

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-124644-12
Date: DECEMBER 06, 2012

Re:

- Legend
- Decedent -
- Son -
- Executor -
- Date 1 -
- Date 2 -
- Date 3 -
- Company -
- X -
- Y -
- A year -
- B year -
- Bank -
- Successor Bank -
- Purchase Price -

Dear :

This letter responds to your letter dated June 6, 2012, submitted by your authorized representative requesting a ruling under § 2703 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows. Decedent died Date 1 owning X shares of Company. At the time of Decedent’s death, Son owned Y shares of Company. Decedent’s shares in Company were subject to a Stock Purchase Agreement (Agreement) executed on Date 2, a date prior to October , 19 . Under the terms of the Agreement, Son is obligated to purchase the shares held by Decedent’s estate. The Agreement provides for a price equal to Purchase Price. The Purchase Price is to be paid in cash in semi-annual installments over an A-year period with interest on the unpaid balance “at the prime rate established by [Bank].”

The current parties to the Agreement amended the Agreement to extend the terms of payment from A years to B years and to clarify that the prime rate is to be established

semi-annually (Amendment). The Agreement did not specify whether the prime rate is fixed or adjustable. The Executor believes that requiring the rate to be adjusted semi-annually is commercially reasonable and appropriate to protect the value of the purchase price if the payment period is extended. The parties also amended the Agreement to update the name of the banking institution from Bank to Successor Bank. The amendments are effective as of Date 3.

You have requested a ruling that the Amendment to the Agreement to extend the payment period for the purchase of X shares from A years to B years will not constitute a substantial modification of the Agreement within the meaning of § 25.2703-2 and will not cause § 2703 to apply to the Agreement.

Law and Analysis

Section 2703(a) provides that, for federal transfer tax purposes, the value of any property is determined without regard to any option, agreement, or other right to acquire or use the property at a price less than the fair market value of the property (without regard to such option, agreement, or right) or any restriction on the right to sell or use such property. Section 2703(a) applies to transfers after October 8, 1990. In this case, the Agreement was executed prior to October 8, 1990. Accordingly, the Agreement is not subject to the provisions of § 2703.

Section 25.2703-1(c)(1) of the Gift Tax Regulations provides that a right or restriction that is substantially modified is treated as a right or restriction created on the date of the modification. Any discretionary modification of a right or restriction, whether or not authorized by the terms of the agreement, that results in other than a *de minimis* change to the quality, value, or timing of the rights of any party with respect to property that is subject to the right or restriction is a substantial modification.

Section 25.2703-1(c)(2) provides that a substantial modification does not include a modification that results in an option price that more closely approximates fair market value. In this case, the interest rate clarification can be expected to result in the proceeds of the sale more closely approximating fair market value. Accordingly, this amendment is not a substantial modification. Finally, the extension of such term from A years to B years does not result in other than a *de minimis* change to the quality, value, or timing of the rights of any party to the agreement because the Agreement requires payment of a reasonable rate of interest during the term of the note.

Based on the facts submitted and representations made, we conclude that the Amendment to the Agreement to extend the payment period from A years to B years will not constitute a substantial modification of the Agreement within the meaning of § 25.2703-2 and will not cause § 2703 to apply to the Agreement.

Except as we have specifically ruled, we express no opinion as to tax consequences of the proposed transaction under § 2703 or any other provisions of the Code.

This ruling is based on the facts and applicable law in effect on the date of this letter. If there is a change in material fact or law (local or Federal), the ruling will have no force or effect. If the taxpayers are in doubt whether there has been a change in material fact or law, a request for reconsideration of this ruling should be submitted to this office.

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

Associate Chief Counsel
(Passthroughs and Special
Industries)

By: _____
Lorraine Gardner
Senior Counsel Branch 4

Enclosure
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