

**Philadelphia Estate Planning Council**  
**Current Developments – November 2018**  
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**GUIDANCE FROM THE IRS**

**Revenue Ruling 2018-28, Internal Revenue Bulletin 2018-45, November 2018 Rates:**

- Section 7520 Rate: 3.6%
- Short Term AFR (0-3 years): 2.70%
- Mid Term AFR (3-9 years): 3.04%
- Long Term AFR (over 9 years): 3.22%

**Regulatory Agenda**

The IRS has release its semiannual regulatory agenda (which can be found at [www.reginfo.com](http://www.reginfo.com)). Several proposed and final rules relate to estate and gift tax and include the following:

Proposed Rules:

- Provide guidance and clarification on Code Section 67(g), including its effect on the deductibility of certain expenses that are incurred by estates and grantor trusts;
- Set forth rules on substantiation requirements and deductibility of interest expenses and amounts paid under a decedent's personal guaranty, and on the proper use of present value when determining what is deductible from the gross estate under Code Section 2053 for expenses or claims against the estate;
- Provide guidance on the Pension Protection Act of 2006 as it relates to donor advised funds; and
- Provide guidance on reporting requirements on transactions with foreign trusts and on large foreign gifts, loans from foreign trusts and foreign trusts having U.S. beneficiaries.

Final Rules:

- Set forth standards under which relief under Code Section 2642(g)(1) will be granted to allocate GST exemption to a transfer;

- Provide guidance in cases in which an alternate valuation election has been made, including addressing effect of post-death transactions on included assets in the estate, treatment of assets transferred at death by contract, determining what portion of a trust in which the decedent regained an interest in includable in the decedent's estate and the types of factors that affect the fair market value of assets that will be recognized;
- Clarification of rules for determining GST exemption available for allocation, and rules governing allocation in instances in which relief is granted under Code Section 2642(g)(1);
- Provide guidance to allow taxpayers to satisfy Code Sections 1014(f) and 6035 regarding basis and valuation issues.

### **RECENT CASE**

In U.S. v. Estate of Chicorel (6<sup>th</sup> Cir., 2018), the Sixth Circuit held that the IRS, by filing a proof of claim in a probate proceeding, satisfied the requirement of filing a "proceeding in court" under Code Section 6502(a) and, therefore, the IRS was not barred by the 10 year statute of limitations.

The IRS had timely assessed a 2002 tax deficiency with respect to a taxpayer, a Michigan resident, in 2005. The taxpayer died in 2006 and, thereafter, the IRS mailed its proof of claim to the estate's personal representative and filed it with the probate court in 2009. The proof of claim sought to reduce to judgment the unpaid balance of the taxpayer's tax liability. The proof of claim was docketed and not challenged; thus, it was deemed allowed.

When the IRS filed a collections suit more than 10 years after the assessment, the estate claimed that the statute of limitations on the IRS claim had expired. The Sixth Circuit concluded that the statute of limitations did not bar IRS's collection effort. The court reasoned that the proof of claim was a "proceeding in court" for the purposes of Code Section 6502(a) and that any timely filed proceeding satisfied the statute of limitations (and that additional proceedings could be filed thereafter).

The court noted that the proof of claim had significant legal consequences and that Michigan law specifically equated presentation of a claim with a proceeding. Additionally, the court noted that it was relevant that a proof of claim in Michigan required action of the personal representative; specifically they were required to provide notice that it was not allowed or it was deemed allowed.

The court stated that while Code Section 6502(a) does not permit the IRS to sit on an assessment for an unreasonable amount of time, once a proceeding is brought it will not be forced to bring every conceivable collections proceeding within ten years.