GASSMAN CROTTY & DENICOLO, P.A.
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Edited By: John Beck

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NON-CHARITABLE FOUNDATIONS – THE NEW KID ON THE BLOCK (Part 1)

In LISI Estate Planning Newsletter #2743 (August 21, 2019) Alexander Bove, Jr. gives his opinion regarding updates in the private non-chartiable foundation world, but we have a more optimistic view on the subject.

By: Alan Gassman and John Beck

Campbell v. Commissioner

Tax Court Concludes that the IRS Cannot Reach Assets in an Old and Cold Self-Settled Offshore Trust

By: Alan S. Gassman, Martin M. Shenkman and Joe Cuffel

199(A) Little Known Rules That Advisors Need to Know (Part 1)

A brief summary of how aggregation rules apply to Section 199(A) and requirements for business endeavors to be active

By: Alan S. Gassman, Brandon L. Ketron and Kelsey Weiss

VIA EMAIL TRANSMISSION & U.S. MAIL

Sample generic letter that estate planning attorneys can use to describe an estate plan

By: Ken Crotty

For Finkel's Followers - Are You Overpaying Your Vendors

If you aren't already a follower of David Finkel, this section of the Thursday Report may change your mind! Email agassman@gassmanpa.com for a free copy of David's book *Build a Business, Not a Job!*

Humor

Upcoming Events

NON-CHARITABLE FOUNDATIONS – THE NEW KID ON THE BLOCK (Part 1)

Non-Charitable Foundations are a new, potentially great planning vehicle for many clients. Anyone considering the establishment of a Domestic Foundation should read Alexander Bove's article on Steve Leimberg's Estate Planning Email Newsletter Archive Message 2743, or check with Mr. Bove or the author to see if there have been later writings.

By: Alan Gassman and John Beck

Alexander Bove's August 21st write-up on the new Wyoming Foundation Statute did a good job of explaining some issues that legal and tax counsel will need to address in establishing Wyoming Foundations, and we believe that a great many families will be well served by taking full advantage of the Wyoming, New Hampshire, Bahamas, or other Foundation Statutes.

A Foundation is, from the U.S. point of view, a hybrid entity that is not a trust or a limited liability company. Instead, it is an entity held for the benefit of one or more individuals or other entities without the strict fiduciary obligations that apply to trusts, or the ownership or creditor charging order structure applicable to a limited liability company.

As with Goldilocks and the Three Bears, for many families the Foundation will be "just right" for the following reasons:

> A Foundation is a legal entity, duly authorized under state or national law, whereby a Foundation manager or other officers hold the Foundation assets and may apply them for the benefit of the Foundation beneficiaries.
>
> The Founder of a Foundation will normally file the Articles of Formation and contribute assets to it. The Wyoming Act specifically provides that powers reserved to the Founder will not pass to his or her heirs, spouse or creditors, unless otherwise provided for in the Foundation entity documents.
>
> Unlike a trust, the Foundation manager, as well as any Trust Protectors, must act in good faith, but are not held to the same strict fiduciary duty that a trustee is.
>
> The beneficiaries of a Foundation will not be entitled to receive an accounting, or to require that distributions be made for their benefit, unless the Foundation documents require this.
>
> This makes a Foundation preferable in many ways to a trust, where an unruly or unappreciative beneficiary might have entitlements to information or to require distributions outside of the intent of the Settlor.
>
> Unlike a limited liability company, a Foundation does not have definitive ownership interests or percentages, and instead may be held generally for the benefit of a group of individuals, so that the creditors or legal counsel for one or more of such individuals cannot reach into the entity, receive Foundation assets, or receive what would be the equivalent of a "charging order" over the entity itself, as a matter of state or federal law.
>
> Due to the above, a judgment creditor of a beneficiary may not have the same rights that he or she would have to receive distributions for support for a descendant of a beneficiary, or to compensate a third party for inappropriate acts of the beneficiary, in the same way that would apply to a trust under state law.
>
> As the result of the above, a state court that might otherwise conclude that a creditor should be able to reach into an offshore asset protection trust ("APT") established by a Grantor for family members, and possibly for the Grantor himself or herself, might not come to the same conclusion with a foundation. This is because under the Foundation rules a Grantor cannot establish a Foundation that would make distributions to or for him, and will typically be working with dozens, if not hundreds, of branding organizations that will not want the Grantor to have made changes or taken actions that would be detrimental or not otherwise approved.

Campbell v. Commissioner

Tax Court Concludes that the IRS Cannot Reach Assets in an Old and Cold Self-Settled Offshore Trust

By: Alan S. Gassman, Martin M. Shenkman and Joe Cuffel

EXECUTIVE SUMMARY:

In the February 4th Tax Court Memorandum Decision of *Campbell v. Comm'r of Internal Revenue* the IRS sought to classify assets that the taxpayer had placed in an offshore trust before the income tax problems arose as being accessible for the purpose of determining his ability to pay a tax judgment in an Offer in Compromise review proceeding. The taxpayer appealed the reasonableness of this determination to the U.S. Tax Court, and Tax Court Judge Kathleen Kerrigan presided over the proceedings and concluded that the IRS abused its discretion in concluding that the assets under the trust would be considered as an available source of payment in an Offer in Compromise.

FACTS:

John F. Campbell filed personal income taxes in 2001, reporting income of $201,519, and paid the taxes due thereon. In 2002, Campbell and his family moved to St. Thomas in the U.S. Virgin Islands. At that time, he also began the process of setting up a family trust. In April, 2004, Campbell established the First Aeolian Islands Trust (the Trust), and funded it with $5,000,000 (20% of his then-applicable net worth). In May of that same year, the IRS notified Campbell that his 2001 personal income tax form was going to be audited.

In 2006, Campbell moved back to the U.S. to take advantage of real estate opportunities in the Gulf Coast Region after the series of devastating hurricanes in that area prompted law makers to establish the "Go-Zone Initiative". Those investments failed due to economic and Chinese drywall problems that were beyond Mr. Campbell's control.

In 2007, the IRS issued a "statutory notice of deficiency" seeking to collect Campbell's 2001 unpaid tax liability – a "$1,135,192 deficiency and a Section 6662(a) accuracy-related penalty of $113,519."

In an attempt to settle the tax liability, Campbell filed for an Offer in Compromise ("OIC"). The IRS Offer in Compromise program enables taxpayers to reduce the amount of tax they would otherwise owe based upon the taxpayer's ability to pay, or "doubt as to collectibility," and other factors, which include "doubt as to liability" and "promotion of effective tax administration."

The IRS rejected Campbell's offer to settle for $12,603, and calculated that his "Reasonable Collection Potential" was millions of dollars.

A taxpayer whose Offer in Compromise application is rejected has the right to appeal the rejection to the Tax Court by filing a petition for judicial review of a determination within 30 days of the date of the rejection letter pursuant to 26 U.S.C. § 6330(d)(1)(B). While the IRS has no duty to negotiate with a taxpayer before rejecting an OIC, under 26 U.S.C. § 6330(c)(2) a taxpayer who has filed an Offer in Compromise may raise any relevant issue relating to the unpaid tax or the proposed levy, including spousal defenses, challenges to the appropriateness of the collection action, and offers of collection alternatives.

Judge Kerrigan found that Mr. Campbell had placed approximately $5,000,000 under a Nevis offshore asset protection trust with Meridian Trust Company in April of 2004.

> Petitioner funded the Trust with a $5 million contribution. At the time of the contribution petitioner's net worth was approximately $25 million. No contributions to the Trust have been made since petitioner's initial contribution in 2004.
>
> The taxpayer and his family were beneficiaries of the Trust, but did not retain the right to replace the trust company or the Trust Protector. The Trust Protector had the power to suggest a replacement trust company, but also did not have the power to replace the trust company.

Because of apparent billing issues, the trust company was changed to SouthPac's Nevis office. At the time of the Offer in Compromise appeal, the trust was valued at $1,493,912 by the IRS.

The roughly $3,500,000 of trust assets that were spent for the benefit of Mr. Campbell and his family was determined by the IRS to be dissipated asset funds "used for investments between 2006 and 2010," which brought the IRS's calculation of Mr. Campbell's reasonable collection potential to at least $19,500,000.

The Tax Court concluded that Mr. Campbell set up and funded the trust well before investing over $27,000,000 in 2006 in GO Zone Properties in Louisiana, Alabama, and Mississippi. Unfortunately, he had a terrible economic result, not only because of plummeting home values, but also because of Chinese drywall issues.

For those who do not recall the calamity of Chinese drywall, up to 100,000 homes in the U.S. were remodeled or built with defective drywall manufactured in China. This drywall, when placed in conditions with high heat and humidity (e.g. the entire Gulf Coast Region that had just been battered by a series of hurricanes), emitted a gas called hydrogen sulfate that smelled like rotten eggs, corroded copper, and caused health issues to the houses' inhabitants. Because the main issue associated with Chinese drywall is the fact that it releases a corrosive gas that can effectively get into every part of a house, reconciling a Chinese drywall situation can sometimes cost more than building a new house.

The "funds [Campbell] used for the production of income" between the time he invested in GO Zone until 2010, when he had accumulated $3.5 million of negative equity, were sought by the IRS in 2019, as dissipated assets, which contributed to his reasonable collection potential. The Court found that the investments Campbell made after becoming aware of his 2001 tax liability were not "in an attempt to avoid paying" and were outside the period of time that the Internal Revenue Manual guidelines would permit an appeals officer to look back to in determining whether the taxpayer dissipated assets.

In this case, because the additional tax and penalty was assessed in April of 2010, the IRS revenue officer could only have looked back six months from that date for assets that Campbell "sold, transferred, encumbered or otherwise disposed of…in an attempt to avoid the payment of the tax liability." Despite Campbell's awareness of the examination of his 2001 Form 1040 in May 2004, his "ability to pay" was dependent upon the date he was assessed the tax liability at issue.

The Tax Court was not looking at the petitioner's underlying tax liability. The Tax Court reviewed the "administrative determination made by the Appeals Office regarding nonliability issues." The Standard of Review for these cases is "abuse of discretion."

In assessing whether or not the appeals officer abused her discretion in determining Campbell's appeal, the court looked at the process by which the officer analyzed, chose, and calculated the assets which the IRS believed the taxpayer possessed.

Campbell's ground for the compromise of his tax liability was "doubt as to collectability," which "exists in any case where the taxpayer's assets and income are less than the full amount of the tax liability." Judge Kerrigan stated that "[g]enerally, under respondent's administrative pronouncements, an OIC based on doubt as to collectability will be acceptable only if the offer reflects the RCP of the case[.]"

The RCP is the "Reasonable Collection Potential". To determine a taxpayer's RCP, the appeals officer follows the IRM guidelines. These guidelines are comprised of four categories of assets:

(1) Assets, including dissipated assets;
(2) Future income;
(3) Amounts collectible from third parties; and
(4) Assets available to the taxpayer but beyond the reach of Government.

The appeals officer "calculated petitioner's RCP as $19.5 million, which included dissipated assets, amounts collectible from third parties, and assets beyond the reach of the Government." Judge Kerrigan assessed the validity of the inclusion of each category of asset included in the calculation and applied the "abuse of discretion" standard to the decision to include these assets in the RCP.

COMMENT:

The petitioner put a large sum of money into an irrevocable grantor trust in Nevis, before knowledge of any pending IRS review. Given that the only contribution was made before the IRS audit, and that no contribution was made thereafter, coupled with the fact that the Trust was not considered to have held assets as "a transferee, nominee, or alter ego of petitioner," the Trust was respected as not being available as a source of payment by the Tax Court.

The Tax Court did not discuss whether state or federal law would enable the Internal Revenue Service to reach the assets of an offshore trust, but Judge Kerrigan, who delivered the Opinion, is a former partner in the law firm of Baker and Hostetler, with a background in tax and legislative processes. She has been sitting on the Tax Court for 7 years of her 15-year term.

Judge Kerrigan must have concluded that the IRS would not be able to reach the assets of a legitimately formed Nevis asset protection trust, even though the trustee of that trust apparently allowed $3,500,000 of assets, plus growth thereon, to benefit the taxpayer.

We believe that Judge Kerrigan made the right call. Even if she had concluded that the questionable Bankruptcy Court decisions that have indicated that U.S. law should apply when a U.S. debtor forms an asset protection trust, the Nevis law does not recognize U.S. judgments. In fact, the recent Belize Supreme Court decision referenced in *In Re Rensin* concluded that the trustee of a Belize asset protection trust should not turn assets over as the result of a U.S. bankruptcy court order. The Belize Supreme Court ordered the trustee in that case "not to comply with any court order to turn over assets in the Joren Trust other than an order from the Supreme Court of Belize."

The Court noted a number of positive facts in its evaluation of the case:

> Petitioner created the Trust in 2004 as an irrevocable grantor trust. He and his family are named beneficiaries of the Trust. Under Section 671, petitioner is required to report all tax consequences of the Trust's activities on his personal federal tax return. The Trust document indicates that petitioner has no control over the trustee and [**20] cannot force the trustee to make distributions or investments. Petitioner contends that as a beneficiary of the Trust he does not hold a property interest in the Trust assets.

Specifically, Judge Kerrigan indicated that it was "arbitrary, capricious, and without sound basis in fact or law" for the IRS to determine the Trust was a nominee of Mr. Campbell where the IRS representatives failed to present "any evidence supporting the determination that [Campbell] has a property right in the Trust under State law." Beyond failing to characterize Mr. Campbell's 2006 GO Zone investments as deceptive means to "shirk his financial obligation to the public fiscal policy," the Court found that the $19.5 million determination could not be sustained against the proposed levy:

> The trustee, in its sole discretion, directed a portion of the Trust's assets to be invested in Antilles Offshore Investors, Ltd. Petitioner could not and did not control this decision. For reasons addressed previously, we conclude that the Trust's assets are not considered assets available to petitioner but beyond the reach of the Government. Therefore, we find that the appeals officer abused her discretion in determining that petitioner had control over the Trust's assets.
>
> We have considered all other arguments made and facts presented in reaching our decision, and to the extent not discussed above, we conclude that they are moot, irrelevant, or without merit.

The Court noted that the taxpayer did not have any control over trust distributions or investments. "Petitioner maintains no control over the trustee to make distributions or investments." It is surprising that investments were noted as control over investments, which is not generally viewed as a tax sensitive power.

Tax Court Memorandum Opinions, such as the one considered here, can be appealed to one of the U.S. Courts of Appeals once a decision is entered by the Tax Court. The notice of appeal must be filed with the Tax Court within 90 days after a decision is entered, or 120 days if the IRS appeals first. The taxpayers may also file a motion for reconsideration of an opinion within 30 days after the written opinion was mailed; the motion is considered by the Judge that decided the case, and is rarely granted. However, in a case such as Mr. Campbell's, the matter may be sent back to the IRS to reconsider collection alternatives or other matters.

CONCLUSION:

The taxpayer's foreign asset protection trust ultimately escaped inclusion as an asset to be considered for purposes of the taxpayer's Reasonable Collection Potential. While the IRS wanted to count it among the assets that could be used to pay the tax levy, Judge Kerrigan ruled that the Trust was not includable in the calculations of Campbell's assets. The factors that may have impacted this decision were as follows:

(1) The taxpayer established the Trust many years before the notice of tax levy occurred, therefore his decision to place assets in the Trust was not viewed as an attempt to hide and protect the money from creditors.

(2) The transfers to the Trust were reasonable relative to the taxpayer's net worth.

(3) The taxpayer was a beneficiary but was not in direct control of the assets. The Tax Court noted that the trustee directed the funds of the Trust in the trustee's sole discretion.

(4) Inherent in the Court's opinion is the fact that the Trust was properly administered. Had the taxpayer in reality controlled the Trust, had Trust formalities been ignored, etc., the results may have been different. For example, in *Wyly*, the Court imputed control over the protectors to the taxpayer and disregarded the trust.

(5) The taxpayer's financial issues were not a result of the taxpayer being a bad actor, as in the *Klabacka* or *Rensin* cases.

(6) The Court did not focus on public policy issues.

The Tax Court ruled that the Nevis Trust must be respected in this case, for good reason. Due to the timing of the establishment of the trust, and the way the trust was structured, there is no doubt why Judge Kerrigan ruled that the Appeals Officer abused her discretion in her attempt to include the Trust assets in her RCP calculation.

The difficulty for advisors is how to synthesize the various cases addressing domestic and foreign asset protection trusts. Many of the unfavorable cases have involved bad actors, and there has been almost no discussion in the decisions as to what the basis is for determining that a trust established in a foreign jurisdiction would for some reason be subject to the law of the residence of the settlor. While "bad facts" are often not relevant to the legal analysis of the case involved, one cannot help but wonder what the implications are. Overall, the facts in so many cases have been so egregious that one must wonder whether or how the legal reasoning in those cases may be applied to more reasonable circumstances. Perhaps this *Campbell* case is an illustration of a better fact case, and a Judge who understands how these trusts work and can legitimately be used. This situation may be communicated to clients who have or are considering the use of a self-s ettled trusts of any type.

199(A) Little Known Rules That Advisors Need to Know (Part 1)

By: Alan S. Gassman, Brandon L. Ketron and Kelsey Weiss

Executive Summary:

IRC Section 199A provides a tax deduction of up to 20% on Qualified Business Income, which is the income that an individual taxpayer, trust or estate receives by reason of ownership and operation of a trade or business that is owned individually, under a disregarded LLC, or by an entity taxed as a S-corporation or a partnership.

Many complicated rules apply under Section 199A, and the complexity is increased when a high earner taxpayer (an individual or trust with more than $157,500 or a married couple with more than $315,000 of taxable income, as adjusted for inflation) because qualified business income from a Specified Service Trade or Business or from any trade or business that does not pay sufficient wages and/or have sufficient "unadjusted basis" in the trade or business will be limited as to deductibility.

These include if and when separate leasing or other activities can be aggregated to be prominent enough to be an "active trade or business", special rules with respect to non-triple net leases, and if and when wages and qualified property can be aggregated. They also include if and when SSTB and non-SSTB businesses can be considered to be separable within a single entity.

It is also noteworthy that the Treasury issued a second round of corrections to the Section 199A Final Regulations on April 17th, 2019 that corrected a number of grammatical errors contained in the 199A Final Regulations. A copy of a red-lined version of the corrected 199A Final Regulations can be obtained by emailing Alan@gassmanpa.com.

Facts:

Aggregation

In many situations, individual taxpayers and trusts are involved with multiple trades and businesses, which may be aggregated in order to qualify for deductibility that would otherwise not apply.

There are multiple types of Aggregation that can apply in tax planning, and they are easy to confuse:

1. What entities and functions can be aggregated to determine if one or more businesses are active enough to meet the definition of an "active trade or business," which is needed to be eligible to take a Section 199A deduction, or losses under Section 162?

2. What kinds of leased property can be aggregated with other leased property to meet the 250-hour Safe Harbor that was made available under Revenue Procedure 2019-7 for leased property under Section 199A?

3. When can separate entities or activities be aggregated for purposes of sharing wages and the unadjusted basis of Qualified Property for a high income taxpayer when there is common ownership.

The applicability of these three aggregation rules is described below.

1. Active Trade or Business Test. No Section 199A deduction will be available for passive investments or activities that do not meet the Section 162 definition of an "active trade or business".

An individual, trust, S-corporation or partnership may own multiple trades or businesses or have multiple rental properties or other activities that would not be considered to be active or entrepreneurial enough to qualify separately as a "trade or business," but which may meet the definition of an "active trade or business" when considered as a group.

Under this "Aggregation" rule, the question is whether the separate items or activities can be considered to all belong to the same individual or entity.

Whether a trade or business exists is measured at the individual level or at the Relevant Pass Through Entity (RPE) level.

For example, an individual or trust may own 10 LLCs that are each disregarded for income tax purposes, so that the individual or trust is considered to own 10 rental properties.

The individual or the trustee of the trust may spend 10 hours a year on average with respect to each separate rental property, and may have an employee and also one or two contractors who themselves spend 20 hours a year on average on each such property.

If this were one or two properties, the IRS might not consider this to be sufficient to be considered a “trade or business,” but in the aggregate with 10 properties combined at the individual level this may well surpass what is needed to establish an active trade or business under these rules.

On the other hand, if the individual or trust owns 10 separate S-corporations or partnerships, which each owns and operates a separate property, then these cannot be aggregated for purposes of determining whether the properties and activities are considered to be active trades or businesses, simply because the Final Regulations do not permit this.

If instead the 10 separate S-Corporations or partnerships contributed their respective properties to a single commonly owned LLC or other entity then all of the activities could be aggregated, or combined, to determine if a trade or business exists. The LLC could be taxed as a partnership and issue K-1 income to each owner entity.

The Management Company Solution. If the 10 separate S-corporations or partnerships cannot be aggregated and each separate property does not rise to the level of a trade or business, then a management company may be established to manage the properties for an arms length management fee and may be considered to be a trade or business that is eligible for Section 199A. The management company could be responsible for negotiating leases, for making repairs and handling maintenance at the properties, for seeking out tenants, and for performing other services related to the rental of properties, which can certainly qualify as a trade or business under Section 162 if it is reasonably active. This was discussed briefly in a May 2, 2019 ALI webinar with Jerry August and a Treasury official, and the Treasury official seemed to “nod” to the concept when it was discussed.

One limitation of a management company is that it can only charge arm’s-length management fees, so there will still normally be profit at the leasing entity level that will be even less likely to qualify for the Section 199A deduction when the entity does not “manage for itself”. The concepts that apply when related parties provide services for each other include IRC Sections 269A and 482, which are discussed at length in LISI Income Tax Planning Newsletter No. 136, entitled *Using Multiple Entities to Reduce Income Taxes for Families Owning Personal Service Corporations Under Section 199A and Unique Concerns.*

2. Other Rules. Other rules also apply with respect to if and when separate items and activities can be aggregated to see if the Active Trade or Business test has been met:

A. Safe Harbor for Non-Triple Net Leases. IRS Notice 2019-7 provides a safe harbor for when a landlord who has an active (not triple net) lease arrangement can be sure of being considered to be conducting an active trade or business. This Proposed Revenue Procedure requires at least 250 hours per year of activity by the landlord and agents of the landlord, which must be contemporaneously memorialized and fall into categories of functions that would not include buying and selling the rental properties, travel to or from the rental properties, or reviewing financial statements.

Most advisors feel that the Proposed Revenue Procedure is not helpful, because virtually any taxpayer that would qualify under the Revenue Procedure would have qualified without its assistance.

B. Residential and Commercial Property Can Normally Not Be Aggregated. Residential and commercial property cannot be aggregated and managed for purposes of determining whether there is an active trade or business; therefore, residential and commercial property must be tested separately to determine if the 250 hour requirement under the safe harbor is met. It is unclear if residential and commercial property may be combined if they are significantly interrelated, such as if a store and the apartment above the store are rented to the same tenant, or a building that has both retail and commercial space and is wholly owned and managed by the landlord. The Notice simply states that commercial and residential property may not be part of the same enterprise, and the authors are not aware of any other guidance on this issue.

C. Similar Properties Under Revenue Notice 2019-7. IRS Notice 2019-7 provides that taxpayers can either treat each non-triple net lease property owned by an individual or RPE (RPE is defined in the Regulations to mean a “Relevant Pass Through Entity” meaning an entity that is taxed as an S corporation or Partnership that has Section 199A income that is reported by K-1 to its owners) separately or may choose to treat all similar properties as a single enterprise. The Notice does not discuss what is considered to be similar property, with the exception of stating that residential and commercial property cannot be treated as part of the same enterprise. As a result, it appears that all rental activity related to residential properties held by an individual or a RPE and all rental activity related commercial properties held by an individual or a RPE may be aggregated to determine if the 250 h our safe harbor is met.

3. Triple Net Leases With Related Party Tenants May Be Considered As Active. A related rule contained in the Final Regulations is that a triple net lease can be considered to be an active trade or business if the tenant is an active trade or business and is considered to be commonly owned under the applicable attribution rules. This rule does not apply if the tenant is a C corporation. Therefore the tenant must be a commonly controlled entity taxed as an S corporation or partnership, or an individual sole proprietor for this to apply.

4. Combining Wages and Qualified Properties. Unrelated to whether an activity is an active trade or business, taxpayers may elect to aggregate commonly controlled entities for purposes of combining the Wages and Qualified Property of each entity in applying the Wage/Qualified Property Test under section 199A if the following requirements are met:

A. The same person or group of persons directly or indirectly own 50% or more of each trade or business. For purposes of determining ownership, ownership by spouses, as well as children, grandchildren, parents, brothers, and sisters can be attributed to each other, and many other attribution rules can apply;

B. The ownership existed for a majority of the tax year;

C. The items must be reported on returns within the same taxable year;

D. None of the businesses can be a Specified Service Trade or Business; and

E. The aggregated trades or business must also satisfy at least two of the following

i. The trade or businesses provide products or services that are the same or customarily offered together;

ii. The trade or businesses share facilities or significant centralized business elements such as personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources; and

iii. The trades or businesses are operated in coordination with, or reliance upon, one or more of the businesses in the aggregated group (for example, supply, transportation, intellectual property, and sales organizations may qualify).

A series of eighteen well-written examples provide detailed guidance on the aggregation provisions. In addition, Example 11 demonstrates that a taxpayer owning less than 50% of multiple entities can elect to aggregate her interests therein, as long as common taxpayers own more than 50% of each entity. The minority owner can elect to aggregate even if the other owners do not.

Aggregation will allow wages and Qualified Property to be considered as paid for all of the entities, so that the deduction can be taken for income received from a partnership, S corporation or proprietorship that has little or no wages or Qualified Property if another entity has sufficient wages and Qualified Property for both its own income and the income of affiliates. The examples point out that losses from any entity that could be aggregated must be netted against the aggregate profits of other applicable entities, if any aggregation occurs.

The examples also provide guidance on if the two separate companies are sufficiently related to meet the requirements for aggregation. For example, the ownership of a sailboat racing team and a marina by separate companies would not be aggregated, but that ownership of a trucking company that delivers lumber and other supplies in one company, operation of a lumber yard in another company, and operation of a construction business that presumably uses lumber and other supplies, can be aggregated.

A new example added in the Final Regulations states that residential and commercial property rental activities cannot be aggregated together for purposes of satisfying the Wage/Qualified Property Test, due to the fact that residential and commercial property are not the same type of property and do not otherwise satisfy two of the three aggregation requirements. If a high-income Taxpayer has rental income from both residential property and commercial property that is considered to be a trade or business, then the residential rental activity and the commercial rental activity must be separately tested to see if both satisfy the wage/Qualified Property Test.

Once a taxpayer chooses to aggregate two or more trades or businesses, they must be consistently reported and aggregated for all subsequent taxable years, unless there is a change in circumstances which cause the applicable entities to no longer qualify for aggregation.

The Final Regulations also give partnerships, S corporations or other entities owning multiple trades or businesses (including by direct ownership or subsidiaries) the ability to make an aggregation election at the entity level, if the requirements for aggregation are met. Any RPE level election should be carefully considered, because it will be binding upon and potentially detrimental to the individual taxpayers who are owners of the RPE, as described in the example below.

While making such an election can simplify tax reporting for the partners or S corporation owners, it can also cause loss of Section 199A tax savings by eliminating aggregation options that an individual partner or S corporation owner would otherwise have.

Under one Example in the Final Regulations, Taxpayer A has a food business and also owns 60% of a partnership that operates both a movie theater and a food business that serves food and drink to theater goers. Taxpayer A may aggregate his personally owned food business with the food business of the partnership, due to the fact that they are the same type of products and services and share centralized business elements. On the other hand, if the partnership makes an aggregation election to combine the movie theater with the partnership's food business (since they are operated in coordination with each other and share centralized business elements), then the individually owned food service cannot be aggregated with the combined movie theater and food business due to the fact that the individually owned food business is not considered the same type of product or service as the combined movie theater and food operations, and therefore the r equirements for aggregation cannot be met.

<u>Drafting Suggestion</u>. Lawyers who are drafting or updating entity arrangements may wish to have the documents prohibit the entity from making an aggregation election without the consent of all, or substantially all, of the owners or may additionally provide that no officer, manager, or director will have a fiduciary duty to aggregate or to not aggregate.

VIA EMAIL TRANSMISSION & U.S. MAIL

jackanddiane@littlediddy.com

Dr. Jack Melloncamp
123 My Street
Cityville, FL 13131

Dear Jack:

It was a pleasure meeting you.

I have attached draft copies of the estate planning documents for you and Diane. Also attached is an explanation letter describing each of the documents. After you have had an opportunity to review the attached, I look forward to scheduling a time to meet with you and Diane to finalize your planning documents.

As we discussed, all of these documents are revocable and can easily be changed. However, it is better to have signed planning documents that are 95% of what you want rather than having no planning documents in place at all.

Once your Revocable Trust is signed, we will contact your life insurance carrier and the administrators of your 401(k) and IRA's to change the Beneficiary Designations. For your life insurance policy we will change the Beneficiary Designation so that it is payable on your death to your Revocable Trust. This way, the proceeds will be held in a protective trust system for Diane's primary benefit and will not be subject to any potential creditors that she may have in the future.

For your 401(k) and IRA's, we will update the Beneficiary Designations so that they continue to provide that they will be held for Diane as the primary beneficiary but we will change the contingent beneficiary to your Living Trusts. We will make the same changes to Diane's retirement plans as well. In the event that you and Diane were to die in a common accident, these assets would then be held in a protective trust system for the benefit of John and any future descendants that you may have.

As we discussed, I would recommend that you open a new Vanguard account in the name of you and Diane as Tenants by the Entireties. Please make sure that you do not select the Tenants in Common option if Tenants by the Entireties is available. Once this account is open, I would then transfer the assets in your individual Vanguard account into this account and also deposit funds in the future into this account.

Once the account has reached the size to provide you with a "nest egg," we can discuss the possibility of forming an LLC to own some of these assets to help provide an additional layer of protection.

We also discussed that I recommend not having any cars titled in your joint names. It would be better for them to be owned by the individual who drives it most frequently.

You currently have a $1,000,000 umbrella policy. You will be looking into increasing this in the future.

We discussed that you intend to purchase a home in the spring. As we discussed, if you purchase a home inside the city limits and the lot is ½ acre or less, then this home will qualify for your homestead and provide you with protection from potential creditors. In the event that the lot is bigger than ½ an acre and lies within the city limits, then this protection is more limited. If the lot is greater than a ½ acre but is outside of the city limits, then the homestead will be protected assuming that the lot does not exceed 160 acres. My partner, Chris Denicolo, handles many real estate transactions for our clients. In the event that you would like our firm to review the contract and/or provide assistance with respect to the preparation of the deed please let us know and we will be happy do so.

You stated that you currently are handling all of your income tax returns and filings. As we discussed, your Revocable Trusts will be ignored for income tax purposes and will not require a separate income tax return to be filed. All of the income will continue to be picked up on the joint 1040 that you file with Diane. In the future, if you hire a CPA, please provide us with his or her contact information so that we can update our records accordingly and make sure that they are aware of any planning that we are doing for you.

We further discussed that if you buy investment property in the future or property that you intend to rent, it would be best if this property was purchased in an LLC to help protect your other assets from any potential exposure that may result from activities on the property. This is something that we can discuss in more detail in the future before you buy such a property.

I want to thank you for the opportunity to be of service with respect to your family's planning. I look forward to hearing from you after you have had an opportunity to review the attached correspondence and documents so that we can finalize this portion of your planning.

Best personal regards,

VIA EMAIL & U.S. MAIL

Kenneth J. Crotty

KJC:*kjc
Enclosures

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Are You Overpaying Your Vendors?

Here's 3 Simple Questions to Save Thousands Every Month

By: David Finkel

You already spend thousands with suppliers and vendors every month, why not learn how to get the best pricing. These three ridiculously easy questions will save you 5-15 percent or more on every purchase or contract.

Let's face a plain fact: it takes a real investment of time, attention, and often money to grow your company's bottom line. Knowing this is true, why then would you or any business owner casually throw away tens or even hundreds of thousands of dollars of easy profits every year?

Think back over the past 90 days – where are all the places you've made purchases for your business without negotiating on price and terms?

At a recent negotiation workshop I taught over 60 percent of the participants admitted to feeling intimidated when they were negotiated, which caused them to often just skip it and pay full retail.

To be clear, these were successful business owners, most of whom owned companies with sales in the millions of dollars. Yet they were letting their discomfort with negotiation cause them to overpay by tens or even hundreds of thousands of dollars every year.

Consider how much money you spend with your suppliers and vendors every year. What would it mean to your bottom line profit if you could save 5, 10, 15 percent or more on contracts and purchases with your vendors and suppliers. This is money you are already spending.

Just to put this into perspective, every dollar you save on a purchase your company was already going to make drops directly to your bottom line. This means that if you have a 20 percent operating profit margin, every dollar you save equals *five* dollars in additional sales.

Imagine you were about to work with a new I.T. vendor at $3,000 a month ($36,000 per year). If you could agree instead on $2,700 a month, a 10 percent savings, that would equal $3,600 of additional profit every year. If your operating profit margin were 20 percent this is the same thing as making an $18,000 sale.

Is the equivalent of an $18,000 sale worth the five minutes of awkwardness as you negotiate with that vendor? Of course.

Here are three questions for you to ask to get yourself that better deal.

Question One: *"I'm a bit new to your world Paul, tell me, who in your world is your biggest competition?"*

Notice this question gets your counterpart to actually voice who their main competition is, stoking the fires of fear of loss and softening the ground for your eventual request for a better deal.

Question Two: *"On those occasions when someone buys from x [the competitor they named] instead of you, why do you think that is?"*

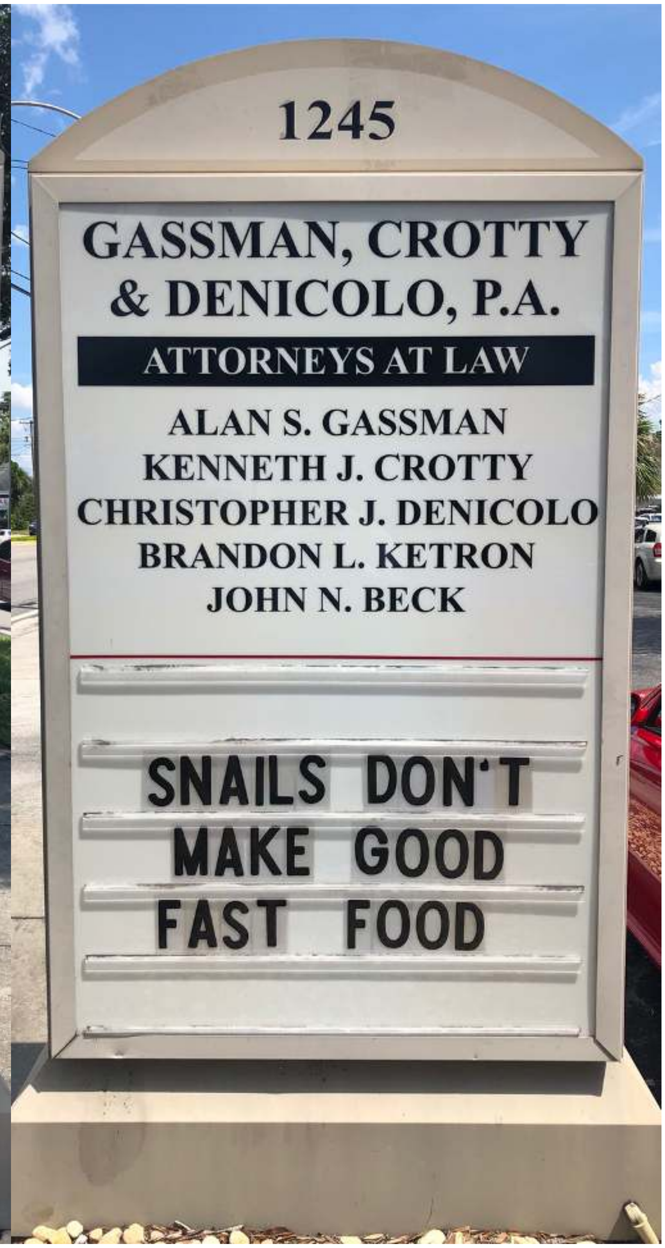
Again, you're preparing to ask your final question.

Question Three: *"Considering all you've told me Paul, what is the best deal you can make for me that would make me just want to work with you right here, right now instead of shopping around?"*

When I use these three questions in this order I've literally saved tens of thousands of dollars in annual spending for my companies, which is the equivalent of hundreds of thousands of extra sales. And it just takes five minutes and a dose of courage to ask.

Humor


1245
GASSMAN, CROTTY
& DENICOLO, P.A.
ATTORNEYS AT LAW
ALAN S. GASSMAN
KENNETH J. CROTTY
CHRISTOPHER J. DENICOLO
BRANDON L. KETRON
JOHN N. BECK
THE ANNOYED
SALAD SAID
LETTUCE ALONE!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CHRISTOPHER J. DENICOLO
BRANDON L. KETRON
JOHN N. BECK
SNAILS DON'T
MAKE GOOD
FAST FOOD


I would leaf it alone...


I’ve seen more seasons than anyone

~~John R.~~ Michael Bolton

Upcoming Events

Recent Updates

Complimentary Learning at Lunch Webinar Series

Date	Event	Details	Information
9/13/2019	Leimberg Webinar Services (LISI)	Alan Gassman and Srikumar Rao present: Successfully Handling Ethical and Professional Challenges for Estate Planners and Tax Professionals: Lead the Field With Passion, Enjoyment and Meaning for Yourself, Your Team and Your Clients from 1 PM to 2:30 PM ET	REGISTER HERE
9/12/2019 through 9/13/2019	FOMA Mid-Year Seminar at Grand Hyatt Tampa Bay in Tampa, FL	Visit us at Booth 104 for a free book!	REGISTER HERE
9/13/2019	FOMA Mid-Year Seminar at Grand Hyatt Tampa Bay in Tampa, FL	Alan Gassman presents: Asset Protection and Protecting Your Family from 4PM to 5PM ET	REGISTER HERE
9/19/2019	Leimberg Webinar Services (LISI)	Ken Crotty presents: Avoiding Disaster on Highway 709 from 3 PM to 4:30 PM ET	REGISTER HERE
9/19/2019	Learning at Lunch Webinar Series	Colleen Flynn presents: Hiring Employees-10 Practical and Legal Strategies from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	REGISTER HERE
9/26/2019	Learning at Lunch Webinar Series	Colleen Flynn presents: Terminating Employees from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	REGISTER HERE
9/26/2019 through 9/27/2019	Notre Dame Tax & Estate Planning Institute at Century Center in South Bend, IN	Please visit our display table in the Exhibit Hall for a free book	REGISTER HERE

Date	Event	Details	Information
9/27/2019	Notre Dame Tax & Estate Planning Institute at Century Center in South Bend, IN	Alan Gassman presents: Application of Section 199A, and its Interaction with Other Income Tax Rules, to Real Estate Investors, Operators and Developers from 3:30 PM to 4:30 PM ET	REGISTER HERE
10/1/2019	RCS Faces of Domestic Violence Luncheon	Please consider supporting this great event	MORE INFORMATION
10/3/2019	Learning at Lunch Webinar Series	Barry Flagg presents: New York Best Interest Rule for Life Insurance – A Game Changer from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	REGISTER HERE
10/3/2019	Leimber Webinar Service (LISI)	Alan Gassman and Ken Crotty present: Estate Tax Planning with Family Entities After *Powell* and *Strangi* from 3 PM to 4:30 PM ET	REGISTER HERE
10/10/2019	Learning at Lunch Webinar Series	Jonathan Blattmachr presents: On the Front Line with JB; What America's Number One Estate Planner is Thinking from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	REGISTER HERE
10/10/2019 through 10/12/2019	Florida Bar Tax Section Fall Meeting at The Don CeSar in St. Pete Beach, FL	Please attend to support this great event	REGISTER HERE
10/17/2019	Learning at Lunch Webinar Series	David Finkel presents: Five Simple, Easy Ways to Increase Your Professional Practice's Profit by $50,000 or More from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	REGISTER HERE

Date	Event	Details	Information
10/22/2019	Florida Bar Tax Section CLE Wealth Protection for the Advanced Practitioner at University of Miami Law School in Miami, FL	Alan Gassman and Leslie Share presenting from 1 PM to 5 PM ET	REGISTER HERE
10/24/2019	FICPA USF Accounting Conference at The Barrymore Hotel Tampa Riverwalk in Tampa, FL	Alan Gassman presenting from 8 AM to 8:50 AM ET	REGISTER HERE
10/24/2019	Learning at Lunch Webinar Series	Christopher Denicolo presents: Florida Revocable Trust Debate--Separate, TBE or JEST--What is BEST? from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	REGISTER HERE
10/24/2019	FICPA Florida Gulf Coast University Accounting & Tax Conference at Embassy Suites Fort Myers in Estero, FL	Alan Gassman presenting	REGISTER HERE
10/31/2019	Learning at Lunch Webinar Series	Barry Flagg presents: Should Irrevocable Life Insurance Trusts (ILITs) be domiciled in NY? from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	REGISTER HERE

Date	Event	Details	Information
11/7/2019	Learning at Lunch Webinar Series	Michael Lehmann presents: Noncash Charitable Giving - Part 1 from 12:30 PM to 1 PM ET (Moderated by Ken Crotty)	REGISTER HERE
11/7/2019	FICPA University of Florida Accounting Conference at Hilton U of F in Gainesville, FL	Alan Gassman presents: Creative Planning and Traps for the Unwary Under Section 199A from 9:35AM to 10:25 AM ET	REGISTER HERE
11/10/2019 through 11/15/2019	Maui Mastermind Wealth Summit at The Fairmont Orchid in The Big Island, HI	Alan Gassman presents: Important Qualities of Clients who Hit Multiple Grand Slams AND How to Avoid Legal Entanglements that can Ruin the Best of Plans and Intentions from TBD to TBD	REGISTER HERE
11/14/2019	Learning at Lunch Webinar Series	Michael Lehmann presents: Noncash Charitable Giving - Part 2 from 12:30 PM to 1 PM ET (Moderated by Ken Crotty)	REGISTER HERE
11/14/2019	Maui Mastermind Wealth Summit at The Fairmont Orchid in The Big Island, HI	Alan Gassman presents: Estate Planning and Legal Considerations for Life Post Exit: What do you need to set up today for life post exit? from TBD to TBD	REGISTER HERE
11/21/2019	Learning at Lunch Webinar Series	Alan Gassman presents: Planning for Florida Dental Practices and Their Owners from 12:30 PM to 1 PM ET	REGISTER HERE
12/5/2019	Learning at Lunch Webinar Series	Barry Flagg presents: What To Ask For To be Able to Actually “Read” A Life Insurance Illustration? from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	REGISTER HERE

Date	Event	Details	Information
12/7/2019	Mote Vascular Foundation Symposium at TBD	Alan Gassman presents: Estate, Medical Practice, Retirement, Tax, Insurance, and Buy/Sell Planning – The Earlier You Start the Sooner You Will Be Secure from 10:20 AM to 11:50 AM ET	Registration available soon
12/12/2019	Learning at Lunch Webinar Series	Barry Flagg presents: Indexed Universal Life – Who Says Hedge Funds Are Only For the Rich? from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	REGISTER HERE
12/19/2019	Learning at Lunch Webinar Series	Alan Gassman presents: Success Tips for First Year Lawyers (and all other professionals) - Part 1 from 12:30 PM to 1 PM ET	REGISTER HERE
12/26/2019	Learning at Lunch Webinar Series	Alan Gassman presents: Success Tips for First Year Lawyers (and all other professionals) - Part 2 from 12:30 PM to 1 PM ET	REGISTER HERE
1/9/2020	Learning at Lunch Webinar Series	David Finkel presents: The Ten Must-Follow Rules to Leverage Your Personal Assistant to Make Your Life More Fun, Profitable, and Enjoyable from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	REGISTER HERE
1/16/2020	Learning at Lunch Webinar Series	David Howell and Larry Rybka present: How to Retire in the Magical Retirement Income Castle in the Clouds from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	REGISTER HERE

Date	Event	Details	Information
1/21/2020	Community Foundation of Sarasota County - Distinguished Speaker Series at TBD	Alan Gassman presents: Creditor and Trust Planning Strategies You May Not Know About from TBD to TBD	REGISTER HERE
1/23/2020	Learning at Lunch Webinar Series	Christopher Denicolo presents: Explaining the Installment Sale to a Defective Trust from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	REGISTER HERE
1/30/2020	Learning at Lunch Webinar Series	Alan Gassman presents: The Biggest Mistakes Physicians Make As Owners and Non-Owners in Medical Practices from 12:30 PM to 1 PM ET	REGISTER HERE
2/6/2020	All Children's Estate, Tax, Legal & Financial Planning Seminar	Please attend to support this great event	REGISTER HERE
2/12/2020 through 2/14/2020	The Florida Tax Institute at Marriott Waterside Tampa in Tampa, FL	Please visit our display table in the Exhibit Hall for a free book	REGISTER HERE
5/1/2020	USF Resident Intern meeting at Tampa General Hospital in Tampa, FL	Alan Gassman presents: "Contract Negotiations" from 4 PM to 5 PM ET	MORE INFORMATION
5/15/2020	USF Resident Intern meeting at Tampa General Hospital in Tampa, FL	Alan Gassman presents: "Contract Negotiations" from 4 PM to 5 PM ET	MORE INFORMATION

Date	Event	Details	Information
5/29/2020	USF Resident Intern meeting at Tampa General Hospital in Tampa, FL	Alan Gassman presents: "Contract Negotiations" from 4 PM to 5 PM ET	MORE INFORMATION
6/5/2020	USF Resident Intern meeting at Tampa General Hospital in Tampa, FL	Alan Gassman presents: "Contract Negotiations" from 4 PM to 5 PM ET	MORE INFORMATION

We welcome contributions for future Thursday Report topics. If you are interested in making a contribution as a guest writer, please email Alan at agassman@gassmanpa.com

This report and other Thursday Reports can be found on our website at www.gassmanlaw.com

Gassman, Crotty & Denicolo, P.A.

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