Barley Snyder

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Possible Changes Coming for Valuations of Family Limited Partnerships and Limited Liability Companies

By: Alexander Puskar

For decades families have used family limited partnerships ("FLPs") and limited liability companies ("LLCs") as a core component of their estate plans. An attractive feature of FLPs and LLCs has been the sizable discounts afforded for "lack of control" and "lack of marketability" when valuing gifts of non-controlling interests in these entities. These discounts reduce the value of a gift and its transfer tax impact. Not surprisingly, the IRS has used a variety of methods to reduce the availability and size of valuation discounts. One of its common means of doing so is through the application of Internal Revenue Code Section 2704.

Section 2704 requires that certain types of restrictions in operating agreements and partnership agreements be disregarded when determining the fair market value of interests transferred between family members. When it applies, Section 2704 essentially eliminates the "lack of control" and "lack of marketability" discounts that would otherwise be available.

This fall, the IRS announced that it would be releasing new 2704 regulations. With the new regulations comes speculation that the IRS may attempt to expand the applicability of Section 2704 in an effort to further restrict or even eliminate the use of discounts. The new 2704 regulations were expected to come out late fall, however, they have still not been released.

Barley Snyder is closely monitoring the release of the new 2704 regulations and advising clients of the possible implications on their estate plans. Until the new regulations are released, taxpayers should remain cautious in relying on these discounts to minimize their gift and estate tax liability, as the IRS will continue to enhance the restrictions on these discounts.

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IRS Announces 2016 Estate and Gift Tax Exemption Amounts

By: Alexander Puskar
Related Practice Area: Trusts & Estates

The IRS recently announced that the 2016 estate and gift tax exemption limits would rise from $5.43 million per person ($10.86 million per couple) in 2015, to $5.45 million per person ($10.90 million per couple) in 2016. Individuals may transfer an additional $20,000.00, and married couples an additional $40,000.00, without estate and gift tax implications. The annual gift tax exclusion amount remains at $14,000.00 per person for 2016.

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New Basis Consistency Reporting Requirements Raise Concerns

By: Brian R. Ott
Related Practice Area: Trusts & Estates

Included in the recently-enacted Surface Transportation and Veterans Choice Healthcare Improvement Act (the "Act") is a provision which promises to add one more task to an executor's already lengthy list of duties and may well impact post-mortem estate planning decisions.

Background

Under Section 1014(a) of the Internal Revenue Code ("IRC"), the income tax basis of property acquired from a decedent is its fair market value on the date of death, or on the alternate valuation date, if the executor elects to use alternate valuation under IRC 2032. Although Treasury regulations establish the estate tax value of such property as *prima facie* evidence of its fair market value in the hands of the recipient, a recipient is not precluded from rebutting the resulting presumption. For instance, an heir inheriting an asset reported to be worth $100,000.00 on the decedent's estate tax return, who sells the asset for $120,000.00, can attempt to avoid the recognition of a capital gain on the transaction by claiming that the asset was in fact worth $120,000.00 on the decedent's date of death.

Section 2004 of the Act attempts to eliminate the possibility of disparate estate and income tax treatment by prohibiting the recipient of inherited property from reporting an income tax basis in excess of the value reported on the estate tax return in cases where inclusion of the property in the decedent's gross estate increased the estate's tax liability. In an effort to insure that the recipient of inherited property has the information necessary to comply with this restriction, Section 2004 also imposes an obligation on executors filing estate tax returns after July 31, 2015 to furnish both the IRS and each person acquiring an interest in the decedent's property with a statement identifying the value of such interest as reported on the return. The Act requires the executor to furnish the statement no later than thirty (30) days after the later of the due date of the return or its actual filing date. The IRS has postponed the deadline to February 29, 2016 for statements otherwise required before that date.

Perhaps the most significant open question regarding this requirement is whether executors who are not required to file an estate tax return, but do so only to claim portability, are obligated to produce the statements. Imposing such a requirement may force an executor to incur additional expense in obtaining valuations of estate assets and in producing and delivering the valuation statement, which in turn will potentially dissuade families from taking advantage of portability. Another troublesome aspect of the legislation for executors will be identifying the assets to be listed on the valuation statement and the appropriate recipients of the statement. Decisions regarding the disposition and distribution of estate assets are often not made until after the thirty (30) day deadline for delivering the valuation statement.

Resolution of these open issues is not expected until mid-January, when the IRS plans to issue final forms and instructions.

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Barley Snyder Attorneys Prevail in Pennsylvania Superior Court Litigation Involving Whether Payable on Death Inve

Related Practice Area: Trusts & Estates

Barley Snyder attorneys, Mike Mixell, Justin Tomevi and Alex Puskar, recently obtained a favorable decision from the Pennsylvania Superior Court in the case of In Re: Estate of Harold E. Rood (2015 Pa. Super. 180), in which the Court held that "payable on death" investment accounts were subject to spousal elections. In Rood, the decedent owned two "payable on death" Vanguard investment accounts in which he named his two children from a prior marriage as the death beneficiaries. When the decedent's will was probated, nothing from his estate was left to his surviving spouse, prompting her to file a claim for her elective share.

Disagreement arose between the decedent's surviving spouse and his children as to whether the accounts were subject to the surviving spouse's elective share. The surviving spouse, represented by Barley Snyder, argued that the "payable on death" accounts were includable due to the accounts' characteristics and operation. The Berks County Orphans' Court agreed with the surviving spouse, ruling that the accounts were includable in the decedent's estate for purposes of calculating her spousal share. The decedent's children appealed the ruling.

The Pennsylvania Superior Court affirmed the holding of the Orphans' Court on the grounds that the "payable on death accounts" are considered "property conveyed by the decedent during his lifetime to the extent that the decedent at the time of his death had the power to revokeconsume, invade or dispose of the principal for his own benefit." 20 Pa.C.S. 2203(a)(3). The Court rejected the children's claims that there was no "conveyance" of the property, and relied heavily on public policy and legislative intent in arriving at its decision in favor of the surviving spouse. No further appeal of the Superior Court ruling was taken.

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Barley Snyder Attorneys, Mike Mixell and Paul Minnich, Negotiate Settlement of Will Dispute

Related Practice Area: Trusts & Estates

Mike Mixell and Paul Minnich represented the granddaughter of a deceased woman who was disinherited under a will prepared by the granddaughter's aunt. Mike and Paul were able to have the granddaughter's inheritance reinstated through a negotiated settlement. As a result, the client received her inheritance without the need for protracted litigation.

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