

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-143643-03
Date:
September 15, 2003

Re:

LEGEND:

- Daughter =
- Decedent =
- Corporation =
- Business =
- Date 1 =
- Revocable Trust =
- Partnership =
- Date 2 =
- Date 3 =
- Year 1 =
- Year 2 =
- Date 4 =
- Date 5 =
- Accountant =
- Attorney =

Dear :

This is in response to a letter dated June 24, 2003, from Daughter, as executrix of the estate of Decedent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 2057(b)(1)(B) of the Internal Revenue Code.

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The facts and representations submitted are summarized as follows: Prior to Decedent's death, Decedent was the sole shareholder of Corporation, which was in the business of Business. On Date 1, Decedent, together with the Revocable Trust, established Partnership, a limited partnership. Decedent contributed all of the stock of Corporation to Partnership. On Date 2, Decedent made several gifts of limited partnership interests of Partnership. On Date 3, Decedent made additional gifts of limited partnership interests of Partnership. Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns were filed for Year 1 and Year 2 reporting the transfers of interests in Partnership. Decedent died on Date 4. Sometime after Date 4, and before Date 5, Decedent's Year 1 and Year 2 gift tax returns were selected for examination by the Internal Revenue Service and are currently still under examination.

Daughter, as executrix of Decedent's estate, hired Accountant to prepare a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for Decedent's estate. Daughter and Accountant consulted with Attorney regarding the preparation of Decedent's estate tax return. Neither Accountant nor Attorney advised Daughter of the ability to file an election or protective election under § 2057. Decedent's estate tax return was filed on Date 5. No deduction under § 2057(a) was claimed on the return.

Daughter, as executrix of Decedent's estate, requests an extension of time under §§ 301.9100-1 and 301.9100-3 to make an election under § 2057(b)(1)(B) to deduct the adjusted value of Decedent's qualified family-owned business interests.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2057(a)(1) provides that for purposes of the tax imposed by § 2001, in the case of an estate of a decedent to which this section applies, the value of the taxable estate shall be determined by deducting from the value of the gross estate the adjusted value of the qualified family-owned business interests of the decedent. Section 2057(a)(2) provides that the deduction allowed by § 2057 shall not exceed \$675,000.

Section 2057(b)(1) provides, generally, that § 2057 shall apply to an estate if (A) the decedent was (at the date of the decedent's death) a citizen or resident of the United States, (B) the executor elects the application of this section and files the agreement referred to in § 2057(h), (C) the sum of the adjusted value of the qualified family-owned business interests described in § 2057(b)(2), plus the amount of the gifts of such interests determined under § 2057(b)(3), exceeds 50 percent of the adjusted gross estate, and (D) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which such interests were owned by the decedent or a member of the decedent's family, and there was material participation (within the meaning of § 2032A(e)(6)) by the decedent or a

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member of the decedent's family in the operation of the business to which such interests relate.

Section 2057(e)(1) provides, generally, that for purposes of § 2057, the term "qualified family-owned business interest" means an interest as a proprietor in a trade or business carried on as a proprietorship, or an interest in an entity carrying on a trade or business, if: (1) at least 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent's family; (2) at least 70 percent of such entity is so owned by members of 2 families and at least 30 percent of such entity is so owned by the decedent and members of the decedent's family; or (3) at least 90 percent of such entity is so owned by members of 3 families and at least 30 percent of such entity is so owned by the decedent and members of the decedent's family.

Section 2057(h) provides that the agreement referred to in this subsection is a written agreement 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 § 2057(f) (the recapture provisions) with respect to such property.

Section 2057(i)(3)(H) provides that, for purposes of making the election and filing the agreement under § 2057(b)(1)(B), rules similar to the rules under § 2032A(d)(1) and (3) (regarding the election of special use valuation of farm and other qualified real property) shall apply.

Section 2032A(d)(1) provides that the election under § 2032A shall be made on the return of tax imposed by § 2001 in a manner consistent with the regulations prescribed by the Secretary. The election, once made, is irrevocable.

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

Section 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). Requests for relief under § 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.

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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. Therefore, an extension of time is granted until 60 days from the date of this letter for making an election under § 2057. The election should be made on a supplemental Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and filed with the Internal Revenue Service Center, Cincinnati, OH 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 during the examination.

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. Specifically, we express or imply no opinion on whether the estate qualifies for the deduction under § 2057. The burden of establishing to the satisfaction of the Service that all of the requirements of § 2057 have been met remains with Decedent's estate.

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

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to Daughter, as executrix of Decedent's estate.

Sincerely,

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copies of this letter (2)