ONE

The Trust: Tom has received a request from his deep mother, which is not includable in gross income under §102(a).

Gifts between family members are presumed to meet the Duberstein detached and disinterested donee test. Gifts transferred at death have a stepped up or down basis based on the FMV of the stock at the time of transfer as poor marital base dies with her, and no gain is realized.

At death, the income from the trust is still going to be income - as under gift the basis 3 in the corpus remains of the trust, and any earnings are taxable without any basis appointment. The dividends, if held by the trust would be taxable to the trust at its rates, but as they are paid to Tom, they are his income, taxable at capital gains dates (dividends §1(h)(1)). When Tom dies, his children will receive the stocks with a stepped up/down basis to the FMV at the time of
TRANSFER AS IT IS STILL A GIFT FROM A BEQUEST MEETING.

THE 5102 EXCLUSION / NON-REALIZING EVENT OF DEATH. THE

TRUST IS NOT SUBJECT TO ANY INCOME SPLITTING ISSUES BECAUSE

MARRYING CREATED AN IRREVOCABLE TRUST AND DID NOT RETAIN

ANY INTEREST IN IT, ONLY THE TRUSTEE HAD ANY DISCRETION

WHICH DOES NOT VIOLATE 5173.

THE CONDO: TOM'S BUSINESS IS IN BUILDING CONDOMINIUMS

FOR SALE TO THE PUBLIC AND AS SUCH, HE MIGHT BE FORCED

TO CAPITALIZE MOST OF HIS EXPENSES INTO THE UNITS, AS THEY

ARE HIS INVENTORY HEIR FOR SALE TO THE PUBLIC - UNICAP

RULES. THIS WOULD FORCE HIM TO CAPITALIZE MUCH OF ITS OVERHEAD,

SOME SALARY, ETC. OTHER BUSINESS EXPENSES FOR WHICH

SERVE A PROFIT MOTIVE AND ARE ORDINARY/NECESSARY

EXPENDITURES, TOM WILL GET TO DEDUCT UNDER 162 - ABOVE THE
LINE BUSINESS EXPENSES. AS A DEALER OF REAL

ESTATE, TOM WILL NOT RECEIVE THE BENEFIT OF $453.

HANDLING OF THE INSTALLMENT SALE TO CONNIE. THOUGH HE'LL

GET SOME PAYMENTS DURING PRESENT YEAR OR AT, HE'LL

BE STUCK WITH THE CLOSED CASH TRANSACTION METHOD FOR

INSTALLMENT SALES INSTEAD OF QUALIFYING TO SPREAD OUT THE

BASIS OVER THE LIFE OF THE PAYMENTS IN RELATION TO HIS

PROFIT DIVIDED BY THE TOTAL CONTRACT SALE - WHERE APPROXIMATELY

ONE THIRD OF THE UPFRONT PAYMENT AND EACH SUBSEQUENT PAYMENT

WOULD BE PROFIT- ALLOWING HIM TO DEFER TAXATION. HERE,

HE WILL BE TAXED ON WHAT HE ACTUALLY RECEIVES IN YEAR

ONE - CONSTRUCTIVE RECEIPT OF THE NOTE BECAUSE HE

COULDN'T SELL IT IMMEDIATELY FOR $160,000. IN WHICH CASE,

HE'LL HAVE AS ORDINARY INCOME (INSTEAD OF CAPITAL GAIN)
BECAUSE ITS (INVENTORY HELD FOR SALE) IN YEAR ONE

BASED ON A 100% SALE. HIS AMOUNT REALIZED IS 100K

FOR CASH RECEIVED AND 160K FOR THE FMV OF THE NOTE.

THAT 260K LESS HIS BASIS OF 200K IS TAXABLE

GAIN OF 60K. THE REMAINING AMOUNT GETS SPREAD

OUT AND AMORTIZED OVER THE 10 YEARS OF THE NOTE.

THE INTEREST PAYMENT ON THE LOAN TO CONNIE WILL BE

ORDINARY INCOME TO TOM AS WELL.

THE HOME OFFICE:

THE DETACHED BUILDING PASSES ISSUES OF THE DIVIDE BETWEEN

PERSONAL AND BUSINESS DEDUCTIONS. CONGRESS SEES PEOPLE

AS SEEKERS OF PROFIT AND AS CREATURES TRYING TO SURVIVE,

THE COST OF MAKING MONEY IS DECEPTIVE. LIVING COSTS ARE

NOT. TOM'S SEARCH IS LIKELY MOTIVATED BY THE SEARCH
FOR PROFIT, BUT MAY NOT BE A NECESSARY EXPENSE

FOR HIS BUSINESS, PLACING IT IN 5262 - NON-DEDUCTIBLE PERSONAL

EXPENSE. THE ISSUE NORMALLY, IS NOT TOM’S MORTGAGE

INTEREST ON TOM’S HOME & OFFICE, WHICH IS DEDUCTIBLE

UNDER § 163 IF HE QUALIFIES BY LIVING THERE 2 OF

THE LAST 5 YEARS, ON ACQUISITION DEBT OF UP TO $1 MILLION.

NOR IS IT TOM’S PERSONAL PROPERTY TAXES WHICH ARE DEDUCTIBLE

UNDER § 164. Tom will want to DECREASE THE COSTS

OF THE OFFICE, UNDER § 280A AS A BUSINESS EXPENSE.

However, 280A’s TEST FOR DEDUCTIBILITY IS VERY NARROW.

UNDER THE PRINCIPLE PACE OF BUSINESS TEST, THOUGH TOM

IS MEETING WITH CLIENTS, NO PERSONAL USE IS ALLOWED

AT ALL, AS THE PREMISES MUST BE EXCLUSIVELY USED

FOR BUSINESS. "FRIDAYS AND FUN" NOT ALLOWED.

SIRPYTOM.
THE POKER GAME:

TOM MIGHT BE ABLE TO DEDUCT THE COSTS OF THE
POKER GAMES AS A BONA FIDE BUSINESS EXPENSE, THOUGH
ONLY FOR biz clients - not for his buddies - too personal.

(IF ALLOWED, TOM WOULD ONLY BE ABLE TO DEDUCT 50%)

OF THIS PARTY UNDER §274(N). TOM BETTER HAVE

BEING UNDER §274, BUT IF HE DOES, HE LIKELY CAN

DEDUCT UNDER §274(A)(1) AS RELATED TO BUSINESS AND

SHOWS THAT BONA FIDE BUSINESS DISCUSSION TRANSPIRED

BEFORE OR AFTER HERE DURING SHOWN WORK. TOM MIGHT

WANT TO BE SURE "OCCASIONAL" DOES NOT BECOME REGULAR,

AND ENSURE THAT "TOO MUCH" FUN IS NOT "HAD" - LIKE SOME

CUTE SUPER BOWL BLOW-OUT SIMILAR TO IRVING PLYMOUTH.

TOM'S POKER LOSSES ARE BASED ON UNDER §(274D)

MEANING HE CAN ONLY USE THEM TO OFFSET ANY GAINS;

WHICH WOULD BE ORDINARY INCOME TO TOM.