

Internal Revenue Service

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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:B04

PLR-109516-24

Date:

November 15, 2024

Legend

Donor =

Spouse =

Trust =

Attorney =

Date =

Year =

Dear :

This letter responds to your authorized representative's letter dated May 17, 2024, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 26.2642-7 of the Generation-Skipping Transfer (GST) Tax Regulations to allocate GST exemption to transfers to a trust.

The facts and representations submitted are as follows:

Donor established an irrevocable trust (Trust) on Date in Year and made transfers to Trust in Year. Trust provides that during Spouse's life, trustee may distribute income and principal to Spouse and Donor's descendants to provide for their health, education, maintenance, and support.

Upon Spouse's death, the trustee is to divide Trust into separate trusts for Donor's children and descendants. With respect to a child's trust, the trustee may make discretionary distributions to provide for that child's health, education, maintenance, and

support. In addition, each child's trust provides that the child has incremental withdrawal rights over the trust principal culminating at age 45, but only over the portion of the trust that is not exempt from GST tax. The child has no withdrawal rights over the portion of the trust that is exempt from GST tax. The child may appoint the remainder of the GST non-exempt portion of the trust at child's death among Donor's descendants and the creditors of child's estate. The child may appoint the remainder of the GST exempt portion of the trust at child's death only among Donor's descendants (and not to the creditors of child's estate). If child does not exercise the power of appointment, the remainder is to be held in further trust for child's issue.

Donor engaged Attorney in connection with the formation of Trust and the preparation of Donor's tax returns. Donor intended Trust to benefit grandchildren and more remote descendants. However, Donor relied on Attorney to prepare the Form 709 for Year, and Attorney did not advise Donor of the consequences of making an election under § 2632(c)(5) to opt out of automatic allocation of GST exemption. Accordingly, Donor elected out of automatic allocation for transfers to Trust in Year, and GST exemption was not allocated to Trust.

RULING REQUESTED

You have requested an extension of time to allocate GST exemption to the transfers made to Trust in Year.

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 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 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of this subsection, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust.

Section 2632(c)(5)(A)(i) provides that an individual may elect to have the automatic allocation rules not apply to (I) an indirect skip, or (II) any or all transfers made by such individual to a particular trust.

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 26.2642-7 of the Generation-Skipping Transfer Tax Regulations sets forth the procedures for requesting an extension of time to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5), and the standards used to determine whether relief may be granted.

Section 26.2642-7(d)(1) provides that requests for relief will be granted when and to the extent that the transferor or the executor of the transferor's estate provides evidence establishing to the satisfaction of the IRS that the transferor or the executor of the

transferor's estate acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the government.

Section 26.2642-7(d)(2) provides a nonexclusive list of factors that will be considered in determining whether the transferor or the executor of the transferor's estate acted reasonably and in good faith for purposes of § 26.2642-7, including reasonable reliance by the transferor or the executor of the transferor's estate on the advice of a qualified tax professional.

Based on the facts submitted and the representations made, we conclude that the requirements of § 26.2642-7 have been satisfied. Therefore, Donor is granted an extension of time of 120 days from the date of this letter to allocate Donor's GST exemption to the Year transfers to Trust.

The allocation of GST exemption should be made on an amended Form 709 for Year. The Form 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 representative.

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. Specifically, we express no opinion as to whether Donor's power to alter the child's withdrawal rights by changing the portion of the trust that is exempt from GST tax (through a late allocation of GST exemption) would cause the trust to be includible in the donor's estate under § 2036(a)(2) and § 2038. We further express no opinion as to whether Donor's retained indirect power causes any portion of Trust to be subject to an estate tax inclusion period under § 2642(f). We therefore express no opinion as to the effect of an allocation of GST exemption made pursuant to this grant of relief.

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)

Leslie H. Finlow

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: