Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4-PLR-105825-02
Date:
            MAY 16, 2002

Re:

Legend:

Decedent   =
Date 1   =
Date 2   =
Date 3   =

Dear   :

        This is in response to your letter of January 25, 2002, 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 § 2032 of the Internal Revenue Code.

        According to the information submitted, Decedent died on Date 1. The Decedent's estate contained real estate, bonds and marketable securities, among other assets. Due to a misunderstanding between the executor and the CPA, Form 706 did not elect to value the assets on the alternative valuation date under § 2032. The assets were valued 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 the alternative valuation date should have been elected. On Date 3, within one year of the date Decedent's Form 706 was due, the CPA filed a supplemental Form 706 electing to value Decedent's assets 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 § 2032 to the date the supplemental Form 706 was filed.

        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 for 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 § 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 § 2032 shall be made by the executor on the return of tax imposed by § 2001. Such election, once made, shall be irrevocable. Under § 2032(d)(2), no election may be made under § 2032 if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return.

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 Code except subtitles E, G, H, and I.

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 § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish that the taxpayer acted reasonably and in good faith, 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.

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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 §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time to make the election under § 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 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 your authorized representative.

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

Enclosure
  Copy for 6110 purposes

cc: