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The 2017 Estate Planning Teleconference Series

Participant Guide

Designing and Administering Estate Plans to Minimize Income Tax

Cannon Financial Institute, Inc.

Presents

The 2017 Estate Planning Teleconference Series

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By

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Mr. Redd has extensive experience and expertise in: (a) the drafting of wills, trust instruments, durable powers of attorney, marital agreements and other estate planning documents; (b) pre- and post-death tax planning for individuals, trusts and estates; (c) preparation and filing of estate tax returns, gift tax returns and fiduciary income tax returns; (d) representation and filing of estate tax returns, gift tax returns and fiduciary income tax returns; (e) representation of individual and corporate fiduciaries and (f) litigation in the Probate Division and other equity divisions of the Circuit Court. Mr. Redd has worked on estates and estate planning projects, some involving assets valued at over a billion dollars, and has successfully handled numerous estate tax, gift tax and generation-skipping transfer tax matters, will and trust construction cases, will contests, contests of trust agreements, alleged breach of fiduciary duty cases and other types of cases involving estates and trusts.

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Mr. Redd was Chairman of the Missouri Bar's Health Care Durable Power of Attorney Subcommittee, and he played a significant role in the drafting and enactment of the Missouri Durable Power of Attorney for Health Care Act. In 1991, Mr. Redd received The Missouri Bar President's Award.

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A. Refined Uses of the Clayton QTIP Structure

1. Clayton QTIP

A so-called Clayton QTIP trust is a trust for which a QTIP election at the death of the first spouse to die is eligible to be made and where, to the extent the predeceased spouse's Executor does not make the QTIP election, any non-elected property, under the terms of the governing instrument, passes to a separate trust which is not required to have terms identical to the QTIP trust and is not required to meet the definition of a QTIP trust. *Estate of Clayton v. Commissioner*, 976 F.2d 1486 (5th Cir. 1992); Treas. Reg. § 20.2056(b)-7(d) and 7(h). Treas. Reg. § 20.2056(b)-7(d)(3) provides that an income interest which is contingent on the election of the Executor will not fail to be a qualifying income interest for life if such an election is actually made.

2. Substantial Post-Death Planning Flexibility

In a typical Clayton QTIP scenario, to the extent a QTIP election is not made with respect to a predeceased spouse's residuary estate, non-elected potential QTIP property passes to a traditional credit shelter-type trust for the concurrent benefit of the surviving spouse and descendants living from time to time. Income from that trust does not have to be paid to the surviving spouse. The trust may provide for wholly discretionary income and principal distributions among multiple current beneficiaries. In addition, the surviving spouse may have a non-general power of appointment over the assets of the trust. The surviving spouse must have a mandatory income interest only in the property with respect to which a QTIP election is made.

An Executor generally has up to 15 months (nine-month due date for filing the decedent's Form 706 plus an automatic six-month extension) after the decedent's death to assess the current situation and determine the appropriate QTIP election approach. The Executor determines the amount of marital deduction desired relative to the size of the decedent's entire residuary estate. To the extent the Executor refrains from making the QTIP election, the Executor effectively shifts the disposition of property from a QTIP disposition to a credit shelter disposition. Treas. Reg. §§ 20.2056(b)-7(d)(3) and -7(h), Ex. 6, explicitly allow this technique to be implemented without causing forfeiture of the marital deduction.

The flexibility allowed in the Clayton QTIP context provides opportunities for tax savings based on asset characteristics, the age and health of the surviving spouse and the family's goals. An Executor may elect portability and may make a QTIP election with respect to 100% of potential QTIP property thereby facilitating use of the predeceased spouse's GST exemption by means of the "reverse QTIP election" under Internal Revenue Code ("IRC") § 2652(a)(3) *plus* a full basis step up as to the QTIP property at the death of the surviving spouse. On the other hand, an Executor may prefer a traditional credit shelter trust approach which will allow for use of the predeceased spouse's GST exemption without the "reverse QTIP election" and will in essence trade estate tax-free appreciation of property during the life of the surviving spouse for basis step-up at the surviving spouse's death.

With a broad discretionary credit shelter trust dispositive scheme, income tax planning potential through the making of judicious distributions abounds. In addition, income tax planning options may be enhanced by providing the surviving spouse with a broad non-general lifetime power of appointment over the credit shelter trust.

A similar result may be achieved by using a contingent disclaimer trust plan. In this scenario, at the death of the first spouse to die, the predeceased spouse's residuary estate is directed to be distributed outright to the surviving spouse (instead of a trust with respect to which a QTIP election could be made). If and to the extent the surviving spouse makes a qualified disclaimer (IRC § 2518), disclaimed property would pass to a credit shelter-type trust for the concurrent benefit of the surviving spouse and descendants living from time to time. However, there are some disadvantages to this approach. If the surviving spouse were to hold a non-general power of appointment not limited by an ascertainable standard, the disclaimer would not be qualified. Treas. Reg. § 25.2518-2(e)(2). Also, the time within which such a qualified disclaimer may be made is nine months after the predeceased spouse's date of death (IRC § 2518(b)) (as compared to the 15-month timeframe after the predeceased spouse's date of death within which a QTIP election decision may be made). In addition, the opportunity to make a qualified disclaimer may be inadvertently tainted by an acceptance of benefits by the surviving spouse before the disclaimer is finalized. IRC § 2518(b); Treas. Reg. § 25.2518-2(d)(1).

3. Possible Difficulties with Clayton QTIP Elections

a. <u>Possible Taxable Gift of a Portion of QTIP Trust Income Interest</u>. In *Estate of Regester v. Comm'r*, 83 T.C. 1 (1984), the Tax Court found that a decedent holding a mandatory income interest in a trust made a taxable gift in an amount equal to the then present value of such interest when she exercised a special power of appointment over the trust principal.

The Tax Court cited Treas. Reg. § 25.2514-1(b) that states "[w]hen a person has the right to income for life and the ability to transfer that right to anyone or to retain it as long as she lives, transfer of that property without consideration gives rise to a taxable gift." The Tax Court also observed that, had the decedent chosen to transfer her life interest to a third party prior to her exercise of the special power of appointment, she would have made a taxable gift of her life interest. The fact that she chose to convey that interest to the ultimate owner of the corpus does not disguise the fact that she chose to give her income from the trust property to another without consideration. Consequently, the Tax Court ruled that the transfer of the property should be treated as a gift by the decedent who had an absolute interest in trust income.

The facts in *Regester* may be seen as analogous to a situation in which a surviving spouse, as Executor for a predeceased spouse whose estate plan sets up a Clayton QTIP trust, unilaterally holds the power to make, or to refrain from making, a QTIP election. To the extent the surviving spouse does not make the QTIP election, if the surviving spouse is not a beneficiary of the credit shelter disposition to which non-elected QTIP property passes, the surviving spouse effectively causes his or her mandatory income interest in the QTIP trust, which he or she could have had by making the election, to be extinguished.

b. <u>Possible Transfer With Retained Interest</u>. Where a surviving spouse, as Executor for a predeceased spouse whose estate plan sets up a Clayton QTIP trust, unilaterally holds the power to make, or to refrain from making, a QTIP election, there is the potential for the surviving spouse inadvertently to make a transfer with a retained beneficial interest, and/or retained power to designate, within the meaning of IRC § 2036(a). To the extent the surviving spouse does not make the QTIP election, if the surviving spouse is a beneficiary of the credit shelter trust to which non-elected QTIP property passes, the surviving spouse effectively "transfers" that non-elected QTIP property while "retaining" his or her beneficial interest in, and/or retained power to designate with respect to, the credit shelter trust -- thereby triggering inclusion in the surviving spouse's gross estate of the value of the credit shelter trust property. Merely saying that a QTIP election is a "tax election" seems to be an inadequate response to this concern and ignores substance. Accordingly, in such a Clayton QTIP trust scenario, it is best for the surviving spouse not to serve as Executor at all or for a special purpose, independent Executor to be appointed for the sole purpose of making the QTIP election decision.

B. Making Distributions of Ordinary Income and Capital Gain to Carry Out DNI

1. Distributions of Ordinary Income

Given the current framework of income taxation of individuals and trusts, if given the discretion and authority to do so, a Trustee may desire to make discretionary distributions so as to carry out as much of the trust's taxable income to trust beneficiaries as possible. IRC § 661. Since the applicable threshold amount for the top income tax rate of 39.6% is much higher and, therefore, more favorable, for individuals than for non-grantor trusts ($470,700 for a married couple filing jointly, $418,400 for single individuals and $12,500 for estates and trusts), distributions to trust beneficiaries in lower tax brackets can save from 4.6% to 29.6% or more in the income tax rate to be applied to the same income. The differential can be even greater when also considering state income tax.

Trustees should not, however, overlook the potential impact of the "kiddie tax," which imposes the parent's income tax rate on a trust's taxable income shifted to the child. IRC § 1(g) imposes a tax on "certain unearned income of a child at the parent's marginal rate, no matter whether the child can be claimed as a dependent on the parent's return." For taxable years beginning in 2017, the amount in IRC § 1(g)(4)(A)(ii)(I), which is used to reduce the net unearned income reported on the child's return that is subject to the kiddie tax, is a mere $1,050. Rev. Proc. 2016-55, 2016-45 I.R.B. 707. Shifting a trust's taxable income to children, therefore, may be no more beneficial, from an income tax perspective, than retaining that income in the trust and subjecting such income to the compressed income tax brackets applicable to trusts. The kiddie tax generally applies to children under age 18 at the close of the taxable year but may extend to a child who has not attained the age of 24 at the close of the taxable year if the child is a student or to a child of any age if the child is permanently and totally disabled. *See* IRC § 152(c)(3).

2. Distributions of Capital Gain

a. <u>Methods of Including in DNI</u>. As a general rule, capital gains are not included in distributable net income ("DNI"), except in the year the trust terminates. IRC § 643(a)(3). Capital gains and losses generally are allocated to principal and benefit (or disadvantage) the remainder beneficiaries of a trust or the residuary beneficiaries of an estate.

There are exceptions to the general rule which provide that capital gains will be included in DNI if they are: (1) allocated to fiduciary accounting income; (2) allocated to principal and "paid, credited, or required to be distributed to any beneficiary during the year" or (3) allocated to principal and "paid, permanently set aside, or to be used for [charitable] purposes specified in § 642(c)." IRC § 643.

With respect to charitable distributions, IRC § 643 provides that capital gains distributable for charitable purposes are included in DNI and may be offset by the corresponding charitable contribution deduction. Thus, DNI reflects the net taxable and nontaxable income available for distribution, after considering the items of gross income paid, permanently set aside or used for charitable purposes under IRC § 642(c).

With respect to items (1) and (2) above, Treas. Reg. §1.643(a)-3(a) provides that "except as provided in 1.643(a)-6 [dealing with foreign trusts] and paragraph (b) of this section, gains from the sale or exchange of capital assets are ordinarily excluded from distributable net income and are not ordinarily considered as paid, credited, or required to be distributed to any beneficiary." Treas. Reg. § 1.643(a)-3(b) provides that capital gains will be included in DNI to the extent they are, pursuant to the terms of the governing instrument and applicable local law, or pursuant to a reasonable and impartial exercise of discretion by the fiduciary (in accordance with a power granted to the fiduciary by applicable local law or by the governing instrument if not prohibited by applicable local law):

(1) Allocated to income (but, if income under the state statute is defined as, or consists of, a unitrust amount, a discretionary power to allocate gains to income must also be exercised consistently and the amount so allocated may not be greater than the excess of the unitrust amount over the amount of distributable net income determined without regard to this subparagraph Treas. Reg. §1.643(a)-3(b));

(2) Allocated to corpus but treated consistently by the fiduciary on the trust's books, records and tax returns as part of a distribution to a beneficiary; or

(3) Allocated to corpus but actually distributed to the beneficiary or utilized by the fiduciary in determining the amount that is distributed or required to be distributed to a beneficiary.

b. Capital Gains Allocated to Income. If capital gains are appropriately allocated to income, then such gains will be included in DNI. Treas. Reg. § 1.643(a)-3(b)(1).

This occurs most frequently when a Trustee sells unproductive or underproductive property and the applicable principal and income act requires that a portion of the net sale proceeds be allocated to income to compensate for the lack of productivity while the property was held. In some cases, the governing instrument or applicable law authorizes the Trustee to allocate gains between income and principal as the Trustee considers best. While such provision offers some flexibility to the Trustee, allocations pursuant to this provision cannot fundamentally depart from the traditional principles of income and principal in order to be recognized for federal income tax purposes. *See* Treas. Reg. § 1.643(a)-3(b)(1), BNA, *Income Taxation of Trusts and Estates*, ESTATES, GIFTS AND TAX PORTFOLIOS: INCOME TAX, Portfolio 852-3rd. Absent unique circumstances, the allocation of capital gains to income in accordance with the exercise of discretion granted by the governing instrument or applicable law will not be considered to depart fundamentally from the traditional principles of income and principal.

c. Capital Gains Treated Consistently As Part of a Distribution. Capital gains will be a part of DNI notwithstanding that they are allocated to principal if the Trustee treats such gains consistently on the trust's books, records and tax returns as part of a distribution to a beneficiary. Treas. Reg. § 1.643(a)-3(b)(2). This consistent treatment may be declared by the Trustee or evidenced by the Trustee's actions even in the first taxable year or the first time such situation arises. *See* Treas. Reg. § 1.643(a)-3(b)(2) Ex. (2). Once declared, the examples in the Treasury Regulations require the Trustee to treat all discretionary distributions in future years as being made first from any realized capital gains.

d. Capital Gains Actually Distributed to Beneficiary. Capital gains appropriately allocated to principal but actually distributed to a beneficiary will be included in DNI. Treas. Reg. § 1.643(a)-3(b)(3).

The preamble to the Treasury Regulations provides that capital gains allocated to principal will be treated as part of a distribution to a beneficiary if the Trustee allocates capital gains to the distribution (pursuant to a discretionary power under local law or under the governing instrument if not inconsistent with local law) and the allocation is exercised in a reasonable and consistent manner and evidenced on the trust's books, records and tax returns. *See* T.D. 9102, 69 Fed. Reg. 12 (2004); BNA, *Income Taxation of Trusts and Estates*, ESTATES, GIFTS AND TAX PORTFOLIOS: INCOME TAX, Portfolio 852-3rd.

This rule is implemented as follows: A trust provides that all income is to be distributed currently to A, and that one-half of the principal is to be distributed when A reaches age 35 and the balance of the principal at age 45. When A reaches age 35, the Trustee sells one-half of the principal held in trust and distributes the net proceeds to him. All of the gains from such sale are included in DNI. If the Trustee sold all of the trust assets when A reached age 35, but only distributed one-half of the proceeds to A, then only one-half of the capital gains from such sales would be included in DNI. *See* Treas. Reg. § 1.643(a)-(3)(e), examples 9 & 10.

e. <u>Capital Gains Used to Determine Amount of Distribution</u>. Treas. Reg. § 1.643(a)-3(b)(3) also provides that capital gains that are allocated to corpus, but utilized by the fiduciary in determining the amount that is distributed or required to be distributed to a beneficiary, will be included in DNI. This exception is closely related to the exception where a Trustee treats capital gains consistently on its books, records and tax returns, as part of a distribution to a beneficiary. However, under this exception, a Trustee uses the capital gains to determine the amount to be distributed, while under the other exception a Trustee treats capital gains as always a part of DNI to the extent distributed and, thus, always a part of the distribution to the beneficiary. BNA, *Income Taxation of Trusts and Estates*, ESTATES, GIFTS AND TAX PORTFOLIOS: INCOME TAX, Portfolio 852-3rd.

The examples in the Treasury Regulations demonstrate this rule as follows: A Trustee is given discretionary powers to invade principal for A's benefit and to deem discretionary distributions to be made from capital gains realized during the year. During the trust's first taxable year, the trust has $5,000 of dividend income and $10,000 of capital gain from the sale of securities. ". . . Trustee decides that discretionary distributions will be made only to the extent the trust has realized capital gains during the year and thus the discretionary distribution to A is $10,000 . . . Because Trustee will use the amount of any realized capital gain to determine the amount of the discretionary distribution to the beneficiary, the $10,000 capital gain is included in Trust's distributable net income for the taxable year." *See* Treas. Reg. 1.643(a)-(3)(e), example 5.

f. <u>General Requirements</u>. In each of these four instances discussed above, the allocation of capital gains to income must be made: (1) pursuant to the terms of the governing instrument and applicable local law; or (2) pursuant to a reasonable and impartial exercise of discretion by the fiduciary (in accordance with a power granted to the fiduciary by applicable local law or by the governing instrument if not prohibited by local law). *See* Treas. Reg. § 1.643(a)-3(b). A Trustee must meet one of these two requirements at all times.

In the absence of clear guidance under local laws or in the governing instrument, a Trustee could consider forming a partnership. Capital gains earned through a partnership will typically constitute trust accounting income. *See* Gorin, *Primer on Carrying Out Capital Gain*, AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL, Fiduciary Income Tax Committee Meeting (Fall 2013). In *Crisp v. United States*, 34 Fed. Cl. 112 (1995), the Court of Claims held that capital gain distributed in the ordinary course of a partnership's operations is includible in

DNI. Additionally, the Uniform Principal and Income Act provides helpful guidance indicating that cash distributions from an entity (including a partnership) would constitute fiduciary accounting income. *See* Gorin, *supra.*

C. Avoiding or Minimizing the Net Investment Income Tax

The Internal Revenue Code imposes a 3.8% tax on certain unearned investment income of individuals, estates and trusts whose income exceeds applicable threshold levels. *See* Health Care and Education Reconciliation Act of 2010, P.L. 111-152. This tax is commonly referred to as the "net investment income" ("NII") tax. The NII tax provisions are governed by IRC § 1411 and Treas. Reg. § 1.1411.

For individual taxpayers, the NII tax is imposed on the lesser of the individual's: (1) NII for the tax year; or (2) the amount by which the taxpayer's modified adjusted gross income for the tax year exceeds the applicable threshold amounts, which are $250,000 for a married couple filing a joint return, $125,000 for a married individual filing a separate return and $200,000 in all other cases. These amounts are not indexed for inflation. In the case of trusts or estates, the NII tax is imposed on the lesser of: (1) undistributed NII; or (2) the excess of AGI over the dollar amount at which the highest income tax rate applicable to an estate or trust applies. In 2017, the threshold for the highest rate to apply is $12,500. Rev. Proc. 2016-55, *supra*.

NII is defined as investment income reduced by deductions allocable to that income. Investment income consists of three items: (1) gross income from interest, dividends, annuities, royalties and rents to the extent not derived in the ordinary course of a trade or business (unless that trade or business is described in clause (b)); (2) other gross income from a trade or business that is an IRC § 469 passive activity or that consists of trading of financial instruments or § IRC 475(e)(2) commodities; and (3) net gain that is taken into account in computing taxable income and attributable to the disposition of property not held in a trade or business (unless that trade or business is described in clause (b)). IRC § 1411(c)(1)(A), (2); Treas. Reg. § 1.1411-4, -5; *see also* BNA, *Income Taxation of Trusts and Estates: Detailed Analysis, General Taxation Rules*, Estates, GIFTS AND TRUSTS PORTFOLIOS, Portfolio 852-3rd. For more details about the computation of NII tax, s*ee* Walthall, *S Corporation Corner – Fresh Fire Against S Corporation Shareholder-Employees and Trusts over Employment and Medicare Taxes*, JOURNAL OF PASS-THROUGH ENTITIES (Nov. 1, 2013).

The NII rules provide some exemptions applicable in determining the NII tax. IRC § 1411(c)(3)-(6); Treas. Reg. §§ 1.1411-6 to -10. One of the important exemptions from the NII tax is for trade or business income derived from a business in which a taxpayer materially participates. A taxpayer materially participates in an activity only if the taxpayer is involved in the operations of the activity on a regular, continuous and substantial basis. IRC § 469(h)(1). The passive activity rules apply to trusts and estates. IRC § 469(a)(9)(A); *see* Walthall, *supra*.

It is not clear how the NII tax and the material participation requirement apply to trusts and estates that own closely held businesses. The Department of the Treasury has not issued any regulations that specifically address the material participation requirement for trusts and estates. IRC § 469(h) is cited as the general rule, which sheds very little light on some practical issues that arise in connection with determination of income tax liabilities pursuant to the NII rules.

Nonetheless, the United States District Court of the Northern District of Texas has held that "material participation" of a testamentary trust in a ranching business must be determined by addressing the activities of the trust through its fiduciaries, employees and agents and cannot be decided by evaluating only the activities of the Trustee. *See Mattie K. Carter Trust v. United States*, 256 F. Supp. 2d 536 (N.D. Tex. 2003). Notwithstanding the result in *Carter*, the IRS continues to maintain that a trust should be judged solely based on whether the Trustee materially participated, its original position taken in *Carter*. *See* TAM 201317010 (holding that Trustee did not regularly, continuously and substantially participate in activities of S corporations held by trust and finding special Trustee's role in controlling sale, retention and vote of company stock not inseparable from his role as president of one of the companies).

In contrast to the District Court's decision in *Carter*, the Tax Court in *Frank Aragona Trust v. Commissioner*, 142 T.C. No. 9 (2014), focused only on the Trustees' activities in determining whether a trust materially participated in a real estate development business. The Tax Court held that the Trustees' activities constituted material participation under IRC § 469(c)(7) and specifically stated it would not decide whether a trust's employees should be considered in determining whether the trust materially participated. *Aragona* emphasizes the importance of designating an appropriate succession of Trustees under a trust that holds or will hold a business interest. Having a Trustee who will be active in the business will help qualify the trust's income from the business as non-passive and therefore avoid the net investment income tax under IRC § 1411.

D. Using Powers of Appointment and Other Strategies to Accomplish Basis Step-Up

1. General Power of Appointment

IRC § 2041(b)(1) defines a general power of appointment as a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate. IRC § 2041(a)(2) provides that "the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised."

Whether the holder of a testamentary power of appointment chooses to exercise it, the property that was subject to the power will be deemed to have been acquired from the deceased testator and will, therefore, qualify for the step-up in basis. *See* Treas. Reg. §§ 1.1014-2(a)(4), (b)(2). Thus, it is important to consider under what circumstances and to what extent it is wise to confer a general power of appointment with respect to property held in trust to generate basis step-up and income tax savings.[1]

a. Allowing an Independent Trustee or Trust Protector to Grant. A trust instrument could be drafted in such a way that an independent Trustee or a trust protector may grant a general power of appointment to a beneficiary after having examined the income and transfer tax consequences of so doing. Conditioning the grant of a general power of appointment on the determination of an independent Trustee or a trust protector may provide more flexibility than having the trust instrument itself confer the general power of appointment.

b. Decanting, Modification and Non-Judicial Settlements. Decanting is the process by which a Trustee of an irrevocable trust with discretionary distribution authority may, without court approval, transfer the trust property into a new, separate trust. The governing instrument of the new trust has administrative and/or dispositive terms different from those contained in the original trust instrument.

Decanting statutes vary widely. Under many such statutes, however, it would be possible (or would certainly appear to be possible) for a Trustee to decant to a new trust whose terms would confer a general power of appointment on a beneficiary, thereby generating basis step-up with respect to the assets of the trust at the beneficiary's death. Since the IRS has not yet issued decanting regulations and has not listed decanting regulations in its latest priority guidance plan (*see* Department of the Treasury, *2016-2017 Priority Guidance Plan*, August 15, 2016), any decanting that changes beneficial interests should be undertaken with care.

A result similar to the decanting result described above may also be achieved by means of judicial or non-judicial modification or non-judicial settlement. *See*, *e.g.*, §§ 111, 411, 412 and 416 of the Uniform Trust Code. In addition, under common law, beneficiaries, Trustees and any other interested parties often have the power to agree among themselves privately to modify trust terms. Acker, *Modifying, Reforming and Terminating Irrevocable Trusts (the Uniform Trust Code Has Made This Harder!)*, 45TH ANNUAL HECKERLING INSTITUTE ON ESTATE PLANNING, Ch. 10 (2011). In some states and under some circumstances, whether such a modification or settlement could be used to insert a general power of appointment may turn on whether such a change would be considered to violate a material purpose of the trust and could be properly approved by the court.

2. Avoiding IRC Section 1014(e)

IRC § 1014(e) sets out an exception to the general rule of IRC § 1014(a) with respect to transfers of appreciated property acquired by the decedent within one year of his or her death. IRC § 1014(e)(1) states that, if appreciated property was acquired by the decedent by gift during

[1] In this connection, *see* IRC § 1014(f), which became law on July 31, 2015, and requires, among other things, that the basis of property acquired from a decedent cannot exceed the value of such property as finally determined for estate tax purposes if inclusion of such property in the decedent's estate increased estate tax liability.

the one-year period ending on the date of the decedent's death and such property is acquired from the decedent by (or passes from a decedent to) the donor of such property (or the spouse of such donor), the basis of such property in the hands of such donor (or spouse) shall be the adjusted basis of such property in the hands of the decedent immediately before the death of the decedent. A close reading of this statutory language suggests that the provisions of IRC 1014(e) could be avoided in cases of certain transfers of assets involving spouses and trusts created by them that take place within one year of death of either spouse.

Assume that a soon-to-be surviving spouse transferred her assets to the soon-to-be-deceased spouse and it is inevitable that the predeceasing spouse will die within one year of such transfer. If, instead of directing a transfer of all of the predeceased spouse's assets to the surviving spouse outright upon predeceased spouse's death, the predeceasing spouse creates a trust in his estate plan providing that his surviving spouse and descendants living from time to time may receive discretionary distributions of income and directs that all assets passing by reason of his death be transferred to the discretionary trust, all assets in the discretionary trust should be eligible to receive a step-up in basis pursuant to IRC § 1014(a). In this scenario, the surviving spouse (the donor) does not acquire her assets back from the predeceased spouse. The assets are acquired by the discretionary trust. Thus, IRC § 1014(e) cannot apply.

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Designing and Administering Estate Plans to Minimize Income Tax

April 25, 2017

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Certificate of Attendance

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April 25, 2017

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Professional Education Coordinator

Continuing Education Credits for this course are as follows:

- **Certified Public Accountant** — **1.5 credit hours**
  In accordance with the National CPE Registry of CPE sponsors, CPE credits have been granted based on a 50-minute hour. For information regarding available CPE credits please visit http://cpemarket.nasbatools.com/index.
  Instructional delivery method: Group-Live
  NASBA #103655; Field of Study –Tax
- **Enrolled Agent (IRS)** — **2.0 credit hours**
  In accordance with the standards set forth in Circular 230 section 10.6, CE credits have been granted based on a 50-minute hour
  Course # (VRUGV-T-00079-16-O)
- **Certified Financial Planner (CFP™)** — **1.5 credit hours**
  Course #235085
- **Accredited Fiduciary Investment Manager (AFIM™)** — **1.5 credit hours**
- **Certified Wealth Strategists (CWS®)** — **2.0 credit hours**
- **Certified Investment Management Analyst (CIMA®)** — **1.5 credit hours**
  Course # **17CFI004**
  If you hold the CIMA®, CIMC® or CPWA® certification, you may report this pre-accepted CE program online by logging into your My IMCA account at www.imca.org/user
- **Certified Trust Financial Advisor (CTFA™)** — **2.0 credit hours**
- **Chartered Life Underwriter & Chartered Financial Consultant** — **1.5 credit hours**
  (**No Individual State Insurance Credit Available)
- **Fiduciary Investment Risk Management Association (FIRMA®)** — **2.0 credit hours**

Any questions regarding CE credit, please contact Laurie Frye at (706) 353-3346.
Fax (706) 353-3994, Email lfrye@CannonFinancial.com
PO Box 6447, Athens, Georgia 30604

CANNON

FINANCIAL INSTITUTE

Certificate of Attendance

____

(Participant Name)

____

(Attorney Bar # or Social Security #)

Has successfully completed the Cannon Financial Institute, Inc. course:

Designing and Administering Estate Plans to Minimize Income Tax

April 25, 2017

CANNON FINANCIAL INSTITUTE, INC. CORPORATE SEAL GEORGIA

Laurie Frye

Laurie Frye
Professional Education Coordinator

Continuing Legal Education Credits for this course are as follows:

The following states have been approved for 1.5 hours of General Credit: (Course number is indicated in parenthesis):Alabama, Arkansas (TWE56361), California, Delaware, Georgia, Idaho, Illinois, Iowa (248555), Kentucky (172707), Louisiana, Maine (042563), Minnesota (233406), Mississippi, Montana (15210), Nebraska(134539), Nevada (24867), New Mexico, New York, North Carolina, North Dakota, Oregon (1048*244),Pennsylvania, South Carolina, Tennessee (Distance Ed), Texas(901367127), Utah , Vermont, Virginia, Washington, Wisconsin, & Wyoming
These states have been approved for the following General Credit: Colorado – 2 hours, Florida - 2 hours (1608830N), Missouri –1.8 hours, Oklahoma – 2 hours, West Virginia – 1.8 hours

The following states either do not require/do not accept outside CLE Credit/or do not accept teleconference calls for CLE Credit: District of Columbia, Hawaii, Maryland, Massachusetts, Michigan & South Dakota
The following states have special circumstances:
Alaska-Attorneys can use this certificate to submit to Alaska State Bar
Arizona-On honor system
Connecticut-Attorneys can use this certificate to submit to Connecticut MCLE
Indiana & Ohio-Site Coordinators must apply for credit as the sponsor in order for participants to receive credit
Kansas–Attorney or Site may apply 30 days prior to program
New Hampshire- *NHMCLE does not approve or accredit CLE activities for the NH Minimum CLE requirement. NH attendees must self-determine whether a program is eligible for credit and self-report their attendance.*
New Jersey-Attorneys can use this certificate to submit to New Jersey State Bar for 1.5 General credits (Reciprocity Rule)
New York–Attorneys may use this certificate to report their attendance as it is accredited by Approved NY Jurisdictions: AL, AR, CO, DE, GA, KY, LA, MS, NM, NC, ND, OK,. Type of credit: Areas of Professional Practice, 1.5 Credits
* In order for PA attorneys to receive credit they must listen to the teleconference in a live classroom setting. The teleconference site must also be listed on the PACLE website and the site must be open to any PA attorney who desires to listen to the program. Call PACLE at 1-800-497-2253 with questions on website listing.

****As required by the following State Bars, and in order to obtain CLE in these states, Cannon will submit the mandatory attendance rosters for the attorneys seeking CLE credits **ONLY** in the following states: Alabama, Delaware, Georgia, Idaho, Louisiana, Montana, Nebraska, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, West Virginia and Washington. ****

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