

**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:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-101371-20

Date:  
July 14, 2020

Legend

Decedent =

Executor =

Trust =

Attorney =

Accountant =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to your authorized representative's letter dated November 26, 2019, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Decedent's generation-skipping transfer (GST) exemption to two trusts.

## Facts

On Date 1, Decedent created and funded Trust, a revocable trust, for his lifetime benefit. Upon Decedent's death on Date 2, Trust became irrevocable. Pursuant to the terms of Trust, Trust was divided into Family Trust and Marital Trust, and Marital Trust was further divided into Exempt Marital Trust and Non-Exempt Marital Trust. Each of Family Trust, Exempt Marital Trust and Non-Exempt Marital Trust have GST potential.

Executor, the spouse of Decedent, hired Attorney and Accountant to assist with the administration of the estate and to prepare and provide advice with respect to all necessary tax returns. Executor was advised of the ability to affirmatively allocate Decedent's available GST exemption and intended to affirmatively allocate to Family Trust and Exempt Marital Trust. However, for various reasons, Accountant inadvertently failed to timely file Form 4768, Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes. Accountant discovered the error in preparing Decedent's Form 706. Executor filed Form 706 on Date 3, prior to what would have been its extended due date, had an extension been obtained.

You request an extension of time pursuant to § 2642(g) and § 301.9100-3 to allocate Decedent's GST exemption to Family Trust and Exempt Marital Trust.

## 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 imposed by § 2601 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.

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. Under § 2642(a)(2), the applicable fraction is a fraction, the numerator of which is the amount of the GST exemption allocated to the trust, and the denominator of which is the value of the property transferred to the trust.

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 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 a return is required to be filed.

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 26.2632-1(d)(1) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of a decedent's unused GST exemption by the executor of the decedent's estate is made on the appropriate Form 706 or Form 706NA filed on or before the date prescribed for filing the return by § 6075(a) (including any extensions actually granted). An allocation of GST exemption with respect to property included in the gross estate of a decedent is effective as of the date of death.

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 this paragraph.

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.

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, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are 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) 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 the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, 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 Family Trust and Exempt Marital Trust.

This allocation should be made on a supplemental Form 706 and filed with the Internal Revenue Service at the following address: Department of the Treasury, Internal Revenue Service Center, Stop 842G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the supplemental Form 706.

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.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction 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.

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

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: Karlene M. Lesho  
Karlene M. Lesho  
Senior Technician Reviewer, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter  
Copy for § 6110 purposes

cc: