

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09 - PLR-106547-02
Date:
May 31, 2002

Re:

LEGEND

- Decedent =
- Trust =
- Date 1 =
- State =
- Spouse =
- Children =
- Date 2 =
- Date 3 =
- Date 4 =

Dear Sir:

This is in response to your letter dated December 28, 2001, 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.

The facts and representations submitted are summarized as follows: On Date 1, Decedent created Trust, an inter vivos revocable trust, under the laws of State.

Paragraph 2 of Trust provides that upon Decedent's death the balance of principal remaining in the trust estate shall be divided into two parts, Fund A and Fund B.

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Paragraph 3 provides, in part, that if Spouse survives Decedent, the trustee shall deposit into Fund A that fractional share of the assets of Trust, including assets received from Decedent's estate, if any, which (when added to the value for federal estate tax purposes of all property passing to Spouse under provisions of Decedent's Will, by right of survivorship with respect to jointly owned property, under settlement arrangements relating to life insurance or otherwise but only to the extent that such property shall be allowed to qualify for the marital deduction) is the minimum amount necessary to reduce Decedent's federal estate tax to zero or as close thereto as possible by utilizing the marital deduction available under the federal estate tax law after taking into account all credits available to Decedent's estate for federal estate tax purposes.

Paragraph 3 provides, in part, that all of the remaining assets of the trust estate after providing for Fund A, or all of the assets of the trust estate if Spouse predeceases Decedent, shall be deposited into Fund B. The trustee is then directed to pay over and deliver Fund B to Children, in equal shares, per stirpes.

Paragraph 4 provides, in pertinent part, that the trustee shall hold Fund A in trust for the benefit of Spouse. The subsections of Paragraph 4 provide the terms of such trust.

Paragraph 4(a) provides, in pertinent part, that the trustee is directed to pay over all of the net income to Spouse or apply the same for her sole use and benefit, in quarterly installments or at more frequent intervals, in the discretion of the trustee, but in no event less frequently than annually.

Paragraph 4(c) provides that in the event that the trust principal under administration shall be less than \$50,000, the trust may be terminated in the discretion of the trustee, other than Spouse, and, if terminated, the balance of principal remaining shall be paid over and delivered to Spouse.

Paragraph 4(d) provides that upon Spouse's death, all of the accrued or undistributed income shall be paid to Spouse's estate, and the entire remaining principal of the trust shall be paid over and delivered to Children, in equal shares, per stirpes.

Decedent died on Date 2 survived by Spouse and Children. Decedent's Last Will and Testament was admitted to probate on Date 3. Although Trust was not funded during Decedent's lifetime, Decedent's Will directed that all of Decedent's probate assets be distributed to the trustee of Trust.

Decedent's long-time accountant prepared Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Decedent's estate timely filed the Form 706 as prepared by the accountant. On Schedule M, the accountant reported

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the property passing to Spouse as the “entire estate, specifically the gross estate less allowable deductions.” However, because Fund B of Trust passed outright to Children, the Schedule M, as filed, is incorrect.

Several months after the filing of Decedent’s Form 706, Spouse met with an attorney to discuss her estate plan. Spouse’s attorney later discovered errors in the estate tax return and filed a supplemental estate tax return on Date 4 to correct certain factual errors and to allocate Decedent’s credit shelter exemption to Fund B of Trust.

You now request an extension of time under §§ 301.9100-1 and 301.9100-3 to make a QTIP election for Trust under § 2056(b)(7).

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 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 no deduction shall be allowed for an interest passing to the surviving spouse if, on the lapse of time, the occurrence of an event or contingency, or 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 qualified terminable interest property, the entire property shall be treated as passing to the surviving spouse for purposes of § 2056(a), and no part of the property shall be treated as passing to any person other than the surviving spouse for purposes of § 2056(b)(1)(A).

Section 2056(b)(7)(B)(i) defines “qualified terminable interest property” as property: (1) that passes from the decedent, (2) in which the surviving spouse has a qualifying income interest for life, and (3) to which an election under § 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if (1) the surviving spouse is entitled to all of the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and (2) no person has a power to appoint any part of the property to any person other than the surviving spouse.

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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 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 (or § 2101). 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 may grant a reasonable extension of time 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.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. 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 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 301.9100-3(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not (i) competent to render advice on the regulatory election; or (ii) aware of all relevant facts.

Based on the facts submitted and the representations made, the standards of § 301.9100-1 and § 301.9100-3 have been met because the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Consequently, we grant an extension of time for making the QTIP

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election for Fund A of Trust under § 2056(b)(7) until 60 days from the date of this letter. The election should be made on a supplemental Form 706 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for that purpose.

This ruling is directed only to the taxpayers 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, a copy of this letter is being sent to the taxpayer.

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,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy of letter