

South Florida Estate Planning Law

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Are Michael Jackson's Funeral Costs Deductible for Estate Tax Purposes?

One of the blogs on my daily reading list is the "[Tax Girl](#)" (a/k/a Kelly Phillips Erb, a Philadelphia tax attorney). She has a regularly occurring feature on her blog called "Ask the Tax Girl" which she uses to answer readers' tax questions (and sometimes, [when necessary, gives her readers the motherly advice that they deserve](#)). She recently [tweeted](#) that she had received a tax question about Michael Jackson, and I replied that I've been blogging about the estate tax issues involved in the case and that I would be happy to answer her reader's question.

Sigh. Me and my big mouth.

Note to self: Never underestimate the sophistication and intelligence of Taxgirl's readers. While I was expecting a rather basic, easy to answer, yes or no question, what I got instead was:

- Are Michael Jackson's funeral costs ordinary and necessary and are they deductible on his estate tax return?

Not necessarily the easy yes or no answer that I had hoped for, but hey, if it were an easy question, the reader wouldn't have had to ask it. First some background information.

- [As I previously blogged](#), the **estate tax** is imposed upon the "**taxable estates**" of citizens or residents of the US. Each estate is entitled to a lifetime exemption of \$3,500,000, which generally means that the first \$3,500,000 of assets are not subject to the tax. I am not going to explain it again in this post, but please read my previous posts [here](#), [here](#), and [here](#) for more detail.
- The term "taxable estate" is defined in [Internal Revenue Code Section 2051](#) as the "**gross estate**" (which is the net value of the property in the estate) minus "the deductions allowed." Just as an individual is entitled to deductions on their income tax return, for example, the charitable deduction and the mortgage interest deduction, an estate is also entitled to deductions that reduce the gross estate, and thus the amount of estate tax owed.
- [Section 2053\(a\)\(1\) of the Code provides, in part](#), that one of the deductions allowed is that for "funeral expenses."

For "ordinary run-of-the-mill" estates, the estate deducts the costs of the funeral from the gross estate on the estate tax return. But in death, as in life, there is nothing "ordinary run-of-the-mill" about Michael Jackson. What the reader is asking is whether Michael Jackson's estate can deduct the *millions* of dollars associated with not just the funeral, but with the memorial service that was held yesterday.

[Section 20.2053-2 of the Treasury Regulations](#) provides that for an estate to take a deduction for funeral expenses, the amounts paid *must actually be expended out of property subject to claims*. In other words, in order to take the deduction, *the estate itself has to pay the costs*. Also, those costs must be out of property that are "subject to claims," that is property that can be used to pay creditors under local law. So first of all, any of the costs involved that were not paid by the estate but instead was paid by the taxpayers of the state of California or the city of Las Angeles are obviously not deductible.

[The regulation continues](#), "A *reasonable* expenditure for a tombstone, monument, or mausoleum, or for a burial lot, either for the decedent or his family, including a reasonable expenditure for its future care, may be deducted under this heading, provided such an expenditure is allowable by the local law. *Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial.*"

While there is a requirement for the costs to be "reasonable" that determination is made on a case by case basis. Reasonable for you and me is not necessarily reasonable for someone with a few hundred million dollars. So will the costs be deductible? Like many other tax questions, and many other questions about Michael Jackson, the answer is going to be — it depends.

Here is my take:

1. Everything involved with the *funeral* (not the *public memorial* but the *private funeral*) itself, no matter how extravagant or expensive will be allowed as a deduction.
2. Everything involved with purchasing and maintaining the *burial site* itself should also be deductible, even if they build a monument to him. In a 1927 case a \$21,000 mausoleum was deemed reasonable. That's over \$250,000 in today's dollars.
3. The costs of transporting Michael Jackson's body from the hospital, to the funeral home, to the memorial, to wherever his final resting place may be will probably also be deductible. This includes any costs that the estate reimburses any local jurisdiction for police escort, shutting down city streets, extra security, etc. Even though the public memorial location is not technically included, I think it would be allowed.
4. Any other costs paid for by the estate for the public memorial which was not part of the funeral should not be allowed as a deduction. The public memorial, while touching, was not really part of the funeral, and the IRS would have a strong argument if they chose to disallow the deduction. However, that being said, I wouldn't be surprised if the estate took the deduction, and the IRS allowed it. The larger estate tax battle is going to be over the valuation of Michael Jackson's intangible intellectual property and the actual size of his liabilities.

Phew. Thanks for letting me assist, Taxgirl. I think.

Thanks for the interesting take - reminds me of the discussions about the tax treatment of the Barry Bonds record-breaking home run ball.

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I believe the most critical word in your analysis is the last one ("liability," I'm counting the "Phew" as a post script). It will be interesting to see whether it is possible for someone who amassed half a billion in assets to leave a net taxable estate of zero (obviating the need for the funeral expense deduction)

[David Shulman](#) - July 8, 2009 3:15 PM

Richard, thanks for reading. I agree that it's quite possible that he will not have a taxable estate at all, due to his enormous liabilities. But from what I've been reading, the value of his intellectual property assets, especially the Sony/ATV catalog is still far greater than his debts.

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