

**Internal Revenue Service**

Department of the Treasury

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**Person to Contact:**

**Telephone Number:**

Refer Reply To:

CC:DOM:P&SI:7 / PLR-100179-00

Date:

May 25, 2000

Legend:

Decedent:

A:

Trust 1:

Trust 2:

Trust 3:

Trust 4:

Trust 5:

Date 1:

Date 2:

Date 3:

Date 4:

a:

b:

Dear

This letter is in response to your letter dated November 15, 1999, requesting: (1) a ruling that the severance of Trust 2 into two separate trusts pursuant to § 26.2654-1(b)(1) of the Generation Skipping Transfer (GST) Tax Regulations will be recognized for GST tax purposes; and (2) an extension of time under § 301.9100 of the Procedure and Administration Regulations to make a reverse Qualified Terminable Interest Property (QTIP) election under § 2652 of the Internal Revenue Code.

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Decedent created Trust 1, a revocable living trust, on Date 1 and amended the terms of Trust 1 on Date 2 and Date 3. Decedent died testate on Date 4, survived by Decedent's spouse, A. Trust 1 became irrevocable on the same date.

The terms of Trust 1 provided for certain specific distributions to A at the death of Decedent. Under the terms of Trust 1, the trustee was directed to create, out of the property of Trust 1, Trust 2, a marital trust, and Trust 3, a credit shelter trust. The trustee was further directed to sever Trust 2 into two parts: Trust 4, a trust with a GST inclusion ratio of zero, and Trust 5, the balance of the amount in the marital trust.

Trust 3 was not funded at the death of Decedent because Decedent had made lifetime gifts in excess of the applicable unified credit.

The terms of Trust 4 provide in part that, until the death of A, the trustee is to pay to A all of the net income of Trust 4 and such portions or all of the principal of Trust 4 as the trustee deems advisable for A's health, education, support, or maintenance. Payments of income to A are to be made at times fixed by the trustee, but at least as often as quarterly and, if practicable, in regular periodic payments. The trustee has the power to terminate Trust 4 at anytime when the value of the principal of Trust 4 is less than \$a. Upon such termination by the trustee, the trustee is to transfer the residue of the property comprising Trust 4, including any unpaid income, absolute and free from any trust, to A. Otherwise, Trust 4 terminates at the death of A. Upon such termination, the corpus of Trust 4, after certain payments as directed in the terms of Trust 4, is to be added to and become a part of the corpus of Trust 3.

The terms of Trust 5 provide in part that, until the death of A, the trustee is to pay to A all of the net income of Trust 5 and such portions or all of the principal of Trust 5 as A from time to time directs in writing or, if not otherwise directed in writing by A, as the trustee determines in the trustee's sole and absolute discretion. Payments of income to A are to be made at times fixed by the trustee, but at least as often as quarterly and, if practicable, in regular periodic payments. The trustee has the power to terminate Trust 5 at anytime when the value of the principal of Trust 5 is less than \$a. Upon such termination by the trustee, the trustee is to transfer the residue of the property comprising Trust 4, including any unpaid income, absolute and free from any trust, to A. Otherwise, Trust 5 terminates upon the death of A.

On Schedule M of Decedent's estate tax return, the executor listed the assets of Trust 2 and made a QTIP election for those assets. However, the executor did not make a reverse QTIP election with respect to any part of Trust 2 and did not allocate Decedent's GST exemption. Consequently, Trust 2 was not severed at Decedent's death into two trusts, Trust 4 and Trust 5, as directed in the terms of Trust 1.

You propose to sever Trust 2 into two trusts, Trust 4 and Trust 5. Trust 4 will be funded with an amount equal to \$b. Trust 5 will be funded with the balance.

You have requested: (1) a ruling that a severance of Trust 2 into Trust 4 and

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Trust 5 will be recognized for GST tax purposes; and (2) an extension of time to make a reverse QTIP election for Trust 4.

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 determined, except as limited in § 2056(b), 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 his 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 --

(i) for purposes of § 2056(a), such property is treated as passing to the surviving spouse, and

(ii) for purposes of § 2056(b)(1)(A), no part of such property is treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B) provides that

(i) the term “qualified terminable interest property” means property --

(I) that 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.

(ii) the surviving spouse has a qualifying income interest for life if --

(I) 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

(II) no person has a power to appoint any part of the property to any person other than the surviving spouse. Subclause (II) does not apply to a power exercisable only at or after the death of the surviving spouse. ...

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual is allowed a GST exemption of \$1,000,000 that may be allocated by

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such individual (or his 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, is irrevocable.

Section 2632(a)(1) provides that any allocation by an individual of his 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 2632(c)(1) provides that any portion of an individual's GST exemption that has not been allocated within the time prescribed by § 2632(a) is 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.

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 § 2056(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 26.2654-1(b)(1) of the GST Tax Regulations provides that the severance of a trust that is included in the transferor's gross estate (or created under the transferor's will) into two or more trusts is recognized for purposes of chapter 13 if --

(i) 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; or

....

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner in exercising this discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory

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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 301.9100-2 provides automatic extensions of time for 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 (including affidavits described in § 301.9100-3(e)) 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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 26.2654-1 and § 301.9100-3 have been met in this case. Therefore, we conclude that the severance of Trust 2 into Trust 4 and Trust 5, as provided, will be recognized for GST tax purposes. We also grant an extension of time to make a reverse QTIP election for Trust 4 under § 2652(a)(3) until 30 days after the date of this letter. The reverse QTIP election will result in a deemed allocation under § 2632(c) of Decedent's GST exemption in the amount of \$b to Trust 4.

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

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

Enclosure: Copy for §6110 purposes