



# TaxNewsFlash

## United States

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### **Rev. Proc. 2016-49: Certain QTIP elections treated as null and void**

The IRS today released an advance version of Rev. Proc. 2016-49 concerning the procedures to disregard and treat as null and void for transfer tax purposes, a “qualified terminable interest property” (QTIP) election in situations when the QTIP election was not necessary to reduce the estate tax liability to zero (\$0). With the availability of portability elections the superseded QTIP election nullification procedures brought into question the ability of a decedent’s estate to make an otherwise unnecessary QTIP election.

[Rev. Proc. 2016-49](#) [PDF 370 KB] confirms the procedures by which the IRS will disregard a QTIP election, and excludes from the scope of the revenue procedure those estates for which the executor elected portability of the “deceased spousal unused exclusion” (DSUE) amount under section 2010(c)(5)(A).

Rev. Proc. 2016-49 is effective September 27, 2016, and applies to QTIP elections within the scope of the revenue procedure.

#### **Background**

Rev. Proc. 2001-38 provided relief from unnecessary QTIP elections—for example, a QTIP election made when the value of the taxable estate, before allowance of the marital deduction, was less than the applicable exclusion amount under section 2010(c), so that no estate tax would have been imposed whether or not the QTIP election was made. The belief was that an executor would never purposefully elect QTIP treatment for property if the election was not necessary to reduce the decedent’s estate tax liability. Following statutory amendments that allowed for portability elections, the executor of a deceased spouse’s estate might still want to elect QTIP treatment for property—even when the election was not necessary to reduce the estate tax liability.

## Rev. Proc. 2016-49

Today's revenue procedure explains that the IRS and Treasury have determined that it is appropriate to continue to provide procedures by which the IRS will disregard an unnecessary QTIP election and treat that election as null and void—but only for those estates in which the executor neither made nor was considered to have made the portability election. Accordingly, QTIP elections will be treated as void when all of the following conditions are met:

- The estate's federal estate tax liability was zero (regardless of the QTIP election) based on values as finally determined for federal estate tax purposes.
- The executor neither made nor was considered to have made the portability election.
- The procedural requirements provided by Rev. Proc. 2016-49 are satisfied (these include making a notation at the top of Form 706 or Form 709, that the QTIP election is within the scope of today's guidance).

For those estates in which the executor made the portability election, Rev. Proc. 2016-49 provides that the QTIP election will not be treated as void.

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