New York State Department of Taxation and Finance Office of Counsel

NYT-G-09(1)M
Estate Tax
January 14, 2009

Use of Alternate Valuation for the New York State Estate Tax Return When a Federal Estate Tax Return Is Not Required to be Filed

We received a letter asking whether an executor may elect to use alternate valuation as provided in Internal Revenue Code (IRC) § 2032 for purposes of calculating the New York gross estate when the date of death is after 2003 and no federal return is required to be filed.

Background

New York State estate tax conforms to the IRC with all amendments enacted on or before July 22, 1998. As a result, New York State estate tax does not incorporate the changes in the IRC brought about by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Among those changes was the increase in the federal filing threshold and the applicable exclusion amount (unified credit). For dates of death after 2003, the federal estate tax filing threshold and the applicable exclusion amount was increased above $1 million. Since the New York State estate tax filing threshold did not increase above $1 million, some estates are required to file an estate tax return for New York State but not required to file a federal estate tax return.

Analysis

Tax Law section 954(a) provides that "[t]he New York gross estate of a deceased resident means his federal gross estate as defined in the internal revenue code (whether or not a federal estate tax return is required to be filed)." Subdivision (c) of section 954 specifically cross-references the alternate valuation provision of IRC section 2032. We believe that these provisions indicate intent to allow the IRC section 2032 alternate valuation for purposes of calculating the New York gross estate in situations where no federal return is required to be filed.

We next turn to the requirements of IRC section 2032. That section allows an executor to elect alternate valuation under certain circumstances, but only if the election will decrease "(1) the value of the gross estate, and (2) the sum of the tax imposed by this chapter [estate tax] and the tax imposed by chapter 13 [generation skipping transfer tax] with respect to property includible in the decedent's gross estate (reduced by credits allowable against such taxes)." The concern is that, if a federal return is not required to be filed and there is no federal estate tax or generation skipping transfer tax liability, the second requirement cannot be met.

In the department's view, this is not the case. Although no federal return would be required to be filed under the IRC as it existed for dates of death after 2003, New York's estate tax is conformed to the IRC with all amendments enacted on or before July 22, 1998. See Tax Law § 951(a). The unified credit is the amount allowable based on the IRC in effect on the decedent's date of death, except that the credit "shall not exceed the amount allowable as if the federal unified credit did not exceed the tax due under [IRC § 2001] on a federal taxable estate of one million dollars." Id.

If the requirements for electing alternate valuation under IRC section 2032 (i.e., reduction of gross estate and reduction of estate and generation skipping transfer tax liability) are met applying the provisions of the IRC as it existed on July 22, 1998 (and applying the limitations on the unified credit in Tax Law section 951(a)), the executor may elect to use alternate valuation for purposes of calculating the gross estate on the New York estate tax return.

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