

Planning For The 99% of Us (estates under \$13 million)

Presented To:

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Presented by:

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About Jordon . . .



Jordon N. Rosen, CPA, MST, AEP® (Distinguished) is a former Director and Shareholder at the Wilmington, Delaware CPA firm, Belfint, Lyons & Shuman, where he headed the firm's estate and trust practice and provided tax consulting and compliance services to the firm's multi-generational high-net-worth clients and business owners. He is a past President of the National Association of Estate Planners and Councils (NAEPC) and was inducted into the NAEPC Estate Planning Hall of Fame in 2020. He has served as President of the Delaware Estate Planning Council and the Chester County, PA Estate Planning Council. He is a past Chair of the Tax Committee of the Delaware State Chamber of Commerce, a past Board member of the Delaware Society of CPAs, a past member of the AICPA Trust, Estate and Gift Tax Technical Resource Panel and currently serves as a member of the AICPA ENGAGE Conference Planning Committee and the Tax Professional Strategic Advisory Group. He also served as a member of the editorial board of Thomson Reuters *Focus* publication.

Jordon is a licensed CPA in Delaware and Pennsylvania and is a member of the Pennsylvania Institute of CPAs, Delaware Society of CPAs, and the AICPA Tax Section. He holds the designation of Accredited Estate Planner (Distinguished). Jordon has also been recognized as a 5-Star Wealth Manager by Philadelphia Magazine and Delaware Today.

Jordon is a frequently sought out speaker both locally and nationally on tax planning and related issues and has published more than 100 articles. He has been a frequent television and radio guest and a past host of *Money Talk* on 1450-WILM. He received his undergraduate degree in Accounting from Temple University and his Masters' degree in Taxation from Widener University.



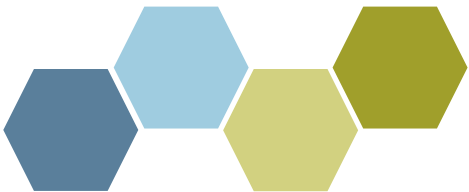
We Will Cover

- > Impact of proposed legislation on small estates
- > Why estate planning is critical for everyone
- > Documents and concepts
- > Lifetime gifting and related strategies
- > Beneficiary designations
- > Portability (including comparison to conventional trust planning)
- > Post-mortem tax elections for smaller estates
 - > Decedent's final return
 - > Administrative elections
 - > Gift tax elections
 - > Fiduciary tax elections
 - > Business related elections
- > Estate planning for pets



Legislative Update

- > Revenue Procedure 2022-32 (supersedes Rev. Proc. 2017-34) increases the time to file and elect portability from 2 to 5 years from the date of death.
- > Notice of Proposed Rulemaking – “Limitation on the Special Rule Regarding a Difference in the Basic Exclusion Amount” (published 4/27/2022)
- > Potential considerations for “small” estates
 - > Lower estate/gift tax exclusions?
 - > Taxing appreciation on lifetime transfers and bequests?
 - > Carryover basis?
 - > Valuations and discounts?
 - > Shifting assets to an irrevocable trust?



Taxpayers are Re-Thinking the Need for Planning

- > Fewer are subject to the Federal Estate Tax since the exemption is so high (\$13,610,000 in 2024)

- > Many states follow the Federal rules, thus eliminating any state death tax

However, . . .

- > Non-taxable estates today may become taxable in the future

- > Assets grow (naturally or by inheritance)

- > Laws change

- > Some people actually win the lottery!

- > As time passes and life events occur, most estate plans become hopelessly out of date



Excuses We Hear Why Clients Don't Think They Need To Plan

- > If there are no taxes due, what is the need for planning?
- > I'm too young
- > All of my property is jointly held with my spouse
- > Estate planning is only for the rich folks
- > It's too expensive (cost v. value)
- > We had our wills drawn up when we were married (probably more than 15 or 20 years ago!)
- > I don't want to think about "it"



Reasons Why Estate Planning is Critical for the Modest Estate Owner

- > Several States have estate exclusions well below the Federal level
- > Several states (i.e., PA) impose a state inheritance tax
- > Need to provide for surviving spouse
- > Special needs family member
- > Care for minor children
- > Second (or third, or fourth) marriage
- > Asset protection (predators and spend thrifts)
- > Divorce planning
- > Life insurance planning
- > Recent changes in law
- > Planning for IRAs and employer plan benefits
- > Roth conversation opportunities



Reasons Why Estate Planning is Critical for the Modest Estate Owner - Continued

- > Closely held business/farming operations
- > Use of discounts
- > Hard to value assets
- > Provide for future education needs
- > Planned charitable giving
- > Family dynamics (alcohol and drug addiction)
- > Disposition of tangible personal property
- > Dictate how YOU want to dispose of your estate
- > Planning for pets
- > Long-term care planning
- > Medicaid planning



Conventional Planning

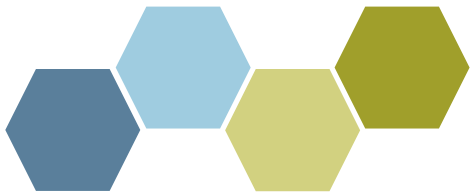
- > Tried to equalize estates
 - > Didn't always know who would die first
 - > Some assets could not be re-titled
 - > Re-titling in separate names could create creditor issues
- > Each spouse created identical wills/trusts
 - > Creating a credit-shelter trust
 - > Creating a marital trust



Basic Estates Planning Documents

- > Will
- > Durable Power of Attorney
- > Advance Medical Directive
- > Revocable Trusts (Living Trusts)
 - > Depends on individual situation and state probate laws
 - > When owning out-of-state real estate
 - > Provides privacy
- > Other trusts to accomplish specific goals
 - > Special needs
 - > Asset protection

Everyone ages 18 and over should have these basic documents



Basic Exclusion Amounts

- > Each individual can exclude \$13,610,000* from their taxable estate (\$27,220,000* for a married couple)
- > Can be applied against lifetime gifts or at death (use it now, or use it later)

*For 2024: Indexed for inflation. Reverts to \$5,000,000 (indexed for inflation) after 2025 unless Congress acts.



Lifetime Gifts to Individuals

For non-taxable estates

- > Appreciation outside of future estate
- > Income from assets no longer taxable to donor. (Could impact taxable SSA benefits, medical deduction, Medicare premiums, etc.)
- > However, there is no basis step-up so need to consider income/capital gain tax impact to the recipient



Lifetime Gifts to Individuals - Limits

- > Annual Exclusion Amount (2024)
 - > Increased to \$18,000 per donee (\$36,000 if married)
 - > Donee gets donor's basis and holding period
 - > Gift can be cash, securities, interest in real estate or business, or payment made on behalf of donee's obligation
- > Gifts in Excess of Annual Exclusion to an Individual
 - > Reduces the basic exclusion amount available to donor
 - > Need to file a federal Gift Tax Return (Form 709) even though no tax may be due



Exceptions to the Gift Tax Rules

The following payments, regardless of the amounts paid, are not considered as “gifts” and avoid the gift tax rules

- > Medical expenses paid directly to the provider
- > Educational expenses paid directly to the provider



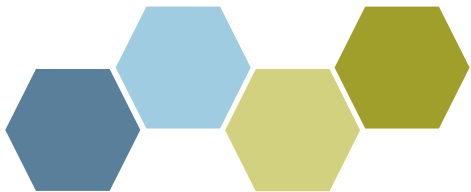
Section 529 Qualified Tuition Plans - General Rules

- > Earnings withdrawn to pay higher education costs are tax-free
- > Tax Cuts & Jobs Act - withdrawals can be made to pay for elementary and high school tuition, up to \$10,000 per beneficiary, per tax year. Applicable for public, private, or religious schools
- > 529 Plans are state-sponsored (with some private university sponsorships). You do not have to use your own state's plan
- > Prepaid Tuition Plans vs. College Savings Plans
- > Most states allow a state tax deduction for contributions to plans
- > Can fund up to 5 times annual gift limit ($5 \times \$18,000 = \$90,000$) in a single year
 - > As if gifts made in current and succeeding 4 years
 - > Election made on gift tax return filed for year of contribution



Beneficiary Designations

- > Applicable to
 - > IRAs, Roth IRAs
 - > Employer plans
 - > Life Insurance
 - > Annuities
 - > Bank and brokerage accounts
- > Review and update as needed
 - > Birth
 - > Death
 - > Divorce
 - > Marriage
 - > Other

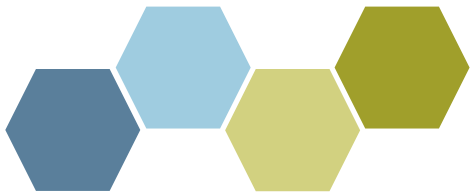
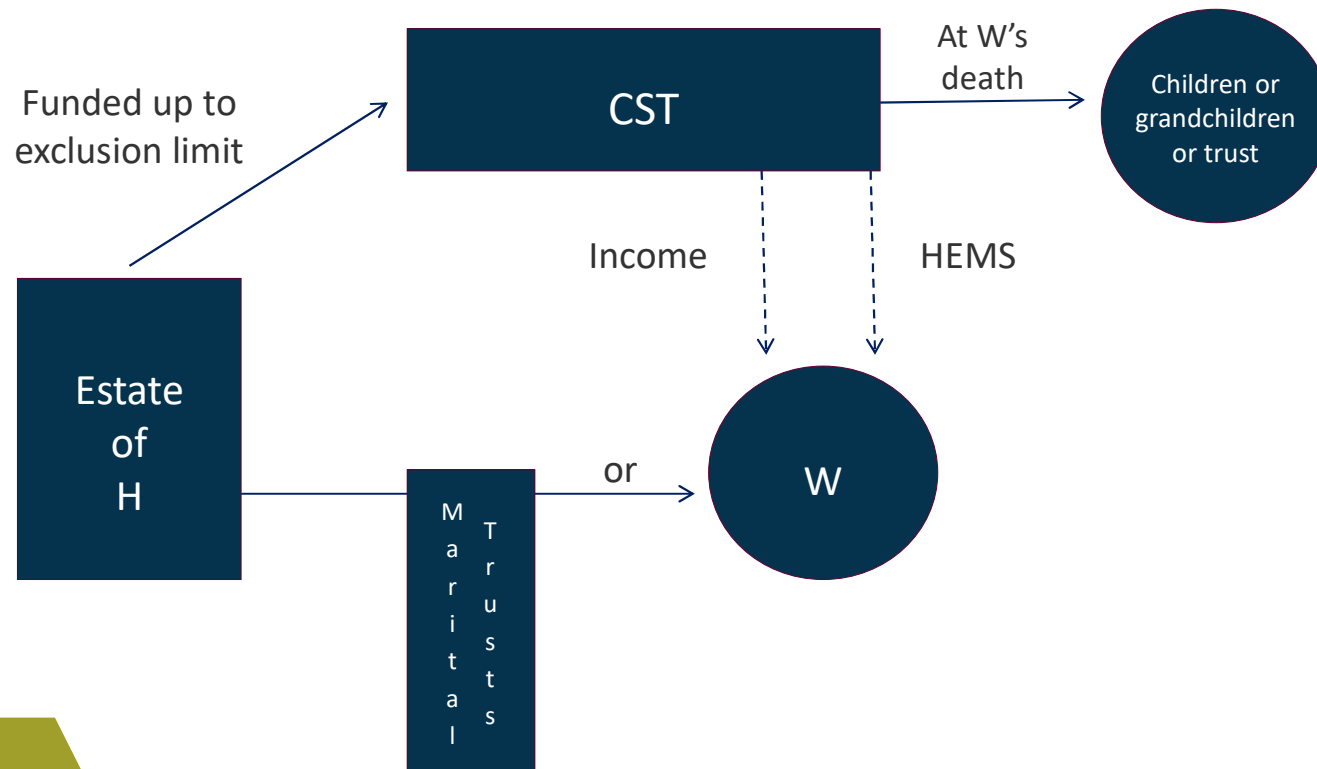


Beneficiary Designations - Continued

- > Consider providing copies to advisors
- > “Per stirpes” or “issue”
- > Trusts as beneficiary
- > Charity as beneficiary
 - > Separation of accounts
 - > Percentage of account balance – if a retirement account, be sure it is separated no later than September 30 of the year following the year of death
 - > Best assets to leave to a charity
 - > Taxable retirement accounts
 - > Series E/EE bonds



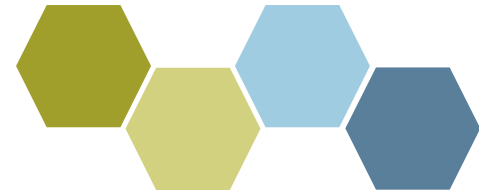
Conventional Planning



Conventional Planning Challenges

- > Not planning at all and wasting the first-to-die's estate exclusion
- > Not being able to fully fund (balance) each spouse's CST at the first death
- > Not requiring that the CST be funded or leaving the decision to the surviving spouse





Portability and Other Estate Tax Elections

IRC Section 2010(c)(4) – “Portability”

Deceased Spousal Unused Exclusion (DSUE) amount

- > TRA 2010 – for decedents dying on or after January 1, 2011
- > Estate and gift tax exclusions were reunited at the hip (“use it now” or “use it later”)
- > “Portability” became permanent with the 2012 Tax Act
- > Final regulation became effective on June 12, 2015



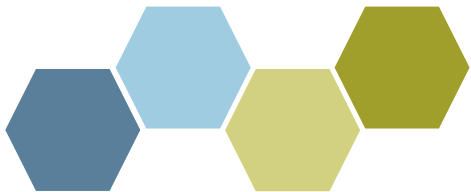
Applicable Exclusion Amount

$$\begin{array}{rcl} \text{(Form 706, Line 9a)} & & \text{Basic Exclusion Amount* (\$13,610,000 in 2024)} \\ \text{(Form 706, Line 9b)} & + & \text{DSUE**} \\ & & \hline & & \text{AEA} \end{array}$$

* \$5,000,000 in 2011 and indexed for inflation prior to 2017

* \$10,000,000 indexed for inflation beginning 2018 – 2025, then back to \$5,000,000 (indexed for inflation) in 2026 if Congress does not act (but also see Notice of Proposed Rulemaking on slide 6 impacting certain transfers after 2017, but before a statutory reduction in the BEA)

** Not indexed for inflation – it is frozen at date of death



DSUE Defined (IRC Section 2010 (c)(4))

- > DSUE is defined as the LESSER of -
 - > The basic exclusion amount, or
 - > The excess of -
 - > The applicable exclusion amount of the last such deceased spouse of such surviving spouse, over
 - > The amount with respect to which the tentative tax is determined under Section 2001(b)(1) on the estate of such deceased spouse



Clawback Provisions

- > **Final Clawback Regulations (11/26/2019)** – any decrease in the Basic Exclusion Amount (BEA) after 2025 will reduce the surviving spouse’s Applicable Exclusion Amount to the extent it is based on BEA, but NOT to the extent it is based on DSUE, thus preserving the DSUE amount.
- > **New Anti-Clawback Exception (Prop. Reg. published 4/27/2022)** – in the case where certain assets with a reversionary interest, including a gift of an enforceable promissory notes are gifted after 2017 and prior to the BEA being statutorily reduced, such assets will be included in the decedent’s GROSS estate, subject to the exclusion limit in the year of death, rather than as an adjusted gift on Form 706; potentially creating a “small’ taxable estate.



Generation Skipping Transfer Tax (GSTT)

No provision in law to “port” unused GST exemption



Making the Portability Election

- > The election is made on a timely and complete 706 showing DSUE and there is a surviving spouse
- > Election is made by the executor (Form 706, Part 6)
- > Not available to a non-resident surviving spouse who is not a U.S. citizen, except to the extent allowable by treaty with his or her country
- > Assets transferred to a QDOT – calculation is preliminary (Form 706, Part 6, Section B)



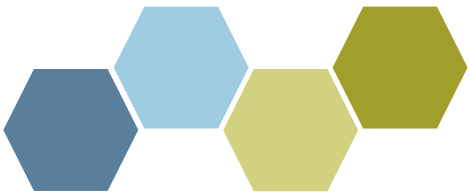
Making the Portability Election - Continued

- > Election is effective as of date of death
- > Election is irrevocable as of the due date of Form 706
- > Uncertainty of exact amount of DSUE when filing the estate tax return where the election is made, does not negate the election; only the amount of the DSUE will change.
- > Statute of Limitations is extended with regard to the determination of the DSUE amount until the expiration of the Statute of Limitations of the surviving spouse's estate.

TIP: Consider including the DSUE calculations on the federal estate tax returns – even if the value is \$0. This allows for future DSUE if values are later adjusted.



Key Item



Requirements of Return When Making Election

- > Complete and properly prepared in accordance with instructions and regulations
- > Reporting values on Form 706 that is not otherwise required to be filed
 - > Property subject to marital or charitable deduction – only need to report
 - > Description
 - > Ownership
 - > Beneficiary
 - > Information to establish right of estate to the deduction



Requirements of Return When Making Election - Continued

- > Rule does not apply to property if
 - > Value needed to determine value passing to another recipient
 - > Value needed to determine eligibility under Section 2032 (alternate valuation), 2032A (farm valuation), or Section 6166 (extension of time to pay tax)
 - > Less than the entire interest in the property is marital or charitable deduction property
 - > A partial disclaimer or partial QTIP election is made with respect to property which is marital or charitable deduction property



Who is Permitted to Make (or opt-out of) the Election?

- > Duly appointed executor or administrator of the estate
- > If no duly appointed executor – a non-duly appointed executor in actual or constructive possession of any property of the decedent
- > Portability election made by a non-appointed executor cannot be superseded by a contrary election by another non-appointed executor of the same estate
- > What if executor and surviving spouse do not agree?
 - > See Vose case (Okla. S.C.)



In re: Vose 390, P.3d 238 Okla. 1.17.2017

- > The Oklahoma Supreme Court held that making a portability election is part of the executor's duty and the executor cannot refuse the surviving spouse's request to make the election.
- > In this case, Mr. Vose was the surviving spouse and Mr. Lee was the executor (administrator).
 - > Lee was the decedent's son from a prior marriage, and he and Vose apparently did not get along.
- > Vose had relinquished his rights to a share of the estate in a pre-nuptial agreement and did not have any interest in the estate other than his interest in portability of the available DSUE amount.



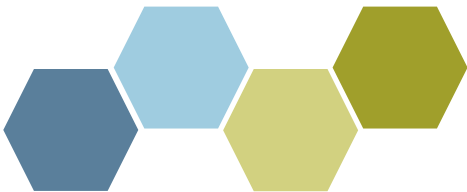
Late Elections

- > No relief if estate was otherwise required to file Form 706
- > If filing just to elect portability
 - > Section 9100 relief may be available. See PLR 201722021.
 - > Rev. Proc. 2022-32 - Simplified Method for Filing for Extension of Time to File
 - > 706 will be due 5 years after death
 - > If estate ultimately found to be taxable – extension is void
 - > Treasury hesitating to make this relief permanent for fear of executors not making the election until after the surviving spouse's death; but has provided the above 5-year filing period as a result of backlogs and to avoid need for dealing with requests for letter rulings.



Opting Out of Portability

- > ✓ the box – Form 706, Part 6, Section A
- > Small estates that otherwise do not have to file Form 706, simply do not file anything
- > If a return is otherwise required to be filed, the filing of a late Form 706 is considered opting-out of the portability election (Prop. Reg. Section 20.2010-2(a)(3)(ii))
- > Hazards of not electing portability
 - > Assets grow
 - > Get client consent in writing if they choose not to elect portability to avoid confrontation with future heirs

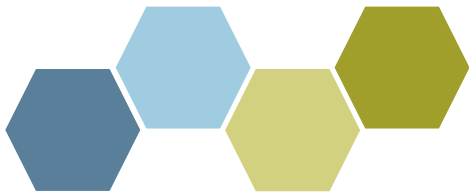


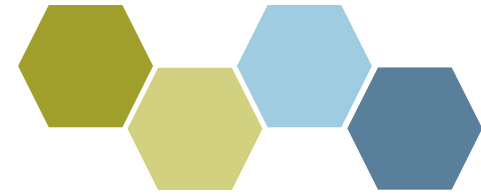
Last Deceased Spouse

- > Most recently deceased person who was married to the surviving spouse at the time of that person's death
- > Identity as of day of taxable gift or the date of the surviving spouse's death
- > Re-marriage does not alter the designation of last deceased spouse. Surviving spouse can apply DSUE amount to future lifetime gifts
- > However, the death of the new spouse will reset the DSUE amount since he/she would now be the most recent deceased spouse. Marry wisely.
- > Multiple DSUE amounts
- > DSUE is ALWAYS applied before the surviving spouse's BEA.
 - > Planning Tip – if making gifts of assets subject to the new anti-clawback provision where one spouse is anticipated to die while the lifetime exclusion is still high , consider making the gifts AFTER the death of the first spouse and elect portability; since the DSUE amount will be applied first to the taxable gift, while preserving the surviving spouse's BEA.



Key Item





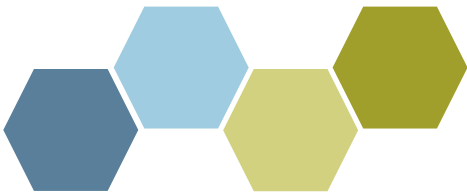
DSUE v. CST
or
Income Tax v. Estate Tax

Estate Tax vs. Income Tax Planning

- > Highest Estate Tax Rate is 40%
- > Highest Marginal Personal rate is 37%
 - > 3.8% surtax
 - > State income tax
- > Since most taxpayers will not be subject to the estate tax, more focus needs to be on the income tax aspects
- > Planning on an asset-by-asset basis
 - > “BASIS” planning is the new normal
 - > Best assets to have in your estate (i.e., Roth IRA, tax-exempt bonds)
 - > Worse assets to have in your estate (i.e., traditional IRA, E/EE Bonds)
- > Need to consider the tax implications to the beneficiaries
- > May drive which assets to spend down first



Key Item

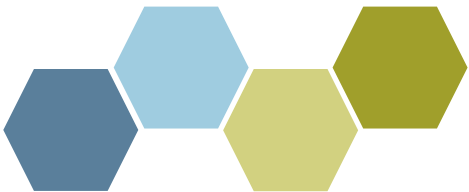


Advantages of DSUE Election

- > Get a second basis step-up at surviving spouse's death
- > Ultimate Federal and state capital gains tax savings
- > Lower administrative expenses
- > Allows for spousal rollover of IRA/retirement plan assets
- > Allows for 10-year (or in some cases a stretch) IRA payout for non-spousal beneficiaries
- > Control/GPA (limited for retirement plan assets)
- > Income subject to individual tax brackets, not condensed trust brackets
- > Could save/avoid NII tax for same reason
- > However – electing portability may cause the surviving spouse's estate to become taxable if conditions change



Key Item



Advantages of CST

- > Asset protection (generally not available using DSUE)
 - > Distrust, immature or gullible surviving spouse
 - > Certain second marriage situations
- > Appreciation exempt from surviving spouse's estate (but no step-up)
- > GST protection
- > Statute of Limitations is not extended on first spouse's 706



State Death Taxes

- > DSUE (portability) is a federal concept
- > 17 states and the District of Columbia have a state-level estate or inheritance tax, ranging as high as 16%!
- > Most states (other than Maryland and Hawaii) have not yet adopted portability election statutes
- > May need to be creative in states where estate exclusion is less than the Federal amount
 - > Use of CST to protect assets up to state exclusion
 - > Use of Marital Trust followed by gift to children's trust by surviving spouse (could have limited benefits in states such as CT and PA)



How Smaller Estates Will Be Affected By

- > Basis Consistency Rules
- > Form 8971 reporting rules

NO IMPACT



Life Insurance Planning

- > Creates liquidity to pay income taxes for beneficiaries who now need to withdraw inherited IRAs and retirement accounts over 10 years, rather than over their lifetime
- > Creates liquidity to pay estate taxes if “small” non-taxable estate become a “small” taxable estate
- > Wealth replacement for those that leave a large portion of their estate to charity



Roth Conversions

- > Creates an income-tax-free inheritance for heirs
- > Still accessible if needed during owner's lifetime
- > Owner of a Roth IRA are always considered to have died prior to their required beginning date, therefore, non-eligible qualified beneficiaries can wait until the end of the 10th year after the year of death before taking distribution of the entire inherited account.



Qualified Domestic Trust (QDOT)

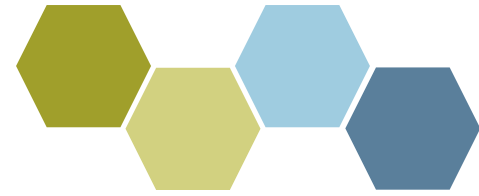
- > Allows for marital deduction for bequeathed property passing to a surviving spouse who is not a U.S. Citizen
- > Estate tax is generally imposed under Section 2056A when distributions are made from the trust
- > If DSUE amount
 - > Executor determines a preliminary DSUE amount
 - > Decreases as Section 2056A distributions are made
 - > Not available to the surviving spouse against tax on lifetime gifts since final determination of DSUE is postponed until death of surviving spouse or termination of QDOT



Using a QTIP Trust

- > Election is made by the executor on the federal estate tax return
- > No estate tax inclusion at first death
- > Included in surviving spouse's taxable estate
- > Assets get a second step-up
- > Control-keeps assets in family
- > General asset protection
- > Can get GST protection with a reverse QTIP election
- > A QTIP election made under Section 2056(b)(7) will not be disregarded and treated as null and void when an executor has elected portability of the DSUE amount under Section 2010(c)(5)(A). Also, see Rev. Proc. 2001-38





Decedent's Final Return

Filing Status

- > Married filing a joint return may not produce the best result if the decedent had little income and large medical expenses
- > Higher income of surviving spouse may cause higher AGI on a joint return; thus, increasing medical deduction threshold



Medical Expenses

- > General Rule

- > Section 213(c) allows the executor to deduct medical expenses on the decedent's final income tax return for the year the expense was incurred, if paid by the estate within one year of death. The election must be filed in duplicate, which includes in the statement that a deduction against the gross estate for those expenses has not been taken and waives the right to claim them at any time for estate tax purposes. If the election does not cover all of the medical expenses, those not covered cannot be taken as a claim against the estate.

- > Deduction on 1040 is subject to AGI floor



Series E/EE Bonds*

- > General Rule

- > Individual can defer recognition of income until the interest is actually received or when the bond matures.

- > Election

- > Individual, in this case the executor, can elect (on a timely filed return) to begin reporting E/EE* bond interest on the decedent's final year income tax return. Section 454(a)

- > Applies only to accrued interest through the date of death, which otherwise would be considered IRD

*Included E/EE Bond interest that had been rolled into H/HH Bonds



Series E/EE Bonds* - Continued

> Election – Continued

- > Interest accruing after date of death is not IRD and beneficiary is not bound by the election
- > Income can be reduced by losses, deduction and exemptions that might otherwise be lost, especially if decedent died early in the year
- > If no election is made – beneficiary, who may be in a higher tax bracket and subject to NIIT, would report the income



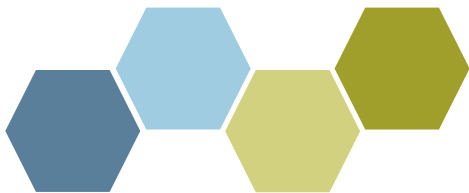
Charitable Contributions

- > Decedent's charitable contributions carryovers may be used on final tax return subject to normal limitations, but no charitable contribution carryovers can be applied to estate. Reg 1.170A-10(d)(4)(iii)
- > Consider accelerating income into final year to utilize these deductions



Capital Losses and NOLs

- > Rev Rule 74-175 specifies capital losses and net operating losses from a business incurred prior to a decedent passing away are deductible only on the final individual tax return.
 - > These losses cannot be carried over to estate income tax return
 - > They also cannot be transferred to surviving spouses
- > Net operating loss carryback may be applied to prior years under Section 172



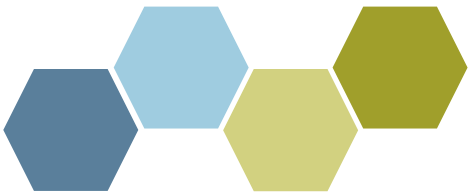
Passive Activity Losses

- > Section 469(g)(2) addresses passive activities transferred by reason of the death of the taxpayer
 - > Suspended PALs can be deducted on final tax return only to the extent the suspended PALs exceeds the following:

Transferee's Basis (Step-up to FMV)

- Less -

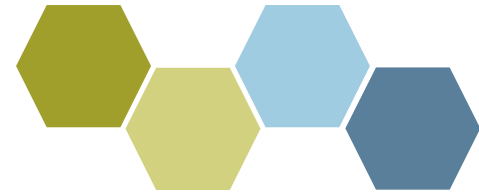
Taxpayer's Adjusted Basis immediately before death



Election Out of Installment Sale Treatment

- > Report sale directly on Schedule D or Form 4797 and recognize entire gain in the year of sale
- > Must be made on a timely filed return, including extension
- > No special statement is needed
- > May be beneficial if decedent will be in a low tax bracket in final year as opposed to beneficiary or estate





Administrative Elections

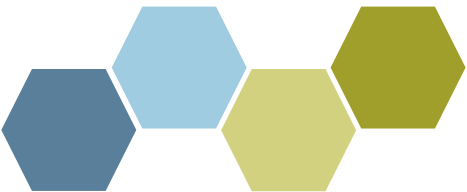
Creating or Terminating A Fiduciary Relationship

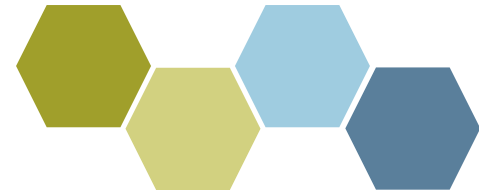
- > Use Form 56 to create or terminate the fiduciary relationship (Section 6903)
- > Notifies IRS of Trustee/Executor's address
- > Avoid notices being sent to incorrect address and missing statutory response dates
- > Form 56 vs. Form 8822-B



Administrative Elections

- > Use Form 4810 to request a prompt assessment of the decedent's income tax and gift tax liability (Section 6501(d))
 - > Filed by the executor or administrator
 - > Filed within 3-year statute of limitations
 - > Filed after Forms 1040 and 709 are filed
 - > IRS assessment of tax or court proceeding must be made within 18 months after filing of form
- > Use Form 5495 to request discharge of executor from personal liability of decedent's income and gift taxes (Section 6905)
 - > Filed after Forms 1040 and 709 are filed
 - > Upon payment of taxes as notified by IRS, or, if no notice within 9 months of filing, executor is discharged from personal liability



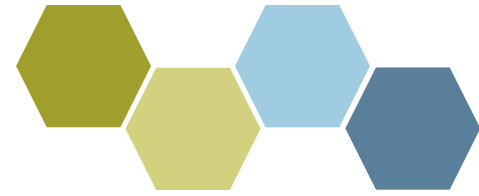


Gift Tax Elections

Consent To Split Pre-Death Gifts

- > Reg. Section 25.2513-2(c) allows the executor or administrator of a deceased spouse to consent to gift-splitting with the surviving spouse with respect to pre-death gifts
- > NOTE: Surviving spouse may not elect to split gifts with deceased spouse if he/she remarries before the end of the calendar year (Section 2513(a))





Fiduciary Tax Elections

Taxable Year of Estate

- > An estate's tax year begins on the day following the date of death
- > Executor may select a calendar year or fiscal year ending on the last day of a month
- > Tax year may not go beyond 1 year after date of death
- > Fiscal year can still be selected on a late-filed return
- > Form SS-4, payment of estimates or filing of an extension does not determine the year-end
- > Advantages of a fiscal year-end
 - > Possible deferral of estate's income tax
 - > Possible deferral of beneficiary's income tax as distributions are considered made on the last day of the estate's tax year



Treating Decedent's Rev. Trust As Part of Estate – Section 645

- > Allows the trustee to treat a “qualified revocable trust” (basically, a rev. trust owned by the decedent at the time of death), as part of the estate for income tax purposes
- > Both Executor and trustees of all revocable trusts making the election must sign on by filing Form 8855 by the due date including extension for filing the estate's first income tax return
- > If no Executor or estate, the trustee can sign as the estate
- > Revocable trusts must obtain a new EIN after the decedent's death, even if it had a prior EIN assigned



Section 645 - Continued

- > Election effective as of date of death and ends on the earlier of
 - > The date when all assets of the electing trust and estate have been distributed and
 - > If no estate tax return is required – up to the second anniversary of the decedent's death, or
 - > If an estate tax return is filed – the later of 2-years or all taxable years of the estate until 6-months after the final determination of the estate's tax



Section 645 - Continued

- > Upon termination, final distribution to a new trust carries out DNI and capital gain of the trust as if the estate was in its termination year
- > Advantages of the Election
 - > Trust can use fiscal year of estate and defer income
 - > Trust can utilize estate's charitable income tax deduction or set-aside
 - > Trust, as part of the estate, can own S Corporation stock
 - > Only one tax return to file
 - > Trust can benefit from estate's \$25,000 rental loss allowance for the first 2-years after death (Section 469(h)(4))
 - > Payment of decedent's medical expenses made by the trust within 1-year after death can be claimed on the decedent's income tax return



65-Day Rule

- > Section 663(b) election to have income distribution made within 65 days after year end to be treated as made on the last day of the preceding tax year of the estate/trust
- > Election can be made for all or a portion of those qualifying distributions
- > Election must be made on a timely filed return, including extensions; and is irrevocable after that date



65-Day Rule - Continued

- > If no return is required to be filed, the election can be filed in the form of a statement with the IRS
- > Can be a valuable tool to assist the executor/trustee to determine whether the income is best taxed to the trust or the beneficiary, including the impact of the NIIT
- > CYA for trustee who forgot to make a distribution before year end



Deducting Administrative Expenses on Fiduciary Tax Return

- > General Rule: Amounts allowed under Sections 2053 and 2054 used to reduce the taxable estate may not also be taken as a deduction on the estate's income tax return
- > Election can be made to claim on fiduciary tax return and waive the deduction on the 706
- > Makes sense if no taxable estate
- > Election (statement detailing specific deductions and losses) must be filed in duplicate with the return on which they are being claimed



Deducting Administrative Expenses on Fiduciary Tax Return - Continued

- > Election can cover all or a portion of the deductions paid
- > Election can be made up until end of SOL.
- > Taxes, interest, and business deductions at the time of death which are claims against the estate, can be deducted on BOTH 706 and 1041



Disclaimers – Section 2518

- > The refusal to accept or have power over property to which the individual is otherwise entitled
- > Reasons to disclaim
 - > Avoid estate tax inclusion
 - > Avoid overfunding the marital trust
 - > To qualify for the marital deduction
 - > To qualify for the charitable deduction
- > Must be a “qualified disclaimer”



“Qualified Disclaimer”

- > Irrevocable and unqualified
- > In writing and identifies property being disclaimed
- > Signed by the disclaimant
- > Delivered to the transferor not later than 9 months after the date creating the transfer occurs, or if under age 21, within 9 months after turning age 21
- > Disclaimant must not have accepted the property or any of its benefits
 - > Exception for surviving spouse – can disclaim to a trust in which she is a beneficiary (but not have the power to appoint the property)
- > Property must pass without any direction on the part of the disclaimant



Disclaimers – Joint Tenancy

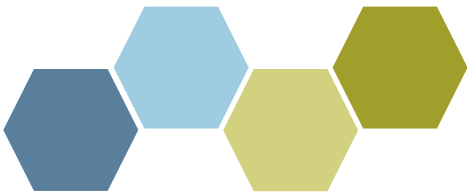
- > General rule – disclaimer must be made within 9 months after the establishment of the joint tenancy
- > Exception – joint bank and brokerage accounts – 9 months from date of decedent’s death with respect to the decedent’s contribution (Reg. 25-2518-2(c)(5), Ex. 12)
- > In the case of joint tenancy which may be unilaterally severed, surviving tenant can disclaim one-half interest even if they provided all or just some of the consideration



Allocation of Estimated Taxes to Beneficiaries

- > Section 643(g); Executor or trustee may elect to treat any portion of an estimated tax made by the estate*/trust as a payment made by a beneficiary of the estate*/trust
- > Treated as an estimated payment made by the beneficiary on January 15 of the following year (after the last day of the taxable year of the beneficiary)
- > Election must be made on or before the 65th day after the close of the taxable year of the estate*/trust

*Only available to estate in its final year



Treatment of Charitable Contributions Made In Succeeding Tax Year

- > With regard to amounts paid or permanently set aside for a charitable purpose
 - > If a charitable contribution is paid after the close of the tax year, but before the close of the following tax year,
 - > Trust or estate can elect to treat the contribution as paid in the preceding year
 - > Election must be made by filing a statement (See. Reg. Section 1.642(c)-1(b)(3) for details of statement) with tax return for which deduction is being claimed



Treatment of Charitable Contributions Made In Succeeding Tax Year - Continued

- > Election can be made up until the due date, including extension, of the succeeding year's tax return
- > Can be made on an amended return if within above time frame
- > After which, the election is irrevocable without IRS consent



Recognition of Gain Upon Distribution of In-Kind Property

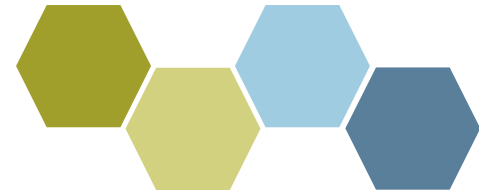
- > Applies when tier-two distributions are made
- > Trustee elects to treat the in-kind distribution as a taxable event
- > Election can be made on a timely filed return, including extension
- > Result
 - > Can change the character of trust's taxable income from ordinary to capital
 - > Can provide beneficiary with a higher basis in the distributed asset
- > However – beneficiary is picking up additional income
- > Circumstances will dictate if making the election is beneficial



Other Elections – Fiduciary Taxes

- > Request for Prompt Assessment
- > Request for Discharge of Personal Liability of Trustee





Business-Related Elections

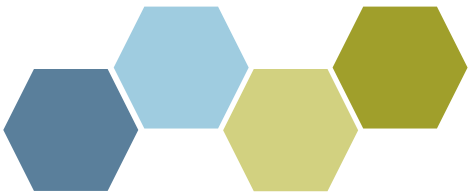
Partnerships

- > Section 754 election allows step-up in basis to be assigned to assets inside of partnership
 - > The election can ONLY be made by the partnership
 - > Election must be made on a timely filed partnership return, including extensions
 - > Attach to the partnership return for the year of the partner's death
 - > Once made, the election can only be revoked with the consent of the IRS and is effective for all subsequent years, until revoked



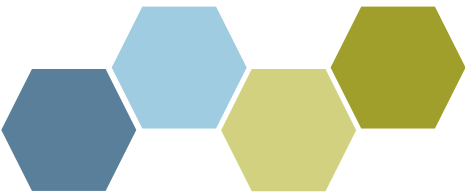
Partnerships – Continued

- > Section 732(d)
 - > Similar to Section 754, but made by estate
 - > Applies to property distributed to the estate within 2-years of the partner's death
 - > Property receives a date-of-death basis step-up
 - > May be a viable alternative if partnership is not willing to make a 754 election, since it does not affect the partnership or remaining partners
- > NOTE: Negative capital accounts disappear at death, avoiding phantom income



Estate as Shareholder of S Corporation

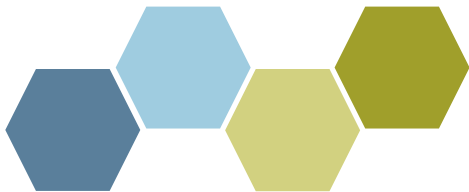
- > General Rules
 - > Estate can own S Corporate stock indefinitely
 - > Only certain trusts can own S Corp stock
 - > Testamentary trust can only own S Corp stock for 2-years
 - > Exception – QSST and ESBT
- > Estate is the owner, not the beneficiaries
 - > Beneficiaries, if otherwise ineligible shareholders, do not negate S status
- > Estate can join in election to elect or terminate S status
 - > Can defer income to beneficiaries if estate is on a fiscal year
 - > If terminating S election, income is allocated between C Corp and S Corp short years



Qualified Subchapter S Trust (QSST)

> Requirements

- > Trust can only (and is required to) distribute all income annually to only one (1) beneficiary, who must be a U.S. citizen or resident
- > Only the income beneficiary can receive principal distributions
- > The income beneficiary's interest must terminate upon the earlier of the death of the income beneficiary or the termination of the trust
- > Upon termination, all trust assets go to the income beneficiary
- > The income beneficiary must elect to be treated as the owner of that portion of the trust consisting of the S Corporation stock
- > QSST status terminates at the time any of the above requirements are not satisfied



QSST Election Made By The Income Beneficiary

- > Separate election required for each S Corporation owned by the trust
- > Generally, the election must be made within 2 ½ months after the S Corporate stock is transferred to the trust or from the time the S election is made
- > The election is irrevocable
- > Covers successive beneficiaries unless they affirmatively refuse to the consent within 2 ½ months of becoming an income beneficiary



Electing Small Business Trust

- > Can have an estate as a beneficiary
- > Election made by trustee within 2½ months of the later of the S stock being transferred to the trust or the beginning of the first tax year which the S election is effective (Reg. 1.1361-1(m)(2))



Qualified Beneficiaries of an ESBT

- > TCJA allows a nonresident alien individual to be a potential current beneficiary of an ESBT (in addition to resident individuals, estates, and certain charitable organizations)



Charitable Contribution Deduction for an ESBT

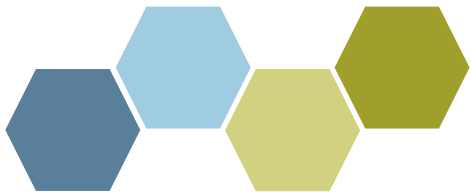
Deduction for charitable contributions is determined using rules applicable to individuals (not trusts)

- > Percentage limitation
- > Carry forward provisions



Estate Planning for Pets

- > Use of trusts
- > Who pays the Income tax?
- > Do Rover and Fluffy need ID numbers?
- > Who is the trustee?
- > Who cares for Fido?
- > Leona Helmsley left \$12 million to her dog, Trouble
- > Court eventually reduced the inheritance to \$2 million
 - > Security - \$100,000/year
 - > Grooming - \$8,000/year
 - > Food – \$1,200/year (went from crab cakes to Alpo)
 - > Medical - \$2,500-\$18,000/year
 - > Guardian fee - \$60,000/year



Thank You!

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