

**Internal Revenue Service**

Department of the Treasury

Number: **200109007**  
Release Date: 3/2/2001  
Index No.: 9100.00-00,  
2652.01-02

P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:4 - PLR-116146-00  
Date: NOVEMBER 20, 2000

Re:

Legend:

Decedent	=
Spouse	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Bank	=

Dear :

This is in response to your letter of August 2, 2000, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to sever a trust under § 26.2654-1(b) of the Generation-Skipping Transfer Tax Regulations and to make a reverse qualified terminable interest property election under § 2652(a)(3) of the Internal Revenue Code.

On Date 1 Decedent and Spouse established a revocable trust (Living Trust). At that time, Decedent and Spouse transferred their community property and separate property to the Living Trust.

When Decedent died on Date 2 survived by Spouse and three adult children, the residue of Decedent's estate passed to the Living Trust to be added to and

administered thereunder. Under the terms of Decedent's will, Spouse was named the executrix of Decedent's estate. Spouse was also the surviving Co-Trustee of the Living Trust.

Under the terms of the Living Trust, upon Decedent's death, the Living Trust was divided into three separate trusts: the Survivor's Trust, the Family Trust, and the Marital Trust.

The Survivor's Trust was funded with Spouse's separate property and her share of community property. The Family Trust was funded with Decedent's separate property and his share of community property in an amount intended to take advantage of Decedent's remaining credit shelter amount. The Marital Trust was funded with the balance of Decedent's property remaining after the funding of the Family Trust.

The terms of the Marital Trust satisfied the requirements for qualified terminable interest property (QTIP) under § 2056(b)(7). Under the terms of the Living Trust, the trustee was authorized to sever the Marital Trust into an exempt trust and a nonexempt trust for generation-skipping transfer (GST) purposes.

Spouse, as executrix of Decedent's estate, engaged the services of a certified public accountant to prepare Decedent's estate tax return. The return was timely filed on Date 3. On Schedule M of the return, the election under § 2056(b)(7)(B)(v) was made to treat the Marital Trust as QTIP. Schedule R was not filed with the return. Therefore, Decedent's GST exemption was not allocated and the reverse QTIP election under § 2652(a)(3) was not made. The estate tax return did not evidence any intention to divide the Marital Trust into an exempt trust and a nonexempt trust for GST tax purposes.

On Date 4, Spouse died. Bank was named as the executor of Spouse's estate and successor trustee of the Family Trust and the Marital Trust. In preparing the federal estate tax return for Spouse's estate, the trustee discovered that the Marital Trust had not been severed into two trusts as authorized by the terms of the Living Trust; that no reverse QTIP election had been made with respect to one of the trusts; and that no allocation of Decedent's GST exemption had been made on Schedule R of Decedent's estate tax return.

Bank requests an extension of time under § 301.9100-1 and 3 of the Procedure and Administration Regulations to sever the Marital Trust into two separate trusts, a GST exempt trust and a GST nonexempt Trust, and to make the "reverse" QTIP election under § 2652(a)(3) with respect to the exempt trust. The severance will be made on a pro rata basis.

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) provides that, in the case of qualified terminable interest property, the 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, defined in § 2611 as a taxable distribution, a taxable termination, and a direct skip. Section 2652(a)(1) provides that in the case of any property subject to the estate tax, the decedent in whose gross estate the property is includible is treated as the transferor of the property for generation-skipping transfer tax (GSTT) purposes. 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 becomes 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 QTIP election 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.

Section 2631(a) allows every individual a GST exemption of \$1,000,000 which may be allocated by such individual (or by his or her executor) 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). Under § 2632(c), any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) is deemed to be allocated at the individual's death, first, to property which is the subject of a direct skip occurring at such individual's death and, 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 such individual's death.

Section 26.2654-1(b)(1) of the Generation-Skipping Transfer Tax Regulations provides that, in general, the severance of a trust that is included in the transferor's gross estate into two or more trusts is recognized for GSTT purposes if the governing instrument does not require or otherwise direct severance but the trust is severed pursuant to discretionary authority granted either under the governing instrument or under local law, and the severance occurs prior to the date prescribed for filing the Federal estate tax return (including extensions actually granted) for the estate of the transferor.

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 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 severing the Marital Trust into a GST exempt trust and a GST nonexempt trust is granted until 60 days after the date of this letter. Further, an extension of time for making the reverse QTIP election with respect to the GST exempt trust is granted until 60 days after the date of this letter. We note that the extension of time to make the reverse QTIP election under § 2652(a)(3) does not extend the time to make an allocation of Decedent's GST exemption. Consequently, Decedent's remaining GST exemption is allocated under the deemed allocation rules of § 2632(c).

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.

Except as we have specifically ruled 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.

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.

In accordance with a power of attorney on file with this office, we sending a copy of this letter to your authorized representative.

A copy of this letter should be forwarded to the Internal Revenue Service office where the Decedent's estate tax return was filed. A copy is enclosed for that purpose.

Sincerely yours,

---

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

Enclosures

Copy for section 6110 purposes

Copy of letter