Planning Strategies to Avoid Income in Respect of Decedent (IRD)

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Figuring out how to avoid the double tax on Income in Respect of a Decedent (IRD) assets is perplexing. Here are steps to help you through the analysis:

**Identify who is going to pay the estate tax.**

If there is no will or the will is silent on the issue, many states require that the distributed assets bear their burden of estate tax. Most wills direct debts and taxes to be paid from the residuary share. If the recipient of the IRD asset and the residuary are the same, there is no problem. However, if the recipient of the IRA is a child and the taxes are to be paid from the surviving spouse’s residuary share, the surviving spouse may be surprised by the small amount received after paying the debts and taxes attributable to other properties in the estate.

**Do not forget to claim the income tax deduction for the estate taxes paid.**

If the estate tax is paid from the residuary and not from the property itself, this deduction is often overlooked.

**If possible, defer the payment of income tax on the IRD by postponing the receipt of IRD income.**

Normally heirs want to collect accounts receivable as soon as possible and installment payments when they are due, but retirement plan distributions can usually be stretched over the life expectancy of the designated beneficiaries. Although postponing collection of income also means postponing the deduction for estate taxes paid, breaking the payments into smaller pieces at lower marginal income tax rates and taking advantage of the time value of money by paying the income tax in the future rather than today support deferring the receipt of income. The benefit of this approach is enhanced if the IRD asset is growing tax free as a retirement account likely is.

Retirement accounts left to multiple beneficiaries generally must be distributed over
the life expectancy of the oldest beneficiary. PLR 200537044 added a beneficial
twist to the strategy of trying to reduce the marginal rates of tax on the distributees
by allowing multiple IRAs within trusts to be named as beneficiaries. The ruling
allowed each beneficiary to receive the assets over his or her own life expectancy,
rather than the life expectancy of the oldest beneficiary.

If the decedent has a lower marginal income tax rate than the beneficiaries,
execute a Roth conversion or distribute the IRD asset to the decedent
before death.

The decedent might have a lower tax rate because: the decedent’s marginal income
tax rate is lower than the tax rates of the estate or heirs; the decedent’s anticipated
time of death is early in the year, before much income has been earned; or the
IRD asset is eligible for special income tax treatment, such as lump sum distribution
averaging, pre-1974 capital gain treatment, or the benefits of net unrealized
appreciation on employer stock.

Avoid estate tax by transferring the IRD asset to the surviving spouse.

The first spouse to die typically designates the surviving spouse as the beneficiary. This transfer qualifies for the marital deduction and usually has the added advantage
of spreading the distribution of the income at lower marginal tax rates over the
life of the surviving spouse. Surviving spouses have the discretion to: withdraw
the retirement plan assets when needed; stretch the distributions over their life
expectancies; or treat the retirement accounts as their own by rolling the assets
over to their own IRAs. Under the Pension Protection Act of 2006, non-spouse
beneficiaries can now transfer retirement plan assets and IRAs to their own
accounts, but they do not have the option of postponing distributions until 70½ as
a spouse does.

Revenue Ruling 2006 — 26, 2006-22 I.R.B. 1 addresses the issues of holding an
IRD in a qualified terminable interest property (QTIP) trust. QTIP treatment
allows the first spouse to die control over the ultimate disposition of the trust
property after the death of the second spouse, yet still receive a marital deduction. In
order to qualify for the marital deduction, the QTIP trust must distribute its income
annually to the surviving spouse. What is the income of an IRA that produces
income, but is also required to make required minimum distributions (RMD)?
For a spouse who can compel the IRA custodian, through the trustee, to invest in
productive assets, the Ruling holds that the IRA must distribute to the spouse the
higher of the RMD or IRA income. After distribution from the IRA the trust, the
amount is distributable to the surviving spouse.

Avoid estate tax by transferring the IRD asset to charity.

Another effective way to avoid the two layers of tax on IRD assets is to take advantage
of the estate tax charitable deduction. Charitably-inclined clients can transfer IRD
assets to charity while transferring assets which receive a step up in basis and have
minimal income tax impact at the beneficiary level to the estate and heirs.
Unless the will provides otherwise, some states require that a decedent’s estate be distributed pro rata to the estate beneficiaries. In other words, if an estate has three beneficiaries — two children and one charity — and three assets — $1 million in securities, a $1 million residence, and a $1 million IRA — the executor might be required to transfer a $3 interest in each of the assets to each of the beneficiaries. If the will provides for specific bequests or gives the executor discretion regarding how to divide the assets among the beneficiaries, the IRA could be transferred to charity and the house and securities could be transferred to the two children.

To summarize, the estate tax portion of the tax on IRD can be avoided by making marital or charitable transfers. The income tax portion can be minimized by postponing distributions of IRD and spreading the distributions among beneficiaries.

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