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January 22-26, 2018
Heckerling 2018 - Report No. 13
(Friday 1/26/18) and Fund. #3

Heckerling 2018
University of Miami School of Law Center for Continuing Legal Education
Orlando World Center Marriott Resort and Convention Center
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http://www.law.miami.edu/heckerling

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As we have done in January for the last twenty one years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting daily Reports to this list containing highlights of the proceedings of the 52nd Annual Philip E. Heckerling Institute on Estate Planning that is being held on January 22-26, 2018 at the Orlando World Center Marriott Resort and Convention Center in Florida. A complete listing of the proceedings and the Institute's 2018 brochure are available at www.law.miami.edu/heckering. Introduction Part 1 issued on 1/11/18 covered the Institute Opening Reception, its Scope, the Faculty, the Advisory Committee, the Sponsors and the Vendors, plus general information at the end about the Institute. Introduction Part 2 issued on 1/12/18 contained a complete listing of all of the proceedings of this Institute. This Report continues our coverage of the proceedings.

We also will be posting the full text of each of these Reports on the ABA RPTE Section's Heckerling Reports Website, as we have since the 2000 Institute. The Reports from 2000 to 2017 can now be found at URL http://www.americanbar.org/groups/real_property_trust_estate/events_cle/heckerling.htm. In addition, each Report from 2006 to date can also be accessed at any time from the ABA-PTL Discussion List's Web-based Archive that now only goes as far back as January of 2006 and is located at URL http://mail.americanbar.org/archives/aba-ptl.html.

Announcement: The Technology Lawyer BlawgWorld eNewsletter has recently published two blogs of special interest to those of us who are interested in technology matters, those being The Best Laptops of 2018 and the Top 25 Legal Technology Products of 2017. These blawgs can be accessed for free at the Technology Lawyer's website at https://www.technolawyer.com/blawgworld.asp.

Summary: This Report #13 contains the report for the Thursday afternoon Fundamentals #3 on demystifying international tax planning that was held concurrently with Special Sessions 3 and 4 that were presented that same day and the reports for the final three General Sessions that were held on Friday morning, those being on Roth IRAs, trustee discretion and the Institute Review.

The next Report #14 will be our last report and will contain our coverage of the Vendors who were in attendance at this year's Institute.

THURSDAY, JANUARY 25, 2018 (CONT.)

2:00-5:20  FUNDAMENTALS PROGRAM #3
(Ran concurrently with Special Sessions III and IV)

Demystifying International Tax Planning for Individuals - A Primer for the Domestic Estate Planner
Introduction. The world is getting smaller and clients are getting more global. Knowledge of the international rules can assist practitioners in avoiding any traps for unwary if they have a client with international ties through residency, citizenship, their family or a foreign business or investment interests.

Todd Angkatavanich led the discussion with an overview. Three preliminary questions are: Who is subject to the U.S. Federal estate, gift, GST, and income taxes; which assets and income are subject to these taxes; and is there an overriding treaty?

Jurisdictional Principles: It is important to determine the status of the client (and the client’s family members). The U.S. applies transfer taxes to the worldwide assets of U.S. citizens or domiciliaries. If a person is neither, the U.S. applies tax on situs property (actually here or deemed to be U.S. property). The discussion covered various domicile-determining factors, which is not unlike determining the state of domicile in the U.S. The residence test to determine income taxation is more clear, based on counting specific days (with exceptions) or if the person holds a green card. A resident may still avoid income tax if there is a closer connection to another jurisdiction. Non-resident aliens (NRA) are taxed on assets situated in the U.S. Use caution with “strings” attaching trust assets where the grantor is an NRA and avoid mixing U.S. and non U.S. assets. NRAs get limited deductions. The above rules may be different if otherwise determined by a treaty, which the taxpayer may elect to apply.

Non U.S. Spouses. Transfers to a non-U.S. citizen spouse do not get the marital deduction unless made through a Qualified Domestic Trust (QDOT). The technical rules are laid out under §2056A. Jointly held property may create gift tax issues. An NRA can transfer tangibles without transfer tax, but will have tax applied if in the NRA’s estate at death. Gift splitting is not allowed with an NRA spouse. Gifts by an NRA are not subject to GST tax unless the transfer was subject to estate and gift tax, which makes room for significant planning. See PLR 200123045.
Income Tax of NRA, with Carlyn McCaffrey.

FDAP Income. NRAs are taxed on (1) U.S. source Fixed or Determinable, Annual or Periodical (FDAP) income. This includes U.S. source interest dividends, rents, wages, etc. It generally does not include capital gains to encourage investment in the U.S. There is a 30% withholding on FDAP usually withheld at the source with no deductions.

ECI Income. Tax is also applied on (2) income effectively connected (ECI) to a U.S. trade or business (USTB). The new §864(c)(8) subjects a portion of the income from the sale of a pass-through entity interest with some USTB as ECI.

Taxation on Foreign Trusts. It is very easy to create a foreign trust; one is created for example, if a person who holds a veto power expatriates. See §7701(a)(31) for rules regarding classification, including the Court Test and Control Test. The trust income is taxed as if it were an NRA (re. FDAP or ECI), but generally not on capital gains even if a trust person is a resident in the U.S. Distributions to NRA beneficiaries receive pass-through treatment with the usual allocation of DNI. DNI includes capital gains and amounts in excess of DNI may be subject to the throwback rules. UNI (or accumulated income) is taxed at ordinary rates, losing the lower tax rates normally applied to LTCG and dividends. A charitable contribution of UNI will not excuse other beneficiaries from paying the associated tax, so consider splitting the trust to avoid this result.

Indirect Distributions. Distributions to a U.S. person made through an intermediary are disregarded if the principal purpose was tax avoidance. Use of personal property (residences, jewelry, artwork) is a deemed distribution unless rented for fair market value. This can be tricky to value on some property, but easy with real estate. Loans can be deemed a distribution if adequate interest is not charged.

Throwback Rules. These draconian rules apply whenever accumulated income is made in excess of the current tax year’s DNI or trust accounting income. The intent was to recapture tax that was deferred offshore. Prior accumulations, capital gains and dividends treated as income. The throwback tax can be calculated with either the “exact” or “default” methods, discussed in the outline. Some of the methods to handle or avoid UNI discussed were:
1. Including the use of the §645 and §643(e) elections;
2. Decanting to purge the UNI;
3. Creating a foreign grantor trust where NRA has a general power of appointment;
4. Distributing out current income;
5. Providing for specific gifts or ones that can be completed in three payments or less (with more ideas in the outline).

Taxation of Foreign Corporations, with Edward Vergara. Business entities hold assets to avoid estate inclusion for the holder; to limit liability for the owners and there may be non-tax reasons for formation as well. There are often significant reporting requirements and complex tax rules under the “controlled foreign corporations” (CFC) or “passive foreign investment companies” (PFICs) regimes. For entity classification, think of tax in one of two ways:

1. **Inbound**: where U.S. assets are held by an entity for a foreign person. Corporations should function as a “blocker” of U.S. situs assets for U.S. estate tax and blocker of ECI. A pass-through entity is not likely to be an effective blocker and treats the individual owner as direct participants of underlying activities, which has drawbacks (significant U.S. tax and reporting if there are assets covered by Foreign Investment in Real Property Tax Act (FIRPTA) or ECI assets) and also benefits (allows for LTCG rates)
2. **Outbound**: where a U.S. person holds foreign assets. U.S. persons are generally only subject to tax when the foreign corporation makes a distribution or is sold, but CFC or PFIC rules may apply. Permits deduction of foreign taxes paid within corporate entity. Allows a generally more efficient credit of foreign taxes paid within pass-through.

Controlled Foreign Corporations. A “CFC” is a foreign corporation where a U.S. person owns more than 50% with each shareholder owning at least 10% of vote or value. U.S. owners are taxed at ordinary income rates even without a distribution. Sec. 318(a) family attribution rules apply. They are subject to generally onerous reporting requirements. U.S. persons are allowed deferred income, unless categorized as “bad income.” Unfortunately most of the income is categorized as bad income, with same application as Subpart F to foreign personal holding company income (FPHCI), foreign base company sales and services income. Depreciable real
estate gives more for income with less tax. The new Tax Act allows for a one time repatriation.

**Passive Foreign Investment Companies.** PFIC status applies in a year where (i) 75% or more of its gross income for a taxable year is passive income or (ii) at least 50% of its assets produce passive income. Tax is only on actual distributions or dispositions, absent an election to be treated as “Qualified Electing Fund (QEF).” There are draconian rules on “excess distributions” and upon disposition of PFIC shares. PFIC rules do not apply to a CFC. Look through rules apply when PFIC owns more than 25% of the corporation. A QEF election avoids penalty interest charge.

**Scott Bowman,** begins with **Entity Identification and Classification.** Assess if assets are held as a trust or a business association. Corporations, or “per se” entities, help the client achieve more opaqueness or serve as a blocker. Pass-through “default” entities, including disregarded entities for one owner or a partnership for more than one owner, allow for more transparency. More opaqueness can be achieved with checking the box on form 8842.

**Foreign Investment in U.S. Real Property.** “FIRPTA” was enacted in 1980 to eliminate the perceived tax advantage of foreigners purchasing U.S. real property over U.S. taxpayers. It treats gain on the disposition of any U.S. Real Property Interest as ECI. REITs can be exempt. The interests/entities covered are very broad (life estate, options to acquire, leasehold, etc.), as are the dispositions covered (any sale or exchanged, capital contributions, gifts with boot, etc.).

**Expatriation.** Expatriation is increasing (5,954 in 2017, up from 972 in 2012). The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) governs tax of U.S. expatriates. Once you give up citizenship, you are treated like everyone else entering from that country. Under the Reed Act, if you expatriate to avoid tax you may be barred from reentry. This is rarely used, partially because information held by the IRS is generally protected. Citizenship is given up by visiting the consulate over two interviews, with a required waiting period between them. This creates problems with timing with regard to certain assets if trying to avoid Covered Expatriate status.
Covered Expatriates. This status needs to be determined due to the rigorous tax regime applied to them. A Covered Expatriate is one who meets one or both of the “tax liability test” and the “net worth test,” or who fails the “tax certification test.”

1. **Tax Liability Test**: average annual tax liability for the years before leaving is more than $165,000.

2. **Net Worth Test**: Net worth is more than $2 million (property includes anything that would trigger gift tax upon transfer; a trust interest is included)

3. **Tax Certification Test.** The person must certify she has satisfied all U.S. tax obligations for the five preceding years with documentation on Form 8854. This can be very hard to accomplish.

Taxes on Expatriates. Covered expatriates are subject to an exit tax. Under §684, gain recognition is triggered on exit, with a 30% withholding tax on non-grantor trust income. Tax computation looks at various factors guided by the transfer tax rules of §§2701-2704, with a chance to exclude up to $713,000 of gain. Timing and volition on the value of certain assets can be a challenge for minimizing or avoiding tax because there can be long delays in getting the exit appointment with the consulate.

The §2801 Tax. A U.S. person is generally subject to a 40% tax on “covered” gifts or bequests from a covered expatriate under §2801. A long term plan before exit can avoid covered expatriate status with planned gifts, using the citizen exemptions, devaluation by discounting assets and gifts to a §2801 trust.

FATCA. The Foreign Account Tax Compliance Act (FATCA) was enacted in 2010 to enlist Foreign Financial Institutions (FFI) to assist the U.S. with disclosure of foreign assets because in voluntary disclosure was insufficient. Lack of compliance may result in a 30% withholding tax. See §§1471-1472. The act is far reaching, and private clients are often swept up as part of an FFI if they have assets in a, (1) manager investment entity, (2) managed investment entity; and (3) fund investment entity. FATCA inspired a lot of
bilateral treaties with the U.S., but no cohesive framework. The Organization for Economic and Cooperation Development ("OECD") used FATCA with some modifications to develop a multilateral compliance agreement with many nations, but the U.S. has chosen not join in at this time.

FRIDAY, JANUARY 26 2018

9:00-9:50

Doth Thou Roth? [FIN]

Presenter: Natalie B. Choate
Reporter: Kimon Karas

Roth IRAs offer significant planning opportunities but are surrounded by pitfalls. This session cover basic to expert tips, including tax-free Roth conversions, beneficiary conversions, estate planning angles, and what trustees must know. NOTE: This Report was originally mistakenly reported as the report for Special Session 4-A also presented by Ms. Choate in Report #11. That error was reported as an errata in Report #12 and the correct SS 4-A report was included in Report #12. For continuity purposes the text of the correct report for this session is being repeated here.

Roth IRA. Only drawback is once funds are removed from the Roth IRA they no longer generate a tax-free return. The new tax act made only one significant change and that relates to Roth characterization. Life expectancy payout is still available as well as see through trusts.

Who should be beneficiary of Roth IRA.

1. Not a charity.

2. Young beneficiary. If concerned young beneficiary may dissipate funds, use a see through trust for the beneficiary.

3. Name the surviving spouse outright as a beneficiary. Spouse can then rollover into spouse’s Roth IRA. Spouse has no minimum distribution requirement. Do not name trust for spouse as beneficiary as no rollover is available and, thus, no tax-free build up potential.

4. If see through trust is Roth IRA beneficiary, trust should place minimum distribution in separate account and then pay trustee administration expenses from separate account. Otherwise would be reducing the tax-free build up in the IRA.

How one acquires a Roth IRA.
1. Making annual contributions to a Roth IRA, but subject to income limitations. Contribution limit is $5,500 or $6,500 for persons over age 50.

2. Back door conversion is available. In the new tax act the Conference Committee confirm back door Roth conversions are legal both under prior law and current law.

3. If one has a significant IRA account how can one convert and limit income tax exposure as the conversion is a taxable event. Convert in a year when income tax rate is low; year in which client may have NOLs. With a qualified plan, a participant in a qualified plan with an IRA with both after tax contributions can affect an upstream rollover of the pre-tax funds to a qualified plan and then take the after tax funds in the IRA and convert those funds to a Roth IRA. Otherwise if IRA owner attempted just to convert the after tax funds, it will not work. All IRAs are aggregated and funds coming out are treated proportionally coming from both pre-tax and after-tax amounts.

4. Another alternative is a client with both pretax and after tax funds in a 401k plan. Client opens two separate IRAs, and rolls the pretax funds into IRA-1 and the after tax funds into IRA-2. IRS has blessed this. Caveat, must take the entire distribution although the funds can end up in different destinations.

5. Another way to create Roth IRA assuming 401k plans have a Roth feature.

6. A Roth conversion is a taxable event. Whatever amount of a traditional IRA is converted or rolled over to a Roth IRA is taxed as if the funds had been disturbed to the IRA owner and not rolled over.

**Tax act changes.**

Roth conversions can no longer be characterized. The IRS just announced for those who make Roth conversions in 2017 will have until October 15 to move funds back to transferring IRA with earnings. From now on however no longer will person have the right to change a Roth conversion-it is permanent.

The act did not change Section 408A(d)(6) which permits certain “adjustments” to be made. The tax act does not ban recharacterization of IRA contributions as a method of fixing mistakes, provided the original contribution was not a valid Roth conversion. The provision allows for fixing mistakes. This section allows a taxpayer who has make any contribution to an individual retirement plan (except after 2017, conversion) during a particular taxable year to move that contribution to “any other individual retirement plan.” If the transfer meets certain requirements, the contribution is treated for all purposes as if it had been originally made to the second (transferee) IRA. For example, an eligible rollover is mistakenly placed in wrong IRA; husband retires and requests direct rollover to his IRA; by mistake funds are placed in wife’s IRA. This should be fixable provided the transfer includes the applicable net earnings together with the original fund. Allows taxpayers to change their minds about their IRA contribution or prior to (2018) conversion and fix mistakes. A “regular” contribution made to either type
of IRA (traditional or Roth) for a particular year may be characterized as a contribution to the other type. Reg.1. 408A-5, A-10, Examples 2,3. What cannot be recharacterized however, are funds rolled over from a traditional retirement plan to a traditional IRA by tax-free rollover and then later change that and recharacterize that as a Roth conversion by moving the rolled amount to a Roth IRA.

9:50-10:40

**Trustee Discretion: The Better Part of Valor or Vulnerability? [TRU]**

Presenter: Amy K. Kanyuk  
Reporter: Patrick Duffey

This session, which supplements the Special Session 4-D panel presentation on the same subject that Ms. Kanyuk was a participant on (Report #12), focused on the challenges trustees face with respect to discretion over distributions, examining the scope and meaning of different types of discretion, and the interplay between a trustee's discretion and a beneficiary's rights and interests. This Report covers the more significant items from this particular presentation.

Amy Kanyuk began with a discussion of the history of trust law as it relates to distributions. In the past, trusts were essentially life estates providing income to the lifetime beneficiary and distributing principal to the remainder. As our economy and law has developed, trusts have become far more complex instruments and the trend is to provide far more discretion to trustees. That discretion is largely a gray area in the law, with few clearly defined rules.

**Part I - Grantor Intent.**

In exercising its discretion, a trustee is guided by a grantor’s intent as it is expressed in the trust instrument. If the trust agreement is unclear or contains conflicting evidence of grantor intent, problems arise for the fiduciary. Kanyuk noted that the forms and boilerplate that often are the basis for trust drafting do not always adequately communicate a grantor's intent.

One common issue facing trustees is the existence of a residence in the trust. Use of the residence and its carrying costs become questions for the fiduciary. So-called “sprinkle trusts” with multiple classes of current beneficiaries can also be problematic for fiduciaries that must navigate the
duty of impartiality. Kanyuk frequently drafts trusts that give a surviving spouse the ability to appoint trust assets to children rather than making children beneficiaries themselves; that avoids the duty of impartiality (at least with respect to current beneficiaries) and can simplify administration.

**Part II – Trust Distribution Terms.**

Trustees will likely be more conservative in making distributions if they feel less secure in the trust distribution standard. Kanyuk pointed out that it can be very difficult to recover an “over” distribution—you can’t, she said, get the toothpaste back in the tube.

Kanyuk has shifted her view in drafting and now believes that trusts should contain as much detail as possible regarding the grantor’s intent. The comment to the relevant Uniform Trust Code provisions specifically states that the phrase “terms of the trust” goes beyond the four corners of the document. Thus, letters of wishes drafted by grantors can be useful. But there are limitations. For example, Kanyuk noted that the Internal Revenue Service might view a letter of wishes as a modification of the trust. In drafting these documents, practitioners should make clear that the letter of wishes is not binding on the trustee, not part of the trust agreement, and not discoverable by the beneficiaries.

When a so-called ascertainable standard (health, education, maintenance, and support) is accompanied by discretionary-type language (for example, “sole discretion”), there is ambiguity. Some states maintain a strict distinction—for creditor purposes as well as beneficiary purposes—between ascertainable standard language and purely discretionary language.

**Part III – Tax Considerations - Ascertainable Standards and Other Issues.**

The ascertainable standard is primarily a creature of the tax law—a method of avoiding characterization of a distribution power as a general power of appointment. But there are state law implications of such distribution standards for creditor protection as well. Moreover, the distribution standard exists solely in state law with respect to decisions about actually making distributions.
Kanyuk discussed the specific terms of an ascertainable standard, beginning with health. The Regulations do not define “health” and there is little case law on the subject. This can create an issue for fiduciaries with respect to distributions on the margins. For example, a Michigan court found that a trustee breached its fiduciary duty by including distributions for the benefit of a beneficiary’s soul within the meaning of “health.”

Support and maintenance are generally considered together. By default, they refer to distributions made to keep a beneficiary in his or her accustomed standard of living. This can shift depending upon the circumstances of the trust, however—for example, the trust may have insufficient assets to support a beneficiary’s accustomed standard of living if any assets are to be preserved for the remaindermen. In that situation, a support and maintenance standard can be particularly problematic when applied to a surviving spouse where the remaindermen are children from the grantor’s prior marriage.

Comfort is a common modifier that adds little practical meaning to the standard. Kanyuk opined that nobody really knows what “comfort” means. Happiness is a much broader term that confers significant discretion on fiduciaries.

**Part IV – Scope of Trustee Discretion.**

Broadly, trustees have two types of trustee discretion. Simple discretion is created where a trustee is granted discretion to take an action but that discretion is not modified by terms such as “sole,” “absolute,” or “unlimited.” Those terms would grant a trustee extended discretion. While broader, extended discretion still has limits.

**Part V – Fiduciary Duties in Decision Making.**

Generally, trustees have a duty to act. They must administer the trust in good faith and may not simply sit idly. Generally, a trustee must act in the interests of the beneficiaries as those interests are defined in the trust agreement. Kanyuk noted that the Uniform Trust Code does not provide that the trustee must act in the beneficiaries’ *best* interests, because the trustee
draws guidance from the trust instrument and not from the whims of a beneficiary. Moreover, a trustee may not abuse its discretion.

Trustees have a duty to be informed. They must understand the trust agreement as well as applicable law. Kanyuk noted that she advises trustees to read the entire trust agreement and create an abstract of that trust agreement.

Trustees have a duty of impartiality. This duty covers the obligation to balance the interests of various current beneficiaries as well as the duty to balance interests of current beneficiaries against remaindermen. It does not require the trustee to treat all beneficiaries equally, only equitably under the terms of the trust.

**Part VI – Other Resources of Beneficiaries.**

Kanyuk believes that trustee consideration of beneficiary resources is an important and often overlooked issue—in fact, documents are often silent on the point. If the instrument is silent, the general rule is that a trustee must consider the other resources of beneficiaries but has some discretion in determining how those resources affect distribution decisions. The Trustee should be diligent in its determination regarding other resources of beneficiaries, but it may generally rely on documentation provided to it.

10:50-12:00  
**The Best, the Most Intriguing, and the Scariest Ideas Culled from the 2018 Institute and Elsewhere and How to Make Them Work for You and Your Clients**  
Presenters: Jonathan G. Blattmachr + Martin Shenkman  
Reporter: Kimon Karas

An eclectic survey of drafting ideas, planning tips, new developments and random thoughts, each of which has practical implications to estate, financial and related planning. A collection of the most practical, nettlesome or just unexpected planning nuggets gleaned from this year’s Institute and elsewhere (professional literature, list serves, and cocktail parties).

The presenters did not refer to the printed course materials but instead used a
power point covering planning aspects as a result of the tax act. For those wishing a more complete description of the concepts, the power point presentation together with a written summary prepared by Marty is to be posted to the Heckerling website.

As an overriding consideration in any tax act planning is that a majority of the provisions sunset after 2025, very few of the changes are permanent. Who knows how long these provisions may be in effect. These provisions could change sooner than the 2025 sunset with the 2020 election if there is a change in administrations, including change in the composition of Congress.

Temporary increase in exemption. With the increased exemption it is a “use it or lose it” proposition. For high net worth client planning continues-business as usual. For the moderately wealthy client they will want to use the exemption with completed gifts but retaining access to it.

Common plan is to use doubled exemptions. For the moderately wealthy family client may want to consider non-reciprocal, grantor SLATs. Single client should consider self-settled trust. If there is a concern with the DAPT, may consider not naming the grantor a beneficiary at the outset but rather grant a person in a non-fiduciary capacity to add grantor as beneficiary at a later date. May want to consider a borrowing power in addition to the swap power to add additional flexibility.

Asset protection and irrevocable trusts. With larger exemptions clients may desire to move larger sums into these trusts. Consider as part of the planning obtaining solvency affidavits from grantor. For the high net worth client may want to consider in addition to grantor trust a non-grantor trust and fractionalize a sale to both trusts. Planning will involve multiple trusts for different purposes.

New trust structure, “salty slat.” Consider a variation a non-grantor trust SLAT. Clients facing SALT limitations of property tax deductions may want to consider multiple trusts. For example, fractionalize a residence into multiple trusts to take advantage of the $10,000 limitation. Make certain you fund the trust with sufficient assets to generate income to pay real estate taxes. Consider if Section 643(f) is relevant. To date no regulations have been issued. See SIIH Partners, 150 TC No. 3.
BDIT. This is a grantor trust as to the beneficiary. Use it to take advantage to shift income to a beneficiary in a low/no income tax state.

ING. Consider a completed gift ING to use exemption.

Charity. Many clients will not be able to take advantage of the charitable deduction. Create simple nongrantor trust for family members including a 642(c) power. This would be in addition to traditional concepts of DAFs, bunching of deductions, using IRAs after 70 ½.

Section 199A and service businesses. The qualified business income tax deduction is 20% of qualified business income with a myriad of exceptions and limitations. However, consider whether professional service business can be segregated to create non service business income. Create separate entities to own real estate, tangible assets-equipment and lease to service entity. Consider gift of ownership to nongrantor trusts irrevocable trusts.

Section 199A and Section 704(e). Watch the 704(e) limitations on gifts of interests to heirs.

Large law firms and CPA firms may want to consider forming REIT for leasehold interests.

C corporations and accumulated earnings tax. Consider if existing buy/sell agreements that are insurance funded with term insurance ought to use permanent insurance.

Kiddie Tax and NIIT. Act applies the trust tax rates to the unearned income of a child. However a child will qualify for the $200,000 threshold under Section 1411.

Tax preparation fees are no longer deductible as miscellaneous itemized deductions.

Matrimonial changes. These are permanent. Starting in 2019, alimony is no longer deductible. That is the major change; however other considerations. Section 529 plans may now be used for elementary and secondary schools. Many marital agreements contemplated a spouse paying for college and structured 529 plans to address the costs. What if funds are now used for elementary and secondary schooling and no funds are remaining for college.
Review standard language in powers of attorney especially as it relates to the gift powers.

Finally, the presenters discussed how to notify clients of the tax act changes.

**The Institute concluded with Tina announcing a record attendance of 3,391 attendees.**

**The Reporters:**

Our on-site local Reporters who are present in Orlando in 2018 are: Joanne Hindel Esq., a Vice President with Fifth Third Bank in Cleveland, Ohio; Kimon Karas Esq., an attorney with McCarthy, Lebit, Crystal and Liffman Co. LPA in Cleveland, Ohio; Craig Dreyer Esq., an attorney with the Dreyer Law Firm in Stuart, Florida; Herb Braverman Esq., an attorney with Braverman & Associates in Orange Village, Ohio; Kristin Dittus Esq., a solo attorney with offices in Denver, Colorado; Michael Sneeringer Esq., an attorney with Porter, Wright, Morris and Arthur, LLP in Naples, Florida; Michelle R. Mieras, a Fiduciary Risk Manager with Bank of the West in Denver, Colorado; Beth Anderson Esq., an attorney with Wyatt, Tarrant & Combs, LLP in Louisville, Kentucky; Bruce A. Tannahill Esq., a Director of Estate and Business Planning in the Mass Mutual Financial Group in Phoenix, Arizona, and Patrick J. Duffey Esq., an attorney with Holland & Knight in Tampa, Florida.

The Report Editors in 2018 are Joseph G. Hodges Jr. Esq., a solo practitioner in Denver, Colorado, who is the Chief Moderator of the ABA-PTL discussion list. He is being ably assisted in those duties this year by Reporter Bruce A Tannahill Esq.