

**Internal Revenue Service**

**Department of the Treasury**

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04 - PLR - 148908-02

Date:

SEPTEMBER 09, 2003

Re:

Legend

Trust =  
Will =

Decedent =  
Spouse =  
Daughter =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
Country X =  
Accountant =  
\$m =  
\$n =  
State 1 =  
State 1 Court =

State 2 =  
Citation 1 =

Citation 2 =

Citation 3 =

Dear :

This is in response to your August 26, 2002 letter, and other correspondence, in which you request rulings under section 2056(d)(2)(B) of the Internal Revenue Code

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and sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations and section 20.2056A-4(b)(6) of the Estate Tax Regulations.

The facts and representations submitted are summarized as follows: Decedent died testate on Date 1. At the time of his death, Decedent was a citizen of Country X and a permanent alien resident of the United States in State 1. Decedent was survived by his spouse, Spouse, and adult child, Daughter. At the time of Decedent's death, Spouse was a citizen of Country X and a permanent alien resident of the United States, also in State 1. The executor of Decedent's estate is Spouse. Property passing under Decedent's will was distributed by an Order of Summary Administration on Date 2, thereby, completing administration of Decedent's estate. Spouse moved to State 2 following Decedent's death.

Spouse was the beneficiary of several life insurance policies owned by Decedent on his life and, upon Decedent's death, Spouse received \$m in life insurance proceeds. Decedent and Spouse jointly owned certain corporate shares, a bank account, and two money market mutual funds (Joint Assets). The Joint Assets had an aggregate value on the date of Decedent's death of \$n and these assets passed to Spouse, upon Decedent's death, by operation of law.

While residing in State 2, Spouse engaged the services of Accountant to prepare and file the federal and state estate tax returns for the estate. In preparing these returns, Accountant advised Spouse to establish a qualified domestic trust (QDOT) under section 2056A and fund the Trust with the life insurance proceeds and Joint Assets. Accountant advised Spouse that the Trust would qualify for the marital deduction under section 2056 on Decedent's estate tax return. On Date 3, Spouse established Trust. The trustee of Trust is Daughter, a United States citizen. Spouse established Trust to hold all of the life insurance proceeds and Joint Assets which were includible in Decedent's gross estate and to have the value of the assets in Trust, a QDOT, be eligible for the marital deduction under section 2056.

Accountant applied for and received an extension to file Decedent's estate tax return to Date 4. On Date 3, Accountant prepared and filed Decedent's estate tax return. The \$m proceeds in life insurance were reported on Schedule D (Insurance on the Decedent's Life) and the \$n value in Joint Assets were reported on Schedule E (Jointly Owned Property) of the return. However, Accountant reported only one-half of the Joint Assets as includible in Decedent's gross estate on the return. Accordingly, Spouse transferred \$m in life insurance proceeds and only one-half of the Joint Assets to Trust. These transfers on Date 3 were made before Date 4.

The following rulings are requested: 1) Spouse made an enforceable, irrevocable and timely assignment of the remaining Joint Assets under section 2056(d)(2)(B)(ii), and 2) an extension of time under sections 301.9100-1 and 301.9100-3 for purposes of section 20.2056A-4(b)(6) until four months from the date of this ruling, but in no event beyond Date 5, to transfer the remaining Joint Assets to Trust.

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Section 2040(a) provides that the value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants with right of survivorship by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth.

Section 2040(b)(1) provides that notwithstanding section 2040(a), in the case of any qualified joint interest, the value included in the gross estate with respect to such interest by reason of this section is one-half of the value of such qualified joint interest. Section 2040(b)(2) provides that for purposes of section 2040(b)(1), the term "qualified joint interest" means any interest in property held by the decedent and the decedent's spouse as tenants by the entirety, or joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants.

Section 2056(d)(2)(B) provides that if the surviving spouse of the decedent is not a citizen of the United States, section 2040(b) shall not apply.

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 section 2056(a) is allowed.

Section 2056(d)(2)(A) provides section 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, for purposes of section 2056(d)(1)(A), such property shall be treated as passing to such spouse in a QDOT if -- (1) such property is transferred to such a trust before the date on which the return of the tax imposed by this chapter is made, or (ii) such property is irrevocably assigned to such a trust under an irrevocable assignment made on or before such date which is enforceable under local law.

For purposes of section 2056A(a) and section 2056(d), a QDOT is any trust in which: (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 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 such distribution the tax imposed by this section on the distribution; (2) the trust meets the requirements as the Secretary may by regulations prescribe to ensure collection of the tax imposed by section 2056A(b); and (3) an election made under this section by the executor of the decedent applies to the trust.

Section 20.2056A-4(b)(1) provides, in part, that under section 2056(d)(2)(B), if an interest in property passes outright from a decedent to a noncitizen surviving spouse by

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operation of law, and such property interest otherwise qualifies for a marital deduction except that it does not pass in a QDOT, solely for purposes of section 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.

Generally, questions as to the effect of an assignment are governed by the law of the place where the assignment was made. Callwood v. Virgin Islands Nat'l Bank, 221 F.2d 770 (3<sup>rd</sup> Cir. 1955). In order for an assignment to be valid, the parties must intend to make an assignment. Citation 1. No special form or language is necessary to effect an assignment, in the absence of statutory requirements. Citation 2. All that is required is that the property must be sufficiently identifiable and there must be an intent to assign a present right in the subject matter of the assignment, divesting the assignor of all control over which is assigned. Citation 3.

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, section 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 section 301.9100-1(a) of this chapter.

Under section 301.9100-1(c), the Commissioner may grant a reasonable extension of time under the rules set forth in sections 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 section 301.9100-2.

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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 section 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.

The \$n in Joint Assets passed outright from Decedent to Spouse by operation of law. One-half of the Joint Assets were transferred to Trust before the estate tax return was due and within the time prescribed under section 2056(d)(2)(B). However, Spouse did not make an irrevocable assignment which would be enforceable under State 2 law of the remaining Joint Assets for purposes of section 2056(d)(2)(B)(ii). An extension of time to transfer the remaining Joint Assets is granted only in the situation where an irrevocable assignment of those assets is made under section 2056(d)(2)(B)(ii). Because Spouse did not satisfy this statutory requirement, Spouse may not be granted an extension of time under sections 20.2056A-4(b)(6) and 301.9100-1(a) to transfer the remaining Joint Assets to Trust.

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.

Except as expressly provided herein, we express or imply no opinion on the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter under any other provisions of the Code.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

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

Sincerely,

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: