

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:B04
PLR-105637-23

Date:
September 11, 2023

Re:

Legend

Decedent =
Spouse =
Executor =
Trust =

Date 1 =
Date 2 =
Date 3 =
Date 4 =

Dear :

This letter responds to a letter from your authorized representative dated March 13, 2023, and subsequent correspondence, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (Regulations) to allocate generation-skipping transfer tax (GST) exemption under § 2632 of the Internal Revenue Code (Code).

The facts and representations submitted are summarized as follows:

Decedent and his spouse, Spouse, created Trust, a revocable trust, on Date 1. Decedent and Spouse amended and restated Trust on Date 2, and further amended Trust on Date 3. Decedent died on Date 4, survived by Spouse.

Article II.C of Trust provides that upon Decedent's death, the trustees shall divide Trust into three separate trusts, the Survivor's Trust, the Marital Trust, and the Exemption Trust. Article IV.G of Trust provides that the trustees of Trust shall have the power to divide any trust before or after its establishment into one or more separate trusts on a fractional basis, or on any other basis permitted by the applicable sections of the Code and Regulations and which provide, in the aggregate, for the same succession of interests of beneficiaries as in the original trust.

Executor engaged a tax professional who customarily represented Decedent and Spouse to prepare and file a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Executor provided the tax professional with the necessary information to file the return, but the tax professional failed to timely file the Form 706 for Decedent's estate. Thus, Decedent's estate failed to allocate Decedent's GST exemption amount or make other desired elections on a timely-filed Form 706.

Executor proposes to sever the Marital Trust, pursuant to § 2642(a)(3), to create a GST Exempt Marital Trust and a GST non-Exempt Marital Trust. Executor represents that Marital Trust will be divided on a fractional basis and that the GST Exempt Marital Trust will receive a fractional share of the total of all trust assets equal to the applicable fraction of Marital Trust immediately before the severance. Executor requests an extension of time under § 2642(g) and § 301.9100-3 to allocate Decedent's GST exemption to the GST Exempt Marital Trust on a late-filed Form 706 for Decedent's estate.

LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer. Section 2611(a) provides that the term "generation-skipping transfer" means: (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.

Section 2631(a), as in effect on Date 3, 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, in part, that except as otherwise provided in § 26.2632-1(d), 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 with respect to property included in the gross estate of a decedent is effective as of the date of death.

Section 2642(a)(3)(A) provides, generally, that if a trust is severed in a qualified severance, the trusts resulting from such severance shall be treated as separate trusts thereafter for purposes of this chapter.

Section 2642(a)(3)(B)(i) provides, generally, that for purposes of § 2642(a)(3)(A), the term "qualified severance" means the division of a single trust and the creation (by any means available under the governing instrument or under local law) of two or more trusts if the single trust was divided on a fractional basis, and the terms of the new trusts, in the aggregate, provide for the same succession of interests of beneficiaries as are provided in the original trust.

Section 2642(a)(3)(B)(ii) provides that if a trust has an inclusion ratio of greater than zero and less than one, a severance is a qualified severance only if the single trust is divided into two trusts, one of which receives a fractional share of the total value of all trust assets equal to the applicable fraction of the single trust immediately before the severance. In such case, the trust receiving such fractional share shall have an inclusion ratio of zero and the other trust shall have an inclusion ratio of one. Section 2642(a)(3)(B)(iii) provides that the term "qualified severance" includes any other severance permitted under regulations prescribed by the Secretary.

Section 2642(a)(3)(C) provides that a severance pursuant to this paragraph may be made at any time. The Secretary shall prescribe by forms or regulations the manner in which the qualified severance shall be reported to the Secretary.

Section 2642(b)(2)(A) provides that if property is transferred as a result of the death of the transferor, the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned. Section 2642(b)(2)(B) provides that 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, generally, 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.

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 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, Executor is granted an extension of time of 120 days from the date of this letter to allocate Decedent's GST exemption under § 2632. The allocation should be made on a Form 706 filed with the Internal Revenue Service Center at the following address: Department of the Treasury, Internal Revenue Service Center, Kansas City, MO 64999. A copy of this letter should be attached to the Form 706.

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) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
Passthroughs & Special Industries

By: _____
Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure (1)

Copy for § 6110 purposes

cc: