

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200949009**  
Release Date: 12/4/2009

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

Index Number: 2056A.04-00, 9100.00-00

, ID No.  
Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-112752-09  
Date:  
August 13, 2009

In Re:

Legend

Decedent =  
Spouse =  
QDOT =

Date 1 =  
Date 2 =  
Trustee =  
Date 3 =  
Date 4 =  
Attorney =

Dear :

This responds to your letter dated March 4, 2009, requesting an extension of time pursuant to § 301.9100-1 of the Procedure and Administration Regulations to file the notice provided under § 20.2056A-10(a)(2) of the Estate Tax Regulations, that Spouse, who is the beneficiary of Trust, has become a United States citizen.

The facts and representations submitted are summarized as follows:

Decedent died on Date 1, survived by Spouse. At the time of Decedent's death, Spouse was not a United States citizen. On Date 2, a Qualified Domestic Trust (QDOT) under § 2056A of the Internal Revenue Code was established.

Trustee serves in the capacity of the U.S. Trustee of the QDOT. Trustee consulted with Spouse's attorney (Attorney) who advised Trustee that in accordance with § 20.2056A-4(b)(6), property irrevocably assigned to Spouse but not transferred to the QDOT before the Form 706 United States Estate (and Generation-Skipping) Tax return is filed must actually be conveyed or transferred to the QDOT before the administration of Decedent's estate is completed. Attorney swore that she advised Trustee that when Spouse became a U.S. citizen, Trustee would need to notify the Internal Revenue Service that Spouse had become a U.S. citizen at such time as the administration of Decedent's estate was completed and the QDOT was funded. However, Attorney swore that she failed to advise Trustee that Trustee must notify the Service and certify in writing that Spouse had become a U.S. citizen not later than Date 4, April 15<sup>th</sup> of the calendar year following the year in which Spouse had become a U.S. citizen.

Spouse became a U.S. citizen on Date 3, a date prior to Date 4. It is represented that the QDOT remains unfunded and there have been no distributions from the QDOT to Spouse. Attorney notified Spouse and Trustee of her failure to advise Trustee to make such notification and certification during the required time period, and Trustee promptly submitted the private letter ruling request. It is represented that Spouse has continuously resided in the United States from the date of Decedent's death and at all times thereafter and remains a resident of the United States.

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 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.

Section 2056(d)(1) provides that, except as provided in paragraph (2), if the surviving spouse is not a citizen of the United States, no deduction shall be allowed under § 2056(a). Paragraph (2) provides that paragraph (1) shall not apply to any property passing to the surviving spouse in a QDOT.

There are three main requirements under § 2056A that must be satisfied in order for a trust to be a QDOT. The trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or a domestic corporation and provides that no distribution (other than a distribution of income) may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the tax imposed by § 2056A on the distribution. In addition, the trust must meet the requirements of regulations that are prescribed to ensure the collection of any federal estate tax imposed by § 2056A(b)(1).

Finally, the executor must make an election that applies to the trust on the federal estate tax return to qualify the property for the federal estate tax marital deduction.

Section 2056A(b)(1) provides that an estate tax is imposed on -- (A) any distribution before the date of death of the surviving spouse from a qualified domestic trust, and (B) the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse.

Section 2056A(b)(12) provides that if the surviving spouse of the decedent becomes a citizen of the United States and if such spouse was a resident of the United States at all times after the date of the death of the decedent and before such spouse becomes a citizen of the United States, and no tax was imposed by § 2056A(1)(A) with respect to any distribution before such spouse becomes such a citizen or such spouse elects to treat any distribution on which tax was imposed by paragraph (1)(A) as a taxable gift made by such spouse for purposes of § 2001, and determining the amount of tax imposed by § 2501 on actual taxable gifts made by such spouse during the year in which the spouse becomes a citizen or any in any subsequent year, and to treat any reduction in the tax imposed by paragraph (1)(A) by reason of the credit allowable under § 2010 with respect to the decedent as a credit allowable to such surviving spouse under § 2505 for purposes of determining the amount of the credit allowable under § 2505 with respect to taxable gifts made by the surviving spouse during the year in which spouse becomes a citizen or any subsequent year, the tax imposed by § 2056A(b)(1)(A) shall not apply to any distributions after such spouse becomes a citizen, and the tax imposed by § 2056A(b)(1)(B) shall not apply.

Section 20.2056A-10(a)(1) and (2) provide, in part, that a QDOT is no longer subject to the § 2056A tax if the surviving spouse becomes a citizen of the United States and the spouse was a resident of the United States at all times after the death of the decedent and before becoming a United States citizen, and the U.S. Trustee of the QDOT notifies the Internal Revenue Service and certifies in writing that the surviving spouse has become a United States citizen. Notice is to be made by filing a final Form 706-QDT on or before April 15<sup>th</sup> of the calendar year following the year in which the surviving spouse becomes a United States citizen, unless an extension of time for filing is granted under § 6081.

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 in subtitles E, G, H, and I.

Section 301.9100-3 sets forth the standards that the Commissioner uses to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation and not expressly provided by statute. These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence

proving 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 to advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Therefore, U.S. Trustee is granted an extension of time of 60 days from the date of this letter to file the required notice and certification with the Internal Revenue Service that Spouse has become a United States citizen.

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

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.

The ruling contained in this letter is 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,

Curt G. Wilson  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: