



Wealth Management Update

April 2022

Edited by Henry J. Leibowitz
Contributor: Dara B. Factor

As part of our ongoing efforts to keep wealth management professionals informed of recent developments related to our practice area, we have summarized below some items we think would be of interest. Please let us know if you have any questions.

April 2022 Interest Rates for GRATs, Sales to Defective Grantor Trusts, Intra-Family Loans and Split-Interest Charitable Trusts 1

Estate of Marion Levine v. Commissioner (158 T.C. No.2)..... 1

IRS Issues Proposed Required Minimum Distribution Regulations for Retirement Plans 2

IRS Overpayment and Underpayment Interest Rate Increased..... 2

This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice or render a legal opinion.

© 2022 PROSKAUER ROSE LLP
All Rights Reserved.

April 2022 Interest Rates for GRATs, Sales to Defective Grantor Trusts, Intra-Family Loans and Split-Interest Charitable Trusts

The April Section 7520 rate for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 2.2% an increase from the March rate of 2.0%. The April applicable federal rate (“AFR”) for use with a sale to a defective grantor trust or intra-family loan with a note having a duration of:

- 3 years of less (the short-term rate, compounded annually) is 1.26%, up from .97% in March;
- 3 to 9 years (the mid-term rate, compounded annually) is 1.87%, up slightly from 1.74% in March; and
- 9 years of more (the long-term rate, compounded annually) is 2.25%, up from 2.14% in March.

While still low, the Section 7520 rate and AFRs have been rising with inflation. Clients contemplating any type of transaction whose success depends on these “hurdle rates” may wish to proceed sooner rather than later. To review a commonly used example, if a 9-year loan is made to a child, and the child can invest the funds and obtain a return in excess of 1.87%, the child will be able to keep any returns over 1.87%. Just last month, that rate was only 1.74% and it would not be surprising to see further rate increases in the coming months.

Estate of Marion Levine v. Commissioner (158 T.C. No.2)

On February 28, 2022, the Tax Court issued its latest ruling regarding intergenerational split-dollar cases. Specifically, Marion Levine (“Levine”) entered into an arrangement in which her revocable trust would pay the premiums on life insurance policies taken out on the lives of her daughter and son-in-law which were purchased and held in a separate irrevocable life insurance trust settled under South Dakota law. Levine’s revocable trust had the right to be repaid for its payment of the premiums. Within the irrevocable life insurance trust, an investment committee (consisting of one person, Levine’s longtime friend and advisor, Robert Larson) had the sole responsibility for making decisions with regard to investments and held the sole power to terminate the irrevocable life insurance trust. Levine died in 2009, survived by her daughter and son-in-law.

Wealth Management Update

On schedule G of the federal estate tax return, the estate reported the revocable trust's right to be repaid for the life insurance premiums as an asset worth \$2,282,195. The IRS challenged the estate tax return and issued a notice of deficiency for approximately \$3 million, plus penalties based on the value of the receivable listed on the estate tax return and the cash surrender value.

The Tax Court held that the split-dollar arrangement met the requirements of the Treasury Regulations – the policies in question were purchased and owned by the irrevocable life insurance trust, not by Levine, and the power to terminate was solely the power of the investment committee. Therefore, neither Internal Revenue Code Section 2036(a)(2) nor Section 2038 required Levine's estate to include the policies' cash surrender values of \$6,153,478 as an asset in her estate since Levine could not, by herself or with another, terminate the policies.

The Tax Court also held that the investment committee (i.e. Robert Larson) owed fiduciary duties to the trust and the beneficiaries of the trust (i.e. Levine's daughter, son-in-law and Levine's grandchildren). Levine held no power to alter, amend, revoke or terminate the irrevocable life insurance trust.

IRS Issues Proposed Required Minimum Distribution Regulations for Retirement Plans

On February 23, 2022, the Internal Revenue Service released proposed regulations under the Setting Every Community Up for Retirement Enhancement (SECURE) Act. The proposed regulations contain a few important clarifications for both spouse and non-spouse beneficiaries of retirement plans.

1. Eligible Designated Beneficiaries ("EDBs"), which are defined as a surviving spouse, a child of the participant under the age of 21 (but only until he or she attains the age of 21), a disabled person or a chronically ill person, are able to continue to take required minimum distributions ("RMD") over their life expectancies. Under the proposed regulations, EDB's may continue to take their RMDs over the life expectancy of the "designated beneficiary" even if the retirement plan is held in trust for them.
2. The proposed regulations broaden the definition of "disabled" to define it the same way as it is defined for Social Security purposes.

3. The proposed regulations clarify that an addition to the class of beneficiaries will not cause the trust to fail the identifiability requirements.
4. Exercising a power of appointment by September 30th of the year following the IRA owner's death in favor of one or more identifiable beneficiaries allows those individuals to be treated as designated. Conversely, beneficiaries who are eliminated by September 30th of the year following the IRA owner's death are disregarded.
5. A see-through trust will not fail the identifiability requirements because state law permits the trust to be modified (for example: reformation or decanting).

If an IRA owner dies on or after the required beginning date for RMDs (i.e., April 1st of the year following the year the IRA owner attains age 72), the beneficiaries (other than an EDB) must take annual distributions in the interim based on the designated beneficiaries life expectancy in the year following the IRA owner's death, reduced by one for each subsequent year until the end of the 10 year distribution period when the balance must be withdrawn.

It is important to keep in mind that these are only *proposed* regulations and are subject to change.

IRS Overpayment and Underpayment Interest Rate Increased

The interest rates on overpayments and underpayments are determined on a quarterly basis. Beginning on April 1, the rates will be:

- 4% for overpayments (3% for corporations)
- 1.5% for the portion of a corporate overpayment exceeding \$10,000
- 4% for underpayments, and
- 6% for large corporate underpayments.

For taxpayers other than corporations, the overpayment and underpayment rate is the federal short-term rate plus 3 percentage points.

For more information: [Section 6621. — Determination of Rate of Interest - Rev. Rul. 2022-05 \(irs.gov\)](#).

The Private Client Services Department at Proskauer is one of the largest private wealth management teams in the country and works with high-net-worth individuals and families to design customized estate and wealth transfer plans, and with individuals and institutions to assist in the administration of trusts and estates.

If you have any questions regarding the matters discussed in this newsletter, please contact any of the lawyers listed below:

BOCA RATON

Albert W. Gortz

+1.561.995.4700 — agortz@proskauer.com

David Pratt

+1.561.995.4777 — dpratt@proskauer.com

Lindsay A. Rehns

+1.561.995.4707 — lrehns@proskauer.com

LOS ANGELES

Mitchell M. Gaswirth

+1.310.284.5693 — mgaswirth@proskauer.com

Andrew M. Katzenstein

+1.310.284.4553 — akatzenstein@proskauer.com

NEW YORK

Nathaniel W. Birdsall

+1.212.969.3616 — nbirdsall@proskauer.com

Stephanie E. Heilborn

+1.212.969.3679 — sheilborn@proskauer.com

Henry J. Leibowitz

+1.212.969.3602 — hleibowitz@proskauer.com

Jay D. Waxenberg

+1.212.969.3606 — jwaxenberg@proskauer.com

This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion.

Proskauer.com

© 2022 PROSKAUER ROSE LLP. All Rights Reserved. Attorney Advertising.