

INTERNAL REVENUE SERVICE
UIL 2652.00-00
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CC:DOM:P&SI:7--PLR-116968-98
January 28, 1999

Re:

Legend:

Decedent:

SSN:

date 1:

date 2:

date 3:

date 4:

j:

Dear :

We received your representative's letter dated, , requesting a ruling on behalf of Decedent's estate for an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make a reverse qualified terminable interest property (QTIP) election pursuant to § 2652(a)(3) of the Internal Revenue Code. This letter is in reply to that ruling request.

Decedent died testate on date 1 survived by her spouse and Decedent's estate tax return was filed timely on date 2. You represent that the Trust, created under Article Fifth of Decedent's Will is a QTIP trust described in § 2056(b)(7). The Trust was funded with an amount equal to the Decedent's unused GST exemption at death which was \$j. On Schedule M of the Form 706, the executor elected QTIP treatment for the Trust. On Schedule R of Form 706, the executor allocated the Decedent's remaining GST exemption to the Trust. Although item 9 of Schedule R shows the allocation of the Generation-Skipping Transfer (GST) tax exemption to the Trust, the box at the top of Schedule R indicating that the special "reverse" QTIP election was being made under § 2652(a)(3) was not marked. The executor

of Decedent's estate relied on a professional to prepare the Form 706, Federal Estate (and GST Tax) Return.

Section 2601 imposes a tax on every generation-skipping transfer (GST) within the meaning of §§ 2611 through 2613.

Section 2631(a) provides that for purposes of determining the inclusion ratio, every individual is 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, is irrevocable.

Section 2632(a) provides that any allocation by an individual of his GST exemption under § 2631(a) may be made 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 a return is required to be filed.

Section 2632(c)(1) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed in § 2632(a) shall be deemed to be allocated as follows-(A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after the individual's death. Section 2632(c)(2)(A) provides that the allocation under § 2632(c)(1) shall be made among the properties described in § 2632(c)(1)(A) and the trust described in § 2632(c)(1)(B), as the case may be, in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of such properties or trusts.

Section 2652(a)(3) provides a special election for qualified terminal interest property in the case of-(A) any trust with respect to which a deduction is allowed to the decedent under § 2056(b)(7), and (B) any trust with respect to which a deduction to the donor spouse is allowed under § 2523(f), the estate of the decedent or the donor spouse, as the case may be may elect to treat all of the property in such trust for purposes of chapter 13 as if the election to be treated as a 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, that decedent's GST exemption may be allocated to that QTIP trust.

Section 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's discretion may 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 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. Section 301.9100-1(b) provides that the term "regulatory election" means an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

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

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

In this case the requirements of § 301.9100-3 have been met. Therefore, an extension of time to make the reverse QTIP election under § 2652(a)(3) is granted until 30 days after the date of this letter.

The extension of time for making the "reverse" QTIP election under § 2652(a)(3) does not extend the time for allocation of any remaining GST exemption. In this case, the executor of Decedent's estate made an allocation on the Schedule R filed with the estate tax return filed for the estate. Under § 2631, this allocation is irrevocable.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or any other provisions of the Code.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

Paul F. Kugler
Assistant Chief Counsel
(Passthroughs and
Special Industries)