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Department of the Treasury

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Person to Contact:

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Refer Reply To:
CC:DOM:P&SI:4/PLR-114992-99
Date: October 28, 1999

Re:
TIN:

Legend:

Decedent =
Trust =
Marital Trust =
Spouse =
Date 1 =

Dear :

This is in response to your submission dated August 9, 1999, in which you requested a ruling under § 2652 of the Internal Revenue Code and § 301.9100-1 of the Procedure and Administration Regulations.

Decedent and Spouse created Trust, an inter vivos revocable trust. Decedent died testate on Date 1 survived by Spouse. At Decedent's death, the trustee of Trust was to divide the trust estate into separate trusts; the Survivor's Trust, the Exemption Trust, and the Marital Trust, and if applicable the Disclaimer Trust. The balance of the Trust estate not otherwise passing to the Survivor's Trust and the Exemption Trust, plus any property passing to Trust as a result of Decedent's death, passed to the Marital Trust.

Article 6.04 of Trust provides that if the trustee elects to treat a portion of the Marital Trust as qualified terminable interest property (QTIP), the Marital Trust is to be divided into two separate trusts, the Elected Marital Trust and the Nonelected Marital Trust. The trustee elected to treat the entire Marital Trust as QTIP.

Article 11.10 of Trust provides that if a reverse QTIP election is made with respect to the property in the Marital Trust, the trust is to be divided into two trusts; the Exempt Marital Trust and the Nonexempt Marital Trust. The Exempt Marital Trust is to be funded with the minimum dollar amount necessary to utilize Decedent’s unused generation-skipping transfer tax (GSTT) exemption.

During her life, Spouse is to receive all of the net income from both Marital Trusts, payable at least quarterly. Article 9.03 of Trust provides that upon Spouse’s death, any undistributed income in the Marital Trusts is to be distributed to Spouse’s estate. The corpus of each Trust is to be distributed either outright or in trust, for the benefit of Decedent’s issue.

On Schedule M of Form 706, (that was timely filed by the estate), the executor made an election under § 2056(b)(7) with respect to the entire value of the Exempt Marital Trust and the Nonexempt Marital Trust. A deduction under § 2056(a) was claimed with respect to these trusts.

The executor, however, failed to file a Schedule R with the Form 706 and , consequently, failed to make an election under § 2652(a)(3) with respect to the Exempt Marital Trust. On August 11, 1997, the estate filed a Schedule R, signifying that a reverse QTIP election under § 2652(a)(3) was being made with respect to the Exempt Marital Trust.

The Decedent's executor requests an extension of time under § 301.9100-1 to make an election under § 2652(a)(3) with respect to the Exempt Marital 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.

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.

Under § 2044, property subject to a QTIP election is includible in the gross estate of the surviving spouse.

Section 2601 imposes a tax on every generation-skipping transfer made by a “transferor” to a skip person. In general, under § 26.2652-1(a)(1) of the Generation-Skipping Transfer Tax Regulations, the transferor for GSTT purposes is the individual with respect to whom the property was most recently subject to Federal estate and gift tax. 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). Under § 2632(c), any portion of an individual’s GSTT exemption not allocated within the time prescribed in § 2632(a), is allocated in accordance with that section.

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 GSTT exemption may be allocated to the QTIP trust.

Under § 301.9100-1(c)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 August 11, 1997, for making an election under §2652(a)(3) with respect to the Exempt Marital Trust.

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. We note that an 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 GSTT exemption. Consequently, in this case, decedent's unused GSTT exemption is allocated in accordance with the automatic allocation rules contained in § 2632(c).

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,

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Paul F. Kugler
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(Passthroughs and Special
Industries)

Enclosure
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