

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-109176-23

Date:

July 28, 2023

In Re:

### Legend

Donor =

Spouse =

Date 1 =

Date 2 =

Year 1 =

Year 2 =

Trust 1 =

Trust 2 =

Trust 3 =

Executor =

Accounting Firm =

Dear :

This letter responds to your authorized representative's letter dated April 24, 2023, 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 for an extension of time to allocate Donor's generation-skipping transfer (GST) exemption to transfers to certain trusts.

### FACTS

The facts and representations submitted are summarized as follows:

On Date 1 in Year 1, a date after October 23, 1986, Donor established Trust 1 and Trust 2 for the benefit of her descendants. On Date 2 in Year 2, Donor established Trust 3 for

the benefit of her descendants. In Year 2, a date before December 31, 2000, Donor made a transfer to each of Trust 1, Trust 2, and Trust 3.

Donor relied on Accounting Firm to prepare Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return reporting her Year 2 transfers to Trust 1, Trust 2, and Trust 3. Donor and spouse signified their consent to treat the transfers occurring in Year 2 as having been made one-half by each under § 2513 of the Code. Accounting Firm did not advise Donor to allocate GST exemption to the Year 2 transfers to Trust 1, Trust 2, and Trust 3. As a result, Donor did not allocate GST exemption to the Year 2 transfers to Trust 1, Trust 2, and Trust 3.

It is represented that Donor had sufficient GST exemption to allocate to the Year 2 transfers to Trust 1, Trust 2, and Trust 3.

Donor requests an extension of time under § 2642(g) and § 301.9100-3 to allocate GST exemption to the Year 2 transfers to Trust 1, Trust 2, and Trust 3.

#### LAW AND ANALYSIS

Section 2513(a) provides, generally, that, if the parties consent, a gift made by one spouse to any person other than his or her spouse shall, for gift tax purposes, be considered as made one-half by the donor spouse and one-half by his or her spouse.

Section 2601 imposes a tax on every GST. A GST 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 2631(a), as in effect for Year 2, provided 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 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(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides, in relevant part, that an allocation of GST exemption to property transferred during the transferor's lifetime is made on Form 709.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a GST 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 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).

Section 2642(b)(1) provides that if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

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).

Section 2642(g)(1)(B) provides that in determining whether to grant relief, 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, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of chapter 13.

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, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) 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 6 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). 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. 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)(1) 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 the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. The executor of Donor's estate is granted an extension of time of 120 days from the date of this letter to allocate Donor's GST exemption to that one-half portion of the transferred property with respect to the Year 2 transfers. The allocation will be effective as of the date of the transfers to Trusts.

The allocation should be made on a supplemental Form 709 for Year 2 and filed with Kentucky Service Center at the following address: Department of the Treasury, Internal Revenue Service — Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the supplemental Form 709.

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 representative.

Sincerely,

Associate Chief Counsel  
Passthroughs and Special Industries

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Daniel J. Gespass  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure:  
Copy for § 6110 purposes

cc: