Report 1A

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

Monday, January 5
2:10 - 5:15 p.m.
Recent Developments in Estate, Gift and Income Taxation - 2003 Part One
Dennis I. Belcher
Carol A. Harrington
Jeffrey N. Pennell
Materials by Richard B. Covey and Dan T. Hastings

Reporter: Gene Zuzpann Esq.

IRC 643 Regulations:

Carol Harrington discussed the new 643 regs that were issued last week in T.D. 9102. Excellent summaries of these are available on the Leimberg LISI service (Archive Message 624 1/5/04 under Free Resources at http://www.leimberg.com) and in the RIA Newsstand for 1/6/04. As a bonus, a full text version of the LISI message will be posted as Report No. 1B

2056 now has a reference to 643 approving the use of income under 643 to qualify under a QTIP. There is no loss of GST if you switch from a straight income trust to a straight unitrust, however you may not do a greater of trust.

Much depends upon applicable state law. The authority must exist in the first place. Those states that have already passed a unitrust alternative are now in place to use the alternative without concern. Those that do not have one will either have to adopt the law of another state (allowed under UPIA but not sure about regs) or push forward to get a statute of their own.

A trustee may not "play with" capital gains - deciding to include them in income in one year and not the next because the trustee likes the income tax consequences. However, the decision to do so in one trust does not affect the same decision in a different trust.

15% Dividends:

Dennis Belcher discussed the new 15% rates on qualifying dividends. He indicated that some trusts may want to take C-corp e&p now because of the low rates and that trustees will have to wait for the 1099's to know what tax rates apply to a given dividend. He believes that some taxpayers are going to surprised at the results. Also, 15% income is deemed to be distributed last in a CRT.

Hess and Lappo and Perachio Cases:

Next the panel discussed the Hess and Lappo decisions. In each of these cases (TCM decisions) the courts determination of value is close to the average of the taxpayer's appraiser and the IRS appraiser. Dennis Belcher also discussed the Perachio case. In that case, the court did not like the work of either appraiser. The taxpayer's appraiser suggested 35-45% and the IRS suggested 5% to 25%. The court used the 25% number.

US E-Bonds:

U.S. E-bonds - the PLR cited stated that there is no discount for income tax due on the accrued interest.

Lottery Winnings:

Jeff discussed the lottery ticket cases. Gribauskas and Shakleford allowed the taxpayer to depart from the 7520 rates because the interest was not transferable. The Cook case held that this fact did not require departure from the tables. There is now a split among the circuits - Cook in the Fifth and the other two in the Ninth and Second Circuits.

Jeff also pointed out that none of the opinions discuss the relevance of 7520(b) for times in which the tables may not be used.

Net Gifts:

The next topic discussed net gifts - those in which the donee agrees to pay the gift tax and any additional estate tax. McCord held that the latter provision benefits the donor's estate and not the donor. Reduction of the value of the gift for possible estate tax is not "the type of tangible benefit required to invoke net gift principles."

Jeff and Dennis then discussed the need for tax clauses to cover potential tax liability due to the gross-up under 2035(b) and stated that this should be covered in the deed of gift.

Kimbell, Strangi II and Stone Cases:

The panel spent some time discussing Kimbell, Strangi II and Stone and the application of Byrum and 2036.The facts of Strangi support the finding that an implied agreement exists for retained possession or enjoyment of the assets - therefore 2036. Jeff discussed the application of 2043 as an anti-tracing rule.

The panel also discussed the dicta by Judge Cohen that 2036(a)(2) may also apply and that a business purpose is very important - both upon the formation and also in the operation of the partnership.

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