ESTATE PLANNING COUNCIL OF NORTHERN NEW JERSEY

ESTATE PLANNING UPDATE:

CASE LAW CONTROLS!!!! – WITH A COUPLE OF CCAS AND \_ REVENUE RULINGS FOR GOOD MEASURE

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Maximizing the Exemption - But You Better Get It Right

The Basic Exclusion Amount is $10,000,000 indexed for inflation – and inflation has raised the exemption from $12,920,000 in 2023 to $13,610,000 in 2024 – not quite the increase Shohei Ohtani will earn this upcoming season, but an increase alone that is greater than the entire exemption as recently as 2001!!

The planning we do to take advantage of the higher exemption continues on steroids. Married couples now have over 27 million available to accomplish transfers without the imposition of a transfer tax. Remember however, the “bonus exemption” disappears after December 31, 2025.

Funding grantor trusts and the ever-popular use of SLATs remains prevalent. Make sure however, that the bonus exemption is not wasted. Transfers which remove appreciation from an estate can have their benefit at any level, but if the object is to utilize the eventually expiring bonus exemption, the amount transferred must exceed the exemption that will be available at the death of the transferor. We will discuss the proper planning and traps in correctly funding the transfers to ensure the use of the bonus exemption.

CCA 202352018 – Enter the IRS into the Trust Modification Arena

Trust modifications, decantings, reformations, judicial and otherwise, have become a regular segment of estate planning. Times change, documents need to be changed, notwithstanding their “irrevocability”.

Modifications carry with them tax consequences. More than a decade ago, the IRS stated they would address those consequences. That time has arrived. In a stunning development, the IRS has issued its position in connection with one such modification. Arguments raised in recent cases involving modifications indicate the active involvement the IRS intends to take. We will discuss the CCA and the tax consequences that modifications may bring forth.

Connelly vs. United States – Controversy in the Buy-Sell Arena

Buy-Sell Agreements are a mainstay in business relationships, even among related parties. Whether they are respected by the IRS is a function of meeting the requirements both judicial and statutory in nature. How to value an interest of an estate in a redemption appeared to be well-settled.

Not anymore!!!! Connelly creates a split among the Circuit Courts in the valuation of an interest in an entity in which insurance is utilized to redeem the interest of the estate. We will discuss the holding – and the rules in connection with a buy-sell agreement which are nicely defined in the holding.

Formula Gifting and the Sorenson Settlement - The Ultimate Safety Net to Avoid Gift Tax - and Malpractice if Done Improperly

Clients love the idea of saving estate taxes – as long as they can avoid paying gift taxes when alive. When maximizing exemptions, avoiding gift taxes can be difficult if the assets transferred are hard-to-value assets. If one believes an asset is worth 12 million – just under the exempt amount – and turns out on audit or judicial resolution to be worth 16 million, a gift tax will be due and your malpractice carrier will require involvement.

The cure? Structure the gift of hard-to-value assets as a formula gift. If done correctly, the amount of assets transferred will not be subject to current gift tax. There are two methods to accomplish a formula gift. We will discuss both, particularly in light of a recent case in the Tax Court which settled – Sorenson vs. Commissioner. Equally important and addressed in Sorenson, we will discuss how a formula gift must be documented and reported.

GRAT Management and Reporting – Look Out!!!

The grantor retained annuity trust is not only a magnificent technique in the toolbox of an estate planner, if drafted in a certain manner can effectively fix the amount of the Basic Exclusion Amount utilized – even zero in the world of “Zeroed Out GRATs”.

Oftentimes, the post-drafting management and proper tax reporting of the GRAT are overlooked. In a CCA 202152018, Treasury demolished the taxpayer for the failure to “follow the yellow brick road” of management and reporting. While the facts in the CCA are extreme, the principles of what should and should not be done are apparent.

The IRS in its recent audits is attacking GRATs which are not properly administered. We will discuss the IRS approach and how to avoid the issue entirely.

Revenue Ruling 2023-2 – The Service Speaks Up on Step Up in Basis

A basic rule in the estate tax arena – if an asset is included in the estate of a decedent for estate tax purposes (IRD excepted), the basis of the asset is adjusted to its fair market value at date of death, colloquially known as step up in basis. By contrast, if an asset is transferred via gift prior to death and is not included in the estate for estate tax purposes, carryover basis applies.

It has been set forth by some practitioners that if the gift prior to death is transferred to an irrevocable grantor trust, the taxpayer avoids estate tax inclusion AND receives a step up in basis. The Service has spoken loudly on the position, not surprisingly in the negative. We will discuss the Ruling and the positions espoused.

Hoenscheid vs. Commissioner – The Assignment of Income Doctrine Gets Turned on its Head

The Assignment of Income Doctrine is an age-old standard in the income tax world – and one of the first concepts taught in the basic income tax course at law school. Simply put, once you earn the income, you cannot avoid the tax consequences by assigning that income to someone else.

In the charitable arena, taxpayers have long relied – 45 years – on the proper timing standard of transferring appreciated stock to a charity which then sells the stock to obtain the “best of both worlds”; an income tax deduction for the fair market value of the stock and having the charity be deemed the taxpayer in connection with the sale of stock, thereby allowing the taxpayer to avoid the income tax which would be due if he or she sold the appreciated stock.

Hoenscheid simply undoes that standard and creates a new ground rule. Worse, the old standard was objective and easy to meet; the new standard is subjective and will leave taxpayers in a massive quagmire. We will discuss the holding.

Annual Exclusions - Really?

The annual exclusion exempts annual gifts to each donee of 10,000 indexed for inflation. For 2023, the indexed exemption was 17,000 and it skyrocketed in 2024 to 18,000. We have become accustomed in estate planning to contort our efforts to stay within the confines of annual exclusion gifting in order to avoid the utilization of the Basic Exclusion Amount.

When the exemption was 600,000, Derek Jeter and Mariano Rivera were rookies and the need to engage in transfers which did not exceed the annual exclusion was fundamental in many cases. Now that the exemption is more than twentyfold – and even with the eventual elimination of the bonus exemption more than tenfold – marrying ourselves to the annual exemption in many cases loses its importance. We will discuss the circumstances in which the annual exclusion remains important – and those in which it is thoroughly irrelevant.

Getting a Second Chance – The Generation Skipping Transfer Exemption

Perhaps the most complicated area of estate tax planning involves the generation skipping tax. Many practitioners – experienced or otherwise – have difficulty with the rules and applications of the GST exemption. The result: trusts currently in existence which are inadvertently not exempt from the eventual imposition of the generation skipping transfer tax. The bonus exemption is also available at the GST level – and late allocations and other uses of the currently large GST exemption will allow in certain circumstances the ability to fully exempt those inadvertently non-exempt trusts.