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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-120588-00

Date:

January 18, 2001

In Re:

LEGEND:

Decedent =

Date 1 =

Spouse =

Son =

Daughter =

Will =

Revocable Trust =

Tax Practitioner 1 =

Date 2 =

Date 3 =

Tax Practitioner 2 =

Dear Madam:

This is in response to your representative's letter dated October 5, 2000, submitted on behalf of Decedent's estate, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to: (1) make a qualified terminable interest property (QTIP) election under § 2056(b)(7) of the Internal Revenue Code; (2) sever a trust into exempt and nonexempt trusts for generation-skipping transfer tax purposes; and (3) make a reverse QTIP election under § 2652(a)(3) with respect to the exempt trust.

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Decedent died testate on Date 1, survived by Spouse, Son, and Daughter. Article VIII of Decedent's Will named Spouse as executrix.

Pursuant to Decedent's Will, Decedent's tangible personal property passed directly to Spouse, and the residue of Decedent's estate passed to Spouse, as trustee of Revocable Trust, of which Decedent was the grantor.

Revocable Trust provides that upon Decedent's death, the trustee shall divide the trust estate into two separate shares, designated the "Residuary Trust" and the "Marital Trust." Articles V.B. and V.C. of the Revocable Trust provide formulas for funding the Residuary Trust and the Marital Trust. Article V.B. provides that the Residuary Trust shall receive a fraction of the trust estate equal to the largest amount that can pass free of federal estate tax by reason of the unified credit and the credit for state death taxes. Article V.C. provides that the Marital Trust shall receive the balance of the trust estate.

Article VI of the Revocable Trust governs the administration of the Marital Trust. Article VI.A. provides that the trustees shall pay all of the net income of the Marital Trust in quarter-annual or more frequent installments to Spouse, for and during her lifetime. Article VI.B. provides that in addition to the payment of income, the trustees shall distribute to Spouse or for her benefit so much of the principal as the trustees from time to time shall deem appropriate for her health, education, and support, taking into account any other financial resources known by the trustees to be available to her. Article VI.C. of the Revocable Trust provides that should the executor elect to treat any portion of the Marital Trust for purposes of generation-skipping transfer taxes as if the qualified terminable interest property election had not been made, the trustees shall establish separate trusts for the elected and non-elected portions of the Marital Trust. Article VI.D. of the Revocable Trust provides for the disposition of the Marital Trust upon Spouse's death.

Article VII of the Revocable Trust governs the administration of the Residuary Trust. Article VII.A. provides that the trustees shall pay all of the net income of the Residuary Trust in quarter-annual or more frequent installments to Spouse, for and during her lifetime. Article VII.B. provides that in addition to the net income of the Residuary Trust payable to Spouse, the trustees shall distribute to Spouse or for her benefit, so much of the principal of the Residuary Trust as the trustees from time to time shall deem appropriate for her health, education, and support, taking into account any other financial resources known by the trustees to be available to her.

Article VII.C. of Revocable Trust provides for the disposition of the Residuary Trust upon Spouse's death. Pursuant to Article VII.C., the Residuary Trust shall be divided into two equal shares for Son and Daughter. The share created for Daughter will pass outright to her if she is then living, or if not, to her issue, per stirpes. The share created for Son will pass in trust for his benefit and for the benefit of his wife and issue. Upon the death of the survivor of Son and Son's wife, the remaining trust estate will

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pass to the issue of Son, per stirpes. Article VII.D. provides that, notwithstanding Article VII.C., Spouse shall have a testamentary power to appoint all or any portion of the Residuary Trust among the Grantor's children, absolutely or in trust.

Article IX.C. of Decedent's Will authorizes the executor to elect that all or a fractional share of the Marital Trust qualify for the marital deduction as qualified terminable interest property (QTIP). Article IX.C. further authorizes the executor to elect, for purposes of generation-skipping transfer taxes, to treat the QTIP share as if the QTIP election had not been made.

Article IX.D. of Decedent's Will authorizes the executor to allocate all or any portion of Decedent's available generation-skipping transfer tax exemption to any property of which the Decedent is the transferor, including any property transferred by Decedent during his lifetime as to which Decedent did not make an allocation before his death.

Following Decedent's death, Spouse, as executrix of Decedent's estate, engaged Tax Practitioner 1 to prepare Form 706 (Federal Estate and Generation-Skipping Transfer Tax Return) for Decedent's estate, provide tax advice to the estate, and provide guidance to Spouse in her duties as executrix. Decedent's estate filed a Form 706 on or about Date 2. Schedule M of the Form 706 failed to distinguish between assets that passed outright to Spouse and assets that were allocated to the Marital Trust. Schedule M also did not reflect the division of the Marital Trust into exempt and nonexempt trusts for purposes of the generation-skipping transfer tax. Tax Practitioner 1 also did not file a Schedule R and make a "reverse" QTIP election under § 2652(a)(3) for the exempt Marital Trust.

While assisting Spouse with personal estate planning matters in Date 3, Tax Practitioner 2 reviewed a copy of the Form 706 filed for Decedent's estate and discovered that the QTIP election and the reverse QTIP election had not been made.

You have requested an extension of time under § 301.9100-3 to make a QTIP election under § 2056(b)(7) for the Marital Trust, sever the Marital Trust into an exempt trust and a nonexempt trust for generation-skipping transfer tax purposes, and make a reverse QTIP election under § 2652(a)(3) with respect to the exempt 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 shall 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.

Section 2056(b)(1) provides the general rule that no deduction shall be allowed for an interest passing to the surviving spouse if, on the lapse of time, on the

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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, 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 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if: (1) 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 (2) no person has a power to appoint any part of the property to any person other than the surviving spouse.

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) of the Estate Tax Regulations provides, generally, that the QTIP election is made on the last filed estate tax return 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.

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 generation-skipping transfer tax (GSTT) exemption of \$1,000,000 which may be allocated by such individual (or by his or her 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.

Under § 2632(a), the allocation of the GSTT exemption may be made at any time on or before the date prescribed for filing the individual's estate tax return (including extensions). Under § 2632(c), any portion of an individual's GSTT exemption not allocated within the time prescribed in § 2632(a), is allocated automatically.

Section 26.2632-1(d)(2) of the GSTT Regulations supplies the method for the automatic allocation of any unused GSTT exemption. First, the exemption is allocated pro rata to direct skips on the basis of the value of the property as finally determined for purposes of Chapter 11. The balance is then allocated pro rata, on the basis of value, to trusts with respect to which a taxable termination may occur or from which a taxable

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distribution may be made. No automatic allocation is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of any GSTT with respect to the trust. The automatic allocation is irrevocable.

Section 2652(a)(3) provides 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 the trust, for purposes of the GSTT, as if the election to be treated as qualified terminable interest property 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 GSTT purposes, the transferor of the QTIP trust for which the election is made. As a result, the decedent’s GSTT exemption may be allocated to the QTIP trust.

Section 26.2652-2(b) provides that the reverse QTIP election is to be made on the return on which the QTIP election is made.

Section 26.2654-1(b)(1)(i) provides that the severance of a trust that is included in the transferor’s gross estate into two or more trusts is recognized for GSTT purposes if the trust is severed pursuant to a direction in the governing instrument providing that the trust is to be divided upon the death of the transferor.

In accordance with § 301.9100-1(a) of the Procedure and Administration Regulations, §§ 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 a regulatory election. 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 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.

Based on the facts submitted and the representations made, we conclude that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Consequently, an extension of time is granted until 30 days from the date of this letter for: (1) making the QTIP election under § 2056(b)(7) with respect to the Marital Trust; (2) severing the Marital Trust, pursuant to § 26.2654-1(b)(1), into exempt and nonexempt trusts for GSTT purposes; and (3) making a reverse QTIP election under § 2652(a)(3) with respect to the exempt trust.

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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 specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter