

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-167164-03

Date: SEPTEMBER 13, 2004

Re:

Legend

Decedent =

Executrix =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This is in response to a letter from your authorized representative dated November 3, 2003, and subsequent correspondence, requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an alternate valuation election under § 2032 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows. Decedent died on Date 1. The Executrix engaged the services of a certified public accountant to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. In preparing the return, it was erroneously concluded that the value, as of Date 1, of bonds and securities that were includible in the gross estate was lower than the value of these assets as of the alternate valuation date. Accordingly, on the Form 706 that was timely filed on Date 2, the Executrix did not make the election under § 2032 to value the gross estate as of the alternate valuation date. Subsequent to the filing of Form 706, the accountant discovered that the value of the gross estate as of the alternate valuation date was less than the value as of the gross estate as of Date 1. As a result, on Date 3 the Executrix filed a supplemental Form 706 reflecting the value of all assets included in the gross estate as of the applicable alternate valuation date and making the election under § 2032. The value of the gross estate and the tax imposed by chapters 11 and 13 decreased as a result of the election.

PLR-167164-03

The Executrix requests an extension of time under § 301.9100 until Date 3 to make the alternate valuation election under § 2032.

Section 2032(a) provides that the value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as of the alternate valuation date, which date is generally:

(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; and

(3) Any interest or estate that 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 of 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 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. 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.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or 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, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

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 extension 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.

PLR-167164-03

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

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.

Based on the facts submitted and the representations made, we conclude that 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 Date 3, the date the supplemental Form 706 was filed. A copy of this letter should be attached to a copy of the supplemental Form 706 and filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999.

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

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.

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

Sincerely,

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

Enclosures

Copy for section 6110 purposes
Copy of this letter

cc: