Proskauer

Wealth Management Update

November 2026

November 2026 AFRs and 7520 Rate

The November 2026 Section 7520 rate for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 6.20%, which is up from 5.60% in October. The November 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 4.67%, up from 4.25% in October;
- 3 to 9 years (the mid-term rate, compounded annually) is 5.08%, up from 4.61% in October; and
- 9 years or more (the long-term rate, compounded annually) is 5.52%, up from 5.22% in October.

New York City Pied-a-Terre Tax: Rollout Blocked by Court and New Lawsuit Challenging Constitutionality

Rollout Blocked by Court: *O'Brien v. City of New York* (N.Y. Sup. Ct., Richmond County, Sept. 29, 2026).

In this decision, the New York Supreme Court ordered substantial changes to New York City's implementation of its pied-à-terre tax, finding that the Department of Finance's ("DOF") rollout was arbitrary and capricious and violated property owners' due process rights. The decision left the surcharge itself in place but required DOF to withdraw its existing notices and revise how it identifies and notifies affected owners.

The court identified two principal flaws. First, DOF had published a supplemental tax roll identifying more than 900,000 properties, even though approximately 98-99% were not subject to the surcharge. The court rejected the City's argument that this broad publication was legally required, finding that it effectively republished the residential assessment roll under a label suggesting potential surcharge liability. The resulting confusion and unnecessary exposure of owners' information were not justified by the legislation's notice requirements. The court directed DOF to remove the roll, permitting its replacement with a list limited to properties actually subject to the surcharge.

Second, the court found that DOF had sent approximately 17,000 notices without first making adequate, individualized determinations that the properties were not primary residences. Although 2025 income tax information was initially unavailable, DOF had access to 2024 returns and improperly declined to use that information on its own to establish residency, arguing that those returns provided stale information. The court emphasized that both the legislation and DOF's rules contemplated using available income tax records, and the DOF rule requires that DOF recognize the primary residence noted on a return if it is the "return for the most recent income tax year for which data is sufficiently available." The result was that homeowners received notices even if their home had been their primary residence for several years. The compressed implementation schedule did not excuse the agency's failure to make well-reasoned determinations as to whether a property was a primary residence.

Instead, DOF required recipients to apply for an "exemption" and submit evidence establishing their primary residence. The court found that this approach unlawfully shifted the agency's burden to homeowners: primary residences were outside the surcharge's scope in the first place, rather than properties requiring an exemption from an otherwise applicable tax. Owners consequently faced unnecessary compliance costs, inadequate guidance about the required proof and potential penalties. The court also expressed concern that data and documents submitted by owners through the application process lacked the statutory confidentiality protections applicable to records obtained directly from the State.

To remedy these defects, the court ordered all previously mailed notices canceled and eliminated the challenged exemption process. Before sending replacement notices, DOF must make individualized initial determinations using the most recent available tax information and other available evidence.

The court also prescribed the contents of replacement notices, such that the factual basis for potential surcharge liability is explained before requiring an owner to respond. Each notice must:

- Identify the property claimed to be a non-primary residence subject to the surcharge.
- Explain the factors and information supporting the determination that the property is not a primary residence, including whether the property was occupied a majority of days in the calendar year, and disclose the supporting records or documents.
- State the applicabThank youle valuation threshold.
- Explain the owner's right to challenge DOF's final determination and the procedure for doing so.
- Warn of the potential 50% penalty if DOF determines, after a hearing, that documentation was submitted negligently or in bad faith.

The City has appealed the decision, which triggers an automatic stay of the court's holdings.

New Lawsuit Challenging Constitutionality: The above-described case did not challenge the constitutionality of the pied-à-terre tax, but rather the implementation of the tax. A new lawsuit now challenges the constitutionality of the tax.[1]

The complaint alleges that the tax is unconstitutional due to the following:

1. **Circumvention of New York's Constitutional Property Tax Limit.** Plaintiffs argue that although called a surcharge, the pied-à-terre tax is substantively a real property tax because it is based on property value and administered and enforced in the same manner used to administer and enforce other real property taxes. Accordingly, its revenues must count toward the limit imposed by Article VIII, § 10 of the New York Constitution on the total amount of property tax that the City can levy to pay for its operating expenses.
2. **Privileges and Immunities Clause.** Plaintiffs allege that the tax discriminates against out-of-state residents in exercising their fundamental rights to own property and travel between states.
3. **Dormant Commerce Clause.** Plaintiffs contend that the tax favors local residents over out-of-state economic interests by imposing an additional burden on nonresidents purchasing and maintaining City homes. In addition, they argue that the tax collects income generated from commercial activities outside of the

City and which the City is not entitled to, thus interfering with interstate commerce.

4. **Federal and State Equal Protection Clauses.** Plaintiffs argue that the distinction between primary and secondary residences burdens the fundamental rights to travel and own property without satisfying strict scrutiny. Alternatively, they allege that the distinction lacks even a rational basis (the scrutiny standard used for residential classifications that do not burden fundamental rights): nonresidents already pay ordinary property taxes, allegedly use fewer municipal services, and are singled out for additional taxation without a sufficient connection to the tax's purposes of addressing a budget shortfall and affordable housing shortage or protecting the City's tax base.

Amendment to Florida Homestead Is On the Ballot in November[2]

In November, Floridians will vote on Amendment 3 to the Florida Constitution. This amendment would change the current homestead landscape. If approved by 60% of the voters, the changes would go into effect January 1, 2027. The proposed changes are as follows:

1. **Ad Valorem Exemption for Non-School Levies.** The amendment increases the homestead ad valorem tax exemption for non-school taxes from $50,000 to $150,000 of assessed value in 2027, and to $250,000 of assessed value in 2028. This $250,000 amount is adjusted annually for inflation beginning in 2029. The exemption for school levies remains $25,000.

   However, this increase is only for those who have established residency in Florida as of December 31, 2026. Those who establish residency on or after January 1, 2027, receive the existing homestead exemption upon qualifying for a homestead exemption. For those individuals, the increased homestead exemption will only begin with the fifth year of exemption. Beginning in 2030, local governments, by 2/3 vote of their governing body, may reduce the five-year residency requirement if such reduction is warranted for a critical local need. The amendment does not contain a definition for what constitutes a "critical local need."

2. **Procedure for Counties and Municipalities to Increase Homestead Exemption.** The amendment requires the Florida legislature to create a uniform procedure for counties and municipalities to increase the homestead exemption for their non-school taxes up to full assessed value, as well as allows special districts to do the same with referendum approval. This could potentially result in

full exemption from local non-school levies if localities so choose.

3. **Reduced Annual Cap on Assessment Increases for Non-Homestead Properties.** For non-homestead properties, the amendment reduces the annual cap on assessment increases from 10% to 5%.

4. **Limitations on Use for Property Taxes.** The amendment narrows the budgetary discretion that localities have by requiring localities to only use property taxes for the following core needs: public safety (including law enforcement, fire services and emergency medical services), education and schools, infrastructure (including road and bridge construction and maintenance and stormwater control), natural resource projects (including flood control measures), bond debt service, retirement benefits for employees, and operations and administration. Other expenditures may be approved by county officers or county or municipal governing bodies, unless prohibited by law.

FinCEN Adopts Final Rule Permanently Ending BOI Reporting Requirements for U.S. Companies and U.S. Persons[3]

The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued a final rule permanently removing the requirements of U.S. companies and U.S. persons to report beneficial ownership information ("BOI") to FinCEN. The final rule became effective August 14, 2026.

In addition, the final rule increases the relief offered by the interim final rule issued in March 2025 by:

1. Exempting foreign companies from the requirement to report U.S. person "company applicants"[4]; and
2. Exempting U.S. persons who have applied for FinCEN IDs from having to update or correct the information they provided to FinCEN (non-U.S. persons must still report any change in information).

FinCEN also plans to implement a process to delete BOI of U.S. companies and U.S. persons who are now exempt from reporting. It is not anticipated that U.S. companies or U.S. persons will be required to contact FinCEN to request that their BOI be removed, but FinCEN does not intend to provide any acknowledgment or confirmation of the deletion of a specific company's or person's information. Rather, FinCEN will provide notice on its website when the deletion process is completed. If BOI relating to a U.S. company or U.S. person is included in a filing made after FinCEN's removal process, FinCEN does not anticipate conducting another sweep to delete that information.

"Reporting Companies" required to report BOI now only include entities formed under the laws of a foreign country that have registered to do business in any U.S. State or Tribal jurisdiction. However, Reporting Companies do not need to report BOI of any U.S. persons, including U.S. company applicants and U.S. person beneficial owners, and U.S. persons are exempt from having to provide BOI to any Reporting Company for which they are beneficial owners or company applicants.

Proposed Rule Eliminates Reporting Requirements for Trusts Whose Charitable Contribution Deductions Are Solely for Contributions Made by Passthrough Entities [5]

The IRS has issued proposed regulations to remove the requirement to file Form 1041-A, U.S. Information Return Trust Accumulation of Charitable Amounts, for trusts whose charitable deduction is exclusively the result of contributions made by a passthrough entity in which the trust directly or indirectly holds an interest.

As background, certain trusts[6] are required to report all charitable contributions and amounts permanently set aside for charitable purposes on Form 1041-A. These trusts are required to file Form 1041-A even if the trust's only charitable contribution deduction is due to charitable contributions made by passthrough entities in which the trust owns an interest. In this case, the trust never received the amounts that were given to charity and never made any direct charitable contributions, and the trust must depend on the entity to inform it about the charitable deduction so that it can file. Commentators have argued that the filing requirement places an unnecessary burden on those trustees who may not be aware of the filing requirement and who may not have the necessary information from the entities to fill out the form. The penalty for failing to file Form 1041-A is $10 per day up to a maximum of $5,000 per return.

The proposed regulations note that qualifying trusts may rely on the proposed regulations for taxable years ending before the date the regulations are published as final regulations.

The Jacob & Alice Klein Charitable Remainder Unitrust v. Director, 34 N.J. Tax 22 (N.J. Tax Ct., June 4, 2026)

In *The Jacob & Alice Klein Charitable Remainder Unitrust v. Director*, the New Jersey Tax Court upheld New Jersey's position that a charitable remainder unitrust ("CRUT") is not exempt from New Jersey Gross Income Tax, even though a CRUT is generally exempt from federal income tax.

The case involved a twenty-year CRUT that was required to pay an annual unitrust amount equal to 7% of its assets to a noncharitable beneficiary. At the end of the twenty-year term, the remaining trust property was to pass to a private foundation or another qualified charitable organization. In 2015, the CRUT realized approximately $6 million of short-term capital gain, which was not distributed out to the noncharitable beneficiary. Although the CRUT was generally exempt from federal income tax under IRC section 664(c), the New Jersey Division of Taxation determined that the gain was taxable to the trust for New Jersey purposes.

The Tax Court upheld the Division's determination. N.J.S.A. 54A:2-1 excludes a "charitable trust" from the trusts subject to New Jersey Gross Income Tax, but the statute does not define that term. Relying on *Burke v. Director*[7] – the only case to interpret the phrase "charitable trust" with respect to the statute – the court concluded that the exemption applies only to a trust operated exclusively for charitable purposes. A split-interest trust, such as a CRUT, does not qualify because it benefits both charitable and noncharitable beneficiaries. Though the *Burke* decision related to a charitable lead trust, this difference was immaterial.

The court rejected the CRUT's argument that the plain language of New Jersey's statute does not condition a charitable trust to be exclusively charitable, and thus charitable remainder trusts should be exempt from taxation, as they are under federal law. New Jersey's Gross Income Tax Act does not automatically incorporate federal deductions and exemptions, and the court noted that the legislature relied upon federal income tax statutes when enacting the Gross Income Tax when it deemed fit, but it did not do so in the statute at issue. Further, the legislature did not negatively react to the *Burke* decision by amending the statute to exempt split-interest trusts. If the legislature had intended to exempt trusts qualifying under IRC section 664, it could have expressly incorporated that provision.

This decision confirms that federal qualification as a CRUT does not protect a trust from New Jersey income tax. A CRUT with New Jersey-taxable income may therefore owe state tax on income or capital gain retained by the trust.

Commentators have noted that the immediate taxation of the capital gain could have been avoided in this instance if the CRUT did not have a New Jersey Trustee – New Jersey does not tax a resident trust if there is no Trustee in New Jersey, no real or tangible property in New Jersey, and no New Jersey source income of a type on which a nonresident would be taxable. Therefore, although the beneficiary would be taxed on any distribution of income from the trust, the taxation of the capital gain could have been spread over several years.[8]

Palermo v. United States, 2026 WL 2475168 (S.D. Fla., Aug. 17, 2026)

Palermo v. United States begins with a unique posture. It is the government arguing that a residence transferred to a qualified personal resident trust ("QPRT") should not be included in the grantor's estate under IRC section 2036(a)(1)[9] after the grantor continued to occupy the residence after the QPRT term while paying below-market rent.

Peter Palermo transferred his Florida residence to a five-year QPRT in 2002 and survived the QPRT term. Following expiration of the term, Palermo continued to live in the residence pursuant to leases with the trust until his death in 2015. Although Palermo paid rent, the Plaintiff (the Trustee of the QPRT) presented an appraisal indicating that the rent was below fair market value: $2,900 to $3,013 per month paid against an appraised rental value of $4,400 to $5,800 per month.

After Palermo's death, the trust sold the residence and claimed a stepped-up basis under IRC section 1014 on the theory that the property was included in Palermo's gross estate. The IRS disagreed, denied the basis step-up and imposed a gross-valuation-misstatement penalty.

The principal issue was whether Palermo's continued occupancy constituted a retained "possession or enjoyment" of the residence within the meaning of Section 2036(a)(1). The court explained that a grantor who transfers a residence but continues to occupy it rent-free has retained enjoyment of the property. Conversely, where a grantor survives a QPRT term, genuinely relinquishes the residence and thereafter pays fair market rent to remain in the property, continued occupancy does not result in estate inclusion. Palermo's arrangement fell between these two situations because he paid rent but allegedly at substantially below-market rates.

The court declined, however, to grant the Plaintiff's motion for summary judgment and hold that below-market rent automatically results in estate inclusion. Instead, it concluded that the Section 2036 inquiry required resolution of disputed factual issues, including whether the rent was sufficiently below market to indicate retained enjoyment, whether the arrangement was arm's-length in substance, whether the parties understood from the outset that Palermo would retain the home for life, and whether expiration of the QPRT term represented a genuine surrender of Palermo's interest in the residence. The court noted that a reasonable factfinder could find that Palermo genuinely surrendered the home at the end of the QPRT term, that he signed written leases and paid material rent and that the trust exercised incidents of ownership by leasing and then ultimately selling the home.

The ultimate Section 2036 issue was therefore left for trial.

The court separately rejected the taxpayer's argument that Palermo's qualification for Florida's homestead property-tax exemption created an ownership interest sufficient to cause estate inclusion under IRC section 2033.[10] Treasury Regulation § 20.2033-1(b), which provides that property subject to a state-law homestead exemption is included in the gross estate, assumes that the decedent otherwise beneficially owned the property; rather than creating an ownership interest for federal estate tax purposes, the regulation confirms that the tax exemption created by state law does not also protect the property from inclusion in the taxpayer's gross estate.

Daniels v. Commissioner, 2026 WL 1699696 (Conn., June 16, 2026)

Daniels v. Commissioner involves the estate of Jack Anderson, who died in 2015 with homes in Connecticut, Florida and Arizona. Anderson generally spent approximately five and ½ months each year in Connecticut, three and ½ months in Florida and three months in Arizona. Although he had filed a Florida declaration of domicile, held a Florida driver's license and was registered to vote there, he also maintained substantial property and social connections in Connecticut. The Department of Revenue Services determined that Anderson was domiciled in Connecticut at his death and assessed approximately $13.2 million in estate taxes. The trial court upheld the assessment, concluding that the estate had not established non-Connecticut domicile by *clear and convincing evidence*.[11]

On appeal, the Connecticut Supreme Court concluded that the trial court had applied the wrong standard. Rather than having to prove non-Connecticut domicile by clear and convincing evidence, an estate challenging a determination of Connecticut domicile must prove the decedent's non-residency by the less-demanding *preponderance of the evidence* standard.

Although Connecticut law places the burden on an estate to overcome a presumption of Connecticut residency, the statute does not specify what standard of proof applies.[12] The court found no compelling reason to depart from the ordinary civil standard, under which the estate must establish that it is more likely than not that the decedent was not domiciled in Connecticut at death.

Though the Commissioner argued that the higher standard of proof "appropriately gives weight to the presumption that the [C]ommissioner has acted properly in making assessments," the court noted that a domicile inquiry does not deal with objective facts that lend themselves to a greater degree of certainty, but rather with unique facts and circumstances that indicate an individual's subjective intent. Thus, the Department of Revenue does not possess the expertise to determine an individual's subjective intent like it has the expertise in complex accounting methods, for instance, that justifies the heightened standard of proof that may be used for other types of assessments.

The court also confirmed that the appropriate scope of review in an appeal from a domicile determination made by the Commissioner for the purpose of estate taxation is de novo without deference to the Commissioner's determinations.

The court remanded the case for a new trial to determine whether Anderson was a Connecticut domiciliary at his death.

Rosenberg v. Rosenberg (Beth Din of America, June 25, 2026)

Rosenberg v. Rosenberg gives a glimpse into how the Beth Din of America addresses the division of assets in divorce. The Beth Din of America website shows only 24 reported decisions, with this one being the only full matrimonial decision.

This case addresses the financial consequences of the dissolution of a nearly 30-year marriage, including the division of marital property, the treatment of inherited and premarital assets, and alimony. The parties married in 1997, separated in September 2022, and received a *get* in January 2025, but had not filed for a civil divorce. The wife argued that their property should be divided under New Jersey equitable distribution principles, while the husband maintained that traditional Jewish law governed, under which the wife generally would receive her *ketubah*[13] and property she brought into the marriage.

The Beth Din determined that equitable distribution principles should govern. It explained that Jewish law may incorporate established commercial and communal practices, particularly where the parties have structured their affairs in accordance with those practices. The panel pointed to the widespread practice among contemporary Orthodox couples of dividing marital property according to equitable distribution principles, as well as the parties' own conduct: they entered into a civil marriage, jointly titled their home and bank accounts, and had previously approached settlement negotiations using an equitable distribution framework. The Beth Din therefore held that the marital assets should presumptively be divided equally.

The decision also addressed the unusual question of when the marital economic partnership ends where the parties have not filed for civil divorce. Although New Jersey generally looks to the filing of a divorce complaint, the Beth Din concluded that this rule was not workable where the parties had proceeded through beit din without commencing a civil action. Drawing on Jewish-law authorities recognizing that certain incidents of marriage may terminate once there is a settled determination to divorce, the panel selected September 15, 2022 — the date the husband left the marital residence — as the cutoff date. The husband's subsequent earnings were therefore his separate property, and his alimony obligation began on the same date.

In applying equitable distribution principles, the Beth Din also considered the husband's premarital retirement assets and an inheritance from his uncle. Although those assets originally constituted separate property and could be traced, the husband had commingled them with marital funds for an extended period without evidence that he intended to preserve their separate character. The panel concluded that the commingling demonstrated donative intent and held that the assets, including their appreciation, were subject to equitable distribution.

The wife's interest in a family trust presented a different issue. She was both a trustee and a discretionary beneficiary, but could not compel distributions. Citing New Jersey precedent, the Beth Din concluded that her discretionary interest was not a presently owned asset for purposes of calculating alimony. However, since the wife was trustee of the trust and entitled to a salary in that capacity (even though she chose not to take one), the panel imputed a salary at a customary level for purposes of calculation alimony. In addition, because the wife was expected to benefit substantially from the trust following the grantor's death, the panel considered the trust in structuring the duration of the alimony award. It ordered the husband to pay $4,166 per month, terminating on the earlier of June 30, 2036 or the death of the trust's grantor.

The decision offers an interesting example of a how a modern beit din may blend contemporary civil-law concepts with traditional Jewish law rather than simply choosing one system over the other. The panel treated equitable distribution as a prevailing communal practice capable of recognition under Jewish law, while relying on halakhic principles to determine the point at which the marital economic partnership ended when the ordinary civil-law benchmark (the filing of divorce) did not exist.

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[1] *Ross v. State of New York*, No. 628629/2026 (N.Y. Sup. Ct., Suffolk County, filed September 28, 2026).

[2] *See* Florida Department of State, *Increased Homestead Exemption; Lower Cap on Increases in Non-Homestead Property Assessments*, https://constitutionalinitiatives.dos.fl.gov/Home/InitDetail?account=10&seqnum=110; and CS/HJR 1F at https://initiativepetitions.dos.fl.gov/InitiativeForms/FulltextPDF/10-110.pdf.

[3] 31 CFR 1010, 91 FR 52508, https://www.federalregister.gov/documents/2026/08/14/2026-16576/beneficial-ownership-information-reporting-requirement-revision; *see also* Final Rule: Questions and Answers, https://www.fincen.gov/system/files/2026-08/QAs_BOIFinalRule.pdf.

[4] "Company applicants" are those individuals who helped foreign companies register to do business in the United States.

[5] REG-109082-25, RIN 1545-BR58, https://public-inspection.federalregister.gov/2026-16769.pdf.

[6] These trusts include trusts that are not required to distribute all income currently in any year in which such trust claims a charitable deduction.

[7] 11 N.J. Tax 29 (N.J. Tax Ct. 1990).

[8] Bruce Steiner on Jacob & Alice Klein Charitable Remainder Unitrust v. Director, N.J. Tax: New Jersey Charitable Remainder Trusts Are Not Exempt from New Jersey Income Tax, Income Tax Planning Newsletter #295 (July 6, 2026) at http://www.leimbergservices.com.

[9] IRC section 2036(a)(1) provides for the inclusion in the gross estate of the decedent property that the decedent transferred during life if he or she retained "the possession or enjoyment of, or the right to the income from, the property."

[10] IRC section 2033 provides for inclusion in the decedent's estate of "the value of all property to the extent of the interest therein of the decedent at the time of his death."

[11] This standard of proof stemmed from *Leonard v. Commissioner*, 823 A.2d 1184 (Conn. 2003), which was a sales and use tax appeal.

[12] *See* Conn. Gen. Stat. §12-391(h)(1).

[13] A traditional Jewish marriage contract.

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