200008038

Internal Revenue Service
Index Nos.: 2652.01-02
9100.00-00

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-109977-99
Date: November 22, 1999

Re:
TIN:

Legend:

Decedent	=
Spouse	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Executors	=
Trustees	=
Family Trust	=
Trust 1	=
Trust 2	=
X	=

Dear :

This is in response to your submission of , , on behalf of Decedent's estate, 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. Decedent was survived by Spouse and four children. Under the terms of Decedent's will, after the specific bequests to Spouse are satisfied and certain expenses are paid, Decedent's probate estate is to be divided into three trusts; the Family Trust, Trust 1, and Trust 2.

186

Article 5 of Decedent's will provides that an amount equal to the largest amount that can pass free of federal estate tax by reason of Decedent's unused unified credit and state death tax credit shall pass to Family Trust for the benefit of Spouse and Decedent's lineal descendants.

Article 7 of Decedent's will provides that the residue of Decedent's estate is to pass to two trusts, Trust 1 and Trust 2. Under Article 7, Trust 1 is to be funded with a pecuniary amount equal to the difference between $1,000,000 and the amount passing to the Family Trust, pursuant to Article 5 of Decedent's will. Trust 2 is to be funded with the balance of the residuary estate.

Article 8 of Decedent's will provides that the Trustees of Trust 1 are to pay to Spouse, during her lifetime, all the income of Trust 1, at least quarterly. At Spouse's death, the Trustees are directed to distribute all accrued but undistributed income to the executors of Spouse's estate. The principal of Trust 1 is to be distributed to the Trustees to be held in trust for the benefit of Decedent's lineal descendants, per stirpes.

Article 9 of Decedent's will directs the Trustees of Trust 2 to pay to Spouse, during her lifetime, all the income of Trust 2, at least quarterly. The Trustees are also directed to pay to Spouse so much of the principal of Trust 2 as is necessary in the Trustees' discretion to provide for Spouse's health, education, and support. Upon Spouse's death, the Trustees are to distribute to the executors of Spouse's estate all accrued but undistributed income of Trust 2. The principal of Trust 2 is to be distributed to the Trustees to be divided into equal shares, one for each living child of Decedent and one for each deceased child of Decedent leaving one or more lineal descendants. The share apportioned to a child of Decedent living at Spouse's death shall be paid over to such child free and clear of trust.

On Date 2, Spouse irrevocably disclaimed a pecuniary amount equal to x from the balance of the residuary estate.

A Federal Estate and Generation-Skipping Transfer Tax Return, Form 706, was timely filed by the Executors of Decedent's estate on Date 3. On Schedule M, the Executors made an election under § 2056(b)(7) with respect to the entire value of Trust 1 and Trust 2. A deduction under § 2056(a) was claimed for the entire amount passing to those trusts. On the Schedule R, Decedent's estate allocated Decedent's entire $1,000,000 GST exemption to Trust 1. Although portions of the Schedule R, as filed, were completed, the estate failed to check the box on the Schedule R signifying that it intended to make a "reverse" QTIP election under § 2652(a)(3) for the amount passing to Trust 1.

On Date 4, Decedent's estate filed an amended Schedule R correctly making a reverse QTIP election under § 2652(a)(3) with respect to Trust 1.

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

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, such 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" 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 is allowed under § 2056(b)(7) is includible in the decedent's gross estate.

Section 2601 imposes a tax on every generation-skipping transfer (GST) made after October 22, 1986.

Section 2631(a) provides for a generation-skipping transfer exemption of $1,000,000 (adjusted under § 2631(c)), which may be allocated by the individual, or the individual's estate, 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).

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) provides that in the case of any trust with respect to which a deduction is allowed to the decedent 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 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.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner of Internal Revenue may grant a reasonable extension of the 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 the 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. Section 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 the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

Based on the facts submitted and representations made in this case, we conclude that the standards of §§ 301.9100-1 and

301.9100-3 have been satisfied. Consequently, an extension of time for filing an amended Schedule R and making a reverse QTIP election under § 2652(a)(3) with respect to Trust 1 is granted until Date 4.

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 district office where Decedent's estate tax return was filed. A copy is included for that purpose.

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)

Enclosure
Copy of letter
Copy for section 6110 purposes