

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-110683-19

Date:

June 12, 2019

In Re:

### Legend

Decedent =

Date =

Spouse =

Trust =

Attorney =

Dear :

This letter responds to your personal representative's letter of May 1, 2019, and subsequent correspondence, requesting an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make a qualified terminable interest property (QTIP) election under § 2056(b)(7) and a "reverse" QTIP election under § 2652(a)(3) of the Internal Revenue Code (Code).

The facts and representations submitted are as follows:

Decedent died on Date survived by Spouse. Decedent established a revocable trust, Trust, which was amended and restated several times before his death. Article III

of Decedent's Will provides that the residue of Decedent's estate passes to Trust. Article III and Article IV of Trust simultaneously provide that such trust is to be divided into two separate trusts, a Family Trust and a Marital Trust. Marital Trust is for the benefit of Spouse and is the subject of this letter ruling.

Article III, Paragraph 3(a) of trust provides that the trustee shall divide the Family Trust into two trusts, the Family GST Exempt Trust and the Family GST Nonexempt Trust. The Family GST Exempt Trust is to hold a portion of the Family Trust based on the amount of the exemption from Generation-Skipping Transfer (GST) tax available to Decedent's estate. The Family GST Nonexempt Trust is to hold the balance.

Article IV, Paragraph 1(a) provides that the trustee shall divide the Marital Trust into two trusts, the Marital GST Exempt Trust and the Marital GST Nonexempt Trust. The Marital GST Exempt Trust is to hold a portion of the Marital Trust based on the amount of the exemption from Generation-Skipping Transfer (GST) tax available to Decedent's estate after allocation to the Family Trust. The Marital Nonexempt Trust is to hold the balance.

Article IV, Paragraph 1(d) of Trust provides that the trustee may elect (and, to the extent the trustee elects, shall direct Decedent's executor to elect) to treat any part or all of the Marital GST Exempt Trust and the Marital GST Nonexempt Trust as qualified terminable interest property (QTIP) for federal estate tax purposes.

Article IV, Paragraph 2(a) of Trust provides that, during Spouse's lifetime, the income of the Marital GST Exempt Trust and the Marital GST Nonexempt Trust is to be paid to Spouse. The trustee must dispose of unproductive property to the extent Spouse directs in writing. Principal of the Marital GST Exempt Trust and the Marital GST Nonexempt Trust may be paid to Spouse for her support and health, taking into account her income known to the trustee.

Article IV, Paragraph 2(d) provides that upon Spouse's death, the principal of the Marital GST Exempt Trust and the Marital GST Nonexempt Trust shall be distributed to or for such one or more of Decedent's descendants, in such proportions and subject to such trusts, powers and conditions as Spouse appoints by Will.

Article IV, Paragraph 2(e) provides that any unappointed portion of the Marital GST Exempt Trust passes to the Family GST Exempt Trust. Article IV, Paragraph 2(f) provides that any unappointed portion of the Marital GST Nonexempt Trust passes to the Family GST Nonexempt Trust.

Spouse is Executor of Decedent's estate. Spouse engaged Attorney to prepare Decedent's Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return for Decedent's estate.

Attorney failed to correctly make the QTIP election for the Marital Exempt GST Trust and the Marital Nonexempt GST Trust. As a result, no QTIP election and “reverse” QTIP election were made for the marital property.

You have requested an extension of time under §§ 301.9100-1 and 301.9100-3 to make a QTIP election under § 2056(b)(7) to treat Marital Trust as QTIP property and to make a “reverse” QTIP election under § 2652(a)(3) with respect to the Marital Exempt GST Trust.

### 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)(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)(4)(i) of the Estate Tax Regulations 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. 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) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by the 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 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 2642(a)(1) provides that, generally, 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 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) of the Generation-Skipping Transfer Tax Regulations provides that 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 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 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 301.9100-3 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.

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 make a QTIP election with respect to the Marital GST Exempt Trust and the Marital GST Nonexempt Trust and a "reverse" QTIP election with respect to the Marital GST Exempt Trust.

The election should be made on an amended Form 706 and filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the Form 706.

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

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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers 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) of the Code 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 representatives.

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 (2):  
Copy for § 6110 purposes  
Copy of this letter