

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **202229028**

Release Date: 7/22/2022

Index Number: 2056.07-00, 2632.03-00,  
9100.00-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-122469-21

Date:  
April 26, 2022

### Legend

Decedent  
Spouse  
Accountant  
Trust  
Date

Dear \_\_\_\_\_ :

This letter responds to a letter from your authorized representative dated August 29, 2021, and subsequent correspondence, 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) of the Internal Revenue Code (Code).

The facts and representations submitted are summarized as follows:

Decedent, and his spouse, Spouse, (collectively, the grantors) executed Trust. Decedent died on Date. Decedent was survived by Spouse and children.

Under Article 5 of Trust, upon the death of the first grantor, the surviving grantor's interest in any community property of the trust and the surviving grantor's separate trust property will be transferred and administered as the Survivor's Trust. Trust is to become irrevocable as it pertains to the administration and distribution of the deceased grantor's trust property.

Under Article 7, the trustee is to divide deceased grantor's remaining trust property into two separate shares: Marital Share and Non-Marital Share. The trustees are to allocate to Marital Share a pecuniary amount equal to the minimum amount sufficient to reduce the federal estate tax to the lowest possible amount. The trustee is to allocate the balance of the trust property to Non-Marital Share.

Under Article 9, the trustee is to administer the Marital Share as the Marital Trust. The trustee is to distribute all the net income from the Marital Trust to the surviving grantor at least quarter-annually during the surviving grantor's lifetime. The trustee is to distribute as much of the principal of the Marital Trust to the surviving grantor as the trustee determines necessary for the surviving grantor's health, education, maintenance, and support.

Article 9 further provides that the grantors intend that the Marital Trust constitute qualified terminable interest property (QTIP) if and to the extent that the trustee makes the necessary election. The surviving trustor is to have a testamentary limited power to appoint all or any portion of the remaining assets of Marital Trust to any of the grantor's descendants and their spouses. Marital Trust is to terminate upon the death of the surviving grantor.

Under Article 10, the trustee is to administer the Non-Marital Share as the Exempt Trust. The trustee is to distribute all the net income from the Exempt Trust to the surviving grantor at least quarter-annually during the surviving grantor's lifetime. The trustee is to distribute as much of the principal of the Exempt Trust to the surviving grantor as the trustee determines necessary for the surviving grantor's health, education, maintenance, and support.

Article 10 further provides that the surviving trustor is to have a testamentary limited power to appoint all or any portion of the remaining assets of Exempt Trust to any of the grantor's descendants and their spouses. Exempt Trust is to terminate upon the death of the surviving grantor.

Spouse, in her capacity as personal representative of Decedent's estate, hired Accountant to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Accountant prepared and timely filed the Form 706 (with extension). On Decedent's Form 706, Accountant mistakenly reported that the entire estate was treated as passing outright to surviving spouse. Accountant failed to identify Marital Trust as property subject to the QTIP election. Accountant also failed to include Schedule R with the return. As a result, no QTIP election was made with respect to Marital Trust.

You have requested an extension of time under § 301.9100-3 to make a QTIP election under § 2056(b)(7) with respect to all of the property of 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 QTIP, 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)(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.

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 (or § 2101). For purposes of § 20.2056(b)-7(b)(4)(i), 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. 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 imposed by § 2601 is the taxable amount multiplied by the applicable rate.

Section 2631(a) provides that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption amount 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)(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(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 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations provides that a decedent's unused GST exemption is automatically allocated on the due date for filing the Form 706, or Form 706NA, to the extent not otherwise allocated by the decedent's executor on or before that date. Unused GST 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 purposes of chapter 11 (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. 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. The automatic allocation is irrevocable.

Section 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of one 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 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 six 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 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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the executor of Decedent's estate is granted an extension of time of 120 days from the date of this letter to make a QTIP election with respect to the property of Marital Trust. Upon making this election, Decedent's available GST exemption will be automatically allocated to Exempt Trust. This election should be made on a supplemental Form 706 filed with the Internal Revenue Service Center at the following address: Internal Revenue Service Center, Attn: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the supplemental Form 706.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

Sincerely,

Associate Chief Counsel  
Passthroughs and Special Industries

*Melissa C. Liquerman*

By: [Melissa C. Liquerman]  
Chief, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure  
Copy for § 6110 purposes

cc: