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2026 HECKERLINGUPDATE

4 ½ DAYS IN 60 MINUTES

February 2026

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- Changes Made by OBBBA
- IRS 2025-2026 Priority Guidance Plan
- Changes to Gift Tax Return – Form 709
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- Section 1202 Stock – QSBS
- Planning with Charitable Remainder Trusts
- Choate- Inherited IRAs

RECENT DEVELOPMENTS

Recent Developments

2026 Gift, Estate and GSTT Inflation Adjustments – [Rev. Proc. 2025-32](#)

- Basic exclusion amount - \$15 million, up from \$13,990,000 in 2025, a \$1,010,000 increase.
- Gift tax annual exclusion - \$19,000, same as 2025
- Annual exclusion for gifts to a non-U.S. citizen spouse - \$194,000 up from \$190,000 in 2025, a \$4,000 increase.
- Aggregate decrease in value of qualified real property resulting from special use valuation under §2032A - \$1,460,000, up from \$1,420,000 in 2025.
- Dollar amount used to determine the “2 percent portion” for purposes of calculating interest under §6601(j) of the estate tax deferred under §6166 - \$1,940,000, up from \$1,900,000 in 2025. That translated to interest on \$776,000 of estate tax.
- The maximum annual Qualified Charitable Distribution (QCD) limit for 2026 is \$111,000, up from \$108,000 (pre-SECURE 2.0) and the amount for a one-time distribution from an IRA to a split-interest entity for 2026 is \$55,000, up from the SECURE 2.0 amount of \$54,000.

Recent Developments

Changes Made by One Big Beautiful Bill Act - Enacted July 4, 2025

- Basic exclusion amount - \$15 million, indexed for inflation, no “sunset”
- Highest income tax rate – 37%, no “sunset”
- SALT deduction cap temporarily increased from \$10,000 to \$40,000, starting in 2025 (\$20,000 for married filing separate)
 - Subject to phasedown (but not below \$10,000) for MAGI of \$500,000 (\$250,000 for married filing separately)
 - 1% increase in cap and MAGI thresholds from 2026 to 2029
 - Cap reverts back to \$10,000 in 2030

Recent Developments

Changes Made by OBBBA - Enacted July 4, 2025

- New charitable income tax deduction rules for individuals
- Starting in 2026, charitable contributions are deductible only to the extent they exceed 0.5% of the taxpayer's contribution base (generally, AGI)
- 60% of AGI limit for cash gift to public charities (including DAFs) made "permanent"
- Starting in 2026, non-itemizers can take an above-the-line deduction of up to \$1,000 (\$2,000 if married, filing joint) for cash contributions to public charities (doesn't include contributions to DAFs or private foundations)

Recent Developments

Changes Made by OBBBA - Enacted July 4, 2025

- Restrictions on itemized deductions – Revised Section 68
- Suspension of deduction for miscellaneous itemized deductions made permanent
- New 2/37 rule replaces the “Pease” limitation. Itemized deductions reduced by 2/37 of the lesser of:
 - The amount of such itemized deductions, or
 - The amount of the applicable year’s taxable income, after adding back itemized deductions, that exceed the amount at which the 37% marginal rate is reached

Recent Developments

Changes Made by OBBBA - Enacted July 4, 2025

- The revised Section 68 limits itemized deductions to a 35% tax benefit. It applies to estates and trusts as well as individuals.
- It applies to both the income distribution deduction allowed under Sections 651 and 661 and the income tax charitable under Section 642(c), as both are itemized deductions.
- Example (using round numbers): Trust has \$1 million of taxable income and makes a distribution of \$1 million to a beneficiary. The income distribution deduction is reduced by \$53,000 ($2/37 \times [\$1 \text{ million} - \$16,000]$) to \$947,000 resulting in the trust having taxable income of \$53,000 on which an \$18,000 income tax is owed. Even though all the taxable income is distributed to the beneficiary, the itemized deduction “haircut” results in the trust having taxable income.
- How to avoid:
 - Give the beneficiary a power of withdrawal over the trust. Section 678 will cause the beneficiary to be taxed on the income as the “deemed owner” of the trust under the grantor trust rules. If the power is not in the trust, reform or decant to include the power.
 - Loan the amount to the beneficiary, assuming the trust allows loans to beneficiaries
- Section 68 has no effect on excess deductions in the year of termination. The excess deduction is a pass-through item, not a trust deduction.
- ACTEC and the New York State Bar Association have submitted comments to the IRS seeking guidance on this issue.

Recent Developments

Changes Made by OBBBA - Enacted July 4, 2025

- Section 199A Qualified Business Income (QBI) for pass-through entities enhanced beginning in 2026
- QBI deduction (lesser of 20% or formula amount) made “permanent”
- QBI deduction for specified service trade or business (SSTB) phases out at certain income limits (\$150,000 for married filing jointly, \$75,000 for others) above the “threshold amount” (for 2026, indexed amount is \$403,500 for married filing joint, 201,775 for married filing separate, \$210,750 for others)
- QBI from an active trade or business of at least \$1,000 gets a minimum deduction of \$400 (indexed for inflation after 2026)

Recent Developments

Changes Made by OBBBA - Enacted July 4, 2025

- Qualified Opportunity Zones – changes for investments in QOFs starting with QOF investments made in 2027
- Capital gains invested in QOF can be deferred until 5 years after the investment is made or when sold or exchanged, if sooner.
- 10% of capital gain (30% for qualified rural opportunity fund) can be excluded from gross income if the QOF or qualified rural opportunity fund is held for at least 5 years. The former 15% exclusion rule after retaining the investment for 7 years was eliminated.
- Post-investment QOF gains can be excluded from gross income if retained for at least 10 years, but if retained for more than 30 years, gain over the FMV at the 30-year investment anniversary date is taxable.
- QOZ designations, once certified by the Treasury, effective for 10 years.

Recent Developments

[2025 – 2026 IRS Priority Guidance Plan – September 30, 2025](#)

- Covers period July 1, 2025 to June 30, 2026.
- Contains 105 projects, 11 of which have been released or published as of August 31, 2025.
- Focus is five key areas:
 - Implementation of the OBBB Act
 - Deregulation and burden reduction
 - Guidance addressing Tribal tax issues
 - Digital assets
 - SECURE 2.0 Act

Recent Developments

[New Gift Tax Return - Form 709](#)

- Form issued 1/2/2025, instructions issued 1/17/2025
- New requirements for gift-splitting
 - Part I, Line 19 question – check box only if spouses want to split the gift. Gift-splitting election has its own separate section - Part III on page 2 of the Form 709
 - Must file separate Notice of Consent which is not included on the Form 709
- Digital assets
 - Part I, Line 21 question – must answer “yes” or “no”
- Various columns have been moved
- Must check boxes for marital and charitable deductions and reverse QTIP election

Recent Developments

[New Fee for Estate Closing Letters](#)

- [Fee reduced from \\$67 to \\$56](#)
- Requires 5,781 staff hours per year based on an average of 8,894 annual requests consuming 0.65 staff hours per request.
- The 5,781 staff hours into full time equivalents (FTE), then applied an average FTE salary of \$67,355 to determine the total compensation paid to handle closing letter requests.
- It then added as additional 62.5% of that amount to cover overhead (accounting, information technology, human resources, facilities, library and legal services and more).
- Based on the above, the total cost to the IRS is \$502,573. Divide \$502,573 by the average of 8,894 annual requests yields a cost of \$56 per request – if you do the math, it is actually \$56.51 so the taxpayer is getting a 51 cents bargain.

Authority: Treasury Decision 10031, May 20, 2025

WM-873436

Recent Developments

Elcan v. Commissioner, T.C. Dkt. [#3405-25](#) (pet. filed 3/14/2025, answer filed 7/9/2025) [GRAT]

- Grantors established two-year GRATs. Assets inside the GRATs appreciated substantially within 6 months of funding.
- Grantors, pursuant to a swap power in the trust, substituted their promissory notes for the appreciated assets, seeking to lock in the appreciation inside the GRAT.
- GRAT satisfied the annuity payments by distributing the grantor's promissory notes back to the grantors.
- Section 2702 regulations prohibit the trustee from issuing the trust's own promissory notes to satisfy the annuity. IRS, taking an aggressive position outside the language of the regulations, says that using the grantor's notes to satisfy the GRAT's annuity payments renders the GRAT invalid, causing the funding to be a taxable gift. IRS assessed a gift tax deficiency of (yikes!) \$736 million.
- Takeaway: **until this issue is resolved**, it is better for the grantor of a GRAT not to reacquire trust assets in exchange for the grantor's promissory note.
- Possible alternatives: (1) have the grantor transfer assets to the GRAT before the annuity payment date to pay off the note, with the GRAT distributing those assets back to the grantor on the annuity payment date or (2) have the grantor borrow funds from a bank to pay off the note shortly before the annuity payment is due, with the cash then used to make the annuity payments which the grantor would use to pay back the loan.

Estate of Galli v. Commissioner, T.C. No. [7003-20](#) and [7005-20](#) (March 5, 2025) | [intra-family loan]

- Tax Court holds that a \$2.3 million intra-family loan from a mother to her son was a bona fide loan, not a taxable gift. The Tax Court found the transaction was properly structured and documented.
- In 2013, mom loaned \$2.3 million to her son for nine years at the mid-term AFR, which was 1.01% at the time.
- The loan was formalized with a signed, written promissory note, though it was unsecured.
- Son made timely annual interest payments and mom reported the interest payments on her income tax return.
- Tax Court said the transaction was a legitimate loan based on the following factors: (1) formal documentation, (2) appropriate interest rate, (3) consistent treatment – son made interest payments and mom reported the interest payments on her income tax return, and (4) IRS didn't present any evidence of the son's inability to repay.
- Tax Court says §7872 governs. But it doesn't address the estate tax issue.
Scroll to #15 to read decision and #19 and #20 to read orders in: [7005-20 Docket](#)
- Note: in Frazee (1992), the Tax Court said §7872 applies for income and gift tax purposes. However, see Prop. Reg. 20.7872-1 issued in 1984 which deals with the estate tax issue.
 - For estate tax purposes, the IRS' position is that no discount is allowed if the market interest rate at death exceeds the AFR used for the note. The IRS takes the position that the note was not given for fair and adequate consideration and is therefore pulled back into the gross estate under §2036 or §2038.
More on Next Page
 - The IRS will value a gift term loan at the present value of all payments using the original AFR interest rate to deal with the disconnect between the AFR used on the note and the market interest rate at death.
 - A proposed regulation is not binding on a taxpayer until it becomes final. These proposed regs, issued in 1984, have yet to be finalized

WM-873436

Recent Developments

Oquendo v. Commissioner, [6th Cir. No. 24-1205](#) (August 25, 2025) | [deadline for filing Tax Court petitions]

- May the Tax Court dismiss a taxpayer's late filed petition, i.e., is the 90-day filing requirement under §6213(a) jurisdictional?
- Sixth, [Second](#) and Third Circuit say no. The deadline can be abated if there are extenuating circumstances.
- Seventh and Ninth Circuit say yes.
- Court held that equitable tolling should be determined on a case-by-case basis and the Tax Court must “conduct a particularized inquiry to assess” whether the taxpayer qualifies.
- The result is a deepening circuit split on whether the Tax Court filing deadline affects that court's jurisdiction to hear the case.

Recent Developments

Griffin v. Commissioner, T.C. Memo 2025-47 | [missing QTIP election]

- \$2 million bequest to spouse didn't qualify for the marital deduction.
- Form 706, Schedule M did not list any property from the estate as QTIP property.
- Form 706, Schedule M section titled "All Other Property" (i.e., non-QTIP property) listed a specific bequest of \$2.3 million to the surviving spouse.
- [\\$300,000 bequest qualified for the marital deduction](#) as an estate trust – the balance of the bequest upon the surviving spouse's death passed to the surviving spouse's estate.

To Read Decision, Scroll to #23 in: [Docket](#) | To read Orders scroll to #24, #26, #34 in: [Docket](#)

Recent Developments

Estate of Billy S. Rowland v. Commissioner, [T.C. Memo 2025-76](#) | [requirements for preserving portability]

- Provides critical insights for tax professionals concerning the deceased spouse's unused exemption (DSUE) and the [stringent requirements for electing portability](#).
- This case is a reminder that while estates otherwise not required to file an estate tax return can take advantage of a simplified method to make a portability election, in some cases they must still provide the values of assets included in the gross estate.
- W dies first, H second. W's estate tax return attempted to elect portability for \$3,712,562. W's executor requested a 6-month extension to file the estate tax return but filed it after the extended due date.
- W's estate tax return listed various assets without values, instead relying on the estimated gross value of the estate.
- W's trust established specific bequests, a distribution of 20% of the estate to a charitable family foundation, ¼ of her gross estate to her H and the residue to fund trusts for various grandchildren.
- H's estate added the \$3,712,562 DSUE amount to his basic exclusion amount to get an applicable exclusion amount of \$14,892,562.

To read T.C. Memo 2025-76, Scroll to #36 on: [Docket](#) 12736-22

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Recent Developments

Estate of Billy S. Rowland v. Commissioner, T.C. Memo 2025-76

- IRS denied the DSUE amount due to the W's executor not filing a "proper, complete and effective" portability election because it was not timely filed and didn't satisfy the requirements of the Rev. Proc. 2017-34 safe harbor, specifically the absence of a complete description and valuation information for the property.
- The IRS said the structure of the W's trust agreement precluded the estimated reporting approach and required itemization and valuation of all property.
- The special relaxed reporting rule for a marital or charitable deduction property where an estate is not otherwise required to file a return, i.e., providing only the description, ownership, and beneficiary information, along with other data needed to establish the deduction but not the property's value, did not apply in this case.

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Recent Developments

Estate of Billy S. Rowland v. Commissioner, T.C. Memo 2025-76

- H's use of W's DSUE denied:
 - Return was filed late
 - The estate tax return did not meet the Rev. Proc. 2017-34 safe harbor as not being a “complete and properly prepared” return and did not provide valuation information for each property.
 - The estate tax return provided for percentage distributions to a charitable foundation and her H, with the residue passing to her grandchildren, i.e., the full itemization and valuation was required for all property, not just an estimate.

Recent Developments

[Besaw v. Commissioner](#), T.C. Summary Opinion 2025-7 [Docket No. 19222-225](#) (July 21, 2025) | [deduction denied; no substantiation of gift]

- \$6,760 income tax charitable deduction denied for failure to comply with substantiation requirements.
- Taxpayer [didn't specifically identify the donated items](#) and their value. Taxpayer attempted to rectify the problem by later providing additional documentation. The Tax Court said the reconstructed documents were insignificant as they were not contemporaneous.
- The Tax Court's decision was [affirmed by the 9th Circuit](#) even though the case was brought under §7463 which makes the decision by the Tax Court non-reviewable.

Scroll to #79 to read TC Summary Opinion 2025-7 in: [Docket No. 19222-225](#)

Recent Developments

WT Art Partnership LP v. Commissioner, T.C. Memo 2025-30 [guidance on charitable donations]

- Valuation dispute – provides guidance on (1) appraiser credentials, (2) donor-imposed restrictions and (3) the risks of inflated charitable deductions.
- Takeaway; the rules governing charitable donations of art are exacting and failure to comply can result in disallowed deductions and steep penalties.
- Case turns on technical compliance with the [substantiation rules](#) under §170, including the definition of a “qualified appraiser,” the application of the reasonable cause exception under §170(f)(11)(A)(ii)(II), the determination of FMV and the imposition of accuracy-related penalties under §6662.
- Court holds that a limited partnership could deduct the value of items donated to the Met even though the taxpayer’s appraisal was not a qualified appraisal. The court excused the failure to comply with the substantiation requirements by applying the reasonable cause exception of §170(f)(11)(A)(ii)(II).

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Recent Developments

- In 1997, T acquired 12 early Chinese paintings for \$5 million through a partnership, WT Art Partnership LP.
- Between 2010 and 2012, the partnership donated 5 of the paintings to the Metropolitan Museum of Art (Met) and claimed a \$73 million income tax charitable deduction.
- All five appraisals were prepared by China Guardian Auction Co. Ltd, which at the time was the second largest art auction house in China.

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Recent Developments

Issue #1: Was the appraisal attached to the return a qualified appraisal? **No. None of the individuals involved in preparing the appraisal was a “qualified appraiser.”**

Issue #2: If not, does the §170(f)(11)(A)(ii)(II) reasonable cause exception apply? **Yes. Failure to secure a qualified appraisal was due to reasonable cause.**

Issue #3: Was the FMV of the painting Palace Banquet donated in 2010 \$26 million as reported or a lesser amount? **Value was determined to be \$12 million.**

Issue #4: Should the value of Palace Banquet be reduced by a discount for lack of marketability due to a “deaccession restriction” imposed on the Met? **No. The deaccession restriction encumbering the gift was not legally enforceable and any discount would be negligible.**

Issue #5: Do accuracy related penalties apply? **Yes. The value claimed on WT Art’s return exceeded the painting’s correct value by more than 200% so a 40% valuation misstatement penalty applied for the tax year 2010 but not for 2011 and 2012. The penalty defense is not available for gross valuation misstatements.**

To read T.C. Memo 2025-30, Scroll to #209 in: [Docket](#)

Recent Developments

Green 1993 Dynasty Trust v. Commissioner, 165 T.C. No. 7 (reviewed) and T.C. Memo 2025-100 (October 2, 2025)

- Reviewed decision addresses complex substantiation issues for noncash charitable contributions. The Memo decision focuses on reasonable cause defense for valuation misstatement penalties.
- Taxpayer, an S corporation, claimed a noncash charitable contribution deduction of \$23 million for 2011 and \$61.6 million for 2012 for 1200 religious items. IRS denied the deduction and imposed gross (40%), and in the alternative, substantial (20%), valuation penalties.
- Claimed deficiencies: (1) provided aggregate basis and aggregate fair market value and a range of acquisition dates for the group of items on Form 8283 rather than itemized information for each item as required by the regulations and (2) provided a deficient appraisal that was not signed by two additional appraisers who provided “personal property valuation assistance.”
- The taxpayer engaged the accounting firm Grant Thornton, LLP to review its federal tax returns and workpapers, including the Form 8283 for each year in question.
- **Cases are set for trial** on issue of substantiation, reasonable cause and valuation misstatement penalties.

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To read 165 T.C. No. 7 (reviewed) and T.C. Memo 2025-100, Scroll to **#121** and **#122** in: [Docket](#)

Valuation Penalties

§6662 Penalty for Income Tax – Tax Must Exceed \$5,000 [reasonable cause exception]

		Penalty	
Substantial valuation misstatement	Value 150% or more of correct value	20%	Reasonable cause exception/good faith (must have qualified appraisal and inquiry)
Gross Valuation misstatement	Value 200% or more of correct value	40%	No reasonable cause exception

*Section 170(f)(11)(A)(ii)(II)

Recent Developments

[New Jersey et. al. v. Bessent, 2d Cir. August 13, 2025](#)

- Regulation under §170 disallowing charitable deduction for amount of SALT credit upheld.
- Second Circuit held that Reg. 1.170A-1(h)(3)(i) which requires a taxpayer claiming an income tax charitable deduction under §170(c) reduce that deduction “by the amount of any state or local tax credit that the taxpayer receives or expects to receive in consideration for the taxpayer’s payment or transfer” did not exceed the IRS’ statutory authority in light of the Supreme Court’s overturning Chevron in Loper Bright.

Recent Developments

Pierce v. Commissioner, T.C. Memo 2025-29 (April 7, 2025)

- Gift tax valuation case of an S corporation.
- Company took advantage of first-time mothers with cheap knock-off maternity products and highly inflated shipping costs with no return policy.
- They created a subsidiary for each product, so they were able to run the inflated shipping scam for each product without the consumer catching on.
- They were involved in various patent infringement lawsuits, investigation by the FBI and blackmail associated with an affair one taxpayer was having with an employee. That's when the W said "we need to do some estate planning."
- H and W each gifted a 29.4% interest to an irrevocable trust and sold 20.6% interest to an entity owned by the trust.
- Court made a rigorous analysis of the business valuation methodologies, the scrutiny of expert witness testimony and the application of relevant legal principles for closely held business transfers.

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To read T.C. Memo 2025-29, scroll to **#148** in:
[Docket](#)

WM-873436

Recent Developments

- While the case was pending at the IRS Appeals Office, the taxpayer obtained a new appraisal which took into consideration facts the original appraiser missed and determined that the value of the gifted and sold interests were lower than those stated in the original appraisal and those proposed by the IRS.
- The Tax Court found the new appraisal persuasive and ruled in favor of the taxpayer.

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Recent Developments

Pierce v. Commissioner, T.C. Memo 2025-29 (April 7, 2025)

- Takeaways:
 - Importance of a well supported and thoroughly documented valuation analysis with independently corroborated data and assumptions.
 - Justification of assumptions – projected cash flow, discount rates and working capital needs.
 - Consider all relevant facts – valuation date, industry trends, impact of management decisions.
 - Appropriate valuation methodology – use of discounted cash flow method.
 - Tax affecting analysis when valuing an S corporation using data derived from C corporations. (Both parties' experts used tax affecting with a 26.2% fictitious tax rate).
 - Support for lack of control and marketability discounts.

Recent Developments

[Spizzirri v. Commissioner, \(11th Cir. No. 23-14049, May 16, 2025\)](#) [disallowed Estate's deductions for payments to stepchildren]

- D's stepchildren from D's estranged 4th wife each filed claims against his estate after which the estate made \$1 million payments to each stepchild and deducted the \$3 million paid under §2053.
- D's wife agreed to a modification of their pre-nup to waive her right to estate rights in exchange for interest in a NYC penthouse and \$1 million payments to each of her 3 children.
- Estate argued D's lack of donative intent and hence the payments were in satisfaction of claims.
- 11th Circuit upheld the Tax Court's holding that the payments were gifts. The payments were not contracted for bona fide because they were not (1) in the ordinary course of business, (2) negotiated at arm's length and free from donative intent, (3) unrelated to an expectation or claim of inheritance, (4) related to an agreement for the performance of services or (5) reported by the stepchildren for income and employment tax purposes.

Recent Developments

Belmont Investments, LLC v. Commissioner, T.C. [Docket No. 14039-25](#) (October 3, 2025) [are assets entitled to basis adjustment if not included in estate?]

- Petition asserts that partnership assets held in a grantor trust which were not included in the decedent's estate were entitled to a basis adjustment under Section 1014.
- This puts the basis step-up issue before the Tax Court.

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Recent Developments

- Husband and Wife transferred property to a partnership which they later transferred to various grantor trusts for the benefit of their issue.
- Grantor died.
- Grantor claims a §1014 step-up in the outside basis of the partnership interest held in the grantor trust, even though the grantor disclosed on the estate tax return that the value of the grantor trust was not included in the grantor's gross estate. The partnership also made an optional adjustment to the inside basis of the partnership asset.
- IRS denied the optional adjustment to the inside basis of the partnership's assets.
- This case raises the issue of whether a §1014 step-up in basis is allowed for property "passing" from the decedent where the asset was held in a grantor trust that was not included in the grantor's gross estate.

Recent Developments

Nosirrah Management LLC v. Autozone, Inc. ([USDC, W.D. Tenn. April 14, 2025](#)) Planning idea: put insider stock in LLC before transfer to GRAT

- Corporate insider's reacquisition of stock was exempt from Section 16 short-swing profits prohibition under the Securities Exchange Act of 1934.
- Taxpayer created two 2-year GRATs. Taxpayer was the sole grantor, trustee and annuitant of the GRATs.
- The GRATs contained a substitution power.
- Taxpayer sold shares of Autozone within 6 months of receiving an in-kind distribution of the shares from the GRATs.
- Section 16(b) - officers, directors and holders of more than 10% of the listed stock of any company shall be liable to the company for any profits realized from any purchase and sale or sale and purchase of such stock occurring within a period of 6 months.
- Issue: does the taxpayer fall under the Rule 16a-13 exemption, i.e., a transaction that effects only a change of ownership without changing a person's pecuniary interest in the subject equity securities? Court holds the transfer was a mere change of form of beneficial ownership. Rule 16(a)-13 exception applies.
- Lesson: if putting insider stock in a GRAT, the grantor should be the trustee and beneficiary. | [Comment: [Court decision did not address swap power](#)]
- Planning idea: put insider stock in an LLC before the transfer to the GRAT. The transfer of an LLC interest to a GRAT is not reportable to the SEC. [Link to April 14, 2025 Summary Judgment Order](#) | [Summary Judgment Order](#)

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Recent Developments-Swap Transaction with GRAT and Section 16(b)

[Donoghue v. Smith, 2022 U.S. Dist.](#), LEXIS 76071 (S.D. N.Y April 26, 2022)

- Swap transaction with GRAT was a “purchase” for purposes of Section 16(b) short-swing profits rule.
- Section 16(b) permits recovery by a corporation of insider trading profits made from a purchase and sale within a 6-month period.
- Settlor (an “insider”) of GRAT should be trustee to satisfy “mere change of form of beneficial ownership” exception under Section 16a-13 as then he would have “exercise or share investment control.”
- Substitution power exercised to reacquire Class B shares, which were convertible into Class A shares. Within 6 months of the reacquisition, taxpayer, who was an “insider,” transferred or sold Class A shares making \$5.5 million in short-swing profit.
- In a shareholder derivative action, shareholders seek disgorgement of the \$5.5 million profit under Section 16(b) of the Securities and Exchange Act of 1934.

More on Next Page

Recent Developments-Swap Transaction with GRAT and Section 16(b)
Donoghue v. Smith, 2022 U.S. Dist., LEXIS 76071 (S.D. N.Y April 26, 2022)

- Estate planners should work with securities attorneys in making these transfers.
- Receiving insider stock in satisfaction of the annuity payment and rolling the stock into a new GRAT may be treated as a purchase and sale of stock within 6 months.
- Lesson: any substitution of assets transaction (especially where the grantor is not a trustee) would constitute a “purchase” of securities that could be matched with any actual sale of securities in a market transaction or private third-party transaction, and the shares should not be sold in a market transaction or private third-party transaction within six months of any substitution of assets transactions.

Recent Developments - Executor Liable for Estate Taxes

Estate of Spenlinhauer, T.C. Memo 2025-134 (December 30, 2025) [Predeath Transfers Included in Estate]

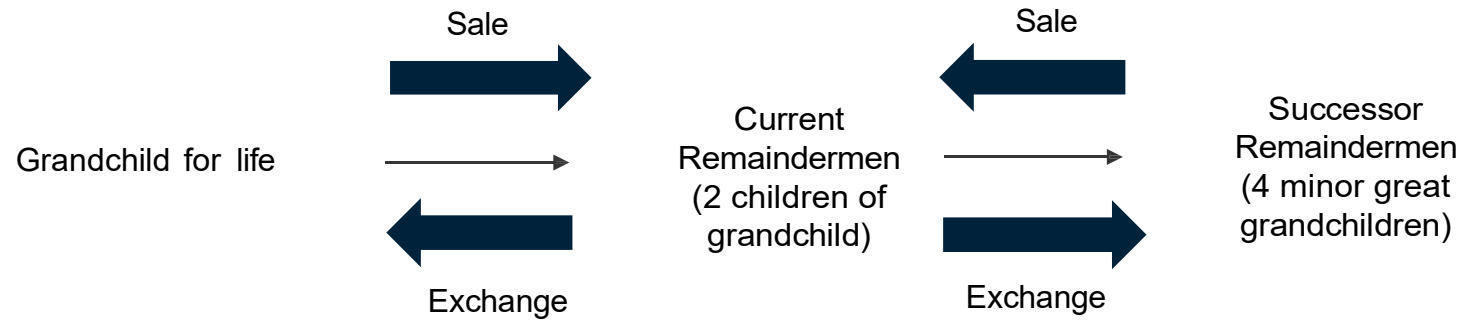
- IRS can seek to recover estate tax liabilities from its executor because he fraudulently transferred the decedent's estate to himself and rendered the estate insolvent.
- \$4 million in unpaid estate taxes and penalties totaling more than \$1.5 million for failure to file and substantial tax valuation understatement.
- Failed to file the estate tax return for nearly 11 years.
- The executor appeared before the Tax Court pro se.
- The executor was held liable as a transferee under Section 6901. To read T.C. Memo 2025-134, Scroll to #103 on: [Docket](#).

[Case Note: Same Executor's 2017 [bankruptcy efforts to avoid MA DOR Lien](#)]

Recent Developments - PLR 202509010

Income Tax Consequences of Premature Termination of an Irrevocable Trust

- In McDougall, the USTC held that the remainder beneficiaries by participating in a nonjudicial settlement agreement to terminate a QTIP trust made gratuitous transfers subject to gift tax.
- [PLR 202509010](#) held that a premature termination of an irrevocable trust may have income tax consequences



Recent Developments- Change in Post Office Rules

Machine Postmarks

- The USPS in November, 2025 adopted a rule in the Domestic Mail Manual that took affect December 24, 2025.
- The new stipulation states that machine postmarks may no longer be applied at local post offices or drop-off points but instead at regional processing centers.
- Result: the date stamped on mailed items may be several days later than when the mail was actually deposited.
- Takeaway: to satisfy the “mailbox rule,” (1) send by certified mail, return receipt, (2) request a manual postmark at a local post office or (3) consider utilizing specifically identified delivery services that meet the requirements of Section 7502.

Recent Developments

FBAR update [Foreign Bank and Financial Accounts (FBAR)]

- Do the [FBAR penalties](#) violate the 8th Amendment's Excessive Fines clause? Circuits split.
- 11th Circuit – violates the excessive fines clause
- 1st Circuit – does not violate the excessive fines clause
- Is the taxpayer entitled to a jury trial on the FBAR fine?
 - Yes

Recent Developments - Proposed Legislation

Borrow, Die, Sell Transactions

- Would impose a 20% excise tax on loans and lines of credit backed by capital assets for individuals making more than \$400,000/year or joint filers making more than \$450,000/year.
- Legislation would exempt home mortgages and some other loans.
- Democratic proposal which probably won't see the light of day but shows there is concern by some in Congress that this is a way to avoid capital gain taxes.

SESSIONS

Trusts and Conflicts of Laws

Takeaways

- Conflict of trust laws – trusts have contact with more than one state. The law in each state may differ.
- Geographic differences of beneficiaries, trustee, grantor, trust protectors, trust assets and place of administration can lead to conflicts in applicable laws.
- Restatement (Second) of Conflict of Laws, finalized in 1971, is out of date. Complicated and inadequate. When drafted, families lived close together, advisory firms were close together. Conflict of laws was not a major problem
- Both the American Law Institute (Restatement (Third) of Conflict of Laws, Draft No. 3, March, 2022) and the Uniform Law Commission Uniform Conflict of Laws in Trusts and Estates, Draft Oct. 24-25, 2025) have reform projects underway.
 - The draft of the Uniform Act acts as a checklist on points to cover in drafting
- Bottom line: due to the possibility of trusts touching a number of different states, conflict of law clauses in trust documents dealing with **administration, interpretation, construction, validity, restraints on alienation and existence or exercise of a power of appointment** can't be ignored.

Tips and Tricks for Subchapter J Junkies

Overview

- Protect the fiduciary:
 - Form 56 – Notice of Fiduciary Relationship – Section 6903
 - Request from Personal Liability – Section 6905; 2204
 - Request for Prompt Assessment – Section 6501(d)
- Basis consistency rules under Section 1014(f) and 6035
- Section 1014 basis adjustment at death. None for IRD or transfers subject to Section 1014(e)
- Finding the law, what are the income tax rates and what are the types of trusts?
- DNI v. TAI (Trust Accounting Income) v. TI (Taxable Income) – Know the Difference
- Why distributable net income (DNI) is important? How to calculate DNI.
- How do capital gains realized by an estate or trust get taxed?
- How does the distribution system work? Simple v. complex trusts
 - General rule: pro rata allocation of DNI based on distributions
 - Tier System
 - Separate Share rule
 - Sixty-Five Day Rule – Section 663(b)
 - Specific bequests – Section 663(a)(1)
 - Distributions in-kind – Section 643(e)
 - Navigating Section 642(c) – the income tax charitable deduction
- Treating a qualified revocable trust as an estate – Section 645 election
- Termination of the estate or trust – NOLs, capital loss carryovers, excess deductions

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But Wait – There’s More ... For the Real Junkies

Dirty (Baker’s) Dozen – Drafting and Planning Ideas

- Select a fiscal year-end for estates
- Administration expense election – 706 v. 1041
- Flexible drafting to include gains in DNI
- Include boilerplate language to allow non-pro-rata distributions. Rev. Rul. 69-468
- Use specific bequests to avoid DNI carryout – Section 663(a)(1)
- Avoid the separate share rule, if desired, by drafting as a spray trust or having trust divide into separate sub-trusts
- Take advantage of the Section 643(e) election to control taxation of capital gains and DNI carryout
- Avoid excess distribution in years prior to termination
- Remember the 3.8% net investment income surtax when drafting trusts
- Consider “Kenan” gain when drafting formula clauses – pecuniary v. fractional

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Planning for U.S. Citizens with Global Investments

Overview

- Not every country works like the U.S. – civil v. common law
- Succession law is not the same in the rest of the world
- Trusts are not used everywhere in the world
- Taxation of wealth transfers varies considerably among countries
- Using a situs will and the advantages/disadvantages of multiple wills
- Issues in drafting a client's U.S. will
- Transferring foreign property
- Is a client's U.S. will valid in another country?
- How should a client dispose of foreign assets in U.S estate planning documents?
- U.S. estate and gift tax issues
- U.S. income tax issues for clients who own foreign property

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Planning for U.S. Citizens with Global Investments

Ten Important Things to Know About U.S. Clients with Foreign Property

1. U.S. citizens and residents must pay U.S. income tax on worldwide income.
2. U.S. owners of interests in foreign business entities give rise to complicated federal income tax issues.
3. U.S. citizens and residents must report gifts from nonresident aliens and distributions from foreign trusts to the IRS.
4. Foreign taxation of wealth transfers may not be an issue.
5. Succession laws vary considerably throughout the world due to the differences between civil and common law.

Planning for U.S. Citizens with Global Investments

Ten Important Things to Know About U.S. Clients with Foreign Property

6. Trusts are not as common in other countries as they are in the U.S.
7. A U.S. citizen and resident client's U.S. estate plan is likely to be valid in another country, with some exceptions.
8. A U.S. estate plan, however, may not be the best idea for a client's foreign property.
9. Multiple wills may or may not be a good idea.
10. The client should seek tax and legal advice on U.S. issues from U.S. counsel and foreign tax and legal advice on from foreign counsel.

Planning for U.S. Citizens with Global Investments

Basic Differences Between Common Law and Civil Law Countries

Common Law	Civil Law
Recognition of trusts	No recognition of trusts
Freedom of disposition of assets	Forced heirship in favor of children and blood relatives
Estate vests in personal representative -Identification of executor evidenced by court order, e.g., letters testamentary - Personal representative, beneficiary not liable for debts in excess of assets of the estate	Estate vests in heirs directly -Identity of heirs evidenced by notarized act -Heirs take the assets subject to liabilities
No matrimonial property regime	Matrimonial property regime protecting the rights of spouse
Succession tax payable by personal representative out of the estate – an estate tax rather than an inheritance tax	Succession tax payable by the heirs – rate dependent on blood relationship as well as value of assets received.

Section 1202 Stock – Qualified Small Business Stock (QSBS)

Changes	Prior Law – Stock Acquired on or before July 4, 2025	OBBBA – Stock Acquired for Tax Years Beginning After July 4, 2025
Required holding period	> 5 years	At least 3 years
Amount of gain excluded	<ul style="list-style-type: none"> • 50% - stock acquired on or after 8/11/93 and on or before 2/17/2009* • 75% - stock acquired after 2/17/2009 and before 9/28/2010* • 100% - stock acquired after 9/27/2010 to July 4, 2025 	<ul style="list-style-type: none"> • 50% for stock held at least 3 years • 75% for stock held at least 4 years • 100% for stock held for 5 years or longer
Maximum gain exclusion	> \$10 million (\$5 million MFS) or 10 times tax basis in the QSBS	> \$15 million (\$7.5 million MFS) adjusted for inflation beginning in 2027, or 10 times tax basis in the QSBS
Gross asset limit (cash and tax basis of other property held by the corporation)	\$50 million	\$75 million (adjusted for inflation beginning in 2027)

* Portion of gain that remains taxable is taxed at 28% rate and excluded gain is a tax preference item for alternative minimum tax (AMT) purposes

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Section 1202 Stock - QSBS

Technical Corrections and Guidance Needed as a Result of OBBBA

- **Acquisition date.** How to determine the holding period. OBBBA makes it possible for holding period to begin before date of enactment (July 4, 2025) due to applying Section 1223 in determining the holding period, meaning that the \$10 million limitation applies rather than the \$15 million limitation or that no exclusion at all is available.
- **Inflation adjustments.** When does the inflation adjustment for the \$15 million dollar limit and the \$75 gross asset limitation take place – (1) no inflation adjustment for 2026, but starting in 2027 the inflation adjustment will include inflation adjustments for the calendar years 2025 and 2026 (a 2-year inflation adjustment), (2) a 1-year inflation adjustment from the beginning of 2025 effective at the beginning of 2026, or (3) no inflation adjustment in 2026 but a 1-year inflation adjustment from the beginning of 2026 effective at the beginning of 2027.
- **Aggregate gross asset requirement retroactive.** It appears the \$75 million gross asset limitation applies to stock issued after 1993, the original enactment date of Section 1202.
- **No increase in exclusion amount once exhausted.**

Section 1202 Stock - QSBS

Planning

- “Packing” is now the elite planning – “packing” deals with building up the cost basis to increase the 10 times cost basis limitation. Assets contributed post-formation are valued at fair market value.
- For 2026, Section 1202 is on the IRS priority plan for the first time – guidance will be issued
- Three methods to convert a partnership to a C corporation, each of which have different basis effect to the corporation and the shareholder:
 - Assets over
 - Assets up
 - Interests up

Planning with Charitable Remainder Trusts (CRTs)

IRS Sample Forms

- IRS has issued sample forms with specimen trust agreements for various types of CRTs
 - For sample CRAT forms, see Rev. Proc. 2003-53 through 2003-60.
 - For sample CRUT forms, see Rev. Proc. 2005-52 through 2005-59.
- Indicates which provisions are mandatory and which are optional
- Using a provision substantially similar to sample forms means the IRS will recognize the CRT as satisfying all the requirements of the law and regulations if the trust operates in a manner consistent with the forms and the trust is valid under state law.

Planning with Charitable Remainder Trusts (CRTs)

IRS Sample Forms

- The IRS prototype CRT forms are designed for simple, standard situations like contributions of cash or publicly traded securities.
- They don't cover contributions of more complex assets such as:
 - Closely-held stock which can trigger excess business holding issues.
 - Real estate whose trust must contain a depreciation reserve provision. Also, donors must move out of contributed property to avoid self-dealing rules.
 - IRA distribution including rules applicable to qualified charitable distributions (QCD).

Planning with Charitable Remainder Trusts (CRTs)

IRS Sample Forms

- The prototype forms also don't cover, among other issues, the following:
 - CRTs with multiple or unidentified beneficiaries
 - Specific governing law or jurisdiction
 - Specialized payout methods like Net Income Charitable Remainder Unitrusts (NICRUTs) or Net Income Make-Up Charitable Remainder Unitrusts (NIMCRUTs) or "Flip" Unitrusts
 - Trustee powers
 - Additional contributions
 - Term of CRT
 - Specific investment directives or restrictions
 - Spousal waiver
 - Payment of estate taxes from trust assets
 - Private foundation restrictions
 - Specific payout frequencies or timing
 - Valuation
 - Unusual assets or funding
 - Gift and generation skipping tax issues
 - Unrelated business taxable income (UBTI)
 - Administration provisions

Inherited IRAs

Spouse as beneficiary

- Use a conduit trust for the surviving spouse rather than a trust paying income to spouse, remainder to children (10-year payout).
 - A conduit trust requires all distributions from the IRA be paid from the trust to the beneficiary (surviving spouse).
 - With a conduit trust the only “countable beneficiary is the surviving spouse which gives the trust all the benefits available to a spouse, except the ability to rollover the distribution. Those benefits are:
 - A life expectancy payout, recalculated annually. Under SECURE 2.0 the surviving spouse uses the Uniform Table (based on the spouse’s age and someone 10 years younger than the surviving spouse). Spouse must elect to use the Uniform Table but can incorporate into the trust that the spouse makes the election to use the Uniform Table.
 - The surviving spouse doesn’t have to take distributions until the IRA owner spouse reaches his required beginning date, i.e., age 73.
 - Spouse can elect the 10-year rule rather than the life expectancy payout.

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A trust can be converted to a conduit trust after the IRA owner's death

- The final regulations allow a trust to be converted into a conduit trust after the IRA owner's death.
- Must get the trust reformed by September 30 of the year after the IRA owner's death – the September 30 deadline is known as the “beneficiary finalization date” or BFD.
- The reformation is retroactive to the IRA owner's date of death.
- However, state law must allow reformation or decanting.

A minor child as a trust beneficiary

- If a minor child is the beneficiary of a trust, there is a life expectancy payout based on the oldest trust beneficiary.

RMD when the IRA owner dies before taking his RMD

- The beneficiary of the account must take the year of death RMD if the IRA owner has not done so before his death. Otherwise, the 25% penalty applies.
- If there are multiple beneficiaries of an IRA, any beneficiary can take the RMD.
- The time for taking the RMD that the decedent didn't take before death is extended to the end of the year after death.

IRA owner takes 401(k) distribution and dies before rolling to an IRA

- If the decedent takes a distribution from his 401(k) and dies before completing a rollover to an IRA, the executor can complete the rollover.
- However, the executor cannot name a beneficiary of the rollover IRA.
- Since the rollover IRA does not have a beneficiary, the payout period is 5 years if the plan owner died before his required beginning date, otherwise the payout period is the decedent's "ghost" life expectancy.
- Takeaway: don't begin a distribution/rollover if the account owner is near death.

Federal estate tax reporting

- IRAs are reported on Schedule I, Annuities, of the Form 706
- The basis consistency rules do not apply to IRA/retirement plans. IRAs/retirement plans are IRD and Section 1014(c) says they do not enjoy a basis adjustment at death.
- Alternate valuation is based on the value of the assets in the IRA,

How to get information or money to pay the estate tax from the IRA provider if the IRA is not payable to the estate?

- If the IRA provider refuses to disclose information about the IRA or distribute money to the executor to pay the estate tax, the executor can send a letter to the IRA provider explaining that the executor will file an estate tax return without including the IRA. As the “person in possession” of the IRA, the IRA provider would be required to file a separate estate tax return reporting the IRA and pay any tax attributable to the IRA.

Section 691(c) deduction

- If a retirement plan is included in the decedent's estate and a federal estate tax is paid, the retirement plan beneficiary is entitled to an income tax deduction for the estate tax attributable to the IRA – the so-called Section 691(c) deduction.
- The Section 691(c) deduction is an itemized deduction which can only be used in the year of the distribution. If the beneficiary does not itemize deductions, the Section 691(c) deduction is not available. The Section 691(c) deduction is allowed in calculating the alternative minimum tax.

IRA owner dies before the required beginning date

- Spouse is deemed to be the owner of the IRA
- As a result, the spouse must name a beneficiary. Otherwise, the payout period is 5 years.

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THANK YOU!



Disclosure Appendix

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