

Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: **200848004**

Release Date: 11/28/2008

CC:PA:04:AEGoldstein

PLR-112958-08

UILC: 6166.00-00, 6166.01-00

date: August 26, 2008

to: Chief, Estate & Gift Tax Operations
(SR:S:SP:E&G)

from: Peter J. Devlin
Chief, Branch 4
(Procedure & Administration)

subject:

Legend

Decedent:

Date A:

Date B:

Date C:

Date D:

Date E:

Date F:

Issues

Issue 1:

Whether an estate is allowed an extension of time under Treas. Reg. § 301.9100-3 to make an election under I.R.C. § 6166 to pay the Decedent's federal estate tax in installments.

Issue 2:

Whether a taxpayer can make an I.R.C. § 6166 election by attaching a statement to a request for an extension of time to file a federal estate tax return.

Conclusions

Issue 1:

An estate will not be allowed an extension of time to make an I.R.C. § 6166 election under Treas. Reg. § 301.9100-3 because section 6166 is a statutory election and Treas. Reg. § 301.9100-3 only allow for extensions for regulatory elections.

Issue 2:

An I.R.C. § 6166 election can only be made by attaching a notice of election to a timely filed federal estate tax return.

Facts

The above estate requested a Private Letter Ruling on Date A. The taxpayer requested the following rulings: (1) that the estate be allowed an extension of time under Treas. Reg. § 301.9100-3 to make an election under I.R.C. § 6166 to pay Decedent's federal estate tax in installments; or (2) alternatively, that the taxpayer made a section 6166 election by attaching a statement to a request for an extension of time to file the federal estate tax return. When the taxpayer was informed that the Office of Chief Counsel anticipated that the ruling would be adverse, the taxpayer withdrew the letter ruling request.

Decedent died testate on Date B. Decedent's parents were named co-personal representatives in the will and were appointed by the court. The representatives retained _____, a CPA, to prepare the decedent's federal estate tax return (Form 706). When the CPA determined that the tax return would not be ready to be filed by the original due date, Date C (nine months after the date of death), he requested an extension of time to file by Date D (six months after the original due date). Attached to the extension request was a statement that it was anticipated that the estate would be eligible to make a section 6166 election. The federal estate tax return was ultimately filed 10 days after the extended due date on Date E. The Service sent the personal representatives a preliminary determination letter dated Date F denying the section 6166 election, as the election was not made with a timely filed federal estate tax return.

Law and Analysis

Issue 1:

Treas. Reg. § 301.9100-1(a) states that the regulations under sections 301.9100-1, 301.9100-2 and 301.9100-3 provide the standards used to determine whether or not an extension of time to make an election will be granted. Sections 301.9100-1 and 301.9100-2 provide for automatic extensions of time for certain statutory and regulatory elections. Section 301.9100-3 provides extension of time for making regulatory elections that do not meet the requirements of automatic extensions under § 301.9100-2.

Treas. Reg. § 301.9100-1(b) defines a statutory election as “an election whose due date is prescribed by statute.” A regulatory election is defined as “an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.” Treas. Reg. § 301.9100-1(b). Section 6166 states that if the value of an interest in a closely held business exceeds 35 percent of the adjusted gross estate and is included in determining the gross estate of a decedent who was a citizen or resident of the United States, the executor may elect to pay part or all of the tax imposed in 2 or more (but not to exceed 10) equal installments. I.R.C. § 6166(a)(1). Section 6166(d) states that an election made under section 6166(a) shall be made not later than the time prescribed by section 6075(a) for filing an estate tax return, including extensions. Section 6075(a) states that estate tax returns must be filed within 9 months after the date of decedent’s death. As the due date for filing an election under section 6166 is prescribed by statute, the election is a statutory election as defined under section 301.9100-1(b). The due date for a section 6166 election cannot be determined without referring to statute. An automatic extension of 6 months is granted to make statutory elections under Treas. Reg. §301.9100-2(b), excluding extensions.

In this case, the estate filed the estate tax return more than six months after the return was due and therefore, even with the automatic extension in Treas. Reg. § 301.9100-2(b), the election was not timely made. Treas. Reg. § 301.9100-3 allows for additional extensions, but these extensions are only available for regulatory elections.

Issue 2:

Section 6166(d) states that an election should be made within the time prescribed under section 6075 and in the manner as prescribed by the Secretary in the regulations. Treas. Reg. § 20.6166-1(b) states the election provided under section 6166(a) is made by attaching a notice of election to a timely filed return. This regulation is a legislative regulation because the code states the manner in which the election is made will be prescribed by the Secretary in the regulations.

The estate has asserted that it made a section 6166 election by attaching the following statement to the request for an extension of time to file the federal estate tax return: “It is anticipated that the Estate will be eligible to elect to defer the payment of the federal estate tax pursuant to IRC Sec. 6166.” A section 6166 election must be made by attaching a notice of election to a timely filed return, as per section 6166(d) and Treas. Reg. § 20.6166-1(b). Since the alleged election was attached to the extension and not

a timely filed return, it is not a timely section 6166 election. Additionally, the statement that was attached to the request for an extension only conveyed that it was anticipated that the estate would be eligible for a section 6166 election. It was not a definitive election under section 6166.

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Please call 622-3630 if you have any further questions.