

Probate & Trust Section, Tax Committee
Tax Update – June 2014
Prepared by Marguerite Weese, J.D., LL.M. (Tax), Wilmington Trust N.A.

GUIDANCE FROM THE IRS

Revenue Ruling 2014-20, July 2014 Rates:

- Section 7520 Rate: 2.2%
- Short Term AFR (0-3 years): 0.31 %
- Mid Term AFR (3-9 years): 1.82%
- Long Term AFR (over 9 years): 3.06%

Regs §10.1, §10.3, §10.22, §10.31, §10.35, §10.36, §10.37, §10.81, §10.82, §10.91, TD 9668, June 9, 2014: The IRS has issued final regs that make various changes to Circular 230, the rules on practice before the IRS. The most significant items in the final regs are the elimination of complex rules governing “covered opinions” and expansion of the requirements for written advice.

Reg. 1.67-4, TD 9664, May 8, 2014, IRS has issued final regulations on which costs incurred by estates and non-grantor trusts (trusts) are subject to the IRC code section 67(a), which places a 2% floor on miscellaneous itemized deductions.

Ownership Costs: The final regs don't change the proposed regs, which state that ownership costs are costs that are chargeable to or incurred by an owner of property simply by reason of being the owner of the property. But the final regs note that other expenses incurred merely by reason of the ownership of property may be fully deductible under other provisions of the IRC and, therefore, would not be miscellaneous itemized deductions.

Tax Preparation Fees: The final regs set out a list of tax returns which are not subject to the 2% floor: Estate and generation-skipping transfer tax return, fiduciary income tax returns, and the decedent's final individual income tax returns. This is an exclusive list. The costs of preparing all other tax returns are subject to the 2% floor.

Investment Advisory Fees: Any fees that would be provided to any individual investor as part of an investment advisory fee are subject to the 2% floor. To the extent that a portion of an investment advisory fee exceeds the fee generally charged to an individual investor and that excess is attributable to an unusual investment objective of the trust or estate or to a specialized balancing of the interests of various parties such that reasonable comparison with individual investors would be improper, that excess is not subject to the 2% floor.

Appraisal Fees: Unlike the proposed regs, the final regs address appraisal fees. Appraisals to determine value for the purposes of making distributions or as otherwise required to properly prepare the estate or trust's tax return are not subject to the 2% floor.

Other fiduciary Expenses: Unlike the proposed regs, the final regs address other fiduciary expenses. The final regs provide that certain other fiduciary expenses are not subject to the 2% floor. They include probate court fees and costs, fiduciary bond premiums, legal publication costs of notices to creditors or heirs, the cost of certified copies of the decedent's death certificate and costs related to fiduciary accounts.

CASES

***Clark v. Rameker*, No. 13-299 (U.S.), aff'd 714 F.3d 559 (7th Circuit 2013).** In a 9-0 ruling, the Supreme Court held there is a distinct division between inherited IRA's and retirement funds and between inherited IRAs and other funds to which the Bankruptcy Code exemptions apply. In 2000, Ruth Heffron established an IRA, which her daughter Heidi Heffron-Clark inherited when Ruth died in 2001. In 2010 Heffron-Clark and her husband filed a bankruptcy petition, in which they claimed that the inherited IRA was exempt from inclusion in the bankruptcy estate. The bankruptcy trustee and unsecured creditors of the estate disagreed on the grounds that the funds in the inherited IRA were not retirement funds. The Court said that the Bankruptcy Code makes it clear that inherited IRA's are not retirement funds by pointing to three legal characteristics of inherited IRA's. 1) the holder of an inherited IRA may never invest additional money in the account; 2) holders of inherited IRAs must withdraw money from them, regardless of how many years they are from retirement and; 3) the holder of an inherited IRA may withdraw the entire balance at any time, for any purpose with no penalty, but this is not the case of traditional or Roth IRA's.

***Estate of John R. H. Thouron* (2014, CA3) 113 AFTR 2d, 2014-822:** The Third Circuit has vacated a district court decision that concluded that Supreme Court precedent set in *Boyle*, 1985 (U.S.) 55 AFTR 2d 85-1535, barred it from refunding a penalty imposed on an estate, based on erroneous advice of an attorney that caused the estate to not timely seek an extension of time to pay the taxes. *Boyle* identified three distinct categories of late-filing or by extension, late-payment cases. The Appeals Court read the precedent differently and sent the case back to the district court to determine whether the estate can establish that it qualifies for relief from the penalty.

PRIVATE LETTER RULINGS

PLR 201422007 (May 30, 2014): The IRS allowed the GST tax annual exclusion under Code Section 2642(c) for separate shares of the transferor's great-grandchildren under a single trust instrument. Each separate share was held for the benefit of only one great-grandchild and provided distribution only to such great-grandchild or her estate. Each such great-grandchild had a 30-day Crummey withdrawal power.

LEGISLATIVE

The following bills have been approved by the House's Ways and Means Committee. They will then move to the floor for a vote, then onto the Senate.

HR Bill 4719: "The Fight Hunger Incentive Act of 2014." This Act would reinstate and make permanent the enhanced deduction for contributions of food inventory.

HR Bill 4619: "Permanent IRA Charitable Contribution Act of 2014." The Act would reinstate and make permanent the exclusion from gross income for up to \$100,000 of qualified charitable distributions from an individual retirement account.

HR Bill 3134: "The Charitable Giving Extension Act." This Act would permit an individual to elect to deduct for a table year charitable contributions made after the close of the taxable year but before the date the individual's income tax return is due.