

Illustration 1 - Revenue Ruling 74-499

Facts:

Date of death	Dec-27-1971
Return due date	Sep-27-1972
Form 4768 filed requesting only a 6-month extension of time to file	Sep-27-1972
Approved Form 4768 extended return filing due date (payment extension not requested)	Mar-27-1973
Return with 6166 election filed on	Mar-27-1973
Non-deferred tax due date	Sep-27-1972
First installment due date	Sep-27-1972
Request for extension of time to pay non-deferred tax filed with return on	Mar-27-1973
Request for extension of time to pay the first installment of deferred tax filed with return on	Mar-27-1973
Total tax shown on the return	229x
Non-deferred tax plus first installment of deferred tax due Sep-27-1972	77x
Payment with return filed on Mar-27-1973	0
Balance of deferred tax payable in 9 remaining installments	<i>(extrapolated)</i> 152x
Annual installment	<i>(extrapolated)</i> 16.9x
Non-deferred tax - Mar-27-1973 request for § 6161 extension of time to pay	<i>(extrapolated)</i> 60.1x
First installment - Mar-27-1973 request for § 6161 extension of time to pay	<i>(extrapolated)</i> 16.9x

Rev. Rul. 76-51, Illustration 1, Comment 1: In Rev. Rul. 74-499 the first installment was due on the return due date determined without regard to any extensions of time to file. The non-deferred tax was also due on that date. The Ruling states that the executor timely requested only a 6-month extension of time to file the return. The issue presented was whether the executor could subsequently file a request for an extension of time to pay both the non-deferred tax and the first installment of deferred tax when the return was filed (and the 6166 election was requested) on the extended return filing due date 6 months after the statutory return due date. The Ruling holds that in this case an extension of time to pay both the non-deferred tax and the first installment of deferred tax may be granted under the exception in section 20.6161-1(b) of the regulations.

Rev. Rul. 76-51, Illustration 1, Comment 2: Regulation 20.6166-1(b) provides in part:

If, in the mistaken belief that an estate satisfies the requirements of section 6166, the executor, within the time prescribed in paragraph (e) of § 20.6166-1, files a notification of election to pay estate tax in installments, the notification of election to pay tax in installments will be treated as a timely filed application for an extension, under section 6161, of time for payment of the tax if the executor so requests, in writing, within a reasonable time after being notified by the district director that the estate does not satisfy the requirements of section 6166.

Rev. Rul. 76-51, Illustration 1, Comment 3: Interest on both portions of the 77x extension will accrue at the regular underpayment interest rates under section 6621. See Rev. Rul. 89-32 regarding interest to be accrued on the first installment. Since the first installment was due on the return due date determined without regard to any extensions of time to file, pursuant to section 6601(a) interest will accrue from the installment due date forward to the date of payment at the rates under section 6621. Such interest is deductible on Schedule J of the estate tax return as it is not interest described in current section 2053(c)(1)(D).

Illustration 2 - Revenue Ruling 76-51 Amplifying Revenue Ruling 74-499

Facts amplifying Revenue Ruling 74-499:

Date of death		Dec-27-1971
Return due date		Sep-27-1972
Form 4768 filed requesting only a 6-month extension of time to file		Sep-27-1972
Approved Form 4768 extended return filing due date (payment extension not requested)		Mar-27-1973
Return with 6166 election filed on		Mar-27-1973
Non-deferred tax due date		Sep-27-1972
First installment due date		Sep-27-1972
Request for extension of time to pay non-deferred tax never made		NA
Request for extension of time to pay the first installment of deferred tax never made		NA
Total tax shown on the return		229x
Non-deferred tax plus first installment of deferred tax due Sep-27-1972		77x
Payment with return filed on Mar-27-1973	<i>(extrapolated)</i>	77x
Balance of deferred tax payable in 9 remaining installments	<i>(extrapolated)</i>	152x
Annual installment	<i>(extrapolated)</i>	16.9x
Non-deferred tax - No request for § 6161 extension of time to pay	<i>(extrapolated)</i>	60.1x
First installment - No request for § 6161 extension of time to pay	<i>(extrapolated)</i>	16.9x

Rev. Rul. 76-51, Illustration 2, Comment 1: In Rev. Rul. 76-51 the facts of Rev. Rul. 74-499 are assumed for purposes of amplification. The first installment was due on the return due date determined without regard to any extensions of time to file. The non-deferred tax was also due on that date. The executor timely requested only a 6-month extension of time to file the return. The return was filed on the 6-month extended filing date with payment of the non-deferred tax and first installment of deferred tax, but without any request for an extension of time to pay either portion of tax. The issue presented was whether an extension of time to pay the first installment could be granted when a request for an extension of time to pay was never filed.

Rev. Rul. 76-51, Illustration 2, Comment 2: The Ruling held that payment of the first installment within the extended filing period at the time of filing the return and making the election under section 6166 will be considered a timely filed request for an extension of time to pay the first installment under section 6166(a)(2).

Rev. Rul. 76-51, Illustration 2, Comment 3: The Ruling makes no mention of the treatment of the payment of non-deferred tax at the time the return was filed. Without submission of a request for an extension of time to pay the non-deferred tax, it might seem that IRS cannot grant the same relief for the non-deferred tax that was available in Rev. Rul. 74-499. Campus IRM 4.25.2.4.3.5(2) (August 30, 2018) provides:

(2) Non-deferred tax must be paid by the return due date unless the estate has an extension of time to pay under IRC 6161.

Rev. Rul. 74-499 treated the time for payment of the non-deferred tax as having been extended pursuant to section 6161 because a request for such extension had been made, in writing, at the time the return was filed with a section 6166 election, thus satisfying the requirements of reg. 20.6166-1(b).

In this Ruling no such written request exists with regard to the non-deferred tax. The section 6166 election relates only to the first installment of deferred tax. IRS could therefore assess a 6651(a)(2) failure to pay penalty of 0.5% per

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Rev. Rul. 76-51, Illustration 2, Comment 4: However, see GCM 36209 (Rev. Rul. 76-51) amplifying GCM 35644 (Rev. Rul. 74-499). Reg. section 20.6166A-1(g) provides:

(g) Extensions of time for payment in hardship cases. The provisions of section 6161, under which extensions of time may be granted for payment of estate tax in cases involving undue hardship, apply to both the portion of the tax which may be paid in installments under section 6166 and the portion of the tax which is not so payable.

Extrapolating from this rule to the present Ruling situation, the result should then be that, since the first installment is being treated as having been paid pursuant to a section 6161 extension of time to pay, so, too, should the concurrent payment of the non-deferred tax. The non-deferred tax payment should also be treated as having been made timely.

Rev. Rul. 76-51, Illustration 1, Comment 5: The conclusions to be drawn from these two Rulings can be stated as:

1. A request for a section 6161 extension of time to pay non-deferred tax and the first installment of deferred tax due under current sections 6166(b)(7), (b)(8), or (b)(10) can be filed 6 months after the regular section 6151(a) statutory estate tax return and Form 4768 filing date if -

- a. a timely request for a section 6081 automatic 6-month extension of time to file was first granted, and
- b. the return is timely filed on the extended return due date together with the section 6166 notice of election and the request for the extensions of time to pay.

2. A 6-month extension of time to pay non-deferred tax and the first installment of deferred tax due under current sections 6166(b)(7), (b)(8), or (b)(10) will be granted even if a request for a section 6161 extension of time to pay was never requested if -

- a. a timely request for a section 6081 automatic 6-month extension of time to file was first granted, and
- b. the non-deferred tax and the first installment of deferred tax due under current sections 6166(b)(7), (b)(8), or (b)(10) are paid together with the timely filing of the return and section 6166 election on the extended return due date.