

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:B04

PLR-126094-20

Date:

April 29, 2021

Legend

Decedent

Spouse

Trust

Date 1

Date 2

Date 3

Date 4

Attorney

Family Trust

Marital Trust 1

Marital Trust 2

Marital Trust 3

Dear :

This letter responds to your authorized representative's letter dated November 9, 2020, 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. Trust was most recently amended on Date 2.

Paragraph A.1. of Article VI of Trust provides, in relevant part, that the "pecuniary amount" is to mean property having a value equal to the largest amount that if distributed pursuant to this paragraph would result in the least possible federal and state

estate taxes being payable by reason of Decedent's death. The trustee is to allocate to Family Trust an amount equal to the lesser of the pecuniary amount or Decedent's unutilized GST exemption.

Paragraph A.2 of Article VI provides, in relevant part, that the "federal pecuniary amount" is to mean property having a value equal to the largest amount that if distributed pursuant to this paragraph would result in the least possible federal estate taxes (excluding state death taxes) being payable by reason of Decedent's death. The "state QTIP amount" is the difference between the pecuniary amount and the federal pecuniary amount. The trustee is to allocate to Marital Trust 1 an amount equal to the lesser of (i) Decedent's unutilized GST exemption reduced by the amount of property allocated to Family Trust and (ii) the state QTIP amount. The allocation of such property to Marital Trust 1 is to be contingent on the trustee or the executor electing to qualify such property for a state marital deduction.

Paragraph A.3 of Article VI provides, in relevant part, that after providing for the allocations required by the foregoing provisions of this section, the trustee is to allocate to Marital Trust 2 an amount equal to Decedent's unutilized GST exemption reduced by the amount of property allocated pursuant to paragraphs A.1 and A.2. Provided, that the allocation of property to Marital Trust 2 is to be contingent on the election by the trustee or by the executor to qualify such property for the federal marital deduction.

Paragraph A.4 of Article VI provides, in relevant part, that after making or fully providing for the allocations required by the foregoing provisions of this section, the trustee is to allocate the balance of the trust property to be disposed of pursuant to the provisions of this article to Marital Trust 3, provided, however, that the allocation of property to Marital Trust 3 is to be contingent on the election by the trustee or by the executor to qualify such property for the federal marital deduction.

Paragraph A.1 of Article IX provides, in relevant part, that upon Decedent's death, the trustee is to pay to the surviving spouse, all of the net income of each marital trust, in annual or more frequent installments.

Paragraph A.2 of Article IX provides, in relevant part, that the trustee is to pay to the surviving spouse such amount or amounts of the principal of each marital trust, even to the extent of all or none, at any time and from time to time, for the surviving spouse's health and support, taking into consideration the surviving spouse's other financial resources.

Paragraph B of Article IX provides, in relevant part, that upon the surviving spouse's death, the trustee is to dispose of such amount of each marital trust property as the surviving spouse may appoint to or in favor of any one or more of Decedent's descendants, but such power may not be exercised to discharge or satisfy the surviving spouse's legal obligations.

Paragraph B of Article IX provides, in relevant part, that upon the surviving spouse's death, to the extent that the surviving spouse has not exercised her special power of appointment, the trustee is to allocate the then remaining property of each marital trust among Decedent's living descendants by right of representation in further trust.

Decedent died on Date 3, survived by his surviving spouse, Spouse. Spouse, in her capacity as executor of Decedent's estate, hired Attorney to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. On Date 4, the Form 706 was timely filed (with extensions) on behalf of the estate. Attorney mistakenly failed to list the property comprising Marital Trust 1 on Schedule M. Additionally, the property comprising Marital Trust 2 and Marital Trust 3 were incorrectly reflected on Schedule M as being distributed to Spouse and were not listed as QTIP property. Thus, no QTIP election was made with respect to any of the three marital trusts.

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

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 the three marital trusts. The election should be made on a supplemental Form 706 with the Internal Revenue Service Center at the following address: Internal Revenue Service Center, Attn: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the supplemental Form 706.

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, no opinion is expressed or implied concerning the 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.

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

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 and Special Industries

Melissa C. Liquerman

By:

Melissa C. Liquerman
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
Copy for § 6110 purposes

cc: