

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4/PLR-116468-01
Date: January 09, 2002

Re:

Legend:

Decedent	=
Spouse	=
State	=
Trust	=
Marital Deduction Trust	=
Will	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=

Dear :

This is in response to your submission dated March 6, 2001 and subsequent correspondence, in which you requested an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make a qualified terminable interest property (QTIP) election under § 2056(b)(7) of the Internal Revenue Code and a reverse QTIP election under § 2652.

Decedent died testate on Date 1 survived by Spouse. Decedent's will was executed on Date 2. Paragraph Third of Will gives all of the residue of Decedent's estate to Trust. Article III, paragraph B of Trust provides for the trustee to divide the trust estate into three separate trusts, the Survivor's Trust, the Marital Deduction Trust and the Residuary Trust. The Marital Deduction Trust was to be funded with:

the amount of property equal to the maximum marital deduction allowable in [Decedent's] estate for federal estate tax purposes under the laws in effect at the time of [Decedent's] death, reduced by the final federal estate tax values of all

other property interests that pass or have passed to Surviving Spouse under other provisions of this trust, or otherwise, that are finally included in [Decedent's] gross estate, and that qualify for the marital deduction; provided, however, that the sum so determined shall be reduced by an amount, if any, needed to increase [Decedent's] taxable estate to the largest amount that will not result in a federal estate tax being imposed on [Decedent's] estate, after taking into account all deductions taken in determining [Decedent's] federal estate tax, adjusted taxable gifts reportable on [Decedent's] federal estate tax return, and all credits allowed for federal estate tax purposes other than any portion of the State death tax credit that will increase the amount of death taxes payable to any State, provided that no credit shall be taken into account if such credit results in the disallowance of the marital deduction.

Article III, paragraph D of Trust provides that the trustee is to distribute the net income from Marital Deduction Trust at least annually to Spouse. In addition, Spouse has the absolute and unrestricted power to invade the principal of Marital Deduction Trust annually to the extent of \$5,000 or five percent of the value of the principal of the trust, whichever is greater, as determined as of the last day of the year. If the payment of income is insufficient in the discretion of the trustee to provide for reasonable support, maintenance and health of Spouse, the trustee may pay to or use for the benefit of Spouse so much of the principal of Marital Deduction Trust as the trustee deems necessary.

At the death of Spouse, the principal of Marital Deduction Trust is to be added to the Residuary Trust. Any accrued or undistributed net income of Marital Deduction Trust will be distributed to Spouse's estate.

The Form 706, Federal Estate (and Generation-Skipping Transfer) Tax Return was filed by Decedent's estate on Date 3. No Marital Deduction Trust was funded. On Schedule R, a portion of Decedent's GST Tax exemption was allocated to the Residuary Trust. At the time the original estate tax return was filed, the estate was unaware of the necessity for the QTIP election.

After filing the return, the estate learned it had omitted lifetime taxable gifts made by Decedent in six prior years that reduced the estate tax exemption amount available at Decedent's death. Consequently, no Marital Deduction Trust had been funded and no election under § 2056(b)(7) had been made on Schedule M of Form 706. In addition, no reverse QTIP election had been made under § 2652(a)(3) on Schedule R.

It was not until after the original estate tax return had been filed with the Internal Revenue Service that the taxpayer's accountant noticed that the decedent's lifetime gifts were not reported on the estate tax return. The Internal Revenue Service had not discovered the error and, in fact, had issued a closing letter. The accountant promptly

notified the taxpayer and her attorneys. The taxpayer then instructed her attorney to request a letter ruling regarding an extension of time to make the QTIP election. On Date 4, the estate filed a supplemental Form 706 indicating a QTIP election on Schedule M. On Date 5, the estate filed a Schedule R indicating a reverse QTIP election.

Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 to make a QTIP election under § 2056(b)(7) with respect to qualified terminable interest property passing to Spouse under the terms of Trust. In addition, the taxpayer requests an extension of time to make a reverse QTIP election under § 2652.

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, and for purposes of § 2056(a), 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) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if: (1) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property; and (2) no person has a power to appoint any part of the property to any person other than the surviving spouse.

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.

Section 20.2056(b)-7(b)(4) of the Estate Tax Regulations provides, generally, that the QTIP election is made on the last filed estate tax return on or before the due

date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed after the due date.

Section 2601 imposes a tax on every generation-skipping transfer made by a "transferor" to a skip person. In general, under § 26.2652-1(a)(1) of the Generation-Skipping Transfer (GST) Tax Regulations, the transferor for GST tax purposes is the individual with respect to whom the property was most recently subject to Federal estate and gift tax.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a generation-skipping transfer tax (GSTT) exemption of \$1,000,000 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. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Under § 2632(a), the allocation may be made at any time on or before the date prescribed for filing the estate tax return (including extensions). Under § 2632(c), any portion of an individual's GST tax exemption not allocated within the time prescribed in § 2632(a), is allocated in accordance with that section.

Section 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 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.

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

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner 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 establish 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 the representations made, we conclude that the taxpayer acted in good faith, and the grant of relief will not prejudice the interests of the Government. Consequently, an extension of time for filing a supplemental Form 706 and making the QTIP election under § 2056(b)(7) is granted until Date 4. Also, an extension of time until Date 5 is granted for filing a corrected Schedule R and for making the reverse QTIP election under § 2652(a).

The ruling contained in this letter is 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 this ruling, it is subject to verification on examination.

This ruling is limited to the taxpayer's request under §§ 301.9100-1 and 301.9100-3. 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(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a Power of Attorney on file, a copy of this letter is being sent to your authorized representatives.

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

Enclosure:
Copy for section 6110 purposes