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Estate Planning and Compliance Under a New Paradigm...
A Look Back & A Look Forward

Preparing Gift Tax Returns and Fiduciary Income Tax Returns After the
Gift Giving Gold Rush... What Have Those Lawyers Done to Us!

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Case Study

Case 1:

- Husband and wife each own 50% of S-Corporation
- Couple took advantage of \$5.12 million gift and generation skipping tax exemption by establishing irrevocable non-reciprocal spousal limited access trusts
- Couple issued a 9:1 non-voting stock dividend and each transferred their non-voting shares to their SLATS with cash to fully use their exemption
- The SLATS are non-reciprocal by having different trustees and different dispositive provisions, trustee removal clauses, and limited powers of appointment. See *Estate of Grace*, 395 U.S. 316 (1969), *Estate of Levy*, 46 T.C.M. 910 (1983), and *Estate of Bischoff*, 69 T.C. 32 (1977) PLR 200426008; *Estate of Green v Commissioner* 68 F.3d 151 (6th Cir. 1995)
- You are a co-trustee with spouse and must file a gift tax return for the trust for 2012 and an income tax return for the trust for 2013

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Case 2:

- Single taxpayer, age 80, owned \$5,250,000 residential property and transferred the property to an irrevocable trust and is leasing the property back from the trust to prevent inclusion under IRC § 2036
- Taxpayer had 10 children and grandchildren
- You are the trustee and must file a gift tax return for the trust for 2012 and an income tax return for the trust for 2013
- You now are considering having the taxpayer either borrow or purchase the property back

PLANNING NOTE:

This technique was selected over a QPRT to avoid estate tax inclusion, to allocate GST exemption at the time of the gift, and to avoid the prohibition of a repurchase. Reg. 25.2702-5(c)(5)

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1. Sample Home-Security Trust Language (Residential Property)

- a) For so long as the Donor is living, income and/or principal is payable in the discretion of the trustee to or for the benefit of the class consisting of the Donor's descendants
- b) Upon the death of the Donor, the Trustee shall divide the assets into as many equal shares as there are children then living and children then deceased leaving issue then living. As to each share, income and principal is payable to the class consisting of such child and such child's issue as the Trustee deems advisable in the Trustee's sole and absolute discretion.

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2. Sample SLAT (Spousal Limited Access Trust) Language:

- a) For so long as the Donor's spouse is living, income and/or principal is payable to the class consisting of the Donor's spouse and the Donor's issue of all generations.
- b) Upon the death of the Donor's spouse, the Trustee shall divide the assets into as many equal shares as there are children then living and children then deceased leaving issue then living.
- c) As to each share, income and principal is payable to the class consisting of such child and such child's issue as the Trustee deems advisable in the Trustee's sole and absolute discretion for the rule of perpetuities.

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Planning Note:

Some practitioners might have included a provision giving the spouse a limited power of appointment to appoint the property in trust back to the donor.

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Planning Note:

If Spouse is the sole trustee of the SLAT, income and/or principal might be payable to the spouse for health, education, support, and maintenance using the ascertainable standard of IRC § 2041. Non-support distributions in favor of the spouse and/or issue will be in the Trustee's discretion other than the surviving spouse.

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**3. Crummey Withdrawal Powers
(included in the Home-Security Trust only)**

- Whenever the trustee receives a gift from the trust, the trustee shall notify the beneficiaries, who shall have 30 days to withdraw the funds, up to \$13,000 per beneficiary. Notwithstanding the foregoing, in no even shall the withdrawal right lapse with respect to the excess over the greater of 5% of the principal or \$5,000 per year.

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4. Donor Permitted to Remove Trustee

- Pursuant to Revenue Ruling 95-58, the Donor shall have the right to remove and replace the trustee, provided the replacement trustee is neither related to nor subordinate to the Donor within the provisions of IRC § 672.

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5. Grantor Trust Status

- The Donor shall have the right to reacquire trust corpus pursuant to IRC § 675(4)(c) by substituting property of an equivalent value.

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6. Income Tax Reimbursement Permitted

- Pursuant to Revenue Ruling 2004-64, the Trustee shall be permitted to reimburse the Donor the incremental income tax attributable to the trust income being included in the Donor's estate as a result of grantor trust status pursuant to IRC § 671 through IRC § 678.

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7. IRC § 2036

IRC § 2036 provides:

(a) General Rule. – The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death –

(1) the possession or enjoyment of, or the right to the income from, the property, or

(2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

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Planning Note:

This is why the Donor cannot be a trustee of the trust the Donor establishes and cannot be a beneficiary into which the Donor transfers assets (unless the Donor uses a so-called Domestic Asset Protection Trust under the laws of New Hampshire, Delaware, Alaska, and South Dakota, in which case the Donor can be a discretionary beneficiary).

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Among the gift tax and income tax compliance questions are the following:

- Is the trust a permitted S-Corporation shareholder?
- How are the rent payments taxable?
- Who pays the income taxes relative to the trust income?
- How are the assets to be valued transferred to the trust?
- How do you report the transaction on a gift tax return?
- Is the gift eligible for gift splitting?
- Did the taxpayer use a Wandry formula gift?
- How and should generation skipping be allocated?
- How do you determine and allocate basis?
- How long do we have to worry (statute of limitations)?

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Is the trust a permitted S-Corporation Shareholder?

•**Qualified S Corporation Shareholders**

In connection with a gift giving program, it is extremely important that the S election be preserved since in all likelihood a trust will be the donee, it is important to be sure the trust is structured to be an eligible S corporation shareholder both during the life of the donor as well as thereafter.

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•**Applicable Code Sections**

IRC § 1361 provides that an S corporation must have only so-called eligible S corporation shareholders and generally must be an individual or one or more trusts as set forth in IRC § 1361(c)(2). Pursuant to this section, an eligible S corporation shareholder is as follows:

1. A trust, all of which is treated as owned as an individual who is a citizen or resident of the United States (meaning a wholly grantor trust). IRC § 1361(c)(2)(A)(i)
2. A trust which was a wholly owned trust immediately before the death of the deemed owner and which continues in existence after such death, but only for the two year period beginning on the date of the deemed owner's death. IRC § 1361(c)(2)(A)(ii)

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3. A trust with respect to stock transferred to it pursuant to the terms of a Will, but only for the two year period beginning on the day on which such stock is transferred to it. IRC § 1361(c)(2)(A)(iii)
4. An electing small business trust (ESBT). IRC § 1361(c)(2)(A)(v)

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In addition to the foregoing, IRC § 1361(d) provides for a so-called qualified subchapter S trust. A qualified subchapter S trust is a trust which, according to the terms of the trust, satisfies the following requirements:

- i. all trust income must be distributed currently to a single income beneficiary;
- ii. the current income beneficiary must be a U.S. citizen or resident;
- iii. the trust instrument must provide that during the life of the current income beneficiary, there may be only one income

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- iv. the trust must restrict principal distributions made during the income beneficiary's life to the current income beneficiary;
- v. the trust instrument must provide that the beneficiary's income interest will terminate upon the earlier of the beneficiary's death or the trust's termination; and
- vi. the trust instrument must provide that if the trust terminates during the current income beneficiary's lifetime, all trust assets must be distributed to the current income beneficiary.

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PLANNING NOTE

In general, a QTIP trust will satisfy this requirement. In the case of a lifetime credit shelter trust, it will be a wholly grantor trust, provided the power to reacquire trust assets pursuant to Section 675(4)(c) is included.

PLANNING NOTE

In addition to the foregoing, a QSST election must be made by the current income beneficiary with respect to each subchapter S corporation in which the trust has an interest. This must be made within 65 days after the date the trust receives the S corporation stock.

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•Income Tax Treatment

In the case of a qualified subchapter S trust, the single beneficiary is treated as the owner and will be taxed on all income attributable to the S corporation pursuant to IRC § 1361(d)(1)(B), which provides:

“For purposes of Section 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which a QSST election is made.” IRC § 1361(d)(2)

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•Electing Small Business Trusts

An ESBT is defined as any trust excluding QSSTs provided such trust (1) does not have a beneficiary, any person other than an eligible individual, an estate (or certain tax exempt organizations), (2) no interest in such trust was acquired by purchase, and (3) an election was made to have it treated as an ESBT.

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•Income Tax Treatment for the ESBT

The income tax on the ESBT share is computed without any deductions, including the deduction for distribution to beneficiaries, other than a deduction for administrative expenses or state or local income taxes that are allowed, such that the income of the ESBT share is taxed at the highest individual rate on all items of income, loss, or deduction. IRC § 641(d)(2)

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How are the rent payments taxable?

Pursuant to Rev. Rul. 85-13, a transfer between a grantor and his wholly owned grantor trust is not an income taxable event, with the following tax consequences.

- (1) While the transferee trust takes a carryover basis, the sale to the trust is income tax free.
- (2) Any interest paid by the trust to the grantor (or by the grantor to the trust) pursuant to the promissory note also is income tax free.
- (3) If the trust owns property and the grantor is paying rent, the payment of rent to the trust is income tax free.
- (4) The transferor can reacquire trust assets by substituting property of an equivalent value to obtain a step-up in basis upon death by exchanging cash for zero or no basis assets.

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PLANNING NOTE:

It is important that the trust be a "wholly grantor trust" as to the grantor.

- How do you make an irrevocable trust a "wholly grantor trust" as to the grantor using the power of acquisition under IRC § 675?

Under IRC § 675, the grantor shall be treated as the owner of any portion of the trust with respect to which a power of administration is exercisable in a non-fiduciary capacity by any person without the approval or consent of any person in a fiduciary capacity to "(C) reacquire the trust corpus by substituting other property of an equivalent value."

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- Are you sure that the power to reacquire trust corpus will not result in estate tax includibility?

Yes. In Rev. Rul. 2008-16, the IRS ruled that, when the grantor of an inter vivos trust has a non-fiduciary power to substitute property held in trust, the value of the trust corpus is not includible in the gross estate under 2036 or 2038 as long as the trustee has some fiduciary obligations that insure the grantor's compliance with the trust terms. It has been held to determine there is a fiduciary obligation to assure that the property is exchanged for its equivalent value and the trustee has a duty of impartiality concerning the trust beneficiaries.

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- Would the answer be the same if the trust held life insurance governed by IRC § 2042?

Yes. In Rev. Rul. 2011-28, the IRS ruled that the grantor's retention of the power, exercisable in a non-fiduciary capacity, to acquire an insurance policy held in trust by substituting other assets of an equivalent value will not, by itself, cause the value of the insurance policy to be includible in the grantor's gross estate under Section 2042, provided the trustee has a fiduciary obligation (under local law of the trust instrument) to insure the grantor's compliance with the terms of this power by satisfying itself that the properties acquired and substituted by the grantor are, in fact, of equivalent value and further provided that the substitution power cannot be exercised in a manner that can shift benefits among the trust beneficiaries.

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Who pays the income taxes relative to the trust income?

- What if the grantor does not have sufficient funds to pay the income tax attributable to the grantor trust earnings?

More good news! Under Rev. Rul. 2004-64, the IRS ruled that a trustee, or any other individual who is not related to or subordinate to the donor as defined in IRC § 672(c), in the trustee's or such person's sole and absolute discretion may make distributions to the donor in order to satisfy any federal estate income tax liability incurred by the donor pursuant to the laws of the United States of America or any state which is attributable to income of the trust or any share thereof. The amount of such payments shall not exceed the excess of the donor's personal income tax liability over his or her income tax liability computed as if the trust was not a grantor trust under IRC § 671, et seq.

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How are the assets to be valued transferred to the trust?

a) Lappo v. Commissioner, T.C. Memo 2003-258:

Taxpayer gifted limited partnership interests in a partnership consisting primarily of marketable securities (principally municipal bonds) and certain parcels of Michigan real estate that was subject to a long term lease. The Tax Court allowed a 15% minority interest and a 24% marketability discount, computed as follows:

TOTAL NAV (NET ASSET VALUE) AS OF DETERMINATION DATE	\$3,156,882
1% OF NAV	\$ 31,569
LESS: 15% MINORITY INTEREST DISCOUNT	(4,735) \$ 26,834
LESS: 24% MARKETABILITY DISCOUNT	(6,440)
FMV OF 1% INTEREST	\$ 20,394
FMV OF 69.4815368% INTEREST	\$1,417,006

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b) Peracchio v. Commissioner, T.C. Memo. 2003-280

Taxpayer formed limited partnership and transferred limited partnership interests to family members where the assets of the partnership consisted primarily of cash and marketable securities with a designated value of \$2,013,765. The Tax Court allowed discounts of 6% for the minority interests and 25% for the marketability discount, computed as follows:

TOTAL NAV	\$2,010,370
1% OF NAV	\$ 20,104
LESS: 6% MINORITY INTEREST DISCOUNT	(1,206)
MARKETABLE VALUE	\$ 18,898
LESS: 25% MARKETABILITY DISCOUNT	(4,725)
FMV OF 1% INTEREST	\$ 14,173
FMV OF 45.47% INTEREST	\$ 644,446
FMV OF 53.48% INTEREST	\$ 757,972

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c) Revenue Ruling 93-12

The IRS will no longer deny discounts simply because transfers are made between family members understanding that there should be no aggregation of interest.

Example:

Decedent owns property, such as an LLC or an S corporation, worth \$10,000,000 and gifts 20% to each of the 5 children. If the decedent dies, the asset would be worth \$10,000,000. However, if the assets are transferred, the fair market value of the gift would be approximately \$6,000,000, assuming a 40% discount. The question is what is the value of each 20% interest based upon the general rule that value is equal to the price of listed property to change hands assuming that a willing buyer and a willing seller and both parties had reasonable knowledge of all of the relevant facts and circumstances and neither party is under a compulsion to either buy or sell.

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d) Real Estate

The fair market value of fractional interests in real estate can range from a low of 17% to a high of 44%.

1. *Ludwick v. Commissioner*, T.C. Memo. 2010-104

Taxpayers, a married couple, separately transferred a tenancy in common interest in a vacation home to qualified personal residence trusts using a discount of 30% of net asset value ($\$7,250,000 \times 50\% \times 70\% = \$2,537,500$). The IRS was willing to allow a discount of 15% but in Tax Court argued that the discount should be no more than 11%. The Tax Court determined that a 17% discount would be appropriate relying on expert testimony as to how much a "partition" proceeding would cost.

In the case of a fractional interesting property, the value should be determined by reference to the "cost to partition" rather than using a "going concern" value.

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2. Lefrak v. Commissioner, T.C. Memo. 1993-526 (1993)

The Tax Court allowed a discount of 20% for lack of control and 10% for lack of marketability rejecting a cost of partition approach.

3. Estate of Barge v. IRS, 73 T.C.M. 2615 (1997)

The Tax Court allowed a 28% discount for an undivided interest in timberland noting that the Tax Court valued the land using a capitalization of income approach using a 10% capitalization rate.

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4. Estate of Williams v. IRS, 75 T.C.M. 1758 (1998)

The Tax Court allowed a 44% discount for a fractional interest of jointly owned real estate gifted to the donor's wife's niece finding that there should be a discount of 20% for lack of marketability and 30% for lack of control (44% in total net).

PLANNING NOTE

In TAM 199943003, the IRS agrees that the estimated cost to partition is only one method of determining the appropriate discount.

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e) Consider Promissory Notes

The gift tax value of a promissory note may be significantly less than the face amount of the note and perhaps forgiveness should be considered, although income tax ramifications of forgiveness should be considered if the note is not between a grantor and an intentionally defective grantor trust.

Reg. 20.2031-4 provides that the value of a note included a decedent's gross estate is presumed to be the amount of unpaid principal less accrued interest on the valuation date, unless the note is shown to have a lesser value or to be worthless. Discounts are appropriate attributable to uncollectability, lack of security, interest rates, and terms. The IRS and the courts have applied this Regulation to promissory notes between family members as well as notes between unrelated persons (even if money will be inherited enough to pay off the note and the cancellation of indebtedness is based on cash loans.). *Estate of Berkman v. Commissioner*, T.C.M. 1979-46; TAM 9240003

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Is the gift eligible for gift-splitting?

- Gift-splitting is permitted as long as the spouse is not a beneficiary, so except in unusual situations, a SLAT could not be funded with assets exclusively owned by the donor. Reg 25.2513-1.

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Did the taxpayer use a *Wandry* formula gift?

PLANNING NOTE

This advantage over outright gifts or sales to intentionally defective trusts has virtually been eliminated as a result of *Wandry v. Commissioner*, T.C. Memo. 2012-88. In *Wandry*, for the first time, the Tax Court approved a gift of LLC units at a value to be determined by an appraisal, subject to adjustment for the IRS audited return. The Tax Court held that the number of units transferred would be based on its decision and that no adjustment would be made for the dollar value of the gift. The exact language was as follows: "I hereby assign and transfer as gifts, a sufficient number of my units, as a member of LLC, so that the fair market value of such gifts for federal gift tax purposes, shall be as follows:

<i>Name</i>	<i>Gift Amount</i>
<i>Kenneth D. Wandry</i>	<i>\$ 261,000</i>
<i>Cynthia K. Wandry</i>	<i>\$ 261,000</i>
<i>Jason K. Wandry</i>	<i>\$ 261,000</i>
<i>Jured S. Wandry</i>	<i>\$ 261,000</i>
<i>Grandchild A</i>	<i>\$ 261,000</i>
<i>Grandchild B</i>	<i>\$ 11,000</i>
<i>Grandchild C</i>	<i>\$ 11,000</i>
<i>Grandchild D</i>	<i>\$ 11,000</i>
<i>Grandchild E</i>	<i>\$ 11,000</i>
<i>Total</i>	<i>\$1,099,000</i>

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Although the number of units gifts is fixed on the date of the gift, that number is based on the fair market value of the gifted units, which cannot be known on the date of the gift, but must be determined after such date based on all relevant information as of that date. Furthermore, the value determined is subject to challenge by the Internal Revenue Service (IRS). I intend to have a good faith determination of such value made by an independent third party professional experienced in such matters and appropriately qualified to make such a determination.

Nevertheless, if, after the number of gifted units is determined based on such valuation, the IRS challenges such valuation and a final determination of a different value is made by the IRS or a court of law, the number of gifted units shall be adjusted accordingly so that the value of the number of units gifted to each person equals the amount set forth above, in the same manner as a federal estate tax formula marital deduction amount would be adjusted for a valuation redetermined by the IRS and/or a court of law."

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How and should generation skipping be allocated?

- Generation skipping considerations

The generation skipping tax exemption is \$5,120,000 as is the gift tax exclusion exemption. In the case of a transfer to a trust which will continue for one or more generation members below that of the grantor, a gift tax return should be filed and generation skipping tax exemption shall be allocation.

- Is the generation skipping tax exemption automatically be allocated?

The answer is confusing, so a gift tax return should be filed in any event to either allocate GST or opt out of the automatic GST allocation rules.

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- What are the GST automatic allocation rules?

IRC § 2632 provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

- What is an indirect skip?

IRC § 2632(c) provides that the term "indirect skip" means any transfer of property (other than a direct skip) made to a so-called GST trust.

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- What is a GST trust?

IRC § 2632(c)(3)(B) provides that a “GST Trust” means a trust that could have a generation skipping transfer with respect to the transferor unless... the trust is a trust, any portion of which would be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer. (IRC § 2632(c)(3)(B)(iv))

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PLANNING NOTE

In the SLAT, so-called “Crummey Notices” were not included so this provision would not be applicable but the result would be different if the trust included so-called Crummey withdrawal powers to make gifts to the trust eligible for the annual exclusion. In such a case, the following provisions of IRC § 2632 may change the result.

IRC § 2632(c)(3)(B) provides that “the value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in IRC § 2503(b) (\$13,000) with respect to any transferor and it shall be assumed that powers of appointment held by non-skip persons will not be exercised.

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PLANNING NOTE

This means that if the irrevocable trust contains so-called Crummey withdrawal powers, and those powers are held by a non-skip person such as the children, even if also held by grandchildren, IRC § 2632(c)(3)(B)(iii) and (iv) can get out of the automatic allocation rules, but the remaining Section § 2632 kept this by stating that essentially Crummey withdrawal powers, to the extent they do not exceed \$13,000 per annum, will be ignored thereby bringing it back into a so-called GST trust and thereby resulting in an automatic allocation. The problem here is where the Crummey withdrawal beneficiaries have the right to withdraw greater than \$13,000 attributable to a carryover from the prior year, in which case the trust would not be considered a GST trust and would not be eligible for the automatic allocation.

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- Resolution:

File a gift tax return and either elect in or elect out of a GST treatment.

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Sample Withdrawal Powers:

- (1) From and after the addition by gift of any property to the trust, who's beneficiary shall be entitled to withdraw a pro rata share of the gift for 30 days. Each such beneficiary shall be provided reasonable notice to make this withdrawal.
- (2) Notwithstanding the foregoing, a beneficiary's right to withdraw property from the trust in any one calendar year shall not expire as to more than the greater of \$5,000 or 5% of the aggregate value of the assets out of which or the proceeds of which a beneficiary's withdrawal right may be satisfied. To the extent of such excess, the withdrawal power shall not lapse, but rather shall be continued into the next succeeding calendar year.

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● PLANNING NOTE

This so-called 5 and 5 limitation is derived from Code Section 2514(e), which recognizes the right to withdraw is the equivalent of ownership and failure to exercise the right to withdraw represents a gift back to the trust and therefore would be a gift by the donee beneficiary not eligible for the annual exclusion.

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- Will this cause adverse gift tax consequences to the donee beneficiaries who do not withdraw their funds?

IRC § 2514(e) provides that there would only be a gift by the donee beneficiary with respect to the lapse of the powers during any calendar year only to the extent of the property which could have been appointed by exercise of such lapsed power exceeds in value the greater of the following amounts, \$5,000, or 5% of the aggregate value of the assets out of which, or the proceeds of which the exercise of the lapsed powers could be satisfied.

PLANNING NOTE:

GST exemption will not be deemed allocated until the close of the estate tax inclusion period. IRC § 2642 (f)(2)(4), Regs 26.2632-1(c) (2)

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How do you determine and allocate basis?

Gift Giving Tax Considerations – The Basis Rules

- a) Compare the tax consequences of a step-up in basis attributable to inherited property vs. carryover basis in the case of lifetime gifts.

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1) Basis of property acquired from the decedent.

A. IRC § 1014 provides:

“Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passes from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent’s death by such person be – (1) the fair market value of the property on the date of the decedent’s death.” IRC § 1014(a)(1)

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B. IRC § 1014(b) provides:

“For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

1. 1. Property acquired by bequest, devise, or inheritance, or by the decedent’s estate from the decedent; IRC § 1014(b)(1)
2. 2. Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;” IRC § 1014(b)(2)
3. 3. “Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;”
IRC § 1014(b)(4)

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4. "In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate." IRC § 1014(b)(9)

5. "Property includible in the gross estate of the decedent under section 2044 (relating to certain property for which marital deduction was previously allowed)." IRC § 1014(b)(10)

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C. Exception:

IRC § 1014 prohibits a step-up acquired from a decedent if appreciated property was acquired by the decedent by gift during the one year period ending on the date of the decedent's death and such property is acquired from the decedent (or passes from the decedent to) the donor of such property (or the spouse of such donor). In such a case, the basis of such property in the hands of the donor or donor's spouse shall be the adjusted basis of such property in the hands of the decedent immediately before the death of the decedent. IRC § 1014(e)(1)

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2) Basis of Property Acquired by Gifts and Transfers in Trust §1015 – Carry Over

If property is acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor (or the last preceding owner) by whom it was not acquired by gift, except that if such basis is greater than the fair market value of the property at the time of the gift, then, for the purpose of determining loss, the basis shall be such fair market value.

Example:

	<u>Property</u>	
FMV		\$90,000
AB		\$100,000

*If sold for \$95,000, no gain or loss because the FMV is used to determine loss and no gain since basis is \$100,000

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3) Increased Basis for Gift Taxes Paid

IRC § 1015(b) provides:

“If the property is acquired by gift on or after September 2, 1958, the basis shall be the basis determined under subsection (a) (carryover basis) increased (but not above the fair market value of the property at the time of the gift) by the amount of gift tax paid with respect to such gifts.”

PLANNING NOTE

The Regulations provide that in allocating the gift tax paid to increase the basis of property acquired by gift, the tax adjustment must be allocated pro rata, which seems to prohibit the allocation to any particular asset for the purpose of selling the asset.
1.1015(b)(2)(iii)

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4) Gift Splitting

Gifts may be treated as made one-half by each spouse. Reg. 25.2513-1. A Spouse who consents to split gifts under IRC § 2513 is not considered a transfer for purposes of IRC § 2038 with respect to property actually owned and transferred by the donor.

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5) Holding Period

A. Inherited Property

In the case of property acquired from a decedent (within the meaning of IRC § 1014(b), if the basis of such property in the hands of the person is determined under IRC § 1014 and such property is sold or otherwise disposed of by such person within one year after the decedent's death, then such person shall be considered to have held such property for more than one year. IRC § 1223 (9)

B. Gifted Property

In determining the holding period of property which has been acquired by gift, the holding period of the grantor will be added to the holding period of the donee for purpose of determining gain or loss from the seller's exchange to the extent the donee was required to use the donor's basis as his basis. IRC § 1223 (2)

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PLANNING NOTE

If the fair market value at the time of the gift is used as the donee's basis, such as when property is sold for a loss, the holding period starts the date after the gift is made. IRS Publication 544

57

6) Don't forget the Gallenstein decision

- A. How do you determine the basis of property inherited by a surviving spouse rather than children?

This depends upon how the property was owned on the date of death, but in the case of jointly owned property, if the property was acquired after 1976, one-half of the fair market value of the property is includible in the estate of the first spouse to die so that the surviving spouse would receive a partial step-up equal to that amount includible in the estate of the first spouse to die. This would then be added to one-half of the original cost to determine the surviving spouse's basis. There is a special rule, however, which may be applied in the case of property acquired by a couple before 1977.

58

If the property was acquired before 1977 and is held jointly on the date of the death of the first spouse to die, the full fair market value of the property would be includible in the estate of the first spouse so that the surviving spouse would acquire a "full" step-up in basis. *Gallenstein v. United States*, 91-2 U.S.T.C. ¶160,088 (ED KY 1991), aff'd 975 F.2d 286 (6th Cir. 1992). See also, *Patten*, 96-1 U.S.T.C. ¶160,231 (DC CA 1996) and *Anderson*, 96-2 U.S.T.C. ¶160,235 (DC MD 1996). In both of these cases, the estate tax return was filed incorrectly, but the Tax Court ruled that the amount reported on the decedent's estate tax return was not determinative of basis, rather, basis is equal to the amount that should have been includible had the estate tax return been filed properly.

59

B. Memorandum In Support of Taxpayer's Position

The taxpayer submits that in this case the property obtained a full step-up in basis and the case of *Treat v. Commissioner*, 52 Mass. App. Ct. 208 (2001) does not apply.

In *Treat v. Commissioner*, the Massachusetts Appeals Court declined to follow the general rule of *Gallenstein v. United States*, 575 F.2d 286 (6th Cir. 1992) where the Sixth Circuit Court of Appeals found that, with respect to real estate owned jointly by a husband and wife acquired before 1977, the surviving spouse obtained a step-up in basis equal to the full fair market value of the property on the date of the decedent's death rather than a basis equal to one-half of the fair market value on the date of the decedent's death plus one-half of the taxpayer's original cost.

60

The basis for the ruling by the Sixth Circuit Court of Appeals stems from IRC § 1014(a), which provides that the basis of property acquired from a decedent is equal to the fair market value of the property that is includible in the decedent's estate for federal estate tax purposes. Moreover, as to property owned jointly between a husband and wife, IRC § 2040(b) provides that, at least with respect to property acquired prior to 1977, the surviving joint tenant obtains a so-called full step-up in basis because the property was includible in the estate of the decedent at 100% of its value.

Following the decision in *Gallenstein*, the Massachusetts Appeals Court addressed the basis of property acquired by a surviving spouse in the case of a decedent who died in 1993. In *Treat v. Commissioner*, the Court ruled that, since the Massachusetts estate tax system required that only 50% of the value of the property owned by the decedent and his spouse be includible pursuant to General Laws chapter 65C, §1, the surviving spouse would acquire only a 50% step-up in basis.

61

The taxpayer's position in this case is that the *Treat* case does not apply to the facts of this case inasmuch as General Laws chapter 65C, § 1 became applicable by virtue of the changes in the Massachusetts estate tax for decedents dying on or after January 1, 1997. In this case, the decedent died in 1999.

The decision in *Treat* is based upon General Laws chapter 65C, § 1(d), which is applicable to deaths occurring before January 1, 1997. This section provides:

"Federal Gross Estate, the gross estate, as defined under the Code, except that (1) notwithstanding Section 2035 of the Code, the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has, at any time made a transfer, relinquished the power or exercised or released a general power of appointment, except in case of a bona fide sale for adequate and full consideration in money or money's worth, by trust or otherwise, during the three year period ending with the date of the decedent's death, provided, however, the value of such property or interest therein so transferred or subject to the power so relinquished, exercised or released, exceeds \$10,000 for any person during a calendar year, and (2) notwithstanding Section 2040 of the Code, one-half of the value of any interest in any property shall be included in the gross estate if such interest is held by the decedent and the decedent's spouse as tenants by the entirety or joint tenants with rights of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants.

62

This Section, however, does not apply to the decedents who died on or after January 1, 1997. Under current law, the Massachusetts Estate Tax is based upon the Federal Estate Tax Credit for estate taxes pursuant to IRC § 2011.

For deaths occurring prior to January 1, 1997, Massachusetts followed the general Federal Rules of includibility, subject to the two foregoing exceptions, i.e., in the case of transfers made by a decedent within three years of the date of death and for property owned jointly between a husband and a wife, where the husband and wife were the only owners.

63

For deaths on or after January 1, 1997, no adjustments are made to the federal gross estate to determine the amount of the Massachusetts estate tax, which is equal to the federal estate tax credit for state death taxes, pursuant to IRC § 2011. (The Massachusetts statute was amended again for estates of decedents who died on or after January 1, 2003, in which case the Massachusetts estate tax was decoupled from the federal estate tax as it was modified by the federal Economic Growth & Tax Relief Reconciliation Act of 2001 (EGTRRA). As the Massachusetts estate tax stands today, the Massachusetts estate tax is to be computed pursuant to the provisions of the federal estate tax in effect on December 31, 2000, with the amount of the tax equal to the sum equal to the amount of the credit for state death taxes that would have been allowable to the decedent's estate, as computed under IRC § 2011, as in effect on December 31, 2000.)

64

While it is true that, General Laws chapter 65C, § 1(d) remains on the books, it is no longer applicable to decedents who die on or after January 1, 1997. The instructions to the Massachusetts Estate Tax Return for decedent's dying on or after January 1, 1997, make it clear that this is the result intended.

Since Massachusetts now requires that the Federal Rules of includibility be followed and the Massachusetts estate tax is based upon the exact amount of the state death tax credit allowable, the principles of Gallenstein now apply to determine Massachusetts basis as well as federal basis, since 100% of the property is includible in the estate of the first spouse to die on the facts of this case.

65

As an additional basis for the refund, it should be noted that Massachusetts incorporates federal income tax provisions to determine the basis of property acquired from a decedent, which, under IRC § 1014, defines the basis of property as the fair market value at the time of death. Specifically, General Laws chapter 62, § 6F of the Massachusetts Income Tax Statute, sets forth the method to determining the basis in property. Here, § 6F(b)(2)(C), provides that:

“Notwithstanding subparagraphs (A) and (B), in the case of property acquired from a decedent within the meaning of IRC § 1014 of the Internal Revenue Code, the initial basis of such property shall be determined under Section 1014 of the Code.

66

In Treat, the Court acknowledged the link between the federal basis and Massachusetts basis but, nevertheless, declined to follow the specific language of General Laws chapter 62, § 6F, since, in the Court's opinion, it would lead to an unfair result. This analysis no longer is valid inasmuch as for decedents dying on or after January 1, 1997, full includibility is required in the estate of the first spouse to die under Code Section 2040(b).

For the foregoing reasons, the refund claim should be allowed.

67

C. Don't Forget the Estate of Gwynn – Does Property Have to be Inherited in Order to Obtain a Step-Up in Basis?

Generally, yes, but there are certain exceptions when property was given away during life and the decedent either retained a "life interest" or "life estate" or merely continued to use the property without paying rent. IRC § 2036(a)(1) requires that the fair market value of the property be includible in the decedent's estate for estate tax purposes, even though the property would not be includible for probate purposes. This can actually provide a benefit as long as the value of the property included in the decedent's estate does not exceed either the Massachusetts or federal estate tax thresholds.

68

In Rev. Rul. 70-155 and *Estate of Guynn*, 437 F.2d 1148 (4th Cir. 1971), it was ruled that the transfer by the decedent of property before death was includible in the decedent's estate for estate tax purposes if the donor continued to use the property before death and did not pay fair rent. On the theory that there was an "implied life estate."

69

This theory has been followed recently in the *Estate of Maxwell*, 98 T.C. 39 (1992) in which the decedent had "sold" property to his children before death and had received approximately 50% of the sale proceeds, but continued to live in the property after the purported sale. The decedent's Will forgave the note at death and the decedent was canceling \$20,000 of the note each year. The Tax Court ruled that the full fair market value of the property was includible and that the sale transaction should be ignored under IRC § 2036 using an implied life estate theory. This retained life estate may be avoided if the decedent owned property as a tenant in common with his children within the theory of *Estate of Powell v. Commissioner*, 63 T.C.M. 3192 (1992). See also, *Estate of Wineman*, 79 T.C.M. 2189 (2000).

70

These rules can provide potentially good news to heirs who are selling property after the donor died, but where the property was gifted before death. Usually, the donee's basis is equal to the donor's basis, increased by any gift taxes paid under IRC § 1015.

71

How long do we have to worry (statute of limitations)?

Valuations and Statute of Limitations Issues

An understanding of how both the gift tax statute of limitations and predeath gifts affect the estate tax computation is important. The value of any gift for gift tax purposes is the fair market value of the property transferred as of the date of the transfer. There is no alternate valuation date. Upon death, the decedent's estate tax return must report the total value of the decedent's lifetime "taxable gifts" by adding this amount to the decedent's taxable estate. I.R.C. § 2001(b). The term "taxable gifts" generally means the total amount of gifts made during the calendar year in excess of the annual exclusion, less any charitable deductions.

72

(a) Gifts Made Prior to August 6, 1997

For gifts made prior to August 6, 1997, the IRS was permitted to revalue a lifetime gift for purposes of computing either the decedent's taxable estate or the decedent's gift tax with respect to returns filed for years following the date of the actual gift, even if it appeared that the statute of limitations had expired.

If a gift tax return had been filed and a gift tax paid on the gift, the IRS could not revalue the gift for the year on the return, provided that the applicable period of limitation on assessment (usually three years) had expired. If, however, a gift tax return was filed but no gift tax was paid on the gift, the IRS was permitted to adjust the value of the prior gift on any gift tax return reported so that it was attributable to subsequent gifts in order to increase the gift tax rate on the subsequent gift. I.R.C. § 2504(c). If the period of limitations on assessment had expired and a tax was actually paid, the IRS was not permitted to revalue the prior gift in connection with a subsequent gift tax filing. It is important to note that using the unified credit was not equivalent to paying the tax. Rev. Rul. 84-11, 1984-1 C.B. 201.

73

Notwithstanding these rules as applied to gift tax returns, in connection with federal estate tax returns the IRS was permitted to revalue any prior gift for purposes of determining the rate of the estate tax even if the decedent paid gift taxes and the statute of limitations had expired. See Estate of Smith v. Comm'r, 94 T.C. 872 (1990), acq. 1990-2 C.B. 1; Evanson v. United States, 30 F.3d 960 (8th Cir. 1994); Levin v. Comm'r, 986 F.2d 91 (4th Cir. 1993). The estate, however, is entitled to a credit for the gift taxes that would have been paid had the donor reported the adjusted gift. This includes using up any unused unified credit attributable to the prior gift. See Evanson v. United States, 30 F.3d 960 (8th Cir. 1994). The estate, however, will not be liable for penalties and interest attributable to the erroneous valuation on the earlier gift tax returns. Good recordkeeping is critical.

74

(b) Gifts Made on or After August 6, 1997

These rules were changed by the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (1997), for gifts made on or after August 6, 1997.

As codified in I.R.C. §§ 2001(f) and 2504(c), the act gives the taxpayer a workable statute of limitations. As to the revaluing of prior taxable gifts on the estate tax return, I.R.C. § 2001(f) provides that, if the value of an item is disclosed on a gift tax return (or in a statement attached to the return) in a manner that is adequate to apprise the IRS of the nature of such item and the time, under I.R.C. § 6501, within which an additional gift tax may be assessed has expired, the value of the item as reported shall be final.

75

As to the revaluing of prior taxable gifts on the gift tax return, I.R.C. § 2504(c) provides that, if the time has expired under I.R.C. § 6501 within which a gift tax may be assessed on either the transfer of property during a preceding calendar year or an increase in taxable gifts required under I.R.C. § 2701(d), the value will be final for purposes of computing the gift tax.

The gift tax statute of limitations also was amended to require "adequate disclosure" as follows:

If any gift of property the value of which (or any increase in taxable gifts required under section 2701(d) which) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item which is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

I.R.C. § 6501(c)(9).

76

The act also provided taxpayers with a judicial remedy, allowing controversies over the valuation of gifts to be submitted to the tax court through the filing of a declaratory judgment action. I.R.C. § 7477.

For amended Treasury Department regulations on gift valuation, disclosure, and statute of limitations issues, see T.D. 8845, 64 Fed. Reg. 67767 (Dec. 3, 1999), corrected, 65 Fed. Reg. 1059 (Jan. 7, 2000).

Practice Note

You should be aware that if the decedent made a transfer within three years of the date of death and a gift tax was paid, notwithstanding the fact that the transferred property is excluded, the amount of the *gift tax paid* on the transfer must be included on Schedule G. See I.R.C. § 2035(c).

77

How do you report the transaction on a gift tax return?

Case 1:

FMV of S-Corporation \$16,000,000 (based on \$3,000,000 in taxable income per year)

Value of Non-Voting Shares

\$16,000,000 x 90% x 65% =	\$9,360,000
Cash Gift	<u>+ \$880,000</u>
Total Gifts	\$10,240,000

- See attached Gift Tax Return – Form 709
- See attached Income Tax Return – Form 1041

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Case Study One

Form **709**

United States Gift (and Generation-Skipping Transfer) Tax Return

OMB No. 1545-0047

Department of the Treasury
Internal Revenue Service

Information about Form 709 and its separate Instructions is at www.irs.gov/form709.

(For gifts made during calendar year 2012)

See Instructions.

2012

1 Donor's first name and middle initial John G.	2 Donor's last name Public	3 Donor's social security number 000-00-0000
4 Address (number, street, and apartment number) 123 Tremont Street		5 Legal residence (see Instructions) Sullois, MA
6 City, state, and ZIP or postal code Boston, MA 02110		7 Citizenship (see Instructions) United States

Part 1—General Information

8 If the donor died during the year, check here and enter date of death _____

9 If you extended the time to file this Form 709, check here

10 Enter the total number of donees listed on Schedule A. Count each person only once. **1**

11a Have you (the donor) previously filed a Form 709 (or 709-A) for any other year? If "No," skip line 11b

b Has your address changed since you last filed Form 709 (or 709-A)?

12 Gifts by husband or wife to third parties. Do you consent to have the gifts (including generation-skipping transfers) made by you and by your spouse to third parties during the calendar year considered as made one-half by each of you? (see Instructions.) (If the answer is "Yes," the following information must be furnished and your spouse must sign the consent shown below. If the answer is "No," skip lines 13–18.)

13 Name of consenting spouse _____ **14** SSN _____

15 Were you married to one another during the entire calendar year? (see Instructions)

16 If 15 is "No," check whether married divorced or widowed/deceased, and give date (see Instructions) _____

17 Will a gift tax return for this year be filed by your spouse? (If "Yes," mail both returns in the same envelope.)

18 Consent of Spouse. I consent to have the gifts (and generation-skipping transfers) made by me and by my spouse to third parties during the calendar year considered as made one-half by each of us. We are both aware of the joint and several liability for tax created by the execution of this consent.

Consenting spouse's signature _____ Date _____

19 Have you applied a DSUE amount received from a predeceased spouse to a gift or gifts reported on this or a previous Form 709? If "Yes," complete Schedule G

Part 2—Tax Computation

1 Enter the amount from Schedule A, Part 4, line 11	1	\$,120,000
2 Enter the amount from Schedule B, line 3	2	
3 Total taxable gifts. Add lines 1 and 2	3	\$,120,000
4 Tax computed on amount on line 3 (see Table for Computing Gift Tax in Instructions)	4	1,772,000
5 Tax computed on amount on line 2 (see Table for Computing Gift Tax in Instructions)	5	
6 Balance. Subtract line 5 from line 4	6	1,772,000
7 Applicable credit amount. If donor has DSUE amount from predeceased spouse(s), enter amount from Schedule C, line 5; otherwise, see Instructions	7	
8 Enter the applicable credit against tax allowable for all prior periods (from Sch. B, line 1, col. C)	8	
9 Balance. Subtract line 8 from line 7. Do not enter less than zero	9	1,772,000
10 Enter 20% (.20) of the amount allowed as a specific exemption for gifts made after September 8, 1976, and before January 1, 1977 (see Instructions)	10	
11 Balance. Subtract line 10 from line 9. Do not enter less than zero	11	1,772,000
12 Applicable credit. Enter the smaller of line 8 or line 11	12	1,772,000
13 Credit for foreign gift taxes (see Instructions)	13	
14 Total credits. Add lines 12 and 13	14	
15 Balance. Subtract line 14 from line 6. Do not enter less than zero	15	
16 Generation-skipping transfer taxes (from Schedule D, Part 3, col. H, Total)	16	
17 Total tax. Add lines 15 and 16	17	0
18 Gift and generation-skipping transfer taxes prepaid with extension of time to file	18	
19 If line 18 is less than line 17, enter balance due (see Instructions)	19	0
20 If line 18 is greater than line 17, enter amount to be refunded	20	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than agent) based on all information of which preparer has any knowledge.

Signature of donor _____ Date _____

Print/type preparer's name **Preparer's signature** **Date** **Preparer's firm name** **PTIN**

Leo J. Cushing, Esq. _____ **04-28-12** **Cushing & Dolan, P.C.** **04-28-1280**

Firm's address **375 Totten Pond Road, Ste. 200, Waltham, MA 02453** **Phone no.** **617-523-1556**

SCHEDULE A Computation of Taxable Gifts (including transfers in trust) (see instructions)

A Does the value of any item listed on Schedule A reflect any valuation discount? If "Yes," attach explanation. Yes No

B Check here if you elect under section 529(c)(2)(B) to treat any transfers made this year to a qualified tuition program as made ratably over a 5-year period beginning this year. See instructions. Attach explanation.

Part 1 - Gifts Subject Only to Gift Tax. Gifts less political organization, medical, and educational exclusions. (see instructions)

A Item number	B Donor's name and address Relationship to donor (if any) Description of gift If the gift was of securities, give CUSIP no. If closely held entity, give EIN	C Donor's adjusted basis of gift	D Date of gift	E Value at date of gift	F For split gifts, enter 1/2 of column F	G Net transfer (subtract col. G from col. F)

Gifts made by spouse - complete only if you are splitting gifts with your spouse and he/she also made gifts.

Part 2 - Direct Skips. Gifts that are direct skips and are subject to both gift tax and generation-skipping transfer tax. You must list the gifts in chronological order.

A Item number	B Donor's name and address Relationship to donor (if any) Description of gift If the gift was of securities, give CUSIP no. If closely held entity, give EIN	C 2632(b) election out	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)

Gifts made by spouse - complete only if you are splitting gifts with your spouse and he/she also made gifts.

Part 3 - Indirect Skips. Gifts to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

A Item number	B Trustee's name and address Relationship to donor (if any) Description of gift If the gift was of securities, give CUSIP no. If closely held entity, give EIN	C 2632(c) election	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
1	JANE Q. PUBLIC IRREVOCABLE TRUST, JANE Q. PUBLIC, TRUSTEE 04-000000						

Gifts made by spouse - complete only if you are splitting gifts with your spouse and he/she also made gifts.

Total of Part 1. Add amounts from Part 1, column H. **5,120,000.**

Total of Part 2. Add amounts from Part 2, column H.

Total of Part 3. Add amounts from Part 3, column H.

If more space is needed, attach additional sheets of same size.

Part 3 - Indirect Skips. Gifts to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

A Item number	B Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2032(c) election	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
2	123 TREMONT STREET BOSTON, MA 02116 TRUST 450 SHARES OF NONVOTING STOCK OF PUBLIC, INC.			12/31/12	4,680,000.		4,680,000.
	JANE Q. PUBLIC IRREVOCABLE TRUST, JANE Q. PUBLIC, TRUSTEE 04-000000 123 TREMONT STREET BOSTON, MA 02116 TRUST CASH		440,000.	12/31/12	440,000.		440,000.

Total of column H **5,120,000.**

Part 4 - Taxable Gift Reconciliation

1	Total value of gifts of donor. Add totals from column H of Parts 1, 2, and 3	1	5,120,000.
2	Total annual exclusions for gifts listed on line 1 (see instructions)	2	0.
3	Total included amount of gifts. Subtract line 2 from line 1	3	5,120,000.
Deductions (see instructions)			
4	Gifts of interests to spouse for which a marital deduction will be claimed, based on item numbers _____ of Schedule A	4	
5	Exclusions attributable to gifts on line 4	5	
6	Marital deduction. Subtract line 5 from line 4	6	
7	Charitable deduction, based on item nos. _____ less exclusions	7	
8	Total deductions. Add lines 6 and 7	8	5,120,000.
9	Subtract line 8 from line 3	9	
10	Generation-skipping transfer taxes payable with this Form 709 (from Schedule C, Part 3, col. H, Total)	10	
11	Taxable gifts. Add lines 9 and 10. Enter here and on page 1, Part 2 - Tax Computation, line 1	11	5,120,000.

Terminable Interest (QTIP) Marital Deduction. (See Instructions for Schedule A, Part 4, line 4.)

If a trust (or other property) meets the requirements of qualified terminable interest property under section 2523(f), and:

- a. The trust (or other property) is listed on Schedule A, and
- b. The value of the trust (or other property) is entered in whole or in part as a deduction on Schedule A, Part 4, line 4, then the donor shall be deemed to have made an election to have such trust (or other property) treated as qualified terminable interest property under section 2523(f).

If less than the entire value of the trust (or other property) that the donor has included in Parts 1 and 3 of Schedule A is entered as a deduction on line 4, the donor shall be considered to have made an election only as to a fraction of the trust (or other property). The numerator of this fraction is equal to the amount of the trust (or other property) deducted on Schedule A, Part 4, line 6. The denominator is equal to the total value of the trust (or other property) listed in Parts 1 and 3 of Schedule A.

If you make the QTIP election, the terminable interest property involved will be included in your spouse's gross estate upon his or her death (section 2044). See instructions for line 4 of Schedule A. If your spouse disposes (by gift or otherwise) of all or part of the qualifying life income interest, he or she will be considered to have made a transfer of the entire property that is subject to the gift tax. See *Transfer of Certain Life Estates Received From Spouse* in the instructions.

12 Election Out of QTIP Treatment of Annuities

Check here if you elect under section 2523(f)(6) not to treat as qualified terminable interest property any joint and survivor annuities that are reported on Schedule A and would otherwise be treated as qualified terminable interest property under section 2523(f). See instructions. Enter the item numbers from Schedule A for the annuities for which you are making this election

SCHEDULE B Gifts From Prior Periods

If you answered "Yes" on line 11a of page 1, Part 1, see the instructions for completing Schedule B. If you answered "No," skip to the Tax Computation on page 1 (or Schedule C, if applicable). See instructions for recalculation of the column C amounts. Attach calculations.

A Calendar year or calendar quarter (see instructions)	B Internal Revenue office where prior return was filed	C Amount of unified credit against gift tax for periods after December 31, 1976	D Amount of specific exemption for prior periods ending before January 1, 1977	E Amount of taxable gifts
1 Totals for prior periods				1
2 Amount, if any, by which total specific exemption, line 1, column D is more than \$30,000				2
3 Total amount of taxable gifts for prior periods. Add amount on line 1, column E and amount, if any, on line 2. Enter here and on page 1, Part 2 - Tax Computation, line 2				3

(If more space is needed, attach additional sheets of same size.)

SCHEDULE C Deceased Spouse Unused Exclusion (DSUE) Amount

Provide the following information to determine the DSUE amount and applicable credit received from prior spouses. Complete Schedule A before beginning Schedule C.

A Name of Deceased Spouse (date of death after December 31, 2010 only)	B Date of Death	C Portability Election Made?		D If "Yes," DSUE Amount Received from Spouse	E DSUE Amount Applied by Donor to Lifetime Gifts (list current and prior gifts)	F Date of Gift(s) (enter as mm/dd/yyyy for Part 1 and as yyyy for Part 2)	G RESERVED
		Yes	No				
Part 1—DSUE RECEIVED FROM LAST DECEASED SPOUSE							
Part 2—DSUE RECEIVED FROM PREDECEASED SPOUSE(S)							
TOTAL (for all DSUE amounts applied for Part 1 and Part 2)							

1	Donor's basic exclusion amount (see instructions)	1	
2	Total from column E, Parts 1 and 2	2	
3	Reserved	3	
4	Add lines 1 and 2	4	
5	Applicable credit on amount in line 4 (See Table for Computing Gift Tax in the Instructions). Enter here and on line 7, Part 2—Tax Computation	5	
6	Reserved	6	
7	Reserved	7	
8	Reserved	8	
9	Reserved	9	
10	Reserved	10	

SCHEDULE D Computation of Generation-Skipping Transfer Tax

Note. Enter values direct skips that are completely excluded by the GST exemption must still be fully reported (including value and exemptions claimed) on Schedule D.

Part 1—Generation-Skipping Transfers

A Item No. (from Schedule A, Part 2, col. A)	B Value (from Schedule A, Part 2, col. H)	C Nontaxable Portion of Transfer	D Net Taxable Gift (from col. C minus col. B)
1			
Gifts made by spouse (for gift splitting only)			

(If more space is needed, attach additional statements.)

Form 709 (2012)

Part 2—GST Exemption Reconciliation (Section 2631) and Section 2652(a)(3) Election

Check here If you are making a section 2652(a)(3) (special QTIP) election (see Instructions)

Enter the item numbers from Schedule A of the gifts for which you are making this election ▶

1	Maximum allowable exemption (see Instructions)	5,120,000
2	Total exemption used for periods before filing this return	
3	Exemption available for this return. Subtract line 2 from line 1	5,120,000
4	Exemption claimed on this return from Part 3, column C total, below	
5	Automatic allocation of exemption to transfers reported on Schedule A, Part 3 (see Instructions)	
6	Exemption allocated to transfers not shown on line 4 or 5, above. You must attach a "Notice of Allocation," (see Instructions) SEE STATEMENT 1	5,120,000
7	Add lines 4, 5, and 6	5,120,000
8	Exemption available for future transfers: Subtract line 7 from line 3	

Part 3—Tax Computation

A Item No. (from Schedule D, Part 1)	B Net Transfer (from Schedule D, Part 1, col. D)	C GST Exemption Allocated	D Divide col. C by col. B	E Inclusion Ratio (subtract col. D from 1.000)	F Maximum Estate Tax Rate	G Applicable Rate (multiply col. E by col. F)	H Generation-Skipping Transfer Tax (multiply col. D by col. G)
1					35% (.35)		
					35% (.35)		
					35% (.35)		
					35% (.35)		
					35% (.35)		
Gifts made by spouse (for gift splitting only)					35% (.35)		
					35% (.35)		
					35% (.35)		
					35% (.35)		
					35% (.35)		
Total exemption claimed. Enter here and on Part 2, line 4, above. May not exceed Part 2, line 3, above		Total generation-skipping transfer tax. Enter here; on page 3, Schedule A, Part 4, line 10; and on page 1, Part 2—Tax Computation, line 16					

(If more space is needed, attach additional statements.)

JOHN Q. PUBLIC

000-00-0000

FORM 709

NOTICE OF ALLOCATION

STATEMENT 1

TRANSFER 1

TRUST IDENTIFICATION

ITEM NUMBER

JANE Q. PUBLIC IRREVOCABLE TRUST,
JANE Q. PUBLIC, TRUSTEE
123 TREMONT STREET
BOSTON, MA 02116
04-0000000

SCH A, PART 3, ITEM 1

VALUE OF GIFT INCLUSION RATIO
 AFTER ALLOCATION

GST EXEMPTION
ALLOCATED TO GIFT

5,120,000.

.000

5,120,000.*

TOTAL GST EXEMPTION ALLOCATED
(TO FORM 709, SCHEDULE C, PART 2, LINE 6)

5,120,000.

* SEE STATEMENT OF GST EXEMPTION ALLOCATION

FORM 709

STATEMENT OF GST EXEMPTION ALLOCATION

STATEMENT 2

TRANSFER 1

\$5,120,000 OR OTHER SUCH AMOUNT AS IS NECESSARY TO HAVE AN INCLUSION RATIO
OF ZERO AFTER FINAL DETERMINATION.

STATEMENT(S) 1, 2

Case Study Two

Form **709**

United States Gift (and Generation-Skipping Transfer) Tax Return

OMB No. 1545-0047

Information about Form 709 and its separate instructions is at www.irs.gov/form709.

2012

Department of the Treasury
Internal Revenue Service

(For gifts made during calendar year 2012)
See instructions.

1 Donor's first name and middle initial John G.		2 Donor's last name Public		3 Donor's Social Security number 000-00-0000	
4 Address (number, street, and apartment number) 123 Tremont Street				5 Legal residence (state)	
6 City, state, and ZIP or postal code Boston, MA 02110				7 State (if you are a resident of a U.S. possession) United States	

Part 1 - General Information

8 If the donor died during the year, check here and enter date of death: _____

9 If you extended the time to file this Form 709, check here

10 Enter the total number of donees listed on Schedule A. Count each person only once.

11a Have you (the donor) previously filed a Form 709 (or 709-A) for any other year? If "No," skip line 11b

11b Has your address changed since you last filed Form 709 (or 709-A)?

12 Gifts by husband or wife to third parties. Do you consent to have the gifts (including generation-skipping transfers) made by you and by your spouse to third parties during the calendar year considered as made one-half by each of you? (see instructions.) (If the answer is "Yes," the following information must be furnished and your spouse must sign the consent shown below. If the answer is "No," skip lines 13-16.)

13 Name of consenting spouse	14 SSN	Yes	No
15 Were you married to one another during the entire calendar year? (see instructions)			
16 If 15 is "No," check whether <input type="checkbox"/> married <input type="checkbox"/> divorced or <input type="checkbox"/> widowed/separated, and give date (see instructions)			
17 Will a gift tax return for this year be filed by your spouse? (If "Yes," mail both returns in the same envelope.)		<input checked="" type="checkbox"/>	

18 Consent of Spouse. I consent to have the gifts (and generation-skipping transfers) made by me and by my spouse to third parties during the calendar year considered as made one-half by each of us. We are both aware of the joint and several liability for tax created by the execution of this consent.

Consenting spouse's signature _____ Date _____

19 Have you applied a DSUE amount received from a predeceased spouse to a gift or gifts reported on this or a previous Form 709? If "Yes," complete Schedule C

Part 2 - Tax Computation

1	Enter the amount from Schedule A, Part 4, line 11	1	5,120,000
2	Enter the amount from Schedule B, line 3	2	
3	Total taxable gifts. Add lines 1 and 2	3	5,120,000
4	Tax computed on amount on line 3 (see Table for Computing Gift Tax in Instructions)	4	1,772,000
5	Tax computed on amount on line 2 (see Table for Computing Gift Tax in Instructions)	5	
6	Balance. Subtract line 5 from line 4	6	1,772,000
7	Applicable credit amount. If donor has DSUE amount from predeceased spouse(s), enter amount from Schedule C, line 5; otherwise, see instructions	7	
8	Enter the applicable credit against tax allowable for all prior periods (from Sch. B, line 1, col. C)	8	
9	Balance. Subtract line 8 from line 7. Do not enter less than zero	9	1,772,000
10	Enter 20% (.20) of the amount allowed as a specific exemption for gifts made after September 8, 1978, and before January 1, 1977 (see instructions)	10	
11	Balance. Subtract line 10 from line 9. Do not enter less than zero	11	1,772,000
12	Applicable credit. Enter the smaller of line 6 or line 11	12	1,772,000
13	Credit for foreign gift taxes (see instructions)	13	
14	Total credits. Add lines 12 and 13	14	
15	Balance. Subtract line 14 from line 6. Do not enter less than zero	15	
16	Generation-skipping transfer taxes (from Schedule D, Part 3, col. H, Total)	16	
17	Total tax. Add lines 15 and 16	17	0
18	Gift and generation-skipping transfer taxes prepaid with extension of time to file	18	
19	If line 18 is less than line 17, enter balance due (see instructions)	19	0
20	If line 18 is greater than line 17, enter amount to be refunded	20	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than donor) is based on all information of which preparer has any knowledge.

Signature of donor _____ Date _____

Paid Preparer Use Only

Print/Type preparer's name Leo J. Cushman, Esq.	Preparer's signature	Date	Spouse's filing status (if any)	PIN
Firm's name Cushing & Dolan, P.C.			Firm's EIN 04-2671360	
Firm's address 375 Totten Pond Road, Ste. 200, Waltham, MA, 02451			Preparer's phone 617-523-1555	

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see the Instructions for this form.

000-00-0000

Form 709 (2011) JOHN Q. PUBLIC

SCHEDULE A Computation of Taxable Gifts (including transfers in trust) (see instructions)

A. Does the value of any item listed on Schedule A reflect any valuation discount? If "Yes," attach explanation. Yes No

B. Check here if you elect under section 329(c)(2)(B) to treat any transfers made this year to a qualified tuition program as made ratably over a 5-year period beginning this year. See instructions. Attach explanation.

Part 1 - Gifts Subject Only to Gift Tax. Gifts less political organization, medical, and educational exclusions. (see instructions)

A Item number	B Donor's name and address Relationship to donee (if any) Description of gift If the gift was of securities, give CUSIP no. If closely held entity, give EIN	C Donor's adjusted basis of gift	D Date of gift	E Value at date of gift	F For split gifts, enter 1/2 of column F	G Net transfer (subtract col. G from col. F)
Gifts made by spouse - complete only if you are splitting gifts with your spouse and he/she also made gifts.						

Part 2 - Direct Skips. Gifts that are direct skips and are subject to both gift tax and generation-skipping transfer tax. You must list the gifts in chronological order.

A Item number	B Donee's name and address Relationship to donor (if any) Description of gift If the gift was of securities, give CUSIP no. If closely held entity, give EIN	C 2632(b) election out	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
Gifts made by spouse - complete only if you are splitting gifts with your spouse and he/she also made gifts.							

Part 3 - Indirect Skips. Gifts to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

A Item number	B Donee's name and address Relationship to donor (if any) Description of gift If the gift was of securities, give CUSIP no. If closely held entity, give EIN	C 2632(c) election	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
1	JOHN Q. PUBLIC IRREVOCABLE TRUST. LEO J. CUSHING, TRUSTEE 04-000000						
Gifts made by spouse - complete only if you are splitting gifts with your spouse and he/she also made gifts.							
Total of Part 3. Add amounts from Part 3, column H.							5,250,000.

(If more space is needed, attach additional sheets of same size.)

Form 709 (2011) JOHN O. PUBLIC
SCHEDULE A, PART 3 CONTINUATION SHEET
 000-00-0000

A Item number	B Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2532(c) election	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
	123 TREMONT STREET BOSTON, MA 02116 TRUST LOT AND BUILDING LOCATED AT 1 CLIFF'S BLUFF DRIVE, NANTUCKET, MASSACHUSETTS. SEE ATTACHED APPRAISAL.		2,000,000.	12/31/12	5,250,000.		5,250,000.

Total of column H **▲ 5,250,000.**
 Form 709 (2011)

Form 709 (2012)

Part 2—GST Exemption Reconciliation (Section 2631) and Section 2652(n)(3) Election

Check here If you are making a section 2652(n)(3) (special QTIP) election (see instructions)

Enter the item numbers from Schedule A of the gifts for which you are making this election ▶

1	Maximum allowable exemption (see instructions)	5,120,000
2	Total exemption used for periods before filing this return	
3	Exemption available for this return. Subtract line 2 from line 1	5,120,000
4	Exemption claimed on this return from Part 3, column C total, below	
5	Automatic allocation of exemption to transfers reported on Schedule A, Part 3 (see instructions)	
6	Exemption allocated to transfers not shown on line 4 or 5, above. You must attach a "Notice of Allocation" (see instructions) . . . SEE STATEMENT 1.	5,120,000
7	Add lines 4, 5, and 6	5,120,000
8	Exemption available for future transfers. Subtract line 7 from line 3	

Part 3—Tax Computation

A Item No. (from Schedule D, Part 1)	B Net Transfer (from Schedule D, Part 1, col. D)	C GST Exemption Allocated	D Divide col. C by col. B	E Inclusion Ratio (Subtract col. D from 1.000)	F Maximum Estate Tax Rate	G Applicable Rate (multiply col. E by col. F)	H Generation-Skipping Transfer Tax (multiply col. B by col. G)
1					35% (.35)		
					35% (.35)		
					35% (.35)		
					35% (.35)		
					35% (.35)		
Gifts made by spouse (for gift splitting only)					35% (.35)		
					35% (.35)		
					35% (.35)		
					35% (.35)		
					35% (.35)		
Total exemption claimed. Enter here and on Part 2, line 4, above. May not exceed Part 2, line 3, above				Total generation-skipping transfer tax. Enter here; on page 3, Schedule A, Part 4, line 10; and on page 3, Part 2—Tax Computation, line 16			

(If more space is needed, attach additional statements.)

JOHN Q. PUBLIC

000-00-0000

FORM 709

NOTICE OF ALLOCATION

STATEMENT 1

TRANSFER 1

TRUST IDENTIFICATION

ITEM NUMBER

JOHN Q. PUBLIC IRREVOCABLE TRUST.
LEO J. CUSHING, TRUSTEE
123 TREMONT STREET
BOSTON, MA 02116
04-0000000

SCH A, PART 3, ITEM 1

VALUE OF GIFT	INCLUSION RATIO AFTER ALLOCATION	GST EXEMPTION ALLOCATED TO GIFT
5,120,000.	.000	5,120,000.*

TOTAL GST EXEMPTION ALLOCATED
(TO FORM 709, SCHEDULE C, PART 2, LINE 6)

5,120,000.

* SEE STATEMENT OF GST EXEMPTION ALLOCATION

FORM 709

STATEMENT OF GST EXEMPTION ALLOCATION

STATEMENT 2

TRANSFER 1

\$5,120,000 OR OTHER SUCH AMOUNT AS IS NECESSARY TO HAVE AN INCLUSION RATIO OF ZERO AFTER FINAL DETERMINATION. SAID GST EXEMPTION IS BEING ALLOCATED TO THE SHARE ESTABLISHED BY THE TRUST AS THE EXEMPT SHARE AND NOT TO THE SHARE ESTABLISHED BY THE TRUST AS THE NON-EXEMPT SHARE.

FORM 1041

For calendar year 2011 or fiscal year beginning 2011 and ending

A Check all that apply:
 Decedent's estate
 Simple trust
 Complex trust
 Qualified disability trust
 ESDT (S puriton only)
 Grantor type trust
 Bankruptcy estate-Ch. 7
 Bankruptcy estate-Ch. 11
 Pooled income fund

B Number of Schedules K-1 attached **F Check applicable boxes:** Initial return Final return Amended return Change in fiduciary Change in fiduciary's name

C Employer identification number 04-0000000
D Date entity created
E Nonexempt charitable and split-interest trusts, check applicable box(es), see instructions.
 Described in sec. 4947(a)(1)
 Described in sec. 4947(a)(2)
 Change in trust's name
 Change in fiduciary's address

Name of estate or trust (if a grantor type trust, see the instructions): JANE Q. PUBLIC IRREVOCABLE TRUST
Name and title of fiduciary: JANE Q. PUBLIC,
Address: 123 TREMONT STREET, BOSTON, MA

Income	1	Interest income		1
	2a	Total ordinary dividends		2a
	2b	Qualified dividends allocable to: (1) Beneficiaries (2) Estate or trust		2b
	3	Business income or (loss). Attach Schedule C or C-EZ (Form 1040)		3
	4	Capital gain or (loss). Attach Schedule D (Form 1041)		4
	5	Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040)		5
	6	Form income or (loss). Attach Schedule F (Form 1040)		6
	7	Ordinary gain or (loss). Attach Form 4797		7
	8	Other income. List type and amount	"UNDER THE TERMS OF THE TRUST INSTRUMENT, THIS IS A GRANTOR TRUST. IN ACCORDANCE WITH SECTIONS 671-678 IRC, 1986, ALL INCOME IS TAXABLE TO THE GRANTOR. STATEMENTS OF INCOME, DEDUCTIONS AND CREDITS ARE ATTACHED."	8
9	Total income. Combine lines 1, 2a, and 3 through 8		9	
Deductions	10	Interest. Check if Form 4952 is attached		10
	11	Taxes		11
	12	Fiduciary fees		12
	13	Charitable deduction (from Schedule A, line 7)		13
	14	Attorney, accountant, and return preparer fees		14
	15a	Other deductions not subject to the 2% floor (attach schedule)		15a
	15b	Allowable miscellaneous itemized deductions subject to the 2% floor		15b
	16	Add lines 10 through 15b		16
	17	Adjusted total income or (loss). Subtract line 16 from line 9	17	17
	18	Income distribution deduction (from Schedule B, line 15). Attach Schedules K-1 (Form 1041)		18
Tax and Payments	19	Estate tax deduction including certain generation-skipping taxes (attach computation)		19
	20	Exemption		20
	21	Add lines 18 through 20		21
	22	Taxable income. Subtract line 21 from line 17. If a loss, see instructions		22
	23	Total tax (from Schedule G, line 7)		23
	24a	Payments: a 2011 estimated tax payments and amount applied from 2010 return		24a
	24b	Estimated tax payments allocable to beneficiaries (from Form 1041-T)		24b
	24c	Subtract line 24b from line 24a		24c
	24d	Tax paid with Form 7094 (see instructions)		24d
	24e	Federal income tax withheld. If any is from Form(s) 1099, check <input type="checkbox"/> Other payments: Form 2439 ; Form 4138 ; Total		24e
25	Total payments. Add lines 24c through 24e, and 24d		25	
26	Estimated tax penalty (see instructions)		26	
27	Tax due. If line 25 is smaller than the total of lines 23 and 26, enter amount owed		27	
28	Overpayment. If line 25 is larger than the total of lines 23 and 26, enter amount overpaid		28	
29	Amount of line 28 to be: a Credited to 2012 estimated tax b Refunded		29	

Sign Here
 Signature of fiduciary or other representative: _____
 Date: _____
 Signature of preparer: _____
 Date: _____
 May the IRS discuss this return with the preparer shown below (see sec. 6011)? Yes No

Paid Preparer Use Only

Print/Type preparer's name: _____ Preparer's signature: _____ Date: _____ Check if self-employed PIN: _____

Firm's name: CUSHING & DOLAN, P.C. Firm's EIN: 04-2871360
 Firm's address: 375 TOTTEN POND ROAD, SUITE 200 WALTHAM, MA 02451 Phone no.: 617-523-1555

Schedule A Charitable Deduction. Do not complete for a simple trust or a pooled income fund.

1	Amounts paid or permanently set aside for charitable purposes from gross income (see instructions)	1
2	Tax-exempt income allocable to charitable contributions (see instructions)	2
3	Subtract line 2 from line 1	3
4	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes	4
5	Add lines 3 and 4	5
6	Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes (see instructions)	6
7	Charitable deduction. Subtract line 6 from line 5. Enter here and on page 1, line 13	7

Schedule B Income Distribution Deduction

1	Adjusted total income (see instructions)	1
2	Adjusted tax-exempt interest	2
3	Total net gain from Schedule D (Form 1041), line 15, column (1) (see instructions)	3
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion)	4
5	Capital gains for the tax year included on Schedule A, line 1 (see instructions)	5
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number	6
7	Distributable net income. Combine lines 1 through 6. If zero or less, enter -0-	7
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law	8
9	Income required to be distributed currently	9
10	Other amounts paid, credited, or otherwise required to be distributed	10
11	Total distributions. Add lines 9 and 10. If greater than line 8, see instructions	11
12	Enter the amount of tax-exempt income included on line 11	12
13	Tentative income distribution deduction. Subtract line 12 from line 11	13
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-	14
15	Income distribution deduction. Enter the smaller of line 13 or line 14 here and on page 1, line 18	15

Schedule G Tax Computation (see instructions)

1	Tax: a Tax on taxable income (see instructions)	1a
	b Tax on lump-sum distributions. Attach Form 4972	1b
	c Alternative minimum tax (from Schedule I (Form 1041), line 56)	1c
	d Total. Add lines 1a through 1c	1d
2a	Foreign tax credit. Attach Form 1116	2a
b	General business credit. Attach Form 3800	2b
c	Credit for prior year minimum tax. Attach Form 8801	2c
d	Bond credits. Attach Form 8912	2d
3	Total credits. Add lines 2a through 2d	3
4	Subtract line 3 from line 1d. If zero or less, enter -0-	4
5	Recapture taxes. Check if from: <input type="checkbox"/> Form 4255 <input type="checkbox"/> Form 8011	5
6	Household employment taxes. Attach Schedule H (Form 1040)	6
7	Total tax. Add lines 4 through 6. Enter here and on page 1, line 23	7

Other Information

	Yes	No
1		X
2		X
3		X
4		X
5		X
6	<input type="checkbox"/>	<input type="checkbox"/>
7	<input type="checkbox"/>	<input type="checkbox"/>
8		X
9		X

110502
01-03-12

CUSHING & DOLAN, P.C.
375 TOTTEN POND ROAD, SUITE 200
WALTHAM, MA 02451

JANUARY 22, 2013

JOHN Q PUBLIC
123 TREMONT STREET
BOSTON, MA

RE: JANE Q. PUBLIC IRREVOCABLE TRUST

DEAR GRANTOR:

ATTACHED IS YOUR COPY OF THE 2011 FIDUCIARY FORM 1041 GRANTOR LETTER. THIS GRANTOR LETTER SUMMARIZES YOUR INFORMATION FROM THE TRUST. THIS INFORMATION HAS BEEN PROVIDED TO THE INTERNAL REVENUE SERVICE WITH THE U.S. INCOME TAX RETURN FOR ESTATES AND TRUSTS.

THE INFORMATION PROVIDED ON THIS GRANTOR LETTER SHOULD BE ENTERED ON YOUR TAX RETURN, IN ACCORDANCE WITH THE INSTRUCTIONS ON THE GRANTOR LETTER. IF YOUR RETURN WILL BE PREPARED BY YOUR ACCOUNTANT OR ATTORNEY, YOU SHOULD PROVIDE A COPY OF THIS GRANTOR LETTER TO THE PREPARER WITH YOUR OTHER TAX INFORMATION.

WE THANK YOU FOR THE OPPORTUNITY TO SERVE YOU.

VERY TRULY YOURS,

JANE Q. PUBLIC,

GRANTOR LETTER
JANE Q. PUBLIC,
123 TREMONT STREET
BOSTON, MA

Tax Year Ending: 12/31/11

Grantor Name & Address JOHN Q PUBLIC 123 TREMONT STREET BOSTON, MA Social Security Number:	Name of Trust JANE Q. PUBLIC IRREVOCABLE TRUST Employer ID Number: 04-0000000
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THE FOLLOWING INCOME, DEDUCTIONS AND CREDITS ARE TO BE REPORTED ON THE FEDERAL INCOME TAX RETURN OF THE ABOVE NAMED GRANTOR, IF REQUIRED.

FEDERAL INFORMATION	
INCOME	
PASSIVE INCOME (LOSS) FROM S CORPORATIONS..... (ENTER ON FORM 1040, SCHEDULE E, PART II)	900,000.
OTHER INFORMATION	
X.....	0.

10071
05-01-11

Name(s) shown on return. Do not enter name and social security number if shown on page 1.

Your social security number

04-0000000

JANE Q. PUBLIC IRREVOCABLE TRUST

Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations

27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? Yes No

Table with 5 columns: (a) Name, (b) Enter F-101 or S corporation, (c) Check if foreign partnership, (d) Employer identification number, (e) Check if any amount is not at risk. Row A: PUBLIC, INC, S.

Summary table for Part II with columns: (f) Passive loss allowed, (g) Passive income from Schedule K-1, (h) Nonpassive loss from Schedule K-1, (i) Section 179 expense deduction from Form 4502, (j) Nonpassive income from Schedule K-1. Totals: 900,000.

Part III Income or Loss From Estates and Trusts

Table with 2 columns: (a) Name, (b) Employer identification number. Rows A and B.

Summary table for Part III with columns: (c) Passive deduction or loss allowed, (d) Passive income from Schedule K-1, (e) Deduction or loss from Schedule K-1, (f) Other income from Schedule K-1. Totals: 36.

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) - Residual Holder

Table with 5 columns: (a) Name, (b) Employer identification number, (c) Excess inclusion from Schedule O, line 2c, (d) Taxable income (net loss) from Schedule O, line 1b, (e) Income from Schedules O, line 3b. Row 38.

39 Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below

Part V Summary

Summary table with 2 columns: Description, Amount. Rows 40-43. Total income: 900,000.