**Internal Revenue Service**

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:9-PLR-102153-02
Date:
March 20, 2002

In re:

LEGEND:

Decedent =

Spouse =

Date 1 =

Date 2 =

Dear

This is in response to your authorized representative's letter dated December 3, 2001, in which you request a ruling that the Service disregard the qualified terminable interest property (QTIP) election made on the Decedent's federal estate tax return.

The facts and representations are as follows: Decedent died testate on Date 1, survived by Spouse. After providing for certain outright bequests to Spouse, Article Sixth of Decedent's will directs the trustee to divide the residue into two parts, to be designated as Part A and Part B.

Article Sixth provides that Part A is to consist of an amount that equals in pecuniary value the maximum amount exempt from federal estate tax in the year of Decedent's death pursuant to section 2010 of the Internal Revenue Code. Article Sixth

further provides that Part A is to be set aside in trust, with the income payable in quarter-annual or more frequent intervals to Spouse for her life and principal payable to Spouse as is necessary for her health, support, maintenance, or education. Upon the death of Spouse, the trust holding Part A is to be divided into equal shares for each of his children and then distributed outright to each of his children at certain ages.

Article Sixth provides that Part B will consist of the balance of the residue of Decedent's estate and is to be distributed outright to Spouse.

As directed in Decedent's will, the Part A residuary assets, which the estate valued at $600,000 (the maximum amount exempt from federal estate tax in the year of Decedent's death), were placed in trust for Spouse's lifetime benefit, while the balance of the residue passed outright to Spouse. Decedent's federal estate tax return, Form 706, was prepared by a certified public accountant and filed on Date 2. On Schedule M, an election was made under section 2056(b)(7) to claim a marital deduction for qualified terminable interest property. Part 1 of Schedule M lists as zero the total value of property interests not subject to a QTIP election. Part 2 of Schedule M lists the total value of Decedent's gross estate as the value of property interests that are subject to the QTIP election.

You have asked that we disregard the QTIP election made on Decedent's Form 706 and treat it as null and void for purposes of sections 2044(a), 2056(b), 2519(a), and 2652.

Section 2056(a) provides that the value of a decedent's 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 that passes or has passed from the decedent to the surviving spouse.

Section 2056(b)(1) provides that a deduction is not allowed for terminable interests that pass to the spouse. 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)(A) provides that qualified terminable interest property shall be treated as passing to the surviving spouse and no part of such property shall be treated as passing to any person other than the surviving spouse. Thus, the value of such property is deductible from the value of the gross estate under section 2056(a) and is not treated as a terminable interest. Under section 2056(b)(7)(B)(i), qualified terminable interest property is property that passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which an election under section 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(v) provides that an election under section 2056(b)(7) 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.

A QTIP election has transfer tax consequences for the surviving spouse. Section 2044(a) and (b) provides generally that the value of the gross estate includes the value of any property in which the decedent has a qualifying income interest for life and with respect to which a deduction was allowed for the transfer of the property to the decedent under section 2056(b)(7). Under section 2519(a) and (b), any disposition of all or part of a qualifying income interest for life in any property with respect to which a deduction was allowed under section 2056(b)(7) is treated as a transfer of all interests in the property other than the qualifying income interest. Further, the surviving spouse will, in the absence of a "reverse QTIP" election under section 2652(a)(3), be treated as the transferor of the property for generation-skipping transfer tax purposes under section 2652(a).

In the case of a QTIP election to which Rev. Proc. 2001-38, 2001-24 I.R.B. 1335, applies, the Service will disregard a QTIP election made under section 2056(b)(7) and treat it as null and void for purposes of sections 2044(a), 2056(b)(7), 2519(a), and 2652. Rev. Proc. 2001-38 applies to QTIP elections under section 2056(b)(7) where the election was not necessary to reduce the estate tax liability to zero, based on values as finally determined for federal estate tax purposes. Rev. Proc. 2001-38 does not apply in situations where a partial QTIP election was required with respect to a trust to reduce the estate tax liability and the executor made the election with respect to more trust property than was necessary to reduce the estate tax liability to zero; nor does it apply to elections that are stated in terms of a formula designed to reduce the estate tax to zero.

In this case, the election under section 2056(b)(7) to treat property as qualified terminable interest property was not necessary to reduce the estate tax to zero because no estate tax would have been imposed whether or not the election was made. The outright bequests to spouse and the Part B share qualify for the marital deduction under section 2056(a) because both pass directly from Decedent to Spouse. The remaining assets in the gross estate were valued by the estate at $600,000 and allocated to the Part A share. After applying the unified credit amount under section 2010, the estate's federal estate tax liability is reduced to zero.

Although an election was made under section 2056(b)(7) to treat the entire value of the gross estate as qualified terminable interest property, the only qualified terminable interest property in Decedent's estate consisted of the assets in the Part A share, which the estate valued at $600,000. Therefore, the QTIP election made by Decedent's estate could have only applied to the assets in Part A.

Because the QTIP election in this case was not necessary to reduce the estate tax liability to zero, Rev. Proc. 2001-38, 2001-24 I.R.B. 1335, applies and the Service will disregard the QTIP election and treat it as null and void for purposes of sections 2044(a), 2056(b)(7), 2519(a), and 2652.

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. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code 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,
Melissa C. Liquerman
Chief, Branch 9
Office of Associate Chief Counsel
Passthroughs and Special Industries

Enclosure:
Copy for § 6110 purposes