



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR NORTH TEXAS DISTRICT COUNSEL

FROM: Alan C. Levine
Chief, Branch 1 (General Litigation) CC:EL:GL:Br1

SUBJECT: Estate Tax Lien Authority

This purpose of this memorandum is to notify your office of a change of position from prior advice issued to your office by an August 26, 1998 memorandum entitled "Elections to Defer Payment of Federal Estate Tax under I.R.C. § 6166." This document is not to be cited as precedent.

ISSUE:

Whether the Internal Revenue Service (the "Service") has the authority to require security in connection with granting an extension of time to pay estate tax, pursuant to section 6166 of the Internal Revenue Code (the "Code").

CONCLUSION:

The Service may require a bond under I.R.C. § 6165, but not the special lien under I.R.C. § 6324A, as a prerequisite of granting a section 6166 election. [REDACTED]

FACTS:

This purpose of this memorandum is to provide a clarification of a prior position taken with respect to the Service's authority to require security in conjunction with an election for deferral of estate tax payments, pursuant to I.R.C. § 6166. This memorandum changes advice we previously provided your office in an August 26, 1998 memorandum.

LAW AND ANALYSIS:

Our current position is that the Service has the authority to require an I.R.C. § 6165 bond, but not an I.R.C. § 6324A lien, as a prerequisite for granting the section 6166 election. In our previous memorandums addressing this issue our focus was limited to the Code and Treasury Regulations governing section 6166. As you know, under those provisions there is no language that requires the executor of an estate to agree to a section 6324A lien or post a section 6165 bond as a prerequisite to granting an extension of time to pay estate tax. Apparently, the issue of adequate security under the provisions of section 6166 was a concern of the Service in 1981, and Office Memorandum 19496 dated October 19, 1981, indicated that the necessary action to alleviate this problem was agreed upon but was never implemented.

The current position reflects a broader approach by viewing section 6166 in conjunction with the provisions of I.R.C. § 6161 as they relate to section 6165. Similar to section 6161, section 6166 contains a cross reference to section 6165 for the authority to require security in the case of an extension granted under the section. See I.R.C. § 6166(k)(1). Section 6165 states that in the event the Secretary grants any extension of time within which to pay any tax or any deficiency therein, the Secretary may require the taxpayer to furnish a bond in such amount (not exceeding double the amount with respect to which the extension is granted) conditioned upon the payment of the amount extended in accordance with the terms of such extension.

Section 20.6165-1(a) of the Treasury Regulations provides that if an extension of time to pay estate tax is granted under section 6161, the District Director may require the executor of the estate to furnish a bond if it is deemed necessary.

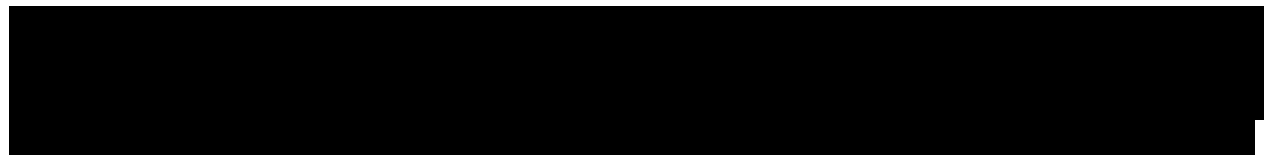
Unlike under section 6161, there is a special lien provision relating to an extension of time to pay under section 6166. See I.R.C. § 6166(k)(2). The executor may elect a special lien under I.R.C. § 6324A in favor of the United States on the section 6166 lien property in the amount of the deferred estate tax, plus any interest, penalties, additional amounts, additions to tax and costs attributable to the deferred amount. The special lien is elective only and is in lieu of any bond (including the section 6165 bond) and the lien under I.R.C. § 6324.

Although the Service can require a section 6165 bond or accept a section 6324A lien agreement, such action is discretionary and not a statutory or regulatory requirement of section 6166. Because the Service's authority to require these types of security is discretionary, the timing of the request for the bond or lien is significant. We believe, as in any legally enforceable agreement, that all terms and conditions of the section 6166 installment agreement should be disclosed and agreed upon by all interested parties prior to granting the election.

There are no statutory or regulatory provisions under section 6166 covering the issue of the timing of the Service's request for security nor is there any case law. Since the law in this area is not well settled, we recommend that the Service take a conservative approach and establish standards for determining whether a bond should be a condition to granting the extension. Based on information provided to us from an estate tax reviewer in the Manhattan District, it is our understanding that an estate requesting an extension of time to pay estate tax under section 6166 is generally contacted two times during the process of granting the request. The two contacts the Service makes with the estate generally are as follows:

- 1) The initial contact is a preliminary determination issued within 10 days of receipt of the request from the Service Center where the Form 706, United States Estate Tax Return and Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate Taxes are filed. The preliminary determination confirms that a request has been made by the estate/estate's representative and a tentative payment schedule is generally included.
- 2) The second and final contact during this process is a mandatory closing letter issued by the district office. The closing letter, among other things, either grants or denies the request for an extension generally as early as 90 days from the date of the request.

Based on the information set forth above, we believe the preliminary determination issued by the Service Center should contain some language informing the estate of the Service's authority under section 6165 to require a bond as a condition to granting the extension. In addition, this letter should advise the estate of the alternative method of security, the optional lien under section 6324A. If a bond is deemed necessary under the established standards, we believe the closing letter issued by the district office should include a formal request for a bond or lien as a condition of granting the extension.



If you have any further questions, please call 202-622-3610.