Philadelphia Estate Planning Council
Current Developments – March 2019

March 2019 Rates:

- Section 7520 Rate: 3.2%
- Short Term AFR (0-3 years): 2.55%
- Mid Term AFR (3-9 years): 2.59%
- Long Term AFR (over 9 years): 2.91%

On January 17, 2019, a Senate bill was introduced to reduce the estate, gift and GST tax rates to a flat rate of 20%. If enacted, the bill would apply to transfers after December 31, 2019.

On January 23, 2019, a bill was introduced in the Senate to repeal the estate and GST taxes. The bill would retain the gift tax with an inflation-adjusted $10 million exemption and a 35% marginal rate (applicable to transfers over $500,000).

On January 31, 2019, a Senate bill was introduced that would reduce the estate, gift and GST exemption equivalent to $3.5 million. The bill also proposes raising the transfer tax rates to 45% on estates, gifts and transfers of $3.5 million to $10 million, 50% on estates, gifts and transfers of over $10 million and not over $50 million, 55% on estates, gifts and transfers of over $50 million and not over $1 billion, and 77% on estates, gifts and transfers of more than $1 billion.

In two Private Letter Rulings (PLR 201852016 and PLR 201852018), the IRS granted the request of a decedent's estate for an extension of time to file a late estate tax return in order to make a portability election. Based on the value of the decedent's gross estate and taking into account any taxable gifts made during his lifetime, the filing of an estate tax return was not required. The IRS concluded that it could exercise its discretion and grant an extension pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations because the information and representations submitted on behalf of the decedent's estate established that the estate acted reasonably and in good faith.

In Private Letter Ruling 201902023, a decedent created a trust to hold the benefits and distributions from any retirement plan, including an IRA. The terms of the trust document provide that all property held in the trust will be held, administered and distributed for the benefit of the beneficiary, the decedent's spouse. The document also states that the beneficiary shall be the sole beneficiary of the trust, and all retirement benefits distributed

to the trustee, including required minimum distributions, shall be paid directly to the beneficiary upon receipt by the trustee, so that the trustee shall serve as a conduit only. Upon the beneficiary's death, the trust shall be divided equally between and distributed to the decedent's children or their descendants. The decedent held an IRA at the time of his death, and the IRA adoption agreement named the trust as the designated beneficiary. The IRS concluded that the trust met the requirements under Treas. Reg. § 1.401(a)(9)-4 and that the beneficiary is to be treated as the sole designated beneficiary of the IRA.

In Private Letter Ruling 201903012, the decedent was survived by a spouse who was not a United States citizen. On Schedule M of Form 706, the decedent's estate claimed a marital deduction for property passing to a qualified domestic trust (QDOT). The spouse later became a United States citizen. The spouse has continuously lived in the United States since the decedent's death. Also, the spouse was not aware of the notice and certification requirements under Treas. Reg. § 20.2056A-10(a)(2), and was not advised by her CPA. Under § 20.2056A-10(a)(2), the U.S. trustee of the QDOT must notify the IRS and certify in writing that the surviving spouse has become a United States citizen. Such notice is to be provided on or before April 15th of the calendar year following the year the surviving spouse becomes a citizen. The IRS granted the co-trustee an extension to file the required notice and certification.

In *Mann v. U.S.,* 123 AFTR 2d ¶2019-396 (DC MD 2019), the taxpayers donated a home and personal property to a public charity that engages in property "deconstruction" (i.e., the salvaging of building materials, fixtures and furniture from properties). The taxpayers signed an agreement regarding the donation, but the agreement was not filed with the county's land records. The taxpayers also supplemented their donation with a cash donation to defray the costs of deconstruction. The taxpayers obtained two appraisals for the home, one based on its highest and best use as a residence and one based on idea that the home was donated to the charity for training purposes. An appraisal of the home's contents was also obtained. On their income tax return, the taxpayers claimed charitable donations on the home based on the value of the highest and best use appraisal, the contents in the home and the cash donation. The IRS disallowed the donations. After paying their tax liability, the taxpayers filed for refund claims. The district court agreed with the IRS that the taxpayers donated only a partial interest in the home. Therefore, under Internal Revenue Code § 170(f)(3), they could not claim a charitable contribution deduction. The court also found that the severance of the home and transfer of the entire interest in the home was not valid for tax purposes under Maryland law because the private agreement between the taxpayers and the nonprofit was not recorded in the land records. Additionally, the court determined that even if the taxpayers had properly recorded the transfer, they would not have been entitled to the claimed deductions because the appraisals valued the home as a residence and not for deconstruction purposes. With regard to the donation of the home's contents, the district court found that the appraisal didn't provide a basis for the valuing the items and had inconsistent valuing methods. The

court did allow the deduction of the cash donation since the taxpayers received no specific benefit in return for the donation.

In *U.S. v. Ringling,* 123 AFR 2d 2019-XXXX (DC SD 2019), the United States sought judgment against the defendants for personal liability for unpaid federal estate tax under Internal Revenue Code Section 6324(a)(2). This section states that if an imposed estate tax liability is not paid when due, a transferee, surviving tenant or beneficiary who receives or has on the date of the decedent's death property included in the gross estate under Sections 2034 to 2042 is personally liable for such tax. To establish liability, the government must prove that the estate tax was not paid when due and the transferee, surviving tenant or beneficiary received property included in the decedent's estate under Sections 2034 to 2042. In this case, the decedent passed away in 1999. A federal estate tax return was not filed until 2008. While the return noted an estate tax due, no payment was made on behalf of the estate. In addition, the undisputed facts of the case showed that each of the defendants either were in possession of property included in the decedent's estate or received property as a result of the decedent's death. The defendants were co-owners of property owned by the decedent and remainder beneficiaries of property in which the decedent retained a life estate interest. As a result, the court found that the defendants were liable for the estate's unpaid tax liability. The court also found that the affirmative defenses raised were not supported by any specific facts in the record.