Proskauer

Wealth Management Update

July 2026

July 2026 Interest Rates for GRATs, Sales to Defective Grantor Trusts, Intra-Family Loans and Split-Interest Charitable Trusts

The July Section 7520 rate for use in estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 5.2%, a slight increase from the June rate of 5%. The July 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 or less (the short-term rate, compounded annually) is 4%, up from 3.85% in June.
- 3 years to 9 years (the mid-term rate, compounded annually) is 4.35%, up from 4.13% in June.
- 9 years or more (the long-term rate, compounded annually) is 4.98%, up from 4.87% in June.

IRS Proposes Increase to Estate Tax Closing Letter User Fee

The IRS has proposed increasing the user fee for estate tax closing letters (Letter 627) from $56 to $76 following its routine biennial review.

Estate tax closing letters confirm the IRS's acceptance of an estate tax return and are commonly requested by executors to facilitate estate administration and help limit personal liability.

The IRS attributes the proposed increase to higher administrative costs, including processing, quality review, and overhead. Public comments are due by July 2. If finalized, the new fee will apply to requests submitted 30 days after implementation.

New York City "Pied-à-Terre" (Second Home) Tax

New York State has enacted a “pied-à-terre” tax, imposing an annual surcharge on certain high-value second homes in New York City owned by non-residents. The surcharge will apply to fiscal years beginning on or after July 1, 2026, and is scheduled to sunset on June 30, 2031.

Purpose

The policy targets ultra-high-net-worth individuals who maintain secondary residences in New York City but do not treat them as primary homes. The intent is to ensure that such owners contribute more equitably to city services.

Applicable Property

The surcharge applies to “covered property,” which includes:

1. Class one property (excluding vacant land);
2. Class two cooperative units where at least one unit has:
   – a phase one market value of $1 million or more, or
   – a phase two market value of $5 million or more, and is not a primary residence; and
3. Condominium dwelling units.

Excluded property includes:

- ???Property lacking a required certificate of occupancy; and
- ???Co-op or condominium units subject to an offering plan that have not yet been sold or transferred.

Valuation Framework

Phase One (Fiscal Years July 1, 2026 through June 30, 2028)

During the initial transitional period, market value is determined using the NYC Department of Finance’s existing valuation methods under the NYC Charter. The surcharge applies to class one properties with a phase one market value of $5 million or more, and to residential condominium or cooperative dwelling units with a phase one market value of $1 million or more.

Phase Two (Fiscal Years Beginning July 1, 2028 and After)

Beginning in fiscal year 2028-2029, “phase two market value” will be determined using a comparable sales methodology. For condominiums and cooperatives, the Department of Finance must value units using a method that considers sales of comparable residential condominiums or cooperative dwelling units, without regard to the valuation restrictions found in Real Property Tax Law §581 or Real Property Law §339-y. Under phase two, the threshold for all covered property rises to $5 million.

Surcharge Rates

The surcharge rates are tiered based on market value:

Phase/Property Type	Market Value Range	Surcharge Rate
Phase One: Class One Property	$5M-$15M	0.8%
	$15M-$25M	1.05%
	Over $25M	1.3%
Phase One: Condo/Co-Op	$1M-$3M	4.0%
	$3M-$5M	5.25%
	Over $5M	6.5%
Phase Two: All Covered Property	$5M-$15M	0.8%
	$15M-$25M	1.05%
	Over $25M	1.3%

There are significantly higher rates imposed on condo and co-op units during the phase one transitional period, reflecting the difference between current assessed value methods and future comparable-sales valuation.

Definition of “Covered Owner”

The statute's definition of "covered owner" is particularly important for trust and estate practitioners. A "covered owner" includes the following categories:

1. An owner or owners of class one property;
2. A tenant-stockholder of a cooperative corporation;
3. An owner or owners of a residential condominium dwelling unit;
4. Property held in trust: where the property or cooperative shares are held in trust, a beneficial owner or owners of such trust, provided that such beneficial owners are the sole beneficiaries of such trust.
5. Property held through entities: where the property or cooperative shares are held by a partnership, corporation or LLC, the partner(s), shareholder(s) or member(s), respectively, provided that such persons hold a majority interest in such entity.

Determination of Primary Residence

A property qualifies as a "primary residence" – and is therefore exempt from the surcharge – if, as of the taxable status date (January 5 preceding the applicable fiscal year), it is used as a primary residence by: (1) one or more covered owners or an immediate family member (defined as a spouse, child, sibling, parent, grandparent, or grandchild) of a covered owner, provided such covered owners are natural persons; or (2) one or more lessees or sub-lessees pursuant to a bona fide lease of at least one year.

The NYC Department of Finance will make annual primary residence determinations based on factors including whether the property was occupied in aggregate for a majority of the days during a calendar year by a covered owner. Owners who receive notice that their property is not considered a primary residence may submit proof, including documentation that: the owner listed the property address on their NYS resident income tax return; the property received a STAR exemption, or the owner received a STAR credit; or the property is the primary residence of a lessee.

Penalties for Misrepresentation

The Department of Finance may impose penalties of up to 50% of the surcharge amount if it determines, after notice and a hearing, that any certification or documentation submitted contained inaccurate or misleading information that was material to the surcharge determination and was submitted negligently or in bad faith.

Challenges to the Surcharge

Owners may challenge the surcharge through the NYC Tax Commission on grounds that the market value is excessive or unlawful, or that the property is a primary residence. The initial filing period for the fiscal year beginning July 1, 2026, runs from the date a notice of surcharge is issued through the last date for filing for fiscal year 2027 review. Judicial review is also available under Article 7 of the Real Property Tax Law following a final determination by the Tax Commission.

Information Sharing

The city and the NYS Department of Taxation and Finance are authorized to share records relevant to primary residence determinations, including income tax returns.

Payment of Surcharge, Collection and Enforcement

The surcharge is due and payable in the same manner as real property taxes and is added by the Department of Finance to the property's statement of account. For the initial fiscal year beginning on July 1, 2026, the surcharge is instead due and payable on the same date as the second semi-annual installment of real property taxes.

For residential cooperative properties, the cooperative corporation is responsible for collecting the surcharge from the individual tenant-stockholder whose shares represent the co-op unit subject to the surcharge.

The surcharge and any penalties imposed constitute a lien on the covered property, and such liens are treated as a tax lien that may be sold, enforced, or foreclosed on in the same manner as other real estate tax liens. If an owner fails to pay the surcharge, the Corporation Counsel may bring an action to enforce payment on behalf of the city. Alternatively, the Commissioner may issue a warrant directing the city sheriff to levy upon and sell the real and personal property of the owner for the amount due, plus interest and costs of executing the warrant.

New SCPA § 307 Service of Process Rules in New York Surrogate's Court

A recent update to the Surrogate's Court Procedure Act (SCPA) § 307 now allows service by mail upon New York residents, without court order.

Prior to the update, service by mail was only permitted upon out of state residents. Service on New York residents under SCPA § 307 required personal delivery by a process server, absent a court order allowing service by mail. This meant identifying and hiring a licensed process server, physically locating the person to be served, making repeated attempts if the person avoided service, and documenting each attempt with affidavits of service.

Now, service may be made by registered or certified mail, or by special mail service (i.e., FedEx, UPS) on all persons – including New York residents, without court order. Personal delivery remains available as before.

Note, electronic service by email is now also explicitly recognized under statute, but it carries additional requirements, including authorization by a court order, and the petitioner must demonstrate that service by personal delivery and mail cannot be accomplished with due diligence or would be impractical.

Section 308 of the SCPA was also amended to update timing requirements. The amended statute establishes a tiered system of minimum notice periods calibrated to the method and geography of service. When service is by personal delivery in New York State, citation must be served at least 10 days before the return date. For service by any method other than personal delivery within the United States – which now includes registered mail, certified mail, and special mail service – the minimum period is 20 days before the return date.

In all other cases – including service outside the United States and cases where the Office of the Attorney General is a necessary party – the required notice period is 30 days.

United States v. Huckaby, 2026 WL 587784 (E.D. Cal. Mar. 3, 2026)

This case involves the United States' effort to enforce a 2018 judgment against Robert Huckaby ("Mr. Huckaby") for failure to honor IRS levies.

In 2005, Mr. Huckaby and Joyce Tritsch (“Ms. Tritsch”) purchased a property in South Lake Tahoe, California as joint tenants. On October 17, 2011, they executed a trust agreement creating the Circle H Bar T Trust (the “Trust”) and transferred the property into it. Mr. Huckaby and Ms. Tritsch were the Settlors, Trustees and the Trust’s sole beneficiaries during their lifetimes. The Trust provides for the governing law of Nevada. On March 30, 2018, a judgment was entered against Mr. Huckaby for failure to honor IRS levies. As of June 15, 2025, Mr. Huckaby owed a total balance of $87,959.84 to the United States. The government filed this enforcement action on March 29, 2023, and subsequently moved for summary judgment.

Choice of Law

The first issue the Court needed to decide was what law would govern the Trust. Mr. Huckaby and Ms. Tritsch argued that Nevada law should govern the Trust because the Trust was designated as a Nevada Spendthrift Trust by its terms. The Court applied federal common law choice-of-law rules under the Restatement (Second) of the Conflict of Laws (the “Restatement”). While acknowledging that the Trust should be construed in accordance with Nevada law under the Restatement, the Court found that the question of whether trust property could be reached by a creditor is governed by the law of the situs under § 280 of the Restatement. Thus, because the property is located in California, California law applies to determine whether the property is subject to enforcement of a judgment lien.

Self-Settled Trust Under California Law

Under California law (California Probate Code § 15304 and related case law), a settlor of a spendthrift trust cannot also be a beneficiary of that trust. California law prohibits self-settled trusts to prevent individuals from placing their property beyond the reach of their creditors while still enjoying the benefits of the property. Because the Trust was formed by Mr. Huckaby and Ms. Tritsch as settlors and both were beneficiaries of the trust, its spendthrift provisions are void against their creditors, including the United States.

Mr. Huckaby and Ms. Tritsch argued that the California law prohibiting self-settled trusts doesn’t apply because the property was transferred into the Trust before the judgment lien arose. The Court rejected this argument, finding that there is no authority or statutory provision limiting California’s prohibition on self-settled trusts to property held in trust only after a lien has occurred.

Mr. Huckaby's Property Interest

The Court, therefore, concluded that Mr. Huckaby possessed both a legal and equitable interest in the property. Under California law, trust beneficiaries hold an equitable interest in trust property and are regarded as the real owners of that property. Additionally, legal title to property owned by a trust is held by the trustee. Because Mr. Huckaby was both trustee and beneficiary, he holds both forms of interest, making the property subject to judgment lien enforcement by the United States.

Decision

The Court granted the government's motion in part, declaring that the United States' judgment lien encumbers Mr. Huckaby's one-half ownership interest in the property and allowing the government to move forward with foreclosure. However, because the Court found that the Trust did not protect the property from enforcement, the Court declined to grant declaratory relief to find Mr. Huckaby and Ms. Tritsch as joint tenants, as additional relief would be unnecessary.

Matthews v. Nielsen (In Re Estate of Nielson) (Mich. Ct. App. 2026)

Neal D. Nielsen ("Neal") died on December 12, 2020, survived by his three adult children (Christie, Christopher and Scott).

Neal had previously been married to Paula Nielsen ("Paula"), but the parties divorced on July 5, 2000 – more than 20 years before Neal's death. Paula had been Neal's children's stepmother for a substantial period during their upbringing. Despite their divorce, they continued to live together and held themselves out in a manner suggesting an ongoing marital relationship; specifically, Neal's children were unaware of the divorce.

On July 25, 2001, the Decedent executed a Will which bequeathed broad categories of tangible personal property – namely "household furniture and furnishings, automobiles, books, pictures, jewelry, art, objects, hobby equipment and collections, wearing apparel and other articles of household or personal use or ornament, together with any assignable insurance policies thereon, but excluding coins held for investment and paper currency" – to Paula. Neal referred to Paula as "my wife" in the Will notwithstanding their divorce.

The Will further provided that if Paula predeceased Neal, the same categories of tangible personal property would pass equally to his then living children, or the survivors of them. The balance of Neal's estate would pour over into the Neal D. Nielsen Family Trust Agreement. While the Will provided for disposition of certain tangible personal property in accordance with a memorandum prepared by Neal prior to his death, none was ever prepared.

Neal's estate was valued at approximately $1.3 million. The personal property bequeathed to Paula was worth less than $60,000. The estate also contained a coin collection, more than $600,000 in cash, and assets belonging to Neal's two law practices.

Neal's children asserted their statutory exempt-property allowance under Michigan law (of approximately $16,000) and sought to satisfy it by selecting items from the property devised to Paula. They argued the bequest of tangible personal property was a general devise and therefore those assets were available for selection.

In addition, disputes arose over:

Neal's personal representative filed a petition in order to determine whether:

1. Chevrolet Silverado Insurance Proceeds: A few weeks before Neal's death, his Chevrolet Silverado was involved in an accident resulting in a total loss. State Farm paid $9,100 in insurance proceeds via a check payable to Neal, which was not issued until after his death.
2. Ford F-150 Pickup Truck: A Ford F-150 was owned by Ajax Leasing, LLC, one of Neal's companies. Ajax Leasing, LLC was owned in Neal's individual name when he died.
3. Life Insurance Policy: On December 24, 1986, Neal D. Nielsen, PC submitted a life insurance application for a $50,000 policy insuring Paula's life, which was issued by State Farm. The policy was an asset of Neal D. Nielsen, P.C. In the 2000 divorce settlement, Neal received business assets and ownership interest in Neal D. Nielsen, P.C., with certain exceptions, while Paula was awarded life insurance policies insuring her life. Paula never took any action to assert her claim to the policy for more than 20 years following the divorce.

The Probate Court found that the devise of tangible personal property to Paula was a general devise. Therefore, the gun collection, bedroom furniture which was of interest to Christopher, and the University of Michigan memorabilia were fair game for the children in satisfaction of their Exempt Property Claim. The Court also held that the Chevy Silverado was an asset of the estate, but because it was part of a general devise, the insurance proceeds were not payable to Paula. Further, with respect to the life insurance policy that belonged to Neal's law practice, the Court held that it was an asset of Neal's trust and didn't belong to Paula and the same was true of the Ford F-150 that was titled to one of Neal's LLCs. Paula appealed.

The Appellate Court agreed that Paula was not entitled to the Ford F-150 because it belonged to Neal's LLC and it held that the bequest of tangible personal property was a specific devise and not a general devise. Specifically, the Court found that the devise of tangible personal property to Paula was a bequest of specific items when Neal identified those items using the word "my". Further, nothing indicated that he wanted Paula to receive something equal in value to the tangible personal property identified as being bequeathed to her in his Will and the fact that Neal reserved the right to dispose of items by a memorandum did not change the character of the bequest from specific to general. The Court followed by stating that there were other assets which the children could use to satisfy their Exempt Property Claim and they would not be able to select from the property specifically devised to Paula. Finally, the Court ruled that Paula was entitled to the insurance proceeds from the totaled Chevrolet Silverado pursuant to § 700.2606(1)(c) of Michigan Compiled Laws which provides that "a specific devisee has a right to specifically devised property" and "any proceeds unpaid at death on fire or casualty insurance on, or other recovery for, injury to the property." Finally, with respect to the insurance policy on Paula's life, the Court found that the divorce settlement created conflicting awards which created ambiguity and because Paula failed to take any action to assert a claim to the policy before Neal died, and for over 20 years following their divorce, and since she was aware of the existence of the policy having signed its application, and claims relating to property settlement contained in a divorce settlement are subject to a 10 year statute of limitations, she was time barred from now claiming the life insurance policy.

PLR 202619008 (May 8, 2026)

This Private Letter Ruling addresses whether modifying a pre???September 25, 1985 irrevocable “grandfathered” trust would affect its favorable tax treatment, specifically whether modifying the trust would trigger gift tax, cause estate inclusion under §§ 2033-2038 or jeopardize the trust’s GST exempt status.

The trust provided income to a daughter for life, with the remainder passing to her descendants, and would otherwise terminate at the daughter’s death. The proposed judicial modification would extend the trust’s duration beyond the daughter’s lifetime and restructure it into a multi???generational trust, including granting general powers of appointment (GPOAs) to the next generation.

The IRS concluded that the modification would not cause the trust to lose its GST exempt status because it fell within the safe harbor under Treasury Regulations governing changes to grandfathered trusts. The restructuring did not shift beneficial interests in a manner prohibited by the regulations and therefore preserved the trust’s exempt status. The IRS also ruled that the modification would not trigger gift tax, as it did not constitute a taxable transfer by any beneficiary, and it would not result in estate tax inclusion under §§ 2033–2038 solely due to the modification itself.

IRS 2025 Data Book

On June 5, 2026, the Internal Revenue Service released its 2025 Data Book, which is the agency’s annual report detailing its activities and operational statistics during the 2025 fiscal year. Some notable highlights include:

- ???Collections and Refunds, Fiscal Years 2024 and 2025: *(money amounts are in thousands of dollars)*

	Gross Collections			Refunds	
	2024	2025	Percentage of 2025 Total Collections	2025	2025
Estate and Gift Tax	**32,867,889**	**31,111,136**	**0.6**	**1,800,868**	**29,310,26**
Estate Tax	29,416,540	28,137,049	0.5	1,820,687	26,316,36

	Gross Collections			Refunds	
Gift Tax	3,451,349	2,974,087	0.1	-19,819	2,993,906

???Number of Returns Filed, Fiscal Years 2024 and 2025:

	2024	2025	Percentage Change
Estate tax	**31,516**	**28,495**	**-9.6**
New York	-	1,967	-
Florida	-	2,261	-
California	-	4,191	-
Gift Tax	**313,197**	**311,332**	**-0.6**
New york	-	23,770	-
Florida	-	31,073	-
California	-	35,898	-

???Gross Collections By State, Fiscal Year 2025: *(money amounts are in thousands of dollars)*

	Gross Collected
Estate Tax	

	Gross Collected
New York	2,004,233
Florida	2,950,856
California	4,680,349
Gift Tax	
New York	173,109
Florida	606,614
California	289,227

???Number of Refunds, Fiscal Year 2025:

	Number of Refunds
Estate Tax	**3,775**
New York	346
Florida	406
California	635
Gift Tax	**1,125**
New York	123
Florida	134
California	138

???Examination Coverage, Fiscal Year 2025: *(money amounts are in thousands of dollars)*

	Examinations Closed in Fiscal Year 2025			Recommended Additional Tax	
	Total	Field Examinations	Correspondence	Total	Field Exami
Taxable Returns	**497,621**	**94,562**	**403,059**	**26,828,726**	**19,09**
Estate tax	1,067	1,067	0	1,094,167	1,094,
Nontaxable Returns	**12,192**	**7,270**	**4,922**	**12,607,596**	**12,50**
Estate Tax	36	36	0	891,338	891,3
Gift Tax	44	44	0	799,086	799,0

???Civil Penalties Assessed and Abated, Fiscal Year 2025: *(money amounts are in thousands of dollars)*

	Civil Penalties Assessed		Civil Penalties Assessed	
	Number	Amount	Number	Amount
Estate and Gift Taxes	**6,855**	**724,395**	**3,999**	**2,010,713**
Accuracy	14	2,992	-	-
Bad Check	53	2,571	-	-4,432
Delinquency	2,299	433,041	1,513	373,337
Failure to Pay	4,432	278,913	2,438	1,633,719
Fraud	0	0	0	0
Other	57	6,877	31	2,571

The entire IRS 2025 Data Book can be downloaded by clicking here.

Succession of Lynch, 415 So. 3d 939 (La. App. 2 Cir. July 16, 2025)

John Garner Lynch (“Mr. Lynch”) died on August 31, 2021, at age 85 while hospitalized with COVID-19. His fourth wife, Katherine (“Kathy”), who was the sole legatee under his 2018 Last Will and Testament (the “2018 Will”), predeceased him by one week. Because no alternate legatees were named in the 2018 Will, Mr. Lynch’s estate would have passed to his two surviving children and grandchildren of his three predeceased children through Louisiana laws of intestacy.

Mr. Lynch’s 2018 Will was probated and Mr. Lynch’s good friend, Rudy Allen Nolin (“Mr. Nolin”) was appointed as Executor on October 5, 2021.

Subsequently, Mr. Lynch’s living children and grandchildren of his predeceased children filed a petition for intervention and rule for accounting/discharge naming Mr. Nolin as the defendant. They asserted that in the 2018 Will, Mr. Lynch had bequeathed his entire estate to Kathy and that bequest had failed because Kathy predeceased him. As such, without naming any alternatives, they (as the intestate heirs) are the recognized owners of all of Mr. Lynch’s assets and property.

In response to their petition, Mr. Nolin filed peremptory exceptions of no right of action and no cause of action, stating that on March 19, 2018, the same date that Mr. Lynch signed the 2018 Will, he also executed a durable power of attorney (the “DPOA”) and appointed Kathy as his agent to be succeeded by Mr. Nolin, to be succeeded by another close friend, Martha Crosslin (“Ms. Crosslin”). Mr. Nolin noted that the DPOA authorized the agents named thereunder to form trusts and transfer Mr. Lynch’s property. Mr. Nolin explained that because no one could visit Mr. Lynch in the hospital, he could not execute a new will, and the POA was instead used to transfer all of his property to a revocable trust, a plan developed by Mr. Lynch’s attorney, John Williams (“Mr. Williams”). According to Mr. Nolin, numerous documents were prepared by Mr. Williams to effectuate this plan in furtherance of what they described as their understanding of what Mr. Lynch wanted.

Specifically, on August 27, 2021, Mr. Nolin declined to serve as agent under the DPOA and Ms. Crosslin (prepared by Mr. Williams) accepted the appointment as the successor agent. Immediately, Ms. Crosslin executed documents - presented to her in her driveway by Mr. Nolin - to create the John Garner Lynch Trust (the “Trust”). The Trust provided that Mr. Lynch was the beneficiary of the Trust for the duration of his life, and that at his death, the Trust would be for the primary benefit of Mr. Nolin and the secondary benefit for other named friends. On August 31, 2021, Ms. Crosslin transferred substantially all of Mr. Lynch’s property to Mr. Nolin, as Trustee of the Trust and Mr. Lynch died within mere hours that same day.

Mr. Nolin further argued that the children and grandchildren had no right of action to demand an accounting because all of Mr. Lynch’s assets were transferred to the Trust and therefore were no longer part of his estate. He also contended that they have no ownership interest in the property and that they had no cause of action to remove him as independent Executor.

The Court emphasized that Mr. Lynch never requested the Trust’s creation, was never informed of its existence and never designated Mr. Nolin as a beneficiary of his estate. Mr. Williams and Mr. Nolin relied on a partially recorded telephone conversation with Mr. Lynch during his final days of hospitalization as evidence of his intent. The Court, however, found the call plainly concerned the administration and the protection of Mr. Lynch’s property from ongoing break-ins while he was in the hospital, not global estate planning. When Mr. Williams inquired about charitable bequests, Mr. Lynch responded with “Don’t iron your dress just yet” to which the Court interpreted as Mr. Lynch’s unwillingness to engage in permanent estate planning at that time.

In response the children and grandchildren filed a petition to annul and an amended petition to remove the Executor and for accounting naming both Mr. Nolin and Ms. Crosslin as the defendants. They argued that Mr. Lynch was not capable of directing the actions of Mr. Nolin and Ms. Crosslin regarding the DPOA and the Trust, that their actions were not authorized by the DPOA and could not be used to allow them to self-deal and ultimately transfer all of Mr. Lynch's assets to Mr. Nolin in a trust which was of primary design to benefit Mr. Nolin. They argued that as Executor, Mr. Nolin acted in his own interest and not for the interest of Mr. Lynch or the heirs of the estate. They further requested the removal of Mr. Nolin as Executor and the appointment of one of Mr. Lynch's children as the Executor, or, in the alternative, an independent third-party Executor.

The Court opined that the sweeping provisions of the Trust were irreconcilable with the limited authority conferred by the DPOA, which required the agent to act in Mr. Lynch's best interests. The Court further noted that Mr. Lynch had repeatedly declined, over many years and through many iterations of last wills and testaments over the years, to name alternate legatees to Kathy – even when prompted by Mr. Williams and Ms. Crosslin, reflecting his actual lack of concern of what would happen if Kathy predeceased him. The Court further found that Ms. Crosslin breached her fiduciary duty by signing the trust documents without any independent inquiry and without confirming Mr. Lynch's wishes, instead acting solely at the direction of Mr. Nolin and Mr. Williams. The Court characterized Mr. Nolin's declination to serve as agent under Mr. Lynch's DPOA as a "thinly veiled tactic to avoid the appearance of self-dealing."

Additionally, the Court expressed concern that endorsing the use of a power of attorney in this fashion could "create a blueprint" for undue influence to be asserted by those of lesser moral character, potentially victimizing testators, legatees and their heirs. While acknowledging that all of the parties appeared to have acted in good faith, the Court concluded that good faith was insufficient to justify the conveyance of all of Mr. Lynch's property to a beneficiary he never designated, by means of a trust he never requested nor knew existed. The Court, therefore, reversed the trial court and declared all of the transfers of Mr. Lynch's property null and void.

The dissenters to the Court's majority argued that the DPOA expressly authorized the creation of trusts and the transfer of assets, and that the trial court was not erroneous in upholding those actions. One dissenting judge added that there was undisputed evidence establishing Mr. Lynch did not want his heirs to receive his property and that the unique facts of this case – including the absence of undue influence or bad faith – provide reasonable justification for the transfers.

PLR 202622003 (March 2, 2026)

This Private Letter Ruling addresses a taxpayer's request for relief under IRC § 2642(g) to obtain an extension of time to elect out of automatic allocation of generation-skipping transfer (GST) tax exemption with respect to a series of earlier transfers to multiple annuity trusts.

The taxpayer had established an irrevocable trust (Trust A) for the benefit of his descendants prior to Year 1, and subsequently established a series of grantor retained annuity trusts (GRATs) in Years 1 through 5 – specifically, Trusts B1 and B2 (Year 1), Trusts C1 and C2 (Year 2), Trusts D1 through D4 (Year 3), Trusts E1 through E3 (Year 4) and Trusts F1 through F5 (Year 5). Each of these annuity trusts were structured to pay an annual annuity to the taxpayer, with the remaining assets passing to Trust A upon the termination of the annuity term. After the annuity trusts terminated, Trust A distributed the assets outright to the taxpayer's children.

The taxpayer represented that he did not intend to allocate GST exemption to any of his transfers to the annuity trusts, and that the assets were always intended to pass to his children (non-skip persons) through Trust A. However, the taxpayer's accountant did not understand that the automatic allocation of GST exemption under § 2632(c)(1) would apply to the value of the remaining assets distributed from each annuity trust to Trust A at the end of each annuity term. Consequently, neither the accountant nor the taxpayer's attorneys advised the taxpayer to elect out of automatic allocation, and no election was timely made on Forms 709 filed for the years at issue.

The failure was discovered in Year 8 when the taxpayer's accounting firm merged with a new accounting firm and the original accountant had retired; a new accountant at the newly merged accounting firm, while preparing the taxpayer's Form 709 for Year 8, identified the missed elections. The taxpayer represented that no taxable distributions, taxable terminations or other events giving rise to GST tax liability had occurred with respect to the trusts.

The IRS concluded that the requirements of § 26.2642-7 were satisfied – namely, that the taxpayer acted reasonably and in good faith, and that granting relief would not prejudice the interests of the government. In reaching this conclusion, the IRS considered factors including the taxpayer's lack of awareness (despite reasonable diligence) of the automatic allocation rules, the taxpayer's reasonable reliance on qualified tax professionals, and the absence of any attempt to benefit from hindsight or any intervening taxable events.

Accordingly, the taxpayers were granted an extension of 120 days from the date of the ruling letter to file amended Forms 709 for each year at issue, electing out of automatic allocation of GST exemption.

C.S. v. R.H., 2025 N.Y. Misc. LEXIS 7294 (Sup. Ct., N.Y. County, Sept. 8, 2025)

In this case of first impression, the Supreme Court of New York, New York County addressed the question of whether a court may consider the value of marital assets held in irrevocable trusts when making an equitable distribution award, without distributing the trust assets themselves or dissolving the trusts. The Court held in the affirmative, concluding that the value of trust assets totaling approximately $111.2 million should be included in the marital estate alongside approximately $70.2 million in non-trust assets, for a total marital estate of $181,469,321.

C.S. (“Wife”) and R.H. (“Husband”) had a nearly 24-year marriage. Early on in the marriage, Husband was an equity partner at Spear Leeds & Kellogg, and the family’s net worth skyrocketed to approximately $120 million when Goldman Sachs purchased Spear Leeds & Kellogg for $6.5 billion. Their lifestyle went from “Manhattan rich – Manhattan apartment, country home and Hamptons summer home rentals – to uber-rich – living in Europe for several years, several Manhattan apartments, a Hamptons estate with 7.5 acres of waterfront property, real estate investments worth $22 million, and the creation of an investment firm, E.T.C. that trades $5.5 billion in assets, among other assets.”

In March 2001, the Husband transferred the vast majority of those marital assets – cash and Goldman Sachs stock – into two irrevocable trusts: the R.H. 2001 Family Trust established for the benefit of their daughters who would receive their share of assets when they attained age 30, and R.H. 2011 GST Trust, a generation-skipping trust for the benefit of their grandchildren. These trusts were structured to avoid estate taxes, while they directly benefited from their use on a daily basis to support their lifestyle. The family continued to reside in each of the homes owned by the trusts and fund daily living with the trust assets. Husband was the grantor of each of the trusts and held the power to remove and replace the trustees, as well as the investment advisor for each of the LLCs owned by the Trusts and which held marital assets. Husband continued to actively manage and control the trust assets.

Wife filed for divorce in May 2018, and Husband began removing her from all roles in the trusts and various LLCs, evicted her from the family homes owned by the trusts, and unilaterally decanted the trusts into new Delaware trusts mid-trial without court approval or Wife’s consent. He also made unauthorized distributions of $21.8 million in marital assets despite a court order denying his request to divide assets pendente lite.

The Court integrated prior precedent and distinguished previous cases in which trusts were excluded from equitable distribution where spouses had relinquished control and were on equal footing. Here, the Court found that the facts were widely different: the Husband never relinquished control over the trust assets, serving as grantor with the power to remove and replace trustees, and acting as investment advisor with broad uncontrolled discretion over all trust assets. The Wife, by contrast, was never on equal footing – she served as trustee and managing director at his pleasure, lacked independent legal counsel during the formation of the trusts, and trusted her Husband's assurances that the trusts were merely "tax shelters" that would continue to benefit them both.

The Court held that, in this case, equity required the inclusion of the trust asset values in the marital estate, relying on the principle that marital property is "sacrosanct, regardless of its form, title or how maintained," and that the Wife had a cognizable interest in the assets she "helped to create and expected to enjoy at a future date." The Court further acknowledged it was "writing into a gap in the law," but concluded that the controlling principles of the Domestic Relations Law compelled this result.

Ultimately, the Court awarded the Wife 50% of the total marital estate (or $90,734,660), crediting the $10,850,000 in the interim distributions already made. The balance was payable through transfer of all non-trust assets (except a home in Sun Valley) and a distributive payment of $24,776,187 payable at $3,557,618.70 per year over 10 years. The Court also awarded Wife attorney's fees and expert fees, citing her status as the non-monied spouse and Husband's violations of automatic orders. The Court declined to award maintenance given the size of the equitable distribution award.

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