Heckerling 2017 - Report No. 5 (Wednesday 1/11/17)

Included in this report are:

- Worldwide Charitable Donations
- Tax Considerations for Foreign Persons owning US assets
- Q&A session
- Partnership Income Tax Fundamentals

All the speakers were great, and the reports are helpful.

Steve

==

Steven B. Gorin
sgorin@thompsoncoburn.com
Phone: 314.552.6151
Fax: 314.552.7151
Mobile: 314.602.6151 (better to leave messages on office phone than on mobile voice mail)

Thompson Coburn LLP
505 N. 7th St.
One US Bank Plaza
St. Louis, Missouri 63101
www.thompsoncoburn.com
http://www.thompsoncoburn.com/people/steve-gorin

From: Joseph G. Hodges Jr.
Sent: Monday, January 09, 2017 8:27 PM
Subject: Heckerling 2017 - Report No. 1 (Monday 1/9/17)

As we have done in January for the last twenty years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting daily Reports to this list containing highlights of the proceedings of the 51st Annual Philip E. Heckerling Institute on Estate Planning that is being held on January 9-13, 2017 at the Orlando World Center Marriott Resort and Convention Center in Florida. A complete listing of the proceedings and the Institute's 2017 brochure are available at www.law.miami.edu/heckerling and the listing of the proceedings was also published as part of **Introduction Part 2** that was distributed on 1/4/17.

We also will be posting the full text of each of these Reports on the ABA RPTE Section's Heckerling Reports Website, as we have since the 2000 Institute. Those Reports from 2000 to 2016 can now be found at URL http://www.americanbar.org/groups/real_property_trust_estate/

events_cle/heckerling_reports.html. In addition, each Report from 2006 to date can also be accessed at any time from the ABA-PTL Discussion List's Web-based Archive that now only goes as far back as January of 2006 and is located at URL http://mail.americanbar.org/archives/aba-ptl.html.

Editor's Comments: This Report #5 begins our coverage of the Wednesday morning Main and fundamentals #2 sessions. Included in this report are four sessions, one on Worldwide Charitable Donations, one on Tax Considerations for Foreign Persons owning US assets, the usual and very popular mid-Institute Q&A session, and the Fundamentals #2 session on Partnership Income Tax Fundamentals.

Coverage of the Wednesday Special Sessions (Nos. 1-A to 1-F and 2-A to 2-F) will start with Report #6.

From Scott Martin and Trust Advisor (www.thetrustadvisor.com) dated December 15, 2016 comes this news item about what is being billed as a ranked listing of "The Best Conferences For Financial Advisors in 2017," an annual listing of which dated October 24, 2016 and done by Kitces, who had been preparing these annual lists since 2012, is attached to Scott's e-mail. The listings are broken down into various categories, include Best Conference for Estate Planning (you guessed it, Heckerling), for Technology, and for Advanced Practitioners (FPA - Financial Planning Institute), as well as Best Overall Financial Planning Conference (FPA NorCal) and Best Advanced Educational Conference (AICPA Engage). More information can be found at www.kitces.com.

===

Wednesday, January 11th, 9:00 to 9:50 am
Around the World in 80 Donations, or Structures Supporting U.S. Deductions for Donations Spent Abroad [CHR][INT]
Presenter: Victoria B. Bjorklund
Reporter: Patrick Duffy

How well prepared are you to advise clients seeking U.S. tax deductions for charitable donations where those donations will be expended outside the United States? This presentation will review the IRS-approved “American Friends of” structure and its cousin, the cross-border donor-advised fund. It will also identify traps for the unwary, particularly facts fatal to deductibility. This Report delves into some of the finer points about this area of the tax and charitable giving laws

Although international generosity from the United States (which tops out at over $15 billion per year) does not stop at the border, under Section 170 of the Tax Code, deductibility of those funds does. There is a framework, though, for getting income tax deductions for clients that want to donate to foreign clauses. In fact, the IRS has recently issued several rulings indicating how it is interpreting Section 170 on audit. The first question for advisors to ask, though, is whether the client even needs (or can use) an income tax deduction. If not, things become much simpler.

If the client does need a deduction, there are tax and non-tax hurdles to overcome. On the non-tax side, the PATRIOT Act and the Specially Designated National List (published by the Office of Foreign asset control) are important. The Financial Action Task Force has also grown into a key player in this area.

Victoria Bjorklund presented the key tax-side issues as a series of vignettes in the form of common client and advisor mistakes.

Mistake #1. Client gives to an organization not created in the U.S.. Victoria knows of no way to save deductibility if the gift has been completed. This is a relatively easy mistake to avoid, though. Clients and advisors can simply check the online list published by the IRS (Publication 78) of exempt entities.

Example. Victoria told the story of a corporation that was formed by a US person in Belgium under Belgium law to aid hurricane victims in the U.S.. This was done simply as a matter of convenience, because the US person was living in Belgium and his attorney was operating in Belgium. The organization, though, had nothing to do with Belgium. It was headquartered in North Carolina, only U.S. persons working for the entity, and it only donated to U.S. causes. The fix? A relatively simple reincorporation as a United State entity.

A useful exception for foreign donation is a donation to an organization in a treaty exemption country. Canada, Mexico, and Israel are the only treaty exception countries. The donor must have income sourced from those countries in order to take the deduction, but it can be helpful under certain conditions.

Mistake #2. Using a “conduit” organization to make international donations. Though these are sometimes aggressively marketed (and, Victoria mentioned, even “sound good”), this simply will not work. The solution is the “American Friends Of” organization, which is not a formal legal classification, but came about in the 1960s as part of President Kennedy’s strategy to increase America’s global presence. The key thing that the IRS looks for is documentation of control and discretion over ultimate use of funds by foreign charity. Doctors Without Borders is a good example of a “American Friends of” organization without that phrase in its name.

In 1963 Revenue Ruling 63-252 was issued with several examples. The first example was a straight pre-approved grant and the second was for a foreign subsidiary. Neither were helpful. RR 66-79 was issued after complaints by practitioners. It became the roadmap for international grant making and the guide for IRS audits. It gave rise to the principal that the organization funded abroad need not have any U.S. operations. There are three main requirements: (1) control and discretion over incoming donations and outgoing grants, (2) the funded project must meet charitable standards of U.S. board, and (3) the U.S. board maintains the right to withdraw funds from a specific project and put to a new purpose.

Mistake #3. Non-independent boards of directors for “American Friends Of” entities. Victoria has found that British organizations have a problem with this—they don’t understand that they cannot control the board. The French, according to Victoria, seem to just “get it.” Ultimately, there has to be trust. Victoria often suggests a compromise as a fix: a bifurcated board structure. In essence, the board has two kinds of directors, foreign charity directors and U.S. charity directors. The fix works because the U.S. directors are required under the operating agreement to be the majority (even if only by 1). Victoria reports that the structure has held up on audit, provided that there is no de facto control (e.g. veto power) by the foreign directors.

Mistake #4. Donation to the Foreign Organization for “General Support.” It is critical to maintain formality in the funding procedure. Another key is to fund specific projects, rather than donations (from the American Friends Of organization) for the “general support” of the foreign entity. This has given rise to a significant debate among advisors, but Victoria strongly advises against these donations, especially post-9/11. Victoria's fix? Create an annual pre-approved project list so that the organization can move quickly when it finds a donor for one of those projects.

About five years ago, the IRS audited a large number of American Friends Of organizations. Substance and form was important to the auditors. At least two organizations failed those audits. One organization in particular failed because of a lack of records, pre-approval of grants, and documentation for funds. Victoria was vindicated when the IRS specifically indicated that "general support" donations were not acceptable.

Mistake #5. An irrevocable donor direction for the money to go to the American Friends Of organization for a specific purpose. This, Victoria reports, creates a conflict with the requirement of control, since the irrevocable direction would tie the hand of the U.S. board of directors. Victoria's fix? For clients that want to fund a particular project or cause, advisors should ask the charity in advance to approve the project (or projects).

Victoria listed a number of organizations that she personally trusts:
American Ireland Fund (Ireland)
Charities Aid Foundation America (Global)
Friends of Fondation de France (France)
Give to Asia (Asia)
Tides Foundation (Canada, global support funds)
Donor Advised Funds (e.g. Fidelity Charitable Gift Fund, Vanguard Charitable, Schwab)

Private Foundations. Under the private foundation rules, if a United States private foundation wants to make an international grant, it must look at private foundation provisions in foreign context.

Mistake #6. Donation by a private foundation to a foreign charity without an equivalency ruling. Victoria advised that it is critical to ask whether the foreign charity has received an equivalency ruling from the IRS. Victoria mentioned, as an example, a college in Oxford that had filed a Form 990 for years, but didn't know what it was. If the charity does not have an equivalency ruling, the private foundation must go through expenditure responsibility analysis: (1) pre-grant inquiry, (2) grant contract with specific limitations, (3) annual report.

In 2015, there was a new development relating to equivalency determinations. Final Regulations were issued in September 2015. The Regulations eliminated the ability to rely on affidavit of foreign charity as the sole basis for the determination. Another change was that the determinations do not require opinion of legal counsel, but now only require the opinion of "qualified tax practitioners." Two organizations now acting as repositories under the newly issued Regulations:

NGO Source (formed by Council on Foundations and TechSoup Global)
Charities Aid Foundation America (no paid membership required; fee based)

Victoria closed her presentation with a discussion about the future viability of international charitable deductions. She believes that, due to Donald Trump's election, the American Friends Of structure is in danger of no longer being recognized. She has already been contacted by US political organizations about revoking that structure. Besides being difficult to do, getting rid of the

American Friends Of structure is also, according to Victoria, "stupid." United States persons and businesses donate more than $15 Billion abroad every year and those donations make a difference not just in the lives of others, but in the lives of Americans. U.S. support during the Ebola outbreak is a specific example; without that early support, it could have spread further, perhaps even into the United States.

===

Wednesday, January 11th, 9:50 to 10:40 am
Tax and Estate Planning Considerations for Foreign Persons Owning U.S. Assets [INT]
Presenters: Michelle B. Graham
Reporter: Michael Sneeringer

This program addressed the U.S. income tax and transfer tax rules that apply to non-U.S. persons who invest in the United States. It also discussed tax treaty planning and some of the foreign law considerations that may arise when planning for non-U.S. persons who invest in the United States.

The Wednesday afternoon follow up Special Session 2-E panel will take a deeper dive into the tax and estate planning considerations for non-U.S. persons contemplating purchasing U.S. assets or having already owned U.S.

Ms. Graham educated the audience on considerations for planning with foreign persons. She took the audience on a journey from intake to income, gift, estate and GST tax planning.
Her opening remarks indicated that foreigners are increasingly looking to invest in the U.S. She noted that in other countries it is difficult to get money out of the country. She indicated that our free economy makes investment in the U.S. attractive to foreign clients. Ms. Graham followed her outline during her presentation.

Ms. Graham first discussed some of the non-tax issues in working with a foreign client. She discussed due diligence with respect to working with foreign clients including client intake procedures. She noted the stringent due diligence requirements that U.S. banks must follow. She indicated that there is a pressure of more regulation on attorneys to have the same money laundering diligence (she indicated the American Bar Association pushed back against this because it would alter the attorney-client relationship). She highlighted the 60 Minutes program which exposed the world of offshore assets and investment, and the role attorneys play in this planning area.

She indicated that after the potential client passes her law firm's due diligence procedures, she looks to the type of law in place in the client's country of domicile for the next steps. She noted that the attorney needs to know whether the country is a: 1) common law country (U.S. and Canada); 2) civil law country (70% of the countries in the world are this; many have forced heirship); and 3) Islamic property law (very difficult to generalize here).

She noted that in many civil law countries there are no full time estate planning attorneys and this makes the estate planning attorney's work challenging, depending on the jurisdiction. She indicated that civil law countries do not have joint ownership that passes on death.

Ms. Graham next discussed conflict of laws. She indicated that in most cases, the law of where the property is situated applies.

Ms. Graham then discussed income tax issues in working with a foreign client. She noted that the query begins with whether the person is a U.S. person or not. She indicated that there are three ways a person becomes a U.S. citizen: (1) birth; (2) substantial presence; and (3) electing. She noted that unless the person renounces citizenship, they are taxed on worldwide income.

Ms. Graham next pointed out that U.S. residents are also taxed on their worldwide income. She indicated that the easiest way to determine whether the person is a U.S. resident (besides counting days) is whether the person holds a Green Card. She noted that the rule of thumb is 120 days in the U.S. (not 180 days) for income tax purposes. More on this particular issue can be found in Ms. Graham's materials. She noted that there are certain visas that will not subject the foreign person to U.S. income taxation.

Ms. Graham indicated that foreign persons can make an election to become a U.S. citizen (and become taxed on his or her worldwide income). She noted that one spouse would do this so that the spouses could file a joint U.S. Federal income tax return.

She next discussed estate tax with respect to foreign persons. She noted that a resident for income tax purposes differs from whether the person is a resident for estate tax purposes. Ms. Graham went through the two pronged approach used to determine whether the foreign person is a U.S. person for estate tax purposes.

She then described the process for determining what a U.S. situs asset is. She noted that stock in U.S. companies is subject to estate tax depending on the amount of shares owned. She highlighted that this rule catches clients off guard. She discussed the case of Estate of Fung v. Commissioner regarding mortgages.

Ms. Graham briefly discussed qualified domestic trusts ("QDOT") for use with surviving foreign spouses.

She then noted that civil law jurisdictions do not recognize the concept of trusts, and this could create significant consequences in terms of property purchase in the U.S. (i.e., to avoid probate in states such as California). Ms. Graham noted the importance of a threshold question of how does the home country deal with what the attorney and client are proposing to do?

Ms. Graham concluded with a discussion regarding the gift and generation-skipping transfer ("GST") taxes. She noted that there typically is no gift tax on gifts by foreign persons to U.S. persons; however, the gift must be reported by the U.S. recipient. She noted that real estate and tangible personal property differ and will be subject to gift tax.

===

Wednesday, January 11th, 10:40 am to 12:45 pm
Question and Answer Panel
Presenters: Dennis I. Belcher, Ronald D. Aucutt, Samuel A. Donaldson, Amy E. Heller and John W. Porter
Reporter: Craig Dreyer

The Question and Answer panel discussed multiple issues in the estate planning field and below is a sampling of a few the of the predominant questions and answers the panel discussed.

The panel opened by discussing the big elephant in the room, the potential for estate tax repeal. They also noted that recently all the predictions were wrong about the estate tax, and we really have no idea what a repeal of the estate tax would look like. Some of the critical questions include carryover basis, realization on death, and whether there would be a step up in basis on death. One of the questions of emphasis was what will occur with basis adjustments if the estate tax is repealed. It may change planning for many (including some real estate developers who simply planned on dying with some partnership assets to get a step up in basis due to their negative basis in partnership assets). The panel noted that a bill for estate tax repeal may be introduced in the house next week, but it still must get through both houses and be approved to get enacted.

The incoming administration wants a tax package by August. However, the panel noted that the estate tax was likely behind the corporate income tax on the priority list. One of the questions asked was whether the estate tax repeal would be retroactive to January 1st? The panel opined that the likelihood of most scenarios being retroactive is unlikely since they likely will institute another tax (such as realization on death or carryover basis) which probably cannot be retroactive. There is no easy way to tell. Another question is whether it will be phased in, will it sunset as part of a budget reconciliation package (since they may have trouble getting 60 votes). What if the estate tax is repealed and later reinstituted, what would it look like if they started over? The panel discussed the Canadian estate tax system as an example about how realization on death could possibly look like, but admitted we likely will not model our system after Canada’s system.

The panel moved on to the proposed 2704 regulations and how they apply to Form 709 reporting after August 2, 2016 for disclosure purposes. The panel noted that that per the IRS many people are interpreting the regulations too broadly, but if the regulations were not designed to do away with minority discounts the questions arises as to why they were so broadly written. If you are filing a gift tax return and have a 2704 issue, you should disclose it may be contrary to regulations to get the statute of limitations running under 6501(c). Google “AICPA adequate disclosure 2704” for sample disclosure to start the gift tax return statute of limitations running. Notwithstanding, the panel also noted that the 2704 regulations are unlikely to survive in their current form.

The use of a Clayton QTIP trust may be a good option for flexibility in today’s uncertainty. It allows one to delay the decision on funding the QTIP and credit shelter trust until after death of the first spouse. The panel discussed the issues you face today with some assets that are better received outright for tax purposes such as a house or IRA. However, a credit shelter trusts work especially well when the surviving spouse lives a long time. With a Clayton QTIP trust, if no election is made, the assets can pass to a credit shelter trust which may also be the best option if the estate tax is repealed.

A discussion followed about how all trusts should provide flexibility to obtain a step up in basis at the second spouses death. Such options include the ability to distribute assets outright to the spouse or the ability to grant a general power of appointment to the spouse up to the amount of available applicable exclusion amount available. In a trusting relationship, an outright distribution to the spouse with an optional disclaimer trust to fund the credit shelter trust may be a prioritized technique.

The panel also noted a few taxpayer losses in construction cases and cited the Hubble Trust v. Commissioner case where there was an attempt to reform a trust to receive a charitable deduction that was disallowed by the IRS and the Tax Court. The panel did not disagree with the result, but provided that a construction case done sooner is always better. In addition, they discussed

CCA201651013, released December 19, about a trust revised to give a beneficiary a limited power of appointment to charity. The taxpayer lost and the panel noted the IRS seemed to avoid the real issue, whether the gift was made pursuant to the governing instrument. The pertinent question asked should have been if the change to the trust related back to the creation of the trust or not. If the construction case did relate back to the original document under state law, it should have been respected pursuant to the Bosch case. Also, the panel noted that it always better to do the construction case prior to making the charitable gift.

A question also arose around the Form 8971 penalties and when they apply. They noted that the Form 8971 is only required where there is a filing requirement. If an estate is under $5.49 million, then there is [Gorin note – I think they mean “no” here] need to file. In addition, if you are only filing the estate tax return for portability or GST purposes, then there is no Form 8971 reporting requirement. A question arose about the enforcement of penalties, and the panel noted that it is too early to tell.

The Electronic Wills Act was recently introduced as Florida Senate Bill 206. Under the Bill an individual can sign a will online. They can sign it online without the assistance of a lawyer. Notarization can also be done online via Skype. They noted that this movement of signing documents electronically is growing, and believe it is only a matter of time before it appears in the Will arena. Other states are also looking at, and one state (Nevada) already has similar legislation.

The automatic estate tax lien and the Form 4422 was a topic of discussion. The significance of this change shows the IRS has moved the process for discharge of the estate tax lien away from the examining agent to the collections divisions. The panel notes it likely will be more difficult to obtain a release due to the change. The panel also discussed the use of an account transcript as opposed to a closing letter to release an estate tax lien. They recognized that the IRS has recognized recent problems with obtaining a release of estate tax liens. One option to consider, if you have an elderly client that may have property to be sold soon after death, is that you can transfer the property to a single member LLC. The LLC could sell the underlying property without being subject to a lien release, as the lien is levied at the LLC level.

Other notable questions discussed included discussions of 9100 relief for late portability filings and its $27,500 user fee, 2042 attribution rules apply to a beneficiary of a trust even if they are not the grantor of the trust, gift tax returns require disclosure of all gifts (even gifts to charity under the 14,000-annual exclusion amount), using general power of appointments to create estate inclusion, and how Crummey notices are not required unless the trust requires it.

==

Wednesday, January 11th, 2:00 to 5:50 pm
FUNDAMENTALS PROGRAM #2
(Ran concurrently with Special Sessions I and II)
Just Enough to Be Dangerous: Partnership Income Tax Fundamentals for the Estate Planner/Administrator
Presenters: Richard B. Robinson and Cristin Conley Keane
Reporter: Kristin Dittus

Partnerships and LLCs are frequently encountered in the course of estate planning/estate administration. This session examined the basic rules, planning opportunities and pitfalls that every estate planner/administrator should know about partnership tax.

This presenters followed a concise outline with key tax topics in the formation, administration and termination of a partnership for the 3 hour lecture. They offered many helpful practical practice tips in working with and drafting partnership agreements, illustrated by diagrams and bullet points in the 30 chapters provided. This Report will attempt to present a concise overview of the more significant points that were discussed.

Partnerships remain the preferred entity among lawyers, receiving attention at Heckerling with topics such as: the new § 2704 proposed regulations, partnership interests being contributed to a GRAT and IDGT, and § 2701 preferred partnership freezes.

<u>The following are foundation basics to understanding partnership tax law (keeping in mind these are general rules with exceptions):</u>

-- Partnerships are a regarded entity with a separate tax ID and tax return from the individual partners.
-- There are also pass-through tax attributes going directly to the partners.
-- There is generally no tax on the contribution of an asset to a partner, but there may be a tax on the distribution of an asset.
-- Basis is the core of income tax law. Basis is the value on previously taxed assets. Your basis in contributed property equals the partnership basis.
-- The Partnership determines gain or loss as an entity, then tax attributes pass through on an aggregate basis among the partners.
-- Partnership law is based on allocation of income according to the partner's interest in the partnership, which is also referred to as substantial economic effect.
-- Capital accounts are the record of the economic relationship and rights of the partners in a partnership to each other. For example 704(c), requires specific allocation for gain or loss on property contributed by a specific partner.
-- Knowing the definition of a partnership for federal tax law and determining that status is important to making the correct elections on your tax return.

<u>Partnership Terminations</u>: A technical termination occurs when there has been a sale in aggregate throughout the year of 50% or more of all partnership assets. Be aware of timing to prevent a technical termination.

If the tax year closes early for a partner due to the partner's death or a sale or exchange of all partnership assets, there can be of varying interest rule applied (also known as an interim closing of the books) or a pro rata rule (with exceptions for extraordinary items) applied. Which to apply is generally determined by creating the biggest tax advantage and the least liability for your client. Because valuation can be very expensive depending on the day and often unexpected events, the IRS allows the partnership to adopt conventions as to the termination day to simplify the process.

<u>Optional Basis Adjustments</u> under §§ 734 / 743 and the related 754 election: These rules try to avoid too much, too little or double taxation to a partner.

The § 743 adjustment applies to a sale or exchange of a partnership interest, or with a transfer at death, and only affects the new owner. The election is binding, the basis change applies to all assets which results in more difficult accounting, there is no change to existing owners because their rights do not change. A § 734 basis adjustment occurs when the partnership adjusted basis exceeds the partner's basis. A decrease in basis to a partner, will result in an increase in basis allocated to the remaining partnership assets. The § 754 election is made on a partnership tax return by the partnership. When drafting agreements, even an FLP, it is a good idea to include when, by whom and under what circumstances the election should be made.

Distributions: The goal of partnership distribution is to get assets out without any unnecessary tax. Gain is only recognized if money is in excess of basis. Whereas with property the distributee partner will take a zero basis if the value of the property exceeds the partner's partnership basis (basis cannot be below zero). Any basis left in the partnership will get reallocated to other assets. This topic connects to on a Heckerling panel discussion held by the presenters last year with Paul S. Lee and Richard Dees.

When making distributions it is important to be aware of the different tax attributes applied to cash, property and the relief of liability. Section 751 addresses "hot assets," including accounts receivable and inventory, which are taxed at ordinary income rates and can skew the economic relationship among the partners if not handled properly.

Basis Shifting: Section 704(c) intends to prevent basis shifting of profit and loss on contributed property. Any transfer of assets that have been in the partnership less than 7 years should be examined to determine if there is a 704(c) problem.

After a 20-minute break, the second half of the lecture began with a Section 731(c) discussion, addressing the treatment and distribution of marketable securities.

Sales of Partnership Interest: Partners have a single unitary basis as opposed to having varying basis, which can happen for example with stock ownership where the same stock is purchased at different times for different amounts. See Rev. Rul. 84-53 on basis allocation.

Installment sale treatment is generally permissible, except in the case of depreciation recapture property, marketable securities, and inventory or accounts receivable. Receiving a disproportionate share of 751 hot assets should also be accounted for. There is often a bifurcated sale / gain recognition on hot assets.

Gifts with Liabilities: Gifts generally do not create a technical termination unless liability is in excess of basis. This is not uncommon for a partnership with depreciable assets. This can be resolved if the donor partner agrees to keep the liability, makes an extra contribution to offset the liability, or resolves the debt before the gift transfer.

It is important to determine if a contributed property is subject to recourse or non-recourse debt. A partner's share in recourse liability can increase that partner's basis, however there is a real loss at stake for that partner. Additionally, the partnership agreement has the power to allocate liability among the partners.

Disguised Sales Rules: Under the disguised sale rules of § 707(a)(2)(B), there is a presumption of a sale or exchange treatment when a partner transfers property and receives a related distribution within two years of the contribution. This presumption can be refuted if there is a qualified exception or the facts and circumstances show otherwise. Delaying the transaction until after a two-year period will avoid this presumption.

Partnership Interest for Services: When giving out a partnership interest for services rather than a capital contribution it is important to deal with this effectively at the inception of the partnership. Proposed Regs. § 1.83 - 3(e), allow for a liquidation valuation safe harbor election showing the service provider partner would get zero value upon liquidation immediately after formation. The accounting can get tricky between formation and the following value appreciation of the company. To avoid this problem the service provider partner can get a profits interest only, which occurs after a certain appreciation value is achieved (referred to as a participation threshold). Practitioners should be aware of the 2701 issues and make a section 83(b) election when granting the partnership interest to the service provider.

Partner vs. Employee: When an employee becomes a partner, it changes the tax structure of reported profit and loss. A partner cannot also be an employee of the partnership, however income to the partner can still be taxed as self-employment income depending on services provided to or on behalf of the partnership.

Special Allocations for FLP: If there is a special allocation under an FLP, any partnership interest created by gift allocates tax to the donor.

Indirect Gift: When discussing indirect gifts, the presenters debated the nature of the gift when discounts were taken on a minority stock interest.

===

The Reporters

Our on-site local reporters who will be present in Orlando in 2017 are **Joanne Hindel Esq**., a Vice President with Fifth Third Bank in Cleveland, Ohio; **Kimon Karas Esq**., an attorney with McCarthy, Lebit, Crystal and Liffman Co. LPA in Cleveland, Ohio; **Craig Dreyer Esq**., an attorney with Clark Skatoff, PA in Palm Beach Gardens, Florida; **Herb Braverman Esq**., an attorney with Braverman & Associates in Orange Village, Ohio; **Kristin Dittus Esq**. a solo attorney in Denver, Colorado, **Michael Sneeringer Esq**., an attorney with Akermn, LLP in Naples, Florida, **Michelle R. Mieras**, a Fiduciary Risk Manager with Bank of the West in Denver, Colorado, **Beth Anderson Esq**, an attorney with Wyatt, Trrant & Combs, LLP in Louisville, Kentucky, **Bruce A. Tannahill Esq**, a Director of Estate and Business Planning in the Mass Mutual Financial Group in Phoenix, Arizona, and **Patrick J, Duffey Esq**, an attorney with Holland & Knight in Tampa, Florida.

The **Report Editor** again in 2017 will be **Joseph G. Hodges Jr. Esq**., a solo practitioner in Denver, Colorado. He is also the Chief Moderator of the ABA-PTL discussion list.

===

GENERAL INFORMATION ABOUT THE INSTITUTE:

Inquiries/Registration:

Philip E. Heckerling Institute on Estate Planning
University of Miami School of Law
Center for Continuing Legal Education
P.O. Box 248087
Coral Gables, FL 33124-8087
Telephone: 305-284-4762 / FAX: 305-284-6752
Web site: www.law.miami.edu/heckerling
E-mail: heckerling@law.miami.edu

==

Headquarters Hotel - Orlando World Center Marriott:
8701 World Center Drive
Orlando, FL 32821
Telephone (407) 239-4200, FAX (407) 238-8777

==