

2018 Heckerling Highlights

Washington, D.C. Estate Planning Council Webinar

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Disclosure

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Heckerling Highlights

Overview – Ramsay Slugg

Overview

- Largest estate planning conference in the country, reportedly with over 4,000 registrants this year
 - U.S. Trust among largest sponsors and participants
- 46 total sessions during the week, led by 73 faculty members
 - 3 Fundamental sessions
 - 19 General sessions
 - 24 Special sessions
- We will cover only a portion of the topics presented, and only in summary fashion

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Charitable Planning – Ramsay Slugg

4 charitable planning related topics

- Beyond the Private Foundation (general session)
 - Overview of private foundations (non-operating and operating), donor advised funds, supporting organizations and 501(c)(4) entities
 - Comparison of those alternatives with respect to varying goals of the donor
 - Deductibility of donations; formation and operation; scope of philanthropic mission; control and intent; and business interests
- Structuring philanthropy: What works when (special session)

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Charitable Planning – Ramsay Slugg

Charitable Planning Related Topics

- 4 charitable planning related topics (cont.)
 - What's a donor to do: planned giving in a changing tax landscape (general session)
 - Review of federal income tax charitable deduction rules, including discussion of the effect of taxes and tax reform on charitable giving
 - Review of traditional methods of giving
 - The big question – are we missing the boat if we only talk about taxes when discussing charitable giving
 - Creative use of planned giving techniques in an uncertain tax environment (special session)

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Recent Developments (Carol Harrington, Steve Akers and Jeffrey Pennell) – Steve Lavner

Passage of the 2017 Tax Act (December 22, 2017)

- Corporate tax reform (permanent)
- Individual tax reform (temporary: sunsets in 2026)
 - Transfer tax reform (temporary: sunsets in 2026)
 - Estate, gift and GST exemptions doubled from \$5 million to \$10 million, subject to inflation adjustment (new “chained CPI” approach)
 - For 2018, exemption is approximately \$11.2 million
 - For 2026 and after, the doubling provision sunsets and the law reverts to the exemption amount before the 2017 Act.
 - Estate planning after the 2017 Tax Act
 - Testamentary planning
 - Formulas, disclaimers, QTIPs and portability
 - Lifetime planning
 - Types of gifts and assets
 - Gift strategies
 - Basis strategies

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Recent Developments (Carol Harrington, Steve Akers and Jeffrey Pennell) – Steve Lavner

Withdrawal of proposed section 2704 regulations

- Proposed regulations under section 2704 were released on August 2, 2016.
 - The regulations were controversial, and there was uncertainty how they would be interpreted, and what effect they would have on valuation discounts for family-controlled entities.
- Some commentators view disregarded restrictions as in effect creating a deemed put right.
 - By valuing interest as if disregarded restriction does not exist, value interest without any limitation on ability to compel liquidation and receive minimum value within 6 months in cash or property. Stated affirmatively, value interest with ability to compel liquidation and receive minimum value within 6 months in cash or property.
- IRS public hearing on 2704 proposed regulations on December 1, 2016
 - Although practically all the commentators who spoke advocated for a complete withdrawal of the regulations, the IRS did not say they would be withdrawn.
- On January 20, 2017, the Trump administration instructed federal agencies to stop all pending regulations until a legal and policy review can be conducted.
- On October 20, 2017, the proposed regulations were withdrawn.

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Recent Developments (Carol Harrington, Steve Akers and Jeffrey Pennell) – Steve Lavner

Deathbed purchase of GRAT remainder (CCA 201745012 released Nov. 9, 2017)

- Donor purchased the remainder interest in a GRAT before the expiration of the annuity term.
 - Donor paid the purchase price with unsecured promissory note.
 - Donor died the following day.
 - Donor's executor filed a gift tax return and reported the purchase as a non-gift transfer, because donor received adequate and full consideration in money or money's worth.
- IRS Chief Counsel's Office states that where a purchase of the remainder occurs on donor's deathbed during the annuity term of a GRAT, the remainder does not replenish the donor's taxable estate and therefore does not constitute adequate and full consideration in money or money's worth for gift tax purposes.
 - Counsel's Office relies on Supreme Court cases: gift tax law requires consideration that is reducible to a money value and thereby replenishes the recipient's estate for the value for which it was transferred.
 - Donor retained a section 2036 interest in the GRAT, which already caused the value of the remainder to be part of his estate. Therefore, the receipt of the actual remainder interest did not increase the value of the donor's taxable estate.
 - Note that the same analysis would apply to a purchase of a remainder interest in a QPRT or in a QTIP trust (see Rev. Rul. 98-8).

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Recent Developments (Carol Harrington, Steve Akers and Jeffrey Pennell) – Steve Lavner

Family limited partnerships: Powell v. Commissioner (Tax Court, May 18, 2017)

- Decedent's son, acting under power of attorney, contributes \$10 million cash and marketable securities to family limited partnership (FLP), in return for 99% limited partnership (LP) interests. Decedent's two sons contribute unsecured notes in return for 1% general partner (GP) interest. Partnership agreement allows for dissolution with consent of all partners. Son transfers 99% LP interest to a charitable lead annuity trust for decedent's life, remainder to sons. Remainder valued by assuming a 25% discount for lack of control and lack of marketability. Decedent dies seven days later.
- IRS claims FLP assets includible without a discount under 2036(a)(1) (retained enjoyment or income), 2036(a)(2) (retained right in conjunction with anyone to designate who enjoys property or income), 2038 (power to revoke), 2035(a) (certain transfers within three years of death).
- Majority and concurring opinions agree that 2036(a)(2) applies. This is the first case to apply 2036(a)(2) when the decedent owned only a limited partnership interest. Accordingly, not necessary to address 2036(a)(1) or 2038.
- Majority on its own also indicates that potential "duplicative transfer tax" could occur if assets have appreciated under 2033, 2036 and 2043.
- Taxpayer did not contest that bona fide sale for full consideration exception to 2036 was not applicable.

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Selected Retirement Planning Issues (Natalie Choate) – John Goldsbury

- When during the year to take your RMDs
 - Her Chapter 5
 - We have a Wealth Strategy Report
- Exceptions to RMDs
 - Roths have no RMDs for original owner
 - Working after 70 ½ can postpone RMDs from company plan
 - Annuitized
- Hard to value assets can = red flag
 - RMDs are based on prior 12/31 balance, but what if hard to value asset?
 - IRA custodian has to file Form 5498, which includes reporting assets that do not have a readily ascertainable market value = red flag
 - 50% penalty
- Compute RMD separately for each retirement plan
 - Different IRAs might differ due to bene
 - Multiple non-inherited IRAs can be treated as one. But
 - Can't take an IRA RMD from 401k
 - Can't take an inherited IRA RMD from your own IRA.

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Selected Retirement Planning Issues (Natalie Choate) – John Goldsbury

- 4 ways to take out and RMD
 - Cash
 - Property
 - Withholding
 - Retroactive
 - Like SS and W-2
 - Qualified Charitable Distribution (QCD)
- 5 ways to reduce RMD efficiently
 - QCD
 - Must be 70 ½
 - Limit of \$100,000 (income?)
 - Can you give to PF? “I can’t figure it out”
 - The QCD avoids increasing AGI and the collateral results of that
 - 1099-R has no Code for QCD! Better make sure you’re preparer knows!
 - Cannot get something in return for the QCD
 - IRS has many regs on that issue in general
 - A coffee mug or a tote bag is OK; both are not OK
 - For a cash gift, triggering the rule just reduces the deduction.
 - Natalie suggests that for a QCD, it’s very different; it’s all or nothing.
 - QCD might be more favorable with increased standard deduction.

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Selected Retirement Planning Issues (Natalie Choate) – John Goldsbury

- The other 4 ways
 - Keep working. What’s “working?” 1 hour a week? IRS has never defined “retirement.” So, who knows?
 - This is the sweet spot. Self-employed with no employees, double tax free income
 - Adopt solo 401(k) plan; Contribute max 24,500
 - Health insurance payments for SE are adjustments (includes Medicare premiums). Say \$24,500
 - So, make \$24,500 of SE income and health care premiums are \$24,500. That both (i) supports \$24,500 to 401k and (ii) adjustment of \$24,500. “Double tax-free.”
 - Roll IRA into a company’s qualified plan
 - Can’t be 5% owner of said company
 - Plan must accept IRA rollovers
 - Convert to Roth
 - Least favorite technique to reduce RMD -- Qualified Longevity Annuity Contract
 - \$130,000 or 25% of IRA

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Selected Retirement Planning Issues (Natalie Choate) – John Goldsbury

Roth Planning

- The benefits I will assume are known.
- Life expectancy payout even more important than IRA!
 - Planner's quest: keep it alive as long as possible. Who's the bene?
 - Obviously not to charity.
 - Young individuals?
 - Good choice. RMDs, but Long life expectancy
 - Can use a see-through trust to address concerns
 - Surviving spouse
 - She can roll into her own Roth
 - No RMDs ever
 - Trust for surviving spouse = bad
 - Not a reboot
 - Best is a life expectancy payout

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Selected Retirement Planning Issues (Natalie Choate) – John Goldsbury

- Trust bene: how to administer
 - You're trustee of see through trust paying Junior over Junior's life expectancy
 - Must (i) charge fees and (ii) pay RMD from Roth
 - If you charge fees to the Roth (i.e., use "inside" funds), you then still have the same RMD. Better to take the RMD first, then take the fees from that (i.e., from "outside" funds).
 - But won't the bene squawk?!?
- How to fund a Roth
 - Annual contributions
 - Need compensation
 - \$5,500 annual limit (\$6,500 if over 50)
 - Income phase out
 - Gross income 199,000 MFJ
 - Backdoor contribution
 - Natalie's example says "the next day"
 - Step transaction? Nervous? TCJA doesn't address, but Committee Report contains 3-4 footnotes that say this is OK.

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Selected Retirement Planning Issues (Natalie Choate) – John Goldsbury

- Conversions
 - Price tag is taxable income, so look for low rate years.
 - How to make a conversion less painful
 - NOL carryforwards
 - Two ideas. Need a participant in a qualified retirement plan.
Need after-tax money in qualified plan or IRA
 - Idea #1: You have a trad IRA with both pre- and post-tax dollars. You'd like to convert only the post-tax dollars to a Roth. \$1MM trad IRA with \$50,000 basis.
 - If you just withdraw \$50,000 and convert to Roth, cream in the coffee rule. All IRAs aggregated for this rule.
 - Code says you can roll from an IRA to a qualified plan, but only pre-tax money. Natalie has no idea why that restriction, but it is. And, a rolling upstream is deemed to come out first, leaving behind only after-tax \$\$.

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Selected Retirement Planning Issues (Natalie Choate) – John Goldsbury

- Conversions
 - Idea #2: You have a 401(k) with pre- and post-tax dollars. You'll like to convert only the post-tax dollars to a Roth. \$500,000 in 401(k) with \$100,000 after-tax. Retires. You can separate the two into an IRA and Roth. Direct transfer. IRS has blessed this.
- Recharacterization change made by 2017 Tax Act
 - You can no longer recharacterize
 - A 2017 conversion can be recharacterized per IRS. It's only 2018 conversions (and later) that cannot be recharacterized.
 - They kept recharacterizations the other way. That is, a contribution to a trad IRA can be recharacterized as a contribution to a Roth
 - This helps with mistakes
 - Money gets deposited into wrong IRA. 401(k) rolled into wrong IRA. You can simply recharacterize (by re-transferring it directly to the correct IRA, plus earnings).
 - Inherited IRA sent to incorrect IRA

Heckerling Highlights

Dishing the Dirt on Planning for Real Estate – Mitch Drossman

DISHING THE DIRT ON PLANNING FOR REAL ESTATE INVESTORS

Thursday: January 25 (11:45 -12:35)

Break-out Session – Thursday afternoon 3:50 – 5:20

[Getting Your Hands Dirty with Real Estate Investors] (with Sarah Moore Johnson)

There are three basic goals of estate and gift tax planning for real estate:

- (a) reduction of estate and gift taxes upon transfer;
- (b) deferral of the estate and gift tax burden; and
- (c) provision of the necessary liquidity to pay the taxes imposed on an illiquid asset

Main Session –

Explored some basics and fundamentals -

- Valuation methods
- Types of discounts (minority, control, swing, blockage, key person, fractional)
 - In general context, not specifically for real estate

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Dishing the Dirt on Planning for Real Estate – Mitch Drossman

- Overview of challenges to FLPs and LLCs.
- Overview of § 2036 (and synopsis of many cases up through *Powell* and summary of cases favorable and unfavorable to taxpayers. Very good summary
- How to obtain finality with respect to valuation issues – adequate disclosure

Wealth Transfer Techniques for real estate

- Outright gifts – discussed pros and cons; planning under the new tax law
- Loans and Guaranties
- Installment sales, SCIN, Private Annuities [*usual suspects*]
 - Major disadvantages – foregoes step up in basis
 - Depreciation recapture issues
- Partnership Freezes and GRATs.
- Sale to Grantor trust and BDITs.

- Planning for Personal Residences
- Sale and lease-back

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Other Main Session Topics – Richard James

- Putting It On & Taking It Off: Managing Tax Basis Today for Tomorrow
- Business Succession: Abdicate? Affiliate? Alienate? Bifurcate? Syndicate? Liquidate? Vacillate? Don't Wait. Cogitate and Participate.
- Care and Feeding of a Dynasty Trust: High Protein or Low Fat?
- Estate Planning in Anticipation of a Contest or a Difficult Beneficiary
- Buy-Sell Agreements: A Critical Part of Any Business Formation
- The 1846 Last Will of John Sutton – What's Not So New in Will Drafting and Contests
- Will You Still Need Me, Will You Still Feed Me, When I'm Sixty-Four?
- Theory Meets Reality:
A Practical Look at the US Income Taxation of U.S. Grantors and Beneficiaries of Foreign Trusts
- Stranger in a Strange Land:
Dealing with Foreign and Domestic Community Property Issues in Your State
- Trust Administration Takes a Village? The New Uniform Directed Trust Act Paves the Way for Creative and Thoughtful Divided Trusteeship
- Trustee Discretion: The Better Part of Valor or Vulnerability?
- The Best, the Most Intriguing, and the Scariest Ideas Culled from the 2018 Institute and Elsewhere and How to Make Them Work for You and Your Clients

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Fundamentals Program Sessions – Richard James

- Starting Off On the Right Foot While Avoiding Foot Faults – Issues at the Formation of the Closely-Held Business
- Selected Subchapter J Subjects:
From the Plumbing to the Planning, Preventing Pitfalls with Potential Payoffs
- Demystifying International Tax Planning for Individuals – A Primer for the Domestic Estate Planner