Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC: PA:APJP:B02
PLR-148198-06
Date:
February 14, 2007

Date of Death:

Dear   :

        In a letter dated October 2, 2006,   , the personal representative of the   , requested an extension of time under Reg. Section 301.9100-3 to file an election under IRC §6166 to pay estate tax in installments. Alternatively,   requested that the §6166 election be considered a procedural directive and granted on the basis of the "substantial compliance doctrine." For the following reasons, we are unable to grant this request.

Pertinent facts:

                        passed away on   .   timely filed Form 4768 on   to request an extension of time to file Form 706 on or before   .   filed Form 706 along with a request for election under IRC §6166 on or about   . On   , the Internal Revenue Service notified the Estate that the election under §6166 was denied due to it not being timely filed.

Relevant statutory and regulatory sections:

        Treas. Reg. §301.9100-1(a) states that the regulations under §§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 a regulatory election will be granted. Sections 301.9100-1 and 301.9100-2 also provide automatic extensions of time for certain statutory elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of §301.9100-2.

        Treas. Reg. §301.9100-1(b) defines "statutory election" as an election whose due date is prescribed by statute. Alternatively "regulatory election" means "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).

I.R.C. Section 6166 states that if the value of an interest in a closely held business, which is included in determining the gross estate of a decedent who was a citizen or resident of the United States, exceeds 35 percent of the adjusted gross estate, the executor may elect to pay part or all of the tax imposed in 2 or more (but not exceeding 10) equal installments. IRC §6166(a)(1). Per §6166(d), this election must be made no later than the time prescribed by section 6075(a) of the Internal Revenue Code for filing the estate tax return. Section 6075(a) states that such returns must be filed within 9 months after the date of the decedent's death. Because the due date for an election under §6166 is prescribed by statute, the election is by definition a statutory election within the meaning of Treas. Reg. §301.9100-1(b). Additionally, there are no regulations that purport to prescribe the due date for a §6166 election. Treas. Reg. §20.6166-1(b) states the election provided under §6166(a) is made by attaching certain information to a timely filed estate tax return, however it is §6075 that prescribes what makes an estate tax return timely. The due date cannot be determined without reference to statute.   Mere incorporation of a statutory due date in a regulation does not change a statutory election into a regulatory election. Therefore, Treas. Reg. §301.9100-3 does not apply in this instance as that section is applicable only to certain regulatory elections and not to statutory elections.

Furthermore, the "substantial compliance" doctrine does not apply in the context of making an election under §6166. The United States Tax Court, considering statutory and regulatory provisions nearly identical to the current §6166 provisions, has stated that there are no reasonable cause exceptions to the requirements for election, and a taxpayer is granted relief under the election only if he complies with the statutory requirements. *See Estate of Glenard B. Boyd v. Commissioner*, T.C. Memo 1983-316 (1983) (ruling in the context of §2032A and its regulations). The court has also stated that where regulations provide that the election must be made on a timely filed estate tax return, the requirement of "a timely filed return is mandatory" and the provisions "leav[e] no room for a reasonable cause exception for an untimely return." *Estate of Shella B. Gardner v. Commissioner*, 82 T.C. 989, 992 (1984) (ruling in the context of §2032A and its regulations).

Conclusion

Because Treas. Reg. §301.9100-3 applies only to regulatory elections and not statutory elections, and an election under IRC §6166 is a statutory election, the request for extension to file is denied.

Sincerely,

Blaise G. Dusenberry
Special Counsel, Administrative Provisions &
Judicial Practice
(Procedure & Administration)