

Report #3 - Tues. a.m. 1/7/03

As we have done in January for the last six years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting to this list throughout the coming week highlights of the proceedings of the 37th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 6-10, 2003 at the Fontainebleau Hilton Resort and Towers in Miami Beach, Florida.

Our on-site local reporters there in Miami this year will be identified as their reports are received and published:

A complete listing of the proceedings and speakers is available on the Institute's Web site.

The URL for that site is <http://www.law.miami.edu/heckerling>.

=====

REPORT NO. 3 - Tuesday, January 7, 2003

The following report has been filed by on-site reporter Eugene Zuspann II Esq. of Denver, Colorado regarding the following:

Adventures in Life Insurance! (And You Thought It Would Be Boring)
Jonathan G. Blattmachr

This presentation covered how to obtain income tax "deductions" for term premiums paid, how to avoid GST tax for a life insurance trust without using GST tax exemption, how to double the power of Crummey withdrawal rights, and how to plan with split-dollar life insurance.

About 80% of states completely exempt life insurance proceeds from creditors claims.

Jonathan first discussed the types of life insurance. His conclusion - there is only one real type of life insurance and that is term insurance.

Life insurance is the only investment that has tax free compounding (as opposed to tax deferred compounding). This is even true in muni bonds because the issuer does not pay a rate comparable to a taxable investment, i.e. the bond has a lower rate.

Jonathan draws life insurance trusts so that the entire gift lapses in the year of the gift and the beneficiaries have the right to withdraw their prorata share in excess of the 5 and 5 power. This allows the transferor for generation skipping purposes to change to the children. The Code provides that each child's shares will be considered a separate trust. This allows the trust to qualify for gst exemption. Jonathan calls this technique cascading Crummy powers.

A problem with the above scenario is that, except in 4 or 5 states, this trust may be subject to the claims of creditors. Texas has acknowledged the problem and changed the law to exclude annual exclusion gifts from creditor claims.

Next he discussed §264 of the Code stating that life insurance premiums are not deductible.

He discussed the benefit of preloading a life insurance policy so that the excess cash in the purchase will, with the tax free earnings, pay for the policy over the desired term. His example had the insured funding the policy with \$54,000 so that, with the earnings, the policy would pay the \$91,000 premiums on a 20 year term policy at which time the insured, Jonathan, would let the policy lapse.

PLR 9636033

Avoiding the 3 year rule under §2035. There is an exception for a full and adequate sale of the policy. This can be done by making sure the life insurance trust is a grantor trust, and sell the policy for the interpolated terminal reserve to the trust.

PLR 9413045

Turning the Tables: When Do the IRS Actuarial Tables Not Apply?
Lawrence P. Katzenstein

This presentation examined when departures from the IRS actuarial tables are permitted or required, including situations of under-productive property and increased risk of mortality, and will consider the implications of recent decisions permitting departures from the tables in valuing the right to receive state lottery payments.

The purpose of this presentation is to analyze when the actuarial tables do not or should not apply.

An example when the tables are not used are simultaneous deaths. They also do not apply to retirement plans as “those sections [of the Code] have their own separate, prescribed rules for determining actuarial values.” There are also exceptions provided in the regulations. See Reg. Section 1.7520-3(a). Most of these deal with different authority provided by other sections of the Code.

The statutory authority for the tables is under IRC §7520. Larry discussed the ability of the service to ignore the tables. The Service has tried to bootstrap Revenue Rulings, rather than regulations, to set doctrine for ignoring the tables. He does not believe this is correct, and that the Service must use the tables in any case in which the regulations do not provide an exception

One exception in which the regs are totally silent is the creditworthiness

of the payor in an annuity situation, i.e. an annuity from Enron. Another area is that of trust exhaustion. The materials cite Estate of Benjamin Shapiro, which is a 2013 credit case. In this case, the Service argued that the trust would be exhausted within 4 years. The Tax Court held that the tables must be used. The regulations were changed, but Larry still believes the regulations are wrong. The regs conclude that if the trust will be exhausted, the gift to the remainder beneficiaries will go up, but the value of the gift should go down. Larry concludes that the correct answer is to take into account the life expectancy of the beneficiary and the payment to the beneficiary, capped by the amount going into the trust.

Another situation is that of underproductive property. If the property in the trust does not produce income, i.e. closely held stock paying no dividends in which the beneficiary does not have the right to make the property productive, then the tables may not be used. Larry pointed out the O'Reilly case in the Eighth Circuit holding that the tables could not be used where the dividend rate was far less than the 10% interest rate assumed by the tables. This is a pre-7520 regulation case.

The next situation that has little litigation or ruling activity is when the mortality tables cannot be used because of the physical condition of the measuring life. The regs provide that if the individual is known to be terminally ill, the tables will not apply. The regs do provide a rebuttable presumption that the tables may be used if the person survives for 18 months.

Another problem area is where the decedent has won the lottery but dies before receiving full payment. There are a number of cases that hold that the estate does not have to use the tables. This departure from the tables is surprising and the practitioner needs to read the cases if the issue presents itself.

GENERAL INFORMATION:

Inquiries/Registration:
Philip E. Heckerling Institute on Estate Planning
University of Miami School of Law
Center for Continuing Legal Education
P.O. Box 248087
Coral Gables, FL 33124-8087
Telephone: 305-284-4762 / FAX: 305-284-6752
Web site: www.law.miami.edu/heckerling
E-mail: heckerling@law.miami.edu

=====
Headquarters Hotel - Fontainebleau Hilton
4441 Collins Avenue
Miami Beach, FL 33140
Telephone (305) 538-2000, FAX (305) 674-4607
=====
