

## Internal Revenue Service

Number: **202238008**

Release Date: 9/23/2022

Index Number: 2056.07-01, 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:B4

PLR-105912-22

Date:

June 29, 2022

### Legend

Decedent =  
Spouse =  
Family Trust =

Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Accounting Firm =

Dear :

This letter responds to a letter dated February 25, 2022, and subsequent correspondence, submitted on behalf of Decedent's estate, 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 as follows.

On Date 1, Decedent and Spouse each established a separate revocable trust. On Date 2, Decedent and Spouse combined their separate revocable trusts to establish Family Trust. Family Trust became irrevocable upon the death of Decedent on Date 3. Under the terms of Decedent's last will and testament, the residuary of Decedent's estate passed to Family Trust.

Paragraph 6.7 of Decedent's last will and testament authorizes the executor of Decedent's estate to elect to have all or a specific portion of Decedent's estate treated as qualified terminable interest property for the purpose of qualifying for the marital

deduction allowable in determining Decedent's federal estate tax. In addition, paragraph 6.7 provides, in part, that without limiting the executor's discretion, it is Decedent's expectation that the executor will elect to minimize the estate tax payable by Decedent's estate unless such election appears to be inappropriate because of (a) the timing of the deaths of Decedent and Spouse and the computation of the combined death taxes in Decedent's and Spouse's estates, or (b) Spouse's age or condition of health at the date of Decedent's death.

Under section 3.2 of Family Trust, upon the death of the first to die of Decedent or Spouse, the trustee is directed to divide the trust estate into three (3) separate trusts designated as Trust A, Trust B, and Trust M.

Under section 3.2A, Trust A is to be funded with that part of the trust estate that is the surviving spouse's interest in community property, the surviving spouse's separate property, and any property received by the trustee that is specifically designated to be added to or held as part of Trust A.

Under section 3.2B, Trust B is to be funded with the Credit Equivalent Gift (defined in section 14.1) and any property received by the trustee that is specifically designated to be added to or held as part of Trust B.

Under section 3.2C, Trust M is to be funded with all remaining property comprising the trust estate and any property received by the trustee that is specifically designated to be added to or held as part of Trust M. Section 3.4B provides that the trustee shall distribute all the net income of Trust M to the surviving spouse in monthly or other periodic installments (no less frequently than annually) as the trustee and surviving spouse shall agree. Section 3.4C provides that the trustee shall distribute to the surviving spouse so much of the principal of Trust M as will provide for the surviving spouse's needs. Section 3.4D provides that Trust M shall terminate upon the death of the surviving spouse.

Under section 14.1, Credit Equivalent Gift means property equal to the largest pecuniary amount which would result in the least possible federal estate tax being payable.

Under Section 14.2A Spouse shall have the power to require the trustee to make the property of Trust M productive or convert it to productive property within a reasonable time. Under section 14.2B all provisions of Family Trust are to be construed and applied so that Trust M qualifies for the marital deduction in the estate of the first to die of the Decedent or Spouse and any provision of Trust incapable of being so construed or applied is to be disregarded. Section 14.2B provides that in no event shall the trustee take any action or have any power that will jeopardize the qualification of the marital deduction, and all provisions regarding Trust M shall be interpreted to conform to this primary objective. Under section 14.2C the trustee may elect to make the election to have all or a specific portion of Trust M treated as qualified terminable interest

property for the purpose of qualifying for the marital deduction allowable in determining the federal estate tax of the first to die of Decedent or Spouse.

The personal representative of Decedent's estate engaged Accounting Firm to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for Decedent's estate. The Form 706 was timely filed on Date 4, and a marital deduction was claimed for all property passing to Spouse. On Schedule M of the Form 706, however, Accounting Firm inadvertently characterized Trust M assets as "property other than QTIP property," instead of "QTIP property." You have requested an extension of time under §§ 301.9100-1 and 301.9100-3 to make a valid QTIP election under § 2056(b)(7) to qualify all property allocated to Trust M as QTIP property.

### 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. 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, 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 all property allocated to Trust M. The election should be made by filing a complete and properly prepared supplemental Form 706 and a copy of this letter, within 120 days from the date of this letter, with the Service Center at the following address: Department of the Treasury, Internal Revenue Service, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915.

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) 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 & Special Industries)

*Melissa C. Liquerman*

Melissa C. Liquerman  
Chief, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure (1)

Copy for § 6110 purposes

cc: