

It's Not Just Estate Taxes that can Help Settle a Will Contest

Legal Alert
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Starting with the obvious, any trust or will contest in which the decedent's estate is large enough to be taxable, and in which the contestant is a surviving spouse, ought to include as part of the settlement conversation how Uncle Sam can contribute to the settlement. This concept recognizes important factors which estate and trust litigators also recognize, including:

- Numbers of decedents die while married to a second, third or fourth spouse;
- Those surviving spouses and the children from the decedent's earlier marriage(s) may not get along;
- Because of the "marital deduction" there won't be an estate tax levied on whatever assets goes to the surviving spouse;
- There may be an estate tax on a settlement paid to a surviving spouse if the IRS isn't convinced she or he had an enforceable claim;
- Educating the surviving spouse and the adverse children on estate taxes and the marital deduction is seldom easy.

But capital gains taxes, real property taxes, and even trust tax rates can also play a role in settling a trust or an estate dispute. Many states reassess for property tax purposes property when it is transferred, even if the transfer is caused by a death. Some states also exempt from reassessment real property interests which pass to a surviving spouse or to children (but not to the caregiver or to siblings or a non-relative).

Examples:

1. I'm familiar with one case in which the ancestral home, but for the settlement, would have gone to the decedent's sister and the annual property taxes would have increased by thousands of dollars. The children were to receive a

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warehouse their dad had recently purchased which already had high property taxes. By swapping inheritances with their aunt, the children got a property they were just as interested in and the difference in value was more than made up for by property tax savings.

2. In another case, a surviving spouse, who had asserted numerous causes of action, found that a settlement which recognized her community property interests in the vacation home afforded her a step-up in basis to the date of death value and gave her the flexibility to sell the property without a significant capital gains hit. It remains to be seen if the taxing authorities (state and federal) and property tax assessor will want to take a look.