Beverly Hills Bar Association – Trusts & Estate Section
April 2019 Legal Updates

California Senate Bill 378

California Senate Bill 378 ("SB 378") creates California transfer taxes (i.e., gift, estate and generation-skipping transfer taxes) modeled on the federal transfer taxes, but with a $3.5 million exemption ($7 million for a married couple). Proceeds go to the Children's Wealth and Opportunity Building Fund, which provides programs and services intended to address and alleviate socio-economic inequality. If passed by the Legislature, SB 378 will appear on the November 2020 ballot. If passed by voters, SB 378 will apply to transfers occurring after December 31, 2020. California transfer taxes would be imposed at a 40% rate, with a credit for federal transfer taxes paid. The $3.5 million exemption is not adjusted for inflation and there does appear to be provisions allowing for a California-specific QTIP election.

Estate of Dieringer v. Commissioner (9th Cir., March 12, 2019)

Following its prior decision (*Ahmanson*), the Ninth Circuit held that an estate's charitable deduction is based on the value of property actually received by the charity, not the property's date of death value, when post-death transactions result in the charity receiving property worth less than its estate tax value. In other words, the charitable deduction cannot exceed the value of what the charity actually receives. The decedent's real estate holding company was restructured after her death and before distribution of her estate. The restructuring included: issuing more shares to family members, electing S corporation status, and redeeming the charity's stock at a lower value. The Court held that these actions changed the nature and reduced the value of the property actually transferred to the charity, consequently, reducing the charitable deduction.

U.S. v. Ringling, *2019 WL 858682* (D.S.D. February 21, 2019)

A U.S. District Court found that beneficiaries were liable for an estate's unpaid tax liability under Section 6324(a)(2). To establish liability under 6324(a)(2), the IRS must prove: (1) the estate tax was not paid when due; and (2) the beneficiary received property included in the decedent's gross estate under Sections 2034 – 2042. Here, the beneficiaries jointly owned property with decedent at the time of his death (includible under Section 2040), received proceeds from insurance policies on decedent's life (includible under Section 2042), and received gifts from the decedent within three years of his death (includible under Section 2035).

Kress v. U.S., *2019 WL 1352944* (E.D. Wis. March 26, 2019)

A U.S. District Court ruled partially for and partially against taxpayers in a matter involving the valuation of a closely-held company. Married taxpayers made gifts of minority interests in the family-owned corporation to children and grandchildren. The Court used the valuation submitted by the taxpayers' expert because the government's expert failed to consider appropriate comparable companies under the market approach and the impact of the recession. However, the Court found that the company's transfer restrictions did not reduce the value of the shares, because the restriction was not comparable to those in an arm's length transaction, in violation of Section 2703(b)(3).