

Estate Planning Update—Highlights of Current Developments

Steve R. Akers, Bessemer Trust

Page numbers refer to Akers, Aucutt & Nipp, *Estate Planning Current Developments* (March 2022).

1. Legislative Proposals [p. 2-13]

- a. FY 2023 Greenbook; Administration Priorities
- b. Bad memories – Ways & Means Committee draft of September 13, 2021 (with sweeping transfer tax/grantor trust provisions)
- c. Surtax in H.R. 5376
- d. Consolidated Appropriations Act of 2022, H.R. 2471, Public Law 117-103 (March 15, 2022)

2. Miscellaneous IRS Guidance; Priority Guidance Plan [p. 25-29]

- a. No New Tax Legislation; IRS May Be Able to Focus on Regulatory Projects
- b. Anti-Abuse Exception to Clawback Regulations; Estate Tax Closing Letter User Fee; Consistent Basis; New Section 7520 Actuarial Tables

3. SECURE Act; Proposed Regulations [p. 16-24]

- a. Applies to 2022 Distributions; For 2021 Distributions Use “Reasonable Good Faith Interpretation”
- b. Highlights: Life Expectancy Payments During 10-Year Term; Payment by December 31 of 10th Year; “Age of Majority” Means Age 21; Accumulation Trust Rules Simplified (only count initial beneficiary and first successor beneficiary, permissible appointees of powers of appointment do not matter until POA exercised); Can Use Accumulation Trust for Minor Child and Disabled/Chronically Ill); Minor Child That Becomes Disabled Before Age 21; Conduit Trust for Spouse
- c. New Life Expectancy Table for RMDs (effective for 2022 distributions)

4. GRATs Using “Deliberately Undervalued Appraisal,” CCA 202152018 [p. 108-111]

- a. Deliberately Undervalued Appraisal Used; “Atkinson Rationale” Applied
- b. Because of “Operational Failure,” Not a Valid GRAT (so full gift)
- c. Treas. Regs. §25.2702-3(b)(1)(ii)(B) (can define annuity as percentage of initial value as finally determined); §25.2702-3(b)(2) (procedure to adjust annuity amounts for incorrect valuations)

5. Estate of Levine v. Commissioner, 158 T.C. No. 2 (February 28, 2022) [p. 80-86]

- a. Intergenerational Split Dollar Life Insurance
- b. Key Facts (mother advanced \$6.5M; only ILIT that owned policies could terminate early; unrelated business associate controlled insurance for ILIT and very unlikely to terminate early because of fiduciary duties owed to grandchildren as ILIT beneficiaries)
- c. Sections 2036, 2038 (fiduciary duties; mere ability to amend contract not “in conjunction with” under §§2036(a)(2), 2038)
- d. Section 2703 (straightforward analysis, not distinguishing contrary analysis in *Estate of Cahill*)

6. Smaldino v. Commissioner, T.C. Memo. 2021-127 [p. 100-108]

- a. Valuation Quandary
- b. Indirect Gift (“purported” gift of LLC interest to wife followed by gift the next day from wife to trust for descendants [to use wife’s exclusion]; terrible facts, including express agreement to re-transfer)

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- c. Planning Implications (especially important for SLATs)

7. Corporate Transparency Act [p. 14-16]

- a. Proposed Regulations (December 8, 2021)
- b. Reporting Companies, Beneficial Owners (Trusts)
- c. Filing Due Dates

8. Early Termination of Trusts; Commutation of Spouse's Interest in QTIP Trust [p. 36-44]

- a. Early Termination of Trusts – Substantial Income Tax Costs, PLRs 201932001-201932010
- b. PLR 202016002; CCA 202118008 – Commutation of QTIP Trust
- c. Complexity of Planning with QTIP Trust Interests (see Read Moore, Neil Kawashima & Joy Miyasaki, *Estate Planning for QTIP Trust Assets*, 44th U. MIAMI HECKERLING INST. ON EST. PLAN. ¶1202.3 (2010); Richard S. Franklin, *Lifetime QTIPs – Why They Should Be Ubiquitous in Estate Planning*, 50th U. MIAMI HECKERLING INST. ON EST. PL. ch. 16 (2016))

9. Estate of Moore (T.C. Memo. 2020-40, *aff'd* 124 AFTR 2d 2021-6604 (9th Cir. Nov. 8, 2021) [p. 52-58]

- a. Charitable Formula Transfer Not Recognized; Appealed Denied, but on Narrow Grounds

10. Valuation Issues

- a. *Nelson* (T.C. Memo. 2020-81, *aff'd*, 17 F.4th 556 (5th Cir. Nov. 3, 2021) (appeal: assignments were not defined value transfers based on finally determined values) [p. 59-61]
- b. *Estate of Michael Jackson* (T.C. Memo. 2021-48) (valuation of publicity rights; undervaluation penalties; tax-affecting [not following *Estate of Jones* (T.C. Memo. 2019-101)]) [p. 71-76]
- c. *Estate of Morrissette* (T.C. Memo. 2021-60) (no §2036, 2038 or 2703; valued reimbursement rights with very little discount; undervaluation penalties applied despite reputable appraisals) [p. 76-80]
- d. *Estate of Warne v. Commissioner* (T.C. Memo. 2021-17) (valuation of majority interests in LLCs owning real estate [4% LOC & 5% LOM discounts]; charitable deduction based on values passing to each separate charity) [p. 63-70]
- e. *Connelly v. U.S.*, 128 AFTR 2d 2021-5955 (E.D. Mo. Sept. 2, 2021) (buy-sell agreement did not fix estate tax value; corporate purchase obligation funded with corporate-owned life insurance; value increased by life insurance proceeds used to fund purchase of decedent's shares) [p. 90-97]
- f. *Buck v. U.S.* (128 AFTR 2d 2021-6043 (D.C. Ct. Sept. 24, 2021) (undivided gifts to separate donees in each of four years valued separately and not aggregated) [p. 97-100]

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