



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.25.5

JUNE 20, 2023

EFFECTIVE DATE

(06-20-2023)

PURPOSE

- (1) This transmits revised IRM 4.25.5, Estate and Gift Tax, Technical Guidelines for Estate and Gift Tax Issues.

MATERIAL CHANGES

- (1) IRM 4.25.5.1.2 was revised to add a new paragraph (3), which provides a citation to an existing IRM table that summarizes estate and gift specific delegation orders.
- (2) The table in IRM 4.25.5.1.4(1) was revised to provide an updated definition of “classification” that uses more general program language instead of specific job titles.
- (3) IRM 4.25.5.2 was revised to restore information that had been inadvertently removed in the last revision of this IRM.
- (4) IRM 4.25.5.2.4 was revised to reflect current procedures for requesting stock valuations.
- (5) IRM 4.25.5.2.6 was edited to conform with the style of the rest of this IRM section and to add form links.
- (6) IRM 4.25.5.2.11 was revised to provide additional cross references.
- (7) IRM 4.25.5.2.15 was edited to conform with the style of the rest of this IRM section and to add a form link.
- (8) IRM 4.25.5.2.16 was edited to conform with the style of the rest of this IRM section and to add form links.
- (9) IRM 4.25.5.2.17 was revised for style and to remove duplicative paragraphs.
- (10) IRM 4.25.5.2.18 was edited to conform with the style of the rest of this IRM section and to add citation links.
- (11) IRM 4.25.5.2.23 was incorporated into IRM 4.25.5.2.22 because there are no longer two separate lead sheets for non-QTIP and QTIP bequests to a surviving spouse. In addition IRM 4.25.5.2.22 was edited for style and to remove outdated citations. The remaining IRM sections were renumbered as a result of combining IRM 4.25.5.2.23 into IRM 4.25.5.2.22.
- (12) IRM 4.25.5.2.25 was edited for style and to add citation links. In addition, a reference to an obsolete publication was removed.
- (13) IRM 4.25.5.2.27 was revised to include a reference to Rev. Proc. 2022-32, which superseded Rev. Proc. 2017-34. In addition, edits were made for style and clarity.
- (14) IRM 4.25.5.2.29 was revised to remove duplicative information.
- (15) IRM 4.25.5.2.32 was revised to reflect the proper title of the lead sheet and to provide correct information regarding where the lien package should be sent.

- (16) Editorial changes have been made throughout this IRM. Website addresses, legal references, and IRM references were reviewed and updated as necessary.

EFFECT ON OTHER DOCUMENTS

The July 28, 2020 version of IRM 4.25.5 is superseded.

AUDIENCE

This section contains instructions and guidelines for Small Business/Self Employed Estate and Gift Tax Specialty Programs employees.

Timothy J. Bilotta
Director, Specialty Examination Policy
Small Business/Self-Employed

4.25.5

Technical Guidelines for Estate and Gift Tax Issues

Table of Contents

4.25.5.1 Program Scope and Objectives

- 4.25.5.1.1 Background
- 4.25.5.1.2 Authority
- 4.25.5.1.3 Program Objectives and Review
- 4.25.5.1.4 Terms/Definitions/Acronyms
- 4.25.5.1.5 Related Resources

4.25.5.2 Issue Specific Lead Sheets and Technical Guidance

- 4.25.5.2.1 Adjusted Taxable Gifts Lead Sheet
- 4.25.5.2.2 Schedule A, Real Estate Valuation Lead Sheet
- 4.25.5.2.3 Schedule A-1, Section 2032A Valuation Lead Sheet
- 4.25.5.2.4 Schedule B – Stocks and Bonds Lead Sheet
- 4.25.5.2.5 Schedule C – Mortgages, Notes, and Cash Lead Sheet
- 4.25.5.2.6 Closely Held Business Lead Sheet
- 4.25.5.2.7 Community Property
- 4.25.5.2.8 Schedule D – Life Insurance Lead Sheet
- 4.25.5.2.9 Domicile Lead Sheet
- 4.25.5.2.10 Schedule E – Jointly Owned Property Lead Sheet
- 4.25.5.2.11 Schedule F – Misc. Property Lead Sheet
- 4.25.5.2.12 Family Limited Liability Entities
- 4.25.5.2.13 Schedule G – Transfers during Decedent's Life Lead Sheet
- 4.25.5.2.14 Schedule H – Powers of Appointment Lead Sheet
- 4.25.5.2.15 Schedule I – Annuities Lead Sheet
- 4.25.5.2.16 Schedule J - Expenses Incurred During Administration
- 4.25.5.2.17 Schedule J - Executor's Commissions and Attorney Fees Lead Sheet
- 4.25.5.2.18 Schedule K — Debts of the Decedent Lead Sheet
- 4.25.5.2.19 Schedule K – Mortgages and Liens
- 4.25.5.2.20 Schedule L – Net Losses during Administration
- 4.25.5.2.21 Schedule L – Property Not Subject to Claims Lead Sheet
- 4.25.5.2.22 Schedule M – Bequests to Surviving Spouse Lead Sheet
- 4.25.5.2.23 Qualified Domestic Trust Lead Sheet
- 4.25.5.2.24 Schedule O – Charitable, Public, and Similar Gifts and Bequests
- 4.25.5.2.25 Schedule P – Credit for Foreign Death Taxes
- 4.25.5.2.26 Portability
- 4.25.5.2.27 Project and Delinquent Return Workpapers
- 4.25.5.2.28 Schedule Q – Credit for Tax on Prior Transfers

-
- 4.25.5.2.29 Schedule U – Conservation Easements
 - 4.25.5.2.30 State Death Tax Credits and Deductions
 - 4.25.5.2.31 Installment Payment Election (IRC 6166) Lead Sheet

4.25.5.1
(07-11-2018)
Program Scope and Objectives

- (1) **General Overview** - This IRM provides technical guidance and an explanation of examination lead sheets and workpapers used in the examination of estate, gift and generation-skipping transfer tax returns and claims.
- (2) **Purpose** - This IRM explains Estate and Gift examiner documentation responsibilities so that managers, senior-level officials and estate, gift and generation-skipping transfer tax return examiners will be better equipped to prepare and submit accurate reports.
- (3) **Audience** - This IRM is for Estate and Gift Specialty Tax managers, examiners and personnel at the Campus who process estate, gift and generation-skipping transfer tax returns, refunds and claims.
- (4) **Policy Owner** - Director, Specialty Examination Policy is responsible for the administration, procedures and updates related to the technical guidance and information processing steps and methods specific to Estate and Gift Tax examiner responsibilities, IRM subsections, and forms created for the examination of returns and claims.
- (5) **Program Owner** - Director, Examination - Specialty Tax owns Estate and Gift Tax Examination.
- (6) **Primary Stakeholders** - Appeals, Collection Advisory, Counsel, Estate and Gift Tax Workload Selection and Delivery, Specialty Examination, and SB/SE Examination Quality & Technical Support are the primary stakeholders for this IRM.

4.25.5.1.1
(07-11-2018)
Background

- (1) This IRM subsection provides technical guidance for understanding typical examination estate, generation-skipping transfer tax and gift tax return issues. This IRM contains sample audit prompts for issues and an explanation of the lead sheets and workpapers used in estate and gift tax examinations.

4.25.5.1.2
(06-20-2023)
Authority

- (1) Estate and gift tax examiners and managers assigned to examine and oversee the examination of estate and gift tax returns and issues are responsible for complying with servicewide policies and authorities set forth in IRM 1.2.1.5, Servicewide Policies and Authorities, Policy Statements for the Examining Process.
- (2) Examination of estate and gift tax returns should be conducted in a manner that will promote public confidence as stated in the Mission of the Service. See IRM 1.2.1.2.1, Policy Statement 1-1.
- (3) Estate and gift tax examiners and managers assigned to examine and oversee the examination of estate and gift tax returns and issues are responsible for complying with all applicable servicewide examination delegation orders and SB/SE delegation orders. A table summarizing estate and gift delegation orders is available at IRM 4.25.14.8, Estate and Gift Tax, Miscellaneous Procedures, Signature Authority.
- (4) Section 3504 of P.L. 105-206 requires the Service to include an explanation of the examination and collection process, as well as information about assistance from the Taxpayer Advocate with any first report/notice of proposed deficiency. Pub 3498, The Examination Process, will be used for this purpose.
- (5) Per Statement of Procedural Rules 26 CFR 601.506, examiners should forward any correspondence (or copy), discussions, reports and/or other

material to the taxpayer at the same time it is sent to the representative. For more detailed information on how to mail correspondence when a POA is involved, see IRM 4.11.55.2.9, Notices and Communications.

- (6) 26 U.S. Code Subtitle B - Estate and Gift Taxes, Chapters 11 through 15 provide the legal authority for the computation of estate, gift and generation-skipping transfer taxes.

4.25.5.1.3
(07-28-2020)

Program Objectives and Review

- (1) Estate and Gift Examination program objectives and review criteria are explained in detail at IRM 4.25.1.1.3, Estate and Gift Tax, Estate and Gift Tax Examinations, Program Objectives and Review, and IRM 4.2.8, Examining Process, General Examining Procedures, Guidelines for SB/SE National Quality Review.

4.25.5.1.4
(06-20-2023)

**Terms/Definitions/
Acronyms**

- (1) The following table sets forth Estate and Gift Tax program specific terms and definitions:

Term	Definition
Classification	The process whereby Campus and Examination employees review all schedules on all estate and gift tax returns that meet the initial screening criteria to identify any issues for examination. See IRM 4.25.3, Estate and Gift Tax, Planning, Classification and Selection, for additional information.
Issue lead sheet	Issue lead sheets must reflect the issue name, adjustments (when applicable), conclusion, audit steps, facts, law, and taxpayer's position in the body. This information should be presented in a logical order so reviewers can easily determine what audit steps and actions were taken to support the conclusion. Issue lead sheets are provided to examiners through the Estate and Gift Tax Notebook Job Aid. The lead sheets provided to examiners meet the SB/SE formatting and content requirements set forth in IRM 4.10.9.6.2.1, Issue Lead Sheet Format.

Term	Definition
Mandatory lead sheet	The mandatory lead sheets are provided to examiners through the Estate and Gift Tax Notebook Job Aid. The mandatory lead sheets document Servicewide and SB/SE examination requirements. These examination requirements include but are not limited to: verifying and protecting the statute of limitations; pre-planning and identifying the scope of the examination; conducting filing checks; providing taxpayer rights documentation; considering appropriate penalties; and soliciting payments.
Notebook Job Aid	This is a proprietary software program used by Estate and Gift Tax to generate reports and examination process and documentation (EPD). It is similar to the Report Generation Software (RGS).
Perfection of return	The process of contacting the taxpayer, representative or preparer (when appropriate) for the sole purpose of obtaining information and documentation that is required as part of the return filing. The specific return instructions set forth the filing requirements.
Significant activity	Any activity where the examiner performed substantial work that moved the case toward a conclusion. This does not include phone calls to or from the taxpayer to cancel or change appointments. It would, however, include phone calls that discussed items which helped move the case toward a conclusion, such as appointments, requests for information, research, etc. Significant activity would also include follow-up contacts either to or from Engineers or other specialists.

Term	Definition
Workpaper	<p>Workpapers support the information included on the lead sheets and, when applicable, should reflect what the examiner reviewed, requested and inspected to audit the issue. See IRM 4.10.9.7, Examination of Returns, Workpaper System and Case File Assembly, Workpapers, for formatting requirements. Examples of workpapers are:</p> <ul style="list-style-type: none"> • Photocopies of relevant documents secured from the taxpayer and/or representative • Internal source documents (e.g., transcripts used to support the examination process and conclusions reached) • Correspondence

(2) The following table sets forth common Estate and Gift Tax program acronyms:

Term	Acronym
Assessment Statute Expiration Date	ASED
Document Locator Number	DLN
Estate and Gift Tax Exam Process and Documentation	EPD
Estate and Gift Tax Embedded Quality Review System	EQRS or EQ
Fraud Enforcement Advisor	FEA
Generation-Skipping Transfer Tax	GSTT
Integrated Data Retrieval System	IDRS
Issue Management System	IMS
National Quality Review System	NQRS or NQ
Notebook Job Aid	Notebook
Plan to Close Meeting	PTC
Substitute for a Return	SFR

4.25.5.1.5
(06-20-2023)
Related Resources

- (1) The Estate and Gift Tax program is required to follow all servicewide examination procedures and those set forth in SB/SE examining process IRM. The following IRM subsections provide additional information relating to the processing, classification and examination of Estate and Gift Tax program returns and claims:
 - IRM 4.25.1, Estate and Gift Tax, Estate and Gift Tax Examinations
 - IRM 4.25.2, Campus Estate and Gift
 - IRM 4.25.3, Planning, Classification and Selection
 - IRM 4.25.4, International Estate and Gift Tax Examinations
 - IRM 4.25.6, Report Writing Guide for Estate and Gift Tax Examinations
 - IRM 4.25.7, Estate and Gift Tax Penalty and Fraud Procedures
 - IRM 4.25.8, Delinquent Returns and SFR Procedures
 - IRM 4.25.9, Requests for Abatement, Claims for Refund and Doubt as to Liability Offer in Compromise in Estate and Gift Tax Cases
 - IRM 4.25.10, Case Closing Procedures
 - IRM 4.25.11, Special Examination Procedures
 - IRM 4.25.12, Valuation Assistance
 - IRM 4.25.13, Appeals, Mediation and Settlement Procedures
 - IRM 4.25.14, Miscellaneous Procedures
 - IRM 4.10.8, Examining Process, Examination of Returns, Report Writing
 - IRM 4.10.5.2, Examination of Returns, Required Filing Checks, General Guidelines

4.25.5.2
(06-20-2023)
Issue Specific Lead Sheets and Technical Guidance

- (1) This section explains the use of issue specific lead sheets and provides technical guidance for common estate and gift tax issues.
- (2) The use of a lead sheet is required for all issues. However, the examiner may choose whether an issue-specific lead sheet or generic lead sheet best suits their needs. Regardless of which lead sheet is chosen, the examiner must use it to identify the issue and steps or actions taken to develop the facts, determine the applicable law, arguments made (including taxpayer arguments), and determine a conclusion for all classified or manager-selected issues. The examiner should document all managerial discussions to limit the examination issues in the relevant issue lead sheet and in the Form 9984, Examining Officer's Activity Record.
- (3) Issue lead sheets must reflect the issue name, adjustments (when applicable), conclusion, audit steps, facts, law, risk analysis, taxpayer's position and conclusions reached. This information should be presented in a logical order so that the audit steps taken to support the conclusions can be easily determined. See IRM 4.10.9.6.2, Issue Lead Sheets, IRM 4.10.9.6.2.1, Issue Lead Sheet Format, and IRM 4.10.9.6.2.2, Issue Lead Sheet Content.

4.25.5.2.1
(07-28-2020)
Adjusted Taxable Gifts Lead Sheet

- (1) Use the Adjusted Taxable Gifts Lead Sheet to document an examination of omitted gifts or gifts reported on a Form 709 or a Form 706.
- (2) To secure historical gift tax returns which have not been associated with the Form 706 at the time of assignment, refer to IRM 4.25.1.3.1, Obtaining Historical Gift Tax Returns (Form 709).
- (3) If annual exclusions are claimed, determine if the donee received a present interest in the transferred property:

- a. The donee must have an unrestricted right to immediate use, possession, or enjoyment of the interests or income from the property transferred. See *Hackl v. Commissioner*, 335 F.3d 664 (7th Cir. 2003). See also, *Price v. Commissioner*, T.C. Memo 2010-2 (T.C. 2010) and *Fisher v. United States*, 2010 U.S. Dist. LEXIS 23380 (S.D. Ind. 2010).

4.25.5.2.2
(07-28-2020)

**Schedule A, Real Estate
Valuation Lead Sheet**

- (1) The Real Estate Valuation Lead Sheet provides the examiner with a list of considerations when verifying ownership and valuation of real estate.
- (2) Reminders include researching for any sales under 26 CFR 20.2031-1(b), verifying fractional interests, reviewing discounts, and determining if a referral should be made to engineering.
- (3) The lead sheet also calculates any adjustments and provides space for documenting an examiner's findings.
- (4) When Special Use Valuation (IRC 2032A) is elected on Form 706, refer to the Schedule A-1 Lead Sheet as detailed in IRM 4.25.5.2.3, Schedule A-1, Section 2032A Valuation Lead Sheet.
- (5) A real property appraisal may include a reduction of the fair market value of the subject property to account for a conservation easement. See IRM 4.25.5.2.29, Schedule U — Conservation Easements.
- (6) Is community property involved? Determine how and when the property was acquired, (e.g., prior to marriage, by gift, by inheritance.) See IRM 4.25.5.2.7, Community Property.
- (7) Internal valuation support is provided by LB&I Engineering. See IRM 4.25.12, Valuation Assistance, for engineering and outside fee appraisal referral procedures. Prior to making an engineering referral, the examiner should request any missing appraisals or relevant data, and review the appraisal to determine whether the appraisal:
 - a. Applies a method appropriate for the subject being valued
 - b. Includes reasonable assumptions and adjustments to comparable sales
 - c. Was prepared by a qualified and independent appraiser

4.25.5.2.3
(07-28-2020)

**Schedule A-1, Section
2032A Valuation Lead
Sheet**

- (1) The Special Use Valuation Lead Sheet should be used to document the examination of a Form 706, Schedule A-1 — Section 2032A Valuation.
 - a. The examiner should review the return and attachments to ensure that a proper election was made. All portions of the Schedule A-1 should be complete, and the lien agreement should be attached with all necessary signatures (e.g., Trustees, Beneficiaries, Corporate Officers, etc.). The examiner should also verify that the liquidity requirements meet the 50 percent and 25 percent tests. See IRC 2032A(b).
 - b. The examiner must document the examination process and analysis used to determine whether the estate had a qualified use and met the material participation tests before and after the date of death.
 - c. Where the IRC 2032A(e)(7) farm valuation method was used, the examiner should review the estate's appraisals for adequacy and completeness. The examiner should document their findings and consider making an engineering referral when necessary. See IRM 4.25.12.4, Referrals to Engineering Services.

- (2) If a qualified use or material participation ceased after the date of death, the examiner should secure a Form 706A.
- (3) The examiner should verify that Form 6111, IRC 2032A Referral to Advisory, is properly completed. See IRM 4.25.11.2, IRC 2032A Special Use Valuation Election, and Form 6111, IRC 2032A Referral to Advisory.
- (4) To calculate the IRC 2032A recapture see IRM 4.25.6.6.6, 2032A Recapture Report Tool Worksheet, and the Estate and Gift Tax Notebook Job Aid User Manual.

4.25.5.2.4
(06-20-2023)
**Schedule B – Stocks
and Bonds Lead Sheet**

- (1) The Schedule B, Stocks and Bonds Lead Sheet, focuses on the value of traded securities and various bonds, including Series EE, HH and I bonds.
- (2) The lead sheet reminds the examiner to secure necessary data from the taxpayer, if not included with the return filing.
 - a. The number of shares, the CUSIP number and the valuation date are needed when requesting stock valuations using electronic resources.
 - b. The examiner should notify their manager if they need to request a stock valuation so the manager can assign the request.
- (3) When stock in a closely held company is listed on Schedule B of Form 706, use the Closely Held Business Lead Sheet discussed at IRM 4.25.5.2.6, Closely Held Business Lead Sheet.

4.25.5.2.5
(07-28-2020)
**Schedule C –
Mortgages, Notes, and
Cash Lead Sheet**

- (1) The Schedule C, Mortgages, Notes, and Cash Lead Sheet, focuses on verification of the outstanding balance of a mortgage or promissory note on the decedent's date of death.
- (2) The examiner is reminded to verify whether any discounts are appropriate.
- (3) The interest rate of any items on this schedule should be verified and the inclusion of the same considered.
- (4) An examiner should also check for Self-Canceling Installment Notes (SCINs), forgiveness of indebtedness, installments sales, and promissory note transactions that may not be arms-length, when warranted.
- (5) An independent review of bank account balances may be necessary by requesting copies of the bank statements.

4.25.5.2.6
(06-20-2023)
**Closely Held Business
Lead Sheet**

- (1) The Closely Held Business Lead Sheet is used to verify the fair market value of the decedent's interest in a closely held business.
- (2) The examiner should determine if there have been any sales of the stock. If so, secure sales documentation.
- (3) Does the governing entity instrument contain requirements for determining the sales price of the closely held business interest?
 - a. Does the closely held business have practices for determining the sales price?
 - b. Are there rights of first refusal that may result in a reduction in the fair market value?

- (4) The examiner should review the attached appraisal along with all appropriate financial records for the five year period preceding the year of death including:
 - a. Income Tax Returns (Form 1120, U.S. Corporation Income Tax Return, or Form 1120-S, U.S. Income Tax Return for an S Corporation); Balance Sheets; and Statements of Income (consider Rev. Rul. 59-60.
 - b. Was the appraiser independent (preparer, personal representative, heir, estate's attorney or accountant)? Are they a qualified appraiser?
- (5) The examiner should verify and/or prepare a current Balance Sheet as of the date of death/alternate valuation date(s) restating the assets/liabilities to their fair market values on that date.
- (6) An engineering referral and/or outside fee appraisal request should be considered as appropriate. See IRM 4.25.12.5, Valuation Assistance, Outside Fee Appraisals.
- (7) The examiner should determine the decedent's ownership of closely held business by reviewing historic stock ledgers and consider transfers made to related parties.
- (8) The examiner should request and review a copy of any buy/sell agreement(s) in effect at date of death. Do the buy-sell agreements meet the three-prong test of IRC 2703?
- (9) The examiner should consider whether the method of valuation is appropriate.
- (10) The correct nature and extent of discounts (e.g., discount for lack of marketability, discount for lack of control, etc.) should be determined by the examiner.

4.25.5.2.7
(07-28-2020)

Community Property

- (1) Community property is a form of co-ownership between spouses in which each spouse owns an undivided one-half interest in each item of community property acquired during marriage, regardless of how the property is titled. Community property is defined almost uniformly in all community property states as property acquired during marriage by either spouse or both spouses. Property acquired out of earnings or attributable to the personal effort of either spouse during marriage is presumed to be community property. Proceeds of, and the income from, community property are likewise treated as community property.
- (2) There are nine "community property states" and one state has an "elective" community property system. Estates of decedents who die in common law states may be affected by community property rules if the decedent previously lived in a community property state. The following states have maintained community property systems since the nineteenth century: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. Effective as of 1986, Wisconsin enacted its Marital Property Reform Act, adopting a community property system. Effective as of 1998, Alaska adopted the Alaska Community Property Act, providing for an elective community property system.
- (3) Prior to the Revenue Act of 1948, several other states temporarily adopted community property laws. These were Hawaii, Michigan, Nebraska, Oklahoma, Oregon, and Pennsylvania. However, after enactment of the income-splitting provisions of the Revenue Act of 1948, all of these states (except Pennsylv-

nia) repealed their community property statutes. After that, Pennsylvania's community property statute was held unconstitutional.

- (4) In all of the "temporary" community property states, except Pennsylvania, community property acquired during the effective periods of those statutes may have retained its community character even after the repeal of the particular statute, depending on each state's requirements. Consequently, spouses who have lived their entire lives outside the traditional community property states may nevertheless own community property.
- (5) Under community property both spouses have presently vested, equal, undivided interests in all community property and equal, or nearly equal, management power. Some actions affecting certain types of community property assets, such as real estate, require the consent of both spouses. In addition, most jurisdictions permit a spouse who is operating or managing a community property business to exercise sole management and control of the business.
- (6) Under IRC 2033, a decedent's gross estate includes the value of all property to the extent of the interest therein of the decedent at the time of their death. Neither the Code nor the regulations contain special provisions for inclusion of property characterized by the laws of community property jurisdictions. The application of IRC 2033 requires additional analysis as to whether the decedent's property interests are subject to state community property law.
- (7) IRC 2033 determinations made based on local property rules generally result in the inclusion of the value of all separate property owned by the decedent together with the value of one-half of the community property owned at death by the decedent and their surviving spouse.
- (8) Where spouses transfer community property and each retains a life estate in the property, the transferred property is subject to normal treatment under IRC 2036; i.e., one-half of the value of the property is included in the gross estate of each spouse. When the transfer is made by both spouses, but possession or enjoyment or the right to income is given to only one of them, the transfer generally will attract estate tax liability only in the estate of the spouse who retained enjoyment, and only to the extent of the community half that said spouse has contributed.
- (9) Proceeds of the sale of community property and income from community property are also community property. Income from separate property is treated differently among the jurisdictions. Courts in some states follow the Spanish doctrine that the "fruits" of separate property realized during marriage are community property. Other states require use of various apportionment formulae to distinguish income attributable to separate property from income attributable to the efforts of the spouse who owns the separate property (thus making it community property).
- (10) Typically, separate property is statutorily defined as property acquired by a spouse while single, or by gift, bequest, devise, or descent.
- (11) Most state laws permit one spouse to make a gift of their interest in a community asset to the other spouse, thereby converting the entire asset into the separate asset of the donee spouse. Also, spouses may agree that certain property is the separate property of one spouse and are generally free to convert community property into separate property.

- (12) If separate and community aspects are so confused and commingled that they cannot be apportioned, then the entire mass is presumed to be community property. This is known as the doctrine of commingling. Problems may arise when community property is used to improve separate property, or to make payments on a separate obligation, and vice versa. Usually, if a spouse uses community property to improve his or her separate property, that spouse will hold title to the improvements, but is obligated to reimburse the community for the increase in value of the separate property resulting from the improvement. However, some courts have required an express agreement to that effect and, absent such agreement, have held there is no right of reimbursement. Some jurisdictions treat property that was acquired under an installment contract executed prior to the marriage and funded partly with community property as constituting part community and part separate in proportion to the amount of community and separate property used to make the payments. Under the laws of other jurisdictions, the property retains its character at the time of the contract as separate property, and the marital community has a right of reimbursement.
- (13) Choice of law issues often arise when property is moved from one jurisdiction to another. The general rule is that the character of movable property is fixed at the time of acquisition in accordance with the law of the marital domicile at that time. Thus, if the parties are domiciled in a community property state, the status of movable property acquired during marriage is determined by the community property law of that state. The character of real property is generally determined by the law of the *situs*. However, if community funds are used to purchase real property in a common law property state, the common law jurisdiction will usually respect the interests of the spouses in that property, even though the exact community nature is not recognized by that jurisdiction. When spouses are domiciled in two different states, the character of property is in general to be determined by the law of the state in which the spouse who acquired the property was domiciled at the time of acquisition.
- (14) The issue of whether a Federal statute preempts state community property laws is the subject of repeated litigation. For example:
- Government bonds: Several courts have held that state law may allow a spouse to recover one-half the value of a bond acquired with community property even though a spouse has designated a third party as beneficiary on death.
 - Federal copyright laws: It has been held that Federal copyright laws do not preempt state community property laws.
 - The Social Security Act has been held to preempt state community property laws.
 - Federal criminal forfeiture statutes have been held to preempt California community property law such that the spouses of convicted drug traffickers are precluded from claiming a share of illegal drug moneys as community property under the California law.
 - Qualified Plan benefits and IRAs: See *Boggs v. Boggs*, 520 U.S. 833 (1997); *Bunney v. Commissioner*, 114 T.C. 259 (2000).
- (1) The Schedule D, Insurance Lead Sheet provides guidance on verifying life insurance policies a decedent held an interest in on their date of death. An interest may include ownership, beneficiary, recent transfer, or payable to the decedent's closely held corporation.

- (2) Form 712, Life Insurance Statement, must be secured from the taxpayer in all situations where a decedent was the owner of a life insurance policy.
- (3) The lead sheet also suggests requesting a copy of the policy and for excluded policies, the policy application, any attachments, riders or assignments, when applicable. Check for evidence of life insurance not includible in the gross estate and split-dollar life insurance issues.

4.25.5.2.9
(07-28-2020)
Domicile Lead Sheet

- (1) The Domicile Lead Sheet should be used to document the examiner's analysis where the decedent's domicile is called into question. See IRM 4.25.4.2.1, Domicile.
- (2) The Domicile Lead Sheet provides audit steps and reminders by prompting the examiner to consider the following:
 - a. Whether treaty language should be consulted?
 - b. Does the decedent meet the classic domicile test standards?
 - c. Do the facts and circumstances in the case indicate that the decedent held domicile in a foreign country?
- (3) The examiner should ask the following questions and obtain documents and information to determine the decedent's domicile:
 - a. Where did the decedent actually reside?
 - b. Did the decedent have the intent to remain there indefinitely?
 - c. Where did the decedent own homes?
 - d. How many days per year did the decedent spend in each home?
 - e. In what countries did the decedent hold a passport, visa, work permits, resident permit, driver's license etc.?
 - f. Where did the decedent file income tax returns?
 - g. Where and when did the decedent last vote?
 - h. Where are most of the decedents business and property interests?
 - i. Has the decedent made any non-self serving statement regarding their domicile?

4.25.5.2.10
(07-28-2020)
Schedule E – Jointly Owned Property Lead Sheet

- (1) The Schedule E, Jointly Owned Property Lead Sheet should be used to document the examiner's analysis and determinations regarding the completeness, valuation, and accuracy of the estate's reporting of qualified joint interests and all other joint interests.
- (2) Qualified Joint Interests (i.e., interests held by the decedent and their spouse as the only joint tenants pursuant to IRC 2040(b)(2)) should be reviewed to ensure the proper valuation of jointly held assets.
 - a. If the value of the gross estate is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the Deceased Spousal Unused Exclusion (DSUE) amount, the estate may not be required to report the value of the assets reported on Schedule E, Part 1. See the instructions to Form 706, IRC 6018(a) and 26 CFR 20.2010-2(a)(7)(ii) for more information.
- (3) If the property was not held as a qualified joint interest, the examiner should also document their verification of the nature and extent of the decedent's interest in the jointly owned property; secure the ownership documentation for the asset (e.g., deeds, etc.); obtain proof of contribution from the other joint

tenant(s) (e.g., purchase price, mortgage and interest payments, etc.), and that the expenses associated with the property properly reflect the decedent's portion.

4.25.5.2.11
(06-20-2023)
**Schedule F – Misc.
Property Lead Sheet**

- (1) The Schedule F – Miscellaneous Property Not Reportable Under Any Other Schedule Lead Sheet provides audit steps and reminders for verifying the fair market value of miscellaneous property not reportable on any other schedule of the return. Assets frequently reported on Schedule F may include:
 - a. Interests in family limited liability entities (See IRM 4.25.5.2.12, Family Limited Liabilities Entities)
 - b. Shares of closely held corporations. (See IRM 4.25.5.2.6, Closely Held Business Lead Sheet)
 - c. Personal property (e.g., jewelry, antiques, cars, club memberships, collectibles, etc.) (See IRM 4.25.12, Valuation Assistance)
 - d. Objects of Art (See IRM 4.25.12, Valuation Assistance)
- (2) The Schedule F Lead Sheet provides the following recommendations to the examiner for reviewing the value of various assets:
 - a. Determine the value of miscellaneous property (e.g., crops, household goods, personal property, automobiles, boats, planes, accruals such as refunds and returns etc., farm or other large equipment, livestock, jewelry, etc.).
 - b. Check the “blue books” or other resale markets.
 - c. Secure and inspect the homeowner’s policy of insurance with attendant riders.
 - d. Review personal property tax assessment data (automobiles, boats, airplanes)
 - e. Secure and review jewelry and gemstones appraisals as applicable.
 - f. Secure and review appraisals of antiques, objects of art and collections. Refer the asset to Art Appraisal Services, as appropriate. See IRM 4.25.12, Valuation Assistance.
 - g. Check Forms 1041 for post-death income and determine if there are accrued (final) salary, commissions, or rents; claims (including refunds of income taxes), rights, royalties, judgments, or leasehold interests.
 - h. Determine if there is any life insurance owned on the life of another (key man policy) and determine if includable.
 - i. Review interest(s) in partnership(s) or closely held businesses and prepare separate lead sheet(s) as needed. (See IRM 4.25.5.2.6, Closely Held Business Lead Sheet, and IRM 4.25.5.2.12, Family Limited Liability Entities.)
 - j. General Powers of Appointment exercisable alone or in conjunction with another person are includible. Secure and review the governing instrument granting the power. Secure an itemization of the assets subject to the power.

4.25.5.2.12
(07-28-2020)
**Family Limited Liability
Entities**

- (1) This section provides guidance on common issues arising during the examination of family limited liability entity assets and transfers.
- (2) The Schedule F – FLP/LLC Lead Sheet should be used to document the examiner’s actions and findings as they relate to the examination of family limited liability entities. The FLP/LLC Lead Sheet also provides sample audit tools and steps useful in examining family limited liability issues.

- (3) See the *Estate and Gift Tax Knowledge Base* for additional family limited liability entity resources and examination tools.
- (4) The examiner and group manager should consider whether or not the legal issues present in the case warrant Area Counsel guidance, and/or whether there are valuation issues that would require an SRS engineering referral as early in the family limited liability entity examination as possible. These considerations should be documented in the examiner's case file and Form 9984, Examining Officer's Activity Record.
- (5) When examining a family limited liability entity the examiner should conduct a multi-pronged analysis. The examiner should first determine if the entity was validly formed and funded under the relevant state law by reviewing transfer documents (e.g., grant deed, assignments, etc.) to determine whether the assets were legally and timely transferred to the entity.
- (6) The examiner may consider whether the formation and funding of the partnership resulted in an indirect gift, or may be subject to the step transaction doctrine. See *Shepherd v. Commissioner*, 283 F.3d 1258 (11th Cir. 2002), and *Senda v. Commissioner*, 433 F.3d 1044 (8th Cir. 2006).
- (7) The examiner should conduct interviews and review documents in order to determine whether the decedent's transfer of family limited liability entity interests falls under an exception to IRC 2036, IRC 2037, IRC 2038 or IRC 2703, or determine whether the decedent's reported family limited liability entity interest is includible under IRC 2036, 2037, or 2038.
 - a. Consider whether the partners received family limited liability entity interests that were proportionate to the value of the property transferred. See *Estate of Bongard v. Commissioner*, 124 T.C. 95 (T.C. 2005).
 - b. The examiner should review the facts of the case to establish whether an implied agreement existed (i.e., right to income) under IRC 2036(a)(1).
 - c. Was there a failure to transfer legal title to property and the decedent retained the income from the property? Consider including the property in the gross estate under IRC 2031, IRC 2033 and IRC 2036. See *Estate of Harper v. Commissioner*, T.C. Memo 2002-121 (T.C. 2002); *Estate of Rosen v. Commissioner*, T.C. Memo 2006-115 (T.C. 2006); *Estate of Erickson v. Commissioner*, T.C. Memo 2007-107 (T.C. 2007), and *Estate of Gore v. Commissioner*, T.C. Memo 2007-169 (T.C. 2007).
 - d. Consider whether the partnership agreement contains provisions with restrictions that cannot meet the bona fide business arrangement and adequate consideration requirements of IRC 2703(b). See *Holman v. Commissioner*, 130 T.C. 170 (T.C. 2008). See also, *Holman v. Commissioner*, 601 F.3d 763 (8th Cir. 2010); *Estate of Blount v. Commissioner*, 428 F.3d 1338 (11th Cir. 2005), and *True v. Commissioner (In re Estate of H. A. True)*, 390 F.3d 1210 (10th Cir. 2004).
- (8) There are additional family limited liability entity examination tips and tools located in FLP folder located on the Estate and Gift SharePoint.
- (9) See IRM 4.25.11.4, Special Examination Procedures, Family Limited Liability Entities, for special procedural requirements (e.g., use of project codes, referrals to income tax, etc.) pertaining to cases with family limited liability entity examination issues.

4.25.5.2.13
(07-28-2020)

**Schedule G – Transfers
during Decedent’s Life
Lead Sheet**

- (1) The Schedule G, Transfers during Decedent’s Life Lead Sheet provides guidance on verifying the value of assets transferred during the decedent’s life.
- (2) The examiner should secure and inspect all previously filed Gift Tax Returns (Forms 709). Properly consider and verify gift tax paid or payable by the decedent or the estate for gifts made within three years before death.
- (3) The examiner should determine if the gift tax return reflects interests includible under IRC 2036 (retained life estate); IRC 2037 (transfers taking effect at death); IRC 2038 (revocable interests); IRC 2041 (power of appointment) or IRC 2042 (proceeds of life insurance and insurance on the life of the decedent receivable by other beneficiaries where the decedent possessed incidents of ownership, including a reversionary interest).
- (4) It is recommended that the examiner secure and inspect all governing instruments (e.g., trust documents), and review applicable trust accounts for a period of three years prior to the decedent’s death and inspect for beneficial (includible) transfers.
- (5) If includible transfers were “split” with a consenting surviving spouse and gift tax returns were filed, the examiner should consider whether the full amount of the transfer would be includible to the extent of the rules pertaining to contribution under IRC 2040.

4.25.5.2.14
(07-28-2020)

**Schedule H – Powers of
Appointment Lead Sheet**

- (1) The examiner should use the Schedule H, Powers of Appointment Lead Sheet to document their inspection of the Form 706 and related testamentary instruments to determine the extent and value of any includible powers of appointment held or exercised by the decedent.
- (2) If necessary, the examiner should perfect the Form 706 by securing the instrument creating the power and/or the instrument by which the power was exercised or released.
- (3) A review of the decedent’s income tax returns may clarify whether income was reported from property subject to a power that may be includible in the gross estate.
- (4) The examiner may make a fraud referral and consider the application of penalties if the Form 706 does not properly disclose and include property subject to a general power of appointment. See IRM 4.25.7, Estate and Gift Tax Penalty and Fraud Procedures.

4.25.5.2.15
(06-20-2023)

**Schedule I – Annuities
Lead Sheet**

- (1) The Schedule I, Annuities Lead Sheet should be used to document whether the decedent owned an annuity or a retirement benefit (e.g., IRA, 401(k), etc.) payable to a beneficiary at death and the valuation of the annuity.
- (2) The examiner should inspect the decedent’s designated beneficiary form(s), Form(s) 1040, and Form(s) 1041 to verify the existence of an annuity/retirement benefit and any payments/distributions.
- (3) Elections made on the Form 706, Schedule M, Line 3 should be inspected by the examiner to determine if the value of the annuity/retirement account is includible in the gross estate and fully deductible as a marital deduction.
- (4) The examiner should verify the extent of the decedent’s ownership interest and the valuation method used to determine the value of the annuity.

- a. A commercial policy should be valued at the replacement value based on the benefits received. Other annuities are valued using the applicable IRC 7520 interest rate.

- (5) The examiner should obtain and review substantiations of contributions made by the surviving beneficiary, or for other excluded approved retirement benefits, and verify the calculation of the includible amount.

4.25.5.2.16
(06-20-2023)
**Schedule J - Expenses
Incurred During
Administration**

- (1) The Schedule J – Miscellaneous Administrative Expense Lead Sheet should be used to verify funeral expenses and miscellaneous expenses incurred in the administration of property subject to claims.
- (2) The examiner should consider whether the expenses are necessarily and reasonably incurred by the estate for the collection of assets, payment of debts, or the distribution of property to the persons entitled to it, and are allowable in accordance with local practice. Verify that expenses were not incurred for the personal benefit of a beneficiary instead of for the estate.
- (3) The examiner should verify that expenses will not also be deducted on the estate's income tax return (Form 1041).
- (4) Form 706, Schedule J, includes an instruction to the estate to use Schedule PC to make a protective claim for refund due to a claim not currently deductible. For such a claim, the estate is instructed to report the expense on the relevant schedule but without a value in the last column. See IRM 4.25.9.3, Protective Claim for Refund.

4.25.5.2.17
(06-20-2023)
**Schedule J - Executor's
Commissions and
Attorney Fees Lead
Sheet**

- (1) The Schedule J – Attorney Fees and Executor Commission Lead Sheet should be used to document examination steps and analysis of Schedule J and Schedule L personal representative commission deductions and attorney fee deductions.
- (2) The examiner should verify the amount of commissions or fees paid to the personal representative or the executor. As appropriate, solicit an executed Form 4421, Declarations – Executor's Commissions and Attorney's Fees, from non-professional representatives, if the amount paid is in excess of \$10,000 and other adequate substantiation is not in the file.
- (3) The examiner should determine whether the personal representative was entitled to the computed fees considering the governing instrument, local practice, local law, and statutory rates.
- (4) The examiner should verify fees were not deducted on the estate's income tax return (Form 1041).
- (5) If the amount paid to a non-professional representative is in excess of \$10,000 Form 5346, Examination Information Report, should be prepared. See IRM 4.25.10.2.6, General Case Closing Procedures, Prepare Form 5346, Examination Information Report (Estate).
- (6) If the attorney fees claimed were estimated, the examiner should determine the accurate final fees:
 - a. A Form 4421, Declaration – Executor's Commissions and Attorney's Fees may be solicited to substantiate the final fees charged.

- b. A ledger of billable hours or fees charged to date and a reasonable estimate of time and fees to conclude the estate's administration may substantiate the final fees charged.
- c. Additional fees claimed during the examination should be substantiated and verification of approval obtained, as appropriate. Estimated fees to close the estate may be allowed at the discretion of the examiner taking into consideration the relevant facts and circumstances.

4.25.5.2.18
(06-20-2023)

**Schedule K — Debts of
the Decedent Lead
Sheet**

- (1) The Schedule K, Debts of the Decedent Lead Sheet should be used to verify the amount of identified debts of the decedent.
- (2) Evidence of indebtedness: bills, invoices, underlying contract, lease, judgment, etc., should be obtained by the examiner.
- (3) The examiner should verify payment or that payment will be made.
- (4) The examiner should verify validity of the debt under local law. Is the debt barred by the statute of limitations or doctrine of *laches*?
- (5) Debts presented by relatives should be scrutinized by the examiner. Are charges for services substantiated and reasonable? Are they presumed to be gratuitous under state law? Are notes enforceable? Did the decedent receive adequate consideration for the note due?
- (6) The examiner should verify property taxes are a personal obligation of the decedent at date of death. Is it a lien against the decedent's property? Was the property sold resulting in the purchaser paying part of the tax claim? See 26 CFR 20.2053-6(b).
- (7) The examiner should calculate any income tax liabilities pro-rata between the decedent and a surviving spouse with income.
- (8) The decedent's final income tax return should be reviewed by the examiner. Medical expenses of the decedent paid within a year of death may be deducted either on the estate tax return or final income tax return, not both. See 26 CFR 1.213-1(d)(2).
- (9) The examiner should consider post-death events in cases of disputed or contingent debts, when computing the deduction. See *McMorris v. Commissioner*, TC Memo 1999-82; *Estate of Smith v. Commissioner*, 198 F.3d 515 (5th Cir. 1999).
- (10) The examiner should determine whether claims for alimony or support payments meet the requirements of IRC 2516 (three year rule). See IRC 2043(b)(2).
- (11) Form 706, Schedule K includes an instruction to the estate to use Schedule PC to make a protective claim for refund due to a claim not currently deductible. For such a claim, the estate is instructed to report the expense on the relevant schedule but without a value in the last column. See IRM 4.25.9.3, Protective Claim for Refund.

4.25.5.2.19
(07-28-2020)

Schedule K – Mortgages and Liens

- (1) The Schedule K, Mortgages and Liens Lead Sheet should be used to verify where there are classified, large, unusual or questionable deductions claimed that require the verification of claimed mortgages and liens. To verify these deductions the examiner should:
 - a. Obtain evidence of indebtedness: mortgage statement, note.
 - b. Scrutinize mortgages or notes owed to relatives. Was the mortgage or note recorded? Did the decedent receive adequate consideration for the mortgage or note?
 - c. Verify the asset securing the mortgage is included in decedent's estate. If only a portion of the asset is includible in the estate (co-ownership), only that portion of the mortgage is deductible. See IRC 2053(a)(4) and 26 CFR 20.2053-7.
 - d. Verify validity of the debt under local law. Is the claim barred by the statute of limitations or doctrine of *laches*?
 - e. Verify that only interest accrued to the date of death is deducted even if the alternate valuation method is elected. See 26 CFR 20.2053-4.

4.25.5.2.20
(07-28-2020)

Schedule L – Net Losses during Administration

- (1) The Schedule L, Net Losses During Administration Lead Sheet should be used to verify losses incurred due to casualty or theft. If losses are claimed the examiner should:
 - a. Determine that the loss is incurred from a casualty or theft (e.g., fire, storm, hurricane, volcano, etc).
 - b. Examine applicable insurance policy coverage and verify whether the loss has been reduced by any insurance proceeds received.
 - c. Verify that the asset was held by the estate and not distributed to the beneficiary when the loss occurred.
 - d. If an alternate valuation election was made, verify that the claimed loss deduction is not duplicated as a reduction to the value of the item included in the gross estate at the alternate valuation date.
 - e. Verify that the losses have not also been deducted on the estate income tax return.
 - f. Inspect bills, invoices, cancelled checks or other documents establishing proof of payment for Large, Unusual or Questionable (LUQ) expenses.

4.25.5.2.21
(07-28-2020)

Schedule L – Property Not Subject to Claims Lead Sheet

- (1) The Schedule L, Property Not Subject to Claims Lead Sheet should be used to verify expenses claimed for the administration of trust assets. To verify the deductions claimed on Schedule L the examiner should:
 - a. Verify expenses are limited to those necessitated by the decedent's death, (i.e., trust termination expenses, non-recurring trust administration expenses). See 26 CFR 20.2053-8 for deductible vs. nondeductible expenses.
 - b. Verify that the payment of the expense claimed was before the statute of limitations expired.
 - c. Verify that the expenses have not also been deducted on the estate's income tax return (Form 1041).
 - d. Inspect bills, invoices, cancelled checks, or other documents establishing proof of payment for Large, Unusual or Questionable (LUQ) expenses.
 - e. Form 706, Schedule L includes an instruction to the estate to use Schedule PC to make a protective claim for refund due to a claim not currently deductible. For such a claim, the estate is instructed to report

the expense on the relevant schedule but without a value in the last column. See IRM 4.25.9.3, Protective Claim for Refund.

4.25.5.2.22
(06-20-2023)

**Schedule M – Bequests
to Surviving Spouse
Lead Sheet**

- (1) The Schedule M – Bequests to Surviving Spouse Lead Sheet should be used to examine the validity of marital deductions claimed for bequests of property to the surviving spouse. See Rev. Rul. 2013-17.
- (2) The examiner should verify that the surviving spouse was legally married, a US Citizen (noting the exception for a qualified domestic trust under IRC 2056A), actually survived, and is receiving assets from the decedent's gross estate under a valid will, trust, intestacy, spousal election, and/or beneficiary designation.
- (3) The deductions on Schedules J, K (mortgage), and L must reduce any marital deduction claimed for an asset to which these deductions apply.
- (4) The examiner should determine whether the marital deduction asset is a terminable interest. Has a valid QTIP election been made? See 26 CFR 20.2056(b)-7.
- (5) The residuary passing to the surviving spouse must be calculated to reflect payment of expenses, taxes, claimed income tax deductions according to the terms of the will, statutory intestacy and tax apportionment. An interrelated computation may apply.
- (6) The examiner should verify disclaimed property deducted as passing to a surviving spouse actually does so under state law rather than to the heirs of the disclaiming party.
- (7) If the decedent's testamentary instrument provides for a pecuniary marital deduction formula bequest that can be satisfied by distributing estate assets, the examiner should verify that the marital deduction qualifies pursuant to Rev. Proc. 64-19, 1964-1 C.B. 682. The Estate and Gift Tax Notebook Job Aid (Notebook) may be used to verify pecuniary marital deduction formulas and interrelated marital computations.
- (8) Beginning in 2012, if the value of the gross estate, together with the amount of adjusted taxable gifts, is less than the basic exclusion amount and the Form 706 is being filed solely to elect portability of the Deceased Spousal Unused Exclusion (DSUE) amount, the estate may not be required to report the value of assets eligible for the marital deduction reported on Schedule M. If the estate is not required to report the value of the asset on the Form 706, Schedule M will identify the property but will not provide a value in the amount column. See IRM 4.25.5.2.26, Portability.

4.25.5.2.23
(07-28-2020)

**Qualified Domestic Trust
Lead Sheet**

- (1) The Qualified Domestic Trust (QDOT) Lead Sheet should be used to document the examiner's analysis of a QDOT issue.
- (2) See IRM 4.25.4.6.2.2, International Estate and Gift Tax Examinations, Property Passing to Non-U.S. Citizen Surviving Spouse, Qualified Domestic Trust, Form 706-QDT, for additional information regarding QDOT filing requirements, elections, changes in the surviving spouse's citizenship status, and the necessary reporting requirements.

4.25.5.2.24
(06-20-2023)

**Schedule O – Charitable,
Public, and Similar Gifts
and Bequests**

- (1) The examiner should verify whether a charitable deduction represents a transfer to a qualified beneficiary, i.e., charitable, public, or religious purpose.

Charitable Deduction Factor to Consider	Estates for Estate Tax	Gift Tax	Estates and Trusts for Income Tax
Code Section	IRC 2055	IRC 2522	IRC 642
Form Number	Form 706	Form 709	Form 1041
Limitations	No Limitations	No Limitations	No Limitations
Permissible Recipients	Not limited to U.S. Charities; Percentage deductions are allowed for Unitrusts, Annuity Trusts and Pooled Income Funds	Not limited to U.S. Charities. Deductions are allowed for retained interests.	Not limited to U.S. Charities; Percentage deductions are allowed for Unitrusts, Annuity Trusts and Pooled Income Funds
Permissible Property	May be any type of property included in the gross estate	May be any type of property	Must normally be an item of gross income from the current year's receipts.
Reason for Contribution	Distribution must be pursuant to the Will, Trust or other non-probate beneficiary designation. Transfer effective at death such as life insurance, IRA, etc.	No donative intent required. Distribution must be a completed gift	Distribution must be pursuant to the Will, Trust or other non-probate beneficiary designation. Transfer effective at death such as life insurance, IRA, etc.
Required Time of Payment	Must be paid	Must be a completed transfer. Special rules may apply. See IRC 2522(e)	Must be paid (trusts and estates) or permanently set aside (estates and old trusts) during the year. A special election for trusts allows a deduction if payment is made in the subsequent year.

- (2) To determine if an organization is tax exempt, check:
- The *Tax Exempt Organization Search* page on IRS.gov
 - Appropriate records of exempt organization rulings maintained by the National Office
 - A copy of the Tax Exemption Letter
- (3) The examiner should include a copy of the documentation of exempt status in the file and note the exemption on their Form 9984, Examining Officer's Activity Record and appropriate lead sheet.

Note: A bequest to an organization that is exempt for income tax purposes may not qualify for an estate or gift tax charitable deduction.

- (4) The amount passing to charity must be ascertained by the examiner after analyzing the testamentary document and considering payment of debts, taxes, and expenses.

4.25.5.2.25
(07-28-2020)
Schedule P – Credit for Foreign Death Taxes

- (1) The estate may report a credit for foreign death taxes on Schedule P of the Form 706. The examiner should use the Schedule P Lead Sheet to examine the foreign death tax credit.
- (2) IRM 4.25.4.5, Foreign Death Tax Credit, provides guidance regarding the relevant authority for a foreign death tax credit, how the estate may claim the foreign death tax credit, and limitations to the foreign death tax credit.

4.25.5.2.26
(06-20-2023)
Portability

- (1) On December 17, 2010, The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJCA) was signed into law. TRUIRJCA introduced the concept of portability of the federal estate tax exemption between married couples for the 2011 and 2012 tax years. On January 2, 2013 the American Taxpayer Relief Act (ATRA) was signed into law. Under ATRA, portability of the estate tax exemption between married couples was made permanent. A deceased spousal unused exclusion (DSUE) amount may be taken into account by a surviving spouse in determining the surviving spouse's applicable exclusion amount only if the executor of the deceased spouse timely files a Form 706 for the deceased spouse's estate, on which the executor computes the deceased spousal unused exclusion amount and makes a portability election. The following table of final regulations and revenue procedures provide guidance for examining the election and computation of the ported or applied DSUE.

Portability Regulations and Revenue Procedures	Title or Description
26 CFR 20.2001-2	Valuation of adjusted taxable gifts for purposes of determining the deceased spousal unused exclusion amount of last deceased spouse
26 CFR 20.2010-1	Unified credit against estate tax, in general
26 CFR 20.2010-2	Portability provisions applicable to estate of a decedent survived by a spouse
26 CFR 20.2010-3	Portability provisions applicable to the surviving spouse's estate
Rev. Proc. 2016-49	Portability election and (IRC 2056(b)(7)) QTIP election.
Rev. Proc. 2022-32	Simplified method for certain taxpayers to obtain an extension of time under section 301.9100-3 to make a portability election under IRC 2010(c)(5)(A).

- (2) There are three Portability Lead Sheets for use in DSUE examinations:

- a. Form 706 Election to Port DSUE to Surviving Spouse
 - b. Form 706 Using DSUE from Deceased Spouse
 - c. Portability Lead Sheet – Form 709
- (3) Use the Portability Lead Sheet – Form 706 Election to Port DSUE to Surviving Spouse if the assigned Form 706 claims to port DSUE to the Surviving Spouse. Some of the recommended examination steps include:
 - a. Identifying and/or securing the workpapers used by the estate to calculate the DSUE amount.
 - b. Obtaining DSUE-related returns, as needed, to confirm the DSUE election(s).
 - c. Examining other classified issues and then considering the effect of any adjustments made to the corresponding DSUE-related items reported on Page 1, Part 2, Line 9b and Line 7 of the assigned Form 706.
- (4) Use the Portability Lead sheet – Form 706 Using DSUE from Deceased Spouse(s) if the assigned Form 706 claims the use of DSUE from the last deceased spouse.
- (5) Use the Portability Lead Sheet – Form 709, when the decedent or donor uses ported DSUE to make adjusted taxable gifts. As part of the Form 709 portability examination the examiner should consider the following:
 - a. Inspect and verify Page 1, Part 1, line 19 of the assigned Form 709.
 - b. Identify and/or secure workpapers used by this Donor to calculate the DSUE amount.
 - c. Obtain and inspect related DSUE returns as needed.
 - d. Examine the classified issues.
 - e. Make applicable adjustments to DSUE on this return based on review of the other DSUE-related returns, if any. The examination report should include any changes to DSUE (that arose from review of the DSUE-related returns).
 - f. Make other adjustments, as necessary. The examination report should include any final balance of DSUE, if applicable.

Note: An estate may elect to both use DSUE from a prior deceased spouse and port DSUE to a surviving spouse. The decedent may also have used DSUE during his or her life to make adjusted taxable gifts. Each portability issue lead sheet provides guidance for the examination of the porting or use of DSUE on a Form 706 or Form 709.
- (6) The examiner should inspect and verify the portability election in all cases.
 - a. If the portability election is invalid the examiner should zero-out the amount ported. If there are no other changes, the case should be closed as a No Change with Adjustments. See IRM 4.25.10, Case Closing Procedures. The examiner should issue a copy of the No Change with Adjustments report to the Taxpayer with a full explanation of the changed items. A Form 706 No Change with Adjustments case does not require a signed waiver, or the issuance of a Pub 3498.
 - b. If the portability election is valid, the examiner should verify the computation of the Deceased Spousal Unused Exclusion (DSUE) amount available to port to the surviving spouse after considering all other applicable changes to the return.

- (7) To close a Form 706 or Form 709 with an election to port DSUE or use ported DSUE the examiner should review the following table:

IF ...	THEN ...
The assigned Form 706 uses no DSUE from prior spouse(s).	Examine and close per normal procedures. See IRM 4.25.10.
There are adjustments to a DSUE-related return where the IRC 6501 statute is open for that return.	Use normal closing procedures for the type of closure. See IRM 4.25.10.
There are adjustments to a DSUE-related return where the IRC 6501 statute is no longer open for that return.	A DSUE-reviewed return can only be closed either as: <ul style="list-style-type: none"> •No Change No Adjustments (no adjustment to DSUE), or •No Change with Adjustment (any changes to DSUE, including zeroing out)
Closing a Form 706 that has used DSUE from Deceased Spouse.	Close the assigned Form 706 using normal procedures. See IRM 4.25.10.
In the process of examining an assigned Form 709, the examiner also opens a previously-filed Form 709 to review the DSUE, and that DSUE-reviewed Form 709 is closed as a no change/no change.	<ul style="list-style-type: none"> •No Change/No Change is a no change to the value of the returned gift and no change to DSUE. •Form 709 No Change/No Change requires no waiver. •No Appeals rights (do not issue Pub 3498). •Close as No Change No Adjustments. See IRM 4.25.10.
In the process of examining an assigned Form 709, the examiner also opens a previously filed Form 709 to review the DSUE, and that DSUE reviewed Form 709 is closed as a change/no change.	<ul style="list-style-type: none"> •If the Change/No Change (C/NC) arises from a change to “the value of any gift shown on the return”, and the IRC 6501 statute is open, the surviving spouse Donor has IRC 7477 rights. •If the C/NC arises solely from a change to DSUE (e.g., from a change to a prior DSUE-electing or DSUE-using return), the taxpayer does not have IRC 7477 rights, but Appeals may still be available if the IRC 6501 statute is open. See IRM 8.1.1.3.2. •Close such C/NC per IRM 4.25.10, generally, but note IRM 4.25.10.7.2. •As with any C/NC, the report must be issued to the taxpayer with a full explanation of changed items.
If any DSUE-related return (Form 706 or Form 709) is examined to review the original DSUE election to port and/or the amount of the DSUE available, and that return is now taxable, and the IRC 6501 statute is open.	Close the return as a normal case closure. See IRM 4.25.10.
If any DSUE-related return (Form 706 or Form 709) is examined to review the original DSUE election to port and/or the amount of the DSUE available, and that return is now taxable, and the IRC 6501 statute is no longer open.	If the tax assessment statute of limitations under IRC 6501 is not open and the reviewed return would otherwise now be taxable, zero out any DSUE on the appropriate return, and close the DSUE-related return as a No Change with Adjustments. No tax may be assessed.

Note: A DSUE reviewed return without an open statute cannot be closed agreed. It is also possible to examine a return with multiple DSUE review issues. Each relevant DSUE issue should be examined using the appropriate lead sheet and closed with the scenario specific procedures. All DSUE-related adjustments should be made to any affected returns.

4.25.5.2.27
(07-28-2020)
**Project and Delinquent
Return Workpapers**

- (1) There may be special project and delinquent return workpapers included at the time the case is assigned. Otherwise, the Estate and Gift Notebook Job Aid (Notebook) has a section under lead sheets for Project and Delinquent Return Workpapers. The section contains initial contact letters, lead sheets, detailed instructions on the project, memos, and other data intended for the specific project.
- (2) Documents found in the Project and Delinquent Return Workpapers section of Notebook should be used in cases with a tracking code indicating the case is a project case.
- (3) The Estate and Gift SharePoint contains additional resources and current project tracking codes for use when examining project and delinquent return cases.

4.25.5.2.28
(06-20-2023)
**Schedule Q – Credit for
Tax on Prior Transfers**

- (1) The taxpayer may take a credit for Tax paid on Prior Transfers (TPT) on Form 706. See IRC 2013. In order to examine the accuracy of the credit, the examiner may need to review historic gift or estate tax returns.
- (2) The Schedule Q – Tax on Prior Transfers Credit Lead Sheet should be used to document the examiner's verification of the estate's claimed credit for tax paid on prior transfers.
- (3) The amount of the credit is the lesser of the "First Limitation" and the "Second Limitation" multiplied by a percentage that varies dependent on the length of time between the death of the transferor and the transferee. The first limitation is the amount of estate tax which the "amount passing" generated in the estate of the first decedent to die, the "transferor decedent."
- (4) The second limitation is the amount of tax generated in the estate of the transferee as though the amount passing to the transferee were already included in their estate. It is not required to identify the property in the transferee estate. It is only necessary that the property was included in the estate of the transferor, passed to the transferee, and was susceptible to valuation by recognized valuation principles at the date of transfer. See 26 CFR 20.2013-1(a).
- (5) The governing principles for valuation of the property are analogous to those applicable to the valuation of property interests transferred for public, charitable, or religious uses. See Rev. Rul. 75-550, 1975-2 C.B. 357. There may also be an allowable TPT credit for tax paid as a result of transferred life estates valued under the IRC 7520 actuarial tables. The amount passing is then computed in the same manner as a marital bequest for purposes of the marital deduction, in that estate taxes, administration expenses deducted on the Form 706, and administration expenses deducted on the Form 1041, as well as the debts of the estate, may all affect the computation.
- (6) The allowable credit is determined by multiplying the lesser of the first and second limitations by the applicable percentage. The applicable percentage is

a fixed schedule ranging from 0 percent to 100 percent based on the time between the dates of death of the transferee and the transferor.

- (7) The percentage limits are set based upon the amount of time since the transferor's date of death. The credit is 100 percent allowed if the tax resulted from a transfer to a non-citizen spouse if a QDOT election was not made. The credit is also allowable at 100 percent where the transferee dies within two years prior to the transferor. After ten years, the credit is eliminated.

Time between the date of death of the Transferor and the date of death of the Transferee	Percentage Credit
< 2 Years	100 percent
>= 2 Years, < 4 Years	80 percent
>= 4 Years, < 6 Years	60 percent
>= 6 Years, < 8 Years	40 percent
>= 8 Years, < 10 Years	20 percent
>= 10 Years	0 percent

4.25.5.2.29
(07-28-2020)

**Schedule U –
Conservation Easements**

- (1) A conservation easement is a restriction on the use of real property through a recorded deed restriction, and the right to enforce the restriction is given to a tax-exempt charitable organization (generally in the conservation field) or a government agency. A conservation easement is reported on Schedule U, Qualified Conservation Easement Exclusion of the Form 706.
- The examiner should use the Schedule U (Conservation Easements) Lead Sheet to document the examination of Schedule U issues in an estate tax case.
 - The pre-existing easement is a legal restriction on the use of the property that must be taken into consideration in a determination of highest and best use. The decedent may have created the easement during life. As a result, this easement may also affect the value of real property reported on Schedule A, Schedule F and/or Schedule G.
- (2) In order for the estate to qualify for a conservation easement valuation reduction the contribution must be:
- A qualified real property interest granted in perpetuity restricting the use of the property.
 - The easement must be granted to a qualified organization.
 - The easement is granted exclusively for conservation purposes. See IRC 170(h)(4)(A).
 - The land subject to the easement must be located within the United States or a United States possession.
 - A qualified easement must be made by the decedent, a member of their family, the executor of the estate or the trustee of a trust that holds the land in question, at the time the election is made.

- The land must have been owned by the decedent or a member of their family at all times during the three-year period that ends with the decedent's date of death.
 - Until the easement is recorded, the easement is not enforceable in perpetuity. See 26 CFR 1.170A-14(g)(1).
- (3) A request for verification of the real estate value as returned, as well as the value of the portion of the real estate easement subject to the conservation easement, must be submitted to the Real Estate Appraisal Service and must be made through the *Specialist Referral System (SRS)*. See IRM 4.25.12, Valuation Assistance. Before making an SRS referral the examiner should:
- a. Obtain copies of the recorded instruments, and research the property's ownership, sales and mortgage history. Recent sales or mortgages on the property may provide insight into the easement value.
 - b. Review the conservation easement deed.
 - c. Confirm how title is held, as it may affect the amount that can be claimed as a charitable contribution by a taxpayer. The IRS appraiser will need to know the property owner of the eased property, any contiguous properties and any other properties owned by the taxpayer in order to properly apply the contiguous/enhancement rules in valuing the property.
 - d. Obtain copies of the appraisal for the real property subject to the conservation easement as of the date of the creation of the conservation restriction, and copies of the appraisal for the real property subject to the conservation easement as of the fair market value date.
 - e. Discuss with the IRS appraiser whether there were any preexisting restrictions on the property imposed by local or state ordinances, zoning or the rules of historic districts. There may be no loss in value as a result of the granting of the easement if the easement does not impose new or expanded restrictions on the property.
- (4) The examiner should also verify that the conservation easement calculation was done correctly and meets the limitation rules of IRC 2055.

4.25.5.2.30
(07-28-2020)

State Death Tax Credits and Deductions

- (1) The state death tax credit was repealed in the case of decedents dying after December 31, 2004, and replaced with a deduction allowable under IRC 2058 for state estate and inheritance tax paid, effective for decedents dying after December 31, 2004.
- a. For dates of death on or before December 31, 2004, the maximum credit for state death taxes should be computed and tentatively allowed unless precluded by an imminent statute of limitations date. If complete evidence has been submitted, the amount allowable is indicated in the "As Corrected" column on Line 13 of Form 1273 , Report of Estate Tax Examination Changes.
 - b. If evidence substantiating the credit is incomplete, the total credit figure is entered in the "As Corrected" column. The portion of the credit which has not been substantiated is entered in the box entitled "Tentatively Allowed." Where this box is used, enter same date shown on Form 890.
- (2) Evidence of actual payment of state death taxes need not be secured when the Territory Manager is satisfied that local enforcement procedures for the collection of state death taxes are adequate. Procedures followed in the territories, incident to the verification of payment, may vary depending upon whether:

- a. The state had a pick-up tax equal to the federal credit, when there was a federal credit available.
 - b. A separate inheritance tax is determined without regard to the federal tax or other death duty.
 - c. The territory has an effective program for exchange of information with the state taxing authority.
- (3) If the Territory Manager is not satisfied with local collection procedures or where there is information from the state taxing authority that indicates the full amount of the state death taxes will not be paid, the Territory Manager should establish procedures for verifying all deductions claimed in the state.
- (4) The examiner may verify the amount of the state death tax credit or deduction in the Estate and Gift Tax Notebook Job Aid (Notebook).

4.25.5.2.31
(07-28-2020)

**Installment Payment
Election (IRC 6166) Lead
Sheet**

- (1) Upon receipt of an IRC 6166 case, the Estate and Gift examination group must verify and/or apply the appropriate ERCS project code:

Project Code	Designation
1000	The case has an IRC 6166 election without an IRC 2032A election or a Family Limited Partnership issue.
1002	The case has both an IRC 6166 election and an IRC 2032A election.
1003	The case has both an IRC 6166 election and a Family Limited Partnership issue(s).
1005	The case has an IRC 6166 election, an IRC 2032A election and a Family Limited Partnership issue(s).

Note: The project code should be removed or changed when it is determined that the estate does not qualify for the IRC 6166 election and the estate agrees with the determination.

- (2) The examiner assigned to the case will determine whether the taxpayer has met the initial eligibility requirements to make the IRC 6166 election and will complete the Installment Payment Election (IRC § 6166) Lead Sheet. This should be done as early as possible during the examination. The estate is eligible under IRC 6166(a) to make the election if the decedent was a United States citizen, the decedent's interest in the closely held business exceeds 35 percent of the adjusted gross estate (not including passive assets), and the notice of election under IRC 6166 was attached to a timely filed estate tax return. The business must also qualify as a closely held business, as defined in IRC 6166(b). In certain cases there may be additional eligibility requirements, see IRC 6166(b) - 6166(h).
- (3) An estate and gift tax group manager will make a determination whether to examine the return or survey the return.
- (4) It is the responsibility of the Estate and Gift examination group to notify the estate whether or not its IRC 6166 election has been granted on examined returns.

- (5) Examiners are not to solicit liens or bonds in IRC 6166 cases.
- (6) At the conclusion of the examination the examiner should prepare and secure email the IRC 6166 lien package referral to Collection Advisory and the Campus Estate and Gift operation. See IRM 4.25.11.3, IRC 6166 Installment Payment Elections.

