Proskauer

Wealth Management Update

January 2026

January 2026 AFRs and 7520 Rate

The January 2026 Section 7520 rate for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 4.60%, which is the same as the December 2025 rate. The January 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 3.63%, down from 3.66% in December 2025;
- 3 to 9 years (the mid-term rate, compounded annually) is 3.81%, down from 3.79% in December 2025; and
- 9 years or more (the long-term rate, compounded annually) is 4.63%, down from 4.55% in December 2025.

IRS Notice 2025-68: Trump Accounts Guidance

Notice 2025-68, issued by the Internal Revenue Service (the "IRS") and the U.S. Department of the Treasury, provides the first detailed administrative guidance on IRC § 530A "Trump accounts" and the related IRC § 6434 Pilot Program under the One, Big, Beautiful Bill Act (the "OBBBA"). It is intended to solicit public comment on numerous technical and administrative issues before issuing full proposed regulations. Comments are due by February 20, 2026, and may be submitted through either Regulations.gov or by mail.

The Notice provides the following framework on how Trump accounts work:

Who Is Eligible to Have a Trump Account

A Trump account can only be established for a child who is under age 18 at the end of the calendar year in which the election is made and has a valid Social Security number. The election to create the account must be made by an authorized person (legal guardian, parent, adult sibling, grandparent, in that order of priority). The election form will be IRS Form 4547 (or via a dedicated portal), and the election can only be made once. The draft Form 4547 and its draft instructions used to elect into the Trump account program have also been made available on the IRS website.

Who Is Eligible to Receive the $1,000 Seed Contribution

For children who are U.S. citizens born between 2025 and 2028, the taxpayer (guardian) may elect to receive a one-time $1,000 seed contribution deposited by the Treasury into the Trump account. That $1,000 is treated as a payment against federal income tax, not an income-taxable contribution.

Contribution Limit

During the growth period (i.e., the period beginning when a Trump account is established until January 1 of the calendar year in which the child turns age 18), a Trump account may receive up to $5,000 per year in total from private contributions and employer contributions. Certain contribution types do not count toward the $5,000 limit — specifically the $1,000 federal seed deposit, qualified general contributions, and rollover contributions. The $5,000 limit applies per child, per calendar year, and is indexed for inflation beginning in 2028.

Who Can Contribute

Contributions during the child's growth period may come from the following sources:

- Private contributions
  - Parents, family members, or other individuals.
  - Counted toward the annual contribution limit.
  - Individual contributions are not income-tax deductible.
- Employer contributions (§ 128 programs)
  - Up to $2,500 per employee per year, in the aggregate for all of that employee's children.
  - Counted toward the annual contribution limit.

- Government seed contributions — $1,000 Pilot Program
  - Do not count toward the annual contribution limit.

- Qualified general contributions (State, Tribal, or 501(c)(3) Funded Programs)
  - A state, the federal government, an Indian tribal government, or a § 501(c)(3) charitable organization may fund a “general funding contribution” to Treasury.
  - Treasury then distributes that funding across Trump accounts belonging to a “qualified class” of children, as defined by statute (e.g., all children in the growth period, children in certain states or qualified geographic areas specified by the general funding contribution, or children born in specified years). A "qualified geographic area" is defined as any geographical area in which no less than 5,000 account beneficiaries reside and which is designated by the Secretary as a qualified geographic area. However, the Treasury and the IRS will not designate any qualified geographic area during the initial phase of rollout of the Trump accounts.
  - For 2026 and 2027, any donor who wants to make a general funding contribution must contribute at least $25 per account beneficiary in the qualified class.
  - Treasury—not the private funder—makes the distribution into the accounts.
  - Do not count toward the annual contribution limit.

- Rollover contributions
  - Transfers from one Trump account to another for the same beneficiary.
  - Must be a full account transfer (entire balance).
  - Do not count toward the annual contribution limit.

With respect to the contribution deadlines and timing, no contributions can be accepted before July 4, 2026. Contributions for a given year must be made by December 31 of that calendar year; they cannot be made up by April 15 of the following year (unlike traditional IRAs).

Investment Restrictions

During the growth period, funds in a Trump account must be invested exclusively in "eligible investments" — mutual funds or ETFs that track a broad, qualified U.S. stock index (e.g., S&P 500 or similarly broad index), with no leverage and a maximum annual expense ratio of 0.1%. Cash or money-market funds are not allowed except temporarily before investment.

Distribution/Liquidation

During the growth period, distributions are heavily restricted. The following distributions are allowed: Rollovers to another Trump account; rollovers to an Achieving Better Life Experience account (a savings account for individuals with disabilities under §529A); distributions of excess contributions; distribution upon the death of the beneficiary during the growth period. Hardship withdrawals or early distributions otherwise are not permitted.

Once the growth period ends, the account generally becomes a standard traditional IRA.

Tax Treatment

Earnings on the funds held in a Trump account are tax deferred. The Trump accounts are taxed as a traditional IRA after the growth period ends, i.e., distribution will be taxable as ordinary income, along with a 10% excise tax for early withdrawals unless one of the IRA exceptions applies.

Basis is created only by after-tax private contributions (e.g., from parents or others). Employer contributions, government seed contributions, and general funding contributions do not create basis. Rollover contributions carry over the basis from the originating account.

Florida Titles: Tenancy by the Entirety vs. Joint Tenancy with Right of Survivorship

Under Florida law, Tenancy by the Entirety ("TBE") is a form of ownership unique to married couples and is premised on the spouses being a single legal unit. The key practical difference between TBE and Joint Tenancy with Right of Survivorship ("JTWROS") is creditor protection. Funds held as TBE are generally exempt from creditors of only one spouse. A creditor of one spouse alone cannot garnish a TBE account; only a joint creditor of both spouses may do so. However, while JTWROS provides survivorship, a creditor of any joint tenant may attach that tenant's interest. There is no special protection merely because the co-owners are married.

Not all states recognize TBE as a title for personal property. As a result, couples who move to Florida often continue to hold accounts in JTWROS form because prior advisors, operating under their own state's law, did not focus on the TBE option.

Florida common law requires that six "unities" must exist simultaneously to create a valid TBE ownership interest: possession, interest, title, time, marriage, and survivorship. Two of these—unity of time and unity of title—are frequently implicated in financial account titling. Under these requirements, a TBE account must be created as such at the moment the account is opened.

Consequently, merely retitling an existing individually owned account or a JTWROS account may not be sufficient to convert it into a legally effective TBE account. Florida courts have not been consistent in determining when the statutory presumption of TBE ownership applies or when the common law unities must still be satisfied. The following two recent cases—*Loumpos* and *Storey Mountain v. Del Amo*—demonstrate the current tension on this issue:

- ***Loumpos v. Bank One*, No. SC2024-1256 (rev. granted Dec. 3, 2024):** In this case, the husband initially opened the account with his name only. Subsequently, the husband and wife executed new signature cards and checked the "TBE" box on them. Accordingly, the TBE title was not created at the same time the account was opened. The Second District held that the unities of time and title must still be present for an account to qualify as TBE property, and since those two unities are lacking in this case, the court declined to extend TBE protection and allowed a creditor to garnish the funds.
- ***Storey Mountain v. Del Amo (In re Del Amo)*, No. 24-13216 (11th Cir. Nov. 10, 2025):** In this case, the couple opened a bank account together and declared the title to be JTWROS on the signature cards. The Eleventh Circuit relied on Florida Statute § 655.79(1), which provides that any account made in the name of two

> persons who are husband and wife shall be considered a TBE unless otherwise specified in writing, and ruled that the account remained TBE because the signature cards do not constitute an expressive anti-TBE statement.

Essentially, there are two competing frameworks when examining the authorities on this issue – one focuses on the requirement of six unities, and the other one focuses on the statutory presumption of TBE ownership and whether such presumption is sufficiently rebutted.

Until the Florida Supreme Court revisits these issues—particularly in its pending review of *Loumpos*—the safest practice is for married clients to open a new account expressly titled as TBE and bearing a new account number, and then transfer funds from any JTWROS or individually titled accounts into the new TBE account.

CCA 202547014: Determining Validity of Tax Return Submitted by Taxpayers

The IRS Chief Counsel Advice (“CCA”) Memorandum 202547014 (the "Memo") analyzes whether a taxpayers’ Form 1040—submitted only as a stamped “Copy” of pages 1 and 2—constituted a valid original return for federal tax purposes. After the IRS issued a notice indicating no return had been received, the taxpayers’ preparer responded by sending a photocopy of the signed Form 1040 and a payment that matched the tax due. This created a dispute over whether the earlier “Copy” return constituted a duly filed return.

Applying the four-prong test from *Beard v. Commissioner*, the Memo concludes that three prongs—sufficient data to compute tax, an honest attempt to satisfy tax law, and execution under penalties of perjury—are likely satisfied. The more complex issue is the second prong: whether a photocopy plainly marked “Copy” can “purport to be a return.” The Memo reviews *Kestin v. Commissioner* and *Smith v. Commissioner*, which together indicate that although a photocopy alone may not purport to be a return, it can do so when sent in response to an IRS notice stating no return was received and when the taxpayer is effectively requesting IRS action on the copy.

Accordingly, the analysis concludes that the taxpayers’ stamped “Copy” Form 1040 could be deemed an original, valid return despite its form, potentially undermining the later attempt to claim that no return had been filed.

Charitable Giving Changes

Beginning January 1, 2026, the charitable deduction changes enacted under the OBBBA will make charitable giving less tax-advantageous for most itemizing donors, while offering only a modest universal deduction for non-itemizers.

Below is a comparison table summarizing the key differences in charitable deductions between the old rules through December 31, 2025 and the new rules under OBBBA effective January 1, 2026.

Issue	Current Law	New Law
Charitable Deduction Eligibility for Itemizers	Full deduction allowed (subject to adjusted gross income ("AGI") percentage limits).	Deduction only allowed to the extent gifts exceed 0.5% of AGI (new AGI floor).
Value of Deduction for High-Income Taxpayers	Deductible at full marginal tax rate (up to 37%).	Deduction capped at 35% for donors in the 37% bracket.
Universal Deduction for Non-Itemizers	No deduction available for non-itemizers.	New universal deduction: up to $1,000 (single) / $2,000 (joint) for cash gifts to public charities only.
Treatment of Gifts to Donor-Advised Funds ("DAF")	Deductible for itemizers; non-itemizers receive no benefit.	Still deductible for itemizers, but not eligible for the universal non-itemizer deduction.
Treatment of Gifts to Private Non-Operating Foundations	Deductible for itemizers.	Still deductible for itemizers, but not eligible for the universal non-itemizer deduction.
Appreciated Property Contributions	Fair market value deduction generally allowed; no capital gain recognized.	Same general rules, but deduction may be partially lost due to the 0.5% floor and 35% rate cap.
Qualified Charitable Distributions ("QCDs")	Up to age-indexed limit ($108,000 in 2025) can be given from IRAs tax-free.	No change—QCDs remain fully available and unaffected by OBBBA. However, for people who are age 70 ½, QCDs allow you to transfer funds to public charities income tax free, and they can also count toward required minimum distributions. In 2026, the QCD limit is $111,000 per person. The law also allows a one-time-only QCD of $55,000 per person to establish a charitable gift annuity. QCDs cannot be used to fund a DAF.

Internal Revenue Service Math and Taxpayer Help Act

The Internal Revenue Service Math and Taxpayer Help Act, enacted on December 1, 2025, requires the IRS to substantially improve the clarity and specificity of math-error notices. Historically, these notices often listed multiple possible issues without identifying the exact mistake, which left taxpayers guessing about what had been corrected and how their return had been recomputed. The Act addresses this problem by mandating plain-language explanations, identifying the exact line of the return involved, and referencing the relevant code section so that taxpayers and practitioners can clearly understand the basis of the adjustment.

For the notices that will be sent after December 1, 2026, the Act also requires the IRS to provide detailed, itemized computations showing how any identified error affects income, credits, tax liability, withholding, and carryforwards. In addition, every notice must prominently display the deadline for requesting abatement, in bold and easily visible formatting on the first page, helping ensure taxpayers do not miss critical response windows. The IRS must also include the automated transcript-service phone number to improve transparency and access to supporting information.

Finally, the Act strengthens post-assessment procedures. When a taxpayer's request for abatement is granted, the IRS must issue a new, plainly written abatement notice with fully itemized adjustments. The legislation also directs the IRS to conduct a pilot program using certified or registered mail with e-signature confirmation to test whether enhanced delivery methods improve response rates. Together, these changes are intended to make math-error assessments more transparent, more accurate, and easier for taxpayers and their advisors to navigate.

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