

Internal Revenue Service
Index No.: 9100.00-00
 2652.01-02
 2654.00-00
Number: **199908017**
Release Date: 2/26/1999

Department of the Treasury

**P.O. Box 7604
Ben Franklin Station
Washington, DC 20044**

Person to Contact:

Telephone Number:

Refer Reply To:

**CC:DOM:P&SI:4 - PLR-115076-98
Date: November 23, 1998**

Re:

Legend:

This is in response to your submission of June 30, 1998, in which you requested a ruling under § 2652 of the Internal Revenue Code and § 301.9100-1 of the Procedure and Administration Regulations.

Decedent died testate on Date 1 survived by Spouse, Nephew, Nephew's Spouse, and Nephew's Daughter. Spouse died on Date 2. Under Decedent's will, her estate passed to a trust established under Trust Agreement. Article Sixth of Trust Agreement provides for the division of the trust estate into four parts. The first part is a Marital Trust to be funded with an amount equal to one-half of the Decedent's adjusted gross estate, less the value of all interests allowable as a federal estate tax marital deduction and passing outside of Article Sixth. The second part is a Credit Shelter Trust to be funded with the amount that would be exempt from federal estate tax by operation of Decedent's available unified credit. The third part is a charitable trust to be funded with 10% of the Decedent's adjusted gross estate. The fourth part is an outright gift to Nephew of the balance of the trust estate.

Under Article Sixth, paragraph I, during his life, Spouse is to receive all of the net income from the Marital Trust, at least annually. Spouse may also receive any amount of principal the trustee, in his sole discretion, deems necessary for Spouse's comfort, support, and maintenance. Upon Spouse's death, Article

Sixth, paragraph A.I.(E) provides that Marital Trust is to be divided into two separate equal parts, "QTIP One" and "QTIP Two." QTIP One is to be distributed outright to Nephew, if then living, or if not, to Nephew's Spouse, if then living, or if not, the corpus is to be added to QTIP Two. QTIP Two is to be held for Nephew's issue.

Under Article Sixth, paragraph II, with respect to the Credit Shelter Trust, during his life, Spouse may receive any amounts of income and principal the trustee, in his sole discretion, deems advisable for Spouse's care, comfort, support, maintenance, health, and welfare. Upon Spouse's death, the credit shelter trust passes to Nephew, if then living, or, if not, into trust for his issue.

On Schedule M of Form 706 (which was timely filed by the estate), the executor made an election under § 2056(b)(7) with respect to the entire value of the Marital Trust. A deduction under § 2056(a) was claimed for the amount passing to the trust.

Article Fourteenth, paragraph A of Trust Agreement authorizes the trustee to divide a trust into separate subshares, one exempt and one non-exempt from generation-skipping transfer (GST) tax. The executor, however, failed to indicate that the Marital Trust would be severed, failed to make to make an election under § 2652(a)(3) with respect to the Marital Trust, and failed to allocate Decedent's GST Exemption.

The estate proposes, pursuant to Article Sixth, A.I.(E) and Article Fourteenth of Trust Agreement, and in accordance with § 26.2654-1(b)(4), Example 1, of the Generation-Skipping Transfer Tax Regulations, to sever the Marital Trust into two equal trusts, "QTIP Part One" and "QTIP Part Two." QTIP Part One and QTIP Part Two will each consist of 50% of the value of the Marital Trust on the date of severance.

QTIP Part One and QTIP Part Two will both have the identical provisions under Article Sixth with regard to distributions from Marital Trust during Spouse's life. Further, any discretionary distribution of principal under Article Sixth must be made pro rata from each trust, and any estate taxes attributable to the inclusion of the trusts in Spouse's gross estate will be paid equally from both trusts. The remainder of QTIP Part One, after payment of estate taxes, will be distributed outright to Nephew and the remainder of QTIP Part Two, after payment of estate taxes, will continue in trust for the benefit of Nephew's issue.

The estate also proposes to make a "reverse" QTIP election under § 2652(a)(3) with respect to QTIP Part Two.

Decedent's estate requests an extension of time under

§ 301.9100-1 to sever the Marital Trust into QTIP Part One and QTIP Part Two and to make the reverse QTIP election under § 2652(a)(3) with respect to QTIP Part Two. In addition, the estate requests that we rule that under the automatic allocation rules contained in § 2632(c)(1), Decedent's GST Exemption under § 2631 is allocated pro rata between the Credit Shelter Trust and QTIP Part Two.

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 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.

Section 2056(b)(1) provides the general rule that no deduction shall be allowed 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 qualified terminable interest property, the entire property shall be treated as passing to the surviving spouse for purposes of § 2056(a) and no part of the property shall be treated as passing to any person other than the surviving spouse in a form described in § 2056(b)(1)(A).

Section 2056(b)(7)(B)(i) defines "qualified terminable interest property" (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)(B)(v) applies.

Section 2601 imposes a tax on every generation-skipping transfer. With regard to the generation-skipping transfer tax (GSTT), each individual is allowed an exemption of \$1,000,000 which may be allocated by such individual (or by his or her executor) to any property with respect to which such individual is the transferor.

Under § 2632(a), the allocation may be made at any time on or before the date prescribed for filing the individual's estate tax return (including extensions). Under § 2632(c) and § 26.2632-1(d)(2), any portion of an individual's GST exemption not allocated within the time prescribed in § 2632(a), is allocated pro rata on the basis of the value of the property as finally determined for federal estate tax purposes, first to

direct skips treated as occurring at the transferor's death. Any balance is allocated pro rata, on the basis of the value of the property as finally determined for federal estate tax purposes, to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. The automatic allocation is irrevocable. 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 generation skipping transfer with respect to the trust.

Section 2652(a)(3) provides that in the case of any trust with respect to which a deduction is allowed to the decedent's estate under § 2056(b)(7), the estate of the decedent may elect to treat all of the property in the trust, for purposes of the GSTT, as if the election to be treated as qualified terminable interest property 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 GSTT 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 26.2654-1(b)(1) provides rules pursuant to which the severance of a trust that is included in the transferor's gross estate into two or more trusts is recognized for purposes of chapter 13. If the governing instrument does not require severance, the trust must be severed pursuant to discretionary authority granted either under the governing instrument or under local law. The severance must occur (or a reformation proceeding be commenced) prior to the date prescribed for filing the federal estate tax return for the estate of the transferor. The trusts must either be severed on a fractional basis or a pecuniary basis (if so required by the governing instrument). If severed on a fractional basis, the separate trusts need not be funded with a pro rata portion of each asset held by the undivided trust.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner may 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, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

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

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

Requests for relief under § 301.9100-3 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. § 301.9100-3(a).

In this case, the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time is granted until 30 days from the date of this letter for (1) commencing the court proceeding to sever the Marital Trust into QTIP Part One and QTIP Part Two under § 26.2654-1(b)(1); and (2) making a reverse QTIP election under § 2652(a)(3) with respect to QTIP Part Two.

The election under § 26.2654-1(b)(1) must be made by attaching a statement to copies of the federal estate tax return and the Schedule R filed by the estate. The statement must indicate that a proceeding has been commenced to sever the Marital Trust and describe the manner in which the Marital Trust is proposed to be severed. A copy of the petition or other instrument used to commence the proceeding must also be attached.

We also rule that, under the automatic allocation rules contained in § 2632(c)(1), Decedent's GST Exemption under § 2631 is allocated pro rata between the Credit Shelter Trust and QTIP Part Two.

Except as 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.

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

Sincerely yours,

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

Enclosure

Copy for section 6110 purposes