Proskauer

Wealth Management Update

April 2021

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

The April 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 to 9 years (the mid-term rate, compounded annually) is 0.89%, up from 0.62% in March.

The April Section 7520 rate for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 1.0%, continuing its rise from 0.6% in January and February and 0.8% in March. The still low Section 7520 rate continues to present potentially rewarding opportunities to fund GRATs in April with depressed assets that are expected to perform better in the coming years – but note that rates appear to be on the upswing from the mid-pandemic low of 0.4%.

The AFRs (based on annual compounding) used in connection with intra-family loans are 0.12% for loans with a term of 3 years or less, 0.89% for loans with a term between 3 and 9 years and 1.98% for loans with a term of longer than 9 years. Note that while rates for loans with a term of less than 3 years have held relatively steady since the beginning of the year, rates on loans with a term of 3 to 9 years or longer than 9 years have both increased with each month of this year.

Extend the Time to File 2020 Gift Tax Returns (Form 709) Before April 15, 2021

On March 17, 2021, the IRS announced that the due date for filing federal income tax returns for 2020 is automatically extended from April 15, 2021 to May 17, 2021. Taxpayers can also postpone federal income tax payments (but not estimated tax payments) due on April 15, 2021 to May 17, 2021 without penalties or interest.

Many taxpayers annually file IRS Form 4868 to extend the time to file their federal income tax returns. Doing so automatically extends the time to file any gift tax returns that may be required. The IRS has not clarified whether an income tax extension for 2020 filed after April 15, 2021 will be considered a timely extension of the time to file a 2020 gift tax return. Accordingly, for taxpayers whose gift tax returns will not be filed before April 15, 2021, it is advisable to file a separate Form 8892 on or before April 15, 2021 to ensure that the due date of any gift tax return for 2020 is extended to October 15, 2021.

Estate of Miriam M. Warne vs. Comm'r (T.C. Memo 2021-17)

In *Warne*, a decedent's estate included a 100% membership interest in an LLC valued at over $25 million. The Decedent left a 25% membership interest in the LLC to her church and a 75% membership interest in the LLC to her family foundation. Schedule O of her estate tax return listed separate deductions for a 25% interest in the LLC and a 75% interest LLC, with an aggregate value equal to the Decedent's 100% ownership interest in the LLC.

In its notice of deficiency, the IRS discounted the values of the two separate LLC interests reducing the amount of the charitable contribution deduction applicable to the estate. The IRS asserted that discounts should apply to the charitable contribution deduction for lack of control and lack of marketability even though the two separate interests collectively represented the entirety of the decedent's ownership interest, and were each left to charitable beneficiaries.

The United States Tax Court agreed with the IRS's position and held that even though the entire LLC was left to charities, "when valuing charitable contributions, we do not value what an estate contributed; we value what the charitable organizations received." As a result, the estate received a charitable deduction worth less than the value of the LLC, resulting in additional estate taxes even though the LLC was distributed entirely to charities.

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