

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200924006**
Release Date: 6/12/2009

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 2056.07-01, 2632.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-135402-08

Date:
February 09, 2009

Decedent =
Date 1 =
Spouse =
Son =
Grandson =

Dear :

This is in response to a letter of July 11, 2008, and subsequent correspondence in which you seek a ruling concerning the application of section 2632 of the Internal Revenue Code.

We understand the relevant facts to be as follows. Decedent died testate on Date 1. Under the terms of his will, Decedent made pre-residuary specific bequests of certain personal property and real estate to his surviving spouse, Spouse, Son, and Grandson.

The residue of the estate is to be distributed among the Descendants' Trust, Marital Trust 1 and Marital Trust 2. Specifically, under Article V of the will a Descendants' Trust for the benefit of Son and his issue, is established, to be funded with certain identified assets. Article VI directs that the balance of the residue is to be distributed between Marital Trust 1 and Marital Trust 2. Marital Trust 1 is to be funded with a pecuniary amount equal to Decedent's available generation-skipping transfer (GST) tax exemption less the date of death value of the assets funding the Descendants' Trust and less all GST direct skips occurring by reason of Decedent's death. Marital Trust 2 is to be funded with the balance of the residue. Both Marital Trust 1 and 2 are intended to qualify as qualified terminable interest property (QTIP) and the will provides that the executor may elect to treat all or a portion of each as QTIP property.

On page 2 of Form 706, United States Estate (and Generation-skipping Tax) Return, filed by Decedent's estate, Decedent's executor reported the amount passing to the Descendants' Trust as \$, the amount passing to Marital Trust 1 as \$,

and the amount passing to Marital Trust 2 as \$. On Schedule M, the executor elected to treat \$ or % of the amount reported as passing to Marital Trust 1 (\$) as QTIP property and claimed a marital deduction for that amount. The executor also elected to treat % of the property passing to Marital Trust 2 (reported as \$) as QTIP property and claimed a marital deduction for that amount.

On schedule R, the executor reported that \$ of GST tax exemption had been allocated to Decedent's lifetime transfers, and that \$ was being allocated to direct skips under Decedent's will. On Part 1, line 9 of Schedule R, the executor elected to allocate the remaining \$ of GST exemption to Marital Trust 1. By listing Marital trust 1 in Part 1, line 9, the executor also made a reverse QTIP election with respect to Marital Trust 1.

On subsequent review of the Form 706, the executor discovered that the amounts reported as passing to Marital Trusts 1 and 2 were incorrect. The reported amount available for funding the trusts is \$ (\$ plus \$). Under the will, the amount of the residue passing to Marital Trust 1 is equal to Decedent's available GST tax exemption less the date of death value of the Descendants' Trust and less all direct skips occurring by reason of Decedent's death. Thus, under Decedent's will, the amount passing to Marital Trust 1 is \$: \$ (available GST exemption) less \$ (corrected value of the Descendants' Trust) less \$ (direct skips). The balance of the residue passes to Marital Trust 2. Thus, under the will, the amount passing to Marital Trust 2 is \$ (\$ less \$ passing to Marital Trust 1).

The executor requests a ruling regarding the inclusion ratio of the Descendants' Trust, Marital Trust 1 and Marital Trust 2 for GST tax purposes, in view of the reporting errors made on the Form 706.

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 generally that no deduction is 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 on such termination or failure, an interest passes to any person other than the surviving spouse or the estate of the surviving spouse. See sections 2056(b)(1)(A) and (B).

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, the entire property is treated as passing to the surviving spouse for purposes of section

2056(a) and no part of the property is treated as passing to any person other than the surviving spouse for purposes of section 2056(b)(1)(A).

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 section 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 (within the meaning of subchapter B). A generation-skipping transfer is defined under 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term "applicable rate" means with respect to any transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under section 2642(a)(1), the inclusion ratio of any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the "applicable fraction". The applicable fraction, as defined in section 2642(a)(2) is a fraction, the numerator of which is the amount of GST exemption under section 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), as in effect on decedent's date of death, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his 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.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2632(e)(1) provides that, in general, any portion of an individual's GST exemption which has not been allocated within the time prescribed by section 2632(a) shall be deemed to be allocated as follows: (A) first, to property which is the subject of a

direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 26.2632-1(b)(4)(i) provides, in part, that an allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount required to obtain an inclusion ratio of zero with respect to the trust.

Section 2642(b)(2)(A) provides that if property is transferred as a result of the death of the transferor, the value of such property for purposes of section 2642(a) shall be its value as finally determined for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as the of time of the distribution concerned. Section 2642(b)(2)(B) provides that any allocation to property transferred as a result of the death of the transferor shall be effective on and after the date of death of the transferor.

Section 2652(a)(1) provides that, for GST tax purposes, the "transferor" of property is the last person with respect to whom the property was subject to estate or gift tax. Thus, in the case of property subject to a QTIP election that is subsequently includible in the surviving spouse's gross estate under section 2044, the surviving spouse is the transferor of the property for GST purposes. However, section 2652(a)(3) provides that in the case of any trust with respect to which a deduction is allowed to the decedent under section 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.

In the present case, as discussed above, \$ _____ passed to Marital Trust 1, and on Schedule M of Form 706, the executor made a QTIP election with respect to _____ % of the amount passing to Marital Trust 1 (and a reverse QTIP election with respect to Marital Trust 1). Accordingly, Decedent is the transferor of the entire \$ _____ passing to Marital Trust 1 for GST tax purposes. That is, Decedent is the transferor of the \$ _____ portion subject to both the QTIP and reverse QTIP elections, and Decedent is the transferor of the balance of Marital Trust 1 that is not subject to a QTIP election (and therefore not eligible for the reverse QTIP election). The executor's allocation of GST exemption to Marital Trust 1 on Schedule R is void to the extent it exceeded \$ _____, the amount passing to the trust. See section 26.2632-1(b)(4)(i). Decedent is not the transferor of Marital Trust 2, and no reverse QTIP election was made with respect to Marital Trust 2 to change that result. Therefore, the balance of Decedent's GST exemption (\$ _____) was automatically allocated to the Descendants' Trust under

the automatic allocation rules of section 2632. Accordingly, because the amount of GST exemption allocated to each of Marital Trust 1 and the Descendants' Trust is equal to the amounts passing to each of those trusts, the inclusion ratio with respect to Marital Trust 1 and with respect to the Descendants' Trust is zero.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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.

Sincerely,

GEORGE L. MASNIK
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure (1)