

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact: ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-101322-23

Date:
June 20, 2023

Legend

Decedent
Spouse
Trust
Date 1
Date 2
Date 3
Date 4
Attorney
Accountant
Family Trust
QTIP Trust

Dear :

This letter responds to your authorized representative's letter dated January 16, 2023, and other correspondence, 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 summarized as follows:

On Date 1, Decedent executed a revocable trust, Trust.

Article 3.3 of Trust provides that, upon Decedent's death and if Spouse survives Decedent, Trust is to be divided into a family share and a marital share.

Article 13.5 of Trust generally provides that the trustee may elect to treat any fraction of Trust as QTIP under § 2056(b)(7).

Article 13.6 provides, in relevant part, that to the extent the trustee makes an election to take a marital deduction for QTIP under § 2056(b)(7), the property for which such election is made is to be held as a QTIP Trust and administered under the following terms: upon Decedent's death, the trustee is to pay all the income to Decedent's surviving spouse, Spouse; upon the death of Spouse, any accrued or unpaid income is to be paid to Spouse's estate; the trustee may not retain non-income producing assets for more than a reasonable amount of time without the consent of Spouse; the trustee may pay to Spouse as much of the principal as the trustee from time to time considers necessary for the health, support, or maintenance in reasonable comfort of Spouse; and upon the death of Spouse, the trustee is to distribute any principal not required for the payment of certain taxes to Decedent's and Spouse's living children.

Decedent died on Date 2, survived by Spouse. Spouse, in her capacity as executor of Decedent's estate, hired Attorney to prepare any necessary tax filings for the estate. Attorney sent Spouse an engagement letter for preparation of the relevant state and federal income tax returns, but did not disclose that Spouse was required to file a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, on behalf of Decedent's estate.

On or after Date 3, Spouse learned that she was required to file Form 706 on behalf of Decedent's estate. Spouse engaged with Accountant for purposes of preparing Form 706. Accountant prepared Form 706, which indicated that Trust was divided into two trusts, Family Trust and QTIP Trust. However, QTIP Trust was not listed under the "QTIP property" section of Schedule M. Thus, no federal QTIP election was made with respect to QTIP Trust on Form 706. Spouse filed Form 706 on Date 4, after the due date.

You have requested an extension of time to make the QTIP election under § 2056(b)(7) with respect to QTIP 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 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 (or § 2101). 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, 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 with respect to QTIP Trust. The election should be made on an amended Form 706 with the Internal Revenue Service Center at the following

address: Internal Revenue Service Center, Attn: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the amended Form 706.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

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.

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

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.

Sincerely,

Associate Chief Counsel
Passthroughs and Special Industries

Leslie H. Finlow

By: _____
[Leslie H. Finlow]
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
Copy for § 6110 purposes

cc: