

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:
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Refer Reply To:
CC:PSI:9-PLR-125468-00
Date:
March 14, 2001

LEGEND:

Date 1 =
Date 2 =
Date 3 =
Decedent =
Estate =
Wife =

Dear :

This responds to a letter dated November 3, 2000 and subsequent correspondence requesting an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make a qualified terminable interest property ("QTIP") election under section 2056(b)(7) of the Internal Revenue Code.

Decedent died on Date 1 survived by Wife and three children. Decedent's estate included a residence that had been Decedent's separate property. With respect to this residence, the Fourth Article of Decedent's will provides as follows:

FOURTH: I give to my wife a life estate in the real property consisting of the dwelling house and area immediately surrounding the same now occupied by my wife and myself, situated on . . ., with remainder over to the trustees of the trust mentioned below, to be disposed of at the death of my wife as a part of the trust estate mentioned below.

The Eighth Article of Decedent's will provides, in pertinent part, as follows:

I authorize my executor to mortgage, lease or sell the whole or any part of my estate, with or without notice, at public or private sale, upon such terms and

conditions as my executor may deem just, subject only to such confirmation of court as may be required by law.

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On Date 2, the Estate sold the residence. You represent that the proceeds of the sale were placed into an interest-bearing account in the Estate's name where they remain as of this date. You further represent that the Estate is still open and that no funds have been distributed. Finally, you represent that upon distribution, the proceeds from the sale of the residence will be placed into a separate interest-bearing account in which the Wife has a qualifying income interest for life under section 2056(b)(7)(B)(ii).

The executors of the Estate retained an accounting firm to prepare the Form 706 on its behalf. The accounting firm had prepared the tax returns of Decedent and Wife for more than thirty years. The accounting firm prepared the Form 706 and the Estate timely filed the Form 706 on Date 3. Shortly after the Form 706 was filed, the Estate's attorney reviewed the Form 706 and discovered that the Estate had failed to make the QTIP election under section 2056(b)(7) on the Form 706.

LAW and ANALYSIS:

Section 2001(a) provides that a tax is hereby imposed 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 section 2001, the value of the taxable estate shall, except as limited by subsection (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 his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) provides that 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, no deduction shall be allowed under this section with respect to such interest.

Section 2056(b)(7)(A) provides that in the case of qualified terminable interest property -- (i) for purposes of subsection (a), such property shall be treated as passing to the surviving spouse, and (ii) for purposes of paragraph (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) provides that, in general, the term "qualified terminable interest property" means 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 this paragraph applies.

Section 2056(b)(7)(B)(ii) provides, in pertinent part, 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

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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 this paragraph with respect to any property shall be made by the executor on the return of tax imposed by section 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 section 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by section 2001 (or section 2101). For purposes of this paragraph, the term *return of tax imposed by section 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.

Under section 301.9100-1(c) of the Procedure and Administration Regulations the Commissioner in exercising the Commissioner's discretion 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 an automatic extension of time for making certain elections.

Section 301.9100-3(a) provides, in pertinent part, that requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 must be made under the rules of section 301.9100-3. Requests for relief subject to 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) provides that except as provided in section 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Internal Revenue Service; or (v) 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.

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Section 301.9100-3(c)(1) provides, in pertinent 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.

In this case, based solely on the facts submitted and the representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Consequently, an extension of time for making the QTIP election under section 2056(b)(7) is granted until 30 days from the date of this letter.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied as to whether any of the assets held or distributed by the Estate are eligible for QTIP treatment under section 2056(b)(7).

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. 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 the ruling, it is subject to verification on examination.

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,
By: Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for section 6110 purposes