

Table of Contents

Volume 1

PART I. COMPENSATION AND ASSETS PLANNING

CHAPTER 1. INTRODUCTION TO ESTATE AND PERSONAL FINANCIAL PLANNING

I. BASIC CONSIDERATIONS

- § 1:1 Scope of treatise
- § 1:2 General introduction
- § 1:3 Overview of income tax planning
- § 1:4 —Income taxation of resident and nonresident aliens
- § 1:5 Overview of estate planning
- § 1:6 —Lifetime planning
- § 1:7 —Postmortem planning
- § 1:8 Basic client goals to be achieved
- § 1:9 Basic documents involved
- § 1:10 —Will
- § 1:11 —Trust
- § 1:12 —Business agreements
- § 1:13 —Marital agreements
- § 1:14 —Other documents

II. PRACTICE MATTERS

- § 1:15 The planning team
- § 1:16 —Attorney
- § 1:17 —Accountant
- § 1:18 —Life underwriter
- § 1:19 —Trust officer
- § 1:20 —Financial planner
- § 1:21 —Coordination of team
- § 1:22 Use of computers
- § 1:23 —Tax analysis and returns
- § 1:24 —Document preparation
- § 1:25 —Other functions
- § 1:26 —Product references
- § 1:27 Conflicts of interest
- § 1:28 —Husband and wife
- § 1:29 —Multiple family members
- § 1:30 —Business associates
- § 1:31 Malpractice prevention

CHAPTER 2. PLANNING FOR THE HIGHLY COMPENSATED

- § 2:1 Scope of chapter

I. OVERVIEW

- § 2:2 Overview of compensation techniques

- § 2:3 Employment contracts
- § 2:4 —Form: Employment contract
- § 2:5 Damage recoveries

II. NONQUALIFIED DEFERRED COMPENSATION PLANS

- § 2:6 Overview
- § 2:7 Taxation of nonqualified deferred compensation plans
- § 2:8 —Advance ruling requirements
- § 2:9 Securing deferred compensation—“Rabbi” and “Secular” trusts
- § 2:10 *[Reserved]*

III. INSURANCE BENEFITS

- § 2:11 In general
- § 2:12 Life insurance
- § 2:13 —Key man insurance
- § 2:14 — —Insuring against loss of key employee
- § 2:15 — —Employers’ income tax considerations
- § 2:16 — —Employee’s income and estate tax considerations
- § 2:17 — —Salary continuation plans
- § 2:18 — — —Income tax considerations
- § 2:19 — — —Estate tax considerations
- § 2:20 — — —Form of salary continuation plan
- § 2:21 —Split dollar life insurance
- § 2:22 — —Methods
- § 2:23 — —Estate and gift tax consequences to employee
- § 2:24 — —Income tax consequences to employer and employee
- § 2:24.50 — —Disguised split dollar arrangements
- § 2:25 — —Termination
- § 2:26 — —Reporting requirement
- § 2:27 — — —Sample letter to Department of Labor
- § 2:28 — —Sample split dollar plan: Endorsement method
- § 2:29 — —Sample split dollar plan: Collateral assignment method
- § 2:30 —Group life insurance
- § 2:31 — —Income tax considerations to employer
- § 2:32 — —Employee income tax considerations
- § 2:33 — —Transfer tax consequences to employee
- § 2:34 — —Coverage for dependents
- § 2:35 — —Recordkeeping and reporting requirement
- § 2:36 Disability insurance
- § 2:37 —Income tax consequences to employer
- § 2:38 —Income tax consequences to employee

IV. FRINGE BENEFITS

- § 2:39 In general
- § 2:40 Medical reimbursement and health plans—In general
- § 2:41 —Income tax consequences to employer
- § 2:42 —Income tax consequences to employee
- § 2:43 —Requirements for valid plan; continuation coverage requirement
- § 2:44 —Reporting and recordkeeping requirement
- § 2:45 —Health savings accounts
- § 2:46 Statutory fringe benefits
- § 2:47 Cafeteria plans

TABLE OF CONTENTS

- § 2:48 —Recordkeeping requirement
- § 2:49 Use of property
- § 2:50 Business expenses
- § 2:51 —Deductibility restrictions
- § 2:52 —Reporting requirements
- § 2:53 Home office deduction
- § 2:54 Certain other fringe benefits

V. COMPENSATORY STOCK TRANSFERS

- § 2:55 In general
- § 2:56 Substantial risk of forfeiture
- § 2:57 Election to include income in year of transfer
- § 2:58 Formula value stock transfers
- § 2:59 Employer deduction
- § 2:60 Impact of Tax Reform Act of 1986

VI. COMPENSATORY STOCK OPTIONS

- § 2:61 In general
- § 2:62 Incentive stock options (ISO)
- § 2:63 —Statutory requirements
- § 2:64 —Tax consequences—Qualifying transfers
- § 2:65 — —Disqualifying transfers
- § 2:66 —Inadvertent ISOs
- § 2:67 —Pyramiding ISOs
- § 2:68 Nonqualified stock options (NSO)
- § 2:69 Conversion of ISOs into NSOs
- § 2:70 Accounting for compensatory options

VII. EQUITY-BASED COMPENSATION NOT USING COMMON STOCK

- § 2:71 In general
- § 2:72 Junior common stock
- § 2:73 Convertible debentures
- § 2:74 Book value shares
- § 2:75 Stock appreciation rights
- § 2:76 Phantom stock

VIII. GOLDEN PARACHUTE PAYMENTS

- § 2:77 Overview
- § 2:78 Operation of provisions
- § 2:79 Planning for parachute tax

IX. SECTION 409A

- § 2:80 Overview
- § 2:81 Plans affected by Section 409A
- § 2:82 Plans exempt from Section 409A
- § 2:83 Plans not exempt from Section 409A
- § 2:84 Time and form of payments
- § 2:85 Initial changes to deferral elections
- § 2:86 Subsequent changes to deferral election
- § 2:87 Special rules for stock options and other equity-based compensation
- § 2:88 Delay of payment to “specified employees” of public companies

- § 2:89 Penalties for failure to comply with Section 409A
- § 2:90 Determination of payment timing

CHAPTER 3. PLANNING FOR THE BUSINESS OWNER

I. IN GENERAL

- § 3:1 Scope of chapter

II. FORMS OF BUSINESS ORGANIZATION

- § 3:2 Corporation
- § 3:3 S corporation
- § 3:4 Partnership
- § 3:5 Limited partnership
- § 3:6 Limited liability companies

III. NONTAX CONSIDERATIONS

- § 3:7 In general
- § 3:8 Limited liability—Corporation
- § 3:9 —Partnership and limited partnership
- § 3:10 Management and control—Corporation
- § 3:11 —Partnership and limited partnership
- § 3:12 Continuity of existence—Corporation
- § 3:13 —Partnership and limited partnership
- § 3:14 Transferability of interests—Corporation
- § 3:15 —Partnership and limited partnership
- § 3:16 Expenses and formalities of organization—Corporations and limited liability companies
- § 3:17 —Partnership and limited partnership
- § 3:18 Sources of capital—Corporation
- § 3:19 —Partnership and limited partnership

IV. TAX CONSIDERATIONS

- § 3:20 In general
- § 3:21 Business credits—Energy conservation
- § 3:22 Additional Medicare tax
- § 3:23 Taxation of income
- § 3:24 Tax rates
- § 3:25 Corporations and taxation of income—Problem of double taxation
- § 3:26 —Corporate distributions
- § 3:27 — —Constructive dividends
- § 3:28 — —Techniques to mitigate double taxation—Generally
- § 3:29 — — —Payment of reasonable compensation to shareholder-employee
- § 3:30 — — —Salary hedge agreement
- § 3:31 — — —Merchant's income on sale of "gift cards"
- § 3:32 —Accumulated earnings tax
- § 3:33 —Personal holding company tax
- § 3:34 Partnerships and taxation of income—In general
- § 3:35 —Determination of partner's distributive share
- § 3:36 — —Limited partners and self-employment tax
- § 3:37 —Special allocations
- § 3:38 —Restrictions on partners' allocations
- § 3:39 — —Depreciation recapture

TABLE OF CONTENTS

§ 3:40	— —Percentage depletion allowance
§ 3:41	— —Section 179 depreciation allowance
§ 3:42	— —Built-in loss property
§ 3:43	— —Electing investment partnerships
§ 3:44	—Guaranteed payments
§ 3:45	—Partnership distributions
§ 3:46	S corporations—In general
§ 3:47	—Taxation of S corporation
§ 3:48	—Taxation of shareholders
§ 3:49	—S corporate distributions
§ 3:50	— —Cash distributions—S corporations without accumulated earnings and profits
§ 3:51	— —S corporations with accumulated earnings and profits
§ 3:52	— —Property distributions
§ 3:53	Deductibility—Losses in general
§ 3:54	—Capital losses
§ 3:55	—Capitalization rules
§ 3:56	—Start-up expenses
§ 3:57	—Equity vs. security interest
§ 3:58	—“Casualty losses”
§ 3:59	—Charitable contribution
§ 3:60	—Section 179 limit on expensing certain depreciable business assets
§ 3:61	—Depreciation
§ 3:62	—Abnormal retirement of business property
§ 3:63	—Home office expenses
§ 3:64	—Insurance premiums paid
§ 3:65	—Net Operating Loss (NOLs)
§ 3:66	—Tip income
§ 3:67	—Casualty loss
§ 3:68	—Theft losses
§ 3:69	—Related party transactions
§ 3:70	Corporations and tax treatment of losses—In general
§ 3:71	—Section 1244 stock
§ 3:72	Partnerships and tax treatment of losses
§ 3:73	—Effect of liabilities on partner’s basis
§ 3:74	—At risk rules
§ 3:75	—Retroactive allocations
§ 3:76	S corporation and tax treatment of losses
§ 3:77	—Retroactive allocations
§ 3:78	Fringe benefits
§ 3:79	—Qualified retirement plans
§ 3:80	—Keogh or H.R. 10 plans
§ 3:81	—Participation standard
§ 3:82	—Top-heavy plans
§ 3:83	—Distributions and effect of Retirement Equity Act of 1984
§ 3:84	— —Qualified domestic relations order
§ 3:85	—Special rules applicable to affiliated service group
§ 3:86	— —Affiliated service groups performing management functions
§ 3:87	— —Leased employees
§ 3:88	— —Personal service corporation used to avoid or evade income tax
§ 3:89	—S corporations and retirement plans
§ 3:90	—Nonqualified retirement plans; deferred compensation arrangements
§ 3:91	—Options for purchase of stock
§ 3:92	—S corporations and fringe benefits

- § 3:93 Accident and health plans
- § 3:94 —Medical and dental reimbursement plans
- § 3:95 —Disability retirement benefits
- § 3:96 —Group-term life insurance
- § 3:97 —Limited employee death benefits
- § 3:98 —Meals and lodging provided for convenience of employer
- § 3:99 —Child and dependent care assistance
- § 3:100 —Cafeteria plans
- § 3:101 Choice of fiscal year—Corporations
- § 3:102 —Partnerships
- § 3:103 —S corporations
- § 3:104 Formation of business organization
- § 3:105 —Corporations
- § 3:106 —Partnerships
- § 3:107 Sale of interest in business organization—Corporations
- § 3:108 —Disposition of partnership interest
- § 3:109 Retirement or death of shareholder or partner
- § 3:110 —Corporation
- § 3:111 —S corporations
- § 3:112 — —Continuing relationship as creditor
- § 3:113 —Partnerships
- § 3:114 Liquidation of business organization
- § 3:115 —Corporations
- § 3:116 —S corporations
- § 3:117 —Partnerships
- § 3:118 Termination of business organization
- § 3:119 —Termination of S election
- § 3:120 — —Inadvertent termination of S election
- § 3:121 —Partnership termination

V. CHART

- § 3:122 Comparison of important attributes of partnership, corporation, and S corporation

CHAPTER 4. PLANNING FOR THE RANCHER/FARMER

I. IN GENERAL

- § 4:1 Scope of chapter

II. FORM OF OPERATION

- § 4:2 In general
- § 4:3 Business considerations in selection of entity
- § 4:4 Income tax considerations
- § 4:5 Liquidation or sale of farm operation

III. SPECIAL INCOME TAX PROVISIONS

- § 4:6 Special accounting rules
- § 4:7 Special fiscal year considerations
- § 4:8 Special provisions for deduction of expenses
- § 4:9 Special treatment of depreciation and capital gain items
- § 4:10 Hobby loss concerns
- § 4:11 Miscellaneous items

IV. LIFETIME AND POSTMORTEM ESTATE PLANNING

- § 4:12 General principles
- § 4:13 Special use valuation (I.R.C. § 2032A)—Predeath requirements
- § 4:14 — —Residency and qualified use
- § 4:15 — — —Use by decedent or member of decedent’s family
- § 4:16 — — —Material participation—Postdeath requirements
- § 4:17 — —Acquisition from decedent
- § 4:18 — —Acquisition by qualified heir
- § 4:19 — —Qualified use
- § 4:20 — —Material participation
- § 4:21 — —Percentage tests
- § 4:22 — —Election
- § 4:23 — — —Form: sample agreement to special use valuation
- § 4:24 — — —Form: sample notice of election
- § 4:25 — — —Form: sample protective election
- § 4:26 —Farm method of valuation
- § 4:27 —Multiple factor method of valuation
- § 4:28 —Use with business real property other than farm real property
- § 4:29 —Application of I.R.C. § 2032A to land held in corporation
- § 4:30 —Recapture of estate tax savings
- § 4:31 —Problems in using special use valuation
- § 4:32 —Planning situations for special use valuation
- § 4:33 Estate tax deduction for family businesses (I.R.C. § 2057) *[Reserved]*
- § 4:34 Fifteen-year deferral of estate taxes (I.R.C. § 6166)
- § 4:35 —Trade or business test
- § 4:36 —Rental of farm real property
- § 4:37 —Activities of agent
- § 4:38 —Personal holding company
- § 4:39 —Attribution rules
- § 4:40 —Time and manner of election
- § 4:41 —Amount of tax deferred and interest rates
- § 4:42 —Acceleration of unpaid tax

CHAPTER 5. USE OF QUALIFIED RETIREMENT PLANS

- § 5:1 Scope of chapter

I. OVERVIEW

- § 5:2 Qualified and nonqualified retirement plans—In general
- § 5:3 —Use of nonqualified plans
- § 5:4 —Constructive receipt and nonforfeitable rights
- § 5:5 —Impact of ERISA on nonqualified plans

II. TYPES OF QUALIFIED PLANS

- § 5:6 Pension plans—Defined benefit or money purchase plans
- § 5:7 —Incidental nonretirement benefits
- § 5:8 Profit sharing and stock bonus plan
- § 5:9 ESOPs
- § 5:10 Thrift and cash or deferred (“401(k)”) plans
- § 5:11 —SIMPLE 401(k) plans
- § 5:12 Choosing among plans
- § 5:13 —Risk of loss

III. QUALIFICATION RULES

- § 5:14 Basic qualification rules
- § 5:15 —Period of service
- § 5:16 — —Service for eligibility purposes
- § 5:17 — —Service for vesting purposes
- § 5:18 — —Service for accrual purposes
- § 5:19 — —1,000 hour standard
- § 5:20 — —Hours of service
- § 5:21 — —Breaks in service
- § 5:22 —Minimum participation standards
- § 5:23 —Minimum coverage
- § 5:24 —Vesting
- § 5:25 —Nondiscrimination in contribution or benefit
- § 5:26 — —Social security integration
- § 5:27 — —Comparability of multiple plans
- § 5:28 —Highly-compensated employees
- § 5:29 —Limits on contributions and benefits

IV. TOP-HEAVY PLANS

- § 5:30 In general
- § 5:31 Definition of top-heaviness
- § 5:32 Additional qualification requirements for top-heavy plans
- § 5:33 Multiple plans

V. DISTRIBUTIONS FROM QUALIFIED PLANS

- § 5:34 In general
- § 5:35 In-service distributions
- § 5:36 Loans
- § 5:37 Required distributions
- § 5:38 —Beginning and required distribution date
- § 5:39 —Amount required to be distributed
- § 5:40 —Form of distribution
- § 5:41 Death benefits
- § 5:42 Designation of beneficiary

VI. TAXATION OF DISTRIBUTIONS

- § 5:43 In general
- § 5:44 In-service distributions
- § 5:45 Retirement benefits
- § 5:46 Rollovers
- § 5:47 Five-year averaging
- § 5:48 Capital gain treatment
- § 5:49 Excise tax on failure to distribute
- § 5:50 Additional income tax on early distributions
- § 5:51 Excise tax on excess distributions
- § 5:52 Selecting method of distribution
- § 5:53 Roth account distributions

VII. INDIVIDUAL RETIREMENT ARRANGEMENTS

- § 5:54 Introduction
- § 5:55 Individual retirement accounts (IRAs) definition and requirements

TABLE OF CONTENTS

§ 5:56	Employer or employee association trust accounts
§ 5:57	Individual retirement annuities definition and requirements
§ 5:58	Deemed IRAs
§ 5:59	Deductible contributions
§ 5:60	Spousal IRAs
§ 5:61	Nondeductible contributions
§ 5:62	Excess contributions
§ 5:63	Distributions
§ 5:64	Deemed distributions/prohibited transactions
§ 5:65	Rollovers
§ 5:66	Individual retirement bonds
§ 5:67	Simplified employee pensions (SEPs)
§ 5:68	—SEP participation requirements
§ 5:69	—SEP nondiscrimination requirements
§ 5:70	—SEP contributions and deductions
§ 5:71	Salary reduction arrangements
§ 5:72	Keogh or HR 10 plans
§ 5:73	Roth IRAs
§ 5:74	Education savings plans

CHAPTER 6. TAX ADVANTAGED INVESTMENTS

§ 6:1	Scope of chapter
-------	------------------

I. OVERVIEW

§ 6:2	In general
§ 6:3	Defining tax advantaged investment
§ 6:4	Where to acquire tax advantaged investments

II. TAX TREATMENT

§ 6:5	In general
§ 6:6	Limitations on tax benefits
§ 6:7	—At-risk rules
§ 6:8	—Passive activity losses
§ 6:9	— —What are passive activities?
§ 6:10	— —Material participation
§ 6:11	— —Active income
§ 6:12	— —Portfolio income
§ 6:13	— —Rental activities
§ 6:14	— —Working interest in oil and gas
§ 6:15	— —Deduction of suspended passive losses on disposition
§ 6:16	— —Phase-in rules
§ 6:17	—Investment interest limitations
§ 6:18	Tax return preparation relating to passive losses
§ 6:19	Tax compliance provisions regulating tax advantaged investments

III. FORMS OF OWNERSHIP

§ 6:20	In general
§ 6:21	Types of ownership forms
§ 6:22	State tax consequences of choice of form
§ 6:23	Partial ownership's impact on value
§ 6:24	Tax impact of forms of ownership
§ 6:25	—Real estate investment trust

- § 6:26 —Small business investment company
- § 6:27 —Limited partnership
- § 6:28 —Master limited partnership
- § 6:29 —General partnership
- § 6:30 —Regular corporation
- § 6:31 —Personal service corporation
- § 6:32 —S corporation
- § 6:33 —Individual

IV. ANALYSIS

- § 6:34 How to analyze tax advantaged investments
- § 6:35 Trade-offs in investment performance
- § 6:36 Reviewing the prospectus/offering memorandum

V. TAX ADVANTAGED INVESTMENTS

- § 6:37 Real estate
- § 6:38 —Raw land
- § 6:39 —Active participation in rental real estate
- § 6:40 —Low income housing and historic property renovations
- § 6:41 Oil and gas
- § 6:42 Equipment leasing
- § 6:43 Tax exempt bonds
- § 6:44 —United States savings bonds/treasury obligations
- § 6:45 — —IRS Form 8818
- § 6:46 Other debt instruments
- § 6:47 Equities

VI. INVESTMENTS—TAX PLANNING OPPORTUNITIES

- § 6:48 Trade or business versus investment activities
- § 6:49 Planning opportunities
- § 6:50 Qualified Opportunity Zones

CHAPTER 7. LIFE INSURANCE PRODUCTS AND THEIR USE

- § 7:1 Scope of chapter

I. OVERVIEW

- § 7:2 In general
- § 7:3 How to evaluate insurance companies
- § 7:4 Types of agents
- § 7:5 —Agent organizations
- § 7:6 —How to use agents

II. TAXATION OF LIFE INSURANCE

- § 7:7 Income taxation
- § 7:8 —Diversification rules—Variable contract accounts
- § 7:9 — — —Correcting inadvertent failure to comply with rules
- § 7:10 —Rebate of commissions
- § 7:11 —Additional riders that create new contracts
- § 7:12 —Policies acquired for profit
- § 7:13 —Surrender or sale of term-life policy
- § 7:14 —Termination of policy

TABLE OF CONTENTS

- § 7:15 —Demutualization of policy holder’s insurance company
- § 7:16 Deductibility of premiums and interest
- § 7:17 Estate and gift tax considerations

III. TYPES OF PRODUCTS

- § 7:18 Term insurance
- § 7:19 —Policy features and structure
- § 7:20 —Convertibility
- § 7:21 —Participating term
- § 7:22 —Reentry provision
- § 7:23 —Deposit term
- § 7:24 —Extraordinary term
- § 7:25 —Graded premium whole life
- § 7:26 —Aspects to consider
- § 7:27 —Premium sharing for close-corporation buy-out
- § 7:28 —When to use
- § 7:29 Permanent insurance
- § 7:30 —Policy features and structure
- § 7:31 —Aspects to consider
- § 7:32 —Commissioners tables
- § 7:33 —When to use
- § 7:34 —Nonparticipating guaranteed—Policy features and structure
- § 7:35 — —Aspects to consider
- § 7:36 — —When to use
- § 7:37 —Nonparticipating indeterminate premium—Policy features and structure
- § 7:38 — —Aspects to consider
- § 7:39 — —When to use
- § 7:40 —Participating general portfolio whole life—Policy features and structures
- § 7:41 — —Use of dividends
- § 7:42 — —Loan rates
- § 7:43 — —Minimum deposit approach
- § 7:44 — —Vanishing premium
- § 7:45 — —Aspects to consider
- § 7:46 — —When to use
- § 7:47 —Adjustable whole life—Policy features and structure
- § 7:48 — —Aspects to consider
- § 7:49 — —When to use
- § 7:50 —Current assumption whole life—Policy features and structure
- § 7:51 — —Aspects to consider
- § 7:52 — —When to use
- § 7:53 —Universal life—Policy features and structure
- § 7:54 — —Aspects to consider
- § 7:55 — —When to use
- § 7:56 —Variable whole life—Policy features and structure
- § 7:57 — —Aspects to consider
- § 7:58 — —When to use
- § 7:59 —Annual premium excess interest life—Policy features and structure
- § 7:60 — —Aspects to consider
- § 7:61 — —When to use
- § 7:62 —Single premium excess interest life—Policy features and structure
- § 7:63 — —Aspects to consider
- § 7:64 — —When to use
- § 7:65 —Last survivor whole life—Policy features and structure

- § 7:66 — —Aspects to consider
- § 7:67 — —When to use

IV. PRODUCTS ANALYSIS

- § 7:68 In general
- § 7:69 Analyzing current assumption whole life proposal
- § 7:70 Analyzing universal life proposal

PART II. PLANNING FOR THE FAMILY UNIT

CHAPTER 8. GIFT PLANNING

I. OVERVIEW

- § 8:1 Scope of chapter
- § 8:2 General concepts
- § 8:3 Why make gifts?
- § 8:4 Gifts to whom
- § 8:5 What to give
- § 8:6 When to give
- § 8:7 Form of gift
- § 8:8 —Indirect gifts
- § 8:9 —Formula clauses
- § 8:10 —Bargain sale of stock as indirect gift to other shareholders
- § 8:11 Computation of tax

II. TECHNIQUES TO MAXIMIZE BENEFITS OF GIFTS

- § 8:12 Planning to use available exclusions
- § 8:13 —Annual exclusion
- § 8:14 —Educational exclusion
- § 8:15 —Medical exclusion
- § 8:16 Present interests—In general
- § 8:17 —Minor's trust
- § 8:18 —Withdrawal (Crummey) power
- § 8:19 — —Form: Standard Crummey power
- § 8:20 —Avoiding taxable gift—Special power of appointment
- § 8:21 — —Form: Crummey power with special power of appointment
- § 8:22 —Hanging power
- § 8:23 — —Form: Crummey power with “hanging power.”
- § 8:24 —Notice of withdrawal right
- § 8:25 — —Form: Standard Crummey notice
- § 8:26 — —Form: Crummey notice with life insurance trust
- § 8:27 —Income tax impact of lapse
- § 8:28 —Supplemental Crummey power
- § 8:29 — —Form: Supplemental Crummey power
- § 8:30 Use of gift-splitting
- § 8:31 —Requirements to qualify
- § 8:32 —Method for making election
- § 8:33 —Effect on consenting spouse
- § 8:34 Maximum use of unified credit
- § 8:35 Gifts by grandparents or other relatives
- § 8:36 Incomplete transfers

TABLE OF CONTENTS

- § 8:37 —Transfers in trust under Section 2511(c) after 2009
- § 8:38 Net gifts

III. SPECIFIC DONEES

- § 8:39 In general
- § 8:40 Gifts to spouse
- § 8:41 —Application of I.R.C. § 1014
- § 8:42 —Application of I.R.C. § 1041
- § 8:43 —Gift tax marital deduction
- § 8:44 — —Terminable interests
- § 8:45 — —Donor's retained interest in gift to spouse
- § 8:46 Gifts to lineals
- § 8:47 Gifts to parents or other relatives

IV. TYPES OF GIFT VEHICLES

- § 8:48 Outright gifts
- § 8:49 Custodianships
- § 8:50 —Uniform Gifts to Minors Act
- § 8:51 —Uniform Transfers to Minors Act
- § 8:52 Gifts in trust
- § 8:53 —Educational trusts
- § 8:54 — —Form: Educational trust provisions
- § 8:55 —Life insurance trusts
- § 8:56 —Totten trusts
- § 8:57 —Alimony trust
- § 8:58 Elder abuse—"Misappropriation" by caregiver

CHAPTER 9. INCOME SHIFTING

I. INTRODUCTION

- § 9:1 Scope of chapter
- § 9:2 Income shifting in general
- § 9:3 Impact of legislation on income shifting
- § 9:4 —Net investment income—Medicare contribution tax
- § 9:5 Other tax considerations of income shifting

II. USE OF TRUSTS TO SHIFT INCOME

- § 9:6 Reversionary trusts—In general
- § 9:7 —Benefits under prior law
- § 9:8 —Clifford (10-year) trust created before 1987
- § 9:9 —Spousal remainder trusts
- § 9:10 —Reversionary trusts created after 1986
- § 9:11 — —Interest taking effect only at death of minor lineal descendant beneficiaries
- § 9:12 Other trust arrangements
- § 9:13 —Section 678 trusts
- § 9:14 —Section 2503(c)(3) trusts
- § 9:15 — —Sample Form: To continue trust past age 21

III. OTHER INCOME SHIFTING TECHNIQUES

- § 9:16 Gifts to custodianship
- § 9:17 Use of fiscal year to shift income

- § 9:18 Interest free and low interest loans—Background
- § 9:19 —Section 7872
- § 9:20 — —Definition of below market loan
- § 9:21 — —Types of loans covered
- § 9:22 — —Tax effect of gift loans
- § 9:23 — —Planning opportunities under Section 7872
- § 9:24 — —Loans from corporations to shareholders
- § 9:25 — —Loans between estate or trusts and beneficiaries
- § 9:26 —Conclusion
- § 9:27 Kiddie tax provisions
- § 9:28 Family partnerships
- § 9:29 S corporations
- § 9:30 —Qualified Subchapter S trusts
- § 9:31 Sales/leasebacks
- § 9:32 Transfer tax implications of income shifting

CHAPTER 10. TYPES OF PROPERTY OWNERSHIP

I. OVERVIEW

- § 10:1 Property in general
- § 10:2 Individually held property
- § 10:3 Tenants in common
- § 10:4 Joint tenancy
- § 10:5 —Tenancy by entirety
- § 10:6 —Joint tenancy with right of survivorship
- § 10:7 Community property
- § 10:8 Other forms of ownership
- § 10:9 —Corporate
- § 10:10 —Partnership
- § 10:11 —Trust
- § 10:12 —Land trusts

II. GENERAL CONSIDERATIONS

- § 10:13 Creditor's claims
- § 10:14 —Homestead property
- § 10:15 Avoidance of publicity
- § 10:16 Loss of flexibility
- § 10:17 Need for coordination with will or trust

III. TAX CONSIDERATIONS

- § 10:18 In general
- § 10:19 Sole ownership
- § 10:20 Spousal joint ownership
- § 10:21 —Income tax consequences
- § 10:22 —Gift tax consequences
- § 10:23 —Estate tax consequences
- § 10:24 —Spousal joint property interests created before 1982
- § 10:25 — —Income tax consequences
- § 10:26 — —Gift tax consequences
- § 10:27 — —Estate tax consequences
- § 10:28 Property owned jointly with third parties
- § 10:29 —Income tax consequences

TABLE OF CONTENTS

- § 10:30 —Gift tax consequences
- § 10:31 —Estate tax consequences
- § 10:32 Special types of property
- § 10:33 —Joint bank accounts
- § 10:34 —Totten trust
- § 10:35 —Brokerage account
- § 10:36 —United States savings bonds
- § 10:37 — —Transferring bonds to a trust
- § 10:38 —Land trusts

IV. COMMUNITY PROPERTY

- § 10:39 In general
- § 10:40 Deemed gifts by surviving spouse
- § 10:41 —Lifetime transfer
- § 10:42 —Life insurance proceeds
- § 10:43 —Retirement plan benefits
- § 10:44 —Widow's election
- § 10:45 Enhancement of separate property
- § 10:46 —Closely held businesses
- § 10:47 —Improvements to separate property
- § 10:48 —Appreciation of separate property
- § 10:49 —Trust accumulations
- § 10:50 Postmortem income tax planning
- § 10:51 —Income splitting
- § 10:52 —Basis adjustment
- § 10:53 —Income and deduction in respect of decedent
- § 10:54 Other postmortem planning
- § 10:55 —Disclaimers
- § 10:56 Additional considerations
- § 10:57 —The mobile client
- § 10:58 —Prenuptial and postnuptial agreements
- § 10:59 —Partition agreements
- § 10:60 —Administration

V. FORMS

- § 10:61 Postnuptial agreement and partition of community property

CHAPTER 11. PLANNING FOR SEPARATION AND DIVORCE

I. TAX CONSEQUENCES OF MARRIAGE TERMINATION PRIOR TO DOMESTIC RELATIONS TAX REFORM OF 1984

- § 11:1 In general
- § 11:2 Alimony or spousal support
- § 11:3 Child support

II. TAX PLANNING FOR TERMINATION OF MARRIAGE AFTER THE DOMESTIC RELATIONS TAX REFORM OF 1984

A. GENERALLY

- § 11:4 In general
- § 11:5 Alimony redefined

§ 11:6 Treatment of Alimony Following the Tax Cuts and Jobs Act of 2017

B. CHILD SUPPORT

§ 11:7 In general

§ 11:8 Dependency exemption and other child care provisions

C. TRANSFERS OF PROPERTY BETWEEN SPOUSES INCIDENT TO DIVORCE

§ 11:9 Income tax treatment generally

§ 11:10 —Basis

§ 11:11 Marital home

§ 11:12 —Default and re-acquisition of premises

§ 11:13 Closely held businesses

§ 11:14 Annuities

§ 11:15 Insurance

§ 11:16 Retirement benefits

§ 11:17 Nonmarital assets

§ 11:18 Estate and gift tax considerations

§ 11:19 —Transfer tax planning

D. MISCELLANEOUS CONSIDERATIONS

§ 11:20 Determination of filing status

§ 11:21 Innocent spouse liability

§ 11:22 —Equitable relief

§ 11:23 — —Limitations period

§ 11:24 —Community income relief

§ 11:25 Attorney's fees

III. SEPARATION AGREEMENTS AND DECREES

§ 11:26 In general

§ 11:27 Form: Separation agreement

§ 11:28 Specific clauses

§ 11:29 —Child support

§ 11:30 —Allocation of dependency exemptions

§ 11:31 —Alimony

§ 11:32 —Property division

§ 11:33 —Pension and employee benefit plans

§ 11:34 —Life insurance

§ 11:35 —Joint return

§ 11:36 —Earlier years' returns

§ 11:37 —Future years' returns

§ 11:38 —Remedies for breach of warranties or representations

IV. PRE- AND POSTNUPTIAL AGREEMENTS

§ 11:39 In general

§ 11:40 Tax aspects

§ 11:41 Form: Prenuptial agreement

V. OTHER RELATED MATTERS

§ 11:42 Planning for the unmarried

§ 11:43 Will for the troubled marriage

CHAPTER 12. LIFETIME PLANNING FOR CHARITABLE GIFTS

§ 12:1 Scope of chapter

I. OVERVIEW

- § 12:2 Introduction to income tax ramifications of charitable giving
- § 12:3 —Legislative history
- § 12:4 —Statutory scheme
- § 12:5 Basis of tax deduction for income, estate and gift tax purposes
- § 12:6 —Common elements of deduction
- § 12:7 —Timing of contributions
- § 12:8 —Substantiation and valuation of contributions

II. LIMITATIONS ON INCOME TAX DEDUCTIBILITY

- § 12:9 Overview of percentage limitation for individuals
- § 12:10 Limitations based on type of charitable organizations
- § 12:11 —Fifty percent organizations
- § 12:12 —Thirty percent organizations and donations “For the use of.”
- § 12:13 — —Contributions to both 50% and 30% organizations in the same year
- § 12:14 —Limitations on capital gain property
- § 12:15 — —Computation of percentage limitations where both cash and long-term capital gain property contributed
- § 12:16 Percentage and other limitations on deductions by corporations
- § 12:17 Carryover of excess contributions by individuals and corporations
- § 12:18 Limitations on contributions by estates and trusts
- § 12:19 Limitations on types of gifts—The “Reduction Rules.”

III. GIFTS OF PRESENT INTERESTS

- § 12:20 In general
- § 12:21 Gifts of cash
- § 12:22 Tax free distributions from Individual Retirement Accounts
- § 12:23 Gifts of property
- § 12:24 —Ordinary income property
- § 12:25 —Tangible personal property—Related use
- § 12:26 — —Motor vehicles
- § 12:27 —Long-term capital gain property
- § 12:28 — —Additional reduction for donation to private foundations
- § 12:29 —Contribution of certain inventory and scientific property by corporations
- § 12:30 —Life insurance
- § 12:31 —Securities
- § 12:32 — —Closely held stock
- § 12:33 — — —Contribution before change in ownership
- § 12:34 — —Bonds
- § 12:35 — —Commodities
- § 12:36 —Works of art
- § 12:37 —“Deductible” admission tickets
- § 12:38 —Installment sales contracts
- § 12:39 Intellectual property
- § 12:40 Gifts of property—Partnership interests and tax shelter investments
- § 12:41 Contribution of services and out-of-pocket expense
- § 12:42 Gift tax considerations

IV. GIFTS OF PARTIAL INTERESTS IN TRUST

- § 12:43 General rule

- § 12:44 Valuations of annuity, interest for life, term of years or remainder
- § 12:45 Income interests—In general
- § 12:46 —Charitable lead grantor trusts
- § 12:47 — —Valuing the deduction
- § 12:48 — —Recapture
- § 12:49 — —Estate and gift tax deduction
- § 12:50 — —Governing instrument
- § 12:51 — —Use in planning
- § 12:52 —Nonstatutory lead trusts
- § 12:53 —Taxation of lead trusts
- § 12:54 Remainder interests—In general
- § 12:55 —Annuity and unitrusts
- § 12:56 — —Requirements
- § 12:57 — — —Permitted income beneficiaries
- § 12:58 — — —Income interest—Annuity trust
- § 12:59 — — —Income interest—Unitrust trust
- § 12:60 — — —Incorrect valuation of property contributed
- § 12:61 — — —Short taxable years and final year
- § 12:62 — — —Termination of income interests
- § 12:63 — — —Additional contributions
- § 12:64 — — —Private foundation rules
- § 12:65 — — —Investment of trust assets
- § 12:66 — — —5% probability test
- § 12:67 — — —Payment of estate tax out of trust
- § 12:68 — —Permitted trustees for remainder trusts
- § 12:69 — —Comparison between annuity and unitrusts
- § 12:70 — —Taxation of remainder trusts and income beneficiaries
- § 12:71 — —Valuing the deduction
- § 12:72 — —Practical drafting considerations
- § 12:73 — —IRS guidelines
- § 12:74 — —Gift tax concerns
- § 12:75 —Pooled income fund
- § 12:76 — —Valuing the deduction
- § 12:77 — —Taxation of the pooled income fund and beneficiary
- § 12:78 —Charitable gift annuity
- § 12:79 — —Valuing the deduction
- § 12:80 — —Using appreciated property—Bargain sale aspects
- § 12:81 — —Taxation of income beneficiary
- § 12:82 Gift tax considerations
- § 12:83 Reformation of partial interests
- § 12:84 Termination of CRT

V. GIFTS OF PARTIAL INTERESTS OUTSIDE TRUSTS

- § 12:85 In general
- § 12:86 Valuing deduction
- § 12:87 Remainder interest in farm or personal residence
- § 12:88 Undivided portion of entire interest
- § 12:89 Qualified conservation contributions (easements)

VI. SPECIAL PROBLEMS OF CHARITABLE GIVING

- § 12:90 Private foundations
- § 12:91 Donor-advised funds

TABLE OF CONTENTS

- § 12:92 Alternative minimum tax problems
- § 12:93 Bargain sale
- § 12:94 Property subject to indebtedness
- § 12:95 Conditioning a contribution on deductibility

VII. FORMS

- § 12:96 Charitable annuity lead trust (nonstatutory)
- § 12:97 Charitable remainder annuity trust
- § 12:98 Charitable remainder unitrust
- § 12:99 Sample declaration of trust and instruments of transfer—Pooled income funds
- § 12:100 Gift annuity agreement
- § 12:101 Charitable trust
- § 12:102 Charitable corporation—Articles of incorporation
- § 12:103 —Bylaws
- Appendix 12A. IRS Form 8282
- Appendix 12B. IRS Form 8283
- Appendix 12C. Pub. L. No. 98-369, §§ 155 and 156
- Appendix 12D. Revenue Ruling 77-374
- Appendix 12E. Revenue Ruling 82-165
- Appendix 12F. Revenue Ruling 82-128
- Appendix 12G. Revenue Ruling 80-123
- Appendix 12H. Revenue Ruling 72-395
- Appendix 12I. Revenue Ruling 88-81
- Appendix 12J. Revenue Procedures for Charitable Remainder Trust Forms

CHAPTER 13. PLANNING FOR RETIREMENT

- § 13:1 Scope of chapter

I. GENERAL CONSIDERATIONS

- § 13:2 Need for retirement planning
- § 13:3 Nonfinancial considerations

II. ESTIMATING NEEDS AND RESOURCES

- § 13:4 Forecasting financial needs at retirement
- § 13:5 Checklist: retirement expenses
- § 13:6 Checklist: retirement resources

III. SOCIAL SECURITY AND RAILROAD RETIREMENT BENEFITS

- § 13:7 Social Security—Persons eligible for benefits
- § 13:8 —Benefits available
- § 13:9 —Working after retirement
- § 13:10 Medicare
- § 13:11 Railroad retirement benefits
- § 13:12 Taxation of Social Security and railroad retirement benefits

IV. PRIVATE AND GOVERNMENTAL RETIREMENT BENEFITS

- § 13:13 Private employee benefit plans
- § 13:14 Governmental retirement benefits

§ 13:15 Distributions from IRAs and employee benefit plans

V. RETIREMENT AGREEMENTS

§ 13:16 Nonqualified deferred compensation agreements

§ 13:17 Salary continuation agreement

VI. STRATEGIES FOR CLOSING GAP BETWEEN INCOME AND EXPENSES

§ 13:18 Investment of savings

§ 13:19 Choosing retirement domicile

§ 13:20 Tapping equity in home

§ 13:21 Taking money out of closely held business

§ 13:22 Insurance reevaluation

VII. MANAGING FINANCES DURING PERIODS OF INCAPACITY

§ 13:23 Professional management of finances

§ 13:24 Durable power of attorney

§ 13:25 Form: Power of attorney

VIII. SPECIAL TAX PLANNING

§ 13:26 Farm leases

§ 13:27 Preserving qualification for special use valuation

§ 13:28 Qualifying for installment payment of estate taxes

CHAPTER 14. ESTATE PLANNING FOR THE UNMARRIED CLIENT

§ 14:1 Scope of chapter

§ 14:2 Nontax concerns

§ 14:3 Composition and form of ownership of assets

§ 14:4 Reduction of estate and income shifting

§ 14:5 Hypothetical fact patterns

§ 14:6 —Formulating the plan

§ 14:7 — —Flowcharts of current estate plans

§ 14:8 Implementing the plan

§ 14:9 —Federal estate tax consequences

§ 14:10 —Power of attorney

§ 14:11 —Intervivos gifts

§ 14:12 —Revocable trusts

§ 14:13 —Testamentary dispositions

§ 14:14 —Joint property

§ 14:15 —Life insurance

§ 14:16 —Employee benefits

§ 14:17 —Charitable giving

§ 14:18 —Installment sales and private annuity

§ 14:19 —Joint purchase; sale of remainder interest

§ 14:20 —Estate freezes

§ 14:21 —Flowcharts of revised estate plans

Volume 2

PART III. ESTATE PLANNING DURING LIFE

CHAPTER 15. INTRODUCTION TO ESTATE PLANNING DURING LIFE

- § 15:1 Scope of chapter
- § 15:2 —Basic objectives determining lifetime and testamentary desires of client
- § 15:3 —Minimizing transfer taxes
- § 15:4 —Creating “Custom-made” estate plan for client
- § 15:5 Who is client?
- § 15:6 Gathering information
- § 15:7 —Initial conference
- § 15:8 — —Obtain financial data
- § 15:9 — —Obtain data regarding family or other beneficiaries
- § 15:10 —Other conferences
- § 15:11 —Form: Estate Planning Questionnaire
- § 15:12 —Checklist: Additional planning information
- § 15:13 Analyzing information and developing plan
- § 15:14 Estate planning—Questions to be discussed at estate planning meeting
- § 15:15 Post-interview estate planning checklist
- § 15:16 Explaining plan to client
- § 15:17 —Form: “basic” estate planning letter
- § 15:18 —Sample “complex” estate planning letter
- § 15:19 Implementing the plan
- § 15:20 —Sample checklists for preparing documents
- § 15:21 Updating plan
- § 15:22 Fees

CHAPTER 16. OVERVIEW OF GIFT AND ESTATE TAXATION

- § 16:1 Scope of chapter

I. INTRODUCTION

- § 16:2 Unification of estate and gift taxes
- § 16:3 Differences between gift tax and estate tax

II. OVERVIEW OF GIFT TAXATION

- § 16:4 Significance of gift tax
- § 16:5 Scope of gift tax: transfers by gift by individuals
- § 16:6 Statutory definitions of transfers and nontransfers
- § 16:7 —Powers of appointment (I.R.C. § 2514)
- § 16:8 —Dispositions of qualifying income interests (I.R.C. § 2519)
- § 16:9 —Educational or medical expense payments (I.R.C. § 2503(e))
- § 16:10 —Waiver of certain pension rights (I.R.C. § 2503(f))
- § 16:11 —Loans of artwork
- § 16:12 —Disclaimers (I.R.C. § 2518)
- § 16:13 Transfer for full and adequate consideration (I.R.C. § 2516)
- § 16:14 Completed gifts
- § 16:15 Who is donor and gift-splitting (I.R.C. §§ 2511, 2513)
- § 16:16 Definition of taxable gift

- § 16:17 —Annual per donee exclusion (I.R.C. § 2503(b))
- § 16:18 — —Present interest (I.R.C. §§ § 2503(c), (e))
- § 16:19 —Charitable deduction (I.R.C. § 2522)
- § 16:20 —Marital deduction (I.R.C. § 2523)
- § 16:21 Gift tax return requirements (I.R.C. § 6019)
- § 16:22 Valuation of gifts (I.R.C. § 2512)
- § 16:23 Gift tax rates, credits and computations
- § 16:24 Liability for gift tax

III. OVERVIEW OF ESTATE TAXATION

- § 16:25 Significance of estate tax

A. DEFINITION OF GROSS ESTATE

- § 16:26 In general
- § 16:27 Probate assets
- § 16:28 Nonprobate assets: Introduction
- § 16:29 —Life insurance proceeds on decedent's life (I.R.C. § 2042)
- § 16:30 Nonprobate assets: introduction—Survivor annuities and other payments (I.R.C. § 2039)
- § 16:31 Nonprobate assets: Introduction—Powers of appointment (I.R.C. § 2041)
- § 16:32 — —Post-October 21, 1942 general power possessed or exercised at death
- § 16:33 — —Pre-October 22, 1942 general power possessed or exercised at death
- § 16:34 — —Post-October 21, 1942 general powers exercised prior to death
- § 16:35 — —Post-October 21, 1942 nongeneral powers exercised to create another power
- § 16:36 — —Pre-October 22, 1942 general power exercised or released prior to death
- § 16:37 —Joint interests with right of survivorship (I.R.C. § 2040)
- § 16:38 — —Tenancies between spouses
- § 16:39 — —Nonspousal or mixed tenancies
- § 16:40 —Transferred interests
- § 16:41 — —Retained life estate (I.R.C. § 2036)
- § 16:42 — — —Retained interests or rights
- § 16:43 — — —Period of retention
- § 16:44 — — —Amount of property includible
- § 16:45 — —Revocable or amendable transfers (I.R.C. § 2038)
- § 16:46 — —Comparison between scope of Sections 2036 and 2038
- § 16:47 — —Transfers taking effect at death (I.R.C. § 2037)
- § 16:48 — —Transfers within three years of death (I.R.C. § 2035)
- § 16:49 —Surviving spouse's interest in marital deduction trusts (I.R.C. § 2044 and others)
- § 16:50 —Dower or curtesy (I.R.C. § 2034)

B. DEFINITION OF TAXABLE ESTATE

- § 16:51 In general
- § 16:52 Deduction for expenses, indebtedness, and taxes (I.R.C. § 2053)
- § 16:53 Deduction for casualty losses (I.R.C. § 2054)
- § 16:54 Charitable deduction (I.R.C. § 2055)
- § 16:55 Marital deduction (I.R.C. § 2056)

C. OTHER MATTERS

- § 16:56 Estate tax return requirements (I.R.C. § 6018)
- § 16:57 Valuation of gross estate
- § 16:58 Computation of estate tax
- § 16:59 Credits against estate tax

TABLE OF CONTENTS

- § 16:60 —Unified credit (I.R.C. § 2010)
- § 16:61 —Credit for state death taxes (I.R.C. § 2011)
- § 16:62 —Credit for gift taxes paid (I.R.C. § 2012)
- § 16:63 —Credit for foreign death taxes (I.R.C. § 2014)
- § 16:64 —Credit for tax on prior transfers (I.R.C. § 2013)
- § 16:65 Liability for estate tax and definition of executor
- § 16:66 Estate and gift tax rates
- § 16:67 Applicable exclusion amount table
- § 16:68 State death tax credit table
- § 16:69 Estate and gift taxation of nonresidents

CHAPTER 17. GENERAL ESTATE PLANNING TECHNIQUES

- § 17:1 Scope of chapter

I. BASIC TOOLS OF THE ESTATE PLANNER

- § 17:2 In general
- § 17:3 Use of wills
- § 17:4 Use of trusts
- § 17:5 —Types of trusts
- § 17:6 —Advantages of trusts over outright gifts
- § 17:7 Powers of attorney
- § 17:8 —General v. durable powers
- § 17:9 — —Form: durable power of attorney
- § 17:10 — —Form: escrow letter for power of attorney
- § 17:11 —Validity of actions under power
- § 17:12 Designation of health care surrogate
- § 17:13 Form: designation of health care surrogate

II. BENEFICIARY CONSIDERATIONS

- § 17:14 Customary considerations for beneficiaries
- § 17:15 —Spouse
- § 17:16 —Beneficiaries other than spouse
- § 17:17 — —Ages of distribution
- § 17:18 — —Form: separate trust for education of beneficiary
- § 17:19 Special considerations for beneficiaries
- § 17:20 —Financial ability of beneficiaries
- § 17:21 —Spendthrift provisions
- § 17:22 — —Form: spendthrift clause
- § 17:23 —Disability of beneficiaries
- § 17:24 — —Form: standby trust for incompetent beneficiaries
- § 17:25 — —Form: supplemental needs trust
- § 17:26 Other concerns

III. ASSET CONSIDERATIONS

- § 17:27 In general
- § 17:28 Special considerations for business planning
- § 17:29 —Unequal participation
- § 17:30 —Control
- § 17:31 —Valuation
- § 17:32 —Key employees
- § 17:33 — —Form: discretion to manage or liquidate business clause
- § 17:34 Liquidity

- § 17:35 —Cash requirements
- § 17:36 —Ways to provide liquidity

IV. TRANSFER TAX CONSIDERATIONS

- § 17:37 Basic estate and gift tax aspects
- § 17:38 Unified concept
- § 17:39 —Tax-free transfers
- § 17:40 Marital deduction and credit shelter planning
- § 17:41 —Credit shelter trust
- § 17:42 —Use of credit by both spouses
- § 17:43 “Joint death” planning
- § 17:44 —Form: presumption of survivorship
- § 17:45 Joint property—In general
- § 17:46 —Gift tax considerations
- § 17:47 —Estate tax considerations
- § 17:48 —Income tax considerations
- § 17:49 Gifts—In general
- § 17:50 —Tax considerations
- § 17:51 — —Tax-free v. taxable gifts
- § 17:52 — —Split gifts

V. USES OF POWERS OF APPOINTMENT

- § 17:53 In general
- § 17:54 Types
- § 17:55 Exercise
- § 17:56 —Form: exercise of power in will
- § 17:57 —Form: nonexercise of power of appointment
- § 17:58 Classification for tax purposes
- § 17:59 Tax consequences
- § 17:60 —Estate tax aspects
- § 17:61 — —Form: exercise of power of appointment to pay marginal tax increase
- § 17:62 —Releases and lapses of powers
- § 17:63 —Gift tax aspects
- § 17:64 —Powers created before October 22, 1942
- § 17:65 —Income taxation

CHAPTER 18. PREPARATION OF WILLS

- § 18:1 Scope of chapter

I. OVERVIEW

- § 18:2 Basic will format

II. INTRODUCTORY PROVISIONS OF WILL

- § 18:3 Publishing clause
- § 18:4 Testator’s directions for disposition of body
- § 18:5 —Anatomical gifts
- § 18:6 Payment of debts and expenses of administration
- § 18:7 —Married woman’s expenses
- § 18:8 —Source of funds
- § 18:9 Apportionment of estate taxes
- § 18:10 —Protection of gifts from estate tax

TABLE OF CONTENTS

§ 18:11 —Sources of payment

III. PREPARATION OF DISPOSITIVE PROVISIONS

- § 18:12 Use of terms
- § 18:13 Designation of beneficiaries
- § 18:14 Character of gifts—In general
- § 18:15 —Specific gifts
- § 18:16 —Demonstrative gifts
- § 18:17 —General gifts
- § 18:18 —Residuary gifts
- § 18:19 Character of Gifts—Nonprobate Assets

IV. GIFTS OF PARTICULAR ASSETS

- § 18:20 Gifts of tangible personal property
- § 18:21 —Exempt property
- § 18:22 —Desirability of separate gift
- § 18:23 —Separate writings
- § 18:24 —Class gifts
- § 18:25 —Gifts of tangible property to minors
- § 18:26 —Unwanted personal effects
- § 18:27 —Shipping costs
- § 18:28 Monetary gifts
- § 18:29 Bank accounts
- § 18:30 Forgiveness of debt due decedent
- § 18:31 Corporate stock
- § 18:32 Real estate
- § 18:33 Homestead
- § 18:34 Life insurance policies
- § 18:35 —Form: clause granting power to hold insurance on spouse's life
- § 18:36 Life insurance proceeds and death benefits
- § 18:37 Encumbrances on gifts
- § 18:38 Statutory exemptions and family allowance

V. PRERESIDUARY AND RESIDUARY CLAUSES

- § 18:39 Preresiduary clauses
- § 18:40 Marital gifts—In general
- § 18:41 —Qualified domestic trusts
- § 18:42 Residuary clauses
- § 18:43 —Form: residuary clause for equalizing gifts among beneficiaries
- § 18:44 Pour-over clause

VI. TESTAMENTARY TRUSTS

- § 18:45 In general
- § 18:46 Trusts for minors
- § 18:47 Spendthrift provisions
- § 18:48 Situs of trusts
- § 18:49 Waiver of court administration of trusts

VII. ADDITIONAL PROVISIONS

- § 18:50 Survivorship clauses
- § 18:51 Exercise of powers of appointment by will

- § 18:52 Appointment of testamentary guardian
- § 18:53 Antilapse provisions

VIII. FIDUCIARIES

- § 18:54 Designation of fiduciaries
- § 18:55 —Appointment of ancillary personal representative
- § 18:56 —Waiver of bond
- § 18:57 —Actions by joint fiduciaries estate
- § 18:58 —Compensation of fiduciaries
- § 18:59 —Attorney as personal representative and counsel for estate
- § 18:60 Fiduciary powers

IX. CONCLUDING PROVISIONS

- § 18:61 Reciprocal wills
- § 18:62 Definitions
- § 18:63 Execution of wills
- § 18:64 Self-proving wills

X. OTHER TESTAMENTARY DOCUMENTS

- § 18:65 Codicils
- § 18:66 Living wills

XI. FORMS

- § 18:67 In general
- § 18:68 Sample simple will with standby trust
- § 18:69 Sample marital deduction will with QTIP trust
- § 18:70 Sample provisions for marital deduction will with power of appointment trust
- § 18:71 Sample pour-over will
- § 18:72 Companion will
- § 18:73 Sample disclaimer will
- § 18:74 Sample cremation codicil
- § 18:75 Sample living will

CHAPTER 19. PREPARATION AND USES OF TRUSTS

- § 19:1 Scope of chapter

I. OVERVIEW

- § 19:2 Background
- § 19:3 Definitions
- § 19:4 Creation of trust
 - § 19:5 —Elements
 - § 19:6 —Testamentary requirements
 - § 19:7 —Consideration
 - § 19:8 —Transfer of property
 - § 19:9 — —Selection of assets
- § 19:10 Form: sample deed from grantor to trustee
- § 19:11 Form: sample assignment from grantor to trustee
- § 19:12 —Acceptance of property by trustee and beneficiary
- § 19:13 —Statute of frauds

II. USE OF REVOCABLE TRUSTS

- § 19:14 General considerations

TABLE OF CONTENTS

- § 19:15 —Avoiding probate
- § 19:16 —Protection against incapacity
- § 19:17 —Reduction of publicity
- § 19:18 —Reduction of challenge and statutory rights of spouse and beneficiaries
- § 19:19 —Impact on creditors
- § 19:20 —Management of property
- § 19:21 —Evaluation of trustee management
- § 19:22 —Cost of creation and operation
- § 19:23 —Selection of trustee
- § 19:24 —Choice of law
- § 19:25 Tax considerations
- § 19:26 —Income taxes
- § 19:27 —Estate and gift taxes
- § 19:28 Coordination with wills and estate planning uses

III. PREPARATION OF REVOCABLE TRUSTS

- § 19:29 Introductory provisions
- § 19:30 Retained rights of grantor and administration during grantor's lifetime
- § 19:31 Provisions for insurance and qualified plan proceeds
- § 19:32 Dispositive provisions
- § 19:33 —Description of gifts
- § 19:34 —Distribution of income
- § 19:35 —Distribution of principal
- § 19:36 —Marital deduction trusts—In general
- § 19:37 —Generation-skipping trusts
- § 19:38 —Trusts for minors and other incompetent beneficiaries
- § 19:39 —Spendthrift provisions
- § 19:40 —Situs of trusts
- § 19:41 —Waiver of court administration of trusts
- § 19:42 —Miscellaneous provisions
- § 19:43 —Designation of fiduciaries
- § 19:44 —Fiduciary powers
- § 19:45 —Execution of trusts
- § 19:46 —Trust amendments
- § 19:47 —Termination of trusts
- § 19:48 Introduction to forms
- § 19:49 Form: sample individual revocable trust without marital deduction provisions
- § 19:50 Form: sample individual revocable trust with marital deduction gift—Outright or in trust
- § 19:51 Form: sample joint revocable trust with marital deduction provisions
- § 19:52 Form: sample trust amendment of particular provisions
- § 19:53 Form: sample trust amendment restatement of trust in its entirety

IV. IRREVOCABLE TRUSTS

- § 19:54 In general
- § 19:55 Basic considerations
- § 19:56 Income taxes
- § 19:57 Gift tax aspects
- § 19:58 —Crummey powers
- § 19:59 Estate tax aspects
- § 19:60 Drafting considerations
- § 19:61 —Irrevocable provision
- § 19:62 —Provisions for insurance and qualified plan proceeds

- § 19:63 —Form: sample form to protect against estate tax inclusion
- § 19:64 Life insurance trusts
- § 19:65 Charitable trusts
- § 19:66 Educational and other income shifting trusts
- § 19:67 Introduction to forms
- § 19:68 Form: sample irrevocable life insurance trust
- § 19:69 Form: sample irrevocable family support trust

V. TESTAMENTARY TRUSTS

- § 19:70 In general
- § 19:71 Specific applications

CHAPTER 20. DOMICILE AND AVOIDING ANCILLARY ADMINISTRATIONS

- § 20:1 Scope of chapter
- § 20:2 Concept of domicile
- § 20:3 Elements of domicile
- § 20:4 Change of domicile
- § 20:5 State law considerations relevant to choice of domicile
- § 20:6 —Intestate succession
- § 20:7 —Statutory rights of surviving spouse
- § 20:8 —Validity of will
- § 20:9 —Qualifications of executor and trustee
- § 20:10 State law considerations relevant to choice of domicile Uniform Gifts or Transfers to Minors Acts and durable powers of attorney
- § 20:11 State law considerations relevant to choice of domicile—Estate administrations
- § 20:12 —Validity of marital agreements
- § 20:13 —Community property
- § 20:14 Lifetime tax considerations relevant to choice of domicile
- § 20:15 —Income taxation
- § 20:16 —Real property taxation
- § 20:17 —Gift taxation
- § 20:18 —Income taxation of estates and trusts
- § 20:19 —Timing change of domicile
- § 20:20 Death tax considerations relevant to choice of domicile
- § 20:21 —Types of state death tax
- § 20:22 —Dual domicile and multistate death taxation
- § 20:23 —Uniform Acts on interstate compromise and arbitration of death taxes
- § 20:24 Ancillary administration
- § 20:25 —Avoidance of ancillary administrations
- § 20:26 —Summary and ancillary procedures
- § 20:27 —Probate avoidance

CHAPTER 21. TESTAMENTARY TRANSFERS TO A SURVIVING SPOUSE

- § 21:1 Scope of chapter

I. OVERVIEW

- § 21:2 History of tax treatment of marital transfers
- § 21:3 General tax considerations
- § 21:4 Other considerations

II. FORM OF TRANSFER AND AMOUNT OF TRANSFER

- § 21:5 In general
- § 21:6 Probate transfers
- § 21:7 Nonprobate transfers
- § 21:8 Amount of deduction

III. BASIC REQUIREMENTS FOR DEDUCTION

- § 21:9 In general
- § 21:10 Limitations on marital deduction where surviving spouse is not citizen
- § 21:11 Marital relationship
- § 21:12 Interest must pass from decedent to surviving spouse
- § 21:13 Interest must be deductible
- § 21:14 Other limitations

IV. TERMINABLE INTEREST RULE

- § 21:15 In general
- § 21:16 Types of terminable interests
- § 21:17 Prohibition against purchase by personal representative
- § 21:18 Tainted asset rule

V. EXCEPTIONS TO TERMINABLE INTEREST RULE

- § 21:19 In general
- § 21:20 Survivorship and common disaster provisions
- § 21:21 —Presumption incorporated in will
- § 21:22 —Presumption under local law
- § 21:23 —Use of “reverse presumption” clause
- § 21:24 —Form: sample reverse presumption and equalization clauses
- § 21:25 Use of survivorship clauses
- § 21:26 —Form: sample survivorship clauses
- § 21:27 Use of clause for spouses with nearly equal estates
- § 21:28 —Form: sample clause for spouses with nearly equal estates
- § 21:29 Life estate with general power of appointment
- § 21:30 —Form: sample language for life estate with general power of appointment
- § 21:31 —Specific portion limitation
- § 21:32 —Qualification for deduction
- § 21:33 —Relationship to “entire interest” concept
- § 21:34 —Income interest
- § 21:35 —Trust income during administration
- § 21:36 —Power of appointment
- § 21:37 —Freedom from third party diversion
- § 21:38 Election for life estate in qualified terminable interest property
- § 21:39 —Drafting requirement
- § 21:40 —Election
- § 21:41 —Form: sample language allowing for partial election and severing trust
- § 21:42 —Inclusion in survivor’s estate
- § 21:43 —Section 2519 dispositions
- § 21:44 Insurance proceeds with power of appointment
- § 21:45 Split gifts between spouse and charity
- § 21:46 Estate trusts
- § 21:47 Joint and mutual wills

VI. VALUATION

- § 21:48 In general
- § 21:49 Death taxes; apportionment
- § 21:50 Preresiduary marital bequests with tax payable from residue
- § 21:51 —Form: sample clauses for preresiduary marital bequest and residuary QTIP
- § 21:52 Debts and encumbrances
- § 21:53 Administration expenses
- § 21:54 Service's position on administrative expenses' effect on charitable and marital deductions

VII. FORMULA MARITAL DEDUCTION CLAUSES

- § 21:55 In general
- § 21:56 —Fractional share formula
- § 21:57 —Types of fractional formula devises
- § 21:58 —Form: sample form for fractional share formula, QTIP
- § 21:59 —Pecuniary "fairly representative" formula
- § 21:60 —Form: sample form for pecuniary fairly representative formula
- § 21:61 —Pecuniary fixed sum provision
- § 21:62 —Form: sample pecuniary fixed sum provision
- § 21:63 —Advantages of fixed sum devise
- § 21:64 Credit shelter trusts
- § 21:65 —Form: sample form for credit shelter formula
- § 21:66 Planning considerations
- § 21:67 In-kind distributions; impact of Revenue Procedure 64-19

VIII. MISCELLANEOUS ISSUES

- § 21:68 Savings clauses
- § 21:69 Transition rule for old formula marital clauses
- § 21:70 Postmortem planning for marital deduction
- § 21:71 —Election of statutory share
- § 21:72 —Disclaimers
- § 21:73 —Transfer pursuant to court order
- § 21:74 —Salvaging marital deduction
- § 21:75 —Maximizing marital deduction through administrative elections
- § 21:76 —Practical considerations

CHAPTER 22. LIFE INSURANCE PLANNING

- § 22:1 Scope of chapter

I. IN GENERAL

- § 22:2 Overview

II. TAXATION OF LIFE INSURANCE POLICIES

- § 22:3 Income taxation—In general
- § 22:4 —Demutualization
- § 22:5 —"Private Placement" life insurance
- § 22:6 —Transfer for value rules
- § 22:7 —Exceptions to transfer for value rules
- § 22:8 —Tax free exchanges, surrenders and sales of insurance policies
- § 22:9 —Adding long-term care coverage to an annuity
- § 22:10 Gift tax consequences—In general
- § 22:11 —Creation of present interest: Crummey powers

TABLE OF CONTENTS

- § 22:12 Estate taxation—In general
- § 22:13 —Payments to or for benefit of estate
- § 22:14 —Incidents of ownership
- § 22:15 —Transfers of ownership within three years of death
- § 22:16 —Payment of premium by insured or transferee

III. WHO SHOULD BE OWNER AND BENEFICIARY OF POLICY

- § 22:17 In general
- § 22:18 Ownership by insured
- § 22:19 Ownership by spouse or other family member
- § 22:20 Ownership by corporation when insured is majority stockholder
- § 22:21 Ownership by inter vivos trust or creation of testamentary trust to receive proceeds
- § 22:22 —Form: sample language for testamentary insurance trust
- § 22:23 Ownership by insured as trustee
- § 22:24 Tax results and liquidity needs regarding ownership

IV. IRREVOCABLE LIFE INSURANCE TRUST

- § 22:25 In general
- § 22:26 Formal requirements for creating
- § 22:27 ILITS and “super” trusts
- § 22:28 Estate tax consequences of ILITS
- § 22:29 —Deemed transfers of insurance policies
- § 22:30 Grantor trust provisions
- § 22:31 Special power of appointment
- § 22:32 Transactions with grantor’s estate for solving liquidity problem
- § 22:33 —Form: sample language that solves liquidity problem and avoids inclusion in estate

CHAPTER 23. PLANNING FOR CLOSELY HELD BUSINESSES

- § 23:1 Scope of chapter

I. OVERVIEW

- § 23:2 Integrating business and estate plans
- § 23:3 Estate liquidity
- § 23:4 Control and ownership
- § 23:5 Assessing the closely held business

II. LIQUIDITY PLANNING: “THE INTEREST RETAINED”

- § 23:6 Sources of liquidity—In general
- § 23:7 The business as source of liquidity
- § 23:8 —The sole proprietorship
- § 23:9 —Partnership or limited partnership
- § 23:10 — —Section 751 property
- § 23:11 —Corporation
- § 23:12 — —Corporate redemptions: Section 302
- § 23:13 — —Corporate redemptions to pay death taxes: Section 303
- § 23:14 — —Redemption of 306 stock
- § 23:15 —Deferral of estate tax liability: Section 6166

III. CONTROL AND OWNERSHIP

- § 23:16 Restructuring the business: In general
- § 23:17 Creation of minority discounts

- § 23:18 —Multiple classes of ownership or control
- § 23:19 —Sole proprietorship
- § 23:20 —Partnerships or limited partnerships
- § 23:21 —Corporations
- § 23:22 Puts, options and similar devices
- § 23:23 Debt vs. equity ownership
- § 23:24 Equalizing devises to other beneficiaries

IV. BUY/SELL AGREEMENTS: “THE INTEREST DIVESTED”

- § 23:25 In general
- § 23:26 Objective
- § 23:27 Corporate buy/sell agreement
- § 23:28 —Estate’s obligation to sell
- § 23:29 —Establishing value
- § 23:30 —Restraints on lifetime transfers
- § 23:31 —Bona fide business arrangements
- § 23:32 Drafting corporate buy/sell agreement
- § 23:33 —Entity purchase vs. cross purchase
- § 23:34 —General business considerations
- § 23:35 —Voting agreements within buy/sell
- § 23:36 Partnership buy/sell
- § 23:37 Funding purchase

V. PLANNING FOR THE S CORPORATION

- § 23:38 In general
- § 23:39 Transferring S corporation stock
- § 23:40 QSSTs and QTIPs
- § 23:41 S corporation buy/sell agreement

VI. FORMS

- § 23:42 Business plan checklist
- § 23:43 Corporate resolution adopting redemption agreement
- § 23:44 Sample corporate stock redemption agreement
- § 23:45 Sample shareholder-cross-purchase agreement
- § 23:46 Sample qualifying S trust article
- § 23:47 Trust or will provision concerning ownership of subchapter S corporate stock

CHAPTER 23A. *[Reserved]*

CHAPTER 24. TESTAMENTARY CHARITABLE PLANNING

- § 24:1 Scope of chapter

I. OVERVIEW

- § 24:2 Introduction to charitable giving for estate
- § 24:3 Contrast with income tax charitable giving
- § 24:4 The statutory scheme of estate and gift tax deduction
- § 24:5 Qualifying charities
- § 24:6 Basis of deduction
- § 24:7 —Transfers by decedent
- § 24:8 —Effect of will contests, compromises, etc
- § 24:9 —Passage by power of appointment

TABLE OF CONTENTS

- § 24:10 —Passage to charity
- § 24:11 — —Effect of power to consume
- § 24:12 — —Preserving deduction through disclaimers
- § 24:13 —Reducing deduction by death taxes payable
- § 24:14 —Limitation on deduction
- § 24:15 —Disqualification of deduction

II. GIFTS OF PARTIAL INTEREST

- § 24:16 In general
- § 24:17 Remainder interest in farm or personal residence
- § 24:18 Undivided portion of entire interest
- § 24:19 Qualified conservation contributions (easements)
- § 24:20 Charitable remainder trusts
- § 24:21 —Benefits of estate tax deduction
- § 24:22 —Partial deduction for settlement of defective remainder trust
- § 24:23 — —Drafting for use of disclaimer
- § 24:24 —Combining remainder trust with marital gifts
- § 24:25 Pooled income funds
- § 24:26 Charitable lead trusts
- § 24:27 Reformation of defective partial interests
- § 24:28 Copyrights and works of art as separate property

III. SPECIAL PROBLEMS

- § 24:29 Charitable giving and marital deduction
- § 24:30 Bequests of life insurance
- § 24:31 Income in respect of decedent
- § 24:32 Charitable pledges, subscriptions, etc
- § 24:33 Use of private foundations
- § 24:34 Interrelated calculations
- § 24:35 Generation-skipping transfer tax
- § 24:36 Forms

CHAPTER 25. PLANNING FOR DISPOSITION OF TAX SHELTER INVESTMENTS

- § 25:1 Scope of chapter
- § 25:2 Anatomy of tax shelter investments before and after Tax Reform Act of 1986
- § 25:3 Rental Haven, Ltd—Hypothetical real estate limited partnership
- § 25:4 Basic tax and accounting concepts
- § 25:5 Inter vivos transfer of tax shelter investments
- § 25:6 —Sale of partnership interest
- § 25:7 —Gift of partnership interest to individual or charity
- § 25:8 —Transfer of partnership interest to trust
- § 25:9 Tax treatment on death of investor—Stepped up outside basis (I.R.C. § 1014(a))
- § 25:10 Step up inside basis: section 754 election
- § 25:11 —Tax consequences of section 754 election on sale of partnership assets
- § 25:12 Manner of ownership and other practical considerations
- § 25:13 Planning for transfer of partnership interest at death
- § 25:14 Postmortem income tax consideration
- § 25:15 Valuation and sale of tax shelter investments

CHAPTER 26. THE GENERATION-SKIPPING TRANSFER TAX

- § 26:1 Scope of chapter

I. INTRODUCTION

- § 26:2 Background
- § 26:3 Abbreviations and terminology

II. TAXABLE EVENTS

- § 26:4 In general
- § 26:5 Transferor
- § 26:6 Generation assignment
- § 26:7 Skip person, nonskip person, interest
- § 26:8 Taxable termination (including separate share and disregarded interest rules)
- § 26:9 Taxable distributions
- § 26:10 Direct skip

III. GST EXEMPTION AND RATE OF TAX

- § 26:11 Exemption, applicable fraction, inclusion ratio, applicable rate
- § 26:12 Special GST QTIP election

IV. STATUTORY EXCEPTIONS APPLICABLE TO OTHERWISE TAXABLE EVENTS

- § 26:13 In general
- § 26:14 Transfers subject to gift or estate tax in first generation
- § 26:15 Nontaxable gifts
- § 26:16 Prior transfers exclusion
- § 26:17 Charitable interests
- § 26:18 Grandchild exclusion
- § 26:19 Predeceased child rule
- § 26:20 Multiple skips; transferor “move-down” rule

V. CALCULATION AND PAYMENT OF TAX; DEDUCTION AND CREDITS; LIABILITY FOR TAX

- § 26:21 Tax rate; taxable amount; deductions; personal liability
- § 26:22 State death tax credit
- § 26:23 Valuation; consideration
- § 26:24 Apportionment

VI. EFFECTIVE DATE RULES

- § 26:25 In general
- § 26:26 Irrevocable trusts
- § 26:27 Transition rule where death occurs before January 1, 1987
- § 26:28 Inter vivos transfers after September 25, 1985
- § 26:29 Mental disability
- § 26:30 Additions
- § 26:31 —Additions through powers
- § 26:32 —QTIP trusts
- § 26:33 —Other additions

VII. RETURNS AND ADMINISTRATION

- § 26:34 Returns
- § 26:35 Administration

VIII. MISCELLANEOUS PROVISIONS

- § 26:36 Nonresident aliens
- § 26:37 Disclaimers

IX. COORDINATION WITH GIFT, ESTATE AND INCOME TAXES

- § 26:38 In general
- § 26:39 Previously taxed property credit—Section 2013
- § 26:40 Extension of time to pay—Section 6166
- § 26:41 Redemption of stock—Section 303
- § 26:42 Basis
- § 26:43 Income tax

X. PLANNING SUGGESTIONS

- § 26:44 Utilizing each spouse's GST exemption
- § 26:45 Creating separate exempt and nonexempt trusts rather than partially exempt trusts
- § 26:46 Structuring trusts so that estate or gift tax can be substituted for generation-skipping tax
- § 26:47 Giving spouse and children limited powers of appointment
- § 26:48 Using gift tax annual exclusion to avoid generation-skipping tax
- § 26:49 "Leveraging" use of GST exemption
- § 26:50 Considering "nonskip person trust" for grandchild as form of layering
- § 26:51 Giving children mandatory income interests and 5&5 powers to mitigate effect of untimely death
- § 26:52 Preserving grandfathered trusts
- § 26:53 Form: authorization to executor to allocate GST exemption
- § 26:54 Form: power to divide trust with inclusion ratio of more than zero and less than one
- § 26:55 Form: authorization to create separate trusts for GST purposes
- § 26:56 Form: use of GST exemption on first spouse's death
- § 26:57 Form: use of surviving spouse's GST exemption
- § 26:58 Form: provision authorizing trustee to confer general power on child
- § 26:59 Form: provision for insertion after direction in QTIP to pay taxes on spouse's death

CHAPTER 27. ENTITY FREEZING AND FAMILY PARTNERSHIPS

- § 27:01 Scope of Chapter

I. INTRODUCTION

- § 27:02 Background
- § 27:03 Prologue—Section 2036(c)
- § 27:04 Chapter 14 Overview
- § 27:05 Types of Freezes
- § 27:06 —Leveraged Gifts as Freezes
- § 27:07 —The Historic Entity Recapitalization
- § 27:08 —Post-Mortem Freezes
- § 27:09 Choice of Entity
- § 27:10 Basic Structure of Entity Freezes: The Corporate Freeze
- § 27:11 Partnership Freezes
- § 27:12 Business Purpose and Devices

II. GRATUITOUS TRANSFER TAX PRINCIPLES AFFECTING ESTATE

- § 27:13 The Taxable Estate
- § 27:14 Taxable Gifts and Gift Taxes Payable
- § 27:15 Property in Which Decedent Had Interest (I.R.C. § 2033)

- § 27:16 Interests Lapsing at Death
- § 27:17 The String Provisions
- § 27:18 —Retained Rights to Income, Possession, or Enjoyment (I.R.C. § 2036)
- § 27:19 —Retention of Right To Vote Transferred Equity Interests (I.R.C. § 2036(b)) and Byrum
- § 27:20 —Continued Viability of Byrum
- § 27:21 —Alterable Transfers (I.R.C. § 2038)
- § 27:22 —Adverse Interest to Retained Powers
- § 27:23 —Consideration in Money or Money's Worth—Section 2043
- § 27:24 Transfers to Persons Possessing Limited Funds

III. VALUATION AND THE IMPACT OF CHAPTER 14

- § 27:25 General Entity Valuation Principles
- § 27:26 Attribute that Affect the Valuation of Interests in Business Entities
- § 27:27 Valuation of Qualified Family-Owned Business Interests *[Reserved]*
- § 27:28 Historic Valuation of Entity Freezes
- § 27:28.10 —Stated Yield
- § 27:28.20 —Dividend Coverage
- § 27:28.30 —Liquidation Coverage
- § 27:28.40 —Voting Rights
- § 27:28.50 —Other Factors
- § 27:29 Entity Freezes Under Section 2701
- § 27:29.10 —Lower of Value Rule
- § 27:29.20 —Minimum Value Rule
- § 27:29.30 —Regulations and the “Subtraction Method” of Valuation
- § 27:29.40 —Exceptions to Section 2701 Application
- § 27:29.50 —Compounding Rule and Elections
- § 27:30 Direct Valuation Manipulations Effected by Devices—Section 2703
- § 27:31 Liquidation Value—Section 2704
- § 27:31.10 —Lapses of Liquidation and Voting Rights
- § 27:31.20 —Applicable Restrictions on the Right to Liquidate—Section 2704(b)
- § 27:31.30 —Applicable State Law Default Rules

IV. THE SELECTION AND DESIGN PROCESS

- § 27:32 Generally
- § 27:33 Keep it Simple—Are Gifts or Other Strategies Sufficient?
- § 27:34 Is the Timing Right?
- § 27:35 Are the Facts Right?
- § 27:36 The Design Process

V. FAMILY CONTROLLED CORPORATIONS AND FREEZES

- § 27:37 Corporate Recapitalizations and Tax Distributions of Stock
- § 27:38 Business Purpose Requirements
- § 27:39 Continuity Requirements
- § 27:40 Plan of Reorganization Requirements
- § 27:41 Step Transaction
- § 27:42 Loss of “S” Election
- § 27:43 Income Tax Issues Apart from Recapitalization
- § 27:44 Section 305 Stock
- § 27:45 —Exceptions to Nonrecognition Treatment
- § 27:46 —Distributions in Lieu of Money—Section 305(b)(1)
- § 27:47 —Disproportionate Distributions—Section 305(b)(2)
- § 27:48 —Distributions of Common and Preferred Stock—Section 305(b)(3)

TABLE OF CONTENTS

§ 27:49	—Distribution on Preferred Stock—Section 305(b)(4)
§ 27:50	—Distributions of Convertible Preferred Stock—Section 305(b)(5)
§ 27:51	—Imputed Distribution of Stock—Section 305(c)
§ 27:52	—Effect of Excess Redemption Premium
§ 27:53	—Application of Section 305 to Typical Estate Freeze Recapitalization
§ 27:54	—Effect of Conversion Privilege
§ 27:55	Section 306 Stock and Redemptions
§ 27:56	Holding Company Issues
§ 27:57	Tax-Free Formation
§ 27:58	Buying “Frozen” Generation Out of Corporation
§ 27:59	Payment of Estate Taxes

VI. FAMILY CONTROLLED PARTNERSHIPS AND FREEZES

§ 27:60	In General
§ 27:61	Structure of Partnership Freeze
§ 27:62	Overview of Partnership Uses and Benefits
§ 27:63	Income Tax Planning
§ 27:64	Gifting
§ 27:65	Business, Management, and Control
§ 27:66	Death Tax Reduction
§ 27:67	State Tax Avoidance
§ 27:68	Asset Protection
§ 27:69	Organization
§ 27:70	General Income Tax Principles
§ 27:71	Partnership Recognition
§ 27:72	The Family Limited Partnership Income Tax Regulations—Section 704(e)
§ 27:73	Partner Recognition
§ 27:73.10	—Retained Direct and Indirect Controls—Regulation § 1.704-1(e)(2)(ii)
§ 27:73.20	—Participation in Management
§ 27:73.30	—Income Distributions
§ 27:73.40	—Conduct of Business
§ 27:73.50	—Summary
§ 27:74	Minors as Partners
§ 27:75	Trusts as Partners
§ 27:76	Gifts of Partnership Interests
§ 27:77	—Completion of Gift
§ 27:78	—Future Interest Gifts
§ 27:79	—Income Tax Issues Related to Gifts of Partnership Interests
§ 27:80	Capitalization
§ 27:81	—General Nonrecognition Rule for Contributions of Property—Section 721(a)
§ 27:82	—Characterization as an Investment Company—Section 721(b)
§ 27:83	—Disguised Sales
§ 27:84	Distributions and Liquidation
§ 27:85	Distribution of Marketable Securities
§ 27:86	Death of a Partner
§ 27:87	—Year of Death Distributive Share
§ 27:88	—Loss Carryovers and Suspended Passive Losses
§ 27:89	—Income in Respect of a Decedent
§ 27:90	—Basis of Partnership Interest and Partnership Assets
§ 27:91	Fiduciary Accounting Considerations and Conflicts
§ 27:92	—Partnership Distributions as Fiduciary Receipts
§ 27:93	Estate Tax Allocations
§ 27:94	Impact of Chapter 14

- § 27:95 —Section 2701
- § 27:96 —Section 2702
- § 27:97 —Section 2703
- § 27:98 —Section 2704
- § 27:99 Asset Protection
- § 27:100 —Charging Orders
- § 27:101 —Effect of Charging Order; Distinction Between General Partnership and Limited Partnership
- § 27:102 —Tax Consequences of Charging Order

VII. PARTNERSHIP FREEZES AND OTHER HYBRID USES OF FAMILY PARTNERSHIPS

- § 27:103 Use With Life Insurance
- § 27:104 —Background and General Rules
- § 27:105 —Ownership of Life Insurance by Family Partnerships
- § 27:106 —Transfers Used to Fund Life Insurance Premiums
- § 27:107 Reverse Freezes
- § 27:108 Intergration With Split Interest Transfers

VIII. FAMILY SUCCESSION PLANNING CONSIDERATIONS

- § 27:109 Management Continuity
- § 27:110 Providing for the Surviving Spouse
- § 27:111 Providing for Children Who are Not in the Business

IX. FORMS

- § 27:112 General
- § 27:113 Certificate of Limited Partnership of [Partnership Name]
- § 27:114 [Partnership Name] Agreement of Limited Partnership
- § 27:115 Exchange Agreement and Amendment of Limited Partnership Creating Preferred and Common Limited Partnership Interests
- § 27:116 Minutes of [Partnership Name] Concerning Plan of Operation and Commencement Of Operations
- § 27:117 Minutes of [Name] Concerning Plan of Operation
- § 27:118 IRS Request For Information—Estate Tax Examination of Limited Partnership Interest
- § 27:119 Articles of Amendment of [Corporation]
- § 27:120 Plan and Agreement of Recapitalization
- § 27:121 Joint Action of Shareholders and Directors Without a Meeting

CHAPTER 28. VALUE-SHIFTING TECHNIQUES

- § 28:1 Scope of chapter
- § 28:2 General considerations

I. GRANTOR RETAINED INCOME TRUST; QUALIFIED PERSONAL RESIDENCE TRUST

- § 28:3 Generally
- § 28:4 Transfer tax consequences
- § 28:5 Income tax consequences
- § 28:6 When to consider using a GRIT
- § 28:7 Requirements for a GRIT holding a personal residence (a “QPRT”)
- § 28:8 Retaining use of the residence transferred to a QPRT
- § 28:9 Control of the residence and allocation of expenses during the QPRT term

TABLE OF CONTENTS

- § 28:10 Generation-skipping with GRITs
- § 28:11 Planning to reduce mortality risk
- § 28:12 Form: GRIT for personal residence (“QPRT”)

II. GRANTOR RETAINED ANNUITY TRUST AND UNITRUST

- § 28:13 Generally
- § 28:14 Transfer tax benefits
- § 28:15 Income tax treatment
- § 28:16 When to consider using a GRAT
- § 28:17 Issues with respect to valuing the annuity
- § 28:18 GRAT with a contingent spousal annuity
- § 28:19 Using borrowed funds for annuity payments
- § 28:20 Grantor Retained Unitrust
- § 28:21 Form: Grantor Retained Annuity Trust
- § 28:22 Form: Alternate provisions for GRUT

III. JOINT PURCHASE AND SALE OF REMAINDER INTEREST

- § 28:23 Generally; Transfer tax consequences
- § 28:24 Impact of tax legislation
- § 28:25 Case law developments and possible responses

CHAPTER 29. OTHER ASSET FREEZES

- § 29:01 Scope of Chapter

I. OUTRIGHT GIFT

- § 29:02 In General
- § 29:03 Benefit of Paying Gift Tax
- § 29:04 Selection of Assets for a Gift
- § 29:05 Basis Considerations
- § 29:06 Use of GRIT To Minimize Risk of Death Within Three Years

II. INSTALLMENT SALES

- § 29:07 In General
- § 29:08 Income Tax Consequences of Initial Sale
- § 29:09 —Disposition of Installment Obligation
- § 29:10 —Income Tax Consequences of Testamentary and Donative Dispositions
- § 29:11 —Special Rule: Sale of Depreciable Property to Related Person
- § 29:12 Intrafamily Installment Sales: Second Disposition
- § 29:13 Disallowance of Loss Deduction
- § 29:14 —Imputed Interest
- § 29:15 —Other Limitation on Use of Installment Sales Method
- § 29:16 Estate Planning Problems
- § 29:17 —Additional Estate Planning Issues: Self-Cancelling Installment Obligations
- § 29:18 —Drafting Cancellation Provision

III. INSTALLMENT SALES TO GRANTOR TRUSTS

- § 29:19 In General
- § 29:20 Summary of the Technique
- § 29:21 Transfer Tax Benefits
- § 29:22 Non-Tax Benefits
- § 29:23 Income Tax Considerations

- § 29:24 —Revenue Ruling 85-13
- § 29:25 —Achieving Grantor Trust Treatment
- § 29:26 —Taxation of Income During Grantor's Life
- § 29:27 —Taxation Upon Grantor's Death
- § 29:28 —Income Tax Reporting/Adequate Disclosure
- § 29:29 Gift Tax Considerations
- § 29:30 —Payment of Income Taxes on Trust's Earnings
- § 29:31 —Gift Tax Reporting/Adequate Disclosure
- § 29:32 Estate Tax Considerations
- § 29:33 Generation Skipping Transfer Tax Considerations
- § 29:34 Additional Issues in Structure of Transaction
- § 29:35 Comparison to a GRAT
- § 29:36 Sample Trust

IV. PRIVATE ANNUITIES

- § 29:37 In General
- § 29:38 Structuring the Annuity
- § 29:39 Income Tax Consequences
- § 29:40 —Tax Treatment of Annuitant
- § 29:41 —Tax Treatment of Obligor
- § 29:42 —Security Arrangements
- § 29:43 Stock Redemption for Private Annuity
- § 29:44 Gift and Estate Tax Issues
- § 29:45 —Effect of Section 2702

V. BARGAIN SALES

- § 29:46 Bargain Sales as an Asset Freezing Device
- § 29:47 Basic Mechanics of Bargain Sales

VI. FORMS

- § 29:48 Form: Installment Sale Agreement and Installment Note
- § 29:49 Form: Private Annuity Agreement

VII. COMPARISON OF FREEZE TECHNIQUES

- § 29:50 Comparative Chart

CHAPTER 30. SELECTION OF FIDUCIARY

- § 30:1 Scope of Chapter

I. OVERVIEW

- § 30:2 In General

II. TYPES OF FIDUCIARIES—DESCRIPTION OF DUTIES

- § 30:3 Guardian of Person
- § 30:4 Guardian of Property
- § 30:5 Attorney-in-Fact Under Durable Power of Attorney
- § 30:6 Custodian Under Uniform Gifts (Transfers) to Minors Act
- § 30:7 Trustee
- § 30:8 Personal Representative of Decedent's Estate

III. QUALIFICATION REQUIREMENTS

- § 30:9 Individuals

TABLE OF CONTENTS

- § 30:10 —Residency
- § 30:11 —Relationship
- § 30:12 —Bond and Surety
- § 30:13 —Miscellaneous
- § 30:14 Corporations
- § 30:15 —“Doing Business” Requirements
- § 30:16 Nonresident Fiduciary Table
- § 30:17 Planning Suggestions
- § 30:18 —Form: Authorization To Appoint Personal Representatives for Ancillary Administration

IV. TAX IMPACT OF FIDUCIARY SELECTION

- § 30:19 In General
- § 30:20 Guardian of Property/Custodian Under Uniform Act
- § 30:21 —Parents/Individuals with Support Obligations
- § 30:22 Personal Representative
- § 30:23 Trustee
- § 30:24 —Grantor Trust Rules
- § 30:25 —Estate and Gift Taxes
- § 30:26 — —Grantor/Spouse Trustees
- § 30:27 — —Parent Trustees
- § 30:28 — —Related or Subordinate Party Trustees
- § 30:29 — —Beneficiary Trustees
- § 30:30 — —Independent Trustees
- § 30:31 — —Cotrustees and Advisers
- § 30:32 —Planning Suggestions
- § 30:33 — —Tax Impact of Power To Remove Trustee
- § 30:34 —Drafting Suggestions
- § 30:35 — —Form for Multiple Trustees
- § 30:36 — —Form for Investment Adviser
- § 30:37 — —Form for Resignation and Removal of Trustee

V. CHOICE OF LAW RULES AND SELECTION OF FIDUCIARY

- § 30:38 Overview of Relevant Conflicts of Law Rules
- § 30:39 —Estates
- § 30:40 —Testamentary Trusts
- § 30:41 —Inter Vivos Trusts
- § 30:42 Planning Suggestions
- § 30:43 Drafting Suggestions
- § 30:44 —Form for Governing Law/Change of Trust Situs

VI. COMPENSATION OF FIDUCIARIES

- § 30:45 In General
- § 30:46 Fee Schedules of Corporate Fiduciaries
- § 30:47 —Hidden Charges
- § 30:48 Compensation of Individual Fiduciaries
- § 30:49 —Hidden Costs
- § 30:50 Drafting Suggestions
- § 30:51 —Form for Compensation of Corporate Fiduciary
- § 30:52 —Form for Compensation of Individual Fiduciary
- § 30:53 —Form for Compensation of Corporate and Individual Fiduciaries

VII. PRACTICAL CONSIDERATIONS

- § 30:54 Individual vs. Corporate Fiduciaries

- § 30:55 Related vs. Unrelated Individual Fiduciaries
- § 30:56 Single vs. Multiple Fiduciaries
- § 30:57 Local vs. Remote Fiduciaries
- § 30:58 Cotrustees vs. Advisers

CHAPTER 31. PLANNING WHEN DEATH IS IMMINENT

- § 31:01 Scope of Chapter

I. NONTAX CONSIDERATIONS

- § 31:02 In General
- § 31:03 Psychological Factors
- § 31:04 Determining Extent and Location of Assets
- § 31:05 Confirming Identity of Advisors
- § 31:06 Executing Power of Attorney
- § 31:07 Executing Living Will
- § 31:08 Confirming Funeral and Burial Arrangements
- § 31:09 Anticipating Disgruntled Beneficiaries
- § 31:10 Review of Existing Powers of Appointment
- § 31:11 —Form: Exercise of Power of Appointment

II. THE WILL

- § 31:12 In General
- § 31:13 Determining Location and Access
- § 31:14 Review and Revision of Wills and/or Trusts
- § 31:15 —Redrafting for Changed Circumstances
- § 31:16 —Specific Devises
- § 31:17 —Special Provisions for Physicians' Wills
- § 31:18 —Review of Fiduciary Appointments
- § 31:18.50 —Review Citizenship Status of Client and Client's Spouse

III. FACILITATING ADMINISTRATION OF ESTATE

- § 31:19 In General
- § 31:20 Determining Domicile
- § 31:21 Avoiding Ancillary Administration
- § 31:22 Determining Existence of Marital Agreements
- § 31:23 Disclaimer of Interest of Client
- § 31:24 Disposition of Certain Assets
- § 31:25 Use of Living Trusts
- § 31:26 Review of Existing Litigation
- § 31:27 Determining Liquidity

IV. FIDUCIARY RELATIONS

- § 31:28 In General
- § 31:29 Review of Fiduciaries Named in Client's Will
- § 31:30 Review of Custodial Property
- § 31:31 Client's Resignation as Fiduciary
- § 31:32 —Notification of Fiduciaries Under Other Instruments

V. ESTATE TAX PLANNING

- § 31:33 In General
- § 31:34 *[Reserved]*

TABLE OF CONTENTS

- § 31:35 Placing Restrictions on Property To Reduce Estate Tax Value
- § 31:36 Joint Property
- § 31:37 Previously Taxed Property (PTP) Credit
- § 31:38 Increasing Liquidity of Estate Composed Primarily of Farm or Business
- § 31:39 Funding of Unified Credit
- § 31:40 Use of Private Annuity
- § 31:41 Payment of Debts

VI. USE OF GIFTS

- § 31:42 In General
- § 31:43 Annual Exclusion Gifts
- § 31:44 —Split Gifts
- § 31:45 Gifts in Excess of Annual Exclusion
- § 31:46 —Gifts To Achieve Minority Ownership Status
- § 31:47 Effect of State Gift Taxes
- § 31:48 Current Gift Tax Returns
- § 31:49 Charitable Gifts
- § 31:50 Basis Considerations for Gifts
- § 31:51 —Elements of Gifts

VII. INCOME TAX PLANNING

- § 31:52 In General
- § 31:53 Use of Charitable Gifts
- § 31:54 —Double Deduction
- § 31:55 —Split-Interest Gifts
- § 31:56 “Gain” Property
- § 31:57 “Loss” Property
- § 31:58 Net Operating Losses
- § 31:59 Income in Respect of a Decedent
- § 31:60 Current Income Tax Returns

VIII. PLANNING FOR SPECIFIC ASSETS

- § 31:61 In General
- § 31:62 Insurance
- § 31:63 Employee Benefits
- § 31:64 Closely Held Business
- § 31:65 —Management
- § 31:66 —Ability of Executor To Carry On Business
- § 31:67 —Transfer of Ownership
- § 31:68 —Buy-Sell Agreement
- § 31:69 —Stock Redemption Under I.R.C. Section 302
- § 31:70 —Salary Continuation Agreement for Spouse
- § 31:71 —Valuation
- § 31:72 S Corporations
- § 31:73 Form: Power To Incorporate as S Corporation
- § 31:74 Partnerships
- § 31:75 Sole Proprietorship
- § 31:76 Beneficial Interest in Trust
- § 31:77 Passive Loss Activities
- § 31:78 *[Reserved]*
- § 31:79 Unusual Assets
- § 31:80 Property Subject to Environmental Hazards

Volume 3

PART IV. PLANNING AFTER DEATH

CHAPTER 32. OVERVIEW OF INCOME TAXATION OF ESTATES AND TRUSTS

§ 32:1 Scope of chapter

I. OVERVIEW

- § 32:2 Basic concepts of Subchapter J
- § 32:3 —Distributable Net Income (DNI)
- § 32:4 —Fiduciary Accounting Income Versus Taxable Income
- § 32:5 Entities subject to Subchapter J
- § 32:6 —Trusts
- § 32:7 — —Simple trusts
- § 32:8 — —Complex trusts
- § 32:9 —Estates
- § 32:10 Entities not subject to Subchapter J

II. INCOME ITEMS OF ESTATES AND TRUSTS

- § 32:11 In general
- § 32:12 Real property income
- § 32:13 Personal property income
- § 32:14 Capital gains and losses
- § 32:15 —Holding period
- § 32:16 —Sales within two years of transfer

III. DEDUCTIONS OF ESTATES AND TRUSTS

- § 32:17 In general
- § 32:18 Distribution deduction
- § 32:19 Personal exemption
- § 32:20 Other deductions
- § 32:21 —Business expenses
- § 32:22 —Interest
- § 32:23 —Taxes
- § 32:24 —Charitable deduction
- § 32:25 —Losses
- § 32:26 —Depreciation and depletion
- § 32:27 —Expenses for production of income
- § 32:28 —Deduction for estate taxes
- § 32:29 — —Example
- § 32:30 —2% limitation for miscellaneous itemized deductions
- § 32:31 Expenses and interest relating to tax-exempt income
- § 32:32 Election between estate and income tax deduction
- § 32:33 Unused loss carryovers and excess deductions on termination
- § 32:34 Tax credits

IV. DISTRIBUTIONS TO BENEFICIARIES

- § 32:35 In general
- § 32:36 Specific gifts

TABLE OF CONTENTS

- § 32:37 Distributions included in income
- § 32:38 —Character of amounts distributed
- § 32:39 —Tier system
- § 32:40 Distributions in-kind
- § 32:41 —Basis of property to beneficiary
- § 32:42 —Gain or loss on in-kind distributions
- § 32:43 — —Section 643(e) election
- § 32:44 — —Other gain or loss
- § 32:45 —To fund marital bequest
- § 32:46 Distributions from qualified plans

V. INCOME AND DEDUCTIONS IN RESPECT OF DECEDENT (IRD AND DRD)

- § 32:47 In general
- § 32:48 Elements of IRD
- § 32:49 Examples of IRD
- § 32:50 Characterization of IRD
- § 32:51 —Death benefits
- § 32:52 —Partnership income
- § 32:53 Acceleration of tax
- § 32:54 Deductions in respect of decedent
- § 32:55 Planning opportunities

VI. THROWBACK RULES

- § 32:56 In general
- § 32:57 Distributions subject to throwback rules
- § 32:58 Exceptions

VII. GRANTOR TRUST RULES

- § 32:59 In general
- § 32:60 Grantor treated as owner
- § 32:61 Third party treated as substantial owner
- § 32:62 Foreign trusts
- § 32:63 Domicile

VIII. MISCELLANEOUS CONSIDERATIONS

- § 32:64 Application of alternative minimum tax
- § 32:65 Estimated tax payments
- § 32:66 Taxable year of trusts and estates
- § 32:67 65-day rule
- § 32:68 Separate share rule
- § 32:69 Treatment of multiple trusts
- § 32:70 Passive activity loss rules—In general
- § 32:71 —Dispositions of PALs at death
- § 32:72 —Rental real estate
- § 32:73 —Disposition by gift
- § 32:74 —Questions facing the fiduciary
- § 32:75 — —Material participation by the estate
- § 32:76 — —Passive activities in the estate
- § 32:77 — —Planning considerations
- § 32:78 — —Passive activity interests in the year of death
- § 32:79 — —Joint returns

- § 32:80 — —Partnership interests
- § 32:81 — —Consolidation of income tax returns for estate and revocable trust
- § 32:82 — —Default statutory reporting requirements
- § 32:83 — —Abbreviated reporting requirements Under IRC § 645
- § 32:84 — —When fiduciaries should make an election

CHAPTER 33. POSTMORTEM ESTATE PLANNING

- § 33:1 Scope of chapter

I. DECEDENT'S FINAL RETURNS

- § 33:2 Final 1040—Generally
- § 33:3 —Filing
- § 33:4 —Unused loss carryforwards (Passive losses, capital losses and NOLs)
- § 33:5 —Estimated tax payments
- § 33:6 —Medical expenses
- § 33:7 —Accrual of series E and EE bond interest
- § 33:8 —Miscellaneous income tax elections and options
- § 33:9 Final gift tax returns

II. TRANSFER TAX OPTIONS

- § 33:10 Generally
- § 33:11 Use of disclaimers
- § 33:12 Probate elections; Will contests
- § 33:13 Estate tax return elections and options
- § 33:14 —Alternate valuation
- § 33:15 —Special use valuation
- § 33:16 Estate Tax Return Elections and Options—QTIP Election
- § 33:17 —Transactions with ESOPs
- § 33:18 —Extension of time to file return
- § 33:19 —Extension of time for paying estate taxes
- § 33:20 —Miscellaneous estate tax options
- § 33:21 Generation-skipping tax elections
- § 33:22 Portability election

III. INCOME TAX ELECTIONS BY EXECUTOR

- § 33:23 Generally
- § 33:24 Administration expenses and casualty losses
- § 33:25 —Property not subject to claims
- § 33:26 —Waiver of personal representative's fees
- § 33:27 Selection of estate fiscal year
- § 33:28 Selection of Estate Fiscal Year—Estimated Tax Payments
- § 33:29 Selection of estate fiscal year—Excess deductions
- § 33:30 —Unused loss carryovers
- § 33:31 Recognition of gain on distribution of property in-kind
- § 33:32 Other elections or options
- § 33:33 —Making or terminating S election
- § 33:34 —Corporate redemptions
- § 33:35 —Corporate liquidations
- § 33:36 —Partnership basis adjustment
- § 33:37 Other Elections or Options—Employee Plans
- § 33:38 — —\$5,000 Death Benefit
- § 33:39 — —Lump sum distributions from qualified plans

TABLE OF CONTENTS

§ 33:40 Other elections or options—Employee plans—Partial estate tax exclusion

IV. PLANNING FOR DISTRIBUTIONS FROM ESTATE

- § 33:41 Generally
- § 33:42 Timing distributions
- § 33:43 Using distributions to shift taxable income
- § 33:44 Funding specific devises
- § 33:45 Trapping distributions
- § 33:46 Distributions of IRD
- § 33:47 Distribution of installment obligations
- § 33:48 Equitable adjustments

CHAPTER 34. TAX FORMS

§ 34:1 Scope of Chapter

I. FORM 1041: FIDUCIARY INCOME TAX RETURN

A. PRELIMINARY CONSIDERATIONS

- § 34:2 The Return
- § 34:3 Filing Requirements
- § 34:4 —Estates
- § 34:5 —Trusts
- § 34:6 When To File
- § 34:7 Where To File
- § 34:8 Payment of Tax
- § 34:9 Selection of Taxable Year
- § 34:10 Employer Identification Number
- § 34:11 Other General Identifying Information

B. FORM 1041: INCOME OR LOSS OF ESTATE OR TRUST

- § 34:12 Dividends and Interest
- § 34:13 Partnership Income or Loss and Income from Another Estate or Trust
- § 34:14 Net Rent and Royalty Income or Loss
- § 34:15 Net Business or Farm Income or Loss
- § 34:16 Capital Gain or Loss
- § 34:17 Ordinary Gain or Loss
- § 34:18 Other Income

C. FORM 1041: DEDUCTIONS OF ESTATE OR TRUST

- § 34:19 General
- § 34:20 Deductions for Interest and Taxes
- § 34:21 Other Deductions
- § 34:22 Adjusted Total Income (or Loss) and Income Distribution Deduction
- § 34:23 Dividend Exclusion
- § 34:24 Estate and Generation Skipping Transfer Tax Deduction
- § 34:25 Exemption

D. FORM 1041: COMPUTATION OF TAX

- § 34:26 Gross Tax
- § 34:27 Credits
- § 34:28 Recapture of Investment Tax Credit and Alternative Minimum Tax

- § 34:29 Tax Payments
- § 34:30 Balance of Tax Due

E. FORM 1041: SCHEDULES AND OTHER REQUIREMENTS

- § 34:31 Schedule A: Charitable Deduction
- § 34:32 Schedule B: Income Distribution Deduction
- § 34:33 Miscellaneous Requirements
- § 34:34 Tips for Preparers

F. FORM 1041: COMPLETED FORMS

- § 34:35 Sample Form 1041 and Supporting Schedules—Irrevocable Trust
- § 34:36 Form 1041—Blank Form and Instructions
- § 34:37 Allocation of Expenses to Tax-Exempt Interest Income
- § 34:38 Waiver of Estate Deductions

II. FORM 709: THE FEDERAL GIFT AND GENERATION-SKIPPING TRANSFER TAX RETURN

A. OVERVIEW OF GIFT TAX PROVISIONS

- § 34:39 Filing Requirements
- § 34:40 Exclusions
- § 34:41 Split Gifts
- § 34:42 Face of Return
- § 34:43 Schedule A: Computation of Taxable Gifts
- § 34:44 Schedule B: Gifts from Prior Periods

B. FORM 709: DEDUCTIONS

- § 34:45 Charitable Deduction
- § 34:46 Marital Deduction

C. FORM 709: CREDITS

- § 34:47 Unified Credit
- § 34:48 Foreign Gift Tax Credit

D. FORM 709: OVERVIEW OF GENERATION-SKIPPING TRANSFER TAX PROVISIONS

- § 34:49 In General
- § 34:50 Filing Requirements
- § 34:51 GST Exemption
- § 34:52 Grandchild Exclusion
- § 34:53 Split Gifts
- § 34:54 Schedule C: Computation of Generation-Skipping Transfer Tax

E. FORM 709: COMPLETED FORMS

- § 34:55 Completed Sample Form 709—Gift Tax
- § 34:56 Form 709—Generation Skipping Tax
- § 34:57 —Uncompleted form

III. FORM 706: FEDERAL ESTATE TAX RETURN

A. OVERVIEW

- § 34:58 In General

TABLE OF CONTENTS

§ 34:59	Beginning Preparation
§ 34:60	Filing Requirements
§ 34:61	Small Estates
§ 34:62	Page 1 of Return
§ 34:63	—Adjusted Taxable Gifts
§ 34:64	Page 2 of Return
§ 34:65	Page 3 of Return
§ 34:66	—QTIP Property in Surviving Spouse’s Estate
§ 34:67	—Gift Tax Returns
§ 34:68	—Insurance
§ 34:69	—Partnerships, Sole Proprietorships and Close Corporations
§ 34:70	—Lifetime Transfers
§ 34:71	—Trusts
§ 34:72	—Powers of Appointment
§ 34:73	<i>[Reserved]</i>

B. FORM 706: ELECTIONS BY EXECUTOR

§ 34:74	Alternate Valuation
§ 34:75	Special Use Valuation
§ 34:76	QTIP Election
§ 34:77	Installment Payments of Tax
§ 34:78	Postponement for Reversionary Interests
§ 34:79	ESOP Election

C. FORM 706: THE GROSS ESTATE

§ 34:80	Family-Owned Business Interest Deduction
§ 34:81	Qualified Conservation Easement Exclusion
§ 34:82	In General
§ 34:83	Schedules A and A-1: Real Estate and Section 2032A Valuation
§ 34:84	Schedule B: Stocks and Bonds
§ 34:85	Schedule C: Mortgages, Notes and Cash
§ 34:86	Schedule D: Insurance on Decedent’s Life
§ 34:87	Schedule E: Joint Property
§ 34:88	Schedule F: Miscellaneous
§ 34:89	Schedule G: Transfers During Life
§ 34:90	Schedule H: Powers of Appointment
§ 34:91	Schedule I: Annuities

D. FORM 706: DEDUCTIONS

§ 34:92	Schedule U: Qualified Conservation Easement Exclusion
§ 34:93	Schedule J: Funeral and Administrative Expenses
§ 34:94	Schedule K: Debts
§ 34:95	Schedule L: Net Loss During Administration
§ 34:96	Schedule M: Marital Deductions
§ 34:97	Schedule N: ESOP Deduction
§ 34:98	Schedule O: Charitable Deduction

E. FORM 706: CREDITS

§ 34:99	<i>[Reserved]</i>
§ 34:100	Unified Credit
§ 34:101	State Death Tax Credit

- § 34:102 Gift Tax Credit
- § 34:103 Schedule P: Foreign Death Tax Credit
- § 34:104 Schedule Q: Prior Transfer Credit

F. FORM 706: OVERVIEW OF GENERATION-SKIPPING TRANSFER TAX PROVISIONS

- § 34:105 In General
- § 34:106 Schedule R: Computation of Generation-Skipping Transfer Tax
- § 34:107 Filing Requirements
- § 34:108 GST Exemption
- § 34:109 Grandchild Exclusion
- § 34:110 Schedule R-1

G. REPEAL OF TAX ON EXCESS RETIREMENT ACCUMULATIONS

- § 34:111 In General

H. FORM 706: COMPLETED FORMS

- § 34:112 Completed Sample Form 706—Revocable Living Trust
- § 34:113 Form 706: Generation-Skipping Tax
- § 34:114 Form 706—Uncompleted form
- § 34:115 Form 706-QDT: United States Estate Tax Return for Qualified Domestic Trusts

IV. OTHER FORMS

- § 34:116 Form SS-4—Employer Identification Number (“EIN”)
- § 34:117 Form SS-4: Employer Identification Number—Completed Sample Form SS-4
- § 34:118 Blank Form SS-4
- § 34:119 Form 56: Notice of Fiduciary Relationship
- § 34:120 Form 56: Notice of fiduciary relationship—Uncompleted form
- § 34:121 Form 712: Life Insurance Statement
- § 34:122 —Completed Sample Form 712
- § 34:123 Form 712—Uncompleted form
- § 34:124 Form 1310: Refund Due Deceased Taxpayer
- § 34:125 —Uncompleted Sample Form 1310
- § 34:126 Form 7004—Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns (Replaces Forms 2758, etc.)
- § 34:127 Form 7004: Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns
- § 34:128 Form 4768: Extension To File or Pay Estate Tax
- § 34:129 Form 4768: Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes
- § 34:130 Form 4810: Request for Prompt Assessment
- § 34:131 —Completed Sample Form 4810
- § 34:132 Form 5495: Discharge from Personal Liability
- § 34:133 —Completed Sample Form 5495 (Income and Gift Tax)
- § 34:134 —Form Letter for Discharge (Estate Tax)
- § 34:135 Form 2848: Power of Attorney and Declaration of Representative

CHAPTER 35. VALUATION

- § 35:1 Scope of Chapter

I. INTRODUCTION TO VALUATION

- § 35:2 In General

TABLE OF CONTENTS

- § 35:3 Fair Market Value
- § 35:4 Valuation Overstatements
- § 35:5 Valuation Understatements
- § 35:6 Copyrights and Other Intangibles
- § 35:7 Individual Retirement Accounts (IRAs)

II. APPRAISALS

- § 35:8 In General
- § 35:9 Selection of Appraiser

III. TANGIBLE PERSONAL PROPERTY

- § 35:10 In General
- § 35:11 Household and Personal Effects
- § 35:12 Arts Objects and Collectibles
- § 35:13 —Blockage

IV. REAL PROPERTY

- § 35:14 In General
- § 35:15 Investment vs. Noninvestment Properties
- § 35:16 Valuation Methods
 - § 35:17 —Market Data Approach
 - § 35:18 —Investment Value Approach
 - § 35:19 — —Capitalization Rates and Methods
 - § 35:20 —Replacement Cost Approach
- § 35:21 Leaseholds
- § 35:22 Mineral Interests
- § 35:23 Timberland
- § 35:24 Charitable Gifts of Easements
- § 35:25 Special Use Valuation
 - § 35:26 —Formula Method for Valuing Farms
 - § 35:27 —Multiple-Factor Method for Valuing Qualified Real Property

V. MARKETABLE SECURITIES

- § 35:28 In General
- § 35:29 Equity Issues
- § 35:30 Debt Issues
- § 35:31 Investment Companies
- § 35:32 Restricted Securities
- § 35:33 Blockage
- § 35:34 Other Securities

VI. CLOSELY HELD BUSINESS INTERESTS

- § 35:35 In General
- § 35:36 Definition
- § 35:37 Types of Holdings
- § 35:38 Revenue Ruling 59-60
- § 35:39 Valuation Methods
 - § 35:40 —Sales and Exchanges
 - § 35:41 —Comparable Companies
 - § 35:42 —Earnings
 - § 35:43 — —Income Statement Adjustments

- § 35:44 — —Discounted Future Earnings
- § 35:45 — —Price/Earnings of Comparable Publicly Traded Stocks
- § 35:46 — —Capitalization Based on Market Rates of Return
- § 35:47 —Dividends
- § 35:48 —Book Value
- § 35:49 — —Balance Sheet Adjustments
- § 35:50 — —Liquidation Value
- § 35:51 — —Price/Book Value of Comparable Publicly Traded Stocks
- § 35:52 Other Valuation Techniques
- § 35:53 —Weighted Formulas
- § 35:54 —Multiple of Revenues
- § 35:55 —Rules of Thumb
- § 35:56 Intangible Assets
- § 35:57 —Goodwill
- § 35:58 — —Calculation of Excess Earnings
- § 35:59 —Business Intangibles
- § 35:60 —Artistic Intangibles
- § 35:61 —Contractual Properties
- § 35:62 Control Stock
- § 35:63 —Family Attribution
- § 35:64 Buy-Sell Agreements
- § 35:65 Discounts
- § 35:66 —Minority Holding
- § 35:67 —Lack of Marketability
- § 35:68 —Selling Restrictions
- § 35:69 —Key Man
- § 35:70 Preferred Stocks
- § 35:71 Professional Practices
- § 35:72 —Balance Sheet Adjustments
- § 35:73 —Professional and Practice Goodwill
- § 35:74 —Valuation Methods

VII. IRS VALUATION TABLES

- § 35:75 Valuation tables for certain estate assets—In general

CHAPTER 36. LIQUIDITY

- § 36:01 Scope of Chapter

I. GENERAL CONSIDERATIONS

- § 36:02 Postmortem Liquidity Needs
- § 36:03 General Planning To Enhance Estate Liquidity

II. SPECIFIC ALTERNATIVES

- § 36:04 Sale or Lease of Estate Assets
- § 36:05 Loans to Estate
- § 36:06 IRS Approval To Extend Time for Payment of Estate Taxes
- § 36:07 —Reasons IRS Will Approve Extension
- § 36:08 —Application for Extension
- § 36:09 Extension of Time for Payment of Estate Tax Attributable to Reversionary and Remainder Interests
- § 36:10 Installment Payment of Estate Taxes
- § 36:11 —Portion of Estate Taxes That May Be Paid in Installments

TABLE OF CONTENTS

- § 36:12 —Time for Making Payments
- § 36:13 —Interest on Installments
- § 36:14 —Election To Pay Estate Taxes in Installments
- § 36:15 — —Election in Case of Deficiency
- § 36:16 — —Judicial Review of Denial of Section 6166 Benefits
- § 36:17 — —Form: Notice of Election
- § 36:18 — —Form: Protective Notice of Election
- § 36:19 —Election in Case of Overpayment
- § 36:20 —TPT Credit and Section 6166
- § 36:21 —Charitable Deduction and Section 6166
- § 36:22 —Acceleration of Payments
- § 36:23 Redemption To Pay Death Taxes (I.R.C. § 303)
- § 36:24 —Limit on Amount of Distributions Qualifying for Section 303 Redemption
- § 36:25 —Stock That May Be Redeemed
- § 36:26 —Time for Making Redemption
- § 36:27 —Coordination with Section 6166
- § 36:28 —Cautions in Making Section 303 Redemption
- § 36:29 Section 302 Redemption in Postmortem Planning

CHAPTER 37. DISCLAIMERS

- § 37:1 Scope of chapter

I. OVERVIEW

- § 37:2 Generally
- § 37:3 Legislative history
- § 37:4 The statute
- § 37:5 —Writing requirement
- § 37:6 —Timing requirements
- § 37:7 — —Testamentary transfers
- § 37:8 — —Inter vivos transfers
- § 37:9 — —Jointly held property between spouses
- § 37:10 — —Revocable joint tenancy
- § 37:11 —Acceptance of benefits

II. TYPES OF INTERESTS

- § 37:12 Generally
- § 37:13 Income and corpus
- § 37:14 Powers

III. DISCLAIMERS WITH SPECIAL PROBLEMS

- § 37:15 Disclaimers by fiduciaries
- § 37:16 Partial disclaimers
- § 37:17 Disclaimers by persons under age of twenty-one
- § 37:18 Written transfers treated as disclaimers

IV. DISCLAIMER AS ESTATE PLANNING DEVICE

- § 37:19 Generally
- § 37:20 Disclaimers to reduce size of estate
- § 37:21 Creation of QTIP trusts
- § 37:22 Disclaimers to fully use available exemption amounts
- § 37:23 Disclaimers to fund marital share fully

§ 37:24 Reduction of generation-skipping transfer tax

V. FORMS

§ 37:25 Sample general disclaimer

§ 37:26 Sample formula disclaimer

§ 37:27 Sample disclaimer relating trust that qualifies for QTIP treatment

§ 37:28 Sample disclaimer by trustee

CHAPTER 38. SPECIAL ASSETS IN THE ESTATE

§ 38:01 Scope of Chapter

I. INTRODUCTION

§ 38:02 Overview

II. S CORPORATION STOCK

§ 38:03 In General

§ 38:04 Estate As a Shareholder

§ 38:05 Dispositions of S Corporation Stock

§ 38:06 Trusts As Shareholders

III. [RESERVED]

§ 38:07 *[Reserved]*

IV. FARMLAND

§ 38:08 In General

§ 38:9 Eligibility To Elect Special Use Valuation Under Section 2032A

§ 38:10 Procedure for Election

§ 38:11 Premature Dispositions and Cessation of Qualified Use

V. TAX SHELTERS AND OTHER PARTNERSHIP INTERESTS

§ 38:12 In General

§ 38:13 Closing of Partnership Year

§ 38:14 Basis in Partnership

§ 38:15 Income Tax Considerations

VI. OTHER SPECIAL ASSETS

§ 38:16 Professional Practice

§ 38:17 Works of Art and Copyrights

§ 38:18 Life Insurance on Another's Life

§ 38:19 Installment Payments and Income Items

§ 38:20 Family Businesses; Exclusion Election

CHAPTER 39. AUDITS, APPEALS AND FINAL DETERMINATION OF TAX

§ 39:1 Scope of Chapter

I. INTRODUCTION

§ 39:2 Overview of Administrative and Judicial Process

§ 39:3 Estate Tax, Gift Tax and Estate Income Tax Returns

II. EXAMINATION

- § 39:4 Process of Selection of Returns for Audit
- § 39:5 Closed Case
- § 39:6 Preparation for Audit
- § 39:7 Audit

III. AGREED CASES

- § 39:8 Waiver of Restrictions on Assessment and Collection
- § 39:9 Payment of Tax
- § 39:10 Discharge from Personal Liability
- § 39:11 Final Distribution of Estate
- § 39:12 Partially Agreed Cases

IV. ADMINISTRATIVE PROCESS IN UNAGREED CASES

- § 39:13 Thirty-day Letter
- § 39:14 —Extension of Time
- § 39:15 Protest
- § 39:16 Appeals Hearing and Settlement

V. TAX COURT

- § 39:17 Ninety-day Letter
- § 39:18 Tax Court Petition for Redetermination of Deficiency
- § 39:19 Settlement Procedures
- § 39:20 Determination of Tax Court
- § 39:21 Appeal from Tax Court Determination

VI. REFUND CLAIMS

- § 39:22 Filing and Contents of Claim for Refund
- § 39:23 —Period of Limitations
- § 39:24 —Protective Claims and Claims Uncertain as to Amount
- § 39:25 —Proper Party To File Claim
- § 39:26 IRS Procedures

VII. REFUND LITIGATION

- § 39:27 General Requirements for Suit
- § 39:28 Considerations in Choosing Forum
- § 39:29 —United States District Court
- § 39:30 —Claims Court

VIII. INTEREST, PENALTIES, AND COLLECTION OF TAX

- § 39:31 Assessable Interest and Penalties
- § 39:32 Notice and Demand for Payment
- § 39:33 Tax Liens

Table of Laws and Rules

Table of Cases

Index