T&E Potpourri: A Collection of Current Trust & Estate Developments of Interest

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The Pending New York State Budget Bill May Require Taxpayer Action By April 1, 2014

The budget bill recently proposed by Governor Cuomo contains significant changes to New York's gift, estate, and generation skipping transfer taxes as well as the taxation of income from certain trusts.

New York currently does not impose a gift tax. Although the budget bill does not propose a gift tax, it does require taxable gifts made on or after April 1, 2014, to be added back to a decedent's estate for estate tax purposes if the decedent was a New York resident at the time such taxable gift was made. Consequently, a New York resident who is contemplating making a taxable gift in 2014, should consider making the gift prior to April 1. This can be especially appealing to New York taxpayers who have not yet used their entire federal exclusion amount.

IRS Revenue Procedure 2014-18 Provides Taxpayers With Second Chance At "Portability"

Since "portability" of the estate tax exemption became available to taxpayers in 2011, the personal representative of the first dying spouse's estate needed to file a federal estate tax return (Form 706) after the death of the first dying spouse in order to make the portability election for the surviving spouse. This Form 706 needed to be filed within nine (9) months following the date of death of the first dying spouse, unless the personal representative filed for and was granted an automatic six (6) month extension.

Apparently, a great number of personal representatives and surviving spouses were not aware of this deadline or otherwise did not file the Form 706 in order to take advantage of any unused estate tax exemption that remained at the death of the first dying spouse. Revenue Procedure 2014-18 provides relief for taxpayers who neglected to timely file a Form 706 for purposes of making a portability election.

The Rev. Proc. is based on the recent Supreme Court case, United States v. Windsor, and the IRS interpretation of the tax law as a result thereof, (Revenue Ruling 2013-17). Nevertheless, the benefits provided by the Rev. Proc. Are available to same sex surviving spouses.

New York Court of Appeals Rules That Mere Ownership of Premises in New York Is Not Conclusive of "Permanent Place of Abode"

An individual is a resident of New York State (or City) if the person is "domiciled" in the State (or City) (the "Domicile Test"), or if the individual both maintains a "permanent place of abode" and spends all or part of more than 183 days in the State (or City) (the "Statutory Residency Test"). New York regulations define a permanent place of abode as a "dwelling place of a permanent nature maintained by the taxpayer."

On February 18, 2014, the Court of Appeals of the State of New York, in Matter of Gaied v. New York State Tax Appeals Tribunal ("Gaied"), criticized the Tax Tribunal's determination that a man who owned a home used by his parents in Staten Island maintained a "permanent place of abode" in New York City and was subject to New York State income tax on his worldwide income. In earlier proceedings, the Tax Tribunal, which was affirmed by a divided Appellate Division, had held that it was improper to look into the "taxpayer's subjective use of the premises," finding that mere ownership was sufficient to conclude that the taxpayer maintained a "permanent place of abode."

Gaied focused on the Statutory Residency Test and in particular the definition of "permanent place of abode." Mr. Gaied did not contest that he had spent more than 183 days in New York City.

Tax Court Upholds Use of a "Formula Clause" When Making Transfers of Interests in Closely Held Business to Family Members

Because of the uncertainty involved in valuing a closely held company, a tax professional said to structure gifts of interests in a closely held business as gifts of a set dollar amount that would be converted into interests in the business after a valuation of the business was done. If the IRS determined the business was worth more, each donee's stake would be reduced accordingly and no extra gift tax would be due. The IRS balked at the "formula clause" because the time it spent auditing the gifts was wasted. The Tax Court gave the OK to the "formula clause". Although IRS will keep fighting this issue, tax advisers can rely on the Court's decision as authority to avoid any penalties.

The decision is a gift tax break for owners of closely held firms.