Heirs Ready $15 Million Fight With IRS Over Grantor Trust Status

by Andrew Velarde

An estate's heirs are braced to fight a $15 million jeopardy assessment from the IRS allegedly stemming from a mistake in classifying a foreign trust as a grantor trust and a closed statute of limitations.

Gunter A. Geiger's son (Grant) and widow (Margie) filed separate district court complaints on May 1 in the U.S. district courts for the Southern District of Florida and Eastern District of Pennsylvania in *Geiger v. United States*. The complaints ask the district courts to determine that a $15 million jeopardy assessment made against them, including approximately $9 million in penalties, is unreasonable and should be abated.

At the center of the dispute is the classification of World Capital Foundation (WCF) as a grantor trust rather than a non-grantor trust. Grant alleges that the IRS used the misclassification to make up for lost revenue from an expired statute of limitations. A non-grantor trust would result in a refund due to the estate, which had a $3 million advance payment on account with the IRS, according to Grant.

WCF was a Liechtenstein foundation formed by Grant's grandfather. According to Grant's complaint, after his grandfather's death, the funds transferred to Gunter in 2011. Gunter was accepted into the offshore voluntary disclosure program in 2012, and he made $1.9 million in payments toward any liability. In filing forms 1040, 3520, and 3520-A for 2003 to 2010, Gunter incorrectly reported WCF as a grantor trust.

There is a substantial difference in tax treatment between a grantor trust and a non-grantor trust. For a grantor trust, Gunter was treated as the owner of all WCF's income and was required to report it on his tax return as well as be responsible for a mark-to-market exit tax when he expatriated. For a non-grantor trust, he was only responsible for taxable portions on distributions made and a 30 percent withholding tax on distributions made after expatriation.

Grant's complaint argues that whether WCF was a grantor trust depends on whether Gunter created or made gratuitous transfers or whether he had the sole right to vest its income or corpus to himself.

The complaint states that the improper classification was discovered quickly and a WCF council member attested that Gunter lacked control. In 2014 Gunter filed protective refund claims for 2003 to 2010. In 2013 the IRS asked for an extension of the statute of limitations on assessments for 2010 and 2011, but the form was never executed. Gunter died in 2015. In 2017 the assets from the estate were distributed to Grant and Margie.

Getting to the Bottom of the 'Flip-Flop'

Grant realized that the OVDP process was not finished and held back $780,000 to cover potential liability, his complaint states. In 2020 he submitted an amended OVDP package, treating WCF as a non-grantor trust, and the IRS "without explanation" revoked its 2019 decision to treat it as such.

"Despite numerous requests to explain the reason for reversing its decision on non-grantor status, the IRS never provided any reason for its flip-flop," Grant's complaint states.

The IRS later offered the estate three options on how to proceed, the complaint outlines. First, it could stay in the OVDP and be treated as a grantor trust with more than $6 million liability, as opposed to being owed a refund as a non-grantor trust. Second, it could stay in the OVDP as a non-grantor trust and expand the covered period to include 2011 and tax on accumulated distributions from WCF, leading to a $20 million liability. Third, it could be removed from the OVDP and be subject to exam and penalties for not filing forms 3520, 3520-A, and 5471, which could lead to a liability exceeding the value of the foreign assets.

Grant argues that the latter two options "made no economic sense, a fact that the IRS must have known."

"The IRS presented these three offers, which were clearly intended to put pressure on Grant to settle for the first option," the complaint states. "By this approach, the IRS would obtain tax revenue from tax years 2003 through 2010 in excess of $6,000,000, which includes the 'exit tax' on Gunter's expatriation in 2010. This approach would in part make up for lost revenue from tax

year 2011 . . . which was then barred by the statute of limitations."

Although the estate cooperated in additional negotiations, according to the complaint, it was removed from the OVDP.

'Dragging Its Feet'

Bypassing normal assessment and collection procedures, jeopardy assessments under section 6861 are used by the IRS when tax collection would be endangered if normal assessment and collection measures were used.

The IRS commenced jeopardy assessment procedures in December 2023, though both Grant and Margie find the measure inappropriate in their circumstances. Margie's complaint argues that the "drastic" procedure is reserved for situations in which a taxpayer is looking to quickly flee the United States or place their assets beyond the reach of the government, or when financial solvency is at risk.

"The Treasury Regulations reference actions a taxpayer is currently taking or planning to take. They are not applicable to situations where a taxpayer, like Plaintiff here, long ago is alleged to have transferred property to a trust for estate planning purposes," Margie's complaint states. "The Jeopardy Assessment here does not identify any current exigency putting the collection of Plaintiff's federal tax liabilities as a transferee in jeopardy. Indeed, the Jeopardy Assessment issued to Plaintiff contains almost no analysis of why a jeopardy assessment is reasonable against her as an alleged transferee."

Both Grant and Margie argue that they are U.S. residents not looking to flee. There have been no actions taken to conceal funds or transfer them offshore. The transfer to Wyoming trusts from the estate, which took place in 2017, was merely wealth planning, according to Grant, and it was when the estate's assets were distributed to the beneficiaries that Grant put the IRS on notice of the estate's liquidation. The Wyoming trusts were willing to return trust assets to pay OVDP liability, Grant's complaint states, and the IRS was aware of the transfer from the estate years before issuing jeopardy assessments.

"The very factors that the IRS states support a jeopardy assessment — liquidation and distribution of Estate assets and the fact that the Estate has no assets — have been in place and basically unchanged for more than six years," Grant's complaint states. "After dragging its feet for years in the OVDP process, the IRS once again drug its feet and waited to make the Jeopardy Assessments."

Not a Deficiency

Both Grant and Margie argue that there is an improper assessment of information return penalties under the IRS's jeopardy assessment. Penalties, including the $8.5 million for failure to file forms 3520 and 3520-A, are not deficiencies for purposes of section 6861, they argue. Further, as Grant points out, Form 3520-A is needed only for grantor trusts.

Both complaints also cite *Farhy v. Commissioner*, 160 T.C. No. 6 (2023), to attack the assessment of penalties for not filing Form 5471.

In *Farhy* the Tax Court held that the IRS could not assess penalties under section 6038(b) against a taxpayer for his failure to file Forms 5471. Unlike with other code provisions, Congress had not explicitly authorized assessment for those penalties, the court reasoned.

Grant also argues that the accuracy-related penalty needed managerial approval, and there was no evidence that was obtained.

Related litigation is proceeding in the Tax Court as well.

In *Gunter Grant Geiger v. United States*, No. 9:24-cv-80562, the taxpayer is represented by Morgan L. Swing and Thomas W. Ostrander of Duane Morris LLP. In *Margie Lance-Geiger v. United States*, No. 2:24-cv-01855, the taxpayer is represented by Ian M. Comisky of Fox Rothschild LLP. ■