# Estate Planning Update


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The Depot Restaurant
1250 Cabrillo Ave
Torrance, CA 90501
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Proskauer

# 2025 INFLATION ADJUSTMENTS

- The applicable exclusion amount is increased from $13,610,000 to $13,990,000 for 2025.
- The GST exemption is similarly increased from $13,610,000 to $13,990,000 for 2025.
- The annual gift tax exclusion increased from $18,000 to $19,000 for 2025.
- The annual exclusion for gifts to non-citizen spouses increased from $185,000 to $190,000 for 2025.

# INCREASED INTEREST RATES IMPACT ESTATE PLANNING

- The applicable federal rate ("AFR"), on account of inflation, has increased substantially.
- Compare:

| | 1/2022 | 1/2023 | 1/2025 |
|---|---|---|---|
| Short Term | 0.44% | 3.84% | 4.33% |
| Mid Term | 1.30% | 3.85% | 4.24% |
| Long Term | 1.82% | 4.5% | 4.53% |

- Since the beginning of 2022, rates have gone from historically low to high rates. There has also been a "rate inversion" – where the short-term rate is not less than the mid-term rate.
- This alters the effectiveness of estate planning techniques that are based on interest rate assumptions.

# WHAT WORKS WHEN INTEREST RATES ARE HIGHER?

- QPRTs work well in higher interest rate environments.
- In a higher interest rate environment, a CRAT is more attractive than a CLAT.
- Note that any trust which makes “unitrust” payments really aren’t affected by a change in interest rates.
- One way to mitigate the impact of higher interest rates in the context of sales to Intentionally Defective Irrevocable Trusts (“IDITs”) is to use discounting in making the sale.

# CORPORATE TRANSPARENCY ACT

## Timeline

| Event | Date | Effect on CTA Enforceability |
|---|---|---|
| **FinCEN Reporting Rule Becomes Effective** | January 1, 2024 | Enforceable |
| **District Court for the Eastern District of Texas Issues Preliminary Injunction (Applicable to All Filers Nationwide)** | December 3, 2024 | Not Enforceable |
| **Fifth Circuit Issues Stay of Preliminary Injunction, Pending Appeal by U.S. Government** | December 23, 2024 | Enforceable (Once Again) |
| **Fifth Circuit Vacates the Dec. 23 Stay, Pending Appeal by U.S. Government** | December 26, 2024 | Not Enforceable (Once Again) |
| **Fifth Circuit Oral Arguments** | March 25, 2025 | TBD |
| **Other Ongoing Litigation Challenges** | [Various] | TBD |

# CORPORATE TRANSPARENCY ACT

- For reporting companies that existed before 2024, filings were required by December 31, 2024. Penalties of $500/day could have been imposed if the filings weren't completed by year end. Those filings are currently not required.
- What to do now?
  - It is unclear whether the injunction will remain in place (i.e., that the CTA is unconstitutional and therefore the filings will *never* be required) or whether the injunction might be lifted in the future.
  - Reporting companies could go ahead with filing or simply choose not to file until the ultimate fate of the law is determined by the courts. The risk is that if the injunction is lifted with no grace period, penalties might be due. Most commentators can't imagine there would not be a grace period provided in that circumstance (especially given the fact there was a grace period during when the injunction was temporarily lifted on 12/23/24).

# USE IT BEFORE YOU LOSE IT PLANNING

- The applicable exclusion amount is scheduled to be cut in half on January 1, 2026, from what it is on December 31, 2025.
- It will take Congressional action to stop that from happening. NOTE: this is different than in the past when there were rumors of this occurrence. Here, it takes and act to stop the reduction, rather than in the past when it would have taken an act to cause a reduction.
- Congress hasn't been able to come together on much of any legislation. Republicans control the House and Senate and hold the Presidency, the chance of passing a law to avoid the sunset is much more likely than before the election.
- Preliminarily indications are that tax legislation will come after immigration and other "first day" priorities.

# USE IT BEFORE YOU LOSE IT PLANNING

- Remember that the estate tax only accounts for about 1% of the revenue collected by the U.S. in any one year. That makes it easy to allow the exemption to be cut in half in exchange for another tax priority (such as increasing SALT limits or keeping corporate/personal income tax rates from rising).
- On the other hand, Senators are wealthy people. In the past, any momentum to reduce the amount of the exemption failed because Senators figured out that it would cost their heirs money.
- HOWEVER: it always makes sense to use one’s exemption during life even if it doesn’t drop. Assuming assets increase in value, making lifetime use of one’s exemption effectively leverages the use of that exemption so there is more “bang for the buck”.

# USE IT BEFORE YOU LOSE IT PLANNING

- What stands in the way of using one’s exemption during life is that the donor is worried that he or she won’t have enough to live their lives the way they want to.  That “reluctant giver” therefore asks how he might have his cake and eat it too – how can he use his exemption but not really change his lifestyle?
- The reluctant giver can consider gifting assets that he doesn’t need to provide for his lifestyle – art, jewelry, residences that don’t generate income, growth stocks that don’t pay much in dividends.

# USE IT BEFORE YOU LOSE IT PLANNING

- SLATs help couples are reluctant givers – for example, because they believe they can't really afford to give away their applicable exclusion amounts – find a way to make their gifts anyway.
- A SLAT is a trust that one spouse (here, H) establishes for the other spouse (here, W). There is an unrelated person who is the trustee of the SLAT, and that person is granted discretion to make distributions to W from the SLAT for her best interests. When W dies, the SLAT assets pass in further trust for the couple's children.
- The gift to the SLAT doesn't qualify for the marital deduction. Therefore, H uses his exemption when he makes the gift.
- After the gift is made, the couple lives off their funds not gifted to the SLAT. In the future, if they run out of those outside assets, W asks the trustee of the SLAT to make distributions to her.

# USE IT BEFORE YOU LOSE IT PLANNING

- Trustee makes those distributions that W uses to support her and H's lifestyles.
- So far, in this example, H's exemption has been used. His reluctance has been overcome because (so long as he stays married to W) his lifestyle can be provided for if outside assets are depleted via distributions from the SLAT to W.
- W wants to use her exemption as well. If she could, she would set up a SLAT for H. That way, both H and W's exemptions are used so that future appreciation on gifted assets escape estate tax, yet all of the funds remain available to the couple to live on if their outside assets are spent. It's a good idea, but the *reciprocal trust doctrine* would be asserted by IRS to "uncross" the SLATs.

# USE IT BEFORE YOU LOSE IT PLANNING

- If successful, the result would be that H would have been treated as creating a SLAT for himself, and W would have been treated as creating a SLAT for herself. IRC Section 2036 would cause inclusion of the trusts in H and W's taxable estates, and no tax savings would be accomplished.
- SO: the challenge is to create two SLATs that are not "reciprocal". The rules are set forth in *U.S. v. Grace,* 395 U.S. 316 (1969). For the reciprocal trust doctrine to apply, (a) the trusts must be interrelated *and* (b) the parties must be left in the same economic position after creating the trusts for each other that they would have been in if they had created the trusts for themselves.

# USE IT BEFORE YOU LOSE IT PLANNING

- In *Krause v Comm'r,* 57 TC 890 (1972), trusts were deemed to be interrelated when the trusts were created on the same day, named the same trustees, were funded with identical assets, included each spouse as a beneficiary and contained substantially identical terms. Therefore, step #1 to avoid the interrelated factor that leads to the application of the reciprocal trust doctrine would be to create the trusts on different days, use different trustees, fund those trusts with different assets, and have different terms.
- Avoiding interrelation is not always possible. H and W may only trust the same people to act as trustees of the SLATs. The assets they have to fund the SLATs are often similar. And SLAT planning often happens on the same day.

# USE IT BEFORE YOU LOSE IT PLANNING

- As a result, to avoid the reciprocal trust doctrine it may be necessary to avoid the spouses being in the same economic position as they would have been in if they established the SLATs for themselves. One approach to avoiding this part of the reciprocal trust doctrine test is to have H create a SLAT for W, and W to create an irrevocable trust for the children. The trust that W creates for children, however, includes a provision which allows W to appoint a trust protector whose powers include the right to designate all or part of the trust for the benefit of any of the issue of W's grandparents. We refer to that trust as a "Hidden SLAT".
- If a SLAT and a Hidden SLAT are created:
  - H and W would start living off the assets not contributed to the SLAT or the Hidden SLAT.

# USE IT BEFORE YOU LOSE IT PLANNING

- If H and W’s outside assets are exhausted, H can ask the trustee of the SLAT established for his benefit to make distributions to him that he can use to provide for himself and his wife. If either H or W dies, there is nothing to “uncross” because there is a SLAT and a Hidden SLAT which don’t leave H and W in the same position that they would be in if they’d each created the other trust for him or herself.
- If the assets of the SLAT are exhausted, W can appoint a trust protector for the Hidden SLAT. The trust protector appoints W as an additional beneficiary of the hidden SLAT and then the trustee makes distributions to W that she and H use for their lifestyles. If H dies, the only trust that exists is the Hidden SLAT which is now for W. But because the SLAT has been exhausted, there is nothing to uncross and the reciprocal trust doctrine cannot apply.
- If W dies, the Hidden SLAT terminates and the assets pass to her children. Again, nothing to uncross on W’s death or on H’s later death.

# USE IT BEFORE YOU LOSE IT PLANNING

- SLATs can get tricky in the context of divorce.
  - If H establishes a SLAT for W but W doesn't establish one for H, then upon divorce W (through her SLAT) starts out "ahead" when the marital property is to be divided.
  - If a SLAT and Hidden SLAT are both created, then upon divorce the trust protector can name W as beneficiary of the Hidden SLAT and now no one is "ahead" when marital property is to be divided. And if H or W dies and both trusts are in existence, since they would not be married at the time the reciprocal trust doctrine is likely not to even be identified as an issue – or even if identified, not likely to be "uncrossed".
  - Note that SLATs are always grantor trusts even if the couple divorces. If the SLAT/Hidden SLAT approach is used, that means H is paying income tax on the earnings of the Hidden SLAT which is now for W, and W is paying income tax on the earnings of the SLAT which she established for H.

# USE IT BEFORE YOU LOSE IT PLANNING

  - In that circumstance, the divorce decree or marital property agreement can provide that the parties each make the other whole for their increased income tax resulting from having to pay tax on the trust for the other.
  - A word to the wise:  it is strongly advised that H and W have separate counsel in the context of the SLAT planning – simply to advise them of the consequences of divorce on the SLAT plan and the division of marital assets at the time of divorce.

- Allocation of generation-skipping tax exemption to the SLATs at the time of creation allows the SLAT assets to pass ultimately to grandchildren and depending on the measuring lives upon which the rule against perpetuities (“RAP”) requires, even for more distant generations.  Establishing the SLAT in a state where there is no RAP effectively allows the assets to pass forever without incurring transfer taxes.

# USE IT BEFORE YOU LOSE IT PLANNING

- Because the SLAT passes to children when the beneficiary spouse dies, those assets won't be available to provide for the grantor spouse's support.
  - Some surviving spouses aren't concerned – half the living expenses disappear when first spouse dies, so they have enough to provide for themselves without the SLAT assets.
  - Others have the SLATs purchase life insurance on the life of the settlor spouse. For example, If W creates a SLAT for H and H creates a Hidden SLAT for W, on H's death the assets in the SLAT pass to the children and W only has the assets of her Hidden SLAT (once it's converted to a trust for W by the trust protector) to live on. However, if the Hidden SLAT bought life insurance on H's life, when H dies the Hidden SLAT will collect those insurance proceeds from which W can benefit once the trust protector makes the Hidden SLAT for her benefit.

## *Connelly v. U.S. (No. 23-146)*

- On March 27, 2024, the United States Supreme Court heard oral arguments over whether the estate of a deceased building supply company owner should be taxed on $3 million in life insurance proceeds the company used to buy his shares after his death.
- Brothers, Michael and Thomas Connelly, owned all of the shares in Crown C Corporation ("Crown C"). Crown C acquired life insurance of $3.5 million on each brother.
- Michael Connelly died in 2013 and Crown C received the life insurance proceeds. Crown redeemed Michael's shares pursuant to an agreement between Thomas and Michael's sons, in which they agreed that Michael's shares would be worth $3 million. Crown C used the remaining $500,000 to fund its operations.

# Connelly v. U.S. (No. 23-146)

- Thomas, as Executor of Michael's estate filed an estate tax return and reported Michael's shares as having a value of $3 million as of his date of death and paid an estate tax of approximately $300,000.
- The IRS determined that Michael's shares were undervalued, insisting that Crown C's fair market value should include the insurance proceeds and therefore, Michael's estate was deficient on $1 million in additional estate tax.
- The IRS issued a deficiency notice to Michael's estate. Michael's estate paid the deficiency and sued the IRS for a refund.
- Michael's estate, using the willing-buyer/willing-seller test, argued a willing buyer of the shares would take into account that the $3 million in life insurance proceeds were an asset that is directly offset by the liability of the redemption agreement.

## *Connelly v. U.S. (No. 23-146)*

- Further, Michael's estate argued that the redemption transaction fixes the value of Michael's shares for estate tax purposes based on the stock purchase agreement, in line with Section 2703(b) of the IRC.  On the contrary, the IRS argued the redemption is not a liability and that a willing buyer at Michael's death, who seeks to purchase all of the shares would expect to pay roughly $7 million for all of them, and then either extinguish the redemption agreement, or redeem the shares from himself.
- The district court granted summary judgement in favor of the IRS ruling that the stock purchase agreement did not influence the valuation process and that the life insurance proceeds were substantial corporate assets, necessitating their inclusion.

# *Connelly v. U.S. (No. 23-146)*

- The estate appealed and the Court of Appeals for the Eighth Circuit affirmed the district courts ruling, determining that the life insurance proceeds increased shareholder's equity. The estate petitioned for a writ of certiorari which was granted by the United States Supreme Court on December 13, 2023.
- On June 6, 2024, the Supreme Court confirmed the lower court's decision.
- What should business owners do in response?
  - If the there was a buy-sell agreement funded by life insurance that each brother owned on the other's life, the issue would be avoided.
  - Cross purchase (rather than redemption) buy-sell agreements provide the added advantage of additional basis for the shares acquired by the cross purchaser. *Connelly* provides another reason to use the cross purchase option.

# IRS Notice 2024-35

- IRS published Notice 2024-35, which waived any excise tax for taxpayers who failed to take required minimum distributions ("RMDs") for the 2024 tax year for certain inherited retirement accounts subject to the 10-year rule under the SECURE Act.
- The SECURE Act provides that after the death of the owner of a defined benefit plan or IRS, if the owner died after the beginning RMD date and the beneficiary is not a surviving spouse, a minor child, or someone less than 10 years younger than the account owner, the plan or IRA assets must be withdrawn by the end of the calendar year containing the $10^{th}$ anniversary of the owner's death.
- Many believed that there were not required annual RMDs, so long as everything was withdrawn by the end of the $10^{th}$ year. But in February 2024, IRS clarified that annual distributions were required.

# IRS Notice 2024-35 (cont'd)

- This notice extends prior relief granted in Notices 2022-53 and 2023-54, which allowed relief for taxpayers that didn't take annual distributions in 2020 – 2023. The new notice waives excise tax through 2024.
- IRS will issue new regulations, effective January 1, 2025, which will provide clarity on the waiving of excise taxes through 2024. Presumably, once Final Regulations are issued, IRS will not issue further relief for future years.

# Treasury Regulation Section 26.2642-7

- The Treasury Department and IRS released final regulations regarding the circumstances and procedures under which an extension of time will be granted under section 2642(g) to make certain late allocations of Generation-Skipping Transfer ("GST") Tax exemption and elections.
- This new Regulation replaces IRS Notice 2001-50, which had previously served as the main source of guidance for taxpayers seeking relief for an extension of time to allocate GST exemption or to (i) elect out of automatic allocation to a direct skip, (ii) elect out of automatic allocation to an indirect skip, and (iii) elect to treat any trust as a GST trust.

# Treasury Regulation Section 26.2642-7 (cont'd)

- Under Notice 2001-50, relief would generally be granted if the taxpayer satisfied the requirements of the regulations and established, to the IRS's satisfaction, that the taxpayer acted reasonably and in good faith and that a grant of relief wouldn't prejudice the government's interests. The IRS and Treasury provided no substantive clarity as to how these requirements could be satisfied.
- New Reg. § 26.2642-7, originally proposed in 2008, identifies specific standards that the IRS will apply when determining whether to grant the requested relief and procedural requirements for establishing eligibility for the requested relief. Reg. § 26.2642-7, include the following provisions:

# Treasury Regulation Section 26.2642-7(cont'd)

- The amount of GST exemption that may be allocated cannot exceed the amount of the transferor's unused GST exemption that existed at the time of the transfer.
- Factors that the IRS will consider in determining reasonableness and good faith include but are not limited to: (i) the intent of the transferor; (ii) intervening events beyond the control of the transferor; (iii) lack of awareness, despite exercise of reasonable diligence; (iv) consistency with regard to prior transactions; and (v) reasonable reliance on the advice of qualified tax professional.

# Treasury Regulation Section 26.2642-7 (cont'd)

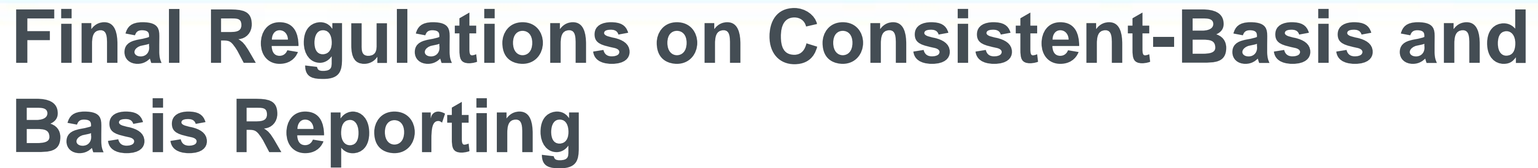
- Factors that the IRS will consider in determining lack of prejudice to the interests of the government include, but are not limited to: (i) whether the taxpayer is attempting to benefit from hindsight, or more specifically, whether the relief would permit an economic advantage or other benefit that would not have been available at the time of the transfer; (ii) whether the timing of the relief request was delayed to deprive the IRS of a sufficient period of time to challenge an element of the transfer; and (iii) whether there was an intervening taxable termination or distribution in between the transfer and the relief request.
- Taxpayers now have an automatic 6-month extension from the due date of the gift or estate tax return to make the late allocation or election on a supplemental return, provided that the taxpayer timely filed an original return. After the expiration of this 6-month period, a Private Letter Ruling is the exclusive remedy to seek relief.

# Treasury Regulation Section 26.2642-7 (cont'd)

- Relief may be granted to revoke an election under Internal Revenue Code § 2632(b)(3), to elect out of automatic allocation of GST tax exemption to direct skip, or § 2632(c)(5), to elect out of automatic allocation of GST tax exemption to GST Trust. Affirmative elections or allocations are irrevocable, subject to three narrow exceptions.
- A request for relief does not reopen, suspend, or extend the period of limitations on the assessment or collection of any estate, gift, or GST tax. While the IRS may request that the taxpayer consent to extend the period of limitations to assess or collect gift and GST tax, the taxpayer is not required to agree. While the IRS has noted that a refusal would not necessarily result in the denial of relief, refusal would still be a factor that may be considered when determining whether the government's interests would be prejudiced.
- The taxpayer must still submit detailed explanatory affidavits from the taxpayer and other parties, such as tax professionals.

# Final Regulations on Consistent-Basis and Basis Reporting

- On September 17, 2024, the IRS issued the final regulations dealing with the requirement under Section 6035 that the basis of property acquired from a decedent must be consistent with the basis reported on the decedent's estate tax return.
- Generally, under Section 1041(f), a recipient's basis in certain property acquired from a decedent must be consistent with the value of the property as finally determined for federal estate tax purposes. In addition, under Section 6035, executors must provide basis information to the IRS and the property recipients.
- According to the IRS, changes were made to the final regulations from the proposed regulations issued more than 8 years ago. These changes are intended to "reduce the burden on both the IRS and taxpayers and increase administrability of the proposes rules."



# Final Regulations on Consistent-Basis and Basis Reporting

- **Removal of the Zero-Basis Rule** – the final regulations remove the rule from the proposed regulations which provided that, for property discovered after the filing of, or otherwise omitted from, an estate tax return, where that property is not reported before the expiration of the statute of limitations period for assessing estate tax, the final value of the property would be zero. The final regulations completely remove this rule, specifically noting in the preamble of the final regulations that the IRS recognized that this rule would primarily affect recipients of unreported property, who may not know of or be involved in the failure to report the property for estate tax purposes.

# Final Regulations on Consistent-Basis and Basis Reporting

- **Statement Deadline** – the proposed regulations required a statement of the basis of the assets to be furnished to the beneficiaries of the estate 30 days after the filing of the estate tax return.  The final regulations provide that assets distributed to a beneficiary prior to the filing of an estate tax return must be reported to the beneficiary 30 days after the filing of the return. For assets distributed after the filing of the return, a statement to the beneficiary is due January 31 of the calendar year following the year of acquisition by the beneficiary. This change will allow Executors/Personal Representatives to provide basis information after they know which beneficiary has received what property.
- **Subsequent Transfers** – the proposed regulations provided that for inherited property acquired by a beneficiary, a subsequent gift or transfer would require a report by the beneficiary making the gift. This provision now only applies to trustees when they distribute inherited property from a trust.

# Final Regulations on Consistent-Basis and Basis Reporting

- **Exceptions to basis-consistency rules and reporting requirements**– The proposed regulations provided for four exceptions of types of property that do not have to be reported under Section 6035: (i) cash (other than a coin collection or other coins or bills with numismatic value); (ii) income in respect of a decedent; (iii) tangible personal property for which an appraisal is not required and (iv) property sold or disposed of in a transaction in which capital gain or loss is recognized. The final regulations added other exceptions to the reporting requirements and the basis-consistency rules:
  - Property subject to a taxable termination for GST tax purposes (not subject to basis-consistency rules)
  - Surviving spouse’s one-half community property
  - Notes forgiven by the decedent
  - Assets sold or disposed of in recognition events (not subject to reporting requirements)

# Final Regulations on Consistent-Basis and Basis Reporting

- **Exceptions (continued)**
  - The proposed regulations excepted income in respect of decedent property from the consistent basis and reporting requirements. The final regulations add to the consistent basis and reporting exceptions other types of assets whose basis is unrelated to the estate tax value of the property:
    - Annuity contracts and amounts received as an annuity;
    - Income in respect of a decedent;
    - Amounts received under installment obligations;
    - Stock of a passive foreign investment company
    - Retirement plans, deferred compensation plans and IRAs
    - Bonds to the extent redeemed by the issuer for US dollars prior to being distributed to a beneficiary;
    - Property included in the gross estate of a beneficiary who died before the due date of the information report; and
    - Any other property that may subsequently be identified by the IRS as excepted property.

# Anenberg v. Commissioner (162 TC No. 9)

- Trustee, with the consent of all of the beneficiaries, petitioned under CA Probate Code Section 15403 to terminate a QTIP created for a surviving spouse.
- QTIP had a FMV of $25,450,000 and surviving spouse’s income interest was valued at $2,599,463.
- In March 2012, the Court approved termination and all the assets were distributed to the surviving spouse (including interests in a family-owned business)
- In August 2012 and September 2012, the surviving spouse gifted and sold virtually all of her interests in the family-owned business to various trusts for the deceased spouse’s issue.  These transactions were reported on her gift tax return.

# Anenberg v. Commissioner (162 TC No. 9)

- After surviving spouse’s death, the IRS issued a gift tax deficiency of more than $9M.
- IRS asserted that IRC 2519 applied and the surviving spouse should be treated as having made a gift of the full value of her interest in the QTIP trust, less the value of her income interest.
- Comparing what the surviving spouse’s had before and after the QTIP termination, the Tax Court held that the QTIP trust termination and distribution to the surviving spouse did not constitute a gift under IRC 2519 because the surviving spouse had full ownership of the assets after the termination (receiving more than was surrendered by her in the termination).
- *IRS did not contend that the remainder beneficiaries of the QTIP had made any kind of gift in consenting to the termination.

# McDougall v. Commissioner 163 TC No. 5

- QTIP was created for surviving spouse.
- Surviving spouse and remainder beneficiaries entered into a nonjudicial settlement agreement to commute the trust and distribute the balance of the trust outright to the surviving spouse. Surviving spouse then sold most of the assets to the remainder beneficiaries.
- Surviving spouse and remainder beneficiaries took the position that there were reciprocal gifts because the commutation of the trust (a) was a gift by the surviving spouse of the remainder interest to the remainder beneficiaries and (b) was a gift of the remainder interest from the remainder beneficiaries to the surviving spouse.
- Court again held that the surviving spouse did not make a gift to the remainder beneficiaries under IRC 2519. HOWEVER, the remainder beneficiaries DID make a gift to the surviving spouse by agreeing to commute the trust.

# Estate of Fields v. Commissioner TCM 2024-90

- In the month leading up to the decedent's death, her great nephew used a power of attorney to form a family limited partnership of which the decedent was the sole limited partner and to which she contributed most of the assets in exchange for a 99.9941% LP interest.
- The great nephew was the sole member and manager of the LLC that was the GP, which contributed $1,000 to the partnership in exchange for a .0059% GP interest.
- Estate tax return took a 15% discount for lack of control and a 25% discount for lack of marketability for the 99.9941% LP interest.
- Court held that IRC 2036(a) applied such that the full (non-discounted) value of the underlying assets of the partnership contributed by the decedent were includible in decedent's estate.

# Estate of Fields v. Commissioner TCM 2024-90

- Court found:
  - GP interest was “token in nature”
  - GP (controlled by great nephew) could make distributions to the decedent, so the Decedent effectively had the right to virtually all the income from the assets transferred to the partnership
  - Very few assets remained in Decedent’s name, which would likely be insufficient to satisfy specific bequests and estate tax liability, so there was an implicit agreement that the great nephew would make distributions to the Decedent’s estate to satisfy these (and this was done)
  - ALSO, under 2036(a)(2), Decedent could dissolve the partnership in conjunction with the GP, and thus could designate the persons who could possess or enjoy the property or income therefrom.
  - There was no bona fide sale (no nontax reason for the partnership’s creation)
    - No personal involvement, no active management required, no threats of elder abuse, no major changes to assets leading up to formation, virtually no pooling of assets