

Internal Revenue Service
Index No.: 2056.07-00

Department of the Treasury

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Refer Reply To:

CC:DOM:P&SI:4 - PLR-107901-98

Date:

OCT 15 1998

Legend:

Decedent =
Spouse =
Trust =
Trustee =
Date 1 =

This is in response to your submission of March 17, 1998, in which you requested rulings under § 2056 of the Internal Revenue Code.

According to your submission, Decedent died testate on Date 1. Under the terms of Decedent's will, after providing for certain bequests of personalty to Spouse, the residue of the estate passed to Trust, a revocable trust established by Decedent during his lifetime.

Article II(1) of Trust provides that if Spouse survives Decedent's death by a period of four months, then Spouse is to receive \$20,000, and any real property, residence, or interest which may be a Trust asset on the date of Decedent's death. In addition, Spouse is to receive all of Decedent's household furniture, furnishings, and works of art. Spouse is also to receive any and all automobiles, items of personal adornment, and personal effects.

Article II(3) states that all of the rest, residue and remainder of the Trust estate are to be divided by Trustee into two separate Trusts, designated "Wife's Bypass Trust" and "Wife's Terminable Interest Trust." Wife's Terminable Interest Trust is intended to qualify for a marital deduction under § 2056(b)(7) as qualified terminable interest property.

The Wife's Bypass Trust is to be funded with assets having a value equal to the lesser of either:

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(i) the value of the entire Trust estate; or (ii) the dollar equivalent of the allowable Unified Credit for Federal estate and gift taxes under the Internal Revenue Code as of the year of Decedent's death, less the value of any assets passing to anyone other than Spouse, which are or would be includible in Decedent's taxable estate for Federal estate tax purposes. Upon determining the dollar value of the assets, if any, to be placed in Wife's Bypass Trust, Trustee shall establish Wife's Bypass Trust so that it contains a share (including undivided interests in assets not physically divisible) of each and every asset of the Trust estate, which is the amount determined under (i) or (ii) immediately above, and the denominator of which is the value of all assets in the Trust estate.

Wife's Terminable Interest Trust is to be funded with the remaining assets of the Trust estate not passing to Wife's Bypass Trust.

Under the terms of the will and Trust, Spouses received, outright, cash in the amount of \$20,000, a condominium valued at \$600,000, and household furniture, furnishings, works of art, automobiles and personal effects valued at \$3,452. In addition to these specific and general bequests, Decedent held assets in joint tenancy with Spouse, valued at \$151,176, which passed to Spouse by operation of law. Spouse also received the proceeds of a life insurance policy on Decedent's life, in the amount of \$5,000.

On Schedule M of Form 706 filed by the estate, the executor properly made an election under § 2056(b)(7) with respect to the entire value of Wife's Terminable Interest Trust. Trustee determined that, based on the formula contained in Article II(3), 55.08% of the Trust residue passed to Wife's Terminable Interest Trust. However, in determining this percentage, Trustee incorrectly included in the value of the residue available for funding the residuary trusts, the life insurance proceeds, the joint property, and personalty. These assets passed outright to Spouse either under the terms of Trust, by operation of law, or as a designated beneficiary and were not part of the residuary Trust estate. To the extent the value of these assets were included in the gross estate, a deduction under § 2056(a) is allowed.

You have requested the following rulings:

1. The estate made a valid election under § 2056(b)(7) to treat 100% of the value of the Wife's Terminable Interest Trust as qualified terminable interest property (QTIP) under § 2056(b)(7).

2. The life insurance proceeds, joint property, and personalty did not pass to the Wife's Terminable Interest Trust and are not subject to the QTIP election.

3. An estate tax marital deduction is allowable for the value of the property passing to the Wife's Terminable Interest Trust as determined under the provisions of Article II(3) of Trust.

Section 2056(a) provides that the value of a decedent's taxable estate shall 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, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) provides the general rule that no deduction shall be allowed for an interest passing to the surviving spouse if, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest passing to the surviving spouse will terminate or fail.

Section 2056(b)(7) provides an exception to the terminable interest rule in the case of qualified terminable interest property.

Section 2056(b)(7)(A) provides that qualified terminable interest property shall be treated as passing to the surviving spouse and no part of such property shall be treated as passing to any person other than the surviving spouse. Thus, the value of such property is deductible from the value of the gross estate under § 2056(a).

Section 2056(b)(7)(B)(i) defines the term "qualified terminable interest property" as property: (1) which passes from the decedent, (2) in which the surviving spouse has a qualifying income interest for life, and (3) to which an election under §2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(ii) and the regulations thereunder provide that the surviving spouse will be considered to have a qualifying income interest for life if: (1) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, and (2) no person, including the surviving spouse, has a power to appoint any part of the property to any person other than the surviving spouse during the surviving spouse's lifetime.

Section 2056(b)(7)(B)(v) provides that an election under

§ 2056(b)(7) with respect to any property is to be made by the executor on the return of tax imposed by § 2001. The election, once made, is irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that the election referred to in § 2056(b)(7)(B)(v) is made on the return of tax imposed by § 2001. For purposes of § 20.2056(b)-7(b)(4)(i), 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.

Under § 2044, any property in which the decedent possessed a qualifying income interest for life and for which a deduction was allowed under § 2056(b)(7) is includible in the decedent's gross estate.

ISSUES 1, 2, and 3

The election to deduct qualified terminable interest property under § 2056(b)(7) is valid if it is made on the return of tax imposed by § 2001, that is, 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.

In the instant case, Trustee elected on Schedule M to treat 100% of the Wife's Terminable Interest Trust as qualified terminable interest property under § 2056(b)(7). Further, the election was made within the time prescribed by § 2056(b)(7) and the applicable regulations. Although Trustee incorrectly calculated the amount passing to the trust under the terms of Trust instrument, this incorrect calculation does not affect the validity of the election, or the amount properly passing to Trust under the terms of the governing instrument. Accordingly, based on the facts presented and representations made, including the value of the assets as reported on the Form 706, we rule as follows:

1. The estate made a valid election under § 2056(b)(7) to treat 100% of the value of the Wife's Terminable Interest Trust as qualified terminable interest property under § 2056(b)(7).
2. The life insurance proceeds, joint property, and personalty did not pass to the Wife's Terminable Interest Trust and are not subject to the QTIP election.
3. An estate tax marital deduction is allowable under § 2056(b)(7) for the value of the property passing to the Wife's Terminable Interest Trust as determined under the provisions of Article II(3) of Trust. In addition, a marital deduction is

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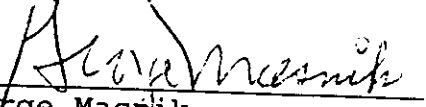
allowable under § 2056(a) for the value of the assets passing to Spouse outright under the terms of Trust, by operation of law, or as a designated beneficiary, to the extent included in the gross estate.

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

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

By 
George Masnik
Chief, Branch 4

Enclosure

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