

nate before the beginning of the 6-month period which ends on the date of the enactment of this Act [Sept. 2, 1958].”

**§ 6164. Extension of time for payment of taxes by corporations expecting carrybacks**

**(a) In general**

If a corporation, in any taxable year, files with the Secretary a statement, as provided in subsection (b), with respect to an expected net operating loss carryback from such taxable year, the time for payment of all or part of any tax imposed by subtitle A for the taxable year immediately preceding such taxable year shall be extended, to the extent and subject to the conditions and limitations hereinafter provided in this section.

**(b) Contents of statement**

The statement shall be filed at such time and in such manner and form as the Secretary may by regulations prescribe. Such statement shall set forth that the corporation expects to have a net operating loss carryback, as provided in section 172(b), from the taxable year in which such statement is made, and shall set forth, in such detail and with such supporting data and explanation as such regulations shall require—

(1) the estimated amount of the expected net operating loss;

(2) the reasons, facts, and circumstances which cause the corporation to expect such net operating loss;

(3) the amount of the reduction of the tax previously determined attributable to the expected carryback, such tax previously determined being ascertained in accordance with the method prescribed in section 1314(a); and such reduction being determined by applying the expected carryback in the manner provided by law to the items on the basis of which such tax was determined;

(4) the tax and the part thereof the time for payment of which is to be extended; and

(5) such other information for purposes of carrying out the provisions of this section as may be required by such regulations.

The Secretary shall, upon request, furnish a receipt for any statement filed, which shall set forth the date of such filing.

**(c) Amount to which extension relates and installment payments**

The amount the time for payment of which may be extended under subsection (a) with respect to any tax shall not exceed the amount of such tax shown on the return, increased by any amount assessed as a deficiency (or as interest or addition to the tax) prior to the date of filing the statement and decreased by any amount paid or required to be paid prior to the date of such filing, and the total amount of the tax the time for payment of which may be extended shall not exceed the amount stated under subsection (b)(3). For purposes of this subsection, an amount shall not be considered as required to be paid unless shown on the return or assessed as a deficiency (or as interest or addition to the tax), and an amount assessed as a deficiency (or as interest or addition to the tax) shall be considered to be required to be paid prior to the

date of filing of the statement if the 10th day after notice and demand for its payment occurs prior to such date. If an extension of time under this section relates to only a part of the tax, the time for payment of the remainder shall be the date on which payment would have been required if such remainder had been the tax.

**(d) Period of extension**

The extension of time for payment provided in this section shall expire—

(1) on the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for the filing of the return for the taxable year of the expected net operating loss, or

(2) if an application for tentative carryback adjustment provided in section 6411 with respect to such loss is filed before the expiration of the period prescribed in paragraph (1), on the date on which notice is mailed by certified mail or registered mail by the Secretary to the taxpayer that such application is allowed or disallowed in whole or in part.

**(e) Revised statements**

Each statement filed under subsection (a) with respect to any taxable year shall be in lieu of the last statement previously filed with respect to such year. If the amount the time for payment of which is extended under a statement filed is less than the amount under the last statement previously filed, the extension of time shall be terminated as to the difference between the two amounts.

**(f) Termination**

The Secretary is not required to make any examination of the statement, but he may make such examination thereof as he deems necessary and practicable. The Secretary shall terminate the extension as to any part of the amount to which it relates which he deems should be terminated because, upon such examination, he believes that, as of the time such examination is made, all or any part of the statement clearly is in a material respect erroneous or unreasonable.

**(g) Payments on termination**

If an extension of time is terminated under subsection (e) or (f) with respect to any amount, then—

(1) no further extension of time shall be made under this section with respect to such amount, and

(2) the time for payment of such amount shall be considered to be the date on which payment would have been required if there had been no extension with respect to such amount.

**(h) Jeopardy**

If the Secretary believes that collection of the amount to which an extension under this section relates is in jeopardy, he shall immediately terminate such extension, and notice and demand shall be made by him for payment of such amount.

**(i) Consolidated returns**

If the corporation seeking an extension of time under this section made or was required to make a consolidated return, either for the tax-

able year within which the net operating loss arises or for the preceding taxable year affected by such loss, the provisions of such section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary may by regulations prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 764; Pub. L. 85-866, title I, §89(b), Sept. 2, 1958, 72 Stat. 1665; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-248, title II, §234(b)(2)(C), Sept. 3, 1982, 96 Stat. 503.)

#### AMENDMENTS

1982—Subsec. (c). Pub. L. 97-248, §234(b)(2)(C)(i), substituted “shall be the date on which payment would have been required if such remainder had been the tax” for “shall be considered to be the dates on which payments would have been required if such remainder had been the tax and the taxpayer had elected to pay the tax in installments as provided in section 6152” in last sentence.

Subsec. (g)(2). Pub. L. 97-248, §234(b)(2)(C)(ii), substituted “date on which payment would have been required if there had been no extension with respect to such amount” for “dates on which payments would have been required if there had been no extension with respect to such amount and the taxpayer had elected to pay the tax in installments as provided in section 6152”.

1976—Subsecs. (a), (b), (d), (f), (h), (i). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

1958—Subsec. (d)(2). Pub. L. 85-866 inserted “certified mail or” before “registered mail”.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to taxable years beginning after Dec. 31, 1982, see section 234(e) of Pub. L. 97-248, set out as a note under section 6655 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable only if mailing occurs after Sept. 2, 1958, see section 89(d) of Pub. L. 85-866, set out as a note under section 7502 of this title.

### § 6165. Bonds where time to pay tax or deficiency has been extended

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.

(Aug. 16, 1954, ch. 736, 68A Stat. 766; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

#### AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

### § 6166. Extension of time for payment of estate tax where estate consists largely of interest in closely held business

#### (a) 5-year deferral; 10-year installment payment

##### (1) In general

If the value of an interest in a closely held business which is included in determining the

gross estate of a decedent who was (at the date of his death) a citizen or resident of the United States exceeds 35 percent of the adjusted gross estate, the executor may elect to pay part or all of the tax imposed by section 2001 in 2 or more (but not exceeding 10) equal installments.

#### (2) Limitation

The maximum amount of tax which may be paid in installments under this subsection shall be an amount which bears the same ratio to the tax imposed by section 2001 (reduced by the credits against such tax) as—

(A) the closely held business amount, bears to

(B) the amount of the adjusted gross estate.

#### (3) Date for payment of installments

If an election is made under paragraph (1), the first installment shall be paid on or before the date selected by the executor which is not more than 5 years after the date prescribed by section 6151(a) for payment of the tax, and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed by this paragraph for payment of the preceding installment.

#### (b) Definitions and special rules

##### (1) Interest in closely held business

For purposes of this section, the term “interest in a closely held business” means—

(A) an interest as a proprietor in a trade or business carried on as a proprietorship;

(B) an interest as a partner in a partnership carrying on a trade or business, if—

(i) 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, or

(ii) such partnership had 45 or fewer partners; or

(C) stock in a corporation carrying on a trade or business if—

(i) 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or

(ii) such corporation had 45 or fewer shareholders.

##### (2) Rules for applying paragraph (1)

For purposes of paragraph (1)—

##### (A) Time for testing

Determinations shall be made as of the time immediately before the decedent's death.

##### (B) Certain interests held by husband and wife

Stock or a partnership interest which—

(i) is community property of a husband and wife (or the income from which is community income) under the applicable community property law of a State, or

(ii) is held by a husband and wife as joint tenants, tenants by the entirety, or tenants in common,

shall be treated as owned by one shareholder or one partner, as the case may be.