

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-116801-03

Date: DECEMBER 22, 2003

In Re:

Legend:

Decedent	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Attorney	=
Niece	=
State	=

Dear :

This is in response to your letter of February 28, 2003, and subsequent correspondence, in which you requested an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make an alternate valuation election under section 2032 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows:

Decedent died on Date 1. Decedent named her niece, Niece, as personal representative. Niece hired Attorney to handle the probate of Decedent's Federal and State estate tax returns.

Neither the Federal nor the State estate tax returns (nor applications for extensions of time to file or pay) were filed by the Date 2 due date. The returns were filed on Date 3 (three months after the due date).

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Attorney failed to make the alternate valuation election under section 2032. On a supplemental return, filed Date 4, Niece elected to have the alternate valuation rules under section 2032 apply to Decedent's estate. Date 4 is more than one year after the Date 2 due date of the return.

You have requested a ruling that Decedent's estate be granted an extension of time to make the election under section 2032 to the date the supplemental Form 706 was filed.

LAW and ANALYSIS:

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 section 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 by this chapter 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 section 2032 shall be made by the executor on the return of tax imposed by section 2001. Such election, once made, shall be irrevocable. Under section 2032(d)(2), no election may be made under section 2032 if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return.

Section 6075(a) provides that returns made under section 6018(a) (relating to estate taxes) shall be filed within 9 months after the date of the decedent's death.

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Section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 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.

Based on the facts submitted and the representations made, we conclude that the requirements of section 2032 have not been satisfied. The election on the Date 4 supplemental return was not made within one year after the estate tax return was due, as required by section 2032(d)(2). Consequently, an extension of time to make the election under section 2032 is not granted.

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

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.

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.

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.

Sincerely,

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

Enclosures

Copy for section 6110 purposes

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Copy of this letter