# 2022 SUPPLEMENT
# TO
# FEDERAL TAXATION OF ESTATES, TRUSTS, AND GIFTS
## FOURTH EDITION

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## Preface

This Supplement includes important legislative, administrative and judicial developments since the manuscript for the Fourth Edition was submitted in the fall of 2013. The most important legislative development was the enactment of the Tax Cuts and Jobs Act in 2017, which is generally effective in 2018. Minor legislation included changes made by the Protecting Americans from Tax Hikes Act of 2015 (the "PATH Act"), the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, as well as the enactment of so-called ABLE legislation in late 2014. In addition, with the enactment of the Secure Act (Setting Every Community Up for Retirement Enhancement Act of 2019), changes were made in the retirement and other areas. Legislation in 2020 included the Coronavirus Aid, Relief and Economic Security Act (CARES Act) and the Consolidated Appropriations Act, 2021 which included a few relevant tax changes.

Chapter 15 in this Supplement also includes President Biden's proposals dealing with income tax issues and Senator Sanders' proposal that would dramatically affect estate, gift and generation-skipping transfer taxes.

The year 2022 saw dramatic changes in interest rates, which in turn has resulted and will in dramatic valuation differences for split-interest and other dispositions. The Appendix includes valuation tables for various interest rates. These include 2% interest rate tables; 2% is the rate used in the Problems and elsewhere in the Fourth Edition.[1] Valuation tables are also provided for a 3.8% interest rate, which is the applicable rate for gifts and deaths in August 2022.[2] Because the applicable interest rate is determined monthly,[3] you can find the applicable valuation tables for other rates by using the following link: http://www.irs.gov/Retirement-Plans/Actuarial-Tables Complicating valuation of non-term interest trusts is a 2022 proposed regulation which alters valuation based on new mortality data. The above IRS url includes proposed valuation tables.

The Appendix also includes certain inflation-adjusted amounts for 2022. Most significantly, the federal exemption level for estate, gift and generation-skipping taxes in 2022 is $12,060,000. Because some Problems rely on wealth of $12 Million, as will be noted those Problems should now be based on $13 Million instead of $12 Million.

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[1] For most Text Problems and Examples, the year 2022 can be used instead of the year 2014. Your professor may also want you to calculate values based on the current interest rate.

[2] *See* Rev. Rul. 2022-14.

[3] For example, in August 2021 the applicable rate was 1.2%. *See* Rev. Rul. 2021-14. For August 2020 and several months thereafter the applicable rate was 0.4%, which was the lowest rate in history. The highest rate was 11.6% in April and May of 1989.

We wish to express our appreciation to William Gaskill, Research, Instructions and Scholarly Communications Librarian, Albany Law School; Theresa Colbert, Bloom's legal assistant, Albany Law School; and Garreth Santosuosso, Albany Law School, Class of 2023, for their invaluable assistance in preparing this Supplement.

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## CHAPTER 1: BACKGROUND

**Page 15:** Replace sentence in last paragraph beginning "For 2014," in third to last line with the following sentence:

For 2017, the exemption amount was $5,490,000. FN 56

FN 56: *See* Rev. Proc. 2016-55, 2016-45 I.R.B. 707.

**Page 16:** Add after 2d full paragraph:

### [4] Tax Cuts and Jobs Act of 2017 (Tax Act of 2017)

On December 22, 2017, President Trump signed H.R. 1 into law. The law, which runs over 400 pages, can be found at https://www.congress.gov/115/bills/hr1/BILLS-115hr1enr.pdf. The Conference Committee Report can be found at http://docs.house.gov/billsthisweek/20171218/Joint%20Explanatory%20Statement.pdf.

Although originally entitled "The Tax Cuts and Jobs Act", at the Senate Parliamentarian's request it ultimately was entitled "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018" The Act, however, is commonly referred to as the Tax Cuts and Jobs Act.

On December 20, 2018, The Joint Committee on Taxation released a general explanation (JCS-1-18) of the Tax Cuts and Jobs Act.

Although the Tax Cuts and Jobs Act runs over 400 pages, only one major change was made in the estate, gift and GST tax areas: the basic exclusion amount (exemption amount) was increased from $5 Million to $10 Million, as adjusted for inflation, for the years 2018-2025. *See* § 2010(c)(3), as amended. For 2022, the exemption amount is $12,060,000. *See* Rev. Proc. 2021-44, 2019 47 I.R.B. 1.

Because the exemption amount will revert to $5 Million as adjusted for inflation in 2026, the Tax Act of 2017 authorizes the Secretary of the Treasury to provide regulations to deal with the reversion of the basic exclusion amount in 2026 to $5 Million as adjusted for inflation. *See* § 2001(g)(2). The problem that the regulations will need to address is the so-called "clawback" problem. For example, if a decedent utilizes the available exclusion amount in 2025 which will be over $11 Million but then dies in 2026 when the exclusion amount will be under $7 Million, there could be a potential tax on the gift over the exclusion amount for 2026. On November 26, 2019, Final Regulations (T.D. 9884) were released which will prevent the clawback effect from taking place. *See* Treas. Reg. § 20.2010-1(c) and (e)(3). A proposed regulation would deny the benefit of the anti-clawback regulation if a gift is also includible in the gross estate. *See* REG-118913-21, 87 F.R. 24918, 2022-20 I.R.B. 1089.

Although not expressly part of the transfer tax legislation, by changing the method for computing the annual inflation adjustment from the Consumer Price Index (CPI-U) to the Chained Consumer Price Index (C-CPI-U), the Act effectively impacts on the basic exclusion amount. This change applies in the estate, gift and GST tax areas because § 2010(c)(3)(B)(ii) requires that the annual inflation adjustment be determined under § (f)(3). That provision was amended by the Act to require the use of the Chained Consumer Price Index (C-CPI-U) instead of the Consumer Price Index (CPI-U). *See* § 1(f)(3), as amended.

In 3d paragraph under **[D]**, after 20% add:

top

After 3d paragraph under **[D]**, add new paragraph:

The Tax Act of 2017 made no direct substantive changes to the federal income taxation of gifts, estates and trusts. However, some changes will result based on changes made to the taxation of individuals which apply to the taxation of trusts and estates. It did, however, change the rate schedule for taxing estates and trusts. *See* § 1(e), as amended. § 1(e) for the tax year 2022 is set forth in the Appendix.

**Page 17:** In “Policies” section, add at end of 1st paragraph the following:

The IRS Data Book for 2021 reveals that estate and gift tax collections were $28,045,739, which was only 0.7% of all taxes collected by the IRS in 2021.

**Page 24:**

After “imposition of liens” in 1stt full paragraph, add:

*See, e.g., Bennett and United States v. Bascom,* 2018-1 U.S.T.C. ¶60,704, (E.D. Ky. Mar. 26, 2018).

Add after FN 24 in Text:

The interest rate for overpayments and underpayments is currently 5%. *See* Rev. Rul. 2022-11, 2022-23 I.R.B. 1159.

## CHAPTER 2: OVERVIEW OF FEDERAL TAXATION OF ESTATES, TRUSTS, AND GIFTS

**Page 34:** The applicable credit amount for 2009 should read as $1,455,800.

The applicable credit amount and applicable exclusion amount beginning in 2015 are as follows:

| | | |
|---|---|---|
| 2015 | $2,117,800 | $5,430,000 |
| 2016 | $2,125,800 | $5,450,000 |
| 2017 | $2,141,800 | $5,490,000 |
| 2018 | $4,417,800 | $11,180,000 |
| 2019 | $4,505,800 | $11,400,000 |
| 2020 | $4,577,800 | $11,580.000 |
| 2021 | $4,625,800 | $11,700,000 |
| 2022 | $4,769,800 | $12,060,000 |

In the fall of each year, the Service will issue a revenue procedure setting forth the inflation-adjusted amounts for the succeeding year.

Add as last sentence to 1st paragraph under **NOTE ON GIFT TAX EXEMPTION**:

Alas, the "permanent" adjusted-inflation exemption of $5,000,000 was doubled to $10 Million by the Tax Act of 2017.

**Page 37:** Replace FN 4 with the following:

In 2022, the gift tax annual exclusion is $16,000. *See* Rev. Proc. 2022-45. 1-?.

**Pages 38-39:** In Problems 1d., 2d. and 3c. substitute 2022 for 2015.

Add new Problems 4:

4. Assume *D,* a widower, made no prior taxable gifts. Consider §§ 2501, 2502, 2505 and 6019.

a. In 2012, D makes his first taxable gift in the amount of $500,000. What are the gift tax ramifications of the transfer? What is the amount of the gift tax payable? Must *D* file a gift tax return?

b. In January of 2022, D makes a taxable gift in the amount of $12,500,000. What are the gift tax ramifications of the transfer? What is the amount of the gift tax payable? Must *D* file a gift tax return?

c. What would be the amount of the gift tax due if D made no gifts before 2022 but made taxable gifts of $13,000,000 in 2022? What are the gift tax ramifications of the transfer? What is the amount of the gift tax payable?

d. How would answers to b and c change if the taxable gifts were made in 2023 instead of in 2022? Carefully consider § 2010(c)(2)(B) in relation to § 2502(a)(1).

**Page 43:** For Problem 1, substitute 2022 for 2014.

**Page 44:** For Problem 2b, substitute 2022 for 2015.

Add new Problem 3:

a. D died in 2022 with a taxable estate of $13,000,000 having made no prior gifts. What would be the federal estate tax imposed, the amount of the credit allowable and federal estate tax payable? Consider §§ 2001 and 2010.

b. How would answers differ from those in 3a. if D died in 2023 instead of in 2022? Consider §§ 2001 and 2010.

c. Who is liable for the payment of the tax? Consider § 2002.

**Page 48:** Add Problem 3 as follows:

Problem 3:

What would be the estate tax payable in Examples 1, 2 and 3 on Pages 45 and 46 if D died in 2022?

**Page 49:** the text in the last line should read:

for 2021 the GST exemption is $12,060,000.

Footnote 23 should read:

The GST exemption ranged from an initial amount of $1 Million to $5,490,000 in 2017.

**Page 50:** Replace the parenthetical in the 3d line with:

(not to exceed $12,060,000 in 2021)

Replace 2014 with 2022 in **Example 1**.

Replace the 2d sentence in **Example 2** with the following:

Assume the grandparent's GST exemption of $12,060,000 was fully allocated before the grandparent died in August 2022.

**Page 52:** Under *Adjusted gross income*, add footnote 27A after ÁGI." In 4th line:

27A: Although alimony will be deductible in 2018 and thereafter to compute AGI for agreements entered into after 2018, alimony will not otherwise be deductible.

In the sentence discussing the medical expense deduction, add after "AGI":

(71/2% for 2017 and 2018)

**Pages 52-53:** Replace the discussion of the *personal exemption deduction* with the following:

Pursuant to the Tax Act of 2017 the personal exemption (PE) deduction for the years 2018-2025 is suspended, that is the personal exemption deduction is zero for these years.

**Page 53:** Under *itemized deductions*, replace the discussion with the following:

Itemized deductions are defined as those deductions that are allowable, other than deductions allowable to compute AGI and the PE deduction, which will be zero for several years, as well as § 199A, which is a new deduction created by the Tax Act of 2017. FN31A *See* § 63(d). The Code allows numerous itemized deductions many of which were seriously reduced or eliminated by the Tax Act of 2017. For example, deductions for state and local taxes (SALT) under § 164 are limited to $10,000 for the years 2018-2025, while most casualty losses have been rendered non-deductible for the years 2018-2025. A significant and highly nuanced itemized deduction is allowed for charitable contributions under § 170. Certain itemized deductions are treated as miscellaneous itemized deductions, which until the Tax Act of 2017 resulted in allowance only to the extent the aggregate exceeded 2% of AGI. *See* § 67(a). For the years 2018-2025, the deduction for miscellaneous itemized deductions is suspended, *i.e.*, no deduction for miscellaneous itemized deductions are allowed. *See* § 67(g). Prior to 2018, the aggregate of all itemized deductions otherwise allowable may have been reduced by 3% of the excess of AGI over a baseline amount. FN 32. *See* § 68(a)(1). Section 68, which was Congress's sneaky way of imposing more tax on wealthier taxpayers without having a higher stated rate of tax, was suspended for the years 2018-2025 by the Tax Act of 2017.

FN31A § 199A, captioned qualified business income, generally allows a deduction of 20% of a taxpayer's qualifying business income from sole proprietorships, LLCs, partnerships and Subchapter S corporations. § 199A is an extremely complex provision with several nuances and restrictions. Extensive final regulations have been issued. S*ee* T.D. 9847, 84 FR 2952-3014 (Feb. 8, 2019).

Under *Standard deduction in lieu of the aggregate of itemized deductions,* replace the paragraph on Page 55 with the following:

For many taxpayers, the aggregate of itemized deductions may be relatively small, especially for taxpayers who do not get to deduct mortgage interest or real estate taxes because they do not own a home. Based on the restrictions for SALT by the Tax Act of 2017 to $10,000, even homeowners who pay significant property and state income taxes may have relatively small itemized deductions. In lieu of taking deductions for itemized deductions, a taxpayer may elect to deduct a standard deduction amount. *See* § 63(b). The standard deduction is generally based on a taxpayer's status and varies each year based on an inflation adjustment. Pursuant to the Tax Act of 2017, the standard deduction was significantly increased for the years 2018-2025. For 2022, the standard deduction, which will be adjusted annually for inflation, ranges from $25,900 for married individuals filing jointly and surviving spouses to $12,950 for unmarried individuals. An additional standard deduction is allowable for taxpayers 65 and over as well as for blind taxpayers. *See* § 63(f). As a result, the standard deduction will be utilized by an increasing number of taxpayers because it will exceed the aggregate of itemized deductions.

**Page 54:**

Replace FN 36 with the following:

36. *See, e.g.,* § 3 of Rev. Proc. 2021- 45, 2021-48 I.R.B. 764 (prescribing rate table amounts for the tax year 2022), set forth on Supplement Pages 77-79.

Replace the sentences beginning with the "The Tax Act and ending with $406,750." By the following:

The Tax Act of 2017 made significant rate reduction changes starting in 2018, including reducing the top rate from 39.6% to 37%. In addition, the taxable income brackets were significantly expanded. For example, a married couple (filing jointly) whose taxable income exceeded $470,700 in 2017 was taxed at 39.6% whereas in 202 taxable income of such a married couple filing must exceed $647,8500 before it will be taxed at the 37% bracket. Rev. Proc. 2021-45, which is set forth in part on Supplement Pages 77-79 provides the applicable inflation-adjusted amounts for the year 2022.

For 2021 and future years, the brackets will be indexed for inflation based on using the chained consumer price index rather that the consumer price index under prior law. *See* § 1(f)(3).

**Note on President Biden's tax proposal:** The proposal, which is set forth on Supplement Pages 68-69, includes restoring the top rate to 39.6%

**Page 55:** In second paragraph under *Long term capital gains and losses*, the second line should read:

will be taxed at 20% for the wealthiest taxpayers, at 15% for many others and even at 0% for some tax payers, albeit there are many exceptions.

Add as new 3d paragraph:

Rev. Proc. 2021-45 provides the following guidance for 2022:

<u>Maximum Capital Gains Rate</u>. For taxable years beginning in 2022, the Maximum Zero Rate Amount under § 1(h)(1)(B)(i) is $83,350 in the case of a joint return or surviving spouse

($41,675 in the case of a married individual filing a separate return), $55,800 in the case of an individual who is a head of household (§ 2(b)), $41,675 in the case of any other individual (other than an estate or trust), and $2,800 in the case of an estate or trust. The Maximum 15-percent Rate Amount under § 1(h)(1)(C)(ii)(l) is $517,200 in the case of a joint return or surviving spouse ($258,600 in the case of a married individual filing a separate return), $488,500 in the case of an individual who is the head of a household (§ 2(b)), $459,750 in the case of any other individual (other than an estate or trust), and $13,700 in the case of an estate or trust.

The Tax Act of 2017 reduced AMT exposure for many taxpayers.

**Page 57:** Add as new FN 50A after the 2d to last sentence in 2d full paragraph:

50A.With the dramatic increase in the federal exemption level for the years 2018-2025, planning to ensure that appreciated property is included in the gross estate has become a feature of estate planning. However, President Biden's tax proposal, which is set forth on Supplement Pages 70-71, would end the advantage of § 1014 for many taxpayers

Add after FN 50 in text:

The § 1014 basis

Add before paragraph beginning "Because of the loss", the following two new paragraphs:

As part of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, which was signed into law on July 31, 2015, §§ 1014(f) and 6035 and amendments to §§ 6662 and 6674 were enacted. Section 1014(f) imposes a consistency requirement: the basis of property under § 1014(a) for income tax purposes must equal the value of the property for estate tax purposes. Section 1014(f)(1) provides that this consistency requirement applies if the value of property is finally determined for estate tax purposes or absent such determination, the value of property provided under § 6035(a), which generally imposes reporting of value to the IRS and recipient beneficiaries when an estate tax return is required to be filed. § 1014(f)(2) limits the consistency requirement "to any property whose inclusion in the decedent's estate increased the liability for the tax imposed by chapter 11 (reduced by credits allowable against such tax) on such estate."

The reporting requirements will help ensure that the income tax basis for property used by beneficiaries will be the value for the property that was used for estate tax purposes. A penalty on executors (and others required to file an estate tax return) for failure to report as required to the Service is imposed. *See* § 6672, as amended. In addition, § 6662(b)(8) was added to provide a 20% accuracy-related penalty on the amount the understatement of tax results from "any inconsistent estate basis," which in turn is defined by § 6662(k)("if the basis of property claimed on a return exceeds the basis as determined under section 1014(f).").

On January 29, 2016, the IRS released Form 8971 (Information Regarding Beneficiaries Acquiring Property from a Decedent). On March 2, 2016, proposed regulations were issued. REG-127923-15, 81 F.R. 11486-11496. These regulations have been heavily criticized (including "unduly burdensome" and "confusing") by many taxpayer organizations *See, e.g.,* Comments by Sections of the American Bar Association, in 2016 TNT 119-21 and 2016 TNT 125-20.

Interestingly, President Obama also proposed consistency and reporting requirements for gifts where basis is determined under § 1015. *See* Text Pages 795-796.

**Page 59:** Add before **PROBLEMS:**

President Biden's tax proposal, which is set forth on Supplement Pages 70-71, would treat a gift or death as a taxable event for many taxpayers.

**Page 60:** In the 5th to the last line, replace ($1,000 in 2014) with the following:

($1,100 in 2022).

**Page 61:** Add as new paragraph before **PROBLEMS:**

The Tax Act of 2017 made a dramatic and complex change to the Kiddie Tax for the years 2018-2025. No longer was net unearned income of a child taxable as if earned by a parent. Instead effectively a child would be taxed by adapting the truncated rate table for trusts and estates.

The dramatic 2017 changes to the Kiddie Tax caused considerable concern. And, by the **Secure Act** (Setting Every Community Up for Retirement Enhancement Act of 2019) these changes were repealed. In effect, the Kiddie Tax regime that was in effect before the 2017 legislation were reinstated beginning in 2019. Indeed, taxpayers have the option to use the original Kiddie Tax regime for the year 2018.

**Page 64:** The last line on the page should read:

(as amended by the Tax Act of 2017) there are only four tax brackets: 10%, 24%, 35% and 37%.

**Page 65:** Replace the sentence in the first two lines with the following:

In 2022, trust income in excess of $13,450 is taxed at the top rate of 37%. FN 63

FN 63: *See* Rev. Proc. 2021-45, § 3.01, Table 5, reproduced on Supplement Page 78. Section 1411 imposes an additional 3.8% tax on excess net investment income.

**Page 65:** Under [2], replace the last sentence of the first paragraph with the following:

For example, in 2022 the maximum amount that could have been saved by having taxable income of $13,700 taxed at brackets below 37% was $1,6.

## CHAPTER 3: ESTATE TAXATION BASICS

**Page 81:** Add before paragraph beginning "Although", the following new paragraph:

The application of § 1014(b)(6) is unclear in two instances. First, many non-community property states have enacted the Uniform Disposition of Community Property Rights at Death.[1] Under the Act, the rights of each spouse in property that was acquired (or became and remained) as community property in a community property jurisdiction (state or foreign country) are preserved on the death of the first spouse.[2] Should the surviving spouse therefor get a step-up (or step-down) in basis under § 1014(b)(6) based on the Act's preservation of community property rights?[3] The second area of uncertainty involves those non-community states (Alaska, Arkansas, Florida, Kentucky, South Dakota and Tennessee) that have enacted some form of opt-in community property legislation. Should the surviving spouse get a step-up (or step-down) basis for property in basis under § 1014(b)(6) if her state's opt-in community property system has been elected?

**Page 88:**

Delete all sentences in FN 2 after the first sentence and add as new 2d sentence:

This statute was repealed in 2008 and replaced with a more robust statute. *See* Fla. Stat. Ann. § 736.0814(2).

**Page 96:** Add before [1] General Valuation Aspects

In August of 2016, controversial proposed regulations under § 2704 were issued; the regulations would not be effective until finalized. S*ee generally* Steve R. Akers, *Section 2704 Regulations,* 51 Heckerling Inst. on Est. Plng. ¶ 100 (2017). Based on President Trump's Executive Order that Treasury review all post-2015 regulations that impose "undue financial burden", the Treasury Department has identified the § 2704 Regulations as falling within the category and will propose reforms to mitigate the burdens. *See* Notice 2017-38, I.R.B. 2017-30 (July 7, 2017). On October 20, 2017, the proposed regulations under § 2704 were withdrawn. *See* Withdrawal of Notice of Proposed Regulations, NPRM REG-163113-02.

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[1] In July 2021, the Uniform Law Commission revised and retitled the Uniform Disposition of Community Rights at Death Act as the Uniform Community Property Disposition at Death Act; a salient feature of the new Act is to extend its application to nonprobate transfers.

[2] The Act also applies to property that was substituted for property that was once community property in a community property jurisdiction. transfers.

[3] Even if a state has not enacted the Uniform Act, the preservation of community property rights at death may still be required.

Add after first full paragraph, the following new paragraph:

*Estate of Kessel v. Commissioner*, T.C. 2014-97, raised the issue whether the knowledge of Bernie Madoff's Ponzi scheme, which finally came to light in 2008, would have been taken into account in valuing a Madoff account of an investor who died in 2006 because "some people had suspected years before Mr. Madoff's arrest that Madoff Investments' record of consistently high returns was simply too good to be true."

**Page 98:** The Tax Court's decision in *Elkins* was reversed in part by the 5th Circuit in 767 F.3d 443 (5th Cir. 2014) because the Service only argued that no discount should be allowed for co-owned works of art and thus failed to provide expert testimony on the amount of the discount for art works if a discount should be allowed. Because the taxpayer presented substantial evidence on the amount of the discount -44.75%- the 5th Circuit accepted the taxpayer's expert testimony and rejected the Tax Court's use of a 10% discount. Based on *Elkins,* the Service will be expected to provide expert testimony on the amount of discounts for works of art in future cases.

Add after 1st sentence in last paragraph:

*See, e.g., Estate of Kollsman v. Commissioner,* T.C. Memo 2017-40 (2017), *aff'd*, 777 Fed.Appx. 870 (9th Cir. 2019).

Add as new last paragraph:

The right of publicity, which is recognized in many states as an intangible property interest and hence includible in the gross estate under § 2033, raises significant valuation issues. The recent case of *Estate of Michael J. Jackson v. Commissioner, T.C. Memo 2021-48* (involving California's right of publicity) illustrates the difficulty where the IRS sought to include over $163 Million in the gross estate while the Tax Court judge held that only some $4 Million was includible.

**Page 99:** Add Problem 4 as follows:

4. To determine the estate tax value, is it appropriate to consider the price an asset sold for after the decedent died? *See Estate of Newberger v. Commissioner*, T.C. Memo. 2015-246 (sale of Picasso painting for $12 Million at auction several months after decedent died should be taken into account).

**Page 102:** Although the Tax Court's decision in *Elkins* was reversed in part by the 5th Circuit in 767 F.3d 443 (5th Cir. 2014), the Tax Court's opinion that disregarded restrictions based on § 2703(a)(2) was not part of the appellate decision.

**Page 103:** Add after the first full paragraph, the following new paragraph:

In August of 2016, controversial proposed regulations under § 2704 were issued; the regulations would not be effective until finalized. S*ee generally* Steve R. Akers, *Section 2704 Regulations,* 51 Heckerling Inst. on Est. Plng. ¶ 100 (2017). Based on President Trump's

Executive Order that Treasury review all post-2015 regulations that impose "undue financial burden", the Treasury Department has identified the § 2704 Regulations as falling within the category and will propose reforms to mitigate the burdens. *See* Notice 2017-38, I.R.B. 2017-30 (July 7, 2017). On October 20, 2017, the proposed regulations under § 2704 were withdrawn. *See* Withdrawal of Notice of Proposed Regulations, NPRM REG-163113-02.

**Page 109:** Add after 1st sentence in 1st full paragraph:

*See, e.g., Estate of Koons v. Commissioner,* 686 Fed. Appx. 779 (11th Cir. 2017) (discount limited to 7.5% as contrasted with a discount of 31.7% as claimed by taxpayer).

Add before last paragraph:

*Estate of Warne v. Commissioner,* T.C. Memo. 2021-17, provides a recent example of the process of allowing discounts involving the valuation of LLC interests in ground leases.

**Page 110:** Add as new paragraph before paragraph beginning "Discounts involving":

In *Estate of Streightoff v. Commissioner*, T.C. Memo. 2018-178 (2018), the Tax Court first held that the decedent owned a LLP interest not an assignee interest. It then disallowed a minority discount finding that the decedent had control over of the LLP but allowed an 18% discount for lack of marketability. The Fifth Circuit affirmed in 954 F.3d 713 (5th Cir. 2020).

**Page 112.** Although Treasury was required to publish new valuation tables by May 1, 2019 based on new mortality assumptions, it has not yet done so. However, on May 5, 2022, Treasury published a proposed regulation updating the relevant valuation tables based on new mortality data. *See* REG-122770-18,87 F.R. 26806-26848,2022-21 I.R.B. 1104. The Proposed Regulation allows use of the proposed tables, instead of the existing tables under the current regulations, for decedents dying on or after January 1, 2021. (ACTEC argues that the date should be May 1, 2019 when the new tables were supposed to be finalized). The proposed tables, which must be finalized to be effective, can be found on the IRS website at: https://www.irs.gov/retirement-plans/actuarial-tables.

By way of example, in the **Example on Text Page 112** the remainder factor for a 47 year old, based on a 2% 7520 rate, would be .52457. The amount includible under § 2033 would be $26,229 instead of $27,019.

More dramatically, if in the **Example** the 47 year-old decedent died in August 2022, when the 7520 rate was 3.8%, the proposed remainder factor would be .31284 (as contrasted with a remainder factor of .32992 under the current regulations). By choosing the proposed remainder factor of .31284, the amount includible under § 2033 would be $15,642.

**Note:** Because the term certain tables (Table B) are not dependent on mortality assumptions, no changes were necessary by the 2022 Proposed Regulations.

**Page 115:** The totals should read:

| *Date of Death* | *Six Months After Date of Death* |
|---|---|
| $6,600,000 | $6,520,000 |

**Page 123:** After 1st full paragraph, add as new paragraph:

*Estate of Koons v. Commissioner,* 686 Fed. Appx. 779 (11th Cir., 2017), explains the rules for deducting interest under § 2053:

> An estate is permitted to deduct expenses that are "actually and necessarily incurred in administration of the decedent's estate." Treas. Reg. § 20.2053-3(a). This regulation clarifies that "[e]xpenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions." *Id*. "Expenses incurred to prevent financial loss to an estate resulting from forced sales of its assets to pay estate taxes are deductible administration expenses." *Estate of Graegin v. Comm'r*, 56 T.C.M. (CCH) 387 (1988). Conversely, interest payments are not a deductible expense if the estate would have been able to pay the debt using the liquid assets of one of its entities, but instead elected to obtain a loan that will eventually be repaid using those same liquid assets.
>
> The interest deduction was denied in *Estate of Koons* because the borrowing was unnecessary-the Estate taxes could have been paid from liquid assets of the estate.

**Page 124:** Add after 1st sentence in 2d paragraph:

However, a deduction will not be allowed to the extent the estate has a claim for reimbursement. *See, e.g., Estate of Sommers v. Commissioner,* 149 T.C. No. 8 (2017). Nor will a deduction be allowed for a claim to receive a portion of the estate. See *United States v. Allison,* 2022 U.S. Dist. LEXIS 34082 (E.D. Cal. 2022).

**Page 127:** The Tax Court's decision in *Estate of Saunders v. Commissioner,* was affirmed by the 9th Circuit in *Riegels v. Commissioner*, 745 F.3d 953 (9th Cir. 2014).

**Page 128: [e] Proposed June 2022 Regulations**

On June 24, 2022, Proposed Regulations were issued regarding the deductibility of certain funeral and administration expenses and certain claims against an estate. *See* REG-130975-08, 87 F.R. 38331-38343,2022-28 I.R.B. 71. The most significant feature provides rules for amounts paid 3 years after a decedent's death with respect to otherwise allowable deductions; the amount deductible will be based on the present value at death of the later payment. The proposed regulations also make it more difficult to deduct interest expense on tax and penalties owed by an estate, and interest expense on some loan obligations incurred by an estate, so-called *Graegin* loans, named after the taxpayer-favorable decision in *Estate of Graegin v. Commissioner*, T.C. Memo. 1988-477. These and some other minor changes will not apply until the regulation becomes finalized.

**Page 129:** The Tax Court in *Estate of Heller v. Commissioner*, 147 T.C. No. 11 (2016) allowed a deduction under § 2054 for theft losses arising from the estate's investment in Bernie Madoff's ponzi scheme.

**Pages 137-138:** Delete the paragraph beginning with "Windsor leaves" on the bottom of Page 137.

**Page 138:** After the sentence beginning "Issues 1 and 2", add the following paragraph:

Because the *Windsor* decision "only" determined that, for federal purposes, same-sex marriages must be treated on an equal footing with opposite-sex marriages, two issues involving state recognition of same-sex marriages remained for decision: (1) Can a state bar same-sex marriages? and (2) Can a state refuse to recognize lawful same-sex marriages performed in another state?

On June 25, 2015, the Supreme Court in *Obergefell v. Hodges*, 2015 U.S. LEXIS 4250 (2015), a 5-4 decision, answered both questions in the negative. As Justice Kennedy, who wrote the majority opinion, stated:

> The Court, in this decision, holds same-sex couples may exercise the fundamental right to marry in all States. It follows that the Court also must hold—and it now does hold—that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.

In Notice 2017-15, 2017-6 I.R.B. 783 the Service provided that same-sex married couples can retroactively claim marital deductions and recalculate GST exemptions.

Prop. Reg. § 301.7701-18 would change the definitions for "spouse," "husband," and "wife" to reflect the reality that same-sex marriages and opposite-sex marriages are treated in the same way for tax purposes.

**Page 163:**

**[b] Portability Issues**

Delete the first sentence and replace it with the following sentence:

The simplicity of the portability concept is belied by its technical statutes and complex final regulations, which were issued and became effective on June 12, 2015. FN 72. *See generally* Richard S. Kinyon & Robin L. Klomparens, *Problems with Portability and Proposed Solutions*, 148 TAX NOTES 881 (2015).

Delete the text of FN 72 and add the following as the text for FN 72:

FN 72: T.D. 9725, 80 Fed. Reg. 34279-34292 (June 16, 2015). The estate tax regulations may be found under Treas. Reg. §§ 20.2001-2 and 20.2010-0 through 2010-3; the gift tax regulations may be found under Treas. Reg. § 2505-0 through 2010-2. Earlier temporary regulations, which were replaced by T.D. 9725, will apply before June 12, 2015.

**Page 164:**

At end of 1st full paragraph, add:

*See In re Estate of Vose*, 390 P.3d 238 (Okla. 2017) (decedent's administrator ordered to file Form 706 so surviving spouse could port DSUE).

Add to FN 73:

The ported DSUE amount may be redetermined on the surviving spouse's death. *See Estate of Sower v. Commissioner,* 149 T.C. No. 11 (2017).

Add to FN 74:

Rev. Proc. 2017-34, 2017-34 I.R.B. 1282 allows an automatic extension of 2 years from the decedent's death to file the estate tax return of the deceased spouse when a return was not otherwise required to be filed and to elect portability. The time period was extended to 5 years by Rev. Proc. 2022-32, 2022-30 I.R.B. 101.

References in footnotes 74, 75, 77 and 78 should be to the final 2015 regulations, *i.e.* reference should be to Reg. (not Temp. Reg.) and citations should be to regulation sections, *i.e.* the reference to "T" should be dropped.

Footnote 76 should include the following new sentence at the end:

For the most part, the final regulations adopt the rules provided in the temporary regulations. Although Rev. Proc. 2001-38 bars a QTIP deduction if unnecessary to reduce estate taxes, based on Rev. Proc. 2016-49, 2016-42 I.R.B. 1. an otherwise barred deduction will be allowed if the QTIP election is made to make a portability election.

**Page 180:** After 1st sentence:

The deduction depends on the decedent's ownership of an interest in property. See *Estate of Moore v. Commissioner,* 2021 WL 5176461 (9th Cir. 2021) (no deduction because asset owned by FLP).

**Page 186:** Add in 1st text paragraph after "and 2032":

Although the amount of the charitable deduction for the interest passing to a qualifying charitable organization will almost always be the value of the interest that is included in the gross estate, *see, e.g. Ithaca Tr. Co. v. United States*, 279 U.S. 151 (1929), in unusual cases the charitable deduction amount may be less. *See, e.g., Estate of Dieringer v. Commissioner,* 917 F.3d 1135 (9th Cir. 2019)(charitable deduction not allowed for value of majority stock interest at death when interest was redeemed after death based on valuation as a minority interest).

In *Estate of Warne v. Commissioner,* T.C. Memo 2021-17, the value of charitable deductions made to two charities of property had to take into account discounts for the fractional interests to each charity even though the decedent contributed 100% of the property to the 2 different charities and 100% of the value of the property was included in the gross estate.

**Page 190:** Replace the **CRAT Example** with the following:

> **CRAT Example:** Decedent created a trust that had an estate tax value of $300,000. At the time of decedent's death, the annuitant, age 77, was entitled to receive an annuity of $15,000 a year for life payable at the end of each year from the trust, with remainder to a qualifying charitable organization. The applicable section 7520 rate was 2.0%.[4] The remainder factor at 2.0% for an individual aged 77 is 0.83515. By converting the remainder factor to an annuity factor,[5] the annuity factor at 2% for an individual aged 77 is 8.6643 (1.00000 minus 0.83515), divided by 0.02). The aggregate annual amount, $15,000, is multiplied by the factor 8.6643. The present value of the annuity at the date of the decedent's death was therefore $129,965 ($15,000 × 8.6643).

**Page 191:** Add as a new paragraph before the paragraph beginning "The unitrust must":

Like the CRAT, the value of the charitable remainder interest in a CRUT must equal at least 10% on the date of contribution. *See* § 664(d)(2)(D). In *Estate of Schaefer v. Commissioner,* 115 T.C. No. 4 (July 28, 2015), the Tax Court determined that the 10% threshold was not met in a NIM-CRUT because the unitrust rate must be used for valuation purposes under § 664(e). Pursuant to the PATH Act of 2015, the unitrust rate must be used to value the charitable remainder interest for valuation even if the CRUT is in NIM-CRUT or NI-CRUT form. § 664(e).

**Page 192:** In 1st line, 2% should read 5%.

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[4] Assume that the 2.0% rate was the most favorable § 7520 rate by comparing the rate the month that the testator died with the rate that was in force in the 2 months before the testator died. *See* Treas. Reg. § 1.7520-2.

[5] *See* Treas. Reg. § 20.2031-7(d)(2)(iv).

**Pages 201- 203:** Replace sub-sections **[4]** and **[5]** with the following:

### [4] Continuing Significance of the Repealed Section 2011 Credit for State Death Tax Purposes

Notwithstanding its repeal, § 2011 has relevance today since some states continue to impose state death taxation based on § 2011. FN 132.

FN 132: These states include Hawaii, Illinois, Maryland, and Massachusetts. New York also used the § 2011 credit as a basis for taxation for decedents dying before April 1, 2014.

Massachusetts is a good example as it imposes a state estate tax based on the § 2011 credit before it was changed beginning by ERTA. Specifically, Massachusetts Estate Tax Law imposes an estate tax on Massachusetts residents who have no out-of-state property as follows: "A tax is hereby imposed upon the transfer of the estate of each person dying on or after January 1, 1997 who, at the time of death, was a resident of the commonwealth. The amount of the tax shall be the sum equal to the amount by which the credit for state death taxes that would have been allowable to a decedent's estate as computed under Code section 2011, as in effect on December 31, 2000. FN 133.

FN 133: Mass. Stat, ch. 65C § 2A.

In effect, Massachusetts imposes a tax equal to the maximum credit that was allowable under § 2011 when § 2011was in full force and effect as a credit for federal estate tax purposes. FN 134

FN 134: States vary as to the threshold amount after which tax will be imposed. While Massachusetts provides a $1 Million threshold, Hawaii's tracks the federal exemption level. Some states, including Maine, New York, Oregon and Washington have separate estate tax systems, i.e., the § 2011 credit is not used to determine the tax. Pennsylvania and New Jersey only have an inheritance tax.

On the other hand, well over half of the states impose a state death tax equal to the credit that is currently allowable under federal law. FN 135

FN 135: These states include California, Florida, Georgia, Michigan and Texas.

Because no credit is currently allowed under § 2011, as it was repealed for decedents dying after 2004, no state death tax is imposed by these states.

### [5] Illustration of How the Repealed Section 2011 Credit Determines the Amount of State Death Tax Imposed

Massachusetts estate taxation provides a good example of how state death taxes may be payable by small and modest estates even though no federal estate tax is payable.

**Example:** The decedent died unmarried in 2016. She was a domiciliary of Massachusetts. The decedent's federal taxable estate was $1.1 million; no adjusted taxable gifts were made. Although no federal estate tax is payable, Massachusetts estate of $38,800 will be imposed.

The tax of $38,800 is determined by applying § 2011. In turn, the lesser of two calculated amounts will control, that, is the lesser of the two calculated amounts is the credit that would have been allowed under § 2011 and is therefore the estate tax that Massachusetts imposes. The first calculation is under § 2011(b), which determines the tax based on a table that relies on "the adjusted taxable estate," which is the federal taxable estate (before the current § 2058 deduction) reduced by $60,000. Thus, in the example, the adjusted taxable estate is $1,040,000 and the tax thereon is $38,800.

The second calculation may only limit the amount determined under § 2011(b), This calculation, which is found in § 2011(e), is determined by first calculating what would have been the federal estate tax imposed on the sum of the federal estate tax (before the current 2058 deduction) and adjusted taxable gifts. FN 136

FN 136: States like Massachusetts require use of an earlier tax rate schedule than is provided by the current version of 2001(c). Specifically, Massachusetts effectively requires use of the § 2001(c) schedule that was in effect at the end of 2000.

In our example, the federal estate tax on $1.1 Million would have been $386,800, based on the 2000 rate schedule under § 2001(c). The next step is to subtract the unified credit that would have been allowable had the exemption level been $1 Million FN 137; that credit amount is $345,800. The difference between $386,800 and $345,800 is $41,000. Because $41,000 is greater than the calculated § 2011(b) amount of $38,800, the maximum credit allowable under § 2011 is the lesser amount of $38,800.

FN 137: Massachusetts limits the credit to $345,800 based on an exclusion amount of $1 Million, Other states may be more generous. For example, the credit in Hawaii is based on the annually adjusted federal amount. The Illinois credit is based on a $4 Million exclusion amount; in Connecticut and Maine the exclusion amount is $2 Million.

Massachusetts estate tax will not be payable if the § 2011(e) calculation is zero. Consider the following example:

**Example:** The decedent dies unmarried in 2016. She was a domiciliary of Massachusetts. The decedent's federal taxable estate is $1 million; no adjusted taxable gifts were made. Of course, no federal estate tax is payable. Nor will Massachusetts estate tax be payable because the amount determined under § 2011(e) would be zero (tax on $1 Million of $345,800, less a unified credit of $345,800.).

The Massachusetts estate tax can be minimized or eliminated by making adjusted taxable gifts. Here's an extreme example of how Massachusetts estate tax can be eliminated.

**Example:** The decedent died unmarried in 2016. She was a domiciliary of New York. Absent death bed planning, the decedent's federal taxable estate would have been $5 Million; assume no adjusted taxable gifts were made. Although no federal estate tax was payable, Massachusetts estate tax of $391,600 would have been payable.

Shortly before death but in 2016, the decedent, or her agent under a durable power of attorney with gift making authority, made a gift of $4,900,000 for which no § 2503(b) exclusion was allowable to the persons who would have taken under the decedent's will. Because the decedent's taxable estate has been reduced to $100,000, no Massachusetts estate tax is payable since the § 2011(b) amount is zero. FN 138

FN 138: The § 2011(e) amount, which will be significant because adjusted taxable gifts are taken into account, is not relevant because it only serves to limit the credit determined under § 2011(b).

**PROBLEM**

Do you see why Massachusetts estate taxes can be eliminated by lifetime gifting? How could Massachusetts prevent such opportunistic planning? Could Massachusetts estate taxes be reduced or even eliminated by re-domiciling to a state that does not impose a death tax?

**Page 207:** In the **Example,** the first line should read:

The decedent, a United States citizen, died in 2014, owning real . . .

**Page 208:** Add after 1st full paragraph :

Section 6901 imposes transferee liability on estate beneficiaries if the executor does not pay the estate tax liability. *See, e.g., United States v.* 824 Fed. Appx. 444 (8th Cir. 2020).

**Page 209:** Add after last sentence in the 1st paragraph:

Section 6901 imposes transferee liability on donees if the donor does not pay the gift tax liability. *See, e.g., United States v. Widtfeldt*, 824 Fed. Appx. 444 (8th Cir. 2020).

## CHAPTER 4: GIFT TAXATION BASICS

**Page 215:** Add before 1st full paragraph:

An issue may arise whether a gift or loan was made. In *Moore v. Commissioner*, T.C. Memo 2020-40, the taxpayer was deemed to have made gifts rather than loans to his children. *Cf. See Estate of Bolles*, T.C. Memo. 2020-71 (loan initially became gift).

After the 1st full paragraph, add:

The gift tax applies not only to direct gifts but also to indirect gifts. *See Smaldino v. Commissioner*, T.C. Memo. 2021-127. *See also Estate of Bies v. Commissioner* on Text Page 240.

In the 3d to the last line in the last paragraph, delete "*See, e.g.,* 10 T.C. 916, *acq.* 1949-1 C.B. 1" and insert in lieu thereof:

*See, e.g., Estate of Redstone v. Commissioner*, 145 T.C. No. 11 (2015) (Edward Redstone did not make gifts by transferring property in trust for his children because the transfers fell within bad business exception; source of consideration not relevant). *But cf.* Redstone v. Commissioner, T.C. Memo. 2015-237 (Sumner Redstone made gifts in 1972 by transferring property in trust for his children; unlike transfers by his brother Edward, these transfers were not made in the ordinary course of business; statute of limitations not applicable because no gift tax return was filed).

**Page 217:** Before *Estate of Kincaid*, add:

, *e.g.¸ United States v. Allison,* 2022 U.S. Dist. LEXIS 34082 (E.D. Cal. 2022) (no gift because cashier's check not delivered).

**Page 233:** Change $14,000 (in 2014) to $16,000 (in 2022)

Before paragraph beginning "Because", add as new paragraph:

Rev. Rul. 56-39, 1956-2 C.B. 605 holds that no § 2513 election is allowed if the donor spouse along with others are discretionary beneficiaries. Such trust provisions are common in spousal lifetime access trusts, which are commonly referred to as SLATS. *See generally* Howard Zaritsky, Tax Planning for Family Wealth Transfers: Analysis with Forms ¶ 6.06 (2021) (discussing SLATs).

**Page 235:** Before sentence starting "Nonetheless," in 1st line, add as follows:

Where a trust owns a minority interest in a corporation, a sale back by another shareholder to the corporation for below market value will be an indirect gift to the other shareholders and for the stock interest that was in trust the beneficiary is the donee, not the trust, which resulted in donee liability under § 6324(b). *United States v. Marshall*, 798 F.3d 296 (5th Cir. August 19, 2015), *withdrawing* 771 F.3d 854 (5th Cir. November 10, 2014)

**Page 253:**

Before the paragraph beginning "A properly drafted", add the following new paragraph:

*Mikel v.* Commissioner, T.C. Memo 2015-64, illustrates how *Crummey* demand powers can be used to minimize taxable gifts. Husband and Wife created a trust over which 60 beneficiaries were given the legally enforceable right to demand $24,000 for up to 30 days; proper notification was required. The Service claimed that the demand rights were illusory because as a practical matter the beneficiaries would not contest the trustee's wrongful refusal to distribute as a forfeiture clause would apply. The court, however, disagreed that the forfeiture provision would apply. The bottom line: each spouse was entitled to gift tax annual exclusions of $720,000.

After the paragraph ending with "*see* Pages 610-613", add the following:

**QUESTION**

*Mikel v. Commissioner* illustrates how effective *Crummey* demand powers can be. Should the annual exclusion for *Crummey* demand powers be limited to an annual amount?

**Page 260:** In the 3rd line from the bottom of the page, change $56,000 to $42,000.

**Page 261:** Add as new paragraph before **PROBLEM:**

The Tax Act of 2017 expanded the definition of qualified higher education expenses to include "expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private or religious school." *See* § 529(c)(7). However, annual distributions for such expenses may not exceed $10,000. *See* § 529(e)(3).

The Secure Act (Setting Every Community Up for Retirement Enhancement Act of 2019) made some additional changes to § 529 plans, effective beginning in 2019. Specifically, the cost of apprenticeship programs are treated as qualified education expenses and distributions not exceeding $10,000 can be made to repay qualified education loans of a designated beneficiary or even a designated beneficiary's sibling. *See* § 529(c)(8) and (c)(9).

**Page 262:** After the 2d line, add as follows:

**[d] ABLE Accounts: Section 529A**

In late December 2014, Congress enacted 529A, which is entitled Qualified ABLE Programs. Patterned after § 529, § 529A is a tax-favored savings program for achieving a better life experience (ABLE) by blind or otherwise disabled individuals. Specifically, a qualified ABLE program is one created by a state to allow for the creation of a state-administered ABLE account for a designated beneficiary.[6] Extensive proposed regulations were issued on June 22, 2015. *See* REG 102837-15, 80 F.R. 35602.

An ABLE account is an account created by or on behalf of a designated beneficiary that meets all of the requirements of § 529A. In turn, a designated beneficiary must be an eligible individual, that is a person who is blind or otherwise disabled based on various criteria but only if the disabling condition began before the individual was 26 years old. The funds in the ABLE account can be used to pay qualifying disability expenses of the designated beneficiary.

Contributions to an ABLE account generally must be in cash. The annual amount that may be contributed to an ABLE savings account, including rollovers from a 529 plan until 2026, is generally the gift tax exclusion amount for the year. For example, in 2018 a total of $15,000 may be contributed by the account owner or others to the ABLE savings account. However, the Tax Act of 2017 increases until 2026 the contribution amount by a designated beneficiary for all or a portion of the designated beneficiary's compensation.

There are several tax benefits which are mostly favorable. First, gains and other income earned in the ABLE account are exempt from income tax, thus allowing a tax-free buildup of the account. Second, the cash contribution is treated as a gift of a present interest for both gift and GST-tax purposes, thus allowing the contributor to exclude the contribution under the gift or GST-tax annual exclusions.[7] Third, distributions for qualified disability expenses are not included in gross income of the qualified beneficiary. One negative tax result is that the amount in the ABLE account on the death of the designated beneficiary is included in the gross estate of the designated beneficiary. *See* Prop. Reg. § 1.529A-4(d).

ABLE accounts are designed to provide supplemental benefits for a blind or otherwise disabled eligible individual. As a result, neither ABLE accounts nor qualified distributions will be taken into account to determine a designated beneficiary's entitlement to governmental benefits.[8]

Several states have already enacted qualified ABLE programs pursuant to 529A. A listing is provided in http://www.thearc.org/what-we-do/public-policy/policy-issues/able-legislation-by-state. *See, e.g.*, N.Y. MENTAL HYGIENE LAW art. 84 (effective April 1, 2016 for implementation by the State Comptroller).

**Page 275:** Add as new paragraph to **"[b] Transfer to Political Organizations: Section 2501(a)** as follows:

The PATH Act of 2015 provides that the gift tax does not apply to the transfer of money or other property, made after December 18, 2015, to organizations tax exempt under §§ 501(c)

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[6] As a result of the PATH Act of 2015, a designated beneficiary need not be a resident of the state that offers an ABLE Account.

[7] Of course, if the designated beneficiary contributes cash to his or her ABLE account, no gift results.

[8] ABLE accounts in excess of $100,000 and distributions for qualified disability expenses may be taken into account for SSI, but not Medicaid, purposes.

(4), § 501(c)(5), or Code § 501(c)(6). § 2501(a)(6). No inference is to be drawn that a transfer to any such organization would have constituted a transfer for gift tax purposes. PATH Act § 408(c).

**Page 278:** Add before last sentence starting with "*See generally*":

*But see Nelson v. Commissioner*, T.C. Memo. 2020-81.

**Page 279:** Add after 35-40%:

*Cf. Nelson v. Commissioner*, T.C. Memo. 2020-81 (combined discounts of 33%). Discounts will apply to partial interests gifted in the same property. *See Buck v. United States*, 2021 WL 4391091, (D. Conn. 2021).

**Page 287:** Add as new paragraph after 1st full paragraph:

Should discounts be allowed but reduced for large non-controlling interests under the so-called perfected method? No according to the recent Tax Court case of *Grieve v. Commissioner*, T.C. Memo. 2020-28. Should stock valuation of gifted shares in a Subchapter S Corporation take into account the tax affects at the shareholder's level? Yes, according to the court in *Kress v. United States,* 372 F.Supp.3d 731(E.D. Wis. 2019). *See also Estate of Jones v. Commissioner*, T.C. Memo. 2019-101.

Add after last paragraph, the following new paragraph:

In August of 2016, controversial proposed regulations under § 2704 were issued; the regulations would not be effective until finalized. S*ee generally* Steve R. Akers, *Section 2704 Regulations,* 51 Heckerling Inst. on Est. Pang. ¶ 100 (2017). Based on President Trump's Executive Order that Treasury review all post-2015 regulations that impose "undue financial burden", the Treasury Department has identified the § 2704 Regulations as falling within the category and will propose reforms to mitigate the burdens. *See* Notice 2017-38, I.R.B. 2017-30 (July 7, 2017). On October 20, 2017, the proposed regulations under § 2704 were withdrawn. *See* Withdrawal of Notice of Proposed Regulations, NPRM REG-163113-02.

**Page 291:** In footnote 32, add before *Wimmer* cite:

*Estate of Purdue v. Commissioner*, 145 T.C. Memo. 2015-249 and

**Page 303:** After sentence ending "revenue rulings." And before "Alternatively", add *See* FSA 20152201F (no adequate disclosure when method for valuation not disclosed)

**[2] Portability**

Footnote 43 should read: *See* § 25.2505-2(b).

**PAGE 304:** Replace the **PROBLEM** as follows:

Husband 1 (H1) dies in 2011, survived by Wife (W). Neither has made any taxable gifts during H1's lifetime. H1's executor elects portability of H1's deceased spousal unused exclusion (DSUE) amount. The DSUE amount of H1 as computed on the estate tax return filed on behalf of H1's estate is $5,000,000. In 2012, W makes taxable gifts to her children valued at $2,000,000. W reports the gifts on a timely filed gift tax return. W is considered to have applied $2,000,000 of H1's DSUE amount to the 2012 taxable gifts, in accordance with [Treas. Reg. § 25.2505-2(b)] and, therefore, W owes no gift tax. W is considered to have an applicable exclusion amount remaining in the amount of $8,120,000 ($3,000,000 of H1's remaining DSUE amount plus W's own $5,120,000 basic exclusion amount). In 2013, W marries Husband 2 (H2). H2 dies on June 30, 2016. H2's executor elects portability of H2's DSUE amount, which is properly computed on H2's estate tax return to be $2,000,000.

What is the DSUE amount for making gifts in 2016 after June 30, 2016? *See* Treas. Reg. § 25.2505-2(c) (Example).

If W died on December 12, 2016 without making any gifts after June 30, 2016, what would be the DSUE amount for estate tax purposes? *See* Treas. Reg. § 25.2010-3(c)(2) (Example).

## CHAPTER 5: GENERATION-SKIPPING TRANSFER TAX BASICS

**Page 307:** Immediately before **§ 5.02**, delete the last sentence and add as follows:

The GST exemption was $5,490,000 in 2017. In years 2018 through 2025, the GST exemption will be $10 Million, as indexed for inflation. For 2021, the GST exemption is $12,060,000.

**Page 319:** In the 5th line, add the following sentence after "in 2014."

The GST exemption was $5.43 Million in 2015, $5.45 Million in 2016 and $5.49 Million in 2017.

Replace the sentence "For subsequent years the GST exemption will be $5 Million as adjusted for inflation." with the following:

In the years 2018 through 2025, the GST exemption will be $10 Million, as indexed for inflation. The GST exemption was $11,180,000 in 2018; $11,400,00 in 2019; $11,580,00 in 2020; $11,700,000 in 202and $12,060,000 in 2022. After 2025, the GST exemption is expected to revert to $5 million, as indexed for inflation.

**Page 321:** After "adjusted for inflation" in the 1st paragraph add:

, except that for the years 2018-2025, the GST exemption will be $10 Million as adjusted for inflation.

## CHAPTER 6: TRANSFERS NEAR DEATH

**Page 341:** Add at the end of the paragraph beginning "The effect of the potential", the following:

In *Steinberg v. Commissioner*, 145 T.C. No. 7 (2015), the Tax Court determined the value for the consideration to pay the potential estate tax liability on the § 2035(b) gross-up and in effect allowed a net, net gift.

## CHAPTER 7: RETAINED INTERESTS

**Page 355:** Add new sentence before paragraph beginning "In 2011":

In *Badgley, v. United States*, 957 F.3d 969 (9th Cir. 2020), inclusion of a GRAT under § 2036(a)(1) was upheld, as was the regulation requiring inclusion and the method to value inclusion.

**Page 383:** After Estate of Magnin, which should be italicized, add:

*See also Estate of Powell v. Commissioner*, 148 T.C. No. 18 (May 18, 2017), which suggests application of § 2043(a) in the context of § 2036(a)(1). Indeed, the Tax Court so held in *Moore v. Commissioner*, T.C. Memo 2020-40. *But see* Grayson M.P. McCouch, *Family Limited Partnerships, Bona Fide Sales and Inadequate Consideration*, 47 ACTEC L. J. 247 (Spring/Summer 2022) (critical of *Estate of Powell*).

**Page 388:** Before *Estate of Stone*, add:

*Moore v. Commissioner*, T.C. Memo 2020-40;

Add after last paragraph:

*Estate of Purdue v. Commissioner*, 145 T.C. Memo. 2015-249, explains the analysis to be used.

> In the context of family limited partnerships, the bona fide sale for adequate and full consideration exception is met where the record establishes the existence of a legitimate and significant nontax reason for creating the family limited partnership and the transferors received partnership interests proportional to the value of the property transferred. *Id.* at 118; *see, e.g., Estate of Mirowski v. Commissioner,* T.C. Memo. 2008–74 (applying *Estate of Bongard* [124 T.C. 94 [2005] in the context of an LLC). The objective evidence must indicate that the nontax reason was a significant factor that motivated the partnership's creation. *Estate of* Bongard *v. Commissioner,* 124 T.C. at 118. A significant purpose must be an actual motivation, not a theoretical justification. *Id.* A list of factors to be considered when deciding whether a nontax reason existed includes: (1) the taxpayer's standing on both sides of the transaction; (2) the taxpayer's financial dependence on distributions from the partnership; (3) the taxpayer's commingling of partnership funds with the taxpayer's own; (4) the taxpayer's actual failure to transfer the property to the partnership; (5) discounting the value of the partnership interests relative to the value of the property contributed; and (6) the taxpayer's old age or poor health when the partnership was formed. *Id.* at 118–119;

The Tax Court concluded in *Estate of Purdue v. Commissioner* that the taxpayer had objective nontax reasons, as opposed to merely theoretical reasons, to form the LLC in issue so that § 2036(a)(1) did not apply. *See also Estate of Beyer v. Commissioner*, T.C. Memo. 2016-183. *But see Moore v. Commissioner*, T.C. Memo 2020-40 and *Estate of Holliday. v. Commissioner*, T.C. Memo. 2016-51 (§ 2036(a)(1) applied because agreement implied and no bona fide sale occurred because there was no legitimate and significant nontax reason for transferring marketable securities to FLP).

Although estate tax inclusion under § 2036(a)(1) was required in *Estate of Turner v. Commissioner*, 138 T.C. 306 (2012) (*Turner II*), which affirmed *Estate of Turner v. Commissioner*, T.C. Memo. 2011-209 (2011) (*Turner I*), the marital deduction was not reduced for taxes payable based on § 2036(a)(1) estate tax inclusion because § 2207B would allow the estate to recover these taxes so that the marital deduction would not be reduced.

**Page 399:** Under **GST Aspects,** add FN 17A:

17A. Although § 2642(f) would require gross estate inclusion in all GRAT cases, Treas. Reg. § 26.2632-1(c)(2)(ii) provides an exception to the rule barring early GST exemption if the "possibility the property will be included in so remote as to be negligible. " Such remoteness will occur "if it can be ascertained by actuarial standards that there is less than a 5% probability" of inclusion.

**Page 400:** Add at end of **GRAT Example:**

**Caveat:** If the property transferred to the GRAT is seriously undervalued, the Service may attempt to disregard the favorable treatment of trust as a GRAT. See ILM 202152018.

**Page 416:** The last paragraph beginning with "The result" is not part of the opinion but our explanation of the case.

## CHAPTER 8: REVOCABLE TRANSFERS

**Page 420:** *DeMuth v. Commissioner*, T.C. Memo. 2022-72 held that cashier's checks were not completed gifts under Pennsylvania law because checks could have been revoked by a stop payment order.

**Page 434:** In *Estate of Powell v. Commissioner*, 148 T.C. 392 (2017), which is reproduced on Supplement Page 29, the Tax Court held that an agent without specific gift-making authority did not have the authority under California law to gift the decedent's LLP interest to a CLAT. As a result, the LLP interest was includible in her gross estate, "either because the purported gift of that interest was void (so that she held title to that interest upon her death) or because the purported gift was revocable (so that the partnership interest is includible in her gross estate by reason of section 2038(a))." As explained in footnote 11:

> As noted in the text above, the California Court of Appeals in *Shields v. Shields*, 19 Cal. Rptr. 129, 131 (Ct. App. 1962), characterized as "void" a transfer purportedly made by an attorney-in-fact that exceeded the authority granted to him. It follows that any such transfer would not convey valid title, and legal ownership of the purportedly transferred property would remain with the attorney's principal. *See Bertelsen v. Bertelson*, 122 P.2d 130, 133 (Cal. Ct. App. 1942) (holding that deed executed by attorney-in-fact beyond the scope of his authority "conveyed no title"). Nonetheless, when the Court of Federal Claims addressed such a situation in *Estate of Swanson v. United States*, 46 Fed. Cl. 388, 393 (2000), *aff'd*, 10 Fed.Appx. 833 (Fed. Cir. 2001), it concluded that the impact of the gifts in issue being void was that the decedent could have "recalled" them. Thus, the court concluded: "Section 2038(a)(2) controls the result with regard to these void gifts." *Id.* If the gifts were really void, rather than merely voidable, and thus conveyed no title, it is not clear why application of sec. 2038 was necessary to include the purportedly gifted property in the decedent's estate. In any event, because of sec. 2038, the distinction between a void and voidable gift appears to be of no consequence.

A similar result in *Estate of Powell v. Commissioner* should result if Massachusetts law applied. *See* Barbetti v. Stempniewicz, 189 N.E.3d 264 (Mass. 2022), holding that uncle, acting as settlor's attorney-in-fact under power of attorney, lacked authority to create trust, and trust was therefore void ab initio; and that, as a matter of first impression, where power to create trust is delegable, either pursuant to statute or judicial opinion, it is only so where there is express grant of power to create trust in power of attorney; and that, as a matter of policy it would defer to the Legislature to determine whether a person could delegate to an attorney in fact the power to create a trust. ("When a trust is declared void ab initio, or void from the beginning, the courts act as though the trust never existed….Assets transferred into the trust are therefore returned to the sources from which they came, as if the transfer of those assets to the trust never occurred in the first instance.")

## CHAPTER 9: RETENTION OF POWERS OTHER THAN THE POWER TO REVOKE

**Page 453:** After the 4th full paragraph add as a new paragraph:

In *Estate of Powell v. Commissioner*, 148 T.C. 392 (2017), the Tax Court held that § 2036(a)(2) applied where decedent retained the right to dissolve a limited partnership to which he had transferred property in return for a 99% LLP interest as the taxpayer did not dispute there was not a bona fide sale. However, the amount includible in the gross estate was reduced by the consideration received by the decedent based on § 2043(a). Salient portion of the opinion follow:

### ESTATE OF POWELL V. COMMISSIONER

148 T.C. 392 ( 2017)

HALPERN, Judge:

On August 8, 2008, cash and securities [worth $10,000,752] were transferred from decedent's revocable trust to NHP [a limited partnership] in exchange for a 99% limited partner interest.

NHP had been formed two days earlier, on August 6, 2008 [and] NHP's limited partnership agreement gives Mr. Powell [the decedent's executor], as general partner, sole discretion to determine the amount and timing of partnership distributions. That agreement also allows for the partnership's dissolution with the written consent of all partners.

<u>Purported Gift of Decedent's Limited Partner Interest in NHP</u>

[On the same day,] August 8, 2008, Mr. Powell, purportedly acting on behalf of decedent under a power of attorney (POA), assigned to [a] CLAT [a charitable lead annuity trust] decedent's 99% limited partner interest in NHP

…

II. <u>Applicability of Section 2036(a) or Section 2035(a) to Transfer to NHP</u>

A. <u>Respondent's Argument</u>

Respondent argues that section 2036(a)(1) and (2) applies to decedent's transfer of cash and securities to NHP. Section 2036(a) provides:

> SEC. 2036. TRANSFERS WITH RETAINED LIFE ESTATE.
>
> (a) General Rule.—The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), * * * under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death—
>
> (1) the possession or enjoyment of, or the right to the income from, the property, or

> (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Respondent argues that section 2036(a)(1) applies to the transfer in issue because it was subject to an implied agreement under which decedent retained the possession or enjoyment of the transferred property or the right to income from that property. Respondent also argues that section 2036(a)(2) applies to the transfer because of decedent's ability, acting with her sons, to dissolve NHP and thereby designate those who would possess the transferred property or the income from the property. Respondent claims that the bona fide sale exception to section 2036(a) does not apply because the estate failed to demonstrate a significant nontax purpose for the creation of NHP and because, in the light of the claimed valuation discount, the transfer was not made for full and adequate consideration. *See Estate of Bongard v. Commissioner*, 124 T.C. 95, 118 (2005) (holding that "the bona fide sale for adequate and full consideration exception" applies to a transfer to a family limited partnership only when "the record establishes the existence of a legitimate and significant nontax reason for creating the family limited partnership"). Because we agree with respondent that the transfer of cash and securities to NHP was subject to a right described in section 2036(a)(2), we need not consider respondent's argument regarding section 2036(a)(1).

B. Estate's Response

The estate does not deny that decedent's ability to dissolve NHP with the consent of her sons constituted a "right * * * in conjunction with * * * [others], to designate the persons who shall possess or enjoy the property [she transferred to the partnership] or the income therefrom", within the meaning of section 2036(a)(2). Nor does the estate challenge respondent's assertion that decedent's transfer of cash and securities to the partnership was "not a bona fide sale for an adequate and full consideration in money or money's worth". The estate's only response to respondent's section 2036(a)(2) argument is that, upon her death, decedent did not retain her interest in NHP. The estate apparently reasons that, even if decedent's interest in NHP gave her the right to designate the beneficiaries of the assets she transferred to the partnership, she did not retain that right for the remainder of her life (and the brief period for which she held the right was not ascertainable only by reference to her death). Consequently, the estate argues, section 2036(a)(2) does not apply to decedent's transfer of cash and securities to NHP.

C. Analysis

The estate's argument against the inclusion in the value of decedent's gross estate of any portion of the value of the cash and securities she transferred to NHP is unavailing for two reasons. First, the argument assumes the validity of the transfer to the CLAT of decedent's 99% limited partner interest in NHP. As explained in part IV.C. below, we conclude that, under California law, the gift was either void or revocable because Mr. Powell did not have authority under the POA to make gifts in excess of the annual Federal gift tax exclusion provided in section 2503(b). Moreover, even if the estate were correct that Mr. Powell transferred decedent's NHP interest to the CLAT, because that transfer occurred less than three years before decedent's death, it would not exclude the value of the cash and securities transferred to the partnership from the value of decedent's gross estate. In claiming otherwise, the estate overlooks section 2035(a).

Section 2035(a) provides:

> SEC. 2035. ADJUSTMENTS FOR CERTAIN GIFTS MADE WITHIN 3 YEARS OF DECEDENT'S DEATH.
>
> (a) Inclusion of Certain Property in Gross Estate.—If—
>
> (1) the decedent made a transfer * * * of an interest in any property, or relinquished a power with respect to any property, during the 3–year period ending on the date of the decedent's death, and
>
> (2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,

the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

Assuming its validity, the transfer of decedent's NHP interest to the CLAT relinquished a power over the disposition of the cash and securities transferred to the partnership. The transfer of her NHP interest occurred less than three years before her death (indeed, only a week before). The estate does not deny that, if decedent had retained her NHP interest on the date of her death, the value of the cash and securities transferred to the partnership would have been included in the value of her gross estate under section 2036(a)(2). Thus, even if decedent's NHP interest were validly transferred to the CLAT before her death, the plain terms of section 2035(a) would require inclusion in the value of her gross estate of the value of the cash and securities that would have been included under section 2036(a)(2) in the absence of that transfer.

Our opinion in *Estate of Strangi v. Commissioner*, T.C. Memo. 2003–145, 2003 WL 21166046, aff'd, 417 F.3d 468 (5th Cir. 2005), supports the conclusion that decedent's ability to dissolve NHP with the cooperation of her sons constituted a "right * * * in conjunction with * * * [others], to designate the persons who shall possess or enjoy the property [she transferred to the partnership] or the income therefrom", within the meaning of section 2036(a)(2). *Estate of Strangi*, like the present cases, involved a decedent who could act with others to dissolve a family limited partnership to which he had transferred property in exchange for a 99% limited partner interest. The ability to dissolve the partnership carried with it the ability to direct the disposition of its assets. In fact, because the decedent was a 99% partner in the partnership, its dissolution "would likely revest in decedent himself * * * the majority of the contributed property." Id., 2003 WL 21166046. Therefore, we concluded that the decedent's ability to join with others to dissolve the partnership justified the application of section 2036(a)(2) to the property he transferred in exchange for his partnership interest.

The ability of the decedent in *Estate of Strangi* to act with others to dissolve the partnership was one of two factors that we relied on in that case to apply section 2036(a)(2). And although decedent's ability to dissolve NHP is sufficient to invoke section 2036(a)(2), the second factor we relied on in *Estate of Strangi* is also present here. In addition to noting the decedent's ability to act with others to dissolve the partnership, we concluded in *Estate of Strangi* that the decedent held the right, through his son-in-law, to determine the amount and timing of partnership distributions. The partnership agreement granted that authority to the managing general partner, a corporation owned by the decedent and other family members. The corporate general partner delegated its authority to the decedent's son-in-law in a management agreement. The son-in-law also served as the decedent's attorney-in-fact under a power of attorney. Thus, we concluded, "Decedent's attorney in fact thereby stood in a position to make distribution decisions." Id. In the present cases, NHP's limited partnership agreement gives Mr. Powell, as general partner, sole discretion to determine the amount and timing of partnership distributions. And, as in *Estate of Strangi*, the person with authority to determine distributions also served as decedent's attorney-in-fact.

Applying section 2036(a)(2) in *Estate of Strangi* to include in the value of the decedent's gross estate the value of assets he had transferred to the family limited partnership required us to distinguish the Supreme Court's opinion in *United States v. Byrum*, 408 U.S. 125 (1972). For the reasons explained below, we conclude that the grounds on which we distinguished *Estate of Strangi* from *Byrum* apply equally in the present cases.

In *Byrum*, the Court held that a decedent's retained right to vote shares of stock in three corporations that he had transferred to a trust for the benefit of his children did not cause the value of those shares to be included in the value of his estate under section 2036(a)(2). The Court rejected the Government's argument that, through his ability to vote the transferred shares, the decedent could affect the corporations' dividend policy and thus the trust's income. Among other things, the Court noted that the decedent, as the controlling shareholder of each corporation, owed fiduciary duties to the minority shareholders that circumscribed his influence over the corporations' dividend policies.

The executor in *Estate of Strangi* argued that any authority the decedent in that case had, through his son-in-law, over the partnership's management was subject to State law fiduciary duties and, therefore, was insufficient under *Byrum* to trigger the application of section 2036(a)(2). In response, we characterized as "illusory" any limitations imposed by fiduciary duties. *Estate of Strangi v. Commissioner*, 2003 WL 21166046. We observed that, before the son-in-law assumed his duties to the partnership, he had owed a duty to the decedent personally as the decedent's attorney-in-fact. We surmised that, in exercising his duties to the partnership, the son-in-law would not "disregard his preexisting obligation to decedent." Id. Because the decedent owned 99% of the partnership, any fiduciary duties that limited his authority, acting through his son-in-law, to manage the partnership were duties he owed "essentially to himself." Id. Moreover, the only owners of the partnership other than the decedent were members of his family. And the partnership, unlike the corporations involved in *Byrum*, did not conduct business operations. We concluded: "Intrafamily fiduciary duties within an investment vehicle simply are not equivalent in nature to the obligations created by the *United States v. Byrum* * * * scenario." Id. FN 3A

3A. In considering the decedent's influence over the dividend policies of the corporations, the Supreme Court in *United States v. Byrum*, 408 U.S. 125, 140, 142 (1972), emphasized the constraints of "business and economic variables over which he had little or no control" and the prospect that minority stockholders unrelated to the decedent would have had a cause of action under State law had the decedent and the corporations' directors violated their fiduciary duties. Because of the Court's emphasis on the corporations' businesses and the presence of "a substantial number of minority stockholders * * * who were unrelated to" the decedent, id. at 142, *Byrum* need not be read as having established a "bright-line test" under which control rights circumscribed by fiduciary duties owed to minority owners (whether related or unrelated to the holder of the rights) prevent the rights from triggering the application of sec. 2036. But see Mitchell M. Gans and Jonathan G. Blattmachr, "*Strangi: A Critical Analysis and Planning Suggestions*", 100 Tax Notes 1153, 1156–1159 (2003).

Again, the present cases can be distinguished from *Byrum* on the same grounds. In addition to his duties as NHP's general partner, Mr. Powell owed duties to decedent that he assumed either before he created the partnership or at about the same time. Nothing in the circumstances of the present cases suggests that Mr. Powell would have exercised his responsibility as general partner of NHP in ways that would have prejudiced decedent's interests. Because decedent held a 99% interest in NHP, whatever fiduciary duties limited Mr. Powell's discretion in determining partnership distributions were duties that he owed almost exclusively to decedent herself. Finally, the record provides no indication that NHP conducted meaningful business operations or was anything other than an investment vehicle for decedent and her sons. We conclude that any fiduciary duties that limited Mr. Powell's discretion in regard to distributions by NHP were "illusory" and thus do not prevent his authority over partnership distributions from being a right that, if retained by decedent at her death, would be described in section 2036(a)(2).

D. Conclusion

For the reasons described above, we will grant respondent's motion for summary judgment that the transfer of cash and securities to NHP was subject to a retained right "to designate the persons who shall possess or enjoy" those assets "or the income therefrom", within the meaning of section 2036(a)(2). As noted above, the estate does not challenge respondent's determination that that transfer was not "a bona fide sale for an adequate and full consideration". Consequently, if decedent retained until her death her right in regard to the transferred cash and securities, the value of those assets would be includible in the value of her gross estate to the extent required by section 2036(a). If, instead, she made a valid gift of her NHP interest before her death, and thus relinquished her retained right to the cash and securities, the value of those assets would still be includible in the value of her gross estate to the extent required by section 2035(a)

Section 2043

Neither section 2036(a)(2) nor section 2035(a) justifies the inclusion in the value of decedent's gross estate of the full date-of-death value of the cash and securities transferred to NHP in exchange for decedent's limited partner interest. Although the terms of each section, read in isolation, would require that result, those sections must be read in conjunction with section 2043(a), which provides:

SEC. 2043. TRANSFERS FOR INSUFFICIENT CONSIDERATION

> (a) In General.—If any one of the transfers, trusts, interests, rights, or powers enumerated and described in sections 2035 to 2038, inclusive * * * is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent

B. <u>Applicability of Section 2043(a) in the Present Cases</u>

In the present cases, because of the limitation provided by section 2043(a), section 2036(a)(2), if applicable, would include in the value of decedent's gross estate only the excess of the fair market value at the time of her death of the cash and securities transferred to NHP over the value of the 99% limited partner interest in NHP issued in exchange for those assets. If, instead, section 2035(a) applies, it would require inclusion in the value of decedent's gross estate of the same amount—that is, the amount that would have been included in the value of decedent's gross estate under section 2036(a)(2) but for the transfer of her interest in NHP less than three years before her death. Section 2043(a) applies by its plain terms: : We have concluded that the transfer of cash and securities to NHP was a transfer "enumerated and described" in either section 2036(a)(2) or section 2035(a). That transfer was made "for a consideration in money or money's worth," that is, a 99% limited partner interest in NHP. Because the estate does not challenge respondent's contention that Mr. Powell had no legitimate and significant nontax reason for creating NHP, the transfer of cash and securities to the partnership was "not a bona fide sale for an adequate and full consideration in money or money's worth", regardless of the value of the limited partner interest issued in exchange for those assets. *See Estate of Bongard v. Commissioner*, 124 T.C. at 118. Therefore, section 2043(a) limits the amount includible in the value of decedent's gross estate, by reason of section 2036(a)(2) (either alone or in conjunction with section 2035(a)), to "the excess of the fair market value at the time of death of * * * [the cash and securities], over the value of the consideration received therefor by the decedent." Put differently, section 2036(a)(2) or section 2035(a), in either case as limited by section 2043(a), includes in the value of decedent's gross estate the amount of any discounts applicable in valuing the 99% limited partner interest in NHP issued in exchange for the cash and securities (an amount that could colloquially be characterized as the "hole" in the doughnut).

D. <u>Conclusion</u>

For the reasons articulated above, we conclude that, when section 2036(a) (either alone or in conjunction with section 2035(a)) requires the inclusion in the value of a decedent's gross estate of the value of assets transferred to a family limited partnership in exchange for an interest in that partnership, the amount of the required inclusion must be reduced under section 2043(a) by the value of the partnership interest received by the decedent-transferor. Consequently, when applicable, section 2036(a) (or section 2035(a)) will include in the value of a decedent's gross estate only the excess of the value of the transferred assets (as of the date of the decedent's death) over the value of the partnership interest issued in return (as of the date of the transfer). *Estate of Magnin v. Commissioner*, T.C. Memo. 1996–25, 1996 WL 24745, ("[U]nder section 2043(a), the consideration received is to be valued at the time of receipt by the decedent [.]"), *rev'd on other grounds*, 184 F.3d 1074 (9th Cir. 1999).

For provocative discussions of *Powell, see* Grayson M.P. McCouch, *Family Limited Partnerships, Bona Fide Sales and Inadequate Consideration*, 47 ACTEC L. J. 247 (Spring/ Summer 2022); Jonathan G. Blattmachr, Mitchell M. Gans & Elizabeth T. Pierson, "Finding a Fix for Powell," 48 Est. Plan. 4 (May 2021); Mitchell M. Gans & Jonathan G. Blattmachr, *Family Limited Partnerships and Section 2036: Not Such a Good Fit*, 42 ACTEC L.J 253 (2017); Ronald H. Jensen, *Commentary*, 42 ACTEC L. J. 293(2017) and Mitchell M. Gans & Jonathan G. Blattmachr, *Powell and Section 2036:Our Reply,* 42 ACTEC L.J, 299 (2017).

For an extended application of *Powell and Strangi* to split dollar insurance agreements, *see Cahill v. Commissioner*, T.C. Memo 2018-84, holding that the ability to revoke the split dollar agreement (even with the consent of a third party) and access the cash surrender value of the insurance policy renders the cash surrender value includable in the decedent's estate under § 2036 and § 2038. *But cf. Estate of Levine v. Commissioner, 158 T.C. No. 2* (2022) (no inclusion of cash surrender value because decedent lacked termination right). *F*or an analysis of the applicability of § 2043 to an inter-generational split-dollar insurance arrangement, see *Estate of Morrissette v. Commissioner*, T.C. Memo. 2021-60.

**Page 469:** Add before **ESTATE OF GOODWYN v. COMMISSIONER**:

In a series of Private Letter Rulings, the IRS has confirmed its favorable approach to Incomplete Gift Non-grantor (*Ding/Ning/Ing*) Trusts. See Private Letter Rulings 201430003 through 201430007, 201510001 through 201510008, 201550005 through 201550010, 201550012, 201613007 201614006-201614008 and 201636029. For the most recent rulings reaching basically the same results, see Private Letter Rulings 201836006, 2019250010 and 202017018.

In 2014 New York responded by enacting legislation which subjects the grantor to New York income tax on the income of such trusts "[i]n the case of a taxpayer who transferred property to an incomplete gift non-grantor trust, …to the extent such income and deductions of such trust would be taken into account in computing the taxpayer's federal taxable income if such trust in its entirety were treated as a grantor trust for federal tax purposes. For purposes of this paragraph, an "incomplete gift non-grantor trust" means a resident trust that meets the following conditions: (i) the trust does not qualify as a grantor trust under section six hundred seventy-one through six hundred seventy-nine of the internal revenue code, and (2) the grantor's transfer of assets to the trust is treated as an incomplete gift under section twenty-five hundred eleven of the internal revenue code, and the regulations thereunder." N.Y. Tax Law 612(b)(41). *Compare* Jeffrey Schoenblum, *Strange Bedfellows: The Federal Constitution, Out-Of-State Nongrantor Accumulation Trusts, And The Complete Avoidance Of State Income Taxation,* 67 VAND. L. REV. 1945 (2014)(discussing, *inter alia*, the constitutionality of the New York statute*)* *with* Alyssa A. DiRusso, *Pro And Con (Law): Considering The Irrevocable Nongrantor Trust Technique*, 67 VAND. L. REV. 1999 (2014) (responding to Professor Schoenblum).

In a related development, the North Carolina Supreme Court held unconstitutional that state's attempt to tax to the trust the accumulated trust income where it was conceded that the only "connection between the…Trust and North Carolina…is the residence of the beneficiaries." *Kaestner Family Trust v. North Carolina Dept. Of Revenue*, 2015 WL 1880607 (Sup. Ct. 2015). The Supreme Court unanimously affirmed the North Carolina Supreme Court in *North Carolina Department of Revenue v. Kaestner Family Trust*, 139 S.Ct. 2213 (June 21, 2019), in an opinion by Justice Sotomayor, stating:

> First, the beneficiaries did not receive any income from the trust during the years in question. If they had, such income would have been taxable. See *Maguire*, 253 U.S. at 17, 40 S.Ct. 417; *Guaranty Trust Co*., 305 U.S. at 23, 59 S.Ct. 1.
>
> Second, the beneficiaries had no right to demand trust income or otherwise control, possess, or enjoy the trust assets in the tax years at issue. The decision of when, whether, and to whom the trustee would distribute the trust's assets was left to the trustee's "absolute discretion." Art. I, § 1.2(a), App. 46–47. In fact, the Trust agreement explicitly authorized the trustee to distribute funds to one beneficiary to "the exclusion of other[s]," with the effect of cutting one or more beneficiaries out of the Trust. Art. I, § 1.4, id., at 50. The agreement also authorized the trustee, not the beneficiaries, to make investment decisions regarding Trust property. Art. V, § 5.2, id., at 55–60. The Trust agreement prohibited the beneficiaries from assigning to another person any right they might have to the Trust property, Art. XII, id., at 70–71, thus making the beneficiaries' interest less like "a potential source of wealth [that] was property in [their] hands." *Curry*, 307 U.S. at 370–371, 59 S.Ct. 900. ……
>
> Third, not only were Kaestner and her children unable to demand distributions in the tax years at issue, but they also could not count on necessarily receiving any specific amount of income from the Trust in the future. Although the Trust agreement provided for the Trust to terminate in 2009 (on Kaestner's 40th birthday) and to distribute assets to Kaestner, Art. I, § 1.2(c)(1), App. 47, New York law allowed the trustee to roll over the trust assets into a new trust rather than terminating it. EPTL 10–6.6(b) [New York's decanting statute]. Here, the trustee did just that. 371 N.C., at 135, 814 S.E.2d at 45.

In *Magical Thinking and Trusts*, 50 Seton Hall L. Rev. 289 (2019), Bridget J. Crawford contends the Supreme Court reached the correct decision in *Kaestner*. *But see* Carla Spivack, *Due Process, State Taxation of Trusts and the Myth of the Powerless Beneficiary: A Response to Bridget Crawford and Michelle Simon,* 67 UCLA L. Rev. 46 (2019). *See also*, Mitchell M. Gans, Kaestner *Fails: The Way Forward*, 11 William & Mary Bus. L. Rev. 651 (2020).

Note, on the other hand with respect to *Ding/Ning/Ing* trusts, that the New York approach is to tax the trust income (accumulated or distributed) to the grantor rather than to the trust or beneficiaries, presumably on the theory that the powers of the grantor that render the trust an incomplete gift for federal gift tax purposes are constitutionally sufficient to warrant taxing the grantor on the trust income, whether it is accumulated or distributed to the beneficiaries. Note also that state taxing authorities could, alternatively, take the position that they are not bound by the federal PLRs as to whether the trusts are grantor trusts for federal income tax purposes (a kind of state-*Bosch* approach). *See* the treatment of *Commissioner v. Estate of Bosch*, 387 U.S. 456 (1967) at Text Pages 25-31.

In Rev. Proc. 2020-3, 2020-1 I.R.B. 131, the IRS added the following to its no-ruling policy:

*Section 671.—Trust Income*

*e, Deductions, and Credits Attributable to Grantors and Others as Substantial Owners.—Whether any portion of the items of income, deduction, and credit against tax of the trust will be included in computing under § 671 the taxable income, deductions and credits of grantors when distributions of income or corpus are made — (A) at the direction of a committee, with or without the participation of the grantor, and (1) a majority or unanimous agreement of the committee over trust distributions is not required, (2) the committee consists of fewer than two persons other than a grantor and a grantor's spouse; or (3) all of the committee members are not beneficiaries (or guardians of beneficiaries) to whom all or a portion of the income and principal can be distributed at the direction of the committee or (B) at the direction of, or with the consent of, an adverse party or parties, whether named or unnamed under the trust document (unless distributions are at the direction of a committee that is not described in paragraph (A) of this section)."*

As explained by William Lipkind, a New Jersey attorney (Wilson Elser), who has obtained numerous favorable rulings in this area, the IRS by this announcement is basically indicating "that it will not grant private letter rulings (PLRs) for *inter vivos* non-grantor trusts unless all distributions are made by decision of committee of no fewer than two beneficiaries, each of whom is an income and remainder beneficiary. This announcement has minimal impact on most rulings, but is designed to discourage the abuse of beneficiary shopping."

In addition, it should be noted that where grantor trust status under § 675 is in issue the IRS has often indicated that it will decline to rule in advance. *See, e.g.,* PLR 201908007 ("We further conclude that an examination of Trust reveals none of the circumstances that would cause administrative controls to be considered exercisable primarily for the benefit of Grantor under § 675. Thus, the circumstances attendant on the operation of Trust will determine whether Grantor will be treated as the owner of any portion of Trust under § 675. This is a question of fact, the determination of which must be deferred until the federal income tax returns of the parties involved have been examined by the office with responsibility for such examination.")

The provisions of Rev. Proc. 2020-3 quoted above were deleted by Rev. Proc. 2021-3 which added, instead, the following:

**SECTION 5. AREAS UNDER STUDY IN WHICH RULINGS OR DETERMINATION LETTERS WILL NOT BE ISSUED UNTIL THE SERVICE RESOLVES THE ISSUE THROUGH PUBLICATION OF A REVENUE RULING, A REVENUE PROCEDURE, REGULATIONS, OR OTHERWISE**

(9) Section 671.—Trust Income, Deductions, and Credits Attributable to Grantors and Others as Substantial Owners.—Whether the grantor will be considered the owner of any portion of a transfer in trust under §§ 673 to 677 that is purported to be an incomplete gift under § 2511, specifically including, but not limited to, a transfer to a trust providing for distributions at the direction of a committee to the donor and the committee members either by unanimous consent of the committee members or a majority of the committee members with the consent of the donor.

Note that the changes in the approach of the two Revenue Procedures seems to indicate that the IRS is now be focusing on the issue of whether an incomplete gift for gift tax purposes is compatible with the income tax grantor trust provisions. This issue, in turn, ultimately depends on whether notions of adversity are, or can be fashioned to be, the same for both the gift tax and the income tax. This issue was meticulously analyzed in M.P. McCouch *Adversity, Inconsistency, and the Incomplete Nongrantor Trust*, 39 Va. Tax Rev. 419 (2020). *See generally* Jonathan Curry, *Incomplete Gift Trusts Hit IRS's No-Rule List in Foreboding Move*, Tax Notes Today, March 29, 2021.

**Page 473:** Insert before the **PROBLEMS**, the following:

For a discussion of the impact of "trust protectors" (unrelated, but loyal, to the grantor) on the "independent" trustee exception of § 674(c), see *SEC v. Wyly*, 56 F. Supp. 3d 494 (S.D.N.Y. 2014).

## CHAPTER 10: LIFE INSURANCE

**Page 503:** After the sentence ending "gift tax consequences", add FN 2A as follows:

2A Gift tax consequences can arise on the payment of premiums when a person is or is treated as the owner of a policy under a split-dollar arrangement. Gift tax consequences can be determined under either an economic benefit regime or a loan regime. In *Estate of Morrissette. v. Commissioner*, 146 T.C. 171 (2016), the Tax Court held that a split-dollar arrangement was subject to gift taxation under the economic benefit regime provided under Treas. Reg. 1.61-22. This result was obtained because the donor was treated as the owner of life insurance policies even though the policies were not actually owned by the donor because the donees received no economic benefits other than current life insurance protection.

## CHAPTER 11: ANNUITIES AND OTHER RETIREMENT ARRANGEMENTS

**Page 556:** In the paragraph beginning "The Pension Protection Act", the second sentence should read:

Based on indexing for inflation, the limitation for 2022 is $20,500, and will thereafter be adjusted for inflation in $500 increments. FN 5

FN 5: *See* § 402(g)(2). Pursuant to § 414(v)(2)(B)(i), employees age 50 or older may be allowed to make additional annual catch-up contributions—$27,000 in 2022—if the employer establishes catch-up contributions as a plan feature.

**Page 557:** Add as new sentence at the end of the first paragraph in footnote 6:

For 2022, the defined contribution limit is $61,000.

Add as new sentence at the end of the second paragraph in footnote 6:

For 2022, the defined benefit limit is $245,000.

**Page 558:** The fourth full sentence should read:

The amount in 2022 is $6,000 ($7,000 if over 50).

The last three sentences in the first full paragraph should read:

Based on inflation adjustments, the applicable deduction amount for 2022 is follows: The deduction will be disallowed entirely if an unmarried, active participant's modified AGI is $78,000 or more, and $129,000 or more if a joint return is filed. If the individual is not an active participant but if his or her spouse is, then the IRA deduction will be disallowed if the couple's modified AGI exceeds $214,000 or more.

In 3d full paragraph, add after the 1st sentence:

Based on the **Secure Act** (Setting Every Community Up for Retirement Enhancement Act of 2019) beginning in contributions to IRAs can be made without regard to an individual's age.

**Page 561:** In the last paragraph on Page 561, add FN 11A after § 403(b) as follows:

FN 11A. Rollovers into SIMPLE IRAs were authorized by the he PATH Act of 2015.

**Page 562:** Add new paragraph after last full paragraph:

Pursuant to the **Secure Act** (Setting Every Community Up for Retirement Enhancement Act of 2019) the age for RBDs was raised from 70½ to age 72 for individuals who reach age 70½ after December 31, 2019. Pursuant to the **Secure Act** retirement plan accounts involving most non-spousal beneficiaries must be distributed by December 31 of the 10th year following the participant's death. *See* generally Vorris J. Blankenship, *The SECURE Act: Retirement Plan Distributions after the Death of a Beneficiary*, 74 Tax Law. 629 (2021), On February 24, 2022, Treasury proposed regulations based on the **Secure Act** provisions. *See* REG-105954-20,87 F.R. 10504, 2022-11 I.R.B. 828.

Add as last sentence to FN 13:

New distribution tables, based on increasing life expectancy, will be used starting in 2021.

**Page 563: Replace the Example with the following and add footnote 13A:**

Alice, who owned an IRA, turned 70½ during 2008. As a result, her first MRD was required no later than April 1, 2009. In 2019, she will mark her 81st birthday. The MRD for 2019 will be the value in the account on December 31, 2018 divided by 17.9, which is the life expectancy factor for a person age 81 under the Uniform Distribution Table. Assuming the account balance on December 31, 2013 was $179,000, Alice must receive a MRD of $10,000 ($179,000/17.9) in 2019. FN 13A.

**FN 13A:** Instead of receiving a distribution of $10,000, Alice could have authorized the IRA custodian to transfer $10,000 to a qualified charity as the PATH Act of 2015 made permanent the earlier rule that up to $100,000 may be directly transferred to a qualified charity and treated as if the IRA owner, if over 701/2, received the distribution. *See* § 408(d)(8).

Add at end of FN 14:

Pursuant to the **Secure Act** (Setting Every Community Up for Retirement Enhancement Act of 2019), retirement plan accounts involving most non-spousal beneficiaries must be distributed by December 31 of the 10th year following the participant's death. This change, effective in 2020, eliminates the so-called stretch distributions which were based on the age of a designated beneficiary. Stretch distributions will continue to be allowed for eligible designated beneficiaries. *See* § 401(a)(2)(E)(ii).

## CHAPTER 12: THIRD-PARTY POWERS

**Page 598:** Andrew Howlett in *An Ascertainable Exception Standard for Beneficiary Controlled* Trusts, Tax Notes Federal (May 16, 2022), argues, contrary to the Blattmachr article, that the ascertainable standard exception for transfer tax purposes does not apply to § 678.

## CHAPTER 13: CONCURRENT PROPERTY INTERESTS

**Page 639:** Replace *Cf.* before *Jeschke* cite with *Compare*

Replace (joint bank account) with:

(no marital deduction allowed in joint bank account) *with Estate of Eubanks,* T.C. Memo. 1967-18 (marital deduction allowed in joint bank account).

## CHAPTER 14: INCOME TAXATION OF ESTATES, TRUSTS, AND BENEFICIARIES

**Page 675:** At end of paragraph beginning "A positive consequence", add the following:

See analysis of relationship of deductions in respect of a decedent to § 642(g), in *Batchelor-Robjohns* v. U.S., 788 F3d 1280 (11 Cir. 2015), discussed on Supplement Pages 49-50.

**Page 685:** At the end of the paragraph beginning with "This part considers", add the following:

*See generally*, Raj A. Malviya & Brandon A.S. Ross, *Subchapter J After Tax Reform: Ten Planning Considerations*, 54 Real Prop. Tr. & Est. L.J. 47 (2019).

**Pages 690-692:** Replace the text at the end of Page 690 beginning with "Under the proposed regulations" and the text of the proposed regulations on Pages 690-692, with the following:

Final regulations, effective on July 17, 2014 and applicable to taxable years beginning in 2015, provide as follows:

**§ 1.67–4 Costs paid or incurred by estates or non-grantor trusts.**

**(b) "Commonly" or "Customarily" Incurred—**

**(1) In general.** In analyzing a cost to determine whether it commonly or customarily would be incurred by a hypothetical individual owning the same property, it is the type of product or service rendered to the estate or non-grantor trust in exchange for the cost, rather than the description of the cost of that product or service, that is determinative. In addition to the types of costs described as commonly or customarily incurred by individuals in paragraphs (b)(2), (3), (4), and (5) of this section, costs that are incurred commonly or customarily by individuals also include, for example, costs incurred in defense of a claim against the estate, the decedent, or the non-grantor trust that are unrelated to the existence, validity, or administration of the estate or trust.

**(2) Ownership costs.** Ownership costs are costs that are chargeable to or incurred by an owner of property simply by reason of being the owner of the property. Thus, for purposes of section 67(e), ownership costs are commonly or customarily incurred by a hypothetical individual owner of such property. Such ownership costs include, but are not limited to, partnership costs deemed to be passed through to and reportable by a partner if these costs are defined as miscellaneous itemized deductions pursuant to section 67(b), condominium fees, insurance premiums, maintenance and lawn services, and automobile registration and insurance costs. Other expenses incurred merely by reason of the ownership of property may be fully deductible under other provisions of the Code, such as sections 62(a)(4), 162, or 164(a), which would not be miscellaneous itemized deductions subject to section 67(e).

**(3) Tax preparation fees.** Costs relating to all estate and generation-skipping transfer tax returns, fiduciary income tax returns, and the decedent's final individual income tax returns are not subject to the 2-percent floor. The costs of preparing all other tax returns (for example, gift tax returns) are costs commonly and customarily incurred by individuals and thus are subject to the 2-percent floor.

**(4) Investment advisory fees.** Fees for investment advice (including any related services that would be provided to any individual investor as part of an investment advisory fee) are incurred commonly or customarily by a hypothetical individual investor and therefore are subject to the 2-percent floor. However, certain incremental costs of investment advice beyond the amount that normally would be charged to an individual investor are not subject to the 2-percent floor. For this purpose, such an incremental cost is a special, additional charge that is added solely because the investment advice is rendered to a trust or estate rather than to an individual or attributable to an unusual investment objective or the need for a specialized balancing of the interests of various parties (beyond the usual balancing of the varying interests of current beneficiaries and remaindermen) such that a reasonable comparison with individual investors would be improper. The portion of the investment advisory fees not subject to the 2-percent floor by reason of the preceding sentence is limited to the amount of those fees, if any, that exceeds the fees normally charged to an individual investor.

**(5) Appraisal fees.** Appraisal fees incurred by an estate or a non-grantor trust to determine the fair market value of assets as of the decedent's date of death (or the alternate valuation date), to determine value for purposes of making distributions, or as otherwise required to properly prepare the estate's or trust's tax returns, or a generation-skipping transfer tax return, are not incurred commonly or customarily by an individual and thus are not subject to the 2-percent floor. The cost of appraisals for other purposes (for example, insurance) is commonly or customarily incurred by individuals and is subject to the 2-percent floor.

**(6) Certain Fiduciary Expenses.** Certain other fiduciary expenses are not commonly or customarily incurred by individuals, and thus are not subject to the 2-percent floor. Such expenses include without limitation the following: Probate court fees and costs; fiduciary bond premiums; legal publication costs of notices to creditors or heirs; the cost of certified copies of the decedent's death certificate; and costs related to fiduciary accounts.

**(c) Bundled fees—**

**(1) In general.** If an estate or a non-grantor trust pays a single fee, commission, or other expense (such as a fiduciary's commission, attorney's fee, or accountant's fee) for both costs that are subject to the 2-percent floor and costs (in more than a de minimis amount) that are not, then, except to the extent provided otherwise by guidance published in the Internal Revenue Bulletin, the single fee, commission, or other expense (bundled fee) must be allocated, for purposes of computing the adjusted gross income of the estate or non-grantor trust in compliance with section 67(e), between the costs that are subject to the 2-percent floor and those that are not.

**(2) Exception.** If a bundled fee is not computed on an hourly basis, only the portion of that fee that is attributable to investment advice is subject to the 2-percent floor; the remaining portion is not subject to that floor.

**(3) Expenses Not Subject to Allocation.** Out-of-pocket expenses billed to the estate or non-grantor trust are treated as separate from the bundled fee. In addition, payments made from the bundled fee to third parties that would have been subject to the 2-percent floor if they had been paid directly by the estate or non-grantor trust are subject to the 2-percent floor, as are any fees or expenses separately assessed by the fiduciary or other payee of the bundled fee (in addition to the usual or basic bundled fee) for services rendered to the estate or non-grantor trust that are commonly or customarily incurred by an individual.

**(4) Reasonable Method.** Any reasonable method may be used to allocate a bundled fee between those costs that are subject to the 2-percent floor and those costs that are not, including without limitation the allocation of a portion of a fiduciary commission that is a bundled fee to investment advice. Facts that may be considered in determining whether an allocation is reasonable include, but are not limited to, the percentage of the value of the corpus subject to investment advice, whether a third party advisor would have charged a comparable fee for similar advisory services, and the amount of the fiduciary's attention to the trust or estate that is devoted to investment advice as compared to dealings with beneficiaries and distribution decisions and other fiduciary functions. The reasonable method standard does not apply to determine the portion of the bundled fee attributable to payments made to third parties for expenses subject to the 2-percent floor or to any other separately assessed expense commonly or customarily incurred by an individual, because those payments and expenses are readily identifiable without any discretion on the part of the fiduciary or return preparer.

**Page 692:** Before **[2] Depreciation**, insert the following:

The Tax Act of 2017 enacted § 67(g) which provides: "Notwithstanding subsection (a), no miscellaneous itemized deduction shall be allowed for any taxable year beginning after December 31, 2017, and before January 1, 2026."

In Notice 2018-61, 31 I.R.B. 278 (July 30, 2018) the IRS announced the following:

SECTION 3. REGULATIONS TO BE ISSUED ADDRESSING THE EFFECT OF SECTION 67(g) ON CERTAIN ESTATE AND NON-GRANTOR TRUST EXPENSES

Commentators have suggested that new section 67(g) might be read to eliminate the ability of estates and non-grantor trusts to deduct any expenses described in section 67(e)(1) and § 1.67-4 for the taxable years during which the application of section 67(a) is suspended. The Treasury Department and the IRS do not believe that this is a correct reading of section 67(g). For the taxable years during which it is effective, section 67(g) denies a deduction for miscellaneous itemized deductions. Section 67(b) defines miscellaneous itemized deductions as itemized deductions other than those listed therein. Section 63(d) defines itemized deductions by excluding personal exemptions, section 199A deductions, and deductions used to arrive at adjusted gross income. Therefore, neither the above-the-line deductions used to arrive at adjusted gross income nor the expenses listed in section 67(b)(1) — (12) are miscellaneous itemized deductions. Section 62(a) defines adjusted gross income of an individual, and section 67(e) provides that the adjusted gross income of a trust or estate is determined in the same way as for an individual, except that expenses described in section 67(e)(1) and deductions pursuant to sections 642(b), 651, and 661 are allowable as deductions in arriving at adjusted gross income. Thus, section 67(e) removes the expenses described in section 67(e)(1) from the category of itemized deductions (and thus necessarily also from the subset of miscellaneous itemized deductions) and instead treats them as above-the-line deductions allowable in determining adjusted gross income under section 62(a). Therefore, the suspension of the deductibility of miscellaneous itemized deductions under section 67(a) does not affect the deductibility of payments described in section 67(e)(1). However, an expense that commonly or customarily would be incurred by an individual (including the appropriate portion of a bundled fee) is affected by section 67(g) and thus is not deductible to the estate or non-grantor trust during the suspension of section 67(a). Nothing in section 67(g) impacts the determination of what expenses are described in section 67(e)(1).

Additionally, nothing in section 67(g) affects the ability of the estate or trust to take a deduction listed under section 67(b). These deductions remain outside of the definition of "miscellaneous itemized deduction." For example, section 691(c) deductions (relating to the deduction for estate tax on income in respect of the decedent), which are identified in section 67(b)(7), remain unaffected by the enactment of section 67(g)).

The Treasury Department and the IRS intend to issue regulations clarifying that estates and non-grantor trusts may continue to deduct expenses described in § 67(e)(1) and amounts allowable as deductions under §§ 642(b), 651 or 661, including the appropriate portion of a bundled fee, in determining the estate or non-grantor trust's adjusted gross income during taxable years, for which the application of § 67(a) is suspended pursuant to § 67(g). Additionally, the regulations will clarify that deductions enumerated in § 67(b) and (e) continue to remain outside the definition of "miscellaneous itemized deductions" and thus are unaffected by § 67(g).

Following through on these intentions, on May 11, 2020, the IRS published the following proposed regulations (REG-113295-18; 85 F.R. 27693-27698; 2020-22 I.R.B. 875):

Section 1.67-4 is amended by revising paragraph (a) and the heading of paragraph (d) and adding a sentence at the end of paragraph (d) to read as follows:

<u>§ 1.67-4. Costs paid or incurred by estates or non-grantor trusts</u>.

(a) <u>In general</u>--(1) <u>Section 67(e) deductions</u>. (i) An estate or trust (including the S portion of an electing small business trust) not described in § 1.67-2T(g)(1)(i) (a non grantor trust) shall compute its adjusted gross income in the same manner as an individual, except that the following deductions (<u>Section 67(e) deductions</u>) are allowed in arriving at adjusted gross income:

(A) Costs that are paid or incurred in connection with the administration of the estate or trust, which would not have been incurred if the property were not held in such estate or trust; and

(B) Deductions allowable under section 642(b) (relating to the personal exemption) and sections 651 and 661 (relating to distributions).

(ii) Section 67(e) deductions are not itemized deductions under section 63(d) and are not miscellaneous itemized deductions under section 67(b). Therefore, section 67(e) deductions are not disallowed under section 67(g).

(2) <u>Deductions subject to 2-percent floor</u>. A cost is not a section 67(e) deduction and thus is subject to both the 2-percent floor in section 67(a) and section 67(g) to the extent that it is included in the definition of miscellaneous itemized deductions under section 67(b), is incurred by an estate or non-grantor trust (including the S portion of an electing small business trust), and commonly or customarily would be incurred by a hypothetical individual holding the same property.

* * * * *

(d) *Applicability date*. * * * Paragraph (a) of this section applies to taxable years beginning after **[**date these regulations are published as final in the **Federal Register**].

The above Proposed Regulations were adopted without modification in the Final Regulations under T.D. 9918 (Sep. 26, 2020). *See generally* RIA article, *IRS Finalizes Rules on Estate and Non-Grantor Trust Deductions not Considered Miscellaneous Itemized Deductions for which TCIA Suspended Deductibility,* 133 J. Taxation 26 (2020).

**Page 695:** Immediately before the sentence beginning ”In April 2012”, add:

In *Navigating the Section 642(c) Minefield – Obtaining the Income Tax Charitable Deduction for Estates and Non-Grantor Trusts*, 48 Est. Plan. 4 (2021), Jeremiah W. Doyle, IV presents a primer on I.R.C. § 642(c), including applicable case law, regulations, and private letter rulings.

**Page 696: Immediately before the sentence beginning “Besides permitting”, add as follows:**

In *Green v. United States*, 880 F.3d 519 (10th Cir. 2018), a trust had purchased property with funds constituting part of its gross income. After the value of the property appreciated, the trust, as authorized by the trust agreement, donated it to charity. The 10th Circuit held (1) that the trust was eligible for a § 642(c)(1) deduction since the property had been purchased with the trust’s gross income (i.e., even though it did not itself constitute gross income of the trust), but (2) that the trust could only deduct its basis in the property (i.e., basically what the trust paid for it), and not its fair market value. The Court noted that, unlike an individual who is permitted to deduct the value of appreciated property even though the individual has not realized the appreciation, a trust’s deduction is limited to “any amount of the gross income [of the trust] paid” to charity.

After the sentence beginning “Besides permitting”, add as follows:

In *Estate of Belmont v. Commissioner*, 144 T.C. No. 6 (Feb. 19, 2015) and *Estate of DiMarco v. Commissioner*, T.C. Memo 2015-184, a charitable deduction was denied because under the facts there was more than a negligible chance that the amount set aside for charity would not be so devoted, thus violating Treas. Reg. § 1.642(c)-2(d).

After 1st full paragraph, add:

"F. Ladson Boyle and Jonathan G. Blattmachr analyze problems concerning income in respect of a decedent (IRD) when an estate has charitable beneficiaries in *IRD and Charities: The Separate Share Regulations and the Economic Effect Requirement,* 52 Real Prop. Tr. & Est. L.J. 369 (2018). The authors then suggest "possible solutions to assure that the income tax charitable deduction is available for an estate when it pays over the proceeds from items of IRD to a charity."

Before **[4] Double Deducting . . . Tax Return** insert the following:

**[3A] New Section 199A**

Under the Tax Cut and Jobs Act (TCJA) of 2017, the maximum corporate tax rate was lowered to 21 percent. However, the 21% rate only applies only to income taxable under Subchapter C of the Internal Revenue Code. New Section 199A was enacted by TCJA in order to provides similar type of relief to the business income of non-corporate taxpayers. Under the General Explanation contained in the Blue Book for the 2017 Tax Act:

> The provision reflects Congress's belief that a reduction in the corporate income tax rate does not completely address the Federal income tax burden on businesses. While the corporate tax is a tax on capital income, the tax on income from noncorporate businesses may fall on both labor income and capital income. Treating corporate and noncorporate business income more similarly to each other under the Federal income tax requires distinguishing labor income from capital income in a noncorporate business.

Under new section 199A, for taxable years beginning after 2017 and before 2026, an individual taxpayer generally may deduct 20 percent of the "qualified business income" with respect to a partnership, S-corporation, or sole proprietorship. Eligible taxpayers also generally include fiduciaries and beneficiaries of trusts and estates which have qualified business income. The 20 percent Section 199A deduction is subject to certain restrictions if the taxpayer has taxable income over a certain threshold ($160,700 for 2019 but $321,400 for joint filers). Taxpayers with taxable income at or below the threshold amount, therefore, are eligible for a deduction for each qualified trade or business equal to 20 percent of the business income with respect to that trade or business. Final Regulations have been issued under 199A, *see* T.D. 9847, 84 FR 2952-3014(Feb. 8, 2019), including, significantly from a planning perspective, a provision allowing a trust or estate to keep its taxable income within the threshold amount by permissible distributions reflected in the trust or estate distribution deduction. For an extended discussion of the application of the new section and its regulations to trusts, estates and beneficiaries, see

Akers, "Section 199A Final Regulations Summary", available at https://www.bessemertrust.com/incites/section-199a-final-regulations-summary.

**Page 697:** At end of first paragraph (ending with "final return."), add as new paragraphs the following:

In *Batchelor-Robjohns* v. U.S., 788 F3d 1280 (11 Cir. 2015), the taxpayer sold stock in a corporation for a substantial capital gain which he reported on his 1999 income tax return. Thereafter the taxpayer was sued for repayment of some of the purchase price of the stock on various grounds. Before the repayment suits were completed, the taxpayer died. After his death his estate settled the repayment cases and, in 2005, paid back some of the proceeds of the capital gain that had been reported previously by the taxpayer on his 1999 income tax return. The estate deducted the settlement payments as a debt on the Form 706 for estate tax purposes under § 2053. Thereafter the estate attempted to use § 1341 to reduce its 2005 income tax. That section provides relief for a taxpayer who has, under a claim of right (but erroneously as it turns out), included in income amounts received in an earlier year, and then, in a later year, repays such amounts. It applies, however, only if there would be a "deduction…allowable" in the later year for the amounts repaid.

In *Batchelor-Robjohns* the Eleventh Circuit Court of Appeals held that § 642(g) prevented the estate from using § 1341 because it had deducted the payments on the estate tax under§ 2053, which thus precluded a "deduction" from being "allowable" in 2005. The Court also held that the § 642(g) exception for § 691(b) deductions in respect of a decedent did not apply because § 691(b) lists as deductions in respect of a decedent only those deductions allowable under §§ 162, 153, 164, 212, and 611, whereas the repayments by the estate in 2005 were properly characterized as (capital) losses (§ 165).

Under Proposed Regulations providing Guidance Under Section 2053 Regarding Deduction for Interest Expense, *see* REG-130975-08, 7 F.R 38331-01 (2022), one of the factors in determining the deductibility of interest on a loan incurred by an estate to pay estate taxes is the following:

> The lender properly includes amounts of paid and/or accrued interest (including original issue discount as determined under sections 1271 through 1275 and the regulations in this part under those sections, such as original issue discount attributable to stated interest that is treated as part of the stated redemption price at maturity because it is not payable at least annually) in gross income for Federal income tax purposes, particularly if the lender is a family member of the decedent, a related entity, or a beneficiary of the decedent's estate or trust.
>
> Thus, if a trust, as a "related entity", is the lender, it would have to include in gross income amounts of paid and/or accrued interest (including original issue discount as determined under sections 1271 through 1275).

**Page 706:** After "Examples 1 and 2." in 3d full paragraph, add:

*See generally,* Lester Law & Howard Zaritsky*, Basis After the 2017 Tax Act – Important Before, Crucial Now, 53* Annual Heckerling Inst. On Est. Pl., Special Session at 1-39 to 146 (2019).

**Page 724:** Insert at the end of footnote 33:

*But see Frank Aragona Trust v. Commissioner,* 142 T.C. 165 (2014) (holding that even if (contrary to *Mattie Carter*) the activities of non-trustee employees should be disregarded, which the Court did not decide, the activities of trustee employees cannot be disregarded.) *See generally,* Mark Berkowitz and Jessica Duran, *100 is the New 500-Planning for the NII Tax*, 146 TAX NOTES 1625 (2015).

In the text after the "PROBLEM", replace ($11,950.00 in 2013) with ($13,050 in 2021).

Add thereafter:

Final regulations under § 1411 were issued in December of 2013. *See T.D. 9644,* 78 Fed. Reg. 72394-72449.

**Page 766:** At the end of the fourth line (immediately before Revenue Ruling 57-31) insert the following:

The Tax Act of 2017 enacted § 67(g) which provides: "Notwithstanding subsection (a), no miscellaneous itemized deduction shall be allowed for any taxable year beginning after December 31, 2017, and before January 1, 2026."

In Notice 2018-61, 31 I.R.B. 278 (July 30, 2018) the IRS announced the following:

SECTION 4. REQUEST FOR COMMENTS CONCERNING A BENEFICIARY'S ABILITY TO CLAIM EXCESS DEDUCTIONS PURSUANT TO SECTION 642(h)

The Treasury Department and the IRS are aware of some concerns that the enactment of section 67(g) will affect a beneficiary's ability to deduct section 67(e) expenses upon the termination of the trust or estate as provided in section 642(h).

Section 642(h) provides that if, on the termination of an estate or trust, the trust or estate has: (1) a net operating loss carryover under section 172 or a capital loss carryover under section 1212, or (2) for the last taxable year of the estate or trust, deductions (other than the deductions allowed under section 642(b) (relating to personal exemption) or section 642(c) (relating to charitable contributions)) in excess of gross income for such year, then such carryover or such excess shall be allowed as a deduction, in accordance with the regulations prescribed by the Secretary, to the beneficiaries succeeding to the property of the estate or trust.

Section 1.642(h)—1(b) provides, in part, that net operating loss carryovers and capital loss carryovers are taken into account when determining adjusted gross income. Therefore, they are above-the-line deductions and thus are not miscellaneous itemized deductions on the returns of beneficiaries. Conversely, § 1.642(h)—2(a) provides that if, on the termination of an estate or trust, the estate or trust has for its last taxable year deductions (other than the deductions allowed under section 642(b) (relating to personal exemption) or section 642(c) (relating to charitable contributions) in excess of gross income, the excess is allowed under section 642(h)(2) as a deduction (section 642(h)(2) excess deduction) to the beneficiaries. However, the section 642(h)(2) excess deduction is allowed only in computing the taxable income of the beneficiaries and must be taken into account in computing the items of tax preference of the beneficiaries. Therefore, a section 642(h)(2) excess deduction is not used in computing the beneficiaries' adjusted gross income and is treated as a miscellaneous itemized deduction of the beneficiaries. *See* sections 63(d) and 67(b).

The section 642(h)(2) excess deduction may include expenses described in section 67(e). As previously discussed, prior to enactment of section 67(g), miscellaneous itemized deductions were allowed subject to the restrictions contained in section 67(a). For the years in which section 67(g) is effective, miscellaneous itemized deductions are not permitted, and that appears to include the section 642(h)(2) excess deduction. The Treasury Department and the IRS are studying whether section 67(e) deductions, as well as other deductions that would not be subject to the limitations imposed by sections 67(a) and (g) in the hands of the trust or estate, should continue to be treated as miscellaneous itemized deductions when they are included as a section 642(h)(2) excess deduction. Taxpayers should note that section 67(e) provides that appropriate adjustments shall be made in the application of part I of subchapter J of chapter 1 of the Code to take into account the provisions of section 67.

The Treasury Department and the IRS intend to issue regulations in this area and request comments regarding the effect of section 67(g) on the ability of the beneficiary to deduct amounts comprising the section 642(h)(2) excess deduction upon the termination of a trust or estate in light of sections 642(h) and 1.642(h)—2(a). In particular, the Treasury Department and the IRS request comments concerning whether the separate amounts comprising the section 642(h)(2) excess deduction, such as any amounts that are section 67(e) deductions, should be separately analyzed when applying section 67.

Following through on these intentions, on May 11, 2020, the IRS published the following proposed regulation (REG-113295-18; 85 F.R. 27693-27698; 2020-22 I.R.B. 875):

<u>§ 1.642(h)-2 Excess deductions on termination of an estate or trust</u>.

(a) <u>In general</u>. If, on the termination of an estate or trust, the estate or trust has for its last taxable year deductions (other than the deductions allowed under section 642(b) (relating to the personal exemption) or section 642(c) (relating to charitable contributions)) in excess of gross income, the excess deductions are allowed under section 642(h)(2) as items of deduction to the beneficiaries succeeding to the property of the estate or trust.

(b) <u>Character and amount of excess deductions</u> —

(1) Character. The character and amount of the excess deductions on termination of an estate or trust will be determined as provided in this paragraph (b). Each deduction comprising the excess deductions under section 642(h)(2) retains, in the hands of the beneficiary, its character (specifically, as allowable in arriving at adjusted gross income, as a non-miscellaneous itemized deduction, or as a miscellaneous itemized deduction) while in the estate or trust. An item of deduction succeeded to by a beneficiary remains subject to any additional applicable limitation under the Code and must be separately stated if it could be so limited, as provided in the instructions to Form 1041, U.S. Income Tax Return for Estates and Trusts and the Schedule K-1 (Form 1041), Beneficiary's Share of Income, Deductions, Credit, etc., or successor forms.

(2) Amount. The amount of the excess deductions in the final year is determined as follows:

(i) Each deduction directly attributable to a class of income is allocated in accordance with the provisions in § 1.652(b)-3(a);

(ii) To the extent of any remaining income after application of paragraph (b)(2)(i) of this section, deductions are allocated in accordance with the provisions in § 1.652(b)-3(b) and (d); and

(iii) Deductions remaining after the application of paragraph (b)(2)(i) and (ii) of this section comprise the excess deductions on termination of the estate or trust. These deductions are allocated to the beneficiaries succeeding to the property of the estate of or trust in accordance with § 1.642(h)-4.

(c) Year of termination — (1) In general. The deductions provided for in paragraph (a) of this section are allowable only in the taxable year of the beneficiary in which or with which the estate or trust terminates, whether the year of termination of the estate or trust is of normal duration or is a short taxable year.

(2) Example. Assume that a trust distributes all its assets to B and terminates on December 31, Year X. As of that date, it has excess deductions of $18,000, all characterized as allowable in arriving at adjusted gross income under section 67(e). B, who reports on the calendar year basis, could claim the $18,000 as a deduction allowable in arriving at B's adjusted gross income for Year X. However, if the deduction (when added to B's other deductions) exceeds B's gross income, the excess may not be carried over to any year subsequent to Year X.

(d) Net operating loss carryovers. * * *

(e) Items included in net operating loss or capital loss carryovers. * * *

(f) Applicability date. Paragraphs (a) and (b) of this section apply to taxable years beginning after [date these regulations are published as final in the Federal Register**]**.

§ 1.642(h)-5 Examples.

The following examples illustrate the application of section 642(h).

(a) Example 1. Computations under section 642(h) when an estate has a net operating loss—(1) Facts. On January 31, 2020, A dies leaving a will that provides for the distribution of all of A's estate equally to B and an existing trust for C. The period of administration of the estate terminates on December 31, 2020, at which time all the property of the estate is distributed to B and the trust. For tax purposes, B and the trust report income on a calendar year basis. During the period of administration, the estate has the following items of income and deductions:

**Table 1 to Paragraph (a)(1)**

| | |
|---|---|
| Income | |
| Taxable interest | $2,500 |
| Business Income | 3,000 |
| Total Income | 5,500 |

**Table 2 to Paragraph (a)(1)**

| | | |
|---|---|---|
| Deductions | | |
| Business expenses (including administrative expense allocable to business income) | 5,000 | |
| Administrative expenses not allocable to business income that would not have been incurred if property had not been held in a trust or estate (section 67(e) deductions) | 9,800 | |
| Total deductions | | 14,800 |

(2) Computation of net operating loss. (i) Under section 642(h)(1), B and the trust are each allocated $1,000 of the $2,000 unused net operating loss carryover of the terminated estate in the taxable year, with the allowance of any net operating loss and loss carryover to B and the trust determined under section 172. The amount of the net operating loss carryover is computed as follows:

**Table 3 to Paragraph (a)(2)(i)**

| | | |
|---|---|---|
| Gross income | | $5,500 |
| Total deductions | 14,800 | |
| Less adjustment under section 172(d)(4) (allowable non-business expenses ($9,800) limited to non-business income ($2,500)) | 7,300 | |
| Deductions as adjusted | | 7,500 |
| Net operating loss | | 2,000 |

(ii) Neither B nor the trust can carry back any of the net operating loss of A's estate made available to them under section 642(h)(1).

(3) Section 642(h)(2) excess deductions. The $7,300 of deductions not taken into account in determining the net operating loss of the estate are excess deductions on termination of the estate under section 642(h)(2). Under § 1.642(h)-2(b)(1), such deductions retain their character as section 67(e) deductions. Under § 1.642(h)-4, B and the trust each are allocated $3,650 of excess deductions based on B's and the trust's respective shares of the burden of each cost.

(4) Consequences for C. The net operating loss carryovers and excess deductions are not allowable directly to C, the trust beneficiary. To the extent the distributable net income of the trust is reduced by the carryovers and excess deductions, however, C may receive an indirect benefit from the carryovers and excess deductions.

(b) Example 2. Computations under section 642(h)(2) — (1) Facts. D dies in 2019 leaving an estate of which the residuary legatees are E (75%) and F (25%). The estate's income and deductions in its final year are as follows:

**Table 4 to Paragraph (b)(1)**

| | | |
|---|---|---|
| Income | | |
| Dividends | $3,000 | |
| Taxable Interest | 500 | |
| Rents | 2,000 | |
| Capital Gain | 1,000 | |
| Total Income | | 6,500 |

**Table 5 to Paragraph (b)(1)**

| | | |
|---|---|---|
| Deductions | | |
| Section 67(e) deductions: | | |
| Probate fees | 1,500 | |
| Estate tax preparation fees | 8,000 | |
| Legal fees | 4,500 | |
| Total Section 67(e) deductions | 14,000 | |
| Itemized deductions: | | |
| Real estate taxes on rental property | 3,500 | |
| Total deductions | | 17,500 |

(2) Determination of character. Pursuant to § 1.642(h)-2(b)(2), the character and amount of the excess deductions is determined by allocating the deductions among the estate's items of income as provided under § 1.652(b)-3. Under § 1.652(b)-3(a), $2,000 of real estate taxes is allocated to the $2,000 of rental income. In the exercise of the executor's discretion pursuant to § 1.652(b)-3(b) and (d), D's executor allocates $4,500 of section 67(e) deductions to the remaining $4,500 of income. As a result, the excess deductions on termination of the estate are $11,000, consisting of $9,500 of section 67(e) deductions and $1,500 of itemized deductions.

(3) Allocations among beneficiaries. Pursuant to § 1.642(h)-4, the excess deductions are allocated in accordance with E's (75 percent) and F's (25 percent) interests in the residuary estate. E's share of the excess deductions is $8,250, consisting of $7,125 of section 67(e) deductions and $1,125 of real estate taxes. F's share of the excess deductions is $2,750, consisting of $2,375 of section 67(e) deductions and $375 of real estate taxes. The real estate taxes on rental property must be separately stated as provided in § 1.642(h)-2(b)(1).

(b) Applicability date. This section is applicable to taxable years beginning after [date these regulations are published as final in the Federal Register]**.**

Under T.D. 9918 (Sep. 26, 2020) the above Proposed Regulations were adopted with minor modification, including those to Example 2 as explained below:

EXAMPLE 2

Section § 1.642(h)-5(b), Example 2, of the proposed regulations (Example 2) demonstrates computations under section 642(h)(2). The expenses in Example 2 include rental real estate taxes in an attempt to illustrate a deduction subject to limitation under section 164(b)(6) to the beneficiary that must be separately stated as provided in § 1.642(h)-2(b)(1).

Multiple commenters noted that Example 2 raises several issues that could be potentially relevant to that example, such as whether the decedent was in a trade or business and the application of section 469 to estates and trusts. To avoid these issues, which are extraneous to the point being illustrated, one commenter suggested that the example be revised so that the entire amount of real estate expenses on rental property equals the amount of rental income. The Treasury Department and the IRS did not intend to raise such issues in the example and consider both issues to be outside the scope of these regulations. Accordingly, the Treasury Department and the IRS adopt the suggestion by the commenter and modify Example 2 to avoid these issues by having rental real estate expenses entirely offset rental income with no unused deduction.

Commenters also noted that Example 2 does not properly allocate rental real estate expenses because the example characterizes the rental real estate taxes as itemized deductions. These commenters asserted that real estate taxes on property held for the production of rental income are not itemized deductions but instead are allowed in computing gross income and cited to section 62(a)(4) as providing that ordinary and necessary expenses paid or incurred during the taxable year for the management, conservation, or maintenance of property held for the production of income under section 212(2) that are attributable to property held for the production of rents are deductible as above-the-line deductions in arriving at adjusted gross income. One commenter suggested that, if the goal of Example 2 is to illustrate state and local taxes passing through to the beneficiary, then the example should include state income taxes rather than real estate taxes on rental real estate. The Treasury Department and the IRS have revised this example in the final regulations to include personal property tax paid by the trust rather than taxes attributable to rental real estate.

Lastly, commenters noted that Example 2 does not demonstrate the broad range of trustee discretion in § 1.652(b)-3(b) and (d) for deductions that are not directly attributable to a class of income, or deductions that are, but which exceed such class ofincome, respectively. In response to these comments, the Treasury Department and the IRS have modified Example 2 to illustrate the application of trustee discretion as found in § 1.652(b)-3(b) and (d).

(a) Example 2: Computations under section 642(h)(2)—(1) Facts. D dies in 2019 leaving an estate of which the residuary legatees are E (75%) and F (25%). The estate's income and deductions in its final year are as follows:

TABLE 4 TO PARAGRAPH (b)(1)

| | | |
|---|---|---|
| Income | | |
| Dividends | $3,000 | |
| Taxable Interest | 500 | |
| Rent | 2,000 | |
| Capital Gain | 1,000 | |
| Total Income | | 6,500 |

TABLE 5 TO PARAGRAPH (b)(1)

| | | | |
|---|---|---|---|
| Deductions | | | |
| Section 62(a)(4) deductions: | | | |
| Rental real estate expenses | | 2,000 | |
| Section 67(e) deductions: | | | |
| Probate fees | 1,500 | | |
| Estate tax preparation fees | 8,000 | | |
| Legal fees | 2,500 | | |
| Total Section 67(e) deductions | | 12,000 | |
| Non-miscellaneous itemized deductions: | | | |
| Personal property taxes | | 3,500 | |
| Total deductions | | | 17,500 |

(2) Determination of character. Pursuant to § 1.642(h)–2(b)(2), the character and amount of the excess deductions is determined by allocating the deductions among the estate's items of income as provided under § 1.652(b)–3. Under § 1.652(b)–3(a), the $2,000 of rental real estate expenses is allocated to the $2,000 of rental income. In the exercise of the executor's discretion pursuant to § 1.652(b)–3(b), D's executor allocates $3,500 of personal property taxes and $1,000 of section 67(e) deductions to the remaining income. As a result, the excess deductions on termination of the estate are $11,000, all consisting of section 67(e) deductions.

(3) Allocations among beneficiaries. Pursuant to § 1.642(h)–4, the excess deductions are allocated in accordance with E's (75 percent) and F's (25 percent) interests in the residuary estate. E's share of the excess deductions is $8,250, all consisting of section 67(e) deductions. F's share of the excess deductions is $2,750, also all consisting of section 67(e) deductions.

Separate statement. If the executor instead allocated $4,500 of section 67(e) deductions to the remaining income of the estate, the excess deductions on termination of the estate would be $11,000, consisting of $7,500 of section 67(e) deductions and $3,500 of personal property taxes. The non-miscellaneous itemized deduction for personal property taxes may be subject to limitation on the returns of both B and C's trust under section 164(b)(6)(B) and would have to be separately stated as provided in § 1.642(h)–2(b)(1).

**Page 771:** Add after **PROBLEM:**

**Private Letter Ruling 201932001**

On Date 1, a date prior to September 25, 1985, Settlor created an irrevocable trust, Trust, for the benefit of Son. The material purpose of Trust was to ensure that Son receive an income stream for his support. Under the terms of the Trust agreement, the trustees are required to distribute all of the net income of Trust to Son, and, upon his death, distribute the remainder to his issue, per stirpes. The Trust agreement does not authorize any distributions of principal during Son's life. Son has four living adult children (Current Remaindermen) and eight living grandchildren, four of whom are adults (Successor Remaindermen). None of Son's descendants has a predeceased child with living issue. Son and Bank are currently serving as co-trustees of Trust.

……

On Date 2, Son, the Current Remaindermen and the Successor Remaindermen entered into Agreement. Agreement states that the continuance of Trust "is no longer necessary to achieve any clear material purpose of such trust because [[Son]'s net worth has grown significantly, such that he does not need income from [Trust] for his support." Agreement further provides for the termination of Trust and the distribution of Trust's assets among Son, the Current Remaindermen and the Successor Remaindermen in accordance with the actuarial value of each beneficiary's share (Proposed Distribution).

Specifically, Agreement provides that after the date of termination, the trustees shall, as expeditiously as possible, value [Trust's] assets, determine the appropriate distributions to be made upon [Trust's] termination pursuant to this Agreement and terminate [Trust]. Upon such termination, the Trustees shall distribute, on a pro rata or in-kind basis, as the Trustees shall, in their sole discretion, determine, all of the [Trust's] assets to [ [Son], [Current Remaindermen] and [Successor Remaindermen] in accordance with their actuarial interests calculated as of the Termination Date.

……

The trustees request the following rulings:

……

3. The termination of Trust and the Proposed Distribution will cause Son and the Successor Remaindermen to recognize long-term capital gain, and will cause the Current Remaindermen to recognize capital gain on the unrealized appreciation of the assets received by Son and the Successor Remaindermen upon termination.

……

<u>Ruling3</u>

Section 1015(b) provides that if property is acquired by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on the transfer.

Section 1.1015-2(a)(2) of the Income Tax Regulations provides that the principles stated in § 1.1015-1(b) apply in determining the basis of property where more than one person acquires an interest in property by transfer in trust.

Section 1.1015-1(b) provides that property acquired by gift has a uniform basis, and that the proportionate parts of that basis represented by the interests of the life tenant and remainder interest holder are determined under rules provided in § 1.1014-5.

Section 1001(e)(1), however, provides that in determining gain or loss from the sale or disposition of a term interest in property, that portion of the adjusted basis of the interest which is determined pursuant to § 1015 (to the extent that the adjusted basis is a portion of the entire adjusted basis of the property) shall be disregarded. Under § 1001(e)(2), the term ""term interest in property" includes an income interest in a trust, but does not include a remainder interest. Section 1001(e)(3) provides that § 1001(e)(1) does not apply to a sale or other disposition which is a part of a transaction in which the entire interest in property is transferred to any person or persons. <u>See</u> § 1.1001-1(f),

……

Rev. Rul. 72-243, 1972-1 C.B. 233, provides that the proceeds received by the life tenant of a trust, in consideration for the transfer of the life tenant's entire interest in the trust to the holder of the remainder interest, are treated as an amount realized from the sale or exchange of a capital asset under § 1222. The right to income for life from a trust estate is a right in the estate itself. See McAllister v. Commissioner, 157 F.2d 235 (2d Cir. 1946), cert. denied, 330 U.S. 826 (1947).

In Rev. Rul. 69-486, 1969-2 C.B. 159, a non-pro rata distribution of trust property was made in kind by the trustee, although the trust instrument and local law did not convey authority to the trustee to a make a non-pro rata distribution of property in kind. The distribution was effected as a result of a mutual agreement between the trustee and the beneficiaries. Because neither the trust instrument nor local law conveyed authority to the trustee to make a non-pro rata distribution, Rev. Rul. 69-486 held that the transaction was equivalent to a pro rata distribution followed by an exchange between the beneficiaries, an exchange that required recognition of gain under § 1001.

Although the proposed transaction takes the form of a distribution of the present values of the respective interests of Son, the Current Remaindermen, and the Successor Remaindermen, in substance it is a sale of Son's and the Successor Remaindermen's interests to the Current Remaindermen. Rev. Rul. 69-486.

The amounts received by Son as a result of the termination of Trust are amounts received from the sale or exchange of a capital asset to the Current Remaindermen. Rev. Rul. 72-243. Because Son's basis in the income interest of Trust is a portion of the entire basis of the property under § 1015(b), and because the disposition of Son's term interests is not part of a transaction in which the entire interest in Trust is transferred to a third party, Son's adjusted basis in Son's interest in Trust is disregarded under § 1001(e). Son's holding period in the life interests in Trust exceeds one year. Accordingly, based on the facts submitted and representations made, the entire amount realized by Son as a result of the early termination of Trust will be long-term capital gain under § 1222(3).

Similarly, the amounts received by the Successor Remaindermen as a result of the termination of Trust are amounts received from the sale or exchange of a capital asset to the Current Remaindermen. Cf. Helvering v. Gambrill, 313 U.S. 11, 15 (1941), 1941-1 C.B. 364 (The phrase "property held by the taxpayer" under a prior law holding period rule relating to capital gains and losses includes not only full ownership, but also any interest owned whether vested, contingent, or conditional). The Successor Remaindermen's holding period in their interests in Trust also exceeds one year. Accordingly, under § 1222(3), the gain determined under § 1001(a) by the Successor Remaindermen as a result of the early termination of Trust will be long-term capital gain.

In addition, to the extent that a Current Remainderman exchanges property, including property deemed received from Trust, for the interests of Son and the Successor Remaindermen, the Current Remainderman will recognize gain or loss on the property exchanged. Accordingly, based on the facts submitted and representations made, for purposes of determining gain or loss, the amount realized by each Current Remainderman on the exchange of property for Trust interests held by Son and the Successor Remaindermen will be equal to amount of cash and fair market value of the trust interests received in exchange for the transferred assets. Section 1.1001-1(a) and Rev. Rul. 69-486.

IRC 1001(e) provides as follows:

**(e) Certain term interests**

**(1) In general**

In determining gain or loss from the sale or other disposition of a term interest in property, that portion of the adjusted basis of such interest which is determined pursuant to section 1014, 1015, or 1041 (to the extent that such adjusted basis is a portion of the entire adjusted basis of the property) shall be disregarded.

**(2) Term interest in property defined**

For purposes of paragraph (1), the term "term interest in property" means—

(A) a life interest in property,

(B) an interest in property for a term of years, or

(C) an income interest in a trust.

**(3) Exception**

Paragraph (1) shall not apply to a sale or other disposition which is a part of a transaction in which the entire interest in property is transferred to any person or persons.

Why did the IRS not apply the § 1001(e)(3) exception to the life income beneficiary in Private Letter Ruling 201932001? See Joyce & DelCotto *The AB (ABC) and BA Transactions: An Economic and Tax Analysis of Reserved and Carved Out Income Interests*, 31 Tax L. Rev. 121, 165-167 (1976). *See also* Ladson Boyle, Howard Zaritsky and Ryan Wallace, *The Uniform Basis Rules and Terminating Interests in Trusts Early, 55* Real Prop, Prob. & Trusts 1 (Spring 2020).

**Page 780:** Add before **PROBLEM**:

Final regulations in the form of § 1.643(f)-1, designed to prevent abuse of the § 199A deduction, which is discussed on Supplement Page 49, were issued and provide as follows:

(a) General rule. For purposes of subchapter J of chapter 1 of subtitle A of Title 26 of the United States Code, two or more trusts will be aggregated and treated as a single trust if such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and if a principal purpose for establishing one or more of such trusts or for contributing additional cash or other property to such trusts is the avoidance of Federal income tax. For purposes of applying this rule, spouses will be treated as one person.

(b) Effective/ applicability date. The provisions of this section apply to taxable years ending after August 16, 2018.

**Page 781:** Add before paragraph beginning "When the income", the following new paragraph:

On August 12, 2015, final regulations, which adopted proposed 2014 regulations, were issued to close a loophole that had been exploited by taxpayers. Specifically, a taxpayer had been able to use a stepped-up basis to determine gain on sale or other disposition of a term interest in CRTs when the charitable interest was also sold or disposed of. Treasury Regulation Section 1.1014-5(c), which is generally applicable to sales and other dispositions of interests in CRTs occurring after January 15, 2014, closes this loophole.

# CHAPTER 15: PERSPECTIVES ON THE CURRENT WEALTH TRANSFER TAX SYSTEM

**Page 793:** Add at the end of part IV:

Recent articles include:

David J. Herzig, *The Income Equality Case for Eliminating the Estate Tax*, 90 S. CAL. L. REV. 1143 (2017).

Karen C. Burke & Grayson M.P. McCouch, *The Moving Target of Tax Reform*, 93 N. CAROLINA L. REV. 649 (2015).

Wendy C. Gerzog, *What's Wrong with A Federal Inheritance Tax?*, 49 REAL PROP. TR. & EST. L.J. 163 (2014).

**Page 794:** Add before **General Explanations …:**

**[a]**

Footnote 8 should read:

8. President Obama subsequently recommended the same general transfer tax changes set forth on Pages 794-802, albeit with a few tweaks to the proposals. *See* General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals, Department of the Treasury, February 2016

**Page 802:** Add before **[2] ABA Sections' Reform Options:**

**[b] "President Obama's Capital Gains Reform Proposals":**

On January 17, 2015, the White House, in advance of President Obama's State of the Union Address on January 20, 2015, released a FACT SHEET, entitled "A Simpler, Fairer Tax Code That Responsibly Invests in Middle Class Families," which provided in part as follows:

> Middle class families today bear too much of the tax burden because of unfair loopholes that are only available to the wealthy and big corporations. In his State of the Union address, the President will outline his plan to simplify our complex tax code for individuals, make it fairer by eliminating some of the biggest loopholes, and use the savings to responsibly pay for the investments we need to help middle class families get ahead and grow the economy.
>
> The President will put forward reforms that include eliminating the biggest loophole that lets the wealthiest avoid paying their fair share of taxes:

- **Close the trust fund loophole—the single largest capital gains tax loophole—to ensure the wealthiest Americans pay their fair share on inherited assets**. Hundreds of billions of dollars escape capital gains taxation each year because of the "stepped-up" basis loophole that lets the wealthy pass appreciated assets onto their heirs tax-free.

- **Raise the top capital gains and dividend rate back to the rate under President Reagan**. The President's plan would increase the total capital gains and dividends rates for high-income households to 28 percent.

The FACT SHEET further discusses the repeal of Section 1014 for beneficiaries of wealthy decedents and make death a realizable event:

**Eliminating the Biggest Loopholes that let the Wealthiest Avoid Paying Their Fair Share of Taxes and Reforming Financial Sector Taxation**

**Reforming the Taxation of Capital Gains**

Rather than make it easier for middle-class families to make ends meet, our tax system has changed over time in ways that make it easier for the wealthy to avoid paying their fair share. Though President Obama restored top tax rates on the highest income Americans to their levels under President Clinton, high-income tax rates remain historically low, especially on capital income. Capital income taxes are also much lower than tax rates on income from work, which explains how the highest-income 400 taxpayers in 2012—who obtained 68 percent of their income from capital gains—paid income tax at an effective rate of 17 percent, even though the top marginal income tax rate was 35 percent.

The problem is that the U.S. capital income tax system is too broken to address this unfairness just by raising tax rates. Current rules let substantial capital gains income escape tax altogether. Raising the capital gains rate without also addressing these loopholes would encourage wealthy individuals to take further advantage of the opportunities the current system provides to defer land avoid tax.

The largest capital gains loophole—perhaps the largest single loophole in the entire individual income tax code—is a provision known as "stepped-up basis." Stepped-up basis refers to the fact that capital gains on assets held until death are never subject to income taxes. Not only do bequests to heirs go untaxed, but the "tax basis" of inherited assets used to compute the gain if they are later sold is immediately increased ("stepped-up") to the value at the date of death—making the capital gain income forever exempt from taxes. For example, suppose an individual leaves stock worth $50 million to an heir, who immediately sells it. When purchased, the stock was worth $10 million, so the capital gain is $40 million. However, the heir's basis in the stock is "stepped up" to the $50 million gain when he inherited it—so no income tax is due on the sale, or ever due on the $40 million of gain. Each year, hundreds of billions in capital gains avoid tax as a result of stepped-up basis.

**The President's proposal would close the stepped-up basis loophole by treating bequests and gifts other than to charitable organizations as realization events, like other cases where**

**assets change hands. It would also increase the total top capital gains and dividend rate to 28 percent—the rate under President Reagan.**[9] (The top rate applies to couples with incomes over about $500,000.) It would:

- almost exclusively impact the top 1 percent. 99 percent of the impact of the President's capital gains reform proposal (including eliminating stepped-up basis and raising the capital gains rate) would be on the top 1 percent, and more than 80 percent on the top 0.1 percent (those with incomes over $2 million). Under the President's proposal, wealthy people would still get a preferential rate on their income from investments, but they would no longer be able to accumulate extra wealth by paying no capital gains tax whatsoever.

- Address a basic unfairness in the tax system. Most middle-class retirees spend down their assets during retirement, which means they owe income taxes on whatever capital gains they've accrued. But the wealthy can often afford to hold onto assets until death—which is what lets them use the stepped-up basis loophole to avoid ever having to pay tax on capital gains.

- Unlock capital for productive investment. By letting very wealthy investors make their capital gains disappear at death, stepped-up basis creates strong "lock-in" incentives to hold assets for generations, even when resources could be reinvested more productively elsewhere. The proposal would sharply reduce these incentives, making it a pro-growth way to raise revenue.

- Protect the middle-class and small businesses to ensure that it would impose neither tax nor compliance burdens on middle-class families, the President's proposal includes the following protections:

- For couples, no tax would be due until the death of the second spouse.

- Capital gains of up to $200,000 per couple ($100,000 per individual) could still be bequeathed free of tax. Note that, since capital gains generally represent only a fraction of an asset's value, this exemption would allow couples to bequeath more than $200,000 without owing taxes. The exemption would be automatically portable between spouses.

- In addition to the basic exemption, couples would have an additional $500,000 exemption for personal residences ($250,000 per individual). This exemption would also be automatically portable between spouses.

- Tangible personal property other than expensive art and similar collectibles (e.g. bequests or gifts of clothing, furniture, and small family heirlooms) would be tax-exempt. In addition to avoiding any tax burden on these transfers, this exclusion would prevent families from having to value and report them.

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[9] The actual proposal made for the Fiscal Year 2016 would increase the rate to 24.2%, which would result in an overall tax of 28% based on the Medicare Tax of 3.8% under § 1411.

As a result of these provisions, only a tiny minority of small businesses could possibly be affected by the repeal of stepped-up basis. However, the President's proposal also includes extra protections that ensure no small family-owned business would ever have to be sold for tax reasons:

- No tax would be due on inherited small, family-owned and operated businesses—unless and until the business was sold.
- Any closely-held business would have the option to pay tax on gains over 15 years.

Based on the FACT SHEET, set forth on Supplement Pages 63-64, President Obama's Revenue Proposals for the Fiscal Years 2016 and 2017 included proposals to reform the taxation of capital gains by increasing the rate of tax on capital gains and dividends to 24.2% AND by drastically reducing the benefits of § 1014.[10]

**REFORM THE TAXATION OF CAPITAL INCOME**

**Current Law**

Capital gains are taxable only upon the sale or other disposition of an appreciated asset. Most capital gains and dividends are taxed at graduated rates, with 20 percent generally being the highest rate. In addition, higher-income taxpayers are subject to a tax of 3.8 percent of the lesser of net investment income, including capital gains and dividends, or modified AGI in excess of $200,000 ($250,000 for married couples filing jointly, $125,000 for married persons filing separately, or $12,400 for estates and trusts).

When a donor gives an appreciated asset to a donee during life, the donee's basis in the asset is its basis in the hands of the donor; there is no realization of capital gain by the donor at the time of the gift, and there is no recognition of capital gain by the donee until the donee later disposes of that asset. When an appreciated asset is held by a decedent at death, the decedent's heir receives a basis in that asset equal to its fair market value at the date of the decedent's death. As a result, the appreciation accruing during the decedent's life on assets that are still held by the decedent at death is never subjected to income tax.

**Reasons for Change**

Preferential tax rates on long-term capital gains and qualified dividends disproportionately benefit high-income taxpayers and provide many high-income taxpayers with a lower tax rate than many low- and middle-income taxpayers.

Because the person who inherits an appreciated asset receives a basis in that asset equal to the asset's fair market value on the decedent's death, the appreciation that accrued during the

[10] General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals at 156-157 (Feb. 2015). General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals at 155-157 (Feb. 2016). Additional proposals were made in the income and retirement area.

decedent's life is never subjected to income tax. In contrast, less-wealthy individuals who must spend down their assets during retirement must pay income tax on their realized capital gains. This increases the inequity in the tax treatment of capital gains. In addition, the preferential treatment for assets held until death produces an incentive for taxpayers to inefficiently lock in portfolios of assets and hold them primarily for the purpose of avoiding capital gains tax on the appreciation, rather than reinvesting the capital in more economically productive investments.

**Proposal**

The proposal would increase the highest long-term capital gains and qualified dividend tax rate from 20 percent to 24.2 percent. The 3.8-percent net investment income tax would continue to apply as under current law. The maximum total capital gains and dividend tax rate including net investment income tax would thus rise to 28 percent.

Under the proposal, transfers of appreciated property generally would be treated as a sale of the property. The donor or deceased owner of an appreciated asset would realize a capital gain at the time the asset is given or bequeathed to another. The amount of the gain realized would be the excess of the asset's fair market value on the date of the transfer over the donor's basis in that asset. That gain would be taxable income to the donor in the year the transfer was made, and to the decedent either on the final individual return or on a separate capital gains return. The unlimited use of capital losses and carry-forwards would be allowed against ordinary income on the decedent's final income tax return, and the tax imposed on gains deemed realized at death would be deductible on the estate tax return of the decedent's estate (if any). Gifts or bequests to a spouse or to charity would carry the basis of the donor or decedent. Capital gain would not be realized until the spouse disposes of the asset or dies, and appreciated property donated or bequeathed to charity would be exempt from capital gains tax.

The proposal would exempt any gain on all tangible personal property such as household furnishings and personal effects (excluding collectibles). The proposal also would allow a $100,000 per-person exclusion of other capital gains recognized by reason of death that would be indexed for inflation after 2017, and would be portable to the decedent's surviving spouse under the same rules that apply to portability for estate and gift tax purposes (making the exclusion effectively $200,000 per couple). The $250,000 per person exclusion under current law for capital gain on a principal residence would apply to all residences, and also would be portable to the decedent's surviving spouse (making the exclusion effectively $500,000 per couple).

The exclusion under current law for capital gain on certain small business stock also would apply. In addition, payment of tax on the appreciation of certain small family-owned and family-operated businesses would not be due until the business is sold or ceases to be family-owned and operated. The proposal would further allow a 15-year fixed-rate payment plan for the tax on appreciated assets transferred at death, other than liquid assets such as publicly traded financial assets and other than businesses for which the deferral election is made.

The proposal also would include other legislative changes designed to facilitate and implement this proposal, including without limitation: the allowance of a deduction for the full cost of appraisals of appreciated assets; the imposition of liens; the waiver of penalty for underpayment of estimated tax if the underpayment is attributable to unrealized gains at death; the grant of a right of recovery of the tax on unrealized gains; rules to determine who has the right to select the return filed; the achievement of consistency in valuation for transfer and income tax purposes; and a broad grant of regulatory authority to provide implementing rules.

To facilitate the transition to taxing gains at death and gift, the Secretary would be granted authority to issue any regulations necessary or appropriate to implement the proposal, including rules and safe harbors for determining the basis of assets in cases where complete records are unavailable.

This proposal would be effective for capital gains realized and qualified dividends received in taxable years beginning after December 31, 2016, and for gains on gifts made and of decedents dying after December 31, 2016.

### [1A] President Biden's Income Tax Proposals

President Biden has proposed various income tax changes, including (as President Obama proposed) an increase in the capital gains rate for high income taxpayers and the elimination of § 1014's basis step-up for high worth taxpayers by making death a realizable event. In addition, Biden's proposal would require the realization of gains on the making of gifts.

**General Explanations of the Administrations Fiscal Year 2022 Revenue Proposals**
**Department of the Treasury**
**May 2021[11]**

**STRENGTHEN TAXATION OF HIGH-INCOME TAXPAYERS**

*INCREASE THE TOP MARGINAL INCOME TAX RATE FOR HIGH EARNERS*

**Current Law**

For taxable years beginning after December 31, 2017 and before January 1, 2026, the top marginal tax rate for the individual income tax is 37 percent. For taxable years beginning after December 31, 2025, the top marginal tax rate for the individual income tax is 39.6 percent.

For 2021, the 37 percent marginal individual income tax rate applies to taxable income over $628,300 for married individuals filing a joint return and surviving spouses, $523,600 for unmarried individuals (other than surviving spouses) and head of household filers, and $314,150 for married individuals filing a separate return.

*Reasons for Change*

The proposal would reverse a recent tax cut for the highest income taxpayers. It would raise revenue while increasing the progressivity of the tax system.

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[11] The document is available at https://home.treasury.gov/policy-issues/tax-policy/revenue-proposals

*Proposal*

The proposal would increase the top marginal individual income tax rate to 39.6 percent. This rate would be applied to taxable income in excess of the 2017 top bracket threshold, adjusted for inflation. In taxable year 2022, the top marginal tax rate would apply to taxable income over $509,300 for married individuals filing a joint return, $452,700 for unmarried individuals (other than surviving spouses), $481,000 for head of household filers, and $254,650 for married individuals filing a separate return. After 2022, the thresholds would be indexed for inflation using the C-CPI-U, which is used for all current tax rate thresholds for the individual income tax.

The proposal would be effective for taxable years beginning after December 31, 2021.

*REFORM THE TAXATION OF CAPITAL INCOME*

**Current Law**

Most realized long-term capital gains and qualified dividends are taxed at graduated rates under the individual income tax, with 20 percent generally being the highest rate (23.8 percent including the net investment income tax, if applicable, based on the taxpayer's modified adjusted gross income). Moreover, capital gains are taxable only upon realization, such as the sale or other disposition of an appreciated asset. When a donor gives an appreciated asset to a donee during the donor's life, the donee's basis in the asset is the basis of the donor; in effect, the basis is "carried over" from the donor to the donee. There is no realization of capital gain by the donor at the time of the gift, and there is no recognition of capital gain (or loss) by the donee until the donee later disposes of that asset. When an appreciated asset is held by a decedent at death, the basis of the asset for the decedent's heir is adjusted (usually "stepped up") to the fair market value of the asset at the date of the decedent's death. As a result, the amount of appreciation accruing during the decedent's life on assets that are still held by the decedent at death completely avoids federal income tax.

*Reasons for Change*

Preferential tax rates on long-term capital gains and qualified dividends disproportionately benefit high-income taxpayers and provide many high-income taxpayers with a lower tax rate than many low- and middle-income taxpayers. The rate disparity between ordinary income taxes and capital gains and dividends taxes also encourages economically wasteful efforts to convert labor income into capital income as a tax avoidance strategy.

Under current law, since a person who inherits an appreciated asset receives a basis in that asset equal to the asset's fair market value at the time of the decedent's death, appreciation that had accrued during the decedent's life is never subjected to income tax. In contrast, less-wealthy individuals who must spend down their assets during retirement pay income tax on their realized capital gains. This increases the inequity in the tax treatment of capital gains. In addition, the preferential treatment for assets held until death produces an incentive for taxpayers to inefficiently lock in portfolios of assets and hold them primarily for the purpose of avoiding capital gains tax on the appreciation, rather than reinvesting the capital in more economically productive investments.

Moreover, the distribution of wealth among Americans has grown increasingly unequal, concentrating economic resources among a steadily shrinking percentage of individuals. Coinciding with this period of growing inequality, the long-term fiscal shortfall of the United States has significantly increased. Reforms to the taxation of capital gains and qualified dividends will reduce economic disparities among Americans and raise needed revenue.

*Proposal*

Tax capital income for high-income earners at ordinary rates.

Long-term capital gains and qualified dividends of taxpayers with adjusted gross income of more than $1 million would be taxed at ordinary income tax rates, with 37 percent generally being the highest rate (40.8 percent including the net investment income tax),[12] but only to the extent that the taxpayer's income exceeds $1 million ($500,000 for married filing separately), indexed for inflation after 2022.[13]

This proposal would be effective for gains required to be recognized after the date of announcement.

Treat transfers of appreciated property by gift or on death as realization events.

Under the proposal, the donor or deceased owner of an appreciated asset would realize a capital gain at the time of the transfer. For a donor, the amount of the gain realized would be the excess of the asset's fair market value on the date of the gift over the donor's basis in that asset. For a decedent, the amount of gain would be the excess of the asset's fair market value on the decedent's date of death over the decedent's basis in that asset. That gain would be taxable income to the decedent on the Federal gift or estate tax return or on a separate capital gains return. The use of capital losses and carry-forwards from transfers at death would be allowed against capital gains income and up to $3,000 of ordinary income on the decedent's final income tax return, and the tax imposed on gains deemed realized at death would be deductible on the estate tax return of the decedent's estate (if any).

Gain on unrealized appreciation also would be recognized by a trust, partnership, or other non-corporate entity that is the owner of property if that property has not been the subject of a recognition event within the prior 90 years, with such testing period beginning on January 1, 1940. The first possible recognition event for any taxpayer under this provision would thus be December 31, 2030.

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[12] A separate proposal would first increase the top ordinary individual income tax rate to 39.6 percent (43.4 percent including the net investment income tax).

[13] For example, a taxpayer with $900,000 in labor income and $200,000 in preferential capital income would have $100,000 of capital income taxed at the current preferential tax rate and $100,000 taxed at ordinary income tax rates.

A transfer would be defined under the gift and estate tax provisions and would be valued using the methodologies used for gift or estate tax purposes. However, for purposes of the imposition of this tax on appreciated assets, the following would apply. First, a transferred partial interest would be its proportional share of the fair market value of the entire property. Second, transfers of property into, and distributions in kind from, a trust, partnership, or other non-corporate entity, other than a grantor trust that is deemed to be wholly owned and revocable by the donor, would be recognition events. The deemed owner of such a revocable grantor trust would recognize gain on the unrealized appreciation in any asset distributed from the trust to any person other than the deemed owner or the U.S. spouse of the deemed owner, other than a distribution made in discharge of an obligation of the deemed owner. All of the unrealized appreciation on assets of such a revocable grantor trust would be realized at the deemed owner's death or at any other time when the trust becomes irrevocable.

Certain exclusions would apply. Transfers by a decedent to a U.S. spouse or to charity would carry over the basis of the decedent. Capital gain would not be recognized until the surviving spouse disposes of the asset or dies, and appreciated property transferred to charity would not generate a taxable capital gain. The transfer of appreciated assets to a split-interest trust would generate a taxable capital gain, with an exclusion allowed for the charity's share of the gain based on the charity's share of the value transferred as determined for gift or estate tax purposes.

The proposal would exclude from recognition any gain on tangible personal property such as household furnishings and personal effects (excluding collectibles). The $250,000 per-person exclusion under current law for capital gain on a principal residence would apply to all residences and would be portable to the decedent's surviving spouse, making the exclusion effectively $500,000 per couple. Finally, the exclusion under current law for capital gain on certain small business stock would also apply.

In addition to the above exclusions, the proposal would allow a $1 million per-person exclusion from recognition of other unrealized capital gains on property transferred by gift or held at death. The per-person exclusion would be indexed for inflation after 2022 and would be portable to the decedent's surviving spouse under the same rules that apply to portability for estate and gift tax purposes (making the exclusion effectively $2 million per married couple). The recipient's basis in property received by reason of the decedent's death would be the property's fair market value at the decedent's death. The same basis rule would apply to the donee of gifted property to the extent the unrealized gain on that property at the time of the gift was not shielded from being a recognition event by the donor's $1 million exclusion. However, the donee's basis in property received by gift during the donor's life would be the donor's basis in that property at the time of the gift to the extent that the unrealized gain on that property counted against the donor's $1 million exclusion from recognition.

Payment of tax on the appreciation of certain family-owned and -operated businesses would not be due until the interest in the business is sold or the business ceases to be family-owned and operated. Furthermore, the proposal would allow a 15-year fixed-rate payment plan for the tax on appreciated assets transferred at death, other than liquid assets such as publicly traded financial assets and other than businesses for which the deferral election is made. The Internal Revenue Service (IRS) would be authorized to require security at any time when there is a reasonable need for security to continue this deferral. That security may be provided from any person, and in any form, deemed acceptable by the IRS.

Additionally, the proposal would include other legislative changes designed to facilitate and implement this proposal, including: the allowance of a deduction for the full cost of appraisals of appreciated assets; the imposition of liens; the waiver of penalty for underpayment of estimated tax to the extent that underpayment is attributable to unrealized gains at death; the grant of a right of recovery of the tax on unrealized gains; rules to determine who has the right to select the return filed; the achievement of consistency in valuation for transfer and income tax purposes; coordinating changes to reflect that the recipient would have a basis in the property equal to the value on which the capital gains tax is computed; and a broad grant of regulatory authority to provide implementing rules.

To facilitate the transition to taxing gains at gift, death and periodically under this proposal, the Secretary would be granted authority to issue any regulations necessary or appropriate to implement the proposal, including rules and safe harbors for determining the basis of assets in cases where complete records are unavailable, reporting requirements for all transfers of appreciated property including value and basis information, and rules where reporting could be permitted on the decedent's final income tax return.

The proposal would be effective for gains on property transferred by gift, and on property owned at death by decedents dying, after December 31, 2021, and on certain property owned by trusts, partnerships, and other non-corporate entities on January

### [1B] Senator Sanders's Tax Proposals

In early 2019, Senator Bernie Sanders introduced far-reaching tax changes as explained:

**FOR THE 99.8% ACT**
**Summary of Sen. Bernie Sanders' legislation to tax the fortunes of the top 0.2%**

The most important economic reality of our time is that over the past 40 years there has been an enormous transfer of wealth from the middle class to the wealthiest people in America.

In America today, the top one-tenth of one percent owns almost as much wealth as the bottom 90 percent. The three wealthiest people in this country own more wealth than the bottom half of Americans — 160 million people. Meanwhile, the median household in America has less wealth today than it did 35 years ago after adjusting for inflation, and the average wealth of those in the bottom 40 percent is virtually zero. While low-income workers at Walmart are forced to rely on food stamps, Medicaid and public housing to survive, the Walton family is now worth nearly $170 billion.

More than a century ago, Republican President Theodore Roosevelt fought for the creation of a progressive estate tax to reduce the enormous concentration of wealth that existed during the Gilded Age.

As Teddy Roosevelt said, "The absence of effective state, and, especially, national restraint upon unfair money-getting has tended to create a small class of enormously wealthy and economically powerful men, whose chief object is to hold and increase their power. The prime need is to change the conditions which enable these men to accumulate power … Therefore, I believe in a … graduated inheritance tax on big fortunes, properly safeguarded against evasion and increasing rapidly in amount with the size of the estate."

While Roosevelt spoke those words on August 31, 1910, they are even more relevant today.

From a moral, economic, and political perspective our nation will not thrive when so few have so much and so many have so little. We need a tax system which asks the billionaire class to pay its fair share of taxes and which reduces the obscene level of wealth inequality in America.

The fairest way to reduce wealth inequality, invest in the disappearing middle class, and preserve our democracy is to enact a progressive estate tax on the inherited wealth of multi-millionaires and billionaires.

That is why Senator Sanders is introducing legislation to establish a progressive estate tax on the fortunes of the top 0.2 percent. Instead of an America for the wealthy and the powerful, we need to create an economy that works for the 99.8 percent.

This legislation:

- **Exempts the first $3.5 million of an individual's estate from the estate tax.**

  This plan would only impact the wealthiest 0.2 percent of Americans who inherit more than $3.5 million. 99.8 percent of Americans would not see their taxes go up by one penny under this plan.

- **Establishes a new progressive estate tax rate structure as follows:**

  - 45 percent on the value of an estate between $3.5 million and $10 million.
  - 50 percent for the value of an estate between $10 million and $50 million.
  - 55 percent for the value of an estate in excess of $50 million.
  - 77 percent for the value of an estate in excess of $1 billion. (The top estate tax rate was 77 percent from 1941 to 1976, according to the Joint Committee on Taxation.)

- **Ends tax breaks for dynasty trusts.** Billionaires like Sheldon Adelson and the Walton family, who own the majority of Walmart's stock, have for decades manipulated the rules for trusts to pass fortunes from one generation to the next without paying estate or gift taxes. This bill would:

  - Strengthen the "generation-skipping tax," which is designed to prevent avoidance of estate and gift taxes, by applying it with no exclusion to any trust set up to last more than 50 years.

  - Prevent abuses of grantor retained annuity trusts (GRATs) by barring donors from taking assets back from these trusts just a couple of years after establishing them to avoid gift taxes (while earnings on the assets are left to heirs tax-free). The lawyer who invented this technique for the Walton's claims it has cost the Treasury $100 billion since 2000.
  - Prevent wealthy families from avoiding gifts taxes by paying income taxes on earnings generated by assets in "grantor trusts."
  - Sharply limit the annual exclusion from the gift tax (which was meant to shield the normal giving done around holidays and birthdays from tax and record- keeping requirements) for gifts made to trusts.

- **Closes other loopholes in the estate and gift tax.** One of these loopholes involves "valuation discounts," restrictions placed on interests in family businesses which are claimed, falsely, to reduce the value of the estate. Another loophole involves claiming that the value of an inherited asset is lower, for estate tax purposes, than what is claimed for income tax purposes to calculate gains when the asset is sold.

- **Protects farm land and conservation easements.** The bill would protect family farmers by allowing them to lower the value of their farmland by up to $3 million for estate tax purposes. The bill also would increase the maximum exclusion for conservation easements to $2 million.

**Under this legislation, the families of all 588 billionaires in America who have a combined net worth of over $3 trillion would owe up to $2.2 trillion in estate taxes.** See chart on Supplement Pages 75-76 for more information.

**Support for Sanders' Legislation**

"One century ago, the US invented steeply progressive estate and income taxes in order to maintain the egalitarian and democratic legacy of the country. Today's US is becoming even more unequal than Pre-World War I Europe. The way out is stronger investment in skills, higher paying jobs and a more progressive tax system. Sen. Sanders' estate tax bill, including a 77% tax rate on estate values above $1 billion, is an important step in this direction," Thomas Piketty, the top-selling author and Paris School of Economics professor.

"The estate tax was a key pillar of the progressive tax revolution that the United States ushered one century ago. It prevented self-made wealth from turning into inherited wealth and helped make America more equal. However, the estate tax is dying of neglect, as tax avoidance schemes are multiplying and left unchallenged. As wealth concentration is surging in the United States, it is high time to revive the estate tax, plug the loopholes, and make it more progressive. Senator Sanders' bill is a bold and welcome leap forward in this direction," Emmanuel Saez, Professor of Economics at the University of California, Berkeley

"Even as the ranks of the working poor continue to grow, America is creating a new aristocracy of the non-working super rich with enormous influence over our economy and politics," according to Robert B. Reich, a former U.S. Department of Labor secretary who is now a University of California at Berkeley professor. Reich called Sanders' estate tax bill "an important step toward reversing this trend."

"Progressive estate taxation is, along with progressive income and wealth taxation, one of the three core components of a fair, meritocratic, and democratic tax system. Sen. Sanders' bill is a crucial step towards greater tax justice in America," Gabriel Zucman, Professor of Economics at the University of California, Berkeley.

"Senator Sanders' estate tax bill is a big step in the right direction towards fulfilling the American ideals of a more moral and decent economy and democracy. It would reverse the iterative and intergenerational trend of consolidating our nation's economic and political power amongst the very elite, who are overwhelmingly white and underwhelmingly black," Darrick Hamilton, Professor of Economics and Urban Policy in the Milano School of Policy, Management, and Environment, Schools of Public Engagement and the Department of Economics, the New School for Social Research

"Senator Sander's progressive estate tax bill is essential to protect our democracy and economy from the corrosive power of concentrated wealth. A century ago, President Theodore Roosevelt and industrialist Andrew Carnegie supported a steeply progressive estate tax to protect our democracy from plutocratic wealth and power. Senator Sanders has picked up this mantle in the second gilded age," Chuck Collins, Institute for Policy Studies, coauthor, with Bill Gates Sr. of Wealth and Our Commonwealth: Why America Should Tax Accumulated Fortunes Maximum Estate Tax Liability for Billionaires (numbers in billions).

**SANDERS' TAX CHART FOR BILLIONAIRES[14]**

| | | ***Maximum Estate Tax Liability*** | | |
|---|---|---|---|---|
| ***Name*** | ****Net Worth (billions)*** | ***Current Law***** | ***GOP Proposal*** | ***For the 99.8% Act*** |
| Jeff Bezos | **$131.90** | $52.75 | $0.00 | $101.34 |
| Bill Gates | **$95.80** | $38.31 | $0.00 | $73.54 |
| Warren Buffett | **$83.20** | $33.27 | $0.00 | $63.84 |
| Larry Ellison | **$60.20** | $24.07 | $0.00 | $46.13 |

[14] Net worth figures from Forbes real time net worth on 1/28/2019. The chart continues to list the affects on less wealthy billionaires for almost 20 pages. The total wealth of the listed billionaires is over $3 Trillion. The Sanders' proposal would generate over $2 Trillion in estate taxes

| | | | | |
|---|---|---|---|---|
| Mark Zuckerberg | **$53.90** | $21.55 | $0.00 | $41.28 |
| Larry Page | **$49.50** | $19.79 | $0.00 | $37.89 |
| Charles Koch | **$48.70** | $19.47 | $0.00 | $37.27 |
| David Koch | **$48.70** | $19.47 | $0.00 | $37.27 |
| Sergey Brin | **$48.30** | $19.31 | $0.00 | $36.96 |
| Michael Bloomberg | **$47.20** | $18.87 | $0.00 | $36.12 |
| Jim Walton | **$45.50** | $18.19 | $0.00 | $34.81 |
| Alice Walton | **$45.20** | $18.07 | $0.00 | $34.58 |
| S. Robson Walton | **$45.20** | $18.07 | $0.00 | $34.58 |
| Steve Ballmer | **$40.70** | $16.27 | $0.00 | $31.11 |
| Sheldon Adelson | **$33.60** | $13.43 | $0.00 | $25.65 |
| Phil Knight | **$32.90** | $13.15 | $0.00 | $25.11 |
| Michael Dell | **$32.40** | $12.95 | $0.00 | $24.72 |
| Jacqueline Mars | **$23.30** | $9.31 | $0.00 | $17.71 |
| John Mars | **$23.30** | $9.31 | $0.00 | $17.71 |
| Elon Musk | **$20.80** | $8.31 | $0.00 | $15.79 |
| James Simons | **$20.00** | $7.99 | $0.00 | $15.17 |
| Rupert Murdoch | **$19.30** | $7.71 | $0.00 | $14.63 |
| Ray Dalio | **$18.60** | $7.43 | $0.00 | $14.10 |
| Laurene Powell Jobs | **$18.00** | $7.19 | $0.00 | $13.63 |
| Thomas Peterffy | **$17.30** | $6.91 | $0.00 | $13.09 |
| Carl Icahn | **$17.00** | $6.79 | $0.00 | $12.86 |
| Len Blavatnik | **$16.50** | $6.59 | $0.00 | $12.48 |

# APPENDIX

## A. Inflation Adjustments for 2022

## Rev. Proc. 2021-45, 2021-48 I.R.B. 764

### SECTION 1. PURPOSE

This revenue procedure sets forth inflation-adjusted items for 2022 for various provisions of the Internal Revenue Code of 1986 (Code), as amended, as of November 10, 2021. To the extent amendments to the Code are enacted for 2022 after November 10, 2021, taxpayers should consult additional guidance to determine whether these adjustments remain applicable for 2022.

### SECTION 3. 2022 ADJUSTED ITEMS

.01 Tax Rate Tables. For taxable years beginning in 2022, the tax rate tables under § 1 are as follows:

**TABLE 1 — Section 1(j)(2)(A) — Married Individuals Filing Joint Returns and Surviving Spouses**

| If Taxable Income Is: | The Tax Is: |
|---|---|
| Not over $20,550 | 10% of the taxable income |
| Over $20,550 but not over $83,550 | $2,055 plus 12% of the excess over $20,550 |
| Over $83,550 but not over $178,150 | $9,615 plus 22% of the excess over $83,550 |
| Over $178,150 but not over $340,100 | $30,427 plus 24% of the excess over $178,150 |
| Over $340,100 but not over $431,900 | $69,295 plus 32% of the excess over $340,100 |
| Over $431,900 but not over $647,850 | $98,671 plus 35% of the excess over $431,900 |
| Over $647,850 | $174,253.50 plus 37% of the excess over $647,850 |

**TABLE 2 — Section 1(j)(2)(B) — Heads of Households**

| If Taxable Income Is: | The Tax Is: |
|---|---|
| Not over $14,650 | 10% of the taxable income |
| Over $14,650 but not over $55,900 | $1,465 plus 12% of the excess over $14,650 |
| Over $55,900 but not over $89,050 | $6,415 plus 22% of the excess over $55,900 |
| Over $89,050 but not over $170,050 | $13,708 plus 24% of the excess over $89,050 |
| Over $170,050 but not over $215,950 | $33,148 plus 32% of the excess over $170,050 |

**TABLE 2 — Section 1(j)(2)(B) — Heads of Households**

| If Taxable Income Is: | The Tax Is: |
|---|---|
| Over $215,950 but not over $539,900 | $47,836 plus 35% of the excess over $215,950 |
| Over $539,900 | $161,218.50 plus 37% of the excess over $539,900 |

**TABLE 3 — Section 1(j)(2)(C) — Unmarried Individuals (other than Surviving Spouses and Heads of Households)**

| If Taxable Income Is: | The Tax Is: |
|---|---|
| Not over $10,275 | 10% of the taxable income |
| Over $10,275 but not over $41,775 | $1,027.50 plus 12% of the excess over $10,275 |
| Over $41,775 but not over $89,075 | $4,807.50 plus 22% of the excess over $41,775 |
| Over $89,075 but not over $170,050 | $15,213.50 plus 24% of the excess over $89,075 |
| Over $170,050 but not over $215,950 | $34,647.50 plus 32% of the excess over $170,050 |
| Over $215,950 but not over $539,900 | $49,335.50 plus 35% of the excess over $215,950 |
| Over $539,900 | $162,718 plus 37% of the excess over $539,900 |

**TABLE 4 — Section 1(j)(2)(D) — Married Individuals Filing Separate Returns**

| If Taxable Income Is: | The Tax Is: |
|---|---|
| Not over $10,275 | 10% of the taxable income |
| Over $10,275 but not over $41,775 | $1,027.50 plus 12% of the excess over $10,275 |
| Over $41,775 but not over $89,075 | $4,807.50 plus 22% of the excess over $41,775 |
| Over $89,075 but not over $170,050 | $15,213.50 plus 24% of the excess over $89,075 |
| Over $170,050 but not over $215,950 | $34,647.50 plus 32% of the excess over $170,050 |
| Over $215,950 but not over $323,925 | $49,335.50 plus 35% of the excess over $215,950 |
| Over $323,925 | $87,126.75 plus 37% of the excess over $323,925 |

**TABLE 5 — Section 1(j)(2)(E) — Estates and Trusts**

| If Taxable Income Is: | The Tax Is: |
|---|---|
| Not over $2,750 | 10% of the taxable income |
| Over $2,750 but not over $9,850 | $275 plus 24% of the excess over $2,750 |
| Over $9,850 but not over $13,450 | $1,979 plus 35% of the excess over $9,850 |
| Over $13,450 | $3,239 plus 37% of the excess over $13,450 |

.02 Unearned Income of Minor Children (the "Kiddie Tax"). For taxable years beginning in 2022, the amount in § 1(g)(4)(A)(ii)(I), which is used to reduce the net unearned income reported on the child's return that is subject to the "kiddie tax," is $1,150. This $1,150 amount is the same as the amount provided in § 63(c)(5)(A), as adjusted for inflation. The same $1,150 amount is used for purposes of § 1(g)(7) (that is, to determine whether a parent may elect to include a child's gross income in the parent's gross income and to calculate the "kiddie tax"). For example, one of the requirements for the parental election is that a child's gross income is more than the amount referenced in § 1(g)(4)(A)(ii)(I) but less than 10 times that amount; thus, a child's gross income for 2022 must be more than $1,150 but less than $11,500.

.03 Maximum Capital Gains Rate. For taxable years beginning in 2022, the Maximum Zero Rate Amount under § 1(h)(1)(B)(i) is $83,350 in the case of a joint return or surviving spouse ($41,675 in the case of a married individual filing a separate return), $55,800 in the case of an individual who is a head of household (§ 2(b)), $41,675 in the case of any other individual (other than an estate or trust), and $2,800 in the case of an estate or trust. The Maximum 15-percent Rate Amount under § 1(h)(1)(C)(ii)(l) is $517,200 in the case of a joint return or surviving spouse ($258,600 in the case of a married individual filing a separate return), $488,500 in the case of an individual who is the head of a household (§ 2(b)), $459,750 in the case of any other individual (other than an estate or trust), and $13,700 in the case of an estate or trust.

.15 Standard Deduction.

(1) In general. For taxable years beginning in 2022, the standard deduction amounts under § 63(c)(2) are as follows:

| **Filing Status** | **Standard Deduction** |
|---|---|
| Married Individuals Filing Joint Returns and Surviving Spouses (§ 1(j)(2)(A)) | $25,900 |
| Heads of Households (§ 1(j)(2)(B)) | $19,400 |
| Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1(j)(2)(C)) | $12,950 |
| Married Individuals Filing Separate Returns (§ 1(j)(2)(D)) | $12,950 |

(2) Dependent. For taxable years beginning in 2022, the standard deduction amount under § 63(c)(5) for an individual who may be claimed as a dependent by another taxpayer cannot exceed the greater of (1) $1,150, or (2) the sum of $400 and the individual's earned income.

(3) Aged or blind. For taxable years beginning in 2022, the additional standard deduction amount under § 63(f) for the aged or the blind is $1,400. The additional standard deduction amount is increased to $1,750 if the individual is also unmarried and not a surviving spouse.

.41 Unified Credit Against Estate Tax. For an estate of any decedent dying in calendar year 2022, the basic exclusion amount is $12,060,000 for determining the amount of the unified credit against estate tax under § 2010.

.42 Valuation of Qualified Real Property in Decedent's Gross Estate. For an estate of a decedent dying in calendar year 2022, if the executor elects to use the special use valuation method under § 2032A for qualified real property, the aggregate decrease in the value of qualified real property resulting from electing to use § 2032A for purposes of the estate tax cannot exceed $1,230,000.

.43 Annual Exclusion for Gifts.

(1) For calendar year 2022, the first $16,000 of gifts to any person (other than gifts of future interests in property) are not included in the total amount of taxable gifts under § 2503 made during that year.
(2) For calendar year 2022, the first $164,000 of gifts to a spouse who is not a citizen of the United States (other than gifts of future interests in property) are not included in the total amount of taxable gifts under §§ 2503 and 2523(i)(2) made during that year.

## B. Actuarial Tables

### 1. TABLE B (Annuity, Income and Remainder Interests for a Term Certain)

The IRS has created a citation for all actuarial tables: http://www.irs.gov/Retirement-Plans/Actuarial-Tables

As explained:

**Current and Proposed Actuarial Tables**

Current and proposed actuarial tables are linked below. For the period from January 1, 2021 to the effective date of final regulations that implement the updated tables, you may rely on either current or proposed tables:

- Current tables are derived from mortality experience around the year 2000 (2000CM). They apply to valuation dates starting May 1, 2009 until the date of final regulations implementing the proposed tables.

- Proposed tables are derived from mortality experience around 2010 (2010CM). They are referenced in proposed regulations issued on May 5, 2022. When updated tables are approved in final regulations, they will also be reflected in the next version of Publications 1457, 1458 and 1459.

The following sets forth tables for interest rates of 2%, 3.6%, 3.8% and 4% that can be used to value interests based on term certains (TABLE B). Tables for interest rates of 2%, 3.6%, 3.8% and 4% are then set out that can be used to value interests based on a single life remainder factors (TABLE S). Both the current and proposed tables are included for each Table S interest rate.

**Note:** By accessing http://www.irs.gov/Retirement-Plans/Actuarial-Tables you can obtain factors for whatever interest rate you or your professor choose to consider. This website includes many other tables besides Table B and Table S.

**Table B**

Annuity, Income, and Remainder Interests for a Term Certain

| | 1.8% | | | Interest Rates | | 2.0% | |
|---|---|---|---|---|---|---|---|
| **Years** | **Annuity** | **Income Interest** | **Remainder** | **Years** | **Annuity** | **Income Interest** | **Remainder** |
| **1** | 0.9823 | 0.017682 | 0.982318 | **1** | 0.9804 | 0.019608 | 0.980392 |
| **2** | 1.9473 | 0.035051 | 0.964949 | **2** | 1.9416 | 0.038831 | 0.961169 |
| **3** | 2.8952 | 0.052113 | 0.947887 | **3** | 2.8839 | 0.057678 | 0.942322 |
| **4** | 3.8263 | 0.068873 | 0.931127 | **4** | 3.8077 | 0.076155 | 0.923845 |
| **5** | 4.7409 | 0.085337 | 0.914663 | **5** | 4.7135 | 0.094269 | 0.905731 |
| **6** | 5.6394 | 0.101510 | 0.898490 | **6** | 5.6014 | 0.112029 | 0.887971 |
| **7** | 6.5220 | 0.117397 | 0.882603 | **7** | 6.4720 | 0.129440 | 0.870560 |
| **8** | 7.3890 | 0.133003 | 0.866997 | **8** | 7.3255 | 0.146510 | 0.853490 |
| **9** | 8.2407 | 0.148333 | 0.851667 | **9** | 8.1622 | 0.163245 | 0.836755 |
| **10** | 9.0773 | 0.163392 | 0.836608 | **10** | 8.9826 | 0.179652 | 0.820348 |
| **11** | 9.8991 | 0.178184 | 0.821816 | **11** | 9.7868 | 0.195737 | 0.804263 |
| **12** | 10.7064 | 0.192715 | 0.807285 | **12** | 10.5753 | 0.211507 | 0.788493 |
| **13** | 11.4994 | 0.206990 | 0.793010 | **13** | 11.3484 | 0.226967 | 0.773033 |
| **14** | 12.2784 | 0.221011 | 0.778989 | **14** | 12.1062 | 0.242125 | 0.757875 |
| **15** | 13.0436 | 0.234785 | 0.765215 | **15** | 12.8493 | 0.256985 | 0.743015 |
| **16** | 13.7953 | 0.248316 | 0.751684 | **16** | 13.5777 | 0.271554 | 0.728446 |
| **17** | 14.5337 | 0.261607 | 0.738393 | **17** | 14.2919 | 0.285837 | 0.714163 |
| **18** | 15.2590 | 0.274663 | 0.725337 | **18** | 14.9920 | 0.299841 | 0.700159 |
| **19** | 15.9716 | 0.287488 | 0.712512 | **19** | 15.6785 | 0.313569 | 0.686431 |
| **20** | 16.6715 | 0.300086 | 0.699914 | **20** | 16.3514 | 0.327029 | 0.672971 |
| **21** | 17.3590 | 0.312462 | 0.687538 | **21** | 17.0112 | 0.340224 | 0.659776 |
| **22** | 18.0344 | 0.324619 | 0.675381 | **22** | 17.6580 | 0.353161 | 0.646839 |
| **23** | 18.6978 | 0.336561 | 0.663439 | **23** | 18.2922 | 0.365844 | 0.634156 |
| **24** | 19.3495 | 0.348292 | 0.651708 | **24** | 18.9139 | 0.378279 | 0.621721 |
| **25** | 19.9897 | 0.359815 | 0.640185 | **25** | 19.5235 | 0.390469 | 0.609531 |
| **26** | 20.6186 | 0.371134 | 0.628866 | **26** | 20.1210 | 0.402421 | 0.597579 |
| **27** | 21.2363 | 0.382254 | 0.617746 | **27** | 20.7069 | 0.414138 | 0.585862 |
| **28** | 21.8432 | 0.393177 | 0.606823 | **28** | 21.2813 | 0.425625 | 0.574375 |
| **29** | 22.4392 | 0.403906 | 0.596094 | **29** | 21.8444 | 0.436888 | 0.563112 |
| **30** | 23.0248 | 0.414446 | 0.585554 | **30** | 22.3965 | 0.447929 | 0.552071 |
| **31** | 23.6000 | 0.424800 | 0.575200 | **31** | 22.9377 | 0.458754 | 0.541246 |
| **32** | 24.1650 | 0.434971 | 0.565029 | **32** | 23.4683 | 0.469367 | 0.530633 |
| **33** | 24.7201 | 0.444961 | 0.555039 | **33** | 23.9886 | 0.479771 | 0.520229 |
| **34** | 25.2653 | 0.454775 | 0.545225 | **34** | 24.4986 | 0.489972 | 0.510028 |
| **35** | 25.8009 | 0.464416 | 0.535584 | **35** | 24.9986 | 0.499972 | 0.500028 |
| **36** | 26.3270 | 0.473886 | 0.526114 | **36** | 25.4888 | 0.509777 | 0.490223 |
| **37** | 26.8438 | 0.483188 | 0.516812 | **37** | 25.9695 | 0.519389 | 0.480611 |
| **38** | 27.3515 | 0.492327 | 0.507673 | **38** | 26.4406 | 0.528813 | 0.471187 |
| **39** | 27.8502 | 0.501303 | 0.498697 | **39** | 26.9026 | 0.538052 | 0.461948 |
| **40** | 28.3401 | 0.510121 | 0.489879 | **40** | 27.3555 | 0.547110 | 0.452890 |
| **41** | 28.8213 | 0.518783 | 0.481217 | **41** | 27.7995 | 0.555990 | 0.444010 |
| **42** | 29.2940 | 0.527292 | 0.472708 | **42** | 28.2348 | 0.564696 | 0.435304 |
| **43** | 29.7583 | 0.535650 | 0.464350 | **43** | 28.6616 | 0.573231 | 0.426769 |
| **44** | 30.2145 | 0.543860 | 0.456140 | **44** | 29.0800 | 0.581599 | 0.418401 |
| **45** | 30.6625 | 0.551926 | 0.448074 | **45** | 29.4902 | 0.589803 | 0.410197 |
| **46** | 31.1027 | 0.559848 | 0.440152 | **46** | 29.8923 | 0.597846 | 0.402154 |
| **47** | 31.5351 | 0.567631 | 0.432369 | **47** | 30.2866 | 0.605732 | 0.394268 |
| **48** | 31.9598 | 0.575276 | 0.424724 | **48** | 30.6731 | 0.613462 | 0.386538 |
| **49** | 32.3770 | 0.582786 | 0.417214 | **49** | 31.0521 | 0.621042 | 0.378958 |
| **50** | 32.7868 | 0.590163 | 0.409837 | **50** | 31.4236 | 0.628472 | 0.371528 |
| **51** | 33.1894 | 0.597410 | 0.402590 | **51** | 31.7878 | 0.635757 | 0.364243 |
| **52** | 33.5849 | 0.604528 | 0.395472 | **52** | 32.1449 | 0.642899 | 0.357101 |
| **53** | 33.9734 | 0.611521 | 0.388479 | **53** | 32.4950 | 0.649901 | 0.350099 |
| **54** | 34.3550 | 0.618390 | 0.381610 | **54** | 32.8383 | 0.656766 | 0.343234 |
| **55** | 34.7299 | 0.625137 | 0.374863 | **55** | 33.1748 | 0.663496 | 0.336504 |
| **56** | 35.0981 | 0.631766 | 0.368234 | **56** | 33.5047 | 0.670094 | 0.329906 |
| **57** | 35.4598 | 0.638277 | 0.361723 | **57** | 33.8281 | 0.676563 | 0.323437 |
| **58** | 35.8151 | 0.644672 | 0.355328 | **58** | 34.1452 | 0.682905 | 0.317095 |
| **59** | 36.1642 | 0.650955 | 0.349045 | **59** | 34.4561 | 0.689122 | 0.310878 |
| **60** | 36.5071 | 0.657127 | 0.342873 | **60** | 34.7609 | 0.695218 | 0.304782 |

**Table B**

Annuity, Income, and Remainder Interests for a Term Certain

| | 3.4% | | | Interest Rates | 3.6% | | |
|---|---|---|---|---|---|---|---|
| **Years** | **Annuity** | **Income Interest** | **Remainder** | **Years** | **Annuity** | **Income Interest** | **Remainder** |
| 1 | 0.9671 | 0.032882 | 0.967118 | 1 | 0.9653 | 0.034749 | 0.965251 |
| 2 | 1.9024 | 0.064683 | 0.935317 | 2 | 1.8970 | 0.068291 | 0.931709 |
| 3 | 2.8070 | 0.095438 | 0.904562 | 3 | 2.7963 | 0.100667 | 0.899333 |
| 4 | 3.6818 | 0.125182 | 0.874818 | 4 | 3.6644 | 0.131918 | 0.868082 |
| 5 | 4.5279 | 0.153948 | 0.846052 | 5 | 4.5023 | 0.162083 | 0.837917 |
| 6 | 5.3461 | 0.181767 | 0.818233 | 6 | 5.3111 | 0.191199 | 0.808801 |
| 7 | 6.1374 | 0.208673 | 0.791327 | 7 | 6.0918 | 0.219304 | 0.780696 |
| 8 | 6.9027 | 0.234693 | 0.765307 | 8 | 6.8454 | 0.246433 | 0.753567 |
| 9 | 7.6429 | 0.259858 | 0.740142 | 9 | 7.5727 | 0.272619 | 0.727381 |
| 10 | 8.3587 | 0.284195 | 0.715805 | 10 | 8.2748 | 0.297894 | 0.702106 |
| 11 | 9.0509 | 0.307732 | 0.692268 | 11 | 8.9526 | 0.322292 | 0.677708 |
| 12 | 9.7205 | 0.330495 | 0.669505 | 12 | 9.6067 | 0.345842 | 0.654158 |
| 13 | 10.3679 | 0.352510 | 0.647490 | 13 | 10.2381 | 0.368573 | 0.631427 |
| 14 | 10.9941 | 0.373801 | 0.626199 | 14 | 10.8476 | 0.390514 | 0.609486 |
| 15 | 11.5998 | 0.394392 | 0.605608 | 15 | 11.4359 | 0.411693 | 0.588307 |
| 16 | 12.1854 | 0.414305 | 0.585695 | 16 | 12.0038 | 0.432137 | 0.567863 |
| 17 | 12.7519 | 0.433564 | 0.566436 | 17 | 12.5519 | 0.451869 | 0.548131 |
| 18 | 13.2997 | 0.452190 | 0.547810 | 18 | 13.0810 | 0.470916 | 0.529084 |
| 19 | 13.8295 | 0.470203 | 0.529797 | 19 | 13.5917 | 0.489301 | 0.510699 |
| 20 | 14.3419 | 0.487623 | 0.512377 | 20 | 14.0847 | 0.507048 | 0.492952 |
| 21 | 14.8374 | 0.504471 | 0.495529 | 21 | 14.5605 | 0.524177 | 0.475823 |
| 22 | 15.3166 | 0.520765 | 0.479235 | 22 | 15.0198 | 0.540712 | 0.459288 |
| 23 | 15.7801 | 0.536524 | 0.463476 | 23 | 15.4631 | 0.556672 | 0.443328 |
| 24 | 16.2283 | 0.551764 | 0.448236 | 24 | 15.8910 | 0.572077 | 0.427923 |
| 25 | 16.6618 | 0.566503 | 0.433497 | 25 | 16.3041 | 0.586947 | 0.413053 |
| 26 | 17.0811 | 0.580757 | 0.419243 | 26 | 16.7028 | 0.601300 | 0.398700 |
| 27 | 17.4865 | 0.594542 | 0.405458 | 27 | 17.0876 | 0.615154 | 0.384846 |
| 28 | 17.8787 | 0.607875 | 0.392125 | 28 | 17.4591 | 0.628527 | 0.371473 |
| 29 | 18.2579 | 0.620769 | 0.379231 | 29 | 17.8177 | 0.641436 | 0.358564 |
| 30 | 18.6247 | 0.633238 | 0.366762 | 30 | 18.1638 | 0.653895 | 0.346105 |
| 31 | 18.9794 | 0.645298 | 0.354702 | 31 | 18.4978 | 0.665922 | 0.334078 |
| 32 | 19.3224 | 0.656962 | 0.343038 | 32 | 18.8203 | 0.677531 | 0.322469 |
| 33 | 19.6542 | 0.668241 | 0.331759 | 33 | 19.1316 | 0.688737 | 0.311263 |
| 34 | 19.9750 | 0.679150 | 0.320850 | 34 | 19.4320 | 0.699553 | 0.300447 |
| 35 | 20.2853 | 0.689700 | 0.310300 | 35 | 19.7220 | 0.709993 | 0.290007 |
| 36 | 20.5854 | 0.699904 | 0.300096 | 36 | 20.0020 | 0.720070 | 0.279930 |
| 37 | 20.8756 | 0.709771 | 0.290229 | 37 | 20.2722 | 0.729798 | 0.270202 |
| 38 | 21.1563 | 0.719315 | 0.280685 | 38 | 20.5330 | 0.739187 | 0.260813 |
| 39 | 21.4278 | 0.728544 | 0.271456 | 39 | 20.7847 | 0.748250 | 0.251750 |
| 40 | 21.6903 | 0.737470 | 0.262530 | 40 | 21.0277 | 0.756998 | 0.243002 |
| 41 | 21.9442 | 0.746103 | 0.253897 | 41 | 21.2623 | 0.765442 | 0.234558 |
| 42 | 22.1897 | 0.754451 | 0.245549 | 42 | 21.4887 | 0.773593 | 0.226407 |
| 43 | 22.4272 | 0.762526 | 0.237474 | 43 | 21.7072 | 0.781460 | 0.218540 |
| 44 | 22.6569 | 0.770334 | 0.229666 | 44 | 21.9182 | 0.789054 | 0.210946 |
| 45 | 22.8790 | 0.777886 | 0.222114 | 45 | 22.1218 | 0.796384 | 0.203616 |
| 46 | 23.0938 | 0.785190 | 0.214810 | 46 | 22.3183 | 0.803460 | 0.196540 |
| 47 | 23.3016 | 0.792253 | 0.207747 | 47 | 22.5080 | 0.810289 | 0.189711 |
| 48 | 23.5025 | 0.799084 | 0.200916 | 48 | 22.6912 | 0.816882 | 0.183118 |
| 49 | 23.6968 | 0.805691 | 0.194309 | 49 | 22.8679 | 0.823245 | 0.176755 |
| 50 | 23.8847 | 0.812080 | 0.187920 | 50 | 23.0385 | 0.829387 | 0.170613 |
| 51 | 24.0664 | 0.818259 | 0.181741 | 51 | 23.2032 | 0.835316 | 0.164684 |
| 52 | 24.2422 | 0.824235 | 0.175765 | 52 | 23.3622 | 0.841038 | 0.158962 |
| 53 | 24.4122 | 0.830015 | 0.169985 | 53 | 23.5156 | 0.846562 | 0.153438 |
| 54 | 24.5766 | 0.835604 | 0.164396 | 54 | 23.6637 | 0.851894 | 0.148106 |
| 55 | 24.7356 | 0.841010 | 0.158990 | 55 | 23.8067 | 0.857040 | 0.142960 |
| 56 | 24.8893 | 0.846238 | 0.153762 | 56 | 23.9447 | 0.862008 | 0.137992 |
| 57 | 25.0381 | 0.851294 | 0.148706 | 57 | 24.0779 | 0.866803 | 0.133197 |
| 58 | 25.1819 | 0.856183 | 0.143817 | 58 | 24.2064 | 0.871432 | 0.128568 |
| 59 | 25.3210 | 0.860912 | 0.139088 | 59 | 24.3305 | 0.875899 | 0.124101 |
| 60 | 25.4555 | 0.865486 | 0.134514 | 60 | 24.4503 | 0.880212 | 0.119788 |

**Table B**

Annuity, Income, and Remainder Interests for a Term Certain

| | 3.8% | | Interest Rates | | | 4.0% | |
|---|---|---|---|---|---|---|---|
| Years | Annuity | Income Interest | Remainder | Years | Annuity | Income Interest | Remainder |
| 1 | 0.9634 | 0.036609 | 0.963391 | 1 | 0.9615 | 0.038462 | 0.961538 |
| 2 | 1.8915 | 0.071878 | 0.928122 | 2 | 1.8861 | 0.075444 | 0.924556 |
| 3 | 2.7857 | 0.105855 | 0.894145 | 3 | 2.7751 | 0.111004 | 0.888996 |
| 4 | 3.6471 | 0.138589 | 0.861411 | 4 | 3.6299 | 0.145196 | 0.854804 |
| 5 | 4.4769 | 0.170124 | 0.829876 | 5 | 4.4518 | 0.178073 | 0.821927 |
| 6 | 5.2764 | 0.200505 | 0.799495 | 6 | 5.2421 | 0.209685 | 0.790315 |
| 7 | 6.0467 | 0.229773 | 0.770227 | 7 | 6.0021 | 0.240082 | 0.759918 |
| 8 | 6.7887 | 0.257970 | 0.742030 | 8 | 6.7327 | 0.269310 | 0.730690 |
| 9 | 7.5036 | 0.285135 | 0.714865 | 9 | 7.4353 | 0.297413 | 0.702587 |
| 10 | 8.1923 | 0.311306 | 0.688694 | 10 | 8.1109 | 0.324436 | 0.675564 |
| 11 | 8.8557 | 0.336518 | 0.663482 | 11 | 8.7605 | 0.350419 | 0.649581 |
| 12 | 9.4949 | 0.360807 | 0.639193 | 12 | 9.3851 | 0.375403 | 0.624597 |
| 13 | 10.1107 | 0.384207 | 0.615793 | 13 | 9.9856 | 0.399426 | 0.600574 |
| 14 | 10.7040 | 0.406751 | 0.593249 | 14 | 10.5631 | 0.422525 | 0.577475 |
| 15 | 11.2755 | 0.428469 | 0.571531 | 15 | 11.1184 | 0.444735 | 0.555265 |
| 16 | 11.8261 | 0.449392 | 0.550608 | 16 | 11.6523 | 0.466092 | 0.533908 |
| 17 | 12.3566 | 0.469549 | 0.530451 | 17 | 12.1657 | 0.486627 | 0.513373 |
| 18 | 12.8676 | 0.488969 | 0.511031 | 18 | 12.6593 | 0.506372 | 0.493628 |
| 19 | 13.3599 | 0.507677 | 0.492323 | 19 | 13.1339 | 0.525358 | 0.474642 |
| 20 | 13.8342 | 0.525700 | 0.474300 | 20 | 13.5903 | 0.543613 | 0.456387 |
| 21 | 14.2912 | 0.543064 | 0.456936 | 21 | 14.0292 | 0.561166 | 0.438834 |
| 22 | 14.7314 | 0.559792 | 0.440208 | 22 | 14.4511 | 0.578045 | 0.421955 |
| 23 | 15.1555 | 0.575907 | 0.424093 | 23 | 14.8568 | 0.594274 | 0.405726 |
| 24 | 15.5640 | 0.591433 | 0.408567 | 24 | 15.2470 | 0.609879 | 0.390121 |
| 25 | 15.9576 | 0.606390 | 0.393610 | 25 | 15.6221 | 0.624883 | 0.375117 |
| 26 | 16.3368 | 0.620800 | 0.379200 | 26 | 15.9828 | 0.639311 | 0.360689 |
| 27 | 16.7021 | 0.634682 | 0.365318 | 27 | 16.3296 | 0.653183 | 0.346817 |
| 28 | 17.0541 | 0.648056 | 0.351944 | 28 | 16.6631 | 0.666523 | 0.333477 |
| 29 | 17.3932 | 0.660940 | 0.339060 | 29 | 16.9837 | 0.679349 | 0.320651 |
| 30 | 17.7198 | 0.673352 | 0.326648 | 30 | 17.2920 | 0.691681 | 0.308319 |
| 31 | 18.0345 | 0.685311 | 0.314689 | 31 | 17.5885 | 0.703540 | 0.296460 |
| 32 | 18.3377 | 0.696831 | 0.303169 | 32 | 17.8736 | 0.714942 | 0.285058 |
| 33 | 18.6297 | 0.707930 | 0.292070 | 33 | 18.1476 | 0.725906 | 0.274094 |
| 34 | 18.9111 | 0.718622 | 0.281378 | 34 | 18.4112 | 0.736448 | 0.263552 |
| 35 | 19.1822 | 0.728923 | 0.271077 | 35 | 18.6646 | 0.746585 | 0.253415 |
| 36 | 19.4433 | 0.738847 | 0.261153 | 36 | 18.9083 | 0.756331 | 0.243669 |
| 37 | 19.6949 | 0.748407 | 0.251593 | 37 | 19.1426 | 0.765703 | 0.234297 |
| 38 | 19.9373 | 0.757618 | 0.242382 | 38 | 19.3679 | 0.774715 | 0.225285 |
| 39 | 20.1708 | 0.766491 | 0.233509 | 39 | 19.5845 | 0.783379 | 0.216621 |
| 40 | 20.3958 | 0.775040 | 0.224960 | 40 | 19.7928 | 0.791711 | 0.208289 |
| 41 | 20.6125 | 0.783275 | 0.216725 | 41 | 19.9931 | 0.799722 | 0.200278 |
| 42 | 20.8213 | 0.791209 | 0.208791 | 42 | 20.1856 | 0.807425 | 0.192575 |
| 43 | 21.0224 | 0.798853 | 0.201147 | 43 | 20.3708 | 0.814832 | 0.185168 |
| 44 | 21.2162 | 0.806217 | 0.193783 | 44 | 20.5488 | 0.821954 | 0.178046 |
| 45 | 21.4029 | 0.813311 | 0.186689 | 45 | 20.7200 | 0.828802 | 0.171198 |
| 46 | 21.5828 | 0.820145 | 0.179855 | 46 | 20.8847 | 0.835386 | 0.164614 |
| 47 | 21.7560 | 0.826730 | 0.173270 | 47 | 21.0429 | 0.841717 | 0.158283 |
| 48 | 21.9230 | 0.833073 | 0.166927 | 48 | 21.1951 | 0.847805 | 0.152195 |
| 49 | 22.0838 | 0.839184 | 0.160816 | 49 | 21.3415 | 0.853659 | 0.146341 |
| 50 | 22.2387 | 0.845071 | 0.154929 | 50 | 21.4822 | 0.859287 | 0.140713 |
| 51 | 22.3880 | 0.850743 | 0.149257 | 51 | 21.6175 | 0.864699 | 0.135301 |
| 52 | 22.5318 | 0.856207 | 0.143793 | 52 | 21.7476 | 0.869903 | 0.130097 |
| 53 | 22.6703 | 0.861471 | 0.138529 | 53 | 21.8727 | 0.874907 | 0.125093 |
| 54 | 22.8038 | 0.866543 | 0.133457 | 54 | 21.9930 | 0.879718 | 0.120282 |
| 55 | 22.9323 | 0.871428 | 0.128572 | 55 | 22.1086 | 0.884344 | 0.115656 |
| 56 | 23.0562 | 0.876135 | 0.123865 | 56 | 22.2198 | 0.888793 | 0.111207 |
| 57 | 23.1755 | 0.880670 | 0.119330 | 57 | 22.3267 | 0.893070 | 0.106930 |
| 58 | 23.2905 | 0.885038 | 0.114962 | 58 | 22.4296 | 0.897183 | 0.102817 |
| 59 | 23.4012 | 0.889247 | 0.110753 | 59 | 22.5284 | 0.901137 | 0.098863 |
| 60 | 23.5079 | 0.893301 | 0.106699 | 60 | 22.6235 | 0.904940 | 0.095060 |

## 2. TABLE S (Based on Life Table 2000CM)

### Actuarial Tables

**Table S - Based on Life Table 2000CM**

**Interest at 2.0 Percent**

| Age | Annuity | Life Estate | Remainder | Age | Annuity | Life Estate | Remainder |
|---|---|---|---|---|---|---|---|
| 0 | 38.3436 | 0.76687 | 0.23313 | 55 | 19.1825 | 0.38365 | 0.61635 |
| 1 | 38.3807 | 0.76761 | 0.23239 | 56 | 18.6933 | 0.37387 | 0.62613 |
| 2 | 38.1678 | 0.76336 | 0.23664 | 57 | 18.2034 | 0.36407 | 0.63593 |
| 3 | 37.9440 | 0.75888 | 0.24112 | 58 | 17.7136 | 0.35427 | 0.64573 |
| 4 | 37.7125 | 0.75425 | 0.24575 | 59 | 17.2236 | 0.34447 | 0.65553 |
| 5 | 37.4748 | 0.74950 | 0.25050 | 60 | 16.7330 | 0.33466 | 0.66534 |
| 6 | 37.2311 | 0.74462 | 0.25538 | 61 | 16.2423 | 0.32485 | 0.67515 |
| 7 | 36.9825 | 0.73965 | 0.26035 | 62 | 15.7528 | 0.31506 | 0.68494 |
| 8 | 36.7282 | 0.73456 | 0.26544 | 63 | 15.2649 | 0.30530 | 0.69470 |
| 9 | 36.4680 | 0.72936 | 0.27064 | 64 | 14.7787 | 0.29557 | 0.70443 |
| 10 | 36.2021 | 0.72404 | 0.27596 | 65 | 14.2943 | 0.28589 | 0.71411 |
| 11 | 35.9306 | 0.71861 | 0.28139 | 66 | 13.8077 | 0.27615 | 0.72385 |
| 12 | 35.6536 | 0.71307 | 0.28693 | 67 | 13.3206 | 0.26641 | 0.73359 |
| 13 | 35.3724 | 0.70745 | 0.29255 | 68 | 12.8345 | 0.25669 | 0.74331 |
| 14 | 35.0885 | 0.70177 | 0.29823 | 69 | 12.3507 | 0.24701 | 0.75299 |
| 15 | 34.8028 | 0.69606 | 0.30394 | 70 | 11.8701 | 0.23740 | 0.76260 |
| 16 | 34.5158 | 0.69032 | 0.30968 | 71 | 11.3926 | 0.22785 | 0.77215 |
| 17 | 34.2268 | 0.68454 | 0.31546 | 72 | 10.9190 | 0.21838 | 0.78162 |
| 18 | 33.9354 | 0.67871 | 0.32129 | 73 | 10.4510 | 0.20902 | 0.79098 |
| 19 | 33.6407 | 0.67281 | 0.32719 | 74 | 9.9903 | 0.19981 | 0.80019 |
| 20 | 33.3413 | 0.66683 | 0.33317 | 75 | 9.5385 | 0.19077 | 0.80923 |
| 21 | 33.0377 | 0.66075 | 0.33925 | 76 | 9.0964 | 0.18193 | 0.81807 |
| 22 | 32.7294 | 0.65459 | 0.34541 | 77 | 8.6643 | 0.17329 | 0.82671 |
| 23 | 32.4158 | 0.64832 | 0.35168 | 78 | 8.2425 | 0.16485 | 0.83515 |
| 24 | 32.0956 | 0.64191 | 0.35809 | 79 | 7.8316 | 0.15663 | 0.84337 |
| 25 | 31.7680 | 0.63536 | 0.36464 | 80 | 7.4324 | 0.14865 | 0.85135 |
| 26 | 31.4330 | 0.62866 | 0.37134 | 81 | 7.0450 | 0.14090 | 0.85910 |
| 27 | 31.0903 | 0.62181 | 0.37819 | 82 | 6.6698 | 0.13340 | 0.86660 |
| 28 | 30.7401 | 0.61480 | 0.38520 | 83 | 6.3073 | 0.12615 | 0.87385 |
| 29 | 30.3833 | 0.60767 | 0.39233 | 84 | 5.9579 | 0.11916 | 0.88084 |
| 30 | 30.0203 | 0.60041 | 0.39959 | 85 | 5.6216 | 0.11243 | 0.88757 |
| 31 | 29.6509 | 0.59302 | 0.40698 | 86 | 5.2988 | 0.10598 | 0.89402 |
| 32 | 29.2753 | 0.58551 | 0.41449 | 87 | 4.9896 | 0.09979 | 0.90021 |
| 33 | 28.8934 | 0.57787 | 0.42213 | 88 | 4.6938 | 0.09388 | 0.90612 |
| 34 | 28.5061 | 0.57012 | 0.42988 | 89 | 4.4118 | 0.08824 | 0.91176 |
| 35 | 28.1130 | 0.56226 | 0.43774 | 90 | 4.1434 | 0.08287 | 0.91713 |
| 36 | 27.7141 | 0.55428 | 0.44572 | 91 | 3.8884 | 0.07777 | 0.92223 |
| 37 | 27.3097 | 0.54619 | 0.45381 | 92 | 3.6466 | 0.07293 | 0.92707 |
| 38 | 26.8994 | 0.53799 | 0.46201 | 93 | 3.4183 | 0.06837 | 0.93163 |
| 39 | 26.4839 | 0.52968 | 0.47032 | 94 | 3.2025 | 0.06405 | 0.93595 |
| 40 | 26.0634 | 0.52127 | 0.47873 | 95 | 2.9990 | 0.05998 | 0.94002 |
| 41 | 25.6378 | 0.51276 | 0.48724 | 96 | 2.8081 | 0.05616 | 0.94384 |
| 42 | 25.2075 | 0.50415 | 0.49585 | 97 | 2.6290 | 0.05258 | 0.94742 |
| 43 | 24.7716 | 0.49543 | 0.50457 | 98 | 2.4609 | 0.04922 | 0.95078 |
| 44 | 24.3311 | 0.48662 | 0.51338 | 99 | 2.3029 | 0.04606 | 0.95394 |
| 45 | 23.8859 | 0.47772 | 0.52228 | 100 | 2.1565 | 0.04313 | 0.95687 |
| 46 | 23.4357 | 0.46871 | 0.53129 | 101 | 2.0179 | 0.04036 | 0.95964 |
| 47 | 22.9813 | 0.45963 | 0.54037 | 102 | 1.8901 | 0.03780 | 0.96220 |
| 48 | 22.5224 | 0.45045 | 0.54955 | 103 | 1.7637 | 0.03527 | 0.96473 |
| 49 | 22.0589 | 0.44118 | 0.55882 | 104 | 1.6474 | 0.03295 | 0.96705 |
| 50 | 21.5904 | 0.43181 | 0.56819 | 105 | 1.5329 | 0.03066 | 0.96934 |
| 51 | 21.1171 | 0.42234 | 0.57766 | 106 | 1.3908 | 0.02782 | 0.97218 |
| 52 | 20.6390 | 0.41278 | 0.58722 | 107 | 1.2303 | 0.02461 | 0.97539 |
| 53 | 20.1567 | 0.40313 | 0.59687 | 108 | 0.9756 | 0.01951 | 0.98049 |
| 54 | 19.6709 | 0.39342 | 0.60658 | 109 | 0.4902 | 0.00980 | 0.99020 |

**Table S - Based on Life Table 2010CM (PROPOSED)**

**Interest at 2.0 Percent**

| Age | Annuity | Life Estate | Remainder | Age | Annuity | Life Estate | Remainder |
|---|---|---|---|---|---|---|---|
| 0 | 38.7526 | 0.77505 | 0.22495 | 55 | 20.1007 | 0.40201 | 0.59799 |
| 1 | 38.7702 | 0.77540 | 0.22460 | 56 | 19.6266 | 0.39253 | 0.60747 |
| 2 | 38.5618 | 0.77124 | 0.22876 | 57 | 19.1492 | 0.38298 | 0.61702 |
| 3 | 38.3437 | 0.76687 | 0.23313 | 58 | 18.6687 | 0.37337 | 0.62663 |
| 4 | 38.1188 | 0.76238 | 0.23762 | 59 | 18.1852 | 0.36370 | 0.63630 |
| 5 | 37.8874 | 0.75775 | 0.24225 | 60 | 17.6986 | 0.35397 | 0.64603 |
| 6 | 37.6509 | 0.75302 | 0.24698 | 61 | 17.2088 | 0.34418 | 0.65582 |
| 7 | 37.4090 | 0.74818 | 0.25182 | 62 | 16.7159 | 0.33432 | 0.66568 |
| 8 | 37.1617 | 0.74323 | 0.25677 | 63 | 16.2200 | 0.32440 | 0.67560 |
| 9 | 36.9088 | 0.73818 | 0.26182 | 64 | 15.7216 | 0.31443 | 0.68557 |
| 10 | 36.6504 | 0.73301 | 0.26699 | 65 | 15.2214 | 0.30443 | 0.69557 |
| 11 | 36.3865 | 0.72773 | 0.27227 | 66 | 14.7209 | 0.29442 | 0.70558 |
| 12 | 36.1174 | 0.72235 | 0.27765 | 67 | 14.2214 | 0.28443 | 0.71557 |
| 13 | 35.8441 | 0.71688 | 0.28312 | 68 | 13.7226 | 0.27445 | 0.72555 |
| 14 | 35.5674 | 0.71135 | 0.28865 | 69 | 13.2250 | 0.26450 | 0.73550 |
| 15 | 35.2878 | 0.70576 | 0.29424 | 70 | 12.7279 | 0.25456 | 0.74544 |
| 16 | 35.0056 | 0.70011 | 0.29989 | 71 | 12.2319 | 0.24464 | 0.75536 |
| 17 | 34.7203 | 0.69441 | 0.30559 | 72 | 11.7379 | 0.23476 | 0.76524 |
| 18 | 34.4321 | 0.68864 | 0.31136 | 73 | 11.2473 | 0.22495 | 0.77505 |
| 19 | 34.1408 | 0.68282 | 0.31718 | 74 | 10.7607 | 0.21521 | 0.78479 |
| 20 | 33.8464 | 0.67693 | 0.32307 | 75 | 10.2793 | 0.20559 | 0.79441 |
| 21 | 33.5489 | 0.67098 | 0.32902 | 76 | 9.8021 | 0.19604 | 0.80396 |
| 22 | 33.2482 | 0.66496 | 0.33504 | 77 | 9.3311 | 0.18662 | 0.81338 |
| 23 | 32.9433 | 0.65887 | 0.34113 | 78 | 8.8659 | 0.17732 | 0.82268 |
| 24 | 32.6332 | 0.65266 | 0.34734 | 79 | 8.4105 | 0.16821 | 0.83179 |
| 25 | 32.3169 | 0.64634 | 0.35366 | 80 | 7.9629 | 0.15926 | 0.84074 |
| 26 | 31.9939 | 0.63988 | 0.36012 | 81 | 7.5252 | 0.15050 | 0.84950 |
| 27 | 31.6644 | 0.63329 | 0.36671 | 82 | 7.0973 | 0.14195 | 0.85805 |
| 28 | 31.3283 | 0.62657 | 0.37343 | 83 | 6.6804 | 0.13361 | 0.86639 |
| 29 | 30.9858 | 0.61972 | 0.38028 | 84 | 6.2721 | 0.12544 | 0.87456 |
| 30 | 30.6370 | 0.61274 | 0.38726 | 85 | 5.8831 | 0.11766 | 0.88234 |
| 31 | 30.2819 | 0.60564 | 0.39436 | 86 | 5.5095 | 0.11019 | 0.88981 |
| 32 | 29.9205 | 0.59841 | 0.40159 | 87 | 5.1540 | 0.10308 | 0.89692 |
| 33 | 29.5525 | 0.59105 | 0.40895 | 88 | 4.8170 | 0.09634 | 0.90366 |
| 34 | 29.1779 | 0.58356 | 0.41644 | 89 | 4.4985 | 0.08997 | 0.91003 |
| 35 | 28.7965 | 0.57593 | 0.42407 | 90 | 4.1986 | 0.08397 | 0.91603 |
| 36 | 28.4084 | 0.56817 | 0.43183 | 91 | 3.9172 | 0.07834 | 0.92166 |
| 37 | 28.0139 | 0.56028 | 0.43972 | 92 | 3.6540 | 0.07308 | 0.92692 |
| 38 | 27.6132 | 0.55226 | 0.44774 | 93 | 3.4088 | 0.06818 | 0.93182 |
| 39 | 27.2065 | 0.54413 | 0.45587 | 94 | 3.1810 | 0.06362 | 0.93638 |
| 40 | 26.7940 | 0.53588 | 0.46412 | 95 | 2.9702 | 0.05940 | 0.94060 |
| 41 | 26.3759 | 0.52752 | 0.47248 | 96 | 2.7755 | 0.05551 | 0.94449 |
| 42 | 25.9525 | 0.51905 | 0.48095 | 97 | 2.5964 | 0.05193 | 0.94807 |
| 43 | 25.5243 | 0.51049 | 0.48951 | 98 | 2.4319 | 0.04864 | 0.95136 |
| 44 | 25.0921 | 0.50184 | 0.49816 | 99 | 2.2811 | 0.04562 | 0.95438 |
| 45 | 24.6560 | 0.49312 | 0.50688 | 100 | 2.1428 | 0.04286 | 0.95714 |
| 46 | 24.2158 | 0.48432 | 0.51568 | 101 | 2.0158 | 0.04032 | 0.95968 |
| 47 | 23.7715 | 0.47543 | 0.52457 | 102 | 1.8983 | 0.03797 | 0.96203 |
| 48 | 23.3234 | 0.46647 | 0.53353 | 103 | 1.7877 | 0.03575 | 0.96425 |
| 49 | 22.8720 | 0.45744 | 0.54256 | 104 | 1.6799 | 0.03360 | 0.96640 |
| 50 | 22.4177 | 0.44835 | 0.55165 | 105 | 1.5679 | 0.03136 | 0.96864 |
| 51 | 21.9608 | 0.43922 | 0.56078 | 106 | 1.4382 | 0.02876 | 0.97124 |
| 52 | 21.5009 | 0.43002 | 0.56998 | 107 | 1.2637 | 0.02527 | 0.97473 |
| 53 | 21.0378 | 0.42076 | 0.57924 | 108 | 0.9882 | 0.01976 | 0.98024 |
| 54 | 20.5711 | 0.41142 | 0.58858 | 109 | 0.4902 | 0.00980 | 0.99020 |

| Section 1 | Table S - Based on Life Table 2000CM | | | | | | |
|---|---|---|---|---|---|---|---|
| | Interest at 3.6 Percent | | | | | | |
| Age | Annuity | Life Estate | Remainder | Age | Annuity | Life Estate | Remainder |
| 0 | 25.4232 | 0.91524 | 0.08476 | 55 | 15.6835 | 0.56460 | 0.43540 |
| 1 | 25.5193 | 0.91869 | 0.08131 | 56 | 15.3530 | 0.55271 | 0.44729 |
| 2 | 25.4510 | 0.91624 | 0.08376 | 57 | 15.0188 | 0.54068 | 0.45932 |
| 3 | 25.3759 | 0.91353 | 0.08647 | 58 | 14.6813 | 0.52853 | 0.47147 |
| 4 | 25.2959 | 0.91065 | 0.08935 | 59 | 14.3403 | 0.51625 | 0.48375 |
| 5 | 25.2120 | 0.90763 | 0.09237 | 60 | 13.9952 | 0.50383 | 0.49617 |
| 6 | 25.1243 | 0.90447 | 0.09553 | 61 | 13.6466 | 0.49128 | 0.50872 |
| 7 | 25.0334 | 0.90120 | 0.09880 | 62 | 13.2954 | 0.47864 | 0.52136 |
| 8 | 24.9387 | 0.89779 | 0.10221 | 63 | 12.9421 | 0.46591 | 0.53409 |
| 9 | 24.8401 | 0.89424 | 0.10576 | 64 | 12.5866 | 0.45312 | 0.54688 |
| 10 | 24.7376 | 0.89055 | 0.10945 | 65 | 12.2290 | 0.44024 | 0.55976 |
| 11 | 24.6312 | 0.88672 | 0.11328 | 66 | 11.8660 | 0.42717 | 0.57283 |
| 12 | 24.5210 | 0.88276 | 0.11724 | 67 | 11.4987 | 0.41395 | 0.58605 |
| 13 | 24.4078 | 0.87868 | 0.12132 | 68 | 11.1284 | 0.40062 | 0.59938 |
| 14 | 24.2924 | 0.87453 | 0.12547 | 69 | 10.7563 | 0.38723 | 0.61277 |
| 15 | 24.1757 | 0.87032 | 0.12968 | 70 | 10.3832 | 0.37379 | 0.62621 |
| 16 | 24.0579 | 0.86609 | 0.13391 | 71 | 10.0089 | 0.36032 | 0.63968 |
| 17 | 23.9386 | 0.86179 | 0.13821 | 72 | 9.6342 | 0.34683 | 0.65317 |
| 18 | 23.8173 | 0.85742 | 0.14258 | 73 | 9.2606 | 0.33338 | 0.66662 |
| 19 | 23.6936 | 0.85297 | 0.14703 | 74 | 8.8896 | 0.32003 | 0.67997 |
| 20 | 23.5663 | 0.84839 | 0.15161 | 75 | 8.5227 | 0.30682 | 0.69318 |
| 21 | 23.4358 | 0.84369 | 0.15631 | 76 | 8.1609 | 0.29379 | 0.70621 |
| 22 | 23.3017 | 0.83886 | 0.16114 | 77 | 7.8044 | 0.28096 | 0.71904 |
| 23 | 23.1634 | 0.83388 | 0.16612 | 78 | 7.4538 | 0.26834 | 0.73166 |
| 24 | 23.0200 | 0.82872 | 0.17128 | 79 | 7.1096 | 0.25595 | 0.74405 |
| 25 | 22.8708 | 0.82335 | 0.17665 | 80 | 6.7727 | 0.24382 | 0.75618 |
| 26 | 22.7157 | 0.81776 | 0.18224 | 81 | 6.4435 | 0.23197 | 0.76803 |
| 27 | 22.5544 | 0.81196 | 0.18804 | 82 | 6.1225 | 0.22041 | 0.77959 |
| 28 | 22.3869 | 0.80593 | 0.19407 | 83 | 5.8103 | 0.20917 | 0.79083 |
| 29 | 22.2137 | 0.79969 | 0.20031 | 84 | 5.5072 | 0.19826 | 0.80174 |
| 30 | 22.0350 | 0.79326 | 0.20674 | 85 | 5.2138 | 0.18770 | 0.81230 |
| 31 | 21.8507 | 0.78662 | 0.21338 | 86 | 4.9303 | 0.17749 | 0.82251 |
| 32 | 21.6607 | 0.77978 | 0.22022 | 87 | 4.6573 | 0.16766 | 0.83234 |
| 33 | 21.4648 | 0.77273 | 0.22727 | 88 | 4.3945 | 0.15820 | 0.84180 |
| 34 | 21.2637 | 0.76549 | 0.23451 | 89 | 4.1426 | 0.14913 | 0.85087 |
| 35 | 21.0568 | 0.75805 | 0.24195 | 90 | 3.9016 | 0.14046 | 0.85954 |
| 36 | 20.8443 | 0.75039 | 0.24961 | 91 | 3.6714 | 0.13217 | 0.86783 |
| 37 | 20.6260 | 0.74254 | 0.25746 | 92 | 3.4522 | 0.12428 | 0.87572 |
| 38 | 20.4018 | 0.73446 | 0.26554 | 93 | 3.2441 | 0.11679 | 0.88321 |
| 39 | 20.1719 | 0.72619 | 0.27381 | 94 | 3.0467 | 0.10968 | 0.89032 |
| 40 | 19.9364 | 0.71771 | 0.28229 | 95 | 2.8596 | 0.10294 | 0.89706 |
| 41 | 19.6952 | 0.70903 | 0.29097 | 96 | 2.6834 | 0.09660 | 0.90340 |
| 42 | 19.4484 | 0.70014 | 0.29986 | 97 | 2.5175 | 0.09063 | 0.90937 |
| 43 | 19.1953 | 0.69103 | 0.30897 | 98 | 2.3612 | 0.08500 | 0.91500 |
| 44 | 18.9364 | 0.68171 | 0.31829 | 99 | 2.2139 | 0.07970 | 0.92030 |
| 45 | 18.6717 | 0.67218 | 0.32782 | 100 | 2.0768 | 0.07477 | 0.92523 |
| 46 | 18.4008 | 0.66243 | 0.33757 | 101 | 1.9468 | 0.07008 | 0.92992 |
| 47 | 18.1242 | 0.65247 | 0.34753 | 102 | 1.8266 | 0.06576 | 0.93424 |
| 48 | 17.8416 | 0.64230 | 0.35770 | 103 | 1.7074 | 0.06147 | 0.93853 |
| 49 | 17.5528 | 0.63190 | 0.36810 | 104 | 1.5978 | 0.05752 | 0.94248 |
| 50 | 17.2573 | 0.62126 | 0.37874 | 105 | 1.4897 | 0.05363 | 0.94637 |
| 51 | 16.9552 | 0.61039 | 0.38961 | 106 | 1.3548 | 0.04877 | 0.95123 |
| 52 | 16.6464 | 0.59927 | 0.40073 | 107 | 1.2021 | 0.04328 | 0.95672 |
| 53 | 16.3311 | 0.58792 | 0.41208 | 108 | 0.9569 | 0.03445 | 0.96555 |
| 54 | 16.0099 | 0.57636 | 0.42364 | 109 | 0.4826 | 0.01737 | 0.98263 |

**Table S - Based on Life Table 2010CM (PROPOSED)**

**Interest at 3.6 Percent**

| Age | Annuity | Life Estate | Remainder | Age | Annuity | Life Estate | Remainder |
|---|---|---|---|---|---|---|---|
| 0 | 25.5700 | 0.92052 | 0.07948 | 55 | 16.3047 | 0.58697 | 0.41303 |
| 1 | 25.6520 | 0.92347 | 0.07653 | 56 | 15.9933 | 0.57576 | 0.42424 |
| 2 | 25.5863 | 0.92111 | 0.07889 | 57 | 15.6761 | 0.56434 | 0.43566 |
| 3 | 25.5146 | 0.91852 | 0.08148 | 58 | 15.3534 | 0.55272 | 0.44728 |
| 4 | 25.4386 | 0.91579 | 0.08421 | 59 | 15.0250 | 0.54090 | 0.45910 |
| 5 | 25.3586 | 0.91291 | 0.08709 | 60 | 14.6908 | 0.52887 | 0.47113 |
| 6 | 25.2754 | 0.90992 | 0.09008 | 61 | 14.3507 | 0.51662 | 0.48338 |
| 7 | 25.1888 | 0.90680 | 0.09320 | 62 | 14.0046 | 0.50417 | 0.49583 |
| 8 | 25.0986 | 0.90355 | 0.09645 | 63 | 13.6525 | 0.49149 | 0.50851 |
| 9 | 25.0048 | 0.90017 | 0.09983 | 64 | 13.2946 | 0.47861 | 0.52139 |
| 10 | 24.9073 | 0.89666 | 0.10334 | 65 | 12.9317 | 0.46554 | 0.53446 |
| 11 | 24.8061 | 0.89302 | 0.10698 | 66 | 12.5646 | 0.45233 | 0.54767 |
| 12 | 24.7013 | 0.88925 | 0.11075 | 67 | 12.1947 | 0.43901 | 0.56099 |
| 13 | 24.5936 | 0.88537 | 0.11463 | 68 | 11.8215 | 0.42557 | 0.57443 |
| 14 | 24.4834 | 0.88140 | 0.11860 | 69 | 11.4455 | 0.41204 | 0.58796 |
| 15 | 24.3711 | 0.87736 | 0.12264 | 70 | 11.0659 | 0.39837 | 0.60163 |
| 16 | 24.2568 | 0.87325 | 0.12675 | 71 | 10.6834 | 0.38460 | 0.61540 |
| 17 | 24.1403 | 0.86905 | 0.13095 | 72 | 10.2986 | 0.37075 | 0.62925 |
| 18 | 24.0215 | 0.86478 | 0.13522 | 73 | 9.9128 | 0.35686 | 0.64314 |
| 19 | 23.9004 | 0.86042 | 0.13958 | 74 | 9.5265 | 0.34296 | 0.65704 |
| 20 | 23.7769 | 0.85597 | 0.14403 | 75 | 9.1408 | 0.32907 | 0.67093 |
| 21 | 23.6511 | 0.85144 | 0.14856 | 76 | 8.7548 | 0.31517 | 0.68483 |
| 22 | 23.5227 | 0.84682 | 0.15318 | 77 | 8.3704 | 0.30134 | 0.69866 |
| 23 | 23.3910 | 0.84208 | 0.15792 | 78 | 7.9873 | 0.28754 | 0.71246 |
| 24 | 23.2554 | 0.83719 | 0.16281 | 79 | 7.6090 | 0.27393 | 0.72607 |
| 25 | 23.1148 | 0.83213 | 0.16787 | 80 | 7.2341 | 0.26043 | 0.73957 |
| 26 | 22.9692 | 0.82689 | 0.17311 | 81 | 6.8644 | 0.24712 | 0.75288 |
| 27 | 22.8182 | 0.82146 | 0.17854 | 82 | 6.5000 | 0.23400 | 0.76600 |
| 28 | 22.6620 | 0.81583 | 0.18417 | 83 | 6.1420 | 0.22111 | 0.77889 |
| 29 | 22.5004 | 0.81002 | 0.18998 | 84 | 5.7885 | 0.20839 | 0.79161 |
| 30 | 22.3335 | 0.80401 | 0.19599 | 85 | 5.4495 | 0.19618 | 0.80382 |
| 31 | 22.1612 | 0.79780 | 0.20220 | 86 | 5.1215 | 0.18438 | 0.81562 |
| 32 | 21.9833 | 0.79140 | 0.20860 | 87 | 4.8075 | 0.17307 | 0.82693 |
| 33 | 21.7997 | 0.78479 | 0.21521 | 88 | 4.5079 | 0.16228 | 0.83772 |
| 34 | 21.6100 | 0.77796 | 0.22204 | 89 | 4.2231 | 0.15203 | 0.84797 |
| 35 | 21.4142 | 0.77091 | 0.22909 | 90 | 3.9534 | 0.14232 | 0.85768 |
| 36 | 21.2122 | 0.76364 | 0.23636 | 91 | 3.6991 | 0.13317 | 0.86683 |
| 37 | 21.0040 | 0.75614 | 0.24386 | 92 | 3.4600 | 0.12456 | 0.87544 |
| 38 | 20.7897 | 0.74843 | 0.25157 | 93 | 3.2361 | 0.11650 | 0.88350 |
| 39 | 20.5693 | 0.74049 | 0.25951 | 94 | 3.0272 | 0.10898 | 0.89102 |
| 40 | 20.3429 | 0.73234 | 0.26766 | 95 | 2.8330 | 0.10199 | 0.89801 |
| 41 | 20.1105 | 0.72398 | 0.27602 | 96 | 2.6531 | 0.09551 | 0.90449 |
| 42 | 19.8723 | 0.71540 | 0.28460 | 97 | 2.4869 | 0.08953 | 0.91047 |
| 43 | 19.6285 | 0.70663 | 0.29337 | 98 | 2.3338 | 0.08402 | 0.91598 |
| 44 | 19.3796 | 0.69767 | 0.30233 | 99 | 2.1930 | 0.07895 | 0.92105 |
| 45 | 19.1257 | 0.68853 | 0.31147 | 100 | 2.0636 | 0.07429 | 0.92571 |
| 46 | 18.8665 | 0.67920 | 0.32080 | 101 | 1.9444 | 0.07000 | 0.93000 |
| 47 | 18.6019 | 0.66967 | 0.33033 | 102 | 1.8340 | 0.06602 | 0.93398 |
| 48 | 18.3320 | 0.65995 | 0.34005 | 103 | 1.7300 | 0.06228 | 0.93772 |
| 49 | 18.0572 | 0.65006 | 0.34994 | 104 | 1.6286 | 0.05863 | 0.94137 |
| 50 | 17.7777 | 0.64000 | 0.36000 | 105 | 1.5231 | 0.05483 | 0.94517 |
| 51 | 17.4935 | 0.62977 | 0.37023 | 106 | 1.4005 | 0.05042 | 0.94958 |
| 52 | 17.2045 | 0.61936 | 0.38064 | 107 | 1.2345 | 0.04444 | 0.95556 |
| 53 | 16.9102 | 0.60877 | 0.39123 | 108 | 0.9692 | 0.03489 | 0.96511 |
| 54 | 16.6104 | 0.59797 | 0.40203 | 109 | 0.4826 | 0.01737 | 0.98263 |

| | Table S - Based on Life Table 2000CM | | | | | | Section 1 |
|---|---|---|---|---|---|---|---|
| | Interest at 3.8 Percent | | | | | | |
| Age | Annuity | Life Estate | Remainder | Age | Annuity | Life Estate | Remainder |
| 0 | 24.3251 | 0.92436 | 0.07564 | 55 | 15.3186 | 0.58211 | 0.41789 |
| 1 | 24.4227 | 0.92806 | 0.07194 | 56 | 15.0033 | 0.57013 | 0.42987 |
| 2 | 24.3633 | 0.92580 | 0.07420 | 57 | 14.6841 | 0.55799 | 0.44201 |
| 3 | 24.2973 | 0.92330 | 0.07670 | 58 | 14.3613 | 0.54573 | 0.45427 |
| 4 | 24.2269 | 0.92062 | 0.07938 | 59 | 14.0348 | 0.53332 | 0.46668 |
| 5 | 24.1527 | 0.91780 | 0.08220 | 60 | 13.7040 | 0.52075 | 0.47925 |
| 6 | 24.0750 | 0.91485 | 0.08515 | 61 | 13.3694 | 0.50804 | 0.49196 |
| 7 | 23.9943 | 0.91178 | 0.08822 | 62 | 13.0320 | 0.49522 | 0.50478 |
| 8 | 23.9100 | 0.90858 | 0.09142 | 63 | 12.6921 | 0.48230 | 0.51770 |
| 9 | 23.8220 | 0.90524 | 0.09476 | 64 | 12.3498 | 0.46929 | 0.53071 |
| 10 | 23.7304 | 0.90176 | 0.09824 | 65 | 12.0051 | 0.45619 | 0.54381 |
| 11 | 23.6351 | 0.89813 | 0.10187 | 66 | 11.6546 | 0.44287 | 0.55713 |
| 12 | 23.5361 | 0.89437 | 0.10563 | 67 | 11.2996 | 0.42938 | 0.57062 |
| 13 | 23.4344 | 0.89051 | 0.10949 | 68 | 10.9413 | 0.41577 | 0.58423 |
| 14 | 23.3306 | 0.88656 | 0.11344 | 69 | 10.5808 | 0.40207 | 0.59793 |
| 15 | 23.2256 | 0.88257 | 0.11743 | 70 | 10.2189 | 0.38832 | 0.61168 |
| 16 | 23.1196 | 0.87855 | 0.12145 | 71 | 9.8555 | 0.37451 | 0.62549 |
| 17 | 23.0122 | 0.87446 | 0.12554 | 72 | 9.4913 | 0.36067 | 0.63933 |
| 18 | 22.9030 | 0.87031 | 0.12969 | 73 | 9.1277 | 0.34685 | 0.65315 |
| 19 | 22.7914 | 0.86607 | 0.13393 | 74 | 8.7662 | 0.33312 | 0.66688 |
| 20 | 22.6765 | 0.86171 | 0.13829 | 75 | 8.4085 | 0.31952 | 0.68048 |
| 21 | 22.5586 | 0.85723 | 0.14277 | 76 | 8.0553 | 0.30610 | 0.69390 |
| 22 | 22.4372 | 0.85261 | 0.14739 | 77 | 7.7071 | 0.29287 | 0.70713 |
| 23 | 22.3118 | 0.84785 | 0.15215 | 78 | 7.3642 | 0.27984 | 0.72016 |
| 24 | 22.1816 | 0.84290 | 0.15710 | 79 | 7.0273 | 0.26704 | 0.73296 |
| 25 | 22.0458 | 0.83774 | 0.16226 | 80 | 6.6973 | 0.25450 | 0.74550 |
| 26 | 21.9043 | 0.83236 | 0.16764 | 81 | 6.3746 | 0.24223 | 0.75777 |
| 27 | 21.7569 | 0.82676 | 0.17324 | 82 | 6.0595 | 0.23026 | 0.76974 |
| 28 | 21.6035 | 0.82093 | 0.17907 | 83 | 5.7529 | 0.21861 | 0.78139 |
| 29 | 21.4446 | 0.81489 | 0.18511 | 84 | 5.4551 | 0.20729 | 0.79271 |
| 30 | 21.2804 | 0.80865 | 0.19135 | 85 | 5.1664 | 0.19632 | 0.80368 |
| 31 | 21.1107 | 0.80221 | 0.19779 | 86 | 4.8874 | 0.18572 | 0.81428 |
| 32 | 20.9355 | 0.79555 | 0.20445 | 87 | 4.6185 | 0.17550 | 0.82450 |
| 33 | 20.7546 | 0.78867 | 0.21133 | 88 | 4.3595 | 0.16566 | 0.83434 |
| 34 | 20.5686 | 0.78161 | 0.21839 | 89 | 4.1110 | 0.15622 | 0.84378 |
| 35 | 20.3770 | 0.77433 | 0.22567 | 90 | 3.8732 | 0.14718 | 0.85282 |
| 36 | 20.1798 | 0.76683 | 0.23317 | 91 | 3.6458 | 0.13854 | 0.86146 |
| 37 | 19.9770 | 0.75913 | 0.24087 | 92 | 3.4292 | 0.13031 | 0.86969 |
| 38 | 19.7684 | 0.75120 | 0.24880 | 93 | 3.2235 | 0.12249 | 0.87751 |
| 39 | 19.5542 | 0.74306 | 0.25694 | 94 | 3.0282 | 0.11507 | 0.88493 |
| 40 | 19.3344 | 0.73471 | 0.26529 | 95 | 2.8430 | 0.10803 | 0.89197 |
| 41 | 19.1090 | 0.72614 | 0.27386 | 96 | 2.6686 | 0.10141 | 0.89859 |
| 42 | 18.8780 | 0.71736 | 0.28264 | 97 | 2.5042 | 0.09516 | 0.90484 |
| 43 | 18.6408 | 0.70835 | 0.29165 | 98 | 2.3493 | 0.08927 | 0.91073 |
| 44 | 18.3979 | 0.69912 | 0.30088 | 99 | 2.2032 | 0.08372 | 0.91628 |
| 45 | 18.1491 | 0.68967 | 0.31033 | 100 | 2.0673 | 0.07856 | 0.92144 |
| 46 | 17.8942 | 0.67998 | 0.32002 | 101 | 1.9382 | 0.07365 | 0.92635 |
| 47 | 17.6336 | 0.67008 | 0.32992 | 102 | 1.8190 | 0.06912 | 0.93088 |
| 48 | 17.3669 | 0.65994 | 0.34006 | 103 | 1.7006 | 0.06462 | 0.93538 |
| 49 | 17.0940 | 0.64957 | 0.35043 | 104 | 1.5918 | 0.06049 | 0.93951 |
| 50 | 16.8143 | 0.63894 | 0.36106 | 105 | 1.4845 | 0.05641 | 0.94359 |
| 51 | 16.5280 | 0.62806 | 0.37194 | 106 | 1.3504 | 0.05132 | 0.94868 |
| 52 | 16.2349 | 0.61693 | 0.38307 | 107 | 1.1987 | 0.04555 | 0.95445 |
| 53 | 15.9353 | 0.60554 | 0.39446 | 108 | 0.9546 | 0.03627 | 0.96373 |
| 54 | 15.6296 | 0.59393 | 0.40607 | 109 | 0.4817 | 0.01830 | 0.98170 |

## Table S - Based on Life Table 2010CM (PROPOSED)

**Interest at 3.8 Percent**

| Age | Annuity | Life Estate | Remainder | Age | Annuity | Life Estate | Remainder |
|---|---|---|---|---|---|---|---|
| 0 | 24.4558 | 0.92932 | 0.07068 | 55 | 15.9112 | 0.60463 | 0.39537 |
| 1 | 24.5397 | 0.93251 | 0.06749 | 56 | 15.6151 | 0.59337 | 0.40663 |
| 2 | 24.4826 | 0.93034 | 0.06966 | 57 | 15.3132 | 0.58190 | 0.41810 |
| 3 | 24.4198 | 0.92795 | 0.07205 | 58 | 15.0055 | 0.57021 | 0.42979 |
| 4 | 24.3530 | 0.92541 | 0.07459 | 59 | 14.6921 | 0.55830 | 0.44170 |
| 5 | 24.2825 | 0.92273 | 0.07727 | 60 | 14.3727 | 0.54616 | 0.45384 |
| 6 | 24.2089 | 0.91994 | 0.08006 | 61 | 14.0472 | 0.53379 | 0.46621 |
| 7 | 24.1322 | 0.91702 | 0.08298 | 62 | 13.7155 | 0.52119 | 0.47881 |
| 8 | 24.0521 | 0.91398 | 0.08602 | 63 | 13.3776 | 0.50835 | 0.49165 |
| 9 | 23.9687 | 0.91081 | 0.08919 | 64 | 13.0338 | 0.49528 | 0.50472 |
| 10 | 23.8817 | 0.90750 | 0.09250 | 65 | 12.6846 | 0.48201 | 0.51799 |
| 11 | 23.7912 | 0.90407 | 0.09593 | 66 | 12.3310 | 0.46858 | 0.53142 |
| 12 | 23.6974 | 0.90050 | 0.09950 | 67 | 11.9742 | 0.45502 | 0.54498 |
| 13 | 23.6008 | 0.89683 | 0.10317 | 68 | 11.6139 | 0.44133 | 0.55867 |
| 14 | 23.5019 | 0.89307 | 0.10693 | 69 | 11.2504 | 0.42751 | 0.57249 |
| 15 | 23.4010 | 0.88924 | 0.11076 | 70 | 10.8830 | 0.41355 | 0.58645 |
| 16 | 23.2983 | 0.88534 | 0.11466 | 71 | 10.5123 | 0.39947 | 0.60053 |
| 17 | 23.1935 | 0.88135 | 0.11865 | 72 | 10.1390 | 0.38528 | 0.61472 |
| 18 | 23.0866 | 0.87729 | 0.12271 | 73 | 9.7642 | 0.37104 | 0.62896 |
| 19 | 22.9774 | 0.87314 | 0.12686 | 74 | 9.3886 | 0.35677 | 0.64323 |
| 20 | 22.8661 | 0.86891 | 0.13109 | 75 | 9.0131 | 0.34250 | 0.65750 |
| 21 | 22.7525 | 0.86459 | 0.13541 | 76 | 8.6369 | 0.32820 | 0.67180 |
| 22 | 22.6365 | 0.86019 | 0.13981 | 77 | 8.2619 | 0.31395 | 0.68605 |
| 23 | 22.5174 | 0.85566 | 0.14434 | 78 | 7.8876 | 0.29973 | 0.70027 |
| 24 | 22.3945 | 0.85099 | 0.14901 | 79 | 7.5179 | 0.28568 | 0.71432 |
| 25 | 22.2670 | 0.84615 | 0.15385 | 80 | 7.1509 | 0.27173 | 0.72827 |
| 26 | 22.1345 | 0.84111 | 0.15889 | 81 | 6.7887 | 0.25797 | 0.74203 |
| 27 | 21.9971 | 0.83589 | 0.16411 | 82 | 6.4313 | 0.24439 | 0.75561 |
| 28 | 21.8545 | 0.83047 | 0.16953 | 83 | 6.0799 | 0.23104 | 0.76896 |
| 29 | 21.7068 | 0.82486 | 0.17514 | 84 | 5.7326 | 0.21784 | 0.78216 |
| 30 | 21.5539 | 0.81905 | 0.18095 | 85 | 5.3992 | 0.20517 | 0.79483 |
| 31 | 21.3958 | 0.81304 | 0.18696 | 86 | 5.0764 | 0.19290 | 0.80710 |
| 32 | 21.2324 | 0.80683 | 0.19317 | 87 | 4.7671 | 0.18115 | 0.81885 |
| 33 | 21.0634 | 0.80041 | 0.19959 | 88 | 4.4717 | 0.16993 | 0.83007 |
| 34 | 20.8885 | 0.79376 | 0.20624 | 89 | 4.1908 | 0.15925 | 0.84075 |
| 35 | 20.7076 | 0.78689 | 0.21311 | 90 | 3.9246 | 0.14913 | 0.85087 |
| 36 | 20.5207 | 0.77979 | 0.22021 | 91 | 3.6733 | 0.13959 | 0.86041 |
| 37 | 20.3278 | 0.77246 | 0.22754 | 92 | 3.4370 | 0.13061 | 0.86939 |
| 38 | 20.1288 | 0.76490 | 0.23510 | 93 | 3.2156 | 0.12219 | 0.87781 |
| 39 | 19.9239 | 0.75711 | 0.24289 | 94 | 3.0089 | 0.11434 | 0.88566 |
| 40 | 19.7132 | 0.74910 | 0.25090 | 95 | 2.8167 | 0.10704 | 0.89296 |
| 41 | 19.4965 | 0.74087 | 0.25913 | 96 | 2.6385 | 0.10026 | 0.89974 |
| 42 | 19.2741 | 0.73242 | 0.26758 | 97 | 2.4738 | 0.09401 | 0.90599 |
| 43 | 19.0462 | 0.72375 | 0.27625 | 98 | 2.3220 | 0.08824 | 0.91176 |
| 44 | 18.8131 | 0.71490 | 0.28510 | 99 | 2.1824 | 0.08293 | 0.91707 |
| 45 | 18.5751 | 0.70585 | 0.29415 | 100 | 2.0541 | 0.07805 | 0.92195 |
| 46 | 18.3318 | 0.69661 | 0.30339 | 101 | 1.9358 | 0.07356 | 0.92644 |
| 47 | 18.0830 | 0.68716 | 0.31284 | 102 | 1.8263 | 0.06940 | 0.93060 |
| 48 | 17.8290 | 0.67750 | 0.32250 | 103 | 1.7230 | 0.06547 | 0.93453 |
| 49 | 17.5700 | 0.66766 | 0.33234 | 104 | 1.6224 | 0.06165 | 0.93835 |
| 50 | 17.3063 | 0.65764 | 0.34236 | 105 | 1.5177 | 0.05767 | 0.94233 |
| 51 | 17.0378 | 0.64744 | 0.35256 | 106 | 1.3959 | 0.05305 | 0.94695 |
| 52 | 16.7645 | 0.63705 | 0.36295 | 107 | 1.2309 | 0.04677 | 0.95323 |
| 53 | 16.4858 | 0.62646 | 0.37354 | 108 | 0.9669 | 0.03674 | 0.96326 |
| 54 | 16.2015 | 0.61566 | 0.38434 | 109 | 0.4817 | 0.01830 | 0.98170 |

| Section 1 | Table S - Based on Life Table 2000CM | | | | | | |
|---|---|---|---|---|---|---|---|
| | Interest at 4.0 Percent | | | | | | |
| Age | Annuity | Life Estate | Remainder | Age | Annuity | Life Estate | Remainder |
| 0 | 23.3069 | 0.93228 | 0.06772 | 55 | 14.9673 | 0.59869 | 0.40131 |
| 1 | 23.4054 | 0.93621 | 0.06379 | 56 | 14.6664 | 0.58665 | 0.41335 |
| 2 | 23.3536 | 0.93414 | 0.06586 | 57 | 14.3613 | 0.57445 | 0.42555 |
| 3 | 23.2956 | 0.93183 | 0.06817 | 58 | 14.0525 | 0.56210 | 0.43790 |
| 4 | 23.2334 | 0.92934 | 0.07066 | 59 | 13.7398 | 0.54959 | 0.45041 |
| 5 | 23.1678 | 0.92671 | 0.07329 | 60 | 13.4225 | 0.53690 | 0.46310 |
| 6 | 23.0988 | 0.92395 | 0.07605 | 61 | 13.1014 | 0.52405 | 0.47595 |
| 7 | 23.0270 | 0.92108 | 0.07892 | 62 | 12.7771 | 0.51108 | 0.48892 |
| 8 | 22.9519 | 0.91807 | 0.08193 | 63 | 12.4500 | 0.49800 | 0.50200 |
| 9 | 22.8732 | 0.91493 | 0.08507 | 64 | 12.1203 | 0.48481 | 0.51519 |
| 10 | 22.7912 | 0.91165 | 0.08835 | 65 | 11.7878 | 0.47151 | 0.52849 |
| 11 | 22.7057 | 0.90823 | 0.09177 | 66 | 11.4494 | 0.45797 | 0.54203 |
| 12 | 22.6167 | 0.90467 | 0.09533 | 67 | 11.1061 | 0.44425 | 0.55575 |
| 13 | 22.5251 | 0.90100 | 0.09900 | 68 | 10.7593 | 0.43037 | 0.56963 |
| 14 | 22.4317 | 0.89727 | 0.10273 | 69 | 10.4100 | 0.41640 | 0.58360 |
| 15 | 22.3370 | 0.89348 | 0.10652 | 70 | 10.0589 | 0.40236 | 0.59764 |
| 16 | 22.2415 | 0.88966 | 0.11034 | 71 | 9.7059 | 0.38824 | 0.61176 |
| 17 | 22.1447 | 0.88579 | 0.11421 | 72 | 9.3518 | 0.37407 | 0.62593 |
| 18 | 22.0462 | 0.88185 | 0.11815 | 73 | 8.9979 | 0.35991 | 0.64009 |
| 19 | 21.9455 | 0.87782 | 0.12218 | 74 | 8.6457 | 0.34583 | 0.65417 |
| 20 | 21.8417 | 0.87367 | 0.12633 | 75 | 8.2968 | 0.33187 | 0.66813 |
| 21 | 21.7349 | 0.86940 | 0.13060 | 76 | 7.9520 | 0.31808 | 0.68192 |
| 22 | 21.6250 | 0.86500 | 0.13500 | 77 | 7.6117 | 0.30447 | 0.69553 |
| 23 | 21.5112 | 0.86045 | 0.13955 | 78 | 7.2764 | 0.29106 | 0.70894 |
| 24 | 21.3928 | 0.85571 | 0.14429 | 79 | 6.9466 | 0.27787 | 0.72213 |
| 25 | 21.2691 | 0.85076 | 0.14924 | 80 | 6.6233 | 0.26493 | 0.73507 |
| 26 | 21.1399 | 0.84560 | 0.15440 | 81 | 6.3068 | 0.25227 | 0.74773 |
| 27 | 21.0050 | 0.84020 | 0.15980 | 82 | 5.9976 | 0.23991 | 0.76009 |
| 28 | 20.8644 | 0.83458 | 0.16542 | 83 | 5.6965 | 0.22786 | 0.77214 |
| 29 | 20.7185 | 0.82874 | 0.17126 | 84 | 5.4038 | 0.21615 | 0.78385 |
| 30 | 20.5675 | 0.82270 | 0.17730 | 85 | 5.1198 | 0.20479 | 0.79521 |
| 31 | 20.4111 | 0.81645 | 0.18355 | 86 | 4.8452 | 0.19381 | 0.80619 |
| 32 | 20.2495 | 0.80998 | 0.19002 | 87 | 4.5803 | 0.18321 | 0.81679 |
| 33 | 20.0822 | 0.80329 | 0.19671 | 88 | 4.3250 | 0.17300 | 0.82700 |
| 34 | 19.9100 | 0.79640 | 0.20360 | 89 | 4.0799 | 0.16319 | 0.83681 |
| 35 | 19.7324 | 0.78930 | 0.21070 | 90 | 3.8451 | 0.15380 | 0.84620 |
| 36 | 19.5494 | 0.78197 | 0.21803 | 91 | 3.6206 | 0.14482 | 0.85518 |
| 37 | 19.3608 | 0.77443 | 0.22557 | 92 | 3.4065 | 0.13626 | 0.86374 |
| 38 | 19.1665 | 0.76666 | 0.23334 | 93 | 3.2031 | 0.12812 | 0.87188 |
| 39 | 18.9667 | 0.75867 | 0.24133 | 94 | 3.0099 | 0.12039 | 0.87961 |
| 40 | 18.7615 | 0.75046 | 0.24954 | 95 | 2.8266 | 0.11306 | 0.88694 |
| 41 | 18.5507 | 0.74203 | 0.25797 | 96 | 2.6539 | 0.10615 | 0.89385 |
| 42 | 18.3344 | 0.73338 | 0.26662 | 97 | 2.4910 | 0.09964 | 0.90036 |
| 43 | 18.1120 | 0.72448 | 0.27552 | 98 | 2.3375 | 0.09350 | 0.90650 |
| 44 | 17.8839 | 0.71535 | 0.28465 | 99 | 2.1926 | 0.08771 | 0.91229 |
| 45 | 17.6499 | 0.70600 | 0.29400 | 100 | 2.0578 | 0.08231 | 0.91769 |
| 46 | 17.4099 | 0.69640 | 0.30360 | 101 | 1.9297 | 0.07719 | 0.92281 |
| 47 | 17.1641 | 0.68657 | 0.31343 | 102 | 1.8114 | 0.07246 | 0.92754 |
| 48 | 16.9123 | 0.67649 | 0.32351 | 103 | 1.6939 | 0.06776 | 0.93224 |
| 49 | 16.6543 | 0.66617 | 0.33383 | 104 | 1.5858 | 0.06343 | 0.93657 |
| 50 | 16.3895 | 0.65558 | 0.34442 | 105 | 1.4793 | 0.05917 | 0.94083 |
| 51 | 16.1180 | 0.64472 | 0.35528 | 106 | 1.3461 | 0.05384 | 0.94616 |
| 52 | 15.8397 | 0.63359 | 0.36641 | 107 | 1.1952 | 0.04781 | 0.95219 |
| 53 | 15.5548 | 0.62219 | 0.37781 | 108 | 0.9523 | 0.03809 | 0.96191 |
| 54 | 15.2638 | 0.61055 | 0.38945 | 109 | 0.4808 | 0.01923 | 0.98077 |

## Table S - Based on Life Table 2010CM (PROPOSED)

### Interest at 4.0 Percent

| Age | Annuity | Life Estate | Remainder | Age | Annuity | Life Estate | Remainder |
|---|---|---|---|---|---|---|---|
| 0 | 23.4235 | 0.93694 | 0.06306 | 55 | 15.5329 | 0.62132 | 0.37868 |
| 1 | 23.5088 | 0.94035 | 0.05965 | 56 | 15.2512 | 0.61005 | 0.38995 |
| 2 | 23.4590 | 0.93836 | 0.06164 | 57 | 14.9636 | 0.59855 | 0.40145 |
| 3 | 23.4040 | 0.93616 | 0.06384 | 58 | 14.6702 | 0.58681 | 0.41319 |
| 4 | 23.3452 | 0.93381 | 0.06619 | 59 | 14.3709 | 0.57484 | 0.42516 |
| 5 | 23.2829 | 0.93132 | 0.06868 | 60 | 14.0655 | 0.56262 | 0.43738 |
| 6 | 23.2178 | 0.92871 | 0.07129 | 61 | 13.7539 | 0.55016 | 0.44984 |
| 7 | 23.1496 | 0.92598 | 0.07402 | 62 | 13.4360 | 0.53744 | 0.46256 |
| 8 | 23.0784 | 0.92314 | 0.07686 | 63 | 13.1116 | 0.52446 | 0.47554 |
| 9 | 23.0040 | 0.92016 | 0.07984 | 64 | 12.7811 | 0.51125 | 0.48875 |
| 10 | 22.9263 | 0.91705 | 0.08295 | 65 | 12.4451 | 0.49780 | 0.50220 |
| 11 | 22.8453 | 0.91381 | 0.08619 | 66 | 12.1044 | 0.48418 | 0.51582 |
| 12 | 22.7612 | 0.91045 | 0.08955 | 67 | 11.7602 | 0.47041 | 0.52959 |
| 13 | 22.6744 | 0.90698 | 0.09302 | 68 | 11.4122 | 0.45649 | 0.54351 |
| 14 | 22.5854 | 0.90342 | 0.09658 | 69 | 11.0607 | 0.44243 | 0.55757 |
| 15 | 22.4947 | 0.89979 | 0.10021 | 70 | 10.7050 | 0.42820 | 0.57180 |
| 16 | 22.4022 | 0.89609 | 0.10391 | 71 | 10.3457 | 0.41383 | 0.58617 |
| 17 | 22.3078 | 0.89231 | 0.10769 | 72 | 9.9834 | 0.39934 | 0.60066 |
| 18 | 22.2114 | 0.88846 | 0.11154 | 73 | 9.6193 | 0.38477 | 0.61523 |
| 19 | 22.1130 | 0.88452 | 0.11548 | 74 | 9.2540 | 0.37016 | 0.62984 |
| 20 | 22.0124 | 0.88050 | 0.11950 | 75 | 8.8883 | 0.35553 | 0.64447 |
| 21 | 21.9097 | 0.87639 | 0.12361 | 76 | 8.5217 | 0.34087 | 0.65913 |
| 22 | 21.8048 | 0.87219 | 0.12781 | 77 | 8.1557 | 0.32623 | 0.67377 |
| 23 | 21.6971 | 0.86788 | 0.13212 | 78 | 7.7901 | 0.31160 | 0.68840 |
| 24 | 21.5856 | 0.86342 | 0.13658 | 79 | 7.4285 | 0.29714 | 0.70286 |
| 25 | 21.4698 | 0.85879 | 0.14121 | 80 | 7.0693 | 0.28277 | 0.71723 |
| 26 | 21.3492 | 0.85397 | 0.14603 | 81 | 6.7144 | 0.26858 | 0.73142 |
| 27 | 21.2239 | 0.84896 | 0.15104 | 82 | 6.3639 | 0.25456 | 0.74544 |
| 28 | 21.0936 | 0.84374 | 0.15626 | 83 | 6.0189 | 0.24076 | 0.75924 |
| 29 | 20.9584 | 0.83834 | 0.16166 | 84 | 5.6776 | 0.22710 | 0.77290 |
| 30 | 20.8183 | 0.83273 | 0.16727 | 85 | 5.3497 | 0.21399 | 0.78601 |
| 31 | 20.6732 | 0.82693 | 0.17307 | 86 | 5.0319 | 0.20128 | 0.79872 |
| 32 | 20.5229 | 0.82091 | 0.17909 | 87 | 4.7272 | 0.18909 | 0.81091 |
| 33 | 20.3671 | 0.81469 | 0.18531 | 88 | 4.4361 | 0.17744 | 0.82256 |
| 34 | 20.2058 | 0.80823 | 0.19177 | 89 | 4.1589 | 0.16636 | 0.83364 |
| 35 | 20.0386 | 0.80154 | 0.19846 | 90 | 3.8961 | 0.15585 | 0.84415 |
| 36 | 19.8655 | 0.79462 | 0.20538 | 91 | 3.6479 | 0.14592 | 0.85408 |
| 37 | 19.6865 | 0.78746 | 0.21254 | 92 | 3.4143 | 0.13657 | 0.86343 |
| 38 | 19.5017 | 0.78007 | 0.21993 | 93 | 3.1954 | 0.12782 | 0.87218 |
| 39 | 19.3111 | 0.77244 | 0.22756 | 94 | 2.9909 | 0.11964 | 0.88036 |
| 40 | 19.1147 | 0.76459 | 0.23541 | 95 | 2.8006 | 0.11202 | 0.88798 |
| 41 | 18.9126 | 0.75650 | 0.24350 | 96 | 2.6241 | 0.10496 | 0.89504 |
| 42 | 18.7047 | 0.74819 | 0.25181 | 97 | 2.4609 | 0.09843 | 0.90157 |
| 43 | 18.4914 | 0.73966 | 0.26034 | 98 | 2.3104 | 0.09242 | 0.90758 |
| 44 | 18.2731 | 0.73092 | 0.26908 | 99 | 2.1719 | 0.08688 | 0.91312 |
| 45 | 18.0497 | 0.72199 | 0.27801 | 100 | 2.0446 | 0.08178 | 0.91822 |
| 46 | 17.8212 | 0.71285 | 0.28715 | 101 | 1.9273 | 0.07709 | 0.92291 |
| 47 | 17.5873 | 0.70349 | 0.29651 | 102 | 1.8186 | 0.07274 | 0.92726 |
| 48 | 17.3480 | 0.69392 | 0.30608 | 103 | 1.7161 | 0.06864 | 0.93136 |
| 49 | 17.1038 | 0.68415 | 0.31585 | 104 | 1.6162 | 0.06465 | 0.93535 |
| 50 | 16.8548 | 0.67419 | 0.32581 | 105 | 1.5122 | 0.06049 | 0.93951 |
| 51 | 16.6011 | 0.66404 | 0.33596 | 106 | 1.3914 | 0.05565 | 0.94435 |
| 52 | 16.3424 | 0.65370 | 0.34630 | 107 | 1.2274 | 0.04909 | 0.95091 |
| 53 | 16.0783 | 0.64313 | 0.35687 | 108 | 0.9645 | 0.03858 | 0.96142 |
| 54 | 15.8086 | 0.63234 | 0.36766 | 109 | 0.4808 | 0.01923 | 0.98077 |