

Internal Revenue Service

Department of the Treasury

Number: **200106008**
Release Date: 2/9/2001
Index Number: 2056.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B9/PLR-114510-00
Date:
October 20, 2000

LEGEND

- Decedent =
- Surviving Spouse =
- A =
- B =
- C =
- D =
- E =
- Scrivener =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Court =
- State =

Dear

This letter is in response to your authorized representative's letter dated July 27, 2000, requesting a ruling that Surviving Spouse has a qualifying income interest for life in the marital trust under Section 2056 of the Internal Revenue Code, provided a State court of competent jurisdiction reforms Decedent's will in accordance with applicable State law as it would be applied in the highest court of State.

The facts and representations submitted are as follows:

Decedent died testate on Date 1. His last will and codicil were executed on Date 2 and Date 3, respectively. Article III of his will sets forth provisions for establishing a marital trust and a residuary trust. Article III, paragraph A directs the trustee to fund the marital trust with property that qualifies for the federal estate tax marital deduction in an amount that will entitle Decedent's estate to the minimum marital deduction necessary to reduce Decedent's taxable estate to an amount on which no federal estate tax is due.

Article III, paragraphs B and C, contains provisions relating to distributions of income and principal from the marital and residuary trusts.

Article III, paragraph B, entitled "Payment and Distribution of Marital Trust," provides that trustee shall distribute all the net income to Surviving Spouse during her lifetime and such amounts of principal deemed necessary for her health, support, maintenance and education. Paragraph B also provides the trustee with the discretion to distribute principal to Decedent's descendants for their health, support, maintenance and education. A, B, C, D, and E are descendants currently eligible to receive distributions of principal from the marital trust. Paragraph B, regarding distributions to Decedent's descendants, specifically provides:

In addition, my Trustee, in my Trustee's discretion, may distribute to any one or more of my descendants such amounts of the principal of the trust created by this Article as are necessary, when added to the funds reasonably available to my descendants from all other sources known to my Trustee, to provide for their health, support, maintenance and education, taking into consideration their age, education and station in life. I desire that each of my descendants be afforded the opportunity to obtain as complete an education, including attendance at graduate, professional and special trade schools, as such descendants may reasonably desire and be qualified to obtain.

Article III, paragraph C, entitled "Payment and Distribution of Residuary Trust," provides that the trustee shall distribute all of the net income to Surviving Spouse during her lifetime and such amounts of principal deemed necessary for her proper maintenance and support.

Because the trustee has the power to appoint the principal of the marital trust to persons other than the Surviving Spouse, the Surviving Spouse's income interest in the marital trust does not qualify for the marital deduction. See Section 2056(b)(7)(B)(ii)(II). You have represented that the scrivener of the will mistakenly included the above quoted two sentences in paragraph B relating to distributions from the marital trust and failed to include these two sentences in paragraph C relating to distributions from the residuary trust.

On Date 4, in her capacity as independent administratrix, beneficiary and trustee of the marital and residuary trusts, Surviving Spouse petitioned Court to reform Decedent's will. It was represented to Court that the will contained a scrivener's error

by including the two sentences permitting discretionary principal payments to descendants as part of paragraph B when it was Decedent's intent that these sentences be included as part of paragraph C. It was further represented to Court that it was Decedent's intent to have his descendants included as permissible beneficiaries of the residuary trust and to have the assets passing to the marital trust qualify for a marital deduction under section 2056. Affidavits of the Scrivener, Surviving Spouse and former trustee were submitted to Court in support of the petition for reformation.

On Date 5, Court issued a judgment declaring that Scrivener made a mistake by including the aforementioned two sentences as part of Article III, paragraph B relating to the marital trust. The Court also found that it was Decedent's intent to have his descendants included as permissible beneficiaries of the residuary trust and to have the assets passing to the marital trust qualify for the marital deduction under section 2056. Court reformed the marital and residuary trusts effective as of Date 2 (the date the Decedent executed his will) to correct the scrivener's error and to effectuate Decedent's intent.

Court reformed Article III, paragraph B of the will as follows:

B. Payment and Distribution of Marital Trust.

The Marital Trust shall be held, administered, and distributed by the Trustee as follows:

My Trustee shall distribute to my wife all net income of the marital trust and such amounts of principal of the trust created by this Article as are necessary, when added to the funds reasonably available to her from all other sources known to my Trustee to provide for her health, support, maintenance and education, taking into consideration her age, education and station in life, with said trust income payments to be made to my wife in monthly or convenient installments, but in no event less than annually.

Court reformed Article III, paragraph C of the will as follows:

C. Payment and Distribution of Residuary Trust.

The Trustee shall pay to or apply for the benefit of my wife during her lifetime all of the net income of the Residuary Trust in monthly or in other convenient installments, but not less often than annually. If at any time, in the discretion of the Trustee my wife should be in need of additional funds for her proper maintenance and support, then the Trustee, in addition to the income payments, shall in his discretion pay to or apply for the benefit of my wife such amounts from the principal of the Residuary Trust, up to the entire amount of the Residuary Trust, as the Trustee from time to time deems advisable. In addition, my Trustee, in my Trustee's discretion, may

distribute to any one or more of my descendants such amounts of the principal of the trust created by this Article as are necessary, when added to the funds reasonably available to my descendants from all other sources known to my Trustee, to provide for their health, support, maintenance and education, taking into consideration their age, education and station in life. I desire that each of my descendants be afforded the opportunity to obtain as complete an education, including attendance at graduate, professional and special trade schools, as such descendants may reasonably desire and be qualified to obtain.

LAW & 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 section 2001, the value of the taxable estate is to be determined, except as limited by subsection (b), 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 such property is included in determining the value of the gross estate.

Section 2056(b)(1) provides the general rule that no deduction shall be allowed for an interest passing to the surviving spouse if, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest will terminate or fail.

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

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 section 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(ii) provides, in relevant part, that the surviving spouse will be considered to have a qualifying income interest for life if: (1) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, and (2) no person, including the surviving spouse, has a power to appoint any part of the property to any person other than the surviving spouse during the surviving spouse's lifetime.

Section 2056(b)(7)(B)(v) provides, in relevant part, that an election under section 2056(b)(7) with respect to any property shall be made by the executor on a return of tax

imposed by section 2001. The election, once made, is irrevocable.

In Commissioner v. Bosch, 387 U.S. 456 (1967), the United States Supreme Court considered whether a state trial court's characterization of property rights conclusively binds a federal court or agency in a federal estate tax controversy. The Supreme Court concluded that the decision of a state trial court as to an underlying issue of state law should not be controlling when applied to a federal statute. Rather, the highest court of the state is the best authority on the underlying substantive rule of state law to be applied in the federal matter. If there is no decision by that court, then the federal authority must apply what it finds to be state law after giving "proper regard" to the state trial court's determination and to relevant rulings of other courts of the state. In this respect, the federal agency may be said, in effect, to be sitting as a state court.

Based on an analysis of the facts submitted and representations made, we conclude that the Court order reforming the will based on scrivener's error is consistent with applicable State law as it would be applied in the highest court of State. Accordingly, we rule that Surviving Spouse has a qualifying income interest for life in the marital trust, as reformed by the Court's order, under Section 2056 of the Internal Revenue Code.

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 expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter under any provisions of the Code.

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 yours,
Melissa C. Liquerman
Senior Technician Reviewer, Branch 9
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure: Copy for § 6110 purposes