

Internal Revenue Service

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2652.01-02

Re:

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-111181-15

Date: SEPTEMBER 14, 2015

LEGEND

Decedent =

Spouse =

A =

Accounting Firm =

Accountant =

Part A =

Part B =

Date 1 =

Date 2 =

x =

Dear :

This letter responds to your authorized representative's letter of February 6, 2015, and other submissions, requesting an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make a qualified terminable interest property (QTIP) election under § 2056(b)(7) and a "reverse" QTIP election under § 2652(a)(3) of the Internal Revenue Code.

The facts and representations submitted are as follows. Decedent died on Date 1 survived by Spouse.

Article Fourth of Decedent's will provides that, on his death, the residue of his estate is to be divided into Part A (GST Exempt Marital Trust) and Part B (GST Non-Exempt Marital Trust). GST Exempt Marital Trust is to hold a portion of the residue based on the amount, if any, of the exemption from Generation-skipping transfer tax (GSTT exemption) available to Decedent's estate (after allocation of GSTT exemption to a trust created in Article Three). GST Non-Exempt Marital Trust is to hold the balance of the residue.

Under Article Fourth, Paragraph H, in relevant part, the income of GST Exempt Marital Trust is to be paid to Spouse at least quarterly for as long as she lives. Principal may be paid to Spouse for her health, support, and maintenance. On Spouse's death, the remaining principal of GST Exempt Marital Trust is to be distributed to such issue of Decedent and their spouses as Spouse may appoint by will.

Under Article Sixth, in relevant part, the income of GST Non-Exempt Marital Trust is to be paid to Spouse at least quarterly for as long as she lives. Principal may be paid to Spouse in the trustees' discretion. On Spouse's death, the remaining principal is to be distributed to such issue of Decedent and their spouses as Spouse may appoint by will.

Spouse and A are the co-executors of Decedent's estate. They engaged Accounting Firm to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for the estate (Estate). Accountant prepared the Form 706 that was filed on Date 2.

On Schedule M, Accountant mistakenly listed the value of the property that was supposed to pass to the GST Exempt Marital Trust and the GST Non-Exempt Marital Trust as a single amount of \$x passing outright to Spouse and not subject to the QTIP election. Thus, no QTIP and reverse QTIP elections were made for this property.

You have requested an extension of time under §§ 301.9100-1 and 301.9100-3:

- (1) to make a QTIP election under § 2056(b)(7) to treat GST Exempt Marital Trust and GST Non-Exempt Marital Trust as QTIP property;
- (2) to make a "reverse" QTIP election under § 2652(a)(3) with respect to GST Exempt Marital Trust; and
- (3) to allocate Decedent's available GST exemption to GST Exempt Marital Trust.

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 which 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.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) defines the term “qualified terminable interest property” as property: (I) which passes from the decedent; (II) in which the surviving spouse has a qualifying income interest for life as defined in § 2056(b)(7)(B)(ii); and (III) to which an election under § 2056(b)(7) applies.

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.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that, in general, the election referred to in § 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by § 2001. For purposes of this paragraph, the term “return of tax imposed by § 2001” means the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date.

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 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.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount 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 under § 2631(a), once made, shall be irrevocable.

Section 2632 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 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of 1 over the applicable fraction determined for the trust. Section 2642(a)(2) provides that, in general, the applicable fraction is a fraction the numerator of which is the amount of the GST exemption allocated to the trust and the denominator of which is the value of the property transferred to the trust, reduced by the sum of any federal estate tax or state death tax actually recovered from the trust attributable to such property, and any charitable deduction allowed under § 2055 or 2522 with respect to such property.

Section 2652(a)(1) provides that for purpose of chapter 13, the term “transferor” means: (A) in the case of any property subject to the tax imposed by chapter 11, the decedent; and (B) in the case of any property subject to the tax imposed by chapter 12, the donor. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides, in pertinent part, 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 such trust for GST tax purposes as if the election to be treated as qualified terminable interest property had not been made (“reverse” QTIP election).

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

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 date is prescribed by a regulation (and not expressly provided by statute).

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.

In the present case, Article Fourth specifically creates two separate trusts for the benefit of Spouse, with the GST Exempt Trust to be funded based on the amount of Decedent's GST exemption available for allocation to that trust. However, Accountant mistakenly listed the \$x, which was to be divided between the two separate trusts, as not subject to the QTIP election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the co-executors of Decedent's estate are granted an extension of time of 120 days from the date of this letter to make a QTIP election with respect to GST Exempt Marital Trust and GST Non-Exempt Marital Trust, make a reverse QTIP election with respect to GST Exempt Marital Trust, and allocate Decedent's available GST exemption to GST Exempt Marital Trust.

The elections and allocation should be made on a supplemental Form 706 filed with the Cincinnati Service Center at the following address: Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

Except as expressly provided herein, we express no opinion on the federal tax consequences of the transactions under the cited provisions or under any other provisions of the Code.

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.

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.

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

Sincerely,

Melissa C. Liquerman
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy of letter for § 6110 purposes