

Internal Revenue Service

Number: **202407004**
Release Date: 2/16/2024

Index Number: 2056.07-00, 9100.00-00

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-112636-23

Date:
November 15, 2023

Legend

Decedent
Spouse
Trust
Marital Trust
Date 1
Date 2
Date 3

Dear _____ :

This letter responds to your authorized representative's letter dated June 13, 2023, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election to treat a marital trust as two separate trusts under § 26.2652-2(c) of the Generation-Skipping Transfer Tax Regulations.

The facts submitted and representations made are as follows:

On Date 1, Decedent established Trust, a revocable trust. Decedent died on Date 2, survived by Decedent's spouse, Spouse. Trust became irrevocable on Decedent's death.

The Trust agreement provides that the net residue of the trust property, after payment of taxes and expenses, would be allocated to Marital Trust. During Spouse's life, all of the income of Marital Trust is to be paid to Spouse in monthly installments. After Spouse's death, the remaining corpus was allocated in equal shares to trusts for the nieces of Decedent.

Decedent's executor timely filed Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. On Schedule M of the Form 706, an election was made under § 2056(b)(7) to treat Marital Trust as QTIP. On Schedule R, the executor made a reverse QTIP election to treat Decedent as the transferor, for GST tax purposes, for the entire Marital Trust.

Subsequent to the filing of Decedent's Form 706, §26.2652-2(c) was issued. This regulation provides a transitional rule that allows certain trusts subject to a reverse QTIP election to be treated as two separate trusts, so that only a portion of the trust would be treated as subject to the reverse QTIP election, and that portion would be treated as having a zero inclusion ratio. The deadline for making the election set forth in the transitional rule was June 24, 1996.

Spouse died on Date 3. In the course of preparing Form 706 for Spouse's estate, the trustee of Marital Trust became aware that the election under §26.2652-2(c) was not made.

You request an extension of time under §§ 301.9100-1 and 301.9100-3 to make an election to treat Marital Trust as two separate trusts pursuant to § 26.2652-2(c) so that one trust has an inclusion ratio of zero (GST Exempt QTIP Trust) and the other trust has an inclusion ratio of one (GST Non-Exempt QTIP Trust) for GST tax purposes.

LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer. 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 the 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) (in effect at the time of Decedent's death) provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 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) provides that any allocation by an individual of his 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 2632(c)(1) (in effect at the time of Decedent's death) 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 2632(c)(2)(A) (in effect at the time of Decedent's death) provides that the allocation under § 2632(c)(1) is made among the properties described in § 2632(c)(1)(A) and the trusts described in § 2632(c)(1)(B) in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of such properties or trusts.

Section 2652(a)(3) provides that, in the case of any property with respect to which a deduction is allowed under § 2056(b)(7) (regarding QTIP), the estate of the decedent may elect to treat all of the property in such trust for purposes of the GST tax provisions as if the QTIP election had not been made.

The election under § 2652(a)(3) is referred to as the "reverse" QTIP election. The consequence of a reverse QTIP election is that the decedent remains, for GST tax purposes, the transferor of the QTIP trust for which the election is made. As a result, the decedent's GST exemption may be allocated to that QTIP trust.

Section 26.2652-2(a) provides 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(c) provides that if a reverse QTIP election is made with respect to a trust prior to December 27, 1995, and the GST exemption has been allocated to that trust, the transferor (or the transferor's executor) may elect to treat the trust as two separate trusts, one of which has a zero inclusion ratio by reason of the transferor's GST exemption previously allocated to the trust. The separate trust with the zero inclusion ratio consists of that fractional share of the value of the entire trust equal to the value of the nontax portion of the trust under § 26.2642-4(a). The reverse QTIP election is treated as applying only to the trust with the zero inclusion ratio. An election under this section is made by attaching a statement to a copy of the return on which the reverse QTIP election was made under § 2652(a). The statement is to be filed before June 24, 1996.

Section 2654(b) (in effect at the time of Decedent's death) provided that substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts.

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 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 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, Decedent's estate is granted an extension of time of 120 days from the date of this letter to make the election under § 26.2652-2(c) to treat Marital Trust as two separate trusts, one of which has a zero inclusion ratio by reason of Decedent's GST exemption allocated to the QTIP Trust, the other of which has an inclusion ratio of one. The reverse QTIP election will be treated as applying only to the trust with the zero inclusion ratio and Decedent will be considered the transferor of this portion of Marital Trust.

The election under § 26.2652-2(c) should be made by completing the statement required in § 26.2652-2(c) and attaching the statement to the supplemental Form 706. The Form 706 should be filed at the following address: Internal Revenue Service Center, ATTN: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915.

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

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.

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.

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

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

Daniel J. Gespass

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: