Wealth Management Update

January 2021

January 2021 Interest Rates for GRATs, Sales to Defective Grantor Trusts, Intra-Family Loans and Split Interest Charitable Trusts

Certain federal interest rates increased slightly for January of 2021 while others remained the same. The January 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 three-nine years (the mid-term rate, compounded annually) is .52%, up from 0.48% in December and down from 1.69% in January of 2020.

The January 2021 Section 7520 rate for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 0.6%, is unchanged from December and down from 2.0% in January of 2020.

The AFRs (based on annual compounding) used in connection with intra-family loans are 0.14% for loans with a term of 3 years or less, 0.52% for loans with a term between three and nine years, and 1.35% for loans with a term of longer than 9 years.

Thus, for example, if a ten-year loan is made to a child, and the child can invest the funds and obtain a return in excess of 1.35%, the child will be able to keep any returns over 1.35%. These same rates are used in connection with sales to defective grantor trusts.

California Franchise Tax Board Proposes Legislation for the Taxation of Income from Incomplete Non Grantor (ING) Trusts to Treat ING Trusts as Grantor Trusts-Legislative Proposal C adding new Section 17082 to the Revenue and Tax Code

The Franchise Tax Board has issued Legislative Proposal C to amend the Personal Income Tax Laws to require that, for taxable years beginning on or after January 1, 2022, the net income derived from an ING trust's assets be included in the grantor's gross income and be subject to California income tax. This proposal would potentially mitigate a developing tax strategy of shifting income to a state with more favorable tax treatment and, as such, avoiding state income taxes in the grantor's or beneficiary's state of residence. The proposed legislation suggests treating a grantor who is a California resident as of January 1, 2022, who transfers assets into an ING trust, in the same manner as a grantor of a grantor trust. If the legislation is enacted in 2021, the grantor will be subject to California income taxation on all of the trust's income as of January 1, 2022.

Chief Counsel Advice 202045011

Upon the dissolution of a trust, the trust's sole beneficiary (the "Beneficiary") directed the trustee to transfer the trust assets to a bank account over which the Beneficiary had no ownership or control. The IRS has ruled that a trust's transfer of assets to a third-party bank account at the direction of the trust's beneficiary was a transfer to the beneficiary and then a gift by the beneficiary to the owner of the bank account. Reg §25.2511-2(b) provides that as to any property of which a donor has so parted with dominion and control as to leave in the donor no power to change its disposition, whether for the donor's own benefit or the benefit of another, the gift is complete. The Beneficiary had released dominion and control over the trust's assets and that constitutes a completed gift for gift tax purposes. The transfer of the trust's assets to the third-party bank account was completed at the beneficiary's request and direction. This is unlike a qualified disclaimer in which the beneficial interest passes without any direction on the part of the person making the disclaimer and passes to a person other than the person making the disclaimer.

Florida's Constitutional Amendment 5 and Constitutional Amendment 6 Approved in 2020 General Election

The save-our-homes benefit came into effect January 1, 1995 stating that the increase of the assessed value of homestead property for property tax purposes is restricted to the lesser of 3% of the prior year's assessed value or the percentage change in the CPI (Consumer Price Index). The accumulated difference between the assessed value and the market value is the save-our-homes benefit. The Florida save-our-homes provision allows you to transfer all or a significant portion of your tax benefit, up to $500,000, from a Florida home with a homestead exemption to a new home within the State of Florida that qualifies for the homestead exemption. This will lower the tax assessment and consequently, the taxes for the new homestead.

Effective January 1, 2021, the time frame during which a property owner may transfer accrued save-our-homes benefits from a prior homestead to a new homestead has been increased from 2 years to 3 years. This law change is the result of Florida voter's approval of Florida Constitutional Amendment 5 in the November 3, 2020 general election.

Also, Florida voters approved Florida Constitutional Amendment 6 in the November 3, 2020 general election. Effective January 1, 2021, an ad valorem tax discount received by a permanently disabled veteran is eligible to carry over to the veteran's spouse and can be transferred to a new homestead, if the spouse holds legal or beneficial title to the homestead property, permanently resides on the property and has not remarried.

U.S. v. Wolin **126 AFTR 2d 2020-6348 (September 28, 2020)—FBAR Penalty Survives Decedent's Death**

In 1983, Leo Ziegel ("Ziegel"), a U.S. citizen, engaged the services of a Swiss company to set up a foundation in Liechtenstein. The foundation's trustee opened a bank account in the Union Bank of Switzerland (UBS). Ziegel signed a UBS signature card for the account and created a trust agreement between the foundation and UBS with regards to the UBS account. On both August 28, 2002 and November 22, 2004, UBS forms were signed identifying Ziegel as the beneficial owner of the foundation and the bank account at UBS. On various occasions between years 2002-2009, Ziegel met or spoke with UBS employees about withdrawing cash from the UBS account and about investments of the account's assets. Between 1999 and 2008, Ziegel made cash withdrawals and wrote checks on the UBS account, deposited earned interest and dividend income and received investment sales proceeds from that account. Ziegel did not disclose this account to the IRS on his 2008 income tax return or at any other time. He did not even advise his accountant who prepared his 2008 federal income tax return that the UBS account existed. He also failed to file a Report of Foreign Bank and Financial Accounts ("FBAR") for 2008.

Ziegel died testate on April 4, 2014 and on May 15, 2015, the IRS assessed against his estate a failure to file an FBAR penalty in the amount of $1.4 million for the willful failure of Ziegel to disclose the account to the IRS.

When the estate failed to pay the FBAR penalty, on May 12, 2017 the IRS initiated an action to recover the FBAR penalty from Ziegel's estate, alleging that the FBAR penalty survived Ziegel's death; therefore, his estate was liable for the penalty. In general, under the federal common law, a claim survives the party's death if it is "remedial" rather than "punitive." *Sharp v. Ally Fin., Inc.*, 328 F. Supp. 3d 81, 88-89 (W.D.N.Y. 2018). The District Court noted that under *Kahr v. Comm'r,* 414 F.2d 621, liability for a tax penalty survives an individual's death and is borne by their estate if the purpose of the penalty is remedial. Here the district court determined that the failure to file an FBAR is a "remedial penalty with incidental penal effects" because it is imposed to protect tax revenue and reimburse the government for the public funds expended in investigating and uncovering the individual's tax malfeasance. Therefore, the FBAR penalty survived Ziegel's death and the estate was liable for the FBAR penalty claim.

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