

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

AUGUST 25, 2003

Number: **200352003**

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Index (UIL) No.: 2057.00-00

CASE MIS No.: TAM-127911-03/CC:PSI:4

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's TIN:

Date of Conference:

LEGEND:

Decedent	=
Executrix	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Year 1	=
Year 2	=
County	=
State	=

ISSUE:

Does Decedent's estate qualify for a qualified business interest deduction under section 2057 of the Internal Revenue Code?

CONCLUSION:

Decedent's estate qualifies for a qualified business interest deduction under section 2057 of the Internal Revenue Code.

FACTS:

Decedent executed her will on Date 1. The will provided that Decedent's four children are the heirs of her estate. Decedent died on Date 2. At the time of Decedent's death, Decedent owned a 50% interest in a Partnership. One of Decedent's sons owned the remaining 50% interest. The Partnership was a family owned business that was begun by Decedent and her husband in Year 1. Decedent's husband died in Year 2. From Year 2 until the Decedent's death, Decedent and her children continued to own and operate the Partnership.

On Date 3, Decedent's federal estate tax return (Form 706), was filed by Executrix. The estate tax return included Schedule T (Qualified Family Owned Business Interest Parts 1 through 4). The estate claimed a deduction on the return for the value of Decedent's interest in the Partnership. However, the estate tax return did not include Part 5 of Schedule T (Agreement to Family-Owned Business Interest Deduction under Section 2057) (Agreement).

On Date 4, Decedent's Form 706 was opened for examination. A letter was sent to Decedent's representative informing him of the examination and requesting additional information.

On Date 5, Decedent's heirs executed the Agreement. The estate tax examiner received the Agreement on Date 6. Shortly thereafter, the examiner sent a letter to Decedent's representative denying the section 2057 deduction because the agreement was not filed with the Form 706 on Date 3.

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)(1) provides that for purposes of the tax imposed by section 2001(a), in the case of an estate of a decedent to which this section applies, the value of the taxable estate shall be determined by deducting from the value of the gross estate the adjusted value of the qualified family-owned business interests of the decedent.

Section 2057(b)(1)(B) provides that section 2057 will apply to an estate if the decedent was (at the time of the decedent's death) a citizen or resident of the United States, the executor elects the application of section 2057 and files the agreement referred to in section 2057(h), and the sum of the adjusted value of the qualified family-owned business interests described in section 2057(b)(2), plus the amount of the gifts of such interests determined under section 2057(b)(3), exceeds 50 percent of the adjusted gross estate, and during the 8-year period ending on the date of decedent's death there have been periods aggregating 5 years or more during which such interests were owned by the decedent or a member of the decedent's family, and there was material participation (within the meaning of section 2032A(e)(6)) by the decedent or a member of the decedent's family in the operation of the business to which such interests relate.

Section 2057(b)(2) provides that the qualified family-owned business interests are the interests which are included in determining the value of the gross estate, and are acquired by any qualified heir from, or passed to any qualified heir from, the decedent (within the meaning of section 2032A(e)(9)).

Section 2057(e)(1) provides, generally, that for purposes of section 2057, the term "qualified family-owned business interest" means an interest as a proprietor in a trade or business carried on as a proprietorship, or an interest in an entity carrying on a trade or business, if: (1) at least 50 percent of such entity is owned (directly or indirectly) by the decedent and members of decedent's family; (2) at least 70 percent of such entity is so owned by members of 2 families and at least 30 percent of such entity is so owned by the decedent and members of the decedent's family; or (3) at least 90 percent of such entity is so owned by members of 3 families, and, at least 30 percent of such entity is so owned by the decedent and members of the decedent's family.

Section 2057(f)(1)(B) provides for the imposition of an additional estate tax if, within 10 years after the date of the decedent's death and before the date of the qualified heir's death the qualified heir disposes of any portion of a qualified family-owned business interest.

Section 2057(h) provides that the agreement referred to in section 2057(b)(1)(B), 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 section 2057(f) with respect to such property.

Section 2057(i)(3)(H) provides that rules similar to section 2032A(d)(1) and (3) (relating to election; agreement) shall apply.

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 section 2032A(d)(1) (and submits the agreement referred to in section 2032A(d)(2)) within the time prescribed therefor, but the notice of election, as filed, does not contain all required information, or signatures of 1 or more persons required to enter into the agreement described in section 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.

As discussed above, section 2057(b)(1)(B) provides that section 2057 will apply to an estate if the executor elects the application of the section and files the agreement referred to in section 2057(h). In this case, Decedent's federal estate tax return was filed on Date 3. The estate tax return included Schedule T, Parts 1 through 4. Part 5 containing the Agreement consenting to the application of the recapture tax under section 2057(f), was omitted. The Agreement, however, was filed on Date 5 and received by the Internal Revenue Service on Date 6. Date 6 is within 90 days of notification that the additional information was required. Accordingly, the requirements of section 2057(b)(1)(B) have been met. Therefore, we conclude that, (assuming that the other requirements of section 2057 are met), Decedent's estate qualifies for a qualified business interest deduction under section 2057.

CAVEAT(S)

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.