

Internal Revenue Service

Department of the Treasury
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Person To Contact: ID No.

Telephone Number:

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Date:
August 11, 2022

Legend

- Decedent =
- Trust =

- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Daughter 1 =
- Daughter 2 =
- Son =
- Daughter-in-law =
- Granddaughter 1 =
- Granddaughter 2 =
- a =
- b =

Dear :

This letter responds to your authorized representative’s letter dated December 28, 2021, requesting a ruling that the automatic allocation rules under § 2632(c) of the Internal Revenue Code, as in effect on Date 2, apply to the transfers made by Decedent to Trust.

The facts and representations submitted are as follows:

On Date 1, Decedent established a revocable trust. The assets of the revocable trust were held and administered for the sole benefit of Decedent during her life. The revocable trust became irrevocable upon the death of Decedent.

Article III of the revocable trust, creates "Trust," which provides, in relevant part, that upon the death of Decedent, if Daughter 1, Daughter 2, Son, or Daughter-in-law (Son's wife), is to survive Decedent, the balance of the trust property is to be retained in Trust. Daughter 2 predeceased Decedent without issue.

Paragraph A of Article III provides, in relevant part, that the trustees of Trust are directed to distribute the net income of Trust monthly to Decedent's children, Daughter 1, Daughter 2, and Son, in equal shares. If Daughter 1 is not then living, Daughter 1's share is to be paid to Daughter 1's daughter, Granddaughter 1. If Daughter 2 is not then living, Daughter 2's share is to be paid equally to the other shares distributed under this article. If Son is not then living, Son's share is to be paid to Daughter-in-law, or if Daughter-in-law is not living to Son's daughter, Granddaughter 2.

Paragraph B of Article III provides, in relevant part, that the trustees, in their sole discretion, may distribute any part or all of the principal of Trust to or for the benefit of any one or more of the issue of Decedent in such amounts as the trustees are to determine. Paragraph C of Article III provides, in relevant part, that upon the death of the survivor of Daughter 1, Son, or Daughter-in-law, Trust is to terminate and the remaining principal and income is to be paid to Granddaughter 1 and Granddaughter 2 in equal shares.

Decedent died on Date 2, a date prior to January 1, 2001. Pursuant to the provisions of Decedent's will, Decedent bequeathed \$a to Granddaughter 1 and \$a to Granddaughter 2. Decedent's residuary estate is to be divided into equal shares for each of Daughter 1, Daughter 2, and Son, to be distributed outright and free of trust. In the event that one of Decedent's children is to predecease Decedent, the deceased child's share is to be distributed to that child's surviving issue, or in default of such issue, the deceased child's share is to be distributed equally to the surviving children. On Date 3, Daughter 1 made a qualified disclaimer of her interest in certain stocks and securities from Decedent's estate, and those interests passed directly to Granddaughter 1. Those interests are represented to have a Date 2 value of \$b.

On Date 4, Decedent's executor timely filed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for the estate. On Date 5, Decedent's executor filed a supplemental Form 706. Schedule R was not included on either return, and thus none of Decedent's generation-skipping transfer tax (GST) exemption was affirmatively allocated to Trust. You represent that prior to Decedent's death, Decedent had not allocated any GST exemption during Decedent's lifetime with respect to any transfer, and Decedent's entire GST exemption was available for allocation at the time of her death.

You have requested the following ruling:

The automatic allocation rules of § 2632(c) operated to cause the unused portion of Decedent's available GST exemption to be automatically allocated to Trust.

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 is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642(a) provides the method for determining the inclusion ratio.

Section 2612(a) provides that the term taxable termination means a termination (by death, lapse of time, release of a power, or otherwise) of an interest in property held in trust where the property passes to a skip person with respect to the transferor of the property. Section 2612(b) provides that the term taxable distribution means any distribution from a trust to a skip person other than a taxable termination or a direct skip. Under §2612(c)(1), a direct skip is a transfer subject to federal estate or gift tax made by a transferor to a skip person. A skip person is defined in § 2613(a) as (1) a natural person assigned to a generation which is two or more generations below the generation assignment of the transferor, or (2) a trust if either all the interests in such trust are held by skip persons, or there is no person holding an interest in the trust, and at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.

Section 2631(a), as in effect on Date 2, provided that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 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 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(b)(1) provides that if any individual makes a direct skip during his lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. Section 2632(b)(2) provides that the unused portion of an individual's

GST exemption is that portion of such exemption that had not previously been allocated or treated as allocated by the individual.

Section 2632(c)(1), as in effect on Date 2, provided that 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)(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 made on the appropriate United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706 or Form 706NA) filed on or before the date prescribed for filing the return by § 6075(a) (including any extensions actually granted (the due date)). An allocation of GST exemption to a trust is void if the allocation is made with respect to a trust that has no GST potential with respect to the transferor for whom the allocation is being made, as of the date of the transferor's death. For this purpose, a trust has GST potential even if the possibility of a GST is so remote to be negligible.

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. The automatic allocation occurs whether or not a return is actually required to be filed. 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 (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 that will have a new transferor with respect to the entire trust prior to the occurrence of any GST with respect to the trust.

As discussed above, it is represented that prior to her death, Decedent did not allocate any GST exemption to any inter vivos transfers and that, at the time of Decedent's death, her entire GST exemption of \$1,000,000 was available. Pursuant to the automatic allocation rules contained in § 2632(c)(1), as in effect on Date 2, GST exemption was automatically allocated first to the direct skip transfers occurring at death, which were the two \$a transfers to Decedent's granddaughters and the interest in stocks and securities that you represent had a value of \$b that Daughter 1 disclaimed in a qualified disclaimer. The remaining GST exemption, if any, would be deemed to be

allocated to Trust. Accordingly, based upon the facts submitted and the representations made, we conclude that the automatic allocation rules of § 2632(c), as in effect on Date 2, operated to cause the unused portion of Decedent's available GST exemption to be automatically allocated to Trust.

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

Except as expressly provided herein, we neither express nor imply any opinion 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) provides that it may not be used or cited as precedent.

Sincerely,

Melissa C. Liquerman

[Melissa C. Liquerman]
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
Copy for § 6110 purposes

cc: