

Internal Revenue Service

Number: **201647002**

Release Date: 11/18/2016

Index Number: 2056A.00-00, 9100.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-104548-16

Date:

August 02, 2016

Re:

LEGEND

Decedent =

Spouse =

Country A =

Country B =

Date 1 =

Month 1 =

Month 2 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Company =

Defined Benefit Plan =

Annuity =

X =

Law Firm =

Accounting Firm =

Attorney =

Dear :

This letter responds to your representative's letter of January 4, 2016, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to satisfy the requirements of § 2056A of the Internal Revenue Code

(Code).

According to the facts submitted, Decedent was a citizen of Country A and a resident of Country B. He died on Date 1, survived by Spouse. Spouse is also a citizen of Country A and a resident of Country B.

Decedent was employed by Company. He participated in a Defined Benefit Plan (Plan) under which Spouse is to receive payments of \$x per month for life (Annuity). Under the Plan's provisions, the Annuity payments were to begin the first day of the month following Decedent's death. Spouse cannot assign her benefits under the Plan.

Spouse received the first Annuity payment in Month 1, and the payments have continued for each month thereafter. She did not advise her legal or tax advisors that the payments had begun as she did not know that there were legal consequences to her receiving them. Subsequently, in Month 2, the Plan's administrator informed Attorney that the payments to Spouse had begun.

Thereafter, on Date 2, Spouse timely established a trust (QDOT) intended to qualify as a qualified domestic trust within the meaning of § 2056A of the Code. On Date 3, pursuant to Attorney's letter of instructions, Spouse transferred to the QDOT the corpus portion of every Annuity payment she had received.

In an agreement (Agreement) dated Date 4, Spouse agreed to transfer to the QDOT within 60 days of receipt the corpus portion of each payment received from the Plan. On Date 5, the federal estate tax return, Form 706 (United States Estate and Generation-skipping Transfer Tax Return), for Decedent's estate was timely filed along with the Agreement. The corpus portion of the Annuity was listed on Schedule M of the return as a part of the QDOT, and the executors made a QDOT election for it. It is represented that Spouse has timely transferred to the QDOT the corpus portion of each monthly Annuity payment she received after establishing the QDOT.

An extension of time pursuant to § 301.9100-3 is requested for Spouse to timely transfer to the QDOT the corpus portion of Annuity payments received before Date 3 so that those corpus amounts will be deemed as transferred within 60 days of receipt.

LAW AND ANALYSIS

Section 2056(a) provides, in part, that, for purposes of the tax imposed by § 2001, the value of the taxable estate shall 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 his surviving spouse.

Section 2056(d)(1) provides, in part, that, except as provided in paragraph (2), if the surviving spouse of the decedent is not a citizen of the United States, no deduction shall

be allowed under subsection (a). Section 2056(d)(2)(A) provides that paragraph (1) shall not apply to any property passing to the surviving spouse in a qualified domestic trust.

Under § 2056A, in order for a trust to qualify as a QDOT: (1) the trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or domestic corporation and 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 additional estate tax imposed by § 2056A(b)(1) on the distribution; (2) the trust must meet the requirements that are prescribed under Treasury regulations to ensure the collection of the tax imposed by § 2056A(b); and (3) the executor must make the election prescribed by § 2056A(d) to treat the trust as QDOT.

Section 20.2056A-4(c)(1) of the Estate Tax Regulations provides, in part, that a nonassignable annuity means a plan, annuity, or other arrangement (whether qualified or not qualified under part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code) that qualifies for the marital deduction but for § 2056(d)(1)(A) and whose payments are not assignable or transferable to the QDOT under either federal law, state law, foreign law, or the terms of the plan or arrangement itself. In the case of a plan, annuity, or other arrangement which is not assignable or transferable, the property passing under the plan from the decedent is treated as meeting the requirements of § 20.2056A-2, and the requirements of § 20.2056A-2T(d) (pertaining, respectively, to general requirements, qualified marital interest requirements, statutory requirements, and requirements to ensure collection of the tax) if the requirements of either paragraph (c)(2) or (3) of this section are satisfied. Thus, the property will be treated as passing in the form of a QDOT, notwithstanding that the spouse does not irrevocably transfer or assign the annuity or other payment to the QDOT.

The requirements of § 20.2056A-4(c)(3) will be satisfied if:

(i) The noncitizen surviving spouse agrees to roll over and transfer, within the time prescribed in § 20.2056A-4(c)(7)(i), the corpus portion of each annuity payment to a QDOT, whether the QDOT is created by the decedent's will, the executor of the decedent's estate, or the surviving spouse;

(ii) A QDOT for the benefit of the surviving spouse is established prior to the date that the estate tax return is filed and on or prior to the last date prescribed by law that the QDOT election may be made;

(iii) The executor of the decedent's estate files with the estate tax return the Information Statement described in § 20.2056A-4(c)(5);

(iv) The executor files with the estate tax return the Agreement To Roll Over Annuity

Payments described in § 20.2056A-4(c)(7); and

(v) The executor makes the election under § 2056A(a)(3) and § 20.2056A-3 with respect to the nonassignable annuity or other payment.

Section 20.2056A-4(c)(7)(i) provides, in part, that beginning in the calendar year of the receipt by the surviving spouse of the spouse's first annuity payment, the corpus portion of each annuity payment, as determined under paragraph (c)(4) of this section, must, within 60 days of receipt, be transferred to a QDOT. In addition, all annuity payments received during the calendar year must be reported on Form 706-QDT no later than April 15th of the year following the year in which the annuity payments are received.

Section 20.2056A-4(c)(7)(ii) provides, in part, that in order for a nonassignable annuity or other payment described in this paragraph (c) to qualify under paragraph (c)(3) of this section, the executor of the decedent's estate must file with the estate tax return an Agreement To Roll Over Annuity Payments, which must be signed by the surviving spouse of the decedent.

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 executor made a valid QDOT election with respect to the corpus portion of the Annuity that was listed on Schedule M of the estate tax return. We also conclude that the requirements of § 301.9100-3 are satisfied with respect to the Date 3 rollover to the QDOT.

It is represented that the required transfers of corpus occurred on Date 3. Nevertheless, an extension of time until 120 days after the date of this letter is granted to complete the transfers of corpus to the QDOT and file a Supplemental Form 706-QDT (including a schedule of transfers) with the Internal Revenue Service Center,

Cincinnati OH 45999. A copy of this letter should be attached to the return.

The ruling 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 ruling, it is subject to verification on examination. Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

Leslie H. Finlow

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy of letter for § 6110 purposes