

Question # 3 -

ABE IS IN TROUBLE!

October 2004

ABE transfers \$500K TO HOLDCO. ABE'S INTEREST DOES NOT INCREASE PROPORTIONALLY. THIS IS AN INDIRECT GIFT TO BRETT W/ IMMEDIATE GIFT TAX CONSEQUENCES. AS 60% HOLDER; IN A ~~FBI~~^{FILY} CONTRIBUTION OF \$500K ABE WOULD PAY \$300K AND BRETT WOULD PAY \$200K. THIS DID NOT OCCUR & AN INDIRECT GIFT W/ A VALUE OF \$200K*. IF BRETT HAS PRESENT RIGHT TO ENJOY THE BENEFITS OF PROPERTY (IT APPEARS HE DOES) THEN ABE IS ENTITLED TO \$111K ANN/EX. AS A DIVORCEE HE CANNOT FILE A SPLIT GIFT + EXCLUDE \$22K W/ HIS EX-WIFE.

SEE
ESTATE OF
ADAMS

Nov. 2004

THIS TRUST IS A TRUST WITHIN THE GRANTOR HAS RETAINED AN IMPERMISSIBLE INTEREST. IT IS A GRIT* AND SUBJECT TO CERTAIN VALUATION RULES. ABE HAS A LIFE ESTATE + BRETT HAS A REMAINDER. THE TRUST IS IRREV. + NO ONE HAS THE POWER TO CHANGE OUT

* Rule of
Roberts

Any beneficiaries so the gift is complete:

However, there are no A/E's available

B/C A/E cannot give a gift to himself + Brett's interest is a future interest + an A/E & L/S is not available.

→ GIFT TAX DUE ON (\$1mm - \$238,530)

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↳ GIFT TAX MUST BE PAID ON A COMPLETED

GIFT; B/C IT IS A GRAT + BRETT + A/E ARE FAMILY MEMBERS, § 2702 PAYS THE ENTIRE \$1M OF THE TRUST IN THE ESTATE. HOWEVER

THAT AMOUNT IS REDUCED BY THE AMOUNT PAID FOR THE ~~GRAT~~ REMAINDER, \$238,530. (discussed later)

↳

~~ACTUALLY, IT JUST DRAWN ON ME THAT THIS MIGHT NOT BE A GIFT B/C THE SQ PAID FULL CONSIDERATION... IN THE EVENT IT IS NOT A GIFT, THEN NO GIFT TAX IS PAYABLE AT THIS TIME.~~

NO → THIS IS A GRAT B/C WOULD HAVE HAD TO PAY ALL \$1mm B/C UNDER § 2702 THE NET INTEREST IS VALUED @ \$0 B/C IT IS NOT A QUALIFIED INTEREST.

DECEMBER 2004

[Signature]

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NOW, THIS IS DEFINITELY A GIFT B/C CATHY DIDN'T PAY. THE GIFT IS COMPLETE EVEN THOUGH A/E CAN INVADE FOR BRETT, B/C INVASION REQUIRES THE CONSENT OF A ADVERSE PARTY. CATHY IS ASSUMED TO NEVER CONSENT TO AN INVASION OF HER CORPUS, SO THE TRANSFER IS TREATED AS A COMPLETED GIFT. BOTH CATHY'S

INCOME INTEREST AND HALF REMAINDER INTEREST
ARE COMPLETE AT THIS TIME. THEREFORE GIFT TAX
IS DUE ON THE ENTIRE \$3MM - MINUS THE \$11K
ANNUAL EXCLUSION FOR CHARLES'S PRESENT RIGHT TO
THE INCOME. GIFT TAX ON \$2,989,000.

ARBE'S DEATH

ARBE'S STOCKS

UPON ARBE'S DEATH HE OWNS 60% OF HOLDCO
STOCK WHICH ALL GOES INTO HIS ESTATE. WE DON'T
KNOW MUCH ABOUT THIS COMPANY, BUT IT SOUNDS
AS IF ARBE WAS THE BIG CHEESE. IF SO, THE
VALUE OF THE STOCK MAY BE REDUCED FOR A
KEY PERSON DISCOUNT. HOWEVER, ARBE HAD A
MAJORITY SHARE, SO THE VALUE MAY BE UPPED
FOR A CONTROL PREMIUM. SINCE WE DON'T KNOW
MUCH ABOUT THE BUSINESS (WHETHER IT'S A FLIP
OR SOMETHING ELSE) I WON'T SPECULATE AS
TO FURTHER DISCOUNTS.

~~NOW, THE BAD PART. AS TO TRUST 1,
ARBE HAD A GIRL - HE HAD A REMAINDER
LIFE ESTATE WHICH COMES BACK INTO HIS~~

~~AS TO TRUST 1, ARBE WAS SMART WHEN~~



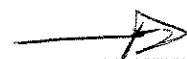
TRUST 1

AS TO TRUST 1 → ARBE THOUGHT HE WAS DOING THE RIGHT THING WHEN HE HAD BRETT PAY FOR THE MEMORIAL INTEREST, BUT UNFORTUNATELY BIC THEY ARE FAMILY MEMBER § 2702 APPLIES. BRETT, SHOULD HAVE PAID FOR THE ENTIRE INTEREST; THEN IT WOULD HAVE BEEN OK. (IF BRETT WAS A SISTER OR NEPHEW - THIS CONSIDERATION WOULD HAVE BEEN ADEQUATE; BUT NOT IN THE CASE OF FAMILY MEMBER ~~§ 2702~~ § 2704(C)(2).)

↳ Anyway, THE INTEREST PAID BY ARBE WAS NOT A QUALIF INTEREST + THAT'S WHY HE HAD TO PAY GIFT TAX ON THE WHOLE THING. NOW, HE WILL HAVE TO PAY FOR THE APPRECIATION THAT THE TRUST HAD... § 2036 DRAGS THE FMV OF THE ENTIRE TRUST BACK INTO HIS ESTATE. EVEN WORSE, BRETT'S CONSIDERATION ONLY KNOCKS OFF A \$ FOR \$, NOT A PERCENTAGE OF FMV.

↳ IN SUM, ENTIRE FMV OF TRUST 1 COME IN BIC § 2036(b) BRINGS IT IN -
FMV TRUST - ~~\$\$\$~~ \$238,530 = AMOUNT IN G/E.

Bad news for Arbe



TRUST 2

↳ AT THE MOMENT OF ARDE'S DEATH, HE POSSESSED THE POWER TO INVADE THE CORP FOR BENET'S BENEFIT. "BENEFIT" IS NOT AN UNSUBSTANTIAL STANDARD BY ITSELF + ARDE WILL BE VIEWED AS HAVING COMPLETE DISCRETION AS TO INVASION OF TRUST. UNDER §2036 + §2038; THEY DON'T CARE IF LITERALLY'S APPROVAL WAS NEEDED FOR THE INVASION - IT JUST LOOKS AT WHETHER HE HAD THE POWER. §2036 LOOKS @ HIS WHOLE LIFE WHILE §2038 LOOKS @ THE MOMENT OF DEATH. BOTH THERE APPLY - ARDE HAD THE POWER DURING LIFE + ALSO @ DEATH. IT IS INCONSEQUENTIAL THAT HE DID NOT EXERCISE IT. IT IS THE POSSIBILITY THAT HE COULD HAVE THAT MATTERS. SINCE BOTH §2036(a)(2) + §2038 APPLY, WE DON'T NEED TO ARGUE ABOUT WHETHER HE HAD THE RIGHT TO CHANGE (2038); BIC §2036 BRINGS ALL THE PROPERTY BACK IN, EVEN IF HE JUST HAD THE RIGHT TO MESS W/ THE INCOME.

↳ IN SUM, THE ENTIRE FMV OF TRUST 2 COME BACK INTO ARDE'S ESTATE.

ABE'S ESTATE
 STOCKS
 TRUST 1
 TRUST 1

ABE'S ESTATE TAX:

TAX ON (STOCKS + FMV TRUST 1 + FMV TRUST 2) + \$200K GIFT (ADJ-TAX)
 ESTATE (-\$230,530)

- GIFT TAX PAID ON TRUST 1 + TRUST 2 + \$200K

TAX PAYABLE



↳ SINCE ARE USED
 OR ESTATE TAX CREDIT

ALL PAYABLE SINCE HE USED UP UTC.

DH YES + NO GST TAXES ON ANY
 OF THE TRANSFERS BK THEY WOULD
 ALL W/IN 1 GENERATION

ABE



BRIAN / CHARLY

LIKE IN Q2 - COULD ELECT ALT. VALUATION DATE
 \$7,027 → BUT PROBABLY NOT WORTH MUCH THERE