Chapter II. Estate Planning for the Farm Estate

Part 2: Estate and Gift Tax and Tax Basis Rules
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I.   Exemption/Tax Rates/Portability/Step-up in Basis

- **Estate Tax Exemption – Federal**
  - Adjusted to increase with inflation
    - 2017 - $5.49M
    - 2018 - $11.18 M (Expires December 31,2025)
  - Reduction of exemption due to lifetime gifting above annual exclusion
    - IRS permits individuals to gift up to $15,000 per year, per person ($30,000 for married couples) without the need to report the gift on a gift tax return.
    - If the gift exceeds $15,000, the gift must be reported to the IRS on a gift tax return (Form 709).
    - Even though the gift needs to be reported, it does not necessarily mean any tax will be due. The amount over the $15,000 will be deducted from the taxpayer's available estate tax exemption.
      - Ex. In 2018, taxpayer (TP) gifts his daughter $100,000 of cash. The first $15,000 is tax free. The remaining $85,000 is subtracted from TP's estate tax exemption. If TP has not made any other taxable gifts in 2018 or previous years, his estate tax exemption after the gift will be $11,095,000. ($11,180,000 - $85,000).
- **2018 Estate Tax Rates**
  - 18% - 40%
  - Rates applied to excess over exemption

Taxable Estate (amount over $11,180,000)	Tax Rate
$0 - $10,000	18%
$10,001 - $20,000	20%
$20,001 - $40,000	22%
$40,001 – $60,000	24%
$60,001 - $80,000	26%
$80,001 - $100,000	28%
$100,001 – $150,000	30%
$150,000 - $250,000	32%
$250,001 - $500,000	34%
$500,001 - $750,000	37%
$750,001 - $1,000,000	39%
$1,000,000 plus	40%

- **Special Valuation for Farm Real Estate**
  - Farmland includable in gross estate may have high fair market value
    - Could result in a gross estate above the exemption amount
    - If estate is largely comprised of non-liquid assets (such as the real estate), executor may be forced to sell the real estate to pay the estate tax due
  - In attempt to preserve the family farm, IRS permits special valuation of farm real estate in certain circumstances
    - Executor can make a special use valuation election under IRC § 2032A
    - Election permits executor to value real estate based on its value as a farm or closely-held business, rather than its fair market value determined on the basis of its highest and best use (ex. for housing development)
    - There is a dollar limit ($750,000, adjusted for inflation) on the amount by which the special valuation can reduce the gross estate.
  - Requirements for the estate to qualify for special use valuation
    - Decedent was a U.S. citizen or resident;
    - The real and personal property of the farm or closely-held business is at least 50% of the gross estate, less expenses;
    - 25% of the adjusted value of the gross estate is qualified as farm or closely-held business real estate;
    - Real estate must pass to a "qualified heir" (i.e. spouse, child, other close relatives);
    - Real estate is in the U.S. and was owned by the decedent or a family and used as a farm or in the closely-held business for 5 of the last 8 years before the decedent's death; AND
    - Decedent or a member of his family materially participated in the farm or business operations in 5 out of the 8 years before the decedent's death.
  - Making the election
    - Executor must file a notice of election with a timely-filed estate tax return. Election can be made on first estate tax return filed after the due date if not timely return was filed.
    - Must also file (simultaneously) a recapture agreement, in which every person having an interest must agree in writing to the special use valuation.
  - Estate tax recapture
    - If within 10 years after the decedent's death, the heir sells or transfers the real estate to nonfamily members or it's not used for farming or other closely-held business purposes, the estate tax benefits are recaptured.
    - No recapture if the heir dies without converting it to a nonqualified use.
- **Portability**

- Unused estate tax exemption of 1st spouse to die (Deceased Spouse's Unused Exclusion, or "DSUE") is available to surviving spouse.
    - Ex. Husband dies in 2018 with a gross estate of $3,000,000. When his estate tax return (Form 706) is filed, his executor can elect to make the unused $8,180,000 exemption available to Wife for her to use upon her death ("portability election").
- DSUE does not increase with inflation.
    - The amount of the DSUE is frozen at the death of the first spouse.
    - DSUE amount does not increase if the estate tax exemption increases in the years following the death of the first spouse.
    - Ex. Husband dies in 2017 with gross estate of $3,000,000. Executor makes portability election on Husband's Form 706. DSUE amount is frozen at $2,490,000. Wife dies in 2018, when the estate tax exemption has been increased to $11,180,000. DSUE amount available to Wife is still $2,490,000.
- Only available for US decedents and US surviving spouses.
    - Not available for non-citizens.
    - Exception – If a surviving spouse is not a US citizen on the deceased spouse's date of death ("DOD"), but becomes a citizen after the DOD, then the DSUE amount is available to the surviving spouse on the date they become a citizen.
- Making a portability election.
    - Portability is <u>not</u> automatic.
    - Must make the election on a timely filed Form 706, even if not estate tax is due and even if no estate tax return is otherwise required to be filed.
- If more than 1 predeceased spouse – only have DSUE of <u>last</u> deceased spouse
    - Last deceased spouse = most recently deceased spouse
    - If the surviving spouse remarries, the surviving spouse still retains the deceased spouse's DSUE amount.
    - The deceased spouse's DSUE amount is lost if the new spouse also predeceases the surviving spouse. In that case, the surviving spouse can only use the DSUE of the deceased new spouse.
- Why you shouldn't rely on it
    - Future appreciation of assets in credit shelter (bypass) trust are sheltered from further estate tax upon the second death.
    - State estate tax laws do not recognize portability, thus the State exemption amount of the first spouse is wasted.
    - The surviving spouse might lose the DSUE if marry a rich spouse who uses most or all of his/her exemption.
    - Portability is an election, and errors might occur in implementing the election or timely filing a return.
    - Surviving spouse may not honor deceased spouse's intentions as to the distribution of assets.

        - Assets inherited outright by spouse do not receive creditor protection as they would in a bypass trust.
        - GST exemption is not portable.
- **Basis - generally**
    - Basis is the amount or value assigned to a taxpayer's cost of acquiring, or investment in, an asset.
    - IRC § 1012
        - Basis = Cost
        - Exceptions to § 1012:
            - Corporate distributions and adjustments
            - Partners/partnerships
            - Capital gains/losses
            - Real estate – cost does not include amount of real estate taxes paid
    - IRC § 1014
        - Stepped-up basis for property received from decedent (inheritance)
            - Basis ≠Cost
            - Basis = fair market value as of DOD (or alt. valuation date)
                - IRC § 2032 permits decedent's assets to be valued at an alternate date (for purposes of determining value of decedent's gross estate) instead of fixing their value as of decedent's date of death.
                - Alternate valuation date is typically 6 months after date of death.
        - Exceptions
            - Decedents dying in 2010
                - Legislation repealed the estate tax in 2010 and modified § 1014 so that decedents dying in that year did not receive a stepped-up basis.
                - § 1022 applied instead, which provided for modified carryover basis (see discussion below on § 1015)
            - Property gifted to decedent and reacquired by donor within one year
                - "One year property" is: (1) appreciated property acquired by the decedent by gift within one year of death, and (2) the property is reacquired by the donor of the property upon decedent's death.
                - One year property was be deemed to have its adjusted basis (under § 1012), and not stepped up basis.
            - Property subject to qualified conservation easement
                - If election is made under IRC § 2031(c), the value of the property will it's appraised value, minus a specified discount (i.e. value of the property is decreased due to the easement)
            - Income in respect of a decedent (IRD)

- Income that decedent is entitled to receive prior to death, but does not actually receive until after date of death.
- Ex. Decedent holds a promissory note entitling him to receive payments totaling $100,000, but dies before receiving any payments under the note.

- Tax deferred annuities and retirement plans
- DISC stock

- IRC § 1015
  - Basis in property acquired by gift
  - "Carryover basis" – Basis is same in donee's hands as it was in donor's hands
    - Exceptions
      - If basis is greater than FMV at time of transfer, basis is equal to FMV at time of transfer.
      - If donor's basis is unknown/impossible to obtain, basis is FMV as of date property acquired by donor.
    - Increase in basis for gift tax paid

<u>II. Marital Deduction</u>

- **IRC § 2056 – Unlimited marital deduction**
  - Requirements to be met in order for § 2056 to apply
    - Interest passing to spouse must be included in decedent's gross estate
    - Surviving spouse must be a US citizen
      - Exception: Qualified Domestic Trust (QDOT)
      - If the property passes into a QDOT (for the benefit of the non-citizen surviving spouse), marital deduction will be allowed.
    - Property must not be a "nondeductible terminable interest" (Terminable Interest Rule)
      - Reason behind the rule is that the government wants to ensure the property will be taxed (or includable in the gross estate) of the surviving spouse.
      - Nondeductible terminable interest
        - Terminable interest is an interest that will terminate/fail on: (1) lapse of time, (2) on occurrence of event or contingency, or (3) on failure of event or contingency to occur. Upon failing, the interest passes to a specified third party.
        - Example: Under decedent's will, surviving spouse is given a life estate (i.e. right to use for life) in a piece of real property. Upon surviving spouse's death, title to the property passes to the decedent's child.
      - Exception – Qualified Terminable Interest Property (QTIP) Trust (see discussion below)
  - Application

        - Also applies to legally married same sex couples
        - Does not apply to domestic partnerships, civil unions, or similar arrangements
- **QTIP Trusts**
    - Makes QTIP eligible for marital deduction if the terms of the trust provide that:
        - Surviving spouse is entitled to all income, payable at least annually, for life, AND
        - No one has power to appoint any part of the property to anyone other than the surviving spouse during the surviving spouse's life.
    - Making the QTIP election
        - If you want to receive the benefit of the marital deduction for QTIP, an affirmative election needs to be made (it is <u>not</u> automatic).
        - Executor needs to list all the property passing into the QTIP trust and attach the list to the Form 706.
    - How the QTIP trust works from a tax perspective
        - Deceased spouse's assets passing to surviving spouse divided into 2 shares
            - 1st share – amount equal to applicable estate tax exemption passes into a credit shelter (nonmarital) trust
            - 2nd share – balance of assets pass into the QTIP (marital) trust
        - Available estate tax exemption will apply to 1st share trust as the trust is set up <u>not</u> to comply with exceptions to terminable interest rule (will ensure use of full amount of available estate tax exemption instead of use of marital deduction).
        - 2nd share (balance of assets over exemption) will pass to the QTIP trust for surviving spouse and get benefit of unlimited marital deduction.
        - End result = No estate tax will be due at death of first spouse to die; payment of any estate taxes is postponed until the death of the surviving spouse.
    - 2nd marriages
        - As an added benefit, the deceased spouse controls how QTIP trust property passes after the death of surviving spouse.
            - Ex. QTIP trust permits uses of the trust property for the surviving spouse's benefit during surviving spouse's life. Upon death of surviving spouse, property passes to beneficiaries designated by the decedent (e.g. decedent's children).
        - Particularly beneficial in the case of 2nd marriage where the decedent has children from a prior marriage.
            - Decedent can ensure that trust assets remaining after surviving spouse's death passes to the decedent's children.
            - Avoids giving surviving spouse all the control over where the assets pass (ex. to surviving spouse's children and/or new spouse).
- **IRC § 2056(b)(5) Power of Appointment Trusts**

    - Assets held in a § 2056(b)(5) Power of Appointment Trust are eligible for the marital deduction.
    - Requirements
        - Surviving spouse must be entitled to receive all trust income, payable at least annually, for life.
        - Surviving spouse must have power to appoint entire interest to herself/her estate.
        - Power of appointment must be exercisable only by surviving spouse (by will or during life).
            - Asset(s) must not be subject to a power in any other person to appoint any part to any person other than the surviving spouse.
            - In other words, someone else is allowed to have a power of appointment over the asset(s) so long as that person is only able to appoint the assets to the surviving spouse.
    - Trust asset(s) will be eligible for the marital deduction even if the surviving spouse never exercises the power of appointment.
    - In essence, this trust is the same as a QTIP trust, but here the surviving spouse is given an option to control where the property passes upon the surviving spouse's death.

III. Credit Shelter Trusts

- **Generally**
    - Also known as "AB Trust" or "Bypass Trust"
    - Same as analysis set forth under QTIP trusts
        - 2 shares – Marital and Non-marital
- **Methods for funding (directing what and how much passes into) the 2 trust shares**
    - Disclaimer
    - Formula
- **Disclaimer style**
    - Disclaimer is a legal term meaning "refusal to inherit"
    - Surviving spouse can disclaim some or all of the assets passing to them
        - Ex. Decedent leaves 100% of his estate to the surviving spouse outright and free of trust. In the event the surviving spouse disclaims some or all of the estate, the disclaimed portion of the estate passes into a trust.
    - Why would anyone disclaim an inheritance?
        - The surviving spouse may already have a sizable estate, and the addition of an inheritance may increase potential estate taxes due upon surviving spouse's death.
        - By disclaiming, the funds will still be available for surviving spouse's use during their life, but will not be includable as an asset in their gross estate upon their death.
    - Common terms of a disclaimer trust

        - Trustee of the trust may use the trust assets as the trustee sees fit for the benefit of the surviving spouse (and perhaps decedent's and surviving spouse's children) during their lives.
        - Trust may terminate upon death of surviving spouse with any remaining assets to be distributed to the decedent and surviving spouse's children.
    - Disclaimer offers the surviving spouse flexibility
        - Surviving spouse can choose to disclaim or not.
            - If no estate tax problem, surviving spouse may choose to inherit outright and not fund the disclaimer trust.
            - Surviving spouse can avoid the administration requirements of the maintaining the trust in the event it is not necessary.
        - Useful when uncertainty exists regarding the future of the estate tax, as is the case now when President Trump has proposed repealing the federal estate tax.
    - Downside
        - Even if the surviving spouse is willing to disclaim, they may be unable to obtain professional advice on how to make a qualified disclaimer; may accidentally take possession of the property, which would then prohibit disclaimer.
        - Need to remember to consult with accountant/estate planning attorney after decedent's death to determine whether or not to disclaim.
- **Formula style**
    - Both shares are funded automatically upon decedent's death (as opposed to optional funding under disclaimer style).
    - One of two types of formulas may be used.
        - Pecuniary – funds each share with a specific dollar amount
        - Fractional – funds each share with a percentage of each trust asset
    - More rigid/complex than disclaimer style
        - Money is required to pass into the trusts, regardless of the surviving spouse's preference.
        - But none of the uncertainty of the disclaimer style (to disclaim or not to disclaim?).

IV. Gift Tax

- **Gift Tax Returns (Form 709)**
    - When you need to file
        - Gifts in amounts above the annual exclusion
            - As of 208, the IRS permits individuals to make a gift of $15,000 per year, (adjusted annually for inflation) per recipient without being subject to a gift tax ("annual exclusion gifting").
                - Married couples can combine their annual exclusion and gift $30,000 per year, per recipient (see discussion below on gift splitting).

        - If you give a gift(s) to a recipient valued at over $15,000 over the course of one year, then the gift(s) needs to be reported to the IRS on a Form 709.
    - Exceptions
        - Gifts to spouse
            - Marital deduction also applies to gifts.
            - You can give an unlimited amount of gifts to your spouse without the need to report the gifts.
        - Transfers to political organizations
        - Transfers to charities (so long as all requirements for charitable gifts are met)
        - Payments that qualify for educational exclusion.
            - Payments <u>made directly</u> to a qualifying educational institution as tuition for an individual.
            - Payments made to the individual for the purpose of paying for tuition, books, room and board, etc. do not qualify.
        - Payments that qualify for medical exclusion
            - Payments <u>made directly</u> to an institution that provides medical care to an individual or to a company that provides medical insurance to an individual.
            - Payments made to the individual for the purpose of paying medical costs do not qualify.
- Gifts of future interests not subject to annual exclusion
    - The annual exclusion is only available for gifts of a present interest in property, which is defined as "[a]n unrestricted right to immediate use, possession, or enjoyment of the property or the income from the property."
    - If the recipient does not have complete use and enjoyment of the gift until some future point in time, it's a future interest gift.
    - Ex. Deeding a piece of real estate to your child while reserving a life use (a.k.a. life estate) for yourself.
    - If the gift is of a future interest, the full value of the gift is to be reported as taxable.
- If you want gift-splitting between spouses
    - Gift splitting is a rule that permits a married couple to split a gift's total value as if each spouse contributed half the amount.
    - Ex. Husband makes gift to child of $30,000. Husband and Wife each file a Form 709 splitting the gift so that each spouse is treated as having made a $15,000 gift to child. The entire amount of the gift is excluded from taxation as it falls within Husband and Wife's annual exclusions.

                - Gift splitting treatment is not automatic. Each spouse needs to file a Form 709 to get the benefit of gift splitting. This is true even if the total amount of the gift is not taxable.
                - In order for gift splitting to apply:
                    - Gift needs to be to a third person (not a gift to spouse)
                    - Both spouses must be US citizens or residents at the time of the gift
                    - Spouses must be married at the time of the gift, and must not divorce and remarry before the end of the year
                    - Both spouses must consent to the gift split on the Form 709
    - Who files
        - Individuals
            - Spouses cannot file joint return; each spouse files own return
            - Trusts/estates/partnerships/corporations do not file
            - Individual beneficiaries/partners/shareholders would be liable for any gift taxes
        - If you die before the return is filed – executor/administrator of your estate must file
    - Effect on remaining ET exemption
        - If taxable gift made, no actual check is cut to the IRS.
        - Simply reduces the amount of your applicable estate tax exemption by the amount of the gift in excess of the annual exclusion.
        - So every individual can gift up to $11,180,000 during their lives without having to pay any gift tax.
        - If you use your full exemption during your life (i.e. make $11,180,000) of lifetime gifts, your entire estate will be taxable upon your death as you will have no remaining estate tax exemption.
- **Pros and Cons of lifetime gifting above annual exclusion**
    - PRO – Removes property from your estate that is likely to appreciate
        - Ex. You own real estate that is currently valued at $500,000. Over the next 10 years, the value is expected to appreciate to $1,000,000.
        - If you gift the property now, you have reduced your available exemption by $500,000 (minus the $15,000 annual exclusion). But if you then pass away 10 years from now when the property is worth $1,000,000, you have effectively removed $500,000 from your estate tax free.

    - CON – As the estate tax exemption has increased, you may have gifted more than necessary to stay within the estate tax exclusion.

- **Valuation**
    - IRC § 6501 – Statute of Limitations (SOL)
        - This may sound obvious, but when you make a gift, you have assigned a value to it.

        - The IRS has the right to question whether the value you assigned to the gift was accurate.
        - If you have not filed a Form 709, the IRS can audit you at any time and potentially assess taxes and penalties. There is no limit on how long the IRS has to do so.
        - If you file a Form 709 to report the gift, the IRS only has a 3 year window in which they can review the accuracy of the gift (i.e. 3 year SOL).
            - If no audit is commenced within 3 years, the IRS is foreclosed from ever reviewing the accuracy of the gift.
            - However, "adequate disclosure" is required to start 3 year SOL.
        - Adequate disclosure
            - Form 709 must include:
                - A description of the gifted asset.
                - The relationship between the donor and the donee.
                - A statement describing any position taken on the For 709 that is contrary to any Treasury regulations or IRS revenue rulings.
                - A qualified appraisal (as performed by a qualified appraiser) OR a detailed description of the method used to determine the value of the gift.
                - It must also disclose whether the value of the gift reflects a valuation discount, and, if so, to attach an explanation (see discussion below on Valuation Discounts).
            - Qualified appraisal – An appraisal that:
                - Is treated as a qualified appraisal under Treasury regulations, and
                - Is conducted by a qualified appraiser in accordance with generally accepted appraisal standards.
            - Qualified appraiser – An appraiser that:
                - Has earned an appraisal designation from a recognized professional appraiser organization, or has met otherwise met minimum education and experience requirements as set forth in the Treasury regulations,
                - Regularly performs appraisals for which he receives compensation, AND
                - Meets any other prescribed requirements.
- **Valuation Discounts**
    - Lack of marketability
        - Takes into account the fact that an owner of an interest in a nonpublicly traded entity will have more difficulty finding a willing buyer.

        - Ex. An interest in a family held LLC or LLP. Very little market for these types of interest, and usually only willing buyers of the interest are other family members.
    - Lack of control, a.k.a. minority interest
        - Appropriate when the holder of the interest does not have the right to decide:
            - When distributions of earnings will be made,
            - When the entity will be liquidated, OR
            - Other issues that affect the financial benefits of ownership.
        - Ex. Individual only owns a 5% ownership in an LLC, and/or the ownership interest is "economic only"(no right to participate in management of the LLC).
    - Fractional interest
        - Takes into account that it may be difficult to find a willing buyer for only a fractional interest in an asset.
        - Often seen in the context of real estate.
        - Ex. Four siblings inherited a piece of real estate from their parents such that they each own ¼ of the property. If a sibling wants to sell their ¼ interest, it would be difficult (if not impossible) to find a third party who wants to purchase their interest in the property.

V. Connecticut Estate Tax

- **Basics**
    - Exemption amount is $2,000,000
    - Tax Rates range from 7.2% to 12% on excess over exemption.

nt of Estate	ate
$2,000,000	
2,000,000 but not over $3,600,000	n excess over $2,000,000
3,600,000 but not over $4,100,000	00 plus 7.8% of the excess over $3,600,000
4,100,000 but not over $5,100,000	00 plus 8.4% of the excess over $4,100,000
5,100,000 but not over $6,100,000	00 plus 9.0% of the excess over $5,100,000
Over $6,100,000 but not over $7,100,000	$328,000 plus 9.6% of the excess over $6,100,000
Over $7,100,000 but not over $8,100,000	$424,200 plus 10.2% of the excess over $7,100,000
Over $8,100,000 but not over $9,100,000	$526,200 plus 10.8% of the excess over $8,100,000
Over $9,100,000 but not over $10,100,000	$634,200 plus 11.4% of the excess over $9,100,000
Over $10,100,000	$748,200 plus 12.0% of the excess over $10,100,000

    - Caps CT estate tax at $20M
        - Cap enacted in 2015
        - Would need to have assets of $170,000,000 in order for cap to apply!
- **Connecticut Estate Tax Return**
    - File within 6 months from date of death
    - If gross estate exceeds exemption, file Form CT-706/709
    - If gross estate does not exceed exemption, file Form CT-706NT

- **Calculating CT gross estate**
    - CT gross estate equals
        - Federal gross taxable estate (less allowable federal estate tax deductions), PLUS
        - All CT taxable lifetime gifts made after January 1, 2005 (other than CT taxable gifts that are includable in the federal gross estate), PLUS
        - Amount of state gift tax paid on any gift made by decedent or the surviving spouse within 3 years of DOD
    - State statutes permit valuation of farm real estate based on its current use as opposed to its highest and best use (C.G.S. §§ 12-349(a) and 12-63(a))
        - Requirements to qualify for current use valuation
            - Beneficiary receiving real estate must be a close family member (spouse, child, parent, sibling, etc.);
            - Real estate was owned by decedent or close family member for aggregate of no less than 5 of the last 8 years preceding decedent's death; AND
            - Decedent or any beneficiary shall have engaged in active and substantial participation in farming operations directly related to the real estate for an aggregate of no less than 5 of the last 8 years preceding decedent's death
        - Where farm real estate is owned by partnership, corporation, or trust engaged in farming, it can be treated as ownership directly in the real estate if:
            - Sole partners, shareholders, or beneficiaries are close family members; AND
            - Decedent's entire interest in the partnership, corporation, or trust passes to a close family member
- **No Portability**
    - Unlike the federal estate tax, there is no portability available for unused CT estate tax exemptions.
    - If a decedent does not use his/her full $2,000,000 exemption, the unused portion of the exemption is gone.
- **Release of Liens on Real Estate**
    - Automatic statutory lien (for estate taxes and probate fees) attaches to all CT real estate a person owns at death
    - To obtain a release of liens, must file Petition for Certificate Releasing Liens (PC-205B) along with all other required probate documents
- **Probate fee**
    - Method for determining probate fee is set forth in C.G.S. § 45a-107.
    - Based on
        - the greatest of:
            - Inventory
            - Gross estate for estate tax purposes
            - CT taxable estate
            - Gross taxable estate for succession tax purposes

    - PLUS all damages recovered for injuries resulting in death, LESS hospital and medical expenses and attorney's fees and costs
    - LESS 50% of property passing to surviving spouse
  - Calculating the probate fee

Basis for Computation of Fees	**Total Fee**
$0 - $500	$25
$500 - $1,000	$50
$1,000 - $10,000	$50 plus 1% of excess of $1,000
$10,00 to $500,000	$150 plus 0.35% of excess over $10,000
$500,000 - $2M	$1,865 plus 0.25% of excess over $500,000
$2M - $8,877,000	$5,615 plus 0.5% of excess over $2M
Over $8,877,00	$40,000

- **Connecticut Succession and Estate Tax prior to 2005**
  - Prior to 2005, CT had both a succession tax and an estate tax.
    - Phase out of the succession tax commenced in 1997 and was completed as of December 31, 2004.
    - Still need to file a Succession Tax Return (Form S-1) for estates of decedent's dying prior to January 1, 2005.
  - CT estate tax was tied closely to the federal estate tax.
    - CT estate tax set to equal maximum federal credit (a.k.a. "sponge tax")
    - Allowed CT to share the revenue from taxable estates with the federal gov. without increasing the estate's total tax liability
  - CT revamped tax laws in 2005
    - Phase out of Succession Tax was completed.
    - Combined state estate and gift taxes into one transfer tax with the same rates.
- **Proposed Changes to CT Estate Tax**
  - Gov. Malloy's budget proposal for 2017 proposes increase in CT's estate tax
  - Proposed increase would be implemented as follows:
    - 2018 – exemption increased to $2.6M
    - 2019 – exemption increased to $3.6M
    - 2020 and beyond – exemption equal to federal exemption
- **Other CT specific issues**
  - Intestacy
    - If you die without having a Will (a.k.a. die "intestate"), CT has prescribed rules setting forth what will happen to your assets.

Children, no spouse	Children inherit 100%
Spouse, no children, no parents	Spouse inherits 100%
Spouse and children (children are children of you and spouse)	Spouse gets first $100K, plus ½ the balance Children get the balance

Spouse and at least 1 child from you and someone other than your spouse	Spouse gets ½ Child gets balance.
Spouse and parents	Spouse gets first $100K plus ¾ of the balance Parents get balance
Parents, no spouse, no children	Parents get 100%
Siblings, no parents, no spouse, no children	Siblings get 100%
No siblings, parents, spouse, or children	Next of kin get 100%

- Statutory share
  - Instead of taking what is left to them under their deceased spouse's will (if anything), surviving spouse have the right to elect to take their statutory share of the deceased spouse's estate. C.G.S. § 45a-436.
  - Statutory share = 1/3 of the decedent's assets passing under the Will
  - Spouse may elect to receive their statutory share if it will give them a larger inheritance than what was provided for them under the Will.
- "Widow's allowance"
  - Probate court can make an allowance necessary for the support of the surviving spouse or family during the settlement of the estate. C.G.S. § 45a-320.
  - Term "surviving spouse" in this context applies to civil unions and same sax marriages.

- **CT Gift Tax**
  - Tax applies to all gifts made after 2005.
  - As to CT residents, tax applies to gifts of real and tangible personal property located in CT and intangible personal property wherever located.
  - As to non-CT residents, tax applies to gifts of real or tangible personal property located in CT.
  - Taxable gifts reduce $2,000,000 estate tax exemption; no tax actually paid unless make more than $2,000,000 of lifetime gifts.
  - Rates = same as estate tax (7.2% to 12%).
- **Transfers of CT Real Estate or CT business entities holding title to real estate**
  - Transfers of Real Estate
    - Transfer of legal title will require deed reflecting transfer to be recorded on the land records.
      - Ex. Transfer from individual(s) to LLC.
    - May be required to report gift for gift tax purposes.
    - May incur Conveyance Tax. C.G.S. § 12-494.
      - The tax is 0.75% of the sales price and is assessed on any sale for more than $2,000.
      - There may also be a tax charged by the municipality in which the real estate is located in addition to the state tax.

- Numerous exceptions, which include conveyances:
  - For no consideration
  - Between spouses
  - Where there is a mere change in of identity or form of ownership or organization where there is no change in beneficial ownership (a.k.a. "identity of ownership")
  - Etc.

- Transfers of CT Business Entity holding title to real estate
  - Transfer of legal title will likely require some form of transfer document to be kept in the entity's records.
    - Ex. Stock certificate, LLC membership transfer certificate, etc.
  - Usually no need to record on land records.
  - Not subject to Conveyance Tax.
  - May be subject to Controlling Interest Transfer Tax.
    - Tax imposed on the sale or transfer for consideration of a controlling interest in an entity where the entity owns (directly or indirectly) an interest in CT real estate which has a value of not less than $2,000.
    - Tax is imposed on the person transferring the controlling interest at the rate of 1.11% of the value of the interest in the real property possessed by the entity.
- Public Act 490 ("PA 490")
  - Permits farm, forest, or open space land to be assessed at its use value rather than its fair market value or highest and best use value for purposes of local property taxation.
  - Without the lower use value assessment, most landowners would have to sell the land because they would not be able to afford the property taxes.
  - Additional Conveyance Tax (above standard Conveyance Tax discussed above) assessed for transfer of land within 10 years of obtaining PA 490 status.
    - If transferred in 1st year, tax of 10% is assessed.
    - Decreases 1% each year until the 10 year period has expired.
    - After 10 years, there is no Conveyance Tax.
    - Exceptions to Conveyance Tax apply.
      - Ex. John owns parcel A that has been classified as PA 490 farm land. John conveys parcel A into a single member LLC of which John is the sole member. Identity of ownership exception applies.

VI. Vermont Estate Tax

- **General**
  - Decedents with a Vermont taxable estate in excess of $2,750,000 are subject to an estate tax.
  - The Vermont taxable estate generally equals the federal taxable estate, plus any deduction taken for state death taxes, plus any taxable gifts made by the

decedent within 2 years of death. 32 V.S.A. §7442a(b); 32 V.S.A. §7402(14).
    - The tax is equal to 16% of the excess of $2,750,000 of Vermont taxable estate multiplied by a fraction wherein the numerator equals the value of the Vermont gross estate plus taxable gifts with a Vermont situs made within 2 years of death and the denominator equals the federal gross estate plus the value of taxable gifts made within 2 years of death. 32 V.S.A.§7442a(b).
    - The Vermont gross estate is the federal gross estate minus any property with a situs outside Vermont. 32 V.S.A. §7402(13). Real property in Vermont is sited in Vermont. Tangible personal property is sited in the state where it was normally kept or located at the time of the decedents death. Intangible personal property is sited in the state where the decedent was domiciled at death. 32 V.S.A. §7402(15).
- **Estate Tax Reduction for Estate of a Farmer**
    - Where a farmer qualifies for installment payments of estate taxes under 26 U.S.C. §6166, and the closely held business is the business of farming in Vermont, the amount of estate tax shall be reduced by the percentage which the closely held farm business bears to the federal adjusted gross estate. 32 V.S.A. §7443. Generally, the adjusted gross estate is the gross estate less deductions for qualified expenses.
    - To qualify for installment payment of estate taxes under 26 U.S.C. §6166, the value of the interest in a closely held business must exceed 35% of the adjusted gross estate. 26 U.S.C. §6166(a). For purposes of the 35% requirement, interests in residential buildings and related improvements occupied by the owner, lessee, or by farm employees. 26 U.S.C. §6166((b)(3).
    - Interest in a closely held business means:
        - An interest in a sole proprietorship;
        - An interest in a partnership if 20% or more of the capital interest is included in determining the gross estate of the decedent and there are 45 or fewer partners; or
        - Stock in a corporation if 20% or more in value of voting stock is included in determining the gross estate and there are 45 or fewer shareholders. 26 U.S.C. §6166(b)(1)(A)-(C).

VII. New Hampshire Estate Tax

- No state estate tax
- No state gift tax

VIII. Rhode Island Estate Tax

- Exemption
    - Set at $1,500,00 in 2015 and indexed to increase with inflation
    - 2016 = $1,500,000
    - 2017 = $1,515,156
    - Unlike the federal estate tax, the available exemption amount is not calculated by taking into account lifetime gifts

        - Incentive to make lifetime gifts to reduce potential RI estate tax consequences
- Estate Tax Rates
    - 6.4% to 16%
- RI Estate Tax Return
    - File within 9 months from date of death
    - If gross estate exceeds exemption, file Form 100A
    - If gross estate does not exceed exemption, file Form 100
- Release of Estate Tax Lien on Real Estate
    - Automatic statutory lien attaches to all RI real estate a person owns at death
    - To obtain a release of lien, must file:
        - Estate Tax Return (Form 100A or 100, whichever is applicable)
        - Discharge of Estate Tax Lien (Form T-77)
- No Portability
- Real Estate held in LLCs
    - While membership interest in an LLC is personal property, a member has no specific interest in specific LLC property. R.I. Gen. Laws § 7-16-34.
    - Accordingly, for RI estate tax purposes, a less than 100% member interest in an LLC is considered intangible personal property. Declaratory Ruling Request No. 2015-01.
        - For non-residents, intangible personal property is not subject to RI estate tax. R.I. Gen. Laws § 44-22-1.1(e). As a result, the underlying real estate held within the LLC would not be includable in the decedent's gross estate and would not be subject to RI estate tax.
        - In contrast, a single-member LLC is treated as an entity disregarded as separate from its owner, unless it affirmatively elects to be taxed as a corporation for federal tax purposes. If no election is made to treat the single member LLC as a corporation, the LLC is disregarded for estate tax purposes and the value of the real estate would be included in the non-resident's gross estate.
        - Finally, all RI real estate owned by a decedent at the time of death is subject to a statutory lien imposed under R.I. Gen. Laws § 44-23-13. A discharge of the estate tax lien is necessary to transfer the property and can be obtained by the payment of all estate taxes due in RI. R.I. Gen. Laws § 44-23-14. However, if the non-resident decedent does not own a 100% interest in the LLC (and the real estate is therefore not includable in his gross estate), an estate tax lien discharge is not required.
        - **NOTE:** The analysis changes if the decedent is a RI resident since the intangible property of a resident is subject to the RI estate tax under R.I. Gen. Laws § 44-22-1.1(e). A RI resident's less than 100% interest in a LLC would be subject to RI estate tax but not the statutory lien on real estate imposed under R.I. Gen. Laws § 44-23-13.
- RI does not have a Gift Tax

IX. Maine Estate Tax

- Exemption amount
  - For decedents dying on or after 1/1/13 but before 1/1/16 = $2,000,000
  - For decedents dying after 1/1/16 = equal to the federal exclusion amount. 36 M.R.S. § 4101 et seq.
- Tax rates

If the Maine taxable estate is greater than	But no more than	The tax is equal to
$5,490,000	$8,490,000	8% of the excess over $5,490,000
$8,490,000	$11,490,000	$240,000 plus 10% of the excess over $8,490,000
$11,490,000		$540,000 plus 12% of the excess over $11,490,000

- No state gift tax

X. Massachusetts Estate Tax

- **Basics**
  - Exemption amount is $1 million as of 2006; no increase in sight
  - Cliff tax - if an estate exceeds $1 million, the entire amount above $40,000 is taxed
  - No gift tax in Massachusetts, BUT to determine whether filing threshold is exceeded, add the value of the property owned at death to the value of any lifetime gifts in excess of the annual exclusion amount, and if the total exceeds the threshold, then filing is required; tax is only paid on what is still owned by decedent
  - Estate tax return due 9 months after date of death
  - No portability
  - For dates of death occurring on or after January 1, 2003, Massachusetts estate tax will be an amount equal to the federal credit for state death taxes computed using the Internal Revenue Code in effect on December 31, 2000.
  - Tax Rates range from .8% to 16%.

Estate SizeTax	**Rate**
$40,001 - $90,0000	.8%
$90,001 - $140,000	1.6%
$140,001 - $240,000	2.4%
$240,001 - $440,000	3.2%
$440,001 - $640,000	4.0%
$640,001 - $840,000	4.8%
$840,001 - $1,040,000	5.6%
$1,040,001 - $1,540,000	6.4%
$1,540,001 - $2,040,000	7.2%
$2,040,001 - $2,540,000	8.0%
$2,540,000 - $3,040,000	8.8%
$3,040,001 - $3,540,000	9.6%
$3,540,001 - $4,040,000	10.4%

$4,040,001 - $5,040,000	11.2%
$5,040,001 - $6,040,000	12.0%
$6,040,001 - $7,040,000	12.8%
$7,040,001 - $8,040,000	13.6%
$8,040,001 - $9,040,000	14.4%
$9,040,001 - $10,040,000	15.2%
Above $10,040,000	16.0%

- Estate tax returns must be filed through Mass Tax Connect at https://mtc.dor.state.ma.us/mtc/_/

- **Clearing Liens on Real Property**
  - Automatic estate tax lien on any interest in real property owned by decedent at time of passing
  - Lien is released by operation of law 10 years from date of death, but tax may still be due
  - If date of death is on or after January 1, 1997, and the gross estate is $1 million or less, lien can be cleared by an affidavit of the Personal Representative, subscribed to under the pains and penalties of perjury, recorded in the appropriate registry of deeds and stating that the gross estate of the decedent does not necessitate a federal estate tax filing. (M.G.L. c. 65C, §14)
  - When amount of the gross estate is greater than $1 million, a Certificate Releasing Massachusetts Estate Lien is necessary.
    - Return not yet filed: Application for Certificate Releasing Massachusetts Estate Tax Lien (Form M-4422) may be filed provided the transaction is occurring sooner than 9 months after the decedent's death, or during an approved extension of time AND there is an executed purchase and sale agreement (or mortgage commitment) for real estate that is includible in the decedent's estate.
    - Return previously filed: forward a copy of the purchase and sale agreement or mortgage commitment and indicate that a return was filed in order to expedite issuance of Certificate Releasing Massachusetts Estate Lien
    - Form M-4422 can now be filed by entering information electronically through MassTaxConnect. (faster processing / quicker release)
    - The application for Form M-4422 must be filed with an attested copy of the deed, a copy of the purchase and sale agreement or mortgage commitment, and payment of the estimated amount of the tax due.
- **Property Outside of MA / Non-resident Decedent**
  - Massachusetts resident who owned or transferred real estate or tangible personal property located outside of Massachusetts: credit for estate or inheritance taxes properly paid to other state(s)

    - Non-resident of Massachusetts who owned or transferred real estate or tangible personal property located in Massachusetts: amount of the Massachusetts nonresident estate tax is the proportion of the allowable credit from the federal estate tax return that the gross value of the Massachusetts property bears to the entire federal gross estate wherever situated (gross value of real property and tangible personal property in Massachusetts ÷ federal gross estate) × credit for state death taxes)
        - More Aggressive Approach may be possible – report out of state property, but state that the Commonwealth has no authority to levy a tax on it; has been successful for most recent returns
    - Determining filing threshold for non-resident: If total gross estate exceeds $1 million, there is a Massachusetts filing requirement because the total estate exceeds the current threshold regardless of the value of the MA property.
- **Special Use Valuation**
    - If the decedent's gross estate includes Massachusetts real property used for farming purposes, the Personal Representative can make an election to value such property for farm use if qualified under Code §2032A as in effect on January 1, 1985. (M.G.L. c. 65C, § 5(c)).
    - When federal estate tax return must be filed also, the Massachusetts election of special use valuation must be consistent with the federal election.
    - Personal Representative may make this election on a late return, but only if it is the first Massachusetts estate tax return filed
    - Election is irrevocable
    - Massachusetts estate tax lien - if Massachusetts farm property qualifying for special use valuation is disposed of or ceases to be used for farming within ten years from the decedent's death, a Massachusetts estate tax lien equal to the amount of additional tax due under Code §2032A, in effect on January 1, 1985, attaches to the property
        - lien arises when the election of special use valuation is made
        - additional tax is due within 6 months of the disposition or cessation of farm use
        - pending legislation may change valuation: "estate may elect to either value such property in accordance with section 2032A of the Code, in effect on January 1, 1985 or, if the gross estate of a decedent includes real property devoted to use for closely held agricultural land, the value of such land shall be valued pursuant to the valuation set by the farmland valuation advisory commission established pursuant to section 11 of chapter 61A for the fiscal year of the most recent growing season."

APPENDICES:

Appendix 1: Sample Credit Shelter / QTIP Trust

Appendix 2: Sample Disclaimer Trust