

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-130597-05

Date: AUGUST 16, 2005

In Re:

Legend:

Date 1 =  
Decedent =

Country =  
Spouse =  
Partnership =

State =  
Company =  
CPA Firm =  
Date 2 =  
Date 3 =

Dear \_\_\_\_\_ :

This is in response to your letter dated May 24, 2005, and subsequent submissions, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 2057(b)(1)(B) of the Internal Revenue Code.

The facts submitted and representations made are summarized as follows: Decedent died on Date 1. Date 1 is prior to December 31, 2003. At her death, Decedent was a United States citizen and a resident of Country. Decedent's surviving spouse (Spouse) was a citizen and resident of Country. At her death, Decedent held a

one-third interest in Partnership, a State general partnership, and a 33 1/3 interest in Company, a State corporation. The other owners of each business were Decedent's brother, two sisters, and, in the case of Partnership, a trust for the benefit of one sister. Under Decedent's Will, Decedent's interests in Partnership and Company, are to be held for the benefit of Spouse in a separate trust governed by the laws of State, with Spouse and Individual, a citizen of the United States, acting as trustees.

The executor of Decedent's estate engaged CPA Firm to handle tax matters, including the preparation of Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. CPA Firm failed to advise the administrator of Decedent's estate of the applicability of the § 2057 election. Decedent's estate tax return was filed on Date 2; however, no deduction under § 2057 was claimed on the return. Upon review of Decedent's estate tax return, CPA Firm determined that an election should have been made under § 2057. On Date 3, a supplemental estate tax return was filed for Decedent's estate, making the § 2057 election and claiming a deduction under § 2057 with respect to Decedent's interests in Partnership and Company.

Decedent's estate requests an extension of time under §§ 301.9100-1 and 301.9100-3 to make an election under § 2057(b)(1)(B) to deduct the value of Decedent's qualified family-owned business interests.

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

Section 2057(b)(1) provides, generally, that § 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 § 2057(h); (C) the sum of the adjusted value of the qualified family-owned business interests described in § 2057(b)(2), plus the amount of the gifts of such interests determined under § 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 § 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(i)(3)(H) provides that, for purposes of making the election and filing the agreement under § 2057(b)(1)(B), rules similar to the rules under § 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 § 2057 shall not apply to the estates of decedents dying after December 31, 2003.

Under § 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.

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 § 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)(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.

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 § 2057.

The rulings contained in this letter are 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.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. Specifically, we express no opinion on whether the transaction satisfies the requirements under §§ 2057 and 2032A.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. The election should be made on a supplemental Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return, and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

Sincerely,

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

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: