

**Office of Chief Counsel
Internal Revenue Service**

memorandum

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to: Chief, Planning and Special Programs
Area 14
PSC:ESC:EXAM
2400 Avila Road
Laguna Niguel, CA 92677

from: Susan L. Hartford
Acting Senior Technician Reviewer
CC:PA:APJP:B02

subject: Private Letter Ruling On Deferral Of Estate Tax Under Section 6166 - Proposed Ruling Request
Withdrawn

We are sending this memorandum to you in accordance with section 8.07(2) of Rev. Proc. 2003-1, 2003-1 I.R.B. 1, 30. In accordance with I.R.C. 6110(k)(3), Chief Counsel Advice may not be used or cited as precedent.

Attached is a copy of the private letter ruling regarding the Estate of Decedent (PLR-111796-03). The request for a ruling, dated February 10, 2003, originally contained requests involving Decedent's interests in three separate corporations. On June 18, 2003, the representatives for Decedent's estate withdrew the ruling request with regard to Decedent's interest in the third corporation, as to which our office had reached a tentatively adverse conclusion. This memorandum outlines our reasoning for a tentatively adverse conclusion.

LEGEND

Decedent =

Corporation 1 =

Corporation 2 =

Corporation 3 =

ISSUES

1. Whether Decedent's interest in Corporation 3 constitutes an interest in a closely held business within the meaning of section 6166(b)(1) or whether the interest in Corporation 3 constitutes a passive asset within the meaning of section 6166(b)(9).
2. Whether Decedent's interest in Corporation 3 can be aggregated with Decedent's interests in Corporation 1 and Corporation 2 such that Decedent is treated as owning an interest in a single closely held business pursuant to section 6166(c).

CONCLUSIONS

Although Corporation 3 owns portions of Property A and Property D, the activities of Corporation 3 were limited to collecting rents from Corporation 1 and Corporation 2 for the use of the land. Thus, Decedent's relationship to Properties A and D was merely that of an owner managing investment assets to obtain the rents ordinarily expected from them. Therefore, Decedent's ownership of stock in Corporation 3 constitutes an interest in a passive asset within the meaning of section 6166(b)(9) and does not qualify as an interest in a closely held business. Consequently, it is not necessary to determine whether Decedent's interest in Corporation 3 can be aggregated with the interests in Corporation 1 and Corporation 2. Thus, the federal estate tax attributable to Decedent's interest in Corporation 3 may not be paid in installments under section 6166.

FACTS

In addition to the facts in the private letter ruling (copy attached), the following facts are relevant with respect to the issues that were withdrawn.

Decedent's grantor trust was the sole shareholder of three corporations: Corporation 1, Corporation 2, and Corporation 3. Corporation 3 has been in existence for more than 50 years and is involved in a number of different business ventures. For purposes of the ruling request, we limited our review to those ventures in real estate. While Corporation 2 owns the majority of Property A, Corporation 3 owns 3 parcels of Property A. In addition, while Corporation 1 owns the majority of Property D, Corporation 3 owns 6.59% of Property D. Corporation 1 acts as the common paymaster for Corporation 3.

Although Corporation 3 owns portions of Property A and Property D, the extent of Corporation 3's involvement with these properties is that Corporation 1 and Corporation 2 pay ground rent to Corporation 3 for the use of the land upon which various commercial activities are being conducted.

LAW AND ANALYSIS

The relevant authorities are set forth in the private letter ruling (copy attached).

Like the decedent in Rev. Rul. 75-365, 1975-2 C.B. 471 and Rev. Rul. 75-367, 1975-2 C.B. 472, the extent of Corporation 3's involvement with Property A and Property D is limited to collecting rents from Corporation 1 and Corporation 2. Thus, from the information provided, Decedent's interest in Corporation 3 constitutes an interest in a passive asset, as defined in section 6166(b)(9)(B)(i), as the interest merely represented an investment. Consequently, for purposes of section 6166, Decedent's interest in Corporation 3 is not an interest in a closely held business.

Because we reached an adverse conclusion on the first issue, it was unnecessary to address the second issue.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have questions, please contact this office at (202) 622-4940.