The Will & The Way

NORTH CAROLINA
BAR ASSOCIATION

The Chair's Comments

Kemp Mosley

Friends and colleagues, I am humbled and most appreciative of the opportunity to serve as the Chair of the Estate Planning & Fiduciary Law Section for the 2025-26 NCBA year. As Janice Davies has assumed the most enviable job on the Section Council – that of the Immediate Past Chair – please join me in thanking Janice for her leadership, not just during the 2024-25 year, but throughout more than 15 years of service to our Section Council and its Executive Committee and Legislative Committee. Janice has worked tirelessly to ensure that all Section members have access to the support and guidance of other practitioners and has devoted herself and our Section leadership to significant and substantial improvements in North Carolina estate and trust law. Our Section has a strong lineage of effective leadership and devoted volunteers, and all of us are indebted to the past Section Chairs and Committee Chairs that have made our Section what I believe to be the strongest Section in the North Carolina Bar Association.

The Section has maintained its momentum in the first few months of this Bar year, following another superb Annual Meeting and CLE program at Kiawah Island, SC. Our CLE Committee, led by Crissy Dixon and Mike Moyer, together with course planners, B.J. Kilgore and Carter Webb, put together an excellent two-day survey course, on September 25 and 26. On the first evening, our Membership Committee, led by Danielle Fuhrman and Carter Webb, hosted a well-attended social and networking event near the Bar Center, attended by practitioners ranging

Continued on page 2

Logging Off With a Legacy:

Planning for Your Digital Afterlife

By Luke Conner and Joseph Causey Jr.

A person's legacy used to be measured in acres and bank balances. Now? It might be hiding behind a password, stored in the cloud, earning ad revenue on YouTube, or waiting in your Venmo history. For the modern estate planner, it's no longer enough to ask about bank accounts and property deeds. We must now ask: what's their Apple ID? Who has the crypto keys? Is there a Google Photos archive, or worse, a TikTok account with a following?

Imagine this: your client passes away with thousands of photos in iCloud and a monetized Etsy store . . . but nobody knows the password. Now the executor is locked out, the heirs are frustrated, and valuable memories and income vanish in a puff of digital smoke.

The result? Executors and loved ones are left navigating password-protected accounts, uncertain legal authority, and user agreements that read like they were written by robots. Sentimental memories are lost, and income streams are shut down or deleted with no recourse. In short, you're not just leaving behind assets, you're leaving behind a mess.

Estate planning professionals can no longer afford to ignore the growing category of digital property. North Carolina's adoption of the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA), codified in Chapter 36F of the North Carolina General Statutes, provides a legal pathway for fiduciaries, but it's not always smooth. Platform policies, privacy laws, and rigid terms of service can still block access, even when a client's wishes are clear.

RUFADAA helps, but it doesn't solve everything. The law is still playing catch-up with technology, leaving planners to untangle outdated documents and navigate digital red tape. The stakes are high: if we don't start treating digital assets like the real assets they are, our clients will be the ones left paying the price, sometimes with more than just money.

What are digital assets?

"Digital assets" might sound techy, but it's really just a modern way of describing the things we now store, share and manage online.

Think of the photos on your iCloud account, your email inbox, your social media profiles, or the playlists you've curated over years of streaming. Now think bigger: websites you own, online storefronts, cryptocurrency wallets, advertising revenue from a YouTube channel, or client files stored in cloud-based software. These aren't just conveniences. In many cases, they're real property with sentimental or monetary value.

Continued on page 3

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The Will & The Way

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The Chair's Comments, continued from page 1

from Buncombe County to Beaufort County. Earlier in September, I was joined by three NCBA members, including Travis Woolen and Jonathan Hilliard from our Section, during a panel presentation at the Wake Forest University School of Law focused in part on the practice of trust and estate law in North Carolina. I am pleased to report that we have now secured volunteers for similar trust and estate presentations at all North Carolina law schools during this Bar year.

The hard work of our Legislative Committee never stops. Mark Hale is chairing that committee this year, pulling double-duty with his role as Section Treasurer, and Kristyn Whitaker has joined Mark in the Vice Chair role. Similarly, our Ad Hoc Sponsorship Committee works year-round to fund and plan our Annual Meeting and CLE program. This year, Chris Hewitt has joined veteran Ad Hoc Committee Co-Chairs, Linda Johnson, Tanya Oesterreich, and Caitlin Horne, while Caitlin also continues her Executive Committee work as the Section's Secretary.

Our Section is on track to publish two fully updated manuals during this Bar year: the Fiduciary Litigation Manual, scheduled to be published simultaneously with our Fiduciary Litigation CLE program, on January 29, 2025, and the Estate Administration Manual, scheduled to be published simultaneously with our Basics of Estate Administration CLE program in February. Abby Adams and Kim Kirk have done great work as Editors of the Fiduciary Litigation Manual, and we are grateful to Maria Collins, Stacy Reid Monroe, and Linda Johnson for their service as Editors of the Estate Administration Manual.

We should be especially proud of our Section's scholarship committee, led by Holly Norvell, who also continues her officer service as Vice Chair of the Section. This year's scholarship budget is $10,000, enabling us to award 6 scholarships to the 2025 Annual Meeting and to make additional scholarships available for the coming Fiduciary Litigation and Basics courses. Our Section continues to pour its resources back into service for its members and for the greater good, and if a scholarship might enable you to attend one of our high-quality CLE programs, I invite you to contact Holly and to be on the lookout for future scholarship announcements from the Section.

I want to thank John Cella for his continuing service to our Section Council and its pro bono committee. Please contact John if you are interested in pro bono service opportunities, whether that may be a Wills for Heroes event or for a local name-change clinic. Likewise, I appreciate Carl King's returning leadership of our Joint Task Force with the Banker's Association and for his continued service in leading our Ethics Committee, where he is joined this year by Vice Chair, Jim Purnell.

We welcome the new leadership of Erin Edgar in chairing our Section's Inclusion, Diversity, Equity & Access (IDEA) Committee, and we thank Danielle Fuhrman for remaining on as Vice Chair with Erin for 2025-26. We all look forward to future publications of The Will and The Way, in February and May, thanks to our Publications team led by Taylor Avioli and Phillip Jester, and in one of those publications, I invite you to look forward to a Technology Committee report from Matt McGonagle and Kyle Agee, concerning the new Remote Electronic Notarization Act (RENA) legislation.

All of these Committees welcome your participation. The work is rewarding, and the experience is invaluable. Should you be interested in volunteering, or even just observing the work of a committee, please contact one of the chairs, or contact me or Kyle Ballantine at the NCBA, and we will be sure you are connected. Together, our team of volunteers is a powerful force, and I invite all Section members to see and participate in the work of one or more of our committees as we move further into another great NCBA year.

Logging off with a Legacy, continued from page 1

Everyone today has unique passwords and possibly seed phrases that serve as keys to accessing their digital assets. These are intangible forms of data, but they represent a critical and highly sensitive category of digital property. In some cases, people may create physical records of this information, such as engraving a seed phrase onto steel plates or washers arranged in a specific order on a bolt and nut for safekeeping. For blockchain-based assets and non-fungible tokens (NFTs), access is often entirely dependent on the availability of the correct password or seed phrase. If these credentials are lost due to oversight or the owner's death, the assets may become permanently inaccessible. To mitigate this risk, some individuals choose to divide their access keys into separate parts and store them in different locations, on different media or with trusted people. Ultimately, access to these credentials determines not only control but also the ability to retain or transfer ownership of certain digital assets.

Generally, digital assets fall into three buckets:

- **Personal** (email accounts, social media profiles, cloud-stored family photos, nonfungible tokens, passwords and seed phrases)
- **Financial** (cryptocurrency, PayPal or Venmo balances, online banking portals)
- **Business-related** (monetized content, e-commerce stores, digital intellectual property)

The common thread is that these assets are stored electronically and often require login credentials to access. If those credentials aren't known, or if no one has legal authority to act, those assets can vanish into the digital void.

Unlike traditional assets, these aren't always governed by state law alone. Private platforms set their own access rules, and they change frequently. That makes identification, documentation, and planning more critical than ever.

The Legal Framework: RUFADAA

Even if a loved one knows the username and password, accessing a digital account after death isn't always straightforward. Many platforms explicitly prohibit third-party access in their terms of service, even from grieving family members trying to settle an estate.

To address this, North Carolina adopted the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA). It sets out a legal framework for fiduciaries (executors, agents under a power of attorney, trustees and guardians) to access a person's digital assets if they become incapacitated or pass away.

RUFADAA operates with a "three-tier" system of priority. First, if a user has used an online tool provided by the platform (like Facebook's legacy contact or Google's Inactive Account Manager), that direction controls. Second, if no online tool is used, then the user's estate planning documents, such as a will, trust or power of attorney govern access. Finally, if neither of those exist, the platform's terms of service apply by default.

In theory, RUFADDAA'S three-tier structure gives users more control and provides clarity for fiduciaries. In practice, it's hit or miss. Many platforms either don't offer online tools or make them difficult to find or use. This often leaves families stuck in digital limbo, especially when there's no clear legal instruction in place.

Transfer of Authority in Estate Planning Documents

Managing digital assets after death or incapacity requires more than simply sharing passwords. Without clear legal authority, even the most well-intentioned family members may find themselves locked out of important accounts or unintentionally violating platform rules.

Wills and trusts remain the cornerstone of estate planning, and they should now include explicit digital asset clauses. These provisions can authorize a fiduciary to access, manage, and dispose of digital property, including social media, cloud storage, cryptocurrency wallets and more. For example, a trust might grant a trustee the right to retrieve photos stored in iCloud or continue managing an online storefront for a beneficiary.

Powers of attorney also play a key role, particularly in cases of incapacity. A durable power of attorney should include language specifically authorizing the agent to access digital accounts. Without this, financial agents may find themselves powerless to pay bills, manage subscriptions or protect online data if the client becomes unable to act.

North Carolina's RUFADAA statute adds another layer. It requires that a person gives explicit permission for fiduciaries to access digital content. Vague or general language is often not enough. Attorneys should take care to include tailored digital asset language that satisfies both legal standards and practical needs.

By addressing these issues proactively, attorneys can help their clients avoid confusion, delays, and potential losses down the road.

Terms of Service and Platform Restrictions

Even with a carefully crafted estate plan, fiduciaries can still face an unexpected hurdle: the fine print in a platform's Terms of Service Agreement (TOSA). These lengthy and often overlooked contracts govern what users can and cannot do with their accounts, including what happens after death. Unfortunately, many platforms prohibit account transfers entirely, regardless of a user's wishes or estate documents.

The TOSA creates a legal gray area. A will might authorize someone to manage a deceased person's YouTube channel, but YouTube's policies may forbid anyone else from accessing the account. Facebook, Instagram, and other platforms often take similar positions. Some allow for memorialization or content download under certain conditions, but rarely do they permit full administrative control to be handed down. The result? A conflict between private platform rules and a client's estate plan.

RUFADAA tries to bridge this gap by setting a legal standard for fiduciary access, but it doesn't override TOS agreements. In fact, the law defers to them in many cases. If a platform's policy says no one can access the account after death, even an executor with clear authority may be blocked.

Because RUFADAA often defers to platform terms of service,

proactive planning becomes essential. Attorneys should counsel clients on using in-platform tools, like Facebook legacy contacts or Google's Inactive Account Manager, which allow users to designate someone to access certain features after death. These tools often carry more weight than a will or power of attorney when it comes to platform compliance.

Ultimately, the problem isn't that digital platforms are unwilling to cooperate. It's that their rules were written with user privacy, not estate administration, in mind. Until that changes, estate planners must work within these boundaries and prepare clients for the limitations they may face.

PLATFORM-SPECIFIC OPTIONS

Some of the most popular digital platforms have introduced tools to help users prepare for incapacity or death. While these tools don't replace formal estate planning, they often carry more authority in the eyes of the platform than a will, trust or power of attorney. That makes them a necessary part of the planning conversation.

Facebook and Instagram (Meta) allow users to designate a *legacy contact*: someone who can manage certain parts of the account after death. This includes writing a pinned post, updating the profile picture, or downloading content. Alternatively, users can choose to have the account deleted entirely. However, the legacy contact must be set up ahead of time. Instagram does not allow a legacy contact to be named but will memorialize an account if someone submits proof of death.

Google, which includes Gmail, YouTube, and Google Drive, offers one of the most robust tools: the *Inactive Account Manager*. This feature lets users choose what happens to their account after a period of inactivity. You can appoint trusted contacts, decide which data they can access, and opt to have the account deleted. It's one of the more flexible tools available, but again, it must be activated before death or incapacity.

Twitter (now X) has no legacy contact or memorialization option. If an account goes inactive for six months, it may be deleted. Family members can request deactivation upon death, but cannot gain access or manage content.

TikTok currently lacks any formal posthumous management system. Accounts can remain active indefinitely or be removed upon request, but there's no way to designate a successor or preserve the content in advance.

Etsy, **Shopify**, and **Amazon Seller Accounts** are treated as business accounts. While the companies don't offer memorialization features, access depends entirely on having login credentials. If those aren't available, or if the platform becomes aware of the owner's death, the account may be suspended. Ownership transfer usually requires contacting support and submitting legal documents, often including probate orders.

Stripe, PayPal, and other payment processors will typically freeze funds if they learn of a user's death and will only release them with proof of legal authority. That means having clear fiduciary documentation is essential. In some cases, these platforms will close the account permanently and require a new application for any successor.

Each of these platforms has its own rules, its own terminology, and its own support policies. And they can change at any time. That's why it's important for estate planners not only to be familiar with current options, but to help clients prepare for the possibility that those options may evolve or disappear.

Practice Tips for Attorneys

As digital assets grow in value and complexity, estate planners must go beyond the traditional checklist. Asking about "bank accounts and property" no longer cuts it. Attorneys must now be proactive in guiding clients through the murky terrain of digital life, and the key is building good habits into your practice.

1. **Start the conversation early.**
   Don't wait for the client to mention a YouTube channel or crypto wallet. Include digital assets as a standard part of your intake process. Ask open-ended questions like: "Do you manage any online businesses?" or "Are there any platforms where you store important information, content, or receive income?"

2. **Educate clients on what digital assets are.**
   Many people don't realize how broad the term is. Walk clients through common examples: cloud photo libraries, email accounts, domain names, social media profiles, or PayPal balances. If it lives online and has sentimental or financial value, it matters.

3. **Use clear, consistent drafting.**
   Include digital asset clauses in wills, trusts and powers of attorney, *explicitly referencing North Carolina's RUFADAA*. Make sure the fiduciary is granted access rights not only after death but also in the event of incapacity.

4. **Offer a Digital Asset Memorandum.**
   This separate document allows clients to list usernames, platforms and instructions, without locking sensitive information into their will. Make it clear that the memo should be stored securely and updated regularly. Let clients know they can update this document without needing to formally amend their estate plan.

5. **Walk through platform tools with the client.**
   Help them designate legacy contacts, set up inactive account managers, or update account recovery settings. These tools don't replace your documents, but they often override them in practice. A few minutes spent here can save hours of frustration for loved ones later.

6. **Set realistic expectations.**
   Yes, your client might believe their digital life will live on like a hologram of Tupac. But sometimes, the fine print wins. Terms of service can limit access, and some platforms simply don't allow transfer. But with proper planning, clients can maximize their chances of preserving what matters.

7. **Stay updated.**
   Digital platforms evolve constantly, and so do their policies. Consider maintaining a simple one-page reference sheet or chart of platform-specific tools and limitations and update it annually.

This is a growing area of law, but also one where practical steps make a real difference. A thoughtful plan can mean the difference between a digital legacy that vanishes, and one that lives on with meaning.

Conclusion

The digital age has changed the way we live, and it's changing the way we plan for death. Photos aren't always in shoeboxes anymore. Incomes may come from platforms, not paychecks. And memories, businesses and relationships are often built and maintained entirely online.

For estate planning attorneys, this shift requires more than just technical updates to documents. It demands a mindset shift. We must recognize digital assets as real property, worthy of protection, forethought and legal clarity.

North Carolina's adoption of RUFADAA gives us a solid starting point, but the responsibility lies with us to help clients use that framework effectively. By asking the right questions, drafting with precision, and educating clients on both the legal and practical realities, we can ensure their digital lives aren't left behind.

Shoeboxes are out. Server farms are in. Whether it's a crypto wallet or a YouTube channel, your client's legacy deserves more than a forgotten password. It deserves a plan.

North Carolina Reforms Intestacy Laws for Children Born to Unwed Fathers

By Andrew Brower

Background

North Carolina has rather archaic laws regarding paternity and legitimization. In estate and probate matters, these issues arise when a father dies without a will (i.e., intestate) and leaves behind children born out of wedlock, where the father did not subsequently marry the mother or otherwise legitimate the child through the courts. In such cases, N.C.G.S. § 29-19(b) governs whether the child is considered an heir of the father and eligible to inherit via intestate succession.

This is significant for real estate attorneys and title searchers in determining who has title to real property owned by the intestate father. Not all biological children are intestate heirs under North Carolina law. In fact, the general rule is that children born out of wedlock, who are not subsequently legitimated, are not heirs and do not inherit from their father via intestate succession. However, there are three ways by which a child born out of wedlock can overcome this bar to inheritance, provided timely notice is given to the personal representative of the father's estate.

1. **Court-Established Paternity**: If paternity has been established in a paternity or child support action, court records are sufficient to allow the child to inherit.
2. **DNA Testing**: If the father died before or within one year of the child's birth, and DNA testing can establish paternity, this is also sufficient.

   These first two methods remain unchanged.
3. **Acknowledgment of Paternity in Writing**: Historically, the third method required the father to have acknowledged paternity during his and the child's lifetime through a written, notarized instrument filed during the father's lifetime with the clerk of superior court. In practice, this was often done through an affidavit of parentage, signed by both parents, typically to have the father listed on the child's birth certificate.

However, most affidavits of parentage are not filed with the clerk of superior court, simply because unwed parents have no reason to consult an attorney or know this additional step is required. As a result, in families where paternity and child support actions are unnecessary, often in the case of happily unwed couples, children can suffer significant legal consequences if their father dies without a will. Once the father has died, it is too late to file the affidavit of parentage.

The Change Effective December 1, 2025

Fortunately, relief is on its way with House Bill 992. The bill was introduced on April 10, 2025, passed the House and Senate unanimously on June 26, 2025, and reached the Governor's desk on July 1, 2025. It was signed by the Governor on July 9, 2025, and will apply to estates of decedents dying on or after December 1, 2025.

The change is simple but impactful. House Bill 992 removes the requirement that a written acknowledgment of paternity be filed with the clerk of superior court. Under N.C.G.S. § 130A-101(f), when a child is born to an unmarried mother, both parents may complete an affidavit of parentage to have the father's name added to the birth certificate. While this affidavit is filed with the State Registrar, under current law it does not affect inheritance rights unless also filed with the clerk of court per N.C.G.S. § 29-19(b)(2). Section 4 of House Bill 992 makes a conforming change to N.C.G.S. § 130A-101(f) by removing this additional filing requirement for inheritance purposes.

In short, for estates of decedents dying on or after December 1, 2025, if a father is listed on the child's birth certificate, the child will be considered his heir and can inherit via intestate succession. While additional reform is likely needed to modernize North Carolina's

laws to conform with nontraditional family structures and prevailing ideas as to what it means to be a parent, this change addresses one of the most common injustices in our intestacy framework.

Lingering Nuance and Uncertainty

While this change will prevent many injustices for children born out of wedlock to intestate fathers, there remains nuance and uncertainty for real estate attorneys and title searchers. The heirs listed on the initial probate forms in the estate file may not be the heirs as finally determined. N.C.G.S. § 29-19(b) provides that, notwithstanding the three criteria to heirship for children born out of wedlock, no person shall be entitled to take unless the person has given written notice to the personal representative within six months after the date of the first publication or posting of the general notice to creditors. Accordingly, if an estate has been opened and is pending, title searchers should coordinate with the probate attorney or personal representative to confirm the heirs.

If cases where no personal representative qualifies and the intestate heirs attempt to sell real estate after two (2) years pursuant to N.C.G.S. § 28A-17-12(b), real estate attorneys may need to conduct their own due diligence as to the requirements of N.C.G.S. § 29-19(b). This scenario also begs the questions as to notice to the personal representative. Does a child born out of wedlock who meets one of the three criteria have rightful title to real property of the intestate father when no personal representative qualifies and, therefore, no notice is given? If no personal representative qualifies within two (2) years of the decedent's death, all sales, leases or mortgages of real property by heirs are valid as to creditors and personal representatives of the decedent, but are such sales valid as to other intestate heirs? Perhaps the notice provision only applies to property of which the personal representative takes title and distributes which would generally not include real property. Perhaps a customized indemnity agreement is needed for a real estate closing involving intestate heirs pursuant to N.C.G.S. § 28A-17-12(b). The answer may not be entirely settled or clear.

Whatever the solution may be, House Bill 992 offers a welcome and much needed modification to the North Carolina Intestate Succession Act. Despite the needed and welcome change, intestate estates, especially involving unwed fathers, remain rife with nuance and potential title landmines of which real estate attorneys and title searchers should be aware.

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Andrew M. Brower is a Board Certified Specialist in Estate Planning & Probate Law at Law Firm Carolinas, which has five offices and a statewide practice. For questions about estate planning and administration, wills and trusts, guardianships, or Medicaid/long-term care and asset protection, reach out to Andrew at abrower@lawfirmcarolinas.com.

Recent Developments - June 2025 - August 2025

By The Trusts and Estates Group of Womble Bond Dickinson

The Tax Court disallowed a limited liability company's $21,972,000 charitable deduction for donation of a conservation easement on 85 acres of granite quarry property and imposed a 40% penalty for gross valuation misstatement under Code Section 6662(h). Beaverdam Creek Holdings, LLC v. Comm'r, T.C. Memo. 2025-53 (June 2, 2025).

A Georgia limited liability company filed IRS Form 1065, U.S. Return of Partnership Income and claimed a charitable deduction of $21,972,000 for donation of a conservation easement on 85 acres of granite quarry property in Oglethorpe County, Georgia. The IRS issued a Notice of Final Partnership Administrative Adjustment (FPAA), denied the deduction in full, and imposed a 40% penalty for gross valuation misstatement under Code Section 6662(h). Taxpayer appealed and argued that the IRS's position was "arbitrary and capricious" on its face and that the burden of proof should shift to the IRS. The Tax Court noted that even if a FPAA is arbitrary and capricious, that taxpayer bears the burden of proof in a deduction case and must offer evidence to support its entitlement to a deduction. At trial, taxpayer argued it presented credible evidence by offering a qualified appraisal that the value of the property was approximately $23,000,000. That appraisal relied on the income approach which taxpayer argued was appropriate and was used because a discounted cash flow (DCF) analysis represented the highest and best use of the property as a quarry. However, the Tax Court noted that taxpayer did not have the expertise to mine the quarry nor any intent to do so.

The IRS offered that the market approach was appropriate and determined that the value of the property before the transfer was $215,000 and the after value $85,500. IRS experts testified that the appraisal offered by taxpayer was more than 112 times higher than the average of comparable sales and did not follow the Uniform Standards of Professional Appraisal Practice ("USPAP") guidelines. The Tax Court noted that failure to follow the USPAP may affect the credibility of an appraisal but not its validity. The Tax Court held that taxpayer's appraisers were qualified and that its appraisal did not fully comport with UPAP but it did not fail to comply with generally accepted appraisal standards. However, based on the IRS's experts offering several comparable sales, the Tax Court held that taxpayer's income method was not appropriate and the valuation of $23,000,000 was absurd. The Tax Court agreed with the IRS that the comparable sales approach was the best evidence of market value and determined the value of the easement before the donation to be $300,000. The parties stipulated that the after value of the easement property was $106,750. Subtracting $106,750 from $300,000, the Tax Court ruled that the fair market value of the easement was $193,250 and held that the penalty of 40% for gross valuation misstatement applied.

The "Helping Ensure Rural Inheritance Transfers Are Generationally Enduring Act," if passed, would raise the limitation on the value reduction for family farm real estate from $750,000 to $15 million. S. 1927, 119th Cong., 1st Sess.

The “Helping Ensure Rural Inheritance Transfers Are Generationally Enduring Act” (the HERITAGE Act) was introduced in the Senate on June 3, 2025. The bill proposed raising the limitation on the value reduction in fair market value of farmland from $750,000 to $15 million for purposes of the application of the estate tax.

The Eleventh Circuit affirmed the Tax Court’s ruling that taxpayer’s charitable deduction was limited to taxpayer’s adjusted basis in the easement because the property was considered inventory in the hands of the contributing partner. Glade Creek Partners, LLC v. Comm’r, 135 A.F.T.R.2d 2025-1836 (June 6, 2025).

Taxpayer donated a charitable conservation easement to Atlantic Coast Conservancy in 2012 consisting of 1,313 acres of land of undeveloped land in Tennessee. Taxpayer claimed a charitable deduction for the entire fair market value the land. The land was contributed by Hawks Bluff Investment Group (“Hawks”), an S corporation, who formed taxpayer for the sole purpose of assuming land from a failed real estate venture tied in part to the 2008 economic recession and declared the land as property on its Form 1065.

The IRS initially disallowed taxpayer’s charitable deduction in full but later conceded that taxpayer was allowed a deduction after an initial trial and a subsequent invalidation of a Treasury Regulation that was utilized in its first holding. The IRS argued that taxpayer was not entitled to deduct the entire FMV of the land. The Tax Court concluded under Code Section 724(b) that the easement property would have been considered inventory in the hands of the contributing partner (Hawks) had it been sold in 2012 and that such a sale would have generated ordinary income. The Tax Court reasoned that the same analysis applied once taxpayer owned the easement property and held that any easement deduction would have been limited to taxpayer’s adjusted basis had it sold the property in 2012. The Eleventh Circuit agreed with this conclusion and affirmed the Tax Court’s ruling.

The requirements of Treas. Reg. §301.9100-1 and Treas. Reg. §301.9100-3 were satisfied and the IRS granted an Estate an extension of time to file for portability. PLR 202523002 (June 6, 2025).

Decedent died, survived by spouse, with an Estate that was not required to file an estate tax return. The Estate failed to timely file for portability. The IRS concluded that information, affidavits, and representations submitted on behalf of Decedent’s estate explain the circumstances that resulted in the failure to timely file a valid election and that granting relief would not prejudice the interests of the government. Having satisfied the requirements of Treasury Regulations Sections §301.9100-1 and 301.9100-3, the IRS granted an extension of time to file for portability.

An entity that provided support to members during the loss of members and members’ families did not qualify for tax-exempt status under Code Section 501(c)(3) because it provides benefits to a small group of persons and not the larger public. PLR 202523008 (June 6, 2025).

An entity, claiming tax-exempt status under Code Section 501(c)(3), was created to operate as a burial and funeral benefit organization that provides financial and spiritual support to the entity’s members when either the member dies or death occurs in their immediate family. Immediate family members of paying members were entitled to benefits. Immediate family members include spouses, children, foster children, parents, stepparents, brothers, sisters, half-brothers, and half-sisters. Membership was open to anyone who was 18 years old and willing and ready to support the entity’s objectives, principles, rules and regulations. The IRS denied the entity tax-exempt status because the entity’s activities served the private interests of its members and did not confer a benefit to the public.

U.S. District Court grants motion for default judgment imposing penalties for taxpayer’s willful failure to comply with FBAR disclosure requirements. United States v. Debrick, 2025 WL 1639702 (D.D.C. June 10, 2025).

The U.S. District Court for the District of Columbia granted the government’s motion for a default judgment upon holding that the allegations in the Complaint sufficiently demonstrated that the taxpayer willfully failed to disclose a pair of foreign accounts on a foreign bank account report (“FBAR”) for multiple years. A willful failure to disclose an account on an FBAR warrants a penalty equal to 50% of the value of the undisclosed account or $100,000, whichever is greater. 31 U.S.C. Section 5321(a)(5)(C)(i). The District Court found that the taxpayer met a willful blindness or reckless disregard standard with respect to the FBAR requirements when he disclosed some of his accounts on FBARs for similar years (though he did not disclose the accounts at issue), had a pattern of concealing asset information from the IRS, made false statements under penalty of perjury related to his tax records and moved assets out of a certain account when he learned that the account administrator would be reporting that relationship to the IRS. As a result, the District Court held that the penalties, which exceeded $2,000,000, were justified.

IRS granted an extension of time of 120 days to make a QTIP election for Executors who reasonably relied on a tax professional who failed to include the assets of a Marital Trust as property subject to the QTIP election in Part A of Schedule M of the Form 706. PLR 202524009 (June 13, 2025).

Decedent died with an estate plan that divided trust assets into a Family Trust and Marital Trust. Executors of Decedent’s estate engaged a tax professional to prepare Decedent’s Form 706. The tax professional mistakenly failed to include the assets of the Marital Trust as property subject to the QTIP election in Part A of Schedule M. Thus, no QTIP election was made with respect to the property passing to Marital Trust. The IRS concluded that Executors reasonably relied on the advice of a qualified tax professional and granted an extension of time of 120 days to make the QTIP election.

Where Decedent’s retirement plans designated Decedent’s estate as sole beneficiary, and Decedent’s Will designated taxpayer surviving spouse as sole beneficiary and personal representative, taxpayer was able to roll over Decedent’s retirement plans into taxpayer’s own IRA, be treated as distributee of the retirement plan assets, and need not include the distribution in taxpayer’s gross income. PLR 202525008 (June 20, 2025).

Decedent owned three retirement plans at this death (“Decedent’s

Plans"). Decedent designated his estate as the sole beneficiary of Decedent's Plans. Decedent's Last Will and Testament designated taxpayer surviving spouse as the sole beneficiary of Decedent's estate and personal representative. Taxpayer intends to direct the retirement plan assets from Decedent's Plans to Decedent's estate and then receive the retirement plan assets as the sole beneficiary of Decedent's estate. Taxpayer intends to roll over those same retirement plan assets into IRAs maintained in taxpayer's name within 60 days of the date the retirement plan assets are received by the estate.

IRS concluded that (i) taxpayer will be treated as the payee or distributee of the retirement plan assets from Decedent's Plans, (ii) taxpayer, as Decedent's surviving spouse, will be eligible to roll over the retirement plan assets from Decedent's Plans into IRAs maintained in Taxpayer's name, if the rollover occurs no later than the 60th day after the date the retirement plan assets are received by the Decedent's estate, and (iii) taxpayer will not be required to include the distribution and rollover in taxpayer's gross income for federal tax purpose.

The IRS rules that the circumstances resulting in the termination of a corporation's S corporation election were inadvertent when a trust shareholder failed to make the election under Code Section 1361(e)(3) to treat the trust as an electing small business trust. PLR 202527005 (July 3, 2025).

In this Private Letter Ruling, the trustee of a trust failed to make the election under Code Section 1361(e)(3) to qualify the trust as an electing small business trust (ESBT). Prior to the date the trust should have made the ESBT election, the trust was an eligible S corporation shareholder as a "grantor trust." Despite failing to make the ESBT election, the corporation and its shareholders all continued to file returns consistent with the corporation's status as an S corporation. The trust also filed returns consistent with its status as an ESBT. The corporation sought relief from the IRS for retroactive relief. The corporation represented that its termination of S corporation status was inadvertent and not motivated by tax avoidance or retroactive tax planning. The IRS granted retroactive S corporation status to the corporation pursuant to Code Section 1362(f) contingent upon the trustee of the trust filing an ESBT election within one hundred-twenty days of the private letter ruling.

The Sixth Circuit affirmed the District Court's decision upholding the IRS's application of the split-dollar Treasury Regulations to a closely held dental corporation and its sole shareholder-employee. Peter E. McGowan; Michele L. McGowan; Peter E. McGowan DDS, Inc. v. United States of America, No. 24-3228 (July 9, 2025).

Affirming the District Court's grant of the IRS's motion for summary judgement, the Sixth Circuit held a life insurance transaction was a compensatory split-dollar arrangement under Treasury Regulations Section 1.61-22, despite a complex subtrust structure. Between 2011 and 2015, taxpayer dentist and his dental corporation, of which he was the sole shareholder-employee, entered into a whole-life insurance policy plan. Under the plan, a "DBT" subtrust purchased the policy on taxpayer's life, and the dental corporation contributed money to the subtrust for the base premium. The dental corporation also contributed money for paid-up additions to the policy to a "RPT" subtrust, which loaned money to the DBT subtrust. If taxpayer died within five years of the plan, the policy was to be paid to his designated beneficiary, his wife. After audit, the IRS assessed deficiencies to taxpayer and the company, finding the split-dollar regulations applied to the plan, requiring taxpayer to include the full economic benefit of the policy in his income and disallowing the corporation to deduct premium payments.

At issue were two of the compensatory split-dollar factors under Treasury Regulations Section 1.61-22(b)(2)(i). The Sixth Circuit held the first factor — that the arrangement is between an owner and a non-owner — was satisfied because Treasury Regulation Section 1.61-22(c)(1)(iii)(C) treats an employer as the owner of the policy when the policy is held by a welfare benefit fund, which the DBT trust qualified as. Furthermore, in applying the substance over form doctrine, the Sixth Circuit found the subtrusts were economically meaningless and did not defeat the corporation's ownership rights in the policy. Next, the Sixth Circuit held the second factor at issue — that the employee designates the death benefit beneficiary or has an interest in the policy cash value — was clearly satisfied because taxpayer designated his wife. The Sixth Circuit rejected taxpayer's argument that he did not designate the beneficiary because there was a potential donation to a charity, the Toledo Zoo, of the cash value from RPT subtrust if DBT had surrendered the policy. The Sixth Circuit held the factor was still met because the charity's cash value interest was not a death benefit, and, even if they had a death benefit interest, the taxpayer still designated the Toledo Zoo as the beneficiary. Therefore, the split-dollar regulations applied to the plan.

Lastly, the Sixth Circuit rejected the taxpayers' argument that *Loper Bright* invalidated the split-dollar Treasury Regulations related to the prohibition on the corporation's deductions, finding the plain language of the Internal Revenue Code sufficient to enforce the prohibition. However, the Sixth Circuit found taxpayer was entitled to characterize the split-dollar benefits as shareholder distributions, rather than compensation, and was thus entitled to a refund based on the difference between the ordinary income and dividend rates.

The Tax Court held that the taxpayer's claimed value of a conservation easement vastly exceeded the correct value and held a limited liability company liable for a 40% penalty for a gross valuation misstatement. **Veribest Vesta, LLC v. Comm'r, No. 9158-23, 2025 WL 1939887 (July 11, 2025)**.

Veribest Vesta, LLC received the old Grimes quarry in Oglethorpe County, Georgia in December 2016. The old Grimes quarry was purchased for $1,818 per acre earlier that year. In September 2018, using a discounted cash flow analysis of an operating dimensional stone granite mine, the old Grimes quarry was appraised at $20.4 million, with a residual value of $90,000. The LLC granted a conservation easement over the old Grimes quarry and claimed a charitable deduction of $20,310,000. The Tax Court found that it was unlikely that the highest and best use of the old Grimes quarry was dimensional stone mining. Further, the Tax Court found that even if dimensional stone mining was the highest and best use, the outcome would not change because regardless of the highest and best use of the property, the before valuation would not exceed $3,000 per acre. The Tax Court determined that the value of the easement was $111,111, which was determined based on the value of the property before the granting of the easement ($165,000 or

$3,000 per acre) and the value after the easement. Given that the claimed value of the conservation easement vastly exceeded its correct value, the Tax Court held that the LLC is liable for a 40% penalty for a gross valuation misstatement. The Tax Court further stated that "this is one of eleven cases before this Court in which True North Resources is the partnership representative pursing the litigation. And we provide this warning, that continuing to pursue similarly incredible, nonsensical, and, quite frankly, smelly arguments may result in sanctions on petitioner or its counsel."

The IRS ruled that the merger of identical GST-exempt trusts created under a husband and wife's separate Revocable Trust Agreements would not affect the GST-exempt status of the surviving trust. PLR 202528006 (July 11, 2025).

A husband and wife created separate Revocable Trust Agreements. Upon the wife's death, all of the remaining assets of her trust funded a Family Trust with an inclusion ratio of zero, because her generation-skipping transfer ("GST") tax exemption was automatically allocated to all of the Family Trust assets. Upon the husband's death, part of his remaining assets funded an Exempt Trust with an inclusion ratio of zero, because his GST exemption was automatically allocated to all of the Exempt Trust assets, and following his death the wife's Family Trust assets also funded a separate Exempt Trust with an inclusion ratio of zero. In order to simplify the administration of the assets, the taxpayer aimed to merge the husband's Exempt Trust into the wife's Exempt Trust, as permitted by the terms of both Revocable Trust Agreements when trusts are identical, and requested this Private Letter Ruling that the merger would not affect the GST-exempt status of the merging trusts and would not cause any distribution from the surviving Exempt Trust to be subject to GST tax. The rules under Treasury Regulations Section 26.2601-1(b)(4)(i)(D) provide that a valid modification of the governing instrument of a GST-exempt trust will not cause the trust to be subject to GST tax if the modification does not shift a beneficial interest to a beneficiary who occupies a lower generation than the persons who hold the beneficial interest before the modification and the modification does not extend the time for vesting any beneficial interest in the trust beyond the vesting period for the original trust. Example 6 under Treasury Regulations Section 26.2601-1(b)(4)(ii)(E) specifically provides that a valid merger of two identical, GST-exempt trusts separately created by spouses does not cause the surviving trust assets to be subject to GST tax if the requirements under Treasury Regulations Section 26.2601-1(b)(4)(i)(D) are met. The IRS found that the proposed merger of the husband's Exempt Trust into the wife's Exempt Trust would not shift the beneficial interests to any beneficiary who occupies a lower generation and would not extend the time for vesting of the beneficial interests. Therefore, the IRS concluded that the merger would not affect the GST-exempt status of the surviving trust or cause any distribution to be subject to GST tax.

The Tax Court found no qualified appraisal due to agreement between donor and appraiser to inflate the easement valuation and imposed a 40% penalty for gross valuation misstatement under Code Section 6662(h). Rock Cliff Reserve, LLC v. Comm'r, T.C. Memo. 2025-73 (July 14, 2025).

Four Georgia limited liability companies taxed as partnerships (Rock Cliff, Jack's Creek, East Village, Baker's Farm) organized by Five Rivers Conservation Group, LLC donated conservation easements in 2015 and claimed aggregate charitable deductions in excess of $62 million. Five Rivers Conservation Group, LLC is the tax matters partner for each of the partnerships in these cases. The IRS adjusted, denying in full, the charitable contribution deductions for tax year 2015 on the Notice of Final Partnership Administrative Adjustment (FPAA) issued to each partnership. The Tax Court upheld the denial of $62 million in charitable deductions for gifts of conservation easements because taxpayer knew facts that put taxpayer on notice that the appraiser would overstate the value of the contributed easements, thus rendering the appraiser not "qualified" under Treasury Regulations Section 1.170A-13(c)(5)(ii). The Tax Court found that taxpayer and the appraiser had orally agreed to a valuation of the easement before the appraiser had been supplied with any of the underlying data, and that taxpayer was fully aware that the entire property had been purchased for a small fraction of the agreed easement value. Thus, taxpayer had facts that would put taxpayer on notice that the appraiser would overstate the value. The Tax Court found that the values on the returns each exceeded the FMV of the easements by more than 200% and imposed a 40% gross valuation misstatement penalty under Code Section 6662(h) in addition to a 20% penalty on the portion of the underpayment not attributable to the valuation misstatement by reason of a substantial understatement of income tax and negligence under Code Section 6662(a).

The Tax Court holds that the estate of a surviving husband cannot utilize DSUE of wife who predeceased him where wife's estate did not timely file an estate tax return and did not qualify for the safe harbor under Rev. Proc. 2017-34. Estate of Billy Rowland v. Comm'r, T.C. Memo 2025-76 (July 15, 2025).

The Tax Court held that a husband's estate could not use the DSUE from his predeceased wife where the wife's estate failed to timely file a Form 706 and did not qualify for the safe harbor under Rev. Proc. 2017-34 as a result of technical deficiencies. Wife died on April 8, 2016, and the executor filed an extension for the Form 706 which extended the due date to July 8, 2017. Wife's estate did not file the return until December 29, 2017 (and was received by the IRS on January 2, 2018). Wife's return indicated that it was "FILED PURSUANT TO REV PROC 2017-34 TO ELECT PORT SEC 2010(c)(5)(A)." Wife's return calculated a DSUE of $3,712,562. Wife's return, however, did not include any information as to the FMV of assets but instead estimated the gross value of the estate in an attempt to rely on the relaxed reporting requirements of Treasury Regulations Section 20.2010-2(a)(7)(ii).

Husband died on January 24, 2018, and his estate timely filed a Form 706 on April 22, 2019, claiming DSUE from wife. The IRS audited the husband's estate and determined that it could not use the claimed DSUE because the return had not been filed timely, and it failed to satisfy the requirements of Rev. Proc. 2017-34 because the wife's estate's return was not a "complete and properly prepared estate tax return" due to the fact that it (i) did not provide complete descriptions or valuation information for the property in wife's estate and (ii) it was ineligible to estimate the value of property under Treasury Regulations Section 20.2010-2(a)(7)(ii).

Treasury Regulations Section 20.2010-2(a)(7)(ii) offers a relaxed reporting requirement for marital and charitable deduction

property where an estate is not required to file a return. Under Treasury Regulations Section 20.2010-2(a)(7)(ii), an estate is not required to report the value of such property but instead "only the description, ownership and/or beneficiary of such property, along with all other information necessary to establish the right of the estate to the deduction." The relaxed requirement, however, is subject to certain exceptions including that it does not apply to marital or charitable property if "the value of such property relates to, affects, or is needed to determine, the value passing from the decedent to a recipient other than the recipient of the marital or charitable deduction property."

Wife's return included property that did not pass to the husband or charity (there were several specific distributions to others), so her return failed to satisfy the applicable regulation as to the nonmarital and charitable deduction property. The wife's estate also erred in applying the relaxed reporting requirements on marital deduction property in light of the exception noted above where her trust agreement provided for a distribution of 20% of the trust estate to a charitable family foundation and "such amount . . . as when added to property to [husband] under my last Will and Testament. . . .will be equal to one-fourth of my gross estate" with the residuary passing to trusts for grandchildren. This language specifically requires the valuation of property passing to the family foundation and husband to determine how other assets would pass under the wife's estate planning documents.

The Tax Court further held that it need not decide whether the estate's argument of substantial compliance is available for the relief under Rev. Proc. 2017-34 because wife's estate could not have been said to substantially comply with the requirements of filing a complete return under the circumstances. The Tax Court further held that the estate did not qualify for the application of equitable estoppel. The Tax Court granted the IRS's motion for partial summary judgment confirming that the DSUE amount was unavailable for husband's estate.

The Tax Court held that the IRS complied with the immediate supervisory approval requirements under Code Section 6751(b)(1) for penalties levied against a taxpayer related to a charitable contribution for a conservation easement. River Moss Property, LLC v. Comm'r, T.C. Memo. 2025-79 (July 22, 2025).

Granting the IRS's motion for partial summary judgment, the Tax Court found the IRS complied with the requirements of Code Section 6751(b)(1) when determining penalties by receiving timely supervisory approval. In 2016, taxpayer, a Georgia limited liability company treated as a TEFRA partnership for Federal income tax purposes, claimed a charitable contribution deduction for its donation of a conservation easement. The IRS selected the taxpayer's 2016 Form 1065 for examination. As the examination concluded, on January 16 and 17, 2020, the Revenue Agent ("RA") recommended disallowance of the charitable deduction, a value of $0 for the easement and the assertion of penalties under Code Sections 6662 and 6662A on Form 886-A and separately on a civil penalty approval form, which he affixed her digital signature. On January 17, 2020, the exam team manager affixed her digital signature to the same documents. The RA subsequently consulted with Chief Counsel because the appraisal for the easement had not been delivered and was still a few months out. The Office of Chief Counsel instructed that the RA could proceed with the recommendations but noted that it was being done without an appraisal and that an update would need to be sent should the appraisal be used after it was finalized. The RA prepared an updated Form 886-A on February 10, 2020, deleting references to the appraisal, setting a value of $0 for the easement, and recommending various penalties, and the form was approved for a second time by the supervisor on the same date. The RA mailed taxpayer a packet of documents including the Form 886-A on February 11, 2020. The appraisal came back with a $0 value on March 9, 2020, and the RA determined he did not need to use it.

On July 7, 2020, the IRS issued the taxpayer an FPAA, including Form 886-A, Explanation of Items, disallowing the charitable contribution deduction claimed for the easement and determining the aforementioned penalties under Code Sections 6662 and 6662A. The taxpayer timely petitioned the Tax Court for readjustment of the partnership items.

The Tax Court found the IRS followed proper procedure under Code Section 6751 when assessing the penalties, which requires an initial determination of penalties to be personally approved (in writing) by the immediate supervisor of the individual making such determination. The Tax Court then found that the final determination after consulting the Office of Chief Counsel occurred on February 10, 2020, and supervisory approval was secured on the same date. This was several months before the FPAA was issued on July 7, 2020. The Tax Court rejected the taxpayer's arguments to the contrary as frivolous and granted the IRS summary judgment on the supervisory approval issue.

See also Ivey Branch Holdings, LLC v. Comm'r, T.C. Memo 2025-63 (June 9, 2025), Jefferson Property Holdings, LLC v. Comm'r, T.C. Memo 2025-75 (July 14, 2025), and River Moss Property, LLC v. Comm'r, T.C. Memo 2025-79 (July 22, 2025) (each having similar facts with holdings in favor of the IRS).

The IRS granted extensions of time to make GST trust elections under Code Section 2632(c)(5). PLR 202530007 (July 25, 2025).

In this Private Letter Ruling, the IRS responded to a ruling request wherein the taxpayer requested extensions of time under Code Section 2642(g) and Treasury Regulations Section 26.2642-7 to make Code Section 2632(c)(5)(A)(ii) elections to treat certain trusts created by the taxpayer as generation-skipping transfer ("GST") trusts for the purposes of the GST automatic allocation rules. The taxpayer originally created and funded separate irrevocable trusts for the benefit of each of the taxpayer's two children and the child's descendants. Although the taxpayer intended each trust to be GST-exempt, the taxpayer's accountant who prepared the Form 709 for the year of the funding of the trusts did not make an election to treat both trusts as GST trusts. According to the record described in the Private Letter Ruling, the automatic allocation of GST exemption did not apply to the taxpayer's transfers to these trusts. Code Section 2642(g)(1) authorizes the Secretary of the IRS to regulate procedures for granting extensions of time to make allocations of GST exemption. According to Treasury Regulations Section 26.2642-7, a request of relief from the default deadline for making a valid GST election will be granted if the taxpayer acted reasonably and in good faith, and if granting relief will not prejudice the government's interests. A taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional and

that tax professional failed to make the desired election. Therefore, the IRS granted the taxpayer's request for extensions with respect to both trusts. Because this request was made after May 6, 2024, the taxpayer's request was governed by the relief standards under Treasury Regulations Section 26.2642-7 and not by those under Treasury Regulations Section 301.9100-3.

The IRS granted extensions of time to make GST allocations under Code Section 2632(c)(5) for transfers to identical trusts. PLR 202531005, PLR 202531004 (August 1, 2025).

This pair of Private Letter Rulings concerns a taxpayer's transfers to identical irrevocable trusts that were intended to be exempt from the generation-skipping transfer ("GST") tax. The taxpayer and the taxpayer's spouse created separate irrevocable trusts for the benefit of their descendants, and for the funding year the taxpayer's accountant who prepared the Form 709 made Code Section 2632(c)(5) elections to opt out of the automatic allocation of GST exemption for those transfers and did not advise the taxpayer of the consequences of those elections. Code Section 2642(g)(1) authorizes the Secretary of the IRS to regulate procedures for granting extensions of time to make allocations of GST exemption. According to Treasury Regulations Section 26.2642-7, a request of relief from the default deadline for making a valid GST allocation will be granted if the taxpayer acted reasonably and in good faith, and if granting relief will not prejudice the government's interests. A taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on the advice of a qualified tax professional. Therefore, the IRS granted the taxpayer's requests for extensions with respect to both trusts. Because these requests were made after May 6, 2024, the taxpayer's requests were governed by the relief standards under Treasury Regulations Section 26.2642-7 and not by those under Treasury Regulations Section 301.9100-3.

The Fifth Circuit holds a constitutional challenge to the Corporate Transparency Act in abeyance pending the issuance of a final rule by the Treasury. Texas Top Cop Shop, Inc. v. Bondi, 136 A.F.T.R.2nd 2025-5435 (Aug. 5, 2025).

Plaintiff challenged the constitutionality of the Corporate Transparency Act. After the filing of plaintiff's appeal, the Treasury issued an Interim Final Rule providing that only foreign entities would be required to comply with the beneficial ownership information reporting rules of the Corporate Transparency Act. The Fifth Circuit noted that the case was not moot in light of the fact that this is an interim rule. In the interests of judicial efficiency, however, the Fifth Circuit held the matter in abeyance pending the issuance of a final rule by the Treasury.

The IRS granted estate an extension of time to make a QTIP and "reverse" QTIP election where estate relied on accountant who failed to make elections on timely filed estate tax return. PLR 202532003 (Aug. 8, 2025).

The IRS granted an estate's request for an extension of time under Treasury Regulation Sections 301.9100-1 and 301.9100-3 to make a qualified terminable interest property ("QTIP") election under Code Section 2056(b)(7)) and a "reverse" QTIP election under Code Section 2652(a)(3). Decedent and spouse executed Family Trust. Upon the death of Decedent, Family Trust was to divide into separate trusts, including Trust A which was to qualify as a QTIP trust. Decedent's estate hired a certified public accountant to prepare the estate tax return. The accountant failed to advise the executors of Decedent's estate of the ability to make a QTIP election and reverse QTIP election, and accordingly did not make valid elections on the estate's tax return for Trust A. The IRS ruled the estate established reasonable cause to grant an extension of time to make the elections because the executors relied on a qualified tax professional who failed to properly advise them. The IRS granted the estate an extension of time of 120 days to file a supplemental Form 706.

Overturning a long line of precedent, the Second Circuit reversed the Tax Court's dismissal of taxpayer's untimely petition for lack of jurisdiction and remanded for consideration of whether the taxpayers are entitled to equitable tolling. Buller v. Comm'r, 152 F.4th 84 (2nd Cir. Aug. 14, 2025), rev'g and rem'g T.C. Dkt. No. 25011-22 (Order of dismissal, March 8, 2024).

Following recent Supreme Court decisions, the Second Circuit held the ninety-day deadline to file a petition in Tax Court challenging a notice of deficiency is not jurisdictional and is instead a claim-processing rule which can be tolled equitably. In 2022, taxpayers filed a petition with the Tax Court challenging a notice of deficiency nine days after the ninety-day limit imposed under Code Section 6213(a) had passed. The Tax Court granted the IRS's motion to dismiss for lack of jurisdiction for filing outside of the ninety-day limit. On appeal, the taxpayers argued the limitation in Code Section 6213(a) is a nonjurisdictional claim processing rule, and therefore subject to equitable tolling.

The Second Circuit determined it must review with "fresh eyes" whether Code Section 6213(a)'s filing deadline placed a limit on the Tax Court's jurisdiction. The Second Circuit found existing precedent was no longer good law in light of recent Supreme Court decisions that held cases that dismiss for lack of jurisdiction without threshold factual determinations should receive no precedential effect. Finding precedent no longer controlled, the Second Circuit held the filing deadline in Code Section 6213(a) is "quite clearly" a nonjurisdictional, claim-processing rule contrary to the long line of existing precedent. In so finding, the Sixth Circuit relied on the Supreme Court's decision in **United States v. Wong**, 575 U.S. 402, 409, 135 S.Ct. 1625, 191 L.Ed.2d 533 (2015), which explained that a procedural requirement to a judicial deadline is only jurisdictional if Congress clearly states it is. The Second Circuit found Congress did not clearly state a filing deadline with jurisdictional consequences in Code Section 6213(a), but rather as a claim-processing rule which speaks only to the claim's timeliness, not the Tax Court's jurisdiction.

Finding the 90-day limitation in Code Section 6213(a) a nonjurisdictional, claim-processing rule, the Second Circuit next held the deadline is therefore also subject to equitable tolling, emphasizing that Code Section 6213(a)'s time limit is directed at the taxpayer, not the court. Because the Tax Court did not consider whether the Taxpayers were entitled to equitable tolling in this case, the Second Circuit remanded for the Tax Court's determination.

The Tax Court denies a charitable contribution deduction after finding that a contemporaneous written acknowledgement was unreliable. Johnson v. Comm'r, T.C. Memo. 2025-87 (Aug. 18, 2025).

In 2018, the taxpayer earned $76,927 as a mediator employed by the City of Baltimore and also served on the board of a Foundation. The Foundation was recognized by the IRS as a tax-exempt public charity. The Foundation's mission was to investigate and find the killer of the taxpayer's nephew, which it ultimately accomplished in 2019. In any event, the taxpayer did not file a timely tax return for 2018, and the IRS prepared a substitute return based on information received from third parties and issued a notice of deficiency to the taxpayer on April 15, 2021. Around this same time, the taxpayer filed a late tax return and claimed itemized deductions of $56,161, which consisted of $43,258 in charitable contributions by cash or check. At trial, the taxpayer explained that the charitable contributions reflected cash that he donated to the Foundation in 2018 to support its mission. The Tax Court admitted into evidence a letter addressed to the taxpayer dated January 22, 2019, from the Secretary of the Foundation that stated in pertinent part: "Our receipts indicated that your 2018 monetary donations total $43,258. [The Foundation] is a registered 501(c)(3) nonprofit organization . . . Your donation is tax deductible to the extent allowable by law. There were no goods or services provided by [the Foundation] in return for this contribution." The Tax Court found that the letter reflects a typeface for the date different from that used in the body of the letter. The taxpayer testified that his contributions consisted of cash withdrawn from ATMs over the course of 2018 that he paid on behalf of the Foundation to various informants in return for information on his nephew's killer. Under Code Section 170(f)(8), for a charitable contribution over $250, there must be a contemporaneous written acknowledgement from the donee organization that specifies the amount of cash and whether any goods or services were provided in return. Under Code Section 170(f)(17), no deduction is allowed for any cash contribution unless the donor maintains as a record of such contribution a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution. The Tax Court found that the letter dated January 22, 2019, satisfied these requirements on its face. However, the Tax Court also found that the letter was unreliable given the taxpayer's lack of credibility during his testimony, the taxpayer's relationship with the Foundation, the lack of other supporting documentation, and the fact that the amount of the contributions "seem unusual" relative to the taxpayer's gross income. Accordingly, the Tax Court applied additional scrutiny to the letter and held that the taxpayer did not satisfy his burden to prove the claimed charitable contributions.

Tax Court grants the IRS partial summary judgment ruling the Seventh Amendment does not require a trial by jury for civil fraud penalties levied against a partnership under the Tax Equity and Fiscal Responsibility Act of 1982. Silver Moss Properties, LLC v. Comm'r, 165 T.C. No. 3 (Aug. 21, 2025).

The Tax Court held that the Seventh Amendment does not require a trial by jury for civil fraud penalties brought against a partnership under the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). Taxpayer purchased real property and subsequently donated a conservation easement on the real property and claimed a charitable deduction for the contribution. The IRS issued a Notice of Final Partnership Administrative Adjustment ("FPAA") in large part disallowing the claimed deduction. The taxpayer filed an action challenging the FPAA and the IRS included a fraud penalty under Code Section 663(a) in its amended Answer. Taxpayer then claimed that the Seventh Amendment (right to trial by jury) prevented the IRS from levying a civil fraud claim against a taxpayer without a trial by jury. The Tax Court held (i) that the government has not waived sovereign immunity with respect to TEFRA related actions and therefore the Seventh Amendment does not apply to such actions, and (ii) because the collection of revenue is a public right, the public rights exception to the Seventh Amendment (which provides that a trial by jury is not required for the enforcement of public rights) applies and a trial by jury is not required. The Tax Court granted partial summary judgment in favor of the IRS on this issue.

The IRS granted a waiver to the 60-day rollover requirement for withdrawals from an IRA because the taxpayer was a victim of a fraud scheme. PLR 202535015 (August 29, 2025).

The taxpayer in this Private Letter Ruling withdrew an amount from the taxpayer's traditional IRA under Code Section 408(a) but failed to rollover that amount into another IRA or eligible retirement plan within 60 days as required under the rules of Code Section 408(d)(3). As a result, by default, the withdrawn amount would be included in the taxpayer's gross income. However, the taxpayer claimed that a timely rollover did not occur because the taxpayer was a victim of a scam. At some point after withdrawing the IRA amount, the taxpayer received an alert on the taxpayer's computer to call a certain company. The taxpayer called what the taxpayer believed to be a representative of that company, who told the taxpayer that, based on a scan of the taxpayer's computer, a virus had spread to the taxpayer's financial accounts. That company representative directed the taxpayer to call a specific individual with a bank. That bank individual represented himself on behalf of the bank, provided a forged letter from the bank, and told the taxpayer that he was the only person with the bank who could be trusted while he completed an investigation of the taxpayer's compromised financial accounts. That individual convinced the taxpayer to wire funds into another company's cryptocurrency bank account, where it would be held temporarily, and the wired funds included the amount the taxpayer withdrew from the IRA. After that bank representative claimed that the investigation of the taxpayer's accounts was complete, the company and bank representatives both stopped responding to the taxpayer's communications and their phone numbers were disconnected. At that point, the taxpayer realized that it was a scam and worked with government agencies to eventually recover the lost funds. Based on these facts, the taxpayer made the Private Letter Ruling request for a waiver of the 60-day rollover requirement. The rules under Code Section 408(d)(3)(I) permit the Secretary to waive the requirement where not waiving it would be against equity or good conscience, and where the reason for the failed rollover was beyond the individual's reasonable control. Revenue Procedure 2003-16 lists other factors for the Secretary's consideration, including errors made by financial institutions, the use of the amount distributed and the time elapsed since the distribution from the IRA. After determining that the taxpayer's documentation supported the taxpayer's narration of the facts, the IRS waived the 60-day rollover period with respect the withdrawn amount and granted the taxpayer an additional 60 days to complete the rollover.