

Basis Consistency, Recent FLP Cases and Other Selected Topics in Transfer Tax, Estate and Trust Administration

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Overview

- New Basis Consistency Rules Under 1014(f) and 6035
- Holiday, Purdue, Beyer and the Proposed 2704 Regs.
- Trust Drafting in Light of the Net Investment Income Tax
- NC's New Digital Asset Statute Chapter 36F
- Trust Directors Under Chapter 36C-8A
- Estate Tax Return Updates



Basis Consistency

- Surface Transportation and Veterans Health Care Choice Improvement Act (i.e. “Highway Act”)
- Added new IRC Sections 1014(f) and 6035
- 1014(f) – Basis can’t exceed value determined for estate tax purposes
- 6035 – Must file Form 8971 if required to file an estate tax return under 6018
 - Beneficiaries receive Schedule A



Basis Consistency

- What value is reported on 8971?
 - Generally, the FMV at date of death under 1014(a)(1)
 - Alternate valuation still applies
- 1014(f) is a taxable estate driven requirement
 - NO Estate tax owed 1014(f) does NOT apply
- 6035 is an estate tax filing driven requirement
 - NO filing requirement under 6018(a) NO 8971 required



Basis Consistency

- 1014(f) rules do not apply to:
 - Estates where no estate tax is owed
 - Estates who file a 706 merely to elect portability
 - Estates who file a 706 to allocate GST exemption
 - Property that qualifies for the marital or charitable deduction under 2055, 2056, 2056A
 - May still be subject to 6035
 - Tangible personal property worth < \$3,000
 - Cash and IRD



Basis Consistency

- Executor must file Form 8971 and deliver Schedule A to each beneficiary
- Must provide beneficiary with updated Schedule A if alternate valuation is reported
- If not sure how estate is going to be distributed must list every property from which bequest could be satisfied
- Failure to report a basis is a harsh penalty
 - Beneficiary's basis is ZERO



Basis Consistency

- Irony of the rule – It is not consistent
 - 1014(f) vs. 6035

- Unlikely to know how estate is going to be distributed by the time Form 8971 is filed

- Places an ongoing reporting burden on the beneficiaries
 - Supposed to give each subsequent transferee a Schedule A stating their basis



Holiday, Purdue, Beyer and the Proposed 2704 Regs.

FLP Cases

- Three Notable Decisions on FLPs
 - Purdue (December 28, 2015)
 - Holiday (March 17, 2016)
 - Beyer (September 29, 2016)
- Learnings from Recent Cases
- Impact of Proposed 2704 Regs.



FLP Cases – Purdue Facts

- In 2000, the Purdue's created a family LLC
 - Transferred \$22 million in marketable securities
 - 5 accounts at 3 different firms
 - 1/6 interest in commercial building in Hawaii worth \$900K
 - \$375K Promissory Note from a child
 - \$865,523 CD
- Purdue's owned 100% of the membership interests
- Purdue's were healthy at the time of the transfer



FLP Cases – Purdue Facts Cont.

- LLC Operating Agreement listed several specific purposes:
 - Consolidate the management of certain property
 - Improve efficiency of management through a single entity
 - Avoid fractionalization of ownership
 - Keep ownership within extended family
 - Protect assets from future creditors
 - Provide a flexible management structure
 - Promote communication and financial education among family members



FLP Cases – Purdue Facts Cont.

- Attorney memo detailed five advantages of LLC
 - Limited Liability
 - Pass-through Income Taxation
 - Minimal Formalities
 - Ideal Entity for Owning Real Estate
 - Tax Savings
- Once LLC “funded”
 - Purdue’s hired a central investment manager
 - Purdue’s & their children held regular meetings with the manager
 - Formal annual meetings to discuss assets & approve distributions
 - **All meetings were well documented with formal minutes**



FLP Cases – Purdue Court’s Analysis

- IRS argued the funding of the LLC was a transfer with a retained interest under 2036
 - Transfer by trust or otherwise and retained
 - 2036(a)(1) - Possession, enjoyment or right to income OR
 - 2036(a)(2) - Right to designate the beneficiaries
 - EXCEPT where the transfer is a *bona fide sale for adequate and full consideration*



FLP Cases – Purdue Court’s Analysis

- Bona Fide Sale: The Bongard Test
 - “A legitimate and significant *nontax* reason”
 - Taxpayer on both sides of the transaction
 - Taxpayer’s dependence on distributions from the LLC
 - Commingling of LLC funds and taxpayer funds
 - Failure to actually transfer the property to LLC
 - Discounting the value of the LLC interests relative to property contributed
 - Taxpayer’s age and health at formation



FLP Cases – Purdue Court’s Analysis

- Mrs. Purdue reiterated nontax reasons stated in the operating agreement plus several others:
 - Relive Purdue’s from burden of managing the assets
 - Avoid repetitive asset transfers among generations
 - Create common asset ownership and efficiency
 - Provide rules for dispute resolution and transfer restrictions
 - Provide annual cash flow to children



FLP Cases – Purdue Court’s Analysis

- In turn court analyzed each nontax reason
 - Simplifying gifting = *Invalid* nontax motive
 - Assuring transfer tax savings = *Invalid* nontax motive
 - Consolidating assets for centralized management = *Valid* Nontax motive
 - Notably different management structure before and after assets transferred



FLP Cases – Purdue Court’s Analysis

- TP on both sides of the transaction = no arm’s length transaction = Invalid nontax motive
 - BUT arm’s length transaction can occur when there are multiple legitimate and significant nontax reasons AND transaction is carried out as if unrelated parties were dealing with each other
 - Here legitimate nontax reasons and Purdue’s received proportionate LLC interests



FLP Cases – Purdue Court’s Analysis

- Purdue’s were not financially dependent on distributions
- No commingling of LLC and personal funds
- LLC formalities were followed
- LLC had own bank account, regular meetings, written minutes
- LLC funded timely
- Purdue’s in good health at time of creation



FLP Cases – Purdue Court’s Analysis

- Adequate and Full Consideration:
 - Transferors' receive partnership interests proportional to value of property transferred
- Purdue’s received 100% of the LLC interests
- Purdue’s Win!
 - 2036 does not apply and LLC assets not part of Mr. Purdue’s estate



FLP Cases – Holliday Facts

- Mrs. Holliday was in a nursing home when FLP was created
- Mrs. Holliday owned 99.9% of the LP interest and owned 100% of the LLC that owned the 0.1% GP interest
- Contributed \$5.9 million of marketable securities to the FLP
 - Maintained significant assets outside the FLP
- Same day sold GP interest to Sons for FMV and transferred 10% of LP interest to an Irrevocable Trust



FLP Cases – Holliday Court’s Analysis

- Retained an implied right to enjoyment under 2036
 - FLP agreement *mandated* distributions of distributable cash above operating expenses
 - Likely drafted that way to avoid 2036(a)(2) or 2038 inclusion
- No Bona fide sale – Bongard Test Again
 - “A legitimate and significant *nontax* reason”
- Adequate and full consideration



FLP Cases – Holliday Court’s Analysis

- Holliday’s argued three nontax reasons
 - Protection from litigator claims
 - Protection from undue influence of caregivers
 - Preservation of assets for heirs
 - FLP was chosen because other methods for asset preservation were difficult to manage
- Court rebuked each reason
 - Mrs. Holliday’s liability risk was low
 - Sons actively managed her affairs
 - Late husband’s assets were easily being managed through a trust



FLP Cases – Holliday Court’s Analysis

- Other bona fide transfer concerns
 - NO formalities were followed
 - No minutes or records
 - Mandatory distribution requirement was not followed
 - GP was not compensated as required
 - NO *active* management of marketable securities
- Mrs. Holliday Loses!
 - 2036(a)(1) applies and all assets included in her estate with NO discount



FLP Cases – Holliday vs. Purdue

- Key differences between Holliday & Purdue:
 - Failure to adhere to formalities
 - No significant change in the management of the assets
 - No documentation supporting nontax reasons for FLP
 - Mrs. Holliday’s age and health*
 - Mrs. Holliday 87 at FLP creation in nursing home
 - Mr. Purdue 83 at LLC creation with active lifestyle
 - Poor drafting of operating agreement*
 - Avoid unnecessary terms

* Note these were not specifically mentioned in the court’s opinion



FLP Cases – Beyer Facts

- 1999 Mr. Beyer creates a revocable trust
 - Transfers 800,000 shares of Abbott Stock
 - Transfers various other assets
 - Mr. Beyer was trustee

- Several meetings with attorney to discuss various strategies to reduce estate tax
 - Attorney sends letter stating *primary* reason to create FLP is to discount assets for tax purposes



FLP Cases - Beyer Facts Cont.

- 2003 creates two additional rev. trusts and FLP
 - Rev. Trust #1 = “Management Trust” owned 1% GP Interest
 - Unrelated Co-trustees
 - Rev. Trust #2 = “Living Trust” owned 99% LP Interest
 - Mr. Beyer was one of Co-trustees

- FLP agreement listed 28 “purposes” for the FLP
 - Centralized management
 - Preferred entity choice
 - Creditor protection
 - Promote family unity & educate family on financial management
 - 7 purposes specifically mentioned tax avoidance



FLP Cases – Beyer Facts Cont.

- Management Trust (GP) had no bank account
- Living Trust (LP) mandated payment of estate taxes due
- Was the FLP a true partnership?
 - Need 2 or more persons
 - Mr. Beyer was grantor of both trusts



FLP Cases – Beyer Facts Cont.

- 2004 Mr. Beyer funds the FLP with \$41 million
 - Most of his securities
 - Retained \$4 million “to live on”
 - Most of his 1999 Rev. Trust assets
 - Including 800,000 shares of Abbott stock
- 2005 Mr. Beyer creates a new irrevocable grantor trust
 - Funds the trust with \$10



FLP Cases - Beyer Facts Cont.

- FLP opens restricted management account and transfers 75% of the assets into the account
 - 4 years no principal distributions and the FLP could not transfer its interest in the account
 - Could freely sell assets in the account
- FLP sells 99% LP interest to the Irrevocable Grantor Trust (Now the LP)
 - FLP receives a Secured Note on all Accounts & Account Receivables of Irrevocable Trust
 - Grantor Trust only had \$10



FLP Cases - Beyer Facts Cont.

- 2006 FLP distributes \$659,660 to Living Trust (former LP) to pay Mr. Beyer's 2005 gift taxes
- FLP makes quarterly distributions of \$116,071.16 to Living Trust directly
 - Interest payments on the Note owned by the Living Trust that were supposed to be paid by Irrevocable Trust (LP)
- FLP makes distribution of \$9,945,000 to Living Trust to pay Mr. Beyer's estate tax



FLP Cases - Beyer Facts Cont.

- FLP's 2005-2007 income tax returns inconsistently reported the Irrevocable Trust as owning 99% of the LP interests
 - 2005 Return listed Living Trust as LP
 - 2006 Return listed Living Trust as owning 25% of LP interest and Irrevocable Trust as owning 75% LP interest
 - 2007 Return listed Irrevocable Trust as LP but K-1s failed to show Irrevocable Trust as LP

- 2009 Estate filed amended returns to correct above mistakes but also to correct non-pro rata distributions that were made



FLP Cases - Beyer Court's Analysis

- IRS argued full value of FLP was includable under 2036(a)(1)

- No Bona fide sale – Bongard Test Again
 - Bona fide sale
 - Adequate and Full Consideration

- Mr. Beyer's estate argued three nontax reasons
 - Desire to keep Abbott stock in a block
 - Transition asset management to nephew
 - Continuity of management
 - None were include in 28 "purposes" in FLP agreement



FLP Cases – Beyer Court’s Analysis

- Bona Fide Sale – Court rejected each Nontax reason
 - Estate argued FLP was need to preserve Abbott stock because 1999 Rev. Trust would have divided among the beneficiaries
 - Court said Mr. Beyer could have easily amended Rev. Trust and besides FLP agreement did not require the Abbott stock not to be sold
 - Nephew had been managing the 1999 Rev. Trust assets
 - Mr. Beyer could have simply amended 1999 Rev. trust to achieve continuity of management



FLP Cases – Beyer Court’s Analysis

- Adequate and Full Consideration
 - First time Tax Court has argued this prong
 - Generally satisfied in three ways:
 - Decedent receives FLP interest proportionate to value of assets transferred (Purdue & Holliday)
 - Capital accounts are properly maintained
 - Partners of FLP have liquidation/dissolution rights proportionate to Cap Accounts
 - Mr. Beyer’s estate failed all three!



FLP Cases – Beyer Court’s Analysis

- No Adequate and Full Consideration
 - Irrevocable Trust had insufficient assets to support the sale.
 - Only had \$10 at time of sale
 - FLP did not maintain separate Cap Accounts for the LP and GP
 - FLP accounts did not reflect LP and GPs initial or subsequent contributions



FLP Cases – Beyer Court’s Analysis

- Section 2036(a)(1) – Retained Enjoyment
 - Continued Use of transferred assets
 - FLP made three significant payments to Living Trust after Living Trust had sold LP interest
 - Gift tax payment for 2005 gift tax return
 - Quarterly interest payments on promissory note
 - Post death transfer to pay estate taxes owed
 - Transferring all of one’s assets
 - Mr. Beyer only kept \$4 million in assets
 - Insufficient because could not cover gift and estate taxes
- Mr. Beyer Loses!
 - 2036(a)(1) applies and all assets included in his estate with NO discount



FLP Cases – A Comparison

- Similarities between Beyer and Holliday
 - Failure to adhere to formalities
 - No significant change in the management of the assets
 - No documentation supporting nontax reasons

- Key differences between Beyer & Purdue
 - “Massive” failure to follow formalities
 - Asset management remained the same
 - Statement from attorney that primary reason for FLP was transfer tax discounts! NO NO



FLP Cases - Takeaways

- When discussing advanced estate planning strategies with clients focus/document the nontax reasons
 - Focus on the facts in the individual client's situation that make an FLP “justifiable”

- Follow formalities!

- Complete entity formation prior to transfer

- Retain sufficient assets to cover taxes and living expenses

- NO commingling of funds



FLP Cases – Takeaways Cont.

- Change the management or management activities
 - If arguing centralized management need 3rd party advisor

- Draft appropriate Operating Agreements
 - Included nontax reasons in agreement
 - Avoid mandating distributions to the transferor
 - Think through how the LLC is actually going to function
 - Avoid unnecessary terms



Impact of the 2704 Regs.

- Section 2704 threatens to eliminate lack of marketability and lack of control discounts for transfers of interests in FLPs

- *IF* 2704 was in effect at the time of the three cases discussed
 - Likely no discounts allowed in all three cases

- If enacted, 2704 likely to have the greatest impact on FLPs that hold marketable securities

- Several commentators think 2704 will have a minimal impact on FLPs that own closely held corporate stock



Trust Drafting in Light of the Net Investment Income Tax (NIIT)

NIIT - Background

- Net Investment Income Tax (NIIT)
 - Part of the Affordable Care Act
 - 3.8% tax on individuals, estates and trusts
 - Applies to interest, annuities, dividends, royalties, rents, *passive income*, and net gains
- Does not apply to *active* business activities of a partnership or S corporation
- Does not apply to income distributed from a trust or estate
 - NIIT is "passed on" to the beneficiaries and is based on their AGI
- Focus on passive income in trust context



NIIT – Passive Income Exception

- Material participant exception to the passive activity rules
 - Where a taxpayer (individual or trust/estate) *materially participates* in the activities of the business
- Individuals – Clear guidelines in the regulations
 - Treas. Reg. § 1.469-5T
- Trusts – Little regulatory guidance
 - Regs. provide some guidance for certain trusts
 - Based on the activity of the owner of the trust
 - Grantor's activity for grantor trusts
 - Beneficiary's activity for QSSTs



NIIT – Trust Material Participation

- Virtually no guidance for ESBTs & Non-grantor trusts
 - Congress has reserved Reg. 1.469-8 and Temp. Reg. 1.469-5T(g) to specifically address trust material participation
- Two court cases & four IRS administrative rulings
 - Mattie K. Cater Trust & Aragona
 - PLR 200733023; TAM 201029014; CCA 201244017; and TAM 201317010
- IRS continues to argue a trust materially participates *only* when the trustee, in his *fiduciary* role, materially participates



NIIT – Mattie K. Carter Trust

- Mattie K. Carter Trust
 - Activities of non-trustee employees and agents count when determining trust material participation
- IRS vehemently contends Mattie K. Carter Trust was incorrect
 - Trust material participation based solely on the trustee's participation as trustee
 - Trust cannot meet the test for material participation because it is not an "individual" within the meaning of the test



NIIT – Aragona Opens the Door

- Aragona sheds some light on trust material participation
 - Trust wholly owned an LLC that employed three of the trustees
 - Trustees managed other businesses owned by the trust
 - Court reasoned that state law required the trustee to prudently manage the trust's assets
 - Thus trustee's participation in a trust-owned business counted when determining material participation
 - Trustee's participation counted regardless of whether the trustee was acting as an employee or fiduciary
 - Court applied test set forth in IRC § 469(h)(1)
 - Trustee's actions must be regular, continuous, and substantial



NIIT – Aragona’s Impact

- Aragona directly counters IRS's position that Trustee must be acting in a fiduciary capacity
- Aragona provides guidance on trust material participation
 - Trustee's acts as *trustee* OR as an *employee* count
 - Material participation test in IRC § 469(h)(1) applies to trusts
 - Trustee's actions must be regular, continuous, and substantial
 - Unclear whether alternative material participation rules for persons in Temp. Reg. 1.469-5T apply to trusts
 - Now a trustee/president of a trust owned company can materially participate as long as his activities as *president* are regular, continuous, and substantial in running the company



NIIT – Aragona to be Continued

- Aragona failed to address several key questions:
 - Can activities of non-trustee employees and agents still count?
 - Mattie K. Carter Trust – CAN look to those activities
 - IRS still contends Mattie K. Carter Trust is wrong
 - What about when there are multiple trustees?
 - Is the material participation test satisfied if only one trustee's actions meet the test?
 - What if the individual trustees' actions do not amount to material participation?
 - Can the individual trustees' actions can be aggregated to satisfy the test?
 - In Aragona a majority of the trustees each materially participated



NIIT – Trust Drafting Considerations

- When is the trust going to hold S Corp stock?
 - During Grantor's life
 - Only at Grantor's death
- Type of trust?
 - QSST vs. ESBT
- Who are the beneficiaries?
- Who works in the business?
- Choice of trustee – Individual vs. Corporate
- Need to create a separate entity wholly owned by the trust



North Carolina's New Digital Asset Statute Chapter 36F

Digital Assets are Everywhere

- Every Minute:
 - 200 million emails are sent
 - 350,000 tweets are sent on Twitter
 - 77,083 apps are downloaded from iTunes
 - \$218,750 is processed by PayPal
 - \$248,934 is spent on Amazon



How Prevalent are Digital Assets?

- Ally Bank is the largest online *only* bank
 - \$63 billion in consumer deposits
- Online gamer spent \$2.5 million on virtual real estate
- Average American:
 - Has 25 online accounts
 - Uses 8 *different* passwords a day
 - Owns \$55,000 of digital assets
 - Spends 13.6 hours on digital devices a day



What are Digital Assets?

- No “universal” definition
 - Generally digital assets include any online account that you own or any file that you store on your computer or a server

- Common locations:
 - Computer
 - Smartphone
 - Tablet
 - eReader
 - CDs, DVDs, and Floppy Disks
 - Memory Cards and Flash Drives
 - Online Merchant Accounts (eBay, PayPal)
 - Online Storage Accounts (“the cloud”)



Digital Assets Defined

- North Carolina’s new definition:
 - 36F-2(10) “Digital asset – An *electronic record* in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.”

- Electronic Record:
 - 36F-2(11) “Electronic – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.”
 - 36F-2(22) “Record – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.”



Problems Presented by Digital Assets

- Fiduciary or heirs may not have access:
 - Digital assets and accounts are often password protected
 - User Agreements may prohibit access
 - Digital assets may be nontransferable
- Financial loss:
 - Online bills may go unpaid
 - Identity theft
 - Valuable assets may be overlooked
 - Domain names may have significant value
 - Personal websites may generate significant Ad revenue
- Potential loss of digital assets with sentimental value
- Digital assets containing sensitive information may be revealed



Digital Assets – Legal Environment

- Federal Law:
 - Stored Communications Act (18 USC § § 2701-2712)
 - Criminalizes the unauthorized, intentional access of electronic communication
 - Computer Fraud and Abuse Act (18 USC § 1030)
 - Criminalizes a variety of actions involving accessing computers to obtain information without authorization
- State Law:
 - States are just beginning to address the issues of digital assets
 - Uniform Fiduciary Access to Digital Assets Act
 - Approved by the Uniform Law Commission on July 6, 2014
 - Some form has been adopted by minority of states
 - 19 States this year with 12 considering it



Digital Assets – Legal Environment

- User Agreements
 - Often prohibit a user from granting third parties access to the user’s digital account or assets
 - Yahoo!
 - Hotmail, MSN – Microsoft Next of Kin
 - Google – Inactive Account Manager
 - iTunes



How Chapter 36F Addresses these Concerns

- June 2016 NC enacted the Revised Uniform Fiduciary Access to Digital Assets Act (Session Law 2016-53)
 - Principal can now grant fiduciaries access to their digital assets
 - Executors, Agents, Trustees and Guardians
 - Include directions in wills, POAs, trusts or other records
 - Tells the custodian what to disclose (or not disclose)
 - Allows use of “online tools” to direct the custodian
 - Online Tool – Separate user agreement with the custodian regarding disclosure of digital assets
 - Under the new law, online tools take *precedence* over instructions in a will, POA or other legal document



Chapter 36F - Continued

- Specific Grant of Access:
 - Fiduciary can access the content (substance) of the digital assets

- NO Specific Grant of Access:
 - Act still allows fiduciaries to access the catalogue of digital assets
 - For example, the "to/from" lines on emails
 - Act allows fiduciary limited access to close account

- It is important that the granting document be specific in defining the fiduciary's scope of access



Chapter 36F - Continued

- Procedure for gaining access
 - Written request to custodian for access
 - Copy of death certificate (where applicable)
 - Letters testamentary
 - Copy of the granting document (i.e. Will, POA, Trust)

- Custodian may require additional information:
 - Unique identifying information of account
 - Evidence linking account to the user
 - Additional findings by the court



Chapter 36F - Continued

- Custodian has 60 days to give access
 - Actual access or a “data dump”
 - Partial access
 - Do NOT have to disclose deleted digital assets

- New Law is a compromise
 - Estate planners wanted automatic access
 - Digital providers wanted privacy safeguards to protect themselves from liability



Chapter 36F - Continued

- Key points of the new law:
 - Burden is on the principal
 - Use online tools to overcome the original terms of service agreements
 - Must grant access through their will, powers of attorney, or trust
 - Use these to complement the online tools

- Digital assets live forever. People don't.



Trust Directors Under N.C.G.S. 36C-8A-1, et. seq.

Directed Trusts

- What is a directed trust?
 - New concept in trust law.
 - Trust where traditional trust powers are vested in third party decision makers.
 - Common names:
 - **Investment advisor**
 - **Distribution advisor**
 - **Trust protector**
 - **Trust directors**

Directed Trusts

- North Carolina's approach:
 - N.G.S. 36C-8A-1 et. seq.
 - Trust may confer upon a "power holder" a power to direct a duty that would normally be required of a trustee.
 - "Power holder" is generally a fiduciary.



Directed Trusts

- Trust director powers:
 - No powers are inherent.
 - Defined by trust instrument.
 - Common functions:
 - **Investments**
 - **Distributions**
 - **Administration**
 - **Custody**



Directed Trusts

- Common powers:
 - Advise/oversee discretionary distributions.
 - Make/veto the sale of certain assets.
 - Vote shares of stock.
 - Serve as tie breaker for co-trustees.
 - Provide investment advice.
 - Remove/replace trustee.
 - Change trust's governing law/situs.
 - Modify trust instrument.



Directed Trusts

- When to use directed trusts?
 - Trust holds special assets (i.e., closely-held business).
 - Settlor wants a trusted advisor or family member to be involved in certain decisions.
 - To add flexibility to long-term trusts.



Directed Trusts

- Standard of liability:
 - Varies by state & governing instrument

- Liability of trustee (NC):
 - Not liable for trust director's action/inaction unless the trustee's compliance constitutes intentional misconduct by the trustee.
 - No duty to monitor trust director.



Directed Trusts

- Liability of trust director:
 - Fiduciary standard of liability.

 - Liable for any loss that results from breach of fiduciary duty occurring as a result of the exercise or nonexercise of the trust director's power.

 - Trust instrument can exculpate trust director except for acts committed in bad faith or with reckless indifference.



Estate Tax Returns: Closing Letters & Final Portability Regulations

Estate Tax Returns

- Effective June 1, 2015, estate tax closing will be issued only upon request.
 - Wait 4 months after filing return to make request.
- If no closing letter is requested, the taxpayer will have to wait for the statutory three year period to learn if the estate tax return will be reviewed.
- December 4, 2015: Account transcripts showing acceptance and completion of 706 may be an acceptable substitute for the estate tax closing letter.



Estate Tax Returns

- Final Portability Regulations (2015-26)
 - Extension may be granted under Treas. Reg. 301.9100-3 to estates with a gross estate value below the applicable exclusion amount.
 - Only the executor may elect portability.
 - Confirms that DSUE is available for gift tax and estate tax purposes.
 - **Not impacted by remarriage or divorce.**
 - **Death of subsequent spouse terminates.**
 - **DSUE amount from previous last deceased spouse.**



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