

FEDERAL TAXATION OF
ESTATES, TRUSTS, AND
GIFTS

Fourth Edition

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FEDERAL TAXATION OF ESTATES, TRUSTS, AND GIFTS

Fourth Edition

Ira Mark Bloom

*Justice David Josiah Brewer Distinguished Professor of Law
Albany Law School*

Kenneth F. Joyce

*SUNY Distinguished Teaching Professor of Law Emeritus
SUNY Buffalo Law School*

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121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800

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Dedications

Ira Mark Bloom

To my wife, Margaret Roberts
and the late Professor John T. Gaubatz

Kenneth F. Joyce

To my wife, Rita S. Joyce,
and the late Professor Louis A. Del Cotto

Preface

As co-authors of this fourth edition, we owe a debt of gratitude to three co-authors of prior editions: F. Ladson Boyle, Lewis Solomon and the late John Gaubatz. Each helped in immeasurable ways to build the foundation for this fourth edition.

As in previous editions, we believe that the most effective pedagogical approach to the federal taxation of estates, trusts, and gifts is one that combines the analytical and problem-method approaches. Since materials concentrating on one approach are inherently weaker than those utilizing both, this fourth edition includes the judicious use of structured problems to facilitate an understanding of the doctrinal framework, analytical processes, and policy issues.

This fourth edition presents a comprehensive study of the tax aspects involved in the wealth transfer process.¹ Chapter 1 provides indispensable background on the federal wealth transfer and related income tax systems. Chapter 2 provides an overview of each of the tax systems. Chapters 3, 4, and 5 outline the basic structure of the gift, estate, and generation-skipping transfer tax systems² and include an examination of underlying policy questions. Chapters 6 through 13 explore how the transfer tax systems, plus the relevant income tax rules — especially the grantor trust provisions of subchapter J — apply to various transactions, most of which are in the nature of testamentary substitutes. The income taxation of estates and non-grantor trusts and their beneficiaries is comprehensively covered in Chapter 14. The book ends with Chapter 15, which provides options for reforming, as well as alternatives to, the tax systems.

This book contains several aspects to promote ease and enjoyment of student learning. The first is an intentional redundancy, so that students will revisit important concepts two or three times. Themes are developed early and then reiterated and expanded upon as later chapters explore more complex areas. According to educational psychologists, thematic repetition helps to cement the concepts in the student's mind.

The second characteristic is its cutting edge information. This book contains not only the changes made by the American Taxpayer Relief Act of 2012, as well as more recent developments, but also highlights a variety of estate planning considerations. And although the book relies on well-recognized leading cases, it includes recent and significant cases, rulings, and regulations that either break new ground or expand on existing law.

The book also features the liberal use of text and textual materials that describe each area of study. In many cases, it explains the rationale for rules and explores whether they should continue. In this sense, the book does not seek to hide the ball.

In writing the book, we have adopted editorial conventions. With respect to reproduced cases and materials, we have excised many citations and footnotes, and have renumbered

¹ We treat community property in an integrated way in this book by raising community property intersections in the context of specific transfer and income tax provisions. We have also attempted to identify the specific community property issues so that they may be focused on or avoided as the course dictates.

² Related state transfer tax systems typically require an understanding of the federal transfer tax systems.

Preface

any remaining footnotes. Further, for ease of reading we have reformatted the cases and materials to follow a consistent pattern. With respect to original text, we have used he and she interchangeably, except as the context suggests otherwise.

As anyone who has produced a book knows, the task cannot be accomplished without the assistance of many people. Professor Bloom received generous support and encouragement from Dean Penelope Andrews. In addition, Albany Law School students, namely, Brynne Grady and Kaivan Mangouri, provided him invaluable help and Bob Emery, Research Librarian at Albany Law School, provided invaluable research assistance. Professor David Pratt, Albany Law School, offered helpful comments on retirement benefits for Chapter 11. Professor Joyce, whose primary contribution to this edition was in Chapters 8, 9, and 14, received great inspirational support from three attorneys, his daughter (and partner) Mary, his son Michael, and “Tibi” (Tiberio Schwartz, Phillips Nizer LLP). Biz Ebben at LexisNexis eased the pain of production. Finally, thanks to the many who assisted, but are unnamed.

Ira Mark Bloom

Kenneth F. Joyce

November 2013

Table of Contents

Part I	INTRODUCTION	1
Chapter 1	BACKGROUND	3
§ 1.01	HISTORY OF FEDERAL TAXATION OF ESTATES, TRUSTS, AND GIFTS	3
[A]	Early History of Estate and Gift Taxation	3
[B]	Early History of Generation-Skipping Transfer Tax	8
[C]	Recent Congressional Developments in Estate, Gift, and GST Taxation	9
[1]	Economic Growth and Tax Relief Reconciliation Act of 2001 (Tax Act of 2001)	9
	Note on Sunset Provision	10
[2]	The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act (Tax Act of 2010)	10
[a]	Background	10
[b]	Explanation of Federal Transfer Tax Changes Made by the 2010 Tax Act	12
[c]	Federal Transfer Tax Changes for 2010	12
[i]	Gift Tax Changes for 2010	12
[ii]	Estate Tax Changes for 2010: Retroactive Reinstatement of the Estate Tax for 2010	12
[iiii]	Estate Tax Changes for 2010: Election by Executor on Form 706 to Opt Out of Estate Tax System and Use Modified Carryover Basis Under Section 1022	13
[iv]	GST Tax Changes for 2010	13
[d]	General Federal Transfer Tax Changes for 2011–2012	14
	Note on Effect of \$5 Million Gift Tax Exemption	14
[e]	Portability During 2011 and 2012	14
[3]	The American Taxpayer Relief Act of 2012 (The Tax Act of 2012)	15
[a]	Background	15
[b]	Federal Transfer Tax Legislation under the Tax Act of 2012	15
[D]	Income Taxation of Gifts, Estates, and Trusts	16
§ 1.02	POLICIES UNDERLYING FEDERAL TAXATION OF ESTATES, TRUSTS, AND GIFTS	17
§ 1.03	SOURCES OF FEDERAL TAX LAW	20
[A]	Legislative Materials	20
[B]	Administrative Materials	21
[C]	Treatment of Tax Returns	23
[D]	Judicial Function and Judicial Materials	23

Table of Contents

[E]	Nonacquiescence in Decisions	25
[F]	State Law as a Source of Federal Tax Results	25
	<i>Commissioner v. Estate of Bosch</i>	25
	<i>Revenue Ruling 73-142</i>	29
	Problem	31
§ 1.04	RESOURCES	31

Chapter 2 OVERVIEW OF FEDERAL TAXATION OF ESTATES, TRUSTS, AND GIFTS 33

	Note on Gift Tax Exemption	34
§ 2.01	FEDERAL GIFT TAX STRUCTURE	37
	Problems	38
§ 2.02	FEDERAL ESTATE TAX STRUCTURE	40
	Problems	43
§ 2.03	THE UNIFIED GIFT AND ESTATE TAX SYSTEM	44
	Note	47
	Problems	47
§ 2.04	GENERATION-SKIPPING TRANSFER TAX	48
[A]	The Taxable Event	48
[B]	Taxable Amount	49
[C]	Calculation of the GST Tax	49
[D]	Section 2604 Credit	50
§ 2.05	THE FEDERAL INCOME TAX SYSTEM	51
[A]	A Brief Primer on the Income Taxation of Individuals	51
	Problems	56
[B]	Income Tax Consequences of Gifts and Bequests	56
	Problems	59
[C]	Federal Income Tax Consequences of Attempted Income Splitting	60
	Problems	61
[D]	Federal Income Taxation of Trusts and Estates	62
[1]	The Tax Structure	62
[2]	Tax Minimization Opportunities	65
	Problems	65
[3]	Grantor Trusts	65
	<i>Helvering v. Clifford</i>	66

Part II BASICS OF WEALTH TRANSFER TAXATION 71

Chapter 3 ESTATE TAXATION BASICS 73

§ 3.01	DETERMINING THE GROSS ESTATE	73
[A]	The Concept of Property	73

Table of Contents

	<i>First Victoria National Bank v. United States</i>	73
[B]	Assets Owned at Death: Section 2033	75
[1]	In General	75
	<i>Connecticut Bank & Trust Co. v. United States</i>	75
	Problems	78
[2]	Interests of the Surviving Spouse	79
[a]	Common Law Interests	79
[b]	Community Property Interests	80
	Problems	81
§ 3.02	POWERS EQUIVALENT TO OWNERSHIP: SECTION 2041	82
[A]	In General	82
	<i>Estate of Alperstein v. Commissioner</i>	82
[B]	Limitations on the Taxation of Powers	86
	<i>Estate of Vissering v. Commissioner</i>	86
	Problems	90
§ 3.03	VALUATION ISSUES	90
[A]	Valuation “At the Time of Death”	91
	<i>Goodman v. Granger</i>	91
[1]	General Valuation Aspects	96
	Problems	98
[2]	Restricted Markets	99
	<i>United States v. Cartwright</i>	99
	Problems	103
[3]	Valuation of Family Business Interests	104
[a]	In General	104
	<i>Revenue Ruling 59-60</i>	104
[b]	Valuation Discounts	106
	<i>Estate of Bright v. United States</i>	106
	Problems	111
[4]	Valuation of Partial Interests	111
	Problems	112
[B]	Alternate Valuation: Section 2032	113
	Problems	114
[C]	Special Use Valuation: Section 2032A	115
	Problem	118
§ 3.04	DEDUCTION PROVISIONS	118
[A]	Section 2053: Expenses and Debts	119
[1]	In General	119
[2]	Funeral Expenses	119
[3]	Administration Expenses	119
	<i>Estate of Smith v. Commissioner</i>	120

Table of Contents

	Problems	123
[4]	Claims and Mortgages	124
[5]	Additional Rules for § 2053 Deductions	125
[a]	Overall Limitations	125
[b]	Bona Fide Requirement	125
[c]	Consideration Requirement	125
[d]	Actual Payment Based on Post-Death Events	127
	Problems	128
[6]	Community Property	129
[B]	Section 2054: Casualties	129
[C]	The Estate Tax Marital Deduction	130
[1]	In General	130
[2]	Marital Deduction Rules	131
[a]	Surviving Spouse Requirement	131
	<i>United States v. Windsor</i>	131
[b]	Citizenship Requirement	139
[c]	Passing and Gross Estate Inclusion Requirements	139
[d]	Deductible Interest Requirement	140
	Problems	140
[3]	The Terminable Interest Rule	141
	<i>Jackson v. United States</i>	141
	Problems	144
[4]	Exceptions to the Terminable Interest Rule	144
[a]	Limited Survivorship Clauses	145
	Problems	145
[b]	Life Estate Power of Appointment Arrangement	145
	Problems	147
[c]	Qualified Terminable Interest Property (QTIP) Exception	148
	<i>Estate of Spencer v. Commissioner</i>	148
	Problems	154
[d]	Estate Trusts	155
[e]	Other Forms of the Marital Deduction	155
[f]	Section 2044: Estate Tax Inclusion Following a QTIP Election	156
	Problems	157
[g]	Valuation Rules	157
	<i>Estate of Bonner v. United States</i>	157
	Problems	162
[5]	Portability	163
[a]	In General	163
[b]	Portability Issues	163
[c]	Portability Examples	165

Table of Contents

	Problems	166
[6]	Estate Planning Considerations	166
[a]	In General	166
[b]	Marital and Non-Marital Deduction Forms	167
[i]	The Flexible QTIP Device	168
[c]	Credit-Shelter Dispositions	168
[d]	The Marital Deduction Amount	170
[i]	Reduce-to-Zero Approach	170
[ii]	Planning for Small and Modest Estates	171
[iii]	Portability Planning	172
[e]	Types of Marital and Non-Marital Dispositions	172
[i]	Choices	172
[ii]	Funding Issues	173
	Problem	173
[7]	Community Property	174
	<i>United States v. Staff</i>	174
	Problem	180
[D]	The Estate Tax Charitable Deduction: Section 2055	180
	<i>Palumbo v. United States</i>	181
[1]	Deferred Charitable Devises	186
[2]	Reasons for Restrictions on Charitable Remainder Trusts	187
[3]	General Rules for Charitable Remainder Trusts	187
[4]	The Charitable Remainder Annuity Trust	189
[5]	Charitable Remainder Unitrust	191
[6]	Comparison Between CRATs and CRUTs	192
[7]	Marital Deduction; Charitable Remainder Trusts	192
[8]	The Pooled Income Fund	192
[9]	Partial Interest Contributions (Not in Trust)	193
[10]	Charitable Lead Trusts	194
[E]	Repealed Section 2057: Family-Owned Business Deduction (FOBD)	195
[F]	Section 2058: The State Death Tax Deduction	196
§ 3.05	DETERMINING THE TAX	196
§ 3.06	CREDITS AGAINST THE ESTATE TAX IMPOSED	196
[A]	Section 2010: Unified Credit	197
	Note on Portability	197
[B]	Repealed Section 2011: Credit for State Death Taxes	198
[1]	§ 2011 [Before repeal]	198
[a]	In general	198
[b]	Amount of credit	198
[2]	Historical Background	200
[3]	Repeal of Section 2011	201

Table of Contents

[4]	Continuing Significance of the Repealed Section 2011 Credit for State Death Tax Purposes	201
[5]	Illustration of How the Repealed § 2011 Credit Determines the Amount of State Death Tax Imposed	202
	Problem	203
[C]	Section 2012: Gift Taxes Paid Credit	203
[D]	Section 2013: Credit for Tax on Prior Transfers	204
[E]	Section 2014: Credit for Foreign Death Taxes	206
§ 3.07	TAX PAYMENT	208

Chapter 4 GIFT TAXATION BASICS 209

§ 4.01	GROSS GIFTS	209
[A]	Definition of “Gift”	210
	<i>Commissioner v. Wemyss</i>	210
	<i>Merrill v. Fahs</i>	212
	Problems	216
[1]	Release of Dominion and Control	217
	<i>Burnet v. Guggenheim</i>	217
	<i>Estate of Sanford v. Commissioner</i>	220
	Problems	222
[2]	Transfer of Property	222
	<i>Dickman v. Commissioner</i>	222
	Problems	228
	<i>Estate of Dimarco v. Commissioner</i>	229
[3]	Specific Inclusionary Sections	231
[4]	Gift Splitting	232
	Problem	233
[B]	Excludable Transfers	233
[1]	Annual Exclusion: Sections 2503(b) and 2503(c)	234
[a]	In General: Section 2503(b)	234
	<i>Maryland National Bank v. United States</i>	235
	<i>Estate of Bies v. Commissioner</i>	240
	Problems	243
[b]	Gifts in Trust: <i>Crummey</i> Trusts and Gifts to Minors	244
	<i>Estate of Cristofani v. Commissioner</i>	245
[c]	Trusts for Minors: Section 2503(c)	253
	<i>Revenue Ruling 69-345</i>	254
	<i>Revenue Ruling 74-43</i>	255
[d]	Other Methods to Make Gifts to Minors: Custodial Accounts	257
	Problems	258
[2]	Transfers for Certain Educational Purposes	259

Table of Contents

[a]	Direct Transfers to Educational Institutions: Section 2503 (e)	259
	Problem	259
[b]	College Tuition Programs: Section 529	259
	Problem	261
[c]	Coverdell IRAs: Section 530	261
[3]	Transfers in Marital Dissolution Context: Section 2516	262
	<i>Harris v. Commissioner</i>	262
	Problems	266
[4]	Disclaimers: Section 2518	266
	<i>Estate of Monroe v. Commissioner</i>	266
	Problems	274
[5]	Miscellaneous Exclusions	274
[a]	Unlimited Exclusion for Certain Transfers for Educational or Medical Expenses: Section 2503(e)	275
[b]	Transfers to Political Organizations: Section 2501(a)(5)	275
[c]	Waiver of Pension Rights: Section 2503(f)	275
§ 4.02	VALUATION OF LIFETIME GRATUITOUS TRANSFERS	276
[A]	In General	276
[B]	Valuation of Family Business Interests	278
	<i>Estate of Jones v. Commissioner</i>	279
	<i>Hackl v. Commissioner</i>	288
	Problem	292
[C]	Donor's Retention of an Interest in Property	292
[1]	The Rule of <i>Robinette</i>	292
	<i>Robinette v. Helvering</i>	292
[2]	Actuarial Valuation	294
	Problem	294
[3]	Section 2702	294
	Problems	295
[4]	Section 2701	296
§ 4.03	GIFT TAX DEDUCTIONS	297
[A]	Charitable Deduction: Section 2522	297
[1]	Generally	297
[2]	Deferred Inter Vivos Charitable Giving	297
[B]	Marital Deduction: Section 2523	299
[1]	In General	299
[2]	Section 2519	300
	Problems	301
[C]	Limitation on Deductions: Section 2524	301
§ 4.04	UNIFICATION REVISITED	302
[1]	In General	302

Table of Contents

[2]	Portability	303
	Problem	304
Chapter 5	GENERATION-SKIPPING TRANSFER TAX BASICS . .	305
§ 5.01	HISTORICAL BACKGROUND	305
§ 5.02	STRUCTURE OF THE GENERATION-SKIPPING TRANSFER TAX SYSTEM	307
[A]	Direct Skips	309
[1]	Outright Transfers	309
[2]	Direct Skips in Trust	311
	Problems	312
[B]	Taxable Terminations	313
[1]	In General	313
[2]	Taxable Amount in Case of Taxable Termination	315
[3]	Tax Computation for a Taxable Termination	315
	Problems	315
[C]	Taxable Distributions	316
[1]	In General	316
[2]	Other Considerations Involving Taxable Distributions	316
[3]	Taxable Amount in Case of Taxable Distribution	317
[4]	Tax Computation for a Taxable Distribution	318
	Problems	318
[D]	The GST Tax Computation	318
[1]	The GST Exemption	318
[2]	The Applicable Rate	320
[3]	Inclusion Ratio	321
[4]	Sample Calculations	322
[a]	GST Tax Imposed on a Direct Skip	322
[b]	GST Tax Imposed on a Taxable Termination	323
[c]	GST Tax Imposed on a Taxable Distribution	323
	Problems	324
§ 5.03	REFINEMENTS UNDER THE GST TAX SYSTEM	324
[A]	Exclusions	324
[1]	Predeceased Child Rule	325
[2]	GST Exclusions Based on Gift Tax Exclusions	326
[a]	Exclusion for Transfers that Qualify Under the Gift Tax Annual Exclusion	326
	Problem	326
[b]	Exclusion for Transfers that Would Have Qualified Under Section 2503(e)	326
	Problem	327

Table of Contents

[3]	Effective Date Rules	327
[4]	Multiple-Skip Rule	328
[5]	Exclusion for Prior Transfers	329
[6]	Spousal Issues	330
[a]	Split Gifts	330
[b]	QTIPs	330
[B]	Income Tax Changes Based on GST Tax System	330
[1]	Basis Adjustment	330
	Problem	331
[2]	Section 164 Deduction	331
§ 5.04	PROCEDURAL AND ADMINISTRATIVE RULES	332

Part III APPLICATION OF PRINCIPLES 333

Chapter 6 TRANSFERS NEAR DEATH 335

§ 6.01	GIFT TAX	335
§ 6.02	ESTATE TAX	335
[A]	Simple Gifts	335
[B]	Application of Section 2035(b) (Formerly Section 2035(c))	338
	<i>Estate of Sachs v. Commissioner</i>	338
[C]	Impact of Tax Payment Provisions	341
	Problem	343
§ 6.03	GENERATION-SKIPPING TRANSFER TAX	343
§ 6.04	INCOME TAX	344
	Problems	346

Chapter 7 RETAINED INTERESTS 347

§ 7.01	RETENTION OF AN INCOME INTEREST	347
[A]	Gift Tax	347
[1]	In General	347
[2]	Section 2702	348
[3]	Donors as Permissible Recipients of Trust Income	349
	<i>Revenue Ruling 77-378</i>	349
	Problems	352
[B]	Estate Tax	352
[1]	In General	352
	<i>Commissioner v. Nathan's Estate</i>	354
	Problems	356
[2]	Discretionary and Support Interests	358
	<i>Gokey v. Commissioner</i>	358
	Problem	362

Table of Contents

[3]	Implied Retentions	362
	<i>Estate of McNichol v. Commissioner</i>	362
	Problems	367
[4]	Retention of Voting Rights: Section 2036(b)	367
[5]	Reciprocal Trusts	367
	<i>United States v. Estate of Grace</i>	367
	Problems	373
[6]	Partial and Full Consideration	373
	<i>Wheeler v. United States</i>	374
	Problems	383
[7]	Unwinding the Benefits of Valuation Discounts in Family-Controlled Entities: Section 2036(a)(1) as the Weapon of Last Resort	384
	<i>Estate of Korby v. Commissioner</i>	384
[C]	Generation-Skipping Transfer Tax	389
	Problem	390
[D]	Income Tax	390
	<i>Krause v. Commissioner</i>	391
	<i>Revenue Ruling 66-161</i>	396
	Problems	397
[E]	The Short-Term Zeroed-Out GRAT: The Basics	398
[1]	The Construct	398
[2]	Gift Tax Aspects	398
[3]	Estate Tax Aspects	399
[4]	GST Aspects	399
[5]	Income Tax Aspects	399
[6]	Virtually Zeroed-out GRAT Example	400
§ 7.02	REVERSIONARY INTERESTS	400
[A]	Indefeasible Reversions	400
[1]	Gift Tax	401
[2]	Estate Tax	401
	Problems	401
[3]	Generation-Skipping Transfer Tax	402
[4]	Income Tax	402
	<i>Private Letter Ruling 9402011</i>	403
	Problems	404
[B]	Reversions Subject to a Condition	405
[1]	Gift Tax	405
	Problem	405
[2]	Estate Tax	405
	<i>Estate of Allen v. United States</i>	408
	Problems	411

Table of Contents

[3]	Generation-Skipping Transfer Tax	411
	Problem	412
[4]	Income Tax	412
	Problems	412
§ 7.03	TRANSFER AND RELEASE OF RETAINED INTERESTS	413
[A]	Gift Tax	413
	Problems	413
[B]	Estate Tax	414
	<i>United States v. Allen</i>	414
	Problems	416
[C]	Generation-Skipping Transfer Tax	417
[D]	Income Tax	418
Chapter 8	REVOCABLE TRANSFERS	419
§ 8.01	ABSOLUTE POWERS	419
[A]	Gift Tax	419
	<i>Camp v. Commissioner</i>	422
	Problems	425
[B]	Estate Tax	426
[1]	Section 2038	426
[2]	Section 2036(a)(2)	426
[3]	Joint Powers	427
	<i>Helvering v. Helmholtz</i>	427
	<i>Revenue Ruling 76-103; 1976-1 C.B. 293</i>	429
[4]	Powers of Attorney	431
	<i>Estate of Swanson v. United States</i>	431
	Problems	434
[C]	Generation-Skipping Transfer Tax	435
[D]	Income Tax	435
	Problems	436
§ 8.02	CONTINGENT POWERS	437
[A]	Gift Tax	437
[B]	Estate Tax	438
	<i>Estate of Farrel v. United States</i>	438
	Problem	442
[C]	Generation-Skipping Transfer Tax	442
[D]	Income Tax	442
§ 8.03	RELEASE OF RETAINED POWERS	443
[A]	Gift Tax	443
[B]	Estate Tax	443
[C]	Generation-Skipping Transfer Tax	444

Table of Contents

[D]	Income Tax	444
	Problems	444
Chapter 9	RETENTION OF POWERS OTHER THAN THE POWER TO REVOKE	447
§ 9.01	POWERS TO CHANGE BENEFICIAL INTERESTS	448
[A]	Gift Tax	448
	<i>Estate of Sanford v. Commissioner</i>	448
	Problems	449
[B]	Estate Tax	450
[1]	Discretionary Powers	450
	<i>United States v. O'Malley</i>	450
	Problems	454
[2]	Powers Subject to a Standard	454
	<i>Jennings v. Smith</i>	454
	Problem	458
[3]	Joint Powers	459
[C]	Generation-Skipping Transfer Tax	459
	Problem	459
[D]	Income Tax	460
[1]	In General	460
	<i>Carson v. Commissioner</i>	460
[2]	DING Trusts and § 674	464
	<i>Estate of Goodwyn v. Commissioner</i>	469
	Problems	473
§ 9.02	POWERS TO CHANGE TIME OR MANNER OF ENJOYMENT OF BENEFICIAL INTERESTS	474
[A]	Gift Tax	475
[B]	Estate Tax	475
	<i>Lober v. United States</i>	475
	Problems	478
[C]	Generation-Skipping Transfer Tax	479
	Problem	479
[D]	Income Tax	479
	Problems	480
§ 9.03	POWER TO REMOVE OR APPOINT A TRUSTEE	480
	<i>Revenue Ruling 95-58</i>	480
	Problems	482
§ 9.04	ADMINISTRATIVE POWERS	482
[A]	Gift Tax	483
[B]	Estate Tax	483

Table of Contents

	<i>Old Colony Trust Co. v. United States</i>	483
	Problem	485
	<i>United States v. Byrum</i>	485
	Problem	492
[C]	Generation-Skipping Transfer Tax	492
[D]	Income Tax	493
[1]	In General	493
	<i>Revenue Ruling 86-82</i>	493
[2]	Intentionally Defective Grantor Trusts (IDGTs)	495
	<i>Rev. Rul. 2008-22; 2008-1 C.B. 796</i>	495
[3]	Power to Adjust and Total Return Unitrusts	498
	Problems	498
§ 9.05	TERMINATION OF RETAINED POWERS	500
	Problem	500
Chapter 10 LIFE INSURANCE		501
§ 10.01	IN GENERAL	501
[A]	Gift Tax	503
[1]	Taxable Transfers	503
[a]	In General	503
[b]	Community Property	504
[2]	Valuation	504
[3]	Annual Exclusion	505
	<i>Private Letter Ruling 8134135</i>	505
	Problems	507
[B]	Estate Tax	508
[1]	Taxation Based on Current Ownership	508
[a]	Policies Not Insuring the Decedent	508
[b]	Policies Payable to the Insured's Estate	509
	Problem	509
[c]	Policies Payable to Others	510
	<i>Commissioner v. Estate of Noel</i>	510
	<i>Estate of Lumpkin v. Commissioner</i>	513
	Problems	517
	<i>Revenue Ruling 2011-28</i>	518
[d]	Community Property	522
	<i>Revenue Ruling 80-242</i>	522
[e]	Life Insurance Proceeds and the Marital Deduction	524
[f]	Interaction with Section 2206	525
[2]	Transfers Within Three Years of Death	525
[a]	In General	525

Table of Contents

	Revenue Ruling 82-13	525
[b]	Pre-1982 Applications	527
[c]	Post-1981 Law	528
	<i>Estate of Leder v. Commissioner</i>	528
	Problems	533
[C]	Generation-Skipping Transfer Tax	534
[D]	Income Tax	534
	Problems	537
[E]	Review Problems	537
Chapter 11	ANNUITIES AND OTHER RETIREMENT ARRANGEMENTS	539
<hr/>		
§ 11.01	TAXATION OF ANNUITIES	539
[A]	Gift Tax	539
[B]	Estate Tax	540
	<i>Estate of Montgomery v. Commissioner</i>	540
	<i>Negron v. United States</i>	543
[C]	Generation-Skipping Transfer Tax	550
[D]	Income Tax	551
[E]	Private Annuities	552
	Problems	553
§ 11.02	EMPLOYMENT RELATED RETIREMENT BENEFITS	554
[A]	Description of Qualified Employment Related Retirement Plans	554
[1]	Employer Plans	554
[a]	ERISA Limitations	556
[b]	Income Tax Limitations	556
[c]	Tax Advantages	556
[2]	Individual Plans	557
[a]	H.R. 10 (or Keogh) Plans	557
[b]	Individual Retirement Arrangements (IRAs)	557
[B]	Taxation of Employment Related Retirement Plans	558
[1]	Gift Tax	559
[2]	Estate Tax	559
[3]	Income Tax	560
[a]	General Rules for Distributions	560
[b]	Lump Sum Distributions	561
[c]	Rollover Distributions	561
[d]	Premature Distributions	562
[e]	Minimum Required Distribution Rules	562
[4]	Income in Respect of a Decedent (IRD)	563
[C]	Spousal Interests and Issues in Retirement Assets	564

Table of Contents

[1]	ERISA Plans	564
[a]	Joint and Survivor Annuities	564
[b]	Qualified Domestic Relations Orders (QDROs)	565
[c]	Community Property	566
	Problem	566
[2]	QTIP Trusts for Qualified Plan Benefits	567
	<i>Revenue Ruling 2006-26</i>	567
[D]	Nonqualified Plans	574
[1]	Gift Tax	574
	<i>Revenue Ruling 81-31</i>	575
[2]	Estate Tax	575
	<i>Hetson v. United States</i>	577
[3]	Income Tax	581
Chapter 12		583
THIRD-PARTY POWERS		583
§ 12.01	DISPOSITIVE POWERS	584
[A]	General Powers of Appointment	584
[1]	Gift Tax	584
[2]	Estate Tax	585
[3]	Limitations on the Taxation of Powers	585
[4]	Release of a General Power	586
	<i>De Oliveira v. United States</i>	586
[5]	Joint Powers and Contingent Powers	590
	<i>Revenue Ruling 76-503</i>	592
	Problems	594
[6]	Generation-Skipping Transfer Tax	595
[7]	Income Tax	595
	<i>Private Letter Ruling 200022035</i>	596
	Problem	597
[B]	Other Dispositive Powers	598
[1]	Gift Tax	598
	<i>Estate of Regester v. Commissioner</i>	598
[2]	Estate Tax	603
[3]	Generation-Skipping Transfer Tax	604
[4]	Income Tax	604
	<i>Stone v. Commissioner</i>	605
	Problems	609
[C]	Additional Tax Problems Raised by <i>Crummey Trusts</i>	610
[1]	Gift Tax	610
[a]	Gifts of Less than \$5,000 or 5% of the Trust	610
[b]	Gifts in Excess of \$5,000 or 5% of the Trust	611

Table of Contents

[c]	A Related Issue: Two Lapses per Year	612
[2]	Estate Tax	613
[3]	Generation-Skipping Transfer Tax	614
	Problem	615
[4]	Income Tax	615
	<i>Private Letter Ruling 8545076</i>	615
	Problems	618
§ 12.02	ADMINISTRATIVE POWERS	618
Chapter 13	CONCURRENT PROPERTY INTERESTS	621
§ 13.01	NON-SPOUSAL CONCURRENT PROPERTY INTERESTS	621
[A]	Gift Tax	621
[1]	Tenancies in Common	621
[2]	Joint Tenancies	622
	<i>Revenue Ruling 78-362</i>	623
[B]	Estate Tax	625
[1]	Interests to which Section 2040 Applies	626
[2]	Consideration Furnished Test	627
	<i>Estate of Goldsborough v. Commissioner</i>	628
	Problem	631
[3]	Simultaneous Death Situations	632
	<i>Revenue Ruling 76-303</i>	633
[C]	Generation-Skipping Transfer Tax	635
[D]	Income Tax	635
	Problems	635
§ 13.02	SPOUSAL CONCURRENT PROPERTY INTERESTS	637
[A]	Gift Tax	637
	Problem	637
[B]	Estate Tax	638
[1]	In General	638
[2]	Pre-1977 Joint Tenancies	639
	Problem	640
[C]	Income Tax	640
	Problems	641
§ 13.03	SPOUSAL CONCURRENT PROPERTY INTERESTS: COMMUNITY PROPERTY	641
[A]	Gift Tax	641
[B]	Estate Tax	642
[C]	Income Tax	643
	Problems	643
§ 13.04	SEVERING JOINT TENANCIES	644

Table of Contents

	<i>Black v. Commissioner</i>	645
	Problems	648
§ 13.05	DISCLAIMERS OF CONCURRENT PROPERTY INTERESTS	649
	<i>McDonald v. Commissioner</i>	649
Chapter 14	INCOME TAXATION OF ESTATES, TRUSTS, AND BENEFICIARIES	655
§ 14.01	THE DECEDENT'S FINAL INCOME TAX RETURN	655
	Problems	656
§ 14.02	INCOME IN RESPECT OF A DECEDENT	657
[A]	In General	657
[1]	Contracts to Sell Property	658
	<i>Claiborne v. United States</i>	658
	<i>Estate of Peterson v. Commissioner</i>	663
[2]	Other IRD Items	667
	<i>Estate of Riegelman v. Commissioner</i>	667
	<i>Estate of Cartwright v. Commissioner</i>	669
	Problems	673
[B]	Deductions in Respect of Decedents	675
[C]	Section 691(c) Deduction	675
	Problem	677
§ 14.03	FIDUCIARY ACCOUNTING	677
[A]	The Relationship Between Subchapter J Taxation and Traditional State Income and Principal Fiduciary Accounting Rules	678
[B]	The Relationship Between Subchapter J Taxation and New Trust Paradigms	681
[1]	In General	681
[C]	Tax Accounting vs. Fiduciary Accounting	683
	Problems	684
§ 14.04	TAXABLE INCOME OF ESTATES AND TRUSTS	685
[A]	Gross Income: Identifying the Taxpayer	685
	<i>Revenue Ruling 75-61</i>	685
[B]	Deductions	689
[1]	In General	689
[2]	Depreciation	692
	<i>Lamkin v. United States</i>	692
	Problem	695
[3]	Charitable Deduction	695
[4]	Double Deducting Administrative Expenses on the Estate's Income Return and Estate Tax Return	696
[a]	In General	696

Table of Contents

	[b]	Marital and Charitable Deduction Regulations	697
	[C]	Timing Issues	698
		<i>Schimberg v. United States</i>	698
		Problems	702
§ 14.05		TRUST AND ESTATE AS CONDUITS	703
	[A]	In General	703
		<i>Irwin v. Gavit</i>	703
		Problems	706
	[B]	Distributable Net Income: The Conduit Mechanism	707
		Problem	714
	[C]	Capital Gains in DNI	714
		<i>Revenue Ruling 68-392</i>	714
		<i>Revenue Ruling 85-116</i>	721
		Problem	724
		Problem	725
	[D]	Operation of the Conduit System	725
	[1]	Taxation of Simple Trusts and Their Beneficiaries	725
		<i>Tucker v. Commissioner</i>	727
		Problems	734
	[2]	Taxation of Complex Trusts and Their Beneficiaries	736
		Problems	744
	[3]	Taxation of Estates and Their Beneficiaries	745
	[4]	Taxation of Certain Trusts as Estates	746
	[5]	Separate Share Rules	747
		Problems	750
	[E]	The Impact of Property Distributions	751
	[1]	Mandatory Recognition of Gain or Loss	751
		<i>Kenan v. Commissioner</i>	751
		<i>Revenue Ruling 74-178</i>	754
		<i>Revenue Ruling 60-87</i>	755
		<i>Revenue Ruling 69-486</i>	757
		<i>Estate of Dean v. Commissioner</i>	759
	[2]	Elective Recognition of Gain or Loss	762
		Problems	764
	[F]	Termination of a Trust or Estate	765
		<i>Revenue Ruling 57-31</i>	766
		<i>O'Bryan v. Commissioner</i>	767
		Problem	771
	[G]	Trapping Distributions	772
	[H]	Equitable Adjustments	772
	[1]	Ordered Adjustment	772

Table of Contents

[2]	Equitable Adjustments Under the 2000 Uniform Principal and Income Act	777
	Problem	778
§ 14.06	CONTROLLING ABUSES OF TRUSTS	778
[A]	Taxation of Multiple Trusts	778
	Problem	780
[B]	Calendar Year Requirement for Trusts	780
[C]	Throwback Rules	780
§ 14.07	INCOME TAXATION OF A CHARITABLE TRUST BENEFICIARY	781
<hr/>		
Part IV	POLICY CONSIDERATIONS	783
<hr/>		
Chapter 15	PERSPECTIVES ON THE CURRENT WEALTH TRANSFER TAX SYSTEM	785
<hr/>		
§ 15.01	ISSUES INVOLVING THE CURRENT WEALTH TRANSFER TAX SYSTEM	785
[A]	Policy Issues Raised During the Congressional Debates in 2010 and 2012 and Elsewhere.	785
[B]	Framework for Analysis	787
	<i>William G. Gale and Joel Slemrod, The Estate Tax: Not Dead Yet . . .</i>	787
[C]	Closing the Loopholes	793
[1]	President Obama’s Reform Proposals	794
	General Explanations of the Administration’s Fiscal Year 2014 Revenue Proposals	794
[2]	ABA Sections’ Reform Options	802
[3]	Treasury Proposals	812
	Treasury Tax Reform Study	812
§ 15.02	ALTERNATIVES TO THE CURRENT WEALTH TRANSFER TAX SYSTEM	816
[A]	An Accessions Tax	817
	<i>Joseph M. Dodge, Replace the Estate Tax with a Realization Accessions Tax, 122 Tax Notes 1151 (2009).</i>	817
[B]	Taxing Gifts and Bequests as Income	822
	Joseph M. Dodge, Beyond Estate and Gift Tax Reform: Including Gifts and Bequests in Income	822
[C]	A Wealth Tax	825
	<i>Barry L. Isaacs, Do We Want a Wealth Tax in America?</i>	825
	Problems	826

Table of Contents

TABLE OF CASES	TC-1
-----------------------------	-------------

TABLE OF STATUTES	TS-1
--------------------------------	-------------

TABLE OF AGENCY DECISIONS	TA-1
--	-------------

INDEX	I-1
--------------------	------------
