

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200504004**

Release Date: 1/28/05

Index Number: 9100.00-00, 2057.00-00 R
1981

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-120719-04
Date: OCTOBER 05, 2004

Re:

Legend:

- Decedent -
- Spouse -
- Child -
- State X -
- Date 1 -
- Date 2 -
- Attorney -

Dear :

This is in response to your authorized representative's letter, dated April 5, 2004, and subsequent correspondence, submitted on behalf of Decedent's estate, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under § 2057(b)(1)(B) of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: Decedent, a resident of State X, died testate on Date 1, survived by Spouse and Child. Included in Decedent's gross estate are community property interests in three parcels of commercial real estate located in State X. Child, as executrix of Decedent's estate, engaged Attorney to prepare the federal estate tax return and handle probate and related estate administration matters. Attorney, who specialized in estate planning and filing federal estate tax returns, was aware of the provisions of § 2057 relating to a deduction for an interest in a family owned business. Attorney prepared and timely filed Decedent's federal estate tax return, Form 706, United States Estate (and Generation-

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Skipping Transfer) Tax Return on Date 2. In preparation of Form 706, Attorney failed to include Schedule T, Qualified Family-Owned Business Interest Deduction. Although Attorney discussed the provisions of § 2057 with Child, he stated, without further explanation, that Decedent's estate was not eligible for the deduction. Further, Attorney did not advise Child to file a protective election if, in fact, it was subsequently determined that Decedent's estate qualified for treatment under the provisions of § 2057. Accordingly, an election under § 2057(b)(1)(B) was not made.

During subsequent audit proceedings, Attorney did not advise Child concerning § 2057 or raise it as an issue with the auditor. During the subsequent Tax Court proceedings of Decedent's estate by the Internal Revenue Service (IRS), Decedent's estate hired another estate tax specialist who determined that the estate qualified for the election under § 2057 and that an election should have been made when the return was filed. The counsel for Decedent's estate informed the IRS that Decedent's estate would request that it be allowed to make a late election under § 2057.

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

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Section 2057(b)(2) provides that the qualified family-owned business interests described in this paragraph are the interests which are included in determining the value of the gross estate, and are acquired by any qualified heir from, or passed to any qualified heir from, the decedent (within the meaning of § 2032A(e)(9)).

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(i)(3)(H) provides that for purposes of § 2057, rules similar to the rules under §§ 2032A(d)(1) and (3) (relating to election; agreement) shall apply.

Section 2057(j) provides that the provisions of § 2057 shall not apply to estates of decedents dying after December 31, 2003.

Section 2032A(d)(1) provides that the election under § 2032A shall be made on the return of tax imposed by § 2001. The election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable. Section 2032A(d)(3) provides that the Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under § 2032A(d)(1) (and submits the agreement referred to in § 2032A(d)(2)) within the time prescribed therefor, the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failure to provide such information.

Section 301.9100-1(c) provides that 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 301.9100-3 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

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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.

In this case, based solely on the information submitted and the representations made, we conclude that the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time to make an election under § 2057(b)(1)(B) is granted until 60 days after the date of this letter.

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 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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

Sincerely,

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

Enclosures

Copy for § 6110 purposes
Copy of this letter

cc: