

Will the Unpaid Portion of a Note be excluded from my Estate if it is forgiven in my Will?

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Unfortunately, the answer is no. Notes that are canceled by a decedent's will are to be included in the decedent's gross estate. (*Estate of Buckwalter v. C. I. R.* (T.C. 1966) 46 T.C. 805.) In *Buckwalter*, the decedent's son was indebted to a bank. The decedent proposed a deal whereby he would pay off this debt. The son would then make the monthly payment he would have otherwise made to the bank to the decedent, but at a lower interest rate. The agreement was outlined in two separate letters (agreement letters). However, the agreement was to be kept a secret as to avoid paying personal property taxes each year. The decedent indicated that the loan would be totally forgiven should the decedent die before the loan was paid in full.

The agreement letters, along with a payment schedule, were placed in the decedent's lock box with instructions that they be given to the son upon the decedent's death.

The court found that the son was not relieved of the debt until he was able to remove the letters from the lock box after the decedent's death thereby destroying the evidence of the loan. Therefore, until his death, the decedent could have revoked his promise to forgive the debt and made the son liable to the estate. The court said that the decedent maintained control over the entire debt until his death. This gave the decedent the requisite interest in the unpaid portion of the note to include that amount in his estate under **§ 2033**.

Leaving the note or canceling the note in a testamentary instrument would be very similar. A testator would be able to change this debt forgiveness at any time up until his death. This would similarly give him the requisite interest in the note in order to have the note included in his estate under **§ 2033**.

Other estate planning strategies, such as self-canceling installment notes (SCIN), Grantor Retained Annuity Trusts (CRAT), or Grantor Retained Unitrusts (CRUT) may provide the desired effect. However, these instruments have strict standards and can be corrupted if setup inappropriately.

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