

# **Recent Developments in Federal Income Taxation**

---

Bruce A. McGovern

Professor of Law and Director, Tax Clinic

South Texas College of Law Houston

Houston, Texas

---

State Bar of Texas Tax Section

First Wednesday Tax Update

April 5, 2023

1

CLE Number for Today's Webcast:  
174190852

2

## ***Legislative Developments***

### ***SECURE 2.0 Act of 2022***

- Selected provisions of SECURE 2.0:
  - Rollovers from 529 plans to Roth IRAs. Beginning in 2024, beneficiaries of 529 college savings plans that have been open for more than 15 years can roll over up to \$35,000 from the 529 plan to a Roth IRA during their lifetime (subject to annual Roth IRA contribution rules). [S2.0 § 126. Outline page 3, item F.1]

3

3

## **Corporate Changes in Inflation Reduction Act**

### **August 16, 2022**

### ***Outline: item B.1, page 3***

- The Inflation Reduction Act, § 138102, adds new Code section 4501
- Imposes excise tax of 1% on the value of any stock that is repurchased by a publicly traded corporation
  - Only repurchases that are treated as redemptions are subject to the tax. Repurchases that are treated as dividends are not.
- Certain exceptions apply, including:
  - Repurchases that are part of a tax-free reorganization, or
  - Repurchases in which total value of stock repurchased does not exceed \$1 million
  - Repurchases in which stock repurchased is contributed to employer-sponsored retirement plan, stock ownership plan, or similar plan
- Applies to stock repurchased after December 31, 2022
- New guidance: Notice 2023-2 (12/27/22) – provides interim guidance on the 1% excise tax. See item a, page 4.

4

4

**Corporate Changes in Inflation Reduction Act  
August 16, 2022**

***Outline: item H.1, page 7***

- The Inflation Reduction Act, § 10101, amends Code section 55(b)
- Imposes a 15 percent AMT on corporations with average “adjusted financial statement income” measured over three years of over \$1 billion.
- Does not apply to:
  - S corporations
  - Regulated investment companies
  - Real estate investment trusts
- Applies to tax years beginning after December 31, 2022
- New guidance: Notice 2023-7 (12/27/22) – provides interim guidance on the corporate AMT. See item a, page 7.

5

5

**Albrecht v. Commissioner,  
T.C. Memo. 2022-53 (5/25/22)**

***Outline: item B.1, page 7***

- The taxpayer donated a large collection of Native American jewelry and artifacts to the Wheelwright Museum of the American Indian in New Mexico.
- In doing so, the taxpayer executed a Deed of Gift that specified the donation was “unconditional and irrevocable.”
  - The deed specified that the museum acquired “all rights, title and interest” in the donated items *except as specified in the Gift Agreement, a separate document.*
- The museum provided the taxpayer with a copy of the deed prior to her filing her return, but not the Gift Agreement
- Held: the taxpayer’s charitable contribution deduction was disallowed.
  - Section 170(f)(8) requires a contemporaneous written acknowledgement (CWA) for contributions of \$250 or more.
  - The deed did not specify that taxpayer had received no goods or services in exchange for her contribution.

6

6

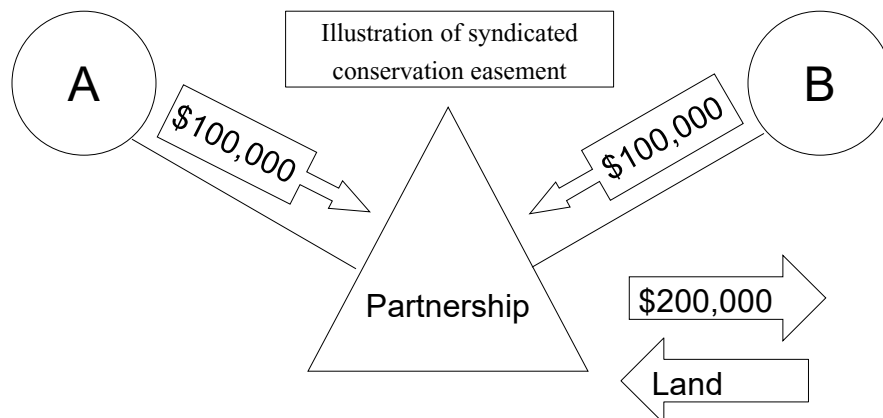
**Keefer v. United States,**  
**130 A.F.T.R.2d 2022-5002 (N.D. Tex. 7/6/22)**  
**Outline: item B.2, page 8**

- The taxpayer donated a 4% interest in a hotel partnership to a donor advised fund (DAF) shortly before the hotel's sale.
- Based on the donation, the taxpayer claimed a charitable contribution deduction of \$1.25 million, which produced tax savings of approximately \$508,000.
- In addition to the normal contemporaneous written acknowledgement (CWA) requirements of § 170(f)(8), § 170(f)(18) imposes additional requirements for contributions to a DAF
  - Specifically, § 170(f)(18) requires that the CWA issued by the DAF state that the DAF has "exclusive legal control over the assets contributed."
- **Held:** the taxpayer's charitable contribution deduction was disallowed.
  - The CWA issued by the DAF (along with other documents executed in connection with the donation) did not expressly state that the DAF had "exclusive legal control" over the contributed partnership interest.

7

7

**Conservation Easements**  
**Outline: item B.3, page 8**



- Land is appraised at its "highest and best use" at \$2 million
- Partnership grants conservation easement to charitable organization
- Appraised value of land restricted by easement is \$1 million
- Difference of \$1 million is charitable contribution deduction (\$500k/partner)

8

## Conservation Easements

### *Outline: item B.3, page 8*

- New legislation:
  - Consolidated Appropriations Act, 2023, Pub. L. No. 117-328
    - Signed by the President on December 29, 2022.
  - Section 605 of the legislation provides rules regarding conservation easements, including:
    - Disallows charitable deductions for qualified conservation contributions by partnerships (and S corporations and other pass-through entities) if the claimed deduction exceeds 2.5 times the sum of a partner's "relevant basis" in the partnership making the contribution.
      - Relevant basis is the partner's "modified basis" allocable to the real property in question. Modified basis is essentially outside basis determined without regard to partnership liabilities.
  - Applies to contributions made after December 29, 2022.

9

9

## Conservation Easements

### *Outline: item B.3, page 8*

- New legislation (cont'd):
  - Exceptions to disallowance of charitable deductions for qualified conservation contributions by partnerships (and S corporations and other pass-through entities):
    1. Partnerships making conservation easement contributions after a three-year holding period applicable at both the partnership- and partner-level
    2. "Family partnerships" (as defined) making conservation easement contributions; and
    3. Partnerships making conservation easement contributions relating to historic structures.
      - Requires certain reporting of conservation easement contributions made by partnerships.

10

10

**Conservation Easements**  
***Outline: item B.3, page 8***

- New legislation (cont'd):
  - Consolidated Appropriations Act, 2023, Pub. L. No. 117-328
    - Signed by the President on December 29, 2022.
  - An uncodified provision, § 605(d), directs Treasury to publish “safe harbor deed language for extinguishment clauses and boundary line adjustments” relating to qualified conservation contributions.
  - Timing:
    - Treasury is directed to publish such safe harbor deed language within 120 days of the date of enactment of new § 170(h)(7) (i.e., by April 28, 2023), and
    - Donors have 90 days after publication of the safe harbor language to execute and file corrective deeds.
  - Purpose:
    - To allow donors of conservation easements granted with language that does not conform to Treasury Regulations to make corrections

11

11

**Mann Construction, Inc. v. United States,**  
**27 F.4th 1138 (6th Cir. 3/3/22)**  
***Outline: item H.1, page 9***

- In Notice 2007-83, the IRS concluded that certain trust arrangements involving cash value life insurance policies are listed transactions.
- The IRS imposed penalties on a corporation and its two shareholders under § 6707A for failing to disclose a transaction that, according to the IRS, was a transaction described in Notice 2007-83.
- Held: the IRS failed to comply with the Administrative Procedure Act in issuing Notice 2007-83 and the notice therefore is invalid.

12

12

**Green Valley Investors, LLC. v. Commissioner,  
159 T.C. No. 5 (11/9/22)**

***Outline: item H.1.a, page 11***

- Holds that Notice 2017-10, which identifies syndicated conservation easements as listed transactions, is a legislative rule, improperly issued by the IRS without notice and comment as required under the APA.
- Notice 2017-10 therefore is invalid.
- IRS was prohibited from imposing penalties for failing to disclose listed transactions
- Note: on December 8, 2022, the IRS issued proposed regulations identifying syndicated conservation easements as listed transactions. [See outline page 12, item b]

13

13

**Rev. Rul. 2023-2**

**2023-\_\_\_ I.R.B. \_\_\_ (3/29/23)**

***Outline: item D.1, page 12***

- A relatively common estate-planning strategy involves the use of a so-called “intentionally defective grantor trust” (IDGT).
- Through an IDGT, a grantor can make a completed gift of property for estate and gift tax purposes under subtitle B chapter 11 of the IRC but still be taxed on the income from the property under subchapter J chapter 1 of the IRC.
- Section 1014(a) provides that a person acquiring property from a decedent acquires a basis in the property equal to the FMV of the property on the date of the decedent’s death.
- Issue: does a person acquiring property from an IDGT upon the grantor’s death have a stepped-up basis, i.e., a basis equal to the FMV of the property upon the donor’s death, under § 1014(a)?
- Held: No. Such an asset is acquired from the IDGT, not from the decedent.

14

14