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TRUST ASSETS AND 15-YEAR YEAR INSTALLMENT PAYMENT OF FEDERAL ESTATE TAX
— by Neil E. Harl

It's been clear for several years that trust ownership of assets would not necessarily preclude eligibility for 15-year installment payment of federal estate tax. A private letter ruling in late 1999 has provided some guidance on the issue of eligibility for a revocable living trust (a grantor trust) where the assets of the trust are used in the decedent's business.  

Leased trust assets

Assets cash rented by a trust, just as with assets cash rented by any other type of organizational entity, are generally not eligible for 15-year installment payment of federal estate tax. The problem is that cash rented assets do not constitute a "trade or business" as required for eligibility.  

For assets such as land, rented to a business entity, the "trade or business" test has been applied separately to the business entity and to the leased assets. Thus, it is believed land cash rented by a trust has been ineligible for 15-year installment payment of federal estate tax even though the lessee was a related person or family-owned entity.

Trust ownership

In rulings dating back to 1977, the test of being an "interest in a closely-held business" has been met even though assets had been transferred to a revocable inter vivos trust before death. In two of the rulings, the conclusion rested on the fact that the trust was a grantor trust with the assets treated as owned by the grantor and subject to inclusion in the grantor's estate. The third ruling based the holding on the fact that for purposes of 15-year installment payment of federal estate tax, property owned directly or indirectly by or for a trust is considered as being owned proportionately by or for its beneficiaries if the beneficiary has a present interest in the trust.

In the latest ruling, the decedent had formed a revocable inter vivos trust and had transferred to the trust 100 percent of the stock of a corporation which was a wholesale supplier of automotive parts and related supplies and the land and a building in which the business was carried on. The decedent was the president and chief operating officer of the corporation until his death and was actively involved in the day-to-day operations of the corporation. The entire amount of corporate stock as well as the land and the building were included in the decedent's gross estate. The ruling acknowledges that property owned directly or indirectly by or for a trust is considered as being owned proportionately by or for its beneficiaries (if the beneficiary has a present interest in the trust). The ruling also acknowledged that...

* Charles F. Curtiss Distinguished Professor in Agriculture and Professor of Economics, Iowa State University; member of the Iowa Bar.
the land, building and corporate stock were all included in the
decedent's gross estate.  The ruling concludes that the assets
were used in a single trade or business.

In conclusion

The rulings, including the latest ruling in late 1999, make it
clear that a revocable inter vivos trust as a grantor trust is not
an impediment to eligibility for trade or business status if the
grantor was carrying on a trade or business directly or
through the efforts of an agent or employee.  It would appear
that assets leased by a revocable inter vivos trust under a cash
rent lease would likely be ineligible where the decedent was
not carrying on a trade or business.

FOOTNOTES

Rul. 8132027, May 1, 1981; Ltr. Rul. 9422052, March 9,
1994.  See generally 5 Harl, Agricultural Law § 42.05[2]
(1999); Harl, Agricultural Law Manual § 5.05[1][a]
(1999).
4  Heffley v. Comm'r, 884 F.2d 279 (7th Cir. 1989); Smith
5  See I.R.C. § 6166(c)(1)(h)(1).
6  Ltr. Rul. 7917006, Jan. 11, 1979 (leased land was not part
of business); Ltr. Rul. 8140020, July 1, 1981 (assets under
cash lease to corporation not deemed to be interest in
closely-held business); Ltr. Rul. 9403004, Oct. 8, 1993
(cash rent lease of ranchland to corporation partly owned
by decedent; decedent's interest treated as separate).
Compare Ltr. Rul. 9410011, Dec. 2, 1993 (land owned by
decedent and operated by decedent and partnership
comprised of decedent's son and grandchildren with
produce sold at stand operated by decedent and
corporation involving decedent's son and another person;
land eligible as interest in closely-held business because
decedent actively engaged in the three operations even
though land on which stand located leased to son and
other person although no rent collected).
8132027, May 1, 1981 (grantor trust; leasing under crop-
share lease); Ltr. Rul. 9422052, March 9, 1994 (grantor
trust; property was nonfarm rental property managed by
decedent).
9  Ltr. Rul. 7917006, Jan. 11, 1979; Ltr. Rul. 8140020, July
13  Id.
14  Id.

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr.

BANKRUPTNCY

GENERAL-ALM § 13.03.*

ESTATE PROPERTY.  The debtor was a wheat and
onion farmer who filed for Chapter 12 but converted the
case to Chapter 7.  The debtor had obtained federal crop
insurance for 1994, 1995 and 1996 and had received insurance proceeds for crop losses in each year.  The debtor
filed for bankruptcy in February 1998 and received a
discharge in November 1998.  On October 21, 1998, Congress passed the Crop Loss Disaster Assistance
Program but the regulations governing applications were
not issued until April 1999.  The debtor filed an application
in April 1999 and received a disaster payment.  The court
held that the disaster payment was estate property because
all of the qualifying requirements, planting the crops and
the disaster losses, occurred prior to the bankruptcy case
petition.  In addition, the court held that the disaster payments were the proceeds of the crops and included in
the estate property.  See also In re Lesmeister, 242 B.R. 920

CHAPTER 12-ALM § 13.03[8].*

DISMISSAL.  The debtors originally filed for Chapter 12
in 1987 and filed an amended plan in 1988.  After several
appeals, the debtors and creditors reached a settlement
agreement which produced a confirmable plan.  The plan
provided for payment of secured claims outside of the plan.
Payments to unsecured creditors were not provided in the
plan itself but were included in a Summary of Operations
which provided for $50,000 in annual disposable income to
be paid to the trustee for distribution to unsecured creditors.
The debtors did not make any payments to the trustee and
in June 1998, the trustee moved to dismiss the case.  The
case was dismissed and the debtor sought to reopen the
case. The court held that the Summary of Operations was
included in the plan; therefore, the plan provided for
payment of disposable income.  The court found that the
debtors had not made any payments of disposable income to the trustee, had not filed monthly reports as required by
the plan, and had failed to make all plan payments within
five years; therefore, dismissal of the case was proper.  In re

MODIFICATION OF PLAN.  The debtors' Chapter 12
plan had received confirmation.  The plan provided for one
secured creditor's claim to be paid, $631 per month over