Proskauer

Wealth Management Update

December 2025

December 2025 AFRs and 7520 Rate

The December 2025 Section 7520 rate for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 4.6%, the same as in November. The December 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 3.66%, down from 3.69% in November;
- 3 to 9 years (the mid-term rate, compounded annually) is 3.79%, down from 3.83% in November; and
- 9 years or more (the long-term rate, compounded annually) is 4.55%, down from 4.62% in November.

Inflation Adjustments for 2026 [1]

On October 9, 2025, the IRS released tax inflation adjustments for 2026, including as follows:

	2026	2025	Increase
Lifetime Federal Estate/Gift Tax Exemption [2]	$15,000,000	$13,990,000	$1,010,000
Annual Exclusion Gifts	$19,000	$19,000	N/A
Beginning of Highest Income Tax Bracket for Trusts & Estates	$16,000	$15,650	$350

	2026	2025	Increase
Annual Exclusion for Gifts to non-Citizen Spouse	$194,000	$190,000	$4,000

IRS Draft Publication 590-A (2025): Trump Account Update

Per IRS Draft Publication 590-A, parents of children born after 2024 and before 2029 who wish to take advantage of the $1,000 government contribution into a Trump account will have to make two elections on a new Form 4547: one to establish the account, and another to elect to receive the $1,000. This is still draft guidance, so the specifics of implementation may change.

SECURE 2.0 Act – Final Regulations Issued for Roth Catch-Up Contributions

As background, employers may permit employees aged 50 or older to make additional contributions to their employer-sponsored retirement plans. In addition, as of January 1, 2025, employers may allow those aged 60 to 63 an increased catch-up amount of 150% of the otherwise applicable catch-up limit. In 2025, the catch-up contribution amount is an additional $7,500 (on top of the $23,500 contribution limit), and the increased catch-up limit for those aged 60-63 is an additional $11,250 (over the $23,500 limit). Under prior law, catch-up contributions could be made on either a pre-tax or post-tax basis. However, the SECURE 2.0 Act requires that those earning more than $145,000 (indexed for inflation) designate catch-up contributions as Roth contributions. IRS Notice 2023-62 delayed this requirement by two years, until January 1, 2026.

On September 16, 2025, the IRS and Department of Treasury issued final regulations implementing the Roth catch-up contribution requirement.[3] Though the regulations generally apply with respect to contributions in taxable years beginning after December 31, 2026, "reasonable, good faith" compliance is generally required beginning January 1, 2026.

The regulations clarify that in determining whether someone meets the $145,000 threshold, only the prior year FICA wages reported in box 3 of Form W-2 are considered. If an eligible participant does not have any wages for purposes of FICA (e.g., because the individual was a partner or other self-employed individual receiving self-employment income, or because the individual is an employee of an exempt state or local government), then they are not subject to the Roth catch-up contribution requirement.

Retirement plans are not required to offer Roth contributions, and, in that case, employees who meet the Roth catch-up contribution threshold will not be able to make catch-up contributions.

It should be noted that special rules apply to 403(b), SIMPLE and governmental 457(b) plans.

Department of the Treasury, Exemptive Relief Order to Delay the Effective Date of the Residential Real Estate Rule (issued September 30, 2025)

The requirements of the Anti-Money Laundering Regulations for Residential Real Estate Transfers (the "Residential Real Estate Rule") were set to become effective December 1, 2025. The Residential Real Estate Rule requires "reporting persons"[4] to report non-financed transfers of residential real property to legal entities and trusts.[5]

Pursuant to the Residential Real Estate Rule, the reporting person must submit information necessary to identify themselves, the residential real property being transferred, the transferor, the transferee entity or transferee trust, the individuals representing the transferee entity or transferee trust in the transfer, and the beneficial owners of the transferee entity or transferee trust.[6] The total consideration paid for the property and certain information about any payments made by the transferee entity or transferee trust must also be reported.[7]

On September 30, 2025, FinCen issued an Exemptive Relief Order delaying the effective date of the Residential Real Estate Rule until March 1, 2026. Therefore, reporting persons are not required to report transactions that close before March 1, 2026.

C.S. v. R.H., 2025 NY Slip Op 51426(U) (Sup. Ct., N.Y. Cnty., Sept. 8, 2025)

In *C.S. v. R.H.*, the Supreme Court of New York County addressed whether the Court could consider the value of marital assets placed into irrevocable trusts when crafting an equitable distribution award, without distributing the assets or dissolving the trusts.

The parties were married for nearly twenty-four years. Early in the marriage, the wife earned $52,000 as a financial reporter, while the husband was an equity partner at Spear Leeds & Kellogg, earning $2,000,000 annually. In 2000, the firm was sold to Goldman Sachs for $6.5 billion, and the husband's share of that sale brought the couple's net worth to roughly $120 million.

In 2001, the husband created two irrevocable trusts: the R.H. 2001 Family Trust for the benefit of the couple's daughters, and the R.H. 2001 GST Trust, for their grandchildren. These trusts were funded with the majority of the couple's marital assets – at the time of the proceeding, the trusts held $111,225,848 of the approximately $181 million of assets accrued during the marriage. In addition, the trusts were used to support the family lifestyle: the family resided in homes owned by the trusts either rent-free or at well below market rent, and family expenses were paid from assets held by the trusts.

During the couple's estate planning, the husband was the main point of contact with the lawyer. Though the husband spoke to the wife about his ideas for trust assets, the wife testified that she did not fully pay attention to the discussions since she "trusted him" and "it didn't interest" her. Furthermore, the wife was not provided with trust documents prior to going into the lawyer's office for execution of the documents; she received no independent legal or financial advice about the trusts, nor was she advised to obtain independent counsel; and she was not informed as to what would happen to the assets held in the trusts upon any divorce.

The Court also emphasized the husband's role in managing and controlling the trust assets, as well as how marital property continued to be funneled into the trusts, even indirectly: the husband was the investment advisor for the LLCs which held the trust assets, and he had the exclusive power to remove and replace trustees and managing directors of the LLCs; the husband had the power to substitute trust assets and, since the trusts were grantor trusts, the payment of income tax on trust earnings further depleted other marital assets; the parties received a promissory note from one of the trusts at a discount to the value of the assets transferred and forgave some of the debt due under the note; and both parties used their lifetime gift exemption (a "non-renewable asset") to defray taxes on the transfers into the trusts.

After the wife filed for divorce in 2018, the husband cut the wife out of any involvement in the trusts and eliminated her interests in trust assets. He evicted her from the marital homes owned by the trusts; he removed her as managing director of the LLCs (a role in which she only exercised nominal control) and removed her sister as trustee of the trusts; and, mid-trial and without Court approval or notice to or consent of the wife (including in her position as joint legal guardian of their minor daughter), decanted the trusts such that, according to the Court, he had even more control over the assets.

The Court ultimately found that the value of the assets in the trusts could be considered for the equitable distribution award, even though the trusts were created as legitimate vehicles to protect the parties' wealth.

Analyzing the relevant authorities, the Court laid out the following guiding principles: (a) “marital property is sacrosanct, regardless of its form, title, or how maintained and the court will protect the parties’ respective equitable interests therein,” and (b) “in furtherance of its mandate, the court must consider the parties’ conduct vis-à-vis marital property held in trusts in determining whether it should be included in the marital estate.”

Here, regarding the first principle, the majority of the couple’s assets were contained in the trusts, those assets were used to fund and support the family’s lifestyle, and the wife reasonably expected to enjoy the use and benefit of the assets in the future. Not only did the wife help create the home and the family life that resulted from the husband’s windfall from the Goldman Sachs buyout, but she gave substantial marital assets in exchange for the trusts’ continued support of the family lifestyle (e.g., she gave up her lifetime gift tax exemption, transferred assets to the trusts for a discounted note that was later partially forgiven, and paid taxes on the trust income).

Regarding the second principle, the Court found that the husband never relinquished control over the trust assets. He continued to actively manage trust assets in his own discretion and without oversight, and the court viewed him as the de facto trustee of the trusts. In the Court’s opinion, his close personal friend, who acted as trustee, “was nothing more than a straw-man who rubber stamped each of [his] decisions,” and there was no credible proof the trustee’s actual, active involvement in trust management. Ultimately, the husband’s “power to remove and replace the Trustees and the LLC Managing Directors, coupled with his unfettered authority as Investment Advisor, and his consistent exercise of those powers, resulted in his total control of Trust assets.”

The Court distinguished this case from *Oppenheim v. Oppenheim*[8], in which the appellate court found that assets placed in an irrevocable trust were not subject to equitable distribution where the husband "kept [wife] informed during the process of creating the family trust . . . the parties were on equal footing with respect to the financial aspects of the creation of the family trust . . . [wife] was fully informed of the source of funding of the family trust and its anticipated tax implications."[9] Rather, here, the Court found that the husband did not keep the wife informed about the management of the trusts or LLCs , the husband controlled the formation of the LLCs and the funding of the trusts, and the wife simply went along with her husband and signed the papers she was told to sign, unaware of the details of the financial assets and transaction or the impact they would have.

Ultimately, the Court awarded the wife 50% of the value of the entire approximately $181 million marital estate (which included the assets held in the trusts), payable, in part, by the transfer of substantially all the non-trust assets to the wife.

Freedom Path, Inc. v. Internal Revenue Service, Case No. 20-cv-1349 (JMC) (D.D.C. Sept. 30, 2025)

This case addressed whether the Internal Revenue Service's standards for determining tax-exempt status under IRC 501(c)(4) are unconstitutionally vague when applied to organizations engaged in political advocacy. Freedom Path is a nonprofit formed to "promote and defend the causes that recognize the individual rights and liberties guaranteed to all Americans," and has advocated against what it views as excessive government spending and various healthcare policies. In 2011, it applied for tax-exempt status under IRC 501(c)(4). The IRS concluded that Freedom Path was not operated "exclusively for the promotion of social welfare," determining that a substantial portion of its expenditures constituted political campaign intervention. Freedom Path challenged that determination, arguing that it is entitled to 501(c)(4) status and that the IRS's governing regulation and interpretive rulings are void for vagueness as applied.

Under 26 C.F.R. 1.501(c)(4)-1, an organization qualifies for 501(c)(4) status if it is "primarily engaged in promoting in some way the common good and general welfare of the people of the community." The regulations provide that "[t]he promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."[10]

Although the text of the regulations suggests that a 501(c)(4) organization may not engage in any political campaign activity, IRS guidance provides that an organization may still qualify even if it carries on political campaign activity, as long as such activity is not the organization’s “primary” activity. However, the IRS has not promulgated any regulations or guidance that addresses what qualifies as an organization’s “primary” activity in the context of a 501(c)(4) determination, and a longstanding appropriations rider prohibits the Treasury or the IRS from issuing guidance not limited to a particular taxpayer relating to this issue.

The regulations also don’t define political campaign activity. Rather, the IRS applies a “facts and circumstances” test, guided by Revenue Ruling 2004-06, that it initially developed for another code provision.

The Court found that both 26 CFR 1.501(c)(4)-1 and Revenue Ruling 2004-06 are unconstitutionally vague as applied to Freedom Path, analyzing the guidance under the heightened vagueness review applicable to civil regulations of speech fully protected by the First Amendment.

A law is unconstitutionally vague if it “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.”[11]

Here, the Court found that Freedom Path had no way of knowing how much political campaign intervention is too much, and the IRS provided contradictory answers in its Revenue Rulings and in its pleadings as to the applicable standard (applying a primary-activity inquiry in its Revenue Rulings and arguing for a “more than insubstantial” standard to be applied in this case). This lack of guidance gives the IRS wide discretion to arbitrarily deny tax-exempt status under 501(c)(4). Furthermore, the facts-and-circumstances test under Revenue Ruling 2004-06 offers no guidance as to how IRS officials should weigh the factors in the ruling against one another or how many factors it takes to reach the threshold for political campaign intervention. This, combined with the fact that the IRS sometimes utilizes different factors from another Revenue Ruling to determine whether an activity constitutes political campaign activity, meant that Freedom Path had no way of knowing how the IRS would ultimately judge its application.

The Court has asked the parties to file new motions advancing interpretations of what constitutes political intervention and what constitutes an organization's "primary activity." Though it won't be binding outside of this case, the interpretation ultimately accepted by the Court may provide helpful insight for organizations hoping to qualify for 501(c)(4) status.

Petition filed in U.S. Tax Court on October 3, 2025*: Belmont Investments, LLC v. Commissioner*

In Revenue Ruling 2023-2, the IRS held that assets in grantor trusts that are not includible in the grantor's gross estate will not be adjusted under IRC 1014 at the grantor's death because the assets were not acquired or passed from a decedent as defined in 1014(b). In this petition, Belmont Investments, LLC ("Belmont") is disputing the IRS's disallowance of the step up in basis for partnership interests held through grantor trusts which were not includable in the decedents' gross estates.

Belmont was owned 91.824% by several irrevocable trusts created by Mr. and Mrs. Seldin, together as grantors. The trusts were grantor trusts for income tax purposes due to Mr. and Mrs. Seldin's power to substitute property. When Mrs. Seldin died in December 2018, each trust became a non-grantor trust with respect to the portion of trust property she contributed. Belmont maintains that this change represented, in substance, a transfer of her ownership interests to non-grantor trusts at her death, and that there was a step-up in basis under IRC 1014 for the partnership interest held by the trust.

To reflect that step-up, Belmont elected optional basis adjustments under IRC 743(b) on its 2018 return. IRC 743(b) allows a partnership to adjust the basis of partnership property to reflect the transferee partner's basis in the partnership after a transfer of a partnership interest by sale or exchange or upon the death of a partner. Belmont disclosed in detail that it had "made an optional basis adjustment in 2018 due to the death of a partner [who] held the partnership interest in a grantor trust for which a basis adjustment was made under I.R.C. Section 1014," and that the grantor trust "was not includable in the estate of the decedent."

In 2019, Belmont sold certain land. On audit, the IRS asserted that the basis of the property sold should not include the basis allocated to it under the IRC 743 optional basis adjustments, and asserted various underpayments based on the disallowance of the basis adjustments.

Two years later, when Mr. Seldin died in 2020, a parallel issue arose. The IRS conceded the step-up for the portion of Belmont that Mr. Seldin held individually (and which was included in his estate) but again denied the step-up for the portions passing from the grantor trusts.

It will be interesting to see how this case progresses.

Pending New York Legislation Allowing Electronic Wills

A bill that has passed both houses of the New York legislature (S7416A, A7856A) would allow for electronic Wills. This legislation has not yet been signed by the Governor.

Pursuant to the bill, the requirements for an electronic Will would be as follows:

1. **Execution:** The Will must (a) be a record that is readable as text at the time of signing, (b) be signed by the testator (or by someone in the physical presence of the testator at his or her direction) and (c) be signed in the physical or electronic presence of the testator by two witnesses who are domiciled in New York within thirty days after witnessing the testator’s execution of the Will or witnessing the testator’s acknowledgment of the signing of the Will. Note that the definition of “sign” includes affixing an electronic symbol or process.
2. **Filing with the Court:** Within thirty days of its execution, the Will must be electronically filed with the New York State unified court system either by the testator or another person authorized by the testator. The failure to timely file an electronic Will with the court will result in the electronic Will being deemed invalid.
3. **Required Disclosure:** The Will must contain a disclosure substantially similar to the following that is in twelve-point font or larger, boldface, and double-spaced:

“CAUTION TO THE TESTATOR: YOUR WILL IS AN IMPORTANT DOCUMENT. AS TESTATOR, YOUR WILL SHOULD REFLECT YOUR FINAL WISHES. TO BE VALID, IT MUST BE SIGNED BY YOU OR ANOTHER INDIVIDUAL AUTHORIZED BY YOU AND WHO IS IN YOUR PHYSICAL PRESENCE AT THE TIME OF SIGNING. IT MUST ALSO BE SIGNED IN YOUR PHYSICAL OR ELECTRONIC PRESENCE BY AT LEAST TWO INDIVIDUALS, EACH OF WHOM IS A DOMICILIARY OF A STATE, AND EACH OF WHOM SIGNS THE WILL WITHIN A THIRTY DAY PERIOD AFTER WITNESSING YOU SIGN THE WILL OR ACKNOWLEDGE THAT YOU SIGNED IT.

WITHIN THIRTY DAYS AFTER THE ELECTRONIC WILL IS EXECUTED, IT MUST BE ELECTRONICALLY FILED WITH THE NEW YORK STATE UNIFIED COURT SYSTEM.

YOU MAY REVOKE YOUR ELECTRONIC WILL AT ANY TIME. YOU MAY DO SO BY EXECUTING A SUBSEQUENT WILL OR SEPARATE WRITING CLEARLY INDICATING YOUR INTENT TO REVOKE ALL OR PART OF YOUR ELECTRONIC WILL, OR BY REQUESTING ITS REMOVAL FROM THE NEW YORK STATE UNIFIED COURT SYSTEM. ONCE YOU HAVE REMOVED YOUR ELECTRONIC WILL FROM THE NEW YORK STATE UNIFIED COURT SYSTEM, IT IS REVOKED."

Commentators have noted several ambiguous aspects to the bill. For instance, it is unclear when the 30-day time period to file the Will with the court system begins and how the 30-day period for witnessing the Will interacts with the 30-day filing requirement. Furthermore, if an electronic symbol is used to sign the Will, there is no guidance regarding how one should validate the genuineness of the testator's signature for purposes of admitting the will to probate.[12]

If signed by the governor, the law will be effective 545 days after enactment.

---

[1] Rev. Proc. 2025-32

[2] Adjustment due to OBBBA; will be adjusted for inflation for calendar year 2027 and future years.

[3] 90 FR 44527

[4] "Reporting persons" are certain persons engaged as a business in the provision of real estate closing and settlement services, as determined by a "reporting cascade," with the person listed as the closing or settlement agent at the top of the cascade, and the person that prepares the deed or any other legal instrument of transfer at the bottom. *See* FinCen, *Real Estate Reports, Frequently Asked Question*, https://www.fincen.gov/rre-faqs#B_5.

[5] Note that there is a list of transfers that are not reportable, including, among others, a transfer resulting from the death of an individual, a transfer incident to divorce, and a transfer for no consideration made by an individual to a trust of which that individual, the individual's spouse, or both, are the settlors or grantors. *See id.*

[6] *Id.*

[7] *Id.*

[8] 168 AD3d 1085 (2d Dept. 2019).

[9] Internal quotations and citations omitted.

[10] 26 CFR 1.501(c)(4)-1(a)(2)(ii).

[11] *United States v. Williams*, 553 U.S. 285, 304 (2008).

[12] *See* Lindsay M. McKenna, *Signed, Sealed and E-Delivered: Wills in the Digital Age*, New York Law Journal (Sept. 18, 2025), https://www.law.com/newyorklawjournal/2025/09/18/signed-sealed-and-e-delivered-wills-in-the-digital-age/?slreturn=20251125202127; Commercial Law and Uniform State Laws Committee of the New York City Bar, *Report on the Proposed Electronic Wills Act in NY* (June 12, 2025), https://www.nycbar.org/reports/report-on-the-proposed-electronic-wills-act-in-ny/#_ftnref2.

Related Professionals

- **Albert W. Gortz**
- **Dara B. Howard**
  Associate
- **Rachel J. Harris**
  Partner
- **Caroline Q. Robbins**
  Partner
- **Nathaniel W. Birdsall**
  Partner
- **Stephanie E. Heilborn**
  Partner
- **Christiana Lazo**
  Partner
- **Henry J. Leibowitz**

Partner

- **Jay D. Waxenberg**
  Partner
- **Clara D. Leonard**
  Associate