Estate and Gift Taxation After the 2010 Tax Law Changes

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Introduction
- Overview of 2010 Tax Act
- Transfer Taxes in 2010
- Transfer Taxes in 2011 and 2012
- Planning Considerations for 2011 and 2012

Overview – Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010
- Reinstates estate and generation-skipping transfer (GST) tax provisions retroactive to January 1, 2010
- Provides an election for estates of decedents dying in 2010 to choose to apply estate tax law applicable in 2010 prior to enactment of Act
- Increases gift, estate, and GST tax exemption amounts to $5,000,000
- Provides for a top gift, estate, and GST tax rate of 35 percent
- Reunifies gift and estate tax
- Allows portability between spouses of their estate tax exemption amounts
- Preserves taxpayer-favorable GST tax rules contained in Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)
- Does not include grantor retained annuity trust (GRAT) or family limited partnership (FLP) revenue raisers
- Sunsets on December 31, 2012

Overview – Current Status of Transfer Taxes for 2013 and Beyond
- Provisions of EGTRRA and Tax Relief Act of 2010 sunset on December 31, 2012
- Pre-EGTRRA transfer tax system returns
- Gift and estate taxes remain unified
- Top marginal gift and estate tax rate returns to 55%
- Gift and estate tax exemption is $1 million
- State death tax credit returns
- GST tax rate returns to 55% and GST exemption returns to $1 million, indexed for inflation

Law at Beginning of 2010
- Estate tax does not apply to estates of decedents who die in 2010
- Carryover basis with limited basis increase applies to property of all decedents who die in 2010
- GST tax does not apply to GSTs made in 2010
- Gift tax exemption remains $1 million, but top marginal rate is reduced to 35%

Final Law for 2010
- Gift tax
  - Amount exempt from tax - $1 million
  - Top marginal gift tax rate - 35%
- Estate tax
  - Applies to estates of decedents who died in 2010
  - Amount exempt from tax - $5 million
  - Top marginal estate tax rate - 35%
  - Executors of estates of decedents who died in 2010 have option to elect not to be subject to estate tax but instead be subject to carryover basis with limited basis increase
  - Estates that do not elect out of estate tax receive basis equal to fair market value of assets on date of death
- Generation-Skipping Transfer tax
  - Applies to generation-skipping transfers made in 2010
  - Amount of GST exemption - $5 million
  - Applicable rate is zero
  - GST tax rules are essentially the same as those that existed in 2009
  - No GST tax on GSTs occurring in 2010 because the applicable rate is zero
  - Forms will need to be filed reporting taxable terminations, taxable distributions, and direct skips occurring in 2010
  - Automatic allocation rules apply to direct skips occurring in 2010 so consider electing out of these rules, especially for outright transfers, because the GST tax will be zero

Filing dates for 2010 transactions
- Gift tax - Form 709 is due April 18, 2011
- Estate tax for decedent who died prior to December 17, 2010 - Form 706 and payment of tax is due September 19, 2011
- Estate tax for decedent who died December 17-31, 2010 - Form 706 is due nine months after date of death
- Carryover basis Form 8939 must be filed for estates that elect out of estate tax for 2010
  - Final Form 8939 has not yet been published by the IRS
  - The IRS has announced that when the final form is released, it will not be due earlier than 90 days after the release date of the form
- GST transfers made prior to December 17, 2010 - Form 706-GS(T), Form 706-GS(D), and Form 706-GS(D-1) are due September 19, 2011
- GST transfers made December 17-31, 2010 - Forms 706-GS(T), 706-GS(D), and 706-GS(D-1) are due April 18, 2011

Disclaimers
- For estates of decedents who died January 1-December 16, 2010 - deadline for making
  a qualified disclaimer for purposes of section 2518(b) of an interest in property passing
  by reason of decedent's death is September 19, 2011
- Issues
  - Has beneficiary already accepted benefits of the property?
  - What are the state law requirements for a valid disclaimer (renunciation)?
  - Section 2518(c)(3) provides that transfers that do not qualify as disclaimers under
    local law may still constitute a qualified disclaimer under federal law provided the
    disclaimer operates as a valid transfer under local law to persons who would have
    received the property had it been a qualified disclaimer under local law
  - Consider filing a gift tax return reporting the disclaimer as not a gift in order to
    commence the running of the statute of limitations

Transfer Taxes in 2011 and 2012

Gift and estate taxes
- Gift and estate taxes are re-unified
- Amount exempt from gift and estate tax is $5 million, indexed for inflation after 2011
- Top marginal gift and estate tax rate is 35%
- Estate tax exemption is portable between spouses

GST tax
- Tax rate is 35%
- GST exemption is $5 million and indexed for inflation after 2011
- GST exemption is not portable between spouses
- EGTRRA GST tax provisions preserved
  - Automatic allocations to indirect skips
  - 9100 relief for missed allocations and elections
  - Retroactive allocations for unnatural orders of death
  - Trust severances for GST tax purposes

Applicable exclusion amount
- Sum of basic exclusion amount and deceased spousal unused exclusion amount
- Basic exclusion amount is $5 million, indexed for inflation beginning in 2012
- Deceased spousal unused exclusion amount is lesser of:
  - Basic exclusion amount or
  - Excess of:
    - Basic exclusion amount of last deceased spouse over
    - Amount with respect to which tentative estate tax is determined on estate of that
      spouse

Applicable exclusion amount *(continued)*
- Executor of first spouse to die must file timely estate tax return computing the deceased spousal unused exclusion amount and making election to permit surviving spouse to use the unused exemption
- IRS may examine first spouse's return at any time for purposes of determining the amount of the unused exemption
- Only most recent deceased spouse's unused exemption is available
- A spouse may not use his or her spouse's deceased spousal unused exclusion amount from a previous deceased spouse
- Portability eliminates necessity to try to equalize estates of spouses
- If poorer spouse dies first, that spouse's unused exclusion amount is not wasted
- As tempting as it may be to avoid efforts to equalize, it is still a necessity until portability becomes permanent
- As of now portability applies only if first spouse dies after 1/1/11 and surviving spouse makes gifts or dies before 12/31/12
- Portability does not apply for GST tax purposes

Computation of Gift Tax
- Tentative tax on sum of current year's taxable gifts and prior years' taxable gifts
- Tentative tax on prior years' taxable gifts
- Subtract second tentative tax from first tentative tax
- Less unified credit against tax which is
  - Applicable credit amount as if applicable exclusion amount were $5 million
  - Less sum of amounts previously allowable as a credit, based on current tax rates, rather than prior years' rates

Example – Computation of Gift Tax
Amy made a $2 million taxable gift in 2005. After using the unified credit of $345,800, Amy paid gift tax of $435,000. In 2011 Amy makes a gift of $4 million.

Tentative tax on $6 million taxable gifts		$2,080,800
Tentative tax on $2 million taxable gifts		$680,800
Balance		$1,400,000
Unified credit	$1,730,800	
Prior unified credit	$330,800	
Allowable credit		$1,400,000
Gift tax due		0

Computation of Estate Tax
- Tentative tax on sum of taxable estate and adjusted taxable gifts
- Subtract amount of gift tax that would have been payable on post-1976 taxable gifts
  based on tax rates and unified credit in effect at death (rather than at time of gifts)
- Subtract applicable credit amount

Example – Computation of Estate Tax
Suppose Amy dies in 2012 with a taxable estate of $3 million and prior adjusted taxable gifts of $6 million. Amount exempt from estate tax remains $5 million.

Tentative tax on $9 million		$3,130,800
Tax on $6 million	$2,080,800	
Applicable credit amount	$1,730,800	
Tax payable on post-1976 gifts		$350,000
Gross estate tax		$2,780,800
Unified credit		$1,730,800
Estate tax due		$1,050,000

Computation of Estate Tax in 2013 – Clawback?
- If provisions of 2010 Act sunset and estate tax reverts to maximum rate of 55% and
  exemption amount of $1 million, will taxpayer who made gifts in 2011 and 2012 lose
  benefit of $5 million exclusion amount upon death?
- Question revolves around what credit amount is to be used in computing "gift tax
  payable
- Under 2010 Act, it is amount as of date of death
- Under prior law, it as of date of gift
- After sunset, argument that new laws never existed and it was never more than
  $345,800

Example – Estate Tax – Clawback
Suppose Amy dies in 2013. There is no state estate tax. Gift tax payable assumes date of gift applicable credit amount.

Tentative tax on $9 million		$4,590,800
Tax on $6 million	$2,940,800	
Applicable credit amount	$1,730,800	
Gift tax payable on post-1976 gifts		$1,210,000
Gross estate tax		$3,380,800
Unified credit		$345,800
Estate tax due		$3,035,000

Note: Estate tax due is more than taxable estate

Example – Estate Tax – No Clawback
If applicable credit amount for computing gift tax payable is based on $345,800 as if tax laws had never been enacted.

Tentative tax on $9 million		$4,590,800
Tax on $6 million	$2,940,800	
Applicable credit amount	$345,800	
Gift tax payable on post-1976 gifts		$2,595,000
Gross estate tax		$1,995,800
Unified credit		$345,800
Estate tax due		$1,650,000

Note: Taxable estate taxed at 55%

Example – Estate Tax Clawback Comparison
Suppose Amy dies in 2013. If she had made no additional gift.

Tentative tax on $9 million		$4,590,800
Tax on $2 million	$780,800	
Applicable credit amount	$345,800	
Gift tax payable on post-1976 gifts		$435,000
Gross estate tax		$4,155,800
Unified credit		$345,800
Estate tax due		$3,810,000

Computation of Estate Tax in 2013
- Hopefully Congress will address clawback issue if amount exempt from transfer taxes decreases in 2013
- Purpose of unified estate and gift tax system enacted in 1976 was to avoid multiple run up tax brackets by including prior taxable gifts in computation of current taxable gifts and ultimately adding them to taxable estate
- Each taxable gift is taxed only once, but taxable estate is taxed in higher bracket
- Changes in exemption amounts should not result in additional estate tax on lifetime gifts in excess of $1 million but whether that is true remains to be seen
- Donors should be advised of possibility of clawback
- There may be less estate tax to pay by making large gift rather than doing nothing, even with clawback
- Donors may want to consider structuring gifts as net gifts

Planning Considerations for 2011 and 2012
- Large Gifts
- Interests in Closely-held Family Businesses
- Sales to Intentionally Defective Grantor Trusts
- Grantor Retained Annuity Trusts
- Qualified Personal Residence Trusts
- Generation-skipping Transfer Tax Planning

Large Gifts
- Amount exempt from gift tax jumps dramatically from $1 million to $5 million
- Increase may be only temporary – for 2011 and 2012
- Gift tax rate is only 35% – may revert to maximum of 55% in 2013
- Gifts during 2011 and 2012 eliminate future appreciation in value of gifted property from transfer taxes

Example – Do Nothing
Evan is divorced and has four children. He has an estate worth $10 million in 2011.
Assume that the amount excluded from estate tax returns to $1 million in 2013 and the
maximum estate tax rate is 55%. Assume no state estate tax. Evan dies in 2013.

If Evan makes no gifts

Gross estate tax	$5,140,800
Unified credit	$345,800
Estate tax due	$4,795,000

Example – Large Gift – Clawback
Instead Evan decides to give each of his four children assets worth $1.25 million in 2011.
Assume that clawback is applicable.

Tentative tax on $10 million		$5,140,800
Tax on $5 million	$2,390,800	
Applicable credit amount	$1,730,800	
Gift tax payable on post-1976 gifts		$660,000
Gross estate tax		$4,480,800
Unified credit		$345,800
Estate tax due		$4,135,000

Example – Large Gift – No Clawback

Instead Evan decides to give each of his four children assets worth $1.25 million in 2011. Assume that the clawback is not applicable.

Tentative tax on $10 million		$5,140,800
Tax on $5 million	$2,390,800	
Applicable credit amount	$345,800	
Gift tax payable on post-1976 gifts		$2,045,000
Gross estate tax		$3,095,800
Unified credit		$345,800
Estate tax due		$2,750,000

Interests in Closely-held Family Businesses
- Discounts for minority interests and lack of marketability
  - Legislative proposals to limit use of discounts for closely-held family businesses have not been enacted
  - So discounts continue to be viable estate planning tool
- Increased gift tax applicable exclusion amount of $5 million can be further leveraged by gifts of interests in closely-held family businesses valued using these discounts
- Even if discounts are legislatively restricted in the future, donor has eliminated value representing discounted value from transfer taxes

Example – Interests in Closely-held Family Businesses

Evan transfers $8 million of assets to a family LLC and gives each of his four children a $1.25 million interest in the LLC valued based on 30% discounts. His taxable estate is $2,600,000.

Tentative tax on $7.6 million		$3,820,800
Tax on $5 million	$2,390,800	
Applicable credit amount	$345,800	
Gift tax payable on post-1976 gifts		$2,045,000
Gross estate tax		$1,775,800
Unified credit		$345,800
Estate tax due		$1,430,000

Examples – Comparison

Estate tax paid if Evan:

Does nothing	$4,795,000
Gives $5 million away	$2,750,000
Leverages $5 million gift	$1,430,000

Sales to Intentionally Defective Grantor Trusts (IDGTs)
- Seed money for sales to IDGTs
- Traditionally IDGT required to have 10% equity
- If funded with $1 million tax-free gift, $9 million of assets could be sold to IDGT
- Now increase funding by another $4 million tax-free gift, an additional $36 million can be sold to IDGT when section 7520 rates are currently low – 2.33% mid-term
- Or additional gift to IDGT can be made to allow it to pay off note

Suggestions
- Do not include Crummey withdrawal powers in trust that will be purchasing assets from grantor
- We want to make sure that trust is wholly-owned grantor trust of grantor so that sale will be disregarded for income tax purposes
- Do not want to risk having beneficiaries treated as owners of a portion of trust under section 678
- Create separate trusts for husband and wife so trust does not lose its status as wholly-owned grantor trust upon death of first spouse die

Grantor Retained Annuity Trusts (GRATs)
- Legislative proposals to require a GRAT to have a 10-year minimum term have not been enacted
- GRATs continue to be a valid estate planning tool for
  - Wealthy individuals
  - Those who may be again subject to estate taxes in 2013 and beyond
  - Those who are subject to state estate taxes
- Current low AFR rates to value the retained interest as well as low values for assets to be transferred continue to make GRATs an important estate planning technique

Qualified Personal Residence Trusts (QPRTs)
- QPRTs may be attractive for:
  - Wealthy individuals
  - Those who may again be subject to estate taxes in 2013 and beyond
  - Those who are subject to state estate taxes
- Larger exemption amount may make QPRTs practical for very valuable homes that would have generated a substantial taxable gift in prior years
- No need for house to appreciate – if grantor survives term, QPRT is guaranteed to remove value from estate

Example – No QPRT
June, a 60-year old single person, has a $10 million estate consisting of a $6 million home and $4 million of marketable securities. Assume that all her assets appreciate at a rate of 4% a year. She dies in February 2017. Assume the maximum estate tax remains 35% and the amount exempt from transfer taxes remains $5 million. If she does nothing, her taxable estate will be $12,650,000.

Gross estate tax	$4,408,300
Unified credit	$1,730,800
Estate tax due	$2,677,500

Example – QPRT
June had been reluctant to establish a QPRT in the past because the value of the taxable gift would have exceeded the $1 million gift tax exemption and the gift would have generated a gift tax liability. With the applicable exclusion amount increased to $5 million, she establishes a QPRT with a 5-year term in a month when the section 7520 rate is 2.8%.

The present value of her retained interest is $1,094,280, and the present value of the gift of the remainder interest is $4,905,720. The gift is covered by the $5 million applicable exclusion amount so she pays no gift tax.

When she dies in 2017, her taxable estate will be $5,061,000 and her adjusted taxable gifts total $4,905,720. The value of her house now owned by her children will be $7,592,000.

Tentative tax on $9,966,720		$3,469,152
Tax on $4,905,720	$1,697,802	
Applicable credit amount	$1,697,802	
Gift tax payable on post-1976 gifts		$ 0
Gross estate tax		$3,469,152
Unified credit		$1,730,800
Estate tax due		$1,738,352

Suggestions
- Draft into trust agreement provision giving parent option to rent for fair market value
   - So if parent stays in house beyond QPRT term, parent has exercised option
   - Eliminates § 2036 challenge if parent dies shortly after end of QPRT term without having paid any rent
- Consider having children give parent back a short term QPRT so parent can stay in house without paying rent
- Have parent buy house back at end of QPRT term provided trust remains a wholly owned grantor trust at that point

Generation-skipping Transfer Tax Planning
- Utilize increased GST exemption of $5 million
- Create new trusts to which GST exemption may be allocated
   - If created in state with no rule against perpetuities, trust can last forever
   - Trust will always be exempt from GSTT
- Consider late allocation to trust that is non-exempt or partially exempt
- Remember that GST exemption is allocated to trust based on value of trust at date of
   late allocation

Form **709**

Department of the Treasury
Internal Revenue Service

United States Gift (and Generation-Skipping Transfer) Tax Return

(For gifts made during calendar year 2010)

▶ See separate instructions.

OMB No. 1545-0020

2010

Part 1—General Information

1 Donor's first name and middle initial	2 Donor's last name	3 Donor's social security number
4 Address (number, street, and apartment number)		5 Legal residence (domicile)
6 City, state, and ZIP code		7 Citizenship (see instructions)

		Yes	No
8	If the donor died during the year, check here ▶ ☐ and enter date of death _____ , _____ .		
9	If you extended the time to file this Form 709, check here ▶ ☐		
10	Enter the total number of donees listed on Schedule A. Count each person only once. ▶		
11a	Have you (the donor) previously filed a Form 709 (or 709-A) for any other year? If "No," skip line 11b		
b	If the answer to line 11a is "Yes," has your address changed since you last filed Form 709 (or 709-A)?		
12	**Gifts by husband or wife to third parties.** Do you consent to have the gifts (including generation-skipping transfers) made by you and by your spouse to third parties during the calendar year considered as made one-half by each of you? (See instructions.) (If the answer is "Yes," the following information must be furnished and your spouse must sign the consent shown below. **If the answer is "No," skip lines 13–18 and go to Schedule A.**)		
13	Name of consenting spouse		
14	SSN		
15	Were you married to one another during the entire calendar year? (see instructions)		
16	If 15 is "No," check whether ☐ married ☐ divorced or ☐ widowed/deceased, and give date (see instructions) ▶		
17	Will a gift tax return for this year be filed by your spouse? (If "Yes," mail both returns in the same envelope.)		
18	**Consent of Spouse.** I consent to have the gifts (and generation-skipping transfers) made by me and by my spouse to third parties during the calendar year considered as made one-half by each of us. We are both aware of the joint and several liability for tax created by the execution of this consent.		

Consenting spouse's signature ▶   Date ▶

Part 2—Tax Computation

1	Enter the amount from Schedule A, Part 4, line 11	1		
2	Enter the amount from Schedule B, line 3	2		
3	Total taxable gifts. Add lines 1 and 2	3		
4	Tax computed on amount on line 3 (see *Table for Computing Gift Tax* in separate instructions) . .	4		
5	Tax computed on amount on line 2 (see *Table for Computing Gift Tax* in separate instructions) . .	5		
6	Balance. Subtract line 5 from line 4	6		
7	Maximum unified credit (nonresident aliens, see instructions)	7	330,800	00
8	Enter the unified credit against tax allowable for all prior periods (from Sch. B, line 1, col. C) . .	8		
9	Balance. Subtract line 8 from line 7. Do not enter less than zero	9		
10	Enter 20% (.20) of the amount allowed as a specific exemption for gifts made after September 8, 1976, and before January 1, 1977 (see instructions)	10		
11	Balance. Subtract line 10 from line 9. Do not enter less than zero	11		
12	Unified credit. Enter the smaller of line 6 or line 11	12		
13	Credit for foreign gift taxes (see instructions)	13		
14	Total credits. Add lines 12 and 13	14		
15	Balance. Subtract line 14 from line 6. Do not enter less than zero	15		
16	Generation-skipping transfer taxes (from Schedule C, Part 3, col. H, Total)	16	0	00
17	Total tax. Add lines 15 and 16	17		
18	Gift and generation-skipping transfer taxes prepaid with extension of time to file	18		
19	If line 18 is less than line 17, enter **balance due** (see instructions)	19		
20	If line 18 is greater than line 17, enter **amount to be refunded**	20		

Sign Here

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

May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☐ No

▶ _____
Signature of donor   Date

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
Firm's name ▶			Firm's EIN ▶	
Firm's address ▶			Phone no.	

Attach check or money order here.

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see the separate instructions for this form.   Cat. No. 16783M   Form **709** (2010)

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SCHEDULE A — Computation of Taxable Gifts (Including transfers in trust) (see instructions)

A Does the value of any item listed on Schedule A reflect any valuation discount? If "Yes," attach explanation . . . . . . Yes ☐ No ☐

B ☐ ◄ Check here if you elect under section 529(c)(2)(B) to treat any transfers made this year to a qualified tuition program as made ratably over a 5-year period beginning this year. See instructions. Attach explanation.

Part 1—Gifts Subject Only to Gift Tax. Gifts less political organization, medical, and educational exclusions. (see instructions)

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
1							

Gifts made by spouse —*complete **only** if you are splitting gifts with your spouse and he/she also made gifts.*

Total of Part 1. Add amounts from Part 1, column H . . . . ►

Part 2—Direct Skips. Gifts that are direct skips and are subject to both gift tax and generation-skipping transfer tax. You must list the gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(b) election out	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
1							

Gifts made by spouse —*complete **only** if you are splitting gifts with your spouse and he/she also made gifts.*

Total of Part 2. Add amounts from Part 2, column H . . . . ►

Part 3—Indirect Skips. Gifts to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(c) election	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
1							

Gifts made by spouse —*complete **only** if you are splitting gifts with your spouse and he/she also made gifts.*

Total of Part 3. Add amounts from Part 3, column H . . . . ►

(If more space is needed, attach additional sheets of same size.) Form **709** (2010)

Part 4—Taxable Gift Reconciliation

1	Total value of gifts of donor. Add totals from column H of Parts 1, 2, and 3	**1**
2	Total annual exclusions for gifts listed on line 1 (see instructions)	**2**
3	Total included amount of gifts. Subtract line 2 from line 1	**3**

Deductions (see instructions)

4	Gifts of interests to spouse for which a marital deduction will be claimed, based on item numbers _____ of Schedule A . .	**4**		
5	Exclusions attributable to gifts on line 4	**5**		
6	Marital deduction. Subtract line 5 from line 4	**6**		
7	Charitable deduction, based on item nos. _____ less exclusions .	**7**		
8	Total deductions. Add lines 6 and 7		**8**	
9	Subtract line 8 from line 3		**9**	
10	Generation-skipping transfer taxes payable with this Form 709 (from Schedule C, Part 3, col. H, Total) . .		**10**	0 00
11	**Taxable gifts.** Add lines 9 and 10. Enter here and on page 1, Part 2—Tax Computation, line 1		**11**	

Terminable Interest (QTIP) Marital Deduction. (See instructions for Schedule A, Part 4, line 4.)

If a trust (or other property) meets the requirements of qualified terminable interest property under section 2523(f), and:

a. The trust (or other property) is listed on Schedule A, and

b. The value of the trust (or other property) is entered in whole or in part as a deduction on Schedule A, Part 4, line 4,

then the donor shall be deemed to have made an election to have such trust (or other property) treated as qualified terminable interest property under section 2523(f).

If less than the entire value of the trust (or other property) that the donor has included in Parts 1 and 3 of Schedule A is entered as a deduction on line 4, the donor shall be considered to have made an election only as to a fraction of the trust (or other property). The numerator of this fraction is equal to the amount of the trust (or other property) deducted on Schedule A, Part 4, line 6. The denominator is equal to the total value of the trust (or other property) listed in Parts 1 and 3 of Schedule A.

If you make the QTIP election, the terminable interest property involved will be included in your spouse's gross estate upon his or her death (section 2044). See instructions for line 4 of Schedule A. If your spouse disposes (by gift or otherwise) of all or part of the qualifying life income interest, he or she will be considered to have made a transfer of the entire property that is subject to the gift tax. See *Transfer of Certain Life Estates Received From Spouse* in the separate instructions.

12 Election Out of QTIP Treatment of Annuities

☐ ◄Check here if you elect under section 2523(f)(6) **not** to treat as qualified terminable interest property any joint and survivor annuities that are reported on Schedule A and would otherwise be treated as qualified terminable interest property under section 2523(f). See instructions. Enter the item numbers from Schedule A for the annuities for which you are making this election ▶ _____

SCHEDULE B   Gifts From Prior Periods

If you answered "Yes" on line 11a of page 1, Part 1, see the instructions for completing Schedule B. If you answered "No," skip to the Tax Computation on page 1 (or Schedule C, if applicable). See instructions for recalculation of the column C amounts. Attach calculations.

A Calendar year or calendar quarter (see instructions)	B Internal Revenue office where prior return was filed	C Amount of unified credit against gift tax for periods after December 31, 1976	D Amount of specific exemption for prior periods ending before January 1, 1977	E Amount of taxable gifts

1	Totals for prior periods	**1**			
2	Amount, if any, by which total specific exemption, line 1, column D is more than $30,000			**2**	
3	Total amount of taxable gifts for prior periods. Add amount on line 1, column E and amount, if any, on line 2. Enter here and on page 1, Part 2—Tax Computation, line 2			**3**	

(If more space is needed, attach additional sheets of same size.)   Form **709** (2010)

SCHEDULE C Computation of Generation-Skipping Transfer Tax

Note. Inter vivos direct skips that are completely excluded by the GST exemption must still be fully reported (including value and exemptions claimed) on Schedule C.

Part 1—Generation-Skipping Transfers

A Item No. (from Schedule A, Part 2, col. A)	B Value (from Schedule A, Part 2, col. H)	C Nontaxable portion of transfer	D Net Transfer (subtract col. C from col. B)
1			
Gifts made by spouse (for gift splitting only)			

Part 2—GST Exemption Reconciliation (Section 2631) and Section 2652(a)(3) Election

Check here ▶ ☐ if you are making a section 2652(a)(3) (special QTIP) election (see instructions)

Enter the item numbers from Schedule A of the gifts for which you are making this election ▶ _____

1	Maximum allowable exemption (see instructions)	**1**	
2	Total exemption used for periods before filing this return	**2**	
3	Exemption available for this return. Subtract line 2 from line 1	**3**	
4	Exemption claimed on this return from Part 3, column C total, below	**4**	
5	Automatic allocation of exemption to transfers reported on Schedule A, Part 3 (see instructions)	**5**	
6	Exemption allocated to transfers not shown on line 4 or 5, above. **You must attach a "Notice of Allocation."** (see instructions)	**6**	
7	Add lines 4, 5, and 6	**7**	
8	Exemption available for future transfers. Subtract line 7 from line 3	**8**	

Part 3—Tax Computation

A Item No. (from Schedule C, Part 1)	B Net transfer (from Schedule C, Part 1, col. D)	C GST Exemption Allocated	D RESERVED	E RESERVED	F RESERVED	G Applicable Rate	H Generation-Skipping Transfer Tax (multiply col. B by col. G)
1						0	0
						0	0
						0	0
						0	0
						0	0
						0	0
Gifts made by spouse (for gift splitting only)							
						0	0
						0	0
						0	0
						0	0
						0	0
						0	0
Total exemption claimed. Enter here and on Part 2, line 4, above. May not exceed Part 2, line 3, above		**Total generation-skipping transfer tax.** Enter here; on page 3, Schedule A, Part 4, line 10; and on page 1, Part 2—Tax Computation, line 16					

Not applicable to transfers made in 2010 (watermark across columns D, E, F)

(If more space is needed, attach additional sheets of same size.)

Form **709** (2010)
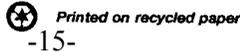
Information About the 2010 Form 8939

The 2010 Form 8939, Allocation of Increase in Basis for Property Acquired From a Decedent, is not yet final. However, a draft of the form is available at http://www.irs.gov/pub/irs-dft/f8939--dft.pdf.

The 2010 Instructions for Form 8939 are still in the process of being drafted. Once final, the instructions will be available at http://www.irs.gov/pub/irs-pdf/i8939.pdf.

Please note the following:

- To help with filing the Form 8939, shortly after the final Form 8939 is available, Instructions for Form 8939 will be also be available, followed thereafter by Publication 4895, Tax Treatment of Property Acquired From a Decedent Dying 2010.

- Form 8939 should not be filed with the decedent's final income tax return.

- The final Form 8939 will be posted at least 90 days before it is required to be filed. Detailed information about filing Form 8939 (including when, where, how, by whom, and for what purposes to file) will be included in the Instructions for Form 8939 and in Publication 4895.

- The election (under section 301(c) of Public Law 111-312) to have the modified carryover basis rules (and other rules from part V of EGTRRA) should not be made on the decedent's final income tax return.

- Instructions as to how to make the 301(c) election will be described on the final Form 8939, as well as in the Instructions for Form 8939 and in Publication 4895.

- The latest information on Form 8939, the Instructions for Form 8939, and Publication 4895 can be found at www.irs.gov/form8939.

Please refer to the draft Form 8939 for more details. The final Form 8939 will be posted in place of this file as soon as it is available.

Form **8939**

Department of the Treasury
Internal Revenue Service

Allocation of Increase in Basis for Property Acquired From a Decedent

File separately. Do NOT file with Form 1040. See below for filing address.
To be filed for decedents dying after December 31, 2009, and before January 1, 2011.

OMB No. 1545-XXXX

2010

Part 1—Decedent and Executor

1a Decedent's first (given) name and middle initial (and maiden name, if any)	1b Decedent's last (family) name	2 Decedent's Social Security No.

3 County, state, and ZIP code, or foreign country, of legal residence (domicile) at time of death	4 ☐ Check if decedent was a nonresident and was not a citizen of the U.S. See instructions. If checked, enter nationality (citizenship)	5 Date of death

6b Executor's address (number and street including apartment or suite number; city, town, or post office; state; and ZIP code) and phone number

6a Name of executor (see instructions)

6c Executor's social security number (see instructions)

Phone no. (   )

Part 2—Basis Allocation Computation

7 Marital status of the decedent at time of death:

☐ Married

☐ Widow or widower—Name, SSN, and date of death of deceased spouse ▶ _____

_____

☐ Single

☐ Legally separated

☐ Divorced—Date divorce decree became final ▶ _____

8a Surviving spouse's name	8b Social security number	8c Value of property acquired (see instructions)

9 Individuals (other than the surviving spouse), trusts, estates, or other entities who acquired property from the estate (see instructions).

Name of individual, trust, estate, or other entity	Taxpayer identification number	Value of property acquired (see instructions)

10 Built-in loss (see instructions). For non-resident alien decedents, enter zero	**10**	
11 Capital loss carryforward (see instructions). For non-resident alien decedents, enter zero	**11**	
12 Net operating loss carryforward (see instructions). For non-resident alien decedents, enter zero	**12**	
13 Aggregate Basis Increase limit. For non-resident alien decedents, enter $60,000. All others, enter $1,300,000	**13**	
14 General Basis Increase limit. Add lines 10 through 13	**14**	
15 Enter the total of the amounts from each Schedule B, line 9	**15**	
16 Subtract line 15 from line 14	**16**	
17 Spousal Property Basis Increase limit (see instructions)	**17**	
18 Add lines 16 and 17	**18**	
19 Enter the total of the amounts from each Schedule A, line 5	**19**	
20 Subtract line 19 from line 18	**20**	

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

Sign Here

▶ _____   ▶ _____
Signature of executor   Date

▶ _____   ▶ _____
Signature of executor   Date

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
Firm's name ▶			Firm's EIN ▶	
Firm's address ▶			Phone no.	

Send Form 8939 (including accompanying schedules and statements) to: Internal Revenue Service, Estate & Gift Stop 824G, 201 W. Rivercenter Blvd., Covington, KY 41011

For Paperwork Reduction Act Notice, see the separate instructions for this form.   Cat. No. 37755W   Form **8939** (2010)

Estate of:	Decedent's Social Security Number	
		Number ___ of ___

SCHEDULE A—Property Acquired by Surviving Spouse

Recipients of Schedule A: For more information and details on the information shown on this schedule, see the Instructions to Form 8939, Publication 4895, Tax Treatment of Property Acquired from a Decedent Dying in 2010, and *www.irs.gov/form8939*.

Complete a separate Schedule A for the surviving spouse and for any QTIP trust. See instructions.

Part I   General Information

1a Name of executor	**1b** Executor's address (number and street including apartment or suite number; city, town, or post office; state; and ZIP code) and phone number.
1c Executor's social security number	
	Phone no. (___)
2a Name of recipient	**2b** Recipient's taxpayer identification number (TIN)

Part II   Property Information

3 For all property acquired from the decedent by the recipient named in line 2a the basis of which at the date of death is greater than its fair market value at the date of death, provide the following information. See instructions.

Item No.	(a) Accurate description of the property	(b) Date decedent acquired the property (mm/dd/yyyy)	(c) Adjusted basis at death	(d) Fair market value at death	(e) Check if any gain would be ordinary (Attach statement)
					☐
					☐
					☐
					☐
					☐
					☐
					☐
					☐
					☐
					☐
					☐

3a Total for columns (c) and (d)

4 For all property acquired from the decedent by the recipient named in line 2a the basis of which at the date of death is less than or equal to fair market value at the date of death, provide the following information. See instructions.

Item No.	(a) Accurate description of the property	(b) Check if qualified terminable interest property	(c) Date decedent acquired the property (mm/dd/yyyy)	(d) Check if ineligible property. Attach statement. See instructions.	(e) Adjusted basis at death	(f) Fair market value at death	(g) Basis increase allocated to property	(h) Amount of gain that would be ordinary (Attach statement)
		☐		☐				
		☐		☐				
		☐		☐				
		☐		☐				
		☐		☐				
		☐		☐				
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		☐		☐				
		☐		☐				
		☐		☐				
		☐		☐				
		☐		☐				

5 Add the amounts in line 4, column (g). Enter this amount on page 1, line 19   .   .   .   .

Schedule A—Page 2

Estate of:	Decedent's Social Security Number	
		Number of

SCHEDULE B—Property Acquired by Person Other Than Surviving Spouse

Recipients of Schedule B: For more information and details on the information shown on this schedule, see the Instructions to Form 8939, Publication 4895, Tax Treatment of Property Acquired from a Decedent Dying in 2010, and *www.irs.gov/form8939.*

Complete a separate Schedule B for each recipient of property, including the decedent's estate. See instructions.

Part I   General Information

1a Name of executor	1b Executor's address (number and street including apartment or suite number; city, town, or post office; state; and ZIP code) and phone number.
1c Executor's social security number	Phone no. ( )
2a Name of recipient	2b Recipient's taxpayer identification number (TIN)

Part II   Property Information

3 For all property acquired from the decedent by the recipient named in line 2a the basis of which at the date of death is greater than its fair market value at the date of death, provide the following information. See instructions.

Item No.	(a) Accurate description of the property	(b) Date decedent acquired the property (mm/dd/yyyy)	(c) Adjusted basis at death	(d) Fair market value at death	(e) Check if any gain would be ordinary (Attach statement)
					☐
					☐
					☐
					☐
					☐
					☐
					☐
					☐
					☐
					☐

3a Total for columns (c) and (d)

4 For all property acquired from the decedent by the recipient named in line 2a the basis of which at the date of death is less than or equal to fair market value at the date of death, provide the following information. See instructions.

Item No.	(a) Accurate description of the property	(b) Check if included on Schedule A. Attach statement. See instructions.	(c) Date decedent acquired the property (mm/dd/yyyy)	(d) Check if ineligible property. Attach statement. See instructions.	(e) Adjusted basis at death	(f) Fair market value at death	(g) Basis increase allocated to the property	(h) Amount of gain that would be ordinary (Attach statement)
		☐		☐				
		☐		☐				
		☐		☐				
		☐		☐				
		☐		☐				
		☐		☐				
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		☐		☐				
		☐		☐				
		☐		☐				
		☐		☐				
		☐		☐				

5 Add the amounts in line 4, column (g) . . . .

6 Enter the amount of basis increase allocated to property shown on this Schedule B and that was acquired by the decedent's estate and shown on the Schedule B for the decedent's estate. If this Schedule B is for the decedent's estate, enter zero . . . .

7 Enter the amount of basis increase allocated to property shown on this Schedule B and that was acquired by the surviving spouse and shown on Schedule A . . . .

8 Add lines 6 and 7 . . . .

9 Subtract line 8 from line 5 . . . .

Schedule B—Page 3