

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09-PLR-144964-02

Date:

November 6, 2002

Legend

Decedent =

Date 1 =

Marital Trust =

Family Trust =

General Fund =

Generation-Skipping Fund =

Family Trust Childrens' Fund =

Family Trust Generation-Skipping Fund =

Date 2 =

\$x =

Dear :

This letter responds to your request, dated August 2, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a reverse qualified terminable interest property (QTIP) election under § 2652 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: Decedent died on Date 1. Under Article IV of Decedent's will, the residue of her estate shall be held in a trust which is to be divided into the Marital Trust and the Family Trust. The Marital Trust shall consist of that portion of the trust estate which is equal in value to the amount necessary to obtain a marital deduction sufficient to reduce the federal estate tax payable by reason of the decedent's death to zero or to the lowest possible amount.

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The Family Trust shall consist of the portion of the trust estate which is not distributed to the Marital Trust.

Article V, Section 1 provides that the Marital Trust shall be divided into two separate funds, the General Fund and the Generation-Skipping Fund. The trustee shall allocate to the Generation-Skipping Fund that portion of the trust estate equal in value to Decedent's generation-skipping transfer (GST) exemption which has not been allocated to the Family Trust or other property. The personal representative shall claim the GST exemption for the Generation-Skipping Fund pursuant to § 2652(a)(3). The balance of the Marital Trust shall be allocated to the General Fund. Decedent's estate represents that the entire trust estate of the Marital Trust will be required to fully fund the Generation-Skipping Fund.

Article V, Section 2 provides for income distribution to the spouse, not less often than quarter-annually. The trustee shall also pay to or for the benefit of the spouse such amounts of principal as the trustee believes advisable to provided for his health and support.

Article V, Section 3 provides the spouse, during his lifetime, with the right to withdraw such amounts of the principal of the General Fund as he requests in writing, provided that the total amount of such withdrawals does not exceed the greater of five thousand dollars or five per cent of the value of the principal of that fund on the last day of the calendar year. This right is noncumulative and shall lapse at the end of that calendar year to the extent it was not exercised within the calendar year.

Article V, Section 4 provides that upon the death of the spouse, all income accrued but undistributed shall be distributed to the personal representative of the spouse's estate.

Article V, Section 7 provides that upon the death of the spouse, all remaining principal and income of the Generation-Skipping Fund shall be distributed to the Family Trust Generation-Skipping Fund. Upon the distribution, the Marital Trust shall terminate.

According to Article V, Section 8, it is Decedent's intention that her personal representative elect to have the initial corpus of the Marital Trust qualify for the federal estate tax marital deduction as QTIP under § 2056(b)(7).

Decedent's Form 706, United States Estate (and Generation-Skipping) Tax Return was prepared by a qualified tax professional with additional input from the estate's legal counsel. The estate's personal representative, counsel, and accountant understood that the will specifically contemplated the reverse QTIP election for the Generation-Skipping Fund and that the election would be reflected on Schedule R of the estate's Form 706. However, the return preparer inadvertently failed to prepare

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Schedule R for the return as filed on Date 2. As a result, the reverse QTIP election was not made. Counsel for the personal representative of the estate subsequently discovered the omission of Schedule R.

Decedent's estate requests an extension of time to make a reverse QTIP election under § 2652(a)(3) thereby allowing the unused portion of Decedent's GST exemption to be allocated to the Generation-Skipping Fund.

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.

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

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST 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. Section 2631(b) provides that once an allocation of GST exemption is made, it is irrevocable.

Under § 2632(a), the allocation 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).

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Section 2632(e)(1) (designated as § 2632(c)(1) at the time of Decedent's death) 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 the individual's death, and (B) second, to trusts with respect to which the individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after the individual's death.

Section 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations supplies the method for the automatic allocation of any unused GST exemption. First, the exemption is allocated pro rata to direct skips on the basis of their values for estate tax purposes. The balance is then allocated pro rata, on the basis of estate tax values, to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. 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 any GST with respect to the trust. The automatic allocation is irrevocable.

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 GST tax, as if the election to be treated as QTIP 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 tax 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) provides that the reverse QTIP election is to be made on the return on which the QTIP election is made.

Under § 301.9100-1(c), the Commissioner may 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 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

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 a regulatory election.

Section 301.9100-2 provides for automatic extensions of time for making certain elections.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will

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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 have been satisfied. Therefore, an extension of time is granted until 30 days from the date of this letter for making a reverse QTIP election under § 2652(a)(3) with respect to the Generation-Skipping Fund. The election should be made on a supplemental Form 706 filed with the Service Center where the original Form 706 was filed. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for that purpose.

An extension of time to make the reverse QTIP election under § 2652 does not extend the time to make an allocation of any remaining GST exemption. In this case, no allocation of Decedent's available GST exemption was made on the Form 706. Therefore, the automatic allocation rules of § 2632(e) and § 26.2632-1(d)(2) operate to allocate Decedent's available exemption.

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.

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.

Sincerely,

Heather C. Maloy

Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)