



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
November 9, 2000

Number: **200116001**
Release Date: 4/20/2001

CC:PA:CBS:Br1:LKWilliams
GL-809665-99
UIL# 51.06.00-00
9999.98-00

MEMORANDUM FOR SBSE ASSOCIATE AREA COUNSEL (DENVER)

FROM: Alan C. Levine
Chief, Branch 1 (Collection, Bankruptcy & Summonses)
CC:PA:CBS:Br1

SUBJECT: _____

This memorandum responds to your request for advice dated November 29, 1999, regarding the qualified family-owned business interest (QFOBI) deduction under I.R.C. § 2057 of the Internal Revenue Code. Specifically, you have asked us to address two issues arising from the special lien procedures for additional estate tax under section 2057. The two issues are:

1. Whether the Service can establish an enforceable lien to secure the additional estate tax under section 2057 for personal property qualifying for the deduction under section 2057; and
2. Whether an estate electing the deduction under section 2057 can designate as security for the lien only those QFOBIs necessary to equal the amount of the additional estate tax payable in the event of a recapture.

As regards Issue 1, SBSE Associate Area Counsel (formerly Rocky Mountain District Counsel) concludes that, in the event of a section 2057 election, a lien under I.R.C. § 6324B should be filed for any real property using a modified version of the Form 668-H currently used in connection with the I.R.C. § 2032A special use valuation election. However, if the real property is insufficient to satisfy the lien amount (or, if the assets consist only of personal property), then Associate Area Counsel asks that Examination contact them for guidance. To clarify, we believe the lien arising in connection with a section 2057 election arises under section 2057(i)(3)(P), which references section 6324B. We agree that Associate Area Counsel should be consulted in the event that the real property subject to the section 2057 election is insufficient to secure the additional estate tax.

As regards Issue 2, Associate Area Counsel concludes that an estate may not designate as security for the lien only those QFOBIs necessary to equal the amount of recapture tax; rather, the lien should cover all assets subject to the election under section 2057. To the extent there is generally a difference between the amount of QFOBI assets necessary for an estate to be eligible for the deduction (that is, aggregate QFOBIs exceeding 50 percent of the adjusted gross estate) and the amount of QFOBI assets actually subject to the election under section 2057, we believe this conclusion should be clarified. Therefore, an estate that elects the deduction under section 2057 should designate as security for the lien those QFOBI assets for which the deduction is claimed. Further, we believe the lien amount should be an amount equal to the maximum potential additional estate tax payable, assuming that all QFOBI property for which the election is made is subject to recapture within the first 6 years of the date of death. See I.R.C. § 2057(f)(2).

At this time, Passthroughs and Special Industries Division (CC:PSI:B7) is engaged in a Year 2000 Priority Guidance Plan project to issue proposed regulations under section 2057. The regulations should address various issues, including the establishment of an enforceable lien and the designation of lien security for purposes of section 2057. We believe the positions stated in this memorandum are a reasonable interpretation of section 2057 and are wholly consistent with Congressional intent.

This document is not to be cited as precedent. I.R.C. § 6110(k)(3). If you have any questions, please contact the attorney assigned to this case, who can be reached at (202) 622-3610.