

make the alternate valuation election on the last estate tax return filed before the due date or the first return filed after the due date will be able to request an extension of time to make the election under the provisions of §§ 301.9100–1 and 301.9100–3. However, in view of the statutory 1 year limitation imposed under section 2032(d)(2), no request for an extension of time will be granted if the request is submitted to the IRS more than 1 year after the due date of the return (including extensions of time to file actually granted). The proposed regulations also provide guidance on making a protective election under section 2032.

Special Analyses

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Theresa Melchiorre, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS

and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 20 and 301 are proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 20.2032–1(b) is revised to read as follows:

§ 20.2032–1 Alternate valuation.

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(b) *Method and effect of election*—(1) *In general.* The election to use the alternate valuation method is made on the return of tax imposed by section 2001. For purposes of this paragraph (b), the term *return of tax imposed by section 2001* means the last estate tax return filed by the executor on or before the due date of the return (including extensions of time to file actually granted) or, if a timely return is not filed, the first estate tax return filed by the executor after the due date, provided the return is filed no later than 1 year after the due date (including extensions of time to file actually granted). Once the election is made, it is irrevocable, provided that an election may be revoked on a subsequent return filed on or before the due date of the return (including extensions of time to file actually granted). The election may be made only if it will decrease both the value of the gross estate and the sum (reduced by allowable credits) of the estate tax and the generation-skipping transfer tax with respect to the property includible in the decedent's gross estate. If the election is made, the alternate valuation method applies to all property included in the gross estate and cannot be applied to only a portion of the property.

(2) *Protective election.* If, based on the return of tax as filed, use of the alternate valuation method would not result in a decrease in both the value of the gross

estate and the sum (reduced by allowable credits) of the estate tax and the generation-skipping transfer tax liability of the estate, a protective election may be made to use the alternate valuation method if it is subsequently determined that such a decrease would occur. A protective election made on the return of tax imposed by section 2001 is irrevocable, provided that it may be revoked on a subsequent return filed on or before the due date of the return (including extensions of time to file actually granted). Absent such revocation, if it is later determined that use of the alternate valuation method would result in a decrease in both the value of the gross estate and in the sum (reduced by allowable credits) of the estate tax and generation-skipping transfer tax liability of the estate, the protective election becomes effective and cannot thereafter be revoked.

(3) *Requests for extension of time to make the election.* A request for an extension of time to make the election pursuant to §§ 301.9100–1 and 301.9100–3 of this chapter will not be granted unless the request is submitted to the Internal Revenue Service no later than 1 year after the due date of the return (including extensions of time to file actually granted).

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PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.9100–6T [Amended]

Par. 4. Section 301.9100–6T is amended by:

1. Removing the language “paragraph (b)(2)” from paragraph (a)(2) introductory text, and adding the language “paragraph (a)(2)” in its place.

2. Removing paragraph (b).

3. Redesignating paragraphs (c) through (s) as paragraphs (b) through (r), respectively.

4. Removing the language “paragraph (c)(2)” from the last sentence in newly designated paragraph (b)(2) and adding the language “paragraph (b)(2)” in its place.

5. Removing the language “paragraph (l)” from the second, fourth and last sentences in newly designated paragraph (k) and adding the language “paragraph (k)” in its place.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

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