

ESTATE & GIFT – BROAD ISSUES

*Look at things from the perspective of the DECEDENT (careful with this one); if the D is the beneficiary, not the grantor, it can change the analysis (i.e. no inclusion in GE)

***Find out what part of the computation you are in and fill in the blanks where possible. I.e. if you are given current taxable gifts then don't go back to exclusions, focus on where you're at. If given all annual transfers then you are running the entire computation. Thus, the importance of knowing the terms, e.g. exclusion versus exemption.

ESTATE TAX

1) GROSS ESTATE:

a) Property D Owned at Death – FSA. §2033

- i) RULE: Prop D (1) owned; (2) transferred.
- ii) Litigation: State law controls ownership. See p. 1 highest state ct binding on fed.
- iii) D didn't Own: Gifted property, state death benefits, legal title alone.
- iv) D Did Own: Prop *owned* to D; Econ Equivalence; Declined value prop in exe's hands; newly discovered property; fractional interests (ten in common, NOT JT); Spousal rts: (1/2 CP, 100% Dower, Curtesy); Contingent remainders Count!

b) Joint Tenancy §2040 p. 4

- i) Gen- 100% interest includible.
 - (1) Except: Orig Contribution by JT. Not gifts from D, but from others OK.
 - (a) Exception: capital contribution by JT.
 - (b) Exception: 1031 exchange- no orig contribution.
 - (2) Allocation: On subsequent contribution. Do calc every time there is contribution. P. 5
 - (3) Qualified Joint Interest bet H&W. ½ property to each sp.
 - (4) Death-Bed Severance of JT to tenancy in common OK.

c) General Power of Appointment §2041 p. 5

- i) Gen- Gen pwr includible in estate whether *exercised, or unexercised* (lapse, release). As long as D held gen pwr at time of death. 2041(a)(2)
 - (1) 100% includible in D's estate if: X → A (life) → B. D has gen pwr appt to appoint to anyone including himself.
- ii) Nature Of Power:
 - (1) Power to- Appoint to D, D's estate, CR or CR's of estate
 - (a) Includes: Discharge of D's obligations, support of another D is legally obligated to support.
 - (2) DONATED POWER. Not retained. But poss 2035-2038.
 - (3) No SPECIAL POWER. X → D (life) → D's issue as D appts.
 - (a) But poss 2035-2038
 - (b) Limitation: D has gen pwr + special pwr. Exercise of special pwr= exercise of gen pwr (includible).
 - (4) Contingent pwr- beyond D's control may block D's ability to ex. May not be incl.
 - (5) Capacity: D ex as TTE or he is incompetent - Irrelevant.
- iii) Disclaimer: treated as if D never had gen power.
- iv) Joint Power: Treated as if D had power alone.
 - (1) Except- where D shares with: (1) donor; (2) sub, adverse interest in prop.

Federal Taxation Of Estates Trusts And Gifts Analysis And Skills Ser

O. Ray Whittington



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