

**Recent IRS Chief Counsel Memorandum on I.R.C. § 6166--
Installment Payment of Estate Tax**

**By William S. Forsberg
Leonard Street and Deinard
Minneapolis, Minnesota**

In a recent memorandum the Office of Chief Counsel of the Internal Revenue Service dealt with the issue of security (bonds and liens) under I.R.C. § 6166. An executor may elect under I.R.C. § 6166(a)(1) to pay all or a portion of the estate tax attributable to a closely held business in two or more (but not exceeding ten) equal annual installments if the value of the decedent's interest in the closely held business exceeds 35% of the value of the decedent's adjusted gross estate. The amount of estate tax that may be deferred is limited to the estate tax attributable to the value of the decedent's interest in the closely held business. The IRS has the right to require a bond to secure the unpaid estate tax. In lieu of a bond the executor may elect to provide a lien under I.R.C. § 6324A. As a result of the Tax Court's decision in Estate of Roski v. Commissioner, 128 T.C. 113 (2007) and IRS Notice 2007-90, 2007-46 I.R.B. 1003, the IRS must now determine on a case-by-case basis whether an estate will be required to provide a bond. It is rare that a bond will be issued, however, because the cost is prohibitive. Therefore, when the IRS determines that security is appropriate, the executor will generally opt for the special lien under § 6324A (the "Special Lien"). Since *Roski* and Notice 2007-90, however, there remained a number of unanswered questions about security for the bond and Special Lien. The questions were recently addressed and answered in Office of Chief Counsel Internal Revenue Service Memorandum CC:PA:BO#: LUDaly, POSTS-113182-07 (February 25, 2009) ("CCM"). Below are the

questions raised in the CCM with the short answer in bold. The full, complete answer and explanation is contained in the CCM.

1. Can the required bond or lien amount include accrued interest on the tax? **Yes.**
2. Can the bond or lien amount be compromised? **Yes.**
3. Can Appeals make valuation determinations with respect to the property upon which the lien will attach? **Yes.**
4. Can Appeals determine whether certain types of property are adequate security for the section 6324A lien? **Yes.**
5. When Appeals determines the value of property, how should this determination be made? **It should be made based on the current fair market value of the property as of the date of the lien agreement.**
6. Must Appeals rely upon the value of the asset listed on the estate tax return, Form 706, or can Appeals determine value based upon other factors? **Other factors, such as the property's current and anticipated use and on the interest which the government would have in the property if the lien were foreclosed upon.**
7. If property is valued under section 2032A as farm property, can it be valued as business or residential property for the lien? **No**
8. Can the undiscounted value of a family limited partnership ("FLP") be used for the lien, even though the FLP interest was discounted on the estate tax return, Form 706? **No.**
9. Can previously pledged or mortgaged property be used for the section 6324A lien? **Yes**
10. Is the value for mortgaged property the full value or the net equity? **Net equity**

11. When Appeals settles a nondocketed case and determines that the taxpayer is entitled to the election, for example by determining the value or type of asset to which the lien will attach, in what format should Appeals issue its determination to the taxpayer and how should it notify the IRS of its determination? **Appeals should either require the taxpayer to submit a revised Form 13925, Notice of Election of and Agreement to Special Lien Under Internal Revenue Code Section 6324A, or require a Lien Agreement with the required information.**

Conclusion:

The answers to the questions posed in the CCM seem appropriate and workable in light of the purpose and policy behind IRC § 6166, and appear to strike a good balance between the need for the Service to adequately secure its estate tax lien and the need of the taxpayer for certainty as to how security will be determined or modified.