

**Internal Revenue Service**

Department of the Treasury

Number: **200328012**  
Release Date: 7/11/2003  
Index No.: 2057.00-00; 9100.22-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04 - PLR - 166454-02

Date:

March 25, 2003

Re:

Legend

Decedent	=
Trust	=
Trustee	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Law Firm	=

Dear \_\_\_\_\_ :

This is in response to your letter, dated December 3, 2002, 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 gross estate consisted primarily of Decedent's farming operation. Trustee, as trustee of Trust, engaged Law Firm to provide legal and tax advice in regard to the post-death administration of Decedent's estate. Law Firm prepared and timely filed Decedent's federal estate tax return, Form 706, on Date 2. In preparation of Form 706, Law Firm determined that the estate did not satisfy the threshold requirements in § 2057(b)(1)(C) and did not advise Trustee of the election. Accordingly, an election under § 2057(b)(1)(B) was not made.

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On Date 3, Law Firm prepared and filed supplemental information on Form 706 (First Supplemental Form 706) reflecting corrected values of some of the estate's assets. In preparation of the First Supplemental Form 706, Law Firm discussed the election under § 2057(b)(1)(B) with Trustee, but once again, Law Firm determined that the estate did not satisfy the threshold requirements in § 2057(b)(1)(C). Trustee relied on Law Firm's expertise and signed the First Supplemental Form 706. Accordingly, an election under § 2057(b)(1)(B) was not made on the First Supplemental Form 706.

On Date 4, Law Firm filed a second supplemental Form 706 (Second Supplemental Form 706). In preparation of the Second Supplemental Form 706, Law Firm and Attorney determined that the estate qualified for the election under § 2057(b)(1)(B). An election under § 2057(b)(1)(B) was made on the Second Supplemental Form 706.

Decedent's estate tax return is currently under examination by the Internal Revenue Service (Service).

Decedent's estate requests an extension of time under §§ 301.9100-1 and 301.9100-3 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.

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

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)(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 to make the election under § 2057 is granted until Date 4, the date on which the Second Supplemental Form 706 was filed. However, the burden is on the estate to establish to the Service's satisfaction that all of the requirements of § 2057 are met.

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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.

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

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.

Sincerely,

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

Enclosures

Copy for § 6110 purposes  
Copy of this letter

cc:

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname							
Date							