

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-114197-04

Date: MAY 25, 2004

Legend:

Decedent =

Attorney =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This responds to your authorized representative's letter of February 23, 2004, on behalf of Decedent's estate, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an alternate valuation election under § 2032 of the Internal Revenue Code.

The facts are as follows. Decedent died on Date 1. As executor of Decedent's estate, you retained Attorney to prepare the Form 706 (United States Estate and Generation-Skipping Transfer Tax Return). The Form 706 was timely filed on Date 2. The election under § 2032 to value the estate as of the alternate valuation date was not made on the return. A closing letter was received from the Internal Revenue Service on Date 3. On or about Date 4, Attorney reviewed the alternate valuation analysis previously performed and realized that the election under § 2032 should have been made on the return. By affidavit, Attorney stated that, at the time he prepared the Form 706, he had failed to recognize the effect of the election by the estate, and that he did not advise you, the executor, the election would be beneficial to the estate.

A supplemental Form 706 reflecting the value of all assets included in the gross estate as of the applicable alternate valuation date was sent to the Internal Revenue Service on Date 5, within one year of the due date of the original return. The value of the gross estate and the amount of federal estate tax due reflected on the

supplemental Form 706 are less than the value of the gross estate and the amount of federal estate tax due as reported. Also on Date 5, this request was submitted.

Section 2032(a) provides that the value of the gross estate may be determined, if the executor elects, by valuing all the property included in the gross estate as follows: (1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition. (2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date 6 months after the decedent's death. (3) Any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time.

Section 2032(c) provides that no election may be made under § 2032 with respect to an estate unless such election will decrease (1) the value of the gross estate, and (2) the sum of the tax imposed under chapter 11 of the Internal Revenue Code and the tax imposed by chapter 13 with respect to property includible in the decedent's gross estate (reduced by credits allowable against such taxes).

Section 2032(d)(1) provides that an election under § 2032 shall be made by the executor on the return of tax imposed by § 2001. Such election, once made, shall be irrevocable. Under § 2032(d)(2), no election may be made under § 2032 if such return is filed more than 1 year after the time prescribed by law (including extensions) for filing such return. Section 301.9100-6T(b)(2) provides the time and manner for making the § 2032 election.

Under § 301.9100-1(c), the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except Subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government. Section

301.9100-3(a).

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1) provides the standard the Commissioner will use to determine when the interests of the Government are prejudiced. Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Based on the facts submitted and the representations made, the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time for making the alternate valuation election under § 2032 is granted until the date that is 60 days from the date of this letter. The election should be made on a supplemental Form 706. The supplemental Form 706 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy of this letter

Copy for § 6110 purposes