

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B4
PLR-107725-22

Date:
August 10, 2022

Legend

Decedent =

Spouse =

Date 1 =

Date 2 =

Dear :

This letter responds to your personal representative's letter of April 1, 2022, and subsequent correspondence, requesting an extension of time pursuant to § 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 established a revocable trust (Trust). Decedent died on Date 2, survived by Spouse. Trust became irrevocable upon Decedent's death. Under the terms of Decedent's Will, Decedent's entire estate passed to Trust.

Article First, Section 1.6 of Trust provides that if Spouse survives Decedent, then upon Decedent's death, the trustee shall distribute the trust estate pursuant to the Marital Trust Provisions found in Article First, Section 1.7 of Trust. Section 1.7(a) provides that the trustee shall pay all of the net income of the Trust at least quarter-annually to Spouse. Section 1.7(a) provides further that Spouse may instruct the trustee of Trust to convert any unproductive Trust property to productive property within a reasonable time. Section 1.7(h) states Decedent's intention that Trust qualify for the marital deduction as qualified terminable interest property and directs that any provisions of Trust that may

appear to conflict with or defeat this intention be construed or applied so as to accomplish this intention.

Decedent's estate filed a timely Form 706, United States Estate (and Generation Skipping-Transfer Tax) Return. Although Trust was reported on the Form 706, Trust was not listed as QTIP property on Schedule M. Spouse, the executor of Decedent's estate, engaged and relied on Accountant to prepare the Form 706. Accountant did not advise Spouse of the necessity to make the QTIP election at the time the Form 706 was filed. Thus, Decedent's estate failed to make a valid QTIP for Trust. You have requested an extension of time under § 301.9100-3 to make a QTIP election under § 2056(b)(7) to treat Trust property 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) defined 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)(ii) provides that the surviving spouse has a qualifying income interest for life if: (I) 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 (II) 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 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 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.

In the present case, Trust was created for the benefit of Spouse. The Form 706 filed for Decedent’s estate, however, did not include a QTIP election for Trust property. Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, 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 under § 2056(b)(7) with respect to Trust. This election should be made on a supplemental Form 706 filed with the Internal Revenue Service at the following address: Department of the Treasury, Internal Revenue Service, 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, 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 ruling contained in this letter is 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, we have sent a copy of this letter to your authorized representative.

Sincerely,

Associate Chief Counsel
Passthroughs & Special Industries

Melissa C. Liquerman

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

Enclosure
Copy for § 6110 purposes

cc: