

# Estate Planning Update—Legislative/Regulatory Developments and Other Current Developments

Steve R. Akers, Bessemer Trust

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## 1. Legislative Proposals

- a. FY 2023 Greenbook; Administration Priorities
- b. Bad memories—Ways & Means Committee draft of September 13, 2021 (with sweeping transfer tax/grantor trust provisions)
- c. Surtax in H.R. 5376

## 2. Corporate Transparency Act

- a. Proposed Regulations (December 8, 2021)
- b. Reporting Companies, Beneficial Owners (Trust)
- c. Filing Due Dates

## 3. *Smaldino v. Commissioner*, T.C. Memo. 2021-127

- a. Valuation Quandry
- b. Indirect Gift (gift of LLC interest to wife followed by gift the next day from wife to trust for descendants [to use wife's exclusion]; terrible facts, including express agreement to re-transfer)
- c. Planning Implications (especially important for SLATs)

## 4. GRATs Using “Deliberately Undervalued Appraisal”, CCA 202152018

- a. Deliberately Undervalued Appraisal Used; “Atkinson Rationale” Applied
- b. Because of “Operational Failure,” Not A Valid GRAT (So Full Gift)
- c. Treas. Regs. §25.2702-3(b)(1)(ii)(B) (can define annuity as percentage of initial value as finally determined); §25-2702-3(b)(2) (procedure to adjust annuity amounts for incorrect valuations)

## 5. SECURE Act; Proposed Regulations

- a. Applies to 2022 Distributions; For 2021 Distributions Use “Reasonable Good Faith Interpretation”
- b. Highlights: Life Expectancy Payments During 10-Year Term; Payment by Dec. 31 of 10<sup>th</sup> Year; “Age of Majority” Means Age 21; Accumulation Trust Rules Simplified (only count initial beneficiary and first successor beneficiary, permissible appointees of powers of appointment not matter until PAO exercised); Can Use Accumulation Trust For Minor Child and Disabled/Chronically Ill); Minor Child Become Disabled Before Age 21; Conduit Trust for Spouse
- c. New Life Expectancy Table for RMDs (effective for 2022 distributions)

## 6. Miscellaneous IRS Guidance; Priority Guidance Plan

- a. No New Tax Legislation; IRS May Be Able to Focus on Regulatory Projects
- b. Estate Tax Closing Letter User Fee; New Actuarial Tables; Anti-Abuse Exception to Clawback Regulation
- c. Others

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## 7. Transfer Planning for Clients Who Want To Make Use of Increased Exclusion Amounts (But May Not Be Thrilled About Making Large Gifts)

- a. Window of Opportunity Through 2025
- b. Possible Continued Benefit for Grantor or Grantor's Spouse; SLATs (Spousal Conflicts? Creditor Issues?)
- c. Anti-Abuse Clawback Regulation Underway

## 8. Early Termination of Trusts; Commutation of Spouse's Interest in QTIP Trust

- a. Early Termination of Trusts-Substantial Income Tax Costs, PLRs 201932001-201932010
- b. PLR 202016002; CCA 202118008 – Commutation of QTIP Trust
- c. Complexity of Planning With QTIP Trust Interests (see Read Moore, Neil Kawashima & Joy Miyasaki, *Estate Planning for QTIP Trust Assets*, 44<sup>th</sup> U. MIAMI HECKERLING INST. ON EST. PLAN. ch. 12 1202.3 (2010); Richard S. Franklin, *Lifetime QTIPs – Why They Should Be Ubiquitous in Estate Planning*, 50<sup>th</sup> HECKERLING INST. ON EST. PL. ch. 16 (2016))

## 9. *Estate of Moore* (T.C. Memo. 2020-40, *aff'd* 124 AFTR 2d 2021-6604 (9th Cir. Nov. 8, 2021))

- a. Charitable Formula Transfer Not Recognized ; Appealed Denied, But on Narrow Grounds

## 10. Valuation Issues

- a. *Estate of Nelson* (T.C. 2020-81, *aff'd* 124 AFTR 2d 5368 (5th Cir. Nov. 3, 2021) (appeal only addressed that the assignments were not defined value transfers based on finally determined values)
- b. *Estate of Michael Jackson* (T.C. Memo. 2021-48) (valuation of publicity rights; undervaluation penalties; tax-affecting [not following *Estate of Jones* (T.C. Memo. 2019-101)])
- c. *Estate of Morrisette* (T.C. Memo. 2021-60) (no §2036, §2038 or §2703; valued reimbursement rights with very little discount; undervaluation penalties applied despite having reputable appraisals)
- d. *Estate of Warne v. Commissioner* (T.C. Memo. 2021-17) (valuation of majority interests in LLCs owning real estate [4% LOC & 5% LOM discounts]; charitable deduction based on values passing to each separate charity)
- e. *Connelly v. U.S.*, 128 AFTR 2d 2021-5955 (E.D. Mo. Sept. 2, 2021) (buy-sell agreement did not fix estate tax value; corporate purchase obligation funded with corporate-owned life insurance; value is increased by life insurance proceeds used to fund purchase of decedent's shares)
- f. *Buck v. U.S.* (128 AFTR 2d 2021-6043 (C. Ct. Sept. 24, 2021) (undivided gifts to separate donees in each of four years valued separately and not aggregated)

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