

Internal Revenue Service

Department of the Treasury

Number: **200231010**
Release Date: 8/2/2002
Index Number: 9100.00-00; 2652.01-02

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:9-PLR-101478-02
Date:
April 26, 2002

Re:

LEGEND:

Decedent =
Date 1 =
Date 2 =
Executors =
Spouse =

Dear

This responds to your letter dated December 21, 2001, 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.

Decedent died on Date 1, survived by Spouse and children. Decedent's will provided for the creation of three trusts, Family Trust, Marital Trust A, and Marital Trust B.

Section 6.1 Decedent's will provides for the creation of a "Marital Portion" from Decedent's residuary estate. Under section 6.2 of Decedent's will, the Marital Portion is to consist of the maximum portion of Decedent's taxable gross estate eligible for the marital deduction, that would reduce Decedent's taxable estate to the lowest possible amount.

Section 6.3 of Decedent's will provides that the Marital Portion shall be apportioned into two trusts, Marital Trusts A and B. Marital Trust A is to be funded with that portion of the marital trust assets equal to Decedent's available generation-skipping (GST) tax exemption after allocation of this exemption to the assets contained in the Family Trust established under section 7.1 of Decedent's will. Marital Trust B is to be funded with the balance of the Marital Portion.

Section 6.4(b) of Decedent's will provides that:

The executor is authorized to exercise the special "deemed transferor" election provided under [§] 2652(a)(3) of the Internal Revenue

PLR-101478-02

Code, as to the property in the Marital Trust A under this instrument, with the result that the property as to which the election is made is held in an “exempt trust” as that term is defined in this instrument.

Section 7.1 of Decedent’s will provides that the Family Trust shall consist of that portion of Decedent’s residuary estate that is not part of the Marital Portion. Under section 7.2(a) of Decedent’s will, the Family Trust is to be held as a single trust to benefit Spouse and any child under age 22 years. Section 7.3(a) of Decedent’s will provides that, upon Spouse’s death and when all of Decedent’s children reach age 22 years, the Family Trust shall be divided into as many individual trusts as there are then living children and deceased children survived by then living descendants, per stirpes.

Section 7.4(a) of Decedent’s will provides that 40 percent and any undistributed income of each trust shall be distributed, free of trust, to that trust’s beneficiary when the beneficiary reaches age 25 years. The remaining principal and any undistributed income shall be distributed, free of trust, to the trust’s beneficiary when the beneficiary reaches age 30 years.

The United States Estate (and Generation-Skipping) Transfer Tax Return, Form 706, was filed on Date 2. However, the Form 706, as filed, did not include a Schedule R reflecting an allocation of Decedent’s GST tax exemption and a “reverse” QTIP election, as contemplated by the terms of Decedent’s will, set forth above. A QTIP election was made on the Form 706 for the assets contained in Marital Trusts A and B. You have represented that, at Decedent’s death, Decedent had sufficient unused GST tax exemption that if applied to the assets of the Family Trust and Marital Trust A, both trusts would have an inclusion ratio of zero for GST tax purposes.

You have requested an extension of time under § 301.9100-3 to make the reverse QTIP election pursuant to § 2652(a)(3) for Marital Trust A.

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 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, in pertinent part, that no deduction shall be allowed under § 2056(a) where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail.

PLR-101478-02

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 such 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) provides that the term "qualified terminable interest property" means property: (i) which passes from the decedent; (ii) in which the surviving spouse has a qualifying income interest for life; and (iii) to which an election under § 2056(b)(7)(B)(v) 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.

Under § 2044, any property in which the decedent had a qualifying income interest for life and for which a deduction is allowed under § 2056(b)(7) is includible in the decedent's gross estate.

Section 2044(c) provides that for purposes of chapter 11 and chapter 13, property includible in the gross estate of the decedent under § 2044(a) shall be treated as property passing from the decedent.

Section 2601 imposes a tax on every generation-skipping transfer made after October 22, 1986.

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 2631(a) provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST tax 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. Under § 2631(b), any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a)(1) provides that any allocation by an individual of his GST tax 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) provides that, in general, any portion of an individual's GST tax exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated as follows-- (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.

PLR-101478-02

Section 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations provides, in pertinent part, that no automatic allocation of GST tax 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 tax with respect to the trust.

Section 2652(a)(1) provides, in pertinent part, 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 that in the case of-- (A) any trust with respect to which a deduction is allowed to the decedent under § 2056 by reason of subsection (b)(7) thereof, and (B) any trust with respect to which a deduction to the donor spouse is allowed under § 2523 by reason of subsection (f) thereof, the estate of the decedent or the donor spouse, as the case may be, may elect to treat all of the property in such trust for purposes of this chapter as if the election to be treated as qualified terminable interest property had not been made.

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.

Under § 301.9100-1(c) the Commissioner may 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 Code except subtitles E, G, H, and I.

Section 301.9100-2 provides an automatic extension of time for making certain elections.

Section 301.9100-3(a) provides, in pertinent part, that 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) provides that, except as provided in § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of

PLR-101478-02

the Internal Revenue Service; or (v) 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.

Section 301.9100-3(c)(1) provides in pertinent part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

As a result of the QTIP election made on the Decedent's Form 706, the property in Marital Trusts A and B is includible in Spouse's gross estate pursuant to § 2044. Spouse, accordingly, is considered the transferor of the property for GST tax purposes. Therefore, Decedent's remaining GST tax exemption may not be allocated to Marital Trust A's assets. However, if a "reverse" QTIP election under § 2652(a)(3) is made for Marital Trust A, Decedent will be treated as the transferor of Marital Trust A's assets and the automatic allocation rules of § 2632(e) will apply Decedent's remaining GST tax exemption to this property.

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 60 days from the date of this letter is granted to file an amended Form 706 making the "reverse" QTIP election for Marital Trust A.

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. 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.

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.

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

Enclosure
Copy for § 6110 purpose