

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

Internal Revenue Service  
Private Letter Ruling  
Number 9149015  
August 30, 1991

**SUBJECT MATTER:** Code Sec. 6166

**REFERENCE:** Symbol: CC:IT&A:4-TR-31-2197-90

**UI No. 6166.52-00**

Extension of time for payment of estate tax where estate consists largely of interest in closely held business;  
Acceleration of estate tax payable in installments

**TEXT**

This is in reply to your request of July 17, 1990, for a private letter ruling on section 6166 of the Internal Revenue Code on behalf of the above named beneficiaries with respect to whether a proposed transaction would accelerate payment of the deferred estate tax under section 6166(g).

**FACTS**

The facts as submitted show that the executors of Decedent's estate made the section 6166 election when the Federal estate tax return was filed. At the time of his death, Decedent owned 16x shares of Corporation's stock and A owned 2x shares. The value of Decedent's stock holdings exceeded 35 percent of the gross estate. Corporation had fewer than 15 shareholders.

Under the terms of Decedent's will, two trusts were established for the residue and remainder of the estate. Trust #2 holds the stock and Trust #1 retains the residue of the estate. Also under the terms of the will, A has the right to vote all the stock on behalf of the estate during the administration of the estate.

Decedent's will also contained an option whereby A could purchase Trust #2's shares of Corporation's stock. If A exercises this option, the executors would distribute 4x shares to him and he would purchase the remaining 12x shares. The terms of the will specify the timing and interest rates for A's payments to the estate as well as the method executors are to use in calculating the purchase price for the shares. If A fails to exercise this option, the will authorizes the executors, at their discretion, to sell the shares outright or to distribute the shares to A, B, C, and D in equal shares.

**ISSUE**

You have asked us to rule that A's acquisition of Trust #2's shares of Corporation's stock under the terms of the option in the Decedent's will would not constitute a distribution, sale, exchange, or other disposition of stock requiring the acceleration of the payment of the estate tax due from the estate pursuant to section 6166(g)(1) of the Code.

**LAW**

The Tax Reform Act of 1976 created a new section 6166 and redesignated the former section as section 6166A. The Economic Recovery Tax Act of 1981 repealed section 6166A and amended section 6166 so that it would apply in most cases that were previously governed by section 6166A. Neither the legislation nor the Committee Reports indicate any intent on the part of Congress that a disposition of an interest under section 6166A would not be a disposition under section 6166. Therefore, the regulations under section 6166A are considered applicable to this ruling request to the extent that the regulations under section 6166A are not inconsistent with the language of section 6166.

Section 6166(a)(1) of the Code provides that if the value of an interest in a closely held business, that is included in determining the gross estate of a decedent who at the time of death was a citizen or resident of the United States, exceeds 35 percent of the decedent's adjusted gross estate, the executor may elect to pay part or all of the estate tax attributable to that interest in 2 or more (but not exceeding 10) equal installments.

Section 6166(g)(1)(A) of the Code provides that if any portion of an interest in a closely held business that qualified for the section 6166(a)(1) election is distributed, sold, exchanged, or otherwise disposed of, or money and other property attributable to such an interest is withdrawn from the trade or business, and if the aggregate of such distributions, sales, exchanges, or other dispositions and withdrawals equals or exceeds 50 percent of the value of the closely held business, then the extension of the time for payment of tax provided in section 6166(a) shall cease to apply, and the unpaid portion of the estate tax payable in installments shall be paid upon notice and demand by the Secretary.

Section 6166(g)(1)(D) of the Code provides that section 6166(g)(1) does not apply to a transfer of property of the decedent to a person entitled by reason of the decedent's death to receive the property under the decedent's will, the applicable law of descent and distribution, or a trust created by the decedent. A similar rule applies in the case of a series of subsequent transfers of the property by reason of death so long as each transfer is to a member of the family (within the meaning of section 267(c)(4)) of the transferrer.

Section 20.6166A-3(e)(1) of the Estate Tax Regulations provides that when in the aggregate 50 percent or more of decedent's interest in a closely held business has been distributed, sold, exchanged, or otherwise disposed of, the privilege of paying the tax in installments terminates and the whole of the unpaid portion of the tax which is payable in installments becomes due and shall be paid upon notice and demand by the district director. However, that section further provides that a transfer by the executor of an interest in a closely held business to a beneficiary or a trustee named in the decedent's will or to an heir who is entitled to receive it under the applicable intestacy law does not constitute a distribution, sale, exchange, or other disposition.

Section 20.6166A-3(e)(2) of the regulations states that the phrase "distributed, sold, exchanged, or otherwise disposed of" comprehends all possible ways by which an interest in a closely held business ceases to form part of the gross estate. However, the term does not generally extend to transactions that are mere changes in form.

Section 20.6166A-3(e)(4) of the regulations provides that an interest in a closely held business may be "sold, exchanged, or otherwise disposed of" by the executor, a trustee or other donee to whom the decedent in his lifetime transferred the interest included in his gross estate under section 2035 through 2038, or section 2041, a beneficiary, trustee, or heir entitled to receive the property from the executor under the decedent's will or under the applicable law of descent and distribution, or to whom title to the interest passed directly under local law, a surviving joint tenant or tenant by the entirety, or any other person.

In determining how to interpret "distributed, sold, exchanged, or otherwise disposed of" for purposes of section 6166(g)(1)(A) of the Code, consideration should be given to the reason Congress provided for the acceleration of installment payments of estate tax in the statute. The basic purpose of section 6166 is to preserve a closely held business so that it need not be sold or broken up to obtain funds to pay the Federal estate tax. Once the business is disposed of by the estate or the decedent's heirs, other than in a transaction to which section 6166(g) does not apply, so that it is no longer held by those entitled to it by reason of the decedent's death, the purpose of preservation is undermined and no further reason exists for extending the time to pay the tax.

The distribution of the 16x shares of Corporation's stock to Trust #2 is a permissible transfer under section 6166(g)(1)(D). Upon the exercise of the option, however, whereby A would purchase 12x shares from Trust #2, a disposition within the meaning of section 6166(g)(1)(A) would result. This proposed transaction is a sale by the executor of 12x shares because the option, if exercised, requires A to purchase and pay for the stock under the terms set forth by the will. Additionally, this proposed transaction is not a subsequent transfer of property by reason of death to which section 6166(g)(1)(A)(i) does not apply by reason of the second sentence of section 6166(g)(1)(D). A transaction of that type occurs at the death of the decedent's heir. See H.R. Rep. No. 97-201, 97th Cong. 1st Sess. 180 (1981), 1981-2 C.B. 388. This proposed transaction is also not a mere change in form.

Section 6166(g)(1)(A) of the Code terminates the privilege of paying the tax in installments and causes the whole of the unpaid portion to become due when any portion of an interest in a closely held business that qualified for the section 6166(a)(1) election is distributed, sold, exchanged, or otherwise disposed of, or money and other property attributable to such an interest is withdrawn from the trade or business, and the aggregate of such distributions, sales, exchanges, or other dispositions and withdrawals equals or exceeds 50 percent of the value of the interest in the closely held business that qualified for the election. As A's purchase from Trust #2 of shares of Corporation's stock under the terms of the option in the Decedent's will would be a distribution within the meaning of section 6166(g)(1)(A)(i), if the sale of those shares of Corporation's stock (together with any other dispositions that may have preceded the sale) equals or exceeds 50 percent of the value of the interest in the closely held business that qualified for the section 6166(a) election, the extension of the time for payment of tax provided in section 6166(a) would cease to apply, and the unpaid portion of the estate tax payable in installments would be payable upon notice and demand by the District Director.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent. Temporary or 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 the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in the ruling. See section 11.04 of Rev. Proc. 91-1, 1991-1 I.R.B. 9, 30. However, when the criteria in section 11.05 of Rev. Proc. 91-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to the Executor of Decedent's estate.