PROBATE & ESTATE PLANNING SECTION

Supplemental Attachments for

Friday, June 9, 2023

Meeting of Committee on Special Projects (CSP),

and

Meeting of the Council of the Probate and Estate Planning Section

at the University Club of Michigan State University
3435 Forest Rd, Lansing, MI 48910

Or *via* Zoom

Probate & Estate Planning Section of the
State Bar of Michigan

You are invited to the June meetings of the Committee on Special Projects (CSP) and the Council of the Probate & Estate Planning Section:

Friday, June 9, beginning at 9 AM
at the University Club of Michigan State University
3435 Forest Rd, Lansing, MI 48910

Remote participation by Zoom will be available. So, you are also invited . . .

to a Zoom meeting.
When: June 9, 2023, 09:00 AM Eastern Time (US and Canada)

Register in advance for this meeting:

https://us02web.zoom.us/meeting/register/tZErceCoqz0iGNNpnZuXDb_TMGZql01fN14a

After registering, you will receive a confirmation email containing information about joining the meeting. If you are calling in by phone, email your name and phone number to Angela Hentkowski ahentkowski@stewardsheridan.com, *we will put your name in a zoom user list that will identify you by name when you call in.*

Please note that the Zoom feature of these meetings entails that they will be recorded.

This will be a regular in person and remote meetings of the Council of the Probate & Estate Planning Section. The Council meeting will be preceded by a meeting of the Council's Committee on Special Projects (CSP), which will begin at 9:00 AM. The CSP meeting will end at about 10:15 AM, and the Council meeting will begin shortly thereafter. The agenda and meeting materials will be posted on the Probate & Estate Planning Section page of the SBM website. Once those things are posted, you should be able to download them from: http://connect.michbar.org/probate/events/schedule.

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Section Secretary

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EXHIBIT A

MCL 700.2524 Definition of Undue Influence:

(A) A donative transfer is procured by undue influence if the alleged influencer exerted such influence over the donor that it overcame the donor's free will and caused the donor to make a donative transfer that the donor would not otherwise have made. The amount of persuasion necessary to overcome a donor's free will may be less when a donor has vulnerabilities that could impair the donor's ability to withstand another's influence. In determining whether a result was produced by undue influence, the following factors are among those that may be considered:

(1) The vulnerability of the donor. Evidence of vulnerability may include, but is not limited to incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, dependency, recent loss of a spouse, estrangement from children, fear of change in living situation, or whether the alleged influencer knew or should have known of the donor's vulnerability.

(2) The alleged influencer's apparent authority. Evidence of the alleged influencer's apparent authority may include, but is not limited to, status as a fiduciary, confidante, close family member, care provider, health-care professional, legal professional, financial professional, spiritual adviser, or the donor's perception of the alleged influencer's expertise.

(3) The actions or tactics used by the alleged influencer. Evidence of actions or tactics used may include, but is not limited to:

(a) Controlling necessaries of life, medication, the donor's interactions with others, access to information, or sleep.

(b) Use of force, threat, undue flattery, intimidation, coercion, fraud or misrepresentation.

(c) Initiation of changes in an estate plan or personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, or claims of expertise in effecting changes.

(d) Efforts to negatively influence the donor's perception of family members, advisors or otherwise interfere with family, business or professional relationships; or,

(e) The existence of other suspicious circumstances.

(B) For purposes of this section and MCL 700.2725, as it relates to any instrument, gift, or other transaction alleged to be the product of undue influence, the term "donor" shall mean a testator, grantor, settlor, transferor or principal. The term "instrument" shall mean any instrument, whether written, governing or otherwise.

MCL 700.2521 Burden of Proof in Undue Influence Contests; Presumption Of Undue Influence.

(a) A presumption of undue influence, whether as to an instrument, gift or transaction, is established when all of the following elements are proven to exist by a preponderance of evidence:

(1) A confidential relationship exists between the donor and the alleged influencer;

(2) The alleged influencer, or an interest represented by an alleged influencer, benefits from a transaction; and,

(3) The alleged influencer had an opportunity to influence the donor's decision in the transaction.

(b) Whether a presumption of undue influence has been established is a question for the court.

(c) If a presumption of undue influence is found to exist, and notwithstanding Section 3407, then the proponent of an instrument, recipient of a gift, or other party to a transaction, has the burden of proving, by a preponderance of evidence, that the instrument, gift, or transaction is not the product of undue influence.

(d) "Confidential relationship," for purposes of this section, means a fiduciary, reliant, or dominant-subservient relationship.

(1) A fiduciary relationship is one in which the relationship arises from a legally recognized fiduciary obligation. Examples of legally recognized fiduciary relationships include, but are not limited to the following: lawyer/client, stockbroker/investor, principal/agent, guardian/ward, trustee/beneficiary, physician/patient, accountant/client, and financial advisor/client.

(2) A reliant relationship is one where there is a relationship between the donor and alleged influencer based on special trust and confidence and may include circumstances where the donor was guided by the judgment or advice of the alleged influencer or placed confidence in the belief that the alleged influencer would act in the interest of the donor. Examples of reliant relationships include, but are not limited to, the following:

(A) The donor relies on the alleged influencer to conduct banking or other financial transactions;

(B) Where trust is placed by the donor in the alleged influencer who, as a result, gains superiority or influence over the donor;

(C) When the alleged influencer assumes control over, and responsibility for, the donor, or is placed in an express or implied position of authority to represent or act on behalf of the donor;

(D) When the donor is reliant upon the alleged influencer for care; or,

(E) When a clergy/penitent relationship exists between the donor and the alleged influencer.

(3) A dominant-subservient relationship is one where the donor is prepared to unquestioningly comply with the direction of the alleged influencer. Examples of dominant-subservient relationships include, but are not limited to, relationships between a hired caregiver and client, or relative and an ill or feeble donor, when the donor is dependent upon the alleged influencer for activities of daily living or instrumental activities of daily living.

(e) Being the donor’s spouse or child, without more, is not sufficient to establish a presumption of undue influence.

(f) The definitions of “donor” and “instrument” set forth in MCL 700.2724, shall also apply to this section.

EXHIBIT B

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MEMORANDUM

TO	SBM Probate Council		
FROM	John T. McFarland on behalf of the Tax Committee	**DATE**	June 8, 2023
SUBJECT	June 2023 Tax Nugget; **Estate of Hoenshied v. Comm'r, T.C. Memo. 2023-34| March 15, 2023 |Nega, J. | Dkt. No. 18606-19**		

<u>Summary of Case</u>: The taxpayer and his brothers held equal amounts of shares in a family owned business. One brother wished to retire, which prompted the brothers' decision to sell the company. The taxpayer decided to donate a portion of his shares to a donor advised fund with Fidelity Charitable prior to the sale of the company. The taxpayer was incorrectly advised by his counsel that the donation of the shares must occur before a definitive agreement to sell the business was in place. The taxpayer delayed the donation of the shares until immediately prior to the sale transaction out of fear that if the deal fell through he would end up owning fewer shares than his brothers. The case involved a deficiency arising from the charitable contribution of appreciated shares of the closely held stock to Fidelity Charitable. Two of the central issues of the case involved the timing of the contribution of the shares to Fidelity Charitable prior to the sale and the failure to adhere to the qualified appraisal requirements.

<u>Timeline of Gift and Sale Transaction</u>

- April 23, 2015 – The parties to the sale transaction executed a nonbinding letter of intent for the purchase to acquire the corporation for $107 million. Taxpayer followed up by email with his advisers stating, "I do not want to transfer the stock until we are 99% sure we are closing."

- June 1, 2015 – Petitioner's counsel sent Fidelity Charitable a Letter of Understanding outlining Petitioner's plan to donate the stock. The letter did not indicate the number of shares.

- June 11, 2015 - Shareholders of the corporation ratified the sale of all outstanding stock of the corporation. Board of directors approved Petitioner's request to transfer a portion of his shares to the Fidelity Charitable Gift Fund. Subsequent to the shareholder vote and board approval of the request to transfer a portion of the shares to

Fidelity Charitable, the corporation and the purchaser of shares continued to revise the Contribution and Stock Purchase Agreement.

- July 13, 2015 - Fidelity Charitable received stock certificate from Petitioner.

- July 14, 2015 - Contribution and Stock Purchase Agreement revised to state Petitioner contributed shares to Fidelity Charitable on July 10, 2015 and on July 15, 2015. Contribution and Stock Purchase Agreement signed and transaction was funded.

- Fidelity Charitable received $2,941,966 in cash proceeds from the sale. Proceeds were deposited in Petitioner's DAF giving account.

- November 18, 2015 - Fidelity Charitable sent Petitioner a receipt acknowledging a charitable contribution of the corporate shares. The receipt indicated that Fidelity Charitable received the shares on June 11, 2015.

- Petitioner did not report any capital gains for the shares contributed to Fidelity Charitable on his 2015 tax return. Petitioner did claim a noncash charitable contribution deduction of $3,282,511.

- The IRS issued a notice of deficiency for $647,489. The Service disallowed the claimed charitable contribution deduction, and assessed a penalty of $129,498 under section 6662(a).

The Tax Court addressed the following issues:

- Whether and when Petitioners made a valid contribution of the shares of stock?

  Holding: Petitioners failed to establish that any of the elements of a valid gift were present on June 11, 2015. Petitioners did not relinquish dominion and control on June 11th. Court held that Petitioners made a valid gift of CSTC shares on July 13, 2015.

- Whether Petitioners had unreported capital gain income due to their right to proceeds from the sale of those shares becoming fixed before the gift?

  Holding: Yes. Petitioners realized and recognized gain because the rights to proceeds from the sale became fixed before the gift. The Court held that Petitioners, through the doctrine of anticipatory assignment of income, had capital gains on the sale of the 1,380 appreciated shares of stock, even though Fidelity Charitable received the proceeds from that sale. Court held that the sale was a virtual certainty at the time the taxpayer donated the shares.

- Whether Petitioners are entitled to a charitable contribution deduction?

  No. Petitioners failed to show that the charitable contribution met the qualified appraisal requirements of section 170. The appraisal did not substantially comply with

the regulatory requirements. “The failure to include a description of such experience in the appraisal was a substantive defect. . . . Petitioners’ failure to satisfy multiple substantive requirements of the regulations, paired with the appraisal’s other more minor defects, precludes them from establishing substantial compliance.” Petitioners failed to establish reasonable cause for failing to comply with the appraisal requirements “because petitioner knew or should have known that the date of contribution (and thus the date of valuation) was incorrect.” The IRS’s determination to disallow the charitable contribution deduction was sustained.

- Whether Petitioners are liable for an accuracy-related penalty under section 6662(a) with respect to an underpayment of tax?

  No. The Court held that even though Petitioners did not have reasonable cause for their failure to comply with the qualified appraisal requirement, Petitioners' liability for an accuracy-related penalty presented a separate issue-and one for which the Service bore the burden of proof. The Court held that even though Petitioners disregarded their counsel’s cautionary note as to the timing, they did adhere to the literal thrust of her advice: that "execution of the definitive purchase agreement" was the firm deadline to contribute the shares and avoid capital gains. The anticipatory assignment of income issue was the subject of contention by the parties in the case. The Court did not consider the anticipatory assignment of income issue to be so clear cut that Petitioner should have known it was unreasonable to rely on his counsel’s advice. While the Petitioner’s counsel’s advice on an issue of substantive tax law was ultimately incorrect, the Court concluded that it was reasonable for Petitioner to rely on it. The Court concluded that the IRS failed to establish that Petitioners did not have reasonable cause under section 6664(c)(1) for their underpayment of tax.

<u>Relevant Law Cited by Tax Court:</u>

Two-Part Test to Determine Charitable Contribution of Appreciated Property Followed by Sale by Donee. The donor must (1) give the appreciated property away absolutely and divest of title (2) “before the property gives rise to income by way of a sale.” *Humacid Co. v. Commissioner*, 42 T.C. 894, 913 (1964).

Valid Gift of Shares of Stock. “Ordinarily, a contribution is made at the time delivery is effected.” Treas. Reg. § 1.170A-1(b). “If a taxpayer unconditionally delivers or mails a properly endorsed stock certificate to a charitable donee or the donee’s agent, the gift is completed on the date of delivery.” *Id.* However, the regulations do not define what constitutes delivery, and the Tax Court evaluates applicable state law for the threshold determination of whether donors have divested themselves of their property rights via gift. *See, e.g.*, *United States v. Nat’l Bank of Com.*, 472 U.S. 713, 722 (1985). In determining the validity of a gift, Michigan law, for example (and as applied in *Estate of Hoensheid*), requires a showing of (1) donor intent to make a gift; (2) actual or constructive delivery of the subject matter of the gift; and (3) donee acceptance. *See Davidson v. Bugbee*, 575 N.W.2d 574, 576 (Mich. Ct. App. 1997).

Delivery. Under Michigan law, the delivery requirement generally contemplates an "open and visible change of possession" of the donated property. *Shepard v. Shepard*, 129 N.W. 201, 208 (Mich. 1910). Manually providing tangible property to the donee is the classic form of delivery. Manually providing to the donee a stock certificate that represents intangible shares of stock is traditionally sufficient delivery. The determination of what constitutes delivery is context-specific and depends upon the "nature of the subject-matter of the gift" and the "situation and circumstances of the parties." *Shepard*, 129 N.W. at 208. Constructive delivery may be effectutated where property is delivered into the possession of another on behalf of the donee. *See, e.g.*, *In re Van Wormer's Estate*, 238 N.W. 210, 212 (Mich. 1931). Whether constructive or actual, delivery "must be unconditional and must place the property within the dominion and control of the donee" and "beyond the power of recall by the donor." *In re Casey Estate*, 856 N.W.2d 556, 563 (Mich. Ct. App. 2014). If constructive or actual delivery of the gift property occurs, its later retention by the donor is not sufficient to defeat the gift. *See Estate of Morris v. Morris*, No. 336304, 2018 WL 2024582, at *5 (Mich. Ct. App. May 1, 2018).

Delivery of Shares. Retention of stock certificates by donor's attorney may preclude a valid gift. Also, a determination of no valid gift may occur where the taxpayer instructs a custodian of corporate books to prepare stock certificates but remained undecided about ultimate gift. In some jurisdictions, transfer of shares on the books of the corporation can, in certain circumstances, constitute delivery of an inter vivos gift of shares. *See, e.g.*, *Wilmington Tr. Co. v. Gen. Motors Corp.*, 51 A.2d 584, 594 (Del. Ch. 1947); *Chi. Title & Tr. Co. v. Ward*, 163 N.E. 319, 322 (Ill. 1928); *Brewster v. Brewster*, 114 A.2d 53, 57 (Md. 1955). The U.S. Court of Appeals for the Sixth Circuit has stated that transfer on the books of a corporation constitutes delivery of shares of stock, apparently as a matter of federal common law. *See Lawton v. Commissioner*, 164 F.2d 380, 384 (6th Cir. 1947), *rev'g* 6 T.C. 1093 (1946); *Bardach v. Commissioner*, 90 F.2d 323, 326 (6th Cir. 1937), *rev'g* 32 B.T.A. 517 (1935); *Marshall v. Commissioner*, 57 F.2d 633, 634 (6th Cir. 1932), *aff'g in part, rev'g in part* 19 B.T.A. 1260 (1930). The transfers on the books of the corporation were bolstered by other objective actions that evidenced a change in possession and thus a gift. *See Jolly's Motor Livery Co. v. Commissioner*, T.C. Memo. 1957-231, 16 T.C.M. (CCH) 1048, 1073.

Anticipatory Assignment of Income. The anticipatory assignment of income doctrine is a longstanding "first principle of income taxation." *Commissioner v. Banks*, 543 U.S. 426, 434 (2005). The doctrine recognizes that income is taxed "to those who earn or otherwise create the right to receive it," *Helvering v. Horst*, 311 U.S. 112, 119 (1940), and that tax cannot be avoided "by anticipatory arrangements and contracts however skillfully devised," *Lucas v. Earl*, 281 U.S. 111, 115 (1930). A person with a fixed right to receive income from property thus cannot avoid taxation by arranging for another to gratuitously take title before the income is received. *See Helvering*, 311 U.S. at 115–17; *Ferguson*, 108 T.C. at 259. This principle is applicable, for instance, where a taxpayer gratuitously assigns wage income that the taxpayer has earned but not yet received, or gratuitously transfers a debt instrument carrying accrued but unpaid interest. A donor will be deemed to have effectively realized income and then assigned that income to another when the donor has an already fixed or vested right to the unpaid income. *See Cold Metal Process Co. v. Commissioner*, 247 F.2d 864, 872–73 (6th Cir. 1957), *rev'g* 25 T.C. 1333 (1956). The same principle is often applicable where a taxpayer

gratuitously transfers shares of stock that are subject to a pending, prenegotiated transaction and thus carry a fixed right to proceeds of the transaction. *See Rollins v. United States*, 302 F. Supp. 812, 817–18 (W.D. Tex. 1969).

Determining Anticipatory Assignment of Income. In determining whether an anticipatory assignment of income has occurred with respect to a gift of shares of stock, the Tax Court looks to the realities and substance of the underlying transaction, rather than to formalities or hypothetical possibilities. *See Jones v. United States*, 531 F.2d 1343, 1345 (6th Cir. 1976) (en banc); *Allen v. Commissioner*, 66 T.C. 340, 346 (1976). In general, a donor's right to income from shares of stock is fixed if a transaction involving those shares has become "practically certain to occur" by the time of the gift, "despite the remote and hypothetical possibility of abandonment." *Jones*, 531 F.2d at 1346. The mere anticipation or expectation of income at the time of the gift does not establish that a donor's right to income is fixed. The Tax Court looks to several other factors that bear upon whether the sale of shares was virtually certain to occur at the time of a purported gift as part of the same transaction. Relevant factors may include (1) any legal obligation to sell by the donee, (2) the actions already taken by the parties to effect the transaction, (3) the remaining unresolved transactional contingencies, and (4) the status of the corporate formalities required to finalize the transaction.

Qualified Appraisal for Certain Charitable Contributions. Section 170(f)(11)(A)(i) provides that "no deduction shall be allowed . . . for any contribution of property for which a deduction of more than $500 is claimed unless such person meets the requirements of subparagraphs (B), (C), and (D), as the case may be." Subparagraph (D) requires that, for contributions for which a deduction in excess of $500,000 is claimed, the taxpayer attach a qualified appraisal to the return. Section 170(f)(11)(E)(i) provides that a qualified appraisal means, with respect to any property, an appraisal of such property which—(I) is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and (II) is conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed under subclause (I). The regulations provide that a qualified appraisal is an appraisal document that, inter alia, (1) "[r]elates to an appraisal that is made" no earlier than 60 days before the date of contribution and (2) is "prepared, signed, and dated by a qualified appraiser." Treas. Reg. § 1.170A-13(c)(3)(i).

Qualified Appraisal Must Include: Treasury Regulation § 1.170A-13(c)(3)(ii) requires that a qualified appraisal itself include, inter alia:

(1) "[a] description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed;"

(2) "[t]he date (or expected date) of contribution to the donee;"

(3) "[t]he name, address, and . . . identifying number of the qualified appraiser;"

(4) "[t]he qualifications of the qualified appraiser;"

(5) “a statement that the appraisal was prepared for income tax purposes;”

(6) “[t]he date (or dates) on which the property was appraised;”

(7) “[t]he appraised fair market value . . . of the property on the date (or expected date) of contribution;” and

(8) the method of and specific basis for the valuation.

Qualified Appraiser. Section 170(f)(11)(E)(ii) provides that a “qualified appraiser” is an individual who (I) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations, (II) regularly performs appraisals for which the individual receives compensation, and (III) meets such other requirements as may be prescribed . . . in regulations or other guidance. An appraiser must also demonstrate “verifiable education and experience in valuing the type of property subject to the appraisal.” The regulations add that the appraiser must include in the appraisal summary a declaration that he or she (1) “either holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis;” (2) is “qualified to make appraisals of the type of property being valued;” (3) is not an excluded person specified in paragraph (c)(5)(iv) of the regulation; and (4) understands the consequences of a “false or fraudulent overstatement” of the property’s value. Treas. Reg. § 1.170A-13(c)(5)(i). The regulations prohibit a fee arrangement for a qualified appraisal “based, in effect, on a percentage . . . of the appraised value of the property.” *Id.* at subpara. (6)(i).

Substantial Compliance with Qualified Appraisal Requirements. The qualified appraisal requirements are directory, rather than mandatory, as the requirements “do not relate to the substance or essence of whether or not a charitable contribution was actually made.” *See Bond v. Commissioner*, 100 T.C. 32, 41 (1993). Thus, the doctrine of substantial compliance may excuse a failure to strictly comply with the qualified appraisal requirements. If the appraisal discloses sufficient information for the IRS to evaluate the reliability and accuracy of a valuation, the Tax Court may deem the requirements satisfied. *Bond*, 100 T.C. at 41–42. Substantial compliance allows for minor or technical defects but does not excuse taxpayers from the requirement to disclose information that goes to the “essential requirements of the governing statute.” *Estate of Evenchik v. Commissioner*, T.C. Memo. 2013-34, at *12. The Tax Court generally declines to apply substantial compliance where a taxpayer’s appraisal either (1) fails to meet substantive requirements in the regulations or (2) omits entire categories of required information.

Reasonable Cause to Avoid Denial of Charitable Contribution Deduction. Taxpayers who fail to comply with the qualified appraisal requirements may still be entitled to charitable contribution deductions if they show that their noncompliance is “due to reasonable cause and not to willful neglect.” 26 U.S.C. § 170(f)(11)(A)(ii)(II). This defense is construed similarly to the defense applicable to numerous other Code provisions that prescribe penalties and additions to tax. *See id.* at § 6664(c)(1). To show reasonable cause due to reliance on a professional adviser, the Tax Court generally requires that a taxpayer show (1) that their

adviser was a competent professional with sufficient expertise to justify reliance; (2) that the taxpayer provided the adviser necessary and accurate information; and (3) that the taxpayer actually relied in good faith on the adviser's judgment. *See Neonatology Assocs., P.A. v. Commissioner*, 115 T.C. 43, 99 (2000), *aff'd*, 299 F.3d 221 (3d Cir. 2002). "Unconditional reliance on a tax return preparer or C.P.A. does not by itself constitute reasonable reliance in good faith; taxpayers must also exercise '[d]iligence and prudence'." *See Stough v. Commissioner*, 144 T.C. 306, 323 (2015) (quoting Estate of Stiel v. Commissioner, T.C. Memo. 2009-278, 2009 WL 4877742, at *2)).

Section 6662(a) Penalty. Section 6662(a) and (b)(1) and (2) imposes a 20% penalty on any underpayment of tax required to be show on a return that is attributable to negligence, disregard of rules or regulations, or a substantial understatement of income tax. Negligence includes "any failure to make a reasonable attempt to comply" with the Code, 26 U.S.C. § 6662(c), or a failure "to keep adequate books and records or to substantiate items properly," Treas. Reg. § 1.6662-3(b)(1). An understatement of income tax is "substantial" if it exceeds the greater of 10% of the tax required to be shown on the return or $5,000. 26 U.S.C. § 6662(d)(1)(A). Generally, the IRS bears the initial burden of production of establishing via sufficient evidence that a taxpayer is liable for penalties and additions to tax; once this burden is met, the taxpayer must carry the burden of proof with regard to defenses such as reasonable cause. *Id.* at § 7491(c); *see Higbee v. Commissioner*, 116 T.C. 438, 446–47 (2001). The IRS bears the burden of proof with respect to a new penalty or increase in the amount of a penalty asserted in his answer. *See Rader v. Commissioner*, 143 T.C. 376, 389 (2014); Rule 142(a), *aff'd in part, appeal dismissed in part*, 616 F. App'x 391 (10th Cir. 2015); *see also RERI Holdings I, LLC v. Commissioner*, 149 T.C. 1, 38–39 (2017), *aff'd sub nom. Blau v. Commissioner*, 924 F.3d 1261 (D.C. Cir. 2019). As part of the burden of production, the IRS must satisfy section 6751(b) by producing evidence of written approval of the penalty by an immediate supervisor, made before formal communication of the penalty to the taxpayer.

Reasonable Cause Defense to Section 6662(a) Penalty. A section 6662 penalty will not be imposed for any portion of an underpayment if the taxpayers show that (1) they had reasonable cause and (2) acted in good faith with respect to that underpayment. 26 U.S.C. § 6664(c)(1). A taxpayer's mere reliance "on an information return or on the advice of a professional tax adviser or an appraiser does not necessarily demonstrate reasonable cause and good faith." Treas. Reg. § 1.6664-4(b)(1). That reliance must be reasonable, and the taxpayer must act in good faith. In evaluating whether reliance is reasonable, a taxpayer's "education, sophistication and business experience will be relevant." *Id.* para. (c)(1).

Conclusion: The taxpayer's refusal to relinquish title, dominion, and control of the gift prior to the shareholder vote triggered the anticipatory assignment of income issue, which resulted in the recognition and realization of gain. The Court concluded that the sale was a virtual certainty by the time the taxpayer ultimately did relinquish title, dominion, and control of the shares to Fidelity Charitable. The taxpayer's failure to adhere to the qualified appraisal regulations resulted in the disallowance of a charitable income tax deduction.

JTM