

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-102335-24

Date:  
July 11, 2024

Legend

Decedent	=
Spouse	=
Date 1	=
Date 2	=
Trust	=
Marital Trust	=
Accountant	=

Dear :

This letter responds to your personal representative’s letter of January 18, 2024 requesting an extension of time pursuant to § 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 created Trust, a revocable trust. Decedent died on Date 2, survived by Decedent’s spouse, Spouse.

Section 2.3 of Trust provides that upon the death of Decedent, after payment of debts and taxes and specified payments to other trusts, the balance of the trust estate is to be held in a family trust. Any portion of the family trust to which a QTIP election is in effect is to be held by the trustee as a separate trust, Marital Trust. The entire net income of Marital Trust is to be paid to Spouse at least quarter-annually during Spouse’s lifetime. The trustee is to distribute to Spouse any part or all of the principal of Marital Trust to Spouse for health, support, or maintenance. Upon Spouse’s death, the remaining principal of Marital Trust is to be distributed to any of Decedent’s

descendants as Spouse shall appoint by a limited power of appointment. Assets in the family trust over which a QTIP election is not made is to be held for the benefit of Spouse and Decedent's descendants.

Decedent's estate filed a timely Form 706, United States Estate (and Generation Skipping-Transfer Tax) Return. No QTIP election was made on Form 706. The assets of Marital Trust were incorrectly reflected on Schedule M as being distributed directly to Spouse, instead of correctly listed as QTIP property. Spouse, the executor of Decedent's estate, engaged and relied on Accountant to prepare the Form 706. Accountant did not advise Spouse of the necessity to make the QTIP election at the time the Form 706 was filed. Thus, Decedent's estate failed to make a valid QTIP election for the portion of the residuary estate that passed to Marital Trust.

You have requested an extension of time under § 301.9100-3 to make a QTIP election under § 2056(b)(7) for the property passing to Marital Trust.

#### 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 qualified terminable interest property, 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) defined 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)(ii) provides that the surviving spouse has a qualifying income interest for life if: (I) 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 (II) 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. 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 six 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 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 representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the executor of Decedent's estate is granted an extension of time of 120 days from the date of this letter to make a QTIP election under §2056(b)(7) with respect to the property in Marital Trust. This election should be made on an amended Form 706 filed with the Internal Revenue Service at the following address: Department of the Treasury, Internal Revenue Service, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the 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 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.

Sincerely,

Associate Chief Counsel  
Passthroughs and Special Industries

*Melissa C. Liquerman*

By: \_\_\_\_\_  
[Melissa C. Liquerman]  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure

Copy for § 6110 purposes

cc: