

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

Revenue Ruling 2018-23, IRB Bulletin 2018-36, September 2018 Rates:

- Section 7520 Rate: 3.4%
- Short Term AFR (0-3 years): 2.51%
- Mid Term AFR (3-9 years): 2.86%
- Long Term AFR (over 9 years): 3.02%

IRB Bulletin 2018-61 – Regulations will address Section 67(g)'s effect on itemized deductions of trusts and estates.

The IRS intends to issue regulations that will clarify the effect of Section 67(g) on the deductibility of certain expenses incurred by estates and non-grantor trusts described in Section 67 of the Internal Revenue Code. Section 67(g) suspends the deduction for miscellaneous itemized deductions. Estates and non-grantor trusts may rely on the notice for tax years beginning after Dec. 31, 2017.

In Notice 2018-61, the IRS announced that the regulations that it intends to issue will clarify that estates and non-grantor trusts may continue to deduct expenses described in Section 67(e)(1) or are allowable under Code Sec. 642(b), Code Sec. 651 or Code Sec. 661 in determining the estate or non-grantor trust's adjusted gross income for all tax years. Additionally, the regulations will clarify that Section 67(b) and 67(e) deductions are not affected by Section 67(g) as they remain outside the definition of "miscellaneous itemized deductions".

LEGISLATIVE HAPPENINGS

New IRS Commissioner

On September 12, 2018, Charles "Chuck" P. Rettig was confirmed as the new IRS Commissioner by the Senate. The Senate voted 64 to 33 in his favor and he received both Democratic and Republican support. Commissioner Rettig was nominated by President Trump in February and the Senate Finance Committee advanced his nomination in July. He will take the place of David Kautter, who has been serving as acting IRS Commissioner since John Koskinen's term ended last November. Commissioner Rettig's term will expire on November 12, 2022.

Tax Reform 2.0

The House Ways and Means Committee released 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."

The "Protecting Family and Small Business Tax Cuts Act of 2018", among other things, seeks to make certain provisions from the Tax Cuts and Jobs Act permanent, including:

- Repeal of deductions for personal exemptions;
- Limitations on SALT deductions;
- Deduction for qualified business income;
- Increased alternative minimum tax exemption for individuals.
- Limitation on deduction for qualified residence interest;
- Termination of miscellaneous itemized deductions;
- Repeal of overall limitation on itemized deductions; and
- Increase in estate and gift tax exemption.

The "Family Savings Act of 2018" would, among other things, seek to repeal the maximum age for traditional IRA contributions, provide for portability of lifetime income investments, expand 529 plans, allow penalty-free withdrawals from retirement plans for individuals in case of birth of child or adoptions, exempt individuals with certain account balances from RMD rules, and establish "Universal Savings Accounts" described as "flexible savings tool that families can use at any time that is right for them".

The "American Innovation Act of 2018" would seek to expand deductions for start-up and organizational expenditures under Section 195 and preserve start-up NOLs and tax credits after ownership change.

Experts indicate that there may be difficulty in securing the votes necessary to pass the legislation as the bill would even further expand the budget deficit that has already increased by the Tax Cuts and Jobs Act. Additionally, some Republicans concerned about the SALT deduction limitation which is disliked by individuals in higher-tax states.

Even if successful in the House, it is unlikely to be taken up in the Senate anytime soon.

RECENT CASE

In Harbor Lofts Associates, 151 TC --, No. 3), the Tax Court held that a taxpayer, who was the lessee of two separate buildings, could not take a charitable contribution deduction for granting a conservation easement under Code Sec. 170(f)(3)(B)(iii) and Code Sec. 170(h). The court found that, as the taxpayer did not hold a fee interest in the property and only gave up contractual rights, the deduction was not proper. The court found that a contractual right in a lease was not a qualified real property interest which could give rise to a charitable contribution deduction.