

TABLE OF CONTENTS

PREFACE	III
TABLE OF CASES	XVII
TABLE OF RULINGS	XXVII
Chapter 1. Overview of the Estate and Gift Taxes	1
A. Historical Perspective	1
B. Introduction to the Operation of the Taxes	17
1. Basic Structure of the Estate and Gift Taxes	17
2. Illustrative Computations	19
3. Valuation of Property	23
4. Unlimited Marital Deduction for Interspousal Transfers	24
5. Split Gifts	25
6. Generation-Skipping Transfer Tax	26
C. Effect of State Law	27
Commissioner v. Bosch's Estate	27
Notes	36
D. Constitutionality	39
Notes	39
E. Income Tax Basis of Inherited Property	42
Chapter 2. The Gift Tax.....	47
A. Transfers of Property by Gift: §§ 2501(a)(1) and 2511(a)	47
1. Definition of "Property"	47
2. Interest-Free Loans and Rent-Free Use of Assets	48
Dickman v. Commissioner	48
Notes.....	56
3. Promises to Be Performed in the Future	58
Bradford v. Commissioner	58
Notes.....	61
DiMarco's Estate v. Commissioner.....	65
Notes.....	70
4. Uncompensated Services	71
Commissioner v. Hogle.....	71
Notes.....	73
5. Gifts of Future, Contingent, or Defeasible Interests.....	74
Smith v. Shaughnessy	74
Notes.....	78
6. Valuation of Transfers in Trust with Retained Interests: § 2702 ...	83
B. Incomplete Transfers	89
1. Retained Power to Revoke	89
Burnet v. Guggenheim	89
Notes.....	93

TABLE OF CONTENTS

2.	Retained Nonbeneficial Power to Alter or Amend	95
	Sanford's Estate v. Commissioner.....	95
	Notes.....	100
3.	Retained Power Exercisable Only with Consent of Person Having Substantial Adverse Interest	101
	Camp v. Commissioner	101
	Notes.....	107
4.	Indirect Retained Power	109
	Outwin v. Commissioner.....	109
	Notes.....	114
C.	Transfers for Consideration or in Discharge of Legal Obligations:	
	§§ 2512(b), 2043(b), and 2053(c)(1)(A).....	116
1.	Donative Intent.....	116
	Commissioner v. Wemyss	117
	Merrill v. Fahs	119
	Notes.....	123
2.	Payments to Discharge Support Obligations.....	125
	Revenue Ruling 68–379	125
	Note	126
3.	Expenditures for Family Consumption: § 2503(e).....	126
	Notes.....	128
4.	Property Settlements in Contemplation of Divorce or Separation: §§ 2516 and 2053(c)(1)(A)	129
	Harris v. Commissioner	129
	Note	134
	Spruance v. Commissioner.....	134
	Notes.....	139
5.	Business Transactions	140
	Anderson's Estate v. Commissioner	140
	Notes.....	144
D.	Annual Exclusion: § 2503(b) and (c).....	148
1.	Present Interest Requirement	148
	United States v. Pelzer.....	148
	Notes.....	151
	Hackl v. Commissioner	155
	Notes.....	158
2.	Powers to Demand Payment.....	161
	Cristofani's Estate v. Commissioner	161
	Notes.....	167
3.	Transfers to Minors	169
	Levine's Estate v. Commissioner.....	169
	Notes.....	173
E.	Disclaimers: § 2518	176
	Monroe's Estate v. Commissioner	176
	Notes.....	186

Chapter 3. The Gross Estate: Property Owned at Death	191
A. Property Owned at Death: § 2033	191
1. Dominion and Control as Ownership.....	192
<i>Helvering v. Safe Deposit & Trust Co.</i>	192
Notes.....	195
Technical Advice Memorandum 9207004	196
Notes.....	201
2. Decedent's Interest in Property.....	203
<i>Barr's Estate v. Commissioner</i>	203
Notes.....	206
<i>Goodman v. Granger</i>	211
Notes.....	215
B. Marital Estates (Dower, Elective Share, and Community Property) and the Origins of the Marital Deduction	217
1. Estates Created by Dower and Elective Share.....	217
2. Community Property and the Marital Deduction	218
Notes.....	221
C. Joint Interests with Right of Survivorship: § 2040	222
1. Introduction	222
2. Spousal Joint Tenancies: § 2040(b)	223
Notes.....	225
3. Nonspousal Joint Tenancies: § 2040(a)	226
<i>Goldsborough's Estate v. Commissioner</i>	226
Notes.....	229
Chapter 4. The Gross Estate: Transfers During Life	233
A. Gifts Within Three Years of Death: § 2035	233
1. 1916 to 1976: Gifts in Contemplation of Death	233
2. 1976 to 1981: Gifts Within Three Years of Death	235
3. After 1981: The Remains of the Three-Year Rule	237
<i>Brown v. United States</i>	239
Notes.....	246
4. Reform Proposals.....	250
Note	251
B. Revocable Transfers: § 2038	252
1. Where Transferor's Power Is Unrestricted	252
<i>Lober v. United States</i>	255
Notes.....	256
<i>Tully's Estate v. United States</i>	259
Notes.....	263
2. Where Transferor's Power Is Restricted	264
a. Power Subject to a Standard or Contingency	264
<i>Jennings v. Smith</i>	264
Notes.....	266
<i>Leopold v. United States</i>	268
Note	272

b.	Power Exercisable in Conjunction with Another Person	273
	Notes.....	275
3.	Where Decedent May Modify a Transfer Made by Another:	
	“Reciprocal Trusts”	276
	United States v. Grace’s Estate.....	276
	Notes.....	281
C.	Transfers with Retained Right to Receive Income or Designate	
	Income Beneficiary: § 2036	283
1.	Transfers Subject to Retained Life Estates	287
a.	Retention of Rights	287
	Rapelje’s Estate v. Commissioner.....	287
	Notes.....	289
	Maxwell’s Estate v. Commissioner	292
	Notes.....	297
b.	Support Trusts	299
	Gokey’s Estate v. Commissioner.....	299
	Notes.....	303
c.	Estate Freezing Techniques Involving Trusts	306
d.	Private Annuities.....	309
	Bergan’s Estate v. Commissioner	309
	Notes.....	312
	D’Ambrosio’s Estate v. Commissioner.....	315
	Notes.....	323
2.	Transfers Subject to Retained Power to Designate Beneficial	
	Enjoyment	325
	Old Colony Trust Co. v. United States.....	325
	Notes.....	328
	United States v. Byrum	330
	Notes.....	336
	Farrel’s Estate v. United States	340
	Notes.....	345
D.	Transfers Taking Effect at Death: § 2037	346
	Roy’s Estate v. Commissioner	358
	Notes	360
E.	Survivorship Annuities: § 2039	363
1.	Purchased Commercial Annuities	363
2.	Benefits Under Employee Retirement and Pension Plans and	
	Individual Retirement Accounts.....	366
	Schelberg’s Estate v. Commissioner	367
	Notes.....	374
F.	Life Insurance.....	379
1.	Policies on the Life of the Decedent: § 2042.....	379
	Commissioner v. Noel’s Estate	387
	Notes.....	390
	United States v. Rhode Island Hospital Trust Co.	393
	Notes.....	398

Skifter's Estate v. Commissioner	400
Notes.....	404
2. Interplay Between §§ 2035 and 2042	410
Notes.....	411
3. Policies Owned or Paid for by Decedent on Life of Third Person.....	412
Pyle v. Commissioner	413
Note	416
G. Powers of Appointment: § 2041	417
1. Introduction	417
2. General Power of Appointment	419
Margrave's Estate v. Commissioner.....	420
Note	422
Jenkins v. United States.....	423
Notes.....	430
3. Taxable Events: Possession at Death, Exercise, Release, and Lapse	435
a. Unexercised Power Held by Decedent at Death	435
Rolin's Estate v. Commissioner	435
Notes.....	438
b. Quasi-Testamentary Exercise or Release of Power	440
c. Lapsed Powers and the "5-and-5" Exemption.....	441
d. Powers of Appointment and the Gift Tax.....	443
Notes.....	444
Chapter 5. Deductions and Credits.....	445
A. Expenses, Claims, and Debts: § 2053	445
1. Funeral Expenses	445
2. Administration Expenses.....	446
Hibernia Bank v. United States	446
Notes.....	452
3. Claims, Debts, and Mortgages.....	457
Leopold v. United States	457
Notes.....	460
Huntington's Estate v. Commissioner	462
Notes.....	467
Marshall Naify Revocable Trust v. United States	471
Notes.....	475
B. Casualty Losses: § 2054	479
C. Charitable Bequests: § 2055	480
1. Qualifying Organizations.....	481
First National Bank of Omaha v. United States	481
Notes.....	486
2. Qualifying Transfers	489
Burgess' Estate v. Commissioner	489
Notes.....	492

3.	Split-Interest Bequests: Transfers for Both Charitable and Private Purposes.....	495
	Edgar's Estate v. Commissioner.....	496
	Notes.....	500
D.	Marital Deduction: §§ 2056 and 2523	507
1.	Threshold Requirements.....	508
a.	Surviving Spouse	508
b.	Property Passing from the Decedent and Included in Decedent's Gross Estate	511
2.	Disqualification of Terminable Interests	512
a.	Support Allowance for Surviving Spouse.....	514
	Jackson v. United States.....	514
	Notes.....	517
b.	Post-Mortem Elections	518
	First National Exchange Bank of Roanoke v. United States	518
	Notes.....	521
3.	Deductible Terminable Interests: Statutory Safe Harbors.....	526
a.	Life Estate with Power of Appointment.....	526
(1)	Right to Income.....	526
(2)	Power of Appointment	528
	Carpenter's Estate v. Commissioner	528
	Notes.....	535
(3)	Specific Portion Rule.....	536
(4)	Estate Trusts.....	538
(5)	Proceeds of Life Insurance, Endowment, and Annuity Contracts Subject to Power of Appointment in Surviving Spouse	538
b.	Qualified Terminable Interest Property	539
(1)	Qualifying Income Interest for Life	540
(2)	QTIP Election.....	542
	Shelfer's Estate v. Commissioner	542
	Notes.....	548
(3)	Termination or Disposition of Spouse's Income Interest	551
	Revenue Ruling 98-8.....	552
	Note.....	555
(4)	Lifetime QTIP Transfers	556
c.	Charitable Remainder Trusts with Life Interest in Surviving Spouse	557
4.	Valuation of Interest Passing to Surviving Spouse.....	557
	United States v. Stapf	557
	Notes.....	561
5.	Planning Considerations.....	564
a.	Interplay Between Unified Credit and Marital Deduction....	564
	Notes.....	565
b.	Portability of Unified Credit	566

c. Tax Deferral or Tax Equalization?	567
d. Marital Deduction Formula Clauses	570
6. Split Gifts by Married Couples to Third Persons	572
E. Deduction for State Death Taxes: § 2058	573
Notes	575
F. Credits Against the Tax	575
1. Unified Credit: § 2010	576
Notes.....	576
2. Credit for Pre-1977 Gift Taxes: § 2012	578
3. Credit for Tax on Prior Transfers: § 2013	578
Notes.....	580
4. Credit for Foreign Death Taxes: § 2014	581
Chapter 6. The Generation-Skipping Transfer Tax	583
A. Overview	583
B. Generation-Skipping Transfers.....	584
1. Transferor	585
2. Generation Assignment	586
3. Skip Persons	586
4. Direct Skips.....	587
5. Taxable Terminations and Taxable Distributions	589
6. Multiple Skips.....	590
C. Computation and Payment.....	590
1. Taxable Amount and Tax Liability	590
2. Applicable Rate and GST Exemption.....	591
D. Planning Considerations.....	593
Notes	596
Chapter 7. Valuation of Property	599
A. General Principles	599
United States v. Cartwright	600
Notes	606
B. Valuation Methods and Applications	609
1. Valuation Methods	609
2. Applications to Specific Types of Property.....	612
a. Real Estate	612
b. Tangible Personal Property	612
c. Actively Traded Stocks and Securities	613
d. Income Interests, Remainders, and Annuities	614
e. Closely Held Business Interests	618
3. Valuation Freezes Involving Corporate Stock and Partnership Interests: § 2701	620
C. Premiums and Discounts	626
1. Blockage	626
2. Lack of Marketability	628

3.	Control Premiums and Minority Discounts.....	629
	Bright's Estate v. United States.....	630
	Notes.....	636
D.	Restrictions on Transfer, Voting, or Liquidation	638
1.	Restrictive Agreements: § 2703	638
a.	Section 2703	639
b.	Agreements Outside § 2703(a).....	641
	Lauder's Estate v. Commissioner	643
	Notes.....	651
2.	Lapsing Rights and Restrictions: § 2704	654
a.	Prior Law.....	654
b.	Section 2704(a).....	656
c.	Section 2704(b).....	657
E.	Special Use Valuation: § 2032A	658
F.	Alternate Valuation Date: § 2032.....	661
Chapter 8. Payment, Collection, and Apportionment		665
A.	Estate Tax.....	665
1.	Tax Returns and Elections.....	665
2.	Extension of Time for Payment of the Estate Tax: §§ 6161, 6163, and 6166.....	668
3.	Redemption of Stock to Pay the Estate Tax: § 303	670
4.	Payment and Collection	671
	Notes.....	673
5.	Apportionment of the Estate Tax	674
	Notes.....	676
B.	Gift Tax	679
C.	Generation-Skipping Transfer Tax	680
INDEX.....		681