

Table of Contents

Volume 1

CHAPTER 1. GIFT TAX PROCEDURE AND LAW

- § 1:1 Overview—The purpose of tax planning
- § 1:2 —The sources of tax law
- § 1:3 —Revenue rulings, revenue procedures, letter rulings, determination letters and technical advice
- § 1:4 —The tax forms
- § 1:5 Gift tax filing and payment requirements
- § 1:6 Starting the gift tax statute of limitations
- § 1:7 Unified rates
- § 1:8 —Revaluation of adjusted taxable gifts: Effect on estate tax
- § 1:9 Exclusions, credits, and deductions—The annual exclusion
- § 1:10 —The unified credit
- § 1:11 —Net gifts
- § 1:12 —Special rules for married couples
- § 1:13 — —Split-gifts
- § 1:14 — —The marital deduction
- § 1:15 — —Gifts of community property
- § 1:16 —Charitable deduction
- § 1:17 Gift defined
- § 1:18 —Consideration
- § 1:19 —Legal obligations
- § 1:20 —Void and voidable gifts
- § 1:21 —Revocable gifts and disclaimers (or waivers)
- § 1:22 —Incomplete gifts
- § 1:23 —Formula gifts
- § 1:24 Qualifying property—Personal services
- § 1:25 —Tax exempt property
- § 1:26 —Forgiveness of debt
- § 1:27 —Jointly held property

CHAPTER 2. ESTATE TAX PROCEDURES AND LAW: GENERAL PROPERTY AND TRANSFERS WITHIN THREE YEARS OF DEATH

- § 2:1 Overview

ESTATE, GIFT, TRUST, AND FIDUCIARY TAX RETURNS

- § 2:2 —Repeal of estate and generation-skipping transfer tax that was planned under the Economic Growth and Tax Relief Reconciliation Act of 2001
- § 2:3 —Special election under TRA 2010 for decedents dying in 2010
- § 2:4 —Portability under TRA 2010 and ATRA 2012 for decedents dying after January 1, 2011 and before June 12, 2015
- § 2:5 —Portability under final regulations—Post June 12, 2015
- § 2:6 —Portability election and relief: Rev. Proc. 2022-32
- § 2:7 —Extension of time for performing certain acts under TRA 2010
- § 2:8 —Property included in the estate
- § 2:9 —Valuation of property
- § 2:10 — —Estate tax basis: Decedents dying other than in the year 2010
- § 2:11 — —Estate tax basis under EGTRRA 2001 and TRA 2010: Decedents dying in year 2010
- § 2:12 — —Estate tax basis: Post year 2010 decedents
- § 2:13 —Dower and curtesy
- § 2:14 —Lifetime transfers
- § 2:15 Estate tax filing requirements
- § 2:16 Transfers within three years of death
- § 2:17 —The Reform Act of 1976 and pre-ERTA rules
- § 2:18 —Exceptions to the rule
- § 2:19 —The rules for gifts of life insurance
- § 2:20 —The gross-up for gift taxes rule
- § 2:21 —Changes made by ERTA and Technical Corrections Act of 1982
- § 2:22 —Current section 2035
- § 2:23 Community property

CHAPTER 3. THE GENERATION-SKIPPING TRANSFER TAX

- § 3:1 Background and overview
- § 3:2 —Introduction and effective dates
- § 3:3 Basic concepts of Chapter 13
- § 3:4 —Transferor
- § 3:5 —Interest
- § 3:6 —Ascertaining generations
- § 3:7 —Skip persons
- § 3:8 —Applicable rate and inclusion ratio
- § 3:9 Three types of taxable events
- § 3:10 —The taxable termination
- § 3:11 — —Special rules
- § 3:12 — —Review

TABLE OF CONTENTS

- § 3:13 —The taxable distribution
- § 3:14 — —Review
- § 3:15 —The direct skip
- § 3:16 — —Predeceased parent exception
- § 3:17 — —Multiple generations skipped
- § 3:18 —Comment
- § 3:19 Exemptions from the generation-skipping transfer tax—Special rule for educational and medical expenses
- § 3:20 —Treatment of “nontaxable gifts”
- § 3:21 —The GSTT exemption
- § 3:22 Computing the GSTT
- § 3:23 —Tax base

CHAPTER 4. RETAINED LIFE ESTATES: REVOCABLE TRANSFERS

- § 4:1 Transfer with retained life estates
- § 4:2 —Retention time periods
- § 4:3 — —Lifetime interest
- § 4:4 — —Periods not ascertainable without reference to death
- § 4:5 — —Periods not ending before death
- § 4:6 —Interests retained for inclusion—Possession or enjoyment of the property
- § 4:7 — —The right to income
- § 4:8 —The amount of the interest includible in the estate
- § 4:9 —Designation powers—In general
- § 4:10 —Voting rights
- § 4:11 —Community property
- § 4:12 Transfers subject to alteration, amendment, revocation, or termination—Provisions compared
- § 4:13 —Amount of includible interest
- § 4:14 —Powers not includible
- § 4:15 —Treatment of certain transfers from revocable trusts
- § 4:16 —Custodians for minor beneficiaries
- § 4:17 —Reciprocal trusts
- § 4:18 Overview of retroactive repeal of estate freeze rules under section 2036(c)
- § 4:19 Section 2701. Special valuation rules in case of transfers of certain interests in corporations or partnerships
- § 4:20 Section 2702. Special valuation rules in case of transfers of interests in trusts
- § 4:21 Section 2703. Certain rights and restrictions disregarded
- § 4:22 Section 2704. Treatment of certain lapsing rights and restrictions

- § 4:23 Recent development—IRS argues section 2036 voids discounts in FLPs

CHAPTER 5. TRANSFERS TAKING EFFECT AT DEATH; GIFT TAX CONSEQUENCES OF LIFETIME TRANSFERS; INCOME TAX CONSEQUENCES OF LIFETIME TRANSFERS; ANNUITIES; JOINT PROPERTY

- § 5:1 Transfers taking effect on death
- § 5:2 —Survivorship
- § 5:3 — —Events other than death
- § 5:4 — —General powers of appointment
- § 5:5 —Reversionary interests
- § 5:6 — —Exception
- § 5:7 — —The 5% requirement
- § 5:8 — —Application of other provisions
- § 5:9 Gift tax consequences of lifetime transfers
- § 5:10 —Gifts subject to alteration, amendment, revocation, or termination and “incomplete gifts”
- § 5:11 —Gifts subject to alteration, amendment, revocation, or termination—Shared powers
- § 5:12 — —“Adverse interest” defined
- § 5:13 —Refused gifts or disclaimers
- § 5:14 Income tax consequences of lifetime transfers
- § 5:15 —Reversionary interests
- § 5:16 —Income for benefit of grantor
- § 5:17 —Revocable transfers
- § 5:18 —Unearned income of minor children under age 14
- § 5:19 Annuities
- § 5:20 —The interest of the decedent’s beneficiary
- § 5:21 —Amount of annuity subject to tax
- § 5:22 —Qualified plans
- § 5:23 —Voluntary payments
- § 5:24 Joint property
- § 5:25 —General rules
- § 5:26 — —Joint bank accounts
- § 5:27 —Property jointly held by husband and wife

CHAPTER 6. LIFE INSURANCE; VALUATION

- § 6:1 Life insurance—Definition
- § 6:2 —Insurance receivable by the estate

TABLE OF CONTENTS

- § 6:3 —Insurance receivable by other beneficiaries; The “incidents of ownership” test
- § 6:4 —Term insurance
- § 6:5 —Transfers within three years of death
- § 6:6 —Community property
- § 6:7 Valuation
- § 6:8 —Discounts
- § 6:9 —Jointly held property
- § 6:10 —The fair market value of real estate
- § 6:11 —Special use valuation for farms and small businesses
- § 6:12 — —Qualified use
- § 6:13 — —Qualified heirs
- § 6:14 — —The percentage tests
- § 6:15 — —Material participation
- § 6:16 — —The method of valuation
- § 6:17 — —Recapture
- § 6:18 — —The election
- § 6:19 —Qualified family-owned business deduction
- § 6:20 —Estate tax exclusion with respect to land subject to a qualified conservation easement
- § 6:21 —Securities—Listed securities
- § 6:22 — —Closely held stock
- § 6:23 — —Restricted stock
- § 6:24 —Cash
- § 6:25 —Mortgages and notes
- § 6:26 —Partnerships and proprietorships
- § 6:27 —Household and personal effects
- § 6:28 —Jewelry and fine arts
- § 6:29 —Claims by and against estate
- § 6:30 —Annuities, life estates, terms of years, remainders, and reversions
- § 6:31 —Disputed valuations
- § 6:32 —Penalty for incorrect valuation
- § 6:33 — —Penalties on appraisers
- § 6:34 —Preventing incorrect valuations by relying on qualified appraisers and appraisals

CHAPTER 7. MARITAL DEDUCTION

- § 7:1 In general—The amount of the deduction
- § 7:2 —Reductions
- § 7:3 Property qualifying for the marital deduction
- § 7:4 —Citizen or residency requirements
- § 7:5 —The surviving spouse requirements
- § 7:6 —Passing to spouse requirement
- § 7:7 — —The right of election
- § 7:8 — —Will contests

- § 7:9 — —Disclaimers
- § 7:10 —The deductible interest requirement
- § 7:11 —The nondeductible terminable interest requirements
- § 7:12 — —The survivorship exception
- § 7:13 — —The life estate general power of appointment exception
- § 7:14 — — —Right to income
- § 7:15 — — —Frequency of payments
- § 7:16 — — —Spouse's power to appoint the interest
- § 7:17 — — —The power to act alone and in all events
- § 7:18 — — —Power not in any other person
- § 7:19 — —The life insurance general power of appointment exception
- § 7:20 Application of marital deduction—Advantages and disadvantages
- § 7:21 —Joint or mutual wills
- § 7:22 —Qualified terminable interest property
- § 7:23 —The power of appointment as an asset in the surviving spouse's estate
- § 7:24 Portability

CHAPTER 8. THE CHARITABLE DEDUCTION

- § 8:1 Eligible organizations
- § 8:2 —Governments
- § 8:3 —Charitable organizations
- § 8:4 —Certain non-charitable organizations
- § 8:5 —Veterans' organizations
- § 8:6 Transfers by the decedent
- § 8:7 Conditional transfers
- § 8:8 Split-interest charitable transfers
- § 8:9 —Real property
- § 8:10 —Charitable remainder annuity trusts and unitrusts and charitable lead annuity trusts and unitrusts
- § 8:11 —Charitable remainder annuity trusts and unitrusts—Flip charitable remainder unitrusts (FLIP-CRUTs)
- § 8:12 Deductible amount

CHAPTER 9. EXPENSES, DEBTS, AND LOSSES

- § 9:1 Funeral expenses
- § 9:2 Administration expenses
- § 9:3 —Executor's commissions
- § 9:4 —Attorney's fees
- § 9:5 —Miscellaneous expenses

TABLE OF CONTENTS

- § 9:6 —Administration expenses in community property states
- § 9:7 Debts
- § 9:8 Taxes
- § 9:9 Casualty and theft losses

CHAPTER 10. POST-MORTEM ESTATE PLANNING

- § 10:1 The double deduction prohibition
- § 10:2 Obtaining tax advantages
- § 10:3 —Differences in tax rates
- § 10:4 —The marital deduction
- § 10:5 —Distributions in redemption of stock
- § 10:6 —Installment payments
- § 10:7 —State death tax credit
- § 10:8 Other considerations—Alternate valuation
- § 10:9 —Flower bonds

CHAPTER 11. THE EFFECTIVE DISCLAIMER

- § 11:1 Introduction
- § 11:2 Pre-Section 2518 federal disclaimers
- § 11:3 —The local law element
- § 11:4 —The reasonable time element
- § 11:5 Post-1976 disclaimers: The implementation of Section 2518
- § 11:6 —The writing requirement
- § 11:7 —The timeliness requirement—The various provisions
- § 11:8 — —The unsolved problems of the timing requirement
- § 11:9 —The acceptance of benefits
- § 11:10 —The passing requirement
- § 11:11 —Partial disclaimers
- § 11:12 The ERTA amendment to Section 2518
- § 11:13 Estate planners' considerations

CHAPTER 12. MARITAL TRUST PLANNING

- § 12:1 Economic Recovery Tax Act of 1981
- § 12:2 The marital deduction: A brief history
- § 12:3 Qualifying property requirements
- § 12:4 The terminable interest rule
- § 12:5 Use of the life estate general power of appointment in estate planning
- § 12:6 QTIP
- § 12:7 —Requirements for QTIP

- § 12:8 —Whether to make the election
- § 12:9 Effect of making the election on the surviving spouse
- § 12:10 Use of the QTIP in estate planning
- § 12:11 —Sample QTIP
- § 12:12 Same-sex marriage

CHAPTER 13. SPECIAL VALUATION RULES

- § 13:1 Introduction
- § 13:2 Valuation of transfers: §§ 2701 to 2704—In general
- § 13:3 —§ 2701: Transfers of interests in corporations and partnerships
- § 13:4 — —Family members defined
- § 13:5 — —Applicable retained interests
- § 13:6 — —Noncovered transactions
- § 13:7 — —Exceptions
- § 13:8 — —Valuation provisions—Qualified payment rights
- § 13:9 — — —Compounding rules: Late or unpaid distributions
- § 13:10 — — —Extraordinary payment rights
- § 13:11 — — —Minimum valuation of junior equity
- § 13:12 — — —Subtraction method
- § 13:13 — — —Adjustment to mitigate double taxation
- § 13:14 —§ 2702: Transfers in trusts and term interests—In general
- § 13:15 — —Family members defined
- § 13:16 — —Exceptions
- § 13:17 — —Valuation provisions—In general
- § 13:18 — — —Property interests treated as held in trust
- § 13:19 — —Personal residence trusts
- § 13:20 — —Qualified personal residence trusts
- § 13:21 —§ 2703: Buy-sell and option agreements—General
- § 13:22 — —Exceptions
- § 13:23 —§ 2704: Treatment of certain lapsing rights and restrictions
- § 13:24 — —Lapsing rights
- § 13:25 — —Restrictions

Appendix 13-1. Internal Revenue Code §§ 2701 to 2704

CHAPTER 14. FIDUCIARY INCOME TAXATION

- § 14:1 Introduction
- § 14:2 Overview of Subchapter J of the Internal Revenue Code of 1986
- § 14:3 Overview of the chapter

TABLE OF CONTENTS

- § 14:4 Grantor trust versus nongrantor trust: Significance of distinction for federal income tax purposes
- § 14:5 —I.R.C. §§ 671 to 678
- § 14:6 Federal income taxation of nongrantor trusts and estates—Conduit taxation
- § 14:7 —Computing taxable income of a trust or estate
- § 14:8 —Deductions available to the trust or estate
- § 14:9 Simple trusts versus complex trusts—Simple trusts
- § 14:10 —Complex trusts
- § 14:11 Distributable net income (DNI) and the distributions deduction—Taxation at trust or estate level
- § 14:12 — —Avoiding double taxation
- § 14:13 —Basic principles of DNI concept
- § 14:14 —The tier system
- § 14:15 —DNI as an allocative mechanism
- § 14:16 —The separate share rule
- § 14:17 The throwback rules (amended by TRA 97)
- § 14:18 The 65-day rule
- § 14:19 Income in respect of a decedent: I.R.C. § 691
- § 14:20 Miscellaneous Subchapter J provisions
- § 14:21 —I.R.C. § 681
- § 14:22 —I.R.C. § 682
- § 14:23 —I.R.C. § 683
- § 14:24 —I.R.C. § 685
- § 14:25 3.8 percent tax on net investment income—I.R.C. § 1411

CHAPTER 15. TAX PREPARER LIABILITY

- § 15:1 Introduction—Preparer penalties
- § 15:2 Preparer returns—Prior law
- § 15:3 —Current Law
- § 15:4 Tax return preparer—Definition
- § 15:5 Understatement of tax liability
- § 15:6 Penalties for understatement of tax liability
- § 15:7 Nonmonetary penalties
- § 15:8 Preventing and defending understatements
- § 15:9 IRS estate tax attorney—Assertion of return preparer penalties

APPENDICES

- APPENDIX I. Circular No. 230 (Rev. 6-2014)
- APPENDIX II. IRS Valuation Training for Appeals Officers Coursebook (U.S. Government Printing Office, 1997)

Volume 2

- APPENDIX III. Part 4, Chapter 25, Sections 1 Through 14

ESTATE, GIFT, TRUST, AND FIDUCIARY TAX RETURNS

of the Internal Revenue Manual—
Examining Process

- APPENDIX IV. Official Forms, Instructions, and
Publications of the Internal Revenue
Service
- APPENDIX V. Treasury Regulations—Selected Sections
- APPENDIX VI. Internal Revenue Code—Selected Sections
- APPENDIX VII. Revenue Rulings—Selected Sections
- APPENDIX VIII. Glossary of Estate, Gift, Generation-
Skipping, and Trust Tax Terms

Table of Laws and Rules

Table of Cases

Index