CHAPTER 1. INTRODUCTION TO ESTATE PLANNING

I. INTRODUCTION

§ 1:1 What is estate planning

II. OBJECTIVES OF GOOD ESTATE PLANNING

- § 1:2 Lifetime objectives
- § 1:3 Death transfer objectives
- § 1:4 Tax planning

III. PROFESSIONS INVOLVED IN ESTATE PLANNING

- § 1:5 Estate planning team
- § 1:6 Life insurance underwriter
- § 1:7 Trust officer
- § 1:8 Financial planner
- § 1:9 Accountant
- § 1:10 Attorney

IV. INFORMATION NEEDED TO PREPARE AN ESTATE PLAN

- § 1:11 Collecting facts—The checklist
- § 1:12 Family facts
- § 1:13 Assets and liabilities
- § 1:14 Income of estate owner, spouse, and other family members
- § 1:15 Prior taxable transfers

V. ASCERTAINING THE ESTATE OWNER'S OBJECTIVES

- § 1:16 Generally
- § 1:17 Beneficiary objectives—Planning for the spouse
- § 1:18 —Planning for the children
- § 1:19 —Other individual beneficiaries
- § 1:20 —Charitable beneficiaries
- § 1:21 Retirement objectives
- § 1:22 Business objectives

VI. STEPS TO FOLLOW IN ANALYZING AND FORMULATING THE ESTATE PLAN

§ 1:23 Generally

CHAPTER 2. OVERVIEW OF TAX PRINCIPLES

I. INTRODUCTION

- § 2:1 Generally
- § 2:2 Unified federal estate and gift transfer tax system

II. THE FEDERAL ESTATE TAX

A. IN GENERAL

§ 2:3 Steps to follow in making computation

B. PROPERTY INCLUDIBLE IN GROSS ESTATE

- § 2:4 Generally
- § 2:5 Property owned at time of death
- § 2:6 —Treatment of community property
- § 2:7 —Treatment of joint tenancy property
- § 2:8 —Property subject to a general power of appointment
- § 2:9 —Life insurance
- § 2:10 —Annuities
- § 2:11 —Assets for which qualified terminable interest property marital deduction was previously allowed
- § 2:12 Property transferred by decedent during decedent's lifetime
- § 2:13 —Gifts made within three years of death
- § 2:14 —Transfers taking effect at death
- § 2:15 —Gifts with possession or enjoyment retained
- § 2:16 —Transfers with retained power to alter, amend, revoke, or terminate
- § 2:17 Valuation of includible assets

C. DEDUCTIONS FROM GROSS ESTATE

1. Charges Against the Estate

- § 2:18 Funeral expenses
- § 2:19 Administration expenses
- § 2:20 Debts of the decedent
- § 2:21 Mortgages and liens

2. Losses During Administration

§ 2:22 Generally

3. Deductions and Contributions

- § 2:23 Marital deduction
- § 2:24 Charitable contributions
- § 2:25 Exclusion from gross estate of value of certain property subject to qualified conservation easement

D. CREDITS AGAINST THE ESTATE TAX

- § 2:26 Unified credit against estate tax
- § 2:27 Credit for state death taxes—Deduction for state death taxes after 2004
- § 2:28 Credit for gift taxes
- § 2:29 Credit for federal estate tax paid on prior transfers
- § 2:30 Credit for foreign death taxes

E. FILING OF THE RETURN AND PAYMENT OF THE TAX

§ 2:31 Generally

III. STATE DEATH TAXES

- § 2:32 Generally
- § 2:33 Estate tax
- § 2:34 Inheritance tax
- § 2:35 "Pick-up" estate tax

IV. THE FEDERAL GIFT TAX

A. IN GENERAL

- § 2:36 Effect of unification on gifts made after 1976
- § 2:37 Steps to follow in computing the gift tax
- § 2:38 Transfer subject to the gift tax
- § 2:39 Split gifts

B. EXCLUSIONS

- § 2:40 Annual exclusion
- § 2:41 Transfers for the benefit of persons under 21 years of age
- § 2:42 Exclusions for educational or medical expenses

C. DEDUCTIONS

- § 2:43 Marital deduction
- § 2:44 Application to interspousal gifts of community property
- § 2:45 Charitable contributions

D. UNIFIED GIFT TAX CREDIT

- § 2:46 Amount of the gift tax
 - E. GIFT TAX RETURN
- § 2:47 Filing deadline

V. STATE GIFT TAXES

§ 2:48 Generally

VI. BASIS OF PROPERTY FOR FEDERAL INCOME TAX PURPOSES

- § 2:49 Property acquired from a decedent
- § 2:50 Consistent basis requirement
- § 2:51 Property acquired from a decedent—Assets acquired by the decedent within one year of death
- § 2:52 —Income in respect of a decedent
- § 2:53 Property acquired by gift
- § 2:54 Holding period and capital gains

VII. NET INVESTMENT INCOME TAX

§ 2:55 Section 1411 of the I.R.C.

CHAPTER 3. PLANNING A SMALL FAMILY ESTATE

I. INTRODUCTION

§ 3:1 Generally

II. PLANNING FOR THE SURVIVING SPOUSE

- § 3:2 The surviving spouse as the primary beneficiary
- § 3:3 Are wills necessary?
- § 3:4 Advantages of having a will
- § 3:5 Alternatives to having a will

III. PLANNING FOR THE MINOR CHILDREN ON THE DEATH OF THE SURVIVING SPOUSE

A. THE NEED FOR PLANNING

§ 3:6 Generally

B. PROVIDING PERSONAL CARE AND SUPERVISION FOR THE CHILDREN

- § 3:7 Appointment of a guardian of the person
- § 3:8 Factors to consider in selecting a guardian of the person
- § 3:9 —Continuity of love and affection
- § 3:10 —Age and health of the potential guardian
- § 3:11 —The family situation of the potential guardian
- § 3:12 The financial impact on the potential guardian
- § 3:13 Providing financial benefits to the guardian

C. PROVIDING MANAGEMENT AND CONSERVATION OF THE CHILDREN'S PROPERTY

- § 3:14 Need for a fiduciary
- § 3:15 Appointment of a guardian of the estate
- § 3:16 —Disadvantages of the guardianship of the estate
- § 3:17 Use of a trust
- § 3:18 —Advantages of a trust
- § 3:19 —Provisions of the trust
- § 3:20 Transfers under custodian statute

IV. PLANNING FOR THE ELDERLY AND DISABLED

- § 3:21 Generally
- § 3:22 Management of the estate
- § 3:23 Planning for catastrophic illness and institutional care
- § 3:24 Health care decisions

CHAPTER 4. OBTAINING THE MARITAL DEDUCTION AND THE COMMUNITY PROPERTY EXCLUSION TO SAVE DEATH TAXES

I. INTRODUCTION

§ 4:1 Generally

II. MARITAL DEDUCTION

- A. IN GENERAL
- § 4:2 General description and historical background

B. COMPUTING THE MAXIMUM MARITAL DEDUCTION

§ 4:3 General rule

	Planning an I
§ 4:4 § 4:5 § 4:6	Computation under pre-September 13, 1981 formula maximum marital deduction clause To what extent should the marital deduction be used? Planning to avoid loss of marital deduction when spouse with larger estate is the survivor
C	. QUALIFYING FOR THE MARITAL DEDUCTION
	1. In General
§ 4:7	Generally
	2. Avoiding the Terminable Interest Rule
\$ 4:8 \$ 4:9 \$ 4:10 \$ 4:11 \$ 4:12 \$ 4:13 \$ 4:14 \$ 4:15 \$ 4:16 \$ 4:17 \$ 4:18 \$ 4:19 \$ 4:20 \$ 4:21 \$ 4:22	Generally Outright bequest Six-month survivorship condition "Power of appointment trust" —"Specific portion" —Income requirement —General power of appointment requirement Legal life estate with power of appointment Estate trust Qualified terminable interest property (QTIP) trust —Requirements —Executor's election —Inclusion in surviving spouse's estate —Other planning considerations Qualified domestic trust
0	3. Life Insurance Settlement Options
§ 4:23	Generally
D	. FORMULA CLAUSE MARITAL DEDUCTION BEQUEST
§ 4:24 § 4:25 § 4:26	Description Advantages of formula clauses Disadvantages of formula clauses

III. **COMMUNITY PROPERTY EXCLUSION**

Selecting the appropriate formula clause

Fractional share of the residue clause Estate tax value pecuniary clause

—Effect of Revenue Procedure 64-19

The community property system

Strict pecuniary clause

§ 4:27

§ 4:28 § 4:29

§ 4:30 § 4:31

- § 4:33 Characteristics of community property
- § 4:34 Tax exclusion of one-half of the community property
- § 4:35 Quasi-community property

CHAPTER 5. BYPASS TRUSTS AND GENERATION-SKIPPING TRANSFERS

I. INTRODUCTION

§ 5:1 Generally

II. THE BYPASS TRUST AS PART OF THE "A-B" TRUST PLAN

§ 5:2 General objectives of bypass trusts

III. MAXIMUM BENEFIT BYPASS ("B") TRUST

- § 5:3 Objective
- $\S~5:4$ Rights and benefits to the surviving spouse in maximum benefit "B" trust
- § 5:5 —Power to invade under an ascertainable standard
- $\S 5:6$ —\$5,000 or five percent power
- § 5:7 —Special power to appoint to third parties
- § 5:8 Gift tax

IV. DISCRETIONARY TRUST

- § 5:9 Generally
- § 5:10 Advantages
- § 5:11 Specific considerations
- § 5:12 —Trustee's right to sprinkle to a dependent person
- § 5:13 —Trustee with sprinkling power should not also be beneficiary
- § 5:14 —Substantial owner under I.R.C. § 678

V. WIDOW'S (OR WIDOWER'S) ELECTION TRUST

A. IN GENERAL

- § 5:15 Generally
- § 5:16 What is the widow's election?
- § 5:17 Non-tax reasons for using a widow's election plan

B. "TRADITIONAL" WIDOW'S ELECTION

§ 5:18 Tax consequences of "traditional" widow's election

e F 10	TO 11 4 1 1 1 1 1 1 1
8 9:19	—Death taxes on the husband's death
§ 5:20	—Gift tax to widow
§ 5:21	—Income taxes
§ 5:22	——Income tax to the widow
§ 5:23	— —Income tax consequences to husband's estate
§ 5:24	—Death taxes at the widow's death
§ 5:25	Conclusion as to traditional widow's election

VI. BYPASS TRUSTS FOR BENEFICIARIES OTHER THAN SPOUSES—GENERATION-SKIPPING TRANSFERS

A. IN GENERAL

§ 5:26 General use of bypass trusts

B. GENERATION-SKIPPING TRANSFERS

§ 5:27	Generally
§ 5:28	What is a generation-skipping transfer?
§ 5:29	When and on what base is the tax imposed?
§ 5:30	When and on what basis is the tax imposed?—Direct skip
§ 5:31	—Taxable termination
§ 5:32	—Taxable distribution
§ 5:33	Exemptions and exclusions
§ 5:34	Effective dates
§ 5:35	Planning under the generation-skipping transfer tax
§ 5:36	Qualified severance of generation-skipping trust

CHAPTER 6. AVOIDING PROBATE

I. PROBATE IN GENERAL

- § 6:1 Purpose of probate
- § 6:2 What property is subject to probate?
- § 6:3 Distinction between assets subject to probate and assets includible in taxable estate
- § 6:4 Probate procedure

II. NON-TAX ADVANTAGES AND DISADVANTAGES OF PROBATE

§ 6:5	Advantages of probate
§ 6:6	Disadvantages of probate
§ 6:7	—Costs
§ 6:8	—Delav

- § 6:9 —Psychological aspects
- § 6:10 —Publicity
- § 6:11 Creditors' claims: Probate versus non-probate

III. METHODS OF AVOIDING PROBATE

A. JOINT TENANCY

- § 6:12 Definition
- § 6:13 Legal characteristics
- § 6:14 —How created
- § 6:15 —Legal effect during life
- § 6:16 —Legal effect on death
- § 6:17 Tax characteristics—Gift taxes
- § 6:18 —Estate taxes—Rule of contribution in general
- § 6:19 —Death taxes—Husband and wife joint tenancy
- § 6:20 —Income taxes
- § 6:21 ——Income tax basis
- § 6:22 Joint tenancy may be poor dispositive device
- § 6:23 Dissolving the joint tenancy
- § 6:24 —Gift tax consequences
- § 6:25 —Methods of dissolving the joint tenancy

B. TOTTEN TRUST

§ 6:26 Generally

C. DISPOSITION BY CONTRACT

- § 6:27 Generally
- § 6:28 Life insurance contract
- § 6:29 Deferred compensation contract
- § 6:30 Qualified retirement plan benefits
- § 6:31 Payable-on-death securities

D. FUNDED REVOCABLE LIVING TRUST

§ 6:32 Generally

CHAPTER 7. USING A REVOCABLE LIVING TRUST

I. INTRODUCTION

§ 7:1 Generally

II. FUNDED REVOCABLE LIVING TRUST

٨	TNT	GENERAL	ī
А	I I V	CTP/INP/B.AI	

0	- 0	D 0 111
Ø.	7:2	Definition

- § 7:3 Typical uses—Probate avoidance; consistent with tax plan
- § 7:4 —Lifetime uses

B. ISSUES DURING LIFE OF GRANTOR

§	7:5	Generally	ý

- § 7:6 Expense and nuisance
- § 7:7 Transfer of assets
- § 7:8 Legal problems incident to transfer of certain assets
- § 7:9 —Transfer of partnership interests and interests in limited liability companies
- § 7:10 —Transfer of stock subject to restrictions on transfer
- § 7:11 —Real estate
- § 7:12 —Interest in a professional practice
- § 7:13 —Bearer securities and tangible assets
- § 7:14 —Backstop pour-over will
- § 7:15 Tax problems during the grantor's life
- § 7:16 —Tax reporting requirements
- § 7:17 —Stock in S corporations
- § 7:18 —Installment obligations
- § 7:19 —Capital gains exclusion on sale of residence
- § 7:20 —"Flower" bonds
- § 7:21 —Combining community property and non-community property assets
- § 7:22 —Gifting assets from the trust
- § 7:23 Avoidance of guardianship

C. ISSUES AFTER DEATH OF GRANTOR

In General

- § 7:24 Mechanics of transfer
- § 7:25 Creditors' claims

2. Tax Considerations

- § 7:26 Preserving tax benefits from community property holdings
- § 7:27 Loss of probate entity as taxpayer
- § 7:28 Estate tax exemption for proceeds of certain qualified retirement plan death benefits
- § 7:29 Death expense deduction
- § 7:30 Out-of-state realty
- § 7:31 Federal estate tax alternate valuation

- § 7:32 Stock in an S corporation (after grantor's death)
- § 7:33 Distribution by fiduciary which gives rise to a taxable loss
- § 7:34 Personal liability of fiduciary
- § 7:35 Conclusion as to use of funded revocable living trust as device to avoid probate

III. POUR-OVER WILL AND UNFUNDED REVOCABLE LIVING TRUST

- § 7:36 Generally
- § 7:37 Validity of pour-over
- § 7:38 Comparison with funded revocable living trust
- § 7:39 Comparison with testamentary trust

CHAPTER 8. MAKING GIFTS

I. GENERAL CONSIDERATIONS IN MAKING GIFTS

A. INTRODUCTION

§ 8:1 Generally

B. TAX ADVANTAGES

- § 8:2 Reducing estate taxes, generally
- § 8:3 Taking advantage of the nontaxable portion of a gift
- § 8:4 Keeping appreciation out of the estate
- § 8:5 Keeping the amount of the gift tax out of the estate
- § 8:6 Gifts included in gross estate
- § 8:7 —Gifts made within three years of death
- § 8:8 —Other lifetime transfers included in the estate
- § 8:9 Reducing income taxes
- § 8:10 Net gifts

C. NON-TAX ADVANTAGES OF GIFTS

§ 8:11 Generally

D. DISADVANTAGES

§ 8:12 Generally

E. LEGAL REQUIREMENTS FOR A VALID GIFT

§ 8:13 Generally

II. TO WHOM A GIFT SHOULD BE MADE

A. INTRODUCTION

§ 8:14 Generally

B. SPOUSE

- § 8:15 Gift tax avoidance
- § 8:16 Estate tax savings
- § 8:17 Income tax savings

C. CHILDREN

- § 8:18 Estate tax savings
- § 8:19 Income tax savings
- § 8:20 Problems in making gifts to children

D. GRANDCHILDREN

- § 8:21 Generally
- § 8:22 Income tax savings

III. SELECTION OF ASSETS TO GIVE

- § 8:23 Generally
- § 8:24 Tax rules to follow in gifting assets

IV. MANNER OF MAKING GIFTS

A. INTRODUCTION

§ 8:25 Generally

B. OUTRIGHT GIFTS

- § 8:26 Advantages
- § 8:27 Disadvantages

C. GIFTS UNDER CUSTODIAN STATUTE

- § 8:28 Uniform acts
- § 8:29 Legal requirements
- § 8:30 Tax consequences—Income tax
- § 8:31 —Gift tax
- § 8:32 —Estate tax

D. GIFTS IN TRUST

1. Advantages and General Tax Consequences

§ 8:33 Advantages

TABLE OF CONTENTS

TABLE OF	CONTENTS
§ 8:34	Tax consequences in general
	2. Gift Tax
§ 8:35	Annual exclusion
§ 8:36	Crummey trust
§ 8:37	Minor's trust
	3. Estate Tax
§ 8:38	Generally
	4. Income Tax
§ 8:39	Generally
§ 8:40	Avoiding income being taxable to donor
§ 8:41	—Retention of powers affecting beneficial enjoyment
§ 8:42	—Administrative powers
§ 8:43	—Income held for future use of the donor
§ 8:44	Planning for income to be taxed to donor using an intentionally defective grantor trust
§ 8:45	Avoiding income being taxable to persons other than donor or beneficiary
§ 8:46	Normal rules of trust income taxation—The extent to which income is taxable to the trust and to the beneficiary
§ 8:47	—Throwback rule
§ 8:48	Sale by trust within two years—Repeal of rule taxing gain to donor
E.	GIFTS TO QUALIFIED STATE TUITION PROGRAMS-SECTION 529 PLANS
§ 8:49	Description of Section 529 Plan
§ 8:50	Requirements of a Section 529 Plan
§ 8:51	Tax benefits of a Section 529 Plan—Gift taxation
§ 8:52	—Estate taxation
§ 8:53	—Income taxation
§ 8:54	Qualified education expenses covered under Section 529 Plan
§ 8:55	Flexibility of Section 529 Plans
§ 8:56	Problems with Section 529 Plans
§ 8:57	Conclusions regarding Section 529 Plans
F.	COVERDELL EDUCATION SAVINGS ACCOUNT (EDUCATION IRA)
§ 8:58	Generally

CHAPTER 9. ADVANCED WEALTH TRANSFER TECHNIQUES

I. INTRODUCTION

- § 9:1 Generally
- II. GRANTOR RETAINED INTEREST TRUSTS (GRITS) AND QUALIFIED PERSONAL RESIDENCE TRUSTS (QPRTS)
- § 9:2 Generally
- § 9:3 Gift tax
- § 9:4 Estate tax
- § 9:5 Income tax
- III. GRANTOR RETAINED ANNUITY TRUSTS (GRATS)
- § 9:6 Generally

IV. SALE OF A REMAINDER INTEREST BY ESTATE OWNER

- § 9:7 Generally
- § 9:8 Value of the remainder interest
- § 9:9 Non-cash consideration
- § 9:10 Build-up of seller's estate
- § 9:11 Income tax considerations

V. JOINT PURCHASE OF LIFE ESTATE AND REMAINDER INTEREST

§ 9:12 Generally

CHAPTER 10. LIFE INSURANCE

I. USE OF LIFE INSURANCE IN ESTATE PLANNING IN GENERAL

- § 10:1 Generally
- § 10:2 Estate creation
- § 10:3 Liquidity
- § 10:4 Funding business and employee agreements
- § 10:5 Fringe benefits

II. TYPES OF LIFE INSURANCE POLICIES

§ 10:6 Generally

6 10 7	m :
§ 10:7	Term insurance
§ 10:8	Ordinary (whole) life insurance
§ 10:9	Limited pay life insurance
§ 10:10	Endowment insurance

III. DEATH TAXATION

§ 10:11	General rule of inclusion
§ 10:12	Exception where insured does not possess incidents o
	ownership
§ 10:13	Gift made within three years of death
§ 10:14	—Transfer of policy within three years of death
§ 10:15	—Payment of premiums
8 10.16	Death of noninsured owner

IV. GIFT TAXATION

§ 10:17	Generally
§ 10:18	Valuation of life insurance policy
§ 10:19	Payment of premiums
§ 10:20	Annual gift tax exclusion

V. INCOME TAXATION

§ 10:21	General rule of excludability
§ 10:22	Transfer-for-value rule
§ 10:23	Settlement options
§ 10:24	—The interest option
§ 10:25	—Installments for a fixed period
§ 10:26	—Installments for life
§ 10:27	—Special options
§ 10:28	—Interest portion
§ 10:29	Policy loans and the interest deduction
§ 10:30	Surrender or exchange of policies
§ 10:31	Universal life insurance
8 10.32	Modified endowment contract

VI. ESTATE PLANNING CONSIDERATIONS IN DESIGNATING THE OWNER AND BENEFICIARY OF A LIFE INSURANCE POLICY

§ 10:33	Small estate
§ 10:34	-Coordinate the beneficiary designation with the
	dispositive plan
§ 10:35	—Trust versus settlement option
§ 10:36	Planning to exclude proceeds from gross estate

§ 10:37 § 10:38		ke sure all incidents of ownership are divested o should pay the premiums?
§ 10:39	—Wh polic	o should be the beneficiary of the non-insured owned cy?
VII.	WHO	SHOULD BE MADE THE OWNER?
A.	OW	NERSHIP BY SPOUSE
\$ 10:40 \$ 10:41 \$ 10:42 \$ 10:43 \$ 10:44 \$ 10:45	—Pos —Pos Who the	rally should be the beneficiary of the spouse-owned policy? sibility of gift tax to owner spouse sible taxation in insured spouse's estate should get the policy if the owner spouse predeceases insured spouse?
В.		NERSHIP BY CHILDREN OR IRREVOCABLE E INSURANCE TRUST
	1.]	ntroduction; Child Ownership
§ 10:46 § 10:47	Gene Owne	rally ership by children
	2.	rrevocable Insurance Trust Ownership
\$ 10:48 \$ 10:49 \$ 10:50 \$ 10:51 \$ 10:52 \$ 10:53 \$ 10:54	—Inc —Dea Who insu —Ma	rally ral tax consequences—Gift taxes ome taxes ath taxes should be the beneficiaries of the irrevocable life rance trust?—In general y the surviving spouse be a beneficiary siprocal trust doctrine
C.		VISABILITY OF LIFE INSURANCE ON BOTH OUSES
§ 10:55	Gene	ral considerations
VIII.	BUSI	NESS LIFE INSURANCE
\$ 10:56 \$ 10:57 \$ 10:58 \$ 10:59	Use i	rally n buy-sell agreements n employee agreements person life insurance

IX. USE OF LIFE INSURANCE IN CONNECTION WITH EMPLOYEE FRINGE BENEFITS

- § 10:60 Group life insurance
- § 10:61 —Non-discrimination requirements
- § 10:62 Split-dollar life insurance
- § 10:63 Pension and profit-sharing plans

CHAPTER 11. ANNUITIES

I. ANNUITY CONTRACTS

§ 11:1 Generally

II. COMMERCIAL ANNUITIES

A. TYPES

- § 11:2 Generally
- § 11:3 Straight life annuity
- § 11:4 Refund annuity
- § 11:5 Life annuity with term certain
- § 11:6 Joint life and survivorship annuity
- § 11:7 Non-tax advantages and disadvantages in purchasing an annuity

B. TAXATION

- § 11:8 Income tax
- § 11:9 Gift tax
- § 11:10 Estate tax
- § 11:11 Tax deferred variable and investment annuities

III. PRIVATE ANNUITIES

- § 11:12 Proposed regulations
 - A. DEFINITION
- § 11:13 Generally

B. TAXATION

- § 11:14 Death taxation
- § 11:15 Gift taxes
- § 11:16 Income taxes—Of the transferor-annuitant
- § 11:17 —Of the transferee-payor

C. ESTATE PLANNING ADVANTAGES AND DISADVANTAGES

- § 11:18 Advantages
- § 11:19 Disadvantages

CHAPTER 12. HANDLING A BUSINESS INTEREST

I. INTRODUCTION

§ 12:1 Generally

II. VALUATION OF A CLOSELY-HELD BUSINESS INTEREST FOR DEATH TAX PURPOSES

A. IN GENERAL

- § 12:2 General factors
- § 12:3 Applicability of book value
- § 12:4 Special election to value real estate used in a closely-held business or for farming
- § 12:5 Goodwill
- § 12:6 Interest of owner

B. QUALIFIED FAMILY-OWNED BUSINESS DEDUCTION UNDER I.R.C. § 2057—REPEALED FOR DEATHS BETWEEN 2004 AND 2012

§ 12:7 Generally

III. BUY-SELL AGREEMENTS

A. IN GENERAL

- § 12:8 Definition
- § 12:9 Purpose
- § 12:10 Making the price binding for tax purposes
- § 12:11 Selecting the method of determining the price
- § 12:12 —Predetermined price subject to periodic review
- § 12:13 —Price determined by appraisal or arbitration
- § 12:14 —Price determined by formula
- § 12:15 Paying the purchase price—Through life insurance
- § 12:16 —Through sinking fund
- § 12:17 —Through long-term pay-out
- § 12:18 Disadvantages of buy-sell agreements
- § 12:19 —Forecloses alternative of estate keeping business and insurance

TABLE OF CONTENTS

TABLE OF	CONTENTS				
§ 12:20 § 12:21 § 12:22 § 12:23	v				
В.	FORM OF AGREEMENT				
	1. Partnership Buy-Sell Agreement				
§ 12:24 § 12:25	Introduction Partnership buy-sell agreement				
	2. Corporate Buy-Sell Agreement				

- § 12:26 Generally
- § 12:27 When stock redemption is preferable—More economical
- § 12:28 —Numerous shareholders
- § 12:29 —Transfer-for-value rule
- § 12:30 —Appreciated assets
- § 12:31 When cross-purchase agreement is preferable—State law restrictions on redemption
- § 12:32 —Unequal ownership
- § 12:33 —Negative tax consequences of stock redemption
- § 12:34 —Correlating life insurance

IV. USE OF § 303 REDEMPTION

- § 12:35 The problem
- § 12:36 Qualifying under I.R.C. § 303
- § 12:37 Unreasonable accumulation of surplus considerations
- § 12:38 Using I.R.C. § 303 even if liquidity is not needed

V. RECAPITALIZING STOCK OF CLOSELY-HELD COMPANY

- § 12:39 Introduction
- § 12:40 Purpose of the recapitalization plan
- § 12:41 Typical plan of recapitalization and impact of Chapter 14
- $\$ 12:42 Special tax problems incident to reorganization—Income tax
- § 12:43 —Gift tax
- § 12:44 —Estate tax

VI. USE OF DEFERRED COMPENSATION CONTRACTS

- § 12:45 Purpose
- § 12:46 Definition

- § 12:47 Tax considerations—Death tax
 § 12:48 —Gift tax
 § 12:49 —Income in respect of a decedent
- § 12:50 —Deductibility by corporation

VII. ELECTION TO DEFER PAYMENT OF ESTATE TAX WITH RESPECT TO CLOSELY-HELD BUSINESS INTEREST

- A. INTRODUCTION
- § 12:51 Generally
 - B. GENERAL REQUIREMENTS OF SECTION 6166 ELECTION
- § 12:52 Generally
- § 12:53 Requirements—Percentage requirements
- § 12:54 —Must constitute a closely-held business
- § 12:55 Time for making the election
 - C. DECEDENTS DYING BEFORE 1982
- § 12:56 Generally
 - D. PITFALLS IN PLANNING TO USE ELECTION
- § 12:57 Generally

VIII. CONSIDERING DISPOSITION OF BUSINESS INTEREST BEFORE DEATH

- § 12:58 Generally
- § 12:59 Outright sale for cash
- § 12:60 Installment sale
- § 12:61 Disposition by tax-free merger
- § 12:62 Transfers on a "discounted" basis
- § 12:63 Family limited partnership
- § 12:64 Limited liability companies
- § 12:65 Asset protection trust

IX. PLANNING FOR POSSIBILITY THAT SPOUSE OWNING A COMMUNITY PROPERTY INTEREST IN A BUSINESS DIES BEFORE THE SPOUSE WHO OPERATES THE BUSINESS

§ 12:66 Generally

§ 12:67	Estate tax considerations
§ 12:68	The wife's disposition planning
§ 12:69	—Who is to be the trustee?
§ 12:70	—The availability of the Subchapter S election
§ 12:71	—Trust management may be more cumbersome than
	outright ownership

CHAPTER 13. EMPLOYEE BENEFITS

I. INTRODUCTION

§ 13:1	Role of fringe benefits in estate planning
§ 13:2	Types of employee fringe benefits
§ 13:3	—Medical benefit plans
§ 13:4	—\$5,000 death benefit exclusion
§ 13:5	—Retirement plans
§ 13:6	Spousal rights in retirement plans

II. QUALIFIED RETIREMENT PLANS

A. IN GENERAL

§ 13:7	Requirements for qualification
§ 13:8	Types of qualified plans
§ 13:9	—Defined benefit pension plan
§ 13:10	—Money purchase pension plan
§ 13:11	—Profit-sharing plan and 401(k) plan
§ 13:12	—Stock plans
§ 13:13	—IRA-based plans
§ 13:14	—Other plans

B. TAX ASPECTS OF QUALIFIED PLANS

1. Income Tax

§ 13:15	Deductibility of employer contributions					
§ 13:16	Deferral of income tax on employer contributions					
§ 13:17	Taxability of plan earnings					
§ 13:18	Income tax on distributions					
§ 13:19	Medicare net investment income tax					
	2. Other Taxes					
§ 13:20	Estate tax					
§ 13:21	Gift tax					

3. Penalties

§ 13:22 Excess distributions and excess accumulations

§ 13:23	Distributions below minimum required distribution amount						
§ 13:24	—Minimum distribution rules during participant's lifetime						
§ 13:25	—Minimum distribution rules after the participant's death						
§ 13:26	Early distributions						
§ 13:27	Excess contributions to IRAs and HSAs						
C.	INDIVIDUAL PLANS						
§ 13:28	Self-employed plans						
§ 13:29	Individual retirement accounts						
§ 13:30	—Traditional (regular) IRA						
§ 13:31	—Roth IRA						
§ 13:32	—Issues involving selection of regular IRA or Roth IRA						
D.	PLANNING CONSIDERATIONS						
§ 13:33	Generally						
§ 13:34	Distributions of retirement benefits during employee's lifetime						
8 13.35	Distributions of death benefits						

CHAPTER 14. MAKING GIFTS TO CHARITY

I. INTRODUCTION

§ 14:1 Generally

II. INCOME TAX CONSEQUENCES OF OUTRIGHT GIFTS

A. IN GENERAL

§ 14:2 Generally

B. CASH GIFTS

§ 14:3 Maximum income tax deduction—The 60 percent rule § 14:4 Organizations that qualify for the 50 percent rule § 14:5 Gifts to private foundations—The 30 percent rule § 14:6 Interplay of the 50 percent and 30 percent rules § 14:7 Carryover of excess contributions § 14:8 Charitable distributions from trusts and estates

C. GIFTS OF PROPERTY OTHER THAN CASH

§ 14:9 Generally

§ 14:10 Ordinary income property

§ 14:11	Capital gain property
§ 14:12	—Gifts to private foundations
§ 14:13	—Gifts to "public" charities
§ 14:14	——Special election available
§ 14:15	— Gifts of tangible personal property unrelated to the
	charity's purpose
§ 14:16	Carryover of excess contributions of appreciated assets
§ 14:17	Tax advantage of gifts of appreciated capital gain property
§ 14:18	Bargain sales of appreciated capital gain property to
	charity

D. GIFTS OF LIFE INSURANCE

§ 14:19 Generally

III. ESTATE AND GIFT TAX CONSEQUENCES OF **OUTRIGHT GIFTS**

- Estate tax—Deductibility of outright gifts to charity —Lifetime charitable gifts compared to bequests § 14:21
- § 14:22 Gift tax

IV. GIFTS OF SPLIT INTERESTS IN TRUST

A. INTRODUCTION

§ 14:23 Generally

B. CHARITABLE REMAINDER TRUSTS

- § 14:24 Charitable remainder annuity trust and charitable remainder unitrust
- § 14:25 —Charitable remainder annuity trust
- § 14:26 —Charitable remainder unitrust
- —Rights to distributions § 14:27
- § 14:28 —Term of the annuity or unitrust interest
- § 14:29 —Additional contributions
- —Valuation of assets contributed to charitable remainder § 14:30
- § 14:31 —Taxation of charitable remainder trust income
- § 14:32 —Estate and gift taxes when surviving spouse has annuity or unitrust interest
- § 14:33 Pooled income fund
- § 14:34 Estate planning advantages of charitable remainder trusts

V. CHARITABLE LEAD TRUSTS

§ 14:35 Generally

	I MINING IN 126
§ 14:36 § 14:37 § 14:38	Income tax consequences of charitable lead trusts Estate and gift tax consequences of charitable lead trusts Charitable gift annuities
	PTER 15. TAX PLANNING FOR THE TE AFTER THE OWNER'S DEATH
I. IN	TRODUCTION
-	Generally Making an analysis of the estate
II. TA	X RETURN REQUIREMENTS
	Federal tax returns State tax returns
III. E	LECTIONS AVAILABLE TO THE EXECUTOR
A.	DECEDENT'S FINAL INCOME TAX RETURN (FORM 1040)
§ 15:5 § 15:6	Generally Should the estate file a joint return with the surviving spouse?
§ 15:7 § 15:8 § 15:9	—Advantages of joint return —Planning to take advantage of joint return —Disadvantage of joint return
§ 15:10	Medical deduction election
§ 15:11	United States Series E Savings Bonds—Should accrued interest be reported?
§ 15:12	Treatment of unused business activity losses
В.	SELECTION OF THE ESTATE'S TAXABLE YEAR
§ 15:13 § 15:14	Generally Planning advantages in selecting the taxable year— Reduce tax liability
§ 15:15	—Delay taxation
C.	DEDUCTION ELECTION FOR ADMINISTRATION EXPENSES AND LOSSES

Disallowance of double deductions and Suspension of Miscellaneous Itemized Deductions until 2026

Considerations in making the election, generally

Manner of making the election

§ 15:16

§ 15:17

§ 15:18

TABLE OF CONTENTS

TIMBLE OF	CONTENTS
§ 15:19	Splitting the deductions
§ 15:20	Maximizing the income tax deductions
§ 15:21	Comparison of tax rates
§ 15:22	Effect on marital deduction planning
§ 15:23	Effect on Pre-September 13, 1981 formula marital deduction bequests
§ 15:24	Effect on community property
§ 15:25	Tax-exempt income
§ 15:26	Allocation of tax savings among beneficiaries
D.	OTHER ELECTIONS AVAILABLE TO THE EXECUTOR
§ 15:27	Qualified terminable interest property (QTIP) election
§ 15:28	Election of alternate valuation date
§ 15:29	Special use valuation election for real estate used in farming or by other closely-held businesses
§ 15:30	Election to defer paying estate tax attributable to interest in a closely-held business

IV. ELECTION BY PARTNERSHIP AND LIMITED LIABILITY COMPANY TO INCREASE BASIS

§ 15:32 Generally

§ 15:31

V. DISTRIBUTION PLANNING

Election to waive executor's fees

A. INTRODUCTION

§ 15:33 Generally

B. OBJECTIVES OF DISTRIBUTION PLANNING

- § 15:34 Equalize tax rates § 15:35 —Family allowance § 15:36 Maximize deductions
- § 15:36 Maximize deductions—Personal exemption
- § 15:37 —Loss carryovers
- § 15:38 —Excess deductions
- § 15:39 Create additional taxpayers by use of trusts
- § 15:40 Distributions of installment obligations arising after death

VI. DISCLAIMERS

A. INTRODUCTION

- § 15:41 Generally
- § 15:42 Requirements for valid disclaimer

B. ADDITIONAL FACTORS TO BE CONSIDERED

- § 15:43 Effect of disclaimer on marital deduction
- § 15:44 Disclaimers and generation-skipping transfers
- § 15:45 Disclaimers and gifts to charity

APPENDICES

APPENDIX I.	Federal	Individual	Income	Tax	Rates	for	Tax

Years Beginning in 2023 and 2024

APPENDIX II. Federal Estate and Gift Tax Rates

APPENDIX III. Maximum Credit for State Death Taxes

APPENDIX IV. Unified Estate and Gift Tax Credit

APPENDIX V. Gift Tax Annual Exclusion—1975 to Present

APPENDIX VI. Valuation of Annuities; Life Estates and

Remainders (Treas. Regs. §§ 20.2031-7, 20.7520-1, 25.2512-5 and 25.7520-1)

APPENDIX VII. Generation-Skipping Transfer Tax Exemption

APPENDIX VIII. Single Life, Unisex, Showing the Present Worth

of the Remainder Interest in Property Transferred to a Charitable Remainder

Unitrust for Selected Payout Rates

APPENDIX IX. States Imposing Estate Tax or Inheritance Tax

in 2024

Table of Laws and Rules

Table of Cases

Index