GASSMAN CROTTY & DENICOLO, P.A.
ATTORNEYS AT LAW

THE MICKEY MOUSE COURTHOUSE REPORT

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Edited by: Ken Crotty

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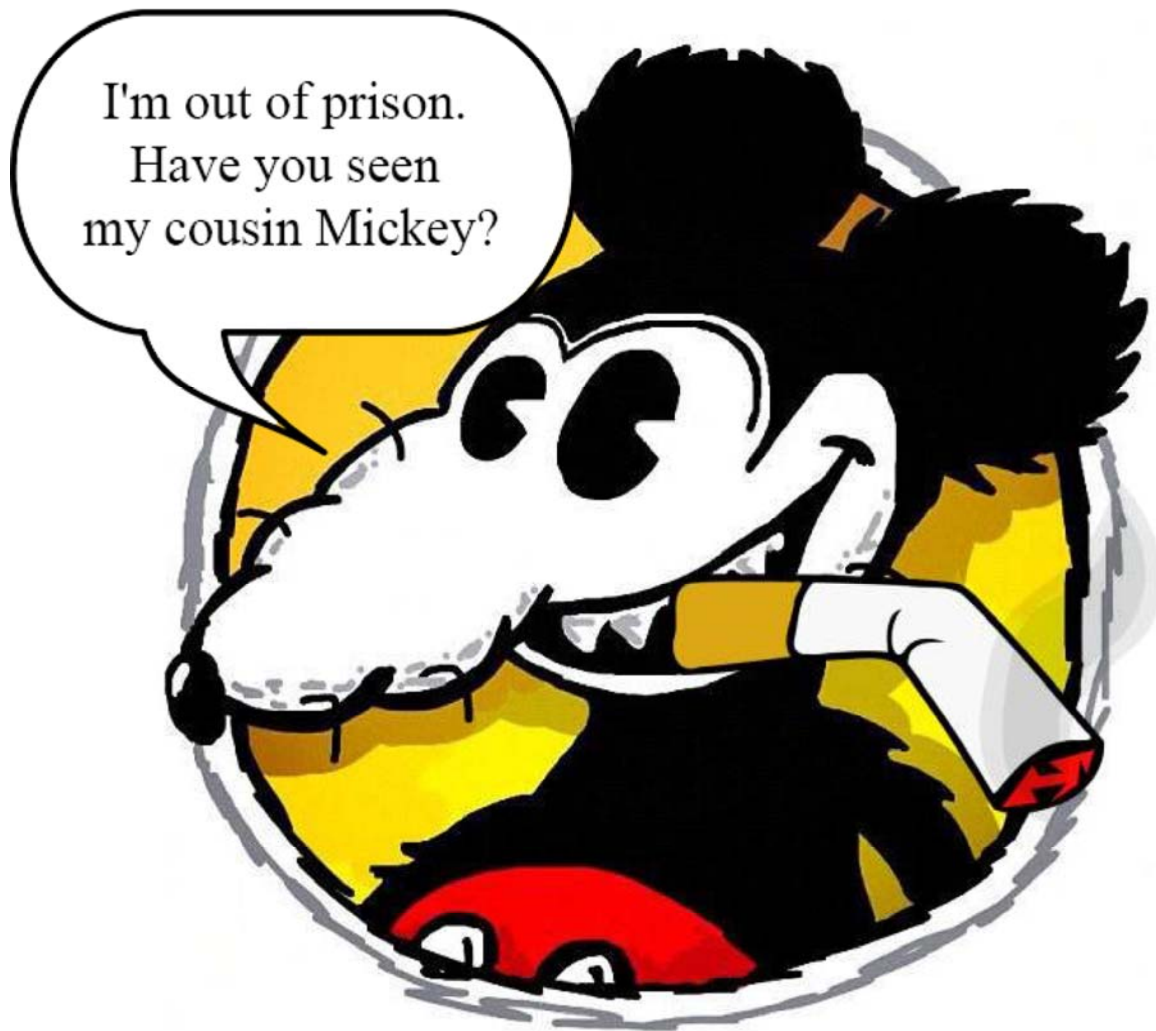

Famous P.J. O'Rourke Disney Quotes

- “Walt is dead. And, after a couple of hours at Epcot, you’ll wish you were, too.” - P.J. O’Rourke

- “With Epcot Center, the Disney corporation has accomplished something I didn’t think possible in today’s world. They have created a land of make-believe that’s worse than regular life.” - P.J. O’Rourke

Quotes

- "Whatever you do, do it well. Do it so well that when people see you do it they will want to come back and see you do it again and they will want to bring others and show

them how well you do what you do." - Walt Disney

- “What I am trying to get across to you; is please take of yourselves and those that you love; because that is what we are here for, that's all we got, and that is all we can take with us.” - Stevie Ray Vaughan
- “I not only use all the brains that I have, but all I can borrow.” - Woodrow Wilson
- “I think I’ve been a great citizen.” - O.J. Simpson

On this Day in History

- **1955: “Mickey Mouse Club” debuts on ABC.**
- 1789: Nov. 26, 1789 was declared a day of Thanksgiving by President George Washington.
- 1913: President Woodrow Wilson signed H.R. 3321 into law, which included the Revenue Act of 1913 and a Federal Income Tax of 1%.
- 1935: Italy invaded Ethiopia, initiating the Second Italo-Ethiopian war.
- 1954: American musician, Stevie Ray Vaughan, and civil rights activist, Al Sharpton, were born.
- 1992: Michelle and Barack Obama became husband and wife.
- 1995: O.J. Simpson was found not guilty of killing his former wife, Nicole Simpson, and her friend, Ronald Goldman.
- 2008: Thirteen years after being acquitted of murdering his ex-wife, O.J. Simpson was found guilty of kidnapping and armed robbery.

199(A) Little Known Rules That Advisors Need to Know - Part 2

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

<u>Executive Summary:</u>

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.

When Trades or Businesses are Considered "Separable"

When both SSTB and non SSTB activities are conducted under one entity it is important to meet the "Separable Trade or Business" requirements under the Regulations or all of an entity's income may be considered to be SSTB income.

> The Section 199A Regulations point to regulations issued long ago under Internal Revenue Code Section 446 which provide that no trade or business will be considered separate unless a complete and "separable" set of books and records can be maintained. Under Section 446 of the Internal Revenue Code, a taxpayer may use different accounting methods for separate Trades of Businesses, such as using the cash method of accounting for one division and the accrual for another.
>
> In some cases, it can be fairly easy to determine whether the IRS will consider two businesses as separate and distinct if the two trades or business are in completely different lines of business. For example, in the 1928 case of Stern, the petitioners were partners under the firm name of Stern Brothers that carried on two businesses – one business operated two retail stores and the other business bought and sold coal lands. The Board of Tax Appeals held that the businesses were separate and distinct by reasoning that the two businesses were "wholly different in character."
>
> The determination can be much more difficult, however, when the businesses are similar or different divisions operate primarily for the purposes of transactions between the divisions.
>
> In *Peterson Produce Co.,* the District Court determined that the corporate taxpayer was unsuccessful in attempting to use different accounting methods for different divisions of the corporation. The taxpayer used the accrual method for the feed and hatchery divisions of the poultry corporation and the cash method for the broiler division. The District Court reasoned that the broiler division was not a separate and distinct business from the feed and hatchery divisions. In this case, the feed and hatchery divisions operated almost solely to transfer feed and young chickens to the broiler division at cost. Although the general ledger accounts of the three divisions could be separated, the original and daily entries could not be physically separated. Therefore, the court determined that the separate books and records kept by the taxpayer were not adequate. The Court held that the three divisions were function ally integrated.
>
> On the other hand, the Tax Court came to the opposite conclusion in Rocco, Inc. even

though the corporation in Rocco was essentially trying to accomplish the same objective as the corporation in Peterson Produce. In Rocco, the corporate taxpayer created a distinct new corporation to run the turkey broiler division completely separate from the chicken broiler division. Even though the two divisions transacted with each other, the Tax Court determined that the turkey broiler division and the chicken broiler division were distinct and separate because each business was conducted through a separate and individual entity.

These decisions have lead tax and legal professionals to conclude that entity structure can be very important in determining whether a particular activity can be included as part of a trade or business and multiple entities can result in multiple trades or businesses.

In an April 11, 2019 Webinar, Attorney and Author Steve Gorin had some practical insights on the matter. As stated by Mr. Gorin:

"As a matter of sound bookkeeping and sound business practices, I highly recommend keeping a separate set of books and records for each business. I would also suggest having separate bank accounts for each separate business to help you track your accounting for each business… You have to be able to show that these really are separate businesses – they may have some interdependencies, but they are being run separately."

Mr. Gorin also provided the following practical example: "If I were going to try to establish my title company as a separate business [from my law firm], I would advertise to the real estate community the ability of my separate title company to provide services for their real estate needs that are completely independent of my law firm services."

"A Principal Purpose" Defined

Treasury Regulation 1.199A-6(d)(3)(vii) provides that "a trust formed or funded with a principal purpose of avoiding, or using more than one, threshold amount for purposes of calculating the deduction under Section 199A will not be respected as a separate trust entity for purposes of determining the threshold amount for purposes of Section 199A."

The term "a principal purpose" is an interesting choice of words, since the word "a" denotes that there can be multiple "principal purposes," while the word "principal" indicates that this would have to be the main purpose, or that there might be equally ranked "principal purposes."

These words have been used in other Internal Revenue Code Sections and Federal Statutes, and have been the subject of decisions by the U.S. Supreme Court, the Tax Court, and multiple Circuit Courts of Appeals.

The majority of case law and regulations define this term as being singular, meaning there can be only one principal purpose. Therefore, "if the purpose to evade or avoid Federal income tax exceeds in importance any other purpose, it is the principal purpose." In determining the purpose, the "entire circumstances in which the transaction or course of conduct occurred, in connection with the tax result," must be considered. In cases where multiple purposes are apparent, it might be "appropriate to aggregate all tax avoidance purposes and compare them with the aggregate business purposes for the acquisition."

An excellent article which reviews these decisions and the references cited has caused us to conclude that the IRS would have to prove that no other purpose was more important than the objective of avoiding tax under Code Section 199A in order for the "a principal purpose" test to be met.

Once the IRS makes the determination that an acquisition was made with the principal purpose to evade tax, the determination is presumed correct and the burden then shifts to the taxpayer to show otherwise.

For example, the vast majority of estate and trust planning performed by the authors will involve trusts that will benefit descendants and never be paid outright to them. Many of these trusts are formed after the death of a parent, for the principal purpose of providing lifetime creditor, estate tax, divorce and unwise decision protection for a child and the descendants of a child, which has nothing to do with Section 199A income tax savings.

Quite often, clients form such trusts during their lifetime to facilitate avoidance of federal estate tax, and to protect assets going to descendants from potential future creditors of the parent.

These trusts have been formed routinely by the authors for decades, and the authors will not stop forming these trusts, even if income paid to the trusts may not qualify for tax savings under Code Section 199A.

But, if and when such a trust is formed, if an "incidental benefit" is to save income taxes under Section 199A, would that be "a principal purpose?"

The answer to this question will be based upon the facts and circumstances of each situation, but the fact that a trust is formed and may save tax money under Section 199A will not make it automatically considered to have been established for "a principal purpose" of avoiding such tax.

Comment:

The implications of all of this to professional advisers can be daunting. In some instances, modeling the various options may be the only way to determine what the actual impact of various decisions might be. Practitioners should be cautious about

providing conclusions to clients with specificity without the opportunity to perform the appropriate analysis. The costs of the level of detailed analysis that might be necessary in many instances will often be material.

NON-CHARITABLE FOUNDATIONS – THE NEW KID ON THE BLOCK

By: Alan Gassman

Californians who may wish to avoid the $800 per year tax imposed on California residents, and those who own a limited liability company outside of California, should be interested to know that it is possible that an ownership interest in a Foundation may not trigger the $800 per year tax, as we understand it.

New Hampshire's New Foundation Act gives advisors the option to use foundations to avoid state tax and receive the same favorable tax treatment as trusts. While New Hampshire's intention is that New Hampshire non-charitable foundations will be treated as trusts for both federal and state income tax purposes, it is unclear whether other authorities will follow their intention. How these foundations will be treated at the federal level remains a question.

Treasury Regulation 3011.7701-4 differentiates ordinary trusts from business trusts. For federal tax purposes, if the trust was created to carry out a profit-making business that would normally have been conducted through a partnership or corporation, then the arrangement would be taxable as a business entity and characterized as a business trust. Thus, how the foundation is structured might be of particular importance if the IRS or another state desires to tax the foundation.

In addition, state court judges who might conclude that the law of the state where a debtor resides should be controlling to allow a creditor to receive more than a charging order interest against part-ownership of a limited liability company may be quite happy to learn that a court residing outside of a state that recognizes Foundations may be reluctant to conclude that it has a right to impose its own laws against the Foundation, when the state has no laws whatsoever that relate to Foundations.

Alexander's article correctly points out that the income tax treatment of a Foundation might result in taxation as a trust, a partnership, or even a C-corporation, but a properly drafted Foundation document package will, in the vast majority of circumstances, allow the Foundation to be taxed as a "Defective Grantor Trust" or a partnership, so that all income and deductions from the Foundation assets can be reported on the Form 1040 tax return of the Grantor of the Foundation, notwithstanding whether the Grantor is a beneficiary thereof.

Further, "exception creditors" who might be able to reach into an irrevocable trust, such as an ex-spouse or a dependent of a trust beneficiary, or the creditor of a trust contributor who might be a beneficiary of a trust may not be able to reach into a Foundation, given that state law strictly prohibits creditors from reaching into a Foundation, assuming that the fraudulent

transfer statutes do not apply.

Many families have formed Nevada asset protection trusts, and have had the Nevada Trust Company or individual trustee own an interest in a limited liability company which holds most of the assets under the arrangement, under the control of a manager or officer of the LLC, so that the trustee of the asset protection trust is not able to steal assets or exert management control from the Founder / Contributor.

This can be facilitated with the use of a Foundation, in lieu of a limited liability company, so that the appointed manager and Trust Protectors do not have the same degree of fiduciary duty that would typically be owed to the beneficiary of a trust, and whereby the trustee of a beneficiary of the Foundation would not be able to attach an ownership interest or obtain a charging order as long as the Foundation documents do not give the beneficiary the ability to force a distribution, to transfer an ownership interest, or to even request an accounting.

It is refreshing to hear of a state law based entity that simply requires entity officers and directors to act in "good faith," without having any obligation to specifically account for trust assets or distributions, or to in any way be beholden to an unruly or unappreciative beneficiary who might assert "legal rights" in a way that would be inconsistent with the Founder's intentions.

The Foundation governing documents may be drafted to facilitate treatment as a partnership or a trust, and can avoid offshore trust registration and reporting. In addition, as indicated by Mr. Bove, a Foundation formed in a civil law jurisdiction, such as the Bahamas, Switzerland, Liechtenstein, or Panama may have no or little risk of having a court "interpret the law" in order to require a Foundation manager to have any equitable duty to a beneficiary or to have to be reformed to meet standards that are not intended.

SELF-EMPLOYMENT TAX RULES

By: Alan Gassman and Brandon Ketron

When is an owner of an LLC taxed as a partnership considered to be a "limited partner" and thus immune from Self-Employment taxes?

While the Proposed Regulations that provide exceptions from the imposition of Self-Employment taxes can generally be read to indicate that income received by a "limited partner" in a legitimate state-formed limited partnership will not be subject to Self-Employment taxes, this will not always be the case when there is a membership interest in an LLC that generally replicates a state law limited partnership.

As a general rule, a member of an LLC who has voting rights or is actively involved with the LLC's business or endeavors can expect to be responsible for up to 16.2% of Self-Employment taxes, which are generally based upon 15.3% of the first $132,900 of income

($128,400 in 2018), 2.9% on income exceeding that, and an additional 0.9% to the extent that Self-Employment income exceeds $250,000 for taxpayers married filing jointly, or $200,000 for single filers. This applies even if the active or voting member has a minority interest in the LLC.

An owner in an LLC is considered to be a limited partner, and thus immune from Self-Employment taxes if all three of the following requirements are met:

1. By reason of state law, the member is not personally liable for debts of or claims against the LLC by reason of being a member.

By contrast, an individual who is a general partner in a normal limited partnership does have liability for excess partnership obligations (except for a Limited Liability Limited Partnership). Personal guarantees or other contractual liabilities do not count for purposes of this test. We cannot think of any situation where being the member of an appropriately formed and maintained LLC would cause this "personal liability" requirement to not be met.

2. The member does not have any authority to contract on behalf of the partnership.

For example, if the member was a managing member, or named Manager of the LLC, then the member would have the authority to contract on behalf of the partnership, and would therefore not be eligible for this exception. If a member has a certain portion of ownership as a voting member and a certain portion as a non-voting member, then bifurcation may apply, as described below, and in such event the non-voting member interest requirement may be met with respect to income received that is attributable to the non-voting member interest.

3. The member does not participate in the trade or business for more than 500 hours during the year.

It is noteworthy that participation by a spouse is not aggregated with the member's participation for purposes of determining whether Self-Employment taxes apply. In determining whether a member is passive under Section 469 and subject to the Net Investment Income Tax, however, participation by a spouse is aggregated with a member's participation. It is therefore possible to be "active" for purposes of avoiding the Net Investment Income Tax, but "passive" for purposes of avoiding Self-Employment taxes by having the non-working spouse be the owner of the entity.

For example, Jane is a member of an LLC and meets the above requirements to be considered a "limited partner" not subject to Self-Employment taxes. The LLC employs Bob, Jane's husband, and Bob participates more than 500 hours in the business of the LLC. Bob's participation will not be attributed to Jane for purposes of determining whether Jane meets the third requirement above, so Jane will not be subject to Self-Employment Taxes. Jane can aggregate Bob's participation in the LLC

so that the income will not be considered passive income under Section 469 and thus not subject to the Net Investment Income Tax.

As mentioned in Requirement 2 above, if the individual holds both a voting interest and a non-voting interest, and cannot satisfy the above requirements, then the member may be able to bifurcate these interests so that the voting interest would be subject to Self-Employment taxes, and the non-voting interest would be exempt from Self-Employment taxes.

In order to bifurcate, the individual must have a non-voting membership interest in the limited liability company that is held under the same terms as other members of the company who have a substantial non-voting interest. Bifurcation can only occur if these other members are just like limited partners in a Limited Partnership, meaning that they cannot have personal liability, contractual authority, or more than 500 hours of participation in the business as described in 1 through 3 above.

For purposes of determining whether another member or members have a "substantial" non-voting interest, this test is based upon the relevant facts and circumstances, but ownership of 20% or more of a specific class of interest will always be considered substantial.

For example, if the managing member of the LLC owns a 1% voting membership interest and is the sole manager of the company, and also owns a 59% non-voting membership interest, and the other members of the LLC are non-voting members that have no management authority and do not spend more than 500 hours of participation in the business during the year, then the managing member may treat his 1% voting membership interest as subject to Self-Employment taxes, while the other 59% non-voting interest would not be reported as being subject to Self-Employment taxes.

There has been no case law or Treasury decision that confirms the above example, which is solely based upon the 1997 Proposed Regulations under Section 1.1402(a)-2(h)(1) that have not been finalized or withdrawn, or even commented on since 1998.

According to the IRS, the intent behind the Proposed Regulations is that an individual's return on capital invested in a limited liability company or partnership should be excluded from Self-Employment taxes, and the income attributable to the services provided to the limited liability company on behalf of the member should be subject to Self-Employment taxes.

We have enclosed the BNA portfolio pages that discuss this in more detail, as well as a chart that we have used in presentations that reviews these rules in more detail.

We were unable to find anything specifically related to a real estate developer treating a portion of the income from an LLC as subject to Self-Employment taxes, and another portion as not subject to Self-Employment taxes.

Another idea mentioned in the BNA portfolio is that non-grantor trusts are never subject to Self-Employment taxes, so one idea may be to transfer a portion of the interest to a non-

grantor trust, which may then transfer the income received out to one or more beneficiaries of the trust.

When is an owner of an LLC taxed as a partnership subject to the 3.8% Net Investment Income Tax (aka Medicare Tax)?

The 3.8% Net Investment Income Tax (NIIT) generally applies to passive income received from a trade or

Passive income is defined under Internal Revenue Code Section 469(c)(1) as income from a trade or business in which the taxpayer does not materially participate.

A taxpayer is treated as a material participant and thus not subject to the NIIT if any one of the following seven tests are satisfied (taking into account the efforts and activities of both the taxpayer and the taxpayer's spouse):

1. Taxpayer participated for more than 500 hours during the tax year.

2. The taxpayer's participation constitutes "substantially all" of the participation in an "active activity" by all individuals during the tax year.

3. The taxpayer participated for more than 100 hours during the tax year and no other individual participated more than the taxpayer's hours in the activity during the tax year.

4. Treated as a material participant in all Significant Participation Activities (SPAs) if the taxpayer's aggregate participation in the SPAs exceeds 500 hours during the tax year. SPAs are defined as activities in which the taxpayer would not be a material participant under any of the other six (6) tests and the taxpayer spends more than 100 hours in during the tax year.

5. The taxpayer was a material participant in five of the last ten tax years.

6. The activity is a personal service activity (health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting) and the taxpayer was a material participant in three of the last six years.

7. Based on all the facts and circumstances, the individual participates in the activity on a regular, continuous, and substantial basis during the tax year.

Please note that under the employment tax discussion above, one spouse can own a disregarded operational LLC, or an interest in an entity taxed as a partnership, while his or her spouse can be active with respect to the applicable business or investments to get the best of both worlds - the owner spouse will not be subject to employment taxes, and the efforts of the non-owner spouse can result in relief from the Medicare tax.

Rental income is treated as being passive "per se" unless the two below enumerated thresholds are met and special rules apply to determine if a taxpayer materially participates in a rental activity. Similar to the above, if the taxpayer, or the taxpayer's spouse, is a material participant, then the income is not subject to the NIIT. In order to be considered a material participant in a rental activity, the taxpayer must be considered a "real estate professional" meeting the following requirements:

1. More than one-half of the personal services performed by the taxpayer in a trade or business are performed in real property trade or businesses in which the taxpayer materially participates, and

2. The taxpayer performs more than 750 hours of service during the year in real property trades or businesses in which the taxpayer materially participates.

In applying the above tests, a spouse's participation can also be aggregated with the taxpayers to determine if the tests are met.

There is also a special exception that applies for "self-charged rent." If rental income is received from a trade or business in which the taxpayer owns an interest and the taxpayer materially participates in the trade or business paying the rent, the rental income is not considered passive, and thus not subject to the NIIT.

A PLANNING OPPORTUNITY FOR REPORTABLE GIFTS MADE IN 2018 THAT HAVE DECREASED IN VALUE

By: Ken Crotty

For individuals who made reportable gifts in 2018, the Gift Tax Return reporting such gift needs to be filed by October 15, assuming that the taxpayer filed an extension of time to file the return. While the value of the gift which needs to be reported is the value of the asset at the time the gift is made, clients have flexibility with respect to the amount of generation skipping transfer tax exemption ("GSTT Exemption") that is allocated to gifts which are indirect skips. This flexibility provides a planning opportunity to save GSTT Exemption if the value of the gift has gone down since the time the gift was made.

Clients are familiar with the estate tax. Currently, clients have an estate tax exemption of $11,400,000 per client, less any lifetime reportable gifts that were made. This exemption can be increased if the client has a Deceased Spousal Unused Exclusion ("DSUE").

When a spouse dies with assets that do not exceed the estate tax exemption, the surviving spouse has the option of filing an Estate Tax Return to elect portability. This allows the surviving spouse to increase his or her estate tax exemption by any amounts that were not used by a pre-deceased spouse assuming that certain conditions are met. However, if the

remaining estate tax exemption of the first dying spouse is ported to the client, the client does not have the ability to port any of the first dying spouse's unused generation skipping transfer tax exemption. As a result, the client may have significantly less GST exemption available to him or her then the client does estate tax exemption.

In addition to the estate tax exemption, clients also have a GSTT Exemption. This GSTT Exemption helps to prevent gifts from being subject to generation skipping transfer tax, which would otherwise be owed if the client makes a gift directly to grandchildren or more remote descendant. Generation skipping transfer tax could also be owed if the client makes a gift to a trust that is only for the benefit of grandchildren or more remote descendants. Further, generation skipping transfer tax could be due if the client (1) makes a gift to a trust, (2) generation skipping transfer tax exemption is not allocated to the gift, and (3) a distribution is made from the trust to the grandchild or more remote descendants. At the time the distribution is made, the amount of the distribution would be subject to tax.

For purposes of this discussion, any reference to a grandchild assumes that the child, who is the grandchild's parent, is still alive. In the event that a child predeceases a parent and has left children, the child's children (who are the grandchildren of the client) would then be treated as children of the client for the purposes of determining generation skipping transfer tax exposure after the death of the client's child.

An indirect skip is a gift made to a "GST Trust." In our practice, almost all of the trusts that we draft for clients and trusts which have been established for clients by other attorneys qualify as GST Trusts. The technical requirements for qualifying as a GST Trust are discussed in the footnote at the end of this article.

Assuming that the trust is a GST Trust, the default rule of the Internal Revenue Code is that the client's GSTT Exemption is automatically allocated to the gift at the time that the gift is made. To the extent that the client has exemption available, the GSTT Exemption is allocated so that the gift will be wholly exempt from generation skipping transfer tax.

If the value of the gift has gone down from the time that the gift was made until the time when a timely filed gift tax return is filed, the client has the ability to opt out of the automatic allocation of GSTT Exemption to the gift. If the client files a timely filed gift tax return, the client can elect to not have the automatic allocation of GSTT Exemption occur. As a result, no GSTT Exemption would be allocated to the gift when it was made or on the timely filed return.

This option should only be considered for gifts to trusts that are indirect skips. If the gift is a direct skip, then GSTT Exemption would need to be allocated otherwise tax would be due at the time of the gift.

However, for indirect skips made to GST trusts, this ability to not allocate exemption provides a planning opportunity. The client needs to be aware though that if a distribution is made from the GST Trust prior to exemption being allocated to a skip person, such as a grandchild or more remote descendant, then generation skipping transfer tax would be due

when the distribution is made.

If the client has made a gift of an asset that has gone down in value when the gift tax return is filed or if the client thinks that the value of the gift will come down in value before a distribution is made to a skip person, then the client can opt to prevent the automatic allocation of GSTT Exemption occurring. The client can then file a second gift tax return at a later date allocating GSTT Exemption to the gift. When the gift tax return is filed, the client can allocate GSTT Exemption equal to the value of the asset as of the first of the month when the return is filed.

By means of example, the client could file a gift tax return on or before October 15, 2019 reporting the gift that the client made in 2018. Assuming the client opted out of the automatic allocation, then the client could file a gift tax return in November allocating GSTT Exemption to the gift. If the gift tax return was filed in November, the client could use the November 1, 2019 value of the assets that were gifted as the value for the purposes of allocating GSTT Exemption.

For example, if the client made a gift of $1,000,000 worth of stock on January 1, 2018 and the stock is currently worth $800,000, the client may want to opt out of the automatic allocation. Assuming a timely gift tax return is filed before October 15th opting out of this allocation, the client could then file a gift tax return in November. If we further assume that the stock decreased to $775,000 as of November 1st, the client would file a gift tax return in November allocating $775,000 worth of GSTT Exemption to the gift.

By timely filing a gift tax return and opting out of the automatic allocation and then filing a second gift tax return, the taxpayer would save $225,000 worth of GST exemption ($1,000,000 - $775,000 = $225,000) which could be allocated to subsequent transfers. As a result of this late allocation, the gift to the trust would be wholly exempt from GST tax. After the allocation occurs, distributions could be made to skip persons from the trust with no adverse tax affect.

This could be especially relevant for a client that has a DSUE. As discussed above, a client who is a surviving spouse may have significantly less GSTT Exemption available than gift tax exemption. Saving GSTT Exemption would be even more important for such a client.

In addition, if a client makes gifts to trusts using annual exclusions, most of these gifts will not qualify for the generation skipping transfer tax annual exclusion. As a result, these gifts would utilize some of the client's GSTT Exemption even if the client's gift tax exemption was not used. This would again cause a disconnect between the value of the client's estate tax exemption and GSTT Exemption, with the client's GSTT Exemption being less than the client's gift tax exemption. As a result, this technique could help clients to shelter and save some of their GST exemption for future use.

For Finkel's Followers

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!*

The 3 Things You Should Try Before Declaring E-Mail Bankruptcy.

The average businessperson receives 88 email messages a day.

You arrive in the office at 8:00AM ready to work. Your to-do list is full of high value tasks that will help your business scale and grow. You fire up your laptop and the all too familiar "ping" of your inbox serenades you...drawing you into the depths of mundane tasks and low level activities. The next thing you know, it's noon and your to-do list is still there untouched.

For most business owners email is a massive problem. In a survey conducted by my company, Maui Mastermind, out of 353 United States business owners, 57 percent cited email as their single biggest time waste.

The Radicati Group's "Email Statistics Report, 2015-2019" shared that the average businessperson receives 88 email messages a day. Now, if each email takes two minutes to read and respond to that would take almost three hours out of your work day! Imagine what it would look like if each email took five or ten minutes to respond to.

It's easy to lose an entire day in your inbox with little or no progress on the high level tasks.

So how do you take back your inbox?

Declare Email Bankruptcy

This first suggestion is not one that I personally suggest. While some business executives swear by the freeing nature of simply deleting all the emails in their inbox and starting fresh, it doesn't really fix the problem and you will find yourself having to declare "bankruptcy" every few months just to stay on top.

I instead suggest a three part system to keep on top of your emails.

Set Boundaries

For me, every Tuesday, Thursday and Friday I refrain from checking email until at least 11am, giving me a solid 2-3 hours to get much higher value work done. I put this time into my calendar as an appointment so that the rest of my team knows what to expect. If you do the same, you will want to coach your team about what you are doing and why, asking for their support to help you produce more for the company.

Looking at the stats from our business coaching clients, odds are that if you check email early, you'll have a high proportion of your days derailed by urgent, but low value fires that could have waited 1-3 hours for you to handle.

Turn Your Inbox Over To Your Assistant

Another trick that I use to keep on top of my inbox is to hand over the reigns to my personal assistant. She is able to go through my box and handle meeting requests and admin questions, as well as handling

spam emails or archiving emails that require no action or review on my part. That way, the eighty eight emails a day end up being a more manageable five or ten by the time she is done.

Develop A System

And lastly, my most powerful weapon against declaring “email bankruptcy” is to use a system of importance in all team correspondence. At Maui, we use the "1, 2, 3" subject line system. Here's how it works. Simply start off your subject line with a 1, 2, or 3.

- "1" means this is time sensitive and important email that you need to take action on right
- "2" means that you have to take some action, but it isn't an urgent/important matter. Handle it in a reasonable time frame.
- "3" means no action is required on the part of the recipient, simply scan the email for content when convenient.

This allows you to scan your inbox quickly to know which emails need your immediate attention and which ones can wait till your down time.

Humor

When you wish upon a Thursday Report,

It's as if Gassman and Co. have come to support.

For the information in each comes very dense

The help to you [hopefully] becomes immense.

Although we try at humor and fun

We hope with this report, you are not done.

If we fail at our jokes it is not of surprise

That's what Mickey Mouse is for, or, burgers and fries.

Today we found out that Mortimer Mouse was the original name Walt Disney proposed

His wife said no and with that the case was closed.

It was with Mickey where cartoon characters were first able to talk

His first words were "Hot dog!" and that should come as no shock.

For Mickey loved dogs, and Pluto was no exception

If you've ever been to Disney you've probably experienced Mickey & Minnie's cordial reception.

For this poem we thank our esteemed law clerk named Max

We hope this report not only helps but also impacts.

- If your new years resolution was to go to Pluto and your outlook on 2019 is beginning to get Gloomy, do not fret, you still have 80 days left to get it done. Although your Minnie van probably can't get you there, Elon Musk's Goofy "starship" can. Considering the fact that the United State's last trip to pluto took 9.5 years, we'd advise you to rethink your resolution before spending that much time in a Tiny stainless-steel cylinder. If space doesn't give you the Spooks like it does to us, just make sure your estate plan is in order before liftoff so your Dustibones are taken care of when you return.
- Why did Mickey Mouse get hit with a snowball? Because Donald ducked.
- Why did Mickey Mouse take a trip to space? He wanted to find Pluto!
- What did Daisy Duck say when she bought lip gloss? Put it on my bill.
- How does Mickey feel when Minnie is mad at him? Mousereable.

Upcoming Events

Recent Updates

Complimentary Learning at Lunch Webinar Series

Date	Event	Details	Information
10/8/2019	Learning at Lunch Webinar Series	Srikumar Rao presents: *Dealing with Challenges Ethically - Part 2* (Moderated by Alan Gassman) from 12:30 PM to 1 PM ET	REGISTER HERE
		Jonathan Blattmachr	

10/10/2019	Learning at Lunch Webinar Series	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
10/16/2019	NAPFA Virtual Learning Webinar	Ken Crotty presents: *Reasons to Use a Revocable Trust-Based Estate Plan, and the Pitfalls of Estate Planning* from 3 PM to 4 PM ET	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
10/22/2019	Florida Bar Tax Section CLE at University of Miami Law School in Miami, FL	Alan Gassman and Leslie Share present: *Advanced Asset Protection Workshop* from 1:30 PM to 5:30 PM ET	REGISTER HERE
10/24/2019	FICPA USF Accounting Conference at The Barrymore Hotel Tampa Riverwalk in Tampa, FL	Alan Gassman presenting: *Asset Protection for Professionals* 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	REGISTER HERE
10/24/2019	FICPA Florida Gulf Coast University Accounting & Tax Conference at	Alan Gassman presenting: *Creative Planning with Section 199A* from 2:05	REGISTER HERE

	Embassy Suites Fort Myers in Estero, FL	PM to 2:55 PM ET	
10/31/2019	Leimberg Webinar Services (LISI)	Alan Gassman and William Prescott present: *Why Dentists are Different* from 1 PM to 2:30 PM ET	REGISTER HERE
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*	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?*	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	Barry Flagg presents: *What To Ask For To be Able to Actually "Read" A Life Insurance*	REGISTER HERE

	Webinar Series	*Illustration?* from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	
12/7/2019	Mote Vascular Foundation Symposium	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
	Community		

1/21/2020	Foundation of Sarasota County - Distinguished Speaker Series	Alan Gassman presents: *Creditor and Trust Planning Strategies You May Not Know About*	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
2/6/2019	Learning at Lunch Webinar Series	John Beck presents: *Don't Be Passive: Passive Rental Losses* from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	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
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
	USF Resident Intern meeting at	Alan Gassman presents: *Contract*	

6/5/2020	Tampa General Hospital in Tampa, FL	*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

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