

Internal Revenue Service

Department of the Treasury

Number: **200348010**

Washington, DC 20224

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2032.00-00

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:4-PLR-113119-03

Date:

AUGUST 18, 2003

Re:

Legend:

Decedent =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This responds to your letter dated February 12, 2003 on behalf of Decedent's estate requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an alternate valuation election under § 2032 of the Internal Revenue Code.

The facts are submitted and represented to be as follows: Decedent died on Date 1 and the co-executors of Decedent's estate timely filed Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return) on Date 2. However, the executors did not make the election under § 2032 to value the estate as of the alternate valuation date. On Date 3, the tax return preparer of Form 1041 (U.S. Income Tax Return for Estates and Trusts) for the Decedent's estate reviewed the Form 706 and determined that the election under § 2032 should have been made on the return. By affidavit, the tax return preparer of the Form 706 stated that he failed to consider the effect of the election for alternate valuation by the estate at the time he prepared the return and did not discuss the election with either co-executor at any time prior to the return being filed. Subsequently, the co-executors were advised that the election under

PLR-113119-03

§ 2032 should have been made on the original Form 706. A supplemental Form 706 reflecting the value of all assets included in the gross estate as of the applicable alternate valuation date was received on Date 4, more than 6 months after the due date of the original Form 706. Thus, the supplemental Form 706 was not filed in time to take advantage of the automatic 6 month extension provided under § 301.9100-2(b). The filing was, however, within one year of the due date of the original Form 706. The value of the gross estate and the amount of federal estate tax due are less than the value of the gross estate and the amount of federal estate tax due on the original Form 706.

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 follows: (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. (3) Any interest or estate which 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 Internal Revenue 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. Such election, once made, shall be irrevocable. 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) of the Procedure and Administration Regulations, the Commissioner may grant a reasonable extension of time to make a regulatory election, or a 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).

PLR-113119-03

Section 301.9100-2 provides automatic extensions 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.

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

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, 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 4, the date the supplemental Form 706 was received. A copy of this letter should be attached to a copy of the supplemental Form 706 and sent to the Internal Revenue Service Center, Cincinnati, OH 45999.

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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

Sincerely,

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

Enclosures

Copy for section 6110 purposes

cc: