

AG TAX TIDBITS

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JOINT TENANCY - “CONSIDERATION FURNISHED” or “FRACTIONAL SHARE”

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During a recent “Farm Estate & Business Planning” seminar led by Dr. Neil Harl, I became aware of some very interesting court decisions involving the issue of what portion of husband & wife -joint tenancy property is or can be included in the estate of the first joint tenant to die.

Review:

Consideration Furnished rule - states that joint tenancy property is subjected to federal estate tax in the estate of the first to die, except to the extent it can be proved the survivor contributed to the acquisition of the property. Law for husband and wife joint tenancy property before 1976.

Fractional Share rule - states that for deaths after 1981, one-half the value is taxed at the death of the first spouse to die if the husband and wife are the only joint tenants.

Farm wives pressed real hard to have the fractional share rule adopted. In general, the fractional share rule provides desired results. However, I have seen many situations, particularly where the heir desired to dispose of the property during their lifetime, that the old “consideration furnished” rule would have produced more favorable tax consequences. Since under the consideration furnished rule if the decedent had provided the consideration, the entire property would have received a step-up in basis, income tax consequences on the sale of the property would only result from difference in the sale price and the appraised value in the estate. Also, if the surviving tenant desired to utilize lifetime gifting, the property would be more attractive for gifting, since the entire property would have received a step-up in basis.

Some tax advisors have taken the position that since the consideration furnished rule was not repealed - the option for its use is still available. Three courts have applied the consideration furnished rule to joint interests created before 1976 and the first joint owner dying after 1981 - ruling where the decedent had furnished the consideration, the entire property was entitled to new income tax basis. The citations are:

Gallenstein v. US, 91-2 U.S.T.C. / 60,088 (E.D. Ky. 1991), affd, 975 F.2d 286 (6th Cir. 1992);
Patten v. US, 96-1 U.S.T.C. / 60,231 (W.D. Va. 1996);
Anderson v. US, 96-2 U.S.T.C. / 60,235 (D. Md. 1996)

The application of these ruling could provide substantial flexibility in the settlement of many estates - providing for increased opportunity of liquidating some assets and the transferring of assets (business) from one generation to the next.



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