

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Contact Person:

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In Reference to:

CC:DOM:P&SI:4/PLR-118886-97

Date:October 30, 1998

Re:

Legend:

Decedent =
Estate =

date 1 =
date 2 =
date 3 =
a =
b =

:

This is in response to your letter dated October 28, 1998, and prior correspondence on behalf of the Decedent's estate, requesting an extension of time under § 301.9100-1T of the Temporary 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 sever a trust under § 26.2654-1(b) of the Generation-Skipping Transfer Tax (GSST) Regulations.

Decedent died on date 1, survived by his spouse and three adult children.

Article IV of Decedent's will established three separate trusts for the benefit of his three children and their descendants. Each trust provides that the trustees are to pay the income at least annually to each child, if living, or, if not living, to his or her surviving descendants, per stirpes. If a child dies with no

descendants surviving, his or her trust shall terminate and the assets shall be divided equally between the trusts of the other two children. The trusts are to terminate 21 years after the death of the last to die of the Decedent's spouse and the Decedent's descendants who were living at the time of his death. At termination, the assets of the trusts are to be distributed to the income beneficiaries in the same ratio or percentage as each is then receiving income.

Article V of Decedent's will devised the residue of his estate to a trust for the benefit of his surviving spouse. The trustees are to pay all of the net income of the trust not less frequently than quarter annually to the surviving spouse and to pay to her, or apply for her benefit, such sums from the principal of the trust as they, in their sole discretion, deem advisable for certain purposes. Additionally, the trustees are required to pay to the surviving spouse the greater of \$5,000 or 5 percent of the principal and accumulated income of the trust valued annually. Upon the death of the surviving spouse, the assets of the trust are to be distributed in equal shares to the three trusts for the benefit of Decedent's children and their descendants.

Decedent's surviving spouse, as executrix, employed Decedent's accountant, a CPA, to prepare the estate tax return. The estate was granted an extension of time to file the return until date 2, and the return was filed on date 3. Each of the three trusts for the children was valued at \$a. The QTIP election was made with respect to the trust for Decedent's surviving spouse, which was valued at \$b. The preparer failed to inform the executrix of the need to file a Schedule R. Therefore, the reverse QTIP election was not made and no allocation was made of Decedent's generation-skipping transfer tax (GSST) exemption on the estate tax return. The estate tax return did not evidence any intent to divide the QTIP trust into an exempt trust and a nonexempt trust for GSST purposes. After the estate tax return was filed, the executrix sought the advice of an attorney for estate planning purposes. The attorney advised the executrix that a reverse QTIP election should have been made on a Schedule R.

Section 2601 imposes a tax on every generation-skipping transfer (GST) made after October 22, 1986.

Section 2631 provides a GST exemption of \$1,000,000 which may be allocated by the individual, or the individual's estate, to any property of which the individual is the transferor.

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

Section 2632(c) provides that any portion of an individual's GST exemption that has not been allocated by the individual, or the

individual's estate, will be allocated automatically at the individual's death, first, to property which is the subject of a direct skip occurring at the individual's death and, second, to trusts with respect to which the individual is the transferor and from which a taxable distribution or taxable termination might occur at or after the individual's death. Under § 26.2632-1(d) of the GST Regulations, no automatic allocation is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of a generation-skipping transfer with respect to the trust.

Under § 2056(b)(7), the full value of the property for which a qualified terminable interest property (QTIP) election is made is treated as passing to the surviving spouse. Therefore, when the surviving spouse transfers her interest during her life or at her death, she will be subject to the gift tax or the estate tax. In general, the transferor with respect to any GST is the individual last subject to the gift or estate tax by reason of a transfer of the property.

Section 2652(a)(3) provides that, with respect to a QTIP trust for which a deduction is allowed under § 2056(b)(7), the estate of the decedent may elect to treat all of the property in such trust for purposes of the GST 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 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 the QTIP trust. Section 26.2652-2(b) of the regulations provides that the reverse QTIP election is to be made on the return on which the QTIP election is made.

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. However, under § 26.2654-1(b), 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 purposes of the GST tax if--

(i) 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

(ii) 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; and

(A) the terms of the new trust provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust;

(B) the severance occurs (or a reformation proceeding, if required, is commenced) prior to the date prescribed for filing the Federal estate tax return (including extensions actually granted) for the estate of the transferor; and

(C) either--

(1) the new trusts are severed on a fractional basis; or

(2) if the severance is required (by the terms of the governing instrument) to be made on the basis of a pecuniary amount, the pecuniary payment is satisfied in a manner that would meet the requirements of § 26.2654-1(a)(1)(ii) if it were paid to an individual.

Section 301.9100-1T(f) of the Temporary Procedure and Administration Regulations provides that the Commissioner of Internal Revenue may, in the Commissioner's discretion, grant a reasonable extension of time 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, provided the taxpayer demonstrates to the satisfaction of the Commissioner that (1) the taxpayer has acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

Sections 301.9100-1T through 301.9100-3T provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. Section 301.9100-1T(d).

Section 301.9100-2T provides automatic extensions of time for making certain elections. Section 301.9100-3T provides extensions of time for making elections that do not meet the requirements of § 301.9100-2T.

Requests for relief under § 301.9100-3T will be granted when the taxpayer provides the evidence to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. Section 301.9100-3T(a).

Based on the facts submitted and representations made in this case, we conclude that the requirements of §§ 301.9100-1T and 301.9100-3T have been met. Accordingly, an extension of time for making the reverse QTIP election is granted until 30 days after the date of this letter, and an extension of time for commencing a judicial proceeding to sever the Trust is granted until 30 days after the date of this letter.

Generally, the extension of time for making the reverse QTIP election under § 2652(a)(3) does not extend the time for making the allocation of any remaining GST exemption. In the instant case, the executrix did not make any allocation of Decedent's GST exemption on the estate tax return as filed. Accordingly, in view of the reverse QTIP election under § 2652(a), the decedent's exemption remaining at the time of his death is automatically allocated to the children's trusts and the balance of the exemption will be allocated to the reverse QTIP trust in accordance with the rules of § 2632(c).

Except as we have specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

A copy of this letter should be forwarded to the district office where the Decedent's estate tax return was filed. A copy is enclosed for that purpose.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

Paul F. Kugler
Paul F. Kugler
Assistant Chief Counsel
(Passthroughs and Special
Industries)

Enclosures

Copy of letter
Copy for § 6110 purposes