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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20 and 301

TD 9172

RIN 1545-BB12

Gross Estate; Election to Value on Alternate Valuation Date

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend ' 20.2032-1(b) to reflect the change made to section 2032 of the Internal Revenue Code by the Deficit Reduction Act of 1984 and the technical change to that section made by the Tax Reform Act of 1986. In addition, the final regulations remove temporary regulation ' 301.9100-6T(b) of the Procedure and Administration Regulations so that estates that fail to make the alternate valuation election on the last estate tax return filed before the due date of the return, or on the first estate tax return filed after the due date of the return may request an extension of time to make the election under the provisions of ' ' 301.9100-1 and 301.9100-3. The final regulations affect estates that are required to file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

DATES: Effective Date: These regulations are effective on January 4, 2005.

Applicability Date: For dates of applicability, see ' 20.2032-1(h).

FOR FURTHER INFORMATION CONTACT: Theresa M. Melchiorre at (202) 622-7830 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 24, 2003, proposed regulations (REG-139845-02) were published in the **Federal Register** [68 FR 74534]. The proposed regulations contained proposed amendments to the Estate Tax Regulations [26 CFR part 20] and the Procedure and Administration Regulations [26 CFR part 301] relating to the election under section 2032 to value a decedent's gross estate on the alternate valuation date. The proposed regulations reflected changes that were made to section 2032 by the Deficit Reduction Act of 1984, Public Law 98-369 (98 Stat. 494). Written comments were received on the proposed regulations, and a public hearing was held on June 3, 2004. The proposed regulations, with certain changes in response to the written and oral comments, are adopted as final regulations.

Summary of Comments and Explanation of Provisions

Determination of Eligibility to make the Alternate Valuation Election

The proposed regulations provided that the alternate valuation election may be made only if the election results in a decrease both in the value of the gross estate and in the sum of the estate tax and generation-skipping transfer tax liability (reduced by credits allowable against these taxes). One commentator noted that it may not be possible to determine whether the election will reduce the sum of estate tax and generation-skipping transfer tax if the generation-skipping transfer tax will not be imposed until a later time, as in the case of a later taxable termination or taxable distribution. In response to this

comment, the final regulations provide that the determination of whether there has been a decrease in the sum of the estate tax and generation-skipping transfer tax liability (reduced by credits allowable against these taxes) is made with reference to the estate tax and generation-skipping transfer tax payable by reason of the decedent's death.

Availability of Relief under ' ' 301.9100-1 and 301.9100-3

In view of the 1-year limitation imposed under section 2032(d)(2), the proposed regulations provided that no request for an extension of time to make the alternate valuation election under the provisions of ' ' 301.9100-1 and 301.9100-3 will be granted if the request is submitted to the IRS more than 1 year after the due date of the return of tax imposed by section 2001 (including extensions of time actually granted). One commentator argued that the 1-year limitation in section 2032(d)(2) applies only to late-filed returns, and therefore should not limit the availability of relief under ' ' 301.9100-1 and 301.9100-3 to make a late alternate valuation election if the taxpayer timely filed its return, but failed to make the election on the return. After considering the language and intent of section 2032 and ' ' 301.9100-1 and 301.9100-3, the IRS and Treasury Department have determined that taxpayers may request relief under ' ' 301.9100-1 and 301.9100-3, even after the expiration of the 1-year period, and that such relief may be granted (subject to the requirements of ' ' 301.9100-1 and 301.9100-3) provided that the return of tax is filed no later than 1 year after the due date of the return (including extensions of time actually granted). This rule also will apply to requests under ' ' 301.9100-1 and 301.9100-3 for an extension of time to make a protective election under section 2032.

The IRS and Treasury Department also have determined that taxpayers should be permitted to apply for relief under ' ' 301.9100-1 and 301.9100-3 to make a late election under section 2056A to be treated as a Qualified Domestic Trust (QDOT). Like the alternate valuation election of section 2032, no election under section 2056A to be treated as a QDOT may be made on a return that is filed more than 1 year after the due date of the return (including extensions of time actually granted). Section 2056A(d). Thus, taxpayers will be permitted to apply for an extension of time under the provisions of ' ' 301.9100-1 and 301.9100-3 to make an election under section 2056A(d), provided that the return of tax is filed no later than 1 year after the due date of the return (including extensions of time actually granted).

Any taxpayer eligible for relief under ' ' 301.9100-1 and 301.9100-3 to make the section 2032 election or the 2056A(d) election is encouraged to file promptly an application for relief and a claim for refund before the statute of limitations under section 6511 expires in the event the requested relief is granted.

Special Analyses

It has been determined that this final Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory

Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Theresa Melchiorre of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 20 and 301 are amended as follows:

PART 20--ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 20.2032-1(b) is revised and paragraph (h) is added to read as follows:

' 20.2032-1 Alternate valuation.

* * * * *

(b) Method and effect of election--(1) In general. The election to use the alternate valuation method is made on the return of tax imposed by section 2001. For purposes of this paragraph (b), the term return of tax imposed by section 2001 means the last estate tax return filed by the executor on or before the due date of the return (including extensions of time to file actually granted) or, if a timely return is not filed, the first estate tax return filed by the executor after the due date, provided the return is filed no later than 1 year after the due date (including extensions of time to file actually granted). Once the election is made, it is irrevocable, provided that an election may be revoked on a subsequent return filed on or before the due date of the return (including extensions of time to file actually granted). The election may be made only if it will decrease both the value of the gross estate and the sum (reduced by allowable credits) of the estate tax and the generation-skipping transfer tax payable by reason of the decedent's death with respect to the property includible in the decedent's gross estate. If the election is made, the alternate valuation method applies to all property included in the gross estate and cannot be applied to only a portion of the property.

(2) Protective election. If, based on the return of tax as filed, use of the alternate valuation method would not result in a decrease in both the value of the gross estate and the sum (reduced by allowable credits) of the estate tax and the generation-skipping transfer tax liability payable by reason of the decedent's death with respect to the property

includible in the decedent's gross estate, a protective election may be made to use the alternate valuation method if it is subsequently determined that such a decrease would occur. A protective election is made on the return of tax imposed by section 2001. The protective election is irrevocable as of the due date of the return (including extensions of time actually granted). The protective election becomes effective on the date on which it is determined that use of the alternate valuation method would result in a decrease in both the value of the gross estate and in the sum (reduced by allowable credits) of the estate tax and generation-skipping transfer tax liability payable by reason of the decedent's death with respect to the property includible in the decedent's gross estate.

(3) Requests for extension of time to make the election. A request for an extension of time to make the election or protective election pursuant to ' ' 301.9100-1 and 301.9100-3 of this chapter will not be granted unless the return of tax imposed by section 2001 is filed no later than 1 year after the due date of the return (including extensions of time actually granted).

* * * * *

(h) Effective date. Paragraph (b) of this section is applicable to decedents dying on or after January 4, 2005. However, pursuant to section 7805(b)(7), taxpayers may elect to apply paragraph (b) of this section retroactively if the period of limitations for filing a claim for a credit or refund of Federal estate or generation-skipping transfer tax under section 6511 has not expired.

PART 301BPROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

' 301.9100-6T [Amended]

Par. 4. Section 301.9100-6T is amended by:

1. Removing the language ~~paragraph (b)(2)~~ from paragraph (a)(2) introductory text, and adding the language ~~paragraph (a)(2)~~ in its place.

2. Removing paragraph (b).

3. Redesignating paragraphs (c) through (s) as paragraphs (b) through (r), respectively.

4. Removing the language ~~paragraph (c)(2)~~ from the last sentence in newly designated paragraph (b)(2) and adding the language ~~paragraph (b)(2)~~ in its place.

5. Removing the language “paragraph (l)” from the second, fourth and last sentences in newly designated paragraph (k) and adding the language “paragraph (k)” in its place.

/s/ Mark E. Matthews

Deputy Commissioner for Services and Enforcement

Approved: December 28, 2004

/s/ Eric Solomon

Acting Deputy Assistant Secretary of the Treasury