Section 6163.—Extension of Time for Payment of Estate Tax on Value of Reversionary or Remainder Interest in Property

26 CFR 20.6163-1: Extension of time for payment of estate tax on value of reversionary or remainder interest in property.

Under section 2031 of the Code, what is the value of the decedent's flower bonds that could have been applied toward the portion of federal estate tax extended under section 6163? See Rev. Rul. 81-228, page 171.

Section 6166.—Alternate Extension of Time for Payment of Estate Tax Where Estate Consists Largely of Interest In Closely Held Business

Are interest expenses, incurred on the federal estate tax deferred under section 6166 of the Code, deductible as administration expenses under section 2053(a)(2) if the interest expenses were claimed as deductions on the estate's income tax returns, no waivers were filed under section 642(g), and the period of limitations on assessment of the estate's income tax has expired? See Rev. Rul. 81-287, page 183.

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26 CFR 20.6166-1: Election of alternate extension of time for payment of estate tax where estate consists largely of interest in closely held business.

Procedure to be followed by an estate when installment payments are recomputed because of a reduction in the estate tax caused by the payment of interest on the tax due. See Rev. Proc. 81-27, page 548.

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26 CFR 20.6166-1: Election of alternate extension of time for payment of estate tax where estate consists largely of interest in closely held business.

Under section 2031 of the Code, what is the value of the decedent's flower bonds that could have been applied toward the portion of federal estate tax extended under section 6166? See Rev. Rul. 81-228, page 171.

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26 CFR 20.6166-1: Election of alternate extension of time for payment of estate tax where estate consists largely of interest in closely held business.

Computation of tax and installments where an amount paid is more or less than required when an executor makes an election to pay the estate tax in installments and pays an amount based upon figures in the return. See Rev. Rul. 81-294, this page.

Section 6166A.—Extension Of Time For Payment Of Estate Tax Where Estate Consists Largely Of Interest In Closely Held Business

Are interest expenses, incurred on the federal estate tax deferred under section 6166A of the Code, deductible as administration expenses under section 2053(a)(2) if the interest expenses were claimed as deductions on the estate's income tax returns, no waivers were filed under section 642(g), and the period of limitations on assessment of the estate's income tax has expired? See Rev. Rul. 81-287, page 183.

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26 CFR 20.6166A-1: Extension of time for payment of estate tax where estate consists largely of interest in closely held business.
(Also Sections 6166, 6402, 6403; 20.6166-1, 301.6402-1, 301.6403-1.)

Closely held business; installment payments; deficiencies; overpayments. Examples illustrate the amount due when installment payments are recomputed because of determinations of deficiencies, overpayments, and changes in the ratio of the value of an interest in a closely held business to the value of the estate.

Rev. Rul. 81-294

ISSUE

What is the amount due under section 6166A of the Internal Revenue Code when installments are recomputed because of determinations of deficiencies, overpayments, and changes in the ratio of the value of an interest in a closely held business to the value of the estate?

FACTS

Situation 1. An executor filed an estate tax return showing tax of 50x dollars. The executor paid 25x dollars with the return and elected to pay the remaining 25x dollars in ten installments of 2.5x dollars each. The first installment of 2.5x dollars was paid at the time the return was filed. Upon examination of the return, the correct tax was determined to be 100x dollars and the ratio represented by the closely held business was 80 percent of the taxable estate of the decedent, rather than 50 percent of the estate. No part of the deficiency was due to negli-

gence, intentional disregard of rules and regulations, or fraud.

Situation 2. Same facts as above except that upon examination it was determined that the value of the closely held business should be increased but that an increased marital deduction resulted in a no-change case. Based on the increase in the closely held business the estate could have paid a minimum of 20x dollars with the return and deferred 30x dollars payable in ten installments of 3x dollars each.

Situation 3. Same facts as above except that upon examination of the return, the correct tax was determined to be 60x dollars and the ratio represented by the closely held business was 40 percent rather than 50 percent.

Situation 4. Same facts as above except that upon examination of the return, the correct tax was determined to be 40x dollars and the ratio represented by the closely held business was 40 percent rather than 50 percent.

Situation 5. Same facts as above except that the ratio represented by the closely held business remained at 50 percent of the gross estate of the decedent and on the due date for the second installment, the executor paid 22.5x dollars, which was believed to be the remainder of the tax liability. Upon subsequent examination of the return, the correct tax was determined to be 60x dollars.

LAW AND ANALYSIS

Section 6166A(a) 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 was (at the date of death) a citizen or resident of the United States exceeds either (1) 35 percent of the value of the gross estate of such decedent, or (2) 50 percent of the taxable estate of such decedent, the executor may elect to pay part or all of the tax imposed by section 2001 in two or more (but not exceeding 10) equal installments. Any such election shall be made not later than the time prescribed by section 6075(a) for filing the return of such tax (including extensions thereof), and shall be made in such manner as the Secretary shall by

regulations prescribe. If an election under this section is made, the provisions of Subtitle F of the Code (Procedure and Administration) shall apply as though the Secretary were extending the time for payment of the tax.

Section 6166A(b) of the Code provides that the amount of tax that may be paid in installments shall be an amount that bears the same ratio to the estate tax imposed by section 2001 (reduced by the credits against such tax) as the value of the interest in a closely held business that qualifies for the election to pay the tax in installments bears to the value of the gross estate.

Section 6402 of the Code provides that in the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall refund any balance to such person.

Section 6403 of the Code provides that in the case of a tax payable in installments, if the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in section 6402.

Section 20.6166A-1(d) of the Estate Tax Regulations provides that the amount of a deficiency that may be paid in installments may not exceed the difference between the amount of tax that the executor elected to pay in installments and the maximum amount of tax that the executor could have elected to pay in installments on the basis of a return that reflects the adjustments that resulted in the deficiency. This amount is then prorated to the installments in which the executor elected to pay the tax. The part of the deficiency prorated to installments

not yet due will be paid at the same time as, and as a part of, the installments. The part of the deficiency prorated to installments already paid or due will be paid upon notice and demand from the district director. At the time the executor receives the notice and demand, the executor may prepay the portions of the deficiency that have been prorated to installments not yet due.

HOLDINGS

In *situation 1*, the difference between the amount the executor elected to pay in installments (25x dollars) and the maximum it could have elected to pay as determined upon audit (80x dollars) is 55x dollars. However, the amount of the deficiency is 50x dollars; therefore, the entire amount of the deficiency may be deferred. Thus, the total amount payable in installments is 75x dollars (25x dollars originally elected plus 50x dollars prorated to the installments or 7.5x dollars per installment. The executor paid 27.5x dollars (25x dollars plus one 2.5x dollars installment). The audit adjustments require that 32.5x dollars be paid (25x dollars non-deferred tax plus one 7.5x dollars installment). Therefore, 5x dollars (32.5x dollars less 27.5x dollars) is payable upon receipt of notice and demand and the nine remaining installments are payable in the amount of 7.5x dollars each.

In *situation 2*, 2.5x dollars should continue to be payable for each installment. An executor may not modify an election in order to defer an increased amount (30x dollars) over that of the amount originally elected for installment payments (25x dollars) except where there is a deficiency that qualifies for installment privileges. In this situation there was no deficiency that qualified for installment privileges.

In *situation 3*, the deficiency (10x dollars) may not be deferred; because the amount the estate elected to defer (25x dollars) is greater than the maximum amount that could have been elected as determined by the audit (24x dollars). The executor paid 27.5x dollars (25x dollars plus one 2.5x dollars installment). The audit adjust-

ments require that 38.4x dollars be paid (36x dollars non-deferrable tax plus one 2.4x dollars installment). Therefore, 10.9x dollars (38.4x dollars less 27.5x dollars) is payable upon receipt of notice and demand and the nine remaining installments are payable in the amount of 2.4x dollars each.

In *situation 4*, the audit adjustments require that 25.6x dollars (24x dollars plus one 1.6x dollars installment) be paid. The executor paid 27.5x dollars which was 1.9x dollars more than required. Of this amount, 1.6x dollars should be credited against the second installment, reducing it to zero, and the remaining .3x dollars should be credited against the third installment, reducing it to 1.3x dollars. The seven remaining installments are payable in the amount of 1.6x dollars each.

In *situation 5*, the difference between the amount the executor elected to pay in installments (25x dollars) and the maximum amount it could have elected (30x dollars) is 5x dollars. Therefore, 5x dollars of the deficiency may be deferred under the provisions of section 20.6166A-1(d) of the regulations, but the remaining 5x dollars is non-deferrable tax, required to be paid with the return. Since the due dates for the first and second installments have passed, the executor must pay 6x dollars (5x dollars of non-deferrable tax plus two .5x dollars installments) upon receipt of notice and demand. The remaining eight installments are payable in the amount of .5x dollars each.

The principles set forth above also apply to section 6166 of the Code.

Under section 2031 of the Code, what is the value of the decedent's flower bonds that could