

The Year in Review: An Estate Planner's Perspective on Recent Tax Developments

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**What is that old life
insurance policy
really worth?
Dematteo
*(PENDING)***

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How do you value a long-held life insurance policy? The interpolated terminal reserve (plus unexpired premium) or an independent appraisal based on the policy's value in the secondary market?

And what is the interpolated terminal reserve, anyway?

New statutory rule on syndicated conservation easements

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The Consolidated Appropriations Act of 2023 sets new limits on the income tax charitable deduction for gifts of some conservation easements. No deduction if:

- **The contribution exceeds 2.5 times the partner's basis in the partnership assets; and**
- **The contribution is made 3 years or more after the last date the partnership last acquired any part of the property or any partner acquired any partnership interest.**

Circuits split over validity of regs on division of proceeds from an involuntary termination of easement. And it looks like we have to live with the split.

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The 6th and 11th Circuits split over the validity of Regs. that require, if a conservation easement is terminated involuntarily (usually because of fire or eminent domain), the proceeds be divided between the donor and the donee solely in proportion to their respective shares (based on the original gift) of the value of the property on the date of termination. The donor cannot receive full repayment of the value of the donor's post-gift improvements to the property.

Oakbrook Land Holdings (6th Circuit) and the Tax Court held that the regs complied with the Administrative Procedure Act.

Hewitt (11th Circuit) held that the regs were invalid under the Administrative Procedure Act.

Certiorari denied in *Oakbrook Land Holdings*.

Sale of corporate shares + charitable gift of stock = donor taxed on gain when charity sells its shares. No income tax deduction, either.

Estate of Hoensheid

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A client's insistence that a charitable gift of stock not be made unless corporation is going to be sold results in the donor being taxed on the gain when the charity sells the contributed shares. Lack of a good appraisal results in no charitable deduction.

What really is the test to decide whether a donor is taxed on the gain when the charity sells contributed assets? Inquiring minds want to know.

**Basis of property
held by an
irrevocable grantor
trust not adjusted
at the grantor's
death.
Rev. Rul. 2023-2**

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The IRS will not allow a basis adjustment under Section 1014(a) for assets held by an irrevocable grantor trust at the grantor's death, unless the assets are includible in the grantor's gross estate.

**Inflation's a damn
shame – FBAR
penalties increased
for both willful and
non-willful
violations.**

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Like many other tax provisions, the \$10,000 and \$100,000 penalties for FBAR violations are adjusted for inflation. Now, \$10,000 = \$15,611 and \$100,000 = \$156,107.

- **Effective January 24, 2023.**
- **These penalties can mount up very quickly.**
- **For 2024, the \$10,000 penalty is likely to be \$16,117 for 2024 and the \$100,000 penalty violations is likely to be \$161,170.**

Non-willful FBAR penalties are calculated per FBAR, not per account. *Bittner*

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In *Bittner*, Supreme Court (5-to4), held that the \$10,000 penalty for non-willful FBAR violations is based on the number of FBARs that were not filed correctly, rather than the number of foreign accounts that were not reported correctly. The difference between the two approaches in *Bittner* was \$50,000 versus \$2.7 million, so this matters.

**11 Damn Seconds -
- When is an
electronically-filed
Tax Court petition
deemed to have
been filed.
*Sanders***

p. 99

A taxpayer filed his Tax Court petition electronically using the court's DAWSON system and filed it 11 seconds late. The petition was rejected.

Is a timely Tax Court petition really jurisdictional?

**Life insurance
used to fund a
corporate stock
redemption is
itself a valuable
corporate asset.
*Connelly***

p. 109

The estate tax value of a decedent's shares of a C corporation that was being valued at net liquidation values was increased to reflect the life insurance proceeds paid to the corporation under a stock redemption buy-sell agreement and used to redeem the decedent's shares.

Circuits (8th and 11th) now split.

Supreme Court granted certiorari.

No estate tax deduction for charitable interest in a CRAT in which the annuity was uncertain.
Estate of Block

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No charitable deduction allowed for the charity's interest in a testamentary CRAT where the annuity was the greater of the trust's net income or \$50,000, because the annuity could be manipulated.

**Successor trustee is personally liable for unpaid estate tax up to the lesser of the value of assets when the decedent died, or the value when the trustee accepted his or her post.
*Estate of Paulson***

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The funded revocable trust of the founder of Gulfstream Aerospace (maker of those private jets you really want but can't afford) owed estate taxes. Trustees were replaced during the administration. Is a successor trustee liable for taxes up to the trust's value on the date of death or its value on the date the trustee became a trustee?

**Adding a tax reimbursement clause to an existing grantor trust is a taxable gift from the beneficiaries to the grantor.
CCM 202352018**

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Trustee, grantor, and beneficiaries agree to modify a grantor trust so that the trustee can reimburse the grantor for income taxes on the trust income. IRS Office of Chief Counsel says that this is a taxable gift from the trust beneficiaries, who consented to the change, to the grantor.

From which beneficiaries? In what shares? How big is the gift? These are only a few of the issues raised by this CCM.

**Valuation of the
stock of the S-
corporation that
operates the largest
private residence in
the United States.
*Estate of Cecil***

p. 124

Heirs of the Vanderbilts gave their children and grandchildren nearly all of the nonvoting stock of The Biltmore Company, an S-corporation that operated the house as a tourist destination. The Tax Court valued the shares based solely on earnings and allowed a 20% discount for lack of control, 19 – 27% discounts for lack of marketability, and a 17.6% discount for tax-affecting.

Beware the *Wandry* clause. It may minimize future gift tax deficiencies, but it (a) requires oversight; and (b) can adversely affect the estate plan.
Estate of Sorensen

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Sandwich moguls gave and sold nonvoting shares to trusts for their children. They included a *Wandry* defined value clause in the gift transaction. IRS refused to honor the *Wandry* clause and increased the gift tax value of the shares. The taxpayers settled by agreeing to ignore the *Wandry* clause.

This is probably the most important defined value clause case yet.

**Finally, guidance on
what constitutes
“adequate
disclosure” of a gift
to start the statute
of limitations.
*Schlapfer***

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On May 31, 2007, Ronald and his mother gave a life insurance policy to Ronald’s mother, his aunt, and his uncle. They filed a timely gift tax return. In 2016, the IRS assessed a gift tax deficiency. The Tax Court held that, although the return did not contain everything that the regulations ask for, together with everything else provided, there was adequate disclosure that started the statute of limitations.

***Treasury 2024
Green Book – the
President doesn't
always get what he
wants***

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The Treasury's Green Book explaining the tax proposals accompanying the Administration's Budget for FY 2024 would, among other things:

- Impose a minimum tax on the unrealized gains of the wealthiest taxpayers;
- Recognize gains and losses on gifts and transfers at death of appreciated property;
- Treat a grantor's payment of income tax on a grantor trust as a gift;
- Eliminate most GRATs;
- Tax most sales to irrevocable grantor trusts;
- Require consistent valuation of promissory notes; and
- Limit the duration of GST-exempt status from allocation of the GST exemption.

Taxes Matter, but Saving Taxes is Easier than Solving Family Problems

