

Internal Revenue Service

Number: **200602007**

Release Date: 1/13/2006

Index Number: 2032A.00-00, 9100.00-00,
2057.00-00 R 1989

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B09
PLR-123233-05

Date:
October 07, 2005

Legend:

Decedent =
Date 1 =
Ranch =
State =
Accounting Firm =

Dear :

This is in response to your authorized representative's letter, dated April 11, 2005, 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 elections under § 2032A and § 2057(b)(1)(B) of the Internal Revenue Code.

The facts submitted and representations made are summarized as follows: Decedent died on Date 1. Decedent's estate consisted, in part, of Ranch, a cattle and hay operation located in State. The personal representative of Decedent's estate engaged the services of Accounting Firm to prepare and file Decedent's Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return ("estate tax return"). Accounting Firm timely filed Decedent's estate tax return, however, no election or protective election was made on the return to specially value Ranch under § 2032A or to deduct Decedent's qualified family-owned business interests under § 2057(a).

Decedent's estate requests an extension of time under §§ 301.9100-1 and 301.9100-3 to make elections under § 2032A(a)(1)(B) and § 2057(b)(1)(B) to specially value Ranch and 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 2032A(a)(1) provides, generally, that if the decedent was (at the time of his death) a citizen or resident of the United States, and the executor elects the application of this section and files the agreement referred to in § 2032A(d)(2), then, for purposes of chapter 11, the value of qualified real property shall be its value for the use under which it qualifies, under § 2032A(b), as qualified real property.

Section 2032A(d)(1) provides that the election under § 2032A shall be made on the return of the tax imposed by § 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable. Section 2032A(d)(3) provides that the Secretary may prescribe procedures under which the executor will have a reasonable period of 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 2057(a)(1) provides that for purposes of the tax imposed by § 2001, in the case of an estate of a decedent to which § 2057 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(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(h) provides that the agreement referred to in this subsection is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of § 2057(f) (the recapture provisions) with respect to such property.

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.

Under § 301.9100-1(c), 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.

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 elections under § 2032A and § 2057. However, the burden is on the estate to establish to the Service's satisfaction that all of the requirements of § 2032A and § 2057 are met. The elections should be made on a supplemental Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return, and filed with the Internal Revenue Service Center, Cincinnati, OH 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 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 special use valuation under § 2032A or the deduction under § 2057.

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.

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,

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

Enclosures

Copy for § 6110 purposes
Copy of letter