

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
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PLR-138612-09
Date: FEBRUARY 19, 2010

Legend

Grantor =
Spouse =
Date 1 =
Date 2 =
Trust =
Law Firm =
Year 1 =
a =

Dear _____ :

This responds to your authorized representative's letter, dated August 17, 2009, 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 § 2523(f)(2) for a Year 1 transfer of stock to a trust for the benefit of Spouse.

The facts and representations submitted are summarized as follows:

On Date 1, Grantor executed Trust for the benefit of her spouse, Spouse. Trust was an irrevocable trust. In Year 1, Trust was funded with stock worth \$a. Article Two, Paragraph A, of Trust provides, in relevant part, during the lifetime of Spouse, the trustees are to pay to him at least quarterly all of the net income of Trust and as much of the principal as the trustees consider advisable for his health, education, maintenance, and support.

Article Two, Paragraph B, provides, in relevant part, that Grantor intends, to the extent that QTIP elections are made on the gift tax returns with respect to Trust, to be entitled to the maximum federal gift tax marital deduction.

Article Three, Paragraph B, provides, in relevant part, that upon Spouse's death, the trustees are to divide the remaining property of Trust, including any accrued and undistributed income, into as many equal shares as there are children of Spouse then living and children of Spouse then deceased leaving issue then living.

Grantor hired Law Firm to prepare and file the Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return for Year 1. Form 709 was timely filed. The QTIP election, under § 2523(f)(2) was not made on the Form 709. Spouse died on Date 2.

You are requesting an extension of time to make a QTIP election under § 2523(f)(2) with respect to the Year 1 transfer of stock to Trust.

Section 2501 imposes a tax on the transfer of property by gift by an individual. Section 2511 provides that the tax imposed by § 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2523(a) provides that where a donor transfers during the calendar year by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar year an amount with respect to such interest equal to its value.

Section 2523(b) provides, in 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, such interest transferred to the spouse will terminate or fail, no deduction shall be allowed with respect to such interest if the donor retains in himself, or transfers or has transferred (for less than an adequate and full consideration in money or money's worth) to any person other than such donee spouse (or the estate of such spouse), an interest in such property, and if by reason of such retention or transfer the donor (or his heirs or assigns) or such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse.

Section 2523(f)(1) provides that in the case of qualified terminable interest property, for purposes of § 2523(a), such property shall be treated as transferred to the donee spouse, and for purposes of § 2523(b)(1), no part of such property shall be considered as retained in the donor or transferred to any person other than the donee spouse.

Section 2523(f)(2) provides that the term "qualified terminable interest property" means any property which is transferred by the donor spouse, in which the donee spouse has a qualifying income interest for life, and to which an election under § 2523(f)(4) applies.

Section 2523(f)(4)(A) provides that an election under § 2423(f) with respect to any property shall be made on or before the date prescribed by § 6075(b) for filing a gift tax return with respect to the transfer (determined without regard to § 6019(2)) and shall be made in such manner as the Secretary shall by regulations prescribe. Section 2523(f)(4) provides that an election under § 2523(f)(4), once made, is irrevocable.

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)(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 because Grantor acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Therefore, Grantor is granted an extension of time until sixty (60) days from the date of this letter to make a QTIP election with respect to Trust. The election should be made on a supplemental Form 709 filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the form.

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.

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,

Curt G. Wilson
Associate Chief Counsel
Passthroughs & Special Industries

Enclosures

Copy for § 6110 purposes
Copy of this letter