NO DISCOUNTS FOR RMAs

By

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Restricted Management Accounts, or RMAs, are considered by many to be a simple, yet effective, means of discounting assets, particularly, stocks and cash, without the need for complex limited partnerships agreements or split-ownership planning. A parent might deposit stocks and bonds into an RMA for a fixed term, perhaps five years. By agreement, the institution, whether a bank or brokerage company, manages the account. It has discretion over the investments, while the person who established the account retains only a property interest in the assets. The RMA cannot be canceled, but the person who set up the account can transfer, with the consent of the institution, the rights of the creator of the account to a family member, a trust, or other permitted transferee. Typically, parents have used RMAs, funding them and then gifting interests in them to children. The restrictions on access to the account are that the parent holds an asset that has a lesser or discounted value and, thus, the gift of an interest in the account to a child or other is a discounted value gift.

While certain commentators earnestly believe that RMA discounts are viable and, if litigated, would be upheld, nonetheless, the Internal Revenue Service has ruled in Rev. Rul. 2008-35, 2008-29 IRB116, that an interest in an RMA is to be valued for transfer tax purposes without any reduction or discount on account of the restrictions imposed by the RMA agreement. For this reason, Reg. Sec. 20.2031-2(g) provides that if a decedent holds a trading account with a broker, all securities belonging to the decedent and held by the broker at the date of death must be included at their fair market value as of the applicable valuation date, even if pledged to secure a debt. Similarly, Reg. Sec. 20.20315 says that the amount of cash belonging to a decedent at the date of death, whether in the possession of the decedent or another person, or deposited with the bank, is included in the gross estate.

The IRS took the position that an RMA agreement is merely a management contract between the owner of the property and the person agreeing to serve as the property manager, whether a broker, bank or other. The restrictions imposed by the RMA agreement relate primarily to the performance of the management contract, and do not place substantive restrictions on the underlying assets. Any restrictions in the RMA agreement on the ability of the depositor to withdraw assets, terminate the agreement, or transfer interests do not impact at all the price of those assets and, thus, do not affect the value of the assets in the RMA for gift or estate tax purposes. The Service reasoned that a RMA is comparable to a retirement fund or an Individual Retirement Account. They cited the cases of *Estate of Smith v. United States*, 391 F.3d 621 (5th Circuit 2004) and *Estate of Kahn v. Commissioner*, 125 TC 227 (2005) where courts reached the conclusion that assets in retirement accounts, which are subject to restrictions, are not entitled to any discount. From that, the Service concluded that assets in an RMA are not subject to any discount either.