

Internal Revenue Service

Number: **201447014**

Release Date: 11/21/2014

Index Number: 2652.01-02, 2654.00-00,
9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-108522-14

Date:

August 07, 2014

Legend

Decedent

Spouse

Date 1

Date 2

Date 3

Date 4

Attorney

Trustee

Year

Family Trust

a

b

Dear :

This letter responds to your authorized representative's letter dated February 25, 2014, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to treat a trust as two separate trusts for purposes of § 26.2652-2(c) of the Generation-Skipping Transfer Tax Regulations and a ruling that the automatic allocation rules under § 2632(e) of the Internal Revenue Code apply to automatically allocate the unused portion of Decedent's GST exemption to Marital Trust.

The facts submitted are as follows:

On Date 1, Decedent and Spouse established Family Trust. Decedent died on Date 2, survived by Spouse, three children, and two grandchildren. Thereafter, one of the children died, leaving two issue surviving and three great-grandchildren were born.

Family Trust provides that on Decedent's death, Family Trust is divided into three trusts, Survivor's Trust, Marital Trust, and Bypass Trust. Survivor's Trust contains Spouse's separate property and Spouse's share of the community property. Of the remaining property, the amount of Decedent's unused applicable exclusion amount was placed in the Bypass Trust and the rest was placed in the Marital Trust. On Date 3, within nine months of Date 2, Spouse executed a qualified disclaimer and disclaimed her interest in the Bypass Trust. Spouse is still alive.

Family Trust provides that after the death of Decedent, the trustee is to pay to Spouse the entire net income of Marital Trust in quarterly or other convenient installments but in no event less often than annually. The trustee is to also distribute to Spouse such amounts from the principal of Marital Trust as the trustee, in its discretion, deems necessary or advisable to provide for Spouse's maintenance and support. Upon Spouse's death, the assets of Marital Trust are distributable, in part, to trusts for the grandchildren and, in part, to trusts that benefit the children and/or the issue of a deceased child.

Spouse, in her role as executor of Decedent's estate, hired Attorney to prepare Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Attorney elected to treat Marital Trust as qualified terminable interest property (QTIP) so that Marital Trust qualified for the marital deduction under § 2056(b)(7). In addition, Attorney made a special election under § 2652(a)(3) to treat the assets of Marital Trust, for generation-skipping transfer (GST) tax purposes, as if the election under § 2056(b)(7) had not been made (a "reverse" QTIP election). Attorney allocated \$a of Decedent's GST exemption to Bypass Trust, but did not allocate Decedent's remaining GST exemption. Spouse timely filed the return (with extensions) on Date 4 (prior to December 27, 1995).

Subsequent to the filing of Decedent's Form 706, § 26.2652-2(c) was issued. This regulation provides a transitional rule that allows certain trusts subject to a "reverse" QTIP election, to which GST exemption had been allocated, to be treated as two separate trusts, so that only a portion of the trust would be treated as subject to the "reverse" QTIP election, and that portion would be treated as having a zero inclusion ratio. The deadline for making the election set forth in the transitional rule was June 24, 1996.

In Year, Spouse resigned as trustee of Family Trust and all subtrusts created thereunder, including Marital Trust. During Spouse's term as trustee, Attorney never advised Spouse of the election under § 26.2652-2(c). Upon the appointment of Trustee, Trustee obtained advice from a law firm regarding administration of Marital Trust and Trustee became aware of the election under § 26.2652-2(c).

You have requested the following rulings:

- 1) The automatic allocation rules under § 2632(e) apply to automatically allocate Decedent's unused GST exemption to Marital Trust.
- 2) An extension of time under § 301.9100-3 to elect to treat Marital Trust as two separate trusts pursuant to § 26.2652-2(c) so that one trust has an inclusion ratio of zero due to the previous automatic allocation of Decedent's unused GST exemption to Marital Trust and the other has an inclusion ratio of one for GST tax purposes. The "reverse" QTIP election would be treated as applying only to the trust with the zero inclusion ratio.

Rulings 1 and 2

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

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 a natural person assigned to a generation that is two or more generations below the generation assignment of the transferor, or a trust if all interests in the trust are held by skip persons.

Section 2631(a), as in effect for the year at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which 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, 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) (formerly § 2632(c)(1) for the year in issue) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) is deemed to be allocated (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 2632(e)(2)(A) (formerly § 2632(c)(2)(A) for the year in issue) provides that the allocation under § 2632(e)(1) is made among the properties described in § 2632(e)(1)(A) and the trusts described in § 2632(e)(1)(B) in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of such properties or trusts.

Section 26.2632-1(d)(2) 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, in part, that the inclusion ratio with respect to any property transferred in a GST is the excess of 1 over the applicable fraction determined for the trust. Section 2642(a)(2) provides, in part, that 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 purpose 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). 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

that QTIP trust.

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 26.2652-2(c) provides that if a "reverse" QTIP election is made with respect to a trust prior to December 27, 1995, and the GST exemption has been allocated to that trust, the transferor (or the transferor's executor) may elect to treat the trust as two separate trusts, one of which has a zero inclusion ratio by reason of the transferor's GST exemption previously allocated to the trust. The separate trust with the zero inclusion ratio consists of that fractional share of the value of the entire trust equal to the value of the nontax portion of the trust under § 26.2642-4(a). The "reverse" QTIP election is treated as applying only to the trust with the zero inclusion ratio. An election under this section is made by attaching a statement to a copy of the return on which the "reverse" QTIP election was made under § 2652(a). The statement is to be filed before June 24, 1996.

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). Section 301.9100-3(a) provides, in part, that 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 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, Attorney allocated \$a of Decedent's GST exemption to Bypass Trust. Attorney also made a "reverse" QTIP election with respect to Marital Trust. For GST tax purposes, Decedent was considered the transferor for the entire Marital Trust. Thus, the remaining \$b of Decedent's GST exemption was automatically allocated to Marital Trust by operation of § 2632(e).

Furthermore, based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, an extension of time of 120 days from the date of this letter is granted in which to make the election under § 26.2652-2(c) to treat Marital Trust as two separate trusts, one of which

has a zero inclusion ratio by reason of Decedent's GST exemption that was automatically allocated to Marital Trust. The "reverse" QTIP election will be treated as applying only to the trust with the zero inclusion ratio. The election should be made by completing the statement required in § 26.2652-2(c) and submitting the election, a copy of the return on which the "reverse" QTIP election was made under § 2652(a)(3), and a copy of this letter, to the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center, Stop 82, Cincinnati, OH 45999.

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:

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter