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Department of the Treasury

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

Person to Contact:

Telephone Number:

**Refer Reply To:
CC:DOM:P&SI:4/PLR-116449-99
Date: June 12, 2000**

Re:

Legend:

Decedent	=
Trust	=
Exempt Trust	=
Nonexempt Trust	=
Spouse	=
Date 1	=

Dear :

This is in response to your submission dated May 2, 2000, and prior correspondence in which you requested a ruling under § 301.9100-1 of the Procedure and Administration Regulations for an extension of time to make an election under § 2652 of the Internal Revenue Code.

Decedent created Trust, an inter vivos revocable trust. Decedent died on Date 1 survived by Spouse. At Decedent's death, Decedent's will provided that after payment of specific bequests, the residue of her estate was to pass to Trust. In addition, the trustee of Trust was to divide the trust estate into three separate trusts; the Survivor's Trust, the Bypass Trust and the QTIP Trust. The QTIP trust was funded with the residue of the estate after funding the Survivor's Trust and the Bypass Trust.

Article 9.3 of Trust provides that if some or all of Decedent's generation-skipping transfer tax (GSTT) exemption is allocated to any trust that is established under Trust, unless the trust will have a generation-skipping inclusion ratio of zero, two separate trusts are to be established so that each has a generation-skipping inclusion ratio of either zero (the "Exempt Trust") or one (the "Nonexempt Trust"). The executors are directed to distribute to the Nonexempt trust the minimum dollar amount necessary to establish that trust with an inclusion ratio of one while leaving the Exempt Trust with an inclusion ratio of zero. Article 9.8 of Trust directs the trustee to allocate Decedent's

GST exemption and to make a reverse QTIP election under § 2652(a)(3).

During his life, Spouse is to receive all of the net income from the QTIP Trusts, payable monthly. Article 4.3 of Trust provides that upon Spouse's death, any undistributed income in the QTIP Trusts is to be distributed to Spouse's estate (or if there is no estate to the Survivor's Trust). On Spouse's death the terms of Trust provide that the Survivor's Trust, Bypass Trust and QTIP trusts are to be consolidated. The net income of the consolidated trust is to be paid to daughter during her lifetime, and the trustee may distribute principal to daughter for her health, maintenance, or support. On daughter's death the trust is to be divided into multiple shares for the benefit of Decedent's issue.

On Schedule M of Form 706, (timely filed by the estate), the executor made an election under § 2056(b)(7) with respect to the entire value of the Exempt Trust and the Nonexempt Trust. A deduction under § 2056(a) was claimed with respect to these trusts.

The executor, however, failed to file a Schedule R with the Form 706 and, consequently, failed to make an election under § 2652(a)(3) with respect to the Exempt Marital Trust. On May 2, 2000, the estate filed a Schedule R, signifying that a reverse QTIP election under § 2652(a)(3) was being made with respect to the Exempt Trust.

The Decedent's executor requests an extension of time under § 301.9100-1 to make an election under § 2652(a)(3) with respect to the Exempt Marital Trust.

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.

Under § 2044, property subject to a QTIP election is includible in the gross estate of the surviving spouse.

Section 2601 imposes a tax on every generation-skipping transfer made by a "transferor" to a skip person. In general, under § 26.2652-1(a)(1) of the Generation-Skipping Transfer Tax Regulations, the transferor for GSTT purposes is the individual with respect to whom the property was most recently subject to Federal estate and gift tax. With regard to the generation-skipping transfer tax (GSTT), each individual is allowed an 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 GSTT exemption not allocated within the time prescribed in § 2632(a), is allocated in accordance with that section.

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 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 GSTT exemption may be allocated to the QTIP trust.

Under § 301.9100-1(c) 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 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 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. Section 301.9100-3(a).

In this case, based on the facts submitted and representations made, the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time is granted until May 2, 2000, for making an election under § 2652(a)(3) with respect to the Exempt Trust.

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. We note that an extension of time to make the "reverse" QTIP election under § 2652(a)(3) does not extend the time to make an allocation of any remaining GSTT exemption. Consequently, in this case, Decedent's unused GSTT exemption is allocated in accordance with the automatic allocation rules contained in § 2632(c).

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

Enclosure
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