

## **An Executor may be personally liable for unpaid Estate Taxes**

In a recent Tax Court opinion, Estate of Lee, TC Memo 2021-92 (TCMemo 2021), the Court decided that an estate's executor was personally liable for the estate's unpaid estate taxes because he made distributions of estate assets knowing that the estate owed estate taxes.

An executor is personally liable for unpaid estate taxes to the extent the executor distributes assets from the estate when either

1. The estate was insolvent at the time of the distribution, or
2. The distribution rendered the estate insolvent and the executor had knowledge or notice of the U.S.'s claim. (31 U.S.C. §3713(b) the "Federal Priority Statute")

What did the executor do wrong? The IRS sent the Executor who was also an attorney, a statutory notice of deficiency ("Stat Notice") claiming the estate owed over \$1,000,000 in estate tax. The Executor filed a petition in the Tax Court disputing the Stat Notice.

But, while the Tax Court case was pending, the Executor distributed \$640,000 of estate assets. After the distribution, the estate retained only \$183,000, leaving not enough to pay the IRS. After the Tax Court issued its decision determining the estate owed \$536,151 in estate tax, the IRS sent Executor a Notice of Federal Tax Lien. In response to the lien, Executor submitted an offer-in-compromise (OIC), based on doubt as to collectability, to settle the estate tax claim. The IRS declined the OIC as too low because it determined that the estate's reasonable collection potential included amounts it could collect from the Executor under the FPS.

The Court ruled with the Internal Revenue Service stating that the Executor was personally liable for the estate tax claim. The Tax Court ruled that the Executor had both knowledge and notice of the estate tax claim when he distributed the estate's assets.

First, the Tax Court found that Executor had notice of the estate tax claim because he received the Stat Notice thereby satisfying the notice requirement in the FPS.

Second, the Tax Court determined Executor had actual knowledge of the estate tax because he was a party in the Tax Court petition the estate filed disputing the Stat Notice.

Finally, the Tax Court also ruled that the Executor made the distribution knowing that the IRS had determined an estate tax deficiency against the estate, and that an action disputing that deficiency claim was pending before the Tax Court. Under these circumstances, the Tax Court ruled that the Executor made the distribution at his own peril.

Lesson learned: Before making any distribution to beneficiaries or even before paying other debts, an Executor should verify that there is no estate tax liability or possibly find that the Executor is personally liable for the unpaid Estate Tax.