

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:  
 , ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-125763-03  
Date: JULY 28, 2004

Re:

Legend:

Decedent	=
Spouse	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=

Dear :

This is in response to your authorized representative's letter requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a qualified domestic trust (QDOT) election under § 2056A(d) of the Internal Revenue Code.

The facts and representation are summarized as follows. Decedent, a resident and domiciliary of the United States, died testate on Date 1. Decedent was not a citizen of the United States. Decedent was survived by Spouse, who currently resides in the United States and has resided continually in the United States since Decedent's death. At the time of Decedent's death, Spouse was not a United States citizen. Spouse was appointed executrix of Decedent's estate.

Under Section IV of Decedent's will, the estate residue was to be divided between two trusts. A Unified Credit Trust was to be funded with that amount that could pass free of estate tax by reason of the allowable unified credit. The balance of the residue was to pass to a Qualified Domestic Trust (QDOT) for the benefit of Spouse. It

is represented that a significant portion of the Decedent's gross estate consisted of nonprobate assets, with respect to which Spouse was the designated beneficiary, or that passed to Spouse by operation of law. Accordingly, the estate residue was not sufficient to fund the QDOT established under Section IV of Decedent's will.

Rather, Spouse, after consulting with her advisors, determined that, in accordance with § 2056A(d)(2)(B), Spouse would create a QDOT and transfer some of the nonprobate assets that passed to her on Decedent's death to the QDOT.

Decedent's estate tax return, Form 706, United States Estate (and Generation-skipping transfer) Tax return, was timely filed on Date 2. On Schedule M of the return, Spouse, as executrix, listed the assets subject to the QDOT election on Schedule M and claimed a marital deduction for the value of the assets. However, at the time the return was filed, Spouse had not executed a QDOT and had not irrevocably assigned the assets listed on Schedule M to a QDOT.

Subsequently, on Date 3, Spouse became a United States citizen. On Date 4, Spouse executed the QDOT. Article IIIB of the QDOT provides, inter alia, that if Spouse becomes a United States citizen, then she may withdraw the entire trust corpus, in which event the trust will terminate. Also on Date 4, Spouse executed an assignment of assets to the QDOT. However, the assets Spouse assigned to the QDOT on Date 4, did not include all the assets that had been listed on Schedule M of Form 706, with respect to which Spouse, as executrix, had made the QDOT election. Several of the assets were not assigned to the QDOT, presumably because the deduction of the value of these additional assets was not necessary to produce a zero estate tax. All the assets that were assigned had been listed on Schedule M.

On Date 5, Spouse, as executrix, filed Supplemental Information containing an amended Schedule M listing the assets Spouse assigned to the QDOT. It is represented that Spouse will complete the transfer all the assets irrevocably assigned to the QDOT before the estate administration is complete, unless a waiver from actual conveyance is received. Dates 3, 4 and 5 are all within one year of the due date of Form 706.

You have requested the following rulings:

- (1) a ruling granting an extension of time to make the QDOT election with respect to the assets listed on the Supplemental Information filed on Date 5;
- (2) a ruling granting an extension of time to assign those assets to the QDOT until Date 4 (the date the assets were assigned to the QDOT);
- (3) a ruling, under § 20.2056A-4(b)(6) of the Estate Tax Regulations, waiving the requirement that the assets assigned to the QDOT be actually conveyed to the QDOT.

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 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.

Sections 2056(d)(1)(A) provides that if the surviving spouse of the decedent is not a citizen of the United States, no deduction under § 2056(a) is allowed. However, section 2056(d)(2)(A) provides that § 2056(d)(1)(A) will not apply to any property passing to the surviving spouse in a qualified domestic trust (QDOT).

Section 2056(d)(2)(B) provides that if any property passes from the decedent to the surviving spouse of the decedent, then for purposes of § 2056(d)(1)(A), the property will be treated as passing to the spouse in a QDOT if: (1) the property is transferred to a QDOT before the date on which the estate tax return (Form 706) is made; or (2) the property is irrevocably assigned to a QDOT under an irrevocable assignment that is enforceable under local law, that is made on or before the date the estate tax return is filed.

Under § 2056A(a), in order for a trust to qualify be a QDOT: (1) the trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or domestic corporation and that no distribution other than a distribution of income may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the additional estate tax imposed by § 2056A(b)(1) on the distribution; (2) the trust must meet the requirements that are prescribed under Treasury regulations to ensure collection of the tax imposed by § 2056A(b); and (3) the executor must make the election prescribed by § 2056A(d) to treat the trust as a QDOT.

Under § 2056A(b)(1) and (b)(3) an estate tax is imposed on: (a) any distribution from a qualified domestic trust before the date of death of the surviving spouse (other than a distribution of trust income to the surviving spouse, or a distribution of corpus on account of hardship); and (b) the value of the property remaining in a QDOT on the date of the death of the surviving spouse.

Under § 2056A(d), the election under § 2056A is made by the executor on the return of tax imposed by § 2001. The election, once made, is irrevocable. Further, no election may be made under § 2056A on any return, if the return is filed more than one year after the time prescribed by law (including extensions) for filing the return.

Section 20.2056A-4(b)(1) provides, in part, that under § 2056(d)(2)(B), if an interest in property passes outright from a decedent to a noncitizen surviving spouse by operation of law, and such property interest otherwise qualifies for a marital deduction except that it does not pass in a QDOT, then solely for purposes of § 2056(d)(2)(A),

the property is treated as passing to the surviving spouse in a QDOT if the property interest is either actually transferred to a QDOT before the estate tax return is filed and on or before the last date prescribed by law that the QDOT election may be made, or is assigned to a QDOT under an enforceable and irrevocable written assignment made on or before the date on which the return is filed and on or before the last date prescribed by law that the QDOT election may be made.

Section 20.2056A-4(b)(6) provides, in part, that property irrevocably assigned but not actually transferred to the QDOT before the estate tax return is filed must be conveyed and transferred to the QDOT under applicable local law before the administration of the decedent's estate is completed. If there is no administration of the decedent's estate, the conveyance must be made on or before the date that is one year after the due date (including extensions) for filing the decedent's estate tax return. If an actual transfer to the QDOT is not timely made, § 2056(d)(1)(A) applies and the marital deduction is not allowed. The executor of the decedent's estate (or other authorized legal representative) may request a private letter ruling from the Internal Revenue Service requesting an extension of the time for completing the conveyance or waiving the actual conveyance under specified circumstances under § 301.9100 -1(a) of this chapter.

Under § 301.9100 -1(c), the Commissioner may 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 Code except subtitles E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

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 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(c)(1) provides, in part, that the Commissioner will grant a reasonable extension of time to make a regulatory election only

when the interests of the government will not be prejudiced by the granting of relief.

We conclude that a valid QDOT election had been made with respect to the assets listed on the Supplemental Information filed on Date 5, since these assets were listed on Schedule M of Form 706 filed on Date 2 and identified as passing to a QDOT on that Form 706. Further, in this case, the requirements of § 301.9100-3 have been satisfied. Accordingly, an extension of time until Date 4 is granted to assign those assets listed on the Date 5 Supplemental Information to the QDOT. Finally, in view of the grant of United States citizenship to Spouse on Date 3, in accordance with §20.2056A-4(b)(6), a waiver of the requirement of actual conveyance of the assets to the QDOT is granted.

The ruling contained in this letter is 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.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

These rulings are directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

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Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure  
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