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Department of the Treasury
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Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

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CC:PSI:04
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Date: FEBRUARY 13, 2006

Legend

- Decedent =
- Spouse =
- Marital Trust =
- Education Trust =
- Attorney =
- Date 1 =
- University =
- State =
- State Statute =

Dear :

This is in response to the August 10, 2005 letter and subsequent correspondence, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to sever a trust into an exempt and nonexempt trust under § 26.2654-1(b)(1) of the Generation-Skipping Transfer (GST) Tax Regulations, to make a "reverse" qualified terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code with respect to the exempt Trust, and to allocate Decedent's available GST exemption to the exempt trust.

The facts and representations submitted are summarized as follows: Decedent died testate on Date 1, survived by Spouse.

Under Article III of Decedent's will, following certain specific bequests, the remainder of Decedent's estate was to be held in 3 trusts, including Marital Trust.

Marital Trust provides that the trustees are required to pay the net income of Marital Trust to Spouse in convenient installments not less frequently than quarterly. Section 3.05 provides that the trustees (other than Spouse) may encroach upon the principal of Marital Trust for Spouse's proper support, maintenance, comfort and welfare, or to provide against any emergency affecting Spouse, whether occasioned by accident, sickness or otherwise. Upon Spouse's death, the trustees are to make a series of cash gifts to certain named individuals and charities. The remaining assets will be divided into two shares: one to benefit University and an Education Trust to benefit Spouse's great nieces and great nephews.

Decedent's attorney, Attorney, prepared the United State Estate (and Generation-Skipping Transfer) Tax Return, Form 706, and filed it within the time prescribed by law. On Schedule M, Bequests, etc., to Surviving Spouse, a QTIP election under § 2056(b)(7) was made with respect to Marital Trust. Attorney did not advise Decedent's estate to sever Marital Trust into an exempt trust and nonexempt trust, to make the reverse QTIP election, or to allocate Decedent's GST exemption to Marital Trust. The errors were discovered by Attorney's partner upon review of Spouse's estate plan.

The trustees of Marital Trust propose to divide Marital Trust into two separate trusts, the GST Exempt Marital Trust and the GST Nonexempt Marital Trust. The GST Exempt Marital Trust will receive a fraction of the assets owned by the Marital Trust, the numerator of which is equal to the Decedent's unused GST exemption, and the denominator of which is equal to the value of the assets of the Marital Trust. The GST Nonexempt Marital Trust will continue to own the balance of the assets not transferred to the GST Exempt Marital Trust. The terms of the GST Exempt Marital and GST Nonexempt Marital Trusts will provide in the aggregate for the same succession of interests and beneficiaries as are provided in Marital Trust.

State Statute provides that after notice to the qualified beneficiaries, a trustee may divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust. The terms of each net trust created by a division under this section do not have to be identical if the interest of each beneficiary is substantially the same under the terms of the trust prior to its division and the combined terms of all trusts after the division.

You have requested an extension of time under §§ 301.9100-1 and 301.9100-3 to sever Marital Trust under § 26.2654-1(b)(1) into a GST Exempt Marital Trust and a GST Nonexempt Marital Trust, to make a reverse QTIP election under § 2652(a)(3) with respect to the GST Exempt Marital Trust, and to allocate Decedent's GST available exemption to the GST Exempt Marital Trust.

Section 2601 imposes a tax on every generation-skipping transfer. 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 GST tax, every individual shall be allowed a GST exemption which may be allocated by the individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(b) provides that any allocation, once made, shall be 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 26.2632-1(d)(1) provides, in part, that an allocation of a decedent's unused GST exemption by the executor of the decedent's estate is made on the appropriate United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706 or Form 706NA) filed on or before the date prescribed for filing the return by § 6075(a) (including any extensions actually granted (the due date)). An allocation of GST exemption to a trust (whether or not funded at the time the Form 706 or Form 706NA is filed) is effective if the notice of allocation clearly identifies the trust and the amount of the decedent's GST exemption allocated to the trust.

Section 2652(a)(1) provides, in 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. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides, in part, 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, 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 (reverse QTIP).

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.

Section 26.2654-1(b)(1) provides, in part, 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 the governing instrument does not require or otherwise direct severance but the trust is severed pursuant to discretionary authority granted either under the governing instrument or under local law; and (A) the terms of the new trust provide in the aggregate for the same succession of

interests and beneficiaries as are provided in the original trust; (B) the severance occurs (or a reformation proceeding, if required, is commenced) prior to the date prescribed for filing the federal estate tax return (including extensions actually granted) for the estate of the transferor; and (C) the new trusts are severed on a fractional basis. 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. The trusts may be funded on a non pro rata basis provided funding is based on either the fair market value on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding.

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 301.9100-3(a) provides, in 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, in part, 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 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 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 Form 706, Spouse, is considered the transferor of the property for GST tax purposes. Therefore, Decedent's remaining GST exemption may not be allocated to Marital Trust. However, if Marital Trust is severed into two portions and a reverse QTIP election under § 2652(a)(3) is made with respect to the GST Exempt Marital Trust, Decedent will be treated as the transferor of the GST Exempt Marital Trust assets.

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 sever Marital Trust into a GST Exempt Marital Trust and a GST Nonexempt Marital Trust, to file a supplemental Form 706 making the reverse QTIP election with respect to the GST Exempt Marital Trust,

and to allocate Decedent's available GST exemption to the GST Exempt Marital Trust. The supplemental Form 706 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the form. A copy is enclosed for this purpose.

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 taxpayers 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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter

cc: