PART 1. INCOME TAX DEDUCTIONS

CHAPTER 1. ORDINARY AND NECESSARY BUSINESS EXPENSES

| DOSI | INESS EXPENSES |
|--------|--|
| § 1:1 | Overview |
| § 1:2 | Trade or business expenses |
| § 1:3 | —Profit motive |
| § 1:4 | —Regular activity |
| § 1:5 | —Allowable expenses |
| § 1:6 | —Unallowable and limited expenses |
| § 1:7 | —Personal expenses: Hotel exception |
| § 1:8 | Ordinary and necessary expenses |
| § 1:9 | —Payment of another's expenses |
| § 1:10 | —Flood insurance reimbursements |
| § 1:11 | —Training costs as ordinary and necessary expenses |
| § 1:12 | A real estate trade or business |
| § 1:13 | Impact fees |
| § 1:14 | Employee fringe benefits: Pass through entities |
| § 1:15 | Payment of Medicare insurance premiums |
| § 1:16 | Penalties and fines |
| § 1:17 | No deduction for wages paid to business owners in |
| | |

CHAPTER 2. DEDUCTION FOR EXECUTIVE COMPENSATION

| § 2:1 | Overview |
|--------|---|
| § 2:2 | Reasonable compensation |
| § 2:3 | —Shareholder employees |
| § 2:4 | —Failure to pay dividends |
| § 2:5 | Guidance for shareholder-employees of closely held corporations |
| § 2:6 | —Checklist |
| § 2:7 | Court-created factors to determine reasonableness |
| § 2:8 | —The seven-factor test |
| § 2:9 | —The independent investor test |
| § 2:10 | —Independent investor test-case study |
| § 2:11 | —When deferred compensation is tax deductible |
| | |

connection with the illegal sale of drugs

§ 2:12 Reasonable compensation in a subchapter S corporation § 2:13 Contingent compensation in a closely-held corportion § 2:14 —Repaying excessive compensation § 2:15 Self-employment tax—Real estate rental exception —Payments from the Department of Agriculture's § 2:16 Conservation Reserve Program § 2:17 -Includible farm rental income § 2:18 Structuring retirement payments to retired partner to avoid self-employment tax

CHAPTER 3. DEDUCTION FOR MANAGEMENT SERVICES BY RELATED ENTITY

§ 3:1 Overview

§ 2:19

- § 3:2 Reallocation of charges example
- § 3:3 Documenting related party charges

Employment taxes and LLCs

CHAPTER 4. DEDUCTION FOR DEPRECIATION

- § 4:1 Overview
- § 4:2 Tax benefits of depreciation for real estate investors
- § 4:3 —Deferral of tax
- § 4:4 —Conversion of ordinary income into capital gain
- § 4:5 —Recapture of depreciation
- § 4:6 Real and personal property distinguished
- § 4:7 Tax benefits of depreciation for real estate investors— Erroneous depreciation changes
- § 4:8 Who may take the depreciation deduction
- § 4:9 —Term interests
- § 4:10 —Shifting depreciation deduction with lease or mortgage
- § 4:11 Property eligible for depreciation deduction: I.R.C. § 168
- § 4:12 Depreciation of real property—Partial year deduction; midmonth convention
- § 4:13 Depreciation of real property: Tables
- § 4:14 Depreciation of real property—Alternative depreciation system
- § 4:15 Depreciation of land by term holder: case study
- § 4:16 Maximizing depreciation through cost allocation
- § 4:17 Allocating cost between land and improvements
- § 4:18 —Buy-sell agreements

| § 4:19 | —Appraisal allocation techniques |
|-----------|--|
| § 4:20 | —Building residual technique |
| § 4:21 | —Land residual technique |
| § 4:22 | —Below-market leases |
| § 4:23 | —Property tax assessment |
| § 4:24 | —Owner as expert |
| § 4:25 | —Special factors |
| $\S 4:26$ | Property tax assessment, California |
| $\S~4:27$ | Land/land improvement allocation |
| § 4:28 | Real/personal property allocation |
| § 4:29 | Component depreciation and cost segregation |
| § 4:30 | IRS agrees to cost segregation |
| § 4:31 | Cost segregation—Limitations on its use |
| $\S 4:32$ | —Hospitality industry |
| § 4:33 | Cost Segregation: Hospitality industry—The tax savings |
| § 4:34 | Gasoline stations, pump canopies, and supporting concrete footings |
| § 4:35 | Bonus depreciation: I.R.C. § 168(k) |
| § 4:36 | Qualified improvement property |
| § 4:37 | Depreciation of personal property |
| § 4:38 | —Expensing in place of depreciation |
| § 4:39 | —Partial exemption for advanced mine safety equipment |
| § 4:40 | —Intangible property |
| $\S 4:41$ | Lease-stripping transactions |
| $\S 4:42$ | Prefabricated structures |
| § 4:43 | Depreciation of water utility property—First year bonus |

CHAPTER 5. DEDUCTION AND CAPITALIZATION OF EXPENDITURES RELATED TO TANGIBLE PROPERTY

| § 5:1 | Overview |
|-------|---|
| § 5:2 | Materials and supplies—Generally (Treas. Reg. |
| | § 1.162-3) |
| § 5:3 | —Definitions |
| § 5:4 | Election to capitalize certain materials and supplies |
| § 5:5 | Optional method of accounting for rotable and |
| | temporary spare parts |
| § 5:6 | De minimis safe harbor |
| § 5:7 | Sale or disposition of materials and supplies |
| § 5:8 | Repairs and maintenance (Treas. Reg. § 1.162-4) |
| § 5:9 | De minimis safe harbor (Treas. Reg. § 1.263(a)-1(f)) |
| | |

- $\S~5:10$ Amounts paid to acquire or produce tangible property (Treas. Reg. $\S~1.263(a)\mbox{-}2)$
- § 5:11 Amounts paid to improve property (Treas. Reg. § 1.263(a)-3)
- § 5:12 Safe harbor for small taxpayers for buildings
- § 5:13 Safe harbor for routine maintenance
- § 5:14 Betterments
- § 5:15 Restorations
- § 5:16 Adapt property to a new or different use
- § 5:17 Optional regulatory accounting method
- § 5:18 Election to capitalize repair and maintenance costs
- § 5:19 Retail and restaurant remodel-refresh safe harbor

CHAPTER 6. DEDUCTION FOR INTEREST

- § 6:1 Overview
- § 6:2 Personal loans
- § 6:3 Home mortgages
- § 6:4 —Secured debt
- § 6:5 —Qualified home
- § 6:6 Home equity loans
- § 6:7 Home mortgages—Part principal residence, part business property
- § 6:8 —Loans taken out before October 14, 1987
- § 6:9 —Loans taken out after October 13, 1987, to buy, build, or improve a home: \$1 million limitation, I.R.C. § 163(h)(3)(B)
- § 6:10 —Loans during the suspension period: 2018 through 2025
- § 6:11 —Mortgages taken out after October 13, 1987, for other purposes: \$100,000 home equity loans, I.R.C. § 163(h)(3)(C)
- § 6:12 Debt (to acquire residence) in excess of \$1.0 million qualifies as home equity debt for deducting mortgage interest
- § 6:13 Qualified debt for home mortgage deduction when there are co-owners
- § 6:14 Qualified debt for home mortgage interest deduction is determined on per-taxpayer basis for unmarried taxpayers—I.R.C. § 163(h)(3)
- § 6:15 Home mortgages—Deducting points on residential financing
- § 6:16 — Option to amortize home loan points
- § 6:17 —Deducting points on residential refinancing
- § 6:18 —Mortgage assumptions and interest deductions
- § 6:19 —Adjacent land

TABLE OF CONTENTS

| § 6:20 | —Deductions in exiting old mortgages |
|--------|---|
| § 6:21 | —Interest paid on a mortgage which is an obligation of another person |
| § 6:22 | —Deduction for mortgage insurance premiums |
| § 6:23 | Trade or business loans |
| § 6:24 | Investment loans |
| § 6:25 | —Definition of investment interest paid |
| § 6:26 | —Net investment income |
| § 6:27 | Allocating interest to specific loans (tracing rules) |
| § 6:28 | —Loan proceeds in an account |
| § 6:29 | —Mixing debt with other funds |
| § 6:30 | —Debt proceeds received in cash |
| § 6:31 | —Bypassing the borrower |
| § 6:32 | —Repaying debt |
| § 6:33 | —Sale of financed assets |
| § 6:34 | —Pass-through entities |
| § 6:35 | Construction-period interest and taxes |
| § 6:36 | Uniform capitalization rules and interest deduction |
| § 6:37 | —Production of property |
| § 6:38 | —De minimis exception |
| § 6:39 | —Avoided cost method |
| § 6:40 | —Priority of rules |
| § 6:41 | —Deferred or contingent interest |
| § 6:42 | —What constitutes a property unit |
| § 6:43 | —Special rule for common features placed in service separately |
| § 6:44 | —Production period |
| § 6:45 | — Maximizing interest deductions during production period |
| § 6:46 | Effect of tax-exempt investments |
| § 6:47 | —IRS rules |
| § 6:48 | —Important IRS ruling on taxable and nontaxable obligations |
| § 6:49 | Original issue discount (OID) and unstated interest rules |
| § 6:50 | —Adequacy-of-interest |
| § 6:51 | —Unstated interest rules |
| § 6:52 | —Exceptions to the OID rules |
| § 6:53 | —Small transactions exception (seller financing up to \$2.8 million) |
| § 6:54 | —Treatment of interest payments |
| § 6:55 | —Loan assumptions |
| § 6:56 | OID safe harbor rules in purchase-money mortgage transactions |
| § 6:57 | AFRs: Qualified stated interest |

- § 6:58 Interest distinguished from other payments
- § 6:59 Applicable high yield discount obligations (AHYDO)

CHAPTER 7. DEDUCTION FOR TAXES

- § 7:1 Overview
- § 7:2 When real property taxes are deductible
- § 7:3 When recovered state and local taxes must be included in income
- § 7:4 Business or investment activities
- § 7:5 Sales tax deduction and builders
- § 7:6 Prorating real estate taxes
- § 7:7 Mortgage recording taxes—Mortgage tax incurred in connection with acquisition of property
- § 7:8 Mortgage tax not incurred in connection with acquisition of property
- § 7:9 State real property tax rebates
- § 7:10 Property tax deduction for non-itemizers
- § 7:11 Taxes for local benefits: fire prevention fees

CHAPTER 7A. DEDUCTION FOR REAL ESTATE BUSINESS STARTUP EXPENSES

- § 7A:1 Overview
- § 7A:2 Deduction for startup expenditures
- § 7A:3 Trade or business requirement
- § 7A:4 Taxpayer's role in business
- § 7A:5 —Startup costs defined
- § 7A:6 Two types of startup costs
- § 7A:7 Timing: When the trade or business begins
- § 7A:8 Time and manner of making election
- § 7A:9 Buying or starting a new real estate business—Case study
- § 7A:10 Diversifying a trade or business

CHAPTER 7B. DEDUCTION FOR ENTITY ORGANIZATIONAL EXPENSES

- § 7B:1 Overview
- § 7B:2 Corporation's organizational expenses—I.R.C. § 248
- § 7B:3 Partnership's organizational expenses—I.R.C. § 709
- § 7B:4 Making the election
- § 7B:5 Expenses relating to entity that never begins business
- § 7B:6 Effective date

CHAPTER 7C. DEDUCTION FOR INVESTMENT ADVICE EXPENSES

§ 7C:1 Overview

- § 7C:2 Trust investment advice expenses subject to 2 percent floor
- § 7C:3 IRS final regulations

CHAPTER 7D. DEDUCTION FOR WEBSITE EXPENSES

- § 7D:1 Overview
- § 7D:2 Fifteen-year property
- § 7D:3 Five-year property
- § 7D:4 Three-year property
- § 7D:5 Expensing website costs

CHAPTER 8. DEDUCTION FOR LOSSES

- § 8:1 Overview
- § 8:2 Active trade or business
- § 8:3 —Proving material participation
- § 8:4 —Part-time occupations
- § 8:5 ——Part-time occupations: case study
- § 8:6 —Material participation by limited partners
- § 8:7 —Material participation by executors and trustees
- § 8:8 —Material participation by executors and trustees: case study
- § 8:9 Passive activity
- § 8:10 —Defining a rental activity
- § 8:11 —The \$25,000 exception
- § 8:12 Special situations as passive or active activities— Rental activities of a developer
- § 8:13 —Related party lease
- § 8:14 ——PAL self-rental rule—Case study
- § 8:15 ——Passive losses-offsetting management fees with rent losses—Case study
- § 8:16 ——Passive losses—Combining rent loss with business activity—Case study
- § 8:17 —Self-charged management fees not sheltered by passive deductions
- § 8:18 ——Self-charged interest regulations
- § 8:19 —Treatment of ground rent
- § 8:20 —Preferred or guaranteed returns
- § 8:21 —Disposition of property
- § 8:22 —Equity-financed lending
- § 8:23 —Converting business income to passive income
- § 8:24 —Condominium rentals
- § 8:25 Treatment of passive losses
- § 8:26 —Definition of an activity

REAL ESTATE PROFESSIONAL'S TAX GUIDE

```
§ 8:27
        —Tax benefits from sale of passive activities
§ 8:28
        —Special rule for publicly traded partnerships
§ 8:29
        —Abandonment as a disposition
§ 8:30
        —Transfers to a related party not a disposition
§ 8:31
        —Low-income housing phase-in rule
§ 8:32
        —Special rule for close corporations
§ 8:33
        —Passive loss rule and investment interest limitation
§ 8:34
        —Desirability of liquidating debt
§ 8:35
        —Capital loss limitation
        —At-risk limitation
§ 8:36
        -Passive loss rule and other tax rules
§ 8:37
§ 8:38
        —Impact of the passive loss rules
§ 8:39
        —Portfolio activity
§ 8:40
        —Tax planning
§ 8:41
        —Converting from a regular corporation to a
         subchapter S corporation
§ 8:42
        Exception for real estate businesses
§ 8:43
        —Real property trades or businesses (I.R.C.
         § 469(c)(7))
§ 8:44
        —Material participation
§ 8:45
        —Definition of "activity"
§ 8:46
        —Five percent shareholders
§ 8:47
        —Joint returns
        -Closely held C corporations
§ 8:48
§ 8:49
        —Application of passive loss relief
§ 8:50
        —Limited partners' interests
§ 8:51
        Treatment of entities other than limited partnerships
§ 8:52
        Planning for real estate professionals
§ 8:53
        —Passive loss exception applies only to owners
§ 8:54
        —The basic rules
§ 8:55
        —The "super material participation" rules
§ 8:56
        —When to elect
§ 8:57
        — Election required to aggregate rental activities—
         Case study No. 1
        ———Case study No. 2
§ 8:58
        — —Election form
§ 8:59
§ 8:60
        —Reasons for avoiding the rules
§ 8:61
        —Joint venture and grouping activities exceptions—
         Guidance for combining rent loss with business
         activity
§ 8:62
        At-risk limitation
§ 8:63
        —Extent of real estate investors' risk
§ 8:64
        —When nonrecourse financing puts investor at risk
§ 8:65
        —Convertible debt
§ 8:66
        —Carryforward of loss
```

TABLE OF CONTENTS

| § 8:67 | —Legal risk vs. economic risk |
|--------|--|
| § 8:68 | —Personal liability on uncertain future obligation |
| § 8:69 | —Combining activities for at-risk and passive loss |
| | rules |
| § 8:70 | Theft or casualty losses |
| § 8:71 | Theft or casualty—Claims that must be filed by |
| | taxpayer |
| § 8:72 | —Measuring personal casualty loss |
| § 8:73 | —Measuring business casualty loss |
| § 8:74 | —Buyer resistance and casualty loss |
| § 8:75 | —Casualty loss not passive |
| § 8:76 | —White collar crime |
| § 8:77 | —Tangible property—Presidentially declared disaster |
| | area |
| § 8:78 | —No deduction for adverse zoning |
| § 8:79 | -Taxpayers affected by Hurricanes Katrina, Rita, and |
| | Wilma |
| § 8:80 | Gratuitous payment or loss incurred in a trade or |
| | business: case study |

CHAPTER 8A. ABANDONED PROPERTY LOSSES

- § 8A:1 Overview
- § 8A:2 Establishing abandonment
- § 8A:3 Effect of foreclosure
- § 8A:4 Abandonment of partnership interest

CHAPTER 8B. HOBBY LOSSES

- § 8B:1 Overview
- § 8B:2 Nine factors
- § 8B:3 Real estate hobby losses
- § 8B:4 Hobby loss case study #1: Jorgenson v. C.I.R., T.C. Memo. 2000-38, T.C.M. (RIA) P 2000-038, 79 T.C.M. (CCH) 1444 (2000)
- § 8B:5 Hobby loss case study #2: Smith v. C.I.R., T.C. Memo. 2007-368, T.C.M. (RIA) P 2007-368, 94 T.C.M. (CCH) 574 (2007)
- § 8B:6 Hobby loss case study #3: Van Wickler v. C.I.R., T.C. Memo. 2011-196
- § 8B:7 Hobby loss illustrations

CHAPTER 8C. DEDUCTION FOR PASS-THROUGH INCOME: I.R.C. § 199A

§ 8C:1 Overview

- § 8C:2 Qualified business income deduction
- § 8C:3 Exclusions, exceptions and limitations

CHAPTER 9. CHARITABLE CONTRIBUTIONS OF REAL ESTATE

| CON | IRIBUTIONS OF REAL ESTATE |
|--------|--|
| § 9:1 | Overview |
| § 9:2 | Charitable contributions in exchange for state or local |
| 0.00 | tax benefits |
| § 9:3 | Outright gifts |
| § 9:4 | —Establishing fair market value |
| § 9:5 | Qualified appraisal report |
| § 9:6 | Outright gifts—Establishing fair market value— Taxpayer loses charitable deduction for failure to substantiate value of gift |
| § 9:7 | —Market value and adjusted basis |
| § 9:8 | — — Ordinary income property |
| § 9:9 | ——Capital gain property |
| § 9:10 | —Limitation on deductions |
| § 9:11 | —Charitable gifts of land by developers |
| § 9:12 | —Charitable gifts of improved real estate |
| § 9:13 | Bargain sales of real estate |
| § 9:14 | —Mortgaged real estate |
| § 9:15 | Contributions for conservation purposes |
| § 9:16 | —Property interests eligible for deduction |
| § 9:17 | —Gift for conservation purposes |
| § 9:18 | ——Definition of conservation purposes |
| § 9:19 | No charitable deduction for air rights easement: case study |
| § 9:20 | Contributions for conservation purposes—Conservation easements: IRS caution |
| § 9:21 | —Conservation easements: IRS caution, syndicated arrangements |
| § 9:22 | Contribution for conservation purposes—Conservation easements: perpetuity requirement |
| § 9:23 | Contributions for conservation purposes—Failure to establish fair market value: case study |
| § 9:24 | —Quid pro quo transactions |
| § 9:25 | —Gift for conservation purposes—Mortgage subordination |
| § 9:26 | — —Qualifying charity |
| § 9:27 | — —Valuing the contribution |
| § 9:28 | Determining "before" value, highest and best use |
| § 9:29 | Contributions for conservation purposes—Preservation easements |
| § 9:30 | ——Benefits of conservation easements |

| § 9:31 | — —Conservation easements: Lakefront property qualifies—Case study |
|--------|---|
| § 9:32 | Estate tax exclusion for land subject to qualified easement |
| § 9:33 | —IRS warning on excessive deductions for facade easements |
| § 9:34 | —Façade easement case study |
| § 9:35 | —Façade easements relationship to state landmark law |
| § 9:36 | —Charitable contributions of easements in registered historic districts: Facade easements |
| § 9:37 | —Charitable contributions of fractional interests in tangible personal property |
| § 9:38 | Charitable deduction for tainted property |
| § 9:39 | No charitable deduction for trust contribution of principal |
| § 9:40 | Charitable withdrawal power not entitled to annual gift tax exclusion or charitable deduction |
| § 9:41 | Certain charitable gifts of real estate identified as tax avoidance |
| § 9:42 | Charitable deduction for estates and trusts—Amount "Permanently Set Aside" |
| | |

CHAPTER 9A. APPRAISAL REQUIREMENTS FOR NONCASH CHARITABLE CONTRIBUTIONS

| 9A:1 | Overview |
|------|----------|
| | |
| | |
| | |

- § 9A:2 Qualified appraiser
- § 9A:3 IRS guidance
- § 9A:4 Competency of appraiser
- § 9A:5 Real property appraisals
- § 9A:6 Property other than real property
- § 9A:7 Appraiser declaration
- § 9A:8 Certain charitable gifts of real estate identified as tax avoidance
- § 9A:9 Failure to comply with substantial requirements means loss of charitable deduction: Case studies

CHAPTER 10. RESIDENTIAL IMPROVEMENTS AS MEDICAL DEDUCTIONS

- § 10:1 Overview
- § 10:2 Deductible amount of home improvement expenditure
- § 10:3 —Year of deduction

| § 10:4 | Cost of operating and maintaining home improvements |
|---------|---|
| § 10:5 | Homes of handicapped persons |
| § 10:6 | Specific home improvements—Elevators and |
| 5 = | inclinators |
| § 10:7 | —Air conditioning |
| § 10:8 | —Swimming pools |
| § 10:9 | -Miscellaneous improvements |
| § 10:10 | Assisted living payments as medical deductions |
| § 10:11 | —Medical care defined |
| § 10:12 | —Determining amount of deduction |
| § 10:13 | —Limitation on medical deductions |
| | |

CHAPTER 10A. TAX CONSEQUENCES ASSOCIATED WITH CONTINUING CARE RETIREMENT COMMUNITIES

- § 10A:2 Below-market loans to CCRCs
- § 10A:3 Medical deduction for fees paid to CCRCs
- § 10A:4 CCRC Depreciation methodology

CHAPTER 11. MISCELLANEOUS ITEMIZED DEDUCTIONS (I.R.C. § 67(B))

- § 11:1 Overview
- § 11:2 Fully deductible expenses
- § 11:3 Expenses over 2 percent of adjusted gross income
- § 11:4 Deduction for real estate tax advice
- § 11:5 Investment advice expenses
- § 11:6 Limitation on itemized deductions

CHAPTER 12. HOME OFFICE EXPENSES

- § 12:1 Overview
- § 12:2 Supreme court definition of "principal place of business"
- § 12:3 —IRS guidance
- § 12:4 —What items are deductible
- § 12:5 Home office deduction rules
- § 12:6 Home office use by employees
- § 12:7 Amount of deduction
- § 12:8 Optional safe harbor deduction method
- § 12:9 Depreciation deductions
- § 12:10 —Depreciation period
- § 12:11 Qualifying portion of room for the deduction

xxvi

PART 2. TAX BENEFITS FOR REAL ESTATE

CHAPTER 13. REHABILITATION TAX CREDIT

| § 13:1 | Overview |
|---------|---|
| § 13:2 | Allocation of rehabilitation credits safe harbor |
| § 13:3 | Active and passive rehabilitation credits |
| § 13:4 | Combining tax credit with depreciation write-offs |
| § 13:5 | Tenant rehabilitation expenditures |
| § 13:6 | External and internal wall requirements |
| § 13:7 | Requirement for substantial rehabilitation |
| § 13:8 | —Buildings eligible for credit |
| § 13:9 | —Rehabilitation of only a part of the building |
| § 13:10 | —Definition of qualified rehabilitation expenditures |
| § 13:11 | -Cost of acquiring or enlarging an existing building |
| § 13:12 | Rehabilitation risks |
| § 13:13 | Recapture of credit |
| § 13:14 | Historic structure rehabilitations—Qualifying for the |
| | 20 percent credit |

CHAPTER 14. DISABLED ACCESS CREDIT

- § 14:1 Overview
- § 14:2 Eligibility for the credit
- § 14:3 Eligible access expenditures
- § 14:4 Barrier removal deduction

CHAPTER 15. LOW-INCOME HOUSING CREDIT

- § 15:1 Overview
- § 15:2 Eligibility for the credit
- § 15:3 Benefits for the developer
- § 15:4 Condominium conversion

CHAPTER 16. TAX-EXEMPT BOND FINANCING OF REAL ESTATE

- § 16:1 Overview
- § 16:2 Private activity bonds
- § 16:3 Property managed by private persons
- § 16:4 Exceptions to nondeductibility of interest rule— Qualified residential rental projects
- § 16:5 —Certain exempt facilities

§ 16:6 —Small-issue bonds § 16:7 —Redevelopment bonds

CHAPTER 17. INVESTING IN ENTERPRISE ZONES

- § 17:1 Overview
- § 17:2 Features of the law
- § 17:3 —Investments in property
- § 17:4 —Tax-exempt bonds
- § 17:5 —Expense election
- § 17:6 Employer wage credit
- § 17:7 State and local enterprise zones

CHAPTER 17A. INVESTING CAPITAL GAINS IN QUALIFIED OPPORTUNITY FUNDS IN QUALIFIED OPPORTUNITY FUNDS

- § 17A:1 Overview
- § 17A:2 Taxpayer election and other requirements
- § 17A:3 Deferral of gain: year of inclusion; amount of gain
- § 17A:4 Definitions relating to a QO Fund
- § 17A:5 Penalty for failure of QO fund to maintain investment standard
- § 17A:6 Special rules for capital gains invested in opportunity zones

CHAPTER 18. WORK OPPORTUNITY TAX CREDIT AND HIRE ACT INCENTIVES

- § 18:1 Overview
- § 18:2 Amount of credit
- § 18:3 Amount of the credit—The general business credit
- § 18:4 Targeted groups
- § 18:5 Hire Act incentives

CHAPTER 19. WELFARE-TO-WORK CREDIT

- § 19:1 Overview
- § 19:2 Integration with worker opportunity credit
- § 19:3 Amount of the credit
- § 19:4 Targeted groups

CHAPTER 19A. ENERGY TAX CREDITS FOR HOMEOWNERS

§ 19A:1 Overview

xxviii

- § 19A:2 I.R.C. § 25C tax credit § 19A:3 I.R.C. § 25D tax credit
- § 19A:4 Similarities in the credits
- § 19A:5 Inflation reduction Act of 2022—Homeowners

CHAPTER 19B. ENERGY TAX DEDUCTION AND CREDIT FOR COMMERCIAL BUILDINGS AND HOME BUILDERS

- § 19B:1 Overview
- § 19B:2 Energy efficient commercial buildings deduction
- § 19B:3 Inflation reduction Act of 2022—Commercial property
- § 19B:4 Energy efficient home credit
- § 19B:5 Solar tax equity financing

CHAPTER 19C. TAX INCENTIVES TO ENCOURAGE ENVIRONMENTAL CLEANUP

- § 19C:1 Overview
- § 19C:2 Expensing of environmental remediation costs
- § 19C:3 Brownfields exemption from the unrelated business income tax
- § 19C:4 New markets tax credit (NMTC)
- § 19C:5 Low-income housing credit (LIHC)
- § 19C:6 Rehabilitation tax credit

CHAPTER 19D. TAX INCENTIVES FOR FIRST TIME HOMEBUYERS

- § 19D:1 2008 overview
- § 19D:2 Phase out of credit
- § 19D:3 Qualified first-time home buyer
- § 19D:4 Credit not allowed
- § 19D:5 Recapture rules

CHAPTER 19E. HEALTH INSURANCE TAX CREDIT FOR SMALL EMPLOYERS

- § 19E:1 Overview
- § 19E:2 Amount of Credit
- § 19E:3 Forms

CHAPTER 19F. TRANSFERABLE STATE INCOME TAX CREDITS

- § 19F:1 Overview
- § 19F:2 The tax issues

- § 19F:3 Resolving the tax issues
- § 19F:4 Case study
- § 19F:5 Illustrations

PART 3. SALES OF REAL ESTATE

CHAPTER 20. ORDINARY AND CAPITAL GAINS AND LOSSES

| § 20:1 | Overview |
|---------|--|
| § 20:2 | Classifying gain and loss |
| § 20:3 | —Capital assets |
| § 20:4 | —Section 1231 assets |
| § 20:5 | —Ordinary assets |
| § 20:6 | Taxation of capital gains and losses |
| § 20:7 | —Capital gain tax rates |
| § 20:8 | Determining cost basis |
| § 20:9 | —Importance of records |
| § 20:10 | Zero tax on certain long-term capital gain and dividends |
| § 20:11 | Taxation of capital gains and losses—Capital gain treatment of installment sale |
| § 20:12 | Installment sales when depreciable property is sold |
| § 20:13 | Qualified small business stock: I.R.C. § 1202 |
| § 20:14 | Small business capital gain exclusion—Tax-Free elective rollover of gain |
| § 20:15 | Dealer status |
| § 20:16 | —Dealer property |
| § 20:17 | —Case patterns |
| § 20:18 | —Exception for subdivided property |
| § 20:19 | Converting ordinary income from real estate sales into capital gain |
| § 20:20 | —Separation of investment and business activities |
| § 20:21 | —Effect of retirement on ordinary income |
| § 20:22 | Converting ordinary income from real estate into capital gains—Sale of lots |
| § 20:23 | Converting ordinary income from real estate sales into capital gain—Converting capital gain into |

—Converting ordinary income into capital gain

Change of intent, segregation of property, and application of Winthrop factors—Case study

(change of intent)—Case study

The rescission principle

— Ordinary income or capital gain?

§ 20:24

§ 20:25

§ 20:26

§ 20:27

- § 20:28 Converting assets to five year property § 20:29 Qualifying timber sales for capital gain treatment
- § 20:29 Quantying timber sales for capital gain treatment

CHAPTER 21. REAL ESTATE OPTIONS

- § 21:1 Overview
- § 21:2 Using an option in place of a sales contract
- § 21:3 —Installment sale
- § 21:4 —Option alternative
- § 21:5 —Buyer's reasons for wanting an option
- § 21:6 —Seller's reasons for the option
- § 21:7 Tax traps to avoid
- § 21:8 Option does not give buyer immediate tax loss
- § 21:9 Comparing stock market options and real estate options
- § 21:10 Income tax consequences of real estate options and contract rights: Capital gain or ordinary income—I.R.C. § 1234A case study

CHAPTER 22. INSTALLMENT SALES OF REAL ESTATE

- § 22:1 Overview
- § 22:2 1987 changes to installment sale method of reporting
- § 22:3 Installment sale method
- § 22:4 —Computation and reporting of gain
- § 22:5 ——Gross profit
- § 22:6 —Total contract price
- § 22:7 ——Principal payments received in tax year
- § 22:8 ——Gain recognized in tax year
- § 22:9 —Examples
- § 22:10 —Contingent selling price
- § 22:11 Additional tax in the form of interest on deferred tax liability
- § 22:12 Related party restrictions
- § 22:13 Congressional motives for installment sale treatment
- § 22:14 Repossession by seller
- § 22:15 Seller's reduction of purchase price
- § 22:16 Installment sale vs. constructive receipt
- § 22:17 Electing out of installment sale—I.R.C. § 453(d)
- § 22:18 Reversal of Installment sale benefits bar for accrual method sellers
- § 22:19 When not to use installment method

CHAPTER 22A. NET INVESTMENT INCOME (HEALTH CARE) TAX IMPACTS CAPITAL GAINS, DIVIDENDS, ANNUITIES, LIFE INSURANCE, AND TRUSTS

§ 22A:1 Overview
§ 22A:2 Threshold amounts
§ 22A:3 Net investment income
§ 22A:4 Capital gains and dividends
§ 22A:5 Taxation of annuities
§ 22A:6 Life insurance contracts
§ 22A:7 Trusts and Estates
§ 22A:8 Installment sales
§ 22A:9 Like-kind exchange

xxxii

PART 4. TAX-DEFERRED EXCHANGES OF REAL ESTATE

CHAPTER 23. EXCHANGES OF INVESTMENT AND BUSINESS PROPERTY

| § 23:1 | Overview |
|---------|---|
| § 23:2 | Essential elements of tax-deferred property exchanges |
| § 23:3 | Post TCJA final regulations |
| § 23:4 | American Families Plan |
| § 23:5 | Essential elements of tax-deferred property exchanges—Actual exchange of properties |
| § 23:6 | —Like-kind properties |
| § 23:7 | Like-kind properties—Exchange of multiple properties: Case studies |
| § 23:8 | Essential elements of tax-deferred property exchanges—Like-kind properties—Foreign real estate |
| § 23:9 | ——Exchange of interests in same partnership |
| § 23:10 | Like kind property, investment intent case study |
| § 23:11 | Essential elements of tax-deferred property exchanges—Like-kind properties—Rental property for condominiums |
| § 23:12 | ——Present and future real estate interests |
| § 23:13 | — — Remainder for present interest |
| § 23:14 | Like-kind properties—Exchange of leased offices and personal property: case study |
| § 23:15 | Essential elements of tax-deferred property |

TABLE OF CONTENTS

| | exchanges—Like-kind properties—Exchange of development rights |
|---------|--|
| § 23:16 | —Exchange of billboards for real estate |
| § 23:17 | ——Exchange of conservation easement for fee |
| | interest is like kind property |
| § 23:18 | — Rental cooperative apartments are like-kind |
| | property |
| § 23:19 | — IRS Guidance: Tax-deferred exchanges using co-ownership entities |
| § 23:20 | — — —Tenancy-in-common guidance liberalized |
| § 23:21 | — — — Undivided fractional interests: case studies |
| § 23:22 | — — Undivided fractional interests: Unanimity |
| | requirements |
| § 23:23 | —Exchange of cooperative for condominium |
| § 23:24 | —Exchanging timber for real estate |
| § 23:25 | —Exchanging real estate for water rights |
| § 23:26 | —Exchanging real estate for coal supply contracts |
| § 23:27 | —Tax-free exchange of personal property |
| § 23:28 | —Properties held for productive use in a trade or |
| | business or for investment |
| § 23:29 | —Stock in trade or other property held primarily for sale |
| § 23:30 | ——Actual purpose for which property is held |
| § 23:31 | ——Effect of change of purpose |
| § 23:32 | —Partnership interests and tenancies-in-common |
| § 23:33 | — —Rearranging tenancy-in-common interests |
| § 23:34 | ——Tax-free exchange by partner of partnership |
| | property |
| § 23:35 | Exchange of partnership property with partner |
| § 23:36 | —Tax-free exchange when property has multiple uses |
| § 23:37 | Essential elements of tax-deferred property |
| | exchanges—Partnership interests and |
| | tenancies-in-common—Limited tax-free exchanges |
| | of vacation homes |
| § 23:38 | —Tax-free exchanges between related parties |
| § 23:39 | — —Indirect exchange between related parties: Case studies |
| § 23:40 | — —Who are related parties? |
| § 23:41 | ——Exceptions to related parties rule |
| § 23:42 | Exception to related parties rule—Exchange |
| | between related parties not for tax avoidance purposes: case study |
| § 23:43 | Tax-free exchanges between related parties—No improper use of intermediary to avoid rule: case study |

REAL ESTATE PROFESSIONAL'S TAX GUIDE

| § 23:44 | Exchange not designed to avoid related party rule, private letter ruling |
|----------|--|
| § 23:45 | Tax deferral denied in exchange designed to avoid |
| 8 00 40 | related party rule: Case study No. 2 |
| § 23:46 | Exception to related parties rule—Tax-free exchanges between related parties—Extending two-year rule |
| § 23:47 | —Conservation easement as like-kind property |
| § 23:48 | ——Conservation easement for farm—Case study |
| § 23:49 | —State law mitigation credits as like-kind property |
| § 23:50 | Entities owned by spouses and replacement property |
| § 23:51 | Exception to related parties rule—Use of single- |
| 3 20.01 | owner entity qualifies for tax-free exchange |
| § 23:52 | — — Using single member LLC to complete a tax- |
| 3 20.02 | free real estate exchange-case study |
| § 23:53 | Effect of nonqualifying property (boot)—Effect of |
| 3 = 3.33 | boot on gain or loss |
| § 23:54 | —Realized vs. recognized gain |
| § 23:55 | —Boot in form of relief from mortgage obligation |
| § 23:56 | —Boot in form of relief from mortgage obligation: |
| 0 | case study |
| § 23:57 | —Effect of boot on basis |
| § 23:58 | —Calculating effect of boot on exchange |
| § 23:59 | — —Cash boot |
| § 23:60 | — — Cash boot and other nonqualifying property |
| § 23:61 | — — Mortgage obligation on one side |
| § 23:62 | ——Mortgage obligation on both sides and cash |
| | payment by one side |
| § 23:63 | —How to reduce boot in tax-free exchanges by |
| | increasing one party's mortgage |
| § 23:64 | —Reducing boot in a tax-deferred exchange |
| § 23:65 | ——Physical division of property |
| § 23:66 | ——Creating a co-tenancy |
| § 23:67 | — Exchanging residual interests |
| § 23:68 | —Rules for netting boot received |
| § 23:69 | — Netting boot received against expenses |
| § 23:70 | ——Netting boot when acting as a conduit |
| § 23:71 | ——Netting when property subject to a liability is |
| | transferred in one year of a partnership and |
| | property subject to a liability is received in the |
| | following year |
| § 23:72 | —Improvements to the replacement property and |
| 0.00 | reducing boot |
| § 23:73 | Handling boot in exchanges of multiple properties |
| § 23:74 | Straight two-way exchanges: Sample transaction |
| § 23:75 | —Reason for exchange |
| | |

TABLE OF CONTENTS

| § 23:76 | —Structuring the exchange |
|------------|--|
| $\S 23:77$ | —Tax consequences to participants |
| § 23:78 | Deferred like-kind exchanges |
| § 23:79 | —Structuring deferred like-kind exchanges |
| § 23:80 | ——Identification of the replacement property— |
| | Identification time period |
| § 23:81 | — — —Manner of identification |
| § 23:82 | — — Multiple properties |
| § 23:83 | — — —Incidental property |
| § 23:84 | ———Revoking an identification |
| § 23:85 | ——Receipt of replacement property |
| § 23:86 | ——Preserving the 180-day exchange period |
| § 23:87 | ——Constructive receipt of money |
| § 23:88 | ——Safe harbors to avoid constructive receipt |
| § 23:89 | ———Security or guaranty arrangements |
| § 23:90 | ———Qualified escrow accounts and trusts |
| § 23:91 | — — Qualified intermediaries |
| § 23:92 | Qualified intermediaries—Case study |
| § 23:93 | Deferred like-kind exchanges—Structuring deferred |
| 3 23.03 | like-kind exchanges—Safe harbors to avoid |
| | constructive receipt—Interest and growth factors |
| § 23:94 | ——Disqualified persons |
| § 23:95 | ——Safe harbors to avoid constructive receipt— |
| Ü | Bankrupt qualified intermediary safe harbor |
| § 23:96 | —Legal title need not pass |
| § 23:97 | Deferred like-kind exchanges: Treatment of escrow |
| _ | account income |
| § 23:98 | Multiparty exchanges |
| § 23:99 | —Three-way exchanges |
| § 23:100 | ——Purchase from third party followed by exchange |
| § 23:101 | — —Exchange by owner with third party followed |
| | by sale by third party |
| § 23:102 | ——Transfer by owner; Payment to third party; |
| | Exchange by third party |
| § 23:103 | —Court rulings involving control over escrow |
| | funds |
| § 23:104 | — — —Control over escrow funds invalidates |
| | exchange |
| § 23:105 | ———Valid exchange when third party is |
| | unrelated to taxpayer |
| § 23:106 | ———Valid exchange involving construction |
| | performed by party related to taxpayer |
| § 23:107 | Four-party exchange designed to avoid related party |
| 0.00 | rule |
| § 23:108 | Multiparty exchanges—Three-way exchanges— |
| | Avoiding purchase money mortgage boot |

| § 23:109 | — — Tax-free exchange with cash alternative |
|----------|---|
| § 23:110 | — — Four-way exchanges |
| § 23:111 | — — Five-way exchanges |
| § 23:112 | ———Avoiding transfer taxes on multiparty |
| | exchanges |
| § 23:113 | Avoiding a tax-free exchange and recognizing a taxable loss |
| § 23:114 | Combining a tax-free exchange and a leaseback |
| § 23:115 | Phantom gain with a tax-free exchange |
| § 23:116 | Construction exchanges and disappearing leases |
| § 23:117 | Reverse-Starker like-kind exchange safe harbor |
| § 23:118 | —Permissible agreements |
| § 23:119 | —Already-owned property ineligible |
| § 23:120 | Intermediary need not bear economic burdens and benefits of ownership to effect a deferred tax reverse like-kind exchange |
| § 23:121 | Reverse-Starker like-kind exchange safe harbor— Reverse multi-party exchange-case study |
| § 23:122 | Reverse exchanges—Illustrations |
| § 23:123 | Qualified property: Delaware statutory trusts |
| § 23:124 | Like-kind exchange valid despite impending trust termination |
| § 23:125 | Depreciating property acquired in a like-kind exchange or involuntary conversion |
| § 23:126 | Completing an exchange after death |
| § 23:127 | Postponing certain deadlines by reason of presidentially declared disaster or terroristic or military actions |

CHAPTER 24. ACCOUNTING TREATMENT OF TAX-FREE EXCHANGES

- § 24:1 Overview
- $\S~24:2~$ Gain or loss recognition; Accounting Standards Update 2014-09
- § 24:3 ASC 845 and three party exchanges

CHAPTER 25. TAX-FREE REPLACEMENT OF INVOLUNTARILY CONVERTED PROPERTY

- § 25:1 Overview
- § 25:2 Nature of replacement property
- § 25:3 Condemned real property held for productive use in a trade or business or for investment
- § 25:4 Nature of replacement property—Similar or related in service or use

xxxvi

TABLE OF CONTENTS

| § 25:5 | —Form of acquisition |
|------------|---|
| § 25:6 | Replacement property acquired from related party |
| § 25:7 | Federally declared disaster |
| § 25:8 | Replacement period |
| \$ 25:9 | —Multiple replacement periods |
| \$ 25:10 | Replacement period-year of gain |
| 25:11 | Basis of replacement property |
| \$ 25:12 | Depreciating property acquired in an involuntary conversion |
| \$ 25:13 | Types of takings |
| § 25:14 | —Regulatory takings |
| § 25:15 | —Easements |
| \$ 25:16 | Effect of partial taking: Treatment of severance damages |
| § 25:17 | —Easements |
| \$ 25:18 | —Prior condemnation case study |
| \$ 25:19 | Special situations involving I.R.C. Section 1033— Award received after replacement period |
| § 25:20 | Insurance settlements and other reimbursements |
| \$ 25:21 | Insurance settlements-electing non-recognition of gain |
| § 25:22 | Special situations involving I.R.C. Section 1033—Sale of related property |
| \$ 25:23 | ——Residential property and the single economic rule |
| $\S~25:24$ | —Award for destruction and condemnation |
| § 25:25 | — Damage to property qualifies as an involuntary conversion |
| \$ 25:26 | Damage to property qualifies as involuntary conversion, case study |
| § 25:27 | Special situations involving I.R.C. Section 1033— Award for destruction and condemnation—Threat of eminent domain proceeding qualifies as involuntary conversion |
| \$ 25:28 | — —Threat to take easement permits tax-free exchange: case study |
| \$ 25:29 | ——Sale to a third party other than the threatening authority |
| \$ 25:30 | — —Use of single owner entity to acquire replacement property |
| § 25:31 | —Who can buy replacement property? |
| \$ 25:32 | Deferring tax in a privately owned utility taken over by a city |
| § 25:33 | Gain from state disaster relief grant may be deferred |
| \$ 25:34 | Involuntary conversion preserved on trust termination |

- § 25:35 Reporting requirements
- § 25:36 Reimbursed relocation expenses

CHAPTER 26. HOME LOSSES DUE TO NATURAL DISASTERS

- § 26:1 Overview
- § 26:2 Calculating loss
- § 26:3 Insurance recovery
- § 26:4 Deductible amount
- § 26:5 Federal disaster areas
- § 26:6 Casualty loss, damaged trees and landscaping
- § 26:7 Gain resulting from casualty
- § 26:8 Involuntary conversion under I.R.C. § 1033
- § 26:9 Separate land sale
- § 26:10 Additional tax breaks
- § 26:11 Living expenses
- § 26:12 How appraisal increases deduction
- § 26:13 Definition of casualty
- § 26:14 Tax Cuts and Jobs Act changes to casualty loss
- § 26:15 No loss due to conversion to rental property

CHAPTER 27. [Reserved]

CHAPTER 28. TAX-FREE SALE OF PERSONAL RESIDENCES

- § 28:1 Overview
- § 28:2 Eligibility requirements
- § 28:3 —Definition of principal residence—In general
- § 28:4 —Mixed-use property
- § 28:5 —Eligibility requirements—Conversion of residence to rental property; Treatment of pre-May 7, 1997 depreciation
- § 28:6 —Definition of principal residence—Sale of principal residence
- § 28:7 ——Physical occupancy may not be required—Case study
- § 28:8 ——In transition from one state to another state— Case study
- § 28:9 —Two-year ownership/occupancy period
- § 28:10 ——Deceased and former spouses
- § 28:11 Out of residence care
- § 28:12 Eligibility requirements—Unforeseen circumstances: IRS guidance
- $\S 28:13$ —Letter rulings

xxxviii

TABLE OF CONTENTS

| § 28:14 | —National Mortgage Settlement |
|---------|--|
| § 28:15 | -Reduced exclusion applicable to sales and |
| | exchanges before January 1, 2009 |
| § 28:16 | ——Computing the reduced exclusion applicable to sales and exchanges before January 1, 2009 |
| § 28:17 | —Reduced exclusion—Exclusion for spouses filing jointly |
| § 28:18 | ——Reduced exclusion for marrieds filing jointly |
| § 28:19 | ——Reduced exclusion for sales and exchanges after December 31, 2008 |
| § 28:20 | Entering marriage; Divorce; Widowhood |
| § 28:21 | —Entering marriage |
| § 28:22 | —Divorce |
| § 28:23 | — Joint ownership of home |
| § 28:24 | — — Transfer of ownership |
| § 28:25 | ——Ownership by both spouses, use by one |
| § 28:26 | ——Liability for capital gain tax |
| § 28:27 | —Widowhood |
| § 28:28 | Sheltering gain from prior sales |
| § 28:29 | Rescuing unused prior-law exclusion |
| § 28:30 | Deferred income can become tax-free profit |
| § 28:31 | Combining tax-free gain with installment sale |
| § 28:32 | Live-in move-out strategy |
| § 28:33 | Election not to exclude gain |
| § 28:34 | Exclusion for casualty gain/Electing out of the exclusion |
| § 28:35 | Maintaining records of improvements |
| § 28:36 | Gain in excess of exclusion: tax alternatives |
| § 28:37 | Revocable trusts and the home sale exclusion |
| § 28:38 | Partnerships and the home sale exclusion |
| § 28:39 | Ownership of principal residence by a trust— Nongrantor trust-gain exclusion not available |
| § 28:40 | —Grantor trust-gain exclusion permitted |
| § 28:41 | —Transfer from revocable to irrevocable trust |
| § 28:42 | Ownership of principal residence by limited |
| | partnership |
| § 28:43 | Converting principal residence to five year property |
| § 28:44 | Home sale exclusion: Liberal stance of new regulations |
| § 28:45 | Partial exclusion rules: Calculating the reduced exclusion: Case study |
| § 28:46 | Partial exclusion rule: Case studies under I.R.C. § 121(c) |
| § 28:47 | Combining the home sale exclusion and like-kind exchange deferral |

§ 28:48 Installment sale of personal residence—Previously excluded gain recognized on reacquisition of residence: Case study
§ 28:49 Passive activity losses do not reduce excluded gain on sale of residence
§ 28:50 Involuntary conversion and § 121

CHAPTER 29. [Reserved]

PART 5. TAX PLANNING FOR SPECIAL TYPES OF REAL ESTATE

CHAPTER 30. TAX ASPECTS OF LEASED REAL ESTATE

| REAL | ESTATE |
|---------|---|
| § 30:1 | Overview |
| § 30:2 | Tax aspects of rent payments—Rent payments to landlord |
| § 30:3 | —Rent payments by tenant—Deductions |
| § 30:4 | —Rent payments by tenant |
| § 30:5 | —Section 467 rental agreements |
| § 30:6 | ——Definition of section 467 rental agreement |
| § 30:7 | — Exceptions to section 467 rental agreements |
| § 30:8 | — —Proportional rent accrual method |
| § 30:9 | — —Constant rental accrual method |
| § 30:10 | ——Definition of tax avoidance; Safe harbors |
| § 30:11 | — —Contingent rent |
| § 30:12 | ——Lease modifications |
| § 30:13 | —Tenant payments under net leases |
| § 30:14 | Types of net leases compared |
| § 30:15 | Tax aspects of rent payments—Landlord and tenant |
| | as related parties |
| § 30:16 | —Planning pointer |
| § 30:17 | Tax aspects of assignment, sublease, or cancellation |
| § 30:18 | —Tenant's payment for lease cancellation |
| § 30:19 | ——Exceptions to deductibility rule |
| § 30:20 | —Lessor receives lease cancellation payment— Treatment to lessor |
| § 30:21 | —Lessee receives lease cancellation payment— Treatment to lessee |
| § 30:22 | —Lessee receives payment when sublease exists |
| § 30:23 | —Related taxpayers |
| § 30:24 | —Landlord's payment for lease cancellation |
| | * * |

TABLE OF CONTENTS

| § 30:25 | Tax aspects of purchase options—Option vs. sale |
|---------|---|
| § 30:26 | —Economic reality test |
| § 30:27 | —Economic reality test, state law |
| § 30:28 | —Economic reality test, case illustrations |
| § 30:29 | —Lease termination and purchase option |
| § 30:30 | Accounting and tax aspects of rent holidays |
| § 30:31 | —Cash incentives |
| § 30:32 | —Rent holidays |
| § 30:33 | Tax aspects of equity leases |
| § 30:34 | Tax aspects of square footage calculation |
| § 30:35 | Tax aspects of security deposits |
| § 30:36 | Tax aspects of lessee alterations and improvements |
| § 30:37 | —Manner of reimbursement |
| § 30:38 | — —Tenant makes and pays for improvements |
| § 30:39 | ——Cash reimbursement to tenant |
| § 30:40 | — — —Construction allowances under TRA 97 |
| 0 | changes |
| § 30:41 | ———Tax-free tenant construction allowances-final |
| | regulations |
| § 30:42 | — — Reduced construction allowance: case study |
| § 30:43 | ——Reduction in rent |
| § 30:44 | —Landlord makes and pays for improvements |
| § 30:45 | — —Landlord reimbursed by tenant |
| § 30:46 | —Movable partitions |
| § 30:47 | Tax aspects of restoration of premises on termination |
| | of lease |
| § 30:48 | —Effect on landlord |
| § 30:49 | —Effect of tenant's cash payment in lieu of |
| | restoration |
| § 30:50 | —Effect on tenant |
| § 30:51 | Tax aspects of lease acquisition costs—Necessity for |
| | capitalizing and amortizing costs |
| § 30:52 | Effect of tenant's option to renew lease |
| § 30:53 | —Effect of cancellation of lease |
| § 30:54 | —Payment to prior tenant |
| § 30:55 | —Landlord's treatment of its acquisition costs— |
| | Necessity for capitalizing and amortizing costs |
| § 30:56 | — —Effect of lease cancellation: When are costs |
| | immediately deductible? |
| § 30:57 | —Landlord's treatment of tenant's bonus payments |
| § 30:58 | ——Payment as immediately taxable to landlord |
| § 30:59 | — — How landlord can avoid immediate tax |
| § 30:60 | ——How landlord can avoid tax |
| § 30:61 | —Tenant's treatment of advance rental |
| § 30:62 | —Landlord's treatment of tenant's advance rental |

§ 30:63 Tax aspects of sale-leasebacks § 30:64 —Genuine sale vs. loan and mortgage § 30:65 — —Intent of parties § 30:66 — —Permanence of transaction ———Term of lease § 30:67 --Renewal option § 30:68 § 30:69 ——Repurchase option § 30:70 — The Lyon case § 30:71 — The Lyon case—Facts of the case § 30:72 ———Risks and benefits of ownership § 30:73 ———Risk of loss — — — The risk of no return § 30:74 § 30:75 — — Other factors ———Effect of Lyon § 30:76 § 30:77 — Tax consequences if the transaction is a mortgage § 30:78 -Lease vs. installment sale § 30:79 —Tax considerations for the seller § 30:80 ——How gain or loss is treated § 30:81 ———Leasebacks for thirty years or more § 30:82 ———Sale for less than full value ———Sale to related parties § 30:83 § 30:84 ---Loss on a bargain sale § 30:85 ——Deductibility of rental payments Tax aspects of change in ownership § 30:86 Tax aspects of change in ownership, transfer to § 30:87 shareholders § 30:88 Lease-In/Lease-Out (LILO) transactions Leveraged leases (Lease stripping) § 30:89

CHAPTER 31. UNDEVELOPED LAND

- § 31:1 Overview
- § 31:2 Capital gain benefits
- § 31:3 Passive vs. investment activity
- § 31:4 —Interest expense
- § 31:5 —Property tax deductions
- § 31:6 —Landowner elections
- § 31:7 —Lender fees
- § 31:8 —Start-up costs
- § 31:9 Deductibility of loan interest
- § 31:10 Capitalization of carrying charges
- § 31:11 Planning for abandonment loss
- § 31:12 —Establishing abandonment loss
- § 31:13 —Abandonment of partnership interest

§ 31:14 Amortization: Deducting land costs

CHAPTER 32. TAX TREATMENT OF LAND UNDER CONSTRUCTION AND DEMOLITION

| § 32:1 | Overview |
|---------|---|
| § 32:2 | Construction-period interest and taxes |
| § 32:3 | Uniform capitalization rules and interest deduction |
| § 32:4 | —Production of property |
| § 32:5 | —De minimis exception |
| § 32:6 | —Avoided cost method |
| § 32:7 | —Ordering rules |
| § 32:8 | —Deferred or contingent interest |
| § 32:9 | —Property units |
| § 32:10 | —Common features placed in service separately |
| § 32:11 | —Production period |
| § 32:12 | —Maximizing interest deductions |
| § 32:13 | Deducting loss prior to demolition |
| § 32:14 | —Abnormal retirement as casualty: Tax court |
| | decisions |
| § 32:15 | ——Facts of the case |
| § 32:16 | — —The court's ruling |
| § 32:17 | —Normal vs. abnormal retirement |
| § 32:18 | —IRS safe harbor |
| § 32:19 | —When immediate write-off is available—Case study |
| § 32:20 | Contributions in aid of construction—CIAC |
| § 32:21 | Retirement of environmentally contaminated land |
| § 32:22 | Treatment of variance and zoning change costs |
| | |

CHAPTER 33. VACATION HOMES

| § 33:1 | Overview |
|---------|--------------------------------------|
| § 33:2 | Categories of vacation homes |
| § 33:3 | —Limited rental use |
| § 33:4 | —Limited personal use |
| § 33:5 | ——Deducting rental expenses |
| § 33:6 | ——Deducting personal use expenses |
| § 33:7 | —Substantial rental and personal use |
| § 33:8 | Planning ideas |
| § 33:9 | Fixed guaranteed rental |
| § 33:10 | Time share losses |
| | |

PART 6. REAL ESTATE ENTITY TAX PLANNING

CHAPTER 34. FORMS OF INCOME PROPERTY OWNERSHIP

- § 34:1 Overview
- § 34:2 Forms of ownership
- § 34:3 Basic tax considerations in choosing entity
- § 34:4 Form of ownership: Paying social security taxes
- § 34:5 Nontax considerations in choosing entity

CHAPTER 35. INDIVIDUAL AND CONCURRENT OWNERSHIP

- § 35:1 Individual ownership (sole proprietorship)
- § 35:2 —Family employment
- § 35:3 —Retirement plan
- § 35:4 —Health insurance
- § 35:5 Concurrent ownership
- § 35:6 —Tenancy-in-common—Undivided interests
- § 35:7 ——Tax consequences of tenancy-in-common
- § 35:8 ——Hazards of tenancy-in-common
- § 35:9 —Joint tenancy with right of survivorship
- § 35:10 ——Characteristics of joint tenancy
- § 35:11 ——Advantages of joint tenancy
- § 35:12 ——Disadvantages of joint tenancy
- § 35:13 ——Tax consequences of joint tenancy
- § 35:14 ——Tax consequences of joint tenancy outside of marriage: case study-what constitutes consideration
- § 35:15 ——Estate tax consequences of joint tenancy outside marriage
- § 35:16 —Tenancy by the entirety—Character as a type of joint tenancy
- § 35:17 ——Tax consequences of tenancy by the entirety
- § 35:18 ———Special rule for Pre-1977 spousal jointly owned property
- § 35:19 —Community property—Characteristics of community property
- § 35:20 ——Tax consequences of community property
- § 35:21 Estate taxation of joint tenancies and tenancies by the entirety
- § 35:22 Estate tax treatment of encumbered spousal joint property

CHAPTER 36. REAL ESTATE GENERAL PARTNERSHIPS

| _ | ALULI | |
|---|-------|---|
| § | 36:1 | Overview |
| § | 36:2 | Tax aspects of partnerships |
| § | 36:3 | —Organizing a partnership |
| § | 36:4 | — —Gain or loss recognized |
| § | 36:5 | — — Contribution of marketable securities |
| § | 36:6 | ———Changes to the Taxpayer Relief Act of 1997 |
| § | 36:7 | — —Contribution of encumbered property |
| § | 36:8 | —Treatment of capital contributions |
| § | 36:9 | —Partnership taxation |
| § | 36:10 | — — Unincorporated entities |
| § | 36:11 | —Election not to be taxed as a partnership |
| § | 36:12 | —Taxation of partners |
| § | 36:13 | — — Distributions of marketable securities |
| § | 36:14 | — — The disguised sale rule |
| § | 36:15 | —Definition of a qualified liability |
| § | 36:16 | -Taxation of partners-Allocating built-in gain and |
| | | loss on property contributed by partners |
| § | 36:17 | —Sales and exchanges |
| § | 36:18 | —Tax basis of a partnership interest |
| § | 36:19 | —Basis of partnership property |
| § | 36:20 | Partnership basis overstatement and the period of limitations |
| § | 36:21 | Tax aspects of partnerships—Sale of a partnership interest |
| 8 | 36:22 | —Liquidation of a partner's interest |
| - | 36:23 | —Termination of a partnership |
| _ | 36:24 | — — Mergers and divisions of partnerships |
| § | 36:25 | ——Substantial economic effect—Case study |
| | 36:26 | Partnership versus tenancy-in-common |
| 8 | 36:27 | Spousal joint ventures |
| _ | 36:28 | Increasing general partnership's asset basis on partner's death |
| § | 36:29 | Partnership anti abuse rule |
| _ | 36:30 | Partnership anti abuse rule: illustrations |
| | | |

CHAPTER 37. LIMITED PARTNERSHIPS

| § 37:1 | Overview |
|--------|--|
| § 37:2 | —Tax aspects of limited partnerships |
| § 37:3 | —Deductibility of partnership losses by partners |
| § 37:4 | —Allocation of partnership loss or income |
| § 37:5 | —Qualifying for tax treatment as a limited |

| | partnership—Limited partnerships may choose to be taxed as partnerships or corporations |
|---------|---|
| § 37:6 | —Partnership antiabuse rules |
| § 37:7 | Partnership antiabuse rules: tax factors |
| § 37:8 | Partnership antiabuse rules: recasting family plan |
| § 37:9 | No gain on transfer of marketable securities to limited partnership |
| § 37:10 | —Investment company exception to non-recognition rule |
| § 37:11 | —1997 Act expands definition of "Stock and securities" |
| § 37:12 | —Real estate and life insurance not "Stock and securities" |
| § 37:13 | —Diversification example |
| § 37:14 | —Additional favorable rulings |
| § 37:15 | Increasing partnership's asset basis on transfer of partnership interest: I.R.C. § 754 |
| | |

CHAPTER 38. LIMITED LIABILITY COMPANIES

| § 38:1 | Overview |
|---------|--|
| § 38:2 | LLCs compared to other entity forms—S corporation |
| § 38:3 | —General and limited partnerships |
| § 38:4 | — —LLC basis advantage over limited partnership |
| § 38:5 | —Regular C corporations |
| § 38:6 | Joint ventures and operating groups |
| § 38:7 | —Joint business ventures |
| § 38:8 | —Intervention by passive investors |
| § 38:9 | —Developer and landowner |
| § 38:10 | Classification for tax purposes |
| § 38:11 | —Planning opportunities with single-member LLCs—Community property and the single-member LLC |
| § 38:12 | — —Two member LLC consisting of grantor and grantor trust treated as single member LLC |
| § 38:13 | —Asset protection planning with single-member LLCs |
| § 38:14 | Allocations |
| § 38:15 | Converting partnerships to LLCs |
| § 38:16 | Converting S corporations to LLCs |
| § 38:17 | —Beware the built-in gains tax and other matters |
| § 38:18 | Disregarded entity converted to a partnership |
| § 38:19 | Self-employment tax |
| § 38:20 | Increasing LLC's asset basis on member's death |

CHAPTER 39. REGULAR C CORPORATIONS

| § 39:1 | Overview |
|---------|---|
| § 39:2 | Basic corporate legal and economic consequences |
| § 39:3 | —Continuity of life |
| § 39:4 | —Limitation of shareholder's liability |
| § 39:5 | Tax aspects of corporations generally |
| § 39:6 | Accumulated earnings tax |
| § 39:7 | Personal holding company tax |
| § 39:8 | Tax concerns when incorporating |
| § 39:9 | —Is tax-free incorporation always best? |
| § 39:10 | —Transfer of mortgaged property to corporation |
| § 39:11 | —Taxable gain when assets, subject to liabilities in excess of basis, exchanged for stock: case study |
| § 39:12 | —Establishing the corporation's capital structure |
| § 39:13 | —Tax consequences of financing with equity or debt |
| § 39:14 | —Risk involved in thin capitalization |
| § 39:15 | —Case study: Taxpayer wins thin capitalization case |
| § 39:16 | —Case study: Equity versus debt |
| § 39:17 | Setting salaries of stockholder-employees |
| § 39:18 | —Guidelines for determining reasonableness of salaries |
| § 39:19 | —How to reduce the risk of a successful attack on salaries |

CHAPTER 40. SUBCHAPTER S CORPORATIONS

| § 40:1 | Overview |
|---------|---|
| § 40:2 | Tax benefits of the subchapter S corporation |
| § 40:3 | —Subchapter S Revision Act |
| § 40:4 | —Summary of tax benefits |
| § 40:5 | Built-in gains tax |
| § 40:6 | Nontax benefits of the S corporation |
| § 40:7 | S corporation compared to C corporation |
| § 40:8 | Qualifying as an S corporation |
| § 40:9 | —Number of shareholders |
| § 40:10 | —Eligible shareholders |
| § 40:11 | ——Electing small business trusts (ESBT) |
| § 40:12 | — — Termination of election: case study—Favorable |
| | IRS guidance concerning the sub S election, estate |
| | tax deferral and the revocable trust election to be |
| | treated as an estate |
| § 40:13 | —One class of stock |

| § 40:14 | —Varying interests distributions and the one class of stock rule |
|---------|---|
| § 40:15 | —Commercial agreements and the one class of stock rule |
| § 40:16 | —Multiple subchapter S corporations |
| § 40:17 | —Subchapter S subsidiaries |
| § 40:18 | Basis of inherited subchapter S stock |
| § 40:19 | Basis for loss deductions by shareholders |
| § 40:20 | Basis for loss deductions by shareholders: Circular |
| | flow of funds, back-to-back loans, guaranteed |
| | loans—Case studies |
| § 40:21 | Basis of indebtedness regulations |
| § 40:22 | Restricting transfers of S corporation stock |
| § 40:23 | Electing and terminating S corporation status |
| § 40:24 | —Termination of election |
| § 40:25 | —Effect of termination of S corporation status |
| § 40:26 | S corporation executive compensation: Pay as disguised profit-sharing |
| § 40:27 | Accumulated earnings and profits and excessive passive income—Termination of election |
| § 40:28 | —§ 1375 corporate level tax |
| § 40:29 | Relief for late S corporation elections |

CHAPTER 40A. NON-SHAREHOLDER CAPITAL CONTRIBUTIONS

| § 40A:1 | Overview |
|---------|---|
| § 40A:2 | Requirements |
| § 40A:3 | State economic development grants |
| § 40A:4 | Nontransferable state income tax credits |
| § 40A:5 | State development grants to entities taxed as |
| | partnerships |

CHAPTER 40B. TREATMENT OF CORPORATE INTERESTS AS STOCK OR DEBT

- § 40B:1 Generally
- $\$ 40B:2 $\,$ The I.R.C. $\$ 385 specified factors
- § 40B:3 The IRS § 485 regulations

CHAPTER 41. REITS, REMICS, AND TRUSTS

- § 41:1 Overview
- § 41:2 Real estate investment trusts

xlviii

| § 41:3 | —General tax rules applicable to REITs |
|---------|---|
| § 41:4 | Net operating loss deductions for REITs under the CARES Act |
| § 41:5 | Definition of real property for REIT purposes—Final regulations |
| § 41:6 | REIT subsidiaries |
| § 41:7 | Real estate investment trusts—How REITS are taxed |
| § 41:8 | REITs spinning off REITs |
| § 41:9 | Real estate investment trusts—Umbrella REITs—Tax planning for owners of real estate |
| § 41:10 | — — The DOWNREIT strategy |
| § 41:11 | ——Real estate corporations and REITS |
| § 41:12 | —Stapled REITs eliminated |
| § 41:13 | Real estate mortgage investment conduits |
| § 41:14 | —Definition |
| § 41:15 | —Election |
| § 41:16 | —Asset composition test |
| § 41:17 | —Ownership instruments: Regular and residual interests |
| § 41:18 | —Transfers of property to a REMIC |
| § 41:19 | —Taxation of a REMIC |
| § 41:20 | — Tax on net income from prohibited transactions |
| § 41:21 | — Tax on net income from foreclosure property |
| § 41:22 | — —Tax on contributions after startup day |
| § 41:23 | —Taxation of holders of REMIC interests |
| § 41:24 | —Disposition of REMIC interests |
| § 41:25 | Trusts |
| § 41:26 | —Business trusts |
| § 41:27 | —Personal trusts |
| § 41:28 | —Estate tax aspects of Illinois land trust |
| § 41:29 | Other alternative entities |
| | |

CHAPTER 41A. CONDOMINIUM AND COOPERATIVE CONVERSIONS: TAX CONSIDERATIONS

| § 41A:1 | Overview |
|---------|--|
| § 41A:2 | Capital gain or ordinary income treatment |
| § 41A:3 | Three approaches to conversion |
| § 41A:4 | Recapture of depreciation |
| § 41A:5 | Contingency installment sale |
| § 41A:6 | New York's Housing Stability and Tenant Protection |
| | Act—Impact on condominium conversions |

CHAPTER 41B. CONDOMINIUMS: SWAPPING WITH COOPERATIVES

- § 41B:1 Overview
- § 41B:2 Tax-free exchange
- § 41B:3 Why condos are preferred
- § 41B:4 Avoiding 80-20 rule
- § 41B:5 Coop and condo tax equivalency payments

PART 7. FAMILY REAL ESTATE TAX PLANNING

CHAPTER 42. GIFTS OF REAL ESTATE

- § 42:1 Overview
- § 42:2 Definition of a gift
- § 42:3 Gift and estate tax basics
- § 42:4 Valuation of property for gift tax purposes
- § 42:5 Declaratory judgment to resolve gift tax valuation
- § 42:6 The annual gift tax exclusion
- § 42:7 —No annual exclusion for gifts of restricted LLC interests
- § 42:8 Gift and estate tax marital deduction
- § 42:9 Transfers to noncitizen spouses—The qualified domestic trust (QDOT)
- § 42:10 QDOT guidance when surviving spouse becomes U.S. citizen
- § 42:11 Relationship of gift tax to income tax
- § 42:12 Relationship of gift tax to estate tax
- § 42:13 Advantages of making gifts
- § 42:14 Family installment sales vs. fractional gifts
- § 42:15 Deeding fractional shares
- § 42:16 Installment sale
- § 42:17 Comparing the two methods
- § 42:18 Gift planning for tax losses and gains
- § 42:19 Private real estate annuities
- § 42:20 Private annuity income tax benefit eliminated under proposed regulations
- § 42:21 What is a private annuity?
- § 42:22 How much is the annuity?
- § 42:23 Will the obligor perform
- § 42:24 Tax consequences to obligor
- § 42:25 Annuity may not be secured
- § 42:26 Payment of annuity to third party

| § 42:27 | Planning opportunities with self-canceling installment notes |
|---------|--|
| § 42:28 | Comparing SCINs with private annuities |
| § 42:29 | Comparing the tax consequences of a SCIN and a |
| | private annuity |
| § 42:30 | Self-canceling installment note (SCIN) bona fide |
| | notwithstanding flaws: case study |
| § 42:31 | Self-settled (estate asset protection) trusts |

CHAPTER 43. EXTENSION OF TIME FOR ILLIQUID ESTATES TO PAY FEDERAL ESTATE TAX

| § 43:1 | Overview |
|---------|---|
| § 43:2 | The mechanics of Section 6166 |
| § 43:3 | —Amount of tax that can be deferred |
| § 43:4 | —Interest payments for decedents dying before January 1, 1998 |
| § 43:5 | The mechanics of Section 6166–Interest payments for decedents dying after December 31, 1997 |
| § 43:6 | Qualifying for Section 6166 deferral |
| § 43:7 | —The 35 percent test |
| § 43:8 | —The three-year rule |
| § 43:9 | —Asset valuation |
| § 43:10 | —Ownership requirements for partnership and corporate interests |
| § 43:11 | —Active trade or business |
| § 43:12 | Qualifying for Section 6166 deferral—Active trade or business—Lending and financing business; holding companies |
| § 43:13 | ——Qualifying real estate as trade or business for estate tax deferral—IRS guidance |
| § 43:14 | Qualifying for Section 6166 deferral—Active trade or business—Qualifying real estate for estate tax deferral—Case study No. 1 |
| § 43:15 | ———Case study No. 2 |
| § 43:16 | ———Case study No. 3 |
| § 43:17 | Bonding requirements |
| § 43:18 | Election to defer estate tax |
| § 43:19 | Acceleration of payments |
| § 43:20 | —Stock redemption may cause loss of estate tax deferral |
| § 43:21 | —Lease of land to LLCs will not cause loss of § 6166 estate tax deferral |
| § 43:22 | —Failure to pay interest will cause loss of § 6166 deferral |

- § 43:23 Limitations of Section 6166 deferral
- § 43:24 Interest on loan to pay deferred taxes: case study

CHAPTER 44. [Reserved]

CHAPTER 45. ALTERNATIVE METHODS OF VALUING REAL ESTATE FOR ESTATE TAX PURPOSES

- § 45:1 Overview
- § 45:2 Introduction to special use valuation
- § 45:3 Indexing for inflation
- § 45:4 Qualification requirements for the estate
- $\S 45:5$ —The 50 percent test
- § 45:6 —The 25 percent test
- § 45:7 —Comparing the 50 percent test and the 25 percent test
- § 45:8 Qualification requirements for the real property
- § 45:9 —Formula method
- § 45:10 —Multiple-factor method
- § 45:11 I.R.C. Section 2032A election and agreement
- § 45:12 The recapture tax
- § 45:13 The recapture tax: Exception for qualified conservation contribution
- § 45:14 The recapture tax—Sale of nonagricultural development rights triggers special use valuation recapture tax
- § 45:15 —Like-kind exchange preserves special use valuation
- § 45:16 Planning considerations
- § 45:17 —Cash leases of farms
- § 45:18 —Option vs. installment sale
- § 45:19 —Minority discount allowed in conjunction with special use valuation
- § 45:20 —Use of discounts in connection with special use valuation

CHAPTER 46. PERSONAL RESIDENCE TRUSTS

- § 46:1 Overview
- § 46:2 Qualification requirements
- § 46:3 —Provisions common to both trusts
- § 46:4 —Provisions for a QPRT
- § 46:5 Qualifying QPRT 2 for benefit of parent created by beneficiaries of QPRT 1

| § 46:6 | Gift tax aspects |
|---------|--|
| § 46:7 | Estate tax aspects |
| § 46:8 | Income tax aspects |
| § 46:9 | Generation-skipping tax aspects |
| § 46:10 | Planning considerations |
| § 46:11 | —Personal residence trusts—Repurchase of residence |
| § 46:12 | ——Reformation of personal residence trusts |
| § 46:13 | —Leveraging QPRTs—Leveraging a QPRT with a rental unit |
| § 46:14 | —Leveraging a QPRT with a conservation easement |
| § 46:15 | ——Leveraging a personal residence trust by splitting ownership |
| § 46:16 | ——Fractional interest discount |
| § 46:17 | —Planning opportunities for separate husband and wife QPRTs—Case study |
| § 46:18 | —Layering personal residence trusts |
| § 46:19 | —New personal residence structure avoids lease at end of QPRT term |
| § 46:20 | Sale of remainder interest in personal residence trust |
| § 46:21 | Planning considerations—Qualified personal residence trust: case study |
| § 46:22 | —Planning after the expiration of the QPRT term |
| § 46:23 | —Payment of fair market rental after QPRT term: case study |

CHAPTER 47. GRANTOR RETAINED ANNUITY TRUSTS (GRATS) AND UNITRUSTS (GRUTS)

- § 47:1 Overview
- § 47:2 GRAT and GRUT qualifications
- § 47:3 Gift tax aspects
- § 47:4 Estate tax aspects
- § 47:5 Income tax aspects
- § 47:6 Use of promissory notes
- § 47:7 —Transition rules
- § 47:8 IRS issues zero-out GRAT regulations

CHAPTER 48. FAMILY LIMITED PARTNERSHIPS

- § 48:1 Overview
- § 48:2 Transferring property to FLPs; avoiding the indirect gift rule
- § 48:3 Contributions to FLPs; nonrecognition of gain

| § 48:4 | Contributions to FLPs; encumbered property |
|---------|---|
| § 48:5 | Contributions to FLPs; marketable securities |
| § 48:6 | Transferring FLP interests to descendants; transfer discounts |
| § 48:7 | IRS position on FLP discounts; transfers with retained life estate |
| § 48:8 | Guidelines for avoiding the application of § 2036(a) |
| § 48:9 | Section 2036(a) case studies |
| § 48:10 | Leveraging with annual exclusion gifts |
| § 48:11 | Guaranteed payments and the family limited partnership |
| § 48:12 | Satisfaction of partner's guaranteed payment with property is a taxable sale or exchange to the partnership |
| § 48:13 | Planning a freeze partnership |

CHAPTER 49. CHARITABLE REMAINDER TRUSTS

| § 49:1 | Overview |
|---------|--|
| § 49:2 | Types of charitable remainder trusts |
| § 49:3 | Charitable deduction limitations |
| § 49:4 | Contributing appreciated property |
| § 49:5 | —Gain on stock transferred to charity taxable to transferors as anticipatory assignment of income |
| § 49:6 | The income tax consequences |
| § 49:7 | Advantages of a NIMCRUT |
| § 49:8 | —FLIP-CRUTs |
| § 49:9 | Mortgaged real estate and charitable gifts |
| § 49:10 | Closely held stock and charitable gifts |
| § 49:11 | IRS regulations attack accelerated CRTs: Trust beneficiary to recognize gain in appreciated assets |
| § 49:12 | IRS warning: Certain sales of charitable remainder interests identified as tax avoidance |
| § 49:13 | Estate tax charitable deduction denied for noncompliance with CRAT terms |
| § 49:14 | Sale of CRUT life interest is sale of a capital asset |
| § 49:15 | Divorce: Dividing a CRUT without adverse income tax consequences |

CHAPTER 50. STOCK REDEMPTIONS IN A FAMILY CORPORATION

- § 50:1 Overview
- § 50:2 Redeeming estate stock in a family corporation
- § 50:3 —Attribution rules

| § 50:4 | —Exception for death taxes and funeral and administrative expenses |
|--------|--|
| § 50:5 | Redeeming stock in a family corporation at retirement |
| § 50:6 | —Avoiding dividend treatment when redeeming stock in family corporation—Case study No. 1 |
| § 50:7 | —Avoiding dividend treatment when redeeming stock in family corporation—Case study No. 2 |
| § 50:8 | Combining stock redemption with installment payments: case study |
| § 50:9 | Stock redemption with installment sale and gift to children: case study |

CHAPTER 51. VALUATION OF INTERESTS IN REAL ESTATE

| § 51:1 | Overview |
|---------|---|
| § 51:2 | Fair market value |
| § 51:3 | —Control premium |
| § 51:4 | —Swing vote |
| § 51:5 | —Valuation discounts |
| § 51:6 | —Lack of marketability discount |
| § 51:7 | — Lack of marketability discount: case study |
| § 51:8 | — Minority interest or lack of control discount— |
| | Minority interest discount allowed in conjunction with special use valuation |
| § 51:9 | — —Fractional interest discount |
| § 51:10 | — —Jointly owned interests |
| § 51:11 | — —Lack of discounts for jointly owned property |
| § 51:12 | ——Blockage discount |
| § 51:13 | —Court applies blockage discount to real estate; |
| | rejects partition cost as measure of fractional interest discount |
| § 51:14 | — —Built-in gains tax discount for corporate-owned real estate |
| § 51:15 | — — —Amount of discount |
| § 51:16 | ———Condemnation award and the built-in capital |
| | gain |
| § 51:17 | Built-in gains tax discount following conversion from a "C" to an "S" corporation: case study |
| § 51:18 | Dividing asset ownership to enhance discounting of real estate transfers |
| § 51:19 | Splitting crops and timber from farmland reduces value of land for estate tax purposes |
| § 51:20 | Trade fixtures on leased real property excluded from landlord's estate |
| § 51:21 | Tax Court allows 60% discount for interests in |

§ 51:22 Restricted management accounts valued without discounts
 § 51:23 Single member LLC not disregarded for gift tax purposes: case study—Pierre I
 § 51:24 Step transaction doctrine collapses four gifts and sales into two 50% gifts: case study—Pierre II

CHAPTER 52. USING REAL ESTATE TO FUND A DEFECTIVE GRANTOR TRUST

- § 52:1 Overview
- § 52:2 Estate tax consequences of the defective trust
- § 52:3 Using the defective grantor trust as an estate freezing technique
- § 52:4 The gift tax consequences of the IDGT
- § 52:5 Benefits of taxing trust income to the grantor
- § 52:6 Comparing the IDGT and the SCIN
- § 52:7 Selling assets to the IDGT in exchange for a SCIN
- § 52:8 Comparing the IDGT to GRATs and GRUTs

CHAPTER 53. EXPATRIATION FOR TAX AVOIDANCE PURPOSES

- § 53:1 Overview
- § 53:2 Permanent resident aliens
- § 53:3 Presumption of tax avoidance under prior law
- § 53:4 Prior law: Extension of time to obtain ruling
- § 53:5 Individuals who expatriate after June 3, 2004 and before June 17, 2008
- § 53:6 Individuals who expatriate before June 17, 2008: Income, estate and gift tax consequences
- § 53:7 Individuals who expatriate on or after June 17, 2008

PART 8. ACCOUNTING, COMPLIANCE, AND REPORTING REQUIREMENTS

CHAPTER 54. ACCOUNTING RULES FOR INCOME AND EXPENSE

- § 54:1 Overview
- § 54:2 Limit on use of cash method
- § 54:3 —Cash method: Small business \$1 million exception
- § 54:4 —Cash method: Small business \$10 million exception
- § 54:5 Premature accruals of deductions

| § 54:6 | Prepaid expenses of cash-method tax shelters |
|---------|---|
| § 54:7 | Tax years of real estate entities |
| § 54:8 | Completed contract method |
| § 54:9 | —Modified percentage-of-completion method |
| § 54:10 | —Percentage-of-completion/capitalized-cost method |
| § 54:11 | —Contracts subject to rules |
| § 54:12 | Current value reporting by real estate companies |
| § 54:13 | —Underlying principles |
| § 54:14 | —Deriving current values |
| § 54:15 | —Accounting rules for impairment of assets |
| § 54:16 | Accounting: Choosing between cash and accrual |
| | method for tax purposes |
| § 54:17 | —Accounting methods |
| § 54:18 | —Switching accounting methods |
| § 54:19 | —Related party transactions |
| § 54:20 | —Unrelated party compensation |
| | |

CHAPTER 54A. DISCHARGING REAL ESTATE DEBT

| § 54A:1 | Overview |
|---------|---|
| § 54A:2 | Debt eligible for the exclusion |
| § 54A:3 | Limits of the exclusion |
| § 54A:4 | Limited exclusion for discharged home mortgage debt |
| § 54A:5 | National Mortgage Settlement—Tax treatment |
| § 54A:6 | Deferral of COD income |
| § 54A:7 | Debt for equity exchanges by corporations and |
| | partnerships: I.R.C. § 108(e)(8) |
| 8 54A·8 | Recourse and nonrecourse debt |

CHAPTER 55. ACCURACY-RELATED AND FRAUD PENALTIES

| § 55:1 | Overview |
|---------|---|
| § 55:2 | Failure to pay tax shown on return |
| § 55:3 | Accuracy-related penalties—I.R.C. § 6662 |
| § 55:4 | Accuracy-related penalties—I.R.C. § 6662—Accuracy related penalties: case study |
| § 55:5 | Fraud penalty—I.R.C. § 6663 |
| § 55:6 | Reportable transaction understatement penalty—I.R.C. § 6662A |
| § 55:7 | Listed and reportable transactions—I.R.C. §§ 6011, 6111, 6112 and 6707A |
| § 55:8 | Aiding and abetting understatements of tax |
| § 55:9 | Promotion of abusive tax shelters |
| § 55:10 | Tax return preparer penalties |
| | |

§ 55:11 Claims for refund, credit, or abatement: Rev. Proc. 2007-21

CHAPTER 56. REPORTING REQUIREMENTS FOR REAL ESTATE TRANSACTIONS

- § 56:1 Transactions that must be reported
- § 56:2 —Transactions that need not be reported
- § 56:3 Who need not report
- § 56:4 Who needs to report
- § 56:5 Designating the reporting person
- § 56:6 Filing the report

CHAPTER 57. PURCHASE FROM A FOREIGN SELLER

- § 57:1 Overview
- § 57:2 Withholding from the sale proceeds
- § 57:3 Purchase from foreign seller—Withholding amount
- § 57:4 —Withholding forms
- § 57:5 Withholding from the sale proceeds—Buyer's responsibilities
- § 57:6 —Affected transactions
- § 57:7 —Penalties for noncompliance
- § 57:8 —Exempt transactions
- § 57:9 ——Residence property
- § 57:10 ——Seller not a foreign person
- § 57:11 Domestic disregarded entity
- § 57:12 Withholding from the sale proceeds—Exempt transactions—Corporation not a U.S. real property holding corporation
- § 57:13 ——Special withholding certificate supplied
- § 57:14 ——Nonrecognition transactions
- § 57:15 ——Publicly traded stock
- § 57:16 —Liability of agents
- § 57:17 ——Duty to inform
- § 57:18 ——Failure to inform
- § 57:19 ——Agents affected
- § 57:20 Alternative procedure for furnishing nonforeign affidavit

APPENDICES

APPENDIX A. Tax Rates, Phaseout of Personal Exemptions, Limitation on Itemized Deductions, Social Security, and Medicare

APPENDIX B. The Alternative Minimum Tax

APPENDIX C. Tax Forms

APPENDIX D. Real Estate Forms

IRS Information Reporting and Other Forms Required for Real Estate Transactions APPENDIX E.

APPENDIX F. IRS Web Section for Homeowners Who Lose

Homes; Foreclosure Tax Relief Available to

Table of Laws and Rules

Table of Cases

Index