

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:B04
PLR-124336-23

In Re:

Date:
May 22, 2024

- Husband =
- Wife =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Year 1 =
- Year 2 =
- Accountant =
- Attorney =
- Trust 1 =

- Trust 2 =
- Trust 3 =
- Trust 3A =
- Trust 3B =
- Trust 3C =

Dear _____ :

This letter responds to your authorized representative's letter dated December 7, 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 Husband's generation-skipping transfer (GST) exemption to trusts.

The facts and representations submitted are summarized as follows:

Husband created and funded Trust 1 on Date 1, in Year 1 (before 2001). Wife, Husband's spouse, created and funded Trust 2 on Date 1. Husband also created and funded Trust 3 on Date 2, in Year 2, and made additional transfers to that trust later in Year 2 (before 2001). Trust 3 was later divided into three trusts, Trust 3A, Trust 3B, and Trust 3C, each trust for the benefit of one of Husband's children.

The trusts provide lifetime interests for the children of Husband and after their deaths to more remote issue. The trusts have GST potential.

Husband and Wife hired Accountant for tax advice and to prepare their Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, for Year 1 and Year 2. However, Accountant failed to prepare Forms 709 for Year 1 and Year 2 for Husband and Wife.

Husband died on Date 3. Wife died on Date 4. The executors of the respective estates of Husband and Wife represent that had the GST exemption been properly allocated in Year 1 and Year 2, there would be sufficient GST exemption available for all subsequent lifetime and testamentary transfers made by Husband and Wife that were subject to the GST tax.

After the death of Wife, Attorney, the attorney for Wife's estate, discovered that no Form 709 was filed with the Internal Revenue Service for Year 1 and Year 2 by either Husband or Wife.

You have requested an extension of time under § 2642(g) and § 301.9100-3 to allocate Husband's remaining available GST exemption to Trust 1 and Trust 3.

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), as in effect for the years at issue in the present case, provided 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 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 2632(a)(2) provides that the manner in which allocations are to be made shall be prescribed by forms or regulations issued by the Secretary.

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 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.

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.

Under § 301.9100-3(g)(1), the procedures set forth in § 301.9100-3 do not apply to requests for relief under § 2642(g)(1) that are filed on or after May 6, 2024, regardless of the date of the transfer. Since this ruling request was filed with the Internal Revenue Service prior to May 6, 2024, the procedures set forth in § 301.9100-3 may still be applied to grant relief under § 2642(g)(1). For requests for relief under § 2642(g)(1), see § 26.2642-7 of the Generation-Skipping Transfer Tax Regulations.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Husband's estate is granted an extension of time of 120 days from the date of this letter to allocate Husband's available GST exemption to Trust 1 and Trust 3. The allocation of GST exemption to the trusts will be effective as of the date of transfer. The allocation of GST exemption to the trusts, and the value of the transfer 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 3.

The allocation should be made on amended Forms 709. The Forms 709 should be filed with the Internal Revenue Service at the following address: Internal Revenue Service Center, ATTN: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915.

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

Daniel J. Gespass

By:

[Daniel J. Gespass]
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for § 6110 purposes

cc:

cc: