

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4-PLR-116529-99

Date:
September 14, 2000

Re:

Legend:

Decedent =
Spouse =
Child1 =
Child 2=
Trust =
Year =
Date 1 =
Date 2 =
Date 3 =

Dear :

This is in response to your letter dated October 1, 1999, 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.

Decedent executed Trust, a revocable inter vivos trust, on Date 1. Decedent died testate on Date 2, survived by Spouse and Children. Spouse is executor of Decedent's estate and trustee of Trust. Under the terms of Decedent's will, the residue of Decedent's estate is to be added to Trust.

The first paragraph under Article VIII of Trust entitled DISTRIBUTION OF THE TRUST ESTATE UPON THE DEATH OF SETTLOR provides that upon Decedent's death and after payment of all expenses and taxes, "the Trustee shall distribute the remaining assets in this trust estate to Settlor's spouse, [Spouse]."

The second paragraph under Article VIII of Trust entitled DISTRIBUTION OF THE TRUST ESTATE UPON THE DEATH OF SETTLOR'S SPOUSE provides that upon Spouse's death, "Settlor hereby gives, devises and bequeaths all of Settlor's estate and all of the property and sums in this trust to Settlor's children, [Child 1 and Child 2], share and share alike." If either of Child 1 or Child 2 dies prior to Decedent or Spouse with children surviving, then the deceased child's share is to pass to the children of the deceased child, share and share alike. If either of Child 1 or Child 2 dies prior to Decedent or Spouse without children surviving, then

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the deceased child's share is to pass to Decedent's surviving child.

The Form 706, of Federal Estate (and Generation-Skipping Transfer Tax) Return was filed by the Decedent's estate on Date 3. Upon audit of Form 706, it was determined that Spouse received only a life estate in Trust residue, with the remainder passing to Child 1 and Child 2. However, a QTIP election under § 2056(b)(7) was not made on Schedule M of Form 706, with respect to these assets.

Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 to make a QTIP election under § 2056(b)(7) with respect to qualified terminable interest property passing to Spouse under the terms of 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 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(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, 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 qualified terminable interest property, such 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. Section 2056(b)(7)(B)(i) defines "qualified terminable interest property" as property: (1) which 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)(v) provides that an election under § 2056(b)(7) with respect to any property is to be made by the executor on the return of tax imposed by § 2001. The election, once made, is irrevocable.

Under § 2044, any property in which the decedent possessed a qualifying income interest for life and for which a deduction is allowed under § 2056(b)(7) is includible in the decedent's gross estate.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner of Internal Revenue may grant a reasonable extension of the 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, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting the relief will not prejudice the interests of the government.

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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 301.9100-1(a).

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.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time for making the QTIP election under § 2056(b)(7) is granted until 30 days from the date of this ruling.

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 this ruling, it is subject to verification on examination.

This ruling is limited to the taxpayer's request under §§ 301.9100-1 and 301.9100-3. Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

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

Pursuant to a Power of Attorney on file, a copy of this letter is being sent to the taxpayer.

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

Enclosure:

Copy for section 6110 purposes