

Recent Developments in Estate Planning and Estate and Trust Administration

Charles D. Fox IV

www.mcguirowoods.com

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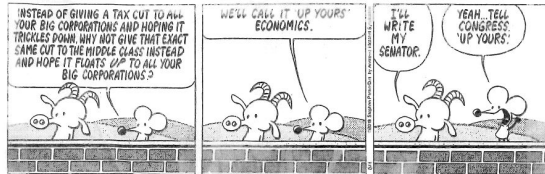
PART A

Confronting the Challenges of Tax Reform: What Happened to the Certainty of Death and Taxes?

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PEARLS BEFORE SWINE

STEPHAN PASTIS



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Why are these people smiling?



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What is President Trump doing?



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Introduction

- Enactment of 2017 Tax Act
 - Briefly called "Tax Cuts and Jobs Act" or "Reconciliation Act of 2017"
 - Official Title: "To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018"
 - Passed House on December 19, 2017 by a vote of 227-203
 - No Democrat voted for the Act and 13 Republicans voted against it
 - Senate parliamentarian determined that three provisions (including the name of the Act) were extraneous to reconciliation and were removed
 - Passed Senate by a party-line vote of 51-48 on December 20, 2017
 - Signed by the President on December 22, 2017

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“LAFTRA”

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“Lawyers, Accountants, Financial Professionals, and Trust Professionals Relief Act”



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General Description

- Alters individual income taxation
- Reduces corporate income taxes
- New form of taxing pass-through income
- Modified territorial system
- Doubles estate tax exemption to \$11,180,000 (estimate)

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Doubling of the estate and gift tax basic exclusion amount and GST exemption

2018 Amounts for Individuals	
Gift & Estate Tax Basic Exclusion Amount	\$11.18M
GST Exemption Amount	\$11.18M

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Who is this?



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Estate and Gift Planning

- Sunset on January 1, 2026
 - Increased gift and estate tax exclusion amount and GST exemption sunset
 - Most individual income tax provisions sunset, with limited exceptions
- Chained Consumer Price Index
 - Department of Labor Chained Consumer Price Index for All Urban Consumers
 - Slows increases in rate brackets
 - Change to C-CPI-U index does not sunset
- Clawback
 - Unlikely, but not impossible

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Estate planning techniques to be considered

- Gifts to existing or new irrevocable trusts
- Leveraging gifts
- Pairing gifts with philanthropy
- Flexibility in the use of portability or credit shelter trusts at the first spouse's death

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International Estate Planning

- Exemption for NRAs remains at \$60,000
- No change to rate schedule
- New concerns about use of foreign blocker corporations by NRAs

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Income Taxes

- Changes to income taxes for individuals, estates and trusts
 - MOST only in effect during Covered Years
- Corporate tax changes are permanent for most part

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The Taxman Giveth...and the Taxman Taketh Away

Household Gains and (Losses) from the Tax Cuts and Jobs Act of 2017 2018-2027, \$ billions			
Lower tax rates and wider income brackets	1,214	Repeal of personal exemptions	(1,212)
Higher standard deductions	720	Limitation on SALT and mortgage interest	(668)
Increased AMT exemptions and phase-outs	637	Repeal the ACA individual mandate	(314)
Increase the child tax credit	544	Change in inflation adjustment	(134)
20% deduction on pass-through income	265	Miscellaneous	(9)
Higher estate and GST exemptions	83		
Addition to household income	3,463	Subtraction from household income	(2,337)
Net Benefits	1,127		

Source: The Joint Committee on Taxation and BBH Analysis

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Unmarried Individuals

New 2018 Tax Brackets and Rates

Not over \$9,525	10%
Over \$9,525 but not over \$38,700	12%
Over \$38,700 but not over \$82,500	22%
Over \$82,500 but not over \$157,500	24%
Over \$157,500 but not over \$200,000	32%
Over \$200,000 but not over \$500,000	35%
Over \$500,000	37%

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Married Individuals Filing Joint Returns and Surviving Spouses

New 2018 Tax Brackets and Rates

Not over \$19,050	10%
Over \$19,050 but not over \$77,400	12%
Over \$77,400 but not over \$165,000	22%
Over \$165,000 but not over \$315,000	24%
Over \$315,000 but not over \$400,000	32%
Over \$400,000 but not over \$600,000	35%
Over \$600,000	37%

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Estates and Trusts	
New 2018 Tax Brackets and Rates	
Not over \$2,550	10%
Over \$2,550 but not over \$9,150	24%
Over \$9,150 but not over \$12,500	35%
Over \$12,500	37%

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Individual Income Tax Planning

- Kiddie Tax
 - No longer applies parents' income tax rate to minor's unearned income
 - Tax Act applies the income and capital gains rates applicable to trusts and estates to a child's unearned income
 - 10% up to \$2,550
 - 24% up to \$9,150
 - 35% up to \$12,500
 - 37% on excess over \$12,500
 - Change to Standard Deduction

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Individual Income Tax Planning

- Modification and Elimination of Deductions
 - State, local and foreign taxes
 - Deduction for state and local income, sales, and property taxes that are not related to a trade or business is limited to \$10,000 for joint filers and unmarried individuals and \$5,000 for a married individual filing separately
 - Not indexed figures
 - Deduction for home mortgage interest
 - Deduction limited to interest paid on acquisition indebtedness incurred after December 15, 2017 of up to \$750,000 (previously \$1,000,000)
 - Not an indexed figure
 - Suspension of deduction for interest on home equity indebtedness
 - Alimony deduction eliminated (permanent)

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Modification to Alternative Minimum Tax Exemption Amount

AMT Exemption Amounts			
2017 AMT Exemption Amounts for Individuals		New AMT Exemption Amounts for Individuals	
Unmarried Individuals	\$54,300	Unmarried Individuals	\$70,300
Married Individuals Filing Joint Returns	\$84,500	Married Individuals Filing Joint Returns	\$109,400
Estates and Trusts	\$24,100	Estates and Trusts	\$24,100

- Threshold for phase out increased to \$1,000,000 for married individuals

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Permanence of Roth IRA Conversions

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Taxation on U.S. Businesses and C Corporations

- Corporate income tax flat rate of 21 percent
- Corporate AMT repealed
- Corporate net operating losses limited
- Top marginal rate on distributions of 39.8% (21%+(79%*23.8%))
- No sunset

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Economic Implications of Corporate Tax Reform

Corporate Gains and (Losses) from the Tax Cuts and Jobs Act of 2017 2018-2027, \$ billions			
21% statutory corporate tax rate	1,349	Changes to the treatment of foreign operations	(377)
Accelerated expensing of investments	112	Other limitations on corporate deductibility	(352)
Other international tax changes	53	Limitation on deductibility of interest paid	(253)
		Limit use of net operating losses	(201)
Addition to corporate income	1,514	Subtraction from corporate income	(1,184)
Net Benefits	330		

Source: The Joint Committee on Taxation and BBH Analysis.

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Pass-Throughs – Section 199A



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WHAT ME WORRY?

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Income Taxation of Pass-Thru Entities

- Deduction for qualified business income from pass-thru entities to individuals and trusts and estates.
- 20% deduction against pass-thru business income for joint filers up to \$315,000 of income.
- If the income of the joint filer is above \$315,000, the deduction is limited to the lesser of:
 - 50% of W-2 wages of qualified business; or
 - 25% of W-2 wages plus 2.5% the unadjusted basis of all qualified property
- These provisions, like most other individual tax provisions, are not permanent and sunset January 1, 2026.

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Income Taxation of Pass-Thru Entities

- Income from certain specified service companies is phased out and ultimately eliminated
- These include: health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerages services, reputation/skill-based services, investment management/trading
- Architecture/engineering businesses are not per se excluded

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Income Taxation of Pass-Thru Entities

- How will these “disfavored” categories be interpreted?
 - Section 1202?
 - Section 448(d)?
- What is the definition reputation or skill-based?
- How does rental property fit in? “real estate” exception to wage limitation?
- Can one entity have multiple trades/businesses?
- Will the IRS aggregate various entities owned by one taxpayer or among common taxpayers?

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Taxation of U.S. Businesses

- Carried interests
- Business interest expenses
- Bonus depreciation
- Like-kind exchanges
- Entertainment deductions largely eliminated

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Charitable Issues

- Charitable contribution deduction percentage limitations
- UBIT
- College and University Endowments

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Broadening Use of 529 Accounts

- Now includes qualified expenses for elementary and high school education up to \$10,000 per year, per student
- Expansion of able accounts, including limited roll-overs from 529 to able

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Fiduciary Income Taxation

- Tax Rates
- Trusts and Estates Retain Personal Exemptions
 - Estate \$600
 - Complex trust \$100
 - Simple trust \$300
- Items still deductible under Section 67(e):
 - Trustee Fees
 - Legal fees related to the administration of a trust or estate
 - Cost of preparing estate tax returns and fiduciary income tax return
 - Administrative fees for items such as appraisals and accountings
 - State and local income and property taxes on assets held in a trust or estate up to the \$10,000 limitation

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Fiduciary Income Taxation

- Items still deductible under Section 67(e) (cont'd):
 - State personal and real estate taxes on a trade or business owned by a trust or estate
 - Interest (subject to the same rules and limits as before 2018)
 - Charitable distributions for amounts specifically allocable or payable to charity by the governing will or trust instrument pursuant to Section 642(c)
 - Amortized bond premiums and original issue discount.
- Electing Small Business Trusts
 - Nonresident aliens are now permissible ESBT beneficiaries
 - Charitable contribution deduction of an ESBT determined by rules applicable to individuals under section 170 rather than the rules applicable to trusts under section 642(c)
 - Changes do not sunset

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691(c) Deduction for Income in Respect of a Decedent Taxed to Estate OR BENEFICIARY

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Planning for Clients in Light of Tax Reform

- Primary Areas of Consideration/Discussion
 - Recommended Estate Planning Structure for (Joint) Estates under \$20 million
 - Planning for the Sunset as of January 1, 2026
 - Tax allocation of GST-Tax exemption
 - Addressing the potential of a “clawback” of transfer tax exemption and apportionment of potential transfer taxes on gifts and bequests
- Further Considerations
 - State Estate Tax
 - Modifying existing trusts for basis step-up
 - Evaluating other existing estate planning

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Planning for Clients in Light of Tax Reform

- Recommended Estate Planning Structure for (Joint) Estates under \$20 million
 - Increased use of disclaimer and formula planning
 - Allows for post-mortem decision on trust funding and use of exemption
 - May not be appropriate in all family situations
 - Over-funded credit shelter trust can have costs
 - No step up in basis at death of surviving spouse
 - Income taxation of credit shelter trust
 - Evaluate interest of surviving spouse in credit shelter trust as qualifying for elective share
 - Strike a balance?
 - Formula driven allocation based on minimum funding of marital trust/share
 - Grant power to third party to allocate trust assets between shares (limited power of appointment)

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Planning for Clients in Light of Tax Reform

- Planning for the Sunset as of January 1, 2026
 - Alternative funding language based on law (remember pre-2010 drafting?)
 - If exemption amount is \$11 million (or more) then fund as follows
 - If exemption amount has reverted to pre 2017 Tax Act level, then fund as follows
 - Use increase in GST Tax Exemption
 - Consider allocating GST exemption to non-exempt trusts
 - Late allocation based on current fair market value of trust assets
 - Review trust provisions to ensure efficient and appropriate use of exemption
 - Evaluate existing GRATs and QPRTs set to expire prior to 1/1/2026 to allocate exemption at end of term
 - Clawback possible but not likely

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Planning for Clients in Light of Tax Reform

- Addressing the potential of a “clawback” of transfer tax exemption and apportionment of potential transfer taxes on gifts and bequests
 - Code section 2001(g)
 - Congress punts to Treasury on the issue
 - Most commentators agree what law will be under current administration
- Assume there is no clawback, and:
 - Current exemptions are extended (or made permanent); or
 - Increased exemptions expire at the end of 2025 as planned
- But what if there was clawback?
 - Estate and gift tax issues
 - Tax apportionment issues
- Counsel clients on hypothetical risks

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Planning for Clients in Light of Tax Reform

- Further Issues for Consideration: State Estate Tax
 - Eighteen jurisdictions retain a state transfer tax: Connecticut, the District of Columbia, Hawaii, Illinois, Iowa (inheritance tax only), Kentucky (inheritance tax only), Maine, Maryland, Massachusetts, Minnesota, Nebraska (county inheritance tax only), New Jersey (inheritance tax only), New York, Oregon, Pennsylvania (inheritance tax only), Rhode Island, Vermont, and Washington
 - Federal estate tax deduction remains for payment of state estate tax
 - Top state tax rate is generally 16% (49.6% combined top federal and state rates)
 - Nonresident taxpayers may face state transfer tax issues for property located in such a state
 - State QTIP elections (9 jurisdictions)
 - No state estate tax portability (except Hawaii) complicates funding considerations at death of first spouse
 - Change in domicile

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Planning for Clients in Light of Tax Reform

- Further Issues for Consideration: “Portability”
 - Deceased spousal unused exclusion (DSUE)
 - Value of portability to family:
 - Approximately twice as valuable for estate tax purposes
 - Approximately twice as valuable for income tax purposes (basis step-up)
 - Temporary (only for 2018-2025 decedents)
 - Gifting by donors with existing DSUE
 - Review funding formulas and make portability election as needed
 - Clawback?
 - GST tax exemption not portable
 - As noted, portability generally not helpful for state estate taxes

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Planning for Clients in Light of Tax Reform

- Further Issues for Consideration: Modifying existing trusts and planning for basis step-up
 - Review terms of governing trust instrument
 - Revocable vs. irrevocable trusts
 - Beneficiary withdrawal rights and powers of appointment
 - Distributions for "best interests"
 - Trust protectors
 - Look to state law for solutions if irrevocable trust inflexible
 - Decanting statutes
 - Nonjudicial settlement agreement statutes
 - Directed trustee statutes
 - Judicial modification

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Planning for Clients in Light of Tax Reform

- Further Issues for Consideration: Evaluating other existing estate planning
 - Life insurance
 - Family limited partnerships / LLCs
 - Grantor retained annuity trusts (GRATs)
 - Intentionally defective grantor trusts (IDGTs)
 - Installment sales to IDGTs
 - Client desire for simplicity vs. non-tax benefits of estate planning structures

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Case Study A

- Anne is a widow whose husband died in 1995
- She and the children are beneficiaries of a credit shelter trust originally funded with \$600,000
- Current value of trust assets = \$1,000,000
- Anne's other assets are valued at \$3,000,000
- Anne is 89 years old

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Case Study B

- Bob and Sandy are 65. They have two children and four grandchildren. They live in Virginia (no state estate tax).
- They have assets of \$10 million
- Current estate plan relies on portability
- Variations:
 - Live in state with estate tax
 - Second marriage, they each have two children and four grandchildren
 - Assets of \$20 million
 - Age 85

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Case Study C

- Carlos and Maria are in their 40s
- They have three minor children
- They have assets in excess of \$100 million, largely from the sale of a business Maria started and sold
- Both Carlos and Maria are currently involved with new start up businesses

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Case Study D

- Diana is a 85 year old widow whose husband Art died 20 years ago
- Prior to Art's death, they formed an FLP and funded it with real property and securities
- Art's interest in the FLP passed to their 3 children and 3 GST trusts at his death
- Diana made gifts of ~\$5 million prior to this year
- Diana still owns 27% of the FLP (FMV ~\$4 million)
- Diana has assets outside the FLP (FMV ~5 million)

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Case Study E

- Ed owns a successful construction business worth \$20 to \$40 million, as well as a large home and other assets
- Ed and Jennifer have 5 children, all minors
- Ed supports his mother Frances, who is 75, has very few assets, and is in relatively poor health

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Case Study F

- Fran founded a manufacturing business taxed as an S-corporation and has, over the years given, and sold 70% to children/grandchildren and (PRIMARILY) to a multi-generation, grantor trust
- Fran, now 87 and retired, holds a note from the grantor trust
- Various family members work for the company and all enjoy distributions
- The company would like to make investments and benefit from the 21% income tax rate

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Case Study G

- George, an accomplished professional athlete, provides life-style advice, conducts fitness consulting and sells various fitness / diet products
- can the advice/consulting services be separated from the fitness/diet products? What about book sales? Or online course subscriptions about health generally?
- How important is George's personal reputation to the company?
- Can George associate with other similar gurus to "diminish" the importance of his personal skills to the enterprise?

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PART B

Recent Developments

1. IRS Proposes Regulations on Section 199A (August 8, 2018)

- **IRS proposes new regulations on passthrough deduction under new Section 199A**

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2. Notice 2018-54, 2018-24 I.R.B. 750 (May 23, 2018)

- **IRS provides guidance on certain payments made in exchange for state and local tax credits**

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3. Press Release: Treasury Issues Proposed Rule on Charitable Contributions and State and Local Tax Credits (August 23, 2018)

- Department of Treasury issues proposed rule on federal income tax treatment of payments and property transfers under state and local tax credit programs

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4. 2017–2018 Priority Guidance Plan (October 20, 2017)

- Treasury Department and the Internal Revenue Service release their 2017–18 priority guidance plan

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5. Revenue Procedure 2017-58, 2017-45 I.R.B. 19 (October 19, 2017)

- Inflation adjustments for 2018 announced

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6. Letter Rulings on Extension of Time to Make Portability Election

- Extension of time to make portability election permitted

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7. Notice 2017-12, 2017-5 I.R.B. 742 (January 6, 2017)

- IRS provides guidance on methods available to confirm closing of the estate tax return examination

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8. Letter Ruling 201751005 (Issued September 18, 2017; Released December 22, 2017)

- IRS grants extension of kind to make QTIP election

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9. **Karen S. True v. Commissioner**, Tax Court Docket No. 21896-16 and **H. A. True III v. Commissioner**, Tax Court Docket No. 21897-16 (Petitions filed October 11, 2016)

- IRS attacks use of **Wandry** clause in gift and sale of interests in a family business

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10. Letter Rulings 201744006 and 201744007 (Issued July 26, 2017; Released November 3, 2017)

- Contributions of property to trust by grantors is not a completed gift subject to gift tax

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11. Letter Ruling 201803003 (Issued October 6, 2017; Released January 9, 2018)

- Proposed trust modifications will not trigger gift or generation-skipping tax

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12. Letter Ruling 2018808002 (Issued January 6, 2017; Released February 23, 2018)

- Service rules on gift tax consequences of gift of life estate interest in pre-October 9, 1990 transaction

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13. Letter Ruling 201825003 (Issued March 9, 2018; Released June 22, 2018)

- Transfer of the legal title, naked ownership, and remainder interest in and to artwork as defined by the deed of transfer is a completed gift for gift tax purposes

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14. **Estate of Sommers v. Commissioner**, 149 T.C. No. 8 (2017)

- Tax Court denies estate tax deduction for gift tax owed at death by decedent on gifts to decedent's nieces

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**15. Letter Rulings 201737001 and 201737008
(Issued June 14, 2017; Released
September 15, 2017)**

- Reformation of power of appointment to make it a limited power of appointment is recognized

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**16. CCA 201745012 (Issued August 4,
2017; Released November 9, 2017)**

- Purchase of remainder interest in transferred property in which donor retained annuity, which purchase occurred on donor's death bed during the term of the annuity, failed to replenish donor's taxable estate and failed to constitute adequate and full consideration for gift tax purposes

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**17. Badgley v. United States, _____
F.Supp.3d _____ (ND Cal 2018)**

- The assets of a GRAT are included in the settlor's estate

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**18. Letter Ruling 201819010 (Issued
February 8, 2018; Released May 11,
2018)**

- IRS grants extension of time to make Section 754 election

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**19. Letter Ruling 201743013 (Issued July
26, 2017; Released October 27, 2017)**

- Grandson's sale of interest in specially valued farm property to Daughter within 10 years of decedent's death will not cause an additional tax under Section 2032A

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**20. Letter Ruling 201814004 (Issued
December 11, 2017; Released April 6,
2018)**

- IRS allows extension of time to make special use valuation election for farmland

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21. Letter Ruling 201820010 (Issued February 13, 2018; Released May 18, 2018)

- IRS allows extension of time for estate to elect alternate valuation date

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22. Letter Ruling 201815001 (Issued December 11, 2017; Released April 13, 2018)

- IRS allows extension to elect alternate valuation date

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23. Letter Ruling 201825013 (Issued March 19, 2018; Released June 22, 2018)

- IRS grants an extension of time to make the alternate valuation election

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24. Estate of Clara M. Morrissette v. Commissioner, ___ Tax Court Order (June 21, 2018)

- Court denies partial summary judgment motion of estate that Section 2703 does not apply to split-dollar arrangement

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25. Cahill v. Commissioner, T.C. Memo 2018-84; subsequently settled on August 16, 2018

- Taxpayer's motion for summary judgment with respect to split-dollar arrangement is denied

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26. RERI Holdings LLC v Commissioner, 149 T.C. No. 1 (July 3, 2017)

- Tax Court denies income tax charitable donation for gift of LLC interest

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**27. 310 Retail, LLC v. Commissioner,
T.C. Memo 2017-164**

- Deed of easement constitutes contemporaneous written acknowledge for charitable income tax deduction for gift of conservation easement

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28. Big River Development, LP v. Commissioner, T.C. Memo 2017-166

- Deed of easement constitutes contemporaneous written acknowledge of charitable gift

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**29. Ohde v Commissioner, T.C. Memo,
2017-137**

- Husband and Wife denied income tax charitable contribution deduction for over 20,000 items donated to Goodwill Industries in 2011

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**30. Roth v. Commissioner, T.C. Memo
2017-246**

- Couple liable for penalties for overstating value of easement donation

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31. Wendell Falls Development, LLC v. Commissioner, T.C. Memo 2018-45

- No charitable contribution deduction is allowed for the donation of a conservation easement and no penalty is applicable

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**32. Notice 2017-73, 2017-51 IRB 562
(December 4, 2017)**

- IRS describes approaches being considered to address certain issues regarding Donor Advised Funds

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33. Letter Ruling 201750014 (Issued September 12, 2017; Released December 15, 2017)

- Extension of time granted to sever a marital trust into exempt and non-exempt trust and to make a reverse QTIP election

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34. Letter Rulings 201820007 and 201820008 (Issued February 5, 2018; Released May 18, 2018)

- Proposed distribution from one generation-skipping tax exempt trust to another exempt trust will not cause either trust to lose their exempt status

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35. Letter Ruling 201815012 (Issued November 14, 2017; Released April 13, 2018)

- Extension of time granted to allocate spouse's available GST exemption

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36. Letter Ruling 201747002 (Issued August 9, 2017; Released November 24, 2017)

- Executor granted extension of time to allocate decedent's GST exemption to family trust

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37. Letter Ruling 201801001 (Issued September 20, 2017; Released January 5, 2018)

- Estate granted an extension of time to allocate GST exemption

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38. Letter Rulings 201803001 and 201803002 (Issued September 18, 2017; Released January 19, 2018)

- Extension of time to allocate GST exemption granted

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39. Letter Rulings 201811002 and 201811003 (Issued November 27, 2017; Released March 16, 2018)

- Service rules on application of split-gift rules to the allocation of GST exemption

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40. Letter Ruling 201736017 (Issued June 1, 2017; Released September 8, 2017)

- IRS permits an extension of time to elect out of the automatic allocation rules with respect to GST tax

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41. Letter Ruling 201737006 (Issued June 12, 2017; Released September 15, 2017)

- Extension of time to opt out of automatic allocation rules for GST exemption permitted

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42. Letter Ruling 201737007 (Issued June 1, 2017; Released September 15, 2017)

- IRS permits taxpayer to opt out of automatic allocation GST exemption

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43. Letter Rulings 201743004 and 201743005 (Issued July 3, 2017; Released October 27, 2017)

- IRS allows extension to elect out of the automatic allocation of GST exemption rules

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44. Letter Rulings 201731005 and 201731010 (Issued April 3, 2017; Released August 4, 2017)

- Taxpayer found to have complied with the essential requirements necessary to allocate GST exemption to irrevocable trust

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45. Letter Ruling 201735009 (Issued May 25, 2017; Released September 1, 2017)

- Judicial reformation of trust will not subject the trust to GST tax

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46. Letter Rulings 201814001 and 201814002 (Issued December 11, 2017; Released April 6, 2018)

- Construction of ambiguous terms of grandfathered GST trust will have no adverse generation-skipping tax, gift tax, or income tax consequences

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47. Letter Ruling 201818005 (Issued January 16, 2018; Released May 4, 2018)

- Partition of trust in accordance with terms of partition order will have no adverse income, gift, or generation-skipping tax consequences

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48. Letter Ruling 201825007 (Issued March 15, 2018; Released June 22, 2018)

- Modification of GST grandfathered trust will not affect exempt status

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49. Letter Ruling 201825023 (Issued March 9, 2018; Released June 22, 2018)

- IRS grants decedent's estate an extension of time to sever a residuary trust into an exempt and non-exempt residuary trust

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50. Letter Ruling 201732029 (Issued April 20, 2017; Released August 11, 2017)

- Reformation of grandfathered GST Trust to correct scrivener's error will have no adverse estate, gift, or generation-skipping tax consequences

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51. Letter Ruling 201735005, (Issued May 8, 2017; Released September 1, 2017)

- Inadvertent payment by trust beneficiary of federal and state income taxes will not have adverse estate, gift, or GST tax consequences

McGuireWoods | Part B-51

52. Letter Ruling 201807001 (Issued November 13, 2017; Released February 16, 2018)

- IRS recognizes reformation of trust to qualify as a grantor trust for income tax purposes

McGuireWoods | Part B-52

53. Letter Ruling 201803004 (Issued September 28, 2017; Released January 19, 2018)

- IRS grants extension to trust for charitable contribution election

McGuireWoods | Part B-53

54. Green v. United States, 880 F.3d 519 (10th Cir. January 12, 2018)

- Income tax charitable deduction for non-grantor trust limited to trust's adjusted basis in properties donated to charity

McGuireWoods | Part B-54

55. Kimberly Rice Kaestner 1992 Family Trust v. North Carolina Department of Revenue, ___ N.C. ___ (2018)

- N.C. Supreme Court holds that income taxation of out-of-state trust is unconstitutional

McGuireWoods | Part B-55

56. Fielding v. Commissioner, ___ Minn. ___ (July 18, 2018)

- Attempt of Minnesota to tax irrevocable non-grantor trusts as resident trusts for state income tax purposes is unconstitutional under the due process clauses of United States and Minnesota Constitutions

McGuireWoods | Part B-56

57. Notice 2018-61, 2018-31 IRB (July 13, 2010)

- IRS to issue regulations on effect of Section 67(g) on certain deductions for estates and nongrantor trusts

McGuireWoods | Part B-57

58. Georgia House Bill 441

- Georgia Governor vetoes domestic asset protection trust legislation

McGuireWoods | Part B-58

59. Toni 1 Trust v. Wacker, ___ AK ___ (March 2, 2018)

- Alaska Supreme Court determines that Alaska state courts do not have exclusive jurisdiction over fraudulent transfer actions under AS 34.40.110(k)

McGuireWoods | Part B-59

60. In re Olson, ___ F. Supp. 3d ___ (C.D. Cal 2018)

- U.S. District Court declines to approve settlement of bankruptcy trustee with respect to offshore trust

McGuireWoods | Part B-60

61. In re Matter of the Estate of Anne S. Vose v. Lee, 390 P.3d 238 (Okla. Jan. 17, 2017)

- Decedent's executor had a fiduciary obligation to the surviving spouse to file an estate tax return to elect portability of the deceased spousal unused exclusion amount even though under a premarital agreement the surviving spouse was not an heir or distributee of the decedent's estate

McGuireWoods | Part B-61

62. Du Pont v. Wilmington Trust Company, C.A. No. 12839-VCS (Del. Ch. Oct. 6, 2017)

- Delaware Chancery Court refuses to grant trust beneficiary's petition to remove the trustee of five directed trusts when the grounds for removal did not relate directly to matters of trust administration

McGuireWoods | Part B-62

63. Saccani v. Saccani, No. C078958, 2016 WL 6068962 (Cal. Ct. App. Oct. 17, 2016)

- California court interprets a shareholder agreement to permit a shareholder's pre-death transfer of shares to a revocable trust after that shareholder gave another shareholder the option to purchase the shares after the transferring shareholder's death, even though the shareholder agreement itself only authorized share transfers to trusts for the benefit of a shareholder's descendants

McGuireWoods | Part B-63

64. Gray v. Binder, 805 S.E.2d 768 (2017)

- The Commissioner of Accounts had the authority to hear a petition filed by the administrator of an estate for advice and guidance regarding the interpretation of the will and the determination of the proper heirs of the decedent

McGuireWoods | Part B-64

65. Lawson v. Collins, No. 03-17-00003-CV, 2017 WL 4228728 (Tex. App. Sept. 20, 2017)

- An arbitration award is final and binding on all participating parties and has the effect of a court order, regardless of whether all parties agree to the terms of the arbitration award. Absent evidence of statutory grounds for overturning such award, or evidence that such award is the result of fraud, misconduct or gross mistake, an arbitration award will be affirmed and confirmed

McGuireWoods | Part B-65

66. Ajemian v. Yahoo!, Inc. 84 N.E. 3d 766 (Mass. 2017), petition for cert. docketed sub nom. Oath Holdings, Inc. v. Ajemian (U.S. Jan. 19, 2018) (No. 17-1005)

- The Stored Communications Act (the "SCA") does not prevent Yahoo!, Inc. ("Yahoo") from voluntarily disclosing emails from a decedent's account to the decedent's personal representatives at the request of the personal representatives; it remains to be settled whether the SCA compels Yahoo to do the same

McGuireWoods | Part B-66

67. Higgerson v. Farthing, 2017 WL 4224476 (Va. Cir. Ct. 2017)

- A Trustee was held liable for breach of fiduciary duty and for excessive fees where the trustee was unnecessarily engaged in aggressive day trading and margin trading and his fees were not reasonable in relation to the work actually required to fulfill his fiduciary duties

McGuireWoods | Part B-67

68. Bradley v. Shaffer, 535 S.W.3d 242 (Tex. App. 2017)

- The transfer of a beneficial interest in trust property by a beneficiary was void because the trust contained a valid spendthrift provision, and the doctrine of after-acquired title is not applicable to a void transfer

McGuireWoods | Part B-68

69. Hodges v. Johnson, 2017 WL 6347941 (N.H. 2017)

- The Supreme Court of New Hampshire affirmed an order declaring a trust decanting void ab initio and removed the trustees for breach of duty of impartiality

McGuireWoods | Part B-69

70. Matter of Sinzheimer, 2017 N.Y. Slip Op. 31379(U) (Surr. Ct. New York Cnty.)

- Corporate trustee removed under the terms of the trust was not required to deliver the trust assets to individual co-trustee when a successor corporate trustee had not been appointed

McGuireWoods | Part B-70

71. IMO Ronald J. Mount 2012 Irrevocable Dynasty Trust U/A/D December 5, 2012, No. CV 12892-VCS, 2017 WL 4082886 (Del. Ch. Sept. 7, 2017)

- Delaware Chancery Court holds that a trust instrument may allow a trust protector to act in a non-fiduciary capacity. Therefore, it dismissed a claim against a trust protector for breach of fiduciary duties

McGuireWoods | Part B-71

72. Laborers' Pension Fund v. Miscevic, No. 17-2022 (7th Cir. Jan. 29, 2018)

- ERISA does not preempt the Illinois slayer statute, and the Illinois slayer statute applies where the deceased was killed by an individual found not guilty by reason of insanity

McGuireWoods | Part B-72

73. Metropolitan Life Ins., Co. v. Teixeira, Civ. No. 16.07486 (D.N.J. 2017)

- Interpleader protection does not extend to counterclaims that are not claims to the interpleaded funds

McGuireWoods | Part B-73

74. Harvey ex rel. Gladden v. Cumberland Tr. & Inv. Co., 532 S.W.3d 243 (Tenn. 2017)

- Trustee had authority to enter into predispute arbitration agreement with financial advisor, and outcome of arbitration bound beneficiaries

McGuireWoods | Part B-74

**75. Berkenfeld v. Lenet, _____
F.Supp.3d _____ (D. Md. 2018)**

- Broker not liable for annuity beneficiaries taking lump sum distributions

McGuireWoods | Part B-75

76. Estate of Rubin A. Meyers v. Commissioner, T.C. Memo 2017-11

- Recipients of assets received by means other than a will or state law governing the distribution of a deceased person's property could be liable for unpaid estate taxes ten years later

McGuireWoods | Part B-76

**77. Estate of Marion Levine v. Commissioner,
No. 13370-13 (October 26, 2017)**

- Estate granted protective order limiting scope of IRS subpoena

McGuireWoods | Part B-77

**78. Hawk, Billy F., Jr. GST Non-Exempt Marital Trust, et al. v. Commissioner,
T.C. Memo 2017-217**

- Decedent's estate, two marital trusts and decedent's widow were liable as transferees under Section 6901 and applicable state law for unpaid income taxes from the sale of a bowling alley

McGuireWoods | Part B-78

**79. United States v. Raelinn M. Spiekhout,
(In the Matter of Estate of Simmons),
____ F. Supp. 3d ____ (S.D. Ind. July 31,
2017)**

- Government's tax liens have priority

McGuireWoods | Part B-79

**80. Letter Ruling 201750004 (Issued
September 12, 2017; Released
December 15, 2017)**

- Subtrust is valid see-through trust

McGuireWoods | Part B-80

81. Letter Ruling 201805011 (Issued November 2, 2017; Released February 2, 2018)

- IRS grants extension to waive family attribution rules

McGuireWoods | Part B-81

82. United States v. Paulson __ F. Supp.3d __ (S.D. Cal. 2018)

- Court denies defendant's motion to stay proceedings pending decision of state court

McGuireWoods | Part B-82

83. Changes in state death taxes in 2018

- Several states see changes in their state death taxes in 2018

McGuireWoods | Part B-83

84. 2018 State Death Tax Chart (as of September 17, 2018)

McGuireWoods | Part B-84