RECENT DEVELOPMENTS
July 1, 2024 – June 30, 2025

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I. U.S. ESTATE TAX

A. Generally

1. *IRS issued 2024 interest rates to be used by estates of decedents in computing special use value of farm real property for which an election is made under Code Section 2032A. Rev. Rul. 2024-16, 2024-35 IRB 534 (August 23, 2024).*

Under Code Section 2032A, an alternate valuation method for estate tax purposes may be available for certain real property used as a farm or in a trade or business. Pursuant to Code Section 2032A(e)(7)(A)(ii), rates on new Farm Credit System Bank loans are used in computing the special use value for such properties. The IRS published the applicable rates in Rev. Rul. 2024-16.

2. *The Tax Court held the value of two life insurance death benefit proceeds were not included in decedent's gross estate, finding the IRS's attempt to apply the step-transaction doctrine inappropriate and the insurable interest doctrine had not been violated. Est. of Becker v. Comm'r, T.C. Memo. 2024-89 (Sept. 24, 2024).*

The Tax Court held that a decedent's gross estate did not include death benefit proceeds from life insurance policies acquired and held by an irrevocable trust created by the decedent and funded with loans. In 2014, the decedent created an irrevocable life insurance trust ("Trust") for the benefit of his spouse and children. The Trust purchased two policies and funded its initial thirty months of premiums with promissory notes from decedent, that were ultimately transferred to an LLC, "JTR." The Trust later entered into an agreement with a third party, "LT" wherein the third party would pay all future premiums in exchange for 75% of the death benefits held in the Trust. After the decedent's death, a dispute arose over the life insurance proceeds, resulting in a settlement agreement between the Trust, JTR, and LT. Under the settlement agreement, the Trust paid nearly half of the death benefit proceeds to LT.

On exam, the IRS asserted the value of the decedent's estate should include the death benefits paid, not because decedent retained incidents of ownership over the Trust or policies, but because the decedent was the only party that had an insurable interest. The IRS further argued the step-transaction doctrine applied to the estate's life insurance transactions, arguing that when the transactions were collapsed, the proceeds were not primarily for the benefit of the Trust's beneficiaries, but rather for LT. The IRS argued that because the trusts lacked insurable interests, they violated Maryland's insurable interest statute and gave rise to a potential state law action.

The Tax Court disagreed, finding the Trust had an insurable interest in the decedent's life and there was no violation of the insurable interest doctrine. The Tax Court also found the step transaction doctrine was not applicable, holding

there was no interdependence between the LT agreement and the Trust's purchase of the policies. Finally, the Tax Court held because there was no inclusion and resulting increase in the gross estate, there was no offsetting claim-against the estate deduction under Code Section 2053 for the settlement payment to LT.

B. Property in Which Decedent Retained an Interest - Code Section 2036

1. *The Tax Court found that the full value of decedent's assets transferred into a family limited partnership by decedent's attorney-in-fact approximately a month before her death should be included in the value of her estate under Code Section 2036. Estate of Fields v. Comm'r, T.C. Memo. 2024-90 (Sept. 26, 2024).*

In this case, decedent died a month after approximately $17 million of her assets were transferred into a family limited partnership ("FLP"). Decedent's great-nephew who was a primary beneficiary of her estate, transferred decedent's assets as her attorney-in-fact. At the time decedent had long been diagnosed with Alzheimer's and after a series of falls, a heart attack, and a spine fracture, died a month after the transfers at the age of 91. A federal estate tax return (Form 706) was timely filed and included a discount of the FLP on the estate tax return. The decedent's estate tax liability was calculated at $4,617,800 which the Estate did not have enough cash to pay. As a result, the IRS issued a notice of deficiency and later argued before the Tax Court that the full value of the decedent's assets should be included in her estate under Code Section 2036. The Tax Court agreed finding that the decedent retained an interest in the assets transferred into the FLP, including the right to income from said assets and the right to designate who should possess or enjoy that income under Code Sections 2036(a)(1) and (2). In concluding that the decedent retained an interest under Code Sections 2036(a)(1) and (2), the Tax Court relied on the fact that the transfers into the FLP left the decedent with only $2.15 million of assets outside of the FLP, while decedent's will listed bequests of $1.45 million, when a substantial estate tax liability was foreseeable. Additionally, decedent's great-nephew, who was also the Executor of her estate made distributions to satisfy decedent's bequests and the estate's tax liability from the FLP. Further, the Tax Court concluded that the transfers to the FLP were for the sole purpose of evading federal estate tax. The Tax Court did not find the non-tax reasons offered by the great-nephew creditable given numerous facts, not limited to the following: that the transfers to the FLP were initiated at the time of decedent's precipitous decline in health, decedent was not involved in any of the planning or management of the FLP, the instances of financial abuse by caregivers and other bad actors occurred years prior to the formation of the FLP, the discovery of an email from the great-nephew about "obtaining a deeper discount" of decedent's partnership interest for tax purposes, and the asset transfers depleted decedent's liquidity to the point that the estate could not pay decedent's bequests or the reported estate tax liability.

C. Deductions

1. *The Second Circuit affirmed the Tax Court's decision that a $6.6 million dollar settlement liability for failure to distribute QTIP income during decedent's lifetime did not reduce the value of the decedent's estate, nor could the estate deduct the settlement as an administration expense. Estate of Kalikow v. Comm'r, 2025 WL 686037 (2nd Cir., March 4, 2025).*

The Second Circuit affirmed the Tax Court's denial of Taxpayer's motion for partial summary judgment, finding that a settlement liability associated with undistributed QTIP trust income did not reduce the value of the trust assets included in the estate, nor was it a deductible administration expense of the estate. In this case, Taxpayer Petitioner Appellant was the Estate of Pearl Kalikow (the "Estate"). Pearl's husband, who predeceased her, established a Trust for the benefit of Pearl which the husband's estate elected to be treated as a QTIP Trust at his death. The largest asset in the QTIP Trust was a 98.5% interest in a limited partnership ("LP Interest"). After Pearl's death and during her estate administration, a dispute arose when it was discovered the trustees of the QTIP Trust failed to distribute the full amount of QTIP Trust income attributable to the Trust's LP Interest to Pearl during her lifetime. The parties ultimately agreed a payment of $6,572,310 from the QTIP Trust to the Estate would resolve the dispute ("Settlement"). The IRS later asserted an estate tax deficiency against the Estate's Form 706. In challenging the deficiency, the Estate argued the value of the QTIP Trust included in the Estate should be reduced by the Settlement amount, or alternatively, the Settlement should be deductible by the Estate as an administration expense pursuant to Code Section 2053.

The Second Circuit held that the value of the QTIP Trust should not be reduced by the Settlement. The Second Circuit first found that the Settlement did not affect the value of the underlying assets of the QTIP Trust. The Second Circuit reasoned that a hypothetical buyer of the LP Interest would not accede the QTIP Trust's Settlement liability, and therefore it would not affect the value of the LP Interest. The Second Circuit noted the parties previously agreed on the value of the LP Interest with full knowledge of the Settlement at the time the value was agreed upon. The Second Circuit was also unpersuaded that the Settlement was deductible by the Estate as an administration expense, stating that the entity responsible for the Settlement was the Trust, not the Estate, and in fact, because the Estate was owed the Settlement, it should be included in the gross estate. Finally, the Second Circuit did not address Petitioner's final argument that the Tax Court's decision resulted in double taxation. The argument was found moot because the Settlement was part of Widow's residuary estate, which was bequeathed to a charity, and resulted in no tax on the Settlement after application of the charitable contribution deduction.

2. *The Eleventh Circuit affirms Tax Court decision finding that payments made by decedent's estate pursuant to the terms of his prenuptial*

agreement are not deductible as claims against the estate. Estate of Spizzirri v. Comm'r***, 136 F4th 1336 (11th Cir. May 16, 2025).***

The Eleventh Circuit addressed whether payments made by a decedent's estate to his stepchildren pursuant to the terms of his prenuptial agreement were deductible as claims against the estate under Code Section 2053. The decedent died while married to his fourth wife with whom he had entered a prenuptial agreement, which they subsequently amended multiple times during the marriage. The prenuptial agreement required that the decedent's estate plan would provide specific bequests of $1 million to each of wife's children. Prior to his death, the decedent became estranged from his wife and acquainted with other women to whom he made large payments (the record is unclear on the nature of these relationships). The decedent died and his estate plan did not contain the bequests for wife's children as required in the prenuptial agreement, as amended. Wife's children brought claims against the estate seeking enforcement of the prenuptial agreement. These claims were settled, and the estate made the required payments. The estate deducted the payments as claims against the estate. The IRS denied the deduction and the Tax Court affirmed the IRS's decision. The taxpayer appealed the Tax Court's decision.

To qualify as a deductible claim, the Eleventh Circuit noted that a claim must be contracted bona fide and for an adequate and full consideration in money or money's worth. The requirement that that a claim be bona fide bars a deduction for a claim to the extent that the claim is based on a transfer that is donative in nature. Transactions with family members, including stepchildren, are subject to particular scrutiny. The Eleventh Circuit noted five factors used by the IRS in determining whether a claim is bona fide: (i) the transaction underlying the claim occurs in the ordinary course of business, is negotiated at arm's length and is free from donative intent; (ii) the claim is not related to an expectation or claim of inheritance; (iii) the claim originates pursuant to an agreement between the decedent and the family member; (iv) performance by the claimant stems from an agreement between the decedent and the family member; and (v) all amounts paid in satisfaction or settlement of the claim are reported by each party for federal income tax purposes in a manner consistent with the nature of the claim. The Eleventh Circuit held that each factor weighed against finding that the payments to the stepchildren were the result of bona fide claims because the transaction did not occur in the ordinary course of business and were not free of donative intent (the decedent was just trying to keep his wife happy and avoid another divorce when he agreed to the terms of the amendments to the prenuptial agreement). Further, the claim was related to the stepchildren's expectation or claim of inheritance. The Eleventh Circuit did not address whether the claims were accompanied by adequate consideration having found that the underlying transaction was not bona fide and affirmed the Tax Court's denial of the deduction.

3. ***The IRS's motion for summary judgment was granted in part and denied in part as the Tax Court holds that of two bequests in trust for a***

surviving spouse only one qualified for the estate tax marital deduction. Estate of Griffin v. Comm'r, T.C. Memo. 2025-47 (May 19, 2025).

The decedent died in 2019 and was survived by his spouse. Prior to his death, the decedent created a revocable trust and an irrevocable trust (known as the "MCC Trust"). The terms of the revocable trust provided that upon the decedent's death the trustee was required to distribute $2,000,000 to the trustee of the MCC Trust for monthly distributions to the decedent's surviving spouse and $300,000 to the trustee of the MCC Trust as a "living expense reserve" for the surviving spouse. At issue was whether the terms of the bequests under the revocable trust conflicted with the terms of the MCC Trust. For example, the revocable trust provided that the "living expense reserve" was to be paid out to the surviving spouse at $5,000 per month, and any amount remaining at her death would be paid to her estate. The MCC Trust provided that the surviving spouse had a testamentary non-general power of appointment over the MCC Trust assets, and in default of the exercise of the power of appointment, the remaining assets would be distributed to her descendants. The decedent's estate tax return did not list any property as Qualified Terminal Interest Property ("QTIP"), but instead listed a specific bequest of $2,300,000 to the surviving spouse on Schedule M of the estate tax return. The IRS issued a notice of deficiency and determined that the bequests to the MCC Trust were included in the decedent's estate. The Tax Court held that the $2,000,000 bequest was terminable interest property and not QTIP because a valid QTIP election was not made on the decedent's estate tax return as required under Code Section 2056(b)(7). As for the $300,000 bequest, the classification of the bequest depended on whether, under applicable state law, the bequest under the revocable trust created a separate trust from the MCC Trust. The Tax Court found that the decedent intended to create a separate trust with the additional language in the bequest. Accordingly, the $300,000 bequest qualified for the marital deduction and was not a terminable interest because the agreement required any remaining funds to be distributed to the surviving spouse's estate at her death.

D. Extensions of Time to Make Elections

1. *The IRS granted an extension of time to make a QTIP election and a reverse QTIP election to an estate where the accounting firm that prepared the Form 706 failed to make the elections. PLR 202503007 (Jan 17, 2025).*

The decedent and the surviving spouse established a joint trust (the "Trust"). Upon Decedent's death, the Trust divided into the survivor's share, the family share, and the marital share. The Trust directed that the marital share be divided into two trusts, an Exempt Marital Trust and a Nonexempt Marital Trust. The spouse, as executor of Decedent's estate, engaged an accounting firm to prepare and file the decedent's Form 706 and to make any necessary elections. The accounting firm failed to report the property passing to the Marital Trust as a

QTIP. Therefore, the QTIP election was not made, and consequently, the reverse QTIP election was also not made.

Generally, the QTIP election is made on the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date. Under Code Section 2632(a), any allocation by an individual of his GST exemption may be made at any time on or before the date prescribed for filing the individual's estate tax return (including extensions). Taxpayer requested an extension of time to make the QTIP election for the Marital Trust and to make a reverse QTIP election under Code Section 2652(a)(3) for the Exempt Marital Trust.

The IRS has discretion to grant a reasonable extension of time if the taxpayer reasonably relied on a qualified tax professional, and the tax professional failed to make, or failed to advise the taxpayer to make, the election. The IRS granted the executor of the decedent's estate a 120-day extension to make the QTIP election for the Marital Trust and reverse QTIP election for the Exempt Marital Trust by filing a supplemental Form 706.

2. ***The IRS denied taxpayer's request for an extension of time to augment an original QTIP election to include additional assets because such an extension is outside of the scope of Treasury Regulations Section 301.9100-3. PLR 202504002 (Jan. 24, 2025).***

The IRS denied the taxpayer's request for an extension of time under Treasury Regulations Section 301.9100-3 to augment the original QTIP election under Code Section 2056(b)(7) by adding an additional amount to a marital trust from a portion of the family trust. The decedent's revocable trust provided that after payment of certain expenses and specific bequests, the trustee must divide the remaining assets into a marital trust and a family trust. The trust provided that the marital trust was determined as a fraction "of which (i) the numerator is the smallest amount which, if allowed as a federal estate tax marital deduction, would result in the least possible federal estate tax payable by reason of decedent's death, and (ii) the denominator is the federal estate tax value of decedent's remaining trust assets." The surviving spouse was the executor of the decedent's estate. On a timely filed Form 706, the estate reported on Schedule M the marital trust with a certain QTIP value. The estate also filed a state estate tax return, which reported a portion of the family trust as QTIP. The state denied the marital deduction over the portion of the family trust because, under state law, the state QTIP election must be in the same amount and cover the same property as the QTIP election reported on the decedent's federal estate tax return. Treasury Regulations Section 20.2056(b)-7(b)(4)(ii) provides that a QTIP election is irrevocable and, once made, no subsequent election can be made with respect to other properties included in the gross estate. Treasury Regulations Sections 301.9100-1 through 301.9100-3 provide that the IRS may grant a reasonable extension of time to make a regulatory election or statutory election (in certain

cases) if the taxpayer acted in good faith and the extension would not prejudice the interests of the government. Here, the IRS found that the relief available under Treasury Regulations Sections 301.9100-1 through 301.9100-3 was not applicable because the estate was seeking to change a previously made QTIP election and not simply extend the time to make an election that was not made.

3. ***The IRS grants a request for an extension of time to make the alternate valuation date election on a Form 706. PLR 202513003 (March 28, 2005).***

In PLR 202513003, the IRS addressed whether an extension of time to make the alternate valuation date election was permissible. The personal representatives of the estate retained a firm to prepare a Form 706. The estate had not yet received the appraisals for assets of the estate and initially filed a Form 706 without an alternate valuation date election. Once the estate received the appraisals, the estate sought to make an election to use an alternate valuation date. Accordingly, the estate filed a supplemental Form 706 to attach the appraisals and make the alternate valuation date election.

Code Section 2032(d)(1) requires that alternate valuation date election be made no later than one year after the due date, including extensions. Treasury Regulations Section 20.2032-1(b)(2) provides that if, based on the return as filed, use of the alternate valuation method would not result in a decrease in both the value of the gross estate and the sum of the estate tax and the generation-skipping transfer tax liability payable by reason of the decedent's death with respect to the property includible in the decedent's gross estate, a protective election may be made to use the alternate valuation method if it is subsequently determined that such a decrease would occur. The protective election becomes effective when it is determined that the alternate valuation date decreases the estate and the generation-skipping transfer tax due.

Under Treasury Regulations Section 301.9100-1(c), the IRS may grant a reasonable extension of time to make a regulatory election or statutory election if the taxpayer demonstrates to the satisfaction of the IRS that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the government. The IRS granted the estate an extension of time because the personal representatives of the estate relied on a tax professional who did not advise the estate to make the alternate valuation election or protective election.

4. ***The IRS granted taxpayer an extension of time to provide notice of intention to divide a trust into a QTIP trust and non-QTIP trust, finding the taxpayer reasonably relied on a qualified tax professional who failed to properly advise the taxpayer. PLR 202517008 (April 25, 2025).***

The IRS granted an estate a 120-day extension under Treasury Regulations Section 301.9100-3 to provide notice of intention to divide a marital trust into a qualified terminable interest property ("QTIP") trust and a non-QTIP trust under

Treasury Regulations Section 20.2056(b)-7(b)(2)(ii)(A). The decedent and surviving spouse created an intervivos revocable trust ("Trust") that divided into a Survivor's Trust and a Marital Trust at the first death of the decedent and the spouse. Upon the decedent's death, the taxpayer engaged Attorney 1 and Law Firm 1 to prepare Form 706*, United States Estate (and Generation-Skipping Transfer) Tax Return*, for the decedent's estate. Attorney 1 timely filed the Form 706 and made a partial QTIP election of the Marital Trust pursuant to Section 20.2056(b)-7(b)(2)(ii)(A). However, at the time of filing the Form 706, the Trustee had not yet divided the Marital Trust into a QTIP and non-QTIP trust. Under Treasury Regulation Section 20.2056(b)-7(b)(2)(ii)(A), the taxpayer was required to provide notice of an intention to divide the Marital Trust no later than the end of the period of estate administration, and to include such notice on the Form 706. When the taxpayer later engaged Attorney 2 and Law Firm 2, Attorney 2 discovered the Form 706 did not include the required notice signifying the intent to divide the Marital Trust to reflect the partial QTIP election made. The taxpayer subsequently requested a private letter ruling for an extension of time to provide such notice.

The IRS ruled the taxpayer met the requirements for a reasonable extension of time under Treasury Regulation Section 301.9100-3 because the taxpayer acted reasonably and in good faith. In finding the taxpayer established reasonable cause, the IRS determined the taxpayer reasonably relied on a qualified tax professional, Attorney 1 and Law Firm 1, who failed to advise the taxpayer about the availability and advisability of severing the Marital Trust into a QTIP trust and non-QTIP trust. The IRS instructed the notice of intent to be made within 120 days by attaching a notice to a supplemental Form 706, and the notice should unequivocally signify the intent to divide the Marital Trust into a QTIP trust and non-QTIP trust to reflect that a partial election had been made pursuant to Treasury Regulation Section 20.2056(b)-7(b)(2)(ii)(A).

E. Qualified Domestic Trusts

1. *The IRS grants a bank-Trustee of a QDOT an extension of time to file Form 706-QDT to notify the IRS that the surviving spouse has become a U.S. citizen. PLR 202507010 (Feb. 14, 2025). See also PLR 202513002 (Mar. 28, 2025).*

The decedent died leaving assets outright to a non-citizen surviving spouse. The surviving spouse established a Qualified Domestic Trust ("QDOT") and funded the QDOT with the assets that would have passed outright to surviving spouse from the decedent spouse's estate. Thereafter, the surviving spouse became a United States citizen and notified Bank-Trustee, a United States corporation, of the surviving spouse's new citizenship. Bank-Trustee relied on its internal tax department to prepare any necessary federal forms. The tax department did not file Form 706-QDT to make notification and certification of the surviving spouse's citizenship during the required time period (April 15 of the calendar year following the year in which the surviving spouse becomes a

citizen). The surviving spouse was at all times after the decedent's death a resident of the United States.

Code Section 2056A(b)(1) provides that estate tax is imposed on (i) any distribution from a qualified domestic trust before the date of death of the surviving spouse, and (ii) the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse. However, if the surviving spouse becomes a citizen of the United States and if such spouse was a resident of the United States at all times after the date of death of the decedent, then the tax imposed by Code Section 2056A(b)(1)(A) shall not apply to any distributions after such spouse becomes a citizen, and the tax imposed by Code Section 2056A(b)(1)(B) shall not apply if notice is provided by filing a final Form 706-QDT on or before April 15th of the calendar year following the year in which the surviving spouse becomes a United States citizen.

The IRS has discretion to grant a reasonable extension of time if the taxpayer reasonably relied on a qualified tax professional, and the tax professional failed to make, or to advise the taxpayer to make, the election. The IRS determined that the statutory requirements were satisfied under the circumstances and granted a 120-day extension to file the required notice and certification that the surviving spouse became a United States citizen via a Form 706-QDT.

F. Collection of Estate Tax

1. *The U.S. District Court for the District of Nevada grants summary judgment in favor of the IRS in an action to collect estate taxes owed by the decedent's estate against deceased Trustee's estate and surviving spouse. United States v. Lipson, et. al., 135 AFTR 2d 2025-1200 (D.NV. March 28, 2025).*

At issue was the recovery of outstanding taxes from the Estate of Jean Lipson. Jean died on March 17, 2007, with a pour-over will and revocable trust, which provided that her assets be divided equally between her two sons, David and Leon, after payment of debts and estate taxes. David was the initial Personal Representative of the Estate and Trustee of Jean's revocable trust. The Estate was initially valued at approximately $2.97 million. In August 2007, David transferred approximately $2.16 million to a newly created Nevada limited partnership, "ABRA." David filed an estate tax return on December 17, 2007, explaining that ABRA was formed to protect the estate's assets from creditors. The gross estate on the estate tax return was approximately $2.45 million and no tax was reported due. The IRS audited the return and issued an estate tax deficiency of $566,041 and a penalty of $75,350, which remain unpaid. David died in 2019. Leon become successor Personal Representative of the Estate and Trustee of Jean's trust, while David's widow became Personal Representative of David's estate. The U.S. alleged that David knowingly reduced the estate's assets before paying the estate tax obligation.

The District Court first found that a ten-year statute of limitations is applicable to this action and that the government's claims are timely. With the timeliness issue aside, the court then analyzed (i) whether the U.S. satisfied the initial burden of proof in an action to collect federal taxes and (ii) whether the taxpayer proved the assessment is erroneous. The court found that the U.S. introduced an IRS Form 4340 describing the assessments for the federal estate tax owed, which is presumptive proof that the taxes were properly assessed. The court also found that the estate already litigated the liability before the tax court and that there is no genuine dispute regarding the estate's liability to pay the taxes. In analyzing whether the Trustee of Jean's trust was required to pay to the Estate the funds necessary to satisfy the estate tax liability, the District Court found that the terms of the trust required the Trustee to pay any estate tax obligations and that the Trustee was obligated under state law to administer the trust in good faith. Most notably, the District Court held that David's widow, both in her individual capacity and as personal representative of David's estate, was liable for the estate tax liability. David's widow is liable as personal representative of David's estate because (i) David transferred assets to ABRA before paying the estate tax, (ii) the transfer was made when the Estate was insolvent, and (iii) the transferred occurred after David should have known that the Estate would owe tax. David's liability extended to his estate. Furthermore, David's liability extended to his widow in her individual capacity because of application of Nevada community property law.

G. Estate Tax Closing Letter

1. *The new fee for an estate tax closing letter is reduced from $67 to $56. Reg 107459-24, TD 10031 (May 20, 2025).*

The reduced fee was determined by reviewing the overall cost and volume of requests. The new fee applies to requests for estate tax closing letters that the IRS receives after May 20, 2025.

II. U.S. GIFT TAX

A. Generally

1. *Applying its recent decision in Estate of Anenberg v. Comm'r, 162 T.C. No. 10 (2024), the Tax Court held the commutation and distribution of a QTIP trust pursuant to a nonjudicial agreement among the surviving spouse and remainder beneficiaries did not result in a taxable gift by the surviving spouse but did result in a taxable gift by the remainder beneficiaries under Code Section 2511. McDougall v. Comm'r, 163 T.C. No. 5 (Sept. 17, 2024).*

In granting in part and denying in part cross-motions for summary judgment and partial summary judgment, the Tax Court held the commutation and distribution of a qualified terminable interest property ("QTIP") trust pursuant to

a nonjudicial agreement resulted in taxable gifts by the remainder beneficiaries but not by the surviving spouse. In 2011, the residuary of decedent wife's estate passed to a marital trust where Petitioner spouse was the income beneficiary and Petitioner children were the remainder beneficiaries. A QTIP election was timely made on the decedent's estate tax return for the marital trust. In 2016, Petitioner spouse and Petitioner children entered a nonjudicial agreement to commute the trust and distribute the QTIP assets to Petitioner spouse. Immediately following the commutation and distribution, Petitioner spouse sold the QTIP assets to trusts established for Petitioner children in exchange for promissory notes. Petitioner spouse and Petitioner children filed gift tax returns asserting no gifts were made because the transfers were offsetting reciprocal gifts.

Following an examination, the IRS issued notices of deficiency for each of Petitioner's 2016 gift tax returns, asserting the commutation resulted in gifts from Petitioner spouse to Petitioner children under Code Section 2519 and from Petitioner Children to Petitioner Spouse under Code Section 2511. On the cross motions for summary judgment, the Tax Court first disagreed with the IRS that Petitioner Spouse had made a taxable gift by applying the principles in its recent decision, *Estate of Anenberg v. Comm'r*, 162 T.C. No. 10 (2024). In Anenberg, the Tax Court held a surviving spouse receiving QTIP assets outright pursuant to the settlement agreement made no gratuitous transfer under Code Section 2501 because when comparing what the spouse has before and after the deemed transfer, there is no gratuitous transfer to the remainder beneficiaries.

However, the Tax Court agreed with the IRS that Petitioner children made taxable gifts by giving up their remainder interests in the QTIP because the interests were transferred to their father for no consideration. The Tax Court rejected their argument that the Anenberg principles should apply to the remainder beneficiaries because that holding applied to the limited purpose of determining a surviving spouse's transfer tax liability when marital assets leave the marital unit. The Tax Court also rejected the offsetting reciprocal gift argument, unpersuaded that there was no change in the parties' economic positions.

2. ***The IRS analyzed the gift tax implications of the division of a QTIP Trust into two separate trusts and a subsequent disclaimer of the spouse's interest in one of the separate trusts. PLR 202504007 (Jan. 1, 2025)***

The beneficiary of a marital trust sought a private letter ruling approving a plan to divide the Marital Trust and for the beneficiary to disclaim her interest in one of the resulting trusts. A QTIP election was made with respect to the assets of the Marital Trust. The terms of the Marital Trust provide that at spouse's death, a specific sum is distributed to two grandchildren in equal shares and another specific sum is distributed to two charities in equal shares. After these specific distributions, the remaining Marital Trust assets are divided among the spouse's two children. Prior to seeking the private letter ruling, the Trustees

agreed to divide the Marital Trust into Trust 1 and Trust 2. Trust 1 will hold assets having a fair market value on the date of division equal to an amount not to exceed spouse's available federal gift tax exclusion, and Trust 2 will hold the balance of the property remaining in the Marital Trust after funding Trust 1. Both Trust 1 and Trust 2 contain the same dispositive provisions during spouse's lifetime and at spouse's death as the Marital Trust. Following the division, a child acting as spouse's duly authorized agent will renounce and disclaim all of spouse's interest in Trust 1. The Trustees sought court approval of the plan, and the state court issued an order ratifying and approving the plan contingent on spouse obtaining a favorable private letter ruling. The IRS issued several rulings: (1) the division of the Marital Trust on a non-pro rata basis will not cause any of the trusts or any beneficiary to recognize ordinary income or loss, or capital gain or loss; (2) Trust 1 and Trust 2 will continue to be QTIP trusts; (3) spouse's disclaimer of her income interest in Trust 1 is not a qualified disclaimer for purposes of Code Section 2518 and spouse's disclaimer is treated as a gift; (4) the value of the property in Trust 1 treated as transferred under Code Section 2519 will not be included in spouse's gross estate under Code Section 2044; and (5) spouse's disclaimer of her interest in Trust 1 will not cause her interest in Trust 2 to be valued at zero under Code Section 2702.

3. ***The Tax Court grants summary judgment to taxpayer after IRS attempts to recharacterize loan as a part-gift transaction. Estate of Galli v. Comm'r (Order, Docket 7003-20, 7005-20 March 3, 2025).***

The Tax Court granted summary judgment to a taxpayer in related gift-tax and estate-tax cases where the IRS attempted to recharacterize a loan during decedent's lifetime as a partial gift. Barbara Galli transferred $2.3 million to her son, Stephen, in 2013. The parties executed a simple note with a nine-year term and a 1.01% interest rate (the mid-term AFR for February 2013). The Gallis treated this as a loan, not as a gift, so a gift tax return was not filed reporting the transaction. Stephen made interest payments each year until Barbara's death in 2016. The unpaid portion of the loan was reported on Barbara's estate tax return at a discounted value of $1,624,000.

The IRS issued a notice of deficiency arguing that the note lacked legally enforceable rights to repayment comparable to those included in arms-length transactions in the market, there was never an intent or ability to repay the loan and Barbara did not intend to enforce the note. The IRS determined that the difference between the amount lent and the fair market value of the note was $869,000 and that such amount was a previously unreported and untaxed gift. The taxpayer argued that the IRS was not trying to recharacterize the entire transfer as a gift but instead only a portion and therefore Code Section 7872(c) applies and the entire transaction was a loan because that section's minimum interest rate for loans was charged.

The Tax Court held that the IRS did not make the recharacterization of the entire transaction a gift an issue in the case and, even if that had done so, the IRS

had not adequately supported that position because it only filed a declaration in support of the fact that the decedent had not filed a gift tax return reporting the transaction as part of its opposition papers. The Tax Court, agreeing that Code Section 7872 applies, held that the transaction was not a gift at all and was purely a loan.

4. ***The United States District Court for the Western District of Tennessee holds that the contribution of shares of stock into a GRAT and the subsequent receipt of shares of stock from a GRAT does not result in a violation of a Section 16(b) of the Securities Exchange Act of 1934. Nosirrah Management, LLC v. AutoZone, Inc., (W.D. Tenn April 14, 2025).***

Although the District Court found that the plaintiff had standing to sue on the basis of a violation of Section 16(b) of the Securities Exchange Act of 1934 ("Section 16(b)"), the District Court held that the contribution of shares of stock to a GRAT and the receipt of the same shares as an annuity payment from the GRAT did not violate Section 16(b). Defendant, an AutoZone executive, created a GRAT that provided him with a swap power. Defendant was the sole grantor, trustee, and annuitant of the GRAT. Defendant contributed 5,000 shares of AutoZone, Inc. to the GRAT. Later, Defendant received an annuity of shares of AutoZone, Inc. from the GRAT. Within six months of receiving the annuity, Defendant sold the shares on the open market for a large profit. Plaintiff demanded AutoZone pursue disgorgement of Defendant's alleged short-swing profits. Section 16(b) provides that an officer or director of a company is liable to the company for any profits realized from the purchase or sale of the company's stock within a six-month period. However, SEC Rule 16a-13 exempts from Section 16(b) transactions that effect only the form of the beneficial ownership without changing the person's pecuniary interest in the security.

Initially, the District Court determined that the Plaintiff did have standing to bring the suit. The District Court then addressed whether Defendant's reacquisition of stock from the GRATs was exempt under SEC Rule 16a-13. Defendant argued because he was the settlor, trustee, and beneficiary, there was not a "purchase," but rather a mere change of form and no change in pecuniary interest. The District Court held that Defendant held an indirect pecuniary interest in the shares of stock when they were in the GRAT and that SEC rules specifically provided that an indirect pecuniary interest is a pecuniary interest for the purpose of this analysis. Defendant's pecuniary interest in the stock became a direct pecuniary interest upon his receipt of the stock as part of the annuity payment. Further, the exemption in SEC Rule 16a-13 does not address whether a change in form of the pecuniary interest matters for the exemption, which the District Court held was intentional in light of the reference to a change in the form of beneficial ownership in the explicit language of the exemption. Like with the pecuniary interest, the District Court found that Defendant's beneficial interest in the shares of stock was an indirect beneficial interest when owned by the GRAT but that it converted into a direct beneficial interest when the Defendant received

the shares. Accordingly, the Court held that the transaction with the GRAT clearly fell within the SEC Rule 16a-13 exemption for a transaction that effects only the form of the beneficial ownership without changing the person's pecuniary interest in the security.

B. Valuation

1. *The Tax Court addressed the valuation of a company that was the subject of a gifting transaction in light of external market pressures on the subject company and the impact of an extramarital affair engaged in by one of the taxpayers with another employee of the company. Pierce v. Comm'r, T.C. Memo. 2025-29 (April 7, 2025).*

The Tax Court addressed the valuation of Mothers Lounge, LLC ("Mother's Lounge") whose shares were gifted to irrevocable trusts and sold to an LLC owned by irrevocable trusts siding with the IRS's valuation expert on one element of the valuation and the taxpayers' valuation expert on several others. Taxpayers created Mother's Lounge as a new business to offer products to mothers. Mother's Lounge had a unique business strategy in that it intentionally ripped off successful products produced by other companies and offered their own inferior product to consumers at a promotional price of "free" as long as consumers paid an inflated shipping price ($7.95). Mothers Lounge made money from the shipping charge because the actual cost to ship the products was significantly less ($1.57 for its first product). As of the date of the valuation of Mothers Lounge, 97% of the company's revenue was generated by the excess shipping charge.

On June 1, 2014, taxpayers amended the Mothers Lounge operating agreement and named husband as the manager of Mothers Lounge with the authority to manage its day-to-day operations and approve distributions to members. The amended operating agreement specifically provided that membership interests were only transferrable with the unanimous consent of the members. On June 4, 2014, husband gifted a 29.4% interest in Mothers Lounge to the Kaleb Jeremiah Pierce Irrevocable Trust and sold a 20.6% interest in Mothers Lounge to Giving Stream, LLC ("Giving Stream"). On the same day, wife gave a 29.4% interest in Mothers Lounge to the Jeanette Court Pierce Irrevocable Trust and sold a 20.6% interest in Mothers Lounge to Giving Stream. Each sale to Giving Stream resulted in a promissory note of $3,419,600. Both notes were satisfied by Giving Stream. Immediately after the transaction, the operating agreement was amended and restated again naming Giving Stream as the sole member of Mothers Lounge with broad authority to manage its day-to-day operations and approve distributions. Taxpayers filed a Form 709 reporting the gift transactions but did not report the sale transactions. The IRS selected the Form 709 for audit and issued notices of deficiency for the taxpayers related to the transactions along with accuracy-related penalties.

Immediately prior to the gift and sale transactions, Mothers Lounge was subject to external and internal pressures. First, the growth of Amazon in online retail significantly disrupted Mothers Lounge's business and Amazon could not be utilized by Mothers Lounge given its model of business wherein it utilized shipping charges to generate revenue. Second, Mothers Lounge was subject to trademark and patent infringement cases. The patent infringement case specifically threatened the existence of Mothers Lounge. Finally, husband had engaged in an extramarital affair with an employee of Mothers Lounge and was being blackmailed about the affair. Husband confessed to wife but it resulted in significant changes to the way Mothers Lounge engaged in business as wife prevented husband from attending trade fairs and husband began spending more time at home to repair his marriage.

The Tax Court's analysis centered on the valuation of Mothers Lounge by the experts. Taxpayers' expert valued Mothers Lounge as of the valuation date at $18,678,000. The IRS expert valued Mothers Lounge at $28,107,338. The parties agreed that the discounted cashflow method (income approach) was appropriate for the valuation. The Tax Court allowed tax effecting for the S Corp given both sides agreed it was appropriate and accepted the taxpayers' experts tax effecting rate of 26.2%. The Tax Court utilized a cost of equity of 18% (from the IRS's expert) to determine the weighted average cost of capital. Further, the Tax Court utilized the taxpayers' lack of control discount of 5% given the provisions of the operating agreement in effect at the time of the transfers. Finally, the Tax Court accepted the taxpayers' expert's 25% marketability discount for valuation purposes.

III. U.S. TAX CERTAIN GENERATION-SKIPPING TRANSFERS

A. Tax Imposed – Code Section 2601

1. *IRS granted Trustees' request that state court construction of the term "per stirpes" will not affect the exempt status of the Trust for purposes of GST tax nor result in a transfer of property that will subject the Trust or distributions thereunder to the GST tax. PLR 202432016 (August 9, 2024).*

In this Ruling, the IRS granted Trustees' request for rulings with respect to the generation-skipping transfer ("GST") tax consequences of a state court construction of the term "per stirpes" and a proposed modification to divide a revocable trust that became irrevocable upon the death of the settlor. The IRS's analysis determined that the that settlor's trust was a grandfathered trust under Treasury Regulations Section 26.2601-1(b)(1) of the GST tax regulations and thus initially exempt from GST tax. Treasury Regulations Section 26.2601-1(b)(4)(i)(C) generally provides that a judicial construction of a governing instrument to resolve an ambiguity in the terms of the instrument will not cause an exempt trust to be subject to the GST tax if: (1) the judicial action involves a bona

fide issue; and (2) the construction is consistent with applicable state law that would be applied by the highest court of the state.

The terms of the trust mandated distribution of all income to the settlor's living issue, per stirpes, as determined at the time of distribution. The terms of the trust provided for termination of the trust twenty-one years after the death of settlor, settlor's wife, and settlor's two children, who all were deceased. The settlor's living issue at the time of the ruling included twenty-nine living descendants (grandchildren, great-grandchildren, and great-great grandchildren). The distribution language provided for outright distribution to the "issue of the settlor then living, per stirpes." To resolve the ambiguity as to whether settlor intended to divide trust at the level of the oldest generation level with "living" descendants (i.e., at the level of Settlor's grandchildren) or at the generation level of settlor's two children with distributions to their "living" descendants, the Trustees filed a petition in state court for construction of the term "per stirpes" and modification of terms to divide the trust. The state court construed the "per stirpes" distribution to require division at the level of settlor's two deceased children, creating one equal share for the descendants of Child 1 and one equal share for the descendants of Child 2.

The Trustees proposed (and the state court approved) division of the trust into two separate equal trusts based on the family lines of Child 1 and Child 2, identical to the terms of the trust but modified as follows: (1) Child 1 Trust will pay all net income to then living issue, per stirpes, of Child 1 (and vice versa as to Child 2), (2) upon termination of each Child's trust, the trust estate will be distributed to the issue of that child then living, per stirpes. If at any time there is no living issue of a child, the remaining assets of the child's trust shall be added to the trust for the other child. The state court Order was contingent upon a favorable private letter ruling from the IRS.

The IRS agreed that the state court's construction resolved a bona fide issue regarding the proper interpretation of the instrument and is consistent with applicable state law as it would be interpreted by the highest court of the state. The IRS therefore determined that the GST exempt status of the trust would remain intact, and the trust will not be subject to the GST tax.

2. ***The IRS granted extension of time to make GST allocation exemption for request filed before May 6, 2024. PLR 202439009 (Sept. 27, 2024).***

In this Private Letter Ruling the IRS responded to a ruling request wherein married taxpayers requested an extension of time under Code Section 2642(g) and Treasury Regulations Section 301.9100-3 to allocate generation-skipping transfer ("GST") tax exemption to a trust created by the taxpayers. A qualified tax professional timely filed the taxpayers' Forms 709 reporting their gifts funding the trust. While the trust had potential to create generation-skipping transfers, the taxpayers claimed GST tax exemption was not automatically applied to their transfers because the trust was not a GST Trust within the meaning of Code

Section 2632(c)(3)(B) at the time of its creation. The qualified tax professional failed to affirmatively allocate GST tax exemption to the transfers on the filed Forms 709 and later noticed this oversight, which led to the taxpayers' request for an extension to allocate GST exemption to the reported transfers. Code Section 2642(g)(1) authorizes the Secretary to regulate procedures for granting extensions of time to make a GST allocation to gifts that have already been reported on a gift tax return. According to Treasury Regulations Section 301.9100-3, a reasonable extension of time will be granted to make a GST allocation if the taxpayer acted reasonably and in good faith, and if granting relief will not prejudice the government's interests. A taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional and that tax professional failed to advise the taxpayer to make the allocation. Therefore, the IRS granted the taxpayers' request for an extension under Treasury Regulations Section 301.9100-3, because the taxpayers reasonably relied on a qualified tax professional and filed their request before May 6, 2024. Pursuant to new final regulations adopted in 2024, all extension requests under Code Section 2642(g)(1) filed after May 6, 2024, are instead governed by Treasury Regulations Section 26.2642-7.

3. ***The IRS granted an extension of time to elect out of automatic GST allocation rules for request filed before May 6, 2024. PLR 202501004 (Jan. 3, 2025).***

In this Private Letter Ruling, the IRS responded to a ruling request wherein the taxpayer requested extensions of time under Code Section 2642(g) and Treasury Regulations Section 301.9100-3 to elect out of the generation-skipping transfer ("GST") tax exemption automatic allocation rules under Code Section 2632(c)(5) for trusts created by the taxpayer. With respect to the taxpayer's gifts to the trusts, the taxpayer's accountant, on separate late or timely filed Forms 709 for the taxpayer, did not elect out of the GST exemption automatic allocation rules, even though the taxpayer did not intend to allocate GST exemption to the trusts and the taxpayer's attorneys advised the accountant to make the elections. Code Section 2642(g)(1) authorizes the Secretary to regulate procedures for granting extensions of time to elect out of GST exemption automatic allocation rules. According to Treasury Regulations Section 301.9100-3, a reasonable extension of time will be granted to elect out of the automatic allocation rules if the taxpayer acted reasonably and in good faith, and if granting relief will not prejudice the government's interests. A taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional and that tax professional failed to make the election. Therefore, the IRS granted the taxpayer's request for an extension under Treasury Regulations Section 301.9100-3, because the taxpayer reasonably relied on a qualified tax professional and filed the request before May 6, 2024. Pursuant to new final regulations adopted in 2024, all extension requests under Code Section 2642(g)(1) filed after May 6, 2024, are instead governed by Treasury Regulations Section 26.2642-7.

4. ***The IRS ruled that termination under state law did not cause trust funded prior to September 25, 1985, to be subject to GST tax or result in any taxable gifts. PLR 2025509010 (Feb. 28, 2025).***

This Private Letter Ruling concerns the potential generation-skipping transfer ("GST") tax consequences of the termination of a trust. The trust was for the primary benefit of the Settlor's grandchild, the grandchild was the sole beneficiary during the grandchild's lifetime, upon the death of the grandchild the income interest was payable to the grandchild's then living issue, the trust would terminate upon the death of the grandchild and the grandchild's then living children and grandchildren, and upon termination the remaining assets would be distributed outright to the grandchild's then living issue. According to the Treasury Regulations, in general, the GST tax does not apply to the trust, because it was irrevocable and funded before September 25, 1985.

Pursuant to a termination agreement valid under state law, that was subject to a favorable ruling from the IRS, the trust beneficiaries, and their representatives, agreed to terminate the trust and to distribute the remaining assets to all of the beneficiaries in accordance with the actuarial value of each beneficiary's interest. A court approved the termination agreement.

In accordance with the rules under Treasury Regulations Section 26.2601-1(b)(4)(D), the IRS ruled that the plan to terminate the trust and to distribute the assets based on the actuarial value of each beneficiary's interest would not cause the trust to become subject to the GST tax because it would not cause a beneficial interest to be shifted to a beneficiary occupying a lower generation and would not extend the time for vesting of any beneficial interest. Furthermore, the IRS ruled that the distribution plan would not result in any taxable gifts under Code Section 2501 by the beneficiaries, since no transfer of property occurs by any beneficiary when the assets are distributed among the beneficiaries in accordance with the actuarial value of each beneficiary's interest.

Finally, the IRS also ruled that for income tax purposes the distribution of the assets would be treated as a sale of the grandchild and successor remaindermen's interests to the current remaindermen and an exchange by the current remaindermen of their interests with the other beneficiaries. The grandchild's basis in the income interest is only a portion of the income interest and the transaction is not a sale of the entire interest, the basis is ignored. The holding period, however, is longer than a year. So the entire amount received by the grandchild is long term capital gain. The IRS ruled that the analysis applied to the other beneficiaries as well.

5. ***The IRS granted taxpayer an extension of time to allocate GST exemption to two irrevocable trusts where accountant inadvertently made an election out of allocation on the Form 709 for the applicable year. PLR 202521013 (May 23, 2025).***

The IRS granted an extension of time to allocate GST exemption to a taxpayer who reasonably relied on the advice of a tax professional. Grantor established and funded Trust 1 for the benefit of Grantor's issue in Year 1. Grantor made an additional transfer to Trust 1 in Year 2. On the date that is the later of the death of Grantor, Grantor's spouse, and the time at which all living children reach a specific age, Trust 1 will be divided among Grantor's issue, per stirpes, and held in further separate trusts. The remainder of each separate trust will be distributed to the remaining beneficiaries upon the close of the perpetuities period applicable under state law. Grantor established and funded Trust 2 with the same terms in Year 2. Accountant prepared Grantor's Year 2 Form 709 and on the return mistakenly made the election under Code Section 2632(c)(5) to opt out of automatic allocation of GST exemption. Accordingly, no GST exemption was allocated to Grantor's Year 2 transfers to Trust 1 or Trust 2. IRS concluded taxpayer reasonably relied on the advice of a qualified tax professional and granted an extension of time of 120 days to allocate Grantor's GST exemption to the transfers.

B. Modification of GST Trusts

1. *The IRS rules that modifications of grandfathered GST Trusts will not cause the trusts to be subject to the GST tax. PLR 202432012 (Aug. 9, 2024); PLR 202432013 (Aug. 9, 2024).*

These Private Letter Rulings concern various issues, but most notably generation-skipping transfer ("GST") tax issues, related to two separate but identical trusts created under the will of a settlor. According to the Treasury Regulations, in general, the GST tax does not apply to transfers under the trusts at issue, referred to as the Grandchild 1 Trust and Grandchild 2 Trust, because they were irrevocable before September 25, 1985. After prior modifications already approved by the IRS, the Grandchild 1 Trust and Grandchild 2 Trust were each for the benefit of a separate grandchild of the settlor, that grandchild's descendants, and the parent of that grandchild who was the child of the settlor. Upon the child's death, the remaining assets of each Grandchild Trust were to be distributed to the grandchild, if living, or if not, distributed among the grandchild's descendants, if any, or if none, distributed among the child's descendants, to be held in trust for that individual only if the trustee already held assets in trust for the primary benefit of that individual. The terms of the will also appointed a certain named individual as successor Trustee of each Grandchild Trust and permitted the adult income beneficiaries of each trust to appoint successor Trustees in the event of a vacancy. Most recently, the parties received new orders under state law to modify the terms of Grandchild 1 Trust and Grandchild 2 Trust, subject to new favorable rulings from the IRS. These new modifications, among other changes, permitted distributions to each beneficiary of a Grandchild Trust to be held in a separate trust for the primary benefit of that individual (referred to herein as an "Article V, L. Trust"), and upon the death of the child, directed the remaining assets to be held in a separate Article V, L. Trust for the benefit of the grandchild, or the grandchild's descendants, or the child's

descendants, as the case may be. The beneficiary of each Article V, L. Trust held a testamentary general power of appointment over the trust assets. The new modifications also removed the appointment of the original successor Trustee, permitted the current Trustee to appoint additional and successor Trustees, permitted the child and grandchild with respect to each Grandchild Trust to appoint additional and successor Trustees of that trust, if the current Trustee ceased serving, and permitted each grandchild to appoint additional and successor Trustees of that grandchild's Article V, L. Trust and each Article V, L. Trust for the benefit of that grandchild's descendants.

The IRS ruled that the dispositive modifications would not cause the Grandchild 1 Trust or Grandchild 2 Trust to lose its status as exempt from the GST tax. Although the changes required distributions during and after the child's lifetime to be held in trust instead of distributed outright, as a result of the testamentary general power of appointment held by each beneficiary of an Article V, L. Trust (causing such assets to be includible in the gross estate of that beneficiary), this change neither shifted beneficial interests to beneficiaries in lower generations nor extended the original time for vesting of any beneficial interest. Furthermore, the IRS ruled that the changes to the Trustee appointment provisions also did not cause the trusts to lose their exempt statuses, because such changes were administrative in nature and would only indirectly increase amounts transferred under each trust.

The IRS also ruled that the modifications would not create a taxable gift by any beneficiary of either Grandchild Trust, since the changes would not alter any beneficial interests, and therefore, no transfer would be deemed to occur that could constitute a gift. Furthermore, the IRS ruled that the modifications, for income tax purposes, would not cause any recognition of gain or loss from the disposition of property and would not change the adjusted basis and holding periods of the assets of each Grandchild Trust because no transfer of property would be deemed to occur as a result of the modifications.

2. ***The IRS ruled that judicial modifications under state law did not spoil generation-skipping transfer tax exemption of trusts originally created and funded prior to September 25, 1985. PLR 202446006 (Nov. 15, 2024); PLR 202446007 (Nov. 15, 2024).***

These Private Letter Rulings concern the potential generation-skipping transfer ("GST") tax consequences of modification to two separate but identical trusts. According to the Treasury Regulations, in general, the GST tax does not apply to transfers under the trusts at issue (originally Trust 1 but currently Trust 1A and Trust 1B), because they were irrevocable and funded before September 25, 1985. Trust 1 was created for the benefit of the descendants of the Grantor's daughter (the "Daughter"), and upon the Daughter's death, its remaining assets were to be divided per stirpes into separate trusts for the primary benefit of each of the Daughter's then living descendants. The Trustee of each continuing trust created for a descendant of the daughter had discretion to distribute trust assets to

that descendant, his or her descendants and their respective spouses, and one-half and the remaining assets of the trust was required to be distributed to the primary beneficiary upon his or her attainment of certain ages, respectively; provided, however, if the primary beneficiary died before the termination of the trust, he or she had a limited testamentary power of appointment over the remaining trust assets, and any unappointed assets would be distributed per stirpes among his or her then living descendants. Pursuant to modifications made under state law that were already approved by the IRS, the assets of Trust 1 were divided pro rata into separate Trusts 1A and 1B for the benefit of each of the Daughter's then living children ("Grandchild A" and "Grandchild B") with the same dispositive provisions as Trust 1. As a result, at the death of the Daughter, Grandchild A had the right to receive portions of Trust 1A upon reaching certain ages, and Grandchild B had the right to receive portions of Trust 1B upon reaching certain ages.

At the time of these new ruling requests, the Daughter, Grandchild A and Grandchild B were still living, and Grandchild A and Grandchild B had reached the age when they would have the right to receive the remaining assets of Trust 1A and Trust 1B, respectively, upon the death of the Daughter. The parties received new orders under state law, subject to favorable rulings from the IRS, to modify the terms of Trust 1A and Trust 1B by extending the termination of each trust to the death of Grandchild A or Grandchild B, respectively, and granting Grandchild A and Grandchild B testamentary general powers of appointments. Put differently, the proposed modifications would cause the assets to remain in trust for Grandchild A or Grandchild B's lifetime but would be included in Grandchild A or Grandchild B's gross estate for federal estate tax purposes upon his or her death as a result of the inclusion of the general powers of appointment.

The IRS ruled that the proposed modifications would not cause Trust 1A or Trust 1B to lose their status as exempt from the GST tax and would not cause any distribution from those trusts to be subject to the GST tax. Although the changes prohibited Grandchild A or Grandchild B from withdrawing all of the assets during his or her lifetime, the IRS ruled that the changes did not cause a shift in any beneficial interest in either trust to any beneficial occupying a generation lower than the persons holding the beneficial interests and did not extend the original time for vesting of any beneficial interest.

3. ***The IRS ruled that judicial modification under state law did not spoil generation-skipping transfer tax exemption of trust that became irrevocable upon settlor's death prior to January 1, 1987. PLR 202518008 (May 2, 2025).***

According to the Code and Treasury Regulations, in general, the generation-skipping transfer ("GST") tax does not apply to transfers under the trust at issue, because it was created under a revocable trust that was executed before October 22, 1986, not amended after October 21, 1986, and the settlor died before January 1, 1987. Upon the settlor's death, trusts were created for the

settlor's spouse, and upon the death of the spouse, a trust was created for the settlor's descendants. The original terms of the trust directed that upon the death of the children, the remaining assets would fund separate trusts for each of the settlor's grandchildren (each a "Grandchild's Trust"); provided, however, a share for a deceased grandchild would be distributed outright to his or her descendants. Furthermore, the original terms of the trust provided that twenty-one years following the death of the survivor of all of the settlor's descendants who were living at the time of the settlor's death (the "Perpetuities Period"), each grandchild would have the right to withdraw all of the principal from his or her Grandchild's Trust, and upon that grandchild's death, any assets not distributed pursuant to the grandchild's exercise of a testamentary limited power of appointment would be distributed outright to his or her descendants.

The beneficiaries of the trust executed a nonjudicial settlement agreement, valid under state law and approved by a state court, to modify the provisions of the trust for the purpose of avoiding, to the extent possible, outright distributions of assets to the settlor's descendants. The modification directed any share apportioned for the descendant of a deceased grandchild to be held in a separate trust for that individual's benefit; provided, however, such beneficiary would have the right to withdraw all of the principal from that trust upon the ending of the Perpetuities Period, and upon the death of that beneficiary, he or should would have a testamentary general power of appointment over the remaining trust assets, though such power could not be exercised so as to extend the trust beyond the Perpetuities Period.

The IRS ruled that the proposed modification would not cause the trust to lose its GST-exempt status, concluding that the changes "will not cause a shift of a beneficial interest to a lower generation beneficiary nor extend the time for vesting of any beneficial interest beyond the period provided for in the original trust," thereby satisfying the rule under Treasury Regulations Section 26.2601-1(b)(4)(i)(D)(*1*).

4. ***The IRS ruled that judicial modification under state law did not spoil generation-skipping transfer tax exemption of an irrevocable trust created and funded prior to September 25, 1985. PLR 202518009 (May 2, 2025).***

This Private Letter Ruling involves the modification of a trust, similar to the issue in PLR 202518008, but in this case the generation-skipping transfer ("GST") tax does not apply to transfers under this trust because it was irrevocable and funded before September 25, 1985. The settlors created the irrevocable trust for the benefit of their daughter. The original terms of the trust directed that upon the daughter's death, the remaining assets would fund separate trusts for the daughter's descendants (each a "Descendant's Trust"); provided, however, when the daughter's youngest child reaches twenty-one years of age, all of the remaining assets of each Descendant's Trust would be distributed outright to the beneficiary of that trust or to the beneficiary's then living descendants.

The current beneficiaries of the trust executed a nonjudicial settlement agreement, valid under state law and approved by a state court, to modify the provisions of the trust for the purpose of avoiding, to the extent possible, outright distributions of assets to the daughter's remote descendants. The modification directed for the trust to terminate after the daughter's death and upon the daughter's youngest child reaching twenty-one years of age; provided, however, for any share then apportioned for one of the daughter's children to be distributed outright to that child, and for any share then apportioned for a more remote descendant of the daughter's to be held in a separate trust for that individual's benefit. Furthermore, such separate trust would terminate upon the earlier to occur of the beneficiary's death or twenty-one years after the date of death of the last to die of the daughter and her descendants who were living at the time of the execution of the original trust (the "Perpetuities Period"). Upon termination due to the expiration of the Perpetuities Period, the remaining assets of that separate trust would be distributed outright to the trust beneficiary, and upon the death of the trust beneficiary, the remaining assets of his or her separate trust would be subject to the beneficiary's testamentary general power of appointment.

The IRS ruled that the proposed modification satisfied the rule under Treasury Regulations Section 26.2601-1(b)(4)(i)(D)(*1*) and would not cause the trust to lose its GST-exempt status, concluding that the changes would "not cause a shift of a beneficial interest to a lower generation beneficiary nor extend the time for vesting of any beneficial interest beyond the period provided for in the original trust."

IV. U.S. INCOME TAX

A. One Big Beautiful Bill Act

Congress passed the One Big Beautiful Bill Act (this is not the technical name of the act but instead it is referred to as an "Act to provide for reconciliation" in the legislation) (hereinafter, the "Act") and it was signed into law by the President on July 4, 2025. The Act was approved via the reconciliation legislative process which allowed for a majority approval in the Senate rather than the customary sixty vote requirement. The Act permanently extends most of the provisions of the Tax Cuts and Jobs Act (the "TCJA"). A brief summary of selected provisions of the Act is included below.

1. ***Fiscal Impact***. The Act reduced government spending by $1.7 trillion (largely Medicaid and health care) but added $450 billion in increased spending in other areas, such as defense and immigration enforcement). The Act results tax cuts of over $4 trillion over the next decade. The Act is estimated to add $4.1 trillion to the national debt over the next ten years.

2. ***Income Tax Provisions***. The Act provides for the following income tax changes:

a) The tax rates and brackets created under the TCJA are extended.

b) The TCJA's increased standard deduction is extended and slightly increased. The standard deduction will continue to be adjusted for inflation for subsequent years.

c) Taxpayers over the age of 65 receive an additional $6,000 deduction for tax years 2025 through 2028. The additional deduction begins to phase out for single taxpayers with modified gross income of $75,000 and for married taxpayers filing jointly with modified gross income of $150,000.

d) The nonrefundable child tax credit is increased to $2,200 per child in 2025. The refundable portion is also retained. The child tax credit will be adjusted annually for inflation.

e) The state and local tax ("SALT") deduction cap is temporarily increased from $10,000 to $40,000 from 2025 through 2029. The cap will increase by one percent each year through 2029. The increased SALT deduction, however, will begin to phase out with taxpayers who have modified adjusted gross income of $500,000 and the increase will completely phase out at modified adjusted gross income of $600,000. The phase out only applies to the $30,000 increase in the SALT deduction (i.e., those with modified adjusted gross income over $600,000 will still have an available SALT deduction of $10,000). Notably, the pass-through entity tax workaround for the SALT deduction offered by many states is still available under the Act.

f) Miscellaneous itemized deductions are permanently suspended.

g) Taxpayers who do not itemize are entitled to an above-the-line charitable deduction. The deduction is $1,000 for single taxpayers and $2,000 for married taxpayers filing jointly.

h) The increased 60% limitation on cash charitable contributions introduced by the TCJA is permanently extended. Itemizers, however, can only deduct contributions that exceed 0.5% of their income.

i) The TCJA's increased AMT exemption is extended.

j) The Act introduces a temporary above-the-line deduction for cash tips from 2025 through 2028 of up to $25,000. This deduction begins to phase out for taxpayers with adjusted gross income of $150,000 or more.

k) The Act introduces a temporary above-the-line deduction for overtime pay. The deduction is limited to $12,500 for single taxpayers and $25,000 for married taxpayers filing jointly. The deduction is available for tax years 2025 through 2028.

l) The Act introduces a temporary deduction for interest on qualified car loans. The deduction is limited to $10,000 and is available for vehicles that were finally assembled in the United States. The deduction is available for tax payers 2025 through 2028.

3. ***Business Tax Provisions***. The Act provides for the following business tax changes:

a) The TCJA's 20% qualified business income deduction under Code Section 199A is extended.

b) Corporate charitable deductions are limited by adding a one-percent floor that must be surpassed before an entity can receive a charitable deduction.

c) The qualified small business stock ("QSBS") exclusion is modified to provide that gain is excluded as follows: (i) 50% for stock held at least three years; (ii) 75% for stock held at least four years; (iii) 100% for stock held at least five years. For stock issued after July 4, 2025, the asset cap is increased from $10 million to $15 million and the asset ceiling is increased from $50 million to $75 million.

4. ***Estate, Gift and Generation-Skipping Tax Provisions***. The estate, gift and generation-skipping tax exemptions are increased to $15 million per person and beginning in 2026 and will be adjusted annually for inflation thereafter.

5. ***Miscellaneous Provisions***. The Act also provides for the following:

a) The provisions governing the use of 529 plan accounts are enhanced to allow additional expenditures. Specifically, the annual limit for primary school education is doubled to $20,000. Additionally, homeschooling expenses, SAT/ACT preparation fees and expenses for vocational and non-degree programs may be paid via 529 plans going forward.

b) The Act introduces Trump Accounts—tax advantaged savings accounts for children. A Trump Account can be opened for a child under the age of 8. For children born between 2024 and 2028, $1,000 will be added to the child's account by the federal government. Parents and relatives can annually contribute up to $5,000 (post-tax) to a child's Trump Account until the child attains the age of 18. Assets grow on a tax deferred basis. At age 18, up to one-half of the Trump Account can be used for certain qualified expenses (e.g., education, first-time home purchase). The withdrawals are subject to long-term capital gains tax rates. Funds can be withdrawn for any purpose after the age of 30 but a use for a non-qualified purpose will result in the withdrawal being taxed at

ordinary income tax rates. Assets contributed to a Trump Account must also be invested in diversified United States equity funds.

c) Additional opportunity zones will be available in beginning in 2027.

d) Excise tax rates for colleges and universities for net investment income is increased.

B. Basis Consistency Rules – Code Sections 1014(f) and 6035

1. *Treasury and IRS publish final regulations that provide guidance on the statutory requirement that a recipient's basis in certain property acquired from a decedent be consistent with the value of the property as finally determined for federal estate tax purposes. T.D. 9991 (Sept. 17, 2024).*

On September 17, 2024, the Treasury and the IRS issued final regulations effective September 17, 2024, under Code Sections 6035 and 1014(f), requiring the consistent reporting of basis on estate and income tax returns and reporting basis to both the IRS and persons who receive property from a decedent. These final regulations come after proposed regulations were published in 2016. While the final regulations preserve many of the rules under the proposed regulations, the final regulations make a few changes to the 2016 temporary and proposed regulations. For background, Code Section 6035 requires personal representatives of estates that must file a federal estate tax return to identify the value of each interest in the property included in the estate with a statement filed with the IRS and delivered to each beneficiary. Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent, along with its schedules, has been used to collect and report information regarding property acquired from a decedent. Code Section 1014(f) provides that the basis in property acquired from a decedent cannot exceed that property's final value for federal estate tax purposes, or, if the final value has not been determined, the value reported on the required statement under Code Section 6035.

The final regulations confirmed that certain adjustments to basis in property acquired by a decedent may be allowable. The final regulations also confirmed that certain property is exempt from Code Section 1014(f), such as property eligible for the marital and charitable deductions, and household and personal effects for which an appraisal is not required. The final regulations also confirmed that there is no requirement to provide a statement of the value of each interest in the property included in the gross estate when an estate tax return is filed solely to make a portability election. A personal representative who is also a beneficiary must deliver a Code Section 6035 statement to himself or herself. If a beneficiary cannot be located, the personal representative must still file the Form 8971 to describe the actions take to find the beneficiary. The final regulations also added some clarifications to property exempt from Code Section 6035

reporting requirements. Cash not only includes U.S. dollars, but it also includes any cash equivalent payable in U.S. dollars.

A notable change in the final regulations pertains to property not included in the estate tax return. Under the proposed regulations, if property was discovered after the filing of the estate tax return or omitted from the estate tax return and reported after the expiration of the statute of limitations on the assessment of estate tax, the basis of the property would be zero. The final regulations get rid of this "zero-basis rule." The final regulations also altered the previous rule that the recipient of property who transfers the property to a related party must file a supplemental Form 8971. This rule now applies only to trustees who make distributions of property that was reported on a Code Section 6035 statement to the trustee.

C. Fiduciary Income Tax

1. *The District Court ruled against the IRS's motion to dismiss Trustee's claim for refund of payment of tax penalties and interest related to Trustee's failure to timely file an income tax return for the irrevocable Administrative Trust finding that the Trustee pled sufficient facts for a determination of whether she reasonably relied upon the advice of her CPA. Murphy v. United States, 2025 WL 535666 (E.D. Cal. Feb. 18, 2025)*

A District Court denied the IRS's motion to dismiss a Trustee's claims for refunds of tax penalties and interest paid related to the failure to file tax returns for an Administrative Trust and her claim that she reasonably relied on her accountant. On January 7, 1993, Mr. Murphy and Ms. Murphy created a revocable Grantor trust. Upon Mr. Murphy's death on November 28, 2016, the trust was converted to an irrevocable trust, creating a new obligation for Ms. Murphy, as Trustee, to file a tax return on behalf of the Administrative Trust. The Trustee worked with her long-term CPA who filed various returns on her behalf, including her personal returns and her corporate return. She subsequently discovered the failure to file the returns for 2016 and 2017 and paid the penalties and interest associated with the failure to file and untimely returns. Within three years of filing the returns, the Trustee submitted a letter to the IRS requesting a refund for the interest and penalties indicating that she reasonably relied on her CPA with respect to the filing requirements for the Administrative Trust. She subsequently filed a formal claim for the refund with the IRS and a question arose as to whether she timely filed the formal claim with the relevant statute of limitations.

The District Court denied the IRS's motion to dismiss based on failure to timely file a refund claim by determining that the letters submitted requesting a refund satisfied the informal claim doctrine for submitting a claim. The informal claim doctrine is a judicially created exception to the tax code's timeliness requirements that provides that a taxpayer may stop the statute of limitations from

tolling through the filing of a refund claim even if it is technically deficient as long as it is later corrected by the filing of a formal claim. The informal claim doctrine requires that the taxpayer (i) give notice to the IRS that it is asserting a right to a credit or refund, (ii) state the legal and factual basis for the claim and (iii) do so in writing or have a written component. The District Court held that the Trustee's complaint alleging that the letter seeking a refund was a claim was sufficient for an informal claim and therefore the Trustee's claim should not be dismissed.

The District Court next addressed whether the Trustee's claim that it reasonably relied on her CPA should be dismissed. Reliance on the advice of an accountant is deemed reasonable by the Tax Court if "(1) The adviser was a competent professional who had sufficient expertise to justify reliance, (2) the taxpayer provided necessary and accurate information to the adviser, and (3) the taxpayer actually relied in good faith on the adviser's judgment." *Cooper v. Comm'r*, 877 F.3d 1086, 1095 (9th Cir. 2017) (citing *Neonatology Assocs., P.A. v. Comm'r*, 115 T.C. 43, 99 (2000)). Here, the accountant was a Certified Public Account who provided tax advice and prepared returns for Ms. Murphy, individually and in her capacity as Trustee, for fifteen years without any prior issues. Ms. Murphy informed her CPA of Mr. Murphy's death and affirmatively requested that he prepare the required returns under the circumstances. Ms. Murphy relied on the CPA's determination that certain income was reportable on her personal returns rather than the returns of the Administrative Trust. Further, Ms. Murphy's failure to review the tax returns does not negate her reasonable reliance because reviewing the returns would not have provided any basis for her to doubt her CPA's advice.

D. Charitable Contributions and Gifts – Code Section 170

1. *The Tax Court disallowed charitable deductions claimed by taxpayer because of its failure to comply with acknowledgement and substantiation requirements. IQ Holdings, Inc. v. Comm'r, T.C. Memo. 2024-104 (Nov. 7, 2024).*

The Tax Court analyzed a taxpayer's claimed charitable deductions for gifts of equipment, residential property, and cash given to non-profit affiliated with taxpayer. The IRS disallowed the deductions due the taxpayer's failure to comply with the acknowledgment requirements.

Treasury Regulations require that a taxpayer must have a written acknowledgment from the donee-charity for any charitable deduction of $250 or more. The acknowledgment must include the amount of any cash contribution, a description of any non-cash property contributed, a statement on whether the charity provided any goods or services in return for the donation, and a good faith estimate of their value. In addition, if a non-cash donation exceeds $5,000, the taxpayer must obtain a qualified appraisal and submit a summary of the appraisal

attached to the tax return. If the donation exceeds $500,000, the taxpayer must submit a full copy of the appraisal.

Taxpayer's acknowledgement letter failed to state whether goods or services were provided in exchange for the gift. In addition, taxpayer only submitted the local property tax assessment and did not obtain qualified appraisals for the residential property and equipment donation.

The Tax Court rejected the taxpayer's substantial compliance argument and held strict compliance with the statutory acknowledgment requirements is required to claim a charitable deduction.

2. ***Tax Court sustains charitable contribution deduction disallowance in bargain sale, rejecting Taxpayer's valuation of a donated building because the appraisals were based on flawed assumptions and inflated rental income potential. Leo v. Comm'r, T.C. Memo. 2025-9 (Jan. 29, 2025).***

In this charitable contribution deduction case, the Tax Court agreed with the IRS's valuation of donated property, reducing the deduction from $15,800,000 to $4,050,000, and subjecting the taxpayer to gross valuation misstatement penalties under Code Section 6662(h). In 2002, the taxpayer purchased two factory buildings on 136.4 acres of land in Union County, Mississippi (the "Property"). On December 13, 2013, the taxpayer completed a bargain sale of the Property with a charity and claimed a charitable contribution deduction. The taxpayer carried forward deductions from the sale through 2017. The IRS later issued a notice of deficiency for tax years 2016 and 2017 related to the charitable carryover for those years, reducing the charitable deduction and asserting penalties. The taxpayer filed a timely petition, arguing the carryover amounts in 2016 and 2017 should be allowed because its initial valuation of the Property was accurate.

After reviewing appraisals from both sides, the Tax Court sustained the IRS's adjustment, agreeing the value of the property was a fraction of what the taxpayer claimed. The Tax Court found the taxpayer's expert witnesses did not personally inspect the property and made flawed assumptions on the quality and condition of the buildings. Additionally, the Tax Court rejected the taxpayer's expert's use of capitalized income to value the properties because it was based on rent projections over three times the highest rent the property had ever produced. Finally, in rejecting the $15,800,000 million appraised value, the Tax Court relied on the fact that the property was sold by the charity for only $1,300,000 million just sixteen months after the donation. The Tax Court also sustained gross valuation misstatement penalties because the reported value well exceeded the 200% misstatement threshold under Code Section 6662(h).

3. ***The Tax Court granted partial summary judgment in favor of IRS related to taxpayer's claimed charitable contribution deduction on an***

income tax return but reserved for factual determinations the questions of whether taxpayers obtained a contemporaneous written acknowledgement and had reasonable cause for failing to obtain qualified appraisals. Cade v. Comm'r***, T.C. Memo. 2025-20 (Mar. 10, 2025).***

In addressing a summary judgment motion from the IRS, the Tax Court reserved for factual determination the questions of whether taxpayers received a contemporaneous written acknowledgment ("CWA") and had reasonable cause for failing to obtain qualified appraisals. Taxpayers filed a return indicating a tax liability of $293,822, which was not fully paid. During a hearing, taxpayers contended that they were entitled to a charitable deduction of $284,553 for the donation of tangible personal property for the same year and allowance of that deduction would eliminate the tax liability for the year in question. The taxpayers filed an amended return claiming the deduction as well.

The purported deduction stems from the donation of surplus tangible items (spring jackets, commercial vinyl tile, granite cobblestones). The taxpayers filed Forms 8283 for each category of donations. For the clothing items, the declaration was signed by the former owner of an army store. For the cobblestones, the declaration was signed by an individual who listed his title as "member" of the relevant supplier company. For the vinyl tile, the declaration was signed by the operations supervisor for a supplier. The taxpayers did not provide qualified appraisals and did not initially provide a CWA. The taxpayers only provided a purported CWA after several requests from the IRS. The IRS denied the charitable deduction claiming that the taxpayers had not satisfied the statutory requirements for donations of tangible items valued in excess of $5,000 because (i) they failed to secure an adequate CWA, (ii) they failed to secure qualified appraisals for the contributed items and (iii) they failed to establish that the individuals who signed the Forms 8283 were "qualified appraisers."

On the issue of whether a CWA was received, the Tax Court determined that there were factual questions regarding the authorship and authenticity of the purported CWA provided by the taxpayers that could not be decided by summary judgment. The Tax Court held, however, that the Forms 8283 could not be qualified appraisals and that, even if they were, none of the individuals who signed them were qualified appraisers because they did not meet the statutory requirements for classification as qualified appraisers. Finally, the Tax Court held that a determination of whether the reasonable cause defense applies is a factual determination.

4. ***The Tax Court allows a charitable deduction for donated art despite determining that the taxpayer's appraisal was not a qualified appraisal. WT Art Partnership LP v. Comm'r, T.C. Memo. 2025-30 (April 9, 2025).***

The issues in this case stem from WT Art Partnership LP's donations of five paintings to the Metropolitan Museum of Art and reporting aggregate

charitable contribution deductions in excess of $73 million, which the IRS denied in their entirety. Five questions presented for decision were (i) whether the appraisals attached to the returns were "qualified appraisals" by a "qualified appraiser"; (ii) if not, whether that lapse is excused because it is due to reasonable cause and not to willful neglect; (iii) whether the fair market value of *Palace Banquet* was $26 million (as reported or a lesser amount); (iv) whether the value otherwise determined for *Palace Banquet* should be reduced by a discount for lack of marketability attributable to a "deaccession restriction" allegedly imposed on the Met; and (v) whether various accuracy-related penalties apply. China Guardian appraised *Palace Banquet* for $26 million even though London Gallery had provided an $11 million estimate of value shortly before the appraisal. China Guardian had been told that a "more than $20 million deduction this year" was needed. The IRS audited the partnership's tax returns for the years in which charitable deductions were taken for *Palace Banquet* and four other paintings and issued accuracy-related penalties. In this case, the Tax Court found that the appraisals for *Palace Banquet* were not qualified appraisals for purposes of Code Section 170(a)(1) because no individuals from China Guardian who worked on or signed the appraisals were qualified appraisers. The individuals did not meet the definition as individuals who "earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in the regulations prescribed by the Secretary." Nevertheless, the Tax Court found that the reasonable cause exception applied because the failure to obtain a qualified appraisal was due to reasonable cause and not willful neglect. The taxpayer had used China Guardian in a previous audit examination by the IRS and the IRS had not challenged the appraisals or claimed that they were not qualified. Based on the taxpayer's prior experience with China Guardian and the IRS, the Tax Court found that the taxpayer had reasonable cause to believe that the appraisals would comply with all applicable reporting and substantiation requirements. In its review of fair market value, the Tax Court found that the fair market value of *Palace Banquet* was $12 million and that no legally binding "deaccession restriction" existed. However, the Tax Court did not enforce accuracy-related penalties because of the reasonable cause exception.

E. Conservation Easements

1. *Married taxpayers failed to satisfy the contemporaneous written acknowledgement requirement under Code Section 170(f)(8) and other requirements for a charitable deduction for their conservation easement donation to a county. Brooks v. Comm'r, 109 F.4th 205 (July 15, 2024).*

The U.S. Court of Appeals for the Fourth Circuit affirmed the U.S. Tax Court's decision to uphold the actions by the Commissioner to disallow a married couple's deductions on their income tax returns for a conservation easement and to impose accuracy-related penalties. In 2006, the married couple purchased roughly 85 acres of vacant land in Liberty County, Georgia, through a family limited liability company and divided it into two parcels. In 2007, the couple granted the county a conservation easement on one of the parcels and claimed

$5.1 million as a charitable deduction on their income tax returns. In 2015, the Commissioner issued a notice of deficiency for their returns, disallowed the deductions, and assessed penalties on the basis that the deductions failed to comply with multiple requirements of the Code and regulations and that the valuation of the donated property was a "gross valuation misstatement." After the married couple filed a petition to challenge the notice of deficiency, the Tax Court upheld the disallowance of the deduction and the assessment of penalties on the separate bases of (i) the failure to provide a contemporaneous written acknowledgment as required by Code Section 170(f)(8); (ii) the failure to submit an adequate baseline report to the county as required by Treasury Regulations Section 1.170A-14(g)(5); and (iii) the misrepresentation of the basis in the property and the failure to provide a reasonable excuse for doing so in violation of Treasury Regulations Section 1.170A-13(c). The Fourth Circuit found that the deed did not satisfy the contemporaneous written acknowledgment requirements because it failed to state whether the county provided any goods or services in consideration for the easement donated (the deed utilized the "boilerplate" language that other consideration was provided in addition to ten dollars). It is also worth noting that the couple attached to their return an appraisal and the deed granting the easement but failed to include any other document that purported to be a "contemporaneous written acknowledgement of the contribution by the donee organization" as required under the Code. The Fourth Circuit also found that the baseline report was inadequate in that it failed to provide specific detail necessary to describe the status of the property and fix the scope of the easement at the time of the donation. Finally, the Fourth Circuit concluded that the Tax Court did not clearly err in finding that the value of the easement was $470,000, and not $5.1 million or $3.63 million, as claimed at trial.

2. ***Partnership was disallowed a conservation easement charitable deduction based on the relinquishment of valuable development rights because the charitable contribution was not made in the tax year for which the return was filed and the development rights relinquished were overstated. Corning Place Ohio, LLC, et al. v. Comm'r, T.C. Memo. 2024-72 (July 17, 2024).***

In this memorandum opinion, the Tax Court upheld the Commissioner's disallowance of the charitable contribution deduction on the grounds that Corning Place Ohio, LLC ("Corning Place") did not make any charitable contribution during the 2016 tax year for which its return was filed. Corning Place was a single-member LLC from May 18, 2016, until July 7, 2016, when it became a partnership. Corning Place filed a partnership income tax return for the short year beginning July 7 and ending December 31, 2016, on which it claimed a $22.6 million charitable contribution deduction for donating a conservation easement over the Garfield Building, a historic building. However, the contribution was made on May 25, 2016. Given that Code Section 170(a) allows a deduction for a charitable contribution "payment of which is made within the taxable year," the Commissioner correctly denied the deduction. Moreover, the valuable development rights that were purportedly relinquished were the opportunity to

add 34-stories on top of a historic 11-story building, which was both impracticable and would have required the partnership to forfeit tax credits upon which it relied to finance the earlier renovation of the building.

3. ***The Tax Court, supplementing a prior holding that denied an income tax deduction for a gift of a conservation easement and upheld a gross overvaluation penalty, held that the government could also impose a 20 percent accuracy-related penalty for negligence under Code Section 6662(b)(1), because the "no-stacking" rule of Treasury Regulations Section 1.6662-2(c) prohibiting multiple accuracy-related penalties does not apply at the partnership level. Oconee Landing Property LLC v. Comm'r, T.C. Memo. 2024-73 (July 17, 2024).***

In this supplemental memorandum opinion, the Tax Court admitted that it erred in its earlier decision in the case in finding that the "no stacking" rule prohibited the Tax Court from determining if a negligence penalty applied to a partnership when its conservation easement charitable contribution deduction was disallowed. In the prior opinion, the Tax Court held that the taxpayer "was entitled to a charitable contribution deduction of zero" because the property on which the easement was granted was ordinary income property and the taxpayer failed to prove its basis, and the taxpayer failed to secure a qualified appraisal. The Tax Court found that the taxpayer was negligent with respect to its failures. The Tax Court admitted that there is no limitation on its ability to determine the applicability of more than one accuracy-related penalty at the partnership level. Accordingly, the Tax Court found that the facts establish that the accuracy-related penalty for a substantial understatement of income tax and the negligence penalty both apply to the taxpayer's underpayment.

4. ***The Tax Court held that the taxpayer, a limited liability company, grossly overstated the value of property donated as a conservation easement for tax deduction purposes and applied a 40% gross misstatement penalty. JL Minerals LLC v. Comm'r, T.C. Memo. 2024-93 (Oct. 8, 2024).***

JL Minerals, a Georgia limited liability company, donated a conservation easement on 64.7 acres of property to the Heritage Preservation Trust in 2016. The easement property had previously been subject to a 10-year mineral lease that granted a mining company the right to extract kaolin, a mineral with a myriad of uses, and abundant in the area. However, no mining had ever occurred during the period of the ten-year lease. In 2017, JL Minerals claimed a charitable deduction on its tax return for $16,745,000 relating to this donation. The Service issued a notice of final partnership administrative adjustment, disallowing the deduction and assessed penalties, later arguing (i) that JL Minerals lacked requisite donative intent to make the charitable contribution of the conservative easement, (ii) whether the contribution was made "exclusively for conservation purposes" under Code Section 170, (iii) whether JL Minerals obtained a qualified appraisal by a qualified appraiser under Code Section 170(f)(11)(D) and (E). The Tax Court

noted that "[a]lthough JL Minerals scrapes by each of these requirements," thus ruling against the IRS on the first three issues, the deduction was an "outrageous overstatement" given that the value on the return ($16,745,000) exceed the correct amount ($93,690) by more than 200%. The Tax Court held JL Minerals liable for a 40% gross misstatement penalty under Code Sections 6662(a) and (h).

5. ***On October 9, 2024, the Treasury Department and IRS issued final regulations identifying certain syndicated conservation easements, which have been repeatedly included on the IRS's annual list of "Dirty Dozen" tax schemes, as reportable listed transactions under Code Section 6011. T.D. 10007 (Oct. 9, 2024).***

In T.D. 10007, the Treasury and the IRS issued final regulations treating certain syndicated conservation easements and substantially similar transactions as listed, or reportable, transactions under Code Section 6011 and which are subject to penalties under Code Section 6707A for failure to report.

The final regulations adopt the Treasury and IRS's proposed regulations from December 8, 2022, with certain revisions. The final regulations cover three classes of abusive syndicated conservation easement transactions: (i) those that involve contributions occurring before December 30, 2022, (ii) those for which a charitable contribution deduction is not automatically disallowed by Code Section 170(h)(7), and (iii) those that substitute the contribution of a fee simple interest in real property for the contribution of a conservation easement. Additionally, the final regulations adopt Notice 2017-10's four-part definition of a syndicated conservation easement transaction: (i) the taxpayer receives promotional materials promising a charitable contribution deduction equal to or exceeding 2.5 times the taxpayer's investment in the passthrough entity (the "2.5 times rule"); (ii) the taxpayer invests directly or indirectly through a passthrough entity; (iii) the passthrough entity contributes the conservation easement to a qualified organization and allocates the charitable contribution deduction to its partners; and (iv) the taxpayer reports the charitable contribution deduction on the taxpayer's federal tax return.

Participants and material advisors are required to report these transactions to the IRS moving forward and for all tax years that are still open.

6. ***In a consolidated case, the Tax Court sides with two taxpayers on their entitlement to a conservation easement deduction, but finds the taxpayers failed to support deduction valuations, subjecting them to penalties. Jackson Crossroads LLC v. Comm'r, T.C. Memo 2024-111 (Dec. 19, 2024).***

In this conservation easement Memorandum Opinion, the Tax Court held in favor of the taxpayers on the IRS's technical arguments, but still found the taxpayers failed to provide sufficient support for their claimed easement values, sustaining the disallowance of most of the claimed deduction and the imposition

of gross overvaluation penalties. In 2016, the taxpayers, Jackson Crossroads, LLC, and Long Branch Investments, LLC, contributed two conservation easements to the Oconee River Land Trust. At issue were the following: (i) whether the partnerships satisfied Code Section 170 to claim the charitable deduction, specifically whether the deductions should be capped at the adjusted basis limitation under Code Section 170(e)(1)(A) as inventory in the hands of the partnerships; (ii) the fair market value of the conservation easements; and (iii) whether the partnerships should be subject to any penalties.

The Tax Court first rejected the IRS's argument that the charitable deductions should be subject to a basis limitation under Code Section 170(e)(1)(A). The IRS argued the properties should be considered inventory and not capital assets under Code Sections 724(b), 724(d)(2), 751(d), and 1221(a)(1), asserting the property should retain the character it had in the hands of the contributing partner. The partnerships argued the property was always held by the contributing partner and the partnership for conservation purposes and not as investment property. The Tax Court applied a multifactor test set out by the Eleventh Circuit to determine whether the property should be considered capital assets or inventory. The Tax Court found the properties were acquired by the partnerships for conservation purposes and the limitation in Code Section 170(e)(1)(A) did not apply.

However, despite finding in favor of the partnerships for satisfying the requirements of a Code Section 170 deduction, the Tax Court rejected the taxpayers' valuations and amount of deduction. Specifically, the Tax Court found the valuations unsupported the claim the properties' highest and best use were mining and industrial development, stating the claims were largely speculative and unsupported. The Tax Court sustained the reduced the value of the easements from $36.8 million to $2.8 million and sustained 40% accuracy related penalty because the valuation was a gross overstatement.

7. ***In A.O.D. 2024-01, the IRS acquiesced that notices that identify certain arrangements as reportable transactions, listed without following notice-and-comment rulemaking procedures after the American Jobs Creation Act of 2004, are invalid under the Administrative Procedure Act. A.O.D 2024-01, 2024-52 IRB 1354 (Dec. 23, 2024).***

On December 23, 2024, the IRS's A.O.D. recommended acquiescence to the Eleventh Circuit's decision in Green Rock LLC v. Internal Revenue Service, 104 F.4th 220 (11th Cir. 2024). In Green Rock, the Eleventh Circuit held that Notice 2017-10, 2017-4 IRB 544, which classified certain syndicated conservation easements as listed transactions, was invalid under the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 et seq., because it was issued without following notice-and-comment rulemaking procedures. In so finding, the Eleventh Circuit adopted the reasoning of the Sixth Circuit in Mann Construction, Inc. v. United States, 27 F.4th 1138 (6th Cir. 2022), which invalidated a different listing notice, holding that listing notices issued after the

American Jobs Creation Act of 2004 ("AJCA") must follow APA notice-and-comment rulemaking procedures because the notices were issued pursuant to AJCA code sections that were legislative in nature. The A.O.D. also recognized the Tax Court reached the same holding in Green Valley Investors, LLC v. Comm'r, 159 T.C. 80 (2022).

The A.O.D. further states the IRS will not enforce the disclosure and reporting requirements set forth in those notices and will not assert penalties under Code Sections 6662A, 6707, 6707A, and 6708 resulting post-AJCA guidance that did not go through notice-and-comment rulemaking procedures. The IRS will concede and abate asserted penalties under Code Sections 6662A, 6707, 6707A, and 6708 in ongoing cases (whether pending in Tax Court and district courts or cases at any stage in which taxpayers request the abatement, removal, or refund of penalties administratively) resulting from identification of reportable transactions pursuant to post-AJCA notices that did not go through notice-and-comment rulemaking procedures. However, the IRS will not concede and abate penalties where there is a court-approved settlement or closing agreement, or an existing final court decision, or the applicable statutes of limitations have expired. Additionally, the A.O.D. does not apply to pre-AJCA notices.

8. ***The Tax Court allowed a charitable contribution deduction for a syndicated conservation easement transaction but significantly reduced the value of the donated conservation easement. Seabrook Property, LLC v. Comm'r, T.C. Memo. 2025-6 (Jan 21, 2025).***

In Seabrook Property, LLC claimed a $32.5M deduction for a conservation easement it granted on approximately 622 acres of land in rural Georgia. The LLC's only material asset at the time was the real property. The IRS disallowed the deduction in full. The IRS also determined that the LLC was subject to accuracy-related penalties. Before the easement donation, InvestCo, a company established to facilitate the transactions related to the easement donation, exercised its option to acquire the entirety of Ms. Belford's (member of LLC) 97% interest in the LLC for $4.74 million.

Although the appraisal did not include an exact legal description or address, failed to include the specific date of contribution, and failed to comply with the Uniform Standards of Professional Appraisal Practice (USPAP), the failures did not cause the appraisal to fail to substantially comply with regulatory requirements, as required for taxpayer to claim a charitable contribution deduction for granting an easement. Further, the Tax Court determined the taxpayer's appraiser was a qualified appraiser because he was a professional appraiser who held himself out to the public as such, was qualified to appraise the subject property, was not disqualified under Treasury Regulations Section 1.170A-13(c)(5)(iv), and made the necessary penalty statement pursuant to Code Section 6701.

However, the Tax Court rejected the appraiser's method in comparing the property with his chosen comparables and rejected his income approach analysis due to numerous problems with information he utilized to complete the analysis (much of which the Tax Court felt was unsupported). Instead, the Tax Court heavily weighed comparable sales presented by the IRS's expert and the actual transaction between Ms. Belford and InvestCo.

The Tax Court determined that the fair market value of the easement was $4,718,000 and imposed a forty percent gross valuation misstatement penalty on the portion of the underpayment attributable to the overvaluation under Code Sections 6662(a), (b)(3) and (e)(1)(A). The Tax Court stated that a misstatement is "gross" if the value of property claimed on the return is 200% or more of the correct amount according to Code Section 6662(h)(2)(A)(i).

9. ***The Tax Court found the IRS complied with the procedural requirements of Code Section 6751(b)(1) by securing timely supervisory approval of penalties related to a charitable contribution deduction claimed for the donation of a conservation easement. Park Lake II, LLC v. Comm'r, T.C. Memo. 2025-11 (Jan 30, 2025).***

Granting the IRS's motion for partial summary judgment, the Tax Court found the IRS complied with the requirements of Cod Section 6751(b)(1) when determining penalties by receiving timely supervisory approval. In 2016, the taxpayer, an Alabama limited liability company treated as a TEFRA partnership for Federal income tax purposes, claimed a charitable contribution deduction of $17.6 million for its donation of a conservation easement. In June of 2019, the IRS selected the taxpayer's 2016 Form 1065 for examination. As the examination concluded, on March 27, 2020, the Revenue Agent ("RA") titled "primary team coordinator" recommended the assertion of penalties under Code Sections 6662 and 6662A on a civil penalty lead sheet which she affixed her digital signature. On the same date, the exam team RA with the title "team manager" affixed his digital signature to the same lead sheet. The "issue manager" for the examination also signed the penalty lead sheet on the same day.

On July 8, 2020, the IRS issued the taxpayer an FPAA, including Form 886-A, Explanation of Items, disallowing the charitable contribution deduction claimed for the easement and determining the aforementioned penalties under Code Sections 6662 and 6662A. The taxpayer timely petitioned the Tax Court for readjustment of the partnership items. In its Answer, the IRS asserted, under Code Section 6662A(c), an increased penalty of 30% for a reportable transaction understatement. The penalty was recommended by IRS Senior Counsel, and the Senior Counsel's immediate supervisor subsequently signed the answer.

In its order, the Tax Court found the IRS followed proper procedure under Code Section 6751 when assessing the penalties, which requires an initial determination of penalties to be personally approved (in writing) by the immediate supervisor of the individual making such determination. The Tax

Court first rejected the taxpayer's general argument that because the IRS asserts penalties in all conservation easement audits, someone other than the examining agent must be making the initial determination. The Tax Court then found an "initial determination" occurred on March 27, 2020, and was unpersuaded by the fact that nine months prior, a different IRS employee indicated that penalties will be considered and assessed, if applicable, on a Risk Analysis Worksheet. Finally, the Tax Court also found staffing changes did not negate the supervisor's status as "immediate supervisor," and approval was made timely in writing.

10. ***The Tax Court denied a charitable deduction for a facade easement finding that the building was not a certified historic structure and that the easement did not protect any conservation purpose recognized by Code Section 170(h)(4). Capitol Places II Owner v. Comm'r, 164 TC No. 1 (Feb. 2, 2025).***

A façade easement preserves a historical structure by restricting changes to the structure. An LLC donated a façade easement over the exterior of a Building in a registered historic district in Columbia, South Carolina, to a historic preservation organization. Relying on a professional appraisal, the LLC claimed a charitable contribution deduction of $23,900,000 for a qualified conservation. The IRS disallowed the deduction.

To be deductible as a charitable contribution, a façade easement must be on a "certified historic structure." Under Code Section 170(h)(4), the term "certified historic structure" includes (i) any building, structure, or land area which is listed in the National Register or (ii) any building which is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district. The Tax Court addressed whether the building qualified as a "certified historic structure" under Code Section 170(h)(4).

In June 2000, the then owner of the Building submitted an application to the National Park Service ("NPS") to determine the Building's eligibility for listing on the National Register. NPS denied the application finding that the Building "does not appear to meet the criteria for individual listing on the National Register" because it "has lost important character-defining features." After concluding that the Building does not qualify as a "certified historic structure," NPS further noted that, while the building was not "within an existing registered historic district or potentially eligible district," it "could potentially contribute to a historic distric" [sic] "[b]ecause of its scale and prominence."

A few years later, the Historic Columbia Foundation, submitted to the National Register, nominating the Columbia Commercial Historic District, in Columbia, South Carolina, for listing in the National Register as a historic district at the local level of significance. The form listed a total of fifty-four commercial buildings within the historic district, identifying thirty-six, including the Building, as "contributing" and eighteen as "noncontributing." The application was

approved, and the Columbia Commercial Historic District was listed in the National Register. However, the Secretary of the Interior was not asked to certify and did not certify that, in the words of Code Section 170(h)(4)(C), the Building is "of historic significance to the district."

The LLC (which had become owner of the Building) recorded a historic preservation easement deed, granting a facade easement over the Building to the Historic Columbia Foundation. The deed stated "the Building was listed in the National Register of Historic Places in 2014 as a contributing resource of the Columbia Commercial Historic District ... and, as such, is a 'certified historic structure' as defined under Section 170(h)."

Highlighting the need for strict compliance, the Tax Court held that the Building did not qualify as a "certified historic structure" because it was not individually listed in the National Register of Historic Places, nor had the Secretary of the Interior certified it as being of historic significance to the district. The Tax Court rejected the LLC's argument that the building was listed merely by being within the district boundaries, emphasizing that the statute requires individual listing. Further, the Tax Court held that the deed conveying the façade easement made it clear that the easement was not intended to protect a "historically important land area."

11. ***In a conservation easement case, the Tax Court denied two motions for partial summary judgment, finding the charitable contribution deduction for a conservation easement limited to the donor's adjusted basis in the property. Habitat Green Investments, LLC v. Comm'r, Tax Ct. Dkt. 14433-17 (partial summ. judg. denied, Feb 10).***

Applying its prior opinions in *Oconee Landing Property LLC v. Comm'r, T.C. Memo*. 2024-25, app. filed, (11th Cir., Feb. 6, 2025); Mill Road 36 Henry LLC v. Comm'r, T.C. Memo. 2023-129; and Glade Creek Partners LLC v. Comm'r, T.C. Memo. 2023-82, the Tax Court held that charitable gifts of property held as inventory limit the donor's charitable contribution deduction to the donor's adjusted basis in the property under Code Section 170(e)(1)(A). The taxpayer partnership acquired property via transfer from a partner. The taxpayer then claimed charitable deductions for the contribution of a partial interest in the property through a conservation easement. The taxpayer sought partial summary judgment on the issue of whether any deduction the taxpayer is entitled to for its charitable contribution is limited by Code Section 170(e)(1)(A) to the taxpayer's basis.

Applying a summary judgment standard, the Tax Court operated under the assumption the property the partnership donated had inventory character in the hands of the transferring partner. The Tax Court relied on its precedent, finding all three cases, Glade Creek, Mill Road, and Oconee Landing, directly applied to the issues presented in the taxpayer's motion. The Tax Court reiterated the precedent confirmed that where a partnership holds real property contributed from

a partner who held the property as inventory, such character is inherited pursuant to Code Section 724(b); and when the partnership contributes to a charity a conservation easement thereon, Code Section 170(e)(1)(A) applies and reduces the charitable deduction to the donor's basis. The Tax Court rejected the taxpayer's argument that an easement cannot be inventory under Code Section 170(e)(1). Applying its decision in Oconee, the Tax Court held an easement is a real property interest, corresponding to a subset of property rights held by the fee simple owner, and thus can have the same inventory character as the fee simple property. Finally, the Tax Court agreed with the IRS that an opposite finding would result in more favorable tax treatment for gifts of partial interests than gifts of fee simple interests, and such result is unaligned with Congressional intent of Code Section 170(e)(1).

12. ***In a consolidated conservation easement case, the Tax Court held that conservation easement deeds did not comply with Treasury Regulation Section 1.170A-14(g)(6), found taxpayers' appraisals inaccurately described the highest and best use of the underlying property, and upheld gross valuation misstatement and accuracy-related penalties. Green Valley Investors, LLC v. Comm'r, T.C. Memo. 2025-15 (Feb. 11, 2025).***

In this consolidated trial concerning charitable contribution deductions claimed by four partnerships, the Tax Court held the conservation easement deeds did not comply with the requirements of Code Section 170 and upheld the IRS assessment of accuracy-related penalties. The taxpayers were four partnerships organized under North Carolina law as limited liability companies, Green Valley Investors, LLC, Big Hill Partners, LLC, Tick Creek Holdings, LLC, and Vista Hill Investments, LLC (the "Partnerships"). In 2014 and 2015, each of the Partnerships granted a conservation easement over its portion of a 607-acre tract of land (the "Property"). The Partnerships obtained valuations of the conservation easements which used a discounted cash flow analysis to value the easements based on the highest and best use of the Property as a crushed stone aggregate quarry. Each Partnership then claimed charitable deductions on its respective tax return totaling nearly $90 million between the four taxpayers.

Following audit, the IRS disallowed the Partnership's claimed deductions in full and asserted accuracy-related penalties. The Partnerships appealed to the Tax Court. On May 27, 2021, by order granting the IRS's motion for partial summary judgment, the Tax Court determined the conservation easement deeds failed to comply with the Treasury Regulation Section 1.170A-14(g)(6) and thus the Partnerships were unable to claim charitable contribution deductions. On November 9, 2022, the Tax Court granted the Partnership's cross motion for summary judgment prohibiting the imposition of Code Section 6662A penalties. Thus, the only issues left for trial were: (i) whether the IRS complied with Code Section 6751 procedural requirements when assessing penalties; and (ii) whether the gross valuation misstatement penalty, substantial understatement of income tax penalty, negligence penalty, and substantial valuation misstatement penalty

apply. The Tax Court explained that to determine whether penalties applied, it first had to determine the value of the charitable contribution deduction claimed, which required the determination of the fair market value ("FMV") of the conservation easement.

At trial, the parties offered expert witness testimony regarding the Property's highest and best use as a quarry, and the Property's FMV before and after granting the conservation easements. The Tax Court disagreed with Partnerships experts, finding the record insufficient to conclude the Property's use as a quarry financially feasible and maximally productive, and that the highest and best use of the Property remained its current agricultural/residential/recreational use. Having rejected the highest and best use as a quarry, the Tax Court subsequently rejected the Partnership's experts use of the income method, agreeing with the IRS that the raw unimproved land should have been valued using the sales comparison approach. The Tax Court concluded the FMV of the conservation easements was more than 200% lower than claimed by the Partnerships.

Finally, having determined the FMV of the conservation easements, the Tax Court sustained all penalties. First, the Tax Court held the IRS complied with the Code Section 6751(b) procedural requirements because an immediate supervisor approved of the penalties by digital signature. Next, the Tax Court sustained the 40% gross valuation misstatement penalty under Code Section 6662(h) because the claimed value of the easements was over 200% of the FMV. Finally, the Tax Court upheld accuracy related penalties under Code Sections 6662(c) and (d) finding the Partnerships tax matter partner failed to establish reasonable cause by relying on professional advice because he was sophisticated with respect to real estate and quarry development.

13. ***The Tax Court holds that the claimed value of a conservation easement vastly exceeded the correct value and holds a limited liability company liable for a 40% penalty for a gross valuation misstatement. Ranch Springs, LLC v. Comm'r, 164 T.C. No. 6 (March 31, 2025).***

Ranch Springs, LLC acquired land in Shelby County, Alabama for $6,500 per acre in December 2016. In December 2017, the LLC hired an appraiser who valued the land at $236,673 per acre based on its highest and best use for limestone mining. The LLC claimed a charitable deduction of $25,814,000 for a qualified conservation contribution. The Tax Court found that the LLC's acquisition of the land in 2016 was an arm's length transaction and provided strong evidence of the fair market value of the land before the easement. The Tax Court also found that the LLC failed to establish that limestone mining was the highest and best use of the land because the property was zoned as agricultural and the LLC did not prove that rezoning to permit mining was reasonably probable. Notably, the LLC did not even file a rezoning application. In any event, even if limestone mining was a permitted use, the valuation conflated the value of a hypothetical limestone business conducted on the land with the value of

the raw land itself. The Tax Court determined that the value of the easement was $335,500, which was determined based on the value of the property before the granting of the easement ($6,550 per acre) and the value after the easement. Given that the claimed value of the conservation easement vastly exceeded its correct value, the Tax Court held that the LLC is liable for a 40% penalty for a gross valuation misstatement.

F. Qualified Pension, Profit-Sharing and Stock Bonus Plans – Code Section 401

1. *The IRS released final regulations regarding required minimum distributions. T.D. 10001; 89 Fed. Reg. 58886-58954 (July 19, 2024).*

The IRS published final regulations for required minimum distributions ("RMDs"). The final regulations became effective on September 17, 2024, and apply to RMDs required for distribution calendar years beginning on or after January 1, 2025. The final regulations update the rules under Code Section 401(a)(9) and reflect changes made by the SECURE Act of 2019 and the SECURE 2.0 Act of 2022. The final regulations are largely consistent with the proposed regulations.

- "At Least As Rapidly" and 10-Year Rule. Under Code Section 401(a)(9)(B)(i) if a participant dies after distributions have begun, the participant's remaining interest must be distributed at least as rapidly as under the distribution method used by the participant as of the date of the participant's death (also known as the "at least as rapidly" rule). This controversial rule was retained in the final regulations and applies in addition to the new ten-year rule requiring beneficiaries to receive annual payments during the ten-year payment period when the participant dies on or after their required beginning date. The transition relief that has been granted each year will no longer apply starting in 2025.

- Increased Required Beginning Date (RBD) Age. The final regulations clarify that the applicable age for RMDs is as follows: 70 ½ if the participant is born before July 1, 1949; 72 if the participant is born after June 30, 1949, and before 1951; 73 if the participant is born after 1950 and before 1960; and 75 if the participant is born after 1959.

- ROTH accounts and RMDs. The final regulations eliminate RMDs for qualified ROTH plans, beginning after December 31, 2023. Note that the amendment does not apply to a RMD for a year beginning before January 1, 2024, that is permitted to be paid by April 1, 2024.

2. ***The IRS released final proposed amendments addressing sections of SECURE 2.0 Act of 2022. SECURE Act (REG-103529-23, Fed. Reg. 58644-58651) (July 19, 2024).***

In July 2024 the IRS published final proposed amendments to the Income Tax Regulations under Code Section 401(a)(9), relating to required minimum distribution rules for plans qualified under Code Section 401(a), and addressing sections of the SECURE 2.0 Act of 2022. Among several other amendments, the final proposals include the following rules: (i) for the purpose of determining an employee's required beginning date, the applicable age of an employee born in 1951 through 1959 is 73 (the applicable age of an employee born in or after 1960 is 75); (ii) if an individual fails to take the full required minimum distribution, steps are available for the individual to take a corrective distribution in order to reduce the excise tax from 25% of the shortfall to 10% of the shortfall; (iii) unless the surviving spouse makes an alternative election, the surviving spouse who is named as the sole beneficiary of the plan of an employee who dies before the employee's required beginning date will automatically be treated as the employee for the purposes of the required minimum distribution rules; and (iv) a see-through trust may qualify as a designated beneficiary if its provisions provide that the trust beneficiaries have an equal interest in the trust's interest in the plan assets and that the trust is to be immediately divided upon the employee's death (even if, as a result of the division, some trust beneficiaries will hold their interests directly while the interests of other trust beneficiaries will continue to be held in trust). These proposed rules apply to plan distributions on or after January 1, 2025.

3. ***The IRS waives 60-day rollover requirement for an IRA for a taxpayer who was the victim of an elaborate fraud scheme. PLR 202430010 (July 26, 2024).***

In this Ruling, the IRS waived a 60-day rollover requirement for a taxpayer's intended transfer of a certain amount from an IRA because the taxpayer was a victim of a fraud scheme. The taxpayer represented that she received a distribution from an IRA and was contacted by and proceeded to engage with several individuals who convinced her that she was the victim of identity theft and that to secure the funds, she had to make a series of financial transactions. After a few wire transfers, the taxpayer began to doubt the legitimacy of the operation and called the local police department and filed a police report. The taxpayer also reported the crime to a government agency. Within the same year, the government agency notified the taxpayer that the mastermind behind the fraud scheme had been arrested and sentenced.

Code Section 408(d)(1) provides that, except as otherwise provided in this section, that any amount paid or distributed from an IRA shall be included in gross income by the distributee. Code Section 408(d)(3)(A) generally provides that Code Section 408(d)(1) does not apply if the entire amount received is paid

into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the distribution.

The IRS determined that the information presented, and documentation submitted by the taxpayer was consistent with her assertion that her failure to accomplish a timely rollover was caused by her being a victim of a fraud scheme and waived the 60-day rollover requirement with respect to the distribution from the IRA pursuant to Code Section 408(d)(3)(1), provided all other requirements of Code Section 408(d)(3) were met. The taxpayer was granted a period of 60 days from the issuance of the ruling letter to contribute the amount into a Rollover IRA.

4. ***Internal Revenue Service and Treasury Department request comments on Saver's Match contributions to be paid by the Treasury under SECURE 2.0 Act of 2022. I.R.S. Notice 2024-65 (Sept. 5, 2024).***

In Notice 2024-65 issued on September 5, 2024, the IRS requested comments on the implementation of Saver's Match contributions. The SECURE 2.0 Act added Code Section 6433, which provides for matching contributions (Saver's Match contributions) paid by the Secretary of the Treasury to applicable retirement savings vehicles on behalf of eligible individuals who make qualified retirement savings contributions. Beginning in 2027, an individual can receive up to $1,000 in annual Saver's Match contributions by making annual contributions of up to $2,000 to a 401(k) plan or individual retirement account. The Saver's Match contribution is paid by the Treasury to a 401(k)-type plan or non-Roth individual retirement account. The contribution must be made as soon as practicable after an eligible individual files a tax return making a claim for the Saver's Match contribution. The amount of the Saver's Match contribution depends on the individual's income level. For most married filers, the phaseout range begins at $41,000 and ends at $71,000. For most unmarried filers, the phaseout range begins at $20,500 and ends at $35,500. The IRS and Treasury Department state that the Saver's Match contribution is a "new approach" to promoting retirement savings for millions of low- to moderate-income individuals. The Notice requested comments from all stakeholders on a variety of issues, including: (i) eligibility; (ii) claim process; (iii) account designations; (iv) contribution process; (v) recovery taxes on specified early distributions; (vi) reporting and disclosure; and (vii) other miscellaneous issues. Comments were due by November 4, 2024.

5. ***Chapter 13 trustee's objection to a taxpayer's bankruptcy estate exemption under Washington law for IRA, which her since-deceased husband had inherited from his father and of which taxpayer was successor beneficiary, was sustained. In re Reilly, U.S. Bankruptcy Court, C.D. Illinois (Oct. 8, 2024).***

Lisa Reilly filed a voluntary petition under Chapter 13 of the Bankruptcy Code and disclosed, among other assets, an inherited IRA. Reilly's position was

that the inherited IRA was exempt from the bankruptcy proceedings under Washington state law. The inherited IRA at issue was Reilly's late-husband's inherited IRA from Reilly's father-in-law. Under section 522(b) of the Bankruptcy Code, a debtor may use exemptions under the Bankruptcy Code unless applicable state law specifically prohibits the use of such exemptions. A debtor may in the alternative use a combination of state and local exemptions, federal exemptions other than those set forth in the Bankruptcy Code, and other limited exemptions. The applicable Washington state law exemption in this case provides that the right of any state citizen accruing under an employee benefit plan is exempt from seizure under any legal process. The bankruptcy Trustee, relying on a U.S. Supreme Court decision in Clark v. Rameker, 573 U.S. 122 (2014), argued that an inherited IRA loses its status as a retirement fund for purposes of the Bankruptcy Code, and thus the Washington state law exemption should not apply. The Court pointed out that no other court has addressed the issue of whether the Washington state law should be interpreted to include inherited IRAs. Weighing how other jurisdictions addressed similar state statutes, the Court decided to deny Reilly's claim of exemption in the inherited IRA under Washington state law. While Reilly also attempted to argue that the inherited IRA was community property and thus protected under Washington state law, the Court found that Reilly did not develop the factual and legal basis of her argument to overcome the presumption that inherited property is separate property.

6. ***The IRS waives the sixty-day rollover requirement for the victim of a sophisticated fraud scheme. PLR 202441015 (Oct. 11, 2024).***

The IRS analyzed a taxpayer's request for a waiver of the sixty-day rollover requirement contained in Code Section 408(d)(3). The taxpayer was a victim of a sophisticated fraud scheme and as a result failed to pay the amount the taxpayer received from an IRA into an IRA for the taxpayer's benefit within sixty days of receipt, as required under Code Section 408(d)(3)(A). When the taxpayer realized she was a victim of a fraud scheme, taxpayer timely filed reports with various law enforcement agencies.

Code Section 408(d)(3)(1) provides that the IRS may waive the sixty-day requirement under Code Section 408(d)(3)(A) when the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. The IRS concluded that the information presented and the documentation submitted by the taxpayer is consistent with her assertion that her failure to accomplish a timely rollover was caused by her being a victim of a fraud scheme. Accordingly, the IRS waived the sixty-day rollover requirement and provided the taxpayer with sixty days from the issuance of the PLR to make the contribution.

7. ***The Third Circuit affirms lower court ruling that taxpayer's retirement plan interests were excluded from his Chapter 7 bankruptcy estate even***

if the retirement plans operated contrary to ERISA and IRC. In re Gilbert, 120 F.4th 114 (3rd Cir. Oct. 24, 2024, amended Nov. 1, 2024).

Eric Gilbert filed for Chapter 7 bankruptcy in 2021 and listed two defined benefit plans valued at approximately $1.7 million. The question before the Court was whether Gilbert's creditors can collect from the retirement plans because they operated contrary to ERISA and the Code. The Bankruptcy Court, and the District Court on appeal, concluded that the retirement plans were beyond the creditors' reach. Under Bankruptcy Code 541(c)(2), beneficial interests in trusts that are subject to restrictions on transfers under applicable non-bankruptcy law are out of reach in bankruptcy. Gilbert claimed that his retirement plans were excluded from his bankruptcy estate. The Chapter 7 trustee sought a declaratory judgment that the retirement plans were available to creditors. The Chapter 7 trustee alleged the retirement plans operated contrary to ERISA and the Code because Gilbert used them "as an extra bank account without having to pay required taxes." The Third Circuit agreed with the lower courts' dismissal of the declaratory judgment based on a plain reading of Bankruptcy Code 541(c)(2) and a Supreme Court ruling in Patterson v. Shumate, 504 U.S. 753, 112 S.Ct. 2242, 119 L.Ed.2 519 (1992). In Patterson, the Supreme Court ruled that Bankruptcy Code 541(c)(2) excluded from the bankruptcy estate an interest in a retirement plan that satisfied all applicable requirements of ERISA and qualified for favorable tax treatment under the IRC. While the Chapter 7 trustee argued that violating ERISA and the Code rules should cause the retirement plans to be included in the bankruptcy estate, the Third Circuit reasoned that a violation of rules does not mean that those rules no longer apply. Given that ERISA and the Code applied to the retirement plans at issue, Bankruptcy Code 541(c)(2) excluded them from Gilbert's bankruptcy estate.

8. ***Surviving spouse eligible under Code Section 402 of the Code to transfer the decedent spouse's retirement annuities into IRA established by the surviving spouse. PLR 202451014 (Dec. 20, 2024).***

In this Private Letter Ruling, a taxpayer died at age 73 survived by a spouse. The taxpayer was a participant in qualified retirement annuities that are annuity contracts under Code Section 403(b). The taxpayer and spouse had a joint revocable trust which was named as beneficiary of the retirement annuities. The trust remains revocable during the surviving spouse's lifetime and the surviving spouse is the sole trust beneficiary. The custodian plans to make a lump sum distribution to the spouse, as trustee of the trust. The surviving spouse intends to make a distribution to the surviving spouse of all amounts in the retirement annuities and rollover the distributions into an individual retirement account (IRA) within sixty days of receipt as trustee of the trust. In the alternative, the surviving spouse would direct custodian to make a direct transfer of the retirement annuities to the IRA. The surviving spouse sought a ruling that such actions were eligible under Code Section 402(c). Under Code Section 402(c)(1), if any portion of an eligible rollover distribution from a Code Section 401(a) qualified retirement plan is transferred to an eligible retirement plan, the

portion of the distribution so transferred shall not be includible in gross income in the taxable year it is paid. In the ruling, the IRS stated that considering the circumstances that the surviving spouse was the sole trustee and beneficiary of the trust, and the surviving spouse of the taxpayer, the distributions from the retirement annuities attributable to the taxpayer were being paid to taxpayer's spouse, then Code Section 402(c) applies in the same manner as if the surviving spouse was the decedent. The IRS ruled that the surviving spouse's rollover was eligible and that the surviving spouse was not required to include the distribution in the surviving spouse's income for federal income tax purposes in the year of the distribution.

9. ***The IRS rules on tax consequences of Decedent's IRAs that named Revocable Trust as primary beneficiary that then divided proceeds into charitable and non-charitable shares. PLR 202506004 (Feb. 7, 2025).***

The IRS addressed the tax consequences of naming a revocable trust as the beneficiary of IRAs where the revocable trust provided for account proceeds to be divided into charitable and non-charitable shares. The decedent died owning multiple retirement accounts which named the decedent's revocable trust (the "Trust") as the sole beneficiary. The decedent died after her required beginning date. The Trust directed the Trustees, upon the death of the decedent, to divide and distribute a percentage of the retirement accounts to charitable organizations selected by the Trustees (the "Charitable Share"). The Trustees formed a Private Foundation as described in Code Sec. 501(c)(3) in accordance with the Trust's provisions to receive and distribute a lump sum from the retirement accounts in satisfaction of the Charitable Share within the same taxable year. The remaining percentage was to be distributed to one or more named individual beneficiaries in the Trust (the "Non-Charitable Share") as an inherited IRA titled under the decedent's name for the benefit of the named individual beneficiaries. Following the transfer of the retirement accounts, the Trustees planned to terminate the Trust within the same taxable year. The Trustees requested several rulings regarding the tax consequences of the proposed transaction.

The IRS ruled that the Trust was entitled to a deduction equal to the amount of IRD included in the Trust's gross income under Code Section 642(c)(1) and Treasury Regulation Section 1.642-1(a)(1) as long as the Trust distributed the full lump sum from the retirement accounts to the Foundation within the same taxable year.

The IRS concluded that the trustee-to-trustee transfer into inherited IRAs would not constitute a transfer under Code Sec. 691(a)(2) and that the named beneficiaries of the non-charitable share would include in their own gross income, the amounts of income from their respective inherited IRA.

The IRS ruled that because the Trust was listed as the beneficiary of each of the retirement accounts each account was treated as having no designated

beneficiary. Because the decedent died after her required beginning date, each of the Individual Beneficiaries would be required to take RMDs based on the decedent's remaining life expectancy. Finally, the IRS concluded that each individual beneficiary was responsible for the income tax liability relating to RMDs from their inherited IRAs.

10. ***The IRS ruled that funds distributed from an individual retirement account ("IRA") to an estate are not recognized as income to the surviving spouse under Code Sec. 408 because the surviving spouse was the sole beneficiary of the deceased spouse's estate, and the IRA funds were timely rolled over to the surviving spouse's IRA within 60 days. PLR 202519010 (May 9, 2025). See also PLR 202508002 (Feb. 21, 2025)***

In this Private Letter Ruling, the IRS ruled proceeds from the decedent's IRA distributed to the decedent's estate ("Estate") will not be recognized as income when the funds are timely rolled over to the surviving spouse's IRA. The Estate was the sole beneficiary of the decedent's IRA. The decedent died intestate, survived by their spouse ("Taxpayer"), who was the sole beneficiary of the Estate. Taxpayer intended to request the IRA custodian distribute the IRA as a as a lump sum payment to the Estate. Thereafter, within 60 days of receipt by the Estate, Taxpayer would roll the IRA proceeds to an IRA maintained for the benefit of Taxpayer. Taxpayer requested a ruling that: (i) the proceeds of IRA will be treated as being paid directly from the decedent's IRA to Taxpayer, and Taxpayer will therefore be treated as the payee or distributee for purposes of Code Section 408(d)(1); (ii) the IRA will not be treated as an inherited IRA within the meaning of Code Section 408(d) with respect to Taxpayer; and (iii) Taxpayer is eligible to roll over the decedent's IRA into their own IRA if such distribution occurs within 60 days of receipt by the Estate.

The IRS ruled that for purposes of Code Section 408(d)(3)(A), Taxpayer is treated as the distributee of the decedent's IRA. The IRS concluded that even though the IRA is payable to the decedent's Estate, because Taxpayer is the sole beneficiary of the Estate and the sole Executor of the Estate, Taxpayer is effectively the distributee of the IRA. Therefore, Taxpayer can roll over the IRA proceeds into their own IRA without recognizing income or having to treat the decedent's IRA as an inherited IRA.

G. Exemption from Tax on Corporations, Certain Trusts, etc. – Code Section 501(c)(3)

1. ***The IRS rules that tax-exempt activities conducted via two separate single-member limited liability companies are charitable activities under the Code. PLR 202451009 (Dec. 20, 2024).***

The IRS examined the activities of a taxpayer, a nonprofit corporation recognized by the IRS as being described under Code Section 501(c)(3) and classified as a public charity under Code Sections 509(a)(1) and 170(b)(1)(A)(vi),

conducted via two single-member limited liability companies. The taxpayer became the sole member of two limited liability companies (LLC A and LLC B), both of which were disregarded entities for federal tax purposes. LLC A was formed to facilitate a merger of an exempt organization into it, with LLC A the surviving state-law entity. As a result of the reorganization, the taxpayer through LLC A acquired the exempt organization's assets and activities.

Code Section 501(c)(3) describes organizations that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes and no part of the net earnings of which inures to the benefit of any private shareholder or individual. Treasury Regulations Section 1.501(c)(3)-1(d)(3) defines the term "educational" as the instruction or training of an individual to improve his or her capabilities, or the instruction of the public on subjects that are useful to the individual and that benefit the community. Example 2 of Treasury Regulations Section 1.501(c)(3)-1(d)(3)(ii) explains that an organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs is considered educational.

LLC A's activities included: (i) running a membership organization that is made up of post-secondary institutions, employers, workforce and economic development organizations, and mission-aligned entities; (ii) creating documentaries for K-12 schools, work force organizations, economic development organizations, and post-secondary institutions to allow students and others to explore various career pathways; (iii) assisting institutions of higher education and various organizations in providing career experiences to student-employees with valued businesses, providing educational support for students to develop soft skills, and providing tuition assistance to student-employees enabling these students to manage debt and stay enrolled; and (iv) facilitating a coaching program pairing post-secondary students with workforce boards, employers, and other non-profit organizations. The IRS ruled that LLC A's activities are both charitable and educational within the meaning of Code Section 501(c)(3).

LLC B's primary activity consists of compiling and analyzing educational and outcome data on nondegree credentials ("NDCs") programs offered by educational institutions that are either described in Code Section 501(c)(3) or Code Section 170(c)(1). This primary service is offered to charitable, government, and public education entities (the "Exempt Entities") without charge. LLC B also anticipates offering deeper, more extensive data analysis to the Exempt Entities for a nominal fee. Taxpayer anticipates that these fees will be less than twenty percent of LLC B's operational costs and that it will waive the fee for additional data analysis for Exempt Entities that are unable to afford the fee. The IRS ruled that LLC B's activities are both charitable and educational within the meaning of Code Section 501(c)(3). The IRS reasoned that this analysis of data is provided to these institutions to aid in the development and improvement of their NDC programs, therefore it furthers the essential functions of these institutions.

V. U.S. EXCISE TAXES

A. Foundation Set-Aside – Code Section 4942

1. *Private foundation's set-aside request to purchase a lodge in rural region to serve as its operations headquarters for promoting land and wildlife preservation was approved under Code Sec. 4942(g)(2). PLR 202432022 (Aug. 9, 2024).*

The IRS approved a private foundation's set-aside request to purchase a lodge in rural region to serve as its operations headquarters for promoting land and wildlife preservation.

Generally, private foundations must distribute five percent of the fair market value of the foundation's assets for charitable purposes each year. Under Code Section 4942(g)(2), an amount set aside for a specific project may be treated as a qualifying distribution in the year set aside if at the time of the set-aside the foundation establishes that the amount will actually be paid for the specific project within sixty months from the date of the first set-aside, and that the project is one which can better be accomplished by such set-aside than by immediate payment of the funds.

The foundation was formed to promote land and wildlife preservation in different regions throughout the world, and specifically in location X. The foundation requested a set-aside to purchase a lodge in location X to serve as the headquarters for the foundation's operations. The foundation was negotiating for the procurement of the lodge: however, the current ranch owner was asking for a sales price greater than what the foundation believed to be the fair market value. The foundation anticipated that real estate prices in the area would fall in the coming years due to drought conditions and other factors and wanted to wait until the market softened to purchase a lodge. The foundation provided a statement signed by its president stating that the set-aside will be paid within sixty months after the date of the set-aside.

In approving the set-aside request, the IRS reasoned that if the foundation were to purchase the lodge at an above-market cost, the foundation would be wasting resources and that the amount of the set-aside it requested correlated to the estimated fair market value cost for acquiring the lodge.

2. *The IRS approved a private operating foundation's request for a set aside for a significant construction project that represented an extraordinary undertaking for the foundation. PLR 202517024 (April 25, 2025).*

The IRS approved a private operating foundation's request for approval of a set-aside under Code Sec. 4942(g)(2). The foundation's purposes are (i) to support the conservation and scholarly study of materials of historic and cultural significant, (ii) to foster a wider public interest in the history and culture of the past, and (iii) to support education. The foundation has designed and is preparing

to construct two buildings at an ancient archaeological site, one of which will be used to examine, preserve, and restore certain archaeological artifacts. The other will be an office building for the staff that manages the archaeological park. The funds for the project will flow through an entity controlled by the foundation. The project is an extraordinary undertaking outside of the foundation's normal activities. Code Section 4942(g)(2)(A) states that an amount set aside for a specific project, which includes one or more purposes described in Code Section 170(c)(2)(B) may be treated as a qualifying distribution if the foundation establishes that the amount will be paid within five years and the project can be better accomplished using the set-aside than by making an immediate payment. Here, the IRS approved the set-aside request.

B. Excess Business Holdings – Code Section 4943

1. *The IRS granted a five-year extension to foundation to dispose of excess business holdings received by bequest. PLR 202503009 (Jan 17, 2025).*

A founder created a foundation and transferred a one-third interest in a company to the foundation upon his death. The founder's son held the remaining interest in the company. The foundation's ownership of the company constitutes excess business holdings under Code Section 4943(c)(1). The company was complex and diversified and owned various assets, including three subsidiary LLCs. Each subsidiary LLC owned subsidiary LLCs that owned various assets (in one case, a golf course). The taxpayer made diligent efforts to dispose of its interest in the company during the initial five-year period. During the first five years after the transfer, the foundation made diligent efforts to dispose of its interest in company. The foundation initially sought to sell its interest, but it soon realized that because of the company's size and complexity, it could not find a buyer that would pay for its non-controlling interest without a significant discount from the value of the underlying assets. Consequently, the foundation, the company, and son decided to liquidate the company in its entirety. All that remained were two of the separate real estate properties held by a subsidiary LLC. During the initial five-year period, the company actively marketed the remaining two real estate assets, engaging in advanced discussions with potential buyers, but various factors prevented finalizing both sales. Before the close of the initial five-year period, the foundation submitted its request to the IRS seeking an additional five-year period to dispose of its excess business holdings.

Code Section 4943(c)(6) provides that if there is a change in a foundation's holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) that causes the private foundation to have excess business holdings, the interest of the foundation in such enterprise shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the five-year period beginning on the date of such change. Code Section 4943(c)(7) provides that the Secretary may extend the Code Section 4943(c)(6) period to dispose of excess business holdings for an additional five years (i) if after diligent efforts the foundation is unable to dispose

of the holdings by reason of the size and complexity or diversity of such holdings, and (ii) before the close of the initial five-year period, the foundation submits to the Secretary and the attorney general a plan for disposing of all the excess business holdings and the Secretary determines that such plan can reasonably be expected to be carried out.

The IRS determined the foundation's plan to dispose of its excess business holdings in the company can reasonably be expected to be carried out before the close of the extension period, found that the parties had satisfied the requirements of Code Section 4943(c)(7) and granted the foundation an additional five years to dispose of the excess business holdings.

C. Jeopardizing Investments – Code Section 4944

1. *IRS Chief Counsel provides advice about various issues related to private foundation's loans pursuant to Code Sections 501(c)(3), 4941(d)(1)(E), 4941(e)(3) and 4944. CCA 202504014 (Jan. 24, 2025).*

In this Chief Counsel Advice Memorandum, the IRS analyzes four issues related to a private foundation's loans to companies established and owned, in whole and in part, by founders and managers of the private foundation.

First, the IRS concluded that the private foundation's loans caused it to be operated for private benefit and that revocation of the private foundation's tax-exempt status would be appropriate regardless of any of its other charitable activities. An organization that is exempt from taxation pursuant to Code Section 501(c)(3) must be organized and operated exclusively for one or more exempt purposes. An organization is not exempt if more than an insubstantial part of the organization's activities is not in furtherance of exempt purposes. The Supreme Court held in Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), that a single nonexempt purpose, if substantial, can preclude exemption. In this case, the IRS determined that as a result of the private foundation's repeated loans of significant amounts of money, representing substantially all of the private foundation's assets, over multiple years, to companies owned by the private foundation's managers, essentially resulted in the private foundation operating as a finance vehicle for the private foundation's managers. The managers and their companies benefited from the convenience of not having to coordinate with a commercial lender in order to acquire financing, the terms of the loan agreements were not actually enforced against the borrowing companies, and there were no records indicating that the loans were made by disinterested managers of the private foundation.

Second, the IRS concluded that the loans to the companies were acts of indirect self-dealing under Code Section 4941(d)(1)(E) and subject to excise taxes under Code Section 4941(a)(1). Pursuant to Code Section 4941(d)(1), self-dealing includes the lending of money or the extending of credit between a private foundation and a disqualified person, and the transfer of a private foundation's

assets to or for the benefit of a disqualified person. The definition of a disqualified person under Code Section 4946 includes a substantial contributor to a private foundation, a manager of a private foundation and a company of which a substantial contributor or manager of the private foundation owns more than 35% of the voting power. These loans were made to companies, and for years at issue the companies would not be disqualified persons with respect to the private foundation, based on the limited voting power of the private foundation's managers. Therefore, the loans were not necessarily acts of self-dealing under Code Section 4941(d)(1)(B). However, the IRS still determined that the loans were acts of self-dealing under Code Section 4941(d)(1)(E), because the private foundation's managers sat on both sides of the transactions, controlled the private foundation's loans to the companies and indirectly benefitted from the transfer of the private foundation's assets for the reasons described above.

Third, the IRS concluded that the private foundation's proposal to assign the private foundation's interest in the loans to public charities would not constitute a correction of the acts of self-dealing. Code Section 4941(e)(3) and the corresponding Treasury Regulations state that a correction of an act of self-dealing requires undoing the transaction, terminating the use of the property at issue and restoring the private foundation to its financial position prior to the occurrence of the self-dealing. Although the assignment of the loans would cease the continuance of the self-dealing, the assignment would actually continue the transaction, to the benefit of the companies, and not terminate the use of the private foundation's property. The proposed assignees, instead of the private foundation, would have rights to future interest and principal payments, and the private foundation's financial position would not be restored. The IRS determined that at minimum the loans must be repaid to the private foundation in order to correct the self-dealing.

Fourth, the IRS concluded that the private foundation's modification of a loan changed the form of that investment and resulted in a jeopardizing investment. Code Section 4944(a)(1) imposes an excise tax on investments that jeopardize the carrying out of a private foundation's exempt purposes. Treasury Regulations Section 53.4944-1(a)(2)(i) requires the managers to exercise ordinary business care and prudence at the time of making the investment in providing for the private foundation's financial needs for carrying out its exempt purposes. The determination of whether an investment is a jeopardizing investment occurs when the investment is made; however, for the purposes of Code Section 4944(a)(1), Treasury Regulations Section 53.4944-1(a)(2)(iii) provides that a new investment occurs if there is a change in the form or term of an existing investment. The IRS determined that the private foundation's extension of the loan term and reduction of the interest rate created a new investment, and that the managers failed to exercise any prudence in its decision to modify the loan. The IRS noted several facts supporting this conclusion, including the managers' control over both sides of the transaction, the company's historic failure to make loan payments, the lack of consideration for the modification and that the loan modification was made at a

time when the private foundation considered assigning the loan to public charities (so it was advantageous to the company but not to the private foundation).

D. Approval of Private Foundation Grants and Scholarships – Code Section 4945

1. *Exempt private foundation's procedures for awarding educational grants to advance endeavors of visual artists living in stated area who have experienced significant life disruptions comply with Code Section 4945(g)(3) and expenditures made under those procedures will not be taxable. PLR 202427007 (July 5, 2024).*

A private foundation sought approval of its procedures awarding educational grants to artists living in a stated area to ensure such expenditures are not "taxable expenditures" on which taxes would be due.

Private foundations must pay tax on any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or similar purposes by the individual, unless the grant satisfies the advance approval requirement of Code Section 4945(g). Under Code Section 4945(g)(3), no tax will be owed on grants made to individuals, if awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the IRS and if the purpose of the grant is to improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

The purpose of the foundation is to advance the artistic endeavors of visual artists living in a stated area who have experienced significant life disruptions (disability, caregiving, incarceration, etc.) in their art careers of at least two years and have returned to creating art for at least one year. The foundation represented that: it will publicize its grant program through announcements on its website, strategic partnerships with other nonprofit organizations that service the same population, and websites that list similar opportunities for the public; the primary selection criteria will be capacity and ability, however, it may also consider extraordinary need in its selection process but will not use financial need as a primary determinant; and its independent selection committee will consist of at least three individuals with demonstrated knowledge and/or lived experiences as art professionals or working artists. The IRS concluded the foundation's procedures meet the requirements of Code Section 4945(g)(3) and the expenditures won't be taxable.

2. *The IRS approved a private foundation's scholarship procedures pursuant to the requirements under Code Section 4945(g)(1). PLR 202436020 (Sept. 6, 2024).*

The IRS analyzed a private foundation's scholarship program and procedures under Code Section 4945(g)(1). Based on information provided in the private foundation's ruling request, the private foundation awards scholarships to

impoverished students attending accredited schools in an unspecified country. Its scholarship application requests information about the income of the child applicant's parents and the child applicant's past school attendance and performance, and the private foundation conducts video interviews with its applicants. The awarded scholarships are sent directly to the recipient's school to be used for tuition, books, room and board. Each recipient must maintain certain attendance and academic standards in order to keep and remain eligible for a scholarship, and a school must satisfy certain requirements in order for its students to be eligible. The private foundation makes onsite visits to assess each recipient's academic performance and keeps records about all of its grants. Applicants related to the private foundation's selection committee members, officers, directors and substantial contributors are not eligible for the scholarships.

In general, a grant paid by a private foundation to an individual for travel, study, or other similar purpose is a taxable expenditure under Code Section 4945(d)(3) that results in an excise tax on the private foundation.

The IRS determined that the taxpayer private foundation awarded grants for individual study at qualified education organizations on an objective and nondiscriminatory basis and pursuant to approved procedures. Therefore, the private foundation's grants satisfied the requirements of Code Section 4945(g)(1), and were not taxable expenditures within the definition of Code Section 4945(d)(3). As a result, the grants were also qualified scholarships under Code Section 117(b) and not taxable to the recipients.

3. ***The IRS approved a private foundation's college scholarship program and educational grant program pursuant to the requirements of Code Section 4945(g). PLR 202501018 (Jan. 1, 2025).***

A grant paid by a private foundation to an individual for travel, study, or other similar purpose is a taxable expenditure under Code Section 4945(d)(3) that results in an excise tax on the private foundation, unless the grant satisfies the advance approval requirements as a scholarship program or an educational program under Code Section 4945(g). A private foundation requested that the IRS approve its college scholarship program and its educational program pursuant to the advance approval requirements.

The purpose of the private foundation's scholarship program was to provide scholarships or fellowship grants to college students with financial need. The recipients would be selected by a committee of the private foundation that considers a variety of factors including financial need, academic ability and the applicant's potential to promote the private foundation's charitable purposes to support the next generation of global leaders and citizens and to foster reconciliation, service and civility. The awarded scholarships would generally be paid directly to the college to cover the recipient's costs, and any scholarships paid directly to the recipient would require the recipient to provide a report of the use of the funds.

The purpose of the private foundation's educational program was to award grants to college students with financial need to encourage and help them to produce a report or improve a skill or capacity that promotes the private foundation's charitable purposes. The recipients would be selected by a committee of the private foundation that considers a variety of factors including financial need, academic ability and the applicant's potential to promote the private foundation's charitable purposes. The awarded grants would be used for travel, attendance at conferences, developing presentations, research and other similar activities, and the recipient would be required to provide proof of the use of the funds, as required by Treasury Regulations Section 53.4945-4(c)(1).

The IRS determined that the taxpayer private foundation's grant programs awarded grants on an objective and nondiscriminatory basis and pursuant to approved procedures, and specifically that the scholarship program awarded grants for individual study at qualified education organizations, as required by Code Section 4945(g)(1), and the educational program awarded grants to achieve the types of objectives permitted by Code Section 4945(g)(3). Therefore, both of the private foundation's programs satisfied the requirements of Code Section 4945(g), and were not taxable expenditures within the definition of Code Section 4945(d)(3).

4. ***The IRS granted advance approval of a foundation's scholarship procedures. PLR 202505026 (Jan 31, 2025).***

The IRS approved a private foundation's request for advanced approval of scholarship procedures under Code Section 4945(g)(1). Under Code Section 4945(d)(3), a taxable expenditure includes any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or similar purposes unless the grant satisfies the advanced approval requirement. The scholarships will be awarded to high school graduates who are seeking to earn a degree from a four-year university or college. The scholarship amount will vary based on the recipient's area of interest, academic and extracurricular accomplishments, and financial need. The scholarship will be publicized online through social media as well as through community events. Eligible recipients must have a 3.0 GPA or higher on a scale of 4.0, show financial need, demonstrate ability to overcome life challenges, and show a desire to pursue a higher education. Applicants must complete an application form and submit their transcript and an essay of about 500 words. In addition, applicants must submit letters of recommendation and a detailed financial statement to substantiate financial need. A selection committee consisting of private foundation members and two outside individuals will select the scholarship recipients, and relatives of the committee or of the private foundation's officers, directors, or substantial contributors will not be eligible for the scholarship. Recipients will be considered for renewals based on submitted reports of their academic success, motivation, accomplishments, financial need, and compliance with furnishing regular reports. As a result of the IRS approval, expenditures by the private foundation under the procedures of the scholarship program will not be taxable.

5. ***The IRS approved a private foundation's two college scholarship programs pursuant to the requirements of Code Section 4945(g)(1). PLR 202508009 (Feb. 21, 2025).***

A grant paid by a private foundation to an individual for travel, study, or other similar purpose is a taxable expenditure under Code Section 4945(d)(3) that results in an excise tax on the private foundation, unless the grant satisfies the advance approval requirements of Code Section 4945(g)(1). A private foundation requested that the IRS approve its two college scholarship programs pursuant to the advance approval requirements.

The purpose of the private foundation's first scholarship program was to provide nonrenewable scholarships for graduates of certain private schools with income requirements that serve students residing in an area near public housing projects to help them with college educational expenses. The scholarship recipients would be selected by a committee of the private foundation that considers financial need and personal recommendations from the applicant's school. The awarded scholarships would be paid directly to the college to cover costs such as tuition, room and board, books, and student fees.

The purpose of the private foundation's second scholarship program was to provide annually one renewable college scholarship to a graduate from a specific private high school with an income requirement, specifically to honor a graduating student who embodies attributes of one of the founders of the private foundation. Eligible recipients must be nominated by the high school and accepted to a four-year college. A committee comprised of representatives of the high school would discuss eligible recipients and propose finalists for the private foundation's consideration. The private foundation would have discretion to choose the recipient based on the person who best exemplifies the spirit of the private foundation's founder and demonstrates the greatest financial need. The awarded scholarship would be paid directly to the college to cover costs such as tuition, room and board, books, and student fees, and the recipient must maintain certain enrollment and GPA requirements and complete his or her degree within six years in order to keep the scholarship.

The IRS determined that both of the taxpayer private foundation's programs awarded grants for individual study at qualified education organizations on an objective and nondiscriminatory basis and pursuant to approved procedures. Therefore, both of the private foundation's programs satisfied the requirements of Code Section 4945(g)(1), and were not taxable expenditures within the definition of Code Section 4945(d)(3). As a result, the grants were also qualified scholarships under Code Section 117(b) and not taxable to the recipients.

6. ***The IRS approved a private foundation's scholarship procedures pursuant to the requirements of Code Section 4945(g)(1). PLR 202514013 (April 4, 2025).***

A grant paid by a private foundation to an individual for travel, study, or other similar purpose is a taxable expenditure under Code Section 4945(d)(3) that results in an excise tax on the private foundation, unless the grant satisfies the advance approval requirements under Code Section 4945(g). A private foundation requested that the IRS approve its scholarship program pursuant to the advance approval requirements under Code Section 4945(g)(1).

The purpose of the private foundation's scholarship program was to award educational grants to students graduating from public high schools who have been accepted to a 4-year college that qualifies as an educational institution recognized under Code Sections 501(c)(3) and 170(b)(1)(A)(ii). The recipients would be selected by a committee organized by the private foundation based on a variety of factors, including academic performance, teacher recommendations and an interview with the committee. The awards would be paid directly to the recipient and could be used for tuition, room and board, books, and any other legitimate expenses associated with a 4-year college education. Each recipient would be required to maintain a 3.0 college GPA and provide official transcripts to the private foundation in order to renew funding for all four years of study. The private foundation agreed to investigate the use of the grants, recover any misspent funds and maintain records.

The IRS determined that the taxpayer private foundation's program awarded scholarships subject to the provisions of Code Section 117(a) for individual study at qualified academic institutions on an objective and nondiscriminatory basis and pursuant to approved procedures. Therefore, the private foundation's program satisfied the requirements of Code Section 4945(g)(1), and its grants were not taxable expenditures within the definition of Code Section 4945(d)(3). Furthermore, the grants were qualified scholarships under Code Section 117(b) and not taxable to the recipients.

7. ***The IRS approved a private foundation's educational grant program, designed to produce and enhance the artistic skills of the grantees, pursuant to the requirements of Code Section 4945(g)(3). PLR 202514014 (April 4, 2025).***

A grant paid by a private foundation to an individual for travel, study, or other similar purpose is a taxable expenditure under Code Section 4945(d)(3) that results in an excise tax on the private foundation, unless the grant satisfies the advance approval requirements under Code Section 4945(g). A private foundation requested that the IRS approve its educational grantmaking program pursuant to the advance approval requirements under Code Section 4945(g)(3).

The general purpose of the private foundation's educational grant program was to "expand existing narratives of American visual art and amplify the diversity of voices contributing to the field." The funds would be awarded to artists as grants for producing, completing or expanding artistic projects like exhibitions, installations, performance art and other types of public art, and the

funds could be used by the recipient to develop skills and research necessary for the project and to support activities related to the project, such as public talks, tours and publications. The eligible applicants would be required to demonstrate qualifications indicative of their ability to accomplish the program's goals and provide detailed information about their anticipated use of the grant.

The recipients would be selected by a rotating committee organized by the private foundation, though final selections would be made by the private foundation's executive staff. The awarded grants would generally be paid directly to the recipient in installments, subject to a written grant agreement limiting the use of the funds to the recipient's approved project proposal. The private foundation agreed to attempt to recover any misspent funds, maintain records and require final reports from and interviews with each recipient, as required by Treasury Regulations Section 53.4945-4(c)(1).

The IRS determined that the taxpayer private foundation's program awarded educational grants on an objective and nondiscriminatory basis and pursuant to approved procedures, and specifically that the program awarded grants to achieve the types of objectives permitted by Code Section 4945(g)(3). Therefore, the private foundation's program satisfied the requirements of Code Section 4945(g), and its grants were not taxable expenditures within the definition of Code Section 4945(d)(3).

E. Miscellaneous

1. *The IRS rules that the accelerated payment of the undiscounted value of the final annuity payment for a CLAT will not be self-dealing and will not be a taxable expenditure. PLR 202432004 (Aug, 9, 2024); PLR 202432008 (Aug 9, 2024).*

The IRS published a pair of similar Private Letter Rulings concerning final, but accelerated, payments of undiscounted annuity amounts from a charity lead annuity trust ("CLAT"), a split-interest trust subject to certain private foundation rules per Code Section 4947(a)(2). The Trustees of the CLAT determined that the success of the CLAT's investments resulted in remaining trust assets exceeding the amounts for the final two annuity payments, at the end of the CLAT's 20-year term, that were required to be paid to the CLAT's private foundation beneficiaries. Likewise, the private foundation beneficiaries desired to receive the final two annuity payments as soon as possible in order to devote the assets to their charitable causes. Because the remainder beneficiaries of the CLAT were disqualified persons with respect to the CLAT, and the CLAT and the remainder beneficiaries of the CLAT were disqualified persons with respect to the private foundation beneficiaries, the Trustees of CLAT pursued a private letter ruling to ensure that its accelerated payment of the undiscounted annuity amounts (the "Proposed Payments") would not violate private foundation rules. First, the IRS ruled that the Proposed Payments would not be an act of self-dealing under Code Section 4941, and therefore, not subject to an excise tax, because the

Treasury Regulations provide that for the purposes of Code Section 4941, a "disqualified person" does not include charitable organizations described in Code Section 501(c)(3) and classified as private foundations under Code Section 509(a), such as the private foundation beneficiaries. Second, the IRS ruled that the Proposed Payments would not be a taxable expenditure under Code Section 4945, because the Proposed Payments would be for a charitable purpose specified in Code Section 170(c)(2)(B). Third, the IRS ruled that the Proposed Payments would not be subject to the tax under Code Section 507(c) related to the termination of private foundation status, because the Treasury Regulations provide that such tax does not apply to payments from a split-interest trust described in Code Section 4947(a)(2) that are non-discretionary and directed by the trust's governing instrument. Meaning, the IRS concluded that Proposed Payments, though accelerated, were still non-discretionary payments that the CLAT was required to make. With respect to all three of these rulings, the IRS also reasoned that after making the Proposed Payments the CLAT would no longer hold assets for which a charitable deduction would be allowed, and therefore, would no longer be subject to the rules under Code Sections 4941, 4945 and 507.

2. ***The IRS approved the modification of a charitable remainder trust to allow distributions to permissible remainder charitable organizations during the term of the trust. PLR 202448002 (Nov. 29, 2024).***

The IRS addressed whether a CRUT could be modified to add provisions enabling the Trustee to distribute currently and/or upon the death of the specified beneficiary all or a portion of the trust assets to permissible remainder beneficiaries without disqualifying the trust as a CRUT under Code Section 664(d)(2). Under the terms of the CRUT, the Trustee is directed to pay two individual beneficiaries each year during their lifetimes a unitrust amount equal to five percent of the net fair market value of the CRUT. Upon the death of the first beneficiary, the Trustee is directed to pay the unitrust amount to the surviving beneficiary. Upon the death of the second beneficiary, the CRUT terminates, and the Trustee is directed to distribute the trust assets to one or more charitable organizations.

After the death of the first beneficiary to die, the Trustee proposed to modify the terms of the CRUT to add that the Trustees may distribute currently and/or upon the death of the surviving beneficiary all or a portion of the trust assets to permissible remainder beneficiaries. In addition, the proposed modification provided that after any distribution to a permissible remainder beneficiary during the lifetime of the surviving beneficiary, the sum of the unitrust amount plus any deficiency payable would thereafter be calculated based on the remaining net fair market value of the trust assets on the first day of the CRUT's succeeding taxable year. Further, if only a portion of the trust assets are distributed in kind, the adjusted basis of the property distributed must be fairly representative of the adjusted basis of the property available for distribution the date of distribution.

The IRS concluded that the proposed modifications would not disqualify the trust as a CRUT under Code Section 664(d)(2). Further, after any distribution to a permissible remainder beneficiary during the lifetime of the surviving individual beneficiary, the sum of the unitrust amount plus any deficiency payable would thereafter be calculated based on the remaining net fair market value of the CRUT assets on the first day of the CRUT's succeeding tax year. The proposed modifications did not convert the CRUT into a grantor trust for federal income tax purposes.

VI. U.S. PROCEDURE AND ADMINISTRATION

A. Portability of Deceased Spousal Unused Exclusion Amount

1. *The IRS granted an estate's request for an extension of time to make a portability election. PLR 202339012 (Sept. 27, 2024).*

The IRS analyzed a request to extend the time to make the portability election for a surviving spouse. The decedent died with an unused portion of the decedent's remaining applicable exclusion amount. Based on the value of the decedent's gross estate, it was represented that decedent was not required to file an estate tax return (Form 706) under Code Section 6018(a). For reasons not mentioned in the ruling, an estate tax return was not timely filed under Treasury Regulations Section 20.2010-2(a)(1), and a portability election not made, as required by Code Section 2010(c)(5)(A). Upon discovery, the estate submitted a private letter request asking for an extension of time to make a portability election under Code Section 2010(c)(5)(A) to allow the decedent's surviving spouse to take into account that decedent's unused exclusion (DSUE) amount. Based on the executor's representation of the decedent's gross estate, accounting for taxable gifts, and the information and affidavits submitted on behalf of the estate, the IRS, under the discretion granted in Treasury Regulations Section 301.9100-1(c), granted the estate an extension of time to file the make the portability election under Code Section 2010(c)(5)(A).

B. Sham Trusts

1. *The Stoll Family Trust was deemed a sham by the District Court, allowing the IRS to enforce tax liens on their property for Stoll's substantial tax liabilities. United States v. Stoll, WL 711200 (W.D. Wash. Mar. 5, 2025).*

The District Court granted summary judgment to the government, ruling that the Stoll Family Trust was a sham and held the property in a constructive trust for Glen A. Stoll, thereby allowing the IRS to enforce tax liens against the property for Stoll's tax liabilities amounting to $1,265,461.89. The Stoll Family Trust was created by Stoll's parents as part of their estate planning. The Stoll Family Trust provided that upon the death of the grantors, Stoll's share would include the property where he lived and the outstanding mortgage would be

satisfied. If, however, Stoll disclaimed his interest, the assets would be distributed to Director of the Family Defense League, which Stoll controlled as an officer. Stoll disclaimed his interest in the Stoll Family Trust but continued to live on the subject property, while Director of the Family Defense League paid bills associated with the property even though the property was never deeded to it. Stoll owed the IRS outstanding tax liabilities and it sought to collect via foreclosure of the home.

The Stoll Family Trust first attempted to argue that the District Court did not have jurisdiction over the case because it required the application of Washington state law and matters dealing with property must be determined by Washington state courts. The District Court rejected this argument citing multiple statutes giving the District Court authority over matters regarding taxes and the collection of tax. The District Court then applied state law to determine that the Stoll Family Trust still owned title to the property but was holding the property in a constructive trust for the benefit of the Director of Family Defense League, which was a sham and alter ego of Stoll. The District Court therefore granted summary judgment in favor of the IRS allowing it to foreclose on the property to collect taxes owed by Stoll.

C. Foreign Bank and Financial Accounts and Foreign Account Tax Compliance Act

1. *A District Court determined that whether a taxpayer's failure to timely file FBAR was willful was a question to be determined by the jury and could not be decided on summary judgment. United States v. Saydam, 2024 WL 3407677 (N.D. Cal. July 12, 2024).*

In *United States v. Saydam*, a District Court held that a taxpayer who maintained foreign bank accounts, did not file FBAR (Report of Foreign Bank and Financial Accounts, also known as, FinCen Form 114) reporting those accounts, and filed federal income tax returns stating under penalty of perjury that he had no such accounts, might still be able to show that his failure to file FBAR was not willful and thus not subject to liability under Code Section 5321(a)(5). Code Section 5321(a)(5) does not define willfulness, but courts interpreting Code Section 5321(a)(5) have found that willfulness includes "both knowing and reckless violations" of the statute. See United States v. Burga, No. 5:19-CV-03246-EJD, 2023 WL 8190173, at *9 (N.D. Cal. Nov. 27, 2023). When defining recklessness, the Third and Fourth Circuits have held that a defendant is reckless in the FBAR context if he "(1) clearly ought to have known that (2) there was a grave risk that an accurate FBAR was not being filed and if (3) he was in a position to find out for certain very easily." Burga, 2023 WL 8190173, at *10 (citing United States v. Horowitz, 978 F.3d 80, 89 (4th Cir. 2020). The District Court noted that, while a false income tax return is evidence of willfulness, that evidence may be rebutted by a showing that the taxpayer did not attempt to conceal the accounts and that he cooperated with the government during its investigation. Here, taxpayer engaged in activities inconsistent with an attempt to

conceal his foreign accounts from the U.S. (e.g., providing a foreign financial institution with a W-9 listing his U.S. address and SSN, despite being informed by said financial institution that such act might result in his foreign account being shared with the U.S. government). The District Court concluded that a reasonable jury could determine that taxpayer acted negligently as opposed to willfully and denied the Government's motion for summary judgement.

2. ***Jeopardy assessment against taxpayer's estate was reasonable where decedent under penalty of perjury notified IRS that taxes, interest and penalties were owed with respect to income from a foreign grantor trust and personal representative of taxpayer's estate distributed all estate assets to irrevocable trusts with investments in illiquid and foreign assets and where beneficiaries lack sufficient income to pay their personal expenses and the income tax in dispute. Geiger v. United States, 2024 WL 3495319 (S.D. Fla. July 22, 2024).***

The Southern District Court of Florida upheld a jeopardy assessment against a taxpayer's estate for taxes, interest, and penalties that the taxpayer agreed were owed with respect to income from a foreign trust. In 2012, taxpayer enrolled in the IRS's Offshore Voluntary Disclosure Program ("OVDP"), notified the IRS that the foreign trust was a grantor trust and, under penalty of perjury, computed the total amount owed to the IRS at $6,280,737. Taxpayer made an initial payment of less than $2 million dollars and died in 2015 before making additional payments. Taxpayer's son and the personal representative of the taxpayer's estate, was notified of the taxed owed and refused to pay the taxes, taking the position that taxpayer had received income from a non-grantor trust. At that time, the estate was valued at approximately $15 million. In 2021, the personal representative notified the IRS that the estate distributed $14.4 million to beneficiaries, leaving $1 million to pay the outstanding tax liability with OVDP, and that said beneficiaries were unable to pay the balance due. During an 8-year period, the taxes remained unpaid and in January 2023, the IRS removed the taxpayer from OVDP. In December 2023, the IRS issued a notice of assessment for $15 million and a notice of jeopardy assessment.

The District Court held that the jeopardy assessment was reasonable under Code Section 7429, and as clarified in Treasury Regulations § 1.6851–1, by the undisputed facts in the case: (i) son transferred and distributed nearly all of the estate assets; (ii) son attempted to impair the IRS's ability to collect the taxes by transferring the estate's assets to four irrevocable Wyoming trusts; (iii) the Wyoming trusts invested the estate funds in illiquid assets, including foreign accounts and foreign entities; (iv) the son transferred estate funds to himself and his mother, leaving the estate with insufficient funds to pay the tax that the IRS had determined to be owed; and (v) the son and his mother lacked sufficient income to pay their personal expenses, that they depended upon consumption of the estate/trust assets for their personal expenditures, and that they lacked sufficient assets to pay the income tax in dispute. The court declined to conclude

that the amount sought in the assessment was unreasonable or inappropriate, ruling that the proper forum for that determination is the Tax Court.

3. ***A district court applies the Fourth Circuit's definition of willful violations with respect to FBAR violations and hold that the fines do not violate the Excess Fines Clause of the Eighth Amendment. United States v. Rund, 743 F. Supp. 3d 779 (E.D. Va. Aug. 6, 2024).***

The taxpayer in this case disputed on various grounds his liability for willful violations of the Report of Foreign Bank and Financial Accounts ("FBAR") requirements under the Bank Secrecy Act of 1970. For various tax years during a more than 10-year period, the taxpayer failed to file FBARs accurately disclosing his beneficial interests in certain foreign accounts. The district court applied the Fourth Circuit's adopted standard that willful violations of the FBAR requirements include knowing and reckless violations and found sufficient evidence with respect to the foreign accounts and tax years at issue that the taxpayer should have known, or knew, of his FBAR reporting liability and intentionally or recklessly failed to file the required reports. The district court also rejected the taxpayer's argument that the civil penalties for his willful violations violate the Excessive Fines Clause of the Eighth Amendment, finding that the taxpayer's FBAR penalties are not a "fine" (because they serve a remedial purpose of recovering lost revenue), and they are not "excessive" (because, among other reasons, the penalties actually assessed by the IRS were significantly less than what it was entitled by statute to impose, and the taxpayer's violations over several years resulted in a significant loss of tax revenue). The district court also rejected the taxpayer's argument that some of the violations were time barred, because the taxpayer had effectively consented to the extension of the assessment period. On every issue, the district court granted the Government's motion for summary judgment.

4. ***The Ninth Circuit addresses the definition of "willful" with respect to violation of the FBAR reporting requirements. United States v. Hughes, 113 F.4th 1158 (9th Cir. Aug. 21, 2024)***

In this opinion, the Ninth Circuit adopted an objective recklessness standard for "willful" violations of the FBAR reporting requirements. Under the statute, a U.S. citizen's non-willful violation of the requirement to accurately disclose transactions and relationships with foreign financial agencies on a filed FBAR is penalized up to $10,000, while a willful violation is penalized up to the greater of 50% of the misreported or unreported account balance or $100,000. In Safeco Insurance Co. of America v. Burr, 551 U.S. 47 (2007), the Supreme Court held that in the civil liability context, willful violations are not limited to knowing violations but also include actions demonstrating a reckless disregard of the law. While the Supreme Court has not yet specifically applied this interpretation to the FBAR statute, every Circuit that has considered the question, including the Fourth Circuit, has aligned with the Safeco decision and concluded that knowing and reckless violations are subject to willful penalties under the FBAR statute. The

Ninth Circuit noted that reckless violations require more than mere negligence, and that affirming a willful failure to file an accurate FBAR requires finding that the taxpayer clearly should have known there was a grave risk of violating the filing requirement and the taxpayer could have determined that risk very easily. In this case, for the years at issue, it was undisputed that the taxpayer had previously indicated on her tax return that she held foreign accounts that would require filing a FBAR (which the taxpayer failed to file), and therefore, the taxpayer was subject to the willful penalties for recklessly disregarding the requirements.

5. ***The District Court for the Southern District of New York holds that FBAR penalties survive death and can be enforced against the taxpayer's estate. United States v. Hendler, 2024 WL 4215744 (S.D. N.Y. Sept. 17, 2024).***

The District Court examined the impact of a taxpayer's death on the levy of penalties for a failure to file Forms TD F 90-22.1, Report of Foreign Bank and Financial Accounts ("FBARs") during the taxpayer's lifetime. Taxpayer was a United States citizen and during the seven calendar years 2004 through 2010, taxpayer had a financial interest in nine bank accounts in Israel. Taxpayer did not timely file FBARs for the accounts in question. On or around March 18, 2015, taxpayer filed untimely FBARs, noting his ownership of the accounts. The IRS initiated an examination of taxpayer's FBARs in October 2015, and in connection with this examination, taxpayer and his representatives agreed in writing several times to extend the time period in which the IRS could assess FBAR penalties, ultimately through June 30, 2021. Taxpayer died on January 6, 2021. On April 21, 2021, the IRS assessed FBAR penalties totaling $250,000 against taxpayer. On April 27, 2021, the IRS sent a letter regarding these penalties to the last known address of taxpayer's estate.

The government sued the Administrator of taxpayer's estate and taxpayer's wife and daughter in their capacities as distributees of taxpayer's estate (collectively, "Defendants") seeking unpaid tax assessments. Defendants made two related arguments: first, that the government lacks the ability to assess FBAR penalties against a taxpayer's estate (rather than against the taxpayer himself); and second, that to the extent that the government had any claim against taxpayer prior to the April 2021 assessments relating to FBARs, that claim was extinguished by taxpayer's death. Both of these arguments failed.

The District Court reasoned that FBAR liability accrues on the date the FBAR form is due, not on the date of the assessment. Further, the District Court reasoned that "courts are generally guided by principles of federal common law, which prescribe that claims characterized as 'penal' abate upon a party's death, while claims characterized as 'remedial' survive." While the parties did not identify and the District Court did not find binding case law with respect to the FBAR penalties at issue, persuasive authority indicates that a claim for FBAR-

related penalties is remedial, and therefore is not extinguished upon the death of the taxpayer.

6. ***Tax Court dismissed petition for lack of jurisdiction because FBAR penalties are not a tax. Jenner v. Comm'r, No. 8903-23., 163 T.C. No. 7 (Oct. 22, 2024).***

The Tax Court addressed whether taxpayers were entitled to collection due process ("CDP") for collection efforts related to penalties for failure to timely file foreign bank account reports ("FBARs"). The Treasury Department notified the petitioners in this case that funds would be withheld from their monthly Social Security benefits in order to collect penalties assessed against them for their alleged failure to timely file FBARs over the course of several years. Upon receiving the Treasury Department's notice, the petitioners requested CDP hearings authorized under Code Section 6330. The IRS responded that the petitioners did not qualify for a CDP hearing, so the petitioners filed their petition with the Tax Court, alleging that the denial of a CDP hearing violated their collection due process rights.

The FBAR penalties assessed against the petitioners are authorized by Title 31, part of the United States Code covering money and finance. Those penalties are nontax debts, and executive agencies have the authority to collect them through administrative offsets following notice and other requirements. Separately, pursuant to Code Section 6330, a taxpayer has a right to a CDP hearing before a tax levy is made against a taxpayer's property.

In this case, the Tax Court held that the FBAR penalties at issue are not a tax imposed by the Internal Revenue Code, and therefore, the right to a CDP hearing under Code Section 6330 does not apply to an executive agency's authority to collect them. Furthermore, the Tax Court dismissed the Petition for lack of jurisdiction since the Tax Court's jurisdiction is generally limited to determinations concerning a tax, and the FBAR penalties are not a tax.

7. ***U.S. Eleventh Circuit Court of Appeals holds that penalties for willful FBAR violations are "fines" subject to the Eighth Amendment's Excessive Fines Clause. United States v. Schwarzbaum, 127 F.4th 259 (11th Cir. Jan. 23, 2025).***

The primary issue addressed by this opinion, which was a matter of first impression for the Eleventh Circuit, was whether the penalties for willful violations of the Report of Foreign Bank and Financial Accounts ("FBAR") requirements under the Bank Secrecy Act of 1970 are fines within the meaning of the Eighth Amendment's Excessive Fines Clause. That Clause prohibits the imposition of "excessive fines." In United Stated v. Bajakajian, 524 U.S. 321, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998), the U.S. Supreme Court held that a fine is subject to the Excessive Fines Clause if it is designed to punish the offender and serves as a punishment "even in part." Under the FBAR statute, a

U.S. citizen's non-willful violation of the requirement to accurately disclose transactions and relationships with foreign financial agencies on a filed FBAR is penalized up to $10,000, while a willful violation is penalized up to the greater of 50% of the misreported or unreported account balance or $100,000.

In United States v. Toth, 33 F.4th 1 (1st Cir. 2022), the First Circuit held that the FBAR penalties for willful violations were not fines subject to the Excessive Fines Clause, finding that they were remedial and intended to compensate the government.

Citing the legislative history of the FBAR penalties (Congress adopted the current strict penalties for willful violations in 2004 to increase taxpayer compliance with the reporting requirement), the design of the statute (which ties culpability for willful violations to stricter penalties), the IRS's recognition of the severity of the penalties (for example, the Taxpayer Advocate Service within the IRS has described the maximum FBAR penalties as "among the harshest civil penalties the government may impose"), and the Supreme Court's ruling that penalties that, even in part, serve as a punishment are subject to the Excessive Fines Clause, the Eleventh Circuit disagreed with the First Circuit's reasoning and held that the penalties were fines subject to the Clause.

Following its conclusion, the Eleventh Circuit analyzed the excessiveness of each penalty assessed against the taxpayer on an account-by-account basis. With respect to three willfully unreported accounts that had applicable values slightly greater than $10,000 each, the Eleventh Circuit found that a minimum penalty of $100,000 per each of those unreported accounts was "grossly disproportional" to the taxpayer's offense and held that such penalties were unconstitutional. However, the Eleventh Circuit found that the remaining $100,000 penalties assessed for each of the other unreported accounts having values of hundreds of thousands dollars or millions of dollars were not unconstitutional and upheld a judgment against the taxpayer in an amount greater than $12,000,000, plus late fees and interest.

8. ***In FBAR case, U.S. District Court grants estate motion to set aside entry of default but denies its motion to dismiss. United States v. Veeraswamy, 765 F.Supp.3d 168 (E.D.N.Y., Feb. 10, 2025).***

In January 2018, the IRS assessed penalties for Velappan Veeraswamy's failure to timely file a foreign bank account report ("FBAR") for his Bank of India account for the 2011 calendar year. Mr. Veeraswamy died in 2019, and the IRS brought suit against the estate in December 2023 to recover penalties for willful violation of the FBAR requirements. Because the estate failed to appear initially, the Clerk of Court entered a default under Rule 55(a) of the Federal Rules of Civil Procedure against the estate in May 2024. After the estate responded weeks later, ultimately, the issues were referred to a Magistrate Judge for review. The Magistrate Judge recommended that the estate's motion to set aside the default be granted but its motion to dismiss be denied. The U.S. District

Court for the Eastern District of New York reviewed the Magistrate Judge's recommendations, especially the estate's objection to the denial of its motion to dismiss.

The reviewing District Court granted the recommendation that the default be set aside. (The Magistrate Judge's recommendation concluded that the estate's failure to respond was not willful but was the result of a genuine mailing error, the estate's defense against the claim of willful FBAR violations was meritorious, the government failed to show that it would suffer prejudice if the default were set aside, and the equities favored allowing the estate to defend its suit on the merits, especially since the defendant was pro se).

However, the reviewing Court also granted the recommendation to deny the estate's motion to dismiss. The estate's motion to dismiss was based on two claims. First, the estate claimed that the assessment was time-barred, arguing that the government had six years to make the assessment under 31 U.S.C. Section 5321(b)(1) for the 2011 tax year, and the government made its assessment in January 2018. The Court rejected the estate's reasoning, noting that the six-year period starts on June 30 of the year after the relevant tax year (2011), representing the actual due date of the FBAR. This meant that the six-year period did not end until June 30, 2018, and the government's assessment in January 2018 was timely. Second, the estate claimed that the government failed to adequately plead willfulness in its complaint. The Court rejected this as well, holding that pleading Mr. Veeraswamy's recklessness or knowing violation would be sufficient, and finding that the government had pleaded that Mr. Veeraswamy falsely told the accountant who prepared his income tax return that he did not have any foreign accounts. The Court rejected the estate's related arguments, including that Mr. Veeraswamy's use of an accountant proved that his actions were not willful.

9. ***U.S. District Court in the Ninth Circuit applies an "objective recklessness standard" for willful violations of FBAR disclosure requirements and the Eleventh Circuit's recent determination that FBAR penalties are "fines" under the Eighth Amendment's Excessive Fines Clause. United States v. Leeds, 2025 WL 743996 (D. Idaho Mar. 7, 2025).***

The U.S. District for the District of Idaho, of the Ninth Circuit, granted the Government's various summary judgment motions related to the deceased taxpayer's willful violation of the foreign bank account report ("FBAR") requirements but also denied its summary judgement motion seeking to enforce the willful penalties against the decedent's surviving spouse in her individual capacity. The primary issue was whether the deceased taxpayer's failure to comply with the FBAR requirements was willful and therefore subject to stricter penalties resulting in an approximately $2,000,000 judgment. The Court applied the Ninth Circuit's adoption of an "objective recklessness standard" for willfulness in *United States v. Hughes*, 113 F.4th 1158 (9th Cir. 2024), a position held by each Circuit that has analyzed the issue for FBAR cases. This standard

means that even if a taxpayer's subjective intent cannot be proven, a taxpayer may willfully fail to file a required FBAR if the taxpayer (i) clearly should have known there was a grave risk the requirement was not being met and (ii) could have very easily found out for certain. Based on that standard, the Court held that there was no genuine dispute that the deceased taxpayer willfully violated the FBAR filing requirement.

The Defendant, the deceased taxpayer's surviving spouse, argued that the FBAR penalties extinguished upon her husband's death. Based on general analysis from the U.S. Supreme Court, the District Court, following the conclusion made by every other court that has considered the issue with respect to FBAR penalties, concluded that the statutory FBAR penalties are "remedial" and not "penal" and therefore survive the taxpayer's death.

The District Court also adopted the Eleventh Circuit's recent determination in *United States v. Schwarzbaum*, 127 F.4th 259 (11th Cir. 2025) that FBAR penalties are "fines" under the Eighth Amendment's Excessive Fines Clause (the Court noted that the Ninth Circuit had not analyzed the issue but had previously assumed that the Excessive Fines Clause applies to FBAR penalties). This conclusion is based on the District Court's determination that the penalties are at least in part designed to punish the offender. Alternatively, Courts within the First and Fourth Circuits [the First Circuit in *United States v. Toth, 33 F.4th 1 (1st Cir. 2022)* is the only other Circuit to have addressed this issue directly] have held that the FBAR penalties are not fines because they are primarily remedial. [Note, the distinction between identifying FBAR penalties as "remedial" for the purposes of the survival of the penalties after the taxpayer's death but identifying them as "penal" for the purposes of the Excessive Fines Clause is not clear.] Based on this determination, the District Court held that the FBAR penalties were not excessive with respect to the deceased taxpayer's offense. But the District Court also held that, in light of the government's attempt to possibly enforce the judgment against the taxpayer's surviving spouse in her individual capacity, such fines would be "grossly disproportional" to her offense (she had no control or interest in the unreported foreign accounts and had no knowledge of them until the assessment arose) and therefore would violate the Excessive Fines Clause.

10. ***U.S. District Court grants motion for default judgment imposing penalties for taxpayer's willful failure to comply with FBAR disclosure requirements. United States v. Debrick, 2025 WL 1639702 (D.D.C. June 10, 2025).***

The U.S. District Court for the District of Columbia granted the government's motion for a default judgment upon holding that the allegations in the Complaint sufficiently demonstrated that the taxpayer willfully failed to disclose a pair of foreign accounts on a foreign bank account report ("FBAR") for multiple years. A willful failure to disclose an account on an FBAR warrants a penalty equal to 50% of the value of the undisclosed account or $100,000, whichever is great. 31 U.S.C. Section 5321(a)(5)(C)(i). The District Court found

that the taxpayer met a willful blindness or reckless disregard standard with respect to the FBAR requirements when he disclosed some of his accounts on FBARs for similar years (though he did not disclose the accounts at issue), had a pattern of concealing asset information from the IRS, made false statements under penalty of perjury related to his tax records and moved assets out of a certain account when he learned that the account administrator would be reporting that relationship to the IRS. As a result, the District Court held that the penalties, which exceeded $2,000,000, were justified.

D. Claim for Refund

1. *District Court granted IRS's motion to stay discovery pending resolution of its motion to dismiss Estate's claim for refund because the estate's amended refund claim was not timely received. Gauler v. IRS, 2024 WL 4307847 (S.D. Fla. July 22, 2024).*

The District Court for the Southern District of Florida granted the IRS's motion to stay discovery pending resolution of the IRS's motion to dismiss an estate's claim for refund under Code Section 7422.

Plaintiff, who was the personal representative of the estate, filed an estate tax return on behalf of the estate in September 2017. This return was received and processed without issue. In April 2020, the beginning of the COVID-19 pandemic, Plaintiff mailed an amended return to the IRS. The IRS confirmed in August 2021 that the amended return had not been received. The Plaintiff mailed a reprocessed amended return in October 2021, along with a letter requesting that the IRS grant reasonable cause for the late filing. In December 2022, the IRS indicated that a refund would not be allowed because the amended return was filed more than three years after the initial tax return was filed. Plaintiff filed an action against the IRS asserting a claim for refund under Code Section 7422. The IRS in turn filed a motion to dismiss the refund claim under Federal Rule of Civil Procedure 12(b)(1) on the basis that the court lacks subject matter jurisdiction over the claim because Plaintiff had not and could not allege that a timely request for a refund was filed. Plaintiff filed a proposed discovery plan and scheduling order to which Defendant filed a motion to stay discovery pending resolution of the motion to dismiss.

Under Code Section 7422(a), no civil action to recover any "internal revenue tax alleged to have been erroneously or illegally assessed or collected shall be maintained… until a claim for refund or credit has been duly filed" with the IRS in accordance with IRS regulations. *Baldwin v. United States*, 921 F.3d 836, 839 (9th Cir. 2019) (citing 26 U.S.C. 7422(a)). For a claim to be "duly filed" such claim must in fact be timely. *Yuen v. U.S.*, 825 F.2d 244, 245 (9th Cir. 1987). Section 6511 of the Code, which governs timeliness, provides that a claim for refund must be filed "within 3 years from the time the return was filed or 2 years from the time the tax was paid," whichever is later. 26 U.S.C. 6511(a), (b)(1).

The Court assessing the merits of the IRS motion to dismiss under the "preliminary peek" approach, agreed with the IRS, finding that the Court was without jurisdiction to hear the action, as the amended return was not timely under the "mailbox rule" (Code Section 7502). Here, the amended return was never actually delivered to support a finding that the return was timely under Code Section 7502(a)(1), nor did Plaintiff allege or provide proof that the return was sent by registered certified mail under Code Section 7502(c)(1). The Court ultimately denied Plaintiff's proposed discovery plan and scheduling order, without prejudice, permitting the Plaintiff to refile in the event the Defendant's motion to dismiss was later denied.

VII. U.S. MISCELLANEOUS

A. Digital Assets

1. *IRS provided safe harbor under Code Section 1012(c)(1) on which taxpayers may rely to allocate units of unused basis of digital assets to digital assets held within each wallet or account of the taxpayer as of January 1, 2025. Rev. Proc. 2024-28, 2024-31 IRB 326 (July 1, 2024).*

In this Revenue Procedure, the IRS referred back to its October 9, 2019 Virtual Currency FAQs which explained that a taxpayer may choose the units of virtual currency deemed to be transferred if the taxpayer can specifically identify the unit(s) involved in the transaction and can substantiate the basis of those units by documenting the unit's unique identifier or by records of the units held within a single account, wallet, or address. If the taxpayer does not identify specific units, the units are deemed to have been sold in chronological order beginning with the earliest unit acquired by the taxpayer (i.e., FIFO). This guidance was affected by the 2023 proposed regulations which would require basis determination on an account-by-account basis. As the IRS put it, some comments in response to the 2023 proposed regulations "expressed the view that transitioning from the universal or multi-wallet approach to the single wallet or account-based rules in the 2023 proposed regulations, if adopted in the final regulations, could lead to ongoing discrepancies between a taxpayer's basis records and the basis reported to the taxpayer by brokers on Form 1099-DA . . . ." Final regulations were adopted in 2024 with some modifications, and this Revenue Procedure was issued to assist taxpayers "who may have specifically identified units or applied the FIFO rule based on a universal or multi-wallet approach in transitioning to the rules in Section 1.1012-1(j) of the 2024 final regulations, which apply the specific identification or FIFO rules to units held within a single wallet or account." The Revenue Procedure provides a safe harbor to taxpayers who own digital assets in a wallet or account as of January 1, 2025. If certain eligibility requirements are satisfied, the taxpayer may make reasonable allocations of units of cost basis (within the meaning of section 5.02 of the Revenue Procedure) to a wallet or account that holds digital asset units.

B. Corporate Transparency Act

1. ***Final regulations provide that transfers are reportable when they meet the following criteria: (i) the property is residential real property; (ii) the transfer is non-financed; (iii) the property is transferred to a legal entity or trust; and (iv) an exemption does not apply. FinCEN Final Regs for Real Estate Transactions Reporting.***

The Financial Crimes Enforcement Center ("FinCEN") published the Anti-Money Laundering Regulations for Residential Real Estate Transfers ("Final Rule") which require certain persons involved in real estate transactions to submit "Real Estate Reports" on certain non-financed transfers of residential real property to specified legal entities and trusts.

Transfers to individuals and transfers with a mortgage loan or other financing provided by a financial institution subject to anti-money laundering and countering the financing of terrorism (AML/CFT) program requirements do not need to be reported.

The rule applies only to residential real property located in the United States. Reportable property includes single-family houses, townhouses, condominiums, and cooperatives, including condominiums and cooperatives in large buildings containing many such units, designed for occupancy by one to four families. The rule also requires reporting on transfers of land, such as vacant or unimproved land, on which the transferee intends to build a structure designed for occupancy by one to four families.

The following transfers are exempt and not reportable: a transfer of an easement; a transfer resulting from the death of an individual, whether pursuant to the terms of a decedent's will or the terms of a trust, the operation of law, or by contractual provision; a transfer incident to divorce or dissolution of a marriage or civil union; a transfer to a bankruptcy estate; a transfer supervised by a court in the United States; a transfer made for no consideration by an individual, either alone or with their spouse, to a trust of which that individual, their spouse, or both of them, are the settlor or grantor; a transfer to a qualified intermediary for purposes of a like-kind exchange under Section 1031 of the Internal Revenue Code; and a transfer for which there is no reporting person.

The rule implements a cascade hierarchy approach to determine who is responsible for filing a report. Unless the parties enter into a designation agreement regarding who will be the reporting person, the hierarchy is as follows: the person listed as the closing or settlement agent on the closing statement; the person that prepares the closing or settlement statement; the person that files the deed with the register of deeds; the person that underwrites an owner's title insurance policy; the person that disburses in any form, the greatest amount of funds in connection with the residential transfer; the person that provides an evaluation of the status of the title; and the person that prepares the deed.

The transferees, transferors and beneficiary owners cannot be reporting persons unless they are engaged in the business of handling real estate closings. If an employee, agent or partner acting within the scope of such individual's employment, agency, or partnership would be the reporting person as determined above, then the individual's employer, principal or partnership is deemed to be the reporting person.

The person filing the report may reasonably rely on information provided by others (as opposed to the alternative full verification standard) unless the reporting person has knowledge of facts that would reasonably call into question the reliability of the information provided.

2. ***U.S. District Court for the District of Oregon rejects motion for a preliminary injunction against the enforcement of the Corporate Transparency Act. Firestone v. Yellen, 134 A.F.T.R.2d 2024-5683, slip op. (D. Or. Sept. 20, 2024).***

The motion for a preliminary injunction was brought by several individuals who challenged the constitutionality of the Corporate Transparency Act ("CTA") on several grounds. The plaintiffs contended that the CTA exceeds Congressional authority under Article I of the United States Constitution, compels speech, interferes with associational rights, constitutes unlawful search and seizure, violates the privilege against coerced self-incrimination, is unconstitutionally vague, imposes excessive fines, infringes upon privacy rights, and interferes with the rights of States. The Court found that the plaintiffs failed to show a likelihood of success on the merits on each claim, a likelihood of irreparable injury, and that the balance of hardships tips sharply in their favor. Therefore, the Court denied the motion for preliminary injunction.

3. ***The Fifth Circuit addresses a nationwide injunction on the enforceability of the Corporate Transparency Act. Texas Top Cop Shop, Inc. v. Garland, 2024 WL 5203138 (Dec. 23, 2024).***

On December 23, 2024, the Fifth Circuit issued a stay of the U.S. District Court's nationwide injunction of the enforcement of the Corporate Transparency Act ("CTA") and expedited the appeal to the next available oral argument panel. The Fifth Circuit, relying on the Nken factors in Nken v. Holden, 556 U.S. 418 (2009), held that (i) the government made a strong showing that it is likely to succeed on the merits; (ii) the government will be irreparably injured without the stay; (iii) the issuance of the stay will not substantially injure the other parties; and (iv) the public interest would best be met by staying the injunction.

On December 26, 2024, different panel of judges from the Fifth Circuit vacated the prior panel's ruling and reinstated the nationwide injunction of the enforcement of the CTA on December 26, 2024. Texas Top Cop Shop, Inc. v. Garland, 2024 WL 5224138 (Dec. 26, 2024).

4. ***The U.S. District Court for the Eastern District of Texas granted the plaintiffs' motion for a preliminary injunction and stay for the enforcement of the reporting rules under the Corporate Transparency Act. Smith v. Treasury, 2025 WL 41924 (E.D. Tex. Jan. 7, 2025)***

The U.S. District Court for the Eastern District of Texas granted the plaintiffs' motion for a preliminary injunction and stay prohibiting FinCEN from enforcing the Corporate Transparency Act ("CTA"). The District Court's ruling enjoined the enforcement of the CTA against the parties in the case and suspended the CTA's reporting rule in all jurisdictions while the litigation is pending. The plaintiffs were two individuals who formed limited liability companies under Texas law to hold real property in Texas. The LLCs do not engage in interstate commerce and do not hold any interstate or foreign assets. The plaintiffs filed the suit to challenge the constitutionality of the CTA and the reporting rule. The plaintiffs argued that the CTA and the reporting rule exceed Congress's enumerated powers, while the Treasury argued that the CTA was within Congress's power to regular interstate commerce and power to regulate foreign commerce, as well as lay and collect taxes. The District Court found that the plaintiffs were likely to succeed on the merits of their claim and concluded that the CTA does not regulate the channels or instrumentalities of interstate commerce and it is not a necessary proper exercise of Congress's taxing power. As the District Court succinctly stated in its analysis of whether a purely intrastate activity substantially affects interstate commerce, "the CTA regulates the *existence* of entities formed under state law, presupposing that they will eventually engage in economic activity. But existence is not an activity covered by the substantial-effects prong of Commerce Clause jurisprudence." The District Court ultimately granted the preliminary injunction because (i) the plaintiffs have a substantial likelihood of succeeding on the merits; (ii) there would be a substantial threat of irreparable injury if the injunction is not issued; and (iii) the injuries likely to occur absent a preliminary injunction outweigh any harm in granting the request and the preliminary injunction would not disserve the public interest. *Smith v. Treasury, 6:24-cv-336-JDK (E.D. Tex. Feb. 17, 2025) (the District Court stayed its own prior preliminary injunction against the reporting rules. This removed any judicial barrier to operation of the CTA.).*

5. ***U.S. District Court upholds constitutionality of Corporate Transparency Act. Boyle v. Bessent, 2025 U.S. Dist. LEXIS 26826, 2025 WL 509519 (D. Me. Feb. 14, 2025).***

The beneficial owner of several limited liability companies originally sued the government on March 15, 2024, seeking a declaratory judgment that the Corporate Transparency Act ("CTA") is unconstitutional and injunctive relief to prevent the CTA's enforcement. The parties made additional filings, including separate motions for summary judgment, and during that time other federal courts addressed similar challenges. When the U.S. District Court for the District of Maine ultimately made its decision in this case, as a result of a decision made by the U.S. District Court for the Eastern District of Texas on January 7, 2025, there

was an effective nationwide stay of the effective date of the Final Rule governing the CTA.

After holding that the plaintiff, a beneficial owner and not a reporting company that has an obligation under the CTA, still had standing to challenge the CTA, the District Court granted the government's motion for summary judgment, holding that the CTA is authorized by the Commerce Clause.

6. ***The U.S. District Court for Maine awarded summary judgment to the Treasury finding the CTA is constitutional. Boyle v. Bessent, 2025 WL 509519 (D. Me. Feb. 14, 2025).***

In *Boyle v. Bessent*, the U.S. District Court for Maine, Plaintiff challenged the CTA on the sole ground that Congress lacked the power to enact it. The District Court found that the CTA is constitutional and is a valid exercise of congressional power under the Commerce Clause for the following reasons: (i) the activity sought to be regulated by the CTA is economic activity because corporate entities are inherently economic; (ii) the lack of a jurisdictional hook element does not cause the CTA to be unconstitutional because the CTA regulates economic activities substantially affecting interstate commerce in the aggregate; (iii) Congress made findings as to the interstate character of the activity regulated by the CTA; (iv) a rational basis exists to conclude that the existence of the corporate entities regulated by the CTA has a substantial effect on interstate commerce. The District Court did, however, question the penalties imposed by the CTA on individuals whose reporting companies fail to submit the Beneficial Ownership Information (BOI) Report because the statute imposes a duty to report only on reporting companies, not individuals (or "persons").

7. ***Department of Treasury announces that it will not enforce any penalties or fines associated with reporting requirements under the Corporate Transparency Act for domestic entities. (2025-05199 (90 FR 13688)).***

On March 2, 2025, the Department of the Treasury announced in a published statement that it would (i) not enforce any penalties or fines associated with reporting under then existing Corporate Transparency Act ("CTA") requirements, (ii) not enforce the CTA reporting requirements against U.S. citizens or domestic reporting companies, and (iii) issue final proposed rules so that the CTA requirements would only apply to foreign reporting companies. On March 21, 2025, the Financial Crimes Enforcement Network announced that it would be issuing an interim final rule that removes U.S. companies and U.S. persons from the reporting requirements of the CTA (2025-05199 (90 FR 13688)).

8. ***The U.S. District Court for the Western District of Michigan held the Corporate Transparency Act violates the Fourth Amendment of the United States Constitution as an unlawful search and seizure. Small***

Business Association of Michigan v. Yellen, No. 1:24-cv-00314, 2025 TNTF 43-3 (W.D. Mich., March 4, 2025).

In granting Plaintiff's cross motion for summary judgment, the U.S. District Court for the Western District of Michigan, Southern Division, found the beneficial ownership information ("BOI") reporting requirements of the Corporate Transparency Act ("CTA") an unreasonable search in violation of the Fourth Amendment. On March 26, 2024, Plaintiffs, who included Michigan non-profit organizations, limited liability companies, and individual business owners, sued the Secretary of the Treasury, initially seeking a preliminary injunction enjoining Defendants from enforcing the CTA against them. After the District Court denied the preliminary injunction, it requested briefing from the parties on the Fourth Amendment challenges raised during briefing and oral argument.

In its motion for summary judgment, Plaintiffs asserted the BOI reporting requirements constitute an unreasonable search and seizure in violation of the reporting person's confidential data. The District Court agreed, holding the compelled disclosure of BOI amounts to a search of both the Plaintiff's physical property and privacy interests. The District Court specifically noted there is a reasonable expectation of privacy around the required BOI reporting information because most, if not all, states do not require reporting of BOI of the owners of the entities formed under that state. The Court then found such search unreasonable because the CTA's definition of beneficial owner created an "essentially unlimited" scope which was not sufficiently described or limited in nature. Accordingly, the District Court issued an injunction prohibiting FinCEN from enforcing the CTA reporting requirements against the Plaintiffs.

9. ***The United States Court of Appeals for the Fourth Circuit granted the government's opposed motion to hold proceedings in abeyance pending the issuance of the Financial Crimes Enforcement Network's ("FinCEN") Final Rule regarding the Corporate Transparency Act's (the "CTA") reporting requirements. Community Ass'ns Inst. et al v. US Dep't of the Treasury et al, No. 24-2118 (4th Cir. May 26, 2025).***

On May 6, 2025, the Fourth Circuit granted Defendants-Appellees' motion to hold Plaintiffs-Appellants' appeal in abeyance pursuant to Federal Rule of Appellate Procedure 27. The government argued the pending FinCEN Final Rule may reaffirm Plaintiffs' exemption from CTA reporting requirements, making their claims on appeal moot. The Fourth Circuit agreed, placing the case in abeyance pending the outcome of the Final Rule regarding the CTA's reporting requirements.

VIII. NORTH CAROLINA LAW

A. Recent Cases

1. ***North Carolina Court of Appeals holds that wife who lived in Florida did not abandon her decedent husband. In the Matter of the Estate of Bozeman, No. COA24-2024 (Filed December 31, 2024).***

Overview: Decedent died of an overdose intestate. He left a wife and a mother. Mother asserted that she was the sole intestate heir because wife abandoned decedent. Wife conceded that she was not living with decedent at the time of his death.

Issue: Did wife willfully and without just cause abandon her husband?

Law:

- N.C. Gen. Stat. § 31A-1(a)(3) states that a surviving spouse loses her rights of intestate succession in her deceased spouse's estate if she (i) willfully and without just cause abandons and refuses to live with the other spouse and (ii) is not living with the other spouse at the time of such spouse's death."

- Case law defines abandonment as when a spouse "brings their cohabitation to an end without justification, without the consent of the other spouse and without intent of renewing it." *Panhorst* v. *Panhorst*, 277 N.C. 664, 671 (1971).

Relevant Facts:

- In support of abandonment

    - Wife lived in Florida. Had never lived with decedent who lived in NC.

    - Wife and decedent were in a romantic relationship all the way back in 1999 and 2000. She knew he had a substance abuse problem.

    - They married in 2018. They honeymooned for one month in Europe. They then each returned to their respective house in different states.

    - She visited decedent on some weekends but after July of 2019, she never saw him again.

    - Mother talked with each one of them and became aware that the marriage was ending.

    - After decedent's death, wife had lengthy conversations with a cousin of the decedent in which she acknowledged that she was living with someone else.

- In opposition to abandonment
    - Decedent sent his wife angry emails starting in July 2019 but ultimately in July 2020 sent her an email apologizing for his conduct.
    - They never filed for divorce.
    - They spoke on at least four occasions after July 2019, including making plans to meet in Las Vegas in late 2021. That did not occur. He died in January 2022.

Court's holding: Abandonment did not occur.

Key Holdings:

- Did wife bring cohabitation to an end without justification?
    - There is no requirement that spouses have previously established a marital home as part of showing that one spouse has abandoned the other spouse (mother won this one—wife argued that you can't bring cohabitation to an end if you never actually live together).
- Was the lack of contact between decedent and wife without his consent?
    - Burden of proof was on mother—and she didn't meet it. Court did not make the proper findings in its order to determine whether the lack of contact between them was without decedent's consent. It just recited evidence.
- Was the separation without intent of renewing the marital relationship?
    - Never proved wife was in a romantic relationship with someone else.
    - Never proved that wife could have come back to visit or live with decedent safely.
    - She argued that it wasn't safe for her to return because he acted cruelly when he was abusing alcohol and drugs.

2. ***North Carolina Court of Appeals addressed appeal from trial regarding reformation of estate planning documents and resulting deeds. Jones v. Corn, 293 N.C. App. 596 (published May 7, 2024).***

Overview: Mother and father had six children. Mother and father engaged in estate planning/elder law planning in the years right before they died that affected ownership of two pieces of real property that they owned—their primary residence and another tract of land. As a result, the primary residence ended up being owned by 2 of the 6 children. The other tract ended up owned by all 6 of the children. Plaintiffs who were the 4 children cut out of ownership of the principal residence sued to reform the deed to include them. Defendants who were the 2 children who got the principal residence sued to reform the deed that left the other tract to the 6 kids on the basis it should have been left to just the 2 of them.

Facts:

- March 2008, mother and father execute pour over wills and revocable trust agreements leaving everything upon the death of the two of them to their six kids equally.
- In 2014-mother and father hired a different attorney to assist them in elder law planning. This attorney prepared two deeds.
    - Deed 1 transferred the principal residence as follows: 99% interest to mother and father, each defendant 0.5% interest—all held as joint tenants with right of survivorship.
    - Deed 2 transferred the separate tract as follows: 49.5% interest to mother's revocable trust; 49.5% interest to father's revocable trust, 0.5% interest to each defendant. This deed also called for joint tenancy with right of survivorship but because mother and father held their interests in their revocable trusts, their deaths did not change the tract's ownership.
- Father died August 2015.
- Mother died August 2016.
- Attorney testified that the ownership was supposed to be joint with right of survivorship. "We did make a mistake in that deed. And that didn't accomplish what the Corns' intention was."
- There was testimony about medical conditions, capacity, undue influence.

Trial Court: (i) denied motions for direct verdict, (ii) jury returned a verdict finding that mother and father lacked capacity to execute the deeds, defendants unduly influenced father and mother to execute the deeds, the tract deed did not need reformation, and defendants owed punitive damages to plaintiffs, (iii) denied

defendants motions for JNOV, and (iv) granted defendants' motion for a new trial.

North Carolina Court of Appeals: Affirmed the trial court's denial of the motions for JNOV. Affirmed the order granting a new trial.

Key Takeaways:

1. The court noted that one of the circumstances when reformation can be available as a remedy is when there is mistake of the draftsman. Here the drafting attorney testified that she made a mistake. The court held however that "viewing the evidence in a light most favorable to Plaintiffs; however, attorney Toms' error can also be reasonably construed as a legal error." The court noted that the attorneys had send a letter to mother and father stating that they retained a majority ownership in the home and the tract "individually and as trustees of [their] revocable trusts." In fact, however, the tract deed lists only the trusts as grantees. Thus, the court concluded—the evidence indicated that the attorney knew who was listed as grantees, but "misunderstood the legal consequences of doing so." Legal errors don't support reformation.

2. Jury's decision regarding capacity and undue influence won't be disturbed. There is a presumption they got the capacity question correct. The court did say, however, "based on the evidence, the likelihood that Father and Mother both lacked capacity via hallucination seems slim."

3. A trial court's decision to grant a new trial is reviewed for abuse of discretion only. Trial court found there was insufficient evidence to support the jury verdicts. That is sufficient.

3. ***The Guilford County Superior Court allowed the modification of an irrevocable trust. Wray v. Dewese, 2024 N.C. Super. LEXIS 182* (Guilford County Superior Court).***

Overview: Trial court order on plaintiff's Petition to modify the terms of an Irrevocable Trust under G.S. 36C-4-412 and G.S. 36C-4-411(b).

Facts:

- Decedent executed a Revocable Trust Agreement in 2001 at a time when the GST exemption was $1,060,000.

- Decedent died in 2010 when there was no estate or GST tax.

- Decedent created a family trust under the terms of his revocable trust agreement that provided in summary as follows: (i) for wife for life, (ii) then, upon her death, to my son, if living, otherwise to his issue, if any, otherwise (iii) divide into shares—one share equal the GST exemption for the issue of my nieces and nephews and a second share equal to the rest after the GST exempt share is funded for my nieces and nephews.

- Son predeceased decedent's wife in 2023 leaving no issue. That meant that upon wife's death, everything would pass to the nieces and nephews and their issue pursuant to the funding formula calling for a GST exempt share and a non-exempt share.

- Problem: there was no GST tax in 2010 so 100% of the assets would pass to the issue of the nieces and nephews. Nothing would go to the nieces and nephews themselves.

- Petition sought to modify the funding share language to provide as follows: (i) GST exempt share in an amount equal to $1,060,000—the amount of the GST exemption when decedent died, and (ii) everything else in the non-exempt share.

- Thus, grand-nieces and grand-nephews would share $1,060,000. Nieces and nephews would share the rest.

- Trust value—approx. $3.8 million

- All beneficiaries signed a consent to the requested modification.

Holding: Court allowed the modification on the following two bases:

- G.S. 36C-4-412(a): Because of circumstances not anticipated by the settlor, modification of the trust furthers the settlor's purposes in creating the Trust; namely, settlor did not anticipate dying in a year when there was no estate or GST tax and when he signed the revocable trust agreement in 2001, the GST exemption was only $1,060,000.

- G.S. 36C-4-411(b): The modification of the Trust is consistent with a material purpose of the Trust and all beneficiaries consented.

Query: Any gift tax issues with this modification? Did the consent of the grandnieces and grandnephews to allow their parents to receive two-thirds of the trust upon termination constitute a gift?

4. ***North Carolina Court of Appeals affirmed Superior Court order granting Executrix's petition for custody and control of two parcels of real property to generate funds to pay estate debts and expenses. Sheppard v. Sheppard, 2024 N.C. App. LEXIS 790, 907 S.E. 2d 99 (opinion issued October 15, 2024) (unpublished opinion).***

Overview: Executrix of Estate filed petition for petition, custody, and control of two parcels of real property owned by the decedent (who was her father) so that she could sell the parcels to generate funds to pay estate debts and expenses.

Facts:

- Decedent had four children by a prior marriage.
- Decedent was married to a second spouse at the time of his death.
- One of Decedent's children was the Executrix.
- The Inventory reported approximately $53k of probate assets.
- Other debt in the amount of $13,000 was entered into evidence.
- There was an equity line on the residence in the amount of $56,000.
- In addition, Executrix had advanced about $25,000 in funds to pay estate debts and expenses and proof of these expenditures was admitted in the court hearing.
- Second wife lived in the home that Executrix petition for control of in order to sell it.

Trial Court: Both the clerk of court and the trial court upon *de novo* review issued an order granting the Executrix's request for possession, custody and control of the real property. Surviving spouse was ordered to vacate the property.

Issue on Appeal: Was sufficient evidence introduced to establish that the personal assets of the decedent were insufficient to satisfy the debts of the estate? A key issue here was that $25,000 of the debt was the result of reimbursements due to the Executrix.

The Law:

- G.S. 28A-15-1(c): if the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control, the clerk of court shall grant an order authorizing that power.

- G.S. 28A-13-3(a): A personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate.

Holding:

- Respondents didn't appeal the findings that there was an equity line of $56,000 or that there was $13,000 of other debt. Based on that alone, the court concluded that the total debts and expenses exceeded the probate asset.

- Court also held the $25,000 in reimbursements owed to the Executrix had been proven to the court.

- Thus all that was left was for the court to decide if it was in the best interest of the administration of the estate for the real property to be sold. Court so concluded. No error.

5. ***North Carolina Court of Appeals analyzes whether a child born via IVF via an embryo implanted after decedent's death is entitled to a share of decedent's estate. Abitol v. Clark, 910 S.E. 2d 10, 2024 N.C. App. LEXIS 960 (opinion issued December 3, 2024).***

Overview: Executor of decedent's estate filed a declaratory judgment action asking the court to determine whether a child of the decedent born via IVF (which embryo was implanted after decedent's death) is entitled to a share of the decedent's estate as an after-born child.

Facts:

- Decedent had a daughter with special needs from a prior relationship.

- Decedent did an estate plan that included a Will, Revocable Trust and Special Needs Trust for his daughter. The residuary beneficiary of his estate was his daughter's Special Needs Trust.

- Decedent got married in 2018.

- Decedent and his wife underwent in vitro fertilization and that resulted in multiple fertilized embryos. Decedent and his wife had selected one embryo for implantation.

- Decedent then suddenly and unexpectedly died on May 10, 2020 from a heart condition due to a delay in routine surgery during the COVID-19 pandemic.

- After his death, his wife had the embryo implanted.

- Son, Noah, was born 10 months and 6 days after decedent's death.

Issue on Appeal: Was there a justiciable controversy as to whether the after-born son was entitled to a share of his father's estate?

The Law:

- G.S. 31-5.5: A will shall not be revoked by the subsequent birth of a child to the testator … or by the subsequent entitlement of an after-born child born out of wedlock to take as an heir of the testator pursuant to the provisions of G.S. 29-19(b), but any after-born, after-adopted or entitled after-born child born out of wedlock shall have the right to share in the testator's estate to the same extent the after-born, after-adopted, or entitled after-born child born out of wedlock would have shared if the testator had died intestate. There are exceptions to this right, but none applied here.

- G.S. 29-19(b): For purposes of intestate succession, a child born out of wedlock shall be entitled to take by, through and from: …(3) A person who died prior to or within one year after the birth of the child and who can be established to have been the father of the child by DNA testing.

- G.S. 29-9: If a child is born more than 10 lunar months or 280 days after the death of the intestate, the presumption is that the child was not en ventre sa mere when the intestate died, but this presumption may be rebutted by evidence tending to show that he was in fact the father of the child.

Trial Court Holding: The superior court granted the defendant's motion to dismiss under Rule 12(b)(6) on the basis that there was no justiciable controversy. Defendant was the guardian for the decedent's daughter with special needs. Apparently, the trial court determined that G.S. 29-9 operates as a bar for any child born more than 10 months from the intestate's death.

Court of Appeals Holding: Reversed and remanded. The Court of Appeals disagreed with the trial court stating that G.S. 29-9 does not operate as an absolute bar. Rather the court stated that "the statute merely confirms that one born within 10 months SHALL inherit, it does not exclude other possibilities." Thus, the

court ruled that the interplay of G.S. 31-5.5 and G.S. 29-9 creates a controversy because plaintiff and defendant area construing those two statues in opposing ways. The matter is remanded so the court may fully determine the facts and issues not only with respect to this issue but with respect to the other matters pending in the case.

6. ***North Carolina Court of appeals addresses caveat on appeal. In re Will of Hobbs, 2024 N.C. App. LEXIS 1036, 909 S.E.2d 926 (opinion issued December 31, 2024) (unpublished opinion).***

Overview: Appeal by Propounder after a jury trial held that the decedent's will was procured by undue influence exerted by Propounder. Caveators' claim based on lack of capacity was dismissed via summary judgment.

Holding: Court of Appeals affirmed the jury verdict. Of interest: the court held that a fiduciary relationship existed between propounder and decedent because decedent had executed a power of attorney naming propounder as his agent. As a result, a presumption of undue influence arose.