

Section 6081

file returns on the fifteenth day of the fourth month following the close of the taxable year of the partnership, and which keep their records and books of account outside the United States and Puerto Rico;

(2) Domestic corporations which transact their business and keep their records and books of account outside the United States and Puerto Rico;

(3) Foreign corporations which maintain an office or place of business within the United States;

(4) Domestic corporations whose principal income is from sources within the possessions of the United States;

(5) United States citizens or residents whose tax homes and abodes, in a real and substantial sense, are outside the United States and Puerto Rico; and

(6) United States citizens and residents in military or naval service on duty, including non-permanent or short term duty, outside the United States and Puerto Rico.

(b) In order to qualify for the extension under this section, a statement must be attached to the return showing that the person for whom the return is made is a person described in paragraph (a) of this section.

(c) For purposes of paragraph (a)(5) of this section, whether a person is a United States resident will be determined in accordance with section 7701(b) of the Code. The term "tax home," as used in paragraph (a)(5), will have the same meaning which it has for purposes of section 162 (a)(2) (relating to travel expenses away from home). If a person does not have a regular or principal place of business, that person's tax home will be considered to be his regular place of abode in a real and substantial sense.

(d) In order to qualify for the extension under paragraph (a)(6), the assigned tour of duty outside the United States and Puerto Rico must be for a period that includes the entire due date of the return.

(e) A person otherwise qualifying for the extension under paragraph (a)(5) or paragraph (a)(6) shall not be disqualified because he is physically present in the United States or Puerto Rico at any time, including the due date of the return.

(f) With respect to income tax returns due on April 15, 1988, an extension of time for filing a return of income and for paying any tax shown

on that return is hereby granted to and including the fifteenth day of the sixth month following the close of the taxable year in the case of citizens or residents of the United States who are traveling outside the United States and Puerto Rico. A taxpayer will be considered to be traveling outside the United States and Puerto Rico only if the period of travel outside the United States and Puerto Rico is a period of at least fourteen days continuous travel that includes all of April 15, 1988. For returns due after April 15, 1988, no extension will be granted to taxpayers traveling outside the United States and Puerto Rico.

OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT (26 CFR Part 602)

Par. 4 The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by removing from the table "\$1.6081-2 ... 1545-0148".

Par. 6. Section 602.101(c) is amended by inserting in the appropriate place in the table "\$1.6081-4T ... 1545-0148".

Lawrence B. Gibbs,
Commissioner of
Internal Revenue.

Approved January 13, 1989.

O. Donaldson Chapoton,
Assistant Secretary of
the Treasury.

(Filed by the Office of the Federal Register on February 22, 1989, 8:45 a.m., and published in the issue of the Federal Register for February 22, 1989, 54 F.R. 7762)

Subchapter B.—Miscellaneous Provisions

Section 6109.—Identifying Numbers

26 CFR 301.6109-1: Identifying numbers

Procedures are established to permit certain fiduciaries or other persons who are authorized to represent ten or more estates or trusts in federal tax matters to file consolidated applications to obtain employer identification numbers. See Rev. Proc. 89-37, page 919.

Chapter 62.—Time and Place for Paying Tax
Subchapter B.—Extensions of Time for Payment

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

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.

At what rate does interest accrue on unpaid interest that should have been paid on past annual interest payment dates if the time for payment of estate tax is extended under section 6166 of the Code and a deficiency is assessed after the estate has timely made one or more annual interest payments? See Rev. Rul. 89-32, page 307.

26 CFR 20.6166A-3. Acceleration of payment.
(Also Section 2032A.)

Extension of time for payment; estate tax; closely held business. Sale of specially valued property to a person, not a qualified heir, where proceeds reduce debt on assets of the ongoing business, is not a disposition for purposes of section 6166(g)(1)(A) of the Code, but is a disposition for purposes of section 2032A.

Rev. Rul. 89-4

ISSUES

1. If there is a sale of a portion of the assets of a closely held business to allay impending foreclosure and all the proceeds are applied to reduce mortgage debt on encumbered assets of the ongoing business, has there been a disposition of an interest in the business or withdrawal of funds from the business within the meaning of section 6166(g)(1)(A) of the Internal Revenue Code?

2. If the sale was of qualified property specially valued under section 2032A of the Code, was there a disposition within the meaning of section 2032A(c) of the Code?

FACTS

D, the decedent, died in 1983. At the time of *D*'s death, *D* had owned and operated a farm as a sole proprietor for more than 10 years. The farm consists of 2 separate tracts of land, each encumbered by a mortgage. Tract *A* had a fair market value of \$700,000 and was encumbered by mortgage and accrued interest of \$400,000. Tract *B* had a fair market value of \$500,000, and was encumbered by a mortgage and accrued interest of \$300,000. The adjusted value of the farming business was \$550,000. The adjusted gross estate was \$700,000. The executor elected to specially value the farm real property under section 2032A of the Code. The executor also elected to defer the payment of a portion of the estate tax pursuant to section 6166 of the Code.

In 1988, the outstanding mortgages on Tract *A* and Tract *B* had matured and were in a delinquent status. Foreclosure

was imminent. However, there were insufficient cash and liquid assets to satisfy the unpaid mortgages and accrued interest which totaled \$700,000. To allay impending foreclosure, Tract A was sold for \$700,000 to a person who was not a qualified heir, and the entire proceeds were used to retire the mortgages on both Tract A and Tract B.

As a result of this transaction the adjusted value of the farming business remained at \$550,000, but now consisted of \$500,000 in unencumbered real estate, and \$50,000 representing the equity in the farm equipment and miscellaneous assets.

LAW AND ANALYSIS

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 exceeds 35 percent of the adjusted gross estate, the executor may elect to pay part or all of the estate tax in 2 or more (but not exceeding 10) equal installments. Under section 6166(a)(2), only the amount of estate tax attributable to the closely held business may be paid in installments.

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

Section 2032A of the Code provides that real property used for family purposes or in a closely held business may, if certain conditions are satisfied, be valued on the basis of its current use rather than on the basis of its highest and best use under conventional rules of valuation.

Section 2032A(c)(1) of the Code imposes an additional estate tax if, within 10 years after the decedent's death and before the death of the qualified heir -

(A) the qualified heir disposes of any interest in qualified real property (other than by a disposition to a member or his family), or

(B) the qualified heir ceases to use for the qualified use the qualified real property which was acquired (or passed) from a decedent.

Section 6166 of the Code was intended to relieve the executor and the heirs from the necessity of partially liquidating a closely held business in order to pay estate taxes. The purpose of the acceleration provisions in section 6166(g)(1)(A) is to withdraw the benefits of section 6166 if 50 percent of the business is sold, or if 50 percent of the net assets are withdrawn from the business.

In a case where the sale of encumbered assets of a business is necessary to preserve the ongoing business from creditors threatening foreclosure on those assets, treating such a sale as a disposition would not be consistent with the purpose of section 6166 of the Code. Further, such a sale does not decrease the value of the closely held business included in the estate.

Therefore, a sale of a portion of the business assets of a closely held business that is made to allay impending foreclosure on encumbered business assets does not constitute a disposition of an interest in the business nor a withdrawal of funds from the business within the meaning of section 6166(g)(1)(A) of the Code, if all the proceeds are applied to reduce mortgage debt on other assets of the ongoing business. However, in a case in which sales proceeds exceed the amount of the mortgage and accrued interest, removal from the business of any excess funds would be a withdrawal of funds from the business within the meaning of section 6166(g)(1)(A) of the Code. Such a disposition would have to be added to other dispositions to determine if the aggregate of such distributions, sales, exchanges, or other disposition and withdrawals equals or exceeds 50 percent of the value of the interest. If so, the extension of time provided by section 6166(a) would cease to apply.

Although the sale of Tract A does not constitute a disposition within the meaning of section 6166(g)(1)(A) of the Code, under section 2032A of the Code, any sale of specially valued property to a person who is not a qualified heir constitutes a disposition for purposes of section 2032A(c). Such a sale results in the imposition of the additional estate tax under that section. Unlike section 6166, section 2032A is focused on real property, and requires the continued dedication of the specially valued real property to a qualified use.

HOLDINGS

1. The sale of a portion of the assets of a closely held business to allay impending foreclosure does not constitute a disposition of an interest in the business within the meaning of section 6166(g)(1)(A) of the Code, if the proceeds are applied to reduce mortgage debt on encumbered assets of the ongoing business.

2. The sale of a portion of qualified property valued under section 2032A of the Code to a person who is not a qualified heir to pay the unpaid balance on the mortgage that encumbered the qualified property, existing at date of death, constitutes a disposition within the meaning of section 2032A of the Code, triggering the imposition on the recapture tax under section 2032A(c).

Chapter 64.—Collection
Subchapter B.—Receipt of Payment

Section 6323.—Validity and Priority Against Certain Persons

26 CFR 301.6323(f)-1: Place for filing notice; form.

T.D. 8234

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Electronic Filing of Notice of Federal Tax Lien

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document removes temporary regulations and adopts as final regulations proposed regulations published in the *FEDERAL REGISTER* on February 23, 1988, relating to a notice of Federal tax lien filed by the use of an electronic or magnetic medium. These regulations clarify existing regulations under section 6323(f) of the Internal Revenue Code (Code).

EFFECTIVE DATES: The regulations are effective for a notice of Federal tax lien filed on or after February 23, 1988.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On February 23, 1988, the Federal Register published temporary regulations (52 F.R. 5269) (1988-1 C.B. 399) and