

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B4
PLR-123125-22

Date:
May 16, 2023

In re:

Legend

Trust =

Decedent =

Spouse =

Trustee =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

State =

Dear :

This letter responds to a letter dated September 28, 2022, and supplemental information, submitted on behalf of Decedent's estate requesting a ruling under §20.2056A-4(b)(6) of the Estate Tax Regulations and § 301.9100-1 of the Procedure and Administration Regulations regarding a waiver of the requirement of an actual conveyance of property irrevocably assigned to a qualified domestic trust (QDOT) described in § 2056A of the Internal Revenue Code (Code).

Facts

Taxpayer represents the facts to be as follows:

On Date 1, Decedent died in State. Decedent is survived by Spouse, who was not a citizen of the United States at the time of Decedent's death. Decedent's estate was not subject to administration under State law.

On Date 2, a date before the due date of Decedent's estate tax return, Spouse established Trust and irrevocably assigned to Trust certain assets that passed as a result of Decedent's death to Spouse. Trust is a QDOT as described in § 2056A(a) of the Code.

On Date 3, Decedent's estate timely filed its Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. On Schedule M, Decedent's estate claimed a marital deduction for the value of the assets Spouse assigned to Trust on Date 2. Schedule M correctly indicated the establishment of Trust and identified the assets assigned to Trust. Although the assets for which the Decedent's estate claimed the marital deduction were irrevocably assigned to Trust, there has been no actual conveyance to Trust.

On Date 4, Spouse became a United States citizen. Date 4 is a date before the date that is one year after the due date (including extensions) for filing Decedent's estate tax return. Spouse currently resides in the United States and has resided continually in the United States since Decedent's death.

It is represented that, as required by § 20.2056A-10(a)(2), Trustee of Trust (a U.S. trustee) intends to timely file a final Form 706-QDT on or before Date 5 to notify the Internal Revenue Service (IRS) and certify that Spouse has become a United States citizen.

Decedent's estate is requesting a waiver to the requirement of an actual conveyance of property irrevocably assigned to a QDOT described in § 2056A for purposes of qualifying for a marital deduction under § 2056 of the Code.

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 to be 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(d)(1)(A) and (d)(2)(A) provides that if the surviving spouse of the decedent is not a United States citizen, no marital deduction is allowed under § 2056(a), unless the property passes to the surviving spouse in a QDOT.

Under § 2056A(a), a QDOT is any trust in which (1) the trust instrument requires that at least one trustee of the trust is an individual citizen of the United States or a domestic corporation, and provides that no distribution (other than income) may be made from the trust unless a United States trustee or domestic corporation has the right to withhold from such distribution the tax imposed on such distribution; (2) the trust meets the requirements as the Secretary may by regulations prescribe to ensure collection of the tax imposed by § 2056A(b); and (3) an election is made by the executor of the decedent with respect to the trust.

Section 2056(d)(2)(B) provides that property passing from the decedent to the surviving spouse will be treated as passing to the surviving spouse in a QDOT, if the property is irrevocably transferred or assigned to the QDOT by the spouse before the date on which the estate tax return is filed.

Section 2056A(b)(1)(A) imposes an estate tax on any distribution made from a QDOT before the date of death of the surviving spouse. Section 2056A(b)(1)(B) imposes an estate tax on the value of the property remaining in a QDOT on the date of the death of the surviving spouse.

Under § 2056A(b)(12)(A) and § 20.2056A-10(a)(1) and (2), a QDOT is no longer subject to the estate tax imposed under § 2056A(b) if the surviving spouse of the decedent becomes a citizen of the United States, the spouse was a resident of the United States at all times after the date of the death of the decedent and before becoming a United States citizen, and the United States trustee of the QDOT notifies the IRS and certifies in writing that the surviving spouse has become a United States citizen. Notice is to be made by filing a final Form 706-QDT on or before April 15th of the calendar year following the year that the surviving spouse becomes a citizen, unless an extension of time for filing is granted.

Section 20.2056A-4(b)(6) provides that, for purposes of § 2056(d)(2), property irrevocably assigned but not actually transferred to the QDOT before the estate tax return is filed must be conveyed and transferred to the QDOT under applicable local law before the administration of the decedent's estate is completed. If there is no administration of the decedent's estate (because for example, none of the decedent's assets are subject to probate under local law), the conveyance must be made on or before the date that is one year after the due date (including extensions) for filing the decedent's estate tax return. If an actual transfer to the QDOT is not timely made, the marital deduction is not allowed. Section 20.2056A-4(b)(6) further provides that an extension of time for completing the conveyance, or a waiver of the actual conveyance, may be requested by the decedent's estate under § 301.9100-1(a).

Section 301.9100-1(a) of the Procedure and Administration Regulations provides that the regulations under §§ 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. However, the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election. Section 301.9100-2 provides automatic extensions of time for making regulatory and statutory elections when the deadline for making the election is the due date of the return or the due date of the return including extensions. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2.

Under § 301.9100-1(c), the Commissioner may grant an 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 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides, in relevant part, that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. 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)(i) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief under § 301.9100-3 before the failure to make the regulatory election is discovered by the IRS.

Section 301.9100-3(c)(1) provides, in relevant part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Based upon the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Consequently, in accordance with § 20.2056A-4(b)(6), a waiver of the requirement of actual conveyance is granted.

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 rulings, it is subject to verification on examination.

Except as we have specifically ruled herein, we express no opinion as to the consequences of this transaction under the cited provisions or under any other provisions of the Code.

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 representatives.

Sincerely,

Associate Chief Counsel
Passthroughs & Special Industries

Karlene M. Lesho

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

Enclosure (1)

Copy for § 6110 purposes

cc: