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U.S. Tax Court: Estate tax return of predeceased spouse, determining allowable DSUE

The U.S. Tax Court today held that the IRS may consider the estate tax return of a predeceased spouse for purposes of determining the correct amount of the “deceased spousal unused exclusion” (DSUE) allowed the surviving spouse pursuant to section 2010(c)(2)(B).

The case is: *Estate of Sower v. Commissioner*, 149 T.C. No. 11 (September 11, 2017). Read the Tax Court’s [opinion](#) [PDF 91 KB]

Summary

The case concerns the estate of the wife. She was the surviving spouse of her late husband. He died in 2012. When his estate filed its estate tax return, the estate did not use all of the basic exclusion amount allowed under section 2010(c)(3). The IRS sent the husband’s estate a letter informing it that the estate tax return had been accepted as filed.

After the wife died in 2013, her estate sought to use the DSUE reported by the husband’s estate. As part of examining the return for her estate, the IRS examined the husband’s estate tax return and based on that examination, reduced the amount of the DSUE by the amount of taxable gifts given by the husband during his life; however, the IRS did not determine or assess a deficiency against the husband’s estate. Rather, the IRS determined a deficiency against the wife’s estate.

The wife’s estate filed a petition with the Tax Court and asserted that the IRS was barred from considering the estate tax return of the predeceased spouse for purposes of adjusting the amount of the DSUE allowable to the estate of the surviving spouse. The Tax Court disagreed.

The Tax Court held that in determining the correct amount of the DSUE allowable to the estate of a surviving spouse, the IRS may consider the estate tax return of a predeceased spouse.

The court also held that:

- The period of limitations on assessment for the estate of the predeceased spouse (husband) was not implicated because no tax was assessed against the husband's estate.
- The letter informing the husband's estate that its return had been accepted as filed was not a closing agreement and did not preclude the IRS from considering the amount of the DSUE left over from his estate to the estate of the surviving spouse, his wife's estate.

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