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Department of the Treasury

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Ben Franklin Station
Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:4 - PLR-116651-98
Date: February 19, 1999

Re:

Legend: Decedent =

Spouse =
Trust =

Executor =
Date 1 =
Date 2 =
Date 3 =

This is in response to the letter from your authorized representative dated August 12, 1998, in which you request 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. Under the terms of Decedent's will, his residuary estate passed to Trust.

Pursuant to Article VIII, paragraph 1 of Trust, upon Decedent's death, a Marital Trust is to be created in an amount equal to the maximum estate tax marital deduction less the value for federal estate tax purposes of the sum of:

(a) all other items of property includible in the Decedent's gross estate for federal estate tax purposes which qualify for the marital deduction but which pass or have passed to Spouse under other provisions of this trust, under Decedent's will, by right of survivorship with respect to jointly owned property, under settlement arrangements

relating to life insurance proceeds not payable to this trust, or otherwise; and

(b) the amount necessary to increase Decedent's taxable estate sufficiently to fully utilize all available credits for federal estate tax purposes.

Article VIII, paragraph 6 of Trust directs Trustee to divide the Marital Trust into two separate trusts, Marital Trust A and Marital Trust B. The Trustee is directed to place assets having a value of $1,000,000 into Marital Trust A. All remaining trust property is to be distributed to Marital Trust B. Trustee is directed to distribute the net income from both Marital Trust A and Marital Trust B to Spouse during Spouse's life in periodic installments not less frequently than annually. In addition, no person has a power to appoint any part of the property to any person other than the surviving spouse. Therefore, both Marital Trust A and Marital Trust B satisfy the requirements for a marital deduction as qualified terminable interest property under § 2056(b)(7).

On Schedule M of Form 706, which was timely filed by the estate, Decedent's executor listed the assets passing to the surviving spouse which qualified for the marital deduction under § 2056(b)(7). No indication was made on the Schedule M that these assets were to be divided, pursuant to the terms of the Trust, into a Marital Trust A, with a value of $1,000,000, and a Marital Trust B. The Trust agreement, however, was filed with the Form 706. On date 2, the estate filed an amended Schedule M on which the assets were divided into Marital Trust A and Marital Trust B.

Schedule R was filed with the federal estate tax return, but no election was made under § 2652(a)(3), and no trust was listed under the GST exemption allocation provisions of Part 1. Thus, the estate tax return did not evidence or otherwise unequivocally manifest an affirmative intent to make the "reverse" QTIP election under § 2652(a)(3) with respect to either Marital Trust A or Marital Trust B.

On Date 3, the estate filed an amended Schedule R that properly signifies that, pursuant to the terms of the will, the Marital Trust is being divided into two separate trusts designated as Marital Trust A and Marital Trust B, and that a reverse QTIP election is being made under § 2652(a)(3) for Marital Trust A.

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

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 in a form described in § 2056(b)(1)(A).

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.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property is to be made by the executor on the return of tax imposed by § 2001. The election, once made, is irrevocable.

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

Section 2601 imposes a tax on every generation-skipping transfer (GST).

Section 2631 provides for a generation-skipping transfer tax (GSTT) exemption of $1,000,000, adjusted for inflation, which may be allocated by the individual, or the individual’s estate, to any property of which the 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). Any portion of an individual

GSTT exemption not allocated within the time prescribed in § 2632(a), is allocated in accordance with § 2632(c).

Section 2632(c) provides that any portion of an individual's GSTT exemption that has not been allocated by the individual, or the individual's estate, will be automatically allocated first, to property which is the subject of a direct skip occurring at the individual's death, and second, to trusts with respect to which the individual is the transferor and from which a taxable distribution or taxable termination might occur at or after the individual's death. This automatic allocation is made among the direct skips and trusts in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of the properties and trusts.

Under § 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations, no automatic allocation is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of any generation-skipping transfers with respect to the trust.

Section 2652(a)(1) provides that, for GST purposes, the "transferor" of property is the decedent in whose gross estate the property is included. Thus, in the case of property subject to a QTIP election that is subsequently includible in the surviving spouse's gross estate under § 2044, the surviving spouse would become the transferor of the property for GST purposes. However, § 2652(a)(3) states that, with respect to any trust for which a deduction is allowed under § 2056(b)(7), the estate of the decedent (the first spouse to die) may elect to treat all of the property in the trust for purposes of the GST provisions as if the QTIP election had not been made. This election is referred to as the "reverse" QTIP election. The consequence of the reverse QTIP election is that the decedent remains, for GST purposes, the transferor of the QTIP trust for which the election is made. As a result, the decedent's GST exemption may be allocated to that QTIP trust.

Section 26.2652-2(a) provides that a reverse QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies. However, reference is made to § 26.2654-1(b)(1). Under § 26.2654-1(b)(1)(i), the severance of a trust that is included in the decedent's estate (or created under the transferor's will) into two or more trusts is recognized for GST purposes if 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.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, 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. Because Decedent’s will directed that the Marital Trust be split into Marital Trust A and Marital Trust B, the provisions of § 26.2654-1(b)(1)(i) have been met. Thus, the reverse QTIP election under § 26.2652-2(a) may be made with respect to either trust. Consequently, an extension of time is granted until Date 3, for making an election under § 2652(a)(3) with respect to Marital Trust A.

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 since the time for making the allocation is expressly prescribed by the statute. In the instant case, the executor did not make any allocation of the GSTT exemption on the estate tax return. Accordingly, in view of the reverse QTIP election, Decedent’s available GSTT exemption is allocated in accordance with the rules of § 2632(c) to Marital Trust A.

Finally, Marital Trust B, for which a marital deduction was allowed under § 2056(b)(7) and for which no reverse QTIP election was made, will be included under § 2044 in the gross estate of the surviving spouse for federal estate tax purposes. Thus, pursuant to § 2652(a)(1), the surviving spouse will be treated as the transferor of Marital Trust B for GSTT purposes.

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.

A copy of this letter should be forwarded to the office where the estate filed the amended Schedule R. A copy is enclosed for that purpose.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

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,

_____

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

Enclosures:
Copy of letter
Copy for section 6110 purposes