

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-114667-24

Date:
January 28, 2025

Re:

Legend

Decedent	=
Spouse	=
Trust	=
Date 1	=
Date 2	=
Date 3	=
Accounting Firm	=

Dear

This letter responds to your authorized representative's letter dated August 16, 2024, and subsequent correspondence, submitted on behalf of Decedent's estate, 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 as follows. On Date 1, Decedent established a revocable trust, Trust. Trust became irrevocable upon Decedent's death on Date 2.

Article Five of Trust provides for the distribution of Trust property upon Decedent's death. Section 5.1 provides for the distribution of specific assets from Trust as directed by Decedent's will. Section 5.2 provides for the distribution of a portion of the remaining Trust assets to a Marital Trust for Spouse's benefit. Pursuant to Section 5.2, the trustee shall set aside in the Marital Trust, the smallest pecuniary amount necessary to eliminate or reduce to the lowest possible sum the federal estate tax liability of the estate. This amount will be calculated taking into account the applicable exclusion

amount and all other tax credits, deductions, and other preferences allowed to the estate, based on the assumption that an election is made to qualify all of the property in the Marital Trust for the marital deduction.

Article Six of Trust provides for the administration of Marital Trust. Section 6.1 provides that during Spouse's lifetime, the trustee of Marital Trust shall pay to Spouse all income from Marital Trust at least quarterly during Spouse's lifetime. Section 6.2 provides that the trustee of Marital Trust may pay to Spouse any principal that the trustee in its discretion deems necessary or advisable for Spouse's health, education, support, and maintenance, or as any independent trustee in its discretion determines to be in Spouse's best interests. Section 6.3 provides that, upon the death of Spouse, the trustee of Marital Trust is directed to distribute the remaining assets of Marital Trust (including in further trusts) as Spouse directs by exercise of a testamentary special power of appointment exercisable in favor of any one or more of Decedent's descendants, their spouses, and any one or more exempt organizations.

Section 23.4 provides that Spouse has the right to require the trustee to make trust property productive or to convert trust property to income-producing property. Section 23.2 of Trust provides that Decedent intends that Decedent's estate be entitled to claim the optimum available marital deduction for federal estate tax purposes. This section also provides that the trustee may make an election to treat property in Marital Trust as property qualifying for the marital deduction.

Spouse, as personal representative of Decedent's estate, engaged Accounting Firm to provide advice on federal estate tax matters and to prepare Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for Decedent's estate. On Date 3, a Form 706 was filed on behalf of Decedent's estate. Accounting Firm intended to make a QTIP election for Marital Trust, however, Accounting Firm mistakenly included the Marital Trust property on Part B of the Form 706 Schedule M, instead of Part A. Upon discovery of the error, Accounting Firm began the process of seeking remedies available to file a corrected Schedule M properly making a QTIP election.

Soon thereafter, Decedent's estate instituted the process for seeking an extension of time under §§ 301.9100-1 and 301.9100-3 to make a QTIP election with respect to Marital Trust.

LAW AND ANALYSIS

Section 2001(a) of the Code 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)(1) provides the general rule that no deduction shall be allowed under § 2056(a) for an interest passing to the surviving spouse if, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest will terminate or fail.

Section 2056(b)(7)(A) provides that, in the case of QTIP, 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 “QTIP” 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) of the Estate Tax Regulations, generally, that the QTIP election is made on 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 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 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, Decedent's estate is granted an extension of time of 120 days from the date of this letter to make a QTIP election with respect to Marital Trust.

The election should be made on a supplemental Form 706 filed with the Internal Revenue Service Center at the following address: Department of the Treasury, Internal Revenue Service Center, 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.

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

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,

Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

By: /s/
Melissa C. Liquerman
Senior Counsel, Branch 4
(Passthroughs, Trusts, and Estates)

Enclosure

Copy for § 6110 purposes

cc: