

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:PT&E:B04

PLR-100842-25

Date:

July 01, 2025

LEGEND

Decedent	=
Spouse	=
Child 1	=
Child 2	=
Child 3	=
Attorney	=
Law Firm	=
Accounting Firm	=
Date 1	=
Date 2	=
Date 3	=
Year 1	=
Year 2	=
Year 3	=
Trust	=
Marital Trust	=
<u>X</u>	=

Dear :

This letter responds to your authorized representative's letter dated December 20, 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 allocate GST exemption to a transfer to a trust.

The facts and representations submitted are summarized as follows:

On Date 1, in Year 1 (a date prior to December 31, 2000), Decedent established Trust for the benefit of Child 1, Child 2, Child 3, and the descendants of such children. Trust has GST tax potential. On Date 2, in Year 1 (a date prior to December 31, 2000), Decedent made a gift of X to Trust 1. On their Year 1 Forms 709 (United States Gift (and Generation-Skipping Transfer) Tax Returns), Decedent and Spouse elected to treat Year 1 gifts as made one-half by each of them under § 2513 of the Code.

Decedent and Spouse retained Attorney and Law Firm to create Trust and to coordinate with Accounting Firm regarding the Year 1 transfer of X to Trust. Decedent and Spouse retained Accounting Firm to prepare Forms 709 to report the Year 1 transfer of X to Trust. In preparing the Year 1 Forms 709, Accounting Firm failed to report the Year 1 transfer of X to Trust. Thus, Accounting Firm did not allocate Decedent's and Spouse's respective GST exemptions to the transfer of X made in Year 1 to Trust.

Decedent died on Date 3 in Year 2. Prior to his death, Decedent executed a revocable trust. Decedent's revocable trust provides that upon Decedent's death, Marital Trust is to be created for the benefit of Spouse. The executor of Decedent's estate (Executor) retained Attorney to prepare Decedent's Form 706, United States Gift (and Generation-Skipping Transfer) Tax return. Executor elected to treat the assets of Marital Trust as qualified terminable interest property (QTIP) so that the amount passing to Marital Trust qualified for the marital deduction under § 2056(b)(7). Executor severed Marital Trust into a GST exempt QTIP trust (GST Exempt Marital Trust) and a GST non-exempt QTIP trust (Non-Exempt Marital Trust). Executor made a reverse QTIP election under § 2652(a)(3) with respect to the GST Exempt Marital Trust. On Form 706, Executor affirmatively allocated the remainder of Decedent's available GST exemption to the GST Exempt Marital Trust.

In Year 3, Executor discovered that the transfer of X to Trust in Year 1 was not reported on Decedent's and Spouse's Year 1 Forms 709. Consequently, Decedent and Spouse did not allocate GST exemption to the Year 1 transfer of X to Trust.

Decedent's estate requests an extension of time under § 2642(g) and § 26.2642-7 to allocate Decedent's GST exemption to the Year 1 transfer of X to Trust.

LAW AND ANALYSIS

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate is to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, the entire property shall be treated as passing to the surviving spouse for purposes of § 2056(a), and no part of the property shall be treated as passing to any person other than the surviving spouse for purposes of § 2056(b)(1)(A).

Section 2056(b)(7)(B)(i) defines “qualified terminable interest property” as property: (1) which passes from the decedent, (2) in which the surviving spouse has a qualifying income interest for life, and (3) to which an election under § 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001. Such election, once made, shall be irrevocable.

Section 2513(a)(1) provides, generally, that, if the parties consent, a gift made by one spouse to any person other than the donor's spouse shall, for gift tax purposes, be considered as made one-half by the donor and one-half by the donor's spouse.

Section 2652(a)(2) provides that if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of chapter 13.

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 2631(a), in effect at the time of the transfer, provides 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 allocations are to be made as prescribed by forms or regulations issued by the Secretary.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Under § 26.2632-1(d)(1), an allocation of a decedent's available GST exemption by the executor of the decedent's estate is made on Form 706 filed on or before the date prescribed for filing the return by § 6075(a) (including any extensions 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 2652(a)(3) provides that in the case of any trust with respect to which a deduction is allowed to the decedent's estate under § 2056(b)(7), the estate of the decedent may elect to treat all of the property in the trust, for purposes of chapter 13, as if the election to be treated as QTIP had not been made. This election is referred to as the reverse QTIP election. The consequence of a reverse QTIP election is that the decedent remains, for GST tax purposes, the transferor of the QTIP trust for which the election is made. As a result, the decedent's GST tax exemption may be allocated to the QTIP trust.

Section 26.2652-2(a) provides that the election must be made with respect to all property held in a QTIP trust. Section 26.2652-2(b) provides that a reverse QTIP election is made on the return on which the QTIP election is made.

Section 2642(b)(1), as in effect at the time of the transfer, provides, in part, that, except as provided under § 2642(f), if the allocation of the GST exemption to any property is made on a gift tax return filed on or before the date prescribed by § 6075(b), (A) the value of such property for purposes of § 2642(a) shall be its value for purposes of chapter 12 and (B) such allocation shall be effective on or after the date of such transfer.

Section 2642(b)(2) provides generally that if property is transferred as a result of the death of the transferor, the value of the property for purposes of determining the inclusion ratio under § 2642(a)(1) shall be the value of the property as finally determined for estate tax purposes.

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(c) provides, in part, that the amount of GST exemption that may be allocated to a transfer as the result of relief granted under this section in no event may exceed the amount of the transferor's unused GST exemption under § 2631(c) as of the date of the transfer.

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.

Section 26.2642-7(e)(2)(i) provides, in part, that relief will not be granted to the extent that it would decrease or revoke an affirmative (but not automatic) allocation of GST exemption under § 2632(a) or 2642(b) that was made on a Federal gift or estate tax return, regardless of whether the transfer or the allocation of exemption was made during the transferor's life or upon the transferor's death.

Section 26.2642-7(e)(2)(ii) provides the three narrow exceptions to the rule that relief is not available to decrease or revoke an affirmative allocation of GST exemption under § 2632(a) or § 2642(b): (A) an allocation of GST exemption is void to the extent that the amount exceeds the amount needed to obtain an inclusion ratio of zero; (B) an allocation is void if made to a trust, which at the time of allocation, has no GST potential; and (C) a late allocation of GST exemption to a transfer or to a trust for certain transfers made prior to December 31, 2000 is void to allow for relief to make a timely allocation of GST exemption.

Based solely on the information submitted and the representations made, we conclude that the requirements of § 26.2642-7 have not been satisfied. In general, § 2631(b) provides that allocations of GST exemption are irrevocable once made. In addition, § 26.2642-7(e)(2)(i) provides, in part, that relief will not be granted to the extent that it

would decrease or revoke an affirmative (but not automatic) allocation of GST exemption under § 2632(a) or § 2642(b) that was made on a Federal gift or estate tax return. Although § 26.2642-7(e)(2)(i) provides limited relief to decrease an affirmative allocation, the facts must specifically fall within the three enumerated exceptions in § 26.2642-7(e)(2)(ii) to qualify for the limited relief.

Relief is not available to the Decedent's estate under § 26.2642-7 as the estate's request for relief does not satisfy the § 26.2642-7(e)(2)(ii) exceptions permitting changes to affirmative allocations of GST exemption. Granting relief to permit a retroactive allocation of GST exemption to Decedent's Year 1 lifetime transfer of X to Trust would necessitate a decrease to the affirmative allocation the Decedent's estate made to Decedent's GST Exempt Marital Trust on the estate tax return. The facts, therefore, fall within the rule of § 26.2642-7(e)(2)(i), which prohibits relief when the relief would decrease or revoke an affirmative allocation of GST exemption under § 2632(a) or § 2642(b) that was made on a Federal gift or estate tax return.

Accordingly, we deny the estate's request to retroactively allocate GST exemption to the Year 1 transfer of X to Trust.

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) 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

Sincerely,

Melissa C. Liquerman

By: _____
Melissa C. Liquerman
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

Enclosure

Copy for § 6110 purposes

cc:

cc:

cc: