

Internal Revenue Service

Department of the Treasury
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Person To Contact:
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Refer Reply To:
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PLR-123699-21

RE:

Date:
May 16, 2022

LEGEND

Decedent =
Spouse =
Accountant =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Trust =

Dear :

This letter responds to your authorized representative's letter of November 5, 2021, 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 (Code).

The facts and representations submitted are as follows.

On Date 1, Decedent and Spouse executed a revocable trust, Trust, which was most recently amended on Date 2. Decedent died on Date 3, survived by Spouse.

Article 3 of Trust provides that upon the death of the first of Decedent and Spouse, the trust estate is to be divided into three separate trusts: the Survivor's Trust, the Marital Trust, and the Exemption Trust. This ruling pertains to the Marital Trust only. The Marital Trust is to be funded in an amount consisting of the minimum pecuniary amount

necessary to eliminate entirely (or to reduce to the maximum extent possible) any federal estate tax at the death of the surviving spouse.

Article 3 further provides that the Marital Trust is intended to qualify for the marital deduction under § 2056 of the Code, and states that the trustee may make a QTIP election under § 2056(b)(7). Under Article 3, the entire net income of the Marital Trust is to be paid to the surviving spouse for life in quarter-annual or other convenient installments, but no less frequently than annually. In addition, the trustee has the discretion to pay principal to the surviving spouse for health, support and maintenance.

Spouse, as executor of Decedent's estate, engaged Accountant to prepare and timely file Decedent's Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return) and to make any necessary elections, including making a QTIP election. Accountant mistakenly included the QTIP property on Part B of Schedule M on the Form 706 that was filed Date 4, instead of Part A. Accountant discovered the mistake two weeks later and immediately began the process of seeking relief under § 9100.

You have requested an extension of time under §§ 301.9100-1 and 301.9100-3 to make a QTIP election with respect to the Marital Trust.

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 is 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. Section 2056(b)(1) provides the general rule that no deduction shall be allowed under § 2056(a) for an interest passing to the surviving spouse if, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest will terminate or fail.

Section 2056(b)(7)(A) provides that, in the case of QTIP, such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(a), no part of the property shall be treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) defines the term "QTIP" as property: (1) which passes from the decedent; (2) in which the surviving spouse has a qualifying income interest for life; and (3) to which an election under § 2056(b)(7) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if: (1) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the

property; and (2) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property is to be made by the executor on the return of tax imposed by § 2001. The election, once made, is irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides, generally, that the QTIP election is made on 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.

Sections 301.9100-1 through 301.9100-3 provide standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election.

Under § 301.9100-1(c), the Commissioner may 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 Code except subtitles E, G, H, and I.

Requests for relief subject to § 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 the grant of 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 are satisfied. Accordingly, Decedent's estate is granted an extension of time of 120 days from the date of this letter to file a supplemental Form 706 to make a QTIP election.

The supplemental Form 706 should be filed with the Internal Revenue Service Center, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the return.

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 ruling, it is subject to verification on examination.

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.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: Leslie H. Finlow

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

Enclosure:
Copy for § 6110 purposes

cc: