

# Wealth Management Update

February 2021

## February 2020 Interest Rates for GRATs, Sales to Defective Grantor Trusts, Intra-Family Loans and Split-Interest Charitable Trusts

The February Section 7520 rate for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is .6%, which is unchanged from the January rate. The February applicable federal rate ("AFR") for use with a sale to a defective grantor trust, self-canceling installment note ("SCIN") or intra-family loan with a note having a duration of 3 to 9 years (the mid-term rate, compounded annually) is .56%, up slightly from .52% in January.

The extremely low Section 7520 rate and AFRs continue to present potentially rewarding opportunities to fund GRATs in February with depressed assets that are expected to perform better in the coming years.

The AFRs (based on annual compounding) used in connection with intra-family loans are .12% for loans with a term of 3 years or less, .56% for loans with a term between 3 and 9 years and 1.46% for loans with a term of longer than 9 years.

Thus, for 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 .56%, the child will be able to keep any returns over .56%. These same rates are used in connection with sales to defective grantor trusts.

## New York Post-Mortem Right of Publicity

Effective May 29, 2021, Section 50-f of the New York Civil Rights Law recognizes rights of publicity for "deceased performers" (deceased person domiciled in New York at time of death who, for gain or livelihood, was regularly engaged in acting, singing, dancing or playing a musical instrument) and "deceased personalities" (deceased person domiciled in New York at time of death whose name, voice, signature, photograph or likeness has commercial value at the time of his or her death or because of his or her death). The law will not be retroactive (thus, only applying to people dying on or after May 29, 2021).

**Deceased Performers.** Damages may be sought for nonconsensual use of a "digital replica" (such as a hologram) in a scripted audio visual work as a fictional character or for the live performance of a musical work, if use is likely to deceive the public into thinking it was an authorized use, unless:

- The use is part of a work that constitutes parody, satire, commentary or criticism.
- The use is in a work of political or newsworthy value or similar work, such as a documentary, docudrama, or historical or biographical work.
- The use is incidental to the foregoing uses.

In addition, a conspicuous disclaimer prevents liability.

**Deceased Personality.** Damages may be sought for unauthorized use of name, voice, signature, photograph or likeness for commercial purposes, except for:

- Uses in a play, book, magazine, newspaper or other literary work.
- Uses in musical work or composition.
- Uses in work of art or other visual work.
- Uses in a work of political or public interest or a work that has educational or newsworthy value, including comment, criticism, parody or satire.
- Uses that are part of an audio or audiovisual work, radio or TV program, if it is fictional or nonfictional entertainment.
- Incidental uses to above.
- Uses in connection with news, public affairs or sports program or political campaign.

The successor in interest to the rights of a deceased personality must register his or her claim with the secretary of state (which will be of public record). Importantly, there will be no liability for uses that predate the registration. The right to use the deceased personality's name, voice, signature, photograph or likeness shall terminate 40 years after the deceased personality's death.

The post-mortem rights under Section 50-f are property rights, which are freely transferable or descendible and which also may be transferred by subsequent owners. In absence of an express transfer in a testamentary instrument, the residue shall be effective to transfer the deceased personality's rights. If passing by intestacy, the person(s) who possess at least a 51% interest of the individual's rights may exercise and enforce such rights and make a proportional accounting to the other rights holders.

## ***Demircan v. Mikhaylov*, 2020 WL 2550067 (Fla. 3d DCA May 20, 2020)**

The Florida court held that a trust modification pursuant to the common law rule that the terms of a trust could be modified if the Settlor and beneficiaries consented rather than pursuant to a judicial modification under the Florida statute, which requires a finding regarding the impracticability or materiality of trust's purpose, was proper.

## **New York Power of Attorney**

New York passed a new power of attorney law, which simplifies the statutory power of attorney form and eliminates the statutory gifts rider. The law takes effect in June.

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