

**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-108372-24

Date:  
October 24, 2024

Re:

Legend

Decedent =

Spouse =

Trust =

Date 1 =

Date 2 =

Date 3 =

Accountant =

Dear :

This letter responds to a letter dated April 4, 2024, and subsequent correspondence, submitted on behalf of Decedent's estate, 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. Trust became irrevocable upon Decedent's death on Date 2.

Article Three of Trust provides for the distribution of Trust property upon Decedent's death.

Section 3.01 provides for the outright distribution of certain items of tangible personal property and household furnishings of Decedent upon Decedent's death.

Section 3.02 provides for the distribution of a portion of the remaining Trust assets to a Marital Trust for Spouse's benefit. Sections 3.02(a) and (b) provide that, during Spouse's lifetime, the trustee of Marital Trust is required to pay all income from Marital Trust to Spouse at least quarterly and may make distributions of Marital Trust principal to Spouse for Spouse's health and support in reasonable comfort. Section 3.02(c) provides that the personal representative of Decedent's estate may elect to have a specific portion or all of Marital Trust treated as qualified terminable interest property for federal estate tax purposes. Section 3.02(d) provides that Spouse may direct the trustee of Marital Trust to sell any Marital Trust property that is not productive of income and convert such property into property productive of income. Section 3.02(e) provides, in relevant part, that upon Spouse's death, the trustee is directed to distribute accrued or undistributed income to Spouse's estate, and after payment of certain estate and inheritance taxes payable by reason of Spouse's death and inclusion of Marital Trust property in Spouse's estate, to distribute remaining trust assets in further trust for the benefit of Decedent's descendants as Spouse may direct in Spouse's will. Sections 3.02(e) and 3.04 further provide that the trustee shall thereafter distribute any Marital Trust property remaining after the foregoing distributions to Decedent's descendants.

After Decedent's death, Spouse, in her capacity as personal representative of Decedent's estate, retained Accountant to prepare Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for Decedent's estate. Spouse relied on Accountant for advice regarding preparation of the Form 706 and federal estate tax matters. On Date 3, a Form 706 was filed on behalf of Decedent's estate. Accountant failed to advise Spouse regarding the availability of the QTIP election and the Form 706 did not report any assets as QTIP Property on Schedule M, "Bequests, etc., to Surviving Spouse." Thus, no QTIP election was made with respect to Marital Trust. Thereafter, Spouse discovered the failure to report Marital Trust assets 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 the QTIP election under § 2056(b)(7) to treat Marital Trust as QTIP property.

#### LAW AND ANALYSIS

Section 2001(a) of the Code 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) 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 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 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, the personal representative of Decedent’s estate 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 election should be made on a supplemental Form 706 filed with the Internal Revenue Service Center at the following address: Department of the Treasury, Internal Revenue Service Center, 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.

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.

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.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: \_\_\_\_\_  
Karlene M. Lesho  
Chief, Branch 4  
(Passthroughs & Special Industries)

Enclosure  
Copy for § 6110 purposes

cc:

cc:

cc: