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Department of the Treasury

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Washington, DC 20224

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Date:

February 12, 2003

In re: Letter Ruling Request on I.R.C. § 6166(g)

Legend

Decedent =

Date 1 =

Date 2 =

State X =

A =

B =

C =

LLC 1 =

LLC 2 =

Y =

\Dear :

This letter is in response to your request for a ruling, dated October 8, 2002, regarding the application of section 6166 of the Internal Revenue Code to certain transactions. Specifically, you have asked us to rule that the transactions will not result in the

acceleration of payments of estate tax under section 6166(g).

Facts

Decedent died on Date 1, a resident of State X. Decedent's gross estate consisted primarily of a sole proprietorship. The sole proprietorship was engaged in direct farming operations of various crops on Y acres of land owned and/or leased by Decedent. In addition, the sole proprietorship was engaged in storage and processing functions with respect to those crops. Up until his death, Decedent was actively involved in all aspects of the farming, storage, and processing operations. The interest in the sole proprietorship included in Decedent's gross estate qualified as an interest in a closely held business within the meaning of section 6166(b)(1). As a result, the personal representative of Decedent's estate elected under section 6166 to pay the portion of estate tax attributable to the value of Decedent's interest in the sole proprietorship in installments. Decedent's estate timely filed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return on Date 2 and included a section 6166 election.

Pursuant to the terms of Decedent's will, the majority of Decedent's assets were distributable to a residuary trust with three primary beneficiaries, A, B, and C. A and B are sons of Decedent. While C was raised by Decedent and changed his last name to that of Decedent's, C is not a blood relative of Decedent. Decedent's will expressed the intent that the beneficiaries continue the farming operations.

Decedent's will authorized the trust to lease portions or all of the Y acres of land to the trust beneficiaries, provided that the beneficiaries personally operate the farm. Decedent's will further provided that in the event the trust beneficiaries, individually or any combination of them, are the sole owners of a farming entity, a lease to such entity is authorized. In accordance with these terms, Decedent's estate has entered into cash leases under which it has leased certain of the Y acres of farmland to LLC 1 and LLC 2. The leases are based on a fixed cash price per acre. LLC 1 and LLC 2 were formed for the purpose of conducting Decedent's farming operations.

LLC 1 is a limited liability company formed under State X law with A as its sole owner. It is a disregarded entity for all federal tax purposes and its activities are treated in the same manner as a sole proprietorship of A. See Treas. Reg. § 301.7701-2(a). Similarly, LLC 2 is a limited liability company formed under State X law with C as its sole owner. Consequently, LLC 2 is treated as a sole proprietorship of C for federal tax purposes.

Ruling Requested

On the basis of the above facts and representations, the following ruling has been requested:

The farmland leased on a cash basis by Decedent's estate to LLC 1 and LLC 2 does not constitute a distribution, sale, exchange, or other disposition of an interest in a closely held business under section 6166(g)(1)(A) and therefore will not result in acceleration of the installment payments.

Relevant Authorities

The Tax Reform Act of 1976 created a new section 6166 of the Code and redesignated the former section as section 6166A. Pub. L. No. 94-455, § 2004(a). The Economic Recovery Tax Act of 1981 repealed section 6166A and amended section 6166 so that it would apply in most cases that were previously governed by section 6166A. Pub. L. No. 97-34, § 422(d). Neither the Economic Recovery Tax Act of 1981 nor its legislative history indicate any intent on the part of Congress that a disposition of an interest under section 6166A would not be a disposition under section 6166. As a result, the regulations under section 6166A are considered applicable to this ruling request to the extent that those regulations are not inconsistent with the language of section 6166.

Under section 6166(a) of the Code, if the value of an interest in a closely held business included in determining the gross estate of a decedent exceeds 35 percent of the adjusted gross estate, the executor of the estate may elect to pay part or all of the tax imposed by section 2001 (estate tax) in two or more (but not exceeding ten) equal installments. Certain activities, however, trigger the acceleration of the payments. Section 6166(g) identifies the activities which terminate the deferred payment election and force an acceleration of payment of the estate tax. In particular, section 6166(g)(1)(A) provides that if 50 percent or more of the value of an interest in a closely held business which qualified for installment payments under section 6166(a)(1) is distributed, sold, or otherwise disposed of, then the extension of time to pay the tax shall cease to apply and the unpaid portion of the tax will be accelerated and due upon notice and demand. See also Treas. Reg. § 20.6166A-3(e)(1). When determining whether the 50 percent threshold is met, dispositions and withdrawals are aggregated. I.R.C. § 6166(g)(1)(A)(ii).

Analysis

The regulations promulgated under section 6166A state that the phrase "distributed, sold, exchanged, or otherwise disposed of" is broad in scope and "comprehends all possible ways by which an interest in a closely held business ceases to form a part of the gross estate." Treas. Reg. § 20.6166A-3(e)(2). As a general rule, however, the phrase does not encompass transactions which are mere changes in form. Id. Further, Rev. Rul. 66-62, 1966-1 C.B. 272, holds that a change in the operation of a business from an incorporated form to an unincorporated form does not materially alter the business or the interest of the estate in the business, and therefore, will not result in the termination of the installment election under section 6166, if it is otherwise available to the estate.

The change in this case, from operating the farm operations as a sole proprietorship to entering into cash leases with LLC 1 and LLC 2, owned and operated by A and C respectively, does not materially alter the business. LLC 1 and LLC 2 are disregarded entities for all federal tax purposes and their activities are treated in the same manner as sole proprietorships of A and C, respectively. LLC 1 and LLC 2 continue the farming operations in the manner previously performed by Decedent. Given LLC 1's status as a disregarded entity for all federal tax purposes and LLC 1's close relationship to A, leasing the land to LLC 1 should be viewed as leasing the land to A. In substance, LLC 1 is merely a trade name by which A conducts the farming business. Similarly, LLC 2 is a trade name by which C conducts the farming business. Therefore, the lease transactions will not result in the acceleration of the estate tax installments.

Based on the facts and information submitted and the representations set forth above, we rule as requested with respect to the following:

The farmland leased on a cash basis by Decedent's estate to LLC 1 and LLC 2 does not constitute a distribution, sale, exchange, or other disposition of an interest in a closely held business under section 6166(g)(1)(A) and therefore will not result in acceleration of the installment payments.

Pursuant to the power of attorney on file in this office, this letter is also being sent to the authorized representatives for the Decedent's estate. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter ruling should be attached to Decedent's federal estate tax return.

If you have questions, please contact _____ .

Sincerely yours,

Assistant Chief Counsel
(Administrative Provisions & Judicial Practice)

By: _____
Susan L. Hartford
Acting Senior Technician Reviewer,
Branch 2

Enclosures:
Copy of letter
Copy for section 6110 purposes