

# Valuing and Reporting Unharvested Crops At Death

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The valuation of unharvested crops and their reporting for federal income tax reporting purposes is an important issue for estates of decedents dying during the growing season.<sup>1</sup> The treatment of unharvested crops at death depends upon whether the decedent was a farm operator, a materially participating landlord or a non-materially participating landlord.<sup>2</sup>

## **Farm operators and materially participating landlords**

As with all property interests held at death, unharvested crops for a decedent who was a farm operator at death or a materially participating landlord at death<sup>3</sup> are valued for federal estate tax purposes at their fair market value as of the date of death<sup>4</sup> or as of the alternate valuation date.<sup>5</sup> That valuation (date of death or alternate valuation date) determines also the income tax basis of the unharvested crops with the alternate valuation date value relating back to the date of death.<sup>6</sup>

Crops that are growing crops at the date of death are “included” property and are valued at fair market value as of the applicable valuation date (date of death, date of disposition or value six months after death).<sup>7</sup> Property interests existing at the date of death are considered included property for purposes of alternate valuation and remain subject to alternate valuation rules even though the asset may change in form.<sup>8</sup> Crops that were planted after the date of death are considered “excluded” property and are not reported for federal estate tax purposes and do not receive a new income tax basis related to the death of the decedent.<sup>9</sup> No allocation is made on later sale between the decedent’s final income tax return and the decedent’s estate with all gain in excess of the date of death basis reportable by the decedent’s estate or the heirs.<sup>10</sup>

The valuation of unharvested crops is usually determined, as of the date death, by appraisal or by discounting the harvest yield back to the date of death by taking into account the risk of crop loss between the date of death and the date of harvest by fire, wind, or other hazard and the risk that the crop because of adverse weather conditions or other factors may not reach the projected harvest yield.

## **Non-materially participating landlords**

For landowners who are not materially participating under a share rent lease,<sup>11</sup> the valuation of interests in an unharvested crop at the date of death is handled in the same manner as for farm operators and materially participating share rent landlords. However, the treatment of the gains is different.

First, growing crops and stored crops for a non-materially participating landowner are considered to be income-in-respect-of-decedent<sup>12</sup> as to share rents which the decedent had a right to receive at the time of death for economic activities occurring before death.<sup>13</sup> The portion of the proceeds allocable to the period before death is income-in-respect-of decedent and does not receive a new income tax basis at death.<sup>14</sup> That portion is also includible in the gross estate for federal estate tax purposes as accrued rent.<sup>15</sup> The remaining amount represents ordinary income earned by the estate after the decedent’s death.<sup>16</sup> The proceeds of sale are apportioned according to the number of days in the rental period ending with the date of the decedent’s death (for the income-in-respect-of-decedent amount) and from the day after death to the end of the rental period for the ordinary income to the estate.<sup>17</sup> The allocation procedure has been criticized by at least one commentator.<sup>18</sup>

## **Material participation is not an election**

The issue of whether a relationship of a landlord to the tenant under the lease is a material participation arrangement (which means self-employment tax is imposed during life and a new basis is received at death) or a non-material participation arrangement (no self-employment tax during life but no new basis at death) is not an election, however. It is a facts and circumstances matter.<sup>19</sup>

This appears to be an area where the activities of an agent or employee can be imputed to the principal (the decedent-to-be) inasmuch as it has been the general rule that, unless a statute or regulation bars imputation, the activities of an agent or principal can be imputed.<sup>20</sup> Therefore, if a family member, for example, can be involved in management for some substantial period before death, that could convert the lease to a material participation lease.

## **ENDNOTES**

<sup>1</sup> I.R.C. §§ 2031, 2033. See generally 4 Harl, *Agricultural Law* § 27.03[11][a] (2010); 5 Harl, *Agricultural Law* §§ 43.02[1][b], 43.03[1] (2010); Harl, *Agricultural Law Manual* § 5.03[1] (2010); 1 Harl, *Farm Income Tax Manual* § 2.10[3] (2010 ed.).

<sup>2</sup> See 1 Harl, *Farm Income Tax Manual* § 2.10[3] (2010 ed.).

<sup>3</sup> See I.R.C. § 1402(a)(1).

<sup>4</sup> I.R.C. § 2031.

<sup>5</sup> I.R.C. § 2032.

<sup>6</sup> I.R.C. § 1014(a)(2).

<sup>7</sup> Rev. Rul. 58-436, 1958-2 C.B. 366.

<sup>8</sup> Treas. Reg. § 20.2032-1(d).

<sup>9</sup> *Id.*

<sup>10</sup> See Treas. Reg. § 20.2031-1(b).

<sup>11</sup> I.R.C. § 1402(a)(1). See *Estate of Davis v. United States*, 68-2 U.S. Tax Cas. (CCH) ¶ 9483 (S.D. Ill. 1968).

<sup>12</sup> I.R.C. § 691(a).

<sup>13</sup> Rev. Rul. 64-289, 1964-2 C.B. 173. See *Davison v. United States*, 292 F.2d 937 (Ct. Cl.), *cert. denied*, 368 U.S. 939 (1961). See also *Gavin v. United States*, 113 F.3d 802 (8th Cir. 1997) (no mention of whether lease was material participation or non-material participation).

<sup>14</sup> I.R.C. § 1014(c).

<sup>15</sup> See I.R.C. § 2031(a).

<sup>16</sup> See Rev. Rul. 64-289, 1964-2 C.B. 173.

<sup>17</sup> *Id.*

<sup>18</sup> 1 Harl, *Farm Income Tax Manual* § 2.10[3][b] (2010 ed.).

<sup>19</sup> 1 Harl, *Farm Income Tax Manual* § 2.10[3][e] (2010 ed.).

<sup>20</sup> See 5 Harl, *Agricultural Law* § 41.06[1] (2010).

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