

## 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:B04  
PLR-135543-12

Date:  
December 27, 2012

### Legend

Decedent =  
Spouse =  
Daughter =  
Date 1 =  
Trust =

Family Trust =

Dear :

This letter responds to correspondence dated August 15, 2012, submitted by the representative of Family Trust, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to sever a trust into an exempt trust and a non-exempt trust for GST tax purposes, to make a “reverse” qualified terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code with respect to the exempt trust, and to apply the automatic allocation rules to allocate Decedent’s GST exemption to the exempt trust.

On Date 1, Decedent died survived by Spouse. Article III of Decedent’s Last Will and Testament provides that upon his death the residue of his estate passes to Trust.

Article VI, paragraph 6.1 of Trust provides that, if Spouse survives Decedent, then on Decedent’s death the Trust shall be divided into two trusts: Trust A and Trust B. This letter pertains to Trust A.

Article VI, paragraph 6.1(a) of Trust provides that Trust A is to consist of an amount equal to the maximum allowable marital deduction but no greater amount than necessary to reduce Decedent's federal estate tax to zero.

Article VI, paragraph 6.2 of Trust provides that Spouse shall receive all of the income of Trust A, payable at least annually, during her lifetime. In addition, the trustees of Trust A may make discretionary payments of principal for the health, support and maintenance of Spouse during her lifetime. Upon Spouse's death, all accrued or accumulated income of Trust A shall be paid to Spouse's estate. Trust A shall end at the death of Spouse, and any remaining balance in Trust A shall pass to Family Trust. During the lifetime of Daughter, the income from Family Trust is to be paid to her and her issue. Upon the death of Daughter, Family Trust shall terminate and any balance thereof shall be distributed per stripes among the then living issue of Daughter.

Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return was timely filed. On Schedule M (Bequests to Surviving Spouse) the estate made the election under § 2056(b)(7) to treat the property of Trust A as qualified terminable interest property (QTIP). However, Decedent's Form 706 did not indicate that Trust A was to be severed into an exempt and a non-exempt trust. The executor of Decedent's estate did not make a reverse QTIP election with respect to any portion of Trust A. No schedule R was filed with Decedent's Form 706 because no generation-skipping transfers were identified in the disposition of Decedent's estate.

### Law and Analysis

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, in pertinent part, that no deduction is allowed under § 2056(a) where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, the entire property is treated as passing to the surviving spouse for purposes of § 2056(a), and no part of such property is treated as passing to any person other than the surviving spouse for purposes of § 2056(b)(1)(A).

Section 2056(b)(7)(B)(i) defines the term “qualified terminable interest property” as property: (1) which passes from the decedent; (ii) in which the surviving spouse has a qualifying income interest for life; and (iii) to which an election under § 2056(b)(7) applies.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001, and that such an election, once made, is irrevocable.

Section 2044(a) provides that the value of the gross estate shall include the value of any property to which § 2044 applies in which the decedent had a qualifying income interest for life.

Section 2044(b) provides, in relevant part, that § 2044 applies to any property if a deduction was allowed with respect to the transfer of such property to the decedent under § 2056(b)(7).

Section 2044(c) provides that for purposes of chapter 11 (Estate Tax) and chapter 13 (Tax on Generation-Skipping Transfers) property includible in the gross estate of the decedent under § 2044(a) shall be treated as property passing from the decedent.

Section 2601 imposes a tax on every generation-skipping transfer (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 GST tax is determined by multiplying the taxable amount by the applicable rate.

Section 2641(a) defines the term “applicable rate” with respect to any GST as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a GST is generally defined as the excess (if any) of 1 over the “applicable fraction.” The applicable fraction is generally defined under § 2642(a)(2) as a fraction the numerator of which is the amount of the GST exemption allocated to the trust and the denominator of which is the value of the property transferred to the trust.

Section 2631(a), as in effect on Date 1, provides that for purposes of determining the inclusion ratio, every individual is allowed a GST exemption of \$1,000,000 that 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, is irrevocable.

Section 2632(a)(1) 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 2632(c)(1), as in effect on Date 1, and § 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations provide that a decedent's unused GST exemption is automatically allocated on the due date for filing the Form 706 to the extent not otherwise allocated by the decedent's executor on or before that date. Unused exemption is allocated pro rata: (A) first to direct skips treated as occurring at the transferor's death, and (B) second to trusts with respect to which a taxable termination may be made or a taxable distribution may occur. However, no automatic allocation of GST exemption 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 new trust.

Section 2652(a)(1) and § 26.2652-1(a)(1) provide that the "transferor" of the property for GST tax purposes is the individual with respect to whom the property was most recently subject to federal estate or gift tax. However, under § 2652(a)(3), in the case of a trust for which a deduction was allowed under § 2056(b)(7), the decedent's estate may elect to treat all of the property in the trust as if the § 2056(b)(7) election had not been made for purposes of the GST tax. This election is referred to as a "reverse QTIP election." The consequences 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 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. Under § 26.2652-2(b), the reverse QTIP election is made on the return of tax on which the QTIP election is made.

Section 26.2654-1(b)(1) provides that the severance of a trust that is included in the transferor's gross estate (or created under the transferor's will) into two or more trusts is recognized for GST 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

- (A) The terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as provided in the original trust;
- (B) The severance occurs (or a reformation proceeding, if required, is commenced) prior to the date prescribed for filing the federal estate tax return (including extensions actually granted) for the estate of the transferor; and

- (C) Either (1) the new trusts are severed on a fractional basis or (2) if the severance is required (by the terms of the governing instrument) to be made on the basis of a pecuniary amount, the pecuniary payment is satisfied in a manner that would meet the requirements of § 26.2654-1(a)(1)(ii) if it were paid to an individual. If severed on a fractional basis, the separate trusts may be funded on a nonpro rata basis provided funding is based on either the fair market value of the assets on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding.

Section 301.9100 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 due date is prescribed by a regulation (and not expressly provided by statute.) Notice 2001-50, 2001-1 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocations rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute.

Requests for relief § 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 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.

Based on the facts and representations made, we conclude that the standards of § 301.9100-3 have been met. Therefore, an extension of time is granted until 120 days from the date of this letter to sever Trust A into an exempt trust and a non-exempt trust and to make a reverse QTIP election with respect to the exempt trust. Finally, we rule that, the automatic allocation rules of § 2632(c) as in effect on Date 1 will automatically allocate Decedent's unused GST exemption to the exempt trust.

The reverse QTIP election should be made on a supplemental Form 706. The supplemental Form 706 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709. A copy of this letter is enclosed for this purpose.

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 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 the authorized representative of Family Trust.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: \_\_\_\_\_  
Lorraine E. Gardner  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: