



BNY MELLON
WEALTH MANAGEMENT

January, 2024

Heckerling 2024 – 4 ½ Days in 60 minutes

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Heckerling 2024

Top Themes

- IRS is flexing its muscle
- Corporate Transparency Act – we're still in the dark
- Chapter 14 – complicated, alive and kicking
- Foreign trusts – disclose or pay – IRS is like Gladys Kravitz
- GRATs – still scary after all these years
- Social welfare organizations – an end run around traditional charitable rules
- Conservation easements – what you don't know can hurt you
- More secure about SECURE
- Blocking and tackling with traditional techniques

Heckerling 2024

Agenda

- Fundamental Session – Practical Estate Planning Tools – Davis and Willms
- Recent Developments – Panel
- Estate Administration – Akers
- GRATs – Zeydel
- Conservation Easements – Dietrich
- ESG Investing – Panel
- Sections 501(c)(3), 501(c)(4) and 501(c)(6)
- Estate and Gift Tax Audits – Porter
- Cybersecurity, Privacy, Ethics – Panel
- Directed Trusts – Gordon
- Chapter 14 Special Valuation Rules – Angkatavanich
- Foreign Trusts – Graham
- Fiduciary Decisions – Fitzsimons
- SECURE - Choate
- Wrap-Up – Kanyuk and Redd

Fundamentals Session – Practical Tools – Davis and Willms

Planning Ideas – Takeaways

- Outline is a fantastic refresher of the listed topics and a great primer of techniques and explanation of planning ideas for those new to estate planning.

Outright Gifting	Accidentally Perfect Grantor Trust
Intra-Family Loans	Charitable Gifts
Irrevocable Life Insurance Trusts	IRAs to Charity
Spousal Limited Access Trusts	Donor Advised Funds
Grantor Retained Annuity Trusts	Portability
Qualified Personal Residence Trusts	Bypass Trust and similar Trusts
Sale to Intentionally Defective Grantor Trust	Marital Trusts

Fundamentals Session – Practical Tools – Davis and Willms

Selected Takeaways

- If owner and beneficiary of life insurance don't match up, the owner is deemed to make a gift of the insurance proceeds to the other beneficiaries when the insured dies.
Example: A is the owner of an insurance policy and A, B and C are the beneficiaries.
When the insured dies, A is making a gift of 2/3 of the policy proceeds to B and C.
- Simple explanation of the zero valuation rule of Section 2701 with statutory exceptions for GRATs and QPRTs. If grantor gives property and retains an interest, the value of the gift is the fair market value of what the grantor gave less the fair market value of what the grantor retained, unless the gift is to a relative and in that case the value of the grantor's retained interest is zero.
- Good examples of portability ordering rules

Recent Developments in Estates and Trusts - Panel

Agenda

Estate tax issues:

- Projected 2024 Gift, Estate and GSTT inflation adjustments
- Priority guidance plan
- New mortality tables
- Rev. Rul. 2023-2 – basis in assets gifted to a grantor trust
- CCA 202352018 – gift tax consequences of modifying a grantor trust to add a reimbursement clause
- Rev. Proc. 2022-32 – portability election extended to 5 years for some estates
- Connelly v. U.S. – value of life insurance included in value of company
- U.S. v. Paulson – liability for estate tax
- Cecil v. Commissioner – “tax affecting” S corporation stock
- Schlapfer – adequate disclosure
- Section 2053 proposed regulations

Recent Developments in Estates and Trusts - Panel

Agenda

Charitable Giving Issues:

- Donor advised funds – November, 2023 proposed regulations
- Estate of Horvitz v. Commissioner – decanting to allow estate tax charitable deduction
- Estate of Hoensheid v. Commissioner– assignment of income
- Gerhardt v. Commissioner – annuity payments from CRAT were ordinary income

Other Relevant Issues:

- Corporate Transparency Act
- Greenbook proposals

Recent Developments

2024 Gift, Estate and GSTT Inflation Adjustments – Rev. Proc. 2023-34

- Basic exclusion amount - \$13,610,000, up from \$12,920,000 in 2023
- Gift tax annual exclusion - \$18,000, up from \$17,000 in 2023
- Annual exclusion for gifts to a non-U.S. citizen spouse - \$185,000 up from \$175,000 in 2023
- Aggregate decrease in value of qualified real property resulting from special use valuation under §2032A - \$1,390,000, up from \$1,310,000 in 2023
- Dollar amount used to determine the “2 percent portion” for purposes of calculating interest under §6601(j) of the estate tax extended under §6166 - \$1,850,000, up from \$1,750,000 in 2023.
- The maximum annual QCD limit for 2024 is \$105,000, up from \$100,000 (pre-SECURE 2.0) and the amount for a one-time distribution from an IRA to a split-interest entity is \$53,000, up from the SECURE 2.0 amount of \$50,000.
- The American Council on Gift Annuities (ACGA) issued new CGA rates effective January, 2024.

2023-2024 Priority Guidance Plan – September 29, 2023

Gifts and Estates and Trusts

- Regulations under §645 pertaining to the duration of an election to treat certain revocable trusts as part of an estate.
- Final regulations under §§1014(f) and 6035 regarding basis consistency between estate and person acquiring property from a decedent. Proposed and temporary regulations were published on March 4, 2016.
- Regulations under §2010 addressing whether gifts that are includible in the gross estate should be excepted from the special rules of §20.2010-1(c). Proposed regulations were published on April 27, 2022.
- Alternate valuation – regulations under §2032A on restrictions imposed on estate assets during the alternate valuation period (anti-Kohler regulations). Proposed regulations were published on November 18, 2011.

2023-2024 Priority Guidance Plan – September 29, 2023

Gifts and Estates and Trusts

- Deductions – final regulations under §2053 regarding the deductibility of certain interest expenses and amounts paid under a personal guarantee, certain substantiation requirements, and the applicability of present value concepts in determining the amount deductible. Proposed regulations were published on June 28, 2022..
- Regulations under §20.2056A-2 for qualified domestic trust elections on estate tax returns, updating obsolete references.
- Regulations under §2632 providing guidance governing the late allocation of generation skipping transfer tax exemption in the event the IRS grants relief under §2642(g), as well as addressing the definition of a GST trust under §2642(c), and providing ordering rules when GST exemption is allocated in excess of the transferor's remaining exemption.
- Final regulations under §2642(g) describing the circumstances and procedures under which an extension of time will be granted to allocate generation skipping transfer tax exemption. Proposed regulations were published on April 17, 2008.

2023-2024 Priority Guidance Plan – September 29, 2023

Gifts and Estates and Trusts and Miscellaneous

- Final regulations under §2801 regarding the tax imposed on U.S. citizens and residents who receive gifts or bequests from certain expatriates. Proposed regulations were published on September 10, 2015.
- Regulation under §6011 identifying a transaction involving certain uses of charitable remainder annuity trusts as a listed transaction.
- Final regulations for the changes to retirement plan administration under §401(a)(9) and the SECURE Act. Proposed regulations were published on February 24, 2022.
- Tax-exempt organizations – final regulations for §509(a)(3) supporting organizations and guidance under §4941 regarding private foundations' investments in partnerships with disqualified persons.

New Mortality Tables – Final Regulations

T.D. 9974, June 7, 2023

- Used to value annuities, life estates, term of years, remainder and reversionary interests
- New tables required to be issued “not less frequently” than every 10 years using “the most recent mortality experience available as of the time of the revision.”
- First update to tables occurred in 1989, updated in 1999, updated again in 2009 but not in 2019 due to delays with the 2010 census.
- Updated tables released three years late on May 5, 2022.
- The tables will only be available online – they won’t be published in the regulations
- The new tables apply to interests valued on or after June 1, 2023

New Mortality Tables – Final Regulations

New Table Changes

- Longer life expectancy – about 2 years
- Lower value for remainder interest
- Higher value for income interest
- Can use new tables for transactions on or after May 1, 2019 and before June 1, 2023. Taxpayers may use the transition period to amend certain returns.

Recent Developments

Rev. Rul. 2023-2

- IRS confirms no basis step-up at grantor's death for assets gifted to defective grantor trust
- Still no answer on the basis of assets at death on sale to defective grantor trust
 - Analysis involves §§ 1012, 1014(b) and 1015(b).

Recent Developments

Rev. Rul. 2023-2

- Ruling goes through Section 1014(b) and eliminates each reason for basis step-up to conclude there is no step-up in basis.
- Rep. Pascrell (D-NJ) pressured Treasury to hold no step-up.
- Ruling accomplished nothing except to pacify Sen. Pascrell.

Recent Developments

CCA 202352018 – Modification of grantor trust to add discretionary tax reimbursement clauses constitutes a gift by the beneficiaries

- A modification of a grantor trust, with the **consent** of the beneficiaries, to add a tax reimbursement clause, giving the trustees discretion to reimburse the grantor for income taxes imposed on the grantor, constitutes a taxable gift by the trust beneficiaries because the addition of a discretionary power to distribute income and principal to the grantor is a relinquishment of a portion of the beneficiaries' interest in the trust.

Rev. Proc. 2022-32 – Portability

Election Extended for Five-Years for Return Below Filing Requirement

- Election deadline originally nine months after death with possibility of six-month extension.
- Rev. Proc. 2017-34 extended the election deadline to two years.
- Rev. Proc. 2022-32 extends the election deadline to the fifth anniversary of the decedent's death– supersedes Rev. Proc. 2017-34. §9100 relief is available after the 5 year period but a fee and excuse is needed.
- Only applies to estate not otherwise required to file a Federal estate tax return, i.e., “portability only” returns. Also, doesn't apply if a return has previously been filed and portability was not elected.
- Must include the following language at the top of the Form 706 (in all caps): FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER §2010(c)(5)(A)

Valuation of Shares in Family Business

Connelly v. United States, No. 21-3683 (8th Cir. 2023)

- Section 2703(b) doesn't apply
- Life insurance payable to the company under a hybrid buy-sell agreement included in the value of the company.
 - Solution: have shareholders, rather than the company, purchase life insurance to avoid having the life insurance proceeds increasing the value of the company.
- Dicta – simply stating a value in a buy-sell agreement is not enough to determine the value of estate tax purposes. Something more, like a formula to determine the value is needed.
- U.S.S C. grants cert.

Beneficiaries Liable for Estate Tax

United States v. Paulson, 9th Cir. May 17.2023

- Successor trustee of revocable trust and trust beneficiaries receiving property after the death of a decedent were personally liable for unpaid estate tax.
- This is the first case holding that personal liability under §6324(a)(2) is extended to successor trustees and trust beneficiaries who are appointed or received property after the decedent's death.
- The court held that the personal liability of the successor trustees is capped at “the value of property at the time that they received or had it as trustee,” and the personal liability of trust beneficiaries “cannot exceed the value of the estate property at the time of the decedent's death, or the value of the property at the time they received it.”
- Case involved an interpretation of IRC §6324(a)(2) and whether the transferees were liable when they were not in possession of estate property at the time of the decedent's death.
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- Appealed to U.S.S.C.

Tax Affecting Applied in Transfer of S Corporation Stock

Cecil v. Commissioner, T.C. Memo. 2023-24, February 28, 2023

- Tax-affecting of value of S corporation allowed.
- Court discusses three methods for valuation of the closely-held company:
 - Asset value
 - Comparable sales
 - Discounted cash flow
- Jones case also instructive on the issue of valuation of a closely-held company and tax-affecting.

Adequate Disclosure

Schlapfer, T.C. Memo. 2023-65

Substantial compliance with each adequate disclosure requirement, rather than strict compliance, satisfies adequate disclosure rules.

- First reported case to contain a detailed discussion of the adequate disclosure rules.

Section 2053 Estate Tax Proposed Regulations

Observation

- Section 2053 proposed regulations require present value calculation for expenses paid more than three years after date of death.
 - May force rushed payment of expenses.
- Mortgage interest exempt from the present value calculation requirement as subjecting it to the present value calculation would have caused a rebellion in the real estate industry.

Section 2053 Estate Tax Proposed Regulations

Background

- The 2009 final regulations generally limit the deduction for claims and expenses to amounts actually paid in satisfaction or settlement of those items, with exceptions for ascertainable amounts, claims against the estate and debt.
- The proposed regulations also address the deductibility of certain types of interest as well as amounts paid under a decedent's personal guarantee.
- The 2009 final regulations expressly reserved for future guidance the issue of applying present-value concepts to determine the deduction amount.
- The June 24, 2022 Section 2053 proposed regulations now deal with these issues.
- The proposed regulations would apply to estates of decedents dying on or after the date the regulations are finalized.

Section 2053 Estate Tax Proposed Regulations

Limitation on Estate Tax Deduction for Administration Expenses, Claims and Interest Expenses

- Proposed regulations cover four items:
 - Apply present value calculations to certain expenses
 - Indicate what interest is deductible
 - When decedent's guarantee is deductible
 - Valuation of claims

Proposed Regs on Donor Advised Funds (DAF)

Issued November 13, 2023

- Excise tax could apply to investment advisors who have DAFs and manage individual's investments.
 - Result: Could favor community foundations over commercial DAFs

Proposed Regs on Donor Advised Funds (DAF)

Issued November 13, 2023

- Deals with excise taxes on taxable distributions from donor advised funds under §4966.
- The proposed regulations provide a broad definition of a DAF and donor advisor.
- **Caution:** Classification of certain third-party consultants and investment advisors as donor advisors may affect a DAF's ability to pay for provided services. Example: payment to an individual consultant would likely qualify as a taxable distribution and compensation received by an investment advisor working with both the donor and the DAF could trigger an excise tax as a taxable distribution, an excess benefit transaction and advice resulting in more than an incidental benefit.

Proposed Regs on Donor Advised Funds (DAF)

Four Projects

- §4966 – Subject to 2023 proposed regulations

- §4967

- §4958

- Guidance on public support

} Subject to future guidance

Recent Developments

Estate of Horvitz v. Commissioner, T.C. Dkt. No. 20409-19 (Order dtd Feb. 7, 2023)

- Modification of QTIP trust to include a power of appointment with charity as a discretionary appointee and exercise of the power in favor of charity qualified for the estate tax charitable deduction.

Recent Developments

Estate of Horvitz v. Commissioner, T.C. Dkt. No. 20409-19 (Order dtd Feb. 7, 2023)

- Tax Court rejects IRS refusal to respect decanting and denial of estate tax charitable deduction even though assets were actually appointed to Charity.
- QTIP trust decanted in 2013 to trusts with broadened testamentary power of appointment allowing surviving spouse to appoint assets to charity.
- Language in trust document allowed decanting under Ohio law. Surviving spouse appointed \$20 million to charity and IRS claimed the trustee of the original trust had no authority to decant the assets to the second trust.
- The Tax Court saw no reason why the decanting was not valid as nobody contested it.
- After much litigation and expense incurred by the estate, the IRS entered into a Stipulated Decision allowing the full estate tax charitable deduction.

Recent Developments

Estate of Hoensheid v. Commissioner, T.C. Memo 2023-34

- Gift of interest in business to charity violates assignment of income doctrine. Income tax charitable deduction disallowed, taxpayer recognizes gain while charity has the asset.
- Corporate redemption from charity – the focus is on the charity – is the charity legally bound or can be compelled to redeem the stock.
- Corporate sale – focus is on the donee – is there a risk that the sale will not close or is the sale certain to close.

Recent Developments

Estate of Hoensheid v. Commissioner, T.C. Memo 2023-34 (March 15, 2023)

- Donation of shares of stock to a DAF at Fidelity Charitable Gift Fund.
- Donor attempted to avoid gain recognition on the sale of stock contributed to charity and obtain an income tax charitable deduction for the stock's fair market value.
- However, donor had to recognize gain under the assignment of income doctrine and was precluded from claiming an income tax charitable deduction due to the failure to properly substantiate the donation – the appraisal obtained by the taxpayer for the donated shares did not meet the requirements of a qualified appraisal for income tax purposes (not done by a “qualified appraiser”). The Fidelity Charitable Gift Fund got the stock, the taxpayer lost an income tax charitable deduction and had to pay income tax on the sale of the stock out of their personal funds.
- At the time of the contribution of the stock, it was clear that the sale of the shares of the stock contributed to the Fidelity Charitable Gift Fund was virtually certain to happen in connection with the sale of the entire company.
- Fidelity was under no legal obligation to sell the contributed share of stock.

Stupid CRAT Tricks

Furrer v. Commissioner, T.C. Memo. 2022-100 (September 28, 2022)

Gerhardt v. Commissioner, 160 T.C. No. 9 (April 20, 2023)

United States v. Eickhoff, No.2-22-CV-04027 (W.D. Mo. May 23,2023)

- Tax Court finds that a CRAT scheme that purportedly avoids income tax on the sale of appreciated property is invalid.
- Proceeds from the sale of appreciated assets contributed to a CRAT which were re-invested in five-year single premium immediate annuities (SPIAs) with the CRAT individual taxpayers/beneficiaries named as recipients of the annuity payments was taxable income to the CRAT beneficiaries and not a return of corpus.
- The promotor of the scheme (John Eickhoff of Hoffman Associates, LLC) liable for penalties and permanently enjoined from promoting the scheme.
- Great quote by the court: the taxpayer's position that the gain "disappeared" was a position that was "worthy of a Penn and Teller magic show."

Corporate Transparency Act

Beneficial Owner Reporting Requirements – Effective January 1, 2024

- Enacted on January 1, 2021 as part of the National Defense Authorization Act. Final regulations were issued September 29, 2022.
- Corporations, LLCs and partnerships (“Reporting Company”) must disclose to FinCEN information about the entity itself, the Company Applicant and its Beneficial Owners. Reporting entities are those that are created by filing a document with the secretary of state or similar office. 23 exceptions exist for entities already heavily regulated, e.g., banks, charities.
- Designed to prevent evasion of anti-money laundering rules or hiding illegal activities
- “Beneficial owner” is any individual who directly or indirectly through any contract, arrangement, understanding or relationship exercises substantial control over a “reporting company” or owns or controls at least 25% of the reporting company.
- Willful failure to report can result in both civil and criminal penalties with a safe harbor for those who correct information within 90 of filing an inaccurate report.

Corporate Transparency Act

Beneficial Owner Reporting Requirements – Effective January 1, 2024

- Both company, the Company Applicant (for entities formed on or after 1/1/2024) and its beneficial owners must report.
- Beneficial owner information (BOI) reports are filed electronically with FinCEN.
- Reportable information for individual includes legal name, date of birth, residential or business address, identification number (e.g., SSN, passport number) and a copy of the document showing the identification number.
- Reportable information for company includes legal name (as well as any dba), date of birth, business address (P.O. box does not qualify), jurisdiction of formation of the entity, EIN or TIN.
- Senior officers of the company are responsible for accuracy of the BOI..

Corporate Transparency Act

Beneficial Owner Reporting Requirements – Effective January 1, 2024

- Entities formed after January 1, 2024 – “Company Applicants” must report. This would include a paralegal who forms the LLC and the supervising attorney.
- Reporting deadline:
 - Entity formed before 1/1/2024 – by January 1, 2025
 - Entity formed on or after 1/1/2024 – 30 days after formation (although on November 30, 2023 FinCEN and the Treasury Department extended the date to 90 days for companies formed in 2024).
 - Updates needed within 30 days of change

Corporate Transparency Act

How it Applies to Trusts or Similar Arrangements

- Currently, private trusts are not included among the entities that must report, and charitable organizations, including private foundations, are specifically exempt from the reporting requirements.
- However, trusts that exercise substantial control over or owns or controls 25% or more of a reporting entity may have to report. More guidance needed on how the CTA applies to trusts. Many unanswered questions. Information on how the CTA affects trusts is in the preamble to the final rule issued September 22, 2022.
- On December 21, 2023 FinCEN issued a final rule regarding access to beneficial ownership information.
- See BNY Mellon white paper on the Corporate Transparency Act.

Corporate Transparency Act

How it Applies to Trusts or Similar Arrangements – Beneficial Owners

- Beneficial owners could include any one or more of the trustee, grantor and beneficiaries
- Trustee or other individual (if any) with the authority to dispose of trust assets
- Beneficiary who (1) is the sole permissible recipient of income and principal; or (2) has the right to demand a distribution of, or withdraw, substantially all the assets, e.g., a surviving spouse of a marital deduction trust.
- Grantor who has the right to revoke the trust or otherwise withdraw the assets
 - This could a grantor who has retained the power to substitute assets of equivalent value which triggers grantor trust status.
- Note: a trust could have more than one beneficial owner subject to a reporting requirement.

Corporate Transparency Act

How it Applies to Trusts or Similar Arrangements – Beneficial Owners

- A beneficial owner may also include:
 - A person with authority to appoint or remove a trustee who can exercise power over a reporting company;
 - A person with authority to direct a trustee who can exercise power over a reporting company;
 - A person with authority to remove and replace any of the individuals described in the above two items.

Recent Developments - Panel

Q & A

- File gift tax return on sale to IDGT to get the statute of limitations running
 - “Seed” and sell in the same year – gift tax return is required.
 - Reg. 301.6501(c) – 1(f)(4) – tells how to disclose non-gift on a gift tax return.
 - Reg. 301.6501(c) – 1(f)(5) – if you file a gift tax return because it is a gift and later find out that is not a gift (e.g., incomplete gift), the statute or limitations still begins to run.
- SCIN – concern: no authority that you can rely on IRS actuarial tables
- GST exempt trust with rule against perpetuities provision moves to a state with no (or greater) rule against perpetuities period does not blow GST grandfathering. The rule against perpetuities of the trust still govern.

Estate Administration - Akers

Takeaways

- Spent considerable time on the basis consistency rules especially the fact that the proposed regulations state that if the asset is not reported on the estate tax return, the basis is zero, a proposition for which there is no authority.
- §2053 proposed regulations cover four items: (1) apply present value calculations to certain expenses, (2) indicate what interest is deductible, (3) when the decedent's guarantee is deductible and (4) valuation of claims.
- .Mechanics for electing the QTIP election – made on last estate tax return before the due date, or if an estate tax return is not filed, on the first estate tax return filed after the due date.
- Funding issues: (1) no need to aggregate QTIP assets with spouse's other assets for valuation purposes (Mellinger case); (2) must consider discounts/control premium when funding marital bequests.
- Planning after QTIP trust is funded. Section 2519 issues – any gift of income interest is a gift of the entire remainder interest.

GRATs - Zeydel

Takeaways

- Recommended using an actuary to establish the GRAT values as commercial software assumes gift is made on January 1.
- Offered two solutions to funding GRAT over more than one day:
 - Contribute to single member LLC and then assign LLC member interest to GRAT
 - Start with a revocable GRAT (revocable trust not subject to Section 2702) and revoke revocation right to establish GRAT
 - If you can't fund all the assets in one day, have language in the trust stating that the assets not funded in the first day are deemed to be held in a separate GRAT with the same provisions.
- If including value of annuity in GRAT versus 100% of GRAT, may not be entitled to Section 1014(b)(9) basis step-up if grantor dies within the GRAT term.
- If annuity payment is not paid on time, the trust says a deemed payment is made to a nominee for the grantor.

GRATs - Zeydel

Takeaways

- Her formula for annuity focuses on the value of the remainder interest, e.g., fund the GRAT with that amount, which if increased by 20% per year, would result in a value of the remainder interest of .01% of the value of the contributed property.
- Suggest not zeroing out the GRAT as the IRS could claim a GRAT with no value of the remainder interest is not valid. You really haven't transferred anything.
- Grantor should not be trustee of GRAT. To fall within the protection of Rev. Rul. 2008-22 (substitution power doesn't cause federal estate tax inclusion), the grantor can't be a trustee.
- Elect out of GST automatic allocation rules when establishing and funding a GRAT to avoid a potential fractional inclusion ratio.
- Include regular dynasty trust provisions in GRAT so it acts as a regular trust after the GRAT terms ends, e.g., administration provisions and decanting clause, among other provision. Draft for flexibility.

GRATs - Zeydel

Takeaways

- In a Walton GRAT, the payment after death must be payable to the grantor's estate. Payments to a revocable trust are not permitted.
- GRATs work best in a low interest rate environment. Annuity payments are greater when interest rates are low which gives you a lower remainder interest.
- Can have declining payments in a GRAT. Use a steeply declining GRAT. Regulations limit you to a 20% increase but there is no limit to the percentage decline in a GRAT.
- Remainder interest in the GRAT should go to a vested remainder trust so that you can assign the annuity interest to the trust.
- Make the annuity interest transferable. When the §7520 rate goes down, have someone buy your interest in the GRAT.

GRATs - Zeydel

Takeaways

- Trustee can't use debt to satisfy annuity payment to grantor.
 - The preamble to the regulations indicate that if the trustee borrows money from a bank and the bank agrees to make the loan only of the grantor deposits funds with the bank equal to the amount of the loan, the IRS may apply the step-transaction doctrine.
 - The theory is that since the grantor has in effect provided security for the trustee's borrowing, the transaction is treated as if the grantor is the borrower from the bank and the trustee has merely issued a debt obligation to the grantor.

GRATs - Zeydel

Takeaways – How to Improve GRAT Performance

- Swapping assets. Use a substitution power to lock in gain in a GRAT. Cases have held that issuing debt is a valid substitution.
- Rolling GRATS
- Asset splitting between multiple GRATS – use different terms, starting dates. Don't want the IRS coming in and saying all the separate GRATs with separate stocks are all treated as one GRAT where unsuccessful stocks will cannibalize the successful stocks.
- 99 year GRAT – amount included in gross estate is annuity amount divided by the §7520 rate in effect for the month of death. The entire date of death value is not what is included in the gross estate. The higher the §7520 rate, the lower the amount included in the estate. The bet is interest rates will increase.
- Leverage GRATs

Conservation Easements - Dietrich

Takeaways

- 200+ cases on Tax Court docket. IRS is pulling people from everywhere to work on these cases. If they haven't gone through IRS appeals, the Tax Court is sending cases back to IRS Appeals.
- IRS is focusing on valuation.
- 2 major issues that may result in denial of charitable deduction as a result of the perpetuity requirement:
 - Loans must be subordinated to the conservation easement at the time of the grant and later.
 - Division of proceeds on sale of the property

Conservation Easements - Dietrich

Takeaways

- Substantiation requirements: contemporaneous written acknowledgement (CWA) plus additional detailed information unique to conservation easement that must be included on the Form 8283
- Outline contains a bibliography of references to key resources to help understand the requirements of conservation easement. See IRS Publication 5464 – Conservation Easement Audit Techniques Guide.
- IRS chief counsel tells staff to review the A,B,C,Ds:
 - Appraisal
 - Baseline study – what was condition of property at time of grant
 - CWA
 - Deed

ESG Investing - Panel

Takeaways

- Presentation focused on case study.
- Trusts – sole interest of the beneficiaries, current and future, as stated by settlor
 - Prudent investor – invest as a prudent investor would given the purpose and terms of the trust and construct a portfolio with risk and return objectives reasonably suited to the purpose of the trust .
 - Duty of loyalty – administer the trust exclusively in the interest of the beneficiaries, both current and future. Trustee may not use its role to achieve any other objective, even if laudable and there is no harm to the beneficiaries.

501(c)(3), 501(c)(4) and 501(c) (6) - Bedingfield

Major 501(c)(4) Takeaways

- Not subject to private foundation rules.
- If making large gifts, you want to make sure the Section 2501(a)(6) gift tax exemption applies so file a Form 1024-A to request an exemption for a 501(c)(4).
- Discuss with client the lack of an estate tax exemption and how to avoid the estate tax.
- If there is inclusion in the gross estate, where is the federal estate tax paid from?

Sections 501(c)(3), 501(c)(4) and 501(c)(6)

	501(c)(3) – Public Charities	501(c)(4) – Social Welfare Organization	501(c)(6) – Business Leagues
Purpose	Organized and operated exclusively for exempt charitable purpose	Organized as a non-profit and operated exclusively (meaning primarily or 49%) for the promotion of social welfare-promoting the common good and general welfare of the community. Requirement: provide a community benefit. Very broad purpose.	Organized as an association of persons organized to promote a common interest of a trade, business or profession provided the organization does not engage in a regular trade or business for profit. Must benefit the entire industry, not individual members.
Tax consequences	Exempt from income tax, including investment income with an exception for UBTI	Exempt from income tax, including investment income with an exception for UBTI	Exempt from income tax, including investment income with an exception for UBTI
Income tax deduction	Contributions generally tax-deductible	Contribution are not tax-deductible	Contributions are not tax-deductible. Membership dues may be deductible as business expense but the organization must track lobbying and political activity expenditures and report annually to members percentage of membership dues that are non-deductible unless the organization elects to pay a 35% “proxy tax” on political expenses.
Non-charitable activity	Non-charitable activity allowed	Non-exempt activities allowed as long as not primary activity	Non-exempt activities allowed as long as not primary activity
Disclosure of donors	Must disclose donors	Donor not required to be disclosed	Donors not required to be disclosed

Sections 501(c)(3), 501(c)(4) and 501(c)(6)

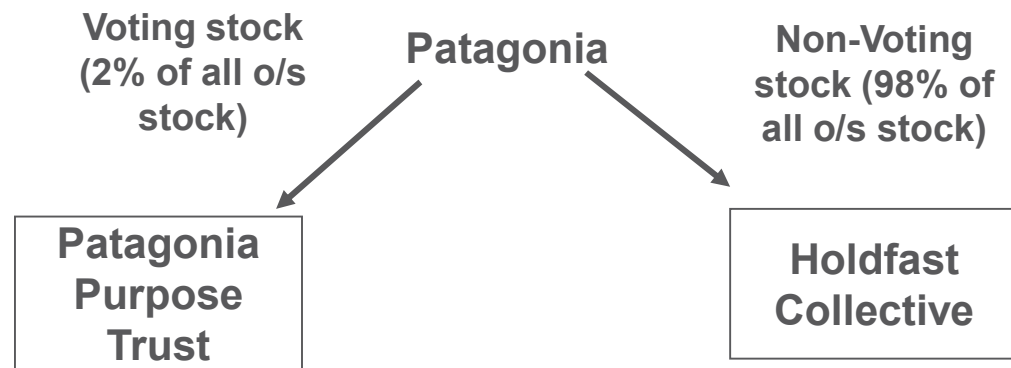
	501(c)(3)	501(c)(4)	501(c)(6)
Filing for exempt status	Must file for exempt status within 27 months after formation of organization. Use Form 1023 series.	Not required to file for exempt status but may so file using Form 1024-A. However, must notify IRS of intent to operate as a 501(c)(4) within 60 days of formation (regardless of whether then elect to file for exemption, which remains optional). Some exceptions apply for those that already filed a Form 990. See IRC §506. Use Form 8976. Penalties apply for failure to notify the IRS.	
Tax Filing Requirements	<p>Form 1023 for exempt status</p> <p>Must file Form 990, 990-EZ or 990-N unless below filing threshold.</p> <p>Failure to file may result in fines up to \$250,000 and revocation of tax exempt status.</p>	<p>Form 1024-A for exempt status</p> <p>Must file Form 990, 990-EZ or 990-N unless below filing threshold.</p> <p>Failure to file may result in fines up to \$250,000 and revocation of tax exempt status.</p>	<p>Form 1024 for exempt status</p> <p>Must file Form 990, 990-EZ or 990-N unless below filing threshold.</p> <p>Failure to file may result in fines up to \$250,000 and revocation of tax exempt status.</p>
Intermediate sanctions	Subject to §4958 intermediate sanctions for excess benefits.	Subject to §4958 intermediate sanctions for excess benefits.	Not subject to §4958 intermediate sanctions for excess benefits.
Donations of appreciated property	Donations of appreciated property does not trigger recognition of gain	Donations of appreciated property does not trigger recognition of gain. Organization takes donor's basis.	Donations of appreciated property does not trigger recognition of gain. Organization takes donor's basis.

Sections 501(c)(3), 501(c)(4) and 501(c)(6)

	501(c)(3)	501(c)(4)	501(c)(6)
Lobbying/political activity	Insubstantial lobbying permitted/electioneering prohibited	Unlimited lobbying to further nonprofit mission/electioneering (endorse political candidates) as long as electioneering not primary activity (up to 40% of activity). §527(f) tax applies unless expenses paid from §527 segregated funds.	Unlimited lobbying to promote member's common business interests. Insubstantial electioneering permitted but §527(f) tax applies unless expenses paid from §527 segregated funds.
Private inurement	Private inurement prohibited (although insubstantial amount allowed)	Private inurement prohibited (although insubstantial amount allowed)	Private inurement prohibited (although insubstantial amount allowed)
Dissolution	Upon dissolution assets must be distributed for charitable purposes	Not applicable	Not applicable
Gift and estate tax	Lifetime and testamentary gifts qualify for gift or estate tax charitable deduction.	Lifetime gifts not subject to gift tax. §2501(a)(6). No similar provision for estate tax. If a donor to a 501(c)(4) retains the right as a director or officer to designate who can enjoy property or income from the 501(c)(4), estate tax inclusion under §2036 could result. Solution: have relative act as director or officer, at death terminate the 501(c)(4) in favor of charity, segregate donation into fund the donor can't control or give up control at least 3 years before death to avoid §2036(a)(2).	Lifetime gifts not subject to gift tax. §2501(a)(6). No similar provision for estate tax. If a donor to a 501(c)(6) retains the right as a director or officer to designate who can enjoy property or income from the 501(c)(6), estate tax inclusion under §2036 could result. Solution: have relative act as director or officer, at death terminate the 501(c)(6) in favor of charity, segregate donation into fund the donor can't control or give up control at least 3 years before death to avoid §2036(a)(2).

Sections 501(c)(3), 501(c)(4) and 501(c)(6)

	501(c)(3)	501(c)(4)	501(c)(6)
Distributions from private foundations	Allowed	Distributions from private foundations to 501(c)(4) allowable if foundation exercises expenditure responsibility.	Distributions from private foundations to 501(c)(6) allowable if foundation exercises expenditure responsibility.
Distribution from a trust	Distribution from a trust to a 501(c)(3) qualifies for an income tax <u>charitable</u> deduction only if the distribution from the trust qualifies for a fiduciary income tax charitable deduction under §642(c).	Distribution from a trust to a 501(c)(4) qualifies for an income <u>distribution</u> deduction even the trust can't qualify for a fiduciary income tax charitable deduction under §642(c) because the distribution isn't traceable to gross income.	Distribution from a trust to a 501(c)(6) qualifies for an income <u>distribution</u> deduction even the trust can't qualify for a fiduciary income tax charitable deduction under §642(c) because the distribution isn't traceable to gross income.
Need to comply with private foundation restrictions	N/A	Donors can use 501(c)(4) to make grants to organizations without having to comply with private foundation restrictions such as the excise tax on net investment income, mandatory distributions, excise tax on self-dealing and excess business holdings. Can therefore hold many investments not allowed for a private foundation.	Donors can use 501(c)(6) to make grants to organizations without having to comply with private foundation restrictions such as the excise tax on net investment income, mandatory distributions, excise tax on self-dealing and excess business holdings. Can therefore hold many investments not allowed for a private foundation.



- \$17.5 million gift tax
 - No income tax charitable deduction – no tax benefit whatsoever
 - Ensures company makes good on commitment to socially responsible business
 - Family maintains ability to call the shots at Patagonia
 - Excess profits goes to Holdfast Collective via dividends
- 501(c)(4) social welfare organization (tax-exempt)
 - Can lobby and engage in political activities
 - Receives all company profits free of income tax
 - No gift tax on transfer of stock
 - No FET or GST
 - No charitable tax benefit

Estate and Gift Tax Audits - Porter

Takeaways

- Prepare for the audit at the planning stage
- IRS is staffing up.
- QTIP termination during the surviving spouse's life is a new audit issue. The focus is Section 2519. It is a focus of the national office.
- IRS issues broad requests for information
- Understand and preserve privileges: (1) attorney/client, (2) work product, (3) tax practitioner.

Estate and Gift Tax Audits - Porter

Common IRS Challenges

- Valuation
- Formula transfers
- QTIP terminations – new, focus of national office
- Promissory Notes – bona fide loan or gift?
- Installment sales to intentionally defective grantor trusts
- Grantor Retained Annuity Trusts (GRATs) – does it comply with §2702 and regulations?
- Penalties – substantial (20% if value is 65% or less than finally determined value)/gross (40% if value is 40% or less than finally determined value) estate and gift tax valuation understatement penalties (§6662(g) and (h)). Reasonable cause exception under §6664(c).
- Section 2036 – most litigated issue
 - Bona fide sale for adequate and full consideration exception
- Split-dollar life insurance
- Statute of limitations – adequate disclosure – See Schlapfer v. Commissioner, T.C. Memo 2023-65 (May 22, 2023).

Estate and Gift Tax Audits - Porter

Formula Transfers

- Potential benefit – allows transferor to define the dollar value of hard-to-value assets passing to taxable transferees.
- Types of formula clauses:
 - Defined value clause based on values “as finally determined for estate/gift tax purposes” (Christiansen, Petter, Wandry)
 - Defined value clause (McCord, Hendrix)
 - Price adjustment clause (King)
 - Reversion clauses don’t work (Procter)

Estate and Gift Tax Audits - Porter

Formula Language – Need Correct Language

- Wandry – “I hereby transfer to _____ that number of shares of the Company with a fair market value as finally determined for federal gift tax purposes equal to \$ [specific dollar amount].
- Petter – “I hereby transfer 100 shares of the Company to [taxable transferee] and [charity/QTIP/GRAT] to be allocated between the transferees as follows: (1) that number of shares with a fair market value as finally determined for federal gift tax purposes equal to \$ [specific dollar amount] to [taxable transferee]; and (2) the remainder of the shares to [charity/QTIP/GRAT].
 - Prefers “spillover to charity/DAF as charities have an independent fiduciary obligation but UBTI, self-dealing and excess business holdings present problems and client may be uncomfortable with significant wealth passing to charity, especially if it is an interest in a family business.

Estate and Gift Tax Audits - Porter

Formula Language – Need Correct Language

- King (price adjustment clause) – “I hereby sell 100 shares of the Company in exchange for a promissory note with a principal amount of \$ [X] (which the parties believe to be equal to the fair market value of the shares). The term of the promissory note shall be [add note terms/interest]. If the fair market value of the shares as finally determined for federal gift tax purposes is greater or less than \$[X], the principal amount of the note shall be adjusted to the finally determined value effective as of the date of the transfer. The parties intend for the sale to be at the fair market value and that no gift result from the sale.”
- Nelson – “[Mrs. Nelson] desires to make a gift and to assign to *** [the trust] her right, title and interest in a limited partner interest having a fair market value of TWO MILLION NINETY-SIX THOUSAND AND NO/100THS DOLLARS (\$2,096,000.00) as of December 31, 2008 ***, **as determined by a qualified appraiser within ninety (90) days of the effective date of this Assignment.**

Cybersecurity, Privacy, Ethics - Panel

Takeaways

- Session focused on ethical duties of attorneys. ABA Model Rule of Professional Conduct 1.1 – competence includes maintaining technical competence.
- NY, NC and FL have required technical training for attorneys.
- Focus of session:
 - Why do we care about this?
 - Identify who we are trying to protect and what are we trying to protect?
 - What are the threats and vulnerabilities?
 - Cyberethics

Cybersecurity, Privacy, Ethics - Panel

Takeaways

- Why do we care about this? Ethical obligation. Security breach is costly. Only 1 in 3 breaches were identified by an organizations own security team, 40% identified by a benign third party.
- Identify who we are trying to protect and what are we trying to protect? Protect information (IP, business practices, client lists, etc. Estate planner needs to protect family information)
- What are the threats and vulnerabilities? Man-made, criminally focused.
- Cyberethics – setting the minimum standard for attorneys. ABA Model Rules of Professional Conduct: 1.1 (competence), 1.6 (confidentiality of information), 1.15 (safekeeping for property), 5.1 and 5.3 (responsibility regarding non-lawyers and lawyers you are supervising). ABA has issued formal opinions that provide guidance.

Cybersecurity, Privacy, Ethics - Panel

Takeaways – What We Need to be Thinking About – Three Buckets

- Are we locking our doors? Files in locked cabinets, locked server room, is there a receptionist who knows who not to let in/prevent people wandering around.
- Technical safeguards. Is there sufficient technology in place, have technological safeguards been implemented, are there firewalls, requirement to change passwords regularly, is multi-factor authentication (MFA) required, patches to software.
- Administrative safeguards to implement policies and practices. What type of training is given to employees.

Cybersecurity, Privacy, Ethics - Panel

Takeaways – Additional Comments

- In addition to legal malpractice insurance, should you also have cybersecurity insurance?
- E-mail is the most attacked source
- What are breach notification requirements – differ under state law. See ABA Formal Opinion 483 that discusses an attorney’s obligation after a breach. ABA rules on notification are different than state notification laws about need to give notice of a breach and to whom.
- What is the attorney’s responsibility for training clients on what to send to the attorney and how to send that information.
- AI – do not put information into AI engine. You have no idea where that information goes. You are giving up the privacy of that information.

Directed Trusts - Gordon

Takeaways

- Defined – takes one or more powers and gives those powers to someone else.
- Review statutory framework under the Uniform Trust Code (UTC), Delaware statute, Restatement (Third) or Trusts, Uniform Directed Trust Act (UDTA).
- Discussed standard for liability of trustee following instructions of directed trustee – in most cases willful misconduct. It is the default standard if the standard of care is not mentioned in the trust document. Suggestion: put standard of care in the trust document.
- Oversight responsibility – unless trust document says otherwise, trustee has oversight duty. Delaware statute says trustee has no oversight responsibility.

Directed Trusts - Gordon

Takeaways – Constructing a Direct Trust – Four Roles

- Trustee
- Investment advisor
- Distribution advisor
- Trust protector – only person speaker is comfortable with serving in a non-fiduciary capacity
- Drafting tip: if any of the above four positions become vacant or person in that capacity doesn't make a decision, have that person's power revert to the trustee with the exception of the trust protector's powers.

Directed Trusts - Gordon

Takeaways – Reviewed UDTA, Delaware Statute on Standard of Care

- UDTA – trust director/advisor is a fiduciary, standard of care depends on state law, there is no ability to negate fiduciary duty if trust director.
- Delaware statute – trust director is a fiduciary, standard of care can be negated in the terms of the trust document except a willful misconduct standard of care cannot be negated

Directed Trusts - Gordon

Takeaways – Tax Planning with Direct Trusts

- Springing completed gift asset protection trust - trust is excluded from estate but retain discretionary beneficial interest i.e., completed gift with discretionary beneficial interest.
 - Allow powerholder to add beneficiaries to the trust and have grantor be one of those people who could be added as a beneficiary. The person with authority to add beneficiaries should not be the trustee (violation of fiduciary duty). It should be exercised by the trust protector (trust protector not acting in a fiduciary capacity).
- Self-settled asset protection trust (DAPT)

Directed Trusts, Family Offices, Private Trust Companies - Panel

Takeaways

- Of the three panelists one covered directed trusts, one covered family offices and the last person covered private trust companies.
- Quote: If you've seen one family office, you've seen one family office. Translated - Every family office is different.
- Common functions of family offices:
 - Administrative services
 - Investment services
 - Fiduciary functions – act as trustee of family trusts
 - Staffing – big issue in finding and cost of talent

Directed Trusts, Family Offices, Private Trust Companies - Panel

Takeaways – Types of Family Offices

- Single family office (SFO) – family members
- Multi-family office (MFO) – no family relationships
- Independent family office (IFO) – run by wealth management firm
- Virtual family office (VFO) – attorney or CPA helps family outsource to provider
- Embedded family office (EFO) – family office is run out of the family's business
- Structure of family office depends on the type of services the family needs
- Desire to structure based on Lender Management case

Directed Trusts, Family Offices, Private Trust Companies - Panel

Takeaways – Types of Trustees

- Individuals including family members
- Professional trustees
- Private trust company
- Comment: to avoid estate and gift tax issues, don't give grantor too much control. Grantor's sole role should be investment director.

Chapter 14 – Special Valuation Rules - Angkatavanich

Background

- Chapter 14 (§§2701-2704) was enacted to put an end to manipulative valuation techniques used in connection with transfers of partial interests in property where the transferor retained an interest in the property.
- Prior to the enactment of Chapter 14, when a transferor transferred a residual interest in property and retained the income interest in the property, the transferred interest was valued for gift tax purposes by taking the value of the entire property and subtracting the present value of the interest retained by the transferor.

Chapter 14 – Special Valuation Rules - Angkatavanich

Takeaways

- Deemed gift provisions
 - §2701 – transfers of certain interests in corporations and partnerships to members of the transferor's family
 - §2702 – valuation of retained interests in trusts – GRATs and QPRTs
 - §2704(a) – treatment of lapsed voting or liquidation rights as transfers
- Disregarding provisions
 - §2703 – certain rights and restrictions disregarded – buy-sell agreements
 - §2704(b) – certain restrictions on liquidation disregarded
- There are exceptions where Chapter 14 does not apply

Foreign Trusts - Graham

Introduction

- U.S. owners and beneficiaries of foreign trusts are generally subject to U.S. reporting and possibly taxation.
- The IRS is always interested whether a U.S. taxpayer had any dealings with foreign trusts or received large amounts of money from a foreign country.
- To find out about U.S. taxpayers dealing with foreign countries the IRS requires the filing of a Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
- The Form 3520 is simply an information return to report (1) certain transactions that have occurred with respect to foreign trusts and (2) the receipt of gifts from foreign persons.
- Failure to file the Form 3520 is subject to severe penalties, generally the greater of (1) \$10,000 or (2) (i) 35% of the gross value of the property transferred, (ii) 35% of the gross value of distributions or (iii) 5% of the gross value of foreign trust assets treated as owned by a U.S. person.

Foreign Trusts - Graham

Test to Avoid Foreign Trust Status – Satisfy Each of Two Tests

- The Internal Revenue Code assumes all trusts are foreign trusts unless the trust can meet both parts of a two-prong test:
 - **Court test** - court within the U.S. can exercise primary authority over substantially all issues in the administration of the trust
 - **Control Test** - one or more U.S. persons have the authority, by vote or otherwise, to control all “substantial decisions” of the trust with no other person having veto power (except for the grantor or beneficiary acting in a fiduciary capacity).

Foreign Trusts - Graham

Six Important Tax Consequences

- How distributable net income (DNI) is calculated for a foreign trust - §643(a)(6);
- Gain recognition when transfers are made to a foreign trust or a domestic trust becomes a foreign trust - §684;
- Application of the grantor trust rules to a foreign trust established by *foreign* grantors - §672(f);
- Application of the grantor trust rules to a foreign trust created by *U.S. persons* - §679;
- Application of the “throwback rules” - §§ 665-668;
- Information reporting requirements under §6048.

Foreign Trusts - Graham

Form 3520 – Four Categories of Transactions

- Transfers to foreign trusts – reported on Part I
- Ownership of foreign trusts – reported on Part II
- Distributions from foreign trusts (including rent-free use of trust property or loans from the trust) – report on Part III
- Receipt of large gifts from foreign individuals, estates, corporations or partnerships – reported on Part IV

Foreign Trusts - Graham

Potential Forms Required to be Filed

- Form 3520-A
- Form 3520
- Form 1040-NR
- FBAR
- Form 8938

Fiduciary Decisions - Fitzsimons

Takeaways

- No major cases or groundbreaking legal decisions in 2023. Many were “small, petty and selfish.”
- Estate of Sarah Graham Kenan (NY) – court refuses to compel trust accounting for trust that owns 50% of the stock in the Breakers Hotel in West Palm Beach worth \$400 million.
- In re Estate of Seeber (TN) – testamentary exception applies to, and attorney required to produce, copies of prior will that was revoked and replaced by a later will. Attorney-client privilege generally survives death. Testamentary exception applies in will contests to prove intent of the testator.
- Reece Trust v. Reece (CO) – beneficiary’s standard of living for discretionary distributions is measured by the standard beneficiary enjoyed during her marriage to testator, which includes period of legal separation prior to death. During separation, the wife’s standard of living declined. Court applied Restatement approach and measured her standard of living at the husband’s death. Recommendation: specify in trust at what point standard of living should be measured.

Fiduciary Decisions - Fitzsimons

Takeaways

- Swanson v. Wolf (MN) – case to remove a trustee. Action is in personam to get personal jurisdiction over the trustee and they brought the action in rem which failed.
- Standing in charitable cases challenging completed gifts (school removing donor's name from building, using funds for other purposes) is generally in the state attorney general. Donor's family generally has no standing.
- Exile Brewing case (IA) – potential estate debtor lacks standing to intervene in a proceeding to re-open closed estate.
- In re Hunt (TN) – cautionary tale about understanding and addressing the tax consequences of settlements. Settlement agreement didn't address who paid capital gain taxes on sale of assets to raise cash to pay settlement.

Fiduciary Decisions - Fitzsimons

Takeaways

- Uniform Trust Code allows an agent to amend a revocable trust where such a power is expressly authorized by the terms of the trust or the power of attorney.
- Jones v. Jones (MA) – Drafting tip: stop drafting trusts with mandatory principal distributions. Husband and wife divorce after 19 years of marriage. For purposes of equitable division, the Massachusetts Appeals Court included a GRAT remainder trust for the wife’s benefit as marital property and ordered the wife to pay \$1.2 million to the husband. The trust was a third party spendthrift trust but was included as marital property because, rather than being a discretionary trust, the trust provided for outright distribution after the death of the settlor. In addition, the wife has a power of appointment over the trust assets in the event she died before outright distribution. The court held that the wife had a fixed and enforceable property right.
- Side note: Most common distribution age: age 30. Most common age for divorce: age 30

SECURE - Choate

Takeaways – Clarified Three Issues

- Charitable giving with a trust named as the beneficiary of a retirement plan
 - Specify in trust that IRA will be used to fund charitable gifts or forbid it (at least after 9/30 of the year after death) to preserve designated beneficiary status
 - Language to qualify for the §642(c) income tax charitable deduction
- Rules governing separate accounts
 - Divide into separate accounts by 12/31 of the year after death
 - Separate accounts for trusts – funding v. subtrusts
- Options for the surviving spouse
 - Spouse subject to same 1 year after death rule to start RMDs as everyone else. No postponement unless spouse ELECTS to get a postponement and spouse ELECTS to treat the IRA as her own account
 - Qualifying for the marital deduction

Wrap-Up – Kanyuk and Redd

Takeaways

- Making and timing of the QTIP election – gift versus estate tax
 - Estate tax – last estate tax return timely filed, including extensions, or, or first estate tax return after the due date.
 - Gift tax – timely filed gift tax return, including extensions. If you file a late gift tax return, you're out of luck if you made a gift to a spousal inter vivos QTIP trust.

Wrap-Up – Kanyuk and Redd

Takeaways – Five Problems with Basis Consistency Proposed Regulations

- Basis or corrections not reported – basis is zero
- Not clear who gets report
- Must put every possible asset beneficiary might receive on form – might over-inform
- The executor is on the hook for mistakes
- Transfer of assets – beneficiary must file report and give to transferee

Thank you!

Disclosure Appendix

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