

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-115741-18

Date:
October 22, 2018

RE:

Legend

Decedent
Spouse
Daughter
Trust

Attorney
Date 1
Date 2
Date 3
Date 4
Date 5
Date 6

Dear :

This letter responds to a letter from your authorized representative dated December 19, 2017, requesting an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make a qualified terminable interest property (QTIP) election under § 2056(b)(7) of the Internal Revenue Code and a “reverse” QTIP election under § 2652(a)(3).

The facts and representations submitted are summarized as follows:

On Date 1, Decedent and Spouse (collectively, the “trustors”) executed a revocable trust, Trust. Trust was restated on Date 2 and amended on Date 3. Decedent died on Date 4, survived by Spouse.

Section 5.03(b) of Trust provides, in relevant part, that upon the death of the first trustor to die, Trust is to be divided into two trusts, Trust A and Trust B. Trust A is to consist of the surviving trustor's remaining one-half share of the trustors' community property and the surviving trustor's separate property. Trust B is to consist of the balance of the Trust assets.

Section 5.03(d) provides, in relevant part, that upon the death of the surviving trustor, any part of Trust A that has not been appointed by the surviving trustor is to be added to Trust B.

Section 5.03(e)(1) provides that the trustee is to pay over and distribute all of the entire net income of Trust B to or for the benefit of the surviving trustor in quarterly or more frequent installments during her lifetime.

Section 5.03(e)(4) provides, in relevant part, that the surviving trustor will have a testamentary limited power to appoint the principal and any undistributed income of Trust B to or for the benefit of any person, excluding the surviving trustor, her estate, her creditors, or the creditors of her estate.

Section 5.03(e)(5) provides, in relevant part, that a material purpose in establishing Trust B was to obtain the marital deduction under § 2056. Thus, the trustee may make a QTIP election over the entirety of Trust B or for any portion thereof. If the trustee makes a QTIP election with respect to a fraction or percentage of Trust B, the trustee is authorized to segregate Trust B into two shares, one share to hold the fraction that qualifies for the marital deduction, and one share to hold the fraction that does not qualify for the marital deduction; provided that such segregation does not disqualify the qualifying share for the marital deduction.

Section 5.03(e)(6) provides, in relevant part, that Trust B is to terminate at the death of the surviving trustor. With respect to any portion of the trust estate over which the surviving trustor did not exercise her testamentary limited power of appointment, the property will be divided into two trusts, one trust for the benefit of Daughter and her issue and the other trust for the benefit of the issue of a second child.

Spouse, while serving as trustee of Decedent's estate, hired Attorney to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. On Date 5, the Form 706 was timely filed (with extensions) on behalf of the estate. On Form 706, Attorney incorrectly reported all assets held in the name of Trust on Schedule E, "Jointly Owned Property," and not on Schedule M, "Bequests, etc., to Surviving Spouse." As a result, the assets of Trust were reported as joint tenancy assets, and hence not eligible for the marital deduction. Thus, no QTIP election was made with respect to the property passing to Trust. Spouse died on Date 6.

You have requested the following rulings:

1. An extension of time under § 301.9100-3 to make a QTIP election with respect to a portion of Trust B.
2. An extension of time under § 301.9100-3 to sever Marital Trust into a GST Exempt Marital Trust and a GST Non-exempt Marital Trust pursuant to § 26.2654-1(b) of the Generation-Skipping Transfer Tax Regulations.
3. An extension of time under § 301.9100-3 to make a “reverse” QTIP election under § 2652(a)(3) with respect to the portion of Trust B that is subject to the QTIP election.

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 2044 provides, in part, that the value of the gross estate shall include the value of any property for which a deduction was allowed with respect to the transfer of such property to the decedent under § 2056(b)(7) in which the decedent had a qualifying income interest for life.

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)(7)(A) provides that, in the case of qualified terminable interest property, 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 the term “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)(ii) provides that the surviving spouse has a qualifying income interest for life if: (I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property; and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

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. Such an election, once made, shall be irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that, in general, the election referred to in § 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by § 2001 (or § 2101). For purposes of this paragraph, the term “return of tax imposed by § 2001” means the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date.

Section 2601 imposes a tax on every generation-skipping transfer. Section 2611(a) provides that the term “generation-skipping transfer” means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term “applicable rate” means, with respect to any GST transfer, 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 such individual (or his 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) provides that any allocation by an individual of his or her 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 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of one over the applicable fraction determined for the trust. Section 2642(a)(2) provides that, in general, 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 purposes of chapter 13, the term “transferor” means: (A) in the case of any property subject to the tax imposed by chapter 11, the decedent; and (B) in the case of any property subject to the tax imposed by chapter 12, the donor. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides, in pertinent part, 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 such trust for GST tax purposes

as if the election to be treated as qualified terminable interest property had not been made (“reverse” QTIP election).

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. Section 26.2652-2(b) provides that an election under § 2652(a)(3) is made on the return 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 purposes of chapter 13 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 and the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original instrument and the severance occurs prior to the date prescribed for filing the federal estate tax return (including extensions actually granted) for the estate of the transferor and the new trusts are severed on a fractional basis.

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 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, the executor of Decedent’s estate is granted an extension of time of 120 days from the date of this letter to make a QTIP election with respect to Trust B. The executor of Decedent’s estate is also granted an extension of time of 120 days from the date of this letter to sever QTIP Trust B into a GST Exempt Marital Trust and a GST Non-exempt Marital Trust and to make a reverse QTIP election with respect to the GST Exempt Marital Trust. These elections should be made on a supplemental Form 706 filed with the Cincinnati Service

Center at the following address: Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

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

Except as expressly provided herein, we neither express nor imply any opinion 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.

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

Leslie H. Finlow

By: _____
Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter

cc: