

# **Federal Income Taxation of Trusts and Estates**

**Cases, Problems, and Materials**

**THIRD EDITION**

**2018 SUPPLEMENT**

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## PREFACE

This supplement deals with developments we would have included in the casebook, had it gone to press in January 2018.

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February 2, 2018

Page xli. In the second paragraph, replace the third, fourth, and fifth sentences with:

Twenty years later, the Economic Growth and Tax Relief Reconciliation Act of 2001 implemented a phased-in increase of the estate tax exclusion to \$3,500,000. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 temporarily raised the exclusion to \$5,000,000 (adjusted for inflation) and provided for “portability” of any unused exclusion of a predeceased spouse. The American Taxpayer Relief Act of 2012 made the changes permanent. Most recently, the Tax Cuts and Jobs Act of 2017 doubled the base amount of the exclusion, increasing it to \$10,000,000, through 2025. As a result, the estate tax now applies to an incredibly small number of estates.

Page xli. In the third paragraph, replace the fourth sentence with:

Section 1(e) of the Code subjects trusts and estates to an onerously compressed rate schedule. For taxable years beginning after December 31, 2012, section 1411 imposes an additional tax equal in many instances to 3.8 percent of the “undistributed net investment income” of the trust or estate. One therefore ignores at one’s peril such topics as the distribution deduction and the grantor trust rules—mechanisms designed to shift the income tax liability of an estate or trust to one or more individuals, who are often taxed at considerably lower rates.

Page xli. Replace the third line from the bottom of the page with:

B. Abbin, *Income Taxation of Fiduciaries and Beneficiaries* (2013).

Page 5. At the end of the last paragraph of the Illustrative Material, add:

For taxable years 2018 through 2025, the child’s unearned income is generally subject to taxation at the same rate that would apply to the taxable income of an estate or trust under section 1(e). *See* I.R.C. § 1(j)(4).

Page 9. At the bottom of the page, add:

7. *Land trusts.* In Rev. Rul. 92-105, 1992-2 C.B. 204, the I.R.S. ruled that an Illinois land trust was not a trust as defined in Treas. Reg. § 301.7701-4(a). In Rev. Rul. 2013-14, 2013-1 C.B. 1267, the I.R.S. reached the same conclusion as to a *fideicomiso*, i.e., a Mexican land trust. In both rulings the I.R.S. reasoned that because the trustee’s only responsibility was to hold and transfer title at the direction of the taxpayer, there was no trust for federal income tax purposes.

8. *Gun trusts.* In INFO 2015-0039 (Nov. 9, 2015), the I.R.S. concluded that a “gun trust” was a trust, as defined in Treas. Reg. § 301.7701-4(a). This conclusion was based on a review of the “Noncharitable Trust for Property NFA [National Firearms Act] Sample Trust”

agreement. The aim of the arrangement seems to be to ease compliance with various laws relating to the ownership and transfer of guns. Such a trust purportedly lacks ascertainable beneficiaries, as its sole purpose is to own and maintain the property it receives. Indeed, state law increasingly permits trusts for noncharitable purposes. *See* Unif. Prob. Code § 2-907(a); Unif. Trust Code § 409; 2 *Scott and Ascher on Trusts* § 12.11 (5th ed. 2006). The I.R.S. concluded, nonetheless, that the trust had at least one beneficiary, i.e., the grantor, who retained the right to add or remove property, to appoint and remove trustees, and to veto any trustee decision. The I.R.S. added that its conclusion would remain the same even if there were no beneficiaries, based on the reasoning of Rev. Rul. 58-190, *supra* note 2, dealing with burial lots, and Rev. Rul. 76-486, *supra*, dealing with a trust for a pet. The I.R.S. also concluded that the grantor's right to revoke the trust and control its administration made it a grantor trust under Subpart E, *infra* chapter 4, so that the grantor remained taxable on any income the trust generated.

Page 29. In the last line of the page, replace the reference to section 61(a)(12) with a reference to section 61(a)(11), in accordance with the Tax Cuts and Jobs Act of 2017.

Page 33. Replace the assignments with:

Internal Revenue Code:  
Section 212

Regulation:  
Section 1.212-1

Page 40. Immediately before *Knight v. Commissioner*, insert, as assignments:

Internal Revenue Code:  
Section 67(a), (b), (c), (e), (g)

Regulation:  
Section 1.67-4

Page 40. In the citation for *Knight v. Commissioner*, replace 128 S. Ct. 782 with 552 U.S. 181.

Page 46. After the last paragraph on the page, add:

In Notice 2008-32, 2008-1 C.B. 593, however, the Service announced:

Taxpayers will not be required to determine the portion of a Bundled Fiduciary Fee that is subject to the 2-percent floor under § 67 for any taxable year beginning before January 1, 2008. Instead, for each such taxable year, taxpayers may deduct the full amount of the Bundled Fiduciary Fee without regard to the 2-percent floor. Payments by the fiduciary to third parties for expenses subject to the 2-percent floor are readily identifiable and must be treated separately from the otherwise Bundled Fiduciary Fee.

In Notice 2008-116, 2008-2 C.B. 1372, which modified and superseded Notice 2008-32, the Service extended its guidance to taxable years beginning before January 1, 2009. Notice 2010-32, 2010-1 C.B. 594, modified and superseded Notice 2008-116, extending the guidance to taxable years beginning before January 1, 2010. Finally, Notice 2011-37, 2011-1 C.B. 785, modified and superseded Notice 2010-32, extending the guidance to taxable years beginning before the date that final regulations are promulgated.

In REG-128224-06, 2011-2 C.B. 533, the Service withdrew the first set of proposed regulations described above and replaced them with a second set. In mid-2014, a lightly revised version of this second set of proposed regulations eventually became final, as Reg. § 1.67-4. T.D. 9664, 2014-1 C.B. 1045. These new regulations are effective for taxable years beginning after Dec. 31, 2014. T.D. 9664, 2014-2 C.B. 254. They continue to make clear that investment advisory fees are subject to the limitations of § 67. In accordance with *Knight*, an expense cannot qualify for the exception in § 67(e)(1) if it “commonly or customarily would be incurred by a hypothetical individual holding the same property.” They also continue to require the unbundling of a variety of fiduciary expenses, including executors’ commissions and trustees’ fees. There is an exception for a bundled fee that is not computed on an hourly basis. As to such a fee, only the portion “attributable to investment advice” is subject to the 2-percent floor.

For more on the applicability of section 67 in the context of trusts and estates, see Abati & Lumpau, *Deductibility of Trust and Estate Expenses*, Tr. & Est., Aug. 2014, at 13; Aucutt, *The “2% Floor” Grows Up—A Biography of Legislation, Litigation, and Regulations*, 33 ACTEC J. 214 (2008); Balter & Blattmachr, “*Knight*” *Addresses 2 Percent Floor and Fiduciary Investment Advisory Fees*, Daily Tax Rep. (BNA), Apr. 14, 2008, at J-1; Bekerman, *Was the Supreme Court Really Wearing Shining Armor? A Hard Day’s Knight for Trusts and Estates*, Prob. & Prop., Sept./Oct. 2008, at 41; Roshkind, Comment, *Interpreting I.R.C. § 67(e): The Supreme Court’s Attempt to Nail Investment Advisory Fees to the “Floor,”* 60 Fla. L. Rev. 961 (2008); Roy, Note, *Is That the End? Section 67(e) and Trust Investment Advisory Fees After Knight v. Commissioner*, 61 Tax Law. 321 (2007).

In the Tax Cuts and Jobs Act of 2017, Congress amended section 67 so as to disallow all miscellaneous itemized deductions for taxable years 2018 to 2025. I.R.C. § 67(g). At first glance, one might reasonably assume that Congress had thereby suspended all deductions otherwise allowable under section 212, except those attributable to the production of rents and royalties. See I.R.C. § 62(a)(4). As one might expect, however, many in the estate planning community are eager to argue that this is not so. Might section 67(e)(1) continue to wreak its havoc in the application of a general disallowance of miscellaneous itemized deductions?

Page 49, footnote 3. Delete the last sentence, due to amendment and renumbering of the regulation cited therein, and insert ellipsis in lieu thereof.

Page 60, note 3. Delete the reference to the regulation, due to its amendment and renumbering.

Page 74. At the end of the last paragraph dealing with the deduction for personal exemption, add:

In the Tax Cuts and Jobs Act of 2017, Congress suspended, through 2025, the deduction for personal exemption under section 151. It was therefore necessary to revisit the exemption for qualified disability trusts. The replacement exemption for such trusts is \$4,150, adjusted for inflation. The exemptions for estates and ordinary trusts remain unchanged, at \$600, \$300, and \$100.

Page 75. Immediately before the paragraph that begins, “*Charitable Set-Asides.*”, add:

In *Green v. United States*, 144 F. Supp. 3d 1254 (W.D. Okla. 2015), *rev’d*, 2018 WL 386656 (10th Cir. Jan. 12, 2018), a trust purchased several parcels of real estate and later donated them to charity. The government stipulated that the funds used to purchase the parcels were traceable to the trust’s gross income. Thus, though the parcels may well have been principal under local law, they remained deductible, according to the trial court, as contributions of gross income, when transferred to charity. The trial court also held, more dubiously, that the amount deductible was not just the trust’s adjusted basis in the parcels, but their fair market value at the time of contribution. Not surprisingly, the Tenth Circuit reversed. The appellate court seemed to accept, as agreed to by the parties, that although a trust’s charitable deductions must come from gross income, “real property purchased with gross income can . . . be treated as the equivalent of gross income.” The deduction was limited to the trust’s basis, however, because the appreciation had never been part of the trust’s gross income. The appeals court pointedly rejected two of the trial court’s reasons for its contrary holding. First, the words “without limitation” in section 642(c) were “intended only to make clear that the percentage limits outlined in §170 . . . do not apply to charitable deductions made by estates and trusts.” Second, although the Supreme Court has frequently stated that tax provisions relating to charitable deductions should be liberally construed in favor of the taxpayer, “Never has the Supreme Court said that this canon of liberal construction . . . means that a taxpayer must win in every case.”

Page 86, note 4. Rev. Proc. 2008-3 (cited in this note) has been superseded. Rev. Proc. 2018-3, 2018-1 I.R.B. 130, 135, is to identical effect.

Page 86, note 4. At the end of the note, add:

Relying on this regulation, the Tax Court in 2015, in a pair of cases, denied set-aside charitable deductions in situations in which one might have expected them to be allowable, at least in part, based on prior rulings. In *Estate of Belmont v. Commissioner*, 144 T.C. 84 (2015), the full Tax Court held that the I.R.S. properly denied the estate a set-aside deduction for the amount claimed, when, years later, insufficient assets remained for charity, as the result of the payment of various litigation costs. The court reasoned that, when the estate claimed the deduction, the possibility that these costs would require it to invade the amount ostensibly set aside for charity was not “so remote as to be negligible.” In *Estate of DiMarco v. Commissioner*, 110 T.C.M. (CCH) 292 (2015), a single Tax Court judge, by memorandum decision, similarly upheld the denial of a set-aside deduction, when it ultimately turned out that insufficient assets remained for charity, due to payment of various costs associated with negotiating settlement of the estate. In *DiMarco*, the court went to great pains to emphasize that what happened may not have amounted to actual litigation. Still, at the time the estate claimed the deduction, the prospect of extended legal wrangling indicated that the possibility the amount claimed would not ultimately be available to charity was not “so remote as to be negligible.” Strictly speaking, it is hard to argue with either holding. There is no good reason why an estate should be able to deduct, as set aside for charity, amounts the charity never receives. On the other hand, neither case discussed whether, or for what taxable year, a deduction for the amount that actually remained was appropriate. The regulation and both cases suggest that the uncertainty that the amount initially deducted would ultimately be available for charity meant that the appropriate deduction in the initial taxable year was zero. Yet, on very similar facts, several of the cases already discussed, *supra* note 2, allowed a deduction, in the initial taxable year, for the amount that remained after the legal dust finally settled. Both Tax Court cases discussed or cited the Ninth Circuit’s *Wright* decision, in which they even purported to find support, but the fact of the matter is that the holdings of *Wright* and its ilk are to the contrary. It is, of course, possible that the older cases are wrong. If so, however, it seems clear that the estate in each of those cases should have been allowed to deduct the amount that remained, *in the taxable year in which the uncertainties that justified denying the deduction sooner were resolved*.

Page 107, note 1. At the end of the note, add:

In *Frank Aragona Trust v. Commissioner*, 142 T.C. 165 (2014), the Commissioner determined that various losses from a trust’s real property activities were passive, because a trust, as such, was *incapable* of performing personal services and as a result *could not* qualify under § 469(c)(7) for the so-called “real estate professional exception.” The Commissioner also argued that even if a trust could perform personal services, the activities of the trustees did not “count,” because the trustees performed the services in their roles as employees of a corporation wholly owned by the trust, not as trustees. The Tax Court unequivocally rejected both positions. As to the first, it held “that a trust is capable of performing personal services and therefore can satisfy the section 469(c)(7) exception,” usually through the activities of its trustees. As to the second, the court held that all of the trustees’ activities, “including their activities as [corporate]



employees . . . should be considered in determining whether the trust materially participated in its real-estate operations.”

Page 130. In the second paragraph of *Schaefer*, replace the citation to section 61(a)(13) with: [Section 61(a)(12).]

Page 149. Immediately following Revenue Ruling 61-20, add:

***Illustrative Material***

In *United States v. Steinbrenner*, 949 F. Supp. 2d 1210 (M.D. Fla. 2013), the disputes at issue were complex and well beyond the scope of Subchapter J. Both the taxpayer and the Service, however, agreed that, as in Rev. Rul. 61-20, a net operating loss carryback to a prior year would reduce a trust’s DNI for the carryback year and thereby also reduce its beneficiaries’ income with respect to the carryback year. The taxpayer was the son of the famous and now deceased former owner of the New York Yankees.

In the Tax Cuts and Jobs Act of 2017, Congress amended section 172(b)(1) to eliminate net operating loss carrybacks, subject to exceptions for farmers and insurance companies.

Page 156. In note 1(b), line 7, replace “For the same result under pre-1954 law, see” with:

*See also Monte Vista Burial Park, Inc. v. United States*, 340 F.2d 595 (6th Cir. 1965);

Page 156. At the end of note 1(b), add:

; *Michigan Memorial Park, Inc. v. United States*, 2013-1 U.S.T.C. ¶ 50,138 (E.D. Mich. 2013).

Page 157. At the end of note 1(d), add:

In § 11051 of the Tax Cuts and Jobs Act of 2017, Congress repealed §§ 71, 215, and 682, effective for divorce and separation instruments executed after December 31, 2018. The changes also apply to divorce and separation instruments executed on or before December 31, 2018, if the instrument is modified after that date, and “if the modification expressly provides that the amendments made by this section apply to such modification.”

Page 204. In line 6 of the Illustrative Material, after the citation to Rev. Rul. 68-667, add:  
Chief Couns. Adv. 201651013 (2016);

Page 204. In lines 9-11 of the Illustrative Material, replace the last citation with:

See M. Ferguson & M. Ascher, *Federal Income Taxation of Estates, Trusts & Beneficiaries* § 6.10 (4th ed. 2016).

Page 218, note 3. Rev. Proc. 2008-3 (cited in the first paragraph) has been superseded. Rev. Proc. 2018-3, 2018-1 I.R.B. 130, 135, is to identical effect.

Page 218, note 3. In line 9 of the second paragraph, after the citation to *McCauley v. United States*, add:

*Costello v. Commissioner*, 111 T.C.M. (CCH) 1148 (2016);

Page 223. Immediately following the *Nemser* opinion, add:

### ***Illustrative Material***

In Chief Couns. Adv. 201047021 (2010), it appeared that the estate was insolvent, due to the decedent's unpaid tax liabilities. The administrator entered into a settlement agreement with the government, under which any assets that remained after payment of the administration expenses would go to the government. The administrator also procured an opinion from the estate's tax counsel to the effect that the residuary beneficiaries were nonetheless entitled to claim the estate's unused capital loss carryovers. The Service concluded otherwise, reasoning that because the settlement agreement had eliminated any possibility that the beneficiaries might actually receive anything, they were not "beneficiaries succeeding to the property of the estate." Under the Service's rationale, the carryovers would never be used.

Page 229. At the end of the Illustrative Material, add:

4. In *Harrell v. Commissioner*, 113 T.C.M. (CCH) 1375 (2017), a daughter paid various expenses relating to her father's death and the administration of his estate, including attorney's fees and C.P.A. fees, which she and her husband sought to deduct, as a net operating loss carryforward, on their joint income tax return. The court properly denied the deduction, relying on various wrinkles under section 172. One cannot help wondering, however, whether, with better counsel, the couple might not have qualified for a deduction under section 642(h)(2), in the year the estate terminated. Before the Tax Court, they were *pro se*.

Page 230. Delete from the assigned readings both provisions of the Internal Revenue Code. In 2010, Congress removed both provisions from the Code, except as to the estates of

decedents dying in 2010 whose executors elected not to be subject to the estate tax. See Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 § 301(a), (c).

Page 261. At the end of the first paragraph in subdivision (B)(1)(b)(i), add:

*See generally* Akers, Blattmachr & Boyle, *Creating Intentional Grantor Trusts*, 44 Real Prop. Tr. & Est. L.J. 207 (2009).

Page 265, note 2. At the end of the second paragraph, add:

In 2009, the Treasury promulgated a new Table S, for single-life remainder factors, based on data from the 2000 census. *See* Treas. Reg. § 20.2031-7(d)(7) (effective for transfers occurring on or after May 1, 2009).

Page 274. At the end of the “Illustrative Material,” add:

6. In Notice 2008-63, 2008-2 C.B. 261, the Service published a proposed revenue ruling relating to the income tax consequences of the use by a family of its own private trust company (PTC) to administer various family trusts in which the trustee has discretion to make distributions of income and principal, although not to the grantor. According to the Service, the ruling, when issued in final form,

will confirm certain tax consequences of the use of a private trust company that are not more restrictive than the consequences that could have been achieved by a taxpayer directly, but without permitting a taxpayer to achieve tax consequences through the use of a private trust company that could not have been achieved had the taxpayer acted directly.

The Service solicited public comments regarding the proposed ruling, particularly as to whether it would “achieve that intended result.”

In one situation considered by the proposed ruling, the trusts are governed by the laws of a state in which there is a statute under which PTCs are required to create a “Discretionary Distribution Committee (DDC)” and delegate to it “exclusive authority to make all decisions regarding discretionary distributions from each trust for which it serves as trustee.” The statute provides that “no member of the DDC may participate in the activities of the DDC with regard to any trust of which that DDC member or his or her spouse is a grantor, or any trust of which that DDC member or his or her spouse is a beneficiary” or with respect to “any trust with a beneficiary to whom that DDC member or his or her spouse owes a legal obligation of support.” The statute also provides that only the PTC’s officers and managers may make personnel decisions.

In a second situation, although the trusts are governed by the laws of a state in which there is no relevant statute, the PTC's "governing documents create a DDC and delegate to the DDC the exclusive authority to make all decisions regarding discretionary distributions from each trust for which it serves as trustee." The PTC's governing documents also contain restrictions, similar to those in the statute discussed above, on the ability of DDC members to participate in decisions regarding discretionary distributions. In addition, the PTC's governing documents provide for the creation of an "Amendment Committee, a majority of whose members must always be individuals who are neither Family members nor persons related or subordinate (as described in §672(c)) to any shareholder of PTC." The PTC's governing documents provide as well that the Amendment Committee has sole power, "by no less than majority vote," to "make any changes to PTC's governing documents regarding the creation, function, or membership of the DDC or of the Amendment Committee itself." Likewise, the PTC's governing documents provide that only the PTC's officers and managers may make personnel decisions.

The Service concludes that a family's use of its own PTC as trustee of a family trust does not *alone* cause the grantor or any beneficiary to be treated as owner of the trust or any portion thereof under § 673, § 675, § 676, § 677, or § 678, in either the first or the second situation. The Service concludes that the applicability § 674 "will depend upon the particular powers of the trustee and may depend upon the proportion of the members of the DDC with authority to act with regard to that trust who are related or subordinate to the grantor." For this purpose, however, "the ownership of voting stock of PTC [by the grantor and the trust] shall be deemed to be not significant under § 672(c)." In support of this pivotal conclusion, the Service offers the following analysis:

"Voting control" is relevant insofar as it gives a grantor or trusts created by a grantor power over distributions made in the discretion of the corporate trustee or power over the employees of the corporate trustee who make such discretionary distribution decisions on behalf of the corporation. Under *Situation 1* and *Situation 2*, adequate safeguards protect against the exercise of such powers.

Instead, according to the Service, the applicability of § 674 may depend under § 672(c)(2) on whether "more than half" of the members of the DDC are nonadverse parties who are related or subordinate to the grantor: "In determining whether or not PTC as trustee is related or subordinate for purposes of [§ 672(c)(2)], one must look at the members of the DDC who are authorized to act with regard to that particular trust (as if those DDC members individually were the trustees)." The Service adds: "A subordinate employee of a corporation in which the grantor is an executive will still be deemed to be subordinate to the grantor under § 672(c)."

7. In Private Letter Rulings 200910008 & 200910009 (both dated 2008), the IRS concluded that a power to reacquire the trust assets by substituting property of equivalent value "affect[ed] beneficial enjoyment." Accordingly, the IRS ruled that section 674 treated the grantors as owners of the entire trust. For more than a decade, the IRS had refused, in countless private rulings, to assure taxpayers that such a power would trigger grantor trust status under the directly relevant provision, i.e., section 675(4)(C), on the theory it was impossible to know ahead

of time whether the power was “exercisable in a nonfiduciary capacity . . . without the approval or consent of any person in a fiduciary capacity.”

Page 291. At the end of the page, add:

Pending the publication of guidance, the Service will no longer rule on whether the assets of a grantor trust qualify for a step up in basis under § 1014 at the death of the grantor, when they are not includible in the grantor’s gross estate for estate tax purposes. Rev. Proc. 2018-3, 2018-1 I.R.B. 130, 143-144.

Page 308. In the last line of note 4, replace the reference to section 61(a)(12) with a reference to section 61(a)(11), in accordance with the Tax Cuts and Jobs Act of 2017.

Page 333. At the end of note 7, add:

*See generally* Jones & Horne, *Grantor Trust Income Tax Reporting Requirements*, Prob. & Prop., Jan./Feb. 2016, at 40; Blattmachr & Crawford, *Grantor Trusts and Income Tax Reporting Requirements: A Primer*, Prob. & Prop., March/April 2002, at 18, May/June 2002, at 11; Klinefelter, *IRS Issues New Reporting Requirements for Grantor Trusts*, 22 ACTEC Notes 171 (1996).

Page 333. At the end of note 9, add:

In the Tax Cuts and Jobs Act of 2017, Congress amended section 67 so as to disallow all miscellaneous itemized deductions for taxable years 2018 to 2025. I.R.C. § 67(g).

Page 345. At the end of the page, add:

## **4. The Future of the Grantor Trust Rules**

Given bracket compression under section 1(e), is there really any continuing need for the grantor trust rules? The prevalence of so-called “intentionally defective grantor trusts” (“IDGTs”) and the damage they inflict on the progressive rate structure have led a chorus of commentators to suggest fundamental reform, or outright repeal, of the grantor trust rules. *E.g.*, Soled & Gans, *Sales to Grantor Trusts: A Case Study of What the IRS and Congress Can Do to Curb Aggressive Transfer Tax Techniques*, 78 Tenn. L. Rev. 973 (2011); Ascher, *The Grantor Trust Rules Should Be Repealed*, 96 Iowa L. Rev. 885 (2011); Cunningham & Cunningham, *Tax Reform Paul McDaniel Style: The Repeal of the Grantor Trust Rules*, Cardozo Legal Studies Research Paper No. 328; Ricks, *I Dig It, But Congress Shouldn’t Let Me: Closing the IDGT Loophole*, 36 ACTEC J. 641 (2010); Soled, *Reforming the Grantor Trust Rules*, 76 Notre Dame L. Rev. 375 (2001); Schmolka, *FLPs and GRATs: What To Do?*, 86 Tax Notes 1473, 1490 n.77 (March 13, 2000); Danforth, *A Proposal for Integrating the Income and Transfer Taxation of*

*Trusts*, 18 Va. Tax Rev. 545 (1999); Dodge, *Simplifying Models for the Income Taxation of Trusts and Estates*, 14 Am. J. Tax Pol’y 127 (1997); Kamin, *A Proposal for the Income Taxation of Trusts and Estates, Their Grantors, and Their Beneficiaries*, 13 Am. J. Tax Pol’y 215 (1996).

Page 351, note 10. Delete the last two sentences, beginning with “Sec. 1551 . . .” due to statutory changes, and insert ellipsis in lieu thereof.

Page 376. After the period in line 16 of note 1, add:

*Compare Sparkman v. Commissioner*, 509 F.3d 1149 (9th Cir. 2007).

Page 376. At the end of note 1, add:

; *Richardson v. Commissioner*, 509 F.3d 736 (6th Cir. 2007); *Olsen v. Commissioner*, 96 T.C.M. (CCH) 415 (2008).

Page 376. After “In” in the third line from the bottom of the page, add:

*Tarpo v. Commissioner*, 98 T.C.M. (CCH) 283 (2009); *Richardson v. Commissioner*, 91 T.C.M. (CCH) 981 (2006), *aff’d*, 509 F.3d 736 (6th Cir. 2007);

Page 377. After “In” in the third line from the top of the page, add:

*Balice v. Commissioner*, 98 T.C.M. (CCH) 191 (2009), *Ioane v. Commissioner*, 97 T.C.M. (CCH) 1344 (2009), *Swanson v. Commissioner*, 96 T.C.M. (CCH) 379 (2008), *aff’d mem.*, 438 Fed. Appx. 582 (9th Cir. 2011), *G. Kierstead Family Holdings Trust v. Commissioner*, 93 T.C.M. (CCH) 1392 (2007), *aff’d sub nom. Kierstead v. Commissioner*, 330 Fed. Appx. 126 (9th Cir. 2009),

Page 377. After “*See also*” in the sixth line of note 3, add:

*United States v. Holland*, 637 F. Supp. 2d 315 (E.D.N.C. 2009) (property owned by family trust was subject to sale by government to satisfy grantor’s income tax liabilities);

Page 427. Delete the last two sentences of note 2. In 2010, Congress removed § 121(d)(11) from the Code, except as to the estates of decedents dying in 2010 whose executors elected not to be subject to the estate tax. See Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 § 301(a), (c).

Page 459, note 1. At the end of the note, add:

In *Batchelor-Robjohns v. United States*, 2013-2 U.S.T.C. ¶ 50,506 (S.D. Fla. 2013), *aff'd on this issue, rev'd in part, and remanded*, 788 F.3d 1280 (11th Cir. 2015), an estate made payments settling various claims that arose out of transactions that had generated capital gains during the decedent's lifetime. Because the payments would therefore have generated capital losses, the court concluded that they did not qualify as deductions in respect of a decedent. In *Harrell v. Commissioner*, 113 T.C.M. (CCH) 1375 (2017), a daughter paid various expenses related to her father's death and the administration of his estate, including funeral expenses, attorney's fees, and C.P.A. fees, which she and her husband sought to deduct on their joint income tax return. Noting that funeral expenses are not deductible for income tax purposes, the court correctly held that they were not deductible under section 691(b). Lumping the professional fees into the same analysis, the court denied them, as well, notwithstanding the fact that administration expenses are often deductible, at least in part, under section 212, one of the very provisions listed in section 691(b). This result, too, may well be correct, however, as the fees seem to have related solely to post-death services, which the decedent in no event could have deducted. If so, section 691(b) would not apply.

Page 476. At the end of the "Illustrative Material," add:

In the Tax Cuts and Jobs Act of 2017, Congress amended section 67 so as to disallow all miscellaneous itemized deductions for taxable years 2018 to 2025. I.R.C. § 67(g).

3. In *Harrell v. Commissioner*, 113 T.C.M. (CCH) 1375 (2017), the court stated the obvious: in the absence of proof that a federal estate tax return was filed or that federal estate tax was paid, there can be no deduction under section 691(c).