

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-105948-22

Date:
September 12, 2022

Re:

LEGEND

Decedent =
Spouse =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Accountant =
Accountant Firm =

Dear :

This letter responds to a letter dated March 10, 2022, 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 (Code).

The facts and representations submitted are as follows. On Date 1, Decedent established a revocable trust, Trust. Trust was amended on Date 2 and Date 3. Under Decedent's will, Decedent bequeathed certain tangible property to Spouse and the residue to Trust. Trust became irrevocable upon Decedent's death on Date 4.

Article III, Section 3 of Trust provides that upon the death of Decedent, the trustee shall divide Trust into two separate trusts: Family Trust and Marital Trust. Under Article IV, all the income of Marital Trust is required to be paid to Spouse during her lifetime in

regular installments, not less frequently than quarter-annually. Trust further provides that principal may be paid to or for the benefit of Spouse as the trustee considers necessary for her health, support, and maintenance. Article IV, Section 3 is entitled "Qualified Terminable Interest Trust" and provides that "Marital Trust is to be qualified as a qualified terminable interest" and the trustee is instructed to cooperate with the legal representative of Decedent's estate in making that election in the event that the Internal Revenue Service regulations do not allow the trustee to make the election.

Article IV provides, in relevant part, that Spouse has a limited testamentary power of appointment to appoint the principal, or any portion thereof, to one or more or all of the living descendants of Decedent or to any trust or organization described in § 2055 of the Code. To the extent Spouse fails to effectively exercise the limited testamentary power of appointment, the principal and undistributed income of Marita Trust shall be added to the Descendants' Trust as provided in Article VI.

Spouse, in her capacity as personal representative of the estate, retained Accountant of Accounting Firm to prepare Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for Decedent's estate. On Date 5, the Form 706 was timely filed (with extension) on behalf of the estate. The Form 706 reported Decedent's Marital Trust assets as "all other property" on Schedule M and reported no "QTIP property." Thus, no QTIP election was made with respect to Marital Trust. After Form 706 was filed, new counsel was retained to advise Spouse in her estate planning. It was at this time that Decedent's Form 706 was reviewed and the failure to properly report Marital Trust on Schedule M and make the QTIP election was discovered.

You have requested an extension of time under §§ 301.9100-1 and 301.9100-3 to make the QTIP election under § 2056(b)(7) to treat Marital Trust as QTIP property.

LAW AND ANALYSIS

Section 2001(a) of the Code 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, Spouse, as the personal representative 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: Department of the Treasury, Internal Revenue Service Center, 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.

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 rulings, 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 & Special Industries)

Karlene M. Lesho

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

Enclosure
Copy for § 6110 purposes

cc: