

Internal Revenue Service

Department of the Treasury

Number: **200236041**
Release Date: 9/6/2002
Index Number: 2032.00-00; 9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B04-PLR-110103-02
Date:

JUNE 11, 2002

In Re:

LEGEND:

Decedent =
Date 1 =
Date 2 =
Date 3 =
Date 4 =

Dear :

This letter is in response to your letter dated February 5, 2002, requesting a ruling granting Decedent's estate an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make the alternate valuation election pursuant to section 2032(a) of the Internal Revenue Code.

FACTS:

Decedent died on Date 1. On Date 2, the co-executors of Decedent's estate timely filed Form 4768, an application for extension of time to file the United States Estate (and Generation-skipping Transfer) Tax Return (Form 706). On Date 3, the extended due date to file Form 706, the co-executors of Decedent's estate filed Form 706. The co-executors engaged qualified and experienced estate tax counsel and an experienced certified public accountant to assist them in administering Decedent's assets and preparing the required returns. The certified public accountant failed to make a determination as to the value of Decedent's assets as of the alternate valuations date. As a result, the co-executors were not advised to make the alternate valuation election.

When the co-executors realized that the alternate valuation election under section 2032(a) should have been made, they prepared and submitted a supplemental estate tax return on Date 4 electing the alternate valuation date. As reflected on the supplemental return, the alternate valuation election results in a decrease in the value of the gross estate and the amount of federal estate tax due. Date 4 is not more than one year after the time prescribed by law (including extensions) for filing the estate tax return.

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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 six 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 six months after the decedent's death such property shall be valued as of the date six 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 for any difference in its value as of the later date not due to mere lapse of time.

Section 2032(c) provides that no election under section 2032 may be made with respect to an estate unless such election will decrease: (1) the value of the gross estate; and (2) the sum of the estate tax imposed and the generation-skipping transfer tax imposed 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 an 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.

Under section 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. Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2.

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Requests for relief under section 301.9100-3 will be granted when the taxpayer provides the evidence to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

In this case, the standards of sections 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time is granted until Date 4 for making an election under section 2032.

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(s) requesting 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 the taxpayer. 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,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure (1)
Copy for section 6110 purposes