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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:B04

PLR-108845-23

Date:

July 26, 2023

In Re:

Legend

Decedent =

Spouse =

Accountant =

Trust =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to a letter from your authorized representative dated March 16, 2023, and subsequent correspondence, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a reverse qualified terminable interest property (QTIP) election under § 2652(a)(3) 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, a revocable trust, on Date 1. Trust was most recently amended on Date 2. Decedent died on Date 3, survived by Spouse and children. Accountant was appointed co-executor of Decedent's estate, along with one of Decedent's children.

Article 6 of Trust directs the trustee, upon the death of the first grantor to die, to use Trust property to satisfy the specific legacies made under such grantor's Will, and thereafter divide the remaining Trust property into three separate trusts: Survivor's Trust, Marital Trust, and Decedent's Trust. Article 6.2 provides that the assets allocated to Survivor's Trust shall consist of: (i) Spouse's share of the community property portion of the trust estate and Spouse's separate property portion of the trust estate, if any, and (ii) specific items of Decedent's personal property. Article 6.2 provides further that the assets allocated to Marital Trust shall consist of the minimum dollar amount (if any) necessary as a marital deduction to eliminate (or reduce to the extent possible) any federal estate tax payable at Decedent's death. The balance of Trust assets, after payment of estate and inheritance taxes, are allocated to Decedent's Trust.

Article 6.4 directs the trustee to distribute to Spouse the entire net income of Marital Trust, at least annually, and to distribute Marital Trust principal to Spouse for Spouse's health, education, support, and maintenance, as the trustee considers necessary. Article 7.4 directs the trustee, at Spouse's death, to distribute the accrued and undistributed income of Marital Trust to such one or more persons and entities, in any amounts and proportions that Spouse may appoint, or otherwise to Spouse's estate, and to distribute the balance then remaining, if any, of Marital Trust principal to such one or more of the group consisting of the grantors' issue or any charitable organizations as Spouse may appoint (pursuant to a limited power of appointment).

Article 12.1 provides, in relevant part, that the grantors intend that Marital Trust qualify for the marital deduction allowable under federal estate tax law. Article 12.3 authorizes the trustee to elect to have Marital Trust treated as QTIP.

If the trustee makes an election to have Marital Trust treated as QTIP, Article 13.1 further authorizes the trustee to make a reverse QTIP election under § 2652(a)(3) to treat the Decedent as the transferor of such property for purposes of the Generation-Skipping Transfer (GST) Tax. If the trustee makes such an election and if the value of Marital Trust exceeds the amount of Decedent's GST Exemption available at the Decedent's death and not otherwise allocated, Article 13.1 directs the trustee to divide Marital Trust into two separate trusts: (i) "Exempt Marital Trust" consisting of that amount of property equal in value to the amount of the Decedent's GST Exemption not otherwise allocated and available at the Decedent's death for allocation to Exempt Marital Trust, and (ii) "Non-Exempt Marital Trust" consisting of the balance of Marital Trust's assets.

Pursuant to Article 4 of Trust, Marital Trust became irrevocable upon Decedent's death.

Accountant, in his capacity as co-executor of Decedent's estate, prepared Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return and was aware of the terms of Trust when doing so. It has been represented that the taxpayer relied on Accountant's tax expertise in preparing and filing Decedent's

Form 706. On Schedule M (Bequests to Surviving Spouse) of Decedent's timely filed Form 706, Accountant identified Marital Trust as property subject to the QTIP election under § 2056(b)(7). However, Accountant failed to advise the taxpayer with respect to the reverse QTIP election under § 2652(a)(3), and, as a result, no Schedule R (Generation-Skipping Transfer Tax) was filed with Decedent's Form 706 and no reverse QTIP election was made with respect to Marital Trust.

Decedent's estate requests an extension of time under § 301.9100-3 to make a reverse QTIP election under § 2652(a)(3) with respect to 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)(1) provides, in pertinent part, that no deduction is allowed under § 2056(a) where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail.

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 "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. The election, once made, is irrevocable.

Section 2601 imposes a tax on every GST. A GST 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 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 the individual’s 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)(1) provides that any allocation by an individual of GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for the individual’s estate (determined with regard to extensions), regardless of whether an estate tax return is required to be filed.

Under § 2632(e) and § 26.2632-1(d)(2), an individual’s unused GST exemption is automatically allocated on the due date to the extent not otherwise allocated by the individual’s executor on or before that date. The unused exemption is allocated: (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. 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 2642(a)(1) defines “inclusion ratio” as the excess (if any) of 1 over the applicable fraction. Under § 2642(a)(2), 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 GST tax purposes, an individual shall be treated as transferring any property with respect to which the individual is the transferor. Under § 2652(a)(1), the “transferor” is the decedent with respect to any property subject to federal estate tax and the donor with respect to any property subject to federal gift tax. However, under § 2652(a)(3), in the case of any trust for which a marital deduction is allowed to the decedent by reason of § 2056(b)(7), the estate of the decedent may elect to treat all of the property in the trust for GST tax purposes as if the QTIP election had not been made. The election under § 2652(a)(3) is referred to as a “reverse QTIP election.” The consequence of a reverse QTIP election is that, for GST tax purposes, the decedent, not the surviving spouse, is the transferor of the trust for which the QTIP election is made, and the decedent’s GST exemption may be allocated to the trust.

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. Under § 26.2652-2(b), the reverse QTIP election is made on the return of tax on which the QTIP election is made.

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 GST tax purposes if the trust is severed pursuant to a direction in the governing instrument providing that the trust is to be divided upon the death of the transferor.

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 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).

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 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.

In this case, the terms of Trust direct the severance of Marital Trust into Exempt Marital Trust and Non-Exempt Marital Trust. Therefore, under § 26.2654-1(b)(1)(i), the severance of Marital Trust into Exempt Marital Trust and Non-Exempt Marital Trust is recognized for GST tax purposes. As a result of the QTIP election made on Form 706, and pursuant to § 2519 or § 2044(a), Spouse will become the transferor of Exempt Marital Trust for GST tax purposes prior to the occurrence of any GST, thereby precluding allocation of Decedent's GST exemption to Exempt Marital Trust. However, if Decedent's estate is granted an extension of time to make a reverse QTIP election, Decedent will remain the transferor of Exempt Marital Trust for GST tax purposes.

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

The reverse QTIP election should be made on a supplemental Form 706. The supplemental Form 706 should be filed with the 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.

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 expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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 and Special Industries

By: Daniel J. Gespass
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for §6110 purposes

cc: