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Department of the Treasury

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Person to Contact:

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CC:DOM:P&SI:4 - PLR-118621-98

Date: January 29, 1999

Re:

LEGEND:

Decedent =
Spouse =
Date 1 =
Date 2 =
Country X =

W =
X =
Y =
Z =

We received your authorized representative's letter, dated September 21, 1998, requesting a ruling concerning the distribution of assets from a qualified domestic trust (QDOT). This letter responds to that request.

The facts and representations submitted are summarized as follows: Decedent died testate on Date 1, a citizen and domiciliary of Country X. At the time of his death, Decedent owned certain assets located in the United States. A U.S. Estate Tax Return, Form 706, was filed disclosing all of the assets worldwide which were owned by Decedent at the time of his death.

Pursuant to Paragraph Fourth of Decedent's will, the residue of Decedent's estate is to be held in trust for the benefit of Spouse, who is also not a citizen of the United States. This trust was intended to qualify as a QDOT, thereby entitling Decedent's estate to a marital deduction.

Paragraph Fourth (A) provides that the Trustees are to distribute all of the net income from this trust in convenient installments at least quarterly, to or for the benefit of Spouse, during her lifetime. The Trustees may also pay to or for the benefit of Spouse such amounts from the principal as the Trustees deem necessary and approve from time to time for Spouse's support and medical care, after considering Spouse's other resources.

Paragraph Fourth (B) provides that the Trustees shall distribute to Spouse such amounts from the principal of the trust as Spouse may from time to time request in writing. No person shall possess or exercise any power to appoint to any person other than Spouse any assets of this trust.

Paragraph Fourth (C) provides that any distributions of principal (including capital gains) during Spouse's lifetime must be approved by the Trustees. If Spouse withdraws principal from this trust during her lifetime, the Trustees shall withhold and pay the federal estate tax on the distribution from the principal to be withdrawn. If the Trustees make a discretionary payment of principal to Spouse, the Trustees shall pay the federal estate tax on the distribution from the remaining principal of this trust.

Under Paragraph Fourth (D), upon the death of Spouse, the Trustees are directed to pay the executor of Spouse's estate all of the accrued and undistributed net income of this trust as of the date of Spouse's death. The Trustees are further directed to pay from the principal of this trust its proportionate share of the federal estate tax assessed under the Internal Revenue Code by reason of the death of Spouse. The balance of the trust principal shall be distributed by the Trustees to Taxpayer's children in equal shares.

According to Paragraph Fourth (E), the trust is intended to constitute a QDOT pursuant to § 2056A(a). The executor of the estate has the right to make any elections that are necessary in order to qualify the trust for the marital deduction. The Trustees may amend the terms of this trust for the purpose of enabling this trust to qualify for the marital deduction as a QDOT and to comply with any Treasury regulations or other qualifications issued for qualified domestic trusts.

Paragraph Fourth (H) states that in the event a trustee resigns or otherwise ceases to act as trustee, or if at any time a trustee shall cease to be an individual citizen of the United States or a domestic corporation, then such trustee shall immediately resign, and the remaining trustee(s) shall succeed to all duties and to all of the powers, including discretionary powers, herein granted to the named trustees. All of the

trustees of this trust must be individual citizens of the United States or domestic corporations.

A Form 706, federal estate tax return, was filed by the estate, notwithstanding that Decedent was a nonresident alien. On the return, as filed, the executor reported a gross estate of w and a taxable estate of x. In determining the taxable estate, the executor claimed a marital deduction on Schedule M of y for property passing to the QDOT under Paragraph Fourth. However, the executor reported the estate tax liability as zero, on the basis (reported on the return) that under the applicable estate and gift tax convention between the United States and Country X, the estate was exempt from United States estate taxation.

The estate was examined by the Internal Revenue Service and it was determined that none of the assets owned by the Decedent were includible in the Decedent's gross estate for U.S. estate tax purposes. Accordingly, as adjusted, the Decedent's gross estate was determined to be zero, and consequently, the marital deduction was not claimed for property passing under Paragraph Fourth. An Estate Tax Closing Letter was issued showing a tentative tax and net estate tax of zero.

However, prior to the receipt of the Closing Letter, estate assets were transferred to the Trustees in partial funding of the QDOT established under Decedent's will. To date, no distributions of principal have been made to Spouse. Spouse proposes to request in writing, pursuant to her power under Paragraph Fourth (B) of the will, that the Trustees make a complete distribution to her of all the assets currently held in the QDOT and any assets that will be distributed to the QDOT when the estate is settled. The Trustees propose to approve such request.

Trustees request a ruling that the distribution of the assets from the QDOT to Spouse under these facts will not result in the imposition of the additional estate tax under § 2056A(b).

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.

Section 2056(d)(1)(A) provides that where the surviving spouse of a decedent is not a United States citizen, the marital deduction is disallowed unless property passes to the surviving

spouse in a QDOT. Under § 2056(d)(2)(B), property is treated as passing to the surviving spouse in a QDOT if such property passes to the spouse and the spouse transfers the property to a QDOT on or before the date the estate tax return is made.

Under § 2056A(a), a trust will qualify as a QDOT if: (1) the trust instrument requires that at least one trustee of the trust be an individual citizen of the United States or a domestic corporation, and provides 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 domestic corporation has the right to withhold from such distribution the tax imposed under § 2056A(b) on the distribution; (2) the trust meets such requirements as the Secretary may by regulations prescribe to ensure the collection of any tax imposed by § 2056A(b); and (3) an election under § 2056A by the executor of the decedent applies to the trust.

Under §§ 2056A(b)(1)(A) and (B), an additional estate tax is imposed on distributions of corpus from the QDOT during the spouse's lifetime and on the value of the QDOT corpus on the date of death of the surviving spouse.

In general, under § 2056A(b)(2) and § 20.2056A-5(a), the additional estate tax is generally equal to the additional amount of estate tax that would have been imposed if the amount involved in the taxable event had been included in the decedent's taxable estate and had not been deductible under § 2056.

Section 20.2056A-5(b)(1) provides that if a taxable event occurs during the noncitizen surviving spouse's lifetime, the amount on which the § 2056A estate tax is imposed is the amount of money and the fair market value of the property that is subject of the distribution (including property distributed from the trust pursuant to the exercise of a power of appointment), including any amount withheld from the distribution by the U.S. Trustee to pay the tax. If, however, the tax is not withheld by the U.S. Trustee but is paid by the U.S. Trustee out of other assets of the QDOT, an amount equal to the tax so paid is treated as an additional distribution to the spouse in the year that the tax is paid.

Section 2056A(b)(6) provides that each trustee shall be personally liable for the amount of the tax imposed by § 2056A(b)(1).

In this case, it has been represented that Decedent was a citizen and domiciliary of Country X. Decedent's estate asserted, and the estate tax examiner agreed, that as a result of the Estate and Gift Tax Treaty between Country X and the United States, the Decedent's gross estate for U.S. estate tax purposes

was zero, and the Decedent's U.S. estate tax liability was zero. As a result of these audit adjustments, the property passing under Paragraph Fourth was not deducted under § 2056 in arriving at the taxable estate. Accordingly, under the facts presented, no additional estate tax will be imposed on the distribution from the trust to the Spouse under § 2056A(b)(1).

A copy of this letter should be attached to the Form 706-QDT filed by the Trustees.

Except as ruled above, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions of the Code or any other provision of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

By _____
George L. Masnik
Chief, Branch 4

Enclosures

Copy for section 6110 purposes
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