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Coordinating Buy-Outs and Installment Payment of Estate Tax

A buy-out agreement that provides for the installment purchase of a decedent's stock can protect the availability of the Section 6166 election to defer the payment of estate tax attributable to a closely held business interest.

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Shareholder redemption agreements (referred to in this article as *buy-out agreements)* are frequently used to help ensure business continuity and minimize estate tax. Similarly, an extension of time under Section 6166 may be elected to permit the installment payment of estate tax and thereby protect against the forced liquidation or sale of a business.

Estate planning that involves closely held business interests often contemplates using both these strategies. Importantly, failure to coordinate the buy-out agreement with the extension of time for payment of estate tax can have catastrophic results. In particular, the structuring of the mandatory purchase of shares at death under a buy-out agreement may inadvertently preclude, or cause the premature extinguishment of, the extension of time to pay estate tax.

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Buy-out agreements

A buy-out agreement can be a cross-purchase agreement, requiring one or more shareholders to purchase one another's stock; an entity buy-sell agreement, requiring the company to purchase a deceased owner's stock; or a hybrid of these two types. One such variation is an agreement between a shareholder and an irrevocable trust established by that shareholder. Under this approach, the trustee's obligation to purchase the stock is funded in part or whole by life insurance owned by the trust.

Which format is used in a given situation depends on the number of shareholders and the objectives to be achieved.[1] Currently, for tax reasons, cross-purchase agreements typically are preferred. First, these agreements allow the surviving shareholders to receive a step-up in basis for the deceased shareholder's stock. Second, this type of arrangement, unlike an entity buy-sell agreement funded with life insurance, does not present problems with the alternative minimum tax.[2]

A principal purpose of a buy-out agreement is to establish the estate tax value of the shares.

For agreements entered into, or "substantially modified" (a term of art), after 10/8/90, Section 2703 prescribes the requirements that must be satisfied in order for an agreement to fix value for estate tax purposes. The agreement must (1) be a *bona fide* business arrangement, (2) not be a device to transfer property to members of the decedent's family for less than full and adequate consideration, and (3) have terms comparable to similar arrangements entered into by individuals in an arm's-length transaction.[3] The comparability test (number (3) above) is a new statutory requirement and poses a substantial concern. In the case of closely held businesses, finding companies that are comparable is often not possible.

Purchase of the decedent's stock via a promissory note payable over a period of time may inadvertently preclude the use of Section 6166.

Consistent with these conditions, the agreement must require that at a shareholder's death, his shares be purchased by the company or other shareholders, or that the remaining shareholders or the company have the *option* to purchase the shares at the prescribed price.[4] There are important reasons besides setting a value for estate tax purposes for having a mandatory buy-out-at-death provision. One of these is to be sure that the deceased shareholder's estate will receive cash in exchange for an illiquid asset (i.e., the stock). The cash can then be used to help pay estate taxes or can be distributed to the beneficiaries.[5]

Alternatively, a family member who is participating in the business may be required to purchase the deceased shareholder's stock so that family members who are not active in the business receive cash. In this way, the buy-out serves to reallocate assets among family members, depending on their involvement in the company.

The mechanism by which a deceased shareholder's stock is purchased is frequently glossed over in buy-out agreements. Specifically, how is the stock to be paid for by the purchasing party? Given the potentially substantial purchase price, a lump-sum cash buy-out is often unlikely. For example, if the purchase price for the deceased shareholder's interest is $800,000, the company or other shareholders may not be able to make a lump-sum payment or may deem it imprudent to part with that amount of cash at one time. This is true even if insurance is available to fund a large portion of the buy-out price. Accordingly, a buy-out partially funded with an installment note may be anticipated by the parties to the agreement.[6]

As to the mechanics of the buy-out, a closing date is provided in the agreement for the post-mortem purchase and sale of the shares. For instance, the closing may be three months after the date of death. The amount to be paid in cash at closing may be determined by reference to the insurance owned by the other shareholders or the company, or may be simply a percentage (e.g., 20%, 30%) of the purchase price. Any part of the purchase price not paid at closing usually is satisfied by a promissory note payable over a period of time. This is exemplified by the following sample language:

> The deferred portion of the purchase price, if any, shall be evidenced by the individual promissory note of the purchasing party made payable to the order of the selling party, in ten (10) equal annual installments with the unpaid balance bearing interest (until default) at the federal midterm rate in effect at the date of the closing, payable at the same time as each annual installment, with the first installment payment being due on the anniversary

1 Fife, "Structuring Buy-Sell Agreements to Fix Estate Tax Value," 22 EP 67 (Mar/Apr 1995); Birnbaum, "Practitioners Have Several Ways of Using Buy-Sell Agreements," 22 Tax'n for Lawyers 260 (Mar/Apr 1994).

2 Lyster, "Corporate Ownership of Life Insurance Must Be Reevaluated," 18 EP 342 (Nov/Dec 1991); Jones and Fisher, "Income Tax Considerations of Buy-Sell Agreements," 19 Tax'n for Lawyers 104 (Nov/Dec 1990); *Tax Facts*, ¶96 (1994).

3 Section 2703(b).

4 Section 2703(a).

5 Finnegan, "Using First-to-Die Life Insurance in Estate Planning," 21 EP 296 (Sept/Oct 1994); Jones and Fisher, "Buy-Sell Agreements Are Still Powerful Tools After RRA '90," 19 Tax'n for Lawyers 294 (Mar/Apr 1991).

6 Hull, *Stock Purchase Agreements in Estate Planning*, p. 16 (1986).

> date of the date of the closing and each subsequent installment being due on the next succeeding anniversary date. The form of promissory note is attached hereto as Exhibit B and is expressly incorporated herein by reference. The note shall be secured by the purchaser's pledge of the shares the purchaser is purchasing from the payee, that pledge being expressly exempted from the provisions of this Agreement.

Purchase of the decedent's interest via an installment note may, however, inadvertently preclude the use of Section 6166.

Electing deferral of estate tax payment

Section 6166 permits the deferral and payment in installments of federal estate tax relating to an interest in a *closely held business,* if the executor so elects. To qualify for this section, a decedent, who was a U.S. citizen or resident, must have owned an interest in a closely held business that exceeds 35% of his adjusted gross estate. The term "closely held business" includes (1) an interest as a proprietor in a trade or business; (2) an interest in a partnership carrying on a trade or business if 20% or more of the total capital interest is included in determining the gross estate of the decedent or if the partnership has 15 or fewer partners; or (3) stock in a corporation carrying on a trade or business if 20% or more of the value of the voting stock is included in determining the decedent's gross estate or if the corporation had 15 or fewer shareholders.[7]

If deferral is allowed under Section 6166, a certain amount of the total federal estate tax can be paid in installments. That amount is the fraction of the estate tax equal to the ratio of the closely held business amount to the value of the gross estate, with certain adjustments.[8] The first installment of tax can be paid any time on or before five years and nine months after the date of death.[9] Each succeeding installment is paid annually.[10] Interest is payable under Section 6601 both during the first five years from the date that the estate tax should have been paid and during the installment period.[11]

For purposes of determining whether the closely held business amount exceeds 35% of the adjusted gross estate, the value of any interest in a closely held business does not include the value of such interest that is attributable to passive assets held by the business.[12] The term "passive assets" means assets other than those used in carrying on a trade or business. Further, in order for a decedent's interest to qualify for the Section 6166 election, the proprietorship, partnership, or corporation must be engaged in an active trade or business at the time of death.

Reasons for electing Section 6166 treatment. There are two primary reasons for an executor to elect deferral under Section 6166. First, the estate may not have adequate liquidity to pay the estate taxes nine months after death. Liquid assets outside the business may be unavailable or insufficient. Moreover, the business itself may not have the capital and may not be capable of sustaining additional debt.

Second, even if there are sufficient liquid assets to pay the tax at one time, economic considerations may militate in favor of deferral. Advisors must carefully compare, from an economic perspective, a quantification of the benefits expected from the deferral, as well as the costs of deferral (such as the interest paid during the installment period).

Interest is charged on the unpaid principal balance during the deferral period. For the first $153,000 of deferred estate tax, the interest rate is 4%.[13] On the excess amount of estate tax, the interest charged is three percentage points over the federal short-term rate.[14] The interest paid is an estate tax deduction.[15] Accordingly, an executor may wish to use Section 6166 for economic reasons if the estate can earn more than the effective interest rate on the unpaid installment.

Assume the interest rate for the deferred estate tax in excess of $153,000 is 9%. After taking into account that interest paid is an estate tax deduction, however, the effective rate is ap-

7 Section 6166(b)(1). See Kiziah, "Deferring Estate Tax Is Not Always a Beneficial Move," 20 EP 12 (Jan/Feb 1993).
8 Section 6166(a)(2).
9 Sections 6166(a)(3) and 6151(a).
10 Section 6166(a)(3).
11 Section 6166(f).
12 Section 6166(b)(9).
13 Section 6601(j).
14 Section 6621(a)(2).
15 Rev. Rul. 80-250, 1980-2 CB 278; Ltr. Rul. 8022006; Estate of Bahr, 68 TC 74 (1977).

proximately 4.5% (based on an average 50% estate tax rate). Economically, if the business appreciates at an after-tax rate greater than the effective interest rate (after considering the estate tax deduction allowed for interest paid), then there is an economic benefit in electing deferral under Section 6166. In that situation, even taking into account the interest paid, the family is better off by deferring the payment of estate tax than by paying the tax in a lump sum nine months after death.

Section 6166(g), which accelerates the payment of tax, can cause drastic results in the case of certain buy-out agreements.

Suppose a company worth $1,700,000 is owned by an estate that owes $500,000 in estate tax. The company, an S corporation, has available $500,000 in liquid assets from previously earned and taxed receipts. It reinvests the assets of the business in such a way that the overall value of the company, after considering any inherent capital gains tax, grows at a 10% rate. The estate elects Section 6166 deferral. Assume that the estate's first principal payment of the tax due is $50,000, with an additional $35,000 in interest ($500,000 times an average interest rate of 7%). As an S corporation, the company makes a dividend distribution, which can be done free of income tax to the estate, of $85,000 to cover the payment. Even if the business were a C corporation, Section 303 could be used to allow after-tax distributions to the estate to pay the estate tax.

Should the company have distributed the $500,000 in a lump sum to the estate to avoid this $35,000 (and each future) interest charge? If so, the company would have lost the ability to realize the projected 10% per annum growth on that $500,000. Ignoring cumulative return on earnings, the cost to the company would have been the last $50,000 per annum. By electing the deferral, the company is benefiting by roughly $50,000 (in earnings) less the $20,000 actual interest cost, or $30,000 per year. In this regard, the $35,000 interest payment constitutes an estate tax deduction, so its real cost is closer to $20,000 ($35,000 less the tax savings at an average estate tax rate of 41%).

Economics aside, the practicality of operating under a Section 6166 election must be evaluated. For example, substantial administrative cost will be added to both the company and the estate administration process. Consider, for instance, the interplay between installment payments under the federal estate tax and the state death tax. The federal interest paid is an estate tax deduction,[16] which decreases both the taxable estate and the interest that has accrued to that point and, therefore, the remaining installment payment obligation. Hence, the estate must file for a federal estate tax refund. As the taxable estate is reduced, so is the state death tax credit. Accordingly, each year when an interest payment is made, a state tax refund must be applied for, if not barred by the state limitations period. If the state taxes are being paid in installments, a readjustment of the remaining amount to be paid will be required—a considerable administrative burden to the estate.

Avoiding acceleration of tax payment

If the estate has chosen the installment payment method, Section 6166(g) provides a boundary that needs to be analyzed. That section states, in part, that if any portion of an interest in a closely held business that qualifies under Section 6166 is distributed, sold, exchanged, or otherwise disposed of and the aggregate of such dispositions and withdrawals equals or exceeds 50% of the estate tax value of such business interest, the extension of time for payment of tax provided under Section 6166 ceases to apply.[17]

The application of Section 6166(g) to a buy-out agreement that requires the purchase of stock at a shareholder's death can have drastic and unexpected results. For instance, the typical buy-out provision states that the purchase can

16 See, e.g., Rev. Rul. 80-250, *supra* note 15.
17 Section 6166(g)(1).

be satisfied by a promissory note that can be paid in one or more installments. When the stock is exchanged for the note, which is usually at the closing, there is a disposition of more than 50% of the value of the stock. The exceptions to Section 6166(g)—such as a distribution of the stock from the deceased shareholder to a beneficiary under the estate plan documents—are not applicable.[18] The acceleration provision of Section 6166 is then triggered, and that section ceases to apply. Because the deceased shareholder's estate has received only a promissory note and no cash, there may insufficient cash to pay the estate tax. The buy-out agreement has then created a liquidity crisis.

For example, assume the two shareholders of Company C enter into a cross-purchase agreement for the sale of each of their 50% interests in C. The agreement provides that upon a shareholder's death, her estate must sell all her interest to the surviving shareholder within six months of death. The price is determined pursuant to a formula. In addition, the amount to be paid in cash at closing equals the available insurance proceeds on the deceased shareholder's life passing to the surviving shareholder. The remaining amount can be represented by a promissory note payable in ten equal installments. Each shareholder owns an insurance policy with a face amount of $500,000 on the life of the other shareholder.

At the first shareholder's death, her stock interest is determined to be worth $2 million, but only $500,000 is available in insurance. Under the buy-out agreement, the surviving shareholder pays the deceased shareholder's estate $500,000 in cash at the closing and $1,500,000 in the form of a promissory note. If the shareholder's taxable estate, other than the $2 million in stock, exceeds $3 million, the $2 million in stock is taxed at a marginal rate of 55%, resulting in $1,100,000 of additional tax. But only $500,000 in cash is received. Although the shareholder had intended that her estate would be able to pay the remaining $600,000 of estate tax in installments under Section 6166, Section 6166(g) renders such deferral unavailable. Absent a discretionary extension of time to pay estate tax granted by the Service under Section 6161, the shareholder's estate must find an additional $600,000 of liquidity within nine months of death.

If all the deceased shareholder's shares are purchased and 55% or more of the purchase price is paid in cash at closing, the liquidity issue should not be a concern. In that case, the Section 6166 election is not essential for the payment of estate tax. Thus, if the buy-out provision in the previous example required payment in cash at the closing of 55% of the purchase price, the deceased shareholder's estate would have received $1,100,000 in cash at closing (i.e., within six months of death). This amount represents the estate tax attributable to the inclusion of the shares in the shareholder's gross estate. As a result, there should not be a need, for liquidity purposes, to extend estate tax payments pursuant to Section 6166. On the other hand, if less than 55% of the purchase price is to be satisfied in cash, the buy-out agreement should be drafted to preserve, at least for a period of time, the Section 6166 deferral.

Drafting the buy-out agreement

Importantly, the situation often arises in which the buy-out obligation at death is satisfied with a cash payment at closing of substantially less than 55% of the purchase price. If a shareholder does not have other liquid assets to pay the estate taxes, the estate plan may likely envision using the Section 6166 deferral option. Where the shareholder's estate plan contemplates both the use of a buy-out agreement and the availability of Section 6166, the buy-out agreement should not provide for the mandatory purchase at death to be satisfied in part by a promissory note. Instead, the purchase obligation should be in the form of an installment purchase of stock rather than a lump-sum purchase of stock with installment notes. (Because the estate would be an unsecured creditor under the installment purchase approach, the advisor to the seller-estate should make sure that the buyer is credit worthy.)

In negotiating and drafting this type of provision, the practical impact of an installment buy-

18 Section 6166(g)(1)(D). See Ltr. Rul. 8506004.

out on both the company and the deceased shareholder's estate should be analyzed. First, the installment purchase may be beneficial both to the estate, because it allows for the continued viability of the Section 6166 election, and to the company because it extends the period over which the company is required to buy out the deceased shareholder's interest. But economic reasons may dictate that the deceased shareholder's estate be liquidated more rapidly, or the company may be interested in acquiring the shares sooner. There can thus be a delicate balancing of competing interests. Even if the buy-out agreement is structured as a cross-purchase obligation between the shareholders, the surviving shareholder becomes, in essence, the company. The surviving shareholder's interests are then synonymous with those of the company.

If only a small portion of the purchase price of stock will be paid in cash, the buy-out agreement should be drafted to preserve the Section 6166 deferral.

If the company's interest is given more deference than the objectives of the deceased shareholder's estate, the company should be given discretion to purchase the stock in installments regardless of whether the estate elects Section 6166 (see below). Otherwise, if the deceased shareholder's interest is paramount, the installment purchase option can be tied to whether the estate makes the Section 6166 election.

A second area of concern is how much stock can be redeemed each year without causing acceleration of the payment of tax under Section 6166(g). If the stock is redeemed pursuant to Section 303—which prevents a partial liquidation from triggering ordinary income—Section 6166(g) does not apply as to that stock.[19] The redemption is not treated as a withdrawal, and the value of the deceased shareholder's interest in the closely held business is reduced by the value of the stock redeemed. In order for this provision to apply, however, the stock redeemed each year must be less than or equal to the next estate tax installment payment.[20] Therefore, the agreement should take into account how much stock can be redeemed each year to fall within this protection and thereby avoid acceleration.

A third concern involves the potential length of time of a complete redemption of a deceased shareholder's interest on an installment basis. For instance, an installment purchase tied to Sections 6166 and 303 will allow only a portion of the deceased shareholder's stock interest to be redeemed prior to the expiration of the Section 6166 period. At the end of the Section 6166 period, a substantial amount of stock may remain to be purchased.

For example, assume for simplicity that the buy-out provisions require the stock redeemed each year to equal the number of shares necessary to produce cash sufficient to pay the tax, plus interest, for the next estate tax installment due. This allows the redemption to fall within the statutory protection discussed above so that the redemption amount *is not* applied against the 50% ceiling of Section 6166(g)(1)(A) for purposes of accelerating the payment of tax. If the estate tax (ignoring interest) is based on a rate of 50%, approximately 50% of the stock will be redeemed during the payout period to make the tax payments. The interest charge will require the buy-out of perhaps another 10% of stock during this period. At the end of the 15-year period permitted by Section 6166, approximately 40% of the stock will remain to be purchased.

This may be too long for the deceased shareholder's estate to wait to obtain its funds. Further, the company may not want the deceased shareholder's family to vote the non-purchased shares over that long a time. A compromise position (other than a voting trust) is to allow an installment purchase of stock for a period, but not the full Section 6166 period. For example, the company could be required to redeem, for cash, up to 50% of the stock over a three-, five-, or seven-year period. At the end of this time, the

19 Sections 303(a) and 6166(g)(1)(B). See also House Ways and Means Comm. Rep't on P.L. 97-448 (1/12/83); Rev. Rul. 86-54, 1986-1 CB 356.

20 Section 6166(g)(1)(B).

remaining stock could then be purchased via a combination of cash and promissory note. Although this would then accelerate the payment of tax under the Section 6166 election, the deceased shareholder's estate should have sufficient liquidity at that time (through both the cash received over the three-, five-, or seven-year period and the cash paid at closing) to pay the accelerated estate tax then due.

Taking into account the above concerns, and to allow for the installment purchase of the quantity of stock necessary to pay the estate tax while still permitting the availability of Section 6166, the buy-out agreement could provide for the following:

> If the deceased Shareholder's estate qualifies for the extension of time for payment of estate tax currently provided under Section 6166 of the Internal Revenue Code (or any similar statute in effect at the time of the Shareholder's death), regardless of whether the estate elects this deferral payment treatment on a timely filed federal estate tax return, then the Corporation may elect to purchase the required amount of stock in installments over the maximum amount of time allowed for the payment of such estate tax under Section 6166 of the Internal Revenue Code (or any similar provision in effect at the Shareholder's death); provided, however, that the Corporation shall in each year then purchase under this paragraph (until its purchase obligation under this agreement has been fulfilled) that amount of stock equal to the amount of the estate tax (including any interest thereon) which would be due on the first estate tax installment payment subsequent to any such purchase (assuming for this purpose that the deceased Shareholder's estate had elected to pay the estate tax over the maximum amount of time allowed for the payment of such estate tax under Section 6166 of the Internal Revenue Code, or any similar provision in effect at the Shareholder's death, regardless of whether such an election has in fact been made). The election to purchase the stock in installments pursuant to this paragraph shall be made in writing by the Corporation and delivered to the personal representative of the Shareholder's estate within six (6) months after the date of the Shareholder's death. The first installment purchase shall be made within eighteen (18) months after the date of the Shareholder's death and thereafter on the anniversary day of the date of the first purchase. The Corporation may accelerate the elected installment purchase option at any time by purchasing, in cash, the remaining amount of stock required to be purchased pursuant to this Agreement. Any stock that remains to be purchased at the end of the above-described installment period shall be purchased in cash at the end of the installment period.

A variation to consider is that the buy-out may not be a complete liquidation of the deceased shareholder's interest. For example, it may have been the deceased shareholder's wish to keep voting stock for certain family members and redeem only nonvoting stock. In that instance, the buy-out may be limited to the nonvoting stock or, potentially, the amount of stock necessary to pay the estate tax attributable to the inclusion of the stock in the gross estate. In that case, the buy-out provision could read as follows (the bracketed italics are explanatory, not textual):

> Upon the death of a Shareholder, the Corporation shall purchase and the estate of the deceased Shareholder (or then holder of such deceased Shareholder's Stock Interest) shall sell that amount of the stock included in the gross estate of the deceased Shareholder sufficient to generate proceeds from such sale equal to (or all of such stock if the proceeds would be less than) the "estate tax attributable to such stock," as hereinafter defined. Such sale or sales shall, except as otherwise provided in this Agreement *[i.e., in the case of an installment purchase]* or except as otherwise consented to by the Corporation and the personal representative of the deceased Shareholder's estate (or then holder of such deceased Shareholder's Stock Interest), be completed within nine (9) months after the date of the deceased Shareholder's death. Further, such sale or sales shall be between the Corporation and the personal representative of the deceased Shareholder's estate (or then holder of such deceased Shareholder's Stock Interest) and shall be in cash. The purchase price of the stock shall be determined as provided in Exhibit A *[i.e., Exhibit A sets forth the formula to determine the purchase price]*.

Determining the "estate tax attributable to such stock" will depend on whether the sale is made within nine months of death or via an installment purchase to preserve the Section 6166 election. If the sale is made within nine months, Section 6166 is not a concern. The following provision would be appropriate to determine the amount of stock to be purchased (the bracketed italics are explanatory, not textual):

> If the sale is made within nine (9) months after the date of the deceased Shareholder's death, then the "estate tax attributable to such stock" *[i.e., the amount of stock to be purchased]* shall mean the product obtained by multiplying the sum of all estate, death, and transfer taxes owed by the Share-

holder's estate (including, without limitation, all state and federal estate taxes and any generation-skipping transfer tax) as set forth on a timely filed federal estate tax return for the deceased Shareholder's estate, but excluding any penalties and interest thereon, by a fraction, the numerator of which is the "value of the stock included in the Shareholder's gross estate," as hereinafter defined, and the denominator of which is the aggregate value, as set forth on a timely filed federal estate tax return for the deceased Shareholder's estate, of the Shareholder's gross estate. As used in this paragraph, the phrase "value of the stock included in the Shareholder's gross estate" shall mean the number of shares of stock included in the Shareholder's gross estate multiplied by the most recently appraised value per share of such stock preceding the Shareholder's date of death, as determined by the firm of Duff & Phelps Inc. (or a successor firm chosen pursuant to this Agreement).

To allow for the sale to be made in installments, the number of shares to be purchased—*based on the estate tax attributable to such stock*—should take into account changes in the taxable estate that result from the installment payments pursuant to Section 6166. Interest payments, which are deductions for federal estate tax purposes, reduce the taxable estate and therefore the tax due.

In addition, adjustments need to be made if the price set forth in the buy-out agreement is finally determined for estate tax purposes to be lower than the estate tax value. The following provision could then apply:

If an election is allowable and is made to purchase the stock in installments pursuant to this Agreement, then the "estate tax attributable to such stock" shall mean the sum of (i) the maximum amount of tax that may be paid in installments under Section 6166(a)(2) of the Internal Revenue Code, or any successor provision then in effect, regardless of whether the deceased Shareholder's estate elects to pay the tax in installments pursuant to that Section plus (ii) the interest at any time and from time to time payable pursuant to Section 6601 of the Internal Revenue Code (or any successor provision then in effect) on the unpaid portion of that amount of the tax for which the time of payment has been extended under that Section, but only if the deceased Shareholder's estate has elected to extend the time for paying estate taxes under Section 6166 (or any successor provision thereto). Solely for purposes of determining the "maximum amount of tax that may be paid in installments," the stock of the Corporation shall be deemed to be the only "closely held business amount," as that term is used in Section 6166(a)(2)(A) (or any successor provision thereto) of the Internal Revenue Code, included in the deceased Shareholder's estate. The determination of the "estate tax attributable to such stock" under this subparagraph (2) shall initially be based on the values set forth on a timely filed federal estate tax return but shall be adjusted consistent with values as finally determined for federal estate tax purposes, if different from those set forth on the estate tax return, and with varying interest rates.

Conclusion

Proper drafting of a buy-out agreement requires an analysis of whether the shareholders intend to use the rules for extending estate tax payments under Section 6166. If so, the specific buy-out provision should not inadvertently trigger the acceleration clause of Section 6166(g). An installment purchase of stock under the agreement, if properly drafted, will allow the continued payment of estate taxes pursuant to Section 6166 either for a determined period of years or for the full Section 6166 period. ◆