THOMPSON COBURN LLP

Landmark Tax Court Self-Employment Tax Decision; Post-Mortem Planning for Business Owners; Reimbursing Deemed Owner of Grantor Trust

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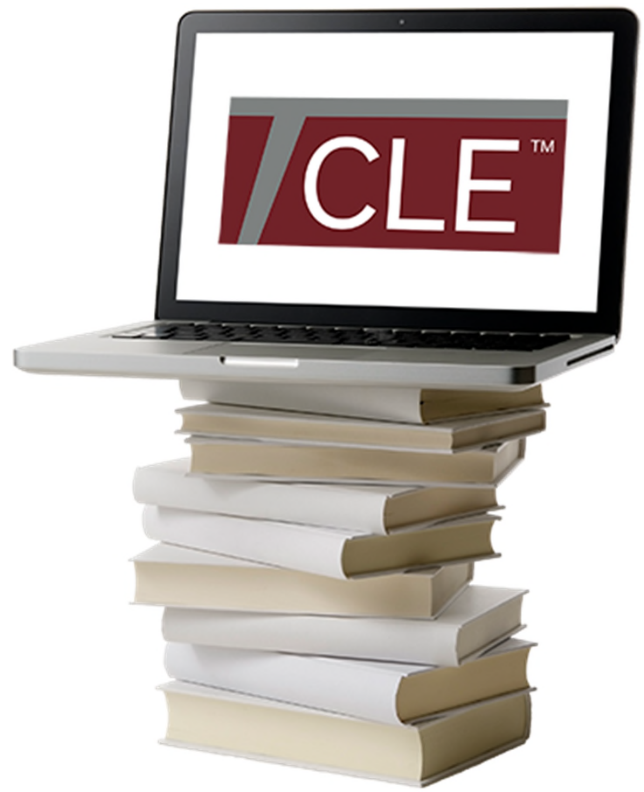

KNOWLEDGE WHERE YOU ARE™

WELCOME

Overview

- Landmark Tax Court Self-Employment Tax Decision
- Post-Mortem Planning for Business Owners
- Reimbursing Taxes Paid by Deemed Owner of Grantor Trust

Landmark Tax Court Self-Employment Tax Decision

- Self-Employment Tax and LLCs
- *Renkemeyer*
- CCA 201436049
- *Methvin*
- *Hardy*
- *Fleischer*

Post-Mortem Planning for Business Owners

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- Issues When Those Receiving The Business After Death Or Trust Termination Do Not Receive The Residue Of The Estate Of The Person Paying Taxes Before Death Or Trust Termination
- Quick Funding of QSSTs – S Stock or Create SCorp to Hold Partnership Interest
- But Beware Liability for Distributing Before Estate Tax Paid

Post-Mortem Planning for Business Owners

- See III.B.2.l Tax Allocations upon Change of Interest in a Business, especially III.B.2.l.ii.(d) Death of a Shareholder and III.B.2.l.iii.(c) Death of a Partner — Treated Like a Transfer of a Partner's Entire Interest. Consider planning opportunities for allocations in the year of death or when funding bequests.

- Obtaining an inside basis step-up on death. See II.Q.8.e.iii Inside Basis Step-Up (or Step-Down) Applies to Partnerships and Generally Not C or S Corporations. (Pre-mortem planning includes II.H.2.i Avoiding a Basis Step-Down.)

Post-Mortem Planning for Business Owners

II.Q.8.e.i and II.Q.8.e.iv Distributing a partnership interest when funding bequests:

- Provides an opportunity to:
  - obtain an inside basis step-up (especially if the partnership did not make the requisite election on or before the partnership's taxable year that included date of death), and
  - make new partnership elections, but
- It also might cause depreciation periods to start again (which could significantly defer depreciation for real estate).

Post-Mortem Planning for Business Owners

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See also III.B.2.e.ii Tax ID Issues When the Deemed Owner of a Grantor Trust Dies; Related Effect on Quarterly Payments of Estimated Income Tax.

Partnership vs. S Corporation

- Some say they are equivalent, but they are not
- Transfer of partnership interest by sale or death allows buyer or beneficiary to get inside and outside basis step-up
- Basis step-up → more depreciation/less gain on sale if partnership sells assets
- S corporation <u>might</u> replicate if it sells all assets <u>and</u> liquidates in the same year

Basis Step-Up Issues: Depreciable Real Estate in an S Corporation (Sale to Third Party)

Part II.H.8.

Sale to Third Party

(Zero basis, $1M value)

Proceeds from sale	$ 1M
Basis of real estate	$ 0
Gain on K-1	$ 1M

Basis Step-Up Issues: Depreciable Real Estate in an S Corporation (Sale to Third Party) (Cont'd)

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Sale to Third Party

(<u>Zero basis, $1M value</u>)

Stock basis after death	$1M
Gain on K-1	<u>$1M</u>
Stock basis after sale of real estate	<u>$2M</u>

Basis Step-Up Issues: Depreciable Real Estate in an S Corporation (Sale to Third Party) (Cont'd)

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Sale to Third Party

(Zero basis, $1M value)

Liquidation proceeds	$ 1M
Stock basis	($ 2M)
Loss on liquidation	($ 1M)

Basis Step-Up Issues: Depreciable Real Estate in an S Corporation (Sale to Third Party) (Cont'd)

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Sale to Third Party

(Zero basis, $1M value)

Long-term capital gain on K-1	$ 1M
Long-term capital loss on liquidation	($ 1M)
Net long-term capital gain (loss)	$ 0

Basis Step-Up Issues: Depreciable Real Estate in an S Corporation (Sale to Third Party) (Cont'd)

- Sale to Third Party Required If Depreciable or Amortizable Property

- State Income Tax Disconnect

Reimbursing Taxes Paid by Deemed Owner of Grantor Trust

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- Grantor Trusts
- consider retaining a sizable portion of the asset being transferred
- Tax Reimbursement and Bankruptcy Abuse and Prevention Act of 2005
- Letter Ruling 201647001

Conclusion

- July 11 webinar for Second Quarter Newsletter
- Blog: Business Succession Solutions
- Reports on Heckerling: http://www.thompsoncoburn.com/forms/gorin-heckerling