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Department of the Treasury

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Person to Contact:

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CC:DOM:P&SI:4/PLR-116590-98

Date: November 30, 1998

Re:

Legend:

Decedent =
Trust =

Spouse =
Date 1 =

Dear :

This is in response to your submission dated September 14, 1998, in which you requested a ruling under § 2652 of the Internal Revenue Code and § 301.9100-1 of the Procedure and Administration Regulations.

Decedent died testate on Date 1 survived by Spouse. Under the terms of the will, Decedent's estate passed to a revocable trust established by Decedent during her lifetime. Article V, Section 5.05 of Trust provides for a "Generation Skipping Trust." The Generation Skipping Trust is to be funded with an amount equal to the Decedent's generation-skipping transfer tax exemption that has not been allocated to property transferred by Decedent during her lifetime. Article V, Section 5.06 provides for a Residuary Trust.

During his life, Spouse is to receive all of the net income from both trusts, payable at least annually. Upon Spouse's death, Article V, Section 5.06 of Trust provides that any undistributed income in the Residuary Trust is to be distributed in accordance with Spouse's exercise of a general power of appointment. If Spouse does not exercise the power of appointment, then the income will be added to the trust estate. The corpus of the Residuary Trust estate is to be distributed to Decedent's issue. Any accumulated income in the Generation Skipping Trust is to be distributed in accordance with Spouse's exercise of a power of appointment. If Spouse does not exercise the power of appointment, then the income is added to the trust

estate. Upon Spouse's death, the corpus of the Generation Skipping Trust is to be divided into equal shares, one share for each surviving child of Decedent, and one share for each child that has died leaving issue.

On Schedule M of Form 706, (that was timely filed by the estate), the executor made an election under § 2056(b)(7) with respect to the entire value of the Generation Skipping Trust and the Residuary Trust. A deduction under § 2056(a) was claimed with respect to these trusts.

Article V, Section 5.05D of Decedent's will provides that an election under § 2652(a)(3) should be made with respect to the Generation Skipping Trust. The executor, however, failed to make an election under § 2652(a)(3) with respect to the Generation Skipping Trust.

The Decedent's personal representative requests an extension of time under § 301.9100-1 to make an election under § 2652(a)(3) with respect to the Generation Skipping Trust.

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.

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.

Section 2056(b)(7)(B)(i) defines "qualified terminable interest property" (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 2601 imposes a tax on every generation-skipping transfer. With regard to the generation-skipping transfer tax (GSTT), each individual is allowed an exemption of \$1,000,000 which may be allocated by such individual (or by his or her executor) to any property with respect to which such individual is the transferor.

Under § 2632(a), the allocation may be made at any time on or before the date prescribed for filing the individual's estate tax return (including extensions). Under § 2632(c), any portion of an individual's GSTT exemption not allocated within the time prescribed in § 2632(a), is allocated in accordance with that section.

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 GSTT, as if the election to be treated as qualified terminable interest property 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 GSTT purposes, the transferor of the QTIP trust for which the election is made. As a result, the decedent's GSTT exemption may be allocated to the QTIP trust.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner may grant a reasonable extension of time 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, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

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 an election. § 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. § 301.9100-3(a).

In this case, the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time is granted until October 19, 1998, for making an election under §2652(a)(3) with respect to the Generation Skipping Trust.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. We note that an extension of time to make the "reverse" QTIP election under § 2652(a)(3) does not extend the time to make an allocation of any remaining GSTT exemption. In the instant case, the executor made an allocation of the GSTT exemption to the Generation Skipping Trust on the estate tax return. Consequently, in view of the reverse QTIP election, Decedent's GSTT exemption allocation to the Generation Skipping Trust will not change.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

Paul F. Kugler
Assistant Chief Counsel
(Passthroughs and Special
Industries)

Enclosure
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