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Internal Revenue Service
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Department of the Treasury

P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:4 - PLR-111800-99
Date: November 4, 1999

Re:

Legend:

Decedent =
SSN:
Spouse =
Son =
Date 1 =
Marital Trust =
EIN:
Trust A =
EIN:
Trust B =
EIN:
Z =

Dear :

This is in response to your submission of , , and subsequent correspondence, 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 and to sever a QTIP marital trust into two separate trusts under § 26.2654-1(b) of the Generation-Skipping Transfer Tax (GSTT) Regulations.

The facts submitted and representations made are as follows:

Decedent died testate on Date 1, survived by Spouse and two children.

Decedent's will provided that the residue of his estate was to be divided into a Martial Trust and a Family Trust. The will provided that the Marital Trust was to be further divided into a generation-skipping transfer (GST) exempt trust (Trust A) and a GST nonexempt trust (Trust B). The terms of the Marital Trust satisfy the requirements for QTIP treatment.

Spouse and Son, as coexecutors of Decedent's estate, employed an accounting firm to prepare Decedent's federal estate tax return (Form 706) and a law firm to review the return. On Schedule M of Form 706, the co-executors made an election under § 2056(b)(7) with respect to the entire value of the Marital Trust and claimed a deduction under § 2056(a) for $Z, the date of death value of the property passing to the trust.

On Schedule R, as filed, the coexecutors allocated Decedent's $1 million GST exemption to the Marital Trust. However, the executors failed to indicate that the Marital Trust would be severed into two trusts and failed to make the election under § 2652(a)(3) with respect to Trust A.

The estate proposes to sever the Marital Trust into two separate trusts and to make a "reverse" QTIP election under § 2652(a)(3) with respect to Trust A. It is represented that Decedent's entire GST exemption was available at his death. It is also represented that there have been no distributions of principal from the Marital Trust.

As proposed, Trust A will consist of a fraction of the current value on the date of severance of the Marital Trust. The numerator of the fraction will be the amount of Decedent's GST exemption available at his death, and the denominator will be $Z, the value of the Marital Trust as finally determined for federal estate tax purposes. Trust B will consist of the balance of the current value on the date of severance of the Marital Trust.

Both Trust A and Trust B will be administered under the terms of Decedent's will and will contain identical provisions with respect to distributions during Spouse's life and the distribution of the remainders at her death.

Decedent's estate requests an extension of time under § 301.9100-1 to sever the Marital Trust into Trust A and Trust B under 26.2654-1(b)(1) and to make the reverse QTIP election under § 2652(a)(3) with respect to 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 2601 imposes a tax on every generation-skipping transfer. With regard to the generation-skipping transfer tax, each individual is allowed, under § 2631, an exemption of $1,000,000 (adjusted for inflation) 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 GST exemption not allocated within the time prescribed in § 2632(a), is automatically allocated, first, to direct skips treated as occurring at the transferor's death and, second, to trusts with respect to which the decedent is the transferor and from which a taxable termination or a taxable distribution might occur at or after the decedent's death. The automatic allocation is irrevocable. No automatic allocation of GST exemption 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 transfer with respect to the trust.

Under § 26.2632-1(b)(2), an allocation of GST exemption is void if the allocation is made with respect to a trust that has no GST potential with respect to the transferor making the allocation, at the time of the allocation.

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 GST exemption may be allocated to the QTIP trust.

Section 26.2652-2(b) provides that a reverse QTIP election is made on the return on which the QTIP election is made.

Section 26.2654-1(b)(1) provides rules pursuant to which the severance of a trust that is included in the transferor's gross estate into two or more trusts is recognized for purposes of chapter 13. If the governing instrument does not require severance, the trust must be severed pursuant to discretionary authority granted either under the governing instrument or under local law. Under §§ 26.2654-1(b)(1)(ii)(B) and 26.2654-1(b)(2), the trust must be severed prior to the date prescribed for filing the Federal estate tax return or, in the alternative, the federal estate tax return must contain a statement that the trust will be severed. In addition, the trust must either be severed on a fractional basis or a pecuniary basis (if so required by the governing instrument). 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.

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. Consequently, an extension of time is granted until 30 days from the date of this letter for (1) filing an amended Schedule M showing that the assets listed on the

original Schedule M are divided into Trust A and Trust B pursuant to Decedent's will; and (2) filing an amended Schedule R making the reverse QTIP election for Trust A.

The severance of the Marital Trust into Trust A and Trust B and the reverse QTIP election with respect to Trust A are deemed to have occurred as of the Decedent's date of death. Therefore, Decedent's available GST exemption will be allocated to Trust A.

A copy of this letter should be attached to the amended Schedules. A copy is enclosed for that purpose.

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 yours,

(Signed) Paul F. Kugler

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

Enclosures
Copy of letter
Copy for section 6110 purposes