The University of Texas Stanley Johanson Estate Planning Workshop
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Update of Audit and Litigation Trends for Estate and Gift Tax

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Where Are We?

- The estate tax exclusion amount for 2019 is $11,400,000 or $22,800,000 for married couples.
- The annual exclusion for gifts for 2019 is $15,000.
- The estate tax exclusion will revert to $5,000,000 on January 1, 2026.
- The IRS has estimated that there will be 4000 Forms 706 filed in 2019 with less than 10% taxable.

Stress Testing the Estate Planning

- The most litigated transfer tax issue IRC Section 2036 where the IRS argues that although assets are transferred, there is an implied agreement of retained enjoyment or control and the assets should be included in the estate.

Stress Testing the Estate Planning

- Now is the time to stress test the planning and blunt the arrows in the IRS's quiver:
  - Have gift tax returns been filed and do they adequately disclose the gifts?
  - Have all the income tax returns been filed?
  - Do the tax returns, transfer documents and appraisals match?
  - Are the entities in good standing?
  - Are the clients respecting the legitimacy of the entities and following formalities?
  - Is the client relying on distributions from the entity or is it making disproportionate distributions?
  - Is the client commingling personal assets with entity assets ("living out of the partnership") or using partnership assets (vacations at the Aspen condo and Maui pad)?
  - Are there transfer documents evidencing contributions to the entity?

Stress Testing the Estate Planning

- Continued stress test planning:
  - Have you documented the non-tax purposes for the entity?
  - Have you documented adequate and full consideration for the issued entity interests?
    - Contribution Schedule
    - Ownership Percentages
    - Capital Account Ledgers
  - Does client have books and records for the entity?
  - Are utilities in name of entity?
  - Are property taxes and other expenses being paid by the entity?
  - Is property liability insurance being paid by the entity?

Stress Testing the Estate Planning

- Continued stress test planning:
  - Is there any personal use of entity property?
  - Is there any comingling of entity assets?
  - Has client retained assets for own support and maintenance?
  - Do the partners conduct annual meeting and prepare minutes?
  - If children or trusts own entity interests, have gift tax returns been filed?
  - Are there prior sales or other non-gift transactions that have not been disclosed on prior returns?
  - Agent will request statement for operating accounts and search for non-disclosed gifts.

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Title search: Update of Audit and Litigation Trends for Estate and Gift Tax

Also available as part of the eCourse
Practice Tips for IRS Estate and Gift Tax Inquiries from Cradle to Grave

First appeared as part of the conference materials for the
2019 Stanley M. Johanson Estate Planning Workshop session
"Practice Tips for IRS Estate and Gift Tax Inquiries from Cradle to Grave"