

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202503007**
Release Date: 1/17/2025

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 2056.00-00, 2652.00-00,
9100.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-108286-24

Date:
October 21, 2024

In Re:

Legend

Decedent =

Spouse =

Accounting Firm =

Date 1 =

Date 2 =

Trust =

Dear :

This letter responds to your authorized representative's letter of April 23, 2024, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a qualified terminable interest property (QTIP)

election for a trust under § 2056(b)(7) of the Internal Revenue Code and a reverse QTIP election for a trust under § 2652(a)(3).

The facts and representations are as follows.

On Date 1, Decedent and Spouse established Trust. Decedent died on Date 2, survived by Spouse.

Upon Decedent's death, Trust divides into the survivor's share, the family share, and the marital share. The marital share consists of all trust property not allocated to the survivor's share or to the family share. The marital share is held in further trust and administered and distributed as Marital Trust. Marital Trust is for the benefit of Spouse and is the subject of this letter ruling.

Trust provides that the trustee shall divide Marital Trust into two trusts, Exempt Marital Trust and Nonexempt Marital Trust. Exempt Marital Trust is to hold a portion of Marital Trust based on the amount of the exemption from generation-skipping transfer (GST) tax available to Decedent's estate after allocation to the family share. Nonexempt Marital Trust is to hold the balance of Marital Trust.

Spouse, as executor of Decedent's estate, engaged Accounting Firm to prepare and file Decedent's Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return) and to make any necessary elections, including the QTIP election and the reverse QTIP election. On Schedule M of Form 706, Accounting Firm mistakenly did not report the property passing to Marital Trust as QTIP. Therefore, the QTIP election was not made, and consequently, the reverse QTIP election was also not made.

You have requested an extension of time under §§ 301.9100-1 and 301.9100-3, (1) to make the QTIP election for Marital Trust, and (2) to make a reverse QTIP election under § 2652(a)(3) for Exempt 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.

Under § 2044, any property in which the decedent had 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 2044(c) provides that for purposes of chapter 11 and chapter 13, property includible in the decedent's gross estate under § 2044(a) shall be treated as property passing from the decedent.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate is 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 the general rule that no deduction shall be allowed under § 2056(a) 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.

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

Section 2056(b)(7)(B)(i) defines the term “QTIP” 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) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if: (1) 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 (2) 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 is to be made by the executor on the return of tax imposed by § 2001. The election, once made, is irrevocable.

Section 20.2056(b)-7(b)(4) of the Estate Tax Regulations provides, generally, that the QTIP election is made on the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date.

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 GST tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines “applicable rate” as 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 the 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.

Under § 2632(a), any allocation by an individual of his GST exemption may be made at any time on or before the date prescribed for filing the individual's estate tax return (including extensions).

Under § 2632(e) and § 26.2632-1(d)(2), an individual's unused GST exemption is automatically allocated on the due date to the extent not otherwise allocated by the individual's executor on or before that date. The unused exemption is allocated: (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. However, 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.

Section 2642(a)(1) defines "inclusion ratio" as the excess (if any) of 1 over the applicable fraction. Under § 2642(a)(2), 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 GST tax purposes, an individual shall be treated as transferring any property with respect to which the individual is the transferor. Under § 2652(a)(1), the "transferor" is the decedent with respect to any property subject to federal estate tax and the donor with respect to any property subject to federal gift tax. However, under § 2652(a)(3), in the case of any trust for which a marital deduction is allowed to the decedent by reason of § 2056(b)(7), the estate of the decedent may elect to treat all of the property in the trust for GST tax purposes as if the QTIP election had not been made. The election under § 2652(a)(3) is referred to as a "reverse QTIP election." The consequence of a reverse QTIP election is that, for GST tax purposes, the decedent, not the surviving spouse, is the transferor of the trust for which the QTIP election is made, and the decedent's GST exemption may be allocated to the trust. 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. Under § 26.2652-2(b), the reverse QTIP election is made on the return of tax on which the QTIP election is made.

Section 26.2654-1(b)(1) provides, in part, that the severance of a trust that is included in the transferor's gross estate (or created under the transferor's will) into two or more trusts is recognized for GST tax purposes if the trust is severed pursuant to a direction in the governing instrument providing that the trust is to be divided upon the death of the transferor or if the governing instrument does not require or otherwise direct severance,

but the trust is severed pursuant to discretionary authority granted either under the governing instrument or under local law.

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 due 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 the grant of 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 are satisfied. The executor of Decedent's estate is granted one hundred twenty (120) days from the date of this letter to make the QTIP election for Marital Trust under § 2056(b)(7) and to make the reverse QTIP election for Exempt Marital Trust under § 2652(a)(3).

The QTIP and reverse QTIP elections should be made on a supplemental Form 706 for Decedent's estate. The supplemental Form 706 should be filed with the Internal Revenue Service Center, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the return.

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.

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.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

/ s /

Daniel J. Gespass
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy for § 6110 purposes

cc: