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Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B01-PLR-167258-01
Date:
March 26, 2002

I =

X =

D =

A =

B =

C =

a =

b =

c =

Date 1 =

Dear

This responds to your letter dated November 28, 2001, and subsequent correspondence requesting several rulings under the Internal Revenue Code.

Facts

At the time of D's death, on Date 1, D was the grantor and trustee of trust I. I owns all of the stock of X, an S corporation. Under the terms of I, upon the death of D, B and C succeeded D as trustee of I and were required to distribute the stock of X, a% to A, b% to B, and c% to C.

Upon D's death, the executors of D's estate elected under section 6166 of the Code for an extension of time for payment of estate tax where the estate consists largely of an interest in closely held business. Currently, I owns all of the stock of X. B and C represent that I's sole purpose in retaining the stock is to facilitate the payment of interest and deferred tax under the provisions of section 6166 of the Code and that once these payments have been made, the stock of X will be distributed according to the terms of I.

PLR-167258-01

Law and Analysis

Section 1361(a)(1) of the Code provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

Section 1361(b)(1) of the Code defines the term "small business corporation" to mean a domestic corporation which is not an ineligible corporation and which does not (A) have more than 75 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6) who is not an individual)), (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Under section 641(a)(3) of the Code, the tax imposed by section 1(e) applies to the taxable income of estates or any kind of property held in trust, including income received by estates of deceased persons during the period of administration or settlement of the estate.

Section 1.641(b)-3(a) of the Income Tax Regulations provides, in part, that the period of administration or settlement of an estate is the period actually required by the administrator or executor to perform the ordinary duties of administration, such as the collection of assets and the payment of debts, taxes, legacies, and bequests, whether the period required is longer or shorter than the period specified under the applicable local law for the settlement of estates. That period of administration cannot be unduly prolonged.

Section 661(a)(2) of the Code provides estates and trusts that accumulate income or distribute corpus with a deduction from taxable income in the amount properly paid or credited or required to be distributed during their taxable year, not to exceed the distributable net income of the estate or trust.

Section 6166 of the Code provides, in part, that 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 executor may elect to pay the estate tax over a two to ten year period.

Rev. Rul. 76-23, 1976-1 C.B. 264, holds that when the sole purpose for retaining stock in an S corporation in an estate of a deceased shareholder is to facilitate the payment of the estate tax under section 6166 of the Code, the administration of the estate will not be considered unreasonably prolonged, and the estate will continue to be an eligible S corporation shareholder for the period during which the estate complies with the provisions of section 6166.

Whether the period of administration of the estate will be considered unduly prolonged depends upon whether the administrator or executor delayed performance of the ordinary duties of administration. One of the ordinary duties of an administrator or executor of an estate is the payment of estate taxes. Section 6166 of the Code provides

PLR-167258-01

a method whereby the estate may pay the federal estate tax in installments. This section was enacted to alleviate the substantial burdens that might otherwise occur if the estate were forced to liquidate its interest in a closely held business in order to pay federal estate taxes.

Accordingly, based on B's and C's representations, we conclude as follows:

1. Unless I otherwise becomes ineligible, I will continue to be an eligible subchapter S corporation shareholder within the meaning of section 1361(b) of the code for the period which I complies with the provisions of section 6166 of the Code.
2. I need not distribute its stock in X to A, B, and C during the period that I complies with the provisions of section 6166 of the Code.
3. The administration of I will not be considered to be unreasonably prolonged for purposes of section 641(a)(1) during the period I complies with the provisions of section 6166.
4. I will be entitled to a deduction under section 661(a)(2) of the Code not to exceed its distributable net income for any income distributed during its fiscal year.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the above-described facts. Specifically, no opinion is expressed concerning whether X is an eligible small business corporation under section 1361(b) of the Code or whether I is eligible to make an election under section 6166.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,
Carolyn H. Gray
Acting Assistant to the Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes