***Bank of the West, Trustee, Executor and Fiduciary of the Estate of George W. Milias v. Commissioner of Internal Revenue, 93 T. C. 462 (1989)***

A fiduciary can be held personally liable for unpaid estate taxes and penalties if it distributes estate assets without paying the tax, even if the tax return was not timely filed.

**Summary**

Bank of the West, as executor of the Estate of George W. Milias, filed an untimely estate tax return and distributed the estate's assets without fully paying the reported estate tax. The court held that the executor was liable for the unpaid estate tax, penalties for late filing and payment, and interest under 31 U. S. C. sec. 3713(b), because it failed to demonstrate that the estate tax return overstated the value of the decedent's property interests. The court rejected the executor's argument that a later sale of a life estate indicated a lower valuation, emphasizing the executor's failure to substantiate the sale's relevance to the valuation at the time of death.

**Facts**

George W. Milias died on October 1, 1977. Bank of the West, as executor, obtained two extensions but filed the estate tax return late on January 22, 1979, reporting a tax liability of $102,356. The return valued Milias' fractional interests in real estate at $447,879. 47, including $409,062 for a 1/8 interest in the Milias Ranch and Bloomfield Road properties. The executor paid only 10% of the tax and requested to pay the rest in installments. An amended return was filed in July 1979, attempting an untimely special use valuation election under section 2032A. In December 1980, the executor sold Mrs. Milias' life interest in the properties to Mrs. Silacci for $150,000, who also relinquished her remainder interest in the estate. The estate was fully distributed in October 1981, and the Commissioner assessed the executor for the unpaid tax, penalties, and interest in 1988.

**Procedural History**

The Commissioner assessed Bank of the West for the unpaid estate tax, penalties for late filing and payment under section 6651(a)(1) and (2), and interest in 1988. The executor petitioned the U. S. Tax Court to contest the liability. The Tax Court upheld the Commissioner's assessment, finding that the executor failed to prove the reported value of the real estate was overstated and that it was liable as a fiduciary for distributing the estate without paying the tax.

**Issue(s)**

1. Whether the fair market value of the decedent's interest in the Milias Ranch and Bloomfield Road properties was overstated on the estate tax return.
2. Whether the executor is liable for the addition to tax under section 6651(a)(1) for

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failure to file a timely estate tax return.
3. Whether the executor is liable for the addition to tax under section 6651(a)(2) for failure to pay the estate tax on time.

## Holding

1. No, because the executor failed to prove that the $409,062 value reported on the original and amended returns was erroneous.
2. Yes, because the executor did not show reasonable cause for the late filing, and the addition to tax was properly assessed.
3. Yes, because the executor did not show reasonable cause for failing to pay the tax shown on the return, and the addition to tax was properly assessed.

## Court’s Reasoning

The court applied the rule that a fiduciary can be personally liable under 31 U. S. C. sec. 3713(b) for distributing estate assets without paying the tax. The executor’s argument that the later sale of the life estate indicated a lower valuation was rejected because the sale occurred three years after the decedent’s death, involved a family member, and did not provide a reliable indicator of the property’s value at the time of death. The court also found that the executor’s attempts to elect installment payments under section 6166 and special use valuation under section 2032A were invalid due to late filing. The executor failed to show reasonable cause for late filing and payment, leading to the imposition of penalties under section 6651(a)(1) and (2). The court noted that the executor had knowledge of the unpaid tax and should have paid it before distributing the estate assets.

## Practical Implications

This decision underscores the importance of fiduciaries ensuring that estate taxes are fully paid before distributing assets. It clarifies that fiduciaries cannot rely on subsequent sales or valuations to challenge the tax liability if they fail to timely file and pay the estate tax. Practitioners should advise executors to file returns on time, even if based on estimated values, and to pay the tax shown on the return before distributing the estate. This case also highlights the strict application of penalties for late filing and payment, emphasizing the need for careful estate administration. Later cases have continued to apply this principle, reinforcing the fiduciary’s duty to prioritize the payment of estate taxes.

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