The Bankler Report

March 10, 2016

INTRODUCTION

The Redstone family who owned CBS Corp (which later became Viacom, Inc.) is in the news again. Another Tax Court case dealing with the Redstone family's 1972 transaction (Sumner Redstone v. Commissioner, TC Memo 2015-237 [12/9/15]) reinforces the proposition 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.

Our initial Bankler Report of 12/10/15 discusses the gift tax case (Estate of Redstone, 145 T.C. No.11) involving Edward Redstone's settlement with his family and children. Edward and his brother Sumner once owned CBS Corp along with their father Mickey.

- Click here to read the December 10, 2015, Bankler Report - Statute of Limitations on unfiled returns.

The Tax Court held that the transfer was not a taxable gift but was a bona fide, arm's-length transaction in settlement of the dispute and free from donative intent.

Facts in This Case

Three weeks after Edward's settlement with his family in 1972, Sumner Redstone transferred one-third of his NAI shares into trusts for his two children. He did this voluntarily as a gesture of goodwill toward his father. This transfer was not part of the settlement and he was under no legal obligation to perform this act.

At the time, Sumner Redstone contacted his accountants. They concluded, in writing, that the transaction was not a taxable gift and no gift tax returns were required. 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 notice also requested additional penalties exceeding $590,000. He then petitioned the Tax Court for relief.

Tax Court Decision

The court held that the transfer was a taxable gift. Although the court states that Sumner Redstone's transfers to his children's trusts "undoubtedly" were prompted by the settlement agreement with Edward Redstone, it found no evidence that the transfers facilitated the settlement. Then the court considered several valuation methods presented by various experts at trial. It found that the most reliable measure of fair market value at the time of transfer was the redemption price NAI paid Edward Redstone in 1972.

Under the law in effect in 1972, the court concluded that Sumner Redstone was not liable for any additions to tax due to fraud, failure to file, or negligence, noting his reliance on competent tax advisers.

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Our Recommendations

As we stated in The Bankler Report of 12/10/15, 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 statute of limitations on which the IRS can question the transaction.

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.