



# TAX ADVISOR

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*You can talk about tax savings, you can think about tax savings, you can hope for tax savings, but if you actually want tax savings, consult a Tax Attorney.*

The President's new simplified **Flat Tax** is eerily reminiscent to earlier Flat Tax legislation. **Lord Acton** was once quoted as saying, "Those that forget history are doomed to repeat it." The original legislation that initiated the Income Tax in the last Century came in as a Flat Tax. The new flat tax proposal eliminates state and local tax deduction and substantially limits interest on mortgages and health insurance while reducing taxes on large corporations and eliminating foreign earned income of multinational corporations. It seems the middle class are doomed to carry the largest share of the income tax burden. Currently corporate income taxes amount to less than 10% of all taxes paid.

**The legal façade crumbles in the face of reality.**

**Estate Tax inclusion where taxpayer retained effective right to all income.** In the Estate of VA A. Bigelow, et al. v. Commissioner, (2005) the Rental Real Estate transferred from taxpayer's revocable trust to a **Family Limited Partnership** was included back into the taxpayer's taxable estate pursuant to Section 2036(a) because, as a practical matter, the taxpayer retained lifetime right to all the property's rental income and economic benefit via **implied agreement**. The taxpayer replaced income she lost from property's transfer with partnership income and used same to secure her loan obligations, make loan payments, and provide funds to trust for her general support; and no distributions were made to any partner other than trust before she died.

**Buy-sell agreement disregarded.** The U.S. Court of Appeals for the Eleventh Circuit held in **Estate of Blount, (October 30, 2005)** that the Tax Court correctly disregarded a buy-sell agreement in determining the estate tax value of the stock subject to it.

The shareholders and the Company entered into a buy-sell agreement restricting transfers of the Company's stock both during the shareholders' lifetimes and at death. Lifetime transfers required the consent of the other shareholders. At death, a shareholder's estate was required to sell, and the Company was required to buy the shareholder's shares at a price set in the agreement. The agreement further provided that it could be modified only by the written consent of the parties to the agreement. In '96, without obtaining such consent, the decedent and the Company modified the agreement, changing the price and terms under which Company would redeem Taxpayer's shares on his death, but leaving unchanged the provision requiring the consent of other shareholders for lifetime transfers. The modified price was substantially below the price that would have been payable under the unmodified agreement. Taxpayer died, and Company redeemed his shares as provided in the modified agreement. His estate reported the value of the shares at the price set forth in the modified agreement. The Tax Court determined and the Eleventh Circuit agreed that, because of his controlling interest, Taxpayer had the unilateral ability to modify the agreement. As a result, the agreement was not binding during his lifetime, as required by Reg. § 20.2031-2(h), and thus did not fix the estate tax value of the shares.

**Stephen L. Robison, J.D.,  
LLM Tax and Business**

Board Certified in Federal  
Tax Law since 2002

Selected as Ohio Super-  
Lawyer in Taxation in 2003,  
2004 & 2005.

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For more information  
contact us at:  
4500 Cooper Road, Ste. 305  
Cincinnati, OH 45242  
513-412-3483 (telephone)  
513-412-3482 (facsimile)

Email  
steve@robisontaxlaw.com