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From:

Sent: Thursday, November 08, 2012 10:15:16 AM

To:

Cc:

Subject: 6166 Election

I agree that the amount that could have been deferred under IRC § 6166 when the estate tax return was filed can't be made subject to IRC § 6166 when a deficiency that's not attributable to the closely-held business is later determined. The estate full-paid the tax shown on the return and it's now too late to make the IRC 6166(a) election and there's no 9100 relief available for the election even if an argument could be made for relief. And as the tax was full-paid, the estate didn't try to make a protective election with the estate tax return under Treas. Reg. § 20.6166-1(d) as that election only defers payment of any portion of tax remaining unpaid. Where no election is made when the return is filed and, later, a deficiency is determined, the IRC § 6166(h) election for certain deficiencies only allows that portion of the deficiency attributable to a closely-held business to be paid in installments under section 6166. Treas. Reg. § 20.6166-1(c)(1). The IRC § 6166(h) election doesn't apply to any tax originally determined to be due. Treas. Reg. § 20.6166-1(a). Treas. Reg. § 20.6166-1(c)(3) doesn't allow any tax originally determined to be due to be subject to the IRC § 6166(h) election; that provision only sets a cap on the amount of the deficiency attributable to the closely-held business. The cap is determined by seeing what's left after using the adjusted figures to set the maximum amount that could be paid in installments and reducing it by any amount already elected. Please give me a call if you want to discuss.