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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-101139-23

Date:
July 11, 2023

In Re:

LEGEND
Decedent =
Spouse =
Law Firm =
Date 1 =
Date 2 =
Trust =

Dear :

This letter responds to your authorized representative's letter of December 30, 2022, 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).

The facts and representations submitted are as follows.

On Date 1, Decedent executed a revocable trust, Trust. Decedent died on Date 2, survived by Spouse.

At the death of Decedent, Trust divides into a marital share and a residuary share. The marital share is to consist of the amount necessary to reduce the amount of Decedent's taxable estate to the point where Decedent's estate would incur the least federal estate tax, after taking into account certain deductions and credits. The marital share is to be further held as an Exempt Marital Trust, and a Non-Exempt Marital Trust.

The Exempt Marital Trust is that fraction of the marital share where the numerator is the amount of Decedent's generation-skipping transfer (GST) tax exemption and the denominator shall be the value of the marital share.

The Non-Exempt Marital Trust is to consist of the balance of the Decedent's marital share.

Under the terms of Trust, the trustee shall pay to or apply for the benefit of Spouse, during Spouse's lifetime, all the income annually of the Exempt Marital Trust and Non-Exempt Marital Trust. In addition, trustee has discretion to distribute corpus for Spouse's health, support, maintenance, or education. No person shall have any power to appoint any part of the trust property to any person other than Spouse. Upon the request of Spouse, the Trustee shall dispose of any unproductive trust assets. The executor of Decedent's estate is authorized and directed, to the extent the executor considers advisable, to exercise the election under § 2056(b)(7) and also any election under § 2652(a)(3). Upon the death of Spouse, the Trustee shall distribute the balance of the Exempt Marital Trust and the Non-Exempt Marital Trust to those Spouse appoints, or in default the property passes under the terms of Trust.

Spouse, as executor of Decedent's estate, engaged Law Firm to prepare and timely file Decedent's Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return) and to make any necessary elections, including making a QTIP election and a reverse QTIP election in accordance with the terms of Trust. On Schedules M of Form 706, Law Firm mistakenly did not include the Exempt Marital Trust and Non-Exempt Marital Trust property as subject to the QTIP election and, therefore, no valid QTIP election was made with respect to Exempt Marital Trust and Non-Exempt Marital Trust, and no reverse QTIP election was made with respect to the Exempt Marital Trust.

You have requested an extension of time under §§ 301.9100-1 and 301.9100-3 to make a QTIP election with respect to Exempt Marital Trust and the Non-Exempt Marital Trust under § 2056(b)(7) and a reverse QTIP election with respect to Exempt Marital Trust pursuant to § 2652(a)(3).

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 is 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. Section 2056(b)(1) provides the general rule that no deduction shall be allowed under § 2056(a) 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.

Section 2056(b)(7)(A) provides that, in the case of QTIP, such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(a), no part of the property shall be treated as passing to any person other than the surviving spouse. Section 2056(b)(7)(B)(i) defines the term “QTIP” as property: (1) which passes from the decedent; (2) in which the surviving spouse has a qualifying income interest for life; and (3) 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: (1) 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 (2) 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 is to be made by the executor on the return of tax imposed by § 2001. The election, once made, is irrevocable.

Section 20.2056(b)-7(b)(4) of the Estate Tax Regulations provides, generally, that the QTIP election is made on 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 GST. Section 2611 provides that a GST includes a taxable distribution, a taxable termination, and a direct skip.

Section 2602 provides that the amount of the GST tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines “applicable rate” as 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.

Under § 2632(a), any allocation by an individual of his GST exemption may be made at any time on or before the date prescribed for filing the individual’s estate tax return (including extensions).

Section 2632(e)(1) provides that 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 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 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 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) of the Generation-Skipping Transfer Tax Regulations 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 26.2652-1(a)(3) provides that solely for purposes of chapter 13, if a transferor makes a reverse QTIP election, the identity of the transferor of the property is determined without regard to the application of §§ 2044, 2207A and 2519.

Sections 301.9100-1 through 301.9100-3 provide standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election.

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. 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)(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 are satisfied. Accordingly, Decedent's estate is granted an extension of time of 120 days from the date of this letter to file a supplemental Form 706 to make a QTIP election with respect to Exempt Marital Trust and Non-Exempt Marital Trust under § 2056(b)(7) and to make a reverse QTIP election with respect to Exempt Marital Trust under § 2652(a)(3).

The supplemental Form 706 should be filed with the Internal Revenue Service Center, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the return.

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) 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 representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

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

Enclosure
Copy for § 6110 purposes

cc: