TI TRUST
TRUE INTEGRITY FIDUCIARY SERVICES

estate planning briefs®

November 2020

In This Issue

www.ti-trust.com

The "perfect storm" for estate planning

The "blue wave" did not materialize in September, and so the fear of an early reduction in the amount exempt from federal estate tax has receded. Nevertheless, according to estate planner Maurice R. Kassimir, Esq., the present moment has provided a "perfect storm" for estate planners to come to the aid of their wealthier clients.

In a November webinar, Mr. Kassimir pointed to three factors that make these times unique:

• *The prospect of higher taxes on "the rich."* The scheduled 2026 drop in the federal transfer tax exemption remains in place. Although few now predict that the drop will be accelerated, even fewer predict that the current exemption levels will be made permanent. Thus, there is every incentive to make transfers soon to "lock in" the higher amount, $11.7 million per person in 2021. What's more, the yawning federal budget deficits are likely to be addressed with higher taxes, with most of the burden targeted to the wealthy.

• *COVID-19 has caused valuation discounts to soar.* Economic pain and uncertainty reduces the value of many assets, notably small businesses and especially real estate. Mr. Kassimir observed that in New York City, the value of some commercial real estate is down as much as 75% as tenants are no longer able to pay their rents. With such discounts in place, the $11.7 million lifetime exemption from gift tax will shelter far more in assets that would have been true one year ago.

• *Historic low interest rates.* The low interest rates provided by the IRS makes this an exceptionally good time for many estate planning strategies, such as grantor-retained-annuity trusts (GRATs). The November 2020 7520 midterm rate was just 0.47%. Mr. Kassimir provided an example of a ten-year, $5 million GRAT paying the grantor an annuity of $357,745 annually. The value of that retained interest is $5 million, so no gift tax is due on the creation of the GRAT. Should the trust achieve income and appreciation of 6% for the term of the trust, some $4.24 million will pass to the remainder beneficiaries free of federal transfer tax.

COMMENT: Implicit in these examples is an assumption that asset values will return to normal after a vaccine brings the pandemic to an end. The other problem planners may face is that in times of severe economic uncertainty, even those with $20 million in assets may not feel rich enough to part with a substantial portion of them.

TCJA survives constitutional challenge

James Kerven brought a lawsuit challenging the constitutionality of the Tax Cuts and Jobs Act of 2017. He alleged that the legislation changed the burden of taxation among taxpayers, that it added to the deficit and caused "debt shenanigans." The District Court dismissed the case for lack of standing, and the Second Circuit Court of Appeals affirmed [James M. Kerven v. United States; No. 19-722].

Kerven asked the U.S. Supreme Court to review his case, but in November that Court denied cert.

—Kerven v. United States, Sup. Ct. Dkt. No. 20-573 (2020

Prince's estate goes to the Tax Court

Pop superstar Prince's estate has filed an estate tax return, and the IRS doesn't like it. The Service has asked for an additional $32.4 million in estate taxes and $6.4 million as a penalty for substantial understatement of tax. The estate has taken the matter to the Tax Court.

The issues are valuation, as one would expect. The estate reported Paisley Park, Prince's home, to be worth $5.1 million; the IRS said $7.6 million. Prince's right of publicity was worth $3.2 million per the estate, $6.2 million by the IRS' calculations. The estate says that the value of Prince's interest in NPG Records was $19.4 million; the IRS came up with $46.5 million. And so on.

The estate also asserts that it relied upon qualified appraisers in making good faith determinations of value, and so the penalty is not appropriate.

—Estate of Prince R. Nelson v. Commissioner; No. 11442-20

Real property definition tweaked

The TCJA limited like-kind exchange tax treatment to real property. In Final Regulations implementing the new law, the IRS made some changes to the definition of real property provided in its initial proposal, in response to comments. The original proposal suggested that local law is not controlling in determining what is real property and what is personal property. That rule now has been reversed. Subject to some exceptions, property classified as real property under state and local law will be eligible for like-kind exchange tax deferral.

—Treasury Decision 9935

Trusting a spouse to do the right thing

William created a two-trust estate plan. His surviving spouse, Dale, was the trustee of both trusts as well as the income beneficiary. A marital deduction trust provided its remainder to William's two daughters from an earlier marriage, and a credit shelter trust provided its remainder to Dale's grandchildren from earlier marriages. Dale had the power to make principal distributions to herself in amounts that she "shall deem necessary for the proper support, care, and maintenance" of herself.

Dale made all such trust invasions from the marital trusts, favoring her own heirs by leaving the credit shelter trust intact. The daughters filed suit, alleging a breach of fiduciary duty and demanding an accounting of the trusts. They contended that trust invasions must be "necessary" and so Dale's other resources must be taken into account to justify them.

The district court agreed with the daughters, but the appellate court reversed. Looking at the trust as a whole, the court found that provision for a grandson explicitly was premised upon his other income sources, while the provision for Dale was not. The court concluded that William did not intend to tie Dale's hands with regard to distributions to herself.

—In re Raggio Family Trust, 136 Nev. Ad. Op.

No tax on postmortem division of IRA

D owned two IRA accounts. After his death, the assets were combined into a new IRA titled as "IRA of decedent D," managed by his personal representatives. The estate has three beneficiaries, and there is no surviving spouse. The personal representatives propose to arrange trustee-trustee transfers from the consolidated IRA into three new IRAs, one for each of the three beneficiaries.

In private advice, the IRS confirms that the transfers to the new IRAs will not be taxable distributions, and the estate will not have taxable income from making the transfer.

—Private Letter Ruling 202039002

Let's get started

The IRS has urged taxpayers to begin getting ready for filing their 2020 tax returns. There are a number of new wrinkles to consider, and getting tax records organized is an important first step. A new web page was published outlining the process for taxpayers [https://www.irs.gov/individuals/steps-to-take-now-to-get-a-jump-on-next-years-taxes]. The Service also recommended staying home and staying safe by relying on their online resources for tax preparation.

—IR-2020-263

Our trust team is looking forward to working with you!

TI-Trust 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:

TI-TRUST

Email: mail@ti-trust.com

Web: www.ti-trust.com

Personal Trust and Farm Management

Quincy, Illinois
2900 North 23rd Street
Quincy, IL 62305
Phone: (217) 228-8060

Personal Trust

St. Peters, Missouri
4640 Mexico Road
St. Peters, MO 63376
Phone: (636) 939-2200

Personal Trust

Hinsdale, Illinois
15 Salt Creek Lane
Suite 117
Hinsdale, IL 60521
Phone: (630) 986-0900