Internal Revenue Service
Index Nos.: 2652.01-02
9100.00-00

Department of the Treasury

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Ben Franklin Station
Washington, DC 20044

199912039

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:4/PLR-113584-98
Date:

DEC 23 1998

Re:

Legend:

Spouse
Date 1
Date 2

Dear

This is in response to your submission of April 8, 1998, on behalf of Decedent's estate, in which you requested an extension of time under § 301.9100-1 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.

Decedent died testate on Date 1. Decedent was survived by Spouse. Decedent's will provides that upon her death, Decedent's half of the community property is to be used to satisfy cash bequests totaling $600,000 to Decedent's grandchildren and great grandchildren. It is also to be used to pay any of the Decedent's estate expenses, debts, and funeral expenses. Any of Decedent's remaining community property assets are to be put in Trust B for the life of Spouse, and then, upon Spouse's death, distributed to Decedent's daughter, son-in-law, and three grandchildren equally. The terms of Trust B satisfy the requirements for making a QTIP election under § 2056(b)(7).

Spouse, as executor of Decedent's estate, employed an attorney to prepare the estate tax return. A valid QTIP election was made with respect to Trust B. The attorney failed to inform the executor of the reverse QTIP election, and it was not elected on the Schedule R attached to the return.

On date 2, the estate filed an amended Schedule R that properly signifies that a reverse QTIP election is being made under § 2652(a)(3) for Trust B.

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" 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 is to be made by the executor on the return of tax imposed by § 2001. The election, once made, is irrevocable.

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

Section 2601 imposes a tax on every generation-skipping transfer (GST) made after October 22, 1986.

Section 2631 provides for a generation-skipping transfer tax (GSTT) exemption of $1,000,000, which may be allocated by the individual, or the individual's estate, 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).

Section 2632(c) provides that any portion of an individual's GSTT exemption that has not been allocated by the individual, or the individual's estate, will be automatically allocated first, to property which is the subject of a direct skip occurring at the individual's death, and second, to trusts with respect to which the individual is the transferor and from which a taxable distribution or taxable termination might occur at or after the individual's death. This automatic allocation is made among the direct skips and trusts in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of the properties and trusts.

Under § 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations, 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 generation-skipping transfers with respect to the trust.

Section 2652(a)(1) provides that, for GST purposes, the "transferor" of property is the decedent in whose gross estate the property is included. Thus, in the case of property subject to a QTIP election that is subsequently includible in the surviving spouse's gross estate under § 2044, the surviving spouse would become the transferor of the property for GST purposes. However, § 2652(a)(3) provides 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 the trust, for purposes of the GST tax, 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 GST 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 of Internal Revenue may grant a reasonable extension of the 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 the relief will not prejudice the interests of the government.

Section 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. Section 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 the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

Based on the facts submitted and representations made in this case, we conclude that the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time is granted until date 2, for making an election under § 2652(a)(3) with respect to Trust B.

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 since the time for making the allocation is expressly prescribed by the statute. In the instant case, the executor made an allocation of Decedent's GSTT exemption on the original Schedule R in the amount of $600,000 for the outright bequests to Decedent's grandchildren and great grandchildren. Accordingly, in view of the reverse QTIP election, Decedent's remaining GSTT exemption is allocated in accordance with the rules of § 2632(c) to Trust B.

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.

A copy of this letter should be forwarded to the district office where Decedent's estate tax return was filed. A copy is included for that purpose.

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

Sincerely yours,

(Signed) Paul F. Kugler

Paul F. Kugler

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

Enclosure
Copy of letter
Copy for section 6110 purposes