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Marriage, Israeli style

Semone Grossman, a German Jew who had survived Nazi concentration camps, immigrated to New York after the war. He had a successful life. At his death in 2014, Grossman left the bulk of his \$87 million estate to Ziona, his wife of 27 years, with whom he had had two children. However, the IRS denied the estate's marital deduction and demanded some \$35 million in estate taxes and over \$7 million in accuracy-related penalties.

Wait, what?

Ziona was Semone's third wife. He married his first wife, Hilda, in 1955, and they had two children. However, they separated in 1965, and Semone made regular payments to Hilda. In 1967, Semone started a new relationship with Katia. Before marrying her, Semone traveled to Mexico to obtain a divorce from Hilda. Although the marriage to Katia also produced two children, it ended by 1974.

That year Hilda filed a lawsuit to have the Mexican divorce declared null and void, a lawsuit that she won following a trial in 1976. The marriage to Katia was nullified, and Hilda was again the legal spouse of Semone. However, the couple never again cohabited, nor filed joint tax returns.

In 1986, then 56 years old, Semone became engaged to Ziona. Both of them had relatives in Israel, and they decided to marry there. Before the ceremony, Semone asked Hilda to cooperate in obtaining a divorce under Jewish religious law. She agreed. They appeared before a rabbi and obtained the necessary paperwork, which Semone brought with him to Israel. The Israeli religious authorities found everything in order, and permitted the wedding to go forward. After the marriage, the couple returned to New York where they lived as a married couple for the rest of Semone's life.

After his estate tax return was filed, the IRS somehow noticed that Semone and Hilda had never formally, legally divorced under New York law. Therefore, the Service reasoned, Hilda was the surviving spouse, not Ziona, even though Semone and Ziona had filed all their tax returns as married filing jointly, even though Hilda had filed all of her tax returns as a single person, and even though Hilda had not attempted to claim her marital share under New York law after Semone's death. Under New York law, the IRS contended, Hilda remained the spouse. Hence, no marital deduction for property passing to Ziona.

The Tax Court concluded that the rule in New York has long been that the validity of a marriage is determined by the place of its celebration. Semone and Ziona had satisfied Israel's fairly strict rules for having a marriage in that country, and public policy generally favors recognition of second marriages.

Semone and Ziona probably could not have legally married in New York. That was in part the basis for the IRS denying the marital deduction. The Tax Court holds that fact was irrelevant to whether they could be legally married elsewhere.

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