

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:9

PLR-145267-04

Date:

November 16, 2004

In Re:

Legend:

Decedent	=
William D. Swan Family	=
Limited Partnership	
Date 1	=
Date 2	=
Date 3	=
State	=
X	=

Dear :

This is in response to your letter dated June 25, 2004 and subsequent correspondence, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under § 2032A of the Internal Revenue Code.

The facts submitted and representations made are summarized as follows. On Date 1, Decedent formed Partnership into which he contributed an X acre farm in State. Decedent died on Date 2. For estate tax purposes, the full value of all of the assets transferred to Partnership by Decedent are included in Decedent's gross estate at the date of death value. Partnership is in the business of farming and its primary asset is the X acre farm in State that Decedent contributed to Partnership on Date 1.

Decedent's estate retained a tax professional to prepare the estate's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, which was timely filed on Date 3. In preparing the Form 706, the tax professional inadvertently failed to make or advise the personal representative's of Decedent's estate to make an election or protective election to value specially the farmland under § 2032A.

Decedent's estate has requested an extension of time under §§ 301.9100-1 and 301.9100-3 to make an election under § 2032A with respect to the farmland held in Partnership.

#### 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 this section 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 301.9100-3 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)(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 requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Therefore, Decedent's estate is granted an extension of time of sixty (60) days from the date of this letter to make an election under § 2032A to specially value qualified real property. However, the burden is on the estate to establish to the Service's satisfaction that all of

the requirements of § 2032A are met. The election should be made on a supplemental estate tax return 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.

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.

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,

Heather C. Maloy

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

Enclosure: Copy for § 6110 purposes  
Copies of this letter