

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201121003**

Release Date: 5/27/2011

Index Number: 2642.00-00, 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-137623-10

Date: FEBRUARY 04, 2011

RE:

Legend

Decedent

Spouse

Executor

Date 1

Date 2

Date 3

Trust

Attorney

Dear :

This letter responds to a letter from your authorized representative dated August 10, 2010, 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 summarized as follows:

On Date 1, Decedent executed a revocable trust, Trust. Decedent died on Date 2, survived by Spouse.

Article II.C.2 of Trust provides that upon the death of Decedent, and after funding trusts for Decedent's grandchildren, the remaining trust estate is to be divided into two parts, Trust A and Trust B, to be held as separate trusts. Trust B is to be funded up to the largest fractional share that will result in no federal estate tax on Decedent's gross estate taking into account the applicable exclusion under § 2010(c). Trust A is to be funded with the remaining amount.

Article III provides, in relevant part, that the trustee is to pay the net income of Trust A to or for the benefit of Spouse for Spouse's lifetime, in convenient installments not less frequently than quarter-annually. The trustee may also pay to or apply for the benefit of Spouse such amounts of the principal of Trust A for the maintenance, health, and support of Spouse, at any time. Upon the death of Spouse, after the payment of certain expenses, the principal of Trust A will be distributed to Trust B.

Executor hired Attorney to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. On Date 3, the Form 706 was filed on behalf of the estate. On Schedule M, Attorney mistakenly listed Trust A as property not subject to the QTIP election. Thus, no QTIP election was made with respect to Trust A.

You have requested an extension of time to make the QTIP election under § 2056(b)(7).

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 (or § 2101). 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 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 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.

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 Trust A. The election should be made on a supplemental Form 706 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.

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

Except as expressly provided herein, we express no opinion on the federal tax consequences of the transactions under the cited provisions or under any other provisions of the Code.

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,

Associate Chief Counsel
Passthroughs & Special Industries

By: Lorraine E. Gardner, Senior Counsel
Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter