1963

Estate and Gift Taxation: Final Examination (January 1963)

William & Mary Law School

I.

In 1963 Grantor, G, about to engage in an adverturesome business, wishes to establish a trust for the protection of his wife, W, and his daughter, D, against loss of his capital. He proposes, for your consideration of the tax consequences, that the income of the trust be payable to W for life, then to D for life, and remainder to D's issue living at her death per stirpes. If D should have no issue surviving at her death, remainder to whomever G, if living, should appoint other than to himself or for his own benefit, and if G is not then living, remainder to G's next of kin. G wishes to have the power, during his lifetime, to invade the corpus for the benefit of either or both W and D to whatever extent it may be necessary to maintain their usual standards of living in the event of failure of other sources of support. He wishes D to have a testamentary power to vary the per stirpes interests of her issue in the event that it should appear, in her sole and absolute discretion that the comparative financial circumstances of her respective issue justify giving more or less to one or the other of them than his or her per stirpes share, and, in the event that D predeceases him, living W, he wishes to have the same power in himself.

If these provisions are effected, give your analysis as to:

(a) The value of what interests, if any, would be included in G's gross estate upon his death, survived by W and D, and making such assumptions as to the circumstances existingat that time as are necessary to the answer?

(b) Same as (a), but assuming that D predeceases G and W survives him?

(c) The value of what interests, if any, would be included in D's gross estate upon her death, predeceased by G and W, her power unexercised?

II.

Supposing that in Question I above the trust corpus is $100,000 and a provision is added as follows: Upon the death of G, the corpus may be invaded without limitation by either or both W and D for their respective comfort, support and contentment, but only by their mutual consent during their joint lives; and the survivor of them shall have the sole right to invade the corpus for any purpose but not to exceed $10,000 in any one year.

(a) Assuming that at G's death, survived by W and D, the IRS determines to include the entire value of the trust properties in G's gross estate and the determination is not contested. Discuss the applicability of the estate tax marital deduction in the circumstances.

(b) W survives G by 10 years and is herself survived by D, the corpus not having been invaded prior to her death. Should any amount be included in her gross estate?

(c) D then survives W by 20 years, never invading the corpus. If D's power to vary the interests of her issue were to be disregarded, should any amount be included in D's gross estate by reason of the Question II provision?

III.

In 1961 D owned a dairy farm comprising extensive grazing lands, farmhouse, equipment and animals, in all worth $300,000. His son, S, was experienced and active in the business and D, although in good health for his age 65, wished to retire, purchase a town home, and leave the business in S's hands. He wished to give S the business outright, but he and his wife, W, still needed an appreciable income and did not want to be dependent upon S for support. He consulted attorney, A, as to how it might be handled and was told that it would especially help his estate tax position to transfer the business to S and, although S had no capital with which to pay D for it, S could be obligated to pay D and W an annuity and S's annual income from the dairy would provide a source for his payments. D asked A why he should not just retain an income interest in the business and was answered that that would not improve the estate tax status. D agreed to A's proposal and transferred the dairy farm outright to S, receiving in consideration S's promise to pay $10,000 annually to D and W jointly and to the survivor of them for life. The cost of a $10,000 annuity for their joint lives and the life of the survivor would be $150,000 if purchased from an annuity company. In order to secure the payments, S gave D and W jointly with right of survivorship a mortgage in that amount, reducible for each $10,000 annuity payment and discharged in full upon the death of the survivor.

(a) Discuss D's gift tax position in 1961 (you need not compute the liability) taking into account all exemptions, exclusions and deductions as may be applicable.

(b) Assuming that D were to die in 1963 and that all above facts are in evidence, discuss the issue of whether the 1961 transfer was made in contemplation of death and how much might be included in D's estate on that premise.

(c) Assuming that D were to die in 1965, survived by S and W, and no changes in the estate tax laws having been made, and that the actuarial value of W's annuity is then $100,000, discuss the issues as to includibility in D's gross estate of the dairy farm properties and/or the value of W's annuity and the applicability of a marital deduction in the circumstances.

IV.

H and W separated in 1956. Pursuant to agreement made at that time, H thereupon transferred $100,000 to an irrevocable trust, the income of which was to be paid to W in lieu of support or alimony should they divorce. The trust was to terminate upon the first event to occur of H's death, W's death, or W's remarriage, and the corpus to be distributed free of trust to W if terminated by the first event, otherwise to H. In consideration of her interest in the trust, W relinquished all marital interests in H's property or estate. They divorced in 1957, the decree making no mention of alimony or settlement of property rights. H died in 1963, survived by W, who had not remarried. Give your analysis as to the deductibility of the trust corpus in H's gross estate and as to any deductions that may be allowed with respect thereto.

V.

Grantor, G, created two trusts for the benefit of his wife, W, his son, S, his daughter, D, and his grandchildren. W was to have the income of both of the trusts during her lifetime. S was the secondary life beneficiary of the S Trust, remainder to his issue living at his death per stirpes; and D was the secondary life beneficiary of the D Trust, remainder to her issue living at her death per stirpes. In the S Trust, G retained the powers in conjunction with S to invade the corpus for the benefit of W and to accumulate income and add it to principal. He retained the same powers in the D Trust in conjunction with D. Upon the death of any of the three, G, S, or D, the non-holder of a power was to be substituted in place of the deceased holder, i.e., if G should die, S and D were to be the co-holders of the powers in both trusts; if S were to die, D would become the co-holder with G in the S Trust, etc., and the last survivor of the three would be the sole holder of the powers in both trusts.
(a) What are the gift tax consequences to G upon creation of the trusts as to the interests, if any, to be included in gross gifts for that year and annual exclusions, if any, applicable thereto? (b) If S should subsequently die, survived by G, D, W, and C, a child of his, what are the gift tax consequences to G as to the same matters?

VI.

H paid $20,000 for a 20 acre farm tract in 1955, taking title with W as tenants by the entirety with right of survivorship, and not electing to treat the acquisition as a gift to W. By reason of twon expansion, home building developments and shopping center construction the property is worth $200,000 in 1963 and is likely to remain at that value for a number of years. H is now 70 years old and his condition of health is such that it is not too likely that he will live for 3 more years. He has a very substantial estate and is undecided whether to hold this property in his estate, sell it and divide the proceeds with W, convert it into tenancies in common with W, or he and W give it now to their children whom they wish eventually to have their wealth. Discuss the tax factors that should be considered and carefully weighed in these circumstances.