

Internal Revenue Service

Number: **201233011**

Release Date: 8/17/2012

Index Number: 2523.06-01, 9100.00-00,
7805.04-01

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-146503-11

Date: May 1, 2012

Legend

Spouse

Trust

Year 1

Law Firm

Dear _____ :

This letter responds to your authorized representative's letter dated September 2, 2011 requesting that the revocation of PLR 201025021 (February 19, 2010) by PLR 201109012 (November 15, 2010) apply prospectively only, in accordance with § 7805(b) of the Internal Revenue Code. We have decided to grant relief under § 7805(b) and that the revocation of PLR 201025021 by PLR 201109012 will apply without retroactive effect.

Private Letter Ruling 201025021 granted you an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an inter vivos qualified terminable interest property (QTIP) election under § 2523(f)(4) for a Year 1 transfer of stock to Trust for the benefit of Spouse. After issuing that letter, we determined that we had issued PLR 201025021 in error because § 2523(f)(4) expressly prescribed the time for filing the inter vivos QTIP election. Because § 301.9100-3 applies only to requests for extensions of time fixed by regulations or other published guidance, we did not have the discretion to grant an extension of time under § 301.9100-3 to make the QTIP election under § 2523(f)(4) for the Year 1 transfer to Trust. Consistent with that decision, we issued PLR 201109012 which retroactively revoked PLR 201025021 as of February 19, 2010, the date of issue

of PLR 201025021, and invited you to submit a request to limit the retroactive effect of the revocation. You submitted that § 7805(b) request in September of 2011.

In response to PLR 201025021, you released Law Firm, the law firm you hired to prepare the Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, from a malpractice action. As a consequence, you may no longer recover damages from Law Firm with respect to this matter. Thus, you relied on PLR 201025021 to your detriment.

Section 7805(b)(8) provides that the Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.

Section 11.05 of Rev. Proc 2012-1, 2012-1 I.R.B. 1, provides that an Associate office will revoke or modify a letter ruling and apply the revocation retroactively to the taxpayer for whom the letter ruling was issued if: (1) there has been a misstatement or omission of controlling facts; (2) the facts at the time of the transaction are materially different from the controlling facts on which the letter ruling was based; or (3) the transaction involves a continuing action or series of actions and the controlling facts change during the course of the transaction.

Section 11.06 of Rev. Proc 2012-1 provides that where the revocation or modification of a letter ruling is for reasons other than a change of facts, such revocation or modification will generally not be applied retroactively to the taxpayer for whom the letter ruling was issued provided that: (1) there has been no change in the applicable law; (2) the letter ruling was originally issued for a proposed transaction; and (3) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment.

Based upon the information submitted and representations you have made, we have determined that we will grant § 7805(b) relief in this case. Therefore, the revocation of PLR 201025021 will not apply retroactively.

You must attach a copy of this letter to any relevant gift or estate tax return.

In accordance with the Power of Attorney on file 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,

Curt G. Wilson
Associate Chief Counsel
(Passthroughs & Special Industries)