

Tax Updates – February 2018
Prepared by Barbara E. Little
Obermayer Rebmann Maxwell & Hippel LLP

Rates:

	February 2018 Rev. Rul 2018-05	February 2017
Section 7520 Rate	2.8%	2.6%
Annual Short Term AFR (0-3 years)	1.81%	1.04%
Annual Mid Term AFR (3-9 years)	2.31%	2.10%
Annual Long Term AFR (over 9 years)	2.57%	2.81%

IRC Section 663(b) Late Election Allowed

An estate made a distribution after the close of its taxable year but during the first 65 days after the end of the taxable year. The estate treated the distribution as having been made during the prior taxable year. The IRS allowed the late election determining that the error was inadvertent. PLR 201801011 (Jan. 5, 2018).

2010 Late Allocation of Basis Allowed to Avoid Estate Tax

Utilizing IRC Section 1022, the fiduciary of a U.S. Estate of a nonresidential alien individual who died in 2010 allocated certain basis adjustments among the assets, as opposed to applying the estate tax to the Estate. The fiduciary missed the filing deadline of on or before January 17, 2012. Nonetheless, applying Regulation Section 301.9100-3, the IRS granted discretionary relief. The IRS found that the taxpayer acted reasonably and in good faith, and that the relief would not prejudice the interests of the government. PLR 201749003 (Dec. 8, 2017).

Effective Date Protection Upheld Despite GST Trust Interpretation and Reform

In addition to resolving various ambiguities of a generation-skipping trust, several beneficiaries partially disclaimed their interests in the trust, one beneficiary partially released a general power of appointment, and the trust was reformed to convert outright distributions to distributions in further trust over which the distributee held a testamentary general power of appointment. Such modifications did not cause the trust to forfeit its exemption from the GST tax under the effective date rules. Further, such reformation did not cause the taxable release of a general power of appointment, because the power had been created before October 22, 1942, and it did not constitute taxable gifts by the disclaiming beneficiaries. PLR 201803003 (Jan. 19, 2018).

Procedures for Rulings and Technical Advice Revised

In Rev. Proc. 2018-1, the IRS revised the general procedures relating to the issuance of written guidance, including letter rulings and determination letters, and technical advice memoranda. This is an annual procedure update. This year the revisions are not significant. The Office of Chief Counsel may make modifications throughout the year.

IRS Revises List for Which Rulings Will Not Be Issued.

In Rev. Proc. 2018-3, the IRS released a revised list of areas in which it is unlikely to issue letter rulings or determination letters. With respect to transfer tax issues, the IRS will not issue letter rulings in the following areas:

- (1) the allowance of an unlimited deduction for amounts set aside by a trust or estate for charitable purposes where there is a possibility that corpus may be invaded;
- (2) whether the settlement of a charitable remainder trust (CRT) upon the termination of the noncharitable interest is made within a reasonable period of time;
- (3) the actuarial factors for valuing interests in the prospective gross estate of a living person or valuing a donor's prospective or hypothetical gifts;
- (4) whether a contribution of an interest in a limited partnership or a limited liability company to a charitable organization is eligible for a charitable contribution deduction under Code Sec. 2055 or 2522;
- (5) whether a trust exempt from the generation-skipping transfer (GST) tax retains its exempt status after modifications similar to those made in the examples contained in Reg. §26.2601-1(b)(4)(i)(E);
- (6) the applicability of Code Sec. 6166 prior to the existence of a decedent;
- (7) whether a taxpayer is liable for tax as a transferee;
- (8) whether the corpus of a trust will be included in a grantor's estate (or an individual's estate) when the trustee is a private trust company owned partially or entirely by members of the grantor's family (or the individual's family);
- (9) whether the distributions of property by a trustee from an irrevocable trust to another irrevocable trust result in a taxable gift, loss of GST tax-exempt status, or constitute a taxable termination or distribution under Code Sec. 2612; and
- (10) whether the assets in a grantor trust receive a Code Sec. 1014 basis adjustment at the death of the deemed owner for income tax purposes when the assets are not includible in the owner's gross estate.

In addition, the IRS will not ordinarily issue letter rulings in the following areas:

- (1) whether a pooled income fund satisfies the requirements of Code Sec. 642(c)(5);
- (2) whether certain CRTs satisfy the requirements of Code Sec. 664;
- (3) whether a net income with makeup charitable remainder unitrust (NIMCRUT) qualifies as a CRT if certain individuals can control the timing of the trust's receipt of income from a partnership or deferred annuity contract;
- (4) whether a transfer to a pooled income fund or a CRT qualifies for an estate or gift tax charitable deduction;
- (5) whether the transfer of property to a life insurance trust containing certain provisions will be a gift of a present interest;
- (6) whether trust assets are includible in a beneficiary's gross estate or the beneficiary is treated as making a taxable gift if the beneficiary sells property to the trust or dies within three years of selling property to the trust and the transaction meets certain requirements;
- (7) whether Code Sec. 2514(e) will apply to a beneficiary of certain life insurance trusts if the beneficiary's power of withdrawal is permitted to lapse;
- (8) whether a GST tax-exempt trust will lose its exempt status if the situs is moved outside of the United States;
- (9) whether annuity interests are qualified annuity interests under Code Sec. 2702 under certain circumstances;
- (10) whether a trust with one term holder satisfies the requirements to be a qualified personal residence trust; and
- (11) whether, under certain circumstances, the sale of property to a trust by a trust beneficiary is included in that beneficiary's gross estate, will be treated as a gift, or is subject to Code Sec. 2702.