

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:4
PLR-127859-04

Date:
July 28, 2004

Re:

Date of Death:

Legend:

- Decedent =
- State =
- Attorney =
- Executor =
- CPA 1 =
- CPA 2 =
- Firm =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Year 1 =

Dear ,

This is in response to your authorized representative's submission dated May 6, 2004, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under section 2057(b)(1)(B) of the Internal Revenue Code.

The facts, representations, and affidavits submitted are summarized as follows: Decedent died on Date 3, leaving a will dated Date 1, amended by a codicil dated, Date 2. Date 3 is prior to December 31, 2003. In her will, Decedent named her brother as executor (Executor) of her estate. Attorney is Executor's counsel.

In Year 1, Executor and Attorney determined that it was in the best interests of Decedent's estate to have the Decedent's estate tax return (Form 706) prepared by a third-party accountant. Executor and Attorney contacted CPA 1, a member of Firm, and engaged CPA 1 and Firm to prepare Decedent's estate tax return. It is represented that at that time, CPA 1 represented that Firm's accountants were very experienced in preparing estate tax returns.

CPA 1 requested the assistance of CPA 2, a member of Firm, to prepare the estate tax return. It is represented that CPA 1, CPA 2, and Attorney were aware of the availability of the section 2057(b)(1)(B) election to deduct the adjusted value of certain family-owned business interests under section 2057(a), but inadvertently failed to advise Executor as to the availability of the section 2057(b)(1)(B) election. CPA 1 and CPA 2 prepared Decedent's federal and state estate tax returns, and Attorney reviewed drafts of the returns prior to their filing.

Decedent's federal estate tax return was timely filed, including extensions, on Date 4. The federal estate tax return was prepared jointly by CPA 1 and CPA 2 and signed by CPA 1 only, on behalf of Firm. Shortly after the return was filed, the parties became aware that the section 2057(b)(1)(B) election had not been made on the return.

On Date 5, Executor submitted a request for an extension of time under section 301.9100-3 of the Procedure and Administration Regulations to make the election under section 2057(b)(1)(B) in order to deduct the adjusted value of the qualified family-owned business interests under section 2057(a).

Section 2001 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 section 2001(a), 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 section 2057 shall not exceed \$675,000.

Section 2057(b)(1) provides, generally, that section 2057 will apply to an estate if (A) the decedent was (at the time of the decedent's death) a citizen or resident of the United States, (B) the executor elects the application of section 2057 and files the agreement referred to in section 2057(h), (C) the sum of the adjusted value of the qualified family-owned business interests described in section 2057(b)(2), plus the amount of the gifts of such interests determined under section 2057(b)(3), exceeds 50 percent of the adjusted gross estate, and (D) during the 8-year period ending on the date of 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 section 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 section 2032A(e)(9)).

Section 2057(e)(1) provides, generally, that for purposes of section 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 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 rules similar to section 2032A(d)(1) and (3) (relating to election; agreement) shall apply.

Section 2057(j) provides that section 2057 shall not apply to the estates of decedents dying after December 31, 2003.

Section 2032A(d)(1) provides that the election under section 2032A shall be made on the return of tax imposed by section 2001. The election shall be made in such manner as the Secretary shall by regulations prescribe. Section 20.2032A-8(a)(1) of the Estate Tax Regulations provides that the election under section 2032A is made as prescribed in § 20.2032A-8(a)(3) (*Time and manner of making election*) and on Form 706, United States Estate and Generation-Skipping Transfer Tax Return. Once made, the election is irrevocable.

Section 20.2032A-8(a)(3) provides that an election under the section is made by attaching to a timely filed estate tax return the agreement described in § 20.2032A-8(c)(1) and a notice of election that contains the items of information therein listed.

Under § 301.9100-1(c), 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.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Based on the facts submitted and the representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Therefore, an extension of time is granted until 60 days from the date of this letter to make the section 2057(b)(1)(B) election with respect to certain family-owned business interests includible in Decedent's estate. The election is to be made on a supplemental Form 706. The supplemental Form 706 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

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 or any aspect of any transaction or item discussed or referenced in this letter. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

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