

Internal Revenue Service

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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:B04
PLR-121450-23

Date:
February 02, 2024

In Re:

Legend

Decedent =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Trust =

Spouse =

Son =

x =

y =

z =

Attorney =

Dear _____ :

This responds to your submission of September 7, 2023, and additional correspondence, requesting an extension of time under § 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 executed a will and established Trust, a revocable living trust in which he named himself as trustee. Decedent died on Date 2, survived by Spouse and Son. Trust ceased to be revocable, and Son replaced Decedent as trustee.

Under Article Fourth of Decedent's will, Decedent's residuary estate passed to Trust. Under Article Fourth of Trust, the sum of \$x and real property was set aside in a trust for the benefit of Son. The balance of Trust property was set aside in a trust (Marital Trust) for the benefit of Spouse.

The terms of Marital Trust are as follows.

Article Fifth, paragraph 1, provides that the greater of the annual net income and \$y is to be paid from Marital Trust to Spouse for life, at least as often as quarterly.

Under Article Fifth, paragraph 2, the Trustee has absolute discretion to distribute all or any part of the principal of Marital Trust to Spouse for her comfort, health, support, care, maintenance, and for other reasons.

Under Article Fifth, paragraph 3, Spouse may, on an annual basis, direct the Trustee to distribute to Spouse z percent of the principal of Marital Trust.

Under Article Fifth, paragraph 4, Decedent states his intention that Marital Trust qualify for the estate tax marital deduction and gives Spouse the right to direct the Trustee to convert property which produces insufficient or unsatisfactory income to property which produces reasonable income.

Attorney was engaged to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for Decedent's estate. The estate's Form 706 was timely filed on Date 3, and a supplemental Form 706 was filed on Date 4.

On the Form 706, the marital deduction was claimed for all property passing to Marital Trust. On Schedule M of the Form 706, however, Attorney inadvertently characterized Marital Trust 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 the Marital Trust as QTIP property.

LAW AND ANALYSIS

Section 2001 of the Code imposes a tax on the transfer of the taxable estate of every decedent who is a citizen 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, except as limited by § 2056(b), 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 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), the 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 which passes from the decedent in which the surviving spouse has a qualifying income interest for life and to which an election under § 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if 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 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. This section further provides that such election, once made, is irrevocable.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner may 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 Code except subtitles E, G, H, and I.

Section 301.9100-2 provides an automatic extension of time for making certain elections.

Section 301.9100-3(a) provides that, in general, 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 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.

Based solely on the facts submitted and the representations made, we conclude that the standards of § 301.9100-3 have been satisfied. Therefore, we grant an extension of time to make a QTIP election under § 2056(b)(7) until 60 days from the date of this letter. This election should be made on an amended Form 706 and filed 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 federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) 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 and Special Industries

/ s /

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

Enclosure:

Copy for § 6110 purposes

cc: