

# Hot Topics in Estate Planning

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# NON SEQUITUR

WILEY

I COULDN'T  
ARGUE WITH  
THEIR CLAIM  
OF BEING A  
SEPARATE  
SPECIES, SO  
WE SETTLED  
OUT OF  
COURT



NOAH'S  
LAWYERS

PICT BY ANDREW PARKER BRONKHORST

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# Current Legislation



# 1. Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”) (March 27, 2020)

- Congress enacts legislation in response to the public health and economic crisis resulting from the Covid-19 pandemic



## **2. Consolidated Appropriations Act 2021 (December 27, 2020)**

- **Congress extends charitable benefits first provided by CARES Act**



**3. Notice 2020-17, 2020-15 IRB 590 (March 18, 2020);  
Notice 2020-18, 2020-15 IRB 592 (March 23, 2020);  
Notice 2020-20, 2020-16 IRB \_\_\_\_\_ (March 27,  
2020); Notice 2020-23, 2020-18 IRB \_\_\_\_\_(April 9,  
2020)**

- **Treasury Department extends due dates for the filing of various tax returns and the payment of tax owed**

| 2020 JULY |        |         |           |          |        |          |
|-----------|--------|---------|-----------|----------|--------|----------|
| SUNDAY    | MONDAY | TUESDAY | WEDNESDAY | THURSDAY | FRIDAY | SATURDAY |
|           |        |         | 1         | 2        | 3      | 4        |
| 5         | 6      | 7       | 8         | 9        | 10     | 11       |
| 12        | 13     | 14      | 15        | 16       | 17     | 18       |
| 19        | 20     | 21      | 22        | 23       | 24     | 25       |
| 26        | 27     | 28      | 29        | 30       | 31     |          |

## **4. Setting Every Community Up for Retirement Enhancement (“SECURE”) Act (December 17, 2019)**

- **Secure Act has large impact on retirement benefits**

## 5. H.R. 8696 -- Securing a Strong Retirement Act of 2020 (October 27, 2020)

➤ **Bipartisan bill introduced to expand SECURE Act**





## 6. Biden's Tax Proposals

- **Proposals made by President Biden during the election campaign could have major impact on taxes if enacted as proposed**



## 7. For the 99.8 Percent Act, S. 309 (Introduced January 31, 2019) and H.R. 4857 (Introduced October 24, 2019)

- **Senator Sanders and Representative Gomez introduce identical bills to change the estate tax**



## **8. Revenue Procedure 2020-45 (October 26, 2020)**

- **IRS announces inflation adjustments for 2021**

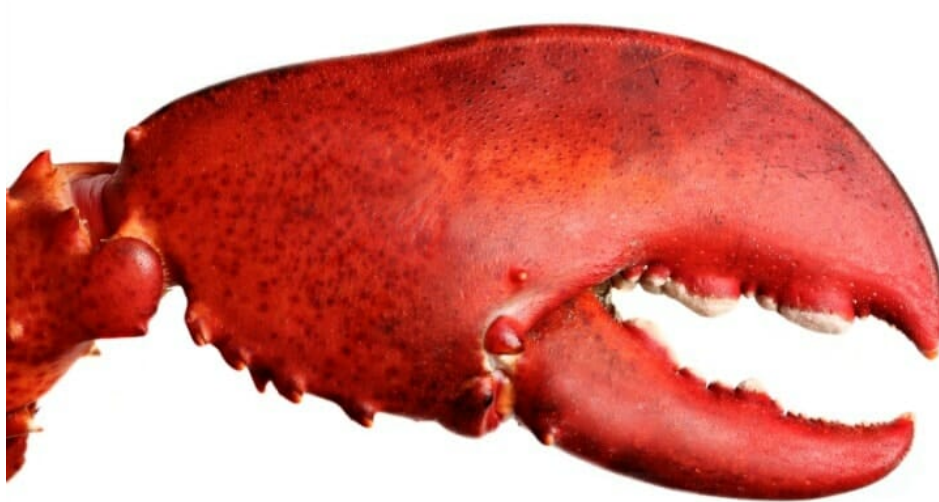
## 9. 2020-2021 Priority Guidance Plan (November 17, 2020)

- Treasury Department and Internal Revenue Service release their 2020 - 2021 Priority Guidance Plan



## 10. Final Treasury Regulation § 20.2010-1(c) (November 22, 2019)

- Treasury Department issues proposed anti-clawback regulations



# 11. Letter Rulings 202018002 (Issued November 19, 2019; Released May 5, 2020) and 202046006 (Issued June 24, 2020; Released November 13, 2020)

- Decedent's estate granted extension to make portability election





## 12. FR Document 2020-28931 (December 29, 2020)

- Internal Revenue Service proposes \$67 user fee for closing letter for federal estate tax return



## **13. Letter Ruling 20201003 (Issued January 29, 2020; Released May 22, 2020)**

- **Estate granted extension of time to make QTIP election**

## **14. Letter Rulings 202016002 through 202016006 (Issued October 30, 2019; Released April 17, 2020)**

- **Service rules on matters arising from settlement of surviving spouse's challenge to decedent's will**

# 15. T. D. 9889 -- Final Regulations on Inclusion Events for Qualified Opportunity Funds (December 19, 2019)

- IRS issues final regulations on Qualified Opportunity Funds



## **16. Cavallaro v. Commissioner, T.C. Memo 2014-189; 842 F.3d 16 (1<sup>st</sup> Cir. 2016), aff'g in part, rev'g in part and remanding; and T.C. Memo 2019-144**

- **Tax Court holds that husband and wife are liable for gift tax following company merger, but reduces amount of additional gift upon remand from First Circuit Court of Appeals**



# 17. Revenue Procedure 2020-3, 2021-1 IRB 140 (January 4, 2021)

- Service states that it will not issue rulings on consequences of incomplete non-grantor trusts





## 18. James C. Nelson v. Commissioner, T.C. Memo 2020-81

- Tax Court finds that formula for gift and sale of limited partnership interests at a discount is not a defined value formula and additional gift tax is imposed



## 19. Grieve v. Commissioner, T.C. Memo 2020-28

- Court accepts donor's valuation for nonvoting LLC interests transferred to grantor retained annuity trust and irrevocable gift trust

## 20. Estate of Mary P. Bolles v. Commissioner, T.C. Memo 2020-71

- Advances made by decedent to son lost characterization as loans and became gifts of inheritance advances when decedent realized loans would not be repaid



## 21. Burt Kroner v. Commissioner, T.C. Memo 2020-73

- Transfers from business associate were not gifts excludable from income under Code Section 102



## 22. Badgley v. United States, \_\_\_\_\_ F.3d \_\_\_\_\_ (9<sup>th</sup> Cir. 2020)

- Assets of GRAT are included in settlor's estate when settlor dies before end of annuity term



## 23. Estate of Clara M. Morrisette v. Commissioner, Tax Court Order, Docket No. 4415-14 (June 21, 2018)

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

## 24. Cahill v. Commissioner, T.C. Memo 2018-84

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





**25. Estate of Frank D. Streightoff v. Commissioner, \_\_\_\_ F.3d \_\_\_\_ (5<sup>th</sup> Cir. 2020)**

- **Fifth Circuit upholds decision of Tax Court imposing additional estate tax liability for limited partnership interest included in estate**

## 26. Kress v. United States, 372 F.Supp. 3d 731, (E.D. Wis. 2019)

- Tax Court rejects IRS's valuation of minority interests in closely held S Corporation stock given to family members over three years



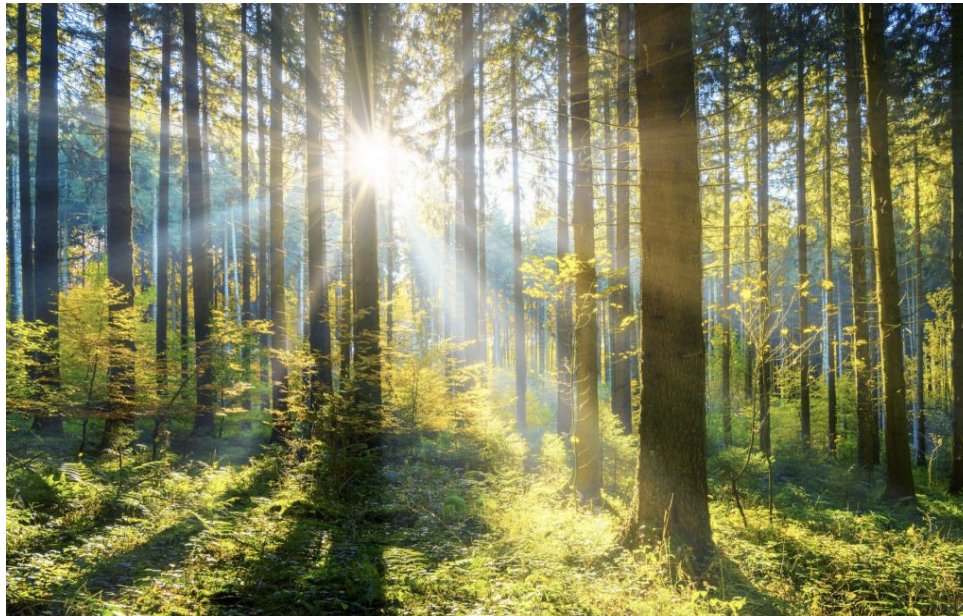
## 27. Carter v. United States \_\_\_\_\_ F.Supp. 3d \_\_\_\_ (N.D. Ala 2019)

- Court rejects attempt of estate to obtain refund for stock that it alleged was over-valued on the alternate valuation date as a result of fraud



## 28. Estate of Aaron U. Jones v. Commissioner, T.C. Memo 2019-101

- Tax Court determines gift tax value of limited partnership units in voting and non-voting shares of stock and related timber land management and lumber entities



## 29. CCA 201939002 (Issued May 29, 2019; Released September 27, 2019)

- Determination of fair market value of publicly traded stock for gift tax purposes should take into account pending merger



## 30. Estate of Moore v. Commissioner, T.C. Memo 2020-40

- Tax Court holds that assets in family limited partnership should be taxed in decedent's estate at their full fair market value



**31. Hoffman Properties II, LP v. Commissioner, \_\_\_\_\_ F.3d \_\_\_\_\_ (6<sup>th</sup> Cir. 2020)**

- **Ability of donor to make changes to donated charitable easement whenever the donee fails to act within 45 days of notice of the proposed change violates the requirement that donation be perpetual**



## **32. AM 2020-001 (Issued March 17, 2020; Released March 27, 2020)**

- **IRS provides legal advice on amendment clauses for conservation easement deed**

## **33. I.R. 2019-182 (November 12, 2019)**

- **IRS increases enforcement action of Syndicated Conservation Easements**

**34. Village at Effingham, v. Commissioner, T.C. Memo 2020-102; Riverside Place LLC v. Commissioner, T.C. Memo 2020-103; Maple Landing, LLC v. Commissioner, T.C. Memo 2020-104; and Englewood Place, LLC v. Commissioner, T.C. Memo 2020-105**

- **Tax court denies income tax charitable deduction for donations of conservation easements**

## **35. Estate of Dieringer v. Commissioner, 917 F.3d 1135 (9<sup>th</sup> Cir. 2019)**

- **Estate tax charitable deduction limited by post-death events**

## **36. Letter Rulings 202013001 to 202013005 (Issued October 7, 2019; Released March 27, 2020)**

- **Proposed modification of GST grandfathered trust will not have adverse generation-skipping tax consequences**

## **37. Letter Rulings 202017009 and 202017010 (Issued November 25, 2019; Released April 24, 2020)**

- **Service grants donor and husband extension of time to opt out of automatic allocation of GST exemption**

**38. Letter Rulings 202014006 – 202014010  
(Issued October 16, 2019; Released April 3, 2020); 202015005 – 202015013 (Issued  
October 12, 2019; Released April 10,  
2020); 202017001 – 202017006 and  
202017011 – 202017014 (Issued October  
16, 2019; Released April 24, 2020)**

- **Proposed changes will not ungrandfather pre-October 8, 1990 buy-sell agreement for purposes of Section 2703**



# 39. Proposed Regulations on Section 67(g) (May 7, 2020)

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

**Form 1041 U.S. Income Tax Return for Estates and Trusts** 2018 OMB No. 1545-0022

Department of the Treasury—Internal Revenue Service

**A** Check all that apply:  
☐ Decedent's estate  
☐ Simple trust  
☐ Complex trust  
☐ Qualified disability trust (SST) (S portion only)  
☐ Grantor trust  
☐ Bankruptcy estate—Ch. 7  
☐ Bankruptcy estate—Ch. 11  
☐ Pooled income fund

**B** Number of Schedules K-1 attached (see instructions) **C** Check applicable boxes:  
☐ Initial return ☐ Final return ☐ Amended return  
☐ Change in trust's name ☐ Change in fiduciary ☐ Change in fiduciary's name

**D** Check here if the estate or trust made a section 645 election: ☐ Trust TIN ☐ Trust EIN

**1** Interest income **2a** Total ordinary dividends **2b** Qualified dividends allocable to: (1) Beneficiaries (2) Estate or trust

**3** Business income or (loss). Attach Schedule C or C-EZ (Form 1040) **4** Capital gain or (loss). Attach Schedule D (Form 1041) **5** Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040) **6** Farm income or (loss). Attach Schedule F (Form 1040) **7** Ordinary gain or (loss). Attach Form 4797 **8** Other income. List type and amount **9** Total income. Combine lines 1, 2a, and 3 through 8

**10** Interest. Check if Form 4952 is attached ☐ **11** Taxes **12** Fiduciary fees. If only a portion is deductible under section 67(e), see instructions **13** Charitable deduction (from Schedule A, line 7) **14** Attorney, accountant, and return preparer fees. If only a portion is deductible under section 67(e), see instructions **15a** Other deductions (attach schedule). See instructions for deductions allowable under section 67(e) **15b** Net operating loss deduction. See instructions **16** Add lines 10 through 15b **17** Adjusted total income or (loss). Subtract line 16 from line 9 **18** Income distribution deduction (from Schedule B, line 15). Attach Schedules K-1 (Form 1041) **19** Estate tax deduction including certain generation-skipping taxes (attach computation) **20** Exemption **21** Add lines 18 through 20

**22** Taxable income. Subtract line 21 from line 17. If a loss, see instructions **23** Total tax from Schedule G, line 7 **24** 2018 net 965 tax liability paid from Form 965-A, Part II, column (a), line 2 **25a** Payments: a 2018 estimated tax payments and amount applied from 2017 return **25b** Estimated tax payments allocated to beneficiaries (from Form 1041-T) **25c** Subtract line 25b from line 25a **25d** Tax paid with Form 7004. See instructions **25e** Federal income tax withheld. If any is from Form(s) 1099, check ☐ **25f** 2018 net 965 tax liability from Form 965-A, Part I, column (f), line 2 **25g** Other payments: g Form 2439 **25h** Total. Add lines 25c through 25f, and 25g **26** Total payments. Add lines 25c through 25f, and 25g **27** Estimated tax penalty. See instructions **28** Tax due. If line 26 is smaller than the total of lines 23, 24, and 27, enter amount owed **29** Overpayment. If line 26 is larger than the total of lines 23, 24, and 27, enter amount overpaid **30** Amount of line 29 to be: a Credited to 2019 b Refunded

**Sign Here** Signature of fiduciary or officer representing fiduciary Date EIN of fiduciary if a financial institution

**Paid Preparer Use Only** Print/type preparer's name Preparer's signature Date Check ☐ if PPTP Form's name Form's address Form's EIN Phone no.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

For Paperwork Reduction Act Notice, see the separate instructions. [www.irs.gov/Form1041](http://www.irs.gov/Form1041) Cat. No. 11370H Form 1041 (2018)

## **40. Letter Ruling 202022002 (Issued February 25, 2020; Released May 29, 2020)**

- **Third party treated as grantor of irrevocable trust**

## 41. Campbell v. Commissioner, T.C. Memo 2019-4

- U.S. Tax Court respected a foreign asset protection trust and held that the IRS could not consider the trust assets in determining the taxpayer's assets for purposes of collecting a tax liability

## **42. Smith v. Szeyller, 31 Cal. App. 5<sup>th</sup> 450 (2019)**

- **A beneficiary who received notice but did not participate in litigation between another beneficiary and the trustees found herself with no recourse to object to the settlement reached between the litigating beneficiary and the trustees, even where the settlement agreement provided that a portion of the litigating beneficiary's legal fees be paid out of the non-participating beneficiary's trust share**

### **43. Matter of Fund for Encouragement of Self Reliance, 440 P. 3d 30 (2019) (4<sup>th</sup> Dist., April 25, 2019)**

- **Where the terms of a charitable trust appointed multiple trustees and did not explicitly provide that the trustees could act alone, consent by all of the co-trustees was required to decant the trust, despite the reference in the decanting statute to “a Trustee,” in the singular**

**44. In re Deborah Dereede Living Trust dated December 18, 2013, 2019 WL 1549157 (S.C. App. April 10, 2019)**

- **A trustee's reasonable, good-faith departure from the express terms of a trust nevertheless constituted a breach of fiduciary duty**

## **45. Gibbons v. Anderson, 2019 Ark. App. 193 (April 3, 2019)**

- **Arkansas Court of Appeals held that the arbitration provision in a trust agreement was unenforceable in a suit challenging the validity of the trust on grounds of undue influence**



**46. In re Antonia Gualtieri Living Trust,  
2019 WL 1265167 (Mich. Ct. App.  
March 19, 2019)**

- **The court could not compel income distributions for payment of child support from a discretionary trust**

## **47. In the Matter of Cleopatra Cameron Gift Trust dated May 26, 1998**

- **The Supreme Court of South Dakota held that a California court's order requiring payment of child support from a trust was not entitled to full faith and credit, and that the father's child support rights were not enforceable against the trust**

## **48. Alexander v. Harris, 2019 WL 2147281 (Fla. Dist. Ct. App. May 17, 2019)**

- **A Florida appellate court held that a father's special needs trust, which contained a spendthrift provision, is subject to garnishment to pay his child support obligations**

**49. Tangwall v. Wacker, 2019 WL 4746742 (Montana September 30, 2019)**

- **Vexatious litigant's attempts to evade collection through fraudulent transfers to self-settled domestic asset protection trust were denied**

## **50. Blech v. Blech, 38 Cal.App.5th 941 (2019)**

- **In California, creditors may request trust assets be made payable directly to the creditor even from a spendthrift trust once the amount to be distributed to a beneficiary is determined**

**51. In re Ignacio G., 2019 WL 2376184,  
2019 Tex. App. LEXIS 4648 (Tex. App.  
– Texarkana, June 6, 2019)**

- Summary judgment on how to interpret a trust was inappropriate where the intent of the settlors was not shown by sufficiently clear and convincing evidence

**52. Levitan v. Rosen, 95 Mass. App. Ct. 248, 124 N.E.3d 148 (2019)**

- **Interest in an irrevocable spendthrift trust created by a third party was deemed part of the marital estate to be considered in the division of property during a divorce, where the wife was the sole trust beneficiary**



**53. In re Estate of Victor J. Mueller  
Irrevocable Trust Number One and  
Number Two, Stephanie Mueller v.  
Krohn, 2019 WL 3210857 (Wis. Ct. App.  
July 17, 2019)**

- **A trustee's report adequately disclosed the existence of a claim so as to shorten the statute of limitations period to one year for matters disclosed in the report**

**54. Vander Boegh v. Bank of Oklahoma, N.A., 2019 WL 1495712 (Ky. Ct. App. Apr. 5, 2019)**

- **Beneficiaries' rights against a trustee are purely equitable, and a "letter of understanding" does not transform them into contract claims**

**55. In the Matter of Estate of Cooney, 454 P.3d 1190 (Montana December 24, 2019)**

- **Contract to make a will claim was not within the jurisdiction of the probate court**

**56. Waldron v. Susan R. Winking Trust,  
2019 WL 3024767, 2019 Tex. App.  
LEXIS 5867 (Tex. Ct. App. July 10,  
2019)**

- **A Texas Court of Appeals held that a trustee's fiduciary duties are not discharged until the trustee has been replaced by a successor trustee**

**57. Sibley v. Sibley, 273 So. 3d 1062 (Fla. Ct. App. 2019)**

- **A Florida appellate court held that an administratively dissolved private foundation is not in existence on the decedent's date of death for purposes of a bequest to that foundation, even when the private foundation is later reinstated**

## **58. Liebovich v. Tobin, 2019 Cal. App. Unpub. LEXIS 5930**

- **Remainder beneficiaries have standing to challenge a court order amending a revocable trust to partially disinherit these beneficiaries when one of the settlors was not given proper notice of the request for entry of such an order**

## **59. Matter of Troy S. Poe Trust, 2019 WL 4058593 (Tex. Ct. App. August 28, 2019)**

- **Texas appellate court determined that jury trials are available in trust modification actions to determine disputed facts**

## 60. Matter of Sochurek, 174 A.D.3d 908 (NY App. Div. 2019)

- Beneficiary claim against an executor for breach of fiduciary duty does not necessarily cause that beneficiary to violate an in terrorem clause



## **61. Bazazzadegan v. Vernon, 588 S.W. 3d 796 (Ark. Ct. App. 2019)**

- **Arkansas Court of Appeals holds that an arbitration provision in a trust is mandatory and bound successor co-trustees and beneficiaries of the trust**

## **62. Matter of Bruce F. Evertson Dynasty Trust, 446 P.3d 705 (Wyo. 2019)**

- **Wyoming Supreme Court holds that a trustee with the power to distribute income and principal for any purpose had the authority to decant a trust. However, the Supreme Court held that the trial court erred by considering whether a specific decanting proposal was permissible**

## 63. United States v. Johnson, \_\_\_\_ F. 3d \_\_\_\_ (10th Cir. 2019)

- Four children held responsible for unpaid federal estate taxes on stock received from mother's trust following mother's death



**64. Shaffer v. Commissioner of Revenue  
                     Mass.                      (2020). Petition  
for writ of certiorari filed with United  
States Supreme Court (November 9,  
2020)**

- **Massachusetts Supreme Court addresses  
impact of federal QTIP election on calculation  
of Massachusetts estate tax**

## **65. Changes in State Death Tax Exemptions from 2020 to 2021**

- **Numerous changes occur in state death tax exemptions for 2021 because of legislation or inflation adjustments**

## 66. 2021 State Death Tax Chart (as of January 1, 2021)

