

Internal Revenue Service

Department of the Treasury

Number: **200315022**
Release Date: 4/11/2003
Index Number: 2632.03-00; 2652.01-02;
9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-152606-02

Date:

January 7, 2003

In Re:

LEGEND

Date 1 =

Decedent =

Date 2 =

Date 3 =

Trust =

Trust A =

Preparer =

Date 4 =

Dear :

This letter responds to your request dated September 19, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a reverse qualified terminable interest property (QTIP) election under § 2652 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: On Date 1, Decedent created a revocable living trust that she subsequently amended and restated on Date 2. Upon Decedent death on Date 3, the terms of Trust required that the balance of Trust be divided into three separate trusts. However, due to the size of Decedent's estate, Trust A was the only trust that could be funded.

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Article IX, paragraph A of Trust provides that Trust A shall contain property that has a value which equals the maximum amount then available to Decedent's estate as a GST exemption under § 2631(a).

Article X, paragraph A provides for the distribution of all the net income from Trust A to or for the benefit of Decedent's spouse in convenient installments, but not less frequently than quarter-annually. In addition, so much, or all, of the principal may be distributed to Decedent's spouse as the trustee deems necessary or advisable to provide for the proper health, maintenance, and support of Decedent's spouse.

Article X, paragraph B provides that upon the death of Decedent's spouse, the trustee shall divide all of the remaining principal of Trust A into as many equal shares as Decedent shall then have children living and children deceased with descendants surviving, one share to each, per stirpes, to be held, administered, and distributed in accordance with the provisions of Article X, paragraph C.

Article X, paragraph C provides in pertinent part that the trustee shall retain each share of Trust A set aside for a child of Decedent as a separate trust. During the lifetime of each child of Decedent, the trustee shall distribute all of the income from the child's separate trust in convenient installments, but not less frequently than quarter-annually. The trustee may, in the trustee's sole discretion, distributed so much of the principal of the child's trust as the trustee shall deem necessary or advisable to provide for the proper health, maintenance, education, and support of the child. Upon the death of the child, the trustee shall divide the remaining principal and undistributed income of the child's trust into equal shares to be distributed to the child's then living descendants, per stirpes, and if none, to Decedent's then living descendants, per stirpes.

Decedent's estate relied on Preparer to prepare Decedent's United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) which was filed on Date 4. A QTIP election was made for the assets passing to Trust A. After the return was filed, Decedent's spouse was informed by his attorney that Schedule R was not filed with Decedent's Form 706. As a result, the reverse QTIP election with regard to Trust A was not made and Decedent's GST exemption was not allocated to Trust A.

Decedent's estate requests the following rulings: (1) that an extension of time be granted to make a reverse QTIP election under § 2652(a)(3) with respect to Trust A; and (2) that the automatic allocation rules of § 2632(e) operate to cause the unused portion of Decedent's GST exemption to be allocated to Trust A so the trust has an inclusion ratio of zero.

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.

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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 and (A) an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than the surviving spouse (or the estate of such spouse); and (B) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse.

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 for purposes of § 2056(b)(1).

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 2601 imposes a tax on every generation-skipping transfer.

Section 2602 provides that the amount of tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642 (a) provides the method for determining the inclusion ratio.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) 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 once an allocation of GST exemption is made, it is irrevocable.

Under § 2632(a), the allocation of the GST exemption may be made at any time on or before the date prescribed for filing the individual's estate tax return (including extensions).

Section 2632(e)(1) (designated as § 2632(c)(1) at the time of Decedent's death) provides that, in general, any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated

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as follows– (A) first, to property which is the subject of a direct skip occurring at the individual's death, and (B) second, to trusts with respect to which the individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after the individual's death.

Section 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations provides that a decedent's unused GST exemption is automatically allocated on the due date for filing Form 706 to the extent not otherwise allocated by the decedent's executor on or before that date. The regulation also supplies the method for the automatic allocation of any unused GST exemption. First, the exemption is allocated pro rata to direct skips on the basis of their values for estate tax purposes. The balance is then allocated pro rata, on the basis of estate tax values, to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. 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 GST with respect to the trust. The automatic allocation is irrevocable.

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 GST tax, as if the election to be treated as QTIP 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 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), 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.

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 a regulatory election.

Section 301.9100-2 provides for automatic extensions of time for making certain elections.

Section 301.9100-3(a) provides that, in general, 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

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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)(v) provides that 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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time is granted until 60 days from the date of this letter for making a reverse QTIP election under § 2652(a)(3) with respect to Trust A. The election should be made on a supplemental Form 706 filed with the Internal Revenue Service Center, Cincinnati, Ohio, 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for that purpose.

An extension of time to make the reverse QTIP election under § 2652 does not extend the time to make an allocation of any remaining GST exemption. However, the automatic allocation rules of § 2632(e) and § 26.2632-1(d)(2) operate to allocate Decedent's available exemption.

Based on the information submitted and the representations made and provided the reverse QTIP election is made for Trust A as authorized in this letter, we conclude that Decedent's unused GST exemption will automatically be allocated to Trust A. Because the amount of Decedent's unused GST exemption exceeds the estate tax value of the trust, Trust A will have an inclusion ratio of zero under § 2642.

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.

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.

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In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer representative.

Sincerely,

Heather C. Maloy

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

Enclosures

Copy for section 6110 purposes
Copy of this letter