

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200839019**

Release Date: 9/26/2008

Index Number: 2056.00-00, 2056.07-00,
9100.22-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-120152-07

Date:

May 23, 2008

Legend:

Decedent	=
A	=
B	=
Trust	=

Date 1	=
Date 2	=
Date 3	=
Date 4	=
Accountant	=
Year	=

Dear

This is in response to your authorized representative's letter of April 12, 2007, 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. Decedent created a revocable trust (the "Trust") on Date 1 and amended it on Date 2. The Trust became irrevocable at Decedent's death on Date 3. Decedent was survived by his

spouse. Decedent's child, A, is designated as the trustee.

Under Article Four, Paragraph A, of the Trust, the trustee is to pay the net Trust income, at least quarter-annually, to the surviving spouse. The Trust will terminate at the surviving spouse's death, and the Trust property will be distributed equally between Decedent's two children, A and B.

On Date 4, A, as trustee of the Trust, filed the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for Decedent's estate. The Trust property was reported on Schedule G, but it was not listed on Schedule M. No QTIP election was made or deemed to be made with respect to the Trust property.

The trustee engaged Accountant to prepare the Form 706. The trustee relied on Accountant to prepare the Form 706. Accountant did not advise the trustee to make a QTIP election. In Year, other tax advisors told the trustee that a QTIP election could and should have been made on the Form 706, and the corresponding marital deduction reported on the Form 706.

You are requesting an extension of time to make a QTIP election with respect to the Trust property.

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 from the decedent to the surviving spouse, but only to the extent that the 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), the property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A), no part of the 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. The election, once made, shall be irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that the election referred to in § 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by § 2001. 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 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.

Requests for relief under §§ 301.9100-2 and 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)(ii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because of intervening events beyond the taxpayer's control.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied because the trustee acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Therefore, the trustee is granted an extension of time until sixty (60) days from the date of this letter to make a QTIP election with respect to the Trust. The election should be made on a supplemental Form 706 filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the form.

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.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures
Copy for § 6110 purposes

cc: