

**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:B04  
PLR-105465-22

Date:  
May 25, 2022

In Re:

Legend

Date 1 =  
Decedent =

Attorney =  
Estate =  
Revocable Trust =

Son's CRAT =

Daughter's CRAT =

Grandson's CRAT =

Dear :

This letter responds to your personal representative's letter of March 11, 2022, requesting an extension of time under § 2642(g) of the Internal Revenue Code (Code) and § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) tax exemption to Son's Charitable Remainder Annuity Trust (CRAT), Daughter's CRAT and Grandson's CRAT.

The facts and representations submitted are as follows:

On Date 1, Donor died and the residue of her Revocable Trust was distributed in equal shares to Son's CRAT, Daughter's CRAT, and Grandson's CRAT, three charitable remainder annuity trusts (CRATs) established by Revocable Trust. None of the three CRATs were skip persons, and all of the CRATs had GST potential (i.e. current or contingent annuitants who were skip persons).

Donor's Estate relied upon Attorney to prepare Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Estate reported the value of the transfers to Son's CRAT, Daughter's CRAT, and Grandson's CRAT and claimed an estate tax charitable deduction for the value of the remainder interest of each CRAT. Donor's Estate did not affirmatively allocate any GST exemption on Form 706, and, as a result, Donor's remaining GST exemption was allocated (in accordance with the deemed allocation at death rules of § 2642(e)) equally among Son's CRAT, Daughter's CRAT, and Grandson's CRAT.

Estate requests an extension of time pursuant to § 2642(g) and § 301.9100-3 to (i) allocate the amount of Donor's remaining GST exemption necessary to cause Grandson's CRAT to have an inclusion ratio of zero (or as close to zero as possible) and (ii) allocate any remaining GST exemption after that in equal parts to Son's CRAT and Daughter's CRAT.

### Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer 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 term "applicable rate," with respect to any GST transfer, as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2613(a) provides that the term "skip person" means a trust if all interests in such trust are held by skip persons.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption 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 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.

Section 2632(e)(1) provides that any portion of a decedent's GST exemption which has not been allocated by the due date of such decedent's Form 706 will be deemed to be allocated (i) first, to property which is the subject of a direct skip occurring at such individual's death, and (ii) 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)(1) of the Generation-Skipping Transfer Tax Regulations provides that allocation of a decedent's unused GST exemption by the executor of the decedent's estate is made on the appropriate Form 706 filed on or before the date prescribed for filing the return by § 6075(a).

Section 26.2632-1(d)(2) provides that a decedent's unused GST exemption is automatically allocated on the due date for filing Form 706 to the extent not otherwise allocated by the decedent's executor on or before that date. Unused GST exemption is allocated pro rata on the basis of the value of the property as finally determined for purposes of chapter 11, first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata on the basis of the chapter 11 value of the nonexempt portion of the trust property (or in the case of trusts that are not included in the gross estate, on the basis of the date of death value of the trust) to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. The automatic allocation of GST exemption is irrevocable, and an allocation made by the executor after the automatic allocation is made is ineffective. No automatic allocation of GST exemption is made to a trust if, during the nine month period ending immediately after the death of the transferor (i) No GST has occurred with respect to the trust; and (ii) At the end of such period no future GST can occur with respect to the trust.

Section 2642(a)(1) provides that the inclusion ratio with respect to any property transferred in a generation-skipping transfer is the excess (if any) of one over the "applicable fraction." Under 2642(a)(1), the applicable fraction is defined as a fraction the numerator of which is the amount of the GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust (or involved in the direct skip), 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 2642(b)(2) provides that if property is transferred as a result of the death of the transferor, the value of such property shall be its value as finally determined for purposes of chapter 11. Any allocation to property transferred as a result of the death of the transferor shall be effective on and after the date of the death of the transferor.

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)(2).

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.

Section 2652(c) provides that a person has an interest in property held in trust if (at the time the determination is made) such person--(A) has a right (other than a future right) to receive income or corpus from the trust, (B) is a permissible current recipient of income or corpus from the trust and is not described in § 2055(a), or (C) is described in § 2055(a) and the trust is a charitable remainder annuity trust.

Notice 2001-50, 2001-2 C.B. 189, provides, in part, that, under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers 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.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 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 Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 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). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(2) under the provisions of § 301.9100-3.

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 have been satisfied. Accordingly, Estate is granted an extension of time of 120 days from the date of this letter to allocate (i) the amount of Donor's remaining GST exemption necessary to cause Grandson's CRUT to have an inclusion ratio of zero (or as close to zero as possible) and (ii) any remaining GST exemption after that in equal parts to Son's CRAT and Daughter's CRAT.

Each election should be made on an amended Form 706 and filed with the Kentucky Service Center at the following address: Internal Revenue Service Center Attn: E&G, Stop 824G 7940 Kentucky Drive Florence, KY 41042-2915. A copy of this letter should be attached to the Form 706.

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

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.

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.

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.

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

Sincerely,

Associate Chief Counsel  
Passthroughs and Special Industries

By: \_\_\_\_\_  
Melissa C. Liquerman  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure:

Copy for § 6110 purposes

cc: