

Internal Revenue Service

Department of the Treasury

Number: **200318053**

Washington, DC 20224

Release Date: 5/2/2003

Index Number: 2032.01-00; 9100.00-00

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:9-PLR-162831-02

Date:

January 23, 2003

In Re:

LEGEND:

| | |
|-------------------|---|
| Decedent | = |
| Decedent's Estate | = |
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
| Date 4 | = |

Dear Sir:

This is in response to your letter of November 1, 2002, and subsequent correspondence, in which you requested, on behalf of Decedent's Estate, an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an alternate valuation election under § 2032 of the Internal Revenue Code.

The facts presented and the representations made are summarized as follows. Decedent died on Date 1. The personal representative for Decedent's Estate retained a tax professional to prepare Decedent's United States Estate (and Generation-Skipping Transfer) Tax Return, Form 706. The Form 706 was timely filed on Date 2.

On Date 3, the personal representative retained an accounting firm to prepare the Decedent's final income tax return. The accounting firm discovered the failure to make the alternate valuation election under § 2032 on Decedent's Form 706. On Date 4, within one year of the date Decedent's Form 706 was due, Decedent's Estate filed an amended Form 706 electing to value Decedent's gross estate on the alternate valuation date.

You have requested an extension of time to the date the amended Form 706 was filed to make the alternate valuation election under § 2032 for Decedent's Estate.

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

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 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 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

Requests for relief under § 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(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 requirements of § 301.9100-3 have been satisfied. Therefore, an extension of time is granted until Date 4, the date on which the amended Form 706 was filed, to make the alternate valuation election under § 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) provides that it may not be used or cited as precedent.

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.

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

Sincerely,

Heather C. Maloy

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

Enclosure: Copy for § 6110 purposes

cc: