Steve Leimberg's Estate Planning Email Newsletter - Archive Message #2147

Date: 24-Sep-13
From: Steve Leimberg's Estate Planning Newsletter
Subject: **Ken Crotty, Jerry Hesch & Alan Gassman on Chief Counsel Advice 201330033: IRS Puts SCINs in the Sunlight, Will Taxpayers Get Burned?**

"Before this CCA was issued, the IRS had never indicated that the willing buyer willing seller standard had to apply to SCINs after decades of literature, and has never taken this position in prior cases involving SCINs. To change the way of looking at this now would be inappropriate, to say the least. If there is a reasonable expectation of repayment, and the use of the § 7520 mortality tables is not inappropriate given the taxpayer's health, then the taxpayer should be able to rely on such tables and should not have to use the willing buyer willing seller standard described in the CCA to determine the value of the SCIN.

While the memo might not be binding, it does appear that the IRS is suggesting that the willing buyer willing seller standard should apply to every SCIN. Based on the memo, caution might suggest that a client get additional appraisals beyond that of the underlying assets to include an appraisal of the actual note, as well as a determination of a reasonable interest rate that should be used. The CCA clearly indicates that when the SCIN holder dies before the end of the term, the estate better prepare for litigation. As one authority put it, clients need to "have an appraiser bless the rate, and then the Service has to have their appraiser tell you why it's wrong." This prospect may make many estate planners opt for an alternative, safer technique such as a private annuity. We again stress that the doctor's letter should address the probability that the measuring life survive the note maturity date.

Going forward, estate planners can look forward to seeing whether the IRS provides clarification on its expectations for the valuation process, takes a stronger stance toward the willing buyer willing seller standard, or allows the working system to remain intact. In the meantime, private annuities will be more popular and more widely used by planners who do not want to cross the line in the sand that may be moved by waves, tides, and sand kicking bullies in years to come. In the meantime, keep the suntan lotion on, and let's hope that the ozone layer of taxpayer protection in Tax Court works out well for the taxpayer in the Davidson case."

Ken Crotty, **Jerry Hesch** and **Alan Gassman** provide members with important commentary on CCA 201330033. The authors thank **Daniel B. Evans** who has written extensively in this area and provided useful comments for this article, and also thank **Kylie Caporuscio** for her assistance in drafting this article.

this article.

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Here is their commentary:

EXECUTIVE SUMMARY:

Chief Counsel Advice (CCA) 2013-30-033 (8/5/13), was issued recently to announce the litigation position the IRS will take in a recently filed Tax Court case. This pronouncement came as a surprise and disappointment to a great many planners and commentators.

The IRS Chief Counsel's Office rejected the traditional practice of using the § 7520 mortality tables to value a self-cancelling installment note (SCIN) where the note holder had a better than 50% chance of living longer than one year. Instead, the IRS announced that the valuation of a SCIN must take into account what a willing buyer would pay a willing seller at the date the SCIN is entered into, after assessing the note holder's "actual" life expectancy based upon medical history and other factors that arm's-length parties would consider under Treas. Reg. § 25.2512-8.[1] Preventing the use of the Treas. Reg. § 25.7250-3(b)(3) "terminally ill" test will lead to uncertainty as to how to properly value a SCIN, as well as dramatically increasing litigation.

Hopefully, the IRS will apply the "terminally ill" test to SCINs. If not, we hope that the Tax Court, and eventually the applicable court of appeals, will do so. As **Howard Zaritsky** and others have pointed out, § 7520 states that it must be used to value "an interest for life or a term of years," which precisely describes the payments scheduled to be made under a SCIN.

Before this CCA was issued, the IRS had never indicated that the willing buyer willing seller standard had to apply to SCINs after decades of literature, and has never taken this position in prior cases involving SCINs. To change the way of looking at this now would be inappropriate, to say the least. If there is a reasonable expectation of repayment, and the use of the § 7520 mortality tables is not inappropriate given the taxpayer's health, then the taxpayer should be able to rely on such tables and should not have to use the willing buyer willing seller standard described in the CCA to determine the value of the SCIN.

FACTS:

The situation addressed in the CCA involved five separate transfers a decedent entered into during the final year of his life. While all personal information had been redacted from the CCA, a recent Tax Court petition indicates that the case involved William M. Davidson, a successful businessman, most notably the owner of the Detroit Pistons NBA basketball team. The stakes here are very large. According to **Mitchell Gans** and **Jonathan Blattmachr** in Estate Planning Newsletter #2135 (August 28, 2013), the proposed deficiency claimed by the IRS could reach close to one billion dollars. Specifically at issue were two sales of closely held stock to grantor trusts in exchange for SCINs. Shortly after these transactions were made, the decedent was diagnosed with a health issue and died within six months of this diagnosis.

One of the main issues of the CCA, and our focus, was whether the actuarial assumptions from the § 7520 mortality tables should be ignored when determining the fair market value of a SCIN. Taxpayers have traditionally used the "terminally ill" test in the § 7520 regulations to determine the value of the SCINs. The Chief Counsel's Office determined that the § 7520 mortality tables should be ignored in this situation, explaining that "[b]y its terms, § 7520 applies only to value an annuity, any interest for life or term of years, or any remainder."[2] Without any further explanation, the CCA hastily cites to General Counsel Memorandum (GCM) 39503, discussed below, as precedent that the notes should be valued based on a method that takes into account the willing buyer willing seller standard.[3]

A SCIN differs from a regular installment note in that the remaining principal balance is cancelled on the death of the obligee. Thus, the noteholder must receive higher payments during the noteholder's lifetime in exchange for the possibility that remaining payments are cancelled upon the noteholder's premature death. SCINs are exclusively used in intra-family transfers of property, and on many occasions eliminate estate taxes. Because most sales utilizing SCINs are made to a grantor trust, the income tax rules for annuities, debt obligations, and installment sales are irrelevant and do not apply.

SCIN transactions are only beneficial for federal estate tax purposes if the seller dies before the note principal is due. In many situations the noteholder will live past the maturity date, and thus receive payments in excess of the value of the asset or assets sold. If a noteholder dies before the note's term, the self-cancelling provision eliminates the remaining balance on the note, so that the buyer owns the assets purchased without having the note included in the seller's gross estate. Thus, the ideal candidate is said to be "someone in poor health, but whose death is not imminent, or someone with a very poor family health history."[4]

Commentators will often refer to this as a "bet-to-die" technique because all or a portion of the principal owed may not be paid. A risk premium is added to the interest rate, principal amount, or both in order to compensate the seller for the possibility the note will be cancelled. The note principal is due in full on a maturity date that is set when the note is established. The note term is based upon the life expectancy of the seller on the date the sale is entered into. In most situations, the term of the SCIN will be less than the life expectancy of the seller because in 1985 the IRS concluded in GCM 39503 that if the term of the "SCIN" was less than the life expectancy of the seller, then the IRS would treat the SCIN as a debt obligation, and, if the term was greater than life expectancy, it would be treated as an annuity. However, as discussed below, the amendment of the Treas. Reg. § 1.1275-1(j) in 1998, it seems that a SCIN for a term greater than life expectancy would no longer be treated as an annuity and would instead be treated as a debt obligation (i.e. an installment note).

Howard Zaritsky explains the importance of the premium that is derived from the § 7520 tables as follows:

> All of the cases upholding SCINs stress that the self-canceling feature was a bargained-for consideration between the parties and that the buyers paid a distinct premium for that feature. This is a critical feature for transfer tax purposes. The failure to pay a premium for a self-canceling feature in a SCIN strongly suggests that the transaction is, at least in part, a gift with a retained life estate includable in the decedent's gross estate under § 2036(a).[5]

In the past, the IRS has acquiesced in court decisions upholding the cancellation provision as part of the bargained-for consideration, and to some extent, has even recognized the principle. As long as the transaction is bona fide, a SCIN sale should not be subject to a gift tax.[6] To be bona fide, a reasonable expectation of repayment should exist, along with an established payment schedule. There are a few cases where no repayment occurred, and the courts have upheld IRS challenges.[7]

COMMENT:

The issue at the heart of the CCA turns on whether the § 7520 mortality assumptions should be ignored. Unfortunately, there has not been any clear guidance from the IRS regarding the test to utilize when making this determination. In its Regulations, the IRS now treats all SCINs as debt obligations.[8] Although, by its terms, § 7520 does not apply to debt obligations, traditionally, practitioners have used the "terminally ill" test under § 7520 to value SCINs, and, all of the commercially available software used to value SCINs use the § 7520 rate, and the 2000CM mortality tables.

Practitioners **Robert Held** and **Charles Newlin** support this approach explaining that "[w]hile Section 7520, by its terms, applies only to the value of an annuity, term interest, remainder or reversion, there seems little reason (beyond semantics) not to apply its rationale and consistency to the SCIN."[9] Additionally, **Howard Zaritsky** has advocated for the application of § 7520. Zaritsky states:

> Section 7520 states that it must be used to value 'an interest for life or a term of years,' which precisely describes the payments under a SCIN. Furthermore, the IRS publication 'Actuarial Values, Alpha Volume,' which implements the IRS actuarial tables under Section 7520, includes an example that uses the tables to determine 'the present worth of a temporary annuity of $1.00 per annum payable annually for 10 years or until the prior death of a person aged 65....' This, too, appears to describe precisely the calculation of the premium for a SCIN. Thus, Section 7520 appears to apply by its terms to the valuation of a SCIN premium.[10]

Treasury Reg. § 25.7520-3(b)(3)(i) places restrictions on the use of § 7520 actuarial assumptions. Of particular interest in the SCIN context, the section sets forth a twelve-month rule for a person who is terminally ill:

> The mortality component prescribed under Section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life is terminally ill at the time of the decedent's death. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the individual will die within 1 year. [11]

This regulation then goes on to establish an eighteen-month rebuttable presumption, often referred to as the safe-harbor provision:

> [if] the individual survives for eighteen months or longer after the [effective date of the note], that individual shall be presumed to have not been terminally ill at the date of death unless the contrary is established by clear and convincing evidence.[12] (emphasis supplied)

Therefore, even in situations where the noteholder has survived the sale by eighteen months or longer, the IRS may still challenge the use of the § 7520 mortality tables, but would have the tougher burden of establishing by clear and convincing evidence that these tables should not apply. The practical consequences of imposing the § 7520 terminal illness test on SCIN holders has meant that the taxpayer should first get a doctor's letter. Now, the best scenario for the noteholder is that the doctor's letter confirms that there is more than a 50% chance that the holder will be alive on the maturity date of the note. This helps to demonstrate that at the time the transaction was entered into that there was a realistic probability that the entire note would be repaid and that the seller expected to receive payment on the note.

If treated as an annuity, then the 2013 *Estate of Kite v. Commissioner* case provides some guidance. [13] In this case Mrs. Kite sold her beneficial interest in one of her trusts to her children under three separate private annuity agreements.[14] The first annuity payments were not due until ten years after the sale occurred. [15] If Mrs. Kite's death occurred within the ten-year deferral period, the annuity interest would terminate.[16] If she survived the 10 year term, however, the children would be personally liable for annual payments of $1,900,679.34 each year thereafter until her death.[17]

Mrs. Kite died approximately 3 years after the sale and the annuity payment rights were excluded from her estate tax return.[18] Mrs. Kite was 74 years old when the sale occurred, and she had received a letter from her physician stating that there was at least a fifty percent probability that she would survive for eighteen months or longer.[19] The IRS tried to argue that the § 7520 tables should not have been used because her "deteriorating health in 2001 made her death within 10 years foreseeable."[20]

Citing *McLendon v. Commissioner,* the Tax Court stated that "[r]espondent, as the party seeking to depart from the actuarial tables, bears the burden of proving that the circumstances justify the departure [from using the § 7520 tables]."[21] The IRS further argued that because she began relying on 24-hour medical care and had increased medical costs of over $100,000 per year at the time of the annuity transactions, that her death in ten years was foreseeable.[22] The Court rejected this argument, stating that the costs "merely demonstrate that Mrs. Kite was a wealthy, 75-year-old woman who, when faced with certain health problems, decided to employ health care aids at her home."[23] The court held that the annuity agreements "constituted adequate and full consideration and consequently were not subject to Federal gift tax.[24]"

Mrs. Kite survived for 3 years and exceeded the 12 month likelihood of survival period that many advisors seek to confirm as likely from doctors when private annuity or SCIN sales occur. Given that the IRS has announced that it will attempt to have the courts impose a test based upon actual willing buyer willing seller standards for SCINs, it is best to obtain a doctor's letter confirming that it is most likely that the expected survival term will surpass the note maturity date. Any and all positive health evidence can help the estate demonstrate that even under the willing buyer willing seller analysis stated in the CCA, the SCIN risk premium selected was sufficient. Unfortunately, as noted above, the IRS treats SCINs as debt obligations and therefore, § 7520 by its terms may not apply to them, if Mr. Zaritsky's rationale above is not accepted by the courts. Therefore, the "terminally ill" safe harbor stated in the § 7520 regulations, which applies to annuities, may not be the appropriate safe harbor for SCINs.

Based on some existing case law,[25] the courts may be inclined to not accept the twelve-month "terminally ill" standard in Reg. § 25.7520-3(b)(3). For example, in *O'Reilly v. Commissioner*, the court stated that "[t]he Tax Court has long followed the rule that the use of the tables 'must be sustained unless it is shown that the result is so unrealistic and unreasonable that either some modification in the prescribed method should be made, or complete departure from the method should be taken, and a more reasonable and realistic means of determining value is available.' "[26]

Thus, the courts have turned to this "unrealistic and unreasonable" test as a measurement standard. However, satisfying the "terminally ill" test would help the holder demonstrate that the use of the § 7520 mortality tables was appropriate, notwithstanding that the IRS could actually challenge the holder. A doctor's letter should be obtained in order to negate this "unrealistic and unreasonable" test. And it is preferable to have the doctor's letter confirm that it is most probable that the person will outlive the note's maturity date!

To add to the confusion, not every commentator agrees with using the § 7520 tables. [27] What rates to apply has been a point of contention for some commentators. The problem is that § 7520 rules explicitly apply to annuities, life estates, remainders and term interests. For example, according to **Steve Akers** and **Philip Hayes**:

> [t]here is not universal agreement on how payments under a SCIN are properly valued, for there is no clear answer concerning which mortality tables should be used and which discount rate should be applied to value these payments Some commentators use the life expectancies in Table 90 CM for May 1999-April 2009 and Table 2000CM from May 2009 forward and a rate equal to the greater of 120% of the mid-term AFR, assuming annual payments, as prescribed by Section 7520, or the AFR for the actual term of the note, as prescribed by Section 7872. Others use the annuity tables under Reg § 1.72-9 Table V and the AFR as prescribed by 7872. Additionally, some commentators have recommended that the actual life expectancy be used. [28]

Elliott Manning and **Jerome Hesch** argue that for a SCIN taxable as an installment sale, the AFR prescribed in §§ 1274 and 7872 should apply—not the § 7520 rate.[29] This results in a much lower premium. They base this argument on the idea that a SCIN is not a term interest under § 7520, stating that the "same considerations that lead to the conclusion that an installment note is not a retained life estate also lead to the conclusion that it is not a term interest."[30]

Manning and Hesch explain that their argument is consistent with "(i) the analysis in Reg. § 1.1275-1(j) that a SCIN is treated as a debt obligation subject to the OID rules, including the provisions of § 1274, and (ii) the similar conclusion in GCM 39503 for a SCIN with a maximum term less than the seller's life expectancy is treated under the installment sale rules of § 453."[31] They also claim that the Tax Court's decision in *Frazee v. Commissioner*,[32] employing § 7872 to determine the interest rate for the value of a note for both income tax purposes and gift tax purposes, further supports their position.

It should be noted that prior to the issuance of Reg § 1.1275-1(j), the IRS treated a note in a non-Grantor trust sale with a maturity date less than the life expectancy date as an installment sale for income tax purposes, and only treated a SCIN with a maturity dated beyond the life expectancy as an annuity. The § 1.1275-1(j) regulation changed the IRS's position for SCINs with a maturity date beyond the life expectancy of the individual so that they would be treated as debt obligations.

Manning and Hesch further suggest that the unintended gift issue should be eliminated. They explain:

> [t]reating all SCINs … as installment sales means that the AFR determines the discount rate. If the same valuation principles are used for both income and transfer tax purposes, valuation disparities for the same transaction can be avoided. Therefore, § 7520 does not apply. Consequently, the unintended gift problem and other distortions can be avoided.[33]

The best answer may be case-specific. Akers and Hayes suggest:

> AFRs should not be used by the faint of heart. A conservative planner probably should use the higher of the § 7520 rate or the AFR for the actual term of the note, as recommended by *Covey*. Clearly, many if not most, practitioners are using the higher of the § 7520 rate or the AFR for the actual term of the note; the estate tax risk of using a rate that is too low is simply too great.[34]

Despite these differences of opinion over what actuarial tables to apply, the IRS flat out rejects the use of any of these practices in this latest CCA memo and uses a new approach: the "method that takes into account the willing buyer willing seller standard in Treas. Reg. § 25.2512-8" which is the method typically applied to gift taxes. The IRS further states that the medical history of the decedent should be considered. The IRS fails to provide further guidance as to how to apply the valuation standard, which would make the process very subjective, to say the least. Some have speculated that a combination of actuarial, medical, and investment risk factors would need to be considered–a process that would undoubtedly be more difficult and imprecise than relying on § 7520 tables. With no certainty in procedures and what seems like a greater potential for challenge, the IRS is stripping away the biggest advantage of establishing a SCIN in the first place which is that there should be no gift tax consequence.

Others have criticized the CCA memo, stating that it should not be given much credence and that the IRS is simply trying to take the best position that it can in the *Davidson* case. It is important to remember that the CCA memo states the litigating position for the IRS in this case. It is possible that the facts of the case may demonstrate that the taxpayer had no reasonable expectation of repayment, and because there was no expectation, the IRS is arguing that a different standard should be applied than had been traditional. It is also important to remember that this could be a bargaining chip used by the IRS in this specific case and may not necessarily be applied to other taxpayers, especially sellers who have a reasonable expectation of being repaid.

The CCA appears to assume that the note maturity was supposed to be within the decedent's actuarial life expectancy, but we are not provided with his actuarial life expectancy at the time of the transaction, or the note term.

Although it might seem odd that the health issue suddenly came to light not long after the transaction, no information is provided as to the decedent's health before or at the time of the transaction. [35]

After allowing the § 7520 tables to be used for SCINs since 1995,[36] the IRS suddenly seems to want to no longer allow for the use of these tables to value a SCIN. The CCA provides a quick cite to GCM 39503 for this proposition–a non-binding memo issued by the IRS in 1986. This Memorandum stated as follows:

> Under an installment sale, a gift tax will not be imposed if the sale price and length of payment are reasonable in light of the facts and circumstances of the case. The value of the installment obligation and the property sold must be substantially equal. However, unlike the private annuity, there is *no requirement* that the actuarial tables are to be used in determining the gift taxation of an installment sale. Thus, the taxpayer's particular health status *may* be considered, and there is more room to establish that the terms of the sale are reasonable (emphasis added).[37]

Remember that this GCM treated a SCIN as an installment note if the note maturity was less than life expectancy.

As the language clearly shows, the GCM is not rejecting the use of the mortality tables at all. The memo simply acknowledged that Revenue Ruling 80-80 required taxpayers to use the mortality tables in Treasury Regulation § 20.2031-10 to value private annuities, and reiterated that no such requirement existed for SCINs. The fact that the use of the § 7520 tables is not required, does not mean that these tables do not offer the most practical valuation system for SCINs as well. And again, this GCM was released in 1986. The subsequent Rev. Rul. 96-3 deemed Rev. Rul. 80-80 to be obsolete. Yet the CCA characterizes the GCM for the proposition that mortality tables should not be used and the willing buyer willing seller standard should be used instead. Simply put, the CCA mischaracterizes the GCM for standing for a much broader principle than it actually does. In his *Tax Management Estates, Gifts, and Trusts Portfolio,* **Edward Wojnaroski** reflects on the 1986 GCM Memo:

> While GCM 39503 may give planners substantially more flexibility in structuring SCIN Transactions, the reasonableness of the SCINs terms relative to a private annuity involve a subjective interpretation. In addition to evaluating the seller's health, it is crucial to obtain a realistic value for the property being transferred. To the extent that the property sold is difficult to value, this will compound the probabilities of scrutiny by the IRS.[38]

And despite the fact that this GCM was released over twenty-five years ago, we have not seen significant changes in the valuation process from the IRS - until now. With no real precedent to resort to, the issue really seems to come down to semantics.

By changing the valuation of a SCIN, the IRS is abandoning a mechanical valuation system for a system that practitioners can only speculate about. The need for subjective valuations was a reason for the enactment of § 7520. Congress recognized that in intra-family transactions there frequently are no comparable arm's-length transactions which could be relied on to establish the value of the transaction.

In light of this, it seems as though the CCA would be hindering some of the policy reasons behind why § 7520 was established. Although Hesch and Manning have cited to the GCM memo previously, they have still advocated the use of § 7872, which at least provide clarity. Prior to the release of the CCA, Wojnaroski also recommended using the tables in his *Tax Management*

Estates, Gifts, and Trusts Portfolio, arguing that the IRS should have greater respect for the use of the tables:

> The risk premium for a SCIN does not have to be obtained by reference to the actuarial tables. The planner or client may engage an actuary for this purpose. However, it would appear that relying on the tables provides a greater degree of certainty that the IRS will respect the terms of a SCIN if the assumption about the seller's life expectancy are reasonable and reflect recent mortality data. If the taxpayer chooses to set the terms of a SCIN by looking outside of the tables, it is advisable to consider the amount of the down payment being made, the length of the contract, and the seller's actual health (assuming the measuring life used is the seller's). The IRS has indicated it will not require the value of the consideration paid for the property being transferred pursuant to a SCIN to be identical, but the consideration and transferred property must be substantially equal. The subjective valuation of a SCIN makes the job of satisfying this "substantially equal" test a difficult and perhaps expensive hurdle for the taxpayer with respect to intra-family transactions if the seller's life expectancy is substantially less than what his or her life expectancy would be under standard actuarial tables. It would appear that there may be a greater risk of a gift tax when working with a SCIN than there would be with a private annuity.

Although the CCA pronouncement appears to be a radical change to many practitioners who have relied on the use of the § 7520 tables, the IRS may be able to bolster support for their argument. As mentioned above, the IRS subtly changed its position on SCINs in 1998 in Reg § 1.1275-1(j)—a rulemaking regulation. The regulation treats SCINs as debt obligations rather than annuities. This change in position resulted from an attempt by the IRS to prevent income tax abuse.

Regardless of how the face value of the SCIN is determined, the only winner is likely to be the IRS, while practitioners are left uncertain on the use of the SCIN, and clients are forced to litigate the potential gift tax trend.

Conclusion

It is important to remember that the CCA memo is not binding on other taxpayers, and may only be an indication of how they intend to litigate the *Davidson* case. The IRS explains that CCA memos "are legal advice, signed by executives in the National Office of the Office of Chief Counsel and issued to Internal Revenue Service personnel who are national program executives and managers. They are issued to assist Service personnel in administering their programs by providing authoritative legal opinions on certain matters, such as industry-wide issues."[39] But most importantly, the IRS states that "these documents cannot be used or cited as precedent."[40]

While the memo might not be binding, it does appear that the IRS is suggesting that the willing buyer willing seller standard should apply to every SCIN. Based on the memo, caution might suggest that a client get additional appraisals beyond that of the underlying assets to include an appraisal of the actual note, as well as a determination of a reasonable interest rate that should be used. The CCA clearly indicates that when the SCIN holder dies before the end of the term, the estate better prepare for litigation. As one authority put it, clients need to "have an appraiser bless the rate, and then the Service has to have their appraiser tell you why it's wrong." This prospect may make many estate planners opt for an alternative, safer technique such as a private annuity. We again stress that the doctor's letter should address the probability that the measuring life survive the note maturity date.

Going forward, estate planners can look forward to seeing whether the IRS provides clarification on its expectations for the valuation process, takes a stronger stance toward the willing buyer willing seller standard, or allows the working system to remain intact. In the meantime, private annuities will be more popular and more widely used by planners who do not want to cross the line in the sand that may be moved by waves, tides, and sand kicking bullies in years to come. But, for private annuities, rule-making regulations Treas. Reg. § 25.7250-3(b)(2)(i) imposed the exhaustion test, a mechanical formula that specifies how much assets a trust issuing a private annuity must have, based upon what many commentators believe is a draconian standard. In the meantime, keep the suntan lotion on, and let's hope that the ozone layer of taxpayer protection in Tax Court works out well for the taxpayer in the Davidson case.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Ken Crotty

Jerry Hesch

Alan Gassman

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[1] SEC. 2033—Property in which the Decedent had an Interest: Self-Cancelling Notes Addressed By Chief Counsel's Office (8/5/13).

[2] Chief Counsel Advice (CCA) Memorandum 2013-30-033.

[3] *Id.*

[4] Steve R. Akers and Philip J. Hayes, The Forty-Seventh Annual Heckerling Institute on Estate Planning, "*Estate Planning Issues With Intra-Family Loans and Notes*," Chapter 5 (Lexis Nexis 2013).

[5] Howard M. Zaritsky, *Tax Planning for Family Wealth Transfers*, 12-04[3] (Warren Gorham & Lamont 4th ed. 2002).

[6] *See Estate of Moss v. Comm'r*, 74 T.C. 1239 (1980) (respecting the sale and declining to apply Section 2036 as a trust substitute).

[7] *See* Zaritsky, *supra* note 5, at 3. *See also Estate of Musgrove v. United States*, 33 Fed. Cl. 657 (1995).

[8] *See* Treas. Reg. § 1.1275-1(j).

[9] Robert S. Held and Charles F. Newlin, Trust & Estates, "*Hedging Death and Taxes*," 56, 58 (January 2004).

[10] Howard M. Zaritsky, *Tax Planning for Family Wealth Transfers*, 12-18-19, 4th ed. (2002).

[11] Treas. Reg. § 20.7520-3 (1995).

[12] *Id.*

[13] *Estate of Kite v. Comm'r*, T.C. Memo 2012-43.

[14] *Id.* at 12.

[15] *Id.*

[16] *Id.* at 17.

[17] *Id.*

[18] *Id.*

[19] *Id*

Id.

[20] *Id.* at 22.

[21] *Id.* (citing *Estate of McLendon v. Comm'r*, T.C. Memo. 1996-307).

[22] *Id.*

[23] *Id.* at 24.

[24] *Id.* at 25.

[25] *See Also Estate of O'Reilly v. Comm'r*, 973 F2.d 1403(8th Cir. 1992); *See also Weller v. Comm'r*, 38 T.C. 790 (1962).

[26] *Estate of O'Reilly v. Comm'r*, 973 F2.d 1403 (8th Cir. 1992) (citing *Weller v. Comm'r*, 38 T.C. 790, 803 (1962). Additionally, the recent "lottery" valuation cases all adopted the O'Reilly/Weller test, citing to both *O'Reilly* and *Weller* in deciding whether to rely on the actuarial assumptions under § 7520). *See Negron v. U.S.* 553 F.3d 1013 (6th Cir. 2009).

[27] Daniel B. Evans, Steve Leimberg's Estate Planning Email Newsletter, "*A Mortality Risk Discount?"*, Message 1510 (August 2009).

[28] Steve R. Akers and Philip J. Hayes, The Forty-Seventh Annual Heckerling Institute on Estate Planning, "*Estate Planning Issues With Intra-Family Loans and Notes*," Chapter 5, (Lexis Nexis 2013).

[29] Jerome H. Hesch and Elliott Manning, 36th Annual University of Miami Philip E. Heckerling Institute on Estate Planning, "*Coordinating Income Tax Planning with Estate Planning: Uses of Installment Sales, Private Annuities and Self-Canceling Installment Notes*," Chapter 10 at 10-36.

[30] *Id.*

[31] *Id.*

[32] *Frazee v. Comm'r*, 98 T.C. 554 (1992).

[33] *Id.*

[34] Steve R. Akers and Philip J. Hayes, The Forty-Seventh Annual Heckerling Institute on Estate Planning, "*Estate Planning Issues With Intra-Family Loans and Notes*," Chapter 5 (Lexis Nexis 2013).

[35] The state of Mr. Davidson's health at the time the SCIN was executed will undoubtedly come to light if the case is litigated.

[36] IRS, General Counsel Memorandum 39503 (1986)(This GCM was the basis for Rev. Rul. 86-72, 1986-1 C.B. 253).T.D. 8630 (Dec. 12, 1995).

[37] IRS, General Counsel Memorandum 39503 (1986)(This GCM was the basis for Rev. Rule 86-72, 1986-1 C.B. 253).

[38] Edward Wojnaroski, *Tax Management Estates, Gifts, and Trusts Portfolios* 805, 3rd Ed. (2013).

[39] IRS, "Legal Advice Issued by Associate Chief Counsel," *available at* http://www.irs.gov/uac/Legal-Advice-Issued-by-Associate-Chief-Counsel (8/6/2013).

[40] *Id.*