MERCER COUNTY ESTATE PLANNING COUNCIL

 HECKERLING REVIEW

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The 51st Annual Heckerling Estate and Trust Symposium was once again stocked with nuggets for all estate and trust practitioners. The following is a summary of some of the key presentations at Heckerling which (time permitting) will be addressed.

Estate, Gift, and Generation Skipping Transfer Tax Repeal

With the surprising result of the Presidential election, the Republicans have gained control of the Executive and Legislative branches of government. The platform of the GOP includes the repeal of the transfer tax system.

However, the “devil is in the details”. The gift tax may remain, the votes for permanent repeal may not be there, the replacement with a carryover basis or capital gain systems – or both - are all on the agenda. The infighting within the GOP between those seeking overall tax cuts and the deficit hawks who are concerned with how to pay for those cuts present additional challenges with respect to possible repeal.

We will discuss the status of repeal, the hurdles that passage faces, the specific proposals being offered and the comments by the presenters with respect to their thoughts on the future.

How to plan, draft and address the concerns of clients in times of such uncertainty presents a difficult challenge for planners. Couple that with the impending repeal of the New Jersey Estate Tax – whose repeal itself is no certainty – adds additional fuel to the planning and drafting fire. Our planning discussion will address the dual challenge.

Proposed Section 2704 Regulations

The Treasury issued Proposed Regulations on August 2, 2016 (the 37th anniversary of the death of Thurman Munson) which read literally would effectively eliminate lack of control and lack of marketability discounts for transfers of equity interests to family members. The furor from the key organizations which represent attorneys, accountants and appraisers was intense. Over 30.000 comments were received and are being digested by the Treasury.

We will discuss the specific method by which the Service would eliminate such discounts, the issue with respect to their validity and the status of the Regulations and the current position of the Service considering the furor. We will also discuss how to plan in light of the impending issuance of Final Regulations, at which time the Regulations in their then existing form will then become effective.

The Basis Consistency and Basis Reporting Rules

On July 31, 2015, the Highway Transportation and Veterans Care Act was enacted into law. While the title creates the appearance of a gigantic yawn, Sections 2004-6 of the Act have a dramatic effect upon estate planners. Specifically, there are now rules which require certain assets in certain estates to have a basis which cannot exceed a certain value. Furthermore, certain estates are now required to report the basis of most assets to the Service and the beneficiaries of those estates.

Regulations are now in effect which control both the consistency and reporting requirements. Those regulations provide a roadmap to both requirements – and also raise additional questions and concerns with which every estate practitioner need be familiar.

We will discuss some of the salient points of the Statute and the Regulations – and the requirements with which estate practitioners must familiarize themselves in order to comply with the law and avoid potentially severe penalties for themselves and their clients. Attached is a PowerPoint presentation which summarizes the rules and requirements.

Modifications of Trusts

There has been a geometric increase in the implementation of changes to what were once thought to be irrevocable trusts. Reformations, Construction Proceedings, Decanting, Judicial and Non-Judicial Modifications are becoming a mainstay in the estate and trust planning practice.

With the advent of the recent adoption of the Uniform Trust Code in New Jersey – effective July 17, 2016 (the 75th anniversary of the end of Joe DiMaggio’s 56 game hitting streak) – such planning has taken on additional importance. We will discuss the various methods and the overlooked concerns of the tax ramifications in connection with such modifications. It may be statutorily permissible to invoke modifications, but it often comes with tax consequences some of which may be undesirable.

State Income Taxation of Trusts

States have created statutes designed to tax non-grantor trusts over which they believe they have nexus. However, what is and is not sufficient nexus has been the subject of numerous cases over the years and a bevy of cases recently.

We will discuss the recent cases and how they affect State income taxation of trusts. Proper planning can avoid unwarranted taxation and improper planning may impose tax in situations which would otherwise appear not to incur taxation.

Retirement Benefit Planning

Planning for Qualified Retirement Benefits has become an ever-increasing part of the estate plan for the client. So have the utilization of trusts. The rules with respect to the latter being beneficiaries of the former can be tricky and are required knowledge for the estate tax practitioner.

We will discuss the rules which must be understood and the traps awaiting the practitioner who plans improperly. Further discussion will address proposed legislation which would substantially affect the rate at which non-spousal beneficiaries could withdraw their benefits.

Revenue Procedure 2016-49

QTIP Trusts have become a mainstay of estate planning. The ability to obtain a marital deduction and simultaneously provide marital benefits in trust form is a critical tool in both second and first marriages.

However, a fundamental tax issue clouded the use of QTIPs, namely, whether or not the estate tax marital deduction is available if the election for same did not save federal estate taxes. A negative result would have traumatic effects upon basis of assets in the estate of the surviving spouse and the potential imposition of New Jersey Estate Tax.

We will discuss the issues that were faced, the resolution of the issue and how to plan both at the Federal level and in New Jersey to ensure the desired result.

IRS Attacks on Traditional Estate Planning Techniques

GRATs, Sales to Intentionally Defective Grantor Trusts and Self-Cancelling Installment Notes have become an integral part of estate planning. The IRS has engaged in judicial warfare in an attempt to derail these techniques. Two of the cases have settled, depriving practitioners of an affirmative adjudication of the validity or invalidity of those positions.

We will discuss the status and viability of each of the positions of the Service and the planning alternatives available to the practitioner which may thwart the arguments raised by the Service.