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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-161092-03

Date:

January 29, 2004

Re:

Legend

Decedent =

Wife =

Sister =

Nephew 1 =

Nephew 2 =

Niece =

Grandnephew 1 =

Grandnephew 2 =

Grandniece 1 =

Grandniece 2 =

Trust =

Trustees =

Country =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Attorney =

Dear :

This is in response to your letter dated October 17, 2003, requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an election to treat Trust as two separate trusts under § 26.2652-2(c) of

Generation-Skipping Transfer (GST) Tax Regulations. This letter responds to that request.

The facts and representations submitted are summarized as follows: Decedent died testate on Date 1, in 1988. He was survived by Wife who was a citizen of Country. Decedent had no living descendants at the time of his death. Article Sixth of Decedent's will, dated Date 2, left the residue of his estate to Trust. Pursuant to Paragraph A.1 of Article Sixth, the Trustees were directed to pay all of the net income to Wife during her lifetime. At Wife's death, if Nephew 1 was not then living, the remaining Trust property (after a specific bequest) was to be distributed per stirpes to the then living issue of Decedent's sister, Sister.

Nephew 1 died on Date 3. Decedent's wife died several years later on Date 4. Sister had three children: Nephew 1, Nephew 2, and Niece. Nephew 2 predeceased Decedent. Nephew 1 had two children, Grandnephew 1 and Grandnephew 2, and Nephew 2 had two children, Grandniece 1 and Grandniece 2.

Decedent's executor timely filed Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. The executors elected to treat Trust as a qualified domestic trust so that the amount passing to Trust qualified for the marital deduction under § 2056A. The executors also made a protective qualified terminable interest property election at that time, in the event such election would be required, under future regulations, in order for the Trust to qualify for the marital deduction. In addition, the executors made an election under § 2652(a)(3). Finally, the executors allocated Decedent's available GST exemption (\$1,000,000) to Trust.

Subsequent to the filing of the estate tax return, § 26.2652-2(c) of the regulations was issued. This regulation provided a transitional rule election that allowed certain trusts subject to a reverse QTIP election, to which GST exemption had been allocated, to be treated as two separate trusts, so that only a portion of Trust would be treated as subject to the reverse QTIP election, and that portion would be treated as having a zero inclusion ratio. The deadline for making the election set forth in the transitional rule was June 24, 1996. The Trustees first became aware of the provision after June 24, 1996, when they hired Attorney regarding potential GST tax consequences as a result of Spouse's death.

The Trustees are requesting an extension of time to elect to treat Trust as two separate trusts pursuant to § 26.2652-2(c) such that one trust has an inclusion ratio of zero due to the previous allocation of Decedent's GST exemption to Trust and the other trust has an inclusion ratio of one. The reverse QTIP election would be treated as applying only to the trust with the zero inclusion ratio.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer 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 tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines “applicable rate” as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2631(a), as in effect for the year at issue, provided 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 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 2652(a)(3) states that, with respect to any trust for which a deduction is allowed under section 2056(b)(7), (regarding qualified terminable interest property) the estate of the decedent may elect to treat all of the property in such trust for purposes of the GST tax provisions as if the QTIP election 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 tax exemption may be allocated to that QTIP trust.

Section 26.2652-2(a) provides that a reverse QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies.

Section 26.2652(c) provides that if a reverse QTIP election is made with respect to a trust prior to December 27, 1995, and the GST exemption has been allocated to that trust, the transferor (or the transferor’s executor) may elect to treat the trust as two separate trusts, one of which has a zero inclusion ratio by reason of the transferor’s GST exemption previously allocated to the trust. The separate trust with the zero inclusion ratio consists of that fractional share of the value of the entire trust equal to the value of the nontax portion of the trust under § 26.2642-4(a). The reverse QTIP election is treated as applying only to the trust with the zero inclusion ratio. An election under this section is made by attaching a statement to a copy of the return on which the reverse QTIP election was made under § 2652(a). The statement is to be filed before June 24, 1996.

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 subtitled of the Internal Revenue Code except subtitles E, G, H, and I.

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 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute).

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, the Trustees are granted an extension of time of 60 days from the date of this letter for making the election under § 26.2652-5(c) to treat Trust as two separate trusts, one of which has a zero inclusion ratio by reason of the Decedent's GST exemption previously allocated to the Trust.

The election should be made by completing the statement required in § 26.2652-2(c) and submitting the election, a copy of the return on which the reverse QTIP election was made under § 2652(a)(3), and a copy of this letter, to the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999.

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.

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 requesting 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  
Copy of this letter