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Estate Planning and Compliance Under a New Paradigm... A Look Back & A Look Forward

Preparing Gift Tax Returns and Fiduciary Income Tax Returns After the Gift Giving Gold Rush...What Have Those Lawyers Done to Us!

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Case Study

Case 1:

- Husband and wife each own 50% of S-Corporation
- Couple took advantage of \$5.12 million gift and generation skipping tax exemption by establishing irrevocable non-reciprocal spousal limited access trusts
- Couple issued a 9:1 non-voting stock dividend and each transferred their non-voting shares to their SLATS with cash to fully use their exemption
- The SLATS are non-reciprocal by having different trustees and different dispositive provisions, trustee removal clauses, and limited powers of appointment. See <u>Estate of Grace</u>, 395 U.S. 316 (1969), <u>Estate of Levy</u>, 46 T.C.M. 910 (1983), and <u>Estate of Bischoff</u>, 69 T.C. 32 (1977) PLR 200426008; <u>Estate of Green v Commissioner</u> 68 F.3d 151 (6th Cir. 1995)
- You are a co-trustee with spouse and must file a gift tax return for the trust for 2012 and an income tax return for the trust for 2013

Case 2:

- Single taxpayer, age 80, owned \$5,250,000 residential property and transferred the property to an irrevocable trust and is leasing the property back from the trust to prevent inclusion under IRC § 2036
- Taxpayer had 10 children and grandchildren
- You are the trustee and must file a gift tax return for the trust for 2012 and an
 income tax return for the trust for 2013
- You now are considering having the taxpayer either borrow or purchase the property back

PLANNING NOTE:

This technique was selected over a QPRT to avoid estate tax inclusion, to allocate GST exemption at the time of the gift, and to avoid the prohibition of a repurchase. Reg. 25.2702-5(c)(5)

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1. Sample Home-Security Trust Language (Residential Property)

- a) For so long as the Donor is living, income and/or principal is payable in the discretion of the trustee to or for the benefit of the class consisting of the Donor's descendants
- b) Upon the death of the Donor, the Trustee shall divide the assets into as many equal shares as there are children then living and children then deceased leaving issue then living. As to each share, income and principal is payable to the class consisting of such child and such child's issue as the Trustee deems advisable in the Trustee's sole and absolute discretion.

2. Sample SLAT (Spousal Limited Access Trust) Language:

- a) For so long as the Donor's spouse is living, income and/or principal is payable to the class consisting of the Donor's spouse and the Donor's issue of all generations.
- b) Upon the death of the Donor's spouse, the Trustee shall divide the assets into as many equal shares as there are children then living and children then deceased leaving issue then living.
- c) As to each share, income and principal is payable to the class consisting of such child and such child's issue as the Trustee deems advisable in the Trustee's sole and absolute discretion for the rule of perpetuities.

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Planning Note:

Some practitioners might have included a provision giving the spouse a limited power of appointment to appoint the property in trust back to the donor.

Planning Note:

If Spouse is the sole trustee of the SLAT, income and/or principal might be payable to the spouse for health, education, support, and maintenance using the ascertainable standard of IRC § 2041. Non-support distributions in favor of the spouse and/or issue will be in the Trustee's discretion other than the surviving spouse.

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3. Crummey Withdrawal Powers (included in the Home-Security Trust only)

• Whenever the trustee receives a gift from the trust, the trustee shall notify the beneficiaries, who shall have 30 days to withdraw the funds, up to \$13,000 per beneficiary. Notwithstanding the foregoing, in no even shall the withdrawal right lapse with respect to the excess over the greater of 5% of the principal or \$5,000 per year.

4. Donor Permitted to Remove Trustee

• Pursuant to Revenue Ruling 95-58, the Donor shall have the right to remove and replace the trustee, provided the replacement trustee is neither related to nor subordinate to the Donor within the provisions of IRC § 672.

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5. Grantor Trust Status

• The Donor shall have the right to reacquire trust corpus pursuant to IRC § 675(4)(c) by substituting property of an equivalent value.

6. Income Tax Reimbursement Permitted

• Pursuant to Revenue Ruling 2004-64, the Trustee shall be permitted to reimburse the Donor the incremental income tax attributable to the trust income being included in the Donor's estate as a result of grantor trust status pursuant to IRC § 671 through IRC § 678.

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7. IRC § 2036

IRC § 2036 provides:

- (a) General Rule. The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death
 - (1) the possession or enjoyment of, or the right to the income from, the property, or
 - (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Planning Note:

This is why the Donor cannot be a trustee of the trust the Donor establishes and cannot be a beneficiary into which the Donor transfers assets (unless the Donor uses a so-called Domestic Asset Protection Trust under the laws of New Hampshire, Delaware, Alaska, and South Dakota, in which case the Donor can be a discretionary beneficiary).

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Among the gift tax and income tax compliance questions are the following:

- •Is the trust a permitted S-Corporation shareholder?
- •How are the rent payments taxable?
- Who pays the income taxes relative to the trust income?
- How are the assets to be valued transferred to the trust?
- •How do you report the transaction on a gift tax return?
- Is the gift eligible for gift splitting?
- Did the taxpayer use a Wandry formula gift?
- How and should generation skipping be allocated?
- •How do you determine and allocate basis?
- How long do we have to worry (statute of limitations)?

Is the trust a permitted S-Corporation Shareholder?

Qualified S Corporation Shareholders

In connection with a gift giving program, it is extremely important that the S election be preserved since in all likelihood a trust will be the donee, it is important to be sure the trust is structured to be an eligible S corporation shareholder both during the life of the donor as well as thereafter.

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Applicable Code Sections

IRC § 1361 provides that an S corporation must have only so-called eligible S corporation shareholders and generally must be an individual or one or more trusts as set forth in IRC § 1361(c)(2). Pursuant to this section, an eligible S corporation shareholder is as follows:

- 1.A trust, all of which is treated as owned as an individual who is a citizen or resident of the United States (meaning a wholly grantor trust). IRC § 1361(c)(2)(A)(i)
- 2.A trust which was a wholly owned trust immediately before the death of the deemed owner and which continues in existence after such death, but only for the two year period beginning on the date of the deemed owner's death. IRC § 1361(c)(2)(A)(ii)

- 3. A trust with respect to stock transferred to it pursuant to the terms of a Will, but only for the two year period beginning on the day on which such stock is transferred to it. IRC § 1361(c)(2)(A)(iii)
- 4. An electing small business trust (ESBT). IRC § 1361(c)(2)(A)(v)

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In addition to the foregoing, IRC § 1361(d) provides for a so-called qualified subchapter S trust. A qualified subchapter S trust is a trust which, according to the terms of the trust, satisfies the following requirements:

- i. all trust income must be distributed currently to a single income beneficiary;
- ii. the current income beneficiary must be a U.S. citizen or resident;
- iii. the trust instrument must provide that during the life of the current income beneficiary, there may be only one income

- iv.the trust must restrict principal distributions made during the income beneficiary's life to the current income beneficiary;
- v. the trust instrument must provide that the beneficiary's income interest will terminate upon the earlier of the beneficiary's death or the trust's termination; and
- vi.the trust instrument must provide that if the trust terminates during the current income beneficiary's lifetime, all trust assets must be distributed to the current income beneficiary.

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PLANNING NOTE

In general, a QTIP trust will satisfy this requirement. In the case of a lifetime credit shelter trust, it will be a wholly grantor trust, provided the power to reacquire trust assets pursuant to Section 675(4)(c) is included.

PLANNING NOTE

In addition to the foregoing, a QSST election must be made by the current income beneficiary with respect to each subchapter S corporation in which the trust has an interest. This must be made within 65 days after the date the trust receives the S corporation stock.

•Income Tax Treatment

In the case of a qualified subchapter S trust, the single beneficiary is treated as the owner and will be taxed on all income attributable to the S corporation pursuant to IRC § 1361(d)(1)(B), which provides:

"For purposes of Section 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which a QSST election is made." IRC § 1361(d)(2)

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• Electing Small Business Trusts

An ESBT is defined as any trust excluding QSSTs provided such trust (1) does not have a beneficiary, any person other than an eligible individual, an estate (or certain tax exempt organizations), (2) no interest in such trust was acquired by purchase, and (3) an election was made to have it treated as an ESBT.

•Income Tax Treatment for the ESBT

The income tax on the ESBT share is computed without any deductions, including the deduction for distribution to beneficiaries, other than a deduction for administrative expenses or state or local income taxes that are allowed, such that the income of the ESBT share is taxed at the highest individual rate on all items of income, loss, or deduction. IRC § 641(d)(2)

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How are the rent payments taxable?

Pursuant to Rev. Rul. 85-13, a transfer between a grantor and his wholly owned grantor trust is not an income taxable event, with the following tax consequences.

- (1) While the transferee trust takes a carryover basis, the sale to the trust is income tax free.
- (2) Any interest paid by the trust to the grantor (or by the grantor to the trust) pursuant to the promissory note also is income tax free.
- (3) If the trust owns property and the grantor is paying rent, the payment of rent to the trust is income tax free.
- (4) The transferor can reacquire trust assets by substituting property of an equivalent value to obtain a step-up in basis upon death by exchanging cash for zero or no basis assets.

PLANNING NOTE:

It is important that the trust be a "wholly grantor trust" as to the grantor.

•How do you make an irrevocable trust a "wholly grantor trust" as to the grantor using the power of acquisition under IRC § 675?

Under IRC § 675, the grantor shall be treated as the owner of any portion of the trust with respect to which a power of administration is exercisable in a non-fiduciary capacity by any person without the approval or consent of any person in a fiduciary capacity to "(C) reacquire the trust corpus by substituting other property of an equivalent value."

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•Are you sure that the power to reacquire trust corpus will not result in estate tax includibility?

Yes. In Rev. Rul. 2008-16, the IRS ruled that, when the grantor of an inter vivos trust has a non-fiduciary power to substitute property held in trust, the value of the trust corpus is not includible in the gross estate under 2036 or 2038 as long as the trustee has some fiduciary obligations that insure the grantor's compliance with the trust terms. It has been held to determine there is a fiduciary obligation to assure that the property is exchanged for its equivalent value and the trustee has a duty of impartiality concerning the trust beneficiaries.

•Would the answer be the same if the trust held life insurance governed by IRC § 2042?

Yes. In Rev. Rul. 2011-28, the IRS ruled that the grantor's retention of the power, exercisable in a non-fiduciary capacity, to acquire an insurance policy held in trust by substituting other assets of an equivalent value will not, by itself, cause the value of the insurance policy to be includible in the grantor's gross estate under Section 2042, provided the trustee has a fiduciary obligation (under local law of the trust instrument) to insure the grantor's compliance with the terms of this power by satisfying itself that the properties acquired and substituted by the grantor are, in fact, of equivalent value and further provided that the substitution power cannot be exercised in a manner that can shift benefits among the trust beneficiaries.

Who pays the income taxes relative to the trust income?

•What if the grantor does not have sufficient funds to pay the income tax attributable to the grantor trust earnings?

More good news! Under Rev. Rul. 2004-64, the IRS ruled that a trustee, or any other individual who is not related to or subordinate to the donor as defined in IRC § 672(c), in the trustee's or such person's sole and absolute discretion may make distributions to the donor in order to satisfy any federal estate income tax liability incurred by the donor pursuant to the laws of the United States of America or any state which is attributable to income of the trust or any share thereof. The amount of such payments shall not exceed the excess of the donor's personal income tax liability over his or her income tax liability computed as if the trust was not a grantor trust under IRC § 671, et seq.

How are the assets to be valued transferred to the trust?

a) <u>Lappo v. Commissioner</u>, T.C. Memo 2003-258:

Taxpayer gifted limited partnership interests in a partnership consisting primarily of marketable securities (principally municipal bonds) and certain parcels of Michigan real estate that was subject to a long term lease. The Tax Court allowed a 15% minority interest and a 24% marketability discount, computed as follows:

TOTAL NAV (NET ASSET VALUE) AS OF DETERMINATION DATE	\$3,156,882
1% OF NAV	\$ 31,569
LESS: 15% MINORITY INTEREST DISCOUNT	(4,735) \$ 26,834
LESS: 24% MARKETABILITY DISCOUNT	(6,440)
FMV OF 1% INTEREST	\$ 20,394
FMV OF 69.4815368% INTEREST	\$1,417,006

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b) Peracchio v. Commissioner, T.C. Memo. 2003-280

Taxpayer formed limited partnership and transferred limited partnership interests to family members where the assets of the partnership consisted primarily of cash and marketable securities with a designated value of \$2,013,765. The Tax Court allowed discounts of 6% for the minority interests and 25% for the marketability discount, computed as follows:

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TOTAL NAV	\$2,010,370
1% OF NAV	\$ 20,104
LESS: 6% MINORITY INTEREST DISCOUNT	(1,206)
MARKETABLE VALUE	\$ 18,898
LESS: 25% MARKETABILITY DISCOUNT	(4,725)
FMV OF 1% INTEREST	\$ 14,173
FMV OF 45.47% INTEREST	\$ 644,446
FMV OF 53.48% INTEREST	\$ 757,972

c) Revenue Ruling 93-12

The IRS will no longer deny discounts simply because transfers are made between family members understanding that there should be no aggregation of interest.

Example:

Decedent owns property, such as an LLC or an S corporation, worth \$10,000,000 and gifts 20% to each of the 5 children. If the decedent dies, the asset would be worth \$10,000,000. However, if the assets are transferred, the fair market value of the gift would be approximately \$6,000,000, assuming a 40% discount. The question is what is the value of each 20% interest based upon the general rule that value is equal to the price of listed property to change hands assuming that a willing buyer and a willing seller and both parties had reasonable knowledge of all of the relevant facts and circumstances and neither party is under a compulsion to either buy or sell.

d) Real Estate

The fair market value of fractional interests in real estate can range from a low of 17% to a high of 44%.

1. Ludwick v. Commissioner, T.C. Memo. 2010-104

Taxpayers, a married couple, separately transferred a tenancy in common interest in a vacation home to qualified personal residence trusts using a discount of 30% of net asset value (\$7,250,000 x 50% x 70% = \$2,537,500). The IRS was willing to allow a discount of 15% but in Tax Court argued that the discount should be no more than 11%. The Tax Court determined that a 17% discount would be appropriate relying on expert testimony as to how much a "partition" proceeding would cost.

In the case of a fractional interesting property, the value should be determined by reference to the "cost to partition" rather than using a "going concern" value.

2. Lefrak v. Commissioner, T.C. Memo. 1993-526 (1993)

The Tax Court allowed a discount of 20% for lack of control and 10% for lack of marketability rejecting a cost of partition approach.

3. Estate of Barge v. IRS, 73 T.C.M. 2615 (1997)

The Tax Court allowed a 28% discount for an undivided interest in timberland noting that the Tax Court valued the land using a capitalization of income approach using a 10% capitalization rate.

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4. Estate of Williams v. IRS, 75 T.C.M. 1758 (1998)

The Tax Court allowed a 44% discount for a fractional interest of jointly owned real estate gifted to the donor's wife's niece finding that there should be a discount of 20% for lack of marketability and 30% for lack of control (44% in total net).

PLANNING NOTE

In TAM 199943003, the IRS agrees that the estimated cost to partition is only one method of determining the appropriate discount.

e) Consider Promissory Notes

The gift tax value of a promissory note may be significantly less than the face amount of the note and perhaps forgiveness should be considered, although income tax ramifications of forgiveness should be considered if the note is not between a grantor and an intentionally defective grantor trust.

Reg. 20.2031-4 provides that the value of a note included a decedent's gross estate is presumed to be the amount of unpaid principal less accrued interest on the valuation date, unless the note is shown to have a lesser value or to be worthless. Discounts are appropriate attributable to uncollectability, lack of security, interest rates, and terms. The IRS and the courts have applied this Regulation to promissory notes between family members as well as notes between unrelated persons (even if money will be inherited enough to pay off the note and the cancellation of indebtedness is based on cash loans.). *Estate of Berkman v. Commissioner*, T.C.M. 1979-46; TAM 9240003

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Is the gift eligible for gift-splitting?

• Gift-splitting is permitted as long as the spouse is not a beneficiary, so except in unusual situations, a SLAT could not be funded with assets exclusively owned by the donor. Reg 25.2513-1.

Did the taxpayer use a Wandry formula gift?

PLANNING NOTE

This advantage over outright gifts or sales to intentionally defective trusts has virtually been eliminated as a result of Wandry v. Commissioner, T.C. Memo. 2012-88. In Wandry, for the first time, the Tax Court approved a gift of LLC units at a value to be determined by an appraisal, subject to adjustment for the IRS audited return. The Tax Court held that the number of units transferred would be based on its decision and that no adjustment would be made for the dollar value of the gift. The exact language was as follows: "I hereby assign and transfer as gifts, a sufficient number of my units, as a member of LLC, so that the fair market value of such gifts for federal gift tax purposes, shall be as follows:

Name	Gift Amount
Kenneth D. Wandry	\$ 261,000
Cynthia K. Wandry	\$ 261,000
Jason K. Wandry	\$ 261,000
Jared S. Wandry	\$ 261,000
Grandchild A	S 261,000
Grandchild B	\$ 11,000
Grandchild C	\$ 11,000
Grandchild D	\$ 11,000
Grandchild E	\$ 11,000
Total	\$1,099,000

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Although the number of units gifts is fixed on the date of the gift, that number is based on the fair market value of the gifted units, which cannot be known on the date of the gift, but must be determined after such date based on all relevant information as of that date. Furthermore, the value determined is subject to challenge by the Internal Revenue Service (IRS). I intend to have a good faith determination of such value made by an independent third party professional experienced in such matters and appropriately qualified to make such a determination.

Nevertheless, if, after the number of gifted units is determined based on such valuation, the IRS challenges such valuation and a final determination of a different value is made by the IRS or a court of law, the number of gifted units shall be adjusted accordingly so that the value of the number of units gifted to each person equals the amount set forth above, in the same manner as a federal estate tax formula marital deduction amount would be adjusted for a valuation redetermined by the IRS and/or a court of law."

How and should generation skipping be allocated?

• Generation skipping considerations

The generation skipping tax exemption is \$5,120,000 as is the gift tax exclusion exemption. In the case of a transfer to a trust which will continue for one or more generation members below that of the grantor, a gift tax return should be filed and generation skipping tax exemption shall be allocation.

• Is the generation skipping tax exemption automatically be allocated?

The answer is confusing, so a gift tax return should be filed in any event to either allocate GST or opt out of the automatic GST allocation rules.

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• What are the GST automatic allocation rules?

IRC § 2632 provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

What is an indirect skip?

IRC § 2632(c) provides that the term "indirect skip" means any transfer of property (other than a direct skip) made to a so-called GST trust.

• What is a GST trust?

IRC § 2632(c)(3)(B) provides that a "GST Trust" means a trust that could have a generation skipping transfer with respect to the transferor unless... the trust is a trust, any portion of which would be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer. (IRC § 2632(c)(3)(B)(iv))

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PLANNING NOTE

In the SLAT, so-called "Crummey Notices" were not included so this provision would not be applicable but the result would be different if the trust included so-called Crummey withdrawal powers to make gifts to the trust eligible for the annual exclusion. In such a case, the following provisions of IRC § 2632 may change the result.

IRC § 2632(c)(3)(B) provides that "the value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in IRC § 2503(b) (\$13,000) with respect to any transferor and it shall be assumed that powers of appointment held by non-skip persons will not be exercised.

PLANNING NOTE

This means that if the irrevocable trust contains so-called Crummey withdrawal powers, and those powers are held by a non-skip person such as the children, even if also held by grandchildren, IRC § 2632(c)(3)(B)(iii) and (iv) can get out of the automatic allocation rules, but the remaining Section § 2632 kept this by stating that essentially Crummey withdrawal powers, to the extent they do not exceed \$13,000 per annum, will be ignored thereby bringing it back into a so-called GST trust and thereby resulting in an automatic allocation. The problem here is where the Crummey withdrawal beneficiaries have the right to withdraw greater than \$13,000 attributable to a carryover from the prior year, in which case the trust would not be considered a GST trust and would not be eligible for the automatic allocation.

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• Resolution:

File a gift tax return and either elect in or elect out of a GST treatment.

Sample Withdrawal Powers:

- (1) From and after the addition by gift of any property to the trust, who's beneficiary shall be entitled to withdraw a pro rata share of the gift for 30 days. Each such beneficiary shall be provided reasonable notice to make this withdrawal.
- (2) Notwithstanding the foregoing, a beneficiary's right to withdraw property from the trust in any one calendar year shall not expire as to more than the greater of \$5,000 or 5% of the aggregate value of the assets out of which or the proceeds of which a beneficiary's withdrawal right may be satisfied. To the extent of such excess, the withdrawal power shall not lapse, but rather shall be continued into the next succeeding calendar year.

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PLANNING NOTE

This so-called 5 and 5 limitation is derived from Code Section 2514(e), which recognizes the right to withdraw is the equivalent of ownership and failure to exercise the right to withdraw represents a gift back to the trust and therefore would be a gift by the donee beneficiary not eligible for the annual exclusion.

 Will this cause adverse gift tax consequences to the donee beneficiaries who do not withdraw their funds?

IRC § 2514(e) provides that there would only be a gift by the donee beneficiary with respect to the lapse of the powers during any calendar year only to the extent of the property which could have been appointed by exercise of such lapsed power exceeds in value the greater of the following amounts, \$5,000, or 5% of the aggregate value of the assets out of which, or the proceeds of which the exercise of the lapsed powers could be satisfied.

PLANNING NOTE:

GST exemption will not be deemed allocated until the close of the estate tax inclusion period. IRC § 2642 (f)(2)(4), Regs 26.2632-1(c) (2)

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How do you determine and allocate basis?

Gift Giving Tax Considerations – The Basis Rules

a) Compare the tax consequences of a step-up in basis attributable to inherited property vs. carryover basis in the case of lifetime gifts.

1) Basis of property acquired from the decedent.

A. IRC § 1014 provides:

"Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passes from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person be -(1) the fair market value of the property on the date of the decedent's death." IRC § 1014(a)(1)

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B. IRC § 1014(b) provides:

"For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

- 1. Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent; IRC § 1014(b)(1)
- 2. Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;" IRC § 1014(b)(2)
- "Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;" IRC § 1014(b)(4)

- 4. "In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate." IRC § 1014(b)(9)
- 5. "Property includible in the gross estate of the decedent under section 2044 (relating to certain property for which marital deduction was previously allowed)." IRC § 1014(b)(10)

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C. Exception:

IRC § 1014 prohibits a step-up acquired from a decedent if appreciated property was acquired by the decedent by gift during the one year period ending on the date of the decedent's death and such property is acquired from the decedent (or passes from the decedent to) the donor of such property (or the spouse of such donor). In such a case, the basis of such property in the hands of the donor or donor's spouse shall be the adjusted basis of such property in the hands of the decedent immediately before the death of the decedent. IRC § 1014(e)(1)

2) Basis of Property Acquired by Gifts and Transfers in Trust §1015 – Carry Over

If property is acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor (or the last preceding owner) by whom it was not acquired by gift, except that if such basis is greater than the fair market value of the property at the time of the gift, then, for the purpose of determining loss, the basis shall be such fair market value.

Example:

Property

FMV AB \$90,000

\$100,000

*If sold for \$95,000, no gain or loss because the FMV is used to determine loss and no gain since basis is \$100,000

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3) Increased Basis for Gift Taxes Paid

IRC § 1015(b) provides:

"If the property is acquired by gift on or after September 2, 1958, the basis shall be the basis determined under subsection (a) (carryover basis) increased (but not above the fair market value of the property at the time of the gift) by the amount of gift tax paid with respect to such gifts."

PLANNING NOTE

The Regulations provide that in allocating the gift tax paid to increase the basis of property acquired by gift, the tax adjustment must be allocated pro rata, which seems to prohibit the allocation to any particular asset for the purpose of selling the asset. 1.1015(b)(2)(iii)

4) Gift Splitting

Gifts may be treated as made one-half by each spouse. Reg. 25.2513-1. A Spouse who consents to split gifts under IRC § 2513 is not considered a transfer or purposes of IRC § 2038 with respect to property actually owned and transferred by the donor.

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5) Holding Period

A. Inherited Property

In the case of property acquired from a decedent (within the meaning of IRC § 1014(b), if the basis of such property in the hands of the person is determined under IRC § 1014 and such property is sold or otherwise disposed of by such person within one year after the decedent's death, then such person shall be considered to have held such property for more than one year. IRC § 1223 (9)

B. Gifted Property

In determining the holding period of property which has been acquired by gift, the holding period of the grantor will be added to the holding period of the donee for purpose of determining gain or loss from the seller exchange to the extent the donee was required to use the donor's basis as his basis. IRC § 1223 (2)

PLANNING NOTE

If the fair market value at the time of the gift is used as the donee's basis, such as when property is sold for a loss, the holding period starts the date after the gift is made. IRS Publication 544

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6) Don't forget the Gallenstein decision

A. How do you determine the basis of property inherited by a surviving spouse rather than children?

This depends upon how the property was owned on the date of death, but in the case of jointly owned property, if the property was acquired after 1976, one-half of the fair market value of the property is includible in the estate of the first spouse to die so that the surviving spouse would receive a partial step-up equal to that amount includible in the estate of the first spouse to die. This would then be added to one-half of the original cost to determine the surviving spouse's basis. There is a special rule, however, which may be applied in the case of property acquired by a couple before 1977.

If the property was acquired before 1977 and is held jointly on the date of the death of the first spouse to die, the full fair market value of the property would be includible in the estate of the first spouse so that the surviving spouse would acquire a "full" step-up in basis. Gallenstein v. United States, 91-2 U.S.T.C. ¶60,088 (ED KY 1991), aff'd 975 F.2d 286 (6th Cir. 1992). See also, Patten, 96-1 U.S.T.C. ¶60,231 (DC CA 1996) and Anderson, 96-2 U.S.T.C. ¶60,235 (DC MD 1996). In both of these cases, the estate tax return was filed incorrectly, but the Tax Court ruled that the amount reported on the decedent's estate tax return was not determinative of basis, rather, basis is equal to the amount that should have been includible had the estate tax return been filed properly.

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B. Memorandum In Support of Taxpayer's Position

The taxpayer submits that in this case the property obtained a full step-up in basis and the case of <u>Treat v. Commissioner</u>, 52 Mass. App. Ct. 208 (2001) does not apply.

In <u>Treat v. Commissioner</u>, the Massachusetts Appeals Court declined to follow the general rule of <u>Gallenstein v. United States</u>, 575 F.2d 286 (6th Cir. 1992) where the Sixth Circuit Court of Appeals found that, with respect to real estate owned jointly by a husband and wife acquired before 1977, the surviving spouse obtained a step-up in basis equal to the full fair market value of the property on the date of the decedent's death rather than a basis equal to one-half of the fair market value on the date of the decedent's death plus one-half of the taxpayer's original cost.

The basis for the ruling by the Sixth Circuit Court of Appeals stems from IRC § 1014(a), which provides that the basis of property acquired from a decedent is equal to the fair market value of the property that is includible in the decedent's estate for federal estate tax purposes. Moreover, as to property owned jointly between a husband and wife, IRC § 2040(b) provides that, at least with respect to property acquired prior to 1977, the surviving joint tenant obtains a so-called full step-up in basis because the property was includible in the estate of the decedent at 100% of its value.

Following the decision in *Gallenstein*, the Massachusetts Appeals Court addressed the basis of property acquired by a surviving spouse in the case of a decedent who died in 1993. In *Treat v. Commissioner*, the Court ruled that, since the Massachusetts estate tax system required that only 50% of the value of the property owned by the decedent and his spouse be includible pursuant to General Laws chapter 65C, §1, the surviving spouse would acquire only a 50% step-up in basis.

The taxpayer's position in this case is that the \underline{Treat} case does not apply to the facts of this case inasmuch as General Laws chapter 65C, § 1 became applicable by virtue of the changes in the Massachusetts estate tax for decedents dying on or after January 1, 1997. In this case, the decedent died in 1999.

The decision in <u>Treat</u> is based upon General Laws chapter 65C, § 1(d), which is applicable to deaths occurring before January 1, 1997. This section provides:

"Federal Gross Estate, the gross estate, as defined under the Code, except that (1) notwithstanding Section 2035 of the Code, the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has, at any time made a transfer, relinquished the power or exercised or released a general power of appointment, except in case of a bona fide sale for adequate and full consideration in money or money's worth, by trust or otherwise, during the three year period ending with the date of the decedent's death, provided, however, the value of such property or interest therein so transferred or subject to the power so relinquished, exercised or released, exceeds \$10,000 for any person during a calendar year, and (2) notwithstanding Section 2040 of the Code, one-half of the value of any interest in any property shall be included in the gross estate if such interest is held by the decedent and the decedent's spouse as tenants by the entirety or joint tenants with rights of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants.

This Section, however, does not apply to the decedents who died on or after January 1, 1997. Under current law, the Massachusetts Estate Tax is based upon the Federal Estate Tax Credit for estate taxes pursuant to IRC § 2011.

For deaths occurring prior to January 1, 1997, Massachusetts followed the general Federal Rules of includibility, subject to the two foregoing exceptions, i.e., in the case of transfers made by a decedent within three years of the date of death and for property owned jointly between a husband and a wife, where the husband and wife were the only owners.

6

For deaths on or after January 1, 1997, no adjustments are made to the federal gross estate to determine the amount of the Massachusetts estate tax, which is equal to the federal estate tax credit for state death taxes, pursuant to IRC § 2011. (The Massachusetts statute was amended again for estates of decedents who died on or after January 1, 2003, in which case the Massachusetts estate tax was decoupled from the federal estate tax as it was modified by the federal Economic Growth & Tax Relief Reconciliation Act of 2001 (EGTRRA). As the Massachusetts estate tax stands today, the Massachusetts estate tax is to be computed pursuant to the provisions of the federal estate tax in effect on December 31, 2000, with the amount of the tax equal to the sum equal to the amount of the credit for state death taxes that would have been allowable to the decedent's estate, as computed under IRC § 2011, as in effect on December 31, 2000.)

While it is true that, General Laws chapter 65C, § 1(d) remains on the books, it is no longer applicable to decedents who die on or after January 1, 1997. The instructions to the Massachusetts Estate Tax Return for decedent's dying on or after January 1, 1997, make it clear that this is the result intended.

Since Massachusetts now requires that the Federal Rules of includibility be followed and the Massachusetts estate tax is based upon the exact amount of the state death tax credit allowable, the principles of Gallenstein now apply to determine Massachusetts basis as well as federal basis, since 100% of the property is includible in the estate of the first spouse to die on the facts of this case.

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As an additional basis for the refund, it should be noted be noted that Massachusetts incorporates federal income tax provisions to determine the basis of property acquired from a decedent, which, under IRC § 1014, defines the basis of property as the fair market value at the time of death. Specifically, General Laws chapter 62, § 6F of the Massachusetts Income Tax Statute, sets forth the method to determining the basis in property. Here, § 6F(b)(2)(C), provides that:

"Notwithstanding subparagraphs (A) and (B), in the case of property acquired from a decedent within the meaning of IRC § 1014 of the Internal Revenue Code, the initial basis of such property shall be determined under Section 1014 of the Code.

In Treat, the Court acknowledged the link between the federal basis and Massachusetts basis but, nevertheless, declined to follow the specific language of General Laws chapter 62, § 6F, since, in the Court's opinion, it would lead to an unfair result. This analysis no longer is valid inasmuch as for decedents dying on or after January 1, 1997, full includibility is required in the estate of the first spouse to die under Code Section 2040(b).

For the foregoing reasons, the refund claim should be allowed.

6

C. Don't Forget the Estate of Gwynn – Does Property Have to be Inherited in Order to Obtain a Step-Up in Basis?

Generally, yes, but there are certain exceptions when property was given away during life and the decedent either retained a "life interest" or "life estate" or merely continued to use the property without paying rent. IRC § 2036(a)(1) requires that the fair market value of the property be includible in the decedent's estate for estate tax purposes, even though the property would not be includible for probate purposes. This can actually provide a benefit as long as the value of the property included in the decedent's estate does not exceed either the Massachusetts or federal estate tax thresholds.

In Rev. Rul. 70-155 and *Estate of Guynn*, 437 F.2d 1148 (4th Cir. 1971), it was ruled that the transfer by the decedent of property before death was includible in the decedent's estate for estate tax purposes if the donor continued to use the property before death and did not pay fair rent. On the theory that there was an "implied life estate."

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This theory has been followed recently in the *Estate of Maxwell*, 98 T.C. 39 (1992) in which the decedent had "sold" property to his children before death and had received approximately 50% of the sale proceeds, but continued to live in the property after the purported sale. The decedent's Will forgave the note at death and the decedent was canceling \$20,000 of the note each year. The Tax Court ruled that the full fair market value of the property was includible and that the sale transaction should be ignored under IRC § 2036 using an implied life estate theory. This retained life estate may be avoided if the decedent owned property as a tenant in common with his children within the theory of *Estate of Powell v. Commissioner*, 63 T.C.M. 3192 (1992). See also, *Estate of Wineman*, 79 T.C.M. 2189 (2000).

These rules can provide potentially good news to heirs who are selling property after the donor died, but where the property was gifted before death. Usually, the donee's basis is equal to the donor's basis, increased by any gift taxes paid under IRC § 1015.

7

How long do we have to worry (statute of limitations)?

Valuations and Statute of Limitations Issues

An understanding of how both the gift tax statute of limitations and predeath gifts affect the estate tax computation is important. The value of any gift for gift tax purposes is the fair market value of the property transferred as of the date of the transfer. There is no alternate valuation date. Upon death, the decedent's estate tax return must report the total value of the decedent's lifetime "taxable gifts" by adding this amount to the decedent's taxable estate. I.R.C. § 2001(b). The term "taxable gifts" generally means the total amount of gifts made during the calendar year in excess of the annual exclusion, less any charitable deductions.

(a) Gifts Made Prior to August 6, 1997

For gifts made prior to August 6, 1997, the IRS was permitted to revalue a lifetime gift for purposes of computing either the decedent's taxable estate or the decedent's gift tax with respect to returns filed for years following the date of the actual gift, even if it appeared that the statute of limitations had expired.

If a gift tax return had been filed and a gift tax paid on the gift, the IRS could not revalue the gift for the year on the return, provided that the applicable period of limitation on assessment (usually three years) had expired. If, however, a gift tax return was filed but no gift tax was paid on the gift, the IRS was permitted to adjust the value of the prior gift on any gift tax return reported so that it was attributable to subsequent gifts in order to increase the gift tax rate on the subsequent gift. I.R.C. § 2504(c). If the period of limitations on assessment had expired and a tax was actually paid, the IRS was not permitted to revalue the prior gift in connection with a subsequent gift tax filing. It is important to note that using the unified credit was not equivalent to paying the tax. Rev. Rul. 84-11, 1984-1 C.B. 201.

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Notwithstanding these rules as applied to gift tax returns, in connection with federal estate tax returns the IRS was permitted to revalue any prior gift for purposes of determining the rate of the estate tax even if the decedent paid gift taxes and the statute of limitations had expired. See Estate of Smith v. Comm'r, 94 T.C. 872 (1990), acq. 1990-2 C.B. 1; Evanson v. United States, 30 F.3d 960 (8th Cir. 1994); Levin v. Comm'r, 986 F.2d 91 (4th Cir. 1993). The estate, however, is entitled to a credit for the gift taxes that would have been paid had the donor reported the adjusted gift. This includes using up any unused unified credit attributable to the prior gift. See Evanson v. United States, 30 F.3d 960 (8th Cir. 1994). The estate, however, will not be liable for penalties and interest attributable to the erroneous valuation on the earlier gift tax returns. Good recordkeeping is critical.

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(b) Gifts Made on or After August 6, 1997

These rules were changed by the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (1997), for gifts made on or after August 6, 1997.

As codified in I.R.C. §§ 2001(f) and 2504(c), the act gives the taxpayer a workable statute of limitations. As to the revaluing of prior taxable gifts on the estate tax return, I.R.C. § 2001(f) provides that, if the value of an item is disclosed on a gift tax return (or in a statement attached to the return) in a manner that is adequate to apprise the IRS of the nature of such item and the time, under I.R.C. § 6501, within which an additional gift tax may be assessed has expired, the value of the item as reported shall be final.

75

As to the revaluing of prior taxable gifts on the gift tax return, I.R.C. § 2504(c) provides that, if the time has expired under I.R.C. § 6501 within which a gift tax may be assessed on either the transfer of property during a preceding calendar year or an increase in taxable gifts required under I.R.C. § 2701(d), the value will be final for purposes of computing the gift tax.

The gift tax statute of limitations also was amended to require "adequate disclosure" as follows:

If any gift of property the value of which (or any increase in taxable gifts required under section 2701(d) which) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item which is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

I.R.C. § 6501(c)(9).

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The act also provided taxpayers with a judicial remedy, allowing controversies over the valuation of gifts to be submitted to the tax court through the filing of a declaratory judgment action. I.R.C. § 7477.

For amended Treasury Department regulations on gift valuation, disclosure, and statute of limitations issues, see T.D. 8845, 64 Fed. Reg. 67767 (Dec. 3, 1999), corrected, 65 Fed. Reg. 1059 (Jan. 7, 2000).

Practice Note

You should be aware that if the decedent made a transfer within three years of the date of death and a gift tax was paid, notwithstanding the fact that the transferred property is excluded, the amount of the gift tax paid on the transfer must be included on Schedule G. See I.R.C. § 2035(c).

77

How do you report the transaction on a gift tax return?

Case 1:

FMV of S-Corporation \$16,000,000 (based on \$3,000,000 in taxable income per year

Value of Non-Voting Shares

 $16.000,000 \times 90\% \times 65\% =$

\$9,360,000

Cash Gift

<u>+ \$880,000</u>

Total Gifts

\$10,240,000

- See attached Gift Tax Return Form 709
- See attached Income Tax Return Form 1041

71

Case Study One

709 Form

order here

Attach

United States Gift (and Generation-Skipping Transfer) Tax Return

Information about Form 709 and its separate instructions is at www.irs.gov/form709. (For gifts made during calendar year 2012)

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Department of the Treasury Internal Revenue Survice ► See instructions. 1 Donor's first name and middle initial 2 Donor's last come O Donor's accial security number John O. Public 000-00-0000 4 Address (number, street, and apartment number) 123 Tremont Street Sullois, MA. 8 Gity, state, and 21P or postal corte 7 Chizonship (red idstructions) Boston, MA 02116 United States No If you extended the time to tile this Form 709, check here 🕨 📋 Enter the total number of donese listed on Schedule A. Count each person only once. Have you (the donor) previously illed a Form 709 (or 709-A) for any other year? If "No," skip line 11b Has your address changed since you last filed Form 709 (or 709-A)? -General Gifts by husband or wife to third parties. Do you consent to have the gifts (including generation-skipping transfers) made by you and by your spouse to third parties during the calendar year considered as made one-half by each of you? (see instructions.) (If the answer is "Yes," the following information must be furnished and your spouse must sign the consent shown below, if the enewer is "No," skip lines 13-10.) Name of consenting spouse 14 SSN Ware you married to one another during the entire calendar year? (see instructions) . . 18 If 15 is "No," check whather [| married [] diverced or [] widewed/deceased, and give date (see instructions) 16 Will a gift tex return for this year be illed by your spouse? (if "Yes," mail both returns in the same anyelope,) 17 Consent of Spotias, I content to have the gifte fund garanation-adopting transfers made by the and by Ty spoten to that a new considered as made one-half by each of us. We are both aware of the plant and sover all liability for tax created by the section of the consent. Gensenting spouss's signature > Have you applied a DSUE amount received from a predeceased spouse to a glft or glfts reported on this or a previous form Entor the amount from Schedule A, Part 4, line 11 5,120,000 Enter the amount from Schedule B, line 3 3 5,120,000 4 Tax computed on amount on line 3 (see Table for Computing Gift Tax in instructions) 4 1,772,800 5 Tax computed on amount on line 2 (see Table for Computing Gift Tax in instructions) 3 6 1,772,800 Part 2-Tax Computation Applicable credit amount. If denor has DSUE amount from predaceased apouse(s), enter amount from Schedule C, line 5; otherwise, see instructions Enter the applicable cradit against tax allowable for all prior periods (from Sch. B, ling 1, col. C) B В 9 1,772,800 Enter 20% (,20) of the amount allowed as a specific exemption for gifts made after September θ_i 10 1976, and before January 1, 1977 (see Instructions) 10 11 Balance, Subtract line 10 from line 9. Do not enter less than zero 11 1,772,000 Applicable credit. Enter the smaller of line 8 or line 11 12 12 1,772,800 13 Credit for loreign gift taxes (see instructions) . 13 Total credits. Add lines 12 and 13 . . . , , 14 14 15 Balance, Subtract line 14 from line 6, Do not enter less than zero Generation-skipping transfer taxes (from Schedule D, Part 3, col, H, Total) 16 16 17 17 0 18 Gift and generation-skipping transfer taxes prepaid with extension of time to file. If line 18 is less than line 17, enter balance due (see instructions) 19 If line 18 is greater than line 17, enter amount to be refunded . check or money Under penalties of parkey, I declare that I have exemined this rown, including any excompanying exhetiting and statuments, knowledge and belief, it is true, correct, and comodity. Destruction of preparer (other than denot) is hoself to all loft matter any knowledge. Sign May the 14th obsessed they enter Here with the unsuprer name indices they sist outstand? [] Yes? [] No Signature of Honor Pdnl/Type preparer's pame Pald Preparer's signature Date CONTRACTOR PIN Leo J. Cushing, Esq. Preparer A improject Firm's name > Cushing & Dolon, P.C. Use Only and they 04-20/1360 Firm's seldinas > 375 Totten Pond Road, Stc. 200, Waltham, MA. 02451 017-523-1556 Phymratus. For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see the instructions for this form.

Cat. No. 16783M

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shall be considered to (or other property) do the property) do the constructions for line thave made a transfer to the conschedule A and value A for the a	have such trust (or other property) treated as quantities value of the trust (or other property) that the donor has to have made an election only as to a fraction of the trust deducted on Schedule A, Part 4, line 6. The denominate P election, the terminable interest property involved will 4 of Schedule A. If your spouse disposes (by glit or other of the entire property that is subject to the glit tax. Se OTIP Treatment of Annuities ere if you elect under section 2523(f)(6) not to treat as would otherwise be treated as qualified terminable interminables for which you are making this election. B Gifts From Prior Periods exected in the contraction of the property in the contraction of the prior periods.	r is equal to the total varies equal to the total varies wise) of all or part of e Transfer of Certain qualified terminable interest property under sect	lue of the trus ouse's gross t the qualifying Life Estates rest property lon 2523(1). S	at (or other properly) list estate upon his or her de life income interest, he flacelyed From Spou- any joint and survivor a eee Instructions. Enter th	ath (sec or she w se in the anuities e item n	rts 1 and 3 of Schedule A. Itton 2044). See iill be considered to e instructions. Ihat are reported umbers from
If you answered "Ye	es" on line 11a of page 1, Part 1, see the instructions	for completing Schedu	nte Altachica	leulations.		
page 1 (or Schedul	e G, if applicable). See instructions for recalculation	of the column C allion		D		Ę
Α	В	Amount o credit égr	t unillad	Amount of spacific	1	Amount of taxable gifts
Calendar year or calendar quarter	Internal Revenue office where prior relurn was filed	lax for pari	ods after	periods anding before		•
(see instructions)		Oriceman	31, 1870	75/75/75		
		· V				
	periads	1				
	which total specific everation line 1 column D is	more than \$30,000	July 2011		2	
	which total specific everation line 1 column D is	more than \$30,000	I any, on line	2.		
2 Amount, if any, 3 Total amount of	by which total specific exemption, line 1, column D is I taxable gifts for prior periods. Add amount on line 1,	more than \$30,000		2.	2 3	Fighty 709 (25) 1/1

nara baginning Schadule	C.	e the DS	UE amour	it and applicable	credit received from	n prior spo	uses, Con	nplote Schedule
A Name of Deceased Spouse (dates of death after December 31, 2010 only)	B Date of Death		C ly Election ade?	If "Yes," DSUE Amount Received Irom Spouse	E OSUE Amount Applied by Donar to Utellma Gifts fliel current and	Unite of Jenter as m for Part 1	in/dd?yy wul.as	RESPRIVED
W. W		Yes	No		prior gifts)	yyyy lur	Part 2)	
irt 1-DSUE RECEIV	ED FROM LAS	TOEC	ASED 8	POUSE				SWATE -
rt 2—DSUE RECEIV	-CYFROM DEL	20122	(A) (W)					
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Donor's basic exclusion	n amount (see inst	rugilana)	ALL STATE OF THE	11 1 11 11 11 11 11 1			1	
Total from column E, P	arts 1 and 2		0.00		50 85 85 85 8 8 8 8 8 8 8 8 8 8 8 8 8 8	#8 #X #1	1 2	
Reserved							3	-1
Add lines 1 and 2 , ,		1	£ 1 .				4	
Applicable credit on as	mount in line 4 (Se	e Table to	or Comput	ing Gill Tax in the	Instructions), Enter	hore and	1000	
on line 7 Part 9 - Year 6	Computation .							
on line 7, Part 2—Tax (, ,			1 0 1	
Reserved		61-91-19	18 W 10				5	1
Reserved	94	6 x x 8 x x			3 8 3 6	i di fa	-	
Reserved			8 X II I			1 /3 fill	0	
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Reserved						1.7 fa 1.00 fi 1.00 fi 1.55 (M)	5 7 8	
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lem No, (from Schedule	Net Transfer (from Schedule D, Part 1, col. D)	O GST Exemption Allocated	D Divide col. G by col. B	Inclusion Fields (Entitional col. D from 1 000)	F Meximum Estato Tex Rate	Applicable Anto final ply call E by pal Fi	H Garevolori Suppany Trocsfer Tax Izolitydy col. I) by nat. G
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Gifts made by	spouss (for pift spi	iting only)	(1) - 10 - 10	1	35% (.35)		
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					35% (.35)		
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ere and on Pa	in claimed. Enter it 2, line 4, above. id Part 2, line 3,		Schedule A	Part 4, line 1	ensfer tax, Entor O; and on page	I' Lair 5-10V	1 phi 709 r

Form 709 (2012)

Part 2—QST Exemption Reconciliation (Section 2631) and Section 2652(n)(3) Election Entor the Item numbors from Schedule A of the glits for which you are making this election ▶

Maximum allowable examption (see instructions)

Automatic allocation of exemption to transfers reported on Schodule A, Part 3 (see instructions)

Total exemption used for periods before filling this return Exemption available for this return. Subtract line 2 from line 1

1

FORM 709

NOTICE OF ALLOCATION

STATEMENT

TRANSFER 1

TRUST IDENTIFICATION

ITEM NUMBER

JANE Q. PUBLIC IRREVOCABLE TRUST, SCH A, PART 3, ITEM 1 JANE Q. PUBLIC, TRUSTEE 123 TREMONT STREET BOSTON, MA 02116 04 - 0000000

VALUE OF GIFT

INCLUSION RATIO AFTER ALLOCATION

GST EXEMPTION ALLOCATED TO GIFT

5,120,000.

.000

5,120,000.*

TOTAL GST EXEMPTION ALLOCATED (TO FORM 709, SCHEDULE C, PART 2, LINE 6)

5,120,000.

FORM 709

STATEMENT OF GST EXEMPTION ALLOCATION

STATEMENT

2

TRANSFER 1

\$5,120,000 OR OTHER SUCH AMOUNT AS IS NECESSARY TO HAVE AN INCLUSION RATIO OF ZERO AFTER FINAL DETERMINATION.

^{*} SEE STATEMENT OF GST EXEMPTION ALLOCATION

Case Study Two

Form **709**

United States Gift (and Generation-Skipping Transfer) Tax Return Information about Form 709 and its eeperate instructions is at www.irs.gov/form709.

larnel	lo fner JnevaRI	Ihu Treesury to Service	(For gifts	s mode during calendar your 26 → See instructions.	012)		76	91;
1	Donor	's first name and middle initial	[2 0	Junce's last gante	1857b	Ph. A. Law	Perginsian	-
1120	ohn Q			blla	V		00000-0000	
		s (number, street, and upartment of			5 Legistres			
10000		mont Street	ANY MARKET		Sulfolk, N		-00/00/01/1	
		tata, and ZIP or postol code					15,000,000	
Di	oston,	MA 02110	4-1		United St	ates		
4		I the donor died during the year	, check here 🕨 📋	and enter date of death	10.00 9450.00			Yos
10		f you extended the time to file the Enter the total number of dones				****		
1	ta I	lave you (the donor) previously les your address changed since	illed a Form 709 (or	709-A) for any other year?	If "No," skip line 11b	_		
12		Sitts by husband or wife to thi			to the total and the second se	25.00	- (- 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1	
100001110111111111111111111111111111111	b Ir	y you and by your spouse to vatruotions.) (If the answer is "' hown below. If the answer is "	third parties during Yes," the following is	the calendar year consident promotion must be furnish	ered as made one-half b	v each	of you? (see	
13		lama of consenting appuse			14 SSN			-
18		Vera you married to ane unother	during the entire cal	londer year? (see Instruction		7	-	
16	3 11	15 is "No," check whether [] mai	rried 🔲 diverced or	widowed/degensed as	nd give date (see testruction	4 len	-	
17	, W	All a gift tax rotum for this year t	be filed by your moon	sa? (if "Yes," mall both ret	ums in the same envolu	0.1	W	1
10) C	oneent of Spouse. I consent to have	ve the giffs land general	illon-skipping transfers) made	by now and by my spruge t	o thirst u	ntons titaleg in	o coleida
	CC	onaldered as made one-hall by each	of us. We are both awa	ire of the joint and several lists	ally for tax created by the ex	acotion a	Luis consent	
Co	nnenth	d sonisolis s, senots bu				Date	F	
19		sve you applied a DSUE amour 197 if "Yes," complete Schodule	nt received from a pr	odoceasod spouse to a gli	ft or glits reported on this	s or a pr	avious form	
202	1	Enter the amount from School	fulo A, Part 4, line 11			11	5.1	20,000
- 11	2	Enter the amount from Sched			E E W ME 10 W 295	2	4,1	2,000
	3	Total taxable gifts, Add ilnes				3	5.1	20,000
	4	Tax computed on amount on			ructions)	4	100	72,000
	5	Tax computed on amount on				5	:0'	-
	8	Balance, Subtract line 5 from				0	1.7	72,860
Computation	7	Applicable credit amount, If from Schedule C, line 5; other	donor has DSUE an	nount from predoceased	spouse(s), enter amount		- 14.9	
5	0	Enter the applicable credit agr				B		-
E	8	Balanco, Subtract line 8 from	line 7. Do not enter la	oss than zero	in by and 1, doi: Of ,	9	1.7	72,000
S	10	Enter 20% (.20) of the arrious 1976, and before January 1, 1	nt allowed as a spec	cillo exemption for glits m			1.7	2,000
Ä	11	Balance, Subtract line 10 from				10		
1	12	Applicable credit, Enter the an				11 12	-	2,800
7	13	Credit for foreign gift taxes (se				13	1,07	2,800
m I	14	Total credits. Add lines 12 and				14		-
_	15	Balanco, Subtract line 14 from				15		-
	18	Generation-skipping transfer to			1	16	-	
1	17	Total tax. Add lines 15 and 16				17		0
- 1	16	Gift and generation-akipping to			file	18		
- 4	19	If line 18 is less than line 17, or			0 0	19		0
1	20	If line 18 is greater than line 17				20		
Sig		Under penalties of perjury, i de knowledge and belief, it is true any knowledge.	eigne that I have exacti of connect, and complete	and this return, including say u. Dealwation of preparer july	aceurpanyng schudurs a un than donur, e maad on	May	trig Ims distanti	C (Factorial)
.01	~	1,				15750	the disperse a control to	ALK.
		Signature of donor			Pate	-		-
1-1	,	Print/Type preparer's name	Tpon	over's signature	1.500	-	1	
aid		A A STATE OF THE PARTY OF THE P	1000	and a supplement of	- CANAGE	Spinis		(
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se	Only	Firm's name > Cushing &		ee matter early				287136
aclo	GUTA. E	Thin's actions > 375 Totton Vivacy Act, and Poperwork Red			laum	199-19		200
	unio, r	men's wert aire subatwork Med	racion Act Motico, Bi	an me instructions for this	form.	C 6676	This 9:000	709 .

Car to enterta

SCHEDOLE A COMPUTATION OF TAXABLE CITES (ILLICIONAL METALICISM COMPUTATION OF TAXABLE COMPU					Yes	No N
Does the value of any listed on Schedule A reliect any Valuation descent if Yes, a text a succession as succession as trade ratable over a 5-year being they year. See instructions. Attach explanation.	condition tuition	uition program as mad	e ratably over a 5-y	rar period beginning th	s year. See instructions	. Attach explanation.
Part 1 - Gifts Subject Only to Gift Tax Gifts less bolitical or canization, medical, and educational exclusions, (see instructions)	Usee instr	uctions)				
Item Pones remained address Item Pones remained address Tumpler Pones remained address (item) Tumpler Pones remained address (item) Item Pones remained address (item) It	o	Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gitts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
	- In all and					
Gifts made by spouse - complete only. If you ere spirting gifts with your spouse and neisne assumed gifts.	and areas					
Total of Part 1, Add amounts from Part 1, Column H	uncloc tay	Voir must fet the offer	n chronological ord	67.	A	
A B Corres's name and additions. Item A Resulted Style Sin Corres's name and additions. Item A Resulted Style Sin Corres's name and additions. Item A Resulted Style Sin Corres's name and additions.	C 2632(b) - election out	Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net Transfer (subfract col. G from ccl. F)
Offis made by spouse - complete only if you are applitting gills with your spouse and helshe also made gittes	made git	22				
Tests of Part 2. Add amounts from Part 2. column H						
Part 3 - Indirect Skips. Giffs to trusts that are currently subject to gift lax and may tater be subject to generalism-skipping transfer fax. You must list these gifts in chronological order	erafion-sk	apping transfer tax. You	must list these gift	s in chranological orde		:
Items	C 2632(c) election	D Donor's adjusted basis of gift	E Date of gift	F Value al date of gift	G For spilt gifts, enter 1/2 of column F	Net transfer (Subtract col. G from col. F)
1 JOHN Q. PUBLIC IRREVOCABLE TRUST. LEO J. CUSHING, TRUSTEE 04-0000000						
Office made by spouse - complete andy if you are splitting gifts with your spouse and helshe also made gifts.	о птабе д	22				
Township of the constitute from Dat 2 only man						▶ 5,250,000
10tal 01 rail 3, Aud clinomis from a construction of construction of the land						From 709 (2011)

Form 709 (2011) JOHN O. PUBLIC SCHEDULE A, PART 3 CONTINUATION SHEET Part 3 - Indirect Skips. Gifts to friests that are currently studied to can be					000-00-000	00
A Done's name and statement to be supported to gill sax and may later be subject to generation-skipping transfer tax. You must list these gifts in shronological order.	o generation-s	dipping transfor tax. Y	ou must list these offis	in chronological order.		
number — Relationship to donor (if any) — Description of gift — If the gift was of securities, give CUSIP no. — If closely hald entity, give EIN	2632(c) election	Donor's adjusted basis of gift	E Date of gift	F Value at dats of gift	G For split gifts, enter 1/2 af column F	H Net transfer (subtract col. G from col. F)
BOSTON, MA 02116 TRUST LOT AND BUILDING LOCATED AT 1 CLIFF'S BLUFF DRIVE, NANTUCKET, MASSACHUSETTS.		2,000,000.	12/31/12	5,250,000.		5,250,000.
Total of calemn H						4
180553 G1: 75, 12					10	▶ 5,250,000.

orm 709 (2011) TO	IN Q. PUBLIC				000-0	00-0000 Page 3
Part 4 - Taxable Gitt Beco	nciliation					5,250,000.
t. Total value of altte of	donor. Add totals from column H of P	arts 1, 2, and 3		- 10	1	130,000.
2. Total annual exclusio	us for aills listed on line 1 (sec instruc	itions),,,,	year Suprement	W X	3	5,120,000.
3 Total included amoun	t of gifts, Subtract line 2 from line 1			area con estimate and	3	3124010001
laductions (see instruction	nns)					
4 Giffs of interests to s	ouse for which a marital deduction w	ill be claimed,	1 - 1			
based on item numbe	irs	of Schedule A	5			
5 Exclusions altributab	e to dura off thire 4	1449939334464384848484844 44 (835 14) cesses 11.				
6 Marital deduction. St	btract line 5 from line 4	lane pyalijejane				
7 Charilable deduction,	based on item nos.	IESS EXCIDIONS			8	
n Total daduations on	1 lines P all 1		**********	Asia Majoritan marina	9	5,120,000.
9 Subtract line 8 from	ine 3 Iransfer taxes payable with this Form	700 /from Schedule C. Part 3, co	L. H. Total)		10	
O Generation-skipping	ransfer taxes payable with this Form nes 9 and 10. Enter here and on page	L. Part 2 - Tax Computation, line	1		11	5,120,000.
1 Taxable gitts, Add it	P) Marital Deduction. (See instruction	ns for Schedule A, Part 4, line 4.		THE THE PARTY OF THE CASE		
erminable interest (VII)	y) meets the requirements of qualified	t rerminable Interest property UN	der section 252	3(f), and:		
a trust (or other proper	y) meets the requirements of quantee	4 (C) Illing of o lines see property				
a. The trust (or other p	property) is listed on Schedule A, and st (or other property) is entered in who	ala as in post as a deduction on S	chedule A. Par	I 4, line 4, then the dono	ir shall he	deemed to have
					eduction a	n line 4, the donor
f less than the entire vall	e of the trust (or other property) that i we made an election only as to a fraction	on of the trust (or other property). The numeral	or of this fraction is equi	al to the ai	mount of the trust
USII DE COUZIDELEN (O NY	ve made an election only as to a fraction ted on Schedule A, Part 4, line 6. The	denominator is equal to the total	value of the Iri	ust (or other property) li	sted in Pa	rts 1 and 3 of Schedule A.
f you make the ATIP elec	tion, the terminable interest property	involved will be included in your	spouse's gross	estate upon his or her	death (sec	ill be sepsidered to
estructions for line 4 of 5	tlon, the terminable interest properly Schedula A. If your spouse disposes (I	by gift or otherwise) of all or par	of the qualifylr	ig life Income interest, n	e or sne v	All DR CONSIDERED TO
ave made a transfer of t	Schedula A. If your spouse disposes (I ne entire property that is subject to the	e gift tax. See Transfer of Certa	in Life Estate:	s Received From Spo	use III ui	a littali actiona.
		t to treat as qualified terminable	nterest propert	y any joint and survivor	annuities	that are reported
on Schedule A and would	otherwise be treated as qualified term	Dinable interest property under s	ection 2523(1).	See instructions, Enter	the item n	ampets trans
Schedule A for the annul	les for which you are making this elec	etion >		COLUMN TO THE REAL PROPERTY.	-	
Account to the last tree to the	nice F Deles Deviade			J NAI - P alcia ho	the Tay (Computation on
		Instructions for completing Sch	edule B. Il you	answered No, skip to	the lave	ompetanon on
page 1 (or Schedule C,	f applicable). See instructions for re	calculation of the column o am	C C	D D		E
A	B Internal Revenue office	Amou	nt of unlifed against gift	Amount of specific		Amount of taxable gifts
Calendar year or calendar quarter	Internal Revenue office where prior return was filed	tax for	periods after ber 31, 1978	periods anding bala January 1, 1977		тривото рите
(see instructions)		Decem	Der 31, 1010			
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9 Total amount of taxa	hich total specific exemption, line 1, c ble gifts for prior periods. Add amoun	it on line 1, column E and amoui	ıl, if any, on line	2.	1 3	
Enter here and on by	ble gifts for prior periods. Add amoun ne 1. Part 2 - Tax Computation, line 2	it on line 1, column E and amoui	it, it any, on uni	3 4,	3	709 main
Enter here and on by	hich total specific exemption, line 1, c ble gifts for prior periods. Add amoun ge 1, Parl 2 - Tax Computation, line 2 ted, attach additional sheets of sa	it on line 1, column E and amoui	it, it any, on uni	3 4,	1 3	Form 709 (2011)

bolore baginning Schadule A Nanie of Decessed Spouse (dates of death after December 31, 2010 only)	Dalo of Death	ilidatio9 M	C ly Election ide?	O II "Yes," DSUE Amount Hecelvad Irom Spouse	E E DSUE Amount Applied by Donar to Lifetima Gifte filst current and prior gifts)	F Date of (unter as a for Part 1 yyyy for	Git(e) in/dd/yy and as	a
Part 1-DSUE RECEN	UNITED ON THAT	Yes	No	E CHILL	bues Aure)	уууу на	run zj	
TOTAL DOUBLE HEAT	A-TON STORY HOLE	गागवन	AT STEED	3:(0)(8)		1100		
Part 2-DSUE RECEIV	HO HOLDER	NECE:	वयवाव	(211)(32)(6)		-		
ALL PROPERTY OF THE PARTY OF TH	A PROPERTY OF THE PARTY	DLGER	PI-PERSI	(6) (6)		NAME OF TAXABLE PARTY.		TOTAL STREET
CITY OF STREET		-						
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2 Total from column E, I		E 15 12	* * *	6 1 2 6 6	0.00		2	
3 Reserved		W-30-14	45 (4. 14)	C			3	
4 Add lines 1 and 2 ,			4.9	3 6 3 0 1	a management	5 165 40	4	
5 Applicable credit on a	imount in line 4 (Se	e Table to	or Comput	ring Gift Tax in the	Instructions), Enter	hore and		
on line 7, Part 2—Tax	Computation .		100				5	
6 Asserved , ,							6	
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Item No.	Net Transfer	GST Exemption	Divide col. C	Inclusion Rutio (Subtract col. D	Maximum Estato Tax Rate	into tiply col. 6.	formstor Tital formstor col. 8 by col. 61
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here end on P	art 2, line 4, above.		Sobedule A	. Part 4, fine 1	io; and on page	d' bmt beday	
May not exce	ed Pari 2, line 3,	1	Computation	line 16		0.000	
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(If more space	is needed, attach ad	iditional atatomer	nay				

FORM 709

NOTICE OF ALLOCATION

STATEMENT

TRANSFER 1

TRUST IDENTIFICATION

ITEM NUMBER

JOHN Q. PUBLIC IRREVOCABLE TRUST. SCH A, PART 3, ITEM 1 LEO J. CUSHING, TRUSTEE 123 TREMONT STREET BOSTON, MA 02116 04-0000000

VALUE OF GIFT

INCLUSION RATIO AFTER ALLOCATION

GST EXEMPTION ALLOCATED TO GIFT

5,120,000.

.000

5,120,000.*

TOTAL GST EXEMPTION ALLOCATED (TO FORM 709, SCHEDULE C, PART 2, LINE 6)

5,120,000.

* SEE STATEMENT OF GST EXEMPTION ALLOCATION

FORM 709

STATEMENT OF GST EXEMPTION ALLOCATION

STATEMENT

2

TRANSFER 1

\$5,120,000 OR OTHER SUCH AMOUNT AS IS NECESSARY TO HAVE AN INCLUSION RATIO OF ZERO AFTER FINAL DETERMINATION. SAID GST EXEMPTION IS BEING ALLOCATED TO THE SHARE ESTABLISHED BY THE TRUST AS THE EXEMPT SHARE AND NOT TO THE SHARE ESTABLISHED BY THE TRUST AS THE NON-EXEMPT SHARE.

FORM 1041

	or column	Department of the Industrial	Dervice C.O. I	ncome Tax Ret	urn for Esta	tes and I	rust	s 201
	A Cher	iar year 2011 or fisc: ok all that apply:	w year negations	a grantor type trust, and the lacebugger	2011 noted needlines			CONTRACTOR
ì		cellent's estate	1	a a sold; this many six mit preported	1.1		C Em	player Identification number
Î	-	iple trust	TANK A PIT	BLIC IRREVOCABI	T Marian			04 0000000
į		nplex trust	Range and title of fiderity	BLIC IRREVOCAB	LE TRUST		D.Duto	entity stemad
ĺ		illied disability trust						
[IT (S purilon aniy)	TANE D. PU	BLTC				exempt charitable and split-
L	X Gran	ntor type trust	Phantie, alway, and room	BLIC,	Octions I		4	est trusts, check applicable
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L	Bank	rupley onlate-Ch, II	City or lown, state, and Zir	eads.				Doscripad in una. 4947(a)(1).
L		led income fund	BOSTON		MA			🖊 neitzbeust staylog s fon Defend
		of Schedules K-1	F Check Inl	dal return L Final return	Amontfod return			Described in sec. 4047(4)2)
	attached		boxes: Gh	anna la Uducione	Torrest to ment	hr'e nama		hango in trust's name
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		Qualified dividends:	allocable to: (1) Benefici	arles	2) Estate or trust	annimante dimin	1	
ncome	3	Businese Income or	(loss). Attach Schrobin	C or C.52 /Facto 10.405	·		3	
ö	1 1	Capital gain or (loss). Altach Schedala D (Fo	ion 1041)	The state of the s	central)abilitation account	4	
ĕ	8	Honts, royaitles, par	merchips, other estates	and trusts, etc. Attach Schedule	E (Fulin 1049)		6	
	7	Ordinara asia as II	s). Allach Schedule F (F	orm (640) "UNDER THE INSTRUMENT	**************		8	
	8	Other income that	s). Allach Form 4797	"UNDER THE	TERMS OF TH	E TRUST	7	
	9	Talal lacers des	/pe and amount	INSTRUMENT	, THIS IS A	GRANTOR	8	
-	10	Inlarest Chashit Ca-	and lines 1, 20, and 3 th	rough 8 TRUST. IN	ACCORDANCE.	WITH	9	
	1100	distinger Others H.L.O.	m 4932 is attached	1 I SECTIONS 6	71-678 700	1006	10	
	4	1104(15)	AND ADDRESS OF THE PARTY OF THE	ALL INCOME	TS TAXABLE	TOCY MILLION	11	1
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Ë	16 a C	Diliar deductions and	tenning to the act these	ATTACHED."	per	***************************************	14	
veductions							154	
9	16 A	idd fines 10 through	15h	subject to the 2% floor	THE RELIGIOUS STREET,	CHIEFFER TO THE	15b	100
9				16 from line 9		· · · · · · · · · · · · · · · · · · ·	16	
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- 1	19 E	state tax deduction to	nelliding codein general	e B, line 15). Atlach Schedules K	-1 (Form 1041)	****************	18	
-1	20 E	xemption	sorgering not fall fight fight	lon-sklpping taxes (altach comp	Mallon)	remoternations.	10	
	21 A	dd Ilnes 18 through	20	*************************	and the same of the same of the		20	1
7	22 T	axable income. Subtr	ract line 21 from line 12	If a loss, see instructions			21	
1	23 T	olai lax/from Sched	itile G. Hao 71	in a iosa, see metrochous	******************	***************************************	22	
٦	24 Pa	ayments; a 2011 est	inated lax payments in	d amount applied from 2010 reli	instrumental management	·····	23	
1	b Es	stimated tax payment	ts allocated to beneficiar	des Alcord Form 104 t Th	***************************************	modern angere	240	
1	e St	btract line 24b from	line 24n	rea (month offile 1041-1)		etternistis mix	24b	
	d To	y nald with Farm 20	HA to minimum the same	*****************************		One-observe value in	240	
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1			ines 24c through 24n, a	nd 24h		- i lotal >	24h	
1	25 To	tai payments, Add i			*** *********	b -	25	
	25 To 26 Est	itat payments. Add li limated fox ponalty (c	ser (nstructions)	AND THE RESERVE OF THE PARTY OF	The state of the s		0.0	
	25 To 26 Est 27 Ta	x due. Il line 25 ls sr	natier than the total of the	nes 23 and 26, enter amount on	er treate and a committee		26	
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	TAND O DUBLIC TERRUCCABLE TRUST	04-00000	UU Begs	2
orm	1041 (2014) JANE Q. PUBLIC TRREVOCABLE TRUST Thedule A Charitable Deduction. Do not complete for a simple trust or a puoled income fund.			
St	Amounts paid or permanently set aside for charitable purposes from gross focume (see instructions)	1		
1	Arrounts paid or permanently set aside for charmons purposes upon ground motivo (command). Tax-exempt income allocable to charitable contributions (see instructions).	2		
2.	Tax-exempt income allocable to charitable contributions (see a surveyers)	3		_
3	Subtract line 2 from Sire 1 Cupital gains for the sax year allocated to corpus and paid or permanently set asola for charlotte purposes	4		
4	Cupital gains for the lax year allocated to corpus and paid or permanency see ason real consists of the lax year	5		
5	Add lines 3 and 4	G		
6	Section 1202 exclusion allocable to capital gains paid or parmamently set as the charmon purposes (volume party see a section 1202)	7		
7	Charitable deduction, Subtract Inte 8 from tine 5. Enter here and on page 1, line 13		0	
St	hedule B Income Distribution Deduction	T i		
1	Adjusted total Income (see Instructions)	2		
2	Adjusted lax-exempt interest	3		_
3	Total net gain from Schodule D (Form 1041), line 15, column (1) (see instructions)	4		
4	Enter amount (roin Schedule A, line 4 (infinus any ullocable section 1202 exclusion)	5		
б	Capital gains for the tax year included on Schedule A, line 1 (see instructions)			
в	Effer any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter inc	8		
	loss as a positive number	7		
7	Distributable net income, Combine lines 1 through 6, if zero or less, enter -0-			
ð	If a complex trust, enter accounting income for the tax year as	1		
	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law	9		
9	Income required to be distributed currently	10		
10	Other amounts pald, credlind, or otherwise required to be distributed			
11	Total distributions, Add lines 9 and 10. If greater than line 0, see instructions	-		
12	Enter the amount of lax-grampt income included on line 11	-		
	The state of the s			
	The state of the s			
471	Income distribution deduction. Enter the smaller of line 13 or line 14 here and on page 1, line 15	1 10 1		
S	chadula G. Tax Computation (see instructions)	1 1		
1	Yay: a Tax on taxable income (see instructions)	1 1		
- 5	h. Tay on himp-sum distributions, Attach Form 4972	+		
	Allowed the interference law (from Schedule I (Form 1041), Inc 56)	10		
	d. Total, Add lines to through 10			-
2a	Engine lax credit, Allach Form 1116	4 1		
h	General Justiness credit, Affacti Form 3800	4 1		
ıt.	Gredit for orior year minimum tax. Attach Form 8801			
	20	4 . 1		
-	Total availle Add lines 2a through 2d	3	-	0
				-
c	Honorture token Charly [1700] 1 190[1420] Lange Charly [1700]			_
	University and appropriate taxes Attach Schedule H (Form 1040)	-		_
79	Total tax. Add lines of through 6. Enter here and on page 1, line 23	- 7	Yaa	No
$\overline{}$				X
	Other Information Did the estate or Irust receive tax-exempt Income? If "Yes," allach a computation of the allocation of expenses			-
	and exempt interest logome and exempt-interest dividends			
0	and the second second of the earnings (salary, wades, and office compensation) of the		1 1	Х
	A THE STATE OF THE PROPERTY OF	COURT IN THE		-
٥	the dealer was 2011, did the nelale or trust have an interest in or a significant or other numbers			X
J		*(*)	-	- /3
	over a bank, securilies, or other infancial account in a foreign country. See the instructions for exceptions and filling requirements for Form TD F 90-22.1. If "Yos," enter the name of the foreign country.	У		
			-	
	During the lax year, did the estate or frust receive a distribution from, or was if the granter of, or transferor to,			
	the metato or trust may have to like Form 3520, See MISUUCHOIS		1	2
	a threign trust in res, the estate of this may have the residence interest on seller-provided linancing? If "Yos," see			١,
5	Did the estate of trial receive, or pay, any quantity transactor interest to the instructions for required attachment	75 7 6	-	2
	the instructions for required attachment. If this is an estate or a complex trust making the section 663(b) election, check here (see instructions).	>		
	- and the trade Cabadula A (Form 10d1) and check ners (See INSHOCKUTS)	▶ [_ [
7	To make a section 643(e)(3) election, attach someone of training the content to the delay in closing the estate, and checilithe decedent's estate has been open for more than 2 years, attach an explanation for the delay in closing the estate, and checilithe delay in closing the estate.	;k here 🔛 🕨 🖺		
8	If the decedent's estate has been open for more than 2 years, action to expenditure the state of	and what he has been as the sales)
9	Are any present or future trust beneficiaries exist persons, and institutions.	For	rm 1041	(20

CUSHING & DOLAN, P.C. 375 TOTTEN POND ROAD, SUITE 200 WALTHAM, MA 02451

JANUARY 22, 2013

JOHN Q PUBLIC 123 TREMONT STREET BOSTON, MA

RE: JANE Q. PUBLIC IRREVOCABLE TRUST

DEAR GRANTOR:

ATTACHED IS YOUR COPY OF THE 2011 FIDUCIARY FORM 1041 GRANTOR LETTER. THIS GRANTOR LETTER SUMMARIZES YOUR INFORMATION FROM THE TRUST. THIS INFORMATION HAS BEEN PROVIDED TO THE INTERNAL REVENUE SERVICE WITH THE U.S. INCOME TAX RETURN FOR ESTATES AND TRUSTS.

THE INFORMATION PROVIDED ON THIS GRANTOR LETTER SHOULD BE ENTERED ON YOUR TAX RETURN, IN ACCORDANCE WITH THE INSTRUCTIONS ON THE GRANTOR LETTER. IF YOUR RETURN WILL BE PREPARED BY YOUR ACCOUNTANT OR ATTORNEY, YOU SHOULD PROVIDE A COPY OF THIS GRANTOR LETTER TO THE PREPARER WITH YOUR OTHER TAX INFORMATION.

WE THANK YOU FOR THE OPPORTUNITY TO SERVE YOU.

VERY TRULY YOURS,

JANE Q. PUBLIC,

GRANTOR LETTER UANE Q. PUBLIC, 123 TREMONT STREET BOSTON, MA

x Year Ending: 12/31/11	Name of Trust
Grantor Name & Address	JANE Q. PUBLIC IRREVOCABLE TRUST
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123 TREMONT STREET	
BOSTON, MA	
BODION, 121	Employer ID Number: 04-000000
Social Security Number:	Employer to Nutribers 5 2 5 5 5 5 5 5

THE FOLLOWING INCOME, DEDUCTIONS AND CREDITS ARE TO BE REPORTED ON THE FEDERAL INCOME TAX RETURN OF THE ABOVE NAMED GRANTOR, IF REQUIRED.

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	OTHER INFORMATION	
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