The Bankler Report

December 10, 2015

INTRODUCTION

A recent Tax Court case reminds taxpayers that the Statute of Limitations on a tax return does not begin to run until the return has been filed.

CBS Corp and Viacom, Inc.

Facts of the case begin with the Redstone family (the father (Mickey) and two sons (Edward & Sumner) who owned CBS (which later became Viacom). Sometime in the late 1960s various disputes arose between Edward and his father and brother. His role with the company had been reduced and, in 1971 he wanted to sell his shares to an outsider. Mickey, who wanted to have control of the company remain within the family, refused to deliver the stock to Edward claiming that the stocks were in trust for the benefit of Edward's children. After several months of negotiating the parties settled with 1/3 of the shares for Edward and the remaining 2/3 of his shares to the Trusts. Edward then sold his 1/3 back to the company for $5 million dollars.

Legal Issues

The above transaction was finalized and funded in 1972, and Edward did not file a gift tax return, as he probably thought that no gift had been made. In 2013, the IRS issued a notice of deficiency in the amount of $737,625 for the gift taxes for the 1972 tax year. The Internal Revenue Code states that a gift has been made when property is transferred for less than full and adequate consideration. In other words, the difference between the value of the property received and the "Fair Market Value" of the property is a gift. However, Treasury Regulations also state that the gift tax doesn't apply to ordinary business transactions. To qualify for this exception, the transfer must also be "bona fide, at arm's length, and free from any donative intent."

Our policy at Steven Bankler, CPA, Ltd. is to file gift tax returns on any related party transaction, in order to put the IRS on notice and start the clock on which the IRS can question the transaction (statute of limitations tp challenge the valuations).

Other Issues

We also believe that, in most situations, the best defense is a good offense. This means filing tax returns for wholly owned LLC subsidiaries, even though they are not required by the IRS. They are filed to prove that these entities exist, are in good standing, and provide corporation protection from creditors.

Contact us should you have any questions or if we can assist in addressing these issues.

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