

## Internal Revenue Service

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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-138492-15

Date:

May 26, 2016

### Legend

Decedent

Spouse

Son

Trust

Attorney

Date 1

Date 2

Date 3

Date 4

QTIP Trust

Spouse Trust

Dear :

This letter responds to a letter from your authorized representative dated November 24, 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 executed his will and a revocable trust, Trust. Decedent died on Date 2, survived by Spouse.

Section 2.01 of Decedent's will provides that Decedent gives, devises, and bequeaths his residuary estate to the then serving trustee of Trust, in his or her capacity as trustee of Trust.

Section 3.01 of Decedent's will provides that Decedent appoints Spouse to serve as personal representative of the estate. If at any time and for any reason Spouse fails to become or ceases to be the personal representative of the estate, Decedent appoints Son to serve as substitute or successor personal representative.

Section 5.01 of Trust provides that after Decedent's death, after making specific bequests, the QTIP Trust is to be funded with the smallest amount of the remaining Trust Fund which qualifies for the marital deduction. The trustees of QTIP Trust are to distribute all the net income to Spouse quarter-annually. The trustees may also pay or apply principal of QTIP Trust to Spouse for her health, support, maintenance, and education. Two years after Decedent's death, the QTIP Trust is to terminate and all undistributed income and the then-remaining balance of QTIP Trust is to be distributed outright and free of trust to Spouse Trust, or if such trust was not then in existence, to Spouse.

Spouse, as personal representative of Decedent's estate, hired Attorney to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. On Date 3, the Form 706 was timely filed on behalf of the estate. On Schedule M, Attorney mistakenly failed to include the assets of QTIP Trust as property subject to the QTIP election. Thus, no QTIP election was made with respect to the property passing to QTIP Trust. Spouse died on Date 4.

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 personal representative 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 the property passing to QTIP Trust. 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.

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,

Associate Chief Counsel  
Passthroughs and Special Industries

*Melissa C. Liquerman*  
By: Melissa C. Liquerman  
Chief, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes  
Copy of this letter

cc: