

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200422044**

Release Date: 5/28/04

Index Number: 2057.00-00, 9100.00-00

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-149208-03

Date: FEBRUARY 18, 2004

In Re:

LEGEND:

Decedent	=
Estate	=
Date 1	=
Date 2	=
Date 3	=
State	=
Nephew	=
Lawyer	=
Law Firm	=

Dear :

This is in response to your letter of July 8, 2003 and other correspondence, requesting an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to make a qualified family-owned business election under section 2057(b)(1)(B) of the Internal Revenue Code.

The facts submitted and representations made are as follows: Decedent died on Date 1, which is prior to January 1, 2004. Decedent's gross estate included farm land and farm structures that are located in State.

Nephew, in his capacity as executor, hired Lawyer of Law Firm to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. Lawyer incorrectly advised Nephew that section 2057 was inapplicable and further advised him that the section 2057 election should not be made on Decedent's return. The return was filed on Date 2.

PLR-149208-03

On Date 3, Nephew filed a protective claim for refund. In his protective claim for refund, Nephew explained that he was in the process of seeking this private letter ruling to request an extension of time under section 301.9100-1 to make a qualified family-owned business election under section 2057(b)(1)(B). Upon issuance of this ruling, Nephew will file an amended estate tax return making the section 2057 election.

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 section 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 section 2057 shall not exceed \$675,000.

Section 2057(b)(1) provides, generally, that section 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 section 2057(h), (C) the sum of the adjusted value of the qualified family-owned business interests described in section 2057(b)(2), plus the amount of the gifts of such interests determined under section 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 section 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.

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 section 2032A(e)(9)).

Section 2057(e)(1) provides, generally, that for purposes of section 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

PLR-149208-03

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 making the election and filing the agreement under section 2057(b)(1)(B), rules similar to the rules under section 2032A(d)(1) and (3) (regarding the election of special use valuation of farm and other qualified real property) shall apply.

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

Section 2032A(d)(1) provides that the election under section 2032A shall be made on the return of tax imposed by section 2001 in a manner consistent with the regulations prescribed by the Secretary. The election, once made, is irrevocable.

Under section 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.

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 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(b)(1)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election.

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(c)(1)(ii) provides that the interests of the Government are normally prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it

PLR-149208-03

been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

In this case, the taxpayer made a protective claim for refund for the overpayment of taxes. Based on the facts submitted and the representations made, we conclude that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Therefore, an extension of time is granted until 60 days from the date of this letter for making an election under section 2057. This election should be made on a supplemental Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return and filed with the Cincinnati Service Center. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

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 particular, the burden is on the estate to establish to the Service's satisfaction that all of the requirements of section 2057 are met.

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

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(s) requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

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

Enclosures:

Copy of letter for section 6110 purposes
Copy of this letter