

Death taxes come in several flavors

James Guyton sold his Florida chicken farm on January 20, 2000, for \$190,000. After paying off two mortgages, he placed the net proceeds of \$99,735 into a joint checking account with his son Timothy.

James died on June 17, 2000. Another son, James, Jr., was named the executor of his father's estate. In that capacity he was required to file a final income tax return and pay any income taxes due. The following year he filed the return, showing a tax liability of more than \$132,000. Partial payments totaling more than \$113,000 were made through 2004. In 2005 the IRS demanded the rest, with interest and penalties.

James told the IRS that it needed to collect the capital gain tax on the sale of the farm from Timothy, not him, because the sales proceeds "never went through the estate." What's more, James argued, because the sale was "income in respect of a decedent," the primary tax obligation fell on Timothy. Finally, James produced a written agreement in which Timothy and other siblings promised to contribute to paying the taxes.

All irrelevant, ruled a federal district court, and the Eleventh Circuit Court of Appeals recently agreed. A pre-death sale is *not* income in respect of decedent but, instead, gives rise to a tax obligation of the decedent. What happened to the proceeds does not matter, and the IRS is not bound by agreements to which it is not a party. *As the estate's executor, James, Jr., must pay these income taxes.*

Self-representation

We do not know from the court record just how large the Guyton estate was, but it appears that there was no federal or state estate tax or inheritance tax. But those aren't the only death tax obligations, despite their notoriety. This case shows that income taxes after death also can be problematic in the absence of a plan to provide a means of payment.

Through three court proceedings, James, Jr., represented himself. Experts do not generally recommend this approach. The larger point is that nearly ten years have elapsed since the senior Guyton's death, and his estate still isn't finally settled.

Whom should you choose as *your* executor?

The impulse to choose a family member for the job of estate settlement is understandable, and for smaller estates it may work out fine. But estate settlement is rather more difficult than most people realize, and there can be unexpected pitfalls. Here are some of the questions to consider as you evaluate the candidates for settling *your* estate:

- *Experience.* Have the individuals or organization settled estates before? Is it part of their daily business routine? Have they been exposed to a wide range of estate settlement issues over the years?

- *Skills.* Is the executor candidate familiar with modern portfolio theory? How about the "prudent man rule"? Will investment management issues be a problem, or can they be handled routinely?

- *Availability*. Will the proposed executor be ready to take on the job at any time? Is there a chance that illnesses, vacations or career issues will interfere with the job of estate settlement?

- *Impartiality*. Does the prospective executor have a financial interest in the estate? Will all parties consider the executor fair and impartial? Can the executor play a constructive role in settling any disputes that arise among beneficiaries?

Choosing an executor is similar to hiring an employee, but the stakes are much higher.

We can help

Estate settlement is one core aspect of our daily business. If you choose us to settle your estate, you will know that there won't be any "on-the-job" learning involved. To learn more about our capabilities in this regard, make an early appointment to meet with us.

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