

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-106360-17

Date:

August 09, 2017

Re:

### Legend

Decedent =

Date =

x =

y =

z =

Accounting Firm =

Dear :

This letter responds to the letter dated January 27, 2017, and subsequent correspondence, submitted by your authorized representative, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Decedent's generation-skipping transfer (GST) exemption to a transfer to a trust.

### FACTS

The facts and representations submitted are as follows:

Decedent died testate on Date. Items 4 and 5 of Decedent's will created Family Trust and Marital Trust, both to be funded at Decedent's death. Family Trust received \$x in assets. Family Trust has GST tax potential.

It is represented that at the time of his death, Decedent had \$y in unused GST exemption available and that no direct skips occurred at the time of Decedent's death.

Accounting Firm prepared and filed a timely Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, with respect to Decedent's estate. On Schedule R, Generation-Skipping Transfer Tax, an allocation of \$z of Decedent's GST exemption was made with respect to the "Family QTIP Trust." Accounting Firm failed to properly allocate \$x of Decedent's available GST exemption to Family Trust.

Accordingly, Decedent's estate requests an extension of time to allocate Decedent's available GST exemption equal to \$x to Family Trust.

## LAW AND ANALYSIS

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax imposed by § 2601 is the taxable amount multiplied by the applicable rate. Section 2641(a) defines the applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a), the inclusion ratio with respect to any property transferred in a GST is the excess (if any) of one over the applicable fraction. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption under § 2631 allocated to the trust, and the denominator of which is the value of the property transferred to the trust.

Section 2631(a) provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-1 through 301.9100-3.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute).

Section 301.9100-3(a) provides, in part, that requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. The executor is granted an extension of time of 120 days from the date of this letter to allocate Decedent's available GST exemption to Family Trust.

The executor should make the allocation on a supplemental Form 706 and filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center — Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the return.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

*Leslie H. Finlow*

By: \_\_\_\_\_  
Leslie H. Finlow  
Office of Associate Chief Counsel  
Senior Technician Reviewer, Branch 4  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of the letter  
Copy for § 6110 purposes

cc: