Philadelphia Estate Planning Council
Tax Updates – September 2016
Prepared by Brian R. Gilboy of Gilboy & Gilboy LLP

GUIDANCE FROM THE IRS:

Rev Rul 2016-20, IRB 2016-36 - September 2016 Rates:

- Section 7520 Rate: 1.4%
- Annual Short Term AFR (0-3 years): .61%
- Annual Mid Term AFR (3-9 years): 1.22%
- Annual Long Term AFR (over 9 years): 1.90%

Prop Reg § 25.2701-2, Prop Reg § 25.2701-8, Prop Reg § 25.2704-1, Prop Reg § 25.2704-2, Prop Reg § 25.2704-3, Prop Reg § 25.2704-4 – Intra-Family Discount Restrictions:

As you are all aware, the IRS has issued proposed regs under §2704 that may dramatically reduce the ability of taxpayers to apply valuation discounts to intra-family transfers of interest in entities.

Since the regs under §2704 are the topic of today's luncheon, I'm not going to focus on them in detail, but such regulations may significantly restrict marketability and lack of control discounts and may have other ramifications yet unseen. It should be noted that the proposed regs under §2704 are not effective until they are finalized. The IRS may apply a new "three-year rule" to transfers made before the effective date if the transferor dies after the effective date but within three years of making the initial transfer.

Rev. Proc. 2016-47 – Missed 60 Day Rollover Solutions*:*

This revenue procedure provides guidance concerning waivers of the 60-day rollover requirement for IRA accounts. Specifically, it provides for a self-certification procedure (subject to verification on audit) that may be used by a taxpayer claiming eligibility for a waiver with respect to a rollover into a plan or IRA.

The rev proc provides that a plan administrator, or an IRA trustee, custodian, or issuer, may rely on the taxpayer's certification in accepting and reporting receipt of a rollover contribution. It also modifies an earlier rev proc., by providing that the IRS may grant a waiver during an examination of the taxpayer's income tax return. An appendix contains a model letter that may be used as a template for a self-certification.

In order to qualify to self certify, the taxpayer must not have had a previous denial by the IRS and the delay in the rollover must be due to one of several enumerated causes including an error by the plan administrator, family member's death, incarceration of the taxpayer and several others.

The taxpayer should make the contribution as soon as practicable after the 60 day period lapses. The rev proc contains a 30 day safe harbor provisions (so that a contribution within 30 days of the initial 60 day expiration will satisfy the soon as practicable requirement).

Rev Proc 2016-42, 2016-34 IRB – CRAT Exhaustion Test Language

The IRS has provided a sample provision that may be included in the governing instrument of a CRAT that provides for annuity payments payable for one or more measuring lives followed by a remainder distribution to charity. The IRS will treat the sample provision as a qualified contingency, including the language in the trust instrument will exempt the CRAT from the "probability of exhaustion test".

A CRAT fails if there is a greater than 5% probability that payment of the annuity will defeat the charity's interest by exhausting the trust assets by the end of the trust term, the test to determine such likelihood is called the "probability of exhaustion test".

The low interest rate environment of the last several years has made CRATs unviable for many taxpayers due to the probability of exhaustion test.

As stated, the sample language in the rev proc will be treated as a "qualified contingency" and will have the effect of a backstop in that it will cause the CRAT to terminate earlier than it otherwise would in favor of the charitable remainder beneficiary, which allows a taxpayer to receive some of the benefit of the CRAT that would otherwise fail based on the probability of exhaustion test.