

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B09

PLR-159333-04

Date:

March 07, 2005

Legend:

Decedent =

Date 1 =

Date 2 =

y =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

z =

Date 7 =

Dear :

This is in response to your authorized representative's letter dated October 29, 2004, submitted on behalf of Decedent's estate, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to perfect a protective election made under § 2032A of the Internal Revenue Code.

The facts submitted and representations made are summarized as follows: Decedent died on Date 1. Decedent's gross estate included farmland that was being farmed by Decedent's family members. The executor of Decedent's estate retained the services of an attorney to assist with the probate of Decedent's estate. The attorney hired an accountant to determine whether Decedent's estate qualified for special use valuation under § 2032A and to prepare and file Decedent's federal and state estate tax returns.

On Date 2, the accountant filed Decedent's federal estate tax return, together with a payment of \$y. Decedent's federal estate tax return also included a protective election to specially value Decedent's farmland under § 2032A.

On Date 3, the Internal Revenue Service issued an estate tax closing letter to the executor of Decedent's estate computing an estate tax liability of \$y. It is represented that at no time did the accountant notify the executor of Decedent's estate or the estate's attorney that the protective § 2032A election had to be perfected within 60 days after issuance of the estate tax closing letter. Between Date 4 and Date 5, the accountant communicated with Decedent's personal representative and qualified heirs in order to gather the necessary information to file a supplemental federal estate tax return for purposes of perfecting the estate's protective election under § 2032A.

On Date 6, the accountant filed Decedent's supplemental federal estate tax return attempting to perfect the § 2032A protective election and requesting a refund of \$z. On Date 7, the Internal Revenue Service informed Decedent's estate that it could not consider the estate's attempt to perfect the protective election for special use valuation under § 2032A because the estate failed to perfect the election within 60 days after issuance of the estate tax closing letter.

Decedent's estate has requested an extension of time under §§ 301.9100-1 and 301.9100-3 to perfect the protective election made under § 2032A with respect to Decedent's farmland.

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 the 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.

Section 20.2032A-8(b) of the Estate Tax Regulations provides, in part, that a protective election may be made to specially value qualified real property. The availability of special use valuation pursuant to this election is contingent upon values as finally determined (or agreed to following examination of a return) meeting the requirements of § 2032A. The protective election is to be made by a notice of election filed with a timely estate tax return stating that a protective election under § 2032A is being made pending final determination of values. If it is found that the estate qualifies for special use valuation based upon values as finally determined (or agreed to following examination of a return), an additional notice of election must be filed within 60 days after the date of such determination.

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 Internal Revenue 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)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election.

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 taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Consequently, an extension of time is granted until 60 days from the date of this letter for perfecting the protective 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 protective § 2032A election must be perfected in accordance with the requirements of § 20.2032A-8(b) and made on a supplemental Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return filed with the Cincinnati Service Center. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

The ruling contained in this letter is 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 ruling request, it is subject to verification on examination.

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

This ruling is directed only to the taxpayer who requested 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.

Sincerely,

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

Enclosures

Copy for § 6110 purposes  
Copy of letter