

Internal Revenue Service

Number: **201903013**

Release Date: 1/18/2019

Index Number: 2642.00-00, 9100.00-00

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-117972-18

Date:

October 18, 2018

Legend

Decedent =

Exempt Trust =

Exempt Trust A =

Exempt Trust B =

Exempt Trust C =

Date 1 =

Date 2 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Accounting Firm =

Attorney =

Dear :

This ruling responds to your authorized representative's letter of May 22, 2018, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption.

The facts and representations submitted are summarized as follows:

On Date 1, a date in Year 1, Decedent created Exempt Trust, an irrevocable trust for the primary benefit of Decedent's three children. The governing instrument of Exempt

Trust directs the trustee to immediately divide the estate of Exempt Trust into three separate trusts to be administered and distributed by the trustee as provided in the governing instrument of Exempt Trust. The governing instrument of Exempt Trust further provides that the three separate trusts shall be designated as Exempt Trust A, Exempt Trust B, and Exempt Trust C and that one-third of the trust estate of Exempt Trust shall be allocated to each such separate trust. Exempt Trust, Exempt Trust A, Exempt Trust B, and Exempt Trust C have generation-skipping transfer (GST) potential, and the governing instrument of Exempt Trust states Decedent's intention that each such trust be exempt from GST tax.

In Year 1, a year ending on or before December 31, _____, Decedent made a transfer to Exempt Trust. In Year 2, Year 3, and Year 4, also years ending on or before December 31, _____, Decedent made transfers directly to Exempt Trust A, Exempt Trust B, and Exempt Trust C.

Accounting Firm prepared and filed a timely Form 709, United States Transfer (and Generation-Skipping Transfer) Tax Return for each of Year 1, Year 2, Year 3, and Year 4, to report Decedent's respective transfers to Exempt Trust, Exempt Trust A, Exempt Trust B, and Exempt Trust C. Accounting Firm failed to properly allocate Decedent's GST exemption to the respective transfers.

Decedent died on Date 2. The failure to properly allocate Decedent's GST exemption was discovered by Attorney upon a review of Decedent's estate. It is represented that on the date of Decedent's death, Decedent had sufficient GST exemption to allocate to the Year 1, Year 2, Year 3, and Year 4 transfers. You request an extension of time under § 2642(g) and §§ 301.9100-1 and 301.9100-3 to allocate Decedent's GST exemption to these transfers.

Law and Analysis

Section 2601 imposes a tax on every GST, which 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 GST 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.

Section 2642(a)(1) provides that for purposes of chapter 13, 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 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 certain taxes and charitable deductions.

Section 2631(a), as in effect for all relevant years, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 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 once an allocation of GST exemption is made, it is 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(b)(4)(i) provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a transfer tax return filed on or before the date prescribed by § 6075(b) for such transfer, 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) and such allocation will be effective on and after the date of such transfer.

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)(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 (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides in part, 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 and taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) 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 Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extension of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

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). 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) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) 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 representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. 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 Decedent's transfers made to Exempt Trust, Exempt Trust A, Exempt Trust B, and Exempt Trust C in Year 1, Year 2, Year 3 and Year 4. The allocations will be effective as of the date of the transfers, and the value of the transfers, as determined for federal transfer tax purposes, will be used in determining the amount of Decedent's GST exemption to be allocated. The allocation of GST exemption should be made on supplemental Forms 709 for Year 1, Year 2, Year 3, and Year 4.

Decedent's supplemental Forms 709 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Forms 709. A copy is enclosed for this purpose.

Except as expressly provided herein, we express no opinion on the federal tax consequences of the transactions under the cited provisions or under any other provisions of the Code.

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.

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.

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)

Melissa C. Liquerman

By: _____
Melissa C. Liquerman
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: