

ONE

THE TRUST: TOM HAS RECEIVED A REQUEST FROM HIS DEPT MOTHER

WHICH IS ~~EXCLUDED FROM~~ ^{NOT INCLUDEABLE IN} GROSS INCOME UNDER §102(a).

GIFTS BETWEEN FAMILY MEMBERS ARE PRESUMED TO MEET THE DURESTEN DETACHED AND DISINTERESTED BENEFIT TEST.

GIFTS TRANSFERRED AT DEATH HAVE A STEPPED UP OR DOWN BASIS

BASED ON THE FMV OF THE STOCK AT THE TIME OF TRANSFER AS

POOR MOTHER'S BASE DIES WITH HER, AND NO GAIN IS REQUIRED

AT DEATH. THE INCOME FROM THE TRUST IS STILL GOING

TO BE INCOME - AS UNDER CAVIT THE BASIS ^{REMAINS} IN THE CORPUS

OF THE TRUST, AND ANY EARNINGS ARE TAXABLE WITHOUT

ANY BASIS ADJUSTMENT. THE DIVIDENDS, IF HELD BY THE

TRUST WOULD BE TAXABLE TO THE TRUST AT ITS RATES, BUT

AS THEY ARE PAID TO TOM, THEY ARE HIS INCOME, TAXABLE

AT CAPITAL GAINS RATES (DIVIDENDS §1(h)(1)). WHEN TOM

DIES, HIS CHILDREN WILL RECEIVE THE STOCKS WITH A

STEPPED UP/DOWN BASIS TO THE FMV AT THE TIME OF

AS THE NATURAL
OBJECT OF MATRIMONIAL
DUTY, UNLESS
THIS IS COMPENSATION
FOR SERVICES, IT
WILL BE A GIFT.

TRANSFER AS IT IS STILL A GIFT FROM A BEQUEST MEETING

THE §102 EXCLUSION / NON-REALIZING EVENT OF DEATH. THE

TRUST IS NOT SUBJECT TO ANY INCOME SPLITTING ISSUES BECAUSE

MARTHA CREATED AN IRREVOCABLE TRUST AND DID NOT RETAIN

ANY INTEREST IN IT, ONLY THE TRUSTEE HAD ANY DISCRETION

WHICH DOES NOT VIOLATE §673.

~~THE~~

THE CONDO: TOM'S BUSINESS IS IN BUILDING CONDOMINIUMS

FOR SALE TO THE PUBLIC, AND AS SUCH, HE MIGHT BE FORCED

TO CAPITALIZE ^{MOST} OF HIS EXPENSES INTO THE UNITS, AS THEY

ARE HIS INVENTORY HELD FOR SALE TO THE PUBLIC - UNICAP

RULES. THIS WOULD FORCE HIM TO CAPITALIZE MUCH OF HIS OVERHEAD,

SOME SALARY, ETC. OTHER BUSINESS EXPENSES TOM HAS WHICH

SERVE A PROFIT MOTIVE AND ARE ORDINARY/NECESSARY

EXPENDITURES, TOM WILL GET TO DEDUCT UNDER §162 - ABOVE THE

LINE BUSINESS EXPENSES. AS A DEALER OF REAL

ESTATE, TOM WILL NOT RECEIVE THE BENEFIT OF §453'S

HANDLING OF THE INSTALLMENT SALE TO CONNIE. THOUGH HE'LL

GET SOME PAYMENTS PART THE PRESENT YEAR ON IT, HE'LL

BE STUCK WITH THE CLOSED CASH TRANSACTION METHOD FOR

INSTALLMENT SALES INSTEAD OF QUALIFYING TO SPREAD OUT THE

PROFIT OVER THE LIFE OF THE PAYMENTS IN RELATION TO HIS

PROFIT DIVIDED BY THE TOTAL CONTRACT SALE - WHERE APPROXIMATELY

ONE THIRD OF THE UP FRONT PAYMENT AND EACH SUBSEQUENT PAYMENT

WOULD BE PROFIT - ALLOWING HIM TO DEFER TAXATION. HERE,

HE WILL BE TAXED ON WHAT HE ACTUALLY RECEIVES IN YEAR

ONE - CONSTRUCTIVE RECEIPT OF THE NOTE BECAUSE HE

COULD SELL IT IMMEDIATELY FOR \$160,000. IN WHICH CASE,

HE'LL HAVE AS ORDINARY INCOME (INSTEAD OF CAPITAL GAIN

BECAUSE ITS INVENTORY HELD FOR SALE) IN YEAR ONE

BASED ON A 1001 SALE. HIS AMOUNT REALIZED IS 100K

FOR CASH RECEIVED AND 160K FOR THE FMV OF THE NOTE.

THAT 260K ~~AND~~ LESS HIS BASIS OF 200K IS TAXABLE

GAIN OF ~~200~~ 60K. THE REMAINING AMOUNT GETS SPREAD

OUT AND AMORTIZED OVER THE 10 YEARS OF THE NOTE.

THE INTEREST PAID ON THE LOAN TO CONNIE WILL BE

ORDINARY INCOME TO TOM AS WELL.

THE HOME OFFICE :

THE DETACHED BUILDING RAISES ISSUES OF THE DIVIDE BETWEEN

PERSONAL AND BUSINESS DEDUCTIONS. CONGRESS SEES PEOPLE

AS SEEKERS OF PROFIT AND AS CREATURES TRYING TO SURVIVE.

THE COST OF MAKING MONEY IS DEDUCTIBLE. LIVING COSTS ARE

NOT. TOM'S SEARCH IS LIKELY MOTIVATED BY THE SEARCH

FOR PROFIT, BUT MAY NOT BE A NECESSARY EXPENSE

FOR HIS BUSINESS, PLACING IT IN § 262 - NON-DEDUCTIBLE PERSONAL

EXPENSE. THE ISSUE NARROWLY, IS NOT TOM'S MORTGAGE

INTEREST ON THIS HOME: OFFICE, WHICH IS DEDUCTIBLE

UNDER § 163 IF HE QUALIFIES BY LIVING THERE 2 OF

^{Below the line of he itemizes}

THE LAST 5 YEARS. ON ACQUISITION DEBT OF UP TO 1 MILLION.

NOR IS IT TOM'S PERSONAL PROPERTY TAXES WHICH ARE DEDUCTIBLE
^{again below if itemizes}

UNDER § 164. Tom will want to deduct THE ^{PROPORTIONAL} COSTS

OF THE OFFICE, UNDER § 280A AS A BUSINESS EXPENSE.

HOWEVER, 280A'S TEST FOR DEDUCTIBILITY IS VERY NARROW.

UNDER THE PRINCIPAL PLACE OF BUSINESS TEST, THOUGH TOM

IS MEETING WITH CLIENTS, NO PERSONAL USE IS ALLOWED

AT ALL, AS THE PREMISES MUST BE EXCLUSIVELY USED

FOR BUSINESS. "FRIENDS AND FUN" NOT ALLOWED.

SORRY TOM.

THE POKER GAME:

TOM MIGHT BE ABLE TO DEDUCT THE COSTS OF THE

POKER GAMES AS A BONA FIDE BUSINESS EXPENSE, ^{ONLY FOR BIZ CLIENTS - NOT FOR HIS BOODIES - TOO PERSONAL} THOUGH

IF ALLOWED, TOM WOULD ONLY BE ABLE TO DEDUCT 50%

OF THIS PARTY UNDER §274(N). TOM BETTER HAVE

RECEIPTS UNDER §274, BUT IF HE DOES, HE LIKELY CAN

DEDUCT UNDER §274(a)(1) AS RELATED TO BUSINESS AND

SHOWING THAT BONA-FIDE BUSINESS DISCUSSIONS TRANSPIRE

BEFORE OR AFTER - HERE DURING SHOULD WORK. TOM MIGHT

WANT TO BE SURE "OCCASIONAL" DOES NOT BECOME REGULAR,

AND ENSURE THAT "TOO MUCH" FUN IS NOT HIT - LIKE SOME

CRAZY SUPER POWL BLOW-OUT SIMILAR TO DANVILLE PLAYWOOD.

TOM'S POKER LOSSES ARE BASKETED UNDER §165(d)

MEANING HE CAN ONLY USE THEM TO OFFSET ANY GAINS,

WHICH WOULD BE ORDINARY INCOME TO TOM.