

Basis Bonanza: Dealing with Consistency Rules and Generating Step-Up

*Presented by
Charles A. Redd*

Basis Consistency and Reporting Rules for Property Acquired from a Decedent

- Background
 - July 31, 2015 – New IRC §§ 1014(f) and 6035
 - March 4, 2016 – Proposed Regulations
- Substantive Rule
- Procedural Rule
- When to be finalized?

Basis Consistency and Reporting Rules for Property Acquired from a Decedent (continued)

- Most Problematic Provisions
 - Zero Basis Rule
 - All Property Rule
 - Subsequent Transfers Rule

Planning to Achieve Basis Step-Up

- Outright Distributions
 - Don't ignore governing instrument and fiduciary duties
- General Power of Appointment
 - Defined
 - By Formula
 - Allowing Independent Trustee or Trust Protector to Grant
 - Decanting, Modification, Nonjudicial Settlements

Planning to Achieve Basis Step-Up (continued)

- Delaware Tax Trap
 - Flexible but can be difficult to predict results and often difficult to implement in perpetual trust jurisdictions
- Portability
 - Outright to Surviving Spouse at Death of Predeceased Spouse
 - To QTIP Trust at Death of Predeceased Spouse

Planning to Achieve Basis Step-Up (continued)

- Designing Spousal Asset Ownership Structure to Ensure Some Basis Step-Up at Death of First Spouse to Die
- Use Elderly Parents
- Avoiding IRC Section 1014(e)
 - Credit Shelter Trust
 - QTIP Trust

Planning to Achieve Basis Step-Up (continued)

- Using a Community Property Trust
 - Alaska, Tennessee or South Dakota
 - Three Fundamental Questions:
 - Can “community property” within meaning of IRC § 1014(b)(6) be created by a voluntary act?
 - Can property be “community property” within meaning of IRC § 1014(b)(6) if title is held in trust?
 - Is spouses’ non-residence in Alaska, Tennessee or South Dakota relevant?