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Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-137549-02

Date:

October 16, 2002

LEGEND

Decedent =

Date 1 =

Spouse =

Trust =

Date 2 =

\$X =

\$Y =

Bank =

Tax Preparer =

Dear :

This letter responds to your request, dated July 3, 2002, requesting rulings under § 301.9100-3 of the Procedure and Administration Regulations as well as rulings under § 2632 and § 2652 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: Decedent died on Date 1, survived by Spouse and two daughters.

In her will, Decedent bequeathed the residue of her estate to a revocable trust (Trust) which she had created prior to her death.

Article II, paragraph C of Trust provides that at Decedent's death, specific pecuniary amounts are to be distributed to named individuals and organizations, and

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any S corporation stock is to be distributed outright to Decedent's husband (Spouse). The balance of the Trust assets and any other assets received by the trustees by reason of Decedent's death is to be divided into three separate shares: the Family Trust, the Marital Trust, and the Marital Share.

Pursuant to Article X, paragraph B of Trust, the Family Trust was intended to be funded with an amount equal to Decedent's applicable exclusion amount. Paragraphs A and B of Article IV provide that, during his lifetime, Spouse is to receive the net income of the Family Trust in quarterly or more frequent installments and as much of the principal as the trustees deem necessary for his support and maintenance. Upon Spouse's death, the remaining principal and income of the Family Trust is to be divided into two equal shares for the benefit of Decedent's daughters' descendants. It is represented that Decedent's lifetime gifts and the pecuniary distributions from the Trust exceeded her applicable exclusion amount and, therefore, the Family Trust was never funded.

Article X, paragraph C provides that the Marital Trust is to be funded with an amount equal to Decedent's available generation-skipping transfer (GST) exemption, minus the amount transferred to the Family Trust. Paragraphs A and B of Article III provide that, during his lifetime, Spouse is to receive the net income of the Marital Trust in quarterly or more frequent installments and as much principal as the trustees deem necessary for his support and maintenance. Upon Spouse's death, any accrued or undistributed net income of the Marital Trust and the amount needed to pay taxes attributable to the inclusion of the Marital Trust in Spouse's gross estate are to be distributed to Spouse's estate. The remaining principal is to be added to the Family Trust.

Article X, paragraph D, and Article II, paragraph C (4) provide that the Marital Share shall consist of the assets remaining after the distributions to the Family Trust and the Marital Trust. The trustees are to distribute the Marital Share outright to Spouse.

Decedent's will authorizes her executors to elect to treat all or a fractional share of the Marital Trust as qualified terminable interest property (QTIP). In addition, for purposes of the GST tax, the will authorizes the trustees to elect to treat the QTIP share as if the QTIP election had not been made. Decedent's will further authorizes her executors to allocate her available GST exemption to any property of which she is the transferor.

On Date 2, Decedent's estate timely filed a United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706). On Schedule M of the Form 706, the executors elected to treat the Marital Trust as QTIP and reported the value of the Marital Trust as \$X. In addition, on Schedule R, \$Y of Decedent's GST exemption was allocated to cash bequests made to Decedent's grandchildren. No reverse QTIP election was made with regard to the Marital Trust. The failure to make the reverse

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QTIP election was discovered by Bank while preparing to fund the Marital Trust. Tax Preparer, who prepared the Form 706, has signed an affidavit stating she inadvertently did not elect the reverse QTIP election for the Marital Trust and failed to recommend the reverse QTIP election to the executors of the estate due to her misunderstandings of the requirement to do so.

It is represented that Decedent's entire \$1,000,000 GST exemption was available for allocation at Decedent's death.

Decedent's estate requests the following rulings: (1) that an extension of time be granted to make a reverse QTIP election under § 2652(a)(3) with respect to the Marital Trust; and (2) that the automatic allocation rules of § 2632(e) operate to cause the unused portion of Decedent's GST exemption to be allocated to the Marital Trust so the trust has an inclusion ratio of zero.

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

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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)) 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. 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) (designated as § 2632(c)(1) at the time of Decedent’s death) 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 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations 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(b) provides that the reverse QTIP election is to be made on

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the return on which the QTIP election is made.

Under § 301.9100-1(c), the Commissioner may 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.

Section 301.9100-2 provides for automatic extensions of time for making certain elections.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. Requests for relief subject to § 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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time is granted until 60 days from the date of this letter for making a reverse QTIP election under § 2652(a)(3) with respect to the Marital Trust. The election should be made on a supplemental Form 706 filed with the Internal Revenue Service Center, Cincinnati, Ohio, 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for that purpose.

An extension of time to make the reverse QTIP election under § 2652 does not extend the time to make an allocation of any remaining GST exemption. However, the automatic allocation rules of § 2632(e) and § 26.2632-1(d)(2) operate to allocate Decedent's available exemption.

Based on the information submitted and the representations made and provided the reverse QTIP election is made for the Marital Trust as authorized in this letter, we conclude that Decedent's unused GST exemption will automatically be allocated to the Marital Trust. Because the amount of Decedent's unused GST exemption equals the estate tax value of the trust, the Marital Trust will have an inclusion ratio of zero under § 2642.

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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.

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.

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.

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

Sincerely,
Heather C. Maloy
Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter