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Problems Arising out of Various Types of Estate Income

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PROBLEMS ARISING OUT OF VARIOUS TYPES OF ESTATE INCOME

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An estate is a distinct taxable entity whose income and deductions, with one major difference, are computed in the same manner as that of an individual.[1] Although the major difference in computation is in the area of deductions,[2] it is also quite possible for an estate to receive income of a type, or in a manner, unknown in the taxation of income of individuals. It is estate income with which this discussion is concerned.

Income In Respect of a Decedent

"Income in respect of a decedent" is an undefined term used to describe income of a decedent which is earned, but not received, prior to death. The right to receive such income is usually taxed as an asset of the decedent's gross estate at the date of death. The income itself is not, of course, received by an estate, or a beneficiary until sometime after the date of death. When the right to receive such income is treated as an asset of a decedent's estate it differs from other estate assets since they have been accumulated with earnings of the decedent taxed prior to death, while the income in respect of a decedent has not yet been subjected to an income tax. The problems of whether, how, when and to whom to tax such income have plagued the Commissioner and taxpayers for many years.

Prior to the enactment of the Revenue Act of 1934, the Code was silent in regard to the taxation of income in respect of a decedent. The result was that income of a cash-basis decedent escaped all income tax on those items of income which were earned but not received prior to death, while an accrual-basis decedent's income escaped tax only on items not properly accrued at death.[3] This resulted in a severe inequality between accrual and cash-basis taxpayers and in a complete escape from taxation of a substantial amount of income. The failure to subject most

1. Int. Rev. Code of 1954, §§ 641, 642(b). (Hereinafter cited as §). An estate cannot claim a standard deduction but is given an unlimited charitable deduction for amounts permanently set aside for charity pursuant to the governing instrument. §§ 142(b) (4), 642(c).

2. The major difference is the deduction for distributions to beneficiaries. § 661(a). See discussion p. 160.

3. See, *e.g.*, J. Howland Auchincloss, 11 B.T.A. 947 (1928); E. S. Heller, 10 B.T.A. 53 (1928).

income in respect of a decedent to income tax was premised on the theory that such items of earned but unreceived income, paid into an estate, should be treated as part of the corpus of the estate and not as income.

With the enactment of section 42 of the Revenue Act of 1934, the pendulum swung in the opposite direction. Under this section all income, ". . . accrued up to the date of . . . death . . ." was to be included in the decedent's last return, ". . . if not otherwise properly includible in respect of such period or a prior period." This resulted in a bunching of all income earned by the decedent, whether or not received, in his last return. The bunching problem was aggravated by cases which expanded the meaning of the term "accrued" beyond its generally accepted accounting meaning.[4]

In 1942, section 126, Internal Revenue Code of 1939, was adopted to solve the problems created by the Revenue Act of 1934. The solution was to tax income in respect of a decedent to the recipient of such income at the time he received it. In addition, the recipient of such income was permitted to deduct from the resulting income tax, the estate tax which resulted from treating the right to such income as an estate asset. Thus, section 126 was an attempt to come as close as possible to treating income in respect of a decedent in the same manner as income earned and received by the decedent prior to his death. Section 691, Internal Revenue Code of 1954, substantially adopted the same manner of treatment of income in respect of a decedent.

The 1954 Code also provides that the right to receive income in respect of a decedent will have the same basis in the hands of a recipient as it had in the hands of the decedent,[5] although property includible in a gross estate would ordinarily receive a stepped-up basis at death.[6] Obviously this is in furtherance of the attempt to tax such income as closely as possible to the manner in which it would have been taxed had the decedent lived to receive it.

What Constitutes Income In Respect of a Decedent

As was noted at the outset, the statutes do not define the term "income in respect of a decedent." The Regulations[7] define the term generally as those amounts to which a decedent was entitled as gross income

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4. Pfaff v. United States, 312 U.S. 646 (1941); Helvering v. Enright, 312 U.S. 636 (1941); McGlue's Estate, 119 F.2d 167 (4th Cir. 1941).
5. § 1014(c).
6. § 1014(a).
7. Treas. Reg. § 1.691(a)-1(b). (Hereinafter cited as Reg.).

at death, but which were not properly includible in computing taxable income for the decedent's last taxable year. This definition, of course, is extremely vague. Actually, the meaning of the term is being molded by the courts which have tended to expand the definition in order to insure that every possible item of income attributable to the activities of a decedent is subjected to income tax.

Certain items are clearly income in respect of a decedent, such as income which the decedent had a legally enforceable right to receive prior to death and as to which the sum due was certain. Thus, for example, a payment under a legally enforceable contract calling for payments to a widow has been held to be income in respect of a decedent,[8] and alimony due a deceased divorcee prior to her death is clearly income in respect of a decedent.[9] Similarly, dividends as to which the record date has passed prior to the death of a decedent are income in respect of a decedent.[10] The same result has been reached where the right to income is fixed, but the amount is uncertain. Thus, post-death insurance commissions earned by an agency of which decedent was a partner and due his estate pursuant to contract are income in respect of a decedent,[11] as are commissions of a fiduciary earned by him but which are not allowed until after his death.[12]

While it is clear that income to which the decedent was clearly entitled at death is income in respect of that decedent, it is more difficult to justify the rule that income to which the decedent had no legally enforceable right at death but which resulted from the voluntary act of the payor is also income in respect of a decedent. The genesis of this rule is to be found in the broad definition of "accrued" developed under the Revenue Act of 1934.[13] Although Congress dropped the term "accrued" under the 1939 Code, it indicated an intention to carry over the concepts created under that term to the term "income in respect of a decedent."[14] As a result, income in respect of a decedent has now been held to encompass a post-death bonus which not only was not fixed as to amount at decedent's death, but as to which the decedent had no legally enforceable

8. Estate of Arthur W. Davis, 21 P-H Tax Ct. Mem. 696 (1952).

9. Estate of Sarah Narischkine, 14 T.C. 1128 (1950), *aff'd*, 189 F.2d 257 (2d Cir. 1951).

10. Estate of Putnam v. United States, 324 U.S. 393 (1945).

11. Estate of Thomas Remington, 9 T.C. 99 (1947). Renewal commissions are also income in respect of a decedent. Francis Latendresse, 26 T.C. 318 (1956), *aff'd*, 243 F.2d 577 (7th Cir. 1957).

12. Estate of Fred Basch, 9 T.C. 627 (1947). In connection with income in respect of a decedent clearly due but uncertain as to amount, see also Edna S. Ullman, 34 T.C. No. 114 (Sept. 23, 1960); Rev. Rul. 57-544, 1957-2 CUM. BULL. 361; Rev. Rul. 55-463, 1955-2 CUM. BULL. 277.

13. Cases cited note 4 *supra*.

14. H.R. REP. No. 2333, 77th Cong., 2d Sess. 83 (1942); S. REP. No. 1631, 77th Cong., 2d Sess. 100 (1942).

right at death.[15] Such a holding is difficult to reconcile with cases which hold voluntary payments to widows of deceased employees to be gifts.[16]

In the case of inventory items of a cash basis taxpayer who deducts the cost of his acquisition, such as a farmer, the inventory at sale will completely escape income taxation to the extent of its estate tax value if its value for estate tax purposes becomes its basis. Recognizing this, the Commissioner has attempted, unsuccessfully, to treat such inventory as income in respect of a decedent.[17] He was successful in treating it as such where the decedent, a member of a cooperative, had irrevocably turned all of the inventory over to the cooperative for sale. However, it appears that this case will be limited to its facts.[18]

As can be seen, the meaning of income in respect of a decedent is not completely certain. Its scope is still in the process of being roughly defined.[19]

A few items are deemed to be income in respect of a decedent by statute. One of these is an installment obligation owned by a decedent at death. Payments under such an obligation are specifically treated as income in respect of a decedent, thus permitting the payment of tax to be stretched out over the period of the payment notwithstanding the death of the original holder.[20] The amount deemed income in respect of a decedent is the excess of the face amount of the installment obligation over the basis of the obligation in the hands of the decedent.[21] As will be seen, however, the sale of an installment obligation by the beneficiary of the original holder will result in an immediate acceleration of the payment of taxes. Also deemed income in respect of a decedent by statute are proceeds of a sale, exchange or other disposition of property made by the decedent prior to his death.[22] The Regulations specifically exclude from this provision, however, the proceeds from stock purchase agreements coming into effect upon the death of a shareholder, on the theory that such agreements are not activated until after his death.[23]

15. Estate of O'Daniel v. Commissioner, 173 F.2d 966 (2d Cir. 1949). See also Bausch v. Commissioner, 14 T.C. 1433 (1950), *aff'd*, 186 F.2d 313 (2d Cir. 1951).

16. See, *e.g.*, Alice Macfarlane, 19 T.C. 9 (1952).

17. Perry v. United States, 1 Am. Fed. Tax R.2d 2028 (N.D. Miss. 1958); Estate of Tom Burnett, 2 T.C. 897 (1943), *acq.*, 1944 CUM. BULL. 4.

18. Commissioner v. Linde, 213 F.2d 1 (9th Cir. 1954). See Rev. Rul. 58-436, 1958-2 CUM. BULL. 366.

19. The Advisory Group on Subchapter J has recommended a statutory definition of the term.

20. §§ 691(a)(4), 453(d)(3). Prior to the 1954 Code, all taxable profit on an installment obligation was reported in the decedent's last return unless a bond was posted and income reported by the recipient in the same proportion it would have been reported by the decedent. Int. Rev. Code of 1939, ch. 1, § 44(d), 53 Stat. 24; Reg. § 39.44-5(c).

21. § 691(a)(4); Reg. § 1.691(a)-5.

22. § 691(a)(2); Reg. § 1.691(a)-2(b) (Example 5); Dixon v. United States, 96 F. Supp. 986 (E.D. Ky. 1950).

23. Reg. § 1.691(a)-2(b) (Example 4).

The Code also provides that partnership payments which are includible in the gross income of a successor in interest of a deceased partner under section 736(a), will be deemed to be income in respect of a decedent.[24] As a result, payments made in liquidation of the interest of a deceased partner, which do not represent a return of capital, are taxed as income in respect of a decedent whether or not the payments are determined with regard to partnership income. Payments with respect to unrealized receivables and payments for good will, which are not specifically provided for in the partnership agreement, will not be deemed to be payments with respect to the partner's capital account.[25] In addition, since the taxable year of a partnership does not close as the result of the death of a partner, the decedent's last return will not include any part of his distributive share of the partnership income for the taxable year during which he died.[26] As a result, an estate might be taxed on partnership income, including income in respect of a decedent representing earnings to date of death, far in excess of the sum actually received from the partnership at the close of the partnership year, if the decedent had drawn heavily against profits prior to death. The Regulations partially compensate for that possibility by providing that in computing the allowable income tax deduction for payment of the estate tax, all partnership income which is income in respect of a decedent will be deemed to have been subjected to the estate tax even though it cannot be identified on the estate tax return.[27]

Under the 1954 Code a surviving annuitant under a joint and survivorship annuity is subject to income tax on only a portion of the annuity he receives. The taxable portion is generally the excess of the value of the annuity at date of death of the deceased annuitant over the total amount excludible from gross income by the surviving annuitant during his life expectancy.[28] This excess is considered income in respect of a decedent, and the deduction for estate taxes, discussed hereafter, is granted with respect to it.[29] Similarly, income which results to an estate by virtue of the fact that the decedent died owning an eighty-five to ninety-five per cent restricted stock option, is deemed to be income in respect of a decedent for the purposes of the same estate tax deduction.[30]

In view of the fact that there are special provisions designed to in-

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24. § 753.

25. §§ 704, 707(c), 736(b)(2), 751(c); Reg. §§ 1.691(e)-1, 1.706-1(c)(3)(v), 1.736-1(b), 1.752-1(b).

26. Reg. §§ 1.706-1(c)(3)(i), (c)(3)(ii).

27. Reg. § 1.753-1(c).

28. § 72.

29. § 691(d); Lacomble v. United States, 177 F. Supp. 373 (N.D. Cal. 1959).

30. §§ 421(b), (d)(6). See also Reg. § 1.421-6(c)(5) relating to nonrestricted stock options.

sure that no double tax results from income in respect of a decedent, or its equivalent, it appears that a similar benefit should be accorded to the estate of a decedent who was a shareholder in a Subchapter S corporation. Undistributed taxable income of such a corporation is treated as a constructive dividend on the last day of the corporation's year and each shareholder is taxed at that time as though he had been a shareholder during that entire year.[31] Thus, if the estate elects to become a new shareholder on death of the former shareholder the entire year's dividend will be taxed to it. Since the date of death value of the decedent's stock, for estate tax purposes, would reflect the value of the estate's share of undistributed income for the current year to the date of the decedent's death, it is clear that the same income would result in both an estate and an income tax.[32] Under these circumstances an estate tax deduction for the income tax attributable to the current year's income to the date of decedent's death would be warranted.

Reporting of Income and Deductions in Respect of a Decedent

Items of income in respect of a decedent must be reported by the recipient in the year in which such income is received. The recipient may be either the decedent's estate,[33] a beneficiary who acquires the right to receive the income directly from the decedent by reason of the decedent's death,[34] or a beneficiary who has received the right to income in respect of a decedent by virtue of a distribution of such a right from decedent's estate.[35] An exception to the general rule that income in respect of a decedent is taxed only when received is made in a case in which the recipient of a right to receive such income transfers that right by sale, exchange or any other disposition including a gift.[36] Under these circumstances he realizes income in the year he transfers his right. The amount of the income received is the fair market value of the right to the income, at the time of the transfer, plus any other consideration which may be received in excess of fair market value. However, the receipt of income will not be accelerated in the event that the right to receive income in respect of a decedent is transmitted, at the death of the person originally entitled to receive it, to either his estate or to a person who has a right to receive such income by reason of his death.[37] It will also be

31. § 1373.
32. § 2031.
33. § 691(a)(1)(A); Reg. § 1.691(a)-2(a)(1).
34. § 691(a)(1)(B); Reg. § 1.691(a)-2(a)(2).
35. § 691(a)(1)(C); Reg. § 1.691(a)-2(a)(3).
36. § 691(a)(2); Reg. § 1.691(a)-4.
37. Reg. § 1.691(a)-2(b) (Example 2). Prior to the 1954 Code, death of the original recipient did accelerate the receipt of income.

seen that a transfer of a right to income in respect of a decedent by an estate to an heir in satisfaction of all or part of a pecuniary legacy could result in income to the estate.[38]

Items of income in respect of a decedent retain the same character in the hands of a recipient as they did in the hands of the decedent. Thus, such income may be ordinary income, capital gain (long or short term), exempt income, or income for personal services entitled to be spread over a number of years, depending upon what treatment it would have been accorded in the hands of the decedent.[39] Where it is relevant to determine whether income is ordinary or capital gain, the occupation of the decedent rather than that of the recipient will be determinative.

Certain specified deductions in respect of a decedent are permitted if such deductions are not properly allowable to the decedent in any taxable period ending with or prior to his death.[40] With respect to an accrual basis taxpayer, the Code provides that any amount which would accrue as a deduction or credit "only by reason of the death of a taxpayer" will not be allowed as a deduction for the period in which the taxpayer's death falls but rather will result in a deduction in respect of a decedent.[41] The question of what constitutes a deduction accruing "only" by reason of the decedent's death has been a perplexing one.[42]

The deductions which are specifically permitted in respect of a decedent are trade or business expenses,[43] non-business expenses,[44] interest,[45] taxes,[46] and the depletion allowance.[47] In addition, the foreign tax credit is allowed.[48] Omitted from the list are charitable deductions, medical expenses, casualty losses and net operating loss carryovers.

Those items which are taken as deductions in respect of a decedent may also be taken as deductions on the estate tax return.[49] Deductions in respect of a decedent are allowed to the estate unless the estate is not liable for the obligations to which the deductible expenses relate. In such a case the person who acquires the property which is subject to

38. Suisman v. Eaton, 15 F. Supp. 113 (D. Conn. 1935), *aff'd*, 83 F.2d 1019 (2d Cir. 1936), *cert. denied*, 299 U.S. 573 (1937).

39. §§ 1201(b), 103, 1301.

40. § 691(b).

41. § 692(b).

42. Estate of George Howe, 16 T.C. 1493 (1951). See also Estate of Pat E. Hooks, 22 T.C. 502 (1954), *acq.*, 1955-1 CUM. BULL. 5.

43. § 162.

44. § 212.

45. § 163.

46. § 164.

47. § 611.

48. § 33.

49. § 642(g).

the obligation may take the deduction.[50] A deduction in respect of a decedent may be taken whether or not there is any income in respect of a decedent.

Deduction of Estate Taxes Attributable to Income In Respect of a Decedent

In an attempt to avoid the double taxation of income in respect of a decedent, an income tax deduction for estate taxes paid on such income is granted.[51] This effort to avoid double taxation is, of course, imprecise in terms of recreating the situation which would have existed had the deceased lived to receive his income. It would have been more precise to permit an estate tax deduction for income taxes paid on income in respect of a decedent. Since, however, the income tax is likely to be paid after the estate tax, this was the best that could be done. It should also be noted that the term "estate tax" is defined as ". . . the tax imposed . . . under sections 2001 and 2101, reduced by the credits against such tax." Those credits include state and foreign death taxes. Reducing the estate tax deduction by virtue of such taxes leaves open the possibility of double taxation on income in respect of a decedent to the extent that state and foreign death taxes have been paid.[52]

The estate tax deduction allocable to each recipient of income in respect of a decedent is computed by first determining the maximum deduction and then allocating the maximum among the recipients proportionately. The maximum deduction is determined by first computing the estate tax on decedent's estate, after giving effect to all items of income and deduction in respect of a decedent, and then computing the estate tax after eliminating from the computation the excess of income in respect of a decedent over deductions in respect of a decedent. The difference in the amount of estate tax between the two is the *maximum* deduction permitted for estate taxes.

The maximum deduction is then allocated to the income of the year of receipt by first computing the proportion which the recipient's current income in respect of a decedent bears to all income of that type from the same decedent. The recipient's proportionate share of the maximum deduction is then determined by multiplying the fraction thus determined by the maximum deduction originally determined.

50. Reg. § 1.691(b)-1(a); Rev. Rul. 58-69, 1958-1 CUM. BULL. 254. The depletion allowance may only be taken by the person who receives the income attributable to it.

51. § 691(c).

52. The same criticism can be made with respect to the credit for gift taxes upon items of income in respect of a decedent. The Advisory Group on Subchapter J has also recommended the correction of this problem.

There can be no deduction under this provision if the deductions in respect of a decedent exceed the income in respect of a decedent. In addition, the deduction can only be taken in the year and to the extent that income in respect of a decedent is received. Also, this deduction is permitted to the recipient of income in respect of a decedent even though the income would not have been subject to any estate tax because it gave rise to a marital or charitable deduction.[53]

The benefit of this deduction for estate taxes will pass to the beneficiary of an estate or trust which receives income in respect of a decedent, if the income is "properly paid, credited, or required to be distributed" to beneficiaries during the taxable year in which the income in respect of a decedent is received.[54] If income in respect of a decedent passes to a second beneficiary upon the death of his predecessor, the special deduction will include estate taxes paid on the estate of the original decedent.[55]

Conclusion

In the case of income in respect of a decedent, a rather effective job has been done in attempting to place the government, the decedent's estate, and his beneficiaries, in the same position they would have been in had this income been received by the decedent prior to his death. While this is an area in which planning is difficult, since the amount of earned but unreceived income at death will probably be difficult to estimate at the estate planning stage, there are certain areas to be watched. Sales on the installment basis should be deferred, if possible, in the case of a taxpayer of advanced age since an installment obligation will not receive the stepped-up basis on death which would be given to the property if it had remained unsold. If deferral is not feasible, then the installment obligation should, if possible, be bequeathed to a low bracket taxpayer. Income under deferred compensation contracts should be spread among a number of beneficiaries, or to beneficiaries in low income tax brackets, in the event the original recipient dies prior to its total receipt. If this can not be done, then at least the right to such income should be allocated to an estate which can share the tax burden with the beneficiary by judicious distributions. Also, if charitable gifts are desired, it would be best if they were made during the life of the decedent, with rights to income which might become in respect of a decedent. This would not only avoid making such rights a part of the gross estate, but it would also prevent them from being taxed in the income tax return of the estate.

53. The Advisory Group on Subchapter J also suggests the correction of this problem.
54. § 691(c)(1)(B).
55. Reg. § 1.691(a)-4.

SOURCES OF UNANTICIPATED INCOME

It is possible, in the administration of an estate, for the estate to realize taxable income from transactions which result in no real gain to it and which might have been avoided. A knowledge of how such taxable income could arise will permit its avoidance.

Problems stem, in this field, primarily from cases which have held that an estate will realize income if it satisfies a pecuniary legacy by distributing property at the date of distribution value which has appreciated in value above the value determined for estate tax purposes.[56] For example, if an estate satisfies a $4000 pecuniary legacy by distributing stock having a present value of $4000 but an estate tax value of $2000, it will be deemed to have realized a $2000 taxable gain. In such a case the beneficiary would take the fair market value of the property distributed as his basis. This, of course, presents the possibility that, in specific circumstances, it may be more desirable for the estate to realize a capital gain so that the beneficiary can have the benefit of a higher basis for depreciation or upon a subsequent sale of property.

However, where appreciated property is distributed in satisfaction of a fractional share of an estate, no gain to the estate will result if a proportional share of the entire estate, based on date of distribution values, is distributed. In such a case the beneficiary would succeed to the basis of the property at the date of the decedent's death.[57]

The foregoing rule holds true where the distribution of the beneficiary's proportional share is made by distributing undivided fractional interests in each of the properties comprising the estate or in dividing, if possible, each piece of property between the beneficiaries, as in the division of a block of stock. Unsettled, however, are questions raised by a distribution in which a fractional interest in a residuary estate is satisfied by distributing separate properties, based on date of distribution values, to different beneficiaries where the date of death values differ or distributing separate properties based on date of death values where date of distribution values differ. Such distributions not only raise probate problems, but carry possible income tax problems for the estate and the beneficiaries, as well as possible gift tax problems for the beneficiaries.

A corollary to the satisfaction of pecuniary claims by use of appreciated property is the satisfaction of debts of the estate using appreciated property. In such a case, the estate would clearly realize income.[58]

56. Kenan v. Commissioner, 114 F.2d 217 (2d Cir. 1940); Suisman v. Eaton, 15 F. Supp. 113 (D. Conn. 1935), *aff'd*, 83 F.2d 1019 (2d Cir. 1936), *cert. denied*, 299 U.S. 573 (1937); Reg. § 1.661(a)-2(f). See also Commissioner v. Brinckerhoff, 168 F.2d 436 (2d Cir. 1948).

57. Rev. Rul. 55-117, 1955-1 CUM. BULL. 233; O.D. 667, 3 CUM. BULL. 52 (1920).

58. First Trust & Deposit Co. v. United States, 58 F. Supp. 162 (N.D.N.Y. 1944).

A problem related to that of the use of appreciated property to satisfy a pecuniary legacy is that of the realization of gain as a result of the use of a pecuniary marital deduction clause in a will. The pecuniary marital clause typically provides for a marital deduction legacy consisting of "... an amount of the decedent's property which ... would equal one-half of his adjusted gross estate as finally determined for federal estate tax purposes." In such a case, the end product is measured by a percentage of the adjusted gross estate, as finally determined for federal estate tax purposes, resulting in a fixed amount as determinable in amount as a pecuniary legacy. Such amount could be satisfied by the use of property which had appreciated in value after the death of the decedent and consequently would result in gain to the estate.[59]

The alternative is the fractional share marital deduction clause which provides for a marital deduction legacy consisting of "... that fractional share of my residuary estate ... which will equal the maximum federal estate tax marital deduction. ..." The beneficiary will receive a fractional share of the estate without reference to specific values, and consequently no taxable gain will result from the transfer of appreciated property to satisfy such a bequest. The spouse's share receives the benefit of any rise or fall in the value of the estate assets and thus participates as would any fractional bequest.

A final source of unanticipated income is the receipt of payments on obligations due the decedent at his death in excess of the estate tax valuation of such obligations. Such excess payments have been held to be ordinary income to the estate.[60]

The possibility of ordinary income resulting from an undervaluation of an obligation due at decedent's death ought to be borne in mind at the time of valuation. It is possible that an undervaluation for estate tax purposes will work to the detriment of the estate and its beneficiaries since the receipt of payments in excess of the estate tax valuation will be taxed at ordinary income rates, which may be higher than the prevailing estate tax rates.

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59. Rev. Rul. 60-87, 1960 INT. REV. BULL. NO. 10, at 18; Rev. Rul. 56-270, 1956-1 CUM. BULL. 325.

60. Helvering v. Ross, 115 F.2d 239 (2d Cir. 1940); Estate of Herbert v. Commissioner, 139 F.2d 756 (3d Cir. 1943), *cert. denied*, 322 U.S. 752 (1955); Wilcox v. United States, CCH 1961 STAND. FED. TAX REP. (60-2 U.S. Tax Cas.) ¶ 9509 (N.D. Ohio May 26, 1960); Estate of Ernest Zabel, 28 T.C. 886 (1957); *cf.* United States v. Carter, 19 F.2d 121 (5th Cir. 1927). *But see* § 1232 with regard to corporate notes. The question of whether estate tax values always control basis was recently raised in Ford v. United States, CCH 1961 STAND. FED. TAX REP. (60-1 U.S. Tax Cas.) ¶ 9375 (Ct. Cl. April 6, 1960).