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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B4
PLR-115993-23

Date:
February 09, 2024

Legend

- Decedent =
- Spouse =
- Executor =
- Administrator =
- Accounting Firm =
- Law Firm =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- State Law 1 =
- State Law 2 =
- State Court =
- x =
- y =
- z =

Dear :

This letter responds to your authorized representative's letter dated March 3, 2023, and subsequent correspondence, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to sever a trust into an exempt and non-exempt trust for generation-skipping transfer (GST) tax purposes under § 26.2654-1(b) of the Generation-Skipping Transfer Tax Regulations and to make a reverse qualified

terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code (Code) with respect to the exempt trust.

The facts and representations submitted are summarized as follows. Decedent died on Date 1 (a date after December 31, 2001), survived by Spouse and his three children. Item V of Decedent's will creates a marital trust for the benefit of Spouse during her lifetime.

Item V(A) of Decedent's will provides that the marital trust shall be funded with an amount equal to fifty percent (50 percent) of Decedent's adjusted gross estate reduced by the aggregate value of all interests in property, if any, that pass to Spouse under any other provision of Decedent's will, by operation of law, through life insurance policies, or otherwise, but only to the extent that such interests are included in determining Decedent's gross estate and qualify for the marital deduction under § 2056 of the Code. Item II(D) defines adjusted gross estate as the value of Decedent's gross estate reduced by the aggregate amount of deductions allowed to Decedent's estate under §§ 2053 and 2054 of the Code.

Item V(D)(1) provides that the trustees of the marital trust shall distribute to or for the benefit of Spouse quarter-annually, or more frequently at intervals convenient to Spouse and the trustees, all the income of the marital trust. Item V(D)(1) provides further that the trustees also shall distribute to Spouse so much of the corpus of the marital trust as they may consider necessary or advisable for Spouse's maintenance in health and reasonable comfort.

Item V(D)(2) provides that upon the death of Spouse, any undistributed income of the marital trust shall be distributed to Spouse's estate, and the remaining corpus, less any amounts which Spouse's estate shall be entitled to recover pursuant to § 2207A(a)(1), shall be added to the residuary trusts created in Item VI of Decedent's will.

Item VI provides for the division of Decedent's residuary estate into four parts, one share for each of his three children and one share to be divided *per capita* among his grandchildren who survive him. Each child is to receive his share outright if he survives the Decedent. A separate residuary trust is to be created for each grandchild's share.

Decedent's will does not direct or grant the trustees discretionary authority to sever the marital trust. It is represented that Decedent had \$x of his GST exemption amount available for allocation on Date 1.

Executor retained Law Firm and Accounting Firm to advise him in connection with the preparation of the Decedent's estate tax return (Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return). Executor timely filed Decedent's estate tax return on Date 2. On Schedule M, Executor made a QTIP election for the marital trust describing this property as the GST Exempt Item V Marital Trust with respect to the amount of \$x and the Item V Marital Trust with respect to the amount of \$y. Schedule R

indicated that an allocation of the Decedent's available GST tax exemption in the amount of \$x was made to the GST Exempt Item V Marital Trust and, as well, indicated that a reverse QTIP election was made with respect to this property. However, neither Law Firm nor Accounting Firm advised Executor that, because Decedent's will did not grant the trustees of the marital trust the authority to sever, it was necessary to petition Court to direct severance of the marital trust into a GST exempt and a GST non-exempt trust in order to make an effective allocation of Decedent's remaining GST exemption amount to the GST Exempt Item V Marital Trust and an effective reverse QTIP election with respect to the GST Exempt V Marital Trust.

After Decedent's estate tax return was filed, Executor died and Administrator was appointed to complete the administration of Decedent's estate. Litigation involving Decedent's estate has prevented the distribution of Decedent's assets and the closing of Decedent's estate. Neither the marital trust nor any residuary trust has been fully funded.

The litigation involving Decedent's estate was completed on Date 3. While preparing to fund the Item V Marital Trust and the GST Exempt Item V Marital Trust as contemplated by the estate tax return and to close the estate, Administrator discovered that the marital trust had not been severed and the requirements in § 26.2654-1(b) had not been satisfied, so that the Item V Marital Trust and the GST Exempt Item V Marital Trust were not recognized as separate trusts for GST tax purposes.

State Law 1 authorizes Court, upon petition, to order the division of a single trust into two or more trusts or the consolidation of two or more trusts, whether created by the same or different trust instruments or by the same or different persons, into a single trust if the division or consolidation would be helpful to the administration of such trust or trusts.

State Law 2 provides that notice of a petition to modify or terminate a trust under State Law 1 shall be given to the settlor, if living, the trustee, any trust director, all qualified beneficiaries, any holder of a power of appointment over the trust property, and such other persons as the court may direct.

On Date 4, the trustee of the marital trust petitioned Court for an order of division of the marital trust pursuant to State Law 1 into a GST exempt trust and a GST non-exempt trust. On Date 5, having received consent to the petition from all interested parties pursuant to State Law 2, State Court issued an order for the division of the marital trust into two trusts described as the GST Exempt Item V Marital Trust (a GST exempt marital trust) and the Item V Marital Trust (a GST non-exempt trust) with the terms of each resulting trust to be identical to the marital trust. Pursuant to the State Court order, the GST Exempt Item V Marital Trust is to be funded with that fraction of the marital trust assets the numerator of which is \$x and the denominator of which is \$z (the amount described in Item V(A) of Decedent's will). The Item V Marital Trust is to be funded with the remainder of the marital trust assets.

Rulings Requested

Administrator requests an extension of time under § 301.9100-3 to retroactively sever, on a fractional basis, the marital trust into a GST exempt and GST non-exempt marital trust under § 26.2654-1(b)(1) and to make a retroactive reverse QTIP election under § 2652(a)(3) with respect to the exempt 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 is to be 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 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 and (A) an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than the surviving spouse (or the estate of such spouse); and (B) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, the entire property shall be treated as passing to the surviving spouse for purposes of § 2056(a), and no part of the property shall be treated as passing to any person other than the surviving spouse for purposes of § 2056(b)(1).

Section 2056(b)(7)(B)(i) defines 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)(B)(v) 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.

Under § 2044(a), any property in which the decedent possessed a qualifying income interest for life and for which a deduction was allowed under § 2056(b)(7) is includable in the decedent's gross estate.

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2602 provides that the amount of 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 2642(a) provides the method for determining the inclusion ratio.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) that may be allocated by such individual (or by his or her executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that once an allocation of GST exemption is made, it is irrevocable.

Under § 2632(a), the allocation of the 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, 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 the individual’s death, and (B) second, to trusts with respect to which the individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after the individual’s death.

Section 2632-1(d)(2) provides that a decedent’s unused GST exemption is automatically allocated on the due date for filing Form 706 to the extent not otherwise allocated by the decedent’s executor on or before that date. The regulation also supplies the method for the automatic allocation of any unused GST exemption. First, the exemption is allocated pro rata to direct skips on the basis of their values for estate tax purposes. The balance is then allocated pro rata, on the basis of estate tax values, to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. No automatic allocation 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 2652(a)(3) provides that in the case of any trust with respect to which a deduction is allowed to the decedent’s estate under § 2056(b)(7), the estate of the decedent may elect to treat all of the property in the trust, for purposes of the GST tax, as if the election to be treated as QTIP had not been made. This election 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 the QTIP trust.

Section 26.2652-2(a) provides that if an election is made to treat property as QTIP under § 2056(b)(7), the person making the election may, for purposes of chapter 13, elect to treat the property as if the QTIP election had not been made (reverse QTIP

election). An election under this section 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 the reverse QTIP election is to be made on the return on which the QTIP election is made.

Section 26.2654-1(b)(1)(ii) provides 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 purposes of chapter 13 if the governing instrument does not require or otherwise direct severance but the trust is severed pursuant to discretionary authority granted either under the governing instrument or under local law; and

- (A) The terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust;
- (B) The severance occurs (or a reformation proceeding, if required, is commenced) prior to the date prescribed for filing the federal estate tax return (including extensions actually granted) for the estate of the transferor; and

(C) Either -

(1) The new trusts are severed on a fractional basis. If severed on a fractional basis, the separate trusts need not be funded with a pro rata portion of each asset held by the undivided trust. The trusts may be funded on a non pro rata basis provided funding is based on either the fair market value of the assets on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding; or

(2) If the severance is required (by the terms of the governing instrument) to be made on the basis of a pecuniary amount, the pecuniary payment is satisfied in a manner that would meet the requirements of paragraph (a)(1)(ii) of this section if it were paid to an individual.

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 Code except subtitles E, G, H, and I.

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

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.

Rev. Proc. 2004-47, 2004-2 C.B. 169, provides an alternative method for certain taxpayers to obtain an extension of time to make a reverse QTIP election under § 2652(a)(3). Under § 3.02, relief to make a reverse QTIP election under Rev. Proc. 2004-47 does not include or grant permission to make a late severance of a trust included in the gross estate. Under § 3.03, Rev. Proc. 2004-47 informs taxpayers who are outside the scope of the revenue procedure that relief under § 301.9100-3 may be requested by requesting a letter ruling.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Decedent's estate is granted an extension of time of 120 days from the date of this letter to sever the marital trust into a GST exempt trust and a GST non-exempt trust in a manner consistent with the requirements of § 26.2654-1(b)(1)(ii). The severance should be reported on a supplemental Form 706 for the estate of Decedent. 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 the State court order severing the marital trust and a copy of this letter should be attached to the return.

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 ruling contained in this letter is 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: _____
Karlene M. Lesho
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure (1)

Copy for § 6110 purposes.

cc: