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

CC:2000-04
May 8, 2000
Attachment 1

CC:DOM:FS:P&SI
CHGRAY

ACTION ON DECISION

SUBJECT: Estate of Smith v. Commissioner
198 F.3d 515 (5th Cir. 1999), rev'g, 108 T.C. 412 (1997)
T.C. Dkt. Nos. 19200-94, 3976-95

Issues: Whether post-death events should be considered in determining the amount deductible under Internal Revenue Code § 2053(a)(3) for claims against the estate that are contingent or contested at the date of death.

Discussion: Decedent died on November 16, 1990. At her death, Exxon had a claim against the estate that was being adjudicated in a United States District Court. In February 1991, the court ruled in favor of Exxon and referred the case to a Special Master to determine the amount of the liability. In April 1991, Exxon presented to the estate its \$2,482,719 damages calculation. The executors deducted that amount on the estate tax return, which was filed in July 1991. On February 10, 1992, the estate settled the claim for \$681,840 and paid this amount on or about March 10, 1992. The Commissioner determined that the estate was only entitled to a deduction for the amount actually paid, and the estate filed a petition in the United States Tax Court.

The Tax Court upheld the Commissioner's determination that the claim against the estate should be limited to the amount actually paid. The Tax Court held that, "[w]here a claim is disputed, contingent, or uncertain as of the date of the decedent's death, the estate is not entitled to a deduction until the claim is resolved and it is determined what amount, if any, will be paid. It is this latter amount that is allowed as a deduction." 108 T.C. at 419.

The United States Court of Appeals for the Fifth Circuit reversed, holding that the amount deductible was the fair market value of the claim on the date of death, rather than the amount paid to settle the claim as argued by the government, or the full amount of the claim as argued by the estate. The Fifth Circuit relied on the decision in Ithaca Trust v. United States, 279 U.S. 151, 155 (1929). In that case, the Supreme Court concluded that a post-death event (the premature death of the life tenant of a charitable remainder trust) should not be taken into account in determining the amount of the charitable deduction allowable under the predecessor to section 2055. The Fifth Circuit remanded the case to the Tax

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Court to determine the value of the claim at the date of death with the instruction that the court was “neither to admit nor consider evidence of post-death occurrences when determining the date-of-death value of Exxon’s claim.” 198 F.3d at 526.

Section 2051 provides that the “taxable estate” is determined by deducting from the value of the gross estate deductions provided in Chapter 11A, Part IV, which includes section 2053 deductions. Section 2053(a) provides, in part, that, in determining the taxable estate, the gross estate shall be reduced by amounts for funeral expenses, administration expenses, claims against the estate, and certain mortgages, to the extent that these items are allowable by the laws of the jurisdiction under which the estate is being administered. The purpose of section 2051 is to define that part of the decedent’s property that should be subject to estate tax. The deductions allowed under section 2053 operate to eliminate from estate tax those portions of the gross estate that do not pass by gift, but rather are expended in paying the expenses of the estate.

We disagree with the Fifth Circuit’s reasoning and conclusion. Because the section 2055 deduction involves different concerns, we do not believe that Ithaca Trust precludes consideration of post-death events in determining the amount deductible under section 2053 for claims against the estate. The Fifth Circuit’s reliance on Propstra v. United States, 680 F.2d 1248, (9th Cir. 1982), and Estate of Van Horne v. Commissioner, 720 F.2d 1114 (9th Cir. 1983), aff’g, 78 T.C. 728, 734 (1982), cert. denied, 466 U.S. 980 (1984) was also misplaced. Propstra and Van Horne involved claims that were certain and enforceable at death, and in both cases, the Ninth Circuit limited its holding to “certain and enforceable” claims, noting that “[t]he law is clear that post-death events are relevant when computing the deduction to be taken for disputed or contingent claims.” Propstra, 680 F.2d at 1253.

Every court, except the Fifth Circuit, that has addressed the section 2053(a)(3) issue where the claim is contested, contingent, or unenforceable on the date of death, has considered post-death events in determining the allowable deduction. Gowetz v. Commissioner, 320 F.2d 874 (1st Cir. 1963), aff’g sub nom., Taylor v. Commissioner, 39 T.C. 371 (1962); Estate of Jacobs v. Commissioner, 34 F.2d 233 (8th Cir.), cert. denied, 280 U.S. 603 (1929); Estate of Courtney v. Commissioner, 62 T.C. 317 (1974); Estate of Cafaro v. Commissioner, T.C. Memo. 1989-348. See also Estate of Van Horne, 720 F.2d 1114 and Propstra, 680 F.2d 1248. But cf., Commissioner v. Strauss, 77 F.2d 401 (7th Cir. 1935).

We nonacquiesce in the Fifth Circuit’s opinion that disputed claims against the estate at the date of death are to be valued without reference to post-death events. We accept, however, the precedential effect of the Fifth Circuit’s opinion in cases appealable to the

Fifth Circuit and will follow it with respect to cases within the Fifth Circuit, if the opinion cannot be meaningfully distinguished.

Recommendation:

Nonacquiescence

Reviewers:

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Approved:

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