

## **Lien securing deferred tax of estates including closely held businesses**

Dear Reader:

You recently mentioned that you have become the executor of an estate that includes a closely held business and you are interested in making the election to defer payment on that portion of the estate tax that is attributable to the closely held business. You want to make the election because you are worried about having enough time to collect the money to pay estate taxes and other expenses while keeping the business intact, but you are concerned about the bond that IRS may require the estate to post as security for payment of the deferred taxes.

You might consider electing to designate property to be subject to a special lien in lieu of providing a bond securing payment of the deferred tax. The designation can be made only with the consent of all interested parties, i.e., each person who has an interest in the property designated for the special lien. The special lien applies to the property designated in the agreement, but there are relatively few restrictions on property that may be designated for the lien. Property designated for the lien does not have to be property included in the estate, but must be property that is expected to survive the tax deferral period. If the unpaid estate tax plus interest exceeds the value of the property in the agreement, IRS may require that more property be designated as lien property or a bond be given in order for the executor to be released from personal liability for the tax.

The special lien substitutes for the estate tax lien that might otherwise apply. Although IRS may not require that the executor designate property as lien property in excess of the sum of the deferred tax and interest, you might consider voluntarily designating in excess of the deferred tax and interest. The reason for designating more than the minimum amount required is that if the value of the designated property decreases during the consent agreement period to less than the amount of the deferred tax and interest, more property must be designated. In order to avoid a situation where you may find it difficult to obtain consents from interested parties in the future, you might find it easier to designate more property now.

If you would like to discuss this area further or have any additional questions, please call.

