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:PSI:B4
PLR-134556-14

Date:
March 12, 2015

Legend

Decedent =
Accountant =

Dear :

This responds to your personal representative's letter of August 14, 2014, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to file a Form 8939 (Allocation of Increase in Basis for Property Acquired from a Decedent) to make an election under § 1022 of the Internal Revenue Code (Code) (Section 1022 Election) and to allocate basis to eligible property transferred as a result of Decedent's death.

Decedent died in 2010. The co-executors of Decedent's estate retained Accountant to advise them on estate tax matters and prepare the necessary tax filings for the Decedent's estate. Accountant failed to prepare the Form 8939 before the filing deadline of January 17, 2012. Consequently, the executor failed to make a Section 1022 Election for Decedent's estate.

Law and Analysis

Section 1022(a) provides that property acquired from a decedent who died after December 31, 2009, is treated as transferred by gift, and the basis of the person acquiring the property from such a decedent is the lesser of the adjusted basis of the decedent or the fair market value of the property at the date of the decedent's death.

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Section 1022(b)(1) provides, in general, that the basis of property under § 1022(a) is increased by basis increase that is allocated to the property.

Section 1022(b)(2)(A) provides, in general, that basis increase is the portion of the aggregate basis increase that is allocated to the property.

Section 1022(b)(2)(B) and (C) provide that the aggregate basis increase is $1,300,000; and that the aggregate basis increase is increased by—(i) the sum of the amount of any capital loss carryover under § 1212(b), and the amount of any net operating loss carryover under § 172 that would (but for the decedent's death) be carried from the decedent's last taxable year to a later taxable year of the decedent, plus (ii) the sum of the amount of any losses that would have been allowable under § 165 if the property acquired from the decedent had been sold at fair market value immediately before the decedent's death.

Section 1022(c)(1) provides that in the case of property that is qualified spousal property, the basis of such property under § 1022(a) (as increased under § 1022(b)) is increased by spousal property basis increase allocated to the property.

Section 1022(c)(2)(A) provides, in general, that spousal property basis increase is the portion of the aggregate spousal property basis increase which is allocated to the property. Section 1022(c)(2)(B) provides that the aggregate spousal property basis increase is $3,000,000.

Section 1022(d)(1)(A) provides, in general, that the basis of property acquired from a decedent may be increased under § 1022(b) or (c) only if the property was owned by the decedent at the time of death. Section 1022(d)(1)(B) describes property that is considered to be owned by the decedent at the time of death.

Section 1022(d)(2) provides that the basis adjustments under § 1022(b) and (c) shall not increase the basis of any interest in property above its fair market value in the hands of the decedent as of the date of the decedent's death.

Section 1022(d)(3) provides, in general, that the executor is to allocate the basis adjustments under § 1022(b) and (c) on the return required by § 6018 and that any allocation made may be changed only as provided by the Secretary.

Section 1022(e) describes property that is considered to be acquired from the decedent for purposes of § 1022.

Subtitle A of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. 107-16 (115 Stat. 76-81), enacted section 2210, which made chapter 11 (the estate tax) inapplicable to the estate of any decedent who died in 2010 and chapter 13 (the

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generation skipping transfer (GST) tax) inapplicable to generation-skipping transfers made in 2010. On December 17, 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJCA), P.L. 111-312 (124 Stat. 3296), became law, and section 301(a) of TRUIRJCA retroactively reinstated the estate and GST taxes. However, § 301(c) of TRUIRJCA allows the executor of the estate of a decedent who died in 2010 to elect to apply the Code as though § 301(a) of TRUIRJCA did not apply with respect to chapter 11 and for property acquired or passing from a decedent (within the meaning of § 1014(b)). Thus, § 301(c) of TRUIRJCA allows the executor of the estate of a decedent who died in 2010 to elect not to have the provisions of chapter 11 apply to the decedent's estate, but rather, to have the provisions of § 1022 apply.

Notice 2011-66, 2011-35 I.R.B. 184, section I.A. provides that the executor of the estate of a decedent who died in 2010 makes the Section 1022 Election by filing a Form 8939 on or before November 15, 2011. Notice 2011-76, 2011-40 I.R.B. 479, extended the due date of the Form 8939 and thus, the election from November 15, 2011 to January 17, 2012.

Notice 2011-66, section I.D.1, provides that the Internal Revenue Service will not grant extensions of time to file a Form 8939 and will not accept a Form 8939 filed after the due date except in four limited circumstances provided in section I.D.2. Under this section of Notice 2011-66, an executor may apply for relief under § 301.9100-3.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose 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 that granting 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 requirements of § 301.9100-3 have been satisfied. Therefore, the co-executors of Decedent's estate are granted an extension of time of 120 days from the date of this letter to make the Section 1022 Election on a Form 8939 and allocate additional basis to eligible property as provided by § 1022. A copy of this letter should be attached to the Form 8939.

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

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.

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

Sincerely,

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

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