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January 4, 2010

Subject: **General Estate and Gift Tax Developments: October 2009**

1. **Decedent's Estate Is Entitled to Substantial Discounts For Lack of Control and Lack of Marketability of Closely-Held Partnership/LLC Interests**

Major References: [*Estate of Murphy v. U.S., ___ F. Supp. 2d ___, 2009-2 USTC ¶60,58,3 \(W.D. Ark. Oct. 2, 2009\)*](#)

Prior AALU Washington Reports: 00-43; 02-71; 02-78; 02-114; 03-56; 04-30; 04-42; 04-110; 05-86; 05-74; 05-77; 07-11; 07-74; 07-107; 08-23 08-49; 09-49; 09-84; 09-111

2. **IRS Issues Final Regulation Under IRC § 2053 On Extent To Which Post-Death Events Can Affect Valuation of Claims Against Estate**

Major References: [*T.D. 9468, 74 Fed. Reg. pp. 53652-53665 \(October 20, 2009\)*](#)

Prior AALU Washington Reports: 07-79

3. **Rollover By Surviving Spouse of Decedent's IRA Through Joint Revocable Trust Is Nontaxable**

Major References: [*PLR 200943046*](#)

Prior AALU Washington Reports: 02-57

MDRT Information Retrieval Index Nos.: 2500.00; 7400.021; 7400.022; 7400.024

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THE CONCLUSION OF THIS WASHINGTON REPORT.

This Washington Report summarizes a few of the more important cases and rulings in the estate and gift tax areas which were decided or reported by the courts and the Internal Revenue Service in October of 2009, and on which we have not previously reported in Bulletins on insurance-related estate and gift tax matters.

Cases

1. *Estate of Murphy v. U.S.*, __ F. Supp. 2d __, 2009-2 USTC ¶60,583 (W.D. Ark. Oct. 2, 2009)

The District Court for the Western District of Arkansas has ruled that the value of the partnership interests and LLC membership interests, and not the value of their underlying assets, should be included in the decedent's gross estate, and that such interests should be valued with a substantial discount (over 40%) for lack of control and marketability, as well as tiered discounts for the LLC membership interests. The court also ruled that the underlying assets of the partnership were not includible in the decedent's gross estate under Sections 2036(a)(1) and 2036(a)(2), since the transfer of assets to the partnership was a "bona fide sale for full and adequate consideration in money or money's worth."

Charles H. Murphy, Jr., "Decedent," died unexpectedly in 2002 as the result of a staph infection following elective quintuple-heart-bypass surgery. During his lifetime, Decedent managed the family banking, timber, and oil and gas businesses. In 1946, Decedent and his three sisters pooled various Decedent and family interests together to form their own partnership, C.H. Murphy & Company, which eventually was incorporated and named "Murphy Oil Corporation." One of the purposes for forming the original partnership was to enable their business assets to be managed collectively and to allow family members to pass ownership and management of the family businesses to future generations. The management of these collective family assets fell to Decedent as the partnership's managing general partner, and later as CEO of the corporation.

"As a result of Decedent's direction and leadership," Murphy Oil grew from a family-owned partnership to an international, publicly traded oil company. By 1997, Murphy Oil had a market capitalization of over \$2 billion with the Murphy Family controlling approximately 25% of the company's outstanding stock and Decedent and his descendants controlling approximately 9.6% of the stock.

Also under Decedent's guidance, Deltic Timber Corporation ("Deltic") grew to hold over 400,000 acres of farm and timberland. It also entered the lumber manufacturing business, owning and operating two sawmills in Arkansas. Deltic became a publicly traded company in 1996 when Murphy Oil spun off its farm, timber and real estate business. In 1997, the Murphy Family controlled approximately 25% of Deltic's outstanding stock, while Decedent and his descendants controlled approximately 9.6% of the stock.

In addition to their holdings in the timber and oil and gas industries, the Murphy Family also owned interests First United Bancshares, Inc. ("First United") (a successor to First National Bank of El Dorado). By 1997, the Murphy Family controlled approximately 8-10% of First United's stock, while Decedent and his descendants controlled approximately 4% of the stock.

During his lifetime, Decedent created several trusts for the benefit of each of his four children-Mike, Martha, Chip and Madison. These trusts were usually funded with shares of Murphy Oil stock or stock of its predecessor. Decedent also made annual exclusion gifts to his children. These gifts were usually in the form of Murphy Oil or First Commercial Corporation stock.

By the 1980s and early 1990s, when Decedent had begun to turn over the management of the Murphy Family assets to the next generation, Decedent came to realize that his sons, Mike and Chip, did not hold the same business/investment philosophy as he did-to hold the family's "Legacy Assets" (their interests in Murphy Oil, Deltic, and First United) longterm and to grow those assets by actively participating in the management of these companies. Both sons had financial problems and one had a failed marriage in which he was required to give up a great deal of Murphy Oil stock that he held directly. Decedent also realized that his other two children, Martha and Madison, did share his business/investment philosophy. In light of this realization, Decedent did not want to leave his family's assets to his children outright.

On December 1, 1997, with the advice and assistance of counsel, Decedent formed the Charles H. Murphy Family Investments Limited Partnership (the "MFLP") and the Murphy Family Management, LLC (the "LLC"). The LLC serves as the MFLP's general partner.

On February 19, 1998, Decedent contributed shares of Legacy Assets (Murphy Oil, Deltic, and First United stock), along with certain other assets, to the MFLP. These partnership contributions were made on behalf of himself or as trustee of the Michael W. Murphy 1994 Revocable Trust ("Mike's 1994 Trust"), the Martha W. Murphy 1994 Revocable Trust ("Martha's 1994 Trust"), and the Robert Madison Murphy 1994 Revocable Trust ("Madison's 1994 Trust"), and the Johnnie W. Murphy Exempt Children's Trust ("Mrs. Murphy's Trust"), of which Decedent was the trustee. Decedent's total contributions to the MFLP were then worth \$88,992,087 and amounted to approximately 41% of the value of Decedent's total assets at the time. Decedent retained approximately \$130 million in non-Legacy Assets outside the partnership.

On February 19, 1998, Decedent also contributed shares of Legacy Assets to the LLC, then worth \$1,021,311. On May 22, 1998, Madison and Martha made their contributions to the LLC. Madison's contribution consisted of shares of Legacy Assets that had a value at the time of \$526,195. Martha's contribution also consisted of shares of Legacy Assets having a value of \$526,195. Decedent's resulting member interest in the LLC was 49% and Madison and Martha's was 25.5% each. Thus, Madison and Martha collectively held a majority of the member interest in the LLC.

After all contributions were made, the LLC held a 2.25% general partnership interest in the MFLP. Decedent held, individually or as trustee of various trusts, a 96.75% limited partnership interest in the MFLP. Each interest owner in the MFLP and the LLC received an interest in the entity proportionate to the value of the assets contributed, with a portion of Decedent's contribution being allocated to Hendrix College as a charitable gift. The value of the assets contributed by each owner was credited to his, her, or its capital account.

Since its creation, the MFLP has engaged in business operations, purchased and sold assets, hired and managed employees, prepared (monthly) and disseminated (quarterly) financial statements to its partners, filed federal and state tax returns, and maintained its own bank account. The partners have met from six to eight times a year to discuss partnership business. They have also respected the partnership as an entity separate and apart from themselves. Accordingly, Decedent did not commingle any of his personal assets with the assets of the MFLP. MFLP made no distributions except for taxes.

In Decedent's federal estate tax return, his Estate listed the value of Decedent's 95.25365% limited partner interest in the MFLP at \$74,082,000 and the value of the 49% member interest in the LLC at \$706,000.

On June 15, 2006, the IRS issued a Notice of Deficiency to the Estate in the amount of \$34,051,539. The Service asserted that the Estate undervalued certain assets (including Decedent's interest in the MFLP and the LLC). It claimed that 1) Decedent's 95.25365% limited partner interest in the MFLP had a value of \$131,541,819, an increase of \$57,459,819 over the value on the return, and 2) Decedent's 49% member interest in the LLC had a value of \$1,903,000, an increase of \$1,197,000 over the value on the return. (The

IRS also challenged the value of certain other assets, including art works, and disallowed certain deductions.)

On September 8, 2006, the Estate paid (with borrowed funds) the additional tax of \$34,051,539 plus \$7,721,720.50 in accrued interest from December 20, 2002. On the same day, the Estate filed a Claim for Refund and Request for Abatement for \$41,770,308, plus interest, which claim was denied by the IRS, resulting in this suit.

1. MFLP. The Court, after evaluating expert testimony, found that the total net asset value of MFLP's assets was \$132,416,538, consisting of shares of Murphy Oil stock, Deltic stock, BancorpSouth stock and Epps Plantation, along with its other assets, and subtracting its liabilities. Taking this net asset value and multiplying it by Decedent's 95.25365% limited partner interest in the MFLP, the pro rata net asset value of Decedent's limited partner interest was determined to be \$126,132,000 FN44 ($\$132,416,538 \times 95.25365\% = \$126,131,586$).

Against this value, the Court allowed a 12.5% lack of control discount (the percentage advanced by Decedent's appraisers). Accordingly, the Court found that the non-controlling, marketable value of Decedent's 95.25365% limited partner interest in the MFLP to be \$110,365,500 (net asset value of limited partner interest (\$126,132,000)-12.5% lack of control discount (\$15,766,500) = \$110,365,500).

The Court also allowed a 32.5% lack of marketability discount on Decedent's limited partner interest in the MFLP (again, the same percentage advanced by Decedent's experts). Accordingly, the fair market value of Decedent's 95.25365% limited partner interest in the MFLP was found to be \$74,500,000 (non-controlling, marketable value of Decedent's 95.25365% limited partner interest in the MFLP (\$110,365,500)-32.5% lack of marketability discount (\$35,868,788) = \$74,496,712). The overall discount was approximately 41%.

2. The LLC. Decedent owned a 49% member interest in the LLC, the MFLP's general partner, the principal asset of which was its 2.28113% general partner interest in the MFLP.

The Court, allowing tiered discounts to the value of the general partner interest in MFLP and to the value of Decedent's 49% interest in the LLC, first applied a 20% lack of control/lack of marketability discount on the value of the general partner interest. Therefore, the fair market value of the 2.28113% general partner interest was found to be \$2,416,000 (net asset value of general partner interest (\$3,020,593)-20% lack of control/lack of marketability discount (\$604,119) = \$2,416,474). The total net asset value of the LLC was \$2,414,995 [fair market value of 2.28113% general partner interest (\$2,416,000) cash (\$245)-liabilities (\$1,250) = net asset value of LLC (\$2,414,995)]. The pro rata net asset value of Decedent's 49% member interest in the LLC on the Valuation Date was \$1,183,348 [net asset value of LLC (\$2,414,995) x 49% member interest = pro rata net asset value of member interest (\$1,183,348)].

In determining the fair market value of Decedent's 49% member interest in the LLC, the Court allowed a 11.1% lack of control discount and a 32.5% lack of marketability discount on the net asset value of Decedent's member interest is appropriate. Accordingly, the fair market value of Decedent's 49% member interest in the LLC was \$710,000 [net asset value of 49% member interest in LLC (\$1,183,348)-11.1% lack of control discount (\$131,352) = marketable, non-controlling value of member interest (\$1,051,996)-32.5% lack of marketability discount (\$341,898) = \$710,098].

3. Section 2036 Issues. In this case, the IRS claimed that the value of the property transferred by Decedent to the MFLP and the LLC is includable in his gross estate under sections 2036(a)(1) and (2) of the Internal Revenue Code (regarding retained interests and powers). The Estate, in turn, argued that section 2036 does not apply to the transfer as it falls within the exception to section 2036, *i.e.*, it is "a bona fide sale for adequate and full consideration." The Court agreed with the Estate.

For cases decided adversely to the taxpayer on the basis of IRC § 2036, see *Estate of Schauerhamer*, T.C. Memo. 1997-242, *Estate of Reichardt*, 114 T.C. 144 (2000), *Estate of Harper*, T.C. Memo. 2002-121, *Estate of Abraham*, T.C. Memo. 2004-39, *aff'd* 408 F.3d 26 (1st Cir. 2005), *Estate of Hillgren*, 87 T.C.M. 1008 (2004), *Estate of Thompson*, T.C. Memo. 2002-246, *aff'd sub nom Turner v. Commissioner*, 382 F.3rd 367 (3rd Cir. 2004), *Estate of Strangi v. Commissioner*, 115 T.C. 478 (2002), *aff'd in part rev'd in part sub nom Gulig v. Commissioner*, 293 F.3d 279 (5th Cir. 2002), *rehearing denied Gulig v. Commissioner*, 48 Fed. Appx. 108 (2002), *on remand at, judgment entered Estate of Strangi v. Commissioner*, T.C. Memo. 2003-145, *aff'd Strangi v. Commissioner*, 417 F.3d 468 (5th Cir. 2005), *review or rehearing granted* 429 F.3d 1154 (5th Cir. 2005), *Estate of Bongard*, *supra*, *Estate of Bigelow*, T.C. Memo. 2005-65, *aff'd* 503 F.3d 955 (9th Cir. 2007), the companion *Korby* cases, T. C. Memo. 2005-102 and 103, *aff'd*. 471 F.3d 848 (8th Cir. 2006), *Estate of Rector v. Commissioner*, T.C. Memo 2007-367 and *Estate of Jorgensen v. Commissioner*, *supra*. (See our Bulletins Nos. 00-43, 02-71, 02-78, 02-114, 03-56, 04-30, 04-42, 04-110, 05-74, 05-77, 07-11, 07-107, 08-23 and 09-49.) *But see Estate of Kimbell*, 371 F.3d 257 (5th Cir. .2004), *Estate of Schutt*, T.C. Memo. 2005-126, *Estate of Mirowski v. Commissioner*, T.C. Memo 2008-74, *Estate of Miller v. Commissioner*, T.C. Memo 2009-119, and *Keller v. U.S.*, __ F. Supp. 2d. __ (S.D. Tex. August 20, 2009), discussed in our Bulletins Nos. 07-74, 05-86, 08-49, 09-84 and 09-111.

In rejecting the government's argument, the Court noted that MFLP was created and operated for various purposes, among them to pool the family's Legacy Assets into one entity to be centrally managed in a manner that was consistent with Decedent's long-term business/investment philosophy. These purposes and actions demonstrated a "legitimate and significant non-tax purpose for creating the MFLP." Decedent also retained approximately \$130 million outside the partnership. Thus, he was not dependant on distributions from the partnership in order to maintain his lifestyle. He also did not treat the partnership's assets as his own and did not commingle his assets with those of the partnership. During the formation of the MFLP, Decedent's two children, Madison and Martha, took an active role, with Martha being represented by her own attorney. Thus, Decedent was not effectively standing on both sides of the transaction.

The mere fact that Decedent knew of the tax advantages associated with the Partnership's creation did not "prevent a sale from being 'bona fide' if the transaction is otherwise real, actual and genuine." Rather, in determining if a bona fide sale was for adequate and full consideration, the proper focus is 1) whether the interest in the partnership received is proportionate to the value of the assets contributed to the entity, 2) whether the value of each partner's contribution is credited to the partner's capital account, and 3) whether on termination or dissolution of the partnership, each partner is entitled to distributions from the partnership in amounts equal to their respective capital accounts, both of which tests were satisfied in this case.

Final Regulations

2. T.D. 9468, 74 Fed. Reg. pp. 53652-53665 (October 20, 2009)

The IRS has issued final regulations under Section 2053(a) of the Internal Revenue Code, regarding the deductibility of claims against a decedent's estate. The regulations address the extent to which post-death events may affect the deduction, and adopt, with changes, the approach set forth in proposed regulations issued in 2007 .

The Revenue Code imposes an estate tax on the taxable estate of every citizen or resident of the United States. A decedent's gross estate includes the value at the date of decedent's death of all property, real or personal, tangible or intangible, wherever situated. A decedent's taxable estate is calculated by deducting certain specified deductions from the value of the gross estate.

Pursuant to Section 2053(a), the following amounts may be deducted from the gross estate: (1) funeral expenses, (2) administration expenses, (3) claims against the estate, and (4) unpaid mortgages on, or

any indebtedness in respect of, property where the value is included in the value of the gross estate, undiminished by such mortgage or indebtedness. Section 2053(a) does not expressly value a deductible item at its date of death value; in fact, it specifically contemplates after death expenses such as funeral and administration expenses.

Courts in some jurisdictions have held that post-death events may not be considered when determining the amount deductible for a claim against the estate, whereas other jurisdictions have held that claims presented and determined as valid against the estate and actually paid (whether before or after death) may be deducted as claims against the estate. The lack of consistency in the case law has resulted in similarly situated estates being treated differently for Federal estate tax purposes, depending upon the applicable jurisdiction.

In an effort to ensure that similarly situated estates are treated consistently, on April 23, 2007, the Internal Revenue Service issued proposed regulations (*see* our Bulletin No. 07-79) providing that an estate may deduct under Section 2053(a)(3) only amounts actually paid in settlement of claims against the estate. The proposed regulations provided that, if the resolution of a contested or contingent claim cannot be reached prior to the expiration of the period of limitations for refunds, the estate may file a protective claim for a refund to preserve its right to claim a deduction.

The proposed regulations expressly provide that events occurring after a decedent's death should be considered in determining the amount deductible and that deductions are limited to amounts actually paid by the estate in satisfaction of deductible claims and expenses. Final court decisions as to the amount and enforceability of a claim or expense will be accepted in determining the amount deductible, if the court examined the facts upon which deductibility depended. Settlements will also be accepted if they are reached through bona fide negotiations between adverse parties with valid claims, and not inconsistent with the applicable law. However, a deduction will not be allowed to the extent the claim or expense is compensated for by insurance or is otherwise reimbursed. The proposed regulations further provide that no deduction may be taken on an estate tax return for a potential, unmaturing or contested claim. Furthermore, the proposed regulations provide that if a claim becomes unenforceable after the decedent's death, the estate may not take a deduction with respect to the claim.

The final regulations, which are effective generally for estates of decedents dying on or after October 20, 2009, adopt the approach of the proposed regulations, but with certain specific changes, the most important of which may be summarized as follows:

- Contingent claims against an estate may offset the value of other assets that comprise at least 10% of the gross estate and contingent claims totaling no more than \$500,000 may be deducted on the return;
- Settlements do not have to be proven to be within the reasonable range of settlement outcomes under applicable state law to be recognized
- There is no affirmative duty for the executor to report after the period of limitations on assessment has expired when claimed expenses or claims are not actually paid;
- Marital or charitable deductions do not have to be reduced on the return by contingent expenses or claims that may be paid out of amounts that would otherwise pass to a spouse or charity if a protective claim for refund is filed regarding that contingent expense or claim;
- The rebuttable presumption included in the proposed regulations that claims by family members, related entities or beneficiaries are not legitimate and bona fide has been deleted from the final regulations; and

- The rule allowing only the present value of recurring noncontingent claims has been dropped. However, a regulation project considering how present value concepts should be applied to administration expenses and claims will continue.
- The final regulations recognize that the purchase of a commercial annuity to fund a continuing obligation of the estate, and the nonrefundable and generally significant costs involved in that purchase, should be sufficient to permit a deduction of the cost of the annuity for purposes of section 2053. Therefore, the final regulations clarify that the estate may be permitted to own the annuity, and need not transfer it to a creditor or other third party who will use the annuity to make payments to the creditor.

The Revenue Service published Notice 2009-84, 2009-44 I.R.B. 592, concurrent with the issuance of the final regulations to clarify that when it processes a timely protective claim for a refund based on a deduction under section 2053, and if the claim becomes ready for consideration after the expiration of the limitations on assessment under section 6501, then the IRS will limit its examination to evidence relating to the deduction under section 2053 that was the subject of the protective claim. If the IRS allows the section 2053 deduction, it will recompute the estate tax liability by allowing that deduction.

Private Letter Rulings

3. *PLR 200943046*

PLR 200943046 demonstrates how an IRA, that is payable to a joint revocable trust established in a community property jurisdiction for the benefit of the decedent/IRA owner and his spouse, may be rolled over by the spouse through the intermediary trust.

Section 1.408-8 of the final Treasury 2002 regulations (*see* our Bulletin No. 02-57), Question and Answer 5, provides that a surviving spouse of an IRA owner may elect to treat the spouse's entire interest in the deceased spouse's IRA as the spouse's own IRA. In order to make this election, the spouse must (i) be the sole beneficiary of the IRA and (ii) have an unlimited right to withdraw amounts from the IRA. If either a trust or estate is named as beneficiary of the IRA, the requirement of this regulation are not satisfied even if the spouse is the sole beneficiary of the trust or estate.

However, the Preamble to the regulations provides, in relevant part, that a surviving spouse who actually receives a distribution from the deceased spouse's IRA will be permitted to roll that distribution over into his or her own IRA even if the spouse is not the sole beneficiary of that IRA if the rollover is accomplished within the requisite 60-day period. The Preamble further provides that a rollover may be accomplished even if IRA assets pass through either a trust or an estate.

PLR 200943046 illustrates the application of these rules with respect to a joint revocable trust established in a community property jurisdiction.

Under the facts of that ruling, "Decedent" died testate on Date 2, a resident of a community property state, having attained age 70 1/2. Decedent was survived by his spouse, "Spouse," whose date of birth is Date 3.

At his death, Decedent owned an individual retirement account ("IRA"), from which he had begun receiving required minimum distributions.

Sometime prior to Decedent's death, Decedent and Spouse had executed a form of joint revocable trust ("Trust") that is common in many community property jurisdictions. Decedent's IRA beneficiary designation form designated Trust as the primary beneficiary of IRA. Spouse became the sole trustee of Trust upon Decedent's death.

Trust provides, in part, that the settlors have designated, or may designate, Trust as the beneficiary of certain life insurance policies on either or both settlors' lives and death benefits payable on either or both settlors' lives under any pension, profit sharing or other form of retirement plan.

Under the terms of the Trust indenture, the first settlor to die shall be called the "deceased spouse." On the death of the deceased spouse, the trustee shall divide the trust estate, including any additions made to the trust by reason of his or her death, such as from the decedent's will or life insurance policies on the decedent's life, into two separate trusts, designated "Marital Trust" and "Bypass Trust."

Marital Trust shall consist of the surviving spouse's interest in the settlors' community estate and the surviving spouse's separate estate, if any, included in or added to the trust estate in any manner, including any undistributed or accrued income on it, and the marital deduction amount remaining after allocation of sufficient property to the Bypass Trust to reduced Decedent's taxable estate to zero. Marital Trust is revocable, in whole or in part, by Spouse during her lifetime, but Bypass Trust is not revocable by Spouse. On the death of the Spouse, neither trust may be amended, revoked, or terminated. On revocation or termination of the Marital Trust, all its assets shall be delivered to Spouse.

Trust provides, in part, that from the time of death of the deceased spouse, the trustee shall pay to or apply for the benefit of the surviving spouse the net income of Marital Trust in quarter-annual or more frequent installments, and also provides that the ". . . Trustee shall pay or apply for the benefit of the Surviving Spouse such amounts of the principal and any accrued or undistributed net income of Marital Trust, up to the whole of it, as the Surviving Spouse may direct from time to time".

The custodians of IRA were provided with information concerning the terms of Trust and the identities of the beneficiaries in a timely manner. Funds of IRA have not been distributed except for those sufficient to satisfy the required minimum distribution rules. All debts, funeral bills, taxes and expenses of Decedent's estate were paid from assets other than IRA, and at all times subsequent to Decedent's death, IRA has been maintained in his name.

Spouse, as trustee of Trust, proposes to allocate IRA to Marital Trust. Upon allocation of IRA's proceeds to Marital Trust, Spouse as beneficiary of Marital Trust, and pursuant to language contained in said Marital Trust, intends to demand payment of all of the IRA proceeds from Marital Trust. Spouse, as trustee of Trust /Marital Trust, will honor her own request and distribute IRA to herself. Upon receipt, Spouse will roll over said distribution (less three calendar years' required minimum distributions) into an IRA set up and maintained in her name. The rollover shall occur no later than the 60th day following the day IRA is distributed to Trust, and will be completed no later than December 31 of the calendar year in which the rollover occurs.

Based on these facts, the Revenue Service issued the following rulings:

1. If the IRA proceeds are paid to Trust, allocated to Marital Trust, distributed to Spouse from Trust /Marital Trust, and timely reinvested/rolled over into an individual retirement account set up in the name of and maintained for the benefit of Spouse, the distribution of the plan proceeds from Decedent's IRA and subsequent rollover into Spouse's recipient IRA will qualify as a transfer to an eligible retirement plan within the meaning of section 408(d) of the Code; and
2. If the distribution/rollover satisfies the requirements of Code section 408(d), then the amounts timely rolled over into Spouse's recipient IRA will not be taxed to either Trust, Marital Trust, or Spouse in the calendar year in which the distribution/rollover occurs.

The Revenue Service, in making these rulings, pointed out that, although an "inherited IRA" (including an IRA payable to an estate or trust) may not be rolled over, a surviving spouse who acquires a decedent's IRA after, and as a result of, the death of an IRA owner will be able to roll over the decedent's IRA into an IRA set up and maintained in the name of the surviving spouse. Citing the preamble to the final 2002 regulations

reference above, the Service concluded that the general rule applicable to inherited IRAs that are received by a beneficiary through a trust should not apply in this case because Spouse is the sole trustee of Decedent's trust and has the sole authority, power, and/or discretion under trust language to pay the IRA proceeds to herself. "In such a case, the surviving spouse may then receive the IRA proceeds and roll over the amounts into an IRA set up and maintained in her name," provided that the rollover is completed within the required 60-day period after receipt.

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