

FEDERAL ESTATE AND GIFT TAXATION
Fall Semester 2007
Professor Wayne M. Gazur

Required Materials:

Campfield, Dickinson, & Turnier, Taxation of Estates, Gifts and Trusts (23rd Edition, 2006, ThomsonWest Publishing), ISBN 978-0-314-15931-1 (13-digit) or 0-314-15931-2 (10-digit).

Thomson-West, Selected Federal Taxation Statutes and Regulations, 2008 Edition, Daniel J. Lathrope, Editor, ISBN 978-0-314-17993-7 (as indicated on the TWEN site, you can probably get by with the 2007 Edition from last academic year).

Supplementary materials as needed (this should be negligible).

Grading:

Ninety-five (95) points of the final course grade will be based on a 3 – 3 1/2 hour written final examination. The following materials will be permitted in the exam: Casebook; Code and Regulations (both of the preceding items can be annotated as you wish); any TWEN materials or emails from me; an outline written by you; a simple calculator. All other materials are prohibited, including, but not limited to, treatises, commercial outlines, study aids, hornbooks, old exams, and Internet or computer based archives, databases, or search tools. The remaining five (5) points will be based on class attendance and performance.

Optional Paper:

If there are fewer than thirty-five (35) students enrolled in the course, the law school rules require that I offer an optional writing project. If the enrollment is below 35 students, then the optional paper, if a student so chooses, would supplant fifteen (15) of the final examination points, such that the final examination would be worth eighty (80) points. The optional paper would require a written analysis, typewritten, not to exceed 15 pages, double-spaced, analyzing a proposed planning structure involving a gift of raw land.

Office Hours:

My office is 403 in Wolf and my telephone number is 303-492-7013. My office hours are Tuesdays and Thursdays, 11 AM-noon. I am also available by appointment. If I am not in, leave a note or email me proposing a time. Please feel free to discuss questions via e-mail. My address is wayne.gazur@colorado.edu.

FEDERAL ESTATE & GIFT TAXATION
Assignments

OVERVIEW

1. (August 28, 2007) The Web of the Estate Tax, Gift Tax and Generation Skipping Transfer Tax; Computing the Gift and Estate Taxes. Read text, pp. 2-24. Read I.R.C.

§§ 2001, 2002, 2010, 2501, 2502, 2504, 2505, 2601, 2602, 2611, and 2612 (these are relatively short sections). There is a lot to digest in the reading, and we are just trying to get the gist of the material at this point, as one would expect for an overview. Would an annual wealth tax (a percentage of personal wealth) be constitutional? If not, why are the wealth transfer taxes constitutional? Read text, pp. 26–31 and look at my solution (on TWEN at Course Materials) to the problem on pp. 29–30 (you don’t have the exemption amounts for prior years necessary to complete the problem). If necessary, acquaint yourselves with I.R.C. §§ 1014 & 1015. We will spend most of the time with the constitutionality of the taxes, Estate of Bosch, considering the case for and against estate and gift taxation, and reviewing the computational problem at pp. 29–30.

THE GIFT TAX

2. (August 30, 2007) Defining “Gift”. Read text, pp. 32–46, and read I.R.C. §§ 2501, 2511, 2512(b) and Treas. Reg. § 25.2512–8. Do problems 1, 2, & 4 on pp. 45–46 (you should have encountered section 7872 in Income Tax). Read text, pp. 46–57. Do the problems on pp. 56–57. Can you think of another solution for part 1 of the problem? Read pp. 57–61, omitting ¶3091.
3. (September 4, 2007) “Consideration” in a Gift Tax Sense. Read text, pp. 62–69; read I.R.C. §§ 2512(b), 2043(b), 2516, and Treas. Reg. § 25.2512–8. In connection with Diedrich (note case at ¶3133) read Treas. Reg. § 1.1001–1(e) and 1.1015–4. Are the regulations and the case consistent?
4. (September 6, 2007) Has a Gift Occurred, and, If So, of What? Read text, pp. 70–83 (omitting ¶4043) and Treas. Reg. § 25.2511–1(d)–(h), 25.2511–2, and 25.2512–5. Skim I.R.C. §§ 671–678 (grantor trust rules). Do the problems on pp. 82–83, determining the gift effects. We will later deal with how one would value the various interests.
5. (September 11, 2007) Timing Can Be Everything. Read text, pp. 83–97 and Treas. Reg. 20.2031–5, Treas. Reg. § 25.2511–1(h)(5), and Treas. Reg. § 25.2512–5. Query: How does timing impact marital relations cases like Merrill v. Fahs, supra p. 63? Read I.R.C. §§ 453 and 453B. Do the problem on p. 97.
6. (September 13, 2007) Powers of Appointment, Disclaimers. Read text, pp. 98–103 and I.R.C. § 2514. Skim I.R.C. § 2041. Do the problems on pp. 103–104. The problems demonstrate fundamental issues one must appreciate in drafting trusts. Read text, pp. 105–110, I.R.C. § 2518 and Treas. Reg. § 25.2518–1, –2. Skim Treas. Reg. § 25.2518–3. You must understand the contours of “acceptance” in this context. What is the purpose of 2518(c)(3)? What risks are involved in using a surviving spouse disclaimer as a substitute for a marital deduction “formula” clause (a clause in the decedent’s Will that divides the estate between marital and nonmarital gifts to fully exploit the unified credit)? Do the problems on pp. 109–110, but don’t compute the actual taxes due, if any.

GIFT TAX EXCLUSIONS AND DEDUCTIONS

7. (September 18, 2007) The Annual Exclusion. Read text, pp. 111-113. You should know how there isn't an aggregate amount of wealth that one can pass free of tax that exceeds \$2,000,000 (i.e., it is not \$3,000,000). Read text, pp. 113-122, up to ¶7039. Read I.R.C. §§ 2503, 2514(e), 678 and Treas. Reg. § 25.2503-3. Do the problems on pp. 116-117.
8. (September 20, 2007) Crummey Powers. Read text, pp. 122-145 and do the problems on pp. 144-145. Crummey is probably the most important gift tax case impacting the structure of irrevocable trusts.
9. (September 25, 2007) Gifts and Other Transfers.
 - a. The 2503(c) Safe Harbor and UGMA/UTMA Transfers. Read text, pp. 145-152. Read I.R.C. § 2503(c), Treas. Reg. § 25.2503-4, and I.R.C. § 2503(e). Reflect on the comparative advantages and disadvantages of Crummey trusts, 2503(c) trusts, and UGMA/UTMA gifts. Skim I.R.C. § 529.
 - b. Sham Transfers, Marital Gifts, and Introduction to Charitable Transfers. Read text, pp. 152-160. Do the problem on p. 160. Read text pp. 160-162 and read I.R.C. §§ 2523 & 2522.
10. (September 27, 2007) Gift Tax Return Mechanics; Introducing the GSTT. Read text, pp. 163-166 and I.R.C. §§ 6019 and 2513. We won't complete the gift tax problem on pp. 165-166. However, take a look at Form 709 on pp. 956-959 to see what information the form generally contains. Indeed, note that the GSTT occupies some portion of the form. The GSTT will be our almost exclusive focus of this day, except for the gift splitting election mentioned in the gift tax chapter. Read text, pp. 726-734, and I.R.C. §§ 2601, 2602, 2611(a), 2612, 2613, 2631, 2642(a)(1) & (2), 2642(c), 2651, 2652(a)(2), 2653(a). This is a complex statute; don't expect to understand everything.
11. (October 2, 2007) General Valuation Principles. Read Chapter 9 and I.R.C. §§ 2512(a), 2031, 2032, Treas. Reg. §§ 20.2031-1(b), 20.2031-2, 20.2031-3, 20.2031-4, 20.2031-6, 20.2031-7, and 20.2031-9. Do the problems on p. 175. Read pp. 176-180 (omitting ¶¶10,019-10,027) of Chapter 10, I.R.C. § 7520, and the variable interest rate valuation regulations, Treas. Reg. §§ 20.2031-7 and 25.2512-5. Do the problems on pp. 185-186.
12. (October 4, 2007) Closely Held Business. Read Chapter 11 and I.R.C. §§ 2703, 2704, and Treas. Reg. 20.2031-2(h). You need only the very general gist of § 2704. Do problems 1-6 on pp. 228-229.
13. Estate Freezes; Misc.
 - a. (October 9, 2007) Corporations and Partnerships. Read text, pp. 230-241, I.R.C. § 2701 and do the problems on pp. 240-241.
 - b. (October 11, 2007) Trusts. Read text, pp. 241-247, I.R.C. § 2702, and do the problems on p. 247. On your own, lightly skim Chapter 13 and I.R.C. § 2032A (so that you know there is a special valuation method for closely held businesses where

land is the value driver—principally agriculture), but read Chapter 14, pp. 254-255 (omitting ¶¶14,007-14,015) and 260-263 (omitting ¶14,027), and I.R.C. § 6662, 7517, and 7491.

THE ESTATE TAX – INCLUSIONS

14. (October 16, 2007) Overview and Determining What Is “Property” Owned “at Death”. Read text, pp. 266–269 (omitting ¶15,013), 271-282 (omitting ¶¶ 15,091), & 284-289 (omitting ¶15,133). Read text, pp. 293-297. Read I.R.C. §§ 2033 and 2034. Reconcile Treas. Reg. § 20.2033–1(b) with Moss at p. 277. Do the problems on pp. 297-298.
15. (October 18, 2007) Joint Tenancies – The Poor Person’s Will. Read text, pp. 299-311 (omitting ¶16,079), I.R.C. § 2040, and Treas. Reg. § 20.2040–1. Do the problems on p. 311.
16. (October 23, 2007) Life Insurance – The Easiest Asset to Shelter.
 - a. Overview and Defining “Insurance”. Read text, pp. 312-318.
 - b. Incidents of Ownership. Read text, pp. 318-334; I.R.C. §§ 2042, 2206, 101, 677(a)(3), and Treas. Reg. § 20.2042–1. Can you reconcile the result in Rhode Island Hospital Trust Co. with that in Morton? After reading p. 331, do you see the importance of Crummey?
 - c. Miscellaneous Issues. Read text, pp. 334-337 (omitting ¶¶17,090-17,097) and 340-343. Do problems 1-6 on pp. 343-344.
17. (October 25, 2007) The Broadest String – Section 2036–Part I. Background and Retained Benefits. Read text, pp. 345–356 (omitting ¶¶ 18,055-18,067, 18,079-18,097), ¶18,073, & pp. 366-383, I.R.C. § 2036, and Treas. Reg. § 20.2036–1. How does this relate to Revenue Ruling 83–180, p. 94 and Haygood, p. 89? Do problems 1, 4, 5 and 9 on pp. 417-418.
18. (October 30, 2007) Section 2036–Part II Retained Control, Amount Includible and Planning. Read text, pp. 383-417 (omitting ¶¶ 18,157-18,161, 18,205-18,211). Read I.R.C. § 2035. Do the remaining problems on pp. 417-418.
19. (November 1, 2007) Powers to Alter, Amend, Revoke or Terminate–Section 2038.
 - a. General Rule. Read text, pp. 419-429 (omitting ¶¶ 19,049-19,067, 19,085-19,109), I.R.C. § 2038, and Treas. Reg. §§ 20.2038–1(a), (b).
 - b. Powers Subject to a Standard and UTMA Transfers. Read text, pp. 434-438. Compare I.R.C. § 2041(b)(1)(A).
 - c. Trustee Substitutions. Read text, pp. 438-439. Recall the material in part 18 above.

- d. Misc. Read text, pp. 439-440 (omitting the balance of the chapter). Read I.R.C. § 2035 again.
- e. Problems. Do the problems on pp. 448-449.
20. (November 6, 2007) Another Curse of the Uninformed Scrivener: Section 2037 (We might omit this assignment).
- a. The Provision. Read text, pp. 450-454 (omitting ¶ 20,021 through the end of the chapter), I.R.C. § 2037, and Treas. Reg. § 20.2037-1. (The examples in the Regulations will help you learn to identify the trademarks of a problem clause.)
- b. Problems. Do problems 1-7 on pp. 461-462. This is an obscure section that, all the future interest haze aside, applies only if the settlor retained a reversion. I would speculate that 70% of law professors skip this section. Avoid the reversion and one avoids the brain damage of these problems. Because these problems will, hopefully, be the only time you will ever see section 2037 in application, let's take a stab at them and move on. The regulations' examples are very helpful.
21. (November 8, 2007) Section 2039. Read text, pp. 463-472 and 485-487, I.R.C. § 2039, Treas. Reg. § 20.2039-1, & I.R.C. § 2056(b)(7)(c). Do the problems on pp. 471-472.
22. (November 13, 2007) Powers of Appointment – Section 2041-Part I.
- a. Overview. Read text, pp. 488-491 (omitting ¶¶ 22,013-22,023) & 497-514, I.R.C. §§ 2041, 2207, and Treas. Reg. §§ 20.2041-1, 20.2041-3. Contrast the “ascertainable standard” for this purpose with that in Assignment 19. Do the problems on pp. 491 and 508.
- b. Some Recurring Themes. Read text, pp. 514-519 (omitting ¶¶ 22,129-22,130). Read I.R.C. § 2514 again. Do the problems on p. 519.
23. (November 15, 2007) Powers of Appointment- Part II; Transfers Within Three Years of Death.
- a. Joint Powers Exception. Read text, pp. 522-524.
- b. Problems. Do the problems on p. 525.
- c. Section 2035. Read text, pp. 526-537 (omitting ¶¶ 23,067-23,092) & 543-547, and I.R.C. § 2035. The principal impact of section 2035 is on ILITs. Is I.R.C. § 1014(e) a restriction or an opportunity? Do problems 1-4 on pp. 546-547.

FALL BREAK

ESTATE TAX EXCLUSIONS AND DEDUCTIONS

24. (November 27, 2007) Expenses, Debts, Claims. Read text, pp. 571-578 (including ¶ 25,039) and text, pp. 809-812; I.R.C. §§ 2053, 2054, 213(c), 642(g), Treas. Reg. § 1.642(g)-1, 1.642(g)-2.

(November 27, 2007) Charitable Transfers. Read text, pp.586-587, 598-601, 603-606, and ¶¶ 26,120, 26,123, 26,131, 26,133, 26,138, & 26,141. This is a technical area for which we don't have adequate time. Read I.R.C. § 2055. Read I.R.C. § 2522 again. How does I.R.C. § 170 fit into the picture?

25. (November 29, 2007) Marital Deduction Part I.

- a. Overview; The Terminable Interest Rule. Read I.R.C. §§ 2044, 2056, 2056A, 2207A, Treas. Reg. § 20.2056(b)-1, (b)-2, (b)-3, and 20.2056(c)-1, (c)-2 and (c)-3, and text, pp. 614-621 (omitting ¶¶ 27,091-27,094) & 625-634. Do the problems on pp. 617 & 628.
- b. The "Estate Trust". Read text pp. 634-637 and read Treas. Reg. § 20.2056(c)-2(a) and (b).
- c. 2056(b)(3); 2056(b)(5), 2056(b)(6). Read text, pp. 637-650 and Treas. Reg. § 20.2056(b)-5. Do problem 2 on p. 639 and the problems on pp. 647 & 650.

26. (December 4, 2007) Marital Deduction Part II.

- a. 2056(b)(7)("QTIP"). Read text, pp. 651-678 and Treas. Reg. §§ 20.2044-1, 20.2056(b)-7, and 20.2207A-1. Do problem 1 on p. 678.
- b. 2056(b)(8). Read text pp. 686.
- c. Planning. Read text, pp. 696-706 and Treas. Reg. § 20.2056(b)-4. Do problem 5 on p. 707.

29. (On Your Own for General Knowledge—Just Get the Gist of this Material) Payment of Estate Taxes. Read pp. 708-715 & ¶¶ 28,061-28,073.

TAX ON GENERATION SKIPPING TRANSFERS-Part II

30. (December 6, 2007) Generation Skipping. Read text, pp. 726-736 and I.R.C. §§ 2601-2663. Read the problems on pp. 736-738 and try to identify the GSTT aspects.

