

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

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Date:  
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### Legend

Decedent  
Spouse  
Sibling  
Accountant  
Trust  
Beneficiary 1  
Beneficiary 2  
Beneficiary 3  
Beneficiary 4  
Beneficiary 5  
Date 1  
Date 2  
Date 3

Dear :

This letter responds to a letter from your authorized representative dated January 30, 2019, requesting a ruling that a qualified terminable interest property (QTIP) election does not apply with respect to a certain trust, and for an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to sever a trust into an exempt trust and a non-exempt trust and make a “reverse” QTIP election under § 2652(a)(3) of the Internal Revenue Code for the exempt trust.

The facts and representations submitted are summarized as follows:

Decedent created Trust, a revocable trust, on Date 1. Trust was amended on Date 2. Decedent died on Date 3, survived by Spouse, Sibling, and other relatives.

At Decedent's death, Trust became irrevocable and the assets of Trust were distributed to trusts created pursuant to Article III of Trust.

Under Article III of Trust, the trustee is empowered to divide the property of Trust into two trusts, Trust A and Trust B. Article III, Section A establishes Trust A. Trust A is to be funded with all assets of Trust not allocated to Trust B. Under the terms of Trust A, Spouse will receive all of the income on a monthly or quarterly basis. The trustee of Trust A has the sole discretion to distribute so much of the principal of Trust A to or for the benefit of Spouse as may be necessary for Spouse's health, maintenance, and support. Upon the death of Spouse, all of the assets of Trust A shall be distributed to Trust B to be added to and administered as a part thereof.

Article III, Section B establishes Trust B. Pursuant to a formula clause, Trust B is to be funded with the maximum amount of money and property which may be allocated to Trust B without creating a federal estate tax in Decedent's estate after considering the applicable credit against federal gift and estate tax and any state death tax credits.

Under the terms of Trust B, the trustee is required to distribute all of the income to Spouse on a monthly or quarterly basis. In addition to the income, the trustee has discretion to distribute so much of the principal of Trust B to or for the benefit of Spouse in such amounts as may be necessary for Spouse's health, maintenance, and support. If Decedent is survived by Sibling, Decedent's sister, the trustee is required to distribute a specified amount to Sibling on an annual basis in monthly or quarterly installments so long as Sibling shall live. Upon the death of Sibling, if Sibling survives Spouse, the assets of Trust B will be distributed in equal shares to Beneficiary 1, Beneficiary 2, Beneficiary 3, Beneficiary 4, and Beneficiary 5.

Pursuant to Article VI, Section W, the trustee has the power to divide any trust into separate shares or separate trusts or to create separate trusts, provided they are administered under the same terms as the initial trust or trust's share. The trustee has the further power to divide any property in any trust held under Trust with an inclusion ratio of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero.

Spouse, while serving as executor of Decedent's estate, hired Accountant to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Accountant prepared and timely filed the Form 706. On Form 706, Accountant incorrectly made a QTIP election with respect to the entire value of Trust (instead of just Trust A). Furthermore, Accountant did not attach Schedule R and thus was not able to make a "reverse" QTIP election over Trust A or divide Trust A into GST exempt and GST non-exempt trusts.

You have requested the following rulings:

1. That the QTIP election is void with respect to Trust B.
2. For an extension of time under § 301.9100-3 to sever Trust A into GST exempt and GST non-exempt trusts pursuant to § 26.2654-1(b) of the Generation-Skipping Transfer Tax Regulations.
3. For an extension of time under § 301.9100-3 to make a “reverse” QTIP election under § 2652(a)(3) with respect to the GST exempt portion of Trust A.

## 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 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)(2)(i) of the Estate Tax Regulations provides that the QTIP election may relate to all or any part of property that meets the requirements of § 2056(b)(7)(B)(i), provided that any partial election must be made with respect to a fractional or percentage share of the property. The fraction or percentage may be defined by a formula.

Section 20.2056(b)-7(b)(2)(ii)(A) provides that, in general, a trust may be divided into separate trusts to reflect a partial election that has been made, or is to be made, if authorized under the governing instrument or otherwise permissible under local law. Any such division must be accomplished no later than the end of the period of estate administration. If, at the time of the filing of the estate tax return, the trust has not yet been divided, the intent to divide the trust must be unequivocally signified on the estate tax return.

Section 20.2056(b)-7(b)(4)(i) 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), as in effect on Date 3, 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 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.

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 the Form 706, or Form 706NA, to the extent not otherwise allocated by the decedent's executor on or before that date. Unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)), on the basis of the value of the property as finally determined for purposes of chapter 11 (chapter 11 value), first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)) on the basis of the chapter 11 value of the nonexempt portion of the trust property to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. No automatic allocation of GST exemption 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 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 trust 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.

In this case, the language of Trust as it pertains to Trust B provides that the trustee is to distribute a specified amount of Trust B corpus to Sibling monthly or quarterly. As a result, Trust B does not provide a qualifying income interest for life to Spouse for purposes of § 2056(b)(7)(B)(ii). The QTIP election made on Form 706 was therefore erroneously made. Accordingly, based on the facts submitted and the representations made, we conclude that the QTIP election made with respect to Trust B is void. Furthermore, since the QTIP election did not apply to Trust B, Decedent's available GST exemption is automatically allocated to Trust B.

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 sever Trust A into GST exempt and GST non-exempt trusts and to make a "reverse" QTIP election with respect to the GST exempt trust. Upon making this election, Decedent's available GST exemption (after taking into account the allocation to Trust B) will be automatically allocated to the GST exempt portion of Trust A. These elections

should be made on a supplemental Form 706 filed with the Kansas City Service Center at the following address: Department of the Treasury, Internal Revenue Service Center, Kansas City, MO 64999. 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

By: Leslie H. Finlow  
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: