

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:  
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Date:  
January 11, 2000

Legend:

- Estate =
- Decedent =
- Spouse =
- Co-Administrators =
- Date 1 =
- Date 2 =
- Trust 1 =
- Trust 2 =
- Trust 3 =
- Trust 4 =
- a =
- b =

Dear

This responds to your request, dated August 6, 1999, requesting 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) of the Internal Revenue Code.

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The Decedent died on Date 1, survived by Spouse. Article THIRD of the Decedent's will provides for all assets, other than the Decedent's tangible personal property, to pour over to Trust 1. Article FOURTH of Trust 1 provides for the fractionalization of Trust 1, under a formula, at the death of the Decedent. The residuary is referred to as Trust 4. Two fractional shares were created in accordance with Trust 1: Trust 2 and Trust 3. Both Trust 2 and Trust 3 meet the requirements of a qualified terminable interest property trust under § 2056(b)(7).

Sections 2 and 3 of Article FOURTH provide that during life, Spouse is to receive all of the net income from Trust 2 and Trust 3, at least quarterly. In addition, Spouse is entitled to distributions of principal, in the discretion of the independent trustee, from Trust 2 and Trust 3. Upon Spouse's death, Section (2)(b)(ii) of Article SECOND of Trust 1 provides that the balance of Trust 2 should be added to Trust 3 for administration and distribution. Furthermore, Section (3)(b)(ii) of Article SECOND of Trust 1 provides that the balance of Trust 3 should be added to Trust 4. Finally, Section (2) of Article FIFTH provides that Trust 4 is to be divided into shares for each of Decedent's children who survive Spouse, and for each of Decedent's children who predecease Spouse leaving descendants who survive Spouse.

The estate filed Form 706 on or about Date 2. On Schedule M of Form 706, the co-executors made an election under § 2056(b)(7) with respect to the entire value of Trust 2 and Trust 3, and claimed a deduction for this amount.

The co-executors failed to make an election under § 2652(a)(3) for Trust 2 and Trust 3. Under the allocation rules of § 2632(c), a of the Decedent's \$1,000,000 GST exemption was allocated to Trust 4. The remainder of the Decedent's GST exemption, b, was not utilized.

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

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.

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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” (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), any portion of an individual GST exemption not allocated within the time prescribed in § 2632(a), is allocated automatically.

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 the value of property. The balance is then allocated pro rata, on the basis of value, 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 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.

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.

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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 interest 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 ruling, for making an election under § 2652(a)(3) for Trust 2 and Trust 3.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. We note that 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 GST exemption. In the instant case, the co-executors did not make any allocation of the GST exemption on the estate tax return, but a of the Decedent’s \$1,000,000 GST exemption was automatically allocated to Trust 4. Accordingly, in view of the reverse QTIP election, Decedent’s remaining GST exemption, b, is allocated in accordance with the rules of § 2632(c) to Trust 2 and Trust 3.

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

Enclosures

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