

# FEDERAL TAX UPDATE

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# Does corporate-owned life insurance used to fund a redemption increase the estate tax value of stock?



*Estate of Blount v. Commissioner*  
(11<sup>th</sup> Cir. 2005) → NO

- While the insurance is an asset, there is an offsetting liability to use the proceeds to redeem the stock

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*Estate of Connelly v. United States*  
(8<sup>th</sup> Cir. June 2, 2023) → YES

- A willing seller would not accept \$3.86 million for the stock when the company is about to get a \$3 million death benefit

Replaced life expectancy payout with **10-year payout** for all BUT “*eligible designated beneficiaries*”

*beneficiaries*”

- (1) Surviving spouse
- (2) Participant’s minor child
- (3) Disabled beneficiary
- (4) Chronically ill beneficiary
- (5) Beneficiary less than 10 years younger than participant

If participant started RMDs before death, DB must take RMDs in each of the 10 years!

*Notice 2022-53*: no penalty where DB fails to take RMDs in 2021 or 2022

*Notice 2023-54*: and no penalty for 2023

*Notice 2024-35*: and no penalty for 2024!

The  
Setting  
Every  
Community  
Up for  
Retirement  
Enhancement  
Act





**Chief Counsel  
Memo 202352018  
(12/29/2023)**

“The modification to add the tax reimbursement clause will constitute a taxable gift by the trust beneficiaries because the addition of a discretionary power to distribute income and principal to the grantor is a relinquishment of a portion of the beneficiaries’ interest in the trust.”

# Exercise of Stock Options Might be Taxable Gift

## *Huffman v. Commissioner*, T.C. Memo. 2024-12

- 1993: Son pays \$4 to parents for options to buy ~56% of stock in closely-held company at a price of \$5 million
- 2007: When outsider expressed interest in acquiring the company for about \$80 million, Son exercised the options; deal later fizzled
- 2009: Different outside buyer pays \$95.75 million for the company, mostly allocated to goodwill



CONSERVATION  
EASEMENT  
BOUNDARY

LANDOWNER &  
USDA / NRCS  
PARTNERSHIP

Reg. §1.170A-14(g)(6)(ii): Upon extinguishment of a conservation easement and subsequent sale, charity's share of proceeds must equal "the proportionate value that the perpetual conservation restriction at the time of the gift, bears to the value of the property as a whole at that time. ... [T]hat proportionate value of the donee's property right shall remain constant."

While many conservation easement deeds give charity a share of the *net proceeds*, the IRS reads the regulation to require that the charity receive a share of the **gross proceeds**.

*Oakbrook Land Holdings LLC v. Commissioner* (T.C. 2020) → Regulation **VALID** (16 – 1 vote)

*Hewitt v. Commissioner* (11<sup>th</sup> Cir. 2021) → Regulation **INVALID**

*Oakbrook Land Holdings LLC v. Commissioner* (6<sup>th</sup> Cir. 2022) → Regulation **VALID**

*Valley Park Ranch LLC v. Commissioner* (T.C., 3/28/2024) → Regulation **INVALID** (9 – 4 vote)



# FBAR Cases

- *Bittner v. United States* (U.S. Sup. Ct., 2023) → Penalty applies per form, not per account
- *Gaynor* (M.D. Florida, 9/6/23) → Penalties don't die with decedent
- *Aroeste* (S.D. California, 11/20/23) → Untimely claiming of treaty benefit still effective
- *Reyes* (E.D. New York, 1/10/24) → Reckless failure is "willful"

<b>TD F 90-22.1</b> <small>(Rev. January 2012) Department of the Treasury</small>		<b>REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS</b>		<small>OMB No. 1545-0048</small>
<small>Do not use previous editions of this form.</small>		<small>Do NOT file with your Federal Tax Return</small>		<b>1</b> This Report is for Calendar Year Ended 12/31
				Amended <input type="checkbox"/>
<b>Part I Filer Information</b>				
<b>2</b> Type of Filer: a <input type="checkbox"/> Individual   b <input type="checkbox"/> Partnership   c <input type="checkbox"/> Corporation   d <input type="checkbox"/> Consolidated   e <input type="checkbox"/> Fiduciary or Other—Enter type _____				
<b>3</b> U.S. Taxpayer Identification Number  <small>If filer has no U.S. Identification Number complete item 4.</small>		<b>4</b> Foreign identification (Complete only if item 3 is not applicable) a Type: <input type="checkbox"/> Passport <input type="checkbox"/> Other _____ b Number _____   c Country of issue _____		<b>5</b> Individual's Date of Birth MM/DD/YYYY
<b>6</b> Last Name or Organization Name			<b>7</b> First Name	<b>8</b> Middle Initial
<b>9</b> Address (Number, Street, and Apt. or Suite No.)				
<b>10</b> City	<b>11</b> State	<b>12</b> Zip/Postal Code	<b>13</b> Country	
<b>14</b> Does the filer have a financial interest in 25 or more financial accounts? <input type="checkbox"/> Yes   If "Yes" enter total number of accounts _____ <small>(If "Yes" is checked, do not complete Part II or Part III, but retain records of this information.)</small> <input type="checkbox"/> No				
<b>Part II Information on Financial Account(s) Owned Separately</b>				
<b>15</b> Maximum value of account during calendar year reported		<b>16</b> Type of account   a <input type="checkbox"/> Bank   b <input type="checkbox"/> Securities   c <input type="checkbox"/> Other—Enter type below _____		
<b>17</b> Name of financial institution in which account is held				
<b>18</b> Account number or other designation		<b>19</b> Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
<b>20</b> City	<b>21</b> State, if known	<b>22</b> Zip/Postal Code, if known	<b>23</b> Country	



# Late Tax Court Petitions

*After* <sup>the</sup>  *Deadline*

*Nutt v. Commissioner* (T.C., May 2)

*Sanders v. Commissioner* (T.C., June 20)

*Culp v. Commissioner* (3d Cir., July 19)

*Sall v. Commissioner* (T.C., November 30)

*Dodson v. Commissioner* (T.C., January 3)

## **Excerpt from §6213(a):**

Within 90 days ... after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. ... The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition.

# Donations to NIL Collectives

## *Advice Memorandum 2023-004 (June 9)*



**TIGER IMPACT**



# *Estate of DeMuth v. Commissioner* (3d. Cir., July 12, 2023)



- D's attorney-in-fact wrote 11 annual exclusion gift checks from D's account, but only 1 check was paid by the drawee bank before D's death (3 others were deposited but unpaid)
- AFFIRMED: While the other 10 checks would normally be included in D's gross estate, only the value of the 7 undeposited checks will be included here because of IRS stipulation!
- HELD: The 7 includible checks were not gifts *causa mortis* completed before death!





## Do limited partners owe self-employment tax?

*Soroban Capital Partners LP  
v. Commissioner*

161 T.C. No. 12

(November 28, 2023)

### Excerpt from §1402(a):

The term “net earnings from self-employment” means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by a partnership of which he is a member...

(13) there shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services;

## *Moore v. United States*

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Is the *Mandatory Repatriation Tax* (“MRT”) → imposed by §965 an **income tax** (and thus constitutional) or an **unapportioned direct tax** (and thus unconstitutional)?



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# General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals

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Department of the Treasury  
March 11, 2024

- **Taxing High-Income Taxpayers**
  - Increase top rate to 39.6%
  - No preferential rates for dividends or long-term capital gains if taxable income > \$1 million
  - Gifts and bequests exceeding \$5 million would be taxable
  - Deemed sale of property held in trust for 90 years
  - 25% minimum tax for those with net wealth above \$100 million



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General Explanations  
of the  
Administration's Fiscal Year 2025  
Revenue Proposals

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Department of the Treasury  
March 11, 2024

- **Estate and Gift Tax Reform**

- Increase special use valuation cap (from \$1.39 million to \$14 million)
- Annual reporting requirements for trusts administered in the U.S.
- Effective repeal of defined value formula clauses
- Charitable lead trusts must have remainder interests worth 10%+ of contributed property
- Add \$50,000 per donor limit to the gift tax annual exclusion

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# General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals

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Department of the Treasury  
March 11, 2024

## • **Grantor Trusts**

- Ban on zeroed-out GRATs (10% remainder minimum)
- 10-year minimum term for GRATs
- No reduction in GRAT annuity amount allowed
- Tax transactions between grantor and defective grantor trust
- Grantor payment of defective grantor trust's income tax becomes a gift

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# General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals

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Department of the Treasury  
March 11, 2024

## • **Closing Loopholes**

- Tax carried interests as ordinary income
- \$500,000 cap on like-kind exchanges
- Distributions from private foundation to DAF don't count unless DAF distributes those amounts by the end of the following year



# Palermo v. United States (S.D. Fla., August 7, 2023)

Form <b>843</b> (Rev. August 2011) Department of the Treasury Internal Revenue Service	<b>Claim for Refund and Request for Abatement</b>  ▶ See separate instructions.	OMB No. 1545-0024
Use Form 843 if your claim or request involves: (a) a refund of one of the taxes (other than income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding) or a fee, shown on line 3, (b) an abatement of FUTA tax or certain excise taxes, or (c) a refund or abatement of interest, penalties, or additions to tax for one of the reasons shown on line 5a.		
<b>Do not</b> use Form 843 if your claim or request involves: (a) an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding (use the appropriate amended tax return), (b) a refund of excise taxes based on the nontaxable use or sale of fuels, or (c) an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.		
Name(s)	Your social security number	
Address (number, street, and room or suite no.)	Spouse's social security number	
City or town, state, and ZIP code	Employer identification number (EIN)	
Name and address shown on return if different from above	Daytime telephone number	
<b>1</b> <b>Period.</b> Prepare a separate Form 843 for each tax period or fee year. From _____ to _____	<b>2</b> <b>Amount to be refunded or abated:</b> \$ _____	
<b>3</b> <b>Type of tax or fee.</b> Indicate the type of tax or fee to be refunded or abated or to which the interest, penalty, or addition to tax is related. <input type="checkbox"/> Employment <input type="checkbox"/> Estate <input type="checkbox"/> Gift <input type="checkbox"/> Excise <input type="checkbox"/> Income <input type="checkbox"/> Fee		
<b>4</b> <b>Type of penalty.</b> If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). IRC section: _____		
<b>5a</b> <b>Interest, penalties, and additions to tax.</b> Check the box that indicates your reason for the request for refund or abatement. (If none apply, go to line 6.) <input type="checkbox"/> Interest was assessed as a result of IRS errors or delays. <input type="checkbox"/> A penalty or addition to tax was the result of erroneous written advice from the IRS. <input type="checkbox"/> Reasonable cause or other reason allowed under the law (other than erroneous written advice) can be shown for not assessing a penalty or addition to tax.		
<b>b</b> Date(s) of payment(s) ▶ _____		

## QUALIFIED PERSONAL RESIDENCE TRUST



# Transferee Liability for Estate Tax

*United States v. Paulson* (9<sup>th</sup> Cir., May 17, 2023)

## **§6324(a)(2). LIABILITY OF TRANSFEREES AND OTHERS**

If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee..., surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, **who receives, or has on the date of the decedent's death**, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax.

# OTHER CASES OF NOTE





Thank  
you

