

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04 - PLR - 106346-03

Date:

March 07, 2003

Re:

Legend

Decedent	=
Independent Executor	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Accountant	=
<u>X</u>	=
<u>Y</u>	=
<u>Z</u>	=
Court	=

Dear :

This letter is in response to your letter dated January 22, 2003, requesting an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make an alternate valuation election under section 2032(a) of the Internal Revenue Code.

The facts and representations submitted are summarized as follows: Decedent died on Date 1. To assist in the administration of Decedent's estate and prepare the necessary tax returns, the executor of Decedent's estate, Independent Executor, hired Accountant. Accountant prepared and filed Form 4768 (Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes) requesting an extension of time to file Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return). Enclosed with Form 4768 was a payment

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of estimated tax of \$x. Form 706 was filed on Date 2. Accountant determined that the actual federal estate taxes payable was \$y and sought a refund of \$z. Accountant did not make a determination as to the value of Decedent's assets as of the alternate valuation date.

Independent Executor engaged Attorney to represent the Independent Executor in an action to construe Decedent's will in Court. On Date 3, Independent Executor forwarded a copy of the estate's Form 706 to Attorney. Upon review of the estate's Form 706, Attorney discovered a number of errors in the return including Accountant's failure to make an election under section 2032 to use the alternate valuation date.

On Date 4, the Internal Revenue Service issued an Estate Tax Closing Letter to Decedent's estate, accepting the return as filed. On Date 5, Independent Executor filed a Supplemental Form 706 for the Estate on which the Independent Executor made the election to use the alternate valuation date. Date 5 is not more than one year after the time prescribed by law (including extensions) for filing the estate tax return. The value of the gross estate and the tax imposed by chapters 11 and 13 decreased as a result of making the election.

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 six 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 six months after the decedent's death such property shall be valued as of the date six 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 section 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 chapters 11 and 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 section 2032 shall be made by the executor on the return of tax imposed by chapter 11. Such election, once made, shall be irrevocable. Under section 2032(d)(2), no election may be made under section 2032 if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return.

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Under section 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. 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 301.9100-2 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 section 301.9100-2.

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(a).

In this case, the standards of sections 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time to make the election under section 2032(a) is granted until Date 5, the date on which the supplemental estate tax return 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 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.

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,

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter