

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09 / PLR-136458-01
Date:
December 17, 2001

Re:

Legend

- Decedent =
- Spouse =
- Trust =
- State =
- Date 1 =
- Date 2 =
- Date 3 =
- Accountant =

Dear

This is in response to your submission of June 24, 2001, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a Qualified Terminable Interest Property Election ("QTIP election") under § 2056(b)(7) of the Internal Revenue Code.

Decedent and Spouse created Trust on Date 1. Decedent and Spouse were also trustees of the Trust. The purpose of the Trust was to avoid probate and to otherwise manage Decedent's and Spouse's assets. The Trust, created under State law, was funded entirely with assets jointly owned by Decedent and Spouse.

Article VII of the Trust provides that upon the death of either Grantor or Spouse, the remaining trust property shall be divided into two separate trusts, a bypass trust and a marital deduction trust.

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Article VIII of the Trust, which governs the marital deduction bequest, establishes a marital deduction trust for the exclusive benefit of Spouse.

Article VIII, Section (2) provides that during Spouse's lifetime, the Trustee shall pay to Spouse annually or more frequently all of the net income of the marital deduction trust. This section further provides that the Trustee shall distribute to Spouse annually or more frequently an amount from the principal equal to the amount of any income taxes, state or federal, imposed on Spouse with respect to any undistributed income from the bypass trust.

Article VIII, Section (3) provides that if, in the discretion of the Trustee, it shall become necessary for the health, support or maintenance of Spouse, the Trustee may make distributions of principal to or for the benefit of Spouse so as to permit the maintenance of her accustomed standard of living.

Article VIII, Section (4) provides that the marital deduction trust shall terminate upon Spouse's death, and the remaining principal shall become a part of the bypass trust to be held, administered and disposed of in accordance therewith, even if the bypass trust shall also terminate upon Spouse's death.

Decedent died on Date 2, survived by Spouse. Following Decedent's death, Accountant prepared the United States Estate (and Generation-Skipping Transfer) Tax Return, Form 706, for Decedent's estate. Accountant omitted Schedule M from the return, thereby failing to make the QTIP election for the marital deduction trust as required by § 2056(b)(7) of the Code. On Date 3, Spouse, in her capacity as Executrix of Decedent's estate and Trustee of the Trust, timely filed Decedent's estate tax return as prepared by Accountant.

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

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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 section 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 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 301.9100-2 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 shall be effective as of Date 3. This election should be made on a supplemental Form 706 and filed with the Service Center. A copy of the letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

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.

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

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the material submitted in support of the request for rulings it is subject to verification on examination.

Pursuant to the Power of Attorney and Declaration of Representative on file with this office, a copy of this letter is being sent to the taxpayer.

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.

Sincerely,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for 6110 purposes
Copy of this letter