

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:04  
PLR-104126-18

Date:  
July 24, 2018

RE:

**LEGEND**

- Date 1 =
- Decedent =
- Trust =
- Date 2 =
- Date 3 =
- Spouse =
- Accountant Firm =

Dear :

This letter responds to your representative’s letter of January 10, 2018, requesting an extension of time under § 301.9100 and § 301.9100-3 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 and to apply the automatic allocation rules to allocate Decedent’s GST exemption to the trust.

**FACTS**

The facts and representations submitted are summarized as follows. On Date 1, Decedent created a revocable trust, Trust. Trust was completely restated on Date 2. Decedent died testate on Date 3, survived by Spouse and children.

Under the terms of Trust, upon the Decedent’s death, the trustee has the power to create Trust A and Trust B.

Under Article 3, Paragraph 4, the trustee is to distribute all the net income of Trust B to Spouse. The trustee may also distribute such amounts of principal to Spouse as the trustee deems advisable for Spouse’s health, education, support or maintenance.

Upon Spouse's death, the property of Trust B is to be distributed to Decedent's issue in such amounts and upon such terms as Spouse may appoint by express reference in Spouse's last will and testament.

Article 5, Section 6, provides, in part, that Decedent intends to eliminate (or to reduce as fully as possible by law) any GST taxes on transfers of property pursuant to Trust. Under Article 5, Paragraph 6.6, the trustee is empowered to make a QTIP election or a reverse QTIP election over any asset for both estate and GST tax purposes and to allocate the unused portion of Decedent's GST exemption to any property with respect to which Decedent is the transferor for GST tax purposes in such manner the trustee deems advisable.

Article 1, Paragraph 4, provides that the provisions of Article 5, Section 6 regarding the GST omnibus provisions shall apply to Trust A and Trust B created under Article 3.

Spouse, as the executor of Decedent's estate, engaged Accounting Firm to prepare Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, which was timely filed. On Schedule M, Accounting Firm reported property passing to Trust B as QTIP, and, therefore, the executor of Decedent's estate is deemed to have made the QTIP election to have Trust B treated as QTIP under § 2056(b)(7). Accounting Firm failed to make a "reverse" QTIP election under § 2652 with respect to Trust B. Accounting Firm also failed to attach Schedule R to the Form 706 and, as a result, Decedent's GST exemption was not affirmatively allocated to Trust B. It is represented that Decedent has sufficient remaining GST exemption to allocate to Trust B.

## LAW AND ANALYSIS

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 shall, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) provides that, where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed under this section with respect to such interest —

(A) if an interest in such property passes or has passed (for less than an adequate consideration in money or money's worth) from the decedent to any person other than such 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;

and no deduction shall be allowed with respect to such interest.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) defines the term “qualified terminable interest property” as property which passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which an election under this paragraph applies.

Section 2056(b)(7)(B)(v) provides, in part, that an election with respect to any property shall be made by the executor on the return of tax imposed by § 2001.

Section 2601 imposes a tax on every generation-skipping transfer (within the meaning of subchapter B) made by a “transferor” to a skip person. Under § 2611(a), the term “generation-skipping transfer” means a taxable distribution, a taxable termination, and a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate.

Section 2641(a) defines the term “applicable rate” with respect to any generation-skipping transfer, as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2631(a), as in effect for the year at issue, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount 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 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 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(d)(2) of the Generation-Skipping Transfer Tax Regulations provides, in part, 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. Unused GST exemption is allocated pro rata, on the basis of the value of the property as finally determined for purposes of chapter 11, first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata on the basis of the chapter 11 value of the nonexempt portion of the trust property to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made.

Section 2652(a)(1) provides, in part, that for purposes of chapter 13, the term "transferor" means in the case of any property subject to the tax imposed by chapter 11, the decedent. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides, in part, that in the case of any trust with respect to which a deduction is allowed to the decedent under § 2056 by reason of subsection (b)(7), the estate of the decedent may elect to treat all of the property in such trust for GST tax purposes as if the election to be treated as qualified terminable interest property had not been made (reverse QTIP election).

Section 26.2652-2(a) provides, in part, 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(b) provides that an election under § 2652(a)(3) is made on the return on which the QTIP election is made.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-1 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 Internal Revenue Code except subtitles E, G, H, and I.

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 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).

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore an extension of time is granted until 120 days from the date of this letter to make a reverse QTIP election with respect to the Trust B, and that the automatic allocation rules of § 2632(e)(1) apply to automatically allocate Decedent's unused GST exemption to Trust B.

The reverse QTIP election should be made on a supplemental Form 706. The supplemental Form 706 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service Center - Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy of this letter is enclosed for this purpose.

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.

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,

Associate Chief Counsel  
(Passthroughs & Special Industries)

*Lorraine E. Gardner*

By: \_\_\_\_\_  
Lorraine E. Gardner  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy for § 6110 purposes  
Copy of this letter

cc: