

TAX AND ESTATE PLANNING NEWSLETTER

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The following tax and estate planning news may be of interest to you in your business or personal pursuits. If you have questions about any of these items, please call or e-mail one of the Tax and Estate Planning Attorneys listed below by clicking on the attorney's e-mail address or calling the telephone number.

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EXECUTORS' INNOCENT SPOUSE CLAIMS

A recent Internal Revenue Service Ruling clarifies that a decedent's executor can continue an innocent spouse claim initiated while the decedent was alive. Furthermore, the Revenue Ruling goes on to state that the executor can even initiate an innocent spouse claim after the decedent died provided the decedent satisfied pertinent requirements while living. Because an executor assumes the rights of a decedent's estate and has a broad grant of authority pursuant to Internal Revenue Code Section 6903 and has specific authority and power to make or disaffirm joint returns under Internal Revenue Section 6013(a)(3), the IRS said that an executor is also authorized to obtain relief from joint and several liability under Internal Revenue Code's innocent spouse relief provisions contained in Section 6015. Therefore, the IRS concluded that an executor may pursue an existing request for relief from joint and several liability that was started while the decedent was alive, although the IRS declared that an executor can only pursue or initiate a claim for innocent spouse relief if

the spouse met requirements under Internal Revenue Code Section 6015(c) while alive. The Revenue Ruling stated that 6015(c)'s requirement that joint filers be no longer married, legally separated, or not members of the same household, cannot be satisfied by the death of the requesting spouse.

ASBESTOS REMOVAL COSTS

A federal court rules that a taxpayer may deduct the expenses associated with removing and encapsulating deteriorating asbestos that its predecessor had installed in an office building. When the taxpayer discovered in the late 80's that asbestos that it had installed was a potential health hazard, it paid a contractor almost \$800,000 to remove and encapsulate the asbestos. The taxpayer indicted that the work was not initiated to either sell the building or change its current use. The taxpayer deducted the entire cost of the removal and encapsulation. The IRS maintained that the expenses should be capitalized. According to the court, because the work was not done to refurbish the building or prepare it for a new use and the cost of removing and

encapsulating the asbestos was only a small fraction of the building's value, the expenses were currently deductible by the taxpayer.

WIDOW'S ELECTIVE SHARE OF IRA IS TAXABLE TO HER ESTATE

The Internal Revenue Service in a Private Letter Ruling held that a decedent's individual retirement accounts constitute income in respect of a decedent to the decedent's surviving spouse who exercised her statutory right to receive a portion of the decedent's estate. The wife died after electing her share of the estate. The Private Letter Ruling further held that the wife's elective share of the decedent's IRAs constitutes income in respect of a decedent

to the wife's estate and its beneficiaries. However, Internal Revenue Code Section 691(c) gave the wife's estate and its beneficiaries a deduction for the estate tax attributable to the inclusion of the income in respect of decedent items in both the husband's estate and the wife's estate.