INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No:
Years Involved:
Date of Conference:

LEGEND:

D =

Taxpayer =

a =

b =

c =

d =

ISSUE(S):

Whether, for income tax purposes, the Taxpayer is estopped from reporting the basis of stock in a closely-held corporation inherited from a decedent different from the fair market value used in calculating the tax on the decedent's estate.

CONCLUSION:

In this case the Taxpayer is not estopped from claiming a basis in the stock different from the fair market value of the stock used on the decedent's estate tax return. Thus, under Revenue Ruling 54-97, 1954-1 C.B. 113, the taxpayer may rebut the presumptive value of the stock by clear and convincing evidence.

FACTS:

D died in 1988. At her death she owned stock in two closely held corporations. The original estate tax return filed on behalf of D's estate valued these interests at a. On audit, the Service proposed a value of b for the stock. The estate argued for a lower valuation and, in 1992, the Service agreed to an estate tax valuation of c for the stock.

Taxpayer inherited a one-sixth interest in the stock from D. In 1995, the two closely held corporations redeemed all of the stock owned by Taxpayer. On his original 1995 return, Taxpayer reported a basis of d in the redeemed stock which caused him to have a taxable gain. In 1996, he amended his 1995 return to reflect a basis in the stock equal to the redemption price, leaving him with no taxable gain. Taxpayer calculated this revised basis by discounting for a lack of marketability the Service's original proposed stock value of b. While the basis of d was lower than Taxpayer's proportionate share of c (the agreed upon value of the stock in the two corporations), the basis reported on the 1995 amended return was greater than both Taxpayer's proportionate share of the fair market value of the stock originally proposed by D's estate (a) and the agreed upon value (c).

Taxpayer was one of seven beneficiaries of D's estate and is currently represented by the attorney for D's estate. Taxpayer, however, was not a personal representative of the estate and was not involved in preparing the estate tax return or in resolving the subsequent audit. Moreover, we have been provided with no evidence that Taxpayer was consulted or provided assistance in settling D's estate other than his informal conversations with one or more of the other beneficiaries or personal representatives.

LAW AND ANALYSIS:

Section 1014 states that the basis of property in the hands of a person who acquired the property from a decedent, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, is the fair market value of the property at the date of the decedent's death.

Section 1.1014-3(a) of the Income Tax Regulations provides that the value of property as of the date of the decedent's death as appraised for the purpose of the Federal estate tax shall be deemed to be its fair market value.

In Rev. Rul. 54-97, 1954-1 C.B. 113, the Service held that for the purpose of determining the basis under § 113(a)(5) (the predecessor of § 1014) of property transmitted at death (for determining gain or loss on the sale thereof or the deduction for depreciation), the value of the property as determined for the purpose of the Federal estate tax shall be deemed to be its fair market value at the time of acquisition. Except where the taxpayer is estopped by his previous actions or statements, such value is not conclusive but is a presumptive value which may be rebutted by clear and convincing evidence.

As ordinarily applied, the duty of consistency (or quasi-estoppel) holds the taxpayer to a representation made for tax purposes if the Service acquiesced in or relied on it and the statute of limitations bars an adjustment for the earlier year. Stearns v. U.S., 291 U.S. 54 (1934). The duty applies when: (1) the taxpayer has made a representation or reported an item for tax purposes in one year; (2) the Commissioner has acquiesced in or relied on that act for that year; and, (3) the taxpayer desires to change the representation, previously made, in a later year after the statute of limitations on assessments bars adjustments for the initial year. Beltzer v. United States, 495 F.2d 211, 212 (8th Cir. 1974); McMillan v. U.S., 64-2 USTC ¶ 9720 (SD W. Va. 1964).

Courts have found a duty of consistency in federal tax cases when the executor and the beneficiary are in privity. See e.g., Estate of Letts v. Commissioner, 109 T.C. 290 (1997)(wife's estate estopped from asserting that trust did not qualify for QTIP treatment). In general, the courts have equated privity with either fiduciary duties owed by the beneficiary to the estate or a sufficiently close relationship between the party making the prior representation and the party to be estopped in holding that the beneficiaries could not repudiate estate tax values.[1] LeFever v. Commissioner, 100 F.3d 778 (10th Cir. 1996)(taxpayer was the executor of the decedent's estate). Cluck v. Commissioner, 105 T.C. 324 (1995)(estoppel applied because the taxpayer's spouse was executor and the spouses had filed joint tax returns for the years at issue); Beltzer v. United States, 495 F.2d 211 (8th Cir. 1974)(taxpayer was co-executor of the decedent's estate); Griffith v. U.S., 71-1 USTC ¶ 9280 (N.D. Tex. 1971)(taxpayer served as executrix of her deceased husband's estate); McMillan v. U.S., 64-2 USTC ¶ 9720 (SD W. Va. 1964)(taxpayers were co-executors of the estate); Hess v. U.S., 537 F.2d 457 (Ct. Cl. 1976) cert. denied 430 U.S. 931 (1977)(testamentary trust whose trustees were executors of the estate). Thus, courts have not estopped beneficiaries from arguing a different value than that reported on the estate tax return where such a

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[1]For purposes of the preclusive effects of judgments in civil actions, however, the Restatement (Second) of Judgements § 41(1) states that a person who is not a party to an action but who is represented by a party is bound by and entitled to the benefits of a judgment as though he were a party. A person is represented by a party who is the trustee, executor, or similar fiduciary manager of an estate of which the person is a beneficiary. Restatement (Second) of Judgements § 41(1) (1980) *cited with approval by* Richards v. Jefferson County, 117 U.S. 793 (1996); Bittinger v. Tecumseh Products Company, 123 F.3d 877 (6th Cir. 1977). See also, McCrocklin v. Fowler, 285 F.Supp. 41 (E.D. Wis.1968)(estate beneficiary held to be in privity with the estate administrator such that the doctrine of *res judicata* barred the beneficiary's suit).

close relationship did not exist. Ford v. U.S., 270 F.2d 17 (Ct.Cl. 1960)(decedent's minor beneficiaries residing outside of the United States were not estopped from arguing a different value because they were not fiduciaries of the decedent's estate and had no knowledge of the decedent's estate tax return); Shook v. U.S., 713 F.2d 662 (11th Cir. 1983)(estoppel not extended to an estate beneficiary for merely indicating approval over executor's handling of the estate over which the executor had total control and the beneficiary none).

The case of Shook v. U.S. is very similar to the situation here. In Shook, the decedent's will included a provision providing for 55 shares of stock in a closely held corporation to be given to Mrs. Shook upon decedent's death. Immediately before the decedent's death, however, the corporation purchased the decedent's shares pursuant to a previously granted option leaving the decedent's estate without the stock left to Mrs. Shook. The executor's of decedent's estate were a bank, and two officers of the corporation. Mrs. Shook sued those executors, the corporation, and various other persons and in lieu of the 55 shares of stock received the corporation's debenture.

On her income tax return for that year Mrs. Shook did not report any of the debenture's principal amount as taxable income. The IRS, however, disagreed with Mrs. Shook. The IRS claimed that only the portion of the debenture's principal amount equal to the value of 55 shares of corporate stock as reported on the decedent's estate tax return was non-taxable, with the remainder of the principal amount being taxable income.

The Shook court held that Mrs. Shook was not estopped from arguing that the value of the 55 shares of stock was greater than the value reported on the decedent's estate tax return. The court found nothing in the record to suggest that anyone other than the decedent's executors and their attorney had or exercised any authority in handling the resolution of the estate's tax liability. In addition, Mrs. Shook never had any contact with the IRS in connection with settling the decedent's estate nor did the IRS rely on any representation made by her. Finally, the court found that the executor's attorney's discussion of the estate's tax settlement with Mrs. Shook and the obtaining of an expression of her approval was a prudent measure based on the parties' animosity and not a legal necessity. Thus, the court was unwilling to extend the estoppel doctrine to an estate beneficiary for "merely indicating approval of the executor's handling over which they have total control and the beneficiary none."

Although § 1.1014-3(a) provides that the appraised value of property for federal estate tax purposes is deemed to be the fair market value of such property for purposes of § 1014, where the taxpayer is not estopped by his previous actions or statements, this rule merely establishes a rebuttable presumption and may not be conclusive in the face of clear and convincing evidence to the contrary. Rev. Rul. 54-97. Here, we have been presented with no evidence that Taxpayer was a fiduciary of D's estate and no other facts sufficient to hold that Taxpayer is estopped by his previous actions or statements from reporting a basis under §1014 different than the value reported on D's estate tax return.

CAVEAT(S)

This technical advice memorandum speaks only to the sufficiency of the evidence presented in relation to the question of whether this taxpayer is estopped from claiming a basis under § 1014 different from his proportionate share of the fair market value reported on D's estate tax return. Specifically, this technical advice memorandum does not speak to the question of whether Taxpayer has met his burden of rebutting by clear and convincing evidence the presumptive value of the stock as reflected on D's estate's tax return or the application of Rev. Rul. 54-97 to a beneficiary of D's estate other than this taxpayer.

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.