

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-116602-23

Date:
February 21, 2024

RE:

LEGEND

Donor A =
Donor B =
Child 1 =
Child 2 =
Year 1 =
Year 2 =
Date =
Month =
Trust 1 =
Trust 2 =
a =
b =
Attorney =
Accountant =

Dear

This letter responds to your authorized representative's letter dated August 8, 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 generation-skipping transfer (GST) exemption to trusts.

The facts and representations submitted are summarized as follows:

Donor A and Donor B are spouses (collectively, Taxpayers). On Date, a date prior to January 1, 2001, Taxpayers established two irrevocable trusts, Trust 1 and Trust 2. The provisions of Trust 1 and Trust 2 are identical except for the identity of the primary beneficiaries: Trust 1 is for the benefit of Child 1 and Child 1's descendants, and Trust 2 is for the benefit of Child 2 and Child 2's descendants. Trust 1 and Trust 2 have GST tax potential.

During Year 1, after the creation of Trust 1 and Trust 2, Taxpayers made several gifts to Trust 1 and Trust 2. Each transfer in Year 1 occurred on a date before January 1, 2001. On Date, Taxpayers transferred \$a cash of community property to each trust. On a date in Month of Year 1, Taxpayers transferred \$b cash of community property to each trust (collectively, the Year 1 Transfers).

Taxpayers retained Attorney for tax and legal counsel with respect to estate, trust, and gift planning. Attorney assisted the Taxpayers with the creation of Trust 1 and Trust 2 and further advised them to file Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, to report the Year 1 Transfers made to Trust 1 and Trust 2 and to allocate their individual GST exemption to taxable transfers to Trust 1 and Trust 2. Correspondence between Attorney and Taxpayers describing the transfers to Trust 1 and Trust 2, as well as the allocation of Taxpayers' GST exemption to those transfers, was sent to Taxpayers and their long-standing tax return preparer, Accountant, who would prepare the Forms 709.

Recently, in Year 2, Taxpayers discussed with Attorney certain gift planning, which required prior-year reporting information. It was at this time that Taxpayers discovered that the Year 1 Forms 709 were not filed. Accordingly, Taxpayers' respective GST exemption was not allocated to the Year 1 Transfers of \$a and \$b.

Taxpayers request an extension of time under § 2642(g) and § 301.9100-3 to allocate Taxpayers' respective GST exemption to the Year 1 Transfers of \$a and \$b to Trust 1 and Trust 2.

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 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides 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 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, Taxpayers are granted an extension of time of 120 days from the date of this letter to allocate Taxpayers' respective available GST exemption to the Year 1 Transfers to Trust 1 and Trust 2. The allocation will be effective as of the date of the Year 1 Transfers to Trust 1 and Trust 2, and the value of the transfers as determined for federal gift tax purposes will be used in determining the amount of GST exemption to be allocated to Trust 1 and Trust 2.

The allocation should be made on a Form 709. The Form 709 should be filed with the Internal Revenue Service at the following address: Department of Treasury, Internal Revenue Service Center, Kansas City, MO 64999.

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.

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

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

Leslie H. Finlow

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

Enclosure:

Copy for § 6110 purposes

cc: