

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-110590-24

Date:
June 26, 2024

In Re:

Legend

Husband =

Wife =

Trust: =

Date 1 =

Date 2 =

Year 1 =

Year 2 =

Accounting Firm =

Dear :

This letter responds to your authorized representative's letter dated January 31, 2024, 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 Wife's generation-skipping transfer (GST) exemption to trusts.

The facts and representations submitted are summarized as follows:

Husband and Wife created and funded Trust on Date 1. Husband and Wife made additional transfers to Trust on Date 2.

Trust provides lifetime interests for the children of Husband and Wife and after their deaths to more remote issue. Trust has GST potential. It is represented that Trust was not a GST Trust within the meaning of § 2632(c)(3)(B) in Year 1.

Husband and Wife hired a qualified tax professional from Accounting Firm for tax advice and to prepare their Forms 709, United States Gift (and Generation Skipping Transfer) Tax Returns, for Year 1. The qualified tax professional prepared and filed Forms 709 for Year 1 for Husband and Wife but failed to affirmatively allocate Husband's and Wife's GST exemption to the reported transfers. Accordingly, no GST exemption was allocated to the Date 2 transfers to Trust. In Year 2, the qualified tax professional discovered the failure to affirmatively allocate Husband's and Wife's GST exemption to the reported transfers in Year 1.

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

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 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 2631(c) provides that, for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the basic exclusion amount under § 2010(c) for such calendar year.

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, Wife is granted an

extension of time of 120 days from the date of this letter to allocate Wife's available GST exemption to Trust. The allocation of GST exemption to the trust will be effective as of the date of transfer. The allocation of GST exemption to the trust, 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.

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

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

Enclosure:
Copy for § 6110 purposes

cc: