

**Internal Revenue Service**

Department of the Treasury

Index Number: 9100.00-00; 2652.01-02;  
2654.00-00

Washington, DC 20224

Number: **200032028**  
Release Date: 8/11/2000

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:DOM:P&SI:Br.4-PLR-104798-00  
Date:

May 12, 2000

Re:

Legend:

Decedent	=
Spouse	=
\$x	=
\$y	=
State	=
Date 1	=
Date 2	=
Date 3	=

Dear :

This is in response to your letter of February 25, 2000, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to sever a marital trust (Residuary Trust) into an Exempt Marital Trust and a Nonexempt Marital Trust under § 26.2652-2(c) of the Generation-Skipping Transfer Tax (GSTT) Regulations.

Decedent, a resident of State, died on Date 1 survived by Spouse. Under the terms of Decedent's 1984 will, after the specific bequest of tangible personal property to Spouse, Article IV of the will provides for the establishment of a Credit Shelter Trust. Under the terms of the Credit Shelter Trust, the net income of the trust is to be accumulated and added to principal of the trust until the principal of the Residuary Trust (established under Article V) is depleted. Thereafter, income and/or principal is to be paid to Spouse to provide for her maintenance and support. Upon Spouse's death, the income of the Credit Shelter Trust is to be paid one-half to Decedent's daughter, and one-fourth each to Decedent's two step-sons. Upon each beneficiary's respective

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death, their income share is to be paid to their respective issue until such issue attain the age of 25. At that time the issue will receive outright the principal of their respective shares.

Under the terms of Article V, the residue of Decedent's estate passed to a Residuary Trust. The trustees of the Residuary Trust are directed to pay all the income from the trust to Spouse, at least monthly during her lifetime. No person has a power to appoint any part of the property to any person other than the Spouse during the Spouse's lifetime. Upon Spouse's death, the principal of the Residuary Trust is to pass to the Credit Shelter trust to be administered under the terms thereof.

On or before Date 2, the executors of Decedent's estate filed the Decedent's federal estate tax return (Form 709). On Schedule M of the return the executors made a QTIP election with respect to the Article V Residuary Trust. The value of the trust as reported on the return was \$x. On Schedule R, the executors made the reverse QTIP election under § 2652(a)(3) with respect to the entire Residuary Trust, and allocated \$y of Decedent's GST exemption to the Residuary Trust.

The executors relied on tax professionals in the preparation and filing of Decedent's estate tax return. The tax professionals did not advise the executors about the possibility of making an election to sever the Residuary Trust into an exempt and a nonexempt portion. The executors did not revisit the issue again until Spouse died on Date 3. It was during the administration of Spouse's estate that the executors learned of the possibility of severing the Residuary Trust into an exempt and a nonexempt trust.

At the time the return was filed, § 26.2652-2(c) of the Generation-Skipping Transfer Tax Regulations had not been promulgated. Proposed regulation, § 26.2652-2(c), issued on December 24, 1992, provides a period of time until April 15, 1993, with respect to a trust for which a reverse QTIP election had been made prior to December 24, 1992, to be treated as two separate trusts. When § 26.2652-2(c) was finalized, it extended the period of time until June 24, 1996, for a trust for which a reverse QTIP election was made prior to December 27, 1995, to be treated as two separate trusts.

The executors of Decedent's estate have requested an extension of time to make the election under § 26.2652-2(c) to treat the Residuary Trust as two trusts. One trust will be an Exempt Marital Trust with an inclusion ratio of zero and the other trust will be a Nonexempt Marital Trust, with an inclusion ratio of one for purposes of the GSTT. The Exempt Marital Trust will be funded with an amount calculated by multiplying the current fair market value of the entire trust, plus the aggregate value of all principal distributions to Spouse during her lifetime, by a fraction which has \$y (the amount of GST exemption originally allocated to the Residuary Trust on the Decedent's estate tax return) as the numerator and \$x (the date of death value of the Residuary Trust as reported on the estate tax return) as the denominator.

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.

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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)(7) provides that, in the case of qualified terminable interest property, the 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. 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).

Section 2652(a)(3) provides that in the case of any trust with respect to which a deduction is allowed to the decedent 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 chapter, 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, a decedent's GST exemption may be allocated to the QTIP trust.

Section 26.2652-2(c) provides a special transitional rule in the case where a reverse QTIP election was made with respect to a trust prior to December 27, 1995. If GST exemption has been allocated to that trust, the transferor (or the transferor's executor) may elect to treat the trust as two separate trusts, one of which has an inclusion ratio of zero by reason of the transferor's GST exemption previously allocated to the trust. The separate trust with the inclusion ratio of zero consists of that fractional share of the value of the entire trust equal to the value of the nontax portion of the trust under § 26.2642-4(a). The reverse QTIP election is treated as applying only to the trust with the zero inclusion ratio. An election under this paragraph (c) is made by attaching a statement to a copy of the return on which the reverse QTIP election was made under § 2652(a)(3). The statement must indicate that an election is being made to treat the trust as two separate trusts and must identify the values of the two separate trusts. The statement is to be filed in the same place in which the original return was filed and must be filed before June 24, 1996.

In accordance with § 301.9100-1(a) of the Procedure and Administration

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Regulations, §§ 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 a regulatory election.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Under § 301.9100-3(a) requests for extensions of time for regulatory elections that do not meet the requirements for an automatic extension of time under § 301.9100-2, 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 the grant of relief will not prejudice the interests of Government.

Based on the information submitted and the representations made, we conclude that, the requirements of § 301.9100-1 and § 301.9100-3 have been met. Consequently, an extension of time for severing the Residuary Trust pursuant to § 26.2652-2(c), into an Exempt Marital Trust and a Nonexempt Marital Trust, is granted until 60 days after the date of 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.

Except as we have specifically ruled herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

A copy of this letter should be forwarded to the Service Center where the election is filed. A copy is enclosed for that purpose.

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

Enclosures

Copy for section 6110 purpose  
Copy of letter

cc: