

Post Mortem Estate Planning Class 2

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Alternate Valuation Election

- Section 2031(a): value of the gross estate is determined at the time of death.
- Reg. 20.2031-1(b): all assets are valued at fair market value at the time of death.
 - The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

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Alternate Valuation Election (cont.)

- Section 2032(a): executor may elect to value the assets at the Alternate Valuation Date. All or nothing election.
- Section 2032(a)(1)-(2): the Alternate Valuation Date is the date an asset is sold, distributed, exchanged or disposed of, or the date 6 months after the date of death.

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Alternate Valuation Election (cont.)

- Section 2032(c): the alternate valuation election must reduce both the value of the gross estate and the estate tax liability.
- Section 2032(d): executor makes the election on the Form 706 (line 1, page 2, Part 3) and once made is irrevocable. The election may not be more than 1 year late claiming this election (including extensions).

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Alternate Valuation Election (cont.)

- Protective Election: no protective election appears on Form 706, but in *Mapes Estate v. Comm'r*, 99 TC 511(1992) the Tax Court allowed a protective election.
- Alternate Valuation Election: can be made up to 27 months after death, but will result in late penalties and loss of other benefits (such as 6166).
- Result of Election: reduced basis to beneficiaries.

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Alternate Valuation Election (cont.)

- **Caution:** what if you make an alternate valuation election thinking the estate went down in value, but in actuality the estate went up? Are you stuck with the higher tax or can you revoke the election?

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Redemptions: Selling Estate Stock Back to the Corporation

- Section 302(d): redemption is a distribution of property under Section 301(a) unless Section 302(a) applies.
 - Section 301(a): distribution of property is taxable as ordinary income to the extent of earnings and profits.
- Section 302(a): redemption is treated as a sale of stock if Section 302(b)(1)-(4) apply.

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Redemptions: 302(b)(2): Subst. Disproportionate Redemption

- Section 302(b)(2): if the shareholder owns (1) less than 50% of the voting stock after the redemption and (2) the ratio of stock after the redemption is less than 80% of the stock before the redemption.
- Section 302(c): constructive ownership rules of Section 318 apply.

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Section 318: Constructive Ownership Rules

- Section 318(a)(1): family attribution: an individual is considered the owner of shares owned directly and indirectly by a member of his family.
- Section 318(a)(2): entity from attribution:
 - Estates: owned proportionately by beneficiaries
 - Trust: owned proportionately by beneficiaries according to actuarial interest

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Section 318: Constructive Ownership Rules cont.

- Section 318(a)(3): entity to attribution:
 - Estates: stock owned, directly or indirectly, by a beneficiary is owned by the estate.
 - Trusts: stock owned, directly or indirectly, by a beneficiary is owned by the estate unless the beneficiary interest is a remote contingent interest (5% or less).
- Section 318(a)(5): Operating Rules

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Section 318: Constructive Ownership Rules cont.

- Treas. Reg. Section 1.318-3: when a beneficiary no longer is entitled to a beneficial interest in the estate, then the entity to attribution rules no longer apply.

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Section 302(b)(3): Complete Termination

- Section 302(b)(3): if a shareholder completely terminates his interest in the corporation.

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Section 302(b)(4): Partial Liquidation

- Section 302(b)(4): if (1) redemption of stock held by an individual and (2) in partial liquidation of the distributing corporation.
 - Section 302(e) defines a partial liquidation.

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Section 302(c): Constructive Ownership Rules

- Section 302(c)(1): Section 318 constructive ownership rules apply.
- Section 302(c)(2)(A): family attribution can be waived with a family waiver.
 - Family waiver is not permitted if any shares are constructively owned by the distributee and the owner acquired them from the distributee within 10 years prior to the redemption unless such shares are also redeemed.

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Section 303: Redemption to Pay Taxes and Expenses

- Section 303(a): a redemption of stock included in the gross estate is taxed as a redemption as long as the redemption does not exceed the amount needed to pay all estate and inheritance taxes, funeral expenses, and administration costs.
- Section 303(b)(1):
 - Redemption must occur within 90 days after the expiration of the statute of limitations for the estate tax.
 - If Section 6166 elected, then within the period for the installments.

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Section 303: Redemption to Pay Taxes and Expenses cont.

- Section 303(b)(2)(A): the value of the stock must exceed 35% of the gross estate less deductions under Sections 2053 and 2054.
- Section 303(b)(2)(B): can aggregate stock of 2 or more corporations if the decedent owns 20% or more of the value of the outstanding stock of each corporation.

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