

**Philadelphia Estate Planning Council**  
**Current Developments – October 2018**  
**Prepared by George C. Deeney of Gilboy & Gilboy LLP**

**GUIDANCE FROM THE IRS**

**Revenue Ruling 2018-27, October 2018 Rates:**

- Section 7520 Rate: 3.4%
- Short Term AFR (0-3 years): 2.55%
- Mid Term AFR (3-9 years): 2.83%
- Long Term AFR (over 9 years): 2.99%

**LEGISLATIVE HAPPENINGS**

**Update on Tax Reform 2.0**

On September 27 and 28, 2018, the House passed the "Protecting Family and Small Business Tax Cuts Act of 2018", the "Family Savings Act of 2018" and the "American Innovation Act of 2018" which, collectively, are being referred to as "Tax Reform 2.0." However, despite the bills clearing the House, it is unlikely that the bills will move along any time soon. Nicole Kaeding, who serves as director of federal projects for the Tax Foundation, a "nonpartisan" tax-policy research group, recently commented that "[t]he Senate is not expected to debate these bills."

**2019 Inflation-Adjusted Figures**

The Labor Department recently release the August 2018 changed Consumer Price Index summary. Thompson Reuters recently calculated the adjustments for 2019 to the estate and trust income tax rate schedule and for transfer tax items. While these are not final, it provides a good idea as to where the rates may end up.

For estates and trust, it is anticipated that the tax rates will be as follows:

Less than \$2,600	10%
Over \$2,600 but not over \$9,300	\$260 plus 24% of excess
Over \$9,300 but not over \$12,750	\$1,868 plus 35% of excess
Over \$12,750	\$3,075.50 plus 37% of excess

The estate and gift tax exclusion amount and the Generation-skipping transfer tax exemption are each expected to increase to \$11,400,000.

The gift tax annual exclusion amount is expected to remain at \$15,000.

The special use valuation reduction limit is expected to increase to \$1,160,000.

The annual exclusion for gifts to noncitizen spouses is expected to increase to \$155,000.

The kiddie tax exemption is expected to increase to \$2,200. A parent will be able to elect to include a child's income on the parent's return if the child's income is more than \$1,100 and less than \$11,000. The AMT exemption for a child subject to the kiddie tax is expected to be the lesser of \$7,750 plus the child's earned income or \$71,700.

### **RECENT CASE**

In Champions Retreat Golf Founders, LLC (TC Memo 2018-146), the Tax Court found that a partnership that operated a golf club which purportedly donated a conservation easement was unable to qualify for a Code Section 170(f)(3) charitable contribution deduction as it had failed to satisfy the conservation purpose requirements of Code Section 170(h).

After receiving advice from a conservation biologist that the Champions Retreat property satisfied the requirements for a conservation easement, Champions Retreat donated an easement area to North American Land Trust. The donated land did not include areas which were developed; however, the easement did have some exceptions which allowed for further development.

Champions Retreat claimed a charitable deduction in excess of 10 million on its Form 1065 which was ultimately denied by the IRS on two grounds, 1) that the easement did not meet the requirements of Code Section 170, and 2) that the easement did not have a value greater than zero.

The Tax Court determined the easement did not serve the conservation purpose requirement of Code Sec. 170(h). While Champions Retreat argued the easement area provided a habitat for several species of conservation concern, there was no evidence of the presence of threatened species to justify the easement. The court concluded that there was not a sufficient presence of rare, endangered, or threatened species in the easement area to satisfy the conservation purpose requirement.

Champions Retreat also argued that the property was a natural habitat because it was a natural area that contributed to the viability of Sumter National Forest. However, the Tax Court rejected this argument noting that the area was heavily manicured and that there could be no guarantee that any area which was "natural" would stay that way due to landscaping changes.

Finally, the Tax Court concluded that the easement was not for "the scenic enjoyment of the general public" because the property was a private gated area accessible only to club members.