

2022 NATIONAL INCOME TAX WORKBOOK

CHAPTER 2: TRUSTS & ESTATES



Chapter Topics

P 45

- Basis of Inherited Assets
- Sale of Inherited Assets
- Gifts in Contemplation of Death
- Irrevocable Life Insurance Trusts
- Qualified Personal Residence Trusts
- Gift and Estate Tax on §529 Plans

Introduction

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- 2022 \$ 12,060,000 basic exclusion
- 2023 \$12,290,000
- Portable – amount unused by one spouse transfers to the other

1. FMV at the date of death GENERAL RULE
2. I.R.C. §2032 election, value on alternate valuation date (6 months)
3. I.R.C. §2032A election, special use valuation for qualified real property (farm value)
4. Applicable exclusion under I.R.C. §2031 (c)
 - Qualified conservation easement
 - Basis in the hands of the decedent

BASIS OF INHERITED ASSETS

Estate of:

SCHEDULE B—Stocks and Bonds

(For jointly owned property that must be disclosed on Schedule E, see instructions.)

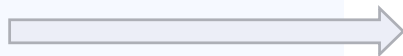
Note: If the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and Form 706 is being filed solely to elect portability of the DSUE amount, consideration should be given as to whether you are required to report the value of assets eligible for the marital or charitable deduction on this schedule. See the instructions for more information. If you are not required to report the value of an asset, identify the property but make no entries in the last four columns.

Item number	Description, including face amount of bonds or number of shares and par value for identification. Give CUSIP number. If trust, partnership, or closely held entity, give EIN.	Unit value	Alternate valuation date	Alternate value	Value at date of death
	CUSIP number or EIN, where applicable				

- Basis for depreciation – FMV on date of death or alternate valuation date
- Adjusted basis – FMV at alternate valuation date LESS depreciation allowed or allowable from date of death
- Rev. Rul. 63-223, 1963-2 C.B. 100

FIGURE 2.1
Basic Exclusion Amounts

Year of Death	Exclusion Amount
2004–2005	\$1,500,000
2006–2008	\$2,000,000
2009	\$3,500,000
2010–2011	\$5,000,000
2012	\$5,120,000
2013	\$5,250,000
2014	\$5,340,000
2015	\$5,430,000
2016	\$5,450,000
2017	\$5,490,000
2018	\$11,180,000
2019	\$11,400,000
2020	\$11,580,000
2021	\$11,700,000
2022	\$12,060,000



Planning under Current Law

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- Second column, last paragraph
- All assets outright to surviving spouse
- Surviving spouse has deceased spousal unused exclusion (DSUE)
- Full step-up basis of appreciated assets

Portability

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- Practitioner Note – Portability is an ELECTION
- Appreciation on deceased spouse's assets included in surviving spouses' estate
- Credit shelter trust may still be useful if estates do or could exceed combined exclusions

Example 2.1 – Trust Planning

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- Alice & Tom are married with two kids from Alice's prior marriage, Alice wants assets available to Tom, then distributed to kids
- Alice dies in 2026 with \$8M gross estate, \$6M exclusion
- Tom has \$2M gross estate
- \$6M to credit shelter trust – no step-up in basis when Tom dies
- Instead, all to marital trust, \$6M DSUE plus Tom's BEA – no estate tax and full step-up

Polling Question #1

Are you the trustee for any trusts?

- a. Yes
- b. No

Uniformity of Basis

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Property included in gross estate and increased estate tax

Basis cannot exceed determined/reported value for federal estate tax

Executor provides info to beneficiaries

Uniformity of Basis

P 50

- Under proposed regulations, don't have to report:
 1. Cash (other than coins or paper bills with numismatic value)
 2. Income in respect of a decedent
 3. Items of tangible personal property for which an appraisal is not required
 4. Property that is sold or otherwise disposed of by the estate (and therefore not distributed to a beneficiary) in a transaction in which capital gain or loss is recognized

Form 8971, Schedule A

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- Provided to beneficiary
- Consistent treatment
- Establishes value
- Notice of basis reporting requirements

FIGURE 2.2
Form 8971, Schedule A, Part 2

Part 2. Information on Property Acquired				
A	B	C	D	E
Item No.	Description of property acquired from the decedent and the Schedule and item number where reported on the decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. If the beneficiary acquired a partial interest in the property, indicate the interest acquired here.	Did this asset increase estate tax liability? (Y/N)	Valuation Date	Estate Tax Value (in U.S. dollars)
	Form 706, Schedule _____, Item _____ Description —			

Notice to Beneficiaries:
You have received this schedule to inform you of the value of property you received from the estate of the decedent named above. **Retain this schedule for tax reporting purposes.** If the property increased the estate tax liability, Internal Revenue Code section 1014(f) applies, requiring the consistent reporting of basis information. For more information on determining basis, see IRC section 1014 and/or consult a tax professional.

I.R.C. § 1014(e) prevents step-up basis for predeath gifts

- Appreciated property gifted within 1 year of date of death
- Passes to the donor or donor's spouse
- Carryover basis

Planning Pointer

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- Qualified Disclaimer under I.R.C. §2518
- Property treated as not transferred to beneficiary
- Alternate beneficiary could receive step-up

Valuation on Date of Death

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- Auto – same make, model, age, condition - NOT used dealer
- Publicly Traded Stocks – highest & lowest quoted selling price
- Household & Personal Property
 - FMV – willing buyer/willing seller
 - Treas. Reg. 20.2031-6 – may need appraisal

Title of property included in gross estate, I.R.C. §2040 – exceptions

1. Tenancy by entirety - $\frac{1}{2}$ of value included
2. Joint tenants with right of survivorship - fractional part that is determined by dividing the value by the number of joint tenants
3. Qualified joint Interest - $\frac{1}{2}$ of value included

Jointly Owned Property

P 53

Non-spouses - I.R.C. § 1014 step-up/step-down basis

Ex. 2-3 Brothers with 30-70% split

Noncommunity Property

P 53

I.R.C. §2040(b) – interests held by married individuals

- Tenants by entirety
- Joint tenants with rights of survivorship
- First spouse dies – $\frac{1}{2}$ of value included in gross estate
- I.R.C. §1014 – step-up/step-down on $\frac{1}{2}$ interest

Example 2.4 Joint Tenancy

P 53

- Jeff & Kim, married Colorado residents & own land as tenants by entirety
- Contributions - Jeff \$90,000/Kim \$10,000
- Kim died, FMV is \$200,000
- \$100,000 included in Kim's estate
- Jeff's basis is \$150,000 (\$50,000 deemed basis + \$100,000)

Example 2.5 – Inherited Community Property P 54

- Kerry & Jerry married CA residents
 - \$80,000 basis
 - Jerry died FMV of property was \$100,000
 - \$50,000 included in Jerry's estate
 - Kerry's basis = \$100,000
- Instead - MT
 - Kerry's basis = \$90,000 (\$40,000 + \$50,000)

Polling Question #2

2. What would you charge for a 1041?

a) Hourly rate

b) Percentage of value of the estate



SALE OF INHERITED ASSETS

Capital Assets

P 55

I.R.C. § 1221 - All classes of property, EXCEPT:

1. TP's Inventory in Trade or Business
2. Depreciable under § 167 used in T or B or real property used in T or B
3. Account receivable in T or B
4. Supplies in T or B

Holding Period & Ex. 2.6

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§ 1223(9)

Long
term

Deductible Capital Loss

P 56

I.R.C. § 165 – no loss deduction on personal-use property

Individual losses limited to:

- Losses incurred in trade or business
- Losses incurred for-profit transactions
- Casualty & theft (with limits)

If questionable, review 4 court cases

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Inherited use of property

Is it in trade or business

Rental – is it trade or business

Fall back is capital loss

Inventory to inherited property Capital

GIFTS IN CONTEMPLATION OF DEATH



Within 3 years of death, Property transferred

p. 58

Include in estate

Life insurance

Revocable transfers

** unless under \$16,000 or yearly exclusion amount or
paid medical or tuition

Practitioner Note – Annual Exclusion P 58

2022 annual
gift tax
exclusion

\$16,000
2023 \$17,000

Rev. Proc,
2021-45, 2021-
48 I.R.B. 764

IRREVOCABLE LIFE INSURANCE TRUSTS



Irrevocable Life Insurance Trust P 59-61

- Shelters proceeds from estate inclusion
- Unless incidents of ownership include control of policy
 - Reversionary interest
 - Gift tax on premiums

Irrevocable Life Insurance Trust P 59

- Shelters proceeds from estate inclusion
- I.R.C. 2042 proceeds included in gross estate of decedent if ownership or incidents of ownership – power to:
 1. Change the beneficiary
 2. Surrender or cancel the policy
 3. Assign the policy
 4. Revoke an assignment
 5. Pledge the policy for a loan
 6. Obtain from the insurer a loan against the surrender value of the policy

Gift Tax on Contribution to ILIT P 60

- Contribution of cash is a gift
 - \$16,000 gift tax exclusion if present interest
- Planning – get new policy
- Present interest is unrestricted right to immediate use, possession, or enjoyment

Gift Tax on Payment of Premiums P 60

- Insured typically pays policy premiums
- If beneficiary has power to withdraw – gift tax exclusion may apply
 - *Crummey v. Commissioner* – parents created trust for 4 four kids, sought to deduct annual exclusion amount for contribution to trust. Trust gave kids right to demand distributions. Court upheld annual exclusions.

Withdrawal Rights

P 61

Crummey withdrawal right is a general power of appointment

- Non-exercise of withdrawal right is a lapse (deemed gift) to the extent that it exceeds the greater of \$5,000 or 5% of the trust value
- Thus, many ILITS contain this 5 X 5 limitation

QUALIFIED PERSONAL RESIDENCE TRUSTS



Sample QPRT

P 66-67

Rev. Proc. 2003-42, 2003-1 C.B. 993



GIFT & ESTATE TAX ON 529 PLANS

Michigan Educational Savings Plan/
Michigan Educational Trust

- Contributions not includible in beneficiary's income
- Qualified distributions are not taxable
- Certain distributions or changes may be a taxable gift
- Amounts distributed on account of death of designated beneficiary are subject to estate tax

No taxable gift if roll over w/in 60 days to QTP for member of family same generation or higher

Member of the family

1. The spouse of the beneficiary
2. A qualifying relative (see list)
3. The spouse of any individual in 2
4. The first cousin of the beneficiary

Polling Question #3

1. Do you have a successor trustee for all 529 plans?
 - a. Yes
 - b. No

Example 2.17 – Excess Contributions

PP 70-71

- Angela contributed \$80,000 to 529 plan
- Elects to include ratably over 5 years
- Completed gift and qualifies for annual exclusion
- Angela dies in year 4
- \$16,000 for year 5 included in her gross estate

Questions?

2022 NATIONAL INCOME TAX WORKBOOK

CHAPTER 8: TAX PRACTICE AND
PROCEDURE – PT. 2 P. 310



TAX PRACTICE AND PROCEDURE

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Topics:

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5. Transferees, Nominees, or Alter Egos	310
6. Amended and Superseding Returns	317

Transferee – receives property for < adequate consideration
from TP who has tax liability

Heir/distributee of estate

S/H of dissolved corp

Donee

Corp successor

Party to reorg

Other distributees – personally liable

TRANSFEREE LIABILITY

PP. 311-312

List of direct and indirect transfers

Disposition of asset/interest in asset

Payment of money or debt, lease

Compensation , distribution to SH

Sham transaction



Source of Liability

Based on law or equity – fraudulent conveyance,
trust fund doctrine

Estate & Gift Tax Transferee Liability – Limited to FMV of property

PR Personally liable – other estate debts paid 1st – and tax nonpayment

TRANSFEE DEFENSES AGAINST LIABILITY

- 1) Transferor paid the tax and waived right to refund
- 2) Transferor does not owe the tax
- 3) SOL expired
- 4) Transferred property returned
- 5) IRS has not exhausted collection efforts against transferor

ALTER EGO

Legally - Entity separate from T/P

Factually – Entity **not separate** from T/P

- | | |
|----------------------------------|------------------------------|
| 1) Co-mingling of funds | 4) Corp.
undercapitalized |
| 2) Unsecured interest free loans | 5) No corp.
formalities |
| 3) SH has substantial control | 6) Unjust or unfair |

IRS treats as one for tax collection- alter ego liable

Superseding Return-filed during filing period

Amended Return-filed after filing period

Reasons to Amend

Change filing status, correct income, deductions, credits, elections, change IRS amounts, claim a carry back

FILING A SUPERSEDING RETURN

PP. 321-322

Paper file – write “SUPERSEDING RETURN”

E-file – new check box for 1040

Superseding Corporate Returns

Note request extension when filing superseding return may be anticipated

May need transcript

When to file

- Wait until original return processed
- Note – file earlier if necessary to avoid penalties/interest

File w/in SOL period

How to file

Form 1040-X; limited 1045 filing (Dec. 31 year after loss)

Electronically file if 2019 or later & orig. filed electronically

Deceased T/P – write “deceased” and date of death

Surviving spouse or PR signs - May need Form 1310

Tracking Amended Return – online tool or call, processing delays

Claim of Right Adjustment – T/P reported income, later determines no right to income-files claim, deduction exceeds \$3K

POLLING QUESTION #4

1. We are nearly at the end of the one-day class and Tax Practice:
 - i. We covered a lot!
 - ii. My brain can't absorb it all

QR CODE FOR COURSE EVALUATION

