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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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Date:
March 23, 2018

RE:

LEGEND

Date 1	=
Date 2	=
Decedent	=
Revocable Trust	=
Date 3	=
Individual A	=
Individual B	=
Individual C	=
Residuary Trust	=
Law Firm	=
Accounting Firm	=
Date 4	=
<u>x</u>	=

Dear :

This letter responds to your authorized representative's letter of October 30, 2017, and subsequent correspondence, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to sever a trust under § 26.2654-1(b)(1) of the Generation-Skipping Transfer (GST) Tax Regulations.

FACTS

The facts and representations submitted are summarized as follows:

On Date 1, Decedent executed Revocable Trust. On Date 2, Decedent executed the tenth amended and restated declaration of Revocable Trust. Revocable Trust became irrevocable upon Decedent's death on Date 3. Decedent was survived by children and further lineal descendants. Decedent was the initial trustee of Revocable Trust. Individual A, Individual B, and Individual C are the current trustees of Revocable Trust and executors under § 2203.

Article Five, Paragraph 8 of Revocable Trust generally provides that, after certain specific bequests, the residue of Revocable Trust is to be held in further trust known as Residuary Trust. Residuary Trust has GST tax potential.

Article Seven, Paragraph 24 directs the trustee to divide any trust created under Revocable Trust into two separate subtrusts of equal or unequal value whenever, in the trustee's discretion, the division is necessary or desirable to minimize transfer or other taxes.

Article Eleven, Paragraph 5 provides that all provisions of Revocable Trust shall be construed in a manner consistent with Decedent's objective of efficiently using available GST tax exemptions, and, to the extent possible, of creating and maintaining trusts that have inclusion ratios either of zero or of one and are thus either entirely exempt or entirely non-exempt.

The executors of Decedent's estate engaged Law Firm to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Accounting Firm was retained to advise Decedent's estate as to income tax issues arising by reason of Decedent's death. During the administration of Decedent's estate, Law Firm and Accounting Firm met with the executors to discuss distributions to children and grandchildren under the terms of Revocable Trust. However, Law Firm and Accounting Firm did not advise Decedent's estate that any gifts or distributions to grandchildren would have a GST impact. Moreover, Decedent's estate was not advised to divide Residuary Trust into two separate trusts, a GST Exempt Residuary Trust and a GST Non-Exempt Residuary Trust, to effectuate Decedent's GST planning as directed under the terms of Revocable Trust.

On Date 4, Form 706 was timely filed on behalf of Decedent's estate. The Form 706 did not evidence any intent to divide Residuary Trust into the GST Exempt Residuary Trust and GST Non-Exempt Residuary Trust. Moreover, there were several reporting and computational errors on Schedule R of Form 706. It is represented that Decedent had previously allocated \$x to skip persons during Decedent's lifetime and had remaining GST exemption available.

You have requested an extension of time to sever Residuary Trust into a GST Exempt Residuary Trust and a GST Non-Exempt Residuary Trust and a ruling that

the automatic allocation rules of § 2632(e) will operate to cause the unused portion of Decedent's GST exemption to be allocated to the GST Exempt Residuary Trust.

LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer. Section 2611(a) provides that the term "generation-skipping transfer" means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term "applicable rate" means, with respect to any GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of one over the applicable fraction determined for the trust. Section 2642(a)(2) provides that, in general, the applicable fraction is a fraction the numerator of which is the amount of the GST exemption allocated to the trust and the denominator of which is the value of the property transferred to the trust, reduced by the sum of any federal estate tax or state death tax actually recovered from the trust attributable to such property, and any charitable deduction allowed under § 2055 or 2522 with respect to such property.

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) 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 2632(e)(1) provides that, in general, any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated as follows: (A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations provides that a decedent's unused GST exemption is automatically allocated on the due date for filing the Form 706, or Form 706NA, to the extent not otherwise allocated by the

decedent's executor on or before that date. Unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)), on the basis of the value of the property as finally determined for purposes of chapter 11 (chapter 11 value), first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)) on the basis of the chapter 11 value of the nonexempt portion of the trust property to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. No automatic allocation of GST exemption is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of any GST with respect to the trust. The automatic allocation is irrevocable.

Section 2652(a)(1) provides that for purposes of chapter 13, the term "transferor" means: (A) in the case of any property subject to the tax imposed by chapter 11, the decedent; and (B) in the case of any property subject to the tax imposed by chapter 12, the donor. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 26.2654-1(b)(1)(ii) provides that the severance of a trust that is included in the transferor's gross estate (or created under the transferor's will) into two or more trusts is recognized for purposes of chapter 13 if the governing instrument does not require or otherwise direct severance but the trust is severed pursuant to discretionary authority granted either under the governing instrument or under local law; and

(A) The terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust;

(B) The severance occurs (or a reformation proceeding, if required, is commenced) prior to the date prescribed for filing the federal estate tax return (including extensions actually granted) for the estate of the transferor; and

(C) Either —

(1) The new trusts are severed on a fractional basis. If severed on a fractional basis, the separate trusts need not be funded with a pro rata portion of each asset held by the undivided trust. The trusts may be funded on a non pro rata basis provided funding is based on either the fair market value of the assets on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding; or

(2) If the severance is required (by the terms of the governing instrument) to be made on the basis of a pecuniary amount, the pecuniary payment is satisfied in a manner that would meet the requirements of § 26.2654-1(a)(1)(ii) if it were paid to an individual.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-1 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

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).

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 representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Decedent's estate is granted an extension of time of 120 days from the date of this letter to sever Residuary Trust into a GST Exempt Residuary Trust and a GST Non-Exempt Residuary Trust in a manner consistent with the requirements of § 26.2654-1(b)(1)(ii). Further, the automatic allocation rules of § 2632(e) apply to automatically allocate Decedent's unused GST exemption to the GST Exempt Residuary Trust.

The severance should be reported on a supplemental Form 706 for the estate of Decedent. The supplemental Form 706 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 706.

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
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: