

**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:B09

PLR-107774-04

Date:

September 01, 2004

In Re:

Legend:

Decedent =

Date 1 =

Spouse =

State =

Accountant =

Dear :

This is in response to your letter dated January 27, 2004, requesting a ruling regarding a qualified terminable interest property ("QTIP") election under § 2056(b)(7) of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: Decedent died on Date 1, survived by Spouse. Spouse elected to receive a statutory share of the real and personal property passing under the will pursuant to State law. State law provides that the statutory share is a life estate of one-third in value of all property passing under the will, after the payment of all debts and charges against the estate.

Accountant prepared and filed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return ("estate tax return"), on behalf of Decedent's estate. On Schedule M of the estate tax return, a QTIP election was made for "100 percent of Decedent's property passing to Spouse in accordance with her statutory share." In determining the amount of the marital deduction, however, Accountant miscalculated the amount of property passing to Spouse in accordance with her statutory share.

The administrator of Decedent's estate requests a ruling on the amount of property subject to the QTIP election made on Decedent's estate tax return.

Section 2001(a) provides that a tax is 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, except as limited by § 2056(b), the value of the taxable estate shall 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, generally, that no deduction is allowed for an interest passing to the surviving spouse that is a “terminable interest.” An interest is a terminable interest if the interest passing to the surviving spouse will terminate or fail on the lapse of time or on the occurrence of an event or contingency or on the failure of an event or contingency to occur and, on termination, an interest in the property passes to someone other than the surviving spouse.

Section 2056(b)(7) provides an exception to the terminable interest rule in the case of qualified terminable interest property. For purposes of § 2056(a), qualified terminable interest property is treated as passing to the surviving spouse and no part of the property is treated as passing to any person other than the surviving spouse. Under § 2056(b)(7)(B)(i), qualified terminable interest property is property which passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which an election under § 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(v) provides that the election to treat property as QTIP under § 2056(b)(7) is made by the executor on the return of tax imposed by § 2001. The election, once made, is 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)(v) is made on the return of tax imposed by § 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.

Based on the facts submitted and the representations made, we conclude that the estate validly elected, under § 2056(b)(7), to treat 100 percent of the property in the statutory share as QTIP. The description of the QTIP property on Schedule M of the estate tax return adequately identifies the property interest for which the election is being made. Further, the election was made within the time prescribed by § 2056(b)(7) and the applicable regulations. Although Accountant incorrectly calculated the amount of Spouse’s statutory share, this incorrect calculation does not affect the validity of the election or the amount properly passing to Spouse pursuant to her statutory share under State law. Similarly, we conclude that the miscalculation of the value of the

marital deduction does not preclude a marital deduction for the full value of the property composing Spouse's statutory share.

Accordingly, the administrator of Decedent's estate should file a supplemental estate tax return with the Internal Revenue Service Center, Cincinnati, Ohio 45999. The supplemental estate tax return should report the full value of the property subject to the QTIP election. A copy of this letter should be attached to the supplemental return. A copy is enclosed for this purpose.

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 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. In addition, we express or imply no opinion regarding the value of the property

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,

James F. Hogan  
Senior Technician Reviewer, Branch 9  
(Passthroughs & Special Industries)