



SC TECHNICAL ADVICE MEMORANDUM #88-17

TO: Mr. C. Norwood Gayle, Jr., Acting Director
Office Services Division

FROM: John Swearingen, Manager
Tax Policy and Procedures Department

DATE: August 10, 1988

SUBJECT: Section 2032A Election
(Estate Tax)

REFERENCE: S.C. Code Section Ann. 12-16-910 (As Amended 4-22-88)
S.C. Code Section Ann. 12-15-40 (Cum. Supp. 1987)

AUTHORITY: S.C. Code Section 12-3-170 (1976)

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Question:

1. Does Section 12-16-910 as amended; require the filing of a federal estate tax return in order to receive the valuation benefits of Section 2032A for decedents dying before July 1, 1991?
2. Pursuant to 12-16-910 as amended, can a taxpayer make a different 2032A election treatment on a South Carolina estate tax return than on the federal estate tax return?
3. For the period between January 1, 1986 and May 6, 1987, must a federal estate tax return have been filed with 2032A election denoted in order for the same election to be available for South Carolina purposes?

Facts:

The South Carolina Tax Commission has received returns in which a federal return was not required to be filed due to the value of the estate however the executor wished to avail himself of the provisions of 12-16-910 for South Carolina purposes. Another situation which has arisen is that a taxpayer has not made the election on the federal estate tax return but wishes to do so on the South Carolina estate tax return. The final question involves an interpretation of 1986 S.C. Act 313. This act did not mention the requirement that a federal estate tax return be filed. Therefore, it is ambiguous as to whether a federal estate tax return must be filed in order to qualify for 2032A treatment.

Discussion: (1) & (2)

S.C. Code Ann. Section 12-16-910 (as amended) reads in part:

When the gross estate of a decedent at the date of death is a value requiring filing of a federal estate tax return and the estate contains certain farm or business real property which qualified for valuation under Internal Revenue Code Section 2032A for the tax imposed under this chapter, a copy of the election made at the time of filing the federal estate tax return, if made, must be attached to the South Carolina estate tax return when filed.

This statute was passed as part of 1987 Act No. 70 with an effective date of May 6, 1987. A 1988 amendment added the wording "if made" effective April 22, 1988.

Chapter 15 of Title 12 also addresses Internal Revenue Code Section 2032A and is in effect for decedents dying before July 1, 1991.

Code Section 12-15-40 states:

The value of the gross estate must be determined by including therein the value of the same property as is included in the gross estate of the decedent for federal estate tax purposes under Section 2031 through 2046, inclusive, of the Internal Revenue Code of 1954, as amended through December 31, 1985, except the property excluded pursuant to Section 12-15-50.

It therefore appears that Code Sections 12-15-40 and 12-16-910 conflict. In situations such as this, it is a rule of statutory construction that the statutes should be harmonized if possible.

Where it is possible to do so, it is the duty of the courts, in the construction of statutes to harmonize and reconcile laws, and to adopt that construction of a statutory provision which harmonizes and reconciles it with other statutory provisions.

73 Am. Jur 2d Section 254

The above state statutes can be easily harmonized. Section 12-16-910 clearly addresses situations in which a federal estate tax return is required to be filed due to the value of the estate. In such cases, if a 2032A election has been made on the federal return, a copy of that election must be attached to the South Carolina estate tax return and the benefits of IRC Section 2032A will apply to the South Carolina returns.

The plain wording of this statute indicates that these provisions are only applicable in circumstances where the estate is large enough to require the filing of a federal estate tax return. If a federal estate tax return is not required, the taxpayer should use Section 12-15-40 as authority for allowing him the benefits of 2032A.

Section 12-15-40 adopted IRC Section 2032A by reference for decedents dying after December 31, 1985. Section 12-16-910, first adopted May 6, 1987, was the initial effort of the legislature to address federal and state conformity with regard to the IRC section 2032A election. It appears that decedents dying prior to May 6, 1987 have no requirement to file a copy of the federal election with their state return. Section 12-16-910 evidences no legislative intent to make this provision retro-active.

In the construction of statutes, there is a presumption that statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision or clear legislative intent to the contrary. Hyder v. Jones, 271 S.C. 85, 245 S.E. 2d 123 (1978); Jefferson Standard Life Insurance Company v. King, 165 S.C. 219, 163 S.E. 653 (1932)

Section 12-16-910 should therefore be deemed to operate prospectively absent any legislative direction to the contrary.

Conclusion:

1. South Carolina Code Ann. Section 12-16-910 (as amended 4/22/88) does require that a federal estate tax return be filed in order for a taxpayer to receive the benefits of Section 2032A. However, pursuant to Section 12-15-40 the election under 2032A may be made on estates not required to file a Federal return for decedents dying before July 1, 1991.
2. Pursuant to Section 12-16-910 a taxpayer may not elect 2032A treatment on the South Carolina return if he has not made such an election on the federal return. If the taxpayer is not required to file a federal estate tax return, then he may still avail himself of the 2032A election pursuant to Section 12-15-40.
3. For the period between January 1, 1986 and May 6, 1987, there is no requirement that a copy of the federal election be filed in order to receive 2032A treatment pursuant to 12-15-40.