

**Internal Revenue Service**

Number: **200540003**

Release Date: 10/7/2005

Index Number: 9100.00-00, 2056.07-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-128977-04

Date:

June 20, 2005

Re.

Legend

Decedent =

Spouse =

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Charity =

Law Firm 1 =

Law Firm 2 =

Dear :

This is in response to a letter from your authorized representative dated May 18, 2004, and subsequent correspondence, 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).

The facts and representations submitted are summarized as follows: Decedent died testate on Date 1 survived by Spouse. Article FIFTH, paragraph B. of Decedent's

Will, dated Date 2, provides that the residue of Decedent's estate is to be held in a marital trust, Trust, for the benefit of Spouse. Spouse is entitled to receive all income from Trust payable quarterly. In addition, the trustee can invade the trust to provide for Spouse's health, support and maintenance. On the death of Spouse, the remainder of the principle in Trust is to be distributed to Charity.

Bank is the executor of Decedent's estate. Bank relied on Law Firm 1 for advice and the preparation of Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Decedent's Form 706 was filed on Date 3. On Schedule M of Form 706, the executor listed the individual assets passing to Trust and claimed a marital deduction for the actuarial value of Spouse's income interest in each asset passing to Trust. On Schedule O of Form 706, the executor listed each individual asset passing to Trust and claimed a charitable deduction for the actuarial value of Charity's remainder interest in each asset passing to Trust. On audit of Decedent's return, the charitable deduction was disallowed.

You have requested the following rulings:

1. The executor of Decedent's estate made a QTIP election for all of the assets in Trust.
2. If a favorable ruling cannot be issued as request in Ruling Request 1, you request an extension of time to make the QTIP election with respect to Trust.

### Law and Analysis

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 shall, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) disallows this deduction where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A), no part of such property shall be

treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) defines the term "qualified terminable interest property" as property: (I) which passes from the decedent; (II) in which the surviving spouse has a qualifying income interest for life; and (III) to which an election under § 2056(b)(7) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if: (I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property; and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001. Such an election, once made, shall be irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that, in general, the election referred to in § 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by § 2001 (or § 2101). The term "return of tax imposed by § 2001" means the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date.

Section 20.2056(b)-7(b)(4)(ii) provides that the election, once made, is irrevocable, provided that an election may be revoked or modified on a subsequent return filed on or before the due date of the return, including extensions actually granted. If an executor appointed under local law has made an election on the return imposed by § 2001 with respect to one or more properties, no subsequent election may be made with respect to other properties included in the gross estate after the return of tax imposed by § 2001 is filed.

Section 301.9100-1(c) provides that the Commissioner has discretion to 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 regulatory election means an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin. A statutory election means an election whose due date is prescribed 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 that granting 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 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). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

In the present case, although the executor listed the assets passing to Trust on Schedule M, the executor claimed a marital deduction only for the actuarial value of Spouse's income interest in the Trust assets. A charitable deduction on Schedule O was claimed for the actuarial value of the remainder passing to Charity. Therefore, based on the facts and representations, we conclude that the executor of Decedent's estate made only a partial QTIP election with respect to a portion of the assets passing to Trust.

With respect to Ruling Request 2, relief under § 301.9100-3 is available to extend the time to make an election where the taxpayer failed to make the election in a timely manner. In this case, as discussed above, the executor did make a timely election. Relief under § 301.9100 is not available to alter or modify an election once made. See also, § 20.2056(b)-7(b)(4)(ii). Therefore, based on the facts submitted and the representations made, we conclude that an extension of time under § 301.9100 cannot be granted in order to make a QTIP election with respect to the balance of 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 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.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: