

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:ITA:2 – PLR-160846-02

Date:

January 23, 2003

LEGEND:

The Decedent =

The Taxpayer =

Dear :

This letter grants the Taxpayer an extension of time to make an election under § 1(h) of the Internal Revenue Code pursuant to § 311(e) of the Tax Reform Act of 1997, Pub. L. No. 105-34, for the Taxpayer's taxable year ending January 31, 2001. The election is to recognize a deemed sale of certain assets held on January 1, 2001, and to commence a post-January 1, 2001, holding period for those assets. The Taxpayer filed the amended income tax return containing this election late because of conditions beyond its control. The deemed sale election is made timely by this letter.

FACTS:

The Taxpayer holds assets which it represents qualify for the deemed sale election. Under the instructions for Form 4797, *Sales of Business Property*, the election is made by reporting the deemed sales on the tax return for the tax year that includes the date of the deemed sale, or on an amended return filed within 6 months of the due date of that return (excluding extensions). The Taxpayer adopted a January 31, 2001, taxable year end for federal income tax purposes, so the deadline for making the election was November 15, 2001. Had the Taxpayer elected a calendar taxable year, the deadline would have been more than a year later.

The Taxpayer was unable to determine whether to make the election by the deadline, and filed its income tax return without the election. A major factor in the uncertainty was difficulty in valuing the assets. The appraisal process began shortly after the Decedent's death, but the appraisals took almost a year to complete. The Taxpayer was also uncertain how making the deemed sale election would affect making the election under § 2032 to use the alternative valuation date. This issue is not answered

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by IRS publications, and calls by the Taxpayer's attorneys to the National Office did not settle the matter. The Taxpayer later filed an amended income tax return making the deemed sale election.

On August 12, 2002, the IRS issued Notice 2002-58, 2002-35 I.R.B. 432, concerning the deemed sale election. The Notice states that under appropriate circumstances, the IRS will grant requests to make a late election under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations. The Taxpayer has applied for relief under § 301.9100-3(a).

ANALYSIS:

Sections 301.9100-1 through 301.9100-3 provide the standards the IRS uses to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin. Because the deemed sale election procedures were published in Notice 2002-58 in the Internal Revenue Bulletin, the deemed sale election is a regulatory election.

Section 301.9100-1(c) provides that the IRS may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six 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. The Taxpayer filed the amended return with the deemed sale election within six months after the due date for filing the original return. An extension of time to permit that election is therefore possible.

Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government. Based on the facts and information submitted and the representations made, it is held that the Taxpayer has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government. Accordingly, the requirements of the regulations for the granting of relief have been satisfied in this case.

CAVEATS:

The extension of time granted by this letter is conditioned on the Taxpayer's tax liability (if any) being not lower, in the aggregate, for all years to which the election applies, than it would have been if the election had been timely made (taking into account the time value of money).

This ruling is based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement. While this office has not verified

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any of the material submitted in support of the request for ruling, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter. This ruling is directed only to the Taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Internal Revenue Code.

Sincerely,

Clifford M. Harbourt
Senior Technician Reviewer
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2)