



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

November 9, 2016

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Mr. Tom West
Tax Legislative Counsel
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Mr. Curtis G. Wilson
Associate Chief Counsel for
Passthroughs and Special Industries
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comments on [Revenue Procedure 2016-49](#) regarding guidance on making a qualified terminable interest property (QTIP) election when filing a return to elect portability

Dear Messrs. Koskinen, Wilkins, West, and Wilson:

The American Institute of CPAs (AICPA) thanks the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS or “Service”) for issuing Revenue Procedure 2016-49 on September 27, 2016, regarding guidance on making the qualified terminable interest property (QTIP) election when filing an estate tax return solely to elect portability of the deceased spousal unused exclusion amount. The guidance provides a reasonable approach to interpreting, implementing, and complying with the QTIP and portability rules.

The AICPA is the world’s largest member association representing the accounting profession, with more than 418,000 members in 143 countries and a history of serving the public interest since 1877. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium size businesses, as well as America’s largest businesses.

The AICPA requested in our May 12, 2016 [letter](#) (as well as in the AICPA’s [2014](#) and [2015](#) letters) to the IRS and Treasury on the priority guidance plan that the Service “provide guidance, such as a revenue procedure, under section 2010(c) regarding the validity of a QTIP election on an estate tax return filed only to elect portability.” We are pleased that the IRS and Treasury listened to our comments and issued Rev. Proc. 2016-49, providing much needed guidance for executors of estates and clarifying the effect of making both a QTIP election and a portability election.

The Honorable John A. Koskinen
The Honorable William J. Wilkins
Mr. Tom West
Mr. Curtis G. Wilson
November 9, 2016
Page 2 of 2

The AICPA requested clarity regarding Rev. Proc. 2001-38 that treated QTIP elections as void and/or voidable if they were not needed to eliminate Federal estate tax. Revenue Proc. 2016-49 now clarifies that treatment of a QTIP election as null and void if the estate has zero estate tax liability without the QTIP election does not apply to estates that make the portability election.

Estate planners need this QTIP election guidance because nontaxable estates often want to make both the QTIP and portability elections, especially those estates in states with lower state estate tax exemption amounts than the Federal exemption amount. With the new guidance, we are pleased that the IRS will not treat a QTIP election as void if the executor has made a portability election.

* * * * *

We welcome the opportunity to discuss these comments or answer any questions that you may have. I can be reached at (408) 924-3508, or annette.nellen@sjsu.edu; or you may contact Mary Kay Foss, Chair, AICPA Trust, Estate & Gift Tax Technical Resource Panel, at (925) 648-3660 or marykay@cpaskllp.com; or Eileen Sherr, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9256, or esherr@aicpa.org.

Sincerely,



Annette Nellen, CPA, CGMA, Esq.
Chair, Tax Executive Committee

cc: Ms. Catherine Veihmeyer Hughes, Estate and Gift Tax Attorney Advisor, Office of Tax Policy, Department of the Treasury
Ms. Melissa Liquerman, Chief, Branch 4, Office of the Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service
Ms. Karlene Lesho, Senior Technician Reviewer, Office of the Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service
Ms. Leslie Finlow, Senior Technician Reviewer, Office of the Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service
Ms. Juli Ro Kim, Attorney, Office of Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service