

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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2642.00-00

Person To Contact:
ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-114094-22

In Re:

Date:
January 03, 2023

Legend

Decedent
Date 1
Date 2
Child 1
Child 2
Child 3
Attorney
Trust 1
Trust 2
Trust 3

Dear _____ :

This letter responds to your authorized representative's letter dated July 18, 2022, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code (Code) and § 301.9100-3 of the Procedure and Administration Regulations to allocate Decedent's generation-skipping transfer (GST) exemption to trusts.

The facts and representations submitted are summarized as follows:

Decedent executed a will on Date 1. Article Fourth of the will sets aside the residue of the Decedent's estate in separate trusts for the benefit of his three children, Child 1, Child 2, and Child 3.

Article Fifth of the will directs the trustees to distribute a unitrust amount to each of the children, and the trustees also have discretion to make distributions of principal for medical expenses and certain other limited circumstances. Upon the death of a

child, the trustees of the child's trust are required to pay the principal of the trust, together with all net income accrued but not yet collected or collected but still on hand, *per stirpes*, to the child's then-living descendants, or if there are no such surviving descendants, to the then-living descendants of Child 1.

Decedent died on Date 2. In accordance with the terms of Decedent's will, three residuary trusts were created: Trust 1 for the benefit of Child 1, Trust 2 for the benefit of Child 2, and Trust 3 for the benefit of Child 3.

Attorney was appointed as the co-executor of Decedent's estate. Attorney also prepared Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for the estate. Attorney intended to allocate all of Decedent's GST exemption to Trust 1, in accordance with Decedent's intent. However, due to an administrative error, only a portion of Decedent's GST exemption was allocated to Trust 1.

You have requested an extension of time under § 2642(g) and § 301.9100-3 to allocate Decedent's remaining available GST exemption to Trust 1.

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 2631(a) provides that, for purposes of determining the GST tax, 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 an individual's GST exemption may be allocated 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 return is required to be filed. Section 2632(a)(2) provides that the manner in which allocations are to be made shall be prescribed by forms or regulations issued by the Secretary.

Section 26.2632-1(d)(1) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of decedent's unused GST exemption by the executor of the decedent's estate is made on the Form 706, filed on or before the date prescribed for filing the return by § 6075(a) (including any extensions actually granted).

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 § 2642(g).

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. See Notice 2001-50, 2001-2 C.B. 189.

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.

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 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 the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Decedent's estate is granted an extension of time of 120 days from the date of this letter to allocate Decedent's available GST exemption to Trust 1. The allocation will be effective as of Date 2, the date of Decedent's death, and the value of the transfer as determined for

federal estate tax purposes will be used in determining the amount of GST exemption to be allocated to Trust 1.

The allocation should be made on a supplemental Form 706. The Form 706 should be filed with the Internal Revenue Service at the following address: Internal Revenue Service Center, ATTN: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915.

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,

Associate Chief Counsel
Passthroughs and Special Industries

Melissa C. Liquerman

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

Enclosure
Copy for § 6110 purposes

cc: