

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:7 / PLR-114547-99

Date:

March 9, 2000

Legend:

Decedent

A

B

C

Trust 1

Trust 2

Trust 3

Trust 4

Date 1

a

Dear . :

We received your letter dated August 25, 1999, requesting (1) a ruling that the severance of Trust 1 into two separate trusts pursuant to § 26.2654-1 (b)(1) of the Generation Skipping Transfer (GST) Tax Regulations will be recognized for GST tax purposes; and (2) an extension of time under § 301.9100 of the Procedure and Administration Regulations to make a reverse Qualified Terminable Interest Property (QTIP) election under § 2652 of the Internal Revenue Code. This letter responds to your request.

Decedent died testate on Date 1, survived by Decedent's spouse, A, and her children, B and C. Decedent's Will, after providing for certain specific bequests to A, provided for the establishment of Trust 1 and Trust 2. Trust 1 is to be funded with an amount equal to the maximum marital deduction allowable reduced by the amount needed to exhaust the unified tax credit and Trust 2 is to be funded with the residue of the estate.

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The executor was directed to make a QTIP election for Trust 1 and was authorized to eliminate any terms in the Will that could prevent a QTIP election for Trust 1. Decedent's Will also authorized the executor to sever any trust created under the Will to take the full advantage of Decedent's GST exemption. In accordance with the terms of the Will, if the executor decided to sever a trust to maximize the benefit of the GST exemption, the trust must be severed into a trust with an inclusion ratio of zero and a trust with an inclusion ratio of one.

Decedent's Will further directed that, on A's death, the property remaining in Trust 1 is to be held for the benefit of B or C surviving at that time, or if deceased, any lineal descendants of B or C. After A's death, Trust 1 is to be controlled by the terms of Trust 2 and may merge into Trust 2.

Trust 2 is a residuary trust and is to be used for the benefit of A, B and C for the lifetime of A. The trustee is allowed to make distributions out of the principal of Trust 2 to A, B or C for the purposes of establishing a business or profession, or purchasing a home for B or C, or if deceased, any lineal descendants of B or C. After A's death, Trust 2 is to be held for the benefit of B and C, and their descendants. Trust 2 was not funded because, at the death of Decedent, there was no residue to fund Trust 2. Decedent's unified tax credit was exhausted otherwise.

On Schedule M of Decedent's estate tax return, the executor listed Trust 1 and made a QTIP election for Trust 1. However, the executor did not make a reverse QTIP election with respect to Trust 1 and did not allocate Decedent's GST exemption.

You now propose to sever Trust 1 into two trusts, Trust 3 and Trust 4. Trust 3 will be funded with an amount equal to \$a. Trust 4 will be funded with the balance.

You have requested (1) a ruling that a severance of Trust 1 into Trust 3, a trust with an inclusion ratio of zero, and Trust 4, a trust with an inclusion ratio of one, will be recognized for GST tax purposes; and (2) an extension of time to make a reverse QTIP election for Trust 3.

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 determined, except as limited in § 2056 (b), 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 his surviving spouse but only to the extent that such interest is included in determining the value of the gross estate.

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Section 2056 (b)(7)(A)(i) provides that, in the case of qualified terminable interest property, for purposes of § 2056 (a), such property is treated as passing to the surviving spouse and for purposes of § 2056 (b)(1)(A), no part of such property is treated as passing to any person other than the surviving spouse.

Section 2056 (b)(7)(B)(i) provides that, in general, the term “qualified terminable interest property” means 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)(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 2631 (a) provides that, for purposes of determining the inclusion ratio, every individual is allowed a GST exemption of \$1,000,000 that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631 (b) provides that any allocation under § 2631 (a), once made, is irrevocable.

Section 2632 (a)(1) 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) provides that any portion of an individual’s GST exemption that has not been allocated within the time prescribed by § 2632 (a) is 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 2652 (a)(3)(A) provides that in the case of any trust with respect to which a deduction is allowed to the decedent under § 2056 by reason of § 2056 (b)(7) thereof, the estate of the decedent or the donor spouse, as the case may be, may elect to treat all of the property in such trust for purposes of this chapter as if the election to be treated as qualified terminable interest property had not been made.

Section 26.2654-1 (b)(1) of the Generation Skipping Transfer tax Regulations provides that the severance of a trust that is included in the transferor’s gross estate (or

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created under the transferor's will) into two or more trusts is recognized for purposes of chapter 13 if –

....

(ii) The governing instrument does not require or otherwise direct severance but the trust is severed pursuant to discretionary authority granted either under the governing instrument or under local law; and

(A) The terms of each of the new trusts provide in the aggregate fractions for the same succession of interests and beneficiaries as are provided in the original trust;

(B) The severance occurs (or a reformation proceeding, if required, is commenced) prior to the date prescribed for filing the Federal estate tax return (including extensions actually granted) for the estate of the transferor; and

(C) ...

(1) The new trusts are severed on a fractional basis. 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. The trusts may be funded on nonpro rata basis provided funding is based on either the fair market value of the assets on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding; ...

Section 301.9100-1 (c) of the Procedure and Administration Regulations provides that the Commissioner in exercising the Commissioner's 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 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.

Section 301.9100-2 provides automatic extensions of time for 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 in part 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.

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Section 301.9100-3 (b)(2) provides in part that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not (i) Competent to render advice on the regulatory election; or (ii) Aware of all relevant facts.

Section 301.9100-3 (c)(1)(i) provides in part 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).

Based on the facts submitted and representations made, we conclude that the requirements of § 26.2654-1 and § 301.9100-3 have been met in this case. Therefore, we conclude that the severance of Trust 1 into Trust 3 and Trust 4, as provided, will be recognized for GST tax purposes. We also grant an extension of time to make a reverse QTIP election for Trust 3 under § 2652 (a)(3) until 30 days after the date of this letter. The reverse QTIP election will result in a deemed allocation under § 2632 (c) of Decedent's GST exemption in the amount of \$a to Trust 3.

This ruling is based on the facts presented and the applicable law in effect on the date of this letter. If there is a change in material fact or law (local or federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect.

Except as specifically ruled herein, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions or any other provisions 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
Assistant Chief Counsel
(Pastthroughs and Special Industries)

Enclosure: Copy for §6110 purposes