

Table of Contents

About the Authors	v
Acknowledgments	vii
Table of Chapters	ix

Chapter 1 Getting Started

§ 1:1	Introduction	1-1
§ 1:2	The Interview	1-3
§ 1:3	Domicile.....	1-6
§ 1:4	Human and Family Problems	1-11
§ 1:5	Family History.....	1-12
§ 1:5.1	The Need for Information.....	1-14
§ 1:6	The Family's Assets	1-16
§ 1:6.1	Registration of Assets.....	1-19
§ 1:7	Tax Facts.....	1-20
§ 1:8	Summary of the Estate, Gift, and Generation-Skipping Tax Provisions of the American Taxpayer Relief Act of 2012.....	1-24
§ 1:9	Planning and Drafting Considerations.....	1-25
§ 1:10	2017 Tax Reform Act.....	1-28

Chapter 2 The Marital Deduction

§ 2:1	Introduction	2-2
§ 2:2	Size of the Deduction	2-5
§ 2:2.1	Setting Aside a Bypass Trust	2-7
§ 2:2.2	Exploiting the Spouse's Credit	2-8
§ 2:3	Factors Favorable to Deferral	2-14
§ 2:4	Factors Unfavorable to Deferral.....	2-18
§ 2:5	Portability of Exemptions.....	2-26
§ 2:5.1	Portability Election.....	2-27
§ 2:5.2	Calculating the Deceased Spousal Unused Exclusion Amount	2-27
§ 2:5.3	Simplified Method for Certain Taxpayers to Make a Late Portability Election	2-31
§ 2:5.4	Planning with Portability	2-33

§ 2:6	Specific Bequests.....	2-34
§ 2:7	The Pecuniary Legacy	2-36
§ 2:8	The Fractional Share Legacy	2-40
§ 2:9	Choosing the Formula	2-43
§ 2:10	Eligible Bequests	2-45
§ 2:10.1	Outright Bequests	2-45
§ 2:10.2	Bequests in Trusts.....	2-46
§ 2:10.3	The Classic Marital Deduction Trust.....	2-46
§ 2:10.4	The Estate Remainder Trust	2-49
§ 2:10.5	The Income-Only Trust	2-50
§ 2:11	Disclaimers	2-62
§ 2:12	Eligible Portions.....	2-65
§ 2:13	The Noncitizen Spouse	2-66
§ 2:14	The Qualified Domestic Trust.....	2-69
§ 2:15	Simultaneous Death.....	2-76
§ 2:16	The Arithmetic.....	2-76

Chapter 3 The Nonmarital Share

§ 3:1	Introduction	3-1
§ 3:1.1	The Exemption Equivalent of the Unified Credit....	3-2
§ 3:1.2	Source of Payment of Estate Taxes and Administration Expenses	3-4
§ 3:2	Sprinkling Trusts	3-8
§ 3:2.1	Generation-Skipping.....	3-13
§ 3:2.2	Power of Appointment.....	3-13
§ 3:2.3	Basis Considerations.....	3-15
§ 3:3	Invasion of Principal.....	3-18
§ 3:3.1	5-and-5 Power.....	3-19
§ 3:4	Further Use of Sprinkling Trusts.....	3-20
§ 3:4.1	Generation-Skipping Tax	3-21
§ 3:5	Charitable Provisions.....	3-21
§ 3:5.1	Form of Bequest.....	3-22
[A]	Pooled Income Fund	3-22
[B]	Charitable Remainder Trust.....	3-22
[C]	Charitable Lead Trust	3-27
§ 3:5.2	Private Foundation Rules	3-29
§ 3:5.3	Taxation.....	3-31

Chapter 4 Providing for Children

§ 4:1	Fundamental Considerations.....	4-1
§ 4:1.1	The Lawyer's Role	4-3
[A]	Use of Trusts	4-4
[B]	Provisions for Flexibility	4-8
[C]	Picking the Right Age	4-9

Table of Contents

§ 4:1.2	Guardianships	4-11
§ 4:1.3	Uniform Transfers to Minors Act.....	4-12
[A]	The Family Business.....	4-14
[B]	Section 2503(c) Trusts	4-17
[C]	Straight Income Trusts	4-20
§ 4:2	Child As Trustee.....	4-21
§ 4:3	When Parents Die.....	4-23
§ 4:3.1	One Trust for Children	4-25
§ 4:3.2	Choice of Guardian.....	4-26
§ 4:4	Further Tax Aspects	4-28
§ 4:4.1	Distributable Net Income	4-28
§ 4:4.2	Capital Gains.....	4-29
§ 4:4.3	The Kiddie Tax.....	4-30
§ 4:4.4	Withheld Income	4-32
§ 4:5	Support.....	4-33
§ 4:5.1	Items of Support	4-36
§ 4:6	Generation-Skipping Transfers	4-39

Chapter 5 Making Gifts

§ 5:1	Introduction	5-1
§ 5:1.1	The Applicable Credit Amount.....	5-2
§ 5:2	Advantages of Gifts.....	5-5
§ 5:3	Contemplation of Death.....	5-12
§ 5:4	A Transfer That Is Not a Gift	5-17
§ 5:5	What the Children Would Like.....	5-18
§ 5:6	Gifts with Strings to Children	5-21
§ 5:7	Interplay of Taxes	5-21
§ 5:7.1	When Tax Savings Are Subordinate.....	5-26
§ 5:8	Discretionary Trusts	5-28
§ 5:9	The Private Annuity	5-30
§ 5:10	Installment Sale.....	5-37
§ 5:11	Short-Term Trusts.....	5-41
§ 5:12	Trust and Leaseback	5-42
§ 5:13	Loans.....	5-43
§ 5:14	Net Gifts	5-48
§ 5:15	Personal and Household Effects.....	5-52
§ 5:16	The Residence	5-54
§ 5:17	Transfers to Charity and Family	5-56
§ 5:18	Charitable Remainder Trusts	5-56
§ 5:19	Charitable Lead Trusts.....	5-63
§ 5:20	Gifts for Conservation and Historic Purposes.....	5-67
§ 5:21	Stock of Family Corporations	5-68
§ 5:22	Tangible Personal Property.....	5-70
§ 5:23	Valuation of Gifts.....	5-71

Chapter 6 Generation Skipping

§ 6:1	Introduction	6-2
§ 6:2	Statutory Framework	6-3
§ 6:3	Taxable Terminations	6-4
§ 6:3.1	Requirements for Taxable Terminations.....	6-5
§ 6:3.2	Taxable Amount.....	6-6
§ 6:3.3	Basis Adjustment.....	6-7
§ 6:4	Taxable Distributions	6-7
§ 6:4.1	Requirements for Taxable Distributions.....	6-7
§ 6:4.2	Taxable Amount.....	6-8
§ 6:4.3	Income Tax Consequences.....	6-8
§ 6:5	Direct Skips.....	6-9
§ 6:5.1	Requirements for Direct Skips	6-10
§ 6:5.2	<i>Crummey</i> Withdrawal Powers	6-10
§ 6:5.3	No Trust Look-Through.....	6-11
§ 6:5.4	Taxable Amount.....	6-12
§ 6:5.5	Basis Adjustment.....	6-12
§ 6:6	Skip Persons and Generation Assignments.....	6-13
§ 6:6.1	General Rules	6-13
§ 6:6.2	Persons with a Deceased Parent	6-13
§ 6:6.3	Trusts As Skip Persons.....	6-17
§ 6:7	Interest in Property.....	6-17
§ 6:7.1	Statutory Rules	6-18
§ 6:7.2	Charitable Split-Interest Trusts.....	6-19
§ 6:8	Excluded Transfers.....	6-20
§ 6:9	The Rate of Tax	6-23
§ 6:10	The GST Exemption	6-24
§ 6:10.1	Separate Trusts	6-24
§ 6:10.2	Exemption for Both Spouses	6-28
§ 6:10.3	Allocating the GST Exemption	6-32
§ 6:11	The Inclusion Ratio.....	6-40
§ 6:11.1	General Rules	6-41
§ 6:11.2	Charitable Lead Trusts.....	6-42
§ 6:11.3	Recalculating the Inclusion Ratio.....	6-43
§ 6:12	Estate Tax Inclusion Period.....	6-44
§ 6:13	When There Are Multiple Skips	6-46
§ 6:14	Planning for the Generation-Skipping Transfer Tax	6-48
§ 6:14.1	Protecting Exempt Trusts.....	6-48
§ 6:14.2	Exploiting the GST Exemption	6-52
§ 6:14.3	Choosing Between the GST Tax and Estate Tax....	6-54
§ 6:14.4	Drafting Concerns	6-55
§ 6:15	Nonresident Aliens.....	6-56

**Chapter 7 Grantor Retained Interest Trusts,
Combined Purchases, and Sales of
Remainder Interests**

§ 7:1	Introduction	7-2
§ 7:2	Historical Perspective	7-3
§ 7:3	Overview of Section 2702	7-5
§ 7:3.1	Chapter 14 Generally.....	7-5
§ 7:3.2	Grantor Retained Income Trust	7-6
§ 7:3.3	Section 2702.....	7-7
§ 7:4	Grantor Trusts with Retained Payments	7-11
§ 7:4.1	Qualified Interests	7-11
§ 7:4.2	Satisfying the Annuity or Unitrust Obligation with Notice.....	7-12
[A]	Prior to Regulations	7-13
[B]	Regulations Proscribing Payment of Annuity with a Note.....	7-16
§ 7:4.3	Valuing the Retained Interest	7-17
§ 7:4.4	Measuring the Effectiveness of a GRAT	7-20
§ 7:4.5	Selecting the Term of the GRAT	7-23
§ 7:4.6	Estate Tax Consequences	7-24
§ 7:4.7	GST Tax Consequences	7-27
§ 7:4.8	Income Tax Consequences.....	7-28
§ 7:4.9	Comparing a GRAT to Other Planning Techniques.....	7-29
[A]	Outright Gift	7-29
[B]	Loan	7-30
[C]	Sale to Family Member	7-30
[D]	Sale to Intentionally Defective Grantor Trust	7-31
§ 7:5	Qualified Personal Residence Trust.....	7-35
§ 7:5.1	Personal Residence.....	7-36
§ 7:5.2	Other Assets	7-39
§ 7:5.3	Conversion to a GRAT.....	7-40
§ 7:5.4	Estate and Gift Tax Consequences	7-41
§ 7:5.5	Practical Considerations	7-43
§ 7:5.6	Prohibition Against Reacquisition.....	7-45
§ 7:5.7	Joint Ownership.....	7-48
§ 7:5.8	Measuring the Effectiveness of a QPRT	7-49
§ 7:6	Joint (Combined) Purchases	7-50
§ 7:7	Sales of Remainder Interests.....	7-55
§ 7:8	The Private Annuity	7-61
Appendix 7A	Qualified Personal Residence Trust	App. 7A-1

Chapter 8 Life Insurance

§ 8:1	Introduction	8-1
§ 8:1.1	Impact of the 2012 Tax Law on the Use of Life Insurance in Estate Planning.....	8-4
§ 8:1.2	Life Insurance Products.....	8-6
§ 8:2	Transfer the Policy?.....	8-8
§ 8:2.1	Collecting the Proceeds.....	8-10
§ 8:2.2	Transferring the Policy	8-13
§ 8:3	Insurance Trusts	8-16
§ 8:4	Payment of Estate Tax.....	8-18
§ 8:5	Second-to-Die Insurance	8-20
§ 8:6	Owner of Policy Dies	8-23
§ 8:7	Premium Payments and Estate Tax.....	8-27
§ 8:7.1	Premium Payments As Gifts.....	8-31
§ 8:8	Loans.....	8-39
§ 8:9	Dissolving Old Borrowing Plans	8-42
§ 8:10	More About Borrowing Against the Policy	8-43
§ 8:11	Group Policies and Premiums	8-44
§ 8:12	Corporate-Owned Insurance.....	8-45
§ 8:13	Split-Dollar Policies	8-47
§ 8:14	Life Settlements.....	8-58

Chapter 9 Retirement Benefits

§ 9:1	Introduction	9-1
§ 9:2	Estate Tax.....	9-3
§ 9:3	Income Tax Rules	9-6
§ 9:3.1	Rollovers	9-7
[A]	Rollovers by Participant or Surviving Spouse.....	9-7
[B]	Rollovers by Nonspouse Beneficiary.....	9-9
§ 9:3.2	Lump-Sum Distributions—Capital Gains and Averaging Rules (applicable to participants born before January 1, 1936).....	9-9
§ 9:3.3	Lump-Sum Elections (Pre-1987 Rules).....	9-13
§ 9:3.4	Taxable Amount of Lump-Sum Distributions (Pre-1987 Rules).....	9-14
§ 9:3.5	Income Tax Treatment of Employee Contributions	9-16
§ 9:3.6	Roth IRAs	9-17
§ 9:3.7	Income in Respect of a Decedent	9-18
§ 9:3.8	Penalty Taxes on Premature Distributions, Failure to Make Minimum Distributions, and Excess Distributions and Accumulations	9-19

Table of Contents

	[A]	Tax on Premature Distributions.....	9-20
	[B]	Minimum Distributions	9-22
	[C]	Excess Distributions and Accumulations.....	9-24
§ 9:4		Selecting the Beneficiary	9-24
§ 9:5		Funding the Applicable Credit Amount Trust with Retirement Benefits	9-31
§ 9:6		Use of Retirement Benefits for Charity.....	9-33
§ 9:7		Payment of Estate Taxes Attributable to Retirement Benefits.....	9-34
§ 9:8		Retirement.....	9-35
§ 9:9		Nonqualified Plans	9-36

Chapter 10 Valuation and Other Estate and Gift Tax Issues Relating to Closely-Held Enterprises

§ 10:1		Introduction	10-3
§ 10:2		Preliminary Comments Concerning Valuation	10-3
	§ 10:2.1	Penalty for Understatement of Value.....	10-4
	§ 10:2.2	Revenue Ruling 59-60.....	10-5
	§ 10:2.3	Statute of Limitations and Adequate Disclosure	10-5
	§ 10:2.4	Anticipating the IRS's Response	10-7
	§ 10:2.5	Valuation When No Estate Tax Is Due	10-8
§ 10:3		Valuation Discounts	10-10
	§ 10:3.1	Minority Discount	10-10
	§ 10:3.2	Discount for Lack of Marketability	10-11
	§ 10:3.3	Market Absorption/Blockage Discount.....	10-12
	§ 10:3.4	Fractional Interest Discount	10-13
	§ 10:3.5	Planning for Discounts and QTIP Trusts.....	10-15
	§ 10:3.6	Key Person Discount.....	10-16
	§ 10:3.7	Discount for Securities Law Restrictions.....	10-16
	§ 10:3.8	Discount for Built-In Capital Gains.....	10-17
	§ 10:3.9	Substantiating Valuation Discounts	10-21
§ 10:4		Valuation Premiums	10-22
	§ 10:4.1	Control Premium.....	10-22
	§ 10:4.2	Swing Vote Premium.....	10-23
§ 10:5		Transfers Soon Before Death to Achieve Minority Position	10-25
§ 10:6		Family Limited Partnerships.....	10-26
	§ 10:6.1	Discounted Gifts with Retained Control.....	10-27
	§ 10:6.2	Economic Substance Doctrine and Section 2703.....	10-29
	§ 10:6.3	Gift on Formation.....	10-38

§ 10:6.4	Section 2704(b)	10-44
§ 10:6.5	Section 2704(a)	10-48
§ 10:6.6	Potential Estate Tax Inclusion—Section 2036 ...	10-52
[A]	<i>Estate of Powell</i>	10-61
[A][1]	Facts of <i>Powell</i>	10-62
[A][2]	IRS Position and Tax Court Analysis	10-62
[A][3]	Methodology for Estate Tax Inclusion and Application of Section 2043	10-63
§ 10:6.7	Annual Gift Tax Exclusion	10-64
§ 10:6.8	Planning Considerations	10-67
§ 10:6.9	Summing Up FLPs	10-69
§ 10:7	Section 2704 Proposed Regulations	10-70
§ 10:7.1	Disregarded Restrictions	10-71
§ 10:7.2	Applicable Restrictions	10-74
§ 10:7.3	Lapses of Certain Rights and the Three-Year Clawback Upon Death	10-76
§ 10:8	Family-Owned Business Deduction	10-78
§ 10:9	Special Valuation of Farms and Qualifying Real Property	10-78
§ 10:10	Estate Freezes	10-79
§ 10:10.1	Prior Attacks on Estate Freezes	10-80
§ 10:10.2	Overview of Section 2701	10-81
§ 10:10.3	Statutory Prerequisites	10-84
§ 10:10.4	Transfer of Equity Interest	10-84
§ 10:10.5	Family Relationships	10-85
§ 10:10.6	Applicable Retained Interest	10-86
[A]	Distribution Right	10-87
[B]	Extraordinary Payment Rights	10-89
§ 10:10.7	Exceptions to Section 2701	10-90
§ 10:10.8	Valuation of Applicable Retained Interests	10-92
[A]	Extraordinary Payment Rights	10-92
[B]	Distribution Rights	10-92
[C]	Qualified Payment Rights Combined with Extraordinary Payment Rights	10-94
[D]	Ten Percent Threshold	10-95
§ 10:10.9	Subtraction Method of Valuation	10-96
[A]	Step One	10-96
[B]	Step Two	10-96
[C]	Step Three	10-98
[D]	Step Four	10-98
§ 10:10.10	Cumulative, but Unpaid, Distributions	10-99
§ 10:10.11	Adjustments to Avoid Double Taxation	10-101
§ 10:10.12	Income Tax Concerns	10-102
§ 10:10.13	Summing Up Estate Freezes	10-108
§ 10:11	Formula Transfers	10-109

Chapter 11 Business Interests: Family and Partner Concerns

§ 11:1	Introduction	11-2
§ 11:2	Continuing the Business	11-2
§ 11:2.1	Will the Business Survive?	11-2
§ 11:2.2	Instructions to Fiduciaries	11-3
§ 11:3	Family Problems	11-4
§ 11:3.1	Income for Dependents	11-6
§ 11:3.2	Corporate Redemption	11-8
§ 11:3.3	Different Classes of Stock	11-9
[A]	Section 2701 Concerns	11-10
[B]	Satisfying Family Members Not in Business	11-11
[C]	Post-Death Reorganization	11-12
§ 11:3.4	S Corporation	11-14
[A]	Qualified Subchapter S Trusts	11-15
[B]	Electing Small Business Trusts	11-16
§ 11:3.5	Partnership and Limited Liability Company	11-19
§ 11:3.6	Nonbusiness Assets	11-20
§ 11:3.7	Sibling Rivalry	11-21
§ 11:4	The Deceased Co-Owner	11-22
§ 11:5	The Surviving Co-Owner	11-24
§ 11:6	The Buy-Sell Agreement	11-25
§ 11:6.1	Tax Law Requirements	11-27
[A]	Case Law	11-27
[B]	Pre-October 9, 1990 Agreements	11-31
[C]	Three-Pronged Test Under Section 2703	11-32
§ 11:6.2	Price Formula	11-36
§ 11:6.3	Funding Through Insurance	11-38
§ 11:6.4	Basis	11-41
§ 11:6.5	Dividend Considerations	11-42
§ 11:6.6	Partnerships	11-44
§ 11:6.7	Other Considerations	11-46

Chapter 12 Joint Interests

§ 12:1	Introduction	12-1
§ 12:2	Nature of Ownership Interests	12-2
§ 12:2.1	Property Rights	12-2
§ 12:2.2	State Law	12-3
§ 12:3	Gift Tax	12-3
§ 12:3.1	Creation of Joint Tenancy	12-3
[A]	Annual Exclusion and Gift Splitting	12-4
[B]	Value of Gift	12-4

[C]	Joint Bank Accounts	12-6
[D]	U.S. Savings Bonds	12-6
[E]	Family Residence	12-7
§ 12:3.2	Termination of Joint Tenancy.....	12-7
§ 12:4	Estate Tax	12-8
§ 12:4.1	General Rule	12-9
§ 12:4.2	Qualified Joint Property	12-12
§ 12:5	Generation-Skipping Transfer Tax	12-13
§ 12:6	Advantages and Disadvantages	12-14
§ 12:6.1	Income Tax Considerations	12-15
[A]	Cost Basis	12-15
[B]	Spousal Joint Tenancies Created Before 1977	12-18
§ 12:6.2	Controlling Disposition of Property	12-19
§ 12:6.3	Exploiting the Unified Credit.....	12-19
§ 12:6.4	Disclaimers.....	12-20
§ 12:6.5	Other Considerations	12-22

Chapter 13 Choosing Executors and Trustees

§ 13:1	Introduction	13-1
§ 13:2	Investment Responsibilities.....	13-6
§ 13:3	Family Members As Fiduciaries	13-12
§ 13:4	Other Fiduciaries	13-18
§ 13:4.1	Banks As Fiduciaries.....	13-20
§ 13:5	Multiple Fiduciaries	13-22
§ 13:5.1	Limitation of Powers.....	13-23
[A]	Sprinkling Trusts	13-25
[B]	Life Insurance	13-26
§ 13:6	Successor Trustees	13-27
§ 13:6.1	Appointment	13-28
§ 13:6.2	Removal.....	13-29
[A]	Scope of Power	13-31

Chapter 14 Payment of Transfer Taxes

§ 14:1	Introduction	14-1
§ 14:2	Responsibility for Tax	14-3
§ 14:2.1	Common Law	14-3
§ 14:2.2	Tax Apportionment.....	14-4
[A]	Broad Tax Clause	14-7
[B]	Marital Deduction Trust.....	14-8
[C]	Generation-Skipping Tax	14-12
[D]	Trusts and Tax Payment.....	14-15

Table of Contents

[E]	Special Problems/Source of Payment of Taxes	14-18
[F]	Confirming Apportionment	14-21
§ 14:2.3	Filing the Estate Tax Return; Closing Letters; Basis Reporting	14-21
§ 14:2.4	New IRS Procedures Concerning Requests for Discharge of Estate Tax Liens.....	14-23
§ 14:3	Deferral of Estate Tax	14-25

Chapter 15 Not to Be Overlooked

§ 15:1	Introduction	15-2
§ 15:2	Costs of Dying.....	15-2
§ 15:3	Memento Bequests	15-5
§ 15:4	Tangible Property	15-6
§ 15:5	Disclaimers	15-11
§ 15:6	Providing for In-Laws.....	15-23
§ 15:7	Income in Respect of a Decedent.....	15-25
§ 15:8	Estate Liquidity.....	15-28
§ 15:8.1	Life Insurance	15-32
§ 15:9	Care for the Elderly and the Failing	15-33
§ 15:10	IRS Guidance on the 2-Percent of Adjusted Gross Income Floor for Trusts and Estates.....	15-46
§ 15:10.1	The Basic Rules.....	15-47
§ 15:10.2	The Special Case of Investment Advisory Fees	15-48
§ 15:10.3	Bundled Fees	15-49
§ 15:11	Proposed Regulations Concerning Basis Consistency and Reporting for Property Acquired from a Decedent	15-51
§ 15:11.1	Consistency of Basis with Estate Tax Return....	15-52
§ 15:11.2	Property that Increases Estate Tax Liability.....	15-52
§ 15:11.3	Final Value of Property Acquired from a Decedent.....	15-53
§ 15:11.4	After-Discovered or Omitted Property	15-53
§ 15:11.5	Definition of Executor for Purposes of Sections 1014(f) and 6035.....	15-54
§ 15:11.6	Requirement to Provide Information Return and Statement(s) Under Section 6035.....	15-54
§ 15:11.7	Circumstances Under which No Form 8971 or Schedule A Is Required Under Section 6035	15-55
§ 15:11.8	Property to Be Reported on the Form 8971 and Schedule A	15-55
§ 15:11.9	Beneficiaries	15-55

§ 15:11.10 Due Date for Information Return and Statements	15-57
§ 15:11.11 Supplemental Form 8971 and Schedule A.....	15-57
§ 15:11.12 Subsequent Transfers	15-58
§ 15:11.13 Proposed Effective/Applicability Date.....	15-59
§ 15:12 Trade or Business Expense Deductions of Family Offices.....	15-60
Index	I-1