

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

by

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

by

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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.² This outline includes those developments reported publicly from October 1, 2022 through November 2, 2023.

¹ 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>.

² 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 20-year 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ordered supplemental briefs, and in its opinion, the court stated that “[a]lthough the technical advice memorandum is not precedential [footnote citing Sec. 6110(k)(3)], it shows that the Hardys’ grouping was not clearly inappropriate”); *Fanning v. United States*, 568 F.Supp. 823 (E.D. Wash.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 |

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