

Estate Planning Made Simple:
A Primer for Gift and Estate Tax

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Introduction

Under the partial integration of the estate and gift taxes, a person's lifetime and death transfers are seen as a continuum rather than as separate transactions.¹ Towards this goal, Congress has determined that lifetime gifts after 1976 are to be taken into account in determining estate tax rates.² Simply stated, taxable gifts made during life operate to increase the rate of tax on testamentary dispositions of property.³ (This is the reason for the rather involved two-step computation provided in Section 2001(b) of the Code.) Gift and estate taxes thus form the two parts of a “unified” transfer tax system,⁴ which means that these taxes are imposed at graduated rates on the cumulative amount of taxable transfers made by one person, counting transfers made both during life and at death. By way of this instant paper, I will briefly discuss the major taxes that may affect one’s estate, and a few frequently used tools for estate planning (*e.g.*, Credit-Shelter Trusts, Crummey trusts, Irrevocable Insurance trusts). This paper is intended to be a brief study guide – a glimpse, if you will – into an area of law with many pot-holes and few easy answers. For those interested in practicing in this area of law, I suggest bypassing this study guide and proceeding directly to the complete list of treatises prepared by Warren, Gorham & Lamont.⁵ Once there, *memorize the entire collection*. It may be time consuming, cumbersome, and daunting (at first) but it is the only way to master the material. For everyone else, I hope you’ll find this primer useful.

Discussion

I. Gift Tax:

A. Scope: Gift Tax is a tax imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident. A companion to both the income and estate tax,⁶ the gift tax reflects an attempt – not entirely successful – to backstop the other two taxes.⁷ With respect to the estate tax, the gift tax results in an exaction on lifetime transfers that take property, which might otherwise be subject to tax at death, out of the estate.⁸

1. *Taxable Gift*: Gift tax rates apply only to a net figure, “taxable gifts,” analogous to the “taxable estate” or “taxable income,” so it becomes necessary to consider gift tax deductions.⁹ The gift tax statute provides for only two deductions in the computation of taxable gifts, and each bears resemblance to some of the estate tax deductions previously noted:

- a. Charitable gifts escape gift tax by way of a deduction unrestricted by any dollar or other limitation.¹⁰
- b. Marital gifts from one spouse to another may also be transferred without limit.¹¹
 - i. “Terminable interest” rules and a transfer to a spouse who is not a citizen of the United States sometimes disqualify a transfer for the deduction.
 - ii. Exceptions to the terminable interest rule are made if the property will return to the donor or will be taxable either in the spouse's estate or upon an inter vivos transfer by the spouse to a third party.

- A transfer to a qualified domestic trust creates an exception to the noncitizen spouse rule.
- The deduction, again, is traceable to a congressional decision to allow interspousal transfers to be made without immediate tax consequences.

B. Exclusions: Under Section 2503(b), the taxpayer may currently exclude from “the total amount of gifts” for a calendar year (the starting point in the computation of taxable gifts) the first \$11,000 of gifts to each donee.¹²

1. Annual exclusion amount is adjusted from an initial \$10,000 amount for inflation in years after 1998.¹³

a. Adjustment is based on the Consumer Price Index (CPI) for the calendar year 1997.¹⁴

b. Adjustments are made only in multiples of \$1,000 and adjustments are rounded to the lowest multiple of \$1,000.¹⁵

2. Annual exclusion amount is reduced, until consumed, by the amount of previous gifts to the same donee in the same calendar year.¹⁶

a. Every donor is entitled to an \$11,000 exclusion for each person to whom the donor makes gifts.

b. This exclusion is renewed annually.¹⁷

3. Annual exclusion can be claimed only in the case of transfers of present interests in property; the disqualification of future interests is discussed later.¹⁸

a. A “future interest” is one that is “limited to commence in use, possession or enjoyment at some future date or time.”¹⁹

- b. The statutory test is the immediate right to use, possession, or enjoyment.²⁰
4. *Minor Exception*: No part of a gift to one under age twenty-one shall be treated as a gift of a future interest if certain conditions are met:²¹
- a. The property and the income therefrom may be expended by or for the donee before the donee reaches age twenty-one, and
 - b. The property and income not so expended will pass to the donee when:
 - i. The donee attains age twenty-one, or
 - ii. To the donee's estate or pursuant to the donee's exercise of a general power of appointment if the donee dies before reaching that age.
 - c. The gift falls under a state statute based on either the Uniform Transfers to Minors Act, or the Uniform Gifts to Minors Act.²²
5. *Medical Expenses and Tuition*: A person's payment of another's unreimbursed medical expenses or academic tuition to an educational organization, long recognized as indirect transfers possibly subject to gift tax, have always escaped the tax:
- a. Payment must discharge the payor's obligation under local law to provide medical care or education to the one for whom the expenses were paid.²³
 - b. Transfers are designated "qualified transfers" and are not treated as transfers of property by gift.²⁴
 - c. Amount excluded is unlimited.²⁵

C. Rate: Gift Tax and Estate Taxes share the same rate schedule.²⁶ Thus the rate brackets applicable to “taxable gifts” are identical to the rate brackets applicable to estates. The combined gift and estate tax rate tables for (a) the years 2002 – 2009, and (b) years beginning in 2011 are listed below.²⁷

<u>Amount</u>	<u>Tax Rate</u>
Not over \$10,000	18% of such amount
Over \$10,000 but not over \$20,000	\$1,800 + 20% over \$10,000
Over \$20,000 but not over \$40,000	\$3,800+ 22% over \$20,000
Over \$40,000 but not over \$60,000	\$8,200 + 24% over \$40,000
Over \$60,000 but not over \$80,000	\$13,000 + 26% over \$60,000
Over \$80,000 but not over \$100,000	\$18,200 + 28% over \$80,000
Over \$100,000 but not over \$150,000	\$23,800 + 30% over \$100,000
Over \$150,000 but not over \$250,000	\$38,800 + 32% over \$150,000
Over \$250,000 but not over \$500,000	\$70,800 + 34% over \$250,000
Over \$500,000 but not over \$750,000	\$155,800 + 37% over \$500,000
Over \$750,000 but not over \$1,000,000	\$248,300 + 39% over \$750,000
Over \$1,000,000 but not over \$1,250,000	\$345,800 + 41% over \$1,000,000
Over \$1,250,000 but not over \$1,500,000	\$448,300 + 43% over \$1,250,000
Over \$1,500,000 but not over \$2,000,000	\$555,800 + 45% over \$1,500,000
Over \$2,000,000 but not over \$2,500,000	\$780,800 + 49% over \$2,000,000
Over \$2,500,000	\$1,025,800 + 50% over \$2,500,000

Beginning in 2003, the tentative tax will be adjusted to reflect the decreasing top tax rates for cumulative transfers over \$2,000,000.²⁸

So, for 2007, the above table is changed to remove the rows for amounts “Over \$2,500,000” and to end with the row for amounts “Over \$2,000,000 but not over \$2,500,000” and thereby applying the 45 percent tax rate to all amounts in excess of \$1,500,000.²⁹ In the year 2010, the top gift tax rate will be 35 percent,³⁰ and there will be no estate tax.³¹ If EGTRRA does not sunset after all, then the 2010

rules would also apply in 2011 and after. Otherwise, the rates would be as follows:

<u>Amount</u>	<u>Tax Rate</u>
Not over \$10,000.....	18% of such amount
Over \$10,000 but not over \$20,000.....	\$1,800 + 20% over \$10,000
Over \$20,000 but not over \$40,000.....	\$3,800+ 22% over \$20,000
Over \$40,000 but not over \$60,000.....	\$8,200 + 24% over \$40,000
Over \$60,000 but not over \$80,000.....	\$13,000 + 26% over \$60,000
Over \$80,000 but not over \$100,000.....	\$18,200 + 28% over \$80,000
Over \$100,000 but not over \$150,000.....	\$23,800 + 30% over \$100,000
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Over \$500,000 but not over \$750,000.....	\$155,800 + 37% over \$500,000
Over \$750,000 but not over \$1,000,000.....	\$248,300 + 39% over \$750,000
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Over \$1,250,000 but not over \$1,500,000.....	\$448,300 + 43% over \$1,250,000
Over \$1,500,000 but not over \$2,000,000.....	\$555,800 + 45% over \$1,500,000
Over \$2,000,000 but not over \$2,500,000.....	\$780,800 + 49% over \$2,000,000
Over \$2,500,000 but not over \$3,000,000.....	\$1,025,800 + 53% over \$2,500,000
Over \$3,000,000 but not over \$10,000,000.....	\$1,290,800 + 55% over \$3,000,000
Over \$10,000,000 but not over \$17,184,000.....	\$5,140,800 + 60% over \$10,000,000
Over \$17,184,000.....	\$9,451,200 + 55% over \$17,184,000

Gift Tax is payable by the donor, although a donee can be liable for the tax where the donor fails to pay.³² Gift Tax is generally due on April 15th of the year following the gift, and the gift tax return (Form 709) is also generally due on that day.³³

II. Estate Tax

- A. Scope: The federal estate tax is imposed by Section 2001(a) of the Internal Revenue Code (“the IRC”)³⁴ on the transfer of the taxable estate of every decedent who is either a citizen or a resident of the United States.³⁵

1. “Taxable estate” is a term of art defined in Section 2051.³⁶ It constitutes the decedent's gross estate reduced by allowable deductions.
 - a. The Gross Estate includes:
 - i. Property the decedent owns outright (or with another),³⁷ and
 - ii. Property the decedent had little or no interest at death but was nevertheless pulled into the gross estate based on numerous statutory rules.³⁸
 - iii. Property included in the gross estate is valued under either the method provided by Section 2031, or Section 2032A (at the date of the decedent's death under Section 2031 or on the alternate valuation date under Section 2032).³⁹
 - b. “Allowable deductions” fall under five categories, as set forth in Section 2053:⁴⁰
 - i. Funeral expenses;
 - ii. Expenses of administering the probate estate;
 - iii. Expenses of administering non-probate, gross estate assets;
 - iv. Claims against the estate; and,
 - v. Mortgages and other indebtedness on estate property for which the decedent is personally liable.
2. “Transfer,” as the term is used here, has less statutory significance than might at first be supposed; the statutory plan presumes the requisite transfer of a property interest if its value is required to be included in the gross estate of a decedent.⁴¹

B. Exclusions: Before the Estate Tax is imposed, a unified credit is applied to the estate of the decedent and against the tax imposed.⁴² The credit applied depends, in part, on the year of the decedent's death, as illustrated by the Section 2010 of the IRC:⁴³

<u>Year of Death</u>	<u>Exclusion Amount</u>
2002 and 2003	\$1,000,000
2004 and 2005	\$1,500,000
2006, 2007, and 2008	\$2,000,000
2009	\$3,500,000

The Estate Tax is generally repealed in the year 2010; and the applicable exclusion amount reinstated at \$1 million in 2011,⁴⁴ due to sun setting of EGTRRA.⁴⁵ This credit is reduced by any gifts that exceed the \$11,000 annual exclusion (identified above).⁴⁶ The gift tax applicable exclusion amount is \$1 million for gifts made in 2002 and thereafter. For obvious reasons, the amount of the credit allowed by the exclusion amount shall not exceed the amount of the Gift and Estate Tax imposed.⁴⁷

C. Rate: The method of computing the tax is provided by Section 2001(b) and the rates to be used are presented in a multipurpose rate table provided in Section 2001(c).⁴⁸

1. Estate Tax computation involves essentially figuring a tentative tax on all gratuitous transfers made inter vivos, or at death after 1976, and then subtracting an amount for tax payable on lifetime gifts after 1976.⁴⁹
2. The computation does not tax any gratuitous transfers twice; the taxable estate is still the only amount being taxed.⁵⁰
3. The rates for estate taxes are identified (and explained above).
Estate tax is payable by the executor of the estate, and may be

apportioned among various recipients of the property subject to the tax.⁵¹ Payment of the estate tax is required nine months after the date of death, unless an extension of time for payment is sought and granted.⁵² The estate tax return (generally, Form 706) is generally due nine months after date of death.⁵³

III. **Generation Skipping Tax.** The generation-skipping transfer tax (GSTT) was designed to subject the transfer of the beneficial enjoyment of property from one generation of beneficiaries to another to a tax in lieu of the estate or gift taxes that were inapplicable.⁵⁴

A. Scope: The GSTT is imposed at a flat rate equal to the highest federal transfer tax rate in existence at the time of the transfer (presently 55 percent) on three types of generation-skipping transfers (GSTs)⁵⁵ – *i.e.*, direct skips; taxable distributions; and taxable terminations:

1. *Direct Skip*: A gift during life or a transfer at death from a transferor directly to a skip person.⁵⁶ For example, a gift from Grandparent to Grandchild is usually a direct skip, unless Grandchild's parent, who is Grandparent's child, is dead at the time of the transfer.⁵⁷
2. *Taxable Distribution*: A distribution of either income or principal from a trust to a skip person.⁵⁸ For example, if Grandparent creates a trust for the lifetime benefit of children (non-skip persons) and more remote descendants (skip persons), any distribution made from the trust to any more remote descendant is a taxable distribution.⁵⁹
3. *Taxable termination*: Terminating a beneficiary's interest in a trust if, immediately after the termination.⁶⁰

- a. No non-skip person has a present beneficial interest in the trust, and
 - b. At least one skip person is (or could be) a beneficiary of the trust.
 - c. For example, if Grandparent creates a trust for the lifetime benefit of children and more remote descendants, the death of the last of the children to die is a taxable termination because no more beneficiaries exist assigned to the first generation below Grandparent, and beneficiaries remain who are skip persons.⁶¹
4. Despite the estate or gift tax paid on these GSTs, *a separate GSTT* is imposed on each type of transaction.
- B. Exclusions: The most important exemption applicable to the GSTT is the \$1 million GST exemption available to each transferor. This exemption not only makes the GSTT irrelevant to families with total net worth of less than \$1 million, but it affords the opportunity for married couples with a total net worth of up to \$2 million to avoid the GSTT.⁶² Other exemptions include:⁶³
1. *Annual exclusion for GSTT purposes*: A transfer of a present interest is excludable from an individual's taxable gifts to the extent of \$10,000 per donee per year (direct skip only).⁶⁴
 2. *Transfers from trusts for tuition and medical expenses*: A transfer from a trust is not a GST if the transfer would have qualified for the gift tax exclusion had the transfer instead been made by an individual as a direct payment of certain medical and tuition expenses.⁶⁵

3. *Gift splitting*: If a husband and wife elect to split gifts, each spouse is treated as the transferor of one half of the gift for GSTT purposes.⁶⁶
4. *Predeceased ancestor exception*: If a parent has already died at the time a transfer in trust first becomes subject to estate or gift tax, that child's (or descendant's) own descendants are treated as moved up one generation for purposes of determining GSTs occurring after 1997.⁶⁷
5. *Generation Move-Down Rule*: Following a GST in trust, the transferor's generation assignment is lowered to the generation immediately above the highest generation of any person holding an interest in the trust immediately after the transfer. This rule applies solely for purposes of determining whether future events involve a skip person.⁶⁸
6. *Charitable transfers*: GSTT does not apply to outright transfers to charitable organizations, charitable trusts, or governmental entities, because these transferees are all automatically assigned to the same generation as the transferor.⁶⁹
7. *“Grandfathered” exceptions*: For reasons too complex for this paper, a transfer made to a grandchild of the transferor, which vested (as defined in the statute) in the grandchild, is not subject to the GSTT at the time of the transfer, under certain circumstances.⁷⁰
Please consult a practice guide.
8. *Statutory exceptions*: The GSTT rules often must be considered in conjunction with other provisions of the income, estate, and gift tax. Some of these other Code sections have not been drafted with full consideration of how they should interrelate with the GSTT.⁷¹

C. Rate: The amount of the GSTT is determined by multiplying the taxable amount by the applicable rate.⁷² The applicable rate is the maximum federal estate tax rate in the year the GST occurs.⁷³ The taxable amount and persons liable for the tax varies depending on the type of GST involved:⁷⁴

1. *Direct Skip*: The taxable amount for this GST is the amount received by the transferee.⁷⁵ The transferor is liable for the tax unless the direct skip is made from a trust,⁷⁶ in which case the trustee is liable for the tax.⁷⁷ The GSTT amount on a direct skip is excluded in the taxable amount. When the transferor pays the GSTT, it is treated as an additional gift for gift tax purposes.⁷⁸
2. *Taxable Distribution*: The taxable amount of this GST is the amount received by the transferee, reduced by any expense incurred by the transferee in connection with the determination, collection, or refund of the GSTT with respect to the distribution.⁷⁹ The transferee of a taxable distribution is liable for the tax.⁸⁰
3. *Taxable Terminations*. The taxable amount for this GST is the value of all property to which the termination has occurred, reduced by expenses, indebtedness, and taxes deductible for estate tax purposes under Section 2053.⁸¹ The trustee of the trust, which the taxable termination occurred, is liable for the tax.⁸² The amount of the GSTT is itself included in the taxable amount of a taxable termination.

IV. **Grantor Trusts tax.** The purpose of the grantor trust provisions is to distinguish between transfers that are sufficiently complete so that the grantor can appropriately be relieved of tax liability with respect to subsequent income from the transferred property and transfers involving retained benefits or controls warranting continuing the grantor's tax liability.⁸³

A. Scope: Grantors of a trust are taxed on its income if they have.⁸⁴

1. A reversionary interest whose value exceeds 5 percent of the value of the trust when the transfer in trust occurs;⁸⁵
2. Certain powers to affect beneficial enjoyment of the corpus or income;⁸⁶ or
3. Specified managerial powers of a broad and unusual character.⁸⁷

B. Exclusions (Safe Harbor): Grantors only avoids taxation if:⁸⁸

1. He or she does not possess a disqualifying reversionary interest;⁸⁹
2. Neither the grantor nor a non-adverse party can revoke the trust;⁹⁰
3. Trust income cannot be distributed to the grantor or the grantor's spouse or used to pay for insurance on their lives without the consent of an adverse party;⁹¹
4. The trust instrument does not vest specified powers to control beneficial enjoyment of the corpus or income in the grantor or certain other persons;⁹² and
5. Neither the grantor nor a non-adverse party has any of various administrative powers.⁹³
6. NOTE: The grantor is treated as owner of any portion of a foreign trust of which a U.S. person is beneficiary, even if the grantor has no interest, right, or power with respect to the trust.⁹⁴

7. A grantor is treated as owner of a trust (or an appropriate portion thereof) if the trust fails any of these tests; a safe harbor is reached only by passing them all.
- C. Rate: The grantor trust tax does not have a separate rate. Rather, the penalty is to tax income generated by a trust as if it were generated by the grantor.
- D. Common Problems: Grantor Trust tax addresses the income generated by trusts that the settlor still controls. Gift tax addresses transfers that are complete enough to qualify as a “gift.” Estate tax addresses property included in the decedent's gross estate at the time of death. Although each of these three taxes distinguishes for its own purposes between complete and incomplete transfers, they establish quite different boundaries. For example:
1. A transfer that is complete enough to relieve the grantor of the obligation to report the income from the transferred property may nevertheless be treated as transferred at death in computing estate tax liability.
 2. Even though a transfer is too tentative to relieve the grantor of income tax liability, it may be complete enough to require payment of a gift tax.
- E. Solution: From a planning perspective, each of these three taxes – *i.e.*, gift, estate, and grantor trust – must be separately examined when creating a trust, with awareness that each has its own standards for testing the completeness of the transfer.

V. Estate Planning Trusts:

A. Credit Shelter (Bypass) Trust. For married clients, each spouse (or the spouse's trust) should separately own sufficient assets to use all of that spouse's applicable credit if that spouse is the first to die, or at least to use enough of that credit so that the surviving spouse's taxable estate will be less than the surviving spouse's applicable exclusion.⁹⁵

1. How it Works:

- a. Decedent will leave his exempt amount (\$600,000 if he hasn't made any taxable gifts during his life) to a "bypass trust" for their spouse.⁹⁶
- b. Decedent will leave the residue of their estate to the spouse in a form that qualifies for the marital deduction.⁹⁷
- c. If the decedent transferred the maximum exclusion amount to a bypass trust, and the rest of his estate to the spouse, no tax will be due on his estate, because the exempt amount is moved into a trust and the rest qualifies for the marital deduction.⁹⁸
- d. On the spouse's subsequent death, the amount in the bypass trust will not be taxed because it is in a trust that "bypasses" her estate.⁹⁹
- e. If, in the interim between decedent's death and spouse's death, the bypass trust has increased to a billion dollars, or any other amount, it is still entirely free from estate tax on the spouse's death.¹⁰⁰

2. Requirements:

- a. Basic planning for a bypass trust, which takes advantage of the marital deduction gift, requires a married couples who expect to

have a combined estate over \$600,000 and an attorney to draft (and fund) the trust.¹⁰¹

B. Inter Vivos QTIP Trust. An inter vivos QTIP trust may be a helpful solution to accommodate the non-tax concerns of a spouse who owns most of the property and is reluctant to transfer assets outright to the other spouse to achieve the tax benefits described above.¹⁰²

1. How it Works:

- a. The donee spouse is the income beneficiary of the QTIP trust for life.¹⁰³
- b. At the death of the donee spouse, the property passes to the beneficiaries of the donor spouse as designated in the trust with little or no power given to the donee spouse to alter that disposition.¹⁰⁴
- c. At the death of the donee spouse, all of the trust property is included on that spouse's federal estate tax return pursuant to the QTIP election made on the gift tax return filed by the donor spouse when the trust was created.¹⁰⁵
- d. If the donee spouse dies before the donor spouse, the property in the trust can effectively utilize the donee spouse's unified credit, Section 2032A value reduction, Section 2057 deduction, and GST exemption.¹⁰⁶
- e. NOTE: Until a few years ago there seemed to be a significant disadvantage of using the inter vivos QTIP trust, because the donor spouse could not retain the right to receive any benefits from the trust property if the donor spouse survived the donee spouse, which would mean that none of the trust would qualify for marital deduction on the donee spouse's Form 706 if the

donee spouse died first.¹⁰⁷ Treasury regulations now specifically indicate that the donor spouse may receive an income interest after the donee spouse's death, without causing Section 2036 inclusion of all of the trust on the donor spouse's Form 706.¹⁰⁸

2. Requirements: To create an inter vivos QTIP trust, the donor spouse must:
 - a. Transfer assets to an irrevocable trust for the benefit of the donee spouse with the donee spouse, a family member, or an independent third party as trustee.¹⁰⁹
 - b. File a gift tax return for the calendar year in which the trust is created to elect QTIP treatment so that the property transferred to the trust qualifies for the gift tax marital deduction.¹¹⁰
- C. Crummey Trust.¹¹¹ Crummey trusts are an integral part of estate planning, and the impact of gift, estate, and GST taxes on such trusts is a crucial and often neglected element in estate planning:¹¹²
1. How it works:
 - a. The \$10,000 annual gift tax exclusion is available only for gifts of present interests.
 - b. Crummey power qualifies gifts in trust for the gift tax annual exclusion, even if used to purchase a future interest (*i.e.*, insurance).
 - c. The gift tax annual exclusion is available for a gift in trust through a power granted to the beneficiary to withdraw the addition to the trust, which power lapses after a stated period, such as sixty days.

2. Use:

- a. Crummy trust may be used to transfer gifts of future interests. For example, a gift may of \$10,000 may be given to a Crummy trusts for the purpose of purchasing insurance (if the *independent* trustee does not exercise their discretion and distribute the money).
- b. A Crummey trust may not qualify for the GSTT annual exclusion, if that trust has:
 - i. With multiple beneficiaries, or
 - ii. For the benefit of only one skip person (where the trust property is not includable in the beneficiary's gross estate on death before termination);
 - iii. That the transfer qualified for the gift tax annual exclusion is irrelevant.

D. Miller Trust. Miller Trusts help Medicaid recipients avoid the income cap imposed by some states for Medicaid eligibility.

1. How it Works:

- a. A recipient whose income exceeded the cap imposed by a state assigns a portion of their income to a trust so that their remaining income is \$20 under the income cap and thus making them eligible for Medicaid.¹¹³
- b. The Omnibus Budget Reconciliation Act of 1993 codified Miller Trusts.¹¹⁴

2. Requirements: A Miller Trust must meet three tests:

- a. It must be composed only of pension, Social Security, other income of the individual, and accumulated income from the trust;

- b. It must provide that the state will receive all money remaining in the trust on the death of the individual up to an amount equal to the total Medicaid assistance paid on behalf of the individual under a state plan; and
- c. The state must have an income cap of 300 percent of the SSI benefit and not have a Medically Needy Program.

Conclusion

Boiled to its essence, this paper can be summarized into three key points: First, do not rely on this paper as an authority for anything. *Period.* Gift, Estate, GST, and Grantor Trust taxes are phenomenally complex and convoluted, and this paper does little more than scratch the surface. Second, this paper relies heavily on practice guides and learned treatises, and cites to them often – you should to. Estate planning is hard enough without reinventing the wheel. Third, look at the names of the treatises I cite in my endnotes, and then re-read key points one and two. Income, estate, gift, and GST taxes are not a well-integrated body of law. If you glean anything from this summary (and anticipate a career in estate planning), understand that these treatises are your new best friends. Get to know them.

¹ Adams and Smith, Fed. Est. & Gift Tax ¶ 1.02 (RIA© 2008).

² Adams and Smith, Fed. Est. & Gift Tax ¶ 1.02 (RIA© 2008).

³ Adams and Smith, Fed. Est. & Gift Tax ¶ 1.02 (RIA© 2008).

⁴ Henkel, Est. Plan. & Wealth Pres., ¶ 1.02 (RIA© 2008).

⁵ Available on Westlaw at WGL-TAXT.

⁶ Adams and Smith, Fed. Est. & Gift Tax. ¶ 9.01 (RIA© 2008).

⁷ Adams and Smith, Fed. Est. & Gift Tax. ¶ 9.01 (RIA© 2008).

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- ⁸ Adams and Smith, Fed. Est. & Gift Tax ¶¶ 9.02, 9.03 (RIA© 2008).
- ⁹ Adams and Smith, Fed. Est. & Gift Tax ¶ 1.03 (RIA© 2008).
- ¹⁰ Adams and Smith, Fed. Est. & Gift Tax ¶ 11.02 (RIA© 2008).
- ¹¹ Adams and Smith, Fed. Est. & Gift Tax ¶ 11.03 (RIA© 2008).
- ¹² Adams and Smith, Fed. Est. & Gift Tax ¶ 9.04 (RIA© 2008), citing Smith, “Should We Give Away the Annual Exclusion?” 1 Fla. Tax. Rev. 361 (1993); and Steinkamp, “Common Sense and the Gift Tax Annual Exclusion,” 72 Neb. L. Rev. 106 (1993).
- ¹³ 26 U.S.C. § 2503(b)(2).
- ¹⁴ 26 U.S.C. § 2503(b)(2)(B); Rev. Proc. 98-61, 1998-2 CB 811; Rev. Proc. 2001-59, 2001-1 CB.
- ¹⁵ 26 U.S.C. § 2503(b)(2) (flush language).
- ¹⁶ 26 U.S.C. § 2503(b).
- ¹⁷ *E.g.*, Adams and Smith, Fed. Est. & Gift Tax ¶ 9.04 (RIA© 2008).
- ¹⁸ S. Rep. No. 665, 72d Cong., 1st Sess. 41 (1932), reprinted in 1939-1 (Pt. 2) CB 496, 526.; *see, e.g.*, Adams and Smith, Fed. Est. & Gift Tax ¶ 9.04 (RIA© 2008).
- ¹⁹ Tres. Reg. § 25.2503-3(a).
- ²⁰ Rev. Rul. 76-360, 1976-2 CB 298; *Wooley v. United States*, 736 F. Supp. 1506 (SD Ind. 1990) (contribution to capital accounts of partners were present interests because of partner's immediate right of withdrawal).
- ²¹ 26 U.S.C. § 2503(c).
- ²² Peirsol, “Gifts to Minors: How Effectively Has the Uniform Act Functioned?” 25 NYU Inst. on Fed. Tax'n 1099 (1967); Rev. Rul. 59-357, 1959-2 CB 212.
- ²³ 26 U.S.C. § 2503(e)
- ²⁴ 26 U.S.C §§ 2503(e)(1), 2503(e)(2).

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- ²⁵ Adams and Smith, Fed. Est. & Gift Tax ¶ 9.04 (RIA© 2008).
- ²⁶ 26 U.S.C. §§ 2001(c), 2502(a)(1).
- ²⁷ 26 U.S.C. § 2001(c)(1). A special rate schedule is available for qualified decedents killed in combat or by a terrorist attack. *See* 26 U.S.C. § 2201(c). For guidance on how to calculate the federal estate tax and state death tax credit under this provision, *see* Rev. Rul. 2002-86, 2002-52 IRB 993.
- ²⁸ 26 U.S.C. § 2001(c)(2), as reprinted by Henkel, Est. Plan. & Wealth Pres. ¶ 1.04, Table (RIA© 2008)
- ²⁹ Henkel, Est. Plan. & Wealth Pres. ¶ 1.04, Table (RIA© 2008)
- ³⁰ 26 U.S.C. § 2502.
- ³¹ 26 U.S.C. § 2210(a).
- ³² 26 U.S.C. §§ 2502(c), 6901.
- ³³ 26 U.S.C. §§ 6075(b)(1), 6151(a). But if a donor dies before a gift tax return reporting his or her gifts in a particular year is due, the executor of the donor's estate is responsible for filing the gift tax return and paying any gift tax due. In that case, the due date for filing the gift tax return and paying gift tax is the same as the due date (including extensions) for filing the donor's estate tax return if that falls earlier than the date the gift tax return would otherwise be due. 26 U.S.C. § 6075(b)(3).
- ³⁴ 26 U.S.C. § 2001(a).
- ³⁵ Adams and Smith, Fed. Est. & Gift Tax. ¶ 2.01 (RIA© 2008)
- ³⁶ Adams and Smith, Fed. Est. & Gift Tax. ¶ 5.02 (RIA© 2008)
- ³⁷ Adams and Smith, Fed. Est. & Gift Tax, ¶ 4.05
- ³⁸ Adams and Smith, Fed. Est. & Gift Tax, ¶ 4.05
- ³⁹ Adams and Smith, Fed. Est. & Gift Tax. ¶ 2.01 (RIA© 2008)
- ⁴⁰ 26 U.S.C. §§ 2053(a)(1)-(4), 2053(b).

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- 41 26 U.S.C. §§ 2031– 2046; Adams and Smith, Fed. Est. & Gift Tax. ¶¶ 4.01 – 4.18 (RIA© 2008).
- 42 26 U.S.C. § 2010(a).
- 43 26 U.S.C. § 2010(c).
- 44 26 U.S.C. § 2210.
- 45 Henkel, Est. Plan. & Wealth Pres. ¶ 4.03 (RIA© 2008).
- 46 26 U.S.C. § 2010(b).
- 47 26 U.S.C. § 2010(d).
- 48 26 U.S.C. §§ 2001(b), and 2001(c), respectively.
- 49 Adams and Smith, Fed. Est. & Gift Tax. ¶ 2.01 (RIA© 2008).
- 50 Adams and Smith, Fed. Est. & Gift Tax. ¶ 2.01 (RIA© 2008).
- 51 26 U.S.C. §§ 2002, 6324(a)(2), 6901.
- 52 Treas. Reg. § 20.6081-1(e).
- 53 26 U.S.C. §§ 6075(a), 6151(a); *cf.* Treas. Reg. § 20.6081-1(a) (An extension for one six-month period for good cause shown may be granted.)
- 54 Harrington et al., Gen. Skipping Trans. Tax ¶ 1.01 (RIA© 2008).
- 55 GSTs generally occur when a transferor transfers an interest in property to a skip person. 26 U.S.C. § 2613. A skip person is a person who is assigned to a generation that is at least two or more generations younger than the transferor's generation. *Ibid.* Trusts also can be skip persons. *Ibid.* All other transferees are non-skip persons. *Ibid.*
- 56 26 U.S.C. § 2612(c).
- 57 Harrington et al., Gen. Skipping Trans. Tax ¶ 1.01 (RIA© 2008).
- 58 26 U.S.C. § 2612(b).

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- ⁵⁹ Harrington et al., Gen. Skipping Trans. Tax ¶ 1.01 (RIA© 2008).
- ⁶⁰ 26 U.S.C. § 2612(a).
- ⁶¹ Harrington et al., Gen. Skipping Trans. Tax ¶ 1.01 (RIA© 2008).
- ⁶² 26 U.S.C §§ 2631, 2632.
- ⁶³ Harrington et al., Gen. Skipping Trans. Tax ¶ 5.01 (RIA© 2008).
- ⁶⁴ 26 U.S.C. § 2503(b); *but see also* 26 U.S.C. § 2642(c)(2) (Establishing criteria for qualifying annual exclusion under Gift Tax and GSTT).
- ⁶⁵ Harrington et al., Gen. Skipping Trans. Tax ¶ 5.03 (RIA© 2008), citing 26 U.S.C. §§ 2503(e), 2611(b)(1); *see also* Schlesinger & Goldberg, “Getting Back to Basics: The Annual Exclusion and the Tuition and Medical Exclusion for Gift Tax Purposes,” 70 NY St. BJ 60 (May/June 1998).
- ⁶⁶ Harrington et al., Gen. Skipping Trans. Tax ¶ 5.03 (RIA© 2008), citing 26 U.S.C. § 2652(a)(2); Treas. Regs. §§ 26.2652-1(a)(5), 26.2652-1(a)(6), Ex. 11.
- ⁶⁷ Harrington et al., Gen. Skipping Trans. Tax ¶ 5.04 (RIA© 2008), citing 26 U.S.C § 2651(e), Treas. Reg. § 26.2651-1(a) and Eisen, “Planning to Minimize Generation-Skipping Tax: Tools and Traps,” 27 Est. Plan. 73, 78–79 (Feb. 2000).
- ⁶⁸ Harrington et al., Gen. Skipping Trans. Tax ¶ 5.05 (RIA© 2008), citing Treas. Regs. § 26.2653-1(a).
- ⁶⁹ Harrington et al., Gen. Skipping Trans. Tax ¶ 5.06 (RIA© 2008), citing 26 U.S.C. § 2642(a)(2); Treas. Regs. §§ 26.2642-1(c), 26.2642-3.
- ⁷⁰ Harrington et al., Gen. Skipping Trans. Tax ¶ 5.07 (RIA© 2008) (citations omitted).
- ⁷¹ Harrington et al., Gen. Skipping Trans. Tax ¶ 5.08 (RIA© 2008) (complete list provided).
- ⁷² 26 U.S.C. § 2602; *see* Harrington et al., Gen. Skipping Trans. Tax ¶ 3.02 (RIA© 2008).

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- ⁷³ *Ibid.*; 26 U.S.C. §§ 2001(c), 2641; Harrington et al., Gen. Skipping Trans. Tax ¶ 3.03 (RIA© 2008).
- ⁷⁴ 26 U.S.C. §§ 2621, 2622, 2623, 2603; *see* Harrington et al., Gen. Skipping Trans. Tax ¶ 1.01 (RIA© 2008).
- ⁷⁵ 26 U.S.C. § 2623.
- ⁷⁶ 26 U.S.C. § 2603(a)(3).
- ⁷⁷ 26 U.S.C. § 2603(a)(2).
- ⁷⁸ 26 U.S.C. § 2515.
- ⁷⁹ 26 U.S.C. § 2621.
- ⁸⁰ 26 U.S.C. § 2603(a)(1).
- ⁸¹ 26 U.S.C. § 2622.
- ⁸² 26 U.S.C. § 2603(a)(2).
- ⁸³ 26 U.S.C. §§ 671 – 675
- ⁸⁴ Bittker and Lokken, Fed. Tax'n Income, Est.& Gifts ¶¶ 80.1 – 80.7 (RIA© 2008).
- ⁸⁵ 26 U.S.C. § 673.
- ⁸⁶ 26 U.S.C. § 674.
- ⁸⁷ 26 U.S.C. § 675.
- ⁸⁸ Bittker and Lokken, Fed. Tax'n Income, Est.& Gifts ¶ 80.1 (RIA© 2008).
- ⁸⁹ 26 U.S.C. § 673; *see* Bittker and Lokken, Fed. Tax'n Income, Est.& Gifts ¶ 80.2 (RIA© 2008).
- ⁹⁰ 26 U.S.C. § 676; *see* Bittker and Lokken, Fed. Tax'n Income, Est.& Gifts ¶ 80.3 (RIA© 2008).

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- ⁹¹ 26 U.S.C. § 677; *see* Bittker and Lokken, Fed. Tax'n Income, Est.& Gifts ¶¶ 80.4, 80.5 (RIA© 2008).
- ⁹² 26 U.S.C. § 674; *see* Bittker and Lokken, Fed. Tax'n Income, Est.& Gifts ¶ 80.6 (RIA© 2008).
- ⁹³ 26 U.S.C. § 675; *see* Bittker and Lokken, Fed. Tax'n Income, Est.& Gifts ¶ 80.7 (RIA© 2008).
- ⁹⁴ 26 U.S.C. § 679; Bittker and Lokken, Fed. Tax'n Income, Est.& Gifts ¶ 83.2.2 (RIA© 2008).
- ⁹⁵ Bellatti, Est. Pln. for Farms & Fam. Bus. ¶ 15.08 (RIA© 2008).
- ⁹⁶ The bypass trust is so called because it bypasses (that is, is not included in) spouse's estate when she subsequently dies.
- ⁹⁷ Henkel, Est. Plan. & Wealth Pres. ¶ 4.03 (RIA© 2008).
- ⁹⁸ Henkel, Est. Plan. & Wealth Pres. ¶ 4.03 (RIA© 2008).
- ⁹⁹ Henkel, Est. Plan. & Wealth Pres. ¶ 4.03 (RIA© 2008).
- ¹⁰⁰ Henkel, Est. Plan. & Wealth Pres. ¶ 4.03 (RIA© 2008).
- ¹⁰¹ Henkel, Est. Plan. & Wealth Pres. ¶ 4.03 (RIA© 2008).
- ¹⁰² Bellatti, Est. Pln. for Farms & Fam. Bus. ¶ 15.08 (RIA© 2008).
- ¹⁰³ Bellatti, Est. Pln. for Farms & Fam. Bus. ¶ 15.08 (RIA© 2008).
- ¹⁰⁴ Bellatti, Est. Pln. for Farms & Fam. Bus. ¶ 15.08 (RIA© 2008).
- ¹⁰⁵ Bellatti, Est. Pln. for Farms & Fam. Bus. ¶ 15.08 (RIA© 2008).
- ¹⁰⁶ Bellatti, Est. Pln. for Farms & Fam. Bus. ¶ 15.08 (RIA© 2008).
- ¹⁰⁷ Bellatti, Est. Pln. for Farms & Fam. Bus. ¶ 15.08 (RIA© 2008).
- ¹⁰⁸ Treas. Reg. §§ 25.2523(d) and 25.2523(f), Exs. (9), (10), and (11).
- ¹⁰⁹ Bellatti, Est. Pln. for Farms & Fam. Bus. ¶ 15.08 (RIA© 2008).
- ¹¹⁰ Bellatti, Est. Pln. for Farms & Fam. Bus. ¶ 15.08 (RIA© 2008).

¹¹¹ 26 U.S.C. § 2503(b).

¹¹² *E.g.*, *Crummey v. Comm'r*, 397 F2d 82 (9th Cir. 1968); Rev. Rul. 73-40, 1973-2 CB 321.

¹¹³ *E.g.*, *Miller v. Ibarra*, 746 F. Supp. 19 (D. Colo. 1990).

¹¹⁴ 42 U.S.C. § 1396p(d)(4)(B)); *see* Frolik and Brown, Advising the Elderly or Disabled Client, ¶ 14.05 (RIA© 2006)