

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:4 – PLR-116096-04

Date: JULY 12, 2004

In Re:

Re:

Date of death:

Legend:

Decedent	=
State	=
Attorney	=
Spouse	=
Representative	=
Company	=
Savings Plan	=

Individual Retirement Account	=
Retirement Account	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=

Dear ,

This is in response to your submission dated March 17, 2004, and previous correspondence, submitted on behalf of Decedent's estate, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file the

Agreement to Pay Section 2056A Estate Tax and the Information Statement required under § 20.2056A-4(c)(2)(i)-(iii) of the Estate Tax Regulations.

The facts, representations, and affidavits submitted are summarized as follows: Decedent, a United States citizen, died testate on Date 1. Decedent was survived by his spouse (Spouse) and two children. At the time of Decedent's death, Spouse was not a United States citizen. The Decedent's Will named Spouse as Executrix.

Under the terms of Decedent's will, all of Decedent's assets passed outright to Spouse. In addition, Spouse was designated as the primary beneficiary of three retirement accounts: 1) Decedent's Savings Plan that is represented to be a qualified profit sharing plan within the meaning of section 401(a) of the Internal Revenue Code; 2) Individual Retirement Account; and 3) Retirement Account. Spouse and Decedent also held several parcels of real estate and bank investment accounts as joint owners with rights of survivorship. Spouse was the primary beneficiary of several insurance policies that Decedent held at the time of his death.

On Date 2, Spouse retained Company to prepare and file the federal and state estate tax returns for Decedent's estate. Representative, who was an employee of Company, was the person responsible for preparing and filing the estate tax return for Decedent's estate. It is represented that Spouse and her children understood that Representative was an expert in estate tax return preparation.

On Date 3, Representative filed an Application for Extension of Time to File a Return and/or Pay United States Estate (and Generation-Skipping Transfer) Tax that was granted. On Date 4, within one year of the due date of the return, including extensions, Representative filed a federal estate tax return for Decedent's estate. The only asset that was listed on Schedule M (Marital Deduction) of the return as qualifying for the marital deduction as qualified domestic trust (QDOT) property was the Savings Plan. However, the Agreement to Pay Section 2056A Estate Tax, and the Information Statement, required under § 20.2056A-4(c)(2) in order for the Savings Plan to qualify for the estate tax marital deduction, were not filed with the return.

Spouse subsequently obtained new counsel (Counsel). After reviewing Representative's file, Counsel submitted a letter ruling request on Date 8. The ruling request seeks an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file the agreement and information statement required under § 20.2056A-4(c)(2) with respect to the Savings Plan.

Section 2001 imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2031(a) provides that the value of the gross estate of the decedent shall be determined by including to the extent provided, the value at the time of the

decedent's death of all property, real or personal, tangible or intangible, wherever situated.

Under § 2056(a), for purposes of the tax imposed by § 2001, the value of the taxable estate is determined, except as limited by § 2056(b), 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.

Sections 2056(d)(1) and (d)(2) provide that where the surviving spouse of a decedent is not a United States citizen, the marital deduction is disallowed unless property passes to the surviving spouse in a qualified domestic trust (QDOT). Property is treated as passing to the surviving spouse in a QDOT if such property passes to the spouse and the spouse transfers the property to a QDOT before the date on which the estate tax return is filed or the spouse irrevocably assigns the property to a QDOT, on or before the date the estate tax return is filed.

Under § 2056A(a) a QDOT is a trust under which the trust instrument requires that at least one trustee of the trust be an individual citizen of the United States or a domestic corporation, and provides 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 domestic corporation has the right to withhold from such distribution the tax imposed under § 2056A(b) on the distribution. In addition, the trust must meet such requirements as the Secretary may by regulations prescribe to ensure the collection of any tax imposed by § 2056A(b). Finally, an election under § 2056A(d) to treat the trust as a QDOT must be made by the executor of the decedent with respect to the trust.

Section 2056A(b)(1), in general, imposes an additional estate tax on distributions of corpus from a QDOT during the spouse's lifetime, and on the value of the QDOT on the date of death of the surviving spouse.

Under section 20.2056A-4(c)(1), in the case of a plan, annuity, or other arrangement which is not assignable or transferable (or is treated as such), the property passing under the plan from the decedent is treated as passing in the form of a QDOT if the requirements of § 20.2056-4(c)(2) are satisfied.

Section 20.2056A-4(c)(2)(i)-(iv) provides the following requirements: (i) the noncitizen surviving spouse agrees to pay on an annual basis, the estate tax imposed under section 2056A(b)(1) due on the corpus portion, as defined in § 20.2056A-(c)(4), of each nonassignable annuity or other payment received under the plan or arrangement; (ii) the executor files with the estate tax return, the Information Statement described in § 20.2056A-4(c)(5); (iii) the executor files with the estate tax return the Agreement To Pay Section 2056A Estate Tax described in § 20.2056A-4(c)(6); and (iv) the executor

makes the election under § 2056A(d) with respect to the nonassignable annuity or other payment.

Under § 301.9100-1(c), 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 301.9100-1 through 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).

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 must be made under the rules of section 301.9100-3.

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.

Section 301.9100-3(c)(1) provides the standards the Commissioner will use to determine when the interests of the Government are prejudiced.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time is granted until 60 days from the date of this letter to file the Agreement to Pay Section 2056A EstateTax and the Information Statement required under §§ 20.2056A-4(c)(2)(i)-(iii). If the requirements of § 20.2056A-4(c)(2) are satisfied, the Savings Plan property will be treated as passing in the form of a QDOT.

The documents should be filed with a supplemental Form 706. The supplemental Form 706 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

The ruling contained in this letter is 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 specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction or 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) provides that it may not be used or cited as precedent.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copies of this letter

cc:

cc: