First Bankers Trust Services

estate planning briefs®

February 2019

In This Issue

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Extension of time for portability election

Decedent's estate, coupled with his lifetime taxable gifts, fell below the filing threshold for the federal estate tax. There was nevertheless a good reason to file a Form 706, as it was the only path to securing the portable estate tax exemption for the surviving spouse, the DSUE. Still, for some reason no estate tax return was filed.

Now the spouse has decided that securing the DSUE will be worthwhile, and has asked the IRS for an extension of time for filing the estate tax return. Because Decedent's estate was below the filing threshold, the IRS has flexibility in this situation, and the extension was granted. However, the Service warned that if subsequent events show that Decedent's estate was above the threshold, this ruling will be void. The Service also declined to offer an opinion on the amount of DSUE to which the spouse was entitled.

—Private Letter Ruling 20185201

COMMENT: In a January webinar, estate planning attorney Martin Shenkman noted that lawyers are having a hard time getting surviving spouses to agree to file the Form 706, and the doubling of the federal exemption in 2017 has made the problem still worse. He reported that according to IRS statistics, in 2017 only 681 nontaxable estate tax returns were filed claiming the DSUE. This private ruling shows an alternative path for relief, but filing a Form 706 should be much less costly than asking for a private letter ruling.

A new GSTT planning opportunity

The "blue book" explanation of the Tax Cuts and Jobs Act, released by the Joint Committee on Taxation last December, includes a footnote that says the temporarily increased exemption from the generation-skipping transfer tax may be applied to transfers in trust that occurred before the legislation was enacted. In the footnote, Taxpayer created a $6 million GSTT trust at a time when the exemption was $5.4 million, so that the inclusion ratio for the trust was 0.1.

According to the blue book, Taxpayer may now apply his expanded exemption to that trust, to reduce the inclusion ratio to zero. If the trust assets have gone up in value, more of the exemption will have to be used up to provide this protection.

—JCS-1-1

Divorce and taxes

As a result of their divorce, A and B became tenants in common of certain real property, with shared responsibility for maintenance and expenses. The divorce decree provided that A and B each had the right to sell the one-half interest upon giving notice to the other party, who then had the right to buy out the interest for one-half of the gross equity value of the real estate.

Some years later the building suffered major smoke damage due to a fire at a nearby home. The amount of the damage was well in excess of what had been contemplated in the divorce decree. A took the initiative to fund the repairs, as he had the greater resources. The couple returned to the divorce court, to have the decree modified so as to take into account the additional expenditures by A.

Some six years have passed since the divorce, and A now wants to buy out B according to the formula in the decree. Notwithstanding the passage of time, the IRS holds that the transaction will be a tax-free transfer incident to divorce, and that it will be for full and adequate consideration, eliminating gift tax concerns.

—Private Letter Ruling 201901003

A novel way to beat estate taxes?

The longest recorded human lifespan is 122 years, 164 days. The record is held by Jeanne Calment, who lived in Arles, France. Born in 1875, Jeanne reportedly had an encounter with Vincent Van Gogh at her uncle's shop. She was the first person verified to have lived to 116 years.

When Jeanne was 90 years old, she had outlived her daughter and her grandson, and she had no other heirs. She agreed to sell her apartment to a lawyer for a small lifetime annuity, retaining the right to live in the property until she died. The lawyer was then 47 years old. The monthly payment was 2,500 francs, about $433.

Unfortunately, the lawyer died of cancer at age 77 while Jeanne was still alive, so he never did get to occupy the apartment. His estate had to keep paying the annuity. The total annuity payments reportedly were double what the apartment was worth.

Doubts have been raised about the authenticity of Jeanne's age, according to a recent item in Smithsonian.com. A new research paper has found several inconsistencies in her life story. For example, a passport issued to Jeanne in the 1930s describes an incorrect eye color and height. In an interview, Jeanne spoke of a maid who had accompanied her to school. In fact, that maid was ten years younger than Jeanne.

Jeanne had a daughter, Yvonne, who died in 1934. After Yvonne's death, Jeanne moved in with her son-in-law and grandson. The son-in-law never remarried, though he was only 42 when he was widowed.

The researchers believe that Yvonne did not die in 1934; her mother did. Yvonne then assumed her mother's identity, she became Jeanne Calment.

Jeanne and her husband owned a small shop together. When she died, under French law at that time her husband would have had to pay a 38% death tax on his wife's ownership share of the business. There would be no tax bill at all if Yvonne died instead of her mother.

Many doubt the researchers' theory, and there is no conclusive proof. Could an identity switch happen without friends and neighbors noticing it? If anyone did notice it, could the secret be kept by so many for so long? But it was a period of tumult in France and in the world. The story does have a certain plausibility.

Estate tax repeal?

Senator John Thune, R-S.D., has again introduced legislation to repeal the federal estate tax permanently. "Oftentimes, family-owned farms and ranches bear the brunt of this tax, which threatens families' agricultural legacies and makes it difficult and costly to pass these businesses down to future generations," said Thune. Senate Majority Leader Mitch McConnell, R-Ky., a co-sponsor of the bill, called the estate tax a "final insult to force grieving families to visit both the undertaker and the IRS on the same day."

—S. 215, The Death Tax Repeal Act of 2019

COMMENT: A somewhat less drastic bill, The Estate Tax Rate Reduction Act, has been filed by a group of GOP Senators. It would lower the estate tax rate to 20%, the same as the rate on long-term capital gains.

A wealth tax?

Senator Elizabeth Warren, D-Mass, has proposed a dramatic shift of emphasis for the federal government's focus in taxing "the rich." Rather than looking to income, she wants an annual wealth tax, which would apply in addition to any other federal taxes due. The exemption would be $50 million. At family wealth levels above that cut-off, an annual tax of 2% would apply. A second 3% bracket kicks in at wealth levels above $1 billion (a "billionaire surtax"). The tax presumably would apply each year to unrealized capital gains. It would continue to apply during economic downturns, when family wealth is shrinking. Some 75,000 American households are projected to be snared by the tax, which would raise an estimated $2.75 trillion over ten years.

Any family that wanted to escape this annual tax bite by giving up American citizenship would be subject to a new 40% "exit tax" applied to its entire net worth.

Six American law professors from around the country have weighed in supporting the constitutionality of a wealth tax, citing Knowlton v. Moore, 178 U.S., 41 (1900). The Tax Foundation, on the other hand, has criticized the proposal on administrative and economic grounds. Much family wealth is very difficult to value accurately on an ongoing basis. Interests in privately held businesses, real estate, art collections, and the like are much harder to value than publicly traded securities. Today wealthy individuals face the valuation puzzle only once, for paying death taxes. Having to do so every year would be a substantial burden (but a bonanza for tax lawyers and accountants). Wealth taxes have declined in popularity around the world due to their negative economic impacts—in 1990 12 OECD countries had wealth taxes; today only four do.

A wealth tax is justified, according to Warren, because the share of wealth held by the top 0.1% of Americans zoomed from 7% in the late 1970s to 20% by 2016. "Put another way, the richest 130,000 families in America now hold nearly as much wealth as the bottom 117 million families combined," according to her press release.

COMMENT: None of these bills are expected to gain much traction before the next Presidential election.

Our trust team is looking forward to working with you!

First Bankers Trust Services, Inc. is committed to providing personalized and responsive services to you and your clients. If we can be of assistance, please visit us at one of our locations or feel free to contact one of our staff members:

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