HMF Update

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Surviving Spouse's Right to Take Against a Will

by Nick Livers

In most situations, when a married person dies he or she leaves most of his or her assets to his or her surviving spouse, either by Will or Trust. However, occasionally a surviving spouse may be excluded or may be left with a smaller share of assets than expected. On other occasions, the estate may be subject to claims of creditors such that even if the surviving spouse is the sole beneficiary, there may be nothing left for the benefit of the survivor after the creditors are paid. A person who finds him or herself in that situation will have some recourse through protections afforded by law.

In Arkansas, a surviving spouse's interest in the assets of the deceased spouse is protected through dower and curtesy. Specifically, a surviving spouse who was married to the decedent for at least one (1) year has an interest in all personal property owned at the time of the spouse's death, and in all real estate owned during the marriage. The extent of a surviving spouse's dower or curtesy interest depends upon whether the decedent had children. If the decedent left children, then a spouse is entitled to one-third of the personal property and a one-third life estate in real estate. If the decedent had no children, then the surviving spouse is entitled to one-half of the personal property and one-half of the real estate. The dower or curtesy interest of the surviving spouse is typically paid ahead of any creditors of the estate.

When a decedent leaves a Will, the surviving spouse has the right to elect to take against the Will. To exercise this right, the survivor must file an election to take against the Will in the probate proceeding in a timely manner. When the right is exercised, instead of taking what he or she would have received under the Will, the surviving spouse will receive his or her dower or curtesy interest in the estate. This election can be useful and can provide some protection for the surviving spouse in various situations.

First, a surviving spouse may desire to elect to take against the Will if the estate has substantial creditors. In a probate estate, creditor's claims must be paid prior to distributing assets of the estate to beneficiaries under a Will. So in a situation where an estate has substantial creditors, the creditors' claims must be paid first, and only the assets remaining will be paid to the surviving spouse. However, if a surviving spouse elects to take against the Will, the spouse's dower or curtesy will be paid first, and only the assets remaining after setting aside his or her dower or curtesy interest may be utilized to pay the claims of creditors. Thus, where there is substantial estate debt or

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The Basics of Required Minimum Distributions

by Tiffany Parker Nutt

Required minimum distributions (RMDs) are minimum amounts that the Internal Revenue Code requires you to withdraw each year from most types of retirement accounts. Once you reach age 70½, you generally are required to take *minimum* annual withdrawals from your retirement accounts. You reach age 70½ on the date that is six (6) calendar months after your 70th birthday. If you do not take your RMDs you can be penalized.

The Internal Revenue Code has some exceptions to the general RMD rule.

<u>Exception #1:</u> For IRAs, including SEP and SIMPLE IRAs, the required beginning date for taking the required minimum distribution is April 1 of the year following the calendar year in which you reach age 70½. In other words, you have until April 1 of the year following the year you reach the age 70½ to take the RMD for the year you turned 70½. For example, you own an IRA and your 70th birthday was on June 30, 2014. You reached age 70½ on December 30, 2014. Therefore, your required beginning date for taking your RMD for 2014 is April 1, 2015. Note, you still must take your RMD for 2015 by December 31, 2015. If you wait until April 1 of the year following the year you reach age 70½ you will have two (2) required distribution dates. Both of these amounts will be included in your income for the same year.

<u>Exception #2:</u> Roth IRA owners are not subject to RMDs rules. Required minimum distribution rules do not apply to Roth IRAs until after the death of the owner.

Once you reach age 70½, you generally are required to take *minimum* annual withdrawals from your retirement accounts.

<u>Exception #3:</u> For 401(k)s, profit-sharing plans, 403(b)s, or other defined contribution plans the required beginning date is April 1 of the year following when you reach age 70½ or you retire, whichever occurs later. For example, you own a 401(k), you retired at the age of 68, and your 70th birthday was July 1, 2014. You reached age 70½ on January 1, 2015. You must take your first RMD (for 2015) by April 1, 2016.

The RMD amount for each year is calculated by using the account balance as of the end of the immediately preceding calendar year divided by the distribution period from the Internal Revenue Service's Uniform Lifetime Tables. For most taxpayers, the RMD is based on Table III. Table II applies to a taxpayer whose spouse is more than ten (10) years younger and is the taxpayer's only beneficiary.

<u>Example:</u> T is the owner of an IRA account. T turned age 76 in 2015. T's IRA account balance as of December 31, 2014 was $100,000.00. The distribution period for T under Uniform Lifetime Table III is 22.0. Therefore, T's required minimum distribution for 2015 is $4,545.45 [$100,000 account balance / 22.0 distribution period].

Under IRC § 4974, if you do not take at least the RMD then you may have to pay a 50% excise tax on the amount not distributed as required. To report the excise tax, you may have to file Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts. However, the IRS may waive the penalty if the taxpayer establishes the following: (1) the failure to make the RMD is due to reasonable error and

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Look Before You Give: Making Sure Your Charitable Contributions End Up in the Right Hands

by Jane F. Strike

Are you sure that your charitable donation is actually going to a worthy cause? The Internal Revenue Service is warning taxpayers that there are fake charities imitating real charitable organizations in order to lure donations from unwary contributors. This abuse is so prevalent that these false charities have made it onto the IRS' "Dirty Dozen" list of tax scams for 2015.

The charity scams take various forms. Some counterfeit charities choose names that are similar to well-known charitable organizations. These bogus groups also set up websites that look like those of legitimate charities. Other scammers seize the opportunity of natural disasters to take advantage of unsuspecting contributors. These scam artists use telephone or email to solicit donations or financial information from the public. Some of these disaster-related schemes even target disaster victims. The victims are contacted by someone claiming to represent the IRS, who requests confidential information that can then be used by the scammer to steal the victim's identity.

How can you protect yourself against these scams?

1. **Know your charity.** The IRS website, www.irs.gov, has a tool to help you check to see if a charity is one that is qualified for tax-deductible donations. If you search for "Select Check" on the IRS website, you will find a search engine of qualified charities.

2. **Know what NOT to share.** Never give out personal financial information, like your social security number or passwords, to anyone asking for a donation.

3. **Know how NOT to give.** Never give or send cash. There is always the potential for theft with personal cash gifts or when cash is mailed. Using a credit card or check is more secure and also gives you a record of your gift.

Use these tips to avoid falling prey to fraudulent charities. If you give to an organization that is not a true, qualified charity, you will not receive a tax deduction for your gift. You will also be making a contribution to a criminal scheme, rather than to a worthy cause.

Common Rental Property Income Mistakes

by Carrie E. Bumgardner

Entering the rental property market is a common way to increase your net worth as well as generate some passive income. If you are new to the landlord business, you may fall prey to some common income mistakes when you file your tax return. Knowing the most common mistakes is a good place to start.

1. **Not declaring rent when it is received.** Any rent received by a landlord must be declared in the year it is received. It is common to require a deposit and last month's rent. Even though the last month's rent is not due yet it must be declared when received.

2. **Security deposits count as income if not returned.** However, you may also have corresponding expenses if the funds are used to complete repairs.

3. **Expenses paid by a tenant are income to the landlord.** If your tenant fixes something on the property, the money spent by the tenant is income if the cost of the repair is deducted off the rent. Again, you may also have a corresponding deduction for the cost of the repairs.

4. **Property and furnishings are depreciated differently.** For

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Premium Tax Credit Penalty Relief

by Tiffany Parker Nutt

In January 2015, the IRS released Notice 2015-9 regarding penalty relief related to advance payments of the premium tax credit. The Notice provides limited relief for taxpayers who have a tax liability on their 2014 income tax return and the liability was a result of reconciling advance payments of the premium tax credit against the premium tax credit allowed.

Beginning in 2014, an eligible individual covered (or whose family member is covered) under a qualified health plan through an Affordable Insurance Exchange (AKA a Health Insurance Marketplace) is allowed a premium credit under IRC § 36B. The premium tax credit is claimed on the income tax return for the taxable year of coverage. The credit is based on *actual* household income and the family size for the year reflected on the tax return. Taxpayers make advance credit payments to the insurance provider during the year of coverage. This amount is determined when an individual enrolls through the Exchange. The credit payment amount is based on *projected* household income and family size for the coverage year.

The amount of advance credit payments are reconciled to the actual amount of premium tax credit on the income tax return. A taxpayer's change in circumstance can result in a difference between the advance credit payments and the actual premium tax credit. If the advance credit payments are more than the premium tax credit allowed on the return, the difference (excess advance payments) is treated as additional tax and may result in a larger balance due or a small refund.

In order to decrease the likelihood of a significant difference between the advance credit payments and the premium tax credit, the IRS encourages taxpayers to notify the Affordable Insurance Exchange to update their information in the event there is a change in household income, marriage or divorce, birth or adoption of a child, or other changes to household composition.

Taxpayers who have a tax liability on their income tax return are subject to penalties under IRC § 6651(a)(2) and IRC 6654(a). Under IRC § 6651(a)(2) taxpayers are subject to a penalty for failure to pay the tax liability by the due date. Under IRC § 6654(a) taxpayers are subject to penalties for underpayment of estimated taxes due. In order to qualify for relief from those penalties the taxpayer must meet certain requirements:

<u>Requirement #1:</u> The tax liability must be from the 2014 taxable year.

<u>Requirement #2:</u> The tax due is a result of the reconciliation of the premium tax credit under IRC § 36B.

<u>Requirement #3:</u> The taxpayer must be current with his or her filing and payment obligations.

<u>Requirement #4:</u> The taxpayer's 2014 tax return must be timely filed, including extensions.

The IRS automatically assesses the IRC § 6651(a)(2) penalty for failure to pay the tax due and then sends the taxpayer a notice demanding payment. In order to claim the relief, the taxpayer should submit a letter to the address listed in the notice. The letter should contain the following statement: "I am eligible for the relief granted under Notice 2015-9 because I received excess advance payment of the premium tax credit." Taxpayers who file their returns by April 15, 2015 will be entitled to relief under Notice 2015-9 even if they have not paid the underlying liability by the time relief is requested. However, the taxpayers who file their returns after April 15, 2015 must fully pay the underlying tax liability by April 15, 2016 in order to be eligible for relief under Notice 2015-9.

In order to request relief from the estimated tax penalty under IRC § 6654(a), taxpayers should check Box A, Part II of Form 2210. Taxpayers should complete page 1 of the form and include Form 2210 with their income tax return along with the following statement: "Received excess advance payment of the premium tax credit."

Contact the attorneys at Hyden, Miron & Foster, PLLC with any questions regarding premium tax credit penalty relief.

Surviving Spouse

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where an estate is insolvent, a surviving spouse may be better off electing to take against the Will, even if he or she is the sole beneficiary under the Will.

Second, a surviving spouse who was excluded or received only a small share should consider making an election against the Will. In these situations, the surviving spouse will often receive a much larger share of the estate. Typically the right of surviving spouse to take against a Will only entitles the surviving spouse to reach assets in the probate estate, and excludes assets of the decedent that were held under a Trust. However, the Arkansas Supreme Court recently decided that a surviving spouse's right to elect to take against the Will of the deceased spouse may also extend to assets held in a Trust created by the deceased spouse , where one purpose of the creation of that Trust was to exclude the surviving spouse from inheriting the assets transferred to the Trust. The Court held that even though the Trust assets were not part of the decedent's estate, the Trust assets would be considered part of the estate for purposes of calculating and paying the surviving spouse's elective share of the estate.

Arkansas has a long history of protecting assets for the benefit of the surviving spouse. The right of the surviving spouse to elect to take against the Will should always be considered to determine whether exercising that right will be in his or her best interest.

Contact Hyden, Miron & Foster, PLLC if you have questions about your rights as a surviving spouse.

RMD

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(2) reasonable steps are being taken to remedy the shortfall. In order to request waiver of the penalty, the taxpayer still needs to file Form 5329, following the specific instructions regarding waiver of tax (Instructions for Form 5329 Page 7-8), and attaching a statement of explanation.

For additional information about RMDs, contact the attorneys at Hyden, Miron & Foster, PLLC.

Rental Income

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property that is rented "furnished," you may deduct the cost of the furnishings. Residential rental property is depreciated over 27½ years while furniture is depreciated over five (5) years.

5. **Failing to document.** Everything from your original lease agreement to the cost of replacing a lightbulb should be documented in writing. Not only does this ensure you will get credit for all your allowable deductions but is also protects you in the event of an Internal Revenue Service audit.

By avoiding these common mistakes you can dramatically reduce the chances of an error on your tax return. The best way to avoid these pitfalls is to have your return prepared by a tax professional.

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