Philadelphia Estate Planning Council
Current Developments – January 2020

January 2020 Rates:

- Section 7520 Rate: 2.0%
- Short Term AFR (0-3 years): 1.60%
- Mid Term AFR (3-9 years): 1.69%
- Long Term AFR (over 9 years): 2.07%

The Setting Every Community Up for Retirement Enforcement Act (SECURE Act) was signed into law on December 20, 2019. Many of the provisions under the SECURE Act take effect on January 1, 2020. Among other things, the new law: (1) repeals the prohibition on contributions to a traditional IRA by an individual who has attained age 70 ½, (2) increases the age for the required beginning date for required minimum distributions to 72, (3) provides for penalty-free withdrawals of up to $5,000 from retirement plans for a qualified birth or adoption distribution, (4) requires distribution of the remaining account balance of a defined contribution plan or IRA to a designated beneficiary by December 31 of the year that contains the 10th anniversary of the employee or IRA owner's date of death, (5) expands qualified higher education expenses for tax-free distributions from Section 529 plans to include expenses of registered apprenticeships and repayments (up to $10,000) of principal or interest of a qualified education loan for the plan beneficiary or a sibling of the beneficiary, and (6) repeals the kiddie tax rules under the Tax Cuts and Jobs Act so that the net unearned income of a child is taxed at the parents' tax rates and not at trust/estate rates.

The Internal Revenue Service issued final regulations (T.D. 9884) confirming that taxpayers who utilize the increased gift and estate tax inclusion amounts in effect from 2018 to 2025 will not be adversely impacted after 2025, when the exclusion amount is scheduled to revert to pre-2018 levels. In addition, the final regulations provide a special rule that allows an estate to compute its estate tax credit using the higher of the basic exclusion amount applied to gifts made during life or the basic exclusion amount applicable on the date of death.

The IRS released proposed regulations (REG-107431-19) on how to treat contributions made to a charity in return for state and local tax credits. The regulations provide guidance on the issues of: (1) the treatment of business entity payments to entities described in Internal Revenue Code § 170(c), (2) the treatment of tax payments by individuals with total local and state taxes of less than $10,000, and (3) the application of the "quid pro quo" principle under Internal Revenue Code § 170 to benefits received or expected to be received by the donor from a party other than the donee.

In Private Letter Ruling 201944006, the taxpayers used a house as a principal residence for more than two years, then converted it to rental property. After the house was destroyed in a fire, the taxpayers received insurance proceeds. The taxpayers later sold the vacant land where the house stood and acquired replacement property. The IRS determined that the gain from the sale of the land was excluded under Internal Revenue Code § 121, and that the receipt of insurance proceeds in the taxable year before the land sale qualified as a sale or exchange of the dwelling unit within two years of the land sale as described in Reg. § 1.121-1(b)(3). The IRS also concluded that the taxpayers held the property for investment for purposes of Internal Revenue Code § 1031. The fact that the taxpayers excluded gain under § 121 did not preclude them from deferring all or a portion of the remainder of the gain under § 1031.

In Private Letter Ruling 201947007, the decedent created a trust that did not qualify for the estate tax charitable deduction because the trust was not a charitable remainder unitrust within the meaning of Internal Revenue Code § 664(d)(2). The trustees of the trust petitioned the state court to reform the trust in order to qualify the trust as a charitable remainder unitrust. The IRS determined that the charitable interests under the terms of the trust prior to the reformation were reformable interests under Internal Revenue Code § 2055(e)(3)(C), the reformation would result in a qualified reformation under Internal Revenue Code § 2055(e)(3)(B), and the present value of the trust's remainder interest and present value of the charity's portion of the unitrust interest will be interests that qualify for a charitable deduction.

In *Apruzzese v. Commissioner*, TC Memo 2019-141 (Oct. 21, 2019), the petitioner filed a whistleblower claim alleging that a decedent's estate tax return was understated by several million dollars by failing to include several assets and undervaluing other assets. The IRS used this information to revalue the estate and paid the petitioner an award based on the revalued estate. The petitioner filed a petition alleging that the adjustments to the estate's returns were inadequate. The petitioner amended the petition, requesting that the Tax Court order the IRS to perform another estate valuation. The Tax Court noted that while it has jurisdiction to review the amount of a whistleblower award, it does not have authority to review the determinations of the alleged tax liability to which the claim pertains, nor the authority to direct the IRS to reexamine the whistleblower's target.

In *TOT Property Holdings LLC v. Commissioner*, T.C. No. 5600-17 (Bench order, Dec. 13, 2019), the taxpayer executed a deed declaring a conservation easement in favor of a tax exempt charitable organization and claimed a charitable contribution deduction of $6.9 million. The IRS disallowed the deduction and determined that penalties for valuation misstatement were applicable. The Tax Court determined that the conservation purpose of the easement was not protected in perpetuity because the easement did not contain the required provisions entitling the charity to a proportionate share of any proceeds from the

sale or involuntary conversion of the property. As a result, the court determined that denial of the deduction for the conservation easement was proper. In addition, the court found that the highest and best use of the property was not residential development but rather recreational use and timber harvesting. The court accepted the IRS appraiser's valuation of the easement at $496,000 and rejected the taxpayer's appraiser's valuation of $2.7 million.

In *Nice v. U.S.*, 124 AFTR 2d 2019-6403 (DC LA Oct. 16, 2019), the taxpayer was diagnosed with probably early dementia. As the dementia progressed, the taxpayer's son began exploiting her financially, diverting the taxpayer's income and distributions from the taxpayer's retirement accounts for his own personal control and use. The son submitted tax returns on behalf of the taxpayer, reporting as income the money he had taken from her for his own use. The taxpayer's daughter later gained power of attorney over the taxpayer and filed amended tax returns seeking refunds. The claim for refund was denied. The taxpayer, acting through her daughter, filed suit claiming that the taxpayer never actually received the reported income because she was unaware of the funds, she could not exercise control of the funds, she was substantially restricted from access to the funds due to the son's control and she did not benefit from the funds except to a very limited and indirect extent. The District Court rejected the arguments. The Court noted that the taxpayer's dementia and son's fraudulent actions does not result in a finding that she did not actually receive income as defined by the Internal Revenue Code. Additionally, the Court concluded that what happens to the income once received, whether it is stolen or fraudulently diverted, has no bearing on the issue of whether the income was actually received.

In *Wilson v. United States*, 2019 WL 6118013 (E.D. N.Y. Nov. 18, 2019), taxpayer created an overseas trust in 2003 naming himself as grantor and as sole owner and beneficiary. From 2003 to 2007, taxpayer filed various income tax and information returns with the IRS. In 2007, taxpayer terminated the trust and transferred the assets back to his accounts in the United States. The taxpayer failed to timely file Form 3520, which is an annual report disclosing distributions from a foreign trust, and has different requirements for trust grantors/owners and for trust beneficiaries. After paying a penalty, taxpayer filed a complaint alleging that the IRS erroneously assessed a 35% penalty, which applies to trust beneficiaries, instead of a 5% penalty, which applies to a trust grantor/owner. The District Court analyzed Internal Revenue Code §§ 6048(b) and 6677 to determine that the untimely filing of Form 3520 resulted in only the 5% penalty and not both or either the 5% and/or 35% penalty.