

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Refer Reply To:

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Date:

May 12, 2000

Re:

Legend

Decedent:

Spouse:

Estate:

Son :

Daughter:

Will:

Bank:

Personal Representatives:

Firm :

Tax Practitioner:

State:

Date 1:

Date 2:

Date 3:

Date 4:

Dear

This responds to a letter dated November 22, 1999, submitted on behalf of Personal Representatives of Estate, requesting an extension of time under § 301.9100-3 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 with respect to Trust C-1 created under Will.

Decedent died testate on Date 1 survived by Spouse, Son and Daughter. Will named Spouse and Bank as co-personal representatives (Personal Representatives) of Estate.

Pursuant to Paragraph III and IV of Will, Decedent's tangible personal property and his interest in jointly owned residential and other property passed directly to Spouse.

Pursuant to Paragraph V of Will, the remaining Estate was divided into two separate shares, designated the "Marital Share" and "Trust B." Trust B was to receive property equal to Decedent's available unified credit. The Marital Share was to receive the balance of Estate. Because Decedent used his entire unified credit amount during life, all property passed to the Marital Share, and no portion passed to Trust B.

Pursuant to Paragraph V.a. of Will, the Marital Share was further divided into two shares: Trust C-1 and Trust C. Trust C-1 was to be funded with an amount equal to Decedent's unused generation-skipping transfer (GST) exemption for the purpose of providing a separate share for which a "reverse" QTIP election could be made. Trust C was to be funded with the balance of the Marital Share. Because Decedent did not allocate any portion of his GST Exemption to lifetime transfers, the full amount of Decedent's \$1 million exemption remained at Decedent's death. Pursuant to Will, Personal Representatives funded Trust C-1 with property valued at \$1 million prior to the due date of Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for Estate. Personal Representatives funded Trust C with the balance of the Marital Share.

During her life, Spouse will receive all of the net income from Trust C-1 and Trust C in installments, which are to be no less frequent than quarterly. Upon Spouse's death, any accrued and undistributed income of Trust C-1 and Trust C is to be paid to Spouse's personal representative or administrator for distribution in accordance Spouse's will. Additionally, the entire remaining principal of Trust C-1 and Trust C is to be distributed in accordance with Spouse's exercise of a general power of appointment. If Spouse does not exercise the power of appointment, the remaining principal of Trust C-1 is to be added to and become part of Trust D, and the remaining principal of Trust C is to be added to and become part of Trust B.

Trust B is to be divided into equal shares, each of which is to be treated as a separate trust, for the benefit of Decedent's children, and administered and distributed in accordance with Paragraph V of Will. Trust D is to be divided into equal separate shares for the benefit of Decedent's grandchildren and administered and distributed in accordance with Paragraph VII of Will.

Following Decedent's death, Personal Representatives hired Firm to prepare all necessary

tax returns required to be filed by Estate and to make all necessary elections under the Code to carry out the intentions of Decedent. Tax Practitioner, a partner in Firm with extensive experience in estate tax planning and reporting, was responsible for the preparation of all tax returns and elections for Estate. Tax Practitioner was involved in the drafting of Will and assisted Decedent with various estate tax planning matters. As a result, Tax Practitioner was very familiar with the terms of Will and knew that the reverse QTIP election needed to be made for Trust C-1 to permit the allocation of Decedent's remaining GST exemption to that trust.

Personal Representatives timely filed the Form 706 for Estate, as prepared and signed by Tax Practitioner on Date 2. The Form 706 claimed a marital deduction and made a QTIP election under § 2056(b)(7) by making an entry on Schedule M for all the property included in the Marital Share. However, the Form 706, as filed, did not indicate an intent to divide the Marital Share into two separate trusts and failed to include the required Schedule R to make a reverse QTIP election for Trust C-1. The Internal Revenue Service accepted the Estate's Form 706 as filed, and an Estate Tax Closing Letter was issued on Date 4.

While assisting Spouse with certain tax planning matters in 1999, Tax Practitioner discovered that the Schedule R necessary to have made a reverse QTIP election had not been completed and attached to the Form 706 that had been filed for Estate. The failure to complete and attach a Schedule R was the result of an oversight by Tax Practitioner and Firm. Upon discovering the oversight, Tax Practitioner immediately brought the issue to the attention of the Personal Representatives and took action to request relief under § 301.9100-3.

In this request for a ruling, the Personal Representatives request an extension of time under § 301.9100-3 to make a reverse QTIP election with respect to Trust C-1.

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 is 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 (QTIP), the entire property is treated as passing to the surviving spouse for purposes of § 2056(a) and no part of the property is treated as passing to any person other than the surviving

spouse.

Section 2056(b)(7)(B)(i) defines “qualified terminable interest property” as property: (I) that passes from the decedent, (II) in which the surviving spouse has a qualifying income interest for life, and (III) 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 shall be made by the executor on a return of tax imposed by § 2001. The election, once made, is irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that 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 § 20.2056(b)-7(b)(4)(i), 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 after the due date.

Under § 2044, any property in which the decedent possessed a qualifying income interest for life and for which a deduction was allowed under § 2056(b)(7) with respect to the transfer of such property to the decedent is includible in the decedent’s gross estate.

Section 2601 imposes a tax on every generating-skipping transfer (GST).

Section 2611(a) defines the term “generation-skipping transfer” as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612(a)(1) provides that the term “taxable termination” means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in trust unless—(A) immediately after the termination, a non-skip person has an interest in the property, or (B) at no time after the termination may a distribution (including distributions on termination) be made from the trust to a skip person. Section 2612(b) provides that the term “taxable distribution” means any distribution from a trust to a skip person (other than a taxable termination or direct skip). Section 2612(c)(1) provides that the term “direct skip” means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) provides that the term “skip person” means—(1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or (2) a trust—(A) if all interests in the trust are held by skip persons, or (B) if—(i) there is no person holding an interest in the trust, and (ii) at no time after such transfer may a distribution (including distributions on termination) be made from the trust to a non-skip person.

Section 2631(a) provides that for purposes of determining the inclusion ratio, every

individual is allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or by his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides any allocation under § 2631(a), once made, is irrevocable.

Section § 2632(a) provides that any allocation by an individual of his 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(c)(1) provides that any portion of an individual's GST exemption not allocated within the time prescribed in § 2632(a) shall be deemed to be allocated: (A) first to property that 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 taxable termination might occur at or after such individual's death. Under § 2632(c)(2)(A), the allocation under paragraph (c)(1) is made among the properties described in subparagraph (A) thereof and the trusts described in subparagraph (B) thereof, as the case may be, in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of such properties or trusts. The term "nonexempt portion" means the value (at the time of allocation) of the property or trust, multiplied by the inclusion ratio with respect to such property or trust.

Section 26.2632-1(d) of the Generation-Skipping Transfer Tax Regulations provides that 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. In addition, no automatic allocation of GST exemption is made to a trust if, during the nine month period ending immediately after the death of the transferor, no GST has occurred with respect to the trust, and at the end of such period no future GST can occur with respect to the trust.

Section 2652(a)(1) provides, in part, that the "transferor" of property subject to the federal estate tax 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 be the transferor of the property for GST purposes.

However, § 2652(a)(3) states that, with respect to any trust for which a deduction is allowed 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 provisions as if the QTIP election 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 GST exemption may be allocated to the QTIP trust.

Section 26.2654-1(a)(2)(i) provides that, if there is more than one transferor with respect

to a trust, the portions of the trust attributable to the different transfers are treated as separate trusts for purposes of chapter 13.

Section 301.9100-1(c) provides that the Commissioner, in an exercise of discretion, 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 not 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.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election under § 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 establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interest of the government.

Based on the facts and representations submitted with your request, we have determined that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time is granted, until 30 days from the date of this ruling, for making an election under § 2652(a)(3) with respect to Trust C-1.

In the present case, upon the death of Decedent, no property passed to Trust B because Decedent used his entire unified credit amount during life. Instead, all property passed to the Marital Share, and a QTIP election for this amount was made by listing the property on Schedule M of Form 706. Therefore, under § 26.2632-(1)(d)(2), no automatic allocation of GST exemption has occurred.

Under Will, additional assets may be added to Trust B from Trust C at the death of Spouse. However, these assets will be attributable to Spouse (as transferor) and, as provided by § 26.2654-1(a)(2)(i), will be treated as held in a separate and distinct trust for GST purposes.

In the case of property subject to a QTIP election that is subsequently includable in the surviving spouse's gross estate under § 2044, the surviving spouse would be the transferor of the property for GST purposes. As provided in § 2652(a)(3), however, if the reverse QTIP election is made with respect to Trust C-1, the Decedent will be treated as the "transferor" of Trust C-1 from which a taxable distribution or a taxable termination might occur at or after Decedent's death. The allocation rules of § 2632(c) will then apply to Trust C-1.

Based solely on the information submitted and the representations made and provided that a reverse QTIP election under § 2652(a)(3) is made within the time period granted by this ruling, we conclude that, under § 2632(c), the Decedent's remaining GST exemption will be allocated to Trust C-1 so that it will have an inclusion ratio of zero.

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 provision of the Code.

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

Enclosure

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