# Declaratory Order 2020-02

Request for Ruling Regarding the Estate Tax Treatment of Proceeds from Certain Settlement Claims

## Request for Ruling

The Taxpayer requested a declaratory order ("Ruling Request") to determine what portion, if any, of settlement proceeds received from claims to the Decedent are includable as assets of the Decedent's gross estate and therefore required to be reported on the Decedent's Rhode Island Estate Tax Return.

## Facts

The facts set forth below are taken from the statement of facts presented in the Ruling Request received by the Tax Division on November 20, 2019.

The Decedent died in 2019. Prior to his passing, the Decedent engaged a local law firm to initiate and file personal injury claims on his behalf. After his passing, these claims were amended to include claims for wrongful death and loss of consortium on behalf of his family.

At the time of his passing, the Decedent had not received any proceeds from the original personal injury claims filed by him. After his passing, the Decedent's estate, through his children, continued to pursue these previously filed claims. Subsequent to Decedent's death, the first settlement check issued to the Taxpayer for five (5) of the pending settlement claims. These proceeds were based on awards for personal injury claims, as well as wrongful death and loss of consortium.

There remain several settlement claims that have been processed and are awaiting payment to the Taxpayer. There are several additional claims awaiting processing and even more claims that have been submitted that may or may not be approved. As of the time of the Ruling Request's submission, it was unknown what the total settlement proceeds value was since many of the claims were still pending. The settlement awards do not provide a breakdown of the allocation of proceeds being awarded for personal injury versus wrongful death and loss of consortium.

## Ruling Requested

The Taxpayer seeks a ruling that certain settlement proceeds are akin to wrongful death and/or loss of consortium claims and therefore are not includable as assets of the Taxpayer, i.e. Decedent's estate, and are not required to be reported on the Taxpayer's Rhode Island Estate Tax Return.

## **Pertinent Statutory and Regulatory Law**

R.I. Gen. Laws § 44-22-1(a) imposes a tax "upon the transfer of the net estate of every resident or nonresident decedent as a tax upon the right to transfer." Pursuant to R.I. Gen. Laws § 44-22-1(g)(7), "[t]he estate tax payable on or account of the estate of a decedent whose death occurs on or after January 1, 1992, is determined in accordance with § 44-22-1.1." R.I. Gen. Laws § 44-22-1.1(a)(4) provides that "[f]or decedents whose death occurs on or after January 1, 2015, a tax is imposed upon the transfer of the net estate of every resident or nonresident decedent as a tax upon the right to transfer."

R.I. Gen. Laws § 44-22-1.1 provides that "[f]or decedents whose death occurs on or after January 1, 2002, the terms 'gross taxable estate' [*sic*] 'federal gross estate' or 'net taxable estate' used in this chapter or chapter 23 of this title has the same meaning as when used in a comparable context in the laws of the United States, unless a different meaning is clearly required by the provisions of this chapter or chapter 23 of this title. Any reference in this chapter or chapter 23 of this title to the Internal Revenue Code or other laws of the United States means the Internal Revenue Code of 1954, 26 U.S.C. § 1 et seq., as they were in effect as of January 1, 2001, unless otherwise provided." R.I. Gen. Laws § 44-22-1.1(c)(2).

Pursuant to the Internal Revenue Code ("IRC"), "[t]he value of the gross estate of a decedent shall be determined by including to the extent provided for in [26 USCS §§ 2031 *et seq.*], the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated." 26 U.S.C. § 2031(a). Further, "[t]he value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death." 26 U.S.C. § 2033. Under § 2033, the gross estate of a decedent includes "the value of all property, whether real or personal, tangible or intangible, and wherever situated, beneficially owned by the decedent at the time of his death." 26 CFR § 20.2033-1(a). The Code of Federal Regulations further provides, as a "[m]iscellaneous example[,]" that the decedent's gross estate includes "[i]nterest… accrued at the date of decedent's death…." 26 CFR § 20.2033-1(b).

Where there are "any recoverable damages… for the pain and suffering of the decedent, the value thereof is includible in his gross estate." IRS Rev. Ruling 69-8. Wrongful death proceeds are not includible in a decedent's gross estate; "[h]owever, where it can be established that such proceeds represent damages to which the decedent had become entitled during his lifetime (such as for pain and suffering and medical expenses) rather than damages for his premature death, the value of these amounts will be includible in the decedent's gross estate." IRS Rev. Ruling 75-127. A decedent's gross estate "includes date of death values of all existing claims and choices in action of the decedent that pass to her estate, notwithstanding that they may be contingent and/or uncertain as to amount." *Estate of Houston v. Comm'r*, T.C. Memo 1982-362, 44 T.C.M. (CCH) 284, T.C.M. (RIA) 82362, 1982 Tax Ct. Memo LEXIS 383 (June 28, 1982).

Further, "[t]he date-of-death values of existing claims of the decedent which pass to his estate are includable in the gross estate." *Estate of Curry v. Comm'r,* 74 T.C. 540, 546, 1980 U.S. Tax Ct. LEXIS 118 (June 9, 1980). Additionally, R.I. Gen. Laws § 10-7-10 states that "[a]ll damages recoverable under §§ 10-7-1 – 10-7-4 and under 10-7-7.1 shall be recoverable by and awarded to those beneficiaries as specified in § 10-7-2 and shall not be deemed or considered damages to the estate of the decedent, nor shall they be considered in any way an asset of the estate of the decedent, nor liable to any claims against the estate of the decedent."

## Discussion

In determining the value of a decedent's gross estate, Rhode Island law relies on federal law. Federal law provides that the value of a decedent's gross estate is the value of all property, "real or personal, tangible or intangible," owned beneficially by the decedent at the time of his death. 26 U.S.C. §§ 2031(a), 26 U.S.C. § 2033. IRS Revenue Rulings clearly distinguish settlement proceeds from claims for wrongful death, i.e. a cause of action accruing subsequent to the decedent's death for which the decedent could not make a claim during his lifetime, and settlement proceeds from claims for pain and suffering, or medical expenses, i.e. a cause of action accruing prior to the decedent's death for which the decedent could make a claim during his lifetime.

In your Ruling Request, you acknowledge that the Decedent's lawsuit was initiated during his lifetime for personal injuries. The lawsuit was amended subsequent to the Decedent's death to include claims by his family members for wrongful death and loss of consortium. Settlement proceeds resulting from personal injury claims are of the type includible in the Decedent's gross estate as they existed prior to the Decedent's death. Thus, the values of these existing claims are included in the Decedent's gross estate.

While "[v]aluation for estate tax purposes frequently involves difficult and somewhat imprecise calculations… uncertainties and difficulties encountered in determining value have never been considered justifications for obviating this necessary task." *Estate of Curry*, *supra,* at 547. If no determination as to the apportionment of settlement proceeds between claims for personal injury by the Decedent and claims for wrongful death and loss of consortium by the Decedent's family is provided, then all settlement proceeds received by the Taxpayer are includable in the Decedent's gross estate and must be reported on the Taxpayer's Rhode Island Estate Tax Return. As set forth herein, if there is a determination as to the apportionment of settlement proceeds between claims for personal injury and claims for wrongful death and loss of consortium, only those proceeds apportioned to personal injury claims are includable in the Decedent's gross estate and must be reported on Taxpayer's Rhode Island Estate Tax Return.

## Ruling

The settlement proceeds received from claims for personal injury to the Decedent are includable as assets of the Decedent's gross estate, i.e., the Taxpayer estate, and therefore are required to be reported on the Taxpayer's Rhode Island Estate tax return.

This ruling is limited to the facts stated herein and may be relied upon by the Taxpayer and shall be valid unless expressly revoked because (1) the applicable statutory provisions of law are amended in a manner that requires a different result; (2) the underlying facts described herein materially change; or (3) a decision on point has been issued by the Rhode Island or Federal courts.

Neena S. Savage
Tax Administrator
February 28, 2020