BESSEMER TRUST

ACTEC 2018 Fall Meeting Musings

October 2018

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This summary reflects the individual observations of Steve Akers from the seminars at the 2018 Fall Meeting and does not purport to represent the views of ACTEC as to any particular issues.

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Introduction

Some of my observations from the 2018 ACTEC Fall Meeting Seminars in Washington, D.C. on October 26-27, 2018 are summarized below. (At the request of ACTEC, the summary does not include any discussions at Committee meetings.) This summary does not contain all of the excellent information from the seminars, but merely selected issues. The summary is based on the presentations at the seminars, but the specific speakers making particular comments typically are not identified.

Items 1-10 summarize comments from a panel by Beth Shapiro Kaufman (moderator), Christopher Arneson (U.S. Tax Policy Advisor, Senate Committee on Finance), Austin W. Bramwell, and Karlene Lesho (Senior Technician Reviewer, Branch 4, Office of Chief Counsel with the Internal Revenue Service) discussing "Washington Insiders: How the Sausage is Made." The government officials emphasized that their comments are only for background and not for attribution and are not made officially on behalf of their respective employers. Some of the comments summarized below were from government officials and some were from Fellows on the panel.

1. Tax Writing Committees

a. **Senate Finance Committee and House Ways and Means Committee**. Legislative tax writing committees include the Senate Finance Committee and the House Ways and Means Committee. The more technical an issue is, the more likely that the committee will be driving the legislative process with respect to that issue. For example, the estate tax is a very technical area in the legislative world, and much of the legislative work is driven by committees.

   Each of the Senate Finance Committee and House Ways and Means Committee has a chairman (from the majority party) and a ranking member (from the minority party). The chairman and the ranking member of the Senate Finance Committee and the House Ways and Means Committee each have political staffs. The staffs try to find bipartisan agreement and report to their respective chairman and ranking member.

   Under the Origination Clause of the Constitution, tax bills must originate in the House. Therefore, the House Ways and Means Committee has a particularly significant role regarding tax policy.

b. **Joint Committee on Taxation**. A third tax-writing committee is the Joint Committee on Taxation. It is a bicameral bipartisan committee consisting of attorneys, economists, and accountants. It plays a very significant role in shaping legislation, providing information about the economic impact and accounting treatment of legislation. Joint Committee staffers typically have worked all of the prior night when testimony is being given the following morning to a legislative committee.

c. **Bipartisanship**. Neither party wants to be responsible for tax increases, so traditionally tax legislation involves significant bipartisan work of the committee staffs.

d. **Few Tax Bills**. As a result of the unpopularity of tax legislation (particularly tax increases) tax bills arise relatively infrequently. Typically, only one or two substantial tax bills are considered each year. The committee staffs spend the rest of the year getting ready.

2. Greenbook—Annual Budget

The Administration makes its tax policies public in its annual budget. The "Greenbook" is typically published in connection with the annual budget, explaining the tax policy proposals. The Greenbook is assembled and approved by the Office of Tax Policy of the Treasury Department. It works closely with the Office of Management and Budget (OMB) to make sure that the proposals are consistent with overall policy objectives.

The Administration is not required to publish a Greenbook each year, but it is a traditional practice. No Greenbook was published for fiscal years 2018 or 2019, but instead the annual budget explained that tax reform legislation was being proposed and negotiated. Publication of specific policy proposals might have interfered with that negotiation.

The Administration is expected to publish a Greenbook for fiscal year 2020 (likely to be released sometime in early 2019).

3. Origination of Ideas for Legislation

Technical legislative proposals typically come from the practitioner community or the Administration (the IRS or Treasury). For example, in the Obama years, the Treasury Department was the driving force behind the estate tax provisions and provisions for grantor trusts. Business tax proposals often originate from the business community.

If an organization wants to suggest and pursue a particular legislative proposal, the group could meet with staff representatives from the Senate Finance Committee or House Ways and Means Committee. Most congressmen do not have tax experts on their staffs; the tax experts are on the staffs of the Senate Finance Committee and House Ways and Means Committee. The best approach is to propose an idea that will make taxes more administrable, and to suggest the most workable way of structuring the legislation if Congress decides to pursue the idea.

4. Observations Regarding 2017 Tax Act

a. **Process Behind Determination of Estate/Gift Exclusion Amount.** The American Taxpayer Relief Act of 2012 (ATRA) increased the estate, gift and GST transfer tax exemptions to $5 million (indexed). A couple effectively had a $10 million exemption, which exempted almost all family businesses and farms. Some testimony before committees still called for repeal of the estate tax, but the testimony typically reflected that very few small business owners or farmers were actually paying estate taxes.

In response to the desire by some for estate tax repeal, the Senate doubled the exclusion amount, but only for eight years because of technical restrictions under the reconciliation process that permitted the passage of tax legislation once per fiscal year with only a majority vote in the Senate and House. The selection of the amount of the exclusion and the decision not to have full repeal for eight years is a highly technical exercise to achieve revenue targets and considering distribution effects that are desired. The estate tax in particular is an especially politically sensitive issue.

b. **Bluebook—General Explanation of Legislation**. The Joint Committee on Taxation traditionally publishes a "General Explanation" of tax legislation, generally referred to as the "Bluebook."

For the 2017 Tax Act, the Conference Committee published a "Joint Explanatory Statement." For each section of the Act, it described the present law, the House bill, the Senate amendment, and the Conference agreement. The Joint Committee on Taxation has not yet published a Bluebook for the Act. They have said that they still intend to do so.

While helpful, the Bluebook is not considered official legislative history.

c. **Anticipated Tax Legislation Over the Next Year**. The House has passed legislation making the various individual provisions in the 2017 Tax Act permanent, but the Senate has not taken up that legislation.

The impact of the mid-term election is unclear. Furthermore, the chairmen of the Senate Finance Committee (Sen. Orrin Hatch) and of the House Ways and Means Committee (Rep. Paul Ryan) are both retiring. Considerable staffing turmoil may result following the mid-term elections. Substantial interest exists in making the individual provisions of the 2017 Tax Act permanent, but the public has not been overly supportive of that Act.

The Administration has announced plans for a middle-class tax cut (and President Trump indicated in a press conference on November 7 that he would consider including a corporate rate increase to help pay for the middle class tax cut). Laura Davison, *Trump Says He's Open to Raising Tax to Pay for Middle-Class Cut*, BLOOMBERG DAILY TAX REPORT (Nov. 7, 2018).

Technical corrections often follow major tax legislation to correct drafting errors, policy missteps, and unworkable provisions. Technical corrections for the 2017 Tax Act will be complicated by the fact that Democrats were excluded from crafting the legislation, and no clear process exists by which technical corrections will get made. However, typographical errors and policy missteps will have to get corrected at some point.

SB 3503, sponsored by Sen. Warren, is a democratic proposal adopting many of the Obama administration Greenbook Treasury proposals regarding transfer taxes, including a return to the 2009 rate and exemption parameters, the 10-year GRAT proposals, the grantor trust proposals, limiting the GST exemption for dynasty trusts, etc. The Warren proposal increases the top transfer tax bracket to 65%, and imposes a surtax on estates and adjusted taxable gifts over $1 billion. That proposal adopts a massive cliff approach – an estate that is one dollar over $1 billion would result in a 10% tax on the entire tax base.

What will happen to the $10 million (indexed) exclusion amount under the 2017 Tax Act is very uncertain. Bipartisan agreement to leave the exclusion amount at $20 million for a couple may not be possible, and Congress may address how to reduce the exclusion amount at some point.

The Warren bill illustrates that Congress is becoming more aware of estate tax avoidance techniques. Congressional members are realizing that the $10 million (indexed) exclusion amount is just a starting point for leveraged planning opportunities, and offers the ability to avoid estate taxes on much more than that amount.

5. Structure of IRS Chief Counsel Office

The IRS Chief Counsel is appointed by the President, and is confirmed by the Senate. The Chief Counsel serves as the chief legal advisor to the IRS Commissioner on all matters pertaining to the interpretation, administration, and enforcement of the Internal Revenue Code. The Chief Counsel reports to the IRS Commissioner and to the General Counsel of the Treasury.

The office of the Chief Counsel has approximately 1,400 attorneys assigned among the IRS National Office and the major operational divisions of the Service. The office is organized into Operations branches and Technical branches.

The Operations Division has attorneys located around the country who assist in administering the tax laws and who litigate in the Tax Court and Bankruptcy Court and assist the Department of Justice in refund cases.

The Technical Division is comprised of six area in the IRS National Office to provide guidance in the administration of tax laws, such as in drafting regulations, rulings, and other published legal guidance. The Passthroughs and Special Industries area addresses, among other things, the income taxation of S corporations, partnerships, estates, and trusts as well as estate and gift taxes. Branch 4 of the Office of the Associate Chief Counsel (Passthroughs and Special Industries) addresses the estate, gift and GST tax. It now is comprised of 12 members. The chief of Branch 4 is Melissa C. Liquerman. Others in Branch 4 include Leslie H. Finlow and Karlene Lesho (Senior Technician Reviewers).

Projects or rulings involving issues covered by multiple Branches will have participants from the various Branches. For example, the basis consistency proposed regulations have involved participants from multiple Branches in a working group.

6. Treasury Department

A representative from Treasury is also involved in regulation projects. Catherine Hughes is the estate and gift tax attorney-advisor in the Office of Tax Policy of the U. S. Department of the Treasury who participates in projects regarding transfer taxes and fiduciary income taxes (among other areas).

Regulations projects are passed back and forth various times between the IRS and Treasury in order to comply with the Administrative Procedure Act.

7. Career Staffs

Most employees of the government are not partisans, but are career staff with only a small handful of political appointees. The staff employees generally do not get into policy discussions, but emphasize technical issues. Policy issues inevitably arise in regulation or guidance projects, but the IRS Chief Counsel staff defer to Treasury with respect to policy matters unless the Chief Counsel staff thinks that a provision resulting from a policy decision is unworkable.

Fellow Austin Bramwell fairly recently served for a period of time as a senior advisor in the Office of Tax Policy in the Treasury Department. He observed on the panel that he was "enormously impressed" with the caliber of attorneys in the IRS Chief Counsel Office.

8. Guidance Projects; Priority Guidance Plan

a. **Guidance Projects**. Guidance projects can arise from a variety of sources. If tax legislation is enacted, guidance is often necessary. In addition, the IRS circulates a notice every year requesting input for guidance projects from the practitioner community. Notice 2018-43 this year requested that such submissions rank issues in the order of priority. In addition, groups can send ideas to the IRS for guidance projects at any time. All of the submissions are reviewed, and the Chief Counsel staff must justify why proposals are not pursued.

Professional staff will meet with outside groups that want to discuss a particular guidance project or idea, as long as it is a matter of general interest and not taxpayer-specific.

Whether the IRS chooses to address "big picture projects" (such as the tax effects of decanting or tax issues surrounding private trust companies) depends on a matter of resources. Branch 4, which would address these types of issues, only has 12 attorneys on staff (and that was just recently increased from 11). Industry groups like ACTEC can be helpful in keeping attention on these types of projects and letting the IRS know that they are still important.

b. **Priority Guidance Plan – Generally**. The IRS and Treasury issues a Priority Guidance Plan each year describing projects that it will be working on in that year (from July 1 to June 30). That plan is typically published sometime between July and November. In the past, it has typically included 10-12 projects related to transfer taxes and related issues. The plan now just includes items that the IRS and Treasury realistically anticipate being completed in the plan year; the 2017-2018 plan includes only three such projects. The remaining items that had previously been on the Plan are not dead; they are just not far enough along to be included on a one-year plan.

c. **2018-2019 Priority Guidance Plan**. A document entitled Fall 2018 Unified Agenda of Federal Regulatory and Deregulatory Actions was released on October 17, 2018. *See* Ron Aucutt, *The 2018-2019 Tax Regulatory Agenda*, ACTEC CAPITAL LETTER NO. 44 (Oct. 22, 2018). The Unified Agenda has been used in prior years, but has not been given significant attention as to the status of pending tax guidance projects.

The Treasury-IRS **Priority Guidance Plan for 2018-2019** was published after the Fall Meeting on November 8, 2018 (which is later than normal, particularly for an Administration that is not in its first year).

- Part 1 of the Plan addresses implementation of the 2017 Tax Act and increases the list of projects that were mentioned in the February 7, 2018 update from 25 to 62.
  - One of the new items is the deductibility of expenses described in §67(b) and (e) of estate and non-grantor trusts, which makes reference to Notice 2018-61.

- The item about §199A has been expanded to four separate items, two of which deal with "cooperatives and their patrons."
- The item dealing with clawback was reworded as follows: "Regulations under §2010 addressing the computation of the estate tax in the event of a difference between the basic exclusion amount applicable to gifts and that applicable at the donor's date of death." Several items in that statement are interesting. First, the new regulations were anticipated to be issued under §2001, not §2010. After all, it is §2001(g)(1) that addresses the relevant computation and §2001(g)(2) that provides the specific statutory authorization of the regulation. However, the issue arises because of the increase, and planned future decrease of, the basic exclusion amount under §2010. Second, some have speculated as to whether the regulation might also grant relief for use of the gift tax exclusion amount, by analogy to the portability regulations, and say that exclusion amount would be used "off the top" of the available $11.18 million exclusion amount. (For a discussion of this issue, see Item 2.d.(3) of the Current Developments and Hot Topics Summary (November 2018) found **here** and available at **www.bessemer.com/professionalpartners**.That speculation was fed by the wording of the project last year: "computation of estate AND GIFT TAXES …" This year, the wording just references computation of the estate tax—suggesting that it is just an estate tax clawback project.

  Following the ACTEC 2018 Fall Meeting, the IRS published proposed regulations on November 23, 2018 dealing with the clawback issue. The proposed regulations take an approach of revising the amount of the unified credit for the estate tax to avoid the clawback problem if a gift is made during the increased exclusion period that is sheltered from gift tax by the increased exclusion. For a summary of the clawback proposed regulation, see Item 2.d.(2) of the Current Developments and Hot Topics Summary (November 2018) found **here** and available at **www.bessemer.com/professionalpartners**.

- Part 3 of the Plan, titled "Near-Term Burden Reduction" in the 2017-2018 Plan and simply as "Burden Reduction" in the 2018-2019 Plan reduces the number of projects in light of some projects that have been completed, and adds no new projects. This "burden reduction" section continues to list final regulations regarding the basis consistency and discretionary extensions of time to make GST exemption allocations (suggesting a likely relaxation of some of the controversial provisions in the proposed regulations for those matters).
- Part 5 contains the traditional general projects in a variety of subject areas. Four items are in the "Gifts and Estates and Trusts" section. The first three are the same as in the 2017-2018 Plan, which include projects dealing with (1) the basis of grantor trust assets at death under §1014, (2) alternative valuation date matters under §2032(a), and (3) the deductibility of certain administration estate administration expenses under §2053. The fourth new project is: "Regulations

under §7520 regarding the use of actuarial tables in valuing annuities, interests for life or terms of years, and remainder or reversionary interests." The project is likely to update the §7520 actuarial tables based on updated mortality information, which must be done every ten years and which was last done effective May 1, 2009.

For a general discussion of and commentary about the 2018-2019 Priority Guidance Plan, see Ronald Aucutt, *The 2018-2019 Priority Guidance Plan*, ACTEC CAPITAL LETTER NO. 45 (Nov. 13, 2018).

9. Types of Guidance

Guidance can be provided in various ways, including a regulation (temporary, proposed, or final), revenue ruling, revenue procedure, or notice. Each type has a different function and level of deference. Highest deference is given to regulations. If the IRS recognizes that a particular issue arises repeatedly and is in need of guidance, it may issue a revenue ruling. If the need for guidance is short-term, it may provide guidance with a revenue procedure or a notice.

10. Private Letter Rulings

Private letter rulings provide advice to individual taxpayers. A user fee is charged. Many private ruling requests in the estate and gift tax area involve requests for 9100 relief for elections or allocations and grandfather GST rulings under §2601.

The first revenue procedure each year (*e.g.*, Revenue Procedure 2018-1) provides information regarding private letter rulings for that year including procedures, checklists, user fees, and what issues the IRS will rule on. The third revenue procedure each year (*e.g.*, Revenue Procedure 2018-3) lists issues that the IRS will not address in private letter rulings that year.

Items 11-20 summarize comments from a panel by Stephanie Loomis-Price (moderator), The Honorable Albert G. Lauber (United States Tax Court), and The Honorable Cary Douglas Pugh (United States Tax Court) titled "Practice Made Perfect: Lessons From the Tax Court Bench"

11. How Selected; Term of Service

Tax Court judges are nominated by the White House and must go through the Senate confirmation process. Judge Pugh was nominated by President Obama and was confirmed in six months, which is now considered very fast.

Tax Court judges serve for a term of 15 years. If a Tax Court judge requests reappointment near the end of his or her term, the reappointment is generally made regardless of the political party of the appointing President or the re-appointing President (but that is not always the case). Retirement is required at age 70, at which time the judge can become a Senior Judge. A Senior Judge recently died who was nominated by President Kennedy.

Up to 19 judgeships are available for the Tax Court. Fifteen "regular" judgeship spots are now filled. (A Senior Judge is not counted as part of the 19 "regular" judgeships.)

The Tax Court judges elect one of the judges to serve a two-year term as Chief Judge, with responsibility for overall administration of the court in addition to having a caseload.

Senior Judges may hear cases while serving on recall by the Chief Judge for service in the court. In addition, "special trial judges" are employees of the court, appointed by the Chief Judge rather than by the President. They may hear cases regarding alleged deficiencies or overpayments of up to $50,000.

12. Types of Opinions and Their Precedential Effect

The Tax Court issues two categories of opinions – formally published dispositions and unpublished dispositions.

a. **Published Opinions**. Formally published opinions, commonly referred to as "T.C. opinions," are published in the Tax Court Reports (referred to as the "white volumes"), and can either be issued by a single judge or can be a "fully reviewed opinion" in which all of the judges participate and may, or may not, result in side opinions (*i.e.*, concurring and dissenting opinions). The Chief Judge decides whether an opinion will be issued as a T.C. opinion or as a memorandum opinion.

b. **Unpublished Opinions**. Unpublished opinions include (1) memorandum opinions (commonly referred to as "memo opinions" or "T.C. memo opinions"), (2) summary opinions, and (3) orders.

Memo opinions are available on the court's website and by commercial publishers, but are not published by the Tax Court. They address cases applying no new principles of law, but apply settled Tax Court precedent to a particular set of facts. Memo opinions are not technically precedential, but they are often cited. About 90% of all Tax Court opinions are memo opinions.

Summary opinions may be issued in cases involving disputes of less than $50,000 that are tried under small tax case procedures. Summary opinions similarly are not technically precedential but may be cited as authority (although they are considered as having less weight than either TC opinions or memo opinions).

Orders often involve evidentiary questions or the application of court rules.

c. **Precedential Effect**. T.C. opinions (whether or not they are reviewed opinions) are binding precedent on the court. This is an unusual phenomenon, in which a trial court is bound by other trial court opinions (unusual in the sense that, for example, federal district courts are not bound by the opinions of other district courts, only of appellate courts). The concept is that the Tax Court provides uniformity of tax laws. The process by which Tax Court opinions are reviewed supports the binding effect given to T.C. opinions. Judges submit their opinions to the Chief Judge for review. The Chief Judge has 30 days for review, and the Chief Judge may send the opinion to the authoring judge approved, or may suggest comments, or may call a Court Conference to review the opinion. The Chief Judge has staff attorneys to assist in reviewing the opinions. After an opinion is approved, it is sent to a court reporter that reviews cite form, grammar, consistency with other cited opinions, etc. After the Chief Judge determines that an opinion will be released, it is forwarded to all of the other Tax Court judges the morning of the day that it will be released, and other judges may contact the Chief Judge if they have concerns with the opinion.

d. **Conference for Reviewed Opinions**. If an opinion is reviewed in a Court Conference, the trial judge presents the case at conference. All judges vote, and if the judges vote to approve the result reached by the trial judge, that judge writes the opinion of the court, but other judges may write side opinions (concurring or dissenting opinions). If the trial judge's report is not approved, the authoring judge may rewrite the report or request that the case be reassigned to another judge. *See McCord v. Commissioner*, 120 T.C. 358 (2003) (Judge Foley, the trial judge, wrote a dissenting opinion), *rev'd*, 461 F.3d 614 (5th Cir. 2006). The number of judges who join concurring or dissenting opinions may outweigh the number of judges who join the authoring judge's opinion. Nevertheless, the concurring opinion is not designated as the opinion of the Court, though it may reflect the reasoning that would be adopted by a majority of the judges with respect to the particular issue.

13. Many Pro Se Cases

About 70% of Tax Court cases are pro se. Taxpayers do not know what they are doing in court, making the cases inefficient for the court. In many of these cases, the taxpayer simply delays and does nothing until getting to the week of trial. If the IRS had more resources, it could settle or resolve these cases in taxpayer clinics and avoid trials. The Tax Court has a sufficient budget and judges, but the IRS is resource constrained.

14. Expert Witnesses

Judges mostly want objectivity, or at least apparent objectivity, by expert witnesses. Ideally, the expert has previously been recognized by the court, and has testified on both sides, rather than being in a cottage industry of testifying just for one side. The judges realize, however, that the IRS often cannot pay the market rate for experts and negotiates package deals with experts who will testify for them in multiple cases. The IRS often uses the same expert, so the judge has to be careful not to "ding" the IRS for that approach. However, judges tend to view experts who testify repeatedly in tax-shelter cases not to be credible.

The judge wants someone who will assist the court in making a decision based on the particular facts of the case. An expert opinion based on something other than facts appearing in the record is not helpful, and reflects on the lack of objectivity by the expert. A pet peeve of judges is when the expert has assumed the wrong facts and refuses to adjust.

If the expert always makes close calls in favor of the client, that may also impact the expert's credibility.

The expert's report constitutes the direct testimony of the expert. In complicated cases, expert summaries may also be used, but most judges do not use that approach. Trial testimony by the expert will arise from cross examination or direct questions from the judge. Tax Court judges are not shy about asking questions directly of experts (or of the taxpayer) as a witness. If an attorney is confusing the expert with a question, the judge may jump in and ask the question in a way that the witness understands.

The late Judge Laro occasionally employed "hot tubbing" of experts – getting the experts to talk directly with each other to try to reach an objective consensus. Many of the judges do not use that approach.

15. IRS Engineers

The IRS has "engineers" as full-time employees to value assets. The judge understands that they are IRS experts, but assumes that the taxpayer will similarly have experts. The judge weighs the credibility of IRS engineers. Do they address specific facts? Can they support their work? In that regard, they are viewed the same as other experts.

The IRS often uses engineers at trial merely to rebut appraisals attached to the return. However, judges typically require the engineer to file a report if his or her testimony will be used to rebut the taxpayer's appraisal or expert. Allowing the engineer to testify with never having filed a report would be unfair to the taxpayer if given no opportunity to review the IRS expert's report before trial.

IRS officials may also testify at trial as a summary witness – testifying as to the steps that were taken in a particular analysis, but not testifying as an expert. In a particular situation, that may be the approach of an IRS engineer – merely to explain the data that was reviewed and how that data was manipulated.

The Tax Court can hire experts directly, but that is extremely rare (the costs would be imposed on the parties and would not be borne by the court).

16. Mediation

Tax Court Rule 124 provides for voluntary binding arbitration and voluntary nonbinding mediation. If the parties request either (mediation is much more common than arbitration), and if the judge thinks a real chance of resolution exists, the judge will typically agree. The judge will communicate with the Chief Judge, who will appoint another judge (typically a Special Trial Judge who is trained in mediation) to oversee the mediation. The mediation or arbitration process is especially helpful for valuation disputes.

17. Appeals; Settlement

An appeals officer very recently told an attorney with a docketed Tax Court case that the appeals officer could not even look at the case for over a year. A notice of trial will be set in the Tax Court before that time. The Tax Court judge will very likely grant a continuance (even more than once) if the parties are attempting to get to appeals. When the case goes to appeals, it goes back to the general trial docket, or the judge can request to retain jurisdiction and receive status reports.

The Tax Court has 30,000 cases a year; the primary process is to facilitate the settlement of cases. A judge typically has about 120 cases on the docket at any time, and about 10-15 of those will go to trial.

18. Attorney Conflicts; Waiver of Privilege

The primary ethical issue that attorneys face in Tax Court is that a lawyer who planned a transaction, or gave a legal opinion, and who might be called as a witness cannot represent the taxpayer in the litigation. Particularly if penalties are alleged, a conflict may exist. That is a nonwaivable conflict.

Whoever is asserting attorney client privilege in Tax Court has the burden of showing that privilege was not waived.

19. Approaches of Judges in Writing Opinions

One judge typically drafts trial notes after trial including how the judge will rule on the issues. The judge gives the notes to a law clerk who will prepare the first draft of the opinion. For short easier cases, the judge may prepare a first draft and have the clerk add case citations.

A judge may sometimes ask a clerk to look at the record and give the judge the clerk's opinion before knowing how the judge stands on the issues.

20. Planning Pointers for Practice Before the Tax Court

a. **Pay Attention**. Counsel should listen closely to questions the judge asks at trial. The question may not just be for an explanation, but may illuminate an issue that is bothering the judge. Judges are confounded by attorneys who ignore the testimony of witnesses at trial.

   Judges will sometimes tell the attorneys what issues should particularly be addressed in pre-trial or post-trial briefs.

b. **No Surprises**. Judges do not like surprises. "There are no Perry Mason moments in our court." Judges are willing to talk about how issues will proceed in court. Resolve issues early; a claim of prejudice will not work if the attorney did not raise the issue early but raises a problem on the eve of trial.

c. **No Histrionics**. If an attorney becomes overbearing ("Is it not true that …?"), the judge will tell the attorney to "take it down a little bit." There is no jury or TV audience to impress. Much of the record in Tax Court is in the transcript, not something that comes out in the courtroom.

d. **No Squabbling**. Judge Pugh once told squabbling attorneys, "I want the record to reflect that I am covering my ears." Judges get annoyed with attorneys who constantly fight about everything.

f. **No Complaints about Audit Activities**. Facts about what happened at the examination of the case on audit are irrelevant. The trial at Tax Court is a trial de novo.

g. **Anticipate Litigation in Planning Transactions**. The transaction attorney should anticipate what evidence the attorney will want the court to have (or not have) if the case ultimately goes to trial. Pesky emails may come up at trial. Early in one judge's career as an attorney, a mentor advised the young attorney to begin her notes with "For the Jury:."

   If a particular issues depends on the intent of the parties, how will that be proved 10 years later, particularly for an estate tax case where the taxpayer may be deceased? Be cognizant about what contemporaneous documentation will reflect. Exercise discipline about what goes into (or is left out of) email messages or documents.

Items 21-29 summarize comments from Laird A. Lile, Suzanne L. Shier, and Martha Washington (a wonderful "interpreter" of Martha Washington from Williamsburg, Virginia) at a panel titled "Wills and Wishes of the First Couples"

21. Overview

The U.S. has had 45 Presidents, of whom 40 are now deceased. One in five (8 of the 40 who have died) died in office; four were assassinated (Presidents Lincoln [1865], Garfield [1881], McKinley [1901], and Kennedy [1963]), and four died of natural causes (Presidents Harrison [1841], Taylor [1850], Harding [1923), and Franklin Roosevelt [1945]).

The comments about the wills of first couples are organized as lessons for planners.

22. Washington's Customized Will

President Washington prepared his own lengthy very personalized and customized will without consulting any "professional character," and he spent many of his "leisure hours" preparing the will. He acknowledged that some of it may appear "crude and incorrect" and may raise concerns "from the want of legal expression, or the usual technical terms."

After providing that his few debts be paid, the will gave Martha Washington the "use, profit and benefit" of the whole estate, other than assets specifically disposed of in the will.

The next paragraph addressed Washington's slaves, providing that the slaves "which I hold *in my own right"* (there were 123 of them) would receive their freedom; Washington expressed that he "earnestly wished" he could give them their freedom immediately following his death, but described "insuperable difficulties" that prevented doing so. He gave detailed instructions regarding the slaves, including a desire that his heirs support those slaves who were unable to support themselves, that the slaves would be taught to read and write and "be brought up to some useful occupation," and "expressly forbid the Sale or transportation out of the said Commonwealth … under any pretense whatsoever" of any of his slaves. After Washington's death, fear arose that the slaves might revolt and kill Martha to gain their freedom. Following a suspicious fire at Mount Vernon, Martha freed Washington's slaves a little more than a year after Washington's death.

George Washington's will was rather long and very customized with respect to specific assets. He left various properties and assets to specifically named individuals, and he directed that some of his widely dispersed landholdings be sold and the proceeds distributed among twenty-three named individuals. For example, the following paragraph near the end of his will gave very specific recommendations to his legatees about the management of certain assets left to them:

> And by way of advice, I recommend it to my Executors not to be precipitate in disposing of the landed property (herein directed to be sold) if from temporary causes the Sale thereof should be dull; experience having evinced, that the price of land (especially above the Falls of the Rivers, & on the Western Waters) have been progressively rising, and cannot be long checked in its increasing value.—And I particularly recommend it to such of the Legatees (under this clause of my Will) as can make it convenient, to take each a share of my Stock in the Potomac Company in preference to the amount of what it might sell for; being thoroughly convinced myself, that no uses to which the money can be applied will be so productive as the Tolls arising from this navigation when in full operation (and this from the nature of things it must be 'ere long) and more especially if that of the Shenandoah is that added thereto.

The last paragraph of the will expressed Washington's desire that no disputes arise, but provides a creative process for resolving disputes, which approach is used in many modern legal documents for resolving valuation disputes:

> I constitute and appoint … Executrix & Executors of this Will & testament,--In the construction of which it will readily be perceived that no professional character has been consulted, or has had any Agency in the draught – and that, although it has occupied many of my leisure hours to digest, & to through it [sic] into its present form, it may, notwithstanding, appear crude and incorrect. – But having endeavored to be plain, and explicit in all the Devises – even at the expense of prolixity, perhaps of the tautology, I hope, and trust, that no disputes will arise concerning them; but if, contrary to expectation, the case should be otherwise from the want of legal expression, or the usual technical terms, or because too much or too little has been said on any of the Devises to be consonant with law, My Will and direction expressly is, that all disputes (if unhappily any should arise) shall be decided by three impartial and intelligent men, known for their probity and good understanding; to be chosen by the disputants – each having the choice of one – and the third by those two. Which three men thus chosen, shall, unfettered by Law, or legal constructions, declare their Sense of the Testators intention; – and such decision is, to all intents and purposes to be as binding on the Parties as if it had been given in the Supreme Court of the United States.

23. Avoid Intestacy

Four Presidents have died without a will (the 16th, 17th, 18th, and 20th Presidents–Lincoln, Johnson, Grant, and Garfield).

President Grant knew he was dying of throat cancer. Someone once said of Grant that he "could remain silent in several languages;" indeed, he remained silent about the disposition of his estate.

24. Words for What Matters Most

Wills can convey a sense of values and deepest desires for friends and family.

As an example, Thomas Jefferson had given James Madison a gold mounted walking staff. Madison's will left the staff to Jefferson's grandson "in testimony of the estemm [sic] I have for him, as from the knowledge I have of the place he held in the affections of his grand-father." That gift is particularly touching in light of the rocky relationship that Jefferson and Madison had in their later years.

Millard Fillmore's will is another nice example. It says:

> I feel it a duty and a pleasure to accord my dying testimony to the noble qualities of my beloved wife, Carolyn C. who has ever proved a Kind affectionate and devoted wife and I hereby ratify and confirm the antenuptial contract between us and wish my executors and heirs to see it fully and faithfully carried out and executed and if she and my son Millard powers shall both survive me, I hope and trust that they may love each other as I have loved them as they will both be orphans, indeed, I hope also that they will mutually render to each other other [sic] every assistance due from a most affectionate parent to a beloved child, and from a most affectionate and beautiful child to a beloved parent; and with this I shall rest in peace.

Kind sentiments expressed in wills may reflect what matters most to the decedent. In our modern tax plan-laden documents, consider whether a short written statement of a client's heart-felt intentions may be meaningful. Perhaps ask clients if they want to include a short written statement of intentions.

25. Selection of Fiduciaries and Fiduciary Powers

The last paragraph of President's Washington's will named his wife and 6 others as co-executors, which would be most unusual in modern wills.

President Lincoln died intestate. His son, Robert, asked Supreme Court Justice David Davis to serve as administrator. He agreed and increased the estate from $83,343 to $110,974 during the period of administration, without accepting any compensation for his services.

An example of naming the wrong fiduciary comes from Dolly Madison. She had a son before her marriage to James Madison, and her will left her property to be managed by that son, who eventually bankrupted his mother.

President Franklin Roosevelt appointed his son, James Roosevelt, and two friends as co-trustees. The trust under his will paid half its income to his wife (Eleanor Roosevelt) and could pay half its income to Roosevelt's secretary, Marguerite A. Le Hand, for her life. That may have been quite uncomfortable for the co-trustees, particularly for Roosevelt's son. If a co-trustee failed to serve, the will allowed the remaining trustees to appoint any New York bank or trust company as a successor co-trustee.

President Nixon's will named his attorney as co-executor and specifically provided that the attorney could receive compensation as co-executor as well as his law firm receiving compensation for legal services rendered to the estate.

Some of the Presidents' wills addressed particular powers given to fiduciaries. President John Tyler's will named "Literary Executors" with specific powers related to his papers (but he appointed six of them, which would seem to be far too many). Some Presidents' wills required fiduciaries to seek approval of the probate court to change investments or limited the types of permitted investments. President Benjamin Harrison used a "prudent investor concept" (long before it became an accepted trust law concept), instructing the trustee to invest "with the greatest prudence, at the best rate of interest consistent with security."

26. Special Planning for Special Assets

Zachary Taylor's will made special provisions for the ongoing operation of his family plantation.

James Polk's will expressed a desire that the family home stay in his family in perpetuity, but creatively conveyed the home at his wife's death to the State of Tennessee as trustee for his heirs.

President Washington's will expressed very detailed recommendations about the management of certain assets (discussed in Item 22 above).

27. Creditor Issues

Various Presidents died insolvent. Thomas Jefferson's financial troubles began upon inheriting land and properties from his father-in-law that were heavily mortgaged. Jefferson died insolvent, but Virginia and South Carolina awarded his daughter $10,000 in appreciation for Jefferson's leadership. His will had provided that any assets passing for his daughter and her husband would pass in trust with express acknowledgment that her husband's many creditors should not be able to reach the property. Ultimately, Jefferson's insolvent estate could not fund the trust.

28. Non-Traditional Families

A wide variety of Presidents have contended with divorce, death and adoption.

Andrew Jackson had no children but adopted one of his wife's brother's children, who became the principal beneficiary of Jackson's estate.

James Buchanan was the only President who never married. His niece was orphaned at age nine and chose Buchanan as her guardian. They were very close and she served as the official White House hostess in the absence of a First Lady. Buchanan's will divided his estate among eleven of his parent's descendants, including that niece.

George Washington had no children of his own, but Martha had four children from a prior marriage. Washington left the bulk of his estate to Martha, but left various properties and assets to 23 named individuals. "Martha Washington" described various fascinating facts about the background of their very non-traditional family. Martha was married to Daniel Parke Custis, whose very wealthy father had died about 6 months before their marriage, leaving his massive estate to Daniel. Martha had four children with Daniel, two of whom died before age five. Daniel and Martha apparently had a happy marriage, but Daniel died after only seven years with no will or guidance how to manage the vast Custis estate. Martha was named administrator of the estate, consisting of over 17,500 acres and 300 slaves. Martha managed the estate, signing all legal documents involving the estate management. As a widow she had rights to 1/3 of his estate. When she re-married, under local law she gave up rights to manage the estate to her new husband. She was impressed with George, in part because he acknowledged that their marriage would be a partnership and that he would manage the estate to ensure the legacy of her children and grandchildren. Interestingly, Martha's children, as well as many of the extended family members had "Parke" in their name because Daniel's grandfather (who apparently was a wealthy and powerful but morally corrupt individual) had provided in his will that anyone wishing to share any part of his estate must have "Parke" as part of his or her name.

29. Learning From Our History

Suzanne Shier offered this summary of the importance of learning from our history:

"We learn so much about our history. There are things about our history that were proud of. There are things about our history that we would rather forget. But the things in our history that we would rather forget are the things we can truly learn from, so our future is not a repeat of our history."

Items 30-35 summarize comments from a panel by Carlyn S. McCaffrey, Justin T. Miller, and Michael F. Teitler titled "Tax Reform Could Make Divorce a Whole Lot More Taxing"

30. Provisions of 2017 Tax Act Having a Tax Effect on Divorced Spouses

a. **Tax Brackets; Head of Household Filing Status**. The 2017 Tax Act continues the marriage penalty for spouses using the brackets for married individuals vs. two individuals using the single brackets. The top bracket for single taxpayers is $500,000, but the top bracket for married taxpayers is $600,000. Two single taxpayers could each make $500,000 without any of the income being taxed in the top bracket, and if they are married, the taxable income in excess of $600,000 would be taxed at the top rate.

A disadvantage for divorced spouses under the 2017 Tax Act results from the change to the head of household brackets and the loss of using the head of household brackets altogether for a single parent who has taxable income exceeding $51,800 and itemizes deductions. The head of household rates historically have provided financial assistance to single parents who had primary custody of children. That advantage is greatly reduced through 2025. Even for single parents who do not itemize deductions and can still use the head of household rates, the rate brackets are the same as the single taxpayer rates at taxable income levels in excess of $51,800, making the maximum possible savings from using head of household rates about $1,400 per year.

b. **Elimination of Itemized Deductions**. Prior to 2018 and after 2025, legal fees for divorce are not deductible, but various fees of attorneys, accountants, appraisers, and actuaries are deductible to the extent related to the production of collection of income (such as the collection of alimony), the management of property held for the production of income, or tax advice. From 2018-2025, none of such expenses will be deductible.

c. **Dependent Personal Exemptions**. Personal exemptions have been eliminated for the years 2018-2025. The standard deduction for all individual taxpayers has been increased, but the determination of which parent has custody of children will no longer result in a tax advantage to the spouse in the form of a dependent personal exemption (which was $4,050 per person).

d. **Child Tax Credit**. The child tax credit (for children under age 17) has increased importance for 2018-2025. It was previously low and phased out at $110,000 for married couples. The credit is now $2,000 and not phased out until $200,000 for single taxpayers and $400,000 for married couples filing jointly. If one spouse is phased out from using the credit, it can be given to the other parent, even if the person is not the custodial parent, on Form 8332.

e. **Alimony Deduction; Section 682**. For divorces or legal separation agreements after 2018, the alimony deduction and §682 have been repealed.

31. Repeal of Alimony Deduction

a. **Rationale of Alimony Deduction**. The rationale of the alimony deduction (which was enacted more than 75 years ago in 1942) is to provide a break to families who are going through the financial stress of divorce. The same gross income that was supporting one household may be supporting two households if one of the spouses has modest income. The alimony deduction effectively allows the portion of the previously combined income that is used to support the low-income earning spouse to be taxed at that spouse's income tax rates. That break is no longer available for divorces after 2018.

b. **Repeal and Effective Date**. Alimony payments will not be deductible and will not be income to the recipient.

The alimony and repeal of §682 provisions (discussed below) are effective for any divorce or separation instruments executed after December 31, 2018 and any divorce

or separation instruments executed before that date but later modified, if the modification expressly states that the amendments made by this section of the Act apply to such modification. The existence of a pre-nuptial agreement or marital agreement entered into before 2019 that references making alimony payments, and even mandating that such payments will be required, does not change the fact that no deduction is allowed if the divorce occurs after 2018.

The elimination of the alimony deduction and the repeal of §682 are permanent and do not sunset after 2025.

This change will have a significant impact on the negotiation of divorce agreements. Many divorce agreements include agreements to pay alimony in order to take advantage of using the recipient spouse's lower income tax brackets. The inability to shift income tax responsibility for alimony payments or for the income of grantor trusts may have an impact on the negotiated amount of alimony. The Act may create an incentive for spouses who are contemplating divorce to complete the divorce or the legal separation agreement before the end of 2018.

c. **Policy Reasons Stated for Repeal**. Reasons given to justify the repeal of the alimony deduction include: (i) the alimony deduction was a divorce subsidy and encouraged divorce, (ii) loss of the deduction would result in some additional tax revenue (but only about $6.9 billion over 10 years), (iii) the change will increase compliance by taxpayers, because the spouse receiving alimony payments did not always report them as income (but the new rules create more complexity for the IRS and possibility for confusion by taxpayers, by having differing rules depending on when the divorce occurred), and (iv) the repeal is family-friendly tax reform that discourages divorce.

d. **Economic Impact of Loss of Alimony Deduction**. The alimony deduction resulted in tax savings of up to about $36,000 annually, a level reached by a taxpayer with at least $1.0 million of income who pays $500,000 alimony to a spouse with no income. Any alimony above $500,000 would be taxed at the highest rate regardless which spouse paid tax on the income. For less wealthy spouses, the dollar cost is not as great, but the economic impact is likely greater. For example, if one spouse earns $150,000 per year, the other spouse has no income, and the couple have two children, their joint tax liability is $15,600 but following divorce the tax liability increases to $23,410, a 40% increase. If the alimony deduction were still allowed and if the earning spouse pays $50,000 per year of alimony, the tax liability would not increase.

32. Spousal Benefit Trust to Replicate Alimony Deduction with Possible Transfer Tax Benefits

a. **Overview**. The effect of the higher income spouse receiving an alimony deduction can be replicated by having that spouse transfer income earning investment assets to a trust for the ex-spouse. Assuming the trust is not a grantor trust (discussed in more detail below), the income will be taxed to recipient ex-spouse (as a carryout of trust DNI when distributed to the ex-spouse) and will not be taxable to the transferor spouse. The arrangement may be complicated by the fact that substantial assets have to be transferred to the trust to result in the desired amount of annual cash flow to the ex-spouse, and the transferor spouse may not be willing be transfer that much value

permanently and may desire to have the trust assets ultimately transferred to the transferor spouse's children. Tax complexities in reaching that result are discussed below.

b. **Avoiding Gift; Section 2516**. Transfers made in a divorce typically are not made with donative intent (indeed, they are often the result of extremely acrimonious negotiations). Nevertheless, for transfers between related parties, the federal gift tax system treats transfers of cash or other property as a gift except to the extent the transferor received full consideration in money or money's worth. §2512(b). Section 2516 provides relief for property settlements in the divorce context. If the transfer is made pursuant to a written marital settlement agreement and divorce occurs within the window of one year before the execution of the agreement or two years after, transfers pursuant to the agreement will not be treated as taxable gifts to the spouse or as taxable gifts to minors to the extent they are intended to provide support during minority.

c. **Section 2702.** If children are named as the initial remainder beneficiaries of the spousal benefit trust, §2702 may cause gift problems for the transferee spouse. Under §2702, if a transferor transfers a term or remainder interest in property, in trust or otherwise, to a family member (defined very broadly to include (i) ancestors or descendants of the transferor or the transferor's spouse, (ii) siblings of the transferor, and (iii) spouses of those individuals or of the transferor, §§2702(e), 2704(c)(2)) and if the transferor or an applicable family member (defined more narrowly to include the transferor's spouse, ancestors of the transferor or spouse and spouses of such ancestors, §§2702(a)(1), 2701(e)(2)) retains an interest in the trust, the retained interest is deemed to have a value of zero unless it is a "qualified" interest (e.g., GRAT QPRT).

If A transfers $100,000 to a trust providing that income will be paid to A's spouse, B, for 15 years with the remainder being retained by A, under §2702 the retained remainder interest is valued at zero and A is deemed to have made to gift to B of the entire amount of the transfer, not just the actuarial value of the term income interest. *However*, an exception is provided in the §2702 regulations for a transfer deemed to be for full consideration by reason of §2516 if all interests are held either by the transferee spouse or by the transferor spouse. Reg. §25.2702-1(c)(7). Therefore, A would not be treated as making a gift - §2516 applies to cover the value of B's interest and §2702 does not apply.

If A wanted the assets ultimately to pass to A's children at the end of B's term interest and if the children were named directly as the trust remainder beneficiaries, §2702 would not apply to A's gift of the remainder interest to the children (because neither the transferor nor any applicable family member has "retained" an interest in the trust) and A would be treated as making a gift to the children equal just to the actuarial value of the remainder interest ($31,500). The problem is that B could be also treated as making a gift to the children equal to the value of B's term interest ($68,500) under the joint purchase rule of §2702(c)(2). The receipt of the term interest by B would be treated as if B acquired full $100,000 transferred to the trust and then as having transferred it in trust to pay income to himself for 15 years, with remainder to the children. The value of his retained term interest is valued at zero, but the

consideration he furnished, marital rights deemed to be worth $68,500 by reason of §2516, limits the amount of his taxable gift.

d. **Example**. A and A's spouse, B, agree that B should receive income of $100,000 per year for 20 years. They execute a marital settlement agreement obligating A to fund a trust with $2.0 million to pay B $100,000 per year for 20 years, remainder to A. The spouses were divorced two months later, so §2516 applied to keep the transfer from being treated as a gift from A to B.

   Shortly after funding the trust, A transferred A's remainder interest to a trust for A's descendants. Assuming the §7520 rate was 3.4%, the value of the taxable gift of the remainder interest to the children is $565,813. At the end of 20 years, the trust remainder will pass estate and gift tax free to A's descendants. If the trust invests the assets to produce an 8% annual return, assets worth about $3.7 million will remain at the end of 20 years to pass to A's descendants. "The later transfer … to the children would be unlikely to resurrect the possible application of §2702 so long as there was no commitment or understanding that the second transfer would be made at the time the spouse entered into the marital settlement agreement."

   Another planning alternative is to include A's descendants as remainder beneficiaries from the outset, but to give B a power of appointment over the remainder interest (which could be limited to the power to appoint to A's issue). The gift that B would otherwise be deemed to have made by application of the §2702(c)(2) joint purchase rule will be an incomplete gift because of B's limited power of appointment.

e. **Grantor Trust Issues**. The trust described above would likely be a grantor trust following the divorce, which creates its own significant problems in light of the repeal of §682, discussed in Item 33, immediately below. The example in Item 32.d above is re-visited in Item 34, in light of the grantor trust problems discussed in Item 33.

33. Grantor Trusts; Repeal of §682

a. **Overview**. Section 682 is repealed; that section provided that if one spouse created a grantor trust for the benefit of the other spouse, following the divorce the trust income would not be taxed to the grantor-spouse under the grantor trust rules to the extent of any fiduciary accounting income that the donee-spouse is "entitled to receive." The repeal of §682 is particularly troublesome, in part because §672(e) treats a grantor as holding any power or interest held by an individual who was the spouse of the grantor at the time of the creation of such power or interest (the spousal unity rule), so the ex-spouse's interest as a beneficiary will likely be sufficient to trigger grantor trust status under §677 even following the divorce.

   Prior to its repeal, §682 does not define "income" and whether it refers only to fiduciary accounting income or also includes capital gains. If capital gains are not distributed to the spouse, §682 probably does not apply to them. If capital gains are allocated to income or are included in DNI and are distributed to the spouse, §682 likely does apply. *See* Barry Nelson & Richard Franklin, *Inter Vivos QTIP Trusts Could Have Unanticipated Income Tax Results to Donor Post-Divorce*, LISI ESTATE PLANNING NEWSLETTER #2244 (Sept. 15, 2014).

b. **Effective Date**. The repeal of §682 (as well as the repeal of the alimony deduction) is effective for any divorce or separation instrument executed after December 31, 2018 and any divorce or separation instrument executed before that date but modified after that date if the modification expressly states that the amendments made by this section of the Act apply to such modification.

In IRS Notice 2018-37, IRB 2018-18, the IRS stated that it intends to issue regulations providing that §682 will continue to apply regarding trust income payable to a former spouse who was divorced or legally separated under a divorce or separation instrument executed on or before December 31, 2018, unless such instrument is modified after that date and the modification provides that the changes made by the 2017 Tax Act apply to the modification.

As with elimination of the alimony deduction, the repeal of §682 is permanent and does not sunset after 2025.

c. **No Grandfathering of Existing Irrevocable Trusts**. The repeal of §682 applies to all divorces or legal separation agreements entered into after 2018, even for irrevocable trusts that were executed before any notice about the possible repeal of §682. This created an extreme unfairness for grantors who created irrevocable grantor trusts with the understanding that the grantor would not have to pay income tax on the trust income following a divorce to the extent of any fiduciary accounting income that the donee-spouse is "entitled to receive."

ACTEC submitted a letter to Congressional leaders (available at **https://www.actec.org/resources/government-relations/**) recommending that legislation add, as a transitional rule to the repeal of §682, that the repeal should apply only to trusts that became irrevocable after December 22, 2017 (to the extent that income is not attributable to corpus added after that date).

d. **Application of Spousal Unity Rule, and Status of Continued Grantor Trust Treatment After Divorce**. Notice 2018-37 also requests comments on whether further guidance is needed following a divorce or separation after 2018 regarding the application of §§672(e)(1)(A) (treating grantor a holding any power of interest of the grantor's spouse for purposes of the grantor trust rules), 674(d) (which includes the grantor's spouse as someone who is not an independent party for purposes of the independent party exception to §674)), and 677 (triggering grantor trust treatment if income can be distributed without the consent of an adverse party to the grantor or the grantor's spouse). For example, regulations might address whether a trust should continue to be a grantor trust after divorce based on powers or interests held by an ex-spouse in the trust.

ACTEC submitted comments to the IRS on July 2, 2018, available at **https://www.actec.org/resources/government-relations/**. The comments state that the spousal unity rule appears not to apply following divorce or legal separation for purposes of §§674(c), 674(d), and 675(3) because of changes to the spousal unity rule in 1988 and because of §674(d); the ACTEC recommends that the IRS clarify that position in regulations. Also, ACTEC recommends that the IRS clarify in regulations that Reg. §1.677(a)-1(b)(2), which states that §677 applies "solely during the period of

the marriage" should continue to be applicable even after the adoption of the spousal unity rule, and the spousal unity rule does not apply for purposes of §677 following divorce or legal separation of the spouse from the grantor.

Even if the IRS issues a regulation eliminating the spousal unity rule as a problem for grantor trusts following a divorce based on the ex-spouse's continued right to receive trust income distributions, the trust would clearly continue as a grantor trust if other trigger powers are present, such as a nonfiduciary substitution power. Well-designed grantor trusts leave someone with the ability to "turn off" grantor trust status by eliminating such powers.

34. Revised Examination of Spousal Benefit Trust in Light of Grantor Trust Issues

The spousal benefit trust example in Item 32.d above creates several grantor trust problems.

First, if the trust is created before the divorce, having the spouse as a beneficiary of $100,000 per year for 20 years likely causes the trust to continue as a grantor trust following the divorce if the trust is created and funded prior to the divorce. The interest held by someone who was a spouse of the grantor of the trust at the time it was created would be attributed to the grantor, which would trigger grantor trust treatment under §677. (That is not an absolute given, as reflected by uncertainties described in the letter from ACTEC to the IRS summarized in Item 33.d above.) To avoid that result, the trust might be created and funded after the divorce, so that B's interest is not created when B is a spouse of the grantor. (Query whether creating the trust after the divorce but pursuant to binding provisions in the property settlement agreement or separation agreement entered into before the divorce would be treated as if the interest were created while the spouse was still a spouse of the grantor?)

Second, the grantor cannot use the initial approach in the example of initially retaining the remainder interest. The value of the grantor's reversionary interest would exceed 5%, which would trigger §673(a). The §673(a) trigger is based on facts at the inception of the trust, and a later release of the grantor's reversionary power would not eliminate grantor trust status. A similar problem would arise if the grantor kept the right to decide how the children would share in the trust property at the termination of B's term interest (or in the event of B's remarriage). One way to avoid this grantor trust problem is to use the alternate approach described above in Item 32.d to avoid §2702 not by the grantor retaining the remainder interest but by naming the children as the remainder beneficiaries and having B retain a limited power of appointment for her life, so that any gift arising from the application of the joint purchase rule of §2702(c)(2) would be an incomplete gift for the balance of B's life.

35. Types of Trusts Likely to Cause Grantor Trust Status After Divorce

The following are several types of trusts that are likely to cause the grantor to be taxed after the divorce.

a. **Family Trust With Spouse as Discretionary Beneficiary**. To avoid grantor trust status after the divorce, consider removing the spouse as a beneficiary after the divorce. This could be accomplished by an amendment power in the trust agreement,

by decanting permitted under state law or under the agreement, or by a judicial or nonjudicial modification allowed under state law. Alternatively, the spouse might remain as a beneficiary but agree in the property settlement agreement to reimburse the grantor for income taxes paid by the grantor with respect to trust income paid to the spouse.

b. **Inter Vivos QTIP Trust**. The spouse-beneficiary of the QTIP trust must continue as the beneficiary in order for the trust to qualify for the QTIP election. Consider dissolving the trust with an outright distribution of the trust property to the spouse or negotiate in the property settlement agreement for the spouse to reimburse the grantor's income tax paid with respect to trust income (all of which must be paid to the spouse if the trust is a QATIP trust).

c. **QPRT With Spouse as Beneficiary**. A QPRT may be created by one spouse, with the other spouse having the right to live in the residence. The trust would likely continue as a grantor trust after the divorce, although a QPRT is unlikely to generate taxable income, given the restrictions on property that a QPRT may hold..

Items 36-46 summarize comments from a panel by Joshua E. Husbands (Moderator), Richard H. Greenberg, and Gene Wolf titled: "IRC Section 199A: Down the Rabbit Hole"

36. Detailed Summary of Operation of Section 199A in Light of Proposed Regulations

For a somewhat detailed overview of the operation of §199A in light of proposed regulations, see Item 2.f of the Estate Planning Current Developments and Hot Topics (November 2018) found **here** and available at **www.bessemer.com/professionalpartners**. The summary below highlights major aspects of this new provision and the proposed regulations.

37. Overview of §199A

The §199A deduction is a deduction for the individuals who own businesses as sole proprietorships or as an interest in partnerships, limited liability companies, or S corporations. It is a deduction in calculating the owner's individual income that is very generally equal to 20% of the individual's qualified business income (QBI). The 20% deduction results in an effective top rate of (1 – 0.20) x 37%, or 29.6%. This deduction is subject to various limitations, the most of important of which apply to taxpayers with taxable income over a certain threshold amount and are (1) based on the wages paid by the business or wages plus the basis of its property, or (2) in certain specified service trades or businesses (SSTBs), designed to prevent converting what would otherwise be normal service income into business income. The deduction is allowed to individuals, trusts and estates.

The deduction is temporary and like most of the individual tax provisions in the 2017 Tax Act, applies only through 2025.

38. Proposed Regulations

The IRS on August 8, 2018 issued 184 pages of proposed regulations (including a 104 page preamble) to §199A and the multiple trust rule under §643. In addition, Notice 2018-64 was issued in conjunction with the proposed regulations and addresses alternative

methods for calculating W-2 wages as used in the computations under §199A. The issuance of the complicated detailed proposed regulations to this complex Code section within only about eight months of the passage of the Act is amazingly fast.

39. General Computation Formula for Deduction

a. **Threshold Amount**. The threshold amount is taxable income, determined without considering the §199A deduction itself, of $157,500 for taxpayers other than joint return filers and $315,000 for married couples filing joint returns, indexed for inflation for tax years beginning after 2018. Prop. Reg. §1.199A-1(b)(11). The wage and capital limitation and SSTB limitation are phased in for the next $50,000 /$100,000 (i.e., other than joint return/joint return taxpayers) of taxable income.

b. **Individuals with Taxable Income Not Exceeding Threshold Amount**.

For each separate business, the deduction = Lesser of:

(1) 20% of QBI {including QBI of SSTBs} + 20% of (qualified REIT dividends + qualified PTP income); or

(2) 20% x (taxable income – net capital gain). Prop. Reg. §1.199A-1(c).

The last element means that the deduction cannot exceed taxable income reduced by the taxpayer's net capital gain for the year. In effect, the 20% deduction cannot exceed the taxpayer's ordinary and qualified dividend income. That same overall limit on the deduction applies for individuals with taxable incomes exceeding the threshold amount (described immediately below).

c. **Individuals with Taxable Income Exceeding Threshold Amount**.

For each separate business, the deduction = Lesser of:

(1) QBI component + 20% of (qualified REIT dividends + qualified PTP income); or

(2) 20% x (taxable income – net capital gain). Prop. Reg. §1.199A-1(d).

QBI component = sum of the following for each separate trade or business--

Lesser of:

(1) 20% of QBI for that trade or business, or

(2) What is referred to in this outline as the "W-2 wages or UBIA limitation," which is the greater of the individual's allocable share of

(i) 50% of W-2 wages for that trade or business, or

(ii) 25% of W-2 wages for that trade or business + 2.5% of UBIA of qualified property for that trade or business,

Subject to a special rule for SSTBs, which is that QBI, W-2 wages, and UBIA of qualified property of a SSTB are not taken into account, and

Subject to a phase-in rule if taxable income is in the "phase-in range." Prop. Reg. §1.199A-1(d).

Phase-In Range. For taxpayers with up to $50,000 ($100,000 for joint returns) over the threshold amount, the W-2 wages or UBIA limitation is applied proportionately by the amount that the excess bears to $50,000 (or $100,000, as appropriate). Prop. Reg. §1.199A-1(d)(iv)(B).

The REIT dividends and PTP income provisions in the first element of the basic deduction formula in effect means that the wage limitation and limitation of SSTB income does not apply to those types of income.

40. Qualified Business Income

QBI "means the net amount of qualified items of income, gain, deduction, and loss with respect to any trade or business as determined under the rules of §1.199A-3(b)."

- The proposed regulations provide that a trade or business, for this purposes, is the same as the meaning of a trade or business under §162.
- A helpful self-rental exception is provided so that rental income from an entity with at least 50% common ownership as the lessor will be treated as a trade or business.
- QBI is generally the net amount of income, gain, deduction, and loss from an active trade or business within the United States, including §751 gain, but not including certain types of investment income (short or long term capital gains or losses including gains or losses under §1231 treated as capital gains or losses, dividends or interest unless the interest is allocable to a trade or business, but interest attributable to the investment of working capital is not included), and certain other types of investment income.
- QBI does not include reasonable compensation paid to the taxpayer, any guaranteed payment under §707(c), or payment to a partner for services under §707(a).
- If a taxpayer has multiple businesses, the QBI must be determined for each separate business. If any business has a negative QBI, that loss is netted against the QBI from businesses with positive QBI. If the net QBI for all businesses in a year is a negative number, the negative amount is treated as QBI from a separate business, and is carried over to subsequent years to offset the positive QBI of businesses in subsequent years.

41. W-2 Wages

The taxpayer's pro rata share of the total W-2 wages paid by the business (including wages paid to the taxpayer) is considered in determining the W-2 wages or UBIA limitation. Three alternative methods are provided for calculating W-2 wages in Notice 2018-64, issued in conjunction with the proposed regulations.

The proposed regulations add a regulatory rule providing relief for situations in which the employees for various separate businesses are employed by a central management company.

For S corporations, compensation paid to shareholders is treated as W-2 wages. Owners of partnerships or LLCs, however, receive guaranteed payments rather than wages. Guaranteed payments are deductible, so reduce QBI (and therefore reduce the 20% of QBI deduction), but do not count as W-2 wages. For §199A purposes, guaranteed

payments are not desirable and result in a whipsaw of reducing QBI but not being counted as wages to help in satisfying the wage limitation to take full advantage of the 20% deduction that is available from the remaining QBI. A possible alternative is to contribute the partnership interest into an S corporation and have wages paid by the S corporation. Alternatively, have the owners of another entity drop their interest into a lower tier entity and have the lower tier entity pay wages to the employee and get W-2 treatment at the lower level. The *owner* of a partnership does not receive W-2 wages but instead receives K-1 income, so pay wages from an entity not owned by the employee.

42. Capital Limitation

The wages limitation was relaxed in the Conference Agreement by adding that the wage limitation is the greater of (a) 50% of W-2 wages, or (b) the sum of 25% of W-2 wages plus 2.5% of the unadjusted basis, immediately after acquisition, (UBIA) of qualified property (generally meaning all tangible property subject to depreciation) for the useful life of such property. This separate "real estate exception" based largely on the basis of property in the business could be very beneficial to real estate companies.

- Qualified property is tangible depreciable property held at the close of the tax year that is used at any time during the year for the production of QBI and for which the depreciable period has not ended before the close of the individual's or passthrough entity's taxable year.
- The depreciable period starts when the property is placed in service and ends on the later of (i) 10 years later, or (ii) the end of last full year of the applicable recovery period under §168(c).
- For like-kind exchanges, the date of service of the relinquished property applies, but the adjusted basis at the time of the exchange (which may reflect depreciation or other downward basis adjustments during the intervening period) becomes the new unadjusted basis, in effect applying the worst rule for both issues from the taxpayer's perspective (but exceptions to that general rule apply). Prop. Reg. §1.199A-2(c)(2)(iii).
- Similarly, if assets are contributed to a new taxable entity in a nontaxable exchange (for example contributions to a partnership under §721 or contributions to an S corporation under §351), the worst of both worlds applies–the original life continues but the adjusted basis at the time of the contribution (which may reflect prior depreciation deductions or other downward basis adjustments) becomes the new unadjusted basis. Prop. Reg. §§1.199A-2(c)(2)(iv); 1.199A-2(c)(3) (in conjunction with the additional explanation in the Preamble); 1.199A-2(c)(4)Ex.3.
- Basis adjustments under §§734(b) and 743(b) of property held in a partnership or LLC with a §754 election in effect are not counted.

43. Aggregation

a. **Significance**. The proposed regulations adopt an approach of allowing taxpayers (not the passthrough entity) to aggregate separate businesses that meet certain tests, which results in combining the QBI, W-2 wages and qualified property of the aggregated separate businesses. This can be very helpful, for example, if some businesses have little wages or qualified property (for the UBIA limitation) and other businesses have a relative abundance of W-2 wages or qualified property.

b. **Requirements**. Businesses may be aggregated for this purpose only if they meet certain requirements, one of which is that someone has at least 50% common ownership of the entities. (Attribution rules apply for that purpose, but they do not include attribution among siblings, which can be a real problem for second generation family businesses where the businesses were bequeathed to more than two siblings, with none of them owning more than 50%.)

44. Specified Service Trades or Businesses (SSTBs)

a. **General Rule**. The deduction does not apply for specified service businesses in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, investment management, trading services, dealing in securities, partnership interests, commodities, or any business where the principal asset is the reputation or skill of one or more of its employees (by reference to §1202(e)(3)(A), except for engineering or architecture). §199A(d)(2). This provision decreases the incentive of specified service businesses to pay low compensation income for the service-provider employees and claim that most of the income from the business is qualified business income entitled to the 20% deduction.

b. **De Minimis Rule for Mixed Businesses With Little SSTB Income.** If a business has income from the specified service fields and also has other income, the business will not be treated as an SSTB if less than 10% of its gross receipts are from the specified service field (or 5% if it has gross receipts over $25 million).

c. **Cracking and Packing**. The proposed regulations limit "cracking and packing" alternatives to separate out administrative functions from the specified service functions of businesses. The proposed regulations add that an SSTB includes any business (i) with 50% or more common ownership (directly or indirectly, with broad attribution), and (ii) that provides 80% or more of its property or services to an SSTB. If an "administrative" business and SSTB business has at least 50% common ownership but does not meet the 80% test, the administrative business is not treated as an SSTB in its entirety, but the portion of the business that provides property or services to the 50% commonly-owned SSTB is treated as part of the SSTB.

d. **Business Incidental to SSTB (With Relatively Little Business Income)**. If a non-SSTB business entity that would not otherwise be an SSTB (i) has 50% common ownership (applying attribution under §267(b) and §707(b)) with an SSTB, (ii) shares expenses with the SSTB, and (iii) accounts for 5% or less of the combined gross receipts of the business and SSTB, the business is treated as incidental to and part of the SSTB for purposes of §199A.

45. Trusts

The deduction is available to non-corporate taxpayers, including trusts and estates. (The Senate version would not have made the deduction available to trusts and estates.)

a. **Threshold Amount**. For trusts, the threshold amount (for purposes of determining whether and to what extent the W-2 wages and UBIA limitation and the SSTB limitation applies) is $157,500 (indexed, $160,700 in 2019). Surprisingly, the proposed regulations take the position that in determining whether the trust's taxable income exceeds the threshold amount, the taxable income before taking into consideration the distribution deduction is used.

b. **Allocation**. QBI, wages, UBIA, etc. are allocated between beneficiaries and the trust based on the percentage of DNI that is deemed distributed or undistributed. The proposed regulations include a detailed two-page example.

c. **Grantor Trusts.** The deemed owner of a grantor trust computes its §199A deduction as if the person directly conducted the activities of the trust as to the portion owned by the grantor or other person.

d. **ESBTs**. The statute and legislative history do not specifically address the availability of the §199A deduction for electing small business trusts (ESBTs), but the proposed regulations provide that ESBTs are entitled to the §199A deduction.

e. **Section 199A Anti-Abuse Rule for Trusts**. The proposed regulations adopt an anti-abuse rule for trusts specifically with respect to §199A: "Trusts formed or funded with *a significant* purpose of receiving a deduction under section 199A will not be respected for purposes of section 199A. See also §1.643(f)-1 of the regulations." Prop. Reg. §1.199A-6(d)(3)(v) (emphasis added). A trust that has taxable income (without considering the distribution deduction) under the threshold amount is not subject to (i) the wage and capital limitation, or (ii) the SSTB limitation. If the grantor would be subject to those limitations, contributing some of the business interest to a non-grantor trust may facilitate being able to take full advantage of the 20% deduction under §199A, as long as the trust's taxable income is under the threshold amount. The maximum tax savings from the §199A deduction alone would not exceed approximately $157,500 (the threshold amount for the trust) times a 20% (§199A deduction) times 37% (top income tax rate), or $11,655. (In round figures, the savings for the trust would be about $150,000 x 20% x 40%, or $12,000.)

f. **Proposed Regulations Regarding Multiple Trusts Under §643(f)**. Proposed regulations under §643(f) reiterate the general rule of §643(f) that two or more trusts will be aggregated and treated as a single trust for income tax purposes (i) if they have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and (ii) if a principal purpose for establishing the trusts or for contributing additional property to the trusts is the avoidance of Federal income tax. In addition, the proposed regulations provide a special rule to help the IRS establish the principal purpose test. Examples suggest that relatively little "crossover" of beneficial interests of beneficiaries will be sufficient to treat trusts as having the same "primary beneficiary."

46. Reporting Requirements for Passthrough Entities

The passthrough entity must report on the Schedule K-1 issued to its owners the QBI, W-2 wages, and UBIA of qualified property attributable to each separate trade or business and whether any of the businesses are SSTBs. The entity must report on a statement attached to Schedule K-1 those items reported to it by another entity in which the first entity owns an interest.

Items 47-53 summarize comments from a panel by Lou S. Harrison, Katarinna McBride, and Karin Prangley titled "Restoring Civility and Professionalism in Attorney Communications in the Digital Age"

47. Ethical Rules Requiring Attorneys to Embrace Modern Methods of Communication

The duty of competence, as described in ABA Model Rule of Professional Conduct ("Model Rule") 1.1, Comment 8, requires the duty understand changes in the law "including the benefits and risks associated with relevant technology." The duty of diligence requires attorneys to act with reasonable diligence and promptness when representing clients. Model Rule 1.3.

The following are several examples of situations which might require the use of social media.

- Divorce-A survey by the American College of Matrimonial Lawyers conducted several years ago indicated that 60% of divorce lawyers use Facebook as a primary source of evidence in divorce cases.
- Trust Distributions-Pictures on #RichKidsofInstragram may illustrate that beneficiaries are abusing their resources or suggest that trust distributions are being used for excessive drug or alcohol usage.
- Capacity-Twitter allows a user to post "badges" to indicate that the user has bipolar disorder, depression, anxiety disorder, borderline personality disorder, schizophrenia, post-traumatic stress disorder, obsessive compulsive disorder, or postpartum depression; Tweets may raise questions about the person's capacity.
- Transactions-Posting on social media may suggested inflated values of transferred assets, disclose sale transactions before they have been closed (endangering the sale), etc.

Everyone should "test drive" social media to be able to use it when needed to represent a client effectively under the duty of diligence and competence. In particular, be familiar with Facebook and LinkedIn. Panelists indicate that they generally do not "Friend" clients on Facebook (and believe that is not bad social media etiquette).

48. Confidentiality Dangers of Social Media

Model Rule 1.6 requires that lawyers use reasonable efforts to prevent the unauthorized access of disclosure of information relating to the representation of a client. Sharing client information, even loosely (or indirectly with pseudonyms or distorted facts), on social media about clients is unreasonable. A particular concern is that associates, who the attorney has the duty to monitor, may post identifying information about a client on social media.

49. Attorney Client Privilege and Social Media

Can posting on social media ever be in confidence? A number of cases have held that communications on social media are not intended to be made in confidence with the expectation of privacy. Indeed, courts have even compelled the disclosure of social media passwords. In *McMillen v. Hummingbird Speedway, Inc.,* No. 113-2010 CD (C.P.

Jefferson, Sept. 9, 2010), the court ordered that the plaintiff who alleged he was seriously injured by defendants had to provide his Facebook and MySpace user names and passwords to counsel for defendants based on comments on the public portion of his Facebook and MySpace accounts suggesting that he was not seriously injured. The court rejected the plaintiff's argument that an element of confidentiality protected his accounts from discovery. While not involving attorney-client privilege, the case is an example of findings that postings on social media sites are not confidential, which is a key element of privilege.

In *Largent v. Reed*, Case No.20009-1823 (C.P. Franklin, Nov. 8, 2011) the court held that the Stored Communications Act only addressed disclosure of information by internet service providers, and did not protect an account owner from having to disclose a Facebook user name and password in discovery.

Privilege waiver issues can also arise with respect to email. In *Charm v. Kohn*, C.A. No. 08-2789-BLS, Suf. Sup. Ct. (2010), the client's attorney sent an email to the client and opposing counsel, and the court held that a party did not waive privilege by accidentally clicking "Reply All," which sent a message to the attorney and opposing counsel of a communication clearly intended just for the attorney. The court held that privilege was not waived through inadvertent disclosure if the client and counsel took reasonable steps to preserve the communication's confidentiality. Panelists observed that computer programs can be installed that will generate a Pop-Up message whenever "Reply All" is chosen.

Because of the danger of waiving attorney client privilege, use extreme caution in communicating with clients in any way on social media.

50. Social Media Policy for Law Firms

A law firm cannot prohibit employees from using social media completely, but should adopt reasonable rules. As a brief example:

> … we should always treat Twitter, Facebook, and other social media platforms as public activities. Regardless of your privacy controls or the size of your follower list, anything you post online can easily be shared with a wider audience. And second, you are an X law firm associate, and your online behavior should be appropriate for an X law firm associate. Readers will inevitably associate anything you post on social media with X law firm.

Completely prohibit "six deadly sins." Unequivocally ban (1) providing legal advice on social media, (2) posting content that is illegal racially/ethnically hateful, obscene or threatening, (3) revealing a client's name or providing any identifying information about a client or case, (4) identifying content as affiliated with or endorsed by the legal services organization, (5) making reference to the lawfirm/work email address instead of the employee's personal email, and (6) connecting with judges on social media.

The materials for this panel include sample detailed social media policy statements.

51. Communicating With Clients

An insurance carrier told one law firm that substantially more mistakes come from communications merely sent electronically than if sent in print (printed communications are reviewed more carefully).

Surveys have indicated that Americans respond to communications as follows (listed in order of urgency): Text, phone call, email, messenger, Facetime, Facebook, WhatsApp, Snapchat, Instagram, and Dating App.

a. **Texting**. Clients may expect immediate responses to text messages. A poll of the audience reflected that about 20% of the Fellows do not respond at all to texts from clients. One panelist at least responds "Why don't you call me so we can discuss this?" Another panelist does communicate with clients by text messages, when reasonably appropriate. For simple messages, that can be the most efficient and convenient (at least for the client) way to communicate with clients.

   For example: "Q-Can I take principal from the Jones QTIP Trust? A-No, only income. Shall we set up a time to discuss? Q-No that's all that I wanted to know." That is efficient communication.

   Every substantive text message with a client should be documented, by saving a screen shot (which can be time consuming and cumbersome) or by backing up text messages to the attorney's computer from time to time (the following link from Digital Trends explains how: **https://macroplant.com/iexplorer/tutorials/how-to-transfer-and-backup-sms-and-imessages**.

b. **Email**. Lou Harrison's 10 Email Rules—

   (1) Do not use ALL CAPS (it feels like shouting).

   (2) Every email will be used against you. (Consider the impact of the email on the reader, the value to the reader, and if it is a legal opinion.)

   (3) Tone. Include the client's name. Should a salutation be used (Dear __)? What is the tone of the end of the message (Regards, Warmly, Talk soon, Look forward to hearing from you)?

   (4) When emails just don't work. Trust your instinct. Do not use email to apologize unless you are really pressed for time.

   (5) Danger parts if they don't work (and they rarely do)—Humor, sarcasm, anger, watch for defamation, watch out for emotion.

   (6) Charging for emails. The description must connote value. Charging for advice given in emails is not the same a charging for copies.

   (7) Spacing and font has I-M-P-A-C-T. Space out emails to convey a point versus the long booooooorring email that one can barely read.

   (8) Avoid arguing.

   (9) Do not criticize. Praise, not criticism.

   (10) Email serves as a good placeholder to notify a client the status of an ongoing project.

52. Helpful Email Tools

F1—Displays the Help Pane.

F6—To Toggle between tech Help Pane and the active application

Control+Shift+I—Switch to In box (or Control+I when in Calendar mode; Control+2, to shift to Calendar when in In box.

Control+N—Compose new message

Control+Shift+G—Display an email in the task pane for followup

Control+B—Bold

Control+Shift+L—Add bullets

Control+I—Italics

Control+T to increase indent (do not hit Tab bar)

Control+Shift+T to decrease indent

Control+X—Cut

Control+C—Copy

Control+V—Paste

Control+Shift+Z—Clear formattings

Control+U—Underline

Control+F2—Open print preview

Alt+P—Print

Control+Shift+F—Find prior emails

Control+Shift+D— Be wary of using this; at one time, it deleted all emails–that may have been changed, but be wary

53. Lou's 80/20 and 90/10 Rules for Firm Income and Aggravation

80/20 rule—80% of income comes from 20% of clients.

90/10 rule—90% of aggravation comes from 10% of clients.