Office of Chief Counsel
Internal Revenue Service

memorandum

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HCBonney

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to: Vicki Martinson, Advisor, Technical Support Group I

from: H. CLIFTON BONNEY, JR.
Attorney (SBSE)

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subject: I.R.C. Section 2057

This memorandum responds to your request for assistance transmitted to this office on April 26, 2001. This memorandum should not be cited as precedent.

DISCLOSURE STATEMENT: This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure is contemplated, please contact this office for our views.

ISSUES

1. May qualified heirs pledge security in lieu of the required lien under Section 2057?

2. Must Technical Support seek the concurrence of Counsel on each case in which property subject to the Section 2057 lien consists in any part of personal property?

3. If the lien on real property is sufficient to cover the additional tax liability, must the Service file a notice of tax lien with respect to the Section 2057 personal property?

Legal Analysis

Section 2057 provides, generally, that for estate tax purposes, the value of the taxable estate is determined by deducting from the value of the gross estate the adjusted value of the qualified family-owned business interests of the decedent. The estate is entitled to a maximum qualified family-owned business deduction of $675.000.00.

Section 2057 allows certain family-owned trade or business interests to pass from the decedent to qualified heirs without the imposition of the estate tax. An additional tax is imposed upon the estate under certain circumstances where, within 10 years of the decedent's death and prior to the death of the qualified heir, a qualified heir fails to materially participate in the business or disposes of the business interest. I.R.C. §2057(f). Qualified heirs include members of the decedent's family and active employees who have been employed by the trade or business for a period of at least 10 years prior to the decedent's death. I.R.C. §2057(i)(1). The Code contains provisions designed to help assure the ability of the government to collect any additional tax liability that may accrue.

Qualified heirs are personally liable for any additional estate tax attributable to that qualified heir's interest in a QFOBI unless the qualified heir has furnished a form of bond in lieu of personal liability. The amount of the bond must cover the maximum amount of the additional liability that may result. I.R.C. §§2057(i)(3)(F), 2032A(c)(5), and 2032A(e)(11). For purposes of Section 2057, rules similar to the those under I.R.C. Section 6324B, relating to special liens for additional estate tax, apply. I.R.C. §2057(i)(3)(P). Applying rules similar to those under I.R.C. Section 6324B provides the Service with a lien on the qualified family-owned business interests for the maximum amount of the additional liability that may arise under Section 2057(f)(2). See I.R.C. §6324B(a). Notice of the lien must be filed to be effective as against certain other interests. I.R.C. §§6324B(c)(1) and 6324A(d)(1). Security acceptable to the Service may be substituted for the lien. See I.R.C. §6324B(d); Treas. Reg. §20.6324B-1(c).

1. Qualified heirs may pledge security in lieu of the lien under Section 2057.

When an executor makes an election pursuant to Section 2057, the taxable estate is determined by deducting the adjusted value of the qualified family-owned business interests from the value of the gross estate. This deduction causes an overall reduction in estate tax. However, the reduction in tax may be recaptured if, within 10 years of the decedent's death and prior to the death of the qualified heir, a qualified heir fails to materially participate in the business or disposes of the business interest. I.R.C. §2057(f). In such a case, the qualified heir is personally liable for the portion of the recapture tax imposed with respect to the qualified heir's interest in the qualified family-owned business. See I.R.C. §§2057(i)(3)(F) and 2032A(c)(5).

In order to protect the Service's interest in this potential future tax liability, the Service is entitled to a lien similar to the lien under Section 6324B. See I.R.C. §2057(i)(3)(P). Section 6324B(d) provides that to the extent provided in the regulations "the furnishing of security may be substituted for the lien imposed by this section." See Treas. Reg. §20.6324B-1(c). Because the Section 2057 lien is similar to the Section 6324B lien, Counsel's position is that a provision similar to Section 6324B(d) is applicable to the Section 2057 lien. Therefore, a qualified heir may furnish security as a substitute for the lien under Section 2057.

2. Technical Support does not need to seek the concurrence of Counsel on each individual case in which the property subject to the Section 2057 lien consists, in any part, of personal property.

The November 2000 Collection, Bankruptcy and Summonses Bulletin states that Counsel should be contacted for guidance if the property subject to the Section 2057 lien consists of both real and personal property or only personal property. In your request, you ask whether you are required to contact Counsel on every occasion in which property subject to the Section 2057 lien consists, in any part, of personal property.

There is a great risk that the government's position will not be adequately protected by a lien against personal property. However, the mere presence of personal property in a Section 2057 case does not trigger the immediate assistance of Counsel. If real property and personal property are available and a lien on the real property can adequately secure the government's interest, there is no requirement to seek Counsel's advice. However, if the real property is insufficient to satisfy the lien amount or if the assets consists only of personal property, you should contact Counsel for assistance prior to agreeing to accept the personal property as Section 2057 property.

3. The Service need not file a notice of tax lien with respect to Section 2057 personal property if there is sufficient real property to secure the government's interest.

In your request, you ask for specific advice on three cases currently in your inventory. In each case, the Section 2057 property consists of real property and personal property. The real property alone is sufficient to secure the government's interest in the qualified heirs' potential future tax liability. You ask whether, in such a case, the Service must also file a lien with respect to the personal property.

Counsel recommends filing a lien on personal property if there is any chance that the real property could possibly prove to be insufficient to cover the amount of the potential future tax liability. When the real property is more than sufficient to secure the government's interest, filing a lien on personal property will provide the Service with additional security. However, in cases where the value of the real property greatly exceeds the qualified heirs' potential future tax liability, it is not necessary to file a lien on the personal property.

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APPROVED:

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