

## Internal Revenue Service

Number: **201447008**

Release Date: 11/21/2014

Index Number: 2056.00-00, 2056.07-00,  
2056.07-02, 2652.01-00, 2652.01-02,  
2654.00-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

CC:PSI:04

PLR-104377-14

Date:

July 22, 2014

RE:

### Legend

Date 1	=
Decedent	=
Trust	=
Date 2	=
Date 3	=
Spouse	=
Accountant 1	=
Trust A	=
Son	=
Accounting Firm	=
Accountant 2	=
Date 4	=

Dear :

This letter responds to your authorized representative's letter of January 14, 2014, and other submissions, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to sever a trust into a qualified terminable interest (QTIP) trust and non-QTIP trust under § 20.2056(b)-7(b)(2)(ii) of the Estate Tax Regulations, and for additional rulings with respect to the severed trusts.

## FACTS

The facts and representations submitted are as follows.

On Date 1, Decedent executed a revocable trust, Trust. On Date 2, Decedent executed a sixth amended and restated declaration of Trust. Decedent died on Date 3, survived by Spouse.

Section 7.2 of Trust provides that if Spouse survives Decedent, the entire residue of the trust estate is to be held, administered and distributed in accordance with the provisions of Article 8 (Marital Trust). The co-trustees of Marital Trust are Spouse and Accountant 1.

Article 8 provides, in relevant part, that the trustee is to distribute all of the net income of Marital Trust to or for the benefit of Spouse, in convenient intervals, but not less often than monthly, during Spouse's lifetime. The trustee may also distribute to Spouse or for her benefit so much of the principal of Marital Trust for her health, maintenance and support in reasonable comfort. Upon the death of Spouse, after the payment of certain expenses, the balance of Marital Trust will be distributed to Trust A for the benefit of Decedent's son, Son. If Son does not survive Decedent, but leaves descendants surviving him, then the balance of the trust estate is to be divided among several grandchildren's trusts as stated in Section 8.10.

Section 8.3 provides that "[i]t is [Decedent's] intention that this MARITAL TRUST qualify, to the extent an election is made, for the federal estate tax marital deduction if the federal estate tax is applicable to [Decedent's] estate." Section 8.4 provides, in part, that the trustee "may elect to have a specific portion or all of the MARITAL TRUST (which portion is referred to as the "Qualified Share") treated as qualified terminable interest property for federal estate tax purposes." Section 8.4.C. provides that the division of MARITAL TRUST is to be made with such formalities and in the manner as will comply with the requirements of § 20.2056(b)-7(b)(2)(ii).

Section 8.4.D. provides, in part, that the trustee may also divide any trust created for the Qualified Share into separate sub-trusts, as of the Decedent's death, and each such trust shall be subject to the identical dispositive and administrative provisions during the lifetime of Spouse. However, the trustee may make different tax elections, including the allocation of the GST exemption, with respect to each separate trust. Any sub-trust to which a portion of Decedent's GST exemption has been allocated shall be referred to as a "GST Exempt Marital Trust." Any sub-trust to which no GST exemption has been allocated shall be referred to as a "Non GST-Exempt Marital Trust."

Spouse and Accountant 1 are the co-executors of Decedent's estate. Spouse engaged Accounting Firm to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Although Accountant 1 is a principal at Accounting Firm, Accountant 1 and Spouse represent that they relied on the estate planning expertise of Accountant 2 to prepare Decedent's Form 706. On Date 4, the Form 706 was timely filed on behalf of the estate. The Form 706 did not evidence any intent to divide Marital Trust into two separate trusts, a Qualified Share (QTIP Trust) and a non-Qualified Share (Non-QTIP Trust). On Schedule M, Accountant 2 mistakenly listed Marital Trust as property not subject to the QTIP election. Thus, no QTIP election was made with respect to Marital Trust. Also, Schedule R was not completed for Form 706. It is represented that Decedent had not allocated any of his GST exemption to lifetime transfers.

You have requested the following rulings:

1. An extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 20.2056(b)-7(b)(2)(ii) to sever the Marital Trust into a QTIP Trust and a Non-QTIP Trust, effective as of the date of Decedent's death.
2. An extension of time to make a QTIP election with respect to the QTIP Trust portion of the Marital Trust under § 2056(b)(7) of the Internal Revenue Code (Code).
3. An extension of time to sever the QTIP Trust into a GST Exempt QTIP Trust and a Non GST-Exempt QTIP Trust pursuant to § 26.2654-1(b)(1) of the Generation-Skipping Transfer Tax Regulations.
4. An extension of time to make a reverse QTIP election under § 2652(a)(3) with respect to the GST Exempt QTIP Trust.
5. An extension of time to allocate Decedent's available GST exemption to the GST Exempt QTIP Trust and to the Non-QTIP Trust portion of Marital Trust.

## LAW AND ANALYSIS

### Rulings 1 and 2

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 shall 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 such 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) such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A) no part of such property shall be treated as passing to any person other than the surviving spouse.

Under § 2056(b)(7) a marital deduction is allowed for qualified terminable interest property (QTIP), which is defined as property: (i) which passes from the decedent; (ii) in which the surviving spouse has a qualifying income interest for life; and (iii) to which an election under § 2056(b)(7)(B)(v) applies. Section 2056(b)(7)(B)(v) provides that an election 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)(2)(i) provides that the QTIP election may relate to all or any part of property that meets the requirements of § 2056(b)(7)(B)(i) provided that any partial election must be made with respect to a fractional or percentage share of the property. The fraction or percentage may be defined by a formula.

Section 20.2056(b)-7(b)(2)(ii)(A) provides that, in general, a trust may be divided into separate trusts to reflect a partial election that has been made, or is to be made, if authorized under the governing instrument or otherwise permissible under local law. Any such division must be accomplished no later than the end of the period of estate administration. If, at the time of the filing of the estate tax return, the trust has not yet been divided, the intent to divide the trust must be unequivocally signified on the estate tax return.

Section 20.2056(b)-7(b)(4)(i) provides that, in general, 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 this paragraph, 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.

Under section 301.9100-1(c) of the Procedure and Administration Regulations, 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 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 301.9100-2 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

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute).

Requests for relief under section 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 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.

In the present case, Section 8.4 of Trust specifically authorizes the trustee of Trust to elect to have a specific portion or all of Marital Trust treated as QTIP. This portion is to be referred to as the “Qualified Share.” Decedent’s Form 706 did not evidence any intent to divide Marital Trust into two separate trusts, a QTIP Trust and a Non-QTIP Trust. Moreover, Accountant 2 mistakenly listed Marital Trust as property not subject to the QTIP election. Thus, no QTIP election was made on Decedent’s Schedule M.

Based on the facts presented and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Decedent’s estate is granted 120 days from the date of this letter to sever Marital Trust into two trusts, a QTIP Trust and a Non-QTIP Trust. The severance will be effective as of the date of Decedent’s death for estate tax purposes. The severance should be made on a supplemental Form 706 within 120 days from the date of this letter unequivocally signifying the severance of Marital Trust. Moreover, we conclude that after Marital Trust has been severed into a QTIP Trust and Non-QTIP Trust, an extension of time of 120 days from the date of this letter is granted to make a QTIP election with respect to the QTIP Trust portion of the Marital Trust under § 2056(b)(7).

#### Rulings 3 through 5

Section 2601 imposes a tax on every generation-skipping transfer. Section 2611(a) provides that the term “generation-skipping transfer” means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term “applicable rate” means, with respect to any GST transfer, the product of the

maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

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

Section 2632(a) 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(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of 1 over the applicable fraction determined for the trust. Section 2642(a)(2) provides that, in general, the applicable fraction is a fraction the numerator of which is the amount of the GST exemption allocated to the trust and the denominator of which is the value of the property transferred to the trust, reduced by the sum of any federal estate tax or state death tax actually recovered from the trust attributable to such property, and any charitable deduction allowed under § 2055 or 2522 with respect to such property.

Section 2652(a)(1) provides that for purpose 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 such individual is the transferor.

Section 2652(a)(3) provides, in pertinent part, 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 such trust for GST tax purposes as if the election to be treated as qualified terminable interest property had not been made ("reverse" QTIP election).

Section 26.2652-2(a) provides, in part, that a "reverse" QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies. Section 26.2652-2(b) provides that an election under § 2652(a)(3) is made on the return on which the QTIP election is made.

Section 26.2654-1(b)(1) provides, in part, that the severance of a trust that is included in the transferor's gross estate (or created under the transferor's will) into two or more trusts is recognized for purposes of chapter 13 if the trust is severed pursuant to a direction in the governing instrument providing that the trust is to be divided upon the death of the transferor and the terms of the new trusts provide in the aggregate for

the same succession of interests and beneficiaries as are provided in the original instrument and the severance occurs prior to the date prescribed for filing the federal estate tax return (including extensions actually granted) for the estate of the transferor and the new trusts are severed on a fractional basis.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, Decedent's estate is granted an extension of time of 120 days from the date of this letter to file a supplemental Form 706 to sever the QTIP Trust into a GST Exempt QTIP Trust and a Non GST-Exempt QTIP Trust; to make a reverse QTIP election with respect to the GST Exempt Marital Trust; and allocate Decedent's available GST exemption to the GST Exempt QTIP Trust and to the Non-QTIP Trust portion of Marital Trust. The allocation will be effective as of Decedent's date of death, Date 3.

The supplemental Form 706 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

Except as expressly provided 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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lorraine E. Gardner  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)