

Tax Updates – September 2017

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Adjusted AFR for September 2017

	Annual	Semiannual	Quarterly	Monthly
Short-term adjusted AFR	.96%	.96%	.96%	.96%
Mid-term adjusted AFR	1.45%	1.44%	1.44%	1.44%
Long-term adjusted AFR	1.93%	1.92%	1.92%	1.91%
Section 7520	2.4%			

Charitable Deduction Upheld for Contribution of Conservation Easement

The Fifth Circuit reversed and remanded the Tax Court decision denying the charitable deduction for a gift of a conservation easements. The deduction was originally denied because the taxpayer retained the right to adjust the borders of the encumbered property. The Fifth Circuit reversed and sustained the income tax deduction, because the retained right only shifted the boundaries of unencumbered property within the tract of encumbered property, without increasing the total acreage of the unencumbered parcels. *BC Ranch, II, L.P. v. Comm’r*, ___ F3d ___, 2017 WL 3446583 (5th Cir. Aug. 11, 2017), rev’g and rem’g *Bosque Canyon Ranch, L.P. v. Comm’r*, T.C. Memo. 2015-130, In *BC Ranch, II, L.P. v. Comm’r*, ___ F3d ___, 2017 WL 3446583 (5th Cir. Aug. 11, 2017), rev’g and rem’g *Bosque Canyon Ranch, L.P. v. Comm’r*, T.C. Memo. 2015-130.

Estate Tax on Lifetime Gifts Not Apportioned; Marital Deduction May be Affected

Decedent made gifts to his nieces within three years of his death. The nieces agreed to pay the associated gift tax. Due to this agreement, the gift taxes on net gifts were neither deductible as claims against the estate nor could such tax liability be apportioned. A deduction under Code Section 2053(a) was denied, because the estate could recover the taxes paid from the nieces. The court also denied a partial summary judgment because under the state (New Jersey) governing law apportionment of taxes is not applicable to assets not included in the estate, even though the gift taxes paid on the gifts were so includible, the gifts themselves were not. In *Estate of Sommers v. Comm’r*, 149 T.C. ___ (No. 8) (Aug. 22, 2017)

Charitable Deduction Upheld Because of Detailed Deed

The donor’s \$26.7 million deduction was upheld because the deed of easement stipulated that the easement was given to the charity in exchange for no consideration. These details satisfied the requirements of a contemporaneous written acknowledgment. *Big River Development, L.P. v. Comm’r*, T.C. Memo. 2017-166 (Aug. 28, 2017), *310 Retail, LLC v. Comm’r*, T.C. Memo. 2017-164 ; *RP Golf, LLC v. Comm’r*, T.C. Memo. 2012-282 ; *Averyt v. Comm’r*, T.C. Memo. 2012-198 .

Charitable Deduction Reduced Because Replacement Value Not Proper Fair Market Value

For the value of the charitable deduction, the taxpayer's appraiser used the cost of reacquisition of the big game trophy heads and parts (skulls, antlers, hooves, etc.) versus the prices that would be paid on the open market for similar items. Such value was rejected. The ability to use a replacement cost is only for items that are so rare and unusual as to be collectibles. *Gardner v. Comm'r, T.C. Memo. 2017-165 (08/24/2017)*.

Beneficiary's Erroneous Payment of Trust's Income Taxes is Not a Constructive Addition

After the sale of property, the beneficiary erroneously paid the taxes, as opposed to the trustees paying them. The beneficiary never waived her right and actually was reimbursed. Therefore, the IRS concluded: (a) the trust remained protected from the generation-skipping transfer tax by the effective date rules; (b) there was no taxable gift by the beneficiary; and (c) no portion of the trust would be included in the beneficiary's gross estate for estate tax purposes on account of the erroneous payment. *Private Letter Rule 201735005 (09/01/2017)*.