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Department of the Treasury

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Person to Contact:
DeAnn K. Malone ID# 50-15093
Telephone Number:

Refer Reply To:
CC:PSI:7 / PLR-108471-00
Date:
December 14, 2000

Legend

- Decedent =
- Spouse =
- Lifetime Trust =
- Trust 2 =
- Trust 3 =
- Trust 4 =
- Date 1 =
- Date 2 =
- \$X =
- \$Y =
- \$Z =

Dear Madam:

This letter responds to your letter, dated January 5, 2000, and subsequent correspondence submitted on behalf of Decedent's estate, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make a qualified terminable interest property (QTIP) election under § 2056(b)(7) of the Internal Revenue Code. In addition, you request a ruling regarding the validity of a reverse QTIP election to be made when the QTIP election is made.

Decedent died on Date 1, survived by Spouse. Decedent's will bequeathed the residue of his estate to Lifetime Trust. Under the terms of the Lifetime Trust, on Decedent's death, the trust estate was divided into three separate trusts: Trust 2,

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Trust 3, and Trust 4. Trust 4 was funded with an amount equal to Decedent's available generation-skipping transfer tax exemption.

Under the terms of the Lifetime Trust Agreement, Spouse shall receive the net income from Trust 4 in quarterly (or more frequent) payments. The trustee, in his absolute discretion, may make distributions of the principal, up to the whole, of Trust 4 to Spouse if she needs funds for her proper health, education, support and maintenance in accordance with the standard of living to which she became accustomed to during Decedent's lifetime. Distributions of Trust 4 principal should not be made unless Trust 2 has been exhausted or the trustee determines it is impractical to raise funds from Trust 2.

Under the terms of the Lifetime Trust Agreement, on Spouse's death, the trust estate shall be divided into two shares, one share that is exempt from federal generation-skipping transfer tax ("Exempt Share") and a second share consisting of the balance of the trust estate allocated to the child ("Nonexempt Share"). Any share of Trust 4 that has an inclusion ratio of zero as the result of an allocation of Decedent's exemption to that trust will be included in the Exempt Share.

Decedent's estate filed a Form 706 (Federal Estate and Generation-Skipping Transfer Tax Return) on or about Date 2. Trust 4 was not listed on Schedule M or Schedule R of Form 706. In addition, there were no allocations of Decedent's generation-skipping transfer tax exemption made on Schedule R of Form 706. Section 5 of Part 4 of Form 706 lists the value of Trust 3 as \$X. Decedent's estate represents that Trust 4 was funded with \$Y. The executor of Decedent's estate relied on a qualified tax professional to prepare the estate tax return. According to the professional responsible for preparing the estate tax return, the trusts have been administered in accordance with the Lifetime Trust Agreement since the inception of the trusts at Decedent's death. The professional failed to advise the executor of the estate of the proper way to make the necessary elections at the time the Form 706 was originally filed. Thus, the estate failed to make valid QTIP and reverse QTIP elections for Trust 4.

You have requested an extension of time under § 301.9100-1 to make a QTIP election under § 2056(b)(7) for Trust 4. In addition, you request a ruling that a reverse QTIP election for Trust 4 under § 2652(a)(3) will be valid if it is made on the same supplemental return on which a valid QTIP election is made pursuant to the relief granted under § 301.9100-1 in this letter.

QTIP Election

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.

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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 for purposes of § 2056(b)(1)(A).

Section 2056(b)(7)(B)(i) defines “qualified terminable interest property” 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 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if (1) the surviving spouse is entitled to all of the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and (2) no person has a power to appoint any part of the property to any person other than the surviving spouse.

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

Section 20.2056(b)-7(b)(4) of the Estate Tax Regulations provides that the QTIP election is made on the last filed estate tax return on or before the due date of the return, including extensions, or, if a timely return is not filed, the first estate tax return filed after the due date.

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. § 301.9100-1(a).

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Section 301.9100-2 provides automatic extensions 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 § 301.9100-2 must be made under the rules of § 301.9100-3. Requests for relief subject to § 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.

Section 301.9100-3(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not (i) competent to render advice on the regulatory election; or (ii) aware of all relevant facts.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Based on the facts submitted and the representations made, we conclude that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Consequently, we grant an extension of time for making the QTIP election under § 2056(b)(7) for Trust 4. The election must be made within 30 days of the date of this letter. The election should be made on a supplemental Form 706 filed with the Service Center 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.

Reverse QTIP Election

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2631(a) provides that for purposes of determining the inclusion ratio, every individual shall be allowed a generation-skipping transfer tax exemption of \$1,000,000, which may be allocated by such individual (or by his executor) to any property with respect to which such individual is the transferor.

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

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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 generation-skipping transfer tax purposes, the transferor of the QTIP trust for which the election is made. As a result, the decedent’s generation-skipping transfer tax exemption may be allocated to the QTIP trust.

Section 26.2652-2(b) of the Generation-Skipping Transfer Tax Regulations provides that the reverse QTIP election is to be made on the return on which the QTIP election is made.

Based on the facts submitted and the representations made, we conclude that a reverse QTIP election will be timely when made on the supplemental return where the QTIP election is made through a grant of relief under § 301.9100-1 pursuant to this letter.

Allocation of Generation-Skipping Transfer Tax Exemption

An extension of time to make the QTIP election under § 2056(b)(7) does not extend the time to make an allocation of any remaining generation-skipping transfer tax exemption.

Under § 2632(a), the allocation of the generation-skipping transfer tax exemption 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 generation-skipping transfer tax exemption not allocated within the time prescribed in § 2632(a), is allocated automatically.

Section 26.2632-1(d)(2) supplies the method for the automatic allocation of any unused generation-skipping transfer tax exemption. First, the exemption is allocated pro rata to direct skips on the basis of the value of property as finally determined for purposes of Chapter 11. The balance is then allocated pro rata, on the basis of value, to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. In the case of trusts that are not included in the gross estate, the generation-skipping transfer tax exemption is allocated on the basis of the date of death value of the trust. 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 generation-skipping transfer tax with respect to the trust. The automatic allocation is irrevocable.

In the instant case, the estate did not allocate any of the Decedent’s \$Z available generation-skipping transfer tax exemption. Therefore, Decedent’s generation-skipping transfer tax exemption is allocated automatically in accordance with § 2632(c) of the Code and § 2632-1(d)(2) of the regulations. Based on Form 706 filed on Date 2, \$X of Decedent’s exemption was automatically allocated to Trust 3. Furthermore, in view of the QTIP and reverse QTIP elections, Decedent’s remaining generation-skipping

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transfer tax exemption of \$Y will be automatically allocated in accordance with the rules of § 2632(c) to Trust 4.

Except as specifically ruled herein, we express or imply 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(s) requesting it. Section 6110(k)(3) of the Code 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 § 6110 purposes
Copy of this letter