2018 SUPPLEMENT

TO

FEDERAL TAXATION OF ESTATES, TRUSTS, AND GIFTS

FOURTH EDITION

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Preface

This Supplement includes important 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.

The Appendix includes certain inflation-adjusted amounts for 2018 and valuation tables based on an interest rate of 2%, which is the rate used in the Problems and elsewhere in the Fourth Edition, [1] as well as interest rates of 3.0%-4.0% to reflect the recent increase in rates. Because the applicable interest rate is determined monthly,[2] you can find the applicable valuation tables for other rates by using the following link: http://www.irs.gov/Retirement-Plans/Actuarial-Tables.

We wish to express our appreciation to Theresa Colbert, legal assistant at Albany Law School, and Greg Kiley, Albany Law School, Class of 2019, for their invaluable assistance in preparing this Supplement.

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[1] For most Text Problems and Examples, the year 2018 can be used instead of the year 2014. Your professor may also want you to calculate values based on the current interest rate.
[2] For August 2018 the applicable rate was 3.4%. *See Rev.* Rul. 2018-21, I.R.B. 2018-32.

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.

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 2018, the exemption amount is $11,180,000. *See* Rev. Proc. 2018-18, 2018-10 I.R.B. 392.

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 $6 Million, there could be a potential tax on the gift over the exclusion amount for 2026. It is likely that the regulations will prevent the clawback effect from taking place.

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 § 010(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.

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

The IRS Data Book for 2017 reveals that estate and gift tax collections were $22.7 Billion, which was only 0.8% of all taxes collected by the IRS in 2017.

Page 24:

After "imposition of liens" in1st 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 both underpayments and overpayments is currently 5%. *See* Rev. Rul. 2018-18, I.R.B. 2018-26.

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

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 2018, the gift tax annual exclusion was increased from $14,000 in 2017 to $15,000. *See* Rev. Proc. Rev. Proc. 2017-58, 2017-45 I.R.B. 48.

Pages 38-39: In Problems 1d., 2d. and 3c. substitute 2018 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 2018, D makes a taxable gift in the amount of $ 11,500,000, 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 2018 but made taxable gifts of $12,000,000 in 2018? 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 2019 instead of in 2018? Carefully consider § 2010(c)(2)(B) in relation to § 2502(a)(1).

Page 43: For Problem 1, substitute 2017 for 2014.

Page 44: For Problem 2, substitute 2018 for 2015.

Add new Problem 3:

a. D died in 2018 with a taxable estate of $12,000,000 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 2019 instead of in 2018? Consider §§ 2001 and 2010.

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

Page 48: Add Problem 3 as follows:

What would be the estate tax payable in Examples 1, 2 and 3 on Pages 45 and 46 if D died in 2018?

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

for 2018 the GST exemption is $11,180,000.

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 $11,180,000 in 2018)

Replace 2014 with 2018 in **Example 1**.

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

Assume the grandparent's GST exemption of $11,180,00 was fully allocated before the grandparent died in August 2018.

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 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 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.

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 2018, the standard deduction, which will be adjusted annually for inflation, ranges from $24,000 for

married individuals filing jointly and surviving spouses to $12,000 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.,* Rev. Proc. 2018-18 (prescribing rate table amounts for 2018).

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 taxable income that exceeded $ 470,700 was taxed at 39.6% whereas in 2018 taxable income must exceed $600,000 before it will be taxed at the 37% bracket. Rev. Proc. 2018-18, which is set forth in part on Supplement Pages 55-57**,** provides the applicable inflation-adjusted amounts for the year 2018.

For 2019 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).

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 and at 15% for most others. *See* § 1(h). There are many exceptions,

Add as last sentence to last full paragraph:

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:

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 will be more significant.

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 60: Add as Problem 5:

5. Should Congress act to repeal § 1014 and treat the decedent's death as a taxable event for income tax purposes?

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

($1,050 in 2018).

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 will net unearned income of a child be taxed as if earned by a parent. Instead net unearned income, which will be the excess of a child's unearned income over $2,100 in 2018, will be effectively taxed to the child by adapting the truncated rate table for trusts and estates. This change will likely increase the Kiddie Tax for many taxpayers.

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

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

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

In 2018, trust income in excess of $12,500 is taxed at the top rate of 37%. FN 63

FN 63: *See* Rev. Proc. 2018-18, § 3.01, Table 5, reproduced on Supplement Page 57. 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 2018 the maximum amount that could have been saved by having taxable income of $12,500 taxed at brackets below 37% was $1,613.

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. 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.[7] 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?[8] The second area of uncertainty involves those non-community states (Alaska, Arkansas, 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 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.

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.

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

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

Add after 1st sentence in last paragraph:

See, e.g., Estate of Kollsman v. Commissioner, T.C. Memo 2017-40 (2017).

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 in1st 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).

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).

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 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 administaror 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.

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 sentence "Outright devises . . . lessen the estate tax.", add FN 109A as follows:

109A 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, in unusual cases the charitable deduction amount may be less. *See Estate of Dieringer. v. Commissioner,* 146 T.C. No. 8 (2016) (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).

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%.[9] The remainder factor at 2.0% for an individual aged 77 is 0.83515. By converting the remainder factor to an annuity factor,[10] 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).

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[9] 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.
[10] *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 . . .

CHAPTER 4: GIFT TAXATION BASICS

Page 215: 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 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. President Obama has proposed limiting the annual exclusion for *Crummey* demand powers to an annual amount of $50,000. *See* Supplement Page 51. Do you agree with this proposal?

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).

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.[11] 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.[12] 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.[13]

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[11] 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.

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

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

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)(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 287: 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. 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 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 2018, the GST exemption is $11,180,000. After 2025, the GST exemption is expected to revert to $5 million, as indexed for inflation.

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. For 2018, the GST exemption is $11,180,000. 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*, 2018-1 U.S.T.C. ¶60,705 (N.D. Cal. May 17, 2018), 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).

Page 388: 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 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).

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.

CHAPTER 8: REVOCABLE TRANSFERS

Page 434: In *Estate of Powell v. Commissioner*, 148 T.C. No. 18 (May 18, 2017), 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.

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. No. 18 (May 18, 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. No. 18 (May 18, 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.

Purported Gift of Decedent's Limited Partner Interest in NHP

[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. Applicability of Section 2036(a) or Section 2035(a) to Transfer to NHP

A. Respondent's Argument

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. Applicability of Section 2043(a) in the Present Cases

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. Conclusion

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 a provocative discussion of *Powell, see* Mitchell M. Gans & Jonathan G. Blattmachr, *Family Limited Partnerships and Section 2036: Not Such a Good Fit*, 42 ACTEC L.J 253 (2017); Mitchell M. Gans & Jonathan G. Blattmachr, *Powell and Section 2036:Our Reply,* 42 ACTEC L.J, 299 (2017) Ronald H. Jensen, *Commentary*, 42 ACTEC L. J. 293(2017).

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. 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 has 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).

Note, on the other hand, 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.

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. No. 11 (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 2018 is $18,500, 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—$24,500 in 2018—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 2018, the defined contribution limit is $55,000.

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

For 2018, the defined benefit limit is $220,000.

Page 558: The fourth full sentence should read:

The amount in 2018 is $5,500.

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

Based on inflation adjustments, the applicable deduction amount for 2018 is follows: The deduction will be disallowed entirely if an unmarried, active participant's modified AGI is $73,000 or more, and $121,000 or more if a joint return is filed. If the individual is not an active participant but his or her spouse is, then the IRA deduction will be disallowed if the couple's modified AGI exceeds $199,000 or more.

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 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 2016, she will mark her 78th birthday. The MRD for 2016 will be the value in the account on December 31, 2015 divided by 20.3, which is the life expectancy factor for a person age 78 under the Uniform Distribution Table. Assuming the account balance on December 31, 2013 was $203,000, Alice must receive a MRD of $10,000 ($203,000/20.3) in 2016. 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).

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 Page 41.

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: At the end of the first full paragraph, 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 section 67(e)(1) and amounts allowable as deductions under section 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 section 67(a) is suspended pursuant to section 67(g). Additionally, the regulations will clarify that deductions enumerated in section 67(b) and (e) continue to remain outside the definition of "miscellaneous itemized deductions" and thus are unaffected by section 67(g).

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.

Page 696: 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).

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).

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 ($12,500 in 2016).

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.

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 after "**President Obama's 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.[10] (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.

[10] 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.

- 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.

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.

The Obama Administration's actual proposal for capital gains reform for the Fiscal Year 2017 is set forth on Supplement Pages 53-54.

Page 794:

Text Pages 794-802 set out several reform proposals in for the fiscal year 2014. Many of these proposals were continued for subsequent fiscal years, including for the most recent fiscal year 2017. A few of the proposals in the text were significantly modified, including proposals relating to consistency in value (Text Pages 795-797), GRATS (Text Pages 797-798) and grantor trusts (Text Pages 799-800). These modified proposals, along with new proposals involving the gift tax annual exclusion and executors, are set forth below.

General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals
Department of the Treasury
February 2016[11]

EXPAND REQUIREMENT OF CONSISTENCY IN VALUE FOR TRANSFER AND INCOME TAX PURPOSES

Current Law

Section 1014 provides that the basis of property acquired from a decedent generally is the fair market value of the property on the decedent's date of death. Similarly, property included in the decedent's gross estate for estate tax purposes generally must be valued at its fair market value on the date of death. Although the same valuation standard applies to both provisions, until the enactment on July 31, 2015, of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (the Act), there was no requirement that the recipient's basis in that property be the same as the value reported for estate tax purposes. This Act amended section 1014 to provide generally that the recipient's initial basis in property as determined under section 1014 cannot exceed the final value of that property for estate tax purposes. This consistency requirement applies to property whose inclusion in the decedent's gross estate increases the estate's liability for federal estate tax.

Reasons for Change

Because the consistency requirement enacted in 2015 applies only to the particular items of property that generate a federal estate tax, the requirement does not apply to property transferred by gift, or to property that qualifies for the estate tax marital or charitable deduction, or to any property of an estate with a total value that does not exceed the applicable exclusion amount ($5,450,000 for 2016). Although the exclusion of property given on death to charities (tax-exempt organizations) has only a minimal impact for income tax purposes, there is a possible effect on the annual excise tax imposed on certain such organizations. However, the exclusion from the application of the consistency requirement of property qualifying for the estate tax marital deduction is significant because an unlimited amount of property may qualify for the estate tax marital deduction in a decedent's estate tax proceeding. Although it is true that the value of such property

[11] This document, which was once available online at https://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2017.pdf., has been removed. Several federal transfer tax proposals for fiscal year 2014, which are found in the text beginning at Page 794, are continued for fiscal year 2017 and are not reproduced in this Supplement.

passing to the decedent's surviving spouse may be increased without incurring any federal estate tax, and a high estate tax value provides a high cap on the recipient's permissible basis, current law contains provisions to prevent an inaccurately high estate tax valuation. Specifically, the executor certifies to the accuracy of the information on the estate tax return under penalties of perjury, and significant underpayment penalties are imposed on the understatement of capital gains and thus income tax that would result from an overstatement of basis.

Proposal

The proposal would expand the property subject to the consistency requirement imposed under section 1014(f) to also include (1) property qualifying for the estate tax marital deduction, provided a return is required to be filed under section 6018, even though that property does not increase the estate's federal estate tax liability, and (2) property transferred by gift, provided that the gift is required to be reported on a federal gift tax return.

The proposal would be effective for transfers after the year of enactment.

MODIFY TRANSFER TAX RULES FOR GRANTOR RETAINED ANNUITY TRUSTS (GRATS) AND OTHER GRANTOR TRUSTS

Current Law

Section 2702 provides that, if an interest in a trust is transferred to a family member, any interest retained by the grantor is valued at zero for purposes of determining the transfer tax value of the gift to the family member(s). This rule does not apply if the retained interest is a "qualified interest." A fixed annuity, such as the annuity interest retained by the grantor of a GRAT, is one form of qualified interest, so the value of the gift of the remainder interest in the GRAT is determined by deducting the present value of the retained annuity during the GRAT term from the fair market value of the property contributed to the trust.

Generally, a GRAT is an irrevocable trust funded with assets expected to appreciate in value, in which the grantor retains an annuity interest for a term of years that the grantor expects to survive. At the end of that term, the assets then remaining in the trust are transferred to (or held in further trust for) the beneficiaries. The value of the grantor's retained annuity is based in part on the applicable Federal rate under section 7520 in effect for the month in which the GRAT is created. Therefore, to the extent the GRAT's assets appreciate at a rate that exceeds that statutory interest rate, that appreciation will have been transferred, free of gift tax, to the remainder beneficiary or beneficiaries of the GRAT.

If the grantor dies during the GRAT term, the trust assets (at least the portion needed to produce the retained annuity) are included in the grantor's gross estate for estate tax purposes. To this extent, although the beneficiaries will own the remaining trust assets, the estate tax benefit of creating the GRAT (specifically, the tax-free transfer of the appreciation during the GRAT term in excess of the annuity payments) is not realized.

Another popular method of removing an asset's future appreciation from one's gross estate for estate tax purposes, while avoiding transfer and income taxes, is the sale of the asset to a grantor trust of which the seller is the deemed owner for income tax purposes. A grantor trust is a trust, whether revocable or irrevocable, of which an individual is treated as the owner for income tax purposes. Thus, for income tax purposes, a grantor trust is taxed as if the deemed owner had owned the trust assets directly, and the deemed owner and the trust are treated as the same person. This results in transactions between the trust and the deemed owner being ignored for income tax purposes; specifically, no capital gain is recognized when an appreciated asset is sold by the deemed owner to the trust. For transfer tax purposes, however, the trust and the deemed owner are separate persons and, under certain circumstances, the trust is not included in the deemed owner's gross estate for estate tax purposes at the death of the deemed owner. In this way, the post-sale appreciation has been removed from the deemed owner's estate for estate tax purposes.

Reasons for Change

GRATs and sales to grantor trusts are used for transferring wealth while minimizing the gift and income tax cost of transfers. In both cases, the greater the post-transaction appreciation, the greater the transfer tax benefit achieved. The gift tax cost of a GRAT often is essentially eliminated by minimizing the term of the GRAT (thus reducing the risk of the grantor's death during the term), and by retaining an annuity interest significant enough to reduce the gift tax value of the remainder interest to close to zero. In addition, with both GRATs and sales to grantor trusts, future capital gains taxes can be avoided by the grantor's purchase at fair market value of the appreciated asset from the trust and the subsequent inclusion of that asset in the grantor's gross estate at death. Under current law, the basis in that asset is then adjusted (in this case, "stepped up") to its fair market value at the time of the grantor's death, often at an estate tax cost that has been significantly reduced or entirely eliminated by the grantor's lifetime exclusion from estate tax.

Proposal

The proposal would require that a GRAT have a minimum term of ten years and a maximum term of the life expectancy of the annuitant plus ten years to impose some downside risk in the use of a GRAT. The proposal also would include a requirement that the remainder interest in the GRAT at the time the interest is created must have a minimum value equal to the greater of 25 percent of the value of the assets contributed to the GRAT or $500,000 (but not more than the value of the assets contributed). In addition, the proposal would prohibit any decrease in the annuity during the GRAT term, and would prohibit the grantor from engaging in a tax-free exchange of any asset held in the trust.

If a person who is a deemed owner under the grantor trust rules of all or a portion of any other type of trust engages in a transaction with that trust that constitutes a sale, exchange, or comparable transaction that is disregarded for income tax purposes by reason of the person's treatment as a deemed owner of the trust, then the portion of the trust attributable to the property received by the trust in that transaction (including all retained income therefrom, appreciation thereon, and reinvestments thereof, net of the amount of the consideration received by the person in that transaction) would be subject to estate tax as part of the gross estate of the deemed owner, would be subject to gift tax at any time during the deemed owner's life when his or her treatment as a deemed owner of the trust

is terminated, and would be treated as a gift by the deemed owner to the extent any distribution is made to another person (except in discharge of the deemed owner's obligation to the distribute) during the life of the deemed owner. The proposal would reduce the amount subject to transfer tax by any portion of that amount that was treated as a prior taxable gift by the deemed owner. The transfer tax imposed by this proposal would be payable from the trust.

The proposal would not change the treatment of any trust that already is includable in the grantor's gross estate under existing provisions of the Code, including without limitation the following: grantor retained income trusts; grantor retained annuity trusts; personal residence trusts; and qualified personal residence trusts. Similarly, it would not apply to any trust having the exclusive purpose of paying deferred compensation under a nonqualified deferred compensation plan if the assets of such trust are available to satisfy claims of general creditors of the grantor. It also would not apply to any irrevocable trust whose only assets typically consist of one or more life insurance policies on the life of the grantor and/or the grantor's spouse.

The proposal as applicable to GRATs would apply to GRATs created after the date of enactment. The proposal as applicable to other grantor trusts would be effective with regard to trusts that engage in a described transaction on or after the date of enactment. Regulatory authority would be granted, including the ability to create exceptions to this provision.

SIMPLIFY GIFT TAX EXCLUSION FOR ANNUAL GIFTS

Current Law

The first $14,000 of gifts made to each donee in 2016 is excluded from the donor's taxable gifts (and therefore does not use up any of the donor's applicable exclusion amount for gift and estate tax purposes). This annual gift tax exclusion is indexed for inflation and there is no limit on the number of donees to whom such excluded gifts may be made by a donor in any one year. To qualify for this exclusion, each gift must be of a present interest rather than a future interest in the donated property. For these purposes, a present interest is an unrestricted right to the immediate use, possession, or enjoyment of property or the income from property (including life estates and term interests). Generally, a contribution to a trust for the donee is a future interest.

Reasons for Change

To take advantage of this annual gift tax exclusion without having to transfer the property outright to the donee, a donor often contributes property to a trust and gives each trust beneficiary (donee) a *Crummey* power. *Crummey* powers are used particularly in irrevocable trusts to hold property for the benefit of minor children.

In order for a *Crummey* power to convert a donor's transfer into the gift of a present interest, the trustee of the recipient trust must timely notify each beneficiary of the existence and scope of his or her right to withdraw funds from the trust. If the appropriate records cannot be produced at the time of any gift or estate tax audit of the grantor, the gift tax exclusion may be denied to the grantor, thereby causing retroactive changes in the grantor's tax liabilities and remaining applicable exclusion amount. Because of the

common use of these withdrawal powers, the number of beneficiaries typically involved, and the differing terms of each such withdrawal power, the cost to taxpayers of complying with the *Crummey* rules is significant, as is the cost to IRS of enforcing the rules.

In addition, the IRS is concerned about the lack of a limit on the number of beneficiaries to whom *Crummey* powers are given. The IRS's concern has been that *Crummey* powers could be given to multiple discretionary beneficiaries, most of whom would never receive a distribution from the trust, and thereby inappropriately exclude from gift tax a large total amount of contributions to the trust. (For example, a power could be given to each beneficiary of a discretionary trust for the grantor's descendants and friendly accommodation parties in the hope that the accommodation parties will not exercise their *Crummey* powers.) The IRS has sought (unsuccessfully) to limit the number of available *Crummey* powers by requiring each powerholder to have some meaningful vested economic interest in the trust over which the power extends. See Estate of Cristofani v. Comm*issione*r, 97 T.C. 74 (1991); Kohlsaat v. Comm*issione*r, 73 TCM 2732 (1997).

Proposal

The proposal would eliminate the present interest requirement for gifts that qualify for the gift tax annual exclusion. Instead, the proposal would define a new category of transfers (without regard to the existence of any withdrawal or put rights), and would impose an annual limit of $50,000 (indexed for inflation after 2017) per donor on the donor's transfers of property within this new category that will qualify for the gift tax annual exclusion. This new $50,000 per-donor limit would not provide an exclusion in addition to the annual per-donee exclusion; rather, it would be a further limit on those amounts that otherwise would qualify for the annual per-donee exclusion. Thus, a donor's transfers in the new category in a single year in excess of a total amount of $50,000 would be taxable, even if the total gifts to each individual donee did not exceed $14,000. The new category would include transfers in trust (other than to a trust described in section 2642(c)(2)), transfers of interests in passthrough entities, transfers of interests subject to a prohibition on sale, and other transfers of property that, without regard to withdrawal, put, or other such rights in the donee, cannot immediately be liquidated by the donee.

The proposal would be effective for gifts made after the year of enactment.

EXPAND APPLICABILITY OF DEFINITION OF EXECUTOR

Current Law

The Code defines "executor" for purposes of the estate tax to be the person who is appointed, qualified, and acting within the United States as executor or administrator of the decedent's estate or, if none, then "any person in actual or constructive possession of any property of the decedent." This could include, for example, the trustee of the decedent's revocable trust, an IRA or life insurance beneficiary, or a surviving joint tenant of jointly owned property.

Reasons for Change

Because the Code's definition of executor currently applies only for purposes of the estate tax, no one (including the decedent's surviving spouse who filed a joint income tax return)

has the authority to act on behalf of the decedent with regard to a tax liability that arose prior to the decedent's death. Thus, there is no one with authority to extend the statute of limitations, claim a refund, agree to a compromise or assessment, or pursue judicial relief in connection with the decedent's share of a tax liability. This problem has started to arise with more frequency as reporting obligations, particularly with regard to an interest in a foreign asset or account, have increased, and survivors have attempted to resolve a decedent's failure to comply.

In addition, in the absence of an appointed executor, multiple persons may meet the definition of "executor" and, on occasion, more than one of them has each filed a separate estate tax return for the decedent's estate or made conflicting tax elections.

Proposal

To empower an authorized party to act on behalf of the decedent in all matters relating to the decedent's tax liabilities (whether arising before, upon, or after death), the proposal would expressly make the tax code's definition of executor applicable for all tax purposes, and authorize such executor to do anything on behalf of the decedent in connection with the decedent's pre-death tax liabilities or obligations that the decedent could have done if still living. In addition, the proposal would grant regulatory authority to adopt rules to resolve conflicts among multiple executors authorized by this provision.

The proposal would apply upon enactment, regardless of a decedent's date of death.

Based on the FACT SHEET, set forth on Supplement Pages 44-46, 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.[12]

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

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[12] 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 areas, These and the many other proposals contained in the Fiscal Year 2017 Revenue Proposals can be found at http://www.treasury.gov/resource-center/tax-policy/Pages/general_explanation.aspx.

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 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.

APPENDIX

Rev. Proc. 2018-18, 2018-10 I.R.B. 392

SECTION 1. PURPOSE

This revenue procedure modifies and supersedes certain sections of Rev. Proc. 2017-58, 2017-45 I.R.B. 489, and supersedes Rev. Proc. 2017-37, 2017-21 I.R.B. 1252, to reflect statutory amendments by An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. 115-97, 131 Stat. 2504 (the Act).

SECTION 3. 2018 ADJUSTED ITEMS AS MODIFIED AND SUPERSEDED

.01 Tax Rate Tables. For taxable years beginning in 2018, the tax rate tables under § 1 are as follows:

TABLE 1 - Section 1 (a) - Married Individuals Filing Joint Returns and Surviving Spouses

If Taxable Income Is:	The Tax Is:
Not over $19,050	10% of the taxable income
Over $19,050 but not over $77,400	$1,905 plus 12% of the excess over $19,050
Over $77,400 but not over $165,000	$8,907 plus 22% of the excess over $77,400
Over $165,000 but not over $315,000	$28,179 plus 24% of the excess over $165,000
Over $315,000 but not over $400,000	$64,179 plus 32% of the excess over $315,000
Over $400,000 but not over $600,000	$91,379 plus 35% of the excess over $400,000
Over $600,000	$161,379 plus 37% of the excess over $600,000

TABLE 2 - Section 1 (b) - Heads of Households

If Taxable Income Is:	The Tax Is:
Not over $13,600	10% of the taxable income
Over $13,600 but not over $51,800	$1,360 plus 12% of the excess over $13,600
Over $51,800 but not over $82,500	$5,944 plus 22% of the excess over $51,800
Over $82,500 but not over $157,500	$12,698 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$30,698 plus 32% of the excess over $157,500
Over $200,000 but not over $500,000	$44,298 plus 35% of the excess over $200,000
Over $500,000	$149,298 plus 37% of the excess over

If Taxable Income Is:	The Tax Is:
	$500,000

TABLE 3 - Section 1 (c) - Unmarried Individuals (other than Surviving Spouses and Heads of Households)

If Taxable Income Is:	The Tax Is:
Not over $9,525	10% of the taxable income
Over $9,525 but not over $38,700	$952.50 plus 12% of the excess over $9,525
Over $38,700 but not over $82,500	$4,453.50 plus 22% of the excess over $38,700
Over $82,500 but not over $157,500	$14,089.50 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$32,089.50 plus 32% of the excess over $157,500
Over $200,000 but not over $500,000	$45,689.50 plus 35% of the excess over $200,000
Over $500,000	$150,689.50 plus 37% of the excess over $500,000

TABLE 4 - Section 1 (d) - Married Individuals Filing Separate Returns

If Taxable Income Is:	The Tax Is:
Not over $9,525	10% of the taxable income
Over $9,525 but not over $38,700	$952.50 plus 12% of the excess over $9,525
Over $38,700 but not over $82,500	$4,453.50 plus 22% of the excess over $38,700
Over $82,500 but not over $157,500	$14,089.50 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$32,089.50 plus 32% of the excess over $157,500
Over $200,000 but not over $300,000	$45,689.50 plus 35% of the excess over $200,000
Over $300,000	$80,689.50 plus 37% of the excess over $300,000

TABLE 5 - Section 1 (e) - Estates and Trusts

If Taxable Income Is:	The Tax Is:
Not over $2,550	10% of the taxable income
Over $2,550 but not over $9,150	$255 plus 24% of the excess over $2,550
Over $9,150 but not over $12,500	$1,839 plus 35% of the excess over $9,150
Over $12,500	$3,011.50 plus 37% of the excess over $12,500

.14 Standard Deduction.

(1) In general. For taxable years beginning in 2018, the standard deduction amounts under § 63 (c) (2) are as follows:

Filing Status	Standard Deduction
Married Individuals Filing Joint Returns and Surviving Spouses (§ 1 (a))	$24,000
Heads of Households (§ 1 (b))	$18,000
Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1 (c))	$12,000
Married Individuals Filing Separate Returns (§ 1 (d))	$12,000

(2) Dependent. For taxable years beginning in 2018, 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) $1,050, or (2) the sum of $350 and the individual's earned income.

(3) Aged or blind. For taxable years beginning in 2018, the additional standard deduction amount under § 63 (f) for the aged or the blind is $1,300. The additional standard deduction amount is increased to $1,600 if the individual is also unmarried and not a surviving spouse.

.15 Overall Limitation on Itemized Deductions. For taxable years beginning in 2018, the overall limitation on itemized deductions under § 68 does not apply.

24 *Personal Exemption*. For taxable years beginning in 2018, the personal exemption amount under § 151(d) is $0.

.35 *Unified Credit Against Estate Tax*. For an estate of any decedent dying in calendar year 2018, the basic exclusion amount is $11,180,000 for determining the amount of the unified credit against estate tax under § 2010.

36 Valuation of Qualified Real Property in Decedent's Gross Estate. For an estate of a decedent dying in calendar year 2018, 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 $1,140,000.

.37 Annual Exclusion for Gifts.

(1) For calendar year 2018, the first $15,000 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 2018, the first $152,000 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.

Actuarial Tables

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

Section 3

Table B

Annuity, Income, and Remainder Interests for a Term Certain

	3.0% Interest Rates				3.2%		
Years	Annuity	Income Interest	Remainder	Years	Annuity	Income Interest	Remainder
1	0.9709	0.029126	0.970874	1	0.9690	0.031008	0.968992
2	1.9135	0.057404	0.942596	2	1.9079	0.061054	0.938946
3	2.8286	0.084858	0.915142	3	2.8178	0.090169	0.909831
4	3.7171	0.111513	0.888487	4	3.6994	0.118380	0.881620
5	4.5797	0.137391	0.862609	5	4.5537	0.145717	0.854283
6	5.4172	0.162516	0.837484	6	5.3815	0.172207	0.827793
7	6.2303	0.186908	0.813092	7	6.1836	0.197875	0.802125
8	7.0197	0.210591	0.789409	8	6.9608	0.222747	0.777253
9	7.7861	0.233583	0.766417	9	7.7140	0.246848	0.753152
10	8.5302	0.255906	0.744094	10	8.4438	0.270201	0.729799
11	9.2526	0.277579	0.722421	11	9.1510	0.292831	0.707169
12	9.9540	0.298620	0.701380	12	9.8362	0.314759	0.685241
13	10.6350	0.319049	0.680951	13	10.5002	0.336006	0.663994
14	11.2961	0.338882	0.661118	14	11.1436	0.356595	0.643405
15	11.9379	0.358138	0.641862	15	11.7671	0.376546	0.623454
16	12.5611	0.376833	0.623167	16	12.3712	0.395878	0.604122
17	13.1661	0.394984	0.605016	17	12.9566	0.414610	0.585390
18	13.7535	0.412605	0.587395	18	13.5238	0.432762	0.567238
19	14.3238	0.429714	0.570286	19	14.0735	0.450351	0.549649
20	14.8775	0.446324	0.553676	20	14.6061	0.467394	0.532606
21	15.4150	0.462451	0.537549	21	15.1222	0.483909	0.516091
22	15.9369	0.478107	0.521893	22	15.6222	0.499912	0.500088
23	16.4436	0.493308	0.506692	23	16.1068	0.515418	0.484582
24	16.9355	0.508066	0.491934	24	16.5764	0.530444	0.469556
25	17.4131	0.522394	0.477606	25	17.0314	0.545004	0.454996
26	17.8768	0.536305	0.463695	26	17.4723	0.559112	0.440888
27	18.3270	0.549811	0.450189	27	17.8995	0.572783	0.427217
28	18.7641	0.562923	0.437077	28	18.3134	0.586030	0.413970
29	19.1885	0.575654	0.424346	29	18.7146	0.598867	0.401133
30	19.6004	0.588013	0.411987	30	19.1033	0.611305	0.388695
31	20.0004	0.600013	0.399987	31	19.4799	0.623357	0.376643
32	20.3888	0.611663	0.388337	32	19.8449	0.635036	0.364964
33	20.7658	0.622974	0.377026	33	20.1985	0.646353	0.353647
34	21.1318	0.633955	0.366045	34	20.5412	0.657319	0.342681
35	21.4872	0.644617	0.355383	35	20.8733	0.667945	0.332055
36	21.8323	0.654968	0.345032	36	21.1950	0.678241	0.321759
37	22.1672	0.665017	0.334983	37	21.5068	0.688218	0.311782
38	22.4925	0.674774	0.325226	38	21.8089	0.697886	0.302114
39	22.8082	0.684246	0.315754	39	22.1017	0.707253	0.292747
40	23.1148	0.693443	0.306557	40	22.3853	0.716331	0.283669
41	23.4124	0.702372	0.297628	41	22.6602	0.725127	0.274873
42	23.7014	0.711041	0.288959	42	22.9266	0.733650	0.266350
43	23.9819	0.719457	0.280543	43	23.1847	0.741909	0.258091
44	24.2543	0.727628	0.272372	44	23.4347	0.749912	0.250088
45	24.5187	0.735561	0.264439	45	23.6771	0.757666	0.242334
46	24.7754	0.743263	0.256737	46	23.9119	0.765181	0.234819
47	25.0247	0.750741	0.249259	47	24.1394	0.772462	0.227538
48	25.2667	0.758001	0.241999	48	24.3599	0.779517	0.220483
49	25.5017	0.765050	0.234950	49	24.5736	0.786354	0.213646
50	25.7298	0.771893	0.228107	50	24.7806	0.792979	0.207021
51	25.9512	0.778537	0.221463	51	24.9812	0.799398	0.200602
52	26.1662	0.784987	0.215013	52	25.1756	0.805618	0.194382
53	26.3750	0.791250	0.208750	53	25.3639	0.811645	0.188355
54	26.5777	0.797330	0.202670	54	25.5464	0.817486	0.182514
55	26.7744	0.803233	0.196767	55	25.7233	0.823145	0.176855
56	26.9655	0.808964	0.191036	56	25.8947	0.828629	0.171371
57	27.1509	0.814528	0.185472	57	26.0607	0.833943	0.166057
58	27.3310	0.819930	0.180070	58	26.2216	0.839092	0.160908
59	27.5058	0.825175	0.174825	59	26.3775	0.844081	0.155919
60	27.6756	0.830267	0.169733	60	26.5286	0.848916	0.151084

Table B

Section 3

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

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Table B

Annuity, Income, and Remainder Interests for a Term Certain

	3.8% Interest Rates				4.0% Interest Rates		
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

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 2000CM

Section 1

Interest at 3.0 Percent

Age	Annuity	Life Estate	Remainder	Age	Annuity	Life Estate	Remainder
0	29.2854	0.87856	0.12144	55	16.8667	0.50600	0.49400
1	29.3716	0.88115	0.11885	56	16.4852	0.49456	0.50544
2	29.2677	0.87803	0.12197	57	16.1007	0.48302	0.51698
3	29.1556	0.87467	0.12533	58	15.7139	0.47142	0.52858
4	29.0377	0.87113	0.12887	59	15.3243	0.45973	0.54027
5	28.9151	0.86745	0.13255	60	14.9317	0.44795	0.55205
6	28.7879	0.86364	0.13636	61	14.5365	0.43610	0.56390
7	28.6568	0.85970	0.14030	62	14.1398	0.42419	0.57581
8	28.5212	0.85564	0.14436	63	13.7420	0.41226	0.58774
9	28.3809	0.85143	0.14857	64	13.3432	0.40030	0.59970
10	28.2361	0.84708	0.15292	65	12.9434	0.38830	0.61170
11	28.0866	0.84260	0.15740	66	12.5391	0.37617	0.62383
12	27.9327	0.83798	0.16202	67	12.1317	0.36395	0.63605
13	27.7752	0.83326	0.16674	68	11.7225	0.35167	0.64833
14	27.6153	0.82846	0.17154	69	11.3126	0.33938	0.66062
15	27.4536	0.82361	0.17639	70	10.9031	0.32709	0.67291
16	27.2907	0.81872	0.18128	71	10.4937	0.31481	0.68519
17	27.1259	0.81378	0.18622	72	10.0854	0.30256	0.69744
18	26.9589	0.80877	0.19123	73	9.6795	0.29038	0.70962
19	26.7889	0.80367	0.19633	74	9.2777	0.27833	0.72167
20	26.6148	0.79844	0.20156	75	8.8816	0.26645	0.73355
21	26.4370	0.79311	0.20689	76	8.4920	0.25476	0.74524
22	26.2551	0.78765	0.21235	77	8.1094	0.24328	0.75672
23	26.0684	0.78205	0.21795	78	7.7341	0.23202	0.76798
24	25.8759	0.77628	0.22372	79	7.3666	0.22100	0.77900
25	25.6769	0.77031	0.22969	80	7.0080	0.21024	0.78976
26	25.4713	0.76414	0.23586	81	6.6584	0.19975	0.80025
27	25.2588	0.75776	0.24224	82	6.3184	0.18955	0.81045
28	25.0395	0.75118	0.24882	83	5.9885	0.17965	0.82035
29	24.8139	0.74442	0.25558	84	5.6691	0.17007	0.82993
30	24.5825	0.73747	0.26253	85	5.3605	0.16081	0.83919
31	24.3448	0.73035	0.26965	86	5.0631	0.15189	0.84811
32	24.1011	0.72303	0.27697	87	4.7772	0.14332	0.85668
33	23.8511	0.71553	0.28447	88	4.5027	0.13508	0.86492
34	23.5956	0.70787	0.29213	89	4.2400	0.12720	0.87280
35	23.3341	0.70002	0.29998	90	3.9892	0.11968	0.88032
36	23.0666	0.69200	0.30800	91	3.7502	0.11250	0.88750
37	22.7931	0.68379	0.31621	92	3.5228	0.10568	0.89432
38	22.5135	0.67540	0.32460	93	3.3075	0.09922	0.90078
39	22.2281	0.66684	0.33316	94	3.1034	0.09310	0.90690
40	21.9370	0.65811	0.34189	95	2.9104	0.08731	0.91269
41	21.6401	0.64920	0.35080	96	2.7290	0.08187	0.91813
42	21.3377	0.64013	0.35987	97	2.5583	0.07675	0.92325
43	21.0289	0.63087	0.36913	98	2.3977	0.07193	0.92807
44	20.7145	0.62143	0.37857	99	2.2465	0.06740	0.93260
45	20.3943	0.61183	0.38817	100	2.1060	0.06318	0.93682
46	20.0681	0.60204	0.39796	101	1.9729	0.05919	0.94081
47	19.7364	0.59209	0.40791	102	1.8499	0.05550	0.94450
48	19.3989	0.58197	0.41803	103	1.7281	0.05184	0.94816
49	19.0555	0.57167	0.42833	104	1.6161	0.04848	0.95152
50	18.7057	0.56117	0.43883	105	1.5056	0.04517	0.95483
51	18.3496	0.55049	0.44951	106	1.3681	0.04104	0.95896
52	17.9872	0.53962	0.46038	107	1.2125	0.03638	0.96362
53	17.6188	0.52857	0.47143	108	0.9638	0.02891	0.97109
54	17.2451	0.51735	0.48265	109	0.4854	0.01456	0.98544

Section 1

Table S - Based on Life Table 2000CM

Interest at 3.2 Percent

Age	Annuity	Life Estate	Remainder	Age	Annuity	Life Estate	Remainder
0	27.8934	0.89259	0.10741	55	16.4568	0.52662	0.47338
1	27.9839	0.89549	0.10451	56	16.0933	0.51499	0.48501
2	27.8937	0.89260	0.10740	57	15.7265	0.50325	0.49675
3	27.7957	0.88946	0.11054	58	15.3570	0.49142	0.50858
4	27.6923	0.88615	0.11385	59	14.9845	0.47950	0.52050
5	27.5844	0.88270	0.11730	60	14.6085	0.46747	0.53253
6	27.4722	0.87911	0.12089	61	14.2297	0.45535	0.54465
7	27.3563	0.87540	0.12460	62	13.8489	0.44317	0.55683
8	27.2362	0.87156	0.12844	63	13.4667	0.43093	0.56907
9	27.1117	0.86757	0.13243	64	13.0830	0.41866	0.58134
10	26.9828	0.86345	0.13655	65	12.6979	0.40633	0.59367
11	26.8496	0.85919	0.14081	66	12.3080	0.39385	0.60615
12	26.7121	0.85479	0.14521	67	11.9145	0.38126	0.61874
13	26.5713	0.85028	0.14972	68	11.5188	0.36860	0.63140
14	26.4281	0.84570	0.15430	69	11.1220	0.35591	0.64409
15	26.2832	0.84106	0.15894	70	10.7251	0.34320	0.65680
16	26.1372	0.83639	0.16361	71	10.3279	0.33049	0.66951
17	25.9894	0.83166	0.16834	72	9.9312	0.31780	0.68220
18	25.8394	0.82686	0.17314	73	9.5364	0.30516	0.69484
19	25.6867	0.82197	0.17803	74	9.1452	0.29265	0.70735
20	25.5300	0.81696	0.18304	75	8.7592	0.28029	0.71971
21	25.3698	0.81183	0.18817	76	8.3792	0.26813	0.73187
22	25.2056	0.80658	0.19342	77	8.0055	0.25618	0.74382
23	25.0368	0.80118	0.19882	78	7.6387	0.24444	0.75556
24	24.8625	0.79560	0.20440	79	7.2792	0.23294	0.76706
25	24.6819	0.78982	0.21018	80	6.9280	0.22170	0.77830
26	24.4949	0.78384	0.21616	81	6.5854	0.21073	0.78927
27	24.3012	0.77764	0.22236	82	6.2519	0.20006	0.79994
28	24.1010	0.77123	0.22877	83	5.9280	0.18970	0.81030
29	23.8946	0.76463	0.23537	84	5.6142	0.17965	0.82035
30	23.6825	0.75784	0.24216	85	5.3108	0.16995	0.83005
31	23.4643	0.75086	0.24914	86	5.0181	0.16058	0.83942
32	23.2402	0.74369	0.25631	87	4.7366	0.15157	0.84843
33	23.0099	0.73632	0.26368	88	4.4661	0.14292	0.85708
34	22.7742	0.72877	0.27123	89	4.2071	0.13463	0.86537
35	22.5326	0.72104	0.27896	90	3.9596	0.12671	0.87329
36	22.2850	0.71312	0.28688	91	3.7236	0.11915	0.88085
37	22.0316	0.70501	0.29499	92	3.4990	0.11197	0.88803
38	21.7720	0.69670	0.30330	93	3.2861	0.10516	0.89484
39	21.5067	0.68821	0.31179	94	3.0843	0.09870	0.90130
40	21.2356	0.67954	0.32046	95	2.8933	0.09259	0.90741
41	20.9588	0.67068	0.32932	96	2.7136	0.08684	0.91316
42	20.6763	0.66164	0.33836	97	2.5446	0.08143	0.91857
43	20.3876	0.65240	0.34760	98	2.3854	0.07633	0.92367
44	20.0931	0.64298	0.35702	99	2.2355	0.07154	0.92846
45	19.7927	0.63337	0.36663	100	2.0962	0.06708	0.93292
46	19.4863	0.62356	0.37644	101	1.9641	0.06285	0.93715
47	19.1743	0.61358	0.38642	102	1.8421	0.05895	0.94105
48	18.8564	0.60340	0.39660	103	1.7212	0.05508	0.94492
49	18.5324	0.59304	0.40696	104	1.6099	0.05152	0.94848
50	18.2019	0.58246	0.41754	105	1.5003	0.04801	0.95199
51	17.8650	0.57168	0.42832	106	1.3636	0.04364	0.95636
52	17.5216	0.56069	0.43931	107	1.2090	0.03869	0.96131
53	17.1720	0.54950	0.45050	108	0.9615	0.03077	0.96923
54	16.8169	0.53814	0.46186	109	0.4845	0.01550	0.98450

Table S - Based on Life Table 2000CM

Section 1

Interest at 3.4 Percent

Age	Annuity	Life Estate	Remainder	Age	Annuity	Life Estate	Remainder
0	26.6095	0.90472	0.09528	55	16.0626	0.54613	0.45387
1	26.7033	0.90791	0.09209	56	15.7162	0.53435	0.46565
2	26.6248	0.90524	0.09476	57	15.3661	0.52245	0.47755
3	26.5391	0.90233	0.09767	58	15.0130	0.51044	0.48956
4	26.4482	0.89924	0.10076	59	14.6567	0.49833	0.50167
5	26.3531	0.89601	0.10399	60	14.2965	0.48608	0.51392
6	26.2540	0.89264	0.10736	61	13.9332	0.47373	0.52627
7	26.1515	0.88915	0.11085	62	13.5676	0.46130	0.53870
8	26.0449	0.88553	0.11447	63	13.2001	0.44880	0.55120
9	25.9342	0.88176	0.11824	64	12.8309	0.43625	0.56375
10	25.8194	0.87786	0.12214	65	12.4598	0.42363	0.57637
11	25.7004	0.87381	0.12619	66	12.0837	0.41084	0.58916
12	25.5774	0.86963	0.13037	67	11.7035	0.39792	0.60208
13	25.4512	0.86534	0.13466	68	11.3208	0.38491	0.61509
14	25.3228	0.86097	0.13903	69	10.9367	0.37185	0.62815
15	25.1928	0.85656	0.14344	70	10.5519	0.35876	0.64124
16	25.0618	0.85210	0.14790	71	10.1663	0.34566	0.65434
17	24.9291	0.84759	0.15241	72	9.7808	0.33255	0.66745
18	24.7943	0.84301	0.15699	73	9.3968	0.31949	0.68051
19	24.6569	0.83833	0.16167	74	9.0159	0.30654	0.69346
20	24.5158	0.83354	0.16646	75	8.6396	0.29375	0.70625
21	24.3712	0.82862	0.17138	76	8.2688	0.28114	0.71886
22	24.2229	0.82358	0.17642	77	7.9039	0.26873	0.73127
23	24.0702	0.81839	0.18161	78	7.5453	0.25654	0.74346
24	23.9122	0.81301	0.18699	79	7.1936	0.24458	0.75542
25	23.7481	0.80744	0.19256	80	6.8496	0.23289	0.76711
26	23.5779	0.80165	0.19835	81	6.5138	0.22147	0.77853
27	23.4012	0.79564	0.20436	82	6.1866	0.21034	0.78966
28	23.2181	0.78942	0.21058	83	5.8686	0.19953	0.80047
29	23.0292	0.78299	0.21701	84	5.5603	0.18905	0.81095
30	22.8346	0.77638	0.22362	85	5.2619	0.17890	0.82110
31	22.6341	0.76956	0.23044	86	4.9739	0.16911	0.83089
32	22.4279	0.76255	0.23745	87	4.6967	0.15969	0.84031
33	22.2156	0.75533	0.24467	88	4.4301	0.15062	0.84938
34	21.9979	0.74793	0.25207	89	4.1746	0.14194	0.85806
35	21.7745	0.74033	0.25967	90	3.9304	0.13363	0.86637
36	21.5452	0.73254	0.26746	91	3.6973	0.12571	0.87429
37	21.3101	0.72454	0.27546	92	3.4754	0.11816	0.88184
38	21.0689	0.71634	0.28366	93	3.2650	0.11101	0.88899
39	20.8220	0.70795	0.29205	94	3.0654	0.10422	0.89578
40	20.5695	0.69936	0.30064	95	2.8763	0.09780	0.90220
41	20.3111	0.69058	0.30942	96	2.6984	0.09175	0.90825
42	20.0472	0.68160	0.31840	97	2.5310	0.08605	0.91395
43	19.7769	0.67242	0.32758	98	2.3733	0.08069	0.91931
44	19.5009	0.66303	0.33697	99	2.2247	0.07564	0.92436
45	19.2191	0.65345	0.34655	100	2.0865	0.07094	0.92906
46	18.9311	0.64366	0.35634	101	1.9554	0.06648	0.93352
47	18.6374	0.63367	0.36633	102	1.8343	0.06237	0.93763
48	18.3377	0.62348	0.37652	103	1.7143	0.05829	0.94171
49	18.0319	0.61309	0.38691	104	1.6038	0.05453	0.94547
50	17.7195	0.60246	0.39754	105	1.4950	0.05083	0.94917
51	17.4005	0.59162	0.40838	106	1.3592	0.04621	0.95379
52	17.0749	0.58055	0.41945	107	1.2056	0.04099	0.95901
53	16.7431	0.56926	0.43074	108	0.9592	0.03261	0.96739
54	16.4054	0.55778	0.44222	109	0.4836	0.01644	0.98356

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 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

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