

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:04
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Date:
July 12, 2016

LEGEND

Decedent =
Date 1 =
Spouse =
Child 1 =
Child 2 =
Child 3 =
Date 2 =
Family Trust =

Marital Trust =

Attorney =
Accountant =
a =
Date 3 =
Year =
Date 4 =

Dear :

This letter responds to the letter dated December 28, 2015, and subsequent correspondence, submitted by your authorized representative, requesting an extension

of time under § 301.9100-3 of the Procedure and Administration Regulations to treat a trust as two separate trusts under § 26.2652-2(c) of the Generation-Skipping Transfer Tax Regulations.

FACTS

The facts and representations submitted are as follows.

Decedent died testate on Date 1, survived by Spouse and children, Child 1, Child 2, and Child 3. Child 3 died on Date 2, survived by three children. Under Decedent's will, Marital Trust and Family Trust were established. During Spouse's lifetime, Spouse is the sole income beneficiary of Marital Trust.

Spouse, as executrix of Decedent's estate, retained Attorney to assist in the probating of Decedent's estate and Accountant to prepare and file Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. The executrix elected to treat Marital Trust as qualified terminable interest property (QTIP) so that Marital Trust qualified for the marital deduction under § 2056(b)(7). In addition, the executrix made a special election under § 2652(a)(3) to treat the assets of Marital Trust, for generation-skipping transfer (GST) tax purposes, as if the election under § 2056(b)(7) had not been made (a "reverse" QTIP election). The executrix allocated \$a of Decedent's GST exemption to Family Trust and Decedent's remaining GST exemption to Marital Trust. Spouse timely filed the return (with extensions) on Date 3 (a date prior to December 27, 1995).

Subsequent to the filing of Decedent's Form 706, § 26.2652-2(c) was issued. This regulation provides a transitional rule that allows certain trusts subject to a "reverse" QTIP election, to which GST exemption had been allocated, to be treated as two separate trusts, so that only a portion of the trust would be treated as subject to the "reverse" QTIP election, and that portion would be treated as having a zero inclusion ratio. The deadline for making the election set forth in the transitional rule was June 24, 1996.

In Year, Spouse resigned as trustee of Marital Trust and Child 1 succeeded Spouse as trustee of Marital Trust. Spouse died on Date 4. During Spouse's term as trustee and Child 1's term as successor trustee, Attorney and Accountant never advised Spouse or Child 1 of the election under § 26.2652-2(c). Upon the death of Spouse, trustee obtained advice from a law firm and became aware of the election under § 26.2652-2(c).

You have requested an extension of time under § 301.9100-3 to elect to treat Marital Trust as two separate trusts pursuant to § 26.2652-2(c) so that for purposes of the GST tax, one trust will have an inclusion ratio of zero due to the previous allocation of Decedent's unused GST exemption to Marital Trust, and the other will have an inclusion

ratio of one. The “reverse” QTIP election would be treated as applying only to the trust with the zero inclusion ratio.

LAW AND ANALYSIS

Section 2601 imposes a tax on every GST. A GST 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 tax imposed by § 2601 is the taxable amount multiplied by the applicable rate. Section 2641(a) defines the applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Under § 2642(a), the inclusion ratio with respect to any property transferred in a GST is the excess (if any) of one over the applicable fraction. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption under § 2631 allocated to the trust, and the denominator of which is the value of the property transferred to the trust.

Section 2631(a), as effective in the year at issue, provided 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)(1) 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 2652(a)(3) states that, with respect to any trust for which a deduction is allowed under § 2056(b)(7) (regarding qualified terminable interest property), the estate of the decedent may elect to treat all of the property in such trust for purposes of the GST tax provisions as if the QTIP election 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 that QTIP trust.

Section 26.2652-2(a) provides that a “reverse” QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies.

Section 26.2652-2(c) provides that if a “reverse” QTIP election is made with respect to a trust prior to December 27, 1995, and the GST exemption has been allocated to that trust, the transferor (or the transferor’s executor) may elect to treat the trust as two separate trusts, one of which has a zero inclusion ratio by reason of the transferor’s

GST exemption previously allocated to the trust. The separate trust with the zero inclusion ratio consists of that fractional share of the value of the entire trust equal to the value of the nontax portion of the trust under § 26.2642-4(a). The “reverse” QTIP election is treated as applying only to the trust with the zero inclusion ratio. An election under this section is made by attaching a statement to a copy of the return on which the “reverse” QTIP election was made under § 2652(a). The statement is to be filed before June 24, 1996.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute).

Section 301.9100-3(a) provides, in part, that 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 that granting 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. Accordingly, an extension of time of 120 days from the date of this letter is granted in which to make the election under § 26.2652-2(c) to treat Marital Trust as two separate trusts, one of which has a zero inclusion ratio by reason of Decedent’s GST exemption previously allocated to Marital Trust. The election should be made by completing the statement required in § 26.2652-2(c) and submitting the election, a copy of the return on which the “reverse” QTIP election was made under § 2652(a)(3), and a copy of this letter, to the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center, Stop 82, Cincinnati, OH 45999.

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.

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.

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

Sincerely,

Leslie H. Finlow

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

cc: