

Internal Revenue Service

Department of the Treasury

Number: **200133015**

Washington, DC 20224

Release Date: 8/17/2001

Index Number: 9100.22-00; 2056.07-01

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09 / PLR-106299-01

Date:

May 16, 2001

Legend

Decedent =

Date 1 =

Spouse =

Date 2 =

Trust =

Daughter =

Dear Sir:

This letter responds to your letter, dated January 29, 2001, and subsequent correspondence, submitted on behalf of Decedent's estate, requesting an extension of time under § 301.9100-1 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: Decedent died on Date 1, survived by Spouse. The executor represents that the estate retained an attorney to prepare the estate tax return. The estate filed a Form 706 Federal Estate Tax Return in Date 2. The executor relied on the advice of the attorney and signed the estate tax return as it was prepared. The attorney failed to advise the estate of the need to make a § 2056(b)(7) QTIP election on Schedule M of the return.

The ninth paragraph of Article Fourth of Decedent's will provides that if my wife, Spouse, shall survive me, I give, devise and bequeath to my trustee, hereinafter referred to as the Trust, an aggregate dollar amount of property equal to the unlimited marital deduction allowable in determining the federal estate tax payable by reason of my death, diminished by (i) the amount by which my gross estate for federal estate tax purposes is deemed increased by virtue of § 2602(c)(5)(A) of the Internal Revenue Code as a result of a generation-skipping transfer, and (ii) provided, however, that this

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bequest shall be reduced by an amount, if any, needed to increase my credit against the federal estate tax being imposed upon my estate.

The fourteenth paragraph of Article Fourth of Decedent's will provides that it is my intention to create hereby a pecuniary bequest and not a fractional share of my estate and that this Trust be available and qualify for the federal estate tax unlimited marital deduction. This bequest shall carry with it its share of the income of my estate from the date of my death.

The sixteenth paragraph of Article Fourth of Decedent's will provides that in establishing and administering the Trust, my executor and trustee shall be vested with all of the powers and authority hereinafter set out; provided, however, that it is my intention that the Trust shall qualify for the marital deduction and neither my executors nor my trustees shall have power or authority to exercise any of such powers in any manner which would disqualify this trust for the marital deduction. In addition, I direct that my executor shall make any elections necessary in accordance with § 2056(b)(7)(B)(v) or otherwise, to effectuate that this bequest shall qualify for the marital deduction.

The seventeenth paragraph of Article Fourth of Decedent's will provides that the Trust shall be held, administered and disposed of as follows: (a) The trustee shall pay to or apply for the benefit of my wife, Spouse, during her lifetime, all of the net income, in convenient installments, but at least quarter-annually; (b) Upon the death of my said wife, the principal remaining in this trust, together with any accrued or undistributed income therefrom, I give, devise and bequeath to my daughter, Daughter, absolutely and outright; and (c) On the death of my said wife, my trustee is authorized to withhold from distribution an amount of property sufficient, in its judgment, to cover any liability that may be imposed on my trustee (or on the Trust remainderman pursuant to § 2207(a)) for estate or other taxes or liabilities until such taxes or liabilities are finally determined and provided for and to pay such liability from such property.

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

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 subsection (b), 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, but only to the extent that such interest is included in determining the value of the gross estate.

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Section 2056(b)(1) provides the general rule that no deduction shall be allowed for an interest passing to the surviving spouse if, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest will terminate or fail.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, the entire 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 for purposes of § 2056(b)(1)(A).

Section 2056(b)(7)(B)(i) defines “qualified terminable interest property” as property: (1) that 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(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if (1) the surviving spouse is entitled to all of the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and (2) 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 is made by the executor on the return of tax imposed by § 2001. Such an election, once made, is 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.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time 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, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. § 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections.

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Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. 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 the grant of 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.

Section 301.9100-3(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not (i) competent to render advice on the regulatory election; or (ii) aware of all relevant facts.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Based on the facts submitted and the representations made, the standards of § 301.9100-1 and § 301.9100-3 have been met because the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Consequently, we grant an extension of time for making the QTIP election under § 2056(b)(7) for Trust. The election must be made within 30 days of the date of this letter. The election should be made on a supplemental Form 706 filed with the Service Office where the original Form 706 was filed. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for that purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to Decedent's estate.

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

Sincerely,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy of this letter
Copy for § 6110 purposes