

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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CC:PSI:B09

PLR-157757-05

Date:

April 20, 2006

## LEGEND

Decedent	=
Date 1	=
Trust	=
Trust Company	=
Spouse	=
Date 2	=

Dear :

This responds to your letter dated November 7, 2005, 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 Internal Revenue Code § 2652(a)(3).

The facts and representations submitted are summarized as follows: Decedent died on Date 1. Pursuant to the terms of Decedent’s Last Will and Testament, Decedent’s estate passed to the trustees of Trust. Trust Company and Spouse were named as co-executors of Decedent’s probate estate.

Trust provides that upon Decedent’s death, a pecuniary amount equal to the amount of the Decedent’s unused exemption from the generation-skipping transfer (“GST”) tax shall be set aside and held in trust (the “Descendants Trust”). During Spouse’s lifetime, the trustees of the Descendants’ Trust are directed to pay all of the trust income to Spouse in quarterly or more frequent installments. After the death of Spouse and until the expiration of the applicable perpetuities period, the trustee is to pay to Decedent’s descendants so much of the net income and principal of the Descendants’ Trust as the trustee deems appropriate.

Decedent’s Form 706, Federal Estate (and Generation-Skipping Transfer) Tax Return, which was timely filed, was prepared by Trust Company. A QTIP election was

made with regard to the Descendants' Trust on Schedule M of the return and \$1,000,000 of Decedent's GST exemption was allocated to the Descendants' Trust. However, the preparer of the Form 706 inadvertently failed to make the reverse QTIP election on Schedule R of Decedent's estate tax return.

Spouse died on Date 2. Decedent's estate now requests an extension of time under §§ 301.9100-3 and 2652(a)(3) to make a reverse QTIP election with respect to the Descendants' 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)(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.

Section 2044(a) provides that the value of the gross estate shall include the value of any property to which § 2044 applies in which the decedent had a qualifying income interest for life.

Section 2044(b) provides, in relevant part, that § 2044 applies to any property if a deduction was allowed with respect to the transfer of such property to the decedent under § 2056(b)(7).

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

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)), that may be allocated by such individual (or by his executor) to any property with respect to which such individual is the transferor.

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 section 2056(b)(7), the estate of the

decedent may elect to treat all of the property in the trust, for purposes of Chapter 13, 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 tax exemption may be allocated to the QTIP trust.

Section 26.2652-2(a) provides that the election must be made with respect to all property held in a 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.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time 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 Internal Revenue 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 an election. § 301.9100-1(a).

Section 301.9100-2 provides 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 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(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

In this case, because a QTIP election was made on Decedent's Form 706, the assets of the Descendants' Trust are includible in Spouse's gross estate pursuant to § 2044. Spouse is considered the transferor of such property for GST tax purposes, thereby initially precluding the allocation of any of Decedent's GST exemption to the Descendants' Trust. However, if Decedent's estate is granted an extension of time to make a reverse QTIP election under § 2652(a)(3) with respect to the assets of the Descendants' Trust, Decedent will be treated as the transferor of those assets for GST tax purposes.

Based on the facts submitted and representations made in this case, we conclude that the standards of § 301.9100-3 have been satisfied. Accordingly, we grant Decedent's estate an extension of time of 60 days from the date of this letter to make a reverse QTIP election with respect to the Descendants' Trust. Because the reverse QTIP election made pursuant to this grant of relief under § 301.9100-3 will be retroactive to the date the Form 706 was filed, the allocation of Decedent's GST exemption to the Descendants' Trust on Schedule R of Decedent's original Form 706 will be deemed valid and the automatic allocation rules of § 2632(e)(1) will not apply.

The reverse QTIP election should be made on a supplemental Form 706. 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.

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 expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

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

Sincerely,

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

Enclosures

Copy of letter

Copy for 6110 purposes

cc: