

Wealth Management Update

May 2022

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

The May Section 7520 rate for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 3.0%, a sharp increase from the April rate of 2.2%. The May applicable federal rate (“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 1.85%, up from 1.26% in April;
- 3 to 9 years (the mid-term rate, compounded annually) is 2.51%, up from 1.87% in April; and
- 9 years or more (the long-term rate, compounded annually) is 2.66%, up from 2.25% in April.

The Section 7520 rate and the AFRs have been steadily rising with inflation although the rates are still relatively low. 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 to obtain a return in excess 2.51%, the child will be able to keep any returns over 2.51%. Just last month, that rate was only 1.87% and it would not be surprising to see further rate increases in the coming months.

NY Remote Notarization Statute Amendment

Governor Hochul has signed Senate Bill 7780 that makes additional updates to the NY remote notarization regime. The amendment contains an interim regime that expires on January 31, 2023, and a permanent regime that comes into existence thereafter. The changes are discussed below and (a) discusses the changes introduced in the interim regime; and (b) describes some of the differences between the interim regime and the regime that comes into existence thereafter.

a. *Interim Regime*

1. Remote ink notarization.
2. Any notary can provide remote acknowledgments.
3. There is specialized language in the notarial certificate.
4. Notaries can paper out e-notarized documents with a form that must be accepted by court clerks.
5. The notary must be in NY but the signer does not need to be.
6. The fee cannot exceed \$5.
7. Notaries must: (1) backup the video file for 10 years, (2) confirm the signer's identity and keep a journal (oath of a witness, personal knowledge or credentials), and (3) ensure the integrity of signed documents.

b. *Post January 31, 2023 Regime*

1. Remote ink notarization will no longer be allowed.
2. The NY Secretary of State shall issue regulations recognizing two different manners for authenticating the identity of a remote individual.
3. A signer will no longer be able to be credentialed by the oath of a witness.
4. Notaries will have to register with the Secretary of State to perform electronic notarizations.
5. The Secretary of State will have the authority to set fees.

2022 Greenbook Proposals

The Greenbook is a publication released by the Department of Treasury (the "Department") outlining the Department's proposed changes to the revenue laws. The Greenbook merely contains proposals that do not carry the force of law. The proposals are below.

1. The highest personal Federal income tax rate would revert from 37% to 39.6% in 2023 instead of 2026.
2. Long-term capital gains would be taxed at ordinary income rates, with a 37% cap, for taxpayers making more than \$1 million annually indexed for inflation after 2023.

3. Transfers by gift and by death would be income tax realization events at the time of the transfer. The non-charitable portion of a transfer to a split-interest trust would be a realization event. A transfer to or from a trust would be a realization event. The tax on such transfers of non-liquid assets would be eligible for a 15-year payment plan. There would be a \$5 million exemption of both inter vivos transfers and transfers at death, which spouses can port. Any tax with respect to a transfer at death would be deductible against the estate tax.
4. A 20% tax on the total income of taxpayers worth over \$100 million, including unrealized gains. The tax could be paid the first year (2023) in nine installment and over five installments in subsequent years.
5. GRATs would have a minimum term of 10 years and a maximum term of the life of the settlor plus 10 years. The remainder interest of the GRAT must be equal to the greater of (1) 25% or (2) \$500,000.
6. Sales between irrevocable grantor trusts would be taxable and the payment of income tax by a grantor with respect to a grantor trust that he established would be a taxable gift.
7. The discount rate for notes will be restricted to the greater of the applicable AFR of the note or the actual interest rate.
8. Trusts with over \$300,000 in assets or \$10,000 in income would have to report their values annually.
9. The special use valuation could be used to decrease the value of an estate by up to \$11.7 million from \$11.23 million.
10. The special estate tax lien would be extended to any deferral period for unpaid estate and gift taxes.
11. The GST exemption would only apply to direct skips to individuals not more 2 generations younger than the transferor and older individuals living on the date of the creation of the trust and taxable terminations while these individuals are beneficiaries of such a trust. The transferor would not be reset when GST tax is paid and all existing trusts would be treated as having been created on the date of enactment.

If enacted into law, the above proposals would drastically alter the estate planning landscape. The Greenbook has given practitioners concern because some of the above-listed proposals are clearly also on Congress' radar and were proposed in the tax legislation that failed to pass 2021.

DOL Cryptocurrency – Compliance Assistance Release No. 2022-01

Under ERISA, the failure of a plan administrator of a defined contribution plan to remove an imprudent investment is a breach of fiduciary duty. In the Compliance Release, the DOL states that it has serious concerns regarding the inclusion of crypto in defined contribution plan investment options, but stops short of stating that such options are imprudent. For more information about our recent blog post, “Cryptocurrency in 401(k) Plans? Might be More Like “Crypto-nite,” Says the DOL in Its Latest Release,” click [here](#).

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