

TRIALS & TRIBULATIONS: DEFENDING TRANSFER TAX RETURNS IN AUDIT

Heart of America Fellows Institute
Oklahoma City, Oklahoma
May 3, 2019

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I. Overview

1. Gift Tax Cases

- Indirect gifts
- Annual exclusion gifts
- Defined value transactions
- Installment sales/Promissory notes
 - FMV of interest sold
 - FMV of consideration/note received
- GRATs
- BDITs
- Adequate Disclosure

I. Overview (cont'd)

Statistics on Gifts

Year/Tax Collected	709s Filed	709s Examined	% Audited	\$ Collected After Audit
2017/\$2.0B	244,974	1,886	0.8%	\$440M
2016/\$2.5B	249,302	1,843	0.8%	\$303M
2015/\$2.1B	238,324	2,539	0.9%	\$286M
2014/\$2.6B	267,600	3,098	0.8%	\$1.3B
2013/\$5.8B	371,747	2,775	1.1%	\$1.2B
2012/\$2.1B	260,426	3,164	1.4%	\$351M
2011/\$6.6B	223,090	2,623	1.2%	\$301M
2010/\$2.8B	226,241	1,777	0.7%	\$203M

I. Overview (cont'd)

2. Estate Tax Cases

- § 2036
- Marital Deduction Mismatch
- *Graegin* Loans

See, e.g., Estate of Black v. Comm'r, 133 T.C. 15 (2009), *supp. by* 103 T.C.M. (CCH) 1302 (2012);
See Estate of Shurtz v. Comm'r, 99 T.C.M. (CCH) 1096 (2010).

I. Overview (cont'd)

Statistics on Estates

Year/Tax Collected	706s Filed	706s Examined	% Audited	\$ Collected After Audit
2017/\$21.8B	35,042	2,876	8.2%	\$799M
2016/\$19.9B	35,592	3,187	8.8%	\$790M
2015/\$18.0B	36,130	2,770	7.8%	\$428M
2014/\$17.6B	35,619	2,853	8.5%	\$775M
2013/\$14.1B	33,719	3,250	11.6%	\$3.3B
2012/\$12.3B	28,061	3,762	29.9%	\$1.2B
2011/\$2.5B	12,582	4,195	18.2%	\$1.6B
2010/\$16.9B	23,014	4,288	10.1%	\$1.4B

I. Overview (cont'd)

3. General Issues

- Valuation
- Generally
- S corporation (tax affecting)
- Unrealized capital gains
- Chapter 14
 - § 2701
 - § 2702
 - § 2703
 - § 2704
- Undervaluation Penalties

II. Transfers of Entity Interests

- Generally
 - Ensure books and records of Entity are in order
 - Review Partnership Agreement, Bylaws, Buy-Sell Agreement to ensure transfer complies with terms or triggers any rights of first refusal
 - Keep track of changes in ownership interests
 - Restate schedule to Partnership Agreement indicating ownership interests
 - Consider keeping historical spreadsheet showing changes at each transaction
 - Update stock transfer ledger, issue stock certificates
 - Consider whether to make § 754 election
 - If made, use stepped-up basis for future transactions

See Estate of Jorgensen v. Comm'r, 97 T.C.M. (CCH) 1328 (2009).

II. Transfers of Entity Interests (cont'd)

- Generally (cont'd)
 - Document the transfer, to be executed by transferor and transferee
 - Date the transfer document – effective date vs. date signed
 - Ask partners to fill in date signed
 - Review Partnership Agreement to determine how interest is to be valued
 - Ensure that changes in percentage interests are reflected in all books and records of Partnership
 - Ensure that the Certificate of Limited Partnership is amended, if necessary
 - Ensure that K-1s conform to ownership changes
 - Ensure that distributions conform to ownership changes

Linton v. United States, 638 F. Supp. 2d 1277 (W.D. Wash. 2009);
Holman v. Comm'r, 130 T.C. 170 (2008), *appeal docketed*, No. 08-3774 (8th Cir. Dec. 12, 2008).

II. Transfers of Entity Interests (cont'd)

2. By Gift or Sale

- For gifts: Refrain from gift planning until Partnership is formed and operating
- For sales: Consider income tax issues

Compare

Linton v. United States, 630 F.3d 1211 (9th Cir. 2011);

Pierre v. Comm'r, 133 T.C. 24 (2009), *supp. by*, 99 T.C.M. (CCH) 1436, (2010);

Holman v. Comm'r, 130 T.C. 170 (2008), *aff'd*, 601 F.3d 763 (8th Cir. 2010);

Gross v. Comm'r, 96 T.C.M. (CCH) 187 (2008);

Estate of Strangi v. Comm'r, 85 T.C.M. (CCH) 1331 (2003), *aff'd*, 417 F.3d 468 (5th Cir. 2005);

Estate of Jones v. Comm'r, 116 U.S. 212 (2001);

Estate of Strangi v. Comm'r, 115 T.C. 478 (2000), *aff'd in part and rev'd in part*, 293 F.3d 279 (5th Cir. 2002);
with

Heckerman v. United States, 2009 WL 2240326 (W.D. Wash. Jul. 27, 2009);

Senda v. Comm'r, 88 T.C.M. (CCH) 8 (2004), *aff'd*, 433 F.3d 1044 (8th Cir. 2006);

Shepherd v. Comm'r, 115 T.C. 376 (2000), *aff'd*, 283 F.3d 1258 (11th Cir. 2002).

II. Transfers of Entity Interests (cont'd)

3. At Death

- Review transfer to determine whether lapse occurs under Chapter 14
- Consider maintaining interest in hands of Executor, subject to estate administration, until closing letter is received from the IRS
- Once IRS closing letter is received, document transfer, to be executed by executor and beneficiary

II. Transfers of Entity Interests (cont'd)

4. By Redemption

- Review Partnership Agreement or corporate documents to ensure that entity is not prohibited from redeeming the interest
- Document the redemption, to be executed by management and the transferring owner
- Ensure that books and records of Partnership reflect decrease to transferring partner's interest and corresponding proportionate increase to all remaining partners' interests

III. Transfer Tax Reporting

1. Obtain independent appraisal from qualified appraiser
 - Appraiser should be engaged by attorney, not taxpayer

Kohler v. Comm'r, 92 T.C.M 55 (2006).

III. Transfer Tax Reporting (cont'd)

2. Encourage communication among appraiser, client, and advisors

- A good appraisal reflects a high level of communication
 - Bad legal facts + Good appraisal = Bad result
 - Good legal facts + Bad appraisal = Bad result
 - Both scenarios = Unhappy client

III. Transfer Tax Reporting (cont'd)

3. Confirm with appraiser interest to be valued

III. Transfer Tax Reporting (cont'd)

4. Consider whether to aggregate interests
 - Interests held in marital trust may be valued separately

See, e.g., Estate of Nowell v. Comm'r, 77 T.C.M. (CCH) 1239 (1999);
Estate of Lopes v. Comm'r, 78 T.C.M. (CCH) 46 (1999);
Ahmanson Foundation v. United States, 674 F.2d 761 (9th Cir. 1981).

See, e.g., Estate of Mellinger v. Comm'r, 112 T.C. 26 (1999);
Estate of Bonner v. United States, 84 F.3d 196 (5th Cir. 1996);
Estate of Bright v. U.S., 658 F.2d 999 (5th Cir. 1981).

III. Transfer Tax Reporting (cont'd)

5. Consider whether tiered discounts might be appropriate

See Astleford v. Comm'r, 95 T.C.M (CCH) 1497 (2008).

III. Transfer Tax Reporting (cont'd)

6. Promote defensibility of valuation reports

- Clients should be realistic about projections
- Appraiser should
 - conduct thorough due diligence – be sure appraiser fully understands the nature, characteristics of business
 - have clear understanding of empirical data
 - apply relevant comparative factors
- Appraisal should be
 - well documented
 - readily understood

III. Transfer Tax Reporting (cont'd)

7. Review appraisal closely for facts

- Distribution policy
- Partnership terms
- Assets
- Cash flow
- Buy-Sell and other restrictive agreements

See *Kohler v. Comm'r*, 92 T.C.M. (CCH) 48 (2006) (declining to rely on IRS appraisal where expert “did not understand Kohler’s business”).

III. Transfer Tax Reporting (cont'd)

8. Encourage taxpayer to live by factual information provided to appraiser
 - Cash flow, distribution policy, etc.

III. Transfer Tax Reporting (cont'd)

9. Beware of rounding on appraisals and tax returns

III. Transfer Tax Reporting (cont'd)

10. Consider IRS Settlement Guidelines

- Goal: Consistency across different jurisdictions
- Issues addressed:
 - Discounts expected for various asset classes
 - Inclusion of assets under I.R.C. Section 2036 or 2038 transfers in gross estate
 - Determination of indirect gifts of assets
 - Applicability of accuracy-related penalties

07 No. 020 BNA Taxcore 25; http://www.irs.gov/pub/irs-utl/asg_penalties_family_limited_pships_finalredacted10_20_06.pdf.

See, e.g., Estate of Murphy v. United States, 104 A.F.T.R.2d 7703 (W.D. Ark. 2009);

Astleford v. Comm'r, 95 T.C.M. (CCH) 1497 (2008);

McCord v. Comm'r, 120 T.C. 358 (2003), rev'd, 461 F.3d 614 (5th Cir. 2006);

Temple v. United States, 423 F. Supp. 2d 605 (E.D. Tex. 2006);

Peracchio v. Comm'r, 86 T.C.M. (CCH) 412 (2003);

Lappo v. Comm'r, 86 T.C.M. (CCH) 333 (2003);

Estate of Beyer v. Comm'r, 112 T.C.M. (CCH) 356 (2016);

Estate of Dailey v. Comm'r, 82 T.C.M. (CCH) 710 (2001);

Estate of Deputy v. Comm'r, 85 T.C.M. (CCH) 1497 (2003).

IV. Audit

1. How are transfer tax returns selected for Audit?

- All are initially screened and reviewed at Cincinnati Service Center. Preparer's reputation can impact selection process
- Audit may occur anywhere in U.S., based on local workloads and inventories
 - Domicile of taxpayer is not controlling factor
- Second review performed by local estate tax manager
- Manager may assign to tax attorney
 - Attorney may approve without audit, with secondary management approval
- Complex business valuation issues may be referred to IRS Engineering & Valuation Division
 - IRS engineers are NOT issuing appraisals

IV. Audit (cont'd)

2. Who will handle audit?

- CPA
- Transaction counsel
- Litigation counsel

IV. Audit (cont'd)

3. Determine whether document destruction policy exists; if so, suspend

See, e.g., Qualcomm Inc. v. Broadcom Corp., 2008 WL 66932 (S.D. Cal. Jan. 7, 2008);
Phoenix Four, Inc. v. Strategic Re. Corp., 2006 WL 1409413 (S.D.N.Y. May 23, 2006).

IV. Audit (cont'd)

4. Consider burden of proof

- Burden shifts to IRS if taxpayer:
 - complies with reasonable requests for documents, information, and interviews
 - maintains required records
 - is not a partnership, corporation, or trust

I.R.C. § 7491.

IV. Audit (cont'd)

5. Consider impact of privileges

- Attorney-client privilege
 - Relation to email?
- Work-product doctrine
- Tax Practitioner's Privilege
- Waiver, generally
- Subject matter waiver

See Scott v. Beth Israel Medical Center, Inc., 847 N.Y.S.2d 436 (N.Y. Sup. 2007);
Sims v. Lakeside Sch., 2007 WL 2745367 (W.D. Wash. September 30, 2007).

See United States v. Frederick, 182 F.3d 496 (7th Cir. 1999);
United States v. Adlman, 68 F.3d 1495 (2d Cir. 1995).

But see United States v. Textron, 507 F. Supp. 2d 138 (D.R.I. 2007), *aff'd in part, vacated in part, and remanded*, 553 F.3d 87 (1st Cir. 2009).

I.R.C. § 7525.

IV. Audit (cont'd)

6. Consider whether production of privileged information may support taxpayer's case
 - Beware subject matter waiver
 - Beware inadvertent waiver

See Fed. R. Evid. 502.

IV. Audit (cont'd)

7. Provide responses that are true and correct, to best of taxpayer's knowledge
 - How much information to volunteer?

IV. Audit (cont'd)

8. Consider right to conference with manager

IV. Audit (cont'd)

9. Anything stated or written can be treated as admission
 - Anything written to any expert is discoverable
 - Educate your appraiser
 - Beware spoliation of evidence

IV. Audit (cont'd)

10. Produce responsive documents in taxpayer's possession, custody, or control

IV. Audit (cont'd)

11. Keep careful track of every document and electronic file produced to IRS
 - Bates-label documents
 - Keep copy

IV. Audit (cont'd)

12. Understand IRS's broad summons power

- May examine or summon laundry list of items and people
- For purpose of “ascertaining the correctness of any return, making a return where none has been made, or determining the liability of any person for any internal revenue tax”
- Subpoena power is subject to privileges

I.R.C. § 7602(a).

IV. Audit (cont'd)

13. File protective claims if necessary

- Variance doctrine
- TEFRA versus non-TEFRA partnership claims for refund
 - AAR versus Form 843

[STEPH: WHICH CITES?]

I.R.C. § § 6031(A), 6222-6231.

IV. Audit (cont'd)

14. Keep Partnership in place

[STEPH: CHECK CITE]

See Estate of Bigelow v. Comm'r, 89 T.C.M. (CCH) 954 (2005), *aff'd*, 503 F.3d 955 (9th Cir. 2007).

IV. Audit (cont'd)

15. If you're in an audit of an estate . . .

- Refrain from distributing Partnership interests held in estate to beneficiaries
- Save any estate audit expenses for deduction at conclusion of matter – on Form 4421
 - consider not taking expenses as deductions on estate's 1041s
 - advise Executor to consider keeping track of time spent on estate matters

[STEPH: CITES?]

I.R.C. § 6324;
31 U.S.C. § 3713;
I.R.C. § 2204.

IV. Audit (cont'd)

16. Treat informal interviews as depositions
 - Prepare witnesses as if for a deposition
 - Conduct interview at advisor's office, rather than client's office

IV. Audit (cont'd)

17. Appeals

- In general, all new cases from Exam must have at least 365 remaining on the SOL when received in Appeals
- Estate tax cases must have at least 270 days remaining on the SOL when received in Appeals
- Appeals may not consider:
 - New information
 - New issues
 - New argument/theory

Relevant Cites

<u>Topic(s)</u>	<u>Citation</u>
2036:	<i>Estate of Abraham v. Comm'r</i> , 87 T.C.M. (CCH) 975 (2004), <i>aff'd</i> , 408 F.3d 26 (1 st Cir. 2005)
Valuation:	<i>Adams v. United States</i> , 83 A.F.T.R.2d 1887 (N.D. Tex. Mar. 17, 1999), <i>rev'd</i> , 218 F.3d 383 (5 th Cir. 2000)
Valuation:	<i>Adams v. United States</i> , 218 F.3d 383 (5 th Cir. 2000), <i>entered by</i> 88 A.F.T.R.2d 6057 (N.D. Tex. 2001)
Burden of Proof:	<i>Estate of Adell v. Comm'r</i> , 108 T.C.M. (CCH) 107 (2014)
Aggregation:	<i>Estate of Adler v. Comm'r</i> , 101 T.C.M. (CCH) 1118 (2011)
Work Product Doctrine:	<i>United States v. Adlman</i> , 68 F.3d 1495 (2 ^d Cir. 1995)
Aggregation:	<i>Ahmanson Foundation v. United States</i> , 674 F.2d 761 (9 th Cir. 1981)
Valuation:	<i>Estate of Amlie v. Comm'r</i> , 91 T.C.M. (CCH) 1071 (2006)
Post-Event Facts:	<i>Estate of Andrews v. United States</i> , 850 F. Supp. 1279 (E.D. Va. 1994)
Valuation:	<i>Astleford v. Comm'r</i> , 95 T.C.M. (CCH) 1497 (2008)
Valuation:	<i>Estate of Baird v. Comm'r</i> , 82 T.C.M. (CCH) 666 (2001), <i>rev'd and remanded</i> , 416 F.3d 442 (5 th Cir. 2005)
2036:	<i>Estate of Beyer v. Comm'r</i> , 112 T.C.M. (CCH) 356 (2016)
Indirect Gift:	<i>Estate of Bies v. Comm'r</i> , 80 T.C.M. (CCH) 628 (2000)
2036:	<i>Estate of Bigelow v. Comm'r</i> , 89 T.C.M. (CCH) 954 (2005), <i>aff'd</i> , 503 F.3d 955 (9 th Cir. 2007)
2036:	<i>Estate of Bischoff v. Comm'r</i> , 69 U.S. 32 (1977)
2036, Promissory Notes, Marital Deduction Mismatch:	<i>Estate of Black v. Comm'r</i> , 133 T.C. 340 (2009), <i>supp. by</i> 103 T.C.M. (CCH) 1302 (2012)
2036:	<i>Estate of Bongard v. Comm'r</i> , 124 T.C. 95 (2005)
Aggregation:	<i>Estate of Bonner v. United States</i> , 84 F.3d 196 (5 th Cir. 1996)

Relevant Cites (cont'd)

<u>Topic(s)</u>	<u>Citation</u>
Indirect Gift:	<i>Estate of Bosca v. Comm'r</i> , 76 T.C.M. (CCH) 62 (1998)
2036:	<i>Estate of Boykin v. Comm'r</i> , 53 T.C.M. (CCH) 345 (1987)
Aggregation:	<i>Estate of Bright v. United States</i> , 658 F.2d 999 (5 th Cir. 1981)
2036:	<i>United States v. Byrum</i> , 408 U.S. 125 (1972)
Privileges:	<i>Cavallaro v. United States</i> , 153 F. Supp. 2d 52 (Mass. 2001), <i>aff'd</i> , 284 F.3d 236 (1 st Cir. 2002)
Burden of Proof, Valuation:	<i>Cavallaro v. Comm'r</i> , 108 T.C.M. (CCH) 287 (2014), <i>aff'd in part, rev'd in part, remanded</i> , 842 F.3d 16 (1 st Cir. 2016)
Aggregation:	<i>Estate of Chenowith v. Commissioner</i> , 88 T.C. 1577 (1987)
Defined Value:	<i>Estate of Christiansen v. Comm'r</i> , 130 T.C. 1 (2008), <i>aff'd</i> , 586 F.3d 1061 (8 th Cir. 2009)
2703, Gift on Formation, Valuation:	<i>Church v. United States</i> , 85 A.F.T.R.2d 804 (W.D. Texas 2000), <i>aff'd</i> , 268 F.3d 1063 (5 th Cir. 2001)
2036:	<i>Comm'r v. Church's Estate</i> , 335 U.S. 632 (1949)
Aggregation:	<i>Estate of Clarke v. Comm'r</i> , 35 T.C.M. (CCH) 1482 (1976)
2036:	<i>Estate of Cohen v. Comm'r</i> , 79 T.C. 1015 (1982)
Aggregation:	<i>Estate of Curry v. United States</i> , 706 F.2d 1424 (7 th Cir. 1983)
Valuation:	<i>Estate of Dailey v. Comm'r</i> , 82 T.C.M. (CCH) 710 (2001)
Valuation:	<i>Estate of Davis v. Comm'r</i> , 110 U.S. 530 (1998)
Valuation:	<i>Estate of Deputy v. Comm'r</i> , 85 T.C.M. (CCH) 1497 (2003)
Aggregation:	<i>Estate of Dieringer v. Comm'r</i> , 146 T.C. 117 (2016)
2036:	<i>Estate of Disbrow v. Comm'r</i> , 91 T.C.M. (CCH) 794 (2006)
Promissory Notes:	<i>Estate of Duncan v. Comm'r</i> , 102 T.C.M. (CCH) 421 (2011)
Valuation (built-in gains):	<i>Estate of Dunn v. Comm'r</i> , 301 F.3d 339 (5 th Cir. 2002)
Valuation:	<i>Eisenberg v. Comm'r</i> , 155 F.3d 50 (2d Cir. 1998)
2703:	<i>Estate of Elkins v. Comm'r</i> , 140 T.C. 86 (2013)
2036:	<i>Estate of Erickson v. Comm'r</i> , 93 T.C.M. (CCH) 1175 (2007)

Relevant Cites (cont'd)

Topic(s)	Citation
Valuation:	<i>Evenchik v. Comm'r</i> , 105 T.C.M. (CCH) 1231 (2013)
Annual Exclusion:	<i>Fisher v. United States</i> , 105 A.F.T.R.2d 1347 (S.D. Ind. 2010)
2703:	<i>Fisher v. United States</i> , 106 A.F.T.R.2d 6144 (S.D. Ind. 2010)
Post-Event Facts:	<i>Estate of Foster v. Comm'r</i> , 101 T.C.M. (CCH) 1444 (2011)
Work Product Doctrine:	<i>United States v. Frederick</i> , 182 F.3d 496 (7 th Cir. 1999)
Valuation:	<i>Estate of Gallagher v. Comm'r</i> , 101 T.C.M. (CCH) 1702 (2011)
Promissory Notes:	<i>Estate of Gilman v. Comm'r</i> , 88 T.C.M. (CCH) 627 (2004)
Valuation:	<i>Estate of Gimbel v. Comm'r</i> , 92 T.C.M. (CCH) 504 (2006)
Valuation:	<i>Estate of Giovacchini v. Comm'r</i> , 105 T.C.M. (CCH) 1179 (2013)
Valuation:	<i>Estate of Giustina v. Comm'r</i> , 101 T.C.M. (CCH) 1676 (2011), <i>rev'd, remanded</i> , 586 Fed. Appx. 417 (9 th Cir. 2014)
2036:	<i>Estate of Gore v. Comm'r</i> , 93 T.C.M. (CCH) 1436 (2007)
2053; Promissory Notes:	<i>Estate of Graegin v. Comm'r</i> , 56 T.C.M. (CCH) 387 (1988)
Valuation:	<i>Estate of Green v. Comm'r</i> , 86 T.C.M. (CCH) 758 (2003)
Valuation:	<i>Estate of Gribauskas v. Comm'r</i> , 116 T.C. 142 (2001), <i>rev'd</i> , 342 F.3d 85 (2d Cir. 2003)
Indirect Gift:	<i>Gross v. Comm'r</i> , 96 T.C.M. (CCH) 187 (2008)
2503, Annual Exclusion Gifts:	<i>Hack'l v. Comm'r</i> , 118 T.C. 279 (2002), <i>aff'd</i> , 335 F.3d 664 (7 th Cir. 2003)
2036, Recycling of Value:	<i>Estate of Harper v. Comm'r</i> , 83 T.C.M. (CCH) 1641 (2002)
2036, Aggregation:	<i>Estate of Harrison v. Comm'r</i> , 52 T.C.M. (CCH) 1306 (1987)
Indirect Gift:	<i>Heckerman v. United States</i> , 104 A.F.T.R.2d 5551 (W.D. Wash. 2009)
Defined Value:	<i>Hendrix v. Comm'r</i> , 101 T.C.M. (CCH) 1642 (2011)
2036:	<i>Estate of Hillgren v. Comm'r</i> , 87 T.C.M. (CCH) 1008 (2004)
2036:	<i>Estate of Holliday v. Comm'r</i> , 111 T.C.M. (CCH) 1235 (2016)

Relevant Cites (cont'd)

Topic(s)	Citation
2703, Indirect Gift, Valuation:	<i>Holman v. Comm'r</i> , 130 T.C. 170 (2008), <i>aff'd</i> , 601 F.3d 763 (8 th Cir. 2010)
2036:	<i>Estate of Hurford v. Comm'r</i> , 96 T.C.M. (CCH) 422 (2008)
2036:	<i>Hutchens v. Comm'r</i> , 66 T.C.M. (CCH) 1599 (1993)
Valuation (built-in gains) Constitutionality:	<i>Estate of Jameson v. Comm'r</i> , 267 F.3d 366 (5 th Cir. 2001), <i>vacating, remanding</i> 77 T.C.M. (CCH) 1383 (1999)
Valuation (built-in gains):	<i>Estate of Jelke v. Comm'r</i> , 507 F.3d 1317 (11 th Cir. 2007), <i>vacating, remanding</i> 89 T.C.M. (CCH) 1397 (2005)
Valuation (built-in gains):	<i>Estate of Jensen v. Comm'r</i> , 100 T.C.M. (CCH) 138 (2010)
Indirect Gift, Valuation:	<i>Jones v. Comm'r</i> , 116 T.C. 121 (2001)
2036, Equitable Recoupment:	<i>Estate of Jorgensen v. Comm'r</i> , 97 T.C.M. (CCH) 1328 (2009), <i>aff'd</i> , 431 Fed. Appx. 544 (9 th Cir. 2011)
Valuation:	<i>Estate of Jung v. Comm'r</i> , 101 T.C. 412 (1993)
2701:	<i>Estate of Karmazin v. Comm'r</i> , T.C. Docket No. 2127-03 (settled prior to disposition)
2036, Promissory Notes, Valuation:	<i>Keller v. United States</i> , 104 A.F.T.R.2d 6015 (S.D. Tex. 2009), <i>aff'd</i> , 697 F.3d 238 (5 th Cir. 2012)
Valuation:	<i>Estate of Kelley v. Comm'r</i> , 90 T.C.M. (CCH) 369 (2005)
2036:	<i>Estate of Kelly v. Comm'r</i> , 103 T.C.M. (CCH) 1393 (2012)
2704:	<i>Kerr v. Comm'r</i> , 113 T.C. 449 (1999), <i>aff'd</i> , 292 F.3d 490 (5 th Cir. 2002)
2036:	<i>Kimbell v. United States</i> , 244 F. Supp. 2d 700 (N.D. Tex. 2003), <i>vacated, remanded</i> , 371 F.3d 257 (5 th Cir. 2004)
2036:	<i>Estate of King v. Comm'r</i> , 37 T.C. 973 (1962)
Valuation:	<i>In the Matter of King</i> , 424 F. Supp. 117 (D.C. Colo. Jan. 28, 1975), <i>aff'd</i> , 545 F.2d 700 (10 th Cir. 1976)
2519:	<i>Estate of Kite v. Comm'r</i> , 105 T.C.M. (CCH) 1277 (2013)

Relevant Cites (cont'd)

<u>Topic(s)</u>	<u>Citation</u>
2036, Valuation:	<i>Estate of Knepp v. United States</i> , 358 F. Supp. 2d 421 (M.D. Pa. 2004)
2704, Valuation:	<i>Knight v. Comm'r</i> , 115 T.C. 506 (2000)
2031, 2032, 2512, Valuation:	<i>Kohler v. Comm'r</i> , 92 T.C.M. (CCH) 48 (2006)
Promissory Notes, Valuation:	<i>Koons v. Comm'r</i> , 105 T.C.M. (CCH) 1567 (2013)
2036:	<i>Estate of Korby v. Comm'r</i> , 89 T.C.M. (CCH) 1150 (2005), <i>aff'd</i> , 471 F.3d 848 (8 th Cir. 2006)
Privileges:	<i>United States v. Kovel</i> , 296 F.2d 918 (2 ^d Cir. 1961)
Valuation:	<i>United States v. Land</i> , 303 F.2d 170 (5 th Cir. 1962)
Valuation:	<i>Lappo v. Comm'r</i> , 86 T.C.M. (CCH) 333 (2003)
2053:	<i>Estate of Lasarzig v. Comm'r</i> , 78 T.C.M. (CCH) 448 (1999)
Aggregation:	<i>Estate of Lehmann v. Comm'r</i> , 74 T.C.M. (CCH) 415 (1997)
Valuation:	<i>Levy v. United States</i> , No. A-07-CA-339-LY (W.D. Tex. Nov. 26, 2008), <i>aff'd</i> , 402 Fed. Appx. 979 (5 th Cir. 2010)
2036:	<i>Estate of Liljestrand v. Comm'r</i> , 102 T.C.M. (CCH) 440 (2011)
Indirect Gift:	<i>Linton v. United States</i> , 638 F. Supp. 2d 1277 (W.D. Wash. 2009), <i>rev'd in part, remanded</i> , 630 F.3d 1211 (9 th Cir. 2011)
Valuation:	<i>Litman v. United States</i> , 78 Fed. Cl. 90 (2007)
2036:	<i>Estate of Lockett v. Comm'r</i> , 103 T.C.M. (CCH) 1671 (2012)
Aggregation:	<i>Estate of Lopes v. Comm'r</i> , 78 T.C.M. (CCH) 46 (1999)
Valuation, Undivided Interest:	<i>Ludwick v. Comm'r</i> , 99 T.C.M. (CCH) 1424 (2010)
2036, Indirect Gift:	<i>Estate of Malkin v. Comm'r</i> , 98 T.C.M. (CCH) 57938 (2009)
Valuation:	<i>Mandelbaum v. Comm'r</i> , 69 T.C.M. (CCH) 2852 (1995)

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Topic(s)	Citation
Valuation:	<i>McCord v. Comm'r</i> , 120 T.C. 358 (2003), <i>rev'd</i> , 461 F.3d 614 (5 th Cir. 2006)
Defined Value, Net, Net Gift:	<i>Succession of McCord v. Comm'r</i> , 461 F.3d 614 (5 th Cir. 2006), <i>rev'g</i> 120 T.C. 358 (2003)
Valuation:	<i>Estate of McFarland v. Comm'r</i> , 72 T.C.M. (CCH) 673 (1996)
Promissory Notes:	<i>McKee v. Comm'r</i> , 72 T.C.M. (CCH) 324 (1996)
Valuation, Annuity Tables:	<i>Estate of McLendon v. Comm'r</i> , 72 T.C.M. (CCH) 42 (1996), <i>rev'd</i> , 135 F.3d 1017 (5 th Cir. 1998)
2036:	<i>Estate of McNichols v. Comm'r</i> , 265 F.2d 667 (3 ^d Cir. 1959)
Aggregation:	<i>Estate of Mellinger v. Comm'r</i> , 112 T.C. 26 (1999)
2036:	<i>Estate of Miller v. Comm'r</i> , 97 T.C.M. (CCH) 1602 (2009)
2036:	<i>Estate of Mirowski v. Comm'r</i> , 95 T.C.M. (CCH) 1277 (2008)
2036, Promissory Notes:	<i>Estate of Murphy v. United States</i> , 104 A.F.T.R.2d 7703 (W.D. Ark. 2009)
Ignoring Entity:	<i>Estate of Murphy v. Comm'r</i> , 60 T.C.M. (CCH) 645 (1990)
Aggregation:	<i>Estate of Newhouse v. Comm'r</i> , 94 T.C. 193 (1990)
Post-Event Facts:	<i>Estate of Noble v. Comm'r</i> , 89 T.C.M. (CCH) 649 (2005)
Aggregation:	<i>Northern Trust Co. v. Comm'r</i> , 87 T.C. 349 (1986)
Aggregation:	<i>Estate of Nowell v. Comm'r</i> , 77 T.C.M. (CCH) 1239 (1999)
2036:	<i>United States v. O'Malley</i> , 383 U.S. 627 (1966)
Valuation:	<i>Peracchio v. Comm'r</i> , 86 T.C.M. (CCH) 412 (2003)
Defined Value:	<i>Petter v. Comm'r</i> , 98 T.C.M. (CCH) 534 (2009), <i>aff'd</i> , 653 F.3d 1012 (9 th Cir. 2011)
Spoliation:	<i>Phoenix Fours, Inc. v. Strategic Res. Corp.</i> , 446 F. Supp. 2d 205 (S.D.N.Y. 2006)
Indirect Gift, Step Transaction:	<i>Pierre v. Comm'r</i> , 133 T.C. 24 (2009), <i>supp. by</i> , 99 T.C.M. (CCH) 1436 (2010)
2036:	<i>Estate of Powell v. Comm'r</i> , 148 T.C. 392 (2017)
Annual Exclusion:	<i>Price v. Comm'r</i> , 99 T.C.M. (CCH) 1005 (2010)

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Topic(s)	Citation
Defined Value, Public Policy:	<i>Procter v. Comm'r</i> , 142 F.2d 824 (4 th Cir. 1944)
2036, Promissory Notes, Annual Exclusion:	<i>Estate of Purdue v. Comm'r</i> , 110 T.C.M. (CCH) 627 (2015)
Discovery Due Diligence:	<i>Qualcomm Inc. v. Broadcom Corp.</i> , No. 05cv1958-B (BLM) (S.D. Cal. Jan. 7, 2008)
Variance Doctrine:	<i>Real Estate Land Title and Trust Co. v. United States</i> , 309 U.S. 13 (1940)
2036:	<i>Estate of Rector v. Comm'r</i> , 94 T.C.M. (CCH) 567 (2007)
2036:	<i>Estate of Reichardt v. Comm'r</i> , 114 T.C. 144 (2000)
2036:	<i>Reinecke v. Northern Trust Co.</i> , 278 U.S. 339 (1929)
Privileges:	<i>United States v. Richey</i> , 632 F.3d 559 (9 th Cir. 2011)
Valuation (built-in gains):	<i>Estate of Richmond v. Comm'r</i> , 107 T.C.M. (CCH) 1135 (2014)
2036:	<i>Estate of Riese v. Comm'r</i> , 101 T.C.M. (CCH) 1269 (2011)
2036:	<i>Estate of Rosen v. Comm'r</i> , 91 T.C.M. (CCH) 1220 (2006)
Adequate Disclosure:	<i>Estate of Sanders v. Comm'r</i> , 107 T.C.M. (CCH) 1493 (2014)
Post-Event Facts:	<i>Estate of Saunders v. Comm'r</i> , 136 T.C. 406 (2011)
Privileges:	<i>Schaeffler v. United States</i> , 22 F. Supp. 3d 319 (S.D.N.Y. 2014), <i>vacated, remanded</i> , 806 F.3d 34 (2d Cir. 2015)
2036:	<i>Estate of Schauerhamer v. Comm'r</i> , 73 T.C.M. (CCH) 2855 (1997)
Reciprocal Trusts:	<i>Estate of Schuler v. Comm'r</i> , 282 F.3d 575 (8 th Cir. 2002)
2036:	<i>Estate of Schutt v. Comm'r</i> , 89 T.C.M. (CCH) 1353 (2005)
Privileges:	<i>Scott v. Beth Israel Medical Center, Inc.</i> , 847 N.Y.S.2d 436 (N.Y. Sup. 2007)
Indirect Gift:	<i>Senda v. Comm'r</i> , 88 T.C.M. (CCH) 8 (2004), <i>aff'd</i> , 433 F.3d 1044 (8 th Cir. 2006)
Valuation, Annuity Tables:	<i>Shackleford v. United States</i> , 82 A.F.T.R. 2D 5538 (E.D. Cal. 1998)
Indirect Gift, Valuation:	<i>Shepherd v. Comm'r</i> , 115 T.C. 376 (2000), <i>aff'd</i> , 283 F.3d 1258 (11 th Cir. 2002)

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Topic(s)	Citation
2036, Marital Deduction Mismatch:	<i>Estate of Shurtz v. Comm'r</i> , 99 T.C.M. (CCH) 1096 (2010)
Valuation:	<i>Estate of Simplot v. Comm'r</i> , 249 F.3d 1191, <i>rev'g</i> 112 T.C. 130 (1999)
Privileges:	<i>Sims v. Lakeside School</i> , No. 06cv1412 (RSM) (W.D. Wash. Sept. 20, 2007)
Post-Event Facts:	<i>Estate of [Algerine] Smith v. Comm'r</i> , 198 F.3d 515 (5 th Cir. 1999)
Valuation:	<i>Estate of [Helen] Smith v. Comm'r</i> , 78 T.C.M. (CCH) 745 (1999)
2704:	<i>Estate of Smith v. United States</i> , 103 Fed. Cl. 533 (2012)
Annual Exclusion:	<i>Estate of Sommers v. Comm'r</i> , 105 T.C.M. (CCH) 1041 (2013)
Net, Net Gift:	<i>Steinberg v. Comm'r</i> , 145 T.C. 184 (2015)
2036, Undivided Interests:	<i>Estate of Stewart v. Comm'r</i> , 92 T.C.M. (CCH) 357 (2006), <i>vacated, remanded</i> , 617 F.3d 148 (2 ^d Cir. 2010)
Promissory Notes:	<i>Estate of Stick v. Comm'r</i> , 100 T.C.M. (CCH) 194 (2010)
2036:	<i>Estate of [Allene] Stone v. Comm'r</i> , 86 T.C.M. (CCH) 551 (2003)
2036:	<i>Estate of [Joanne] Stone v. Comm'r</i> , 103 T.C.M. (CCH) 1237 (2012)
2036:	<i>Estate of Strangi v. Comm'r</i> , 115 T.C. 478 (2000), <i>aff'd in part, rev'd in part</i> , 293 F.3d 279 (5 th Cir. 2002)
2036:	<i>Estate of Strangi v. Comm'r</i> , 85 T.C.M. (CCH) 1331 (2003), <i>aff'd</i> , 417 F.3d 468 (5 th Cir. 2005)
Valuation:	<i>Temple v. United States</i> , 423 F. Supp. 2d 605 (E.D. Tex. 2006)
Work Product Doctrine:	<i>United States v. Textron</i> , 507 F. Supp. 2d 138 (D.R.I. 2007), <i>rev'd</i> , 577 F.3d 21 (1 st Cir. 2009)
Valuation, Special Use:	<i>Estate of Thompson v. Comm'r</i> , 76 T.C.M. (CCH) 426 (1998)
2036, Valuation:	<i>Estate of Thompson v. Comm'r</i> , 84 T.C.M. (CCH) 374 (2002), <i>aff'd</i> , 382 F.3d 367 (3 ^d Cir. 2004)
Defined Value:	<i>True v. Comm'r</i> , T.C. Docket Nos. 21896-16, 21897-16
Step Transaction:	<i>True v. United States</i> , 190 F.3d 1165 (10 th Cir. 1999)
2036, Annual Exclusion, Marital Deduction Mismatch:	<i>Estate of Turner v. Comm'r</i> , 102 T.C.M. (CCH) 214 (2011), <i>supp. by</i> 138 T.C. 14 (2012)

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Topic(s)	Citation
Privileges:	<i>United States v. Tweel</i> , 550 F.2d 297 (5 th Cir. 1977)
Privileges:	<i>In re von Bulow</i> , 828 F.2d 94 (2 ^d Cir. 1987)
Defined Value, Annual Exclusion: 2036:	<i>Wandry v. Comm'r</i> , 103 T.C.M. (CCH) 1472 (2012), <i>nonacq.</i> , I.R.B. 2012-46 (Nov. 13, 2012) <i>Wheeler v. United States</i> , 116 F.3d 749 (5 th Cir. 1997), <i>rev'g</i> 77 A.F.T.R.2d 1411 (W.D. Tex. Jan. 26, 1996)
Annual Exclusion:	<i>Estate of Wimmer v. Comm'r</i> , 103 T.C.M. (CCH) 1839 (2012)
2702, 2036, IDGTs:	<i>Estate of Woelbing v. Comm'r</i> , T.C. Docket No. 30261-13 (settled prior to disposition)
IRS Settlement Guidelines:	07 No. 020 BNA Taxcore 25; http://www.irs.gov/pub/irs-utl/asg_penalties_family_limited_pships_finalredacted_10_20_06.pdf
Investment Company Rules:	I.R.C. § 351
Investment Company Rules:	I.R.C. § 368
Investment Company Rules:	I.R.C. § 721
Fiduciary Liability:	I.R.C. § 2204
TEFRA:	I.R.C. § 6031(A)
TEFRA:	I.R.C. § 6222-31
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Burden of Proof:	I.R.C. § 7491
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Fiduciary Liability:	31 U.S.C. § 3713
Privileges:	Fed. R. Evid. 502
Work Product:	Fed. R. Civ. P. 26(B)(3)
Privileges:	Tax Ct. R. 70(c)