

Internal Revenue Service

Department of the Treasury

Number: **200314012**
Release Date: 4/4/2003
Index Number: 2523.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04-PLR-169030-01

Date:

DECEMBER 17, 2002

In Re:

Legend:

Taxpayer =
Trust =
Date 1 =
Year 1 =
Year 2 =
\$a =
\$b =

Dear :

This responds to a letter, dated March 19, 2002, and prior correspondence requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an inter vivos “qualified terminable interest property” (QTIP) election under § 2523(f) of the Internal Revenue Code with respect to Taxpayer’s Year 1 and Year 2 gifts to Trust.

FACTS

The facts submitted and representations made are as follows. Taxpayer established Trust on Date 1 in Year 1, transferring property valued at approximately \$a to Trust in Year 1. Taxpayer did not file a Form 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) for Year 1 and, accordingly, Taxpayer did not make the § 2523(f) QTIP election with respect to the transfer. In Year 2, Taxpayer transferred \$b to Trust and made a QTIP election for \$b on Schedule A of the timely filed Year 2 Form 709.

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LAW AND ANALYSIS

Section 2523(a) provides that where a donor transfers during the calendar year by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar year an amount with respect to such interest equal to its value.

Section 2523(f)(1) provides that in the case of qualified terminable interest property, for purposes of § 2523(a), such property shall be treated as transferred to the donee spouse, and for purposes of § 2523(b)(1), no part of such property shall be considered as retained in the donor or transferred to any person other than the donee spouse.

Section 2523(f)(2) provides that the term "qualified terminable interest property" means any property which is transferred by the donor spouse, in which the donee spouse has a qualifying income interest for life, and to which an election under § 2523(f)(4) applies.

Section 2523(f)(4)(A) provides that an election under § 2423(f) with respect to any property shall be made on or before the date prescribed by § 6075(b) for filing a gift tax return with respect to the transfer (determined without regard to § 6019(2)) and shall be made in such manner as the Secretary shall by regulations prescribe. An election under § 2523(f)(4), once made, is irrevocable. § 2523(f)(4)(B).

Section 301.9100-1 provides that the Commissioner, in exercising his discretion, 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 Internal Revenue Code except subtitles E, G, H, and I. A statutory election means an election whose due date is prescribed by statute. § 301.9100-1(b).

An automatic extension of 6 months from the due date of a return excluding extensions is granted to make regulatory or statutory elections whose due dates are the due date of the return or the due date of the return including extensions provided the taxpayer timely files its return for the year the election should have been made and the taxpayer takes corrective action (file an original or a supplemental return) within that 6-month extension period. § 301.9100-2(b), (c).

The time for filing the inter vivos QTIP election is expressly prescribed by § 2523(f)(4). The taxpayer did not timely file a Form 709 for Year 1 and, accordingly, the 6-month automatic extension period under § 301.9100-2(b) was not available to the taxpayer for Year 1. Further, the taxpayer did not take any corrective action for Year 1 within the 6-month extension period. Because § 301.9100-3 is applicable only to requests for extensions of time fixed by regulations or other published guidance, the

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Commissioner does not have the discretion to grant a request for an extension of time under § 301.9100-3 to make the QTIP election under § 2523(f)(4) for the Year 1 transfer to the trust. A QTIP election for the Year 2 transfer of \$b was made on Schedule A of the timely filed Year 2 Form 709 and, accordingly, satisfies the statutory requirements under § 2523(f).

The ruling contained in this letter was based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the taxpayer. 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.

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

Sincerely,

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

Enclosure

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