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**From:**

**Sent:** Thursday, December 04, 2008 9:23:25 AM

**To:**

**Cc:**

**Subject:** RE: 6166 question

Regulation section 20.6166-1(c)(1) provides the procedures for making an election to pay a deficiency in installments under section 6166(h) of the Code, where no election, including a protective election, has been made under section 6166(a). Neither the statute nor regulations require that the estate tax return must have been timely filed in order to make an election to pay that portion of the deficiency attributable to the closely held business interest in installments. Therefore, the fact that the estate tax return was not timely filed will not, in and of itself, prevent an executor from electing to pay a deficiency in installments. Section 6166(h) of the Code, however, provides that an executor may not elect to pay a deficiency in installments if the deficiency is due (1) to negligence, (2) to intentional disregard of rules and regulations, or (3) to fraud with intent to evade tax. This limitation has been in all the variations of section 6166 since the first version was enacted in 1958. The Committee Report, H.R. No. 2198, 85th Cong., 1st Sess. (1958), 1959-2 C.B. 709, 713, indicated that if the deficiency was not due to negligence, intentional disregard of rules and regulations or to fraud an election could be made.

Thus, the estate may elect to pay the deficiency determined by the Service in installments under section 6166(h) of the Code even though the estate tax return was not timely filed unless the deficiency, or any part of the deficiency, is due to negligence, to intentional disregard of rules and regulations or to fraud.

Please let me know if you have any further questions.

Sincerely,