Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
August 05, 2013

Decedent =
Spouse =
Child 1 =
Child 2 =
Child 3 =
Child 4 =
Trust =
Marital Trust =
Date 1 =
Date 2 =
x =
y =

Dear :

This letter responds to your letter of February 7, 2013, requesting a ruling that, pursuant to Rev. Proc. 2001-38, 2001-2 C.B. 124, the qualified terminable interest property (QTIP) election made with respect to the Marital Trust is a nullity for federal gift, estate and generation-skipping transfer (GST) tax purposes.

The facts and representations submitted are as follows.

On Date 1, Decedent executed a will and established Trust, a revocable living trust. Decedent died on Date 2, survived by Spouse, Child 1, Child 2, Child 3, and Child 4. On Decedent's death, Trust ceased to be revocable.

Under the provisions of Article 4 of Trust, upon Decedent's death, if Spouse survives him, Trust terminates and trustee is directed to distribute outright and free of trust to Spouse an amount determined by reference to the amount of property disposed of by Trust that exceeds the largest amount, if any, that can pass free of federal estate tax by

reason of the unified credit and the state death tax credit allowable to Decedent's estate, after taking into account certain property passing outside Trust and certain other debts, expenses, and charges.

Article 4 of Trust provides that, after distribution of the amount payable outright to Spouse, the remainder is to be distributed to a separate trust. During Spouse's lifetime, the trustee of the separate trust is directed to pay to Spouse, at least annually, all the net income of the trust and to distribute principal as the trustee considers appropriate for Spouse's comfort and welfare.

Article 4 of Trust directs that upon the death of Spouse, the trustee shall distribute all the remaining principal and accrued and undistributed income to Child 1, Child 2, Child 3, and Child 4, in equal shares. If any child should predecease Spouse, then that child's issue shall take the child's share, per stirpes.

Pursuant to the terms of Decedent's will and Article 4 of Trust, Spouse received $x outright and free of trust. The remaining $y of Decedent's gross estate less exclusion funded the Marital Trust.

The executor of Decedent's estate timely filed a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. On Schedule M of Form 706, the executor listed the assets of the Marital Trust. By listing the assets of the Marital Trust on Schedule M, the executor made a QTIP election with respect to those assets.

You have requested a ruling that, pursuant to Rev. Proc. 2001-38, 2001 C.B. 124, the QTIP election made with respect to the Marital Trust on Form 706 be treated in its entirety as null and void for purposes of §§ 2044(a), 2056(b)(7), 2519(a), and 2652 of the Internal Revenue Code, insofar as the election was not necessary to reduce the estate tax liability to zero.

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, except as limited by § 2056(b), the value of the taxable estate is to be 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, but only to the extent that such interest is included in determining the value of the gross estate. Section 2056(b)(1) provides the general rule that a marital deduction is not allowed 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) provides an exception to this terminable interest rule in the case of QTIP. For purposes of § 2056(a), QTIP 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), QTIP 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. The election, once made, is irrevocable.

Section 2044 provides 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, in the case of property subject to an election under § 2056(b)(7), the surviving spouse will be treated as the transferor of the property for GST tax purposes in the absence of a “reverse QTIP” election under § 2652(a)(3).

In general, under Rev. Proc. 2001-38, a QTIP election under § 2056(b)(7) will be treated as null and void for purposes of §§ 2044(a), 2056(b)(7), 2519(a), and 2652, where the election was not necessary to reduce the estate tax liability to zero, based on values as finally determined for federal estate tax purposes. The revenue procedure provides an example where a QTIP election was made when the taxable estate (before allowance of the marital deduction) was less than the applicable exclusion amount under § 2010(c). Another example set forth in the revenue procedure is where the decedent's will provides for a “credit shelter trust” to be funded with an amount equal to the applicable exclusion amount under § 2010(c), with the balance of the estate passing to a marital trust intended to qualify under § 2056(b)(7). The estate makes QTIP elections with respect to both the credit shelter trust and the marital trust. 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. See Rev. Proc. 2001-38, § 2.

In this case, the election under § 2056(b)(7) to treat the assets of the Marital Trust as QTIP was not necessary to reduce the estate tax to zero because no estate tax would

have been imposed on the assets in the Marital Trust whether or not the election was made. If relief under Rev. Proc. 2001-38 is granted, the estate's federal estate tax liability will remain at zero after applying Decedent's unified credit amount under § 2010.

Because the QTIP election in this case was not necessary to reduce the estate tax liability to zero, Rev. Proc. 2001-38 applies and the Service will disregard the QTIP election with respect to the Marital Trust and treat it as null and void for purposes of §§ 2044, 2056(b)(7), 2519(a), and 2652. Accordingly, the property for which the election is disregarded will not be includible in the Spouse's gross estate under § 2044(a) 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 Marital Trust for GST tax purposes under § 2652.

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. In addition, we express or imply no opinion regarding the value of the property transferred to the trusts.

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.

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.

Sincerely,

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)