Issue 1 - Increased Exclusion Amount

- IRC § 2001 imposes tax on **ALL** U.S. decedents.

- For tax years beginning in 2011, temp provision allowed surviving spouse to add unused exclusion amount from deceased spouse.

- In 2012 – Deceased Spouse Unused Exclusion (DSUE) made permanent.
• Amount will increase each year up through 2025

• In 2026 – it will revert back to $5,000,000
Issue 1 - Basic Exclusion Amount

- Applicable exclusion = Basic Amount + DSUE
- The Applicable Credit amount is what reduces / eliminates tax

**FIGURE 6.2 Applicable Credit Amount**

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004–2005</td>
<td>$555,800</td>
</tr>
<tr>
<td>2006–2008</td>
<td>$780,800</td>
</tr>
<tr>
<td>2009</td>
<td>$1,455,800</td>
</tr>
<tr>
<td>2010–2011</td>
<td>$1,730,800</td>
</tr>
<tr>
<td>2012</td>
<td>$1,772,800</td>
</tr>
<tr>
<td>2013</td>
<td>$2,045,800</td>
</tr>
<tr>
<td>2014</td>
<td>$2,081,800</td>
</tr>
<tr>
<td>2015</td>
<td>$2,117,800</td>
</tr>
<tr>
<td>2016</td>
<td>$2,125,800</td>
</tr>
<tr>
<td>2017</td>
<td>$2,141,800</td>
</tr>
<tr>
<td>2018</td>
<td>$4,417,800</td>
</tr>
<tr>
<td>2019</td>
<td>$4,505,800</td>
</tr>
<tr>
<td>2026</td>
<td>$1,730,800 indexed for inflation</td>
</tr>
</tbody>
</table>
Executor timely files complete Form 706 – election automatic

Opt out:
1. √ box in Part 6, Section A, Form 706
2. Not filing Form 706 (nontaxable est.)
Issue 1 - DSUE Amount

- DSUE permanently set, not subject to annual inflation adjustments
- DSUE amount is:
  - Available as credit against taxable lifetime gifts, even after surviving spouse remarries.
  - The last deceased spouse’s unused exclusion. If surviving spouse’s 2nd spouse dies, the DSUE of the 2nd spouse replaces the DSUE of the 1st
Hunter & Whitney – no taxable gifts
Hunter dies - $5,000,000 DSUE
Whitney applies $2,000,000 to gifts
Whitney & Hector
Hector dies - $2,000,000 DSUE
Whitney dies - $9,430,000
(Hunter $2M + Hector $2M + $5,430,000)
Issue 1 - Ordering Rules

- DSUE before decedent’s exclusion
- DSUE from last deceased spouse applied to taxable gifts first
- If > 1 deceased spouse
  - Can use DSUE of each in succession
  - May not use sum of both at one time
  - Cannot use predeceased spouse DSUE after subsequent spouse death
Currently (2019) basic exclusion is $11,400,000 ($22,800,000 if married)

In 2026 basic exclusion will be $5,000,000 ($10,000,000 if married)

Plan now to lock in higher amounts

- Make gifts to non-spouse,
- Make gifts to self (not subject to creditors), or
- Make gifts to spouse
Can preserve increased exclusion amount by:

1. Making gifts to non-spouses
2. Making gifts to Trusts for non-spouses

Proposed regs allows estate to compute estate tax credit using the higher of:

1. Basic exclusion amt applicable to gifts made during life, OR
2. Basic exclusion amount applicable on date of death
### ESTATE TAX COMPUTATION:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Estate</td>
<td>$15,000,000</td>
</tr>
<tr>
<td>LESS: DSUE from Ed</td>
<td>($5,450,000)</td>
</tr>
<tr>
<td>LESS: Annie exclusion amt</td>
<td>($6,000,000)</td>
</tr>
<tr>
<td>Estate amt subject to tax</td>
<td>$3,550,000</td>
</tr>
<tr>
<td>Estate Tax Rate</td>
<td>40%</td>
</tr>
<tr>
<td>Estate Tax Owed</td>
<td>$1,420,000</td>
</tr>
</tbody>
</table>

No Gift
## ESTATE TAX COMPUTATION:

<table>
<thead>
<tr>
<th>Description</th>
<th>With Gift</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Estate</td>
<td>$15,000,000</td>
</tr>
<tr>
<td>LESS: DSUE from Ed</td>
<td>($5,450,000)</td>
</tr>
<tr>
<td>LESS: Annie exclusion amt</td>
<td>($8,000,000)</td>
</tr>
<tr>
<td>Estate amt subject to tax</td>
<td>$1,550,000</td>
</tr>
<tr>
<td>Estate Tax Rate</td>
<td>40%</td>
</tr>
<tr>
<td>Estate Tax Owed</td>
<td>$620,000</td>
</tr>
</tbody>
</table>
Issue 2 – Gifts to Self

May NOT be our best option

Assets will be included in transferor’s estate if:
- Transferor retains certain rights to use or enjoy the property, OR
- Control its disposition.

If Trust is subject to creditors’ claims, will be included in transferor’s gross estate
Spouses can establish trusts for each other

Must be substantially different or:

- Will be deemed reciprocal trusts AND
- Self-settled trust rules will apply.
Factors to consider for substantially different:

- Were the trusts created at the same time?
- Do the trusts have identical trustees?
- Do the trusts contain the same assets (e.g. the same number of shares of stock)?
- Were the trusts created pursuant to a prearranged plan?
- Are the residuary beneficiaries of the trusts the same?
2018 – Henrik creates trust for Gertrude
   1. Gifted $7,000,000 of property
   2. Gertrude has lifetime special power of appointment
   3. First National Bank is Trustee

2019 – Gertrude creates trust for Henrik
   1. Gifted $8,000,000 of stock
   2. No lifetime special power of appointment
   3. America Trust Company is Trustee
## ESTATE TAX COMPUTATION:

<table>
<thead>
<tr>
<th>Description</th>
<th>With Gift</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Estate</td>
<td>$20,000,000</td>
</tr>
<tr>
<td>LESS: Gift from Henrik</td>
<td>($7,000,000)</td>
</tr>
<tr>
<td>LESS: Gift from Gertrude</td>
<td>($8,000,000)</td>
</tr>
<tr>
<td>Estate amt subject to tax</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>Estate Tax Rate</td>
<td>40%</td>
</tr>
<tr>
<td>Estate Tax Owed</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>
Issue 4 – Trust & Estate Returns

Decedant's Final 1040

Form 1041 - Annual Income if ≥ $600

Form 706 - Gift Tax Return - $11,400,000 Lifetime or $15,000 Annual Limits

Form 706 - Estate - Transfer of Assets - $11,400,000

Overall Dead Guy Situation and Forms
- Form 1040 – Final Return (if required)
- Across the top of return write: DECEASED, Decedent’s name & Date of Death
- Executor files & signs return for Decedent
  - POA not required, File Form 56
  - If no Executor, Surviving spouse can file
If no executor or surviving spouse, personal representative files

Personal representative
- Person in charge of decedent’s property
- Person who receives the decedent’s property
- File Form 56
- File Form 1310 (if refund due)
Form 706

Required if: gross estate + adjusted taxable gifts > $11,400,000 ($22,800,000 MFJ) in 2019

To elect transfer of DSUE to surviving spouse

• File within 9 months after date of death
• Can get 6 month extension, file F4768
Basis Consistency:

- Property acquired must be consistent with the estate tax return
  - Final determination
  - Statement made under § 6035
- File Form 8971 on earlier of:
  - 30 days after return required to be filed
  - 30 days after return is filed
4 exceptions to reporting property:

1. Cash (Unless collectible)
2. Income in respect of a decedent
3. Tangible personal property where appraisal is not required
4. Sold/disposed property where capital gain or loss is recognized
Form 1041 required if:
  - ≥ $600 of income generated
  - Any beneficiary is nonresident alien

Due date:
  - Same as F1040
  - Extension of 5 ½ months (File Form 7004)
  - Fiscal year – 15th day of 4th month from end of tax year
Income in Respect of Decedent

- G. I. not on decedent's final (or prior) return

Examples:
- Accrued & unpaid salary and benefits,
- Fees & commissions accrued & unpaid at death,
- Deferred compensation agreement payments,
- Accounts receivable from professional practice,
- Unpaid but declared dividends,
- Cap. gains (securities) completed before death.
Other Estate Income

- Estate can own property that generates income
- If accumulated, taxed to estate
- If distributed, taxed to beneficiary

Estate deductions

- Amounts required to be distributed currently
- Amounts properly paid, credited or required to be distributed
Form 1041
- Any taxable income for the tax year
- Gross income of $600 or more (regardless of taxable income)
- A beneficiary who is a nonresident alien

Qualified Revocable Trusts
- Elect treatment under IRC § 645, Form 8855
  - Taxed as part of estate
  - Entitled to $600 exemption
Issue 5 – Basis Rules

- FMV value at date of death;
- Alternate valuation date (generally 6 months after date of death)
- Special use valuation for qualified real property
- Basis in hands of decedent (land subject to qualified conservation easement)
Appreciated property acquired from decedent does not include:

- Gift to decedent w/in 1 year of death if passes to donor or donor’s spouse
  - Basis = A/B just before death
  - Same rule: sold by estate if donor is entitled to proceeds of the sale
Automobiles
  • Price general public would pay

Stocks & Bonds (basis per share)
  • Market Open -
    • avg of the highest & lowest quoted selling price.
  • Market Closed -
    • weighted avg of the highest & lowest quoted selling prices on the trading day before and after date of death
Household & Personal Property

- Price a willing buyer/seller conduct transaction
- May need appraisal for:
  - jewelry, furs, silverware, paintings, etchings, engravings, antiques, books, statuary, vases, oriental rugs, and coin or stamp collections
Issue 5 – Basis Rules
IRD

- Wages earned by the decedent but not received prior to death
- Accounts receivable for a cash basis taxpayer
- Distributions from an inherited traditional IRA
- Declared but unpaid dividends
- Unpaid rent income
- Payment made under an installment sale
Generally co-owned property included

Exceptions:

1. Tenancy in entirety – 1/2 of the value is treated as the decedent’s interest.

2. Joint tenants w/ right of survivorship - interest includes fractional part (divide value by # of joint tenants).

3. Qualified joint interest - ½ the of the qualified joint interest.
If property included in determining gross estate:

- Survivor receives step-up (or step-down) to FMV on date of death
- Survivor reduces basis by depreciation taken prior to decedent’s death
- Reduced amount plus FMV of decedents interest = Survivors basis
**FACTS:** Ahmed contributes $20K, Cyril contributes $10K. Both are 50% joint tenants, $12K in depreciation. FMV is $60K when Ahmed dies.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial contribution</td>
<td>$10,000</td>
</tr>
<tr>
<td>Depreciation ($12,000 ÷ 2)</td>
<td>(6,000)</td>
</tr>
<tr>
<td>FMV basis of Ahmad’s interest</td>
<td>40,000</td>
</tr>
<tr>
<td>New basis in property</td>
<td><strong>$44,000</strong></td>
</tr>
</tbody>
</table>
Noncommunity Property
- Decedent includes $\frac{1}{2}$ of value in their estate
- If MFJ – reduce basis by depreciation
- If MFS – no reduction (if no benefit)

Community Property
- Decedent includes $\frac{1}{2}$ of value in their estate
- Entire property basis stepped-up to FMV on date of death
- No reduction for depreciation
Types of Loans

• Demand Loans
• Term Loans

Definition of Below-Market

• Demand: Less than AFR
• Term: Amt loaned > present value of all pymts

Applicable Federal Rate

• Short term (< 3 years)
• Mid term (3 – 9 years)
• Long Term (> 9 years)
Below-market gift or demand loan:

• Deemed gift, dividend, contribution of capital, etc from lender to borrower

• Retransferred from borrower to lender as interest

• Both treated as occurring on last day of calendar year
Term loan:

- Lender deemed to transfer cash equal to excess of amount loaned over present value of all payments required on date loan made.

- Borrower treated as having received on date the loan was made.
Exceptions to Section 7872
1. Gift Loans
2. Compensation Loans
3. Special Rules for Gift Loans
Charitable Deductions

- Contribution must be from gross income
- No limits on amt of deduction (unless UBTI)
- Contributions made pursuant to governing instrument (will or trust)

Benefits:
- Elect to treat as made in prior year
- Can make contribution to foreign charity
Estate Tax Deduction made to:

- U.S., any State, Political subdivision, DC for public purposes

- Corp entity for religious, charitable, scientific, literary, educational purposes, encouragement of art, to foster national or international amateur sports competition, prevention of cruelty to children/animals;

- Entity operating under lodge system for religious, charitable, scientific, literary, educational purposes or for prevention of cruelty to children or animals;
Estate Tax Deduction made to:

- Any veteran organization
- An employee stock ownership plan if such transfer qualifies as a qualified gratuitous transfer of qualified employer securities
Charitable Remainder Trusts (CRT)

- Pays income to donor/beneficiary for set period
- Upon termination, assets given to charity
- Two types of CRT:
  - Charitable Remainder Annuity Trust (CRAT)
  - Charitable Remainder Unitrust (CRUT)
Requirements for a CRAT:

1. Payments must be between 5% & 50% of the initial FMV of the property placed in trust, at least annually, 20 yrs or less for entity, or life of individual.

2. Cannot pay any other amounts to or for the use of any person other than the charity.

3. Following termination, remainder interest must be transferred to the charity.

4. Value of the remainder interest must be $\geq 10\%$ of initial FMV of property placed in the trust.
Requirements for a CRUT:

- Similar to CRAT
- Annual payments, are a fixed percentage
- Amount recalculated each year based on remaining value
- CRUT can receive additional contributions
CRT Planning – Advantages:

- Can avoid recognition gain on sale of property.
- Transfer generates a deduction of the present value of the remainder interest.
- Property transferred, and any appreciation, excluded from taxable estate of the donor.
- Can time distributions to avoid net investment income.
- Can plan for cash flow.
Income Tax Deduction

- Grantor receives immediate tax deduction.
- TP determines full FMV of contributed property reduced by actuarial value of the payment.
- Value of payment depends on whether the trust is a CRAT or CRUT
Value of payments calculated for CRAT

1. Determine interest rate for month of transfer.
2. Determine the appropriate annuity factor from the IRS tables in Pub 1457
   • If annuity paid for life, use Table S.
   • If annuity is for fixed term, use Table B.
3. Multiply annuity amount by annuity factor to determine value of payments.
Once TP determines value of payments, remainder interest calculated:

FIGURE 6.7 Formula to Calculate Value of Remainder Interest

\[
\text{Value of the property in its entirety} - \text{Value of payments} = \text{Remainder value}
\]
Value of payments calculated for CRUT

1. Determine adjusted payout rate (annual payout rate \times\text{appropriate factor in Pub 1458, Table F}).

2. Determine the appropriate remainder interest factor from the IRS tables in Pub 1458
   - If fixed term, use Table D.
   - If over single life, use Table U(1).
   - If over joint lives, use Table U(2).

3. Determine remainder interest value (FMV of property \times \text{remainder interest factor})
Estate Tax Deduction

- Grantor is beneficiary, dies before end of trust term
  - Portion of the value of the trust must be included in grantor’s estate
  - Estate can claim offsetting deduction for assets passing to a charity
- Grantor not beneficiary
  - Value not included in grantor’s estate
  - May generate a taxable gift if transferred to other than grantor’s spouse or charity
Thank You!