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**From:**

**Sent:** Thursday, November 29, 2012 11:06:29

**To:**

**Cc:**

**Subject:** RE: 6166 question

You asked whether an estate that timely made an election under § 6166 to defer the payment of estate tax on only part of its interest in a closely-held business could expand its election to its entire interest in that business once exam determined an estate tax deficiency resulting from the non-business portion of the estate.

Here's a summary of our conversation this morning:

An election was made originally. Section 6166(h) does not apply.

Section 6166(e) provides for the pro-rating of a deficiency, using the qualified percentage formula from section 6166(a)(2). Because the numerator of this fraction (the value of the portion of the closely held business elected for deferral) is staying the same and the denominator (the value of the adjusted gross estate) is increasing, the qualifying percentage goes down where the deficiency relates exclusively to the non-closely-held business portion of the estate. Treas. Reg. 20.6166-1(c)(2) provides that where an election is made when the estate tax return is filed and a deficiency is later assessed, the portion of the deficiency attributable to the closely-held business (but not any accrued interest) will be prorated to the installments payable pursuant to the original election. The estate remains eligible to defer the original closely-held business value but none of the deficiency, because the portion of the deficiency attributable to the closely-held business is zero.

The determination and assessment of a deficiency in estate tax unrelated to the value of the portion of the closely-held business interest that the estate originally elected for deferral does not provide the estate an opportunity to expand its § 6166 election.

Please let me know if you have any further questions.

Thanks,