



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE LEGAL ADVICE

MEMORANDUM FOR: Raymond Dunn
Estate Tax Attorney, CC:SB:3:NAS

FROM: Melissa C. Liquerman
Branch Chief, CC:PSI:B09

SUBJECT: FAILURE TO SIGN THE AGREEMENT REFERRED
TO IN § 2057(h)

This Chief Counsel Advice responds to your memorandum dated April 30, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

Decedent =

Executor =

Date 1 =

ISSUE

Whether the submission of an unsigned agreement (referred to in § 2057(h)) renders the § 2057 election ineffective, or may the executor have a reasonable period of time (not exceeding 90 days) after notification to provide the necessary signatures.

CONCLUSION

The executor shall have a reasonable period of time (not exceeding 90 days) after notification of the failure, to provide the required signatures.

FACTS

POSTN-124337-02

Decedent died on Date 1. Executor signed the Form 706, and included Schedule T with the Form 706, but did not sign the written agreement referred to in § 2057(h).

LAW AND 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 2057(a) allows a deduction (not to exceed \$675,000) from the value of the decedent's gross estate for the adjusted value of the qualified family-owned business interests of the decedent.

Section 2057(b)(1)(B) provides that in order to qualify for the deduction, the executor must elect application of the section and file the written agreement described in § 2057(h).

Section 2057(h) provides that the agreement referred to in this subsection is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in the agreement consenting to the recapture provisions described in section 2057(f) with respect to such property.

Section 2057(e)(1) generally defines the term "qualified family-owned business interest" to mean—

- (A) an interest as a proprietor in a trade or business carried on as a proprietorship, or,
- (B) an interest in an entity carrying on a trade or business, if—
 - (i) at least—
 - (I) 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent's family,
 - (II) 70 percent of such entity is owned by members of two families, or
 - (III) 90 percent of such entity is owned by 3 families, and
 - (ii) for purposes of subclause (I) and (II) of clause (i), at least 30 percent of such entity is owned by the decedent and members of the decedent's family.

Section 2057(i)(3)(H) provides that, for purposes of making the election and filing the agreement under § 2057(b)(1)(B), rules similar to the rules under § 2032A(d)(1) and (3) (regarding the election of special use valuation of farm and other qualified real property) will apply.

POSTN-124337-02

Section 2032A(d)(1) provides that the election under § 2032A shall be made on the return of tax imposed by § 2001 in a manner consistent with the regulations prescribed by the Secretary. The election, once made, is irrevocable.

Section 2032A(d)(2) provides that the agreement referred to in § 2032A(d) is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subsection (c) with respect to such property.

Section 2032A(d)(3) provides that the Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under § 2032A(d)(1) (and submits the agreement referred to in § 2032A(d)(2)) within the time prescribed therefor, but the notice of election, as filed, does not contain all required information, or the signatures of 1 or more persons required to enter into the agreement described in § 2032A(d)(2) are not included on the agreement as filed, or the agreement does not contain all required information, the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or signatures.

Under Section 2057(i)(3)(H), rules similar to § 2032A(d)(3) will apply for purposes of making the 2057 election and filing the agreement required under § 2057(b)(1)(B). These provisions reflect Congressional intent that taxpayers be given an opportunity to correct simple errors and imperfect elections made under § 2057, where a taxpayer fails to include all required information or signatures. The taxpayer, accordingly, shall have a period of time, not exceeding 90 days after the taxpayer is notified of the omissions, to provide the information or signatures needed to perfect the election.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Please call if you have any further questions.

PAUL F. KUGLER

By: _____

MELISSA C. LIQUERMAN

Branch Chief, Branch 9

Associate Chief Counsel

(Passthroughs and Special Industries)