Internal Revenue Service

Department of the Treasury

P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

199925054

UIL 2056.00-00

Person to Contact:

Telephone Number:

Refer Reply to:
CC:DOM:P&SI:7--PLR-122469-98

Date: MAR 18 1999

Re:

Legend:

Estate:

SSN:

Decedent:

Spouse:

SSN:

Executor:

date 1:

Dear :

This is in response to your letter dated, , , requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make a qualified terminable interest property (QTIP) election under § 2056(b)(7) of the Internal Revenue Code.

Decedent died on date 1 survived by Spouse. Article One of the Decedent's last will and testament provided for a marital deduction trust that qualified under § 2056(b)(7). Spouse was the income beneficiary and a charitable trust was the successor income beneficiary of the trust. Decedent's Executor retained an accountant to prepare the Decedent's Form 706, United States Estate Tax Return (Return). The filed Return failed to manifest an intent to make the QTIP election with respect to property that otherwise qualified under § 2056(b)(7) for a QTIP deduction on Schedule M. Executor was unaware of the necessity to make the QTIP election on the estate tax return.

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.

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Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate will, 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 that passes or has passed from the decedent to the surviving spouse, but only to the extent that the interest is included in determining the value of the gross estate.

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

Section 2056(b)(7)(B)(i) defines "qualified terminable interest property" as property: (1) which passes from the decedent, (2) in which the surviving spouse has a qualifying, income interest for life, and (3) to which an election under § 2056(b)(7)(B)(v) 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 the election referred to in § 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by § 2001 (or § 2001). For purposes of § 20.2056(b)-7(b)(4)(i), 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 2044(a) provides that the value of the gross estate will include the value of any property to which this section applies in which the decedent had a qualifying income interest for life. Section 2044(b)(1)(A) says that § 2044 applies to any property if a deduction was allowed with respect to the transfer of the property to the decedent under § 2056 by reason of § 2056(b)(7).

Section 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's 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.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. Section 301.9100-1(a).

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 § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish 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(a).

Based on the facts and representations submitted with your request, we have determined that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time to make the QTIP election is granted until 30 days from the date of this ruling.

Except as we have specifically ruled herein, we express or imply no opinion as to the federal tax consequences of this transaction under the cited provisions or under any other provisions of the Code.

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

Sincerely,

(Signed) Paul F. Kugler

Paul F. Kugler
Assistant Chief Counsel
(Passthroughs and
Special Industries)

Enclosure
Copy for section 6110 purpose