

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PT&E:B4

PLR-116871-24

Date:

March 17, 2025

LEGEND

Decedent =

Spouse =

Trust =

Tax Professional =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear

This letter responds to a letter from your authorized representative dated August 27, 2024, and subsequent 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 summarized as follows:

Decedent created Trust, a revocable trust, on Date 1. Trust was restated in full on Date 2, and amended on Date 3 and Date 4. Decedent died on Date 5, survived by Spouse. Trust became irrevocable upon Decedent's death.

Under Article VII(A) of Trust, if Spouse survives Decedent, the Trust is to be divided into two separate trusts: the Family Trust and the Marital Trust. The Family Trust is to be funded with any assets not part of Decedent's estate for Federal estate tax purposes. In addition, the Family Trust is to be funded with Decedent's estate assets, to be chosen by the trustee in his discretion, in an amount having the largest possible amount (but not exceeding 50 percent) of the value of Decedent's adjusted gross estate which will not create or increase a federal estate tax on Decedent's estate. The Marital Trust is to be funded with any remaining assets. This ruling pertains to the Marital Trust only.

Under Article VII(B), the entire net income of the Marital Trust is to be paid to the surviving spouse for life in quarter-annual or other convenient installments, but no less frequently than annually. In addition, the trustee has the discretion to pay principal to the surviving spouse for health, education, support and maintenance. Article VII(E) provides that the Marital Trust is intended to qualify for the federal estate marital deduction applicable to Decedent's estate.

The executors of Decedent's estate engaged Tax Professional to prepare Decedent's Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return) and to make any necessary elections, including making a QTIP election. It is represented that the Form 706 was timely filed on behalf of Decedent's estate; however, Tax Professional mistakenly failed to include the assets of Marital Trust as property subject to the QTIP election in Part A of the Schedule M. Thus, no QTIP election was made with respect to the property passing to Marital Trust.

You have requested an extension of time to make the QTIP election under § 2056(b)(7).

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)(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)(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) 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 (or § 2101). 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 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. Accordingly, the executors of Decedent's estate are granted an extension of time of 120 days from the date of this letter to make a QTIP election with respect to the property of the Marital Trust. The election should be made on a supplemental Form 706 filed with the Internal Revenue Service Center at the following address: Internal Revenue Service Center, 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.

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.

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.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Sincerely,

Associate Chief Counsel
Passthroughs, Trusts, and Estates

By: _____
Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

Enclosure: (1)

Copy for § 6110 purposes

cc: