

**Office of Chief Counsel  
Internal Revenue Service  
Memorandum**

Number: **200836027**

Release Date: 9/5/2008

CC:ITA:B01:NJLee

POSTN-111097-08

UILC: 163.05-00

date: May 12, 2008

to: Nelson M. Blakely  
Attorney (Estate Tax)  
(Small Business/Self-Employed)

from: John P. Moriarty  
Branch Chief, Branch 1  
(Income Tax & Accounting)

Nancy J. Lee  
General Attorney, Branch 1  
(Income Tax & Accounting)

---

subject:

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Whether interest on the estate tax accrued during the period of extension for paying tax under § 6161 of the Internal Revenue Code is deductible under § 163.

CONCLUSIONS

Interest on the estate tax accrued during the period of extension for paying tax under § 6161 constitutes nondeductible, personal interest under § 163(h)(2).

## FACTS

During the taxable year at issue, taxpayer (an estate) owed income and estate taxes but lacked liquid assets to pay the taxes. Instead, taxpayer held real property assets, which subsequently were sold to pay the taxes. In the meantime, under § 6161, taxpayer requested and was granted (due to economic hardship) an extension of time for paying the estate tax. During the period of extension for paying the estate tax, interest on the unpaid estate tax continued to accrue. Taxpayer filed its Form 1041, U.S. Income Tax Return for Estates and Trusts, which reflected the income tax due. Taxpayer claimed a deduction on the income tax return for the amount of interest due on the unpaid estate tax. Taxpayer later paid the estate tax and interest due pursuant to the extension under § 6161 (and did not claim a deduction on the estate tax return for the related interest).

## LAW AND ANALYSIS

In general, § 163(a) provides that a deduction is allowed for interest paid or accrued within the taxable year on indebtedness. However, under § 163(h)(1), no deduction is allowed for personal interest paid or accrued during the taxable year. Only the six types of interest listed in § 163(h)(2)(A) through (F) qualify as deductible, non-personal interest.

Section 163(h)(2)(E) states that where an extension of time for payment of estate tax is in effect under § 6163, the interest payable on the estate tax during that period of extension is allowable as an income tax deduction.<sup>1</sup> Other than interest payable on estate tax during a period of extension under § 6163, all interest with respect to other extensions of time for paying estate tax are considered personal interest for purposes of the income tax deduction (unless the interest qualifies as non-personal interest under § 163(h)(2)(A) through (C), relating to trade or business, investment, and passive activities).<sup>2</sup>

Taxpayer in this case was granted an extension of time for payment of estate tax. However, the extension was in effect under § 6161 – not § 6163. Therefore, the interest payable on taxpayer's estate tax during the period of extension is personal interest and not allowable as an income tax deduction.

## CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

In a publication of the American Law Institute, Jeffrey N. Pennell suggested a question remained with respect to whether interest payable on estate tax during a period of

---

<sup>1</sup> Prior to its amendment in 1997, § 163(h)(2)(E) included § 6166 and § 6166A interest. Section 503(b)(2) of P.L. 105-34, 111 Stat. 788, 852 (Aug. 5, 1997). In the same amendment, Congress added § 163(k), which explicitly states that interest payable on estate tax during the period of extension under § 6166 is not deductible under § 163. Note, however, the Temporary Income Tax Regulations have yet to delete references to § 6166 and § 6166A. Section 1.163-9T(b)(1)(v) (originally promulgated on Dec. 22, 1987, and corrected on Mar. 19, 2003).

<sup>2</sup> Nothing in the facts indicates any other exception under § 163(h)(2) would apply in this case.

extension under § 6161 would qualify as deductible, non-personal interest under § 163(h)(2)(E). Jeffrey N. Pennell, § 4, Interest and Late Filing or Payment Penalties, of *Tax Payment Provisions and Equitable Apportionment*, SM093 ALI-ABA 1097, 1107 (Jun. 17-22, 2007) (accessed via Westlaw). The plain language of the statute, along with Congress's prior inclusion and then exclusion of § 6166, indicates that no interest payable on the estate tax during a period of extension other than under § 6163, qualifies as deductible, non-personal interest under § 163(h)(2)(E).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-5020 if you have any further questions.