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:PSI:04
PLR-101301-19

Date:
June 03, 2019

In Re:

LEGEND:

Decedent =

Spouse =

Date =

Dear :

This letter responds to a letter dated October 4, 2018, submitted on behalf of Decedent's estate, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make an election. Decedent's estate is requesting to make an election under § 2010(c)(5)(A) of the Internal Revenue Code (a "portability" election) to allow a decedent's surviving spouse to take into account that decedent's deceased spousal unused exclusion (DSUE) amount.

The information submitted for consideration is summarized below.

Decedent died on Date, survived by Spouse. It is represented that based on the value of Decedent's gross estate and taking into account any taxable gifts, Decedent's estate is not required under § 6018(a) to file an estate tax return (Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return). It is further represented that there is an unused portion of Decedent's applicable exclusion amount and that a portability election is required to allow Spouse to take into account that amount (the "DSUE" amount). A portability election is made upon the timely filing of a complete and properly prepared estate tax return, unless the requirements for opting out are satisfied. *See* § 20.2010-2(a)(2) of the Estate Tax Regulations. For various reasons, an estate

tax return was not timely filed and a portability election was not made. After discovery of this, Decedent's estate submitted this request for an extension of time under § 301.9100-3 to make a portability election.

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 2010(a) provides that a credit of the applicable credit amount shall be allowed to the estate of every decedent against the tax imposed by § 2001.

Section 2010(c)(1) provides that the applicable credit amount is the amount of the tentative tax that would be determined under § 2001(c) if the amount with respect to which such tentative tax is to be computed were equal to the applicable exclusion amount.

On December 17, 2010, Congress amended § 2010(c), effective for estates of decedents dying and gifts made after December 31, 2010, to allow portability of a decedent's unused applicable exclusion amount between spouses. Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 303, 124 Stat. 3296, 3302 (2010).

Section 2010(c)(2) provides that the applicable exclusion amount is the sum of the basic exclusion amount, and, in the case of a surviving spouse, the DSUE amount.

Section 2010(c)(3) provides the basic exclusion amount available to the estate of every decedent, an amount to be adjusted for inflation annually after calendar year 2011.

Section 2010(c)(4) defines the DSUE amount to mean the lesser of (A) the basic exclusion amount, or (B) the excess of -- (i) the applicable exclusion amount of the last deceased spouse of the surviving spouse, over (ii) the amount with respect to which the tentative tax is determined under § 2001(b)(1) on the estate of such deceased spouse.

Section 2010(c)(5)(A) provides that a DSUE amount may not be taken into account by a surviving spouse under § 2010(c)(2) unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an election on such return that such amount may be so taken into account. The election, once made, shall be irrevocable. No election may be made if such return is filed after the time prescribed by law (including extensions) for filing such return.

Section 20.2010-2(a)(1) provides that the due date of an estate tax return required to elect portability is nine months after the decedent's date of death or the last day of the period covered by an extension (if an extension of time for filing has been obtained).

Under § 20.2010-2(a)(1), an extension of time under § 301.9100-3 to make a portability election may be granted in the case of an estate that is not required to file an estate tax return under § 6018(a), as determined solely based on the value of the gross estate and any adjusted taxable gifts (and without regard to § 20.2010-2(a)).

Under § 301.9100-1(c), 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 subtitles E, G, H, and I.

Section 301.9100-3 provides the standards the Commissioner will use 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 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.

In this case, based on the representation as to the value of the gross estate and any adjusted taxable gifts, the time for filing the portability election is fixed by the regulations. Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Decedent's estate to elect portability, provided Decedent's estate establishes it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted on behalf of Decedent's estate explain the circumstances that resulted in the failure to timely file a valid election. Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Therefore, we grant an extension of time of 120 days from the date of this letter in which to make the portability election. The election should be made by filing a complete and properly prepared Form 706 and a copy of this letter, within 120 days from the date of this letter, with the Cincinnati Service Center, at the following address: Internal Revenue Service, Cincinnati Service Center, Stop 82, Cincinnati, OH 45999. For purposes of electing portability, a Form 706 filed by Decedent's estate within 120 days from the date of this letter will be considered to be timely filed.

If it is later determined that, based on the value of the gross estate and taking into account any taxable gifts, Decedent's estate is required to file an estate tax return pursuant to § 6018(a), the Commissioner is without authority under § 301.9100-3 to grant an extension of time to elect portability and the grant of the extension referred to in this letter is deemed null and void. *See* § 20.2010-2(a)(1).

We neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, we express no opinion as to the DSUE amount to be potentially taken into account by Spouse. Any claimed DSUE amount will be included in the applicable exclusion amount of Spouse only to the extent that Spouse can substantiate such amount and will be subject to determination by the Director's office upon audit of relevant Federal gift or estate tax returns. *See* § 20.2010-3(c)(1) and (d).

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) provides that it may not be used or cited as precedent.

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 and Special Industries

Karlene M. Lesho

By: Karlene M. Lesho
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)