

Internal Revenue Service

Department of the Treasury

Number: **200146015**
Release Date: 11/16/2001
Index Number: 2056.19-02

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:9-PLR-117306-01

Date:

July 5, 2001

LEGEND

Decedent =
Spouse =

Dear :

This is in response to your letter dated February 13, 2001, and subsequent correspondence, in which you requested an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make a qualified domestic trust ("QDOT") election pursuant to section 2056A(d) of the Internal Revenue Code ("Code").

The facts and representations submitted are summarized as follows. Decedent died survived by Spouse, who was not a United States citizen at the time of Decedent's death. Pursuant to the terms of Decedent's will, Decedent's entire estate passed to Spouse. Approximately one month after its due date Spouse, as executor of Decedent's estate, filed the Form 706, Federal Estate (and Generation-Skipping Transfer) Tax Return. The Form 706 was prepared by a tax practitioner. A marital deduction was claimed on Part 1 of Schedule M for Decedent's entire gross estate. Spouse did not make a QDOT election on the Form 706 for any of the property for which a marital deduction was claimed.

Within one year of the due date of the Form 706 the following events occurred. Spouse established a QDOT described in section 2056A(a) of the Code and simultaneously conveyed Decedent's interest in the family home to the QDOT. Spouse did not irrevocably assign or convey the remaining assets in Decedent's estate to the QDOT. Spouse, as executor, filed an amended Form 706 making a QDOT election under section 2056A(d) for Decedent's interest in the family home. The amended Form 706 did not claim a marital deduction for the remaining assets in Decedent's estate. Shortly thereafter, Spouse became a United States citizen.

You have requested an extension of time to make the QDOT election under section 2056A(d) to the date the amended Form 706 was filed and an extension of time to convey Decedent's interest in the family home to the QDOT to the date such conveyance occurred.

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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 section 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 to the extent such interest is included in determining the value of the gross estate.

Sections 2056(d)(1)(A) and 2056(d)(2)(A) provide that if the surviving spouse of the decedent is not a United States citizen, the marital deduction is not allowed under section 2056(a), unless the property passes to the surviving spouse in a QDOT.

Section 2056(d)(2)(B) provides that if any property passes from the decedent to the surviving spouse of the decedent, for purposes of section 2056(d)(1)(A), such property shall be treated as passing to such spouse in a QDOT if - (1) such property is transferred to such a trust before the date on which the return of the tax imposed by this chapter is made, or (ii) such property is irrevocably assigned to such a trust under an irrevocable assignment made on or before such date which is enforceable under local law.

Under section 2056A(a), a QDOT is any trust in which: (1) 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 income) may be made from the trust unless a United States trustee has the right to withhold from such distribution the tax imposed on the distribution; (2) the trust meets the requirements as the Secretary may by regulations prescribe to ensure collection of the tax imposed by section 2056A(b); and (3) an election is made by the executor of the decedent with respect to the trust.

Section 2056A(d) provides that an election under section 2056A with respect to any trust is to be made by the executor on the return of tax imposed by section 2001. Such an election, once made is irrevocable. No election may be made under section 2056A on any return if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return.

Section 20.2056A-3(a) provides that 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.

Section 20.2056A-4(b)(6) provides that property irrevocably assigned but not actually transferred to the QDOT before the estate tax return is filed must be conveyed and transferred to the QDOT under applicable local law before the administration of the decedent's estate is completed. If there is no administration of the decedent's estate,

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the conveyance must be made on or before the date that is one year after the due date (including extensions) for filing the decedent's estate tax return. If an actual transfer to the QDOT is not timely made, the marital deduction is not allowed. Section 20.2056A-4(b)(6) further provides that an extension of time for completing the conveyance, or a waiver of the actual conveyance, may be requested by the decedent's estate under specified circumstances under section 301.9100-1(a).

Under section 301.9100-1(c) of the Procedure and Administration Regulations the Commissioner may grant a reasonable extension of time under the rules set forth in section 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 Code except subtitles E, G, H, and I.

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

Section 301.9100-3(a) provides, in pertinent part, 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 subject to 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) provides that except as provided in section 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Internal Revenue Service; or (v) 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 in pertinent part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

The requirements of sections 301.9100-1 and 301.9100-3 have been met. An extension of time, therefore, is granted to make the QDOT election under section 2056A(d) to the date the amended Form 706 was filed and an extension of time to convey Decedent's interest in the family home to the QDOT to the date such conveyance occurred.

Except as expressly provided herein, no opinion is expressed or implied concerning the

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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. Specifically, no opinion is expressed or implied concerning the qualifications of the QDOT established herein.

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.

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

Sincerely,
Paul F. Kugler
Associate Chief Counsel
Passthroughs and Special Industries

Enclosure: Copy for section 6110 purposes