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COMPLIANCE INSIGHT BRIEF

The Executor's Hidden Risk: Personal Liability for Unpaid Federal Taxes

Understanding Federal Tax Priority Rules and the Steps Fiduciaries Can Take to Avoid Personal Financial Exposure

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Executive Summary

Federal tax claims generally take priority over beneficiary distributions and many creditor claims. Executors who distribute assets prematurely may become personally liable for unpaid taxes under 31 U.S.C. § 3713. Strategic use of IRS Forms 4810 and 5495 can help expedite tax clearance and protect fiduciaries from personal financial exposure.

Key Takeaway: Don't distribute first and ask tax questions later.

Fiduciary Personal Liability Under 31 U.S.C. § 3713

When administering an estate, an executor's primary duty is to settle debts and distribute assets to beneficiaries. However, making distributions too quickly poses a severe financial risk: **personal liability for unpaid federal taxes.**

Under the **Federal Priority Statute (31 U.S.C. § 3713)**, claims of the United States Government must be paid first before any other debts or distributions.

The Trap of Personal Liability

If an executor distributes estate assets to beneficiaries or pays non-priority debts (such as credit cards or general claims) when the estate has outstanding tax obligations to the IRS, **the executor becomes personally liable** for those taxes under § 3713(b).

This liability applies to the extent of the distributions made if two conditions are met:

1. The estate was insolvent at the time of the distribution or became insolvent as a result of it.
2. The executor had actual or constructive knowledge of the tax debt.

Because the IRS can pursue the executor's personal assets—bank accounts, real estate, and investments—executors should never distribute estate assets until all federal income, gift, and estate tax liabilities are fully resolved.



Accelerating Tax Clearance: Forms 4810 and 5495

Normally, the IRS has three years from the filing date of a tax return to assess additional taxes under **IRC § 6501**. For an executor waiting to close an estate, a three-year window creates significant administrative delay.

1. Form 4810: Request for Prompt Assessment (IRC § 6501(d))

- **Scope:** Covers income tax returns (Form 1040 for the decedent, Form 1041 for the estate) and gift tax returns (Form 709).
- **Effect:** Shortens the standard 3-year audit window down to **18 months** from the date the written request is received by the IRS.

2. Form 5495: Request for Discharge from Personal Liability (IRC § 6905 / § 2204)

- **Scope:** Requests discharge of the executor's personal liability for the decedent's income, gift, and estate taxes.
- **Effect:** The IRS must notify the executor of any tax due within **9 months** for estate taxes (under § 2204) or **6 months** for income/gift taxes (under § 6905). Once the executor pays that amount (or if the IRS fails to respond within the timeframe), the executor is personally discharged from liability.

Practitioner Takeaway: Filing Forms 4810 and 5495 does not prevent the IRS from pursuing remaining estate assets or beneficiaries if additional tax is later found, but it creates a legal liability shield for the executor—allowing them to distribute assets safely without risking personal ruin.

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Schedule a consultation to discuss your compliance needs.