

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

In Re:

Refer Reply To:

CC:PSI:4 – PLR-170422-03

Date: MAY 10, 2004

Re:

Legend:

| | |
|----------|---|
| Decedent | = |
| State | = |
| Attorney | = |
| Son | = |
| CPA | = |
| Farm 1 | = |
| Farm 2 | = |
| Year 1 | = |
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
| Date 4 | = |

Dear ,

This is in response to your authorized representative's submission dated October 27, 2003, and subsequent correspondence, submitted on behalf of Decedent's estate, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a special use valuation election under section 2032A of the Internal Revenue Code.

The facts, representations, and affidavits submitted are summarized as follows: In Year 1, Decedent transferred Farm 1 and Farm 2 situated in State to Decedent's son, Son. Under the deed of transfer, Decedent reserved a life estate in the transferred

property. The transfers were reported on a federal gift tax return. Decedent died on Date 1.

Son, as Personal Representative of Decedent's estate, retained Attorney to prepare Decedent's federal estate tax return (Form 706). Attorney asked for the assistance of CPA with the preparation of the return. Son, Attorney and CPA were not aware that Farm 1 and Farm 2 were subject to inclusion in Decedent's gross estate under section 2036(a) of the Internal Revenue Code. Rather, CPA advised Attorney that he should report the Year 1 transfer on line 4 of page 1 of the federal estate tax return as an adjusted taxable gift. Thus, Attorney failed to properly report the transferred property as includible in Decedent's gross estate on the estate tax return. The return was filed on Date 2. Since Farm 1 and Farm 2 were not reported as includible in the gross estate, no election was made on the return for the application of the special use valuation provisions described in section 2032A with respect to Farm 1 and Farm 2.

The estate now agrees that Farm1 and Farm 2 are includible in the gross estate. On Date 4, CPA on behalf of Decedent's estate, submitted a letter ruling request seeking an extension of time under § 301.9100-3 to make the special use valuation election provided for in § 2032A, with respect to Farm 1 and Farm 2.

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 2031(a) provides that the value of the gross estate of the decedent shall be determined by including to the extent provided, the value at the time of the decedent's death of all property, real or personal, tangible or intangible, wherever situated.

Section 2032A provides that if the decedent was at the time of death a citizen or resident of the United States, and the executor elects the application of section 2032A and files the agreement under section 2032A(d)(2), then, for estate tax purposes, the value of qualified real property is to be determined based on the use under which it qualifies, under section 2032A(b), rather than its highest and best use.

Section 2032A(b)(1) provides that the term "qualified real property" means real property located in the United States, which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death was being used for a qualified use by the decedent or a member of the decedent's family, but only if certain percentage and qualified use requirements are met.

Section 2032A(b)(2) provides that the term "qualified use" means the devotion of the property to use as a farm for farming purposes or use in a trade or business other than the trade or business of farming.

Section 2032A(d)(1) provides that the election under section 2032A is to be made on the return of tax imposed by section 2001. The election is to be made in such manner as the Secretary prescribes in regulations. The election, once made, is irrevocable.

Section 2032A(d)(2) requires that an agreement be submitted with the return. The agreement is a written statement 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 section 2032A(c) with respect to such property.

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate consideration in money or money's worth), by trust or otherwise, under which the decedent has retained for life or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death--(1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

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 301.9100-1 through 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).

Section 301.9100-2 provide automatic extensions of time for making certain elections.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 must be made under the rules of section 301.9100-3.

Requests for relief under section 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) provides the standards the Commissioner will use to determine when the interests of the Government are prejudiced.

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 special use valuation election under section 2032A(d). The election should 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)

Enclosures

Copy for section 6110 purposes
Copies of this letter