

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Date:
July 17, 2013

Legend:

Estate	=
Decedent	=
Executor	=
Date 1	=
Shares/Percentage 1	=
Company 1	=
Company 2	=
Number 1	=
Number 2	=
Number 3	=
Number 4	=
Number 5	=
Number 6	=
State 1	=
State 2	=
State 3	=
Division 1	=
Division 2	=
Division 3	=
Division 4	=
Division 5	=

This letter is in response to Estate's representative's letter dated January 17, 2013, requesting several rulings under section 6166 of the Internal Revenue Code. The request was made on behalf of Executor, the executor of the Estate.

The facts as submitted reflect that Decedent died on Date 1. At the time of his death he owned Shares/Percentage 1 of Company 1, a closely held corporation organized in State 1 that has approximately Number 1 full-time employees. Company 1 has several operating divisions: Division 1; Division 2; and Division 3. Company 1 also owns stock in Company 2. Company 2 has two operating divisions: Division 4 and Division 5. Company 1 as the common parent corporation files a consolidated corporate income tax return along with Company 2. Company 1 has not ever had more than 15 shareholders.

Rulings requested:

1. The activities of Division 5 constitute the carrying on of a trade or business, such that an interest in Division 5 qualifies as an interest in a closely held business for purposes of section 6166(a)(1).
2. The activities of Division 1 constitute the carrying on of a trade or business such that an interest in Division 1 qualifies as an interest in a closely held business for purposes of section 6166(a)(1).
3. Company 2, Division 3, and Division 4 are qualified lending and finance businesses for the purposes of section 6166(b)(10).

Relevant Authorities:

Under section 6166(a)(1), if the value of an interest in a closely held business which is included in determining the gross estate of a decedent exceeds 35 percent of the adjusted gross estate, the estate may elect to pay all or part of the tax imposed by section 2001 (the estate tax liability) in two or more (but not exceeding ten) equal installments. Under section 6166(a)(2), the maximum amount of tax that may be deferred is the percentage of estate tax equal to the percentage of the adjusted gross estate that is comprised of the closely held business amount. Under section 6166(a)(3), if the estate makes an election under section 6166(a)(1), the estate has up to five years from the due date prescribed by section 6151(a) to make the first installment payment.

Section 6166(b)(10) provides that an asset used in a qualifying lending and finance business will be treated as an asset used in carrying on a trade or business. However, if the executor elects treatment under this section, the section 6166(a)(3) five-year deferral is not available and the estate may only elect to pay the tax in up to five installments.

Discussion:

Requested ruling 1

The first ruling requested pertains to the activities of Division 5, a division of Company 2. According to the facts provided, Division 5 is responsible for selling or leasing thousands of pieces of used equipment that are returned upon the expiration of leases. Division 5 also provides marketing, management, and support services to independent third-party lessors. Division 5 has Number 2 full-time employees including marketing personnel, sales representatives working out of offices in State 1 and State 2, and personnel staffing an equipment storage warehouse in State 3. Division 5 maintains extensive support capabilities, including computer and network specialists, quantitative analysts, lease administration office personnel, as well as an in-house counsel. Division 5's duties with respect to used equipment include marketing and portfolio management services to Company 2, Division 4, and to third-party investors and lessors. These services involve tracking and monitoring of lease termination dates, the delivery of all required notices of lease expiration to lessees, the active marketing of equipment for sale or re-lease, and management of equipment returned following lease expiration (including the inspection, shipment and storage of returned equipment). The employees of Division 5 also hire and monitor third party contractors to perform these services.

Revenue Ruling 2006-34 contains a non-exclusive list of factors that are relevant in determining whether real property interests are interests in a closely held business for purposes of section 6166. The revenue ruling provides that in determining whether the activities of a corporation that owns real estate are those of an active trade or business, the Service will consider various nonexclusive factors: the amount of time the corporation's employees devoted to the trade or business; whether an office was maintained from which the activities of the corporation were conducted, and whether the corporation maintained regular business hours for that purpose; the extent to which the corporation's employees were actively involved in finding new tenants and negotiating and executing leases; the extent to which the corporation's employees provided services beyond the mere furnishing of leased premises; the extent to which the corporation's employees personally arranged for, performed, or supervised repairs and maintenance to the property (whether or not performed by independent contractors); and the extent to which the corporation's employees handled tenant repair requests and complaints.

Although in this case Division 5 manages personal property, not real estate as addressed in the revenue ruling, the factors discussed in the revenue ruling are helpful in evaluating whether the employees of Division 5 are engaged in a trade or business. Several offices and a warehouse are maintained by Division 5 in which the employees conduct business. The employees actively negotiate leases, inspect equipment, ship

equipment, arrange repairs, and hire and monitor third party contractors. Accordingly, the activities of Division 5 constitute an active trade or business for purposes of section 6166.¹

Requested ruling 2

The second ruling requested pertains to the activities of Division 1, a division of Company 1. The facts provided reflect that Division 1 is a real estate business involved in the acquisition, development, leasing, operation, and management of commercial real properties. Division 1 has an in-house leasing department with Number 3 full-time employees. Division 1 is involved in the day-to-day operations, management, and maintenance of its properties. Division 1 uses a team of in-house professionals and engineers to maintain and operate its commercial office buildings and has developed extensive procedures for hiring and overseeing its third-party suppliers and vendors. Only major items such as substantial repairs and capital improvements and services unrelated to the management of the properties are performed by independent contractors.

Applying the factors discussed in Revenue Ruling 2006-34, Division 1 has a significant number of full-time employees that are involved in the day-to-day operations, management and maintenance of the real estate. Therefore, the activities of Division 1 constitute the carrying on of a trade or business for purposes of section 6166.

Requested ruling 3

The third ruling requested pertains to the status of Company 2, Division 3, and Division 4 as “qualifying lending and finance businesses” under section 6166(b)(10)(B)(i). Under section 6166(b)(10)(A), any asset used in a qualified lending and finance business is treated as an asset which is used in carrying out an active trade or business.

¹ We note that in order for an interest in a business to qualify as an interest in a closely held business under section 6166, the decedent must have personally conducted an active trade or business or must have held an interest in a partnership, LLC, or corporation that itself carried on an active trade or business. In this case, the decedent did not personally conduct business for Company 2, nor did he hold an interest in Company 2 (decedent owned stock in Company 1 which held stock in Company 2). In order for Company 2’s assets to be included in the estate’s section 6166 election, the estate must make a section 6166(b)(8) holding company election or the assets must qualify for the active corporation exception under section 6166(b)(9)(B)(iii). Whether the estate may make a section 6166(b)(8) election or would qualify for the active corporation exception is not addressed in this letter ruling.

Section 6166(b)(10)(B)(i) defines the term “qualified lending and finance business” to mean a lending and finance business if (I) based on the facts and circumstances at the time of the decedent’s death there was substantial activity with respect to the lending or finance business or (II) during 3 out of the 5 years ending before the decedent’s death, the business employed at least 1 full-time employee who actively managed the business, 10 full-time non-owner employees whose services directly related to the business and the business had gross receipts of \$5,000,000 for lending and finance activities.

A lending and finance business, as defined under section 6166(b)(10)(B)(ii), is a business that engages in the following activities:

- (I) making loans,
- (II) purchasing or discounting accounts receivable, notes, or installment obligations,
- (III) engaging in rental and leasing of real and tangible personal property, including entering into leases and purchasing, servicing, and disposing of leases and leased assets,
- (IV) rendering services or making facilities available in the ordinary course of a lending or finance business, and
- (V) rendering services or making facilities available in connection with activities described in subclauses (I) through (IV) carried on by the corporation rendering services or making facilities available, or another corporation which is a member of the same affiliated group.

The facts provided indicate that Company 1 owns stock in Company 2.² Company 2, which includes the operating divisions of Division 4 and Division 5, at the time immediately preceding decedent’s death, focused its efforts in several areas, including equity ownership in leases of capital equipment such as locomotives, airplanes, railcars, and power plants. In at least 3 of the last 5 taxable years ending before the date of decedent’s death, Company 2 employed at least Number 4 full-time management employees and at least Number 5 full-time non-owner employees. The facts provided also indicate that Company 2’s revenue was also well over \$5,000,000 from its leasing activities. Division 4 provided client companies with single investor lease financing for material-handling equipment such as forklifts, cranes, and tractors. Division 5, as discussed above, was responsible for selling or leasing thousands of pieces of used equipment that are returned upon the expiration of leases.

² In order for Company 2’s assets to be included in the estate’s section 6166 election, the estate must make a section 6166(b)(8) holding company election or the assets must qualify for the active corporation exception under section 6166(b)(9)(B)(iii). Whether the estate may make a section 6166(b)(8) election or would qualify for the active corporation exception is not addressed in this letter ruling.

Based upon the facts provided at the time before the decedent's death, Company 2 (including Division 4 and 5), had substantial activity in activities listed in paragraphs (III) and (V) of section 6166(b)(10)(B)(ii). Company 2 also employed more than 1 full-time management employee and more than 10 full-time non-owner employees. Company 2's revenue was also well over \$5,000,000 from the activities listed in section 6166(b)(10)(B)(ii). Therefore, Company 2 would qualify for the special election under section 6166(b)(10) for assets in a "qualified lending and finance business" as described in section 6166(b)(10)(B)(i). Consistent with our conclusions as to Company 2, Division 4, which was engaged in renting and leasing of personal property, also on its own constitutes a qualified lending and finance business because it engaged in substantial activity with respect to leasing activities and rendering services in connection with its leasing activities.

Division 3 is a division of Company 1. Based on the facts provided, Division 3 was started in late 20 when Company 1 started to accumulate a residential rental portfolio. Division 3 employed Number 6 full-time non-owner employees and at least 1 was a full-time management employee. The company has acquired a portfolio of multi-family real property in various locations. Division 3's employees, or independent contractors hired by those employees, lease and maintain the rental properties and collect rent.

Based upon the facts provided at the time before decedent's death, Division 3, engaged in substantial activities involving renting and leasing of real property and rendering services in connection with those activities. Because of this substantial activity, Division 3 would qualify for the special election under section 6166(b)(10) for assets in a "qualified lending and finance business" as described in section 6166(b)(10)(B)(i).

Conclusions:

1. The activities of Division 5 are sufficient to constitute the "carrying on of a trade or business."
2. The activities of Division 1 are sufficient to constitute the "carrying on of a trade or business."
3. Company 2, Division 3, and Division 4 are qualified lending and finance businesses under section 6166(b)(10).

A copy of this letter must be attached to any income tax return to which is it relevant. Alternatively, a taxpayer filing a return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of the letter ruling.

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 taxpayer requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by the executor's representative 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 rulings, it is subject to verification on examination.

Sincerely,

Mitchel S. Hyman
Senior Technician Reviewer, Branch 3
(Procedure and Administration)

Enclosures: Copy for § 6110 purposes
One copy of this letter