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Internal Revenue Service

Department of the Treasury

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

UIL 2056.00-00

Person to Contact:

Telephone Number:

Refer Reply to:
CC:DOM:P&SI:7--PLR-120965-98

Date:
MAR 31 1999

Re:

Legend:

Estate:

TIN:

Decedent:

Spouse:

SSN:

Trustee:

Executor:

date 1:

date 2:

date 3:

Dear :

This is in response to your letter dated, , , requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make a qualified terminable interest property (QTIP) election under § 2056(b)(7), a reverse QTIP under § 2652(a)(3) of the Internal Revenue Code and to allocate the generation skipping transfer (GST) tax exemption permitted under § 2631 of the Internal Revenue Code to an exempt trust created under the Decedent's trust agreement as permitted by § 2632(a).

Decedent died on date 1 survived by Spouse. Article Three of the Decedent's trust agreement provided for a Family Trust and Exempt and Non-Exempt Marital Trusts. The Taxpayer represents that the Exempt Marital Trust qualified for a federal estate tax marital deduction under § 2056(b)(7). The Executor did not have extensive experience in the preparation of Form 706, United States Estate Tax Return (Return). The Executor was unaware of

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the complexities of the preparation of Form 706, and in particular, was unaware that accomplishing the estate and GST tax planning in the Trust was dependent on making proper elections on the Return. When Form 706 was timely filed on date 2, Schedules R and M were not filed with the Return. Schedule R permits a taxpayer to allocate the GST tax exemption among trusts and to make a reverse QTIP election. Schedule M permits the taxpayer to make a QTIP election. The Executor consulted with another attorney and discovered the errors in the filed Return. On date 3, within 6 months of date 2, Executor filed an amended Form 706 along with Schedules R and M reflecting the intended elections.

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 will, except as limited by § 2056(b), 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, but only to the extent that the interest is included in determining the value of the gross estate.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), the property shall be treated as passing to the surviving spouse and for purposes of § 2056(b)(1)(A), 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 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001. Such an election, once made, shall be irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that the election referred to in § 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by § 2001 (or § 2101). For purposes of § 20.2056(b)-7(b)(4)(i), the term "return of tax imposed by § 2001" means the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date.

Section 2044(a) provides that the value of the gross estate will include the value of any property to which this section applies in which the decedent had a qualifying income interest for life. Section 2044(b)(1)(A) says that § 2044 applies to any property if a deduction was allowed with respect to the transfer of the property to the decedent under § 2056 by reason of § 2056(b)(7).

Section 2601 imposes a tax on every generation-skipping transfer (GST) within the meaning of §§ 2611 through 2613.

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

Section 2632(a) provides that any allocation by an individual of his 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 2632(c)(1) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed in § 2632(a) shall be deemed to be allocated as follows-(A) first, to property which 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 a taxable termination might occur at or after the individual's death. Section 2632(c)(2)(A) provides that the allocation under § 2632(c)(1) shall be made among the properties described in § 2632(c)(1)(A) and the trusts described in § 2632(c)(1)(B), 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.

Section 2652(a)(3) provides a special election for qualified terminable interest property in the case of-(A) any trust with respect to which a deduction is allowed to the decedent under § 2056(b)(7), and (B) any trust with respect to which a deduction to the donor spouse is allowed under § 2523(f), 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. 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, that decedent's GST exemption may be allocated to that QTIP trust.

Section 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's discretion 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 Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) provides that the term "regulatory election" means an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

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

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government. Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. Section 301.9100-1(a).

In this case the requirements of § 301.9100-3 have been met. Therefore, an extension of time is granted, from date 2 until date 3, to make the QTIP election under § 2056(b)(7), the reverse QTIP election under § 2652(a)(3), and the GST tax exemption allocation.

Except as we have specifically ruled herein, we express or imply no opinion on the federal tax consequences of this transaction under the cited provisions or any other provisions of the Code.

This ruling letter 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,

(Signed) Paul F. Kugler

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