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Handling joint tenancy at death *
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It took nearly a decade, but the Internal Revenue Service has acknowledged the line of cases headed by Gallenstein v. United States and followed by five more cases holding that the so-called “consideration furnished” rule of federal estate taxation of jointly-owned property could be applied at the first death of a husband-wife joint tenancy to produce a higher income tax basis in the hands of the surviving joint tenant. IRS has now acquiesced in the Tax Court decision, Hahn v. Commissioner, which removes the remaining doubt as to whether application of the consideration furnished rule was acceptable in the case of husband-wife joint tenancies. In Hahn v. Commissioner, The Tax Court agreed that a surviving spouse could be entitled to a new income tax basis on 100 percent of the date of death value for property held in joint tenancy with a predeceased spouse.

Facts in Hahn v. Commissioner
In Hahn v. Commissioner, the husband, who was the first of the joint tenants to die, in 1972 had signed an agreement to purchase shares in a corporation representing an apartment. The shares were issued later to the husband and wife in joint tenancy. At the husband’s death, in 1991, the wife became the sole owner of the shares. The federal estate tax return included 100 percent of the value of the shares in the husband’s estate. That amount of course, was covered by the federal estate tax marital deduction. On later sale of the shares, the wife (as the surviving joint tenant) claimed an income tax basis of $758,412. On audit, the Internal Revenue Service took the position that only 50 percent of the date of death value for property held in joint tenancy with a predeceased spouse.

History of the “consideration furnished” rule
Before 1977, the value of joint tenancy property was subject to federal estate tax in the estate of the first to die except to the extent it could be proved that the survivor contributed to its acquisition. This became known as the “consideration furnished” rule.

Before 1982, the creation of husband-wife joint interests in land was not subject to federal gift tax unless so reported on a gift tax return timely filed.

An important point in Hahn v. Commissioner is that whatever portion of asset value is included in the decedent’s gross estate also receives a new income tax basis at death. A surviving joint tenant is considered to have acquired property from the decedent only to the extent that the property was required to be included in the estate of the deceased joint tenant. Thus, the portion of the property not included in the decedent’s estate retains the survivor’s income tax basis.

The “fractional share” rule
In 1976, the joint tenancy rule was amended to create a special rule for joint tenants who were husbands and wives married to each other. Under that rule, one-half the value was included in the estate of the first to die without regard to which spouse furnished the consideration to acquire the jointly held property. Moreover, one-half the value received a new income tax basis at death.

Applicability of “consideration furnished” rule before 1982
The key question has been whether the “consideration furnished” rule continued to apply in the case of deaths after 1981. That question was first answered by Gallenstein v. United States in 1992 and confirmed by the other cases decided since 1992 including Hahn v. Commissioner. The Gallenstein case concluded that Congress had not repealed the “consideration furnished” rule for husband-wife joint tenancies either expressly or by implication. Indeed, in Hahn v. Commissioner, the court concluded that the “fractional share” rule “does not apply to spousal joint interests created before January 1, 1977.”

To what property does Hahn apply?
For federal gift tax purposes, by the general rule a gratuitous transfer of property by one person to that person and another as joint tenants is considered a gift of a proportionate part of the value. Before January 1, 1977, only three classes of property did not involve a gift when acquired by a husband and wife in joint tenancy—(1) the purchase of United States savings bonds registered as payable to the one providing the consideration “or” another did not...
(and still does not) constitute a taxable gift until and unless the one not providing consideration redeems the bond during the lifetime of the other without any obligation to account for the proceeds to the other owner; (2) the transfer of funds into a joint bank account did not (and still does not) produce a taxable gift until and unless the one not providing funds withdraws amounts for his or her own benefit; and (3) through 1981, for a joint tenancy in real property created after December 31, 1954, in a husband and wife, by one of the spouses, a taxable gift did not result at the time of the transfer unless the donor elected to treat the transfer as a gift. Contribution was defined in terms of “money, other property or an interest in property.”

Thus, these three types of categories of property appear eligible for application of the “consideration furnished” rule at the death of the first to die of a husband-wife joint tenancy, although only the land exception is of much interest. Of course, it is necessary for the spouse who provided the consideration to die first in order for the surviving spouse to benefit from a new basis for up to 100 percent of the value of the property. Note that if assets had declined in value, and death of the first to die would result in a step-down in basis, the fractional share rule would result in a more advantageous result for the survivor. However, Hahn v. Commissioner states that “…section 2040(b)(1) [the “fractional share” rule] does not apply to spousal joint interests created before January 1, 1977.”

Who can use Hahn v. Commissioner?
Obviously, in the estate of the first to die of a husband-wife joint tenancy, if the estate applied the “consideration furnished” rule (for acquisition of eligible property before 1977 when the first to die contributed the consideration), the rule of Hahn v. Commissioner can be applied. What if the estate of the first to die was not sufficiently large to file a federal estate tax return? In that case, it would appear that, so long as an inconsistent position was not taken after the first death (and the facts otherwise support application of the “consideration furnished” rule), the “consideration furnished” rule could be applied. An “inconsistent position” could possibly have been taken on a depreciation schedule as the schedule was adjusted after death of the first joint tenant to die or on a state inheritance tax return in a state with rules for joint tenancy taxation similar to the federal rules. These possibilities await further illumination in rulings or cases or both.

Building your brand
by Nancy Giddens, Agricultural Extension Marketing Specialist, Missouri Value-added Development Center, University of Missouri

Value-added products need a distinct identity - they need a brand. This article is the first of a five-part series and will examine what branding is, why it is important, and the necessary steps to brand your new product. Next month, we will discuss flanker branding.

What is branding?
Branding is one of the most important factors influencing an item’s success or failure in today’s marketplace. A brand is the combination of name, words, symbols or design that identifies the product and its company and differentiates it from competition.

Businesses use branding to market a new product, protect market position, broaden product offerings, and enter a new product category. Four types of branding are:

- **New product branding** — creating a new name for a new product in a category completely new to the company. Example: A Taste of the Kingdom jellies.
- **Flanker branding** — protect market position by marketing another brand in a category in which the firm already has a presence. Example: HORMEL® chili and its flanker brand, STAGG® chili.
- **Brand line extension** — use of the company’s brand name in the firm’s present product category. Example: PepsiCo’s Pepsi and Diet Pepsi.
- **Brand leveraging (franchise extension)** — use of the existing brand name to enter a new product category is called leveraging. Example: Mr. Coffee (a coffee maker) and Mr. Coffee coffee.

Why is it important to develop a brand for your product?
A brand offers instant product recognition and identification. Consumers identify branded products...