



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC TECHNICAL ADVICE MEMORANDUM #89-2

TO: Mr. William F. Bray, Director
Office Services Division

FROM: John Swearingen, Manager
Tax Policy and Procedures Department

DATE: January 4, 1989

EFFECTIVE DATE: Applicable to Estate and Fiduciary Returns Filed After December 31, 1987

SUBJECT: Election to Deduct Administration Expense
(Estate Tax/Income Tax)

REFERENCE: S.C. Code Ann. Section 12-15-60 (1976)
S.C. Code Ann. Section 12-7-455 (Supp. 1987)
S.C. Code Ann. Tax Rule 117-87.41 (1976)
Internal Revenue Code Section 642 (1987)
Internal Revenue Code Section 2053 (1987)

AUTHORITY: S.C. Code Section 12-3-170
SC Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Question:

Can a different election be made by the executor of an estate to claim administration expenses as a Federal income tax deduction and then as a South Carolina estate tax deduction?

Discussion:

S.C. Code Section 12-15-60 provides that "the value of the taxable estate shall be determined by deducting from the value of the gross estate the exemptions and deductions allowed for Federal estate tax purposes pursuant to Sections 2051 through 2056, inclusive, of the Internal Revenue Code..."

Internal Revenue Code Section 2053(a) allows the executor to deduct administration expenses from the value of the gross estate. However, Internal Revenue Code Section 642(g) provides that,

"Amounts allowable under Section 2053 or 2054 as a deduction in computing the taxable estate of a decedent shall not be allowed as a deduction...in computing the taxable income of the estate or of any other person, unless there is filed, within the time and in the manner and form prescribed by the Secretary, a statement that the amounts have not been allowed as deductions under Section 2053 or 2054 and a waiver of the right to have such amounts allowed at any time as deductions under Section 2053 or 2054."

The limitation imposed by Internal Revenue Code Section 642(g) was adopted by South Carolina Regulation 117-87.41 which states,

"Amounts allowable under Section 12-15-60 of the South Carolina Estate Tax Code as a deduction for computing the taxable estate of a decedent shall not be allowed as a deduction in computing the taxable income of the fiduciary, unless there is filed with the fiduciary income tax return, a statement that the amounts have not been deducted on the Estate Tax return. This election applies only to administration expenses which include:

- (1) Executor's Commissions;
- (2) Attorney's fees;
- (3) Miscellaneous expenses which qualify as deductions under the Income Tax Code.

Therefore, administration expenses may be considered as a deduction on either the estate tax return or the income tax return, but not both.

S.C. Code Section 12-7-455(1) provides that "any election for federal income tax purposes automatically applies for South Carolina income tax purposes and a taxpayer may not elect differently for South Carolina income tax purposes." Therefore, the executor's decision as to which Federal tax return administration expenses will be deducted is also a determination of which State tax return administration expenses will be deducted. S.C. Code Section 12-7-455(1) precludes the executor from deviating from his or her choice at the Federal level.

Conclusion:

If the executor of an estate elects to take administration expenses as a Federal income tax deduction, the executor may not elect to take the administration expenses as a South Carolina estate tax deduction. S.C. Code Section 12-7-455(1) provides that any election made for federal income tax purposes automatically applies for South Carolina income tax purposes and a taxpayer may not elect differently.