

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:7 / PLR-104212-00

Date:

August 8, 2000

Legend

Decedent =

Trust =

Lifetime Trust =

Spouse =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

\$W =

\$X =

\$Y =

\$Z =

Dear Sir and Madam:

This responds to your request, dated February 17, 2000, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make a reverse qualified terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code.

The Decedent died on Date 2, survived by Spouse. Section 3.3.1 of the Decedent's Will funds Trust with an amount equal to the amount of the Decedent's

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generation-skipping tax exemption allowable under § 2361(a) as of the date of the Decedent's death, which was not allocated to a lifetime transfer. Section 3.3.2 of the Decedent's Will provides that (if Spouse survives Decedent) Trust should be funded with assets which qualify for the marital deduction.

Section 3.3.3(b) of the Decedent's Will states that, if Spouse disclaims an interest in Trust, the trustee shall segregate the disclaimed assets from the other assets. Section 3.3.4(a) provides that Spouse is the sole beneficiary of Trust while she is alive. Section 3.3.5(a) directs the trustee to pay to Spouse the net income of Trust as she requests, but not less frequently than annually. In addition, that section provides that the trustee may distribute Trust principal to or for the sole benefit of Spouse for any reason satisfactory to the trustee.

Section 3.3.4(a) provides that after Spouse's death, the Decedent's grandchildren become the beneficiaries of Trust. Section 3.3.7 provides that Trust shall terminate on the first occurring of the following events: (i) distribution of all assets, (ii) exercise of a power of appointment which effectively terminates the trust; (iii) the absence of beneficiaries, or (iv) the day before the last day allowable to avoid violating the rule against perpetuities. If Trust terminates because of (iv), all Trust assets shall be distributed to the then income beneficiaries, per capita.

The estate filed a Form 709 (Federal Gift and Generation-Skipping Transfer Tax Return) on Date 3. The purpose of the Form 709 was to allocate part of the Decedent's generation-skipping transfer (GST) exemption to a gift made to Lifetime Trust on Date 1. Pursuant to § 26.2642-2(a)(2) of the Generation-Skipping Transfer Tax Regulations, the estate elected to value the gift as having been made on the first day of the month during which the allocation was made. The estate noted on Part 1 of Schedule A of Form 709 that an appraisal had not yet been received and would be submitted upon receipt. The estate submitted an appraisal on Date 5 which valued the gift to Lifetime Trust at \$Y as of the first day of the month in which the allocation was made. Thus, the value of the actual bequest to Trust was reduced to \$Z.

The estate filed Form 706 (Federal Estate and Generation-Skipping Transfer Tax Return) on Date 4. On Schedule M of Form 706, the executor made an election under § 2056(b)(7) with respect to the entire value of Trust, and claimed a marital deduction for that amount. Form 706 valued Trust at \$W which is the Decedent's GST exemption of \$1,000,000 less the estimated value \$X of the Date 1 gift as of the first day of the month in which the allocation was made. The executor relied on a qualified tax professional to prepare the estate tax return. According to the attorney responsible for preparing the estate tax return, the box on Schedule R, which should be checked if a taxpayer wished to make a § 2652(a)(3) reverse QTIP election, inadvertently was not checked. Thus, the estate failed to make a reverse QTIP election under § 2652(a)(3) for Trust. Part 2 of Schedule R did not list any direct skips to which the Decedent's remaining GST exemption could have been allocated automatically under the allocation

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rules of § 2632(c). Therefore, the remainder of the Decedent's GST exemption was not utilized.

You have requested an extension of time under § 301.9100-1 to make an election under § 2652(a)(3) for Trust.

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)(1) provides the general rule that no deduction shall be allowed for an interest passing to the surviving spouse if, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest will terminate or fail.

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 2601 imposes a tax on every generation-skipping transfer.

Section 2631(a) 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 by his executor) to any property with respect to which such individual is the transferor.

Under § 2632(a), the allocation of the GST exemption may be made at any time on or before the date prescribed for filing the individual's estate tax return (including extensions). Under § 2632(c), any portion of an individual GST exemption not allocated within the time prescribed in § 2632(a), is allocated automatically.

Section 26.2632-1(d)(2) supplies the method for the automatic allocation of any unused GST exemption. First, the exemption is allocated pro rata to direct skips on the basis of the value of property as finally determined for purposes of Chapter 11. The

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balance is then allocated pro rata, on the basis of value, to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. In the case of trusts that are not included in the gross estate, the GST exemption is allocated on the basis of the date of death value of the trust. No automatic allocation is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of any GST with respect to the trust. The automatic allocation is irrevocable.

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 the GST tax, as if the election to be treated as qualified terminable interest property 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 exemption may be allocated to the QTIP trust.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except Subtitles E, G, H, and I, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. § 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of 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.

Section 301.9100-3(b)(2) provides that a taxpayer will not be considered to have

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reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not (i) competent to render advice on the regulatory election; or (ii) aware of all relevant facts.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Based on the facts submitted and the representations made, we conclude that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Consequently, we grant an extension of time for making the reverse QTIP election under § 2652(a)(3) for Trust. The election must be made within 30 days of the date of this letter. The election should be made on a supplemental Form 706 filed with the Service Center where the original Form 706 was filed. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for that purpose.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. We note that an extension of time to make the reverse QTIP election under § 2652(a)(3) does not extend the time to make an allocation of any remaining GST exemption. In the instant case, the estate effectively allocated \$Y on the Form 709 filed on Date 3 as supplemented by the Date 5 letter. Accordingly, in view of the reverse QTIP election, Decedent's available GST exemption of \$Z is automatically allocated in accordance with the rules of § 2632(c) to Trust.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy of this letter
Copy for § 6110 purposes