IRS rulings demand more careful use of revocable trusts to make gifts

Recent limitations on estate freezes have caused greater reliance upon alternative lifetime giving strategies. Now, however, the IRS, in its rulings, has created a roadblock to making lifetime gifts from a revocable trust. This article examines the IRS' ruling position and how to overcome it.

by LOUIS S. HARRISON, *Attorney*

ALTHOUGH THERE should be no difference in the tax treatment of gifts made from a revocable trust and the treatment of gifts made directly by a donor, recent rulings indicate that the Service may not treat these two situations in the same manner. According to the rulings, gifts made from certain revocable trusts within three years of death must be included in the decedent's gross estate.

Lifetime gifts

Annual exclusion gifts. Despite the frenzy of recent "anti-estate tax planning" Congressional legislation (such as Section 2036(c), which may be repealed in the future), annual exclusion gifts remain an effective means to reduce estate taxes. Section 2503(b) provides that a gift by a donor to a donee of a present interest in property will not be a taxable gift to the extent the total amount given to the donee by the donor in any one year is not more than $10,000. Section 2513 increases this amount to $20,000 per donee if the donor's spouse consents to having the gift deemed made one-half by him or her. This $10,000 (or $20,000, if the spouse consents) per donee per year amount is often referred to as the "gift tax annual exclusion." There is no limit on the number of potential donees in any year.

Under recent Joint Committee on Taxation proposals, the gift tax annual exclusion would be limited to $30,000 per donor per year.[1] Under these proposals, the current limitation of $10,000 per donee would continue to apply. The proposals do not have the Administration's backing and do not appear at the current time to have sufficient support to be enacted into law in 1990 (although Congress sometimes moves in strange and unpredictable ways).

If a husband and wife have a modest-size family that includes grandchildren, an annual giving program can make substantial inroads in reducing their gross estate.

Example. Grandfather and grandmother have three children, two of whom are married, and four minor grandchildren. The current gross estate of grandmother and grandfather is $5 million. If grandmother and grandfather engage in an annual giving program to each of the potential nine donees (three children, two spouses of those children, and four grandchildren), grandmother and grandfather could give away $180,000 per year without any gift tax. At the end of ten years, $1.8 million, plus the income from and appreciation of that property, would have been given free of gift tax and would not be subject to estate tax at the grandparents' deaths. Further, if properly structured, the transfers could also avoid generation-skipping transfer tax.

Leveraging the unified credit by gifts. Section 2010 provides that the first $192,800 in gift or estate taxes incurred by an individual does not require the payment of any gift or estate tax. This amount, referred to as the "unified credit," will shield the first $600,000 in taxable transfers from any actual payment of tax. To the extent the unified credit is used during life, it will not be available at death to decrease the estate tax.

Another strategy for lifetime giving is the use of the unified credit during life. Currently, the unified credit is $192,800. Unlike the tax rates schedules, the unified

LOUIS S. HARRISON is with the law firm of Lord, Bissell & Brook in Chicago. He is an adjunct professor at DePaul University Law School and has previously written for ESTATE PLANNING.

credit is not indexed for inflation. This means that in an era of inflation, the value of the $600,000 that the unified credit can shield against the payment of either estate or gift tax becomes worth less each year.

Example. The present worth of $1 to be received t years in the future during a period of interest at x% can be calculated by the following algebraic formula: $1/(1 + .x)^{t}$. If the average interest rate during the next five years is 10.20%, the value of $600,000 in five years equals only .615307 of the $600,000, or $369,184. In other words, the value of $600,000 to be received five years in the future, in today's dollars, is only $369,184.

Therefore, to maximize the economic benefit of the unified credit, the unified credit should be used during life rather than at death.

Example. If client A gratuitously transfers assets worth $600,000 currently, thereby fully using his unified credit (assume the non-application of the annual exclusion), and these assets appreciate to $3 million 20 years from now, that $3 million will be out of A's gross estate for estate tax purposes. If this transfer is not made currently, those assets, worth $3 million at A's death, will be in A's estate, and only $600,000 of that amount could then be shielded (*i.e.,* result in no actual payment of estate tax) by A's unified credit available at death.

Of course, additional considerations become relevant when deciding whether to use the unified credit during life. One factor is the interplay between taxable gifts and annual exclusion gifts. For example, if an individual has three potential donees (*i.e.,* three donees the individual wants to benefit), the donor can transfer $60,000 per year to those donees (assuming the donor's spouse consents) and, in ten years, give away $600,000. If the same donor had used the unified credit in year one to give $600,000, but had not combined that gift with additional gifts of $20,000 per beneficiary per year, the donor would have in effect partially wasted the unified credit. Arguably the $600,000 transferred in year one will increase in value faster than $60,000 per year transferred over a ten-year period (and this increase in value is out of the gross estate). This potential difference, however, should not outweigh the "waste" of using the unified credit when the same gratuitous transfers could have been accomplished by annual exclusion gifts, thereby preserving the unified credit for future use.

Further, gifts are irrevocable, and therefore, from a practical perspective, a donor must be certain that the funds that have been given away will not be needed in the future.

Manner of making gifts

Section 2503(b) provides that a gift of a future interest will not qualify for the annual exclusion from gift tax. Neither an outright transfer nor a transfer to a custodian account is a transfer of a future interest.[2] Thus, to the extent a donor makes an annual exclusion type gift outright to a beneficiary or, if the beneficiary is a minor, to that beneficiary's custodian pursuant to the state's Uniform Gifts or Transfers to Minors Act, the transfer will qualify for the annual exclusion from gift tax. If the transfer is to a donee or donees by means of an irrevocable trust, the potential donees must have a legitimate withdrawal power over the transferred property in order for the transfer to qualify for the gift tax annual exclusion.[3] Currently, a proposal has been made by the Joint Committee on Taxation that would eliminate the ability of donors to create present interests in trusts by using lapsing withdrawal powers.

There is no gift in contemplation of death or three-year rule with regard to annual exclusion gifts. These gifts can be made at any time prior to death, not be subject to gift tax, and not be included in the estate tax calculation as part of the gross estate or as an adjusted taxable gift. For example, if one day before the donor dies, she makes ten annual exclusion gifts, she could transfer $100,000 out of her gross estate without the payment of any gift or estate tax.

If property in excess of the annual exclusion amount is transferred to a donee in any calendar year, that transfer will result in a taxable gift. To the extent the donor's taxable gifts for any calendar year, when added to all previous taxable gifts made or deemed made by the donor, do not exceed $600,000, there will be no actual payment of gift tax. The tax on aggregate taxable gifts of $600,000 will equal $192,800, the amount of the credit against the gift tax allowed to each individual.

At the donor's subsequent death, the amount of all taxable gifts will be added to the donor's gross estate for purposes of "grossing up" the taxable estate (*i.e.,* pushing the decedent into a higher estate tax bracket), but the donor will be entitled to a credit for the amount of gift tax payable on these adjusted taxable gifts included in the tax base when calculating the donor's estate tax.[4]

For example, when an individual who gratuitously transferred $1 million during life dies with $1 million more in her taxable estate, how is that additional $1 million taxed? It is not taxed at the lower 18% through 39% brackets applicable to the first $1 million in taxable transfers. Rather, it is taxed at the 41% through 45% rates. Section 2001(b)(1) accomplishes this by providing that the amount with respect to which the tentative tax is to be computed equals both the taxable estate (*i.e.,* the property included in an individual's estate for estate tax purposes, minus allowable deductions) plus the amount of "adjusted taxable gifts." Adjusted taxable gifts are taxable gifts made after 1976,

other than gifts that are includable in the gross estate of the decedent.

Although the decedent in this example dies with a taxable estate of only $1 million, all taxable gifts that the decedent made during her lifetime (other than gifts that are included in the gross estate) are added to the taxable estate for purposes of determining how much estate tax will be paid. Therefore, in the case of a person who transfers $1 million during her life, and thereafter dies with a taxable estate of $1 million, her estate tax will be computed based on the $2 million amount (the taxable estate plus adjusted taxable gifts).

After the estate tax has been calculated, Section 2001(b)(2) allows the decedent a credit for the amount of gift tax that "would have been payable" with respect to gifts made by the decedent after 1976. Thus, the total transfer taxes paid (gift tax plus estate tax) by the individual who transfers $1 million one day before she dies and dies with an additional $1 million in her estate, will be the same as the total transfer taxes (just estate taxes) paid by the individual who dies with $2 million in her estate.

If the adjusted taxable gifts have appreciated between the time the gift was made and the donor's death, however, this appreciation is not included in the decedent's gross estate and so escapes transfer taxation. This is one reason why it is important to ensure that taxable gifts made during life come back into the estate tax calculation only as adjusted taxable gifts (which is at their gift tax value) and not as part of the gross estate (which would then be their date of death or alternate valuation date value).

Gifts from revocable trusts

Revocable lifetime trusts are established by individuals for a variety of reasons, including avoiding probate, ensuring privacy of testamentary gifts and financial affairs, providing for the management of assets in the event of disability, and avoiding ancillary probate in other states. The revocable lifetime trust is not a means to avoid estate or gift tax. Since the trust is revocable and subject to change at any time by the grantor, the transfer of assets to the trust is not a completed gift for gift tax purposes.[5] Nevertheless, if the trust document provides for distribution to one other than the grantor and the trustee makes such distributions, or if the trustee distributes property to a third party pursuant to the specific directions of the grantor, the grantor will have then made a gift of the amount distributed at the time of the actual distribution.[6] Even though made from the trust, it is as if the gift was made directly by the grantor at the time the trustee makes the distribution.

Theoretically, the trustee could transfer the property first to the grantor pursuant to the terms of the revocable trust, and thereafter the grantor could transfer the funds to one or more beneficiaries (assuming the grantor is competent). Therefore, from a practical standpoint there should be no transfer tax difference between gifts made from a revocable trust versus gifts made by the grantor himself. For example, an individual who makes annual exclusion gifts right up to the moment of death will not have any part of such gifts either included in his gross estate or treated as an adjusted taxable gift. The same result should logically apply if the transfer were not made by the grantor himself, but by a fully revocable trust held for the grantor's benefit.

Practitioners should beware, however, that in light of recent rulings the Service may not in fact treat these two situations alike. These rulings began with TAM 8609005, which has been reinforced by a number of recent rulings.

In TAM 8609005, D established a revocable trust primarily for his benefit. Pursuant to the terms of the trust, the trustees had discretion to make annual gifts to A, B, C, and E of up to $10,000 per year. Within three years prior to death, the trustees made distributions from the trust to A of $15,005, to B of $13,420, to C of $10,028, and to E of $10,025.

Had D made these gifts directly, and not pursuant to his revocable trust, no part of them would have been included in the gross estate, and only those amounts of the gifts in excess of the annual exclusion amount would have been adjusted taxable gifts. But in TAM 8609005, the Service resorted to Section 2038, both alone and in conjunction with Section 2035(d)(2), to rule that the full amount of these gifts was included in D's gross estate for estate tax purposes. Thus, the date of death value of the gifts was subject to estate tax, and the decedent was not able to use the annual exclusion amount available for gifts made during lifetime.

The Service reasoned as follows in TAM 8609005:

1. D had the unrestricted right to remove the trustee and appoint himself as trustee.

2. This resulted in D constructively having all the powers of the trustee.

3. The distribution of trust assets to A, B, C, and E acted as a "relinquishment" of the trustee's dominion and control over such assets.

4. There was thus a relinquishment of D's power over such assets within a three-year period ending on the date of D's death, resulting in inclusion of the assets in D's gross estate under Section 2038(a).

This reasoning is open to question. The term "relinquishment" contemplates an affirmative act of giving up some right.[7] Further, the Service held in subsequent rulings that a withdrawal by a grantor of property does not act as a relinquishment.[8] That holding contradicts the reasoning behind the Service's relinquishment argument espoused in TAM 8609005: Regardless of

whether property is distributed from the trust to a grantor or to a third party, the grantor in each case technically loses the power to revoke the trust with respect to the distributed assets. The more logical result is that transfers from the trust should be treated as terminations rather than releases or relinquishments.

In TAM 8609005, the Service cited another justification for inclusion of the property in D's gross estate—Section 2035(d)(2). The three-year rule under Section 2035(d)(2) was held to apply to the transfers from the trust since, had the transfers not been made within three years of death, the property that was transferred would have been included in the gross estate under Section 2038.

From a technical perspective, this argument is correct. Section 2038 provides that the value of the gross estate includes the value of all property "to the extent of any interest therein of which the decedent has at any time made a transfer...if the enjoyment thereof was subject at the date of his death to...the exercise of a power...to alter, amend, or revoke." The establishment of the revocable trust is subject to a power to revoke and therefore includable in the gross estate pursuant to Section 2038. Section 2035 provides that the value of the gross estate includes the value of all property of which the decedent has made a transfer during the three-year period ending on the date of death if the property would have been included in the value of the gross estate under Section 2038 had no transfer been made. Property transferred from a revocable trust would have been includable in the grantor's gross estate pursuant to Section 2038 if the transfer had not been made. Hence, the Section 2035(d)(2) three-year rule technically applies.

The legislative history to the current version of Section 2035 indicates, however, that Congress most likely was concerned about the establishment of an irrevocable trust in which the decedent retained an interest or had the ability to control the management of the trust, but relinquished control or management immediately before death to avoid inclusion of the property in the gross estate.[9] There is no indication in the Congressional history to the current version of Section 2035 that Congress intended gifts made from revocable trusts within three years prior to death to be included in the gross estate pursuant to that section.

IRS' most recent rulings

Approximately 3½ years after TAM 8609005, the Service again considered the issue. In TAM 8940003, the decedent had executed an instrument entitled "Trust Arrangement Y" with a bank. Under the instrument, the decedent was the sole beneficiary. Any assets remaining in the trust at the decedent's death were to pour over into his estate. The trustee, at the decedent's direction, transferred common stock held in the trust arrangement to the decedent's grandchildren and great-grandchildren. Each gift qualified for the annual exclusion. The decedent died within three years after the making of these gifts.

The Service concluded that because Section 2033 applied to include the assets in the trust arrangement in the decedent's gross estate, Section 2038 did not apply. Because Section 2038 did not apply (nor Section 2036, 2037, or 2042), the three-year rule of that section and Section 2035 was inapplicable. The implication, however, was that had Section 2038 applied (for example, had the assets been distributed to named beneficiaries and not to the decedent's estate at the decedent's death, as with a typical pour-over will/living trust plan), the three-year rule under Section 2035 would have applied, and the gifts would have been brought back into the decedent's gross estate.

It was not long after that ruling that the Service affirmed the implication, though in a bizarre manner. In TAM 9010004, the terms of the revocable trust allowed for distributions from the trust to the grantor during her competency. There was no power in the trustee to transfer trust property directly from the trust to other beneficiaries (during the grantor's competency). Nonetheless, stock held in the trust was transferred from the trustee to third-party beneficiaries in annual exclusion amounts within three years of the decedent's death.

The Service concluded that the three-year rules under Sections 2035 and 2038 did not apply in this situation since "the stock at issue could only have been transferred out of the trust pursuant to the exercise of [the grantor's] power to withdraw trust corpus for [her] benefit." According to the Service: "[T]he transfer of the shares of stock to the nine donees must be viewed as a withdrawal of trust corpus by [the grantor] for her benefit, followed by a transfer of the shares by [the grantor] (in [her] capacity as an individual not as trustee) to the nine donees...Therefore, the transaction does not constitute a relinquishment of the power to revoke the trust with respect to the distributed assets subject to § 2038(a)(1), or a transfer of an interest in property that would have been includible under § 2038(a)(1) if the property had been retained by the

CITATIONS

[1] Joint Committee on Taxation Staff Explanation (JCS-4-90) of Miscellaneous Tax Proposals Scheduled for Hearing Feb. 21-22, 1990, before House Ways and Means Committee's Subcommittee on Select Revenue Measures, released 2/14/90, reprinted in *BNA Daily Tax Reports*, 2/15/90.

[2] See, *e.g.*, *Rev. Rul.* 59-357, 1959-2 CB 212.

[3] For further discussion, see Harrison, *Lapse of* Crummey *power need not result in taxable gift if hanging power is used*, 17 EP 140 (May/Jun 1990).

[4] Section 2001(b).

[5] See, *e.g.*, Reg. 25.2511-2(b).

[6] Reg. 25.2511-2(f).

[7] See, *e.g.*, *Black's Law Dictionary* (5th ed.). See also Reg. 25.2511-2(f) (contemplating an affirmative act by the donor relinquishing a power).

[8] See, *e.g.*, *Ltr. Rul.* 9010004.

[9] See, *e.g.*, General Explanation of the Economic Recovery Tax Act of 1981, H.R. 4242, 97th Cong., P.L. 97-34, prepared by the Staff of the Joint Committee on Taxation.

decedent, subject to inclusion under §§ 2035(a) and (d)(2) of the Code." (The Service made analogous rulings in *Ltr. Rul.* 9010005, TAM 9018004, and *Ltr. Rul.* 9017002.)

The Service's reasoning regarding the relinquishment issue is not completely clear. If the distribution to third parties by a trustee acts as a relinquishment of the grantor's power to alter, amend, revoke, or terminate the trust with respect to the distributed property (which was the conclusion reached by the Service in TAM 8609005 and subsequent rulings), the same can be said of a distribution to the grantor. The Service apparently is focusing on the grantor's power to control the property. If the grantor withdraws the property from the trust, arguably there is no relinquishment since the grantor controls the property. Moreover, at the time of withdrawal, the property no longer becomes subject to inclusion in the gross estate under Section 2038, but rather is then subject to inclusion under Section 2033. Hence, the subsequent transfer by the grantor to the third parties, though technically a relinquishment at that point under the Service's reasoning, does not invoke the Section 2038 three-year rule.

As discussed previously, the more logical reading of Section 2038 is that a distribution of property from the trust, regardless of whether the distribution is to the grantor or to a third party, is a termination and not a relinquishment of the grantor's right to amend the trust as to that property.

The Service's reasoning with regard to the Section 2035(d)(2) transfer issue is unarguable. Once the shares are withdrawn from the trust for the benefit of the grantor, those shares will potentially be includable in the grantor's gross estate pursuant to Section 2033. Thereafter, the transfers from the grantor to the third parties would not have been included in the grantor's gross estate under Section 2038 if the transfers had not been made. Rather, the transfers would have been includable in the grantor's gross estate pursuant to Section 2033. Hence, the three-year rule under Section 2035 is inapplicable.

In contrast to TAM 9010004, the revocable trust established by the decedent in TAM 9015001 allowed the trustee to distribute income or corpus to children of the grantor and spouses of the children. During the three-year period ending on the date of the decedent's death, the trustees, acting on the decedent's instructions, distributed property directly from the trust to several such individuals. The taxpayer sought to characterize the transactions as transfers out of the trust, pursuant to the exercise of the decedent's power to withdraw corpus for his own benefit. The Service concluded that the transfers to the several donees should be viewed as (1) distributions of trust corpus to third parties and not as (2) withdrawals of trust corpus by the decedent for his own benefit followed by a gift of the property to several donees. Therefore, the distributions of property from the trust were includable in the decedent's gross estate (pursuant to the reasoning discussed above). In *Ltr. Rul.* 9016002, the Service ruled that facts indicated that transfers to the donees had to be viewed as (1) gifts of trust corpus to third parties and not as (2) withdrawals of trust corpus by the grantor for her own benefit followed by a gift of the property to the donees.

Although the letter rulings since 1986 typically involved annual exclusion gifts, theoretically the same reasoning applies to taxable gifts made from a revocable trust. This is important because if the property has appreciated (for example, in the 2-1/2 years prior to the date of the decedent's death), then the gifts enter into the estate tax calculation as part of the gross estate (*i.e.*, at date of death or alternate valuation date values) and not as adjusted taxable gifts. Therefore, the appreciation is included in the gross estate for estate tax purposes.

Overcoming IRS' position

Until Congress steps in to correct the Service's view, or until the Service itself reconsiders its position, the practitioner must take steps to avoid the reasoning and holdings in the Service's recent letter rulings. To the extent the grantor is competent, the Service's holdings can be avoided by having the trustee distribute property directly to the grantor (or by having the grantor partially revoke the trust as to that property) and then having the grantor make the gifts directly.

To the extent the grantor is incompetent, an additional step should be included. First, the trustee should distribute the property back to the grantor. Second, transfer of the property should be made pursuant to a durable power of attorney (assuming the state in which the grantor is domiciled allows an agent to make these types of gifts pursuant to an express giving power in a durable power of attorney). The durable power of attorney should be set up preferably at the same time the revocable trust is established, but in any event prior to disability.

By following these additional procedural steps in making lifetime gifts from a revocable trust, the donor can avoid the illogical and punitive effect of certain recent letter rulings. *

Gift tax results from low-interest sale

IN *Krabbenhoft*, 94 TC 56, the Service was allowed to impose a gift tax on the sale of property, even though the purchase price equaled the value of the property

and the interest rate charged was sufficient under the imputed interest provisions of Section 483. The amount of the gift was the difference between the interest rate charged by the parties and a higher rate used by the Service.

The taxpayer sold farm property to his sons for an amount equal to the fair market value of the property, to be paid in equal annual installments over 30 years, at an interest rate of 6%. The Service used an interest rate of 11% to discount the payments on the contract, and concluded that the contract had a present value substantially lower than the fair market value. Though Section 483 precluded any income tax consequences on the 6%, the Service asserted that the difference between the discount and FMV was a taxable gift.

The taxpayer argued that the 6% interest rate was sufficient under Section 483, and therefore the Service was precluded from using a higher interest rate to calculate a gift for gift tax purposes. The court held that although the 6% rate was sufficient for Section 483, this did not prevent the Service from using a reasonable rate to compute a gift.

Section 483 imputes an interest amount when a deferred payment sale contract calls for no interest or for an unrealistically low rate of interest. The taxpayer based his argument, that a rate sufficient under Section 483 is also sufficient for valuing a gift, on the phrase in Section 483(a) indicating that it applies "for purposes of this title," *i.e.*, for the Code. The Tax Court, in a departure from a Seventh Circuit opinion, reasoned that although Section 483 applies to all Code sections to which it is relevant, it is not relevant to questions of valuation. Thus, the Service was permitted to use a different, higher interest rate in valuing the gift.

For land transfers between related parties after 6/30/85, there is a $500,000 cap on the 6% discount rate that can be used in determining total stated interest. It appears, however, that the issue will await further development in the courts. *

Transfer of minority interest avoids estate taxes

A TRANSFER OF minority interests in real estate partnerships and S corporations with the transferor retaining a majority interest was not a retained interest within the meaning of Section 2036, according to *Ltr. Rul.* 9026021. The fact that there were restrictions on the entities, as opposed to the owners, did not change the situation.

On the other hand, an agreement freezing the value of taxpayer's shares to be purchased by the corporation resulted in a partial inclusion of the shares in his estate under Section 2036.

Transfers subject to Section 2036. In general, Section 2036 requires that the value of property transferred be included in the transferor's estate under the following conditions:

1. The transferor retained for any period that does not end before death the possession of, enjoyment of, or the right to the income from the property, or the right, even in conjunction with others, to designate the persons who will enjoy the property or income therefrom. (Section 2036(a).)
2. The right to vote transferred shares of a controlled corporation. (Section 2036(b).)
3. A disproportionately large share of the potential appreciation of an interest is transferred with an interest in the income or rights being retained. (Section 2036(c).)

Real estate interests. In *Ltr. Rul.* 9026021, the taxpayer owned interests in a complex arrangement of partnerships and S corporations. He transferred minority interests in the partnerships and corporations to his children. The partnerships in which the children had interests were subject to agreements requiring the following:

1. All partners were to be general partners.
2. The partnership could be dissolved by a vote of 57% of the partners.
3. The maximum term of the partnership was 50 years.
4. Voting powers are to be determined by the partners with more than 50% of the partnership percentages.
5. A vote of the partners owning 50% of the partnership percentages could remove the taxpayer as managing partner and elect another.
6. The managing partner was not to be paid a fee, but could engage personnel to handle the affairs of the partnership at its expense.

There were no restrictions on the ability of a partner to transfer an interest. At a partner's death, the interest passed to his or her heirs.

The corporations were subject to stockholder agreements that provided the following:

1. There was free transferability of interests provided the S election was not endangered thereby.
2. Each shareholder had the right to purchase a proportionate share of new stock.
3. The corporation could also issue stock to new purchasers who would have to agree to the above mentioned terms.

The Service concluded that the transfers were not includable under any of the three subsections of 2036, reasoning as follows:

1. Since the partnership and S corporation agreements did not restrict transferability of interests or indirectly permit a transferee to acquire an interest for less than its FMV, Section 2036(a) did not apply. The

agreements concerned the entities, not the transfer of interests therein.

2. The voting rights of the transferred shares were also transferred, thus rendering Section 2036(b) inapplicable. Even though the taxpayer was the majority shareholder, his ability to change a minority shareholder's voting rights by issuing additional shares was not an indirect retention of the power to vote the shares.

3. A taxpayer retains an interest in a transferred enterprise under Section 2036(c) if there was an agreement to render services for more than three years. Since the taxpayer's services as managing partner could be terminated at will, that provision was inapplicable. Even though the taxpayer was not paid, the services required were nominal and performed at FMV.

As a result, the taxpayer's estate did not include the value of the transferred interests.

Redemption agreement. The situation was different in *Ltr. Rul.* 9026023, however, which involved a taxpayer who owned 32% of the shares of a corporation when he retired. A company related to taxpayer, Parent, owned 5,000.

Under an original agreement, the corporation had the right of first refusal to purchase any shareholder's interest for book value. Under a retirement agreement, this provision was modified to give the corporation the right to purchase the taxpayer's shares at $52, the corporation's book value as of the date of the agreement.

Since the taxpayer's shares would not participate in any increase in the book value after the agreement, there was a disproportionate transfer of appreciation, as that term is used in the provisions of Section 2036(c).

The result of the transaction was to transfer the appreciation to the other shareholders. Since, however, only 5,000 of those shares were owned by an entity related to taxpayer, Section 2036(c) applied to only those shares.

Had the transfer taken place after 6/21/88, the taxpayer would have been deemed to have made a gift as to those shares.

The ruling concludes that, assuming a bona fide business reason existed for the arrangement, the value of the stock in the taxpayer's estate will be restricted to $52. *

MEETINGS OF INTEREST TO ESTATE PLANNERS

The Annual Employee Benefits Law Institute. Sponsored by Executive Enterprises, Inc. and the Benefits Law Journal. October 15-16, Loews Summit Hotel, New York City. Topics include: pension and profit-sharing plans, the impact of Proposed Regulations to Sections 401(a), 401(l), 410(b), and 414(s). Contact: Executive Enterprises, Inc., 22 West 21st Street, New York, New York 10010. (212) 645-7800.

Institute on Federal Taxation. Sponsored by New York University School of Continuing Education. **Mergers and Acquisitions.** October 15-16, Grand Hyatt, New York City. **49th Annual Institute on Federal Taxation.** November 11-17, Grand Hyatt, New York City; December 2-8, Fairmont Hotel, San Francisco. Contact: New York University, Finance, Law, and Taxation, 11 West 42nd Street, Suite 429, New York, New York 10036. (212) 790-1320.

Conrad Teitell's 3-Day Comprehensive Planned Giving Courses. Sponsored by the Philanthropy Tax Institute. October 29-31, Hilton and Towers, Chicago; November 13-15, Harvard Club, New York City; February 11-13, Fairmont Hotel, San Francisco. Topics include: charitable remainder and lead gifts, AMT, partnership and corporate gifts, estate planning. Contact: Sally-Ann O'Shea, Philanthropy Institute, 13 Arcadia Road, Old Greenwich, Connecticut 06781. (203) 637-4311.

15th Annual AICPA National Conference on Federal Taxes. Sponsored by American Institute of Certified Public Accountants. November 5-6, Grand Hyatt, Washington, D.C.; January 7-8, Fairmont Hotel, San Francisco. Topics include: passive activity losses, Section 2036(c), debt restructuring, AMT. Contact: AICPA, 1211 Avenue of the Americas, New York, New York 10036-8775. (212) 575-5696. (800) 242-7269.

Eighty-Third Annual Conference on Taxation. Sponsored by the National Tax Association. November 11-14, Sir Francis Drake Hotel, San Francisco. Topics include: AMT, tax policy questions, corporate tax, state and local taxes, property tax. Contact: National Tax Association, 5310 East Main Street, Suite 104, Columbus, Ohio 43213. (614) 864-1221.

Twenty-Fifth Annual Philip E. Heckerling Institute on Estate Planning. January 7-11, Fontainebleau Hilton Resort & Spa, Miami Beach. Topics include: planning for the young, terminally ill; spin-offs, split-offs, and split-ups; Section 6166; estate and gift taxation; ERISA; fiduciaries. Contact: University of Miami Law Center, P.O. Box 248087, Coral Gables, Florida 33124. (305) 284-4762.