

Department of the Treasury

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Person to Contact:**Telephone Number:**

Refer Reply To:

CC:DOM:P&SI:7:PLR-116933-97

Date:

May 12, 1999

Legend: Year 2:
 Year 1:
 X:
 Taxpayer:
 Spouse:
 Date 1:
 Date 2:
 Date 3:
 Account:
 Trust Company:
 Y:
 Year 3:
 Year 4:
 Year 5:

Dear

We received your letter dated, _____ and subsequent submissions, requesting certain rulings concerning the income and estate tax consequences of transactions involving an individual retirement account (IRA). Specifically, you requested the following rulings:

(1) The withdrawals made from the money purchase pension plan, 401(k) plan and individual retirement account in Year 2, the first distribution calendar year, based upon the account balances as of December 31, Year 1, the valuation calendar year, computed by dividing such balances by X will satisfy the minimum distribution requirement under § 401(a)(9) of the Internal Revenue Code for Year 2 and will be credited toward the first required minimum distribution amount, provided that the amount withdrawn from each account is at least equal to the account balance as of December 31, Year 1, divided by X.

(2) In years subsequent to the first distribution calendar year of Year 2, in accordance with the terms of the Beneficiary Designation, Taxpayer will continue to be able to make

withdrawals from the IRA Trust over the joint life expectancies of Taxpayer and Spouse, and the survivor of them, using life expectancies which are not recalculated, namely, Y in Year 3 and decreasing by one in each year thereafter. Such distributions will be subject to tax under § 408(d) and § 72 and not be subject to excise tax under § 4974.

(3) The Revocable Trust created by Taxpayer, and the designation of Spouse as sole beneficiary of the Marital QTIP Trust and a beneficiary of the Family Trust satisfy the requirements of Q&A D-5 of § 1.409(a)(9)-1 of the proposed Income Tax Regulations and thus, Spouse will be deemed the death beneficiary of Taxpayer's IRA Trust assuming that: (1) the Trust is irrevocable, or will, by its terms, become irrevocable on the death of the employee; (2) the Trust is valid under state law; (3) the beneficiaries are identifiable from the trust instrument; and, (4) a copy of the trust instrument is provided to the plan administrator.

(4) The terms of the Revocable Trust requiring the Trustee to make the withdrawals from the IRA Trust after the death of the Taxpayer at least as rapidly as under the method of distribution in effect as of the date of the Taxpayer's death, will satisfy the minimum distribution requirements under § 401(a)(9) in years subsequent to the death of the Taxpayer.

(5) The division of the IRA Trust into the IRA Marital QTIP Share and the IRA Family Share using a fractional formula will not be considered to be a distribution that is in satisfaction of a right to receive a distribution of a specific dollar amount and thus no gain or loss will be realized by the IRA Trust upon such division.

(6) The fractional share of the IRA Trust allocated to the IRA Marital QTIP Share in accordance with the provisions of the Beneficiary Designation and the fractional share of the Revocable Trust allocated to the Marital QTIP Trust in accordance with the provisions of the Trust, will each be qualified terminable interest property as defined in § 2056(b)(7)(B), provided that the Taxpayer's executor makes an election under § 2056(b)(7)(B)(v) for each of the IRA Marital QTIP Share of the IRA Trust and the Marital QTIP Trust established under Article 5 of the Revocable Trust.

(7) The IRA Family Share existing at the time of Spouse's death, assuming Taxpayer predeceases Spouse, will not be included in her gross estate for federal estate tax purposes.

FACTS

The IRA

Taxpayer was born on Date 1 and retired on Date 2. Spouse was born on Date 3. At the time of his retirement, Taxpayer was a participant in two employer-sponsored qualified retirement plans: a money purchase pension plan and a 401(k) plan. He also had an individual retirement account (IRA) to which he had made only deductible contributions.

In January of Year 2, Taxpayer withdrew amounts from each of the employer retirement plans and the IRA. These withdrawals were intended to satisfy the minimum distribution for Year 2. The withdrawal from each account was based upon the account balance as of December 31, Year 1, and Taxpayer's single life expectancy.

After the withdrawals, Taxpayer intends to roll over the remaining balances of the three accounts in a direct rollover to a rollover IRA (the Account) of which Trust Company will serve as Trustee.

Taxpayer will execute a standard IRA form with the Trustee and also attach a Beneficiary Designation to the IRA form. The Beneficiary Designation provides that during Taxpayer's lifetime, payments from the IRA will be based upon the joint life expectancies of Taxpayer and Spouse. Taxpayer has determined that the divisor to be used for the Year 3 withdrawal is Y. In Year 3, he will make a withdrawal from the IRA of the account balance on December 31, Year 2, divided by Y. In each subsequent year, Taxpayer will withdraw an amount equal to the account balance of the previous December 31 divided by Y minus one for each subsequent year. Thus, the withdrawal for Year 4 will be the account balance as of December 31, Year 3, divided by Y minus one, and for Year 5 the withdrawal will be the account balance as of December 31, Year 4, divided by Y minus two, etc.

The life expectancy of Taxpayer and Spouse is not recalculated. Taxpayer has reserved for his lifetime the right to withdraw from the IRA amounts greater than the required minimum distribution.

The Beneficiary Designation further provides that on Taxpayer's death, if Spouse survives Taxpayer, the account balance in the IRA Trust is to be divided into two shares, the IRA Family Share and the IRA Marital QTIP Share. Under the beneficiary designation, if Spouse survives Taxpayer, the IRA Family Share is to be determined by a fraction, the numerator of which is the maximum amount that can be included in said

fractional share causing the least federal estate tax to be payable by the Taxpayer's estate. The denominator of the fraction shall be the remaining balance in the account. The IRA Marital QTIP Share is to be the remaining portion of the Account.

In the Beneficiary Designation, Taxpayer directs that the Marital QTIP Trust (discussed below) is to be the beneficiary of the IRA Marital QTIP Share. Any distributions made from the IRA Marital QTIP Share to the Marital QTIP Trust are to be added to other property held in trust thereunder and thereafter are to be administered and disposed of in accordance with the terms of the Marital QTIP Trust, and with the same provisions and under the same conditions and for the same purposes stated therein.

Under Article 7(e) of the Beneficiary Designation Form, during Spouse's lifetime, the IRA Trustee shall pay to the Trustee of the Marital QTIP Trust the greater of: 1) all of the net income of the IRA Marital QTIP Share, or 2) the Minimum Distribution Amount (MDA) computed with reference to the IRA Marital QTIP Share.

Article 7(f) of the Beneficiary Designation Form provides that the Trustee of the Marital QTIP Trust shall be responsible for making the determination of what is income and what is principal of the IRA Marital QTIP Share. The Trustee of the Marital QTIP Trust shall allocate to income of the Marital QTIP Trust all of the amounts paid to it pursuant to Article 7(e) from the IRA Marital QTIP Share regardless of whether a distribution from such share to the Marital QTIP Trust is treated as principal or income for trust accounting purposes.

Article 7(g) of the Beneficiary Designation Form provides that if the MDA of the IRA Marital QTIP Share exceeds the income of the IRA Marital QTIP Share in any given year, then such Minimum Distribution Amount shall be paid to the Trustee of the Marital QTIP Trust as follows: (i) first from the income of the IRA Marital QTIP Share for the current year; and (ii) then from the principal of the IRA Marital QTIP Share. The distributions from the IRA Marital QTIP Share shall be governed by the Marital QTIP Trust provisions of the Trust Agreement so that all of the amounts paid pursuant to Article 7(e) from the IRA Marital QTIP Share and all of the income of the Marital QTIP Trust shall be paid at least annually to Spouse.

Article 7(h) of the Beneficiary Designation Form provides that the Trustee of the Marital QTIP Trust shall have the right to request immediate payment of any part or all of the IRA Marital QTIP Share in order to satisfy any request that Spouse may, from time to time, make to the Trustee to convert unproductive property into productive property pursuant to the

right given to Spouse under the terms of Trust. The Trustee of the Marital QTIP Trust, in its discretion, shall have the authority to accelerate distributions from the IRA Marital QTIP Share and receive one or more payments in excess of the MDA in any year so that the Trustee of the Marital QTIP Trust has flexibility to withdraw principal, in such Trustee's discretion, from the IRA Marital QTIP Share in order to satisfy its fiduciary obligations under the Marital QTIP Trust.

Article 7(i) of the Beneficiary Designation Form provides that during Spouse's life, the IRA Trustee shall not possess or exercise any power to appoint any assets of the IRA Marital QTIP Share to any person other than to the Trustee of the Marital QTIP Trust for the sole benefit of Spouse.

Article 7(j) of the Beneficiary Designation Form provides that the provisions of the IRA Marital QTIP Share shall, in combination with the provisions of the Marital QTIP Trust qualify for the federal estate tax marital deduction. To this end, the powers and discretions of the IRA Trustee with respect to the property in the IRA Marital QTIP Share shall not be exercised or exercisable during the period that Spouse survives Taxpayer except in a manner consistent with the intentions of Taxpayer. The executor of Taxpayer's estate is authorized, in her discretion, to make the election provided by § 2056(b)(7)(B)(v) of the Code with respect to the IRA Marital QTIP Share.

Article 7(k) of the Beneficiary Designation Form provides that after Taxpayer's death, during Spouse's lifetime, the IRA Trustee is directed to distribute to the Trustee of the Family Trust (discussed below) at least all of the income of the Family Trust Share. If the MDA exceeds the income of the IRA Family Trust Share in any year, such MDA shall be distributed to the Trustee of the Family Trust to be administered in accordance with the terms of the Family Trust.

Article 7(l) of the Beneficiary Designation Form provides that the Trustee of the Family Trust is authorized to make withdrawals from time to time from the IRA Family Trust Share in order to carry out its obligations and the discretionary authorities granted to such Trustee under the provisions of Family Trust.

Article 7(m) of the Beneficiary Designation Form provides that after the death of the survivor of Taxpayer and Spouse, if Spouse survives Taxpayer, the IRA Trustee shall pay to the estate of Spouse an amount as directed by the Trustee of the Marital QTIP Trust equal to the sum of (a) any accrued but undistributed income of the IRA Marital QTIP Share as of the date of death of Spouse and (b) such sum or sums from the principal of the IRA

Marital QTIP Share as the executor of Spouse's estate may request, in writing, for expenses of administration of her estate and for any death taxes payable by reason of her death. If there are not liquid assets readily available from the estate of Spouse or a trust, the assets of which are includible in her estate for federal estate tax purposes, to make payment of the death taxes imposed on Spouse's estate, the IRA Trustee shall pay to the Spouse's estate from the IRA Marital QTIP Share such additional amounts as the executor of Spouse's estate may request in writing.

The Revocable Trust

Taxpayer created Trust, a revocable trust for the benefit of his Spouse and his family and that Trust becomes irrevocable at Taxpayer's death pursuant to Article 10.02 of Trust. Under Article 4.2 of Trust, if Taxpayer's Spouse survives Taxpayer, the Trustee is required to divide the Trust (except any Account) into two fractional shares, a Marital QTIP Trust and a Family Trust, with Trust Company designated as the trustee.

Article 5 of the Trust provides that the Marital QTIP Trust is to be administered and distributed for the benefit of Taxpayer's Spouse. Further, Article 5 provides that the Marital QTIP Trust is intended to constitute a qualified terminable interest property trust to the extent that the election granted pursuant to § 2056(b)(7)(B)(v) is exercised.

Article 5.1 of Trust provides that after the death of Taxpayer, the Trustee of the Marital QTIP Trust shall pay the net income of such trust and the greater of the income of the Marital QTIP Share and the Minimum Distribution Amount (described in Article 5.9A(2)) of such share received by it as Trustee of the Marital QTIP Trust from the Marital QTIP Share to Taxpayer's Spouse for her life in monthly or other convenient installments to the end that all of the net income and the MDA shall be paid to her annually. Upon Spouse's death, the Trustee shall pay all of the accrued income to the date of the death of the Taxpayer's Spouse to Spouse's estate.

Article 5.2 of Trust provides that the Trustee, in its discretion, may pay to or apply for the benefit of Spouse, at any time and from time to time, such amount or amounts of principal of the trust as the Trustee deems needful for her support, comfort and maintenance, including medical, surgical, hospital or other institutional care, having in mind both the standard of living to which she has been accustomed and her income from other sources, and adjusting the payment or application of principal accordingly, to the end that consumption of principal shall supplement, not substitute for, income from other sources.

Article 5.4 of Trust provides that Spouse shall have the right to appoint by her Will any part, or all, of the property in the Marital QTIP Trust to and among Taxpayer's issue. Such special power of appointment may be exercised by specific reference to the Trust in favor of one or more persons within the class of issue in such amounts and proportions and for such estates and interests, and outright, or upon such terms, trusts, conditions and limitations as Spouse shall determine.

Article 5.5 of Trust provides that upon Spouse's death, to the extent that Spouse does not exercise the special power of appointment created in Article 5.3, the Trustee shall dispose of the then remaining principal of the Marital QTIP Trust by adding such principal to the Family Trust described in Article 4.2(a) of Trust to be administered and disposed of in accordance with the provisions of Article 6 of Trust.

Article 5.5 of Trust provides that the Taxpayer intends that the value for federal estate tax purposes of the property of the Marital QTIP Trust and in any IRA or IRA Trust of which the Marial QTIP Trust is the beneficiary shall be available for the marital deduction. Article 5.5 of Trust further provides that Spouse shall have the right to demand that the Trustee make any unproductive assets held in the Marital QTIP Trust productive.

Article 5.9(A) of Trust provides that the Taxpayer may designate the Marital QTIP Trust and/or the Family Trust established under Trust as beneficiaries of an Account. If the Marital QTIP Trust is a beneficiary of death benefits under an Account, the Trustee must withdraw from such Account in each calendar year and deposit in the Marital QTIP Trust at least whichever of the following amounts is the greater:

(1) The net income of the IRA Marital QTIP Share for such year; or

(2) The "minimum distribution amount" (MDA) which is required to be withdrawn from the IRA Marital QTIP Share. If the MDA exceeds the income of the IRA Marital QTIP Share in any given year, then such MDA shall be withdrawn by the Trustees from the IRA Marital QTIP Share as follows: (i) first from the income of the IRA Marital QTIP Share for the current year; and (ii) then from the principal of the IRA Marital QTIP Share.

Article 5.9(A) further provides that the Trustee is authorized, in its discretion, to accelerate distributions from the Account and to receive one or more payments in excess of the aforesaid two amounts so that the Trustee has flexibility to withdraw principal from the IRA Marital QTIP Share in order to satisfy its fiduciary obligations under the Marital QTIP Trust.

Article 5.9(B) of Trust provides that the Trustee shall direct that the account balance of each of the IRA Marital QTIP Share and the IRA Family Trust Share as of the date of Taxpayer's death be distributed to the Marital QTIP Trust and the Family Trust, as applicable, under the method of distribution that is in effect at the date of Taxpayer's death and shall also demand the additional distributions as set forth below. If distributions for any annual period under the method of distribution then in effect would total less for any annual period than the income earned by the IRA Marital QTIP Share for such annual period, the Trustee shall demand additional distributions from the IRA Marital QTIP Share so that all distributions for that annual period equal at least the income earned by the IRA Marital QTIP Share for such period.

Article 5.9(C) of Trust provides that the Trustee shall allocate each year to trust income of the Marital QTIP Trust the greater of (i) the portion of each payment received from the IRA Marital QTIP Share allocable to trust income under the laws of the state in which the Taxpayer is domiciled at the time of Taxpayer's death, or (ii) an amount equal to the MDA of the IRA Marital QTIP Share.

Article 5.9(D) of Trust provides that Spouse is granted the power to compel the Trustee to demand that the assets held in the IRA Marital QTIP Share be invested in income producing assets.

Article 5.9(E) of Trust provides that the income received from the IRA Marital QTIP Share and the IRA Family Trust Share shall not be subject to reduction by reason of expenses allocable to principal. All trust expenses normally allocated to principal, including any income tax due with respect to an installment distribution of principal, shall be charged proportionately to the principal of the Marital QTIP Trust and Family Trust, as applicable.

Article 5.9(F) of Trust provides that the Trustee shall be responsible for making the determination of what is income and what is principal of the Account. The Trustee shall allocate to income of the Marital QTIP Trust the greater of (1) all of the income of the IRA Marital QTIP Share; and (2) the MDA of the IRA Marital QTIP Share regardless of whether a distribution from the IRA Marital QTIP Share to the Marital QTIP Trust is treated as principal or income for trust accounting purposes. All other distributions from the IRA Marital QTIP Share shall be treated as principal for trust accounting purposes.

Article 5.9(G) of Trust provides that the Trustee shall have the right to request immediate payment of any part or all of the IRA Marital QTIP Share in order to satisfy any request by Spouse

to convert unproductive property into productive property or in order to make withdrawals in excess of the MDA as defined in Article 5.9(A)(2).

Article 5.9(I) of Trust provides that Spouse shall have the right to direct the Trustee to compel distribution from the IRA Marital QTIP Share the greater of all of the income of such Share or the MDA.

Article 6 of Trust provides for the disposition of the Family Trust.

Article 6.1 of Trust provides that during Spouse's life, the Trustee may pay to, or apply for the benefit of, any one or more of the group consisting of Spouse and Taxpayer's issue who are living from time to time, such amount or amounts of the net income, or all of the net income, as the Trustee in its discretion may determine is needful for the support, maintenance, education, and general welfare of any one or more of them. In making such distributions of income, the Trustee shall be guided by the principle that the support and maintenance of Spouse in accordance with the standard of living to which she has been accustomed shall be given first priority by the Trustee.

Article 6.2 of Trust provides that the Trustee may pay to, or apply for the benefit of, any one or more of the group consisting of Spouse and Taxpayer's issue who are living from time to time, such amount or amounts of principal, or all of the principal, as the Trustee in its discretion may determine is needful for the support, maintenance, education, and general welfare of any one or more of them. The Trustee is directed to take into account potential adverse federal estate tax consequences to the estate of Spouse, if distributions of principal from the Family Trust are made to her.

Article 6.3 of Trust provides that if the Family Trust shall be a beneficiary of death benefits from an Account, the Trustee of the Family Trust is authorized, in its discretion, to accelerate distributions from the IRA Family Trust Share in order to permit the Trustee effectively to carry out its fiduciary obligations under the terms of the Family Trust.

Article 6.5 of Trust provides that upon Spouse's death, or upon Taxpayer's death if Spouse does not survive him, the Trustee shall value the property then held in Trust by it, including (a) any property which is added to the Family Trust from the Marital QTIP Trust; (b) the value of an Account of which the Family Trust is or becomes a beneficiary; (c) under the provisions of Taxpayer's Will or Spouse's Will; or (d) otherwise. The Trustee shall then apportion the value of the trust property and all

other property thereafter received by the Trustee as additions to principal and not otherwise to be allocated to a specific trust into as many equal shares as there are then living children of Taxpayer and deceased children of Taxpayer with issue then living.

Article 8.3 of Trust provides that the Trustee is directed to analyze distributions made to the Trustee from both the IRA Marital QTIP Share and the IRA Family Trust Share to determine whether all or any part of such distributions are income in respect of a decedent (IRD) under the then applicable provisions of the Internal Revenue Code. If all or any part of such distributions are IRD, then the Trustee is directed to ensure that the distributions or parts thereof are treated as IRD for purposes of computing the federal income taxes applicable to such distributions.

LAW AND ANALYSIS

Rulings 1 - 5

Section 408(a)(6) of the Code states that under regulations issued by the Secretary of the Treasury, rules similar to the rules of § 401(a)(9) and the incidental death benefit requirements of § 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA is maintained.

Section 401(a)(9) states that a plan will not be a qualified plan unless the plan provides that the entire interest of each employee will be distributed, beginning not later than the required beginning date, in accordance with regulations, over a period not extending beyond the life expectancy of such employee and a designated beneficiary.

Section 401(a)(9)(C) defines required beginning date to mean April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 ½ or the calendar year in which the employee retires.

Section 641(b) of the Code states that the taxable income of an estate or trust shall be computed in the same manner as in the case of an individual except as otherwise provided in Part I of Subchapter J of the Code.

Section 408(e)(1) of the Code states that any individual retirement account is exempt from income taxation unless such account has ceased to be an individual retirement account by reason of § 408(e)(2) or 408(e)(3).

Section 1.401(a)(9)-1, E.-1(A) states that for required distributions under § 401(a)(9)(A), life expectancies are calculated using the employee's and the designated beneficiary's attained age as of the employee's birthday and the designated beneficiary's birthday in the calendar year in which the employee attains age 70 1/2.

Section 1.401(a)(9)-1, E.3 and 4 states that the life expectancies for purposes of determining required distributions under § 401(a)(9) must be computed by use of the expected return multiples in Tables V and VI of § 1.72-9.

D-5 A. of Prop. Treas. Reg. § 1.401(a)(9)-1 states in relevant part:

(a) Pursuant to D-2a of this section, only an individual may be a designated beneficiary for purposes of determining the distribution period under § 401(a)(9)(A)(ii). Consequently, a trust itself may not be the designated beneficiary even though the trust is named as a beneficiary. However, if the requirements of paragraph (b) of this D-5A are met, distributions made to the trust will be treated as paid to the beneficiaries of the trust with respect to the trust's interest in the employee's benefit, and the beneficiaries of the trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under § 401(a)(9)(A)(ii). ***

(b) The requirements of this paragraph (b) are met if, as of the later of the date on which the trust is named as a beneficiary of the employee, or the employee's required beginning date, and as of all subsequent periods during which the trust is named as a beneficiary, the following requirements are met:

(1) The trust is a valid trust under state law, or would be but for the fact that there is no corpus; (2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee; (3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable from the trust instrument within the meaning of D-2 of this section; and, (4) the documentation described in D-7 of this section has been provided to the plan administrator.

Provided that the employer plans in which a taxpayer is a participant and from which he receives distributions are qualified under § 401 of the Code as of the date of the distributions in Year 2; the Taxpayer's deductible IRA meets the requirements of § 408 of the Code for 1998; the documentation required by D-7 of § 1.401(a)(9)-1 is furnished to the IRA rollover trustee at the appropriate time; we conclude that:

(1) The withdrawals from the money purchase pension plan, 401(k) plan, and IRA in 1998, the first distribution calendar year, based upon the account balances as of December 31, 1997, the valuation calendar year, computed by dividing such account balances by X will satisfy the minimum distribution requirements under § 401(a)(9) for Year 2.

(2) The distributions in Year 3, determined by dividing the account balance of the rollover IRA as of December 31, Year 2, by Y will satisfy the minimum required distribution for Year 3.

(3) Amounts withdrawn in years subsequent to Year 3, determined by dividing the account balance as of December 31 of the previous year and decreasing Y by one for each year will satisfy the minimum distributions required by § 401(a)(9). Such distributions will be taxable under § 408(d) and § 72 and will not be subject to the excise tax under § 4974.

(4) The Revocable Trust (Trust) that Taxpayer created and the designation of Spouse as the sole beneficiary of the Marital QTIP Trust and a beneficiary of the Family Trust satisfies the requirements of § 1.401(a)(9)-1, Q&A D-5 and thus, Wife will be deemed the death beneficiary of Taxpayer's IRA Trust.

(5) The terms of the Trust requiring the trustee to make withdrawals from the IRA Trust after the death of Taxpayer at least as rapidly as under the method of distribution in effect as of the date of Taxpayer's death will satisfy the minimum distribution requirements under § 401(a)(9) in years subsequent to the death of Taxpayer, provided the withdrawals are made.

(6) The division of the IRA Trust into the IRA Marital QTIP Share and the Family Share using a fractional formula will not be considered to be a distribution that is in satisfaction of a right to receive a distribution of a specific dollar amount and no gain or loss will be realized by the IRA Trust upon such division.

Ruling 6

Section 2056(a) of the Code allows a marital deduction for the value of any interest in property that is included in the

gross estate and that passes from the decedent to the decedent's surviving spouse. 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) of the Code provides an exception to this general rule for "qualified terminable interest property." This is property: (1) which passes from the decedent; (2) in which the surviving spouse has a qualifying income interest for life; (3) to which an election under § 2056(b)(7)(B)(v) has been made.

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, and (2) no person has the power to appoint any part of the property to any person other than the surviving spouse.

Section 20.2056(b)-5(f)(4) provides that a power to retain trust assets which consist substantially of unproductive property will not disqualify the interest if the applicable rules for the administration of the trust require, or permit the spouse to require, that the trustee either make the property productive or convert it within a reasonable time.

Section 20.2056(b)-7(b)(2)(i) of the Estate Tax Regulations provides that the election under § 2056(b)(7)(B)(v) may relate to all or any part of property that meets the requirements of § 2056(b)(7)(B)(i), provided that any partial election must be made with respect to a fractional or percentage share of the property so that the election portion reflects its proportionate share of the increase or decrease in value of the entire property for purposes of applying section 2044 or 2519. The fraction or percentage may be defined by formula.

Revenue Ruling 89-89, 1989-2 C.B. 231, sets forth the circumstances under which a decedent's IRA may qualify as qualified terminable interest property where the IRA proceeds are payable in installments, not directly to the surviving spouse, but to a QTIP Trust that otherwise qualifies under § 2056(b)(7). The Revenue Ruling concludes that the spouse will have a qualifying income interest for life in the IRA proceeds, where the IRA proceeds are distributed in installments to the QTIP Trust, provided: (a) the decedent irrevocably selects a distribution option that provides that the income earned by the undistributed IRA account balance will be paid currently to the QTIP Trust; and (b) under the terms of the QTIP Trust (or applicable state law) such IRA income distributed to the QTIP Trust is allocated to trust income and distributed to the

surviving spouse. In Rev. Rul. 89-89, the executor made a QTIP election with respect to both the IRA and the QTIP Trust.

Based on Taxpayer's submission and representations, Taxpayer irrevocably selected an IRA distribution option requiring that the greater of all of the income of the IRA Marital QTIP Share and the minimum distribution required under § 401(a)(9) of the Code (computed with reference to the IRA Marital QTIP Share) must be paid at least annually to the Trustee of the Marital QTIP Trust. Under the terms of the Beneficiary Designation Form and the Marital QTIP Trust, Spouse has the right to request that the Trustee convert unproductive property into productive property. The Marital QTIP Trust provides that these amounts received from the IRA Marital QTIP Share must be distributed to Spouse at least annually. Therefore, we conclude that Spouse will have a qualifying income interest for life in the IRA Marital QTIP Share for purposes of § 2056(b)(7) of the Code.

We also conclude that, if the Trustee of the Marital QTIP Trust makes an election under § 2056(b)(7)(B)(v) to treat the IRA Marital QTIP Share and the Marital QTIP Trust as qualified terminable interest property, the IRA Marital QTIP Share and the Marital QTIP Trust will be eligible for a federal estate tax marital deduction under § 2056(b)(7).

Ruling 7

Section 2033 provides for the inclusion in the gross estate of any property in which the decedent had an interest at the time of death.

Section 2036(a) of the Internal Revenue Code provides that the value of the gross estate shall include the value of any property of which the decedent has made a transfer (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) in which the decedent has retained for his life the possession or enjoyment of, or the right to designate the persons who shall possess or enjoy the property or the income from the property.

Section 2037 provides that the value of the gross estate shall include the value of any property of which the decedent has made a transfer (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if the possession or enjoyment of the property can be obtained only by surviving the decedent and the decedent has retained a reversionary interest in the property.

Section 2038(a) provides that the value of the gross estate includes the value of all property of which the decedent has at

any time made a transfer (except where there has been a bona fide sale for adequate and full consideration in money or money's worth) by trust or otherwise where the enjoyment thereof was subject at the date of death to any change through the exercise of a power by the decedent, to alter, amend, revoke, or terminate the interest in the property or where the decedent relinquished this power within the three-year period ending on the date of the decedent's death.

Based on Taxpayer's submission and representations, Taxpayer is the transferor for purposes of sections 2036, 2037, and 2038 of the IRA Family Share. Because Taxpayer rather than the Spouse is the transferor for the IRA Family Share, the IRA Family Share will not be includible in Spouse's gross estate under sections 2036, 2037, or 2038.

Except as we have specifically ruled herein, we express no opinion under the cited provisions or under any other provision of the Code.

This letter is based on the assumption that Taxpayer's Revocable Trust is a valid trust under state law.

This ruling is based on the facts and applicable law in effect on the date of this letter. If there is a change in material fact or law (local or Federal) before the transactions considered in the ruling take effect, the ruling will have no force or effect. If the taxpayer is in doubt whether there has been a change in material fact or law, a request for reconsideration of this ruling should be submitted to this office. Moreover, if the IRA or Trust is substantially amended, this ruling may not remain in effect.

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

Sincerely yours,

Christine E. Ellison

Christine E. Ellison, Chief
Branch 7
Office of Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures:

Copy for § 6110 purposes