

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Re:

Refer Reply To:
CC:PSI:04
PLR-110405-15
Date:
August 11, 2015

LEGEND

Trust	=
Decedent	=
Spouse	=
State	=
Date 1	=
Date 2	=
<u>X</u>	=
<u>Y</u>	=

Dear :

This letter responds to your letter of December 9, 2014, and subsequent correspondence, requesting a ruling that, pursuant to Rev. Proc. 2001-38, 2001-2 C.B. 124, the qualified terminable interest property (QTIP) election made with respect to Trust is a nullity for federal gift, estate and generation-skipping transfer (GST) tax purposes.

The facts and representations submitted are as follows.

Decedent died testate on Date 1, survived by Spouse and their children. Under the terms of Article 3.1 of Decedent's will, Trust was established and was to be funded by an amount that fully utilizes the federal unified credit, but no greater amount than is necessary to reduce to zero the smallest sum possible of Federal estate tax or State estate tax, payable as a result of Decedent's death. Under Article 3.1.A and B, the trustee is to pay all the net income from Trust to Spouse until her death and the trustee

is to pay or apply to Spouse as much of the trust principal as is necessary for her proper care and support, maintenance, health, and education during her lifetime. Article 3.1.D provides that the trustee has the power to appoint to Spouse, during any calendar year property in the value of the greater of \$5,000 or 5 percent of the aggregate value of the trust. Article 3.1.E provides that Spouse has a special power to appoint the remainder interest of the trust to Decedent's children then living in equal or unequal shares, exercisable in an instrument referencing Decedent's will or in Spouse's own will. If Spouse fails to exercise the special power of appointment, the remainder interest of the trust shall be divided among her living children at the time of her death, in equal shares.

Article 7.1. provides that Decedent gives, devises and bequests the rest and residue of Decedent's property which he owned at the time of his death, whether real, personal or mixed, community or separate, and wheresoever situated to Spouse, in fee simple.

Pursuant to the terms of Decedent's will, Spouse received \$x outright in fee simple. The remaining \$y of Decedent's gross estate funded Trust.

Spouse, as the executor of Decedent's estate, timely filed a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. All of the assets of Trust were included on Schedule M, Bequests to Surviving Spouse. All of the assets other than the assets that funded Trust passed to Spouse outright pursuant to Article 7.1. By listing the assets of Trust on Schedule M, the executor made a QTIP election with respect to those assets. Decedent's estate received an estate tax closing letter on Date 2 indicating that no tax was due.

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, except as limited by § 2056(b), the value of the taxable estate is to be 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, but only to the extent that such interest is included in determining the value of the gross estate. Section 2056(b)(1) provides the general rule that a marital deduction is not allowed for an interest passing to the surviving spouse that is a "terminable interest." An interest is a terminable interest if the interest passing to the surviving spouse will terminate or fail on the lapse of time or on the occurrence of an event or contingency or on the failure of an event or contingency to occur and, on termination, an interest in the property passes to someone other than the surviving spouse.

Section 2056(b)(7) provides an exception to the terminable interest rule in the case of QTIP. For purposes of § 2056(a), QTIP is treated as passing to the surviving spouse,

and no part of the property is treated as passing to any person other than the surviving spouse. Under § 2056(b)(7)(B)(i), QTIP is property which passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which an election under § 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(v) provides that the election to treat property as QTIP under § 2056(b)(7) is made by the executor on the return of tax imposed by § 2001. The election, once made, is irrevocable.

Section 2044 provides that the value of the gross estate includes the value of any property in which the decedent had a qualifying income interest for life and with respect to which a deduction was allowed for the transfer of the property to the decedent under § 2056(b)(7).

Section 2519(a) and (b) provide that any disposition of all or part of a qualifying income interest for life in any property with respect to which a deduction was allowed under § 2056(b)(7) is treated as a transfer of all interests in the property other than the qualifying income interest.

Section 2652(a) provides that, in the case of property subject to an election under § 2056(b)(7), the surviving spouse will be treated as the transferor of the property for generation-skipping transfer (GST) tax purposes in the absence of a “reverse QTIP” election under § 2652(a)(3).

In general, under Rev. Proc. 2001-38, a QTIP election under § 2056(b)(7) will be treated as null and void for purposes of §§ 2044(a), 2056(b)(7), 2519(a), and 2652, where the election was not necessary to reduce the estate tax liability to zero, based on values as finally determined for federal estate tax purposes. The revenue procedure provides an example where a QTIP election was made when the taxable estate (before allowance of the marital deduction) was less than the applicable exclusion amount under § 2010(c). Another example set forth in the revenue procedure is where the decedent’s will provides for a “credit shelter trust” to be funded with an amount equal to the applicable exclusion amount under § 2010(c), with the balance of the estate passing to a marital trust intended to qualify under § 2056(b)(7). The estate makes QTIP elections with respect to both the credit shelter trust and the marital trust. The QTIP election for the credit shelter trust was not necessary, because no estate tax would have been imposed whether or not the QTIP election was made for that trust. See Rev. Proc. 2001-38, § 2.

In this case, the election under § 2056(b)(7) to treat the assets of Trust as QTIP was not necessary to reduce the estate tax to zero because no estate tax would have been imposed on the assets in Trust whether or not the election was made. If relief under Rev. Proc. 2001-38 is granted, the estate’s federal estate tax liability will remain at zero after applying Decedent’s unified credit amount under § 2010.

Because the QTIP election in this case was not necessary to reduce the estate tax liability to zero, Rev. Proc. 2001-38 applies and the Service will disregard the QTIP election with respect to Trust and treat it as null and void for purposes of §§ 2044, 2056(b)(7), 2519(a), and 2652. Accordingly, the property for which the election is disregarded will not be includible in the Spouse's gross estate under § 2044(a) and Spouse will not be treated as making a gift under § 2519 if Spouse disposes of the income interest with respect to that property. Further, Spouse will not be treated as the transferor of the property in Trust for GST tax purposes under § 2652.

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.

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,

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
(Passthroughs & Special Industries)

Enclosures (2)