Proskauer

Wealth Management Update

June 2025

June 2025 AFRs and 7520 Rate

The June 2025 Section 7520 rate for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 5.00%, which is the same as the April 2025 Section 7520 rate. 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 4.00%, down from 4.05% in May;
- 3 to 9 years (the mid-term rate, compounded annually) is 4.07%, down from 4.10% in May; and
- 9 years or more (the long-term rate, compounded annually) is 4.77%, up from 4.62%
  in May.

IRS Notice 2025-23

The Treasury Department and IRS plan to remove Treas. Reg. § 1.6011-18, which had classified certain partnership related-party basis adjustments as "transactions of interest" (TOIs) starting January 14, 2025. The notice also withdraws Notice 2024-54.

The TOI rules had required disclosure and recordkeeping for transactions involving basis adjustments under IRC §§ 734(b) and 743(b), often triggered by § 754 elections after related-party transfers—common in estate and gift tax planning. These rules required Forms 8886 and 8918, advisor list maintenance, and carried penalty risks under §§ 6707A, 6707, and 6708.

Notice 2025-23 provides immediate relief. It announces the plan to remove the TOI regulations, allows taxpayers and advisors to rely on this intent and apply the removal retroactively to January 14, 2025, and waives penalties for failing to file disclosures or maintain lists related to the withdrawn rules.

Pierce v. Commissioner, T.C. Memo 2025-29

This case shows the importance of solid, independent valuation work in estate and gift tax planning for closely held businesses, and that the Court may allow tax-affecting S corporation earnings if it’s well explained and justified.

In *Pierce v. Commissioner*, the Tax Court had to decide how to value minority interests in an S corporation after the owners transferred those interests to Trusts in 2014 as part of an estate plan. The transfers were part gift and part sale, and the values reported by the taxpayer used a discounted cash flow (DCF) method. The IRS said those values were too low and assessed a large tax deficiency and penalties.

Both sides agreed on using the DCF method but disagreed on the details, like how to project future cash flows, what discount rates to use, how to handle the S corporation’s tax status, and how big the valuation discounts should be. The Court allowed tax affecting, using a 26.2% rate, but only because the facts supported it. The Court made clear this isn’t a general rule for all S corporations and that tax affecting "has been narrowly applied" by the Court historically.

The Court accepted the taxpayer’s proposed 5% discount for lack of control and 25% discount for lack of marketability, finding them reasonable and supported by evidence. The IRS’s expert had tried to apply a 10% control discount only to nonoperating assets, but the Court rejected that as too narrow and not well supported. The Court also found the IRS’s marketability analysis lacking because it didn’t fit the company’s situation.

When looking at the DCF models, the Court criticized the IRS’s expert for relying on an old 2017 report from the taxpayer’s expert without doing his own analysis or checking the assumptions. The Court stressed that valuations must be based on what was known or knowable at the time of the transfer, not on hindsight or outdated data.

The Court also clarified that while a value reported on a tax return can be used as an admission against the taxpayer, it’s not binding if the taxpayer can provide a credible, well-supported alternative. The taxpayer in this case had a lower valuation now than he did in 2014.

In the end, the Court mostly sided with the taxpayer’s approach but blended some elements from both sides, like using the IRS’s discount rate and the taxpayer’s growth rate. The final value calculation was left for later.

WT Art Partnership LP v. Commissioner, T.C. Memo 2025-30

This case shows that while strict compliance with technical appraisal requirements is a good idea, it won't automatically destroy your deduction and load you with penalties if you demonstrate reasonable cause and good faith efforts to comply. However, "gross valuation" penalties (misstating 200% of the value) cannot be avoided, even with good faith.

In *WT Art Partnership LP v. Commissioner*, the Tax Court considered whether a partnership could claim large charitable contribution deductions for the donation of several ancient Chinese paintings to a museum. The partnership reported over $73 million in deductions, supported by appraisals from a major Chinese auction house.

The IRS disallowed the deductions, arguing that the appraisals were not “qualified appraisals” and were not prepared by a “qualified appraiser” as required by the tax code. The Court agreed with the IRS, finding that the appraisals were not prepared by individuals who met the education, experience, and professional requirements for qualified appraisers. The appraisals also lacked detailed analysis and did not adequately explain the selection or adjustment of comparable sales. Additionally, the auction house was not in the regular business of providing appraisals for compensation, and the appraisals were signed by its president, who did not have the necessary background.

Despite these technical failures, the Court found that the partnership’s failure to meet the appraisal requirements was due to reasonable cause and not willful neglect. The taxpayer had relied on recommendations from respected art experts and had previously used the same auction house's appraisals in an IRS audit without issue. The Court found this reliance reasonable, given the taxpayer’s efforts to comply and the lack of any indication that the appraisals would be found deficient.

The Court allowed the charitable deductions but imposed a 40% gross valuation misstatement penalty for one painting. The partnership had claimed a $26 million deduction for this painting, but the Court determined its fair market value was $12 million. For the other paintings and years, the Court did not impose penalties, concluding that the taxpayer acted with reasonable cause and in good faith.

The Court also addressed the reliability of Chinese auction sales data, noting that many reported sales were not actually paid in full and that the Chinese art market at the time had issues with nonpayment and inflated prices. This affected the Court's view of the comparables used in the appraisals.

Nosirrah Management, LLC v. AutoZone, Inc., Case No. 2:24-cv-2167 (W.D. Tenn. Apr. 14, 2025)

This case reassures estate planners that using GRATs with swap powers for insiders does not automatically create short-swing profit liability under Section 16(b).

In *Nosirrah Management, LLC v. AutoZone, Inc*., the Court looked at whether a corporate insider's receipt of company stock from two GRATs counted as a "purchase" under Section 16(b) of the Securities Exchange Act, which could have required the insider to give up profits from selling the stock within six months. The insider, who was the sole grantor, Trustee, and annuitant of the GRATs, received shares as annuity payments and then sold some of those shares for a profit within six months. A shareholder sued, arguing that these distributions were purchases under the law.

The main question was whether the insider's reacquisition of stock from the GRATs was exempt under SEC Rule 16a-13, which covers transactions that only change the form of ownership without changing the person's actual financial interest. The Court found that the insider always had a financial interest in the stock: first indirectly through the Trust, then directly after the distribution. Because the insider's interest didn't really change, just the form of ownership, the Court said the exemption applied and the transaction wasn't a "purchase" under Section 16(b).

Earlier in the case, the Court had raised concerns that simply having a swap power (the right to substitute assets of equal value in the Trust) might make the exemption unavailable, but in the final decision, the Court didn't mention the swap power at all. Instead, it focused on whether the requirements for the exemption were met and found that they were. The Court also rejected arguments that the insider's children, as remainder beneficiaries of the GRATs, had any relevant ownership interest, since they had no control over the Trust assets.

The Court confirmed that the shareholder had standing to bring the case but dismissed the lawsuit with prejudice, finding no Section 16(b) liability.

Carlson v. Colangelo, 2025 N.Y. Slip Op. 02264 (N.Y. Ct. App. Apr. 17, 2025)

This decision clarifies that, at least in New York, a beneficiary does not automatically forfeit their inheritance by going to Court to enforce the terms of a Trust that includes a no contest clause, also known as an in terrorem clause, as long as they are not trying to overturn or rewrite the Trust itself. The dissent's concerns are important because they point out the potential for more disputes if the line between enforcement and contesting a Trust is not clear, but the majority's ruling sets a precedent for a more limited application of in terrorem clauses.

In *Carlson v. Colangelo*, the New York Court of Appeals looked at whether a beneficiary's lawsuit to enforce her rights under a revocable Trust triggered the Trust's in terrorem clause, which would have caused her to lose her inheritance if she was found to be "contesting" the Trust.

The beneficiary claimed she was entitled to certain real property and an income stream from an LLC based on the Trust's terms. She also argued she had a 50% ownership interest in the LLC, separate from what the Trust provided. The Trustee refused to transfer the property or pay the income, and argued that the beneficiary's lawsuit was a challenge to the Trust.

The lower Courts agreed with the Trustee, finding that the beneficiary's claims (especially her assertion of a 50% interest in the LLC) amounted to a contest of the Trust's distribution scheme and triggered the forfeiture provision. But the Court of Appeals reversed, holding that the beneficiary's actions did not violate the in terrorem clause. The Court said that simply seeking to enforce the Trust as written, or to clarify what the Trust required, is not the same as contesting or trying to invalidate the Trust. The Court emphasized that in terrorem clauses are enforceable but must be strictly and narrowly interpreted. It found that the beneficiary's lawsuit was about getting what the Trust said she should get, not about changing or undoing the Trust itself.

The Court granted summary judgment to the beneficiary on her claim to the real property, saying the Trust clearly required the property to be transferred to her. However, the Court said there were still factual questions about her right to the income stream from the LLC and her unjust enrichment claims, so those issues were sent back to the lower Court for further proceedings.

The dissent argued that the beneficiary's claim to a 50% ownership in the LLC was, in effect, a challenge to the Trust's distribution plan, since the Trust gave all of the decedent's interest in the LLC to the person who was also acting as Trustee. The dissent warned that allowing beneficiaries to bring lawsuits like this under the label of "enforcement" could weaken the deterrent effect of in terrorem clauses and lead to more litigation over Trusts, which these clauses are meant to prevent.

Monsalvo Velázquez v. Bondi, 604 U.S. ___ (2025)

This case gives taxpayers and their advisors more support for treating deadlines as moving to the next business day, unless the law clearly says otherwise.

In *Monsalvo Velázquez v. Bondi*, the U.S. Supreme Court held that when a statutory deadline falls on a Saturday, Sunday, or legal holiday, the period does not expire on that day, but instead extends to the next business day, unless Congress has clearly stated otherwise.

The case arose in the immigration context, where the petitioner was granted 60 days to voluntarily depart the United States. The final day of that period landed on a Saturday, and the petitioner departed the following Monday. The government argued this was untimely, but the Court rejected that view. Writing for the majority, Justice Gorsuch emphasized that both Courts and administrative agencies have long understood statutory deadlines to operate this way, unless a statute expressly says otherwise. He concluded that the 60-day period "works like others" across federal law and that "the term 'days' operates to extend a deadline that falls on a weekend or legal holiday to the next business day."

Though decided under the immigration laws, this case has immediate implications for federal tax compliance, including estate and gift tax planning. Under IRC § 7503, if the last day for performing any act required by the internal revenue laws falls on a Saturday, Sunday, or legal holiday, the act is considered timely if performed on the next business day. However, the IRS has long maintained, like in Rev. Rul. 83-116, that § 7503 does not apply universally, arguing instead that it only applies to a narrow set of procedural acts such as filing returns or making payments. This position has led to inconsistent treatment and litigation, especially where taxpayers have missed deadlines by one or two days when those deadlines fall on weekends.

The Court's holding in *Velázquez* undermines this restrictive reading by reinforcing the default legal principle that statutory deadlines should not expire on non-business days unless Congress explicitly says so.

The decision may also affect the interpretation of statutory holding periods that measure ownership or use in terms of "days" or "months," such as the five-year holding period for qualified small business stock under § 1202 or the two-year use and ownership requirement for the § 121 gain exclusion. In those contexts, the logic of *Velázquez* could arguably delay the date on which the required period is satisfied which could cut against the taxpayer if the relevant anniversary date falls on a weekend and action is taken one day too early.

In the matter of the CES 2007 Trust, C.A. No. 2023-0925-SEM

This decision makes clear that Delaware's asset protection Trust laws are strong, and that following the formal rules will protect Trusts from creditor claims, even from out-of-state judgments, unless there is real evidence of abuse or fraud.

In *In the Matter of the CES 2007 Trust*, the Delaware Court of Chancery dismissed a creditor's attempt to break through a Delaware asset protection Trust to collect on a $14 million Michigan judgment against the Trust's grantor. The creditor argued the Trust was just a shell to hide assets and that the grantor still controlled everything, but the Court disagreed. The Trust was set up in 2007, before the debt existed, and held 90% interests in several Delaware LLCs that owned real estate. The Court said that under Delaware law, owning an interest in an LLC is not the same as owning the LLC's property, so the Trust didn't directly own the real estate.

The Court found the Trust met all the legal requirements for a Delaware asset protection Trust: it was irrevocable, had a valid spendthrift clause, was run by a qualified Delaware Trustee, and was governed by Delaware law. The grantor did keep some powers as an investment advisor, and his brother was the Trust protector, but the Court said these roles were allowed under Delaware law and didn't make the Trust invalid or mean the grantor was really in control.

The Court also said there was no evidence of fraud or improper administration, and that just because the grantor managed the LLCs didn't mean the Trust protections should be ignored. The Court refused to treat the Trust as a sham or to "pierce the veil" without specific facts showing wrongdoing.

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