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### Tax Problems in Probating Estates

Byron E. Bronston

*Indiana University School of Law*

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## TAX PROBLEMS IN PROBATING ESTATES

By BYRON E. BRONSTON\*

Even as death and taxes are certain, so are the tax problems confronting an executor. They begin immediately upon the death of the decedent. Both the executor and the attorney for the estate must, even before the will is admitted to probate, give consideration to some of them. Careful planning early in the period of administration oftentimes results in a saving of income, inheritance, and estate taxes.

### *Schedule of Tax Steps*

Preliminary to appointment by the Court, the executor should approximate the amount and location of both real and personal property and determine if any property was held in joint tenancy. He should collect the data for the income tax return of the decedent to the date of death, obtain copies of the decedent's income tax returns for at least the last three years before death and the records in support of the returns. He should determine if the decedent was covered by the Social Security Act, and, after his appointment, write the Social Security Administration relative to any benefits due the estate or beneficiaries. He should ascertain the status of both real estate and personal property taxes on the property of the estate; he may possibly, if the decedent died shortly before or after April 1st, file promptly a personal property tax return for the estate. He will ascertain if any gifts or transfers were made by the decedent for which gift tax returns were or were not filed, the date and value of any gift, and the name of the donee. He will ascertain if the decedent possessed a power to appoint by will, deed or other disposition, if the power was exercised, and if so, obtain the value of the property covered by the power. He will inquire into the decedent's liability for Social Security taxes on domestics and the estate's liability for employees retained by the executor. He will arrange with the State Treasurer's office for the examination of the con-

tents of any safe deposit box standing in the decedent's name.

Upon receiving his appointment by the Court the Executor will procure separate consents from the Inheritance Tax office for each bank account standing in the decedent's name, for each holding of registered securities and each safe deposit box. He will obtain also inheritance tax waivers or consents from states other than the one of residence for each holding of a registered security if one is required. If there was insurance on the life of the decedent, he will consider obtaining a photostatic copy of each policy of insurance and will obtain from each company Federal Estate Tax Form 712 on each policy whether payable to the estate or others. He will also arrange for obtaining from the beneficiaries of policies their contribution toward payment of the Federal estate tax unless such contribution is waived by the will. Shortly after his appointment he will have any real estate appraised for inheritance and Federal estate tax purposes and will determine how much of the appraised value is allocable to land, how much to improvements, and, if there is farm property, how much to growing crops. At the same time he will also have all personal property appraised.

Within 60 days after letters have issued, the Executor will file with the U. S. Director of Internal Revenue Preliminary Notice Form 704 if the gross estate is expected to exceed \$60,000 in value. If the tangible personalty of the decedent is of substantial value and distribution or sale is to be made before examination of the Federal estate tax return by the agent of the Internal Revenue Service, Reg. 105, Sec. 81.10(g) provides a means whereby a consent may be obtained. Twelve months after death he will determine whether to value the estate for Federal estate tax purposes at the value as of the date of death, or as permitted under Sec. 2032 I.R.C., value the estate as of one year after death. The return must be filed within 15 months after the

\* Member, Chicago Bar Association.

date of death and upon filing the return he will request, as provided in Sec. 2204, that the amount of the estate tax be determined within 1 year after making the request and the Executor be discharged from personal liability therefor. Further, he will prepare the deduction for estate tax on accruals (income in respect of a decedent) as provided in Sec. 691(c), and consider amending income tax returns filed for accrual deductions (Sec. 691(b)) and optional values if the estate tax return was filed using the alternative valuation of 1 year after death. He will consider also using the deduction of administration expenses on income tax returns as permitted by Sec. 642(g). After the estate tax examination has been completed and any deficiency in tax or overpayment has been determined, he will consider the effect of any change in valuation of assets: such changes affect the basis for gain or loss in the future and may effect changes on income tax returns filed by him as to capital gain or loss and as to deductions for accruals. When filing the estate tax return and paying the tax, the Executor may use certain U. S. government bonds to pay the tax; if he does so, the bonds should be tendered for such payment 1 month before the tax is due.

The Illinois inheritance tax return must be filed with the County Clerk within 16 months after death, the date for a hearing set, if one is required, and the tax paid within 18 months after death. Upon entry of the order by the County Court, the Executor should obtain the inheritance tax receipt in duplicate, send it to the State Treasurer for countersignature and, if there is real estate listed in the return, record the receipt in the county in which the real estate is located.

In addition to obtaining copies of the last income tax returns and working papers of the decedent, the Executor will obtain from the decedent's employer, if there be one, W2 and 1099 forms. He will consider the desirability of filing the return to the date of death jointly with the surviving spouse. This return is due 3½ months after the close of the decedent's taxable year. If a joint return is

filed, the tax and credits should be allocated between the estate and the spouse. Upon filing the return to the date of death, a request for examination of this return, and all prior returns of the decedent not barred by the running of the statute of limitations, should be made as provided in Sec. 6501(d) I. R. C. As each fiduciary return is filed for the estate, a request for its prompt examination should likewise be made pursuant to the provisions of the same section of the Code. Such a request shortens from 3 years to 18 months the time within which a determination must be made by the Internal Revenue Service. When preparing to file the first fiduciary return, consideration may be given to the desirability of placing the estate on a fiscal year. Annually, probably late in the year, the Executor will consider the advisability of distributing some income to legatees, or beneficiaries, and of using some of the administration expenses and fees as an income tax deduction, as permitted by Sec. 642(g), in lieu of estate tax deductions under Sec. 2053. If a portion of the estate is bequeathed for a charitable purpose, the estate will claim as a deduction a proportionate part of taxable net income. If a bequest of a specific amount is satisfied by delivering securities in lieu of cash, capital gain or loss on the securities must be reported on the fiduciary return of the estate. If income is being distributed to a non-resident alien, the Executor must withhold an amount equal to 30% thereof to pay the non-resident alien tax. (Sec. 1441.)

When the Executor is ready to prepare his final accounting for filing in the Probate Court, he should ascertain whether all state inheritance taxes, Federal estate tax, personal property taxes, and income taxes have been finally determined and paid or provided for. In the year of termination of the estate he may have a net operating loss carryover under Sec. 172 or a capital loss carryover under Sec. 1212 or, for the last taxable year of the estate, certain deductions in excess of gross income for such year which he may take on his last fiduciary return as a deduction and pass on to the beneficiaries succeeding to the property of the estate

as provided in Sec. 642(h). Upon making distributions of the estate he will inform the residuary legatees of income and gain upon which they are taxable and will furnish them with the cost basis, as determined in the Federal estate tax proceeding, of securities or other property distributed to them. He will also have paid out of the estate the federal stamp tax on bonds, stocks and other securities subject to tax, distributed in kind, and have affixed the stamps as required by Sec. 4353. Other pertinent provisions of the Code with respect to documentary stamps may be found in Secs. 4321, 4331, 4342, 4343, 4344 and 4351.

#### *Executor's Liability*

The definition of a fiduciary under the Code includes that of an Executor or Administrator. (Sec. 7701(a)(6).) The term "Executor" wherever it is used in the estate tax sections of the Code means the Executor or Administrator of the decedent; or if there is none appointed, qualified and acting within the United States, then any person in actual or constructive possession of any property of the decedent. (Sec. 2203.) The personal liability of an Executor may result from unpaid income tax assessments issued against the decedent or the estate; or from the unpaid estate tax of the decedent; or from the unpaid gift taxes of the donor. (Sec. 6901, I. R. C.; Sec. 3467 Revised Statutes (31 USC 192).) Notice to the Secretary or his delegate of the assumption of a fiduciary relationship and later that the fiduciary capacity has terminated are provided by Sec. 6903. Once the Executor has given notice of his discharge, he has no further authority to represent the estate as to tax matters. The fiduciary capacity, however, must have terminated under state law or the notice is not effective. (*Hulburd v. Comm.*, 296 US 300 (1935).)

It is the duty of the Executor to examine the returns of the decedent which had been filed prior to the date of death and to make some reasonable check between the assets in the estate and prior income tax returns. A correlation of the two may make it obvious on the usual "net worth" basis that the decedent had

failed to report part or all of the income from his assets. An Executor owes an obligation both to the government and to the estate to disclose the facts through the preparation and filing of amended returns, in so far as it may be possible to prepare such returns, if an examination of the facts leads the Executor to feel reasonably sure that false returns may have been filed by the decedent. There is no way in which the Executor may terminate his responsibilities for penalties that might be imposed with respect to false returns.

Estate Tax Regulations 105, Sec. 81.99, provide that if the Executor, before paying all the estate tax, pays in whole or in part any debt due by the decedent or the decedent's estate, or distributes any portion of the estate, he is personally liable to the extent of such payment or distribution for so much of the estate tax as remains due and unpaid. Income Tax Regulations 118, Sec. 39.162-1(i) state with respect to returns filed by the Executor that the liability for the payment of the tax attaches to the person of the Executor up to and after his discharge if prior to distribution and discharge he had knowledge of his tax obligation or failed to exercise due diligence in ascertaining whether or not such obligation existed. Both the Administratrix and distributees were held liable for deficiencies and additions to tax for failure to file a return and negligence determined on unreported income of the decedent since the Administratrix made distribution of the estate with notice of unpaid taxes. (*Minnie Viles, Administratrix*, TC Memo 1955-142, CCH Tax Court Reports Dec. 21037(M).)

#### *Income Tax Returns*

The first return to be filed by the Executor in the usual case is that of the decedent to the date of death. This is the return of an individual and may be filed as a joint return with the surviving spouse. If a joint return is filed, consideration must be given to adjustments between the estate and the spouse in the event a deficiency is subsequently determined. If the Executor joins in the filing of a joint return under which the bene-

fits of any tax savings flow primarily to the spouse, there is always the possibility that those interested in the estate may be damaged unless the estate pays no more than its tax would have amounted to had the Executor filed an individual return. If the decedent was a member of a partnership, under Sec. 706 of the Code the partnership's taxable year will usually not terminate with the death of the decedent nor will the partnership income of the decedent, beginning with the close of the last previous taxable year of the partnership, be returnable in the decedent's return to the date of death. Rather the decedent's share of partnership income for the year in which he dies, determined in accordance either with the agreement or applicable law, will be determined as of the close of the partnership's taxable year and will be returned by the Executor in the year in which payment is received. Such income to the date of death is income in respect of a decedent. (Sec. 753.) If, however, the decedent was a member of a two man partnership, the partnership agreement and local law should be studied carefully to determine if the partnership has in fact terminated and the taxable year of the deceased partner will have ended with his death, thereby causing his share of the income of the partnership to be included in the decedent's return to the date of his death. Under Sec. 213(d) of the Code, expenses for medical, dental and similar items may be taken as a deduction on the return to the date of death if such expenses are paid out of the estate within one year from the date of death provided they are not deducted for estate tax purposes.

A question that arises occasionally by reason of the decedent having been a beneficiary of trust income is whether the decedent's income from the beginning of the trust's taxable year to the date of his death is to be determined in accordance with the principles of Sec. 706 applicable to the year in which a deceased taxpayer's income is taxable. The argument has been strongly advanced that the Code may be properly interpreted to tax, for example, the income of a beneficiary who died June 30, the trust being

a simple trust, both trust and beneficiary being on a calendar year basis, not in the return to date of death but to tax such income in the Executor's fiduciary return for the year in which such income is received, the amount of the distributable net income to be taxed not being determined until the close of the trust's taxable year. Presumably, if the argument stands, such income will be income in respect of a decedent, the accrual of it to the date of death being returnable in the estate tax return, and upon its receipt by the Executor it will thereupon be entitled to the deduction under Sec. 691(c) for the estate tax attributable to the inclusion of such income in the estate tax return.

Before filing his first fiduciary return, the Executor will wish to consider the desirability of placing the estate upon a fiscal year basis. Once this basis is chosen the Executor is bound to follow it. Before deciding to go on a fiscal year basis the Executor should carefully consider not alone the apparent advantages that might arise early in the administration of the estate in either the matter of the receipt of income or the taking of deductions, but equally so the effect of a fiscal year period late in the administration and at the time of distributing and closing the estate.

#### *Income in Respect of a Decedent*

Sec. 691 of the 1954 Code was formerly Sec. 126 of the 1939 Code. If the decedent was a cash basis taxpayer, the final return until the date of death will include income actually or constructively received during the period of his lifetime. It will not include such items as are accruals or accrued rights to income. This latter class of income is includible in the Federal estate tax return, is returnable under Sec. 691(a) in the Executor's fiduciary return in the year in which it is received and is entitled to a deduction on the income tax return for the amount of estate tax attributable to it. (Sec. 691(c).) If such income in respect of a decedent is not received by the Executor but is distributed, the legatee or beneficiary receiving it will report it in the year in which it is paid and will likewise

be entitled to the deduction under Sec. 691(c). Examples of income in respect of a decedent are accrued interest on bonds and other obligations; salary and wages actually earned; dividends declared to stockholders of record of a date prior to date of death; bonus and other compensation payments made in consideration of personal services rendered by the decedent; income realized from a claim which was in the process of litigation at the date of death; deferred income from transactions which were consummated during the decedent's lifetime such as installment obligations.

Accrued deductions are entitled to the same treatment as accruals of income. They are listed in Sec. 691(b). An example within Sec. 691 may be that of a cash basis decedent who was the owner of a sole proprietorship, he having directed by his will that his Executor continue the business. The accounts receivable will be inventoried as separate assets of the estate as will the business inventory, cash and other property used in the conduct of the business. The accounts payable are claims against the estate and deductible as such on the estate tax return. They will also be deductible on the Executor's return as business or trade expenses and are undoubtedly Sec. 691(b) deductions whether or not there is income returnable under Sec. 691(a). If the Executor must take long term capital gain into account in computing gross income in respect of a decedent, 100% of it will be taken and the same percentage will be used in computing the deduction authorized to recipients of income in respect of a decedent by Sec. 691(c). (Revenue Ruling 55-481 IRB 1955-31, 10.)

#### *Distributions*

Any distribution, whether of cash, securities or other property, made by an Executor during the period of administration to a residuary legatee or to one who is a beneficiary of a trust established under the will may, under Sec. 662, be taxable in whole or in part to him as a distribution of income for the current year unless such distribution may fall within the special rules set forth in Sec.

663. Likewise, a distribution to a trust, even though under the Illinois Principal and Income Act not distributable to the beneficiary, may be deductible by the Executor and taxable to the Trustee within the limits of the distributable net income of the estate. If, for example, the distributable net income of the estate for the year in question is \$20,000 and if a residuary legatee who will receive one-half of the residuary estate receives \$20,000 on account of his distributive share of the estate, one-half, not all, of the estate's distributable net income will, in the writer's opinion, be deemed to have been distributed to him as one-half of the \$20,000 which he receives whether intended as a distribution of corpus or not. The Code (Sec. 661) states that any payment or distribution made, within the ceiling of the estate's distributable net income, shall be deducted by the Executor and under Sec. 662 taxed to the beneficiary receiving it. "Beneficiary" is defined in Sec. 643(c) as including an heir, legatee or devisee. If a trust, pecuniary or residuary, is a legatee, then it would appear to be a "beneficiary." But to the extent that the governing instrument requires income to be distributed currently, the beneficiary of the trust will be taxable upon the amount of the distribution to the trust which is required to be distributed to him. Any income thus received by the trust and not distributable currently, or in fact properly paid or credited, should be taxable to the trust.

There is, in the opinion of the writer, a limitation on the amount of taxable income which may be thus taxed to a beneficiary. "Taxable income" is defined and determined by the Code. But to whom it is taxable is governed in part at least, by the will or trust instrument and by local laws. It is submitted that the Illinois Principal and Income Act controls, unless provided otherwise by the will, what is in fact distributable estate or trust income as distinguished from distributable taxable income. To tax to A that which under the will and Illinois law is B's income is unthinkable. Therefore, for want of a better phrase, the writer terms this attempt at reconciling

tax and trust or estate accounting laws the "rule of proportionate interests."

Further support for this view is to be found in Sec. 663(c) which provides that in determining the amount of the distributable net income in the case of a single trust having more than one beneficiary, substantially separate and independent shares of different beneficiaries in the trust shall be treated as separate trusts. Did Congress intend that separate distributable entities of an estate in administration should be taxed differently from separate distributable entities of a single trust?

It is probable, in the writer's opinion, that, to the extent of the application of this rule of proportionate interests, payments to a widow on account of her award will be taxable to her as a distribution of income from the estate.

In making distributions during the period of administration the legatee should be notified as to what is his share of the gross income of the estate to the date of distribution for the current year in order that he may amend his declaration of estimate at the next quarterly date and thereby avoid the penalties imposed by the 1954 Code for failure to make a proper amendment.

#### *Elective Deductions*

Administration expenses, including executor's and attorney's commissions and fees, are deductible on the Federal estate tax return under Sec. 2053. Certain losses are deductible under Sec. 2054. To the extent that these items of deduction can qualify as deductions from gross income under Sec. 162, trade or business expenses; Sec. 165, losses not compensated by insurance or otherwise, or Sec. 212, expenses for production of income, they may be used by the Executor as deductions on the fiduciary income tax return of the estate in lieu of being used on the estate tax return. They cannot be used as double deductions. Their use wisely on one return or the other will oftentimes effect substantial tax savings to the estate. To the extent that they may be used as an income tax deduction in the year of closing the administration, they may be passed on to the distributees

of the estate and be availed of by them on their individual returns. Sec. 642(g) and Sec. 642(h) are the pertinent sections of the Code.

Reg. 105, Sec. 81.36 provide that amounts may be deducted under Sec. 2053 (Estate tax) as claims against the estate if they represent personal obligations of the decedent existing at the time of his death. If a divorced wife files against the estate a claim for alimony, which is allowed by the Probate Court, it would seem that such a claim, to the extent that it would be deductible from the gross income of the estate under Sec. 215 would fall within the election allowed under Sec. 642(g). If alimony is payable by the estate for a period after death as a charge upon corpus, it has been held that the payments are taxable to the wife under Sec. 22(k), 1939 Code (Sec. 71, 1954 Code). *Albert R. Gallatin Welsh Trust*, 16 TC 1398, aff'd CA 3, Feb. 27, 1952. Since under the foregoing circumstances the wife would be taxable upon the payments received from the estate, the latter should be permitted to claim them as an income tax deduction under Sec. 215 if the provisions of Sec. 642(g) are complied with by the Executor.

If fees and administration expenses are used as income tax deductions under Sec. 642(g) and if there is a marital deduction, the estate tax will be larger and the adjusted gross estate for determining the amount of the marital deduction will likewise be larger. This result may operate to the disadvantage of the residuary legatees. The question has been raised with the Commissioner as to whether or not the taking of such deductions on the income tax return will still permit them to be used in determining the size of the adjusted gross estate for marital deduction purposes. The Commissioner has recently ruled on this question in Revenue Ruling 55-643 IRB 1955-43, Page 18. Where the decedent bequeathed to his wife an amount equal to 50% of the value of his adjusted gross estate as finally determined for Federal estate tax purposes, less the aggregate amount of other property which passes to her and qualifies for the marital deduction, this

being a formula type of bequest, the Executors elected to claim certain expenses of administration as deductions from the gross estate under Secs. 162 and 212 rather than as estate tax deductions under Sec. 2053, the election being made under Sec. 642(g). The Commissioner held that where amounts allowable under Sec. 2053 are claimed as deductions for income tax purposes under Secs. 162 or 212 and the right to have them allowed as deductions for estate tax purposes is waived, such items do not constitute deductions allowed by Secs. 2053 or 2054. Sec. 642(g) is a limitation upon the two estate tax sections. The Commissioner ruled that, upon the statement of facts, the value of the adjusted gross estate is determined by subtracting from the gross estate only the deductions authorized by Sec. 2053 which are actually allowed as deductions for estate tax purposes. (See Revenue Ruling 55-225 IRB 1955-16, 14). The value of the interest which actually passes to the surviving spouse should not be reduced by the amounts of those items which are not allowed as deductions under Sec. 2053.

How does an Executor avail himself of the right to take estate tax deductions as income tax deductions as permitted under Sec. 642(g)? He must file a statement to the effect that the items have not been claimed or allowed as deductions from the gross estate of the decedent and a waiver of the right to have such deductions allowed. But he may hold off for the full period of limitation before filing a waiver of his right to deduct administration expenses on the estate tax return. He may file the estate's income tax return without claiming the deductions, and at a later date claim them. He may claim the deductions on the estate's income tax return without filing the waiver when the return is filed. But he must file the waiver before the period of limitation has run on either the income tax or the estate tax return and before there has been a final determination of either tax. Once the waiver has been filed (to claim the deductions on the income tax return) it cannot be revoked in order to claim the estate tax

deductions. Rev. Rul. 240, IRB 1953-23, 6.

#### *Who Pays the Income Tax?*

The following is, in the writer's opinion, a summary of the law applicable to estates being administered in Illinois on the question of who is ultimately liable for the payment of income tax on income collected by an Executor during administration.

Under the clear net residue rule (see Principal and Income Act, Chapter 30, Sec. 163, Ill. Revd. Stat. 1955), the Executor pays the tax on estate income not distributed and deducted by him on his fiduciary return. This income tax is charged against the corpus of the estate initially because in Illinois an Executor does not for estate accounting purposes carry principal and income accounts separately.

But when the estate is distributed by the Executor he will

1. On income on property *specifically* bequeathed, if such income was not in fact distributed, deduct therefrom that portion of the income tax attributable to the income on the specifically bequeathed property; but he will not deduct any portion of expenses of administration, etc.
2. On bequests in trust, he will determine the average rate of return on the whole estate and allow interest, at such rate, on the amount of the bequest. In so doing, the income of the whole estate will have been charged with the income taxes paid on such income by the Executor and with such other charges of administration as are properly chargeable against income.
3. On a pecuniary legacy type of marital trust, set up on the basis of estate tax values—the customary formula type—the treatment will be the same as in 2 above.
4. On the residue, whether distributed a portion into a marital trust, whether distributed all into a trust

or trusts, or whether there may be portions distributed outright, the income actually collected follows, under the clear net residue rule, through with the corpus distributed. The income taxes paid by the Executor on such income, or attributable to it, will be deducted therefrom and thereby restored to the corpus against which it was previously tentatively charged until a definite determination could be made of the liability of the respective distributable shares, funds or portions.

*Effect of Application of Sec. 642(g)*

The deduction under Sec. 642(g) of Executor's and attorney's fees and other expenses of administration on the Executor's income tax returns will not affect the income of a specific legatee except to reduce the share or amount of tax attributable to his income on which the tax was paid by the Executor.

On a pecuniary legacy in trust the amount of income computed at the average rate of return on the whole estate will presumably be increased to some degree, thereby working against the interests of the residuary legatees because the payment of such amount reduces their residuum. The Federal estate tax is increased also, thereby reducing the residuum.

If there is a marital share set aside under the marital deduction provisions of the Code, the adjusted gross estate will be larger and the spouse will receive more to the detriment or disadvantage of the residuary legatees.

If there is no marital share nor a pecuniary legacy in trust, the residuary legatees will not be affected unless the residuum goes into trust. Then, the larger estate tax reduces the corpus of the trust; the deduction of fees, etc. under Sec. 642(g) reduces the income tax and thereby gives more net income after taxes to the income beneficiary. This situation calls for an adjustment between income and corpus of the residuary trust at the time of the final accounting.

*Federal Estate Tax*

The estate tax is now computed on one table of rates as set forth in Sec. 2001 and credit for state death taxes is now set forth in the table in Sec. 2011. The credit for previously taxed property has been changed by the 1954 Code to a graduated schedule covering a 10 year period and is set forth in Sec. 2013. Under Sec. 2037 property transferred during lifetime (and after October 8, 1949) by a decedent will be includible in his estate only if he retained at death a reversionary interest in property exceeding 5% of the value of the property. This rule operates whether the reversionary interest is express or by operation of law.

Under Sec. 2039 a joint and survivor annuity is includible in the gross estate to the extent that the decedent contributed to its cost. For the purpose of determining the extent of the decedent's contribution the payments made by his employer under an unqualified plan are to be taken into account; however, under qualified pension and profit-sharing plans, the employer's contributions are not to be considered as having been made by the decedent. The removal of the premium payment test in determining the taxability of life insurance now leaves such insurance proceeds includible in the decedent's estate if the policy was owned by the decedent or it was payable to his Executor. A 5% reversionary interest rule similar to that applicable to other transferred property is also applicable to life insurance. (Sec. 2042.)

The optional valuation date for estate tax purposes may be elected even if this results in the use of higher valuations. (Rev. Rul. 55-333 IRB 55-22, Page 16.) Such an election is sometimes desirable because an increased basis for income tax purposes then becomes available. (Sec. 1014(a).) Even though the filing of an estate tax return might not be mandatory, the Executor could probably file such a return and elect the optional valuation date, thereby obtaining a higher basis.

The Commissioner has recently ruled that the valuation of United States Savings Bonds, Series G and K, is at par at death and does not include accrued in-

terest. (Rev. Rul. 55-301 CCH Estate and Gift Tax Report, Paragraph 8022.) He has ruled that a lump sum death benefit under the Social Security Act as amended in 1953 is not includible in the decedent's gross estate under Sec. 2033. (Rev. Rul. 55-87 CCH Federal Estate Tax Report, Paragraph 8010.) Such an amount should not be taxable in Illinois for inheritance tax purposes either. It represents a benefit given by the United States to the spouse or the estate to apply against burial expenses, but there is no legal requirement that it be so used. It is, in effect, a gift by the United States government. The Commissioner also recently ruled that the entire gift tax paid by a decedent's Executors on gifts made by the decedent in the year in which he died is deductible for estate tax purposes even though the Executors and the decedent's spouse consented to treat the gifts as being made one-half by each spouse. (Rev. Rul. 55-334 IRB 1955-22, Page 17.) By virtue of TD 6091, August 17, 1954, all existing regulations, rulings, instructions, etc. are effective under the 1954 Code to the extent that they are not inconsistent with the provisions of that Code and have not been superseded by new regulations.

The provisions of the Code with respect to bequests, etc. to the surviving spouse (the marital deduction) are found in Sec. 2056. If the testator's will has given the spouse less than her full marital share of his estate, should she renounce the will? The problem has many facets, not the least of which is who shall advise her of her rights under the statute. Shall the Executor cause her to become aware of her rights; shall the Executor's attorney advise her; must she retain her own counsel to protect her interests? The Executor is obligated to administer the estate, to carry out the provisions of the will; but the Executor will be remiss if he does not cause the widow to be apprised of her rights under the statute. Whether or not she should renounce is, however, her problem to resolve.

#### *Illinois Inheritance Tax*

Sec. 30(c) has been added to the Inheritance Tax Act, being Sec. 403(c)

Illinois Revised Statutes, Chapter 120, approved March 9, 1955. The new section provides that whenever there shall be a reassessment or redetermination of the inheritance tax under Sec. 25, or a redetermination of the tax under Secs. 8 and 10 of the Inheritance Tax Act, or either of them, there shall be a concurrent redetermination of the tax under Sec. 30(a) (pick-up tax) in the same proceeding, and a reassessment of the tax shall be made under Sec. 30(a) equal to the maximum tax credit allowed under the Internal Revenue Code (26 USCA) upon the net estate having a taxable situs in Illinois, less the inheritance taxes due the State of Illinois as so redetermined. Interest shall not be charged on any additional tax imposed under Sec. 30(c).

#### *General Property Taxes*

Chapter 120 of the Illinois Revised Statutes in Sec. 539 requires the Executor to list the property inventoried in the estate for the assessment of a personal property tax. The Act further provides that personal property, except such as is required to be listed and assessed otherwise, shall be listed and assessed in the tax district where the owner resides. Where an Executor was not appointed until after April 1 of the year for which the personal property of the estate was to be assessed, the Executor stands in the shoes of his testator with respect to such personal property, and his ownership of the property is but a continuation of the ownership of the decedent. Until the property has been distributed, the Executor is regarded by the statute as the legal owner and possessor of the property of his decedent and is personally responsible for the taxes. (*People v. Continental Illinois National Bank and Trust Company of Chicago*, 360 Ill. 454, 196 NE 515 (1935).) The lien for the tax on both real and personal property attaches April 1.

The duty of an Executor is not only to administer the estate well but to minimize to the extent proper the multitude of tax burdens which fall upon the estate. He is, under court decisions, presumed to know the duties imposed upon him under the applicable tax statutes.