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**REQUIRED SECURITY FOR THE ESTATE TAX LIEN UNDER  
SECTION 6166 ELECTION WILL BE MADE BY THE IRS ON A CASE BY CASE BASIS**

Under IRC §6166, an Executor may choose to pay the estate tax attributable to a closely held business interest (or farm) in up to ten equal annual installments that are required to start not later than five (5) years after the date the estate tax payment is due. In order to qualify for §6166, the value of the closely held business interest must be at least 35% of the decedent's adjusted gross estate.

IRC §6166 permits the IRS to require a surety bond from an estate to insure payments of the deferred estate tax are made. In lieu of the surety bond, the IRS could require a special lien on the estate's asset. In a 2007 case, the Tax Court held the IRS abused its discretion in requiring all estates electing under §6166 to provide a bond or a special lien. The Tax Court said its was Congress' intent for the IRS to determine, on a case by case basis, that the government's interest would be at risk before requiring security from an estate electing under §6166.

The IRS has published Notice 2007-90 in which it has indicated that during the deferral period the government's interest in the estate tax deferred under §6166 is at risk, it will evaluate certain factors to determine whether to justify the requirement of a bond or special lien. The factors the IRS will consider are: (i) duration and stability of the closely held business; (ii) ability of the estate to pay the installments of tax and interest when due (which considers how the estate expects to be able to make the annual payments of tax and interest); and (iii) compliance history addressing the business' history regarding compliance with all federal tax payments and tax filing requirements.

**MY RECOMMENDATION:** Realize that when electing under §6166, the estate might not have to post a bond or grant a special lien, especially if the closely held business has a stable business and financial history.

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