

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-139500-01

Date:

November 26, 2001

Legend

Decedent

Spouse

Executors

C.P.A.

Date 1

Date 2

Sons

Marital Trust

Bypass Trust

\$x

\$y

Dear :

This letter responds to your request, dated May 1, 2001, requesting rulings under section 301.9100-1 of the Procedure and Administration Regulations as well as rulings under § 2632 and § 2652 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: Decedent died on Date 1, survived by Spouse and his five children.

Article II, Section 2.2 of the Will directs that if Spouse and either Son survives Decedent, Decedent gives to trustee, in trust, such amount of property as will be equal to the maximum amount needed to increase Decedent's taxable estate to the largest amount possible without incurring any federal estate tax on Decedent's estate (the Bypass Trust).

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Article VI, Section 6.3(a) of the Will provides that trustee shall distribute to Sons from the Bypass Trust principal such amounts as shall be necessary, when added to the funds reasonably available to Decedent's Sons from all other sources known to trustee, to provide for their health, support, maintenance and education, taking into consideration the age, education and station in life of each such distributee.

Under Article VI, Section 6.3(b), the Bypass Trust shall terminate when no Son of Decedent is living and under the age of twenty-three years or when Spouse dies, whichever is later. Upon such termination, the then remaining trust property shall be distributed to Decedent's then living descendants, per stirpes, or to a trust for the benefit of any descendent under the age of thirty-five.

Article III, Section 3.1 provides that if Spouse survives Decedent, Decedent gives all of his residuary estate to Marital Trust. Under Article IV, Section 4.2, the trustee shall distribute to Spouse the income from the Marital Trust at least quarterly, and such amounts of principal as shall be necessary to provide for her health, support, and maintenance, in order to maintain her to the extent reasonably possible in accordance with the standard of living to which she is accustomed at the time of Decedent's death.

Article IV, Section 4.3 directs that no person shall have the power to appoint any part of the Marital Trust property to any person other than Spouse. Under Article IV, Section 4.5, upon the death of Spouse, the Marital Trust principal shall be distributed to Decedent's then living descendants, per stirpes, or to a trust for the benefit of any descendent under the age of thirty-five. However, if no such descendent is then living, such trust principal shall be distributed to Decedent's contingent beneficiaries.

Article 8, Section 3 directs that Executor shall allocate any remaining exemption from the generation-skipping tax available at the time of Decedent's death.

Under Article 8, Section 4, if any trust created under the will is partially subject to the generation-skipping transfer tax, trustee shall create two separate trusts so that one trust is not subject to the generation-skipping transfer tax, and one trust is fully subject to the generation-skipping transfer tax.

Under Article 8, Section 5, with respect to any trust (or portion of a trust) held for the benefit of Decedent's Spouse which the Executor has elected to treat as qualified terminable interest property, and which is exempt from the generation-skipping transfer tax, Executor shall also make the special election pursuant to section 2652(a)(3) with regard to such trust (or such portion of such trust).

Pursuant to an extension, the United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) was timely filed on Date 2. On Schedule M of Form 706, an election was made under 2056(b)(7) to treat Marital Trust as qualified terminable interest property (QTIP). A Schedule R was not attached to Form 706. Therefore, no portion of Decedent's generation-skipping transfer (GST) exemption was

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allocated, and no reverse QTIP election was made. Executors are not tax professionals. The Form 706 was prepared by a certified public accountant (C.P.A.) who failed to make, or advise Executors to make, the reverse QTIP election or to allocate Decedent's remaining GST exemption. It is represented that Decedent's entire \$1,000,000 GST exemption was available for allocation at Decedent's death and that the value, for estate tax purposes, of Bypass Trust was \$x. Pursuant to the provisions of Decedent's will, Marital Trust is required to be divided into Non-Exempt Marital Trust and Exempt Marital Trust. It is represented that the value of Exempt Marital Trust is \$y.

You have requested the following rulings: (1) an extension of time under § 301.9100-1 to make a reverse QTIP election under § 2652(a)(3) with respect to the Exempt Marital Trust; and (2) a ruling that the automatic allocation rules of § 2632(c) operate to cause the unused portion of Decedent's GST exemption to be allocated to the Exempt Marital Trust and the Bypass Trust so that both trusts have an inclusion ratio of zero.

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" 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 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 GST 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. Section 2631(b) provides that once an allocation of GST exemption is made, it is irrevocable.

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Under § 2632(a), the allocation of the GST exemption may be made at any time on or before the date prescribed for filing the individual's estate tax return (including extensions).

Section 2632(c)(1) provides that, in general, any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated as follows— (A) first, to property which is the subject of a direct skip occurring at the individual's death, and (B) second, to trusts with respect to which the individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after the individual's death.

Section 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations supplies the method for the automatic allocation of any unused GST exemption. First, the exemption is allocated pro rata to direct skips on the basis of their values for estate tax purposes. The balance is then allocated pro rata, on the basis of estate tax values, to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. 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 GST with respect to the trust. The automatic allocation is irrevocable.

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 GST tax, as if the election to be treated as QTIP 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 exemption may be allocated to the QTIP trust.

Section 26.2652-2(b) provides that the reverse QTIP election is to be made on the return on which the QTIP election is made.

Under § 301.9100-1(c), the Commissioner may 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 Code except subtitles E, G, H, and I.

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 a regulatory election.

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.

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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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time is granted until 30 days from the date of this letter for making a reverse QTIP election under § 2652(a)(3) with respect to the Exempt Marital Trust. The election should be made on a supplemental Form 706 filed with the Service Office 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.

An extension of time to make the reverse QTIP election under § 2652 does not extend the time to make an allocation of any remaining GST exemption.

In the instant case, no allocation of Decedent's available GST exemption was made on the Form 706. Therefore, the automatic allocation rules of § 2632(c) and § 26.2632-1(d)(2) operate to allocate Decedent's available exemption.

Based on the information submitted and the representations made and provided the reverse QTIP election is made for the Exempt Marital Trust as authorized in this letter, we conclude that \$x of Decedent's GST exemption automatically is allocated to the Bypass Trust and \$y is automatically allocated to the Exempt Marital Trust. Because the amount of GST exemption allocated to each trust equals the estate tax value of each trust, the Exempt Marital Trust and the Bypass Trust will each have an inclusion ratio of zero under § 2642.

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

Enclosures

Copy for section 6110 purposes; Copy of this letter