

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:P&SI:4-PLR-126093-00
Date:

February 12, 2001

Re:

Legend

Decedent =

Spouse =

Date 1 =

Date 2 =

Trust =

Dear :

This responds to a letter dated November 7, 2001, on behalf of the above-referenced taxpayer, 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 testate on Date 1, survived by Spouse. Decedent was the grantor of Trust, a revocable trust that became irrevocable on Decedent’s death. Subparagraph 6(a) of Trust directs the trustee to divide Trust on Decedent’s death and to allocate to a Family Trust, generally, the amount that would be exempt from estate tax by reason of the available unified credit. Subparagraph 6(b) directs the trustee to allocate to a GST Exempt Trust an amount equal to Decedent’s generation-skipping transfer (GST) tax exemption (as described in § 2631) not otherwise allocated before or after Decedent’s death. Under subparagraph 6(c) the balance of the Trust assets are to pass to a Marital Trust. Paragraph 8 of Trust directs the trustee to pay to Spouse all of the income and such amounts of principal from the GST Exempt Trust as shall be reasonably necessary for her support, maintenance and health. Spouse has a limited testamentary power to appoint the GST Exempt Trust property to or for the benefit of Decedent’s descendants.

Spouse, as executrix of Decedent’s estate, filed Form 706, United States Estate

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(and Generation-Skipping Transfer) Tax Return. On Schedule M of Decedent's Form 706, the executrix elected to treat the GST Exempt Trust as qualified terminable interest property under § 2056(b)(7). However, the box on Schedule R, Part I of Decedent's Form 706 for signifying the "reverse" QTIP election under § 2652(a)(3) was not checked. Therefore, a "reverse" QTIP election under § 2652(a)(3) was not made with respect to the GST Exempt Trust. On January 24, 2001, the executrix filed an amended Schedule R that properly signifies that a "reverse" QTIP election is being made under § 2652(a)(3) with respect to the GST Exempt Trust.

You represent that Decedent's entire \$1,000,000 GST tax exemption was available for allocation at Decedent's death. On Schedule R, as originally filed, pursuant to a formula allocation, a portion of the GST tax exemption was allocated to the Family Trust, and a portion was allocated to the GST Exempt Trust.

You request a ruling that an extension of time be granted under § 301.9100-1 to make a reverse QTIP election under § 2652(a)(3).

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 is 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 is treated as passing to the surviving spouse for purposes of § 2056(a) and no part of the property is 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) that 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. Under § 2631(a), with regard to the generation-skipping transfer tax, each individual is allowed

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an exemption of \$1,000,000 (adjusted for inflation as provided in § 2631(c)) that 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)(1), any portion of an individual's GST tax exemption not allocated within the time prescribed in § 2632(a), is allocated (A) first to property that 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 taxable termination might occur at or after such individual's death.

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 GST tax, 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 GST tax purposes, the transferor of the QTIP trust for which the election is made. As a result, the decedent's GST tax 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, based solely on the facts submitted and the representations

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made, we conclude that an extension of time is granted until January 24, 2001, for making an election under § 2652(a)(3) with respect to the GST Exempt 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.

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

Enclosure
Copy for § 6110 purposes