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From:

Sent: Monday, August 22, 2011 12:40:32 PM

To:

Cc:

Subject: 6166(b)(8) question

I apologize for the delay in getting back to you on this.

The question being posed is whether making the election under section 6166(b)(8) means the treatment specified therein applies to the entirety of the estate tax, or just the portion qualifying under 6166(b)(8). The estate says it's just the qualifying portion; the service center has opined (without providing any reasoning) that it's the entirety of the tax.

Very few legal authorities even mention 6166(b)(8), and those that do focus on the fact that 6166(b)(8) was designed to qualify certain interests for installment-payment treatment that would otherwise not qualify. Since neither the statute nor any authorities mention the availability of a "bifurcated" election (what the estate is urging), my thinking is that such an election is not available -- rather, the estate has to either elect to avail itself of 6166(b)(8), thus forfeiting the deferral option provided by section 6166(a)(3), or not make a 6166(b)(8) election, preserving the option to defer payments that is provided in section 6166(a)(3).

FYI, in researching this I attempted to talk to the person who provided the original service center advice. I reached _____, the person designated as the contact person in the letter from the service center containing the election determination. _____ told me that the advice had come from an attorney who has since retired. She also told me that the advice has since been given with respect to other estates.

I hope that this response is helpful. Please let me know if you would like to discuss this issue further.