

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B4  
PLR-107698-20

In Re:

Date:  
August 26, 2020

Legend

Husband =

Wife =

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

X =

Accounting Firm =

Attorney =

Dear :

This letter responds to your authorized representative's letter dated March 12,2020, and subsequent correspondence, requesting an extension of time under § 2642(g) of the

Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Wife's GST exemption to certain trusts.

### Facts

The facts and representations submitted are summarized as follows:

On Date 1, Husband and Wife established Trust for the benefit of the surviving spouse and their children and more remote descendants. Husband and Wife subsequently amended the Trust on Dates 2 and Date 3. Husband died on Date 4. Pursuant to the terms of Trust, the trustee of Trust divided Trust into two separate trusts designated as the Survivor's Trust and the Residual Trust, and further divided the Residual Trust into two separate trusts designated as the Credit Shelter Trust and the Marital Trust. A QTIP election was made on Husband's Form 706, Estate (and Generation Skipping Transfer) Tax Return with respect to the Marital Trust, but no reverse QTIP election was made. Accordingly, Husband's GST exemption was not allocated to Marital Trust.

Wife died on Date 5. Wife was survived by her three children and three grandchildren. Wife's remaining GST exemption was \$x, and the value of assets in the Marital Trust and Survivor's Trust exceeded \$x. Thus, pursuant to the terms of Trust, Marital Trust and Survivor's Trust were divided into separate exempt and non-exempt trusts: Child's Exempt Trusts and Child's Non-Exempt Trusts, to benefit Wife and each respective child and that child's issue.

The trustees instructed Accounting Firm to prepare a Form 706 for Wife's estate. The Form 706 was timely filed on extension. However, Accounting Firm failed to prepare and include a Schedule R (Generation-Skipping Transfer Tax) with the Form 706. Accordingly, Wife's GST exemption was not affirmatively allocated to Child's Exempt Trusts on the Form 706. The error was discovered when Attorney requested a copy of, and reviewed, Wife's Form 706.

### Ruling Requested:

Wife's estate requests an extension of time to allocate Wife's GST exemption to the Child's Exempt Trusts and the value of the transfers as determined for federal estate tax purposes will be used in determining the amount of GST exemption to be allocated to the trusts.

### Law and Analysis:

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2044(a) provides that the value of the gross estate shall include the value of any property in which the decedent had a qualifying income interest for life.

Section 2044(b) provides that § 2044(a) applies to any property if a deduction was allowed with respect to the transfer of such property to the decedent under § 2057(b)(7) and § 2519 did not apply with respect to a disposition by the decedent of part or all of such property.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2011(a) as (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.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the “applicable fraction.” The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), as in effect on Date 5, 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 the 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 26.2632-1(d)(1) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of a decedent’s unused GST exemption by the executor of the decedent’s estate is to be made on the appropriate United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) filed on or before the date prescribed for filing the return (including extensions).

Section 2652(a)(1)(A) provides, in part, that the term “transferor” means in the case of any property subject to the tax imposed by chapter 11, the decedent. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 26.2652-1(a)(1) provides that a surviving spouse is the transferor of a qualified domestic trusts created by the deceased spouse that is included in the surviving

spouse's gross estate, provided the trust is not subject to the election described in § 26.2652-2 (reverse QTIP election).

Section 2642(b)(2)(B) provides that any allocation of GST exemption to property transferred as a result of the death of the transferor is effective on and after the date of death of the transferor.

Section 2642(g)(1) 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 this paragraph, 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 under this paragraph, 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, is to be treated as if not expressly prescribed by statute and taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) under the provisions of § 301.9100-3.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in § 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 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). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin.

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 the grant of 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.

In this case, the executors of Husband's estate did not make a reverse QTIP election with respect to Marital Trust on Husband's Form 706. Therefore, under §§ 2044 and 26.2652-1(a)(1), Wife is deemed to be the transferor of the Marital Trust for GST purposes. In addition, Wife is the transferor of the Survivor's Trust. Pursuant to Trust, these trusts were divided into Child's Exempt Trusts and Child's Non-Exempt Trusts.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, the executors of Wife's estate is granted an extension of time until 120 days after the date of this letter to allocate Wife's GST exemption to Child's Exempt Trusts. The allocations will be effective as of Wife's date of death and the value of the transfers as determined for federal estate tax purposes will be used in determining the amount of GST exemption to be allocated to the trusts.

The allocations should be made on a supplemental Form 706. The supplemental Form 706 should be filed with the Department of the Treasury, Internal Revenue Service, Attn: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

The ruling contained in this letter is 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.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

In accordance with the power of attorney on file with this office, we are sending copies of this letter to your authorized representative.

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

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

*Lorraine Gardner*

By: \_\_\_\_\_  
Lorraine Gardner  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter  
Copy for § 6110 purposes

cc: