

# 2021 NATIONAL INCOME TAX WORKBOOK

CHAPTER 2: TRUSTS & ESTATES



## LEARNING OBJECTIVES

P. 43

- ✓ Calculate the gross estate
- ✓ Understand when an estate should consider electing portability of the deceased spousal unused exclusion (DSUE)
- ✓ Determine the amount of the DSUE
- ✓ Know who has authority to obtain information and file returns for a deceased taxpayer
- ✓ Recognize income in respect of a decedent and know how it is taxed
- ✓ Identify a grantor trust
- ✓ Know what deductions are available to an estate or trust

# THE GROSS ESTATE



BASIC ESTATE EXCLUSION

P. 43

\$ 11,700,000

Until 2026

- US citizens or residents of US at date of death
- Form 706 – estate tax return
- Estate Tax = gross income – deductions – credits – unused exclusions
- Practitioner Note – applicable credit (after applied to gift tax returns)

## FIGURE 2.1 – BASIC EXCLUSION AMOUNTS

P. 44

- \$ 11,700,000 per individual
- \$ 23,400,000 MFJ
- **2026 CHANGE**
  - \$ 5,000,000 per individual
  - \$ 10,000,000 MFJ
  - Indexed for inflation

## EXAMPLE 2.1 – TAXPAYER SUBJECT TO TAX

P. 45

- Evan died in 2021
- Amy was beneficiary
- Estate value of \$ 17,000,000
- No taxable gifts over his lifetime
- Tax due = \$ 2,120,000  
( $\$ 17,000,000 - \$11,700,000$  exclusion) x 40%)

## CALCULATING THE GROSS ESTATE

P. 45

- Property value at time of death
  - Real
  - Personal
  - Tangible
  - Intangible
- I.R.C. §2035
- Treas. Reg. § 20.2031-1 total value included under sections 2033 through 2044
- Cross-Reference – Estate Planning from 2020



## CALCULATING THE GROSS ESTATE

P. 45

- Property interests include
  - A cemetery lot owned by the decedent, not used for burial
  - Property subject to homestead or other exemptions under local law
  - Notes or other claims held by the decedent, even if cancelled by will
  - Interest and rents accrued
  - Uncollected dividends that are declared before decedent's death as the stockholder of record
  
- Cross-Reference – Special Use Valuation 2020 Workbook

## DOWER OR CURTESY INTERESTS

P. 45

- I.R.C. §2034 – surviving spouse's dower included in gross estate – **No** dower or curtesy rights in Michigan since 1981
- State's elective share law
  - The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this part to take an elective-share amount equal to 50% of the value of the marital-property portion of the augmented estate.

## GIFTS MADE WITHIN 3 YEARS OF DEATH

P. 46

- I.R.C. §2035 – property includes
  - Transfer (by trust or otherwise) of any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death; and
  - value of such property (or an interest in the property) would have been included in the decedent's gross estate under I.R.C. §2036, 2037, 2038, or 2042 if the decedent had retained such transferred interest or relinquished power on the date of his/her death.
- Bona fide sale – property NOT included
- Gift tax paid – increases gross estate
- Transfers from revocable trust – treated as directly by the decedent

- Interest is retained for life, period ascertainable w/ reference to death, or period that doesn't end before death
- NOT a bona fide sale
- Includes retained right to:
  - Possess, Enjoy, or Income
  - Designate possession, enjoyment, or income
  - Vote stock (directly or indirectly)

## EXAMPLES

PP. 46-47

- Example 2.2 – Life Estate
- Example 2.3 – Period Not Ascertainable without Reference to Death
- Example 2.4 – Retained Right Did Not End before Death
- Practitioner Note – Discharge of Legal Obligation

# TRANSFERS TAKING EFFECT AT DEATH

P. 47

- Value of decedent's property included if
  - Use of property can only be claimed by surviving the decedent;
  - the decedent retained a reversionary interest in the property; &
  - the value of the reversionary interest immediately before the decedent's death is more than 5% of the value of the property.
- Reversionary interest – property transferred by the decedent may return to the decedent or his/her estate
- Reversionary interest IS NOT possible in inherited property
- Example 2.5 – No Reversionary Interest
- Example 2.6 – Reversionary Interest

## REVOCABLE TRANSFERS

P. 48

- Treas. Reg. §20.2038-1 – does not apply to the following:
  - Transfer was for adequate and full consideration in money
  - Decedent's power could be exercised only with the consent of all parties having an interest (vested or contingent) in the transferred property, and if the power adds nothing to the rights of the parties under local law
  - A power held solely by a person other than the decedent
- Right to amend or revoke a trust – “Grantor, during grantor's lifetime, reserves the right to amend or revoke the trust. Upon the death of grantor, the trust shall be irrevocable.”

## ANNUITIES & JOINT INTERESTS

P. 48

- Annuities -Remaining value INCLUDED in gross estate
- Joint Interest
  - Value INCLUDED in gross estate
  - Qualified joint interest 50% included
    - Held with spouse
    - Joint tenants by entirety
    - Joint tenants with right of survivorship
      - Get legal advice with Transfer on death or Tenants in common



## EXAMPLE 2.7 JOINT OWNERSHIP

PP. 48-49

- Frank & Freida
- Purchase rental property
- Figure 2.2 – Deed
- Frank dies & interest passes to sister
- Entire property included in Frank's gross estate
- Unless Freida proves she paid half the purchase, 50% included

**FIGURE 2.2**  
**Frank and Freida's Deed**

QUITCLAIM DEED	
GRANTOR(s):	JUDY A. HOLBRIGHT
Address:	P.O. Box 3333, Coram, MT, 59912
GRANTEE(s):	FRANK WILLIS and FREIDA WILLIS, as joint tenants with right of survivorship
Address:	P.O. Box 2222, Hungry Horse, MT 59919
LEGAL DESCRIPTION:	Lot 22 of Meadow Lake Country Club Estates Phase II, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana

# POWERS OF APPOINTMENT

P. 49

- General power of appointment
- Exercises & releases of a power of appointment
- Power given to a decedent to affect the beneficial enjoyment of trust property or its income by altering, amending, or revoking the trust instrument or terminating the trust
- Example – wife has power of appointment upon spouse's death
- Practitioner Note – Ascertainable Standard
- Practitioner Note – Lapse of Power of Appointment

## LIFE INSURANCE PROCEEDS

PP. 49-50

- Included if incidents of ownership
  - Not limited to ownership of policy
  - Include right of insured (his/her estate) to the economic benefits of the policy
  - Includes powers to:
    - Change the beneficiary, Surrender or cancel the policy
    - Assign the policy, Revoke an assignment
    - Obtain a loan or pledge the policy for a loan
- Included reversionary interest

## TRANSFERS FOR INSUFFICIENT CONSIDERATION & MARITAL DEDUCTION PROPERTY

P. 50

- Transfers for insufficient consideration – excess FMV of property over price received is included in gross estate
- Marital deduction property
- Practitioner Note – Basis
- Example 2.8 – Inclusion of Trust Subject to Election
  - Wife Asset value = \$ 800,000 to Sam, surviving spouse
  - Deceased spouse's estate makes QTIP election and claims marital deduction; Spouse dies and property FMV in Sam's estate

# ELECTING PORTABILITY



- Surviving spouse adds unused exclusion from decedent spouse
- Electing Portability
  - Estate < basic exclusion – no portability necessary
  - Estate > basic exclusion – portability may be option
- Example 2.9 – No Portability Election
- Example 2.10 – Tax Practitioner Advice

# SAMPLE LETTER TO EXECUTOR

P. 52

FIGURE 2.3  
Sample Letter to Executor

Dear Mrs. Rivers,

Please allow me to express my sympathy for your recent loss. It is always difficult to lose a loved one and settling an estate can be time-consuming and stressful. Recently we discussed the election for portability of the deceased spousal unused exclusion (DSUE) amount. I am writing this letter to summarize that discussion, and the basis for your decision to not elect portability of your husband's DSUE.

Each US person has a basic exclusion from estate and gift tax. For taxpayers dying in 2021, that exclusion is \$11,700,000. Absent any changes in the law, that amount will be reduced to approximately \$6,000,000 for taxpayers dying in 2026. The DSUE election makes the exclusion portable between spouses, which means that the unused exclusion of the first deceased spouse is added to the exclusion of the surviving spouse.

Unless the estate opts out, the portability election is made automatically by timely filing a complete and properly prepared estate tax return (Form 706). The filing can be made only by an authorized person. In this case, you are the person authorized to file Form 706 because you have been appointed as executor of the estate. If the estate is filing Form 706 solely to elect portability, the deadline for filing can be up to 2 years after the date of death.

For spouses whose assets may exceed the basic exclusion amount, electing DSUE portability can be advantageous. Take, for example, spouses with a combined estate of \$8,000,000. The husband died in 2021 and devised the entire estate outright to his wife. The husband's estate did not elect portability. The wife dies in 2026. Her estate has an estimated \$6,000,000 exclusion and must pay estate tax on \$2,000,000 (\$8,000,000 – \$6,000,000). If instead the husband's estate had elected portability, the husband's \$11,700,000 DSUE (based on the 2021 exclusion amount) would have been carried over to the wife's estate, and the wife's \$17,700,000 (\$11,700,000 + \$6,000,000) exclusion would have more than offset the \$8,000,000 estate. The wife's estate would have owed no estate tax.

For a surviving spouse whose assets do not currently exceed the basic exclusion amount, electing portability may still be advantageous because the size of your estate may increase in the future. Also, while the basic exclusion amount is permanently indexed for inflation, subsequent tax legislation could reduce the amount of the exclusion. However, you must weigh the possible benefits of electing portability against the time and expense to make the election. A complete and properly prepared estate tax return must include an accurate calculation of the DSUE amount, which may necessitate obtaining costly appraisals of estate assets.

As we discussed, the likelihood that your estate could exceed the basic exclusion amount is small, and the cost to elect portability is high. Accordingly, you have decided to not make the election. Please let me know immediately if you have any additional questions about the portability election or if any information in this letter does not accurately reflect our discussion. Thank you.

Sincerely,  
Jerome Jensen, CPA

Note: This sample letter is provided for general educational purposes. The terms of such a letter are very fact-specific, and laws in taxing jurisdictions vary. For these reasons, the sample letter is not applicable in all circumstances.

## COMBINED ESTATES & PORTABILITY

P. 53

- Below two times basic exclusion – advantageous to elect portability
- Example 2.11 – Electing Portability Eliminates Estate Tax
- Above two times basic exclusion
  - Use DSUE and get step-up basis
  - But appreciation on deceased spouse's assets included in estate
  - Credit shelter trust



## COMBINED ESTATES & PORTABILITY

P. 53

### ➤ Example 2.12 – Estate Planning with an A-B Trust and No Portability

Credit shelter trust – no asset appreciation

In 2017 Shawn dies with combined estate of \$12,000,000,

Credit shelter trust for wife of \$5,490,000

Trust FMV at death \$6,300,000, no step up

If DSUE was elected \$5,490,000, estate value \$6.3Million

## ELECTING PORTABILITY

P. 54

- Practitioner Note – Nontax Use of Trusts
- How to Make the Portability Election by filing Form 706 properly
- Who Can File the Election
  - Executor or administrator, if none, person in possession of property
  - Practitioner Note – Non-US Spouse
- Timely Filed Election -Due date 9 months after decedent's date of death
  - Request automatic 6-month extension

## ELECTING PORTABILITY

PP. 54-55

### Simplified Procedure

- The decedent had a surviving spouse, died after 12/31/2010, and was a citizen or resident of the US on the date of death.
- Estate small enough to not require a return without regard to the need to file for portability purposes.
- Executor did not file an estate tax return timely
- The executor satisfies all other requirements of Rev. Proc. 2017-34.
- Private Letter Ruling

## ELECTING PORTABILITY

P. 55

- Private Letter Ruling
- Lowest cost \$3,000
- Applicant must show good faith and reasonable actions- list in chapter, 2 years after date of death
- Not good faith – negligence, chose not to file or facts now make it advantageous to file

## COMPLETING THE ESTATE TAX RETURN

PP. 55-56

- Assets of the gross estate
- Deductions
- Certified copy of the Will
- Calculate the DSUE
- Reporting of Value Not Required
  - If no filing requirement, don't have to report specific value of
  - Marital deduction property
  - Charitable deduction property

## COMPLETING THE ESTATE TAX RETURN

P. 56

- Reporting items on the return even if no filing requirement
  - Description
  - Ownership
  - Beneficiary
  - “All other” information necessary to determine right to deduction
  - Estimate/range of values



## LAST DECEASED SPOUSE

P. 58

- Most recently deceased person who was married to surviving spouse
- Even if surviving spouse remarried
- Ordering Rules
  1. DSUE
  2. Decedent's basic exclusion



## EXAMPLE 2.13 ORDERING OF DSUE

P. 58

- Bart & Heather are married
  - Heather died
  - Elects \$3,000,000 DSUE
  - Bart remarries Cindy
  - Bart died
  - \$5,000,000 taxable estate
  - 1<sup>st</sup> Apply \$3,000,000 DSUE
  - 2<sup>nd</sup> Apply Bart's exclusion, \$5,450,000
  - 3<sup>rd</sup> Elect portability to Cindy
- No DSUE from Heather after Bart died
  - If no portability election, then no DSUE for Cindy
  - DSUE from prior deceased spouse can offset lifetime taxable gifts

## EXAMPLE 2.14 DSUE USED FOR TAXABLE GIFTS

P. 58

- Whitney survives Hunter, No gifts made
- Hunter's estate elects portability
- \$5,000,000 DSUE
- Whitney gifts \$2,000,000 to children
- Applies Hunter's DSUE on gift tax return
- DSUE remaining = \$3,000,000
- Whitney marries Michael
- Michael dies
- Michael's estate elects portability
- \$6,000,000 DSUE
- Whitney dies, basic 6.3 Million
- Estate = \$8,000,000 DSUE
- Estate exclusion = \$14,300,000

- Practitioner Note – IRS can examine Deceased Spouse's Return
- Opting Out of DSUE
  - Filing Form 706 elects portability unless opt out, Figure 2.5
  - NOT filing Form 706 automatic opt out

**FIGURE 2.5**  
**Opting Out of Portability on Form 706**

Form 706 (Rev. 8-2019)

<b>Estate of:</b>	<b>Decedent's social security number</b>
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**Part 6—Portability of Deceased Spousal Unused Exclusion (DSUE)**

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**Portability Election**  
 A decedent with a surviving spouse elects portability of the DSUE amount, if any, by completing and timely filing this return. No further action is required to elect portability of the DSUE amount to allow the surviving spouse to use the decedent's DSUE amount.

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**Section A. Opting Out of Portability**  
 The estate of a decedent with a surviving spouse may opt out of electing portability of the DSUE amount. Check here and do not complete Sections B and C of Part 6 only if the estate opts **NOT** to elect portability of the DSUE amount.

# DEATH OF A TAXPAYER

WHO CAN ACT FOR THE ESTATE?

## POWERS OF ATTORNEY

P. 60

- IRS Form 2848 – Power of Attorney & Declaration of Representative – Tax matters
  - Act on behalf of the taxpayer
  - Terminates upon taxpayer's death
- Court-appointed administrator
  - Acts upon death of taxpayer
- Automatic transfer of assets to heirs – no administrator
  - Joint tenancy, TOD, designated beneficiary

## POWERS OF ATTORNEY

P. 60

- TP appoints attorney-in-fact, agent to act  
Broad scope – financial, tax, other matters
- General POA – terminates upon physical or mental disability
- Durable POA – valid even after physical or mental disability
- Terminate upon death
  
- Executor files IRS Form 2848 & Form 56

## THIRD-PARTY DESIGNEE –CHECK THE BOX

PP. 60-61

Authority to interact with IRS:

- Give information missing from the taxpayer's return
- Call about processing of the taxpayer's return, or refund or payment(s) status
- Receive notices/transcripts related to the tax return, upon request
- Respond to notices about math errors, offsets, & return preparation

Cannot: receive refund checks, make binding agreements or represent taxpayer before the IRS



EXECUTOR APPOINTED BY PROBATE COURT  
PER THE WILL



- Practitioner Note – Probate
- Deemed to be the taxpayer & is not required to file a power of attorney with the IRS
- File **Form 56** – Notice Concerning Fiduciary Relationship
- Practitioner Note – Digital Assets
- Form 4810 – Request for Prompt Assessment to reduce time period to 18 months
- Form 5495 Request for Discharge From Personal Liability

## EXECUTOR –AUTHORITY TO ACT FOR ESTATE

NOT IN BOOK

➤ Pension – IRA – 401(k)

➤ Where can you look for assets

National Registry of Unclaimed Retirement  
Benefits.com

Pension benefit Guaranty Corporation?

Mi.gov/unclaimed property

## NO FIDUCIARY APPOINTED

PP. 61-62

- No executor appointed if assets pass by operation of law
- Signing a return -Surviving spouse or person in charge of property
- Requesting information
  - Heir at law, next of kin, beneficiary under the will or recipient of property
  - Material interest – usually financial nature
  - Affected by the requested information

## POWER TO ACT

P. 62

- Treas. Reg. §601.503 residuary beneficiary
- Form 56 – notify IRS of the fiduciary relationship
- IRS may require
  - Evidence of discharge of executor
  - Evidence that executor is not responsible for disposition of matters
  - Statement signed under penalty of law showing relationship to decedent and right to assets

# INCOME IN RESPECT OF A DECEDENT (IRD)



## DEFINITION OF IRD

P. 63

- All accrued income of a cash basis decedent
- Income accrued solely by accrual basis decedent's death
- Income to which the decedent had a contingent claim at the time of his death (Michigan land contracts)
- Example 2.15 – No IRD on Post-death Sale of Stock
- Example 2.16 – IRD on Predeath Sale of Apples & Transfer to Cooperative

## TAXATION OF IRD

P. 64

- Include in gross income as same character during life
- Gross income included by:
  - The decedent's estate if the estate receives it
  - The beneficiary, if receipts of cash directly
  - Any person to whom the estate properly distributes the right to receive it

## TAXATION OF IRD

P. 64

- Example 2.17 – Estate & Beneficiary Receive IRD  
Estate received % includes 2 payments  
Juanita received & includes 2 payments as ordinary income
- Example 2.18 – Retained Character of IRD  
long term capital gain property and no step-up in basis
- Transfer of Right to IRD – if transferee includes in gross income,  
transferor does not



## TAXATION OF IRD

P. 65

- Example 2.19 – Transfer of IRD
- Deductions – allowable if decedent was allowed
- Income – taxed when recipient receives it
- Estate tax paid – deduct on Sch. A (other)
- Treas. Reg. §1.691(c)-1
  - Determine the net value of IRD items included in the gross estate
  - Determine how much of the estate tax is attributable to inclusion of those items

# TAXATION OF IRD

PP. 65-67

- Example 2.20 – Calculating the Deduction for Estate Tax Paid
- Types of IRD
  - Wages – earned prior to death
  - Example 2.21 – Wages paid after death

**FIGURE 2.6**  
**Zane Kenyon's Form W-2**

<b>22222</b>		a Employee's social security number XXX-XX-XXXX		OMB No. 1545-0008		
b Employer identification number (EIN) XX-XXXXXXX			1 Wages, tips, other compensation \$10,000	2 Federal income tax withheld \$1,500		
c Employer's name, address, and ZIP code First American Credit Union 100 Central Ave. Columbia Falls, MT 59912			3 Social security wages \$13,000	4 Social security tax withheld \$006		
			5 Medicare wages and tips \$13,000	6 Medicare tax withheld \$188.50		
			7 Social security tips	8 Allocated tips		
d Control number			9	10 Dependent care benefits		
e Employee's first name and initial      Last name      Suf.  Zane Kenyon 345 Railway Street Whitefish, MT 59937			11 Nonqualified plans		12a	
			13 Status: employee      Retirement plan      Third-party sick pay		12b	
			14 Other		12c	
					12d	
f Employee's address and ZIP code						
15 State Employer's state ID number MT XXXXXXXX	16 State wages, tips, etc. \$10,000	17 State income tax \$500	18 Local wages, tips, etc.	19 Local income tax	20 Locality name	

W-2 Wage and Tax Statement

2021

Department of the Treasury—Internal Revenue Service

# EXAMPLE 2.21

PP. 66-67

**FIGURE 2.7**  
**The Estate of Zane Kenyon's Form 1099-MISC**

VOID     CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.  <b>First American Credit Union</b> 100 Central Ave. Columbia Falls, MT 59912		<b>1</b> Rents \$	OMB No. 1545-0115  <span style="font-size: 2em; font-weight: bold;">2021</span>  Form <b>1099-MISC</b>	<b>Miscellaneous Information</b>
		<b>2</b> Royalties \$		
PAYER'S TIN  XX-XXXXXXX		<b>3</b> Other income \$ <span style="float: right;">3,000</span>	<b>4</b> Federal income tax withheld \$	<b>Copy 1 For State Tax Department</b>
		RECIP  XX-XXXXXXX		
RECIPIENT'S name  <b>Estate of Zane Kenyon</b> Street address (including apt. no.)  21 Tamarack Lane City or town, state or province, country, and ZIP or foreign postal code  Kalispell, MT 59901		<b>7</b> Payer made direct sales totaling \$5,000 or more of consumer products to recipient for resale <input type="checkbox"/> \$	<b>8</b> Substitute payments in lieu of dividends or interest \$	
		<b>9</b> Crop insurance proceeds \$	<b>10</b> Gross proceeds paid to an attorney \$	
		<b>11</b> Fish purchased for resale \$	<b>12</b> Section 409A deferrals \$	
Account number (see instructions)	FATCA filing requirement <input type="checkbox"/>	<b>13</b> Excess golden parachute payments \$	<b>14</b> Nonqualified deferred compensation \$	
		<b>15</b> State tax withheld \$	<b>16</b> State/Payer's state no. \$	<b>17</b> State income \$

Form **1099-MISC**    [www.irs.gov/Form1099MISC](http://www.irs.gov/Form1099MISC)    Department of the Treasury - Internal Revenue Service

## TYPES OF IRD

P. 67

### Farm Income

- Cash method farmer
- Crop share rents received prior to death = \$205
- Crop sold after death = \$1,295
- Example 2.22 – Crop Share Earned before Death

## TYPES OF IRD - US SAVING BONDS – SERIES EE OR SERIES I P. 68

- Reporting Interest
  - Executor *elects* to include interest earned before the decedent's death on the return. The estate or beneficiary includes only the interest earned after the date of death on its return.
  - Executor does *not* make the election, the interest earned up to the date of death is IRD. All the interest earned before & after death is income to the transferee (estate or beneficiary).
- Example 2.23 Inherited Bond – No Election to Include Interest

# GRANTOR TRUSTS



## GRANTOR TRUSTS

P. 69

- Separate legal entity, Grantor & Trustee defined
- Beneficiary – person entitled to receive benefits from trust
- Practitioner Note – Gross Estate Inclusion
- Grantor trust if the trust meets any of the grantor trust definitions in I.R.C. § 673, 674, 675, 676, or 677.
- Reversionary interests – return of possession or enjoyment

POWER TO CONTROL BENEFICIAL ENJOYMENT – GRANTOR CAN  
DIRECT INCOME OR PRINCIPAL PP. 69-70

- I.R.C. §674(b) – not grantor status if power to direct fund per trustees
- List in text on left side of page 70



## POWER TO CONTROL BENEFICIAL ENJOYMENT

P. 70

- I.R.C. §674(c) – trustee can have the power to distribute if:
  - Trustee is not the grantor
  - Majority of trustees are not related
  - Majority of trustees are not subordinate to grantor
- Sample language
  - “Trustee may make distributions of income and principal in such amounts and to such of the trust beneficiaries as the trustee determines, in the trustee’s sole discretion.”

# ADMINISTRATIVE POWERS

PP. 70-71

## ➤ I.R.C. §675 – 4 powers of grantor trust

### 1. Power to Deal with Trust Assets

### 2. Power to Borrow without Adequate Interest or Security

Example paragraph in text

### 3. Borrowing Funds from the Trust

### 4. Administrative Powers

➤ Vote or direct the voting of a significant interest in stock or securities

➤ Control the investment of trust funds

➤ Reacquire trust principal by substituting other property of an equivalent value

## ADMINISTRATIVE POWERS AND OTHER TYPES OF GRANTOR TRUSTS

P. 71

Administrative powers sample language in text

Grantor's power unlimited

- Power to Use Income for the Benefit of Grantor
- Person Other than Grantor Treated as Owner

# TRUST & ESTATE DEDUCTIONS



- Costs paid or incurred in connection with the administration of an estate or non-grantor trust that would not have been incurred if the property were not held in the estate or trust
- The personal exemption of an estate or non-grantor trust
- The distribution deduction for trusts distributing current income
- The distribution deduction for estates & trusts accumulating income

## DEDUCTIBLE EXPENSE ON 1040

P. 72

Text lists

Not deductible – subject to 2% limit or personal expenses

Deductible – expense paid on behalf of trust to produce income,

non grantor trust, check list carefully,

final return coming up

## BENEFICIARY DEDUCTIONS ON TERMINATION

P. 73

- NOL carryover
- Capital loss carryover
- Excess deductions

Transfer to beneficiary on termination of estate or trust.

# EXAMPLE 2.24 ESTATE HAS AN NOL CARRYOVER

P. 74

**FIGURE 2.8**

**Alan Adams Estate Income and Deductions**

<b>Income</b>		
Taxable interest	\$2,500	
Business income	3,000	
<b>Total income</b>		<b>\$5,500</b>
<b>Expenses</b>		
Business expenses (including administrative expenses allocable to business income)	\$5,000	
Administrative expenses not allocable to business income that would not have been incurred if the property were not in a trust [section 67(e) deductions]	9,800	
<b>Total expenses</b>		<b>\$14,800</b>

**FIGURE 2.9**

**Brian Bester's Schedule K-1, Box 11**

<b>11 Final year Deductions</b>	
A	7,300
E	2,000

[Treas. Reg. § 1.642(h)-5(a) Example 1]



## EXCESS DEDUCTIONS

P. 75

- Character of excess deduction – same as in the trust
- Subject to applicable limitations of the beneficiary – current year

## EXAMPLE 2.25 CALCULATION OF EXCESS DEDUCTIONS PP. 75-76

**FIGURE 2.10**  
**Daria Mendez's Estate's Income and Deductions**

<b>Income</b>	
Dividends	\$3,000
Taxable interest	500
Rent	2,000
Capital gain	1,000
<b>Total income</b>	<u><u>\$ 6,500</u></u>
<b>Expenses</b>	
Rental real estate expenses [section 62(a)(4) deduction]	\$2,000
Probate fees [section 67(e) deduction]	1,500
Estate tax preparation fees [section 67(e) deduction]	8,000
Legal fees [section 67(e) deduction]	2,500
Personal property taxes (nonmiscellaneous itemized deduction)	3,500
<b>Total expenses</b>	<u><u>\$17,500</u></u>

# REPORTING EXCESS DEDUCTIONS ON 1040 FROM 1041 K-1

P. 76

**FIGURE 2.11**  
**Schedule K-1 (Form 1041) Box 11 Codes –**  
**Final Year Deductions**

Box 11 Code	Description
A	Excess deductions – Section 67(e) expenses
B	Excess deductions – Non-miscellaneous itemized deductions
C	Short-term capital loss carryover
D	Long-term capital loss carryover
E	Net operating loss carryover – regular tax
F	Net operating loss carryover – minimum tax

**FIGURE 2.12**  
**Schedule K-1 (Form 1041) Box 11 Code Instructions**

**Box 11, Code A—Excess Deductions on Termination – Section 67(e) Expenses**

If this is the final return of the estate or trust, and there are excess deductions on termination that are section 67(e) expenses reported to you as a beneficiary, you may deduct the excess deductions shown in box 11, code A, as an adjustment to income. Report this amount as a write-in on Schedule 1 (Form 1040), Part II, line 22. On the dotted line next to line 22, enter the amount of the expense using the code “ED67(e).” Include the expense in the total amount reported on line 22.

**Box 11, Code B—Excess Deductions on Termination – Non-Miscellaneous Itemized Deductions**

If this is the final return of the estate or trust, and there are excess deductions on termination that are non-miscellaneous itemized deductions reported to you as a beneficiary, you may deduct the excess deductions shown in box 11, code B, on the applicable line on Schedule A (Form 1040). The fiduciary will provide you with a statement of allowable deductions.

**Box 11, Codes C and D—Unused Capital Loss Carryover**

Upon termination of the trust or decedent’s estate, the beneficiary succeeding to the property is allowed to deduct any unused capital loss carryover under section 1212. A short-term capital loss carryover, reported as code C, is reported on Schedule D (Form 1040), line 5. A long-term capital loss carryover, reported as code D, is reported, as appropriate, on Schedule D (Form 1040), line 12; line 5 of the 28% Rate Gain Worksheet for Schedule D, line 18; and line 16 of the Unrecaptured Section 1250 Gain Worksheet for Schedule D, line 19.

**Box 11, Codes E and F—NOL Carryover**

Upon termination of a trust or decedent’s estate, a beneficiary succeeding to its property is allowed to deduct any unused net operating loss (NOL) if the carryover would be allowable to the trust or estate in a later tax year but for the termination. The deduction for regular tax purposes, reported as code E, is reported on Schedule 1 (Form 1040), line 8. A deduction for an Alternative Tax NOL (ATNOL) carryover for Alternative Minimum Tax (AMT) purposes, reported as code F, is reported on Form 6251, line 2f.

# REPORTING A TAXABLE ESTATE

## FILING REQUIREMENTS

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- Gross estate > basic exclusion amount
- Date of death
- Less lifetime taxable gifts
- File Form 706 in text, recap & delayed payment
- Nonresident aliens – different from US citizens or US resident aliens
- Due date – 9 months after date of decedent's death
- 6-month extension

QUESTIONS?