

1986 PLR LEXIS 3181

US Internal Revenue Service

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PLR 8631005

Reporter

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Private Letter Ruling 8631005

[*1]

Reference: Control No.: 5J0501

UI List: UI No. 2056.01-00; Bequests, etc., to surviving spouse; Terminable interests

Core Terms

income interest, election, surviving spouse, qualifying, qualified terminable interest property, terminable interest, regulations, contingent, trust instrument, nondeductible, Temporary, modified, spouse's, revoked

Text

FACTS

Decedent died testate after 1981. Under the terms of his will, a formula amount of his estate was bequeathed to Trust X, in which the surviving spouse, A, has an income interest for life. The executrix was empowered by the trust instrument to make a partial election under [section 2056\(b\)\(7\)\(B\)\(i\)\(III\) of the Internal Revenue Code](#) with respect to the assets allocated to Trust X -- the non-elective part to be transferred to Trust Y in which A has a discretionary income interest.

On the Federal estate tax return, the executrix elected under [section 2056\(b\)\(7\)\(B\)\(i\)\(III\) of the Code](#) to treat all of the property in Trust X as qualified terminable interest property, as defined by [section 2056\(b\)\(7\)\(B\) of the Code](#).

A's income interest in Trust X otherwise constituted a qualifying income interest for life as defined by [section 2056\(b\)\(7\)\(B\)\(ii\) of the Code](#). A is the sole executrix of the estate and trustee under the trust instrument.

ISSUE

Whether a surviving spouse's income interest is eligible for treatment as a qualifying income interest for life under [section 2056\(b\)\(7\)\(B\)\(ii\) of the Internal Revenue Code](#) [*2] if the income interest is contingent upon an election by the surviving spouse, as executrix, under [section 2056\(b\)\(7\)\(B\)\(i\)\(III\) of the Internal Revenue Code](#).

LAW AND ANALYSIS

[Section 2056\(a\) of the Code](#) provides that, except as limited by subsection (b), the value of the taxable estate is determined by deducting from the value of the gross estate an amount equal to the value of an interest in property which passes from the decedent to the surviving spouse.

[Section 2056\(b\)\(1\) of the Code](#) provides that no deduction is allowed if a nondeductible terminable interest passes from the decedent to the surviving spouse. Generally, an interest in property is a nondeductible terminable interest where, on the occurrence of an event, an interest passing to the surviving spouse will terminate and an interest in the property passes (for less than an adequate and full consideration in money or money's worth) from the decedent to another person.

Under [section 2056\(b\)\(7\) of the Code](#), an executor can elect to treat property as qualified terminable interest property. If the election is made, an otherwise nonqualifying terminable interest will qualify for the marital deduction.

Under [section 2056\(b\)\(7\)\(B\)\(i\)\(I\)](#), **[*3]** [\(II\)](#) and [\(III\)](#), 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 applies.

The surviving spouse has 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 has a power to appoint, during the spouse's lifetime, any part of the property to any person other than the surviving spouse. An election with respect to any property shall be made by the executor on the return of tax imposed by [section 2001](#).

Generally, an income interest that is contingent upon an executor's election under [section 2056\(b\)\(7\)\(B\)\(i\)\(III\)](#) is not a qualifying income interest for life, regardless of whether the election is actually made.

However, in contrast, where, as here, the decision whether to elect to treat such property as qualified terminable interest property is left entirely to A as executrix of the estate, then only A may affect her right, as surviving spouse, to receive an income interest from Trust X.

Accordingly, the election made by A under [section 2056\(b\)\(7\)\(B\)\(i\)\(III\) of the Code](#) **[*4]** is a valid election and A's income interest in Trust X constitutes a qualifying income interest for life under [section 2056\(b\)\(7\)\(B\)\(ii\)](#).

CONCLUSION

An income interest, the creation of which is contingent solely upon an election by the surviving spouse under [section 2056\(b\)\(7\)\(B\)\(i\)\(III\) of the Code](#), is a qualifying income interest for life under [section 2056\(b\)\(7\)\(B\)\(ii\)](#).

This ruling is addressed only to the taxpayer involved. [Section 6110\(j\)\(3\) of the Code](#) provides that it may not be used or cited as precedent. Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent that the regulations are inconsistent with any conclusions in the ruling. See section 17.04 of [Rev. Proc. 86-1, 1986-1 I.R.B. 6](#). However, when the criteria in section 17.05 of [Rev. Proc. 86-1](#) are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

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This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code.