

**Internal Revenue Service**

Department of the Treasury  
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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
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PLR-142924-05

Date:  
December 14, 2005

RE:

Legend

- Decedent =
- Daughter =
- Trustees =
- Trust I =
- Trust II =
- Partnership =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- A years of age =
- B years of age =

Dear \_\_\_\_\_ :

This responds to \_\_\_\_\_ August 10, 2005 letter, submitted on your behalf,  
requesting the following ruling:

The distribution by the Trustees to Daughter, of part or all of the \_\_\_\_\_ % interest in  
Partnership held by the Trustees in Trust I, in response to a written request by Daughter  
in accordance with Decedent's will, would not cause the extension of time for payment

of the estate tax under § 6166(a) of the Internal Revenue Code (Code) to cease to apply.

## FACTS

Decedent died testate on Date 1. The probate of Decedent's will was concluded on Date 3. Decedent's will provided for distribution of her residence to Daughter and made a number of specific bequests to others. Under \_\_\_\_\_ of the will, the residue of Decedent's estate was to be held in trust (Trust I) for the benefit of Daughter. The will further provided that when Daughter shall have attained A years of age, she at any time thereafter may by written request withdraw up to one-half of the assets of Trust I as it exists at the time of withdrawal. At any time after she has attained B years of age, she may withdraw all or any portion of the trust then remaining. Daughter has attained the age of A years, and will attain the age of B years on Date 4.

Trust I was funded on Date 2, upon distribution of the Decedent's estate. Trustees manage Trust I assets, including a \_\_\_\_\_ % interest in Partnership, which engages in forest products ownership, harvesting, and sale, and invests in other real estate and in securities. The sole function of the Trustees is to administer Trust I and make distributions under the provisions of the trust, in accordance with Decedent's will. Other than a \_\_\_\_\_ % interest in Partnership, Daughter has no business operations relevant to this request. The remaining \_\_\_\_\_ % interest in Partnership is held by Trust II, an irrevocable trust that Decedent established during her lifetime. Trustees are also co-trustees of Trust II.

The executor of the estate timely filed a federal estate tax return (Form 706) and elected under the provisions of § 6166 to defer payment of the tax attributable to the \_\_\_\_\_ % interest in Partnership that was owned by Decedent at the time of her death.

Daughter plans to exercise her right to withdraw up to one-half of the Trust I assets, including one-half of the \_\_\_\_\_ % interest in Partnership. When Daughter attains the age of B years, she contemplates exercising her right to withdraw some additional portion or all of the assets of Trust I then remaining. If Daughter requests withdrawal of any Trust I assets as allowed by Decedent's will, the Trustees will comply with her request.

## LAW AND ANALYSIS

The Tax Reform Act of 1976 enacted new § 6166 and redesignated the former § 6166 as § 6166A. Pub. L. No. 94-455, § 2004(a). The Economic Recovery Tax Act of 1981 repealed § 6166A and amended § 6166 so that the section applies in most cases that were previously governed by § 6166A. Pub. L. No. 97-34, § 422(d). There is no indication in the statute or underlying legislative history that Congress intended that a transaction that would have constituted a disposition of an interest under § 6166A prior

to repeal would not be a disposition under § 6166. Therefore, the regulations under § 6166A are considered applicable to this ruling request to the extent that those regulations are not inconsistent with the language of § 6166.

Section 6166(a)(1) provides that if the value of an interest in a closely held business, which is included in determining the gross estate of a decedent who was (at the date of his death) a citizen or resident of the United States, exceeds 35 percent of the adjusted gross estate, the executor may elect to pay any part or all of the tax imposed under § 2001 in two or more (but not exceeding ten) equal installments. If such an election is made, the first installment shall be paid on or before the date selected by the executor which is not more than five years after the date prescribed by § 6151(a) for payment of the tax. § 6166(a)(3).

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

Section 6166(g)(1)(D) provides that § 6166(g)(1)(A)(i) does not apply to a transfer of property of the decedent to a person entitled by reason of the decedent's death to receive the property under the decedent's will, the applicable law of descent and distribution, or a trust created by the decedent.

Section 20.6166A-3(e)(1) of the Estate Tax Regulations provide, in relevant part, that in any case where in aggregate 50 percent or more of the decedent's interest in a closely held business has been distributed, sold, exchanged, or otherwise disposed of, the privilege of paying the tax in installments terminates and the whole of the unpaid portion of the tax that is payable in installments becomes due and shall be paid upon notice and demand from the district director. A transfer by the executor of an interest in a closely held business to a beneficiary or a trustee named in the decedent's will does not constitute a distribution thereof for purposes of determining whether 50 percent or more of an interest in a closely held business has been distributed, sold exchanged or otherwise disposed of.

Section 20.6166A-3(e)(1) further provides that a subsequent transfer of the interest by the beneficiary, trustee, or heir will constitute a distribution, sale, exchange, or other disposition thereof for such purposes. This language, however, is inconsistent with current § 6166(g)(1)(D) of the Code and, therefore, is inapplicable. The language was developed pursuant to former § 6166A(h)(1)(D). That section provided that an acceleration of the deferred estate tax did not occur if the transfer of property was made

pursuant to the decedent's will or the law of descent and distribution. The section did not refer to transfers made pursuant to a trust created by the decedent. Current § 6166(g)(1)(D), however, provides that an acceleration of the deferred estate tax does not occur with respect to transfers of property to a person entitled to receive the property under a trust created by the decedent. Thus, the applicable regulatory language does not require an acceleration of the deferred estate tax where the property is transferred from a trust created by the decedent to a person entitled to receive the property under such trust.

The estate distributed its interest in Partnership to Trust I under Article V of Decedent's will. Under the terms of Trust I, Daughter can exercise her power to withdraw some or all of the assets from such trust.

Under § 6166(g)(1)(D) of the Code and § 20.6166A-3(e)(1) of the regulations, transfers of property to a person entitled to receive such property under the decedent's will or a trust created by the decedent will not cause the acceleration of the deferred portion of the estate tax. In this case, the decedent empowered her daughter, upon attaining certain ages, under the terms of her will and Trust I to withdraw any or all of the assets comprising Trust I. The testamentary trust agreement thus entitles Daughter, depending upon her age, to a portion or all of the interest in the closely held business held by Trust I.

Accordingly, the Trustees' distribution to Daughter of part or all of the % interest in Partnership held in Trust I, in response to Daughter's written request, will not cause the cessation of the extension of time under § 6166(a) for payment of the estate tax.

This ruling assumes that the election under § 6166(a) was valid and that Partnership is a closely held business. This ruling thus does not address those issues.

Furthermore, this ruling is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers 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 should be attached to Decedent's federal estate tax return.

Sincerely,

Associate Chief Counsel

By:

Carol P. Nachman  
Special Counsel, Administrative Provisions &  
Judicial Procedure  
(Procedure & Administration)

Enclosures

Copy for section 6110 purposes

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