

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

June 2, 1999

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Control Number: TAM-122609-98
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Taxpayer's Name:
Taxpayer's Identification Number:
Taxpayer's Address:

Year in Issue:
Date of Conference:
District Director:

LEGEND:

Taxpayer:

Decedent:

Official:

a:

b:

c:

d:

State:

ISSUE:

For purposes of computing the "adjusted tax difference with respect to the estate" under § 2032A(c)(2)(C) of the Internal Revenue Code, is the amount of the state death tax credit allowed limited to the amount actually paid by the estate, or is the state death tax credit redetermined based upon the increased value of the taxable estate as if there had been no § 2032A election?

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CONCLUSION:

For purposes of computing the “adjusted tax difference with respect to the estate,” the amount of the state death tax credit allowed is generally limited to the amount the estate actually paid relating to any property included in the gross estate with respect to the filing of the federal estate tax return. Inasmuch as State has a state death tax statute with a counterpart to § 2032A and imposes an additional state death tax in a manner similar to § 2032A(c), however, the state death tax credit, used in computing the adjusted tax difference with respect to the estate, will be the lesser of the maximum allowable credit under § 2011(b) if there had been no § 2032A election or the sum of the state death tax actually paid and the potential state recapture tax. Therefore, the state death tax credit may be redetermined based upon the increased value of the taxable estate as if there had been no § 2032A election.

FACTS:

Decedent died testate in State on a. It has been represented that Taxpayer is one of three “qualified heirs” under § 2032A(e)(1).

At the time of filing the Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return), the executor of Decedent’s estate elected to specially value Decedent’s interest in certain “qualified real property” under the provisions of § 2032A. It has been represented that the Service reviewed and approved this election.

On or about b, approximately nine years after Decedent's death, the qualified heirs under Decedent’s will, including Taxpayer, entered into a contract to sell the qualified real property. Inasmuch as the qualified heirs disposed of their interest in the qualified real property within the 10-year statutory period under § 2032A(c), the qualified heirs seek a release from the § 6324B lien filed in connection with the § 2032A election. Further, the qualified heirs are required to report the additional estate tax imposed by § 2032A(c) on Form 706-A (United States Additional Estate Tax Return). The Form 706-A was due on c.

In a letter dated d, Official from State asserts that

[State] law has always been interpreted to allow the State to pick up its share of any “recapture tax” due because of a decedent’s estate’s disposition or failure to use property for a qualified use under Internal Revenue Code Section 2032A. The Service has consistently recognized this and allowed a credit for the payment of the State portion of the recapture tax.

In support of this statement, Official cites Chapter 211, State Tax Code, which generally provides that a tax equal to the amount of the federal credit is imposed on the transfer at death of

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the property of every resident. In addition, Official asserts that State has adopted administrative rules that provide for State's collection of the recapture tax.

For purposes of recalculating the additional estate tax imposed by § 2032A(c), Taxpayer argues that the state death tax credit for purposes of § 2011 should be based upon the taxable estate amount that would have resulted if the qualified real property had been included in Decedent's gross estate at its fair market value.

LAW:

Section 2011 of the Code provides that the tax imposed by § 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any state, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The credit allowed by § 2011 shall not exceed the appropriate amount determined under § 2011(b). Section 2011(c) provides that the credit shall include only such taxes as were actually paid and credit therefor claimed within four years after the filing of the estate tax return. See § 20.2011-1(c) of the Estate Tax Regulations.

Section 2032A generally provides that if the executor elects the application of § 2032A and files the agreement described in § 2032A(d)(2), the value of the qualified real property included in the decedent's gross estate that is devoted to farming shall be valued on the basis of its use as a farm, rather than at its highest and best use (i.e., fair market value).

Section 2032A(c)(1) imposes an additional estate tax if, within 10 years after the decedent's death and before the death of the qualified heir, (A) the qualified heir disposes of any interest in qualified real property (other than by a disposition to a member of his family), or (B) the qualified heir ceases to use for the qualified use the qualified real property that was acquired (or passed) from the decedent.

Section 2032A(c)(2)(A) provides that the amount of the additional estate tax imposed by § 2032A(c)(1) with respect to any interest shall be the amount equal to the lesser of (i) the adjusted tax difference attributable to such interest, or (ii) the excess of the amount realized with respect to the interest (or, in any case other than a sale or exchange at arm's length, the fair market value of the interest) over the value of the interest determined under § 2032A(a).

Section 2032A(c)(2)(B) provides that the adjusted tax difference attributable to an interest is the amount that bears the same ratio to the adjusted tax difference with respect to the estate (determined under § 2032A(c)(2)(C)) as (i) the excess of the value of such interest (determined without regard to § 2032A(a)) over the value of such interest determined under § 2032A(a), bears to (ii) a similar excess determined for all qualified real property. Section 2032A(c)(2)(C) defines the term "adjusted tax difference with respect to the estate" as the excess

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of what would have been the estate tax liability but for § 2032A(a) over the estate tax liability. The term “estate tax liability” means the tax imposed by § 2001 reduced by the credits allowable against such tax.

Section 2032A(d)(1) provides that the election to specially value real property shall be made on the return of the tax imposed by § 2001. Such election is to be made in such manner as the Secretary prescribes by regulations. See § 20.2032A-8 of the Estate Tax Regulations.

Section 2032A(d)(2) provides that a written agreement must be signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of § 2032A(c) with respect to such property.

Section 6324B provides that in the case of any interest in qualified real property (within the meaning of § 2032A(b)), an amount equal to the adjusted tax difference attributable to such interest (within the meaning of § 2032A(c)(2)(B)) shall be a lien in favor of the United States on the property in which such interest exists.

Rev. Rul. 82-35, 1982-1 C.B. 128, provides rules for determining the lien imposed by § 6324B. In the ruling, the Service has analyzed the computation of the state death tax credit under three different types of state statute for purposes of calculating the “adjusted tax difference with respect to the estate.” The three types of state statute provide for: (1) a state death tax in an amount equal to the maximum credit under § 2011; (2) a state death tax in an amount equal to the greater of the amount determined under a state rate schedule or the maximum allowable credit under § 2011; and (3) a state death tax statute with a counterpart to § 2032A and imposing an additional state death tax in a manner similar to § 2032A(c). Rev. Rul. 82-35 holds that in states that do not provide for an additional death tax (situations (1) and (2) above) in circumstances identical to those that would result in additional federal tax under § 2032A, the § 2011 credit will be the lesser of the maximum allowable credit under § 2011(b) or the amount of state death tax actually paid. Conversely, in states that have a counterpart to § 2032A and impose a recapture tax (situation (3)), the § 2011(b) credit used in calculating the adjusted tax difference with respect to the estate will be the lesser of the maximum allowable credit under § 2011(b) if there had been no § 2032A election or the sum of the state death tax actually paid and the potential state recapture tax.

ANALYSIS:

The issue presented in this request for technical advice is, for purposes of computing the “adjusted tax difference with respect to the estate” under § 2032A(c)(2)(C), whether the amount of the state death tax credit allowed is limited to the amount actually paid by the estate to State, or can the state death tax credit be redetermined based upon the increased value of the taxable estate. Relying upon Rev. Rul. 82-35 (specifically, situation (1)), the estate tax examiner has concluded that, in the absence of an additional estate tax liability imposed by State, the amount

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of state death tax credit allowed in this case is limited to the amount actually paid by the estate to State.

Under § 2011, the state death tax credit allowable is limited to the amount the estate actually paid to State. In this case, if State does not provide for a state recapture tax in circumstances identical to those that would result in the imposition of the § 2032A(c) recapture tax, then under Rev. Rul. 82-35 the § 2011 credit, used in computing the adjusted tax difference with respect to the estate, will be the lesser of the maximum allowable credit under § 2011(b) if there had been no § 2032A election or the state death tax actually paid. In the event, however, that State imposes a state recapture tax in circumstances identical to those that would result in the imposition of the § 2032A(c) recapture tax, Rev. Rul. 82-35 holds that the § 2011(b) credit, used in computing the adjusted tax difference with respect to the estate, will be the lesser of the maximum allowable credit under § 2011(b) if there had been no § 2032A election or the sum of the state death tax actually paid and the potential state recapture tax.

Based upon the information submitted and the representations made, it is our view that State imposes a recapture tax in circumstances identical to those that would result in the imposition of the § 2032A(c) recapture tax. Therefore, the state death tax credit may be redetermined based upon the increased value of the taxable estate as if there had been no § 2032A election.

Except as specifically stated in this technical advice memorandum, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions of the Code or under any other provisions of the Code.

CAVEAT:

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.