

**The Year in Review:  
An Estate Planner's Perspective on Recent Tax Developments**

by

Howard M. Zaritsky,  
Rapidan, Virginia  
[www.howardzaritsky.com](http://www.howardzaritsky.com)

## TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	INCOME TAX	2
A.	IRC § 1. Income Tax Rates.	2
	Income Tax Rates Adjusted for Inflation. Rev. Proc. 2022-38, §§ 3.01, Table 5, 3.02. 2022-45 I.R.B. 445 (Nov. 7, 2022).	2
B.	IRC §§ 61, 101, 2042, & 2512. Life Insurance	3
	1. Proposed Regs Address Interests in Life Insurance Contracts. REG-108054-21, 88 Fed. Reg. 30058 (May 10, 2023).	3
	2. “Restricted Property Trust” is a Split-Dollar Arrangement Taxable Under the Economic Benefit Regime. <i>McGowan v. United States</i> , 2023 WL 6214527 (N.D. Ohio Sept. 25, 2023) (slip copy).	3
	3. Tax Court Rejects Summary Judgment Regarding How to Determine the Gift Tax Value of Long-Held Life Insurance Policies. <i>Dematteo v. Comm’r</i> , Tax Ct. Dkt. No. 3634-21 (July 21, 2022), <i>trial originally scheduled</i> (March 6, 2023), <i>continuance granted</i> (Jan. 9, 2023).	5
	4. Taxation of Reverse Split Dollar Arrangement Disputed in Tax Court. Estate of <i>Cinader v. Comm’r</i> , Tax Ct. Dkt. Nos. 5245-22, 13491-22, 13492-22, 13493-22, 13494-22, 13495-22 and 13496-22 (March 17, 2022 & June 29, 2022), <i>trial scheduled for</i> (May 22, 2023).	7
C.	IRC § 61. Gross Income	9
	Employer’s Write-Off of Prior Advances is Taxable Compensation Income, Not a Tax- Free Gift. <i>Fields v. Comm’r</i> , T.C. Summ. Op. 2022-22 (Nov. 10, 2022).	9
D.	IRC §§ 170, 642, 49404947. Charitable Gifts and Distributions	10
	1. Conservation (Including Façade) Easements Raise Numerous and Often Very Expensive Problems	10
	a. Statutory Limitations on Syndicated Conservation Easements. The Consolidated Appropriations Act, 2023, Pub. L. 117-328, § 605, 117th Cong., 2d Sess., 136 Stat. 4459 § 605 (Dec. 29, 2022)	10
	(1) General Denial of Income Tax Deduction	10
	(2) Family Partnerships	11
	(3) Façade Easements	11
	(4) Other Passthrough Entities	12
	(5) Opportunity to Correct Defective Easements	12
	(6) Regulations	13
	b. Penalties	13
	c. Effective Date	13
	d. Proposed Regulations Confirm Classification of Certain Syndicated Conservation Easements as Listed Transactions. Prop. Reg. § 1.6011-9, REG-	

	1061334-22, 87 Fed. Reg. 75185 (Dec. 8, 2022); Ann. 2022-28, 2022-52 I.R.B. 657 (Dec. 27, 2022) . . . . .	13
	(1) Definition of Syndicated Conservation Easement . . . . .	14
	(2) Application of the 2.5 Times Rule . . . . .	14
	(3) Anti-Stuffing Rule . . . . .	15
	(4) Effective Date . . . . .	15
e.	Loss of Deduction if Easement Fails to Follow Reg. § 1.170A-14(g)(6) on Division of Proceeds of Involuntary Extinguishment of Easement . . . . .	16
	(1) Courts Split Over Validity of Reg. § 1.170A-14(g)(6). <i>Oakbrook Land Holdings, LLC v. Comm’r</i> , 28 F.4th 700, 2022 WL 766050, 129 A.F.T.R. 2d 2022-1031 (6th Cir. 2022), <i>reh. en banc denied</i> (6th Cir. July 6, 2022), <i>cert. denied</i> (Jan. 9, 2023); <i>Battelle Glover Investments LLC v. Comm’r</i> , Tax Ct. Dkt. No. 6904-19 (Sept. 12, 2022). . . . .	16
	(2) IRS Releases Sample Clauses for Conservation Easement Deeds. Notice 2023-30, 2023-17 I.R.B. 766 (April 21, 2023) . . . . .	19
f.	Eleventh Circuit Validates Easement Despite Reserved Right to Build Residences on Parts of Property -- \$771,000 Deduction Restored. <i>Carter v. Comm’r</i> , 2022 WL 4232170 (unpub’d op., 11th Cir. Sept. 14, 2022), <i>rev’g and rem’g</i> T.C. Memo. 2020-21 . . . . .	20
g.	Tax Court Finds IRS Notice on Syndicated Conservation Easements Invalid under the Administrative Procedure Act. <i>Green Valley Investors, LLC v. Comm’r</i> , 159 T.C. ____ (No. 5) (Nov. 9, 2022), <i>pet. for partial summary judgment denied</i> (Tax Ct. Dkt. Nos. 17379-19, 17380-19, 17381-19, 17382-19, Oct. 17, 2023). . . . .	22
h.	This Hog Didn’t Get Slaughtered – Loss of Hog Farming Potential Increases Value of Conservation Easement; Lack of Basis Information Does Not Eliminate Deduction Because Government Did Not Prove Lack of Reasonable Cause. <i>Murfam Enterprises LLC v. Comm’r</i> , T.C. Memo. 2023-73 (June 15, 2023) . . . . .	23
i.	Same Family, Different Easement Gifts, Different Results. Easements on Golf Course properties Had a Valid Conservation Purpose, but had Substantially Lower Values than Claimed; Failure to Provide Basis Information Did Not Disqualify Deduction Because IRS Failed to Prove Absence of Reasonable Cause. <i>Murphy v. Comm’r</i> , T.C. Memo. 2023-72 (June 15, 2023) . . . . .	25
j.	Tax Court States that Whether Conservation Easement Donor Reserved Right to Mine Subsurface Clay is a Question of Fact. <i>North Donald LA Property, LLC v. Comm’r</i> , T.C. Memo. 2023-50 (April 18, 2023) . . . . .	27
k.	Easement Deed of Gift for Syndicated Easement Did Not Reserve Mining Rights on the Subject Property. <i>Cattail Holdings LLC v. Comm’r</i> , T.C. Memo. 2023-17 (Feb. 14, 2023). . . . .	28
l.	A Private Golf Course within the Easement Area Does Not Preclude a Valid Conservation Purpose -- \$7.8 Million Deduction Sustained. <i>Champions Retreat Golf Founders, LLC v. Comm’r</i> , T.C. Memo. 2022-106 Oct. 17, 2022), <i>on</i>	

	<i>rem'd from 959 F.3d 1033, 2020 WL 2462534 (11th Cir. 2020), vac'g and rem'g T.C. Memo. 2018-146</i> . . . . .	30
m.	No Summary Judgment for IRS on \$26 Million Syndicated Conservation Easement Because Ambiguous Deed of Gift and Must be Interpreted in Light of State Law. <i>Morgan Run Partners, LLC v. Comm'r</i> , T.C. Memo. 2022-61 (June 14, 2022). . . . .	31
n.	District Courts Invalidate Notice 2017-10 Only for Specific Litigants. <i>Green Rock, LLC v. IRS</i> , 2023 WL 1478444 (N.D. Ala. Feb. 2, 2023), <i>app. filed</i> (11th Cir., Mar. 31, 2023); <i>GBX Associates LLC v. United States</i> , 2022 WL 16923886 (N.D. Ohio Nov. 14, 2022) (slip copy) . . . . .	32
o.	\$5,100,000 Conservation Easement Deduction Lost for Failure to Receive a Contemporaneous Written Acknowledgement, Inadequate Baseline Documentation, and Misreporting of Basis. <i>Brooks v. Comm'r</i> , T.C. Memo. 2022-122 (Dec. 19, 2022) . . . . .	34
p.	No Conservation Easement Charitable Deduction if Donor Reserves Right to Surface Mine, Even with Donee's Approval. Chief Couns. Advice 202236010 (Sept. 9, 2022) . . . . .	36
2.	\$338,080 Deduction Lost for Failure to Obtain a Special Contemporaneous Written Acknowledgement Required for Contribution of an Airplane. <i>Izen v. Comm'r</i> , 38 F.4th 459, 2022 WL 2337393 (5th Cir. 2022), <i>cert. denied</i> , 143 S.Ct. 1781 (Mem), 2023 WL 3046154 (April 24, 2023) . . . . .	36
3.	Lack of Contemporary Written Acknowledgement Prevents \$30,050 Charitable Contribution Deductions. <i>Tucker v. Comm'r</i> , T.C. Memo. 2023-87 (July 17, 2023) . . . . .	38
4.	\$5.2 Million Charitable Deduction Lost for Failing to Prove Value Received in a Purported Bargain Sale and Failing to Obtain a Contemporaneous Written Acknowledgement. <i>Braens v. Comm'r</i> , T.C. Memo. 2023-85 (July 11, 2023) . . .	39
5.	Conservation Easement was Inventory and Charitable Contribution Deduction Limited to Donor's Adjusted Basis. <i>Glade Creek Partners, LLC v. Comm'r</i> , T.C. Memo. 2023-82 (June 29, 2023), <i>supp. op on remand from 2022 WL 3582113</i> , 130 A.F.T.R.2d 2022-5625 (11th Cir. 2022); <i>Mill Road 36 Henry LLC v. Comm'r</i> , T.C. Memo. 2023-129 (Oct. 26, 2023)) . . . . .	40
a.	<i>Glade Creek Partners</i> . \$17.5 Million Deduction Drops to \$3.6 Million. . . .	40
b.	<i>Mill Road 36 Henry LLC</i> . \$8.95 Million Deduction Drops to \$900,000. . . .	41
6.	No Deduction for 173 Separate Charitable Gifts of Clothing without a Qualified Appraisal. <i>Bass v. Comm'r</i> , T.C. Memo 2023-041 (March 27, 2023) . . . . .	42
7.	Timing is Almost Everything -- Donor of Closely Held Stock Taxed on Gain on Sale by Charity Because Sale was Virtually Certain at Time of Gift; No Deduction Allowed Due to Lack of a Qualified Appraisal. <i>Estate of Hoensheid v. Comm'r</i> , T.C. Memo. 2023-34 (March 15, 2023) . . . . .	43
8.	"Ultimate Tax, Estate and Charitable Plan" Is Badly Misnamed. \$1.6 Million Charitable Deduction Denied for Lack of Documentation. <i>Lim v. Comm'r</i> , T.C. Memo. 2023-11 (Jan. 23, 2023) . . . . .	47

9.	Farmer Cannot Deduct Value of Crops Contributed to Charitable Remainder Annuity Trust. <i>Furrer v. Comm’r</i> , T.C. Memo. 2022-100 (Sept. 28, 2022) . . . . .	49
10.	Donor Lacks Reasonable Cause for Not Obtaining Qualified Appraisal and Completing Appraisal Summary; \$600,000 Charitable Deduction Voided. <i>Schweizer v. Comm’r</i> , T.C. Memo. 2022-102 (Oct. 6, 2022) . . . . .	50
11.	IRS Warns Taxpayers of Improper Art Donation Deduction Promotions. Info. Rel. 2023-185, <a href="https://www.irs.gov/newsroom/irs-warns-taxpayersof-improper-art-donation-deduction-promotions-highlights-common-red-flags">https://www.irs.gov/newsroom/irs-warns-taxpayersof-improper-art-donation-deduction-promotions-highlights-common-red-flags</a> (Oct. 5, 2023) . . .	51
12.	Charitable Contribution of More than \$5,000 of Cryptocurrency Must be Supported by a Qualified Appraisal; Donor Cannot Rely on Value Listed on Cryptocurrency Exchange. Chief Couns. Memo. 202302012 (Jan. 13, 2023) . . . . .	51
E.	IRC §§ 401-409A. Retirement Plan Benefits . . . . .	52
1.	SECURE Act 2.0 Enhances Tax Treatment of IRAs and Qualified Retirement Benefits. The Consolidated Appropriations Act, 2023, Pub. L. 117-328, Div. T, 117th Cong., 2d Sess., 136 Stat. 4459, Div. T (Dec. 29, 2022) . . . . .	52
a.	Required Beginning Date . . . . .	52
b.	Excise Tax on Failure to Take Required Minimum Distributions . . . . .	53
c.	Qualified Charitable Distribution to Split-Interest Trusts . . . . .	53
d.	Excise Tax on Excess Contributions and Accumulations . . . . .	53
e.	Repayment of Qualified Birth or Adoption Distributions Would Be Limited to Three Years . . . . .	54
f.	Withdrawals in Case of Domestic Abuse . . . . .	54
2.	IRS Announces Effective Date of Forthcoming Final Required Minimum Distribution Regulations. Notice 2023-54, 2023-31 I.R.B. 382 (July 31, 2023) . .	54
3.	An Offer the IRS Could Refuse Causes Disqualification of IRA Rollover. <i>Estate of Caan v. Comm’r</i> , 161 T.C. ____ (No. 6) (Oct. 18, 2023) . . . . .	56
4.	Gross Income Does Not Include IRA Distributions Obtained by Taxpayer’s Spouse Acting Beyond Scope of Her Power of Attorney. <i>Balint v. Comm’r</i> , T.C. Memo. 2023-118 (Sept. 25, 2023) . . . . .	57
5.	Having Diabetes Does Not Necessarily Constitute Being Disabled for Purposes of the 10% Tax on Premature Distributions. <i>Lucas v. Comm’r</i> , T.C. Memo. 2023-9 (Jan. 17, 2023) . . . . .	58
F.	Basis of Property Acquired from a Decedent . . . . .	58
1.	Irrevocable Grantor Trust Not Included in Deceased Grantor’s Gross Estate Receives No Basis Adjustment at Death. Rev. Rul. 2023-2, 2023-16 I.R.B. 658 (Apr. 17, 2023) . . . . .	58
2.	Will 2010 Never End? IRS Allows Very Late Election Out of the Estate Tax and Allocation of Basis for Estate of a 2010 Decedent. PLR 202340016 (Oct. 6, 2023) . . . . .	59
G.	IRC §§ 1361 – 1368. S Corporations . . . . .	60
	Expedited Procedure for Certain S Corporation Disqualification Relief. Rev. Proc. 2022-19, 2022-41 IRB 282 (Oct. 7, 2022) . . . . .	60
H.	Foreign Bank Account Reporting Act. 31 U.S.C. §§ 5314, 5321 . . . . .	60

1.	Regulations Adjust Penalty Limits for Inflation. 31 C.F.R. § 1010.821, Table 1, 88 Fed. Reg. 3311 (Jan. 19, 2023) . . . . .	60
2.	Taxpayer's Conviction for Criminally Willful Failure to File FBAR Affirmed; Statute is Neither Invalid nor Ambiguous. <i>United States v. Xiao</i> , 77 F.4th 466, 2023 WL 5025025 (7th Cir. Aug. 8, 2023) . . . . .	61
3.	Proving Willfulness for FBAR Penalty. <i>United States v. Bedrosian</i> , 42 F.4th 174, 2022 WL 2899266 (3rd Cir. 2022), <i>en banc reh'g denied</i> , 2022 WL 17175823 (Sept. 27, 2022), <i>cert. denied</i> , 143 S.Ct. 2636, 2023 WL 4065595 (June 20, 2023), <i>aff'g</i> 505 F.Supp.3d 502, 2020 WL 7129303 (E.D. Pa. 2020), <i>on rem'd from</i> 912 F.3d 144 (3rd Cir. 2018); <i>Kurotaki v. United States</i> , 2023 WL 6604892 (D. Hawaii Oct.10, 2023) (slip copy); <i>United States v. Kelly</i> , 2023 WL 3212718, 131 A.F.T.R.2d 2023-1560 (E.D. Mich. May 2, 2023) (slip copy), <i>app. filed</i> , (6th Cir. May 31, 2023), <i>repatriation and bond order</i> , 2023 WL 6973872 (E.D. Mich. Oct. 23, 2023) (slip copy); <i>United States v. Mahyari</i> , 2023 WL 372656 (D. Ore. Jan. 24, 2023) (slip copy), <i>jury verdict</i> , (June 21, 2023) . . . . .	63
	a. <i>Bedrosian</i> (3rd Cir.) Willfulness Can be Mere Recklessness or Blind Ignorance; Proofs Include Not Cooperating with IRS, Not Reviewing False Tax Returns, and Not Informing CPA of Foreign Accounts . . . . .	63
	c. <i>Kelly</i> (E.D. Mich). Government Wins Nearly \$1 million FBAR Penalty from Clearly Willful Taxpayer . . . . .	66
	d. <i>Maghyari</i> (D.Ore.) Proof of Willfulness Includes Lying to the IRS. <i>Bedrosian</i> Standard Applied Despite Lack of Ninth Circuit Precedent . . . . .	68
4.	\$10,000 Non-Willful FBAR Penalty is Computed Per Form, Not Per Account. <i>Bittner v. United States</i> , 598 U.S. 85, 143 S.Ct. 713, 215 L.Ed. 2d 1, 2023 WL 2247233 (Feb. 28, 2023), <i>rev'g &amp; rem'g</i> 19 F.4th 734, 2021 WL 5570729 (5th Cir. 2021), <i>aff'g in part, rev'g in part</i> , 469 F.Supp 3d 709, 2020 WL 3498082 (E.D. Tex. 2020) (slip copy) . . . . .	70
5.	\$100,000 Regulatory Cap on Willful FBAR Penalties No Longer Applies. <i>United States v. Toth</i> , 33 F.4th 1, 2022 WL 1284015 (1st Cir. 2022), <i>aff'g</i> , 2020 WL 5549111, 126 A.F.T.R. 2d 2020-6065 (D. Mass. 2020) (slip copy), <i>cert. denied</i> , 598 U.S. ___, 143 S.Ct. 552 (Mem), 214 L.Ed.2d 458, 2023 WL 350008 (Jan. 23, 2023), <i>reh. denied</i> , 143 S.Ct. 2604 (June 5, 2023) . . . . .	73
6.	FBAR Penalties Are Not Unconstitutional Excessive Fines. <i>United States v. Toth</i> , 33 F.4th 1, 2022 WL 1284015 (1st Cir. 2022), <i>aff'g</i> , 2020 WL 5549111, 126 A.F.T.R. 2d 2020-6065 (D. Mass. 2020) (slip copy), <i>cert. denied</i> (Justice Gorsuch), 598 U.S. ___, 143 S.Ct. 552 (Mem), 214 L.Ed.2d 458, 2023 WL 350008 (Jan. 23, 2023), <i>reh. denied</i> , 123 S.Ct. 2604 (June 5, 2023) . . . . .	74
8.	Criminal Tax Fraud Conviction Does Not Estop Taxpayer from Defending Against FBAR Penalties. <i>United States v. Quiel</i> , 2023 WL 4351543 (D. Ariz. July 5, 2023) (slip copy) . . . . .	76
9.	Willful FBAR Penalties Were Set Arbitrarily. <i>United States v. Hughes</i> , 2022 WL 911721, 129 A.F.T.R. 2d 2022-1304 (N.D. Calif. 2022) (slip copy), <i>penalty recalculated</i> , 2023 WL 2393780, 131 A.F.T.R. 2d 2023-945 (N.D. Cal. March 6,	

	2023) (slip copy); and <i>United States v. Kerr</i> , 2022 WL 912563, 129 A.F.T.R. 2d 2022-1296 (D. Ariz. 2022) (slip copy), <i>on reconsideration</i> , 2023 WL 2308415, 131 A.F.T.R. 2d 2023-866 (D. Ariz. March 1, 2023) . . . . .	77
a.	<i>Hughes</i> (N.D.Cal.) Penalty Calculation Incorrect Because IRS Used Incorrect Bank Balances and Misconstrued the Reversals of Loan Payments . . . . .	77
b.	<i>Kerr</i> (D.Ariz.) Penalty Calculation Incorrect Because IRS Must Follow Internal Revenue Manual in Valuing Foreign Bank Accounts . . . . .	78
10.	Court Again Requires Repatriation of Foreign Financial Assets to Pay FBAR Penalties. <i>United States v. Schwarzbaum</i> , 2019 WL 3997132 (S.D. Fl. 2019), <i>report and recommendation adopted</i> , 2021 WL 4958307 (S.D. Fl. 2021), <i>stay granted</i> , 2021 WL 6197777 (S.D. Fl. 2021), <i>app. dismiss'd</i> , 2022 WL 18278271 (11th Cir. 2022), <i>penalty recalculation approved</i> , 2022 WL 1478910 (S.D. Fl. 2022), <i>reconsideration denied</i> , 2022 WL 14638468 (S.D. Fl. 2022), <i>app. filed</i> (11th Cir. May 31, 2023), <i>repatriation ordered</i> , 2023 WL 2682296 (S.D. Fl. March 28, 2023), <i>delay of repatriation refused</i> , 2023 WL 3930728 (S.D. Fl. June 9, 2023) . . . . .	79
11.	IRS Revises Rules on Non-Willful FBAR Penalty in Light of Supreme Court Holding in <i>Bittner v. United States</i> . SBSE-04-0723-0034 (July 6, 2023) . . . . .	81
I.	Income Tax Procedures . . . . .	81
1.	Proposed Regulations on Supervisory Approval of Penalties under Section 6751(a). REG-121709-19, 88 Fed. Reg. 21564-21572 (April 11, 2023). . . . .	81
2.	Taxpayer is Responsible for the Actual Timely Filing of a Return by Taxpayer's Accountant, Even if it is E-Filed. <i>Lee v. United States</i> , ___ F.4th ___, 2023 WL 6979257 (11th Cir. Oct. 24, 2023), <i>aff'g</i> 2022 WL 376066 (M.D.Fla. 2022) . . . . .	82
3.	Civil Fraud Penalties Affirmed for Fraudulent Use of Foreign Trusts to Avoid U.S. Income Tax. <i>Harrington v. Comm'r</i> , 2022 WL 17333080, 130 A.F.T.R. 2d 2022-6646 (10th Cir. Nov. 30, 2022), <i>aff'g</i> T.C. Memo. 2021-95 . . . . .	84
4.	A Lichtenstein Stiftung is a Foreign Trust for U.S. Tax Reporting Purposes. <i>Rost v. United States</i> , 44 F.4th 294, 2022 WL 3271155 (5th Cir. 2022), <i>reh. denied</i> (5th Cir. Oct. 10, 2022), <i>aff'g</i> 2021 WL 5190875 (W.D. Tex. 2021) (slip copy) . . . . .	85
5.	Supervisory Approval of Penalties Was Timely. <i>Kraske v. Comm'r</i> , 161 T.C. ___ (No. 7) (Oct. 26, 2023) . . . . .	86
6.	You Are Either On the Bus, or Off the Bus; There is No "Almost." Tax Court Petition Rejected Because it is 11 Seconds Late. <i>Sanders v. Comm'r</i> , 160 T.C. ___ (No. 16) (June 20, 2023) . . . . .	87
7.	Grantor/Trustee Personally Liable for Frivolous Return Penalties. <i>Stanojevich v. Comm'r</i> , 160 T.C. ___ (No. 7) (April 10, 2023). . . . .	89
8.	IRS Sanctioned for Not Telling Tax Court that Agent's Supervisor Backdated the Written Penalty Approval Required by Section 6751(b). <i>Lakepoint Land II, LLC v. Comm'r</i> , T.C. Memo. 2023-111(Aug. 29, 2023) . . . . .	91
9.	Tax Court Rejects Collateral Attacks on the Requirement of Written Supervisory Approval of Penalties. <i>Dorchester Farms Property, LLC v. Comm'r</i> , T.C. Memo. 2023-92 (July 24, 2023) . . . . .	92

10.	Trustee of Funded Revocable Trust Cannot Substitute for Deceased Grantor in Pending Individual Income Tax Litigation. <i>Sander v. Comm’r</i> , T.C. Memo. 2022-103 (Oct. 6, 2022) . . . . .	93
11.	Government Tax Lien on Taxpayer Extends to Trust of Which He Was Sole Beneficiary and Controlled the Trustee. <i>United States v. Gibbons</i> , 2023 WL 4669548 (D. Mass. July 20, 2023) (slip copy) . . . . .	94
12.	Two Trusts Treated as Taxpayer’s Nominees. <i>United States v. Hovnanian</i> , 2022 WL 17959583 (D.N.J. Dec. 27, 2022) . . . . .	94
II.	ESTATE TAX . . . . .	95
A.	IRC § 2010. Unified Credit & Portability . . . . .	95
1.	Basic Exclusion Amount Adjusted for Inflation. Rev. Proc. 2022-38, § 3.41, 2022-45 I.R.B. 445 (Nov. 7, 2022) . . . . .	95
2.	Section 9100 Relief Allows Executor to Make Late Election of Portability if Estate is Under the Filing Threshold. PLRs 202343033 (Oct. 27, 2023); 202343027 (Oct. 27, 2023); 202341010 (Oct. 13, 2023); 202338004 (Sept. 22, 2023); 202339006 (Sept. 29, 2023); 202336003 (Sept. 8, 2023); 202332002 (Aug. 11, 2023); 202327013 (July 7, 2023); 202327002 (July 7, 2023); 202323002 (June 9, 2023); 202317013 (April 28, 2023); 202316003 (April 21, 2023); 202315009 (April 14, 2023); 202310009 (March 10, 2023); 202307006 (Feb. 17, 2023); 202306007 (Feb. 10, 2023); 202250009 (Dec. 16, 2022); 202248004 (Nov. 24, 2022); 202246004 (Nov. 17, 2022); 202243006 (Oct. 28, 2022); 202242003 (Oct. 21, 2022); 202241001 (Oct. 14, 2022); 202240016 (Oct. 7, 2022); 202240013 (Oct. 7, 2022) . . . . .	96
B.	IRC §§ 2031, 2032, 2032A, and 7520. Valuation . . . . .	97
1.	Final Regulations Update Actuarial Valuation Tables to Reflect 2010 Census. T.D. 9974, 88 Fed. Reg. 37424 (June 7, 2023) . . . . .	97
2.	IRS Updates the Interest Rates for Valuing Farmland under Section 2032A. Rev. Rul. 2023-15, 2023-34 I.R.B. 559 (Aug. 18, 2023) . . . . .	98
3.	IRS Adjusts Section 2032A Limitation for Inflation. Rev. Proc. 2022-38, § 3.41, 2022-45 I.R.B. 445 (Nov. 7, 2022) . . . . .	98
4.	Life Insurance Proceeds Used to Fund Stock Buy-Sell Agreement Increases the Fair Market Value of the Stock for Estate Tax Purposes. <i>Connelly v. United States</i> , 70 F.4th 412, 2023 WL 3769233 (8th Cir. June 2, 2023), <i>pet. for cert.</i> (Dkt. No. 23-146, Aug. 16, 2023) . . . . .	99
5.	Electing Special Use Valuation on a Very Late Estate Tax Return. <i>United States v. Parks</i> , 641 F.Supp.3d 419, 2022 WL 17085594 (E.D. Mich. Nov. 18, 2022) . . . . .	101
6.	IRS Rejects “Diminishing Utility” Valuation Discount for Ranchland. <i>Estate of Carrari v. Comm’r</i> , Tax Ct. Dkt. No. 3014-23 ( <i>pet.</i> filed March 10, 2023) . . . . .	102
C.	IRC §§ 2033. Property in Which the Decedent Had an Interest . . . . .	103
	Uncashed Gift Checks Includible in Deceased Donor’s Gross Estate. <i>Estate of DeMuth v. Comm’r</i> , T.C. Memo. 2022-72, <i>aff’d</i> , 2023 WL 4486739 (3rd Cir. July 12, 2023). . . . .	103



D.	IRC § 2053. Expenses, Indebtedness, and Taxes . . . . .	104
1.	Decedent’s Debts Bought by His Children Are Not Deductible Claims Against his Estate. <i>Estate of MacElhenny, Jr. v. Comm’r</i> ; T.C. Memo. 2023-33 (March 15, 2023) . . . . .	104
2.	Payments under Premarital Agreement and Amounts to Replace Decks Are Not Deductible Estate Debts or Expenses. <i>Estate of Sprizziri v. Comm’r</i> , T.C. Memo. 2023-25 (Feb. 28, 2023) . . . . .	105
E.	IRC § 2055. Charitable Deduction . . . . .	107
	CRAT is Deductible Only if Annuity Amount is Certain and Not Manipulable. <i>Estate of Block v. Comm’r</i> , T.C. Memo. 2023-30 (March 13, 2023) . . . . .	107
F.	IRC § 2056, 2044. Marital Deduction . . . . .	108
1.	Estate of New York Real Estate Developer Cannot Reduce Taxable Estate by Costs of Settlement of Suit Against Trustee. <i>Estate of Kalikow v. Comm’r</i> , T.C. Memo. 2023-21 (Feb. 27, 2023) . . . . .	108
2.	IRS Examines Requirement of Actual Conveyance of Property Assigned to QDOT. PLR 202332013 (Aug. 11, 2023) . . . . .	108
G.	Estate Tax Procedures . . . . .	109
1.	High-Flying Decedent Leaves Troubled Family Fiduciaries -- Trustees are Personally Liable for Estate Taxes Despite Not Possessing Decedent’s Assets on the Date of Death. <i>United States v. Paulson</i> , 68 F.4th 528, 2023 WL 3489050 (9th Cir. May 17, 2023), <i>rev’g and rem’g</i> 331 F. Supp. 3d 1066, 2018 WL 4282682 (S.D. Calif. 2018), <i>reconsideration denied</i> , 2018 WL 5920143, 122 A.F.T.R. 2d 2018-6648 (S.D. Calif. 2018), <i>pet. for cert.</i> (Dkt. No. 23-436, Oct. 26, 2023) . . . . .	109
2.	There is No Statute of Limitations on IRS Levy on a 200 Year Old Italian Cello In Order to Satisfy an Estate Tax Deficiency. <i>United States v. Firestone</i> , 2023 WL 3948633 (W.D. Wash. June 12, 2023) . . . . .	111
3.	2% Interest Rate on Deferred Estate Taxes on CloselyHeld Business Adjusted for Inflation. Rev. Proc. 2022-38, § 3.46, 2022-45 I.R.B. 445 (Nov. 7, 2022). . . . .	112
III.	GIFT TAX . . . . .	112
A.	IRC § 2503. Gift Tax Annual Exclusion . . . . .	112
	Annual Exclusion Adjusted for Inflation. Rev. Proc. 2022-38 § 3.43, 2021-45 I.R.B. 445 (Nov. 7, 2022). . . . .	112
B.	IRC § 2512. Valuation of Gifts . . . . .	112
	Tax Court Values Stock of Company Holding Largest Personal Residence in the United States and Other Finery. <i>Estate of Cecil v. Comm’r</i> , T.C. Memo. 2023-24 (Feb. 28, 2023). . . . .	112
C.	IRC § 2519. Dispositions of Certain Life Estates. . . . .	114
1.	Exchange of Remainder Interest in QTIP is a Taxable Transfer. <i>McDougall v. Comm’r</i> , Tax Ct. Dkt. No. 2458-22 (Petition filed, Feb. 18, 2022; Mot. for Partial Sum. Judg. filed, Jan. 19, 2023; Response filed, March 18, 2023). . . . .	114

2.	Good Planning When the Surviving Spouse Does Not Need the Marital Share. PLR 202339008 (Sept. 29, 2023) . . . . .	116
D.	Gift Tax Procedures . . . . .	117
1.	Tax Court Cannot Redetermine Interest Due on Gift Tax Deposit Absent Finding of an Overpayment. <i>Hill v. Comm’r</i> , 64 F.4th 1240, 2023 WL 2847906 (11th Cir. April 10, 2023), <i>aff’g</i> T.C. Memo. 2021-121 . . . . .	117
2.	Gift Tax Return for the Wrong Year Still Starts the Statute of Limitations. <i>Schlapfer v. Comm’r</i> , T.C. Memo. 2023-65 (May 22, 2023) . . . . .	118
IV.	GENERATION-SKIPPING TRANSFER TAX . . . . .	120
	IRC § 2601. GST Tax Imposed . . . . .	120
	GST Exemption Adjusted for Inflation. Rev. Proc. 2022-38, § 3.41, 2022-45 I.R.B. 445 (Nov. 7, 2022). . . . .	120
V.	PROPOSED LEGISLATION . . . . .	120
A.	Repeal . . . . .	120
1.	H.R. 25, 118th Cong., 1st Sess. (Jan. 9, 2023) – “The Fair Tax Act” . . . . .	120
2.	H.R.108, 118th Cong., 1st Sess. (Jan. 9, 2023) – “The Small Business Prosperity Act of 2023” . . . . .	120
3.	H.R. 338, 118th Cong., 1st Sess. (Jan. 13, 2023) – “The Permanently Repeal the Estate Tax Act of 2023” . . . . .	121
4.	H.R. 1040, 118th Cong., 1st Sess. (Feb. 14, 2023) – “The Flat Tax Act” . . . . .	121
5.	S. 1108, 118th Cong., 1st Sess. (March 30, 2023) – “The Death Tax Repeal Act of 2023” . . . . .	121
B.	Preserving the Increased Basic Exclusion Amount. H.R. 976, 118th Cong., 1st Sess. (Feb. 10, 2023) – “The TCJA Permanency Act” . . . . .	122
C.	Dept. of Treas., “General Explanations of the Administration’s Fiscal Year 2024 Revenue Proposals,” (March 9, 2023). <a href="https://home.treasury.gov/system/files/131/General-Explanations-FY2024.pdf">https://home.treasury.gov/system/files/131/ General-Explanations-FY2024.pdf</a> . . . . .	122
1.	Increase Top Marginal Income Tax Rate for High-Income Earners . . . . .	123
2.	Taxing Gains of High-Income Taxpayers as Ordinary Income Rates . . . . .	123
3.	Realization of Gains on Certain Gratuitous Transfers . . . . .	123
a.	Partial Interest Gifts . . . . .	124
b.	Transfers in Kind to or From a Noncorporate Entity . . . . .	124
c.	Spousal and Charitable Gifts . . . . .	124
d.	Tangible Personal Property . . . . .	125
e.	Personal Residence Transfers . . . . .	125
f.	Small Business Stock . . . . .	125
g.	\$5 Million Per Donor Exclusion . . . . .	125
h.	Basis . . . . .	125
i.	Deferral Elections . . . . .	126
j.	Appraisal Costs . . . . .	126
k.	Related Provisions . . . . .	126

1.	Effective Date. . . . .	127
4.	Minimum Tax on Wealthy Taxpayers. . . . .	127
a.	Calculating the Tax . . . . .	127
b.	Deferred Payment. . . . .	128
c.	Reporting . . . . .	128
d.	“Illiquid” Taxpayers. . . . .	128
e.	Estimated Tax Payments . . . . .	128
f.	Regulations. . . . .	129
g.	Effective Date. . . . .	129
5.	High-Income Taxpayers with Large Retirement Accounts . . . . .	129
a.	“High-Income Taxpayer” Defined. . . . .	129
b.	Aggregate Vested Account Balances Over \$20 Million . . . . .	130
c.	Which Account?. . . . .	130
d.	Increased Required Minimum Distribution (RMD). . . . .	130
e.	Reporting . . . . .	131
f.	Effective Date. . . . .	131
6.	Limit Rollovers and Conversions to Designated Roth Retirement Accounts or to Roth IRAs . . . . .	131
7.	Defined Value Formula Clauses . . . . .	132
a.	Permitted Defined Value Formula Clauses . . . . .	132
b.	Effective Date. . . . .	132
8.	Gift Tax Annual Exclusion . . . . .	132
9.	Limit the Duration of the GST Exemption . . . . .	133
a.	Section 2653. . . . .	133
(1)	Generation Assignment of the Grantor. . . . .	133
(2)	Expiration of the 90-Year Exemption Protection . . . . .	133
(3)	Multiple Grantors . . . . .	134
(4)	Pour-Over Trusts. . . . .	134
b.	Effective Date. . . . .	134
10.	Grantor Retained Annuity Trusts (GRATs) . . . . .	134
11.	Recognizing Gain on Sales Between the Grantor and the Grantor Trust . . . . .	135
12.	Payment of Tax on Grantor Trust Income as a Taxable Gift . . . . .	135
13.	Redetermining the GST Inclusion Ratio After Transactions with Other Trusts . . . . .	136
14.	GST Characterization of Certain Tax-Exempt Organizations . . . . .	136
15.	Limiting the Use of Charitable Lead Annuity trusts (CLATs) . . . . .	136
16.	Trust Loans . . . . .	137
17.	Consistent Valuation of Promissory Notes . . . . .	137
18.	Valuation Discounts for Partial Interests Transferred to Family Members. . . . .	138
a.	Assets Held by a Trade or Business. . . . .	138
b.	25% Rule . . . . .	138
c.	Effective Date. . . . .	139
19.	Other Changes. . . . .	139

a.	Definition of “Executor” . . . . .	139
b.	Increase the Limit on the Reduction in Value of Special Use Property. . . . .	139
c.	Extend Certain Estate and Gift Tax Liens Beyond 10-Years Duration . . . . .	139
d.	Require Reporting of Trust Information Including Estimated Total Value of Trust Assets . . . . .	140
(1)	Value and Income Thresholds. . . . .	140
(2)	GST Inclusion Ratio and Trust Modifications . . . . .	140
(3)	Effective Date . . . . .	140
e.	Private Foundation Payout Requirements . . . . .	141
(1)	Donor Advised Funds . . . . .	141
(2)	Payments to Disqualified Persons. . . . .	141
(3)	Effective Date . . . . .	141
D.	S. 1178, 118th Cong., 1st Sess. (April 18, 2023) and H.R. 2676, 118th Cong., 1st Sess. (April 18, 2023) – “The For the 99.5 Percent Act” . . . . .	141
1.	Raising Rates and Lowering Exemptions . . . . .	142
2.	Increasing the Limit on Special-Use Valuation. . . . .	142
3.	Liberalizing the Estate Tax Rules for Conservation Easements . . . . .	142
4.	Eliminating Basis Step-Up for Property in a Grantor Trust . . . . .	142
5.	Reducing Valuation Discounts . . . . .	143
6.	Limiting or Eliminating GRATs . . . . .	144
7.	Including Grantor Trust Assets in the Grantor's Gross Estate. . . . .	144
8.	Limiting the Benefit of the GST Exemption. . . . .	145
9.	Gift Tax Annual Exclusion . . . . .	145
II.	SELECTED ATTACHMENTS. . . . .	147
A.	IRS/Treasury Priority Guidance Plan for 2023-2024 (Sept. 29, 2023) -- Issues Related to Estate Planning . . . . .	147
B.	IRS No-Rulings – Domestic - List for 2023 -- Estate, Gift, GST Tax and Related Issues. Excerpts from Rev. Proc. 2023-3, 2023-1 I.R.B. 144 (Jan. 3, 2023) . . . . .	152
C.	IRS No-Rulings – International - List for 2023 -- Estate, Gift, GST Tax and Related Issues. Excerpts from Rev. Proc. 2023-7 2023-1 I.R.B. 305 (Jan. 3, 2023). . . . .	166

# AN ESTATE PLANNER'S PERSPECTIVE ON RECENT TAX DEVELOPMENTS: THE YEAR IN REVIEW

by

Howard M. Zaritsky, J.D., LL.M. (Tax)  
Rapidan, Virginia  
[www.howardzaritsky.com](http://www.howardzaritsky.com)<sup>1</sup>

## I. INTRODUCTION

The past year (well, 13 months, actually) has witnessed substantial changes in the estate, gift and generation-skipping transfer (GST) taxes and in the income tax laws relating to estate planning.

This outline summarizes the legislation, regulations, revenue rulings and procedures, decisions of the Tax Court, the Claims Court and the courts of appeals, as well as selected district court decisions, private rulings, notices, announcements and other Service documents from the past year.<sup>2</sup> This outline includes those developments reported publicly from October 1, 2022 through November 2, 2023.

---

<sup>1</sup> I thank Probate Practice Reporter, of which I am tax editor emeritus, for permission to use material published in that journal. Subscriptions to Probate Practice Reporter may be obtained at <http://www.probate-practice-reporter.com/Subscribe.asp>.

<sup>2</sup> Private letter rulings (PLRs) and technical advice memoranda (TAMs) are not legal precedents. IRC § 6110(k)(3). They may, however, show how the Service might address a similar case, and they have been cited and discussed by several courts. See, e.g., *Wolpaw v. Comm'r*, 747 F.3d 787 (6th Cir. 1995), *rev'g* T.C. Memo. 1993-322 (taxpayers can rely on 20year old PLR, absent definitive regulations); *Xerox Corp. v. United States*, 656 F.2d 659 (Ct. Cl. 1981) (stating that PLRs are useful in ascertaining the scope of the doctrine adopted by the Service and demonstrating its continued and consistent application by the Service); *Estate of Blackford v. Comm'r*, 77 T.C. 1246 (1982) (noting that the Service litigation position was contrary to a prior PLR); *Hardy v. Comm'r*, T.C. Memo. 2017-17 (during litigation, IRS released a TAM presenting the same issues as this case, and the court ordered supplemental briefs, and in its opinion, the court stated that “[a]lthough the technical advice memorandum is not precedential [footnote citing Sec. 6110(k)(3)], it shows that the Hardys’ grouping was not clearly inappropriate”); *Fanning v. United States*, 568 F.Supp. 823 (E.D. Wash. 1983) (noting that a distinction between the facts of the instant case and those of prior cases had been cited in a TAM, and that TAMs are often relied upon by the courts).

All references to “IRC” or to “Code” are to the Internal Revenue Code of 1986, as amended to date, unless otherwise specifically indicated. References to “Reg” are to the regulations of the Treasury Department, unless otherwise specifically indicated.

The tax developments in this outline are divided into four categories: Income Tax, Estate Tax, Gift Tax, Generation-Skipping Transfer Tax, and Proposed Tax Legislation. The first three categories are each arranged by Internal Revenue Code section, except that a few consolidated discussions examine the developments relating to life insurance, family partnerships and LLCs, grantor trusts, charitable remainder trusts, and various procedural rules.

There is also an additional section, “Selected Attachments,” that includes discussions of certain cases that affect tax planning indirectly, sample forms illustrating some of the planning techniques discussed in this outline, and other related items, such as relevant portions of the IRS “no-rulings” list and the Treasury/IRS Priority Guidance.

## II. INCOME TAX

### A. IRC § 1. Income Tax Rates

#### **Income Tax Rates Adjusted for Inflation. Rev. Proc. 2022-38, §§ 3.01, Table 5, 3.02. 2022-45 I.R.B. 445 (Nov. 7, 2022)**

The 2023 income tax rates for trusts and estates under Section 1 are as follows:

<i>Income</i>	<i>Rate</i>
Not over \$2,900	10%
Over \$2,900 but not over \$10,550	\$290 + 24% on excess over \$2,900
Over \$10,550 but not over \$14,450	\$2,126 + 35% on excess over \$10,550
Over \$14,450	\$3,491 plus 37% on excess over \$14,450

For 2023, the kiddie tax will be imposed on net unearned income over \$1,250 and a parent can again elect to include in gross income up to \$12,500 of a child’s income. See IRC § 1(g)(4)(A)(ii)(II).

**Note.** Unofficial projections for 2024 are:

<i>Income</i>	<i>Rate</i>
Not over \$3,100	10%
Over \$3,100 but not over \$11,150	\$310 + 24% on excess over \$3,100

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: The Year in Review: An Estate Planner's Perspective on Recent Tax Developments

Also available as part of the eCourse

[2023 Stanley M. Johanson Estate Planning eConference](#)

First appeared as part of the conference materials for the 2023 Stanley M. Johanson Estate Planning Workshop session "Recent Developments Affecting Estate Planning"