Proskauer

Wealth Management Update

September 2020

September Interest Rates for GRATs, Sales to Defective Grantor Trusts, Intrafamily Loans and Split Interest Charitable Trusts

The September Section 7520 rate for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 0.4%, which is identical to the August rate. The September applicable federal rate ("AFR") for use with a sale to a defective grantor trust, self-cancelling installment note ("SCIN") or intrafamily loan with a note having a duration of three to nine years (the mid-term rate, compounded annually) is 0.35%, a new all-time low and down slightly from 0.41% in August.

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

The AFRs (based on annual compounding) used in connection with intrafamily loans are 0.14% for loans with a term of three years or less, 0.35% for loans with a term between three and nine years and 1.00% for loans with a term of longer than nine years. With the short and mid-term rates remaining exceptionally low, clients who have the liquidity to repay loans within three years will likely prefer the short-term rate for their estate planning transactions, and clients seeking a broader time horizon will likely prefer to use the mid-term rate.

New York's Department of Taxation and Finance Confirms that Any New York Source Income will Subject All of a New York Resident Trust's Income to New York State Income Tax. TSB-A-20(2)(I) (Feb. 4, 2020)

New York's Department of Taxation and Finance confirmed that an irrevocable, non-grantor, New York resident trust with no New York trustees and no New York situs assets will be entirely subject to New York state income tax if there is *any* New York source income.

The taxpayer argued that imposition of New York State's income tax to the entirety of a New York resident trust's income was unconstitutional when the New York source income was less than 5% of the trust's total income, the Trustees were all domiciled outside of New York and the trust had no New York situs assets. The New York source income of the trust was derived from tax-exempt NY bonds held in a Vanguard bond fund and from a publicly traded partnership.

However, in this advisory opinion, New York reiterated its general rule that all New York resident trusts are subject to New York state income tax on the entirety of their income unless the three-prong test laid out in N.Y. Tax Law § 605(b)(3)(D) is satisfied, namely that: (1) all Trustees are domiciled outside of New York, (2) all trust property is located outside of New York and (3) the trust has no New York source income. According to the Department of Taxation and Finance, there is no *de minimis* exception to the third prong of the exception.

Florida's 3rd District Court of Appeals Holds that the Settlor and Sole Current Beneficiary of a Self-Settled Irrevocable Trust May be Removed as Trustee by the Court under Florida's Uniform Trust Code. *Wallace v. Comprehensive Personal Care Services, Inc.* (Fla. 3d D.C.A., June 3, 2020)

In *Wallace*, a Florida Appellate Court found that it had the right to remove a Trustee of an irrevocable self-settled trust of which the Trustee was the Settlor and sole current beneficiary, notwithstanding that the trust instrument contained specific provisions and mechanisms for Trustee removal. The trust was created by the Trustee and his predeceased spouse as part of a marital agreement. After the spouse's death, the trust provided that all income and principal for the Trustee's health, education, maintenance and support, as determined by the Trustee, was to be distributed to the Trustee.

In the midst of a broader set of family disputes, the Trustee's son brought an action to remove the Trustee under Florida's Uniform Trust Code, citing gifts made by the Trustee to non-beneficiaries from trust assets.

The Appellate Court ultimately held that the Florida courts always retain the power to remove Trustees under the Florida Trust Code, and that such a removal, even where the Trustee created the trust and is the sole current beneficiary, is distinct from a guardianship proceeding, which requires a higher standard. Accordingly, the Appellate Court found the Trustee should be removed as such in light of the apparent financial mismanagement alleged by the Trustee's son.

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