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Person To Contact: ID No.

Telephone Number:

Refer Reply To:
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PLR-102162-22

Date:
July 22, 2022

Legend

Decedent =
Spouse =
Attorney =
Trust =
Date 1 =
Date 2 =
Date 3 =

Dear :

This letter responds to a letter from your authorized representative dated January 21, 2022, 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), and a “reverse” QTIP election under § 2652(a)(3) of the Code for the exempt trust.

The facts and representations submitted are summarized as follows:

Decedent and his spouse, Spouse, created Trust, a revocable trust, on Date 1. Trust was amended on Date 2. Decedent died on Date 3, survived by Spouse and Decedent’s children.

Section 3.02 of Trust provides, in relevant part, that after the death of the deceased settlor, the surviving settlor may at any time amend, revoke, or terminate the Survivor’s Trust (a trust created for the benefit of the surviving settlor). All other trusts are to become irrevocable and not be subject to amendment after the death of the deceased settlor.

Section 5.02 provides, in relevant part, that upon the death of the deceased settlor, the trustee is to divide the trust estate into three shares, hereinafter referred to

as the Survivor's Share, the Marital Deduction Share, and the Nonmarital Share. The Survivor's Share is to consist of the portion of the trust estate consisting of the surviving settlor's one-half interest in the settlors' community property, the surviving settlor's one-half interest in the deceased settlor's quasi-community property, and all the surviving settlor's separate property and quasi-community property.

Section 5.02 further provides, in relevant part, that the Marital Deduction Share is to consist of assets having a value equal to the minimum amount necessary to eliminate any federal estate tax at the death of the deceased settlor, taking into account: (1) the net value of all other property that passes or has passed to the surviving settlor under the trust instrument, the will of the deceased settlor, or otherwise, and that qualifies for the federal estate tax marital deduction; (2) all federal estate tax deductions actually allowed other than the marital deduction; (3) the unified credit available to the estate of the deceased settlor; and (4) the credit for state death taxes available to the estate of the deceased settlor, to the extent that the use of that credit does not result in or increase any death tax payable to any state; and (5) any other allowable credits available to the estate of the deceased settlor, but only to the extent that those credits do not disqualify this gift from receiving the marital deduction.

Section 5.02 further provides, in relevant part, that the Marital Deduction Share is to be held, administered, and distributed according to the terms of the QTIP Trust as set forth in Section 5.07 of Trust; and the Nonmarital Share is to consist of all assets not allocated to the Survivor's Share or the Marital Deduction Share. The Nonmarital Share is to be held, administered, and distributed according to the terms of the Bypass Trust as set forth in Section 5.08.

Section 5.07 provides, in relevant part, that the trustee is to hold, administer, and distribute the assets of QTIP Trust as follows: if the executor has elected that the trust qualify for the federal estate tax marital deduction under § 2056(b)(7), the trustee is to thereafter administer the trust in a manner that will not invalidate the election or disqualify the property in which the surviving settlor has a qualifying income interest for life. If an election is made under § 2056(b)(7) to qualify some but not all of the property allocated to the QTIP Trust for the federal estate tax marital deduction, the QTIP Trust is to be divided into two separate trusts pursuant to the terms of the election. The trustee is to pay to or apply for the benefit of the surviving settlor, so long as the surviving settlor lives, the entire net income of the trust, in monthly or other convenient installments, but not less often than annually. The trustee is to distribute to or apply for the benefit of the surviving settlor, for life, as much of the principal of the trust as the trustee deems necessary for his or her health, education, support, and maintenance.

Section 5.07 further provides, in relevant part, that on the death of the surviving settlor, the trustee may pay the taxes, debts, and expenses arising on his or her death. The net income of the trust then accrued, but uncollected, is to be distributed to the estate of the surviving settlor. The trustee is to distribute the balance of the principal of the QTIP trust in the manner specified in section 5.08.

Section 5.08 provides, in relevant part, that the trustee is to hold, administer, and distribute the assets of the Bypass Trust as follows: the trustee is to pay to or apply for the benefit of the surviving settlor, for life, in monthly or other convenient installments, but not less often than annually, as much of the net income of the trust, and as much of the principal of the trust, as the trustee deems necessary for his or her health, education, support, and maintenance.

Section 5.08 further provides, in relevant part, that on the death of the surviving settlor, the trustee is to divide the trust property into as many shares of equal market value as are necessary to create one share for each of the children of the settlors who survives the surviving settlor and the issue who survive the surviving settlor of each child who predeceases the surviving settlor. Each share for a surviving child is to be distributed outright to that child.

Section 5.13 provides, in relevant part, that upon written notification by the deceased settlor's executor that the executor intends to allocate any part of the generation-skipping transfer (GST) tax exemption that is available to the deceased settlor under § 2631(a) to some but not all of the property in any trust to which this paragraph applies, the trustee shall or may divide that trust into two separate trusts, to be designated as the Exempt Trust and the Non-Exempt Trust.

Spouse, while serving as executor of Decedent's estate, hired Attorney to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Attorney prepared and timely filed the Form 706. On Schedule M of Form 706, Attorney incorrectly listed the assets of the QTIP Trust in the "All other property" section (Section B) instead of the "QTIP property" section (Section A). Further, Attorney failed to attach Schedule R and thus was not able to divide QTIP trust into exempt and non-exempt trusts and was unable to make a "reverse" QTIP election over the exempt marital trust.

You have requested the following rulings:

1. An extension of time under § 301.9100-3 to make a QTIP election under § 2056(b)(7) with respect to the QTIP Trust.
2. An extension of time under § 301.9100-3 and § 2642(a)(3) to sever QTIP Trust into two trusts, GST Exempt QTIP Trust and GST Non-Exempt QTIP Trust.
3. An extension of time under § 301.9100-3 to make a "reverse" QTIP election under § 2652(a)(3) with respect to the GST Exempt QTIP 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)(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)(2)(i) of the Estate Tax Regulations provides that the QTIP election may relate to all or any part of property that meets the requirements of § 2056(b)(7)(B)(i), provided that any partial election must be made with respect to a fractional or percentage share of the property. The fraction or percentage may be defined by a formula.

Section 20.2056(b)-7(b)(2)(ii)(A) provides that, in general, a trust may be divided into separate trusts to reflect a partial election that has been made, or is to be made, if authorized under the governing instrument or otherwise permissible under local law. Any such division must be accomplished no later than the end of the period of estate administration. If, at the time of the filing of the estate tax return, the trust has not yet been divided, the intent to divide the trust must be unequivocally signified on the estate tax return.

Section 20.2056(b)-7(b)(4)(i) 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 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), as in effect on Date 3, provides that, for purposes of determining the inclusion ratio, 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 the 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)(1) provides 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; 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 relevant 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) of the Generation-Skipping Transfer Tax Regulations provides, in relevant 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 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 QTIP Trust. The executor of Decedent's estate is also granted an extension of time of 120 days from the date of this letter to sever QTIP Trust into two trusts, GST Exempt QTIP Trust and GST Non-Exempt QTIP Trust, and to make a "reverse" QTIP election under § 2652(a)(3) with respect to the GST Exempt QTIP Trust. These elections 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

Leslie H. Finlow

By:

[Leslie H. Finlow]
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for § 6110 purposes

cc: