

Estate Planning for the Entertainer or Athlete

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Jimi Hendrix is considered one of the greatest electric guitarists of all time. In his short career, Hendrix charted multiple hits, and *Guitar World* ranks six Hendrix recordings among the greatest 100 guitar solos of all time. His legacy endures today. He died intestate (without a will) in 1970 in London. Under New York's intestacy statute, the state of his legal domicile, his estimated \$80 million estate went to his father, Al Hendrix. Al Hendrix then established Experience Hendrix, LLC, to handle the rights inherited from his son. In a codicil to his will, Al disinherited Jimi's brother Leon. A business partner of Leon later formed Electric Hendrix, LLC, for the purpose of selling liquor under the mark "Hendrix Electric Vodka." Experience Hendrix, which owned at least 48 registered Hendrix trademarks, did not license or consent to the use of "Electric Hendrix" to sell vodka. Experience Hendrix sued Electric Hendrix.¹ One of the arguments of the defendants was that the estate of Jimi Hendrix had abandoned its marks by failing to properly exercise quality control over Hendrix products. The court disagreed, noting that the estate was careful to approve any products using his name. The court also rejected the claim that because when he died he was domiciled in New York, any rights of publicity to his name and likeness terminated under New York law upon his death. The court noted that trademark and rights of publicity exist independently, and any purported termination of publicity rights (discussed later in this article) did not impact the trademark rights at issue.

When Marilyn Monroe died of a drug overdose in 1962 at the age of 36, her will left to Lee Strasberg her personal effects, which amounted to just over half of her residuary estate. She expressed her desire that he "distribute the [effects] among my friends, colleagues and those to whom I am devoted." Instead, he stored them in a warehouse and bequeathed them to his widow, Anna. After Anna successfully sued Los Angeles-based Odyssey Auctions in 1994 to prevent the sale of items taken by Monroe's former business manager Ines Melson, Christie's auctioned the bulk of the items for Anna in October 1999, including those recovered from Melson's family, netting \$13,405,785. Anna then sued the children of four photographers to determine rights of publicity. Because this is a state law right, the issues turned on whether Monroe was a domiciliary of California, where she died, or New York, where her will was probated. California recognizes a postmortem right of publicity, while New York does not, a difference worth millions. On May 4, 2007, the U.S. District Court for the Central District of California determined that Monroe's right of publicity ended at death under New York law.²

Estate planning for the entertainer, athlete, performer, or creative client can present unique challenges, particularly with the handling of intellectual property. Unique planning is encountered with compositions, manuscripts, collections, and other creative inventions, and the right to publicity for well-known clients. This article will provide a brief overview of some of the specialized rules and options available when advising our creative and/or famous clients.

BASIC ESTATE PLANNING

As with any estate plan, there are certain basic recommendations and documents that should be completed. For attorneys, these include health care directives and financial powers of attorney in case of disability, and a will or trust for handling of the assets and beneficiaries upon disability or death. We also look for alignment with other advisors for money management, risk management, and tax planning. After the legal documents are complete, the next step is to make sure that the ownership and/or beneficiary designations on all assets have been consistently structured to accomplish the goals incorporated into the estate planning documents. In addition, the ownership issue also can ensure that the client's estate will not be subject to probate in the local jurisdiction. Each state has its own statutes for achieving nonprobate transfers with common techniques including payable on death designations for bank accounts, transfer on death designations for securities and brokerage accounts, various types of deeds for real estate, assignment documents for tangible and intangible personal property, and entity documents for business interests. Most of us are familiar with the use of beneficiary designations on life insurance, annuities, and retirement plans. It is important to advise the client on all pieces of the plan to make sure they understand how the different parts are coordinated.

Inventory

Before deciding on an appropriate plan, the first step is to determine the client's financial position, family and financial priorities, and legacy goals. Next, identify the assets and liabilities, and roughly value the assets to determine the significance of each and the overall net worth of the client. Valuation can be a challenge for creative works or unique items owned by the creator. If the estate is in excess of the federal estate tax exemption (\$5 million in 2011 and 2012) or the state exemption (as low as \$675,000 in states that have a separate estate tax), there should be transfer tax discussion and planning included in the overall plan. Currently, the federal law is temporarily effective for 2011 and 2012, with the exemption scheduled to revert back to \$1 million in 2013. This is the amount a client can transfer estate tax-free to individuals, with an unlimited amount to a surviving spouse³ or qualified charities.⁴ In states such as Minnesota and New York (and about 18 other states), there is a separate state transfer tax that can take on several different forms. In Minnesota and New York, for example, the estate tax is assessed on cumulative transfers to beneficiaries in excess of \$1 million at death. Steps should be taken to make sure that the estate tax exemption is fully utilized at the first death, and that the survivor's estate is not unduly burdened with additional wealth taxed upon the survivor's death. Further discussion of transfer tax planning is beyond the scope of this article.

Creative Works

Intertwined with the planning is the issue of what to do with the intellectual property. If a plan is not in place for the intellectual property, it is typical that the beneficiary may have to decide

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whether to discard it, try to sell it in part or as a whole, or give it to a nonprofit organization. Major issues will include how to dispose of it, how to value it for tax purposes, and how to pay any taxes that are due. Similar to many of our business clients, the artistic clients are typically interested in producing the product rather than working on an inventory or discussing its disposition after they are gone. Many consultants recommend that the owner not assume that the beneficiaries will know anything about how to handle the property, and will need direction hopefully from the owner as to the steps to follow. Family members may be relieved to know the owner has left explicit instructions on how to dispose of the property, and perhaps which items to discard.

Another misconception is that everybody knows what it is worth, although in many cases it can be a fairly unique product without a ready market for valuation. Frequent mistakes might be undervaluing the property and donating it to charity or possibly overloading the market with a unique property that ends up devaluing its worth. In some cases there also can be very costly litigation.

Administration

One technique for disposition might be to set up a private foundation,⁵ which typically receives its major funding from one donor but must benefit the public in order to receive tax-exempt status. The foundation may be funded with the property itself or by the proceeds of the sale. To avoid probate, many plans also are structured with a revocable living trust, which is recognized in all 50 states. The property can be transferred into the trust during lifetime, and if the client becomes incapacitated or dies, the trustee can sell or donate the property to benefit the intended beneficiaries. With intellectual property, it is important to appoint a personal representative (executor) or other agent who is knowledgeable about the client's talent, expertise, and work product. With artwork, for example, the personal representative might arrange shows of the artist's work, or make targeted gifts to charitable institutions, museums, or art schools. It is important for a personal representative to recognize that he or she serves in a fiduciary⁶ capacity and must protect the beneficiary's interests. To be helpful, the owner might approach organizations ahead of time about accepting his or her work, and it also can be helpful for the owner to discard any work he or she does not want to be made public. It can be very difficult for personal representatives, families, or beneficiaries to make those decisions.

TRANSFER

In most cases, tangible personal property (such as artwork, collections, and other physical items) can be transferred through an assignment document and by direct reference in a testamentary instrument such as a will or trust. Intangible⁷ personal property, which typically would include securities, copyrights, royalties, patents, personal service contracts, installment obligations, life insurance and annuity contracts, and partnership interests, can be transferred by following specific formalities that apply for each. In many cases, intangible property might be "bundled" with tangible or real property (e.g., a work of art and its copyright; mineral rights, land, and real property from which the minerals are derived; etc.). While transfer of these interests may be restricted by contract, interests also may be subject to statutory limitations.

Right of Publicity

Some clients will enter into profitable merchandising contracts

that provide for the use of the client's name and likeness in connection with posters, games, toys, and other similar products. A number of states recognize this right of publicity as a right that can be passed on to the client's heirs.⁸ In *Estate of Andrews*,⁹ the only case that has dealt with the right of publicity for federal estate tax purposes, the court agreed with the IRS position that the "name and likeness" was an asset that can be valued for estate tax purposes, but disagreed with the IRS position on how to value the asset. In this case involving the estate of a well-known author, the valuation issue focused on the rights of the estate to hire a ghostwriter to write the books that the author had agreed to produce but had not completed prior to death. A ghostwriter was hired who wrote several successful books, and the IRS argued that the estate tax valuation should be based on the actual value of all of the books written after the taxpayer's death. The court instead determined that the value should be based on the facts known at the date of death, which was what a willing buyer and a seller would have negotiated based on the possibilities for success or failure of the first book. There have been no reported cases since then, although there continues to be a risk that the IRS would assess an estate tax value for the right of publicity of prominent clients. The taxation rates would presumably follow those described for copyrights.

Copyrights

Under Title 17 of the U.S. Code, the holder of a copyright has the exclusive right to: (1) reproduce the copyrighted work in copies or phono records; (2) prepare derivative works based upon the copyrighted work; (3) distribute copies or phono records of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending; (4) perform the copyrighted work publicly in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works; (5) display the copyrighted work publicly in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and (6) perform the copyrighted work publicly by means of a digital audio transmission in the case of sound recordings.¹⁰ Title 17 was revised in 1976, and for works created on or after January 1, 1978, the duration of the copyright endures for a term consisting of the life of the author and 70 years after the author's death.¹¹ In the case of a joint work prepared by two or more authors who did not work for hire, the copyright endures for a term consisting of the life of the last surviving author and 70 years after such last surviving author's death. In the case of an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term 95 years from the year of its first publication, or a term of 120 years from the year of its creation, whichever expires first.¹² For works created before January 1, 1978, the duration of the copyright depends on when the work itself was published or copyrighted.¹³

Copyright Transfer

The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or passed as personal property by the applicable laws of intestate succession.¹⁴ Such transfers must be evidenced in writing by instrument of conveyance, or a note or memorandum of the transfer, which is signed by the copyright owner or owner's agent.¹⁵ The final step in transferring a copyright involves sending

the original or a certified copy of the original instrument of transfer to the Register of Copyrights, along with the applicable fee.¹⁶ The document will be returned with a certificate of recordation.¹⁷

Termination of Transfer

The copyright law gives an author a right to terminate any grant or license executed by him or her regardless of whether the grant or license is for exclusive or nonexclusive rights to the work.¹⁸ The right to terminate cannot be waived in advance or contracted away.¹⁹ There is a five-year window during which the grant or license can be terminated, beginning 35 years after the date of the grant or license.²⁰ The notice giving termination of the grant or license must specify a termination date that falls within the five-year period, and the notice must be served not less than two years or more than 10 years before the termination date.²¹ If the author has exercised the termination right before he dies (regardless of whether the termination date has occurred), or, alternatively, if the author dies after the time for giving the termination notice has expired (i.e., after year 37), there is no particular estate planning problem. The problems arise if the author dies before year 25 (before his termination right becomes exercisable), or dies between years 25 and 38 without having given notice of termination.²² In such a case, the statute provides that the author's surviving spouse and descendants jointly have the termination right, with the surviving spouse having a 50 percent right (or 100 percent if there are no descendants) and the descendants per stirpes having the other 50 percent (or 100 percent if there is no surviving spouse). The notice of termination can be effected only by those persons who hold a majority of the termination rights.²³ Unless the author exercises the termination right, the author has no ability to change the statutory structure providing the surviving spouse and/or descendants have the same ownership interest as the author had in the termination right.²⁴

Trademarks

Trademarks consist of words, names, symbols, or devices, or any combination thereof, that are used by consumers to identify products and/or services and distinguish them from competing products or services. Trademark law has its roots in consumer protection. The purpose of trademark law is to prevent customer confusion regarding the source of goods and services and the affiliation of companies and to provide indicia of consistent quality.

While the term "trademark" applies to all types of source identifiers, there are three main categories of trademarks: trademarks, service marks, and trade dress.

Trademarks are applied to tangible goods and usually appear either on the product itself or the product's packaging or labeling. Band names are commonly used as trademarks on posters, stickers, apparel, packaging for sound recordings, and other "merch."

Service marks indicate the source of services and are used in marketing advertising and promotional materials. When a band name is used to promote its concerts, the band name is functioning as a service mark. Many bands offer multiple services and often use different names for each service.

Trade dress is the broad category of total image or overall appearance and may include features such as size, shape, color, or color combinations. Costumes like those worn by KISS are considered trade dress.

Trademark rights are relative to the goods and/or services on

or in connection with which a mark is used. The first person/entity to use a mark in commerce may prevent all others from using the same or a similar mark for the same or similar services. Trademark owners have exclusive rights to use their marks on the products with which they have been used, and often on related products and/or services (i.e., products or services that lie within the realm of natural expansion). The duration of trademark rights depends on the length of use of the mark; trademark rights will continue to exist as long as the mark is in use.

Trademarks are protected by federal statute under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, and by each state's statutory and/or common laws. Common law trademark rights are restricted in geographic scope to the locations in which the mark has been used. If a mark has been used in interstate commerce (almost all are), then the trademark owner may obtain additional protection through federal trademark registration. Specifically, federal registration provides the trademark owner with the following benefits:

- Federal question jurisdiction;
- Evidence of ownership of the trademark;
- A basis for obtaining trademark registration in foreign countries;
- The ability to prevent importation of infringing foreign ("grey market") goods;
- The possibility of recovering attorneys' fees in exceptional cases;
- The ability to recover profits, damages, and costs of infringement, including treble damages;
- Incontestable status upon application after five years of registration, which eliminates most grounds upon which others might challenge the registrant's ownership of its mark; and
- Nationwide constructive notice of the trademark owner's claim of exclusive rights in its mark, provided that the ® symbol is used correctly and consistently.

Trademark Renewal

A certificate of registration functions like a title or deed to the intangible trademark asset, much like the title to your car or the deed or lease for your home. It is documentary evidence of your ownership, which may be provable otherwise, but not without great effort and expense. Federal trademark registrations must be renewed five years after they are obtained and then again every 10 years. Failure to use a mark for three or more consecutive years creates a statutory presumption that the mark (and the rights therein) have been abandoned. Further, failure to include the necessary quality control provisions in a trademark license (as well as the failure to enforce quality control provisions) also may effectuate an abandonment of rights in a mark, including the right to prevent others from using it.

Trademark registration usually takes 12–14 months to obtain. Thus, it is prudent to apply for registration as early as possible, as registration is not something that can be accomplished quickly when the need arises. Trademark registration may be used to determine ownership of the mark between band members, when a member leaves the band, or the band disbands and in relationship to third parties, either for commercialization through licensing or co-branding (use by permission) or to prevent infringement (use without permission). Musical bands often overlook their trade-

mark issues but would be wise to treat their band as a brand, at least from the standpoint of intellectual property protection.

Most infringers respond quickly and favorably to a “cease and desist” letter that includes a certificate of registration. For those who don’t, it is easier and far more cost-effective to go into court with a certificate of federal trademark registration than without one. Federal trademark registration also goes a long way in helping a band obtain a nationwide injunction to prevent continued infringement for the duration of a tour.

Patents

U.S.C. Title 35 governs the protection of intellectual property rights for those who invent or discover any new and useful process, machine, manufacture, or composition of matter, or any new or useful improvement thereof. Patents are issued in the name of the United States of America, under the seal of the U.S. Patent and Trademark Office (“USPTO”). They grant to the patentee and his or her heirs or assigns the right to exclude others from making, using, offering for sale, or selling the property subject to the patent throughout the United States, or from importing the property into the United States. Patents are granted for a term beginning on the date on which the patent issues and ending 20 years from the date on which the application for the patent is filed in the United States or, if the application contains a specific reference to an earlier filed application or applications under 35 U.S.C. §§ 120, 121, or 365(c), from the date on which the earliest such application was filed. If the issue of an original patent is delayed for various administrative reasons, the term of the patent shall be extended for the period of delay, but in no case for more than five years.²⁵

Patent Transfer

Applications for patent, patents, or any interest therein are assignable in law by an instrument in writing.²⁶ The applicant, patentee, or his or her assigns or legal representatives may in like manner grant and convey an exclusive right under the application for patent, or patents, to the whole or any specified part of the United States. A certificate of acknowledgment under the hand and official seal of an authorized person²⁷ provides prima facie evidence of the execution of an assignment, grant, or conveyance of a patent or application for patent. An assignment, grant, or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the USPTO within three months from its date or prior to the date of such subsequent purchase or mortgage. In the absence of any agreement to the contrary, each of the joint owners of a patent may make, use, offer to sell, or sell the patented invention within the United States, or import the patented invention into the United States, without the consent of and without accounting to the other owners.²⁸

Royalty Interests

A “royalty” is defined as “amounts received for the privilege of using patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property.”²⁹ The transfer of royalty interests is governed by contract law during lifetime, and by the laws applicable to estate assets upon the owner’s death. Typically, the transfer of a royalty does not include the property or property right that produced it. For

example, a work of art is distinguishable from its copyright; so is a royalty received by the copyright owner for the right to produce and sell reproductions of the artwork distinguishable from the copyright itself. Conversely, if the property or property right is transferred, the royalty interest will accompany the transfer.

Planning with Entities

The client may conduct the activities through an entity such as a corporation or LLC, so that the intellectual property is owned by the entity at death, and the entity interests can be transferred as part of the estate plan. The issues involved are similar to those that would be encountered with any closely held business, and with appropriate entity documents can be smoothly handled after the death of an owner. The entity interests typically will be transferred to the surviving family members, purchased by other owners, or sold or transferred to an outside party. The entity interest also can be considered for planned giving strategies that may provide estate tax reduction. An experienced and competent tax advisor should be involved with advising the business on the income tax aspects of the planning, particularly if the entity will generate ordinary income from the client’s activities. See the next section, “Tax Issues,” discussing income in respect of a decedent.

TAX ISSUES

In general, if the client’s main activity is the performance of personal services, most of the income from the activity will be subject to ordinary income tax during his or her lifetime, and subject to the rules governing income in respect of a decedent (“IRD”) after death. Generally, IRD is income that has accrued in the economic sense to a cash-basis taxpayer prior to death but has not been received by the taxpayer.³⁰ If there are any business expenses attributable to the IRD, they may be deductible in the year of death, or on the estate or income tax return for the estate. If the IRD is being recognized by an entity established during the owner’s lifetime, the tax advisor may recommend keeping the entity alive after the owner’s death to avoid unnecessary acceleration of the tax on the ordinary income.

On the other hand, if the client owns manuscripts, master recordings, motion picture and television films, copyrights, and other similar assets, those may be subject to capital gains tax upon sale and receive a step-up in basis for income tax purposes if they are in the taxable estate in 2011 or 2012. This means that the income tax basis will adjust to the fair market value of the asset at the time of the decedent’s death.³¹ The beneficiaries can then sell the asset with little or no taxable gain.

Copyrights

The IRS has ruled that amounts earned before death are always IRD, but that royalties earned after death are IRD only if the copyright was “sold” during the decedent’s lifetime.³² A transfer of the exclusive, perpetual right to exploit a copyrighted work in a particular medium of publication will be treated as a sale for tax purposes, provided that the transferor possesses no right to reacquire the transferred right except upon the failure of certain conditions outside the transferor’s control.³³ A transfer for less than the full period of copyright protection or transfer of nonexclusive rights will be treated as a license and not a sale (i.e., royalties earned after death are not IRD).³⁴

Patents

The same issues regarding “license” versus “asset” pertain to patents. If the holder has transferred “all substantial rights” during his or her lifetime, then the patent is treated as having been sold, and future income would be considered part of the installment sale (creating IRD before and after death). However, if the owner had limited the use of the rights to a patent by geography, field of use, length of use (if that duration is less than the patent’s life), or the inventions covered by the patent (if less than all existing inventions covered by the patent), then the transfer is deemed a license instead of a sale or exchange (i.e., income after death is not IRD).³⁵ The courts also have applied the patent rules of I.R.C. § 1235 to “know-how.” The information must be: (1) known only by the owner and those confidential employees who require the information for use in the conduct of the activities to which it is related, and adequate safeguards have been taken to guard the secret and authorize disclosure; and (2) a discovery that is original, unique, and novel. In *Pickren v. U.S.*,³⁶ the court stated that “secret formulas and trade names are sufficiently akin to patents to warrant the application, by analogy of the tax law that has been developed relating to the transfer of patent rights, in tax cases involving transfers of secret formulas and trade names.”

CONCLUSION

The challenges associated with estate planning for entertainers, athletes, and creative clients may require specialized rules and options, primarily in terms of handling the individual’s intellectual property. These options include basic estate planning, inventory, creation of a plan for the intellectual property rights, tangible property transfers—expressed through an assignment document or testamentary document—or transfers of copyrights, patents, or other intangible assets. An assessment of the appropriate tax status of the famous individual and the individual’s work also should be considered. ♦

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ENDNOTES

1. Experience Hendrix, LLC v. Electric Hendrix, LLC, 90 U.S.P.Q.2d (BNA) 1983 (W.D. Wash. 2008).
2. Milton H. Greene Archives, Inc. v. CMG Worldwide, Inc., 568 F. Supp. 2d 1152 (C.D. Cal. 2008).
3. If the surviving spouse is not a U.S. citizen, there are limitations on the amount, and planning tools such as qualified domestic trusts are available to avoid immediate transfer tax for the spouse’s portion.
4. A “qualified charity” needs to be qualified as a charitable organization under Internal Revenue Code (“I.R.C.”) §§ 501(c)(3) and 2055. At the IRS website, <http://www.irs.gov>, the IRS has a list of charities that qualify for charitable contributions. You should check with a professional advisor, however, for transfers upon death because there are slightly different requirements for the estate tax deduction.
5. Private foundations are subject to specific regulation and unique tax requirements, starting with I.R.C. § 509 and extending to other areas of the I.R.C. Private foundations also are subject to state regulation, typically through the state attorney general’s office.
6. “Fiduciary” means “[a] person who is required to act for the benefit of

another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor.” BLACK’S LAW DICTIONARY 289 (3d ed. 1996).

7. Although the I.R.C. does not provide a concise definition of intangible personal property, it does provide several examples. For example, § 936(h)(3)(B) defines intangible property to mean any: (i) copyright, literary, musical, or artistic composition; (ii) patent, invention, formula, process, design, pattern, or know-how; (iii) trademark, trade name, or brand name; (iv) franchise, license, or contracts; (v) method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list, or technical data; or (vi) any similar item that has substantial value independent of the services of any individual.

8. See, e.g., *Ventura v. Titan Sports, Inc.*, 65 F.3d 725 (8th Cir. 1995) (Minnesota common law right of publicity).

9. 850 F. Supp. 1279 (E.D. Va. 1994).

10. 17 U.S.C. § 106 (1976) (Exclusive Rights in Copyrighted Works).

11. *Id.* § 302(a).

12. *Id.* § 302.

13. *Id.* If the work was created but not yet published or copyrighted prior to January 1, 1978, the duration of the copyright is the same as for works created on or after January 1, 1978. For any copyright subsisting on January 1, 1978, the duration varies under federal law, which is summarized in Circular 15A published by the U.S. Copyright Office.

14. 17 U.S.C. § 201(d)(1).

15. *Id.* § 204(a).

16. *Id.* § 708.

17. *Id.* § 205(a).

18. *Id.* § 203(a).

19. *Id.* § 203(a)(5).

20. *Id.* § 203(a)(3). If the grant covers the right of publication, the five-year window begins at the earlier of 35 years from the date of publication or 40 years from the date of grant.

21. *Id.* § 203(a)(4). Accordingly, the earliest that a termination notice can be given is the first day of the 25th year to take effect on the first day of the 35th year; the latest that a termination notice can be given is the last day of the 37th year to take effect on the last day of the 39th year.

22. *Id.* § 203(a)(2). For pre-1978 copyrights, the problem arises if the author dies between years 47 and 60 without having given notice of termination.

23. *Id.* § 203(a)(1)–(2).

24. *Id.* § 203(b).

25. I.R.S. Gen. Couns. Mem. 38,083 (Sept. 11, 1979).

26. 35 U.S.C. § 261 (1952) (Patent Act).

27. An “authorized person” includes a person authorized to administer oaths within the United States, or, in a foreign country, a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proven by a certificate of a diplomatic or consular officer of the United States, or an apostille of an official designated by a foreign country that, by treaty or convention, accords like effect to apostilles of designated officials in the United States.

28. *Moore v. Commissioner*, 27 T.C.M. (CCH) 536 (1968); see also *Lucas v. Earl*, 281 U.S. 11 (1930).

29. Treas. Reg. § 1.691(a)-1(b) (1965).

30. *Id.*

31. I.R.C. § 1014(a) (2010).

32. Rev. Rul. 57-544, 1957-2 C.B. 361. See also Rev. Rul. 60-277, 1960-1 C.B. 262; *Grill v. U.S.*, 303 F.2d 922 (Ct. Cl. 1962).

33. Rev. Rul. 60-226, 1960-1 C.B. 26.

34. I.R.C. § 1235(a) (1986); Treas. Reg. § 1.1235-2(b) (1980).

35. I.R.C. § 1235(a) (1998); Treas. Reg. § 1.1235-2(b).

36. 378 F.2d 595 (5th Cir. 1967).