

## 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:B4

PLR-107960-23

Date:

September 26, 2023

### Legend

Husband =

Wife =

Trust =

Attorney =

CPA 1 =

Date =

Year 1 =

Year 2 =

Year 3 =

Dear :

This letter responds to your authorized representative's letter dated April 5, 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 to allocate Wife's generation-skipping transfer (GST) exemption to certain transfers to Trust.

The facts and representations submitted are as follows:

On Date, a date after December 31, 2000, Husband established Trust, an irrevocable trust for the benefit of Husband and Wife's two children and their issue. The governing instrument of Trust created two equal sub-trusts, one for the primary benefit of each of their two children. In Year 1, Husband transferred securities to Trust. In

Year 2, Wife died. In Year 3, Husband made additional transfers directly to the sub-trusts created by Trust.

During Year 1, Husband and Wife retained Attorney for estate planning advice and preparation of the governing instrument of Trust. Attorney coordinated this estate planning with CPA 1 who Husband and Wife retained to prepare any necessary Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. During the planning and preparation of the governing instrument of Trust, CPA 1 was advised of the intention of Husband and Wife to allocate GST exemption to transfers made or deemed to be made by each of Husband and Wife to Trust in Year 1. CPA 1 prepared Year 1 Forms 709 for Husband and Wife on which Husband and Wife each made a split-gift election under § 2513. CPA 1 failed to allocate GST exemption to the amount of the Year 1 transfer made or deemed to be made by Wife.

Husband, in his capacity as executor of the estate of Wife, requests an extension of time to allocate a portion of Wife's GST exemption to the amount of the Year 1 transfer made or deemed to have been made by Wife.

### LAW AND ANALYSIS

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 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. Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a GST is generally defined as the excess (if any) 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, 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 2631(a) 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 such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 26.2632-1(b)(4)(i) of the Generation Skipping Transfer Tax Regulations provides, in part, that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's 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. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term “indirect skip” means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 to a GST Trust. Section 2632(c)(3)(B)(i)(I) provides that the term “GST trust” means a trust that could have a GST with respect to the transferor unless the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons before the date that the individual attains the age of 46.

Section 2642(b) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of § 2632(a) shall be its value as finally determined for purposes of chapter 12, and such allocation shall be effective on and after the date of such transfer. If property is transferred as a result of the death of the transferor, the value of such property for purposes of § 2632(a) shall be its value as finally determined for purposes of chapter 11, and such allocation shall be effective on and after the due date of the death of the transferor.

Section 2513(a)(1) provides that a gift made by one spouse to any other person other than his spouse shall be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. Section 2513(a)(1) only applies if both spouses have signified their consent to the application of this section in the case of all such gifts made during the calendar year by either while married to the other.

Section 2652(a)(1) provides, in part, that except as provided in § 2652(a) or § 2653(a), the term “transferor” means, in the case of any property subject to the tax imposed by chapter 12, the donor. 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. Under § 26.2652-1(a)(4), in the case of a transfer with respect to which the donor's spouse makes an election under § 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is

actually deemed to have transferred under § 2513. The donor is treated as the transferor of one-half of the value of the entire property.

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). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A).

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 shall be treated as if not expressly prescribed by statute.

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 is 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) 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 Internal Revenue 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). 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. Accordingly, Husband, as executor of Wife's estate, is granted an extension of time of 120 days from the date of this letter to allocate Wife's GST exemption to the Year 1 transfer to the extent Wife is considered the transferor under § 26.2652-1(a)(4). The allocation will be effective on the date of the Year 1 transfer and is based on the value of the transferred property as finally determined for purposes of chapter 12.

Husband, acting as executor of Wife's estate, should allocate Wife's GST exemption on an amended Form 709 for Year 1 for Wife. The amended Form 709 should be filed with the 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 each amended 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.

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 & Special Industries)

By: \_\_\_\_\_  
Daniel J. Gespass  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure (1)

Copy for § 6110 purposes.

cc: