

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B09-PLR-111609-01
Date:
July 26, 2001

LEGEND:

- Decedent =
- Date 1 =
- Daughter =
- Attorney 1 =
- Ranch =
- Date 2 =
- State Court =
- Date 3 =
- Date 4 =
- Attorney 2 =
- Date 5 =
- Date 6 =
- Date 7 =

Dear Madam:

This is in response to your representative's letter dated January 25, 2001, and subsequent correspondence, submitted on behalf of Decedent's estate, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an election under § 2032A of the Internal Revenue Code.

The facts, representations, and affidavits submitted are summarized as follows: Decedent died on Date 1. Daughter, as executor of Decedent's estate, engaged Attorney 1 to prepare Decedent's federal estate tax return. Attorney 1, based on

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interviews with Daughter and documents presented by Daughter, determined that Daughter was the owner of Ranch at the time of Decedent's death. Accordingly, Attorney 1 did not include Ranch as an asset of Decedent's gross estate.

On Date 2, Daughter instituted a quiet title proceeding in State Court. On Date 3, State Court issued its Findings of Fact, Conclusions of Law, and Order, together with judgment, concluding that Daughter held Ranch in constructive trust for Decedent's estate. Attorney 1 represents that following the State Court litigation, he did not believe that the court's determination required an amendment to the federal estate tax return to include Ranch as an asset of Decedent's estate. Therefore, Attorney 1 did not advise Daughter to amend Decedent's estate tax return.

Following the State Court litigation, the Internal Revenue Service commenced an audit of Decedent's estate tax return and determined that Ranch should have been included in Decedent's estate. In Date 4, Attorney 2 was engaged as counsel to represent Daughter, as executor of Decedent's estate in connection with the audit of Decedent's estate tax return. On Date 5, Decedent's estate filed a petition with the United States Tax Court for redetermination of federal estate tax. On Date 6, Respondent filed a motion for partial summary judgment asserting that Daughter was collaterally estopped from litigating the issue of ownership of Ranch. By order dated Date 7, the Tax Court granted Respondent's motion for partial summary judgment. The court then granted a motion for continuance joined by respective counsel and Daughter, as executor of Decedent's estate, submitted a request for an extension of time to make the special use valuation election under § 2032A.

You have requested an extension of time under § 301.9100-1 to make an election under § 2032A with respect to Ranch.

Section 2032A(a) 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 subsection (d)(2), then, for purposes of this chapter, the value of qualified real property shall be its value for the use under which it qualifies, under subsection (b), as qualified real property.

Section 2032A(d)(1) provides that the election under this section shall be made on the return of 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.

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 Internal Revenue 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.

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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, in general, 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 subject to § 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.

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(a)(iii) provides that a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

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. Consequently, an extension of time is granted until 60 days from the date of this letter for making an election under § 2032A to specially value qualified real property. However, the burden is on the estate to establish to the Service's satisfaction that all of the requirements of § 2032A are met.

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.

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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.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

Enclosures

Copy for section 6110 purposes
Copy of this letter