

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202504002**
Release Date: 1/24/2025

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 9100.00-00, 2056.00-00,
2056.07-00

Person To Contact: ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-108093-24

Date:
October 16, 2024

Legend

- Decedent =
- Spouse =
- Date 1 =
- Date 2 =
- Trust =
- Attorney 1 =
- Attorney 2 =
- State =
- a =
- b =
- Citation 1 =
- Citation 2 =

Dear :

This letter responds to your personal representative’s letter of April 10, 2024, and subsequent correspondence, 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 with respect to a portion of Family Trust.

The facts and representations submitted are as follows.

Decedent died on Date 1, a resident of State. Decedent was survived by his spouse, Spouse. Prior to his death, Decedent executed Trust, a revocable trust, with a pour-over will. Article VIII, Paragraph A of Trust provides, in relevant part, that if Spouse survives Decedent, after the payment of certain expenses and specific

bequests, the trustee is to divide the remaining trust assets into two separate trusts, a Marital Trust and a Family Trust.

Article VIII, Paragraph A(1) provides, in relevant part, that the Marital Trust is determined as a fraction of the decedent's remaining trust assets of which (i) the numerator is the smallest amount which, if allowed as a federal estate tax marital deduction, would result in the least possible federal estate tax payable by reason of Decedent's death, and (ii) the denominator is the federal estate tax value of Decedent's remaining trust assets.

Article VIII, Paragraph A(2) provides, in relevant part, that the Family Trust is to consist of the remaining assets not allocated to the Marital Trust.

Article VIII, Paragraph A(4) provides, in relevant part, that Decedent intends that the amount allocated to the Marital Trust is to qualify for the marital deduction for federal estate tax purposes and that the executor is authorized to treat such property as QTIP for federal estate tax purposes. However, the personal representatives may elect not to treat part or all of the property allocated to the Marital Trust as QTIP for federal and/or state estate tax marital deduction purposes, notwithstanding the above stated intentions. In deciding whether or not to make the election under § 2056(b)(7) to have the property set apart in Marital Trust treated as QTIP for federal and/or state estate tax purposes, the personal representatives may consider spouse's life expectancy, estimated estate taxes at spouse's death, assets available to pay Decedent's estate taxes, and any other relevant factor.

Spouse served as the executor of the estate. Spouse engaged Attorney 1 and Attorney 2 to provide advice with respect to the legal and tax aspects of the estate administration and to prepare any necessary tax returns. Attorney 1 and Attorney 2 prepared Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for the estate, and executor timely filed Form 706. On Schedule M of Form 706, the estate reported Marital Trust, with a value of \$a, as QTIP.

The executor also filed a State estate tax return for Decedent's estate that was prepared by Attorney 1 and Attorney 2. The estate reported Marital Trust, with a value of \$a, and a fractional portion of Family Trust, with a value of \$b, as QTIP on the State estate tax return. On Date 2, the State revenue authority denied the \$b deduction taken on the State estate tax return because the deduction was not permitted under State law. Under State law, where an executor or administrator of a decedent's estate makes an election under § 2056(b)(7) with respect to any QTIP, that election will be binding for State tax purposes. Thus, the State QTIP election must be in the same amount and cover the same property as the QTIP election under § 2056(b)(7) reported on the Form 706. See Citation 1; Citation 2. The State revenue authority assessed a tax based on the denied deduction.

You have requested an extension of time under § 301.9100-3 to augment the original QTIP election under § 2056(b)(7) by adding an additional amount, comprising \$b of property in the Family 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)(1) provides, in part, that no deduction shall be allowed under § 2056(a) where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, and on such termination, an interest in that property passes or has passed from the decedent to any person other than the surviving spouse.

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 20.2056(b)-7(b)(4)(ii) provides, in part, that the election, once made, is irrevocable. If an executor appointed under local law has made an election on the return of tax imposed by § 2001 (or § 2101) with respect to one or more properties, no subsequent election may be made with respect to other properties included in the gross estate after the return of tax imposed by § 2001 is filed.

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.

In this case, the estate made a valid QTIP election on Form 706 for the value of the Marital Trust and requests to augment the amount subject to the QTIP election by including a portion of the Family Trust as QTIP. Based on the facts submitted and representations made, we conclude that in the instant case, the estate is not seeking an extension of time to make the QTIP election. Rather, the estate is seeking to change a previously made QTIP election to include additional property, which is not permitted under § 20.2056(b)-7(b)(4)(ii). Accordingly, § 301.9100 is not applicable in this case and the request for relief is denied.

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

