

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04 – PLR-157774-03

Date: DECEMBER 03, 2003

Re:

Legend:

Decedent =

Spouse =

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

\$X =

\$Y =

Dear :

This responds to your letter dated November 12, 2003 and prior correspondence, on behalf of Decedent's estate, in which you request an extension of time under §§ 301.9100-1 and 301.9100-3 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.

The facts are submitted and represented to be as follows: On Date 1, Decedent executed a revocable inter-vivos trust, Trust. On Date 2, Trust was amended and restated. Decedent died on Date 3, survived by Spouse and two adult children. Under Decedent's will the residue of the estate is to be poured-over into Trust.

Article V(1) of Trust provides that upon Decedent's death, if Decedent is survived by Spouse, the trustee is to divide the trust estate into two (2) separate shares, the "Marital Share" and "Trust B". The Marital Share is to be a fraction of the trust estate (undiminished by estate, inheritance, succession, death or similar taxes), the numerator of which shall be an amount equal to the maximum marital deduction as finally determined in Decedent's federal estate tax proceedings, less the aggregate amount of marital deduction, if any, allowed for such estate tax purposes by reason of property or interests in property passing or which have passed to Spouse otherwise than pursuant to the provisions of this Article; provided, however, the amount of the Marital Share shall be reduced by the amount, if any, needed to increase Decedent's taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will result in the smallest (if any) federal estate tax being imposed on Decedent's estate. The Trust B numerator is to be equal to the amount of the trust estate minus the amount of the Marital Share numerator. The Trust B share is to pay the deductions allowed on the federal estate tax return under §§ 2053 and 2054 and the federal estate tax and state tax and inheritance taxes, which will have the effect of reducing the Trust B numerator and the trust estate thus reducing the final denominator. The Marital Share is to be further divided into two shares, Trust C and Trust A. Trust C is to be a fraction of the trust estate, the numerator of which is to be an amount equal to Decedent's available generation-skipping transfer exemption minus the amount of the Trust B numerator as finally determined above (but not to exceed the amount of the Marital Share numerator above determined). Trust A is to be a fraction of the trust estate, the numerator of one of the fractions may be zero (or less), in which case no property is to be allocated to that share. It is intended that the numerators of Trust B, Trust A, and Trust C when totaled are to be an amount equal to the value of the trust estate. The denominator is to be an amount equal to the value of the trust estate. The numerator of Trust B and the denominator of the fraction are to be reduced by the amounts required to be paid from Trust B as provided above. For purposes of

establishing such fractions the values as finally determined in Decedent's federal estate tax proceedings are to be used.

Article V(3) provides that commencing with the date of Decedent's death, the trustee is to pay to Spouse, during Spouse's lifetime, all the net income from Trust C in convenient installments but no less frequently than quarter-annually. In addition, the trustee may, in its sole discretion, pay to Spouse such sums from the principal of Trust C as are necessary for the health, education, maintenance and support of Spouse. Spouse may, at any time, require the trustee to make any nonproductive property of Trust productive. Upon the death of Spouse, the entire remaining principal of Trust C is to be added to Trust B.

Article VI provides that commencing with the date of Decedent's death, the trustee is to pay to Spouse, during Spouse's lifetime, all the net income from Trust A in convenient installments but no less frequently than quarter-annually. In addition, the trustee may, in its sole discretion, pay to Spouse such sums from the principal of Trust A as are necessary for the health, education, maintenance and support of Spouse. Spouse may at any time during Spouse's lifetime withdraw all of any part of the principal of Trust A. Spouse may, at any time, require the trustee to make any nonproductive property of Trust productive. Upon the death of Spouse, the entire remaining principal of Trust A is to be paid over to or in trust for such appointee or appointees (including the estate of Spouse), as Spouse may appoint by Spouse's will. In default of the exercise of Spouse's power of appointment, the remaining principal of Trust A is to be added to Trust B.

Article VII provides that commencing with the date of Decedent's death, the trustee is to pay to Spouse and Decedent's issue, all of the net income from Trust B in convenient installments as the trustee in its sole discretion shall determine for the health, education, maintenance, and support of Spouse and Decedent's issue. Further, if there is no principal remaining in Trust A or C, then in addition to the income and discretionary payments of principal from Trust, there is to be paid to Spouse during Spouse's lifetime, upon written request during the last month of each fiscal year of Trust, an amount not to exceed during such fiscal year the greater of \$5,000 or 5% of the total value of the principal of Trust B. Upon the death of Spouse, the entire remaining principal of Trust A is to be paid over to or in trust for such appointee or appointees (including the estate of Spouse), as Spouse may appoint by Spouse's will. In default of the exercise of Spouse's power of appointment, the remaining principal of Trust B is to be divided into equal shares, one share for each of the then living grandchildren of Decedent, and one share for each deceased grandchild leaving issue surviving. Each share created for a living grandchild is to be held as a separate trust and each share created for a deceased grandchild is to be distributed to the issue per stirpes of such grandchild.

Article XV(B) provides that Decedent authorizes the trustee to exercise, in its sole discretion, to divide any trust created under Trust into separate trusts in order that

the inclusion ratio for federal generation-skipping transfer tax purposes for one such trust shall be zero or one.

Article XVII provides that any trusts created under Trust are to terminate not later than 21 years after the death of the last survivor of Spouse and issue living on the date of Decedent's death.

On Date 4, Decedent's estate timely filed a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, prepared by a certified public accountant, CPA. On Schedule M of Form 706, CPA made an election under § 2056(b)(7) to treat the entire value of Trust A and Trust C as QTIP property, and claimed a deduction for this amount. Trust B and Trust C were listed on Schedule R of Form 706 and Decedent's \$1,000,000 GST exemption was allocated \$X to Trust B and \$Y to Trust C. However, CPA did not make a "reverse" QTIP election under § 2652(a)(3) to treat Decedent as the transferor of any portion of Trust C for generation-skipping transfer tax purposes.

CPA represents by affidavit that he advised Spouse and the trustee of Trust C that Decedent's full GST exemption was allocated to Trust B and Trust C on Schedule R of the Form 706. However, CPA inadvertently, and without Spouse's or the trustee's knowledge, failed to check the box on Schedule R to effectively make the reverse QTIP election under § 2652(a)(3) with respect to Trust C.

The trustee of Trust C requests an extension of time under §§ 301.9100-1 and 301.9100-3 to make a "reverse" QTIP election under § 2652(a)(3) with respect to Trust C.

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, such 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 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with

respect to any property is to be made by the executor on the return of tax imposed by § 2001. The election, once made, is irrevocable.

Under § 2044, any property in which the decedent possessed a qualifying income interest for life and for which a deduction is allowed under § 2056(b)(7) is includible in the decedent's gross estate.

Section 2601 imposes a tax on every generation-skipping transfer (GST) (within the meaning of subchapter B). 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) provides that the term "applicable rate" means with respect to any GST transfer, 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 generation-skipping transfer is generally defined as the excess of 1 over the "applicable fraction". The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

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)) which 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, shall be irrevocable.

Section 2632(a) 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(e)(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 such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 2642(b)(2)(A) provides that if property is transferred as a result of the death of the transferor, the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as the of time of the distribution concerned. Section 2642(b)(2)(B) provides that any allocation to property transferred as a result of the death of the transferor shall be effective on and after the date of the death of the transferor.

Section 2652(a)(1) provides that, for GST purposes, the "transferor" of property is the decedent in whose gross estate the property is included. Thus, in the case of

property subject to a QTIP election that is subsequently includible in the surviving spouse's gross estate under § 2044, the surviving spouse would become the transferor of the property for GST purposes. However, § 2652(a)(3) provides that in the case of any trust with respect to which a deduction is allowed to the decedent 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 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 301.9100-1(c) 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). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin.

Requests for relief under § 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 that granting 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.

Based on the facts submitted and representations made in this case, we conclude that the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time for filing a supplemental Form 706 to make a "reverse" QTIP election under § 2652(a)(3) with respect to Trust C is granted until 60 days after the date of this letter. In the present case, the executor made an allocation of the GST exemption to Trust C on Form 706. Accordingly, if the trustee makes the reverse QTIP election pursuant to the grant of relief provided above, the allocation of Decedent's GST exemption to Trust C will be effective for GST purposes.

A copy of this letter should be attached to a copy of the supplemental Form 706 and sent to the Internal Revenue Service Center, Cincinnati, OH 45999.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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,

Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes

cc