Proskauer

Wealth Management Update

August 2025

August 2025 Interest Rates for GRATs, Sales to Defective Grantor Trusts, Intra-Family Loans and Split-Interest Charitable Trusts

The August Section 7520 rate for use in estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 4.80%, a decrease from the July rate of 5.00%. The August applicable federal rate ("AFR") for use with a sale to a defective grantor trust or infra-family loan with a note having a duration of:

- 3 years of less (the short-term rate, compounded annually) is 4.03%, down from 4.12% in July.
- 3 years to 9 years (the mid-term rate, compounded annually) is 4.06%, down from 4.19% in July.
- 9 years or more (the long-term rate, compounded annually) is 4.82%, down from 4.90% in July.

One Big Beautiful Bill Act Signed into Law

On July 4, 2025, President Trump signed the One Big Beautiful Bill into law. Select relevant provisions are as follows:

- **Income Tax Provisions from 2017's TCJA have made permanent.** Including (a) the raised standard deduction, (b) limitations on itemized deductions, (c) Section 163(j) Interest Expense Limitation, (d) Section 168 Bonus Depreciation, (e) Section 174 R&D amortization and (f) Section 199A deduction.
- **SALT Deduction Changes.** The State and Local Tax (SALT) deduction has been raised to $40,000 for taxpayers making up to $500,000. The raised amount is set to revert back to the pre-OBBB amount of $10,000 after 2030.

QSBS Exclusion Expanded. The exclusion for gain from sale of Qualified Small Business Stock (QSBS) has been expanded. The exclusion has been increased to $15 million per issuer, indexed for inflation after 2026, subject to a greater exclusion based on 10 times the taxpayer's basis in the QSBS. A 50% exclusion is allowed for QSBS held for three years, a 75% exclusion is allowed for QSBS held for four years, and a 100% exclusion is allowed for QSBS held for five or more years. If the issuing corporation's aggregate gross asset limitation to qualify a stock as QSBS has been increased to $75 million.

- **Charitable Income Tax Deduction Changes.** For itemizing taxpayers, there is now a 0.5% floor on charitable contributions. The effective value of charitable deductions for those in the top 37% tax bracket has been reduced to approximately 35%. The 60% ceiling for cash gifts to "50% charities," which was set to expire after 2025, has been made permanent. Contribution of cash to a 50% charity is also deductible to the extent that the total amount of contributions of cash to 50% charities does not exceed the excess of: (a) 60% of the taxpayer's contribution base for the tax year, over (b) the total amount of contributions to 50% charities for the tax year. For non-itemizing taxpayers, there is a charitable deduction capped at $1,000 ($2,000 for joint filers).
- **"Trump" Accounts.**S. Citizens born in 2025 through 2028 (as US citizens with Social Security numbers for both parents and the child) will be automatically enrolled and receive a one-time deposit of $1,000 from the federal government into their account, which will track a stock index and will grow tax deferred. Private contributions will be allowed of up to $5,000 per year (indexed for inflation). Employers will also be allowed to contribute up to $2,500 if certain program design requirements are met. Contributions provided to Trump accounts from tax exempt entities, such as private foundations, are not subject to the $5,000 annual limit. In addition, contributions are not permitted after the calendar year in which the beneficiary turns 17.

Generally, no distributions are permitted from the Trump account before the calendar year in which the beneficiary turns 18, but afterwards, the account is treated and taxed like a traditional IRA. If account owners make withdrawals for a qualified expenditure (e.g., college tuition, small business loan, first-time home purchase), the withdrawal, net of contributions, faces the long-term capital gains tax rate. Otherwise, withdrawals net of contributions face the individual income tax rate plus an additional 10 percent penalty. Withdrawals are allowed from half of the account once the account owner turns 18 and from the full account once the account owner turns 25. When the account owner turns 31, the remaining balance is treated as withdrawn and taxed accordingly.

- **Temporary Income Tax Deduction for Seniors**. A temporary deduction of $6,000 has been added for seniors aged 65 or older, to be phased out when the senior’s modified AGI exceeds $75,000 ($150,000 if filing jointly). This deduction lasts through 2028.
- **No Tax on Tips and Overtime.** Temporary above-the-line deductions are allowed for tips (up to $25,000) and overtime pay (up to $12,500); the deductions phase down based income levels.
- **Increased employer-provided childcare credit.** The employer-provided childcare credit now provides businesses with a nonrefundable tax credit of up to $500,000 per year on up to 40% of qualified childcare expenses provided to employees.
- **Expanded definition of qualified higher education expenses regarding 529 accounts.** Tax-exempt distributions from 529 accounts can now be used for an expanded range of K-12 expenses, including books and other curriculum materials, certain testing fees, and certain educational therapies for students with disabilities. The tax-free withdrawal limit is increased from $10,000 to $20,000 per year.

PLR 202526004 allows a late ESBT election for a trust that failed to file one, curing an LLC’s S election

The company (the “Company”) at issue was formed as a limited liability company in Delaware and elected to be treated as an S corporation. The Company then sold all shares to Trust 1, which was intended to satisfy the requirements to be classified as an Electing Small Business Trust (“ESBT”). However, Trust 1 inadvertently failed to file an ESBT election, thus terminating the Company’s S election as of the date when Trust 1 became an ineligible shareholder. Sometime later, Trust 1 sold all shares of the Company to Trust 2, a grantor trust to Taxpayer A. Afterwards, Trust 2 transferred some of its interest in the Company to Trust 3, a grantor trust to Taxpayer B. Together, Trust 2 and Trust 3 owned all shares of the Company.

The Company sought relief, claiming that the circumstances resulting in the termination of the Company’s S election were inadvertent and not motivated by tax avoidance or retroactive tax planning. Additionally, the Company claimed that it filed its federal income tax returns consistent with having a valid S election in effect since formation.

The Service determined that the S election terminated when Trust 1 failed to make an ESBT election, but that the termination was inadvertent within the meaning of § 1362(f) of the Internal Revenue Code. Accordingly, the Service allowed the Company to be treated as continuing to be an S corporation from as of the termination date and thereafter.

As a takeaway, if necessary steps are taken to demonstrate the intention to have made the necessary election and to be an eligible shareholder, the IRS is likely to provide relief and allow a late election. Nevertheless, the importance of double-checking all necessary elections have been made cannot be overstated.

Colin Markes and Sharon Hart-Corrigan v. Estate of Keith Albert Markes, et al., No. 4D2024-2101 (Fla. 4th DCA 2025)

A Florida court had jurisdiction over the administration of an estate, and venue was proper in Broward County, even though the decedent was domiciled in Jamaica; further, the court lacked authority to unilaterally transfer probate proceedings to another state.

The Decedent, originally from Jamaica, resided in New York City for many years but frequently visited Florida, purchased considerable property in Florida, and often declared his intent to retire in either Florida or Jamaica, where he retained citizenship and the Decedent was living in Jamaica at the time of his death.

At the time of the Decedent's death, he owned ten pieces of property in Florida, eight of which were in Broward County. The Decedent's children initiated probate proceedings in Broward County. The Decedent's other child sought to revoke the probate, arguing that the Decedent was a New York resident, and seeking to transfer the administration to New York. The trial court agreed and transferred the administration.

On appeal, the Florida Fourth District Court of Appeal examined Florida's jurisdiction and venue statutes to determine whether the Decedent's domicile controlled whether proceedings were proper in Broward county.

The court found that the Decent was not in fact domiciled in Florida or New York, but rather Jamaica. Nevertheless, however, Florida courts retain jurisdiction to adjudicate the disposition of Florida property, so jurisdiction and venue were both proper. Additionally, the court found no authority for a Florida trial court to transfer a probate proceeding to another state, calling the argument "so novel and bewildering that this court is stymied in its efforts to find any authority relating to the proposition."

Accordingly, even though the Decedent was not in fact domiciled in Florida, the state still had jurisdiction over his administration, and venue was still proper.

Jacquelyn Adelson v. Jodi Kalter, etc., No. 3D24-0337 (Fla. 3d DCA 2025)

A bequest exceeding the amount mandated by a prenuptial agreement satisfied the Decedent's obligations under the prenuptial agreement, and surviving spouse could not superfluously enforce the agreement to obtain an additional amount.

The Decedent and the surviving spouse entered into a prenuptial agreement, which provided that, upon the death of the Decedent, the spouse would receive the greater of $250,000 or an amount equal to ten percent of the Decedent’s estate. After the marriage, the Decedent amended his trust to incorporate the terms of the agreement. Years later, the Decedent further amended his trust to leave the spouse with $1,000,000 upon his death; the amendment also stated that the prior amendment was “deleted in its entirety.”

When the Decedent died, his net estate was worth $4,943.475.59. The spouse received $1,000,000 from the estate in accordance with most recent amendment. The spouse, however, filed a statement of claim seeking an additional amount— the greater of $250,000 or an amount equal to ten percent of the estate. The personal representative of the estate objected.

The spouse filed suit, claiming that the trust was an additional gift and that she was entitled to the additional bequest. Both parties moved for summary judgment, which the lower court granted to the Personal Representative.

On appeal, the court explained that a will or trust that bequests a different—but greater—amount than required by a prenuptial agreement generally complies with the prenuptial agreement. In a brief analysis, the court found that the Decedent not only complied with his obligation under the prenuptial agreement but exceeded it. Thus, the Decedent did not breach his contract, and the spouse was paid all sums she was entitled to.

O’Connor v. Commissioner, T.C. Memo 2025-42

A tax attorney neglected to report income tax returns for eight years and unsuccessfully challenged notice of deficiency by making numerous frivolous and long-rejected legal arguments. The Tax Court assessed tax, additions to tax under Sections 6651 and 6654, and an additional penalty.

The Petitioner, a tax attorney licensed in California, failed to file federal income tax returns and to pay federal income tax from 2010 to 2017. For those years, the IRS determined deficiencies and additions to tax. In total, the Petitioner was liable for $1.09 million of unpaid taxes for these years, plus penalties.

The Petitioner over 1,000 pages of briefs and supporting documents making long-rejected arguments regarding the validity and authority of the Sixteenth Amendment to the U.S. Constitution and the authority of the IRS to assess and collect tax due to its failure to provide an annual regulation in the Federal Register. The Tax Court admonished the Petitioner's arguments, calling his tactics frivolous, notorious, astonishing, and a time-consuming delay tactic.

The Tax Court found that the Petitioner lacked reasonable cause for failing to file and pay tax and thus charged him with additions to tax under §§ 66514 and 6654 of the Internal Revenue Code.

Lastly, the court issued penalties amounting to $2,000 to the Petitioner under § 6673 of the Code, which allows a penalty of up to $25,000 when a taxpayer advances frivolous or groundless arguments before the court. Although the Petitioner received no previous warnings and the IRS had not requested the court impose any penalties, the court ultimately held the Petitioner to a higher standard in assessing penalties because he used his specialized knowledge as an attorney to promote frivolous arguments in a way that could only hinder the work of the court.

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