The Institute for Advanced Financial Education™

COMMENT

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RIGHTS OR THINGS

In the year of death, a taxpayer will often have several different types of income, such as regular earned income to the date of death, income from the deemed disposition of capital property, and income from the realization of any registered plans. Some income items fall into the definition of a right or thing and may enjoy favourable income tax treatment.

In general terms, a right or thing is a receivable amount that has been earned before the date of death but has not yet been received. Examples of rights or things include dividends that have been declared but are unpaid, matured uncashed bond coupons, and amounts that are payable to an employee at the time of death but that have not yet been paid (for example, salary accrued to the end of the most recent pay period, unpaid commissions or bonuses, and unused vacation pay credits). For individuals on the cash basis of accounting (e.g., farmers and fishers), rights or things will also include harvested crops, livestock, account receivable, supplies on hand, and inventory.

It is important to distinguish a right or thing from other types of income that may be paid on a periodic basis. For instance, a right or thing does not generally include accrued interest because, while it has been earned by the date of death, it is not receivable until the next due date. For employment-related rights or things, the deceased must have had, on the date of death, an enforceable claim to an amount that related to a pay period ending prior to that date. As such, an employee might have accrued employment income as of the date of death, but if the amount would not have been receivable until a later pay day, it is not a right or thing. Capital property, eligible capital property, and income from a registered plan, such as a registered retirement savings plan or registered retirement income fund, are also not considered to be rights or things.

Several options are available to the executor for reporting the deceased's rights or things, and the executor can use the option that is most advantageous. Rights or things can be:

- transferred to a beneficiary who reports the income on his or her return;
- included in an optional tax return on which only the rights or things are reported; or,
- reported on the deceased's final income tax return.

The executor may distribute some, or all, of the rights and things to one or more beneficiaries of the estate. The beneficiary would have to report the income on his or her own tax return and would be liable for any associated income tax. This transfer removes the reporting of those rights or things from the deceased's final tax return and the separate rights or things tax return. For such a transfer to take place, the beneficiary must be entitled to the right or thing and the value thereof as a distribution from the estate. This means that the executor must follow the testator's wishes with respect to the distribution of assets when determining how best to minimize income taxes through a distribution of rights or things.

Rights or things not allocated to beneficiaries may be reported on the deceased taxpayer's final return or a separate rights or things tax return in the year of death. The advantage of using a separate tax return is that it is possible to claim a number of personal tax credits on that return as well as on the deceased's final return. In addition, any taxable income on the separate tax return is subject to its own set of marginal tax rates. If, however, the executor elects to file a separate tax return for rights or things, then all of the rights or things not allocated to beneficiaries must be reported on that separate return.

Planning involves minimizing the overall taxation of rights or things by determining which items and amounts to allocate to beneficiaries and whether to file a separate tax return for the remaining rights or things.

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