

1998

Myra has made a completed gift of the ~~950,000~~ stocks to ~~the~~ Trust 1. She has released all dominion: control over the disposition of the stocks and she has not received full & adequate consideration in money or money's worth in return for her transfer of the stocks. However, she has retained a life estate to the income interest in the stock, so she has only made a gift of the remainder interest to her granddaughter, Gwen.

The value of the gift is the FMV of the property at time of transfer (§2512), less M's retained interest. However, §2702 comes into play bc M has not retained a qualified interest (i.e. an annuity income interest, an unitrust income interest, or a non-contingent remainder interest) and M's donee is "a member of grantor's family." Gwen is M's lineal descendant, §2704(c)(2). Accordingly, M's retained interest is valued at zero and she ~~has~~ has made a gift of the entire property, *950,000.

GST tax does not yet apply bc there is no direct skip, taxable termination, or taxable distribution. However, a taxable termination is going to happen when M dies and it might be a good idea for M to allocate some of her \$1 million exemption from GST

tax to this transfer, so when the TT does occur the inclusion amt is fixed. If M allocates \$950,000 ~~to~~ of her \$1 million exemption to this transfer now, when the TT occurs, no GST tax will be incurred.

No annual exclusion can be taken by M bc there is no present interest gift. Gwen has a future interest. M cannot take annual exclusion under §2503(c), transfers to minors, either, b/c the interest given to Gwen will not necessarily be distributed by the time Gwen reaches 21.

No deductions to gift tax apply. No Crummey power given to Gwen.

M is going to have to pay gift tax on the \$950,000 and so she would be wise to use up some unified credit. In 1998, the applicable exclusion amt. is \$625,000.

M ~~can~~ ^{cannot} take ^{an} annual exclusion ~~either~~ for power given to T/ee ^{either} bc it is not a general POA bc T/ee cannot appoint any part of corpus to ~~herself~~ itself.

For Trust II, M has made an incomplete gift of the remainder interest bc ~~she~~ she has retained the power to change the remainderman. No gift tax implications made

by setting up Trust II

2001

M's release of her power to change remainderman results in a completed gift of the remainder interest in Trust II.

No GST implications bc Sam is not a skip person

Value of remainder interest is the actuarial value on the date M releases the power. § 2702 does not apply even though M retained an un-qualified interest bc § 2702 does not apply to personal residences put in trust.

So value of remainder is : \$ 244,200

term of yrs = 12

interest rate = 7%

actuarial factor = 0.444

$$0.444 \times 550,000 = \$ 244,200$$

M has made a gift of \$ 244,200. No annual exclusion is available bc remainder interest is a future interest. Annual exclusion only applies if donee has unrestricted right to immediate use or possession of the income or property. Not the case here. No deductions apply. No split-gift bc she is a widow

She can use some unified credit. In 2001, the applicable exclusion amt. is \$675,000

M's retention of right to rent house from S does not ~~is does not affect~~ cause an incomplete gift because it does not give her control over the disposition of the property

2003 M dies

2 § 2036(a)(1) will include in M's gross estate the entire value of Trust I, on date M died, because M retained a life estate. Value of Trust I included in gross estate is \$1.8 million.

1 M released her control of ~~Trust II, in favor of~~ who shall get the remainder interest but it was w/in the last 3 yrs of her life, so § 2035(a) ignores the release of power: includes in M's gross estate the amt that § 2038 would have put in. Here, § 2038 would have put in the value of the remainder, valued on M's date of death, ~~to~~ \$625,000

2 § 2035(b) will also include in M's gross estate the gift tax paid on the release of power in Trust II

§2036(a)(2) does not apply bc M never had power to designate who would enjoy the income interest

§2612(a) When Trust I terminates this is a taxable Termination ~~bc~~ and the \$1.8 million going to Gwen is subject to GST tax at 55%. However, if she had allocated her \$1 million exemption before this distribution, ^{then the distribution} to Gwen would not be subject to GST tax. If she did not previously allocate the exemption, M's estate can do it now but now she will have to pay some GST tax bc the exemption does not cover the entire amt.

Nothing goes into M's estate through §2033

T/ee

2 When Trust I terminates no effect on T/ee bc he did not have a general POA. His powers were only fiduciary to the trust

Gwen

/ no ~~to~~ estate, gift or GST consequences

Sam

no estate, gift or GST consequences.

M's estate

No marital deduction. They can get the regular funeral expenses, admin expenses, claims against the estate, and unpaid mortgages. No charitable or casualty deduction.

Estate will get to use unified credit, in 2003 applicable exclusion amt \$ 700,000. Credit for state death taxes.

Problem 2

1998 - H sets up trust. This is a completed gift of the stock bc H has released all dominion & control and has not received full & adequate consideration for his transfer of property. Value of gift is FMV of property on date of transfer. ~~Under & Publically traded stock is~~ ~~5,000,000~~ Publically traded stock is valued at \$5,000,000 ~~at the~~ but could argue for a blockage discount bc only 100,000 shares change hands in a typical month. No GST implications. H can take a \$10,000 ~~exp~~ annual exclusion for W's income interest, even though T/ee has power to invade corpus: so could ~~in theory~~ in theory deprive W of income. However, T/ee's power is limited by an ascertainable standard: therefore W's interest is considered a

3
/ present interest. Also, H can ~~make a gift~~ take a marital deduction under §2523, if H makes a Qtip election: files a gift tax return. W's interest qualifies for marital deduction bc she has ~~right to income~~ absolute right to income for life and no one, during W's ~~lifetime~~ ^{lifetime}, has the power to appoint the property to anyone else. Again, Tlee's power is treated as a non-power bc it is limited by an ascertainable standard. No annual exclusions permitted for kids remainder interest: consequently no ~~app~~ application of gift-splitting.

If H does make the Qtip election, then if W ever decides to transfer her interest in the Qipped property, §2519 will consider the entire Qipped property as the value of the gift. ~~Moreover, when W die~~

/ ~~No effect~~ No GST, gift or estate tax consequences in 1998 for W, W's estate, Bob, Ken or Raren.

/ ~~Any~~ If Bob as Tlee decides to exercise his power to said for W, this has no gift tax consequences bc Tlee does not have a general POA. He cant appoint

property to himself, his creditors, his estate, his estate. An exercise of his Tlee powers is just a fiduciary duty limited by an ascertainable standard.

2002 H dies

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S2037 will included in H's estate the value of the ~~remainder~~ interest that passes to Ken & Karen. At date of death, value of remainder is the actuarial value of the remainder using W's age and 7% interest rate.

Remainder is included in ~~gr~~ H's gross estate bc i) grantor had retained a reversion → he retained a life estate plus the remainder from the trust; ii) interest transferred to Ken & Karen could only be enjoyed by outliving the grantor; and iii) immediately before grantor's death, grantor's reversionary interest was greater than 5% of the value of the entire property (Ken & Karen were only 1 generation below grantor so no way that reversionary interest was less than 5%.)

~~H's estate can elect to get~~

H's estate can take a marital deduction under S2056 for property that passes to wife, if H gives W property outright,

or ~~he~~ gives W a qualified terminable interest i. makes a QTIP election; or gives W a life estate in property w power of general appointment. H's estate can also take regular deductions under 32053 (funeral, admin, claims against estate, unpaid mortgages). No charitable or casualty deduction

~~Since H has already~~

No gift, estate, or GST ~~conseq~~ tax consequences for Bob the T/ee, W or kids when H dies

2004 W dies

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§2044 - Bc §2033 could not put anything in W's gross estate bc her income interest disappears when she dies, the nice folks ~~that~~ in Congress created §2044 which puts the entire value of ~~the~~ QTIPed property in W's gross estate, if H had previously taken a deduction for it.

When trust terminates no GST implications bc no skip persons involved. ~~No gift, estate~~

Trust's ^{termination} ~~power~~ of power has no gift or estate tax implications

→ so entire value of Trust goes into her gross estate. On date of death value of ~~gross~~

trust is btw \$5 million : \$6 million. ~~Under~~
W's estate could try to get a blockage
discount be got more than there is demand
for. ~~Maybe could also try to argue~~ W's estate
could also use the alternative valuation date
§2032 if it looks like stock will decrease in
value w/in 6 months bc of market forces.

W's estate can get all the regular deductions
under § 2053. Can get credit for state death
taxes paid to state

~~Additionally, if she is in a jurisdiction~~

Problem 3

1999 D dies

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under § 2042(1), the proceeds of from the life insurance policy are included in D's estate bc D was the insured (now decedent) and her estate was the beneficiary. Accordingly, \$1 million is included in D's estate. D's gross estate also includes the \$2 million worth of property: stocks that she uses to fund her testamentary trust. D's gross estate = \$3 million. Arguably, D's estate can take a \$100,000 deduction under administrative expenses incurred by the auctioneer's fee under § 2053. However, there is some question as to whether this expense was ~~actually~~ "necessary". Just bc the local probate court allowed the deduction, it does not prevent fed ct from having the power to determine if admin. expense was really necessary. ~~It seems a little so~~ ~~It is just~~ Since Sarah is receiving a lot of D's estate, it seems questionable whether this sale of goods was for the beneficiary; not for ~~the~~ D's estate (Estate of Smith).

2
D's estate can take a Charitable Deduction under § 2055 for interest in the testamentary trust. ~~Since D gave~~ I'm assuming that the

college & church are "qualified charitable org's".
Since the interest to the charities are successive interests, the deduction is only allowed if ~~the~~ Sarah's interest is a unitrust or annuity trust. ~~Star~~ Sarah's interest satisfies a unitrust income interest in that she will receive income ~~in~~ at a fixed % rate of the FMV of the property, in trust. Here, D's estate will get a charitable deduction in the actuarial value of the remainder interest.

S's Disclaimer

S has not made a qualified disclaimer under §2518 bc her written disclaimer must have been ^{received} by D's estate w/in 9 months of date of transfer of interest. In this case, 1 month of D's death. Accordingly, S has made a gift of her ~~inter~~ income interest in the trust to the local school & church. The value of the gift is the FMV of her ~~inter~~ income interest on the date she disclaimed. ~~in the trust form~~ In consolidation, she can take 2 * \$10,000 in annual exclusions bc she has given the church & school unrestricted right to possession of trust corpus. ~~In addition~~ ~~However, she won't need them bc~~ In addition, she can take a charitable deduction under §2522 for ~~gift~~ outright gifts to the school & church.

from the
commercial
real estate

However, the charitable deductions will reflect the non-controlling interests the school: the church receive. ~~As~~ As a result, the charitable deduction ~~may not~~ ^{may} will not cover the full value of the property if they each own $\frac{1}{2}$ of the real property. Hopefully the annual exclusions will cover any excess gift from the charitable deductions. Also she can apply unified credit if she has to.

Happy Holidays!