



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR NEW ENGLAND DISTRICT COUNSEL

FROM: Kathryn A. Zuba
Chief, Branch 2 (General Litigation)

SUBJECT: Estate of

This document responds to your request, dated February 13, 1999, for an advisory opinion. This document is not to be cited as precedent.

LEGEND:

Date A:

Date B:

Date C:

Date D:

Date E:

Amount A:

Amount B:

ISSUE:

Whether a federal tax lien that arose after decedent's death attaches to the proceeds of a decedent's individual retirement annuity?

CONCLUSION:

The lien does not attach to the proceeds of the retirement deferred annuity contract since there was no assessment or tax lien prior to the decedent's death. As an annuity, the proceeds from the contract were paid to the beneficiary outside of probate. Because the Internal Revenue Service (Service) did not assess the income taxes until following the decedent's death, no tax liens existed at the time the annuity benefits passed outside of probate.

FACTS:

The decedent held a retirement deferred annuity contract with a value of Amount A at the time of his death on Date A. The proceeds of the annuity contract were paid to the contingent beneficiary, the decedent's brother, as a death benefit. The contract provided a right to a designated cash surrender value, an option not exercised by the decedent, who also died prior to receiving any annuity payments. After his death, the Service assessed 1995 and 1996 income taxes (on Date B and Date C, respectively), with a balance due of Amount B as of Date D. Notices of Federal Tax Lien were filed on Date E.

LAW AND ANALYSIS:

The retirement deferred annuity contract in effect at the time of the decedent's death provided:

Death Benefit On or Prior to Retirement Date – In the event of the Annuitant's death on or prior to the Retirement Date, the Company will, upon receipt of due proof of such death, pay to the Beneficiary a Death Benefit equal to the Guaranteed Cash Value of this contract as of the date of death. However, if no purchase payment is in default beyond the grace period at the date of death, and if the sum of all purchase payments which have been paid for the annuity benefit is greater than this contract's Guaranteed Cash Value, such greater amount will instead be paid as the Death Benefit... .¹

Under the terms of this annuity contract, the decedent while living had a right to obtain the Cash Surrender Value of the annuity from the insurance company. As stated above, upon death, the payment to the beneficiary would be the greater of the cash surrender value or the amount of purchase payments.

Under I.R.C. § 6321, a federal tax lien attaches to all of a taxpayer's property or rights to property. State law controls the determination of the existence of any legal interest that a taxpayer has in property. Aquilino v. United States, 363 U.S. 509 (1960). Whether the state-created interest constitutes property or rights to property to which the federal tax lien attaches is a matter of federal law. United States v. Bess, 357 U.S. 51 (1958).

In this case, the taxpayer's rights in the policy terminated at death. Under the terms of his annuity, the taxpayer was not entitled to any payment from the plan while he was alive because he had not retired at the time of his death. At the time

¹ The contract provides that the Guaranteed Cash Value is equivalent to the Cash Surrender Value.

he was alive, the decedent had no right to the lump sum death benefit, nor does his estate have a right to it now. Instead, the death benefit is payable to a specified beneficiary. At the time the federal tax lien arose, after the decedent's death, the insurance company had no obligation to the decedent or his estate. The only obligation was to the beneficiary. The lien filed after the taxpayer's death did not attach to the proceeds of the annuity because those proceeds were not property or rights to property of the taxpayer. See Commissioner v. Stern, 357 U.S. 39 (1958); Bess, 357 U.S. at 55-56.

If you have any questions, please call (202) 622-3620.

cc: Assistant Regional Counsel (NER)