

**Internal Revenue Service**

Department of the Treasury

Index Number: 9100.00-00; 2652.01-00;  
2632.03-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Number: **199908024**  
Release Date: 2/26/1999

Refer Reply To:  
CC:DOM:P&SI:4-PLR-117984-98  
Date:  
November 27, 1998

Re:

Legend

Decedent =

Spouse =

Daughter =

Date 1 =

Date 2 =

Date 3 =

Trust 1 =

EIN =

Trust 2 =

\$x =

\$y =

\$z =

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

This responds to a letter dated September 11, 1998, submitted by your authorized representative, requesting (1) rulings on the allocation of the generation-skipping transfer tax (GSTT) exemption under § 2632 of the Internal Revenue Code, and (2) an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make a “reverse” qualified terminable interest property (QTIP) election under § 2652(a)(3).

Decedent died testate on Date 1, survived by Spouse and Daughter. Decedent was the grantor of Trust 1, a grantor retained income trust. Daughter was the trustee of Trust 1. Article VI of Trust 1 provided that Decedent was to receive the trust income until Date 2 or the prior death of the Decedent. Upon the expiration of the trust term, Article VII provided that the trust assets were to be distributed to Daughter. Decedent died prior to Date 2, and Trust 1 was included in Decedent’s gross estate. The fair market value of the assets held in Trust 1 on the date of Decedent’s death is represented to be \$x. Pursuant to the terms of Trust 1, on Decedent’s death the trust corpus was distributed, free of trust, to Daughter. Decedent’s Form 706 allocated \$x of Decedent’s GSTT exemption to the assets passing to Daughter from Trust 1.

Decedent was also the grantor of Trust 2, a revocable trust created on Date 3. Upon Decedent’s death, Section 3.1 of Trust 2 provided for the creation of a Marital Trust and a Family Trust. According to the formula set forth in Section 3.1 of Trust 2, \$y was allocated to the Marital Trust and \$z was allocated to the Family Trust. Under Section 3.4, the Marital Trust provides that trust income is to be paid to Spouse during Spouse’s lifetime. In addition, trust principal may be distributed to Spouse at the discretion of the trustee. Upon Spouse’s death, the assets in the Marital Trust are to be distributed to or for the benefit of Decedent’s descendants pursuant to the Spouse’s exercise of a limited power of appointment. Assets not appointed by Spouse are to be held for the benefit of Daughter and Daughter’s issue as provided in Section 4 of Trust 2. The Family Trust also makes certain provisions for Spouse during Spouse’s lifetime, but also provides that if Spouse is the Trustee of the Family Trust, Spouse may distribute to Decedent’s descendants as much of the principal of the Family Trust as the Trustee deems necessary for their health, education, support and maintenance. Assets remaining in the Family Trust after Spouse’s death are also to be held for the benefit of Daughter and Daughter’s issue as provided in Section 4 of Trust 2.

Schedule M of Decedent’s Form 706 listed the Marital Trust and indicated that a QTIP election under § 2056(b)(7) was being made with respect to the Marital Trust. The box on Schedule R, Part I of Decedent’s Form 706 was not checked. Therefore, a “reverse” QTIP election under § 2652(a)(3) was not made with respect to the Marital

Trust.

You represent that Decedent's entire \$1,000,000 GSTT exemption was available for allocation at Decedent's death.

You request rulings that:

1. An extension of time be granted under § 301.9100-1 to make a reverse QTIP election under § 2652(a)(3);
2. The allocation of \$x of the GSTT exemption to assets passing outright to Decedent's Daughter is void because there was no GST potential with respect to such transfer at the date of Decedent's death; and
3. A GST exemption equal to \$y is allocated to the Marital Trust and \$z to the Family Trust under § 2632(c).

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 is 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 is treated as passing to the surviving spouse for purposes of § 2056(a) and no part of the property is treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) defines "qualified terminable interest property" as property: (1) that 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. Under

§ 2631(a), with regard to the generation-skipping transfer tax, each individual is allowed an exemption of \$1,000,000 that 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)(1), any portion of an individual's GSTT exemption not allocated within the time prescribed in § 2632(a), is allocated (A) first to property that 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 taxable termination might occur at or after such individual's death. Under § 2632(c)(2)(A), the allocation under paragraph (c)(1) is made among the properties described in subparagraph (A) thereof and the trusts described in subparagraph (B) thereof, as the case may be, in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of such properties or trusts. The term "nonexempt portion" means the value (at the time of allocation) of the property or trust, multiplied by the inclusion ratio with respect to such property or trust.

Section 26.2632-1(d) of the Generation-skipping Transfer Tax Regulations provides that an allocation is void if the allocation is made with respect to a trust that has no GST potential with respect to the transferor for whom the allocation is being made, as of the date of the transferor's death. For this purpose, a trust has GST potential even if the possibility of a GST is so remote as to be negligible.

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 GSTT exemption may be allocated to the QTIP trust.

Under § 301.9100-1(c), 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 November 6, 1998, for making an election under § 2652(a)(3) with respect to the Marital Trust.

However, an extension of time to make the “reverse” QTIP election under § 2652(a)(3) does not extend the time to make an allocation of any remaining GSTT exemption. Based on the above, we conclude that the allocation of \$x of Decedent’s GSTT exemption to the Trust 1 assets passing outright to Daughter is void, because there was no GST potential with respect to such transfer at the date of Decedent’s death. Further, Decedent’s available GSTT exemption is allocated under the automatic allocation provisions of § 2632(c). Accordingly, based solely on the information submitted and the representations made, we conclude that Decedent’s GSTT exemption is properly allocated as follows: (1) \$y to the Marital Trust, and (2) \$z to the Family Trust.

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(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this ruling has been sent to your authorized representative.

Sincerely yours,

---

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

Enclosure  
Copy for § 6110 purposes