

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:B04

PLR-114153-24

Date:

January 28, 2025

In Re:

LEGEND

Decedent =

Spouse =

Child =

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Attorney 1 =

Attorney 2 =

Law Firm 1 =

Law Firm 2 =

State Statute =

\$x =

\$y =

Dear :

This letter responds to the letter dated July 26, 2024, submitted by your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to provide notice of intention to divide a trust into a qualified terminable interest property (QTIP) trust and a non-QTIP trust pursuant to Section 20.2056(b)-7(b)(2)(ii)(A) of the Estate Tax Regulations.

FACTS

The facts submitted and the representations made are as follows:

Decedent and Spouse created a revocable trust, Trust, on Date 1. Decedent died on Date 2, survived by Spouse and Decedent's children. Decedent's Child is serving as executor of the Decedent's estate and as successor trustee of Trust.

Trust provides that upon the death of the first of Decedent and Spouse, the trust estate is to be divided into two separate trusts: the Survivor's Trust and the Marital Trust. The Marital Trust consists of trust property not allocated to Survivor's Trust. Marital Trust is for the benefit of Spouse and is the subject of this letter ruling.

Trust provides that the trustee must distribute all income of the Marital Trust to Spouse. After the exhaustion of the Survivor's Trust, the trustee may distribute principal for Spouse's support, maintenance, medical expenses, and emergencies. During Spouse's life, no distributions from Marital Trust may be made to anyone other than Spouse.

Child, in his capacity as executor, hired Attorney 1 and Law Firm 1 to advise and prepare a Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return), on behalf of Decedent's estate. The executor timely filed a Form 706 on behalf of Decedent's estate on Date 3. On Schedule M of the Form 706, the executor elected to treat \$x of the Marital Trust as qualified terminable interest property under § 2056(b)(7), and a marital deduction in the amount of \$x was claimed with respect to the Marital Trust. No QTIP election was made for the balance of Marital Trust, valued at \$y.

Attorney 1 and Law Firm 1 did not advise the executor about the availability and advisability of severing the Marital Trust into a QTIP trust and non-QTIP trust as outlined in § 20.2056(b)-7(b)(2)(ii)(A). As a result, the executor filed the Form 706 and did not include a notice on Decedent's Form 706 signifying the intent to divide the Marital Trust into a QTIP trust and non-QTIP trust to reflect a partial election pursuant to § 20.2056(b)-7(b)(2)(ii)(A). The errors were discovered by Attorney 2 on Date 4 after the executor retained Attorney 2 and Law Firm 2.

Child, in his capacity as executor, represents that the period of administration of the Decedent's estate remains open. The Marital Trust was not severed into a QTIP trust and a non-QTIP trust prior to the due date of the Form 706, and the return contained no indication that the Marital Trust was to be severed as required under § 20.2056(b)-7(b)(2)(ii)(A).

You have requested an extension of time under §§ 301.9100-1 and 301.9100-3 to provide notice of intent to divide the Marital Trust into a QTIP trust and a non-QTIP.

LAW AND ANALYSIS

State Statute provides the trustee may, unless expressly prohibited by the terms of the instrument establishing the trust, divide a trust into two or more separate trusts without a judicial proceeding if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the original trust.

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.

Under § 2056(b)(7), a marital deduction is allowed for qualified terminable interest property (QTIP), which is defined in § 2056(b)(7)(B)(i) as property: (I) which passes from the decedent; (II) in which the surviving spouse has a qualifying income interest for life; and (III) to which an election under § 2056(b)(7)(B)(v) applies.

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 shall have the 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)(2)(i) provides that the QTIP election may relate to all or any part of property that meets the requirements of § 2056(b)(7)(B)(i), provided that any partial election must be made with respect to a fractional or percentage share of the property so that the elective portion reflects its proportionate share of the increase or decrease in value of the entire property for purposes of applying sections 2044 or 2519. The fraction or percentage may be defined by a formula.

Section 20.2056(b)-7(b)(2)(ii)(A) provides that, in general, a trust may be divided into separate trusts to reflect a partial election that has been made, or is to be made, if authorized under the governing instrument or otherwise permissible under local law. Any such division must be accomplished no later than the end of the period of estate administration. If, at the time of filing of the estate tax return, the trust has not yet been divided, the intent to divide the trust must be unequivocally signified on the estate tax return.

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. 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.

Under § 301.9100-1(c), the Commissioner has the 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 301.9100-3 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 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.

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.

Section 301.9100-1(a) cautions that granting an extension of time to make an election is not a determination that the taxpayer is otherwise eligible to make the election.

Based on the facts presented and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Decedent's estate is granted 120 days from the date of this letter to provide notice of intent to divide the Marital Trust into a QTIP trust and non-QTIP trust under § 20.2056(b)-7(b)(2)(ii)(A). This notice of intent to divide the Marital Trust should be made on a supplemental Form 706, or by attaching a notice to the supplemental Form 706, to unequivocally signify the intent to divide the Marital Trust into a QTIP trust and non-QTIP trust to reflect that a partial election has been made pursuant to § 20.2056(b)-7(b)(2)(ii)(A). The supplemental Form 706 should be filed with the Internal Revenue Service Center, Attn: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should also be attached to the supplemental Form 706.

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

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. Specifically, no opinion is express or implied regarding whether the Marital Trust property satisfies the requirements for qualified terminable interest property under § 2056(b)(7). Further, no opinion is express or implied regarding whether the period of estate administration has expired.

The ruling contained in this letter is based upon the information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the ruling request, and 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.

Sincerely,

Associate Chief Counsel
Passthroughs, Trusts, and Estates

Daniel J. Gespass

By: Daniel J. Gespass
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

Enclosure:

Copy for § 6100 purposes

cc: