

**SAN ANTONIO
ESTATE PLANNERS COUNCIL
JANUARY 14, 2014**

**TAX AND ESTATE PLANNING
FOLLOWING
THE PORTABILITY REGULATIONS AND
THE AMERICAN TAXPAYER RELIEF
ACT OF 2012**

Presented by:
MATTHEW S. BEARD, J.D., LL.M.



MEADOWS COLLIER

ATTORNEYS AT LAW

MEADOWS, COLLIER, REED, COUSINS, CROUCH & UNGERMAN, L.L.P.

ATTORNEYS AT LAW
A REGISTERED LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL
CORPORATIONS
901 Main Street, Suite 3700
Dallas, Texas 75202
Direct (214) 749-2450
FAX (214) 747-3732
TOLL FREE 1(800) 451-0093
mbeard@meadowscollier.com

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. APPLICABLE LAW FOLLOWING ATRA.....	1
A. Three Transfer Taxes	1
B. Transfer Tax Rates	2
C. Transfer Tax Credits	2
1. Credit Against Estate Tax	2
2. Credit Against Gift Tax	2
3. GST Exemption Amount	2
D. Portability of DSUE Amount to Surviving Spouse	3
1. Portability Election	4
2. No Portability Election	5
3. Example	5
4. Statute of Limitations.....	5
E. Income Tax Rates	6
III. IMPACT OF ATRA	8
A. ATRA Establishes Relative Permanence in Tax Law	8
B. ATRA Provides Greater Consistency Among Transfer Taxes	8
C. ATRA Continues Erosion of Transfer Tax System	9
D. ATRA Provides Powerful Gift and GST Tax Planning Opportunities.....	11
E. Treasury and IRS Expect Significant Increase in Form 706 Filings	12
F. Review and Revise Existing Estate and Discount Planning	13
G. Credit Shelter Trust Remains Important Component	13
H. ATRA Reaffirms Shift in Estate Planning Focus	14
I. Home Privacy Trusts Grow in Popularity.....	14
J. Anticipate Closing of “Loopholes”	15
APPENDIX.....	attached

**TAX AND ESTATE PLANNING
FOLLOWING
THE PORTABILITY REGULATIONS AND
THE AMERICAN TAXPAYER RELIEF ACT OF 2012¹**

Matthew S. Beard, J.D., LL.M.

I. INTRODUCTION

Two significant pieces were added to the transfer tax rules during 2012. First, Treasury released temporary regulations with respect to the portability election for the DSUE amount, effective June 15, 2012. Second, President Obama signed H.R.8, the American Taxpayer Relief Act of 2012 (“ATRA”),² into law on January 2, 2013. The tax law had previously been in a state of flux for over a decade due to sunset provisions enacted under P.L. 107-16, the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”),³ and P.L. 111-312, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (“TRUIRJA”).⁴ ATRA removes much of the uncertainty that existed during this period by permanently extending EGTRRA and TRUIRJA and striking the sunset provisions.⁵ This outline summarizes selected transfer tax rules following ATRA, and ATRA’s impact on tax, estate, and asset protection planning.

II. APPLICABLE LAW FOLLOWING ATRA

A. Three Transfer Taxes. The federal transfer tax system consists of three taxes: the estate tax, gift tax, and generation-skipping transfer (“GST”) tax. An estate tax is imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the US.⁶ A gift tax is imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident, or nonresident.⁷ A GST tax is imposed on every generation-skipping transfer.⁸

¹ © 2014 Matthew S. Beard

IRS Circular 230 Notice: The statements contained in this outline are not intended to and do not constitute an opinion as to any tax or other matter. They are not intended or written to be used, and may not be relied upon, by any person for the purpose of avoiding penalties that may be imposed under any Federal tax law or otherwise.

² American Taxpayer Relief Act of 2012, H.R. 8, 112th Cong. (2013).

³ Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. 107-16, 107th Cong. (2001).

⁴ Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, 111th Cong. (2010).

⁵ ATRA §§ 101(a)(1) & (2).

⁶ I.R.C. § 2001(a).

⁷ I.R.C. § 2501(a).

⁸ I.R.C. § 2601.

B. Transfer Tax Rates. The estate, gift, and GST tax rates are unified. The highest tax rate is 40%.⁹ This is an increase from the previous rate of 35%.

C. Transfer Tax Credits.

1. Credit Against Estate Tax. The estate of every decedent is allowed a credit against the estate tax.¹⁰ This credit is the “applicable credit amount” (formerly the “unified credit”), which equals the amount of tentative tax that would be determined if the amount on which such tentative tax is to be computed were equal to the *applicable exclusion amount*.¹¹ In other words, the applicable credit amount is determined by applying the rate schedule to the applicable exclusion amount.¹²

The “applicable exclusion amount” is the sum of the *basic exclusion amount* and, in the case of a surviving spouse, the *deceased spousal unused exclusion amount*.¹³

The “basic exclusion amount” is \$5 million multiplied by a cost of living adjustment.¹⁴ After applying this adjustment, the basic exclusion amount is \$5,340,000 for 2014.¹⁵

For the surviving spouse of a deceased spouse dying after December 31, 2010, the term “deceased spousal unused exclusion amount” (or “DSUE”) means the lesser of (a) the basic exclusion amount (i.e., \$5,340,000 for 2014); or (b) the excess of the basic exclusion amount of the last such deceased spouse of such surviving spouse over the amount with respect to which the tentative tax on the estate of such deceased spouse.¹⁶

2. Credit Against Gift Tax. In the case of a citizen or resident of the US, there shall be allowed as a credit against the gift tax for each calendar year an amount equal to the applicable credit amount which would apply if the donor died as of the end of the calendar year, reduced by the sum of the amount allowable as a credit to the individual for all preceding calendar periods.¹⁷ Thus, the credit against gift tax includes both the basic exclusion amount (i.e., \$5,340,000 for 2014) and the DSUE amount.¹⁸

3. GST Exemption Amount. Every individual shall be allowed a *GST exemption amount* which may be allocated by such individual to any property to

⁹ ATRA § 101(c)(1); I.R.C. § 2001(c); I.R.C. § 2502(a); I.R.C. § 2641(a).

¹⁰ I.R.C. § 2010(a); Treas. Reg. § 20.2010-1T(a).

¹¹ I.R.C. § 2010(c)(1); Treas. Reg. § 20.2010-1T(d)(1).

¹² Treas. Reg. § 20.2010-1T(d)(1).

¹³ I.R.C. § 2010(c)(2); Treas. Reg. § 20.2010-1T(d)(2).

¹⁴ I.R.C. § 2010(c)(3); Treas. Reg. § 20.2010-1T(d)(3).

¹⁵ Rev. Proc. 2013-15, 2013-5 I.R.B. 444, § 2.13.

¹⁶ I.R.C. § 2010(c)(4).

¹⁷ I.R.C. § 2505(a).

¹⁸ Treas. Reg. § 20.2010-1T(d)(1); Treas. Reg. § 25.2505-2T(a)(1).

which such individual is the transferor.¹⁹ The “GST exemption amount” for any calendar year is equal to the basic exclusion amount for such calendar year (i.e., \$5,340,000 for 2014).²⁰ However, portability does not apply to the GST exemption.²¹

D. Portability of DSUE Amount to Surviving Spouse. For estate tax purposes, a decedent’s *DSUE amount* is included in determining a surviving spouse’s applicable exclusion amount, provided that such decedent is the *last deceased spouse* of such surviving spouse on the date of death of the surviving spouse, and the executor of the decedent’s estate elected portability.²²

Similarly, for gift tax purposes, in computing a surviving spouse’s gift tax liability with regard to a transfer subject to gift tax, a DSUE amount of a decedent is included in determining the surviving spouse’s applicable exclusion amount, provided such decedent is the last deceased spouse of such surviving spouse at the time of the surviving spouse’s taxable gift, and the executor of the decedent’s estate elected portability.²³ If a donor who is a surviving spouse makes a taxable gift and a DSUE amount is included in determining the surviving spouse’s applicable exclusion amount, then such surviving spouse will be considered to apply such DSUE amount to the taxable gift before the surviving spouse’s own basic exclusion amount.²⁴

The term “DSUE amount” means the lesser of (1) the basic exclusion amount (i.e., \$5,340,000 for 2014); or (2) the excess of the basic exclusion amount of the last deceased spouse of a surviving spouse, over the amount with respect to which the tentative tax is determined on the estate of such deceased spouse.²⁵ In other words, the term “DSUE amount” refers, generally, to the unused portion of a decedent’s applicable exclusion amount to the extent this amount does not exceed the basic exclusion amount in effect in the year of the decedent’s death.²⁶

The term “last deceased spouse” means the most recently deceased individual who, at that individual’s death after December 31, 2010, was married to the surviving spouse.²⁷

If the last deceased spouse of a surviving spouse had no DSUE amount, or if the executor of such a decedent’s estate did not make a portability election, then the surviving spouse’s estate has no DSUE amount to be included in determining the applicable exclusion amount, even if the surviving spouse previously had a DSUE

¹⁹ I.R.C. § 2631(a).

²⁰ I.R.C. § 2010(c); I.R.C. § 2631(c).

²¹ Joint Comm. Staff, Tech Expln of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (JCX-55-10), 12/10/2010, p. 52.

²² Treas. Reg. § 20.2010-3T(a)(1).

²³ Treas. Reg. § 25.2505-2T(a)(1).

²⁴ Treas. Reg. § 25.2505-2T(b).

²⁵ I.R.C. § 2010(c)(4).

²⁶ Treas. Reg. § 20.2010-1T(d)(4).

²⁷ Treas. Reg. § 20.2010-1T(d)(5); see Treas. Reg. § 20.2010-3T(b) and Treas. Reg. § 25.2505-2T(c) for rules in case of multiple deceased spouses.

amount available from another decedent who, prior to the death of the last deceased spouse, was the last deceased spouse of such surviving spouse.²⁸

1. Portability Election. A DSUE amount may not be taken into account by a surviving spouse unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an election on such return that such amount may be so taken into account.²⁹ In other words, the executor of the decedent's estate may file the estate tax return on behalf of the estate of the decedent and, in so doing, elect portability of the decedent's DSUE amount.³⁰ This election is referred to as the "portability election" by the regulations and the IRS.³¹ This election is available for a decedent that dies in calendar year 2011 or during a subsequent period in which portability of a DSUE amount is in effect.³²

The portability election is generally irrevocable once made.³³

The executor or administrator of a decedent's estate that is appointed, qualified, and acting within the US may make the portability election on behalf of the estate.³⁴ The portability election must be made on a timely-filed Form 706, "United States Estate (and Generation-Skipping Transfer) Tax Return."³⁵ No election may be made if such return is filed after the time prescribed by law (including extensions) for filing such return.³⁶ The due date of an estate tax return required to elect portability is 9 months after the decedent's date of death or the last day of the period covered by an extension (if an extension of time for filing has been obtained).³⁷ Additionally, the executor must include a computation of the DSUE amount on the estate tax return to elect portability.³⁸

Upon the timely filing of a complete and properly-prepared estate tax return, an executor of an estate of a decedent (survived by a spouse) will have elected portability of the decedent's DSUE amount unless the executor chooses not to elect portability.³⁹ An estate tax return will be considered complete and properly-prepared if it is prepared in accordance with the instructions issued for the estate tax return and certain requirements under the regulations.⁴⁰

The current estate tax return form (Form 706, revised August 2013) includes a new page 4, part 6 (attached to this outline as Appendix A) for portability of a DSUE

²⁸ Treas. Reg. § 20.2010-3T(a)(2); Treas. Reg. § 25.2505-2T(a)(2).

²⁹ I.R.C. § 2010(c)(5)(A).

³⁰ Treas. Reg. § 20.2010-2T(a)(6)(i).

³¹ Treas. Reg. § 20.2010-2T(a); Notice 2011-82, 2011-42 I.R.B. 516.

³² Treas. Reg. § 20.2010-2T(a)(5).

³³ I.R.C. § 2010(c)(5)(A); Treas. Reg. § 20.2010-2T(a)(4).

³⁴ Treas. Reg. § 20.2010-2T(a)(6)(i); *see* Treas. Reg. § 20.2010-2T(a)(6)(ii) for rules if no appointed executor.

³⁵ Treas. Reg. § 20.2010-2T(a); Notice 2011-82, 2011-42 I.R.B. 516.

³⁶ I.R.C. § 2010(c)(5)(A).

³⁷ Treas. Reg. § 20.2010-2T(a)(1).

³⁸ Treas. Reg. § 20.2010-2T(b)(1).

³⁹ Treas. Reg. § 20.2010-2T(a)(2).

⁴⁰ Treas. Reg. § 20.2010-2T(a)(7)(i).

amount. Section C of this new part provides a schedule to compute the DSUE amount portable to the surviving spouse, and Section D provides a schedule to account for any DSUE amount received from a predeceased spouse. Additionally, page 1, part 2, line 9 of this form has been replaced with new lines that calculate the applicable exclusion amount and applicable credit amount factoring in any DSUE amount received from a predeceased spouse.

2. No Portability Election. A decedent (survived by a spouse) will not make or be considered to make the portability election if either of the following applies: (a) the executor does not timely file an estate tax return; or (b) the executor states affirmatively on a timely-filed estate tax return, or in an attachment to that estate tax return, that the estate is not electing portability.⁴¹ The manner in which the executor may make this affirmative statement on the return is set forth in instructions to the estate tax return.⁴²

The current estate tax return form (Form 706, revised August 2013) includes a new page 4, part 6 (attached to this outline as Appendix A) for portability of a DSUE amount. Section A of this new part provides a check-the-box option for opting out of portability.

3. Example⁴³ In 2002, having made no prior taxable gifts, Husband makes a taxable gift valued at \$1,000,000 and reports the gift on a timely filed gift tax return. Because the amount of the gift is equal to the applicable exclusion amount for that year (\$1,000,000), \$345,800 is allowed as a credit against the tax, reducing the gift tax liability to zero. Husband dies on September 29, 2011, survived by Wife. Husband and Wife are US citizens and neither have been previously married. Husband's taxable estate is \$1,000,000. The executor of Husband's estate timely files Husband's estate tax return and elects portability, thereby allowing Wife to benefit from Husband's DSUE amount. The executor of Husband's estate computes Husband's DSUE amount to be \$3,000,000 (the lesser of the \$5,000,000 basic exclusion amount in 2011, or the excess of Husband's \$5,000,000 applicable exclusion amount over the sum of the \$1,000,000 taxable estate and the \$1,000,000 amount of adjusted taxable gifts).

4. Statute of Limitations. The IRS may examine returns of a decedent in determining the decedent's DSUE amount, regardless of whether the period of limitations on assessment has expired for the return.⁴⁴ For purposes of the determining the DSUE amount to be included the applicable exclusion amount of the surviving spouse, the IRS may examine returns of each of the surviving spouse's deceased spouses whose DSUE amount is claimed to be included in the surviving spouse's applicable exclusion amount, regardless of whether the period of limitations on assessment has expired for any such return.⁴⁵ The IRS may adjust or eliminate the DSUE amount

⁴¹ Treas. Reg. § 20.2010-2T(a)(3); Treas. Reg. § 20.2010-2T(a)(6)(i).

⁴² Treas. Reg. § 20.2010-2T(a)(3)(i).

⁴³ Treas. Reg. § 20.2010-2T(c)(5)(Example 1).

⁴⁴ I.R.C. § 2010(c)(5)(B); Treas. Reg. § 20.2010-2T(d); Treas. Reg. § 25.2505-2T(e).

⁴⁵ Treas. Reg. § 20.2010-3T(d).

reported on such a return; however, the IRS may assess additional tax on that return only if that tax is assessed within the period of limitations on assessment applicable to the tax shown on that return.⁴⁶

E. Income Tax Rates. To determine the ordinary income tax liability, a taxpayer generally applies the tax rate schedules (or the tax tables) to his or her taxable income.⁴⁷ The rate schedules are broken into several ranges of income, known as income brackets, and the marginal tax rate increases as a taxpayer's income increases.⁴⁸ EGTRRA created a new 10-percent income tax bracket for a portion of taxable income that was previously taxed at 15 percent.⁴⁹ EGTRRA also reduced the tax rates in excess of 15 percent to 25, 28, 33, and 35 percent.⁵⁰ ATRA permanently extends the EGTRRA individual income tax rates for taxable incomes below the threshold amount.⁵¹ For taxable income above the threshold amount, the 39.6 percent rate which applied prior to the enactment of EGTRRA applies.⁵² The threshold amount is (1) \$450,000 in the case of a joint return, and (2) \$400,000 in the case of an unmarried person who is not a surviving spouse or head of household.⁵³ The threshold amount is indexed for inflation to \$457,600 and \$406,750, respectively, for 2014.⁵⁴

On the sale or exchange of a capital asset, any gain generally is included in income.⁵⁵ Any net capital gain of an individual generally is taxed at rates lower than rates applicable to ordinary income.⁵⁶ Similarly, an individual's qualified dividend income is taxed at the same rates that apply to net capital gain.⁵⁷ Under ATRA, the tax rates in effect before 2013 for adjusted net capital gain and qualified dividend income are made permanent, except that the 15 percent rate applies only to adjusted net capital gain and qualified dividend income which otherwise would be taxed at a rate below 39.6 percent under the ordinary income tax.⁵⁸ A 20 percent rate applies to amounts which would otherwise be taxed at a 39.6 percent rate.⁵⁹ Thus, the tax rates of 0, 15, and 20 percent apply to this income.⁶⁰

Additionally, individuals are subject to tax equal to 3.8 percent of the lesser of (1) *net investment income*; or (2) the excess of modified adjusted gross income over the

⁴⁶ Treas. Reg. § 20.2010-3T(d); Treas. Reg. § 25.2505-2T(e).

⁴⁷ Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 112th Congress (JCS-2-13), February 2013, p. 86 (the "Blue Book").

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 87.

⁵² ATRA § 101(b)(1); Blue Book, p. 87.

⁵³ ATRA § 101(b)(1); Blue Book, p. 87.

⁵⁴ ATRA § 101(b)(1); Blue Book, p. 87.

⁵⁵ Blue Book, p. 106.

⁵⁶ *Id.*

⁵⁷ *Id.* at 108.

⁵⁸ ATRA § 102; Blue Book, p. 110.

⁵⁹ ATRA § 102; Blue Book, p. 110.

⁶⁰ ATRA § 102; Blue Book, p. 110.

threshold amount.⁶¹ The term “threshold amount” means \$250,000 for a taxpayer making a joint return, or \$200,000 for most other cases.⁶² “Net investment income” generally includes interest, dividends, annuities, royalties, and rents; gross income derived from a trade or business that is a passive activity, or a trade or business of trading in financial instruments or commodities; and net gain attributable to the disposition of property.⁶³

The income tax rate schedules for individuals for 2013 are as follows.⁶⁴

	Taxable income	Ordinary Income	Capital Gain and Qualified Dividends	Medicare Tax on Investment Income
Single Filers	\$0	10%	0%	0%
	\$8,925	15%	0%	0%
	\$36,250	25%	15%	0%
	\$87,850	28%	15%	0%
	\$183,250	33%	15%	0%
	\$200,000 (MAGI)	33%	15%	3.8%
	\$398,350	35%	15%	3.8%
	\$400,000	39.6%	20%	3.8%
Joint Filers	\$0	10%	0%	0%
	\$17,850	15%	0%	0%
	\$72,500	25%	15%	0%
	\$146,400	28%	15%	0%
	\$223,050	33%	15%	0%
	\$250,000 (MAGI)	33%	15%	3.8%
	\$398,350	35%	15%	3.8%
	\$450,000	39.6%	20%	3.8%
Trusts	\$0	15-33%	15%	0%
	\$11,950	39.6%	20%	3.8%

⁶¹ I.R.C. § 1411(a)(1); *see* I.R.C. § 1411(a)(2) (for application to estates and trusts).

⁶² I.R.C. § 1411(b).

⁶³ I.R.C. § 1411(c).

⁶⁴ Rev. Proc. 2013-15, 2013-5 I.R.B. 444.

III. IMPACT OF ATRA

A. ATRA Establishes Relative Permanence in Tax Law. The tax law has been in a state of flux for more than a decade. Beginning in 2001, EGTRRA provided for increasing exemption amounts and decreasing tax rates over a period of years, and a one-year repeal of the estate tax in 2010.⁶⁵ In 2010, TRUIRJCA extended EGTRRA for two years, increased exemptions, decreased rates, and introduced new concepts such as the DSUE amount and portability.⁶⁶ Both EGTRRA and TRUIRJCA included sunset provisions that automatically repealed their provisions on certain dates.⁶⁷ Although these acts substantially reduced the impact of the estate tax on many taxpayers, the acts also created uncertainty because the sunset provisions made the new rules temporary. Many taxpayers and their advisors moved forward with estate and tax planning anticipating rules applicable under pre-2001 law, as well as law under EGTRRA and TRUIRJCA. Other taxpayers decided to postpone their planning until the tax law became more permanent. ATRA removes much of the uncertainty caused by EGTRRA and TRUIRJCA by permanently extending the acts and removing the sunset provisions.⁶⁸

B. ATRA Provides Greater Consistency Among Transfer Taxes. The rules for the estate, gift, and GST taxes are more consistent following ATRA. The highest tax rate is 40% for the estate, gift and GST taxes.⁶⁹ The same basic exclusion amount applies to the estate, gift, and GST taxes.⁷⁰ Portability of the DSUE amount applies to estate and gift taxes.⁷¹ However, portability does not apply to the GST tax.⁷²

	Estate Tax	Gift Tax	GST Tax
Rate	40%	40%	40%
Basic Exclusion Amount (2014)	\$5,340,000	\$5,340,000	\$5,340,000
Portability of DSUE Amount?	Yes	Yes	No

⁶⁵ EGTRRA §§ 501(a), 511, 521.

⁶⁶ TRUIRJCA §§ 301, 302, 303.

⁶⁷ EGTRRA § 901; TRUIRJCA §§ 101 & 304.

⁶⁸ ATRA § 101.

⁶⁹ ATRA § 101(c)(1); I.R.C. § 2001(c); I.R.C. § 2502(a); I.R.C. § 2641(a).

⁷⁰ I.R.C. § 2010(c); I.R.C. § 2505(a); I.R.C. 2631(c).

⁷¹ Treas. Reg. § 20.2010-1T(d)(1).

⁷² Joint Comm. Staff, Tech Expln of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (JCX-55-10), 12/10/2010, p. 52.

C. ATRA Continues Erosion of Transfer Tax System. Public and political support of the federal transfer tax system varies throughout US history. Prior to 1916, the US did not make regular use of estate or gift taxes.⁷³ From 1797 to 1915, federal death taxes appear to have served as a supplemental revenue source adopted only during war times.⁷⁴

At the turn of the 20th century, attitudes began to change with respect to the perpetuation of large estates.⁷⁵ President Theodore Roosevelt called for:

a progressive tax on all fortunes beyond a certain amount, either given in life or devised or bequested upon death to any individual – a tax so framed as to put it out of the power of the owner of one of these enormous fortunes to hand on more than a certain amount to any one individual.⁷⁶

The modern federal estate tax was adopted in 1916 and had many features of the current estate tax.⁷⁷ It was measured by the value of property owned by a decedent at the date of death, and allowed the executor to reduce a decedent's estate for tax purposes by a \$50,000 exemption.⁷⁸ The tax rates ranged from 1% to 10%.⁷⁹

Congress completely restructured most of the federal transfer tax system in 1976.⁸⁰ The estate and gift tax systems had previously been two separate systems.⁸¹ The Tax Reform Act of 1976 created a unified estate and gift tax framework, consisting of a single graduated rate of tax imposed on both lifetime gifts and testamentary dispositions.⁸² The scope of these taxes was changed in terms of size of estate affected.⁸³

Attitudes changed again by the turn of the 21st century. The enactment of EGTRRA in 2001 culminated a movement away from the use of transfer taxes.⁸⁴ EGTRRA gradually reduced and temporarily repealed the federal estate tax.⁸⁵ In 2010, the first year since 1916, a federal estate tax did not exist.⁸⁶ TRUIRJCA extended EGTRRA for two years, established larger exemptions subject to future cost of living

⁷³ John R. Luckey, *A History of Federal Estate, Gift, and Generation-Skipping Taxes*, Congressional Research Service 7-5700 (January 24, 2011) ("Luckey").

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*, citing quotation in Randolph E. Paul, *Taxation in the United States*, p. 88 (Boston, 1954).

⁷⁷ Luckey.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Joint Comm. Staff, *Present Law and Historical Overview of the Federal Tax System* (JCX-1-11), 1/18/2011, p. 29 ("Historical Overview").

⁸² Luckey.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Historical Overview, p. 31.

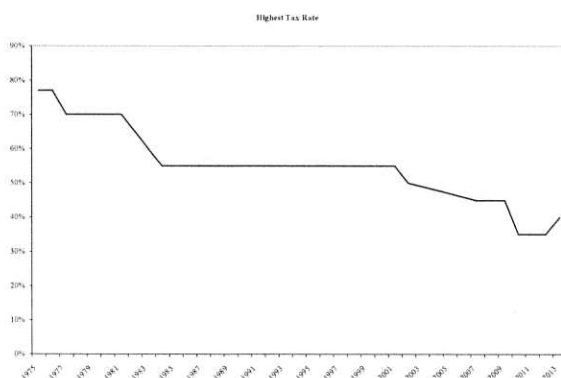
⁸⁶ Luckey.

increases, and introduced new concepts such as the DSUE amount and portability. ATRA continues the erosion of transfer taxes by extending EGTRRA and TRUIRJA without sunset and, thus, provides historically high exemption amounts and portability.

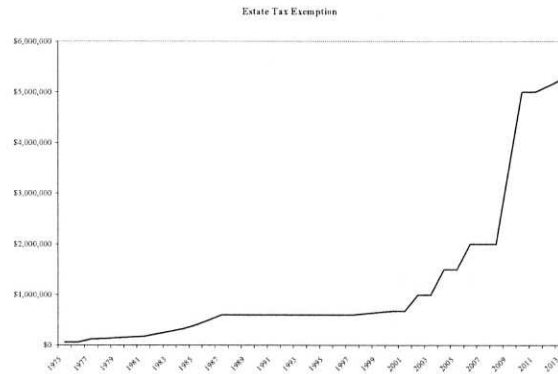
Year	Estate Exemption	Gift Exemption	Highest Tax Rate
1975	\$60,000	\$30,000	77%
1976	\$60,000	\$30,000	77%
1977	\$120,667	\$120,667	70%
1978	\$134,000	\$134,000	70%
1979	\$147,333	\$147,333	70%
1980	\$161,563	\$161,563	70%
1981	\$175,625	\$175,625	70%
1982	\$225,000	\$225,000	65%
1983	\$275,000	\$275,000	60%
1984	\$325,000	\$325,000	55%
1985	\$400,000	\$400,000	55%
1986	\$500,000	\$500,000	55%
1987	\$600,000	\$600,000	55%
1988	\$600,000	\$600,000	55%
1989	\$600,000	\$600,000	55%
1990	\$600,000	\$600,000	55%
1991	\$600,000	\$600,000	55%
1992	\$600,000	\$600,000	55%
1993	\$600,000	\$600,000	55%
1994	\$600,000	\$600,000	55%

Year	Estate Exemption	Gift Exemption	Highest Tax Rate
1995	\$600,000	\$600,000	55%
1996	\$600,000	\$600,000	55%
1997	\$600,000	\$600,000	55%
1998	\$625,000	\$625,000	55%
1999	\$650,000	\$650,000	55%
2000	\$675,000	\$675,000	55%
2001	\$675,000	\$675,000	55%
2002	\$1,000,000	\$1,000,000	50%
2003	\$1,000,000	\$1,000,000	49%
2004	\$1,500,000	\$1,000,000	48%
2005	\$1,500,000	\$1,000,000	47%
2006	\$2,000,000	\$1,000,000	46%
2007	\$2,000,000	\$1,000,000	45%
2008	\$2,000,000	\$1,000,000	45%
2009	\$3,500,000	\$1,000,000	45%
2010	\$5,000,000	\$1,000,000	35%
2011	\$5,000,000	\$5,000,000	35%
2012	\$5,120,000	\$5,120,000	35%
2013	\$5,250,000	\$5,250,000	40%

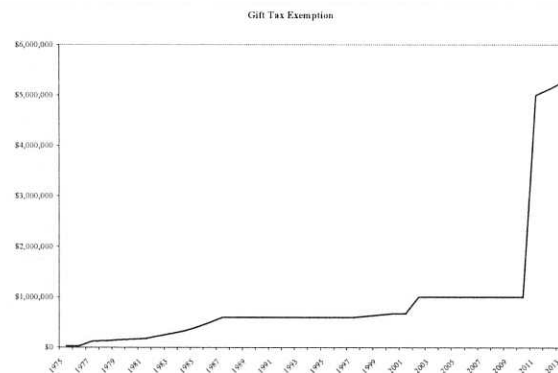
The highest tax rate has steadily decreased.



The estate tax exemption has steadily increased, with an accelerated increase over the past decade. The exemption in 2014 is more than five times larger than the exemption in 2003.



Similarly, but with a more dramatic increase in recent years, the gift tax exemption has also increased. The exemption in 2014 is more than five times larger than the exemption in 2010.



D. ATRA Provides Powerful Gift and GST Tax Planning Opportunities.

The gift tax exemption is significantly higher following TRUIRJCA and ATRA. This provides a powerful planning opportunity because a taxpayer may move more property out of his or her estate during life without gift tax than ever before – more than five times more than in 2010. If structured properly, a gift transfer should also move the subsequent appreciation and income on the gifted property out of the taxpayer's estate.

There should also be an increase in GST tax planning to take advantage of the historically high GST exemption following ATRA. As part of this planning, many taxpayers will consider establishing a trust's situs in Delaware or one of the other minority states that permit perpetual trusts for other than charitable or similar purposes.⁸⁷ The rule against perpetuities applies in Texas to trusts other than charitable trusts.⁸⁸

⁸⁷ See Richard W. Nenno, *Delaware Dynasty Trusts, Total-Return Unitrusts, and Asset-Protection Trusts* (2008).

⁸⁸ Tex. Const. art. I, § 26; Tex. Prop. Code § 112.036.

E. Treasury and IRS Expect Significant Increase in Form 706 Filings.

The number of estate tax returns (Form 706) filed should significantly increase following ATRA. Although it may initially appear that the increase in the basic exclusion amount under ATRA should reduce the number of estate tax returns that will be filed,⁸⁹ there should be an increase because a DSUE amount may not be taken into account by a surviving spouse unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an election on such return that such amount may be so taken into account.⁹⁰ Failure to file an estate tax return is effectively a waiver of the DSUE amount.⁹¹ In Notice 2011-82,⁹² the Treasury and IRS alerted taxpayers that they expect a significant increase in the number of estate tax returns that are filed. In fact, the Treasury and IRS expect that “most (if not all)” married decedents will want to make the portability election.

This notice *alerts* executors of the estates of decedents dying after December 31, 2010, of the need to file a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, within the time prescribed by law (including extensions) in order to elect to allow the decedent’s surviving spouse to take advantage of the deceased spouse’s unused exclusion amount, if any pursuant to section 303(a) of [TRUIRJCA] and section 2010(c)(5)(A) of the Internal Revenue Code (Code). In particular, for the executor of the estate of a decedent to elect under section 2010(c)(5)(A) (a “portability election”) to allow the decedent’s surviving spouse to use the decedent’s unused exclusion amount, the executor is required to file a Form 706 for the decedent’s estate, *even if the executor is not otherwise obligated to file a Form 706.*

The Treasury Department and the Service anticipate that, as a general rule, married couples will want to ensure that the unused basic exclusion amount of the first spouse to die will be available to the surviving spouse and, thus, that *most (if not all) married decedents dying after December 31, 2010, will want to make the portability election.* As indicated above, because the election is to be made on a timely-filed Form 706, the Treasury Department and the Service *anticipate a significant increase* in the number of

⁸⁹ I.R.C. § 6018(a)(1) (In all cases where the gross estate at the death of a citizen or resident exceeds the basic exclusion amount in effect under section 2010(c) in effect for the calendar year in which includes the date of death (i.e., \$5,250,000 for 2013), the executor shall make a return with respect to the estate tax.).

⁹⁰ I.R.C. § 2010(c)(5)(A).

⁹¹ Treas. Reg. § 20.2010-2T(a)(3); Treas. Reg. § 20.2010-2T(a)(6)(i).

⁹² Notice 2011-82, 2011-42 I.R.B. 516.

Forms 706 that will be filed by the estates of decedents dying after December 31, 2010, *and that many of those returns will be filed by the estate of decedents whose gross estates have a value below the applicable exclusion amount.* (Emphasis added)

F. Review and Revise Existing Estate and Discount Planning. Many taxpayers and their advisors implemented estate plans anticipating a credit against the estate tax much lower than the current applicable credit amount (i.e., \$5,340,000 for 2014). These plans should be reviewed and revised, if necessary, to take into account the new rules following ATRA. This should include an analysis of the funding language for credit shelter and marital trusts to confirm that such language is proper, as well as the beneficiary identification and distribution standard to confirm they provide for the surviving spouse and descendants as intended.

Discount planning remains an important part of sophisticated estate planning following ATRA. A decedent's partnership interest is not usually valued at the pro rata share of the property owned by the partnership.⁹³ An estate is entitled to a discount on the value of that interest to reflect restrictions on the interest's transferability and other burdens on the partnership interest.⁹⁴ The estate tax implications of any such discounts should be compared against the income tax consequences of holding assets in a partnership. The basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, generally be stepped-up to the fair market value of the property at the date of the decedent's death.⁹⁵

G. Credit Shelter Trust Remains Important Component. The portability rules contain traps for the unwary. The GST exemption is not portable among spouses.⁹⁶ The DSUE amount is a fixed amount with no inflation indexing and, thus, not increased to take into account asset appreciation following the deceased spouse's date of death.⁹⁷ A portability election should not be considered made if the executor does not timely file an estate tax return.⁹⁸ A credit shelter trust should continue to be the cornerstone of estate planning following ATRA because the trust, if properly structured, utilizes the GST exemption of the deceased spouse, shelters asset appreciation from estate tax at the surviving spouse's death,⁹⁹ and avoids the risk of losing the DSUE amount for failure to timely file an estate tax return. Additionally, a credit shelter trust should provide its beneficiaries asset protection benefits.

⁹³ Keller v. U.S., 697 F.3d 238 (5th Cir. 2012).

⁹⁴ *Id.*

⁹⁵ I.R.C. § 1014(a).

⁹⁶ Joint Comm. Staff, Tech Expln of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (JCX-55-10), 12/10/2010, p. 52.

⁹⁷ I.R.C. § 2010(c)(4).

⁹⁸ Treas. Reg. § 20.2010-2T(a)(3); Treas. Reg. § 20.2010-2T(a)(6)(i).

⁹⁹ Compare I.R.C. § 1014 (The assets in a credit shelter trust should not receive a stepped-up basis to fair market value at the surviving spouse's death; whereas the assets owned by the surviving spouse outright and free of trust should receive a stepped-up basis).

H. ATRA Reaffirms Shift in Estate Planning Focus. EGTRRA and TRUIRJCA have measurably reduced the effect of the estate tax on a significant number of taxpayers. Approximately 122,000 federal estate tax returns were filed in 2001, whereas 12,582 federal estate tax returns were filed in 2011.¹⁰⁰ This is a reduction of approximately 90% in the number of returns filed between 2001 and 2011. The IRS attributes this decrease primarily to the increase in the filing threshold.¹⁰¹

Tax planning should continue to serve a material role for taxpayers with estates of approximately \$5 million (\$10 million for couples) or more. This represents a small percentage of the US population. Based on US Census Bureau statistics, the US had approximately 2.7 million “top wealth holders” in 2004.¹⁰² Of this group, approximately 126,000 had net worth of \$10 million or more, and 357,000 had net worth of \$5 million or more.¹⁰³ Thus, only a minority of the “top wealth holders” have an estate potentially subject to the estate tax following ATRA.

The vast majority of taxpayers have estates well below the applicable credit amount. Many taxpayers with estates between \$1.5 and \$5 million (\$10 million for couples) will need less tax planning following ATRA. Estate planning for these taxpayers should focus on efficient wealth transfer vehicles, providing privacy from public records, reducing federal income taxes, and protecting wealth from divorce, creditors, and spendthrifts.

I. Home Privacy Trusts Grow in Popularity. The Wall Street Journal reported a recent trend in home purchases – using a trust to purchase a home for privacy purposes:

It’s a disappearing act commonly pulled by the ultrarich.

To keep their real-estate transactions as private as possible, starlets, tycoons, sports stars and other high-end home buyers are increasingly forming limited liability companies (LLCs) and trusts. They bury multimillion-dollar real estate deals under legal entities that, when set up properly, are virtually untraceable.¹⁰⁴

¹⁰⁰ I.R.S. Publication 6186, *Calendar Year Return Projections for the United States and IRS Campuses CY 2012-2019*, Table 1 (Rev. 10-2012).

¹⁰¹ I.R.S. Publication, *Statistics of Income*, <http://www.irs.gov/pub/irs-soi/10esesttaxsnap.pdf>.

¹⁰² U.S. Census Bureau, *Statistical Abstract of the United States: 2012; Income, Expenditures, Poverty, and Wealth*, Table 717.

¹⁰³ *Id.*

¹⁰⁴ Alyssa Abkowitz, *Psst. Wanna Buy a House?*, Wall Street Journal, October 25, 2012.

These vehicles first became popular in the 1990s, but their use increased after the economy soured, typically because wealthy individuals wanted to cloak conspicuous purchases.¹⁰⁵

Today, these vehicles are broadly used by any person who wants to keep information with respect to their home private, such as the address, tax appraised value, or amount borrowed against the home. This information may otherwise be available in public databases that can be searched electronically. Landlords may want privacy from their tenants. Business people may not want their home information available to clients or colleagues. Some hedge fund managers and bankers bought their homes under these vehicles because “they were doing phenomenally well but felt it was in bad taste to let people know about the \$25 million house they just bought.”¹⁰⁶

If structured correctly, the home privacy trust provides complete privacy from the public. Title to the property should be in the name of a third party trustee. The trust name should not include the home purchaser’s name. The home purchaser’s name should not be included in any recorded documents, including the deed, deed of trust, or any riders or attachments thereto (including the grantee return mailing address). If properly prepared, the home privacy trust should qualify for homestead liability protection and the homestead tax exemption in Texas.¹⁰⁷

J. Anticipate Closing of “Loopholes.” The Treasury has for several years asked Congress for legislation limiting the utility of GRATs, family limited partnerships (and LLCs), dynasty trusts, and sales to an intentional grantor trust.¹⁰⁸ It obtained none of these in ATRA.¹⁰⁹ These proposals remain on the table for future consideration, and may be part of the promised “comprehensive tax reform.”¹¹⁰ Clients for whom these transactions make good sense should consider implementing them sooner, rather than later, to assure that they will be able to obtain the full advantages of these arrangements.¹¹¹

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Tex. Prop. Code § 41.0021; Tex. Tax Code § 11.13.

¹⁰⁸ Howard M. Zaritsky, *Top Ten Estate Planning Issues for 2013*, RIA United States Tax Reporter Estate and Gift Taxes Tax Bulletin (February 7, 2013).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

APPENDIX A

Form 706 (Rev. August 2013),
United States Estate (and Generation-Skipping Transfer) Tax Return,
Pages 1-4

Form **706**

(Rev. August 2013)

Department of the Treasury
Internal Revenue Service**United States Estate (and Generation-Skipping Transfer)
Tax Return**► Estate of a citizen or resident of the United States (see instructions). To be filed for
decedents dying after December 31, 2012.► Information about Form 706 and its separate instructions is at www.irs.gov/form706.

OMB No. 1545-0015

Part 1 — Decedent and Executor	1a Decedent's first name and middle initial (and maiden name, if any)	1b Decedent's last name	2 Decedent's social security no.	
	3a City, town, or post office; county; state or province; country; and ZIP or foreign postal code.	3b Year domicile established	4 Date of birth	5 Date of death
	6a Name of executor (see instructions)	6b Executor's address (number and street including apartment or suite no.; city, town, or post office; state or province; country; and ZIP or foreign postal code) and phone no.		
	6c Executor's social security number (see instructions)			
	6d If there are multiple executors, check here <input type="checkbox"/> and attach a list showing the names, addresses, telephone numbers, and SSNs of the additional executors.			7b Case number
7a Name and location of court where will was probated or estate administered				
8 If decedent died testate, check here <input type="checkbox"/> and attach a certified copy of the will. 9 If you extended the time to file this Form 706, check here <input type="checkbox"/>				
10 If Schedule R-1 is attached, check here <input type="checkbox"/> 11 If you are estimating the value of assets included in the gross estate on line 1 pursuant to the special rule of Reg. section 20.2010-2T(a) (7)(ii), check here <input type="checkbox"/>				
Part 2 — Tax Computation	1 Total gross estate less exclusion (from Part 5—Recapitulation, item 13)	1		
	2 Tentative total allowable deductions (from Part 5—Recapitulation, item 24)	2		
	3a Tentative taxable estate (subtract line 2 from line 1)	3a		
	b State death tax deduction	3b		
	c Taxable estate (subtract line 3b from line 3a)	3c		
	4 Adjusted taxable gifts (see instructions)	4		
	5 Add lines 3c and 4	5		
	6 Tentative tax on the amount on line 5 from Table A in the instructions	6		
	7 Total gift tax paid or payable (see instructions)	7		
	8 Gross estate tax (subtract line 7 from line 6)	8		
	9a Basic exclusion amount	9a		
	9b Deceased spousal unused exclusion (DSUE) amount from predeceased spouse(s), if any (from Section D, Part 6—Portability of Deceased Spousal Unused Exclusion)	9b		
	9c Applicable exclusion amount (add lines 9a and 9b)	9c		
	9d Applicable credit amount (tentative tax on the amount in 9c from Table A in the instructions)	9d		
	10 Adjustment to applicable credit amount (May not exceed \$6,000. See instructions.)	10		
	11 Allowable applicable credit amount (subtract line 10 from line 9d)	11		
	12 Subtract line 11 from line 8 (but do not enter less than zero)	12		
	13 Credit for foreign death taxes (from Schedule P). (Attach Form(s) 706-CE.)	13		
14 Credit for tax on prior transfers (from Schedule Q)	14			
15 Total credits (add lines 13 and 14)	15			
16 Net estate tax (subtract line 15 from line 12)	16			
17 Generation-skipping transfer (GST) taxes payable (from Schedule R, Part 2, line 10)	17			
18 Total transfer taxes (add lines 16 and 17)	18			
19 Prior payments (explain in an attached statement)	19			
20 Balance due (or overpayment) (subtract line 19 from line 18)	20			

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

**Sign
Here**

Signature of executor

Date

Signature of executor

Date

**Paid
Preparer
Use Only**

Print/Type preparer's name

Preparer's signature

Date

Check ☐ if
self-employed

PTIN

Firm's name ►

Firm's EIN ►

Firm's address ►

Phone no.

Decedent's social security number

Estate of:**Part 3—Elections by the Executor**

Note. For information on electing portability of the decedent's DSUE amount, including how to opt out of the election, see Part 6—Portability of Deceased Spousal Unused Exclusion.

Note. Some of the following elections may require the posting of bonds or liens.

Please check "Yes" or "No" box for each question (see instructions).

	Yes	No
1 Do you elect alternate valuation?		
2 Do you elect special-use valuation? If "Yes," you must complete and attach Schedule A-1		
3 Do you elect to pay the taxes in installments as described in section 6166? If "Yes," you must attach the additional information described in the instructions. Note. By electing section 6166 installment payments, you may be required to provide security for estate tax deferred under section 6166 and interest in the form of a surety bond or a section 6324A lien.		
4 Do you elect to postpone the part of the taxes due to a reversionary or remainder interest as described in section 6163?		

Part 4—General Information

Note. Please attach the necessary supplemental documents. You must attach the death certificate. (See instructions)

Authorization to receive confidential tax information under Reg. section 601.504(b)(2)(i); to act as the estate's representative before the IRS; and to make written or oral presentations on behalf of the estate:

Name of representative (print or type) State Address (number, street, and room or suite no., city, state, and ZIP code)

I declare that I am the ☐ attorney/ ☐ certified public accountant/ ☐ enrolled agent (check the applicable box) for the executor. I am not under suspension or disbarment from practice before the Internal Revenue Service and am qualified to practice in the state shown above.

Signature CAF number Date Telephone number

1 Death certificate number and issuing authority (attach a copy of the death certificate to this return).

2 Decedent's business or occupation. If retired, check here ☐ and state decedent's former business or occupation.

3a Marital status of the decedent at time of death:

☐ Married ☐ Widow/widower ☐ Single ☐ Legally separated ☐ Divorced

3b For all prior marriages, list the name and SSN of the former spouse, the date the marriage ended, and whether the marriage ended by annulment, divorce, or death. Attach additional statements of the same size if necessary.

4a Surviving spouse's name 4b Social security number 4c Amount received (see instructions)

5 Individuals (other than the surviving spouse), trusts, or other estates who receive benefits from the estate (do not include charitable beneficiaries shown in Schedule O) (see instructions).

Name of individual, trust, or estate receiving \$5,000 or more	Identifying number	Relationship to decedent	Amount (see instructions)

All unascertainable beneficiaries and those who receive less than \$5,000

Total

If you answer "Yes" to any of the following questions, you must attach additional information as described.

	Yes	No
6 Is the estate filing a protective claim for refund? If "Yes," complete and attach two copies of Schedule PC for each claim.		
7 Does the gross estate contain any section 2044 property (qualified terminable interest property (QTIP) from a prior gift or estate)? (see instructions)		
8a Have federal gift tax returns ever been filed? If "Yes," attach copies of the returns, if available, and furnish the following information:		
b Period(s) covered c Internal Revenue office(s) where filed		
9a Was there any insurance on the decedent's life that is not included on the return as part of the gross estate?		
b Did the decedent own any insurance on the life of another that is not included in the gross estate?		

Decedent's social security number

Estate of:

Part 4—General Information (continued)

If you answer "Yes" to any of the following questions, you must attach additional information as described.

	Yes	No
10 Did the decedent at the time of death own any property as a joint tenant with right of survivorship in which (a) one or more of the other joint tenants was someone other than the decedent's spouse, and (b) less than the full value of the property is included on the return as part of the gross estate? If "Yes," you must complete and attach Schedule E		
11a Did the decedent, at the time of death, own any interest in a partnership (for example, a family limited partnership), an unincorporated business, or a limited liability company; or own any stock in an inactive or closely held corporation?		
b If "Yes," was the value of any interest owned (from above) discounted on this estate tax return? If "Yes," see the instructions on reporting the total accumulated or effective discounts taken on Schedule F or G		
12 Did the decedent make any transfer described in sections 2035, 2036, 2037, or 2038? (see instructions) If "Yes," you must complete and attach Schedule G		
13a Were there in existence at the time of the decedent's death any trusts created by the decedent during his or her lifetime?		
b Were there in existence at the time of the decedent's death any trusts not created by the decedent under which the decedent possessed any power, beneficial interest, or trusteeship?		
c Was the decedent receiving income from a trust created after October 22, 1986, by a parent or grandparent? If "Yes," was there a GST taxable termination (under section 2612) on the death of the decedent?		
d If there was a GST taxable termination (under section 2612), attach a statement to explain. Provide a copy of the trust or will creating the trust, and give the name, address, and phone number of the current trustee(s).		
e Did the decedent at any time during his or her lifetime transfer or sell an interest in a partnership, limited liability company, or closely held corporation to a trust described in lines 13a or 13b? If "Yes," provide the EIN for this transferred/sold item. ►		
14 Did the decedent ever possess, exercise, or release any general power of appointment? If "Yes," you must complete and attach Schedule H		
15 Did the decedent have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account?		
16 Was the decedent, immediately before death, receiving an annuity described in the "General" paragraph of the instructions for Schedule I or a private annuity? If "Yes," you must complete and attach Schedule I		
17 Was the decedent ever the beneficiary of a trust for which a deduction was claimed by the estate of a predeceased spouse under section 2056(b)(7) and which is not reported on this return? If "Yes," attach an explanation		

Part 5—Recapitulation. Note. If estimating the value of one or more assets pursuant to the special rule of Reg. section 20.2010-2T(a)(7)(ii), enter on both lines 10 and 23 the amount noted in the instructions for the corresponding range of values. (See instructions for details.)

Item no.	Gross estate	Alternate value	Value at date of death
1	Schedule A—Real Estate	1	
2	Schedule B—Stocks and Bonds	2	
3	Schedule C—Mortgages, Notes, and Cash	3	
4	Schedule D—Insurance on the Decedent's Life (attach Form(s) 712)	4	
5	Schedule E—Jointly Owned Property (attach Form(s) 712 for life insurance)	5	
6	Schedule F—Other Miscellaneous Property (attach Form(s) 712 for life insurance)	6	
7	Schedule G—Transfers During Decedent's Life (att. Form(s) 712 for life insurance)	7	
8	Schedule H—Powers of Appointment	8	
9	Schedule I—Annuities	9	
10	Estimated value of assets subject to the special rule of Reg. section 20.2010-2T(a)(7)(ii)	10	
11	Total gross estate (add items 1 through 10)	11	
12	Schedule U—Qualified Conservation Easement Exclusion	12	
13	Total gross estate less exclusion (subtract item 12 from item 11). Enter here and on line 1 of Part 2—Tax Computation	13	

Item no.	Deductions	Amount
14	Schedule J—Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims	14
15	Schedule K—Debts of the Decedent	15
16	Schedule K—Mortgages and Liens	16
17	Total of items 14 through 16	17
18	Allowable amount of deductions from item 17 (see the instructions for item 18 of the Recapitulation)	18
19	Schedule L—Net Losses During Administration	19
20	Schedule L—Expenses Incurred in Administering Property Not Subject to Claims	20
21	Schedule M—Bequests, etc., to Surviving Spouse	21
22	Schedule O—Charitable, Public, and Similar Gifts and Bequests	22
23	Estimated value of deductible assets subject to the special rule of Reg. section 20.2010-2T(a)(7)(ii)	23
24	Tentative total allowable deductions (add items 18 through 23). Enter here and on line 2 of the Tax Computation	24

