

## Post Mortem Estate Planning Class 6

Christopher M. Harvey, Esquire  
Harvey & Mortensen  
800 Lancaster Ave. Suite T-2  
Berwyn, PA 19312  
www.harveymortensen.com  
(610) 408-8388 (610) 408-8378 fax

## Estates Can Be Fiscal Year Filers

- **441(b) & 7701(a)(1), (14):** Estates may have a calendar or fiscal taxable year, as long as 12 months or less and ends on last day of the month.
  - Huge Tax Planning Opportunity
- **Section 662(c)** states income to Beneficiary in tax year when the estate tax year ends.
  - Irrelevant when the property was distributed.

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## Fiscal Year Tax Planning

- Hypo: Decedent dies on 2/15/04, estate elects 1/31/05 year-end. Estate has \$250,000 of income at year-end. Estate distributes all of the income to Beneficiary on 12/31/04. When is Beneficiary taxed?

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## Answer

- Beneficiary would be taxed on \$250,000 on 1/31/05. Beneficiary would have to pay taxes on his 2005 tax return, due 4/15/2006. Thus, Beneficiary and the estate have use of the money for 2 years and 2 months before any taxes are due!

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## Tax Savings

- What did Beneficiary save? Beneficiary keeps all the interest income on the taxes that are paid 2 years from now.
- Assuming Beneficiary is in 35% tax bracket and earns 6% interest:  
$$= (\$250,000 * 35\%) * .06 * 2 * (1-35\%)$$
$$= \$6,825.$$

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## Election to Claim Expenses

- Section 642(g):
  - Amounts deductible under Sections 2053-2054 may not be deducted on the estate or trust income tax return unless an election waiving the estate tax deduction has been made.
  - Expenses are deductible according to the method of accounting.

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## Excess Deductions, NOL's and CL Carryovers

- Section 642(h):
  - If on termination, an estate or trust has (1) an NOL or CL carryover or (2) excess deductions for that taxable year, then such excess is available to the beneficiaries.
  - Excess deductions in a non-terminating year are lost.
  - NOL's and CL's do not carry out in any year other than the terminating year.

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## Income on Termination: Timing of the Termination

- Income on Termination:
  - If the estate or trust is operating on a fiscal year basis, terminating the estate or trust can cause the “bunching” of income.
  - Calendar year entities do not generally have a “bunching” problem, but poor timing can cause the loss of additional deductions.
  - Period of Administration: 1.641(b)-3(a)-(d).

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## Section 645

- Certain Revocable Trusts Treated As Part of the Estate
  - If the executor of the estate and the trustee of a qualified revocable trust make an election, then the trust is treated as part of the estate for all taxable years after the decedent's death until the applicable date.

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## Section 645 cont.

- Applicable Date: 645(b)(2):
  - If a 706 is not filed, 2 years from date of death;
  - If a 706 is filed, then 6 months after the date of final determination of the estate tax liability.
    - See Prop. Reg. Section 1.645-1(f)(2)(ii).
- Election: 645(c):
  - The election shall be made on the estate income tax return no later than the time prescribed for filing plus extensions.
    - See Prop. Reg. Section 1.645-1(c).

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## Section 645 cont.

- Effect of Election: 645(a) & Prop. Reg. Section 1.645-1(e):
  - The electing trust is part of the estate and is taxed as an estate.
  - There is one \$600 exemption.
  - Separate share rules treat the estate and electing trust as 2 shares for DNI purposes.

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## Section 213: Medical Expenses

- 213(a):
  - A deduction is allowed for medical expenses paid during the year not compensated by insurance.
- 213(c)(1)-(2):
  - Expenses paid for medical care of decedent within 12 months after death are a deduction to the decedent.
  - But not if the expense is allowed as an estate tax deduction unless a waiver is filed.

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