

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-111633-20

Date:

November 03, 2020

RE:

### Legend

Decedent =

Spouse =

Trust =

Date 1 =

Date 2 =

CPA Firm =

Dear :

This letter responds to a letter dated December 6, 2019, submitted on behalf of Decedent's estate, requesting an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make a qualified terminable interest property (QTIP) election under § 2056(b)(7) of the Internal Revenue Code.

The facts and representations submitted are as follows. On Date 1, Decedent executed a last will and testament and also established a revocable trust, Trust. Under Decedent's will, Decedent bequeathed certain tangible property to Spouse and the residue to Trust. Trust became irrevocable upon Decedent's death on Date 2.

Article First (A) of Trust provides that upon the death of Decedent, the entire trust estate is to be held as a Marital Trust and all the income is to be paid to Spouse for life. Under Article First (C) the trustee of Trust may elect under section 2056(b)(7) of the Internal Revenue Code to treat all or part of Marital Trust as qualified terminable interest property.

Spouse, in his capacity as personal representative of the estate and trustee of Trust, retained CPA firm and an estate tax attorney. Spouse was not advised to file a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for Decedent's estate. CPA firm subsequently prepared a Form 706 and Spouse filed the return pursuant to Rev. Proc. 2017-34. The Form 706 reported Decedent's Marital Trust assets as "all other property" on Schedule M and reported no "QTIP property." A marital deduction was claimed for all property and a corresponding DSUE election accounted for this deduction. CPA firm discovered the mistake on resent review.

Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 to make a QTIP election under § 2056(b)(7) to treat Marital Trust as QTIP property.

## 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 shall, 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 which 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.

Section 2056(b)(7)(B)(i) defines the term "qualified terminable interest property" as property: (I) which passes from the decedent; (II) in which the surviving spouse has a qualifying income interest for life as defined in § 2056(b)(7)(B)(ii); and (III) to which an election under § 2056(b)(7) 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, 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. 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.

Section 301.9100-1(c) provides that 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 six 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 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute).

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 that granting 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, Spouse, as the personal representative of Decedent's estate, is granted an extension of time of 120 days from the date of this letter to make a QTIP election with respect to Marital Trust.

The election should be made on a supplemental Form 706 filed with the Internal Revenue Service Center at the following address: Department of the Treasury, Internal Revenue Service Center, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. 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, including any issues pertaining to the Form 706 as filed.

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.

This ruling is directed only to the Taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: Melissa Liquerian  
Melissa Liquerian  
Branch Chief, Branch 4  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy for § 6110 purposes  
Copy of this letter

cc:

cc: