

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-144605-05

Date: FEBRUARY 23, 2006

Legend

Decedent =

Spouse =

Date 1 =

Date 2 =

\$X =

\$Y =

Dear :

This letter is in response to a letter dated August 23, 2005 from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to sever a marital trust for purposes of the Generation-Skipping Transfer (GST) tax, and to make a “reverse” qualified terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code.

The facts and representations submitted are summarized as follows:

Decedent died on Date 1, survived by Spouse and two children. Spouse was appointed executor of the estate. After making certain specific and pecuniary bequests, Article 5 of Decedent’s will provides that the fractional portion of the residuary estate that can pass free of estate tax by reason of the Decedent’s available applicable credit amount is to pass to a Credit Shelter Trust for the benefit of Spouse and the issue of Decedent. Under Article 6, the balance of the residuary estate is to pass to a Marital Trust intended to qualify as qualified terminable interest property (QTIP) under § 2056(b)(7) of the Code. Under Article 6, section 6.4.2, the executor is authorized to make the election provided under § 2652(a)(3) and if the election is made, to divide the Marital Trust based on the amount of Decedent’s remaining GST Exemption into an

exempt Marital Trust” which will have an inclusion ratio of zero and a “Non-Exempt Marital Trust” which will have an inclusion ratio of one.

Spouse retained an accounting firm to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. The Form 706 was timely filed on Date 2. On the Form 706, the executor made a QTIP election under § 2056(b)(7)(B)(v) with respect to the Marital Trust. The Marital Trust had not been severed into an exempt trust and a non-exempt trust prior to the due date of the return, and the return contained no indication that the Marital Trust was to be severed, as required under § 26.2654-1(b), nor did Schedule R of the return signify that a “reverse” QTIP election was being made under § 2652(a)(3). Finally, on Schedule R, \$X of GST exemption was allocated to the Credit Shelter Trust, and \$Y was allocated to a bequest to a skip person.

None of the trusts established under Decedent’s will have been funded and administration of the Decedent’s estate remains open. The executor requests an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to sever Marital Trust into a GST Exempt Marital Trust and a GST Non-Exempt Marital Trust, and an extension of time to make a “reverse” QTIP election under § 2652(a)(3) with respect to the GST Exempt Marital 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 for purposes of § 2056(b)(1)(A).

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. Under § 2044, generally, property subject to a QTIP election is includible in the surviving spouse’s gross estate.

Section 2601 imposes a tax on every generation-skipping transfer made by a transferor to a skip person. In general, under §2652(a)(1), the term "transferor" is defined for GST tax purposes as the decedent, in the case of any property subject to the federal estate tax.

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.

Under 2642(a)(1), the inclusion ratio with any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the "applicable fraction". The applicable fraction, as defined in § 2642(a)(2) is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the direct skip. Section 2642(b)(2)(A) provides that if property is transferred as a result of the death of the transferor, the value of such property for purposes of § 2642(a) shall be its value as finally determined for estate tax purposes.

Section 2631(a) provides that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Under § 2631(c), effective in the case of decedents dying and generation skipping transfers after December 31, 2003, the GST exemption for any calendar year is equal to the applicable exclusion amount under § 2010(c).

Section 2632(a)(1) 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 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 such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

As noted above, § 2652(a)(1) provides that, for GST tax 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 decedent's estate may make a "reverse" QTIP election 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. 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 a "reverse" QTIP election is made on the return on which the QTIP election is made.

Section 26.2654-1(b)(1) provides rules under which the severance of a trust that is included in the transferor's gross estate into two or more trusts will be recognized for GST tax purposes. Under the regulation, if the governing instrument does not require severance, the trust must be severed pursuant to discretionary authority granted either under the governing instrument or under local law. The terms of the new trust must provide in the aggregate for the same succession of interests and beneficiaries as provided in the original trust. The severance must occur (or a reformation proceeding be commenced) prior to the date prescribed for filing the federal estate tax return for the estate of the transferor. The trusts must either be severed on a fractional basis or a pecuniary basis (if so required by the governing instrument). 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.

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 in subtitles E, G, H, and I.

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.

Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an election described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

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 to 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 sixty (60) days from the date of this letter to sever Marital Trust into the GST Exempt Marital Trust and the GST Nonexempt Marital Trust. Assuming the severance otherwise conforms to the requirements of §26.2654-1(b), the severance will be recognized for GST tax purposes.

In addition, the executor of Decedent's estate is granted an extension of time of sixty (60) days from the date of this letter to make a "reverse" QTIP election with respect to the severed GST Exempt Marital Trust.

Under the automatic allocation rules contained in § 2632(e), a portion of Decedent's unused GST exemption was automatically allocated to the Credit Shelter Trust at the time the Form 706 was filed. Assuming a "reverse" QTIP election is made with respect to the Exempt Marital Trust pursuant to the relief granted in this letter ruling, the Decedent's remaining GST exemption will be automatically allocated to the Exempt Marital Trust. Assuming the Exempt Marital Trust is properly funded, that trust will have an inclusion ratio of zero for GST tax purposes.

The election under § 2652(a)(3) is to be made by filing a supplemental Form 706 on which the "reverse" QTIP election is made for the GST Exempt Marital Trust. In addition, the supplemental return should contain the statement required under § 26.2654-1(b)(2) providing that separate trusts will be created and clearly setting forth the manner in which the trust is to be severed and the separate trusts funded. The supplemental Form 706 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999.

A copy of this letter should be attached to the return. A copy is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal 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 ruling, it is subject to verification on examination.

Pursuant to the Power of Attorney on file with this office, this letter is being sent to the taxpayer's representatives.

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,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter