

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:9-PLR-106948-02
Date:
April 4, 2002

In Re:

LEGEND:

Decedent =
Date 1 =
Date 2 =
Date 3 =

Dear

This is in response to your letter of January 10, 2002, and subsequent correspondence, in which you requested an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make an alternate valuation election under section 2032 of the Internal Revenue Code.

The facts presented and the representations made are summarized as follows. Decedent died on Date 1. The Decedent's estate contained bonds and marketable securities, among other assets. The tax professional preparing the Form 706 for Decedent's estate asked Decedent's broker to provide the tax professional with the values of these bonds and securities at both the date of Decedent's death and the alternative valuation date under section 2032. Decedent's broker provided information that indicated that the date of death value of Decedent's bonds and securities was less than the value of these assets on the alternative valuation date. Based upon this information, Decedent's estate valued the bonds and securities on the Form 706 at their date of death value. The Form 706 was timely filed on Date 2.

Shortly after the Form 706 was filed, it was discovered that Decedent's broker had provided the tax professional with incorrect information regarding the value of Decedent's bonds and securities on Decedent's date of death and the alternative valuation date. The value of these items was actually less on the alternative valuation date than on the date of Decedent's death. On Date 3, within one year of the date Decedent's Form 706 was due, the tax professional filed an amended Form 706 electing to value Decedent's bonds and securities on the alternative valuation date.

You have requested a ruling that Decedent's estate be granted an extension of time to make the election under section 2032 to the date the amended Form 706 was filed.

LAW and ANALYSIS:

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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 section 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 section 2032 shall be made by the executor on the return of tax imposed by section 2001. Such 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 Code except Subtitles E, G, H, and I, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government.

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

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,

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and granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

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(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not (i) competent to render advice on the regulatory election, or (ii) aware of all relevant facts.

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, the standards of sections 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time to make the election under section 2032 is granted until Date 3, the date on which the amended Form 706 was filed.

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,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure: Copy for section 6110 purposes