

the total value of all interests in property passing or which shall have passed at the time of Decedent's death to Spouse for which a marital deduction is allowable under the federal estate tax laws in effect at Decedent's death, will cause there to be the least possible (or no) federal and state estate taxes payable by Decedent's Estate. The Trustees shall divide this amount into two parts known as the Federal Marital Trust and the State Exemption Marital Trust and shall allocate to the Federal Marital Trust an amount equal to the smallest amount that shall (or would) cause there to be the least possible (or no) federal estate taxes payable by Decedent's estate. The Trustees shall allocate to the State Exemption Marital Trust, the balance, if any, of the amount passing pursuant to Paragraph B.

Section III, Paragraph C provides that the balance of the trust shall be held as the Residuary Trust. In this case, only the Federal Marital Trust and the Residuary Trust were funded.

The governing terms of the Federal Marital Trust provide that the Trustees shall pay to Spouse all of the net income from the Federal Marital Trust for his lifetime. In addition, the Trustees may pay to Spouse from the principal of the Federal Marital Trust such amounts as the Trustees, in their sole and absolute discretion, deem necessary or advisable for his health, maintenance and/or support in his accustomed manner of living at Decedent's death. Upon Spouse's death, the Trustees shall distribute the Residuary Trust (including any amounts received from the Federal Marital Trust) among Decedent's then living descendants as Spouse may appoint by his will, in trust or outright; provided, however, that Spouse shall also have the power to appoint an income interest to the spouse of any of Decedent's descendants. The Trustees shall divide any unappointed part of the Residuary Trust among Decedent's then living descendants, *per stirpes*, in further trust as provided in the trust instrument.

Attorney represented Decedent and Spouse during Decedent's lifetime as Decedent's trusts and estate lawyer. Attorney also advised Child, serving as the personal representative of Decedent's estate, with the preparation and filing of Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. On Date 4, Form 706 was filed late and contained an election to treat the Federal Marital Trust as "QTIP property." However, Attorney failed to include Federal Marital Trust on Part 1, Line 9 of Schedule R in order to make the reverse QTIP election under § 2652(a)(3) as instructed. Thus, a reverse QTIP election was not made with respect to the Federal Marital Trust. Attorney failed to advise Child to make the reverse QTIP election or apply Decedent's GST exemption to the Federal Marital Trust. It is represented that Decedent has sufficient GST exemption to allocate to the Federal Marital Trust.

You have requested an extension of time under §§ 301.9100-1 and 301.9100-3 to make a reverse QTIP election under § 2652(a)(3) with respect to the Federal Marital Trust.

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 2044 provides, in part, that the value of the gross estate shall include the value of any property for which a deduction was allowed with respect to the transfer of such property to the decedent under § 2056(b)(7) in which the decedent had a qualifying income interest for life.

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)(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: (I) which passes from the decedent; (II) in which the surviving spouse has a qualifying income interest for life as defined in § 2056(b)(7)(B)(ii); and (III) to which an election under § 2056(b)(7) applies.

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

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

Section 2601 imposes a tax on every generation-skipping transfer. Section 2611(a) provides that the term “generation-skipping transfer” means: (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 GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2631(a) 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 the 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 § 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 that a decedent's unused GST exemption is automatically allocated on the due date for filing the Form 706, or Form 706NA, to the extent not otherwise allocated by the decedent's executor on or before that date. Unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)), on the basis of the value of the property as finally determined for purposes of chapter 11 (chapter 11 value), first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)) 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. No automatic allocation of GST exemption 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 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of one over the applicable fraction determined for the trust. Section 2642(a)(2) provides that, in general, the applicable fraction is a fraction the numerator of which is the amount of the GST exemption allocated to the trust and the denominator of which is the value of the property transferred to the trust, reduced by the sum of any federal estate tax or state death tax actually recovered from the trust attributable to such property, and any charitable deduction allowed under § 2055 or 2522 with respect to such property.

Section 2652(a)(1) provides that for purposes of chapter 13, the term "transferor" means: (A) in the case of any property subject to the tax imposed by chapter 11, the decedent; and (B) in the case of any property subject to the tax imposed by chapter 12,

the donor. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides, in pertinent part, that in the case of any trust with respect to which a deduction is allowed to the decedent under § 2056(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 §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six 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.

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

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.

In this case, as a result of the QTIP election made on Form 706, and pursuant to § 2519 or § 2044(a), Spouse will become the transferor of Federal Marital Trust for GST tax purposes prior to the occurrence of any GST, thereby precluding allocation of Decedent's GST exemption to Federal Marital Trust. However, if Decedent's estate is granted an extension of time to make a reverse QTIP election, Decedent will remain the transferor of Federal Marital Trust for GST tax purposes.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the executor of Decedent's estate is granted an extension of time of 120 days from the date of this letter to make a reverse QTIP election with respect to the Federal Marital Trust.

The reverse QTIP election should be made on a supplemental Form 706 filed with the Internal Revenue Service at the following address: Department of the Treasury, Internal Revenue Service, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the supplemental Form 706.

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)

Melissa C. Liquerman

By: Melissa C. Liquerman
Senior Counsel, Branch 4
Office of Associate Chief Counsel
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Enclosure
Copy for § 6110 purposes

cc: