

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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Date: FEBRUARY 11, 2014

In re:

LEGEND:

Decedent =
Spouse =
Country =
Trust =

Date 1 =
Date 2 =
State =

Dear :

This letter responds to your authorized representative's letter dated August 15, 2013, and other correspondence requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to satisfy the requirements for a qualified domestic trust under section 2056A of the Internal Revenue Code.

Decedent, a United States citizen, died on Date 1, survived by Spouse, who is not a United States citizen. Spouse is a resident and a citizen of Country. At his death, Decedent created a trust (Trust) to be held for the benefit of Spouse during her life. Trust is administered under the laws of State.

Trust provides that Trust shall at all times have at least one acting U.S. Trustee that is either an individual who is a United States citizen or a qualified domestic corporation. To the extent an effective election is required to be made to qualify Trust for the estate

tax marital deduction, the trustee is directed to amend or reform the terms of Trust as may be required to comply with federal estate tax statutes and regulations relating to the allowance of a marital deduction for property passing to a spouse who is not a United States citizen.

The executor of Decedent's estate timely filed the estate tax return Form 706 (United States Estate and Generation-skipping Transfer Tax Return) on Date 2. The return, on Schedule M, includes the executor's election to treat Trust as a qualified domestic trust (QDOT) within the meaning of § 2056A.

Executor now seeks an extension of time to amend Trust to provide that Trust shall at all times have at least one acting U.S. Trustee that is a bank as defined in § 581, as required by § 20.2056A-2(d)(1)(i)(A) of the Estate Tax Regulations for the Bank Trustee security alternative. Trust will further provide that no distribution of principal shall be made from Trust without the approval of the corporate trustee that is then serving as the U.S. Trustee.

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 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) provides that if the surviving spouse is not a citizen of the United States, no deduction shall be allowed under § 2056(a). Under § 2056(d)(2)(A), § 2056(d)(1)(A) will not apply to any property passing to the surviving spouse in a qualified domestic trust.

Under § 2056A, in order for a trust to qualify as a QDOT: (1) the trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or domestic corporation and that no distribution other than a distribution of income may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the additional estate tax imposed by § 2056A(b)(1) on the distribution; (2) the trust must meet the requirements that are prescribed under Treasury regulations to ensure the collection of the tax imposed by § 2056A(b); and (3) the executor must make the election prescribed by § 2056A(d) to treat the trust as QDOT.

Section 20.2056A-2(d)(1)(i) provides, in part, that if the fair market value of the assets passing to the QDOT exceeds \$2 million as of the date of the decedent's death, the trust instrument must meet the requirements of either paragraph (d)(1)(i)(A), (B), or (C)

of § 20.2056A-2 at all times during the term of the QDOT.

Section 20.2056A-2(d)(1)(i)(A) provides, in part, that the trust instrument must provide that whenever the Bank Trustee security alternative is used for the QDOT, at least one U.S. Trustee must be a bank as defined in § 581.

Section 301.9100-1(c) provides, in part, 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 in subtitles E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3 sets forth the standards that the Commissioner uses to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence proving 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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the executor is granted an extension of time until 120 days after the date of this letter to: (i) amend Trust to meet the requirements of § 20.2056A-2(d)(i)(A), and (ii) file with the Internal Revenue Service a supplemental Form 706 with a copy of the amended Trust. The supplemental Form 706 should be filed with the Internal Revenue Service Center, Cincinnati OH 45999. A copy of this letter should also be attached to the return.

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

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 ruling, it is subject to verification on examination.

Sincerely yours,

Lorraine E. Gardner
Senior Counsel, Branch 4
(Passthroughs & Special Industries)

Enclosure:
copy of this letter