

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:4 - PLR-116107-99

Date: April 7, 2000

Re:

Legend:

R Family Trust	=
Decedent	=
Spouse	=
\$x	=
State	=
Date 1	=

Dear :

This is in response to your letter of August 10, 1999, and subsequent correspondence, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to sever a marital trust (Trust B) into a GST exempt trust and a GST nonexempt trust, and to make a reverse qualified terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code, with respect to the exempt GST trust.

In 1995 Decedent and Spouse established a revocable trust; the R Family Trust. At that time, Decedent and Spouse transferred their community property and separate property to the R Family Trust.

When Decedent died on Date 1 survived by Spouse and four children all of his property, both real and personal, passed to the R Family Trust. Under the terms of his will, Spouse is the executrix of Decedent's estate and successor Trustee of the R Family Trust.

Under the terms of the R Family Trust, upon the Decedent's death, the Decedent's assets were divided into two trusts: Trust B, and Trust C. Trust B and Trust C are to consist of the decedent's share of the couple's community property as well as the decedent's separate property. Trust B is to be funded with an amount equal to the maximum marital deduction allowable for the decedent's estate reduced by the value of all other property interests includible in the estate of the decedent that otherwise qualified for the marital deduction and the amount that will result in no federal estate tax after allowing for the unified credit, and the credit for state death. The balance of Decedent's assets passed to Trust C.

Trust B was intended to be a qualified terminable interest property (QTIP) trust within the meaning of § 2056(b)(7). The terms of the R Family Trust specifically authorized the successor Trustee to make the § 2056(b)(7)(B)(v) election (QTIP election) to qualify Trust B for the federal estate tax marital deduction. The trust agreement also authorized the executrix to sever Trust B into a generation-skipping transfer (GST) exempt trust and a GST nonexempt trust and to make the election under § 2652(a)(3) (reverse QTIP election) with respect to the exempt trust.

During Spouse's life, Spouse is to receive all of the net income of Trust B, payable at least monthly. Upon the death of Spouse, in accordance with Spouse's testamentary special power of appointment, the assets of Trust B are to be distributed to or for the benefit of Decedent's children or their wives. The trustee shall pay or apply as much of Trust C net income and principal to or for the benefit of Spouse, during her lifetime, as the trustee deems necessary for her proper health, support, maintenance and education. Upon the death of Spouse, Trust C shall be distributed in trust for the benefit of Decedent's children.

Decedent's estate filed a federal estate tax return on August 15, 1999. On Schedule M of the Decedent's estate tax return, the estate made an election to treat all of Trust B as QTIP under § 2056(b)(7). Trust B was valued at \$x on the estate tax return. The estate's attorney, however, failed to sever Trust B, as authorized under the terms of the R Family Trust, into a GST exempt trust and a GST nonexempt trust, prior to the time prescribed for filing the Decedent's estate tax return. The estate's attorney also failed to file a Schedule R with the estate tax return on which the § 2652(a)(3) reverse QTIP election with respect to the exempt Trust B is to be signified. On March 21, 2000, Spouse, as executrix of Decedent's estate, filed with the Internal Revenue Service an amended estate tax return containing a Schedule R on which Spouse reported the severance of Trust B into two trusts, a GST exempt trust and a GST nonexempt trust. Spouse also unequivocally signified that the election under § 2652(a)(3) was being made with respect to the exempt Trust B.

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) provides that, in the case of qualified terminable interest property, the 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.

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 2601 imposes a tax on every generation-skipping transfer. With regard to the generation-skipping transfer tax (GSTT), each individual is allowed an 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. Under § 2632(a), the allocation may be made at any time on or before the date prescribed for filing the individual's estate tax return (including extensions).

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 chapter, 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 GST exemption may be allocated to the QTIP trust.

Section 26.2654-1(b)(1) of the Generation-skipping Transfer Tax Regulations provides that, in general, 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 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 the severance occurs prior to the date prescribed for filing the Federal estate tax return (including extensions actually granted) for the estate of the transferor.

In accordance with § 301.9100-1(a) of the Procedure and Administration Regulations, §§ 301.9100-2 and 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. Under § 301.9100-3(a) requests for extensions of time for regulatory elections that do not meet the requirements for an automatic extension of time under § 301.9100-2, 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 Government. Section 301.9100-3(b) provides that, in general, a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied upon a qualified tax

professional to make the election and the tax professional failed to make, or advise the taxpayer to make, the election.

In this case, the requirements of § 301.9100-1 and § 301.9100-3 have been met. Consequently, an extension of time for severing Trust B, pursuant to § 26.2654-1(b)(1), into a GST exempt trust and a GST nonexempt trust, and an extension of time for making the "reverse" QTIP election under § 2652(a)(3) with respect to the exempt Trust B, is granted until 60 days after the date of this letter. We note that the extension of time to make the reverse QTIP election under § 2652(a)(3) does not extend the time to make an allocation of any remaining GST exemption. Consequently, in this case Decedent's remaining GSTT exemption is allocated under the deemed allocation rules to the exempt Trust B.

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 we have specifically ruled 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 who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter should be forwarded to the Service Center where the election was filed. A copy is enclosed for that purpose.

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

Enclosures

Copy for section 6110 purpose

Copy of letter