RECENT DEVELOPMENTS
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I. U.S. ESTATE TAX

A. Generally

1. *The Tax Court sustains the IRS's positions on several issues in case involving estate tax return filed over a decade after decedent's death. Estate of Spenlinhauer v. Comm'r, T.C. Memo. 2025-134 (Dec. 30, 2025).*

The decedent died in 2005, and her son was appointed as the executor of the estate and was the sole residuary beneficiary. The son transferred the residuary of the estate to himself after distributing specific bequests and paying expenses, and the son closed the probate estate in Massachusetts Probate and Family Court. The son did not file a federal estate tax return. In 2013, the son filed for bankruptcy. The IRS discovered the estate in the bankruptcy proceedings and initiated an examination. In 2017, after being contacted by the IRS, the son filed an estate tax return and elected an alternate valuation date. After examining the estate tax return, the IRS sent a notice of deficiency that, in pertinent part, (1) disallowed the elections for a qualified conservation easement exclusion and an alternate valuation for the "Hingham Property"; (2) adjusted the values reported for the Hingham Property, the estate's interest in "Spencer Press", and certain taxable gifts; (3) included in the gross estate the value of the "Milton Property" and the value of a note; (4) disallowed the deductions for the executor's commissions, attorney's fees, litigation fees, and an unsecured letter of credit; and (5) determined a Code Section 6651(a)(1) addition to tax for failure to timely file the estate tax return. Subsequently, the IRS notified the son that he was liable for the estate's liabilities as a transferee. The Tax Court sustained the IRS's disallowance of the alternate valuation date election because such an election under Code Section 2032 must be made on the estate tax return no later than a year after the time prescribed by law for filing. Similarly, the Tax Court sustained the IRS's disallowance of the executor's election to exclude a percentage of the value of land from the gross estate pursuant to the qualified conservation easement exclusion because such an election must be made on a timely filed estate tax return. The Tax Court also agreed with the IRS's position that the value of the Hingham Property should be based on a real estate appraisal expert's opinion rather than the assessment value for local tax purposes. On another valuation issue, the Tax Court agreed with the IRS that the value of the estate's 1% interest in Spencer Press should be based on what was reported to the probate court during the probate administration despite the son's argument that such interest had little or no value at the time of her death. The Tax Court sustained the IRS's positions on the other issues from the notice of deficiency. In closing its opinion, the Tax Court noted that Code Section 6901 provides that the IRS may assess and collect unpaid estate tax from the transferee of a decedent's property. Applying applicable state law, the Tax Court held that the IRS may seek to recover the estate's tax liability from the son up to the amount of property actually transferred to him as residuary beneficiary.

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

1. *The Fifth Circuit affirms the Tax Court's decision 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. Fields v. Comm'r, 178 F.4th 895 (5th Cir. 2026).*

The Estate appealed the Tax Court's decision affirming the IRS issuance of a notice of deficiency and assessment of a 20% penalty. 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.

The Fifth Circuit reviews the Tax Court's findings of fact for clear error and its conclusions of law *de novo*. The Estate advanced three purported non-tax reasons for the transfers: (1) to remedy insufficiencies of the decedent's power of attorney as to succession and management; (2) to consolidate and streamline management of the decedent's assets; and (3) to protect against fraud and elder abuse. The Fifth Circuit concluded that the Tax Court did not clearly err in finding that the creation and funding of the limited partnership did not serve a substantial non-tax purpose, as each purported reason by the Estate was found to be a theoretical justification rather than an actual motivation for the transfers. The Fifth Circuit also found that the Tax Court did not clearly err in finding the Estate negligent in underpaying estate tax.

C. Extensions of Time to Make Elections

1. *IRS granted an extension of time of 120 days to make a QTIP election for Executors who reasonably relied on a tax professional who failed to include the assets of a Marital Trust as property subject to the QTIP election in Part A of Schedule M of the Form 706. PLR 202524009 (June 13, 2025).*

Decedent died with an estate plan that divided trust assets into a Family Trust and Marital Trust. Executors of Decedent's estate engaged a tax professional to prepare Decedent's Form 706. The tax professional mistakenly failed to include the assets of the Marital Trust as property subject to the QTIP election in Part A of Schedule M. Thus, no QTIP election was made with respect to the property

passing to Marital Trust. The IRS concluded that Executors reasonably relied on the advice of a qualified tax professional and granted an extension of time of 120 days to make the QTIP election.

2. ***The IRS granted estate an extension of time to make a QTIP and "reverse" QTIP election where estate relied on accountant who failed to make elections on timely filed estate tax return. PLR 202532003 (Aug. 8, 2025).***

The IRS granted an estate's request for an extension of time under Treasury Regulation Sections 301.9100-1 and 301.9100-3 to make a qualified terminable interest property ("QTIP") election under Code Section 2056(b)(7)) and a "reverse" QTIP election under Code Section 2652(a)(3). Decedent and spouse executed Family Trust. Upon the death of Decedent, Family Trust was to divide into separate trusts, including Trust A which was to qualify as a QTIP trust. Decedent's estate hired a certified public accountant to prepare the estate tax return. The accountant failed to advise the executors of Decedent's estate of the ability to make a QTIP election and reverse QTIP election, and accordingly did not make valid elections on the estate's tax return for Trust A. The IRS ruled the estate established reasonable cause to grant an extension of time to make the elections because the executors relied on a qualified tax professional who failed to properly advise them. The IRS granted the estate an extension of time of 120 days to file a supplemental Form 706.

3. ***The IRS grants a request for an extension of time to make the alternate valuation date election on a Form 706. PLR 202547003 (Nov. 21, 2025).***

The IRS addressed whether an extension of time to make the alternate valuation date election was permissible. The personal representatives of the estate retained an accounting firm to prepare a Form 706. The estate filed the Form 706 without an alternate valuation date election and the accounting firm did not advise the estate that it should have elected the alternate valuation date. The estate requested that the accounting firm prepare a supplemental Form 706 making the alternate valuate date election under Code Section 2023 and the supplemental Form 706 was filed within one year after the due date (including extensions).

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. Treasury Regulations Section 301.9100-3(b)(1)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because the taxpayer was unaware of the need to make the election after exercising reasonable diligence. Treasury Regulations Section 301.9100-1(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied upon a qualified tax professional and that tax professional failed to make or advise the taxpayer to make the election. 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.

D. Collection of Estate Tax

1. *A U.S. District Court held that the co-trustees of a Decedent's revocable trust were jointly liable for unpaid estate taxes, interest, and penalties, because they distributed estate assets to themselves knowing that the estate taxes had not been paid. United States v. Karst, No. 24-CV-04090-TC, 2026 WL 560224, at *1 (D. Kan. Feb. 27, 2026).*

Decedent died on September 15, 2007, leaving his property, including several oil and gas businesses, in a revocable trust. His sons, Monty Karst and Todd Alan Templeton, served as co-trustees of the trust and were the primary beneficiaries of both the trust and the estate. Karst also served as the executor of the estate.

The Estate filed Form 706 reporting an estate tax liability of $792,790.75 and electing to pay the tax in yearly installments under Section 6166. Although Karst and Templeton made the first several installments, they stopped making payments after June 16, 2015. During the administration of the Estate and while the tax liability remained outstanding, Karst and Templeton distributed the Estate's assets—which were held in the trust—to themselves as beneficiaries. As of June 30, 2025, the outstanding balance of the Estate's federal tax liability, including interest and penalties, was $1,105,111.34.

The United States filed suit on September 10, 2024, seeking a judgment to reduce the Estate's tax liability to a money judgment and to hold Karst and Templeton personally liable for the unpaid taxes. The Government asserted that Karst and Templeton are personally liable under Code Section 6324(a)(2) because they received or held property from the gross estate that was not used to satisfy the tax debt. The parties' stipulations establish each element required for personal liability under Code Section 6324(a)(2).

The Government generally has ten years to collect estate taxes from a decedent's estate. Karst and Templeton argued that the statute of limitations had run and the Government could not collect the remaining owed tax. Per Code Section 6503(d), when an estate elects to pay in installments under Code Section 6166, the limitations period is suspended until the IRS terminates the election for nonpayment. Thus, the Code Section 6166 election shifts the deadline to ten years after the IRS's termination of the election, id., which in this case occurred on May 10, 2018. This resulted in an extended deadline of May 8, 2028, which means that the statute of limitations did not preclude the Government's filing of the suit on September 10, 2024. The District Court determined that Karst and Templeton were jointly and severally liable.

E. Estate Tax Closing Letter

1. *Final regulations confirm the fee to obtain an estate tax closing letter. Treasury Decision 10038 (Dec. 12, 2025).*

The IRS adopted final regulations regarding the user fee for estate tax closing letters. The fee for estate tax closing letters requested after May 20, 2025, will be $56 (reduced from $67). This represents an adoption of the proposed regulations issued in May 2025 without changes.

II. U.S. GIFT TAX

A. Generally

1. *The IRS provides a safe harbor for certain contributions to Trump accounts that will be treated as completed gifts that are not gifts of future interests in property and to which the annual per-donee gift tax exclusion applies. Rev. Proc. 2026-25 (June 29, 2026).*

In this Revenue Procedure, the IRS acknowledged the concerns that the vast majority of individual donors to Trump accounts are unlikely to ever owe federal gift, estate, or GST tax due to the lifetime basic exclusion amount of $15,000,000 and the corresponding $15,000,000 GST exemption amount. The IRS also recognized the burdens on taxpayers and the IRS that gift tax reporting requirements would cause. Accordingly, the IRS and Treasury Department provides a safe harbor for individual taxpayers whose only taxable gifts in the calendar year are cash contributions to one or more Trump accounts and such gifts do not exceed the annual exclusion amount (and no gift or GST tax liability is generated and a gift tax return is otherwise not required to be filed). The safe harbor provides that the contributions to the Trump accounts are gifts that are not future interests in property and the requirement to file a gift tax return is eliminated under these circumstances.

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

A. Tax Imposed – Code Section 2601

1. ***The IRS granted extensions of time to make GST trust elections under Code Section 2632(c)(5). PLR 202530007 (July 25, 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 26.2642-7 to make Code Section 2632(c)(5)(A)(ii) elections to treat certain trusts created by the taxpayer as generation-skipping transfer ("GST") trusts for the purposes of the GST automatic allocation rules. The taxpayer originally created and funded separate irrevocable trusts for the benefit of each of the taxpayer's two children and the child's descendants. Although the taxpayer intended each trust to be GST-exempt, the taxpayer's accountant who prepared the Form 709 for the year of the funding of the trusts did not make an election to treat both trusts as GST trusts. According to the record described in the Private Letter Ruling, the automatic allocation of GST exemption did not apply to the taxpayer's transfers to these trusts. Code Section 2642(g)(1) authorizes the Secretary of the IRS to regulate procedures for granting extensions of time to make allocations of GST exemption. According to Treasury Regulations Section 26.2642-7, a request of relief from the default deadline for making a valid GST election will be granted 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 desired election. Therefore, the IRS granted the taxpayer's request for extensions with respect to both trusts. Because this request was made after May 6, 2024, the taxpayer's request was governed by the relief standards under Treasury Regulations Section 26.2642-7 and not by those under Treasury Regulations Section 301.9100-3.

2. ***The IRS granted extensions of time to make GST allocations under Code Section 2632(c)(5) for transfers to identical trusts. PLR 202531005, PLR 202531004 (August 1, 2025).***

This pair of Private Letter Rulings concerns a taxpayer's transfers to identical irrevocable trusts that were intended to be exempt from the generation-skipping transfer ("GST") tax. The taxpayer and the taxpayer's spouse created separate irrevocable trusts for the benefit of their descendants, and for the funding year the taxpayer's accountant who prepared the Form 709 made Code Section 2632(c)(5) elections to opt out of the automatic allocation of GST exemption for those transfers and did not advise the taxpayer of the consequences of those elections. Code Section 2642(g)(1) authorizes the Secretary of the IRS to regulate procedures for granting extensions of time to make allocations of GST exemption. According to Treasury Regulations Section 26.2642-7, a request of relief from the default deadline for making a valid GST allocation will be granted 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 the advice of a qualified tax professional. Therefore, the IRS granted the taxpayer's requests for extensions

with respect to both trusts. Because these requests were made after May 6, 2024, the taxpayer's requests were governed by the relief standards under Treasury Regulations Section 26.2642-7 and not by those under Treasury Regulations Section 301.9100-3.

3. *The IRS granted extensions of time to make a GST trust election under Code Section 2632(c). PLR 202610004 (March 6, 2026).*

In this Private Letter Ruling, the IRS responded to a request for extensions of time under Code Section 2642(g) and Treasury Regulations Section 26.2642-7 to make a Code Section 2632(c)(5)(A)(ii) election to treat a certain trust as a generation-skipping transfer ("GST") trust for the purposes of the GST automatic allocation rules. The grantor of the trust originally created and funded an irrevocable trust for the benefit of a non-skip person who had a right to withdraw gifts made to the trust at the end of each calendar year to the extent of the greater of $5,000 or 5% of the aggregate value of the trust. Although the grantor intended the trust to be GST-exempt, the grantor's accounting firm that prepared the Form 709 for the year of the funding of the trust did not make an election to treat the trust as a GST trust and did not affirmatively allocate GST exemption to the transfer. Code Section 2642(g) authorizes the Secretary of the IRS to regulate procedures for granting extensions of time to make allocations of GST exemption. According to Treasury Regulations Section 26.2642-7(d), a request of relief from the default deadline for making a valid GST election will be granted 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. Therefore, the IRS granted the grantor's request for an extension.

B. Modification of GST Trusts

1. *The IRS ruled that the merger of identical GST-exempt trusts created under a husband and wife's separate Revocable Trust Agreements would not affect the GST-exempt status of the surviving trust. PLR 202528006 (July 11, 2025).*

A husband and wife created separate Revocable Trust Agreements. Upon the wife's death, all of the remaining assets of her trust funded a Family Trust with an inclusion ratio of zero, because her generation-skipping transfer ("GST") tax exemption was automatically allocated to all of the Family Trust assets. Upon the husband's death, part of his remaining assets funded an Exempt Trust with an inclusion ratio of zero, because his GST exemption was automatically allocated to all of the Exempt Trust assets, and following his death the wife's Family Trust assets also funded a separate Exempt Trust with an inclusion ratio of zero. In order to simplify the administration of the assets, the taxpayer aimed to merge the husband's Exempt Trust into the wife's Exempt Trust, as permitted by the terms of both Revocable Trust Agreements when trusts are identical, and requested this Private Letter Ruling that the merger would not effect the GST-exempt status of

the merging trusts and would not cause any distribution from the surviving Exempt Trust to be subject to GST tax. The rules under Treasury Regulations Section 26.2601-1(b)(4)(i)(D) provide that a valid modification of the governing instrument of a GST-exempt trust will not cause the trust to be subject to GST tax if the modification does not shift a beneficial interest to a beneficiary who occupies a lower generation than the persons who hold the beneficial interest before the modification and the modification does not extend the time for vesting any beneficial interest in the trust beyond the vesting period for the original trust. Example 6 under Treasury Regulations Section 26.2601-1(b)(4)(ii)(E) specifically provides that a valid merger of two identical, GST-exempt trusts separately created by spouses does not cause the surviving trust assets to be subject to GST tax if the requirements under Treasury Regulations Section 26.2601-1(b)(4)(i)(D) are met. The IRS found that the proposed merger of the husband's Exempt Trust into the wife's Exempt Trust would not shift the beneficial interests to any beneficiary who occupies a lower generation and would not extend the time for vesting of the beneficial interests. Therefore, the IRS concluded that the merger would not affect the GST-exempt status of the surviving trust or cause any distribution to be subject to GST tax.

2. ***The IRS concluded, in a series of related rulings, that proposed modifications causing interests to be retained in trust and incorporating certain administrative provisions did not cause the assets of similar irrevocable trusts funded before September 25, 1985, to be subject to the GST tax. PLR 202619003, 202619004, 202619005, 202619006, 202619007, 202619008 (May 8, 2026).***

This series of related Private Letter Rulings concern, among other issues, the preservation of exemption from the generation-skipping transfer ("GST") tax of assets held in irrevocable trusts on September 25, 1985 (the "Exemption Date"). Presumably the same Grantor across these Private Letter Rulings created separate irrevocable trusts for the primary benefit of each of his two children, funded before the Exemption Date.

The Grantor, child beneficiary and contingent beneficiaries of each trust executed separate modification agreements, approved by court orders, effective upon favorable Private Letter Rulings. Originally, the provisions of the trust provided that upon the death of the child beneficiary, any remaining assets would be paid to the child beneficiary's then living issue, per stirpes, subject to a holdback trust until that individual reached a certain age, or if none, to the Grantor's then living issue, per stirpes, outright, or if none, to the child beneficiary's estate. The agreed upon modifications directed that upon the death of the child beneficiary any assets allocated for that child's issue must be held in a separate trust for that individual (each, an "Issue Trust"), regardless of that individual's age. The modifications provided that each Issue Trust must terminate upon the earlier of the beneficiary's death or by the day prior to 21 years after the death of the last to die of the Grantor's children (the "Perpetuities Period"). If an Issue Trust terminates upon the beneficiary's death, then the beneficiary is granted

a testamentary general power of appointment over all of the trust assets, and any unappointed assets are payable to the beneficiary's estate. If an Issue Trust terminates because of the end of the Perpetuities Period, all of the trust assets are payable to the beneficiary. The agreed upon modifications also confirmed the Trustee's discretionary power to make distributions, changed Trustee resignation and appointment provisions, and confirmed that a spendthrift clause applied to all individual beneficiaries.

Based on Treasury Regulations Section 26.2601-1(b)(4)(i)(D), the IRS concluded that following the modifications each trust would continue to be exempt from GST tax, because the proposed modifications were administrative in nature and did not shift any beneficial interest to a lower generation or extend the time for vesting of any beneficiary interest. The IRS also concluded that the proposed modifications would not cause the trust assets to be includible in the gross estate of the Grantor under Code Sections 2035 through 2038 and would not constitute a transfer causing the Grantor or any trust beneficiary to be subject to gift tax under Code Section 2501.

3. ***The IRS concluded that proposed modifications under a nonjudicial settlement agreement changing the administrative provisions related to the appointment of a Trustee and granting an advisory committee certain investment powers did not cause the assets of an irrevocable trust created before September 25, 1985, to be subject to the GST tax. PLR 202622002 (May 29, 2026).***

This Private Letting Ruling concerns, among other issues, the preservation of exemption from the generation-skipping transfer ("GST") tax of assets held in an irrevocable trust on September 25, 1985 (the "Exemption Date"). Decedent's Will created a trust that initially split into separate funds prior to the Exemption Date. Following the death of one of the decedent's children, the funds were combined into a single trust (the "Trust"). An Advisory Committee, comprised of family members of the decedent, had certain authority to direct and replace the Trustee of the Trust.

The Trust was modified by court order multiple times before the Trustee and beneficiaries of the Trust executed a nonjudicial settlement agreement, effective upon a favorable Private Letter Ruling, modifying the Trust to remove a geographic requirement for the Trustee, adding certain administrative provisions related to the Trustee's service and granting the Advisory Committee the power, in a fiduciary capacity, to direct the investments of trust assets depending on the geographic location of the Trustee (the "Settlement Agreement"). The Settlement Agreement did not give the Advisory Committee any powers with respect to the distribution of the income or principal of the Trust.

Based on Treasury Regulations Section 26.2601-1(b)(4)(i)(D), the IRS concluded that following the modifications the Trust would continue to be exempt from GST tax, because the proposed modifications under the Settlement

Agreement were administrative in nature and did not shift any beneficial interest to a lower generation or extend the time for vesting of any beneficiary interest. In response to the Trustee's request, the IRS also concluded that the proposed modifications would not cause the members of the Advisory Committee to have a general power of appointment within the meaning of Code Section 2041(a) and would not trigger a transfer or other disposition that will subject the Trust and the beneficiaries to gift tax under Code Section 2501 or to the realization of any gain or loss under Code Section 1001.

IV. U.S. INCOME TAX

A. Fiduciary Income Tax

1. *The OBBBA replaces the Pease limitation with a 2/37ths cap on itemized deductions for top-bracket taxpayers, including trusts and estates, potentially causing trusts to incur tax liability despite distributing all income. Footnote 102 of The Joint Committee on Taxation's General Explanation of the Tax Provisions of the "One Big Beautiful Bill Act" (OBBBA).*

Prior to the original Tax Cuts and Jobs Act (TCJA), you could deduct certain "miscellaneous" expenses if the total exceeded 2% of your adjusted gross income, but the TCJA, as made permanent by the OBBBA, eliminates these deductions for most taxpayers. Instead, a new 2% cut-back (the 2/37ths rule) applies to itemized deductions for high-income earners. If a taxpayer is in the top marginal tax bracket (37%), the taxpayer's total itemized deductions are reduced by 2/37ths of the lesser of (i) total itemized deductions or (ii) the excess of taxable income (computed without itemized deductions) over the threshold for the 37 percent tax bracket. Footnote 102 clarifies this 2% cut-back applies to the distribution deductions of trusts and estates. Accordingly, a trust or estate in the top tax bracket that distributes all income each year may nonetheless owe federal income tax, because it is taxed at a 37% rate while its deduction for distributions is limited to 35%.

2. *In PLR 202618006, the IRS determined that an estate could deduct income distributed to charitable residuary beneficiaries, even when the governing instrument did not expressly allocate estate income to those charities. PLR 202618006 (February 4, 2026).*

The decedent's Will provided that a percentage of the residuary estate was payable to exempt entities. The decedent's Will did not specify the treatment of income earned by the estate, however, state law provided that income not arising from a specifically bequeathed asset must be paid to residuary beneficiaries. The IRS ruled that the estate could deduct the income paid to qualified charities that were its residuary beneficiaries. Further, the IRS stated that requiring estate income to be distributed to the residuary beneficiaries fulfills the IRC § 642(c) requirement that the income be paid to the charity.

B. Basis Consistency Rules

1. *RIN 1545-BM97 is a correction to the final consistent basis regulations (T.D. 9991) make non substantive fixes to restore intended language and clarifies that Form 8971 and its Schedule A are subject to §§ 6721 and 6722 penalty regimes, respectively, for filings required after September 17, 2024. In RIN 1545-BM97, 91 Fed. Reg. 13220 (March 19, 2026)*

In RIN 1545-BM97, 91 Fed. Reg. 13220 (Mar. 19, 2026), the Treasury issued a correction to the 2024 final consistent-basis regulations (T.D. 9991), fixing drafting errors that had unintentionally displaced prior regulatory language. The correction does not change any substantive rules; rather, it clarifies the effective dates of certain penalty provisions. Specifically, it confirms that (i) Form 8971 is treated as an information return subject to failure-to-file penalties for returns required after September 17, 2024, and (ii) Schedule A is treated as a payee statement subject to separate penalty provisions for statements required after that same date.

C. Charitable Contributions and Gifts – Code Section 170

1. ***Proposed Legislation -** Congressman Don Beyer (D-VA), Congressman Mike Kelly (R-PA), Senator Cramer (R-ND), and Senator Chris Coons (D-DE) introduced the Charity Parity Act, which would allow taxpayers to make direct qualified charitable distributions from employer sponsored retirement plans. **H.R. 8783, 119th Cong., 2d Sess.***

On May 13, 2026, Donald S. Beyer Jr. (D-Va.) and Mike Kelley (R-Pa.), both members of the House Committee on Ways and Means, introduced H.R. 8783, 119th Cong., 2d Sess. (May 13, 2026), the "Charity Parity Act," seeking to amend the Internal Revenue Code to exclude from gross income charitable distributions from certain employer-sponsored retirement plans. The Charity Parity Act is a bipartisan bill which would allow taxpayers to make qualified charitable distributions from employer-sponsored retirement plans. Currently, a taxpayer cannot make a qualified charitable distribution from a qualified plan, such as a Code Section 401(k) or 403(b) plan, without first rolling those funds to an IRA. The Charity Parity Act seeks to eliminate rollover fees and administrative complications by removing that step.

2. *The Tax Court denies a charitable contribution deduction after finding that a contemporaneous written acknowledgement was unreliable. Johnson v. Comm'r, T.C. Memo. 2025-87 (Aug. 18, 2025).*

In 2018, the taxpayer earned $76,927 as a mediator employed by the City of Baltimore and also served on the board of a Foundation. The Foundation was recognized by the IRS as a tax-exempt public charity. The Foundation's mission was to investigate and find the killer of the taxpayer's nephew, which it ultimately accomplished in 2019. In any event, the taxpayer did not file a timely tax return

for 2018, and the IRS prepared a substitute return based on information received from third parties and issued a notice of deficiency to the taxpayer on April 15, 2021. Around this same time, the taxpayer filed a late tax return and claimed itemized deductions of $56,161, which consisted of $43,258 in charitable contributions by cash or check. At trial, the taxpayer explained that the charitable contributions reflected cash that he donated to the Foundation in 2018 to support its mission. The Tax Court admitted into evidence a letter addressed to the taxpayer dated January 22, 2019, from the Secretary of the Foundation that stated in pertinent part: "Our receipts indicated that your 2018 monetary donations total $43,258. [The Foundation] is a registered 501(c)(3) nonprofit organization . . . Your donation is tax deductible to the extent allowable by law. There were no goods or services provided by [the Foundation] in return for this contribution." The Tax Court found that the letter reflects a typeface for the date different from that used in the body of the letter. The taxpayer testified that his contributions consisted of cash withdrawn from ATMs over the course of 2018 that he paid on behalf of the Foundation to various informants in return for information on his nephew's killer. Under Code Section 170(f)(8), for a charitable contribution over $250, there must be a contemporaneous written acknowledgement from the donee organization that specifies the amount of cash and whether any goods or services were provided in return. Under Code Section 170(f)(17), no deduction is allowed for any cash contribution unless the donor maintains as a record of such contribution a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution. The Tax Court found that the letter dated January 22, 2019, satisfied these requirements on its face. However, the Tax Court also found that the letter was unreliable given the taxpayer's lack of credibility during his testimony, the taxpayer's relationship with the Foundation, the lack of other supporting documentation, and the fact that the amount of the contributions "seem unusual" relative to the taxpayer's gross income. Accordingly, the Tax Court applied additional scrutiny to the letter and held that the taxpayer did not satisfy his burden to prove the claimed charitable contributions.

3. ***The Tax Court held that the application of the "reasonable cause exception" to the charitable contribution substantiation requirements presented a genuine issue of material fact and the eligibility of charitable contributions for an income tax deduction could not be determined without a trial. The David and Barbara Green 1993 Dynasty Trust v. Commissioner, 165 T.C. No. 7 (Oct. 2, 2025).***

This case involves three electing small business trusts and two married couples. Together, these taxpayers owned over 99 percent of the stock in Hobby Lobby Stores, Inc., an S corporation, during 2011 and 2012. In each of these years, Hobby Lobby donated over 1,200 biblical artifacts to the Museum of the Bible, a charitable organization. Hobby Lobby claimed charitable contributions of over $23 million on its 2011 return and over $61.6 million on its 2012 return. The IRS disallowed the deductions in their entirety and imposed valuation

misstatement penalties. Both determinations were challenged before the Tax Court.

In substantiating the values of the deductions, the taxpayers reported acquisition dates on an aggregate basis and submitted an appraisal that was missing signatures from some of the appraisers. In its motion for partial summary judgment, the IRS sought a ruling that the charitable deductions for both years should be disallowed because the deductions were not adequately substantiated. The taxpayers argued they were in strict or substantial compliance with the substantiation rules or that, in the alternative, the reasonable cause exception to the substantiation requirements applied. The Tax Court denied the IRS's motion, focusing on the applicability of the reasonable cause exception. The exception, set forth at Code Section 170(f)(11)(A)(ii)(II), provides that the rule denying a charitable contribution deduction on substantiation grounds "shall not apply if it is shown that the failure to meet such requirements is due to reasonable cause and not to willful neglect." The Tax Court noted that the reasonable cause defense is available for misstatements of value that are based on a qualified appraisal following a good faith investigation but is not available for gross misstatements of value. The IRS claimed that the exception could not apply as a matter of law because Hobby Lobby did not rely on professional advice and did not provide necessary information to the accounting firm that prepared the forms. The Tax Court disagreed with the IRS, reasoning that whether the reasonable cause defense is available is determined on a case-by-case basis and is a factual question that requires a trial.

4. ***The Tax Court holds that the sale of for-profit colleges to a charity is a bargain sale. Barney v. Comm'r, T.C. Memo. 2025-133 (Dec. 30, 2025).***

The taxpayer owned five S Corporations that were for-profit colleges. Due to market conditions, the taxpayer became interested in transitioning the colleges from for-profit entities to nonprofit entities. In 2012, the taxpayer transferred for consideration three of the colleges and donated two of the colleges to CEHE, a nonprofit entity recognized as an exempt organization under Code Section 501(c)(3). The consideration for the purchase of the three colleges was in the form of two secured notes in the amounts of $200 million and $231 million. After the transaction closed, the parties agreed to irrevocably discharge some of the debt. On the 2012 tax returns, the S corporations reported the merger as a bargain sale and claimed charitable contribution deductions. The taxpayer similarly reported the charitable contribution deductions and capital gains that flowed through the S corporations on his 2012 tax return. The IRS selected the tax returns for examination and proposed a deficiency and a penalty. A key issue before the Tax Court was whether the transaction was a bargain sale. The Tax Court noted that a charitable contribution deduction is allowed under Code Section 170 for a bargain sale made to a charitable organization and that the donor recognizes taxable gain on the sale over his adjusted basis and is entitled to deduct the excess of the property's fair market value over the sale price. However, the IRS argued that no gift was made because the taxpayer did not intend to

contribute more value to CEHE than he received in return. After analyzing the fair market value of the colleges at the time of the transaction, the Tax Court ultimately determined that the transaction was indeed a bargain sale but for an amount less than originally reported.

5. ***The Tax Court denied a pro se taxpayer's claimed charitable contribution deduction for donated "high-end cycling EQ apparel" because the taxpayer failed to substantiate his basis in the property and failed to obtain a qualified appraisal. Gibson v. Comm'r, TC Summ. Op. 2026-1, 2026 WL 32780 (Jan. 6, 2026).***

The Tax Court denied a pro se taxpayer's claimed $188,563 charitable contribution deduction for the donation of "high-end cycling EQ apparel." The taxpayer purportedly received the high end cycling equipment as a gift but did not have value information from the donor or identify the donor. The Tax Court held that the taxpayer failed to substantiate the deduction because he did not provide evidence showing how he acquired the donated items or establish his adjusted basis in the property, as required under the Code. In addition, the Tax Court concluded that the taxpayer failed to prove that the appraisal submitted in support of the deduction constituted a qualified appraisal. As a result, the taxpayer was not entitled to any charitable contribution deduction for the donation.

6. ***The District Court has been asked to establish the rights of a successor advisor to a donor-advised fund and to compel proper administration of the donor-advised fund in Peterson v. Christian Community Foundation, Inc., Dkt. No. 1:26-cv-00179 (D.Colo., filed Jan. 15, 2026).***

On January 15, 2026, Plaintiff, as successor advisor to a donor-advised fund, filed suit in the United States District Court for the District of Colorado against the sponsoring organization of the fund, bringing seven claims for relief for misadministration of the fund. The fund was established by the Plaintiff's father in 2005 and holds over $21 million in charitable assets. Plaintiff claims that since March 2024, the fund's sponsoring organization has refused communication with Plaintiff, revoked his account access, declined to process grant recommendations including a $1 million request, and failed to make any charitable distributions from the fund during 2024—the first time in the fund's nineteen-year history that no grants were made. Plaintiff also claims that the CEO of the fund's sponsoring organization directed Plaintiff never to contact the organization again and terminated his online portal access, while refusing to provide governing documents or fund accountings. The complaint includes demands for jury trial on all triable issues and seeks both legal and equitable relief to establish Plaintiff's rights as advisor and compel proper fund administration.

The sponsoring organization filed a Motion to Dismiss, contending that the advisor to a donor-advised fund has no legally enforceable rights with respect to the administration of the fund. Specifically, the sponsoring organization contends that Code Section 170(d)(18) states that a tax deduction is available only

if the fund sponsor receives "exclusive legal control over the assets contributed," making any charitable tax deductions unavailable for donor-advised funds over which an advisor possesses legally enforceable contractual rights.

7. ***The IRS concluded that the transfer of a non-voting interest in an LLC to a tax-exempt entity should be disregarded because it lacked economic substance reasoning the taxpayers retained all voting control and management authority over the LLC and its underlying assets. Field Service Advice 20260401F (Jan. 23, 2026).***

Husband and wife taxpayers formed an LLC, contributed cash and marketable securities to the LLC, then transferred a substantial nonvoting membership interest in the LLC to a Code Section 501(c)(3) organization ("Charity") created by taxpayers' advisor. Taxpayers claimed a charitable deduction for the nonvoting interest transferred to the Charity and claimed that the Charity's share of the LLC's investment income shouldn't be taxable because the Charity was a Code Section 501(c)(3) entity.

The IRS applied the two-prong (objective and subjective) economic substance test under Code Section 7701(o), which provides that a transaction shall be treated as having economic substance if the transaction changes in a meaningful way (apart from federal income tax effects) the taxpayer's economic position, and the taxpayer has a substantial purpose (apart from federal income tax effects) for entering into such transaction.

In assessing the transaction, the IRS noted Taxpayer-Husband had unfettered control over the assets of the LLC, as evidenced by withdrawals from the LLC during the years at issue. These withdrawals were later papered as loans to Taxpayers to take advantage of an amendment made to the operating agreement, which allowed for secured loans to "qualified borrowers." The IRS noted that that Taxpayer-Husband not only had the ability to drain value out of the LLC at any time, he, in fact, acted on this ability. Taxpayers, through these withdrawals, had the immediate benefit of the investment income. Although the Operating Agreement required yearly distributions to Charity, Taxpayer-Husband retained the sole discretion to dissolve the LLC at any time or to exhaust the LLC's investments, Charity had no right to demand any distributions and Charity did not, in fact, receive any distributions as required. Charity was also unable to realize any value from the transfer or sale of the nonvoting LLC units. Charity was limited in its ability to divest itself of the LLC units. Charity could not sell the interests to obtain value because the interests had no value (i.e., the operating agreements were statements of intention to make a gift in the future) and the ability to sell any interest was subject to a very detailed right of first refusal. Notably, the IRS had also issued a notice to Charity proposing to revoke its exempt status because of its considerable activities that were not in furtherance of its exempt purpose, including participating in many tax shelter schemes like the one addressed here.

The IRS concluded that the transaction did not meaningfully change Taxpayers' economic position nor did they have a substantial purpose in participating in the transaction. Accordingly, the IRS concluded that the transfer of LLC interests to Charity must be disregarded under the economic substance doctrine of Code Section 7701(o). Because the transfer of nonvoting interests to Charity lacks economic substance, Charity is not a member of LLC, and all income or gains of LLC must be allocated to Taxpayers. In addition, the IRS did not allow taxpayers to take a charitable deduction reasoning the taxpayers' predominant purpose was to obtain financial benefits.

8. ***Charitable deductions are disallowed absent strict compliance with the contemporaneous written acknowledgment requirement; specifically, the acknowledgment must affirmatively state whether goods or services were provided (even if none were). Martin v. Comm'r, T.C. Memo. 2026-39 (May 14, 2026) and Martin v. Comm'r, T.C. Memo. 2026-40 (May 14, 2026).***

To obtain a charitable deduction under Code Section § 170(f)(8) a Contemporaneous Written Acknowledgment (CWA) for a contribution exceeding $250 must explicitly state whether the donee provided any goods or services in return, and if so, include a description and good-faith estimate of their value. In Martin v. Comm'r, T.C. Memo. 2026-39 (May 14, 2026) and Martin v. Comm'r, T.C. Memo. 2026-40 (May 14, 2026), the Tax Court disallowed charitable deductions for contributions of real property where the CWA provided that the contribution was a "donation" and a "gift" but did not expressly provide whether any goods and services were provided in exchange for the real property. The Tax Court held that the statute requires strict compliance, an affirmative statement is required even if the donee provides no consideration, and including words such as "donation" or "gift" do not overcome this defect.

9. ***In Simmons v. Comm'r, TC Memo. 2026-34 (April 22, 2026), The Tax Court denied the claimed charitable contribution deduction, finding that the partnership did not provide sufficient documentation to substantiate the individual gifts. Simmons v. Comm'r, TC Memo. 2026-34 (April 22, 2026).***

The Tax Court upheld the disallowance of the partnership's charitable contribution deduction due to inadequate evidence regarding the amounts and recipients of the donations. The limited liability company provided QuickBooks transaction entries that showed the amounts and dates of certain charitable contributions, they did not identify the donee organizations and the limited liability company did not have receipts or contemporaneous written acknowledgements, as required by Reg. § 1.170A-13(a)(1), (f). Additionally, the limited liability company claimed deductions for non-reimbursed food" expenses or automobile expenses, but did not have receipts or other contemporaneous records. The Tax Court also denied interest deductions for business operations financed through personal credit cards and personal loans from family members

because the debts were obligations of the limited liability company, rather than obligations of the business itself.

D. Conservation Easements

1. *The Tax Court disallowed a limited liability company's $21,972,000 charitable deduction for donation of a conservation easement on 85 acres of granite quarry property and imposed a 40% penalty for gross valuation misstatement under Code Section 6662(h). Beaverdam Creek Holdings, LLC v. Comm'r, T.C. Memo. 2025-53 (June 2, 2025).*

A Georgia limited liability company filed IRS Form 1065, U.S. Return of Partnership Income and claimed a charitable deduction of $21,972,000 for donation of a conservation easement on 85 acres of granite quarry property in Oglethorpe County, Georgia. The IRS issued a Notice of Final Partnership Administrative Adjustment (FPAA), denied the deduction in full, and imposed a 40% penalty for gross valuation misstatement under Code Section 6662(h). Taxpayer appealed and argued that the IRS's position was "arbitrary and capricious" on its face" and that the burden of proof should shift to the IRS. The Tax Court noted that even if a FPAA is arbitrary and capricious, that taxpayer bears the burden of proof in a deduction case and must offer evidence to support its entitlement to a deduction. At trial, taxpayer argued it presented credible evidence by offering a qualified appraisal that the value of the property was approximately $23,000,000. That appraisal relied on the income approach which taxpayer argued was appropriate and was used because a discounted cash flow (DCF) analysis represented the highest and best use of the property as a quarry. However, the Tax Court noted that taxpayer did not have the expertise to mine the quarry nor any intent to do so.

The IRS offered that the market approach was appropriate and determined that the value of the property before the transfer was $215,000 and the after value $85,500. IRS experts testified that the appraisal offered by taxpayer was more than 112 times higher than the average of comparable sales and did not follow the Uniform Standards of Professional Appraisal Practice ("USPAP") guidelines. The Tax Court noted that failure to follow the USPAP may affect the credibility of an appraisal but not its validity. The Tax Court held that taxpayer's appraisers were qualified and that its appraisal did not fully comporat with UPAP but it did not fail to comply with generally accepted appraisal standards. However, based on the IRS's experts offering several comparable sales, the Tax Court held that taxpayers income method was not appropriate and the valuation of $23,000,000 was absurd. The Tax Court agreed with the IRS that the comparable sales approach was the best evidence of market value and determined the value of the easement before the donation to be $300,000. The parties stipulated that the after value of the easement property was $106,750. Subtracting $106,750 from $300,000, the Tax Court ruled that the fair market value of the easement of $193,250 and held that the penalty of 40% for gross valuation misstatement applied.

2. ***The Eleventh Circuit affirmed the Tax Court's ruling that taxpayer's charitable deduction was limited to taxpayer's adjusted basis in the easement because the property was considered inventory in the hands of the contributing partner. Glade Creek Partners, LLC v. Comm'r, 135 A.F.T.R.2d 2025-1836 (June 6, 2025).***

Taxpayer donated a charitable conservation easement to Atlantic Coast Conservancy in 2012 consisting of 1,313 acres of land of undeveloped land in Tennessee. Taxpayer claimed a charitable deduction for the entire fair market value the land. The land was contributed by Hawks Bluff Investment Group ("Hawks"), an S corporation, who formed taxpayer for the sole purpose of assuming land from a failed real estate venture tied in part to the 2008 economic recession and declared the land as property on its Form 1065.

The IRS initially disallowed taxpayer's charitable deduction in full but later conceded that taxpayer was allowed a deduction after an initial trial and a subsequent invalidation of a Treasury Regulation that was utilized in its first holding. The IRS argued that taxpayer was not entitled to deduct the entire FMV of the land. The Tax Court concluded under Code Section 724(b) that the easement property would have been considered inventory in the hands of the contributing partner (Hawks) had it been sold in 2012 and that such a sale would have generated ordinary income. The Tax Court reasoned that the same analysis applied once taxpayer owned the easement property and held that any easement deduction would have been limited to taxpayer's adjusted basis had it sold the property in 2012. The Eleventh Circuit agreed with this conclusion and affirmed the Tax Court's ruling.

3. ***The Tax Court held that the taxpayer's claimed value of a conservation easement vastly exceeded the correct value and held a limited liability company liable for a 40% penalty for a gross valuation misstatement. Veribest Vesta, LLC v. Comm'r, No. 9158-23, 2025 WL 1939887 (July 11, 2025).***

Veribest Vesta, LLC received the old Grimes quarry in Oglethorpe County, Georgia in December 2016. The old Grimes quarry was purchased for $1,818 per acre earlier that year. In September 2018, using a discounted cash flow analysis of an operating dimensional stone granite mine, the old Grimes quarry was appraised at $20.4 million, with a residual value of $90,000. The LLC granted a conservation easement over the old Grimes quarry and claimed a charitable deduction of $20,310,000. The Tax Court found that it was unlikely that the highest and best use of the old Grimes quarry was dimensional stone mining. Further, the Tax Court found that even if dimensional stone mining was the highest and best use, the outcome would not change because regardless of the highest and best use of the property, the before valuation would not exceed $3,000 per acre. The Tax Court determined that the value of the easement was $111,111, which was determined based on the value of the property before the granting of the easement ($165,000 or $3,000 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. The Tax Court further stated that "this is one of eleven cases before this Court in which True North Resources is the partnership representative pursing the litigation. And we provide this warning, that continuing to pursue similarly incredible, nonsensical, and, quite frankly, smelly arguments may result in sanctions on petitioner or its counsel."

4. ***The Tax Court found no qualified appraisal due to agreement between donor and appraiser to inflate the easement valuation and imposed a 40% penalty for gross valuation misstatement under Code Section 6662(h). Rock Cliff Reserve, LLC v. Comm'r, T.C. Memo. 2025-73 (July 14, 2025).***

Four Georgia limited liability companies taxed as partnerships (Rock Cliff, Jack's Creek, East Village, Baker's Farm) organized by Five Rivers Conservation Group, LLC donated conservation easements in 2015 and claimed aggregate charitable deductions in excess of $62 million. Five Rivers Conservation Group, LLC is the tax matters partner for each of the partnerships in these cases an. The IRS adjusted, denying in full, the charitable contribution deductions for tax year 2015 on the Notice of Final Partnership Administrative Adjustment (FPAA) issued to each partnership. The Tax Court upheld the denial of $62 million in charitable deductions for gifts of conservation easements because taxpayer knew facts that put taxpayer on notice that the appraiser would overstate the value of the contributed easements, thus rendering the appraiser not "qualified" under Treasury Regulations Section 1.170A-13(c)(5)(ii). The Tax Court found that taxpayer and the appraiser had orally agreed to a valuation of the easement before the appraiser had been supplied with any of the underlying data, and that taxpayer was fully aware that the entire property had been purchased for a small fraction of the agreed easement value. Thus, taxpayer had facts that would put taxpayer on notice that the appraiser would overstate the value. The Tax Court found that the values on the returns each exceeded the FMV of the easements by more than 200% and imposed a 40% gross valuation misstatement penalty under Code Section 6662(h) in addition to a 20% penalty on the portion of the underpayment not attributable to the valuation misstatement by reason of a substantial understatement of income tax and negligence under Code Section 6662(a).

5. ***The Tax Court held that the IRS complied with the immediate supervisory approval requirements under Code Section 6751(b)(1) for penalties levied against a taxpayer related to a charitable contribution for a conservation easement. River Moss Property, LLC v. Comm'r, T.C. Memo. 2025-79 (July 22, 2025).***

Granting the IRS's motion for partial summary judgment, the Tax Court found the IRS complied with the requirements of Code Section 6751(b)(1) when determining penalties by receiving timely supervisory approval. In 2016,

taxpayer, a Georgia limited liability company treated as a TEFRA partnership for Federal income tax purposes, claimed a charitable contribution deduction for its donation of a conservation easement. The IRS selected the taxpayer's 2016 Form 1065 for examination. As the examination concluded, on January 16 and 17, 2020, the Revenue Agent ("RA") recommended disallowance of the charitable deduction, a value of $0 for the easement and the assertion of penalties under Code Sections 6662 and 6662A on Form 886-A and separately on a civil penalty approval form, which he affixed her digital signature. On January 17, 2020, the exam team manager affixed her digital signature to the same documents. The RA subsequently consulted with Chief Counsel because the appraisal for the easement had not been delivered and was still a few months out. The Office of Chief Counsel instructed that the RA could proceed with the recommendations but noted that it was being done without an appraisal and that an update would need to be sent should the appraisal be used after it was finalized. The RA prepared an updated Form 886-A on February 10, 2020, deleting references to the appraisal, setting a value of $0 for the easement, and recommending various penalties, and the form was approved for a second time by the supervisor on the same date. The RA mailed taxpayer a packet of documents including the Form 886-A on February 11, 2020. The appraisal came back with a $0 value on March 9, 2020, and the RA determined he did not need to use it.

On July 7, 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.

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 then found that the final determination after consulting the Office of Chief Counsel occurred on February 10, 2020, and supervisory approval was secured on the same date. This was several months before the FPAA was issued on July 7, 2020. The Tax Court rejected the taxpayer's arguments to the contrary as frivolous and granted the IRS summary judgment on the supervisory approval issue.

See also Ivey Branch Holdings, LLC v. Comm'r, T.C. Memo 2025-63 (June 9, 2025), Jefferson Property Holdings, LLC v. Comm'r, T.C. Memo 2025-75 (July 14, 2025), and *River Moss Property, LLC v. Comm'r, T.C. Memo 2025-79 (July 22, 2025) (each having similar facts with holdings in favor of the IRS)*.

6. ***The Tax Court held that the taxpayer's claimed value of a conservation easement vastly exceeded the correct value and held a limited liability company liable for a 40% penalty for a gross valuation misstatement. Buckelew Farm, LLC v. Commissioner, No. 24-13268, 2025 LX 332759 (11th Cir. Sep. 2, 2025).***

Between 1998 and 2006, Buckelew Farm, LLC ("Buckelew") acquired eight parcels of land consisting of around 1,561.65 acres in Jones County, Georgia, for $4,014,000. In 2013 Buckelew granted a conservation easement to the Southeast Regional Land Conservancy, Inc. and Buckelew claimed a charitable deduction of $47.6 million. The Tax Court found that the conservation easement was properly claimed, but that Buckelew overvalued the property and the claimed charitable deduction. The Tax Court determined that the value of the easement was $4.6 million, which was determined based on the value of the property before the granting of the easement ($7.4 million) and the value after the easement ($2.8 million). Buckelew challenged the Tax Court's ruling, asserting that the proposed development plans were legally permissible and claiming that Tax Court violated certain evidentiary rules. The Eleventh Circuit denied Buckelew's petition stating that the Tax Court's valuation was independent of the legal permissibility of the proposed development plans. The Tax Court had in fact analyzed the valuation of the property in the alternative of assuming that the development plans were permissible. Further, the Eleventh Circuit held that the evidentiary issues (admitting one of the members' tax returns to evidence and allowing the IRS to amend its Petition to assert additional claims) do not bear on the Tax Court's determination of the property's value and that the Tax Court had actually ruled in Buckelew's favor on the issues that those evidentiary concerns impacted.

7. ***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 v. Commissioner, No. 25-1093 (6th Cir. Nov. 5, 2025) (2025 Westlaw 3089710).***

In this opinion, the Sixth Circuit upheld the Tax Court'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 15, 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 in downtown Cleveland. 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 Tax Court correctly denied the deduction. Moreover, the valuable development rights that were purportedly relinquished were the opportunity to add thirty-four stories on top of a historic eleven-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. The Tax Court also correctly found that Corning Place failed to document its easement-related expenses on its partnership return by relying on an engagement letter dated May

16, 2016, since the letter did not state the date on which services would occur and Corning Place was not a partnership at that time.

8. ***The Tax Court disallowed a partnership's $12,740,000 charitable deduction for donation of a conservation easement on 157 acres of rural property and imposed a 40% penalty for gross valuation misstatement under Code Section 6662(h). Lake Jordan Holdings, LLC v. Commissioner, T.C. Memo. 2025-123 (Nov. 25, 2025).***

The taxpayer, a TEFRA partnership, claimed a $21,972,000 charitable deduction for a conservation easement on 157 acres of unimproved land on Lake Jordan, Alabama. The IRS issued a Notice of Final Partnership Administrative Adjustment ("FPAA"), denying the deduction and imposing penalties, including a 40% gross valuation misstatement penalty under Code Section 6662(h). The IRS argued that the taxpayer lacked donative intent under Code Section 170(a)(1), claimed the deduction in the wrong short taxable year, and failed to obtain a qualified appraisal under Code Section 170(f)(11)(D).

The Tax Court rejected these arguments. It held that the "objective fact that a perpetual conservation easement was donated" satisfied the statutory donative intent requirement. The technical termination of the LLC and the CPA's inadvertent reporting on the wrong short taxable year did not preclude the deduction. The Tax Court found that the appraiser, holding an IFAS designation, met the statutory and regulatory qualifications, and any appraisal deficiencies related only to credibility, not admissibility.

Using the comparable sales method, the Tax Court determined the pre-donation value of the easement to be $1,376,760; the parties stipulated the post-donation value was $285,000. The Tax Court concluded that the fair market value was $1,091,760, holding that the taxpayer had grossly overstated the easement's value and that the 40% § 6662(h) penalty applied. The Tax Court denied the IRS's motion to assert a civil fraud penalty under Code Section 6663(a), reasoning that the taxpayer's full disclosure on its return did not impede the IRS from identifying the overstatement.

9. ***In a $44.94 million syndicated conservation easement charitable contribution deduction case, the Tax Court found the IRS complied with the penalty supervisory approval requirements of Code Section 7751(b) when assessing civil fraud penalties against the Taxpayer. Palmwood Holdings LLC v. Comm'r, Tax Ct. Dkt. No. 17489-23 (partial summ. judg. Feb. 3, 2026).***

The Tax Court granted the IRS's motion for partial summary judgment, finding the written immediate supervisory approval requirements of Code Section 6751(b) were satisfied when the IRS assessed fraud penalties against the Taxpayer related to a charitable contribution deduction for a conservation easement. The IRS first assessed the penalties in its answer, which stated the

determination had been approved by the attorney's immediate supervisors, and was signed by all three individuals. The IRS also submitted sworn declarations confirming the supervisor approved the penalty in writing by singing the answer. However, in its motion that the Tax Court described as an "ill-conceived attempt to obtain discovery," the Taxpayer accused the IRS officers of lying in their sworn statements related to the initial determination of penalties and requested additional discovery to investigate the veracity of the IRS counsel's sworn statements. As support for their request, the Taxpayer relied on a three-year old email from the IRS which was unrelated to the Taxpayer and the IRS officers in the case. The Tax Court found that such email had no bearing on the case, and the record conclusively established the Code Section 6751(b) requirements were met because the "initial determination" of a penalty can occur in a pleading, and supervisory approval was satisfied with sworn declarations.

10. ***The Tax Court upheld the IRS's assessment of over $7.1 million in accuracy-related penalties related to the disallowance of a $48.18 million conservation easement charitable contribution deduction, finding the IRS complied with the supervisory approval procedure required under Code Section 6751(b). Mossy Flats Property LLC v. Comm'r, TC Memo. 2026-14 (Feb. 5, 2026).***

The Tax Court granted the IRS's motion for partial summary judgment, finding the written immediate supervisory approval requirements of Code Section 6751(b) were satisfied when the IRS assessed accuracy-related penalties against the Taxpayer related to a charitable contribution deduction for a conservation easement. In rejecting the Taxpayer's arguments that the IRS failed to follow the proper procedure, the Tax Court found it irrelevant that the examining agent had multiple and even changing supervisors during the examination because the sworn testimony of the examining agent and his supervisor was sufficient to establish the immediate supervisor signed the form. Furthermore, the Tax Court reaffirmed that a signature on a penalty approval form alone satisfied the requirements of Code Section 6751(b), and such records are admissible business records. Thus, the Tax Court found the Taxpayer Petitioner failed to show a genuine dispute of material fact that the examining agent's immediate supervisor signed the penalty approval form.

11. ***The Tax Court rejects an inflated syndicated conservation easement valuation and imposes a 40% gross valuation misstatement penalty where the claimed highest and best use was legally impermissible and economically infeasible. North Donald LA Property, LLC v. Commissioner of Internal Revenue, T.C. Memo. 2026-19 (Feb. 19, 2026).***

North Donald LA Property, LLC claimed a charitable contribution deduction exceeding $115 million for the donation of a conservation easement on farmland purchased less than two years earlier for approximately $2,975 per acre. The taxpayer asserted that the property's highest and best use prior to the

easement was operation as a clay borrow pit generating royalty income, notwithstanding that the land was zoned exclusively for agricultural use and located in a wetlands-heavy area. The Tax Court held that clay mining was not a legally permissible use because there was no reasonable probability of rezoning, and further concluded that the proposed mining use was not financially feasible given the absence of local demand, excessive transportation distances, and substantial wetlands mitigation costs. Relying primarily on comparable sales and the recent arm's-length purchase price, the Tax Court determined that the easement reduced the property's value by only $675 per acre, resulting in an allowable deduction of $175,824. Although the Tax Court declined to impose the civil fraud penalty due to full disclosure of the transaction on the return, it imposed the mandatory 40% gross valuation misstatement penalty and disallowed all claimed syndication and organizational expense deductions, reaffirming the Tax Court's continued skepticism of aggressive syndicated conservation easement structures.

12. ***The Tax Court held that conservation easement properties must be valued based on their actual highest and best use and rejected conservation easement valuations premised on speculative future operations. Harman Road Property, LLC v. Comm'r of Internal Revenue, T.C. Memo. 2026-23 (Mar. 2, 2026).***

The taxpayers claimed charitable contribution deductions of approximately $13.57 million and $18.3 million for conservation easements granted on two Georgia properties. The taxpayers argued that the properties' highest and best use was as granite aggregate quarries and relied on discounted cash flow analyses that projected decades of future quarry income. The IRS contended that the properties' highest and best use remained agricultural, rural reserve, recreational, and low-density residential use.

The Tax Court agreed with the IRS, finding that the taxpayers failed to prove that quarry development was reasonably probable or even possible. The court emphasized that the properties were zoned for agricultural and rural uses, no quarry zoning existed in the county, no rezoning applications had been filed, any rezoning would require a public hearing, large public opposition to the quarry's development existed, and the taxpayers failed to establish sufficient market demand to support a financially feasible quarry operation. Moreover, the taxpayers failed to establish that the development of a quarry was legally permissible and physically possible. As a result, the court found that the highest and best use of the properties remained agricultural and rural reserve.

The Tax Court adopted a sales-comparison approach based on comparable local land sales to determine the values of the properties. The court determined before-easement values of $313,000 and $545,000 and after-easement values of $232,000 and $400,000, resulting in allowable charitable contribution deductions of only $81,000 and $145,000. Because the taxpayers claimed deductions exceeded the correct values by more than 200%, the Tax Court held that the

deductions constituted gross valuation misstatements and sustained the 40% gross valuation misstatement penalties under IRC § 6662(h).

13. ***The Eleventh Circuit affirmed the Tax Court's valuation of conservation easements and held that the taxpayers' claimed deductions triggered 40% gross valuation misstatement penalties under IRC § 6662(h). Jackson Crossroads LLC v. Commissioner, 2026 WL 822261 (11th Cir. Mar. 25, 2026).***

In 2016, the taxpayers, Jackson Crossroads, LLC, and Long Branch Investments, LLC, contributed two conservation easements to the Oconee River Land Trust. The taxpayers claimed more than $36.9 million in charitable contribution deductions for the conservation easements donated on two Georgia properties: Jackson Crossroads and Long Branch. The taxpayers argued that Jackson Crossroads should be valued based on its potential use as a granite quarry and that Long Branch should be valued based on its potential use for industrial development connected to a proposed regional megasite. After a trial involving competing expert testimony, 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. The Tax Court determined easement values of approximately $1.17 million for Jackson Crossroads and $1.57 million for Long Branch. The Eleventh Circuit reviewed the Tax Court's valuation of the easements.

The Eleventh Circuit affirmed the Tax Court's conclusion, holding that the Tax Court did not clearly err in finding the taxpayers' proposed highest-and-best uses overly speculative. As to Jackson Crossroads, the court upheld the finding that a hypothetical granite quarry was not financially feasible and that the property lacked the necessary permits or entitlements for mining in 2016. As to Long Branch, the court upheld the finding that industrial development was not reasonably probable based on the market conditions existing at the relevant valuation date. The Eleventh Circuit also approved the Tax Court's reliance on the IRS's comparable-sales analysis, which offered properties that were zoned for residential or agricultural uses, were roughly the same size as Jackson Crossroads and Long Branch and were sold during the relevant timeframe.

Because the taxpayers' claimed deductions far exceeded 200% of the easement values determined by the Tax Court, the Eleventh Circuit also held that the Tax Court did not clearly err in sustaining the 40% gross valuation misstatement penalties under IRC § 6662(h). The court therefore affirmed the Tax Court's decision in all respects.

14. ***The Tax Court held that two syndicated conservation easement donations satisfied the threshold requirements for qualified conservation contributions, but that the partnerships' claimed easement values were grossly overstated and triggered 40% gross valuation misstatement***

penalties. Kimberly Road Fulton 25, LLC v. Commissioner, T.C. Memo. 2026-36 (May 4, 2026).

The taxpayers donated conservation easements over two parcels of vacant land near Atlanta and claimed nearly $30 million in combined charitable contribution deductions, despite acquiring the properties for far less. The IRS disallowed the conservation easement deductions in full, allowed the cash charitable contributions, and asserted penalties. The Tax Court rejected the IRS's threshold arguments that the partnerships should be disregarded and that the donations lacked donative intent, finding that the partnerships objectively transferred easements to Southern Conservation Trust, Inc., a stipulated qualified charitable organization, and received no consideration from the donee.

The Tax Court also found that the taxpayers substantially complied with the qualified appraisal requirements and that the easements satisfied the conservation-purpose requirements of Code Section 170(h). The court rejected the IRS's arguments that the appraisals were procedurally defective, including objections to appraiser independence and a missing Form 8283 signature, because the appraisal materials otherwise provided sufficient information for the IRS to evaluate the claimed contributions. On conservation purpose, the court found that both properties protected relatively natural habitats, including oak-hickory-pine forests and habitat for various rare, threatened, or conservation-priority species, and also preserved open space that provided scenic enjoyment and furthered the Georgia State Wildlife Action Plan. The court further rejected the IRS's arguments that reserved rights, including logging, agricultural, forestry, hunting, and recreational rights, defeated the easements' conservation purposes, and found that old utility and pipeline easements on one property were so remote as to be negligible for perpetuity purposes.

The Tax Court nevertheless agreed with the IRS on valuation of the easements. The Tax Court found the taxpayers' appraisals unreliable because they assumed high-density development uses—an assisted-living facility for Kimberly Road and mixed-use development for South Fulton—without sufficient market support and relied on comparables from a broad Atlanta-region market that were not sufficiently similar to the subject properties. In addition, there was no evidence presented that the partnerships actually reached out to state and local licensing and zoning agencies to build assisted living facilities or mixed-use developments on the subject properties. The court instead adopted the IRS expert's valuations, finding before-and-after easement values that produced allowable deductions of only $430,000 for Kimberly Road and $610,000 for South Fulton, rather than the claimed deductions of $9,866,000 and $15,871,000. Because the claimed values exceeded 200% of the values determined by the court, and because the parties stipulated that the IRS complied with Code Section 6751(b)(1)'s supervisory approval requirement, the Tax Court upheld the 40% gross valuation misstatement penalties under Code Section 6662(h).

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

1. ***The IRS ruled that the lump sum distribution from the decedent's Pension Plan to an estate may be treated as being paid from the Pension Plan directly to the surviving spouse under Code Section 402(c) because the surviving spouse was the sole beneficiary of the deceased spouse's estate and the funds were timely rolled over to the surviving spouse's IRA within sixty days. PLR 202538004 (June 13, 2025).***

In this Private Letter Ruling, the IRS ruled that the surviving spouse may roll over the lump sum distribution from decedent's Pension Plan to the surviving spouse's IRA. Decedent submitted all the necessary documents to receive a lump sum distribution from the Pension Plan but the benefit had not yet been distributed by decedent's date of death. Decedent died testate, survived by Decedent's spouse ("Taxpayer"), who was the sole Executor and beneficiary of the Estate.

Taxpayer intended to direct the payment of the lump sum distribution from the Pension Plan to decedent's Estate and then receive the lump sum distribution as the sole beneficiary of the Estate. Thereafter, within sixty days of receipt by the Estate, Taxpayer would roll the assets to an IRA maintained for the benefit of Taxpayer.

The IRS ruled that the lump sum distribution will be treated as being paid directly from Decedent's Pension Plan to Taxpayer. The IRS concluded that Taxpayer is eligible to roll over the distribution from the Decedent's Pension Plan into Taxpayer's own IRA if such distribution occurs within sixty days after the date of distribution from the Pension Plan. Further, except in the case of a rollover to a Roth IRA, to the extent that the amount distributed from the Pension Plan is timely rolled over to the IRA, it will be excluded from Taxpayer's income under Code Section 402(c)(1) and Taxpayer will not be required to include the distribution in Taxpayer's gross income for federal income tax purposes in the taxable year in which paid.

2. ***Where Decedent's retirement plans designated Decedent's estate as sole beneficiary, and Decedent's Will designated taxpayer surviving spouse as sole beneficiary and personal representative, taxpayer was able to roll over Decedent's retirement plans into taxpayer's own IRA, be treated as distributee of the retirement plan assets, and need not include the distribution in taxpayer's gross income. PLR 202525008 (June 20, 2025).***

Decedent owned three retirement plans at this death ("Decedent's Plans"). Decedent designated his estate as the sole beneficiary of Decedent's Plans. Decedent's Last Will and Testament designated taxpayer surviving spouse as the sole beneficiary of Decedent's estate and personal representative. Taxpayer intends to direct the retirement plan assets from Decedent's Plans to Decedent's estate and then receive the retirement plan assets as the sole beneficiary of Decedent's estate. Taxpayer intends to roll over those same retirement plan assets

into IRAs maintained in taxpayer's name within 60 days of the date the retirement plan assets are received by the estate.

IRS concluded that (i) taxpayer will be treated as the payee or distributee of the retirement plan assets from Decedent's Plans, (ii) taxpayer, as Decedent's surviving spouse, will be eligible to roll over the retirement plan assets from Decedent's Plans into IRAs maintained in Taxpayer's name, if the rollover occurs no later than the 60th day after the date the retirement plan assets are received by the Decedent's estate, and (iii) taxpayer will not be required to include the distribution and rollover in taxpayer's gross income for federal tax purpose.

3. ***The IRS granted a waiver to the 60-day rollover requirement for withdrawals from an IRA because the taxpayer was a victim of a fraud scheme. PLR 202535015 (August 29, 2025).***

The taxpayer in this Private Letter Ruling withdrew an amount from the taxpayer's traditional IRA under Code Section 408(a) but failed to rollover that amount into another IRA or eligible retirement plan within 60 days as required under the rules of Code Section 408(d)(3). As a result, by default, the withdrawn amount would be included in the taxpayer's gross income. However, the taxpayer claimed that a timely rollover did not occur because the taxpayer was a victim of a scam. At some point after withdrawing the IRA amount, the taxpayer received an alert on the taxpayer's computer to call a certain company. The taxpayer called what the taxpayer believed to be a representative of that company, who told the taxpayer that, based on a scan of the taxpayer's computer, a virus had spread to the taxpayer's financial accounts. That company representative directed the taxpayer to call a specific individual with a bank. That bank individual represented himself on behalf of the bank, provided a forged letter from the bank, and told the taxpayer that he was the only person with the bank who could be trusted while he completed an investigation of the taxpayer's compromised financial accounts. That individual convinced the taxpayer to wire funds into another company's cryptocurrency bank account, where it would be held temporarily, and the wired funds included the amount the taxpayer withdrew from the IRA. After that bank representative claimed that the investigation of the taxpayer's accounts was complete, the company and bank representatives both stopped responding to the taxpayer's communications and their phone numbers were disconnected. At that point, the taxpayer realized that it was a scam and worked with government agencies to eventually recover the lost funds. Based on these facts, the taxpayer made the Private Letter Ruling request for a waiver of the 60-day rollover requirement. The rules under Code Section 408(d)(3)(I) permit the Secretary to waive the requirement where not waiving it would be against equity or good conscience, and where the reason for the failed rollover was beyond the individual's reasonable control. Revenue Procedure 2003-16 lists other factors for the Secretary's consideration, including errors made by financial institutions, the use of the amount distributed and the time elapsed since the distribution from the IRA. After determining that the taxpayer's documentation supported the taxpayer's narration of the facts, the IRS waived the 60-day rollover

period with respect the withdrawn amount and granted the taxpayer an additional 60 days to complete the rollover.

4. ***U.S. Seventh Circuit Court of Appeals reverses district court decision that plan beneficiary substantially complied with employer's procedures to update retirement plan beneficiary designation. Packaging Corp. of Am. Thrift Plan for Hourly Emps. v. Langdon, 166 F.4th 645 (7th Cir. Feb. 2, 2026).***

Carl Kleinfeldt participated in the Employee Retirement Income Security Act of 1974 ("ERISA") retirement plan of his employer, Packaging Corporation of America ("PCA"). In 2006, he designated his wife, Dená Langdon, as the primary beneficiary and his sisters as contingent beneficiaries. Kleinfeldt and Langdon divorced in September 2022, and as a result of a Qualified Domestic Relations Order, part of Kleinfeldt's retirement account was segregated for Langdon and disbursed to her, and the balance remained in the account. PCA's retirement plan documents instructed employees to keep their beneficiary designations current and to update them by calling its Benefits Center or updating the beneficiaries online. In October 2022, Kleinfeldt sent a fax to PCA's Benefits Center requesting that Langdon be removed from all of his benefits, including his retirement plan and that PCA to send him "any necessary paperwork" that he would need to complete the changes. As a result, PCA removed Langdon from Kleinfeldt's other benefits, such as for health, vision and dental insurance, but did not remove her as primary beneficiary of the retirement account. Kleinfeldt died in January 2023, and the dispute arose when PCA initially tried to distribute the retirement funds to Langdon as the primary beneficiary. Ultimately, the U.S. District Court for the Western District of Wisconsin held that Kleinfeldt substantially complied with the requirements of the retirement plan documents, which was sufficient to remove Langdon as the primary beneficiary. Langdon appealed to the U.S. Seventh Circuit Court of Appeals.

The Court of Appeals reviewed the substantial compliance issue *de novo*, focusing on whether (i) Kleinfeldt evidenced his intent to make the change and (ii) attempted to effectuate the change by taking action similar to the action required under the plan documents. The Court of Appeals found that Kleinfeldt's fax was undeniable evidence of his intent to remove Langdon as the primary beneficiary. However, the Court of Appeals also found that when Kleinfeldt sent his fax, but did nothing more, he did not sufficiently attempt to take the actions required by PCA's policy. The plan documents instructed employees to change their beneficiary designations by calling the Benefits Center or by updating them online. The plan documents did not provide that beneficiary designations could be updated by fax, and Kleinfeldt's fax implied that he knew that further steps might be necessary. The Court of Appeals reasoned that the unchanged beneficiary designation was not the result of Kleinfeldt's clerical mistake (such as providing the wrong address) or careless error, nor the result of PCA's incomplete or incorrect instructions to Kleinfeldt, but rather the result of Kleinfeldt's decision to disregard the clear instructions in the plan documents. For those reasons, the

Court of Appeals held that Kleinfeldt did not substantially comply with the requirements and that Langdon was the primary beneficiary of the retirement account.

5. ***The Department of the Treasury and IRS announced when final regulations relating to required minimum distributions under Code Section 401(a)(9) will apply. Internal Revenue Bulletin: 2026-11, Announcement 2026-7 (Mar. 9, 2026).***

Code Section 401(a)(9) concerns the timing of required minimum distributions ("RMDs") from various types of retirement plans. The Setting Every Community Up for Retirement Enhancement Act (SECURE Act), enacted December 20, 2019, updated the RMD provisions, and the Department of the Treasury published new regulations on February 24, 2022. The SECURE Act 2.0 updated those provisions again, and the Department of the Treasury published final regulations on July 19, 2024. Among other things, these regulations address the "10-year rule" for RMDs. The most recent regulations were initially going to apply to determine RMDs for calendar years beginning on or after January 1, 2025, however, following the comments period, the Department of the Treasury and the IRS announced that the final regulations relating to RMDs will apply for the distribution calendar year that begins no earlier than six months after the final regulations are issued in the Federal Register. Until then, taxpayers are expected to apply a reasonable interpretation of the updated Code Section.

6. ***In PLR 202621003, the IRS stated that a decedent's surviving spouse could roll over the decedent's IRA, despite the IRA being first paid to the decedent's estate, and then to decedent's trust for the benefit of surviving spouse. PLR 202621003 (February 20, 2026).***

The decedent's estate was the sole beneficiary of decedent's traditional Individual Retirement Account (IRA). The surviving spouse was sole administrator of the decedent's estate and the sole trustee. The surviving spouse, as beneficiary and sole trustee of the decedent's trust, could withdraw the trust assets at any time. The IRS stated that, for purposes of applying the IRA rollover rules, the surviving spouse was effectively the individual to or for whose benefit the decedent's IRA was distributed, so the surviving spouse could roll it over to the spouse's own IRA within 60 days of its receipt. The IRS also stated that (i) the IRA is not treated as an inherited IRA because it is paid to the surviving spouse, and (ii) except in the case of a rollover to a Roth IRA, the surviving spouse is not required to include in gross income any portion of the IRA proceeds timely rolled over to the surviving spouse's own IRA.

F. Executors and Income Tax Assessments

1. ***The U.S. District Court for the District of Massachusetts held that the decedent's surviving spouse was the de facto executor for purposes of***

defending a suit to collect unpaid income taxes. United States v. Est. of Whittemore, 2025 LX 594058 (D. Mass. Dec. 16, 2025).

John W. Whittemore died intestate in 2017, survived by his wife, Charlene R. Whittemore, the sole beneficiary of his estate. In June 2025, the government alleged that joint federal income tax assessments were made against the Whittemore's for tax years 2008-2014 and the liabilities remained unpaid. The government sought judgment against Mrs. Whittemore, individually and in her representative capacity on behalf of the Estate. Mrs. Whittemore asserted that she was misnamed as the Estate's representative, as no probate matter had been opened and she held no formal representative role. Code Section 2203 defines the term executor broadly for estate-related tax obligations as "any person in actual or constructive possession of any property of the decedent." A spouse who receives the decedent's estate is deemed the executor for estate tax purposes. The court noted its authority "to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws" under Code Section 7402. The U.S. District Court held that Mrs. Whittemore was the de facto executor for purposes of defending a suit to collect unpaid income taxes.

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

1. *An entity that provided support to members during the loss of members and members' families did not qualify for tax-exempt status under Code Section 501(c)(3) because it provides benefits to a small group of persons and not the larger public. PLR 202523008 (June 6, 2025).*

An entity, claiming tax-exempt status under Code Section 501(c)(3), was created to operate as a burial and funeral benefit organization that provides financial and spiritual support to the entity's members when either the member dies or death occurs in their immediate family. Immediate family members of paying members were entitled to benefits. Immediate family members include spouses, children, foster children, parents, stepparents, brothers, sisters, half-brothers, and half-sisters. Membership was open to anyone who was 18 years old and willing and ready to support the entity's objectives, principles, rules and regulations. The IRS denied the entity tax-exempt status because the entity's activities served the private interests of its members and did not confer a benefit to the public.

V. U.S. EXCISE TAXES

A. Self-Dealing – Code Section 4941

1. *The IRS determines that there are no self-dealing issues in the proposed division of a CRUT into two separate CRUTS and the termination of one resulting CRUT. PLR 202601003 (Jan. 2, 2026).*

Husband and Wife established a charitable remainder unitrust under Code Section 664. The trust provides annual payments to Husband and Wife, and the survivor of them, equal to the lesser of 5% of the net fair market value of the trust assets valued annually or the amount of the annual trust net income. The trust also provides that on "Date 2," the annual payments shall be equal to a total of 5% of the net fair market value of the trust assets valued annually. Upon the death of the survivor of Husband and Wife, the trust terminates and distributes to one or more qualified charitable organizations as designated by Husband or Wife. Any unappointed assets are distributed in equal shares to two identified charities. Sometime after establishing the trust, Husband and Wife decided to divide the trust into two separate trusts, with one trust terminating early. For the terminating trust, Husband and Wife would assign their unitrust interests to a private operating foundation, a private nonoperating foundation, and a public charity. Notably, both the private operating foundation and the private nonoperating foundation were created by Husband and Wife, respectively. Husband and Wife successfully obtained a state court order authorizing the modification of the trust.

Husband and Wife requested, and the IRS provided, several rulings on the proposed division and termination. The IRS ruled the wholly gratuitous division and termination of the trust to allow distribution of trust assets to the private foundations were not acts of self-dealing within the meaning of Code Section 4941(d)(1) with respect to the trust, the private operating foundation, and the private nonoperating foundation. The IRS also ruled (i) Husband and Wife are entitled to an income tax charitable deduction under Code Section 170 for the value of the terminating trust unitrust interests transferred to the charitable remainder beneficiaries, (ii) Husband and Wife are entitled to a gift tax charitable deduction under Code Section 2522, (iii) the terminating trust will not be required to exercise expenditure responsibility under Code Section 4945(d)(4) and (h) during any period in which the trust has no assets, and (iv) the division and termination would not cause the non-terminating trust to cease to function as a charitable remainder unitrust.

2. ***The Internal Revenue Service held that the early termination of a charitable lead annuity trust under state law to a donor advised fund does not constitute an act of self-dealing. PLR 202614004.***

In this private letter ruling, the Service held that the early termination by a charitable lead annuity trust ("CLAT") to a donor advised fund ("DAF") did not constitute (i) an act of self-dealing under Section 4941, (ii) a taxable expenditure under Section 4945, or (iii) a termination subject to tax under Section 507(c). The CLAT was formed as a twenty-year fixed annuity required to make annual payments to a DAF. After approximately ten years, the investments in the CLAT significantly exceeded the present value of the remaining annuity payments. The CLAT requested the Trustee be able to pay the undiscounted sum of all remaining annuity payments to the DAF so that the funds can be devoted to a charitable purpose, which was authorized under state law because the trust was no longer necessary to accomplish the trust's charitable purposes. The Service first held that

the accelerated payment of undiscounted remaining annuity payments to the DAF was not an act of self-dealing under Section 4941 because the DAF, as a Section 501(c)(3) organization, was not a disqualified person. Next, the Service held the payments would not be considered a taxable expenditure under Section 4945(d) because the payments were made for charitable purposes specified in Section 170(c)(2)(B). Finally, the Service held that Section 507(a), which imposes a tax upon a private foundation's termination of its status, does not apply because the Treasury Regulation Section 53.4947-1(e)(1) provides that Section 507(a) tax does not apply when annuity payments were required by the CLAT's governing instrument and were not discretionary by the trustee.

VI. U.S. PROCEDURE AND ADMINISTRATION

A. Portability of Deceased Spousal Unused Exclusion Amount

1. *The requirements of Treas. Reg. §301.9100-1 and Treas. Reg. §301.9100-3 were satisfied and the IRS granted an Estate an extension of time to file for portability. PLR 202523002 (June 6, 2025).*

Decedent died, survived by spouse, with an Estate that was not required to file an estate tax return. The Estate failed to timely file for portability. The IRS concluded that information, affidavits, and representations submitted on behalf of Decedent's estate explain the circumstances that resulted in the failure to timely file a valid election and that granting relief would not prejudice the interests of the government. Having satisfied the requirements of Treasury Regulations Sections §301.9100-1 and 301.9100-3, the IRS granted an extension of time to file for portability.

2. *The Tax Court holds that the estate of a surviving husband cannot utilize DSUE of wife who predeceased him where wife's estate did not timely file an estate tax return and did not qualify for the safe harbor under Rev. Proc. 2017-34. Estate of Billy Rowland v. Comm'r, T.C. Memo 2025-76 (July 15, 2025).*

The Tax Court held that a husband's estate could not use the DSUE from his predeceased wife where the wife's estate failed to timely file a Form 706 and did not qualify for the safe harbor under Rev. Proc. 2017-34 as a result of technical deficiencies. Wife died on April 8, 2016, and the executor filed an extension for the Form 706 which extended the due date to July 8, 2017. Wife's estate did not file the return until December 29, 2017 (and was received by the IRS on January 2, 2018). Wife's return indicated that it was "FILED PURSUANT TO REV PROC 2017-34 TO ELECT PORT SEC 2010(c)(5)(A)." Wife's return calculated a DSUE of $3,712,562. Wife's return, however, did not include any information as to the FMV of assets but instead estimated the gross value of the estate in an attempt to rely on the relaxed reporting requirements of Treasury Regulations Section 20.2010-2(a)(7)(ii).

Husband died on January 24, 2018, and his estate timely filed a Form 706 on April 22, 2019, claiming DSUE from wife. The IRS audited the husband's estate and determined that it could not use the claimed DSUE because the return had not been filed timely and it failed to satisfy the requirements of Rev. Proc. 2017-34 because the wife's estate's return was not a "complete and properly prepared estate tax return" due to the fact that it (i) did not provide complete descriptions or valuation information for the property in wife's estate and (ii) it was ineligible to estimate the value of property under Treasury Regulations Section 20.2010-2(a)(7)(ii).

Treasury Regulations Section 20.2010-2(a)(7)(ii) offers a relaxed reporting requirement for marital and charitable deduction property where an estate is not required to file a return. Under Treasury Regulations Section 20.2010-2(a)(7)(ii), an estate is not required to report the value of such property but instead "only the description, ownership and/or beneficiary of such property, along with all other information necessary to establish the right of the estate to the deduction." The relaxed requirement, however, is subject to certain exceptions including that it does not apply to marital or charitable property if "the value of such property relates to, affects, or is needed to determine, the value passing from the decedent to a recipient other than the recipient of the marital or charitable deduction property."

Wife's return included property that did not pass to the husband or charity (there were several specific distributions to others), so her return failed to satisfy the applicable regulation as to the nonmarital and charitable deduction property. The wife's estate also erred in applying the relaxed reporting requirements on marital deduction property in light of the exception noted above where her trust agreement provided for a distribution of 20% of the trust estate to a charitable family foundation and "such amount . . . as when added to property to [husband] under my last Will and Testament. . . .will be equal to one-fourth of my gross estate" with the residuary passing to trusts for grandchildren. This language specifically requires the valuation of property passing to the family foundation and husband to determine how other assets would pass under the wife's estate planning documents.

The Tax Court further held that it need not decide whether the estate's argument of substantial compliance is available for the relief under Rev. Proc. 2017-34 because wife's estate could not have been said to substantially comply with the requirements of filing a complete return under the circumstances. The Tax Court further held that the estate did not qualify for the application of equitable estoppel. The Tax Court granted the IRS's motion for partial summary judgment confirming that the DSUE amount was unavailable for husband's estate.

3. ***The IRS granted an extension of time to make a portability election under Code Section 2010(c)(5)(A). PLR 202609001 (Feb. 27, 2026); and PLR 2026006 (Feb. 27, 2026).***

These published rulings, separately released in February 2026 but originally made in November 2025, concern similar fact patterns, legal issues and outcomes. The decedent's estate at the center of each ruling requested an extension of time to file an estate tax return for the purpose of porting the decedent's unused exclusion amount ("DSUE") to the surviving spouse. Each estate was not otherwise required to file an estate tax return pursuant to Code Section 6018(a), and each estate did not timely file a return. The published rulings do not provide each estate's reason for not having timely filed an estate tax return for portability purposes. Pursuant to Treasury Regulations Section 301.9100-3, the IRS has discretion to grant an estate an extension of time to make a portability election if the estate was not otherwise required to file a return, provided that the estate acted reasonably and in good faith and that granting the extension will not prejudice the interests of the government. The published rulings do not report the details of the information provided by each estate supporting its claim for an extension, but based on that information, the IRS concluded that the requirements were met and granted the estates 120 days to make the portability election.

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

1. *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 greater. 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.

2. *The U.S. District Court for the Northern District of Texas granted the defendant's motion to dismiss in an action to assess FBAR penalties. United States v. Sagoo, 2025 LX 456390 (N.D. Tex. Sep. 19, 2025).*

In December 2022 the IRS assessed penalties for Sharnjeet K. Sagoo's failure to timely file a foreign bank account report ("FBAR") in 2011, 2012 and 2013. Ms. Sagoo did not pay the penalties assessed against her and after her failure to pay, the IRS identified possible computational issues with the penalty. The government brought an action requesting that the assessed FBAR penalties be reduced to judgment in an amount that the IRS would recalculate in a future proceeding. Ms. Sagoo moved to dismiss under FRCP 12(b)(6), contending that the agency's underlying assessment was invalid because the penalized individual is guaranteed a jury trial before the penalty can be assessed. The government agreed with Ms. Sagoo and granted her motion to dismiss because the IRS violated Ms. Sagoo's Seventh Amendment right by adjudicating her liability without a neutral fact finder.

3. *The Second Circuit upholds FBAR penalties and the IRS's determination that the failure to file was willful. United States v. Reyes, 164 F.4th 78 (Jan. 7, 2026).*

The government pursued civil penalties against Juan and Catherine Reyes for failing to file Reports of Foreign Bank and Financial Accounts ("FBAR"), as mandated by the Bank Secrecy Act. The Reyeses maintained a foreign bank account representing between 75% and 90% of their total assets, which generated considerable income and was accessed domestically via credit cards. Despite repeated reminders from both their accountant and the Internal Revenue Service, the Reyeses omitted disclosure of the account from their tax returns for the years 2010 through 2012. The IRS imposed enhanced penalties for willful violations. Following a reduction of the fees on an administrative appeal, the Reyeses continued to contest payment, prompting litigation that culminated in summary judgment for the United States at the District Court level.

The Second Circuit affirmed the District's Court grant of summary judgment, establishing that the term "willfully" under 31 U.S.C. § 5321(a)(5)(C) encompasses both intentional and reckless conduct within the civil context. The Second Circuit found undisputed evidence of recklessness, including the Reyeses' deliberate concealment of their foreign account (telling their bank in Switzerland not to communicate with U.S. authorities about the account), failure to respond to explicit inquiries regarding foreign assets, and disregard of multiple documents outlining reporting obligations. The Second Circuit concluded that this conduct satisfied the civil standard for recklessness, warranting the imposition of enhanced FBAR penalties and accrued interest. Furthermore, the Second Circuit upheld the application of a mandatory six percent late payment penalty pursuant to Treasury regulations, rejecting the contention that the district court retained discretion to reduce the rate.

C. Claim for Refund

1. *The District Court holds that an estate beneficiary lacks standing to pursue tax refund, wrongful levy, and unauthorized collection claims*

where the taxes were paid or assessed against the decedent or the estate. Hafner v. United States, 2026 WL 412288 (W.D. Wash. Feb. 13, 2026).

The plaintiff, who was both the beneficiary and former administrator of his father's estate, sought refunds of alleged tax overpayments, damages for wrongful levy and unauthorized collection, and injunctive and declaratory relief against the IRS in his capacity as a beneficiary of the estate. The District Court held that the federal tax refund statute authorizes recovery only by the person who made the overpayment, and that claims for wrongful levy and damages under the Internal Revenue Code similarly may be brought only by the taxpayer against whom the tax was collected or whose property was levied upon. Because the plaintiff did not personally pay the taxes at issue and had no legal interest in the disputed property at the time of levy under applicable state law, the District Court concluded that he lacked Article III standing. The case was dismissed without prejudice for lack of subject-matter jurisdiction, underscoring the importance of proper party status in estate-related tax disputes.

2. ***The District Court held that an estate's income tax refund claim was untimely because the executor could not establish timely filing under Code Section 7502, leaving the court without subject matter jurisdiction to consider the refund suit. Dunlap v. United States, 2026 WL 1243304 (S.D.N.Y. May 6, 2026).***

The Estate made federal income tax payments totaling $448,067 for the 2016 tax year, which the executor alleged resulted in an overpayment of $60,483. After the IRS Office of Appeals denied the Estate's refund claim, the executor brought a refund action against the United States under Code Section 7422(a) and 28 U.S.C. § 1346(a)(1). The District Court noted that, although federal district courts have jurisdiction to hear tax refund suits, taxpayers must first satisfy the refund claim procedures and jurisdictional time limitations under Code Sections 7422 and 6511. Under the "look-back" rule of Code Section 6511(b)(2)(A), a refund claim generally must be filed within three years of filing the return, plus any extension period. Because the Estate received an extension until October 15, 2017, any refund claim generally was required to be filed by October 15, 2020.

The executor alleged that the Estate's 2016 income tax return requesting the refund was mailed to the IRS in 2017 and again in 2019, but the IRS maintained that it had no record of receiving the return until 2022. The District Court emphasized that the taxpayer bears the burden of proving that a refund claim was timely filed. The District Court held that the executor failed to satisfy the proof requirements of Code Section 7502. The District Court further explained that when a taxpayer claims a return was mailed but not received, timely filing may be established only through a postmarked envelope or a postmarked certified or registered mail receipt under Code Section 7502. Because the executor produced no such documentation, the District Court treated the refund claim as filed on the date the IRS acknowledged receiving it in 2022, which was outside the limitations period. Accordingly, the District Court dismissed the action for

lack of subject matter jurisdiction. The decision underscores the importance of maintaining certified mail receipts and other Code Section 7502 documentation when filing returns and refund claims.

D. Deadline to File Petition in Tax Court

1. *Overturning a long line of precedent, the Second Circuit reversed the Tax Court's dismissal of taxpayer's untimely petition for lack of jurisdiction and remanded for consideration of whether the taxpayers are entitled to equitable tolling. Buller v. Comm'r, 152 F.4th 84 (2nd Cir. Aug. 14, 2025), rev'g and rem'g T.C. Dkt. No. 25011-22 (Order of dismissal, March 8, 2024).*

Following recent Supreme Court decisions, the Second Circuit held the ninety-day deadline to file a petition in Tax Court challenging a notice of deficiency is not jurisdictional and is instead a claim-processing rule which can be tolled equitably. In 2022, taxpayers filed a petition with the Tax Court challenging a notice of deficiency nine days after the ninety-day limit imposed under Code Section 6213(a) had passed. The Tax Court granted the IRS's motion to dismiss for lack of jurisdiction for filing outside of the ninety-day limit. On appeal, the taxpayers argued the limitation in Code Section 6213(a) is nonjurisdictional claim processing rule, and therefore subject to equitable tolling.

The Second Circuit determined it must review with "fresh eyes" whether Code Section 6213(a)'s filing deadline placed a limit on the Tax Court's jurisdiction. The Second Circuit found existing precedent was no longer good law in light of recent Supreme Court decisions that held cases that dismiss for lack of jurisdiction without threshold factual determinations should receive no precedential effect. Finding precedent no longer controlled, the Second Circuit held the filing deadline in Code Section 6213(a) is "quite clearly" a nonjurisdictional, claim-processing rule—contrary to the long line of existing precedent. In so finding, the Sixth Circuit relied on the Supreme Court's decision in *United States v. Wong,* 575 U.S. 402, 409, 135 S.Ct. 1625, 191 L.Ed.2d 533 (2015), which explained that a procedural requirement to a judicial deadline is only jurisdictional if Congress clearly states it is. The Second Circuit found Congress did not clearly state a filing deadline with jurisdictional consequences in Code Section 6213(a), but rather as a claim-processing rule which speaks only to the claim's timeliness, not the Tax Court's jurisdiction.

Finding the 90-day limitation in Code Section 6213(a) a nonjurisdictional, claim-processing rule, the Second Circuit next held the deadline is therefore also subject to equitable tolling, emphasizing that Code Section 6213(a)'s time limit is directed at the taxpayer, not the court. Because the Tax Court did not consider whether the Taxpayers were entitled to equitable tolling in this case, the Second Circuit remanded for the Tax Court's determination.

E. Civil Fraud Penalties

1. ***Tax Court grants the IRS partial summary judgment ruling the Seventh Amendment does not require a trial by jury for civil fraud penalties levied against a partnership under the Tax Equity and Fiscal Responsibility Act of 1982. Silver Moss Properties, LLC v. Comm'r, 165 T.C. No. 3 (Aug. 21, 2025).***

The Tax Court held that the Seventh Amendment does not require a trial by jury for civil fraud penalties brought against a partnership under the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). Taxpayer purchased real property and subsequently donated a conservation easement on the real property and claimed a charitable deduction for the contribution. The IRS issued a Notice of Final Partnership Administrative Adjustment ("FPAA") in large part disallowing the claimed deduction. The taxpayer filed an action challenging the FPAA and the IRS included a fraud penalty under Code Section 6663(a) in its amended Answer. Taxpayer then claimed that the Seventh Amendment (right to trial by jury) prevented the IRS from levying a civil fraud claim against a taxpayer without a trial by jury. The Tax Court held (i) that the government has not waived sovereign immunity with respect to TEFRA related actions and therefore the Seventh Amendment does not apply to such actions, and (ii) because the collection of revenue is a public right, the public rights exception to the Seventh Amendment (which provides that a trial by jury is not required for the enforcement of public rights) applies and a trial by jury is not required. The Tax Court granted partial summary judgment in favor of the IRS on this issue.

2. ***The Tax Court upheld its authority to adjudicate Code Section 6663(a) civil fraud penalties and, exercising judicial restraint, declined to rule on the validity of qualified appraisal regulations under the Administrative Procedure Act (APA), deferring that issue until a jury trial could determine whether the validity argument was essential. Kellum Resources, LLC v. Comm'r, T.C. Docket No. 2585-23 (Oct. 14, 2025).***

The taxpayer challenged the IRS's disallowance of a charitable deduction for a donated conservation easement and filed two motions for partial summary judgment. In its Penalty Motion, the taxpayer argued that the Seventh Amendment barred the Tax Court from adjudicating a civil fraud penalty under Code Section 6663(a), asserting that, as a non–Article III tribunal, the Tax Court could not provide jury trials. The Tax Court denied the motion, citing its prior decision in *Silver Moss Properties, LLC v. Commissioner*, 165 T.C. No. 3 (2025), which upheld the Tax Court's authority to adjudicate Code Section 6663(a) penalties.

In its Validity Motion, the taxpayer contended that the qualified appraisal regulations under Treasury Regulations Section 1.170A-13(c)(5)(ii) were invalid under the Administrative Procedure Act ("APA"), 5 U.S.C. Section 553. The Tax Court, exercising judicial restraint, denied the motion without ruling on the APA

challenge, deferring the issue until a jury trial could determine whether the evaluation was essential.

The decision reinforces the Tax Court's authority to adjudicate Code Section 6663(a) civil fraud penalties and illustrates the Court's cautious approach in avoiding preemptive invalidation of Treasury regulations, leaving potential APA challenges to be considered in the context of a full trial.

F. Inadvertent Termination of S Corporation Status

1. *The IRS rules that the circumstances resulting in the termination of a corporation's S corporation election were inadvertent when a trust shareholder failed to make the election under Code Section 1361(e)(3) to treat the trust as an electing small business trust. PLR 202527005 (July 3, 2025).*

In this Private Letter Ruling, the trustee of a trust failed to make the election under Code Section 1361(e)(3) to qualify the trust as an electing small business trust (ESBT). Prior to the date the trust should have made the ESBT election, the trust was an eligible S corporation shareholder as a "grantor trust." Despite failing to make the ESBT election, the corporation and its shareholders all continued to file returns consistent with the corporation's status as an S corporation. The trust also filed returns consistent with its status as an ESBT. The corporation sought relief from the IRS for retroactive relief. The corporation represented that its termination of S corporation status was inadvertent and not motivated by tax avoidance or retroactive tax planning. The IRS granted retroactive S corporation status to the corporation pursuant to Code Section 1362(f) contingent upon the trustee of the trust filing an ESBT election within one hundred-twenty days of the private letter ruling.

2. *The IRS grants a request for a waiver of inadvertent termination of S-Corp status where property was initially held by husband and wife as community property. PLR 202548006 (Nov. 28, 2025).*

Husband and wife created a grantor trust that owned an interest in a limited liability company that owned shares in a S Corp. Husband and wife were the co-grantors and co-trustee of the grantor trust and lived in a community property state. Husband and wife treated the limited liability company as a disregarded entity for federal tax purposes in accordance with the provisions of Rev. Proc. 2002-69, which provides that a married couple may elect to treat a business entity owned by both spouses as community property for federal income tax purposes. The grantor trust subsequently transferred all of its interest in the S Corp to another limited liability company taxes as a partnership for federal tax purposes that was therefore an ineligible S Corp shareholder. Husband and wife indicated that the termination of the S Corp election was inadvertent and not motivated by tax avoidance or retroactive tax planning. The IRS waived the S

Corp termination provided that the S Corp make all necessary elections within 120 days of the date of the issuance of the private letter ruling.

3. ***The IRS granted relief for an inadvertent termination of S-corporation status when a trustee failed to make a timely electing small business trust (ESBT) election for a trust. PLR 202609002 (Feb. 2, 2026).***

Corporation was incorporated on Date 1. Effective Date 1, Corporation elected to be treated as an S corporation. On Date 2, all shares of Corporation were transferred to a Trust. Corporation represents that Trust has at all times since Date 2 met the requirements of an Electing Small Business Trust ("ESBT") except that the trustees of the Trust did not make a timely ESBT election under Code Section 1361(e)(3), thus causing Corporation's S-corporation election to terminate effective Date 2. Corporation represents that there was no tax avoidance or retroactive tax planning involved in the failure of the Trust to file the ESBT election.

Code Section 1362(f) provides if a corporation's S-corporation status terminates because of a trustee's failure to make a timely ESBT election for a trust, and if the IRS determines that the circumstances resulting in termination were inadvertent and no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, then, such corporation shall be treated as an S-corporation.

Based on the facts submitted and the representations made, the IRS granted relief for an inadvertent termination and concluded that Corporation will be treated as an S-corporation effective Date 2, contingent upon the trustees of the Trust filing an appropriately completed ESBT election for the Trust effective Date 2 and upon the Trust and its beneficiaries filing amended federal income tax returns for all open years consistent with the treatment of Trust as an ESBT effective Date 2.

4. ***The IRS provides S corporation relief under Code Section 1362(f) contingent upon completing effective ESBT election and filing amended federal income tax returns. PLR 202609002 (Feb. 27, 2026).***

Shares of S corporation stock transferred to a trust that failed to make a timely Electing Small Business Trust ("ESBT") election under Code Section 1361(e)(3). As a result, the trust was not an eligible shareholder within the definition of a "small business corporation" under Code Section 1361(b)(1), and the corporation's S election terminated. Under Code Section 1362(f), the corporation requested the restoration of its S corporation status, arguing that the termination was inadvertent and the requested relief was made within a reasonable period of time after discovery of the trustee's failure to make the timely ESBT election, and agreeing to make any requested adjustments. The published ruling does not report the company's argument, or the argument of the

trustee of the trust, that the termination, and failure to timely file an ESBT election, was inadvertent. Based on that information, the IRS concluded that the Code Section 1362(f) requirements were met, so long as the trustee of the trust filed an ESBT election and amended federal income tax returns for all of the years effected by the terminated S corporation status.

5. ***The IRS granted corporation relief under Code Section 1362(f) following the inadvertent termination of the corporation's S election. PLR 202614003 (April 3, 2026).***

A shareholder transferred shares of a S corporation to a trust that was a grantor trust as to the shareholder and an eligible S corporation shareholder under Code Section 1361(c)(2)(A)(i) (the "Trust"). Following the shareholder's death, when the Trust ceased to be a grantor trust, the Trust continued to hold the shares beyond the two-year administrative period permitted under Code Section 1361(c)(2)(A)(ii) (the "Administrative Period") without making a separate Qualified Subchapter S Trust ("QSST") election under Code Section 1361(d). The shares were then transferred to two separate trusts; however, the corporation's S election terminated when the Trust became an ineligible shareholder at the expiration of the Administrative Period. In this Private Letter Ruling, the IRS granted relief under Code Section 1362(f), finding that the termination of the corporation's S election was inadvertent, steps were taken by the corporation to resolve the matter within a reasonable period of time after discovery of the termination, and the corporation and its shareholders agreed to make any necessary adjustments consistent with the treatment of the corporation as a S corporation. Therefore, the IRS ruled that the corporation would continue to be treated as a S corporation from the end of the Administrative Period, contingent upon the Trust's beneficiary filing a proper QSST election within 120 days from the date of the ruling.

VII. U.S. MISCELLANEOUS

A. Proposed Legislation

1. ***HERITAGE Act. The "Helping Ensure Rural Inheritance Transfers Are Generationally Enduring Act," if passed, would raise the limitation on the value reduction for family farm real estate from $750,000 to $15 million. S. 1927, 119th Cong., 1st Sess.***

The "Helping Ensure Rural Inheritance Transfers Are Generationally Enduring Act" (the HERITAGE Act) was introduced in the Senate on June 3, 2025. The bill proposed raising the limitation on the value reduction in fair market value of farmland from $750,000 to $15 million for purposes of the application of the estate tax.

2. ***Tax Court Improvement Act. The "Tax Court Improvement Act," if passed, would clarify that the Tax Court can equitably toll the 90-or 150-***

day filing deadline for a petition to review an assessed deficiency and would suspend the deadlines when the filing location is not available to the general public. H.R. 5349 § 5, 119th Cong., 1st Sess. (Sept. 14, 2025).

The Tax Court Improvement Act ("the Act") was introduced to the Senate on December 2, 2025, by Representatives Nathaniel Moran and Terri A. Sewell. The Act would clarify that the Tax Court is permitted to toll the 90-or 150-day filing deadline for a petition under section 6213(a) to review an assessed deficiency when it is equitable to do so (known as equitable tolling). The Act would also suspend the deadlines when the filing location is not available to the general public. Filing location is defined as the office of the clerk of the Tax Court, or any on-line portal made available by the Tax Court for electronic filing of petitions. In such cases, the filing date would be tolled until 14 days after the inaccessibility ends. The bill would apply to filings made after the date of enactment, but it states that no inference is to be drawn with respect to the Tax Court's jurisdiction with respect to any petition filed on or before the date of enactment.

3. ***Strengthen Social Security by Taxing Dynastic Wealth Act. S. 4196, the "Strengthen Social Security by Taxing Dynastic Wealth Act," is proposed legislation introduced by Senator Chris Van Hollen that would significantly reduce estate and gift tax exemptions, increase applicable tax rates, and allocate resulting revenues to the Social Security Trust Fund. S. 4196, 119th Cong., 2d Sess. March 25, 2026.***

A new Senate bill, S. 4196, introduced by Sen. Chris Van Hollen would (i) lower the estate tax exemption amount and GST exemption amount to $3.5 million per individual ($7 million for a married couple), (ii) cap the lifetime gift tax exemption amount at $1 million dollars per individual ($2 million dollars for a married couple), (iii) increase the top estate, gift, and GST tax rate from 40% to 45% on amounts over $1.5 million, and (iv) direct the revenue collected from estate and gift taxes to the new single Social Security Trust Fund (created by combining the Old Age and Survivors Fund and the Disability Insurance Fund).

4. ***The Protecting Charitable Giving Act. S. 4539, the "The Protecting Charitable Giving Act," is proposed legislation that would increase penalties for identifying donors' information to charities. S. 4539, 119th Cong., 2d Sess. (May 14, 2026).***

A new Senate bill, S. 4539, introduced by Sen. Tod Young and Sen. James Lankford, both members of the Senate Finance Committee, would increase the penalties for disclosing the identities of donors to tax-exempt organizations. Code Section 7213 currently imposes a penalty of $5,000 for unauthorized disclosure of any tax return information. This bill would increase the penalty to $250,000 for disclosure of the identity of charitable donors otherwise contained in Form 990,

schedule B. This bill would be effective for disclosures made after the date of enactment.

5. ***Fair Trusts for Fiscal Responsibility Act of 2026. Senator Patty Murray (D-WA), Vice Chair of the Senate Appropriations Committee, introduced the Fair Trusts for Fiscal Responsibility Act of 2026, proposing a withholding tax on certain trust assets greater than $50 million. S. 4490, 119th Cong., 2d Sess.***

On May 4, 2026, Senator Patty Murray (D-WA) introduced S. 4490, 119th Cong., 2d Sess., a bill seeking to amend the Internal Revenue Code to provide a tax on trusts with assets greater than $50 million. The bill proposes annually withholding 1% of the value of trust assets between $50 million and $100 million, 1.5% of the value of trust assets between $100 million and $250 million, 2% tax of the value of trust assets between $250 million and $1 billion, and 3% of the value of trust assets above $1 billion. The withheld taxes would be applied against an estate or GST tax liability if the trust assets are included in a decedent's estate or the subject of a generation-skipping transfer. The withholding applied against such taxes cannot exceed the tax that is due. The withholding tax would not apply to charitable trusts, ERISA-qualified employee benefit trusts, and other trusts not typically used in estate planning. The bill would be effective for taxable years beginning after the date of enactment.

6. ***Protecting Proper Life Insurance from Abuse (PPLI Abuse) Act. Senator Ron Wyden (D-Ore) introduced the "Protecting Proper Life Insurance from Abuse (PPLI Abuse) Act" which would add a new Internal Revenue Code Section excluding certain private placement contracts from being treated as insurance or annuity contracts for tax purposes. S. 4279, 119th Cong., 2d Sess. (April 13, 2026).***

On April 13, 2026, Senator Ron Wyden (D-Ore.) introduced the "Protecting Proper life Insurance from Abuse Act," a bill that would materially recharacterize certain private placement life insurance and annuity arrangements, removing them from the ordinary life-insurance and annuity tax treatments. S. 4279, 119th Cong., 2d Sess. (April 13, 2026). The bill would define certain life insurance policies as "Private Placement Contracts" (PPCs), which would be disqualified from the protected tax benefits of traditional life insurance and annuity contracts. A PPC is any life insurance contract backed by an insurance company asset account that supports fewer than twenty-five contracts held by other individual investors. Contracts owned by related parties would be aggregated for purposes of the twenty-five-investor requirement. A PPC would be taxed to the contract owner annually as earnings and losses are earned. Additionally, the death benefit paid under a PPC would be taxable.

For insurance carriers, the proposal would deny life-insurance reserve treatment for reserves related to PPCs. The insurer could not deduct reserves held to support the PPC, and those reserves would not count as life-insurance reserves

for purposes of testing whether the issuer qualifies as a life insurance company. Instead, the reserves would be subject to general accrual tax principles.

Furthermore, the bill creates reporting requirements, including an information return when a contract becomes a PPC. Failure to file the return would result in a $1 million fine for each 30 days the report goes unfiled, with notice sent to the insurance commissioner and SEC. Annual reporting would be required in subsequent years. The proposal would be effective on the date of enactment and would be retroactive for PPCs. Existing contracts would have a 180-day transition period to convert into traditional insurance policies before the new PPC rules apply.

7. ***Getting Rid of Abusive Trust Schemes (GRATS) Act. Senator Widen and Senator King reintroduced the "Getting Rid of Abusive Trust Schemes (GRATS) Act," a bill that would modify the rules related to GRATs, sales to GRATs, and income tax treatment of GRATS. S.4287, 119th Cong., 2d Sess. (April 14, 2026).***

On April 14, 2026, Senate Finance Committee ranking Democrat Ron Wyden (D-Ore.) reintroduced the "Getting Rid of Abusive Trust Schemes (GRATS) Act." The bill would (i) impose a required minimum 15-year term for GRATS and a maximum term of ten years more than the annuitant's life expectancy, (ii) prohibit decreasing annuity payments during the term of the GRAT, and (iii) and require the remainder interest have a gift tax value, as determined as of the time of transfer, of the 25% fair market value of the property transferred, or $500,000, whichever is greater. The bill would also impact transfers between grantor trusts and deemed owners, treating them as a sale or exchange for income tax purposes, and any income tax paid on the income of most grantor trusts as gifts made by the grantor to the beneficiaries.

8. ***The Donald J. Trump Wealth Tax Act of 2026. Representative Juan Vargas (D-Cal) introduced a house bill which would impose a one-time 14.25% net worth tax on certain individuals and trusts. H.R. 8316, 119th Cong., 2d Sess. (April 15, 2026).***

On April 15, 2026, Representative Juan Vargas (D-Cal.) resurrected a proposal President Donald Trump made in 1999 to reduce national debt by introducing "The Donald J. Trump Wealth Tax Act of 2026." The bill would impose a one-time 14.25% net worth tax on both individuals and non-grantor trusts worth more than $10 million.

9. ***Make Billionaires Pay Their Fair Share Act. Senator Bernie Sanders and Representative Ro Khanna introduced companion legislation that would impose a 5% annual tax on individuals and trusts with net assets exceeding $1 billion, marking a significant shift from the current system of taxing wealth transfers through gift, estate, and generation-skipping***

transfer taxes to an annual tax on accumulated net wealth. S. 3956, 119th Cong., 2d Sess. (2026); H.R. 7767, 119th Cong., 2d Sess. (2026).

Senator Bernie Sanders introduced S. 3956, the *Make Billionaires Pay Their Fair Share Act*, on March 2, 2026, and Representative Ro Khanna introduced companion legislation, H.R. 7767, on March 3, 2026. The bills would amend the Internal Revenue Code to impose a 5% annual tax on individuals and trusts with net assets exceeding $1 billion. Net wealth generally would equal the value of all property—real or personal, tangible or intangible, wherever situated—less outstanding debt. The bills would establish rules for valuing assets, calculating net wealth, and administering the annual tax. The tax would apply to calendar years beginning after the date of enactment. Beyond the wealth tax, the bills would provide affordability rebates, expand certain health-care benefits, add Medicare coverage for dental, hearing, and vision services, increase funding for affordable housing and child care, support a minimum salary for public school teachers, and expand home- and community-based care services.

B. Inflation Adjustments

1. *The IRS provides key inflation adjustments for more than sixty tax provisions in 2026. Rev. Proc. 2025-32, 2025-44 (Oct. 27, 2025).*

Rev. Proc. 2025-32 provides inflation adjustments under the Code for 2026. The inflation adjustments most relevant to estate planners include the following: the gift tax annual exclusion will remain $19,000; the gift tax annual exclusion for gifts to a non-U.S. citizen spouse will be $194,000 (was $190,000); the top (37%) income tax bracket for estates and trusts will begin at $16,000 (was $15,650); the standard deduction for married couples filing jointly is $32,200 (was $31,500), and $16,100 (was $15,750) for single taxpayers or married filing separately; the maximum zero capital gains tax amount for trusts and estates will be $3,300 and the maximum 15% capital gains tax amount for trusts and estates will be $16,250; the two percent portion of the estate tax on certain business interests deferred under Code Section 6166 will be $1,940,000 (was $1,900,000); the alternative minimum tax exemption for estates and trusts will be $31,400 (was $30,700), and the phaseout of the exemption will start at $104,800 (was $102,450).

C. Life Insurance

1. *The Sixth Circuit affirmed the District Court's decision upholding the IRS's application of the split-dollar Treasury Regulations to a closely held dental corporation and its sole shareholder-employee. Peter E. McGowan; Michele L. McGowan; Peter E. McGowan DDS, Inc. v. United States of America, No. 24-3228 (July 9, 2025).*

Affirming the District Court's grant of the IRS's motion for summary judgement, the Sixth Circuit held a life insurance transaction was a compensatory

split-dollar arrangement under Treasury Regulations Section 1.61-22, despite a complex subtrust structure. Between 2011 and 2015, taxpayer dentist and his dental corporation, of which he was the sole shareholder-employee, entered into a whole-life insurance policy plan. Under the plan, a "DBT" subtrust purchased the policy on taxpayer's life, and the dental corporation contributed money to the subtrust for the base premium. The dental corporation also contributed money for paid-up additions to the policy to a "RPT" subtrust, which loaned money to the DBT subtrust. If taxpayer died within five years of the plan, the policy was to be paid to his designated beneficiary, his wife. After audit, the IRS assessed deficiencies to taxpayer and the company, finding the split-dollar regulations applied to the plan, requiring taxpayer to include the full economic benefit of the policy in his income and disallowing the corporation to deduct premium payments.

At issue were two of the compensatory split-dollar factors under Treasury Regulations Section 1.61-22(b)(2)(i). The Sixth Circuit held the first factor—that the arrangement is between an owner and a non-owner—was satisfied because Treasury Regulation Section 1.61-22(c)(1)(iii)(C) treats an employer as the owner of the policy when the policy is held by a welfare benefit fund, which the DBT trust qualified as. Furthermore, in applying the substance over form doctrine, the Sixth Circuit found the subtrusts were economically meaningless and did not defeat the corporation's ownership rights in the policy. Next, the Sixth Circuit held the second factor at issue—that the employee designates the death benefit beneficiary or has an interest in the policy cash value—was clearly satisfied because taxpayer designated his wife. The Sixth Circuit rejected taxpayer's argument that he did not designate the beneficiary because of there was a potential donation to a charity, the Toledo Zoo, of the cash value from RPT subtrust if DBT had surrendered the policy. The Sixth Circuit held the factor was still met because the charity's cash value interest was not a death benefit, and, even if they had a death benefit interest, the taxpayer still designated the Toledo Zoo as the beneficiary. Therefore, the split-dollar regulations applied to the plan.

Lastly, the Sixth Circuit rejected the taxpayers' argument that *Loper Bright* invalidated the split-dollar Treasury Regulations related to the prohibition on the corporation's deductions, finding the plain language of the Internal Revenue Code sufficient to enforce the prohibition. However, the Sixth Circuit found taxpayer was entitled to characterize the split-dollar benefits as shareholder distributions, rather than compensation, and was thus entitled to a refund based on the difference between the ordinary income and dividend rates.

2. ***The Georgia Supreme Court adopted a totality of the circumstances approach to determine when a life insurance policy is procured or caused to be procured by a third party. Wilmington Trust, NA v. Ameritas Life Ins. Corp., ___ SE 2d ___, 2026 WL 437172 (Ga. Feb 17, 2026).***

On certified questions from the U.S. District Court for the Northern District of Georgia, the Georgia Supreme Court held that a third party may be deemed to have "procured or caused to be procured" a life insurance policy on the life of another, even if the insured participated in the application process, so long as the third party actually obtained the policy. The Georgia Supreme Court stated that the determination should be made by considering the totality of the circumstances and guided by the Georgia public policy that prohibits life insurance policies that function as wagering contracts. The Georgia Supreme Court provided relevant circumstances could include which party initiated the transaction, who controlled the process, who financed premiums, whether the policy was created for the benefit of the insured or investors, who had the power to name the trustee of a life insurance trust, and the sophistication of the insured.

3. ***When a life insurance policy terminates after policy and premium loan balances exceed its cash surrender value, the use of that value to satisfy the debt constitutes a constructive distribution taxable as income, even though the taxpayer receives no cash. Sawyer v. Comm'r, T.C. Memo. 2026-33 (April 16, 2026).***

In Sawyer v. Comm'r, T.C. Memo. 2026-33, taxpayer took out a loan secured by the value of the policy in an attempt to keep his business afloat. In addition, the taxpayer's policy allowed taxpayer to borrow from the cash surrender value to pay premiums, which taxpayer utilized. The policy loan and the premium loan balances grew over time and eventually exceeded the policy cash surrender value, at which point the insurer terminated the policy and used the entire cash surrender value to satisfy the loans. Although taxpayer did not receive any cash, the Tax Court held taxpayer received a constructive distribution and treated the satisfaction of the debt as taxable income.

D. Redaction of Information from Tax Court Record

1. ***The Tax Court allows some personal information to be put under seal, but not information about property, because it was not demonstrated with articulated reasoning that harm would result from the disclosure of such information. Estate of Heiniger v. Commissioner, T.C. No. 8096-17 (protective orders granted and denied, Sept. 18, 2025).***

The IRS and the Estate of Patrick Heiniger are engaged in a dispute regarding whether certain property, including a condominium and multiple works of art, are includible in the decedent's United States gross estate, and the values of such property. The Estate filed a motion seeking to redact from the court's record personal contact information of Hana Nina Stevens, the decedent's girlfriend at the time of his death, and other individuals, other personal information, and the names of the pieces of art, their creators, and their values.

The Tax Court granted protection for a portion of the requested information and denied protection of the remaining information. The Tax Court

explained that Code Section 7461 makes all evidence received by the Tax Court "public records open to the inspection of the public," except for trade secrets and "other confidential information" that the court, in its discretion, agrees to protect. Tax Court Rule 103(a)(7) states that upon motion supported by good cause, "the Court may make any order that justice requires" to ensure that "a trade secret or other information not be disclosed or be disclosed only in a designated way." The Tax Court agreed to redact personal contact information but objected to all other requested redactions. The Tax Court ruled that the estate had not "demonstrated with specific examples or articulated reasoning that harm would result from the disclosure of such information." It provided only "conclusory predictions of harm."

E. Spendthrift Provision

1. *The Court of Appeals of Tennessee held that a Revocable Trust's spendthrift provision does not protect trust property from creditors. In re Estate of Thompson, No. M2024-01564-COA-R3-CV (Sept. 19, 2025).*

Decedent executed a Will and Revocable Trust Agreement. Decedent's Revocable Trust Agreement contained a standard spendthrift provision. Decedent conveyed the real property at issue to her Revocable Trust via a quitclaim deed. After execution of all the aforementioned documents, Decedent received long-term care services for which TennCare paid approximately $230,000. Upon Decedent' death, TennCare sought reimbursement of these costs, petitioned to open probate and appoint an administrator of the Estate, and filed a claim against the Estate. In response, the Estate argued Decedent did not own the real property because it was owned by the Revocable Trust, that Decedent suffered from diminished capacity which made the trust irrevocable, that the property not subject to the claims of creditors, and that the trust language created a life estate based on Decedent's actions.

The Court of Appeals of Tennessee held that the spendthrift provision did not protect the trust property from creditors' claims after the settlor's death and the real property could be reached to reimburse TennCare. Further, the court held the trust language and quitclaim deed did not create a life estate that would prevent TennCare from reaching the property.

F. Safe Harbor for Investment Trusts

1. *The IRS describes a safe harbor for trusts that otherwise qualify as investment trusts under Treasury Regulations Section 301.7701-4(c) and as grantor trusts to stake their digital assets without jeopardizing their tax status as investment trusts and grantor trust for federal income tax purposes. Rev. Proc. 2025-31, 2025-48 IRB 743 (Nov. 20, 2025).*

Investment trust status is forfeited if the trustee has the power to "vary the investment" of the trust's interest holder. Staking is the process used by proof-of-

stake protocols to validate blockchain transactions, allowing participants to earn additional tokens as rewards. Prior to this Revenue Procedure, it was unclear whether the power to participate in staking would be a "power to vary" that would disqualify treatment as an investment trust. This Revenue Procedure permits an investment trust to stake digital assets and maintain investment trust status and grantor trust status if fourteen safe harbor requirements are met. Those requirements, include, but are not limited to, the trust's assets must consist only of cash and units of a single type of digital asset, the trust's interests must be traded on a national securities exchange in accordance with updated SEC regulations, the trust must direct the staking of its digital assets through one or more custodians who facilitate the staking of the digital assets on the trust's behalf.

G. Transferee Liability

1. *The Federal Circuit held that family trusts may be liable as transferees for a corporation's unpaid taxes, penalties, and interest where the trusts had actual or constructive knowledge that a stock-sale transaction was structured to avoid built-in corporate tax liabilities. Dillon Trust Company LLC as Trustee for Trusts 709204, 709210, and 8545 v. United States, 176 F.4th 1298, 1309 (Fed. Cir. May 14, 2026).*

Taxpayers, the Dillon family trusts, sold stock in two C corporations that held highly appreciated assets, including farmland and investment portfolios. The buyer later caused the corporations to sell their assets and engage in abusive transactions designed to generate artificial losses to offset the built-in gains. After the buyer failed to pay the resulting tax liabilities, the IRS sought to collect the unpaid taxes, penalties, and interest from the trusts as transferees under IRC § 6901 and New York fraudulent conveyance law. The Court of Federal Claims held the trusts liable, and the trusts appealed, challenging the Court of Federal Claims' decisions (1) to impose transferee liability on the Dillon trusts; (2) to not limit their transferee liability to the net value they received from the buyer; (3) to hold the Dillon trusts liable for the gross valuation misstatement penalty that the buyer incurred for claiming unsubstantiated losses on its tax return; and (4) to hold on summary judgment that the Dillon Trust Company could not make an illegal exaction claim based on the continued accrual of interest after the Dillon trusts made deposits according to 26 U.S.C. § 6603.

The Federal Circuit affirmed the decision of the Court of Federal Claims to impose transferee liability, concluding that the stock sale and later asset sales could be collapsed and treated as a single transaction. The court held that the trusts had actual or constructive knowledge of facts sufficient to put them on inquiry notice that the transaction was structured to avoid the corporations' built-in tax liabilities. The court emphasized that the trusts were sophisticated parties, knew the corporations held appreciated assets with substantial embedded tax liabilities, were warned that the IRS could recharacterize the transaction, accepted unusually high bids that made economic sense only if the buyer avoided the tax, and failed to investigate after the buyer refused to disclose its plan for the assets.

The Federal Circuit also upheld the scope of the trusts' liability. The court concluded that the trusts were not entitled to cap their liability at the net value received because constructive fraudulent intent under New York law could qualify as actual fraud for purposes of the applicable remedy. The court further held that penalties owed by the intermediary buyer could be included in the trusts' transferee liability and that the IRS did not abuse its discretion by declining to treat deposits made by successor trusts as payments of taxes owed by the original trusts. Accordingly, the Federal Circuit affirmed the Court of Federal Claims' decisions in full.

H. Code Section 6039F Penalties for Unreported Foreign Gifts

1. *The District Court held that the IRS may assess and collect Code Section 6039F penalties for unreported foreign gifts and dismissed the taxpayer's Administrative Procedure Act and Eighth Amendment challenges. Zhang v. Internal Revenue Service, 2026 WL 1210079 (N.D. Cal. May 4, 2026).*

The taxpayer, a Chinese citizen, moved to California in September 2017 to join her spouse and, by mid-December 2017, satisfied the substantial presence test under Code Section 7701(b), becoming subject to U.S. tax reporting requirements. During 2017, she received approximately $287,000 in wedding gifts from family members in China. Although she timely filed her 2017 federal income tax return in 2018 using TurboTax, she was unaware of the requirement to file Form 3520 (Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts) and did not learn of that obligation until later in 2018, when she submitted a delinquent Form 3520. Code Section 6039F requires U.S. persons to report certain foreign gifts and imposes a penalty for failure to timely file the required information return, even when no tax is owed. The penalty equals 5% of the unreported gift for each month the failure continues, up to a maximum of 25% of the gift amount. The IRS assessed a $71,777 penalty, representing 25% of the reported gifts, which was later reduced on appeal to $57,422. After paying the reduced penalty and exhausting administrative remedies, the taxpayer filed a refund action challenging, among other things, the IRS's authority to assess the penalty.

Relying on *Farhy v. Commissioner* (*Farhy II*), 100 F.4th 223 (D.C. Cir. 2024), the District Court rejected the taxpayer's argument that the IRS lacked authority to assess the Code Section 6039F penalty because the statute does not expressly describe the penalty as "assessable." Applying *Farhy II*, the District Court concluded that Congress may authorize assessment by implication and that Code Section 6201(a), which broadly authorizes the IRS to assess taxes, interest, additions to tax, and penalties imposed under the Internal Revenue Code, supports administrative assessment and collection of Code Section 6039F penalties. The District Court further held that Code Section 6039F, when read in conjunction with Code Section 6201(a), demonstrates Congressional intent to permit assessment and collection of the penalty. The District Court emphasized that Code

Section 6039F requires payment "upon notice and demand by the Secretary and in the same manner as tax" and includes a reasonable-cause exception that contemplates IRS review through an administrative process. The District Court also dismissed the taxpayer's Administrative Procedure Act claims, finding that a refund action under Code Section 7422 and 28 U.S.C. § 1346(a) provided an adequate alternative remedy, and rejected the taxpayer's Excessive Fines Clause challenge, concluding that the penalty was remedial rather than punitive. Notably, the taxpayer's refund claims based on reasonable cause and Code Section 6751(b) were permitted to proceed.

I. Bank Secrecy Act

1. *The U.S. District Court for the Eastern District of Texas held that FinCEN exceeded its statutory authority under the Bank Secrecy Act by requiring nationwide reporting of non-financed residential real estate transfers involving entities and trusts and therefore vacated the rule under the Administrative Procedure Act. Flowers Title Companies, LLC v. Bessent, 2026 WL 782283 (E.D. Tex. Mar. 19, 2026).*

Plaintiff, a title company, challenged FinCEN's 2024 rule requiring the reporting of most non-financed residential real estate transactions in which ownership is transferred to an entity or trust. FinCEN argued that the rule was authorized by the Bank Secrecy Act provisions permitting the reporting of "suspicious transactions" and allowing the agency to require financial institutions to maintain procedures designed to combat money laundering. The plaintiff contended that the rule exceeded FinCEN's statutory authority and, alternatively, raised constitutional challenges.

The District Court agreed with the plaintiff and concluded that FinCEN had not shown that non-financed residential real estate transactions are categorically "suspicious" within the meaning of the Bank Secrecy Act. The court rejected FinCEN's reliance on evidence that some bad actors used such transactions and that certain transactions captured by geographic targeting orders were associated with suspicious activity reports. The court further held that the Bank Secrecy Act provision authorizing FinCEN to require institutions to maintain appropriate procedures did not grant independent authority to impose broad substantive reporting obligations. Because the rule exceeded FinCEN's statutory authority, the District Court vacated the rule and declined to reach the plaintiff's constitutional challenges.

J. Corporate Transparency Act

1. *The Firth Circuit holds a constitutional challenge to the Corporate Transparency Act in abeyance pending the issuance of a final rule by the Treasury. Texas Top Cop Shop, Inc. v. Bondi, 136 A.F.T.R.2nd 2025-5435 (Aug. 5, 2025).*

Plaintiff challenged the constitutionality of the Corporate Transparency Act. After the filing of plaintiff's appeal, the Treasury issued an Interim Final Rule providing that only foreign entities would be required to comply with the beneficial ownership information reporting rules of the Corporate Transparency Act. The Fifth Circuit noted that the case was not moot in light of the fact that this is an interim rule. In the interests of judicial efficiency, however, the Fifth Circuit held the matter in abeyance pending the issuance of a final rule by the Treasury.

2. *Plaintiffs asked the United Stated Supreme Court to review a decision of the Eleventh Circuit which held that the Corporate Transparency Act facially regulates economic activities having a substantial aggregate impact on interstate commerce and does not facially violate the Fourth Amendment. National Small Business United v. U.S. Department of the Treasury, 161 F.4th 1323 (11th Cir. Dec 16, 2025), cert. req'd, No. 25-120 (April 15, 2026).*

The plaintiffs, a business association and small business owner, have asked the United States Supreme Court to review a decision of the Eleventh Circuit that sustained the validity of the Corporate Transparency Act (CTA). The plaintiffs previously argued that the CTA is unconstitutional because it is not an appropriate exercise of Congress's power to regulate interstate commerce, and in the alternative, it violates the Fourth Amendment's prohibition on unreasonable searches. The district court concluded that the CTA did not regulate economic activity and granted summary judgment to the plaintiffs. The Eleventh Circuit reversed by concluding that the CTA effectively prohibits anonymous business dealings, which facially regulates economic activities having a substantial aggregate impact on interstate commerce. Moreover, the Eleventh Circuit concluded that the CTA sets forth a uniform and limited reporting requirement, which does not facially violate the Fourth Amendment.

A petition for writ of certiorari was filed by the plaintiffs on April 15, 2026.

VIII. NORTH CAROLINA LAW

A. Income Tax Act for Estates, Trusts, and Beneficiaries

1. *Section 105-160.2*

On July 2, 2026, Governor Josh Stein signed Session Law 2026-31. Section 1.3 of the Act fundamentally rewrites North Carolina's fiduciary income tax regime. Effective for taxable years beginning on or after January 1, 2026, North Carolina no longer attempts to tax the accumulated income of trusts merely because that income may benefit a resident beneficiary. Instead, North Carolina now focuses principally on income derived from North Carolina sources as follows:

§ 105-160.2. Imposition of tax.

The tax imposed by this Part applies to the taxable income of estates and trusts as determined under the provisions of the Code except as otherwise provided in this Part. The taxable income of an estate or trust is the same as taxable income for such an estate or trust under the provisions of the Code, adjusted as provided in G.S. 105-153.5 and G.S. 105-153.6, except that the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6 are apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. The tax is computed on the amount of the taxable income of the estate or trust that is for the benefit of a resident of this State, or for the benefit of a nonresident to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from a business, trade, profession, or occupation carried on in this State. For purposes of the preceding sentence, taxable income and gross income is computed subject to the adjustments provided in G.S. 105-153.5 and G.S. 105-153.6. The tax on the amount computed above is at the rate levied in G.S. 105-153.7. The fiduciary responsible for administering the estate or trust shall pay the tax computed under the provisions of this Part.

B. Recent Cases

1. *James H.Q. Davis Trust v. JHD Props., LLC, 387 N.C. 19, 910 S.E.2d 652 (Filed January 31, 2025).*

Overview: As part of his estate planning in 2001, Dr. James H. Davis transferred 68 acres of undeveloped real estate in Wake County to two LLCs. He also created four trusts—one for each of his sons. Decedent then transferred the LLCs to the four trusts so that each trust owned 25% of the LLCs. He named two of his sons as managers of the LLC. The Operating Agreement required the managers to act unanimously to take any action on behalf of the LLC. Since 2018, the managers have been unable to agree on whether to develop, rent, or sell the property. The last economically useful activity of the LLCs was a timber sale in 2004. In 2022, two of the trusts filed an action seeking to dissolve the LLC.

Issue: Has it become **impracticable** to conduct the business of the LLCs due to the disagreement between the two managers such that the LLCs should be judicially dissolved under N.C. Gen. Stat. § 57D-6-02(2)(i)?

Key Sub-Issue: What does "not practicable" mean?

Law:

- Under North Carolina's Limited Liability Company Act, judicial dissolution of a limited liability company is appropriate when "it is established that (i) it is not practicable to conduct the LLCs business in conformance with the operating agreement and [Chapter 57D] or (ii) liquidation of the LLC is necessary to protect the rights and interests of the member. N.C. Gen. Stat. § 57D-6-02(2).
- The North Carolina Supreme Court had previously considered whether dissolution of an LLC was appropriate under the "not practicable" standard. *Chisum v. Campagna*, 376 N.C. 680 (2021). In *Chisum*, the Supreme Court affirmed the Business Court's

dissolution of two LLCs based on the extreme level of acrimony and distrust between the LLC members. The Business Court was "convinced that these parties could not ever again be associated with one another in a jointly owned business, let alone conduct the business of [the LLCs]. Id. at 25.

- However, even after the Chisum decision the words "not practicable" remain undefined by statute and the North Carolina Supreme Court.

Relevant Facts:

- Per the terms of the Operating Agreements:
  - Neither LLC may take action without a majority of the managers coming to an agreement (since there are only two managers—this requires unanimity.
  - The purpose and business of the LLCs shall be to "engage in the purchase, development, rental, ownership and sale of real property and in any other lawful business for which the limited liability companies may be organized under the Act".
- Actions of two sons who were the managers
  - The managers have cooperated on tasks necessary for maintaining the LLCs such as making tax payments, preparing Secretary of State filings, financing the LLCs, and selecting and managing the accountant.
  - Part of the property is dedicated to timber, but the last (and only) sale of timber made by the LLCs was 2004 before Dr. Davis died.
  - The forestry management plan for one of the LLCs expired in 2022 and hasn't been renewed.
  - The managers have disagreed since 2018 on the use of the real property. Three of the four brothers wanted the property sold. The fourth brother who was one of the managers consistently opposed a sale.
  - The manager who opposed a sale believed that he had no obligation to consider or approve a sale of the Property.
  - By 2020, one manager insisted on selling the property, the other manager continued to object to such a sale. No agreement was ever reached on a path forward.

Court's holding: The Business Court's decision to dissolve the LLCs is affirmed. "Not practicable" means "unfeasible,"—it does not mean "impossible."

Key Holdings:

- "Practicable" is synonymous with "feasible" and does not mean simply "possible". Something may be possible but not feasible without extra time or resources in a certain circumstance.
- To determine whether it is "not practicable" for the managers to continue operating the LLCs, the Court may consider the following:
  - Whether the management of the company is unable or unwilling to work together to reasonably engage in or promote the purpose for which the company was formed;
  - Whether there is deadlock between the managers;

    - Whether the operating agreement provides a means of navigating around such deadlock;
    - Whether, due to the company's financial position, there is still a business to operate;
    - Whether continuing the company is financially feasible, and
    - Whether a member or manager has engaged in misconduct.
- Applying this new test to the facts of the case at issue:
    - The purpose clause of the Operating Agreements shows that the property was to be used as an active real estate business in order to maximize its value. For the LLCs to engage in active use of the property, there must be an opportunity for the LLCs to make use of the land.
    - Because both managers had to act unanimously and were unable to agree and because the Operating Agreements provided no means of navigating around a deadlock, there was a managerial deadlock. There was a long record of disagreement and inability to reach any decisions at all.
    - The managers were clearly unwilling to permit the LLCs to engage in and pursue the purpose for which they were formed.
    - All of these facts supported a conclusion that it is not practicable for the managers of the LLCs to operate the LLCs in accordance with the operating agreements.

2. *In re Richard B. Smith Fam. Trust, 2025 N.C. App. LEXIS 498, 918 S.E.2d 921 (Filed August 20, 2025)(unpublished).*

Overview: On May 19, 2023, The co-Trustees of two revocable trusts (now irrevocable due to the deaths of both grantors), filed a Petition for Order on Disbursement of Trust Funds seeking a court order authorizing them to distribute the assets of the revocable trusts to the beneficiaries of the revocable trusts which were four trusts—one for each of the grantors' four children. The co-Trustees filed the petition because two of the four children refused to provide them with EINs for their respective trusts and UBS refused to distribute the assets of the revocable trusts other than all at once. The two brothers filed a response objecting to the petition and demanding an accounting.

Issue: Were the Trustees required to provide a full accounting to the qualified beneficiaries under N.C. Gen. Stat. § 36C-8-813(a)(2) of a wide range of trust-related documents, including checks, receipts, tax returns, wire transfers, and other documents dating back several years?

Law:

- N.C. Gen. Stat. § 36C-8-813(a)(2) states that upon a reasonable request of any qualified beneficiary, the trustee is under a duty to (i) provide a copy of the trust instrument, (ii) provide reasonably complete and accurate information as to the nature and amount of the trust property, and (iii) allow reasonable inspections of the subject matter of the trust and the accounts and other documents relating to the trust.
- N.C. Gen. Stat. § 36C-1-105(a) states that "*except as otherwise provided in the terms of the trust*, this Chapter governs the duties and powers of a trustee and a power holder under Article 8A of this Chapter, relations among trustees and those power holders, and

the rights and interests of a beneficiary." The rule that the terms of a trust can override the provisions of the Uniform Trust Code is subject to a very limited set of exceptions. Section 36C-8-813(a)(2) is not one of those exceptions. Thus, the terms of a trust can override the accounting requirements of Section 36C-8-813(a)(2).

- *Wilson v. Wilson*, 203 N.C. App. 45, 690 S.E.2d 710 (2010) held that N.C. Gen. Stat. § 36C-8-813 does not override the duty of the trustee to act in good faith, nor can it obstruct the power of the court to take such action as may be necessary in the interests of justice. Such action would clearly encompass the power of the court to compel discovery where necessary to enforce the beneficiary's rights under the trust or to prevent or redress a breach of trust, any contrary provision in the trust instrument notwithstanding. Id. at 53-54.

Relevant Facts:

- Richard and Dixie Smith created two revocable trusts in 1998. Richard died in 2013. Dixie died in 2022. The beneficiaries of their revocable trusts, upon their deaths, were four trusts—one for each of their four children.
- Two of the Smiths' children—their daughters, Lindsay and Lani, were named as co-Trustees of their revocable trusts.
- The daughter co-trustees asked their brothers, Scott and Cary, to provide EINs for their trusts so that UBS could distribute the trust assets in four equal shares to the four trusts.
- Scott and Cary refused. A year and a half went by and the brothers still hadn't provided EINs for the trusts. So, the daughter co-Trustees filed a petition in the estate file seeking a court order authorizing them to fund the sub-trusts.
- They subsequently filed a motion for judgment on the pleadings.
- Thereafter, the two brothers filed a response to the petition objecting to the relief requested and demanding a full accounting of each and every financial statement, tax return, check copy, and related documentation for both trusts from January 2020 (a date that was two years before the daughters began serving as co-Trustees) onward and reserved the right to demand earlier records.
- The daughter co-Trustees responded by producing detailed annual and interim accountings for the period they served, covering January 2022 through January 2024. These accounts included beginning and ending balances, categorized receipts, such as dividends and interest, itemized disbursements, including trustee fees, legal and administrative expenses, and distributions to beneficiaries. The reports also disclosed realized gains and losses from investments and provided a detailed inventory of trust assets with valuation at the close of each reporting period.
- The Trust Agreements state that the trustee "shall prepare annual calendar year accountings for this trust as well as for any trusts created hereunder. Such accountings shall list all receipts, disbursements and expenses of the particular trust during the calendar year of the accounting. In addition, the Trustee shall furnish upon request, at least annually, copies of the aforesaid accountings to me, if living, and if not, to each beneficiary to whom income of the trust could then be paid."
- The brothers/respondents did not allege that the accountings that were provided to them were false, misleading, or substantively deficient. Instead they argued that the

accountings were insufficient under § 36C-8-813(a)(2) because they did not include underlying source documents such as receipts, invoices, or tax filings.

Court's holding: The cotrustees fulfilled their duty under both the terms of the trust and applicable law.

Key Holdings:

- The requirements of a trustee to inform and report contained in N.C. Gen. Stat. § 36C-8-813 are default requirements that can be overridden by the terms of a trust. No explicit waiver of the disclosure obligations of § 36C-8-813(a)(2) is required in order to limit a beneficiary's right to request additional information. If a trust instrument specifies the scope of reporting required, no further waiver of disclaimer language is needed to displace the broader default duties of § 36C-8-813(a)(2).
- The provisions of this trust stated that all a trustee had to do was prepare an annual accounting listing all receipts, disbursements and expenses for the year. Thus, all the Trustees had to do to comply with the terms of the trust and North Carolina law was provide those accountings. They did that, so they fulfilled their duties and no further accounting was required.
- The court distinguished the *Wilson* decision as follows: The *Wilson* case involved a superior court action for breach of fiduciary duty in which the trustee refused to respond to discovery requests or disclose any trust information. In *Wilson*, the Court held that such disclosures could not be withheld in the fact of an active claim of misconduct. "By contrast, no such claims have been asserted here." *Id*.
- Key Point: The Court won't "recognize an expansive right of inspection untethered to need or context—effectively granting all beneficiaries the ability to conduct open-ended audits of trust history." *Id*.
- What does this mean? You cannot file just a request for information and expect to receive more than what is required under the terms of the trust if the terms of the trust limit reporting to something less than § 36C-8-813. However, if a breach of fiduciary duty claim or other allegation of misconduct is made, then discovery will be permitted under the normal discovery rules. Essentially § 36C-8-813/trust terms and the discovery rules operate independently.

3. *Harrington v. Laney, 2025 N.C. App LEXIS 718, 921 S.E.2d 218 (Filed October 15, 2025) (unpublished).*

Overview: Decedent's son filed a lawsuit more than three years after Mother's death and more than six years after Mother executed her power of attorney seeking to set aside a transfer of real estate whereby Mother's agent under her power of attorney executed a deed on Mother's behalf transferring Mother's real estate to himself (subject to a life estate in Mother).

Issue: What is the statute of limitations for bringing such a claim?

Relevant Facts:

- June 24, 2016, Mother and husband signed a power of attorney naming Curtis Laney and Daniel Hedgepeth (now deceased) as her agents. Shortly thereafter, Mother and husband executed a deed conveying real estate to Curtis Laney. September 2016, husband dies.
- In 2018, Laney transferred the property back to Mother. That same day, Laney acting on behalf of Mother executed a deed granting a remainder interest in the Property to himself and his wife (leaving a life estate in Mother). He executed this deed using Mother's power of attorney.
- June 26, 2019, Mother dies and the real estate passes to Laney and his wife.
- Plaintiff-Son files an action to quiet title in September 2022 claiming he is the rightful owner of his mother's real estate because the 2018 deed executed through the power of attorney was void because his mother lacked the necessary mental capacity to execute the 2016 power of attorney.
- The case proceeds to trial and the jury returns a verdict in favor of Plaintiff-Son and a judgment was entered voiding the 2018 deed.

Court's holding: Plaintiff-Son filed his lawsuit too late and therefore the jury's verdict was overturned due to statute of limitations.

Key Holdings:

- Plaintiff-Son's case at its core hinges on the validity of the 2016 power of attorney. This Court has held that "there is, as a general matter, little reason to draw distinctions between powers of attorney and contracts." *O'Neal v. O'Neal*, 254 N.C. App. 309, 312, 803 S.E.2d 184 (2017). Thus, this matter is a contract claim and claims arising out of contract must be brought within three years of the time the cause of action accrues.
- This holding in and of itself is unremarkable. What was concerning was the following statement "Whether the cause of action accrued **when the POA was executed on** 24 June 2016 or when Defendant's became the owner of the Property upon the death of Plaintiff's mother in June 2019, Plaintiff did not bring this action within three years of either date." *Id*. at *5.
    - The highlighted language is the concerning part. It would seem patently unfair to require Plaintiff to file his lawsuit to contest the 2018 deed no later than June 24, 2019 (the date that was three years after the power of attorney was signed).
    - What if the deed hadn't been signed until 2020?
    - Or what if the son didn't find out about the power of attorney until his mother's death?
    - This creates as potential issue as to when a cause of action to contest actions taken via the use of a power of attorney accrues.

4. *Timmons v. Herring, 2025 N.C. App. LEXIS 881, 923 S.E.2d 894 (Filed December 17, 2025) (unpublished).*

Overview: Plaintiffs and Defendant are the three children of Mother. Mother executed a power of attorney naming Defendant as her agent. Using the power of attorney, Defendant transferred assets to himself and his immediate family, including an interest in the family beach house. Plaintiffs sued defendant for breach of fiduciary duty and sought to set aside the power of attorney. Mother was still living. Defendant moved to dismiss on the basis that plaintiffs lacked

standing because only Mother has the right during her lifetime to bring an action challenging any wrong done to her.

Issue: Who has standing to contest the validity of a power of attorney while the principal is still living?

Law:

- N.C. Gen. Stat. § 32C-1-116(c) states that proceedings brought pursuant to NC's Uniform Power of Attorney Act may be brought by (i) the principal or the agent, (ii) a general guardian, guardian of the estate or guardian of the person, (iii) the personal representative of the estate of a deceased principal, (iv) a person authorized to make health care decisions for the principal, or (v) any other interested person.
- Standing to sue means that a party "has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." *In re Estate of Phillips*, 251 N.C. App. 99, 104, 795 S.E.2d 273, 278 (2016).

Relevant Facts:

- In January of 2021, at a time when Mother was living independently, she executed a limited power of attorney naming one of her daughters as her agent.
- In September of 2021, Defendant (her son) moved Mother from her home in Clinton to his home in Fayetteville and then subsequently moved her into an assisted living facility.
- On October 21, 2022, Mother executed a durable power of attorney naming Defendant as her agent. The power of attorney was recorded on January 6, 2023.
- Plaintiffs content that Mother had significant assets which were for the benefit of all three children and which Defendant diverted to himself and his immediate family by using Mother's power of attorney to transfer such assets.
- Plaintiffs sued Defendant in 2023 for breach of fiduciary duty and requested an accounting of Mother's assets. Plaintiffs subsequently amended their complaint to add a claim to invalidate the power of attorney.
- Defendant filed a Rule 12(b)(1) motion to dismiss arguing that Plaintiff's lawsuit was now moot because a general guardian had been appointed for Mother. Defendant then refused to answer the discovery that had been served on him.
- The trial court awarded sanctions against Defendant for failing to comply with the discovery.
- Defendant then appealed the entry of sanctions to the Court of Appeals on the basis that Plaintiffs did not establish legal standing to sue him.

Court's holding: Plaintiffs did have legal standing to bring an action to invalidate the power of attorney under the Uniform POA Act.

Key Holdings:

- Plaintiffs are mother's other children and state they have an equal interest in those assets that Defendant is accused of mishandling. They are asserting a financial interest in

Mother's assets. That is enough to qualify them as "interested persons" under N.C. Gen. Stat. § 32C-1-116(c).

- This means an action can be brought during the principal's lifetime by family members who contest the validity of a power of attorney if they can assert a financial interest in the assets that were transferred with the purported power of attorney. This applies even if a guardian of the person has been appointed for the agent.
- North Carolina's Uniform POA Act has expanded the class of persons who have standing by including the reference to "any interested person."

5. *Lucas v. Hopper, 2026 NCBC 1, 2026 NCBC LEXIS 4 (Filed January 14, 2026).*

Overview: Andrew Lucas and Harold Hopper entered into an oral business agreement (a "handshake agreement") regarding environmental projects that they were hired to complete at Miller Coors's facility in Eden, North Carolina. The first project that they entered into was an undisputed joint venture in which the project's profits would be split 50/50 between the two of them. However, there was a dispute as to whether all subsequent projects were also intended to be joint venture partnerships. Plaintiff Lucas says they were partners. Defendant Hopper says that Plaintiff was an independent contractor performing services for Defendant for which he was compensated.

Issue: What facts establish an oral partnership?

Law:

- Under North Carolina law, a partnership is statutorily defined as "an association of two or more persons to carry on as co-owners [of] a business for profit." N.C. Gen. Stat. § 59-36(a).
- A partnership may be formed by an oral agreement. *Campbell v. Miller,* 274 N.C. 143, 149, 161 S.E.2d 546 (1968).
- Although North Carolina courts have considered a variety of factors in evaluating whether a partnership exists "co-ownership and sharing of any actual profits are indispensable requisites for a partnership." *Williams v. Hammer*, 2015 NCBC LEXIS 81, at *10-11 (N.C. Super. Ct. Aug. 12, 2015 (quoting *Best Cartage, Inc. v. Stonewall Packaging*, LLC, 219 N.C. App. 429, 438, 727 S.E.2d 291 (2012).

Relevant Facts:

- There was no business co-owned by Plaintiff. The only actual business at issue was LH Service, which is a corporation that is owned solely by Defendant's wife.
- All of the projects that form the basis for the lawsuit took place pursuant to contracts between LH Service and the then current owner of the Eden Facility. All of the work at issue performed by Plaintiff was for tasks that LH Service was contractually obligated to perform.
- Yes, Plaintiff did receive a portion of the profits that LH Service earned from the projects that he worked on, but this fact, without more, is insufficient to establish a partnership.

- Plaintiff formed his own entity to receive his profit distributions. And that entity, not Plaintiff personally, received all of the profit distributions.
- Plaintiff received 1099s, rather than K-1s.
- No partnership name, bank account, or tax returns existed.
- Plaintiff had no authority to sign contracts or checks.
- Plaintiff never made a capital contribution.
- The alleged partnership never filed a tax return.
- There is no evidence that Plaintiff and Defendant ever registered a partnership with the State.

Court's holding: No partnership existed. It is agreed that the manner in which Plaintiff received payment for his services was somewhat unique (i.e., he always got a percentage of the profits). But that is not enough to overcome all of the other facts of their relationship. Those facts constitute fatal defects to Plaintiff's argument that a partnership existed.

6. *In the Matter of the Estate of Leonard A. Russo, No. COA 25-321 (Filed January 7, 2026).*

Overview: Decedent executed a will that created a testamentary trust for his wife's lifetime. Decedent's will was prepared for him by his attorney, a solo practitioner. The Will named Decedent's wife as Executor and named the attorney's law firm (not the attorney) as back-up Executor. The Will also named the attorney's law firm as the Trustee of the testamentary trust. Decedent died. No one qualified as Executor for the next five years. Decedent's grandson, the remainder beneficiary of the trust, filed a petition for declaratory judgment before the clerk of court seeking among other things, an order that the law firm was statutorily barred from serving either as trustee or successor executor. Decedent's wife and the law firm objected and argued that the law firm was legally permitted to serve.

Issue: Can a law firm, as a corporate entity, serve as Trustee of a trust or executor of a will without being authorized under one of the eight enumerated categories in N.C. Gen. Stat. § 53-303(a)?

Law:

- Under North Carolina's Multistate Trust Institutions Act, no company can engage in trust business in North Carolina unless it is authorized by one of the eight enumerated categories listed in N.C. Gen. Stat. § 53-303(a).
- "Trust business" is defined as acting as a fiduciary or engagement in activities permitted for a trust institution. N.C. Gen. Stat. § 53-301(50). Thus, a company cannot act as a fiduciary unless it is authorized by one of the eight enumerated categories.
- N.C. Gen. Stat. § 53-304(2) provides that a company does not act as a fiduciary; engage in trust business or in any other business requiring a charter, license, or approval under the provisions of this Chapter; or engage in unauthorized trust activity by … rendering legal services in a manner authorized by the North Carolina State Bar.

- In Rule of Professional Conduct 82 (1990), the State Bar clarified that the duties of a lawyer serving as a trustee arise from the fiduciary relationship, not the attorney-client relationship.
- Chapter 28A of the North Carolina General Statutes governs appointment of executors. N.C. Gen. Stat. § 28A-4-2(5) provides that a "corporation not authorized to act as a personal representative in this State" may not serve as a personal representative.
- Chapter 53 regulates corporate fiduciaries. N.C. Gen. Stat. § 53-301 includes acting as personal representative of the estate of a deceased person in its definition of acting as a fiduciary.

Relevant Facts:

- Decedent executed his Will in June of 2012. The will was drafted by his attorney. The attorney practiced through a law firm that was a PLLC. The Will named Decedent's wife as Executor and the law firm as successor Executor. The Will called for the creation of a testamentary trust for the lifetime benefit of the Decedent's wife which was to be funded with the Decedent's residence. Upon the wife's death, the trust was to terminate and any remaining trust assets were to be distributed to Petitioner—the Decedent's grandson. The law firm was named as trustee.
- Decedent died in 2018. The will was admitted to probate but neither the wife nor the law firm sought to be appointed as Executor.
- Five years passed and still no activity occurred—neither the estate nor the trust were administered.
- In July of 2013, Petitioner grandson filed a verified petition for declaratory judgment before the clerk of court alleging that the wife's prolonged failure to qualify as executor constituted an implicit renunciation and that the law firm was statutorily barred from serving either as trustee or successor executor. Petitioner sought an order appointing either himself or the public administrator as administrator CTA and trustee.
- The wife, the lawyer, and the law firm opposed the petition. They argued that the law firm was legally permitted to serve as trustee and executor.
- The matter was transferred to superior court. Respondents moved for judgment on the pleadings. The superior court granted Respondents' motion and ruled that the law firm was authorized under North Carolina law to serve as Trustee and that the wife, despite the five-year delay, was the proper executor.

Court's holding: The Court held that the law firm could not serve as Trustee or executor. The court remanded the issue of whether the five-year delay was an implicit renunciation to the trial court.

Key Holdings:

- The Court held that the list of companies who can engage in trust business under Chapter 53 does not include law firms organized as PLLCs.
- The legal services exception in N.C. Gen. Stat. § 53-304(2) does not apply because serving as trustee is not itself the practice of law as any competent adult may serve as trustee. The State Bar's guidance consistently refers to individual lawyers as trustees.

Not law firms. Nowhere do the Rules of Professional Conduct suggest that a law firm, as an entity, may serve in a fiduciary capacity.

- Likewise, a law firm that is a PLLC is not authorized to act as a personal representative of an estate. Chapter 53 regulates all corporate fiduciaries—both trustee and executor. If an entity is not in the list of eight enumerated categories, it cannot serve.
- Respondents argued that the law firm may serve as executor because it is authorized to render legal services and because attorneys frequently serve as fiduciaries. The Court held that is argument conflates the authority of an individual attorney with that of a corporate entity.
- Bottom line—lawyers can serve; law firms cannot.
- Note: Respondents also raised an issue as to whether Petitioner's petition violated the in terrorem or forfeiture clause in the will. The court held that it did not.

7. *Charles Schwab & Co. v. Marilley, 2026 NCBC 7, 2026 NCBC LEXIS 15 (Filed January 23, 2026).*

Overview: Grandfather created UTMA account at Charles Schwab for his granddaughter. Grandfather's son (granddaughter's father) served as custodian. Just months before she turned 21, Father-Custodian had his daughter sign a document converting the UTMA account to a joint brokerage account naming both her and her father as the joint owners. Father then restricted daughter's access to the joint account. Daughter sought to have the funds transferred into an account in her own name. Charles Schwab filed an interpleader action.

Issue: Can a beneficiary of a UTMA (Uniform Transfer to Minors Act) account convert the account to a joint account before reaching the age of twenty-one?

Law:

- Assets in a UTMA account are indefeasibly vested in the minor, but the custodian retains control over the custodial property until the minor reaches the age of majority (in this case—the age of twenty-one).
- While the custodian controls the funds, the UTMA act imposes a fiduciary duty on the custodian. When the minor turns 21, the custodianship terminates, and the custodian must transfer the funds to the minor.

Relevant Facts:

- Grandfather created a Florida UTMA account for his granddaughter in 2005 when she was 9 years old. He was the initial custodian. At the age of 81, he resigned as custodian in favor of his son who was the granddaughter's father.
- In August of 2016, just before his daughter turned 21 (which is the age of majority for a UTMA account), father had his daughter convert the UTMA account into a joint brokerage account in their joint names as owners.
- The UTMA Account conversion application that father instructed daughter to sign erroneously referred to her as a "former minor" even though she was not yet 21.

- Less than a year later in June of 2017, after arguing with his daughter, father instructed Schwab to place a hold on the account so that no funds could be transferred out. When daughter discovered the restriction, she made repeated unsuccessful attempts to have the restriction lifted and to remove her father from the joint account so that she alone had control of the funds.
- While the funds were restricted, daughter worked as a nurse for two years before going to graduate school.
- Finally, in May of 2023, **six years** after her father had placed a restriction on the account, Schwab changed its practices and allowed daughter to transfer the funds in the account to an account in her sole name. Her father complained and Schwab restricted the assets in the account again. Her father then filed an arbitration action against Schwab and his daughter in June of 2023. Schwab then filed this interpleader in September of 2023.
- Daughter moved to stay the arbitration to the extent it addressed ownership of the UTMA account assets. The trial court agreed and, in 2024, the North Carolina Supreme Court affirmed that order.
- Daughter then moved for summary judgment on her declaratory judgment claim that she owned the assets.
- The hearing on the motion for summary judgment was scheduled for October 31, 2025. The day before the hearing and more than two years after the lawsuit was commenced, father moved for leave to amend his answer to add affirmative defenses of statute of limitations and laches, as well as a crossclaim for unjust enrichment.
- By 2025, the value of the account was over $400,000.

Court's holding: Daughter owns the funds in the UTMA account. Daughter's attempt to transfer the funds into a joint account with her father prior to her twenty-first birthday was ineffective.

Key Holdings:

- The restricted funds were funds that were irrevocably gifted to daughter as custodial property to be held until age twenty-one.
- Daughter was unable, as a matter of law, to convey ownership of the assets to her father while they were still subject to the UTMA account provisions. The court cite *Walston v. Atl. Christian Coll. (Inc.),* 257 N.C. 130, 133-35, 128 S.E.2d 134 (1962) for the proposition that an attempted transfer of property by a grantor with no right or power of ownership over the property was ineffective to convey title.
- Father argued that his daughter was a legal adult when she turned eighteen and therefore she had the capacity to contract and, therefore, her signature on the form converting the UTMA account to a joint account should control. The court disagreed stating that the daughter "may have been of age to contract regarding certain matters, but she was powerless to affect ownership of custodial funds in a UTMA account." *Schwab v. Marilley*, 2026 NCBC 7, *75.

8. *Steele v. Kenna, et al., No. COA 25-530 (Filed February 18, 2026).*

Overview: Decedent created a revocable trust, the terms of which he modified and amended at least four times prior to his death. Upon his death, the terms of the trust provided for a distribution of $5 million to his sister and his nieces and nephews. At least one iteration of the

terms of the trust had provides for his sister, his nieces and nephews, and his wife's nieces and nephews as beneficiaries. Upon his death, his wife who was the Trustee of his trust filed a declaratory judgment action seeking clarification of the phrase "nieces and nephews" as used in the terms of the trust. Decedent's nieces and nephews served a subpoena on the law firm who had drafted the documents directing the firm to produce all documents related to estate planning for Decedent.

Issue: Does the attorney-client privilege apply to prevent disclosure of the Decedent's estate planning file? Or does the testamentary exception to the attorney-client privilege apply?

Law:

- The attorney-client privilege is not absolute. The United States Supreme Court has long recognized certain exceptions to the privilege, including the "testamentary exception." "[W]e are of opinion that, in a suit between devisees under a will[,] statements made by the deceased to counsel respecting the execution of the will, or other similar document, are not privileged." *Glover v. Patten*, 164 U.S. 394, 406, 41 L. Ed. 760, 767 (1897).
- The North Carolina Supreme Court has also adopted the testamentary exception, explaining that "where the controversy is to determine who shall take by succession the property of a deceased person and both parties claim under him, neither can set up a claim of privilege against the other as regards the communications of [the] deceased with his attorney." *In re Will of Kemp*, 236 680, 684, 73 S.E.2d 906, 910 (1953).
- The exception is grounded in the assumption that "a client impliedly authorized the release of confidential information in order that the estate might be properly and thoroughly administered." *In re Will of Johnston*, 157 N.C. App. 258, 263, 578 S.E.2d 635, 640, 641 (Tyson, J. dissenting).
- Prior to this decision, no North Carolina case had applied the testamentary exception to the attorney-client privilege in the context of a trust, rather than a will.

Relevant Facts:

- Decedent created his revocable trust in 2007. He amended it in 2013, 2015, 2018 and 2021. In the 2007 version, he included his sister, his nieces and nephews, and his wife's nieces and nephews. The 2021 version, which was the version in effect at the time of his death, capped the total distribution to $5 million and directed that it be distributed to his sister and his nieces and nephews.
- Decedent had five biological nieces and nephews. His wife had twenty-four nieces and nephews.
- His wife was trustee of the trust. She filed a declaratory judgment action seeking a ruling that all 29 nieces and nephews are entitled to share in the distribution.
- The five biological nieces and nephews asserted that in a meeting with his attorney, Decedent had clearly expressed his intent to include only his nieces and nephews. They then served a subpoena on the law firm seeking the law firm's estate planning file. The law firm objected to the subpoena on the basis of attorney-client privilege.
- The biological nieces and nephews filed a motion to compel and invoked the testamentary exception to the attorney-client privilege.

Court's holding: The logic of the testamentary exception's application to wills applies with equal force to trusts.

Key Holdings:

- The exception applies when there is a controversy to determine who shall take by succession. That is the precise controversy presented by the present case.
- The Court of Appeals noted that other states have applied the exception to trusts.
- "Considering this issue of first impression under North Carolina law, we now similarly conclude that the testamentary exception to the attorney-client privilege applies equally to a dispute regarding distribution under either a will or a trust."

9. *In the Matter of the Estate of Alford, No. COA 25-782 (Filed April 1, 2026) (unpublished).*

Overview: Decedent's step-children filed a caveat challenging Decedent's will (which disinherited them and left everything to Decedent's son) on the basis of undue influence and lack of capacity. Propounder, Decedent's son, moved for summary judgment which was granted by the trial court.

Issue: Was the trial court's grant of summary judgment dismissing the caveat proper?

Court's holding: Affirmed. Grant of summary judgment was proper.

Relevant Facts:

- Decedent and Maurice were married. Both had been married previously. No children were born of their marriage. Decedent had a son from a prior marriage. Maurice had two children from a prior marriage.
- Decedent and Maurice executed mirror image estate planning documents which provided that at the death of the first of them to die, all of the deceased spouse's assets would pass to the surviving spouse and, at the death of the surviving spouse, everything would pass to their three children.
- Maurice died.
- Decedent changed her estate plan to leave everything to her son.
- Decedent died two years later.
- Maurice's children filed a caveat asserting the new will was the product of undue influence and lack of capacity, but alleged no specific facts in support of their claims. The caveat itself asserted that both the claims for lack of capacity and undue influence were "upon information and belief." And they did no discovery and offered no affidavits at the hearing on the motion for summary judgment.

Key Message: General assertions of lack of capacity and undue influence are not sufficient grounds for a caveat and will be dismissed at a motion for summary judgment.

10. *In the Matter of West, No. COA 24-1115 (Filed May 6, 2026) (unpublished).*

Overview: Executrix petitioned the court for approval of attorneys fees incurred in "the fractious administration of Decedent's Estate." Clerk of Court in Cabarrus County allowed the payment of the attorneys' fees incurred. Superior court affirmed.

Issue: Whether the clerk of court erred in entering an order allowing the payment of attorneys' fees from the Estate where the clerk failed to determine that those fees were "reasonable sums for necessary charges?"

Court's holding: Reversed. Clerk of court did not make the appropriate findings to allow payment by the Executor of the attorneys' fees she had incurred while administering the Estate.

Relevant Facts:

- Decedent was survived by five children and a wife. Decedent's estate plan disinherited one child. Decedent's sister, Uhle, was the named Executrix.
- Surviving spouse filed a petition for elective share.
- Four of the children filed a petition to have Decedent's sister removed as the Executrix.
- A freeze order was entered prohibiting any disbursements from being made from the estate other than those absolutely necessary to protect and preserve the estate assets. The order specifically prohibited any additional payment of attorneys' fees without a court's ruling.
- Two years later, Executrix petitioned the clerk to allow her to resign as Executrix due to poor health and to dissolve the freeze order and authorize the payment of attorneys' fees incurred. Over the course of the estate administration, Executrix had hired two different law firms to assist her in her duties—at the time of her petition, one law firm was owed $30,983.34 and the second law firm had submitted invoices for $82,169.80 of which $57,169.80 was still outstanding.
- The clerk of court entered an order dissolving the freeze order and approving the payment in full from the Estate for attorneys' fees submitted by both law firms. In so ordering, the clerk held:
    - "As for the question of the reasonableness of the fees submitted, this court does not generally set rates in cases where attorneys were privately retained."
    - "Legal rates are established by individual attorneys, who price their own product. Their customers, their clients, decide what to pay."
    - The Executrix "acted in a responsible way when she hired experienced counsel."
    - The "attorneys she hired did legal work, charged standard rates, and kept adequate business/billing records."
- The children who had sought the removal of Executrix appealed the clerk's order. On appeal to the superior court, the superior court affirmed the clerk's order and specifically held that the clerk had properly determined that the requested attorneys' fees were "reasonable and necessary based upon the time … expended, skill necessary for all these cases, the customary fees for like work and [the attorneys'] experience."

Key Holdings:

- In reversing the clerk's order, the Court of Appeals began by citing N.C. Gen. Stat. § 28A-13-3(a)(19) for the noncontroversial principle that a personal representative is

authorized to employ persons, including attorneys, "to advise or assist the personal representative in the performance of the personal representative's administrative duties."

- But then the Court cited *In re Est. of Seamon*, 291 N.C. App. 547, 896 S.E.2d 294 (2023), another decision involving (under completely different facts) a clerk's review of attorneys' fees to determine if such fees are properly payable from an estate. The Court of Appeals cited *Seamon* for the proposition that "[n]o direct statutory provision governs the payment of attorney's fees from an estate to an attorney representing the personal representative of the state; the personal representative is generally liable for such fees." *Id*. at 550, 896 S.E.2d at 297.
    - As authority for their statement in *Seamon*, the Court of Appeals cited the 1905 North Carolina Supreme Court case, *Kelly v. Odum*, 139 N.C. 278, 51 S.E. 953. In *Kelly*, the Supreme Court held as follows:

> "The plaintiff has paid his attorney, and properly, as he was clearly liable to him. What we have said has no application as between them. **An executor is always personally liable to his counsel for his fee or compensation, but it is in no sense a debt of the estate**. He is liable in such case in his individual and not in his official capacity. This is perfectly familiar learning. *Devane v. Royal*, 52 N.C. 426; *Banking Co. v. Morehead*, 122 N.C. 318, 30 S.E. 331; *Lindsay v. Darden*, 124 N.C. 307, 32 S.E. 678. As Pearson, J., said for the Court, in *Hailey v. Wheeler*, 49 N.C. 159, "It is not possible to conceive how a debt of the testator can be created by a matter occurring wholly in the executor's time." But if the disbursement is found to be a proper one, it will be allowed to the executor in his settlement. **In this case we hold that, however reasonable and just the disbursement may have been as between the plaintiff and his attorney, it is not a proper charge against the defendant**, and it will be stricken from the bill. (emphasis added) *Id*. at 282.

    - Side note: In *Kelly*, the issue was whether attorneys' fees should be allowed <u>at all</u>. Not whether the attorneys' fees at issue were reasonable. In *Seamons*, the personal representative allowed his father to file a claim against the estate and did not challenge it. As a result, the magistrate issued an order for payment to the father. The personal representative then tried to sell the decedent's land in order to obtain money to pay the debt. The heirs objected and said no valid debt was owed to the personal representative's father. The objection was tried to a jury twice and both times the jury agreed—the personal representative should have denied the claim submitted by his father because it was not a valid claim. The personal representative then tried to have his attorneys' fees that he incurred in seeking to sell the decedent's land paid from the estate. The Supreme Court ruled, under that set of facts, no attorneys' fees could be paid from the estate.

- The court then cited N.C. Gen. Stat. § 28A-23-3(d)(1) for the proposition that the clerk of court possesses the authority to allow "reasonable sums for necessary charges and disbursements incurred in the management of the estate."
    - Note that N.C. Gen. Stat. § 28A-23-3 is the statute which governs commissions for personal representatives (including when and how the clerk can award such commissions). Subsection (d) of that statute states that "[n]othing in this section shall be construed to: prevent the clerk of superior court from allowing reasonable sums for necessary charges and disbursements incurred in the management of the estate."
- Next the court cited its prior opinion *In re Taylor*, 242 N.C. App. 30, 774 S.E.2d 863 (2015) where the Court noted that our Supreme Court, in the case of *Phillips v. Phillips*, 296 N.C. 590, 252 S.E.2d 761 (1979), "expressly recognized that attorneys' fees incurred in the administration of an estate fall within [the] statutory provision" of N.C. Gen. Stat. § 28A-23-3(d)(1).
- The court then reaffirmed the holding in *In re Taylor*, stating:
    - Clerks "possess the authority to review attorneys' fees petitions for reasonableness pursuant to their power to allow reasonable sums for necessary charges and disbursements incurred in the management of an estate."
    - Clerks "in fact are required to review the reasonableness of such fees prior to allowing payment of the fees from the estate."
    - Where an order awarding attorney's fees "contain[s] insufficient findings to support [the clerk's] decision as to the amount of attorneys' fees that [are] reasonable and therefore allowable as an expense of the [e]state," we will vacate the order.
- Applying those holdings to the instant case, the court held as follows:
    - The Cabarrus County Clerk did not make the required determination as to whether the requested fees were "reasonable sums for necessary charges."
    - It is "significant that the client in such cases is the *estate*, the administration of which the clerk supervises.
    - "Although a clerk is not required to 'set rates,' he or she must determine whether the rates charged to the estate are reasonable before allowing the payment of those fees from the estate assets."
    - The clerk's order is vacated because no such determination was made and the matter is remanded to the clerk to make the requisite findings of fact and conclusions of law.

Important Note: The court's decision did not require it to say anything about attorney billing rates. It could have held that the underlying order failed to determine if the requested fees were reasonable sums for necessary charges. But by adding language stating that clerks of court must determine whether billing rates charged to the estate are reasonable, attorneys may find themselves needing to prove the reasonableness of billing rates in addition to whether the services rendered were necessary in seeking an order approving fees.

11. *In re: the Estates of Atkinson and Atkinson, No. COA 25-1039 (Filed May 20, 2026).*

Overview: Public administrator for the estates of deceased husband and wife, Doris R. and Robert Wesley Atkinson, Sr. sought to sell all of the decedents' real property in order to satisfy debts of the estate. Decedents' sons objected arguing in part that it was necessary to sell only a small part of the real property to satisfy the debts. Court entered an order allowing the sale. One of the sons appealed eleven days after the order was entered. Court of Appeals dismissed the appeal for not being timely filed.

Issue: Was the son's appeal of the order of sale untimely?

Court's holding: Affirmed. Respondent did not file his appeal within ten days of the date that the clerk's order was entered.

Relevant Facts:

- Order was entered by the clerk of court on February 11, 2025.
- Notice of appeal was filed February 22, 2025—eleven days after the order was entered.

Applicable Law: Order was entered in a special proceeding. Appeal of a special proceeding is governed by N.C. Gen. Stat. § 1-301.2 which states in subsection (e) that "A party aggrieved by an order or judgment of a clerk that finally disposed of a special proceeding, may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a hearing de novo." There is no requirement that the order be served on the aggrieved party. As a result, once an order is entered in a special proceeding, regardless of whether it has been served, it must be appealed within ten days or the appeal will not be allowed.

Distinction: Compare N.C. Gen. Stat. § 1-301.2 with N.C. Gen. Stat. § 1-301.3 which governs appeals of orders entered by clerks in estate proceedings. Under N.C. Gen. Stat. § 1-301.3(c), "A party aggrieved by an order or judgment of the clerk may appeal to the superior court by filing a written notice of the appeal with the clerk within 10 days of service of the order on that party." (emphasis added). Thus, the ten-day appeals period does not run on an aggrieved party until ten days after the order is served on the party. But with a special proceeding, it runs ten days after entry of the order even if the aggrieved party was never served with the order.

12. *In the Matter of the Revised Will of Greenamyer, No. COA 25-1004 (Filed June 17, 2026).*

Overview: Decedent signed his Will on January 28, 2023. The will execution was not overseen by an attorney. The will was witnessed by two witnesses and notarized. However, neither witness actually signed his name on the will. Rather, the notary at the direction of the witnesses, signed the will on their behalf.

Issue: Was the January 2023 Will valid if the witnesses had a third party sign the will on their behalf and at their direction?

Court's holding: No. North Carolina law does not allow witnesses to have a third party sign on their behalf and as such the January 2023 Will did not comply with the statutory requirements for an attested written will.

Relevant Facts:

- David Anthony Greenamyer, Decedent, died on June 23, 2023. Earlier that year, on January 28, 2023, Decedent signed a new will.
- The notary for the will was Karen Nash. She was an employee of the Decedent and a friend of the Decedent.
- When it was time to sign the will, Ms. Nash called in her husband and son to be witnesses. They were auto mechanics and their hands were literally dirty at the time and so they told Ms. Nash to please sign the will on their behalf. So she did. They did not participate in the actual signing at all, including they never touched the pen during the signing.

Key Rulings:

- This issue is one of first impression for North Carolina courts.
- However, in the case of *In re Pope's Will*, 139 N.C. 484, 52 S.E.2d 235 (1905), our Supreme Court did address the issue of the validity of an attesting witness's signature on a will where both the witness and the third party took part in physically writing the signature. In that case, the first witness signed the will. Then the first witness helped the second witness sign her name by writing her name while she held the pen. The second witness and the testator had asked the first witness to write the second witness's name for her. The Supreme Court held that the signature was valid because by holding the pen during signing, she "took part in the physical act of writing her name, animo testandi, in the presence of the testator, at his request, and thus fulfill[ed]every requirement for an effectual subscribing witness to a will." Id. at 487, 52 S.E.2d at 236.
- The Court of Appeals stated that the fact that the witness touched the pen during the entire signing of her name was central to the Supreme Court's decision in *Pope*. Taking part in the physical act of signing the will is the "essential feature" of the subscription requirement. Opinion p. 9.
- The Court of Appeals did note that our courts have recognized the validity of adopted signatures in other contexts. Example: *Barrett v. Fayetteville*, 248 N.C. 436 (1958) where the court held that a signature was valid because it is generally permissible "for the maker either to sign the instrument by affixing his own signature, or to adopt a signature written for him by another." *Id*. at 439.
- However, Wills are invalid unless they comply with statutory requirements. N.C. Gen. Stat. § 31-3.3 governs the requirements for executing an attested will. Subsection (d) states that the "attesting witnesses must sign the will in the presence of the testator but need not sign in the presence of each other." The statute does not include any express provision allowing or disallowing witnesses to adopt a signature made by a third party. Additionally, the term "sign" is not defined in Chapter 31. Accordingly, the plain language of § 31-3.3 is ambiguous.

- Because the statute is ambiguous, the Court of Appeals turned to canons of statutory interpretation and policy considerations.
    - In considering the statute:
        - The testator's signing requirements are laid out in subsections (b) and (c). Under (b), the testator must either sign the will or have someone else in the testator's presence and at the testator's directions sign the testator's name thereon. Under (c), the testator must either sign or acknowledge their signature in the presence of each attesting witness.
        - In contrast, the signing requirements of attesting witnesses describe only the presence requirement. Under (d), the attesting witness must sign the will in the presence of the testator but need not sign in the presence of each other.
    - The General Assembly's inclusion of a provision describing how the testator may sign and expressly allowing a third party to sign on behalf of the testator indicates that the omission of a similar provision in the same statute of attesting witnesses was intentional.
    - Held: the General Assembly did not intend to allow attesting witnesses to adopt signatures written by a third party. The witnesses must actually sign the will themselves.
- The Court of Appeals then noted that this holding aligns with the policy behind § 31-3.3. Citing *Pope*, the court noted the following:
    - "One principal purpose in requiring the attestation of wills is to surround the testator with witnesses who are charged with the present duty of noting his condition and mental capacity." *In re Pope's Will*, 139 N.C. at 488.
    - "Another is to insure the identity of the instrument and to prevent the fraudulent substitution of another document at the time of its execution. *Id*.
- Requiring witnesses to actually sign the will themselves helps ensure their presence and ability to note the testator's condition. And it lessens the chance of fraud. Their actual handwritten signature provides additional assurance that the will was properly executed.