



Decedent died on Date 1, survived by Spouse. At the time of Decedent's death, Spouse was not a United States citizen. On Date 2, Spouse established a Qualified Domestic Trust (QDOT) (Trust) pursuant to § 2056A and funded Trust with assets that would have passed outright to Spouse from Decedent's estate. Spouse and Trustee, a U.S. corporation, are co-trustees of Trust. Spouse, as executrix of Decedent's estate, timely filed Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and elected, on Schedule M, to treat Trust as a QDOT. Decedent's estate received a closing letter from the Service.

On Date 3, Spouse became a U.S. citizen. Spouse did not advise Trustee of Trust that she had become a U.S. citizen until Date 4. Accordingly, Trustee did not file a Form 706-QDT and make notification and certification of Spouse's U.S. citizenship during the required time period. Upon discovery of this information, Trustee promptly submitted this private letter ruling request.

It is represented that Spouse continuously resided in the United States from the date of Decedent's death until the time Spouse became a United States citizen. It is represented further that no taxable distributions were made from Trust to Spouse or any other person after the death of Decedent and before Spouse became a United States citizen.

### Law and Analysis

Section 2001(a) of the Internal Revenue Code 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 is 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.

Section 2056(d)(1) provides that, except as provided in paragraph (2), if the surviving spouse is not a citizen of the United States, no deduction shall be allowed under § 2056(a). Section 2056(d)(2) provides that paragraph (1) shall not apply to any property passing to the surviving spouse in a QDOT.

There are three main requirements under § 2056A that must be satisfied in order for a trust to be a QDOT. The trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or a domestic corporation, and provides that no distribution (other than a distribution of income) may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the tax imposed by § 2056A on the distribution. In addition, the trust must meet the requirements of the regulations under § 2056A(b)(1). Finally, the executor must make an election under this section on

the federal estate tax return to qualify the property for the federal estate tax marital deduction.

Section 2056A(b)(1) provides that an estate tax is imposed on — (A) any distribution before the date of death of the surviving spouse from a qualified domestic trust, and (B) the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse.

Section 2056A(b)(12) provides, in part, that if the surviving spouse of the decedent becomes a citizen of the United States and if such spouse was a resident of the United States at all times after the date of death of the decedent and before such spouse becomes a citizen of the United States, then the tax imposed by § 2056A(b)(1)(A) shall not apply to any distributions before such spouse becomes a citizen, and the tax imposed by § 2056A(b)(1)(B) shall not apply.

Sections 20.2056A-10(a)(1) and (2) of the Estate Tax Regulations provide, in part, that a QDOT is no longer subject to the § 2056A estate tax if the surviving spouse becomes a citizen of the United States and the spouse was a resident of the United States at all times after the death of the decedent and before becoming a United States citizen; and the U.S. Trustee of the QDOT notifies the Service and certifies in writing that the surviving spouse has become a United States citizen. Notice is to be made by filing a final Form 706-QDT on or before April 15th of the calendar year following the year in which the surviving spouse becomes a United States citizen, unless an extension of time for filing is granted under § 6081.

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 six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3 sets forth the standards that the Commissioner uses to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation and not expressly provided by statute. These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence proving 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 to 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 are satisfied. Therefore, Trustee is granted an extension of time of 120 days from the date of this letter to file with the Service the required notice and certification that Spouse became a United States citizen. The required notice and certification should be made on a Form 706-QDT. The Form 706-QDT should be filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the Form 706-QDT.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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.

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.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: \_\_\_\_\_  
Lorraine E. Gardner, Senior Counsel  
Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter  
Copy for § 6110 purposes

cc: