

**Tax Law Update  
2023**

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**SECURE Act 2.0**

- Delay RBD to age 72 with plan for staged increase to age 75 for those who turn 73 on or after January 1, 2033
- Eliminated the Pre-Death distribution requirement of retirement plans
- Clarifies that a Charity may be named as the remainder beneficiary of a special needs trust
- Increased catch-up contribution limit for people aged 60-64
- Retirement Plans may distribute up to \$2,500 annually to pay premiums for LTC Insurance
- Roth IRA Employer Matching Permitted

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**SECURE Act 2.0 (cont.)**

- Penalty-free withdrawals for domestic abuse survivors who need access for reasons such as escaping an unsafe situation
  - \$10,000 or up to 50% of account (lesser of)
- Up to \$35,000 rollover from 529 accounts open for more than 15 years to Roth IRAs permitted
- Penalty-free withdrawals for terminally ill
- Penalty-free withdrawals for public safety officer who is age 50 with at least 25 years of service
  - Extended to employees of state and local governments
- Hardship rules for 403(b) plans now mirror 401(k) plans

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**Revenue Ruling 2023-2**

Gift Must be in a Grantor's Estate to get a Step-Up in Basis

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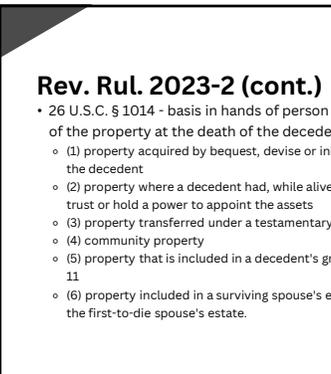
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**Rev. Rul. 2023-2 (cont.)**

- 26 U.S.C. § 1014 - basis in hands of person acquiring from decedent is the FMV of the property at the death of the decedent
  - (1) property acquired by bequest, devise or inheritance, or by the decedent's estate from the decedent
  - (2) property where a decedent had, while alive, the power to (a) revoke or (b) amend the trust or hold a power to appoint the assets
  - (3) property transferred under a testamentary general power of appointment
  - (4) community property
  - (5) property that is included in a decedent's gross estate under the provisions of Chapter 11
  - (6) property included in a surviving spouse's estate due to a marital deduction allowed in the first-to-die spouse's estate.

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**Rev. Rul. 2023-2 (cont.)**

- Termination of an irrevocable trust is often considered a "bequest" or "devise"
- Must be included in the Grantor's gross estate for federal tax purposes for FMV basis adjustment

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Cryptocurrency and  
Cryptocurrency Award Income

**Revenue Ruling  
2023-14**

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**Rev. Rul. 2023-14 (cont.)**

- Cryptostaking - earn rewards for holding certain cryptocurrencies
  - By holding and staking, hold assisting in verifying and securing the blockchain
  - Holders earn passive income
  - Successful validation results in a reward, such as more units
- Dominion and Control Test- when taxpayer can sell, exchange, or dispose of interest in the reward
- IRC 83 - property transferred to another person in connection with the performance of services, property is valued and included in income when transferrable or not subject to a substantial risk of forfeiture, whichever occurs earlier
  - Does not explain why this was not used

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**Rev. Rul. 2023-14 (cont.)**

- Newly minted cryptocurrency is NOT self-created property that is taxable when disposed
- *Jarrett, et. al v. United States*
  - sued the IRS for a refund of his 2019 taxes
  - Argued that because he only owed taxes on the cryptocurrency tokens he created through staking when he sold or transferred the tokens, he had not realized the income on the tokens, and, therefore, had overpaid his taxes and was entitled to a refund.
  - IRS argued that the rewards produced through staking increase the taxpayer's gross income at the time of receipt and, therefore, a taxpayer owes tax on the income for the year in which the rewards are received.
  - Note: AG sent refund and directed IRS to schedule overpayment
  - Case was dismissed - Moot
  - The Court of Appeals for the Sixth Circuit affirmed.

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**Rev. Proc. 2023-3**

- The IRS will answer taxpayer inquiries regarding their status for tax purposes and the tax effects of their transactions, prior to the filing of returns or reports required by revenue laws.
- IRS will temporarily not issue rulings on any issue involving the application of the Inflation Reduction Act of 2022 as such area is under study.



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**Rev. Proc. 2023-3 (cont.)**

- Bulletin No. 2023-1
- Revised list of those areas of the Internal Revenue Code relating to issues on which the IRS will not issue, will not ordinarily issue, or will temporarily not be issuing letter rulings or determination letters.

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**Rev. Proc. 2023-3 (cont.)**

- In income and gift tax matters, issues a letter ruling on a proposed transaction or on a completed transaction if the letter ruling request is submitted before a return containing a tax position on the completed transaction is filed.
- An Associate office *will not* ordinarily issue a letter ruling on a completed transaction if the letter ruling request is submitted after a return containing a tax position on the completed transaction is filed.
  - Unique and compelling reasons must be demonstrated to justify the issuance of a letter ruling submitted after the return is filed for the year in which the transaction is completed.

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### Rev. Proc. 2023-3 (cont.)



- Issues letter rulings on transactions affecting the estate tax on the prospective estate of a living person.
- Will not issue letter rulings for prospective estates on computations of tax, actuarial factors, or factual matters.
- Generally issued before the decedent's estate tax return is filed.
  - If ruling not to be expected prior to filing, request extension and notify the branch considering the letter ruling request that an extension has been obtained.
  - If return is filed before the ruling taxpayer must disclose on the return that a letter ruling has been requested

The Associate office will make every effort to issue the letter ruling within 3 months of the date the return was filed.

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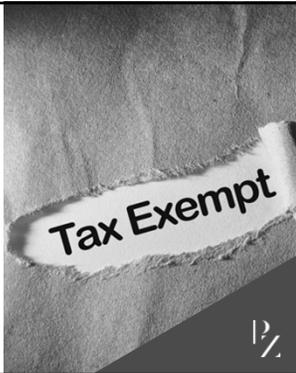
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### Rev. Proc. 2023-5

- Procedures for issuing determination letters on tax-exempt status, private foundation status, and other determinations related to tax-exempt organizations.
- Also applies to revocation or modification of determination letters.



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### Rev. Proc. 2023-5 (cont.)



- Revisions reflect mandatory e-filing of Form 1024 (Application for Recognition of Exemption Under section 501(a) or section 521 of the Internal Revenue Code)
- A clarification in section 9.02 that an organization may protest/appeal a proposed adverse determination letter on the classification or reclassification of a section 4947(a)(1) non-exempt charitable trust as described in section 509(a)(3).
- Rev. Proc. 2023-5, section 13.02 has been updated to note that favorable determination letters issued in 2014 and later are available on Tax Exempt Organization Search.

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### Notice 2023-54

- Provides transition relief for plan administrators, payors, plan participants, IRA owners, and beneficiaries in connection with the change in the required beginning date for required minimum distributions



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### Rev. Notice 2023-54 (cont.)

- A payor or plan administrator will not be considered to have failed to satisfy the requirements of §§ 401(a)(31), 402(f), and 3405(c) merely because of a failure to treat certain distributions as eligible rollover distributions.
  - Any distribution made from a plan between January 1, 2023 and July 31, 2023, to a participant born in 1951 (or that participant's surviving spouse) that would have been an RMD but for the change in the required beginning date under § 107 of the SECURE 2.0 Act.
- The Treasury Department and the IRS are extending the 60-day rollover period for any impacted distribution above (in addition to certain IRA distributions) so that the deadline for rolling over such a distribution will be September 30, 2023.



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### Estate of Cecil v. Commissioner (T.C. Memo 2023-24)

- In 2010, Mr. William A.V. Cecil, Sr. (grandson of George Vanderbilt and whose mother inherited the famed Vanderbilt Biltmore House in Asheville, North Carolina) and his Wife gave stock in an S Corporation that owned the Biltmore House and some surrounding land and tourist facilities ("TBC") to their children and grandchildren.
- The donors attached an appraisal to the gift tax return; however, the IRS calculated the value of the gifts to be substantially more and asserted a gift tax deficiency of \$13.1 million by each donor.
- While the court did not come to a value of the gifted shares, it accepted the valuation reached by Petitioners' expert with some adjustments.
  - Despite past rejection of using tax-affecting to determine an S corporation's fair market value, the court applied tax affecting "given the unique setting at hand" and declined to find that tax-affecting is "always, or even more than not, a proper consideration for valuing an S corporation."
  - With the discounts and use of tax-affecting, the resulting valuation will result in a significant refund to the taxpayers from the amounts reported on their gift tax returns.

NOTE: 'Tax affecting' is a valuation approach that applies a hypothetical entity-level tax to a pass-through entity's taxable income, which reduces the value of the business.



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**Connelly v. United States**  
**No. 21-3683**  
**(8th Cir. June 2, 2023)**

- Two brothers were the only shareholders of a corporation governed by a buy-sell agreement that required that the corporation purchase the shares of a decedent shareholder.
- The pricing provision of the agreement required the brothers to mutually agree as to the value each year. If they could not agree on the annual value, then the price would be determined by securing two more appraisals. The brothers never complied with the terms of the pricing provision.
- The company funded the agreement with a \$3.5 million life insurance policy on each of the brothers' lives, so that if one of the shareholders died, the corporation could use the proceeds to redeem that shareholder's shares.
- One of the shareholders died, and the IRS assessed taxes on his stock interest in the corporation.
- Estate reported the shares at approximately \$3.1 million but the IRS took the position that the fair market value of the corporation included the life insurance proceeds intended for the stock redemption.
  - IRS sent a notice of deficiency to the estate for \$1 million in additional tax liability.
  - The estate paid the deficiency and sued for a refund.

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**Connelly v. United States**  
**No. 21-3683**  
**(8th Cir. June 2, 2023)**

**cont.**

- Ruling:
  - Trial Court: the buy-sell agreement did not fix the value of the shares and granted summary judgment to the IRS.
  - 8th Circuit Court of Appeals: Affirmed, concluding (1) that the stock-purchase agreement requiring the redemption of a deceased shareholder's shares did not affect the value of the shares for estate tax purposes under section 2703(b) because the agreement did not provide for a "fixed and determined price" in light of the fact that the parties "ignored the agreement's pricing mechanisms", and (2) that a proper valuation of the corporation in accordance with sections 2042 and 2031 must include the life insurance proceeds without treating the obligation to redeem shares as an offsetting liability.
- Impact - Circuit Splits

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**Estate of Blount v. Commissioner**  
**428 F.3d 1338**  
**(11th Cir. 2005)**

- The issue presented is how one should value a decedent's shares in a corporation where those shares are subject to a buy-sell agreement that is either: (1) disregarded for estate tax purposes, or (2) omits the price of the shares it covers.
  - The specific issue is how one should account for insurance proceeds a corporation receives on account of a decedent's death when those proceeds are offset by a corresponding obligation to redeem the decedent's shares.
- insurance proceeds are to be ignored when offset by a corresponding redemption obligation.
  - Joined the Ninth Circuit, which reached a similar conclusion in *Estate of Cartwright v. Commissioner*

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**Estate of  
Blount  
v.  
Commissioner  
428 F.3d 1338  
(11th Cir.  
2005)**

**(cont.)**

- Must be a business agreement and not testamentary device
  - Factors included: (1) reasonableness of the purchase price in the agreement, (2) the intent of the parties, and (3) the facts leading to the conclusion that the agreement is a substitute for a testamentary device.
  - Testamentary substitute factors: (1) grantor's health at the time the agreement was executed (2) any significant changes in the business as of the date of the agreement (3) selective enforcement of restrictive provisions and (4) the nature and extent of negotiations

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## Any Questions?

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