



Using Section 6166 to Assist With Payment of Estate Taxes

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The Internal Revenue Code (IRC) provides a method of assisting business owners or farm owners with the payment of estate taxes. The method allows for: 1) a special extension of time to pay; 2) a special payment schedule; and 3) a low interest rate. The IRC Section is 6166 and therefore an extension of time to pay using this method is commonly referred to as a “6166 extension.”



DUE DATE FOR ESTATE TAX PAYMENT

The estate tax is due exactly nine months from the date of death. If you do not have enough cash to make all or part of the estate tax payment, you can request an extension of time to pay. Usually the IRS will grant this extension for one year to allow the estate to obtain the needed cash. The IRS will charge interest on the unpaid tax beginning on that nine month date, continuing until the estate tax is paid.

Although this one year extension can be very helpful to an estate, the interest charges can be expensive, and if a family business is a large part of the estate and the family wants to keep the business in the family, this additional year may not allow the family enough time to obtain enough cash to completely pay the estate taxes. Section 6166 allows your family to pay the estate taxes in installments, by either extending the period for payment so your family can obtain needed cash without upsetting business operations, or by making tax payments out of the earnings of the family business each year.

Following are highlights of the provisions of Section 6166:

Special Extension of Time

Section 6166 allows a special extended extension of time for payment of estate taxes related to a family-owned business. Instead of only one additional year to pay the estate tax, Section 6166 allows payments to be spread out over as long as 14 years.

Special Payment Schedule

There are two parts to the 6166 payment schedule allowed for the total of 14 years.

For the first four years you only have to pay the interest due on the unpaid estate taxes. The first of the four interest payments is due nine months from the date of death.

After the first four years, beginning on the fifth anniversary of the original estate tax due date, you make installment payments of the estate tax itself each year, plus interest. The installment agreement can allow payment of as few as two payments made in each of two years or up to as many as ten payments made in each of ten years. You are allowed to pay the entire amount of tax early any time you want, but if you stay on the maximum ten payment schedule, the taxes will be completely paid off in ten years.

Low Interest Rate

Section 6166 also allows you to pay a low interest rate on a large portion of the business-related estate taxes while you use the 14 year extension. The interest rate is only 2% a year. The interest rate can be even lower than 2% in a low interest rate economy. The IRS sets the interest rate charged on unpaid taxes four times a year. So, the 6166 interest rate you pay over the 14 year extension time may change, but should not be higher than 2%.

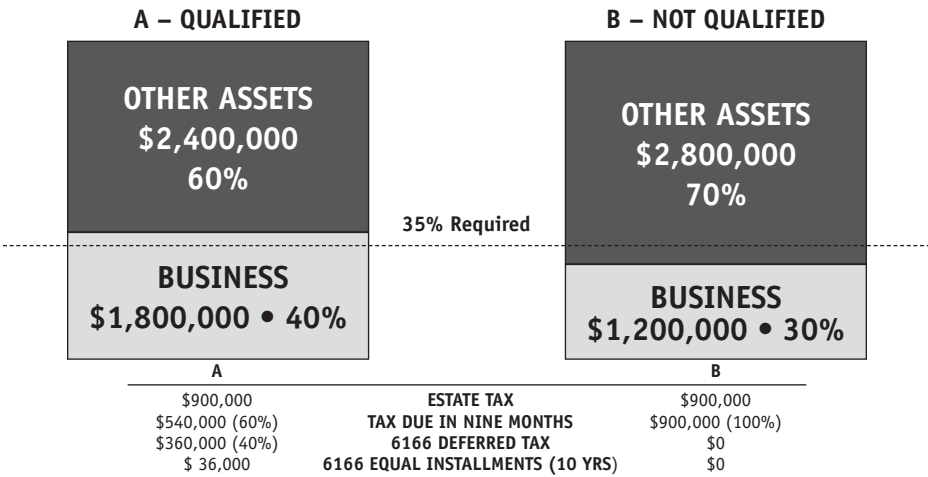
BUSINESSES THAT QUALIFY FOR THE 6166 EXTENSION

The 6166 extension is designed to help active family businesses stay in business by giving family members an extended period of time to pay the estate taxes related to the value of the business. Many types of family businesses qualify for this tax extension, including retail stores, service companies, manufacturing companies, companies active in management of real estate, and lending and financing businesses. Merely investing in the stock market or holding cash is not considered a business for purposes of Section 6166.

The family business can be owned directly as a partnership, a limited liability company, or as a corporation. If it is a partnership, you must own at least 20% of the partnership at the time of your death to qualify for the 6166 extension. If it is a corporation, you must own at least 20% of the voting shares. A partnership or corporation must also have 45 or fewer owners of the business to qualify. In addition, the portion of the business you own must be valued at your death at 35% or more of your total estate value. You can add together the value of two or more businesses to cross this 35% threshold as long as you and your spouse together own at least 20% of each business.

Example of estate tax payment, death of a single taxpayer in 2008:

**\$4,000,000 adjusted gross estate
Business with less than 45 owners**



PLANNING TO MAKE SECTION 6166 AVAILABLE FOR YOUR ESTATE

Your estate and family can use the 6166 estate tax payment extension if you need extra time to make the business-related estate tax payment. Remember, however, that Section 6166 does not reduce estate taxes for your family. It merely helps your family make payments over a longer period of time.

During your life, you can make planning choices to leave Section 6166 available as a payment option for your estate as a part of your overall estate plan. If there are more than 45 owners of the business, you can keep at least a 20% ownership in the business instead of selling it all or giving it away during your lifetime. You may also choose to sell or give away different assets in order to increase the percentage the family business bears to the overall value of your total estate in order to meet the 35% test.

After your death, your family members and your business managers have requirements they must follow to allow the 6166 extension to continue for the full 14 years. Restrictions will be imposed on their ability to transfer or sell more than 50% of the business and the amount of cash that they can remove without using the cash to make an estate tax payment. If these restrictions are broken, for example, if the family sells the business to an outside buyer, then the full amount of unpaid estate taxes becomes due and payable.

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