

Wealth Management Update

June 2018

June Interest Rates for GRATs, Sales to Defective Grantor Trusts, Intra-family Loans and Split Interest Charitable Trusts

The June § 7520 rate for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 3.4%, which is an increase from the May rate of 3.2%. The June applicable federal rate (AFR) for use with a sale to a defective grantor trust, self-canceling installment note (SCIN) or intra-family loan with a note having a duration of 3-9 years (the mid-term rate, compounded semiannually) is 2.84%, up from 2.67% in May.

The still relatively low § 7520 rate and AFRs continue to present potentially rewarding opportunities to fund GRATs in June with depressed assets that are expected to perform better in the coming years.

The AFRs (based on semiannual compounding) used in connection with intra-family loans are 2.33% for loans with a term of 3 years or less, 2.84% for loans with a term between 3 and 9 years, and 3.03% for loans with a term of longer than 9 years.

Thus, for example, if a 9-year loan is made to a child, and the child can invest the funds and obtain a return in excess of 2.84%, the child will be able to keep any returns over 2.84%. These same rates are used in connection with sales to defective grantor trusts.

New Jersey's Appellate Division Holds That Court Can Look to Extrinsic Evidence to Determine Settlor's "Probable Intent" in Construing an Unambiguous Term in a Trust. *In re: Trust of Violet Nelson, Deceased*, 2018 WL 1513450) (N.J. App. Div., March 28, 2018).

A decedent created a New Jersey trust that included a marital trust that left the remainder interest to her "grandchildren," per capita. The decedent had created previous testamentary documents that expressly excluded her daughter and her daughter's descendants. However, the relevant instrument did not expressly exclude the decedent's daughter or the daughter's descendants, and simply used the term "grandchildren." All of the parties agreed that the decedent had minimal or no relationship with her daughter or her daughter's descendants and that the decedent mourned her daughter's "death" when she married outside the Orthodox Jewish faith. Further, the decedent's other children and her attorney testified that the decedent understood at all times that the term "grandchildren" included only the children of her children who remained in the Orthodox Jewish community.

The New Jersey Superior Court held that the term "grandchildren" was unambiguous, and included all of the decedent's biological grandchildren, including the children of her daughter whom the decedent had considered "deceased" for over 30 years.

Despite the unambiguous term, the New Jersey Appellate Division reversed and remanded the case to the Superior Court to look at extrinsic evidence to determine if there was any ambiguity. According to the Appellate Division, long-standing New Jersey law makes the court's primary goal in interpreting a trust agreement to "fulfill the settlor's intent," which should "not be thwarted by unduly stressing the 'literal meaning' of his words." Accordingly, the trial court was directed to consider the external evidence to determine if there was any ambiguity regarding the decedent's intent in using the term "grandchildren," and, if so, to use extrinsic evidence to resolve such ambiguity.

**IRS Rules That Safe-harbor Rules for Grandfathered GST Trusts Apply to Determine If a Modification of a GST-exempt Trust Results in a Taxable Distribution or Taxable Termination.
PLR 201817002.**

The grantor created a GST-exempt trust for his wife and descendants by allocating a proper amount of GST exemption to such trust. The trusts for his descendants required the Trustees to distribute all income to the beneficiary upon attaining age 21, and provided that half of the principal be distributed to the beneficiary upon attaining age 25, with the balance to be distributed to the beneficiary upon attaining age 30.

Two of the grantor's descendants were disabled. The Trustees petitioned the court to modify the trust as it applied to the disabled beneficiaries to prevent such beneficiaries from having access to any of the trust assets during his or her life. The modification changed the mandatory income distributions to a discretionary power, but provided that any undistributed income would be held in a separate account and payable to the beneficiary at his or her death. Further, the modification eliminated the mandatory principal distributions at age 25 and 30, and instead provided that the beneficiary would have a testamentary general power of appointment over the property that would have been distributable to him or her.

None of the modifications were found to shift beneficial interests to a lower generation because all of the property that would have been distributed to the beneficiary would be included in such beneficiary's estate. In addition, none of the modifications were deemed to extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

Accordingly, the Service ruled that these modifications did not change the GST-exempt status of the trust by reference to the safe-harbor rules for grandfathered GST trusts.

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