

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:
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Date:
July 10, 2019

Re:

Legend

Decedent =
Spouse =
Date 1 =
Date 2 =
Date 3 =
Executrix =
Trust =
Year 1 =
Year 2 =
Accountant =
x =

Dear :

This letter responds to your authorized representative's letter dated December 13, 2018, and subsequent correspondence 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)(B)(v) of the Internal Revenue Code (Code) with respect to a marital trust.

The facts and representations submitted are as follows:

On Date 1, Decedent executed a revocable trust, Trust. On Date 2, in Year 1, Decedent died, survived by Spouse and three children. His daughter was designated Executrix. The last will of Decedent provided that the net estate would be paid to Trust. Trust provided that upon the death of Decedent, and if Spouse survives Decedent, Trust would be divided into two parts, Marital Trust (Fund A) and Family Trust (Fund B).

Trust provides that the trustee shall pay to or apply for the benefit of Spouse, during her lifetime, all the net income from Marital Trust, in convenient installments, but not less frequently than quarter-annually. Until the assets are allocated to Marital Trust, the trustee shall estimate the income and begin making payments.

Trust also provides that the trustee is authorized in his or her discretion to pay to or apply for the benefit of Spouse at any time and from time-to-time so much of the principal of Marital Trust (even to the point of completely exhausting Marital Trust) as he or she believes advisable to provide adequately for Spouse's support, health, maintenance, and education, keeping in mind that Spouse's needs are Decedent's primary concern.

Upon the death of Spouse, the trustee shall pay to Spouse's estate all of the accumulated but undistributed income of Trust and, from the corpus of Trust, the increase in taxes attributable to the inclusion of the assets of Marital Trust in Spouse's taxable estate. Any corpus not used to satisfy this requirement shall be disposed of in accordance with the provisions of Family Trust, to benefit Decedent's children.

Trust also provides that the trustee of Marital Trust shall not have any rights which would disqualify any part of Marital Trust for the marital deduction and Spouse shall have the right to compel the trustee to invest the assets of Marital Trust in income-producing investments.

Trust provides that it is Decedent's intention that the assets of Marital Trust shall be "qualified terminable interest property," as defined in § 2056 of the Code, as amended, and the trustee shall have the right in his or her absolute discretion to have all or a portion of Marital Trust qualify for the marital deduction.

In Year 1, Spouse received \$x from the estate accounts. Spouse died on Date 3, in Year 2. Following Spouse's death, Executrix settled the administration of Decedent's estate and distributed the balance of the funds pursuant to the terms of Trust.

Decedent's estate engaged legal counsel for the administration of Decedent's estate and Accountant for tax filings. Accountant recommended that Decedent's estate not file a Form 706, Federal Estate (and Generation-Skipping Transfer Tax) Return, because the estate did not exceed the filing threshold for Year 1 and did not wish to make a portability election under § 2010.

Executrix requests an extension of time under § 301.9100-1 and § 301.9100-3 to make the QTIP election under § 2056(b)(7) to treat Marital Trust as QTIP property.

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 is, except as limited by § 2056(b), 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) provides, in relevant part, that where, on the lapse of time, on 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, no deduction shall be allowed under § 2056(a) with respect to such interest if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than the surviving spouse (or the estate of the spouse); and if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse.

Section 2056(b)(7) provides an exception to the rule of § 2056(b)(1) in the case of QTIP.

Section 2056(b)(7)(A) provides that for purposes of § 2056(a), QTIP 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 QTIP as property that passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which an election under § 2056(b)(7)(B)(v) applies. Under § 2056(b)(7)(B)(ii), a surviving spouse has a "qualifying income interest for life" if (I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 20.2056(b)-7(d)(6) of the Estate Tax Regulations provides that, an income interest in a trust will not fail to constitute a qualifying income interest for life solely because the trustee has a power to distribute principal to or for the benefit of the surviving spouse.

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) 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 the 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 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 due date is prescribed by 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 representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, the Decedent's estate is granted an extension of time of 120 days from the date of this letter to make a QTIP election under § 2056(b)(7)(B)(v) with respect to Marital Trust.

The above election should be made on a Form 706 for Year 1. The Form 706 should be filed with the Kansas City Service Center at the following address: Department of the Treasury, Internal Revenue Service Center, Kansas City, MO 64999. A copy of this letter should be attached to the Form 706. A copy is enclosed for this purpose.

In accordance with the Power of Attorney on filed with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion 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.

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 & Special Industries)

By: Leslie H. Finlow
Leslie H. Finlow, Senior Technician Reviewer
Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):
Copy for § 6110 purposes
Copy of this letter

cc: