

Internal Revenue Service

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In Re:

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-119741-18

Date:
December 17, 2018

LEGEND:

Decedent =
Spouse =
Date 1 =
Date 2 =
Will =
Trust =

Marital Trust =
X =
Foundation =
Child =
A =
Attorney =

Dear :

This letter responds to your authorized representative's letter of June 13, 2018, 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. Decedent died on Date 1 survived by Spouse.

Pursuant to Article III of Decedent's will, all of Decedent's estate passed to Trust. Spouse is designated as the Personal Representative of the estate.

Under Section 3.C(3) of Trust, a trust (Marital Trust) is to be established for the lifetime benefit of Spouse. All of the net income of the Marital Trust is to be paid to Spouse at least quarterly. In addition, the co-trustees may pay or expend for Spouse so much or all of the Marital Trust principal as the co-trustees may deem advisable for Spouse's health, maintenance, or support. On Spouse's death, \$x of the Marital Trust property is to be distributed to Foundation. The Marital Trust will then terminate, and the remaining property will be distributed to Child or Child's issue, by right of representation. Spouse and A are the co-trustees of Trust and the Marital Trust.

Under Section 3.C(3)(e) of Trust, the Personal Representative and/or Successor Co-Trustees are authorized to elect to claim the marital deduction under § 2056(b)(7) with respect to part, all, or none of the property that passes to Marital Trust.

Attorney was engaged to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for Decedent's estate. On Schedule M, the value of the property passing to the Marital Trust was listed as property other than QTIP property, and for which no QTIP election was made.

You have requested an extension of time under §§ 301.9100-1 and 301.9100-3 to make a QTIP election under § 2056(b)(7) to treat the Marital Trust property 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.

In the present case, the Marital Trust was created for the benefit of Spouse. Although it was identified on Schedule M, the return did not include a QTIP election for the Marital Trust property.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the executor 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 the Marital Trust.

The election should be made on a supplemental Form 706 filed with the Cincinnati

Service Center at the following address: Internal Revenue Service Center, Cincinnati, OH 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 ruling, it is subject to verification on examination.

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.

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,

Associate Chief Counsel
(Passthroughs and Special Industries)

Melissa C. Liquerman

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

Enclosure

Copy of letter for 6110 purposes

cc: