

Internal Revenue Service

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2032A.00-00

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Department of the Treasury

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Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:7:PLR-106257-99

Date: September 28, 1999

LEGEND:

Decedent:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Year:

Dear

We received your letter, dated _____, submitted on behalf of Decedent's estate, in which you request an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an election under § 2032A of the Internal Revenue Code. This letter responds to that request.

The represented facts are as follows: Decedent died on Date 1. Decedent's estate included, in relevant part, a number of undivided interests in various parcels of real property that comprised a family farming operation.

The executor of Decedent's estate relied upon a tax professional to prepare the Estate (and Generation-Skipping Transfer) Tax Return on Form 706. It is represented that Decedent's estate considered the possibility of making an election under § 2032A and requested an appraisal of Decedent's undivided real property interests. As of Date 2, the due date of Decedent's estate tax return, the appraisal had not been completed. Therefore, Decedent's estate filed a request for

an extension of time to file the estate tax return no later than Date 4. The Service granted this request.

Decedent's estate received the appraisal of Decedent's undivided real property interests on Date 3, two days before the due date, as extended, of Decedent's estate tax return. The appraisal did not take into consideration any applicable minority interest discounts with respect to some of Decedent's undivided real property interests. Therefore, it is represented that Decedent's estate could not determine conclusively whether special use valuation would be beneficial to the estate.

Decedent's estate tax return was timely filed on Date 4. On the estate tax return as filed, the estate made a protective election under § 2032A(d)(1) and § 20.2032A-8(b) of the Estate Tax Regulations to specially value the farm property, pending a determination by the estate's tax professional that an election under § 2032A was available and appropriate.

On Date 5, the Service Center where Decedent's estate tax return was filed issued a closing letter accepting the federal estate tax return as filed. It is represented that the estate's tax professional continued to investigate for the remainder of Year the availability of an election under § 2032A.

It is represented that on or about Date 6, Decedent's estate instructed its tax professional to file an election for special use valuation under § 2032A based upon the tax professional's determination that such an election would be beneficial to Decedent's estate. The tax professional did not file an election, or additional notice of election for purposes of the protective election under § 20.2032A-8(b), to specially value the farm property. It is represented that the executor of Decedent's estate did not learn until Date 7 that the election under § 2032A had not been made.

The executor of Decedent's estate requests an extension of time under § 301.9100-1 to make an election under § 2032A.

Section 2032A provides that if the executor elects the application of § 2032A and files the agreement described in § 2032A(d)(2), the value of the qualified real property included in the decedent's gross estate that is devoted to farming shall be valued on the basis of its use as a farm, rather than at its highest and best use (i.e., fair market value).

Section 2032A(d)(1) provides that the election to specially value real property shall be made on the return of the tax imposed by § 2001. Such election is to be made in such manner as the Secretary prescribes by regulations. See § 20.2032A-8 of the Estate Tax Regulations.

Section 20.2032A-8(b) provides that a protective election may be made to specially value qualified real property. The availability of special use valuation pursuant to this election is contingent upon values as finally determined (or agreed to following examination of a return)

meeting the requirements of § 2032A. A protective election does not, however, extend the time for payment of any amount of tax. Rules for such extensions are contained in §§ 6161, 6163, 6166, and 6166A. The protective election is to be made by a notice of election filed with a timely estate tax return stating that a protective election under § 2032A is being made pending final determination of values.

Under § 301.9100-1(c), the Commissioner in exercising the Commissioner's discretion may 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 six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a).

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 § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) 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). Section 301.9100-3(b) provides, in relevant part, 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, Decedent's estate has shown good cause and has satisfied the other requirements of §§ 301.9100-1 and 301.9100-3. Accordingly, an extension to make an election under § 2032A is granted until 60 days from the date of this ruling.

We note, however, that the burden is upon the estate to establish to the Service's satisfaction that all of the requirements of § 2032A are met.

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

A copy of this letter should be sent to the Service Center where the Decedent's federal estate tax return was filed. A copy is enclosed for that purpose.

Sincerely yours,

PLR-106257-99

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Paul F. Kugler
Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy for § 6110 purposes