

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-134287-18

Date:
March 19, 2019

Legend

Decedent
Date
Trust 1

Trust 2

Attorney

Dear :

This letter responds to your authorized representative's letter dated November 15, 2018, 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 Decedent's generation-skipping transfer (GST) exemption to Trust.

The facts and representations submitted are summarized as follows:

Decedent died on Date. Decedent's will provided direct skips of cash to each of her grandsons. Pursuant to Decedent's will, the residuary of the estate is divided into two trusts for the benefit of her two sons, Trust 1 and Trust 2. Both Trust 1 and Trust 2 have GST potential.

The personal representatives of Decedent's estate hired Attorney to assist with the administration of the estate. Attorney prepared Decedent's will and was very much involved in the administration of the estate. Attorney reviewed the estate's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return prior to filing. The Form 706 contained several mistakes; in particular, Decedent's available GST

exemption was not properly allocated to the direct skips, Trust 1, and Trust 2. Form 706 was timely filed prior to the extended due date.

You have requested an extension of time under § 2642(g) and § 301.9100-3 to allocate Decedent's GST exemption to the direct skips, 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 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.

Under § 2642(a), the inclusion ratio with respect to any property transferred in a GST is the excess (if any) of one 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 under § 2631 allocated to the trust, and the denominator of which is the value of the property transferred to the trust.

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 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, the personal representative of Decedent's estate is granted an extension of time of 120 days from the date of this letter to allocate Decedent's available GST exemption to the direct skips and to the transfers to Trust 1 and Trust 2. The allocations will be effective as of Decedent's date of death and the value of the transfer as determined for federal estate tax purposes will be used in determining the amount of GST exemption to be allocated to the direct skips, Trust 1, and Trust 2.

The allocation should be made on a supplemental Form 706. The Form 706 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

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

Sincerely,

Associate Chief Counsel
Passthroughs and Special Industries

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

Enclosures

Copy for § 6110 purposes
Copy of this letter

cc: