

**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:B04  
PLR-106041-19

In Re:

Date:  
July 30, 2019

Legend

Date 1 =  
Decedent =

Trust =

Date 2 =  
Spouse =

Bank: =  
Daughter: =

Date 3 =  
GST Non-Exempt Trust =

\$a =  
State Statute 1 =  
State Statute 2 =

Dear \_\_\_\_\_ :

This letter responds to your authorized representative's letter dated December 17, 2018, and subsequent correspondence, requesting rulings concerning the federal gift and estate tax treatment of the proposed severance of a marital trust and the proposed renunciation by Spouse of her interest in one of the divided marital trusts.

### FACTS

The facts submitted and the representations made are summarized as follows:

On Date 1, Decedent created Trust, a revocable trust. Trust was amended by Decedent several times prior to his death on Date 2, at which time Trust became irrevocable. Decedent was survived by Spouse.

Under Article Eight, Section 1 of Trust, at Decedent's death, the trustee is directed to divide Trust into a family share (Family Share) and a marital share (Marital Share). The Marital Share is held in accordance with the provisions of Article Nine of Trust.

Under Article Nine, in relevant part, the trustee shall pay to or apply for the benefit of Spouse at least annually all of the net income of the Marital Share. In addition, the trustee may distribute to or for the benefit of Spouse as much of the principal of the Marital Share as the Trustee considers necessary or advisable for Spouse's education, health, maintenance and support. Upon Spouse's death, the Marital Share shall be held in further trust for Decedent's issue. The current trustees of the Marital Share are Spouse, Bank and Daughter.

On Date 3, Decedent's executor timely filed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for Decedent's estate. On Schedule M, Bequests, etc., to Surviving Spouse, attached to the return, the executor made an election to treat the Marital Share as qualified terminable interest property (QTIP) under § 2056(b)(7) of the Internal Revenue Code. The trustee severed the Marital Share into two shares, one with a GST tax inclusion ratio of zero (GST Exempt Trust) and the other with a GST tax inclusion ratio of one (GST Non-Exempt Trust).

The trustee proposes to sever the GST Non-Exempt Trust into two trusts, Trust A and Trust B. Trust A will contain approximately \$    in cash and Trust B will contain the remaining GST Non-Exempt Trust property. Following the bifurcation of the GST Non-Exempt Trust into Trust A and Trust B, Spouse will renounce her entire interest in Trust A by making a non-qualified disclaimer of her interest in Trust A, and subsequently, Trust A will be held in further trust for Decedent's issue in accordance with the provisions of Article XII of Trust, as if Spouse had predeceased Decedent.

State Statute 1 provides that after notice to the qualified beneficiaries, a trustee may

divide a trust into two or more separate trusts, if the result does not materially impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust.

State Statute 2 provides, in relevant part, that a person may disclaim any interest in or power over property, including an interest in a trust, even if its creator imposed a spendthrift provision or similar restriction on the transfer or a limitation on the right to disclaim. The disclaimed interest will then pass as if the disclaimant had died immediately before the interest was created.

You have requested the following rulings:

1. After the GST Non-Exempt Trust is severed into two trusts, Trust A and Trust B, as permitted by State law, and Spouse renounces her entire interest in the property in Trust A, such actions will have no effect on the election under § 2056(b)(7) by the estate to qualify the GST Exempt Share and the GST Non-Exempt Share for the federal estate tax marital deduction, or on the status of Trust A and Trust B as QTIP trusts.
2. After the GST Non-Exempt Trust is severed into Trust A and Trust B and Spouse renounces her entire interest in the property in Trust A, the subsequent distribution and termination of Trust A will not cause Trust B or the GST Exempt Trust to fail to be qualified terminable interest property under § 2056(b)(7).
3. After Spouse disclaims her entire interest in the property in Trust A, Spouse will be deemed to have made a transfer of all of the property of Trust A under § 2519 other than the value of her qualifying income interest, and Spouse will be deemed to have made a transfer of her qualifying income interest under § 2511.
4. After Spouse disclaims her entire interest in the property in Trust A, Spouse will not be deemed to have made a transfer of the property in Trust B or in the GST Exempt Marital Trust under § 2519 or a transfer of her qualifying income interest in the property of Trust B or the GST Exempt Marital Trust under § 2511.
5. After Spouse disclaims her entire interest in the property in Trust A, the value of Spouse's income interest in Trust B or the GST Exempt Trust will not be valued at zero under § 2702.
6. After Spouse disclaims her entire interest in the property in Trust A, the property in Trust A that is deemed to be transferred under § 2519 will not be included in Spouse's gross estate under § 2044(b)(2), provided spouse survives three years from the date of the transfer.

## LAW AND ANALYSIS

### Rulings 1 and 2

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, except as limited by § 2056(b), 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, but only to the extent that such interest is included in determining the value of the gross estate.

Under § 2056(b)(1), a marital deduction is not allowable for an interest in property passing to the surviving spouse that is a “terminable interest.” An interest passing to the surviving spouse is a terminable interest if it will terminate or fail on the lapse of time or on the occurrence of an event or contingency, or on the failure of an event or contingency to occur and, on termination, an interest in the property passes to someone other than the surviving spouse.

Section 2056(b)(7) allows an estate tax marital deduction for qualified terminable interest property. Under § 2056(b)(7)(B)(i), the term “qualified terminable interest property” means property that passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which the qualified terminable interest election under § 2056(b)(7)(B)(v) applies.

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

Pursuant to the terms of Marital Trust and with respect to the qualified terminable interest property election made by Decedent’s estate, the assets of the GST Non-Exempt Trust are treated as qualified terminable interest property under § 2056(b)(7)(i).

Spouse has a qualifying income interest for life in the GST Non-Exempt Trust. After the proposed division of the GST Non-Exempt Trust into Trust A and Trust B pursuant to the applicable State law, Spouse will have a qualifying income interest for life in both Trust A and Trust B.

The severance of the GST Non-Exempt Trust into Trust A and Trust B does not materially impair the rights of any beneficiary or adversely affect the achievement of the purposes of the trust.

Therefore, based on the facts submitted and the representations made, after the GST Non-Exempt Trust is severed into two trusts, Trust A and Trust B, as permitted by State

law, and Spouse subsequently disclaims Trust A, such action will have no effect on the election under § 2056(b)(7) by the estate to qualify the GST Exempt Trust and the GST Non-Exempt Trust for the federal estate tax marital deduction, nor the status of Trust A and Trust B as QTIP trusts.

Moreover, after the GST Non-Exempt Trust is severed into Trust A and Trust B and Spouse disclaims her interest in Trust A, the subsequent distribution and termination of Trust A will not cause Trust B or the GST Exempt Trust to fail to be qualified terminable interest property under § 2056(b)(7).

#### Rulings 3 and 4

Section 2501 imposes a tax on the transfer of property by gift. Section 2511(a) provides that the tax imposed by § 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 25.2511-1(c)(1) of the Gift Tax Regulations provides that the gift tax applies to gifts indirectly made. Thus, any transaction in which an interest in property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax.

Section 25.2511-2(a) provides that the gift tax is a primary and personal liability of the donor, is an excise upon his act of making the transfer, is measured by the value of the property passing from the donor, and attaches regardless of the fact that the identity of the donee may not then be known or ascertainable.

Section 2519(a) provides that any disposition by the surviving spouse of all or part of a qualifying income interest for life in any property for which a deduction was allowed under § 2056(b)(7) is treated as a transfer by the surviving spouse of all interests in the property other than the qualifying income interest. The transfer of the qualifying income interest is a transfer subject to gift tax under § 2511.

Section 25.2519-1(c)(1) provides that the amount treated as a transfer under § 2519 upon a disposition of all or part of a qualifying income interest for life in qualified terminable interest property is equal to the fair market value of the entire property subject to the qualifying income interest, determined on the date of the disposition (including any accumulated income and not reduced by any amount excluded from total gifts under § 2503(b) with respect to the transfer creating the interest), less the value of the qualifying income interest in the property on the date of the disposition. The gift tax consequences of the disposition of the qualifying income interest are determined separately under § 25.2511-2.

In this case, Spouse will disclaim her entire interest in Trust A, and Spouse will retain

her income interest in Trust B. Therefore, after Spouse disclaims her entire interest in the property in Trust A, Spouse will be deemed to have made a transfer of all of the property of Trust A under § 2519, other than the value of Spouse's qualifying income interest, and Spouse will be deemed to have made a transfer of her qualifying income interest under § 2511.

As stated above, pursuant to State law and the representations made herein, after the division of the GST Non-Exempt Trust, Spouse's interest in Trust A will be separate and distinct from her interest in Trust B. Therefore, after Spouse renounces her entire interest in the property in Trust A, Spouse will not be deemed to have made a gift of the property in Trust B or the GST Exempt Trust under § 2519.

#### Ruling 5

Section 2702(a)(1) provides that solely for the purpose of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or any applicable family member (as defined in § 2701(e)(2)) shall be determined as provided in § 2702(a)(2).

Section 2702(a)(2) provides that the value of any retained interest which is not a qualified interest (as defined in § 2702(b)) shall be treated as being zero and the value of any retained interest that is a qualified interest (as defined in § 2702(b)) shall be determined under § 7520. Under § 25.2702-2(a)(3), the term "retained" means held by the same individual both before and after the transfer in trust.

In this case, the GST Non-Exempt Trust will be divided into two separate trusts, Trust A and Trust B. We have concluded above that Spouse's disclaimer of her entire interest in Trust A will not result in a transfer under § 2519 with respect to any interest in Trust B. Accordingly, Spouse will not be treated as making a deemed gift under § 2519 with respect to Trust B. Section 2702 does not apply to the division of the GST Non-Exempt Trust and the disclaimer by Spouse of her entire income interest in Trust A. Therefore, after Spouse disclaims her interest in the property in Trust A, neither the value of Spouse's income interest in Trust B nor the GST Exempt Trust will be valued at zero under § 2702.

#### Ruling 6

Section 2044(a) provides that the value of the gross estate shall include the value of any property in which the decedent had a qualifying income interest for life. Section 2044(b) provides that § 2044(a) applies to any property if a deduction was allowed with respect to the transfer of such property to the decedent under § 2056(b)(7) and § 2519 did not apply with respect to a disposition by the decedent of part or all of such property.

When Spouse renounces her interest in the property in Trust A, Spouse will be deemed to have made a transfer of all of the property of Trust A, other than her qualifying income interest therein, under § 2519. Section 2044(b)(2) provides that § 2044(a) does not apply to any property if § 2519 applies to the disposition of part or all of that property prior to Spouse's death. Therefore, after Spouse disclaims her entire interest in the property in Trust A, the property in Trust A that is deemed to be transferred under § 2519 will not be included in Spouse's gross estate under § 2044(b)(2).

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,

Melissa C. Liquerman

Melissa C. Liquerman  
Branch Chief, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy for §6110 purposes  
Copy of this letter