

Letter Ruling 8926002, March 22, 1989
CCH IRS Letter Rulings Report No. 645, 07-12-89
IRS REF: Symbol: TR-32-00022-89

Uniform Issue List Information:
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

[Code Sec. 2032A]

ISSUE 1

If 1) the decedent and the spouse held property as community property, and 2) special use valuation is elected for the portion of the property subject to the decedent's community property interest, must the spouse, who is not an heir of the decedent's interest, execute the agreement required under section 2032A(d)?

ISSUE 2

For purposes of section 2032A(d)(3) of the Code, does the notice of election substantially comply with the election requirements for special use valuation?

FACTS

The decedent died in 1987 a resident of State. At the time of his death, the decedent and his spouse owned certain ranch property as community property. Under the terms of the decedent's will, the portion subject to the decedent's community property interest passed to his son and grandson. The decedent also owned other ranch property as his separate property.

On the federal estate tax return filed for the estate, the executor indicated that an election was being made to specially value, under section 2032A of the Code, some of the decedent's property, including the portion of the ranch property subject to the decedent's community property interest. A notice of election and contemporaneously executed agreement were attached to the return.

Some of the information that was required, under section 20.2032A-8(a)(3) of the regulations, to be included in the notice of election was omitted. Much of the omitted information is, however, stated in the agreement. That is, the agreement includes a legal description of the property, the decedent's taxpayer identification number, and the identification numbers and addresses of the qualified heirs. Similarly, the adjusted values and method used in determining the special use value are also stated in the agreement. However, neither the notice of election nor the agreement provides a statement of ownership, a statement of material participation, or affidavits describing the material participation.

The agreement was signed by the decedent's son and grandson, as the qualified heirs, and was valid and binding under State law. The agreement states that the parties approve of the election made for the described property and that they agree to pay any additional estate tax imposed under section 2032A. The surviving spouse did not sign the agreement.

LAW AND ANALYSIS

Section 2032A(a)(1) of the Code provides that if the executor elects the application of section 2032A and files the agreement referred to in subsection (d)(2), then the value of qualified real property shall be its value for the use under which it qualifies.

Section 2032A(d)(1) and (2) of the Code provides that the election shall be made on the federal estate tax return. The agreement referred to is a written agreement signed by each person who has an interest in any property designated in such agreement consenting to the imposition of the additional estate tax with respect to such property.

Section 2032A(d)(3) of the Code provides that the Secretary shall prescribe procedures which provide that in any case in which (A) the executor makes a timely election, and (B) substantially complies with the regulations with respect to such election, but the notice of election, as filed, does not contain all the required information, or the signatures of one or more persons required to enter into the agreement are not included in the agreement, as filed, or the agreement does not contain all the required information, the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or agreements.

Section 20.2032A-8(a)(3) of the Estate Tax Regulations provides that an election is made by attaching to the estate tax return the agreement and a notice of election containing fourteen separate items of required information.

Section 20.2032A-8(c) of the regulations provides that the agreement must be executed by all parties who have any interest in the property being valued based on its qualified use as of the date of the decedent's death. In the case of a qualified heir, the agreement must consent to personal liability under section 2032A(c) in the event of certain early dispositions of the property or early cessation of the qualified use. The agreement is to be a form that is binding on all parties having an interest in the property.

ISSUE 1

In this case, the decedent and the spouse owned certain ranch property as community property until the decedent's death. However, the spouse was not an heir of the portion of the property subject to the decedent's community property interest. Rather, the decedent's son and grandson are the qualified heirs. Thus, upon the decedent's death, the entire property that had been owned as community property was thereafter held by the spouse and the heirs of the decedent's interest.

Because section 2032A(d)(2) of the Code requires that the agreement be signed by each person who has an interest in the specially valued property, the focus of consideration, in this case, is on the character of the spouse's community property interest to determine whether she possessed an interest in the specially valued property, for purposes of section 2032A(d).

Under applicable local law, the character of a surviving spouse's community property interest, after spouses have held property as community property and one of the spouses has died, is one of a tenancy in common with the heirs of the deceased spouse's interest. See *Estate of Bright v. United States*, 658 F.2d 999 (5th Cir. 1981). Thus, upon the death of one of the spouses, the property (theretofore held as community property) is subject to the surviving spouse's right, as a tenant in common, of partition. Because the surviving spouse and the heirs may partition the property and thereafter own separate and divided tracts, a surviving spouse is not regarded as having an interest in the property subject to a deceased spouse's community property interest, for purposes of section 2032A(d). See *Estate of Pullin v. Commissioner*, 84 T.C. 789 (1985).

In this case, because the spouse became a tenant in common with the heirs of the decedent's community property interest, upon the decedent's death, the spouse is not regarded as having an interest in the specially valued property, for purposes of section 2032A(d) and section 20.2032A-8(c). Consequently, it is not necessary for the spouse to execute the agreement required under section 2032A(d) of the Code.

ISSUE 2

Under section 2032A, an executor may make an election for special use valuation by attaching to the federal estate tax return a notice of election and agreement. The notice of election must contain certain information, including a legal description of the property to be specially valued, the decedent's taxpayer identification number, the taxpayer identification numbers and addresses of the qualified heirs, the adjusted values, the method used in determining the special use value, a statement of ownership, a statement of material participation, and affidavits describing the material participation. Section 20.2032A-8(a)(3).

If the notice of election, as filed with the estate tax return, does not include all of the required information but the executor has substantially complied with the regulations for making the election, the executor will be permitted to perfect the notice of election. H.R. Rep. No. 861, 98th Cong., 2d Sess. 1241. However, some of the informational requirements of section 20.2032A-8(a)(3), with respect to the notice of election, relate to the substance of the election and must be included when the notice of election is originally filed. *Estate of Strickland v. Commissioner*, 92 T.C. No. 3 (1989). In addition, the agreement, as originally filed, must at a minimum be valid under state law and must include the signatures of all parties having a present interest or a remainder interest other than an interest having a relatively small value. See H.R. Rep. No. 861, above cited, at 1241; section 20.2032A-8(c). Thus, slight technical failures will not disqualify an estate from the benefits of special use valuation. *Estate of McDonald v. Commissioner*, 853 F.2d 1494 (8th Cir. 1988).

Under applicable local law, when two instruments are executed together as part of a single transaction, the instruments may be read together and construed with reference to each other. Therefore, the information contained in one of the instruments is treated as corresponding to the other instrument. See *Shield v. Shield*, 286 S.W.2d 252 (1955).

In this case, the notice of election is incomplete in that it does not include some of the information required under section 20.2032A-8(a)(3) for an election. Some of the omitted information relates to the substance of the election and, to have an effective election in this case, that information must have been included in the notice of election when it was originally filed. Nevertheless, that information is contained in the agreement filed with the notice of election.

Since the notice of election and agreement were executed together as part of a single transaction that is valid and binding under State law, the information included in the agreement is construed as also pertaining to the notice of election. Because 1) the notice of election and agreement, construed together, contain all of the requisite information relating to the substance of the election, and 2) the decedent's son and grandson, the parties having an interest in the specially valued property, have signed the agreement and are bound by it, there was substantial compliance with the requirements of the regulations for making the election. Therefore, under the facts of this case, the omissions are regarded as minor technical failures. Compare Estate of Killion v. Commissioner, T.C. Memo. 1988-244 (in which there was no substantial compliance with the election requirements because the notice of election included almost none of the required information). Consequently, the notice of election may be perfected to contain all of the information that is required under section 20.2032A-8(a)(3), including the information already provided in the agreement and the information omitted from both the notice of election and the agreement.

CONCLUSIONS

ISSUE 1

If 1) the decedent and the spouse held property as community property, and 2) special use valuation is elected for the portion of the property subject to the decedent's community property interest, it is not necessary for the spouse, who is not an heir of the decedent's interest, to execute the agreement required under section 2032A(d) because the spouse, as a tenant in common after the decedent's death, does not have an interest in the portion of the property that is specially valued.

ISSUE 2

For purposes of section 2032A(d) of the Code, the notice of election substantially complies with the election requirements for special use valuation. The notice of election, therefore, may be perfected pursuant to section 2032A(d)(3) of the Code.

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

PRIVATE RULING 9027004

INTERNAL REVENUE SERVICE NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

"This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code."

SECTION 2032A

Alternate Valuation

-- Not Able to Identify Under Present List

2032A-0000

PRIVATE RULING 9027004; 1990 PRL LEXIS 941

DATE: March 22, 1990

[*3] <=10>

District Director

* * * District Office

National Office

Internal Revenue Service

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ISSUES

- 1) Whether a disposition of qualified real property by a qualified heir to an uncle is a disposition to a member of the heir's family within the definition of section 2032A(e)(2) of the Internal Revenue Code as applied to estate's of decedents dying before December 31, 1981?
- 2) Is a subsequent transfer of the qualified property from the uncle to a trust of which the income beneficiary and holder of a general power of appointment is the uncle's mother a disposition of the qualified property to a member of the uncle's family within the meaning of section 2032A(c)(1)(A)?
- 3) Whether co-tenants who held property with the decedent as of the decedent's date of death and who do not receive property from the decedent have to be parties signing a section 2032A agreement pertaining to property held in co-tenancy?

FACTS

A died on Date 1, owning X and an undivided one-half interest in Y real estate. A's estate elected to value A's interest in X and Y at their qualified use values pursuant to section 2032A of the [*4] Code. A's qualified heirs including B, A's daughter, executed section 2032A <=11> agreements and consented to personal liability for any additional tax imposed on the estate. One-fourth of A's residuary estate including X and a one-eighth undivided interest in Y passed to B. It is represented that the other co-tenants of Y did not execute the section 2032A agreement.

On Date 2, B sold 52 acres of X to her uncle (A's brother), C. On Date 3, C exchanged the 52 acre tract in X for a 42 acre tract of land owned by Trust M. Subsequently, on Date 4, C sold the 42 acre tract. C's mother, D is the sole income beneficiary of the trust. D also possesses a right to corpus if income is insufficient and a general power of appointment under the trust. In addition, on Date 2, B sold her one-eighth interest in Y to her uncle, C. On Date 3, C sold his interest in Y to a nonfamily member.

ISSUES #1 AND #2

Section 2032A(a)(1) of the Code provides that, if certain conditions are satisfied then, at the election of the executor, qualified real property may be valued for estate tax purposes at a value based on its use as [*5] a farm for farming purposes instead of its fair market value. In order to qualify for valuation under section 2032A, the real property must pass from <=12> the decedent to a qualified heir of the decedent. A "qualified heir" is a member of the decedent's family, as defined in section 2032A(e)(2). The aggregate decrease in the value of the qualified real property which results from the application of section 2032A, as of the decedent's death, could not exceed \$500,000.

As of the decedent's death, section 2032A(c)(1) of the Code provided that if within 15 years after the decedent's death and before the death of the qualified heir the qualified heir disposed of any interest in the specially valued property to a person other than a member of the heirs family or ceases to use the property for the qualified use, an additional estate tax is imposed.

Section 2032A(c)(2)(D) of the Code provides that where the qualified heir disposes of a portion of the interest acquired by (or passing to) such heir (or a predecessor qualified heir) or there is a cessation of use of the portion, (i) the value determined under section [*6] 2032A(a) taken into account under section 2032A(c)(2)(A)(ii) with respect to the portion will be its pro rata share of the value of the interest, and (ii) the adjusted tax difference attributable to the interest taken into account <=13> with respect to the transaction involving the second or any succeeding portion will be reduced by the amount of the tax imposed by this subsection with respect to all prior transactions involving portions of such interest.

Section 2032A(e)(1) of the Code defined the term "qualified heir" to mean, with respect to any property, a member of the decedent's family who acquired the property (or to whom the property passes) from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his family, the member will thereafter be treated as the qualified heir with respect to the interest.

Under section 2032A(e)(2) of the Code (as of the decedent's death), the term "member of the family" was defined to mean, with respect to any individual, only the individual's ancestor or lineal descendant, a lineal descendant or a grandparent of the individual, [*7] the spouse of the individual, or the spouse of any descendant.

Under section 2032A(g), the Secretary of the Treasury is directed to prescribe regulations setting forth the application of section 2032A in case of an interest in trust.

Tax liability attaches to ownership of property. A trust consists <=14> of separate interests: the equitable interests of the beneficiary and the legal interests of the trustee. The trust form allows the settlor to protect the beneficiary from the burdens of ownership. A beneficiary is entitled through equity to compel the trustee to act in accordance with the trust obligations. See, *Greenough v. Tax Assessors*, 331 U.S. 486 (1947).

Under the facts of this case, B was A's daughter an a qualified heir. C, A's brother and B's uncle, was a member of B's family under section 2032A(e)(2) of the Code as in effect when A died. A's interest in X and Y passed to B, a qualified heir. Accordingly, any disposition of qualified use property from B to C was a disposition to a family member. Therefore, after the disposition, C was thereafter treated as the qualified [*8] heir of A's interest in X and Y.

Regarding C's subsequent disposition of the 52 acre tract of X to Trust M, D, the mother of A and C, is the sole income beneficiary of Trust M. D also possesses a general power of appointment. Under the terms of the trust, the trust corpus cannot be distributed to anyone except D during D's lifetime. Therefore, D will be treated as the sole owner of the property <=16> of Trust M including the 52 acre tract of X. Accordingly, D will be treated as a qualified heir notwithstanding that the 52 acre tract in X is held in trust. Since D is considered a member of C's family, C's transfer to Trust M will not be a disposition of X under section 2032A(c) of the Code.

ISSUE #3

Under section 2032A(d)(2) of the Code, the agreement referred to in section 2032A(a) is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in the agreement consenting to the application of section 2032A(c) with respect to the property.

A decedent's estate is entitled to value farm property under the special use valuation provisions [*9] of section 2032A of the Code without including the signatures of the surviving tenants in common on the agreement prescribed by section 2032A(d)(2). *Estate of Pullin, 84 T.C. 789 (1985), acq., 1988-2 C.B. 1*

In this case, A owned an undivided one-half interest in Y on the date of his death. The other co-tenants of Y were not required to execute the section 2032A agreement if they did not receive any interest in the special use property from A. Thus, the agreement was <=19> a valid agreement from the date of A's death.

After C received an undivided one-eighth interest in Y from B, C sold his interest in Y to a nonfamily member within 15 years from the date of A's death. The subsequent sale to a nonfamily member constituted a disposition of specially valued property under section 2032A(c) of the Code. Therefore, the recapture provisions under section 2032A(c) of the Code will apply to this transaction.

HOLDINGS

- 1) A disposition of qualified real property by a qualified heir to an uncle constitutes a disposition to a member of the heir's family within [*10] the definition of section 2032A(e)(2) of the Code as applied to estates of decedent's dying before December 31, 1981.
- 2) A subsequent transfer of the qualified property from the uncle to a trust of which the income beneficiary and holder of a general power of appointment is the uncle's mother, constitutes a disposition of the qualified property to a member of his family within the meaning of section 2032A(c)(1)(A) of the Code.
- 3) Co-tenants who held property with the decedent as of the decedent's date of death and who do not receive property from the decedent do not have to be parties signing <=20> a section 2032A agreement pertaining to property held in co-tenancy.

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent. Final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by adoption of final regulations, to the extent the regulations are inconsistent with any conclusions in the ruling. Section 16.04 of *Rev. Proc. 90-1, 1990-1 I.R.B. 8*. [*11] However, when the criteria in section 16.05 of *Rev. Proc. 90-1* are satisfied, a ruling is not revoked or modified retroactively except in rare circumstances.

-END-