

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:4
PLR-139331-11
Date:
March 12, 2012

RE:

Legend

Decedent =
X =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Attorney =
Accountant =

Dear :

This letter responds to your letter dated September 15, 2011, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election to specially value qualified real property under § 2032A of the Internal Revenue Code.

Facts

Decedent died on Date 1, owning an interest in farmland and related structures. X was appointed to administer Decedent's estate. X had no knowledge or understanding of estate administration. During the estate administration period, Decedent's heirs disputed the distribution of Decedent's interest in the farmland and related structures and litigation ensued. X retained Attorney to assist in the administration of the estate and Accountant to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

Accountant filed Form 4768 requesting a six-month extension of time to Date 2 to file Decedent's Form 706. The probate litigation settled immediately prior to Date 2. Accountant, Attorney, and X discussed making the § 2032A election with respect to

Decedent's interest in the farmland and related structures, but Decedent's Form 706 did not include the election when it was timely filed on Date 2.

Shortly after filing Decedent's Form 706 on Date 2, Accountant advised X that the estate could request a 12-month extension of time to make an election under § 2032A pursuant to the relief provisions under § 301.9100-2. On Date 3, X sent a letter to the Internal Revenue Service (IRS) requesting a 12-month extension of time to make an election, but failed to comply with the requirements under § 301.9100-2. On Date 4, the IRS began an examination of Decedent's Form 706. On Date 5, a date more than 12 months after Date 2, X filed a supplemental Form 706 for Decedent's estate and attached Schedule A-1, "Section 2032A Valuation." On Date 6, the IRS mailed X an Examination Report stating that the § 2032A election was not timely, and therefore, invalid.

Law and Analysis

Section 2032A(a)(1) provides, generally, that if the decedent was (at the time of his death) a citizen or resident of the United States, and the executor elects the application of § 2032A and files the agreement referred to in § 2032A(d)(2), then, for purposes of chapter 11, the value of qualified real property shall be its value for the use under which it qualifies, under § 2032A(b), as qualified real property.

Section 2032A(d)(1) provides that the election under § 2032A shall be made on the return of tax imposed by § 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

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 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-2(a)(2)(vii) provides an automatic 12-month extension of time to make the estate tax election to specially value qualified real property (where the IRS has not yet begun an examination of the filed return) under § 2032A(d)(1) provided the taxpayer takes corrective action as defined in § 301.9100-2(c).

Under § 301.9100-2(c), corrective action means taking the steps required to file the election in accordance with the statute or the regulation published in the Federal Register, or the revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin. For those elections required to be filed with a return, corrective action includes filing an original or an amended return for the year the

regulatory or statutory election should have been made and attaching the appropriate form or statement for making the election.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). 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 the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(i) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief under this section before the failure to make the regulatory election is discovered by the IRS.

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.

In this case, X failed to make the § 2032A election on Decedent's timely filed Form 706. Pursuant to Accountant's advice, X requested an extension of time to make an election, but failed to comply with the requirements under § 301.9100-2(c). The IRS then began its examination of Decedent's Form 706. After the examination had begun and more than 12 months after the due date of Decedent's Form 706, X filed a supplemental Form 706 with an election attached. The election was untimely and also filed after the IRS began examining Decedent's Form 706.

X requested relief under §§ 301.9100-1 and 301.9100-3 after the IRS began its examination of Decedent's Form 706. However, we do not believe X acted in bad faith for purposes of § 301.9100-3(b)(1)(i). X had expressed previously her intent to make the election when, on Date 3, X requested relief under § 301.9100-2 for an extension of time to make an election, and X made such request before the IRS began its examination of Decedent's Form 706. In addition, X relied on Accountant's advice and believed the election filed with the supplemental Form 706 was valid. Furthermore, when the IRS determined that the election was untimely and invalid, X immediately sought relief under §§ 301.9100-1 and 301.9100-3.

Based on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Decedent's estate is granted an extension of time until 120 days from the date of this letter to make an election under § 2032A to specially value qualified real property. The election should be made on a supplemental estate tax return on Form 706 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental return. A copy is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion on whether the estate qualifies for special use valuation under § 2032A.

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

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

The rulings contained in this letter are based upon 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 request for rulings, it is subject to verification on examination.

Sincerely,

Curt G. Wilson
Associate Chief Counsel
(Passthroughs & Special Industries)

By:

Leslie H. Finlow, Senior Technician Reviewer
Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes
Copy of this letter

cc: