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**Department of the Treasury**

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**Date:January 22, 1999**

Re:

Legend:

This is in response to your submission of November 30, 1998, and prior correspondence in which you requested a ruling under § 2652 of the Internal Revenue Code and § 301.9100-1 of the Procedure and Administration Regulations.

Decedent died testate on Date 1 survived by Spouse. Article Sixth of Decedent's will provides that the residue of Decedent's estate is to pass to a trust for the benefit of Spouse. Article Eighth provides that the trustee is to hold the property in one or more trusts as the trustee in his discretion shall determine to be advisable for the purpose of minimizing the generation-skipping transfer tax.

During her life, Spouse is to receive all of the net income from the trust, at least annually. Upon Spouse's death, Article Eighth of Decedent's will provides that any accumulated income in the trust is to be distributed to Spouse's estate. The remainder of the trust, after payment of taxes, is to be distributed for the benefit of Decedent's issue.

On Schedule M of Form 706 timely filed by the estate, the executors made an election under § 2056(b)(7) with respect to the entire value of the trust. A deduction under § 2056(a) was claimed for this amount. The executors, however, failed to make an election under § 2652(a)(3) with respect to the trust. On November 30, 1998, the estate filed an amended Schedule R, that signifies that a reverse QTIP election is being made with respect to the trust.

The Decedent's personal representatives request an extension of time under § 301.9100-1 to make an election under § 2652(a)(3) with respect to the trust.

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 in a form described in § 2056(b)(1)(A).

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. Under § 2631, 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's GSTT exemption not allocated within the time prescribed in § 2632(a), is allocated in accordance with that section.

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 GSTT exemption may be allocated to the QTIP trust.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, 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.

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 interests 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 November 30, 1998, for making an election under §2652(a)(3) with respect to the Marital Trust.

Except as specifically ruled herein, we express 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 GSTT exemption. In the instant case, the executors did not make any allocation of the GSTT exemption on the estate tax return. Accordingly, in view of the reverse QTIP election, Decedent's available GSTT exemption is allocated in accordance with the rules of § 2632(c).

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 yours,

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(Passthroughs and Special  
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Enclosure

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