Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Release Date: 10/26/2012

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

Re:

Legend:

Decedent	=
Estate	=
Spouse	=
Country	=
Plan	=
Account	=
Domestic Custodian	=
Date 1	=
Date 2	=
Date 3	=
$x	=

Dear :

This is in response to your representative's letter dated December 28, 2011, requesting an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to satisfy the requirements of section 2056A of the Internal Revenue Code.

According to the facts submitted, Decedent, a United States citizen, died on Date 1, survived by Spouse, who is not a United States citizen. Spouse is a resident and a citizen of Country. Decedent participated in Plan, a profit sharing plan described in section 401(k) of the Code. At his death, the value of Decedent's interest (Account) in Plan was $x. Spouse was designated as the beneficiary.

The estate tax return, Form 706 (United States Estate and Generation-skipping Transfer Tax Return), for the Decedent's estate was timely filed on Date 2. The return included (i) the executor's election to treat the Account as a QDOT, and (ii) Spouse's agreement

to report to the Internal Revenue Service all annuity payments received from the Account or any Individual Retirement Account (IRA) into which she transferred the Account.

On Date 3, the Account was rolled over to Spouse's IRA governed by section 408 of the Code. Domestic Custodian is the administrator. Spouse has the right to take withdrawals from the IRA at any time and has the sole power to designate the beneficiary or beneficiaries at her death. On the same day, Date 3, the executor filed a supplementary Form 706 providing the information required to treat the IRA as a QDOT. Spouse's agreement executed in accordance with § 20.2056A-4(c)(2) and (6) of the Estate Tax Regulations was included.

It is represented that the delay in irrevocably assigning the Account to the IRA was caused by intervening events beyond Spouse's control. The Estate requests extension of time to comply with the requirements of section 2056A with respect to the rollover.

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 section 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)(A) provides that if the surviving spouse is not a citizen of the United States, no deduction shall be allowed under section 2056(a). Under section 2056(d)(2)(A), section 2056(d)(1)(A) will not apply to any property passing to the surviving spouse in a qualified domestic trust (QDOT).

Under section 2056A, in order for a trust to qualify as a QDOT: (1) the trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or domestic corporation and 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 additional estate tax imposed by section 2056A(b)(1) on the distribution; (2) the trust must meet the requirements that are prescribed under Treasury regulations to ensure the collection of the tax imposed by section 2056A(b); and (3) the executor must make the election prescribed by section 2056A(d) to treat the trust as QDOT.

Under section 2056(d)(2)(B) and § 20.2056A-4(b)(1), if an interest in property passes outright from a decedent to a noncitizen surviving spouse pursuant to an annuity or other similar plan or arrangement, and such property interest otherwise qualifies for a marital deduction except that it does not pass in a QDOT, then solely for purposes of

section 2056(d)(2)(A), the property is treated as passing to the surviving spouse in a QDOT if the property interest is assigned to a QDOT under an enforceable and irrevocable written assignment made on or before the date on which the return is filed and on or before the last date prescribed by law that the QDOT election may be made. Section 20.2056A-4(b)(6) provides that property irrevocably assigned but not actually transferred to the QDOT before the estate tax return is filed must actually be conveyed and transferred to the QDOT under applicable local law before the administration of the decedent's estate is completed. If there is no administration of the decedent's estate, the conveyance must be made on or before the date that is one year after the due date (including extensions) for filing the decedent's estate tax return. If an actual transfer to the QDOT is not timely made, section 2056(d)(1)(A) applies and the marital deduction is not allowed. The executor of the decedent's estate may request a private letter ruling from the Internal Revenue Service requesting an extension of the time for completing the conveyance.

Under section 2056(d) and § 20.2056A-3(a), the election to treat a trust as a QDOT must be made on the last federal estate tax return filed before the due date (including extensions of time to file actually granted) or, if a timely return is not filed, on the first federal estate tax return filed after the due date. The election, once made, is irrevocable. No election may be made if the return is filed more than 1 year after the due date of the return.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, 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 6 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 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3 provides the standards used 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). 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 the grant of relief will not prejudice the interests of the government.

Based on the facts submitted and representations made, we conclude that the executor made a valid QDOT election with respect to the Account that was listed on Schedule M of the timely filed Form 706. We also conclude that the requirements of § 301.9100-3 have been satisfied with respect to the rollover to the IRA.

It is represented that the following required filings occurred on Date 3. Nevertheless, extension of time until 120 days after the date of this letter is granted to (i) complete the transfer to the IRA, (ii) file with the Internal Revenue Service a supplementary Form 706 with the Information Statement described in § 20.2056A-4(c)(5), and (ii) likewise, file the agreement executed by Spouse as described § 20.2056A-4(c)(6)(ii). The Information Statement and agreement should be attached to a Supplemental Form 706 filed with the Internal Revenue Service Center, Cincinnati OH 45999. A copy of this letter should also be attached to the return.

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.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that if may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: James F. Hogan
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures
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