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is a solid move if disability coverage is maintained.

Age — how soon will benefits start? The closer one is to “pay dirt,” the higher the return from Social Security taxes being paid.

Life expectancy — normal, greater, or less? Obviously, if one lives longer, the investment returns from future Social Security taxes increase, roughly 2% for each five years.

Gender — this affects life expectancy. Women, on the average, receive 55 to 60 more Social Security checks, making returns greater for them as a whole.

Marital status and spouse's past earnings. Dependent benefits are a built-in bias favoring married, single-earner households.

Whether the husband and wife are close in age. This variable is surprisingly neutral. Younger spouses receive greater survivor's benefits, offsetting their delay in benefit receipt.

Inflation growth in the economy. This variable may have a very

positive effect for those not yet retired, especially if it comes 10 to 20 years before retirement.

The size of cost-of-living adjustments in benefits. Higher increases obviously make Social Security returns better.

The opportunity cost for tax contributions compared to Social Security. Higher investment returns in mutual funds or other investments make Social Security look bad.

The type of Social Security taxes the worker is subject to. FICA employees only pay half the bill, thus doubling their investment return.

Whether increased earnings will result in increased income tax. If inflating one's self-employment earnings increases income tax as well, the move becomes a sure loser.

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Decedent's tax returns provide clues for finding estate's assets

PRACTICE ISSUES: Anyone with “material interest” can get a copy of decedent's returns.

By Richard Malamud, J.D., LL.M., CPA

ECP Guest Contributor

It is not unusual for an heir to ask a CPA or attorney, “How do I know if my sibling, who is our parents' executor, has included all of mom's assets in the list of assets to be split between the kids?” If family members don't get along — maybe even don't speak to one another — a beneficiary who is not a fiduciary can avoid a confrontation and still get a copy of the decedent's final income tax return. Just ask Uncle Sam — i.e. the IRS — for a copy.

A great place to start an investigation of a decedent's assets is his or her last two years of income tax returns. The returns list bank accounts (under “Interest”), stocks (under “Dividends”) and possibly real estate and automobiles (under “Taxes — deductions”). They also list rental property, partnerships, S corporations, trusts and “royalty property” on Schedule E.

Though this is a good starting point, the decedent's tax returns will never produce a complete list of assets. For example, stock won't be listed if the company doesn't pay a dividend. Similarly, individual stocks

will not be listed if the stocks are kept in street name at a brokerage, in which case only the brokerage firm's name will appear on the tax return.

How does one get a copy of the return?

It is well-known that taxpayers can request copies of old tax returns. So can their representatives, including executors, administrators, and trustees. What about an heir who won't or can't receive the information from the trustee? The answer is that IRC §6103(e) allows persons having a “material interest” to request copies of the decedent's income tax returns.

The term material interest is not defined in the code, regulations, administrative rulings, or case law. This is a problem because the law says that heirs can only receive a copy of the return if “the Secretary (the IRS) finds that such heir at law, next of kin, beneficiary, or donee has a material interest which will be affected by information contained therein.” The only case occurred when the IRS denied a request to the child of a deceased taxpayer for copies of the deceased's tax return.¹ It appeared that the IRS was not sure if this was a legal heir. The court, upon finding that the child was an heir under state law, ordered the IRS to provide copies of the returns to the child's mother, finding that the child had a material interest.

There are two similar revenue rulings that deal with heirs. When the decedent died intestate (without a will), Rev. Rul. 2004-68 basically reiterated an earlier ruling, Rev. Rul. 54-379, which stated that the decedent's return for the calendar year prior to death shall be made available to the heir. It noted however, that the IRS may amend the access procedures, in effect requiring materially interested persons to provide additional information in order to obtain past tax returns. The ruling states that the IRS interprets a material interest as an “important interest that is financial in nature.”

Assuming that a beneficiary has a material interest, which it would seem they do, since they are to receive a percentage of the estate or trust, it appears that they can request copies of prior tax returns, but only if the request is accompanied by a payment of \$39 per return. There may be a partial alternative to the fee. Instead of requesting a copy of the tax return, why not request a copy of the tax return transcript. Transcripts are free and are delivered in less than half the time of a complete return. Unfortunately, it may not have as much information as the tax return, especially if the return was not electronically filed and had supplemental materials. Requests for tax returns are made on Form 4506 and transcripts are requested on Form 4506T.

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Proving material interest

The difficulty in preparing the request may be proving to the IRS that you have a material interest. That is because the request must include:

1. Proof of the date of death, place of death and state of decedent's residence (to help determine the state law that would apply).
2. Proof of the relationship to the decedent, including a copy of the birth certificate, baptismal certificate, school record, or insurance designation.
3. A written statement, including sup-

porting documents to demonstrate that there is a material interest that will be affected by the request. This may include the petition for probate or other administrative pleadings.

If the above requirements will be hard to comply with, the decedent's representative may not know that. So why not give the representative a call and ask for the returns, saying, "Could you please send my mom's last two tax returns so I can get an idea what the estate looks like. My accountant has told me that I can get copies from the IRS, but since you have them, why put me through that hassle?"

Save the threat of attorney reference for another time if things don't go well! 

¹ *Minnie Williams* 523 F. Supp. 89, 81-2 U.S.T.C. P9636 (ED MI 1981)

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There are times when a retiree may deduct a moving expense

TAX: Moving expenses are deductible when certain conditions apply.

By Lynn Freer, EA

ECP Publisher

We usually think of moving expenses in connection with a transfer or a new job. However, a retiree may qualify to deduct the qualified moving costs if returning to the U.S. from a foreign country or if at least one spouse goes back to work after the move.

Foreign move

IRC §217(i) provides that a retiree or decedent working abroad may deduct the qualified costs of a move even without meeting the work in the new location requirement. The moving expenses are deductible if:

- The individual's former principal place of work and residence were outside the United States; and
- The individual is moving back to the United States in connection with bona fide retirement.

Bona fide retirement means the permanent withdrawal from full-time employment and self-employment.¹ An individual who intends to retire is considered to be a bona fide retiree even though he or she may later resume full-time employment.² Whether an individual intends to retire is deter-

mined by the surrounding relevant facts and circumstances.

The surviving spouse or dependent of a decedent may also deduct qualified expenses to move back to the United States if:

- At the time of death, the decedent's principal place of residence and employment is outside the U.S. and;
- The surviving spouse and/or dependent begin the move back to the U.S. within six months of the date of death.

See Example 2-8.

EXAMPLE 2-8: Ali has been working in Algeria for the past 3 years. She retired on June 1, 2005. She moved back to her home in Arizona on July 1, 2005. She may deduct the cost of her move even though she will not work after she returns.

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What is deductible?

For moves within the United States, the taxpayer may deduct the unreimbursed costs of:

- Packing, crating, and transporting household goods.
- Storage of household goods and personal effects for up to 30 days. You may choose any 30 days in a row after the items were moved from the old home and before they were delivered to the new home.
- Travel from the old to new home, including transportation and lodging but not meals. One deductible trip for each member of the household is allowed. Members do not have to travel together or at the same time. If driving a personal vehicle, the taxpayer may deduct actual out-of-pocket expenses for gas and oil or mileage at the rate of 15 cents per mile from Jan. 1 through August 31, 2005 and 22 cents per mile for September 1 through December 31, 2005 and 18 cents per mile for 2006. Travel also includes toll and parking charges.

For moves outside the United States, the taxpayer may deduct amounts paid to pack, crate, move, store, and insure household goods and personal effects. Also, include the amount paid to move personal effects to and from storage and to store them for all or part of the time the new workplace continues to be the taxpayer's principal residence.³

Moving expenses are not deductible to the extent they are allocable to or chargeable against the foreign earned income exclusion.⁴