

Tax Updates – October 2017
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AFR for October 2017

	Annual	Semi-annual	Quarterly	Monthly
Short-term	1.27%	1.27%	1.27%	1.27%
Mid-term	1.85%	1.84%	1.84%	1.83%
Long-term	2.50%	2.48%	2.47%	2.47%
The Section 7250 rate is 2.2%				

Proposed Section 2704 Regulations are Withdrawn

Complying with Executive Order 13789, Treasury announced the withdrawal of the proposed regulations under Section 2704 on restrictions and lapsing rights for estate, gift and generation-skipping transfer tax purposes. The proposed regulations were in response to case law enabling family-controlled entities to generate valuation discounts (e.g. lack of control and/or lack of marketability). These discounts reduce the value of property for gift and estate tax purposes. The Treasury and the Internal Revenue Service recognized the proposed regulations were unworkable, and that taxpayers, the Internal Revenue Service, and the courts would not be able to apply the regulations in a practical manner.

**IRS Reexamination of First Decedent's Estate to
Determine Surviving Spouse's DSUE Upheld**

The Tax Court held that the Internal Revenue Service has broad authority to re-examine the estate of the first spouse to die in order to determine the correct amount of the surviving spouse's deceased spousal unused exclusion amount (DSUE amount). After a no-change letter had been issued with respect to the first estate, the Internal Revenue Service reexamined the return for the sole purpose of recalculating the DSUE. It was determined that the DSUE was incorrect because the surviving spouse failed to subtract lifetime taxable gifts in determining the DSUE amount. *Estate of Sower v. Comm'r*, 149 TC No. 11 (Sept. 11, 2017).

**Electing Portability Deadline:
January 2018 or Second Anniversary of Date of Death**

In Revenue Procedure 2017-34, the Internal Revenue Service established a simplified method and new timeframe for electing portability. The simplified method is available to the executor (either an appointed executor or, if none, a non-appointed executor, as provided in Section 20.2010-2(a)(6)) of the estate of a decedent if:

- (1) The decedent:
 - (a) was survived by a spouse;
 - (b) died after December 31, 2010; and
 - (c) was a citizen or resident of the United States on the date of death.
- (2) The executor is not required to file an estate tax return under Section 6018(a) as determined based on the value of the gross estate and adjusted taxable gifts and without regard to the need to file for portability purposes;
- (3) The executor did not file an estate tax return within the time required by Section 20.2010-2(a)(1) for filing an estate tax return; and
- (4) The executor satisfies all requirements of section 4.01 of the revenue procedure.

The new deadline for filing is either on or before the later of (a) January 2, 2018 or (b) the second annual anniversary of the decedent's date of death. The Form 706 will be considered complete and properly prepared if it is prepared in accordance with Section 20.2010-2(a)(7).