Tax Treatment Of Post-Death Settlements: Remember Income In Respect Of Decedent?

By Robert W. Wood[1]

I. INTRODUCTION

Income in respect of a decedent ("IRD") has been part of the Internal Revenue Code since 1942.[2] Although such longevity arguably has afforded virtually every tax professional ample opportunity to digest its modest provisions, many practitioners know little about the inner workings of §691. This Code Section gives us a relic of what sometimes seems another era. The IRD provisions have changed little over the past sixty years, but many tax advisers still have a hard time discussing them.

There is at least some reason for the lack of familiarity. The term "income in respect of a decedent" is not precisely defined in the Code, or regulations, or in any other authority. The regulations do contain a "general" definition, stating that IRD "refers to those amounts to which a decedent was entitled as gross income, but which were not properly" included in computing the decedent's taxable income for the taxable year prior to death.[3]

Beyond this most basic formulation, however, it is often unclear what is and is not encompassed within the scope of the IRD rules. Perhaps for fear of being under-inclusive, or overly vague, Congress, the courts, and the IRS have not pinned down a precise definition. Despite the current debate over the continued merits (both policy and fiscal) of the federal estate tax, IRD as an income tax concept is still important, laying traps and occasionally offering opportunities. It comes up, or should come up, fairly frequently.

II. SEEING THE FOREST OF IRD

Before discussing IRD examples, a bit of background is in order. The purpose of §691 is simple: to reach all income earned by the decedent during his lifetime that might otherwise escape income tax. If a decedent does not receive an item of income during his lifetime (so the item of income has not been included in his tax return for the short tax year of his death or in a prior period), that income may constitute IRD when paid to the decedent's successor in interest.[4]

Even though there is no precise definition for IRD, a few general characteristics are discernable. The most significant IRD characteristic is that an item of income must ***not*** be properly includible in the taxable period which includes the taxpayer's date of death or any prior period.[5] The item of income must be properly includible in the taxable period ***after*** the taxpayer's death. Otherwise, there would be no need for IRD as a concept.

Another characteristic is that having income classified as IRD does not affect its character as either ordinary or capital.[6] Character is determined as if the decedent were alive and had received the item of income personally. Significantly, amounts classified as IRD do not receive a step-up in basis to fair market value upon death.[7]

Some earmarks of IRD have been developed by the courts. Thus, IRD must be directly attributable to the lifetime economic activities of the decedent, and must have been slated to constitute income to the decedent, if only he had lived to receive it.[8] Moreover, the income must have accrued to the decedent to the extent that he was entitled to receive the amount. Yet, under the decedent taxpayer's method of accounting, the income must not have been includible in the taxpayer's income prior to death. Again, if this were not so, there would be no need for the concept of IRD.

Some of this sounds awfully metaphysical, inviting, and even requiring, a colossal game of "what if." That axiom may be the reason why IRD is so hard to identify.

There are some non-IRD criteria. For example, income is not IRD when it is attributable to the mere passive appreciation of the decedent's property, or to acts undertaken by the decedent's estate. Factually, this latter characteristic may be the most difficult to grasp.

Notably, IRD characterization does not rest upon the identity of the recipient of the income. Thus, the decedent's estate can have IRD if it receives the income. Likewise, the beneficiary of an estate can have IRD if the right to income is passed directly to the beneficiary, and the beneficiary receives it. Furthermore, any person to whom an estate properly distributes the right to receive income can have IRD. Different types of taxpayers can receive IRD, and whoever receives IRD must report it.

With these basic tenets, a few examples will help explain the scope of this concept.

A. IRD Related To Services

IRD related to the decedent's performance of services is perhaps the easiest situation in which to rationalize IRD. If a decedent is legally entitled to salary or wages at the time of his death, the receipt of that compensation by the decedent's estate (or by a legatee of the estate) constitutes IRD to the recipient.[9] In fact, a variety of compensation-type payments have been found to constitute IRD, including commissions,[10] payments of accrued vacation,[11] and payments made to a surviving spouse as part of a decedent's employment contract.[12]

1. Bonuses

Not surprisingly, a bonus paid after a worker's death (because he had an enforceable right to receive it) has been held to constitute IRD.[13] More surprising is the fact that courts have held that a bonus to which the decedent had no legal entitlement can also be IRD.[14] In *Estate of O'Daniel v. Commissioner,* the taxpayer died in 1943, but in 1944, his estate received money under an employee bonus plan. The IRS determined that the bonus had to be included in the estate's income for 1944, and the court affirmed. The court held that the estate acquired the rights of the decedent.

Therefore, the bonus was treated for tax purposes by the estate just as it would have been considered in the hands of the deceased. It did not matter to the court that this "right" was not legally enforceable. The court held that the predecessor to §691[15] provided that the income of a decedent had to be included in gross income for the taxable year in which the money was received. Accordingly, the estate had to include the bonus in income in 1944.

2. Royalties

Given that bonus payments under such circumstances can be treated as IRD, it should come as no surprise that some royalty payments are also IRD. In Revenue Ruling 57–44,[16] the IRS ruled that royalty payments received under a contract signed by an author's widow as executrix constituted IRD. The deceased author's right to royalties, although contingent as to amount, had been established upon the sale of his manuscript to the publisher prior to his death.

A later contract signed by the executrix, while modifying the original contract, did not alter the fact that payments to the deceased author's successor in interest continued to be made with respect to the author's efforts. The IRS ruled that the royalty payments had been earned by the author's efforts during the author's lifetime, and thus constituted IRD. Of course, this suggests that had the author completed his manuscript but not executed a contract with the publisher, any amounts later received by his estate or legatee on account of the manuscript would not be IRD.

3. Other Service Payments

Services-related IRD can also arise in more factually complicated situations. For example, Tally Taxpayer was entitled to a large salary payment at the date of her death. The amount was to be paid in five annual installments. Tally's estate, after collecting two installments, distributed the right to the remaining installments to Tally's son, Sully, the beneficiary of her estate. Since none of the payments had been included by Tally on any of her returns, the installment payments were held to constitute IRD to both Tally's estate and to Sully.[17]

Life insurance renewal commissions can also be IRD. Suppose Debra daughter inherited the right to receive renewal commissions on life insurance sold by her father before his death. Debra inherited the right from her mother, who acquired it by bequest from her husband. Debra's mother passed away before she received all of the commissions she had the right to receive, and Debra inherited the remaining rights. Since none of the commissions had been included in any of the father's returns, the commissions received by the mother were IRD to her. The commissions received by Debra are also IRD.[18]

B. IRD Related To Investment Income

Outside the context of services income, investment income is probably the second most common variety of IRD. This makes sense, since many taxpayers own stocks, bonds, rental property, etc., and whether purposefully or inadvertently, take them to their grave. IRD concerning investment income differs from IRD in the services context, in that the economic activities of the decedent during his lifetime are not so important. The relevant inquiry concerns what the decedent owned on the date of his death, and what sort of income had accrued on his property at that time.

Under the IRD rules, interest income is generally considered to be earned ratably.[19] In Revenue Ruling 79–340,[20] a taxpayer owned a savings certificate that paid interest quarterly at a fixed rate. The IRS ruled that if the taxpayer passed away in between interest payments, the interest that had accrued on the date of death was IRD, even though the interest was not payable until after death. Interestingly, the fact that the decedent was a cash-basis taxpayer was irrelevant.

Dividends, on the other hand, are generally not earned ratably, but are considered earned only on the record date, after a corporation declares the dividend.[21] This can make IRD hard to identify. For example, in Revenue Ruling 64–308,[22] the taxpayer owned 50% of an S corporation. Generally speaking, the income of an S corporation flows through to its shareholders, individually. More precisely, at the end of the taxable year, the undistributed taxable income of an S corporation is included in its shareholders' gross income by means of a deemed dividend.[23] The amount included is treated as distributed on the last day of the taxable year.

In the ruling, the taxpayer died shortly before the end of the S corporation's taxable year, and his estate was the shareholder at year-end. The IRS ruled that the entire deemed dividend had been distributed to the taxpayer's estate at year-end. In effect, both the declaration date and record date for the dividend was the S corporation's year-end. Since the taxpayer had no right the dividend when he died, none of the dividend was classified as IRD.

C. IRD Related To Sales

Another common form of IRD arises from the sale of property. Sales-type IRD is generally more complicated than the other types of IRD discussed above. This complication stems from the variable facts that can surround the sale of property. Generally speaking, sales-type IRD consists of amounts received post-death from the completed sale of property pre-death.[24]

Although classifying sales-type IRD may appear simple, various factors must be analyzed. These include the amount of work that must be conducted by the estate to complete the sale, and the number and complexity of conditions to the sale that exist on the date of death. What constitutes IRD in this area is often dependent on the facts and circumstances of a particular case, and it may be helpful to walk through an example.

> Example 1:
> Frank Farmer, a cash-method taxpayer, owned and operated an apple orchard. He sold and delivered 100 bushels of apples to a canning factory for $2,000, but did not receive payment before his death. When the estate was settled, payment had not yet been made and the estate transferred the right to payment to Frank's widow. The proceeds from the sale are IRD. When she collects the $2,000, she must include that amount in her return as IRD. It is not reported on Frank's final return or on the return of his estate.[25]

> Example 2:
> Tom Trucker sells his truck on February 1 for $3,000. His adjusted basis in the truck is $2,000. Although he delivers the truck on that date, the sales contract specifies that he is not to receive payment until March 1. Tom dies on February 15, prior to receiving payment. The gain to be reported as IRD is the $1,000 difference between his basis in the tractor and the sale proceeds. The character of the gain will be same as if Tom received the payment himself.

A more complicated example can be found In *Trust Company of Georgia v. Ross*.[26] There, the decedent had entered into a contract conveying corporate stock. He placed the shares in escrow with his attorney, but died prior to the closing. The decedent's attorney closed the transaction. Contrary to the taxpayer's estate, the IRS treated the gain on the sale of the stock as IRD. The trial court agreed with the IRS, focusing on the services performed by, and the economic activities of, the decedent which led to the sale.

The court of appeals affirmed, but held that the district court's focus was misguided. What mattered was the fact that the decedent was legally entitled to the income on the date of his death. Since the acts undertaken by the estate to complete the sale were perfunctory and of no material significance, the court of appeals held the sales proceeds were IRD.

D. Litigation Claims

It is comparatively easy to see how income earned from services and investments can be IRD. It is not so clear-cut how income earned from sales can be IRD. Indeed, such a determination typically requires a more fact-intensive inquiry, reviewing how much effort had been undertaken by the decedent *vis a vis* his estate, etc. IRD can result from many other types of income, such as from partnership interests, sharecropping, and alimony arrears. The remainder of this article will focus on one of the more obscure types of IRD: claims in litigation.

Given the hyperbole of our society and its constant litigation, it seems reasonable to assume that many plaintiffs pass away during the course of a lawsuit. Whether or not this plays out in real life, there is surprisingly little authority on the extent to which damages received post-death from a lawsuit filed pre-death constitute IRD. If the proceeds from a settlement or judgment are not IRD, it may be possible to take the position that the claim is an asset of the decedent's estate, subject to a step-up in basis. Yet, if a plaintiff settles a suit but dies before collecting some or all of the payment, this seems precisely the kind of situation the IRD statute was designed to address.

Given the dearth of authority on this point, it is worth reviewing each notable kernel.

1. Revenue Ruling 55–463

In Revenue Ruling 55–463,[27] the taxpayer was engaged in litigation on the date of his death. The decedent had commenced an action praying for a permanent injunction against the future infringement of certain patent rights, a preliminary injunction pending trial, and an assessment of damages arising out of the alleged infringements. The issue was whether any amount realized by the taxpayer's estate upon the settlement of the claim was IRD.

The ruling initially noted that §691 taxes to a decedent's estate any income it receives if the right to receive the income is acquired from the decedent.[28] The estate treats this right as if it had acquired the right to receive the income itself. Moreover, the character of the income to the estate is the same as if the decedent had lived and received the income.

For support, the IRS looked to several cases, including *Estate of O'Daniel.*[29] In that case, the court held that a bonus paid to the estate of a decedent-employee was includible in the gross income of the estate because the right to receive it was "acquired by the decedent's estate from the decedent," even though the decedent had no enforceable right to receive it. The court stated:

> "It is true that the decedent would not have had a legally enforceable right to receive the foregoing amount until it was allocated by the American Cyanamid Company, but the payment clearly represented compensation for his services and any right to receive it that was realized by his estate was acquired through him and never arose in any other way or through any other source. . . . We believe it is not disputed that if the decedent had lived and received the bonus in 1944, it would have been reportable and taxable in that year as income for services."[30]

Relying on another service case, the IRS noted *Estate of Bausch v. Commissioner.*[31] There, the court held that monthly payments made by a corporation to the estate of a deceased founder of the corporation constituted a reward for services performed for the employer. Thus, the payments were taxable as IRD.

The IRS also found support in *Commissioner v. Linde,*[32] where the court held that liquidating proceeds of cooperative marketing associations' wine pools paid to the decedent's widow in the year after the estate was closed constituted IRD. That meant such items had to be included as IRD in the gross income of the decedent's widow. The court said:

> "We find no merit in the suggestion that the gross income here referred to is limited to income from personal services. The language [of the statute] discloses that [IRD] cannot be confined to any particular type or kind of income."[33]

The *Linde* court found that income from any source could be IRD, including capital gains, business income, interest, dividends, etc. Based on these cases, in Revenue Ruling 55–463, the IRS found that a settlement award received by an estate represented income lost by the decedent during his lifetime from the exploitation of his patent rights. The decedent commenced the action to recover his loss, which was in the process of litigation at the date of his death. According to the IRS, one can have a "right to receive" an award of compensation for lost income even though the claim is still disputed at the time of the plaintiff's death.

Indeed, any judgment entered in favor of the decedent's estate will be in recognition of his claim that he had a "right to receive" the award. If the decedent had lived and received the judgment, it would have been taxable to him.[34] Of course, such a general rule seems overly broad on its face. Nevertheless, the IRS ruled that the income realized by the estate resulting from a claim which was in the process of litigation at the date of the decedent's death constitutes IRD, and is includible in the gross income of the recipient in the year received.

2. Estate Of Carter

On September 15, 1940, Mabel Carter, in partnership with Charles and Olga Sears, began showing motion pictures at the Liberty and Sedalia Theaters in Sedalia, Missouri. A few months later, Mabel purchased Charles and Olga's interest in the theaters, and she continued to operate the theaters until May of the following year. Eights months after starting her theater business, Mabel closed the theaters because the business was losing money. She then leased the theaters to Fox Ozark Theater Corporation.[35] In a declaration of trust executed over eleven years later in 1952, Mabel Carter irrevocably assigned to herself as trustee all of her claims, rights and causes of action against various theater companies, such as Fox Ozark, Paramount Pictures, Warner Brothers, etc. She claimed that the various movie companies colluded and conspired in violation of federal and state antitrust laws, forcing her to lease the properties to Fox. The beneficiaries of the trust included herself and various family members.

In 1955, the parties settled all claims. However, Mabel Carter passed away prior to the settlement, and other beneficiaries of the trust inherited her share. The trust beneficiaries reported the settlement proceeds as if the claim were a capital asset. The beneficiaries who received an inheritance from Mabel reported their inherited share as receiving a stepped-up basis on Mabel's death. The IRS disagreed, claiming the proceeds were ordinary income, and the matter wound up in Tax Court.

The Tax Court began its analysis addressing the perennial question that arises in every settlement: "in lieu of what were the amount paid under the settlement received?"[36] Business profits are ordinary income, and the IRS argued that the settlement payment represented lost profits from the theaters. Moreover, under the antitrust statute, Mabel was able to receive punitive damages, which, the IRS argued, should also be characterized as ordinary.[37]

The Carter clan saw things differently. They argued the settlement payment represented damages for the destruction of Mabel's theater business, and this constituted a compulsory or involuntary conversion of a capital asset. Even though the amount of the settlement was predicated on the amount of lost profits from the theaters, they argued that using profits as a measuring stick to calculate damages does not necessarily make the damages themselves a substitute for lost profits.

For the Carters to prevail on their innovative theory, the court noted that the converted property must have been a capital asset. The Carters' asset was the right to operate the theater business. The court agreed that this might be a property right, but it was not a capital asset.[38]

Moreover, since the defendants did not destroy an ongoing business, there had been no destruction of goodwill, which might also have been a capital asset. The court found that the goal of antitrust litigation is to place the injured parties in the same profit position they would have occupied had there been no interference, and to punish (by additional damages) the one responsible for the interference.

The court held the proceeds to be ordinary income, and held there was no involuntary conversion of a capital asset. Moreover, the beneficiaries of the trust could not step-up their bases in the claim. This was true even though some of the proceeds were disbursed to legatees of Mabel Carter's share of the trust. With no further analysis, the Tax Court found the legatees in receipt of IRD, having the same character in the legatees' hands as it did in the decedent's hands.[39]

The taxpayers appealed to the Eighth Circuit, arguing that since the settlement proceeds were only "an unliquidated antitrust claim," the proceeds could not be IRD. Rejecting the taxpayers' arguments, the Eighth Circuit was swayed by Revenue Ruling 55–463, quoting it that "income realized by the estate of a deceased person resulting from a claim which was in the process of litigation at the date of his death constitutes" IRD. All that Mabel Carter had at the time of her death was a contingent claim, which, under the regulations, was IRD.[40] The court noted that the Code clearly mandates that items of IRD do not receive a step-up in basis.[41]

3. Letter Ruling 8740042

After the *Estate of Carter* case, the tax public would have to wait twenty five years for another piece of authority on whether the receipt of damages constitutes IRD. Of course, technically speaking, a letter ruling does not constitute "authority," although even the U.S. Supreme Court has cited them. Given this generation gap, one can wonder whether in the interim the IRS believed this matter to be well-settled. On the other hand, perhaps few litigants passed away prior to reaching a settlement or judgment, and the IRS and the courts thus had few opportunities to address this topic.

In any case, in Letter Ruling 8740042,[42] the IRS revisited IRD resulting from damage claims in an employment case. In 1981, the plaintiff was placed on disability leave. He reported back to work in February, 1984, when he was notified that his position would be eliminated within weeks. By March, the employee's employment had been terminated. A few years later, in January, 1986, he filed a suit in state court against his former employer for personal injuries and breach of contract. He alleged six counts, raising several different theories (some, but not all, of which were torts), and each count sought both compensatory and punitive damages.

The following month, the plaintiff passed away. His parents were appointed as administrators of his estate, and they were substituted as the plaintiff of record in their son's civil action. By July of that year, the parties reached a settlement for $120X, which was approved by the probate court. Later that year, after submitting an accounting to the probate court and paying the estate's expenses, the parents, as administrators, distributed $75X to themselves as their son's heirs.

The Letter Ruling provides a prosaic analysis, starting with a reference to the IRD statute. The Letter Ruling then refers to the regulations. After a review of Revenue Ruling 55–463 and *Estate of Carter*, noting the similarities among the ruling and case with the facts in Letter Ruling 8740042, the IRS concludes that the proceeds received by the parents were IRD. However, to the extent the settlement proceeds were received on account of personal injuries, the Service noted, such amounts may be excludable from the gross income of the estate pursuant to §104(a)(2),[43] and would not be IRD.[44]

III. CONCLUSIONS

There is a paucity of authority addressing the IRD issues arising from settlements occurring after the death of the plaintiff. Given the scarcity of analysis, perhaps the IRS believes settlement proceeds received by an estate are always IRD. Yet, in my experience, the classification of settlements as IRD is rarely black and white. Moreover, many practitioners rarely consider the point.

In many instances, settlements in the IRD context more closely resemble a sale of goods than the performance of services. That is, an estate (or the legatee) is not necessarily given an impending right to income. In some circumstances, what an estate receives is arguably not even a contingent right to income.

In fact, an estate usually must undertake more than a small amount of work before receiving any income from an inherited claim. There may be discovery, a trial, an appeal, mediation, arbitration, and even settlement negotiations. This suggests that a more factual analysis should be required to determine if settlement proceeds should be classified as IRD.

An interesting hypothetical can be raised from the facts of *Estate of Carter.* Instead of an antitrust lawsuit filed after a business failed, what if the taxpayer had sold a successful business to Fox upon retirement? Further, assume that Mrs. Carter had later discovered fraud in the sale, and brought suit to recover additional sales proceeds. With these changed facts, if Mrs. Carter had died pending this claim, would the proceeds have been IRD?

The *Estate of Carter* court rests much of its opinion on the fact that the settlement proceeds represented lost profits (which are ordinary income), and were not capital in nature. As a consequence, the court did not allow a step-up in basis. In this hypothetical, any proceeds received upon the settlement of the claim would arguably be characterized as capital, since the origin of the claim was the sale of the taxpayer's business. A capital asset subject to a basis step-up should not be classified as IRD.[45]

In any event, IRD issues can arise from a wide variety of litigation claims that settle after the claimant's death. In the employment context, IRD could result from claims of age, sex, race discrimination, harassment, retaliation, etc. In the business context, IRD could result from claims of lost profits, damages to goodwill, sales of patents (including the sale of all substantial rights to a patent as defined in §1235), breaches of fiduciary duty, breaches of a covenant not to compete, etc. Of course, there would be no IRD where claims are excludable from income, as would be the case for claims of personal physical injury and physical sickness.

IRD could also arise from more pedestrian claims such as damages received from your neighbor whose fence was built on your property, or damages received from the auto mechanic who improperly repaired your car. I expect there are many other real-life situations similar to these fictional scenarios.

The apparent breadth of IRD's application may suggest tremendous extra income. Yet, despite the breadth of IRD and its purpose of preventing income from escaping taxation, it appears that IRD should be viewed as a timing issue. This is certainly suggested by Revenue Ruling 57-44 in which income received by an author's estate from a contract for the sale of a manuscript entered into prior to death was found to be IRD. Had the author completed the manuscript, but not executed the contract before his death, the ruling implies that amounts later received would not be IRD.

Clearly, a living author would have income when he sells his manuscript. However, if the author had not executed the sale contract prior to death, would the IRS still argue that the author's estate has a contingent claim? Would it matter if the author had a long-standing history of selling his manuscripts?

By analogy, one wonders if a taxpayer who dies owning an inchoate claim, not yet having filed suit, might generate IRD on a later recovery. As with sales-type IRD, it may make sense to examine where the claim is in the litigation life-cycle on the decedent's date of death. Even recognizing that this is not a perfect analogy, what if a taxpayer has not yet filed a claim upon his death?

Many claims survive a claimant's death, and can be brought by a successor in interest. Moreover, many claims are assignable, allowing actions to be brought by unrelated parties. It is hard to imagine that claims that are literally in their infancy on the putative claimant's death would be classified as IRD. Plainly, there is no adjudicated right to income before a case is even filed.

Maybe these musings themselves make clear why few practitioners or taxpayers seem to worry much about IRD. Still, the dearth of authority on this topic, suggests this area may be ripe for further development. Many litigants presumably pass away prior to reaching a settlement or judgment. With twenty years having passed since the last IRD ruling, perhaps it is time for fresh authority to remind another generation that IRD remains an issue.

ENDNOTES

1. Robert W. Wood practices law with Wood & Porter, in San Francisco (www.woodporter.com), and is the author of ***Taxation of Damage Awards and Settlement Payments*** (3d Ed. Tax Institute 2005 with 2007 Update) available at www.damageawards.org. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.

2. In 1942, Congress enacted P.L. 77–753, setting forth the modern IRD statute in §126 of the 1939 Code. Congress had enacted a different version of an IRD statute in 1934. *See* P.L. 73–216.

3. Treas. Reg. §1.691(a)-1(b).

4. *Poorbaugh v. United States,* 423 F.2d 157 (3rd Cir. 1970).

5. *See* Treas. Reg. §1.691(a)-1(b). *See* also *Findlay v. Commissioner,* 332 F.2d 620 (2nd Cir. 1964).

6. IRC §691(c).

7. IRC §1014(c).

8. *Estate of Davison v. United States,* 292 F.2d 937 (Fed. Cl. 1961).

9. Treas. Reg. §1.691(a)-2(b) Example 1. See also *Estate* of *O'Daniel v. Commissioner,* 173 F.2d 966 (2nd Cir. 1949); *Rollert Residuary Trust v. Commissioner,* 752 F.2d 1128 (6th Cir. 1985).

10. *Findlay v. Commissioner,* 332 F.2d 620 (2nd Cir. 1964).

11. Rev. Rul. 59-64, 1959-1 C.B. 31.

12. *Miller v. United States,* 389 F.2d 656 (5th Cir. 1968); *Essenfeld v. Commissioner,* 37 T.C. 117 (1961), *aff'd,* 311 F2d 208 (2nd Cir. 1962).

13. *Estate of Huesman v. Commissioner,* 16 T.C. 656 (1951), *aff'd,* 198 F.2d 133 (9th Cir. 1952); Rev. Rul. 65–217, 1965–2 C.B. 214, *amplified by,* Rev. Rul. 68–124, 1969–1 C.B. 44.

14. *Estate of O'Daniel v. Commissioner,* 173 F.2d 966 (2nd Cir. 1949).

15. Section 126 of the Internal Revenue Code of 1939.

16. 1957–2 C.B. 361.

17. IRS Publication 559.

18. IRS Publication 559.

19. *Richardson v. United States,* 177 F.Supp 394 (E.D. Mich. 1959), *aff'd,* 294 F.2d 593 (6th Cir. 1961); *Estate of Ingraham v. Commissioner,* 8 T.C. 701 (1947).

20. 1972–2 C.B. 320.

21. *Estate of Putnam v. Commissioner,* 324 U.S. 393 (1945).

22. 1964–2 C.B. 176.

23. IRC §1373.

24. Rev. Rul. 78–32, 1978–1 C.B. 198.

25. IRS Publication 559.

26. *Trust Company of Georgia v. Ross,* 262 F.Supp 900 (N.D. Ga. 1966), *aff'd,* 392 F.2d 694 (5th Cir. 1967).

27. 1955–2 C.B. 277.

28. IRC §691(a)(1).

29. *Estate of O'Daniel v. Commissioner,* 173 F.2d 966 (2nd Cir. 1949).

30. *Id.* at 967.

31. *Estate of Bausch v. Commissioner,* 186 F.2d 313 (2nd Cir. 1951), *aff'g,* 14 T.C. 1433 (1951).

32. *Commissioner v. Linde,* 213 F.2d 1 (9th Cir. 1954).

33. *Id.* at 7.

34. *See United States v. Safety Car Heating and Lighting Co.,* 297 U.S. 88 (1936).

35. *Estate of Carter v. Commissioner,* 35 T.C. 326 (T.C. 1960), *aff'd by,* 298 F.2d 192 (8th Cir. 1962).

36. *Raytheon Production v. Commissioner,* 1 T.C. 952, 958 (1943), *aff'd* 144 F.2d 110 (1st Cir. 1944).

37. *Commissioner v. Glenshaw Glass,* 348 U.S. 426 (1955).

38. *See Commissioner v. Gillette Motor Transport,* 364 U.S. 130 (1960).

39. IRC §691(a)(3).

40. Treas. Reg. §1.691(a)-1(b)(3). Notably, these regulations were issued two years after the issuance of Rev. Rul. 55–463. *See* T.D. 6257, October 7, 1957.

41. *See* IRC §1014(c).

42. July 9, 1987.

43. Note that after statutory changes enacted in 1996, an exclusion from gross income under §104(a)(2) requires personal physical injury.

44. IRC §691(a)(3); Treas. Reg. §1.691(a)-1(d).

45. IRC §1014(c).