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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
December 15, 1999

Number: **200011023**
Release Date: 3/17/2000
CC:DOM:FS:P&SI
TL-N-5325-99
UILC: 691.03-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR DISTRICT COUNSEL

FROM:

Deborah A. Butler
Assistant Chief Counsel CC:DOM:FS

SUBJECT: Deduction for Estate Tax Imposed

This Field Service Advice responds to your memorandum dated October 6, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND

Taxpayer =

Decedent =

Periods in issue =

ISSUE

Whether the Taxpayer may claim an Internal Revenue Code (I.R.C.) section 691(c) deduction for estate taxes owed, but not yet paid, by Decedent's estate.

CONCLUSION

The Taxpayer as a recipient of income in respect of a decedent (IRD) may claim the section 691(c) deduction even though the estate tax has not yet been paid.

FACTS

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The Taxpayer inherited the right to receive the remaining payments from an annuity for a term of years from the decedent. The executor reported the value of the annuity on Schedule I of Decedent's Form 706, United States Estate Tax Return, and included this value on line 1, "Total gross estate." The estate tax, however, has not yet been paid. The taxpayer reported the annuity payments received on her income tax returns for the periods in issue. For the periods in issue, Taxpayer claimed section 691(c) deductions for the amount of the estate tax attributable to the annuity payments received.

LAW AND ANALYSIS

Section 691(a)(1) provides, in part, that the amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of:

(C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 691(c)(1)(A) provides that a person who includes an amount in gross income under subsection (a) shall be allowed, for the same taxable year, as a deduction an amount which bears the same ratio to the estate tax attributable to the net value for estate tax purposes of the items described in subsection (a)(1) as the value for estate tax purposes of the items of gross income or portions thereof in respect of which such person included the amount in gross income (or the amount included in gross income, whichever is lower) bears to the value for estate tax purposes of all the items described in subsection (a)(1).

Under Treas. Reg. § 1.691(c)-1(a), a person who is required to include in gross income for any taxable year an amount of income in respect of a decedent may deduct for the same taxable year that portion of the estate tax imposed upon the decedent's estate which is attributable to the inclusion in the decedent's estate of the right to receive such amount. The regulation further provides that for purposes of § 1.691(c)-1, the term "estate tax" means the tax imposed under sections 2001 or 2101 reduced by the credits against such tax.

Neither the Code nor the regulations require that the estate tax be paid for a recipient of IRD to claim a deduction for the estate tax attributable to amounts

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required to be included in income. In some instances, for example, an agreement to pay the estate tax in installments under section 6161, the estate tax may not have been payable as of the time the IRD is required to be included in income. Thus, we see no bar to a deduction under section 691(c) solely because the tax to which it is attributable has not yet been paid.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

We note that even though the estate elected to pay tax in installments under section 6161(a), the request for field service advice indicates that only nominal amounts of estate tax have been paid. [REDACTED]

Please call if you have any further questions.

By: MELISSA LIQUERMAN
Senior Technician Reviewer
CC:DOM:FS:P&SI