

INTERNAL REVENUE SERVICE
Index No.: 2056A.00-00
Number: **199904023**
Release Date: 1/29/1999

PLR-111782-98

October 30, 1998

Re:

This is in response to your letter dated May 27, 1998, requesting rulings concerning the application of § 2056A of the Internal Revenue Code.

According to the facts submitted, Decedent died on date 1, survived by Spouse, who is not a United States citizen. Decedent executed Trust and a Last Will and Testament on date 2. Under Article III of Decedent's will, upon Decedent's death, all of the real and personal property comprising the Decedent's residuary estate is to pass to the trustee of Trust to be held and managed under the terms of Trust. Trust provides that after the death of Decedent, certain specific nonspousal bequests are to be made. Thereupon, the Trust is to be divided into a Family Trust and a Marital Trust.

Under the terms of the Marital Trust, Spouse is to receive, in convenient installments not less frequently than quarterly, all the net income arising from the Marital Trust from and after the date of Decedent's death. In addition, the trustee of the

Marital Trust is given the authority to pay to Spouse, from time to time during her lifetime, so much of the principal of the Marital Trust as shall be necessary to respond to an immediate and heavy financial need relating to Spouse's health, support and maintenance, which need cannot be met from other resources reasonably available to Spouse. Spouse is given the power to direct the trustee to convert unproductive assets of the Marital Trust into income producing assets. Upon Spouse's death, the remaining principal of the Marital Trust is to pass to the Family Trust.

Article III(b)(iii) of Trust provides that Marital Trust is intended to be a "qualified terminable interest trust." Article III(b)(vii) of Trust provides that Marital Trust is also intended to meet the requirements of a Qualified Domestic Trust (QDOT) pursuant to § 2056(d)(2)(A) of the Internal Revenue Code. Under Article III(b)(vii)(B), at least one trustee must be a United States citizen or a domestic corporation.

At the time of the execution of Decedent's Will and Trust, final QDOT regulations prescribing the requirements that a trust must meet in order to qualify as a QDOT had not been issued. Final QDOT regulations were issued on December 9, 1996. Decedent died several months later without having amended the Trust to comply with the final QDOT regulations.

Decedent's executor has obtained a judicial reformation of the Marital Trust. The executor's petition for reformation was filed in the Circuit Court of County, State, on date 3, which date preceded the date on which Decedent's federal estate tax return was due, after an extension of time for filing was granted. The County court order of date 4 modifies the provisions of the Marital Trust by deleting the original Article III(b)(vii) and replacing it with a new Article III(b)(vii).

As reformed, Article III(b)(vii)(A) and (B) provide that at least one trustee of the Marital Trust shall be at all times a United States citizen or a domestic corporation and that the United States citizen or domestic corporation trustee will have the right to withhold the tax imposed by § 2056A on any distribution (other than a distribution of income) to be made from the Marital Trust. As reformed, Article III(b)(vii)(C) contains the sample language contained in Revenue Procedure 96-54, 1996-2 C.B. 386. This language satisfies the governing instrument requirements for a QDOT as set forth in sections 20.2056A-2(d)(1)(i) and (d)(1)(ii) of the Estate Tax Regulations. As reformed, Article III(b)(vii)(D) provides that the "trustee shall comply with, and the trust shall be administered in compliance with, the requirements for qualified domestic trusts as set forth in Internal Revenue Code Section 2056A and Treasury Regulations Sections 20.2056A-1 through 20.2056A-13, which are

hereby incorporated herein by reference and made a part hereof."

Spouse is also the beneficiary under a joint and survivor annuity from Decedent's employer's pension plan. The present value of the annuity is includible in the gross estate of Decedent. It is represented that Spouse will pay the § 2056A(b)(1)(A) tax on the corpus portion of each annuity payment that Spouse received prior to the reformation of the Trust and prior to the filing of Decedent's estate tax return. With respect to these payments, Spouse will execute the Agreement to Pay the Section 2056A Estate Tax as provided in § 2056A-4(c)(6)(ii). Upon the filing of Decedent's estate tax return and the reformation of the Marital Trust, Spouse will roll over the corpus of each annuity payment Spouse receives to the reformed Marital Trust that will meet the requirements of a qualified domestic trust. With respect to the payments received by Spouse after the reformation of Trust, Spouse will execute the Agreement to Roll Over Annuity Payments as provided in § 20.2056A-4(c)(7). Spouse will also file the Information Statement described in § 20.2056A-4(c)(5).

The following rulings are requested:

1. The Marital Trust, as reformed, will meet the requirements of a Qualified Domestic Trust under § 2056A and will qualify for the estate tax marital deduction under § 2056.

2. The payment of the § 2056A(b)(1)(A) tax on the corpus portion of all annuity payments received by the Spouse from Decedent's pension plan between the date of the Decedent's death and the date the Decedent's estate tax return is filed and the rollover to the Marital Trust of the corpus portion of each annuity payment received thereafter from the Decedent's pension plan will satisfy the requirements of § 20.2056A-4(c) and will qualify for the estate tax marital deduction under § 2056.

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 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.

Section 2056(b)(7) provides that, in the case of qualified terminable interest property, the property shall be treated as passing to the surviving spouse for purposes of § 2056(a) and no part of the property shall be treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) defines "qualified terminable interest property" as property: (1) which passes from the decedent, (2) in which the surviving spouse has a qualifying income interest for life, and (3) to which an election under § 2056(b)(7)(B)(v) applies.

Section § 2056(d)(1) provides that where the surviving spouse of a decedent is not a United States citizen, the marital deduction is disallowed unless property passes to the surviving spouse in a qualified domestic trust (QDOT).

Section 2056(d)(5) provides, in pertinent part, that if a judicial proceeding is commenced on or before the due date (determined with regard to extensions) for filing the estate tax return to change a trust into a QDOT, the determination of whether the trust is a QDOT shall be made as of the time when the changes pursuant to such proceeding are made.

Under § 2056A(a), a trust will qualify as a QDOT if: (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 a distribution of income) may be made from the trust unless a trustee who is an individual citizen of the United States or domestic corporation has the right to withhold from such distribution the tax imposed under § 2056A(b) on the distribution; and (2) the trust meets such requirements as the Secretary may by regulations prescribe to ensure the collection of any tax imposed by § 2056A(b); and (3) an election under § 2056A made by the executor of the decedent applies to the trust.

Section 2056A(e) provides that the Secretary shall prescribe regulations under which there may be treated as a qualified domestic trust any annuity or other payment which is includible in the decedent's gross estate and is by its terms payable for life or a term of years.

Section 20.2056A-2(a) of the Estate Tax Regulations provides that in order to qualify as a QDOT, the requirements of §§ 20.2056A-2(b) and (c) and 20.2056A-2T(d) must be satisfied. In addition, the trust must constitute an ordinary trust as defined in § 301.7701-4(a) of the Procedure and Administration Regulations. Section 20.2056A-3 pertains to the QDOT election. Section 20.2056A-4 contains procedures for conforming marital trusts and nontrust marital transfers to the requirements of a QDOT.

Under § 20.2056A-4(c)(1), in the case of a plan, annuity, or other arrangement which is nonassignable (or is treated as such), the property passing under the plan from the decedent is treated

as meeting the requirements of §§ 20.2056A-2 and 20.2056A-2T(d) if the requirements of either § 20.2056A-4(c)(2) or § 20.2056A-4(c)(3) are satisfied. If these requirements are satisfied, the property will be treated as passing in the form of a QDOT, notwithstanding that the spouse does not irrevocably transfer or assign the annuity or other payment to the QDOT.

The requirements of § 20.2056A-4(c)(2) will be satisfied if:

(i) The noncitizen surviving spouse agrees to pay on an annual basis, as described in § 20.2056A-4(c)(6)(i), the estate tax imposed under section 2056A(b)(1) due on the corpus portion, as defined in § 20.2056A-4(c)(4), of each nonassignable annuity or other payment received under the plan or arrangement;

(ii) The executor of the decedent's estate files with the estate tax return the Information Statement described in § 20.2056A-4(c)(5);

(iii) The executor files with the estate tax return the Agreement To Pay Section 2056A Estate Tax described in § 20.2056A-4(c)(6); and

(iv) The executor makes the election under § 2056A(a)(3) and §20.2056A-3 with respect to the nonassignable annuity or other payment.

The requirements of § 20.2056A-4(c)(3) will be satisfied if:

(i) The noncitizen surviving spouse agrees to roll over and transfer, within the time prescribed by § 20.2056A-4(c)(7)(i), the corpus portion of each annuity payment to a QDOT;

(ii) A QDOT for the benefit of the surviving spouse is established prior to the date that the estate tax return is filed and on or prior to the last date prescribed by law that the QDOT election may be made;

(iii) The executor of the decedent's estate files with the estate tax return the Information Statement described in § 20.2056A-4(c)(5);

(iv) The executor files with the estate tax return the Agreement to Roll Over Annuity Payments described in § 20.2056A-4(c)(7); and

(v) The executor makes the election under § 20.2056A-3 with respect to the nonassignable annuity or other payment.

Ruling #1. The judicial proceeding to reform the terms of the Marital Trust was commenced within the time required by § 2056(d)(5). Reformed Article III(b)(vii)(A) and (B) provide that at least one trustee of the Marital Trust shall be at all times a United States citizen or a domestic corporation, and that the United States citizen or domestic corporation trustee will have the right to withhold the tax imposed by § 2056A on any distribution (other than a distribution of income) to be made from the trust. These provisions satisfy the first requirement of § 2056A for a QDOT.

Reformed Article III(b)(vii)(C) contains the language in Revenue Procedure 96-54, 1996-2 C.B. 386, which, if adopted by a trust instrument, will satisfy the governing instrument requirements of §§ 20.2056A-2(d)(1)(i) and (d)(1)(ii). These are the regulations prescribed by the Secretary under § 2056A to ensure the collection of any tax imposed by § 2056A(b). Thus, reformed Article III(b)(vii)(C) satisfies the second statutory requirement for a QDOT.

If the executor made the election under § 2056A(d) on Decedent's estate tax return, all of the § 2056A(a) requirements for a QDOT will have been satisfied.

In addition, the reformed provisions of the Marital Trust satisfy the requirements of §§ 20.2056A-2(b) and (c) and 20.2056A-2T(d) as required by § 20.2056A-2(a).

On the conditions that the executor made the election under § 2056A(d) on the Decedent's estate tax return and that the Marital Trust constitutes an ordinary trust, as defined in § 301.7701-4(a) of the Procedure and Administration Regulations, we conclude, based on the facts submitted and representations made, that the Marital Trust, as reformed, satisfies the requirements for a QDOT and that the marital deduction under § 2056(a) is allowable for the value of the Marital Trust which passed from Decedent to Spouse.

Ruling #2. The provisions of the regulations cited above provide two methods of qualifying a nonassignable annuity as a QDOT. Under § 20.2056A-4(c)(2), the surviving spouse may pay, on an annual basis, the estate tax imposed under § 20.2056A(b)(1) on the corpus portion of each annuity payment received. This method requires the filing of an Information Statement and an Agreement To Pay Section 2056A Estate Tax. Under § 20.2056A-4(c)(3), the surviving spouse may roll over and transfer to a QDOT, within a certain time, the corpus portion of each annuity payment. This method requires the filing of the Information Statement and an Agreement To Roll Over Annuity Payments. It also requires that a QDOT be established for the benefit of the surviving spouse prior

to the date the estate tax return is filed and on or before the last date prescribed by law that the QDOT election may be made. Both methods also require the executor to make the QDOT election under § 2056A(a)(3) and § 20.2056A-3.

In the present case, Spouse has chosen to use the second method. It is represented that the executor will file with Decedent's estate tax return the Information Statement and the Agreement To Roll Over Annuity Payments. However, Spouse received annuity payments prior to the reformation of the Marital Trust and prior to the filing of Decedent's estate tax return. Therefore, it is represented, Spouse will pay the estate tax under § 2056A(b)(1) on the corpus portion of each annuity payment received during that period, and the executor will file the Agreement To Pay Estate Tax. It is also represented that the executor of Decedent's estate will make the QDOT election under § 2056A(a)(3) and § 20.2056A-3.

Based on the facts submitted and the representations made, and assuming that the Information Statement, the Agreement to Pay Estate Tax, and the Agreement To Roll Over Annuity Payments satisfy the requirements of the regulations, we conclude that the payment of the § 2056A(b)(1) tax on the corpus portion of all annuity payments received by Spouse from Decedent's pension plan between the date of Decedent's death and the date of filing Decedent's estate tax return and the roll over to the Marital Trust of the corpus portion of each annuity payment received thereafter from Decedent's pension plan will satisfy the requirements of § 20.2056A-4(c) and will qualify for the estate tax marital deduction under § 2056.

Except as we have specifically ruled herein, we express no opinion as to the consequences of this transaction under the cited provisions or under any other provisions of the Code or regulations.

A copy of this letter should be filed with the office where Decedent's estate tax return was filed. A copy is enclosed for that purpose.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file, we are sending a copy of this letter to your authorized representative.

Sincerely yours,

Assistant Chief Counsel
(Passthroughs and Special Industries)

By _____
Katherine A. Mellody
Assistant to the Branch Chief
Branch 4

Enclosure
Copy of letter
Copy for section 6110 purposes