



Decedent died testate on Date 2, survived by Spouse, Daughter, and Grandson. The executrix of Decedent's estate is Daughter. The current trustee of Trust is Daughter and A.

Article III of Trust provides that Marital Trust is to be divided into an Exempt Part Marital Trust and a Non-Exempt Part Marital Trust. The Exempt Part Marital Trust is to be funded with an amount equal to Decedent's available GST exemption. The balance, or all, of the Marital Trust, shall be allocated to the Non-Exempt Part Marital Trust.

Upon Spouse's death, any accrued or undistributed income of the Marital Trust is to be distributed to her estate pursuant to the terms of Trust. Spouse also has a special testamentary power of appointment to appoint the remaining principal of Marital Trust to or for the benefit of any one or more of Decedent's issue. Any unappointed principal of the Exempt Part Marital Trust that is wholly exempt from GST tax by reason of the allocation of Decedent's GST exemption shall fund the Exempt Trust for the benefit of Grandson (Grandson's Trust) pursuant to the terms of Trust. The balance of the principal of the Exempt Part Marital Trust and any remaining unappointed principal of the Non-Exempt Part Marital Trust shall be divided into a GST Exempt Share and a GST Non-Exempt Share. The GST Exempt Share shall consist of that fraction of the portion of Trust principal disposed of under paragraph 4.b. which is includable in Spouse's gross estate and with respect to which she is treated as the transferor for GST tax purposes, the numerator of which is Spouse's available GST exemption and the denominator of which is the value of such portion as finally determined for federal estate tax purposes in Spouse's estate. The balance, or all, of the principal shall be the GST Non-Exempt Share. The GST Exempt Share shall fund the Grandson's Trust.

Article III further provides that the executor is authorized to elect any part or all of Marital Trust created under Trust to be treated as QTIP under § 2056(b)(7). The executor is also authorized to make the reverse QTIP election under § 2652(a)(3) with respect to the Exempt Part Marital Trust and to allocate Decedent's remaining available GST exemption to the property constituting the Exempt Part Marital Trust.

Decedent's attorney, Attorney, prepared the United State Estate (and Generation-Skipping Transfer) Tax Return, Form 706. On Schedule M, Bequests, etc., to Surviving Spouse, a QTIP election under § 2056(b)(7) was made with respect to Marital Trust. On Schedule R, Generation-Skipping Transfer Tax, \$x of Decedent's available GST exemption was allocated to Grandson's Trust.

Attorney did not advise Decedent's estate to sever Marital Trust into an exempt trust and nonexempt trust or to make the reverse QTIP election. Spouse died on Date 3 without exercising the special power of appointment granted to her. The errors were discovered upon review of Spouse's estate.

You have requested an extension of time under §§ 301.9100-1 and 301.9100-3 of 60 days to sever Marital Trust into the Exempt Part Marital Trust and the Non-Exempt

Part Marital Trust pursuant to § 26.2654-1(b)(1) and to make a reverse QTIP election under § 2652(a)(3) for the Exempt Part Marital Trust.

Section 2601 imposes a tax on every generation-skipping transfer. Section 2611(a) provides that the term "generation-skipping transfer" means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2631(a), provided 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 the individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(b) provides that any allocation, once made, shall be irrevocable.

Section 2632(a)(1) provides that any allocation by an individual of his 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 26.2632-1(d)(1) provides, in part, that an allocation of a decedent's unused GST exemption by the executor of the decedent's estate is made on the appropriate United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706 or Form 706NA) filed on or before the date prescribed for filing the return by § 6075(a) (including any extensions actually granted (the due date)). An allocation of GST exemption to a trust (whether or not funded at the time the Form 706 or Form 706NA is filed) is effective if the notice of allocation clearly identifies the trust and the amount of the decedent's GST exemption allocated to the trust.

Section 2632(e)(1) provides that any portion of such individual's GST exemption which has not been allocated within the time prescribed by section 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 taxable termination might occur at or after such individual's death.

Section 2652(a)(1) provides, in part, that for purposes of chapter 13, the term "transferor" means -- (A) in the case of any property subject to the tax imposed by chapter 11, the decedent. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides, in part, that in the case of -- (A) 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 such trust for purposes of chapter 13 as if the election to be treated as qualified terminable interest property had not been made (reverse QTIP election).

Section 26.2652-2(b) provides that an election under § 2652(a)(3) is made on the return on which the QTIP election is made.

Section 26.2654-1(b)(1) provides, in part, that the severance of a trust that is included in the transferor's gross estate into two or more trusts is recognized for purposes of chapter 13 if the trust is severed pursuant to a direction in the governing instrument providing that the trust is to be divided upon the death of the transferor.

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.

Section 301.9100-3(a) provides, in part, that 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) provides, in part, except as provided in § 301.9100-3(b)(3)(i) through (iii), 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(c)(1) provides, in part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

As a result of the QTIP election made on the Form 706, Spouse, is considered the transferor of the property for GST tax purposes. Therefore, Decedent's remaining GST exemption may not be allocated to Marital Trust. However, if Marital Trust is severed into the Exempt Part Marital Trust and the Non-Exempt Part Marital Trust and a reverse QTIP election under § 2652(a)(3) is made with respect to the Exempt Part Marital Trust, Decedent will be treated as the transferor of the Exempt Part Marital Trust assets.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, an extension of time of 60 days from the date of this letter is granted to sever Marital Trust into a Exempt Part Marital Trust and a Non-Exempt Part Marital Trust and to file a supplemental Form 706 making the reverse QTIP election with respect to the Exempt Part Marital Trust. As a result of the severance of Marital Trust and the "reverse" QTIP

election with respect to the Exempt Part Marital Trust, Decedent's remaining GST exemption will be allocated in accordance with the rules provided in section 2632(e)(1). The supplemental Form 706 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the form. A copy is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures

Copy for § 6110 purposes  
Copy of this letter