

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:4

PLR-113548-18

Date:

October 17, 2018

RE:

### Legend 1

Decedent =  
Spouse =  
Trust =  
Date 1 =  
Date 2 =  
CPA =

Dear :

This letter responds to your personal representative's letter of April 17, 2018, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to file the notice and certification required under § 20.2056A-10(a)(2) of the Estate Tax Regulations that Spouse has become a United States citizen.

The facts and representations submitted are as follows:

On Date 1, Decedent died, survived by spouse (Spouse). Spouse was not a citizen of the United States at that time. On Schedule M of Decedent's Form 706, the estate claimed a marital deduction for property passing to a Qualified Domestic Trust (QDOT), Trust. On Date 2, Spouse became a United States citizen. Spouse has continuously resided in the United States from Date 1. Spouse was not aware of the notice and certification requirements under § 20.2056A-10(a)(2) and was not advised by her CPA.

Spouse is requesting an extension of time under §301.9100-3 to file the notice and certification required under § 20.2056A-10(a)(2).

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(d)(1)(A) provides that if the surviving spouse is not a citizen of the United States, the marital deduction is not allowed under § 2056(a), unless the property passes to the surviving spouse in a qualified domestic trust.

Under § 2056A, a qualified domestic trust is any trust in which: (1) the trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or domestic corporation and that no distribution other than a distribution of income may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the additional estate tax imposed by § 2056A(b)(1) on the distribution; (2) the trust must meet the requirements that are prescribed under Treasury regulations to ensure the collection of the tax imposed by § 2056A(b); and (3) the executor must make the election prescribed by § 2056A(d) to treat the trust as QDOT.

Under § 2056A(d) and § 20.2056A-3(a) of the Estate Tax Regulations, the election to treat a trust as a QDOT must be made on the last federal estate tax return filed before the due date (including extensions of time to file actually granted) or, if a timely return is not filed, on the first federal estate tax return filed after the due date. The election, once made, is irrevocable. No election may be made if the return is filed more than one year after the due date of the return.

Under § 2056A(b)(1)(A), an estate tax is imposed on any distribution of principal from the qualified domestic trust (other than on account of hardship) before the date of death of the surviving spouse. In addition, under § 2056A(b)(1)(B) an estate tax is imposed on the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse.

Under § 2056A(b)(12) and § 20.2056A-10(a)(1) and (2), a QDOT is no longer subject to the estate tax imposed under § 2056A(b) if the surviving spouse becomes a citizen of the United States, and the spouse was a resident of the United States at all times after the death of the decedent and before becoming a United States citizen, and the U.S. Trustee of the qualified domestic trust notifies the Internal Revenue Service and certifies in writing that the surviving spouse has become a United States citizen. Notice is to be made by filing a final Form 706-QDT on or before April 15th of the calendar year following the year that the surviving spouse becomes a citizen, unless an extension of time of up to 6 months for filing is granted under § 6081.

Section 301.9100-1(c) provides that the Commissioner 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 six months except in the case of a taxpayer who is abroad), under all subtitles of the 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). The time for filing the notice required under § 20.2056A-10(a)(2) is not expressly prescribed by statute. Accordingly, co-trustees may seek an extension of time to file the required notice and certification with the Internal Revenue Service that Spouse has become a United States citizen.

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 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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the co-trustees are granted an extension of time of 120 days from the date of this letter to file with the Internal Revenue Service the required notice and certification that Spouse has become a citizen of the United States. The required notice and certification should be made on a Form 706-QDT. The Form 706-QDT should be filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the Form 706-QDT. A copy is enclosed for this purpose.

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

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.

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.

Sincerely,

Associate Chief Counsel  
(Passthroughs and Special Industries)

*Melissa Liquerman*

By: \_\_\_\_\_

Melissa Liquerman, Chief Branch 4  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes  
Copy of this letter

cc: