Department of Taxation and Finance

Important

The information concerning the Estate Tax in this TSB-M is no longer current and is provided only for historical purposes.

For the most up-to-date information, see Estate tax.

The TSB-M begins on page 2 below.

Subject: Extension of time for payment of estate tax where estate consists largely of interest in closely held business (including the business of farming) and related information.

This memorandum should be associated with memorandum TSB-M-80(6), Estate and Gift Tax.

Section 962(f) of Article 26 of the New York State Tax Law was amended by Chapter 916, Laws of 1982. The amendments bring this section of the Tax Law into conformity, with certain modifications, with Section 6166 of the Internal Revenue Code. The new provisions apply to estates of decedents dying after December 31, 1982. (Section 6166A, a related section, was repealed by Chapter 916, effective for estates of decedents dying after 1982.)

The amended Internal Revenue Code Section 6166 expands the former provisions of that section to include estates in which the value of an interest in a closely held business exceeds 35 percent of the value of the decedent's federal adjusted gross estate. If the value of the closely held business (reduced by allowable expenses, losses, and indebtedness) exceeds 35 percent of the value of the federal adjusted gross estate, the estate taxes applicable to the value of the closely held business may be deferred for up to 14 years (annual interest payment for four years, followed by up to 10 annual installments of tax and interest). If a federal estate tax return is not required to be filed, the 35 percent requirement is based on the New York adjusted gross estate computed in accordance with Sections 955 and 962(f) of the Tax Law. For the purpose of determining eligibility for this deferred payment plan (the 35 percent test), it is necessary to include in the gross estate the value of all taxable transfers made by the decedent within three years of the date of death that would otherwise be excludible under Section 2035(d)(1). (See subsection (j) of Section 6166 and Section 2035(d)(4).)

Election for deferred payment of tax must be made within nine months from the date of death. Form TP-415.1 should be completed and filed by the executor. However, a "protective" election may be filed with the estate tax Petition if it has not been definitely determined whether the estate will need to defer payment of the tax. A final election must be made within 60 days after the values have been finally determined.

Interest starts accruing nine months after the date of death. Annual interest payments, beginning one year and nine months after the date of decedent's death, may be made for four years, followed by two or more yearly installments of tax, for a maximum of 10 years. (The due date for the fifth payment of interest coincides with due date for the first installment payment of tax.)

The special four percent interest rate continues to apply to the first $54,000 of deferred tax (the first $1 million in value of closely held business). If the deferred tax exceeds $54,000, interest on the unpaid portion of tax will be computed and charged at the rate or rates in effect for the date these taxes remain unpaid, compounded daily. Interest rates are set by the State Tax Commission under the provisions of Section 962(k) of the Tax Law.

The balance of tax not extended under Section 962(f) is due and payable under Section 962(k) of the Tax Law.

Under certain conditions, the taxes deferred under this payment plan can become due (See subsection (g) of Section 6166.). If an acceleration of payment occurs, the extension of time for payment of the tax will no longer apply and any unpaid portion of the tax payable in installments shall be paid upon notice issued by this department. If a delinquent payment of interest or tax is the cause for acceleration of payment of the balance of tax due, interest is assessed at the current rate(s) in effect, plus penalty. However, if the delinquent installment payment is made within six months of the original due date of the installment, the deferred payment plan can be resumed.

The Tax Commission may, at any time, require the filing of a bond in the amount needed to secure the payment of the deferred tax and interest.

The lien, as provided for in Section 249-bb of the Tax Law, shall apply and become a lien for the deferred tax to the same extent as if no election had been made to extend the time for payment under this special deferred payment plan (See subsection (g) of Section 962.).