The Taxation Section of the
State Bar of California

CURRENT DEVELOPMENTS

2017 ANNUAL MEETING OF THE CALIFORNIA TAX BAR & THE TAX POLICY CONFERENCE

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1. Repeal Estate Tax.

Possible Legislation.
Removal or limiting _____ after deducting
Other proposal

Some discussion has centered

Built in gains tax on ___________ a death. Will this apply to gifts? A concern is that there could be both on estate and built in gains tax.

2. In 2017, the United States finds itself with a budget deficit of roughly $603 billion. Rather than fund the Federal government (in part) using an estate tax designed to burden those who have derived the most benefit and protection from the United States, our elected leaders propose repeal. Like hats with ostrich plumes (popular in 1916), it appears that fiscal responsibility and equitable distribution of the tax burden have fallen out of fashion.

3. Charitable deductions – Taxpayers may deduct charitable contributions made after the close of the tax year but before the due date of the return. Deduction is only possible if it exceeds 2% of the donor's adjusted gross income. All contributions to public charities whether cash or appreciated property would be subject to a 40% AGI limitation. All contributions to private foundations not qualifying for the 40% limitation would be subject to a 25% AGI limitation. The deduction for contributions of appreciated property would be limited to the donor's adjusted basis in the property, but contributions of the following types of property would be deductible at fair market value less any ordinary income that would have been realized had the property been sold – related use tangible personal property, publicly traded stock, qualified conservation contributions, qualified research property, and qualified inventory contributions.

4. Employee compensation – A new 25% excise tax would be imposed on charitable organizations that pay more than $1 million to certain covered employees. The tax applies to renumeration in excess of $1 million dollars, which includes wages and excess parachute payments.

5. Unrelated Business Income Tax (UBIT) – The UBTI tax would be extended by way of "basketing" (treating each separate activity separately, so that net losses of some activities could not offset the income from other activities). Corporate sponsorships would be impacted – a sponsor's payment will be treated as UBTI if the sponsor's name or logo is used, and if the organization receives more than $25,000 of qualified sponsorship payments for any one event.

6. Excess Benefit Transactions – The excess benefit rules would be extended not only to apply to 501(c)(3) corporations, but also to (c)(5) (labor organizations) and (c)(6) (trade organizations.

7. Donor Advised Funds – The proposal would require DAFs to meet a distribution requirement. Must distribute contributions within five years of receipt. Restricted to public charities described under §§509(a)(1) or (2).

8. Private Foundations – Self-dealing transactions would subject the organization itself to a 2.5% tax in addition to the taxes currently imposed on the disqualified person and foundation managers. The self-dealing tax imposed on the disqualified person would increase to 10% in cases involving the payment of unreasonable compensation. The safe harbor for foundation managers who rely on professional advice would be eliminated. The 2% excise tax on net investment income would be reduced to 1%. The tax on net investment income would be imposed on exempt operating foundations.

9. Would apply the IRA charitable rollover rules to distributions to a DAF

10. Would require that DAFs disclose in their returns specified details regarding (i) policies on inactive or dormant funds, and (iii) average aggregate contributions to and grants made from the funds during the most recent three-year period.

11. Reduce the excise tax on investment income of private foundations from 2% to 1%

12. Would require tax-exempt organizations to file their returns in electronic forms and require the IRS to make the returns available to the public in a machine readable format as soon as practicable; and

13. Exempt certain philanthropic business holdings from the tax on excess business holdings of private foundations if the foundation meets requirements for exclusive ownership, donating all profits to charity, and independent operation.

<u>Under Other Proposals</u>

1. <u>FATCA, CRS, and Reporting Requirements</u>. The Foreign Account Tax Compliance Act was enacted by Congress in 2010 to target tax evasion by US taxpayers using foreign accounts. FATCA requires foreign financial institutions (FFIs) to report to the IRS information about financial accounts held by US taxpayers, or by foreign entities in which US taxpayers hold a substantial ownership interest. FATCA generally requires the FFI to conduct due diligence to determine if the account owners are US citizens to the United States. When FATCA was first enacted, other countries were outraged that the US was unilaterally requiring banks in their country to divulge information about US account holders. Eventually, the other countries decided that was a good idea and ultimately developed the Common Reporting Standard (CRS) system as a way of exchanging information with other countries about financial information of owners connected with those other countries.

CRS began in 2012 as a pilot initiative of five European countries to follow the FATCA model as a multilateral reporting tool on beneficial ownership. In 2014, the system was adopted by the Organization for Economic Cooperation and Development (OCED) with a model treaty and Multilateral Competent Authority Agreement. CRS has now been adopted by over 100 jurisdictions. Of those, 54 will be reporting in 2017 (for activities in 2016), and the remainder will start reporting in 2018 (for activities in 2017).

Case Law

1. *Estate of Powell v. Commissioner*, 148 T.C. No. 18 (May 18, 2017)

a) This "reviewed" Tax Court decision may be the most important Tax Court case addressing FLPs and LLCs in the context of estate planning since the Bongard case (124 T.C. 95 (2005) 12 years ago. The Tax Court breaks new ground (1) in extending the application of §2036(a)(2) to decedents owning only limited partnership interests, and (2) in raising the risk of double inclusion of assets under §2036 and a partnership interest under §2033, which may (in the court's own words) result in "duplicative transfer tax."

The facts involve "aggressive deathbed tax planning," and the fact that the taxpayer lost the case is no surprise. But the court's extension of the application of §2036(a)(2) and the extensive discussion of possible double inclusion for assets contributed to an FLP or LLC are surprising (but whether a majority of the judges would apply the double inclusion analysis is not clear).

The decedent's son, acting in her behalf under a power of attorney, contributed about $10 million of cash and marketable securities to a limited partnership (FLP) in return for a 99% limited partnership (LP) interest. Her two sons contributed unsecured notes in return for the 1% general partner (GP) interest. The same day, the son who was the agent under the power of attorney (acting under the power of attorney) transferred the decedent's 99% LP interest to a charitable lead annuity trust (CLAT) paying an annuity to charity for the decedent's life with the remainder passing to the decedent's two sons (the remainder was valued by assuming a 25% discount for lack of control and marketability of the 99% LP interest). (A problem with the transfer to the CLAT is that the power of attorney only authorized gifts to the principal's issue up to the federal gift tax annual exclusion amount.) The decedent died 7 days later.

The IRS claimed that the $10 million of assets contributed to the FLP were includible in the decedent's estate (without a discount) under §§2036(a)(1) (retained enjoyment or income), 2036(a)(2) (retained right in conjunction with any person to designate who could enjoy the property or its income), or 2038 (power to alter, amend, revoke, or terminate the transfer at the decedent's death), or under §2035(a) (transfer of property within three years of death that otherwise would have been included in the estate under §§2036-2038 or 2042) if the transfer to the CLAT was valid. The taxpayer did not contest the application of §2036(a)(2), or contest that the bona fide sale for full consideration exception to §2036 was not applicable. The taxpayer merely argued that §§2036 and 2038 could not apply because the decedent no longer owned the LP interest at her death (despite the fact that the interest had been transferred within 3 years of her death and §2035(a) would then apply).

b) Section 2036(a)(2) Issue

The majority and concurring opinions both agreed that §2036(a)(2) applied (though the concurring opinion did not address the reasoning for applying §2036(a)(2)). The majority opinion reasoned (i) that the decedent, in conjunction with all the other partners, could dissolve the partnership, and (2) that the decedent, through her son as the GP and as her agent, could control the amount and timing of distributions. The opinion adopted the analysis in Strangi as to why the "fiduciary duty" analysis in the Supreme Court Byrum case does not apply to avoid inclusion under §2036(a)(2) because under the facts of this case any such fiduciary duty is "illusory."

c) The §2036(a)(2) issue is infrequently addressed by the courts; it has only been applied with any significant analysis in four prior cases (Kimbell and Mirowski [holding that §2036(a)(2) did not apply], and Strangi and Turner [holding that §2036(a)(2) did apply]). In both Strangi and Turner, the decedent was a general partner (or owned a 47% interest in the corporate general partner). Powell is the first case to apply §2036(a)(2) when the decedent merely owned a limited partnership interest. In this case the decedent owned a 99% LP interest, but the court's analysis drew no distinction between owning a 99% or 1% LP interest; the court reasoned that the LP "in conjunction with" all of the other partners could dissolve the partnership at any time. (Whether the court would have applied §2036(a)(2) had the decedent owned only a small LP interest is not known, but the court's reasoning does not draw any distinction based on the amount of LP interest owned by the decedent.) Because §2036(a)(2) applied, the court did not address §2036(a)(1) or §2038.

d) "Double Inclusion" Issue

The majority opinion raised, on its own with no argument or briefing from any party, how §2036 or §2038 operate in conjunction with §2043 ostensibly to avoid double inclusion. The consideration received in return for the contribution to the FLP (i.e. the 99% LP interest) is subtracted under §2043 from the amount included in the gross estate under §2036. In effect, the value of the discount is included under §2036/§2043 (i.e., the value of the assets contributed to the FLP minus the value of the 99% LP interest considering lack of control and marketability discounts). The opinion refers to this amount colloquially as the "doughnut hole." In addition, the 99% LP interest itself is included in the gross estate (if the gift is not authorized under the power of attorney) or is included in the gift amount if the gift is recognized, and the court referred to this as the "doughnut." That analysis avoids double inclusion IF the assets have not appreciated (and because the decedent died only 7 days later, the parties stipulated that the contribution values were also the date of death values). But if the assets have appreciated, footnote 7 of the "majority" opinion acknowledges that "duplicative transfer tax" would apply because the date of death asset value is included in the gross estate under §2036 offset only by the date of contribution discounted value of the partnership interest. The date of death value of the LP interest would also be included under §2033, so all of the post-contribution appreciation of the assets would be included under §2036 AND the discounted post-contribution appreciation would also be included under §2033. More value may be included in the gross estate than if the decedent had never contributed assets to the FLP. (Similarly, footnote 17 acknowledges that a "duplicative reduction" would result if the assets depreciated after being contributed to the FLP.) Whether a court would actually tax the same appreciation multiple times (or whether the IRS would even make that argument), in a case in which the majority's analysis is applied is (hopefully) doubtful, but the majority opinion did not even hint that the court would refuse to tax the same appreciation twice in that situation.

The concurring opinion (joined by seven judges) reasoned that the inclusion of the partnership assets in the gross estate under §2036 meant that the partnership interest itself was merely an alter ego of those same assets and should not also be included in the gross estate. That approach has been followed by the prior FLP cases in which §2036 was applied, and indeed even in this case the IRS did not argue that the asset value/partnership value should be included under both §2036 and §2033, offset by the partnership value at the date of the contribution. (That argument would have been meaningless in this case [because the date of contribution values and date of death values were the same], but the IRS has not made that argument in any other FLP cases even though substantial additional estate tax liability would have resulted in situations involving significant appreciation of partnership assets.)

The opinion leaves uncertainty, particularly as to the double inclusion issue, because the "majority" opinion (that espoused the double inclusion analysis) was joined by only 8 judges (one of whom was Judge Halpern, who is a Senior Judge and not one of the 16 current "regular" Tax Court judges), a concurring opinion (that rejected the double inclusion analysis) was joined by 7 judges, and 2 judges concurred in the majority opinion in result only.

The fact that eight judges adopted the double inclusion analysis may embolden the IRS to take that position in future cases, even though we do not yet know how a majority of the Tax Court judges would rule as to that issue. This raises a risk that contributing assets to an FLP (or for that matter, any entity) may leave a taxpayer in a significantly worse tax position than if the taxpayer merely retains the assets.

e) Increased Significance of Bona Fide Sale for Full Consideration Exception

The combination of applying §2036(a)(2) even to retained limited partnership interests and the risk of "duplicative transfer tax" as to future appreciation in a partnership makes qualification for the bona fide sale for full consideration exception to §§2036 and 2038 especially important. In one respect, this means that Powell does not reflect a significant practical change for planners, because the §2036 exception has been the primary defense for any §2036 claim involving an FLP or LLC. This case is appealable to the Ninth Circuit Court of Appeals.

2. *926 N. Ardmore Ave. LLC v. County of Los Angeles* – Documentary Transfer Tax

a) On June 29, 2017, <u>the California Supreme Court held that a change in ownership under California property tax law caused an incidence of documentary transfer tax under Section 11911 of the California Revenue and Taxation Code</u> (the Code) affirming the Court of Appeal's decision in *926 N. Ardmore Ave. LLC v. County of Los Angeles*.

To summarize, previously, in most counties and cities, documentary transfer tax was only imposed when a document was recorded, and transfers of interests in legal entities owning real property were not subject to documentary transfer tax. In several counties and cities in California, the localities had enacted specific ordinances imposing documentary transfer tax on certain transfers of interests in legal entities owning real property. As a result of the Court's decision, however, transfers of interests in legal entities owning real property in California are subject to documentary transfer tax in all 58 counties and in hundreds of cities that impose documentary transfer taxes, regardless of whether a document is recorded, to the extent that such transfers constitute a change of ownership for property tax purposes.

The case involves a partnership that was the sole member of an LLC that owned real property. The partnership triggered an "original co-owner" change in ownership under the property tax law found in Code Section 64(d). Transfers of this type, not directly involving conveyances of underlying real property, had historically not been subject to documentary transfer tax. Under the plain language and historical interpretation of the documentary transfer tax, this transfer did not cause an incidence of transfer tax. Under a practice instituted in 2010 in Los Angeles County, the County nevertheless sought transfer tax for these types of transfers by sending taxpayers notices of amounts due. From 2010 to present, however, the County did not seek to collect those amounts if they were not voluntarily paid.

In this case, the taxpayer in 926 N. Ardmore paid the documentary transfer tax and then claimed a refund. In its claim and in the courts below, the taxpayer argued that the documentary transfer tax applied only in two instances: (1) if there was a written instrument that transferred ownership of real property (see 11911 of the Code); or (2) if a partnership that directly owned real property terminated under IRC Section 708 (see 11925 of the Code). Both the District Court of Appeal and the Supreme Court's 926 N. Ardmore decision only dealt with the first issue.

Los Angeles County argued that a documentary transfer tax was triggered if a transaction constitutes a "change in ownership" under property tax law. The county, along with many amici curiae representing other local government agencies, argued that this reading of section 11911 of the Code was consistent with other California Court of Appeal decisions which have held that defining the term "realty sold" in the Documentary Transfer Tax sections of the Code had essentially the same meaning as "change in ownership of real property" in the Property Tax portion of the Code.

Both the trial court and the Court of Appeal agreed with the county and upheld the assessment of the tax. On appeal to the California Supreme Court, the taxpayer argued that the documentary transfer tax laws should not be read together with the property tax statutes because they were in separate divisions of the Code and had different goals, histories, and functions. Numerous briefs by amici curiae were filed on both sides of the issue.

After determining that the case was "one of statutory interpretation," the California Supreme Court recognized that the text of the code section levying the documentary transfer tax, Section 11911 of the Code, "provides no clear answers." The court then looked at the section in context with the other provisions of the California Transfer Tax Act to resolve the ambiguity. The court found that Section 11925 "creates a conditional exemption from the documentary transfer tax for realty held by specified entities when interests in those entities are transferred. Its inclusion indicates the underlying scheme is one in which the transfer of an interest in a legal entity might otherwise result in a tax liability." The court concluded that "the critical factor in determining whether the documentary transfer tax may be imposed is whether there was a sale that resulted in a transfer of beneficial ownership of real property." And the court determined that Section 60 et seq. of the Code serves the same purpose.

In a strong, but lone dissent, Justice Leondra Kruger stated that the effect of the majority's decision was to "sweep into the DTTA's compass a considerable swath of entity interest transfers that bear little or no resemblance to ordinary sales of real property." Justice Kruger also noted that the majority was expanding the taxation of "ventures well beyond the statute's language and historical practice," stating that she "would leave it to the Legislature to determine the circumstances under which an entity interest transfer should result in a deemed sale of the entity's real estate, and how to calculate the tax due in those circumstances."

This decision surprised many practitioners in California, particularly those who generally agree with the dissent. Nevertheless, it is now the law of California.

Some localities already impose the documentary transfer tax in connection with the transfer of ownership interests in a legal entity that result in a transfer of beneficial interest in real property under California property tax law. This decision will surely expand the ranks of cities and counties applying the documentary transfer tax to entity interest transfers that constitute property tax changes in ownership. Taxpayers should review their transactions carefully and consult with counsel in light of this decision.

3. <u>ILC E-Bulletin: Disclaimer of Inheritance avoidable by SBA</u>

a) The 9th Cir. Has held that a guarantor's disclaimer of his share of an inheritance was avoidable by the SBA as a fraudulent transfer, despite a state statute declaring that disclaimers are not fraudulent transfers.

b) <u>Facts:</u> An individual issued a personal guarantee in favor of a lender, on behalf of his wholly-owned company. The loan was guaranteed by the SBA. Following his default, the lender obtained a default judgment and assigned it to the SBA. Several years later, the guarantor inherited a share in his deceased father's trust. Instead of accepting his inheritance, he signed a disclaimer, passing his share to his children and preventing his creditors from accessing his trust share under California law. The SBA the sought to satisfy its default judgment and argued that all the government was permitted to recover from his trust share, despite contrary California law, on the theory that the disclaimer constituted a fraudulent transfer. The DC ruled in favor of the SBA and the 9th Cir. Affirmed.

c) <u>Reasoning:</u> The court noted that under CPC §283, a disclaimer of an inheritance is not a fraudulent transfer: A "disclaimer is not a voidable transfer by the beneficiary under the Uniform Voidable Transactions Act…" However, the court held that under 28 USCA §3003(d) of the Federal Debt Collection Procedures Act (FDCPA), state law is expressly preempted: "This chapter shall preempt state law to the extent such law is inconsistent with a provision of this Chapter." Section 3304(a) of the FDCPA contains a provision stating that a transfer made by a debtor while involved is constructively fraudulent. The court noted that its ruling is consistent with the result in *Drye v. United States*, 528 US 49 (1999). The court also distinguished its own holding in *In re Costas* on the ground that it involved a disclaimer executed prior to a bankruptcy filing, before the bankruptcy estate gained any interest in the disclaimed assets. By contrast, the disclaimer in this case occurred long after the guarantor incurred his debt to the SBA.

4. <u>Portability Does Have Downsides</u>. On Monday, the Tax Court issued its opinion in *Estate of Sower v. Commissioner*, 149 T.C. No 11. Here, husband died in 2012 and his estate filed an estate tax return electing portability to his wife with a DSUE of $1,256,033. The estate tax return however omitted $997,920 of taxable gifts that had been previously reported on 2003, 2004, and 2005 gift tax returns. In 2013, the estate received a closing letter from the IRS stating that the estate tax return was accepted as filed

The surviving spouse died in 2013. Her 706 used the $1,256,033 DSUE from her husband. The return was audited by the IRS as well as the husband's estate tax return. In audit IRS reduced the

DSUE by the amount of unreported taxable gifts, which did not result in a deficiency for the husband's return but did reduced the amount of DSUE that could be utilized on the wife's 706. The Tax Court held that the IRS may audit the predeceased spouse's estate tax return to determine the amount of DSUE claimed even though the IRS sent the estate a closing letter which includes language that the return was accepted as filed.

This is a great reminder that when portability is elected the statute of limitations does not start to run, instead it stays open until the surviving spouse's death. So, the first spouse's 706 can be audited after the surviving spouse's death. This is certainly something that should be taken into account when analyzing whether to make the portability election.

Current Legislation

1. Proposed Regulations under Section 2704 on Restrictions on Liquidation of an Interest for Estate, Gift and Generation-Skipping Transfer Taxes (Reg-163113-02; 81 F.R. 51413)

a) The regulations under Section 2704 which addresses the valuation, for wealth transfer tax purposes, of interests in family-controlled entities when determining the fair market value of an interest for estate, gift, and generation- skipping transfer tax purposes. In limited situations, this section treats lapses of voting or liquidation rights as if they were transfers for gift and estate tax purposes were withdrawn.

FEDERAL DEVELOPMENTS

Recent letter rulings state that CRTs are not subject to the private foundation restrictions including self-dealing rules if no income or gift tax deductions were allowed for contributions to the trust, even if a deduction would have been allowable had it been claimed. PLRs 201713002-003.

1) Trust as Owner of Another Trust, PLR 201633021

a) This Letter Ruling approves the fascinating concept of one trust being treated as the owner of another trust for income tax purposes under §678(a). In this ruling, Trust 1 and Trust 2 had the same beneficiaries and same distribution provisions. Trust 1 had the power to withdraw the income from Trust 2 each year, which power lapsed at the end of each calendar year.

Section 678(a) provides that a person other an the grantor shall be treated as the owner of any portion of the trust with respect to which (1) such person has a power exercisable solely by himself to vest the corpus or the income therefrom in himself, or (2) such person has previously partially released or otherwise modified such a power and after the release or modification retains such control as would, within the principles of Sections 671-677, subject a grantor of a trust to treatment as the owner thereof.

The IRS ruled that because of Trust 1's withdrawal right, Trust 1 was the deemed owner of the portion of Trust 2 over which it held the withdrawal power. Because Trust 1 had the power to withdraw the income of Trust 2, which Trust 2 defined as capital gains, as well as dividends, interest, feeds, and other amounts characterized as income under § 643(b), Trust 1 effectively was treated as the deemed owner of all the taxable income of Trust 2. Reg. §1.671-2€(6)(Ex. 8 is consistent wit this result.

This result opens the possibility of having sale transactions between the trusts that would not be treated as taxable transactions.

2) <u>Conversion of CLAT to Grantor Trust, PLRs 201730012, 201730017, and 201730018</u>

   a) In these PLRs, a CLAT was amended to give the grantor's brother a substation power. One of the ruling requests is whether the conversion of the trust from a nongrantor trust to a grantor trust (assuming the substitution power is found to be held in a non-fiduciary capacity) is a taxable transfer from the trust to the grantor. The ruling concluded that the conversion from nongrantor trust to grantor trust status is not a taxable transfer for income tax purposes. The ruling observed that Rev. Rul. 85-13, 1985-1 C.B. 184 involved the conversion of a nongrantor trust to a grantor trust (by the grantor's acquisition of trust assets in return for a note from the grantor, which the ruling viewed as an indirect borrowing of the trust corpus by the grantor). Rev. Rul. 85-13 concluded that the transfer was not a sale for income tax purposes and the grantor did not acquire a cost basis in the assets. This ruling is consistent with CCA 200923024 which similarly concluded (in a ruling involving an abusive transaction) that the conversion of a nongrantor trust to a grantor trust was not a taxable transaction, noting that treating the conversion as a taxable transaction would have an impact on non-abusive transactions.

      The PLRs also concluded that the conversion is not an act of self-dealing under the private foundation rules because the grantor's brother (who held the substitution power) is not a disqualified person under §4946(a). In addition, the trust was not entitled to a charitable deduction because the conversion was not recognized as a transfer at all for income tax purposes.

3) <u>Electronic Wills Act</u>

   a) Traditionally, wills must be on paper, either typed (or printed) or handwritten. Nevada was the first state to adopt a statute recognizing electronic wills. NEV. STAT. ANN. § 133.085(1)(a) (2016). Recently introduced Florida S.B. 206 and H.B. 277 allows persons to execute wills electronically without the physical presence of a witness or an attorney. At least three other states will likely introduce similar legislation in 2017. A growing trend of interest is appearing in this topic.

      The Joint Editorial Board for the Uniform Trusts and Estates Act has recommended that the Uniform Law Commission form a drafting committee to address proposed uniform legislation governing electronic wills.

      One issue to be addressed is how an electronic document will be authenticated. For example, the Nevada statute requires the testator's electronic signature and at least one "authentication characteristic," which the statute defines as "a reprint, a retinal scan, voice recognition, facial recognition, a digitized signature or other authentication using a unique characteristic of the person."

The Florida bill is simpler, requiring that the will exists in an electronic record, is electronically signed by the testator in the presence of either a notary public or at least two attesting witnesses, and is electronically signed by the notary public (and accompanied by a notary public seal) or both of the attesting witnesses "in the presence of" the testator and, in the case of witnesses, in the presence of each other. Individuals are deemed to be "in the presence of" each other if they are in the same physical location or in different physical locations that can communicate with each other by live video and audio conference (meaning they could be present with each other by Skype). However, another requirement in an amended version of the bill is that either the notary or both attesting witnesses must physically be in the "same room" as the testator. The signature requirement of any individual may be satisfied by an electronic signature. For an electronic record, and the electronic will at all times must have been under the control of a qualified custodian before being reduced to the certified paper original that is sought to be probated. The bill was ultimately enacted with amendments, but the act was vetoed by the Governor, he expressed concern that the remote notarization provisions do not adequately ensure authentication of the identities of the parties, and could lead to overburdening the Florida court system with the probate of wills that have no Florida nexus other than the at the will were created and stored in Florida. Concerns will also have to be addressed about the safety, confidentiality, and the possibility of fraudulent tampering.

4) <u>Intergenerational Split Dollar life Insurance Plan Qualified for Economic Benefit Regime Under Split Dollar Regulations</u> – *Estate of Morrissette v. Commissioner*, 146 T.C. No. 11 (2016) (appealable to Fourth Circuit)

   a) <u>Facts</u>: The Tax Court, in a "regular" opinion of the full court, approved an intergenerational split dollar life insurance arrangement in which Mrs. Morrissette (actually her revocable trust) paid large lump sum premiums ($29.9 million) for Dynasty Trusts to purchase universal life insurance policies on the lives of her three children. Under the split dollar agreement, as each of the children died, the revocable trust was entitled to receive the aggregate premiums paid (without added interest) on the policies on that child's life (or the cash surrender value of such policies, if greater [but the cash values may be lower than the aggregate premiums paid, because the cost of insurance and other costs of maintaining the policies in force would be charged against the policies each year.])

   b) <u>Holding</u>: The court granted partial summary judgment, holding that the technical requirements in the regulations for applying the economic benefit regime were satisfied. The court's analysis waded through the hyper-technical details of the split dollar regulations. The central issue under the court's analysis is its conclusion that the Dynasty Trusts had no current access to the cash values of the policies and received no additional economic benefit other than current life insurance protection.

   c) <u>Effect</u>: Morrissette is important because it is the first court case addressing intergenerational split dollar insurance, and it is a taxpayer victory by the full Tax Court. But the court addresses only one narrow issue (on the taxpayer's motion for partial summary judgment as to that narrow issue), and the IRS is no doubt advancing a variety of other issues in the case (in addition to the valuation issue).

5) Treasury-IRS Priority Guidance Plan

b) The 2016-2017 Plan was published August 15, 2016 and includes two new items:

> "2. Guidance on definition of income for spousal support trusts under § 682. [This projects addresses whether references to income in § 682 refers to taxable income or fiduciary accounting income.]
> …
> 10. Guidance under §§2522 and 2055 regarding the tax impact of certain irregularities in the administration of split-interest charitable trusts." [This project will provide guidelines as to irregularities that are merely foot faults and those that have more serious consequences (and that may result in disqualification of the trust, under the reasoning of *Estate of Atkinson v. Commissioner*, 115 TC 26 (2000), aff'd, 309 F.3d 1290 (11^{th} Cir. 2002).

c) The 2016-2017 Plan deletes to GST items that had been on the plan for a few years. For example:

> "9. Regulations under §2642 regarding available GST exemption and the allocation of GST exemption to a pour-over trust at the end of an ETIP [This could include the allocation of GST exemption to trusts created under a GRAT at the end of the initial GRAT term. This project first appeared on the 2012-2013 Plan.].
>
> 10. Final regulations under §2642(g) regarding extensions of time to make allocations of the generation-skipping transfer tax exemption. Proposed regulations were published on April 17, 2008 [This item first appeared in the 2007-2008 plan.]"

6) Same Sex Marriage – Notice 2017-15 Allowing Recovery of Applicable Exclusion Amount and GST Exemption Allocation

a) The Notice now clarifies that an individual who made a gift to a same sex spouse that should have qualified for a marital deduction, but for which the statute of limitations has run on obtaining a refund of the gift tax paid, may recalculate the remaining applicable exclusion amount as a result of recognizing the individual's marriage to his or her spouse. The Notice describes various procedures and limitations:

   i) Once the limitations period has expired, neither the value of the transferred interest nor any position concerning any legal issue (other than the existence of the marriage) can be changed.
   ii) The "taxpayer must recalculate the remaining applicable exclusion amount, in accordance with IRS forms and instructions [to be provided] on a Form 709, on an amended Form 709, or on the Form 706 for the taxpayer's estate if not reported on a Form 709.
   iii) An amended supplemental return need not be filed merely to report and increased applicable exclusion amount unless the taxpayer has predeceased the notice (prior to Jan. 17, 2017).
   iv) If a QTIP or QDOT election is required to obtain the marital deduction, a separate request for relief pursuant to Reg. §301.9100-3 must be submitted.

v) Any unrefunded gift tax paid, for which the limitations period has expired, "will continue to be recognized as a gift tax paid or payable for purposes of the computation of the estate tax under §2001.

7) Relief Procedure for Extension of Time to File Returns to Elect Portability, Rev. Proc. 2017-34.

a) Section 2010(c)(5)(A) requires that the portability election be made on an estate tax return for the decedent whose unused exclusion amount is being made available to the surviving spouse. Rev Proc. 2014-18 allowed a relief procedure for certain estates through December 31, 2014 and Rev. Proc. 2017-34 provides relief procedure through the later of January 2, 2018 or the second anniversary of the decedent's date of death in certain cases if the estate was not otherwise required to file an estate tax return. Requirements for qualifying for the relief procedure are:

i) The decedent (i) was survived by spouse, (ii) died after December 31, 2010, and (iii) was a citizen or resident of the United States;
ii) The executor was not required to file an estate tax return under §6018(a) based on the value of the gross estate and adjusted taxable gifts (without regard to the need to file for portability purposes);
iii) The executor did not file an estate tax return within the time required under §20.2010-2(a)(1);
iv) The election is made on a complete and properly prepared Form 706 that is filed on or before the later of January 2, 2018 or the second annual anniversary of the decedent's date of death; and
v) The following statement appears at the top of the Form 706 – "FILED PURSUANT TO REV. PROC. 2017-34 TO ELECT PORTABILITY UNDER §2010(C)(5(A)."

8) Improving GRAT performance – Drafting Techniques to Ensure Regulatory Compliance

a) **Late Annuity Payments**. Include a provision in the trust agreement causing the trust to terminate to the extent of a required payment if it is not made within the 105-day grace period allowed by the regulations.

b) **Prohibition Against Additions**. The regulations prohibit additions to a GRAT. Include a clause providing that if the Settlor (inadvertently) makes an addition, the additional property will be held in a separate trust and not added to the initial GRAT.

c) **Reduce Valuation Risk by Defining the Annuity Formula**. Defining the annuity formula provides assurance that no significant taxable gift will be made upon the creation of the GRAT. If the value of the asset contributed to the GRAT is adjusted, the annuity amount adjusts as well.

d) **Reduce Exposure to Economic Risk**. Structure the GRAT so that only a nominal taxable gift results. If a significant gift is made upon creating a GRAT, and if the GRAT assets fail to produce sufficient growth, all of the trust assets could end up being returned to grantor, thereby wasting use of the gift exemption amount.

e) **Reduce Mortality Risk by**:
i) Creating short-term GRATS;

ii) Qualifying for Marital deduction in case Settlor Predeceases;
iii) Sell GRAT Remainder when contributing existing assets to GRAT;
iv) Joint-purchase when acquiring a new asset; or
v) Avoiding income tax issue if Settlor predeceases the annuity term.

f) **Enhance Probability of Economic Success**
i) Create short-term GRATS
ii) Use Increasing annuity amounts

g) **Funding Techniques**
i) Fund GRATS with Separate investments
ii) Fund GRATs with fractional (or discounted interests); or
iii) Fund GRATS with Leveraged assets
iv) Fund GRATS with preferred interests

9) <u>Sale to Grantor Trusts – Settlement of the Woelbing Estate Cases</u>

a)
<u>Facts:</u> In 2006, Mr. Woelbing sold that number of shares of non-voting stock in Carma Laboratories (a closely held company in Wisconsin) having a value of $59 million to his grantor trust in return for a $59 million note. The IRS questioned the value of the assets and the value of the note for gift tax purposes. It also argued that the stock was includable in the estate under §§ 2036 and 2038.

b) <u>Decision</u>: A stipulated decision was entered in the cases in March 2016 resulting in no additional gift tax for the Woelbing's estate and no additional estate tax for Mr. Woelbing's estate. Attorneys involved in the case report that the IRS recognized the Wandry-like provision in the sales agreement (selling that number of shares equal to $59 Million), and that §§2702, 2036, and 2038 did not apply because 10% equity existed in the grantor trust that purchased the shares. The result apparently is that more shares were retained by Donald, and passed from his estate to Marian (qualifying for the marital deduction at Donald's death). The settlement likely included an agreement of the additional shares that were included in Marion's estate, and the date of death valuation of those shares-even though the pending Tax Court cases does not address her estate Tax.

10) Self Cancelling Installment Notes (SCIN) – Valuation Issues

a) ***ESTATE OF JOHNSON v. COMMISSIONER***

i) Facts: In 2005, Ms. Johnson sold shares of a closely held company in exchange for a SCIN. The SCIN provided for current interest payments, but a balloon principal payment on April 28, 2013. Ms. Johnson died in January, 2012, about one year before the maturity date, and the principal payments were cancelled pursuant to the terms of the SCIN. The face amount of the SCIN was $5,532,589, of which $2,941,356 represented a principal premium to compensate for the actuarial risk of Ms. Johnson's premature death and the cancellation of the note. The risk premium was determined by actuarial computations based on the life expectance factors of Tres. Reg. Section 1.72-9 (Table V). In addition, the interest rate on the note was 4.28% per annum, which was greater than the applicable AFR of 4.09%.

ii) Issues: According to the petition filed with the Tax Court, the IRS refused to treat the SCIN "as a bona fide consideration equal in value to (i) the fair market value of such units, plus (ii) the fair market value of the risk associated with the possibility of cancellation in the event that decedent did not survive the terms of the SCIN." Additionally, the estate reported the gain on the cancellation of the note as a gain on the decedent's final income tax return rather than on the estate's first fiduciary income tax return.

iii) IRS's Position: The IRS's position is that gain should be reported on the fiduciary income tax return, based on the Eighth Circuit Court of Appeal opinion in *Estate of Frane v. Commissioner* (998 F.2d 567), and the IRS's published position in Rev Ruling 86-72.

iv) Taxpayer's position: The Taxpayer's position is that the Tax Court decision in *Estate of Frane* remains the controlling law in the Tenth Circuit, despite its reversal by the Eighth.

b) Tax Effects of Settlements and Modifications

i) *Commissioner v. Estate of Bosch*, 387 US 456 (1967) – Legislative history regarding marital deductions direct that "proper regard" be given to a State court's construction of wills. Because the Court did not use the term "final effect," State court decisions should not be binding on the issue, and federal courts in tax cases will be bound only by the state's highest court in the matter before it.

ii) Revenue Ruling 73-142 – Pre-transaction Actions can Avoid Bosch Analysis. In this ruling, a Settlor reserved the power to remove and replace the trustee with no express limitation on appointing himself, and the trustee held tax sensitive powers that would cause estate inclusion under §§ 2036 and 2038 if held by the grantor at his death. The Settlor obtained a local court construction that the Settlor only had the power to remove the trustee once and did not have the power to appoint himself as trustee. After obtaining this ruling, the Settlor removed the trustee and appointed another, so the Settlor no longer had the removal power. In this Ruling, the state court determination, which was binding on everyone in the world after the appropriate appeals periods ran, occurred before the taxing event, which would have been the Settlor's death. The IRS concurred.

(1) PLRs 201723002 and 201723003 are examples of situations in which this opportunity should apply. The taxpayer reformed his irrevocable trust in a state court action to remove powers that were reserved to the grantor as a result of a scrivener's error, and the reformation was completed before the taxpayer died, which avoided estate inclusion under §§2035, 2036, or 2038. The rulings reasoned that the reformation to correct the error was consistent with state law under the *Bosch* doctrine, but the result should be been the same even without the *Bosch* analysis.

c) <u>Recent Rulings re Tax Effects of Court Modifications</u>.

i) A recent CCA refused to give effect to a court modification for purposes of whether or not charitable distributions were made "pursuant to the terms of the governing instrument." CCA 201651013. The trust was modified to give the beneficiary a limited power of appointment in favor of charity. The IRS concluded that if the beneficiary exercised a power of appointment to make distributions to a charity, a charitable deduction would not be available under §642(c) because the distribution would not be made pursuant to the terms of the governing instrument.

ii) A recent PLR concluded that a court ordered division of a "pot" trust into separate trusts for the beneficiaries would not have adverse GST, income, estate or gift tax consequences. PLRs 201702005 & 201702006 are good examples of rulings that have analyzed these issues with respect to court modifications.

iii) Other PLRs holding that the division of a trust instrument into separate trusts for the beneficiaries did not have gift tax consequences. PLRs 200419001, 2013409002, 201245007, 201243006, 201238004, 201218003, 20125001.

11) <u>Estate Tax-Returns and Procedures- Notice of Federal Tax Lien- Collection Due Process Hearing-</u> *Estate of Ruben A. Myers, Deceased, Ken Norton, Executor v. Commissioner*., CCH Dec. 60, 812(M), U.S. Tax Court, (Jan. 10, 2017) - 20823-15L Federal Estate and Gift Tax Reporter ¶45,636(M)

a) <u>Summary</u>: An IRS settlement officer did not err in sustaining the filing of a notice of federal tax lien (NFTL) against an estate and the issuance of a levy notice. The estate made timely installment payments of estate tax from 2007 through 2013. After the estate became delinquent in the payments, the NFTL was filed and the estate was notified of its right to a collection due process (CDP) hearing. The Code Sec. 6324 special estate tax lien expired on the date that was 10 years after the decedent's death and one year after the NFTL was filed. The executor argued that the IRS abused its discretion by failing to file a lien against the nonprobate assets before the statute of limitations ran and that levying the probate assets of the estate was inefficient. The special estate tax lien comes into existence automatically on the death of the decedent against all of the estate's property. Therefore, the argument that the IRS abused its discretion by failing to file a special estate tax lien against the nonprobate assets was without merit. Because Code Sec. 6330 limits the court's review to whether there was an abuse of discretion in sustaining the filing of the NFTL and the issuance of the levy, an examination into the means by which the IRS sought to collect estate tax from the estate over the years since the decedent's death was not allowed. A determination of whether there was unreasonable delay in not proceeding against the nonprobate assets was not permitted. In addition, the expiration of the special estate tax lien and the IRS's inaction to collect the estate tax liability with respect to nonprobate assets did not necessitate a remand of the CDP case for consideration of changed circumstances. The court noted that the 10-year period to collect from transferees under Code Sec. 6324(a)(2) may still be open since that period begins running on the date the tax is assessed, not the date of death.

12) Gift Tax – Returns and Procedures: Unpaid Gift Tax Liability: Notice of Intent to Levy - *Estate of Lillian Beckenfeld, Deceased, Ronald Beckenfeld, Trustee v. Commissioner*., CCH Dec. 60, 826(M), U.S. Tax Court, (Jan. 31, 2017) – 7732-15L Federal Estate and Gift Tax Reporter ¶45,637(M).

    a) Summary: A notice of intent to levy with respect to a deceased donor's gift tax liability was sustained because no payment was made on the donor's account. After the donor's spouse died, the trustee of the estates filed federal gift tax returns for each spouse and paid the gift tax due. The IRS assessed late-filing and late-payment penalties and interest against both estates. The attorney representing both estates sent a letter to the IRS and a check, which included the donor's spouse's Social Security number, with instructions to apply the payment to the spouse's gift tax liability. In response to a final notice of levy against the donor, the attorney requested a collection due process hearing, at which time the attorney argued that the remittance should have been applied to the donor's gift tax liability in spite of the instructions to the contrary and advanced several arguments pertaining to the spouse's liability. The notice of the intent to levy was sustained because no payment had been received on behalf of the donor's gift tax liability and the appeals officer did not have jurisdiction over the spouse's liability. A taxpayer is permitted to designate how a voluntary payment will be applied and the IRS must honor that designation. As instructed by the spouse's representative, the payment was applied to the spouse's gift tax liability. There was no indication that the payment should have been applied to the donor's gift tax liability. As a result, the donor's gift tax liability remained unpaid. Accordingly, the notice of determination was sustained..

13) Estate Tax: Valuation: Art Objects: Expert Opinions: Applicable Discounts - *Estate of Eva Franzen Kollsman, Deceased, Jeffrey Hyland, Executor v. Commissioner*., CCH Dec. 60, 844(M), U.S. Tax Court, (Feb. 22, 2017) – 26077-09 Federal Estate and Gift Tax Reporter ¶45,638(M)

    a) Summary: The value of two paintings was calculated based on an expert's report and applying appropriate discounts to reflect the condition of the paintings. The decedent died in 2005, owning a painting referred to as "Maypole" by Pieter Brueghel the Younger, and a second painting referred to as "Orpheus" by Jan Brueghel the Elder, Jan Brueghel the Younger, or a Brueghel studio. The opinion of the estate's expert was rejected as unreliable and unpersuasive. The government's expert examined sales of paintings similar to Maypole and concluded that a 1997 sale of a painting similar in size and composition was most comparable. Although not addressed by the government's expert, a discount to account for the painting's condition and risk in cleaning was applied. On the assumption that Orpheus was painted by Jan Brueghel the Elder, the government's expert identified sales of comparable works and estimated a fair market value based on the size of Orpheus in relation to the comparable paintings. Recognizing the dispute in attribution, works by Brueghel the

Younger were also examined, which resulted in a lower value. Because the government offered evidence for attributing Orpheus to Brueghel the Elder, the higher valuation of $500,000 was accepted, with discounts applied for the painting's dirtiness, bowing on the valuation date, and to account for the attribution dispute.

14) <u>Estate Tax – Gross Estate – Transfers with retained interest – Transfers within three years of death- transfers to family limited partnership – insufficient consideration – invalid transfer of partnership interest</u> - *Estate of Nancy H. Powell, Deceased, Jeffrey J. Powell, Executor v. Commissioner.*, CCH Dec. 60, 901, 148 T.C. No. 18, U.S. Tax Court, (May 18, 2017) – 24703-12 Federal and Gift Tax Reporter ¶45,639

    a) <u>Summary</u>: The full value of assets transferred to a limited partnership (LP) was includible in a decedent's gross estate. One week prior to the decedent's death, the decedent's son transferred cash and securities from the decedent's revocable trust to the LP. After the decedent was declared incapacitated, the son, acting on her behalf under a power of attorney, transferred the LP interest to a charitable lead annuity trust (CLAT). As in A. Strangi Est., Dec. 55,160(M), 85 TCM 1331, TC Memo. 2003-145, aff'd CA-5, 2005-2 ustc ¶60,506, the decedent's ability to dissolve the LP with her son was a right in conjunction with another to designate the person who should possess or enjoy the transferred property within the meaning of Code Sec. 2036(a)(2). Similarly, the decedent retained the right, through her son, who was her attorney-in-fact, to determine the amount and timing of distributions. Any limitations imposed by the son's fiduciary duties by reason of being the sole general partner were illusory and were owed almost exclusively to the decedent as the 99 percent limited partner. If the decedent made a valid gift of her LP interest to the CLAT, the value of the assets would be includible in her gross estate under Code Sec. 2035(a) because it was a transfer occurring within three years of death. Under Code Sec. 2035(a) or 2036(a)(2), as limited by Code Sec. 2043(a), the amount includible in the decedent's gross estate was the value of the 99 percent LP interest, less any applicable discounts. The full value of the transferred property would only be includible in the gross estate if the transfer to the CLAT was void or revocable. Because the son, acting under the power of attorney, did not have the express authority as required under applicable state (California) law to transfer the LP interests to the CLAT, the gift was either void or revocable. As a result, the value of the gross estate included the excess of the date-of-death value of the cash and securities transferred to the LP over the value, as of the date of the transfer, of the 99 percent LP interest. Furthermore, because the transfer to the CLAT was void or revocable, the date-of-death value of the 99 percent LP interest was includible in her gross estate.

15) <u>Estate Tax – Deductions – gifts made within three years of death – gift tax paid by donees -</u> *Estate of Sheldon C. Sommers, Deceased, Stephan C. Chait, Temporary Administrator, Petitioner, and Wendy Sommers, Julie Sommers Neuman, and Mary Lee Somers-Gosz, Intervenors v. Commissioner.*, CCH Dec. 60, 994, 149 T.C. No. 08, U.S. Tax Court, (Aug. 22, 2017)- 9306 – 07 Federal Estate and Gift Tax Reporter ¶45,640

    a) <u>Summary</u>: A decedent's estate was disallowed an estate tax deduction in amount equal to the gift tax liability that was includible in the decedent's gross estate on a gift made within three years of the decedent's death. The decedent transferred interests in a limited partnership to his three nieces in the year of his death. Pursuant to an agreement entered into by the decedent and the nieces, the nieces were liable for any gift tax due on the transfer of the partnership units. The estate argued that the decedent was obligated to pay the gift under

Code Sec. 2502(d) and that a corresponding deduction was allowed under Reg. §20.2053-6(d) for the decedent's unpaid gift tax liability. Notwithstanding the public policy arguments against allowing the estate to deduct the gift tax that was ultimately paid by the donees, several cases established that a claim against an estate was deductible only to the extent that it exceeded any right to reimbursement that the estate was entitled to pursue. Because the nieces agreed to pay the gift tax arising from the transfers of the units, the estate would have had a right to reimbursement from the nieces if it had paid that amount. The right of reimbursement would then have been taken into account in determining the taxable estate. As a result, because the estate would have been entitled to reimbursement of the gift tax paid, a deduction for the gift tax was not allowed. There was no conflict in denying the estate's deduction for the gift tax liability with the rationale for including the gift tax in the value of the decedent's gross estate as argued by the estate. Because the decedent provided his nieces with the ability to pay the tax on the gifts of the partnership units when they were transferred, the decedent reduced his potential estate by not only the value of the taxable gifts but also the amount of the tax on the gifts. The timing of the payments by the nieces after the decedent's death was irrelevant in whether the estate was allowed a deduction. In reading that A. Morgens Est., Dec. 58,027, 133 TC 402, aff'd CA-9, 2012-1 ustc ¶60,645, allowed for the avoidance of transfer tax on net gifts, the estate would essentially make Code Sec. 2035(b) ineffective.

16) <u>Estate Tax – Portability of deceased spousal unused exclusion amount – Examination of return – effective date – statute of limitations -</u> *Estate of Minnie Lynn Sower, Deceased, Frank W. Sower, Jr. and John R. Sower, Co-Executors v. Commissioner*., CCH Dec. 61, 010, U.S. Tax Court, (Sept. 11, 2017) – 32361-15 Federal Estate and Gift Tax Reporter ¶45,641

a) <u>Summary</u>: The amount of deceased spousal unused exclusion (DSUE) amount available to a decedent was reduced following an examination of her deceased spouse's estate tax return. The decedent's return was examined and, in connection, the spouse's return was examined for the purpose of determining the proper DSUE amount. The decedent's taxable estate was increased by the amount of her 2003 and 2005 taxable gifts and the DSUE amount available to the decedent was reduced on account of the spouse's taxable gifts, resulting in an estate tax deficiency. The IRS was within its authority under Code Secs. 2010(c)(5)(B) and 7602 to examine the spouse's estate tax return. The estate argued that the examination of the spouse's estate was not within the IRS's scope of power because the DSUE amount was not applied to a "taxable gift transfer." The IRS has the authority to examine a deceased spouse's return with respect to each transfer made by the surviving spouse to which a DSUE amount is or has been applied. As a result, this argument was irrelevant because there was a transfer to which the DSUE amount had been applied. The argument that the effective date of Code Sec. 2010 precluded the adjustment of the taxable estate as the result of pre-2010 gifts was also irrelevant because the estate tax provision was applicable and both decedents died after December 31, 2010. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) made the amendments to Code Secs. 2010 and 2505 "apply to estates of decedents dying and gifts made after December 31, 2010." The language of Code Sec. 2010(c)(5)(B) explicitly gave the IRS the authority to examine a deceased spouse's return and adjust the DSUE amount regardless of the statute of limitations period on assessments. Thus, there was not a violation of the Congressional intent of portability. There was no due process concern relating to a subversion of the statute of limitations because the IRS did not have the power to assess estate tax against the predeceased spouse's estate outside the period of limitations..

17) Estate, Gift, Income and Excise Taxes/ Charitable remainder unitrust/ Division of trust/ Divorce of noncharitable beneficiaries – IRS Letter Ruling 201648007, LTR 201648007, Internal Revenue Service, (Aug. 15, 2016) – Federal Estate and Gift Tax Reporter ¶35,920

   a) Summary: The division of a charitable remainder unitrust (CRUT) pursuant to a married couple's divorce arrangements was determined to have no adverse income, estate, gift, or excise tax ramifications. The trust division resulted in two new CRUTs having the same general terms as the original trust, except that: (1) each party would possess no interest in the other's charitable remainder unitrust; (2) on the husband's death all the remaining assets in his trust would be distributed to the charitable beneficiaries designated by him and upon the wife's death all remaining assets in her trust would be distributed to the charitable beneficiaries designated by her; (3) each party was the sole non-charitable beneficiary of his or her respective trust; and (4) each party would receive future unitrust payments from his or her respective trust. The trust division did not cause the successor trusts to lose their status as charitable remainder trusts, nor did it result in the realization of any gain or loss for income tax purposes. Each party's basis in the new trusts would be a pro-rata portion of his or her basis in the original trust and their holding periods in the original trust would be tacked. Similarly, the division did not result in a taxable gift and, although the assets remaining in the trusts at each party's death would be includible in each one's respective gross estate for estate tax purposes, an estate tax charitable deduction would be available for any trust assets passing to the designated charitable beneficiaries. The division and distribution of trust assets to the successor trusts did not terminate the trust's status under Code Sec. 507(a)(1) and no excise tax was imposed under Code Sec. 507(c). Because no charitable deduction was claimed with respect to the payment of unitrust amounts to the noncharitable beneficiaries, no acts of self dealing occurred. Also, the division of the original trust and the subsequent distribution of its assets to the successor trusts did not constitute taxable expenditures under Code Sec. 4945.

18) Estate Tax/ Deceased Spousal Unused Exclusion amount/Portability election/Requirements – CCA Letter Ruling 201650017, CCA 201650017, Internal Revenue Service, (Oct. 14, 2016) – Federal Estate and Gift Tax Reporter ¶35,921

   a) Summary: The IRS Office of Chief Counsel advised that, in cases where the taxpayer has a gross estate of more than $5 million, the taxpayer would have an absolute obligation to file a Form 706 within nine months of the date of death. Where such a taxpayer fails to do so, the election for portability would be missed and no relief would be available to the taxpayer, even if the estate was nontaxable due to the marital deduction. However, if a taxpayer has a gross estate of less than $5 million and fails to timely file a Form 706, the taxpayer may seek, and likely be granted, relief through the private letter ruling process. The Chief Counsel noted that merely filing a late Form 706 would be ineffective in making the portability election and the election would not be respected.

19) Estate Tax/ Charitable Deduction/ Foreign Organization/Qualification – IRS Letter Ruling 201702004, LTR 201702004, Internal Revenue Service, (Sept. 21, 2016) – Federal Estate and Gift Tax Reporter ¶35,922

   a) Summary: A bequest by a U.S. citizen and resident to a designated foreign organization that was organized and operated to improve the quality of life of handicapped and elderly individuals qualified for an estate tax charitable deduction under Code Sec. 2055(a). The foreign charitable organization was operated for its stated charitable purpose, and prohibited any part of its net earnings from being used to benefit private stockholders or individuals or being used for lobbying, attempting to influence legislation, or engaging in any other political activities. The organization received all of its support from sources outside the U.S., had not engaged in any prohibited transactions within the meaning of Code Sec. 4948(c), and had not been notified that it had engaged in any such prohibited transactions. Therefore, the decedent's estate was entitled to an estate tax charitable deduction equal to the fair market value of the property that was includible in the gross estate and passed to the foreign organization.

20) Estate, Gift, and Generation-Skipping Transfer Taxes/ Modifications to trust/ Trust assets not includible in gross estate/ Modifications not a taxable gift/ Effect on GST exempt status – IRS Letter Ruling 201702016, LTR 201702016, Internal Revenue Service, (Sept. 19, 2016) – Federal Estate and Gift Tax Reporter ¶35,923

    a) Summary: Modifications to a trust created for the benefit of a settlor's son did not result in the grant of a general power of appointment that would cause the trust property to be included in the gross estate of the beneficiary nor did they result in a taxable transfer for gift tax purposes. The modifications also did not constitute a constructive addition to the trust or cause a distribution or termination of any trust for purposes of the generation-skipping transfer (GST) tax. The trust was created prior to September 25, 1985. None of the modifications affected the dispositive provisions of the trust because, both before and after the modifications, no son or other issue of the settlor, while serving as trustee, could participate in any decision relating to discretionary distributions of income or principal. Further, the modifications required that there be an independent trustee at all times. Although the son could remove a trustee, that removed trustee was to be replaced with an independent trustee. In addition, the son could not participate in the selection of a non-independent trustee. As such, the son's power to remove and replace a trustee was considered equivalent to the power described in Rev. Rul. 95-58, 1995-2 CB 191, where a replacement trustee could not be related or subordinate to the powerholder within the meaning of Code Sec. 672(c). Similar to Reg. §26.2601-1(b)(4)(i)(E), Example 10, the modifications were administrative in nature and would not shift a beneficial interest in the trust to a lower generation nor would they extend the time for vesting of any beneficial interest in the trust. Accordingly, the trust did not lose its GST tax-exempt status and distributions from or the termination of any interest in the trust would not be subject to GST tax.

21) Estate, Generation-Skipping Transfer, Gift and Income Taxes/Division of Trust/ Exempt Status/ Charitable Deduction – IRS Letter Ruling 201704005, LTR 201704005, Internal Revenue Service, (Oct. 3, 2016) – Federal Estate and Gift Tax Reporter ¶35,924.

    a) Summary: A decedent's estate was granted an extension of time to sever a marital trust into generation-skipping transfer (GST) tax-exempt and non-exempt trusts and to make a reverse qualified terminable interest property (QTIP) election with respect to the exempt trust. In addition, the Code Sec. 2632(e) automatic allocation rules applied to automatically allocate the decedent's unused generation-skipping transfer (GST) exemption to the exempt trust. Further, after the division of a charitable lead unitrust (CLUT) into two CLUTs, the charitable interests of each CLUT qualified as a charitable lead interest for purposes of Code Sec. 2055(e)(2)(B). For GST tax purposes, the decedent's surviving spouse would be treated as the transferor of the CLUT funded by the assets of the non-exempt trust, as well as the transferor for trusts for the benefit of the decedent's children. The decedent would be treated as the transferor of the CLUT funded by the exempt trust. Finally, the modification of the decedent's revocable trust pursuant to court order was not treated as a gift under Code Sec. 2501 and did not cause the trusts and beneficiaries to realize gain under Code Sec. 1001.

22) <u>Estate Tax/valuation/trust property/transfer incident to divorce</u> – IRS Letter Ruling 201707007, LTR 201707007, Internal Revenue Service, (Oct. 31, 2016) – Federal Estate and Gift Tax Reporter ¶35,925

   a) <u>Summary</u>: The fair market value of trust property on a husband's date of death, reduced by the fair market value of his ex-wife's outstanding income interest, would be includible in his gross estate upon his death. As part of the former couple's divorce settlement, the husband transferred property to a trust for her benefit. The trust provided that, upon the ex-wife's death, the remaining trust principal would revert to the husband or his estate. Because the husband retained powers over the trust, the trust property would be includible in his gross estate under Code Sec. 2036(a)(1) or 2036(a)(2). The value of the trust property would be reduced by the value of the ex-wife's outstanding income interest, which would be determined in accordance with the Reg. §20.2031-7 valuation tables.

23) <u>Estate, Gift, and Generation-skipping transfer taxes/ Effect on exempt status/ transfer necessary/ qualified disclaimer/ declaratory judgment</u> – IRS Letter Ruling 201707003, LTR 201707003, Internal Revenue Service, (Oct. 12, 2016) – Federal Estate and Gift Tax Reporter ¶35,926

   a) <u>Summary</u>: A declaratory judgment clarifying the rights and legal relations of parties to an irrevocable trust did not cause the loss of the trust's generation-skipping transfer (GST) tax exempt status. The trustee sought a declaratory judgment to clarify ambiguities that arose under an earlier settlement agreement dividing the original, pre-October 21, 1942 trust, and under which the beneficiaries disclaimed certain interests. When read together, the trust, settlement agreement, and disclaimers did not clearly state the identity of the remainder beneficiaries of the trust, the standard for distributions, or how distributions were to be made upon the beneficiary's death. Because these ambiguities created bona fide issues and the declaratory judgment applied applicable state law in a manner consistent with the highest court of the state, the trust retained its GST exempt status. Since the beneficiaries had the same interest before and after the declaratory judgment, no beneficiary was deemed to have made a transfer that caused inclusion of the trust in their gross estates or to have made a transfer for gift tax purposes. Under the settlement agreement, each beneficiary disclaimed testamentary powers of appointment over his or her respective share in the trust. Since the power was a general power of appointment, the release or lapse of that power was not a transfer subject to estate or gift tax. Further, the disclaimer made by a specific beneficiary was a qualified disclaimer since she disclaimed a percentage of her contingent income interest, remainder interest and power of appointment in the trust and any interest as an heir in the interests disclaimed by her father and the disclaimer met the requirements of Code Sec. 2518.

24) Estate Tax/ Unified Credit/ Deceased Spousal Unused Exclusion Amount/ Extension of time – IRS Letter Ruling 201710002, LTR 20170002, Internal Revenue Service, (Nov. 9, 2016) – Federal Estate and Gift Tax Reporter ¶35,927

a) Summary: A decedent's estate was granted an extension of time to make an election to allow the surviving spouse to take into account the decedent's deceased spousal unused exclusion (DSUE) amount. The decedent died on a date that was after the effective date of the amendment to Code Sec. 2010(c), which provided for the portability of a decedent's DSUE amount. Although the estate was required to file a federal estate tax return to make the portability election, the return was not filed and the error was discovered after the due date for making the election. The decedent's gross estate was less than the basic exclusion amount in the year of the decedent's death. Because the return was not required to be filed under Code Sec. 6018, the portability election was a regulatory election as defined in Reg. §301.9100-1(b). Pursuant to the discretionary authority given to the IRS in Reg. §301.9100-3, the estate was granted an extension of time to elect portability on a complete and properly prepared federal estate tax return.

25) Estate, Generation-Skipping Transfer, Gift and Income Taxes/Division of Trust/Effect on exempt status/ no taxable transfer – IRS Letter Ruling 201709020, LTR 201709020, Internal Revenue Service, (Sept. 12, 2016) – Federal Estate and Gift Tax Reporter ¶35,928

a) Summary: The division of a generation-skipping transfer (GST) tax-exempt trust into eight new trusts, a family trust and seven other trusts, one for each of the grantor's children and their descendants, did not result in adverse tax consequences for purposes of federal income, estate, gift, and GST taxes. Because the beneficiary's interests in the trusts were substantially the same before and after the division, no taxable transfer occurred for gift tax purposes and the basis of the assets under Code Sec. 1015 would be the same after the pro-rata transfers as before. Similarly, no taxable transfer occurred for estate tax purposes that would cause the assets of the original trust or any of the successor trusts to be includible in the gross estate of any beneficiary. Any trusts created as a result of the division would not be includible in the gross estate of the grantor because he did not retain any beneficial interest in these trusts. No trust created as a result of the division would be includible in the gross estate of the grantor's surviving spouse, so long as she did not make any transfers to these trusts and no insurance policy on the spouse's life was acquired by the trusts. Finally, because the transfer of assets did not result in a shift of any beneficial interest in the original trust to any beneficiary occupying a lower generation than the person holding the beneficial interests prior to the division, and did not extend the time for vesting of any beneficial interest beyond the period provided in the original trust, the transfer of assets did not alter the zero inclusion ratio of the trust for GST tax purposes.

26) Generation-skipping transfer tax/ allocation of exemption/ inclusion ratio/ extension of time – IRS Letter Ruling 201711001, LTR 201711001, Internal Revenue Service, (Nov. 10, 2016) – Federal Estate and Gift Tax Reporter ¶35,929

a) Summary: A decedent's estate and surviving spouse were granted extensions of time to allocate generation-skipping transfer (GST) tax exemption to a transfer to a trust. The decedent created a trust for the benefit of his children and their families. The trust was a GST trust within the meaning of Code Sec. 2632(c)(3)(B). The couple filed separate gift tax returns, reporting the transfer and electing split-gift treatment for the gift. After the decedent's death, it was discovered that GST exemption had not been allocated to the transfer. Because the requirements of Reg. §301.9100-3 were met, the estate and the surviving spouse were granted an extension of time to allocate their available GST exemption to the transfer. The allocations would be effective as of the date of the transfer. In addition, the value of the transfer, as determined for federal gift tax purposes, would be used in determining the amount of the decedent and spouse's GST exemption allocated to the transfer.

27) Generation-skipping transfer tax/ allocation of exemption/ GST trust/ automatic allocation – IRS Letter Ruling 201714008, LTR 201714008, Internal Revenue Service, (Dec. 19, 2016) – Federal Estate and Gift Tax Reporter ¶35,930

   a) Summary: A trust was a "GST trust" within the meaning of Code Sec. 2632(c)(3)(B) and the donor's available generation-skipping transfer (GST) tax exemption was automatically allocated to the transfer. The donor created the trust for the benefit of his brother, the brother's wife, and their children. Pursuant to the trust, the brother had a limited power of appointment to appoint trust assets during his life or by a testamentary instrument and a withdrawal power subject to certain limitations. The donor's counsel originally advised that the trust was a GST trust and the automatic allocation of GST exemption rules applied to the transfer. Subsequently, the donor was advised that the trust was not a GST trust. Under the terms of the trust, there was no provision for mandatory distributions to beneficiaries who were non-skip persons. In addition, the brother's power of appointment was a limited power and the amount subject to the withdrawal right, which lapsed each year, was not considered to make the amount subject to the right includible in the gross estate of a non-skip person or subject to a right of withdrawal pursuant to Code Sec. 2632(c)(3)(B). Therefore, none of the exceptions to the definition of a "GST trust" in Code Sec. 2632(c)(3)(B) were applicable. On the date of the transfer, the trust was a GST trust and the donor's available GST exemption was automatically allocated to the transfer.

28) Estate Tax/ Marital deduction/ qualified terminable interest property/ extension of time to make election – IRS Letter Ruling 201714020, LTR 201714020, Internal Revenue Service, (Dec. 6, 2016) – Federal Estate and Gift Tax Reporter ¶35,931

   a) Summary: A decedent's estate was granted an extension of time to make the qualified terminable interest property (QTIP) election for property passing to a marital trust. the co-executors of the estate retained an accountant to prepare the estate tax return. On Schedule M, the value of the marital trust property was listed as property other than QTIP property. No QTIP election was made. Because the executors' reliance on the advice of the accountant was reasonable and the interests of the government would not be prejudiced, the estate was granted an extension of time to make the QTIP election with respect to the marital trust.

29) Generation-skipping transfer tax/ exempt status/termination of trust/ effect of state law – IRS Letter Ruling 201719008, LTR 201719008, Internal Revenue Service, (Feb. 1, 2017) – Federal Estate and Gift Tax Reporter ¶35,932

   a) Summary: A court-ordered termination of a generation-skipping transfer (GST) tax-exempt trust and distribution of trust assets to the grantor's daughter and granddaughter did not cause the trust or any distributions from it to be subject to GST tax. The trust was created prior to September 25, 1985, for the benefit of the grantor's daughter and granddaughter. Under the trust agreement, the trustee had the discretion, once the granddaughter reached age 30, to pay all corpus and income to the granddaughter if the daughter was not still living. The granddaughter, who was over age 30, was under a conservatorship due to severe medical issues requiring constant attention and medical care. The court determined that the daughter and the granddaughter were "qualified beneficiaries" of the trust under state law, and as such, were the only parties necessary to consent to the termination of the trust. Also, the court stated that the material purpose of the trust would be fulfilled by terminating the trust. The trust estate was distributed to the daughter and the granddaughter's conservator, in accordance with the actuarial value of their respective interests calculated in accordance with Code Sec. 7520. As in Reg. §26.2601-1(b)(4)(i)(D), the termination of the trust did not shift a beneficial interest to a beneficiary who occupied a generation lower than the beneficiaries who held the interests prior to the termination, and it did not extend the time for vesting of any beneficial interest beyond the period provided in the trust. As a result, neither the trust nor any terminating distributions from the trust were subject to GST tax.

30) Estate and Gift Taxes/ Qualified terminable interest property/ disposition of certain life estate/ renunciation of income interest – IRS Letter Ruling 201721006, LTR 201721006, Internal Revenue Service, (Feb. 13, 2017) – Federal Estate and Gift Tax Reporter ¶35,933

    a) Summary: A surviving spouse's renunciation of his entire interest a qualified terminable interest property (QTIP) trust following the division of an original QTIP trust did not cause the other share to fail to qualify as QTIP under Code Sec. 2056(b)(7). Pursuant to the deceased spouse's will and applicable state law, the trustee divided the original QTIP trust into Trust 1 and Trust 2, which had identical terms to the original trust. After the division, the surviving spouse continued to have a qualifying income interest for life in both trusts. His renunciation of his interest in Trust 1 was a deemed gift of his income interest in Trust 1 under Code Sec. 2511 and a gift of all the property owned by Trust 1, other than the spouse's qualifying income interest, under Code Sec. 2519. The gift tax liability for the transfer of the qualifying income interests was calculated under Reg. §25.2511-2. The renunciation was not a gift of the property in Trust 2. As the result of the division of the marital trust, Trusts 1 and 2 were funded as separate trusts. Therefore, the spouse's interest in Trust 1 was separate and distinct from his interest in Trust 2. When the spouse renounced his interest in Trust 1, his interest in Trust 2 was not a retained interest for purposes of Code Sec. 2701(a)(1). Thus, the renunciation of his interest in Trust 1 did not result in his interest in Trust 2 being valued at zero. Furthermore, because the spouse was deemed to have made a transfer of all of the property of Trust 1, other than his qualifying income interest therein, that property owned by Trust 1 and deemed transferred according to Code Sec. 2519, would not be includible in the spouse's gross estate under Code Sec. 2044(a).

31) Gift and Generation-skipping transfer taxes/split-gift election/ spouse's interest in trust/ ineffective election/ expiration of limitations period/ allocation of exemption – IRS Letter Ruling 201724007, LTR 201724007, Internal Revenue Service, (Mar. 2, 2017) – Federal Estate and Gift Tax Reporter ¶35,934

    a) Summary: Split-gift treatment with respect to transfers to a family trust was irrevocable because the time period for determining whether the election was effective had expired. In Year 1, a wife created a trust for the benefit of her husband and their descendants. In that same year, the wife transferred property to the trust and the husband transferred property to three adult children. The spouses each filed a Form 709, consenting to treat the gifts as having been made one-half by each spouse. The property transferred to the trust was mistakenly reported on Schedule A, Part 1 (Gifts Subject Only to Gift Tax). The spouses did not allocate any generation-skipping transfer (GST) tax exemption to the transfers and did not elect out of the automatic allocation of exemption rules. The returns were amended to correctly report the transfers on Schedule A, Part 3 (Indirect Skips) and to indicate that their respective GST exemption was automatically allocated to the transfer to the trust. The statute of limitations had expired with respect to the Year 1 Forms 709. As in Rev. Rul. 56-439, 1956-2 CB 605, the husband's interests in the income and principal of the family trust were not susceptible of determination and, therefore, not severable from the interests that the other beneficiaries had in the family trust. Pursuant to Code Sec. 2504(c), the time for determining whether split-gift treatment was effective with respect to the Year 1 transfer to the trust had expired. As a result, the election to treat the Year 1 transfer to the family trusts as split gift was irrevocable. Because the couple filed corrected Forms 709 to report that their GST exemption was automatically allocated to the transfer, each spouse was treated as the transferor of one-half of the entire property transferred to the trust. In addition, the automatic allocation rules under Code Sec. 2632(c) apply to allocate the spouse's GST exemption to one-half of the Year 1 transfer of property to the trust.

32) <u>Estate, Gift, and Generation-skipping transfer taxes/ Reformation of trust/ Scrivener's error</u> – IRS Letter Ruling 201723002, LTR 201723002, Internal Revenue Service, (Jan. 23, 2017) – Federal Estate and Gift Tax Reporter ¶35,935

   a) <u>Summary</u>: As the result of a court-approved modification of a life insurance trust to correct a scrivener's error made by the grantor's attorney, the transfers to the trust were completed gifts. The grantor had established an irrevocable life insurance trust during lifetime to be divided at her death into separate shares for the benefit of her surviving children, or the surviving children of a predeceased child. The grantor made additional transfers to the trust to pay the required premiums for the life insurance, and annual gift tax returns were filed with respect to these transfers. The grantor's attorney acknowledged that her life insurance plan was to be structured so that at her death the insurance proceeds payable to the trust would not be included in her gross estate. During the grantor's life, the attorney's error in drafting the documents implementing the grantor's estate plan in a way that erroneously provided for the retention by the grantor of a reserved power in the transferred assets was discovered. This meant that the r transfers to the trust were incomplete gifts, and that the value of such transfers would have been includible in the grantor's gross estate at death. Upon documentation of the scrivener's error, the state court approved a modification of the trust document, retroactive to the date of its creation. As a result of the retroactive reformation of the trust to correct the scrivener's error, the transfers were completed gifts under Code Sec. 2501. Further, the trust as reformed did not reserve to the grantor any powers or interests under Code Sec. 2035, 2036, or 2038, and did not give the grantor incidents of ownership in policies held by the trust pursuant to Code Sec. 2042. Accordingly, the value of the trust property would not be included in the grantor's gross estate at death. Because the retroactive reformation resulted in the transfers being completed gifts when made, the inclusion ratio for purposes of Code Sec. 2642(b) with respect to the property transferred to the trust was the gift tax value of each transfer on the date that it was made.

33) <u>Generation-skipping transfer tax/ allocation of exemption/election out of automatic allocation rules/ extension of time</u> – IRS Letter Ruling 201729007, LTR 201729007, Internal Revenue Service, (Mar. 20, 2017) – Federal Estate and Gift Tax Reporter ¶35,936

a) Summary: A donor was granted an extension of time to elect out of the automatic allocation of generation-skipping transfer (GST) tax rules with respect to transfers to three trusts. The trusts were created after December 31, 2000. Trust 1 was a grantor retained annuity trust (GRAT), to which the donor transferred stock in Year 1. The donor's retained interest in Trust 1 terminated and the estate tax inclusion period (ETIP) with respect to the Year 1 transfer closed for GST tax purposes on the same date. Trusts 2 and 3 were created for the benefit of the donor's children and grandchildren. In two years, the donor transferred cash and shares of stock to the trusts. All of the trusts had GST potential. Although the donor was advised of the election out of the automatic allocation of GST exemption rules and indicated that she did not want to allocate GST exemption to the transfers, the accountant who prepared the federal gift tax returns failed to make the election and reported the gifts on the wrong schedule. In accordance with Notice 2001-50, 2001-2 CB 189 and Code Sec. 2642(g)(1)(B), the extension of time was governed under the provisions of Reg. §301.9100-3. The donor's acted reasonably and in good faith in reliance on the advice of the accountant and granting the extension would not prejudice the government. Therefore, the donor was granted an extension of time to make an election under Code Sec. 2632(c)(5) that the automatic allocation rules did not apply to the transfers to the three trusts.

34) Estate, Gift, and generation skipping transfer taxes/ returns and procedures/definitions/common law marriage – IRS Technical Advice Memorandum 201734007, LTR 201734007, Internal Revenue Service, (May 1, 2017) – Federal Estate and Gift Tax Reporter ¶35,937

   a) Summary: A decedent and surviving spouse were married for federal tax purposes under applicable state law. After the decedent's death, the State Board of Finance and Revenue issued an order that the decedent and the spouse had entered into a common-law marriage under the law of the state. As a result, on the decedent's death, the couple was married under state law. Reg. §301.7701-18(b)(1) provides that a marriage is recognized for federal tax purposes if the marriage is recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of the couple's domicile. Because the State Board of Finance and Revenue held that the couple was married under state law when the decedent died, the marriage was recognized for federal tax purposes.

35) Estate and Gift Taxes/ Gross Estate/ Power of Appointment/ Reformation of power – IRS Letter Ruling 201737008, LTR 201737008, Internal Revenue Service, (Jun. 14, 2016) – Federal Estate and Gift Tax Reporter ¶35,938

   a) Summary: A power of appointment granted to a spouse was not a general power of appointment. The grantor intended that the power of appointment given to his spouse was a limited power of appointment. However, due to a scrivener's error, the language did not specifically limit the exercise of the power to persons other than the spouse, the spouse's estate, or the creditors of the spouse or her estate. In accordance with applicable state law, a court ordered the retroactive reformation of the trust to limit the spouse's power of appointment. The power of appointment, as reformed by the court order, did not constitute a general power of appointment under Code Sec. 2041(b) over the trust assets. Thus, the trust assets would not be includible in the spouse's gross estate when she died. In addition, the reformation of the trust was not an exercise or release of a general power of appointment under Code Sec. 2514 and was not a gift by the spouse for gift tax purposes.

36) <u>Estate, gift, generation-skipping transfer and income taxes/ returns and procedures/ requests and issuance of guidance/ internal revenue service</u> – Rev. Proc. 2017-1, Internal Revenue Service, (Jan. 2017)

a) <u>Summary</u>: The IRS has revised the general procedures relating to the issuance of written guidance (including letter rulings and determination letters) to taxpayers on issues under the jurisdiction of the various offices of the Associate Chief Counsel. The procedures detail the manner in which advice is requested by taxpayers and provided by the IRS. Estate, gift, and generation-skipping transfer tax issues fall under the jurisdiction of the Associate Chief Counsel (Passthroughs and Special Industries). The Associate office will generally issue a letter ruling on proposed transactions affecting federal transfer taxes, and on completed transactions, if the letter ruling request is submitted before the return affected by the transaction is filed. The IRS will not issue letter rulings or determination letters on frivolous issues and will not issue "comfort" letter rulings. Moreover, the IRS will not issue letter rulings for perspective estates on the computation of tax, actuarial factors, or factual matters. A sample format for a letter ruling request is provided in Appendix B. The procedures may be modified throughout the year. The revised procedures are generally effective January 3, 2017. Rev. Proc. 2016-1, (FEGT ¶30,809) IRB 2016-1, 1, is superseded.

37) <u>Estate, gift, generation-skipping transfer and income taxes/ returns and procedures/ letter rulings and determination letters/ "no rule" issues/ Internal Revenue Services</u> – Rev. Proc. 2017-3, Internal Revenue Service, (Jan. 3, 2017)

a) <u>Summary</u>: The IRS has released a revised list of areas in which it will not issue letter rulings or determination letters. In Section 3, the IRS sets forth the areas in which letter rulings will not be issued, including transfer tax and related issues. The areas include issues relating to charitable remainder interest trusts, actuarial factors for estate and gift tax purposes, the allowance of the estate or gift tax charitable deduction, effect of modifications to a generation-skipping transfer (GST) tax-exempt trust, the installment payment election, and a taxpayer's liability as a transferee. In addition, areas under which the IRS will not ordinarily issue letter rulings are identified in Section 4, and specifically for transfer tax issues in Sections 4(38)-(40), (43), and (49)-(60). Furthermore, the IRS will not issue letter rulings on whether the corpus of a trust will be included in a grantor's estate (or an individual's estate) when the trustee is a private trust company owned partially or entirely by members of the grantor's family (or the individual's family). Rulings will also not be issued regarding whether the distributions of property by a trustee from an irrevocable trust to another irrevocable trust result in a taxable gift, loss of GST-exempt status, or constitute a taxable termination or distribution under Code Sec. 2612. Rulings will not be issued on whether the assets in a grantor trust receive a Code Sec. 1014 basis adjustment at the death of the owner of the trust for income tax purposes when the assets are not includible in the owner's gross estate for estate tax purposes. These areas are under study. Letter rulings will not be released on these issues until the IRS addresses them by publishing revenue rulings, revenue procedures, regulations, or other guidance. The revised procedures are generally effective January 3, 2017. Rev. Proc. 2016-3 (FEGT ¶30,811), IRB 2016-1, 126, is superseded. (Material not relevant to estate, gift, or GST taxes has been omitted from the text.)

38) <u>Estate, gift, and generation-skipping transfer taxes/ same-sex spouses/ recalculation of unified credit/ allocation of GST exemption</u> – Notice 2017-15, Internal Revenue Service, (Jan. 17, 2017)

a) Summary: Special administrative procedures have been provided for certain taxpayers and their estates to recalculate the remaining applicable exclusion amount and generation-skipping transfer (GST) exemption to the extent that an allocation of that exclusion or exemption was made to certain transfers while the taxpayer was married to a person of the same sex. If the limitations period has expired, the taxpayer can recalculate the taxpayer's remaining applicable exclusion amount as a result of the recognition of the taxpayer's same-sex marriage. No change in value of the transferred interest nor any other change in position concerning a legal issue after the limitations period has expired. In addition, no credit or refund of the tax paid on the marital gift can be given after the expiration of the period for credit or refund. The Notice applies to the recalculation of the remaining applicable exclusion amount of a taxpayer and the recalculation of any deceased spousal unused exclusion amount allowed to be included in the applicable exclusion amount of that taxpayer's surviving spouse. The rules also apply to allocations of a taxpayer's GST exemption made on a return filed, or by operation of law as of a date, before the date the Notice was issued, regardless of whether the Code Sec. 6511 limitations period has expired. A taxpayer is also permitted to reduce GST exemption allocated to transfers that were made to or for the benefit of transferees whose generation assignment is changed as a result of the Windsor decision. The Notice applies only to the recalculation of the taxpayer's GST exemption that was allocated to a transfer to, or to a trust for the sole benefit of, one or more transferees whose generation assignment for purposes of that exemption allocation should have been determined on the basis of the familial relationship as the result of the Windsor decision, and who are, therefore, non-skip persons. To recalculate the remaining applicable exclusion amount or the taxpayer's remaining GST exemption (taking into account the GST implications of any interim transfers), the taxpayer should use a Form 709 (preferably the first to be filed after the issuance of the Notice), an amended Form 709 if the limitations period has not expired, or Form 706 for the taxpayer's estate if the gift is not reported on a Form 709. The Form 706 or 709 should include the statement "'FILED PURSUANT TO NOTICE 2017-15" and statements described in the Notice.

39) Estate Tax/Unified Credit/Portability of Exclusion Amount/ Extension of time to make election/Simplified method – Revenue Procedure, 2017-34, I.R.B. 2017-26, June 9, 2017.

a) Summary: The IRS has issued a simplified procedure for estates requesting an extension of time to make a portability election under Code Sec. 2010(c)(5)(A). The simplified method to obtain an extension of time to elect portability is available to the estates of decedents having no filing obligation under Code Sec. 6018(a) for a period the last day of which is the later of January 2, 2018, or the second anniversary of the decedent's death. An estate seeking relief after the second anniversary of the decedent's death may do so by requesting a letter ruling. Section 3 provides that the simplified procedure is only available if certain criteria are met. First, the taxpayer must be the executor of the estate of a decedent who: (1) was survived by a spouse; (2) died after December 31, 2010; and (3) was a U.S. citizen or resident at the time of death. In addition, the estate must not be required to file an estate tax return under Code Sec. 6018(a) and did not file an estate tax return within the time prescribed by Reg. §20.2010-2(a)(1) for filing a return required to elect portability. Finally, all requirements of section 4.01 of the revenue procedure must be met. The revenue procedure is effective June 9, 2017. Through the later of January 2, 2018, or the second anniversary of a decedent's date of death, the procedure described in section 4.01 of this revenue procedure is the exclusive procedure for obtaining an extension of time to make portability election if the decedent and the executor meet the requirements of section 3.01 of this revenue procedure. If a letter ruling request is pending on June 9, 2017, and the estate is within the scope of the revenue procedure, the file on the ruling request will be closed and the user fee will be refunded. The estate may obtain relief as outlined in the revenue procedure by complying with section 4.01. Rev. Proc. 2017-3, I.R.B. 2017-1, 130, is amplified.

2017 State Death Tax Chart

1) California: Effect of EGTRRA on Pick-Up Tax and Size of Gross Estate

   a. Tax is tied to federal state death tax credit. CA REV and TAX §§ 13302; 13411.

State	Type of Tax	Effect of EGTRRA on Pick-up Tax and Size of Gross Estate	State Law Source	2017 State Death Tax Threshold and Notes
Alabama	None	Tax is tied to federal state death tax credit.	AL ST § 40-15-2	
Alaska	None	Tax is tied to federal state death tax credit.	AK ST § 43.31.011	
Arizona	None	Tax was tied to federal state death tax credit.	AZ ST §§ 42-4051;42-4001(2),(12)	On May 8, 2006, Gov. Napolitano signed SB 1170 which permanently repealed Arizona's state estate tax.
Arkansas	None	Tax is tied to federal state death tax credit.	AR ST § 26-59-103; 26-59-106; 26-59-109, as amended March, 2003	
California	None	Tax is tied to federal state death tax credit.	CA REV & TAX §§ 13302; 13411	
Colorado	None	Tax is tied to federal state death tax credit.	CO ST §§ 39-23.5-103; 39-23.5-102	
Connecticut	Separate Estate Tax	As part of the two year budget which became law on September 8, 2009, the exemption for the separate estate and gift taxes was increased to $3.5 million, effective 1/1/10, the tax rates	CT ST § 12-391.	$2,000,000 On 7/10/15, the Connecticut Governor signed SB 1502 which implemented the

		were reduced to a spread of 7.2% to 12%, and effective for decedents dying on or after 1/1/10, the Connecticut tax is due six months after the death of death. In May 2011, the threshold was lowered to $2 million retroactive to 1/1/11		biannual budget. The budget bill included a $20 million dollar cap on the amount of Connecticut estate and gift tax for both residents and nonresidents. This cap will be effective for decedents dying on or after January 1, 2016. It is estimated that the tax cap will affect taxable estates greater than $170.5 million. The Connecticut exemption remains at $2 million.
Delaware	Pick up Only Sunsets on December 31, 2017	For decedents dying after June 30, 2009. The federal deduction for state death taxes is not taken into account in calculating the state tax.	DE ST TI 30 §§ 1502(c)(2)	$5,490,000 (indexed for inflation) On July 2, 2017, the Governor signed HB 16 which sunsets the Delaware Estate Tax on 12/31/17.
District of Columbia	Pick-up Only	Tax frozen at federal state death tax credit in effect on January 1, 2001. In 2003, tax imposed only on estates exceeding EGTRRA applicable exclusion amount. Thereafter, tax imposed on estates exceeding $1 million. No separate state QTIP election	DC CODE §§ 47-3702; 47-3701; approved by Mayor on June 20, 2003; effective retroactively to death occurring on and after 1/1/03.	$2,000,000 On June 24, 2015, the D.C. Council approved changes to the D.C. Estate Tax. The changes include possible increases in the D.C. estate tax threshold to $2 million in 2016 and to the federal

				threshold of $ 5 million indexed for inflation in 2018 or later. Both increases are subject to the District meeting or exceeding certain revenue targets. The target for increasing the exemption to $2,000,000 was met in 2016 and became effective in 2017.
Florida	None	Tax is tied to federal state death tax credit.	FL ST § 198.02; FL CONST. Art. VII, Sec. 5	
Georgia	None	Tax is tied to federal state death tax credit.	GA ST § 48-12-2	
Hawaii	Modified Pick-up Tax	Tax was tied to federal state death tax credit. The Hawaii Legislature on April 30, 2010 overrode the Governor's veto of HB 2866 to impose a Hawaii estate tax on residents and also on the Hawaii assets of a non-resident or a non US citizen.	HI ST §§ 236D-3; 236D-2; 236D-B	$5,490,000 (indexed for inflation for deaths occurring after January 25, 2012) On May 2, 2012, the Hawaii legislature passed HB 2328 which conforms the Hawaii estate tax exemption to the federal estate tax exemption for decedents dying after January 25, 2012.
Idaho	None	Tax is tied to federal state death tax credit.	ID ST §§ 14-403; 14-402; 63-3004 (as amended Mar. 2002).	
Illinois	Modified Pick-up	On January 13, 2011, Governor Quinn signed Public	35 ILCS 405/2(b-1)	$4,000,000

	Only	Act 096-1496 which increased Illinois' individual and corporate income tax rates. Included in the Act was the reinstatement of Illinois' estate tax as of January 1, 2011 with a $2 million exemption. SB 397 passed both the Illinois House and Senate as part of the tax package for Sears and CME on December 13, 2011. It increased the exemption to $3.5 million for 2013 and beyond. Governor Quinn signed the legislation on 12/16/11. Illinois permits a separate state QTIP election, effective 9/8/09.		
Indiana	None	Pick-up tax is tied to federal state death tax credit.	IN ST §§ 6-4.1-11-2; 6-4.1-1-4.	On May 11, 2013, Governor Pence signed HB 1001 which repealed Indiana's inheritance tax retroactively to 1/1/13. This replaced Indiana's prior law enacted in 2012 which phased out Indiana's inheritance tax over nine years beginning in 2013 and ending on 12/31/2021 and increased the inheritance tax exemption amounts

				retroactive to 1/1/12.
Iowa	Inheritance Tax	Pick-up tax is tied to federal state death tax credit. Effective 7/1/10, Iowa specifically reenacted its pick-up estate tax for decedents dying after 12/31/10. Iowa has a separate inheritance tax on transfers to remote relatives and third parties	IA ST § 451.2; 451.13. Iowa Senate File 2380, reenacting IA ST § 451.2	
Kansas	None	For decedents dying on or after January 1, 2007 and through December 31, 2009, Kansas had enacted a separate stand alone estate tax.	KS ST § 79-15, 203	
Kentucky	Inheritance Tax	Pick-up tax is tied to federal state death tax credit. Kentucky has not decoupled but has a separate inheritance tax and recognizes by administrative pronouncement a separate state QTIP election.	KY ST § 140.130	
Louisiana	None	Pick-up tax is tied to federal state death tax credit.	LA R.S. §§ 47:2431; 47:2432; 47:2434.	
Maine	Pick-up Only	For decedents dying after December 31, 2002, pick-up tax was frozen at pre-EGTRRA federal state death tax credit, and imposed on estates exceeding applicable exclusion amount in effect on 12/31/00 (including scheduled increases under pre-EGTRRA law) (L.D. 1319; March 27, 2003). On 6/20/11, Maines' Gov. signed Public Law Chapter 380 into law, which will increase the Maine estate tax exemption to $2 million in		$5,490,000

		2013 and beyond. The rates were also changed, effective 1/1/13, to 0% for Maine estates up to #2 million, 8% for Maine estates between $2 million and $5 million, 10% between $5 million and $8 million and 12% for the excess over $8 million. On 6/30/15, the Maine legislature overrode the Gov.'s veto of LD 1019, the budget bill for fiscal years 2016 and 2017. As part of the new law, the Maine Exemption is tagged to the federal exemption for decedents dying on or after 1/1/16. The tax rates will be: 8% on the first $3 million above the Maine Exemption; 10% on the next $3 million above the Maine Exemption; and !2% on all amounts above $6 million above the Maine Exemption. The new legislation did not include portability as part of the Maine Estate Tax.		
		For estates of decedents dying after 12/21/02, Sec. 2058 deduction is ignored in computing Maine tax and separate state QTIP election is permitted.	M.R.S. Title, 36, Sec. 4062.	
		Maine also subjects real or tangible property located in Maine that is transferred to a trust, limited liability company or other pass-through entity to tax in a non	M.R.S. Title 36, Sec. 4064.	

		resident's estate.		
Maryland	Pick-up Tax Inheritance Tax	On May 15, 2014, Gov. O'Malley signed HB 739 which repealed and reenacted MD TAX GENERAL §§ 7-305, 7-309(a), and 7-309(b) to do the following: 1. Increases the threshold for the Maryland estate tax to $1.5 million in 2015, $2 million in 2016, $3 million in 2017, and $4 million in 2018. For 2019 and beyond, the Maryland threshold will equal the federal applicable exclusion amount. 2. Continues to limit the amount of the federal credit used to calculate the Maryland estate tax to 16% of the amount by which the decedent's taxable estate exceeds the Maryland threshold unless the Section 2011 federal state death tax credit is then in effect. 3. Continues to ignore the federal deduction for state death taxes under Sec. 2058 in computed Maryland estate tax, thus eliminating a circular computation. 4. Permits a state QTIP election.	MD TAX GENERAL §§ 7-305, 7-309(a), and 7-309(b)	$3,000,000
Massachusetts	Pick-up Only	For decedents dying in 2002, pick-up tax is tied to federal state death tax credit. For decedents dying on or after 1/1/03, pick-up tax is frozen at federal state death tax credit in effect on 12/31/00.	MA ST 65C §§ 2A. MA ST 35C §§ 2A(a), as amended July 2002.	$1,000,000

		Tax imposed on estates exceeding applicable exclusion amount in effect on 12/31/00 (including scheduled increases under pre-EGTRRA law), even if that amount is below EGTRRA applicable exclusion amount. Massachusetts Department of Revenue has issued directive, pursuant to which separate Massachusetts QTIP election can be made when applying state's new estate tax based upon pre-EGTRRA federal state death tax credit.	See, Taxpayer Advisory Bulletin (Dec. 2002), DOR Directive 03-02, Mass. Guide to Estate Taxes (2003) and TIR 02-18 published Mass. Dept. of Rev.	
Michigan	None	Tax is tied to federal state death tax credit.	MI ST §§ 205.232; 205.256	
Minnesota	Pick-up Only	Tax frozen at federal state death tax credit in effect on December, 31, 2000, clarifying statute passed May 2002. Tax imposed on estates exceeding federal applicable exclusion amount in effect on December 31, 2000 (including scheduled increases under pre-EGTRRA law), even if that amount is below EGTRRA applicable exclusion amount. Separate state QTIP election permitted.	MN ST §§ 291.005; 291.03; instructions for MS Estate Tax Return; MN Revenue Notice 02-16.	$1,800,000 On March 21, 2014, the Minnesota Gov. signed HF 1777 which retroactively repealed Minnesota's gift tax (which was enacted in 2013). With respect to the estate tax, the new law increases the exemption to $1,200,000 for 2014 and thereafter in annual $200,000 increments until it reaches $2,000,000 in 2018. It also modifies the computation of the estate tax so

				that the first dollars are taxed at a 9% rate which increases to 16%. The new law permits a separate state QTIP election. The provisions enacted in 2013 to impose an estate tax on non-residents who own an interest in a pass-through entity which in turn owned real or personal property in Minnesota has been amended to exclude certain publicly traded entities. It still applies to entities taxes as partnerships or S Corporations that owned closely held businesses, farms, and cabins.
Mississippi	None	Tax is tied to federal state death tax credit.	MS ST § 27-9-5.	
Missouri	None	Tax is tied to federal state death tax credit.	MO ST §§ 145.011; 145.091.	
Montana	None	Tax is tied to federal state death tax credit.	MT ST § 72-16-904; 72-16-905.	
Nebraska	County Inheritance Tax	Nebraska through 2006 imposed a pick-up tax at the state level. Counties impose and collect a separate inheritance tax.	NEB REV ST §§ 77-2101.01(1)	
Nevada	None	Tax is tied to federal state	NV ST Title 32	

		death tax credit.	§§ 375A.025; 375A.100.	
New Hampshire	None	Tax is tied to federal state death tax credit.	NH ST §§ 87:1; 87:7.	
New Jersey	Pick-up tax Inheritance Tax	For decedent tying after December 31, 2002, pick-up tax frozen at federal state death tax credit in effect on 12/31/02. Pick-up tax imposed on estates exceeding a federal applicable exclusion amount in effect 12/31/01 ($675,000), not including scheduled increases under pre-EGTRRA law, even though that amount is below the lowest EGTRRA applicable exclusion amount. The exemption will be increased to $2 million in 2017 and the pick-up tax, but the inheritance tax, will be eliminated as of 1/1/18. The executor has the option of paying the above pick-up tax or a similar tax prescribed by the NJ Dir. Of Div. of Taxn. New Jersey allows a separate state QTIP election when a federal estate tax return is not filed and is not required to be filed. The New Jersey Administrative Code also requires that if the federal and state QTIP election is made, they must be consistent.	NJ ST § 54:38-1 NJ ST § 54:38-1; approved on 7/1/02. NJAC 18:26-3A.8(d)	$2,000,000 On October 14, Gov. Christie signed Assembly Bill A-12 which was the tax bill accompanying the Assembly Bill A-10 which revised the funding for the state's Transportation Fund. Under this new law, the Pick-Up Tax will have a $2 million exemption in 2017 and will be eliminated as of 1/1/18. The new law also eliminates the tax on New Jersey real and tangible property of a non-resident decedent. The repeal of the pick-up tax does not apply to the separate New Jersey inheritance tax.
New Mexico	None	Tax is tied to federal state death tax credit.	NM ST §§ 7-7-2; 7-7-3.	
New York	Pick-up Only	Tax frozen at federal state death tax credit in effect on July 22, 1998.	NY TAX § 951	$4,187,500 (as of 4/1/16 and through 3/3/17)

		Gov. signed S. 6060 in 2004 which applies New York Estate Tax on a pro rata basis to non-resident decedents with property subject to New York Estate Tax. On 3/16/10, the New York Office of Tax Policy Analysis, Taxpayer Guidance Division issued a notice permitting a separate state QTIP election when no federal estate tax return is required to be filed such as in 2010 when there is no estate tax or when the value of the gross estate is too low to require the filing of a federal return. An interest in an S Corporation owned by a non-resident and containing a condominium in New York is an intangible asset as long as the S Corporation has a real business purpose. If the S Corporation has no business purpose, it appears that New York would look through the S Corporation and subject the condominium to New York estate tax in the estate of the non-resident. There would likely be no business purpose if the sole reason for forming the S Corporation was to own assets.	See TSB-M-10(1)M	$5,250,000 (4/1/17 through 12/31/18) As of 1/1/19, the New York estate tax exemption amount will be the same as the federal estate tax applicable exclusion amount. The maximum rate of tax will continue to be 16%. Taxable gifts within three years of death between 4/1/14 and 12/31/18 will be added back to a decedent's estate for purposes of calculating the New York tax. The New York estate tax will be a cliff tax. If the value of the estate is more than 105% of the then current exemption, the exemption will not be available. On 4/1/15, as part of the 2015-2016 Executive Budget, New York enacted changes to the New York Estate

				Tax. New York first clarified that the new rate schedule enacted in 2014 applies to all decedents dying after 4/1/14. Previously, the rate schedule only applied through 3/31/15. New York then modified the three year gift back add-back provision to make it clear that the gift add-back does not apply to any individuals dying on or after 1/1/19. Previously, the gift add-back provision did not apply to gifts made on or after 1/1/19. New York continues to not permit portability for New York estate and no QTIP election is allowed.
North Carolina	None	On July 23, 2013, the Gov. signed HB 998 which repealed the North Carolina estate tax retroactively to 1/1/13.		
North Dakota	None	Tax is tied to federal estate death tax credit.	ND ST § 57-37.1-04	
Ohio	None	Gov. Taft signed the budget bill, 2005 HB 66, repealing the Ohio estate (sponge) tax prospectively and granting credit for it retroactively. This		

		was effective June 30, 2005 and killed the sponge tax. On 6/30/11, Gov. Kasich signed HB 153, the biannual budget bill, which contained a repeal of the Ohio state estate tax effective 1/1/13.		
Oklahoma	None	Tax is tied to federal state death tax credit. The separate estate tax was phased out as of 1/1/10.	OK ST Title 68 § 804	
Oregon	Separate Estate Tax	On June 28, 2011, Oregon's Gov. signed HB 2541 which replaces Oregon's pick-up tax with a stand-alone estate tax effective 1/1/12. The new tax has a $1 million threshold with rates increasing from ten percent to sixteen percent between $1 million and $9.5 million. Determination of the estate for Oregon estate tax purposes is based upon the federal taxable estate with adjustments.		$1,000,000
Pennsylvania	Inheritance Tax	Tax is tied to the federal state death tax credit to the extent that the available federal state death tax credit exceeds the state inheritance tax. Pennsylvania had decoupled its pick-up tax in 2002, but has no recoupled retroactively. The recoupling does not affect the Pennsylvania inheritance tax which is independent of the federal state death tax credit. Pennsylvania recognizes a state QTIP election.	PA ST T. 72 P.S. § 9117 amended 12/23/03.	
Rhode Island	Pick-up Only	Tax frozen at federal state death tax credit in effect on January 1, 2001, with certain	RI ST § 44-22-1.1	$1,515,156 On June 19,

		adjustments (see below). Rhode Island recognized a separate QTIP election in the State's Tax Division Ruling Request No. 2003-03. Rhode Island's Gov. signed into law HB 5983 on June 30, 2009, effective for deaths occurring on or after 1/1/10, an increase in the amount exempt from Rhode Island estate tax from $675,000, to $850,000, with annual adjustments beginning for deaths occurring on or after 1/1/11 based on "the percentage of increase in the Consumer Price Index for all Urban Consumers (CPI-U)… rounded up to the nearest five dollar ($5.00) increment."	RI ST § 44-22-1.1	2014, the Rhode Island Gov. approved changes to the Rhode Island Estate Tax by increasing the exemption to $1,500,000 indexed for inflation in 2015 and eliminating the cliff tax.
South Carolina	None	Tax is tied to federal state death tax credit.	SC ST §§ 12-16-510; 12-16-20 and 15-6-40, amended in 2002.	
South Dakota	None	Tax is tied to federal state death tax credit.	SD ST §§ 10-40A-3; 10-40A-1 (as amended Feb. 2002).	
Tennessee	None	Pick-up tax is tied to federal state death tax credit. Tennessee had a separate inheritance tax which was phased out as of January 1, 2016. On May 2, 2012, the Tennessee legislature passed HB 3760/SB 3762 which phased out the Tennessee Inheritance Tax as of January 1, 2016. The Tennessee Inheritance Tax Exemption was increased to $1.25 million	TN ST §§ 67-8-202; 67-8-203	

		in 2013, $2 million in 2014, and $5 million in 2015. On May 2, 2012, the Tennessee legislature also passed HB 2840/SB 2777 which repealed the Tennessee state gift tax retroactive to 1/1/12.		
Texas	None	Tax was permanently repealed effective as of September 15, 2015 when Chapter 211 of the Texas Tax Code was repealed. Prior to September 15, 2015, the tax was tied to the federal state death tax credit.		
Utah	None	Tax is tied to federal state death tax credit.	UT ST § 59-11-102; 59-11-103	
Vermont	Modified Pick-up	In 2010, Vermont increased the estate tax exemption threshold from $2,000,000 to $2,750,000 for decedents dying January 1, 2011. As of January 1, 2012 the exclusion is scheduled to equal the federal estate tax applicable exclusion, so long as the FET exclusion is not less than $2,000,000 and not more than $3,500,000. Previously the estate tax was frozen at federal state death tax credit in effect on January 1, 2011. No separate state QTIP election is permitted.	VT ST. T 32 § 7442a. VT ST. T. 32 §§ 7402(8), 744a, 7475, amended on June 21, 2002.	$2,750,000
Virginia	None	Tax is tied to federal state death tax credit. The Virginia tax was repealed effectively July 1, 2007. Previously, the tax was frozen at federal state death tax credit in effect on January 1, 1978. Tax was imposed only on	VA ST §§ 58.1-901; 58.1-802. VA ST §§ 58.1-901; 58.1-902	

		estates exceeding EGTRRA federal applicable exclusion amount.		