

# HANDLING FEDERAL ESTATE AND GIFT TAXES

Revised, 6th

**2025–2026 Edition  
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by

**James M. Kosakow**

*of the Connecticut, Florida, and New York bars*

and

**Kevin M. Yamamoto**

*Professor of Law, South Texas  
College of Law Houston*

**VOLUME 1**

**Chapters 1–12**



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## Authors' Highlights

### Author's Note

On July 4, 2025, President Trump signed into law PL 119-21, popularly known as the “One Big Beautiful Bill Act” (OBBBA). While OBBBA made numerous changes to the tax code, there was only one change to the transfer taxes of Subtitle B: an increase in the basic exclusion amount to \$15,000,000, indexed for inflation after 2026. I.R.C. § 2010(c)(3)(A). The legislation states the effective date “*apply to estates of decedents dying and gifts made after December 31, 2025.*”

Since the OBBBA was passed shortly before this edition (Fall 2025) went into production, the text in the first edition of 2026 will reflect the OBBBA changes.

### Volume 1

#### § 3:156 Bona fide business arrangements exception

Added *Huffman v. Commissioner* to note 3. In *Huffman* the Tax Court determined an option agreement did not meet the I.R.C. § 2703(b) exception, even though it was a bona fide business arrangement and was for full and adequate consideration, since it was not comparable to similar arms-length arrangements. The option agreement between parents and child differed from past arrangements in that the child's rights were exercisable at any time, not just at death or the receipt of another offer to purchase, and the option agreement was not transferable without the parents' consent

#### § 4:8 Timing of election—Extension of time to make election

Added to footnote 1 one private letter ruling allowing an extension of time to elect alternative valuation.

#### § 6:201 Election required— Failure to make QTIP election

Added to footnote 4 three 2025 private letter rulings permitting an extension of time to make a QTIP election after the estate tax return was filed. Additionally, the section includes a new paragraph on a 2025 private letter ruling denying an extension of time since the request was to change a valid QTIP election amount.

#### § 6:231 Procedure once surviving spouse becomes a U.S. citizen

Added a citation to note 7 to a 2023 private letter ruling allowing a 120-day extension of time to file notice and certification of U.S. citizenship on Form 706-QDT.

#### § 7:14 Extension of time to make portability election for decedents dying after December 31, 2010

Added citations to footnote 1 of several 2025 private letter rulings allowing extensions of time to make an election under I.R.C. § 2010(c)(5)(A) permitting surviving spouse to utilize decedent's deceased spousal unused exclusion (DSUE) amount. Also, one private letter ruling was denied since the surviving spouse had died before the request was filed. The Service deemed this to be using hindsight to make the request, which the Regs. equate to a lack of good faith.

#### § 8:7 Individuals who expatriate on or after June 17, 2008

Edited material to reflect the new regulations added by TD 10027.

#### § 10:4 Executor liable for decedent's unpaid taxes: Case study

Added *United States v. Lipson* to note 1. In *Lipson* the United States obtained a judgment to collect estate taxes from the mother's estate. The judgment imposed liability on both the successor personal representative and the surviving spouse of the original personal representative under 31 U.S.C. § 3713(b). The spouse's liability was limited to one-half of the couple's community property interest.

#### § 11:12 Closing letters issued only on request

Changed note 1 to reflect final Reg. § 300.13 which adds a \$56 fee for issuing an estate tax closing letter.

**Volume 2 (starts at Chapter 14)**

**§ 14:14 Mergers and division of trusts—Modification of trusts: illustrative Cases**

Added new illustration based on a 2025 private letter ruling determining the division of a QTIP trust into two separate trusts (Trust 1 and Trust 2) did not alter the QTIP status of either subsequent trust. Also, the disclaimer of the surviving spouse of the QTIP interests in Trust 1 would trigger gifts under I.R.C. § 2519, but did not in Trust 2. Finally, the division did not subject the original marital trust to any income taxation since the division was allowed under the trust documents.

**§ 17:141 Shares of stocks and bonds of closely held corporations-discounted cash flow v. net asset valuation**

Added *Pierce v. Commissioner* to note 1. In *Pierce*, the Tax Court used the discounted cash flow method to value S Corporation stock transferred by the taxpayer to irrevocable trusts.

**§ 19:43 Extension of time to apply the GST exemption amount**

Added to footnote 7 several 2025 private letter rulings permitting an extension of time to allocate the GST exemption amount.

**§ 19:45 Election out of automatic allocation rules: Election out statement**

Added to note 3 several private letter rulings permitting an extension of time to opt out of the GST automatic allocation rules.

**§ 19:52 Severance of GST trusts for tax purposes—Extension of time to allocate GST exemption and make qualified severance: case study**

Added to note 1, a private letter ruling granting an extension of time to sever a trust into GST exempt and non-GST exempt trusts when the attorneys' failure to advise of the need for severance caused the oversight.

**§ 19:68 Modifications to “grandfathered” exempt trusts: termination of trust**

Added to note 1, a private letter ruling providing that the termination of a trust created before September 25, 1985, would not cause the trust to be subject to the GST tax, the trust or beneficiaries to be treated as making taxable gifts, or any income tax consequences.

**§ 19:73. Modifications to “grandfathered” exempt trusts: settlement agreements**

Added to note 1 a private letter ruling providing that there was no loss of grandfathered GST exemption for settlement agreement that permitted (1) an extension of the termination date less than 21 years from the current date; (2) early termination of one of the trusts based upon the majority vote of the distributees of all the trusts; (3) trustees to make discretionary distributions by considering the best interests of the beneficiaries in addition to the existing health, education, maintenance, and support standard; and (4) elimination of the provision requiring the trustees forced distribution).

**§ 19:93 No Loss of GST Exemption due to Creation of Testamentary GPA**

Added reference to a private letter ruling providing no loss of exempt status for nonjudicial agreement adding testamentary general power of appointment.

## **Dedication**

To our families.

JMK KMY



## About the Authors

**Myron Kove** (Mike) has been co-author of *Handling Estate and Gift Taxes* for several years. As co-author he substantially revised and updated the text using knowledge gained over his long and distinguished legal career. Mike is now taking his retirement and Kevin Yamamoto, Professor of Law at South Texas College of Law Houston, is the new co-author. Professor Yamamoto is the editor of *Federal Transfer Taxes Code and Regulations* and many articles and books on the subject of estate tax. We congratulate Mike on his retirement and are grateful for his very important contribution to the text.

**James M. Kosakow**, a partner at McLaughlin & Stern, LLP, New York, NY, and a Fellow of the American College of Trust and Estate Counsel, is admitted to practice in New York, Connecticut and Florida, and before the U.S. Tax Court. He is co-author with Professor Gerry Beyer of *Revocable Trusts 5th* and *Irrevocable Trusts 4th*, both published by Thomson Reuters, and is a contributing author to *Strategies for Trusts and Estates in New York, 2015 Edition: Leading Lawyers on Analyzing Recent Developments and Navigating the Estate Planning Process in New York (Inside the Minds)*. He was assistant editor of *Insights and Strategies*, a nationally distributed monthly financial and estate planning newsletter for professionals and has authored or co-authored more than twenty articles in the field of estate planning and trust and estate administration. Jim was an Adjunct Professor of Estate Planning in the Center for Professional Education at the Pace University Lubin School of Business and the Department of Finance, Law and Taxation at New York University School of Continuing and Professional Studies. He has been named by *Worth* magazine as one of the “Top 100 Attorneys” in the nation for private clients, by *Law & Politics* as a “New York Super Lawyer” and as one of *The Best Lawyers in America* for Trusts and Estates by U.S. News-Best Lawyers. He is also rated AV Preeminent by Martindale-Hubbell, identifying him as part of a select group of lawyers recognized for their legal abilities and professional ethical standards. He serves on the Planned Giving Advisory Councils of the American Cancer Society, The New York Historical Society and the Hospital for Special Surgery. Jim received his bachelors degree from Connecticut College and his law degree from Benjamin N. Cardozo School of Law at Yeshiva University.

**Kevin Yamamoto** is a law professor at South Texas College of Law Houston, teaching courses in income, estate, and corporate tax. Kevin received his bachelor’s degree from the University of California, Davis, his law degree from the University of San Diego College of Law, and LL.M. in Taxation from the University of Florida. He is the co-author of a number of books published by West on the subject of taxation.





## **Preface**

Tax law is constantly evolving, either through legislation, judicial decision, or regulatory pronouncements. We will continue to report twice-yearly subsequent developments, which will be integrated in the text rather than in the form of separate supplements.

A continuing feature (following the copyright page) is the Authors' Highlights, which lists several recent important developments (reported in greater detail in the text) which may be of special interest to practitioners. The Authors' Highlights will change with each new edition.

We would like to thank Joanne Perry Hodge, Tax & Accounting Specialist Editor, for her assistance with past editions of the text, and wish her well in her new position. In the preparation of this revised edition, we wish to acknowledge the contribution of Jennifer Waterworth, Attorney Editor. Her insightful comments and suggestions were of great value in the preparation of the manuscript. We also thank Mary Hoggard, Legal Assistant with McLaughlin & Stern, LLP for her assistance in updating the IRS forms, and Rachel Munarov, a Summer Associate with the firm, for her assistance in editing the text.

James M. Kosakow  
Kevin M. Yamamoto





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