Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4-PLR-168587-01
Date:
JULY 25, 2002

Re:

LEGEND:

Decedent =
Spouse =
Trust =

Date =

Dear :

This letter is in response to a letter from your authorized representative dated December 3, 2001, requesting a ruling, pursuant to the authority of Revenue Procedure 2001-38, 2001-24 I.R.B. 1335, that the qualified terminable interest property (QTIP) election which was made in respect of the credit shelter trust established pursuant to the terms of Trust be treated as a nullity for purposes of sections 2044(a), 2056(b)(7), 2519(a), and 2652 of the Internal Revenue Code.

FACTS:

Decedent died on Date. Pursuant to Article Third, Paragraph A of Trust, the executors of Decedent's estate funded a credit shelter trust for the lifetime benefit of Spouse in an amount equal to "the maximum amount which can be absorbed by the unified credit in effect at the time of [Decedent's] death." Pursuant to Paragraph B of

Article Third, the balance of the residuary estate passed to a marital trust for the lifetime benefit of Spouse. The marital trust was intended to qualify as a QTIP trust.

You represent that Decedent made no taxable gifts during his lifetime and that, at the time of Decedent's death, the maximum unified credit was available to shelter the distribution of Trust's assets to the credit shelter trust. Decedent's federal estate tax return (Form 706) was filed timely. On Schedule M of the return, the executors made QTIP elections for both the credit shelter trust and the marital trust. The QTIP election for the credit shelter trust was unnecessary, because no estate tax would have been imposed whether or not the QTIP election was made for that trust.

LAW AND ANALYSIS:

Section 2056(a) provides that, except as limited by § 2056(b), the value of a taxable estate is 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. Section 2056(b)(1) denies a marital deduction for an interest passing to the surviving spouse that is a "terminable interest." An interest is a terminable interest if the interest passing to the surviving spouse will terminate or fail on the lapse of time or on the occurrence of an event or contingency or on the failure of an event or contingency to occur, and on termination, an interest in the property passes to someone other than the surviving spouse.

Section 2056(b)(7)(A) provides an exception to this terminable interest rule in the case of qualified terminable interest property. For purposes of § 2056(a), qualified terminable interest property is treated as passing to the surviving spouse, and no part of the property is treated as passing to any person other than the surviving spouse. Under § 2056(b)(7)(B)(i), qualified terminable interest property is property which passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which an election under § 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(v) provides that the election to treat property as QTIP under § 2056(b)(7) is made by the executor on the return of tax imposed by § 2001. This election, once made, is irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that the QTIP election is made on the return of tax imposed by § 2001 (or § 2101). The term "return of tax imposed by § 2001" means the last estate tax return (Form 706-United States Estate (and Generation-Skipping Transfer) 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 after the due date.

Section 2044(a) and (b) provides generally that the value of the gross estate includes the value of any property in which the decedent had a qualifying income

interest for life and with respect to which a deduction was allowed for the transfer of the property to the decedent under § 2056(b)(7).

Section 2519(a) and (b) provide that any disposition of all or part of a qualifying income interest for life in any property with respect to which a deduction was allowed under § 2056(b)(7) is treated as a transfer of all interests in the property other than the qualifying income interest.

Section 2652(a) provides that the surviving spouse will be treated as the transferor of the property for generation-skipping transfer tax purposes in the absence of a “reverse QTIP” election under § 2652(a)(3).

Revenue Procedure 2001-38 provides relief for surviving spouses and their estates in situations where a predeceased spouse's estate made an unnecessary QTIP election under § 2056(b)(7) that did not reduce the estate tax liability of the estate. When such an unnecessary election is made, the Internal Revenue Service will disregard the election and treat it as null and void for purposes of §§ 2044(a), 2056(b)(7), 2519(a), and 2652. The revenue procedure specifically applies to cases where an estate made QTIP elections for both a credit shelter trust and a marital trust, and the QTIP election for the credit shelter trust was not necessary, because no estate tax would have been imposed whether or not the QTIP election was made for that trust.

In this case, the QTIP election for the credit shelter trust was unnecessary because no estate tax would have been imposed whether or not the election was made for the trust. Accordingly, we rule that the Service will disregard the QTIP election for the credit shelter trust established under Article Third, Paragraph A and treat it as null and void for purposes of §§ 2044(a), 2056(b)(7), 2519(a) and 2652. The property in the credit shelter trust for which the election is disregarded will not be includible in the gross estate of Spouse under § 2044, and Spouse will not be treated as making a gift under § 2519 if Spouse disposes of the income interest with respect to that property. Further, Spouse will not be treated as the transferor of the property in the credit shelter trust for generation-skipping transfer tax purposes under § 2652(a).

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(s) 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. A copy of this letter must be attached to any tax return to which it is relevant. 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,

Lorraine E. Gardner
Assistant to the Branch Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure (1)
Copy for section 6110 purposes

cc: