Philadelphia Bar Association, Probate and Trust Section
Tax Committee's Tax Update – March 2013
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GUIDANCE FROM THE IRS

Revenue Ruling 2013-9, April 2013 Rates:

Section 7520 Rate: 1.4%
Short Term AFR (0-3 years): 0.22%
Mid Term AFR (3-9 years): 1.09%
Long Term AFR (over 9 years): 2.70%

IRS requests comments on Form 706-GS(D): IRS is soliciting comments on Form 706-GS(D), the Generation-Skipping Transfer Tax Return for Distributions. Form 706-GS(D) is used by persons who receive taxable distributions from a trust to compute and report the generation-skipping transfer tax imposed by Internal Revenue Code (IRC) section 2601. The IRS uses this information to verify that the tax has been properly calculated. The IRS has said that no changes were being made to the form at this time. Written comments should be submitted before April 15, 2013.

A memo from acting IRS Commissioner Steven Miller to all IRS employees outlined agency plan to deal with sequestration. The three ways Miller listed in which the IRS will cut spending include: 1- continue a hiring freeze 2- reduce funding for grants and other expenditures 3- cut costs for travel, training, facilities and supplies.

CASES

Crimi v. Commissioner, T.C. Memo 2013-51 (Feb. 14, 2013). The Tax Court concluded that the taxpayer was entitled to a charitable income tax deduction for a part-gift, part-sale transaction of land to a NJ County and its conservation partnership, despite the lack of a qualified appraisal. Whether this appraisal met the requirements was not a matter of minor import. The claimed deduction was $1,400,000 and under IRC §170(f)(11) if such an appraisal is not submitted, the entire deduction is disallowed. The Court notes that the appraisal that was undertaken prior to trial actually found that the property was more valuable than it had been at the 2000 appraisal date and thus it was reasonable for Mr. Crimi to believe that the amount he was claiming as a deduction was not being overstated by using an appraisal prepared at a time when the property was worth significantly more than it was worth at the contribution date. There was no reason why Mr. Crimi should second-guess the CPA's advice or believe he was claiming an overstated value. He had sought advice from an adviser whose qualifications Mr. Crimi was aware of and which appeared sufficient to justify reliance. The Court concluded that the taxpayer had relied upon his long time CPA's advice concerning the use of the appraisal, and therefore the failure was excused on the ground of reasonable cause under IRC section 170(f)(11)(A)(ii)(II). Thus, even though he may have submitted a return that did not have a qualified appraisal, it was due to reasonable cause and not willful neglect.

Jarvis v. Commissioner, T.C. Summ. Op. 2013-11 (Feb. 19, 2013): The Tax Court held that a taxpayer who had paid premiums on a life insurance policy by borrowing against its cash surrender value, must recognize income when that debt was discharged because of the cancellation of the policy for nonpayment of premiums. The Petitioner purchased a whole life insurance policy and selected the automatic premium loan provision on his application. This provides if the petition failed to pay the premium, the insurance company would extend his coverage by paying the premium automatically via a policy loan against the cash value of the policy. Under this policy, the policy would lapse if its cash value could no longer cover the premium payments. In 2009, the insurance company notified the Petitioner that his policy had lapsed and issued him a Form 1099-R for a gross distribution. For federal income tax purposes, loans against the cash value of a life insurance contract are treated as true loans with the policy serving as the collateral. Therefore, the Tax Court held the petitioner had received a taxable constructive distribution upon the termination of his life insurance policy.

PRIVATE LETTER RULINGS

PLR 201310002 (release date 3/8/2013): The IRS ruled in favor of the use of a Delaware Incomplete Non-Grantor Trust (DING) in this private letter ruling. The DING trust is a strategy designed to eliminate state income taxes on the Grantor's investment income. This PLR keeps the IRS's view of DING trusts fairly consistent with the prior PLR on this topic. Unlike the prior ruling, however, this fact scenario involved a trust which contained a reserved power for the grantor to make lifetime distributions to his issue in a non-fiduciary capacity subject to the ascertainable standard.

PLR 201309003 (release date 3/1/2013): The IRS concluded that a buy-sell agreement and bonus plan among the members of an LLC, taxed as an S Corporation, did not constitute a second class of stock. The IRS explained that the various agreements are disregarded in evaluating the one class of stock requirement except where (1) the principal purpose of the agreement is to circumvent such requirements and (2) the agreement establishes a purchase price, other than book value, that at the time the agreement is entered into, is significantly in excess of or below the fair market value of the stock.

PLR 201308019 (release date 2/22/2013): The IRS stated that the transfer of a life insurance policy to a limited liability company in exchange for membership interests was not a transfer for value and therefore the proceeds of the policy were not taxable income. The IRS explained that this contribution would qualify under the "carryover basis" exception to the transfer for value rule in IRC section 101(a)(2)(A).

PLR 201308016 (release date 2/22/2013): The IRS stated that upon a judicial reformation, which added two more discretionary beneficiaries, no gain or loss would be recognized by the existing beneficiaries of a discretionary trust. The reformation caused the settlor's children to go from being discretionary beneficiaries upon the settlor's death, to being current discretionary beneficiaries. The IRS pointed out that the beneficiaries of the trust before the reformation had no vested interest because they would only receive what the trustee chose to distribute to them. As a result, the addition of the other discretionary beneficiaries did not alter the interests of the existing beneficiaries causing recognition of gain or loss.