

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200842012**
Release Date: 10/17/2008
Index Number: 6166.03-00, 6166.00-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact: , ID No.

Telephone Number:

Refer Reply To:
CC:PA:04
PLR-112670-08
Date:
July 18, 2008

In Re:

Date of Death:

Legend:

Decedent:

Corporation:

A shares:

B shares:

C shares:

D shares:

E:

F:

G:

H:

Dear :

This letter is in response to a letter from your attorney dated March 12, 2008 requesting the following rulings under section 6166 of the Internal Revenue Code.

The facts as submitted show that at the time of her death, the Decedent owned stock in the corporation as follows: A shares of Class A Voting Common Stock; B shares of Class B Nonvoting Common stock; C shares of Partially Convertible \$0.10 Par Value

Non-Voting Common Stock; and D shares of \$0.10 Par Value Non-Convertible Common stock.

Rulings Requested:

At the time of Decedent's death,

(1) The corporation was engaged in carrying on an active "trade or business" within the meaning of section 6166(b)(1)(C) of the Internal Revenue Code; and

(2) The stock of the corporation owned by Decedent qualified as "an interest in a closely held business" within the meaning of section 6166(a)(1) of the Internal Revenue Code.

The estate has not requested that a ruling be issued regarding the percentage value of such interest as a part of the adjusted gross estate.

Relevant Authorities:

Issue 1:

In order for an estate to qualify to make an election under section 6166, the business interest at issue must be an active "trade or business" within the meaning of section 6166(b)(1)(C). In 2006, Rev. Rul. 2006-34 was issued updating guidance from Rev. Ruls. 75-365, 75-366, and 75-367. The Revenue Ruling provides guidance as to whether real property interests qualify for a deferral under section 6166 by analyzing criteria to determine whether the business is an active "trade or business." Under section 6166(b)(9), for purposes of section 6166(a)(1) and determining the interest in the closely held business, the value of any interest in the closely held business will not include interests in passively held assets. The trade or business must be active, as section 6166 does not apply to passive assets which are distinguished as "mere management of investment assets." Rev. Rul. 2006-34. In order to determine whether the interest in the business qualifies as an active interest, the decedent must have conducted an active trade or business or held an interest in a partnership, LLC, or

corporation that carries on an active trade or business. In order to determine whether a trade or business is active or passive, the activities of the decedent and decedent's agents and employees and the activities of the corporation must be taken into account. There are many factors to look to in determining whether actions are active or passive including: (1) the amount of time devoted to the business; (2) whether an office was set up for the business and whether regular hours were kept at the office; (3) the extent to which the decedent, or decedent's agent's or employees were involved in finding new tenants and completing leases; (4) whether landscaping and ground care were provided by decedent or decedent's agents or employees; (5) whether decedent or decedent's agents or employees were involved in repairs and maintenance of the properties; and (6) whether the decedent, or decedent's agents or employees, were involved in tenant's requests for repairs or tenant complaints. Rev. Rul. 2006-34.

Issue 2:

In order for an estate to qualify to make an election under section 6166, the decedent must have had an interest in a closely held business. Under section 6166, for a corporation, an "interest in a closely held business" means "stock in the corporation carrying on a trade or business if (i) 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or (ii) such corporation has 45 or fewer shareholders." I.R.C. § 6166(b)(1)(C).

Section 6166(b)(2) of the Code sets forth certain attribution rules. Section 6166(b)(2)(C) provides that property owned, directly or indirectly, by or for a corporation, partnership, estate or trust will be considered as owned proportionately by or for its shareholders, partners, or beneficiaries. A person may be treated as a beneficiary of a trust only if such person has a present interest in the trust (defined in Treas. Reg. § 25.2503-3(b)).

Section 6166(b)(2)(C) of the Code applies for purposes of determining whether a partnership or corporation has 45 or fewer partners or shareholders within the meaning of section 6166(b)(1). The legislative history of section 6166 supports this interpretation of section 6166(b)(2)(C). The legislative history states:

Also, in order to prevent avoidance of the shareholder or partner limitations by use of partnerships, trusts, or tiers of corporations, the bill provides that property (including stock or a partnership interest) owned directly or indirectly by or for a corporation, partnership, estate, or trust are to be considered as being owned proportionately by or for its shareholders, partners or beneficiaries..."

H.Rep. No. 94-1380, 94th Cong., 2d Sess. 32 (1976), 1976-3 (Vol. 3) C.B. 738, 766, accompanying H.R. 10612.

Conclusions:

Issue 1:

According to facts stated in your letter, the corporation owns, develops, manages, and leases property including commercial, office, manufacturing, light industrial, residential and storage space. In order to determine whether the corporation constitutes an active trade or business, the activities of the employees of the corporation must be taken into account.

The activities of the corporate employees encompass all aspects of the business. Employees of the corporation locate tenants, negotiate leases, and handle tenant problems and requests. The employees of the corporation are also responsible for collecting common area maintenance charges, maintaining and recording businesses transactions, balancing ledgers, and preparing reports on the commercial properties.

A facilities team is responsible for day-to-day repairs, maintenance, general upkeep, functioning of the business systems, and performing or overseeing maintenance, repairs, construction, renovation, janitorial services and landscaping. Additionally, the facilities team is responsible for demolition, excavation, grading, asphalt and street repairs. Until recently the facility team did all landscaping, but now independent contractors are used. However, the facility team still negotiates the contract with the landscape contractor and supervises the work.

The corporation also employs secretarial, accounting and clerical staff, which provides receptionist duties, bookkeeping services, rent collection, and payment of bills. A controller heads the accounting functions, prepares financial reports, and presents findings. The Corporate Executive Officer and Corporate Operating Officer are family member shareholders that work full time for the corporation.

Additionally, the corporation maintains an office with regular business hours. Except for the facilities personnel, all of the corporation's employees work at this office. The facility manager and coordinator split their time between the main office and a facilities shop, where the facility employees are based.

Day-to-day activities including negotiating leases, managing tenant requests and concerns, and maintenance of the properties are overseen or performed by corporate employees. The corporation also maintains a business office with regular hours. Based upon the factors provided in Rev. Rul. 2006-34, the corporation is an active business, not just an entity managing assets. The corporation is actively involved in "trade or business" within the meaning of section 6166(b)(1)(C).

Issue 2:

At the time of the Decedent's death, the corporation had fewer than 45 shareholders. The stock was owned by E individuals (decedent and decedent's F granddaughters (

and by G trusts (a trust for the benefit of decedent's son (); a trust for the benefit of decedent's granddaughter (); a trust for decedent's granddaughter (); a trust for granddaughters (); a trust for the benefit of decedent's great-grandson (); and a trust for the benefit of decedent's great-grandson ()). According to the facts provided, the trust beneficiaries have a present interest in the trust. Under section 6166(b)(2)(C), the property owned by a trust where a beneficiary has a present interest in that trust will be considered as owned by that beneficiary. Therefore, there were only H shareholders at the time of decedent's death and the estate would qualify as a closely held business under section 6166(b)(1)(C)(ii).

This letter ruling does not address whether the estate qualifies to make an election under section 6166. In order for the estate to qualify to make the election, the value of the decedent's interest in the closely held business must exceed 35 percent of the decedent's adjusted gross estate. The estate did not request a ruling on this matter and this letter ruling does not purport to so rule.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent. You must attach a copy of this letter ruling to any tax return to which it is relevant.

The information contained in the letter ruling is based on the information and representations submitted by the taxpayer and accompanied by a penalties 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 ruling, it is subject to verification on examination.

Enclosed is a copy of the letter ruling showing the deletions proposed to be made when the letter is disclosed under section 6110 of the Code.

If you have any questions, please contact .

Sincerely,

Peter J. Devlin
Branch Chief, CC:PA:04