

# TABLE OF CONTENTS

---

ACKNOWLEDGMENTS .....	V
TABLE OF CASES .....	XV
TABLE OF CODE SECTIONS.....	XVII
TABLE OF REGULATIONS.....	XXI
TABLE OF REVENUE RULINGS.....	XXIII
<b>Chapter One. Transfer Tax Fundamentals: Policy, History &amp; Structure .....</b>	<b>1</b>
Part A. Policy Aspects of the Transfer Taxes .....	2
Revenue .....	2
Wealth Accumulation & Democracy.....	3
Equity .....	4
Interaction with the Income Tax .....	5
Family Businesses and Entrepreneurship.....	6
Effect on Savings .....	7
Conclusion .....	7
Part B. History & Structure of the Transfer Taxes .....	7
Ancient History: Pre-1976.....	7
Unification: The Tax Reform Act of 1976.....	9
Political Football: Post-1976 .....	10
1981 Changes .....	11
2001 Changes .....	11
2010 Changes .....	13
2012 Changes .....	14
2017 Changes .....	14
Part C. Structure: The Calculation of the Gift Tax, the Estate Tax, and the Operation of the Unified Credit.....	15
The Role of the Unified Credit.....	15
Calculating the Gift Tax.....	17
Calculating the Estate Tax .....	20
Continued Benefits of Lifetime Giving.....	23
The Estate and Gift Taxes Are Now a “Flat Tax” on Amounts over the Exclusion Amount .....	25
Part D. Introduction to Generation-Skipping Transfers .....	26
Part E. Related Income Tax Issues.....	26
Moving Forward.....	28

<b>Chapter Two. Gift Tax Fundamentals</b> .....	<b>29</b>
Part A. Transfers Subject to the Tax .....	29
What Is a Gift? .....	29
Donative Intent .....	29
Ordinary Business Transactions .....	31
Support Obligations .....	32
What Is Property? .....	32
Cash & Non-Cash Assets .....	32
Interests in Trust .....	33
Services .....	33
Use of Property, Below Market Loans .....	34
Part B. The Concept of “Completed Gift” .....	38
Part C. Introduction to Valuation .....	44
Basic Valuation Principles .....	44
Valuing Interests in Trusts .....	45
General Principles .....	45
Gift Tax Valuation of Trust Interests Transferred to Family Members: § 2702 .....	48
Part D. Statutory Exclusions from Taxable Gifts .....	49
Section 2503(b): The Annual Exclusion .....	49
Basic Rules .....	50
Gift Splitting .....	50
Present Interest Rule .....	51
Trusts for Minors .....	52
Section 2503(e): Transfers for Medical Care and Educational Expenses .....	52
Part E. Introduction to Disclaimers .....	53
Moving Forward .....	54
 <b>Chapter Three. Property Owned at Death (§§ 2033 &amp; 2040)</b> .....	 <b>55</b>
Part A. Assets Owned at Death: § 2033 .....	55
Part B. Jointly Held Property .....	62
Tenancy in Common .....	62
Joint Tenancy: § 2040 .....	62
Moving Forward .....	65
 <b>Chapter Four. Property Transferred During Decedent’s Lifetime (§§ 2035, 2036, 2037 &amp; 2038)</b> .....	 <b>67</b>
Part A. Introduction .....	67
Gifts Within Three Years of Death: § 2035 .....	68
Transfers with Retained Interests and Powers (The “String Provisions”) .....	69
History .....	69
Current Law: The “String Provisions” .....	70

Part B. Section 2036 .....	71
In General .....	71
Section 2036(a)(1): Retained Rights to Income or Enjoyment .....	73
Retention of Voting Rights in a Controlled Corporation: § 2036(b) .....	78
Section 2036(a)(2): Retained Powers over Income.....	81
Part C. Section 2038 .....	85
Part D. Section 2037 .....	89
Part E. Section 2035 .....	93
Part F. Exception for Transfers Made for Adequate and Full Consideration .....	95
Taking a Step Back.....	99
Moving Forward.....	101
<b>Chapter Five. Annuities, Retirement Plans and     Insurance (§§ 2039 &amp; 2042) .....</b>	<b>103</b>
Part A. Section 2039: Annuities and Retirement Plans .....	103
Annuity Contracts .....	104
Retirement Plans .....	105
Part B. Section 2042: Life Insurance.....	107
General Principles .....	107
Inclusion of Life Insurance Under § 2035.....	108
Special Case: Policy Owned by Controlled Corporation.....	110
Moving Forward.....	111
<b>Chapter Six. Powers of Appointment (§ 2041) .....</b>	<b>113</b>
Part A. What Is a “Power of Appointment”? .....	113
Part B. Powers of Appointment and the Transfer Taxes in General .....	114
General Power of Appointment Defined .....	116
General Powers Held at Death .....	117
General Powers Exercised or Released During Life.....	120
Gift Tax Consequences .....	120
Estate Tax Consequences.....	122
The Lapse Problem .....	123
Gift Tax.....	126
Estate Tax .....	126
Drafting to Allow Principal Distributions While Avoiding the Lapse Problem .....	127
Moving Forward.....	128
<b>Chapter Seven. Deductions (§§ 2053, 2055 &amp; 2056) .....</b>	<b>129</b>
Part A. Expenses, Indebtedness, Etc.: § 2053 .....	130
Introduction to Probate .....	130

Revocable Living Trusts, Non-Probate Property .....	131
Funeral Expense: § 2053(a)(1) .....	133
Administration Expenses: § 2053(a)(2) & (b) .....	133
Claims Against the Estate: § 2053(a)(3) .....	133
Mortgages: § 2053(a)(4) .....	134
Part B. The Charitable Deduction: §§ 2522 & 2055 .....	135
Part C. The Marital Deduction: §§ 2523 & 2056 .....	140
Introduction .....	140
Pre-ERTA .....	140
ERTA .....	142
Marital Deduction Requirements .....	143
The “Passing” Requirement .....	143
Terminable Interest Rule .....	144
Statutory Exceptions to the Terminable Interest	
Rule for Transfers in Trust .....	145
The Marital Deduction and Estate Planning .....	149
Moving Forward .....	152

**Chapter Eight. Advanced Gift Tax Issues (§§ 2503, 2702 & 2518)..... 153**

Part A. Annual Exclusion Gifts in Trust .....	153
Introduction .....	153
Gifts to Minors .....	154
Custodianships .....	154
“Minor’s Trusts”: § 2503(c) .....	155
“Crummey Trusts” .....	157
Part B. Gift Tax Valuation of Retained Interests: § 2702 .....	159
Introduction .....	159
Qualified Retained Interests .....	161
The “Zeroed out GRAT” .....	162
Transfer of Interest in Trust .....	163
Members of Family and Applicable Family Members .....	164
Exception for Personal Residences .....	166
Part C. Disclaimers: § 2518 .....	168
Timing of Disclaimers .....	169
Disclaimers of Partial Interests .....	173
Moving Forward .....	174

**Chapter Nine. The Tax on Generation Skipping**

<b>Transfers .....</b>	<b>175</b>
Part A. Introduction .....	175
Part B. Who Is a Skip Person? §§ 2613 & 2651 .....	176
Generation Assignments of Natural Persons: § 2651 .....	176
Lineal Descendants of Grandparents .....	177

Deceased Parent Exception .....	179
Non-Linear Descendants .....	181
When Is a Trust a Skip Person? .....	182
Part C. Taxable Events.....	183
Direct Skips.....	183
Taxable Terminations .....	185
Taxable Distributions .....	185
Taxation of Multiple Skips.....	186
Identifying the Taxable Event .....	187
Part D. The Taxable Amount .....	189
Part E. Computation of the GST Tax: Exemption and	
Exclusions .....	190
Allocating the GST Exemption and Determining the	
Applicable Rate .....	191
Transfers Excluded from the Tax .....	195
Moving Forward.....	196
 <b>Chapter Ten. Valuation .....</b>	 <b>197</b>
Part A. Introduction.....	197
Part B. Date of Valuation: § 2032 .....	198
Part C. Survey of the Basic Methods of Valuation .....	199
Historical Cost .....	199
Sales of Comparable Property .....	200
Capitalization of Income .....	201
Special Rule for Valuing Certain Real Property Including	
Family Farms: § 2032A .....	202
Part D. Valuing Business Interests .....	202
Blockage .....	203
Lack of Marketability .....	203
Control Premiums and Minority Discounts .....	204
Tax Planning and Discounts .....	205
Discounts and the Annual Exclusion .....	207
GRATs and Discounts.....	208
Intentionally Defective Grantor Trusts, or “IDGTs” ....	209
Part E. Statutory Curbs on Valuation Techniques:	
§§ 2701–2704.....	212
Section 2701 .....	213
Section 2703 .....	214
Section 2704 .....	215
Moving Forward.....	218
 <b>Appendix. A Brief Survey of Wills and Trusts .....</b>	 <b>219</b>
The Probate Estate.....	219
Non-Probate Transfers.....	220

Introduction to Trusts .....	220
Irrevocable & Testamentary Trusts .....	220
Revocable Trusts.....	222
Beneficial Trust Interests .....	223
Powers of Appointment .....	224