

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B09

PLR-137414-04

Date:

August 25, 2004

In Re:

### LEGEND:

Decedent =

Trust =

Date 1 =

Spouse =

Date 2 =

Date 3 =

Bank =

Date 4 =

Dear :

This is in response to your letter dated May 18, 2004, in which you requested, on behalf of Trust, an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file the notice provided under § 20.2056A-10(a)(2) of the Estate Tax Regulations, that the beneficiary of Trust has become a United States citizen.

According to the facts submitted and the representations made, Decedent died on Date 1, survived by Spouse. At the time of Decedent's death, Spouse was not a United States citizen. A Qualified Domestic Trust (QDOT) under § 2056A of the Internal Revenue Code was established under the terms of Trust. The current co-trustees of QDOT are Spouse and Bank.

On Date 3, Spouse became a United States citizen. Spouse informed her attorney that she became a United States citizen and asked her attorney to prepare the appropriate paperwork to terminate the QDOT. Spouse's attorney inadvertently failed to

file the required notice on Form 706-QDT (U.S. Estate Tax Return for Qualified Domestic Trusts) or an extension for filing such a notice on or before Date 4.

It is represented that Spouse has continuously resided in the United States from the date of Decedent's death until the time that Spouse became a United States citizen. No principal distributions have been made from Trust since Trust was established.

Spouse and Bank have requested an extension of time to file the final Form 706-QDT notifying the Service that Spouse has become a United States citizen as required by § 20.2056A-10(a)(1) and (2).

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(d)(1) provides that except as provided in paragraph (2), if the surviving spouse is not a citizen of the United States, no deduction shall be allowed under § 2056(a). Paragraph (2) provides that paragraph (1) shall not apply to any property passing to the surviving spouse in a QDOT.

There are three main requirements in order for a trust to be a QDOT under § 2056A. The trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or a domestic corporation and 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 a domestic corporation has the right to withhold from the distribution the tax imposed by § 2056A on the distribution. In addition, the trust must meet the requirements of Treasury regulations that are prescribed to ensure collection of any federal estate tax imposed either with respect to the trust property in the case of any distributions of trust principal during the life of the surviving spouse (other than distributions on account of hardship) or upon the property remaining in the trust at the time of the surviving spouse's death. Finally, the executor must make an election that applies to the trust on the federal estate tax return to qualify the property for the federal estate tax marital deduction.

Section 2056A(b)(1) provides that an estate tax is imposed on—(A) any distribution before the date of death of the surviving spouse from a qualified domestic trust, and (B) the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse.

Section 2056A(b)(12) provides that if the surviving spouse of the decedent becomes a citizen of the United States and if such spouse was a resident of the United

States at all times after the date of the death of the decedent and before such spouse becomes a citizen of the United States, the tax imposed by § 2056A(b)(1)(A) shall not apply to any distributions after such spouse becomes a citizen and the tax imposed by § 2056A(b)(1)(B) shall not apply.

Section 20.2056A-10(a)(1) and (2) provide, in part, that a QDOT is no longer subject to the § 2056A tax if the surviving spouse becomes a citizen of the United States and the spouse was a resident of the United States at all times after the death of the decedent and before becoming a United States citizen, and the U.S. Trustee of the QDOT notifies the Internal Revenue Service and certifies in writing that the surviving spouse has become a United States citizen. Notice is to be made by filing a final Form 706-QDT on or before April 15th of the calendar year following the year that the surviving spouse becomes a citizen, unless an extension of time of up to 6 months for filing is granted under § 6081.

Under § 301.9100-1(c), 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 301.9100-2 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.

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). In accordance with § 20.2056A-10(a)(2), the time for filing the required notice with the Internal Revenue Service is not expressly prescribed by statute. Accordingly, Bank, the U.S. Trustee, may seek an extension of time to file the required notice and certification with the Internal Revenue Service that Spouse has become a United States citizen.

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 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 to advise the taxpayer to make, the election.

Based upon the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Bank is granted an

extension of time of 60 days from the date of this letter to file with the Internal Revenue Service the required notice and certification that Spouse has become a citizen of the United States.

The ruling contained in this letter is 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.

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 requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Heather C. Maloy

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

Enclosures:

Copy of this letter

Copy of this letter for § 6110 purposes

cc: