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56 DTR G-2

Trusts

IRS Should Clarify Written Statement Rules For QDOTs, Texas Bar Tax Section Says



March 21 — The Section of Taxation of the State Bar of Texas has asked the Internal Revenue Service to add information to the supplemental documents section of the Form 706-QDT instructions to inform tax practitioners of the situations in which a written statement is required, and to explain that Form 706-QDT must be filed if a written statement is required.

Form 706-QDT, U.S. Estate Tax Return for Qualified Domestic Trusts, is used by the trustee or designated filer of a qualified domestic trust (QDOT) to figure and report the estate tax due on certain distributions from the trust, the value of the property remaining in the QDOT on the date of the surviving spouse's death, and the corpus portion of certain annuity payments.

The QDOT final rules (T.D. 8612) apply only in situations where a decedent's surviving spouse isn't a U.S. citizen.

Written Statement

The supplemental documents section of Form 706-QDT instructions requires attaching a copy of the trust and a copy of the death certificate, but currently there is no mention in the forms' instructions about the written statement that is referred to in Treasury Regulations Section 20.2056A-2(d)(3)(ii), the tax section's letter, dated March 19, said.

Under the regulations, a written statement is required under a number of complex situations, including when the QDOT directly owns any foreign real property on the last day of the taxable year and the QDOT doesn't meet the bank trustee requirement, the bond requirement, or the letter of credit requirement, or the QDOT doesn't have either an alternate arrangement or waiver with the IRS commissioner, the letter said.

Instructions Lack Detail

The instructions don't tell practitioners what the contents of the written instructions are supposed to be, the letter writers said.

"The instructions don't give you the detail you need for the written statement, nor do they tell you that you have to file the Form 706 for the sole purpose of filing the written statement," Catherine Scheid, with the Law Offices of Catherine C. Scheid, told Bloomberg BNA March 21. "The Form 706-QDT is the avenue by which the written statement must be filed with the IRS even if an IRS Form 706-QDT isn't required to be filed."

The instructions simply tell practitioners to see the regulations when it comes to the written requirements for a bond and letter of credit, details on the exclusion of a personal residence, rules on the disallowance of the marital deduction for substantial undervaluation of QDOT property and other situations.

The state bar said additional guidance would be helpful and would enhance the quality, utility and clarity of the information requested.

Furthermore, the group said the pro rata share section of Treas. Regs. Section 20.2056A-2(d)(3)(iii)(B) of the contents of the written statement is overly burdensome, and it asked that a "reasonable estimation" of fair market value be authorized by the Treasury Department and the IRS to minimize the burden of the collection of information.

The section also recommended adding to Form 706-QDT's instructions explicit guidance that a Form 706-QDT may need to be filed for the sole purpose of accommodating the filing of the written statement where the statement is required.

For More Information

Text of the State Bar of Texas Section of Taxation's letter is in TaxCore.

BNA Snapshot

Key Development: Texas Bar tax section says Form 706-QDT needs more information on written statement requirements.

Key Takeaway: Instructions don't give enough information on complex situations, such as when QDOT doesn't meet bank trustee or bond requirements.

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ISSN 1522-8800

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Source: Daily Tax Report: News Archive > 2014 > March > 03/24/2014 > TaxCore® - IRS Documents > Comment Letters > Texas Bar Tax Section Comments on Final Rules (T.D. 8612, PS-102-88) on Gift, Estate Tax Marital Deduction Involving Non-U.S. Citizen Donee Spouse

Texas Bar Tax Section Comments on Final Rules (T.D. 8612, PS-102-88) on Gift, Estate Tax Marital Deduction Involving Non-U.S. Citizen Donee Spouse

March 19, 2014

Yvette Lawrence

Internal Revenue Service

Room 6129

1111 Constitution Avenue N.W.

Washington, DC 20224

Re: Comments of the Section of Taxation of the State Bar of Texas on Income, Gift and Estate Tax; OMB Number: 1545-1360; Regulation Project Number: PS-102-88 (T.D.8612)

Dear Ladies and Gentlemen:

On December 24, 2013, the Department of Treasury and the Internal Revenue Service requested comments on the collection of information under the Qualified Domestic Trust Treasury Regulations of the Internal Revenue Code (commonly referred to as the "QDOT Regulations") in connection with the availability of the gift and estate tax marital deduction when the donee spouse or surviving spouse is not a citizen of the United States. On behalf of the Section of Taxation of the State Bar of Texas (the "Tax Section"), I am pleased to submit the following comments concerning the collection of information under the QDOT Regulations.

THE COMMENTS ENCLOSED WITH THIS LETTER ARE BEING PRESENTED ONLY ON BEHALF OF THE TAX SECTION OF THE STATE BAR OF TEXAS. THE COMMENTS SHOULD NOT BE CONSTRUED AS REPRESENTING THE POSITION OF THE BOARD OF DIRECTORS, THE EXECUTIVE COMMITTEE OR THE GENERAL MEMBERSHIP OF THE STATE BAR OF TEXAS. THE TAX SECTION, WHICH HAS SUBMITTED THESE COMMENTS, IS A VOLUNTARY SECTION OF MEMBERS COMPOSED OF LAWYERS PRACTICING IN A SPECIFIED AREA OF LAW.

THE COMMENTS ARE SUBMITTED AS A RESULT OF THE APPROVAL OF THE COMMITTEE ON GOVERNMENT SUBMISSIONS OF THE TAX SECTION AND PURSUANT TO THE PROCEDURES ADOPTED BY THE COUNCIL OF THE TAX SECTION, WHICH IS THE GOVERNING BODY OF THAT SECTION. NO APPROVAL OR DISAPPROVAL OF THE GENERAL MEMBERSHIP OF THIS SECTION HAS BEEN OBTAINED AND THE COMMENTS REPRESENT THE VIEWS OF THE MEMBERS OF THE TAX SECTION WHO PREPARED THEM.

We appreciate being extended the opportunity to participate in this process.

Respectfully submitted,

/s/

Elizabeth A. Copeland

Chair, Section of Taxation

The State Bar of Texas

RESPONSE TO REQUEST FOR COMMENTS ON INCOME, GIFT AND ESTATE TAX OMB NUMBER: 1545-1360 REGULATION PROJECT NUMBER: PS-102-88 (T. D. 8612)

This response to the request for comments with respect to information collected under the Qualified Domestic Trust Treasury Regulations of the Internal Revenue Code is presented on behalf of the Section of Taxation of the State Bar of Texas (the "Tax Section").

Principal responsibility for drafting these comments was exercised by Catherine C. Scheid and Austin Carlson. The Committee on Government Submissions ("COGS") of the Tax Section has approved these comments. Tina R. Green, immediate past Chair of the Tax Section, reviewed the comments and made suggestions on behalf of COGS. Stephanie Schroepfer, the Co-Chair of COGS, also reviewed the comments on behalf of COGS.

Although members of the Tax Section who participated in preparing, reviewing and approving these Comments have clients who would be affected by the federal tax law principles addressed by these Comments and have advised clients on the application of such principles, no such member (or the firm or organization to which such

member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.

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Date: March 3, 2014

These comments address certain issues relating to the instructions of the IRS Form 706-QDT and the annual reporting requirements in Treasury Regulation §20.2056A-2(d)(3).

Background

For decedents dying after November 10, 1988, the Federal estate tax marital deduction is not allowed for property passing to or for the benefit of a surviving spouse who is not a United States citizen at the date of the decedent's death unless the property passes from the decedent (i) to a qualified domestic trust (a "QDOT"), (ii) a reformed QDOT, (iii) to a surviving spouse that places the property in a QDOT or irrevocably assigns the property to a QDOT, or (iv) the property passes from the decedent to a plan that would have qualified for the marital deduction but for Section 2056(d)(1)(A) of the Internal Revenue Code and whose payments are not assignable to a QDOT and the executor makes a timely QDOT election.

Summary of Comments

We respectfully recommend that the Department of Treasury (the "Treasury") and the Internal Revenue Service (the "IRS") consider making additions to the instructions for Form 706-QDT in the Supplemental Documents Section to (1) inform tax practitioners about the situations for which a written statement would be required under Treas. Reg. §20.2056A-2(d)(3) and (2) explain that Form 706-QDT must be filed if a written statement is required under Treas. Reg. §20.2056A-2(d)(3) (solely to accommodate the requirement of the filing of the written statement), as this will enhance the quality, utility, and clarity of the information to be collected.

Further, in our view, the pro rata share section of Treas. Reg. §20.2056A-2(d)(3)(iii)(B) of the contents of the written statement is overly burdensome, and we respectfully recommend that a "reasonable estimation" of fair market value be authorized by the Treasury and the IRS to minimize the burden of the collection of information.

Discussion

While the Supplemental Documents section of the Form 706-QDT Instructions requires attaching a copy of the trust and a copy of the death certificate, there is presently no mention in the Form 706-QDT Instructions about the written statement that is referred to in Treas. Reg. §20.2056A-2(d)(3)(ii).

Under the Regulations, the written statement is required in the following situations:

- (i) the QDOT directly owns any foreign real property on the last day of its taxable year and the QDOT does not meet the Bank Trustee requirement, the Bond Requirement, the Letter of Credit Requirement or have either an alternate arrangement or Waiver with the Commissioner of the IRS;
- (ii) the personal residence which was excluded from the bond, letter of credit or other arrangement was sold or is no longer being used as a personal residence of the spouse; or
- (iii) after applying the look through rule, the QDOT is treated as owning foreign real property on the last day of its taxable year and the QDOT does not meet the Bank Trustee requirement, the Bond Requirement, the Letter of Credit Requirement or have either an alternate arrangement or Waiver with the Commissioner of the IRS.

We believe that additional guidance for taxpayers and practitioners in the Form 706-QDT Instructions concerning the above complex situations would be helpful and will enhance the quality, utility, and clarity of the information that is collected. While there is mention of Treas. Reg. §20.2056A-2(d) concerning the "Additional Information" section of the Form 706-QDT Instructions, there appears to be an unintentional dearth of guidance in the Additional Information section of the Form 706-QDT Instructions concerning the circumstances in which a written statement is required to be filed under the QDOT Regulations. We recommend that the Treasury and the IRS consider adding specific language to the Form 706-QDT Instructions informing taxpayers of the specific situations for which a written statement is required, and the required contents of the written statement. We also recommend adding to the Form 706-QDT Instructions explicit guidance that a Form 706-QDT may need to be filed for the sole purpose of accommodating the filing of the written statement where the written statement is required.

In our view, certain of the contents of the written statement outlined in Treas. Reg. §20.2056A-2(d)(3)(iii) are overly burdensome. Specifically, the requirement under Treas. Reg. §20.2056A-2(d)(3)(iii)(B) that "the QDOT's pro

rata share of the foreign real property and other assets owned by that entity must be listed on that statement as if directly owned by the QDOT". The assets are required to be listed at fair market value as of the last day of the QDOT's taxable year. This presents the challenging task of evaluating assets that are not directly owned by the QDOT and that may not have a readily ascertainable fair market value. We recommend that the Treasury and the IRS consider amending the language of Treas. Reg. §20.2056A-2(d)(3)(iii)(B) to allow for a "reasonable estimation" of fair market value to minimize the burden of the collection of information.

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ISSN 1522-8800

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