

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

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CC:PSI:B01
PLR-100439-22

Date:
July 01, 2022

LEGEND

X =

Y =

Trust =

Estate =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to a letter dated December 17, 2021, and subsequent correspondence, submitted on behalf of Estate by its authorized representatives, requesting relief under § 301.9100-3 of the Procedure and Administration regulations to revoke an election made under § 643(e)(3) of the Internal Revenue Code ('Code').

FACTS

X died on Date 1. The executors of Estate and the trustees of Trust made an election under § 645 of the Code to treat Trust as part of Estate beginning in Estate's tax year ending Date 2.

During the Estate's tax year ending Date 3, Trust made a distribution to X's spouse, Y, who subsequently gifted all the distributed assets to X and Y's children, who are also the executors of Estate and trustees of Trust.

On the advice of Estate's return preparer, the executors of Estate made an election under § 643(e)(3) for Estate's tax year ending Date 3 to treat the distribution as a sale of property to Y. The intended effect of the election was for Estate to recognize built-in loss in the distributed assets, and for Y, and subsequently X and Y's children, to have a basis in the assets equal to their fair market value. Estate filed its income tax return for its tax year ending Date 3 on this basis.

While preparing Y and Y's children's tax income tax returns, the return preparer realized that the intended effect of the § 643(e)(3) election had not occurred because of the prohibition against deductions in transactions between related taxpayers in § 267 of the Code. The preparer advised the executors of Estate to submit a request for permission to revoke the § 643(e)(3) election. Estate has filed an amended return for its tax year ending Date 3 as though the § 643(e)(3) election is not in effect.

LAW AND ANALYSIS

Section 645(a) provides that if both the executor (if any) of an estate and the trustee of a qualified revocable trust elect the treatment provided in this section, such trust shall be treated and taxed as part of such estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date.

Section 645(b) provides that for purposes of § 645(a) the term "applicable date" means (A) if no return of tax imposed by chapter 11 of the Code is required to be filed, the date which is 2 years after the date of the decedent's death, and (B) if such a return is required to be filed, the date which is 6 months after the date of the final determination of the liability for tax imposed by chapter 11 of the Code.

Section 643(e)(3) provides that in the case of any distribution of property (other than cash) to which an election is made, gain or loss is recognized by an estate or trust in the same manner as if the property had been sold to the distributee at its fair market value. Section 643(e) further provides that any such election, once made, may be revoked only with the consent of the Secretary.

Section 267(a)(1) provides, in pertinent part, that no deduction shall be allowed in respect of any loss from the sale or exchange of property, directly or indirectly, between persons specified in § 267(b).

Section 267(b) provides, in pertinent part, that the persons specified in § 267(a)(1) are: (1) members of a family, as defined in § 267(c)(4); and (13) an executor of an estate and a beneficiary of such estate. Section 267(c)(4) defines members of a family as an individual's brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides rules for requesting extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Under § 301.9100-1(c), the Commissioner 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. 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.

Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) the grant of relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(i) provides generally that the taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the IRS. In addition, § 301.9100-3(b)(1)(v) provides that the taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(2) provides that the taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not: (i) competent to render advice on the regulatory election; or (ii) aware of all relevant facts.

Section 301.9100-3(b)(3) provides that a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer: (i) seeks to alter a return position for which an accuracy related penalty could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election

for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1)(i) provides that the interests of the government are prejudiced when granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made.

Section 301.9100-3(c)(1)(ii) provides that the interests of the government ordinarily are prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief.

Rev. Rul. 83-74, 1983-1 CB 112, granted relief under § 1.9100-1 to a homeowner's association seeking to revoke its section 528 election, reasoning that the situation of a taxpayer seeking relief to revoke an election is analogous to one where a taxpayer is seeking relief to make an election.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Estate is granted the consent of the Commissioner to revoke its election under § 643(e)(3) for its tax year ending Date 3.

This ruling is contingent on Estate, within 120 days of the date of this letter, revoking its election in a written statement filed with an additional amended federal income tax return for its tax year ending Date 3. A copy of this letter must be attached to the amended return.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code or the regulations thereunder.

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.

The ruling contained in this letter is based on information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representative.

Sincerely,

Holly Porter
Associate Chief Counsel
(Passthroughs & Special Industries)

By: /s/ _____
Laura C. Fields
Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure
Copy for § 6110 purpose

cc: