

Internal Revenue Service

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Department of the Treasury

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Person to Contact:

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CC:DOM:P&SI:4/PLR-100108-00
Date:

March 14, 2000

Re:

Legend:

Decedent =
Trust =

Marital Trust 1 =

Marital Trust 2 =
Spouse =
Date 1 =
Date 2 =

Dear :

This is in response to the submission on your behalf dated November 4, 1999, requesting a ruling under § 2652 of the Internal Revenue Code and § 301.9100-1 of the Procedure and Administration Regulations.

Decedent created Trust, a revocable inter vivos trust. Decedent died on Date 1 survived by Spouse. At Decedent's death, after payment of specific bequests, the trustee of Trust was to divide the trust estate into two separate trusts: Marital Trust 1 and Marital Trust 2.

Article V, Section 1 of Trust provides that Marital Trust 1 is to be funded with a pecuniary amount equal to Decedent's unused generation-skipping transfer tax (GSTT) exemption which remained unallocated immediately before his death. The balance of the Trust estate passed to Marital Trust 2. Marital Trust 1 was intended to be exempt from GSTT and to qualify for the "reverse QTIP" election under § 2652(a)(3).

Article V, Section 2 of Trust provides that the trustee may elect to have a specific portion or all of Marital Trust 1 treated as qualified terminable interest property (QTIP).

During her life, Spouse is to receive all of the net income from both Marital Trusts, payable at least quarterly. Article V, Section 3 of Trust provides that Spouse has a limited testamentary power of appointment to appoint the principal of Trust in further trust for such one or more of Decedent's descendants and their respective spouses and charitable, scientific or educational purposes as Spouse may appoint by making specific reference to the power of appointment. If Spouse does not exercise her power of appointment, the balance of Marital Trust 1 will pass to trusts for the benefit of Decedent's issue.

On Schedule M of Form 706, (that was timely filed by the estate), the trustee made an election under § 2056(b)(7) with respect to the entire value of Marital Trust 1 and Marital Trust 2. A deduction under § 2056(a) was claimed with respect to these trusts.

On Schedule R of Form 706, the trustee made an allocation to Marital Trust 1, but failed to affirmatively signify the intent to make an election under § 2652(a)(3) with respect to Marital Trust 1. On Date 2, the estate filed a Schedule R that signified that a reverse QTIP election under § 2652(a)(3) was being made with respect to Marital Trust 1.

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

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 six 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 301.9100-2 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 is granted until Date 2, for making an election under §2652(a)(3) with respect to Marital Trust 1.

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 yours,

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

Enclosure

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