

General Information Letter: Person who voluntarily filed return and paid tax on behalf of a decedent is neither liable for underpayment of tax nor entitled to a refund of voluntary payments made.

October 7, 2002

Dear:

This is in response to your letter dated July 8, 2002 addressed to Paul Caselton. Mr. Caselton has forwarded your letter to me for a response. Your letter states as follows:

I spoke to you on the phone not long ago about my situation in regard to my deceased father's state income tax of 2001. I paid part of his tax but now need to know if I qualify for a refund since I may not have been required to pay it since all money I inherited from my father was acquired through joint tenancy with rights of survivorship or as a beneficiary or joint account holder. My father did not write a will and there was not any estate established formally with an executor etc. What I inherited consists of:

1. a tax sheltered annuity and IRA account. This was established, I think, through his employer, a state university. I inherited this as a beneficiary.
2. a money market account at a bank. I inherited this through joint tenancy with rights of survivorship.
3. life insurance through his employer which was a state university. I was a beneficiary.
4. a certificate of deposit in which I am the sole living account holder.

Enclosed are copies of both state and federal income tax returns and the notices I received from the state of Illinois. I hope they will help you to determine if I am liable to pay this tax. If I am not liable I hope I can get a refund since I am now only working part time and do not have any financial resources at all besides my savings because I am single and have yet to establish myself in a career, this being delayed partly due to my father's illness. Please let me know whether I am liable or not liable to pay my father's state income tax. Please send me the letter ruling. If you need any more information please let me know.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Section 1405 of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 et seq.) addresses "Transferee Liability." In short, transferee liability is the liability of a transferee of property of a taxpayer who owes Illinois income tax, interest and penalty. Section 1405 states as follows:

The liability of a transferee of property of a taxpayer for any tax, penalty or interest due the Department under this Act, shall be assessed, paid and collected in the same manner and subject to the same provisions as in the case of the tax to which the liability relates, except that the period of limitations for the issuance of a notice of deficiency with respect to such liability shall be as provided in Section 905(m). The term "transferee" includes donee, heir, legatee and distributee and bulk purchasers under Section 902(d).

Generally the above statute allows the Illinois Department of Revenue to collect taxes, interest and penalties owed by a decedent from each transferee of the property owned by the decedent prior to his death to the extent of the property received by each transferee. The above statute does not mention "beneficiary" as a possible term that could be used to describe "transferee". Thus, as a beneficiary of proceeds from an annuity and an IRA account, you will not be considered a "transferee" for purposes of the IITA. However, these proceeds are included in your gross income for the year you received these proceeds and you must pay income taxes accordingly. IRC § 408(d).

Your letter indicates that you were also a "beneficiary" of your father's life insurance that, again, does not make you a transferee. There is further support protecting you from becoming a transferee as a result of the proceeds received from your father's life insurance: according to IRS Letter Ruling 9851036, a life insurance beneficiary is not liable as a transferee in equity for an insured's tax liabilities except to the extent provided by applicable local law. As I am unable to find an Illinois law to contradict the general treatment under federal law, you are not a transferee for purposes of the income you received from the life insurance at issue. Unlike the annuity and IRA accounts, life insurance proceeds paid by reason of death are excluded from gross income so that you will not pay taxes on the proceeds you received from the life insurance. IRC § 101(a),

With respect to your money market held in joint tenancy with rights of survivorship, there was no "transfer" of money. When a joint tenancy is created, each tenant acquires an undivided interest in the entire property so that when one joint tenant dies, nothing is transferred to the survivor because the survivor already has an interest in the entire property. As a result, the surviving joint tenant is not liable for a decedent's income taxes because the surviving joint tenant is not a "transferee". (This would not be true if fraud is involved.)

The explanation in the aforementioned paragraph is also applicable to the certificate of deposit. As a joint account holder of the certificate of deposit, the funds therein were not "transferred" to you. Without a "transfer" of funds, you cannot be a "transferee" as required by IITA § 1405.

Your letter asks whether you may receive a refund if you are found not to be responsible for the payment of your father's taxes. Any specific payments received from a person not liable for the specific tax liability is considered to be a voluntary payment. You sent in a payment along with your father's final tax return for the exact amount owed according to the return that was filed and processed. This is considered a specific payment for a specific tax liability. Illinois law does not allow for refunds of voluntary payments even if made erroneously. For example, in 1979 an Illinois Appellate court held that taxes voluntarily paid cannot be recovered or refunded unless a statute expressly authorizes such recovery or refund. Aldens, Inc. v. Rosewell, 71 Ill.App.3d 754, 390 N.E.2d 476 (1st Dist. 1979). See also Inland Real Estate Corp. v. Oak Park Trust and Sav. Bank, 127 Ill.App.3d 535, 469 N.E.2d 204 (1st Dist. 1983); Jansen Real Estate Corp. v. Cullerton, 49 Ill.App.3d 231, 364 N.E.2d 905 (1st Dist. 1977) (taxes voluntarily paid may not be refunded regardless of validity of claim.) There is no Illinois law that allows for a refund in your situation.

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In conclusion, you are not liable for your deceased father's Illinois income tax liability. However, you are not entitled to a refund for the amount you have already paid. As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott
Staff Attorney -- Income Tax