

Internal Revenue Service

Department of the Treasury

Number: **200234004**
Release Date: 8/23/2002
Index Numbers: 9100.00-00
9999.98-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09-PLR-166171-01
Date:
January 18, 2002

LEGEND:

Decedent =

Date 1 =

Son =

Law Firm 1 =

Accounting Firm =

Law Firm 2 =

Dear

This is in response to your representative's letter, dated November 21, 2001, 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 make an election under § 2057(b)(1)(B) of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: Decedent died on Date 1. Decedent's estate consisted primarily of real property and improvements used for Decedent's family farming operations. Son, as executor of Decedent's estate, engaged Law Firm 1 to handle probate and related estate administration matters. The attorneys at Law Firm 1 did not hold themselves out as experts in federal estate taxation, therefore, Son engaged Accounting Firm to prepare Decedent's federal estate tax return. Although Law Firm 1 and Accounting Firm had all the facts necessary to determine that a deduction under § 2057(a) was available to and

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advantageous for Decedent's estate, Son, as executor, was never advised of the existence or applicability of the election.

Decedent's estate tax return was timely filed, however, the estate did not claim a deduction under § 2057(a), did not enter into or file the agreement referred to in § 2057(h), and did not file Schedule T of Form 706. Decedent's estate tax return is currently under examination by the Internal Revenue Service. The estate retained Law Firm 2 to assist with the examination of Decedent's estate tax return. Upon review of Decedent's estate tax return, Law Firm 2 determined that a deduction under § 2057 should have been claimed by the estate. The Service did not discover the estate's failure to file a timely § 2057 election before this request for relief was filed.

Decedent's estate requests an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under § 2057(b)(1)(B) to deduct the adjusted value of Decedent's qualified family-owned business interests.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2057(a)(1) provides that for purposes of the tax imposed by § 2001, in the case of an estate of a decedent to which this section applies, the value of the taxable estate shall be determined by deducting from the value of the gross estate the adjusted value of the qualified family-owned business interests of the decedent. Section 2057(a)(2) provides that the deduction allowed by § 2057 shall not exceed \$675,000.

Section 2057(b)(1) provides, generally, that § 2057 shall apply to an estate if (A) the decedent was (at the date of the decedent's death) a citizen or resident of the United States, (B) the executor elects the application of this section and files the agreement referred to in § 2057(h), (C) the sum of the adjusted value of the qualified family-owned business interests described in § 2057(b)(2), plus the amount of the gifts of such interests determined under § 2057(b)(3), exceeds 50 percent of the adjusted gross estate, and (D) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which such interests were owned by the decedent or a member of the decedent's family, and there was material participation (within the meaning of § 2032A(e)(6)) by the decedent or a member of the decedent's family in the operation of the business to which such interests relate.

Section 2057(b)(2) provides that the qualified family-owned business interests described in this paragraph are the interests which are included in determining the value of the gross estate, and are acquired by any qualified heir from, or passed to any qualified heir from, the decedent (within the meaning of § 2032A(e)(9)).

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Section 2057(e)(1) provides, generally, that for purposes of § 2057, the term “qualified family-owned business interest” means an interest as a proprietor in a trade or business carried on as a proprietorship, or an interest in an entity carrying on a trade or business, if: (1) at least 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent’s family; (2) at least 70 percent of such entity is so owned by members of 2 families and at least 30 percent of such entity is so owned by the decedent and members of the decedent’s family; or (3) at least 90 percent of such entity is so owned by members of 3 families and at least 30 percent of such entity is so owned by the decedent and members of the decedent’s family.

Section 2057(i)(3)(H) provides that, for purposes of making the election and filing the agreement under § 2057(b)(1)(B), rules similar to the rules under § 2032A(d)(1) and (3) (regarding the election of special use valuation of farm and other qualified real property) shall apply.

Section 2032A(d)(1) provides that the election under § 2032A shall be made on the return of tax imposed by § 2001 in a manner consistent with the regulations prescribed by the Secretary. The election, once made, is irrevocable. Section 2032A(d)(3) provides that the Secretary may prescribe procedures under which the executor will have a reasonable time (not exceeding 90 days) to provide necessary information or signatures after receiving notification of a failure to provide the required information or signatures.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, 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.

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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. Therefore, an extension of time is granted until 60 days from the date of this letter for making an election under § 2057. However, the burden is on the estate to establish to the Service's satisfaction that all of the requirements of § 2057 are met.

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 request for rulings, 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. Specifically, we express or imply no opinion on whether the estate qualifies for the deduction under § 2057.

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. This election should be made on a supplemental Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return and 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.

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

Sincerely,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter