

Internal Revenue Service

Department of the Treasury

Number: **200203031**
Release Date: 1/18/2002
Index Number: 9100.00-00
2032.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:4-PLR-131612-01

Re:

Date:
October 17, 2001

Legend:

Decedent =

Trust 1 =
Trust 2 =

Charity =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =

Dear :

This is in response to your letter dated October 9, 2001, and prior correspondence, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an alternate valuation election under § 2032 of the Internal Revenue Code with respect to Decedent's estate.

The facts are represented to be as follows: On Date 1, Decedent executed a revocable trust, Trust 1. On Date 2, Decedent executed another revocable trust, Trust 2. Decedent's will left the residue to Trust 2. Decedent died on Date 3. Under Trust 1, Charity was to receive 30% of the assets from the residue of Decedent's estate. Under Trust 2, Charity was to receive 20% of the assets from the residue of Decedent's estate.

Due to ambiguities created under Decedent's will, Trust 1 and Trust 2, Decedent's estate became involved in litigation. Decedent's estate was not able to calculate the amount of estate tax due because of the uncertainties of the pending litigation. On Date 4, Decedent's estate 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

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706 (United States Estate (and Generation-Skipping Transfer) Tax Return). Enclosed with Form 4768 was a payment of estimated tax and a letter disclosing the uncertainties of the pending litigation. Form 706 was due on Date 5. The request for extension to file Form 706 was granted until Date 6. Form 706 was timely filed on Date 6, however, the personal representative of Decedent's estate did not unequivocally make an election under § 2032 to value the estate as of the alternative valuation date. At the time the original Form 706 was filed, the tax return preparer, an attorney, did not advise the personal representative to make the alternate valuation date election. On Date 7, the Internal Revenue Service issued an Estate Tax Closing Letter to Decedent's estate, accepting the return as filed.

On or about Date 8, the tax return preparer advised the personal representative that the election under § 2032 should have been made on the original Form 706. A supplemental Form 706 reflecting the value of all assets included in the gross estate as of the applicable alternate valuation date will be filed by the personal representative on Date 9. The value of the gross estate and the amount of federal estate tax due on the supplemental Form 706 are less than the value of the gross estate and the amount of federal estate tax due on the original Form 706. It is represented that no assets of Decedent's estate were distributed, sold, exchanged, or otherwise disposed of, within 6 months after Decedent's death.

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 6 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 6 months after the decedent's death such property shall be valued as of the date 6 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 of 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 § 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 this chapter and the tax imposed by chapter 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 § 2032 shall be made by the executor on the return of tax imposed by § 2001. Such election, once made, shall be irrevocable. Under § 2032(d)(2), no election may be made under § 2032 if such return is filed more than 1 year after the time prescribed by law (including extensions) for filing such return.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, 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, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government.

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 301.9100-1(a).

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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 to establish that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

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.

Section 301.9100-3(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not (i) competent to render advice on the regulatory election, or (ii) aware of all relevant facts.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Based on the facts submitted and the representations made, the standards of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time for making an election of alternate valuation under § 2032 is granted until Date 9.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.

This 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.

Sincerely yours,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures
Copy for section 6110 purposes