

Philadelphia Bar Association, Probate and Trust Section
Tax Committee's Tax Update – January 2013
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The Taxpayer Relief Act of 2012 (“ATRA”):

IRA Charitable Rollover: ATRA reinstated the IRA Charitable Rollover for the calendar year of 2013. This law allows taxpayers who are 70 ½ or older to donate up to \$100,000 directly from their IRA to charity without any tax consequence. In addition to being effective for 2013, the law can be retroactive for the month of January 2013 to apply to the 2012 taxable year. Gifts cannot be made to donor advised funds, supporting organizations or private foundations.

Federal Estate Tax Exemption: \$5,250,000 (indexed for inflation) with top tax rate of 40%.

Trust and Estate Income Tax Rate: 39.6% on trust and estate income over \$11,950.

GUIDANCE FROM THE IRS

Rev Ruling 2013-1 came out with January Rates:

7520 rate: 1.0%

AFR Rates: Short Term (0-3years): 0.21%
 Mid-Term (3-9 years): 0.87%
 Long-Term (Over 9 years): 2.31%

Actions Relating to Decisions of the Tax Court, re: *Wandry v. Commissioner*, T.C. Memo. 2012-88, IRB 2012-46, Nov. 13, 2012:

The IRS has issued its nonacquiescence to the *Wandry* decision. “Nonacquiescence” signifies that although no further review has been sought, the Service does not agree with the holding of the court and generally will not follow the decision in cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, it indicates that the Service will not follow the holding on a nationwide basis. It will, however, recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

Chief Counsel Advice 201249015 (Dec. 7, 2012): IRS concluded that underpayment interest on an unreported gift runs from the due date for reporting the gift. In this scenario, the unified credit would have been available to offset the tax on the gift had it been report, but the unified credit was fully used on a later gift that was reported and therefore not available to be applied against the earlier gift.

Reg. 130507-11, 77 Fed. Reg. 72612-01 (Dec. 5, 2012): The Treasury and IRS have proposed regulations to interpret Internal Revenue Code section 1411, which imposes the 3.8% tax on net investment income. The net investment income can be generated by an individual, estate or trust.

Rev. Proc. 2013-13 (Jan. 15, 2013): The IRS gave the taxpayers an optional safe-harbor method to calculate the amount of the deduction for expenses for business use of a residence during the tax year under IRC section 280A, beginning with the current tax year. Individual taxpayers who elect this method can deduct the allowable square footage multiplied by \$5. The allowable square footage is the portion of the house used in a qualified business use, but not to exceed 300 square feet. The maximum a taxpayer can deduct annually under the safe harbor is \$1,500.

Rev. Proc. 2013-3 (Jan. 2, 2013): The IRS added Beneficiary Defective Irrevocable Trusts (BDITs) to no-rulings list with respect to many issues related to these vehicles.

CASES

Windsor v. U.S., 2012 WL 4937310 (2d Cir. 2012), aff'g 833 F. Supp.2d 394 (S.D. N.Y. June 6, 2012), cert. granted (Dec. 7, 2012): the United States Supreme Court has agreed to decide whether the Defense of Marriage Act (DOMA) is constitutional as it applies to the estate tax marital deduction for same-sex couples whose marriage was valid in the state in which they were domiciled. The Court is reviewing the decision of the U.S. Court of Appeals for the Second Circuit, which held DOMA was unconstitutional to this specific issue.

Estate of Derksen v. United States, 2012 WL 5465002 (E.D. Pa. 2012): a U.S. District Court denied an estate tax deduction under IRC section 2053 for a debt that was allegedly owed to the estate of the decedent's late husband under an informal agreement between the spouses to maintain equal estate. As a result, late filing penalties were imposed.

Estate of Sylvia E. Bates, T.C. Memo 2012-314 (Nov. 7, 2012): The Tax Court held the estate could not deduct the settlement payment as either a claim or as an administration expense. Sylvia Bates had an initial will which provided assets remaining after payment of expenses would fund a Family Trust for the benefit of her grandchildren, Sheri, Kenneth and Scott. It also provided for a \$100,000 bequest to Reggie Lopez, who was a trusted friend. Later, Sylvia was diagnosed with Alzheimer's and began to pay Mr. Lopez to assist her in performing a variety of tasks. Decedent fully paid Mr. Lopez for all services rendered. Approximately a year later, Sylvia executed a new will, which provided that trust income from the Family Trust would be distributed evenly between Mr. Lopez and only one of Sylvia's grandchildren. After Sylvia's death, a will contest ensued and ultimately ended in a settlement between two of Sylvia's grandchildren and Mr. Lopez. The estate tried to deduct the settlement payment in excess of the initial bequest to Mr. Lopez as an administrative expense. The IRS disallowed this deduction and the Tax Court agreed.

PRIVATE LETTER RULINGS

IRS Letter Ruling 20124902 (Dec. 7, 2012): the IRS allowed a charitable income and gift tax deduction for a gift to the remainder beneficiary of a charitable remainder unitrust, part of which was the donor's reserved interest in the trust. The gift caused the charitable beneficiary to receive a fractional share of the total trust assets in proportion to the gift of the unitrust interest. In exchange, the donor will receive deductions for the present value of the right to receive the unitrust payments for the rest of the donor's life.

PENNSYLVANIA DEPARTMENT OF REVENUE

Schedule O, Form Rev-1649, has been updated. The PA Department of Revenue is now requiring an assumption of liability such that the fiduciaries must to agree to notify the PA Department of Revenue and pay the appropriate tax if there is a termination made without court approval or notice to the Department.