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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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PLR-114689-24

Date:

February 14, 2025

LEGEND

Taxpayer	=
Attorney	=
Accountant 1	=
Accountant 2	=
Date 1	=
Date 2	=
Year	=
Trust 1	=
Trust 1A	=
Trust 1B	=
Child A	=
Child B	=

Dear :

This letter responds to your authorized representative's letter dated August 6, 2024, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code (Code) and § 26.2642-7 of the Generation-Skipping Transfer (GST) Tax Regulations to make an election under § 2632(c)(5) to have the automatic allocation generation-skipping transfer (GST) exemption rules under § 2632(c)(1) not apply with respect to certain transfers to trusts.

The facts and representations submitted are summarized as follows:

On Date 1, in Year, Taxpayer created and funded Trust 1, a grantor retained annuity trust (GRAT). Trust 1 provided that an annual annuity would be paid to Taxpayer from Date 1 until Date 2. On Date 2, Trust 1 would terminate and any remaining property in Trust 1 was required to be divided into separate trusts for the benefit of Taxpayer's descendants. The assets of Trust 1 were divided into Trust 1A, for the primary benefit of Taxpayer's child, Child A, and Trust 1B, for the primary benefit of Taxpayer's child, Child B. It is represented that Taxpayer did not intend to allocate GST exemption to Trust 1.

Taxpayer retained Attorney to advise on estate planning matters. Attorney drafted Trust 1. Taxpayer also retained Accountant 1 and Accountant 2 to prepare Taxpayer's Year Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. Taxpayer timely filed Form 709 for Year. However, Accountant 1 and Accountant 2 failed to advise Taxpayer to elect out of the automatic allocation of GST exemption pursuant to § 2632(c)(5)(A)(i) on the return.

Taxpayer requests an extension of time under § 2642(g) and § 26.2642-7 to elect out of the automatic allocation of GST exemption under § 2632(c)(5)(A)(i) with respect to Taxpayer's Year transfer to Trust 1, so that Taxpayer's GST exemption is not allocated to Trust 1, Trust 1A, or Trust 1B.

LAW AND ANALYSIS

Section 2601 provides that a tax is imposed on every generation-skipping transfer (GST). Section 2611(a) provides that the term "generation-skipping transfer" means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of GST tax 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.

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 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 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)(3)(B) provides, in relevant part, that the term "GST trust" means a trust that could have a GST with respect to the transferor unless an exception listed in § 2632(c)(3)(B)(i)-(vi) applies.

Section 2632(c)(5)(A)(i) provides, in relevant part, that an individual may elect to have the automatic allocation rules of § 2632(c)(1) not apply to -- (I) an indirect skip, or (II) any or all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(ii) provides, in relevant part, that the election under § 2632(c)(5)(A)(i)(II) may be made on a timely-filed gift tax return for the calendar year for which the election is to become effective.

Section 26.2632-1(b)(2)(i) provides that in the case of an indirect skip made after December 31, 2000, to which § 2642(f) (relating to transfers subject to the ETIP) does not apply, the transferor's unused GST exemption is automatically allocated to the property transferred (but not in excess of the fair market value of the property on the date of the transfer). This automatic allocation is effective whether or not a Form 709 is filed reporting the transfer, and is effective as of the date of the transfer to which it relates. An automatic allocation is irrevocable after the due date of the Form 709 for the calendar year in which the transfer is made.

Section 26.2632-1(b)(2)(ii) provides that, except as otherwise provided, the transferor may prevent the automatic allocation of GST exemption with regard to an indirect skip by making an election as provided in § 26.2632-1(b)(2)(iii).

Section 26.2632-1(b)(2)(iii)(A) provides, in relevant part, that a transferor may prevent the automatic allocation of GST exemption (elect out) with respect to any transfer or transfers constituting an indirect skip made to a trust or to one or more separate shares that are treated as separate trusts under § 26.2654-1(a)(1). A transferor may elect out with respect to: (1) one or more prior-year transfers subject to § 2642(f) (regarding ETIPs) made by the transferor to a specified trust or trusts; (2) one or more (or all) current-year transfers made by the transferor to a specified trust or trusts; (3) one or more (or all) future transfers made by the transferor to a specified trust or trusts; and (4) all future transfers made by the transferor to all trusts (whether or not in existence at the time of the election out); or (5) any combination of (1) through (4).

Section 26.2632-1(b)(2)(iii)(B) provides that to elect out, the transferor must attach an election out statement to a Form 709 filed within the time period provided in

§ 26.2632-1(b)(2)(iii)(C). In general, the election out statement must identify the trust, and specifically must provide that the transferor is electing out of the automatic allocation of GST exemption with respect to the described transfer or transfers. Under § 26.2632-1(b)(2)(iii)(C), to elect out, the Form 709 with the attached election out statement must be filed on or before the due date for timely filing the Form 709 for the calendar year in which: (1) for a transfer subject to § 2642(f), the ETIP closes; or (2) for all other elections out, the first transfer to be covered by the election out was made.

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, generally, 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).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), 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.

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 upon the facts submitted and the representations made, we conclude that the requirements of § 26.2642-7 have been satisfied. Accordingly, Taxpayer is granted an extension of time of 120 days from the date of this letter to elect out of the automatic allocation rules under § 2632(c)(5)(A)(i) for Taxpayer's Year transfer to Trust 1. The election should be made on an amended Form 709 for Year. The amended Form 709 should be filed with the Internal Revenue Service Center at the following address: Internal Revenue Service Center, Attn: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. You should attach a copy of this letter to the amended Form 709.

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

Except as expressly provided herein, no opinion is expressed or implied 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, Trusts, and Estates

By: [Leslie H. Finlow]
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

Enclosure:
Copy for § 6110 purposes

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