

Internal Revenue Service

Number: **200535018**

Release Date: 9/2/2005

Index Number: 9100.22-00, 2642.00-00,
2652.01-02

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B09
PLR-161400-04

Date:
May 31, 2005

Legend

Decedent =
Trust 1 =
Marital Trust =
Date 1 =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Spouse =
Date 2 =

Dear :

This is in response to your letter dated November 19, 2004, and subsequent correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Decedent's generation-skipping transfer (GST) exemption to transfers to Trust 1 and an extension of time under § 2652 and § 301.9100-3 to make a reverse qualified terminable interest property (QTIP) election with respect to Marital Trust.

The facts and representations submitted are summarized as follows: On Date 1, Decedent created Trust 1, a trust with GST potential. Decedent made cash gifts to Trust 1 in Year 1, Year 2, Year 3, Year 4, Year 5, and Year 6. Decedent and Spouse consented to split gifts on each filed Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return (gift tax return), filed for the transfers to Trust 1. Spouse, intended and Decedent relied upon a qualified tax professionals to prepare the gift tax returns. The qualified tax professionals, inadvertently failed to properly allocate Decedent's generation-skipping transfer tax exemption to the transfers to Trust 1.

Decedent died on Date 2. A valid QTIP election was made with respect to Marital Trust on the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return (estate tax return). Marital Trust is a trust with GST potential. Spouse relied upon a qualified tax professional to prepare the estate tax return for Decedent's estate. The qualified tax professional inadvertently failed to make a reverse QTIP election for the GST exempt Marital Trust and to properly allocate Decedent's remaining GST exemption to that trust.

LAW AND ANALYSIS

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 for purposes of § 2056(b)(1)(A).

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 20.2056(b)-7(b)(2)(i) provides that a QTIP election may relate to all or any part of the property for which the surviving spouse has a qualifying income interest for life, provided that any partial election must be made with respect to a fractional or

percentage share of the property so that the elected portion reflects its proportionate share of the increase or decrease in value of the entire property for purposes of applying §§ 2044 or 2519. The fractional or percentage share may be defined by formula.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than the other spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States.

Section 2513(a)(2) provides that paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in subsection (b)) their consent to the application of paragraph (1) in the case of all such gifts made during the calendar year by either while married to the other.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall, by regulation, prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 2652(a)(1) provides, in relevant part, that for purposes of chapter 13, the term “transferor” means – (A) in the case of any property subject to the tax imposed by chapter 11, the decedent, and (B) in the case of any property subject to the tax imposed by chapter 12, the donor. An individual shall be treated as transferring any property with respect to which the individual is the transferor.

Section 2652(a)(3) provides that in the case of – (A) any trust with respect to which a deduction is allowed to the decedent under § 2056 by reason of subsection (b)(7) thereof, and (B) any trust with respect to which a deduction to the donor spouse is allowed under § 2523 by reason of subsection (f) thereof, the estate of the decedent or the donor spouse, as the case may be, may elect to treat all of the property in such trust for purposes of chapter 13 as if the election to be treated as qualified terminable interest property had not been made.

Section 26.2652-2(b) provides that a “reverse” QTIP election is made on the return on which the QTIP election is made.

Section 301.9100-1(c) provides that the Commissioner has discretion to 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 six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

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.

Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to

make an election described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will 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 that granting 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 to advise the taxpayer to make, the election.

CONCLUSION

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the representative of Decedent's estate is granted an extension of time of 60 days from the date of this letter to make allocations of Decedent's GST exemption to the Year 1 through Year 6 transfers to Trust 1 and to make a reverse QTIP election with respect to the GST exempt Marital Trust. A supplemental Form 709 should be filed with respect to Trust 1 for each year. Each Form 709 should include a Notice of Allocation properly allocating Decedent's GST exemption to the transfers to Trust 1. The allocations will be effective as of the date of the transfer, and the gift tax value of the transfer to the trusts will be used in determining the amount of GST exemption to be allocated to each trust. The inclusion ratio for each trust will be determined under §§ 2642(a) and 2642(b). In addition, a supplemental 706 should be on which the "reverse" QTIP election for the GST exempt Marital Trust should be made on Schedule. A copy of this letter should be attached to each supplemental form and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy is included for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer's representative.

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

Sincerely,

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

Enclosures

Copy of this Letter

Copy of this Letter for § 6110 purposes