

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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RE:

Refer Reply To:
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Date:
July 22, 1999

Legend:

Decedent	=
Trust	=
<u>x</u>	=
Corporation	=
<u>a</u>	=
<u>y</u>	=

This letter is in response to a letter dated January 22, 1999, requesting a ruling under § 2032 of the Internal Revenue Code.

Decedent established Trust, a revocable trust, on July 17, 1990. Decedent died on June 14, 1998, and trust became irrevocable.

On the date of the Decedent's death, Trust owned x shares of stock in Corporation, a publicly traded company. The mean between the highest and lowest quoted selling price for the stock in Corporation on the exchange in which it was traded was a.

In the months following Decedent's death, the successor trustees of the Trust negotiated a repurchase agreement with the Corporation for y of the x shares of stock in Corporation. Subsequently, the trustees sold or distributed the remaining shares of stock. All x shares of the stock were sold or distributed within six months after Decedent's death. An appraiser has determined that the value of the x shares of Corporation as of the date of Decedent's death should reflect a discount for blockage.

The personal representative of Decedent's estate proposes to make a "protective" election under § 2032 to value the gross estate as of the alternate valuation date or dates. The election will be effective only if the date of death value of the Decedent's gross estate, as determined, is higher and the sum of the tax imposed by chapter 11 and the tax imposed by chapter 13 with respect to property includible in Decedent's gross estate (reduced by taxes allowable against such taxes) is higher than the value of the gross estate determined as of the alternate valuation date or dates.

LAW AND ANALYSIS:

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 the property is 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 the property is valued as of the date 6 months after the decedent's death.
- (3) Any interest or estate that is affected by mere lapse of time is 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) states that:

[n]o election is allowed under this section with respect to an estate unless the 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 "[t]he election under this section shall be made on the return of the tax imposed by section 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 2032(d)(2) provides that no election may be made if the return is filed more than 1 year after the time prescribed by law (including extensions) for filing the return.

In Estate of Mapes v. Commissioner, 99 T.C. 511 (1992), the executors of the decedent's estate made a protective alternate valuation election under § 2032 that was to be effective in the event, and only in the event, that the special use valuation election under § 2032A was denied. The court held that the protective § 2032 election was effective. Accordingly, the gross estate could be valued as of the alternate valuation date.

In this case, the x shares of stock in Corporation held in trust are includible in Decedent's gross estate. On the date of Decedent's death, the mean between the highest and lowest quoted selling price for the stock in Corporation on the exchange in which it was traded was a. An appraiser has determined that the fair market value of the x shares of Corporation as of the date of Decedent's death, should reflect a discount for blockage.

Based on the facts submitted and the representations made, we conclude that the personal representative of Decedent's estate may make the proposed "protective" election under § 2032. The election will become effective only if the date of death value of the Decedent's gross estate, as finally determined, is higher and the sum of the tax imposed by chapter 11 and the tax imposed by chapter 13 with respect to property includible in Decedent's gross estate (reduced by taxes allowable against such taxes) is higher than the value of the gross estate determined under § 2032 using the appropriate alternate valuation date or dates.

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

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. Specifically, we are not ruling on the date of death value of the stock in Corporation, the value of the stock as of the alternate valuation date or dates, or what the appropriate alternate valuation dates are.

Sincerely yours,

Assistant Chief Counsel
(Passthroughs and Special
Industries)

By _____
George Masnik
Chief, Branch 4

Enclosure (1)
Copy for § 6110 purposes