

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201751005**
Release Date: 12/22/2017

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 2056.01-00, 9100.00-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:4
PLR-109871-17

Date:
September 18, 2017

Re:

Legend

- Decedent =
- Spouse =
- Date 1 =
- Date 2 =
- Executor =
- Trust =

- Marital Trust =

- Accounting Firm =

Dear :

This letter responds to your authorized representative's letter of March 16, 2017, and subsequent 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 (Code).

The facts and representations submitted are as follows.

Decedent died on Date 1 survived by Spouse. Decedent and Spouse established a revocable trust, Trust, which was amended and restated on Date 2. Article Fourth, Paragraph 4.1 of Decedent's will provides that the residue of Decedent's estate passes to Trust. Article Six, Paragraph A. of Trust provides that at the death of the first to die of Decedent and Spouse, Trust is to be divided into three separate trusts, the Survivor's Trust, the Marital Trust, and the Bypass Trust. Marital Trust is for the benefit of Spouse and is the subject of this letter ruling. Article Six, Paragraph E. provides that the Marital Trust will qualify for the QTIP election under § 2056(b)(7).

Article Seven, Paragraph D. of Trust provides that, during Spouse's lifetime, the income of Marital Trust is to be paid to Spouse at least annually. Spouse has the power to require the trustee to make unproductive property productive or convert it to productive property. Principal may be paid to or applied for the benefit of Spouse for her health, education, support and maintenance in accordance with Spouse's standard of living on the death of Decedent. Under Article Eight, Paragraph B, on Spouse's death, the remaining principal of Marital Trust is to be distributed to the Bypass Trust.

Executor of Decedent's estate, is a CPA with Accounting Firm. Executor paid Accounting Firm to prepare Decedent's Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return. Executor misinterpreted the terms of Trust and failed to make a QTIP election with respect to Marital Trust. Form 706 was timely filed but no QTIP election was made with respect to Marital Trust.

You have requested an extension of time under §§ 301.9100-1 and 301.9100-3 to make a QTIP election under § 2056(b)(7) to treat Marital Trust as QTIP property.

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 QTIP, 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. 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 6 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, Trustee is granted an extension of time of 120 days from the date of this letter to make a QTIP election with respect to Marital Trust.

The QTIP election should be made on a supplemental Form 706 filed with the Cincinnati Service Center at the following address: Internal Revenue Service Center, Cincinnati,

OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

Except as expressly provided herein, we express no opinion on the federal tax consequences of the transactions under the cited provisions or under any other provisions of the Code.

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. 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.

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

Sincerely yours,

Associate Chief Counsel
Passthroughs & Special Industries

Leslie H. Finlow

By: _____

Leslie H. Finlow
Senior Technician Reviewer
Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: