Scouting Report on Recent Tax-Related Estate Planning Developments

2025 Tri-State Trust Conference
Fargo, North Dakota
April 23, 2025

PRESENTED BY

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McGuireWoods LLP

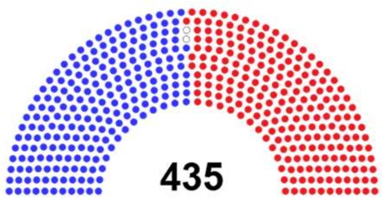
McGuireWoods

Agenda

- Legislative and Regulatory Developments
- Gift Tax
- Charitable Gifts
- Estate Tax and Estate Inclusion
- Marital Deduction and Portability
- Generation-Skipping Transfer ("GST") Tax
- Other Items of Interest: SLATs and FBAR

Scouting Report: Legislative and Regulatory Developments

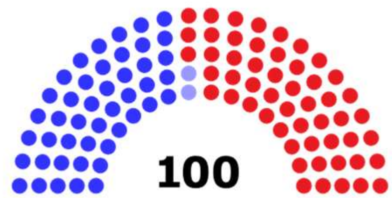
1. Congressional Make-Up and Leadership



United States
House of Representatives
Republican Leadership

Michael Johnson (R) (LA 4)
Speaker of the House of Representatives

Jason Smith (R) (MO 8)
House Ways and Means Committee Chair



United States
Senate
Republican Leadership

John Thune (R) (SD)
Senate Majority Leader

Mike Crapo (R) (ID)
Senate Finance Committee Chair

Scouting Report: Legislative and Regulatory Developments

2. Recent Legislation Affecting the Transfer of Assets

- The "Sunset" of the 2017 Tax Act
- Current estate/gift tax exclusion and GST tax exemption
  - $10 million, indexed for inflation ($13.99 million for 2025)
  - Scheduled to "sunset" at the end of 2025, to revert to $5 million, indexed for inflation
  - Final regulations clarify that there is no "clawback" for transfers before the sunset, subject to certain exceptions and clarifications
- Other provisions of the 2017 Tax Act are also scheduled to "sunset"

Scouting Report: Legislative and Regulatory Developments

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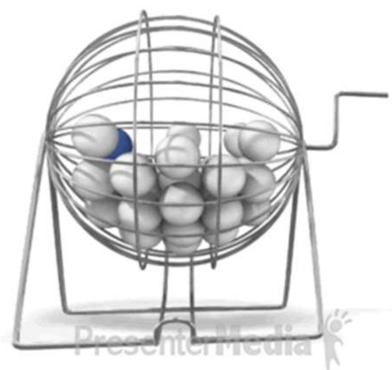

- H.R. 338: Permanently Repeal the Estate Tax Act of 2023
- H.R. 108: Small Business Prosperity Act of 2023
- H.R. 25: Fair Tax Act of 2023
- H.R. 976: TCJA Permanency Act
- H.R. 1040: Flat Tax Act
- H.R. 7749: Ultra-Millionaire Tax Act of 2024

- S. 1108: Death Tax Repeal Act of 2023
- S. 1178: For the 99.5 Percent Act
- S. 1226: A bill to make permanent the individual tax provisions of the tax reform law
- S. 3367: Billionaires Income Tax Act
- S. 3988: Getting Rid of Abusive Trust Schemes Act (GRATS Act)
- S. 4017: Ultra-Millionaire Tax Act of 2024

Scouting Report: Legislative and Regulatory Developments

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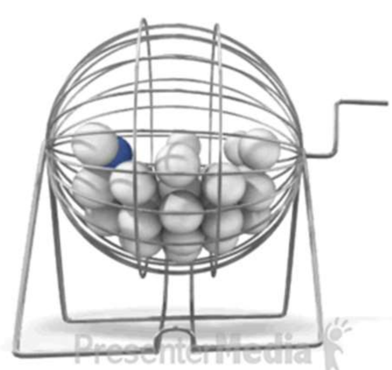

- H.R. 1301: Death Tax Repeal Act of 2025
    - Introduced by Rep. Randy Feenstra (R) (IA-4)
    - Co-sponsored by 175 Representatives
- S. 587: Death Tax Repeal Act of 2025
    - Introduced by Kevin Cramer (R) (ND) and John Thune (R) (SD)
    - Co-sponsored by 45 Senators

- Each would “permanently” repeal the estate tax
- Each would “permanently” repeal the GST tax
- The gift tax would remain subject to a $10 million exclusion, indexed for inflation
- Top marginal rate for gift tax would be 35%
- Prior gifts would be subject to existing rules
- Rules for QDOT trusts for a 10-year transition period
- No change to “step-up in basis”

Scouting Report: Legislative and Regulatory Developments

2. Recent Legislation Affecting the Transfer of Assets

- Republican Control of White House and Congress
  - Attempt to preserve individual tax benefits of 2017 Tax Act?
  - Maintain high estate/gift exclusion and GST tax exemption?

- The constant of change
  - Both parties continue to propose changes to laws
  - Increase/decrease exemption amounts?
  - More fundamental changes to taxes at death?
  - Further sunsets of tax laws?

- These factors reinforce that estate/tax planning should be:
  - not a <u>transaction</u>, but
  - a <u>process</u>

Scouting Report: Legislative and Regulatory Developments

3. Revenue Ruling 2025-8 (March 17, 2025)

Changing interest rates lead to movement in Applicable Federal Rate ("AFR"), Section 7520 rate; Impact on Estate Planning Techniques Varied

Applicable Federal Rates – April 2025		
Short-Term AFR (Annual Compounding)	4.16%	
Mid-Term AFR (Annual Compounding)	4.21%	
Long-Term AFR (Annual Compounding)	4.61%	
Section 7520 Rate	5.00%	

In general, HIGHER Section 7520 Rates are **GOOD** for QPRTs, CRATs, and CGAs and **BAD** for GRATs, CLATs, and private annuities and LOWER 7520 RATES are **GOOD** for GRATs, CLATs, and private annuities and **BAD** for QPRTs, CRATs, and CGAs.

Scouting Report: Legislative and Regulatory Developments

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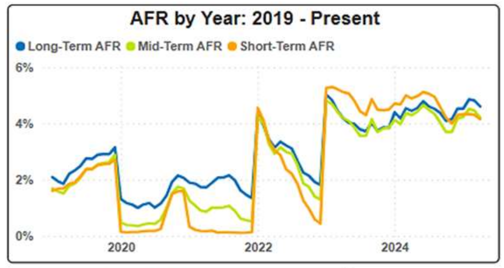

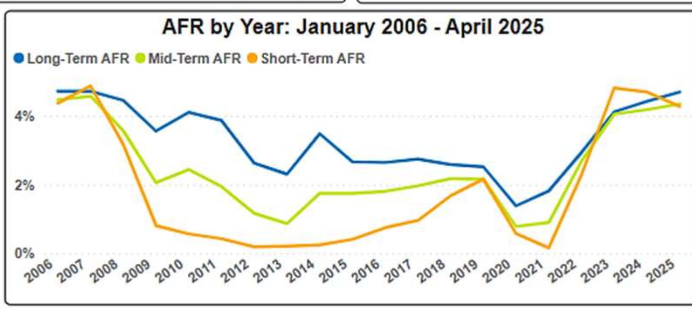

Scouting Report: Legislative and Regulatory Developments

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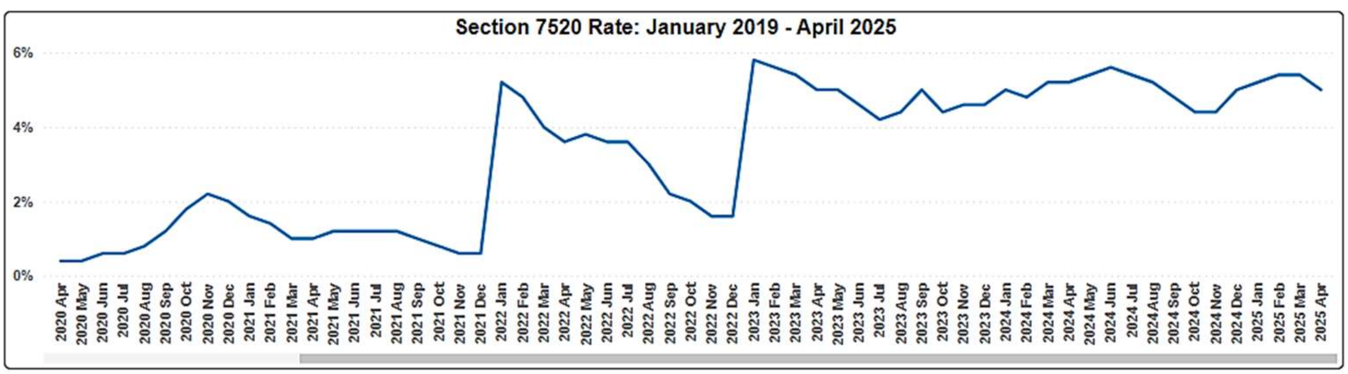

Scouting Report: Legislative and Regulatory Developments

4. Revenue Procedure 2024-40 (October 22, 2024)

IRS announces inflation adjustments for 2025

Select Provisions

- **Gift/Estate Tax Exclusion (Basic Exclusion Amount): $13,990,000**
- **GST Tax Exemption: $13,990,000**
- **Annual Exclusion for Gifts: $19,000**
- **Gifts to a Spouse Who Is Not a U.S. Citizen: $190,000**
- **Income Tax Rates for Trusts & Estates:**

If Taxable Income is:	The Tax is:
Not over $3,150	10% of the taxable income
Over $3,150 but not over $11,450	$315 plus 24% of the excess over $3,150
Over $11,450 but not over $15,650	$2,307 plus 35% of the excess over $11,450
Over $15,650	$3,777 plus 37% of the excess over $15,650

Scouting Report: Legislative and Regulatory Developments

5. Basis Consistency Reporting, T.D. 9991, 89 Fed. Reg. 76356-76387 (Sept. 17, 2024)

Final regulations are issued on basis consistency reporting under IRC Sections 1014, 6035; final regulations respond to comments and clarify proposed regulations

Select Provisions

- IRC Section 1014(f) requires that the basis of property acquired from a decedent be consistent with the basis reported on the decedent's estate tax return
- IRC Section 6035 requires executors to provide basis information to both the IRS and to property recipients
- The final regulations remove the "zero-basis rule" included in the 2016 proposed regulations.
- That "zero basis rule" provided that for property not reported on an estate tax return, where that property is not reported before the expiration of the limit period for assessing estate tax, the property's basis would be deemed to be zero
- Commentators felt such an outcome would be "onerous, unduly harsh, and unfair". The final regulations recognized that such an outcome would primarily affect recipients of unreported property who may not have been involved in the failure to report.

Scouting Report: Legislative and Regulatory Developments

6. Corporate Transparency Act: Reporting Requirements for Trusts

FinCEN announced that it will not issue any fines or penalties or take any other enforcement actions against any U.S. companies based on any failure to file or update beneficial ownership information (BOI) reports pursuant to the Corporate Transparency Act by the current deadlines

- The Corporate Transparency Act ("CTA") requires "Reporting Companies" to report to FinCEN. While trusts do not fit in the definition of Reporting Companies, they may own Reporting Companies. In that case, a trust must disclose its individual beneficial owners, based on various (and uncertain) rules and FAQs.
- Over the past year, several federal courts have ruled on the constitutionality of the CTA.
- FinCEN announced a new approach on March 26, 2025—see this FinCEN Alert available on its website:

  > "All entities created in the United States—including those previously known as 'domestic reporting companies'—and their beneficial owners are now exempt from the requirement to report beneficial ownership information (BOI) to FinCEN."

Scouting Report: Legislative and Regulatory Developments

7. SECURE Act and SECURE 2.0: IRS Issues Final Regulations

Final regulations issued on required minimum distributions from retirement plans, generally retaining proposed rules

Select Provisions

- The SECURE Act (2019) and SECURE 2.0 (2022) amended various rules, including the rules governing required minimum distributions from inherited IRAs.
- Prior to the SECURE Act, inheriting beneficiaries could spread IRA distributions over the lifetime of designated beneficiaries ("stretch IRAs"). The SECURE Act inserted a new "10-year rule," requiring IRAs to be fully distributed within 10 years of the year of the deceased owner's death.
- The proposed regulations clarified the 10-year rule. Commentators contended that the proposed regulations were even more unfavorable for inheriting beneficiaries because they required beneficiaries to continue annual distributions if the deceased IRA owner had begun required minimum distributions (RMDs) prior to death.
- On July 18, 2024 (Effective Date Sept. 17, 2024), final regulations were issued that did not soften the proposed regulations, upholding the 10-year rule and the requirement to continue annual distributions if the deceased owner had already begun RMDs.

Scouting Report: Gift Tax

8. *Huffman v. Commissioner*, T.C. Memo (January 31, 2024)

Stock sold pursuant to an option agreement for less than fair market value was, in part, a gift subject to gift tax

- Lloyd and Patricia Huffman were employees and shareholders of Dukes. Lloyd was President of Dukes for a period of time before stepping down so that his son, Chet, could become President.
- Lloyd entered into an option agreement giving him the right to purchase all of the shares owned by the majority shareholder of Dukes, and then assigned that agreement to Chet. Chet exercised that option agreement in 1993 and became the majority shareholder.
- Later, Chet entered into two more option agreements to purchase additional Dukes shares from (1) a separate entity of which Patricia was the owner; and (2) the Huffman Family Trust, which had been established by Lloyd and Patricia.
- Just before a transaction to sell Dukes for over $50M, Chet exercised the two option agreements and bought 55% of the shares of the company for a total of $5M.
- The IRS argued that the sale price of the company should be used to value the 55% of shares sold under the option agreements, as opposed to the agreed-upon price in the agreements.
- The Tax Court, in considering IRC Section 2703, agreed with the IRS.
- The Court determined that gift tax should be assessed to Patricia and Lloyd's estate based on the difference between 55% of the sales prices of the company and the agreed-upon price in the agreements.

Scouting Report: Gift Tax

9. *CCA 202352018* (November 28, 2023)

IRS issues memorandum addressing gift tax consequences of modifying a grantor trust to add a tax reimbursement clause

- The IRS considered what, if any, gift tax consequences arise when the trustee of a grantor trust seeks to modify the trust, with the consent of the trust beneficiaries, to allow the trustee to make discretionary distributions to reimburse the grantor for income taxes paid as a result of being treated as the owner of the trust.
- The IRS asserted that such modification and consent from the beneficiaries would constitute a gift from the beneficiaries, because the beneficiaries would be relinquishing a portion of their interest in the trust. The CCA did not provide guidance on valuing the gift or how to allocate the gift among different beneficiaries.
- Notably, this CCA was a departure from the IRS' prior position stated in PLR 201647001. That prior position provided that "the modification of a trust to add a discretionary trustee power to reimburse the grantor for the income tax paid attributable to the trust income is administrative in nature and does not result in a change of beneficial interests in the trust."

Scouting Report: Charitable Gifts

10. *Taxes on Taxable Distributions From Donor Advised Funds Under Section 4966*, 26 CFR Part 53, REG–142338–07 (November 14, 2023)

Proposed regulations offer guidance, but leave big questions unanswered

- IRC Section 4966 provides a set of rules governing Donor-Advised Funds (DAFs), which are accounts or funds sponsored by charitable organizations to facilitate charitable gifts by donors, and which are popular alternatives to private foundations.
- In November 2023, proposed regulations were issued to clarify certain rules and definitions under IRC Section 4966. For example:
  - **Donor:** The definition of a "donor" to a DAF was updated to exclude other public charities and governmental units, meaning that accounts or funds funded exclusively by either of those types of contributors would not be DAFs.
  - **Donor-Advisor:** The definition of "donor-advisor" was updated to include (1) persons appointed with an advisory role as to distributions or investments, (ii) the person who established the DAF, and (3) personal investment managers providing investment advice with respect to the DAF's assets or to the personal assets of the donor. By including investment managers, any compensation paid to an investment manager from the DAF would be deemed an excess benefit transaction incurring excise tax.

Scouting Report: Charitable Gifts

11. Private Letter Ruling on Excess Business Holdings

IRS granted a private foundation an additional five years to dispose of excess business holdings after concluding that the transaction can reasonably be expected to occur before the extension period ends.

- PLR 202503009 (January 17, 2025)
- In the facts of this matter, the founder of a company created a foundation and transferred a 1/3 interest in his company to the foundation. His son held the remaining membership interest in the company.
- The company held numerous subsidiary entities. During the first 5 years after the transfer, the foundation sought to sell its interest, but the foundation determined that it could not find a buyer that would purchase its interest without a significant discount.
- As a result, the foundation, the company, and the founder's son decided to liquidate the company in its entirety.
- During the initial 5-period, the company liquidated most of its assets, but some assets remained.
- Those interests would result in excess business holdings of the foundation after 5 years, and would be subject to significant tax.
- The IRS granted the foundation an additional 5 years to dispose of excess business holdings after concluding that the parties had satisfied various factors, including that the transaction can reasonably be expected to occur before the extension period ends.

Scouting Report: Estate Tax and Estate Inclusion

12. *Estate of William Barron Hilton v. Commissioner*, Dkt. No. 1804-24 (February 2, 2024)

IRS issues notice of deficiency for $1.16 billion against the estate of deceased hotel heir; Executor challenges the deficiency

- William Barron Hilton, the son of hotel magnate Conrad Hilton, passed away in 2019 and his estate plan devised $2.9 billion to the Conrad N. Hilton Foundation and $1 million to Ducks Unlimited (a public charity). For purposes of estate taxes, the Executor of William's estate claimed corresponding charitable deductions.
- William, throughout his life and in his estate plan, conveyed his intent to leave most of his estate to charity. Nonetheless, a number of William's heirs made claims against his estate, which, if successful, would reduce the amount of William's estate that would ultimately be distributed to charitable purposes.
- For estate tax purposes, the Executor of William's estate claimed as deductions the amounts passing to charity and the claims of William's heirs, along with administrative and legal fees in defending against those claims.
- The IRS disagreed, determining that if the claims against William's estate were successful, the assets used to satisfy those charitable bequests would be distributed to William's heirs and not to charity. Accordingly, the IRS argued that no charitable deduction is available for these amounts.

Scouting Report: Estate Tax and Estate Inclusion

13. *Connelly v. United States*, 602 U.S. 257 (2024), aff'g 70 F.4th 412 (8th Cir. 2023)

U.S. Supreme Court confirms that for purposes of valuation of a company, value should take into the consideration the proceeds of life insurance for a buy-sell agreement

- Michael and Thomas Connelly were brothers and the two shareholders of a closely-held business. The business entered into a buy-sell agreement wherein the business would redeem a brother's shares upon his death. The business also bought a life insurance policy on each brother's life, such that the business could use the proceeds to carry out the redemption.
- Michael died in 2013. Thomas, as Executor of Michael's estate, filed an estate tax return valuing Michael's interest in the business at $3 million, which did not include the proceeds of the life insurance policy on Michael's life. Thomas, as Executor, argued that the terms of the buy-sell agreement made the redemption price of Michael's share of the business a liability of the business, which reduced its valuation.
- The U.S. Supreme Court ultimately agreed with the IRS' position that the proceeds of the life insurance policy would be an asset of the company at the time of Michael's death and therefore should be included in the valuation of the business for estate tax purposes.

Scouting Report: Estate Tax and Estate Inclusion

14. *Estate of Fields v. Commissioner*, T.C. Memo 2024-90

Tax Court rules that assets contributed to limited partnership are included in decedent's estate for estate tax purposes and denies discount

- For family limited partnerships and related entities, this is another case of bad facts leading to a bad result for the taxpayer, and perhaps leading to uncertainty for others.
- In this case, the taxpayer's agent under power of attorney transferred $17 million of her assets to a partnership, with the taxpayer retaining a 99.9941% limited partner interest.
- The taxpayer died about a month later, and the executor claimed a discount of 15% for lack of control and 25% for lack of marketability, such that the estate's interest was valued at $10.8 million.
- The Tax Court found that the taxpayer retained sufficient control and sufficient implicit rights to the benefits of the property that the underlying assets should be considered to be included in her estate, at their full value.
- The Tax Court also found that while there were "plausible" arguments for a substantial nontax purpose, those did not rise to the level of a "bona fide" transaction that would keep the underlying assets out of the estate for estate tax purposes.
- The full value of the assets was included in the estate, and the estate was assessed a 20% accuracy-related penalty.
- This case underscores the risk of this kind of transfer shortly before death or using such an entity, and the critical importance of the transaction meeting the standard of a "bona fide" transaction with a substantial nontax purpose.

Scouting Report: Marital Deduction and Portability

15. *Estate of Anenberg v. Commissioner*, 162 T.C. No. 9 (May 20, 2024)

Tax Court rules that estate not liable for gift tax following termination of marital trusts

- Alvin and Sally Anenberg, a married couple, established the Anenberg Family Trust and funded it with shares of an oil company. Upon the death of Alvin, a portion of the shares funded two marital trusts for Sally's benefit, for which Qualified Terminable Interest Property ("QTIP") elections were made.
- Upon obtaining court approval, the trustee of the marital trusts terminated both trusts and transferred the oil company shares in each trust to Sally, outright. Sally subsequently transferred the shares to or for the benefit of Alvin's children, part by gift and part by sale to trusts for their benefit.
- The IRS examined Sally's gift tax return, which reported the gifts to Alvin's children, and Sally died during the examination.
- The IRS assessed a deficiency of $9 million for unpaid gift tax relating to the termination of the marital trusts, arguing that under IRC Section 2519, Sally had relinquished her income interests in the marital trusts.
- The Tax Court determined that the termination of the marital trusts ultimately left her with at least the same economic interest in the assets of the marital trusts, if not more of an economic interest, and therefore, neither the termination of the trusts nor the subsequent transfers were deemed gifts.

Scouting Report: Marital Deduction and Portability

16. *McDougall v. Commissioner*, 163 T.C. No. 5 (September 17, 2024)

Tax Court follows *Anenberg* on case involving commutation of QTIP Trust interest; adds holding that remainder beneficiaries made gifts to surviving spouse as a result of transactions

- Clotilde McDougall died in 2011 and her estate plan provided that the residue of her estate would be held in trust for the benefit of her surviving spouse, Bruce. As Executor of Clotilde's estate, Bruce made a QTIP election for the resulting trust. Bruce was entitled to annual distributions of the trust's income and distributions of principal for support and health. Upon Bruce's death, and subject to Bruce exercising a power of appointment over the trust assets, the trust would be distributed to the children of Bruce and Clotilde, Peter and Linda.
- Bruce, Peter, and Linda entered into a nonjudicial settlement agreement to terminate the trust and distribute the trust assets to Bruce, outright. Bruce subsequently sold the trust assets to trusts for the benefit of Linda, Peter, and their descendants, in exchange for promissory notes.
- Like in *Anenberg*, the Tax Court held that the termination of the trust did not result in a gift from Bruce to Peter and Linda.
- However, unlike *Anenberg*, the Tax Court held that, by entering into the nonjudicial settlement agreement, Peter and Linda had "given up something for nothing" by relinquishing their remainder interests in the trust. Accordingly, the trust termination resulted in a gift from each of Peter and Linda to Bruce. This issue—the before and after positions of the remainder beneficiaries of a terminated QTIP trust and the potential gift tax implications for the children—was not considered by the *Anenberg* court.

Scouting Report: Generation-Skipping Transfer ("GST") Tax

17. Relief Provisions Respecting Timely Allocation of GST Exemption and Certain GST Elections, T.D. 9996; 89 F.R. 37116-37127 (May 6, 2024)

Final regulations issued on extensions of time to make allocations and elections for GST tax purposes under Section 2642(g)(1)

- As noted below, each year the IRS issues several private letter rulings granting an extension of time to allocate GST tax exemption to a trust, or to opt out of the automatic allocation rules regarding GST tax exemption.
- In these long-awaited Regulations, the IRS provides more specific guidance regarding when such relief will be granted.
- Of note, these Regulations:
  - generally allow a taxpayer to fix an election that was not made (*i.e.*, an "error of omission")
  - generally do not allow a taxpayer to "un-do" an election that was made (*i.e.*, an "error of commission")
  - no longer suggest a specific rule based on closed tax years
  - provide clarification on what constitutes "prejudice" to the interests of the government, and generally provide that the government is not prejudiced if the taxpayer is only seeking a benefit that the taxpayer would have had if the election was timely made
  - provide that the relief is not sought under Section 9100, which increases the "application fee" to the IRS

Scouting Report: Generation-Skipping Transfer (“GST”) Tax

18. IRS Approves Modification of Trust to Extend Period for Holding Assets in Trust: Private Letter Ruling 202432013, Private Letter Ruling 202432016 (released August 9, 2024)

IRS rules that a court-approved modification that will retain assets in trust for remainder beneficiaries upon termination, rather than having those assets pass outright, will not cause the trust to lose its status as exempt from GST tax.

- In the trust at issue in this case, upon the death of the Child,, the trust assets would pass to the Grandchildren, outright.
- The trustees petitioned a court for numerous changes, including to provide that a share for a Grandchild (or further descendant) would be held in trust, with that person as sole permissible distributee, and granting that person a general power of appointment.
- The IRS ruled that these changes would not impair the trust’s GST exempt status, concluding that:
  - The terms of the trust would not shift a beneficial interest to a lower generation, and
  - The terms would not postpone “vesting” beyond the period of the original trust, because the trust would still grant that descendant a general power of appointment over the assets
- The trustees also modified provisions regarding trustees; the IRS approved of those changes as administrative in nature.

Scouting Report: Generation-Skipping Transfer (“GST”) Tax

19. IRS Approves Another Modification of Trust to Extend Period for Holding Assets in Trust: Private Letter Ruling 202446006, Private Letter Ruling 202446007 (released August 9, 2024)

IRS rules in another matter that a court-approved modification that will retain assets in trust for remainder beneficiaries upon termination, rather than having those assets pass outright over time, will not cause the trust to lose its status as exempt from GST tax, and cites that the retention in trust was justified in light of changed circumstances.

- Under the terms of 2 trusts, upon the Daughter’s death, the assets would be divided into shares for the Daughter’s children (the settlor’s Grandchildren), with the assets passing outright to the Grandchild: 50% at age X, and 50% at age Y.
- By the time of this ruling request, the Daughter was still living, but each Grandchild had reached age Y.
- The trustees petitioned the court to allow the assets to stay in trust for the Grandchild’s lifetime, based on changed circumstances and the doctrine of “equitable deviation”.
- The IRS summarily concluded that this modification would not cause the trust to lose its GST exempt status.

Scouting Report: Generation-Skipping Transfer ("GST") Tax

20. IRS Addresses Another Ambiguity Regarding Use of Term "Per Stirpes": Private Letter Ruling 202432016 (August 9, 2024)

IRS rules that a state court construction of the term "per stirpes", and the division of a trust based on that construction, will not cause the trust to lose its status as exempt from GST tax.

- Years ago, a settlor had established a trust for the benefit of his descendants. By the time of this matter, the trust had 29 beneficiaries—all grandchildren, great-grandchildren, and great-great-grandchildren.
- The trust provided that upon the expiration of the perpetuities period, the trust would be distributed to the Settlor's descendants, "per stirpes".
- The parties concluded that this language was ambiguous, regarding whether the division among family lines should be at the level of the settlor's 2 children, or at the oldest level which had any living members.
- The state court concluded that the division should be at the level of the settlor's children, and modified the trust and divided it into shares for each child.
- The IRS ruled that this modification and division would not cause the trust to lose its status as exempt from GST tax.

Scouting Report: Generation-Skipping Transfer ("GST") Tax

21. Additional Private Letter Rulings on GST Tax Issues

Various additional rulings grant extensions of time to make certain elections, to opt-in or opt-out of automatic allocation of GST tax exemption, or regarding settlement agreements.

- PLR 202428002, PLR 202428004 (July 12, 2024) (granting taxpayers an extension of time to opt out of automatic allocation of GST tax exemption with respect to a transfer to trusts for the primary benefit of their children)
- PLR 202434009, PLR 202434010 (August 23, 2024) (following taxpayers' deaths, when no Form 709 had been filed with respect to certain transfers, and granting taxpayer an extension of time to allocate GST tax exemption to a transfer to a trust).
- PLR 202440003 (October 4, 2024) (granting taxpayer an extension of time to opt out of automatic allocation of GST tax exemption with respect to certain Grantor Retained Annuity Trusts)
- PLR 202440002 (October 4, 2024) (granting taxpayer an extension of time to opt out of automatic allocation of GST tax exemption with respect to transfers to certain trusts, including Grantor Retained Annuity Trusts, over 8 years)
- PLR 202452005 (December 27, 2024) (ruling that a proposed judicial modification of a noncharitable irrevocable trust will not cause the trust to lose its exemption from GST tax)

Scouting Report: Other Items of Interest: SLATs

22. *Dave v. 2012 Bobby Shah Irrevocable Trust*, No. CV-24-08053-PCT-DLR, 2025 WL 26706 (D.Ariz. Jan. 3, 2025)

Another case highlights the potential issues that can result in funding a spousal lifetime access trust, or "SLAT", but also suggests some options to address such issues.

- In this case, a husband established a trust for the benefit of his wife and children, with his wife as trustee.
- When the couple were in divorce proceedings, the husband took steps that removed the wife as trustee and named himself as trustee, then reorganized the trust assets and moved the trust to South Dakota.
- The wife brought an action to stop these steps.
- The husband moved to dismiss, and the court denied the husband's motion to dismiss, allowing the wife's claims to proceed.
- *See also McKim v. McKim*, NO. 2021-CA-0643-MR, 2023 WL 2437475 (Kent. Ct. App. 2023).

Scouting Report: Other Items of Interest: FBAR

23. *United States v. Schwarzbaum*, 2024 3997326 (11th Cir. August 30, 2024)

Addressing a case of "willful" violations of FBAR, upholding most of the $12.6 million penalty, but finding that $300,000 constituted unconstitutional Excessive Fines under the Eighth Amendment.

24. *United States v. David L. Vettel,* No. 4:21-cv-03099 (D. Neb. April 11, 2024)

In another case of "willful" violations of FBAR, upholding penalties despite taxpayer's apparent subjective belief that no filing was required, perhaps finding that the taxpayer was willfully blind to the requirements.

25. *Bittner v. United States*, 598 U.S. 85 (2023)

U.S. Supreme Court rules in favor of taxpayer on FBAR reporting case; penalties are not assessed per account, but per report.