

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202133010**
Release Date: 8/20/2021

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 2056.00-00, 2056.07-00,
9100.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:4
PLR-126627-20

Re:

Date:
April 08, 2021

Legend

Decedent =

Date
Spouse =

Trust =

Survivor's
Trust =

Exemption
Trust =

Marital Trust =

Child =

Accountant =

Attorney =

Dear :

This letter responds to a letter dated October 27, 2020, and subsequent correspondence, submitted on behalf of Decedent's estate, requesting an extension of time under § 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 as follows:

Decedent died on Date survived by Spouse. Under the terms of Decedent's will, as amended by a codicil, the residue of Decedent's probate estate passes to Trust. Trust, a revocable living trust, was established by Decedent and Spouse, as trustors and trustees, during their joint lifetimes. Under the terms of Trust, on Decedent's death, the Trust is divided into three subtrusts – Survivor's Trust, to be funded with Spouse's separate property and one-half interest in the community property, Exemption Trust, to be funded with Decedent's separate property and one-half interest in the community property up to a pecuniary amount, and Marital Trust, to be funded with the balance of Decedent's separate property and one-half interest in the community property. Survivor's Trust is revocable by Spouse, and Exemption Trust and Marital Trust are irrevocable.

Under the terms of Trust, during Spouse's lifetime, the trustee must distribute the net income of Marital Trust in quarterly or more frequent installments to Spouse and may distribute the principal of Marital Trust to Spouse for Spouse's support, health, maintenance, and education. Upon Spouse's death, any accrued or undistributed income passes to Spouse's estate, and the remaining principal passes to a subtrust for the benefit of Decedent's descendants.

Decedent intended, as stated in the terms of his Will and Trust, that the trustee or Decedent's executor, as appropriate, make a QTIP election with respect to the property passing to Marital Trust.

Upon Decedent's death, Spouse served as sole trustee of Trust and was the executor of Decedent's estate under § 2203. Nine months later, Child became the sole trustee of Trust and the executor under § 2203.

Spouse, followed by Child, retained Accountant to prepare Form 706 for Decedent's estate. Accountant prepared Form 706 and a supplemental Form 706 for Decedent's estate (collectively, Forms 706). Although the due date was extended by six months, Forms 706 were not timely filed, and no QTIP election was made with respect to the property passing to Marital Trust. Attorney, engaged by Spouse for estate planning advice, subsequently discovered the failure to make the QTIP election when Attorney reviewed Forms 706.

You have requested an extension of time under § 301.9100-3 to make a QTIP election under § 2056(b)(7) to treat Marital Trust as QTIP.

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 QTIP, 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. 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 six 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, Child, as 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 Marital Trust.

The election should be made on a supplemental Form 706 filed with the Internal Revenue Service Center at the following address: Internal Revenue Service Center, Attn: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the supplemental Form 706.

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, including any issues pertaining to the Form 706 as filed.

The ruling contained in this letter is based upon information and representations submitted on behalf of Decedent's estate 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.

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.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: Karlene M. Lesho

Karlene M. Lesho
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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Enclosure

Copy for § 6110 purposes

cc: