Internal Revenue Service

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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-107048-14

Date:
August 13, 2014

Re:

Legend

Decedent	=
Spouse	=
Executor	=
Date 1	=
Date 2	=
Date 3	=
Account	=
Marital Trust	=
Accountant	=
Company	=

Dear :

This letter responds to your authorized representative's letter of April 10, 2013, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to sever a marital trust into two separate trusts and to make a qualified terminable interest property (QTIP) election under § 2056(b)(7) of the Internal Revenue Code.

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On Date 1, Decedent created Marital Trust. Decedent died on Date 2, whereupon Marital Trust became irrevocable. Decedent was survived by Spouse. Marital Trust is a testamentary trust and contains a pecuniary marital formula to minimize both federal and state estate taxes.

Article V, section A, paragraph 1 of the Marital Trust provides that the net income from the Marital Trust is to be paid to Spouse at least quarter-annually, for life. In addition, the trustees are directed to pay so much of the principal of the trust as the trustees deem necessary for her health, support in reasonable comfort, maintenance and education, and so much of the principal as the trustees (other than Spouse) deem appropriate. Thus, the Marital Trust is for the sole benefit of Spouse and meets the requirements of § 2056(b)(7) as QTIP property.

Article V, section A, paragraph 4, provides that the Trustees may divide the Marital Trust as the Trustees deem appropriate to accommodate or reflect Executors QTIP election.

The estate timely filed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return on Date 3. On the Form 706, Schedule M listed assets passing to Marital Trust. In addition, Schedule M listed other property passing to spouse including Account. Spouse was listed as the sole beneficiary of Account. In fact, Marital Trust was the beneficiary of Account.

It is represented that Marital Trust should have been divided into two separate trusts, a QTIP Marital Trust and a non-QTIP Marital Trust. Account should have been allocated to the QTIP Trust and a QTIP election should have been made for the Account and the QTIP Trust. The other assets listed on Schedule M are in a non-QTIP Marital Trust and no marital deduction should be taken for those assets

Executor thoroughly reviewed the records necessary for preparation of the Form 706, but found nothing to indicate that the Marital Trust was the beneficiary of Account. Prior to filing the Form 706, Accountant did not ask Company to provide him with the Account paperwork designating the beneficiary. Consequently, Accountant did not advise executor of the need to sever Marital Trust into a QTIP Marital Trust and a non-QTIP Marital Trust and to make a QTIP election for Account and the QTIP Marital Trust. The error was discovered when Executor called Company to have Account transferred to Spouse. Company did exhaustive research in the Company archives to determine that, in fact, Trust was the beneficiary of Account.

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

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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)(7) 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 as defined in § 2056(b)(7)(B)(ii); and (III) to which an election under § 2056(b)(7) applies.

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). For purposes of this paragraph, 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 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.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided 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)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the

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complexity of the return or issue), the taxpayer was unaware of the necessity for the election.

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.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Executor is granted an extension of time of 120 days from the date of this letter to make a QTIP election with respect to the QTIP Marital Trust and Account. The election should be made on a Supplemental Form 706 filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the form.

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.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures
Copy for section 6110 purposes

cc:

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