Tax Court issues favorable FLP ruling

**TAX: U.S. Tax Court provides guidance on FLP and FLLC provisions.**

*By Timothy P. Murphy, Esq.*  
*Guest Contributor*

In the past few years, the U.S. Tax Court and various federal Courts of Appeals have issued opinions on Family Limited Partnerships (FLPs) which have been adverse to the taxpayers. Now Judge Chiechi, writing for the U.S. Tax Court, has issued an opinion on FLPs which is favorable to the taxpayer.1 The opinion goes into great detail on provisions of the Family Limited Liability Company’s (FLLC) operating agreement and rejects many contentions put forward by the IRS.

Anna Mirowski died suddenly on September 11, 2001, just a few days following the formation and funding of her FLLC, as well as subsequent gifts of an aggregate of 48% of the FLLC interests therein to trusts for her three daughters. After her death, the IRS asserted an estate tax deficiency of $14.2 million.

Finding significant and real non-tax purposes for the FLLC, the court held the FLLC was viable, the gifts were separate transactions to be respected as such, and that IRS’s reliance on prior “bad facts” cases was misplaced.

**Background**

Anna’s husband was a doctor who developed an implantable defibrillator device (ICD) and the patents thereon were the primary basis of the development of the wealth of the Mirowski family.

Upon his death in 1990, Dr. Mirowski, per his Will, left his interests in the patents, the patent licensing agreements and all other assets.

See FLP ruling, page 2

Tax free municipal bonds — look at the options

**TAX: A recent decision by the Supreme Court has taxpayers rethinking purchasing state municipal bonds.**

*By Lynn Freer, EA*  
*Publisher*

The U.S. Supreme Court has issued a ruling permitting states to exempt interest on their own bonds from taxation, while taxing residents for interest on bonds issued by other states.1 This decision overturns the Kentucky Court of Appeals decision that held a statute unconstitutionally violated the commerce clause because it taxes interest earned on bonds issued by other states and their political subdivisions, while exempting interest earned on Kentucky bonds.

The Supreme Court’s decision to uphold the state tax-exempt status of municipal bond interest is a relief to state tax officials, as there will be no refund of tax on out of state bonds. It also benefits those states that issue bonds at a lower-than-commercial bond rate because the decision upholds the tax system that currently exists for state tax purposes. Finally, the decision reaffirms the wisdom of investing in single-state municipal bonds.

The ruling also signals a call to rethink the benefits of purchasing state municipal bonds from the taxpayer's state of residence.

**Tax benefit recap**

In today’s market, a California tax-free bond will yield approximately 4%. Ten-year treasury bonds yield only 3.8%. Because the California bond is federal and state tax free, in this scenario it’s a better after-tax investment. And to have the same after-tax

See Municipal bonds, page 3
Married partners, continued from page 9

How to make the election

Spouses make the election on a jointly filed Form 1040 by dividing all items of income, gain, loss, deduction, and credit between them in accordance with each spouse’s respective interest in the joint venture. Each spouse will file a separate Schedule C (Form 1040), Profit or Loss From Business (Sole Proprietorship), or Schedule F (Form 1040), Profit of Loss From Farming, and, if otherwise required, a separate Schedule SE (Form 1040), Self-Employment Tax.

For tax purposes, the partnership terminates at the end of the tax year immediately preceding the year the election takes effect.

Making the election for a rental real estate business

If a taxpayer and spouse make the election for their rental real estate business as opposed to investment, they must each report their share of the income and deductions on Schedule C or C-EZ instead of Schedule E.3

This rule does not apply if the real estate activity is mere joint ownership of property without engaging in a trade or business, or if some other operation would be sufficient to create a partnership.

EXAMPLE 7-5 Rental property: Dan and Maryann also co-own rental property on F Street. This is not a trade or business, and they may report income and expenses on Schedule E.

They also own property that they lease, manage and that is a trade or business. It is owned by the Dan and Maryann partnership. This is a rental trade or business. Because rental real estate income generally is not included in net earnings from self employment subject to self employment tax, and generally is subject to the passive loss limitation rules, the spouses should enter “Exempt–QJV” on Form 1040, line 58, and not file Schedule SE, unless they had other income subject to self employment tax.

Duration of election

Once the election is made, it can only be revoked with IRS permission. However, the election technically remains in effect only for as long as the spouses filing as a qualified joint venture continue to meet applicable requirements. If the spouses fail to meet the requirements for a year, a new election will be necessary for any future year in which the spouses meet the requirements to be treated as a qualified joint venture.

The effect of reduced Social Security and higher taxes upon the death of a spouse

How often does a retired (joint return) couple ask what will happen to their cash flow when one of them dies? How often is that taken into account when doing cash flow projections? Probably not very often.

In the typical situation in which a couple has some retirement income and Social Security benefits, the retirement income (other than Social Security benefits) often stays the same whether there are one or two taxpayers.

The general rule for Social Security, however, is that when one spouse dies, the surviving spouse will receive the higher of the two spouse’s benefits. The effect is to reduce cash flow by the Social Security benefits received by the lower of the two. The average Social Security is approximately $1,082 for the worker and $530 per month for the spouse.

EXAMPLE 7-6 Survivor benefits: One spouse receives $13,000 per year of Social Security benefits and the other receives $6,500 a year. When the first dies, the survivor will receive $13,000 per year in Social Security benefits.

Cash flow analysis

The effects on the survivor’s cash flow will be illustrated using the Social Security benefits listed above. The standard deduction will reflect that the taxpayers have each attained the age of 65. The effects will be calculated at three different retirement income levels:

(1) $ 25,000;
(2) $ 50,000; and
(3) $100,000.

The table on the next page illustrates the cash flow and federal and state taxes at each income level and compares the married couple’s income and the survivor’s income. We have used California tax rates to illustrate the state tax effect.

The most striking facts above are that not only does gross cash flow decrease due to the lower (single) Social Security benefits, but the federal income tax actually goes up. The tax goes up because of the fact that as a single taxpayer, a greater amount of Social Security benefits are taxable than when the couple was married and the tax rates are higher.

The effect of these two items is that cash flow drops between 13% and 19%. That equates to over $700 and up to over $1,000 in decreased monthly cash flow. How many widows or widowers can reduce their expenses by that amount?
M any taxpayers own U.S. savings bonds that were purchased many years ago. They rarely even think about the bonds, except when they make the occasional trip to the safe deposit box. In some cases the bonds were gifts, and in other cases the taxpayers purchased them as safe investments that would accrue interest and wouldn’t be taxable until a later date.

The interest may only be deferred until the bond expires (up to 30 years depending on the type of bond). At the end of the bond term, all accrued interest becomes taxable, even if the taxpayer has not redeemed the bond. However, taxpayers may elect to pay the interest as it accrues. This article addresses the election to pay the tax currently, versus waiting until the bond matures or is redeemed.

### Paying tax on U.S. savings bonds: now or later

**TAX: Consider the long term ramifications when electing to pay tax on bonds in the current year.**

**By Renée Rodda, J.D.**

**Associate Editor**

Because...