

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:7- PLR-111088-00

Date:

July 26, 2001

Legend:

Decedent =

a =

Spouse =

Dear Sir or Madam:

This letter responds to your request, dated May 12, 2000, for an extension of time under § 301.9100-1 of the Procedure and Administrative Regulations to make a qualified terminable interest property (QTIP) election under § 2056(b)(7) of the Internal Revenue Code.

Decedent died testate on a survived by Spouse. Decedent's will grants Spouse a life interest in all real estate owned by Decedent. Decedent's will designates the individuals who are to receive the real estate on Spouse's death, or in the event Spouse predeceases Decedent.

Spouse, the executrix of Decedent's estate, filed a timely Form 706, but no QTIP election was made on that return with respect to any property included on the return.

When preparing to close the probate estate, the Personal Representative discovered that the accountant who prepared the original Form 706 had failed to include several parcels of real estate owned by Decedent on the date of Decedent's death in Decedent's probate estate or the federal gross estate for federal estate tax purposes.

Decedent's estate requests an extension of time under § 301.9100-1 to make an election under § 2056(b)(7) with respect to a number of the parcels of real estate omitted from the original Form 706.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate is, except as limited by § 2056(b), 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, but only to the extent that such interest is included in determining the value of the gross estate. Section 2056(b)(1) disallows this deduction where, upon the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), the property is treated as passing to the surviving spouse and for purposes of § 2056(b)(1)(A), no part of the property is 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: (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.

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. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interest of the government. Section 301.9100-3(a).

Based solely on the facts submitted and the representations made, we conclude that the standards of §§ 301-9100-1 and 301-9100-3 have been satisfied. Accordingly, we grant an extension of time for making the QTIP election under § 2056(b)(7). The election must be made 30 days from the date of this letter. The election should be made on a supplemental Form 706 filed with the Service Center 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 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.

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.

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

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