

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-146159-05

Date: NOVEMBER 14, 2005

In Re:

Legend:

Decedent =

Will =

Credit Shelter Trust =

Spouse =

Attorney =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This is in response to a letter dated July 28, 2005, and subsequent correspondence, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make a qualified terminable interest (QTIP) election under §2056(b)(7) of the Internal Revenue Code.

Facts

The facts submitted and representations made are as follows. Decedent died testate on Date 1, survived by Spouse.

Decedent's Will provided for the establishment of Credit Shelter Trust to be funded with a pecuniary amount. The residue of Decedent's estate passed outright to Decedent's surviving spouse (Spouse), as did certain nonprobate property. Under the terms of Credit Shelter Trust, all trust income is to be paid to Spouse at least quarterly. On Spouse's death, the trust corpus is to be distributed to Decedent's children.

The Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return filed for Decedent's estate was prepared by Attorney and filed on Date 2. On the Form 706, the estate reported adjusted taxable gifts made by Decedent during her lifetime and claimed a marital deduction on Schedule M for the value of the property passing outright to Spouse. However, the return erroneously reported that the estate tax liability was zero. Spouse died on Date 3.

Shortly after filing the Decedent's Form 706, Attorney determined that, because Decedent had made adjusted taxable gifts, the estate tax liability would not be reduced to zero unless a qualified terminable interest property (QTIP) election under § 2056(b)(7) is made for a fractional portion of Credit Shelter Trust.

Decedent's estate has requested an extension of time under §§ 301.9100-1 and 301.9100-3 to make a qualified terminable interest property (QTIP) election under § 2056(b)(7).

Law and Analysis

Section 2056(a) provides that the value of the taxable estate is, except as limited by § 2056(b), determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes from the decedent to the surviving spouse.

Under § 2056(b)(1), if an interest passing to the surviving spouse will terminate, no deduction is allowed with respect to the interest if, after termination of the spouse's interest, an interest in the property passes or has passed from the decedent to any person other than the surviving spouse (or the estate of the spouse).

Section 2056(b)(7) provides an exception to the "terminable interest" rule contained in § 2056(b)(1). Under § 2056(b)(7), qualified terminable interest property is treated as passing to the surviving spouse and no part of the property is treated as passing to any person other than the surviving spouse. Section 2056(b)(7)(B)(i) defines qualified terminable interest property as property that passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which an election described in § 2056(b)(7)(B)(v) applies. Under § 2056(b)(7)(B)(ii), the surviving spouse has a qualifying income interest for life if (I) the surviving spouse is entitled for life 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.

Under § 2056(b)(7)(B)(v) and § 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations, the election to treat property as QTIP is to be made by the executor on the return of tax imposed by § 2001 which is defined as the last estate tax return filed before the due date of the return, including extensions, or if a timely return is not filed, the first return filed 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 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 301.9100-3 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).

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.

We have determined that relief under §§ 301.9100-1 should be granted. Consequently, under §§ 301.9100-1 and 301.9100-3, an extension of time is granted until 60 days from the date of this letter for Decedent's estate to make a QTIP election under § 2056(b)(7) with respect to a fractional or percentage share of Credit Shelter Trust. See § 20.2056(b)-7(b)(2)(i) regarding partial QTIP elections. The election should be made on a Supplemental Form 706 filed with the Internal Revenue Service Center -- Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the form.

In addition, we note that the value on the date of Spouse's death of that portion of the Credit Shelter Trust subject to the QTIP election is includible in Spouse's gross estate under § 2044.

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,

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

Enclosure

Copy for section 6110 purposes
Copy of this letter

cc: