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Department of the Treasury
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Person To Contact: _____, ID No. _____
Telephone Number: _____

Refer Reply To:
CC:PSI:B04 – PLR-102505-12
Date:
July 10, 2012

Re:

Legend

- Decedent =
- Spouse =
- Son =
- Son's spouse =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Year 1 =
- Year 2 =
- Attorney 1 =
- Attorney 2 =
- Trust =
- Trust B =

Dear _____ :

This letter responds to correspondence, dated December 28, 2011, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to sever Trust B into two trusts: Non-Exempt Trust B and Exempt Trust B; make a reverse qualified terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code with respect to Exempt Trust B, and apply the automatic allocation rules to allocate Decedent's Generation-Skipping Transfer (GST) exemption to Exempt Trust B.

Decedent died on Date 4, survived by Spouse, one child (Son), and grandchildren. Article IV of Decedent's will provides that upon her death the residue of her estate passes to Trust. Article Fourth of Trust provides that upon the death of the

first spouse to die, Trustee is to divide Trust into three separate trusts: Trust A, Trust B, and Trust C. This letter ruling pertains to Trust B.

Article Fourth, Section 1, paragraph B of Trust provides that Trust B will consist of an amount equal to the unlimited estate tax marital deduction allowable in computing the federal estate tax owing as a result of the deceased spouse's death, less: (1) the federal state tax value of all other property interests that qualify for the federal estate tax marital deduction and that pass or have passed from the deceased spouse to the surviving spouse in any manner; and (2) that amount not subject to federal estate tax in the deceased spouse's estate by reason of the unused credit available at the death of the deceased spouse's death under § 2010.

Under Article Fourth, Section III, Spouse is to receive the net income from Trust B at least quarter-annually. Trustee is to pay to or for the benefit of Spouse as much of the principal of Trust B as reasonably necessary for health, maintenance and support of Spouse in his accustomed manner of living. Trustee is also directed to pay Spouse such amounts of principal of Trust B as Spouse may request, not to exceed \$5,000 or five percent of the value of Trust B at the end of each calendar year.

At Spouse's death Trust B is to be distributed for the benefit of descendants of Decedent and Spouse either outright or in trust, as the surviving spouse appoints by will. Any property not effectively appointed will be distributed to Son, if Son survives for 30 days. If Son does not survive, the remaining trust estate is divided into shares for each of Son's issue to be held in further trust. The trustees are authorized to take any action and make any election, in the trustees' discretion, to minimize the tax liabilities of the trust and the beneficiaries.

Spouse, as executor of Decedent's estate, retained Attorney 1 to advise and assist him in the administration of the estate and to prepare and file Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Form 706 was timely filed on Date 5. On Schedule M, the estate made the election under § 2056(b)(7) (qualified terminable interest property) for Trust B. However, Form 706 did not indicate that Trust B was to be severed into an exempt and non-exempt trust. The executor did not make a reverse QTIP election with respect to Trust B, and accordingly, the executor did not allocate Decedent's GST exemption to any portion of Trust B. In an affidavit, Attorney 1 stated that he failed to advise Spouse to sever Trust B into an exempt trust and non-exempt trust, to make the reverse QTIP election under § 2652(a)(3), or to allocate Decedent's GST exemption to any portion of Trust B. These errors were discovered by Spouse in Year 1, in the course of seeking estate planning advice from Attorney 2. Spouse died on Date 6, in Year 2. Son and Son's spouse are the Trustees of Trust.

Trustees request the following rulings:

1. An extension of time to sever Trust B under § 26.2654-1(b)(1) of the Generation-Skipping Transfer Tax Regulations into Exempt Trust B and Non-Exempt Trust B;
2. An extension of time to make a reverse QTIP election under § 2652(a)(3) with respect to the Exempt Trust B;
3. That Decedent's exemption will be automatically allocated to Exempt Trust B, effective as of the Decedent's date of death under § 2632.

Law and Analysis

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 shall, except as limited by § 2056(b), 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, but only to the extent that such interest is included in determining the value of the gross estate.

Under § 2056(b)(1), no deduction is 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.

Under § 2056(b)(7)(A), qualified terminable interest property is treated as passing to the surviving spouse for purposes of § 2056(a) and no part of the property is treated as passing to any person other than the surviving spouse for purposes of § 2056(b)(1)(A). Qualified terminable interest property is defined under § 2056(b)(7)(B)(i) as property: (1) which passes from the decedent to the surviving spouse; (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)(ii) provides that the surviving spouse has a qualifying income interest for life if: (I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for

life in the property; and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001. Such an election, once made, shall be irrevocable.

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

Section 2601 imposes a tax on every generation-skipping transfer (GST) made by a transferor to a skip person. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Under § 2631(a) (in effect at the time of Decedent's death) for purposes of determining the inclusion ratio, every individual is allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) that 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 under § 2631(a), once made, is irrevocable.

Section 2632(a)(1) provides that an individual's GST exemption may be allocated 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 return is required to be filed.

Section 2632(c)(1) (as in effect on Date 4)) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by subsection (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 26.2632-1(d)(2) provides, in relevant part, that a decedent's unused GST exemption is automatically allocated on the due date for filing Form 706 to the extent not otherwise allocated by the decedent's executor on or before that date. Unused exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)), on the basis of the value of the property as finally determined for estate tax purposes (chapter 11 value), first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)) on the basis of the chapter 11 value of the nonexempt portion of the trust property to trusts with respect to which a taxable termination may occur or from

which a taxable distribution may be made. However, no automatic allocation of GST exemption 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.

Section 2652(a)(1) provides, in part, that for purposes of chapter 13, the term "transferor" means 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 that, in the case of any trust with respect to which a deduction is allowed 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 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 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 26.2654-1(b)(1) provides, in part, that the severance of a trust that is included in the transferor's gross estate (or created under the transferor's will) into two or more trusts is recognized for purposes of chapter 13 if the governing instrument does not require or otherwise direct severance but the trust is severed pursuant to discretionary authority granted either under the governing instrument or under local law; and

(A) The terms of the new trust provide in the aggregate for the same succession of interests and beneficiaries as provided in the original trust;

(B) The severance occurs (or a reformation proceeding, if required, is commenced) prior to the date prescribed for filing the Federal estate tax return (including extensions actually granted) for the estate of the transferor; and

(C)(1) The new trusts are severed on a fractional basis. If severed on a fractional basis, the separate trusts need not be funded with a pro rata portion of each asset held by the undivided trust. The trusts may be funded on a nonpro rata basis provided funding is based on either the fair market value of the assets on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding.

Under § 301.9100-1(c), 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. In accordance with § 2642(g)(1)(B) and Notice 2001-50, 2001-34 I.R.B. 189, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

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 has 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)(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 and representations made, we conclude that the standards of §§ 301.9100-1 and 301.9100-3 have been met. Therefore, an extension of time is granted until 120 days from the date of this letter to sever Trust B into Exempt Trust B and Non-Exempt Trust B and to make a reverse QTIP election with respect to Exempt Trust B. Finally, we rule that, the automatic allocation rules of § 2632(c) (in effect on Date 4) will automatically allocate Decedent's unused GST exemption to Exempt Trust B.

The reverse QTIP election should be made on a supplemental Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return). The supplemental Form 706 should be filed on behalf of Decedent's estate with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached.

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 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) of the Code provides that it may not be used or cited as precedent.

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,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Lorraine E. Gardner, Senior Counsel
Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes

cc: