

## Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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PLR-161321-04

Date:

May 25, 2005

Re:

### Legend:

Decedent -

Spouse -

Revocable Trust -

Marital Trust A -

Marital Trust B -

Date 1 -

Date 2 -

Date 3 -

Asset -

Dear :

This is in response to your letter, dated November 15, 2004, submitted on behalf of Decedent's estate, requesting a ruling concerning the estate tax treatment under section 2056(b)(7) of the Internal Revenue Code of the funding of a trust.

The facts and representations submitted are summarized as follows: On Date 1, Decedent executed Revocable Trust, a revocable trust under which Decedent was both the grantor and trustee. Decedent died on Date 2, survived by Spouse. Decedent's United States Estate (and Generation-Skipping Transfer) Tax Return, Form 706, was timely filed on Date 3.

PLR-161321-04

Under the terms of Decedent's will, the residuary estate passed to Revocable Trust, which distributed its assets to three trusts; a credit shelter trust, Marital Trust A, and Marital Trust B. Because Decedent utilized the full gift and estate tax exemption prior to death, the credit shelter trust was not created or funded. Consequently, the assets of the Revocable Trust funded both Marital Trust A and Marital Trust B. Marital Trust A was to be funded with Revocable Trust assets in an amount that was equivalent to the Decedent estate's available generation-skipping transfer (GST) tax exemption. The balance of the Revocable Trust would fund Marital Trust B.

Article VII of Revocable Trust provides that the net income of Marital Trusts A and B will be paid to Spouse in periodic installments, not less often than annually. In addition, the trustee may distribute principal to Spouse for Spouse's health, support or maintenance. In the event the trustee elects to value less than all of a marital trust as qualified terminable interest property (creating a qualified and nonqualified portion), then after fifteen months following Decedent's death, Spouse may, for any reason, withdraw any portion of the principal of the nonqualified portion of a marital trust. Further, Spouse has the annual noncumulative right to withdraw from the trust principal an amount described under § 2514(e), which currently is up to the greater of \$5,000 or five percent of the value of the trust corpus. Upon Spouse's death, the balance of Marital Trusts A and B will be distributed to or for the benefit of one or more of Decedent's descendants, their spouses, or one or more organizations described in §§ 170(c), 2055(a) and 2522(a) as the Spouse may appoint by will or an inter vivos instrument. In the event Spouse does not exercise the limited power of appointment, the assets of Marital Trusts A and B will be distributed pursuant to specified provisions governing the distribution of assets of the credit shelter trust in Revocable Trust.

On Schedule M of Decedent's Form 706, the estate elected to treat Marital Trusts A and B as qualified terminable interest property (QTIP) trusts as described under § 2056(b)(7).

Subsequent to filing the estate tax return, the estate's personal representative discovered that Asset, a promissory note, had inadvertently not been included on Decedent's Form 706. It is represented that, if the existence of Asset had been known when the estate tax return was filed on Date 3, Asset would have funded Marital Trust B and would have been listed on Schedule M of Form 706 as qualified terminable interest property.

You request a ruling that the QTIP election will be treated as made with respect to Asset passing to Marital Trust B when the QTIP election was made on Decedent's Form 706 with respect to the property in Marital Trust B. You represent that, upon receiving the requested ruling, Decedent's estate will file a supplemental Form 706 in order to report the inclusion of Asset in Decedent's gross estate.

PLR-161321-04

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 defined in § 2056(b)(7)(B)(i), 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; and (III) to which an election under § 2056(b)(7) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if: (I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property; and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

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.

As noted above, Decedent's estate timely filed the Form 706 on which the QTIP election was made with respect to Marital Trust A and Marital Trust B. The subsequent discovery of Asset resulted, pursuant to the terms of Decedent's will and Revocable Trust, in additional funding of Marital Trust B for which the QTIP election had already been properly made.

Consequently, upon Decedent's estate filing a supplemental Form 706 in order to report the inclusion of the value of Asset in Decedent's gross estate as an asset of the Marital Trust, the QTIP election will be treated as made with respect to all of the property in Marital Trust B, including Asset.

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 form. A

PLR-161321-04

copy is enclosed for this purpose.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. Specifically, we express or imply no opinion on whether Asset qualifies as qualified terminable interest property for the deduction under § 2056(b)(7).

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.

Sincerely,

Lorraine E. Gardner  
Senior Counsel, Branch 4  
Associate Chief Counsel  
Passthroughs and Special Industries

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: