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Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:4 - PLR-119987-98

Date: February 24, 1999

Re:

Legend:

Decedent =

Spouse =

Date 1 =

Will =

Z =

Date 2 =

This is in response to your submission of October 22, 1998, and subsequent correspondence, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make a "reverse" qualified terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code and to sever a QTIP marital trust into two separate trusts under § 26.2654-1(b) of the Generation-Skipping Transfer Tax (GSTT) Regulations.

Decedent died testate on Date 1, survived by Spouse and four children.

Item VI, paragraph (a) of Decedent's Will provides for a fractional share of the residuary estate to be allocated to two marital trusts. The fractional share is to be determined under a formula calculated to reduce the federal estate tax to zero after taking into account the amount of Decedent's unified credit remaining at his death. Under Item VI, paragraph (d), Item VII, paragraph (a), and Item VIII, paragraph (a) of Will, 25 percent of this fractional share is to fund the "Power of Appointment Marital Trust" and 75 percent is to fund the "QTIP Marital Trust."

Under Item VIII, paragraph (b), during her life, the QTIP Marital Trust is to pay Spouse all of the trust income quarterly and, under Item VIII, paragraph (c), any part of the principal the trustees deem necessary to provide for her support in her accustomed manner of living, considering her other means of support. Under Item VIII, paragraph (d), at Spouse's death, the trustees are to distribute the remainder of the QTIP Marital Trust to any of Decedent's descendants or to any charity, appointed by Spouse in her will. Spouse cannot appoint any of the remainder to herself, her creditors, her estate, or the creditors of her estate.

Item VIII, paragraph (g) authorizes the trustees to divide into two separate trusts that part of the QTIP Marital Trust for which an election is made under § 2056(b)(7). One trust would be the GSTT Exempt QTIP Marital Trust, consisting of a fractional share of the QTIP Marital Trust. The numerator of the fraction would be an amount equal to Decedent's GST exemption available at his death, and the denominator would be the value for federal estate tax purposes of the trust property for which the election was made. The balance of the QTIP Marital Trust for which an election is made under § 2056(b)(7) would be the GSTT Nonexempt QTIP Marital Trust.

Item VIII, paragraph (g) authorizes the executor to make a "reverse" QTIP election for the GSTT Exempt QTIP Marital Trust and requests the executor to allocate the Decedent's available GST exemption to that trust.

Spouse, as executrix of Decedent's estate, employed an accounting firm to prepare the estate tax return. On Schedule M of Form 706 (which was timely filed by the estate), the executrix made an election under § 2056(b)(7) with respect to the entire value of the QTIP Marital Trust and claimed a deduction under § 2056(a) for \$Z, the date of death value of the property passing to the trust.

On Schedule R as filed, the executrix failed to indicate that the QTIP Marital Trust would be severed, failed to make the election under § 2652(a)(3) with respect to the QTIP Marital Trust, and failed to allocate Decedent's GST exemption.

Subsequently, on Date 2, the executrix sold stock held by the QTIP Marital Trust and segregated the sale proceeds in a subtrust, Marital Trust A, for accounting purposes.

The estate proposes, pursuant to Item VIII, paragraph (g) of Will, and in accordance with § 26.2654-1(b)(1) of the Generation-Skipping Transfer Tax Regulations, to sever the QTIP Marital Trust into two separate trusts, a GST Exempt QTIP Trust and a Nonexempt QTIP Trust, and to make a "reverse" QTIP election under

§ 2652(a)(3) with respect to GST Exempt QTIP Trust. It is represented that, at Decedent's death, a certain amount of Decedent's GST exemption was allocated to inter vivos trusts under the automatic allocation rules of § 2632(c). Therefore, to the extent that Decedent has any available GST exemption after that allocation, that GST exemption will apply to the reverse QTIP trust under the § 2632(c) automatic allocation rules.

The GST Exempt QTIP Trust will consist of a fraction of the current value on the date of severance of the QTIP Marital Trust, including the value of Marital Trust A. The numerator of the fraction will be the amount of Decedent's GST exemption remaining after the automatic allocation of Decedent's GST exemption to the inter vivos trusts, and the denominator will be \$Z, the value as finally determined for federal estate tax purposes of the QTIP Marital Trust. The Nonexempt QTIP Trust will consist of the balance of the current value on the date of severance of the QTIP Marital Trust, including Marital Trust A.

Both the GST Exempt QTIP Trust and the Nonexempt QTIP Trust will be administered under the terms of Decedent's Will, and will contain the identical provisions under Item VIII with respect to distributions during Spouse's life and the distribution of the remainders at her death.

Decedent's estate requests an extension of time under § 301.9100-1 to sever the QTIP Marital Trust into a GST Exempt QTIP Trust and a Nonexempt QTIP Trust under 26.2654-1(b)(1) and to make the reverse QTIP election under § 2652(a)(3) with respect to the GST Exempt QTIP 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 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)(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 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 in a form described in § 2056(b)(1)(A).

Section 2056(b)(7)(B)(i) defines "qualified terminable interest property" (QTIP) 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 (adjusted for inflation) 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). Under § 2632(c) and § 26.2632-1(d)(2), any portion of an individual's GST exemption not allocated within the time prescribed in § 2632(a), is allocated pro rata on the basis of the value of the property as finally determined for federal estate tax purposes, first to direct skips treated as occurring at the transferor's death. Any balance is allocated pro rata, on the basis of the value of the property as finally determined for federal estate tax purposes, to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. The automatic allocation is irrevocable. 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 generation-skipping transfer with respect to the trust.

Section 2652(a)(3) provides that in the case of any trust with respect to which a deduction is allowed to the decedent's estate 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 GST exemption may be allocated to the QTIP trust.

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

Section 26.2654-1(b)(1) provides rules pursuant to which the severance of a trust that is included in the transferor's gross

estate into two or more trusts is recognized for purposes of chapter 13. If the governing instrument does not require severance, the trust must be severed pursuant to discretionary authority granted either under the governing instrument or under local law. Under §§ 26.2654-1(b)(1)(ii)(B) and 26.2654-1(b)(2), the trust must be severed prior to the date prescribed for filing the Federal estate tax return or, in the alternative, the federal estate tax return must contain a statement that the trust will be severed. In addition, the trust must either be severed on a fractional basis or a pecuniary basis (if so required by the governing instrument). 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.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner may grant a reasonable extension of time 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, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

Sections 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 an election. § 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. § 301.9100-3(a).

In this case, the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time is granted until 30 days from the date of this letter for (1) filing an amended Schedule M showing that the assets listed on the original Schedule M are divided into, first, a "QTIP Marital Trust" and a "Power of Appointment Marital Trust" pursuant to Items VI, VII, and VIII of Decedent's Will and, second, that the QTIP Marital Trust is divided into a GST Exempt QTIP Trust and a Nonexempt QTIP Trust under Item VIII of Decedent's Will; and (2) filing an amended Schedule R making the reverse QTIP election for the GST Exempt QTIP Trust.

A copy of this letter should be attached to the amended Schedules. A copy is enclosed for that purpose.

Except as specifically ruled herein, we express 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 who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

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

Enclosures

Copy of letter

Copy for section 6110 purposes