

## Post Mortem Estate Planning Class 7

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## Decedent's Passive Losses

- Section 469(g):
  - Upon the decedent's death, passive losses are recognized as though the activity were sold, but the losses are reduced by the step up in basis.
  - Losses can be used in the year of death or carried back under Section 172 to the preceding 2 years.

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## Passive Activities Post Death

- Section 469(i):
  - \$25,000 of passive losses are deductible for rental real estate where there is active participation, subject to phase outs.
  - 469(i)(4)(A): The first 2 taxable years of an estate are permitted to use the \$25000 loss provision if the decedent was actively participating.
    - Trusts are not eligible.

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## Distribution of Passive Activities

- Section 469(j)(12):
  - If the activity is transferred from an estate or trust, the basis of the activity is increased by all suspended losses.
  - Such losses are not eligible for depreciation.

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## Joint Tax Returns

- Section 6013(a)(2)-(3):
  - As long as on same year, then can file jointly as long as spouse doesn't remarry.
  - Executor makes joint filing election
    - Spouse can make the election if executor has not been appointed
    - However, executor can revoke election.

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## Tax Planning Joint Tax Return

- Tax Planning:
  - Since the spouse has the period from death until the end of the year to recognize income or deductions, tax planning can be accomplished.
  - Decedent's unused losses do not carry over to the estate.

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## Mandatory Gain Recognition

- Treatment of In Kind Property Distributions
  - Any time property is distributed in satisfaction of a **pecuniary amount**, the distribution is treated as a sale or exchange for tax purposes.
  - Gain or loss is recognized, but the related party loss limitation rules of Section 267 are applicable. See 267(b)(13).

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## Section 643(e)(3)

- Treatment of In Kind Property Distributions
  - Basis of Beneficiary: 643(e)(1): AB to the beneficiary is the AB to the estate or trust prior to distribution, adjusted for any gain or loss on distribution.
  - Amount of Distribution: 643(e)(2): amount of distribution for DNI purposes is lesser of AB to the beneficiary in 643(e)(1) or FMV.

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## Section 643(e)(3) cont.

- Section 643(e)(3)(A):
  - If an election is made, then gain or loss shall be recognized as if the property were sold at its FMV, and the amount for DNI distribution purposes is the FMV of the property.
- Election: 643(e)(3)(B):
  - Election is irrevocable and must be made on all property distributions during the year. Election is made on the tax return for the estate or trust.

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## Section 643(e)(3) cont.

- Section 643(e)(4):
  - This subsection is not applicable to property distributions under Section 663(a) pertaining to specific bequests.
- Section 267:
  - Related party loss rules apply to losses incurred by a trust or estate.

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## Income in Respect of Decedent

- Section 691(a)(1):
  - GI of a decedent not taxed to the decedent is taxed to whoever receives it.
- Section 691(a)(3):
  - Character of that GI is dictated by reference to the decedent.
- Section 691(b):
  - Expenses not deducted by the decedent during life but yet accrued at death are deductible by the estate or the person obligated to pay them post-death.

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## Section 691(c)

- Section 691(c): Deduction for Estate Taxes Paid:
  - A person who includes an item of IRD in GI under 691(a) is entitled to a deduction for proportionate estate taxes paid on the net value of IRD.
  - Section 691(c)(2): estate taxes on net-IRD is determined based on incremental tax.

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