

Wherever it is determined by the taxpayer that the estate or gift tax has been overpaid, the Executor or donor may file a claim for refund of such overpayment.

2. Considerations Before Filing

The mere fact that federal estate or gift tax may have been overpaid does not necessarily mean that the Executor or donor should automatically file a claim for refund. It should be understood and discussed with the client that the filing of a claim for refund once the estate tax return has been accepted and the Estate Tax Closing Letter issued will constitute a request by the Executor for a "voluntary reopening" of the case, and such action may result in a previously accepted return, as well as the claim itself, being audited by the Service. In view of this fact, it is the common practice of some Practitioners to wait to file such claims just immediately prior to the date that the statute of limitations for assessment by the Service under Section 6501 of the Code expires. Although the Service may still raise all audit issues to "offset" any claimed refund, the Service cannot assess an actual tax deficiency against the taxpayer in excess of the claimed overpayment. Caution must be exercised to insure that both the statute of limitations for filing the claim has not expired and that the statute of limitation for assessment by the Service has expired.

3. Form:

A claim for refund of overpayment of federal estate or gift tax should be made on Form 843, Claim for Refund, and should be executed by the Executor or donor. The latest revision of Form 843 is January, 1997. The claim may either be mailed to the Regional Service Center or hand-carried to the local District Office. Claims for refund should always be prepared in great detail since any later suit by the estate or donor on the alleged overpayment of taxes may be limited to those specific grounds stated and the matters and issues raised in the claim. The Practitioner will generally include in the claim any actual or "estimated" administration expenses (i.e., attorney fees) incurred in connection with the preparation of the claim. Alternate theories of recovery, even though

inconsistent with one another, should be set forth in detail in the claim.

4. Statute of Limitations on Filing

Claims for refunds of estate or gift taxes must be filed either within 3 years from the time the tax return was filed or within 2 years from the time the tax was actually paid, whichever period is later. See §6511(a). If the return was filed early and/or the tax paid prior to the original due date for paying such tax, then the return and/or payment of the tax will be deemed to have been made on the original due date for purposes of determining the application of both the 3-year and the 2-year limitation periods. See §6513(a).

5. Limitations on Amount Refunded

If a claim is filed under the 3-year limitation rule, then the amount to be refunded is limited to the tax paid within that period of time immediately preceding the filing of the claim equal to 3 years plus the period of any extension of time to file the return which had been previously granted. If the claim is filed under the 2-year rule, then the refund is limited only to those taxes actually paid during the 2-year period immediately preceding the filing of the claim for refund. See §6511(b)(2).

6. Initial Processing of Claims

If a claim is filed before the original tax return has been accepted and/or examined by the Estate Tax Group in the District Office, the claim will be associated with the original tax return, and the claim's issues will be considered by classifier or by the Estate Tax Attorney along with other issues on the return. However, if the original return has previously been accepted and closed by the Service, the claim will be initially reviewed by the Estate Tax Attorney(s) stationed in the Service Center. Most claims do not involve controversial issues and can often be accepted as filed at the Service Center without any examination of the claim's issues by the District Office Estate Tax Group. After the tax assessed against an estate is corrected, the Service Center will issue a "revised" Estate Tax Closing Letter to the Executor evidencing the revised amount of federal estate taxes assessed against the estate. If the Service

Center believes that the claim is inaccurate or if the claim relates to an issue previously examined by the District Office Estate Tax Group upon audit of the return to which the claim relates, the claim is generally selected for audit and forwarded to the appropriate District Office Estate Tax Group for its further consideration. Generally, such claims are promptly assigned by the Group Manager to an Estate Tax Attorney for audit. If the return to which the claim relates was audited by an Estate Tax Attorney in the Group, the claim is generally also assigned to that attorney.

7. Claims Selected for Audit

Upon receipt in the District Office Estate Tax Group, the claim is reviewed for audit potential. Many claims will simply be “surveyed” or accepted without further examination and returned to the Service Center for abatement of the tax. If the claim is assigned to an Estate Tax Attorney for audit, the examination of the claim is required to be initiated by the estate Tax Attorney within a maximum of 30 work days following receipt of the claim in the Group. The Estate Tax Attorney is also required to give priority to the examination of the claim in order to minimize the amount of interest which the government must pay to the taxpayer upon any refund of the tax. Upon audit of the claim, the claim will be either accepted in full or rejected by the Estate Tax Attorney, in whole or in part. If the claim is rejected in whole or in part and the taxpayer wishes to agree with the Estate Tax Attorney’s determination, the Executor or donor will be requested to sign Form 2297, Waiver of Statutory Notification of Claim Disallowance, and the Estate Tax Attorney will prepare an examination report reflecting the adjustments, if any, agreed upon by the Executor and/or donor. The filing of this Form 2297 will commence the 2-year statutory period in which the taxpayer must commence suit to recover that part of the claim which was disallowed by the Service. If the Executor or donor does not agree with the Estate Tax Attorney’s determination on the claim issues, then the examination of the claim will be entitled to an administrative appeal with the Appeals Office upon the timely filing of a written Protest.

8. Request for Immediate Claim Disallowance

In general, a taxpayer may not commence suit to seek to recover the claimed overpayment of tax prior to the expiration of 6 months from the date that a claim for refund is filed with the Service unless the Service renders its decision on the claim prior to such date. If the claim for refund is based solely or primarily on disputed estate or gift tax issues which were previously considered upon audit of the applicable tax return, the taxpayer may choose to expedite the denial of the claim in order to promptly proceed with litigation on the disputed issues. Therefore, if the taxpayer does not want to pursue a further appeal of those issues within the Service, the Executor or donor may request in writing that the claim be immediately rejected and disallowed. Upon receipt of such requests, the Service will promptly issue its Form 2297, Statutory Notice of Claim Disallowance, and the taxpayer will have 2 years in which to file a refund suit in either the United States District Court or the United States Court of Claims.

9. Protective Claims

If the statute of limitations for filing a claim is about to expire, the Executor or donor may file a “protective” claim with the Service, pending final resolution of the litigation or other matter which precludes the immediate consideration of the claim. Upon receipt of protective such claims, they are to be “suspended” by the Service until such time as the taxpayer requests the active consideration of the claim. In preparing such claims, Form 843 should clearly be marked “Protective” to prevent its immediate consideration and possible issuance of a Statutory Notice of Claim Disallowance.

C. CLOSING LETTERS

1. Service Center Function

The Service Center(s) aligned with the new SB/SE Operating Division and assigned to process estate and gift tax returns will be responsible for the issuance of the Estate Tax Closing Letters.

2. Legal Effect

The Estate Tax Closing Letter is not a formal Closing Agreement issued under the authority of Section 7121 of the Code. *Est. of Ella Meyer*, 58 T.C. 69 (1972); *Schwager v. Comm.*, 64 T.C. 781 (1975). However, the examination of a previously accepted or audited estate tax return will be reopened by the Service to make an adjustment unfavorable to the taxpayer only under very limited, appropriate circumstances. The procedures for reopening of “closed” estates are contained in Revenue Procedure 94-68, a copy of which is enclosed with the Estate Tax Closing Letter itself. That Revenue Procedure is reproduced in Appendix D to this paper.

3. Voluntary Requests to Re-Open

The filing of a claim for refund or an amended or supplemental return by the Executor constitutes a request for a “voluntary” reopening of the estate, and it is not necessary for the Service to go through the formal procedures set forth in Rev. Proc 94-68 to reopen the review or examination of the federal estate tax return.

D. DISCHARGE OF PERSONAL LIABILITY

1. Section 2204

a. In General

Section 2204 and its corresponding Regulations provide that the Executor may make written application to the Service for a determination of the federal estate taxes due by the estate and for a discharge of personal liability therefrom. Within 9 months after the filing of such request for discharge, the Executor is to be notified by the Service of the amount of the federal estate tax and, upon payment of such amount, the Executor will be discharged from any personal liability for any deficiency in tax thereafter found to be due by the estate.

b. Form

A request under Section 2204 of the Code must be in writing, should specifically refer to Section 2204 or otherwise expressly state that it is a request for discharge of

personal liability for federal estate taxes, and should be attached to Form 706 if made at the time the original return is filed. §2204; Reg. 20.2204-1. Requests for so-called “prompt audit or review” of the return or for “early action” will not be considered or treated by the Service as Section 2204 requests. A request for discharge may also be made by the Practitioner on behalf of the Executor if the Practitioner has filed a properly executed Form 2848 with the Service.

c. Effect on Statute of Limitations

Section 2204 is a “notice” provision, and a discharge of the Executor under its provisions does not effect the Service’s statute of limitations for actual assessment of a tax deficiency under Section 6501 of the Code. Section 2204 pertains only to the discharge of the Executor’s personal liability for payment of tax, and its application does not prevent or void a subsequent assessment of a tax deficiency against the estate. In addition, the Executor continues to be fully liable for such deficiency in his fiduciary capacity to the extent of the remaining estate assets in the Executor’s possession or control. *Est. of Ella Meyer*, 58 T.C. 69 (1972); *Est. of Bert L. Sivyver*, 64 T.C. 581 (1975); Reg. 20.2204-1(a).

d. Other Fiduciaries

A fiduciary other than the Executor (i.e., a Trustee of an *inter vivos* or testamentary trust) may also make written application for discharge of personal liability under Section 2204. If such an application is made by a non-Executor, the fiduciary will be discharged either 6 months after the discharge is requested by the fiduciary or upon the discharge of the Executor under Section 2204(a), whichever event is later. §2204(b); Reg. 20.2204-2. In view of the above, unless the Executor requests a discharge under Section 2204, the other fiduciaries are precluded from obtaining their own discharge from personal liability.

e. Certificate of Discharge

Form 7990, U.S. Estate Tax Certificate Of Discharge from Personal Liability, is a formal certificate of discharge which will be issued to the Executor upon specific written request for same. Such

requests should (i) be in writing, (ii) specifically request Form 7990, and (iii) should provide the decedent's name, social security number, date of death and the latest document locator number for the tax return shown on the Estate Tax Closing Letter. Such requests should be mailed to the Service Center where the return was processed. Form 7990-A, U.S. Gift Tax Certificate of Discharge from Personal Liability, is available for gift tax purposes. It should be noted that the current Estate Tax Closing Letter incorporates in it the discharge language under Section 2204 of the Code and will also to discharge the Executor from personal liability if an application was made for same on the estate tax return when it was originally filed.

2. Section 6905

The Executor may also request a discharge from personal liability for the decedent's unpaid income and gift taxes. Form 5495, Request for Discharge From Personal Liability Under Internal Revenue Code 6905, should be used for this purpose. This Section is also a "notice" provision and acts only to discharge the Executor from personal liability. It does not shorten the applicable statute of limitations for assessments nor does it preclude the subsequent assessment of an income or gift tax deficiency.

3. Section 6501(d)

The Executor may, in addition to merely requesting a discharge from personal liability for the decedent's income and/or gift taxes, actually request the prompt assessment of such taxes under provisions of Section 6501(d) of the Code. This provision is not a "notice" provision, but actually serves to reduce or shorten the statute of limitations applicable to the assessment of those taxes. The request should be made on Form 4810, Request for Prompt Assessment Under Internal Revenue Code Section 6501(d), and must be mailed by separate envelope to the appropriate Service Center after the subject tax return has been filed. These requests are promptly associated with the applicable tax returns and are reviewed for audit or acceptance as filed. If accepted, a letter is sent to the Executor advising of the

acceptance of the subject returns. If the classification of the return indicates high audit potential, the return is selected for audit and sent to the appropriate District Office for examination. Although many requests are made by Executors under Section 6501(d) of the Code for the prompt assessment of federal estate taxes, the practitioner should be aware that the statute is made expressly inapplicable to the federal estate tax. See §6501(d).

4. Installment Payment of Tax

Even if the federal estate tax is being paid in installments under Sections 6166, 6163 or 6161, the Executor may, nevertheless, obtain a discharge from personal liability for such taxes by either posting a bond for such amount or by electing the special tax lien under Section 6324A provided for such purpose. See §2204(a); §2204(c).

E. EXTENSIONS OF TIME TO FILE AND PAY

1. Service Center Function

Extension requests will be processed and acted on by the Service Center assigned to process the estate or gift tax return in question.

2. Form and Content

Applications for extensions of time to file Form 706 and/or to pay the federal estate tax due thereon are made on Form 4768. This form has a separate section for the Executor to request either or both an extension of time to file Form 706 or an extension of time to pay all or any part of the estate tax due thereon, under provisions of Section 6161 of the Code. Both portions or sections of the form should be completed, since an extension of time to file the return will not act to extend the time for payment of the tax and visa versa. See Reg. 20.6081-1(c); Reg. 20.6161-1(c)(3). There is no comparable Service form for gift tax returns, and the request for an extension of time to file a Form 709 and/or to pay the federal gift taxes due thereon, if any, should be made in writing, in letter form addressed to the Service Center. A practitioner who signs the declaration on the front of Form 4768 can file the request for the estate

without having to submit a Form 2848, Power of Attorney, with the application. The reasons given for any requested extensions should be detailed and fully developed in order to insure that the requests are not summarily denied by the Service Center.

3. Processing the Applications

All application for extensions should be filed with the Service Center, and should be filed in adequate time to permit the Service Center to consider and act on the request before the original due date for filing the return or for paying the tax expired. The Service Center will return one or more copies of Form 4768 to the taxpayer evidencing its action on the application.

4. Late Applications

Although it is rarely done by the Service, an extension of time to file the return may, under very special circumstances, be granted even though the application requesting the extension was not timely filed. See Reg. 20.6081-1(b). Such requests are sometimes made by the Executor in an attempt to qualify the estate for a "lost" tax benefit or election required to have been made on a timely filed return. Except as expressly provided, a delinquent application for an extension of time to pay the tax will not be considered by the Service under any circumstances. See Reg. 20.6161-2(c).

5. Maximum Period of Extension

Unless the Executor is abroad, an extension of time to file the return cannot be granted for more than a maximum of 6 months from the original due date of the return. See Reg. 20.6081; Reg. 25.6081. Currently, approved extensions are automatically granted for the maximum 6 month period, even if a shorter period of extension was requested. An extension of time to pay all or any part of the original estate tax due with the return may not exceed a maximum period of 10 years. See §6161(a)(2). Such extensions are to pay generally granted in 12 month periods, and are subject to an annual review by the Collection function of the Service. An extension of time to pay a part of an estate tax deficiency may also be granted by the Service, but such extension may not exceed

a maximum period of 4 years from the initial date fixed for payment of such deficiency. See § 6161(b)(2).

6. Payments With Extensions

In general, an extension of time to pay will be granted only for the amount of the claimed "cash shortage." On occasion, the Service may require, or the Executor may elect, to pay a portion of the estimated estate taxes due at the time Form 4768 is filed. If the amount paid with the extension request represents a good faith estimate of the final tax liability reported on the return, the Service has ruled that any excess payment will be treated as an "overpayment" of tax, and the estate will be entitled to receive interest on the refund of such excess. See Rev. Rul. 81-189, 1981-2 C.B. 240.

7. Denied Extensions

The granting of an extension of time to file the return is totally within the discretion of the Service, and there is no express statutory or regulatory right of appeal in the event the request is denied. *Crissey v. U.S.*, 80-1 USTC ¶13,335 (D.C. N.Y. 1980); See §6081. However, if an extension of time to pay the estate tax under Section 6161 is denied by the Service, the Executor may file a written appeal within 10 days from the date such denial is mailed to the Executor. See Reg. 20.6161-1(b); Instructions to Form 4768. The authority to hear such appeals has been previously delegated to the Appeals Office. If the denied extension application requested both an extension of time to file the return and an extension of time to pay the tax, the Appeals Officer will "administratively" reconsider both requests even though the right of appeal technically applies only to the denied extension of time to pay the tax. The decision of the Appeals Officer is final, and there is no further appeal on the issue.

F. SECTION 6166 ELECTIONS

1. Form of the Election

An election under Section 6166 of the Code to pay a portion of the estate tax in installments must be made on or before the date set for filing the return (including

extensions thereof). The election must be in writing and contain the information required by the Regulations. The election should be attached to the timely filed estate tax return. See §6166; Reg. 20.6166-1(b).

2. Initial Processing

During the initial processing of the return at the Service Center, the return is identified as an installment case, and a “tentative” installment account or installment notice file is set up at the Service Center for the estate.

3. Final Determination

Historically, the District Office Estate Tax Group has been responsible for determining whether an election made by the Executor meets the qualifications of Section 6166. Elections are accepted or selected for additional review during the classification process for the returns. If accepted, the appropriate function in the Service Center will be notified to that effect. If the election and/or the return itself are selected for examination, the Estate Tax Attorney will make his final determination regarding such election during the course of the audit, and the Executor will be advised accordingly. If the election is tentatively denied by the Estate Tax Attorney, the Executor will be given an opportunity to appeal the Estate Tax Attorney’s determination before the decision is final.

4. Appeal of Denied Elections

If the Estate Tax Attorney believes that the election does not meet the qualifications of Section 6166, the Executor is entitled to a hearing with the Appeals Office before the decision is final. See Rev. Proc. 79-55, 1979-2 C.B. 539. The decision of the Appeals Officer is final, and there is no further administrative appeal on the issue.

5. Redeterminations on Audited Cases or Claims

The installment payments may be recomputed because of the determinations of tax deficiencies, overpayments and/or changes to the ratio of the qualified closely-held business interest. The Service has issued examples and procedures which illustrate the recomputation of the

installment amount under such situations. See Rev. Rul. 81-294, 1981-2 C.B. 237.

G. SPECIAL ESTATE AND GIFT TAX LIENS

1. In General

The Code provides for special estate and gift tax liens which arise instantly at the date of death or date of gift and which have a duration of 10 years from such dates, unless the estate or gift taxes due by the estate or donor are paid in full or otherwise become unenforceable by reason of lapse of time. These liens attach to all property comprising a part of the decedent’s gross estate and to all gifts made during the period for which the gift tax return was filed. These liens are in addition to the general tax lien provided for by Section 6321. See §6324(a)(1) and §6324(b); Reg. 301.6324-1.

2. Authority to Discharge Liens

Local District Offices have historically been responsible for processing requests submitted to them by an Executor or donor for discharge of any or all property subject to the special estate and/or gift tax lien imposed on such property by Section 6324. See Estate and Gift Tax Handbook § 5.4; Reg. 301.6325-1(c). If the Service determines that the estate or gift tax due has been satisfied or otherwise provided for, the Service is authorized to issue a certificate of discharge on any or all of the property subject to the lien. See §6325(c); Reg. 301.6325-1(c)(1).

3. Procedures to Obtain Releases of Lien

Form 4422, Application for Certificate Discharging Property Subject to Estate Tax Lien, should be filed directly with the Estate Tax Group in the District Office responsible for collection of the tax. There is, however, no specific IRS Form for requesting a discharge of the gift tax lien, and such requests should be made in letter form in the manner set out in Reg. 301.6325-1(c)(2). If the subject property is being sold, a copy of the executed sales contract should be attached to the Application. The issuance of a certificate of discharge is discretionary with the Service

and will only occur if there is an actual need for such certificate. See Estate and Gift Tax Handbook § 5.4. The Service will generally not issue a certificate of discharge after the Estate Tax Closing Letter has been issued and the taxes paid, nor will a release be given merely to effectuate a distribution or division of the property among the decedent's heirs or distributees free of the estate tax lien. A release of lien can be obtained regardless of whether or not Form 706 has been filed at the time Form 4422 is submitted. See Estate and Gift Tax Handbook § 5.4. If the return is not yet filed, the applicant is instructed to use "estimated" amounts to the extent they can be determined. See Form 4422.

4. Certificates of Discharge

If the Estate Tax Group Manager determines that a release or discharge of the lien is appropriate, Form 792, United States Certificate Discharging Property Subject to Estate Tax Lien, is issued to the Executor. A copy of such certificate is associated with and retained in the estate tax file. The Service has generally been agreeable to expediting the review of release of lien requests upon a showing of good cause for same.

5. Escrow of Funds

If the estate tax is unpaid and the request for discharge of lien applies to all or the majority of the real property included in the decedent's gross estate, then it is common practice for the Service to require all or a specific portion of the net proceeds of sale to be placed into an escrow account pending issuance of the Estate Tax Closing Letter and the payment of the tax. Form SWRE-224, Escrow Agreement, may be used by the Executor to establish an acceptable escrow account prior to the issuance of the certificate of discharge. This "suggested" agreement will permit the use of the escrowed funds to pay the federal estate taxes due by the estate.

6. Subordination of Lien

Frequently the real property subject to the lien is not being sold, but is simply being used as security or collateral to secure a loan. Requests for subordination of the estate tax lien should also be made

on Form 4422 and filed with the Estate Tax Group in the District Office. If it appears that the subordination of the federal tax lien will not detrimentally affect the collection of the unpaid estate taxes, and the remaining property is adequate to secure the payment of such taxes, the Service will generally issue Form 792 to the Executor evidencing such subordination. See §6325(d); Reg. 301.6325-1(d).

H. PENALTIES

1. In General

Section 6651 of the Code provides for the assessment of certain civil penalties for failure to either timely file a return or to timely pay the taxes due. The assertion of a penalty by the Service may initially arise at the time of the processing of the tax return at the Service Center or may be raised as an audit issue by the Estate Tax Attorney during the course of his examination. Few issues tend to anger or frustrate both the taxpayer and the practitioner alike as do questions concerning the assessment of penalty.

2. Initial Consideration at Service Center

The Service Center has the initial responsibility for determining whether or not "reasonable cause" exists for the late filing of the return and/or the payment of the tax. If the return is filed late and an extension of time to file the return has not previously been obtained, the Executor should attach a detailed statement to the return setting forth his or her reasons why the return could not be timely filed and the tax timely paid. Such statements are considered by the Service Center prior to the assessment of the penalties, and it is generally much easier to prevent the assertion of the penalty than to have the penalty abated after it has already been assessed. If the Service Center processing the tax return believes that the statement reflects reasonable cause for the delinquency, then the return is coded to prevent the assessment of penalty. However, if there is no such statement attached to the return or the circumstances set forth in the statement are considered insufficient to constitute "reasonable cause" for the delinquency, then penalties will be

assessed upon processing of the return, and a computer-generated Notice will be issued to the Executor or donor advising him of such penalty assessment. Unfortunately, it has been the experience of this writer that the affidavits or statements of the taxpayer are overlooked on the processing of the return and the reasonable cause of the taxpayer is not considered on the merits before the penalties are assessed.

3. Review by Estate Tax Attorney

If a determination on the penalty issue has previously been made by the Service Center prior to the audit of the return by the Estate Tax Attorney, the Estate Tax Attorney is advised that he should generally not disturb that determination except under very limited circumstances. For example, the request for abatement of the penalty may be initially raised by the taxpayer during the examination of the return, or the Estate Tax Attorney may determine that the taxpayer misrepresented the facts in his statement on which the penalty was abated by the Service Center.

I. VERIFICATION OF TAX PAYMENTS

Although the Estate Tax Closing Letter may be used as evidence of the filing and acceptance of the Federal estate tax return, it does not verify the payment of the estate tax reflected thereon. Proof of payment can be provided by copies of cancelled checks or by any receipt for the estate tax which may have been requested by the Executor under Section 6314(b) at the time such payment was made to the Service. In order to have available a full and detailed summary of all assessments and payments made on the estate's account, the Executor may request that the Service Center issue Form 4340, Certificate of Assessment and Payments, to the estate.

XI. HOT AUDIT ISSUES

Perhaps the best way to determine the current "hot audit issues" of the IRS at any given time is to simply review the current tax reporters and literature to determine what issues the Service is litigating and issuing

rulings on. Some of the issues which appear to this writer to be on the Service's radar screen are set out below. For an IRS perspective on some of these issues refer to James L. Gulley's recent Article and presentation given at the State Bar's Advanced Estate Planning and Probate Law Course in 1997. See Gulley, "IRS Hot Topics", 21st Annual Advanced Estate Planning and Probate Law Course, Dallas, Texas, June 4-6, 1997.

A. FAMILY LIMITED PARTNERSHIP

The family limited partnership ("FLP") continues to be THE number one audit matter for the Service. Although the Service to date has not had a great deal of success with its litigation involving FLPs, the IRS is definitely not conceding much to the taxpayers at this time. A list of the FLP cases to date is attached to this paper as Appendix G.

B. ABUSIVE TRUST

Perhaps the next big audit focus will be on so-called "Abusive Trusts". The Service is increasingly concerned about the perceived misuses of both foreign and domestic trusts, and the IRS has recently undertaken a national coordinated strategy to address what it considers to be fraudulent trust schemes. For more information on the Service's perspective on this matter, refer to IRS Publication 2193 (Rev. 11-1999).

As a consequence of this new audit focus, it is the opinion of this writer that trusts, particularly foreign and other types of inter vivos trusts will get increasing scrutiny from the Service.

C. ADMINISTRATIVE EXPENSES

The deductibility of administration expenses, particularly those interrelated the marital or charitable deductions continue to get regular IRS attention. It is the experience of this writer that the proposed adjustment of claimed administration expenses is one of the Estate Tax Attorney's most treasured tools in avoiding the dreaded "no change" audit case.

D. GIFTS BY ATTORNEYS-IN FACT

The IRS continues to challenge gifts made by attorneys-in-fact under power of

attorney forms that do not contain a specific authorization for the attorney-in-fact to make such transfers.

E. CLAIMS AT DEATH

Recently there have been several cases dealing with the deductibility of unliquidated claims owed by the decedent at death, particularly litigation claims. For a flavor of this dispute see *Smith v. Commissioner*, 198 F.3d 515 (5th Cir. 1999) and *McMorris v. Commissioner*, 2001-1 USTC ¶60,396 (10th Cir. 2001).

F. UNLIQUIDATED INTEREST DISCOUNTS

The IRS continues to challenge discounts claimed for undivided interest in real property and/or to limit the amount of discount claimed to the "cost of partition." Frankly, the Service has not been very successful in its efforts.

G. DISCOUNTS

If a discount is claimed on an estate or gift tax return for anything, the chances of an audit of the return are significantly increased.

APPENDIX E
FORMS RELEVANT TO TRANSFER TAX RETURNS

<u>Form</u>	<u>Description</u>	<u>Revised</u>
SS-5	Application for a Social Security Card	Feb. 1998
56	Notice Concerning Fiduciary Relationship	Aug. 1997
668-H	Notice of Federal Estate Tax Lien Under Internal Revenue Laws and Certificate of Release of Federal Estate Tax Lien	July 1987
668-J	Notice of Federal Estate Tax Lien Under Internal Revenue Laws and Certificate of Release of Federal Estate Tax Lien	August 1980
669-F	Certificate of Subordination of Federal Estate Tax Lien	June 1981
706	United States Estate (and Generation-Skipping Transfer) Tax Return	July 1999
709	United States Gift (and Generation-Skipping Transfer) Tax Return	2000
712	Life Insurance Statement	May 2000
792	United States Certificate Discharging Property Subject to Estate Tax Lien	Nov. 1980
843	Claim for Refund and Request for Abatement	Jan. 1997
890	Waiver of Restrictions on Assessment and Collection of Deficiency and Acceptance of Overassessment – Estate, Gift, and Generation-Skipping Transfer Tax	Oct. 1988
890-AD	Estate Tax – Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment	Nov. 1980
977	Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary	Feb. 1987
1273	Report of Estate Tax Examination Changes	Dec. 1980
2297	Waiver of Statutory Notification of Claim Disallowance	March 1982
2848	Power of Attorney and Declaration of Representative	Dec. 1997
3259	U.S. Certificate Discharging Property Subject to Gift Tax Lien	Dec. 1982

4351	Interest Computation-Estate Tax Deficiency on Installment Basis	April 1989
4421	Declaration – Executor’s Commissions and Attorney’s Fees	April 1987
4422	Application for Certificate Discharging Property Subject to Estate Tax Lien	Oct. 1986
4768	Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes	Jan. 2000
4810	Request for Prompt Assessment Under Internal Revenue Code Section 6501(d)	Dec. 1999
5495	Request for Discharge from Personal Liability Under Internal Revenue Code Section 6905	Oct. 1983
7990	United States Estate Tax Certificate of Discharge from Personal Liability	Sep. 1980
7990-A	United States Gift Tax Certificate of Discharge from Personal Liability	Dec. 1982
7990-B	United States Individual Income Tax Certificate of Discharge from Personal Liability	Jan. 1982
8821	Tax Information Authorization	Jan. 2000
8822	Change of Address	Oct. 2000

NOTE: The preceding forms can be printed from the Service’s website at “www.irs.ustreas.gov/prod/forms_pubs/form.html.”

**APPENDIX F
USEFUL IRS PUBLICATIONS**

<u>Publication No.</u>	<u>Title</u>	<u>Revised</u>
Pub. 1	Your Rights as a Taxpayer	August 2000
Pub. 5	Your Appeal Rights and How to Prepare a Protest If You Don't Agree	Jan. 1999
Pub. 216	Conference and Practice Requirements	March 1992
Cir. 230	Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service	July 1994
Notice 433	Interest and Penalty Information	August 1999
Pub. 470	Limited Practice without Enrollment	Jan. 1982
Pub. 556	Examinations of Returns, Appeal Rights and Claims for Refund	Nov. 2000
Pub. 559	Survivors, Executors and Administrators	2000
Pub. 594	The IRS Collection Process	Jan. 2000
Pub. 721	Tax Guide for US Civil Service Retirement Benefits	2000
Pub. 901	U.S. Tax Treaties	April 2001
Pub. 939	General Rule for Pensions and Annuities	June 1997
Pub. 947	Practice before the IRS and Power of Attorney	Jan. 1999
Pub. 950	Introduction to Estate and Gift Taxes	June 1998
Pub. 1450	A Certificate of Release of Federal Tax Lien	March 1999
Pub. 1546	The Taxpayer Advocate Service of the IRS	Jan. 2001
Pub. 1660	Collection Appeal Rights	May 2000
Pub. 2193	Too Good to be True Trusts?	Nov. 1999
Pub. 3349	Modernizing America's Tax Agency	Jan. 2000
Pub. 3559	The New IRS Stands Up: What the Modernized Agency Means for You	Jan. 2000

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NOTE: The above documents can be obtained directly from the Service's website located at "www.irs.ustreas.gov/prod/forms_pubs/pubs.html."

APPENDIX G
RECENT CASES INVOLVING FLP'S

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APPENDIX H
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