

AN EXECUTOR'S JOB IS NOT ALL FUN AND FEES

Sunday, March 25, 2012

A recent District Court case reminds co-executors that if they do not do their job right, they can incur personal liability for the income taxes of the decedent whose state they are administering. In the case, the decedent had a substantial unpaid income tax liability at the time of her death. Notwithstanding the liability, the executors, with knowledge of the income tax liability, conveyed real property of the estate to the son of the decedent (who was also one of the executors) for one dollar. The son eventually sold the real property, and later claim that he lost the proceeds in the stock market.

Presumably because they could not collect against the son or other assets of the estate, the IRS sought to impose liability on the executors for disposing of the real estate without first satisfying the income tax liabilities of the decedent. The District Court found for the IRS and imposed liability for the taxes on the executors.

The executors got caught under the federal priority statute (also known as the federal claims statute) under 31 USC 3713(b). This provision is not under the Internal Revenue Code, but is referenced and incorporated under Code §6901(a)(1)(B). This provision is an exception to the normal rule that executors will not have personal liability for the debts and obligations of a decedent. Under the statute, a fiduciary that disposes of assets of an estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government if three elements are met:

- (1) the fiduciary distributed assets of the estate;
- (2) the distribution rendered the estate insolvent; and
- (3) the distribution took place after the fiduciary had actual or constructive knowledge of the liability for unpaid taxes.

Usually, executors will be protected by (3). Most executors, at least those that are properly represented, will know to first pay obligations of the federal government before

using assets needed to pay those obligations to make distributions to beneficiaries. Thus, if the executors do not know of the unpaid tax liability, this third element will protect them from liability in many circumstances.

Surely to the dismay of the executor in this case who was not the son, if there is more than one executor all executors are jointly and severally liable for this liability. This means that if the son has insufficient assets to cover the liability, the executor who did not benefit at all from this transaction may be forced to pay the IRS 100% of the liability.

U.S. v. David A. Tyler and Louis J. Ruch, all 109 AFTR 2d ¶2012-583 (DC PA 03/13/2012)

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