

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B09

PLR-154151-04

Date:

January 27, 2005

Decedent =

Wife =

Son 1 =

Son 2 =

Son 3 =

Family Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

c =

d =

e =

Law Firm =

Dear :

This is in response to the letter sent by the estate's representative dated October 5, 2004, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election to treat a marital trust as two separate trusts under § 26.2652-2(c) of the Generation-Skipping Transfer Tax Regulations.

The facts and representations submitted are summarized as follows: On Date 1, Decedent and Wife established Family Trust. Decedent died on Date 2, survived by Wife, Son 1, Son 2, Son 3, and grandchildren.

At Decedent's death, pursuant to article 2, paragraph 2 of Family Trust, Family Trust was divided into three separate trust shares, designated the Marital Trust, the Exemption Trust, and the Survivor's Trust.

Decedent's personal representative timely filed Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. The personal representative elected to treat the assets of the Marital Trust as qualified terminable interest property (QTIP) so that the amount passing to the Marital Trust qualified for the marital deduction under Internal Revenue Code § 2056(b)(7). In addition, the personal representative made a special election under § 2652(a)(3) to treat the assets of the Marital Trust, for generation-skipping transfer (GST) tax purposes, as if the election under § 2056(b)(7) had not been made (a "reverse" QTIP election). Decedent's personal representative allocated \$a of Decedent's GST tax exemption to the Exemption Trust and allocated the balance of Decedent's GST tax exemption, \$b, to the Marital Trust.

Son 1 died on Date 3, survived by two children. Wife died on Date 4.

At Wife's death, article 2, paragraph 5(c) of Family Trust directs the trustee to allocate \$c among the grandchildren of Decedent and Wife, payable first out of the assets of the Exemption Trust, and, to the extent necessary, out of the assets of the Marital Trust. Accordingly, the trustee of Family Trust allocated \$d of assets from the Exemption Trust and \$e of assets from the Marital Trust to the grandchildren. The trustee is to distribute the residue of the Marital Trust to the issue of Decedent and Wife, by right of representation. Accordingly, the trustee of Family Trust is to distribute 1/3 of the residue to Son 2, 1/3 to Son 3, and 1/6 to each of Son 1's children.

Subsequent to the filing of Decedent's Form 706, § 26.2652-2(c) of the regulations was issued. This regulation provides a transitional rule that allows certain trusts subject to a reverse QTIP election, to which GST tax exemption had been allocated, to be treated as two separate trusts, so that only a portion of the trust would be treated as subject to the reverse QTIP election, and that portion would be treated as having a zero inclusion ratio. The deadline for making the election set forth in the transitional rule was June 24, 1996. The personal representative of Decedent's estate first became aware of the provision after June 24, 1996, when Son 3, acting as personal representative of Wife's estate, hired Law Firm to prepare Wife's Form 706.

The personal representative of Decedent's estate is requesting an extension of time to elect to treat the Marital Trust as two separate trusts pursuant to § 26.2652-2(c) such that one trust has an inclusion ratio of zero due to the previous allocation of Decedent's GST exemption to the Marital Trust and the other has an inclusion ratio of one for GST

tax purposes. The reverse QTIP election would be treated as applying only to the trust with the zero inclusion ratio.

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2631(a), as in effect for the year at issue, provided 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 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, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her 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 2652(a)(3) states that, with respect to any trust for which a deduction is allowed under section 2056(b)(7) (regarding qualified terminable interest property), the estate of the decedent may elect to treat all of the property in such trust for purposes of the GST tax provisions 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 GST tax purposes, the transferor of the QTIP trust for which the election is made. As a result, the decedent's GST tax exemption may be allocated to that QTIP trust.

Section 26.2652-2(a) provides that a reverse QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies.

Section 26.2652-2(c) provides that if a reverse QTIP election is made with respect to a trust prior to December 27, 1995, and the GST exemption has been allocated to that trust, the transferor (or the transferor's executor) may elect to treat the trust as two separate trusts, one of which has a zero inclusion ratio by reason of the transferor's GST exemption previously allocated to the trust. The separate trust with the zero inclusion ratio consists of that fractional share of the value of the entire trust equal to the value of the nontax portion of the trust under § 26.2642-4(a). The reverse QTIP election is treated as applying only to the trust with the zero inclusion ratio. An election under this section is made by attaching a statement to a copy of the return on which the reverse QTIP election was made under § 2652(a). The statement is to be filed before June 24, 1996.

Section 301.9100-1(c) provides that the Commissioner has discretion to 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 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute).

Requests for relief under § 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 that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Decedent's personal representative is granted an extension of time of 60 days from the date of this letter for making the election under § 26.2652-2(c) to treat the Marital Trust as two separate trusts, one of which has a zero inclusion ratio by reason of Decedent's GST exemption previously allocated to the Marital Trust. The election should be made by completing the statement required in § 26.2652-2(c) and submitting the election, a copy of the return on which the reverse QTIP election was made under § 2652(a)(3), and a copy of this letter, to the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999.

Except as expressly provided 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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure (1)

cc: