

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

November 6, 2001

Legend

Decedent

Spouse

Son

Trust

Marital Exempt
Trust

Marital Non-
Exempt Trust

Residuary Trust

Date 1

Date 2

Date 3

Date 4

Date 5

Firm

C.P.A.

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\$z

\$x

\$y

Dear :

This letter responds to your request, dated May 1, 2001, requesting rulings under § 301.9100-1 of the Procedure and Administration Regulations as well as rulings under § 2632 and § 2642 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: Decedent created Trust on Date 1, with himself as trustee. The Trust was amended on Date 2. The Decedent died on Date 3, survived by Spouse and Son.

Section Third, Paragraph A of the Trust provides that upon Decedent's death the trust assets are to be divided into a Marital Trust and a Residuary Trust. The Marital Trust is to be funded generally with the smallest amount of assets that will result in the least possible federal estate tax, and the balance of the assets are to pass to the Residuary Trust. The Marital Trust is to be further divided into two separate trusts, the Marital Exempt Trust and the Marital Non-Exempt Trust, if the executor makes the election under section 2652(a)(3).

The Form 706, United States Estate (and Generation-Skipping Transfer) Tax return, was timely filed on Date 4. On Schedule M of Form 706, elections were made under section 2056(b)(7) with respect to the Marital Exempt Trust and Marital Non-Exempt Trust. A Schedule R was not attached to the return. Thus, no reverse qualified terminal interest property (QTIP) election was made with respect to the Marital Exempt Trust, and no allocation of generation-skipping transfer (GST) exemption was made. The Internal Revenue Service issued a closing letter on Date 5.

Son, who acted as executor, represents that he retained Firm and relied exclusively upon Firm to advise him regarding all federal estate and generation-skipping tax matters, including the preparation of Decedent's Form 706. Son further represents that he had no knowledge that he was required to make a reverse QTIP election in order to receive certain tax benefits. Subsequent to filing the Form 706, C.P.A., a certified public accountant, discovered that the Schedule R had not been attached to the return and notified Son. It is represented that \$z of Decedent's GST exemption was available for allocation at Decedent's death and that the values, for federal estate tax purposes, of the Marital Exempt Trust and the Residuary Trust were \$y and \$x, respectively.

You have requested the following rulings: (1) an extension of time under

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§ 301.9100-1 of the Procedure and Administration Regulations to make a reverse QTIP election under § 2652(a)(3) with respect to the Marital Exempt Trust; (2) a ruling that the automatic allocation rules of § 2632(c) operate to allocate Decedent's GST exemption under § 2631 pro rata between the Residuary Trust and the Marital Exempt Trust, based on the value of these trusts as of the date of death; and (3) a ruling that the Residuary Trust and the Marital Exempt Trust created under the Trust will each have an inclusion ratio of zero under § 2642, and each trust is exempt from the federal generation-skipping transfer tax.

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.

Section 2056(b)(7)(B)(i) defines "qualified terminable interest property" (QTIP) 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 (GST).

Section 2631(a) provides that every individual shall be allowed 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. Section 2631(b) provides that once an allocation of GST exemption is made, it is irrevocable.

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).

Section 2632(c)(1) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by section 2632(a) shall be deemed to be allocated as follows— (A) first, to property which is the subject of a direct

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skip occurring at the 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 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations 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 their value for estate tax purposes. The balance is then allocated pro rata, on the basis of estate tax values, to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. 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 generation-skipping transfer 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.

Section 26.2652-2(b) provides that the reverse QTIP election is to be made on the return on which the QTIP election is made.

Under section 301.9100-1(c) of the Procedure and Administration Regulations the Commissioner may grant a reasonable extension of time under the rules set forth in section 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 Code except subtitles E, G, H, and I.

Section 301.9100-2 provides an automatic extension 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 section 301.9100-2 must be made under the rules of section 301.9100-3. Requests for relief subject to section 301.9100-3 will be granted when the taxpayer provides the 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.

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Based on the facts submitted and the representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Therefore, an extension of time is granted until 30 days from the date of this letter, for making a reverse QTIP election under § 2652(a)(3) with respect to the Marital Exempt Trust. The election should be made on a supplemental Form 706 filed with the Service Office 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.

An extension of time to make the reverse QTIP election under section 2652 does not extend the time to make an allocation of any remaining GST exemption. In the instant case, no allocation of Decedent's available GST exemption was made on the Form 706 filed on Date 4. Therefore, the automatic allocation rules of section 2632(c) and section 26.2632-1(d)(2) operate to allocate Decedent's available exemption.

Based on the information submitted and the representations made and provided the reverse QTIP election is made for the Marital Exempt Trust as authorized by this letter, we conclude that \$x of Decedent's GST exemption automatically is allocated to the Residuary Trust and \$y automatically is allocated to the Marital Exempt Trust. Because the amount of GST exemption allocated to each trust equals the estate tax value of each trust, the Residuary Trust and the Marital Exempt Trust will each have an inclusion ratio of zero under section 2642 and, therefore, will not be subject to GST tax.

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.

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

Enclosures

Copy for section 6110 purposes
Copy of this letter