

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

Telephone Number:

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PLR-103791-15

Date:  
May 13, 2015

Legend

Decedent  
Spouse  
Trust  
Attorney  
Date 1  
Date 2  
Date 3  
Date 4  
Child 1  
Child 2  
Child 3  
Child 4

Dear :

This letter responds to a letter from your authorized representative dated January 7, 2015 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:

On Date 1, Decedent and Spouse executed a revocable trust, Trust. Decedent and Spouse transferred community property and separate property into Trust. Trust was most recently amended on Date 2. Decedent died on Date 3, survived by Spouse.

Article V.A. of Trust provides that on Decedent's death, the trustee is to distribute Decedent's separate property to Child 1 and Child 2. Article V.A. provides that the

trustee is to divide the remaining trust estate into two separate trusts, Trust A and Trust B.

After funding Trust A, Trust B is to consist of the balance of Decedent's interest in Decedent's and Spouse's community property. Article V.E.4 provides that the trustee is to pay to or apply for the benefit of Spouse during her lifetime all of the net income of Trust B in monthly or in other convenient installments, but in no event not less often than annually. If at any time in the discretion of the trustee Spouse should be in need of additional funds for her proper health, education, maintenance, and support and if Trust A is entirely exhausted, then the trustee, in his discretion, is to pay to or apply for the benefit of Spouse such amounts from the principal of Trust B as the trustee from time to time deems advisable.

Article V.F.5 provides that upon the death of Spouse, the remaining trust estate is to be divided into two equal shares. One share is to be distributed in equal shares to Child 3 and Child 4. The other share is to be distributed in equal shares to Child 1 and Child 2.

Spouse, as executor of Decedent's estate, hired Attorney to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. On Date 4, the Form 706 was timely filed on behalf of the estate. On Schedule M, Attorney mistakenly did not include Trust B as property subject to the QTIP election. Thus, no QTIP election was made with respect to Trust B.

You have requested an extension of time to make the QTIP election under § 2056(b)(7).

## LAW AND ANALYSIS

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 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)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A), no part of such 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. Such an election, once made, shall be irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that, in general, the election referred to in § 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by § 2001 (or § 2101). For purposes of this paragraph, 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 by the executor 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.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute).

Requests for relief under § 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. Therefore, the executor of Decedent’s estate is granted an extension of time of 120 days from the date of this letter to make a QTIP election with respect to Trust B. The election should be made on a supplemental Form 706 filed with the Cincinnati Service Center at the following address: Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

