

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4-PLR-112509-00

Date: September 15, 2000

Re:

Legend:

Decedent =

Spouse =

Child =

Trust =

Date 1 =

Date 2 =

Date 3 =

Dear :

This is in response to the letter dated July 28, 2000, and prior correspondence, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make a reverse qualified terminable interest property (reverse QTIP) election under § 2652(a)(3) of the Internal Revenue Code and to sever a trust under § 26.2654-1(b) of the Generation-Skipping Transfer Tax (GSTT) Regulations.

Decedent executed a revocable trust (Trust) on Date 1. Decedent died testate on Date 2, survived by Spouse and Child. Spouse is the executor of Decedent's estate, and Spouse and Child are co-trustees of Trust. Under the terms of Decedent's will, the residue of Decedent's estate passed to Trust.

Article IX of Trust provides that at Decedent's death the assets of Trust are to be divided into two separate trusts, the Family Trust and the Marital Trust. The Family Trust is to be

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funded with an amount equal to the largest amount that can pass free of the federal estate tax, and the Marital Trust is to be funded with the remaining Trust property.

Article XI of Trust provides that the net income of the Family Trust is to be paid in quarterly or more frequent installments to or for the benefit of Spouse for Spouse's lifetime. The principal of the Family Trust is to be paid to Spouse as is necessary for Spouse's health, maintenance, support and education to enable Spouse to maintain Spouse's standard of living maintained during Decedent's lifetime. No distributions of principal from the Family Trust are to be made until all of the income and principal from the Marital Trust have been entirely consumed. After the death of Spouse, or if Spouse does not survive Decedent, the Family Trust is to be segregated into three separate and equal trusts for the benefit of Child and Decedent's two grandchildren.

Article XII of Trust provides that the net income of the Marital Trust is to be paid in quarterly or more frequent installments to or for the benefit of Spouse for Spouse's lifetime. The principal of the Marital Trust is to be paid to Spouse as is necessary for Spouse's health, maintenance, support and education to enable Spouse to maintain Spouse's standard of living maintained during Decedent's lifetime. After the death of Spouse, the remaining property of the Marital Trust is to be added to and administered as part of the Family Trust.

Article XIII of Trust provides that the personal representative and trustee have absolute discretion to elect under § 2652(a)(3) to treat any qualified terminable interest property as if Decedent, rather than Spouse, is the transferor for GSTT purposes.

Article XXI provides that the trustee may divide any trust, including the Marital Trust, into two separate trusts for GSTT purposes. The two trusts are to represent two fractional shares of the property being divided. One trust is to be funded with property that is exempt from the GSTT, and the other trust is to be funded with property that is not exempt from the GSTT.

Spouse, as executor of Decedent's estate, retained an accountant for purposes of preparing Decedent's federal estate tax return and an attorney for assistance in administering the estate. The estate tax return was timely filed on extension on Date 3. A QTIP election under § 2056(b)(7) was made on Schedule M with respect to the full value of the Marital Trust. Schedule R was filed with the return but was not completed. Therefore, the reverse QTIP election under § 2652(a)(3) was not made, and no allocation of Decedent's GSTT exemption was made on the estate tax return. The estate tax return did not evidence any intent to divide the Marital Trust into an exempt trust and a nonexempt trust for GSTT purposes. After the estate tax return was filed, Spouse retained another attorney who advised Spouse of the need to make the reverse QTIP election and to divide the Marital Trust into two separate trusts.

Spouse requests an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make the reverse QTIP election and to divide the Marital Trust into an exempt trust and a nonexempt trust for GSTT purposes.

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

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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, such 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.

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.

Under § 2044, any property in which a decedent possessed a qualifying income interest for life and for which a deduction was allowed under § 2056(b)(7) is includible in the decedent's gross estate.

Section 2601 imposes a tax on every generation-skipping transfer (GST) made after October 22, 1986.

Section 2631(a) provides for a generation-skipping transfer exemption of \$1,000,000 (adjusted under § 2631(c)), which may be allocated by the individual, or the individual's estate, to any property with respect to which such individual is the transferor. Under § 2632(a), the allocation may be made at any time on or before the date prescribed for filing the individual's estate tax return (including extensions).

Section 2652(a)(1) provides that, for GSTT purposes, the "transferor" of property is the decedent in whose gross estate the property is included. Thus, in the case of property subject to a QTIP election that is subsequently includible in the surviving spouse's gross estate under § 2044, the surviving spouse would become the transferor of the property for GSTT purposes. However, § 2652(a)(3) provides that in the case of any trust with respect to which a deduction is allowed to the decedent under § 2056(b)(7), the estate of the decedent may elect to treat all of the property in the trust, for purposes of the GSTT, 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 GSTT 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) of the Procedure and Administration Regulations, 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

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and in good faith, and granting relief will not prejudice the interests of the government.

Sections 301.9100-2 and 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 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. § 301.9100-3(a).

In this case, the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time for making the reverse QTIP election under § 2652(a)(3) is granted until 30 days from the date of this letter. Further, an extension of time for dividing the Marital Trust into exempt and nonexempt trusts for GSTT purposes is granted until 30 days from the date of this letter.

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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

Sincerely yours,

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

Enclosure
Copy for section 6110 purposes