

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

June 21, 2004

Third Party Communication: None
Date of Communication: Not Applicable

Number: **200444021**
Release Date: 10/29/04
Index (UIL) No.: 2053.00-00, 691.00-00
CASE-MIS No.: TAM-171150-03/CC:PSI:B4

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No.:
Date of Death:
Date of Conference:

LEGEND:

Decedent =
Date 1 =
Amount 1 =
Amount 2 =
Amount 3 =
Amount 4 =

ISSUE:

Whether the deduction for Amount 4 claimed on the Decedent's estate tax return and representing income taxes paid by the estate on the estate's income tax return with respect to distributions to the estate from individual retirement accounts (IRAs), should be allowed under § 2053(a) of the Internal Revenue Code.

CONCLUSION:

The deduction for Amount 4 should be disallowed under § 2053(c)(1)(B) and the regulations thereunder

FACTS:

Decedent died on Date 1. Decedent's gross estate consisted of assets valued at approximately Amount 1. Included in Decedent's estate were IRAs valued at Amount 2. After the payment of all debts and expenses, Decedent's estate did not contain sufficient cash to pay the estate tax, Amount 3. Distributions from the IRAs were made to Decedent's estate to obtain the necessary cash to pay the estate taxes. The estate treated the IRAs distributions as income in respect of decedent under § 691(a) and, therefore, reported the distributions as income on the estate's income tax return. In addition, on its income tax return, the estate claimed a deduction under § 691(c) for estate taxes attributable to the IRAs distributions. The § 691(c) deduction claimed was less than the amount of income taxes paid by the estate for the income reported with respect to the IRAs distributions. The amount of income taxes paid that exceeded the § 691(c) deduction is Amount 4. On Decedent's estate tax return, the estate deducted Amount 4 taking the position that Amount 4 was either (1) a claim against Decedent's estate, or (2) an administrative expense of selling property of the estate in order to pay the estate taxes under § 2053(a).

LAW AND ANALYSIS:

Section 2053(a) provides that, for purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate such amounts for (1) funeral expenses, (2) administration expenses, (3) claims against the estate, and (4) for unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, as are allowable by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered.

Section 2053(c)(1)(B) provides that any income taxes on income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes, shall not be deductible under § 2053.

Section 20.2053-1(a) of the Estate Tax Regulations provides that, in determining the taxable estate of a decedent who was a citizen or resident of the United States at the time of his death, there are allowed as deductions under § 2053(a) and (b) amounts falling within two categories (subject to the limitations contained in this section and in §§ 20.2053-2 through 20.2053-9). Under § 20.2053-1(a)(1), the first category includes

amounts that are payable out of property subject to claims and that are allowable by the law of the jurisdiction, whether within or without the United States, under which the estate is being administered for administration expenses and for claims against the estate (including taxes to the extent set forth in § 20.2053-6).

Section 20.2053-3(a) provides that the amounts deductible from a decedent's gross estate as "administration expenses" of the first category set forth in § 20.2053-1(a) are limited to such expenses as are actually and necessarily incurred in the administration of the decedent's estate; that is, in the collection of assets, payment of debts, and distribution of property to persons entitled to it. The expenses contemplated in the law are such only as attend the settlement of an estate and the transfer of the property of the estate to individual beneficiaries or to a trustee, whether the trustee is the executor or some other person. Administration expenses include executor's commissions, attorney's fees, and miscellaneous expenses.

Under § 20.2053-3(d)(1), miscellaneous administration expenses include such expenses as court costs, surrogates' fees, accountants' fees, appraisers' fees, and clerk hire. Under § 20.2053-3(d)(2), expenses for selling property of the estate are deductible if the sale is necessary in order to pay the decedent's debts, expenses of administration, or taxes, to preserve the estate, or to effect distribution. The phrase "expenses for selling property" includes brokerage fees and other expenses attending the sale, such as the fees of an auctioneer if it is reasonably necessary to employ one.

Section 20.2053-4 provides that the amounts that may be deducted as claims against a decedent's estate are such only as represent personal obligations of the decedent existing at the time of his death, whether or not then matured, and interest thereon which had accrued at the time of death. Only claims enforceable against the decedent's estate may be deducted.

Section 20.2053-6(a) provides that taxes are deductible in computing a decedent's gross estate only as claims against the estate (except to the extent that excise taxes may be allowable as administration expenses), and only to the extent not disallowed by § 2053(c)(1)(B). Section 20.2053-6(f) provides that unpaid income taxes are deductible if they are on income properly includible in an income tax return of the decedent for a period before his death. Taxes on income received after the decedent's death are not deductible.

Section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent that are not properly includible in respect of the taxable period in which falls the date of the decedent's 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: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (B) the person who, by

reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (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 1.691(a)-1(b) of the Income Tax Regulations provides that the term "income in respect of a decedent" refers to those amounts to which a decedent was entitled as gross income but which were not properly includible in computing the decedent's taxable income for the taxable year ending with the date of the decedent's death or for a previous taxable year under the method of accounting employed by the decedent.

Section 691(c) provides that a person who includes an amount in gross income under § 691(a) shall be allowed, for the same taxable year, as a deduction an amount that bears the same ratio to the estate tax attributable to the net value for estate tax purposes of all the items described in § 691(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 § 691(a)(1).

In this case, on Decedent's estate tax return, the estate treated Amount 4 as either (1) a claim against Decedent's estate, or (2) an administrative expense of selling property of the estate in order to pay the estate taxes that would be deductible under § 2053(a). With respect to the second position, Decedent's estate argues that the income taxes paid on the income reported on the estate's income tax return with respect to the IRAs distributions, to the extent the taxes exceed the § 691(c) deduction, are deductible on the Decedent's estate tax return as an administration expense of selling property of the estate under § 20.2053-3(d)(2). Decedent's estate contends that the facts in this case are unique in that the estate did not have sufficient assets that could have been used to satisfy the estate tax obligations. Therefore, the income tax was incurred as a result of the Executor's "forced sale" in order to pay taxes.

Taxes may be deductible in computing a decedent's gross estate only as claims against the estate. See § 20.2053-6(a). The only taxes which may be deductible as administrative expenses are excise taxes. See § 20.2053-6(a). Accordingly, income taxes are not treated as administrative expenses and cannot be characterized as such even in the situation, as here, where the taxes are incurred in connection with distributions from IRAs which the estate has characterized as a "forced sale." We do not need to determine whether such distributions would be a sale for purposes of § 20.2053-3(d)(2) or whether the taxes paid here are administrative expenses because, in general and except for excise taxes, taxes may be deductible only as claims against the estate. See § 20.2053-6(a).

More importantly, in this case, the income taxes paid by the estate with respect to the income reported on the estate's income tax return and representing the amount distributed to the estate from the IRAs may not be deducted on the Decedent's estate tax return as claims against the estate (or as administrative expenses for that matter) because of the limitation in § 2053(c)(1)(B). Section 2053(c)(1)(B) disallows a deduction under § 2053(a) for income taxes paid on income received after the death of the decedent. See § 20.2053-6(f). In this case, the estate has not argued that the income taxes at issue were paid prior to decedent's death. In fact, the estate treated the income from the IRAs distributions as income in respect of the Decedent under § 691(a), which is not properly reportable on Decedent's final income tax return and the estate reported the income on the estate's income tax return and claimed a § 691(c) deduction on the estate's income tax return for estate taxes.

The income taxes paid by the estate on the income reported on its income tax return with respect to the amounts distributed from the IRAs were paid on income received after decedent's death and under § 2053(c)(1)(B), such taxes are not deductible on the Decedent's estate tax return under § 2053(a), as claims against the estate or administrative expenses. The cases relied upon by the estate which allow a deduction for interest expenses are distinguishable. See Turner v. United States, 306 F. Supp. 2d 668 (D.C. Tex 2004); Estate of Bahr v. Commissioner, 68 T.C. 74 (1977); Estate of Todd v. Commissioner, 57 T.C. 288 (1971).

We note that the estate has argued that only Amount 4 should be deductible under § 2053. Amount 4 represents the amount by which the income taxes paid by the estate on its income tax return with respect to the distributions it received from the IRAs exceed the amount of the § 691(c) deduction claimed by the estate on its income tax return for estate taxes. Even if the estate had not claimed a § 691(c) deduction, the income taxes paid on the IRAs distributions would not be deductible under § 2053. Congress recognized the problem of income tax inherent in certain assets included in a decedent's gross estate and determined that the proper relief is to allow an income tax deduction under § 691(c) to the estate or beneficiary reporting the income. The estate has availed itself of this deduction. Any additional benefit beyond what Congress intended would be unwarranted. See Estate of Smith v. United States, 300 F. Supp.2d 474 (S.D. Texas 2004), appeal docketed, No. 04-20194 (5th Cir. February 20, 2004); Estate of Robinson v. Commissioner, 69 T.C. 222 (1977).

Accordingly, under § 2053(c)(1)(B) and the regulations thereunder, income taxes on income received after decedent's death are not deductible under § 2053. Therefore, we conclude that the deduction for Amount 4 claimed on Decedent's estate tax return should be disallowed.

CAVEAT(S):

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

