

Trust F4 =
Trust F5 =
Accounting Firm 1 =
Accounting Firm 2 =
Accountant 1 =
Accountant 2 =
Law Firm =

Dear :

This letter responds to your authorized representative's letter dated July 14, 2025, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code (Code) and § 26.2642-7 of the Generation Skipping Transfer (GST) Tax Regulations to make an election under § 2632(c)(5) to have the generation skipping transfer (GST) exemption automatic allocation rules under § 2632(c)(1) not apply with respect to certain transfers to trusts.

The facts and representations submitted are summarized as follows:

On Date, prior to Year 1, Taxpayer established Trust A, an irrevocable trust for the benefit of his descendants, and funded Trust A with a nominal amount. The terms of Trust A provide that the trustee may distribute all of the net income and principal of Trust A to or for the benefit of any one or more of Taxpayer's living issue from time to time, in such amounts or proportions, and to the exclusion of any one or more of them, as the trustee determines in the trustee's absolute discretion for any reason whatsoever, even though any such distribution results in the termination of Trust A. The terms of Trust A define "issue" to mean Child 1, Child 2, and Child 3 (collectively, Children) and their descendants. Trust A terminates at the earlier of the death of Taxpayer or the distribution of all of the assets of Trust A by the trustee.

In Year 1, Taxpayer established and funded two trusts, Trust B1 and Trust B2. The terms of Trust B1 and Trust B2 provide that an annual annuity will be paid to Taxpayer and, at the end of the annuity term, the trusts will terminate and any remaining assets will pass to Trust A. Trust B1 and Trust B2 terminated in Year 3.

In Year 2, Taxpayer established and funded two trusts, Trust C1 and Trust C2. The terms of Trust C1 and Trust C2 provide that an annual annuity will be paid to Taxpayer and, at the end of the annuity term, the trusts will terminate and any remaining assets will pass to Trust A. Trust C1 terminated in Year 4 and Trust C2 terminated in Year 7.

In Year 3, Taxpayer established and funded four trusts, Trust D1, Trust D2, Trust D3, and Trust D4. The terms of Trust D1, Trust D2, Trust D3, and Trust D4 provide that an annual annuity will be paid to Taxpayer and, at the end of the annuity term, the trusts will terminate and any remaining assets will pass to Trust A. Trust D1, Trust D2, Trust D3, and Trust D4 terminated in Year 5.

In Year 4, Taxpayer established and funded three trusts, Trust E1, Trust E2, and Trust E3. The terms of Trust E1, Trust E2, and Trust E3 provide that an annual annuity will be paid to Taxpayer and, at the end of the annuity term, the trusts will terminate and any remaining assets will pass to Trust A. Trust E1, Trust E2, and Trust E3 terminated in Year 6.

In Year 5, Taxpayer established and funded five trusts, Trust F1, Trust F2, Trust F3, Trust F4, and Trust F5. The terms of Trust F1, Trust F2, Trust F3, Trust F4, and Trust F5 provide that an annual annuity will be paid to Taxpayer and, at the end of the annuity term, the trusts will terminate and any remaining assets will pass to Trust A. Trust F1, Trust F2, Trust F3, Trust F4, and Trust F5 terminated in Year 7.

Taxpayer had living children and grandchildren at the termination of each trust established in Year 1, Year 2, Year 3, Year 4, and Year 5 (the Annuity Trusts). Upon the termination of each Annuity Trust, the remaining assets of each Annuity Trust passed to Trust A and, thereafter, Trust A distributed the assets outright to Children. Taxpayer represents that Taxpayer did not intend to allocate GST exemption to any of Taxpayer's transfers to the Annuity Trusts and that Taxpayer intended for the assets remaining in each Annuity Trust at the end of each Annuity Trust term to pass to Children through Trust A.

Taxpayer engaged Accounting Firm 1 to prepare Taxpayer's Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, for Year 1, Year 2, Year 3, Year 4, and Year 5 (collectively, the years at issue). Taxpayer timely filed Taxpayer's respective Forms 709 for the years at issue. Accountant 1, an accountant at Accounting Firm 1, did not understand that automatic allocation of Taxpayer's GST exemption would apply to the value of the remaining assets distributed from each Annuity Trust to Trust A at the end of each Annuity Trust term and, therefore, Accountant 1 did not advise Taxpayer to elect out of the automatic allocation of GST exemption. Neither did attorneys at Law Firm advise Taxpayer of the ability to elect out of the automatic allocation of GST exemption. Taxpayer represents that Taxpayer was not aware of or otherwise advised of the ability to make an election to elect out of the automatic allocation of GST exemption. Therefore, Taxpayer did not elect out of the automatic allocation of GST exemption for Taxpayer's transfers to the Annuity Trusts.

In Year 8, Accounting Firm 1 merged with Accounting Firm 2 and Accountant 1 retired. While preparing Taxpayer's Form 709 for Year 8, Accountant 2, an accountant at Accounting Firm 2, discovered the failure to elect out of the automatic allocation of GST exemption for the years at issue.

Taxpayer requests an extension of time under § 2642(g) and § 26.2642-7 to elect out of the automatic allocation of GST exemption under § 2632(c)(5)(A)(i) with respect to Taxpayer's transfers to the Annuity Trusts in Year 1, Year 2, Year 3, Year 4, and Year 5.

Taxpayer represents that no taxable distributions, taxable terminations, or any other events have occurred with respect to the trusts that would give rise to a GST tax liability.

LAW AND ANALYSIS

Section 2601 provides that a tax is imposed on every generation-skipping transfer (GST). 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 GST tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines the applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

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, shall be irrevocable.

Section 2632(a)(1) provides that any allocation by an individual of his 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 2632(a)(2) provides that the Secretary shall prescribe by forms or regulations the manner in which any allocation is to be made.

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 the term “indirect skip” means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust. Section 2632(c)(3)(B) provides, in relevant part, that the term “GST trust” means a trust that could have a GST with respect to the transferor unless an exception listed in § 2632(c)(3)(B)(i)-(vi) applies.

Section 2632(c)(5)(A)(i) provides, in relevant part, that an individual may elect to have the automatic allocation rules of § 2632(c)(1) not apply to -- (I) an indirect skip, or (II) any or all transfers made by such individual to a particular trust.

Section 2632(c)(5)(B)(ii) provides, in relevant part, that the election under § 2632(c)(5)(A)(i)(II) may be made on a timely-filed gift tax return for the calendar year for which the election is to become effective.

Section 26.2632-1(b)(2)(i) provides, in relevant part, that in the case of an indirect skip made after December 31, 2000, to which § 2642(f) (relating to transfers subject to the ETIP) does not apply, the transferor's unused GST exemption is automatically allocated to the property transferred (but not in excess of the fair market value of the property on the date of the transfer). This automatic allocation is effective whether or not a Form 709 is filed reporting the transfer and is effective as of the date of the transfer to which it relates. An automatic allocation is irrevocable after the due date of the Form 709 for the calendar year in which the transfer is made. In the case of an indirect skip to which § 2642(f) does apply, the indirect skip is deemed to be made at the close of the ETIP and the GST exemption is deemed to be allocated at that time.

Section 26.2632-1(b)(2)(ii) provides, in relevant part, that, except as otherwise provided in forms or other guidance published by the Internal Revenue Service, the transferor may prevent the automatic allocation of GST exemption with regard to an indirect skip (including indirect skips to which § 2642(f) may apply) by making an election as provided in § 26.2632-1(b)(2)(iii).

Section 26.2632-1(b)(2)(iii)(A) provides, in relevant part, that a transferor may prevent the automatic allocation of GST exemption (elect out) with respect to any transfer or transfers constituting an indirect skip made to a trust or to one or more separate shares that are treated as separate trusts under § 26.2654-1(a)(1). A transferor may elect out with respect to: (1) one or more prior-year transfers subject to § 2642(f) (regarding ETIPs) made by the transferor to a specified trust or trusts; (2) one or more (or all) current-year transfers made by the transferor to a specified trust or trusts; (3) one or more (or all) future transfers made by the transferor to a specified trust or trusts; and (4) all future transfers made by the transferor to all trusts (whether or not in existence at the time of the election out); or (5) any combination of (1) through (4).

Section 26.2632-1(b)(2)(iii)(B) provides, in relevant part, that to elect out, the transferor must attach an election out statement (election out statement) to a Form 709 filed within the time period provided in § 26.2632-1(b)(2)(iii)(C). In general, the election out statement must identify the trust and specifically must provide that the transferor is electing out of the automatic allocation of GST exemption with respect to the described transfer or transfers. Under § 26.2632-1(b)(2)(iii)(C), to elect out, the Form 709 with the attached election out statement must be filed on or before the due date for timely filing the Form 709 for the calendar year in which: (1) for a transfer subject to § 2642(f), the ETIP closes; or (2) for all other elections out, the first transfer to be covered by the election out was made.

Section 2642(b)(1)(A) provides that, except as provided in § 2642(f), 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)), or, in the case of an allocation deemed to have been made at the close of

an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period.

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).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), 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 26.2642-7 sets forth the procedures for requesting an extension of time to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5), and the standards used to determine whether relief may be granted.

Section 26.2642-7(d)(1) provides that requests for relief will be granted when and to the extent that the transferor or the executor of the transferor's estate provides evidence establishing to the satisfaction of the Internal Revenue Service that the transferor or the executor of the transferor's estate acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the government.

Section 26.2642-7(d)(2) provides a nonexclusive list of factors that will be considered in determining whether the transferor or the executor of the transferor's estate acted reasonably and in good faith for purposes of § 26.2642-7, including: (i) the intent of the transferor to timely allocate GST exemption to a transfer or to timely make an election under § 2632(b)(3) or (c)(5); (ii) intervening events beyond the control of the transferor that caused the failure to allocate GST exemption to a transfer or to make an election under § 2632(b)(3) or (c)(5); (iii) lack of awareness, despite the exercise of reasonable diligence, by the transferor or the executor of the transferor's estate, taking into account the experience of the transferor or the executor of the transferor's estate and the complexity of the GST tax issue, as the cause of the failure to allocate GST exemption to a transfer or to make an election under § 2632(b)(3) or (c)(5); (iv) consistency by the transferor with regard to the allocation of the transferor's GST exemption to one or more trusts or skip persons; and (v) reasonable reliance by the transferor or the executor of the transferor's estate on the advice of a qualified tax professional.

Section 26.2642-7(d)(3) provides a nonexclusive list of factors that will be considered to determine whether the interests of the government would be prejudiced for purposes of § 26.2642-7, including: (i) an attempt to benefit from hindsight; (ii) the timing of the request for relief, including any delay by the transferor or the executor of the transferor's

estate in the filing of the request for relief that was intended to deprive the Internal Revenue Service of a sufficient period of time in which to challenge any element of the transfer that is the subject of the request for relief; (iii) the occurrence and effect of an intervening taxable termination or taxable distribution between the time for making a timely allocation of GST exemption or a timely election described in § 2632(b)(3) or (c)(5) and the time at which the request for relief was filed; and (iv) certain circumstances involving the expiration of a period of limitations on the assessment or collection of transfer taxes.

Based upon the facts submitted and the representations made, we conclude that the requirements of § 26.2642-7 have been satisfied. Accordingly, Taxpayer is granted an extension of time of 120 days from the date of this letter to make an election under § 2632(c)(5)(A)(i) to have the automatic allocation rules not apply under § 2632(c)(5)(A)(i) for the Year 1 transfer to Trust B1 and Trust B2, the Year 2 transfers to Trust C1 and Trust C2, the Year 3 transfers to Trust D1, Trust D2, Trust D3, and Trust D4, the Year 4 transfers to Trust E1, Trust E2, and Trust E3, and the Year 5 transfers to Trust F1, Trust F2, Trust F3, Trust F4, and Trust F5. The election should be made on an amended Form 709 for each year at issue. Each amended Form 709 should be filed with the Internal Revenue Service Center at the following address: Internal Revenue Service Center, Attn: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. You should attach a copy of this letter 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.

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, Trusts, and Estates

By:

Karlene M. Lesho
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

Enclosure:
Copy for § 6110 purposes

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