

The facts presented are as follows:

Decedent died testate on Date 1, in Year 1. Item V of Decedent's will provides that the residue of Decedent's property is to be placed in a trust. Item V(a) provides that the trustee is to pay Spouse all income from the trust property, in monthly installments, until Spouse's death. Item V(c) provides, in part, that on the death of Spouse, all property remaining in trust is to be distributed equally to Daughter and Son.

Item V(e) provides the following:

I anticipate that the Executor will elect to treat some portion of the property in this trust as qualified terminable interest property that qualifies for the marital deduction in the determination of the federal estate tax liability imposed upon my estate. I recognize, however, that future tax considerations, whether relating to the time of my wife's death and mine, the availability of advantageous tax options for my estate, or otherwise, may indicate that it would be prudent not to make the election in whole or in part, and for this reason I leave the responsibility for that decision to the Executor.

The Executor of Decedent's estate employed Lawyer of Law Firm to provide advice with regard to the legal and tax aspects of the administration and distribution of Decedent's estate, including the preparation of the estate tax return, Form 706, United States Estate (and Generation-Skipping) Tax Return. It is represented that the Executor and Lawyer intended that the QTIP election be made in the amount necessary to reduce Decedent's estate tax to zero.

The applicable exclusion amount under § 2010(c) for decedents dying in Year 1 was \$x. Lawyer prepared Decedent's estate tax return in Year 2, when the applicable exclusion amount was \$y. The difference between \$x and \$y is \$z. Lawyer used \$y as the applicable exclusion amount in computing the estate tax and concluded that a QTIP election in the amount of \$a would reduce Decedent's estate tax to zero. The return was filed on Date 2 and reported a tax liability of zero. Due to the \$z difference between \$x and \$y, the QTIP election should have been made in the amount of \$b (\$a + \$z).

On Date 3, the executor received a notice from the Internal Revenue Service that there was a computation error on the estate tax return. The tentative tax on Line 6 was incorrectly reported because of the application of the incorrect applicable exclusion amount. This error resulted in an underpayment in estate tax.

On or about Date 4, the estate filed a supplemental Form 706 which corrected the amount of the applicable exclusion, elected QTIP treatment with respect to property in the amount of \$b, and reported a tax liability of zero.

The estate requests a ruling that a marital deduction is allowable under § 2056(b)(7) with respect to the amount necessary to reduce decedent's estate tax liability to zero, determined based on the correct applicable exclusion amount for decedents dying in Year 1.

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.

In this case, the facts indicate that Lawyer and Executor intended to make the QTIP election with respect to that amount necessary to reduce the estate tax to zero. However, in determining that amount, Lawyer made a mathematical error by applying the applicable exclusion amount for Year 2, rather than the applicable exclusion amount for Year 1, in computing Decedent's federal estate tax. This error led to an erroneous

computation indicating that a QTIP election in the amount of \$a was sufficient to reduce Decedent's estate tax to zero. Based on the facts submitted and the representations made, we conclude that a marital deduction is allowable under § 2056(b)(7) for the amount necessary to reduce the estate tax to zero, determined using the correct applicable exclusion amount for the year of Decedent's death.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives. A copy of this letter, together with a copy of the supplemental Form 706, should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy is enclosed for this purpose.

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.

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,

Katherine A. Mellody
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter