Steve Leimberg's Estate Planning Email Newsletter - Archive Message #2587

Date:	**04-Oct-17**
From:	**Steve Leimberg's Estate Planning Newsletter**
Subject:	**FLASH: Keith Schiller & Estate Planning At The Movies(R) - Proposed Regulations Under Code §2704 Finally Die**

"On October 2, 2017, the United States Department of the Treasury killed the Proposed Regulations under Internal Revenue Code §2704 with the issuance of the Second Report to the President on Identifying and Reducing Tax Regulatory Burdens. Issued in the name of Steven T. Mnuchin, Secretary of the Treasury, the report characterizes the proposed regulations as "unworkable." The report eviscerates the proposed regulations technically and strategically, leaving one to wonder, "Why did it take so long?" The fate reminds this author of the movie JAWS. At first, the mayor denies there is a problem. Finally, someone brought a bigger boat and killed the gosh darn shark. The Treasury report is that bigger boat."

Editor's Note: The original version of Keith's newsletter incorrectly cited the Internal Revenue Code, and we apologize for any confusion.

Keith Schiller has authored a host of **LISI** newsletters respecting federal estate and gift tax law and the preparation of the Form 706. Keith was the principal author of *A Call to Congress for Action*, an editorial with 21 nationally and regionally prominent co-authors calling for Congressional action to stop the proposed regulations under *Code §2704* and discussing numerous ambiguities, technical flaws, policy miscalculations and procedural failings with the proposed regulations. In this FLASH newsletter, Keith discusses death knell to the issuance of the proposed regulations under Code §*2704*.

Keith Schiller, Esq., shareholder of the **Schiller Law Group, a PLC**, of Alamo California, has more than 42 years of experience with taxation, and estate and business succession planning. Keith works with clients, teaches and consults on estate planning, tax compliance, business succession and trust administration. Keith's prior contributions relating to the proposed regulations under Code §2704 include the foregoing editorial and:

- Estate Planning At the Movies®, Willy Wonka, La La Land and Why the Death of the 2704 Nightmare Should Not Become Your Shared Dream, Estate Planning Newsletter # 2509.

- Estate Planning At The Movies®: From La La Land to Chucky and the Apparent Death of the 2704 Regulations and Potential Rebirth, Estate Planning Newsletter # 2565.

Keith is the author of the award-winning book, **Art of the Estate Tax Return — Estate Planning At The Movies®** ("706 Art").[1] The book reveals Keith's best practice pointers, his insights from co-teaching with the IRS for greater than thirteen years, and practical recommendations from over a dozen leading practitioners across the country who contributed to the book. The Second Edition and 2017 Supplement of 706 Art is published by Bloomberg BNA Books and is available at http://www.bna.com/bnabooks/aetr. Keith is a member of the Advisory Board for Bloomberg BNA's Estates, Gifts and Trusts Journal and the Consulting Board for the Leimberg Information Services, Inc. ("LISI") Newsletter. He has taught 11 courses for the CalCPA Education Foundation and received the 2000 and 2010-2011 awards for Outstanding Course Materials. From passion, Keith chaired the Yosemite License Plate Campaign, during which he lobbied passage for the law approving the Yosemite License Plate and directed the state-wide marketing and sales campaign. The Yosemite License Plate has raised in excess of $35 million for the preservation of Yosemite and California conservation.

Here is Keith's commentary:

EXECUTIVE SUMMARY:

The proposed regulations under Code §2704 are dead.

FACTS:

On October 2, 2017, the United States Department of the Treasury killed the Proposed Regulations under Internal Revenue Code §2704 with the issuance of the **Second Report to the President on Identifying and Reducing Tax Regulatory Burdens**. Issued in the name of Steven T. Mnuchin, Secretary of the Treasury, the report characterizes the proposed regulations as "unworkable." The report eviscerates the proposed regulations technically and strategically, leaving one to wonder, "Why did it take so long?" The fate reminds this author of the movie JAWS. At first, the mayor denies there is a problem. Finally, someone brought a bigger boat and killed the gosh darn shark. The Treasury report is that bigger boat.

The October report was issued in response to Executive Order 13789 (and IRS Notice 2017-38) to reduce tax regulatory burdens. The proposed regulations under §2704 were identified among the regulations that: (i) impose an undue financial burden on U.S. taxpayers; (ii) add undue complexity to the Federal tax laws; or (iii) exceed the statutory authority of the Internal Revenue Service (IRS). The executive order instructed Treasury to submit a final report to the President by September 18, 2017, recommending "specific actions to mitigate the burden imposed by regulations identified in the interim report."

The October report cites the following deficiencies in the proposed regulations:

1. Dense rules and definitions.

2. Narrowing longstanding exceptions and dramatically expanding the class of restrictions that are disregarded under §2704.

3. Valuation of the entity interest as if disregarded restrictions did not exist, whether under the business agreements or state law.

4. No exceptions were allowed for interests in active or operating businesses.

5. Creation of impractical standards for valuation and use of fanciful assumptions.

6. Imposition of lengthy and difficult rules.

7. Reduction of legitimate discounts not created artificially as a value-depressing device.

The proposed regulations received massive criticism from professional organizations and the public. Over 28,000 adverse comments were filed by individual and industry taxpayers, practitioners, and industry groups against the proposed regulations.

COMMENT:

This family-business eating shark is dead. The death of the proposed regulations in large part reflects the vibrancy of the democratic system in which the voice of the public to protect family business enterprise, promote tax fairness and avoid needless complexity were heard.

For those of us who lent our voices and time to express opposition and concerns to the IRS and Treasury and rally business owners and members to protest taxation of family business in greater amounts than identical non-family owned enterprise, this result is lovingly received. For at least the time being, the matter is dead. As with the movie Jaws sequel may be on the horizon in a new form, though likely not for at least the next few years.

Conclusion

Until we meet again.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Keith Schiller

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CITES:

Second Report to the President on Identifying and Reducing Tax Regulatory Burdens, Executive Order 13789, Steven T. Mnuchin, Secretary of the Treasury; October 2, 2017.

CITATIONS:

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[1] Estate Planning At the Movies® is the registered trademark of Keith Schiller.