Proskauer

Wealth Management Update

March 2022

March 2022 Interest Rates for GRATs, Sales to Defective Grantor Trusts, Intra-Family Loans and Split-Interest Charitable Trusts

The March Section 7520 rate for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 2.0%, a significant increase from the February rate of 1.6%.
The March applicable federal rates ("AFR") for use with a sale to a defective grantor trust or intra-family loan with a note having a duration of:

- 3 years or less (the short-term rate, compounded annually) is 0.97%, up from 0.59% in February;
- 3 to 9 years (the mid-term rate, compounded annually) is 1.74%, up from 1.4% in February; and
- 9 years or more (the long-term rate, compounded annually) is 2.14%, up from 1.92% in February.

While still low, the Section 7520 rate and AFRs have been rising with inflation. Clients contemplating any type of transaction whose success depends on these "hurdle rates" may wish to proceed sooner rather than later. To review a commonly used 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 1.74%, the child will be able to keep any returns over 1.74%. Just last month, that rate was only 1.4% and it would not be surprising to see further rate increases in the coming months.

Disclosure of Revocable Trusts on Surrogate's Court Probate Petitions

Media reports about the estate of legendary Broadway composer Stephen Sondheim serve as a reminder that in New York, while Revocable Trusts help protect the privacy of a decedent's estate plan by keeping the full plan details out of public view, the probate petition still includes the identities of the various trustees and beneficiaries. While the specific terms, conditions and amounts of any gifts will remain private, the identities of the beneficiaries and nominated fiduciaries may not.

Change in New York Residency Audit Guidelines

The statutory residence test, which applies to individuals who are not domiciled in New York State, provides that if an individual spends 184 days or more of the year in New York State and maintains a permanent place of abode "for substantially all of the taxable year," such individual is treated as a New York resident for state income tax purposes. The term "domicile" generally means a person's "permanent and primary residence that they intend to return to and/or remain in after being away (for example, on vacation, business assignments, educational leave, or military assignment)."

Prior to the tax year 2022, the term "for substantially all of the taxable year," was intended by New York State to mean a period exceeding 11 months. Beginning with tax year 2022, the term "substantially all of the year" shall mean a period exceeding 10 months (instead of 11 months). This subtle change should serve as a reminder to geographically mobile taxpayers to be mindful of both their ties and time spent in New York.

New York's Remote Notarization Statute

On December 22, 2021, New York Governor Kathy Hochul signed Senate Bill S1780C which will reintroduce remote notarization to New York upon its effective date. An expanded version of the law (amending the original) was signed by Governor Hochul on February 24, 2022. The new law, which takes effect in full as of January 31, 2023, has significant limitations and requirements on the use of remote notarization, including:

1. The new law only permits remote notarization of documents which can otherwise be signed electronically under New York law. As such, among other exceptions, it does not apply to wills, trusts, powers of attorney or health care proxies.

2. The video conference software utilized must be secure from interception through lawful means by anyone other than the persons communicating.
3. Any electronic notarization conducted by video conference must be recorded and kept on file by the Notary for 10 years.
4. To be recorded with a county clerk, city registrar or other recording officer, an electronically notarized document would need to be separately “certified” as to its authenticity.
5. Beginning January 31, 2023, there will be a separate registration process for notaries who wish to perform electronic notarizations.

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