

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-154790-01

Date:

December 19, 2001

Legend

Decedent =

Date 1 =

Spouse =

Daughter =

Date 2 =

Trust A =

Trust B =

Trust C =

Counsel =

Accountant =

Date 3 =

x =

y =

z =

Dear :

This letter responds to your letter, dated January 29, 2001, 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 reverse qualified terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code.

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Decedent died on Date 1, survived by Spouse and Daughter. Spouse was appointed executrix of Decedent's estate. Decedent's estate was distributed pursuant to his Last Will and Testament ("the will") executed on Date 2. The terms of the will operate to create: a credit shelter trust, Trust A; a marital deduction trust that is exempt from the generation-skipping transfer (GST) tax, Trust B; and a marital deduction trust that is not exempt from the GST tax, Trust C.

Article Fifth of the will provides, in part, that if Spouse survives Decedent, Decedent bequeaths to his trustee that property described in paragraph A of Article Fifth to be held, administered and distributed by his trustee in accordance with the provisions of subparagraphs 1, 2, and 3 of paragraph A of Article Fifth.

Article Fifth, paragraph A provides, in part, that Decedent bequeaths to his trustee the largest amount that can pass free of federal estate tax by reason of the unified credit, the state death tax credit, and any other estate tax credits allowed by the Internal Revenue Code.

Article Sixth of the will provides, in part, that if Spouse survives Decedent, Decedent bequeaths to his trustee that property described in paragraph A of Article Sixth to be held, administered and distributed by his trustee in accordance with the provisions of subparagraphs 1, 2, 3, and 4 of paragraph A of Article Sixth.

Article Sixth, paragraph A provides, in part, that Decedent bequeaths to his trustee an amount of property equal in value to the difference between the exemption amount available under the generation-skipping transfer tax provisions of the Internal Revenue Code and the amount of property placed in the trust created under Article Fifth of the will.

Article Sixth, paragraph A, subparagraph 1, provides that the trustee shall pay to or for the benefit of Spouse all of the net income from the trust in quarterly or more frequent installments so long as she shall live.

Article Seventh of the will provides, in part, that if Spouse survives Decedent, Decedent bequeaths all the rest, residue, and remainder of Decedent's property, of every kind and nature whatsoever situated, whether real or personal to Decedent's trustee to be held, administered and distributed in accordance with the provisions of paragraphs A, B, C, D and E of Article Seventh.

Article Seventh, paragraph A provides that the trustee shall pay to or for the benefit of Spouse all of the net income from the trust in quarterly or more frequent installments so long as she shall live.

The executrix retained Counsel to assist with the probate and administration of Decedent's estate. Counsel retained Accountant to assist in the preparation of the Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return) ("the estate tax return") for Decedent's estate. The estate represents that the estate tax

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return was timely filed on Date 3. Trust A (\$x) was listed on Part 4, line 5 of the estate tax return. Schedule M of the estate tax return listed Trust B (\$y) and Trust C (\$z). Schedule R was included with the estate tax return but was blank. The executrix relied on the advice of the Counsel and Accountant and signed the estate tax return as it was prepared. Neither Counsel nor Accountant advised the executrix of the specific need to make a reverse QTIP election under § 2652(a)(3) on Schedule R of the return.

A QTIP election was made with respect to Trust B when the trust was listed on Schedule M of the estate tax return. The executrix has requested an extension of time under § 301.9100-1 to make the reverse QTIP election under § 2652(a)(3) with respect to Trust B.

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 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 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 (adjusted for inflation under § 2631(c)), that may be allocated by such individual (or by his executor) to any property with respect to which such individual is the transferor.

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). Under § 2632(c), any portion of an individual GST exemption not allocated within the time prescribed in § 2632(a), is allocated automatically.

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Section 26.2632-1(d)(2) 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 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 GST 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 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 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 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.

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.

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).

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 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(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, the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Consequently, we grant an extension

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of time for making the reverse QTIP election under § 2652(a)(3) with respect to Trust B. The election must be made within 60 days of the date of this letter. The election should be made on a supplemental Form 706 and filed with the Cincinnati Service Center. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for that purpose.

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. 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 GST exemption. In the instant case, provided that none of the Decedent's GST exemption was utilized during his lifetime and in view of the reverse QTIP election with respect to Trust B, \$x will be automatically allocated to Trust A and \$y will be automatically allocated to Trust B in accordance with the rules provided in § 26.2632-1(d)(2).

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.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

This ruling is directed only to the taxpayer requesting 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 (2)

Copy of this letter to be included with Supplemental Form 706

Copy of this letter for § 6110 purposes