Issue #279 - Thursday, December 12, 2019

Edited by: John Beck

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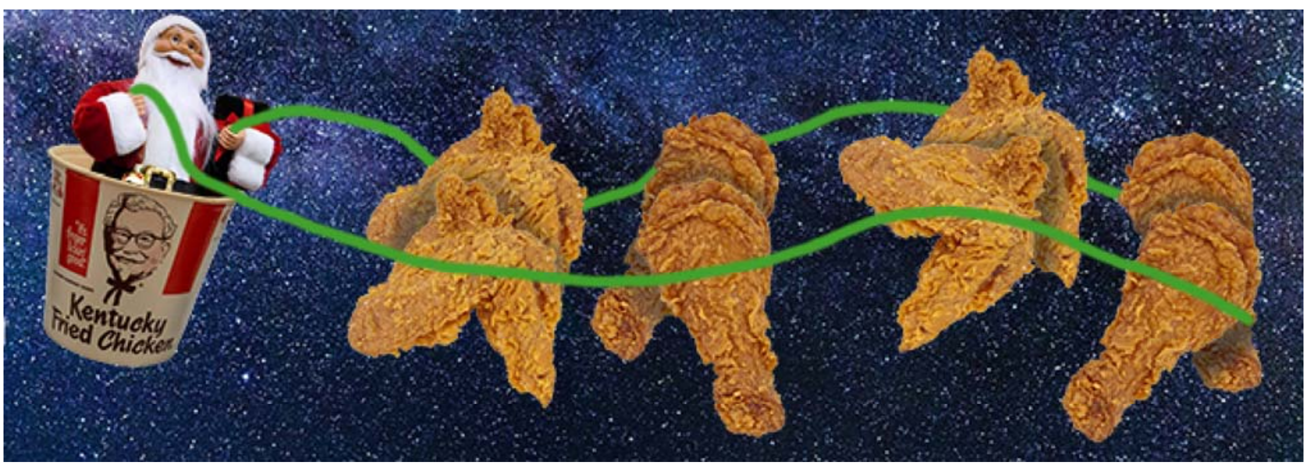


Quotes

Quotes

- “All generalizations are false, including this one.” **- Mark Twain**
- “I stopped believing in Santa Claus when I was six. Mother took me to see him in a department store and he asked for my autograph.” - **Shirley Temple**

United States v. Lax - U.S. District Court for the Eastern District of New York makes wife who unknowingly received a fraudulent transfer responsible nevertheless

By: Alan Gassman and Adriana Choi

"A wrong is a wrong, regardless of whether the wrongdoer carries it out on her own initiative or at the request of another."

EXECUTIVE SUMMARY:

Chaim Lax, a diamond merchant who owned diamond companies and millions of dollars of real estate in Brooklyn, died in 2008, apparently owing over $10,000,000 of income taxes and having significant estate tax exposure. The IRS alleged that Chaim, his children and daughter-in-law created four "sham transactions" to shield more than $77 million in assets from being collected. The U.S. District Court for the Eastern District of New York denied a motion by Shaindy to dismiss the government's lawsuit seeking to set aside the transactions as fraudulent conveyances under New York Debtor and Creditor Law and determined that the IRS can pierce the veil of the companies that received transfers intended to avoid creditors to reach her personally as the owner of such companies.

FACTS:

In 2003, Chaim Lax, a well-known New York businessman and philanthropist, created an irrevocable trust, the "Lax Family Trust." The Lax Family Trust named his two children, Moshe Lax and Zlaty Schwartz, as trustees and named his children and grandchildren as beneficiaries. Moshe's wife, Shaindy, was not a beneficiary or trustee of this trust.

Three years later Chaim was diagnosed with stomach cancer. At the time of his diagnosis, Chaim Lax was being audited by the IRS and was aware that he owed a significant amount of income taxes. It is at this time, the Government alleged, that Chaim, his son, Moshe, and his daughter, Zlaty began a series of "sham transactions" designed to shield assets from creditors, including the IRS. These alleged "sham transactions" occurred prior to Chaim's death on November 3, 2008, and also thereafter.
The transactions are broken down into four distinct "schemes" as discussed below and illustrated in the charts that can be found at this link: [Lax](Lax)

Scheme 1

In February of 2007, Chaim conveyed approximately $41.2 million in Brooklyn real estate to an entity called LX Holdings LLC, which was owned by him and Favorable Enterprises LLC, which was in turn owned by an offshore trust, the GAMA Trust, of which Chaim was the sole trustee and beneficiary.

On May 7, 2007, Chaim conveyed his ownership interests in LX Holdings to the Lax Family Trust for purported consideration of a self-cancelling installment note in favor of Chaim. This note provided for payments of $3,887,360 per year and bore interest at 7.24%, which may have qualified this as an arms-length transaction for estate and gift tax purposes, but not for fraudulent transfer purposes, given his short life expectancy. Only two payments became due before Chaim's death, for $3,887,360 each, but it seems from the opinion that Chaim's estate was never paid and never made any efforts to collect these payments.

"The Government alleges that '[t]he transfer described in Scheme 1 ... was not an arm's-length, commercial transfer but Chaim's attempt to pass property to his children in derogation of his creditor's claims, including the IRS.'"[i]

There is no discussion of whether the IRS challenged the SCIN for estate tax purposes, which would be expected after the litigation that occurred in the Davidson[ii] case, which was settled somewhat favorably to the taxpayer several years ago. It is still unknown whether the standard life expectancy tables can be used in determining the interest rate and terms of a SCIN where a taxpayer is unhealthy but has better than a 50% chance to live at the time the note is put into place. The Treasury Regulations permit this for a private annuity sale, as described in the Author's YouTube Musical Video entitled Being For the Benefit of "Mrs" Kite, which can be viewed by clicking here. For a more scholarly treatment see Ken Crotty, Jerry Hesch & Alan Gassman on IRS Puts SCINs in the Sunlight, Will Taxpayers Get Burned?, LISI Estate Planning Newsletter #2147 (September 24, 2013).

Scheme 2

The second scheme involved the funding of 5 LLCs shown as owned by the daughter-in-law, Shaindy, under her maiden name, Chana Weisz, even though she did not contribute to them. These LLCs were funded with over $4.6 million of the Brooklyn real estate that was transferred in Scheme 1, and then one of these LLCs allegedly loaned moneys to the "Scheme 1" LLC, LX Holdings, and it allegedly defaulted on the loan and transferred more real estate as a default payment.

To provide more detail, in 2009 Moshe and Zlaty formed SL Holdings I, LLC; SL Holdings II, LLC; SL Holdings III, LLC; SL Holdings IV, LLC; and SL Holdings V, LLC (collectively the "SL Companies") and capitalized them with funds from the Lax Family Trust and other sources under Moshe's control. Each company's sole member and 100% owner was Chana Weisz (Shaindy).

In October of 2009, one of the SL Companies advanced LX Holdings LLC a line of credit of about $3 million which acted as a loan by the Lax Family Trust to itself since Moshe had financed SL Holdings I with funds from the Trust. LX Holdings then defaulted on the line of credit. After the default, LX Holdings transferred approximately $4.6 million of real property interests (that were conveyed in Scheme 1) to SL Holdings I through a Membership Interest and Stock Transfer Agreement, which was signed by Zlaty on behalf of LX Holdings and countersigned by Shaindy on behalf of SL Holdings I. After receipt, SL Holdings I then split the interests amongst itself and the four other SL holding companies, and none filed tax returns.

Scheme 3

As if the first two Schemes were not enough, Scheme 3 involved conveying interests of one of Chaim's diamond companies. Chaim was the sole owner of a diamond wholesaling business called Dynamic

Diamond Corp. ("DDC"). At the time of his death, his interests in the company (valued at roughly $10 million) were transferred to his Estate.

On February 26, 2010, Moshe and Zlaty changed the name of DDC to "White Coat, Inc." which the Government alleged was an effort to conceal the company's true identity. A week later White Coat, Inc. executed a deed transferring assets to attorney Tracy Klestadt, to hold in trust for payment to creditors. On the same day, Klestadt submitted a motion requesting the entry of an order approving the sale of substantially all of White Coat's assets to Diamond Dynamics (not to be confused with Dynamic Diamond Corp.).[iii] Klestadt was not a defendant in the case, and is not discussed in the opinion.

The New York Supreme Court approved the sale for $3,826,258 in cash and assumption of $3,116,668 of its debts and liabilities. The Government argues that the consideration paid by Diamond Dynamics was "inadequate and based on artificially low valuations."

It may come as no surprise that Diamond Dynamics was owned by Shaindy, but under her prior name of Chana Weisz.

Scheme 4

At the time of Chaim's death, he owned a 50% interest in Madison Avenue Diamonds, LLC valued at more than $21 million which passed to his Estate upon his death. The Government alleges that, "at some point between 2008 and 2012, Moshe caused the Estate to transfer its interest in Madison Avenue Diamonds LLC to SL Holdings I for no consideration."

COMMENT:

Did this really happen, and did these people actually think that they would not be pursued and purloined by the IRS? Apparently so, and it will be interesting to see what other actions and litigation may result from this.

Lawyers and CPAs involved in putting together estate and gift tax avoidance arrangements should be careful to assure that using conventional and appropriate techniques such as SCIN's, private annuities, and sales of discounted LLC and other interests do not result in breach of duties to creditors, and especially with respect to creditors like the IRS, where "evading taxes" is a felony.

One question is whether Shaindy was responsible for paying the amounts that were moved to the companies that she owned, given that there was not proof that she was aware that she was involved in transfers that were "fraudulent" as to creditors.

New York Debtor & Creditor Law ("DCL") states that a fraudulent conveyance occurs either when the conveyance is made with the actual intent "to hinder, delay, or defraud either present or future creditors,"[iv] or, regardless of intent, when the obligation is incurred without fair consideration by "a person who is or will be thereby rendered insolvent."[v] In her motion to dismiss, Shaindy contended that the Government could not seek damages against her personally, and the court took her position seriously, pointing out that while the DCL does not have an express provision for the recovery of money damages, courts have recognized that an implied right of action for damages may exist where the assets fraudulently transferred no longer exist or are no longer in possession by the transferee. The court cited *Stochastic Decisions, Inc. v. DiDomenico* as support of this implied right, which held that money damages may be awarded under the DCL against persons who "participate in the fraudulent transfer of a debtor's property and are transferees of the assets and beneficiaries of the conveyance."[vi] Shaindy argued that she was not the transferee of the conveyances and thus could not be held liable, and that even if the companies that received the assets were liable, the IRS could not pierce the corporate veil to hold her personally responsible.

Her arguments would bolster the strategy of having individuals who might cooperate to receive transfers that may or may not be considered as for the purpose of avoiding creditors to (1) not be aware of the creditor situation and possible fraudulent transfer implications; and (2) set up an LLC or other entity to receive the transfer or engage in the transaction to help protect the individual from having personal liability.

The court noted that New York courts have held a defendant liable for damages if they are *either* a "transferee" or a "beneficiary" of the conveyance. The court found that because Shaindy was the sole owner of the entities that transferred the assets, she was a beneficiary of the conveyances, and the value in her equity interests increased as a result of the transfers and that she thus directly benefitted from the schemes.

And the court's conclusion was well reasoned:

> Perhaps the most compelling argument that Shaindy should not be held personally liable for the Schemes, though not explicitly raised in her motion papers, comes from page 83 of the amended complaint, wherein the Government references (and, apparently, credits) Shaindy's 2014 testimony that she was not "aware" of the existence of any of the SL Companies, other than SL Holdings I. At face value, this suggests that Shaindy may have been deceived by Moshe regarding the transactions that had been carried out under her name; and from this it can be further be argued that she did not act with a sufficiently culpable state of mind to justify the imposition of personal liability.
>
> This argument, however, fails on both the facts and the law. It fails on the law because a mere lack of knowledge of the fraudulent conveyance is not a defense. Rather, DCL §278 exempts from liability only those who are "purchaser[s] for fair consideration without knowledge of the fraud at the time of purchase." DCL §278(1) (emphasis added). Obviously, the proviso that an acquirer of the transferred assets must pay "fair consideration" evinces a clear intent by the statute's drafters that creditors may recover against acquirers who have not paid fair consideration, regardless of their knowledge, *vel non*, of the fraudulent nature of the transfer. And while DCL §278, on its face, only addresses the traditional remedies of rescission and/or attachment, there is no reason why the rule should be different where "rescission is no longer practicable" and money damages are sought. Adelphia, 634 F.3d at 692. If the rule were otherwise, a debtor could easily circumvent the purposes and objectives of the DCL by giving the assets to a friend or relative, keeping them blissfully unaware of the fraud while retaining *de facto* control over the assets (or their proceeds, if the assets are later sold). Here, the Government alleges that the Schemes were effected without fair consideration, a point that Shaindy has not disputed for purposes of this motion. Therefore, her purported lack of awareness of the fraud is no defense.

Conclusion

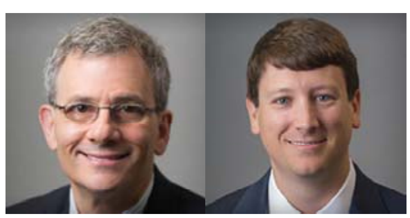
It is hard to not be astonished when actions like this are exposed and defended in court, and this is a good example of the well-known rule that bad facts make bad law. In this case, the court got it right by concluding that "a wrong is a wrong, regardless of whether the wrongdoer carries it out on her own initiative or at the request of another."

When we represent individuals who are involved in transactions that may be classified as transfers to avoid creditors we need to remember the possible repercussions thereof, and stay clear of representing clients who have aggressive and even possibly criminal motives.

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

CITATIONS:
i U.S. v. Lax, 18CV4061ILGPK, 2019 WL 5103798, at *2 (E.D.N.Y. Oct. 11, 2019).
ii Est. of *Davidson v. Commissioner*, T.C. No. 013748-13 (July 6, 2015)
iii For more details on an ABC Sale see Alan S. Gassman, J.D, LL.M, Alberto F. Gomez, Esq, Michael C. Markham, Esq., R. Lawrence Heinkel, J.D., LL.M, and Adriana M. Choi, Esq., What Estate Planners (And Others) Need to Know About Bankruptcy (2019).
iv N.Y. Debt. & Cred. Law § 276 (McKinney).
v N.Y. Debt. & Cred. Law § 273 (McKinney).
vi *Stochastic Decisions, Inc. v. DiDomenico*, 995 F.2d 1158, 1172 (2d Cir. 1993).

678 Trust Chapter Of Section 199A Book



Brandon Ketron and Alan Gassman *are completing an update on the Section 199A book regarding the 20% income tax deduction for business and investment income.*

Some clients are establishing special trusts that are considered as owned by children, grandchildren, in-laws, or significant others who have lower income and can take the deduction.

These trusts can benefit a business or practice owner's spouse and descendants.

Our redraft of the Section 678 chapter is as follows:

A. USE OF SECTION 678 TRUSTS

Certain trusts cannot be used to deflect income that would not be deductible by professionals or high-income taxpayers.

Trusts which are separately taxed and held for the benefit of family members can be structured to receive income that is either accumulated or distributed, whereby the trust will pay tax on income accumulated, and the beneficiary or beneficiaries will pay tax to the extent of income distributed. When Section 199A was first passed, the estate planning community was ready to mobilize a great number of these trusts that would own interests in SSTBs, management companies and non-SSTB companies owned by high earner taxpayers, so that each separate trust could accumulate up to $157,500 of income and also spray out an amount sufficient so that each child and grandchild would have income of up to $157,500 (or $315,000 if married filing jointly), and articles describing this technique were published and mentioned in the Preamble to the Proposed Regulations.

The Final Regulations carry forth the intention of the Proposed Regulations by providing that a separately taxed trust that is "formed or funded with a principal purpose of avoiding, or of using more than one, threshold amount for purposes of calculating the deduction under Section 199A" will be considered as aggregated with its contributor for Section 199A purposes.

The language of the Final Regulations was also changed from referencing "Trusts formed or funded..." under the Proposed Regulations to "A trust formed or funded..." under the Final Regulations, meaning that this not only applies to the creation of multiple trusts, but can also apply to the creation of a single trust as specifically stated in the Preamble to the Final Regulations.

For example, if a high earner married couple owning 50% of a manufacturing company that does not pay sufficient wages or have sufficient qualified property to allow them to receive a Section 199A deduction transfers part ownership of the S corporation to a trust for their daughter for no other purpose than to allow for the Section 199A deduction, then the income accumulated within the trust will not qualify for the Section 199A deduction as long as the father and the mother who fund the trust continue to be high income taxpayers, based upon their personal income and the income of the trust being aggregated.

The Proposed Regulations went even farther and provided that income distributed from the trust to a beneficiary of the trust would be considered to have stayed in the trust for the purposes of "disrespecting" the arrangement.

While the Final Regulations now allow for the taxable income of the "tax avoidance trust" to be determined after considering the DNI deduction for income distributed to a beneficiary, it is unclear if the net income that is transferred from a separately taxed trust to a beneficiary will be treated as having been received by the beneficiary and not subject to aggregation under the Anti-Abuse provisions of the Final Regulations, although the two Treasury lawyers who participated in the April 4, 2019 ABA webinar described in Chapter 9 and Chapter 13 indicated that even if the income was distributed by trust out to a beneficiary, it will be aggregated with any remaining trust income and the Grantor's income for purposes of determining whether the Grantor's income of the trust exceeds the threshold levels, assuming that the trust was established for the principal purpose of avoiding, or using more than one, threshold amount.

The Final Regulations did not impose any limitation on the use of Section 678 Trusts, which are irrevocable trusts which are considered as owned by the beneficiary or beneficiaries thereof.

In fact, Final Regulations specifically state that trusts that are considered as owned by a specific individual or individuals under the "Grantor Trust Rules" will be "treated as owned by the grantor or other person," and therefore appear to not be subject to these rules.

Therefore, in the example above, the mother and father could place part ownership of their S corporation stock into a trust that is considered as owned by their daughter for income tax purposes.

This is accomplished by special provisions in the trust that may give the daughter the right to withdraw the stock contributed to the trust within thirty days of when it is contributed thereto. After the thirty days lapses, the daughter will have no further withdrawal or control rights, and an Independent Trustee who is replaceable by the parents (which may be the daughter) can determine if and when the trust will make distributions to the daughter.

The K-1 income from the S corporation with respect to such stock will be reported on the daughter's personal income tax return, to qualify for the Section 199A deduction assuming that the daughter's income is below the threshold levels.

This will work just as well with a Specified Service Trade or Business, if state law allows this, or an MSO established to provide services to a Specified Service Trade or Business, if state law does not allow for ownership to be transferred.

More detail on the use and implementation of Section 678 Trusts is as follows:

If a beneficiary of a trust is given the power to withdraw all contributions made to the trust, then the beneficiary is treated as the owner of the trust for federal income purposes under IRC Section 678(a)(1).

Further, if the beneficiary's power lapses or if the beneficiary releases such power, and if the beneficiary otherwise has a grantor trust power (i.e., a power described in IRC Sections 671 through 677), then the beneficiary will nevertheless be treated as the owner of the trust for federal income purposes under IRC Section 678(a)(2).

The beneficiary's withdrawal power can lapse or the beneficiary can release his or her withdrawal power each year to the extent of the greater of $5,000 or 5% of the value of the trust's assets without the beneficiary being considered to have made a gift to the trust for federal gift tax purposes. Therefore, the beneficiary's withdrawal power could be expected to lapse or be completely released prior to the beneficiary's death, which would cause the trust assets to not be included in the gross estate of the beneficiary upon his or her death, notwithstanding that the beneficiary is treated as the owner of the trust for federal income tax purposes (and could therefore enter into an installment sale with the trust without recognizing income taxes related to the sale).

The greater of 5% or $5,000 of trust assets should generally be calculated based on the entire value of the trust, and not solely on the income of the trust. In Revenue Ruling 66-87, the IRS clarified that a beneficiary who had the power to withdraw the greater of $5,000 or 5% of trust income was only a deemed owner of 5% of the trust's income, because the power to withdraw the greater of 5% or $5,000 only applied to the trust's income.

When read literally, Section 678 may be viewed to require that either (1) the beneficiary continues to have the power to “withdraw income or corpus;” or (2) the beneficiary has “partially released” or “otherwise modified” the right to receive “income or corpus.”

Taking the first alternative above, (“(1) that the beneficiary continues to have the right to withdraw the income or corpus”), there is uncertainty as to whether the words “income or corpus” mean that the beneficiary has to have the right to withdraw both all income and all corpus, or whether the power to withdraw all income, but not corpus, would be sufficient. Commentators have differed on which interpretation would be accurate.

There have, however, been a number of Private Letter Rulings that have concluded that a complete release is deemed to meet the requirements that the power has been “partially released or otherwise modified.” For example, in PLR 200104005, a wife created a trust for the benefit of her husband, and granted him the non-cumulative power to withdraw principal in an amount of up to the greater of $5,000 or 5% of the trust property. The IRS concluded that the husband “will be deemed to have partially released the power to withdraw the portion of the trust corpus subject to that power under 678(a)(2),” even though there was a full release of the power in relation to the amount that the beneficiary could have withdrawn that year.

One downside to the use of Section 678 trusts is that if the Section 678 trust is established by giving a beneficiary the right to withdraw all assets of the trust and then releasing such power (or allowing the power to lapse), the beneficiary will be considered the grantor of the trust for state law purposes. As a result, the trust will be subject to the beneficiary’s creditors.

Most states do not consider the beneficiary as making a transfer to the trust to the extent that the lapsed or released withdrawal power does not exceed the greater of $5,000 or 5% of the trust’s assets.

One alternative may be the use of the Beneficiary Deemed Owner Trust (BDOT) to allow for Section 678 taxation, but also to allow for some creditor protection for the beneficiary.

This has been written on extensively by Ed Morrow and is established by giving the beneficiary a withdrawal power that covers the greater of the (1) net taxable income of the trust; or (2) 5% of the corpus.

If net taxable income is less than 5% of the corpus, then the beneficiary will not be considered the grantor of the trust for state law purposes. If net taxable income is greater than 5% of the corpus, then the beneficiary could withdraw the excess and spend the money, or, if it would not be considered a fraudulent transfer, invest it into some other creditor protected asset (IRA, variable annuity, life insurance, etc.). The trust could also provide a hanging power if net income exceeds 5% of the corpus and release all or a portion of the hanging power in years that income is less than 5%.

Since the beneficiary has the power to withdraw all income of the trust annually, Section 678(a)(1) applies to treat the beneficiary of the trust as the owner for income tax purposes. 1

CITATIONS:

i For more information on the BDOT see Morrow, LISI Estate Planning Newsletter #2587 (September 5, 2017).

Comparison of 678 Trusts to Complex Trusts

Complex Trusts	678 Trusts
1. Attempt to spray taxable income among multiple beneficiaries.	1. All taxable income considered as taxed to one beneficiary who may receive limited or no distributions.
2. Will need a separate tax return and must pay income before 65 days after the end of each calendar year to carry out DNI.	2. No separate tax return has to be prepared for the trust.
3. Ability to retain up to $12,750 of income to be taxed at lower brackets to save up to $2,127 if Medicare tax applies.	3. If beneficiary has less than $157,500 of taxable income, including 678 income, 199A deduction may be taken on SSTB or income otherwise limited by wage/replacement property requirements.
4. Up to $157,500 of retained income may qualify for the Section 199A deduction for SSTB or low wage/qualified property income if trust not formed or funded to avoid tax under 199A.	4. Section 121 deduction may apply to primary residence of withdrawal power beneficiary.
5. May pay income to charity to avoid tax if allowed under Trust Agreement.	5. The trust may benefit a spouse, descendants and other individuals – spouse may only receive benefits with consent of adverse party while grantor is living.
6. May pay up to $10,000 per year in property taxes to receive deduction.	6. Deemed owner/beneficiary may deduct up to $10,000 per year in property taxes cumulatively.
7. Medicare tax savings may also apply.	7. Spouse or another individual may have a testamentary power of appointment while grantor is living to divest the withdrawal power beneficiary and/or others.

An Excerpt From GUN TRUSTS AND FIREARMS ISSUES IN PROBATE MATTERS

By: Sean Healy and Alan Gassman

(4) Issue Regarding Transfers from an Estate to a Beneficiary

New Regulation 41F established a rule allowing personal representatives (executors and administrators) to possess NFA firearms registered to the decedent, during the term of probate. This replaced ATF's informal policy of allowing personal representatives to possess those items "for a reasonable time."

There are two ways a personal representative can transfer a decedent's NFA firearms. If the transferee is a beneficiary, then the personal representative transfers the NFA firearm to the beneficiary using Form 5. ATF does not collect the transfer tax for these transfers. The reason is that they consider this a change of ownership by operation of law, rather than a voluntary transfer.

If the transferee is not a beneficiary, then ATF considers this to be a voluntary transfer, and the personal representative applies for permission to make the transfer using Form 4. In this case, the transfer tax must be paid, as in other Form 4 transfers.

There is a possible issue regarding Form 5 transfers from an estate to a beneficiary. ATF published a new Form 5 in May, 2015, a couple of months before 41F became effective. The new Form 5 requires information on Responsible Persons. This includes a completed Responsible Person Questionnaire, fingerprints, and photographs.

It appears that the actual rules do not require that information to be submitted with Form 5.

In contrast, the new rules clearly require Responsible Person information to be provided with Form 1, "Application to Make and Register a Firearm." 27 CFR § Sec. 479.62(b)(2) requires the name, address, and identifying info for each RP to be provided on Form 1. Section 479.63(b)(2)(ii) requires the Responsible Person Questionnaire to be submitted with Form 1. Section 479.63 (b)(2)(iii) requires the RP's photos. Section 479.63 (b)(2)(iv) requires the RP's fingerprints.

The new rules also clearly require Responsible Person information to be provided with Form 4, "Application for Tax Paid Transfer and Registration of Firearm." Section 479.85(b)(2)(ii) requires the RP Questionnaire to be submitted with Form 4. Section 479.85(b)(2)(iii) requires the RP's photos. Section 479.85(b)(2)(iv) requires the RP's fingerprints.

The new rule for estates requires this information for transfers to nonbeneficiaries. Section 479.90a(b) requires the executor to file Form 4 in accordance with 479.84. Section 479.84(a) requires all RP information to be provided with every Form 4 application.

The rules do not appear to require this information to be provided for Form 5 transfers. Section 479.90a covers Estates. Subsection 479.90a(a) covers transfers to nonbeneficiaries. That subsection requires the personal representative to file Form 5 "in accordance with § 479.90." Section 479.90 deals with transfers to "Certain governmental entities" (which are also accomplished using Form 5 because no tax is collected). Section 479.90 does not mention "responsible persons" and does not require submission of the Responsible Person Questionnaire, fingerprints, or photographs.

Nowhere in the regulations is there an explicit requirement to submit the Responsible Person Questionnaire, fingerprints, or photographs with Form 5. The fact that the rules explicitly require that information to be provided with Form 1 and Form 4 is evidence that this information is *not* required to be submitted with Form 5. In other words, ATF rewrote the rules to specifically require information on Responsible Persons with Form 1 and Form 4. If they wanted to require it for Form 5, all they had to do is say so in the rule.

How will this issue be resolved? ATF will undoubtedly require submission of the current version of Form 5, including all the required information. We can expect them to reject any application submitted using the old Form 5, and to reject any Form 5 application which omits the Responsible Person Questionnaire, fingerprint cards, or photos. Therefore this issue will only be resolved if someone files a lawsuit or administrative appeal challenging ATF's authority to require this information with Form 5 applications. ATF also has the option of publishing another Notice of Proposed Rulemaking to add these requirements for Form 5 applications. Of course that would require ATF to provide another comment period, and to comply with the other rulemaking requirements.

(5) Transition Period

The old rules were still in place until the new regulation became effective on July 13, 2016. Here is a short description of the requirements, before and after that date:

Before 7/13/16 (old regulation): For Form 1 and Form 4 applications sent to ATF before July 13, 2016, trusts and business entities did not have to submit the Responsible Person questionnaire, fingerprints, or photographs. Until that date, individual applications were required to include the CLEO certifications and signatures.

After 7/13/16 (new regulation): All Form 1 and Form 4 applications for trusts and entities submitted after this date must include a completed Responsible Person Questionnaire, plus fingerprints and photographs, for all RP's. Applicants must send a copy of the application to the CLEO with jurisdiction over the applicant. Responsible persons must send a copy of the RP Questionnaire to the CLEO with jurisdiction over the area where the RP resides.

It was advisable for all persons intending to make or acquire NFA firearms to form an NFA trust and submit their forms to ATF before the new regulation became effective on July 13, 2016. Applications submitted under the old rules did not require fingerprints, photographs, or completed Questionnaires for responsible persons. There was also no requirement to notify the CLEO's that the application is being filed. The application process was somewhat less burdensome in some ways under the old rules. The major advantage of filing before the new regulation became effective was protecting the privacy of the applicant and responsible persons. There was simply no reason to provide the government with information regarding your "responsible persons" unless there was simply no way to file your application before the effective date. Now those requirements are unavoidable.

It is likely that the time required for ATF to process an NFA application will increase, now that 41F has become effective. The reason is that it will take more time to review the information on the Responsible Person Questionnaires, and to process the fingerprints and photographs. ATF will also have to perform background checks on all responsible persons.

It remains to be seen how the new regulation will affect the e-filing system. The original e-filing system allowed applications for trusts and entities to be electronically filed. Individual applications could not be e-filed, because of the difficulty of obtaining quality scans of fingerprints and photographs. While the original system was operational and accepting Form 1 and Form 4 submissions, electronically filed forms were processed significantly faster than paper forms. The new regulations require fingerprints and photographs to be submitted with every application, except for those subject to the 24-month exemption. It seems almost inevitable in the long run that the e-filing system will survive, but it will have to be revised to allow a larger number of applications to be e-filed.

(6) What was the law like before Regulation 41F?

This section of the paper is being written in August, 2016, approximately a month and a half after Regulation 41F became effective. Most lawyers who practice in this area are familiar with the law as it existed prior to the regulation. But to see the changes from a different angle, here is how the law was different before 41F:

1. Responsible Person requirement: Trusts and entities could submit applications with very little information regarding the persons who would have access to their property and control over their affairs (trustees, officers, directors, managers, etc.). Specifically, they were not required to submit the "Responsible Person Questionnaire," fingerprints, or photographs. There were normally no background checks conducted on individuals.
2. CLEO Signature requirement: ATF required individual applications to be signed by the person's chief local law enforcement officer. By signing, the CLEO generally certified that the individual would not be in violation of any state or local laws by possessing the NFA firearm, and that in their opinion, the individual would not use the firearm for unlawful purposes.
3. Treatment of executors and administrators: ATF allowed executors and administrators to possess the NFA firearms owned by the decedent for a "reasonable time," but this was just ATF's policy rather than being an official regulation.
4. 24-Month Exemption: There was no 24-month exemption for trusts and entities submitting a subsequent application, when the information had not changed. Each application had to be complete and include all required information.

Here is a summary which compares the old rule with the new rule:

Issue	Old Rule (applications postmarked 7/12/16 and before)	New Rule (applications postmarked 7/13/16 or later)
Responsible Persons	Individuals must submit info in application, photos, fingerprints. Trustees and corporate officers not required to submit same.	Individuals and RP's of trusts and entities must submit questionnaire, photos, fingerprints.
CLEO signature	Required for individual applications, but not applications for trusts or entities.	No CLEO signature required.
CLEO notification	No CLEO notification required (but effectively given for individual applications).	Required for all applicants and responsible persons.
Lawful possession of NFA firearms by executors	Informal policy, no formal legal authority.	Official part of ATF regulations.
24-Month Exemption	No exemption from application requirements.	Trusts and entities have 24-month exemption if info unchanged.

How to Keep a Bad Mistake at Work From Ruining What Really Matters Most

This powerful and simple technique can save your you-know-what.

By: Srikumar Rao

Susan Blackburn was feeling good about her life and her company. Blackburn Manufacturing (names changed) had turned the corner and this year promised to wash out the cumulative red ink and replace it with black.

But fate has a habit of dishing out curve balls.

Her star salesman called an hour later. He was on the premises of a new client. A client who had signed a contract worth north of a million dollars of recurring revenue each year. This was the order that put everything right and accounting had already booked the sale.

But the contract had a no-penalty cancellation clause that still had a week to run.

Sheepishly her salesman confessed that he had inadvertently emailed an internal spreadsheet to the client. The document was detailed and laid out exactly how much Blackburn was making on each phase of the project.

The profit margin was humongous.

Susan blanched. If the client cancelled, the company went back to a loss for the year. A covenant in her loan agreement would allow her bank to withdraw its loan. Her company could well go down.

Anger rose in her as she prepared to roast her hapless employee. She debated firing him instantly and heading over herself to try to salvage the situation.

She paused. Leadership principles she learned recently in my course jostled each other in her mind. She paused to think about her salesman. He had been a loyal employee for years and had young children.

His voice was trembling and the trepidation was palpable. A Susan thunderbolt would certainly not reassure him. Did she really want to lambaste him?

He had got the company into this mess. Perhaps she should help him get it out. Should she?

She reflected: Was this slip really a such bad thing? Perhaps it was a good thing? Who could really know? Both she and her salesman had instantaneously decided that the leak was "bad" and this led them to contemplate worst-case scenarios including loss of the entire order.

But could this turn out to be "good"? Was there any conceivable way in which this could be a boon? Was there anything she could do to make it so?

An idea came to her. She pulled up the Excel report on her desktop and shared her screen with her employee.

"Humpty Dumpty has fallen and there isn't much we can do about it," she said. "Let's see if we can put him together again."

A relieved salesman was happy to cooperate.

One of the columns in the spreadsheet listed anticipated savings by the customer. She asked the salesman to specifically draw it to the customer's attention as proof that the company stood behind its promise and would deliver the expected cost reduction or more.

And, she authorized him to offer a discount to the client should he press for it. Better to cut margins, even drastically cut them, than to lose a customer with a high lifetime value.

As it turned out, the customer did not understand what he received and deleted it. He complained about the "needlessly complex" document sent to him and the salesman promptly apologized and promised to send him a simpler summary.

The sale stood.

Later, Susan reflected on the incident. "The old me would have screamed at the salesman," she said. "That would certainly have affected his composure and who knows how the client would have reacted then? And, even if I didn't fire him, he would have smarted under my tongue-lashing and may well have quit. Years of institutional memory would have walked out with him."

The next time you are faced with a business problem, try this simple but enormously effective strategy.

Ask yourself if there is any imaginable way in which this could actually turn out advantageous.

Just asking this question will place you in a different, better, emotional domain and open up avenues that you would never have appeared to you otherwise.

Then ask yourself what you can do to bring this about.

And I will cheer as your business prospers beyond your wildest dreams.

For Finkel's Followers

At a Crossroads: Deciding What You Really Want Out of Your Business

I was recently re-organizing my office when I came across one of my journals from 2001. In it, I had written about how hard I was working and how close I was to getting burnt out. I was on the road teaching workshops ten months out of the year, and it was really taking a toll on me both physically and mentally. The business itself was going well, and by most accounts, I was successful. But I worried that if I stopped moving, the whole thing would come crashing down around my feet.

I was at a crossroads.

Thankfully, even then I knew the value of a good mastermind group and mentorship. So, I took my concerns to my business mentors that very week and they asked me the following three questions that changed my perspective on things.

"What is it that you really want?"

My initial answer was the standard *"I want my business to continue growing…"* but then after a pause I added *"but not feel like everything is resting on my shoulders."*

That extra bit of insight would lead me to build my business in an entirely new way, and go on to help hundreds of thousands of business owners do the same over the next eighteen years.

"What are you really afraid of happening?"

That question was an easy one, I told him that *"I was afraid that if I didn't closely manage all the details* *of my business then things would fall through the cracks and it would cause serious harm to the company. Clients would leave us; vendors would overcharge us; and our reputation would be permanently damaged."*

I shared that I was afraid that not only would things start to fall apart, but now that we had a larger staff and higher fixed overhead, I was afraid that it would mean the financial ruin of the company.

He stayed silent a little longer as if willing me to look deeper like I did in the first question.

And I added, *"I am afraid of losing control."*

Once I said it, I realized just how emotionally charged the situation was. My feelings and my actions were fueled by my inability to trust my team.

"Isn't there a better way to do this than trying to do it all yourself?"

By this point, I had gotten the message. I realized that if I set up my company differently and trusted in myself as a leader and in my team we would be able to grow and scale without me sacrificing my health and personal life to do so.

So I got to work building a company that I would step away from. My team flourished; the business flourished--and four years later I sold the business for a nice profit.

The two main takeaways from that journal entry in 2001:

1. Trust in your mastermind group or mentors to help you change the way you see your life and your business.
2. Trust in yourself to have the leadership tools and capabilities to grow your business and still regain your personal life.

Humor

- On December 12, 1965 The Beatles played the last night of their final tour in Great Britain. Maybe the guys gave a shoutout to ole saint nick by singing a holiday song at the end of the concert. “Hey santa, if your hands get cold flyin that sleigh tonight...all you need is gloves!”

- The U.S. launched Pioneer 8 into solar orbit on December 12, 1967, which greatly helped Santa stay hidden during his flight over Australia and parts of Asia.

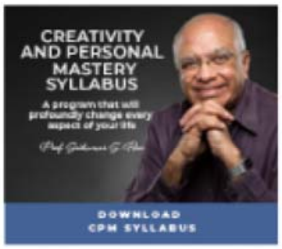
Upcoming Events


JOIN US FOR A VERY
INTERESTING & POWERFUL
PRACTICE
ACCELERATION
WORKSHOP
in Tampa, Florida
March 26th through 28th
SPONSORED BY
THE RAO INSTITUTE
InterActive Legal

gies developed by the greatest minds on the planet, along with his protocol for making vast and permanent personal changes. This will enable you to reclaim confidence, eliminate struggles and maintain a joyful and energetic base for future personal and professional execution and experience. Dr. Rao has helped thousands of executives, professionals and entrepreneurs achieve success and happiness throughout the world. Dr. Rao is the best coach to help you transform your professional and personal life, while applying practical and effective strategies that he and Alan Gassman have developed together.

Take the Training Home

Attendees will receive a notebook complete with exercises and office protocols that you can bring back to your team for immediate implementation. Go home with a new game plan, ideas, office forms and client communications tools to enhance your practice, your income and your time - at the office and at home.



Schedule at a Glance

Thursday, March 26th through Saturday, March 28th, 2020

*All six program meals are included at no charge to registered attendees.

Thursday March 26

THURSDAY Evening | *(Optional)* Complimentary dinner* and evening workshop with Professor Rao and Alan Gassman.

Friday March 27

FRIDAY | FULL DAY CORE PROGRAM led by Professor Rao, followed by optional complimentary dinner* with Professor Rao and Alan Gassman.

Goals and How to Reach Them
- How we hold ourselves back
- How we can reach forward confidently and with pleasure

Eliminating Frustrations & Obstacles
- Listening to our voices of expressions
- Deciding what to change first and second

Solving Problems & Developing Strategies
- Solving problems from a different point of view
- Solving our problems as if they were someone else's

Connect with Others Like Never Before
- The common denominator of all human experience
- How to live & breathe in the best mode of thought and action

Putting it All Together: How to convert "I Want" into "I Have"
- Building decisions into actions

Recent Updates

Register for the full complimentary Learning at Lunch webinar series

Date	Event	Details	Information
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
1/15/2020	Heckerling Institute on Estate Planning in Orlando, FL	Alan Gassman will be at the *Interactive Legal* booth beginning at 3:30 PM ET	REGISTER HERE
1/16/2020	Learning at Lunch Webinar Series	David Howell, Larry Rybka and Tom Love present: *How to Retire in the Magical Retirement Income Castle in the Clouds* from 12:30 PM to	REGISTER HERE

		1 PM ET (Moderated by Alan Gassman)	
1/21/2020	Community 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
1/31/2020	ABA Tax Section Meeting in Boca Raton, FL	Alan Gassman participates in a panel discussion: *TCJA - Hot Topics for Closely Held Businesses* from 2:30 to 3:30 PM ET	REGISTER HERE
2/6/2020	Johns Hopkins All Children's 22nd Annual Estate, Tax, Legal & Financial Planning Seminar at mutiple viewing locations across Florida	Please consider attending to support this great event	REGISTER HERE
2/6/2020	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
2/13/2020	Learning at Lunch Webinar Series	Alan Gassman presents: *Planning for Florida Dental Practices and Their Owners - Part 2* from 12:30 PM to 1 PM	REGISTER HERE

		ET	
2/13/2020	Leimberg Webinar Services (LISI)	Alan Gassman, Jonathan Blattmachr and Sean Healy present: *NFA Gun Trusts: Keeping Safe At The Range And In The Estate Plan* from 3 PM to 4:30 PM ET	REGISTER HERE
2/14/2020	LawEasy Webinar	Alan Gassman and Martin Shenkman present: *Asset Protection for Physicians - Part 1*	More information available soon
2/21/2020	LawEasy Webinar	Alan Gassman and Martin Shenkman present: *Asset Protection for Physicians - Part 2*	More information available soon
3/26/2020	Creative & Personal Mastery For Estate Planners in Tampa, FL	Dinner and evening workshop with Professor Rao and Alan Gassman	MORE INFORMATION
3/27/2020	Creative & Personal Mastery For Estate Planners in Tampa, FL	Full day core program led by Professor Rao, followed by dinner with Professor Rao and Alan Gassman	MORE INFORMATION
3/28/2020	Creative & Personal Mastery For Estate Planners in Tampa, FL	Breakfast and morning workshop with Alan Gassman, followed by lunch talk by Professor Rao	MORE INFORMATION
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/?/2020	Reno Estate Planning Council in Reno, NV	A morning or afternoon with Alan Gassman: *4 Hours To Spur Wild West Planners Into Action!*	More information available soon
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	Alan Gassman presents: *Contract*	MORE INFORMATION

	Hospital in Tampa, FL	*Negotiations* from 4 PM to 5 PM ET	
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
7/3/2020	Florida Bar Tax Section Workshop at Amelia Island, FL	Alan Gassman presents: *Tax Lawyer Professional Acceleration Workshop* from 8:30 AM to 12:30 PM ET	More information available soon
8/28/2020 through 8/30/2020	46th Annual Notre Dame Tax & Estate Planning Institute	Please consider attending to support this great event	Registration available soon
9/25/2020	Florida Bar Tax Section Fall Meeting	Fall CLE	Registration available soon

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

Unsubscribe here

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