

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-111620-24

Date:
September 19, 2024

In Re:

LEGEND

Decedent =
Spouse =
Trust =

Attorney =
Date 1 =
Date 2 =
Date 3 =

Dear _____ :

This letter responds to your authorized representative’s letter of June 18, 2024, and additional 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:

On Date 1, Decedent established a revocable trust (Trust), which was amended and restated on Date 2. Trust became irrevocable upon Decedent’s death on Date 3.

The terms of Trust provide, in relevant part, that upon the death of Decedent, the trustee shall divide the Trust into two trusts, one of which is intended to qualify for the unlimited marital deduction from estate tax as a QTIP trust under § 2056(b)(7)(B) (Marital Trust), and the other of which is intended not to qualify for the unlimited marital deduction from estate tax (Exemption Trust).

Marital Trust is to be administered as follows: all the net income of Marital Trust is to be paid to or for the benefit of Spouse in installments, not less often than annually; the trustee is required to pay all the income to Spouse; and, the trustee may pay to or for the benefit of Spouse such amounts of principal as the trustee deems necessary for the health, maintenance and support of Spouse. Upon the death of Spouse, Trust directs the trustee to distribute the remaining property of Marital Trust outright to named beneficiaries.

Trustee, in its capacity as personal representative of Decedent's estate, retained Attorney to prepare the estate's Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return) and to make any necessary elections, including the QTIP election. Decedent's Form 706 was timely filed on behalf of Decedent's estate. The Form 706 reported Decedent's Marital Trust assets as "all other property" on Schedule M and reported no "QTIP property." Thus, no QTIP election was made with respect to Marital Trust.

Thereafter, Decedent's Form 706 was selected for examination, and it was at this time that the trustee discovered the failure to properly report the assets of Marital Trust on Schedule M and to make the QTIP election.

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 is 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 the 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; and (III) to which an election under § 2056(b)(7)(B)(b) applies.

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. Such an election, once made, is 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) of the Procedure and Administration Regulations 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 relief subject to § 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 the grant of 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, the trustee, as the personal representative of Decedent’s estate, is granted an extension of time of 60 days from the date of this letter to make a QTIP election with respect to Marital Trust under § 2056(b)(7).

The election should be made on a supplemental Form 706 filed with the Internal Revenue Service Center at the following address: Department of Treasury, Internal Revenue Service, Attn: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the supplemental Form 706.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, including any issues pertaining to the Form 706 as filed.

The ruling contained in this letter is based upon information and representations submitted on behalf of the taxpayer's estate 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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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,

Associate Chief Counsel
(Passthroughs & Special Industries)

Leslie H. Finlow

By: _____
Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy for § 6110 purposes

cc: