

APPENDIX

APPENDIX 1

Shaffer v. Commissioner of Revenue,
485 Mass. 198 (2020) 148 N.E.3d 1197
Supreme Judicial Court of Massachusetts,
Suffolk.

M. Christine SHAFFER, executrix,¹

v.

COMMISSIONER OF REVENUE.

SJC-12812

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Argued February 10, 2020.

|

Decided July 10, 2020.

Synopsis

Background: Executrix of decedent, who was lifetime income beneficiary of qualified terminable interest property (QTIP) trust created in New York by her predeceasing husband, appealed from decision of the Appellate Tax Board, 2019 WL 2158344, which determined that there was no constitutional or statutory barrier to assessment of Massachusetts estate tax on value of QTIP assets included in decedent's gross estate when she died while domiciled in Massachusetts. Estate's application for direct appellate review was granted.

Holdings: The Supreme Judicial Court, Cypher, J., held that:

[¹] assessment of Massachusetts estate tax on value of QTIP trust assets included in decedent's gross estate when she died while domiciled in Massachusetts did not violate due process, and

¹ Of the estate of Adelaide P. Chuckrow.

[2] decedent's Massachusetts estate tax obligation included all assets reported in federal gross estate, including QTIP assets.

Affirmed.

****1198** Taxation, Estate tax, Trust. Trust, Taxation. Due Process of Law, Taxation. Words, "Transfer," "Massachusetts gross estate."

Appeal from a decision of the Appellate Tax Board.

The Supreme Judicial Court granted an application for direct appellate review.

Attorneys and Law Firms

Leo J. Cushing, (Jenna R. Wolinetz, Waltham, also present) for the taxpayer.

Celine E. de la Foscade-Condon (John J. Connors, Jr., Boston, also present) for Commissioner of Revenue.

Present: Gants, C.J., Lenk, Gaziano, Lowy, Budd, Cypher, & Kafker, JJ.

Opinion

CYPHER, J.

***198** This case concerns whether the intangible assets in a qualified terminable interest property (QTIP) trust, which was created by the predeceasing spouse in New York, are subject to ***199** the Massachusetts estate tax, G. L. c. 65C, § 2A (a), when the surviving spouse died domiciled in Massachusetts. Adelaide P. Chuckrow (decedent), the lifetime income beneficiary of the QTIP trust created in New York by her late husband Robert Chuckrow (Robert), died domiciled in Massachusetts in 2011. The decedent's estate (estate) included the value of the QTIP trust assets in computing her

Federal estate tax return, but not in computing her Massachusetts estate tax return. The Commissioner of Revenue (commissioner) selected the estate's Massachusetts return for audit and assessed an additional Massachusetts estate tax of \$1,809,141.88, based on the value of the QTIP assets. The Appellate Tax Board (board) upheld the assessment. The key issue before us is whether the intangible assets in a QTIP trust created by the predeceasing spouse when he was domiciled in a different State are includable in the gross estate of the Massachusetts domiciliary decedent for purposes of calculating the Massachusetts estate tax under § 2A (a). We affirm the decision of the board that there is not a constitutional or a statutory barrier to the assessment of ****1199** Massachusetts estate tax, on the value of the QTIP assets.

Background. 1. Statutory framework. We begin with an overview of the statutory framework, in order to provide context to the following discussion.

1a. Federal estate tax and Massachusetts estate tax. An estate tax is a tax on the privilege of transferring property at death. See Knowlton v. Moore, 178 U.S. 41, 56, 20 S.Ct. 747, 44 L.Ed. 969 (1900). Internal Revenue Code § 2001(a) sets forth the Federal estate tax: “A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.” 26 U.S.C. § 2001(a). General Laws c. 65C, § 2A (a), sets forth the Massachusetts estate tax. Following various versions of the Massachusetts estate tax in response to the changes in the Internal Revenue Code, in 2002, the Legislature amended § 2A to use a “sponge tax”

calculation² based upon the Federal credit for State death taxes that would have been allowable to a decedent's estate in 2000. See G. L. c. 65C, § 2A (a); St. 2002, c. 186, §§ 28, 34; St. 2002, c. 364, §§ 10, 23. See also Department of Revenue, Technical Information Release 02-18 (Nov. 6, 2002) ("reference point Massachusetts uses to tie itself to the [Internal Revenue] Code for sponge tax purposes is a fixed date instead of a reference *200 point that automatically incorporates any federal changes. Thus, due to the decoupling legislation, the Massachusetts sponge tax is now tied to the [Internal Revenue] Code as in effect on December 31, 2000"). The Massachusetts estate tax imposes a tax "upon the transfer of the estate of each person dying on or after January 1, 1997 who, at the time of death, was a resident of the commonwealth." G. L. c. 65C, § 2A (a).

2]b. Marital deduction. The marital deduction allows an estate to deduct from the value of the taxable estate certain property that passes or has passed from a decedent to the decedent's surviving spouse. 26 U.S.C. § 2056(a). In general, a marital deduction defers the estate tax on the property subject to the marital deduction until the death of the surviving spouse; it does not eliminate the tax liability altogether. See Estate of Sommers v. Commissioner of Internal Revenue, 149 T.C. 209, 223 (2017).

c. QTIP trust. An estate generally may not make use of the marital deduction when conveying terminable interest property (terminable interest rule). 26 U.S.C. § 2056(b)(1). However, 26 U.S.C. § 2056(b)(7)

² Under a "sponge tax," the State tax liability is determined based on the Federal estate death tax credit. See Ward v. Commissioner of Corps. & Taxation, 369 Mass. 3, 4, 336 N.E.2d 862 (1975).

provides an exception to the terminable interest rule for QTIP. To become QTIP, (1) the property must pass from the predeceasing spouse, (2) the surviving spouse must have a qualifying income interest for life³ in the property, and (3) the executor of the estate of the predeceasing spouse must elect to designate the property as QTIP. 26 U.S.C. § 2056(b)(7)(B). Using a QTIP trust allows for the deferral of the Federal estate tax on the assets used to create the QTIP trust until the surviving spouse dies.⁴ See ****1200** 26 U.S.C. § 2044. See also Estate of Clayton v. Commissioner of Internal Revenue, 976 F.2d 1486, 1491-1493 (5th Cir. 1992) (explaining history of marital deduction and QTIP).

2. Robert's creation of the QTIP trust. Robert died in July 1993, while domiciled in New York.⁵ His last will and testament established a trust for the decedent's benefit. The trust qualified for a QTIP trust election under 26 U.S.C. § 2056(b)(7) and under New ***201** York law. At the time of Robert's death, the trust assets totaled \$844,101.27, and consisted wholly of intangible property, including shares in various companies and a fifty percent limited

³ "The surviving spouse has a qualifying income interest for life if ... (I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse." 26 U.S.C. § 2056(b)(7)(B)(ii).

⁴ Although not relevant to this appeal, the assets in a QTIP trust would be subject to tax before the surviving spouse's death if the surviving spouse disposed of all or part of the qualifying income interest before his or her death. 26 U.S.C. § 2519.

⁵ At the time of Robert's death, the decedent was also domiciled in New York.

partnership interest in Chuckrow Smith Associates, L.P.

The trustees of the trust were the two adult daughters of the decedent and Robert. The decedent did not hold general or limited powers of appointment over the trust assets. The trustees were entitled to the remainder interest of the trust upon the decedent's death.

After Robert's death, his estate filed Federal and New York tax returns.⁶ In both returns, the estate reported no tax due, claiming the marital deduction in the full amount of the QTIP assets.

3. Prior proceedings. The decedent died in August 2011, while domiciled in Massachusetts. The estate filed a Massachusetts estate tax return, reporting a tax due of \$100,997 and including a payment in that amount. The value of the QTIP assets was not included in the Massachusetts estate tax return, but it was included in the estate's Federal tax return.⁷ The estate did not file a New York estate tax return, nor did it pay any New York estate tax.

The commissioner selected the estate's Massachusetts estate tax return for an audit. The commissioner sent the estate a notice of intention to assess and a notice of intention to assess work papers, showing the commissioner proposed an additional Massachusetts tax assessment of \$1,809,141.88. The additional tax assessment was based on the total gross estate reported on the Federal estate tax return. The commissioner

⁶ Robert's estate did not file a Massachusetts tax return.

⁷ The estate's Massachusetts return reported a total gross estate of \$2,382,148, and the estate's Federal return reported a total gross estate of \$15,633,617, the difference being the value of the QTIP assets.

assessed the tax as proposed, and sent the estate a notice of assessment, which included the \$1,809,141.88 plus interest. The estate paid the amount assessed.

The estate then filed an abatement application, which the commissioner denied. The estate appealed to the board from the denial of the abatement application. The parties submitted an agreed statement of facts along with their arguments in briefs and oral arguments, and no evidentiary hearing was held.

4. The board's decision. The board issued a decision in favor of the commissioner and subsequently promulgated its findings of fact and report. One of the board's commissioners dissented.

202** The board ruled that the QTIP assets were subject to tax under G. L. c. 65C, § 2A (a). It disagreed with the two primary arguments raised by the estate: (1) that there was only one transfer of the QTIP assets, which took place when Robert died in New York, and therefore the Massachusetts assessment violates the Fourteenth Amendment to the United States Constitution and art. 10 of the Massachusetts Declaration of Rights; and (2) that the QTIP assets were not includable in the decedent's estate because "the definition *1201** of 'Massachusetts gross estate' in [G. L. c. 65C, § 1 (f),] excludes QTIP property for which a Federal, but not a Massachusetts, QTIP election was made."

In addressing the estate's constitutional argument and interpreting the term "transfer," the board relied on case law analogous to the present matter, in which courts gave the term a broad construction. See Fernandez v. Wiener, 326 U.S. 340, 352, 66 S.Ct. 178, 90 L.Ed. 116 (1945); Estate of Brooks v.

Commissioner of Revenue Servs., 325 Conn. 705, 733, 159 A.3d 1149 (2017), cert. denied, — U.S. —, 138 S. Ct. 1181, 200 L.Ed.2d 314 (2018). The board also noted that 26 U.S.C. § 2044(c) provides, in part, that QTIP property “shall be treated as property passing from” the surviving spouse, and that other sections of the Internal Revenue Code treat the surviving spouse as the transferor of the full value of the QTIP property. See 26 U.S.C. §§ 2044(c), 2519, 2652(a). The board accordingly determined that for estate tax purposes, there are two transfers of QTIP assets. The first is “a transfer from the estate of the first-to-die spouse to the surviving spouse when the QTIP election is made,” and the second is “a transfer from the estate of the surviving spouse to the designated beneficiaries when the surviving spouse dies.” Applying that reasoning to the QTIP assets at issue, the board ruled that constitutional principles were not violated because the second transfer of the QTIP assets occurred in Massachusetts.

In addressing the estate’s statutory argument, the board stated that the “fatal flaw” with the estate’s analysis that G. L. c. 65C, § 1 (f), “provides that only those QTIP assets for which a Massachusetts deduction was allowed in the estate of the first-to-die spouse are includable in the Massachusetts gross estate of the surviving spouse” was that § 1 (f) defines “Massachusetts gross estate,” which is a term “not found in the operative taxing statute, [G. L. c. 65C,] § 2A.” The board looked to the Legislature’s enactment of § 1 (f), as well as to its enactment of G. L. c. 65C, § 3A, which addresses the Massachusetts election of QTIP treatment, and determined that the § 1 (f), definition of Massachusetts *203 gross estate applies only when

the predeceasing spouse makes a Massachusetts QTIP election under § 3A. It therefore concluded that because Robert did not make a Massachusetts QTIP election and there was not any Massachusetts QTIP property (as defined in § 3A), §§ 1 (f) and 3A do not pertain to the estate's Massachusetts estate tax obligation under § 2A (a).⁸

The board therefore ruled that the decedent's estate "is taxable under the unambiguous terms of [§ 2A (a)]." The dissenting commissioner concluded that the only transfer of the QTIP assets occurred at the time of Robert's death, and that therefore the commissioner's assessment violated constitutional principles.

The estate filed a timely notice of appeal from the board's decision, and we granted its motion for direct appellate review.

[3] [4]Discussion. 1. Standard of review. In reviewing decisions of the board, "[w]e review conclusions of law, including questions of statutory construction, de novo." Shrine of Our Lady of La Salette Inc. v. Assessors of Attleboro, 476 Mass. 690, 696, 71 N.E.3d 509 (2017), quoting ****1202** New England Forestry Found., Inc. v. Assessors of Hawley, 468 Mass. 138, 149, 9 N.E.3d 310 (2014). "However, because the board is an agency charged with administering the tax law and has expertise in tax matters, we give weight to its interpretation of tax

⁸ The board also rejected the estate's argument regarding potential double taxation and G. L. c. 65C, § 1 (f), concluding, "The [estate] offered no reasoned basis to interpret a statute that prevents double taxation of Massachusetts QTIP property under limited circumstances in a manner that prevents taxation of the QTIP assets where no double taxation is possible and the assets are explicitly and exclusively taxable under [G. L. c. 65C,] § 2A."

statutes ...” (quotation and citation omitted). AA Transp. Co. v. Commissioner of Revenue, 454 Mass. 114, 119, 907 N.E.2d 1090 (2009). See Boston Professional Hockey Ass’n v. Commissioner of Revenue, 443 Mass. 276, 285, 820 N.E.2d 792 (2005) (“We will not modify or reverse a decision of the board if the decision is based on both substantial evidence and a correct application of the law”).

[5]2. Constitutionality of the Massachusetts estate tax. We first address whether the Massachusetts estate tax, G. L. c. 65C, § 2A (a), violates the due process clause of the Fourteenth Amendment and art. 10. The estate argues that the Massachusetts estate tax violates constitutional principles because it includes property wherever situated. The estate further contends that the board erred in finding that a transfer occurred upon the death of the decedent, and that therefore Massachusetts did not have a constitutional basis to tax the QTIP trust assets. The commissioner argues that ***204** the Massachusetts estate tax does not violate constitutional principles and that a transfer occurred upon the death of the decedent and, therefore, the decedent’s domicile in Massachusetts provided the constitutional basis for Massachusetts to tax the trust assets. We agree with the board that the Massachusetts estate tax does not violate constitutional principles and that a transfer occurred upon the death of the decedent.

[6]States may only impose an estate tax on tangible property, such as real estate, located within the State’s jurisdiction. See Frick v. Pennsylvania, 268 U.S. 473, 488-492, 45 S.Ct. 603, 69 L.Ed. 1058 (1925). The analysis, however, differs for a State’s imposition of an estate tax on intangible property, such as the QTIP assets here, with the decedent’s domicile in the State at death forming the requisite

nexus for the State to impose the estate tax. See Curry v. McCanless, 307 U.S. 357, 366, 59 S.Ct. 900, 83 L.Ed. 1339 (1939); Page v. Commissioner of Revenue, 389 Mass. 388, 395, 450 N.E.2d 590 (1983). See also Graves v. Schmidlapp, 315 U.S. 657, 660, 62 S.Ct. 870, 86 L.Ed. 1097 (1942) (“Intangibles, which are legal relationships between persons and which in fact have no geographical location, are so associated with the owner that they and their transfer at death are taxable at the place of his domicile ...”).

In addition, “the estate tax as originally devised and constitutionally supported was a tax upon transfers.” Fernandez, 326 U.S. at 352, 66 S.Ct. 178. See G. L. c. 65C, § 2A (a) (“A tax is hereby imposed upon the transfer of the estate of each person dying on or after January 1, 1997 who, at the time of death, was a resident of the commonwealth”). See generally Knowlton, 178 U.S. at 56, 20 S.Ct. 747. Therefore, because in the present case the QTIP trust consisted completely of intangible assets, and the decedent was domiciled in Massachusetts at the time of her death in 2011 and was therefore subject to the provisions of § 2A (a), the question presented herein is what constitutes a “transfer” for estate tax purposes.

As the board did in interpreting “transfer,” we look to case law analogous to the issue at hand. In Fernandez, 326 U.S. at 342, 352, 355, 66 S.Ct. 178, the United States Supreme Court addressed the scope of what constitutes a transfer in the context of an estate tax levied on the termination of marital community property and noted that the decedent’s death enabled the surviving spouse to have greater rights in the subject property. The Court stated that an estate tax is not limited to literal ****1203** transfers at death, but “extends to the creation,

exercise, acquisition, or relinquishment of any power or legal privilege which is incident to the ownership of property.” Id. at 352, 66 S.Ct. 178. In Estate of Brooks, 325 Conn. at 733, 159 A.3d 1149, the Connecticut *205 Supreme Court used the broad interpretation of the term “transfer” from Fernandez in addressing the issue of Connecticut’s ability to tax the value of assets in a QTIP trust. As in the case at hand, in Estate of Brooks, the trust at issue was created by the predeceasing spouse while he was a domiciliary of another State, and then the surviving spouse died as a domiciliary of Connecticut. Id. at 707-708, 159 A.3d 1149. The estate of the surviving spouse challenged the constitutionality of Connecticut’s imposition of an estate tax on the QTIP assets, arguing, in part, that the only transfer of the QTIP assets took place in the other State. Id. at 726, 159 A.3d 1149. The Connecticut Supreme Court determined that a second transfer of the QTIP assets occurred upon the death of the surviving spouse. Id. at 730-731, 159 A.3d 1149. In reaching this conclusion, the court stated that “a sovereign may tax the transmutation of legal rights in property occasioned by death.” Id. at 729, 159 A.3d 1149, citing Fernandez, supra at 358, 66 S.Ct. 178. The Connecticut Supreme Court noted that the Fernandez Court’s practical approach “looked not to whether death was the generating source of ‘rights,’ but rather whether death was the generating source of ‘changes in the legal and economic relationships to the property taxed.’” Estate of Brooks, supra at 733, 159 A.3d 1149, quoting Fernandez, supra at 356-357, 66 S.Ct. 178.

In addition, the Federal QTIP rules create fictional transfers. Although the surviving spouse receives only a lifetime income interest from the predeceasing

spouse, the Internal Revenue Code QTIP rules treat property subject to a QTIP election as passing in full from the predeceasing spouse to the surviving spouse, with the property then passing from the surviving spouse. See 26 U.S.C. §§ 2044(c), 2056(b)(7)(A), 2519(a); Estate of Morgens v. Commissioner of Internal Revenue, 678 F.3d 769, 771 (9th Cir. 2012) (“underlying premise of the QTIP regime is that the surviving spouse is deemed to receive and then give the entire QTIP property, rather than just the income interest. The purpose of the QTIP regime is to treat the two spouses as a single economic unit with respect to the QTIP property while still allowing the first-to-die spouse to control the eventual disposition of the property”).

In the present case, the decedent’s death created a change in the legal relationship among the QTIP assets, the decedent, and the beneficiaries. See Fernandez, 326 U.S. at 355, 66 S.Ct. 178; Estate of Brooks, 325 Conn. at 733, 159 A.3d 1149. Before her death, the decedent had a lifetime interest in the QTIP assets. See 26 U.S.C. § 2056(b)(7)(B). After her death, her daughters, as the beneficiaries, received a present interest in the QTIP assets. It is this change in legal relationship *206 that occurred upon the death of the decedent that constitutes a transfer for estate tax purposes and brings the QTIP assets within the Massachusetts taxable estate. See Fernandez, supra at 355, 66 S.Ct. 178; Estate of Brooks, supra at 729, 733, 159 A.3d 1149.

We therefore agree with the board that two transfers of QTIP property occur for estate tax purposes, with the first occurring when the predeceasing spouse makes the QTIP election and the second occurring upon the death of the surviving spouse. Therefore, the decedent’s domicile in Massachusetts at the time

of her death, and therefore at the time of the second transfer, provided the connection to the ****1204** Commonwealth to allow Massachusetts to impose an estate tax on the QTIP assets.

[7]3. Applicability of definition of “Massachusetts gross estate” in G. L. c. 65C, § 1 (f). We next address whether the board correctly determined that G. L. c. 65C, §§ 1 (f) and 3A, do not bear upon the estate’s Massachusetts estate tax obligation. The estate argues that the definition of “Massachusetts gross estate” in § 1 (f) should apply to the Massachusetts estate tax, and that therefore the value of the QTIP assets should not be included in the estate. The commissioner responds that § 1 (f) is not applicable to G. L. c. 65C, § 2A, and that the board correctly interpreted and applied the unambiguous language of § 2A, which requires the inclusion of all assets reported in the Federal gross estate. We agree with the board that § 1(f) does not apply to the estate’s Massachusetts estate tax obligation under § 2A.

[8]We look first to the plain meaning of the statute. See Thurdin v. SEI Boston, LLC, 452 Mass. 436, 444, 895 N.E.2d 446 (2008) (“where the language of a statute is plain and unambiguous, it is conclusive as to legislative intent”). General Laws c. 65C, § 1 (f), defines “Massachusetts gross estate.”⁹ See G. L. c. 65C, § 1 (“When used in this chapter the following

⁹ “[T]he federal gross estate ... plus the value of any property (i) in which the decedent had at death a qualifying income interest for life described in [G. L. c. 65C, § 3A (c),] ... and (ii) for which a deduction was allowed for Massachusetts estate tax purposes with respect to the transfer of such property to the decedent The Massachusetts gross estate shall not include the value of any property in which the decedent had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph” G. L. c. 65C, § 1 (f).

words or terms shall have, unless the context clearly indicated otherwise, the following meanings ...”).

The term “Massachusetts gross estate,” however, is not used in G. L. c. 65C, § 2A, which is the statute the estate was subject to ***207** because the decedent died on or after January 1, 1997. Instead of referring to “Massachusetts gross estate,” § 2A provides for an estate tax equal to the State tax credit “that would have been allowable to a decedent’s estate as computed under Code section 2011, as in effect on December 31, 2000.” G. L. c. 65C, § 2A (a). See G. L. c. 65C, § 2A (e) (“all references and provisions in this chapter to the Internal Revenue Code or Code, unless the context clearly indicates otherwise, shall be to the Code as in effect on December 31, 2000”).

General Laws c. 65C, § 3A, which covers the Massachusetts QTIP election by the predeceasing spouse, and is not at issue here, does utilize the term “Massachusetts gross estate.” G. L. c. 65C, § 3A (b) (providing requirements to qualify as QTIP for Massachusetts estate tax purposes, including that subject property must be “included in the Massachusetts gross estate” of predeceasing spouse). The Legislature enacted § 3A in 1985, at the same time that it amended G. L. c. 65C, § 1 (f), to address a decedent’s qualifying income interest and to refer to § 3A. See St. 1985, c. 711, §§ 6, 12. While § 3A provides requirements for the predeceasing spouse to make a QTIP election, § 1 (f), in turn, provides that when the surviving spouse who had a qualifying income interest for life, as described in § 3A (c), dies, then only property for which the predeceasing spouse was allowed a Massachusetts deduction will be included in the taxable estate of the surviving spouse. In other words, the definition of “Massachusetts gross estate” in § 1 (f) applies only

where the predeceasing spouse makes a Massachusetts QTIP election for property that is included in the Massachusetts gross estate of the predeceasing spouse under § 3A.

****1205** Because Robert's estate did not make a Massachusetts QTIP election, nor was there otherwise any Massachusetts QTIP property as defined in G. L. c. 65C, § 3A, the board did not err in determining that G. L. c. 65C, §§ 1 (f) and 3A, do not bear upon the estate's Massachusetts estate tax obligation under G. L. c. 65C, § 2A. Therefore, we look to the plain meaning of § 2A, which requires the inclusion of all assets that the estate reported in the Federal gross estate.¹⁰ Therefore, the QTIP assets were includable ***208** in the estate for purposes of the Massachusetts estate tax.

For the foregoing reasons, we affirm the decision of the board.

So ordered.

¹⁰ In addition, the estate's contention that the current Massachusetts estate tax does not eliminate the potential of double taxation is without merit under the present circumstances. The estate is not subject to double taxation, as the QTIP assets in Robert's estate were not subject to Massachusetts or New York tax before the decedent's death.

APPENDIX 2
COMMONWEALTH OF MASSACHUSETTS
Appellate Tax Board
100 Cambridge Street, Suite 200
Boston, Massachusetts 02114

(617) 727-3100

(617) 727-6234 FAX

Docket No. C327773

M. CHRISTINE SHAFFER, AS EXECUTRIX,
Appellant.
COMMISSIONER OF REVENUE,
Appellee.

DECISION

The decision is for the Appellee.
Commissioner Scharaffa dissents.

APPELLATE TAX BOARD

By/s/ Thomas W. Hammond, Jr. Chairman

Frank J. Scharaffa Commissioner

/s/ James D. Rose Commissioner

/s/ Richard G. Chmielinski Commissioner

/s/ Patricia M. Good Commissioner
Patricia M. Good

Attest: /s/ _____
Asst. Clerk of the Board

Year Assessed: 2011
Estate Tax

Date: SEP 11 2017
(Seal)

NOTICE: Pursuant to G.L. c. 58A, § 13 and CMR 1.32, either party may request findings of fact and report within ten days of this Decision and may also appeal this Decision in accordance with the Massachusetts Rules of Appellate Procedure and 831 CMR 1.35.

COMMONWEALTH OF MASSACHUSETTS
Appellate Tax Board
100 Cambridge Street, Suite 200
Boston, Massachusetts 02114

(617) 727-3100
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SEP 11 2017

Leo J. Cushing, Esq.
Cushing & Dolan, P.C.
375 Totten Pond Road, Suite 200
Waltham, MA 02451

Re: M. Christine Shaffer, as Executrix v.
Commissioner of Revenue
Docket No. C327773

Dear Sir:

Enclosed please find copy of Decision promulgated by the board this day in the above-entitled appeal.

Very truly yours,

/s/

Asst. Clerk of the Board

/ag
Encl.

Copy to: John J. Connors, Jr., Esq.
Department of Revenue

APPENDIX 3

COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD

RECEIVED
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**M. CHRISTINE SHAFFER,
AS EXECUTRIX OF THE ESTATE
OF ADELAIDE CHUCKROW
v. COMMISSIONER OF REVENUE**

Docket No. C327773 Promulgated:
April 29, 2019

This is an appeal under the formal procedure pursuant to G.L. c. 62C, § 39, from the refusal of the Commissioner of Revenue (“Commissioner” or “appellee”) to abate estate tax assessed to M. Christine Shaffer as Executrix of the Estate of Adelaide Chuckrow (“appellant” or “estate”) under G.L. c. 65C, § 2A (a) (“§ 2A (a)”) .

Commissioner Good heard the appeal and was joined in the decision for the appellee by Chairman Hammond and Commissioners Rose and Chmielinski. Commissioner Scharaffa dissented.

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

Leo J. Cushing, Esq. and *Luke C. Bean*, Esq.
for the appellant.

John J. Connors, Jr., Esq. for the appellee.

FINDINGS OF FACT AND REPORT

The facts of this appeal, which was submitted on a statement of agreed facts and exhibits along with briefs and oral argument, are not in dispute. The sole issue presented for consideration by the Appellate Tax Board (“Board”) was whether assets that were part of a Qualified Terminable Interest Property (“QTIP”) trust and included in the Federal gross estate of Adelaide Chuckrow (“Mrs. Chuckrow” or “decedent”) were properly included in the calculation of her Massachusetts estate tax pursuant to § 2A(a). The relevant facts as stipulated by the parties are summarized below.

Mrs. Chuckrow died on August 14, 2011. At the time of her death, Mrs. Chuckrow was a Massachusetts resident. Mrs. Chuckrow had previously resided in Chappaqua, New York, but moved to Williamstown, Massachusetts in her later years to be cared for by her daughter.

Mrs. Chuckrow’s late husband, Robert Chuckrow (“Mr. Chuckrow”), died on July 11, 1993, while domiciled in New York. His Last Will and Testament established a QTIP trust (“Trust”) for the benefit of Mrs. Chuckrow under Internal Revenue Code (“Code”) § 2056 (b) (7) (“Code § 2056 (b) (7)”) and the corollary provisions of New York law. The assets of the Trust (“QTIP assets”) consisted entirely of intangible property, and had a value of \$844,101.27 at the time of Mr. Chuckrow’s death.

Under the terms of the Trust, as required by Code § 2056(b)(7), Mrs. Chuckrow was entitled to all of the income from the Trust as long as she lived as well as distributions from the principal of the Trust, at the sole discretion of the trustees. The trustees of

the Trust were the couple's adult daughters, who were entitled to the remainder interest in the Trust.

As will be discussed in greater detail below, the effect of a QTIP trust is to defer the collection of estate taxes from the time of the death of the first-to-die spouse to the time of the death of the second-to-die spouse, while still allowing the first-to-die spouse to control the ultimate disposition of the assets. The deferral is accomplished by allowing the first-to-die spouse to claim a marital deduction for the value of the assets in the QTIP trust; absent the QTIP provisions in Code § 2056(b)(7), the marital deduction would not be available for the transfer of a terminable interest in property. The trade-off is that the estate of the second-to-die spouse must report and pay taxes on the full value of the assets in a QTIP trust at the time of that spouse's death.

Accordingly, following Robert Chuckrow's death, his estate filed both Federal and New York estate tax returns claiming a marital deduction in the full amount of the QTIP assets and reporting no tax due. No Massachusetts estate tax return was filed because Mr. Chuckrow was not domiciled in Massachusetts at the time of his death and owned no property in Massachusetts.

There is no dispute, however, that Mrs. Chuckrow was a Massachusetts resident at the time of her death on August 14, 2011. Accordingly, on May 14, 2012, the appellant filed on behalf of the estate of Mrs. Chuckrow a Massachusetts estate tax return reporting a tax due of \$100,997, based on a total estate of \$2,382,148. The tax was paid in full.

The appellant did not include the value of the QTIP assets when computing Mrs. Chuckrow's Massachusetts estate tax.

The appellant likewise filed a Federal estate tax return, which reported a total gross estate of \$15,633,617. The appellant included the value of the QTIP assets in Mrs. Chuckrow's Federal gross estate and paid the appropriate Federal estate tax. The appellant did not file an estate tax return in New York or pay a New York estate tax because Mrs. Chuckrow was a Massachusetts resident at the time of her death and owned no property in New York. Accordingly, because Mr. Chuckrow's estate had taken a marital deduction for the full value of the QTIP assets at the time of his death and the appellant did not include the QTIP assets in Mrs. Chuckrow's Massachusetts estate, the appellant did not pay estate tax on the QTIP assets in any State.

The Commissioner selected Mrs. Chuckrow's Massachusetts estate tax return for audit and sent the appellant a Notice of Intent to Assess ("NIA") dated September 27, 2013. The NIA proposed an additional assessment of tax in the amount of \$1,809,141.99. The additional assessment was based on increasing her total estate by \$13,251,469, consistent with the total gross estate reported on the Federal estate tax return, which included the value of the QTIP assets.

The Commissioner assessed the tax as proposed and sent the appellant a Notice of Assessment dated March 18, 2014, which included the additional tax proposed along with interest in the amount of \$143,890, for a total balance due of \$1,953,032. The appellant paid that amount in full.

On April 11, 2014, the appellant filed an Application for Abatement with the Commissioner, seeking an abatement of the additional tax assessed. By Notice of Abatement Determination dated May

19, 2015, the Commissioner denied the appellant's Application for Abatement. The appellant timely filed her appeal with the Board on June 25, 2015. On the basis of the foregoing facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

As described more fully below, on the date of Mrs. Chuckrow's death, § 2A(a) imposed a tax on "the transfer of the estate of each person dying on or after January 1, 1997 who, at the time of death, was a resident of the commonwealth." There was no dispute in the present appeal that Mrs. Chuckrow was a resident of Massachusetts at the time of her death, and the Board so found. To the extent it is a finding of fact, and as will be discussed further below, the Board found that a transfer of the QTIP assets occurred upon the death of Mrs. Chuckrow, within the meaning of § 2A(a).

Accordingly, the Board ruled that the QTIP assets, which were properly included in the Federal gross estate of Mrs. Chuckrow, were also properly includable in her Massachusetts estate subject to tax under § 2A(a). The Board therefore found and ruled that the appellant failed to demonstrate her entitlement to an abatement of the tax and issued a decision for the appellee in this appeal.

OPINION

Resolution of the issue of whether Massachusetts may properly impose an estate tax on the value of the QTIP assets requires an analysis of both Federal and Massachusetts estate tax provisions and the interplay between them. These provisions have evolved considerably over the years and a review of the history of these taxing regimes is necessary to resolve the issue raised in this appeal.

The Federal estate tax has been in effect for more than a century. First enacted as temporary measures to fund wars, Congress enacted a permanent estate tax in 1916. *See* Revenue Act of 1916, ch. 463, 39 Stat. 756. In 1948, in order to reconcile anomalies in the estate taxation of community—property and common-law property States, Congress created the marital deduction. *See* Revenue Act of 1948, Pub. L. No. 80-471, 62 Stat. 110. Under that legislation, the decedent spouse's estate received a deduction for one half of the property that passed to the surviving spouse, with an exception relevant here: ineligible for the marital deduction were “terminable interests” in property, that is, an interest in property that terminated at the surviving spouse's death.

In 1981, Congress enacted sweeping changes to its estate tax regime under the Economic Recovery Tax Act, including an increase in the marital deduction from one-half of the value of property passing to a spouse to an unlimited deduction. *See* Pub. L. No. 97-34, § 403(a), 95 Stat. 301. In addition, Congress created an exception to the aforementioned “terminable interest” exclusion by enacting § 2056(b)(7), which created the concept of a “qualified terminable interest” in property that qualified for the marital deduction and gave rise to the estate planning device known as the QTIP trust.

For a terminable interest to be a qualified terminable interest under Code § 2056(b)(7): (1) the surviving spouse must receive all of the income from the QTIP property for life payable at least annually; (2) no person can have a power to appoint any part of the QTIP property to any person other than the surviving spouse; and (3) an irrevocable QTIP election must be made by the executor of the first-to-

die spouse. The first-to-die spouse's estate gets the benefit of an unlimited marital deduction for the value of property for which a QTIP election is made; however, the QTIP property will be included in the Federal estate of the surviving spouse and is treated as property passing from the surviving spouse under Code § 2044(c).

From a practical perspective, the use of a QTIP trust allows the first-to-die spouse to control the disposition of the assets upon the death of his or her spouse. From a tax perspective, it allows for a deferral of the Federal estate tax on the QTIP assets until the death of the surviving spouse.

Massachusetts, meanwhile, has had its own estate tax in one form or another for nearly a century. *See* St. 1926, c. 355. Originally implemented as what is commonly referred to as a "sponge-tax," that is, a tax equal to the credit allowable under Federal law for State death taxes, Massachusetts created a stand-alone estate tax in 1975 by enacting G.L. c. 65C.

In response to the 1981 Federal change that ushered in the QTIP trust, Massachusetts added a QTIP provision to its estate tax regime in 1985 that was substantially similar to the provisions of Code § 2056(b)(7). *See* G. L. c. 65C, § 3A. The Massachusetts statute required a separate QTIP election and, although similar in most respects to the Federal QTIP provisions, Massachusetts did not permit an unlimited marital deduction until July 1, 1994.

Beginning in 1992, when the Legislature enacted G.L. c. 65C, § 2A, the stand-alone tax was phased out and Massachusetts reverted back to a sponge-tax based on the Federal credit. For

decedents dying on or after January 1, 1997, § 2A provided that the Massachusetts estate tax was to be determined under the provisions of the Code as in effect at the time of a decedent's death.

In 2001, Congress enacted legislation slowly phasing out the Federal estate tax over a period of years, including an elimination of the State death tax credit. *See* Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38. Concerned by the potential loss of revenue, Massachusetts and many other States amended their estate tax legislation to preserve the sponge effect by adhering to the provisions of the Code as in effect on December 31, 2000, prior to the phase-out of the Federal estate tax, rather than the date-of-death version of the Code. *See* St. 2002, c. 186, § 28; St. 2002, c. 364, § 10.

Accordingly, at the time of Mrs. Chuckrow's death in Massachusetts on August 14, 2011, § 2A(a) imposed a sponge tax on "the transfer of the estate of each person dying on or after January 1, 1997 who, at the time of death, was a resident of the commonwealth." The sponge tax was based on the Code provisions in effect on December 31, 2000.

At the time of Mrs. Chuckrow's death in 2011, § 2A(a) provided in pertinent part that:

The amount of the tax shall be the sum equal to the amount by which *the credit for state death taxes that would have been allowable to a decedent's estate as computed under Code section 2011, as in effect on December 31, 2000*, hereinafter referred to as the "credit", exceeds the lesser of:

(i) the aggregate amount of all estate, inheritance, legacy and succession taxes actually paid to the several states of the United States, other than the commonwealth, in respect to any property owned by that decedent or subject to those taxes as part of or in connection with his estate; or

(ii) an amount equal to the proportion of such allowable credit as the value of properties taxable by other states bears to the value of the entire federal gross estate wherever situated.

(emphasis added). Because the appellant paid no State tax to any jurisdiction other than Massachusetts, sub-paragraph (i) is zero. Therefore, the Massachusetts estate tax due from Mrs. Chuckrow's estate is equal to the State tax credit that would have been allowable to the appellant for Federal estate tax purposes under the provisions of the Code in effect on December 31, 2000. *See also* G.L. c. 65C, § 2A (e) ("all references and provisions in this chapter to the Internal Revenue Code shall be to the Code as in effect on December 31, 2000.").

The calculation of the State tax credit allowable under the Code in effect on December 31, 2000 begins with the determination of the Federal gross estate. The applicable version of Code § 2031 provided that the gross estate includes the value at the time of the decedent's death of "all property, real or personal, tangible or intangible, wherever situated." Regarding the value of property in which a decedent, such as Mrs. Chuckrow, had a qualified terminable interest, the applicable version of Code

§ 2044 provided that the value of such property is includable in the decedent's estate if a marital deduction had been allowed with respect to such property when it was transferred to the decedent by the first-to-die spouse.

There is no dispute that Mr. Chuckrow's estate was allowed a marital deduction on the QTIP property that was transferred from his estate to Mrs. Chuckrow and that the value of the QTIP assets would have been properly includable in Mrs. Chuckrow's estate for Federal estate tax purposes under the December 31, 2000 version of the Code.¹

Calculation of the State tax credit is then a mechanical exercise of subtracting various deductions and referring to a tax table under Code § 2011(b). The appellant does not dispute the accuracy of the Commissioner's State tax credit calculation.

Applying the unambiguous language of § 2A(a) and the cited Code provisions, the Massachusetts estate tax due from the appellant was equal to the State tax credit calculated under the Code provisions applicable as of December 31, 2000; therefore, the Board found and ruled that the subject assessment was proper. *See, e.g., Massachusetts Broken Stone Co. v. Weston*, 430 Mass. 637, 640 (2000) ("Where the language of a statute is clear, courts must give effect to its plain and ordinary meaning and the courts need not look beyond the words of the statute itself."); *Commissioner of Revenue v. Franchi*, 423 Mass. 817, 822 (1996).

¹ There is also no dispute that the value of the QTIP assets was properly included in Mrs. Chuckrow's Federal gross estate under the version of the Code applicable for Federal purposes as of the date of her death.

In an effort to avoid this straightforward result, the appellant advanced two principal arguments: (1) there is no constitutional basis for Massachusetts to impose a tax on the value of the QTIP assets because the only transfer of the QTIP assets occurred when Mr. Chuckrow died in New York; and (2) the QTIP assets are not includable in Mrs. Chuckrow's estate because the definition of "Massachusetts gross estate" in G. L. c. 65C, § 1(f) excludes QTIP property for which a Federal, but not a Massachusetts, QTIP election was made. For the reasons that follow, the Board rejected both of these arguments.

I. APPELLANT'S CONSTITUTIONAL ARGUMENT

The appellant argued that the subject assessment violates the Fourteenth Amendment of the U.S. Constitution and Article 10 of the Massachusetts Declaration of Rights because Massachusetts is attempting to tax a transfer of assets that took place outside of Massachusetts.

Although the U.S. Constitution prohibits direct taxes unless they are apportioned among the States (U.S. Const. Art. I, § 9, cl. 4), it has long been held that estate taxes are not a direct tax on the value of the property but an excise on the privilege of transferring the property, *Knowlton v. Moore*, 178 U.S. 41 (1900). Somewhat less settled is the question of what constitutes a transfer for estate tax purposes. See *Coolidge v. Long*, 282 U.S. 582 (1931); *Fernandez v. Wiener*, 326 U.S. 340 (1945); *Morgens v. Commissioner of Internal Revenue*, 678 F.3d 769, 776, n.7 (9th Cir. 2012); *In re Estate of Bracken*, 175 Wash. 2d 549 (2012).

In *Fernandez*, the U.S. Supreme Court rejected a restrictive interpretation of the term transfer and instead embraced a broader construction. In that case, a decedent's heirs challenged the inclusion in the estate of the first-to-die spouse of the full value of marital community property, including the value of the one-half share that was owned by a surviving spouse prior to the death of the first-to-die spouse. *Id.* at 346-47. The heirs argued that the surviving spouse “acquire[d] no new or different interest in the property,” as a result of the decedent's death, and as such there was no transfer. *Id.* The Court rejected this position and upheld the imposition of the tax, after noting that the surviving spouse enjoyed greater rights in the property at issue following the death of the first-to-die spouse. *Id.* at 355-56. In so holding, the Court noted

A proper excise or estate tax, however, is levied not only upon literal transfers at death. Rather, any ‘creation, exercise, acquisition, or relinquishment of any power or legal privilege which is incident to the ownership of property’ at the death of the decedent is subject to tax as a transfer at death. In other words, a sovereign may tax the transmutation of legal rights in property occasioned by death.

Id. at 352.

This view of the term “transfer” has recently been applied in a case involving facts nearly identical to the present appeal. In *Estate of Brooks v. Sullivan*, 325 Conn. 705 (2017), *cert. denied*, 583 U.S. 608 (2018), Connecticut assessed an estate tax on the value of assets in a QTIP trust upon the death of the surviving spouse, who was a resident of

Connecticut at the time of her death. The QTIP trust at issue in that case had been created by the surviving spouse's late husband when he was a domiciliary of Florida. *Id.* at 707-09. Her estate claimed that Connecticut could not constitutionally tax the trust's QTIP assets following her death, as the only transfer of those assets had occurred in Florida. *Id.* at 726.

Though the underlying facts of *Fernandez* were different, the Connecticut Supreme Court observed that the rationale of *Fernandez* "fit[s] comfortably" within the context of the change in relationships to QTIP property effectuated by the death of a second-to-die spouse *Id.* at 730. Taking a "more practical approach" that gave weight to "the economic and legal shifts occasioned by death rather than a reliance on formalistic property law distinctions in determining whether a properly taxable transfer has occurred," the Connecticut Supreme Court concluded that a transfer of the QTIP assets had occurred upon the death of the surviving spouse, such that Connecticut could constitutionally impose an estate tax on those assets. *Id.* at 733.

The Board in this appeal agreed with the reasoning espoused in *Brooks*. A QTIP election brings about more than just a deferral of tax. It creates new relationships between the trust assets, the surviving spouse, and the beneficiaries, and it is precisely the type of "transmutation of legal rights in property" that constitutes a "transfer" for purposes of § 2A(a). *Fernandez*, 362 U.S. at 352. A broad construction of the term transfer is particularly warranted in consideration of the underlying premise of the QTIP regime which is

that the entire QTIP property, rather than just the income interest, is deemed to pass to, and then from, the surviving spouse. Thus, the two spouses are treated as a single economic unit with respect to the QTIP property while still allowing the first-to-die spouse to control the eventual disposition of the property.

Morgans, 678 F.3d at 776, n.7.

Accordingly, for estate tax purposes, there are two transfers of QTIP property: (1) a transfer from the estate of the first-to-die spouse to the surviving spouse when the QTIP election is made; and (2) a transfer from the estate of the surviving spouse to the designated beneficiaries when the surviving spouse dies.

The Board therefore rejected the appellant's argument that the only transfer of QTIP property occurred when Mr. Chuckrow died in New York. Moreover, many of the cases cited by the appellant in support of its position were decided

long before the evolution of state and federal tax schemes that employ complex fictions designed to effectuate certain public policy - such as treating a married couple as a single economic unit while ensuring that tax schemes do not form apertures through which it would be possible to avoid taxation.

Brooks, 325 Conn. at 733.

These cases could not and did not consider the various dispositive fictions created under the estate tax statutes; indeed, contrary to the appellant's

argument, these fictions provide that the surviving spouse is treated as the transferor of QTIP property.

First and foremost, Code § 2044(c) provides that once the estate of the first-to-die spouse elects QTIP treatment, the QTIP property is included in surviving spouse's estate and "shall be treated as property passing from" the surviving spouse. Because the QTIP property is treated as passing from the surviving spouse, Code § 1014(b)(10) provides that the remainder beneficiaries receive a stepped-up basis in the QTIP assets to the value of the assets as of the date of the surviving spouse's death. The surviving spouse is also treated as the transferor of the full value of the QTIP property not just the value of the income interest -- for gift tax and generation-skipping tax purposes. *See* Code §§ 2519 and 2652(a).

Further, although the treatment of Mrs. Chuckrow as the transferor of the QTIP property may have resulted from certain fictions under the Code, there was nothing fictional about the benefit of the complete deferral of State and Federal estate tax upon Mr. Chuckrow's death that resulted from the application of the relevant fictions. Having received the benefit of these fictions, the appellant cannot now disavow the consequence of associated relevant fictions upon Mrs. Chuckrows' death. *See Morgens*, 678 F.3d at 776, n.7. ("The Estate cannot first use that favorable tax deferral (the § 2056 marital deduction) and then claim that the property never actually passed to [the surviving spouse.]"). *See also General Mills, Inc. v. Commissioner of Revenue*, 440 Mass. 154, 170 (2003) (holding that a taxpayer who chose to accept the benefit of a "fictional" treatment of a sale of stock as a deemed sale of assets under Code § 338(h)(10) for Federal tax purposes could not

re-characterize the transaction as a stock sale for Massachusetts tax purposes, noting that “[t]here was nothing ‘fictional’ about the effect of the election for Federal tax purposes.”).

The Board therefore found and ruled that Mrs. Chuckrow is properly treated as the transferor of the QTIP property. Accordingly, the Board rejected the appellant’s constitutional argument that was based on the assertion that the sole transfer of the QTIP assets took place outside of Massachusetts and ruled that Massachusetts has the power to exact an estate tax on the appellant’s transfer of the QTIP assets.

II. APPELLANT’S STATUTORY ARGUMENT

The appellant’s statutory argument is based on its reading of G.L. c. 65C, § 1(f) (“§ 1(f)”). The appellant maintained that the definition of “Massachusetts gross estate” under § 1(f) excludes from Mrs. Chuckrow’s estate the value of the QTIP assets because Mr. Chuckrow’s estate made a Federal, but not a Massachusetts, QTIP election. The operative language of § 1(f) defines the “Massachusetts gross estate” as:

the federal gross estate . . . plus the value of any property (i) in which the decedent had at death a qualifying income interest for life described in subsection (c) of section three A . . . and (ii) for which a deduction was allowed for Massachusetts estate tax purposes with respect to the transfer of such property to the decedent. The Massachusetts gross estate shall not include the value of any property in

which the decedent had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent's estate to recover federal or Massachusetts estate taxes from such property.

In the appellant's view, this language requires that only QTIP property "for which a deduction was allowed for Massachusetts estate tax purposes" may be included in the Massachusetts gross estate of the surviving spouse. Because Mr. Chuckrow's estate did not make a Massachusetts QTIP election, no deduction was allowed to it for Massachusetts estate tax purposes and, therefore, the appellant maintained that the QTIP assets were not includable in Mrs. Chuckrow's Massachusetts gross estate.

In the appellant's view, § 1(f) was enacted to prevent the double taxation of QTIP assets in the Massachusetts estates of both the first-to-die spouse and the surviving spouse. Because, it reasoned, the estate of the first-to-die spouse could make a Federal election in an amount greater than its Massachusetts QTIP election—particularly during the time that Massachusetts allowed only a 50 percent marital deduction in contrast to the unlimited Federal deduction—the Massachusetts estate of the first-to-die spouse could include assets that were not included in its Federal gross estate, *i.e.*, assets for which a Federal but not a Massachusetts QTIP election was made. When the surviving spouse dies, all of the QTIP assets for which the estate of the first-to-die spouse made a Federal QTIP election would be included in the

Federal gross estate of the surviving spouse. If the Massachusetts gross estate of the surviving spouse was equal to its Federal gross estate, the QTIP assets for which a Federal but not a Massachusetts QTIP election had been made would be includible in the surviving spouse's estate and subject to a second estate tax. Therefore, the appellant reasoned, § 1(f) provides that only those QTIP assets for which a Massachusetts deduction was allowed in the estate of the first-to-die spouse are includible in the Massachusetts gross estate of the surviving spouse.

The fatal flaw with the appellant's analysis is that § 1(f) defines a term—"Massachusetts gross estate"—that is not found in the operative taxing statute, § 2A. As detailed previously, because Mrs. Chuckrow was a Massachusetts resident who died on or after January 1, 1997, her estate is subject to tax under § 2A. There is no reference to "Massachusetts gross estate" in § 2A; rather, the § 2A tax is equal to the State tax credit that would have been allowable to the appellant under the provisions of the Code as in effect on December 31, 2000.

The term "Massachusetts gross estate" is, however, used in G.L. c. 65C, § 3A, which deals with the Massachusetts election of QTIP treatment by the first-to-die spouse. Both, § 1(f) and § 3A were enacted simultaneously in 1985 in response to the Federal legislation in 1981 creating the QTIP concept. *See* St. 1985, c. 711, §§ 5 and 11. These provisions work in tandem: § 3A describes the requirements for a Massachusetts QTIP election by the first-to-die spouse and § 1(f) provides for the Massachusetts state tax consequences to the surviving spouse of a Massachusetts QTIP election.

More specifically, in order for property to be considered “qualified terminable interest property” for Massachusetts estate tax purposes, § 3A requires, *inter alia*, that the first-to-die spouse elect Massachusetts QTIP treatment and that such property must be “included in the Massachusetts gross estate” of the first-to-die spouse and pass to the surviving spouse. *See* § 3A(b). When the surviving spouse dies, § 1(f) provides that if the spouse had a qualifying income interest for life as described in § 3A, then only property for which a Massachusetts deduction had been allowed will be taxable in the surviving spouse’s estate.

Therefore, the § 1(f) definition of Massachusetts gross estate is applicable only where the first-to-die spouse makes a Massachusetts QTIP election for property that is included in the Massachusetts gross estate of the first-to-die spouse under § 3A. Where, as here, there was no Massachusetts QTIP election by the first-to-die spouse and no Massachusetts QTIP property as defined in § 3A, neither § 1(f) nor § 3A has any bearing on the appellant’s Massachusetts estate tax obligation under § 2A.

Moreover, the double taxation of QTIP assets that the appellant claimed § 1(f) was meant to address is not a possibility under the facts of this appeal.² The QTIP assets were not included in Mr. Chuckrow’s estate and were not subject to Massachusetts tax prior to Mrs. Chuckrow’s death. The appellant offered no reasoned basis to interpret

² The appellant’s analysis of § 1(f) does not account for situations like the present one where no part of the QTIP assets were subject to Massachusetts estate tax on the death of the first-to-die spouse.

a statute that prevents double taxation of Massachusetts QTIP property under limited circumstances in a manner that prevents taxation of the QTIP assets where no double taxation is possible and the assets are, explicitly and exclusively taxable under § 2A.

Accordingly, the Board found and ruled that the appellant is taxable under the unambiguous terms of § 2A(a) and there is no constitutional or statutory impediment to the imposition of the subject assessment. Therefore, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: /s/ Thomas W. Hammond, Jr.
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest" /s/

Clerk of the Board

Commissioner Scharaffa Dissenting.

As noted by the majority, the facts of this appeal are not in dispute. Briefly, when the decedent, Mrs. Chuckrow, died on August 14, 2011, she was a resident of Massachusetts. Mrs. Chuckrow had resided in Chappaqua, New York, with her late husband, Mr. Chuckrow, who died on July 11, 1993. In his will, Mr. Chuckrow established a QTIP trust for the benefit of Mrs. Chuckrow that held intangible assets ("Trust" and "QTIP assets," as defined above). The Trust was established federally under the Code and in New York under applicable law.

Pursuant to the Trust, Mrs. Chuckrow was entitled to all of the income from the Trust while she lived, and distributions from the Trust's principal,

the latter at the sole discretion of the Trust's trustees. The trustees, the Chuckrows' adult daughters, were entitled to the remainder interest in the Trust.

Following Mr. Chuckrow's death, his estate filed both Federal and New York estate tax returns, claiming a marital deduction in the full amount of the QTIP assets. The estate did not file a Massachusetts estate tax return because Mr. Chuckrow was not domiciled in Massachusetts at the time of his death and owned no property in Massachusetts. When Mrs. Chuckrow died, her estate filed Federal and Massachusetts estate tax returns, including the value of the QTIP assets in her Federal gross estate, but excluding that value from her "Total gross estate" on Massachusetts Form M-706. Following an audit, the Commissioner of Revenue issued an additional assessment based on a calculation of estate tax that incorporated the value of the QTIP assets.

Given the preceding facts, the Board found and rule that upon Mrs. Chuckrow's death, the QTIP assets were properly included in the calculation of Mrs. Chuckrow's Massachusetts estate tax pursuant to G.L. c. 65C, § 2A(a). In reaching their conclusion, the Board rejected the appellant's two principal arguments, one of which was based on statutory construction, and the other, constitutional principles that the appellant asserted undermine the disputed assessment. My concern lies primarily with the appellant's constitutional argument, which I believe is dispositive and precludes inclusion of the QTIP assets in Mrs. Chuckrow's Massachusetts estate.

The majority correctly observes that estate taxes are not a direct tax on the value of property

but an excise on the privilege of transferring property. *Knowlton v. Moore*, 178 U.S. 41 (1900); see also *Estate of Ackerley*, 389 P.3d 583 (2017). The parties to this appeal also agree that for state tax purposes, a transfer of the QTIP assets occurred upon Mr. Chuckrow's death, tax on which was deferred by virtue of a qualifying QTIP election. There is a dispute, however, as to whether a taxable transfer of the QTIP assets also occurred upon Mrs. Chuckrow's death. Unlike the majority, I believe that the sole transfer occurred at the time of Mr. Chuckrow's death, a conclusion that for constitutional reasons fatally undermines the Commissioner of Revenue's assessment.

Although Mrs. Chuckrow was entitled to the Trust's income while she lived, as well as distributions from the Trust's principal at the sole discretion of the Trust's trustees, she had no power or control whatsoever over the QTIP assets. Lacking such power or control, there was nothing for Mrs. Chuckrow to transfer with respect to the QTIP assets upon her death. The true and only transfer, and thus the only relevant taxable event, occurred on the death of Mr. Chuckrow.

The Supreme Court of the State of Washington addressed the question of when a taxable transfer occurs in *In re Estate of Bracken*, 175 Wn.2d 549 (2012). In *Bracken*, the court considered the Washington Department of Revenue's attempt to impose a tax on the estates of second-to-die spouses attributable to QTIP trusts that had been established by their spouses who had died first. In 2006, the Washington legislature enacted a stand-alone estate tax and authorized the creation of a Washington QTIP election. The first-to-die spouses died, and their executors made Federal QTIP

elections, before the enactment of the statute. The court found that Washington could not impose a “tax on the Federal QTIP trusts upon the deaths of the second-to-die spouses in part because no taxable transfer occurred upon their deaths. *Id.* at 575-76. More particularly, the estate tax requires a transfer of property to impose a tax; the transfer of assets of a QTIP trust occurs when the first spouse dies; and because no taxable transfer occurs at the surviving spouse’s death, the state could not impose an estate tax. *See Id.* The present appeal involves a similar lack of a taxable transfer, but in the context of impermissible extraterritorial taxation.

The due process clause of the Fourteenth Amendment prohibits a state from imposing a tax on a transaction that occurs entirely outside its borders. “[T]he exaction by a State of a tax which it is without power to impose is, a taking of property without due process of law in violation of the Fourteenth Amendment.” *Frick v. Pennsylvania*, 268 U.S. 473, 488-89 (1925). *Frick* hews to *McCulloch v. Maryland*, 17 U.S. 316, 429 (1819), in which the Court held that the power to tax “is an incident of sovereignty, and is co-extensive with that to which it is an incident. All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident.” *Id.* at 429. Absent a finding that a second transfer of the QTIP assets occurred upon Mrs. Chuckrow’s death, the sole transfer of the property at issue in this appeal occurred outside of and was unrelated to Massachusetts, and the disputed assessment does not pass constitutional muster.

In sum, for estate tax purposes, a transfer of the QTIP assets occurred entirely outside of Massachusetts upon the death of Mr. Chuckrow, a New York resident who created a New York Trust. Further, no additional transfer occurred upon Mrs. Chuckrow's death. Under these circumstances, the Commissioner of Revenue's assessment cannot be upheld because it depends on Massachusetts reaching beyond its sovereign powers in violation of fundamental constitutional principles. Accordingly, a decision should have been issued in favor of the appellant.

By: /s/ Frank J. Scharaffa
Frank J. Scharaffa, Commissioner

A true copy,

Attest: /s/_____

Clerk of the Board

The Commonwealth of Massachusetts
Appellate Tax Board
100 Cambridge Street, Suite 200
Boston, MA 02114

APR 29 2019

(617) 727-3100
(617) 727-6234 FAX

Leo J. Cushing, Esq.
Cushing & Dolan, P.C.
375 Totten Pond Road, Suite 200
Waltham, MA 02451

Re: Christine M. Shaffer
Executrix of the Estate of Adelaide P.
Chuckrow v. Commissioner of Revenue
Docket No: C327773

Dear Sir,

Enclosed, please see copy of Findings of Fact
and Report promulgated by the Appellate Tax Board
in the above-entitled appeals.

Sincerely,

/s/

Clerk of the Board

Cc: John J. Connors, Jr., Esq.
Department of Revenue
Litigation Bureau - 7th Floor
100 Cambridge Street
Boston, MA 02114

/lm

APPENDIX 4

U.S.C.A. Const. Amend. XIV

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV, § 1-Citizens

Section 1. Citizens of United States

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. * * *

<For complete text of Amend. XIV, see USCA Const Amend. XIV-Full Text>

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

U.S.C.A. Const. Amend. XIV, § 1-Privileges

Section 1. Privileges and Immunities

* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; * * *

<For complete text of Amend. XIV, see USCA Const Amend. XIV-Full Text>

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

U.S.C.A. Const. Amend. XIV, § 1-Due Proc

Section 1. Due process of law

<Notes of Decisions for Due Process are displayed in multiple documents.>

* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *

<For complete text of Amend. XIV, see USCA Const Amend. XIV-Full Text>

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Equal protection of the laws>

U.S.C.A. Const. Amend. XIV, § 1-Due Proc

Section 1. Due process of law

<Notes of Decisions for Due Process in General are displayed in multiple documents. For text, historical notes, and references, see

first document for USCA Const Amend. XIV,
§ 1-Due Proc. >

U.S.C.A. Const. Amend. XIV, § 1-Due Proc

Section 1. Due process of law

<Notes of Decisions for Due Process are displayed in multiple documents. For text of due process clause, historical notes, and references, see first document for USCA Const Amend. XIV, § 1-Due Proc.>

U.S.C.A. Const. Amend. XIV, § 1-Due Proc

Section 1. Due process of law

<Notes of Decisions for Due Process are displayed in multiple documents. For text of due process clause, historical notes, and references, see first document for USCA Const Amend. XIV, § 1-Due Proc.>

U.S.C.A. Const. Amend. XIV, § 1-Due Proc

Section 1. Due Process of law

<Notes of Decisions for Due Process are displayed in multiple documents. For text of due process clause, historical notes, and references, see first document for USCA Const Amend. XIV, § 1-Due Proc.>

U.S.C.A. Const. Amend. XIV, § 1-Due Proc

Section 1. Due process of law

<Notes of Decisions for Due Process are displayed in multiple documents. For text of due process clause, historical notes, and references, see first document for USCA Const Amend. XIV, § 1-Due Proc.>

U.S.C.A. Const. Amend. XIV, § 1-Due Proc

Section 1. Due process of law

<Notes of Decisions for Due Process are displayed in multiple documents. For text of due process clause, historical notes, and references, see first document for USCA Const Amend. XIV, § 1-Due Proc.>

U.S.C.A. Const. Amend. XIV, § 1-Equal Protect

Section 1. Equal protection of the laws

<Notes of Decisions for Equal Protection are displayed in three separate documents. Notes of Decisions for roman heads I through XIII are contained in this document. Notes of Decisions for roman heads XIV through LIII are contained in the second document for USCA Const Amend. XIV, § 1-Equal Protection. For Notes of Decisions for roman heads LIV through LXXVIII, see third document for USCA Const Amend. XIV, § 1-Equal Protection.>

* * * nor deny to any person within its jurisdiction the equal protection of the laws.

<For complete text of Amend. XIV, see USCA Const Amend. XIV-Full Text>

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

U.S.C.A. Const. Amend. XIV, § 1-Equal Protect

Section 1. Equal Protection of the laws

<Notes of Decisions for Equal Protection are displayed in three separate documents. Notes of Decisions for roman heads XIV through LIII are contained in this document. For text of amendment and Notes of Decisions for roman heads I through XIII, see first document for USCA Const Amend. XIV, § 1-Equal Protection. For Notes of Decisions for roman heads LIV through LXXVIII, see third document for USCA Const Amend. XIV, § 1-Equal Protection.>

U.S.C.A. Const. Amend. XIV, § 1-Equal Protect

Section 1. Equal Protection of the laws

<Notes of Decisions for Equal Protection are displayed in three separate documents. Notes of Decisions for roman heads LIV through end are contained in this document. For text of amendment and Notes of Decisions for roman heads I through XIII, see first document for USCA Const Amend. XIV, § 1-Equal Protection. For Notes of Decisions for roman heads XIV through LIII, see second document for USCA Const Amend. XIV, § 1-Equal Protection.>

U.S.C.A. Const. Amend. XIV, § 2

Section 2. Apportionment of Representatives

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for

President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

<For complete text of Amendment XIV, see
USCA Const Amend. XIV-Full Text>

U.S.C.A. Const. Amend. XIV, § 3

**Section 3. Disqualification as Officers or Electors
of Persons Who Have Engaged in Insurrection or
Rebellion; Removal of Disability**

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

<For complete text of Amendment XIV, see
USCA Const Amend. XIV-Full Text>

U.S.C.A. Const. Amend. XIV, § 4

**Section 4. Validity of Public Debt; Debts for
Payment of Pensions or Bounties in Suppressing
Insurrection; Payment of Obligations Incurred in
Aid of Insurrection or Claims for Emancipation of
Slaves**

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

<For complete text of Amendment XIV, see
USCA Const Amend. XIV-Full Text>

U.S.C.A. Const. Amend. XIV, § 5

Section 5. Legislation for Enforcement of Article

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<For complete text of Amendment XIV, see
USCA Const Amend. XIV-Full Text>

U.S.C.A. Const. Amend. XIV, § 5, USCA CONST
Amend. XIV, § 5

Current through P.L. 116-158. Some statute sections
may be more current, see credits for details.

APPENDIX 5

M.G.L.A. Pt. I, T. IX, Ch. 65C, Refs & Annos

M.G.L.A. Pt. I, T. IX, Ch. 65C, Refs & Annos, MA ST
Pt. I, T. IX, Ch. 65C, Refs & Annos

Current through Chapter 88 of the 2019 1st Annual
Session

M.G.L.A. 65C § 1

§ 1. Definitions

When used in this chapter the following words or terms shall have, unless the context clearly indicated otherwise, the following meanings:--

(a) “Code”, the Internal Revenue Code of the United States, as amended and in effect on January first, nineteen hundred and seventy-five.¹

(b) “Commissioner”, the commissioner of revenue.

<[There is no subsection (c).]>

(d) “Federal gross estate”, the gross estate as defined under the Code except that, (1) notwithstanding section two thousand and thirty-five of the Code,² the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, relinquished a power, or exercised or released a general power of appointment, except in case of a bona fide sale for an adequate and full consideration in money or money’s worth, by trust or otherwise, during the three year period ending with the date of the decedent’s death; provided, however, that the value of such property or interest therein so transferred or subject to the power so relinquished,

¹ 26 U.S.C.A. § 1 et seq.

² 26 U.S.C.A. § 2035.

exercised or released exceeds ten thousand dollars for any person during a calendar year; and (2) notwithstanding section two thousand and forty of the Code,³ one-half of the value of any interest in any property shall be included in the gross estate if such interest is held by the decedent and the decedent's spouse as tenants by the entirety, or joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants.

(e) "Massachusetts adjusted gross estate", the Massachusetts gross estate less the deductions allowable under section three pursuant to sections two thousand and fifty-three and two thousand and fifty-four of the Code.⁴

(f) "Massachusetts gross estate", the federal gross estate, whether or not a federal estate tax return is required to be filed, plus the value of any property (i) in which the decedent had at death a qualifying income interest for life described in subsection (c) of section three A, or to the extent of any such interest therein of which the decedent has at any time made a transfer, by trust or otherwise, under any circumstances which would require the property to be included in the gross estate under the provisions of this chapter and (ii) for which a deduction was allowed for Massachusetts estate tax purposes with respect to the transfer of such property to the decedent; and less the value of real and tangible personal property having an actual situs outside the commonwealth. The Massachusetts gross estate shall not include the value of any property in which the decedent had a qualifying income interest for life

³ 26 U.S.C.A. § 2040.

⁴ 26 U.S.C.A. §§ 2053, 2054.

which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent's estate to recover federal or Massachusetts estate taxes from such property.

(g) "Massachusetts net estate", the Massachusetts gross estate less the following deductions to the extent they are allowable under section three: (1) funeral expenses; (2) claims against the estate; and (3) unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the Massachusetts gross estate.

(h) "Massachusetts taxable estate", the Massachusetts gross estate less the exemption and deductions allowable under section three.

(i) "Resident", any person domiciled in the commonwealth.

M.G.L.A. 65C § 2

§ 2. Computation of estate tax

(a) A tax computed in accordance with the following table less the credit, if any, provided in subsection (a) of section three, is hereby imposed on the transfer of the Massachusetts taxable estate of every deceased resident of Massachusetts:--

If the Massachusetts taxable estate is:	The Massachusetts estate tax shall be:

Over	But not over	

0	50,000	5% of the taxable estate

50,000	100,000	\$ 2,500 plus 7% of the excess over \$ 50,000

100,000	200,000	\$ 6,000 plus 9% of the excess over \$ 100,000

200,000	400,000	\$ 15,000 plus 10% of the excess over \$ 200,000

400,000	600,000	\$ 35,000 plus 11% of the excess over	\$ 400,000
600,000	800,000	\$ 57,000 plus 12% of the excess over	\$ 600,000
800,000	1,000,000	\$ 81,000 plus 13% of the excess over	\$ 800,000
1,000,000	2,000,000	\$107,000 plus 14% of the excess over	\$1,000,000
2,000,000	4,000,000	\$247,000 plus 15% of the excess over	\$2,000,000
4,000,000		\$547,000 plus 16% of the excess over	\$4,000,000

; provided, however, that the tax under this subsection shall not be greater than twenty per cent of the amount by which the Massachusetts net estate exceeds the exemption given at subsection (a) of section three.

(b) If the maximum credit for state death taxes allowable to the estate of a deceased resident or nonresident against the federal estate tax, computed according to the rate schedule found in section two thousand and eleven of the Code¹ based upon an amount equal to the Massachusetts taxable estate, computed, with respect to a nonresident, as if the decedent had been a resident and apportioned in accordance with subsection (b) of section four, exceeds the tax imposed under subsection (a), the amount of such excess shall be added to the tax imposed under said subsection (a). In the case of a decedent who was a nonresident of the United States, however, the Massachusetts taxable estate shall be computed as if such decedent had been a resident without apportionment in accordance with subsection (b) of section four. For purposes of this subsection, the Massachusetts taxable estate shall include the value of any property subject to a power of appointment to the extent that such value has been excluded from the computation in said subsection (a) because a tax had been paid thereon pursuant to section fourteen of chapter sixty-five and shall also include the value of qualified terminable interest property, as defined in subsection (b)(7)(B) of section two thousand and fifty-six of the Internal Revenue Code² in effect on January first, nineteen hundred and eighty-five, to the extent that such property has been included in the gross estate of the decedent as finally determined for federal estate tax purposes but has not been included in the gross estate of the decedent for Massachusetts estate tax purposes, in each case less the deductions described in subsection (b) of section three attributable thereto

¹ 26 U.S.C.A. § 2011.

² 26 U.S.C.A. § 2056.

and the value of real and tangible personal property includible therein and having an actual situs outside the commonwealth.

(c) The provisions of this section shall apply to decedents dying on or before December thirty-first nineteen hundred and ninety-six.

M.G.L.A. 65C § 2A

§ 2A. Transfer of estate and real property; tax

(a) A tax is hereby imposed upon the transfer of the estate of each person dying on or after January 1, 1997 who, at the time of death, was a resident of the commonwealth. The amount of the tax shall be the sum equal to the amount by which the credit for state death taxes that would have been allowable to a decedent's estate as computed under Code section 2011, as in effect on December 31, 2000, hereinafter referred to as the "credit", exceeds the lesser of:

(i) the aggregate amount of all estate, inheritance, legacy and succession taxes actually paid to the several states of the United States, other than the commonwealth, in respect to any property owned by that decedent or subject to those taxes as part of or in connection with his estate; or

(ii) an amount equal to the proportion of such allowable credit as the value of properties taxable by other states bears to the value of the entire federal gross estate wherever situated.

(b) A tax is hereby imposed upon the transfer of real property situated in this Commonwealth and upon tangible personal property having an actual situs in this Commonwealth of every person who at the time of his death was not a resident of this Commonwealth. The amount of this tax is a sum equal to the proportion of the credit which the value of Massachusetts real and tangible personal property taxed in this Commonwealth which qualifies for such credit bears to the value of the decedent's total federal gross estate.

(c) Notwithstanding any other provision of law, the tax imposed by subsections (a) and (b) shall be

computed upon the value of any property subject to a power of appointment which is includible in the federal gross estate, notwithstanding that a tax has been paid thereon pursuant to section fourteen of chapter sixty-five.¹

(d) For the purposes of computing the tax imposed by subsections (a) and (b), the provisions of section three shall not apply.

(e) For the estate of decedents dying on or after January 1, 2003, all references and provisions in this chapter to the Internal Revenue Code or Code, unless the context clearly indicates otherwise, shall be to the Code as in effect on December 31, 2000.

¹ Suspended; see 65C App. § 14.

M.G.L.A. 65C § 3

§ 3. Exemption and deductions

(a) An exemption equal to the Massachusetts net estate shall be allowed if the Massachusetts net estate is three hundred thousand dollars or less for decedents dying after December thirty-first, nineteen hundred and ninety-two and on or before December thirty-first, nineteen hundred and ninety-three; four hundred thousand dollars or less for decedents dying after December thirty-first, nineteen hundred and ninety-three and on or before December thirty-first, nineteen hundred and ninety-four; five hundred thousand dollars or less for decedents dying after December thirty-first, nineteen hundred and ninety-four and on or before December thirty-first, nineteen hundred and ninety-five; and six hundred thousand dollars or less for decedents dying after December thirty-first, nineteen hundred and ninety-five and on or before December thirty-first, nineteen hundred and ninety-six; provided, that the exemption shall not exceed an amount equal to the smallest federal taxable estate that absorbs the allowable federal credit under section two thousand and ten of the Internal Revenue Code as amended and in effect as of the date of death of the decedent. Except for purposes of the final clause of subsection (a) of section two of chapter sixty-five C, if the Massachusetts net estate exceeds the amount of the exemption, no exemption shall apply.

(b) In addition to the exemption provided in subsection (a), the deductions allowable in computing the Massachusetts taxable estate shall consist of the deduction or portions thereof, other than the exemption found in section two thousand

and fifty-two of the Code,¹ which are allowable in determining the federal taxable estate and which are attributable to property included in the Massachusetts gross estate; provided, however, that the deduction for property which has passed or passes to a surviving spouse shall not be limited by subsection (c) of section two thousand and fifty-six of the Code. No deduction for interest shall be allowed hereunder unless the same has been paid or has, solely through the passage of time, accrued within three years from the due date of the return, without regard to any extension granted.

(c) Notwithstanding the provisions of subsection (b) or any general or special law to the contrary, if a deduction from any federal estate tax would not be allowed because of a failure to meet the requirements set forth pursuant to section two thousand and fifty-five of the Code² in effect on January first, nineteen hundred and eighty-five, and if the relevant governing instrument is the subject of a qualified reformation as hereinafter defined as a result of which a deduction under said section two thousand and fifty-five would be allowable from any federal estate tax, then a similar deduction shall be allowed from any tax imposed pursuant to this chapter to the extent that it can be attributed to property included in the Massachusetts gross estate. For purposes of this subsection, the term “qualified reformation” shall mean a change of a governing instrument which is a qualified reformation as defined in section two thousand and fifty-five (e) of the Internal Revenue Code³ in effect on January first, nineteen hundred and eighty-five.

¹ 26 U.S.C.A. § 2052 (repealed).

² 26 U.S.C.A. § 2055.

³ 26 U.S.C.A. § 2055(e).

(d) If the right to claim any deduction otherwise allowable is waived for federal estate tax purposes, such right shall be considered waived for Massachusetts estate tax purposes.

M.G.L.A. 65C § 3A

§ 3A. Qualified terminable interest property

(a) In the case of qualified terminable interest property, (i) for purposes of subsection (a) of section two thousand and fifty-six of the Code,¹ such property shall be treated as passing to the surviving spouse, and (ii) for purposes of subsection (b)(1)(A) of section two thousand and fifty-six of the Code,² no part of such property shall be treated as passing to any person other than the surviving spouse; provided, however, that a deduction with respect to such terminable interest property shall not be limited by subsection (c) of section two thousand and fifty-six of the Code.

(b) For purposes of this section, the term “qualified terminable interest property” shall mean property (i) which is included in the Massachusetts gross estate, (ii) which passes from the decedent, (iii) in which the surviving spouse has a qualifying income interest for life, and (iv) to which an election under this section applies.

(c) The surviving spouse has a qualifying income interest for life if (i) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, and (ii) no person has a power to appoint any part of the property to any person other than the surviving spouse. Clause (ii) of this subsection shall not apply to a power exercisable only at or after the death of the surviving spouse.

(d) The term “property” includes an interest in property.

¹ 26 U.S.C.A. § 2056(a).

² 26 U.S.C.A. § 2056(b)(1)(A).

(e) A specific portion of property shall be treated as separate property.

(f) An election under this section with respect to any property shall be made by the executor on the Massachusetts estate tax return filed within the time prescribed for filing such return, or any extension of such time granted by the commissioner, to have the property treated as qualified terminable interest property for Massachusetts estate tax purposes. Such election, once made, shall be irrevocable and shall be separate from and independent of any election made by the executor for federal estate tax purposes.

(g) If the surviving spouse of the decedent is the only noncharitable beneficiary of a qualified charitable remainder trust, subsection (b)(1) of section two thousand and fifty-six of the Code³ shall not apply to any interest in such trust which passes or has passed from the decedent to such surviving spouse. For purposes of the preceding sentence, the term “noncharitable beneficiary” shall mean any beneficiary of the qualified charitable remainder trust other than an organization described in subsection (c) of section one hundred and seventy of the Code⁴ and the term “qualified charitable remainder trust” shall mean a charitable remainder annuity trust or charitable remainder unitrust as described in section six hundred and sixty-four of the Code.⁵

(h) Nothing in this section or any other provision of this chapter shall allow the value of any interest in

³ 26 U.S.C.A. § 2056(b)(1).

⁴ 26 U.S.C.A. § 170(c).

⁵ 26 U.S.C.A. § 664.

property to be deducted under this chapter more than once with respect to the same decedent.

M.G.L.A. 65C § 4

§ 4. Nonresident decedents; tax on certain property located in commonwealth

(a) A tax is hereby imposed on the transfer of a nonresident decedent's real and tangible personal property having an actual situs in Massachusetts, if such property would have been included in the Massachusetts gross estate had the decedent been a resident.

(b) The tax imposed under subsection (a) shall be an amount which bears the same ratio to the tax that would be due if the decedent had been a resident as (i) the value of all real and tangible personal property, diminished by any mortgage or lien thereon, having an actual situs in Massachusetts, the transfer of which is subject to tax under said subsection (a) bears to (ii) the value of the decedent's Massachusetts gross estate, diminished by any mortgage or lien or property included therein, determined as if he had been a resident.

M.G.L.A. 65C § 4A

§ 4A. Generation-skipping transfers

(a) When used in this section, the following words shall, unless the context indicates otherwise, have the following meanings:--

(1) "Generation-skipping transfer", every transfer subject to the federal generation-skipping transfer tax in which the original transferor is a resident of the commonwealth at the date of original transfer or the property transferred is real or personal property in the commonwealth.

(2) “Original transferor”, any grantor, donor, settlor or testator who by grant, gift, trust or will makes a transfer of real or personal property that results in a federal generation-skipping transfer tax.

(b) A tax is hereby imposed upon every generation-skipping transfer in which the original transferor is a resident of the commonwealth at the date of original transfer, in an amount equal to the amount allowable as a credit for state death taxes under section twenty-six hundred and two of the Internal Revenue Code of the United States in effect on December thirty-first, nineteen hundred and eighty-one.

(c) A tax is hereby imposed upon every generation-skipping transfer in which the original transferor is not a resident of the commonwealth at the date of the original transfer but in which the property transferred includes real or personal property in the commonwealth, in an amount equal to the amount allowable as a credit for state death taxes under section twenty-six hundred and two of the Internal Revenue Code of the United States in effect on December thirty-first, nineteen hundred and eighty-one.

(d) Every person required to file a return reporting a generation-skipping transfer under applicable federal law and regulations shall file with the commissioner, on or before the last day prescribed for filing the federal return, a return in such form as the commissioner may prescribe, including a duplicate copy of the federal return.

(e) The person liable for payment of the federal generation-skipping transfer tax shall be liable for the tax imposed by this section, which tax is due upon a taxable distribution or taxable termination as

determined under the applicable provisions of the federal generation-skipping transfer tax, and shall be paid to the commissioner.

(f) Any person failing to file any payment of tax required by this section when due shall be subject to the interest and penalty provisions under sections thirty-two and thirty-three of chapter sixty-two C.

(g) If, after a duplicate copy of the federal return of a generation-skipping transfer has been filed with the commissioner, the amount of the federal generation-skipping transfer tax is increased or decreased by the federal government, an amended return shall be filed with the commissioner showing all changes made in the original return and the amount of increase or decrease in the federal generation-skipping transfer tax and in the state death tax credit relating thereto.

M.G.L.A. 65C § 5

§ 5. Valuation; gross estate

(a) Property in the Massachusetts gross estate shall be valued as of the date of death of the decedent; provided, however, that if an alternate valuation has been properly elected for purposes of the federal estate tax in accordance with section two thousand and thirty-two of the Code¹ in effect on January first, nineteen hundred and eighty-five the property in the Massachusetts gross estate shall be valued as of the dates used for federal estate tax valuation purposes; and provided, further, that if no federal estate tax is payable under federal estate tax laws applicable to the decedent's estate, whether or not a federal estate tax return is required to be filed, the executor may elect to value the property in the Massachusetts gross estate on the alternate valuation dates and in the manner provided under the provisions of section two thousand and thirty-two of said Code on the Massachusetts estate tax return.

(b) The value of an annuity, a life estate or an interest in property less than an absolute interest shall be determined in accordance with the actuarial tables in effect as of the decedent's death under section two thousand and thirty-one of the Code² in effect on January first, nineteen hundred and eighty-five at such time and regulations issued thereunder.

(c) If the gross estate of a decedent dying on or before December 31, 2018 includes real property devoted to use as a farm for farming purposes, the estate may elect to value such property in accordance with

¹ 26 U.S.C.A. § 2032.

² 26 U.S.C.A. § 2031.

section 2032A of the Code³ in effect on January 1, 1985. If a federal return is required to be filed, such election shall be consistent with the election made for federal estate tax purposes. All substantive and procedural provisions of said section 2032A shall, insofar as pertinent and consistent, apply to such election. The commissioner shall promulgate regulations to carry out this subsection.

(d)(1) As used in this subsection, the following words shall have the following meanings unless the context clearly requires otherwise:

“Applicable date”, the date upon which the 10-year period that the estate shall be liable for assessment under paragraph (4) begins; provided, however, that for qualifying agricultural and associated land, the applicable date shall be the date of death of the decedent; and provided further, that for qualifying noncommitted land, the applicable date shall be 2 years from the date of death of the decedent.

“Associated land”, land under the same ownership as and contiguous to qualifying agricultural land and which, as of the date of death of the decedent, is not committed to residential, industrial or commercial use; provided, however, that land shall be deemed contiguous if it is separated from other land under the same ownership only by a public or private way or waterway; provided further, that land under the same ownership shall be deemed contiguous if it is connected to other land under the same ownership by an easement for water supply; and provided further, that any such land in excess of 100 per cent of the acreage of qualifying agricultural land shall be deemed qualifying noncommitted land.

³ 26 U.S.C.A. § 2032A.

“Closely-held agricultural land”, qualifying agricultural and associated land and qualifying noncommitted land for which an election is made under this subsection.

“Qualifying agricultural land”, land which meets the definition of forest land under chapter 61, land actively devoted to agricultural, horticultural or agricultural and horticultural uses under chapter 61A and recreational land under chapter 61B that is also used for farming or agriculture as defined in section 1A of chapter 128 and has been devoted to any such use for not less than 2 of the tax years immediately preceding the death of the decedent; provided, however, that the land need not be classified by municipal assessors as forest land under chapter 61, land actively devoted to agricultural or horticultural or agricultural and horticultural uses under said chapter 61A or recreational land under said chapter 61B to qualify for valuation as closely-held agricultural land under this subsection.

“Qualifying noncommitted land”, land that is not qualifying agricultural land and is not committed to residential, industrial or commercial use, including associated land in excess of 100 per cent of the acreage of qualifying agricultural land.

“Savings”, the difference between the estate taxes paid as a result of an election made under this subsection and the estate taxes that would have otherwise been paid had the election not been made.

(2) If the gross estate of a decedent dying on or after January 1, 2019 includes real property that is qualifying agricultural land, associated land or qualifying noncommitted land, the estate may elect to value such property, or any portion thereof, as

closely-held agricultural land pursuant to the valuation set by the farmland valuation advisory commission established in section 11 of chapter 61A for the fiscal year of the most recent growing season. The value of closely-held agricultural land as determined pursuant to such election shall only be for the purpose of computing the tax due under this chapter. Such election shall be subject to paragraphs (3) to (6), inclusive.⁴

(3) Unless the property is restricted by a nondevelopment covenant that: (i) is approved by the commissioner of agriculture; (ii) is for the purposes of maintaining the land in agricultural use; (iii) precludes non-agricultural development of the land; (iv) is recorded at the registry of deeds in the counties or districts in which the property is located; and (v) does not expire within 10 years of the applicable date, the commissioner shall forthwith cause to be recorded in the registry of deeds of the counties or districts in which the property is situated a statement which shall constitute a lien upon the land covered by election under this subsection. The statement shall include any owners of record, the savings as a result of such election, the fair market value of the property and a description of the land adequate for identification. Unless such a statement is recorded, the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of the lien. Upon application by a record owner, any such lien shall be released by the commissioner with respect to that property upon the facts being established by record or by affidavit or otherwise that all assessments have been paid or unless it is more than 10 years

⁴ So in enrolled bill; probably should read, “inclusive”.

past the applicable date and no assessment is due. All recording fees paid under this subsection, whether for statements of liens, certificates, releases or otherwise, shall be borne by the owner of record of the land.

Property restricted by an agricultural preservation restriction as defined in section 31 of chapter 184 that is signed by the commissioner of agriculture shall be deemed to be restricted by a nondevelopment covenant if the restriction: (i) is approved by the commissioner of agriculture; (ii) is for the purposes of maintaining the land in agricultural use; (iii) precludes non-agricultural development of the land; (iv) is recorded at the registry of deeds in the counties or districts in which the property is located; and (v) does not expire within 10 years of the applicable date.

(4)(i) When land valued as closely-held agricultural land under this subsection within a period of 10 years from the applicable date is sold for other use or no longer qualifies as closely-held agricultural land, any owners shall immediately notify the commissioner of such sale or change of use and an assessment shall be due to the commonwealth. Such assessment shall be calculated with interest based on the date of sale for other use or based on the last date of use as closely-held agricultural land as specified in this paragraph.

The assessment shall be equal to 100 per cent of the savings if such date is not more than 1 year after the applicable date; 90 per cent of the savings if such date is more than 1 year but not more than 2 years after the applicable date; 80 per cent of the savings if such date is more than 2 years but not more than 3 years after the applicable date; 70 per cent of the

savings if such date is more than 3 years but not more than 4 years after the applicable date; 60 per cent of the savings if such date is more than 4 years but not more than 5 years after the applicable date; 50 per cent of the savings if such date is more than 5 years but not more than 6 years after the applicable date; 40 per cent of the savings if such date is more than 6 years but not more than 7 years after the applicable date; 30 per cent of the savings if such date is more than 7 years but not more than 8 years after the applicable date; 20 per cent of the savings if such date is more than 8 years but not more than 9 years after the applicable date; 10 per cent of the savings if such date is more than 9 years but not more than 10 years after the applicable date. No assessment shall be due if such date is more than 10 years from the applicable date.

Such assessment shall also include interest calculated at a simple interest rate of 5 per cent per annum on the savings from the applicable date.

There shall be an additional assessment equal to 30 per cent of the savings if the date of sale for other use or the last date of use while qualified as closely-held agricultural land occurs not more than 1 year of the applicable date and 15 per cent of the savings if such date occurs more than 1 year but not more than 2 years after the applicable date.

(ii) If an election has been made with respect to: (A) qualifying non-committed land which, on the applicable date, fails to meet the definition of forest land under chapter 61; (B) land actively devoted to agricultural or horticultural or agricultural and horticultural uses under chapter 61A; or (C) recreational land under chapter 61B that is also used for farming or agriculture as defined in section

1A of chapter 128, an assessment shall be due to the commonwealth and payable by the owners not more than 30 days of the applicable date; provided, however, that the land need not be classified by municipal assessors as forest land under said chapter 61, land actively devoted to agricultural or horticultural or agricultural and horticultural uses under said chapter 61A or recreational land under said chapter 61B. Such assessment shall be equal to the sum of: (I) 100 per cent of the savings; (II) interest calculated at a simple interest rate of 5 per cent per annum on the savings from the date of death of the decedent; and (III) an additional assessment equal to 30 per cent of the savings.

(iii) Notwithstanding this paragraph, there shall be no assessment if the land involved, or a lesser interest in the land involved, is acquired for a natural resource by the commonwealth or by a nonprofit conservation organization; provided, however, that if any portion of the land is sold or converted to commercial, residential or industrial use not more than 10 years after the applicable date by a nonprofit conservation organization, an assessment shall be imposed against the nonprofit conservation organization in the amount that would have been imposed at the time of acquisition of the subject parcel by the nonprofit conservation organization had the transaction been subject to an assessment or, in the case of qualifying non-committed land acquired by a nonprofit conservation organization before the applicable date, the amount that would have been imposed on the applicable date under subparagraph (ii).

(iv) In the case of sale for other use of closely-held agricultural land, other than qualifying noncommitted land sold for other use before the

applicable date, assessments imposed by this subsection shall be due and payable by the grantor at the time of transfer of the property by deed or other instrument of conveyance. In the case of qualifying non-committed land sold for other use before the applicable date, assessments imposed by this subsection shall be due and payable by the grantor on the applicable date. In the case of change to a non-qualifying use, assessments imposed by this subsection shall be due and payable by the owners not more than 30 days after the last date of use as closely-held agricultural land, regardless of the date on which the commissioner was notified by the owners of such change of use.

(v) An assessment shall only be imposed under this subsection on that portion of the land on which the use has changed. If, by conveyance or other action of the owner thereof, a portion of land which is valued as closely-held agricultural land under this subsection is separated for other use, the land so separated shall be subject to liability for assessment, interest and additional assessment under this paragraph based on the proportion that the acreage of the land so separated bears to the total acreage of the land valued as closely-held agricultural land under this subsection.

(5) All buildings located on land which is valued as closely-held agricultural land under this subsection and all land occupied by a dwelling or regularly used for family living shall not be valued as provided in this subsection.

(6) The commissioner shall promulgate regulations to carry out this subsection.

M.G.L.A. 65C § 6

§ 6. Executor's liability for tax

(a) The tax imposed by this chapter shall be paid by the executor. The term "executor", wherever used in this chapter, means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified and acting within the commonwealth, then any person in actual or constructive possession of any property of the decedent. The probate court may authorize an executor to sell so much of the property of the estate as will enable him to pay such tax in the same manner as it may authorize him to sell such property for the payment of debts.

(b) No final account of an executor of any estate shall be allowed by the probate court unless and until the executor shall have filed in the probate court a certificate of the commissioner showing either that the amount of the tax has been paid, that payment thereof has been secured as provided in section ten, or that no tax is due. For dates of death on or after January 1, 1997, said certificate of the commissioner shall not be required.

M.G.L.A. 65C § 7

§ 7. Discharge of executor's personal liability

If the executor makes a written application, accompanied by a copy of the final determination of federal estate tax liability, to the commissioner for determination of the amount of the tax and discharge from personal liability therefor, the commissioner, as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed,

shall notify the executor of the amount of the tax. The executor, on payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due, and shall be entitled to a receipt or writing showing such discharge.

M.G.L.A. 65C § 8

§ 8. Records, statements and returns; rules and regulations

Every person liable for any tax imposed by this chapter, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the commissioner may from time to time prescribe.

M.G.L.A. 65C § 9

§ 9. Repealed, 1976, 415, Sec. 115

M.G.L.A. 65C § 10

§ 10. Extension of due date for payment of tax

(a) The commissioner may extend the time for payment of the tax imposed by this chapter for a reasonable period not to exceed six months from the date fixed for the payment thereof. If the commissioner finds that the payment on the due date of any part of such tax would result in undue hardship, he may extend the time for payment for a reasonable period not in excess of three years from the date fixed for payment of the tax. If an extension is granted, the commissioner may require the taxpayer:--

(i) to deposit with the state treasurer bonds or other negotiable obligations of the commonwealth or of the United States of America of such aggregate face amount as the commissioner may from time to time

deem necessary to adequately secure payment of such taxes; or

(ii) to give a bond to the state treasurer in such amount and with such sureties as the commissioner deems necessary, conditioned upon the payment of the amount with respect to which the extension is granted in accordance with the terms of the extension.

In case of a deposit of bonds or other negotiable obligations with the state treasurer hereunder he shall pay to such taxpayer the interest accruing thereon, and, if such taxes shall be paid in full when due in accordance with the terms of the extension, he shall return such bonds or obligations to the persons entitled thereto; but if such taxes shall not be paid when due, the state treasurer may sell all or any part of such bonds or obligations to satisfy such taxes, and shall return to the taxpayer all the proceeds of such sale, and all such bonds or obligations, remaining in his hands after satisfying such taxes.

(b) If the value of a reversionary or remainder interest in property is included in the value of the gross estate, the payment of the part of the tax imposed by this chapter attributable to such interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property, and the amount the payment of which is so postponed shall then be payable, together with interest thereon at the rate of eight per cent per annum from the date the tax was payable under section thirty-two of chapter sixty-two C until such amount is paid. The postponement of such amount shall be under regulations to be prescribed by the commissioner,

and shall be upon condition that the executor, or any other person liable for the tax, shall give bond to the state treasurer in such amount, and with such sureties as the commissioner deems necessary, conditioned upon the payment within six months after the termination of such precedent interest or interests of the amount the payment of which is so postponed together with interest thereon, as hereinbefore provided.

M.G.L.A. 65C § 11

§§ 11, 12. Repealed, 1976, 415, Sec. 115

M.G.L.A. 65C § 12

§§ 11, 12. Repealed, 1976, 415, Sec. 115

M.G.L.A. 65C § 13

§ 13. Fraudulent underpayment; penalty

If any part of any underpayment of tax required to be shown on the return required by section seventeen of chapter sixty-two C is due to fraud, there shall be added to the tax an amount equal to fifty per cent of the underpayment. For purposes of this section, the term "underpayment" means a deficiency assessed pursuant to subsection (b) of section twenty-six of chapter sixty-two C except that, for this purpose, the tax shown on a return referred to in subsection (a) of said section twenty-six shall be taken into account only if such return was filed before the last day prescribed for the filing of such return, determined with regard to any extension of time. If any penalty is assessed for fraud under this section for an underpayment of tax required to be shown on the return, no penalty under section thirty-three of chapter sixty-two C shall be assessed with respect to the same underpayment.

M.G.L.A. 65C § 14

§ 14. Lien for unpaid tax; liability for delinquent tax; release or discharge of lien

(a) Unless the tax imposed by this chapter is sooner paid in full, it shall be a lien for ten years from the date of death upon the Massachusetts gross estate of the decedent, except that such part of the Massachusetts gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by the probate court having jurisdiction thereof, shall be divested of such lien. For dates of death on or after January 1, 1997, an affidavit of the executor, subscribed to under the pains and penalties of perjury, recorded in the appropriate registry of deeds and stating that the gross estate of the decedent does not necessitate a federal estate tax filing, shall release the gross estate of the lien imposed by this section.

(b) If the tax imposed by this chapter is not paid when due, then the spouse, transferee, trustee, surviving tenant, person in possession of the real or personal property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, real or personal property included in the Massachusetts gross estate to the extent of the value, at the time of the decedent's death, of such property shall be personally liable for such tax. Any part of such real property, which, prior to the decedent's death, was conveyed by a deed of the decedent not disclosing an intention that it take effect in possession or enjoyment at or after his death and such deed was recorded or registered prior to the decedent's death, and any part of such personal property transferred by, or transferred by a

transferee of, such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser, mortgagee or pledgee, for an adequate and full consideration in money or money's worth shall be divested of the lien provided in subsection (a), and a lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except any part transferred to a bona fide purchaser, mortgagee or pledgee for an adequate and full consideration in money or money's worth.

(c) The lien imposed by this section shall not be valid with respect to a security, as hereinafter defined, as against any mortgagee, pledgee, or purchaser of any such security, for an adequate and full consideration in money or money's worth, or if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee or purchaser is without notice or knowledge of the existence of such lien. As used in this section, the term "security" shall mean any bond, debenture, note or certificate or other evidence of indebtedness, issued by any corporation, including one issued by a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(d) The commissioner may release, or give a partial discharge of, any lien imposed by this chapter with respect to all or any part of the property subject to such lien, if he is satisfied that the collection of the

tax will not thereby be jeopardized. The issuance by the commissioner of any certificate of release or of partial discharge shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

(e) Such lien shall cease to attach to any personal property after the same has been sold or disposed of for value by the person lawfully entitled to make such sale or disposition; provided, however, that such lien shall forthwith, upon any sale or disposition of such personal property, attach to the proceeds or other property acquired in substitution therefor. A license issued or decree entered authorizing the sale of real estate of a resident decedent or of any property of a nonresident decedent subject to such lien shall state affirmatively that the commissioner has released or discharged the lien, and before such a license or decree is issued or entered, it shall appear in the records of the probate court that the commissioner has released or discharged the lien with respect to such property.

(f) In the case of any interest in qualified real property, devoted to use as a farm for farming purposes and valued pursuant to the provisions of subsection (c) of section 5, an amount equal to the adjusted tax difference attributable to such interest within the meaning of section two thousand and thirty-two A of the Code¹ in effect on January first, nineteen hundred and eighty-five shall be a lien in favor of the commonwealth on the property in which such interest exists. Such lien shall arise at the time an election is filed under subsection (c) and shall continue with respect to any interest in the qualified

¹ 26 U.S.C.A. § 2032A.

real property (1) until the liability of tax under subsection (c) of section two thousand and thirty-two A of said Code,² with respect to such interest has been satisfied or (2) until it is established to the satisfaction of the commissioner that no further tax liability may arise under section two thousand and thirty-two A of said Code, with respect to such interest. For purposes of this section, the term “qualified real property” includes qualified replacement property (within the meaning of section two thousand and thirty-two A(h)(3)(B) of said Code,³ and qualified exchange property (within the meaning of section two thousand and thirty-two A(i)(3) of said Code.⁴

M.G.L.A. 65C § 15

§ 15. Assessment of tax on decedent’s transferee

(a) The amount of the liability, at law or in equity, of a transferee of property of a decedent in respect of the tax imposed by this chapter shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of the tax with respect to which the liability was incurred. Any such liability may be either as to the amount of tax shown on a return or as to any deficiency in tax.

(b) The period of limitations for assessment of any such liability of a transferee shall be as follows:--

(i) In the case of the liability of an initial transferee, within one year after the expiration of the period of limitation for assessment against the transferor.

² 26 U.S.C.A. § 2032A(c).

³ 26 U.S.C.A. § 2032A(h)(3)(B).

⁴ 26 U.S.C.A. § 2032A(i)(3).

(ii) In the case of the liability of a transferee within one year after the expiration of the period of limitation for assessment against the preceding transferee, but not more than three years after the expiration of the period of limitation for assessment against the initial transferor;

except that if, before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the initial transferor or the last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution.

(c) In the absence of notice to the commissioner under section sixteen of the existence of a fiduciary relationship, any notice of liability enforceable under this section, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient.

(d) As used in this section, the term "transferee" includes donee, heir, legatee, devisee and his distributee, and includes a person who, under subsection (b) of section fourteen, is personally liable for any part of the tax.

M.G.L.A. 65C § 16

§ 16. Executor; fiduciaries; assumption of powers and duties

(a) Upon notice to the commissioner that any person is acting as executor, such person shall assume the powers, rights, duties and privileges of an executor in respect of the tax imposed by this chapter until notice is given that such person is no longer acting as executor.

(b) Upon notice to the commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section fifteen, the fiduciary shall assume on behalf of such person the powers, rights, duties, and privileges of such person under such section, except that the liability shall be collected from the estate of such person, until notice is given that the fiduciary capacity has terminated.

M.G.L.A. 65C § 17

§§ 17 to 20. Repealed, 1976, 415, Sec. 115

M.G.L.A. 65C § 18

§§ 17 to 20. Repealed, 1976, 415, Sec. 115

M.G.L.A. 65C § 19

§§ 17 to 20. Repealed, 1976, 415, Sec. 115

M.G.L.A. 65C § 20

§§ 17 to 20. Repealed, 1976, 415, Sec. 115

M.G.L.A. 65C § 21

§ 21. Death taxes of nonresident decedent; proof of payment; filing

(a) The terms “death tax” and “death taxes”, as used in this section, shall include inheritance, succession, transfer and estate taxes and any taxes levied against the estate of a decedent upon the occasion of his death.

(b) At any time before the expiration of eighteen months after the qualification in any probate court in the commonwealth of any executor of the will or administrator of the estate of any nonresident decedent, such executor or administrator shall file with such court proof that all death taxes, together with interest or penalties thereon, which are due to

the state of domicile of such decedent or to any political subdivision thereof, have been paid or secured, or that no such taxes, interest or penalties are due, as the case may be, unless it appears that letters testamentary or of administration have been issued on the estate of such decedent in the state of his domicile, herein called the domiciliary state.

(c) The proof required by subsection (b) may be in the form of a certificate issued by the official or body charged with the administration of the death tax laws of the domiciliary state. If such proof has not been filed within the time limited in subsection (b) and if within such time it does not appear that letters testamentary or of administration have been issued in the domiciliary state, the register of probate shall forthwith upon the expiration of such time notify by mail the official or body of the domiciliary state charged with the administration of the death tax laws thereof with respect to such estate, and shall state in such notice so far as is known to him--

(i) the name, date of death and last domicile of such decedent,

(ii) the name and address of each executor or administrator,

(iii) a summary of the values of the real estate, tangible personalty, and intangible personalty, wherever situated, belonging to such decedent at the time of his death, and

(iv) the fact that such executor or administrator has not filed theretofore the proof required in subsection (b).

Such register shall attach to such notice a plain copy of the will and codicils of such decedent, if he dies

testate, or, if he died intestate, a list of his heirs and next of kin, so far as is known to such register. Within sixty days after the mailing of such notice the official or body charged with the administration of the death tax laws of the domiciliary state may file with such probate court in this commonwealth a petition for an accounting in such estate, and such official or body of the domiciliary state shall, for the purposes of this section, be a party interested for the purpose of petitioning such probate court for such accounting. If such petition be filed within said period of sixty days, such probate court shall order such accounting, and upon such accounting being filed and approved shall order either the payments of any such tax found to be due to the domiciliary state or subdivision thereof or the remission to a fiduciary appointed or to be appointed by the probate court, or other court charged with the administration of estates of decedents, of the domiciliary state, of creditors and expenses of administration in this commonwealth.

(d) No final account of an executor or an administrator of a nonresident decedent shall be allowed unless either:--

(i) proof has been filed as required by subsection (b), or

(ii) notice under subsection (c) has been given to the official or body charged with the administration of the death tax laws of the domiciliary state, and such official or body has not petitioned for an accounting under said section within sixty days after the mailing of such notice, or

(iii) an accounting has been filed and approved under said subsection (c), an order has been made upon such accounting and it appears that the executor or

administrator has paid such sums and remitted such securities, if any, as he was required to pay or remit by such decree, or

(iv) it appears that letters testamentary or of administration have been issued by the domiciliary state and that no notice has been given under said subsection (c).

(e) This section shall apply to the estate of a nonresident decedent only in case the laws of the domiciliary state contain a provision, of any nature or however expressed, whereby the commonwealth is given reasonable assurance, as finally determined by the commissioner, of the collection of its death taxes, interest and penalties from the estates of decedents dying domiciled in the commonwealth, when such estates are administered in whole or in part by a probate court or other court charged with administration of estates of decedents in such other states.

(f) The provisions of this section shall be liberally construed in order to insure that the domiciliary state of any nonresident decedent whose estate is administered in the commonwealth shall receive any death taxes, together with interest and penalties thereon, due to it from the estate of such decedent.

M.G.L.A. 65C § 22

§§ 22, 23. Repealed, 1976, 415, Sec. 115

M.G.L.A. 65C § 23

§§ 22, 23. Repealed, 1976, 415, Sec. 115

M.G.L.A. 65C § 24

§ 24. Documents; issuance; fees

The commissioner is hereby authorized to issue the following documents and to charge and collect therefor the fees as determined annually by the commissioner of administration under the provision of section three B of chapter seven, except that in those cases where a fee has been paid with the filing of a return under section seventeen of chapter sixty-two C, no additional fee shall be charged or collected for copies of any of said documents. In each case, the fee for a duplicate original or for additional copies of any document shall be the same as for the document itself.

(a) For a certificate of release of any lien imposed by this chapter, a certificate of discharge of any property subject to any lien imposed by this chapter, or a certificate that particular property is free of any lien imposed by this chapter.

(b) For a certificate showing no tax is due under this chapter as a result of the death of a specified decedent.

(c) For a copy of a computation sheet showing the computation of the tax due under this chapter as a result of the death of a specified decedent.

(d) For a certificate showing the amount of tax paid under this chapter.

(e) For a duplicate copy of a notice of assessment showing the amount of any tax assessed under this chapter.

(f) For a duplicate copy of a receipt showing the amount of any tax paid under this chapter.

M.G.L.A. 65C § 25

§ 25. Repealed, 1976, 415, Sec. 115

M.G.L.A. 65C § 26

§ 26. Tax evasion; penalties

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one half years, or both.

M.G.L.A. 65C § 27

§ 27. Willful failure to pay tax or provide information; penalties

Except as otherwise expressly provided in this chapter, any person required under this chapter to pay any tax, or required by this chapter or chapter sixty-two C, or regulations made under the authority of chapter fourteen and chapter sixty-two C to make a return or supply any information, who willfully fails to pay such tax or make such return or supply such information at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in a jail or house of correction for not more than one year, or both.

M.G.L.A. 65C § 28

§ 28. Removal or concealment of goods; penalties

Any person who removes, deposits or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, with intent to evade or defeat the assessment or collection of any tax imposed by this chapter shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or imprisonment in jail for not more than two years, or both.

APPENDIX 6

C.G.S.A. § 12-391

§ 12-391. Transfer of resident and nonresident estates. Definitions. Rate of tax. Determination of domicile. Limit on tax payable. Reduction of tax for investment in private investment fund

Effective: July 8, 2019

(a) With respect to estates of decedents who die prior to January 1, 2005, and except as otherwise provided in section 59 of public act 03-1 of the June 30 special session,¹ a tax is imposed upon the transfer of the estate of each person who at the time of death was a resident of this state. The amount of the tax shall be the amount of the federal credit allowable for estate, inheritance, legacy and succession taxes paid to any state or the District of Columbia under the provisions of the federal internal revenue code² in force at the date of such decedent's death in respect to any property owned by such decedent or subject to such taxes as part of or in connection with the estate of such decedent. If real or tangible personal property of such decedent is located outside this state and is subject to estate, inheritance, legacy, or succession taxes by any state or states, other than the state of Connecticut, or by the District of Columbia for which such federal credit is allowable, the amount of tax due under this section shall be reduced by the lesser of: (1) The amount of any such taxes paid to such other state or states or said

¹ Section 59 of public act 03-1 of the June 30 special session is special in nature and was not classified to the general statutes but remains in full force and effect according to its terms.

² 26 U.S.C.A. § 1 et seq.

district and allowed as a credit against the federal estate tax; or (2) an amount computed by multiplying such federal credit by a fraction, (A) the numerator of which is the value of that part of the decedent's gross estate over which such other state or states or said district have jurisdiction for estate tax purposes to the same extent to which this state would assert jurisdiction for estate tax purposes under this chapter with respect to the residents of such other state or states or said district, and (B) the denominator of which is the value of the decedent's gross estate. Property of a resident estate over which this state has jurisdiction for estate tax purposes includes real property situated in this state, tangible personal property having an actual situs in this state, and intangible personal property owned by the decedent, regardless of where it is located. The amount of any estate tax imposed under this subsection shall also be reduced, but not below zero, by the amount of any tax that is imposed under chapter 216³ and that is actually paid to this state.

(b) With respect to the estates of decedents who die prior to January 1, 2005, and except as otherwise provided in section 59 of public act 03-1 of the June 30 special session, a tax is imposed upon the transfer of the estate of each person who at the time of death was a nonresident of this state, the amount of which shall be computed by multiplying (1) the federal credit allowable for estate, inheritance, legacy, and succession taxes paid to any state or states or the District of Columbia under the provisions of the federal internal revenue code in force at the date of such decedent's death in respect to any property

³ C.G.S.A. § 12-340 et seq.

owned by such decedent or subject to such taxes as a part of or in connection with the estate of such decedent by (2) a fraction, (A) the numerator of which is the value of that part of the decedent's gross estate over which this state has jurisdiction for estate tax purposes and (B) the denominator of which is the value of the decedent's gross estate. Property of a nonresident estate over which this state has jurisdiction for estate tax purposes includes real property situated in this state and tangible personal property having an actual situs in this state. The amount of any estate tax imposed under this subsection shall also be reduced, but not below zero, by the amount of any tax that is imposed under chapter 216 and that is actually paid to this state.

(c) For purposes of this section and section 12-392:

(1) (A) "Connecticut taxable estate" means, with respect to the estates of decedents dying on or after January 1, 2005, but prior to January 1, 2010, (i) the gross estate less allowable deductions, as determined under Chapter 11 of the Internal Revenue Code,⁴ plus (ii) the aggregate amount of all Connecticut taxable gifts, as defined in section 12-643, made by the decedent for all calendar years beginning on or after January 1, 2005, but prior to January 1, 2010. The deduction for state death taxes paid under Section 2058 of said code shall be disregarded.

(B) "Connecticut taxable estate" means, with respect to the estates of decedents dying on or after January 1, 2010, but prior to January 1, 2015, (i) the gross estate less allowable deductions, as determined

⁴ 26 U.S.C.A. § 2001 et seq.

under Chapter 11 of the Internal Revenue Code, plus (ii) the aggregate amount of all Connecticut taxable gifts, as defined in section 12-643, made by the decedent for all calendar years beginning on or after January 1, 2005. The deduction for state death taxes paid under Section 2058 of said code shall be disregarded.

(C) “Connecticut taxable estate” means, with respect to the estates of decedents dying on or after January 1, 2015, (i) the gross estate less allowable deductions, as determined under Chapter 11 of the Internal Revenue Code, plus (ii) the aggregate amount of all Connecticut taxable gifts, as defined in section 12-643, made by the decedent for all calendar years beginning on or after January 1, 2005, other than Connecticut taxable gifts that are includable in the gross estate for federal estate tax purposes of the decedent, plus (iii) the amount of any tax paid to this state pursuant to section 12-642 by the decedent or the decedent’s estate on any gift made by the decedent or the decedent’s spouse during the three-year period preceding the date of the decedent’s death. The deduction for state death taxes paid under Section 2058 of the Internal Revenue Code shall be disregarded.

(2) “Internal Revenue Code” means the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, except in the event of repeal of the federal estate tax, then all references to the Internal Revenue Code in this section shall mean the Internal Revenue Code as in force on the day prior to the effective date of such repeal.

(3) “Gross estate” means the gross estate, for federal estate tax purposes.

(d) (1) (A) With respect to the estates of decedents who die on or after January 1, 2005, but prior to January 1, 2010, a tax is imposed upon the transfer of the estate of each person who at the time of death was a resident of this state. The amount of the tax shall be determined using the schedule in subsection (g) of this section. A credit shall be allowed against such tax for any taxes paid to this state pursuant to section 12-642 for Connecticut taxable gifts made on or after January 1, 2005, but prior to January 1, 2010.

(B) With respect to the estates of decedents who die on or after January 1, 2010, but prior to January 1, 2015, a tax is imposed upon the transfer of the estate of each person who at the time of death was a resident of this state. The amount of the tax shall be determined using the schedule in subsection (g) of this section. A credit shall be allowed against such tax for any taxes paid to this state pursuant to section 12-642 for Connecticut taxable gifts made on or after January 1, 2005, provided such credit shall not exceed the amount of tax imposed by this section.

(C) With respect to the estates of decedents who die on or after January 1, 2015, but prior to January 1, 2016, a tax is imposed upon the transfer of the estate of each person who at the time of death was a resident of this state. The amount of the tax shall be determined using the schedule in subsection (g) of this section. A credit shall be allowed against such tax for (i) any taxes paid to this state pursuant to section 12-642 by the decedent or the decedent’s

estate for Connecticut taxable gifts made on or after January 1, 2005, and (ii) any taxes paid by the decedent's spouse to this state pursuant to section 12-642 for Connecticut taxable gifts made by the decedent on or after January 1, 2005, that are includable in the gross estate of the decedent, provided such credit shall not exceed the amount of tax imposed by this section.

(D) With respect to the estates of decedents who die on or after January 1, 2016, but prior to January 1, 2019, a tax is imposed upon the transfer of the estate of each person who at the time of death was a resident of this state. The amount of the tax shall be determined using the schedule in subsection (g) of this section. A credit shall be allowed against such tax for (i) any taxes paid to this state pursuant to section 12-642 by the decedent or the decedent's estate for Connecticut taxable gifts made on or after January 1, 2005, and (ii) any taxes paid by the decedent's spouse to this state pursuant to section 12-642 for Connecticut taxable gifts made by the decedent on or after January 1, 2005, that are includable in the gross estate of the decedent, provided such credit shall not exceed the amount of tax imposed by this section. In no event shall the amount of tax payable under this section exceed twenty million dollars. Such twenty-million-dollar limit shall be reduced by the amount of (I) any taxes paid to this state pursuant to section 12-642 by the decedent or the decedent's estate for Connecticut taxable gifts made on or after January 1, 2016, and (II) any taxes paid by the decedent's spouse to this state pursuant to section 12-642 for Connecticut taxable gifts made by the decedent on or after January 1, 2016, that are includable in the gross

estate of the decedent, but in no event shall the amount be reduced below zero.

(E) With respect to the estates of decedents who die on or after January 1, 2019, a tax is imposed upon the transfer of the estate of each person who at the time of death was a resident of this state. The amount of the tax shall be determined using the schedule in subsection (g) of this section. A credit shall be allowed against such tax for (i) any taxes paid to this state pursuant to section 12-642 by the decedent or the decedent's estate for Connecticut taxable gifts made on or after January 1, 2005, and (ii) any taxes paid by the decedent's spouse to this state pursuant to section 12-642 for Connecticut taxable gifts made by the decedent on or after January 1, 2005, that are includable in the gross estate of the decedent, provided such credit shall not exceed the amount of tax imposed by this section. In no event shall the amount of tax payable under this section exceed fifteen million dollars. Such fifteen-million-dollar limit shall be reduced by the amount of (I) any taxes paid to this state pursuant to section 12-642 by the decedent or the decedent's estate for Connecticut taxable gifts made on or after January 1, 2016, and (II) any taxes paid by the decedent's spouse to this state pursuant to section 12-642 for Connecticut taxable gifts made by the decedent on or after January 1, 2016, that are includable in the gross estate of the decedent, but in no event shall the amount be reduced below zero.

(2) If real or tangible personal property of such decedent is located outside this state, the amount of tax due under this section shall be reduced by an amount computed by multiplying the tax otherwise due pursuant to subdivision (1) of this subsection,

without regard to the credit allowed for any taxes paid to this state pursuant to section 12-642, by a fraction, (A) the numerator of which is the value of that part of the decedent's gross estate attributable to real or tangible personal property located outside of the state, and (B) the denominator of which is the value of the decedent's gross estate.

(3) For a resident estate, the state shall have the power to levy the estate tax upon real property situated in this state, tangible personal property having an actual situs in this state and intangible personal property included in the gross estate of the decedent, regardless of where it is located. The state is permitted to calculate the estate tax and levy said tax to the fullest extent permitted by the Constitution of the United States.

(e) (1) (A) With respect to the estates of decedents who die on or after January 1, 2005, but prior to January 1, 2010, a tax is imposed upon the transfer of the estate of each person who at the time of death was a nonresident of this state. The amount of such tax shall be computed by multiplying (i) the amount of tax determined using the schedule in subsection (g) of this section by (ii) a fraction, the numerator of which is the value of that part of the decedent's gross estate over which this state has jurisdiction for estate tax purposes, and the denominator of which is the value of the decedent's gross estate. A credit shall be allowed against such tax for any taxes paid to this state pursuant to section 12-642, for Connecticut taxable gifts made on or after January 1, 2005, but prior to January 1, 2010.

(B) With respect to the estates of decedents who die on or after January 1, 2010, but prior to January 1,

2016, a tax is imposed upon the transfer of the estate of each person who at the time of death was a nonresident of this state. The amount of such tax shall be computed by multiplying (i) the amount of tax determined using the schedule in subsection (g) of this section by (ii) a fraction, the numerator of which is the value of that part of the decedent's gross estate over which this state has jurisdiction for estate tax purposes, and the denominator of which is the value of the decedent's gross estate. A credit shall be allowed against such tax for any taxes paid to this state pursuant to section 12-642, for Connecticut taxable gifts made on or after January 1, 2005, provided such credit shall not exceed the amount of tax imposed by this section.

(C) With respect to the estates of decedents who die on or after January 1, 2016, but prior to January 1, 2019, a tax is imposed upon the transfer of the estate of each person who at the time of death was a nonresident of this state. The amount of such tax shall be computed by multiplying (i) the amount of tax determined using the schedule in subsection (g) of this section by (ii) a fraction, the numerator of which is the value of that part of the decedent's gross estate over which this state has jurisdiction for estate tax purposes, and the denominator of which is the value of the decedent's gross estate. A credit shall be allowed against such tax for any taxes paid to this state pursuant to section 12-642 for Connecticut taxable gifts made on or after January 1, 2005, provided such credit shall not exceed the amount of tax imposed by this section. In no event shall the amount of tax payable under this section exceed twenty million dollars. Such twenty-million-dollar limit shall be reduced by the amount of (I) any

taxes paid to this state pursuant to section 12-642 by the decedent or the decedent's estate for Connecticut taxable gifts made on or after January 1, 2016, and (II) any taxes paid by the decedent's spouse to this state pursuant to section 12-642 for Connecticut taxable gifts made by the decedent on or after January 1, 2016, that are includable in the gross estate of the decedent, but in no event shall the amount be reduced below zero.

(D) With respect to the estates of decedents who die on or after January 1, 2019, a tax is imposed upon the transfer of the estate of each person who at the time of death was a nonresident of this state. The amount of such tax shall be computed by multiplying the amount of tax determined using the schedule in subsection (g) of this section by a fraction, the numerator of which is the value of that part of the decedent's gross estate over which this state has jurisdiction for estate tax purposes, and the denominator of which is the value of the decedent's gross estate. A credit shall be allowed against such tax for (i) any taxes paid to this state pursuant to section 12-642 by the decedent or the decedent's estate for Connecticut taxable gifts made on or after January 1, 2005, and (ii) any taxes paid by the decedent's spouse to this state pursuant to section 12-642 for Connecticut taxable gifts made by the decedent on or after January 1, 2005, that are includable in the gross estate of the decedent, provided such credit shall not exceed the amount of tax imposed by this section. In no event shall the amount of tax payable under this section exceed fifteen million dollars. Such fifteen-million-dollar limit shall be reduced by the amount of (I) any taxes paid to this state pursuant to section 12-642 by the

decedent or the decedent's estate for Connecticut taxable gifts made on or after January 1, 2016, and (II) any taxes paid by the decedent's spouse to this state pursuant to section 12-642 for Connecticut taxable gifts made by the decedent on or after January 1, 2016, that are includable in the gross estate of the decedent, but in no event shall the amount be reduced below zero.

(2) (A) For a nonresident estate, the state shall have the power to levy the estate tax upon all real property situated in this state and tangible personal property having an actual situs in this state.

(B) For real property and tangible personal property owned by a pass-through entity, the entity shall be disregarded for estate tax purposes and such property shall be treated as personally owned by the decedent in proportion to the nonresident decedent's constructive ownership in the pass-through entity if (i) the entity does not carry on a business for the purpose of profit and gain, (ii) the ownership of the property by the entity was not for a valid business purpose, or (iii) the property was acquired by other than a bona fide sale for full and adequate consideration and the decedent retained any power with respect to or interest in the property that would bring the real property situated in this state or the tangible personal property having an actual situs in the state within the decedent's federal gross estate. Nothing in this subparagraph shall be deemed to impose a lien in favor of the state of Connecticut under subsection (d) of section 12-398 or section 45a-107b against any real property included in the nonresident decedent's estate under this subparagraph to any greater extent than if the nonresident decedent was a resident decedent

owning an interest in a pass-through entity owning real property located in this state. For purposes of this subparagraph, “pass-through entity” means a partnership or an S corporation, as those terms are defined in section 12-699, or a single member limited liability company that is disregarded for federal income tax purposes.

(C) The state is permitted to calculate the estate tax and levy said tax to the fullest extent permitted by the Constitution of the United States.

(f) (1) For purposes of the tax imposed under this section, the value of the Connecticut taxable estate shall be determined taking into account all of the deductions available under the Internal Revenue Code of 1986, specifically including, but not limited to, the deduction available under Section 2056(b)(7) of said code⁵ for a qualifying income interest for life in a surviving spouse.

(2) An election under said Section 2056(b)(7) may be made for state estate tax purposes regardless of whether any such election is made for federal estate tax purposes. The value of the gross estate shall include the value of any property in which the decedent had a qualifying income interest for life for which an election was made under this subsection.

(g) (1) With respect to the estates of decedents dying on or after January 1, 2005, but prior to January 1, 2010, the tax based on the Connecticut taxable estate shall be as provided in the following schedule:

⁵ 26 U.S.C.A. § 2056.

Amount of Connecticut

Taxable Estate	Rate of Tax
Not over \$2,000,000	None
Over \$2,000,000 but not over \$2,100,000	5.085% of the excess over \$0
Over \$2,100,000 but not over \$2,600,000	\$106,800 plus 8% of the excess over \$2,100,000
Over \$2,600,000 but not over \$3,100,000	\$146,800 plus 8.8% of the excess over \$2,600,000
Over \$3,100,000 but not over \$3,600,000	\$190,800 plus 9.6% of the excess over \$3,100,000
Over \$3,600,000 but not over \$4,100,000	\$238,800 plus 10.4% of the excess over \$3,600,000
Over \$4,100,000 but not over \$5,100,000	\$290,800 plus 11.2% of the excess over \$4,100,000
Over \$5,100,000 but not over \$6,100,000	\$402,800 plus 12% of the excess over \$5,100,000

Over \$6,100,000 but not over \$7,100,000	\$522,800 plus 12.8% of the excess over \$6,100,000
Over \$7,100,000 but not over \$8,100,000	\$650,800 plus 13.6% of the excess over \$7,100,000
Over \$8,100,000 but not over \$9,100,000	\$786,800 plus 14.4% of the excess over \$8,100,000
Over \$9,100,000 but not over \$10,100,000	\$930,800 plus 15.2% of the excess over \$9,100,000
Over \$10,100,000	\$1,082,800 plus 16% of the excess over \$10,100,000

(2) With respect to the estates of decedents dying on or after January 1, 2010, but prior to January 1, 2011, the tax based on the Connecticut taxable estate shall be as provided in the following schedule:

Amount of
Connecticut

Taxable Estate

Rate of Tax

Not over \$3,500,000

None

Over \$3,500,000 but not over \$3,600,000	7.2% of the excess over \$3,500,000
Over \$3,600,000 but not over \$4,100,000	\$7,200 plus 7.8% of the excess over \$3,600,000
Over \$4,100,000 but not over \$5,100,000	\$46,200 plus 8.4% of the excess over \$4,100,000
Over \$5,100,000 but not over \$6,100,000	\$130,200 plus 9.0% of the excess over \$5,100,000
Over \$6,100,000 but not over \$7,100,000	\$220,200 plus 9.6% of the excess over \$6,100,000
Over \$7,100,000 but not over \$8,100,000	\$316,200 plus 10.2% of the excess over \$7,100,000
Over \$8,100,000 but not over \$9,100,000	\$418,200 plus 10.8% of the excess over \$8,100,000
Over \$9,100,000 but not over \$10,100,000	\$526,200 plus 11.4% of the excess over \$9,100,000
Over \$10,100,000	\$640,200 plus 12% of the excess over \$10,100,000

(3) With respect to the estates of decedents dying on or after January 1, 2011, but prior to January 1, 2018, the tax based on the Connecticut taxable estate shall be as provided in the following schedule:

Amount of
Connecticut

Taxable Estate	Rate of Tax
Not over \$2,000,000	None
Over \$2,000,000 but not over \$3,600,000	7.2% of the excess over \$2,000,000
Over \$3,600,000 but not over \$4,100,000	\$115,200 plus 7.8% of the excess over \$3,600,000
Over \$4,100,000 but not over \$5,100,000	\$154,200 plus 8.4% of the excess over \$4,100,000
Over \$5,100,000 but not over \$6,100,000	\$238,200 plus 9.0% of the excess over \$5,100,000
Over \$6,100,000 but not over \$7,100,000	\$328,200 plus 9.6% of the excess over \$6,100,000
Over \$7,100,000 but not over \$8,100,000	\$424,200 plus 10.2% of the excess over \$7,100,000

Over \$8,100,000 but not over \$9,100,000	\$526,200 plus 10.8% of the excess over \$8,100,000
Over \$9,100,000 but not over \$10,100,000	\$634,200 plus 11.4% of the excess over \$9,100,000
Over \$10,100,000	\$748,200 plus 12% of the excess over \$10,100,000

(4) With respect to the estates of decedents dying on or after January 1, 2018, but prior to January 1, 2019, the tax based on the Connecticut taxable estate shall be as provided in the following schedule:

Amount of
Connecticut

Taxable Estate	Rate of Tax
Not over \$2,600,000	None
Over \$2,600,000 but Not over \$3,600,000	7.2% of the excess over \$2,600,000
Over \$3,600,000 but not over \$4,100,000	\$72,000 plus 7.8% of the excess over \$3,600,000

Over \$4,100,000 but not over \$5,100,000	\$111,000 plus 8.4% of the excess over \$4,100,000
Over \$5,100,000 but not over \$6,100,000	\$195,000 plus 10% of the excess over \$5,100,000
Over \$6,100,000 but not over \$7,100,000	\$295,000 plus 10.4% of the excess over \$6,100,000
Over \$7,100,000 but not over \$8,100,000	\$399,000 plus 10.8% of the excess over \$7,100,000
Over \$8,100,000 but not over \$9,100,000	\$507,000 plus 11.2% of the excess over \$8,100,000
Over \$9,100,000 but not over \$10,100,000	\$619,000 plus 11.6% of the excess over \$9,100,000
Over \$10,100,000	\$735,000 plus 12% of the excess over \$10,100,000

(5) With respect to the estates of decedents dying on or after January 1, 2019, but prior to January 1, 2020, the tax based on the Connecticut taxable estate shall be as provided in the following schedule:

Amount of
Connecticut

Taxable Estate	Rate of Tax
Not over \$3,600,000	None
Over \$3,600,000 but not over \$4,100,000	7.8% of the excess over \$3,600,000
Over \$4,100,000 but not over \$5,100,000	\$39,000 plus 8.4% of the excess over \$4,100,000
Over \$5,100,000 but not over \$6,100,000	\$123,000 plus 10% of the excess over \$5,100,000
Over \$6,100,000 but not over \$7,100,000	\$223,000 plus 10.4% of the excess over \$6,100,000
Over \$7,100,000 but not over \$8,100,000	\$327,000 plus 10.8% of the excess over \$7,100,000
Over \$8,100,000 but not over \$9,100,000	\$435,000 plus 11.2% of the excess over \$8,100,000
Over \$9,100,000 but not over \$10,100,000	\$547,000 plus 11.6% of the excess over \$9,100,000

Over \$10,100,000	\$663,000 plus 12% of the excess over \$10,100,000

(6) With respect to the estates of decedents dying on or after January 1, 2020, but prior to January 1, 2021, the tax based on the Connecticut taxable estate shall be as provided in the following schedule:

Amount of
Connecticut

Taxable Estate	Rate of Tax
Not over \$5,100,000	None
Over \$5,100,000 but not over \$6,100,000	10% of the excess over \$5,100,000
Over \$6,100,000 but not over \$7,100,000	\$100,000 plus 10.4% of the excess over \$6,100,000
Over \$7,100,000 but not over \$8,100,000	\$204,000 plus 10.8% of the excess over \$7,100,000
Over \$8,100,000 but not over \$9,100,000	\$312,000 plus 11.2% of the excess over \$8,100,000
Over \$9,100,000 but not over \$10,100,000	\$424,000 plus 11.6% of the excess over \$9,100,000

Over \$10,100,000	\$540,000 plus 12% of the excess over \$10,100,000

(7) With respect to the estates of decedents dying on or after January 1, 2021, but prior to January 1, 2022, the tax based on the Connecticut taxable estate shall be as provided in the following schedule:

Amount of
Connecticut

Taxable Estate	Rate of Tax
Not over \$7,100,000	None
Over \$7,100,000 but not over \$8,100,000	10.8% of the excess over \$7,100,000
Over \$8,100,000 but not over \$9,100,000	\$108,000 plus 11.2% of the excess over \$8,100,000
Over \$9,100,000 but not over \$10,100,000	\$220,000 plus 11.6% of the excess over \$9,100,000
Over \$10,100,000	\$336,000 plus 12% of the excess over \$10,100,000

(8) With respect to the estates of decedents dying on or after January 1, 2022, but prior to January 1,

2023, the tax based on the Connecticut taxable estate shall be as provided in the following schedule:

Amount of
Connecticut

Taxable Estate	Rate of Tax
Not over \$9,100,000	None
Over \$9,100,000 but not over \$10,100,000	11.6% of the excess over \$9,100,000
Over \$10,100,000	\$116,000 plus 12% of the excess over \$10,100,000

(9) With respect to the estates of decedents dying on or after January 1, 2023, the tax based on the Connecticut taxable estate shall be as provided in the following schedule:

Amount of
Connecticut

Taxable Estate	Rate of Tax
Not over the federal basic exclusion amount	None
Over the federal basic exclusion amount	12% of the excess over the federal basic exclusion amount

(h) (1) For the purposes of this chapter, each decedent shall be presumed to have died a resident of this state. The burden of proof in an estate tax proceeding shall be upon any decedent's estate claiming exemption by reason of the decedent's alleged nonresidency.

(2) Any person required to make and file a tax return under this chapter, believing that the decedent died a nonresident of this state, may file a request for determination of domicile in writing with the Commissioner of Revenue Services, stating the specific grounds upon which the request is founded provided (A) such person has filed such return, (B) at least two hundred seventy days, but no more than three years, has elapsed since the due date of such return or, if an application for extension of time to file such return has been granted, the extended due date of such return, (C) such person has not been notified, in writing, by said commissioner that a written agreement of compromise with the taxing authorities of another jurisdiction, under section 12-395a, is being negotiated, and (D) the commissioner has not previously determined whether the decedent died a resident of this state. Not later than one hundred eighty days following receipt of such request for determination, the commissioner shall determine whether such decedent died a resident or a nonresident of this state. If the commissioner commences negotiations over a written agreement of compromise with the taxing authorities of another jurisdiction after a request for determination of domicile is filed, the one-hundred-eighty-day period shall be tolled for the duration of such negotiations. When, before the expiration of such one-hundred-eighty-day period, both the commissioner and the

person required to make and file a tax return under this chapter have consented in writing to the making of such determination after such time, the determination may be made at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The commissioner shall mail notice of his proposed determination to the person required to make and file a tax return under this chapter. Such notice shall set forth briefly the commissioner's findings of fact and the basis of such proposed determination. Sixty days after the date on which it is mailed, a notice of proposed determination shall constitute a final determination unless the person required to make and file a tax return under this chapter has filed, as provided in subdivision (3) of this subsection, a written protest with the Commissioner of Revenue Services.

(3) On or before the sixtieth day after mailing of the proposed determination, the person required to make and file a tax return under this chapter may file with the commissioner a written protest against the proposed determination in which such person shall set forth the grounds on which the protest is based. If such a protest is filed, the commissioner shall reconsider the proposed determination and, if the person required to make and file a tax return under this chapter has so requested, may grant or deny such person or the authorized representatives of such person an oral hearing.

(4) Notice of the commissioner's determination shall be mailed to the person required to make and file a tax return under this chapter and such notice shall

set forth briefly the commissioner's findings of fact and the basis of decision in each case decided adversely to such person.

(5) The action of the commissioner on a written protest shall be final upon the expiration of one month from the date on which he mails notice of his action to the person required to make and file a tax return under this chapter unless within such period such person seeks review of the commissioner's determination pursuant to subsection (b) of section 12-395.

(6) Nothing in this subsection shall be construed to relieve any person filing a request for determination of domicile of the obligation to pay the correct amount of tax on or before the due date of the tax.

(i) The tax calculated pursuant to the provisions of this section shall be reduced in an amount equal to half of the amount invested by a decedent in a private investment fund or fund of funds pursuant to subdivision (43) of section 32-39, provided (1) any such reduction shall not exceed five million dollars for any such decedent, (2) any such amount invested by the decedent shall have been invested in such fund or fund of funds for ten years or more, and (3) the aggregate amount of all taxes reduced under this subsection shall not exceed thirty million dollars.

APPENDIX 7

MD Code, Tax - General, § 7-309

§ 7-309. Changes in federal estate tax law

Effective: July 1, 2018

In general

(a) Notwithstanding an Act of Congress that repeals or reduces the federal credit under § 2011 of the Internal Revenue Code, the provisions of this subtitle in effect before the passage of the Act of Congress shall apply with respect to a decedent who dies after the effective date of the Act of Congress so as to continue the Maryland estate tax in force without reduction in the same manner as if the federal credit had not been repealed or reduced.

Determination of Maryland estate tax

(b) (I) Except as provided in paragraphs (2) through (9) of this subsection and subsection (c) of this section, after the effective date of an Act of Congress described in subsection (a) of this section, the Maryland estate tax shall be determined using:

(i) the federal credit allowable by § 2011 of the Internal Revenue Code as in effect before the reduction or repeal of the federal credit pursuant to the Act of Congress; and (ii) other provisions of federal estate tax law as in effect on the date of the decedent's death.

(2) Except as provided in paragraphs (3) through (9) of this subsection and subsection (c) of this section, if the federal estate tax is not in effect on the date of the decedent's death, the Maryland estate tax shall be determined using:

(i) the federal credit allowable by § 2011 of the Internal Revenue Code as in effect before the reduction or repeal of the federal credit pursuant to the Act of Congress; and

(ii) other provisions of federal estate tax law as in effect on the date immediately preceding the effective date of the repeal of the federal estate tax.

(3)(i) Notwithstanding any increase in the unified credit allowed against the federal estate tax for decedents dying after 2003, the unified credit used for determining the Maryland estate tax for a decedent may not exceed the applicable credit amount corresponding to an applicable exclusion amount, within the meaning of § 2010(c) of the Internal Revenue Code, of:

1. \$1,000,000 for a decedent dying before January 1, 2015;
2. \$1,500,000 for a decedent dying on or after January 1, 2015, but before January 1, 2016;
3. \$2,000,000 for a decedent dying on or after January 1, 2016, but before January 1, 2017;
4. \$3,000,000 for a decedent dying on or after January 1, 2017, but before January 1, 2018;
5. \$4,000,000 for a decedent dying on or after January 1, 2018, but before January 1, 2019; and
6. \$5,000,000 for a decedent dying on or after January 1, 2019, plus any deceased spousal unused exclusion amount calculated in accordance with paragraph (9) of this subsection.

(ii) The Maryland estate tax shall be determined without regard to any deduction for State death taxes allowed under § 2058 of the Internal Revenue Code.

(iii) Unless the federal credit allowable by § 2011 of the Internal Revenue Code is in effect on the date of the decedent's death, the federal credit used to determine the Maryland estate tax may not exceed 16% of the amount by which the decedent's taxable estate, as defined in § 2051 of the Internal Revenue Code, exceeds:

1. \$1,000,000 for a decedent dying before January 1, 2015;
2. \$1,500,000 for a decedent dying on or after January 1, 2015, but before January 1, 2016;
3. \$2,000,000 for a decedent dying on or after January 1, 2016, but before January 1, 2017;
4. \$3,000,000 for a decedent dying on or after January 1, 2017, but before January 1, 2018;
5. \$4,000,000 for a decedent dying on or after January 1, 2018, but before January 1, 2019; and
6. \$5,000,000 for a decedent dying on or after January 1, 2019, plus any deceased spousal unused exclusion amount calculated in accordance with paragraph (9) of this subsection.

(4)(i) With regard to an election to value property as provided in § 2032 of the Internal Revenue Code, if a federal estate tax return is not required to be filed:

1. an irrevocable election made on a timely filed Maryland estate tax return shall be deemed to be an election as required by § 2032(d) of the Internal Revenue Code;
2. the provisions of § 2032(c) of the Internal Revenue Code do not apply; and
3. an election may not be made under item 1 of this subparagraph unless that election will decrease:

- A. the value of the gross estate; and
 - B. the Maryland estate tax due with regard to the transfer of a decedent's Maryland estate.
- (ii) An election to value property as provided in § 2032 of the Internal Revenue Code for Maryland estate tax purposes must be the same as the election made for federal estate tax purposes.
- (5)(i) With regard to an election to treat property as marital deduction qualified terminable interest property in calculating the Maryland estate tax, an irrevocable election made on a timely filed Maryland estate tax return shall be deemed to be an election as required by § 2056(b)(7)(B)(i), (iii), and (v) of the Internal Revenue Code.
- (ii) An election under this paragraph made on a timely filed Maryland estate tax return shall be recognized for purposes of calculating the Maryland estate tax even if an inconsistent election is made for the same decedent for federal estate tax purposes.
- (6)(i) For purposes of calculating Maryland estate tax, a decedent shall be deemed to have had a qualifying income interest for life under § 2044(a) of the Internal Revenue Code with regard to any property for which a marital deduction qualified terminable interest property election was made for the decedent's predeceased spouse on a timely filed Maryland estate tax return under paragraph (5) of this subsection.
- (ii) For the purpose of apportioning Maryland estate tax under § 7-308 of this subtitle, any property as to which a decedent is deemed to have had a qualifying income interest for life under subparagraph (i) of this paragraph shall be deemed to be included in

both the estate and the taxable estate of the decedent.

(7) For purposes of calculating Maryland estate tax, amounts allowable under § 2053 or § 2054 of the Internal Revenue Code as a deduction in computing the taxable estate of a decedent may not be allowed as a deduction or as an offset against the sales price of property in determining gain or loss if the amount has been allowed as a deduction in computing the federal taxable income of the estate or of any other person.

(8) Notwithstanding any contrary definition of “marriage” and “spouse” under any applicable provision of federal law, for purposes of calculating Maryland estate tax under this subsection, the surviving “spouse” of a decedent shall include any individual to whom, at the time of the decedent’s death, the decedent was lawfully married as determined under the laws of the State.

(9)(i) In this paragraph, “deceased spousal unused exclusion amount” means the applicable exclusion amount in effect at the time of the death of the last predeceased spouse of the decedent under paragraph (3) of this subsection reduced by the taxable estate of the last predeceased spouse:

1. as reported on a Maryland estate tax return filed with the Comptroller; or
2. as reported on a federal estate tax return, if the last predeceased spouse was not a Maryland resident and no property with a Maryland estate tax situs was includible in the gross estate of the last predeceased spouse.

(ii) The deceased spousal unused exclusion amount may not be taken into account under paragraph (3) of this subsection unless:

1. if the last predeceased spouse died on or after January 1, 2019, a Maryland estate tax return is timely filed for the last predeceased spouse, on which the deceased spousal unused exclusion amount is calculated and an irrevocable election is made that the deceased spousal unused exclusion amount may be taken into account; or 2. if the last predeceased spouse died before January 1, 2019, or was not a Maryland resident and no property with a Maryland estate tax situs was includible in the gross estate of the last predeceased spouse, an election was made under § 2010(c) of the Internal Revenue Code on the federal estate tax return of the last predeceased spouse.

Agricultural property

(c)(I)(i) In this subsection the following words have the meanings indicated.

(ii) “Fanning purposes” has the meaning stated in § 2032A(e)(5) of the Internal Revenue Code.

(iii) “Qualified agricultural property” means real or personal property that is used primarily for farming purposes.

(iv) “Qualified recipient” means an individual who enters into an agreement to use qualified agricultural property for fanning purposes after the decedent’s death.

(2) The Maryland estate tax shall be determined by excluding from the value of the gross estate up to \$5,000,000 of the value of qualified agricultural property that passes from the decedent to or for the use of a qualified recipient.

(3) If the value of qualified agricultural property that passes from the decedent to or for the use of a qualified recipient exceeds \$5,000,000, the Maryland estate tax imposed on the Maryland estate of the decedent may not exceed the sum of:

(i) 16% of the amount by which the decedent's taxable estate, excluding the value of all qualified agricultural property that passes from the decedent to or for the use of a qualified recipient, exceeds the applicable exclusion amount specified under subsection (b) of this section; and

(ii) 5% of the amount by which the value of qualified agricultural property that passes from the decedent to or for the use of a qualified recipient exceeds \$5,000,000.

(4)(i) The Maryland estate tax shall be recaptured as provided in this paragraph if, within 10 years after the decedent's death, the qualified agricultural property ceases to be used for farming purposes.

(ii) The amount of the estate tax imposed under this paragraph shall be the additional Maryland estate tax that would have been payable at the time of the decedent's death but for the provisions under paragraphs (2) and (3) of this subsection.

(5) The Comptroller shall adopt regulations to implement this subsection.

APPENDIX 8

26 U.S.C.A. § 2011, I.R.C. §2011

§ 2011. Credit for State death taxes

Effective: [See Text Amendments] to December 18,
2014

(a) In **general.**--The tax imposed by section 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent).

(b) Amount of credit.--

(1) In **general.**--**Except** as provided in paragraph (2), the credit allowed by this section shall not exceed the appropriate amount stated in the following table:

If the adjusted taxable estate is:	The maximum tax credit shall be:
Not over \$90,000	8 / 10 ths of 1% of the amount by which the adjusted taxable estate exceeds \$40,000.
Over \$90,000 but not over \$140,000	\$400 plus 1.6% of the excess over \$90,000.
Over \$140,000 but not over \$240,000	\$1,200 plus 2.4% of the excess over \$ 140,000.
Over \$240,000 but not over \$440,000	\$3,600 plus 3.2% of the excess over \$240,000.
Over \$440,000 but not over \$640,000	\$10,000 plus 4% of the excess over \$440,000.
Over \$640,000 but not over \$840,000	\$18,000 plus 4.8% of the excess over \$640,000.

Over \$840,000 but not over \$1,040,000.
\$27,600 plus 5.6% of the excess over \$840,000.

Over \$1,040,000 but not over \$1,540,000
\$38,800 plus 6.4% of the excess over \$1,040,000.

Over \$1,540,000 but not over \$2,040,000
\$70,800 plus 7.2% of the excess over \$1,540,000.

Over \$2,040,000 but not over \$2,540,000.
\$106,800 plus 8% of the excess over \$2,040,000.

Over \$2,540,000 but not over \$3,040,000
\$146,800 plus 8.8% of the excess over \$2,540,000.

Over \$3,040,000 but not over \$3,540,000
\$190,800 plus 9.6% of the excess over \$3,040,000.

Over \$3,540,000 but not over \$4,040,000
\$238,800 plus 10.4% of the excess over \$3,540,000.

Over \$4,040,000 but not over \$5,040,000
\$290,800 plus 11.2% of the excess over \$4,040,000.

Over \$5,040,000 but not over \$6,040,000
\$402,800 plus 12% of the excess over \$5,040,000.

Over \$6,040,000 but not over \$7,040,000
\$522,800 plus 12.8% of the excess over \$6,040,000.

Over \$7,040,000 but not over \$8,040,000
\$650,800 plus 13.6% of the excess over
\$7,040,000.

Over \$8,040,000 but not over \$9,040,000
\$786,800 plus 14.4% of the excess over \$8,040,000.

Over \$9,040,000 but not over \$10,040,000
\$930,800 plus 15.2% of the excess over \$9,040,000.

Over \$10,040,000
\$1,082,800 plus 16% of the excess over
\$10,040,000.

(2) Reduction of maximum credit.--

(A) In general.--In the case of estates of decedents dying after December 31, 2001, the credit allowed by this section shall not exceed the applicable percentage of the credit otherwise determined under paragraph()

(B) Applicable percentage.--

In the case of estates of decedents dying during:	The applicable percentage is:

2002.....	75 percent
2003.....	50 percent
2004.....	25 percent.

(3) Adjusted taxable estate.--For purposes of this section, the term “adjusted taxable estate” means the taxable estate reduced by \$60,000.

(c) Period of limitations on credit.--The credit allowed by this section shall include only such taxes as were actually paid and credit therefor claimed within 4 years after the filing of the return required by section 6018, except that--

(1) If a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213(a), then within such 4-year period or before the expiration of 60 days after the decision of the Tax Court becomes final.

(2) If, under section 6161 or 6166, an extension of time has been granted for payment of the tax shown on the return or of a deficiency, then within such 4-year period or before the date of the expiration of the period of the extension.

(3) If a claim for refund or credit of an overpayment of tax imposed by this chapter has been filed within

the time prescribed in section 6511, then within such 4-year period or before the expiration of 60 days from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of any part of such claim, or before the expiration of 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon such claim, whichever is later.

Refund based on the credit may (despite the provisions of sections 6511 and 6512) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

(d) Limitation in cases involving deduction under section 2053(d).--In any case where a deduction is allowed under section 2053(d) for an estate, succession, legacy, or inheritance tax imposed by a State or the District of Columbia upon a transfer for public, charitable, or religious uses described in section 2055 or 2106(a)(2), the allowance of the credit under this section shall be subject to the following conditions and limitations:

(1) The taxes described in subsection (a) shall not include any estate, succession, legacy, or inheritance tax for which such deduction is allowed under section 2053(d).

(2) The credit shall not exceed the lesser of--

(A) the amount stated in subsection (b) on an adjusted taxable estate determined by allowing such deduction authorized by section 2053(d) or

(B) that proportion or the amount stated in subsection (b) on an adjusted taxable estate determined without regard to such deduction

authorized by section 2053(d) as (i) the amount of the taxes described in subsection (a), as limited by the provisions of paragraph (1) or this subsection, bears to (ii) the amount of the taxes described in subsection (a) before applying the limitation contained in paragraph (1) or this subsection.

(3) If the amount determined under subparagraph (B) or paragraph (2) is less than the amount determined under subparagraph (A) or that paragraph, then for purposes of subsection (d) such lesser amount shall be the maximum credit provided by subsection (b).

(e) Limitation based on amount of tax.--The credit provided by this section shall not exceed the amount of the tax imposed by section 2001, reduced by the amount or the unified credit provided by section 2010.

(f) Termination.--This section shall not apply to the estates of decedents dying after December 31, 2004.

APPENDIX 9

26 U.S.C.A. § 2044, I.R.C. § 2044

§ 2044. Certain property for which marital deduction was previously allowed

(a) General rule.--The value of the gross estate shall include the value of any property to which this section applies in which the decedent had a qualifying income interest for life.

(b) Property to which this section applies.--This section applies to any property if--

(1) a deduction was allowed with respect to the transfer of such property to the decedent--

(A) under section 2056 by reason of subsection (b)(7) thereof, or

(B) under section 2523 by reason of subsection (f) thereof, and

(2) section 2519 (relating to dispositions of certain life estates) did not apply with respect to a disposition by the decedent of part or all of such property.

(c) Property treated as having passed from decedent.--For purposes of this chapter and chapter 13, property includible in the gross estate of the decedent under subsection (a) shall be treated as property passing from the decedent.

APPENDIX 10

26 U.S.C.A. § 2056, I.R.C. § 2056

§ 2056. Bequests, etc., to surviving spouse

Effective: August 5, 1997

(a) Allowance of marital deduction.--For purposes of the tax imposed by section 2001, the value of the taxable estate shall, except as limited by subsection (b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

(b) Limitation in the case of life estate or other terminable interest.--

(1) General rule.--Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed under this section with respect to such interest--

(A) if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse); and

(B) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse;

and no deduction shall be allowed with respect to such interest (even if such deduction is not disallowed under subparagraphs (A) and (B))--

(C) if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.

For purposes of this paragraph, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.

(2) Interest in unidentified assets.--Where the assets (included in the decedent's gross estate) out of which, or the proceeds of which, an interest passing to the surviving spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets passed from the decedent to such spouse, then the value of such interest passing to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

(3) Interest of spouse conditional on survival for limited period.--For purposes of this subsection, an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail on the death of such spouse if--

(A) such death will cause a termination or failure of such interest only if it occurs within a period not exceeding 6 months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent

and the surviving spouse, or only if it occurs in the case of either such event; and

(B) such termination or failure does not in fact occur.

(4) Valuation of interest passing to surviving spouse.--In determining for purposes of subsection (a) the value of any interest in property passing to the surviving spouse for which a deduction is allowed by this section--

(A) there shall be taken into account the effect which the tax imposed by section 2001, or any estate, succession, legacy, or inheritance tax, has on the net value to the surviving spouse of such interest; and

(B) where such interest or property is encumbered in any manner, or where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to such spouse of such interest were being determined.

(5) Life estate with power of appointment in surviving spouse.--In the case of an interest in property passing from the decedent, if his surviving spouse is entitled for life to all the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire interest, or such specific portion (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others),

and with no power in any other person to appoint any part of the interest, or such specific portion, to any person other than the surviving spouse--

(A) the interest or such portion thereof so passing shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) no part of the interest so passing shall, for purposes of paragraph (1)(A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if such power in the surviving spouse to appoint the entire interest, or such specific portion thereof, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(6) Life insurance or annuity payments with power of appointment in surviving spouse.--In the case of an interest in property passing from the decedent consisting of proceeds under a life insurance, endowment, or annuity contract, if under the terms of the contract such proceeds are payable in installments or are held by the insurer subject to an agreement to pay interest thereon (whether the proceeds, on the termination of any interest payments, are payable in a lump sum or in annual or more frequent installments), and such installment or interest payments are payable annually or at more frequent intervals, commencing not later than 13 months after the decedent's death, and all amounts, or a specific portion of all such amounts, payable during the life of the surviving spouse are payable only to such spouse, and such spouse has the power to appoint all amounts, or such specific portion, payable

under such contract (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), with no power in any other person to appoint such amounts to any person other than the surviving spouse--

(A) such amounts shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) no part of such amounts shall, for purposes of paragraph (1)(A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if, under the terms of the contract, such power in the surviving spouse to appoint such amounts, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(7) Election with respect to life estate for surviving spouse.--

(A) **In general.**--In the case of qualified terminable interest property--

(i) for purposes of subsection (a), such property shall be treated as passing to the surviving spouse, and

(ii) for purposes of paragraph (1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

(B) **Qualified terminable interest property defined.**--For purposes of this paragraph--

(i) **In general.**--The term “qualified terminable interest property” means property--

- (I) which passes from the decedent,
- (II) in which the surviving spouse has a qualifying income interest for life, and
- (III) to which an election under this paragraph applies.

(ii) Qualifying income interest for life.--The surviving spouse has a qualifying income interest for life if--

- (I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and
- (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Subclause (II) shall not apply to a power exercisable only at or after the death of the surviving spouse. To the extent provided in regulations, an annuity shall be treated in a manner similar to an income interest in property (regardless of whether the property from which the annuity is payable can be separately identified).

(iii) Property includes interest therein.--The term “property” includes an interest in property.

(iv) Specific portion treated as separate property.--A specific portion of property shall be treated as separate property.

(v) Election.--An election under this paragraph with respect to any property shall be made by the executor on the return of tax imposed by

section 2001. Such an election, once made, shall be irrevocable.

(C) Treatment of survivor annuities.--In the case of an annuity included in the gross estate of the decedent under section 2039 (or, in the case of an interest in an annuity arising under the community property laws of a State, included in the gross estate of the decedent under section 2033) where only the surviving spouse has the right to receive payments before the death of such surviving spouse--

(i) the interest of such surviving spouse shall be treated as a qualifying income interest for life, and

(ii) the executor shall be treated as having made an election under this subsection with respect to such annuity unless the executor otherwise elects on the return of tax imposed by section 2001.

An election under clause (ii), once made, shall be irrevocable.

(8) Special rule for charitable remainder trusts.--

(A) In general.--If the surviving spouse of the decedent is the only beneficiary of a qualified charitable remainder trust who is not a charitable beneficiary nor an ESOP beneficiary, paragraph (1) shall not apply to any interest in such trust which passes or has passed from the decedent to such surviving spouse.

(B) Definitions.--For purposes of subparagraph (A)--

(i) **Charitable beneficiary.**--The term “charitable beneficiary” means any beneficiary

which is an organization described in section 170(c).

(ii) ESOP beneficiary.--The term “ESOP beneficiary” means any beneficiary which is an employee stock ownership plan (as defined in section 4975(e)(7)) that holds a remainder interest in qualified employer securities (as defined in section 664(g)(4)) to be transferred to such plan in a qualified gratuitous transfer (as defined in section 664(g)(1)).

(iii) Qualified charitable remainder trust.--The term “qualified charitable remainder trust” means a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664).

(9) Denial of double deduction.--Nothing in this section or any other provision of this chapter shall allow the value of any interest in property to be deducted under this chapter more than once with respect to the same decedent.

(10) Specific portion.--For purposes of paragraphs (5), (6), and (7)(B)(iv), the term “specific portion” only includes a portion determined on a fractional or percentage basis.

(c) Definition.--For purposes of this section, an interest in property shall be considered as passing from the decedent to any person if and only if--

- (1)** such interest is bequeathed or devised to such person by the decedent;
- (2)** such interest is inherited by such person from the decedent;

- (3) such interest is the dower or curtesy interest (or statutory interest in lieu thereof) of such person as surviving spouse of the decedent;
- (4) such interest has been transferred to such person by the decedent at any time;
- (5) such interest was, at the time of the decedent's death, held by such person and the decedent (or by them and any other person) in joint ownership with right of survivorship;
- (6) the decedent had a power (either alone or in conjunction with any person) to appoint such interest and if he appoints or has appointed such interest to such person, or if such person takes such interest in default on the release or nonexercise of such power; or
- (7) such interest consists of proceeds of insurance on the life of the decedent receivable by such person.

Except as provided in paragraph (5) or (6) of subsection (b), where at the time of the decedent's death it is not possible to ascertain the particular person or persons to whom an interest in property may pass from the decedent, such interest shall, for purposes of subparagraphs (A) and (B) of subsection (b)(1), be considered as passing from the decedent to a person other than the surviving spouse.

(d) Disallowance of marital deduction where surviving spouse not United States citizen.--

- (1) **In general.**--Except as provided in paragraph (2), if the surviving spouse of the decedent is not a citizen of the United States--
 - (A) no deduction shall be allowed under subsection (a), and

(B) section 2040(b) shall not apply.

(2) Marital deduction allowed for certain transfers in trust.--

(A) **In general.**--Paragraph (1) shall not apply to any property passing to the surviving spouse in a qualified domestic trust.

(B) **Special rule.**--If any property passes from the decedent to the surviving spouse of the decedent, for purposes of subparagraph (A), such property shall be treated as passing to such spouse in a qualified domestic trust if--

(i) such property is transferred to such a trust before the date on which the return of the tax imposed by this chapter is made, or

(ii) such property is irrevocably assigned to such a trust under an irrevocable assignment made on or before such date which is enforceable under local law.

(3) Allowance of credit to certain spouses.--If--

(A) property passes to the surviving spouse of the decedent (hereinafter in this paragraph referred to as the “first decedent”),

(B) without regard to this subsection, a deduction would be allowable under subsection (a) with respect to such property, and

(C) such surviving spouse dies and the estate of such surviving spouse is subject to the tax imposed by this chapter,

the Federal estate tax paid (or treated as paid under section 2056A(b)(7)) by the first decedent with respect to such property shall be allowed as a credit under section 2013 to the estate of such

surviving spouse and the amount of such credit shall be determined under such section without regard to when the first decedent died and without regard to subsection (d)(3) of such section.

(4) Special rule where resident spouse becomes citizen.--Paragraph (1) shall not apply if--

(A) the surviving spouse of the decedent becomes a citizen of the United States before the day on which the return of the tax imposed by this chapter is made, and

(B) such spouse was a resident of the United States at all times after the date of the death of the decedent and before becoming a citizen of the United States.

(5) Reformations permitted

(A) **In general.**--In the case of any property with respect to which a deduction would be allowable under subsection (a) but for this subsection, the determination of whether a trust is a qualified domestic trust shall be made--

(i) as of the date on which the return of the tax imposed by this chapter is made, or

(ii) if a judicial proceeding is commenced on or before the due date (determined with regard to extensions) for filing such return to change such trust into a trust which is a qualified domestic trust, as of the time when the changes pursuant to such proceeding are made.

(B) **Statute of limitations.**--If a judicial proceeding described in subparagraph (A)(ii) is commenced with respect to any trust, the period for assessing any deficiency of tax attributable to

any failure of such trust to be a qualified domestic trust shall not expire before the date 1 year after the date on which the Secretary is notified that the trust has been changed pursuant to such judicial proceeding or that such proceeding has been terminated.

APPENDIX 11

26 U.S.C.A. § 2519, I.R.C. § 2519

§ 2519. Dispositions of certain life estates

(a) General rule.--For purposes of this chapter and chapter 11, any disposition of all or part of a qualifying income interest for life in any property to which this section applies shall be treated as a transfer of all interests in such property other than the qualifying income interest.

(b) Property to which this subsection applies.--This section applies to any property if a deduction was allowed with respect to the transfer of such property to the donor--

(1) under section 2056 by reason of subsection (b)(7) thereof, or

(2) under section 2523 by reason of subsection (f) thereof.

(c) Cross reference.--

For right of recovery for gift tax in the case of property treated as transferred under this section, see section 2207A(b).

APPENDIX 12

26 C.F.R. § 20.2011–1, Treas. Reg. § 20.2011–1

§ 20.2011–1 Credit for State death taxes.

(a) In general. A credit is allowed under section 2011 against the Federal estate tax for estate, inheritance, legacy or succession taxes actually paid to any State, Territory, or the District of Columbia, or, in the case of decedents dying before September 3, 1958, any possession of the United States (hereinafter referred to as “State death taxes”). The credit, however, is allowed only for State death taxes paid (1) with respect to property included in the decedent’s gross estate, and (2) with respect to the decedent’s estate. The amount of the credit is subject to the limitation described in paragraph (b) of this section. It is subject to further limitations described in § 20.2011–2 if a deduction is allowed under section 2053(d) for State death taxes paid with respect to a charitable gift. See paragraph (a) of § 20.2014–1 as to the allowance of a credit for death taxes paid to a possession of the United States in a case where the decedent died after September 2, 1958.

(b) Amount of credit. (1) If the decedent’s taxable estate does not exceed \$40,000, the credit for State death taxes is zero. If the decedent’s taxable estate does exceed \$40,000, the credit for State death taxes is limited to an amount computed in accordance with the following table:

Table for Computation of Maximum Credit for State Death Taxes

(A)—Taxable estate equal to or more than—	(B)—Taxable estate less than—	(C)—Credit on amount in column (A)	(D)—Rates of credit on excess over amount in column (A) (percent)
\$40,000	\$90,000		0.8
90,000	140,000	\$400	1.6
140,000	240,000	1,200	2.4
240,000	440,000	3,600	3.2
440,000	640,000	10,000	4.0
640,000	840,000	18,000	4.8
840,000	1,040,000	27,600	5.6
1,040,000	1,540,000	38,800	6.4
1,540,000	2,040,000	70,800	7.2
2,040,000	2,540,000	106,800	8.0
2,540,000	3,040,000	146,800	8.8

3,040,000	3,540,000	190,800	9.6
3,540,000	4,040,000	238,800	10.4
4,040,000	5,040,000	290,800	11.2
5,040,000	6,040,000	402,800	12.0
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	786,800	14.4
9,040,000	10,040,000	930,800	15.2
10,040,000		1,082,800	16.0

(2) Subparagraph (1) of this paragraph may be illustrated by the following example:

Example. (i) The decedent died January 1, 1955, leaving a taxable estate of \$150,000. On January 1, 1956, inheritance taxes totaling \$2,500 were actually paid to a State with respect to property included in the decedent's gross estate. Reference to the table discloses that the specified amount in column (A) nearest to but less than the value of the decedent's taxable estate is \$140,000. The maximum credit in respect of this amount, as indicated in column (C), is \$1,200. The amount by which the taxable estate exceeds the same specified amount is \$10,000. The maximum credit in respect of this amount, computed at the rate of 2.4 percent indicated in column (D), is \$240. Thus, the maximum credit in respect of the decedent's taxable estate of \$150,000 is \$1,440, even though \$2,500 in inheritance taxes was actually paid to the State.

(ii) If, in subdivision (i) of this example, the amount actually paid to the State was \$950, the credit for State death taxes would be limited to \$950. If, in subdivision (i) of this example, the decedent's taxable estate was \$35,000, no credit for State death taxes would be allowed.

(c) Miscellaneous limitations and conditions to credit—(1) Period of limitations. The credit for State death taxes is limited under section 2011(c) to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the estate tax return for the decedent's estate. If, however, a petition has been filed with the Tax Court of the United States for the redetermination of a deficiency within the time prescribed in section 6213(a), the credit is limited to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the

return or within 60 days after the decision of the Tax Court becomes final, whichever period is the last to expire. Similarly, if an extension of time has been granted under section 6161 for payment of the tax shown on the return, or of a deficiency, the credit is limited to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the return, or before the date of the expiration of the period of the extension, whichever period is last to expire. If a claim for refund or credit of an overpayment of the Federal estate tax is filed within the time prescribed in section 6511, the credit for State death taxes is limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return or before the expiration of 60 days from the date of mailing by certified or registered mail by the district director to the taxpayer of a notice of disallowance of any part of the claim, or before the expiration of 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon the claim, whichever period is the last to expire. See section 2015 for the applicable period of limitations for credit for State death taxes on reversionary or remainder interests if an election is made under section 6163(a) to postpone payment of the estate tax attributable to reversionary or remainder interests. If a claim for refund based on the credit for State death taxes is filed within the applicable period described in this subparagraph, a refund may be made despite the general limitation provisions of sections 6511 and 6512. Any refund based on the credit described in this section shall be made without interest.

(2) Submission of evidence. Before the credit for State death taxes is allowed, evidence that such

taxes have been paid must be submitted to the district director. The district director may require the submission of a certificate from the proper officer of the taxing State, Territory, or possession of the United States, or the District of Columbia, showing: (i) The total amount of tax imposed (before adding interest and penalties and before allowing discount); (ii) the amount of any discount allowed; (iii) the amount of any penalties and interest imposed or charged; (iv) the total amount actually paid in cash; and (v) the date or dates of payment. If the amount of these taxes has been redetermined, the amount finally determined should be stated. The required evidence should be filed with the return, but if that is not convenient or possible, then it should be submitted as soon thereafter as practicable. The district director may require the submission of such additional proof as is deemed necessary to establish the right to the credit. For example, he may require the submission of a certificate of the proper officer of the taxing jurisdiction showing (vi) whether a claim for refund of any part of the State death tax is pending and (vii) whether a refund of any part thereof has been authorized, and if a refund has been made, its date and amount, and a description of the property or interest in respect of which the refund was made. The district director may also require an itemized list of the property in respect of which State death taxes were imposed certified by the officer having custody of the records pertaining to those taxes. In addition, he may require the executor to submit a written statement (containing a declaration that it is made under penalties of perjury) stating whether, to his knowledge, any

person has instituted litigation or taken an appeal (or contemplates doing so), the final determination of which may affect the amount of those taxes. See section 2016 concerning the redetermination of the estate tax if State death taxes claimed as credit are refunded.

(d) Definition of “basic estate tax”. Section 2011(d) provides definitions of the terms “basic estate tax” and “additional estate tax”, used in the Internal Revenue Code of 1939, and “estate tax imposed by the Revenue Act of 1926”, for the purpose of supplying a means of computing State death taxes under local statutes using those terms, and for use in determining the exemption provided for in section 2201 for estates of certain members of the Armed Forces. See section 2011(e)(3) for a modification of these definitions if a deduction is allowed under section 2053(d) for State death taxes paid with respect to a charitable gift.

APPENDIX 13

26 C.F.R. § 20.2033–1, Treas. Reg. § 20.2033–1

§ 20.2033–1 Property in which the decedent had an interest.

(a) **In general.** The gross estate of a decedent who was a citizen or resident of the United States at the time of his death includes under section 2033 the value of all property, whether real or personal, tangible or intangible, and wherever situated, beneficially owned by the decedent at the time of his death. (For certain exceptions in the case of real property situated outside the United States, see paragraphs (a) and (c) of § 20.2031–1.) Real property is included whether it came into the possession and control of the executor or administrator or passed directly to heirs or devisees. Various statutory provisions which exempt bonds, notes, bills, and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation are generally not applicable to the estate tax, since such tax is an excise tax on the transfer of property at death and is not a tax on the property transferred.

(b) **Miscellaneous examples.** A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of that part of the lot which is not designed for the interment of the decedent and the members of his family. Property subject to homestead or other exemptions under local law is included in the gross estate. Notes or other claims held by the decedent are likewise included even though they are cancelled by the decedent's will. Interest and rents accrued at the date of the decedent's death constitute a part of the

gross estate. Similarly, dividends which are payable to the decedent or his estate by reason of the fact that on or before the date of the decedent's death he was a stockholder of record (but which have not been collected at death) constitute a part of the gross estate.

APPENDIX 14

PL 107-16, June 7, 2001, 115 Stat 38

UNITED STATES PUBLIC LAWS

107th Congress - First Session

Convening January, 2001

Additions and Deletions are not identified in this
database.

Vetoed provisions within tabular material are not
displayed

PL 107-16 (HR 1836)

June 7, 2001

ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001

An Act To provide for reconciliation pursuant to
section 104 of the concurrent resolution on the
budget for fiscal year 2002.

Be it enacted by the Senate and House of
Representatives of the United States of America in
Congress assembled,

SECTION I. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

<< 26 USCA § 1 NOTE>>

(a) **SHORT TITLE.**-This Act may be cited as the
"Economic Growth and Tax Relief Reconciliation Act
of 2001".

(b) **AMENDMENT OF 1986 CODE.**-Except as
otherwise expressly provided, whenever in this Act
an amendment or repeal is expressed in terms of an
amendment to, or repeal of, a section or other
provision, the reference shall be considered to be

made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.-The table of contents of this Act is as follows:

Sec. I. Short title; references; table of contents.

TITLE I-INDIVIDUAL INCOME TAX RATE REDUCTIONS

Sec. 101. Reduction in income tax rates for individuals.

Sec. 102. Repeal of phaseout of personal exemptions.

Sec. 103. Phaseout of overall limitation on itemized deductions.

TITLE II-TAX BENEFITS RELATING TO CHILDREN

Sec. 201. Modifications to child tax credit.

Sec. 202. Expansion of adoption credit and adoption assistance programs.

Sec. 203. Refunds disregarded in the administration of Federal programs and federally assisted programs.

Sec. 204. Dependent care credit.

Sec. 205. Allowance of credit for employer expenses for child care assistance.

TITLE III-MARRIAGE PENALTY RELIEF

Sec. 301. Elimination of marriage penalty in standard deduction.

Sec. 302. Phaseout of marriage penalty in 15-percent bracket.

Sec. 303. Marriage penalty relief for earned income credit; earned income to include only amounts

includible in gross income; simplification of earned income credit.

TITLE IV-AFFORDABLE EDUCATION PROVISIONS

Subtitle A-Education Savings Incentives

Sec. 401. Modifications to education individual retirement accounts.

Sec. 402. Modifications to qualified tuition programs.

Subtitle B-Educational Assistance

Sec. 411. Extension of exclusion for employer-provided educational assistance.

Sec. 412. Elimination of 60-month limit and increase in income limitation on student loan interest deduction.

Sec. 413. Exclusion of certain amounts received under the National Health Service Corps Scholarship Program and the F. Edward Hebert Armed Forces Health Professions Scholarship and Financial Assistance Program.

Subtitle C-Liberalization of Tax-Exempt Financing Rules for Public School Construction

Sec. 421. Additional increase in arbitrage rebate exception for governmental bonds used to finance educational facilities.

Sec. 422. Treatment of qualified public educational facility bonds as exempt facility bonds.

Subtitle D-Other Provisions

Sec. 431. Deduction for higher education expenses.

TITLE V-ESTATE, GIFT, AND GENERATION-
SKIPPING TRANSFER TAX PROVISIONS

Subtitle A-Repeal of Estate and Generation-Skipping
Transfer Taxes

Sec. 501. Repeal of estate and generation-skipping transfer taxes.

Subtitle B-Reductions of Estate and Gift Tax Rates

Sec. 511. Additional reductions of estate and gift tax rates.

Subtitle C-Increase in Exemption Amounts

Sec. 521. Increase in exemption equivalent of unified credit, lifetime gifts exemption, and GST exemption amounts.

Subtitle D-Credit for State Death Taxes

Sec. 531. Reduction of credit for State death taxes.

Sec. 532. Credit for State death taxes replaced with deduction for such taxes.

Subtitle E-Carryover Basis at Death; Other Changes
Taking Effect With Repeal

Sec. 541. Termination of step-up in basis at death.

Sec. 542. Treatment of property acquired from a decedent dying after December 31, 2009.

Subtitle F-Conservation Easements

Sec. 551. Expansion of estate tax rule for conservation easements.

Subtitle G-Modifications of Generation-Skipping
Transfer Tax

Sec. 561. Deemed allocation of GST exemption to lifetime transfers to trusts; retroactive allocations.

Sec. 562. Severing of trusts.

Sec. 563. Modification of certain valuation rules.

Sec. 564. Relief provisions.

Subtitle H-Extension of Time for Payment of Estate
Tax

Sec. 571. Increase in number of allowable partners and shareholders in closely held businesses.

Sec. 572. Expansion of availability of installment payment for estates with interests qualifying lending and finance businesses.

Sec. 573. Clarification of availability of installment payment.

Subtitle I-Other Provisions

Sec. 581. Waiver of statute of limitation for taxes on certain farm valuations.

TITLE VI-PENSION AND INDIVIDUAL
RETIREMENT ARRANGEMENT PROVISIONS

Subtitle A-Individual Retirement Accounts

Sec. 601. Modification of IRA contribution limits.

Sec. 602. Deemed IRAs under employer plans.

Subtitle B-Expanding Coverage

Sec. 611. Increase in benefit and contribution limits.

Sec. 612. Plan loans for subchapter S owners, partners, and sole proprietors.

Sec. 613. Modification of top-heavy rules.

Sec. 614. Elective deferrals not taken into account for purposes of deduction limits.

Sec. 615. Repeal of coordination requirements for deferred compensation plans of State and local governments and tax-exempt organizations.

Sec. 616. Deduction limits.

Sec. 617. Option to treat elective deferrals as after-tax Roth contributions.

Sec. 618. Nonrefundable credit to certain individuals for elective deferrals and IRA contributions.

Sec. 619. Credit for pension plan startup costs of small employers.

Sec. 620. Elimination of user fee for requests to IRS regarding pension plans.

Sec. 621. Treatment of nonresident aliens engaged in international transportation services.

Subtitle C-Enhancing Fairness for Women

Sec. 631. Catch-up contributions for individuals age 50 or over.

Sec. 632. Equitable treatment for contributions of employees to defined contribution plans.

Sec. 633. Faster vesting of certain employer matching contributions.

Sec. 634. Modification to minimum distribution rules.

Sec. 635. Clarification of tax treatment of division of section 457 plan benefits upon divorce.

Sec. 636. Provisions relating to hardship distributions.

Sec. 637. Waiver of tax on nondeductible contributions for domestic or similar workers.

Subtitle D-Increasing Portability for Participants

Sec. 641. Rollovers allowed among various types of plans.

Sec. 642. Rollovers of IRAs into workplace retirement plans.

Sec. 643. Rollovers of after-tax contributions.

Sec. 644. Hardship exception to 60-day rule.

Sec. 645. Treatment of forms of distribution.

Sec. 646. Rationalization of restrictions on distributions.

Sec. 647. Purchase of service credit in governmental defined benefit plans.

Sec. 648. Employers may disregard rollovers for purposes of cash-out amounts.

Sec. 649. Minimum distribution and inclusion requirements for section 457 plans.

Subtitle E-Strengthening Pension Security and Enforcement

Part I-General Provisions

Sec. 651. Repeal of 160 percent of current liability funding limit.

Sec. 652. Maximum contribution deduction rules modified and applied to all defined benefit plans.

Sec. 653. Excise tax relief for sound pension funding.

Sec. 654. Treatment of multiemployer plans under section 415.

Sec. 655. Protection of investment of employee contributions to 401 (k) plans.

Sec. 656. Prohibited allocations of stock in S corporation ESOP.

Sec. 657. Automatic rollovers of certain mandatory distributions.

Sec. 658. Clarification of treatment of contributions to multiemployer plan.

Part II-Treatment of Plan Amendments Reducing Future Benefit Accruals

Sec. 659. Excise tax on failure to provide notice by defined benefit plans significantly reducing future benefit accruals.

Subtitle F-Reducing Regulatory Burdens

Sec. 661. Modification of timing of plan valuations.

Sec. 662. ESOP dividends may be reinvested without loss of dividend deduction.

Sec. 663. Repeal of transition rule relating to certain highly compensated employees.

Sec. 664. Employees of tax-exempt entities.

Sec. 665. Clarification of treatment of employer-provided retirement advice.

Sec. 666. Repeal of the multiple use test.

Subtitle G-Miscellaneous Provisions

Sec. 671. Tax treatment and information requirements of Alaska Native Settlement Trusts.

TITLE VII-ALTERNATIVE MINIMUM TAX

Sec. 701. Increase in alternative minimum tax exemption.

TITLE VIII-OTHER PROVISIONS

Sec. 801. Time for payment of corporate estimated taxes.

Sec. 802. Expansion of authority to postpone certain tax-related deadlines by reason of Presidentially declared disaster.

Sec. 803. No Federal income tax on restitution received by victims of the Nazi regime or their heirs or estates.

TITLE IX-COMPLIANCE WITH CONGRESSIONAL BUDGET ACT

Sec. 901. Sunset of provisions of Act.

TITLE I-INDIVIDUAL INCOME TAX RATE REDUCTIONS

SEC. 101. REDUCTION IN INCOME TAX RATES
FOR INDIVIDUALS.

«26 USCA § 1»

(a) IN GENERAL-Section 1 (relating to tax imposed) is amended by adding at the end the following new subsection:

"(i) RATE REDUCTIONS AFTER 2000.-

"(1) 10-PERCENT RATE BRACKET.-

"(A) IN GENERAL-In the case of taxable years beginning after December 31, 2000-

"(i) the rate of tax under subsections (a), (b), (c), and (d) on taxable income not over the initial bracket amount shall be 10 percent, and

"(ii) the 15 percent rate of tax shall apply only to taxable income over the initial bracket amount but not over the maximum dollar amount for the 15-percent rate bracket.

"(B) INITIAL BRACKET AMOUNT-For purposes of this paragraph, the initial bracket amount is-

"(i) \$14,000 (\$12,000 in the case of taxable years beginning before January 1, 2008) in the case of subsection (a),

"(ii) \$10,000 in the case of subsection (b), and

"(iii) $\frac{1}{2}$ the amount applicable under clause (i) (after adjustment, if any, under subparagraph (C)) in the case of subsections (c) and (d).

"(C) INFLATION ADJUSTMENT-In prescribing the tables under subsection (f) which apply with respect to taxable years beginning in calendar years after 2000---

"(i) the Secretary shall make no adjustment to the initial bracket amount for any taxable year beginning before January 1, 2009,

"(ii) the cost-of-living adjustment used in making adjustments to the initial bracket amount for any taxable year beginning after December 31, 2008, shall be determined under subsection (f)(3) by substituting '2007' for '1992' in subparagraph (B) thereof, and

"(iii) such adjustment shall not apply to the amount referred to in subparagraph (B)(iii).

If any amount after adjustment under the preceding sentence is not a multiple of \$50, such amount shall be rounded to the next lowest multiple of \$50.

"(D) COORDINATION WITH ACCELERATION OF 10 PERCENT RATE BRACKET BENEFIT FOR 2001.-This paragraph shall not apply to any taxable year to which section 6428 applies.

"(2) REDUCTIONS IN RATES AFTER JUNE 30, 2001.-In the case of taxable years beginning in a calendar year after 2000, the corresponding percentage specified for such calendar year in the following table shall be substituted for the otherwise applicable tax rate in the tables under subsections (a), (b), (c), (d), and (e).

**The corresponding percentages
shall be substituted for
the following percentages:**

**"In the case of taxable years
beginning during calendar year:**

<u>28%</u>	<u>31%</u>	<u>36%</u>	<u>39.6%</u>	
2001	27.5%	30.5%	35.5%	39.1%
2002 and 2003	27.0%	30.0%	35.0%	38.6%
2004 and 2005	26.0%	29.0%	34.0%	37.6%
2006 and thereafter	25.0%	28.0%	33.0%	35.0%

The corresponding percentages

"In the case of taxable years shall be substituted for
beginning during calendar year: the following
percentages:

28% 31 % 36% 39.6%

2001 27.5% 30.5% 35.5% 39.1%

2002 and 2003 27.0% 30.0% 35.0% 38.6%

36% 39.6%

2004 and 2005 26.0% 29.0% 34.0% 37.6%

2006 and thereafter 25.0% 28.0% 33.0% 35.0%

"(3) ADJUSTMENT OF TABLES.-The Secretary shall adjust the tables prescribed under subsection (f) to carry out this subsection."

(b) ACCELERATION OF 10 PERCENT RATE BRACKET BENEFIT FOR 2001.-

<< 26 USCA § 6428 >>

(1) IN GENERAL-Subchapter B of chapter 65 (relating to abatements, credits, and refunds) is amended by adding at the

end the following new section:

"SEC. 6428. ACCELERATION OF 10 PERCENT INCOME TAX RATE BRACKET BENEFIT FOR 2001.

"(a) IN GENERAL-In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by chapter 1 for the taxpayer's first taxable year beginning in 2001 an amount equal to 5 percent of so much of the taxpayer's taxable income as does not exceed the initial bracket amount (as defined in section 1 (i)(1)(B)).

"(b) LIMITATION BASED ON AMOUNT OF TAX.-The credit allowed by subsection (a) shall not exceed the excess (if any) of-

"(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(2) the sum of the credits allowable under part IV of subchapter A of chapter 1 (other than the credits

allowable under subpart C thereof, relating to refundable credits).

"(c) ELIGIBLE INDIVIDUAL-For purposes of this section, the term 'eligible individual' means any individual other than

"(1) any estate or trust,

"(2) any nonresident alien individual, and

"(3) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins.

"(d) SPECIAL RULES.-

"(1) COORDINATION WITH ADVANCE REFUNDS OF CREDIT.-

"(A) IN GENERAL-The amount of credit which would (but for this paragraph) be allowable under this section shall be reduced (but not below zero) by the aggregate refunds and credits made or allowed to the taxpayer under subsection (e). Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

"(B) JOINT RETURNS.-In the case of a refund or credit made or allowed under subsection (e) with respect to a joint return, half of such refund or credit shall be treated as having been made or allowed to each individual filing such return.

"(2) COORDINATION WITH ESTIMATED TAX.-The credit under this section shall be treated for purposes of section 6654(f) in the same manner as a credit under subpart A of part IV of subchapter A of chapter 1.

"(e) ADVANCE REFUNDS OF CREDIT BASED ON PRIOR YEAR DATA.-

"(1) IN GENERAL-Each individual who was an eligible individual for such individual's first taxable year beginning in 2000 shall be treated as having made a payment against the tax imposed by chapter 1 for such first taxable year in an amount equal to the advance refund amount for such taxable year.

"(2) ADVANCE REFUND AMOUNT-For purposes of paragraph (1), the advance refund amount is the amount that would have been allowed as a credit under this section for such first taxable year if this section (other than subsection (d) and this subsection) had applied to such taxable year.

"(3) TIMING OF PAYMENTS.-In the case of any overpayment attributable to this subsection, the Secretary shall, subject to the provisions of this title, refund or credit such overpayment as rapidly as possible and, to the extent practicable, before October 1, 2001. No refund or credit shall be made or allowed under this subsection after December 31, 2001.

"(4) NO INTEREST-No interest shall be allowed on any overpayment attributable to this subsection."

<< 26 USCA prec. § 6411 >>

.

<< 26 USCA § 62 NOTE >>

<< 26 USCA §§ 86 nt, 135 nt, 137 nt, 219 nt, 221 nt, 222 nt, 469 nt >>

(d) EFFECTIVE DATE.-The amendments made by this section shall apply to payments made in taxable years beginning after December 31, 2001.

TITLE V-ESTATE, GIFT, AND GENERATION-
SKIPPING TRANSFER TAX PROVISIONS

Subtitle A-Repeal of Estate and Generation-Skipping
Transfer Taxes

SEC. 501. REPEAL OF ESTATE AND
GENERATION-SKIPPING TRANSFER TAXES.

<< 26 USCA § 2210 >>

(a) ESTATE TAX REPEAL.-Subchapter C of chapter 11 of subtitle B (relating to miscellaneous) is amended by adding at the end the following new section:

"SEC. 2210. TERMINATION.

"(a) IN GENERAL-Except as provided in subsection (b), this chapter shall not apply to the estates of decedents dying after December 31, 2009.

"(b) CERTAIN DISTRIBUTIONS FROM QUALIFIED DOMESTIC TRUSTS.-In applying section 2056A with respect to the surviving spouse of a decedent dying before January 1, 2010-

"(1) section 2056A(b)(1)(A) shall not apply to distributions made after December 31, 2020, and

"(2) section 2056A(b)(1)(B) shall not apply after December 31, 2009 .".

<< 26 USCA § 2664 >>

(b) GENERATION-SKIPPING TRANSFER TAX REPEAL.-Subchapter G of chapter 13 of subtitle B (relating to administration) is amended by adding at the end the following new section:

"SEC. 2664. TERMINATION.

"This chapter shall not apply to generation-skipping transfers after December 31, 2009.".

(c) CONFORMING AMENDMENTS.-

<< 26 USCA prec. § 2201 >>

(1) The table of sections for subchapter C of chapter 11 is amended by adding at the end the following new item:

"Sec. 2210. Termination."

<< 26 USCA prec. § 2661 >>

(2) The table of sections for subchapter G of chapter 13 is amended by adding at the end the following new item:

"Sec. 2664. Termination."

« 26 USCA § 2210 NOTE»

(d) EFFECTIVE DATE.-The amendments made by this section shall apply to the estates of decedents dying, and generationskipping transfers, after December 31, 2009.

Subtitle B-Reductions of Estate and Gift Tax Rates

SEC. 511. ADDITIONAL REDUCTIONS OF ESTATE AND GIFT TAX RATES.

<< 26 USCA § 2001 >>

(a) MAXIMUM RATE OF TAX REDUCED TO 50 PERCENT.-The table contained in section 2001(c)(1) is amended by striking the two highest brackets and inselling the following:

"Over \$2,500,000.\$1,025,800, plus 50% of the excess over\$2,500,000."

<< 26 USCA § 2001 >>

(b) REPEAL OF PHASEOUT OF GRADUATED RATES.-Subsection (c) of section 2001 is amended by striking paragraph (2).

<< 26 USCA § 2001 >>

(c) ADDITIONAL REDUCTIONS OF MAXIMUM RATE OF TAX-Subsection (c) of section 2001, as amended by subsection (b), is amended by adding at the end the following new paragraph:

"(2) PHASEDOWN OF MAXIMUM RATE OF TAX.-

"(A) IN GENERAL-In the case of estates of decedents dying, and gifts made, in calendar years after 2002 and before 2010, the tentative tax under this subsection shall be determined by using a table prescribed by the Secretary (in lieu of using the table contained in paragraph(j)) which is the same as such table; except that-

"(i) the maximum rate of tax for any calendar year shall be determined in the table under subparagraph (B), and

"(ii) the brackets and the amounts setting forth the tax shall be adjusted to the extent necessary to reflect the adjustments under subparagraph (A).

"(B) MAXIMUM RATE.-

The maximum

"In calendar year: rate is:

2003.49 percent

2004.48 percent

2005 .47 percent

2006.46 percent

2007, 2008, and 2009.45 percent."

<< 26 USCA § 2502 >>

(d) MAXIMUM GIFT TAX RATE REDUCED TO MAXIMUM INDIVIDUAL RATE AFTER 2009.-

Subsection (a) of section 2502 (relating to rate of tax) is amended to read as follows:

"(a) COMPUTATION OF TAX.-

"(1) IN GENERAL-The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of

"(A) a tentative tax, computed under paragraph (2), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over

"(B) a tentative tax, computed under paragraph (2), on the aggregate sum of the taxable gifts for each of the preceding calendar periods.

"(2) RATE SCHEDULE.-If the amount with respect to which the tentative tax to be computed is:

"If the amount with respect to which the tentative tax to The tentative tax is:

be computed is:

Not over \$10,000

18% of such amount.

Over \$10,000 but not over \$20,000

\$1,800, plus 20% of the excess over \$10,000.

Over \$20,000 but not over \$40,000

\$3,800, plus 22% of the excess over \$20,000.

"If the amount with respect to which the tentative tax is:

tentative tax to be computed is:

Not over \$10,000

18% of such amount.

Over \$10,000 but not over \$20,000

\$1,800, plus 20% of the excess over \$10,000.

Over \$20,000 but not over \$40,000
\$3,800, plus 22% of the excess over \$20,000.

"If the amount with respect to which the tentative tax to be computed is:

The tentative tax is:

Over \$40,000 but not over \$60,000
\$8,200, plus 24% of the excess over \$40,000.
Over \$60,000 but not over \$80,000
\$13,000, plus 26% of the excess over \$60,000.
Over \$80,000 but not over \$100,000
\$18,200, plus 28% of the excess over \$80,000.
Over \$100,000 but not over \$150,000
\$23,800, plus 30% of the excess over \$100,000.
Over \$150,000 but not over \$250,000
\$38,800, plus 32% of the excess over \$150,000.
Over \$250,000 but not over \$500,000
\$70,800, plus 34% of the excess over \$250,000.
Over \$500,000
\$155,800, plus 35% of the excess over \$500,000."

"If the amount with respect to which the tentative tax is:

the tentative tax to be computed is:

Over \$40,000 but not over \$60,000
\$8,200, plus 24% of the excess over \$40,000.
Over \$60,000 but not over \$80,000
\$13,000, plus 26% of the excess over \$60,000.
Over \$80,000 but not over \$100,000
\$18,200, plus 28% of the excess over \$80,000.
Over \$100,000 but not over \$150,000
\$23,800, plus 30% of the excess over \$100,000.

Over \$150,000 but not over \$250,000
\$38,800, plus 32% of the excess over \$150,000.

Over \$250,000 but not over \$500,000
\$70,800, plus 34% of the excess over \$250,000.

Over \$500,000
\$155,800, plus 35% of the excess over \$500,000."

<< 26 USCA § 2511 >>

(e) TREATMENT OF CERTAIN TRANSFERS IN TRUST-Section 2511 (relating to transfers in general) is amended by adding at the end the following new subsection:

"(c) TREATMENT OF CERTAIN TRANSFERS IN TRUST.-Notwithstanding any other provision of this section and except as provided in regulations, a transfer in trust shall be treated as a taxable gift under section 2503, unless the trust is treated as wholly owned by the donor or the donor's spouse under subpart E of part I of subchapter J of chapter 1."

(f) EFFECTIVE DATES.-

<< 26 USCA § 2001 NOTE>>

(1) SUBSECTIONS (a) AND (b).-The amendments made by subsections (a) and (b) shall apply to estates of decedents dying, and gifts made, after December 31, 2001.

(2) SUBSECTION (c).-The amendment made by subsection (c) shall apply to estates of decedents dying, and gifts made, after December 31, 2002.

<< 26 USCA § 2502 NOTE>>

<< 26 USCA § 2511 nt >>

(3) SUBSECTIONS (d) AND (e).-The amendments made by subsections (d) and (e) shall apply to *gifts* made after December 31, 2009.

Subtitle C-Increase in Exemption Amounts

SEC. 521. INCREASE IN EXEMPTION EQUIVALENT OF UNIFIED CREDIT, LIFETIME GIFTS EXEMPTION, AND GST EXEMPTION AMOUNTS.

<< 26 USCA § 2010 >>

(a) IN GENERAL-Subsection (c) of section 2010 (relating to applicable credit amount) is amended by striking the table and inserting the following new table:

"In the case of estates of decedents The applicable dying during: exclusion amount is:

2002 and 2003 .\$1,000,000

2004 and 2005.\$1,500,000

2006, 2007, and 2008.\$2,000,000

2009.\$3,500,000."

(b) LIFETIME GIFT EXEMPTION INCREASED TO \$1,000,000.-

<< 26 USCA § 2505 >>

(1) FOR PERIODS BEFORE ESTATE TAX REPEAL-Paragraph (1) of section 2505(a) (relating to unified credit against gift tax) is amended by inserting "(determined as if the applicable exclusion amount were \$1,000,000)" after "calendar year".

<<26 USCA § 2505>>

(2) FOR PERIODS AFTER ESTATE TAX REPEAL-Paragraph (1) of section 2505(a) (relating to unified

credit against gift tax), as amended by paragraph (1), is amended to read as follows:

"(I) the amount of the tentative tax which would be determined under the rate schedule set forth in section 2502(a)(2) if the amount with respect to which such tentative tax is to be computed were \$1,000,000, reduced by".

(c) GST EXEMPTION.-

<< 26 USCA § 2631 >>

(1) IN GENERAL-Subsection (a) of 2631 (relating to GST exemption) is amended by striking "of \$1,000,000" and inserting "amount".

<< 26 USCA § 2631 >>

(2) EXEMPTION AMOUNT.-Subsection (c) of section 2631 is amended to read as follows:

"(c) GST EXEMPTION AMOUNT.-For purposes of subsection (a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under section 2010(c) for such calendar year."

<< 26 USCA § 2057 >>

(d) REPEAL OF SPECIAL BENEFIT FOR FAMILY-OWNED BUSINESS INTERESTS.-Section 2057 (relating to family-owned business interests) is amended by adding at the end the following new subsection:

"(j) TERMINATION.-This section shall not apply to the estates of decedents dying after December 31, 2003."

<< 26 USCA § 2010 NOTE >>

<< 26 USCA §§ 2057 nt, 2505 nt, 2631 nt >>

(e) EFFECTIVE DATES.-

(1) IN GENERAL-Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to estates of decedents dying, and gifts made, after December 31, 2001.

(2) SUBSECTION (b)(2)-The amendments made by subsection (b)(2) shall apply to gifts made after December 31, 2009.

(3) SUBSECTIONS (c) AND (d)-The amendments made by subsections (c) and (d) shall apply to estates of decedents dying, and generation-skipping transfers, after December 31, 2003.

Subtitle D-Credit for State Death Taxes

SEC. 531. REDUCTION OF CREDIT FOR STATE DEATH TAXES.

(a) IN GENERAL-Section 2011 (b) (relating to amount of credit) is amended

<< 26 USCA § 2011 >>

(1) by striking "CREDIT.-The credit allowed" and inserting "CREDIT.-

"(1) IN GENERAL-Except as provided in paragraph (2), the credit allowed",

<< 26 USCA § 2011>>

(2) by striking "For purposes" and inserting the following:

"(3) ADJUSTED TAXABLE ESTATE.-For purposes", and

<< 26 USCA § 2011 >>

(3) by inserting after paragraph (1) the following new paragraph:

"(2) REDUCTION OF MAXIMUM CREDIT.-

"(A) IN GENERAL-In the case of estates of decedents dying after December 31, 2001, the credit allowed by this section shall not exceed the applicable percentage of the credit otherwise determined under paragraph (1).

"(B) APPLICABLE PERCENTAGE.-

"In the case of estates of decedents The applicable dying during: percentage is:

2002.75 percent

2003.50 percent

2004.25 percent."

<< 26 USCA § 2011 NOTE>>

(b) EFFECTIVE DATE.-The amendments made by this subsection shall apply to estates of decedents dying after December 31, 2001.

SEC. 532. CREDIT FOR STATE DEATH TAXES REPLACED WITH DEDUCTION FOR SUCH TAXES.

<< 26 USCA § 2011 >>

(a) REPEAL OF CREDIT-Section 2011 (relating to credit for State death taxes) is amended by adding at the end the following new subsection:

"(g) TERMINATION.-This section shall not apply to the estates of decedents dying after December 31, 2004."

<< 26 USCA § 2058 >>

(b) DEDUCTION FOR STATE DEATH TAXES.-Part IV of subchapter A of chapter 11 is amended by adding at the end the following new section:

"SEC. 2058. STATE DEATH TAXES.

"(a) ALLOWANCE OF DEDUCTION.-For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent).

"(b) PERIOD OF LIMITATIONS.-The deduction allowed by this section shall include only such taxes as were actually paid and deduction therefor claimed before the later of-

"(1) 4 years after the filing of the return required by section 6018, or

"(2) if-

"(A) a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213(a), the expiration of 60 days after the decision of the Tax Court becomes final,

"(B) an extension of time has been granted under section 6161 or 6166 for payment of the tax shown on the return, or of a deficiency, the date of the expiration of the period of the extension, or

"(C) a claim for refund or credit of an overpayment of tax imposed by this chapter has been filed within the time prescribed in section 6511, the latest of the expiration of-

"(i) 60 days from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of any part of such claim,

"(ii) 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon such claim, or

"(iii) 2 years after a notice of the waiver of disallowance is filed under section 6532(a)(3).

Notwithstanding sections 6511 and 6512, refund based on the deduction may be made if the claim for refund is filed within the period provided in the preceding sentence. Any such refund shall be made without interest."

(c) CONFORMING AMENDMENTS.-

<< 26 USCA § 2012 >>

(1) Subsection (a) of section 2012 is amended by striking "the credit for State death taxes provided by section 2011 and".

<< 26 USCA § 2013 >>

(2) Subparagraph (A) of section 2013(c)(1) is amended by striking "2011,".

<< 26 USCA § 2014 >>

(3) Paragraph (2) of section 2014(b) is amended by striking", 2011,".

<< 26 USCA § 2015 >>

<< 26 USCA § 2016 >>

(4) Sections 2015 and 2016 are each amended by striking "2011 or".

<< 26 USCA § 2053 >>

(5) Subsection (d) of section 2053 is amended to read as follows:

"(d) CERTAIN FOREIGN DEATH TAXES.-

"(1) IN GENERAL.-Notwithstanding the provisions of subsection (c)(1)(B), for purposes of the tax imposed by section 2001, the value of the taxable estate may be determined, if the executor so elects before the expiration of the period of limitation for assessment provided in section 6501, by deducting from the value of the gross estate the amount (as determined in accordance with regulations prescribed by the Secretary) of any estate, succession, legacy, or inheritance tax imposed by and actually paid to any foreign country, in respect of any property situated within such foreign country and included in the gross estate of a citizen or resident of the United States, upon a transfer by the decedent for public, charitable, or religious uses described in section 2055. The determination under this paragraph of the country within which property is situated shall be made in accordance with the rules applicable under subchapter B (sec. 2101 and following) in determining whether property is situated within or without the United States. Any election under this paragraph shall be exercised in accordance with regulations prescribed by the Secretary.

"(2) CONDITION FOR ALLOWANCE OF DEDUCTION.-No deduction shall be allowed under paragraph (1) for a foreign death tax specified therein unless the decrease in the tax imposed by section 2001 which results from the deduction provided in paragraph (1) will inure solely for the benefit of the public, charitable, or religious transferees described in section 2055 or section 2106(a)(2). In any case where the tax imposed by section 2001 is equitably apportioned among all the transferees of property included in the gross estate, including those described in sections 2055 and

2106(a)(2) (taking into account any exemptions, credits, or deductions allowed by this chapter), in determining such decrease, there shall be disregarded any decrease in the Federal estate tax which any transferees other than those described in sections 2055 and 2106(a)(2) are required to pay.

"(3) EFFECT ON CREDIT FOR FOREIGN DEATH TAXES OF DEDUCTION UNDER THIS SUBSECTION.-

"(A) ELECTION.-An election under this subsection shall be deemed a waiver of the right to claim a credit, against the Federal estate tax, under a death tax convention with any foreign country for any tax or portion thereof in respect of which a deduction is taken under this subsection.

"(B) CROSS REFERENCE.-

"See section 2014(f) for the effect of a deduction taken under this paragraph on the credit for foreign death taxes."

<< 26 USCA § 2056A >>

(6) Subparagraph (A) of section 2056A(b)(10) is amended-

(A) by striking "2011," and

(B) by inserting "2058," after "2056,".

<< 26 USCA § 2102>>

(7)(A) Subsection (a) of section 2102 is amended to read as follows:

"(a) IN GENERAL.-The tax imposed by section 2101 shall be credited with the amounts determined in accordance with sections 2012 and 2013 (relating to gift tax and tax on prior transfers)."

<< 26 USCA § 2102 >>

(B) Section 2102 is amended by striking subsection (b) and by redesignating subsection (c) as subsection (b).

<< 26 USCA § 2102>>

<< 26 USCA § 2107 >>

(C) Section 2102(b)(5) (as redesignated by subparagraph (B)) and section 2107(c)(3) are each amended by striking "2011 to 2013, inclusive," and inserting "2012 and 2013".

<< 26 USCA § 2106 >>

(8) Subsection (a) of section 2106 is amended by adding at the end the following new paragraph:

"(4) STATE DEATH TAXES.-The amount which bears the same ratio to the State death taxes as the value of the property, as determined for purposes of this chapter, upon which State death taxes were paid and which is included in the gross estate under section 2103 bears to the value of the total gross estate under section 2103. For purposes of this paragraph, the term 'State death taxes' means the taxes described in section 2011(a).".

<< 26 USCA § 2201 >>

(9) Section 2201 is amended-

(A) by striking "as defined in section 2011(d)", and

(B) by adding at the end the following new flush sentence:

"For purposes of this section, the additional estate tax is the difference between the tax imposed by section 2001 or 2101 and the amount equal to 125 percent of the maximum credit provided by section 2011(b), as in effect before its repeal by the Economic Growth and Tax Relief Reconciliation Act of 2001.".

<< 26 USCA § 2604 >>

(10) Section 2604 (relating to credit for certain State taxes) is amended by adding at the end the following new subsection:

"(c) TERMINATION.-This section shall not apply to the generation-skipping transfers after December 31, 2004."

<< 26 USCA § 6511>>

(11) Paragraph (2) of section 6511 (i) is amended by striking "2011 (c), 2014(b)," and inserting "2014(b)".

<< 26 USCA § 6612>>

(12) Subsection (c) of section 6612 is amended by striking "section 2011 (c) (relating to refunds due to credit for State taxes),".

<< 26 USCA prec. § 2010 >>

(13) The table of sections for part II of subchapter A of chapter 11 is amended by striking the item relating to section 2011.

<< 26 USCA prec. § 2051 >>

(14) The table of sections for part IV of subchapter A of chapter 11 is amended by adding at the end the following new item:

"Sec. 2058. State death taxes."

<< 26 USCA prec. § 2601 >>

(15) The table of sections for subchapter A of chapter 13 is amended by striking the item relating to section 2604.

<< 26 USCA § 2011 NOTE>>

<< 26 USCA §§ 2012 nt, 2013 nt, 2014 nt, 2015 nt,
2016 nt, 2053 nt, 2056A nt, 2102 nt, 2106 nt, 2107
nt, 2201 nt, 2604 nt, 6511 nt, 6612 nt >>

(d) EFFECTIVE DATE.-The amendments made by this section shall apply to estates of decedents dying, and generation-skipping transfers, after December 31, 2004.

Subtitle E-Carryover Basis at Death; Other Changes
Taking Effect With Repeal

<< 26 USCA § 1014 >>

SEC. 541. TERMINATION OF STEP-UP IN BASIS
AT DEATH.

Section 1014 (relating to basis of property acquired from a decedent) is amended by adding at the end the following new subsection:

"(f) TERMINATION.-This section shall not apply with respect to decedents dying after December 31, 2009."

SEC. 542. TREATMENT OF PROPERTY
ACQUIRED FROM A DECEDENT DYING AFTER
DECEMBER 31, 2009.

(a) GENERAL RULE.-Part II of subchapter O of chapter 1 (relating to basis rules of general application) is amended by inserting after section 1021 the following new section:

<< 26 USCA § 1022 >>

"SEC. 1022. TREATMENT OF PROPERTY
ACQUIRED FROM A DECEDENT DYING AFTER
DECEMBER 31, 2009.

"(a) IN GENERAL-Except as otherwise provided in this section-

"(1) property acquired from a decedent dying after December 31, 2009, shall be treated for purposes of this subtitle as transferred by gift, and

"(2) the basis of the person acquiring property from such a decedent shall be the lesser of"

(A) the adjusted basis of the decedent, or

"(B) the fair market value of the property at the date of the decedent's death.

"(b) BASIS INCREASE FOR CERTAIN PROPERTY.-

"(1) IN GENERAL-In the case of property to which this subsection applies, the basis of such property under subsection

(a) shall be increased by its basis increase under this subsection.

"(2) BASIS INCREASE.-For purposes of this subsection-

"(A) IN GENERAL-The basis increase under this subsection for any property is the portion of the aggregate basis increase which is allocated to the property pursuant to this section.

"(B) AGGREGATE BASIS INCREASE.-In the case of any estate, the aggregate basis increase under this subsection is \$1,300,000.

"(C) LIMIT INCREASED BY UNUSED BUILT-IN LOSSES AND LOSS CARRYOVERS.-The limitation under subparagraph (B) shall be increased by-

"(i) the sum of the amount of any capital loss carryover under section 1212(b), and the amount of any net operating loss carryover under section 172, which would (but for the decedent's death) be carried from the decedent's last taxable year to a later taxable year of the decedent, plus

"(ii) the sum of the amount of any losses that would have been allowable under section 165 if the

property acquired from the decedent had been sold at fair market value immediately before the decedent's death.

"(3) DECEDENT NONRESIDENTS WHO ARE NOT CITIZENS OF THE UNITED STATES.-In the case of a decedent nonresident not a citizen of the United States-

"(A) paragraph (2)(B) shall be applied by substituting '\$60,000' for '\$1,300,000', and

"(B) paragraph (2)(C) shall not apply.

"(c) ADDITIONAL BASIS INCREASE FOR PROPERTY ACQUIRED BY SURVIVING SPOUSE.-

"(1) IN GENERAL-In the case of property to which this subsection applies and which is qualified spousal property, the basis of such property under subsection (a) (as increased under subsection (b)) shall be increased by its spousal property basis increase.

"(2) SPOUSAL PROPERTY BASIS INCREASE.-For purposes of this subsection-

"(A) IN GENERAL-The spousal property basis increase for property referred to in paragraph (1) is the portion of the aggregate spousal property basis increase which is allocated to the property pursuant to this section.

"(B) AGGREGATE SPOUSAL PROPERTY BASIS INCREASE.-In the case of any estate, the aggregate spousal property basis increase is \$3,000,000.

"(3) QUALIFIED SPOUSAL PROPERTY-For purposes of this subsection, the term 'qualified spousal property' means

"(A) outright transfer property, and

"(B) qualified terminable interest property.

"(4) OUTRIGHT TRANSFER PROPERTY-For purposes of this subsection-

"(A) IN GENERAL-The term 'outright transfer property' means any interest in property acquired from the decedent by the decedent's surviving spouse.

"(B) EXCEPTION.-Subparagraph (A) shall not apply where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail-

"(i)(I) if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse), and

"(II) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse, or

"(ii) if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.

For purposes of this subparagraph, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.

"(C) INTEREST OF SPOUSE CONDITIONAL ON SURVIVAL FOR LIMITED PERIOD.-For purposes

of this paragraph, an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail on the death of such spouse if-

"(i) such death will cause a termination or failure of such interest only if it occurs within a period not exceeding 6 months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such event, and

"(ii) such termination or failure does not in fact occur.

"(5) QUALIFIED TERMINABLE INTEREST PROPERTY-For purposes of this subsection

"(A) IN GENERAL-The term 'qualified terminable interest property' means property-

"(i) which passes from the decedent, and

"(ii) in which the surviving spouse has a qualifying income interest for life.

"(B) QUALIFYING INCOME INTEREST FOR LIFE.-The surviving spouse has a qualifying income interest for life if"

(i) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and

"(ii) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Clause (ii) shall not apply to a power exercisable only at or after the death of the surviving spouse. To

the extent provided in regulations, an annuity shall be treated in a manner similar to an income interest in property (regardless of whether the property from which the annuity is payable can be separately identified).

"(C) PROPERTY INCLUDES INTEREST THEREIN.-The term 'property' includes an interest in property.

"(D) SPECIFIC PORTION TREATED AS SEPARATE PROPERTY.-A specific portion of property shall be treated as separate property. For purposes of the preceding sentence, the term 'specific portion' only includes a portion determined on a fractional or percentage basis.

"(d) DEFINITIONS AND SPECIAL RULES FOR APPLICATION OF SUBSECTIONS (b) AND (c)."

(1) PROPERTY TO WHICH SUBSECTIONS (b) AND (c) APPLY.-

"(A) IN GENERAL-The basis of property acquired from a decedent may be increased under subsection (b) or (c) only if the property was owned by the decedent at the time of death.

"(B) RULES RELATING TO OWNERSHIP.-

"(i) JOINTLY HELD PROPERTY.-In the case of property which was owned by the decedent and another person as joint tenants with right of survivorship or tenants by the entirety-

"(I) if the only such other person is the surviving spouse, the decedent shall be treated as the owner of only 50 percent of the property,

"(II) in any case (to which subclause (I) does not apply) in which the decedent furnished consideration for the acquisition of the property, the decedent shall

be treated as the owner to the extent of the portion of the property which is proportionate to such consideration, and

"(III) in any case (to which subclause (I) does not apply) in which the property has been acquired by gift, bequest, devise, or inheritance by the decedent and any other person as joint tenants with right of survivorship and their interests are not otherwise specified or fixed by law, the decedent shall be treated as the owner to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants with right of survivorship.

"(ii) REVOCABLE TRUSTS.-The decedent shall be treated as owning property transferred by the decedent during life to a qualified revocable trust (as defined in section 645(6)(1)).

"(iii) POWERS OF APPOINTMENT-The decedent shall not be treated as owning any property by reason of holding a power of appointment with respect to such property.

"(iv) COMMUNITY PROPERTY.-Property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State or possession of the United States or any foreign country shall be treated for purposes of this section as owned by, and acquired from, the decedent if at least one-half of the whole of the community interest in such property is treated as owned by, and acquired from, the decedent without regard to this clause.

"(C) PROPERTY ACQUIRED BY DECEDENT BY GIFT WITHIN 3 YEARS OF DEATH.-

"(i) IN GENERAL-Subsections (b) and (c) shall not apply to property acquired by the decedent by gift or by inter vivos transfer for less than adequate and full consideration in money or money's worth during the 3-year period ending on the date of the decedent's death.

"(ii) EXCEPTION FOR CERTAIN GIFTS FROM SPOUSE.-Clause (i) shall not apply to property acquired by the decedent from the decedent's spouse unless, during such 3-year period, such spouse acquired the property in whole or in part by gift or by inter vivos transfer for less than adequate and full consideration in money or money's worth.

"(D) STOCK OF CERTAIN ENTITIES.-Subsections (b) and (c) shall not apply to-

"(i) stock or securities of a foreign personal holding company,

"(ii) stock of a DISC or former DISC,

"(iii) stock of a foreign investment company, or

"(iv) stock of a passive foreign investment company unless such company is a qualified electing fund (as defined in section 1295) with respect to the decedent.

"(2) FAIR MARKET VALUE LIMITATION.-The adjustments under subsections (b) and (c) shall not increase the basis of any interest in property acquired from the decedent above its fair market value in the hands of the decedent as of the date of the decedent's death.

"(3) ALLOCATION RULES.-

"(A) IN GENERAL-The executor shall allocate the adjustments under subsections (b) and (c) on the return required by section 6018.

"(B) CHANGES IN ALLOCATION.-Any allocation made pursuant to subparagraph (A) may be changed only as provided by the Secretary.

"(4) INFLATION ADJUSTMENT OF BASIS ADJUSTMENT AMOUNTS.-

"(A) IN GENERAL-In the case of decedents dying in a calendar year after 2010, the \$1,300,000, \$60,000, and \$3,000,000 dollar amounts in subsections (b) and (c)(2)(B) shall each be increased by an amount equal to the product of-

"(i) such dollar amount, and

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting '2009' for '1992' in subparagraph (B) thereof.

"(B) ROUNDING.-If any increase determined under subparagraph (A) is not a multiple of"

(i) \$100,000 in the case of the \$1,300,000 amount,

"(ii) \$5,000 in the case of the \$60,000 amount, and

"(iii) \$250,000 in the case of the \$3,000,000 amount, such increase shall be rounded to the next lowest multiple thereof.

"(e) PROPERTY ACQUIRED FROM THE DECEDENT-For purposes of this section, the following property shall be considered to have been acquired from the decedent:

"(1) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent.

"(2) Property transferred by the decedent during his lifetime-

"(A) to a qualified revocable trust (as defined in section 645(b)(1)), or

"(B) to any other trust with respect to which the decedent reserved the right to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust.

"(3) Any other property passing from the decedent by reason of death to the extent that such property passed without consideration.

"(f) COORDINATION WITH SECTION 691.-This section shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 691.

"(g) CERTAIN LIABILITIES DISREGARDED.-

"(1) IN GENERAL-In determining whether gain is recognized on the acquisition of property-

"(A) from a decedent by a decedent's estate or any beneficiary other than a tax-exempt beneficiary, and

"(B) from the decedent's estate by any beneficiary other than a tax-exempt beneficiary, and in determining the adjusted basis of such property, liabilities in excess of basis shall be disregarded.

"(2) TAX-EXEMPT BENEFICIARY-For purposes of paragraph (1), the term 'tax-exempt beneficiary' means-

"(A) the United States, any State or political subdivision thereof, any possession of the United States, any Indian tribal government (within the meaning of section 7871), or any agency or instrumentality of any of the foregoing,

"(B) an organization (other than a cooperative described in section 521) which is exempt from tax imposed by chapter 1,

"(C) any foreign person or entity (within the meaning of section 1 68(h)(2)), and

"(D) to the extent provided in regulations, any person to whom property is transferred for the principal purpose of tax avoidance.

"(h) REGULATIONS.-The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(b) INFORMATION RETURNS, ETC.-

(1) LARGE TRANSFERS AT DEATH.-So much of subpart C of part II of subchapter A of chapter 61 as precedes section 6019 is amended to read as follows:

<< 26 USCA prec. * 6018 >>

"Subpart C-Returns Relating to Transfers

During Life or at Death

"Sec. 6018. Returns relating to large transfers at death.

"Sec. 6019. Gift tax returns.

<< 26 USCA § 6018 >>

"SEC. 6018. RETURNS RELATING TO LARGE TRANSFERS AT DEATH.

"(a) IN GENERAL-If this section applies to property acquired from a decedent, the executor of the estate of such decedent shall make a return containing the information specified in subsection (c) with respect to such property.

"(b) PROPERTY TO WHICH SECTION APPLIES.-

"(1) LARGE TRANSFERS.-This section shall apply to all property (other than cash) acquired from a decedent if the fair market value of such property acquired from the decedent exceeds the dollar amount applicable under section 1022(b)(2)(B) (without regard to section 1022(6)(2)(C)).

"(2) TRANSFERS OF CERTAIN GIFTS RECEIVED BY DECEDENT WITHIN 3 YEARS OF DEATH.-This section shall apply to any appreciated property acquired from the decedent if-

"(A) subsections (b) and (c) of section 1022 do not apply to such property by reason of section 1022(d)(1)(C), and

"(B) such property was required to be included on a return required to be filed under section 6019.

"(3) NONRESIDENTS NOT CITIZENS OF THE UNITED STATES.-In the case of a decedent who is a nonresident not a citizen of the United States, paragraphs (1) and (2) shall be applied-

"(A) by taking into account only-

"(i) tangible property situated in the United States, and

"(ii) other property acquired from the decedent by a United States person, and

"(B) by substituting the dollar amount applicable under section 1022(6)(3) for the dollar amount referred to in paragraph (1).

"(4) RETURNS BY TRUSTEES OR BENEFICIARIES.-If the executor is unable to make a complete return as to any property acquired from or passing from the decedent, the executor shall

include in the return a description of such property and the name of every person holding a legal or beneficial interest therein. Upon notice from the Secretary, such person shall in like manner make a return as to such property.

"(c) INFORMATION REQUIRED TO BE FURNISHED.-The information specified in this subsection with respect to any property acquired from the decedent is-

"(1) the name and TIN of the recipient of such property,

"(2) an accurate description of such property,

"(3) the adjusted basis of such property in the hands of the decedent and its fair market value at the time of death,

"(4) the decedent's holding period for such property,

"(5) sufficient information to determine whether any gain on the sale of the property would be treated as ordinary income,

"(6) the amount of basis increase allocated to the property under subsection (b) or (c) of section 1022, and

"(7) such other information as the Secretary may by regulations prescribe.

"(d) PROPERTY ACQUIRED FROM DECEDENT.-For purposes of this section, section 1022 shall apply for purposes of determining the property acquired from a decedent.

"(e) STATEMENTS TO BE FURNISHED TO CERTAIN PERSONS.-Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth

in such return (other than the person required to make such return) a written statement showing-

"(1) the name, address, and phone number of the person required to make such return, and

"(2) the information specified in subsection (c) with respect to property acquired from, or passing from, the decedent to the person required to receive such statement.

The written statement required under the preceding sentence shall be furnished not later than 30 days after the date that the return required by subsection (a) is filed."

(2) GIFTS.-Section 6019 (relating to gift tax returns) is amended-

<< 26 USCA § 6019 >>

(A) by striking "Any individual" and inserting "(a) IN GENERAL-Any individual", and

<< 26 USCA § 6019 >>

(B) by adding at the end the following new subsection:

"(b) STATEMENTS TO BE FURNISHED TO CERTAIN PERSONS.-Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return (other than the person required to make such return) a written statement showing-

"(1) the name, address, and phone number of the person required to make such return, and

"(2) the information specified in such return with respect to property received by the person required to receive such statement.

The written statement required under the preceding sentence shall be furnished not later than 30 days after the date that the return required by subsection (a) is filed."

(3) TIME FOR FILING SECTION 6018 RETURNS.-

<< 26 USCA § 6075 >>

(A) RETURNS RELATING TO LARGE TRANSFERS AT DEATH.-Subsection (a) of section 6075 is amended to read as follows:

"(a) RETURNS RELATING TO LARGE TRANSFERS AT DEATH.-The return required by section 6018 with respect to a decedent shall be filed with the return of the tax imposed by chapter I for the decedent's last taxable year or such later date specified in regulations prescribed by the Secretary."

<< 26 USCA § 6075 >>

(B) CONFORMING AMENDMENTS.-Paragraph (3) of section 6075(b) is amended-

(i) by striking "ESTATE TAX RETURN" in the heading and inserting "SECTION 6018 RETURN", and

(ii) by striking "(relating to estate tax returns)" and inserting "(relating to returns relating to large transfers at death)".

(4) PENALTIES.-Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

<< 26 USCA § 6716 >>

"SEC. 6716. FAILURE TO FILE INFORMATION WITH RESPECT TO CERTAIN TRANSFERS AT DEATH AND GIFTS.

"(a) INFORMATION REQUIRED TO BE FURNISHED TO THE SECRETARY.-Any person required to furnish any information under section 6018 who fails to furnish such information on the date prescribed therefor (determined with regard to any extension of time for filing) shall pay a penalty of \$10,000 (\$500 in the case of information required to be furnished under section 6018(b)(2)) for each such failure.

"(b) INFORMATION REQUIRED TO BE FURNISHED TO BENEFICIARIES.-Any person required to furnish in writing to each person described in section 6018(e) or 6019(b) the information required under such section who fails to furnish such information shall pay a penalty of \$50 for each such failure.

"(c) REASONABLE CAUSE EXCEPTION.-No penalty shall be imposed under subsection (a) or (b) with respect to any failure if it is shown that such failure is due to reasonable cause.

"(d) INTENTIONAL DISREGARD.-If any failure under subsection (a) or (b) is due to intentional disregard of the requirements under sections 6018 and 6019(b), the penalty under such subsection shall be 5 percent of the fair market value (as of the date of death or, in the case of section 6019(b), the date of the gift) of the property with respect to which the information is required.

"(e) DEFICIENCY PROCEDURES NOT TO APPLY.-Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and

certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by this section."

(5) CLERICAL AMENDMENTS.-

<< 26 USCA prec. § 6671>>

(A) The table of sections for part I of subchapter B of chapter 68 is amended by adding at the end the following new item:

"Sec. 6716. Failure to file information with respect to certain transfers at death and gifts."

<< 26 USCA prec. § 6011 >>

(B) The item relating to subpart C in the table of subparts for part II of subchapter A of chapter 61 is amended to read as follows:

"Subpart C. Returns relating to transfers during life or at death."

<< 26 USCA § 121 >>

(c) EXCLUSION OF GAIN ON SALE OF PRINCIPAL RESIDENCE MADE AVAILABLE TO HEIR OF DECEDENT IN CERTAIN CASES.- Subsection (d) of section 121 (relating to exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

"(9) PROPERTY ACQUIRED FROM A DECEDENT.-The exclusion under this section shall apply to property sold by

"(A) the estate of a decedent,

"(B) any individual who acquired such property from the decedent (within the meaning of section 1022), and

"(C) a trust which, immediately before the death of the decedent, was a qualified revocable trust (as defined in section 645(b)(1)) established by the decedent, determined by taking into account the ownership and use by the decedent."

(d) TRANSFERS OF APPRECIATED CARRYOVER BASIS PROPERTY TO SATISFY PECUNIARY BEQUEST.

(1) IN GENERAL-Section 1040 (relating to transfer of certain farm, etc., real property) is amended to read as follows:

<< 26 USCA § 1040 >>

"SEC. 1040. USE OF APPRECIATED CARRYOVER BASIS PROPERTY TO SATISFY PECUNIARY BEQUEST.

"(a) IN GENERAL-If the executor of the estate of any decedent satisfies the right of any person to receive a pecuniary bequest with appreciated property, then gain on such exchange shall be recognized to the estate only to the extent that, on the date of such exchange, the fair market value of such property exceeds such value on the date of death.

"(b) SIMILAR RULE FOR CERTAIN TRUSTS.-To the extent provided in regulations prescribed by the Secretary, a rule similar to the rule provided in subsection (a) shall apply where-

"(1) by reason of the death of the decedent, a person has a right to receive from a trust a specific dollar amount which is the equivalent of a pecuniary bequest, and

"(2) the trustee of a trust satisfies such right with property.

"(c) BASIS OF PROPERTY ACQUIRED IN EXCHANGE DESCRIBED IN SUBSECTION (a) OR (b).-The basis of property acquired in an exchange with respect to which gain realized is not recognized by reason of subsection (a) or (b) shall be the basis of such property immediately before the exchange increased by the amount of the gain recognized to the estate or trust on the exchange."

<< 26 USCA prec. § 1031 >>

(2) The item relating to section 1040 in the table of sections for part III of subchapter O of chapter 1 is amended to read as follows:

"Sec. 1040. Use of appreciated carryover basis property to satisfy pecuniary bequest."

(e) AMENDMENTS RELATED TO CARRYOVER BASIS.-

(1) RECOGNITION OF GAIN ON TRANSFERS TO NONRESIDENTS.-

<< 26 USCA § 684 >>

(A) Subsection (a) of section 684 is amended by inserting "or to a nonresident alien" after "or trust".

<< 26 USCA § 684 >>

(B) Subsection (b) of section 684 is amended to read as follows :

"(b) EXCEPTIONS.-

"(1) TRANSFERS TO CERTAIN TRUSTS.- Subsection (a) shall not apply to a transfer to a trust by a United States person to the extent that any United States person is treated as the owner of such trust under section 671.

"(2) LIFETIME TRANSFERS TO NONRESIDENT ALIENS.-Subsection (a) shall not apply to a lifetime transfer to a nonresident alien."

<< 26 USCA § 684 >>

(C) The section heading for section 684 is amended by inserting "and nonresident aliens" after "estates".

<< 26 USCA prec. § 681 >>

(D) The item relating to section 684 in the table of sections for subpart F of part I of subchapter J of chapter 1 is amended by inserting "and nonresident aliens" after "estates".

(2) CAPITAL GAIN TREATMENT FOR INHERITED ART WORK OR SIMILAR PROPERTY.-

<< 26 USCA § 1221 >>

(A) IN GENERAL-Subparagraph (C) of section 1221(a)(3) (defining capital asset) is amended by inserting "(other than by reason of section 1022)" after "is determined".

<< 26 USCA § 170>>

(B) COORDINATION WITH SECTION 170.- Paragraph (1) of section 170(e) (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end the following: "For purposes of this paragraph, the determination of whether property is a capital asset shall be made without regard to the exception contained in section 1221 (a)(3)(C) for basis determined under section 1022."

<< 26 USCA § 7701 >>

(3) DEFINITION OF EXECUTOR.-Section 7701(a) (relating to definitions) is amended by adding at the end the following:

"(47) EXECUTOR.-The term 'executor' means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent."

<< 26 USCA § 4947 >>

(4) CERTAIN TRUSTS.-Subparagraph (A) of section 4947 (a)(2) is amended by inserting "642(c), " after "170(f)(2)(B)".

(5) OTHER AMENDMENTS.-

<< 26 USCA § 1246 >>

(A) Section 1246 is amended by striking subsection (e).

<< 26 USCA § 1291 >>

(B) Subsection (e) of section 1291 is amended-

(i) by striking "(e),"; and

(ii) by striking"; except that" and all that follows and inserting a period.

<< 26 USCA § 1296 >>

(C) Section 1296 is amended by striking sub-section (i).

<< 26 USCA prec. § 1011 >>

(6) CLERICAL AMENDMENT-The table of sections for part II of subchapter O of chapter I is amended by inserting after the item relating to section 1021 the following new item:

"Sec. 1022. Treatment of property acquired from a decedent dying after December 31, 2009."

<< 26 USCA § 121 NOTE >>

<< 26 USCA §§ 170 nt, 684 nt, 1014 nt, 1022 nt, 1040 nt, 1221 nt, 1246 nt, 1291 nt, 1296 nt, 4947 nt, 6018 nt, 6019 nt, 6075 nt, 7701 nt >> << 26 USCA § 6716 nt >>

(f) EFFECTIVE DATE.-

(1) IN GENERAL-Except as provided in paragraph (2), the amendments made by this section shall apply to estates of decedents dying after December 31, 2009.

(2) TRANSFERS TO NONRESIDENTS.-The amendments made by subsection (e)(1) shall apply to transfers after December 31, 2009.

(3) SECTION 4947.-The amendment made by subsection (e)(4) shall apply to deductions for taxable years beginning after December 31, 2009.

Subtitle F-Conservation Easements

SEC. 551. EXPANSION OF ESTATE TAX RULE FOR CONSERVATION EASEMENTS.

<< 26 USCA § 2031 >>

(a) REPEAL OF CERTAIN RESTRICTIONS ON WHERE LAND IS LOCATED.-Clause (i) of section 2031(c)(8)(A) (defining land subject to a qualified conservation easement) is amended to read as follows:

"(i) which is located in the United States or any possession of the United States,".

<< 26 USCA § 2031 >>

(b) CLARIFICATION OF DATE FOR DETERMINING VALUE OF LAND AND EASEMENT-Section 2031(c)(2) (defining applicable percentage) is amended by adding at the end the following new sentence: "The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B).".

<< 26 USCA § 2031 NOTE>>

(c) EFFECTIVE DATE.-The amendments made by this section shall apply to estates of decedents dying after December 31, 2000.

Subtitle G-Modifications of Generation-Skipping
Transfer Tax

SEC. 561. DEEMED ALLOCATION OF GST EXEMPTION TO LIFETIME TRANSFERS TO TRUSTS; RETROACTIVE ALLOCATIONS.

<< 26 USCA § 2632 >>

(a) IN GENERAL-Section 2632 (relating to special rules for allocation of GST exemption) is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsections:

"(c) DEEMED ALLOCATION TO CERTAIN LIFETIME TRANSFERS TO GST TRUSTS.-

"(1) IN GENERAL-If any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused

portion shall be allocated to the property transferred.

"(2) UNUSED PORTION.-For purposes of paragraph (1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been-

"(A) allocated by such individual,

"(B) treated as allocated under subsection (b) with respect to a direct skip occurring during or before the calendar year in which the indirect skip is made, or

"(C) treated as allocated under paragraph (1) with respect to a prior indirect skip.

"(3) DEFINITIONS.-

"(A) INDIRECT SKIP.-For purposes of this subsection, the term 'indirect skip' means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust.

"(B) GST TRUST.-The term 'GST trust' means a trust that could have a generation-skipping transfer with respect to the transferor unless-

"(i) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons-

"(I) before the date that the individual attains age 46,

"(II) on or before one or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, or

"(III) upon the occurrence of an event that, in accordance with regulations prescribed by the

Secretary, may reasonably be expected to occur before the date that such individual attains age 46,

"(ii) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons and who are living on the date of death of another person identified in the instrument (by name or by class) who is more than 10 years older than such individuals,

"(iii) the trust instrument provides that, if one or more individuals who are non-skip persons die on or before a date or event described in clause (i) or (ii), more than 25 percent of the trust corpus either must be distributed to the estate or estates of one or more of such individuals or is subject to a general power of appointment exercisable by one or more of such individuals,

"(iv) the trust is a trust any portion of which would be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer,

"(v) the trust is a charitable lead annuity trust (within the meaning of section 2642(e)(3)(A)) or a charitable remainder annuity trust or a charitable remainder unitrust (within the meaning of section 664(d)), or

"(vi) the trust is a trust with respect to which a deduction was allowed under section 2522 for the amount of an interest in the form of the right to receive annual payments of a fixed percentage of the net fair market value of the trust property (determined yearly) and which is required to pay principal to a non-skip person if such person is alive

when the yearly payments for which the deduction was allowed terminate.

For purposes of this subparagraph, the value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in section 2503(b) with respect to any transferor, and it shall be assumed that powers of appointment held by non-skip persons will not be exercised.

"(4) AUTOMATIC ALLOCATIONS TO CERTAIN GST TRUSTS.-For purposes of this subsection, an indirect skip to which section 2642(t) applies shall be deemed to have been made only at the close of the estate tax inclusion period. The fair market value of such transfer shall be the fair market value of the trust property at the close of the estate tax inclusion period.

"(5) APPLICABILITY AND EFFECT.-

"(A) IN GENERAL-An individual-

"(i) may elect to have this subsection not apply to"

(I) an indirect skip, or

"(II) any or all transfers made by such individual to a particular trust, and

"(ii) may elect to treat any trust as a GST trust for purposes of this subsection with respect to any or all transfers made by such individual to such trust.

"(B) ELECTIONS.-

"(i) ELECTIONS WITH RESPECT TO INDIRECT SKIPS.-An election under subparagraph (A)(i)(I) shall be deemed to be timely if filed on a timely filed

gift tax return for the calendar year in which the transfer was made or deemed to have been made pursuant to paragraph (4) or on such later date or dates as may be prescribed by the Secretary.

"(ii) OTHER ELECTIONS.-An election under clause (i)(II) or (ii) of subparagraph (A) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

"(d) RETROACTIVE ALLOCATIONS.-

"(1) IN GENERAL.-If-

"(A) a non-skip person has an interest or a future interest in a trust to which any transfer has been made,

"(B) such person-

"(i) is a lineal descendant of a grandparent of the transferor or of a grandparent of the transferor's spouse or former spouse, and

"(ii) is assigned to a generation below the generation assignment of the transferor, and

"(C) such person predeceases the transferor, then the transferor may make an allocation of any of such transferor's unused GST exemption to any previous transfer or transfers to the trust on a chronological basis.

"(2) SPECIAL RULES.-If the allocation under paragraph (1) by the transferor is made on a gift tax return filed on or before the date prescribed by section 6075(b) for gifts made within the calendar year within which the non-skip person's death occurred-

"(A) the value of such transfer or transfers for purposes of section 2642(a) shall be determined as if

such allocation had been made on a timely filed gift tax return for each calendar year within which each transfer was made,

"(B) such allocation shall be effective immediately before such death, and

"(C) the amount of the transferor's unused GST exemption available to be allocated shall be determined immediately before such death.

"(3) FUTURE INTEREST.-For purposes of this subsection, a person has a future interest in a trust if the trust may permit income or corpus to be paid to such person on a date or dates in the future."

<< 26 USCA § 2632 >>

(b) CONFORMING AMENDMENT.-Paragraph (2) of section 2632(b) is amended by striking "with respect to a prior direct skip" and inserting "or subsection (c)(l)".

<< 26 USCA § 2632 NOTE>>

(c) EFFECTIVE DATES.-

(1) DEEMED ALLOCATION.-Section 2632(c) of the Internal Revenue Code of 1986 (as added by subsection (a)), and the amendment made by subsection (b), shall apply to transfers subject to chapter 11 or 12 made after December 31, 2000, and to estate tax inclusion periods ending after December 31, 2000.

(2) RETROACTIVE ALLOCATIONS.-Section 2632(d) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to deaths of non-skip persons occurring after December 31, 2000.

SEC. 562. SEVERING OF TRUSTS.

<< 26 USCA § 2642 >>

(a) IN GENERAL-Subsection (a) of section 2642 (relating to inclusion ratio) is amended by adding at the end the following new paragraph:

"(3) SEVERING OF TRUSTS.-

"(A) IN GENERAL-If a trust is severed in a qualified severance, the trusts resulting from such severance shall be treated as separate trusts thereafter for purposes of this chapter.

"(B) QUALIFIED SEVERANCE.-For purposes of subparagraph (A)-

"(i) IN GENERAL-The term 'qualified severance' means the division of a single trust and the creation (by any means available under the governing instrument or under local law) of two or more trusts if-

"(I) the single trust was divided on a fractional basis, and

"(II) the terms of the new trusts, in the aggregate, provide for the same succession of interests of beneficiaries as are provided in the original trust.

"(ii) TRUSTS WITH INCLUSION RATIO GREATER THAN ZERO.-If a trust has an inclusion ratio of greater than zero and less than 1, a severance is a qualified severance only if the single trust is divided into two trusts, one of which receives a fractional share of the total value of all trust assets equal to the applicable fraction of the single trust immediately before the severance. In such case, the trust receiving such fractional share shall have an inclusion ratio of zero and the other trust shall have an inclusion ratio of 1.

"(iii) REGULATIONS.-The term 'qualified severance' includes any other severance permitted under regulations prescribed by the Secretary.

"(C) TIMING AND MANNER OF SEVERANCES.-A severance pursuant to this paragraph may be made at any time. The Secretary shall prescribe by forms or regulations the manner in which the qualified severance shall be reported to the Secretary."

<< 26 USCA § 2642 NOTE >>

(b) EFFECTIVE DATE.-The amendment made by this section shall apply to severances after December 31, 2000.

SEC. 563. MODIFICATION OF CERTAIN VALUATION RULES.

<< 26 USCA § 2642 >>

(a) GIFTS FOR WHICH GIFT TAX RETURN FILED OR DEEMED ALLOCATION MADE.-Paragraph (1) of section 2642(b) (relating to valuation rules, etc.) is amended to read as follows:

"(I) GIFTS FOR WHICH GIFT TAX RETURN FILED OR DEEMED ALLOCATION MADE.-of the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by section 6075(b) for such transfer or is deemed to be made under section 2632 (b)(I) or (c)(I)-"(A) the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of section 2001 (f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and

"(B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period."

<< 26 USCA § 2642 >>

(b) TRANSFERS AT DEATH.-Subparagraph (A) of section 2642(b)(2) is amended to read as follows:

"(A) TRANSFERS AT DEATH.-If property is transferred as a result of the death of the transferor, the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-deaU1 changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned."

<< 26 USCA § 2642 NOTE >>

(c) EFFECTIVE DATE.-The amendments made by this section shall apply to transfers subject to chapter 11 or 12 of the Internal Revenue Code of 1986 made after December 31, 2000.

SEC. 564. RELIEF PROVISIONS.

<< 26 USCA § 2642 >>

(a) IN GENERAL-Section 2642 is amended by adding at the end the following new subsection:

"(g) RELIEF PROVISIONS.-

"(1) RELIEF FROM LATE ELECTIONS.-

"(A) IN GENERAL-The Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make-

"(i) an allocation of GST exemption described in paragraph (1) or (2) of subsection (b), and

"(ii) an election under subsection (b)(3) or (c)(5) of section 2632.

Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

"(B) BASIS FOR DETERMINATIONS.-In determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

"(2) SUBSTANTIAL COMPLIANCE.-An allocation of GST exemption under section 2632 that demonstrates an intent to have the lowest possible inclusion ratio with respect to a transfer or a trust shall be deemed to be an allocation of so much of the transferor's unused GST exemption as produces the lowest possible inclusion ratio. In determining whether there has been substantial compliance, all relevant circumstances shall be taken into account, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant."

<< 26 USCA § 2642 NOTE>>

(b) EFFECTIVE DATES.-

(1) RELIEF FROM LATE ELECTIONS.-Section 2642(g)(1) of the Internal Revenue Code of 1986 (as added by subsection

(a)) shall apply to requests pending on, or filed after, December 31, 2000.

(2) SUBSTANTIAL COMPLIANCE.-Section 2642(g)(2) of such Code (as so added) shall apply to transfers subject to chapter 11 or 12 of the Internal Revenue Code of 1986 made after December 31, 2000. No implication is intended with respect to the availability of relief from late elections or the application of a rule of substantial compliance on or before such date.

Subtitle H-Extension of Time for Payment of Estate
Tax

SEC. 571. INCREASE IN NUMBER OF
ALLOWABLE PARTNERS AND SHAREHOLDERS
IN CLOSELY HELD BUSINESSES.

<< 26 USCA § 6166 >>

(a) IN GENERAL-Paragraphs (1)(B)(ii), (1)(C)(ii), and (9)(B)(iii)(I) of section 6166(b) (relating to definitions and special rules) are each amended by striking "15" and inserting "45".

<< 26 USCA § 6166 NOTE >>

(b) EFFECTIVE DATE.-The amendments made by this section shall apply to estates of decedents dying after December 31, 2001.

SEC. 572. EXPANSION OF AVAILABILITY OF
INSTALLMENT PAYMENT FOR ESTATES WITH
INTERESTS QUALIFYING LENDING AND
FINANCE BUSINESSES.

<< 26 USCA § 6166 >>

(a) IN GENERAL-Section 6166(b) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

"(10) STOCK IN QUALIFYING LENDING AND FINANCE BUSINESS TREATED AS STOCK IN AN ACTIVE TRADE OR BUSINESS COMPANY.-

"(A) IN GENERAL-If the executor elects the benefits of this paragraph, then

"(i) STOCK IN QUALIFYING LENDING AND FINANCE BUSINESS TREATED AS STOCK IN AN ACTIVE TRADE OR BUSINESS COMPANY-For purposes of this section, any asset used in a qualifying lending and finance business shall be treated as an asset which is used in carrying on a trade or business.

"(ii) 5-YEAR DEFERRAL FOR PRINCIPAL NOT TO APPLY-The executor shall be treated as having selected under subsection (a)(3) the date prescribed by section 6151(a).

"(iii) 5 EQUAL INSTALLMENTS ALLOWED.-For purposes of applying subsection (a)(1), '5' shall be substituted for '10'.

"(B) DEFINITIONS.-For purposes of this paragraph-

"(i) QUALIFYING LENDING AND FINANCE BUSINESS.-The term 'qualifying lending and finance business' means a lending and finance business, if-

"(I) based on all the facts and circumstances immediately before the date of the decedent's death, there was substantial activity with respect to the lending and finance business, or

"(II) during at least 3 of the 5 taxable years ending before the date of the decedent's death, such business had at least 1 fulltime employee substantially all of whose services were the active management of such business, 10 full-time, nonowner employees substantially all of whose services were directly related to such business, and \$5,000,000 in gross receipts from activities described in clause (ii).

"(ii) LENDING AND FINANCE BUSINESS.-The term 'lending and finance business' means a trade or business of

"(I) making loans,

"(II) purchasing or discounting accounts receivable, notes, or installment obligations,

"(III) engaging in rental and leasing of real and tangible personal property, including entering into leases and purchasing, servicing, and disposing of leases and leased assets,

"(IV) rendering services or making facilities available in the ordinary course of a lending or finance business, and

"(V) rendering services or making facilities available in connection with activities described in subclauses (I) through (IV) carried on by the corporation rendering services or making facilities available, or another corporation which is a member of the same affiliated group (as defined in section 1504 without regard to section 1504(b)(3)).

"(iii) LIMITATION.-The term 'qualifying lending and finance business' shall not include any interest in an entity, if the stock or debt of such entity or a controlled group (as defined in section 267(t)(l)) of which such entity was a member was readily

tradable on an established securities market or secondary market (as defined by the Secretary) at any time within 3 years before the date of the decedent's death."

<< 26 USCA § 6166 NOTE>>

(b) EFFECTIVE DATE.-The amendment made by this section shall apply to estates of decedents dying after December 31, 2001.

SEC. 573. CLARIFICATION OF AVAILABILITY OF INSTALLMENT PAYMENT.

<< 26 USCA § 6166 >>

(a) IN GENERAL.-Subparagraph (B) of section 6166(b)(8) (relating to all stock must be non-readily-tradable stock) is amended to read as follows:

"(B) ALL STOCK MUST BE NON-READILY-TRADABLE STOCK.-

"(i) IN GENERAL.-No stock shall be taken into account for purposes of applying this paragraph unless it is 11011-readily tradable stock (within the meaning of paragraph (7)(8)).

"(ii) SPECIAL APPLICATION WHERE ONLY HOLDING COMPANY STOCK IS NON-READILY-TRADABLE STOCK.-If the requirements of clause (i) are not met, but all of the stock of each holding company taken into account is non-readily-tradable, then this paragraph shall apply, but subsection (a)(I) shall be applied by substituting '5' for '10'."

<< 26 USCA § 6166 NOTE>>

(b) EFFECTIVE DATE.-The amendment made by this section shall apply to estates of decedents dying after December 31, 2001.

Subtitle I-Other Provisions

« 26 USCA § 2032A NOTE »

SEC. 581. WAIVER OF STATUTE OF LIMITATION
FOR TAXES ON CERTAIN FARM VALUATIONS.

If on the date of the enactment of this Act (or at any time within I year after the date of the enactment) a refund or credit of any overpayment of tax resulting from the application of section 2032A(c)(7)(E) of the Internal Revenue Code of 1986 is barred by any law or rule of law, the refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

TITLE VI-PENSION AND INDIVIDUAL
RETIREMENT ARRANGEMENT PROVISIONS

Subtitle A-Individual Retirement Accounts

SEC. 601. MODIFICATION OF IRA
CONTRIBUTION LIMITS.

(a) INCREASE IN CONTRIBUTION LIMIT.-

« 26 USCA § 219 »

(1) IN GENERAL-Paragraph (1)(A) of section 219(b) (relating to maximum amount of deduction) is amended by striking "\$2,000" and inserting "the deductible amount".

« 26 USCA § 219 »

(2) DEDUCTIBLE AMOUNT-Section 219(b) is amended by adding at the end the following new paragraph:

"(5) DEDUCTIBLE AMOUNT-For purposes of paragraph (1)(A)-

"(A) IN GENERAL-The deductible amount shall be determined in accordance with the following table:

"For taxable years

The deductible

beginning in: amount is:

2002 through 2004.\$3,000

2005 through 2007 .\$4,000

2008 and thereafter.\$5,000.

"(B) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS 50 OR OLDER.-

"(i) IN GENERAL-In the case of an individual who has attained the age of 50 before the close of the taxable year, the

deductible amount for such taxable year shall be increased by the applicable amount.

"(ii) APPLICABLE AMOUNT-For purposes of clause (i), the applicable amount shall be the amount determined in accordance with the following table:

"For taxable years

The applicable

beginning in: amount is:

2002 through 2005.\$500

2006 and thereafter.\$1,000.

"(C) COST-OF-LIVING ADJUSTMENT.-

"(i) IN GENERAL-In the case of any taxable year beginning in a calendar year after 2008, the \$5,000 amount under subparagraph (A) shall be increased by an amount equal to-

"(1) such dollar amount, multiplied by. . .

APPENDIX 15

SURROGATE'S COURT OF THE
STATE OF NEW YORK
COUNTY OF NEW YORK

New York County
Surrogate's Court
Date: October 9, 2018

-----X

Application of Sara Jane Hogan, as Executor,
Seeking to Vacate and set aside a
Determination of the New York State
Department of Taxation and Finance
Declaring an Estate Tax Deficiency in the
Estate of

EVELYN SEIDEN,

Deceased.

-----X

DECISION and ORDER

File No.: 2014-4802/B

MELLA, S.:

This is a proceeding pursuant to New York Tax Law § 998 to vacate and set aside a Notice of Estate Tax Deficiency. The court is asked here to determine the effect of the federal estate tax repeal for the year 2010 on the New York estate tax attributable to “QTIP” trusts for surviving spouses of individuals who died in that year.

Decedent Evelyn Seiden (decedent, or wife) died in November 2014, predeceased in 2010 by her husband, Jules Seiden (husband). Decedent was the beneficiary of a trust under her husband's will that was eligible for estate tax treatment as Qualified Terminable Interest Property, known as a “QTIP”

trust. In general, a QTIP trust qualifies for the marital deduction in the estate of the first spouse to die, despite the surviving spouse's lack of control over the remainder as would otherwise be required (*compare* IRC § 2056 [b] [5], *with* IRC § 2056 [b] [7] [B]).¹ To so qualify under the federal law the first

¹ As aptly explained by the 9th Circuit federal appeals court,

“The QTIP is an exception to an exception to an exception. In general, a tax is levied on the transfer of estates. § 2001. However, the marital deduction is an exception to this rule, and any interest in property which passes to a surviving spouse is not considered part of the decedent's gross estate. § 2056(a). Life estates and other terminable interests are an exception to the marital deduction. § 2056(b)(1). Finally, the QTIP regime is an exception to the terminable interest exception to the marital deduction. A QTIP is a terminable interest in property which has certain limiting characteristics: (1) the surviving spouse receives all of the income from the property for life, distributed at least annually (a “qualifying income interest”); (2) no person can appoint any part of the property to any person other than the surviving spouse; and (3) the decedent's estate elects to treat the interest as a QTIP. § 2056(b)(7)(B). If an interest is a QTIP, the regime establishes a legal fiction: for the purposes of estate taxes, the entire property is treated as *if* it passed to the surviving spouse (and, consequently, nothing to the remainder [beneficiaries])—even though the surviving spouse actually possesses only the income interest. § 2056(b)(7)(A). Therefore, the marital deduction of § 2056(a) applies to the entire QTIP property and the property is not included in the gross estate of the decedent.

estate must make a specific election on its federal estate tax return (IRC § 2056 [b] [7] [BJ [i] [III])). A concomitant federal tax code provision, IRC § 2044, requires that trust property for which a marital deduction “was allowed” in this manner be included in the estate of the surviving spouse.

Due to the repeal of the federal estate tax for the year 2010, the estate of the husband in this case was not required to file, and did not file, a federal estate tax return.² The husband’s executor was required to file, and did file, a New York estate tax return. On the New York return the executor elected QTIP treatment in the manner authorized by the New York State Department of Taxation of Finance (Tax Department) in *its* Technical Services Bureau Memorandum TSB-M-10(1)(M), Estate Tax, March 16, 2010 (TSB Memorandum). In accordance with those instructions, she filed a “pro forma” federal return with the New York return, indicating the election by listing the QTIP property in a space on

“The underlying premise of the QTIP regime is that the surviving spouse is deemed to receive and then give the entire QTIP property, rather than just the income interest. The purpose of the QTIP regime is to treat the two spouses as a single economic unit with respect to the QTIP property while still allowing the first-to-die spouse to control the eventual disposition of the property.”

(Estate of Morgens v. C.I.R., 678 F.3d 769, 771 [9th Cir 2012].)

² The federal estate tax for 2010 was repealed by Section 501 of the Economic Growth and Tax Relief Reconciliation Act of 2001. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 gave executors the option to apply the estate tax to the estates of decedents who died in 2010 in return for certain income tax benefits, but the husband’s executor here did not exercise that option.

the federal form designated for that purpose.³ The husband's estate took a marital deduction for the trust property in calculating the New York estate tax, and the Tax Department issued a closing letter accepting the return in 2012.

The case here concerns the tax treatment of the trust in the estate of the wife, as the surviving spouse. Her executor excluded the value of the trust property on the federal estate tax return on the basis that no federal marital deduction had been claimed or "allowed" in the husband's estate, as is required to trigger inclusion in the second estate under IRC § 2044. The Internal Revenue Service issued a closing letter accepting the return as filed. The estate also excluded the trust property on decedent's New York estate tax return, taking the position that New York law defines its gross estate by reference to the federal gross estate, which clearly excludes the property. The Tax Department disagreed and assessed additional tax in the amount of \$462,546.18,⁴ all attributable to the QTIP trust. Decedent's estate seeks here to vacate the alleged deficiency. There are no disputed factual issues, and the parties have agreed that the court decide the matter on the papers submitted.

The Estate's Position

The estate argues that IRC § 2044 has no application to the wife's estate because, as stated

³ Specifically, the trust property for which the election was made and which is referred to herein as the "QTIP" property was 78.4 percent of a trust designated as "Family Trust" under the husband's will.

⁴ Including interest, the deficiency amounts to \$529,342.86. Decedent's estate has paid the deficiency to stop the running of interest.

above, no federal marital deduction was allowed in the estate of her pre-deceased husband. Since the trust property is not includible in her federal gross estate, it follows the estate maintains, that the property is not includible in her New York gross estate, which is defined solely by reference to the federal definition. As provided in New York Tax Law (TL) § 954 (a) :

“The New York gross estate of a deceased resident means his or her federal gross estate as defined in the internal revenue code (whether or not a federal estate tax return is required to be filed) . . .”⁵

The Tax Department Position

The Tax Department contends that TL § 951 as it existed in 2010 requires a different result. That statute provided, “[A]ny reference to the Internal Revenue Code means the United States Internal Revenue Code of 1986, with all amendments enacted on or before July 22, 1998 . . .” Thus, the Tax Department argues, the reference in TL § 954(a) to the internal revenue code means the internal revenue code as it existed on July 22, 1998, when a federal marital deduction was “allowed,” making IRC § 2044 operative under New York’s tax regime to require inclusion of the trust property in the second estate.

Discussion

The Tax Department analysis is incorrect. First, the relevant tax law is that which existed in

⁵ The statute includes modifications to the federal definition concerning out-of-state property, limited powers of appointment, and taxable gifts, not relevant here.

2014, when decedent died, and not in 2010, because it is the tax on the wife's estate that concerns us here. In 2014, TL § 951 (a) was rewritten to change references to the federal tax law from that in effect on July 22, 1998, to the law as in effect on January 1, 2014. The statute as amended was made applicable to estates of persons, like decedent, who died after April 1, 2014 (L 2014, ch 59, pt X, §§ 1, 11). Under the federal tax law in effect on January 1, 2014, no marital deduction was "allowed" for decedents dying in 2010.⁶

Second, even under the law as it existed prior to 2014, no federal marital deduction was "allowed" in the husband's estate. To be "allowed" as QTIP property, it is necessary that the executor make a particular election on the federal estate tax return. IRC § 2056 (b) (7) clearly states:

"(i) . . . The term 'qualified terminable interest property' means property—

. . .

"(III) to which an election under this paragraph applies.

"(v) Election

. . .

An election under this paragraph with respect to any property shall be made by the executor on the [federal estate tax return]"

⁶ As noted above, executors had the option of electing certain income tax benefits in lieu of the benefits of estate tax repeal, but no such election was made here.

See Estate of Morgens v. C.JR. (133 TC 402, 410-411 [2009], *affd* 678 F3d 769 [9th Cir 2012]) where the Tax Court stated:

“Three requirements must be met for terminable interest property to qualify as QTIP: (1) The property passes from the decedent, (2) the surviving spouse has a qualifying income interest for life in the property, and (3) *the executor of the estate of the first spouse to die makes an affirmative election to designate the property as QTIP.* Sec.2056(b)(7)(B)” (*emphasis added*).⁷

The husband’s executor did not make the required election in this case. Therefore, IRC §2044 does not apply, the QTIP property is not included in the wife’s federal gross estate, and the property is not included in the New York gross estate as defined in TL § 954(a).

The Tax Department also maintains that the TSB Memorandum referred to above is controlling and dispositive of the issue. The memorandum specifically states that if (as here) an election was made on a New York return to qualify trust property for QTIP treatment, “the value of the QTIP property for which the election was made must be included in the estate of the surviving spouse.” This memorandum, however, is merely a statement of the

⁷ *Accord Terrell v. Sullivan*, 2015 WL 2473178, *3 (Super. Ct. Conn. Jud. Dist. of New Britain, Tax and Administrative Appeals Session, Apr 29, 2015, No. CV136020308) (“Since January 1, 1982, federal law has *allowed* a marital deduction *[if an appropriate election is filed]* for certain Trusts even though the surviving spouse only has life use in the trust assets” *[emphasis added]*).

Tax Department's position and has no legal effect. The role of memoranda such as this is explained in TL § 171 [Rule Twenty-third]:

“Technical memoranda issued by the department shall advise and inform taxpayers and others of existing interpretations of laws and regulations by the department or changes to the statutory or case law of interest to the public.”

The memoranda “do not have legal force or effect, do not set precedent and are not binding” (20 NYCRR 2375.6 [c]). *See Matter of AIL Systems, Inc.*, NY St Tax Appeals Trib DTA No 819303, May 4, 2006, *available at* <https://www.dta.ny.gov/pdf/archive/Decisions/819303.dec.pdf>:

“Technical Service Bureau Memoranda are merely informational statements issued by the Division [of Taxation] to disseminate current policies and guidelines and are advisory in nature, have no legal force or effect, are not binding and do not rise to the level of promulgated rule or regulation.”

The memorandum cites IRC § 2044 and Tax Law § 954, but, as discussed above, neither of these sections supports the policy it announces. The Tax Department cannot use a TSB memorandum to override statutory provisions.

The Tax Department argues further that the “duty of consistency” doctrine prevents the wife’s estate from taking one position on its tax return when the husband’s estate had taken another. This doctrine is a form of estoppel, intended to prevent a

taxpayer from benefiting from its error or omission on a tax return, only to take a contrary position on a subsequent return after the statute of limitations has expired on the first. The flaw in this argument is twofold: the husband's estate did not make an error or omission, and the wife's estate has not taken a contrary position. Both estates followed the law in effect at the time of their decedents' respective deaths. In a related argument the Tax Department attempts to show that it "relied" to its detriment on the husband's estate return by allowing the statute of limitations to run on the claim for a marital deduction. But that claim was entirely lawful, and the Tax Department cites no authority for how it might properly have denied that deduction.

The Tax Department also argues that the New York State legislature always intended that marital deduction property be taxed in the estate of the second spouse to die. The estate correctly responds that it is entitled to rely on the plain language of the statute, without resort to speculation about what the legislature intended. As the Court of Appeals stated in *Branford House, Inc. v. Michetti* (81 NY2d 681, 686 [1993]),

"Generally, a court may not assume the existence of legislative error and change the plain language of a statute to make it conform to an alleged intent."

It is true that a court may "correct" a legislative error in certain cases, but only "if it is established unquestionably that (1) the true legislative intent is contrary to the statutory language, and (2) the mistake is due to inadvertence or clerical error" (*id.*). The Tax Department has established neither of these elements. In fact, the legislature has amended

the Tax Law in other ways to take account of the federal changes (including § 951, as discussed above, and § 955 [c]), but, in the eight years since the repeal of federal tax for the year 2010, has not acted to change the effect of the repeal on QTIP property in the circumstances of this case. The court also notes “the general rule” that “tax statutes are to be strictly construed with any doubt resolved in favor of the taxpayer” (*Compass Adjusters & Investigators v. Commissioner of Taxation & Fin. of State of NY.*, 197 AD2d 38, 42 [3d Dept 1994]; *see also Matter of Gallatin*, 188 Misc 54, 55 [Sur Ct, Orange County 1946], *affd* 273 AD 870 [2d Dept 1948], *affd* 298 NY 812 [1949] [“In construing tax statutes it has been held that the literal meaning of the words is important, for such statutes are not to be extended by implication”]).⁸

Lastly, the Tax Department posits that a decision vacating the deficiency in this case will “open the floodgates” to tax avoidance. As the estate points out, however, the legislature could still amend the Tax Law to apply to future estates. Moreover, it is not guaranteed that all or even part of any QTIP trust would be subject to New York estate tax at the death of the surviving spouse under present law. The trust property might decrease in value; it might be distributed and spent down; or the surviving spouse might change domicile to another state.

For the foregoing reasons, the petition is granted and the Notice of Deficiency is hereby

⁸ This rule of construction applies to statutes that impose tax, such as that under consideration here, and is to be distinguished from laws relating to the collection of tax, not an issue in this case (*Matter of Roosevelt Raceway, Inc. v Bedell*, 24 Misc 2d 374 [Sup Ct, Nassau County 1960], *affd* 12 AD2d 787 (2nd Dept 1961)).

vacated. This decision constitutes the order of the court.

Clerk to notify.

Dated: October 9, 2018

/s/_____

S U R R O G A T E

APPENDIX 16

FORM ET-3

MASSACHUSETTS DEPARTMENT OF REVENUE
BUREAU OF DESK AUDIT
ESTATE TAX BUREAU
200 ARLINGTON STREET, 4TH FLOOR
CHELSEA, MA 02150

**NOTICE OF INTENTION TO ASSESS
WORK PAPERS**

Examiner: Leo Haroutunian
Phone Number: 617-887-6838

DATE: 08/29/2013

NAME OF DECEDENT
Adelaide P Chuckrow

DATE OF DEATH
08/14/2011

ESTATE DEFICIENCY
(OVERASSESSMENT) \$
\$1,809,141.88

In accordance with the provisions of General laws, Chapter 62C, section 26(b), you are hereby notified of the intention of the Commissioner of revenue to assess, at the expiration of thirty (30) days from the date of this notice the above named tax in the amount, and for the reason(s) shown on the attached pages.

During this thirty-day period you, or your representative with a properly executed Power of Attorney (Form M-2848), will be given an opportunity to confer as to the proposed assessment(s). If you wish to request a conference, so

indicate by checking the box below and mailing this notice to the address shown above. You may also attach and submit a statement in support of your position if you request a conference.

If you wish to pay within the thirty-day period, payments should be mailed with one copy of the Form Estate Tax-3 to the Department of Revenue, Estate Tax Unit, 200 Arlington Street, 4th Floor, Chelsea, MA 02150. If payment is not received, a formal bill will be issued with additional interest and penalties where applicable.

Massachusetts now has a Taxpayer Bill of rights. For more information about your individual rights as a Taxpayer, you can request a copy of "Taxpayers Guide to the Department of Revenue," by calling (617) 887-6367 or by writing the Customer Service Bureau, P.O. Box 7010, Boston, MA 02204.

REQUEST FOR A CONFERENCE

As provided by the Massachusetts General Laws, Chapter 62C, section 26(b), you are hereby notified of the proposed tax deficiency/overassessment on the above estate. You may request a conference on this determination within 30 days from the date of this notice before assessment is made.

CONFERENCE REQUEST CONFERENCE NOT REQUESTED

COMMONWEALTH OF MASSACHUSETTS
EXPLANATION OF CHANGES TO ESTATE

Estate of Adelaide P Chuckrow

Social Security Number
xxx-xx-7341

Date of Death
08/14/2011

	Reported	Corrected
Schedule F		
Items 1-126		
Robert Chuckrow		
QTIP Trust	\$ - 0 -	\$13,477.559
Increase	\$13,224,800	

The decedent was the beneficiary of trust assets held in the Robert Chuckrow QTIP Trust. The trust assets were included in the decedent's pre-deceased spouse's estate as a marital deduction under section 2056. The QTIP assets were included in the second-to-die spouse's federal estate tax return per section 2044. The Massachusetts estate tax is equal to the state death tax credit allowed by section 2011 of the IRC in effect on December 31, 2000. Having Massachusetts domicile, the assets are includable on line 1 of the 706 (7/99) for the purposes of determining the state death tax credit. IRC section 2031.

Commonwealth of Massachusetts - Department of Revenue
Adjustments to Taxable Estate

Page 2

Estate of
Adelaide P
Chuckrow

Social Security Number
xxx-xx-7341

Date of Death
08/14/2011

GROSS ESTATE ON RETURN:	\$2,382,148.00	
SCHEDULE A - Real Estate:	\$0.00	
SCHEDULE B - Stocks and Bonds:	\$0.00	
SCHEDULE C - Mortgages, Notes and Cash:	\$0.00	
SCHEDULE D - Insurance:	\$0.00	
SCHEDULE E - Jointly Owned Property:	\$0.00	
SCHEDULE F - Other Misc. Property:	\$13,251,489.00	
SCHEDULE G - Transfers During Decedent's Life:	\$0.00	
SCHEDULE H - Powers of Appointment:	\$0.00	
SCHEDULE I - Annuities:	\$0.00	
NET CHANGE TO GROSS ESTATE:	\$13,251,489.00	
CORRECTED GROSS ESTATE:		\$15,633,617.00
TOTAL DEDUCTIONS AND EXEMPTIONS ON RETURN:	\$362,749.00	
SCHEDULE J - Expenses:	\$0.00	
SCHEDULE K - Debts:	\$0.00	
SCHEDULE L - Administration Losses, Expenses:	\$0.00	
SCHEDULE M - Marital Deduction:	\$0.00	
SCHEDULE O - Gifts and Bequests:	\$0.00	
NET CHANGE IN DEDUCTIONS:	\$0.00	
CORRECTED DEDUCTIONS AND EXEMPTIONS:		\$362,749.00
TAXABLE ESTATE AS CORRECTED:		\$15,270,868.00

APP000006

Computation of Estate Tax

Page 3

Estate of:
Adelaide P
ChuckrowSocial Security Number
xxx-xx-7341Date of Death
08/14/2011

1. TAXABLE ESTATE ON RETURN	\$2,010,399.00
2. INCREASE / DECREASE (From Adjustments Schedule)	\$13,251,469.00
3. TAXABLE ESTATE AS CORRECTED (Combine Lines 1 and 2)	\$15,270,868.00
4. ADJUSTED TAXABLE GIFTS	\$0,805,018.00
5. TOTAL (Combine Lines 3 and 4)	\$22,105,884.00
6. TENTATIVE TAX (See enclosed Unified Rate calculation)	\$11,799,036.20
6a. If Line 5 exceeds \$10,000,000, enter lesser of line 5 or \$17,184,000 (Otherwise skip to Line 6d)	\$17,184,000.00
6b. Subtract \$10,000,000 from 6a	\$7,184,000.00
6c. Enter 5% of 6b	\$359,200.00
6d. TOTAL TENTATIVE TAX (Add Lines 6 and 6c)	\$12,158,236.20
7. AGGREGATE GIFT TAXES PAYABLE	\$0.00
8. SUBTRACT LINE 7 FROM 6	\$12,158,236.20
9. UNIFIED CREDIT AGAINST ESTATE TAX (From IRS Table C)	\$345,800.00
10. ADJUSTMENT TO UNIFIED CREDIT:	\$0.00
11. SUBTRACT LINE 10 FROM 9	\$345,800.00
12. GROSS FED ESTATE TAX LESS UNIFIED CREDIT	\$11,812,436.20
13. STATE DEATH TAX CREDIT (See enclosed State Credit calculation)	\$1,910,138.08

Computation continued on next page.

APP000007

Commonwealth of Massachusetts - Department of Revenue
Computation of Estate Tax

Page 4

Estate of:
Adelella P
Chuckrow

Social Security Number
xxx-xx-7341

Date of Death
08/14/2011

Part 1. Tentative Massachusetts Estate Tax

1 - Corrected Gross Estate.....	\$15,633,617.00
2 - Corrected Credit for State Death Taxes. If this estate is of a Massachusetts resident domicile who did not own real estate and/or tangible property in another state, enter this amount in Part 4, line 1.	\$1,910,138.88

Part 2. Computation of Tax for Estate of Massachusetts Resident Decedent with Property in Another State

1 - Corrected Gross Estate, wherever situated. Enter the amount from Part 1, line 1.....	\$15,633,617.00
2 - Corrected Credit for State Death Taxes. Enter the amount from Part 1, line 2.....	\$1,910,138.88
3 - Estate or Inheritance Taxes actually paid to other states.....	\$0.00
4 - Gross Value of Real Estate and Tangible Personal Property in other states.....	\$0.00
5 - Percentage of Estate in Other State. Divide line 4 by line 1.....	
6 - Pro-rated Credit. Multiply line 2 by line 5.....	
7 - Deduction Allowable for Taxes Paid to Other States. The smaller of line 3 or line 6.....	\$0.00
8 - Massachusetts Estate Tax. Subtract line 7 from line 2. Enter result here and in Part 4, line 1.....	\$0.00

Part 3. Computation of Tax for Estate of Nonresident Decedent with Massachusetts Property

1 - Corrected Gross Estate, wherever situated. Enter the amount from Part 1, line 1.....	\$15,633,617.00
2 - Corrected Credit for State Death Taxes. Enter the amount from Part 1, line 2.....	\$1,910,138.88
3 - Gross Value of Real Estate and Tangible Personal Property in Massachusetts.....	0.00
4 - Percentage of Estate in Massachusetts.....	
5 - Massachusetts Nonresident Estate Tax. Enter result here and in Part 4, line 1.....	

Part 4. Massachusetts Estate Tax

1 - Massachusetts Estate Tax. Enter the amount from Part 1, line 2, Part 2, line 8, or Part 3, line 5, whichever applies.....	\$1,910,138.88
2 - Estate Tax previously paid.....	\$100,997.00
3 - Total Tax Adjustment.....	\$1,809,141.88

APP0000008

Commonwealth of Massachusetts - Department of Revenue
Estate Tax Bureau

Table A. Unified Rate Schedule

Column A	Column B	Column C	Column D
Taxable Amount Over	Taxable Amount Not Over	Tax on Amount in Column A	Rate of Tax on Excess Over Amount in Column A (Percent)
\$0	10,000	0	18
10,000	20,000	1,800	20
20,000	40,000	3,800	22
40,000	60,000	8,200	24
60,000	80,000	13,000	26
80,000	100,000	18,200	28
100,000	150,000	23,600	30
150,000	250,000	38,800	32
250,000	500,000	70,800	34
500,000	750,000	155,800	37
750,000	1,000,000	248,300	39
1,000,000	1,250,000	345,800	41
1,250,000	1,500,000	448,300	43
1,500,000	2,000,000	555,800	45
2,000,000	2,500,000	780,800	49
2,500,000	3,000,000	1,025,800	53
3,000,000	and over	1,290,800	55

Table B. Maximum Credit for State Death Taxes

1	2	3	4.0
Adjusted Taxable Estate Equal to or More than	Adjusted Taxable Estate Less than	Credit on Amount in Column 1	Rate of Credit on Excess Over Amount in Column 1 (Percent)
Zero	40,000	0	None
40,000	90,000	0	0.8
90,000	140,000	400	1.8
140,000	240,000	1,200	2.4
240,000	440,000	3,600	3.2
440,000	640,000	10,000	4.0
640,000	840,000	18,000	4.8
840,000	1,040,000	27,800	5.8
1,040,000	1,540,000	38,800	6.4
1,540,000	2,040,000	70,800	7.2
2,040,000	2,540,000	108,800	8.0
2,540,000	3,040,000	146,800	8.8
3,040,000	3,540,000	193,800	9.5
3,540,000	4,040,000	238,800	10.4
4,040,000	5,040,000	290,800	11.2
5,040,000	6,040,000	402,800	12.0
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	786,800	14.4
9,040,000	10,040,000	930,800	15.2
10,040,000	-----	1,082,800	16.0

APP000009

APPENDIX 17



MASSACHUSETTS DEPT. OF REVENUE
200 ARLINGTON ST RM 4300
CHELSEA, MA 02150

Leo Haroutunian, Desk Audit
Telephone: (617) 887-6039

Notice Date: September 27, 2013

Taxpayer ID Number: XXX-XX-7341

Document Number: 0482 2883 3443

Total Assessment: \$1,916,565

Response Due Date: October 27, 2013

Tax Type: Estate

NOTICE OF INTENT TO ASSESS This is an official notice from the Massachusetts Dept. of Revenue.

EST OF ADELAIDE P. CHUCKROW
FOX ROTHSCHILD LLP
100 PARK AVE # 81500
NEW YORK, NY 10017-5516

673C

You are receiving this notice because... The Massachusetts Department of Revenue has conducted an audit for the periods 08/14/11 to 08/14/11. As a result of that audit, the Department has adjusted the tax reported for some or all of those periods. Please see page 3 "Assessment Detail" for a breakdown of the changes.

You may want to consider making a payment. Interest and, in some cases, penalties will continue to accrue until you pay the full amount owed. If you decide to dispute the proposed assessment, you are not required to pay while your dispute is pending. (See page 5 for information regarding appeals.) You may want to pay, however, to avoid additional interest and penalty charges. If your appeal is successful, any money paid will be refunded with applicable interest. Mail your check or money order along with the Payment Coupon shown below.

Other actions you may take... If you wish to discuss this notice with the Department of Revenue's Audit Division, please call Leo Haroutunian at (617) 887-6039. If someone will be representing you, you must complete and submit a Power of Attorney Form (M-204B). This form is available from several sources (see page 2 - "What Type of Assistance is Available").

If you decide to wait for a bill... If you do not respond by October 27, 2013, you will receive a bill that reflects the tax that you owe, plus interest and any applicable penalties. Interest and penalties will continue to accrue until you pay the full amount due (see "Understanding the Notice of Intent to Assess" for more information).



Page 1 of 6

CUT HERE AND RETURN THE COUPON BELOW IN THE ENVELOPE PROVIDED

Please check the appropriate boxes.

☐ Submit payment.

I am paying the following amount:

Write your Taxpayer ID # on this check or money order

Make checks or money order payable to:

Commonwealth of Massachusetts



EST OF ADELAIDE P. CHUCKROW
FOX ROTHSCHILD LLP

Taxpayer ID Number: 155 01 7341

Document Number: 0482 2883 3443

Total Assessment: \$1,916,565

Response Due Date: October 27, 2013

Tax Type: Estate

Payment Coupon

☐ Address or phone number change.

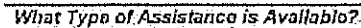
See reverse side.

Massachusetts Department of Revenue
P.O. Box 7072
Boston, MA 02204

155017341203048220033443001916565789

APP000010

The diagram shown below will help you to understand your personal assessment information. (See page 3 - "Assessment Detail" for your personal assessment information.) Note, the numbers used are for example purposes only.



 **Call the Department of Revenue (DOR)**
Contact the representative or Bureau listed on the front page of this notice if you have questions or need assistance.

 **Interactive Voice Response (IVR)**
617-887-MDOR (5367) or toll-free within
Massachusetts at 1-800-392-6055

Call 24 hours a day to access our automated IVR system
to order forms.

 **Massachusetts Department of Revenue**
website: www.mass.gov/dor
Our Website offers a variety of information including "Your
Taxpayer Bill of Rights", rulings and regulations, Power of Attorney
Form (M-2846), as well as many other tax forms and publications.

Please mail this Response Form with all written correspondence.

☐ **Address or phone number change.**
Please complete only if your address or phone has changed.

Street _____ Apt. No. _____
City _____ State _____ Zip _____
Home Phone () _____ Work Phone () _____

Response

155017341203046220033443001926565789

EST OF ADELAIDE P. CHICKROW
FOX ROTHSCHILD LLP

Notice Date: September 27, 2013

Taxpayer ID Number:	155 01 7341
Document Number:	04E2 2063 3443

Total Available: \$1,016,565

Response Due Date: **October 27, 2013**

Tax Type: Estate

MASSACHUSETTS DEPARTMENT OF REVENUE
LEO HARCOUTUNIAN
200 ARLINGTON ST RM 4000
CHELSEA, MA 02150

{ 1 }
2B3



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
Leo Hesse/Lizette Deschamps
Telephone: (617) 827-6936

Taxpayer Name: Est Of Adelaide P. Chuckrow
Fox Rothschild LLP

Notice Date: September 27, 2013
Taxpayer ID Number: XXX-XX-7341
Document Number: 0482 2883 3443
Total Assessment: \$1,916,565
Response Due Date: October 27, 2013
Tax Type: Estate

Assessment Detail for Audit Period 08/14/11 to 09/14/11.

For help understanding this section, see page 2 - "Guide to Understanding the Assessment Detail".

No.	Period End Date	Tax Assessment	Interest Accrued	Penalty Accrued	Net Amount Due	Previous Assessment(s)	Payments/Credits	Balance Due
1	09/14/11	\$1,009,141	\$107,429.90	\$0.00	\$1,916,565	\$100,997.00	\$100,997.00	\$1,916,565
2					TOTAL:	\$1,916,565	\$100,997.00	\$1,916,565

TOTAL AMOUNT DUE: \$1,916,565

Comments:

To include assets held in the Robert Chuckrow Trust which were taken as a QTIP deduction on the first-to-die spouse's return. Assets are then includable in the second to die's estate under section 2044. Since Massachusetts has adopted the IRC in effect on December 31, 2000, these assets are included in the gross estate for the purposes of computing the state death tax credit.

Understanding the Notice of Intent to Assess

What is the Notice of Intent to Assess (NIA)?

The Notice of Intent to Assess (NIA) is not a bill. It is a notification that DOR intends to assess tax liabilities that a determination is owed to the Commonwealth of Massachusetts. It is also an opportunity to resolve matters before a bill is issued.

What if a payment was not credited?

If you believe that you previously made a payment for the amount shown on this Notice of Intent to Assess, contact the representative or Bureau listed on the front page of this notice.

What if I would like to appeal this notice?

If you would like to appeal, you have a right to a pre-assessment conference, to request settlement consideration, or both, with the Director of Appeals. This request must be received within 30 days, or be postmarked within 25 days of the notice date indicated on page 1 of this NIA. Nonfiling cases are not entitled to request a pre-assessment conference or settlement consideration.

What happens if I do not respond to this notice?

At the end of 30 days, you will be sent a Notice of Assessment (NOA) indicating the amount due. Interest and penalties will continue to accrue until the balance is paid in full.

How do I stop interest and penalties from continuing to accrue?

If you agree with the amount assessed, pay the amount indicated within the 30-day period given. If you are disputing the amount assessed, you may want to pay since interest and, in some cases, penalties will continue to accrue on any unpaid amount for which you are ultimately held responsible. A refund, with applicable interest, will be issued to you if your appeal is successful.

If you pay the full amount indicated on the NIA within the given 30-day period, you will receive a Notice of Assessment (NOA), with a "zero balance", which serves as your receipt of full payment.

If you make a partial payment or do not pay the amount owed, you will receive a Notice of Assessment. The NOA will indicate the balance due, including interest and penalties. Please note that interest and penalty charges will continue to accrue until the amount owed is paid in full.

What if I cannot afford to pay the balance due?

You may make a partial payment with this notice. When you receive the NOA, there will be instructions on how to request a payment agreement with DOR.

What if this notice indicates an overassessment and/or refund?

If the Department has determined that you are due a credit and/or refund, the amounts are reflected in this Notice of Intent to Assess. At the end of the 30 day period following issuance of this NIA, your account will be adjusted and the credit/refund will be processed automatically. Therefore, if you agree with the finding, you need to take no further action. Please note, the Department may apply any credit/refund to outstanding liabilities for other tax types or tax periods if those circumstances exist. Generally, you will receive a separate notification if this occurs. If you disagree with the Department's processed credit/refund you may follow the appeal procedures.

What are the most common penalties?

Under Massachusetts law, penalties are automatically imposed on late returns and the payments and when taxpayers have failed to meet other filing requirements. The five most common penalties are:

Late Return - A late return will generate a late file penalty of 1% per month on the unpaid tax. The total penalty charge cannot exceed 25% of the unpaid tax. It is calculated from the due date of the return to the date the return is filed.

Late Payment - An unpaid balance will generate a 1% penalty per month on the unpaid tax. The total penalty charge cannot exceed 25% of the unpaid tax.

Underpayment of Estimated Tax - Income and corporate taxpayers who fail to pay the required amount of tax by the proper due date through estimated and/or withholding payments may be subject to this addition to tax. Individuals whose liabilities exceed \$200 are required to make estimated payments equal to 90% of their current year's tax liabilities or 100% of their prior year's tax liabilities. Corporations whose liabilities exceed \$1000 for any taxable year are required to make estimated tax payments equal to 90% of the current year's tax or 100% of the prior year's tax.

Federal Change Non-Compliance Penalty - If you are audited by the IRS, you must report the changes affecting your Massachusetts taxable income and pay any additional tax due plus interest. You are required to report these changes within one year under Chapter 62 (Personal Income Tax), within two months under Chapter 63 (Corporate Excise) and within two months under Chapter 64C (Estate Tax) of receipt of the final determination from the IRS. Failure to report within these time frames will result in a penalty of ten percent of the additional tax found to be due.

Failure to File G.L. Ch. 82C Sec. 28 - If you failed to file a required return, DOR may determine the tax due according to the best information available. A penalty may be assessed at not more than double the amount so determined.

How is interest accrued?

Effective July 1, 2003, the interest rate on overpayments is the Federal short-term rate plus two percentage points, simple interest. The rate for underpayments is the Federal short-term rate plus four percentage points, compounded daily. Interest will accrue on unpaid interest and penalties as well as on unpaid tax. It is calculated on:

- 1) unpaid future-to-file penalties and underpayment of estimated tax penalties starting on the due date through the date of full payment; and
- 2) unpaid future-to-pay penalties starting on the 31st day after the date of the NOA and continuing to the date of full payment.

Additional information on interest and penalties

To obtain additional information on interest and penalty charges, contact the Customer Service Bureau (CSB) at 617-667-VDOR (6367) or toll-free in Massachusetts at 1-800-392-6080. You may also obtain rate information on our website at www.mass.gov/dor.



MASSACHUSETTS DEPT. OF REVENUE
200 ARLINGTON ST RM 4300
CHELSEA, MA 02150
Leo Haroukian, Desk Audit
Telephone: (617) 627-6036

NOTICE OF INTENT TO ASSESS
This is an official notice from the Massachusetts Dept. of Revenue.

Notice Date: September 27, 2013

Taxpayer ID Number: XXX-XX-1341

Document Number: 04622903 3442

Total Assessment: \$1,915,565

Response Due Date: October 27, 2013

Tax Type: Estate

EST OF ADELAIDE P. CHUCKROW
FOX ROTHSCHILD LLP
100 PARK AVE # 5150
NEW YORK NY 10017-5516

WTC

If you have
general questions
about this Notice
of Intent to
Assess

If you would like to discuss this notice or if you want to provide additional information, please contact the representative or Bureau listed above by OCTOBER 27, 2013.

If you wish to
appeal this Notice
of Intent to
Assess

The Office of Appeals is a separate office within the Department of Revenue that: (1) conducts conferences relating to taxpayer appeals of proposed tax assessments; and (2) may settle tax disputes when there is a factual or legal issue in dispute.

If you wish to appeal this Notice of Intent to Assess, through the Office of Appeals, you may: (1) request a conference to dispute the proposed assessment pursuant to G.L. Ch. 62C, Sec. 27(b); (2) request settlement consideration pursuant to G.L. Ch. 62C, Sec. 37C; or (3) request both a conference and settlement consideration.

If you wish to request a conference and/or settlement consideration, please submit your request in writing on a Form DR-1/Appeals Form. See the Department of Revenue's website at www.mass.gov/dor/dr-1 for a Form DR-1/Appeals Form.

Please submit the Form DR-1/Appeals Form, together with a statement of facts and legal issues in dispute, along with any supporting documentation. Conferences may be conducted by telephone so please include a telephone number on the Appeals Form.

Deadline for filing
an appeal

You must send your Form DR-1/Appeals Form with supporting documentation to the address shown in the "Mail to" box on the bottom of page 2 of this notice. Your request must be received by the Department of Revenue by OCTOBER 27, 2013 or be postmarked within 25 days of the above Notice Date in order for your appeal to be timely filed.

If you decide to
wait for a bill

If you do not respond by OCTOBER 27, 2013, you will receive a bill that reflects the tax that you owe, plus interest and any applicable penalties. Interest and in some cases penalties will continue to accrue until you pay the full amount due. See "Understanding the Notice of Intent to Assess" on page 4 for more information.

You also have the right to appeal your assessment and/or request settlement consideration at the Office of Appeals after it is billed by filing a Form CA-6/Application for Abatement.



Taxpayer Bill of Rights

DOR must be objective, impartial, professional and ethical in its administration of the tax laws; any information that you as a taxpayer provide to the Department will be handled with the utmost confidentiality and professionalism.

DOR must maintain a Problem Resolution Office and an Office of Internal Affairs to safeguard taxpayers' rights.

DOR may not establish or enforce individual collection goals or collection quotas for its employees.

If you are unable to satisfy a tax liability in full, the Commissioner of Revenue may enter into a payment agreement if the Commissioner determines it will facilitate collection of the tax.

You may obtain representation at any point in your dealings with the Department.

You may be entitled to appeal any DOR decision regarding your tax liability. DOR is obligated to make abatement decisions as promptly as possible and to issue any refunds resulting from abatement decisions within 30 days of such decisions.

You will not be subject to statutory penalties if you make a mistake because you relied on erroneous written advice from DOR representatives acting in their official capacities.

You can find more comprehensive details on your rights as a taxpayer in "A Guide to the Department of Revenue: Your Taxpayer Bill of Rights". To obtain a copy, visit our website at www.mass.gov/dor or call 617-607-MDOR (6367) or toll-free in Massachusetts at 1-800-392-6089.

APPENDIX 18

*The Commonwealth of Massachusetts
Department of Revenue
Office of Appeals
PO Box 9551
Boston, MA 02114-9551*

AMY A. PITTER
COMMISSIONER
DEBRA S. ROKOSZ
DIRECTOR

March 10, 2014

Estate of Adelaide Chuckrow
c/o Christine Shaffer Exec.
10803 Montrose Ave.
P.O. Box 96
Garret Park, MD 20896

RE: Notice of Intention to Assess Estate Tax for the
5/14/12 Taxable Period;

Dear Ms. Shaffer:

Christine Shaffer, in her capacity as executrix of the Estate of Adelaide Chuckrow (the "Taxpayer"), requested a conference pursuant to G.L. c. 62C, §26(b) relating to the proposed assessment of estate tax for the May 14, 2012 tax period (the "Tax Period"). The conference regarding the referenced matter was conducted at this Office on February 12, 2014 with the Taxpayer's representatives, Leo Cushing Esq. and Luke Bean Esq. The sole issue presented for consideration is whether the assets of Trust U/W/O Robert Chuckrow which are included in the Adelaide Chuckrow's (the "Decedent") federal gross estate pursuant to IRC §2044 may be excluded

from the calculation of credit for state death tax and Massachusetts Estate Tax. For the reasons discussed below, we determine that the assets of Trust U/W/O Robert Chuckrow are properly includible in Decedent's federal gross estate pursuant to IRC §2044; therefore, they shall be included in the calculation of the credit for state death tax which is the Massachusetts estate tax.

BACKGROUND

The Decedent died on August 14, 2011. At the time of her death the decedent was a resident of Massachusetts and the beneficiary of the Trust U/W/O Robert Chuckrow (the Estate of Adelaide P. Chuckrow "Trust"). The Trust was a Qualified Terminable Interest Property ("QTIP") as proscribed by IRC §2056(b)(7), allowing the interest passing to qualify for a marital deduction upon election of the Estate of taxpayer. The Trust was created by the Will of Robert Chuckrow on July 11, 1993 at the time both the Decedent and Robert Chuckrow were New York residents. An election was made to treat the interest in the Trust passing to the Decedent as qualifying for the marital deduction for federal estate tax purposes.

The Massachusetts Estate Tax Return ("M-706") was timely filed on May 14, 2012 reporting a total gross estate of \$2,382,148.00 and a Massachusetts Estate Tax of \$100,997.00. The return was selected for audit. A Notice of Intention to Assess was issued on August 29, 2013 giving notice of the adjustment to increase the estate by \$13,251,469.00 reflecting the value of the assets held by the Trust and resulting in \$1,809,141.88 of proposed additional estate tax.

The Taxpayer requested a conference pursuant to G.L. c. 62C, §26(b) which was held on February 12, 2014. At the conference the Taxpayer's representative argued that imposition of the Massachusetts estate tax on property held by the Trust was not proper because the trust assets were not the subject of a Massachusetts QTIP election upon the death of Robert Chuckrow; therefore, the assets are not includible pursuant to G.L. c. 65C, §1 (f). The representative also argued that the tax should not be assessed because Robert Chuckrow was not a Massachusetts resident and the Decedent did not have transferrable interest that would be subject to the Massachusetts estate tax under Massachusetts Law.

DISCUSSION

The Decedent died on August 14, 2011 and as such the estate is subject to the provisions of G.L. c. 65C, §2A. This provides in relevant part that the Massachusetts estate tax is equal to the credit for state death taxes as computed under IRC §2011 as in effect on December 31, 2000, less taxes paid or credits allocable to other jurisdictions, adjustments not relevant here.

The Massachusetts estate tax is the credit for state death tax calculated by reference to the federal taxable estate which is calculated with reference to federal gross estate. The Trust property is includible in the Decedent's federal gross estate pursuant to IRC §2044 therefore Estate of Adelaide P. Chuckrow value of the property is used on the calculation of the estate tax due pursuant to I.R.C. §2011 and G.L. c. 65C, §2A.

DISPOSITION

We are returning this matter to the Audit Division for assessment consistent with our determination.

If the Taxpayer continues to disagree with the proposed adjustments, then after the Taxpayer has received a Notice of Assessment, the Taxpayer may file an Application for Abatement with the Customer Service Bureau. A hearing requested in connection with an Application for Abatement will only be granted if the Taxpayer first establishes to the satisfaction of the Commissioner that a further hearing is necessary, either due to the availability of new factual information or new legal precedent not available to the Taxpayer at the time of the pre-assessment conference.

This letter may not be relied upon as precedent in subsequent or other matters. It represents the application of previously established Department policy and statutory or case law only to this particular set of facts of this particular Taxpayer for the tax period in issue.

Very truly yours,

COMMISSIONER OF REVENUE

By /s/ Leonard R. Spector

Leonard R. Spector, Deputy Director

Barbara K. Savage, Appeals Officer

cc: Leo Cushing Esq.
Steven Dodd, Chief, Bureau of Desk Audit
#420215

APPENDIX 19



MASSACHUSETTS DEPT. OF REVENUE
PO BOX 7010
BOSTON, MA 02204
Customer Service Bureau
Telephone: (617) 887-5387
www.mass.gov/dor

Notice Date: March 18, 2014

Taxpayer ID Number: XXX-XX-7841
Bill Number: 0412 2008 7638
Total Amount Due: \$1,853,032
Payment Due Date: April 17, 2014
Tax Type: Estate

NOTICE OF ASSESSMENT

This is an official notice from the Massachusetts Dept. of Revenue.



EST OF ADELAIDE P. CHUCKROW
LUKE C BEAN, ESQ
375 TOTTEN POND RD STE 200
WALTHAM MA 02451-2028

You are receiving this Notice of Assessment because...

The records of the Massachusetts Department of Revenue indicate that you have an outstanding liability of \$1,853,032 that you owe to the Commonwealth of Massachusetts. This amount includes tax, interest and penalties. Interest and penalties will continue to accrue until the balance is paid in full (see page 4 for more information). To avoid additional interest and penalty charges, you must pay the total amount due by April 17, 2014.

Actions you should take...

Submit Payment - Make your payment electronically via our website: <http://www.mass.gov/dor>, make a phone payment with an agent at the number listed above, or mail your payment along with the coupon shown below for the total amount assessed. Include your ID # on your check or money order. If you double to dispute the assessed amount, you are not required to pay but may want to in order to avoid additional interest and penalty charges. If your appeal is successful, any money paid will be refunded with applicable interest.

Enter into a payment agreement - You may be eligible to pay the total amount due through monthly installments. Visit our website to arrange for monthly payments or to see if you can pay this amount by credit card or call our automated telephone system at (617) 887-MDOR (6367) or toll-free in Massachusetts at 1-800-302-6086. For amounts over \$5000 call 617-887-6460.

Dispute the assessment - You have the right to appeal. If you believe that the information on this notice is incorrect and wish to dispute this assessment, you may file an Application for Abatement/Amended Return (see page 2 - "What Type of Assistance is available" for details.)



Interest and penalties will continue to accrue until you pay the full amount.

CUT HERE AND RETURN THE COUPON BELOW IN THE ENVELOPE PROVIDED

Page 1 of 4



Your payment must be postmarked by April 17, 2014

Taxpayer ID Number: 155 01 7841
Bill Number: 0412 2008 7638
Payment Due Date: April 17, 2014
Total Amount Due: \$1,853,032

EST OF ADELAIDE P. CHUCKROW
LUKE C BEAN, ESQ
375 TOTTEN POND RD STE 200
WALTHAM MA 02451-2028

DO NOT SIGN HERE

Write your Taxpayer ID # on your check or money order and make it payable to the Commonwealth of Massachusetts

Please complete only if your address or phone has changed.

Street _____ Apt. No. _____
City _____ State _____ Zip _____
Home Phone () _____ Work Phone () _____

Massachusetts Department of Revenue
P. O. Box 7095
Boston, MA 02204-7095

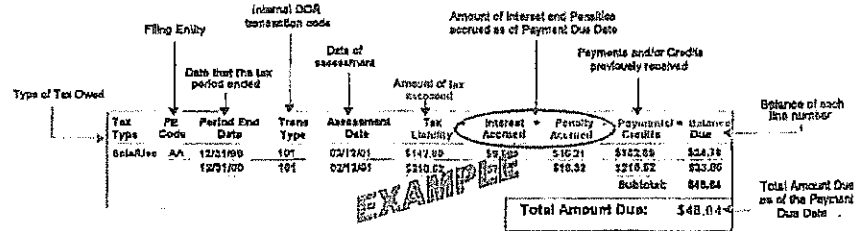
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APPC00016

Guide to Understanding the Assessment Detail

The diagram shown below will help you to understand your personal assessment information. (See page 3 - "Details of What You Owe" for your personal assessment information.) Note, the numbers used are for example purposes only.



Most Common Tax Types

ESTATE.....	Estate Tax	INCOME.....	Individual Income Tax	CORP.....	Corporate
SALE/USE.....	Sales Use Tax	ROOM OCC.....	Room Occupancy Tax	FIDO.....	Fiduciary Income
MEALS.....	Meals Tax	WITH INC.....	Withholding Tax		

What Type of Assistance is Available?



Massachusetts Department of Revenue website: <http://www.mass.gov/dor>
Our Website offers a variety of information and electronic payment options including "Your Taxpayer Bill of Rights", rulings and regulations, Form CA-6, Application for Assessment/Amended Return, as well as many other tax forms and publications.



Interactive Voice Response (IVR)
617-887-ADOR (5367) or toll-free within Massachusetts at 1-800-392-6083
Call 24 hours a day to access our automated IVR system to order forms, enter a small payment agreement or check the status of your refund.



Call the Department of Revenue (DOR)
Contact the representative or Bureau listed on the front page of this notice if you have questions or need assistance.

Page 2 of 4

Make check or money order payable to:
Commonwealth of Massachusetts

John Taxpayer 100 Cambridge St. Boston, MA 02204	DATE 03/18/14	1234
PAY TO THE ORDER OF Commonwealth of Massachusetts		\$1,000.00
One Thousand and 00/100		DOLLARS
Bank of America		
000-00-2121		

John Taxpayer

Do not forget to write your Taxpayer ID Number

Do not forget to sign your check

APP000017



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
Customer Service Bureau
Telephone: (617) 867-6397

Taxpayer Name: Esq Of Adelaide P. Chickrow
Luke C Bean, Esq

Notice Date: March 18, 2014
Taxpayer ID Number: XXX-XX-7341
Bill Number: 0412 2008 7638
Total Amount Due: \$1,953.032
Payment Due Date: April 17, 2014
Tax Type: Estate

Details of What You Owe

For help understanding this section, see page 2 - "Guide to Understanding the Assessment Detail".

Tax Type*	File Code	Period End Date	Trans Type	Assessment Date	Tax Liability	Interest Accrued	Penalty Accrued	Payments/ Credits	Balance Due
ESTATE		03/14/11	700	03/15/14	\$1,800,141	\$143,980	\$0.00	\$0.00	\$1,944,121
									Subtotal:
									\$1,953,032

* See explanation of the Most Common Tax Types on page 2.
Recent payments may not be reflected.

TOTAL AMOUNT DUE: \$1,953,032

Is this notice clear? If not, tell us.

www.mass.gov/der/ddas





Taxpayer Bill of Rights

DOR must be objective, impartial, professional and ethical in its administration of the tax laws; any information that you as a taxpayer provide to the Department will be handled with the utmost confidentiality and professionalism.

DOR must maintain a Problem Resolution Office and an Office of Internal Affairs to safeguard taxpayers' rights.

DOR may not establish or enforce individual collection goals or collection quotas for its employees.

If you are unable to satisfy a tax liability in full, the Commissioner of Revenue may enter into a payment agreement if the Commissioner determines it will facilitate collection of the tax.

You may obtain representation at any point in your dealings with the Department.

You are entitled to appeal any DOR decision regarding your tax liability. DOR is obligated to make statement decisions as promptly as possible and to issue any refunds resulting from statement decisions within 30 days of such decisions.

You will not be subject to statutory penalties if you make a mistake because you relied on erroneous written advice from DOR representatives acting in their official capacities.

You can find more comprehensive details on your rights as a taxpayer in "A Guide to the Department of Revenue: Your Taxpayer Bill of Rights". To obtain a copy, visit our website at www.mass.gov/dor or call 617-887-MDOR (6367) or toll-free in Massachusetts 1-800-392-6089.

Understanding the Notice of Assessment

What is the Notice of Assessment?

The Notice of Assessment (NOA) is a bill that is sent when DOR determines you owe a tax liability to the Commonwealth of Massachusetts. The liability may be the result of an audit, a late and/or unpaid return or an error on a return.

What if a payment was not credited?

If you believe that you previously made a payment for the amount shown on this Notice of Assessment, contact the representative or Bureau listed on the front page of this notice. WFB users can check payments online.

What if I disagree with this notice or would like to appeal?

You may appeal electronically on our website www.mass.gov/dor at WebFile for Income or WebFile for Business within the time allowed for making application. Filing online offers a safer, more convenient, and the fastest means of resolving your issue.

Should I pay even if I am disputing this assessment?

You are not obligated to pay an amount that you are disputing. However, you may want to pay some interest and, in some cases, penalties will continue to accrue on any unpaid amount for which you are ultimately held responsible. A refund resulting from an abatement will include interest computed from the date a complete application was filed.

What if I do not have the money to pay?

If you cannot pay the full amount that you owe, you may be able to pay the total liability through monthly installments or credit card. To request a payment agreement for amounts under \$5,000, visit our website or call 617-887-MDOR (6367) or toll-free in Massachusetts at 1-800-392-6089. For amounts over \$5,000, call 617-887-8400.

Note: DOR may refuse to show a payment agreement if a taxpayer has a history of delinquency; has the resources to settle the debt immediately; or if the agreement jeopardizes the ultimate collection of the tax due.

What happens if I do not respond to this notice?

If you do not pay the amount due and do not dispute the assessment by filing an application for abatement, DOR will pursue full payment using a series of collection tools up to and including your name being published on our website.

What are the most common penalties?

Under Massachusetts law, penalties are automatically imposed on late returns and late payments and when taxpayers have failed to meet other filing requirements. The four most common penalties are:

Late Return - A late return will generate a late file penalty of 1% per month on the unpaid tax. The total penalty charge cannot exceed 25% of the unpaid tax. It is calculated from the due date of the return to the date the return is filed.

Late Payment - An unpaid balance will generate a 1% penalty per month on the unpaid tax. The total penalty charge cannot exceed 25% of the unpaid tax.

Underpayment of Estimated Tax - Income and corporate taxpayers who fail to pay the required amount of tax by the proper due date through estimated and/or withholding payments may be subject to this addition to tax. Individuals whose liabilities exceed \$200, \$400 for tax year beginning 01/01/05, are required to make estimated payments equal to 80% of their current year's tax liabilities or 100% of their prior year's tax liabilities. Corporations whose liabilities exceed \$1,000 for any taxable year are required to make estimated tax payments equal to 80% of the current year's tax or 100% of the prior year's tax.

Penalty for Failure to Comply with Efile Mandate:

A penalty of \$100 for each payment/extension payment (return type 92A) or return/extension filing (92B) not submitted electronically when required.

How is interest accrued?

Effective July 1, 2003, the interest rate on overpayments is the Federal short-term rate plus two percentage points, simple interest. The rate for underpayments is the Federal short-term rate plus four percentage points, compounded daily. Interest will accrue on unpaid interest and penalties as well as on unpaid tax. It is calculated on:

- 1) unpaid failure-to-file penalties and underpayment of estimated tax penalties starting on the due date through the date of full payment; and
- 2) unpaid failure-to-pay penalties starting on the 31st day after the date of the NOA and continuing to the date of full payment.

Additional Information on Interest and Penalties

To obtain additional information on interest and penalty charges, contact the Customer Service Bureau (CSB) at 617-887-4DOR (6367) or toll-free in Massachusetts at 1-800-392-6089. You may also obtain this information on our website at www.mass.gov/dor, Legal Library, Administrative Procedures 612.

APPENDIX 20

*The Commonwealth of Massachusetts
Department of Revenue
Office of Appeals
PO Box 9551
Boston, MA 02114-9551*

AMY A. PITTER
COMMISSIONER
DEBRA S. ROKOSZ
DIRECTOR

January 23, 2014

Estate of Adelaide Chuckrow
c/o Christine Shaffer Exec.
10803 Montrose Ave.
P.O. Box 96
Garret Park, MD 20896

RE: Office of Appeals Conference Request:
Proposed Assessments of Estate Tax for the
5/14/12 tax period

Dear Ms. Shaffer,

The above-referenced matter has been transferred to this Office by the Audit Division in connection with your request for a conference pursuant to G.L. c. 62C, § 26(b).

Your conference will be conducted on Wednesday, February 12, 2014 at 9:30 a.m. To initiate the conference, please dial (617) 626-3227 at the designated time and ask for the Appeals Officer.

You and/or your representative may appear at the designated time to present any documentation or legal arguments that would warrant a finding in your favor. Your representative must provide a power of attorney to act on your behalf at the conference if one has not been provided previously. Please be advised that if you do not appear for the conference or contact this Office prior to the conference to reschedule, we will return the matter to the Audit Division for assessment as proposed.

Very truly yours,

/s/ Barbara K. Savage
Barbara K. Savage
Appeals Officer
(617)626-3227

Cc: Steven Dodd, Chief, BODA
Luke C. Bean, Esq.

*Deliveries: 100 Cambridge St., Boston, MA 02114 •
Phone: (617)626-3300 • Fax (617)626-3349*

APPENDIX 21
FORM M.E.C.L.

Massachusetts Department of Revenue
Bureau of Desk Audit
Estate Tax Unit
PO Box 7023
Boston, MA 02204
Phone# (617) 887-6930

I- PROBATE COURT COPY Date: 4/25/2014

LUKE C BEAN, ESQ
375 TOTTEN POND RD STE 200
WALTHAM, MA 02451

ESTATE TAX CLOSING LETTER
THIS IS NOT A BILL

Estate of ADELAIDE P CHUCKROW
Probate Court BERKSHIRE

Social Security No. XXX-XX-7341
Probate Number BE1 1P0655E
Date of Death August 14, 2011

The following is a summary from the Department's records of the Massachusetts Estate tax liability for the taxpayer named above, including the net balance (if any). This letter is the certificate or "closing letter" that may be required by the Probate Court under G.L. c. 65C, s6(b). If there is a balance due, you will receive a separate Notice of Assessment that contains payment instructions. The amount shown due on the Notice of Assessment may include additional interest or penalty. You should retain a copy of this letter with the records of the Estate. For

dates of death prior to January 1, 1997, your attorney may need to file this letter with the probate court in order to close the probate proceedings, if any.

Very truly yours,
Commissioner of Revenue
By /s/ _____
Bureau of Desk Audit
Estate Tax Unit

Massachusetts Estate Tax (including returns, audit assessments etc.).....	\$1910138.88
Interest	142606.35
Penalty.....	0.00
Total Massachusetts Estate Tax Liabilities.....	2052745.23
Less Total Payments.....	2052745.23
Net Balance	\$ 0.00

Note: Massachusetts G.L. c. 65C, S6(b) was amended in 1998 as follows: "For dates of death on or after January 1, 1997, said certificates shall not be required". (Chapter 202, S 32, relating to foreign executors was similarly amended.)

APPENDIX 22

GO TO MASS.GOV/DOR/AMEND TO FIND OUT IF YOU CAN FILE THIS ONLINE.

REV. 6/03

Mass. Form CA-6 Application for Abatement/Amended ReturnTAXPAYER NAME (IF INDIVIDUAL, ENTER LAST NAME FOLLOWED BY FIRST; IF BUSINESS, ENTER FULL LEGAL NAME)
ESTATE OF ADELAIDE P. CHUCKROWFEDERAL IDENTITY (OR FEDERAL IDENTIFICATION NUMBER)
155 01 7341FOUNDER'S NAME (if applicable)
C/O M. CHRISTINE

SHAFFER, P.R.

SPOUSE'S SOCIAL SECURITY NUMBER

ADDRESS
10803 MONTROSE AVE., PO BOX 96CITY/TOWN/POST OFFICE
GARRETT PARKSTATE ZIP + 4
MD 20896**Prerequisites for Filing an Application for Abatement**

Three requirements must be met for an application for abatement to be valid. First, the required return must have been filed for the period stated on the application, unless the abatement application is founded on the assertion that no return is required. Second, the application must be fully substantiated. Third, the application must be submitted to DOR within the applicable time limits (see instructions on page 2).

If your account has changed since you last filed a return, check the box ☐**Explanation of Issues Involved in Request**

1. Please state the issues involved, including all facts and relevant statutory references, and enclose any exhibits that substantiate this change in tax or request for penalty waiver. Attach additional statement if necessary.

See attached.

2. Are you filing to ☐ increase your tax? ☒ decrease your tax? ☐ dispute penalties? ☐ dispute an audit? ☐ dispute a responsible person determination? ☐ other:

3. Tax type originally filed (select one): ☐ personal income ☐ sales/use ☐ withholding ☐ sales tax on meals ☐ corporate excise
☒ other: ESTATE

4. Are you amending your return as a result of a federal change? ☐ Change made by another state? ☐ If Yes, enclose copy of federal or other state's results, if available.

5. Fill in box if you are filing for a reduction in sales, meals, room occupancy or withholding taxes and have not withheld or collected the tax: ☐

6. Fill in box if you would like to request a statutory hearing: ☒ If we agree with your claim, no hearing will be necessary.

Line Item Information. If disputing penalties, complete tax period end and filing frequency items only.

For the period in which a change to tax is being made, enter below: the line item number being changed in col. A; the original amount reported in col. B; and enter the corrected amount in col. C. If more than one period is being adjusted, consolidate this information on a spreadsheet, or use Form CA-6A which is available at www.mass.gov/dor. Form CA-6A provides space for additional line item information. If you have completed and enclosed a revised tax return, omit items A, B and C and enter the net change below.

Tax periodTax period end: Month 08 Year 11 Filing frequency: ☐ Annual ☐ Monthly ☐ Quarterly

	A.	B. Original amount	C. Corrected amount
Line item no.	1	15,633,617.	2,382,148.

Line item no.

Line item no.

Note: You do not have to compute the change to your tax. DOR will notify you of any additional taxes or refund due. However, if you do wish to compute the change, complete and enclose a revised copy of your return with this form. If you owe additional tax, please enclose a check or money order payable to the Commonwealth of Massachusetts and write your identification number on the front of your check or money order in the lower left corner.

Net change, if you have completed and enclosed a revised tax return, enter the net change to tax here.

-1,809,142.

If making a payment, mail to: Massachusetts Department of Revenue, Customer Service Bureau, PO Box 7022, Boston, MA 02204. Otherwise, mail to: Massachusetts Department of Revenue, Customer Service Bureau, PO Box 7031, Boston, MA 02204.

FORM CA-6 PAGE 2

87-10-0204

Instructions

Complete this application carefully. Explain why you are requesting an abatement/amendment and attach all pertinent information (Forms W-2 and 1099, schedules, invoices, credit memos, etc.). To determine the appropriate documentation to include, see DOR's online Tax Guide at www.mass.gov/dor or call the Customer Service Bureau at (617) 837-MOOR or toll-free in Massachusetts 1-800-392-6069. If you would prefer that DOR discuss this application with someone other than yourself, complete the Power of Attorney section at the bottom of this page. An abatement may be denied if the information necessary to support the application is not provided. The application must be submitted to DOR within the time limits provided in MGL, Ch. 62C, sec. 37.

Generally:

- Within three years from the date of the filing of the return (or within three years from the due date, if the return was filed before the due date);
- Within two years from the date the tax was assessed or deemed to be assessed;
- Within one year from the date the tax was paid;
- Within two years of DOR's determination of a responsible person's liability;
- Within any agreed-upon extension of time for assessment of taxes under MGL, Ch. 62C, sec. 27;
- Within one year from the date of the final federal determination, including acceptance of an amended federal return by the Internal Revenue Service under MGL, Ch. 62C, sec. 30; or
- Within one year from the date of another state's final determination, including acceptance of an amended return under MGL, Ch. 62C, sec. 30A.

*Under the law prior to July 1, 2011, the three-year period for filing an application for abatement was "within three years from the due date for filing the return (regardless of any extension of time to file)." As set out above, the three-year part of sec. 37 does not apply for any tax period for which the statute of limitations for filing an statement had expired as of July 1, 2011. See TIR 11-6, Part VIII(B).

Note: Interest and, in some cases, penalties will accrue on any unpaid amount for which you are ultimately liable. The statute of limitations on collections will generally be suspended during the appeal process. You may wish to pay the amount you are disputing to stop the accrual of interest and applicable penalties. A refund, with applicable interest, will be issued if the abatement is approved and the assessment has been paid.

To request settlement consideration, you must submit Form DR-1, Appeal Form, with this application for abatement. See AP 62B at www.mass.gov/dor.

Pursuant to MGL, Ch. 62-65C, 121A and 13A, the taxpayer named herein makes application for abatement of the tax assessed for the period(s) stated, to the extent set forth herein. [Consent is hereby given, pursuant to Chapter 28A, Section 6, for the Commissioner of Revenue to act upon this application after six months from the date of filing.] This consent is provided to protect your rights where processing of your application for abatement is delayed for any reason. Your consent may be withdrawn at any time. If you do not consent, or withdraw your consent, the application for abatement is deemed denied (1) at the expiration of six months from the date of filing or (2) the date consent is withdrawn, whichever is later. If you choose not to consent, you must strike out the sentence in brackets and (b) in this box ☐.

Sign Here. Under penalties of perjury, I declare that, to the best of my knowledge and belief, the information herein is true, correct and complete.

Taxpayer's Signature: M. Christine Shaffer, Secretary Date: 10/27/14
Spouse's Signature (if filing jointly): _____ Date: _____
Taxpayer's name (print): ESTATE OF ADELAIDE P. CHUCKROW Spouse's name (print): _____

Title of taxpayer (if any): _____ Daycare provider number: _____

M. CHRISTINE SHAFFER, P.R.

Preparer's signature and attestation. (PB in the box ☒) I attest that I prepared this form, and that the statements contained herein, including information submitted to me by the taxpayer, are true and correct to the best of my knowledge, information and belief.

Preparer's Signature: [Signature] Preparer's Title: ATTORNEY
Preparer's Name (including taxpayer, complete Power of Attorney below): _____

Power of Attorney. (PB in the box ☒) I, the undersigned taxpayer shown on this application, hereby appoint the following individual(s) as attorney(s)-in-fact to represent the taxpayer(s) before any office of the Massachusetts Department of Revenue for the specified tax period(s).

Name of attorney-in-fact (print): LEO J. CUSHING, ESQ.
Power number: 617-523-1555
PIN: P01318674
Address: 375 TOTTEN POND ROAD, SUITE 200 City/Town: WALTHAM State: MA ZIP: 02451

The attorney(s)-in-fact is authorized, subject to limitations set forth below or in revocation, to receive confidential information and to perform any and all acts that the taxpayer(s) can perform with respect to the above-specified tax matters. The authority does not include the power to substitute another representative (unless specifically added below) or to receive refund checks.

Attorney-in-fact is not authorized to:

Taxpayer's Signature: M. Christine Shaffer, Secretary Signature of attorney-in-fact: [Signature]

87-10-0204 (09-14)

**Form M-284B
Power of Attorney and
Declaration of Representative**

Rev. 8/11
Massachusetts
Department of
Revenue

See separate instructions. Please print or type.

Part 1. Power of Attorney

A Name of taxpayer(s) Estate of Adelaide P. Chockrow, c/o M. Christine Social Security number(s) 55-01-7341
 Number and street, including apartment number or rural route Shaffer, P.R., 10503 Montrose Ave., P.O. Box 86 Federal identification number
 City/Town Garrett Park State MD Zip 20896

B I hereby appoint(s) the following individual(s) as attorney(s)-in-fact to represent the taxpayer(s) before any office of the Massachusetts Department of Revenue for the following tax matter(s) (specify the type(s) of tax and year(s) or period(s) (date of death if estate tax):

Name	Address	Telephone number
<u>Leo J. Cushing, Esq.</u>	<u>All Same:</u>	<u>All Same:</u>
<u>Luke C. Bean, Esq.</u>	<u>375 Totten Pond Road, Suite 200</u>	<u>617-523-1555</u>
	<u>Malden, MA 02451</u>	

Type of tax (individual, corporate, etc.)	Year(s) or period(s) (date of death if estate tax)
<u>Estate and Application for Abatement</u>	<u>Date of Death: 08/14/2011</u>

C The attorney(s)-in-fact (or any of them) are authorized, subject to any limitations set forth below or in revocation, to receive confidential information and to perform any and all acts that the principal(s) can perform with respect to the above specified tax matters, such as the authority to sign any agreements, consents or other documents. The authority does not include the power to substitute another representative (unless specifically added below) or the power to receive refund checks.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney:

D Originals of notices and other written communications go to the taxpayer(s). Send copies of all notices and all other written communications addressed to the taxpayer(s) in proceedings involving the above tax matters to:

1 ☐ the appointee first named above, or
 2 ☒ (name of another appointee designated above) Luke C. Bean, Esq.
 This power of attorney revokes all earlier powers of attorney on file with the Department of Revenue for the same tax matters and years or periods covered by this power of attorney, except the following (specify to whom granted, date and address including Zip code or attach copies of earlier powers):

Attorney Abba Shapiro, 100 Park Avenue, New York, New York, 10017

E Signature of or for taxpayer(s). If signed by a corporate officer, partner, or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

Signature (S) M. Christine Shaffer Esq. Title (if applicable) Personal Representative Date 10/27/11
 If signing for a taxpayer who is not an individual, type or print your name

Signature _____ Title (if applicable) _____ Date _____

F If the power of attorney is granted to a person other than an attorney, certified public accountant, public accountant or enrolled agent, the taxpayer(s) signature must be witnessed or notarized below.

The person(s) signing as or for the taxpayer(s) (check and complete one):

☐ I/are known to and signed in the presence of the two disinterested witnesses whose signatures appear here:

Signature of witness _____ Date _____

Signature of witness _____ Date _____

☐ appeared this day before a notary public and acknowledged this power of attorney as a voluntary act and deed.

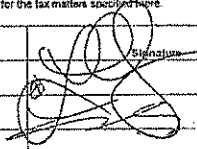
Signature of notary _____ Date _____

Part 2. Declaration of Representative. All representatives must complete this section.

I declare that I am not currently under suspension or disbarment from practice within the Commonwealth or in any jurisdiction, that I am aware of regulations governing the practice of attorneys, certified public accountants, public accountants, enrolled agents and others, and that I am one of the following:

- 1 a member in good standing of the bar of the highest court of the jurisdiction shown below;
- 2 duly qualified to practice as a certified public accountant or public accountant in the jurisdiction shown below;
- 3 enrolled as an agent under the requirements of Treasury Department Circular No. 230;
- 4 a bona fide officer of the taxpayer organization;
- 5 a full-time employee of the taxpayer;
- 6 a member of the taxpayer's immediate family (spouse, parent, child or sibling);
- 7 a fiduciary for the taxpayer;
- 8 other (attach statement)

and that I am authorized to represent the taxpayer identified in Part 1 for the tax matters specified here.

Designation (insert appropriate number from above list)	Jurisdiction (state, etc.) or enrollment card number	Signature	Date
1	MA		1/27/14
1	MA		

**Form M-2848
Power of Attorney and
Declaration of Representative**

Rev. 8/11
Massachusetts
Department of
Revenue

See separate instructions. Please print or type.

Part 1. Power of Attorney

A Name of taxpayer(s) Social Security number(s)
Estate of Adelaide P. Chuckrow, c/o M. Christine 155-01-7341
 Number and street, including apartment number or rural route Federal identification number
Shaffer, P.R., 10802 Montrose Ave., P.O. Box 86
 City/Town State Zip
Garrett Park MD 20896

B Hereby appoint(s) the following individual(s) as attorney(s)-in-fact to represent the taxpayer(s) before any office of the Massachusetts Department of Revenue for the following tax matter(s) (specify the type(s) of tax and year(s) or period(s) (date of death if estate tax)):

Name	Address	Telephone number
<u>Leo J. Cushing, Esq.</u>	<u>All Same:</u>	<u>All Same:</u>
<u>Luke C. Bean, Esq.</u>	<u>375 Totten Pond Road, Suite 200</u>	<u>617-523-1555</u>
	<u>Waltham, MA 02451</u>	

Type of tax (individual, corporate, etc.)	Year(s) or period(s) (date of death if estate tax)
<u>Estate and Application for Abatement</u>	<u>Date of Death: 08/14/2013</u>

C The attorney(s)-in-fact (or any of them) are authorized, subject to any limitations set forth below or to revocation, to receive confidential information and to perform any and all acts that the principal(s) can perform with respect to the above specified tax matters, such as the authority to sign any agreements, consents or other documents. The authority does not include the power to substitute another representative (unless specifically added below) or the power to receive refund checks.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney:

D Originals of notices and other written communications go to the taxpayer(s). Send copies of all notices and all other written communications addressed to the taxpayer(s) in proceedings involving the above tax matters to:

1 ☐ the appointee first named above, or
 2 ☒ (name of another appointee designated above) Luke C. Bean, Esq.

This power of attorney revokes all earlier powers of attorney on file with the Department of Revenue for the same tax matters and years or periods covered by this power of attorney, except the following (specify to whom granted, date and address including Zip code or attach copies of earlier powers):

Attorney Abbe Shandlen, 100 Park Avenue, New York, New York, 10017

E Signature of or for taxpayer(s). If signed by a corporate officer, partner, or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

Signature	Date (if applicable)	Date
<u><i>M. Christine Shaffer, Esq.</i></u>	<u>Personal Representative</u>	<u>10/27/14</u>
If signing for a taxpayer who is not an individual, type or print your name		
Signature	Date (if applicable)	Date

45-050012

F If the power of attorney is granted to a person other than an attorney, certified public accountant, public accountant or enrolled agent, the taxpayer(s) signature must be witnessed or notarized below.

The person(s) signing as or for the taxpayer(s) (check and complete one):

☐ is/are known to and signed in the presence of the two disinterested witnesses whose signatures appear here:

Signature of witness _____ Date _____

Signature of witness _____ Date _____

☐ appeared this day before a notary public and acknowledged this power of attorney as a voluntary act and deed.

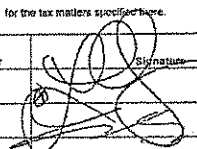
Signature of notary _____ Date _____

Part 2. Declaration of Representative. All representatives must complete this section.

I declare that I am not currently under suspension or disbarment from practice within the Commonwealth or in any jurisdiction, that I am aware of regulations governing the practice of attorneys, certified public accountants, public accountants, enrolled agents and others, and that I am one of the following:

- 1 a member in good standing of the bar of the highest court of the jurisdiction shown below;
- 2 duly qualified to practice as a certified public accountant or public accountant in the jurisdiction shown below;
- 3 enrolled as an agent under the requirements of Treasury Department Circular No. 230;
- 4 a bona fide officer of the taxpayer organization;
- 5 a full-time employee of the taxpayer;
- 6 a member of the taxpayer's immediate family (spouse, parent, child or sibling);
- 7 a fiduciary for the taxpayer;
- 8 other (attach statement)

and that I am authorized to represent the taxpayer identified in Part 1 for the tax matters specified here.

Designation (insert appropriate number from above list)	Jurisdiction (state, etc.) or enrollment card number	Signature	Date
1	MA		1/2/14
2	MA		

Estate of Adelaide P. Chuckrow
Application for Abatement
Explanation of Issues Involved in Request

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I. Introduction

The question presented is whether the Commonwealth of Massachusetts may impose an estate tax on the surviving spouse based on the transfer of property into a New York trust by a New York resident, where the only plausible connection to Massachusetts is that the surviving spouse—an income beneficiary under the trust—moved to Massachusetts after her husband's death. As a matter of constitutional law and statutory interpretation, the answer must be no.

Robert Chuckrow's executrix made a federal QTIP election on the value of property that funded a testamentary trust. By making a QTIP election, this transfer qualified for the federal unlimited marital deduction, thus delaying collection of the tax until the second spouse's death. Because Robert Chuckrow was a resident of New York with no Massachusetts real or tangible personal property, his executrix did not file a Massachusetts estate tax return (as none was required), and so did not make a Massachusetts QTIP election. His wife Adelaide moved to Massachusetts and died there August 14, 2011. Now, Massachusetts insists that it may collect a tax on the value of federally elected QTIP property, because the Massachusetts gross estate is defined as the federal gross estate. This assertion is incorrect, for the following reasons.

First, the attempt to collect this tax is unconstitutional under the Fourteenth Amendment. The estate tax is a tax on the privilege of transferring property at death, rather than a tax on the property itself. *Knowlton v. Moore*, 178 U.S. 41 (1900). The taxing authority may tax only the transfer of the assets. In this case, there was no

transfer by Adelaide. The only transfer took place when Robert died, at which time the estate tax would have been imposed, but for the marital deduction.

Federal law provides for an unlimited marital deduction, meaning that all property transferred from the decedent spouse to the surviving spouse passes tax free—it is expected that the tax will be collected on the second spouse's death. As a general rule, terminable interest property (property which the surviving spouse's interest terminates at her death) does not qualify for a marital deduction. But the code creates a statutory exception for qualified terminable interest property. To qualify, a terminable interest must meet three conditions:

- (1) the surviving spouse must receive all income from the property for life, payable at least annually;
- (2) No person can have a power to appoint any part of the property to any person other than the surviving spouse; and
- (3) A QTIP election must be made by the executor of the deceased spouse's estate, and this election is irrevocable once made.

The quid pro quo is that the QTIP election merely delays collection of the tax, because there is no separately taxable transfer at the second spouse's death. To ensure the tax is eventually collected, the code creates a fictional second transfer, from surviving spouse to beneficiaries. See I.R.C. § 2044. This transfer is just that—fictional; the only true transfer occurs on the first-to-die spouse's death. See *In re Estate of Bracken*, 175 Wash. 2d 549 (2012).

And because estate tax may only be collected on a transfer, Massachusetts cannot constitutionally tax this New York transfer.

Second, the attempt to collect this tax runs afoul of the statutory definition of Massachusetts gross estate. Determining Massachusetts gross estate begins with the federal gross estate, but it does not end with it. Indeed, the last sentence of G.L. c. 65C, § 1(f) provides, in relevant part, that “[t]he Massachusetts gross estate shall not include the value of any property in which the decedent had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph.” Although the first sentence of § 1(f) references the federal gross estate, that portion of the last sentence seeks to include only property for which a Massachusetts QTIP election was made. If it referred back to the federal estate, it would render this last sentence inoperable, in violation of a fundamental tenet of statutory construction. Further, the last sentence serves to prevent unnecessary double taxation of assets that would have been already been taxed on the first spouse's death. This provision was necessary because Massachusetts maintained a 50% marital deduction, even after federal law moved to an unlimited—meaning that executors would regularly make federal QTIP elections in excess of the state QTIP election.

II. Facts

Robert Chuckrow and Adelaide Chuckrow, a married couple, lived in and were residents of Chappaqua, New York. Robert died on July 11, 1993, while the couple was living in New York, leaving a Last Will and Testament. Article Third of Robert's

Will established a trust that would qualify for a Qualified Terminable Interest Property Trust election under I.R.C. § 2056(6)(7). A Form 706, United States Estate (and Generation Skipping Transfer) Tax Return, was filed.

The federal estate tax return contained the following information about Robert's estate:

- Robert's total federal gross estate was \$1,996,043.24.
- A total marital deduction of \$1,436,025.39 was taken.
- Of that amount, \$591,924.12 passed outright to Adelaide, as a surviving spouse.
- The remaining \$844,101.27 passed into the Trust established by Article Third of Robert's Will, which is now known as the "Trust u/w/o Robert Chuckrow." Pursuant to I.R.C. § 2056(b)(7), the co-executrix elected to have the Trust treated as a qualified terminable interest property trust for federal estate tax purposes.

This \$844,101.27 thus qualified for the federal estate tax marital deduction. Because Robert Chuckrow was a resident of New York and owned no real or tangible property in Massachusetts, his estate did not file a Massachusetts estate tax return.

At some point in time after Robert's death, Adelaide moved to Massachusetts to be cared for by her daughter. She died while living in Williamstown, Massachusetts on August 14, 2011. Adelaide's niece, the executrix of her estate, filed a Form 706, United States Estate (and Generation Skipping Transfer) Tax Return and a Form M-706, Massachusetts Estate Tax Return.

Adelaide's federal estate, as reflected on Form 706, was as follows:

- Adelaide's total federal gross estate was \$15,633,617.
- Of that amount, \$13,251,469 consisted of assets held by the Trust u/w/o Robert Chuckrow, which was includible in Adelaide's federal gross estate under I.R.C. § 2044, by virtue of the I.R.C. § 2056(b)(7) election made for the Trust at Robert's death.

Accordingly, Adelaide's estate paid \$5,225,419 in federal estate taxes.

Meanwhile, on Form M-706, the executrix reported a Massachusetts gross estate of \$2,382,148 (representing the difference between Adelaide's federal gross estate and the amount attributable to the QTIP trust property). Adelaide's estate paid \$100,997 in Massachusetts estate taxes.

Adelaide's estate was selected for audit. On August 29, 2013, the Department of Revenue issued a Notice of Intention to Assess, determining that the Massachusetts gross estate should have included the assets of the Trust u/w/o Robert Chuckrow, and thus asserting that the estate owed additional taxes in the amount of \$1,809,141.88. Disagreeing with the intended assessment, Adelaide's estate requested a conference pursuant to G.L. c. 62C, § 26(b), which was held on February 12, 2014. The Department of Revenue issued its decision letter on March 10, 2014, denying the estate's requested relief and returning the matter to the audit division for assessment.

On March 18, 2014, Adelaide's estate received a Notice of Assessment for \$1,953,032, representing

the additional tax of \$1,809,141.88 plus accrued interest thereon. The estate paid the assessed tax on April 11, 2014, and noted that an application for abatement would be forthcoming.

The Trust u/w/o Robert Chuckrow did not terminate on Adelaide's death. It continues to operate at the present time, and it remains sited in New York, where it has always been.

III. Background of the federal and Massachusetts estate tax and marital deduction

A. History of the federal estate tax

Prior to the current estate tax system, Congress imposed temporary death taxes to raise revenue during or after times of war. The first three iterations (in 1797, 1862, and 1898) were temporary revenue raisers, and were repealed after their need dissipated. The War Revenue Act of 1898 led to the Supreme Court case of *Knowlton v. Moore*, 178 U.S. 41 (1900), holding that death taxes were constitutional and that Congress may properly tax the *transfer* of property, but not the *value* of property.

The estate tax as we know it came into existence in 1916, again to fund a war. See Revenue Act of 1916, ch. 463, 39 Stat. 756. This time, however; the estate tax was not repealed. Until World War II, the federal estate tax treated citizens of common-law states differently from those in community-property states, such that citizens of community-property states paid significantly less in estate taxes due to the form of ownership.

To reconcile this difference, Congress introduced the marital deduction in 1948, thus equalizing tax benefits in common-law and

community-property states. See Revenue Act of 1948, Pub. L. No. 80-471, 62 Stat. 110. Under the 1948 legislation, the decedent spouse would receive a deduction for one-half of the property that passed to the surviving spouse. *Id.* § 361. Notably, the 1948 legislation disqualified “terminable interest” property from the marital deduction, out of fear that estate tax might be avoided on the death of the surviving spouse.¹ *Id.* In 1976, Congress increased the maximum allowable marital deduction to the greater of \$250,000 or one-half of the decedent's adjusted gross estate. See Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520, § 2002.

Significant changes to the marital deduction (and estate taxes generally) came in 1981, under the Economic Recovery Tax Act. See Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 172. First, the marital deduction was made unlimited. *Id.* § 403. Second, the marital deduction was expanded to allow for certain terminable interests to be eligible for a marital deduction-known as qualified terminable interests. *Id.* For a terminable interest that passes from the decedent spouse to the surviving spouse to be considered a qualified terminable interest three conditions must be met:

- (1) The surviving spouse must receive all income from the property for life, payable at least annually;

¹ A “terminable interest” is an interest in property that terminates upon “the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur.” I.R.C. § 2056(b)(1). See also Black's Law Dictionary 886 (9th ed. 2009).

- (2) No person can have a power to appoint any part of the property to any person other than the surviving spouse; and
- (3) A QTIP election must be made by the executor of the deceased spouse's estate, and this election is irrevocable once made.

See I.R.C. § 2056(b)(7). The tradeoff is that property for which a QTIP election was made under § 2056(b)(7) is includible in the surviving spouse's federal gross estate pursuant to I.R.C. § 2044.

Hence the QTIP trust was born. The QTIP trust, has two major advantages, one practical and one tax-related. The practical advantage is that the first-to-die spouse controls the ultimate disposition of the property upon his spouse's death. The tax advantage is that the surviving spouse can delay paying estate taxes until her death. And further, with proper planning, married couples can maximize both of their federal exemption to minimize estate taxes paid on family assets.

B. History of the Massachusetts estate tax

Massachusetts enacted its first death tax in 1926, which took advantage of the state death tax credit under federal estate tax law—otherwise known as a "sponge tax." St. 1926, c. 355 (establishing estate tax). This tax was suspended (though never repealed) when the legislature enacted a stand-alone, Massachusetts estate tax under St. 1975, c. 684, § 74 (creating G.L. c. 65C). Under the stand-alone estate tax, there was no unlimited marital deduction, because federal law did not yet have an unlimited deduction. Nor was there a provision for QTIP, because QTIP property was (again) not yet in existence under federal law.

Rather, Massachusetts mirrored federal law by providing for a 50% marital deduction.

Massachusetts, mirroring the federal changes of 1981, added a QTIP section to its estate tax regime in 1985. St. 1985, c. 711, § 12 (inserting G.L. c. 65C, § 3A). The Massachusetts QTIP statute provided definitions nearly identical to those in I.R.C. § 2056(b)(7). But the Massachusetts QTIP required a state-level election that was "separate from and independent of" the federal QTIP election. G.L. c. 65C, § 3A. Despite mirroring the federal statute, Massachusetts did not permit an unlimited state marital deduction until July 1, 1994. See St. 1992, c. 133, §§ 422, 597.²

The stand-alone Massachusetts estate tax was phased out beginning in 1993, when the legislature enacted G.L. c. 65C, § 2A, which (for decedents dying after January 1, 1997) imposed a tax equal to the state death tax credit under federal law. This was a second sponge tax that was in effect for decedents dying between 1997 and 2003.

In 2001, Congress began a decade-long phase out of the federal estate tax, including an elimination of the state estate tax credit. See Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 ("EGTRRA"). Responding to EGTRRA, the Massachusetts legislature decoupled the Massachusetts estate tax from the federal estate tax. See St. 2002, c. 186, § 28. See also St. 2002, c. 364,

² There have been two subsequent amendments to the Massachusetts estate tax: St. 1992, c. 133, § 422, and St. 1994, c. 342, § 4. Both became effective for decedent's dying after July 1, 1994, so these amendments were inapplicable at the time of Robert's death in 1993.

§ 10. Thus, for those dying after January 1, 2003, the amount of the Massachusetts estate tax is computed by determining what would have been the federal credit for state estate tax on December 31, 2000. So when determining Massachusetts estate tax liability, it is still necessary to fill out the 1999 version of federal Form 706.

Thus, the Massachusetts estate tax from the 1980s forward was patchwork reaction to federal laws that has led to much confusion, even for seasoned practitioners.

- From 1981 to December 31, 1985, federal law provided for an unlimited marital deduction and a QTIP election. Massachusetts permitted a 50% marital deduction, but had no provision for QTIP elections.
- From 1986 to June 30, 1994, federal law provided for an unlimited marital deduction and a QTIP election. Massachusetts added a provision for QTIP elections, but still limited the state marital deduction to 50%.³
- From July 1, 1994 to December 31, 1996, federal law maintained the unlimited marital deduction and QTIP elections. Massachusetts finally provided the same.
- From 1997 to December 31, 2002, federal law provided for an unlimited marital deduction and QTIP elections. Massachusetts provided the same, but altered its estate tax regime to a sponge tax.
- From January 1, 2003 to the present, the Massachusetts estate tax is calculated based

³ Robert Chuckrow died on July 11, 1993.

on the state estate tax credit that would have applied under the 2000 Internal Revenue Code.

The above documents differences in federal and Massachusetts law with regard to the marital deduction and QTIP elections. But this does not even take into account the differences between federal and Massachusetts law regarding the estate tax exemptions. Because the exemption amounts were different, the executor would, to minimize estate tax liability, have to make a federal QTIP election on a different amount than the state QTIP election. This chart (also attached as an exhibit) attempts to visualize the differences:

CHART^{4, 5, 6}

Date of Death	Fed. Exemption	Mass. exemption	Fed. marital deduction	Mass. marital deduction	Fed. QTIP	Mass. QTIP
1982	\$225,000	\$30,000 ⁴	unlimited	50%	yes	no
1983	\$275,000	\$30,000	unlimited	50%	yes	no
1984	\$325,000	\$30,000	unlimited	50%	yes	no
1985	\$400,000	\$30,000	unlimited	50%	yes	no
1986	\$500,000	\$200,000 ⁵	unlimited	50%	yes	yes
1987	\$600,000	\$200,000	unlimited	50%	yes	yes
1988	\$600,000	\$200,000	unlimited	50%	yes	yes
1989	\$600,000	\$200,000	unlimited	50%	yes	yes
1990	\$600,000	\$200,000	unlimited	50%	yes	yes
1991	\$600,000	\$200,000	unlimited	50%	yes	yes
1992	\$600,000	\$200,000	unlimited	50%	yes	yes
1993	\$600,000	\$300,000	unlimited	50%	yes	yes
1994	\$600,000	\$400,000	unlimited	unlimited ⁶	yes	yes
1995	\$600,000	\$500,000	unlimited	unlimited	yes	yes
1996	\$600,000	\$600,000	unlimited	unlimited	yes	yes
1997	\$600,000	\$600,000	unlimited	unlimited	yes	yes
1998	\$625,000	\$625,000	unlimited	unlimited	yes	yes
1999	\$650,000	\$650,000	unlimited	unlimited	yes	yes
2000	\$675,000	\$675,000	unlimited	unlimited	yes	yes
2001	\$675,000	\$675,000	unlimited	unlimited	yes	yes
2002	\$1,000,000	\$1,000,000	unlimited	unlimited	yes	yes
2003	\$1,000,000	\$700,000	unlimited	unlimited	yes	yes
2004	\$1,500,000	\$850,000	unlimited	unlimited	yes	yes
2005	\$1,500,000	\$950,000	unlimited	unlimited	yes	yes
2006	\$2,000,000	\$1,000,000	unlimited	unlimited	yes	yes
2007	\$2,000,000	\$1,000,000	unlimited	unlimited	yes	yes
2008	\$2,000,000	\$1,000,000	unlimited	unlimited	yes	yes

⁴ Through 1985, Massachusetts had an exemption of \$30,000 for all Massachusetts decedents. But if the Massachusetts net estate was \$60,000 or less, then the exemption would be equal to that amount, thus eliminating Massachusetts estate tax.

⁵ Beginning in 1986, the Massachusetts exemption was not applicable to every decedent. In the event that a Massachusetts decedent had a net estate equal to or lower than this threshold amount, then the decedent is entitled to an estate tax exemption equal to the amount of his net estate, thus eliminating any state estate tax. If the decedent has a net estate worth just \$1 more than the threshold amount, then the estate must pay an estate tax on the entire estate.

⁶ The unlimited marital deduction went into effect for decedents dying after July 1, 1994.

IV. Argument

- A. The taxable transfer of QTIP occurs at the death of the first spouse, and because Robert Chuckrow died in New York, there is no constitutional basis for Massachusetts to impose a tax.
 - 1. The estate tax does not (and constitutionally cannot) tax the value property, but rather taxes the transfer of property.

The United States constitution forbids direct taxes unless they are apportioned among the states. U.S. Const. Art. I, § 9, cl. 4. In *Knowlton v. Moore*, 178 U.S. 41 (1900), the estate tax imposed by the War Revenue Act of 1898 was challenged as a direct tax that was not properly apportioned. The Supreme Court rejected this argument, holding that the estate tax (and taxes of that general character) are not taxes on the property or the value of the property itself but on the privilege of transferring the property at death: "death is the generating source from which the particular taxing power takes its being, and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested." *Id.* at 56.

Accordingly, estate taxes at the state and federal level are imposed not on the value of property, but on the transfer of the taxable estate from the decedent to the beneficiaries. See I.R.C. § 2001 (a) ("A tax is hereby imposed on the transfer of the taxable estate "); 830 Code Mass. Regs. § 65C1.1 ("The Massachusetts estate tax is a transfer tax imposed on the value of all property in the estate of a decedent at the date of death."). This is illustrated in Treasury Regulation 20.2033-1,

where it is said that "a cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of that part of the lot which is not designed for the interment of the decedent and members of his family." This is so because the occupied portion of the burial lot is not transferrable to anyone else by the decedent's beneficiaries.

2. The marital deduction is unlike other tax deductions because it merely delays the collection of tax.

The marital deduction is unlike other tax deductions. The typical tax deduction is given to offset expenses or costs that are incurred by the taxpayer, thus permanently eliminating the basis for taxation. The marital deduction, on the other hand, is not an elimination of taxation; it is a deferral or postponement of a tax that would otherwise be imposed on the first-to-die spouse. That is, if the entire taxable estate of the first-to-die spouse is transferred to the second-to-die, there will be no estate tax due from the estate of first-to-die spouse because of the unlimited marital deduction. But the taxing authority will eventually be able to tax that transferred property when the surviving spouse dies.

An example: H and W are married in a jurisdiction with an unlimited marital deduction and no estate tax exemption. H has \$2 million in assets, and W has \$0. When H dies, he can transfer the entire \$2 million to W without incurring any estate tax liability, because of the unlimited marital deduction. If W dies a year later, the taxing authority will then be able to assess a tax on W's \$2 million when she transfers it to the beneficiaries. The taxing authority merely had to delay

enforcement of the tax on the \$2 million, though it is the same \$2 million that was originally owned by H. Of course, in this situation there are two transfers: one from H to W, and another from W to beneficiaries.

Contrast the above with a hypothetical where H's executor makes a QTIP election using a trust identical to the Trust u/w/o Robert Chuckrow. H has \$2 million; W has \$0. When H dies, his entire \$2 million is transferred into the trust. His executor makes a QTIP election (which qualifies for the marital deduction), so no estate tax is due on H's death. W does not receive outright any of the \$2 million. She still has \$0, but she receives all income from the trust, payable annually. When W dies, her estate owes estate taxes on the \$2 million, but only by virtue of I.R.C. § 2044, and not § 2031.⁷ The trust remains in existence; only an income beneficiary has been removed by death. In this situation, however, there was only one transfer—the transfer from H into the trust. (This is explored more fully below.) W never had any dominion or control over the property; nor could she control its disposition. The trust's terms controlled. So W never had the money, but her estate is taxed under I.R.C. § 2044.

⁷ I.R.C. § 2031 defines gross estate to include, at the decedent's death, "all property, real or personal, tangible or intangible, wherever situated"—in other words, all assets the decedent owns. I.R.C. § 2044, on the other hand, adds to the gross estate the value of any property "in which the decedent had a qualifying income interest for life." Section 2044 creates a fictional transfer of property from the surviving spouse to the ultimate beneficiaries of a QTIP trust.

3. QTIP trust assets are transferred only one time, at the death of the first-to-die spouse, and there is thus no basis for Massachusetts to tax that transfer.

The estate tax is a tax on the transfer of property at death. When the property transferred is qualified terminable interest property, there is only one transfer—and that transfer occurs on the death of the first-to-die spouse. There is no transfer when the surviving spouse later dies.

a. A background of QTIP trusts.

QTIP trusts are commonly used in modern estate planning to minimize estate taxes for families while preserving assets for the benefit of a surviving spouse during her lifetime. QTIP trusts are an exception to the general IRS rule that terminable interest property cannot qualify for the marital deduction. Thus, if properly established, QTIP trusts qualify for the marital deduction.

Typically, property passing from the decedent spouse to the surviving spouse qualifies for the unlimited federal marital deduction. I.R.C. § 2056(a). There are some limitations. One is that no marital deduction can be taken for terminable interest property. I.R.C. § 2056(b). But if the terminable interest property is *qualified* terminable interest property (QTIP), it does qualify for the marital deduction, and so the applicable estate tax is deferred until the surviving spouse's death. I.R.C. § 2056(b)(7).

Qualified terminable interest property is defined as property "(I) which passes from the decedent, (II) in which the surviving spouse has a qualifying income interest for life, and (III) to which

an election under this paragraph applies." I.R.C. § 2056(b)(7)(B)(i). And the surviving spouse has a qualifying income interest for life if "(I) the surviving spouse is entitled to all income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse." I.R.C. § 2056(b)(7)(B)(ii).

The ordinary federal estate plan for a decedent who plans to use a QTIP trust proceeds in this manner. Before his death, the decedent sets up a plan to use two trusts. Upon death, an amount equal to the federal exemption passes into a Credit Shelter Trust, thus utilizing the decedent's federal estate tax exemption. And the balance of the decedent's estate would fund a Marital Trust, which would be eligible for a QTIP election.

The Marital Trust is purposefully structured so as to preserve the marital deduction. First, the surviving spouse must be paid income from the trust at least annually. Second, no person may have the power to appoint any portion of the trust property to anyone other than the surviving spouse. And third, the language of the trust will allow for a QTIP election to be made by the decedent spouse's executor, and this election is irrevocable. See I.R.C. § 2056(6)(7).

- b. The taxable transfer of the Trust occurs at the death of the first-to-die spouse, not the second-to-die spouse.**

When Robert Chuckrow died, the executrix of his estate made an irrevocable federal QTIP election on a timely filed Form 706 for the Trust assets. Under the terms of the Trust, Adelaide had no

general power of appointment over the property the Trust, and she was unable to exercise any dominion or control over the Trust property. Her interest in the Trust was limited to her right to receive income distributions from the Trust, and principal distributions but only in the trustee's sole and absolute discretion. The best way to conceptualize the estate tax liability of QTIP is as a taxable transfer on the death of the first spouse, but a deferment on the collection of those taxes until the second spouse dies. This comports with general theories of both property law and federal tax law.

First, as a matter of general property law, the transfer of trust property is completed when the Donor puts the property into an irrevocable trust. See *In re Estate of Bracken*, 175 Wash. 2d 549, 566 (2012), citing *Coolidge v. Long*, 282 U.S. 582, 605 (1931). The Donor establishes the trust terms, nominates a trustee, and dictates the ultimate disposition of the property by listing the beneficiaries. Once the property is transferred into an irrevocable trust (assuming the Donor retains no interest in the trust), the Donor relinquishes all rights to dominion or control over the property. This is why a gift tax return is required when a Donor creates an irrevocable trust in which he is neither the trustee nor beneficiary.

The Trust established by Robert's will was no different. Robert, through his executrix, made the irrevocable election to treat the property transferred into the Trust as QTIP property. See I.R.C. § 2056(b)(7)(v). None of this property was ever transferred to Adelaide, and she had no authority or power to alter the Trust's terms, to control its

principal, to change its beneficiaries, or to alter the principal's ultimate disposition.⁸

In short, Robert controlled the ultimate disposition of his property by setting the terms of the trust, and it was his death that constituted the transferring event that the federal government (or any state government, for that matter) could constitutionally tax. Adelaide had no control or dominion over the property that was in the Trust. She could not remove it, add to it, or otherwise manipulate it. When Adelaide died, there was no further transfer of the Trust property. Rather, the property remained (and still remains) held in the same Trust for the benefit of the class selected by Robert per the terms of the Trust as he established it. Adelaide's death merely changed the class of beneficiaries eligible to receive Trust property. Because she had no power or control over the assets of the Trust, Adelaide cannot be said to have transferred any of the Trust property upon her death. Therefore, as a matter of property law, the *only* transfer with regard to this QTIP trust was upon Robert's death.

Second, under the Internal Revenue Code and applicable regulations, the death of the first-to-die spouse is the taxable event with regard to QTIP trust assets. As discussed above, the marital deduction (which QTIP-elected trusts qualify for) is not a typical deduction that eliminates taxation

⁸ This is also illustrated in Treas. Reg. 20.2033-1, where it is said, "[a] cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of that part of the lot which is not designed for the interment of the decedent and members of his family." The reason is obvious: the portion of the burial plot is used exclusively by the decedent, and is not transferrable by any of his beneficiaries.

completely. Rather, the election only delays or postpones the collection of the tax (which would otherwise be due at the decedent spouse's death) until the surviving spouse dies.

The value of the first-to-die spouse's federal gross estate includes property that he passes into a trust for which a QTIP election is intended to be made. See I.R.C. § 2033 (value of gross estate includes the value of all property to the extent of the interest of the decedent); Treas. Regs. §§ 20.0-2(a), 20.2033-1(a), 20.2044-1(e) (Ex. 1). Ordinarily, terminable interest property passed to a surviving spouse would not qualify for the marital deduction. But I.R.C. § 2056(b)(7) provides an exception for qualified terminable interest property, which does qualify for the marital deduction. To perfect a QTIP trust, one of the conditions is that property *actually pass* from the first-to-die spouse into the trust. I.R.C. § 2056(b)(7)(B)(i)(I) (property "which passes from the decedent"). Only by virtue of a QTIP election, and corresponding allowance of a marital deduction, is such decedent spouse's property not taxed immediately. The quid pro quo of the marital deduction created by specific legislative rule, however, is that estate taxes on the trust assets are ultimately paid when the surviving spouse dies. The Code essentially creates a fictional transfer to reach QTIP property in the surviving spouse's estate—treating it as having passed to the surviving spouse. See Rev. Proc. 2001-38 ("For purposes of § 2056(a), qualified terminable interest property is treated as passing to the surviving spouse, and no part of the property is treated as passing to any person other than the surviving spouse."). It is only *treated* as passing to the surviving spouse for purposes of § 2056 because the property was *actually* transferred

into the QTIP trust—forever out of reach of the surviving spouse.

This point is reiterated in the tax procedures for the surviving spouse. At the death of the surviving spouse, where a QTIP election has been made and the marital deduction previously allowed, the Code again creates a fictional transfer. Internal Revenue Code § 2044(c) provides that, for estate tax purposes, qualified terminable interest property is "includible in the gross estate of the decedent [the surviving spouse] under subsection (a) shall be treated as property passing from the decedent [the surviving spouse]." Again, it is *treated* as passing, but it does not actually pass from the surviving spouse. This is no accident of phrasing either. In subsection (b), the Code specifies that this section applies to property for which "a deduction was allowed with respect to the transfer of such property to the decedent [the surviving spouse]." Thus, under a plain reading, I.R.C. § 2044 recognizes the differences between property that is actually transferred and property that is only treated as transferred.

Furthermore, the Code recognizes that there is only one transfer by its inclusion of I.R.C. § 2207 A. Under § 2207A, the second-to-die's estate is entitled to recover from the QTIP trust the position of the second-to-die's estate tax that is attributable to the § 2044 inclusion of QTIP trust—*i.e.*, the portion the surviving spouse fictionally transfers to the ultimate beneficiaries by virtue of § 2044. Thus, even the Code recognizes that the surviving spouse does not and cannot actually transfer any property from a QTIP trust on her death, which is why § 2207A allocates the ultimate tax liability for taxes

assessed on the value of QTIP property to the QTIP assets themselves.

This is not some hovel or unique interpretation. Indeed, the Supreme Court of Washington reached the very same conclusion in *In re Estate of Bracken*, 175 Wash. 2d 549 (2012). The court held that the taxable transfer of property passing to a trust for which a QTIP election was made is on first-to-die's death. *Id.* at 567-568. Therefore, the state could not retroactively impose Washington estate taxes on the second-to-die spouse attributable to assets of a QTIP trust for her benefit. *Id.* at 566-568, 575-576. *Bracken* is discussed in further detail below.⁹

Accordingly, under general principles of property law and federal and state tax law, the only transfer of QTIP assets occurs at the death of the first-to-die spouse. And this true transfer is the transfer of assets from the decedent into the qualifying trust. Nevertheless, the Code supposes a two-step fictional transfer of QTIP assets: first from the decedent spouse to the surviving spouse, and then a second fictional transfer from the surviving spouse to the ultimate beneficiaries. But these two

⁹ Other courts have discussed the fictional transfer on the surviving spouse's death. See *Estate of Bonner v. United States*, 84 F.3d 196, 198 (5th Cir. 1996) ("Although § 2044 contemplates that the QTIP property will be treated as having passed from Bonner for estate tax purposes, the statute does not require, nor logically contemplate that in so passing, the QTIP assets would merge with other assets."); *Estate of Mellinger v. Commissioner*, 112 T.C. 26, 35 (1999) ("[QTIP] properly is 'treated as property passing from the' surviving spouse, sec. 2044(c), and is taxed as part of the surviving spouse's estate at death, but QTIP property does not actually pass to or from the surviving spouse.").

transfers are just that fictional. The Code creates these fictional events in order to collect, on the death of the second spouse, the tax that otherwise would be collectible upon the death of the first-to-die spouse. Without the first fictional transfer (from decedent spouse to surviving spouse), taxes would be immediately due. But, if the first fictional transfer were allowed without the second fictional transfer from the surviving spouse to the ultimate beneficiaries, the trust assets would escape estate taxation altogether, since an income interest in a trust created by a third party expires at death with no general power of appointment over such assets would not be includible in the decedent's gross estate—but for the fiction created by I.R.C. § 2044.

Adelaide, having no control over the Trust assets, had nothing to actually transfer on her death. The true transfer, and thus the taxable event, occurred on the death of Robert.

4. The taxable event occurred when Robert Chuckrow died in New York; thus the QTIP property is beyond the reach of Massachusetts's taxing jurisdiction.

Because the taxable transfer occurred on the death of Robert Chuckrow, the Massachusetts Department of Revenue is powerless to impose a tax on the Trust assets at the death of Adelaide Chuckrow.

a. The Fourteenth Amendment and art. 10 prohibits a state from taxing a transaction that occurs outside its borders.

The due process clause of the Fourteenth Amendment prohibits a state from imposing a tax on

a transaction that occurs entirely outside its borders. "[T]he exaction by a State of a tax which it is without power to impose is a taking of property without due process of law in violation of the Fourteenth Amendment." *Frick v. Pennsylvania*, 268 U.S. 473, 488-489 (1925) (holding statute that attempts to tax tangible property with situs in another state unconstitutional). *Frick* tracks Chief Justice Marshall's statement in *McCulloch v. Maryland* that the power to tax "is an incident of sovereignty, and is coextensive with that to which it is an incident. All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation." *McCulloch v. Maryland*, 4 Wheat. (17 U.S.) 316, 429 (1819). Similarly, art. 10 of the Massachusetts Declaration of Rights proscribes the collection of estate taxes on a person who is not a citizen of Massachusetts.

b. Massachusetts is reaching beyond its taxing jurisdiction in seeking to impose a tax on Adelaide based on Robert's transfer of property into the Trust.

Here, Massachusetts is attempting to reach beyond its borders—beyond its sovereignty—to collect a tax on a transfer made in New York by a New York resident. By doing so, Massachusetts is attempting to exact "a tax which it is without power to impose," in violation of the due process clause of Fourteenth Amendment of the United States Constitution. *Frick v. Pennsylvania*, 268 U.S. 473, 488-489 (1925).

The Supreme Judicial Court has recognized that Massachusetts may constitutionally impose an

estate tax on gifts made within three years of death by a Massachusetts decedent, even though the gifts were of Maryland intangible securities and even though the decedent was a Maryland resident at the time the gifts were made. See *Page v. Comm'r of Revenue*, 389 Mass. 388, 394-395 (1983). In reaching that decision, the SJC relied, in part, on *Curry v. McCanless*, 307 U.S. 357 (1939). In *Curry*, both Alabama and Tennessee attempted to impose death taxes on the transfer of an interest in intangibles. *Id.* at 360. The decedent was a domiciled resident of Tennessee, and the intangibles were held in trust by an Alabama trustee—a trust established by the decedent and over which she maintained the power to dispose of the trust estate by her will (a general power of appointment). *Id.* at 360-361. The Court held that both states could constitutionally levy a tax on the transfer of these assets. *Id.* at 372-373.

Of course, there are several major distinctions between taxing the assets of the individuals in *Page* and *Curry* and taxing the Trust assets here. In *Page*, the decedent maintained absolute control and dominion over the ultimate transfer of the property. She could have sold them, gifted them, or bequeathed them. Similarly, the decedent in *Curry*, by her trust instrument, maintained a right to bequeath the trust assets, thus controlling their ultimate transfer. What is more, in *Page* and *Curry*, the decedents were both the taxpayer and the transferor.

Not so in the case of Adelaide Chuckrow. In the Trust created under Robert's Will, Adelaide had no power or control to transfer the principal. Contrast *Pearson v. McGraw*, 308 U.S. 313, 318 (1939) (noting that the jurisdiction of a state "is dependent not on the physical location of the

property in the state but on control over the owner"). Unlike *Page* and *Curry*, here the transferor and the taxpayer are not one and the same. In *Page* and *Curry*, the states taxed their residents on the transfers made by their residents. In the present case, however, the transfer was made by Robert Chuckrow, but the Department seeks to tax Adelaide. Robert was not a Massachusetts resident at the time of this transfer (his death), and he never subjected himself to the estate taxing jurisdiction of the Commonwealth, as he owned no real or tangible personal property sited in Massachusetts. Further, Robert was the person who determined the ultimate disposition of the property by deciding the terms of the trust, and he was the one who through his executrix will transferred the property into the Trust. Therefore, unlike the taxpayers in *Page* and *Curry*, the present taxpayer, Adelaide, had no say in the initial transfer of the property and no control over the ultimate disposition of the property at her death. The only reason that the Trust relates to Adelaide's estate at all is because of the special rules of I.R.C. § 2056(b)(7) and I.R.C. § 2044.

Indeed, the better analogy is to a situation where a Donor completes an inter vivos gift by transferring the property into an irrevocable trust, where he is neither the trustee nor a beneficiary. Under general principles of property law, the gift is completed once the property is delivered to the trustee. See *In re Estate of Bracken*, 175 Wash. 2d 549, 566 (2012), citing *Coolidge v. Long*, 282 U.S. 582, 605 (1931). At that moment, the Donor has relinquished all rights in the property he transferred into trust (thus triggering the requirement of filing a gift tax return). In *Wuesthoff v. Wisconsin Dep't of Taxation*, the state of Wisconsin attempted to impose

a tax on a gift made into an irrevocable inter vivos trust by a nonresident Donor to a nonresident trustee. 261 Wis. 98, 99-100 (1952). The only connection to Wisconsin was that the gift consisted of Wisconsin securities. *Id.* at 104. Because the gift was completed outside the state, and because donor and done were not residents of Wisconsin, the court held that the transfer was beyond the taxing jurisdiction of the state of Wisconsin. *Id.* at 104-105.

The Supreme Court of Washington reached a similar conclusion regarding federal QTIP and its interplay with state estate taxes in *In re Estate of Bracken*, 175 Wash. 2d 549 (2012). In 2006 the Washington legislature enacted a stand-alone state estate tax and authorized the Washington Department of Revenue to create, for the first time, a separate state QTIP election. *Id.* at 559-560. The first-to-die husbands died before the enactment of this statute and their executors made federal QTIP elections; the second-to-die wives died after. The Department attempted to impose a tax on the estates of second-to-die wives attributable to the QTIP trusts established by their husbands. *Id.* at 556. The court held that the state could not impose a tax on the federal QTIP trusts because no transfer occurred at the surviving spouses' death. *Id.* at 575-576. That is, the estate tax requires a transfer of property to impose a tax; the transfer of assets of a QTIP trust occurred when the first spouses die; and because no taxable transfer occurred at the surviving spouses' deaths, the state could not impose an estate tax. *Id.* Although Massachusetts had a QTIP election at the time of Robert's death, he was a New York resident and the transfer occurred in New York. Massachusetts cannot constitutionally tax a transfer that occurred in a different state. The

difference between *Bracken* and this case is that Washington attempted to impose a retroactive estate tax on in-state transfers. Here, not only is Massachusetts attempting to impose a retroactive tax, but it is also attempting to tax an out-of-state event. The legitimacy of the present tax is thus even more tenuous. See *McCulloch v. Maryland*, 4 Wheat. (17 U.S.) 316, 429 (1819) ("All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation.").

The right to collect a tax on the Trust occurred on the death of Robert, because that is when the taxable transfer of the property occurred. Even under *Page*, where the Commonwealth was permitted to impose a tax, the court held that "it is the domicile of the decedent at the time the right to impose the tax arises that determines the propriety of the tax." *Page*, 389 Mass. at 395. In *Page*, the taxable event was the decedent's death, which occurred in Massachusetts. But here, the taxable event was the transfer upon Robert's death, which occurred in New York. Therefore, the estate tax imposed by Massachusetts on the assets of the Trust violates the due process clause of the Fourteenth Amendment of the United States Constitution because it exceeds the permissible reach of Massachusetts's sovereignty. See *McCulloch v. Maryland*, 4 Wheat. (17 U.S.) 316, 429 (1819). Consequently, the estate is entitled to an abatement in the full amount of \$1,953,032.

B. Under the terms of the Massachusetts estate tax statute, the value of the federally elected QTIP property is not properly includible in Adelaide's Massachusetts gross estate.

The Massachusetts estate tax, as it existed through 1996, was the result of patchwork legislation in response to federal code changes, thus resulting in a highly convoluted maze of state statutes and regulations. Massachusetts lagged years behind innovative updates to the federal code, such as the unlimited marital deduction and the QTIP. The federal QTIP was introduced in 1981, but the Massachusetts QTIP did not become effective until January 1, 1986. See St. 1985, c. 711, §§ 12, 19. The federal code also moved to an unlimited marital deduction in 1981, but Massachusetts did not do so until July 1, 1994. See St. 1992, c. 133, §§ 422, 597. Couple these issues with the phase out of the Massachusetts estate tax beginning in the early 1990s (in favor of the sponge tax, G.L. c. 65C, § 2A, which went into effect on January 1, 1997), and the result was a complicated morass for anyone trying to navigate between the federal and Massachusetts estate tax.

1. The executor may make a Massachusetts QTIP election that is separate from and independent of the federal QTIP election and the Massachusetts QTIP election.

The executrix of Robert Chuckrow's estate did not make a Massachusetts QTIP election; no such election was required. An executor may make separate and independent QTIP elections for purposes of federal and Massachusetts taxation. See G.L. c. 65C, § 3A(f), as inserted by St. 1985, c. 711, § 12 ("Such election, once made, shall be irrevocable

and shall be separate from and independent of any election made for federal estate tax purposes.").¹⁰ This was true when Massachusetts had a stand-alone estate tax, and it remained true even after Massachusetts returned to a sponge tax beginning in 2003. Not only has the legislature never repealed G.L. c. 65C, § 3A, but the Department of Revenue's Directive 03-2 (which was issued after Massachusetts reverted to a sponge tax) states that "[t]he executor ... is not required to have made the same QTIP election for federal estate tax purposes in order to make the election for Massachusetts purposes." Accordingly, an executor could and can make a federal QTIP election on certain property but not make a Massachusetts QTIP election on the same property, or vice versa.

2. Because the state and federal QTIP elections can be different, the analysis does not end simply by defining the Massachusetts gross estate as the federal gross estate.

At the settlement conference, the decision's reasoning began and ended with the observation that Massachusetts estate tax is calculated by reference to the as the federal gross estate—of which the assets of the Trust u/w/o Robert Chuckrow would be included. However, because it is possible for separate federal and state QTIP elections, bare reference to the federal gross estate runs the risk of double taxing property for which a federal QTIP election was made, but for which no Massachusetts QTIP election was made. This issue was confronted when the legislature amended the stand-alone estate tax to allow for state QTIP elections, yet kept the

¹⁰ Section 3A(1) has never been amended.

50% state marital deduction. The solution then was to alter the definition of Massachusetts gross estate so as to exclude property for which a federal QTIP election was made, but no state QTIP election was made. See G.L. c. 65C, § 1(f). Indeed, this is the only logical construction of § 10(f).

Under the familiar tenets of statutory interpretation, a statute is construed "in accord with 'the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.' ... " *Champigny v. Commonwealth*, 422 Mass. 249, 251 (1996), quoting *Telesetsky v. Wight*, 395 Mass. 868, 872-873 (1985). Further, "a statute must be construed so that 'effect is given to all its provisions, so that no part will be inoperative or superfluous.'" *Wheatley v. Mass. Insurers Insolvency Fund*, 456 Mass. 594, 601 (2010), quoting *Bankers Life & Cas. Co. v. Comm'r of Ins.*, 427 Mass. 136, 140 (1998). Because this is a tax statute, it is also necessary to note that the statute should avoid double taxation where possible. *O'Brien v. State Tax Comm'n*, 339 Mass. 56, 62 (1959).

3. The last sentence of G.L. c. 65C, § 1(f), explicitly excludes, from the Massachusetts gross estate, the value of property for which a federal QTIP election was made, but no Massachusetts QTIP election was made.

Any analysis of G.L. c. 65C, § 1, must begin with the language of the statute itself:

"When used in this chapter the following words or terms shall have, unless the context clearly indicated otherwise, the following meanings:--

....

(f) "Massachusetts gross estate", the federal gross estate, whether or not a federal estate tax return is required to be filed, plus the value of any property (i) in which the decedent had at death a qualifying income interest for life described in subsection (c) of section three A ... and (ii) for which a deduction was allowed for Massachusetts estate tax purposes with respect to the transfer of such property of the decedent; and less the value of real and tangible personal property having an actual situs outside the commonwealth. The Massachusetts gross estate shall not include the value of any property in which the decedent [the surviving spouse] had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent's estate to recover

federal or Massachusetts estate taxes from such property."

G.L. c. 65C, § 1(f), as amended by St. 1985, c. 711, § 6.¹¹

The starting point is to determine the decedent's federal gross estate. The statute then adds "the value of any property (i) in which the decedent [the surviving spouse] had at death a qualifying income interest for life described in [G.L. c. 65C, § 3A(c)] ... and (ii) for which a deduction was allowed for Massachusetts estate tax purposes with respect to the transfer of such property to the decedent." G.L. c. 65C, § 1(f). The purpose of this portion of the statute is to capture the value of any property for which a Massachusetts QTIP election was made. See 830 Code Mass. Regs. § 65C.2.1(1)(b), (5). Without this provision, property for which a Massachusetts QTIP election was made would not be able to be taxed on the surviving spouse's death, because this property would not be included by mere reference to the federal gross estate.¹²

Finally, we arrive at the final sentence of the statute:

"The Massachusetts gross estate shall not include the value of any property in which the decedent [the surviving spouse] had a qualifying income interest for life which is not

¹¹ Prior to the 1985 amendment, the definition simply read: "the federal gross estate, whether or not a federal estate tax return is required to be filed, less the value of real and tangible personal property having an actual situs outside the commonwealth." St. 1975, c. 684, § 74.

¹² The next step is to subtract out-of-state real and tangible personal property, but that is not relevant to the present circumstances.

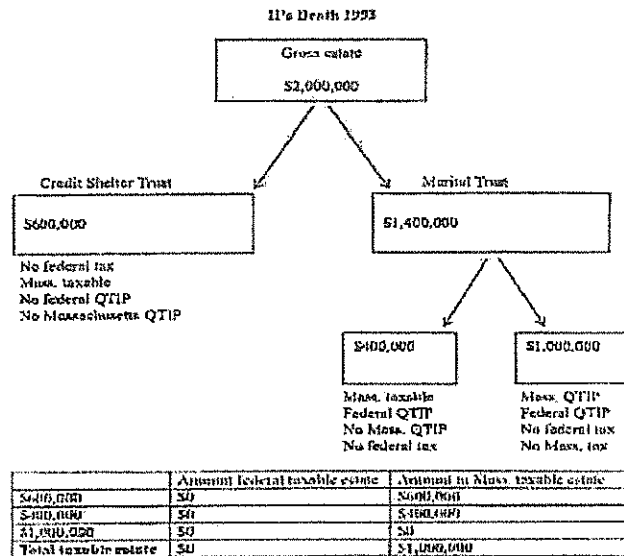
otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent's estate to recover federal or Massachusetts estate taxes from such property."

To fully understand this sentence of the statute, it is necessary to examine the context in which it was added. See *Champigny v. Commonwealth*, 422 Mass. 249, 251 (1996). When this sentence was added in 1985, federal law had already moved to an unlimited marital deduction, in addition to permitting QTIP elections. Massachusetts followed the federal lead regarding QTIP elections under this 1985 amendment, but chose to maintain its 50% marital deduction. This created a serious disconnect between federal QTIP elections and Massachusetts QTIP elections. Hence, the executor is permitted to make a Massachusetts QTIP election that is "separate from and independent of" any federal QTIP election. See G.L. c. 65C, § 3A(f). And due to the 50% Massachusetts marital deduction, a proper estate-tax-minimizing estate plan would always make a federal QTIP election in excess of the Massachusetts QTIP election. But this, in turn, would have created a serious double taxation problem-that is, the excess amount elected under the federal QTIP would already have been taxed by Massachusetts on the state estate taxes. So the legislature needed to create a way to eliminate from the Massachusetts gross estate the excess value of federal QTIP property.

Thus the last sentence of the statute was added: "The Massachusetts gross estate shall not include the value of any property in which the decedent [the surviving spouse] had a qualifying income interest for life which is not otherwise

includible in the Massachusetts gross estate under the first sentence of this paragraph." G.L. c. 65C, § 1(f). Understood in the proper context, it is clear that the intent of this sentence is to eliminate the excess federal QTIP election from the Massachusetts gross estate.

The following hypothetical demonstrates why: H has \$2 million, and W has \$0. Assume that no federal exemption exists. H dies in 1993, and the entire \$2 million funds a trust that could qualify for a QTIP election. H's executor makes a federal QTIP election only, thus deferring collection of the federal estate tax until W dies. See I.R.C. §§ 2044, 2056(b)(7). No Massachusetts QTIP election was made, and so state estate tax would be assessed on the \$2 million at H's death. W never receives the property; she merely has a qualifying income interest for life in the trust. At W's death, her federal gross estate would be \$2 million, by virtue of I.R.C. § 2044. And if the first words of G.L. c. 65C, § 1(f), or the formula for the sponge tax under § 2A, are to be taken literally without regard to the last sentence—i.e., the Massachusetts gross estate is the federal gross estate—then W's Massachusetts gross estate would be \$2 million, even though tax was already paid on this \$2 million and even though W never owned or had control of the \$2 million. The final sentence of G.L. c. 65C, § 1(f), remedied this problem: it would exclude from W's Massachusetts gross estate her qualifying income the \$2 million from W's Massachusetts gross estate. (The chart is also attached as an exhibit).



W's Death
Gross estate \$0

	Amount federal taxable estate	Amount in Mass. taxable estate
\$600,000	\$0	\$0
\$700,000	\$700,000	\$0
\$1,300,000	\$1,300,000	\$1,000,000
Total taxable estate	\$1,300,000	\$1,000,000

The same situation could apply in the present day, even with Massachusetts now using a sponge tax. See G.L. c. 65C, § 2A. The executor could choose to make only a federal QTIP election, and simply pay the Massachusetts estate tax on the decedent spouse's death. Accordingly, simply referencing the federal estate in the current estate tax regime would create the same problems, and would lead to double taxation of the value of assets for which estate tax was already paid.

4. Under the rules of statutory interpretation, and the rule of construction that taxing statutes should avoid double taxation, this analysis of the last sentence of G.L. c. 65C, § 1, is correct.

For two reasons, this is the only logical construction of the last sentence of this statute. And it shows the significant flaw of simply referencing the federal gross estate in calculating Massachusetts estate tax. First, the rules of statutory interpretation require that the last sentence take precedence over the previously enacted first words of the statute. Effect must be given to all provisions in a statute. See *Wheatley v. Mass. Insurers Insolvency Fund*, 456 Mass. 594, 601 (2010). So the analysis cannot stop at the words "the federal gross estate"; otherwise, the last sentence of G.L. c. 65C, § 1, would be extraneous, superfluous, and entirely ineffective. The portion of the statute referencing the "federal gross estate" has been in the statute since it was originally enacted in 1975, see St. 1975, c. 684, § 74, while the final sentence was added in 1985. Not only did the amendment come later in time, it is undoubtedly the more specific provision and, as such, controls over the general. See *Doe v. Attorney General (No. 1)*, 425 Mass. 210, 215-216 (1997) ("[W]hen two statutes (or provisions within those statutes) conflict, ... the more specific provision, particularly where it has been enacted subsequent to a more general rule, applies over the general rule.").¹³

¹³ The last sentence does not exclude property that is "otherwise includible in the Massachusetts gross estate under the first sentence." This, technically, points back to the words

Second, this construction avoids the problem of double taxation. "Massachusetts taxing statutes will be 'interpreted so as not to cause double taxation unless no other reasonable construction is practicable.'" *O'Brien v. State Tax Comm'n*, 339 Mass. 56, 62 (1959), quoting *DeBlois v. Comm'r of Corps. & Taxation*, 276 Mass. 437, 439-440 (1931). Returning to the example above, W's federal gross estate would include the \$2 million. See I.R.C. § 2044. Under the Department's reading, this \$2 million would be subject to Massachusetts estate tax on W's death, even though the same \$2 million was already taxed at H's death. Moreover, not only would Massachusetts be attempting to tax the same assets twice, it would also be attempting to tax the same transfer twice—the transfer from H into the trust.¹⁴ Cf. *Rohrbough, Inc. v. Comm'r of Revenue*, 385 Mass. 830, 831 (1982) (double taxation of proceeds from the same transaction should be avoided).

At bottom, the definition of Massachusetts gross estate is inarticulate. The last sentence was added to avoid including federal QTIP property for which no Massachusetts QTIP election was made in the definition of Massachusetts gross estate. At the very least, this statute is ambiguous. "Taxing statutes are to be construed strictly against the

"federal gross estate," which by virtue of I.R.C. § 2044 would include the federal QTIP property. But this would also create an endless circle, because—it would then be excluded once again by the last sentence. Such a construction would also make the last sentence inoperative. Rather, the better interpretation of "the first sentence" would be to ensure that the last sentence did not exclude Massachusetts QTIP property.

¹⁴ Even more offensive, W never had any dominion or control over the property, but received only a qualifying income interest from the trust.

taxing authority, and all doubts resolved in favor of the taxpayer." *Comm'r of Revenue v. AMI Woodbroke, Inc.*, 418 Mass. 92, 94 (1994), quoting *Dennis v. Comm'r of Corps. & Taxation*, 340 Mass. 629, 631 (1960).

5. Adelaide Chuckrow had a qualifying income interest for life in Trust property for which a federal QTIP election was made, but no Massachusetts QTIP election was made; her situation falls directly in line with the last sentence of G.L. c. 65C, § 1(f), and so the value of Robert Chuckrow's federal QTIP property must be excluded from Adelaide's estate.

Under G.L. c. 65C, § 1(f), the value of the property in the Trust u/w/o Robert Chuckrow would have been excluded from Adelaide's Massachusetts gross estate. The same result should apply under the current sponge tax. Robert's executor did not make a Massachusetts QTIP election, but she did make a federal QTIP election. Adelaide had a qualifying income interest for life in the Trust u/w/o Robert Chuckrow, and this interest would not otherwise have been includible under the first sentence—i.e., it was not Massachusetts QTIP property. G.L. c. 65C, § 1(f). And reference cannot be made back to "federal gross estate," because this would have rendered the entire final sentence inoperative. Indeed, this was the purpose of the last sentence. Therefore, Adelaide's Massachusetts gross estate would "not [have] include[d] the value of any property in which [she] had a qualifying income interest for life!" So it would not have included the value of the assets in the Trust u/w/o Robert Chuckrow. *Id.* The result should be no different under the current sponge tax.

The Massachusetts legislature already confronted the issue of how to tax an estate where a federal QTIP election was made, but no state QTIP election was made. The fact that Massachusetts now uses a sponge tax does not eliminate the potential for double taxation. And so the analysis should not change. Therefore, Adelaide's estate is entitled to a full abatement of \$1,953,032.

C. Even if the Chuckrows had been Massachusetts residents at the time of Robert's death, Robert's executor could only have made a Massachusetts QTIP election on 48.11% of his estate, and so, at the very least, abatement in that amount is due Adelaide's estate.

The unfairness and injustice of the Massachusetts estate tax regime in the 1980s and mid-1990s is demonstrated by looking at what would have happened if Robert Chuckrow was a Massachusetts resident at his death. Robert Chuckrow's estate plan demonstrated that he intended to minimize estate taxes where possible. Yet he would have been limited to only a 50% marital deduction and no state estate tax exemption.

- Robert Chuckrow's gross estate was \$1,996,043.24.
- Taking half of that number, the Massachusetts marital deduction would have been limited to \$998,021.62.
- Of that amount, \$591,924.12 passed directly to Adelaide.

- And so the maximum Massachusetts QTIP election that Robert's executor could have made would have been \$406,097.50.¹⁵

Thus, only 48.11% of the federal QTIP (which was \$844,101.27) could have qualified for a Massachusetts QTIP election. So the Department of Revenue would have assessed a tax on \$438,003.77 (51.89%) of the federal QTIP that would not qualify for the Massachusetts marital deduction. But now the Department wants to tax the entire \$844,101.27, even though 51.89% of which it already would have been taxed on Robert's death. Such a result would be unjust, violating principles against double taxation. See *O'Brien v. State Tax Comm'n*, 339 Mass. 56, 62 (1959).

Accordingly, at the very least, Adelaide's estate should only be required to pay tax on 48.11% of the total assessment of \$1,953,032 (which comes to \$939,603.70). And so she is due an abatement of \$1,013,428.30.

V. Conclusion

The estate tax assessed on Adelaide's estate for the present value of Robert's federally elected QTIP trust has no basis in the law. Both constitutionally and statutorily, this tax cannot be collected.

This assessment is unconstitutional because Massachusetts is attempting to assess a tax on a transfer that occurred in New York by a New York resident into a New York trust. Massachusetts is attempting to tax the trust's income beneficiary, who never received the principal, never controlled the

¹⁵ Compare that to his executor's federal QTIP election: \$844,101.27

principal, and never had a say how the principal would ultimately be disposed. All those decisions were made by Robert Chuckrow in his will, and the taxable transfer occurred at his death. Adelaide's estate, of course, must pay this amount in federal estate tax because of the delayed collectibility of the marital deduction. But the internal revenue code is clear that it is not taxing a new transfer, but is merely creating a fictional transfer to make the mechanics work. Massachusetts insists it can tax this fictional transfer. But in reality, this is merely a change in the class of beneficiaries to the Trust. Massachusetts cannot constitutionally reach across its borders—beyond its sovereignty—to tax this New York transfer.

This assessment also mangles the definition of Massachusetts gross estate. The final sentence excludes from the Massachusetts gross estate the value of any property in which the second-to-die spouse had a qualifying income interest for life, but which is not otherwise includible in the Massachusetts gross estate by virtue of the first sentence. When examined in context of Massachusetts's retaining its 50% marital deduction, it is clear that the legislature inserted this provision to prevent the inclusion of federal QTIP election that was in excess of the Massachusetts QTIP election. So the analysis cannot end simply by saying that the Massachusetts gross estate is the federal gross estate. If it could, the final sentence of G.L. c. 65C, § 1(f); would be rendered ineffective, violating a fundamental tenet of statutory construction. By its own laws, then, Massachusetts cannot tax Adelaide's estate for the value of the federal QTIP property.

In conclusion, the Commonwealth is attempting to tax the transfer of property into a New

York trust, effectuated by a New York resident's death more than twenty years ago. It attempts to tax the income beneficiary who had no control over the property or its ultimate disposition. And it attempts to do so in contravention of its own definition for calculating what is taxable.

For these reasons, the application for abatement should be allowed, and the estate of Adelaide Chuckrow should be refunded the entire \$1,953,032.

APPENDIX 23

**Massachusetts
Department
Of
Revenue** PO Box 7010 Boston, MA 02204

AMY A. PITTER, COMMISSIONER
MICHAEL J. LIVIDOTI,
DEPUTY COMMISSIONER

Leo J. Cushing, Esq.
Cushing & Dolan
375 Totten Pond Rd.
Suite 200
Waltham, MA 02451

Notice: Abatement Denial
T/P ID: 7341
Bureau: CSB Estate Unit

Phone: (617) 887 - 6367
Tax Type: Estate

Date: 05/19/15

NOTICE OF ABATEMENT DETERMINATION

Dear Taxpayer:

This notice is to inform you that the Massachusetts Department of Revenue (DOR) has completed review of your Application for Abatement.

Your application has been denied. The reason that your claim has been denied is stated on the following page, which is a part of this notice.

This determination is final. You may appeal this decision to the Appellate Tax Board (the "Board"), which is not part of the Department of Revenue, in accordance with the provisions of Massachusetts General Laws, Chapter 62C, s.39. If you choose to file an appeal with the Board, your petition must be postmarked or received in the Board's offices at 100 Cambridge Street, Suite 200, Boston, MA 02114 within sixty (60) days of the date of this notice together with a minimum filing fee made payable to the Board in the amount of \$65.00 for appeals up to \$65,000 of tax abatement requested and an additional \$.10 for every \$100.00 of additional abatement requested up to a maximum of \$5,000.00. Please note that certain taxpayers may qualify to file an appeal with a reduced filing fee under the small claims procedure. See Massachusetts General Laws, Chapter 58A, section 7B and Section 1.10: FEES or the Code of Massachusetts Regulations 831 CMR 1.00; Appellate Tax Board Rules or Practice and Procedure. Visit the Board's website at www.mass.gov/atb for additional information.

A copy of any petition filed with the Board must be served upon the Commissioner of Revenue, Litigation Bureau, P.O. Box 9565, Boston, MA 02114-9565 pursuant to Rule 1.04 of the Rules of Practice and Procedure of the Board.

In certain estate and inheritance tax cases arising under Chapter 65C or former Chapter 65 of the Massachusetts General Laws, you may appeal to the Probate Court having jurisdiction of the estate of the decedent in accordance with applicable provisions of those statutes and/or § 39 of Chapter 62C. In the case of an appeal to the Probate Court, the time limits for filing a petition and the amount of the

required filing fee may be governed by statutory provisions and court rules other than those in § 39 of Chapter 62C. Service of Probate Court petitions upon the Commissioner, at the above address, and upon the Massachusetts Attorney General at its offices should be made in accordance with the rules applicable to Probate Court practice, including the Massachusetts Rules of Civil Procedure.

If you decide to appeal this determination to the Board, you generally are not required to pay and will not be subjected to involuntary collection activities on tax, interest or penalties that are in dispute while any denial of your abatement claim is on appeal at the Appellate Tax Board. However, interest and in some cases penalties will accrue on any unpaid amount for which you are ultimately held responsible. Therefore, you may wish to pay the amount you are disputing to stop the accrual of interest and penalties. Please note that the statute of limitations on collections will be suspended during the appeal process.

Please note, s 33(c) late pay penalties will not be charged during the appeal process. If your bill was paid in full on or after July 1, 1999, you may receive a refund of s 33(c) (late pay) penalties paid.

Very truly yours,
/s/ Michael J. Lividoti
Michael J. Lividoti
Deputy Commissioner

ATTACHMENT TO NOTICE OF ABATEMENT
DETERMINATION

Estate of Adelaide Chuckrow

155-01-7340
Abatement Denial

REASON:

THE MASS. ESTATE TAX IS THE CREDIT FOR STATE DEATH TAX CALCULATED BY REFERENCE TO THE FEDERAL TAXABLE ESTATE. THEREFORE, THE QTIP TRUST ASSETS MUST BE INCLUDED IN THE FEDERAL GROSS ESTATE PER IRC S2044 AND THE VALUE OF THE QTIP ASSETS MUST BE INCLUDED IN THE CALCULATION OF THE MASS. ESTATE TAX CREDIT AMOUNT UNDER IRC S2011 IN EFFECT ON DEC.31. 2000 AND M.G.L. C.65C, S2A.

PER THE LETTER DATED MAY 4, 2015 FROM THE OFFICE OF APPEALS, THE HEARING IS DENIED SINCE NO NEW FACTUAL INFORMATION OR LEGAL PRECEDENT WAS PRESENTED SINCE THE PREASSESSMENT CONFERENCE HELD BY THAT OFFICE.

PERIODS INCLUDED IN THIS
DETERMINATION:
DOD=08/14/2011

APPENDIX 24

**THE COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD**

DOCKET NO. C327773

M. CHRISTINE SHAFFER, AS	)
EXECUTRIX OF THE ESTATE	)
OF ADELAIDE P. CHUCKROW,	)
Appellant	)
v.	)
	)
COMMISSIONER OF REVENUE,	)
Appellee	)
	)

STATEMENT OF AGREED FACTS

The parties in the above-captioned matter hereby stipulate and agree that the following facts are true and that the attached documents are true and accurate copies of the originals. The parties expressly reserve their rights to contest the materiality and/or relevance of any fact or document stipulated herein.

JURISDICTIONAL FACTS

1. Adelaide P. Chuckrow (the "Decedent") died, domiciled in Williamstown, Massachusetts, on August 14, 2011, (Exhibit 1 is a copy of the Decedent's Death Certificate.)
2. On May 14, 2012, the Estate of Adelaide P. Chuckrow (the "Estate") filed a Massachusetts Estate Tax Return, Form M-706, (the "Massachusetts Return") reporting a tax due in the amount of \$100,997.00, along with payment of \$100,997.00. (Exhibit 2 is a copy of the

Massachusetts Return along with the required copy of the Federal Estate Tax Return with a revision date of July 1999. Exhibit 3 is a copy of the Estate's Federal Estate Tax Return (the "Federal Return") that was filed with the United States Internal Revenue Service (the "IRS").)

3. The Commissioner of Revenue (the "Commissioner") selected the Massachusetts Return for audit and sent the Estate a Notice of intention to Assess, dated September 27, 2013, (the "NIA"). The Commissioner also sent the Estate Notice of intention to Assess Work Papers, dated August 29, 2013, (the "Work Papers"), which showed the Commissioner proposed to assess additional estate taxes in the amount of \$1,809,141.88, based upon increasing the Federal Gross Estate by \$13,251,469. (Exhibit 4 is a copy of the NIA and the Work Papers.)

4. The Estate requested a conference regarding the NIA. (Exhibit 5 is a copy of the Form DR-1 and attachment requesting a conference.) The conference was held on February 12, 2014. (Exhibit 6 is a copy of the letter of determination from the conference.)

5. The Commissioner assessed the tax as proposed and sent the Estate a Notice of Assessment (the "NOA"), dated March 18, 2014. In addition to the tax, the NOA showed the assessment of interest in the amount of \$143,890, which resulted in a total balance due in the amount of \$1,953,032. (Exhibit 7 is a copy of the NOA.)

6. On April 11, 2014, the Commissioner received the Estate's payment of \$1,953,032.00. The payment was by check written on an account of the Trust under the Will of Robert Chuckrow Deceased. (Exhibit 8 is a copy of the check.)

7. On April 17, 2014, the Commissioner refunded \$1,283.77 to the Estate. This refund consisted of an overpayment of \$1,283.35, and \$0.42 in refund interest per G.L. c. 62C, §40.

8. On November 12, 2014, the Commissioner received the Estate's Abatement Application, Form CA-6, seeking abatement of the audit assessment. (Exhibit 9 is a copy of the Abatement Application, the Table of Contents for the Abatement Application and the Explanation of Issues Involved in Request.¹

9. The Estate requested a conference with respect to their Abatement Application. The Commissioner denied the conference request because the Estate had had a conference with respect to the NIA and no new facts or legal precedent was presented in the Abatement Application, citing G.L. c. 62C, §37. (Exhibit 10 is a copy of the Letter rejecting the Abatement Conference.)

10. The Commissioner denied the Estate's Abatement Application and sent the Estate a Notice of Abatement Determination, dated May 19, 2015. (Exhibit 11 is a copy of the Notice of Abatement Determination.)

11. The Estate appealed the Commissioner's abatement denial by filing a Petition with this Board on June 25, 2015.

12. The Assessment at issue has been paid in full. The Commissioner's records show the following Massachusetts Return and Audit assessments and payments:

¹ In an effort to avoid duplication and to reduce the number of attachments to this Statement of Agreed Facts, the remaining attachments listed in the Table of Contents will not be included as part of this Exhibit

	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
	<u>Assessed</u>	<u>Assessed</u>	<u>Paid</u>
Massachusetts			
Return	100,997.00	0.00	100,997.00
Audit	<u>1,809,141.88</u>	<u>142,606.35</u>	<u>1,951,748.23</u>
Total	1,910,138.88	142,606.35	2,052,745.23

(Exhibit 12 is a copy of the Massachusetts Estate Tax Closing Letter.)

ESTATE TAX RETURN FACTS

13. On the Massachusetts Return, the Estate reported a Total Gross Estate of \$2,382,148. (See Exhibit 2, at the top of the second page, Part 1, Line 1.)

14. On the Estate's Federal Return, the Estate reported a Total Gross Estate of \$15,633,617. (See Exhibit 3, on the first page, Line 1.)

15. The difference between the Gross Estate reported on the Federal Return and the Gross Estate reported on the Massachusetts Return, \$15,633,617 - \$2,382,148 = \$13,251,469, was the value of the Trust under the Last Will and Testament of Robert Chuckrow (the "QTIP Trust"), the Decedent's spouse, who died on July 11, 1993, which was included in the Decedent's Federal estate under IRC 2044. (See Exhibits 2, at the top of the second page, Part 1, Line 1, and Exhibit 3, on the first page, Line 1.)

16. The Estate has not filed a New York Estate Tax Return and has not paid any New York Estate Tax based upon the death of the Decedent.

ROBERT CHUCKROW

17. The Decedent was the widow of Robert Chuckrow.

18. Robert Chuckrow died on July 11, 1993, domiciled in Chappaqua, New York. At the time of Robert Chuckrow's death, the Decedent also was domiciled in Chappaqua, New York. (Exhibit 13 is a copy of the Robert Chuckrow's Death Certificate.)

19. Robert had a Last Will and Testament which established under Article Third a trust for the benefit of his surviving spouse, the Decedent, that qualified for a Qualified Terminable Interest Property Trust ("QTIP") election under I.R.C. § 2056(b)(7) and under corollary provisions of New York Law. (Exhibit 14 is copy of Robert Chuckrow's Will.)

20. The Estate of Robert Chuckrow filed a Federal Estate Tax Return reporting no tax due. (Exhibit 15 is a copy of the Federal Estate Tax Return of the Estate of Robert Chuckrow.)

21. The Estate of Robert Chuckrow filed a New York Estate Tax Return reporting no tax due. (Exhibit 16 is a copy of the New York Estate Tax Return of the Estate of Robert Chuckrow.)

22. On both the Federal and New York Estate Tax Returns of the Estate of Robert Chuckrow, the Estate of Robert Chuckrow made a QTIP election for the Trust established under Article Third of Robert Chuckrow's Will as part of the marital deduction. (See Schedule M of both Exhibits 15 and 16. See also the copy of the Last Will and Testament of Robert Chuckrow attached as Exhibit 14.)

23. At the date of Robert Chuckrow's death, the value of the assets in the QTIP Trust was reported to

be \$844,101.27. (See Exhibits 15 and 16 at Schedule M.)

24. The Will and Trust thereunder were established while Robert was a resident of the State of New York and the Will was probated in the Westchester County Surrogate's Court, White Plains, New York (See Exhibit 14 the introductory paragraph of Robert's Will and Robert's 706, First Page, Exhibit 1.5).

25. The Trustees of the Trust were the decedent's daughters, Carol Guernsey of Williamstown, MA and Amy Chuckrow of Charlestown, MA. (See Exhibit 3, on page 6 at paragraph Eighth.)

26. Under the Terms of the Trust, the Decedent was entitled to all income for so long as she was living, paid at least quarter annually. She was entitled to principal distributions during her life at the sole discretion of the trustees. At her death, the remainder passed to the children of Robert and the Decedent. (See Exhibit 3, on page 2 at paragraph Third, subparagraphs A, B and C.) Adelaide held no general or limited power of appointment over the trust assets.

27. There was no real estate or tangible personal property located in Massachusetts reported on the Federal or New York Estate Tax Returns of Robert Chuckrow. (See Exhibits 15 and 16.)

28. The Estate of Robert Chuckrow did not file a Massachusetts Estate Tax Return; and, therefore, made no Massachusetts QTIP election.

29. Neither the Estate nor the Estate of Robert Chuckrow have filed an amended New York Estate Tax Return, and neither have paid any New York

Estate Tax based upon the death of Robert Chuckrow.

30. Neither the Estate nor the Estate of Robert Chuckrow have filed an Estate Tax Return, and neither have paid any Estate Tax based upon the death of Robert Chuckrow to any other state, other than the Estate Tax Return that the Estate of Robert Chuckrow filed with New York.

31. Neither the Estate nor the Estate of Robert Chuckrow have filed an Estate Tax Return and neither have paid any Estate Tax based upon the death of Adelaide Chuckrow to any other state, other than the Estate Tax Return that the Estate filed with Massachusetts.

*[The space remaining on the page is left
intentionally blank]*

32. All of the assets held in the Trust under Article Third of the Will of Robert Chuckrow were intangible personal property.

M. CHRISTINE SHAFFER AS
EXECUTRIX OF THE ESTATE
OF ADELAIDE P. CHUCKROW
By her attorneys

Leo J. Cushing, Esq. (BBO# 110560)
lcushing@cushingdolan.com
Luke C. Bean, Esq. (BBO# 685399)
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(617) 523-1555

MICHAEL J. HEFFERNAN
COMMISSIONER OF THE
DEPARTMENT OF REVENUE
By his attorney,

John J. Connors, Jr. (BBO# 552409)
connors@dor.state.ma.us
Counsel to the Commissioner
Department of Revenue
Litigation Bureau
P.O. Box 9565
100 Cambridge Street, 7th Floor
Boston, MA 02114-9565
(617) 626-3219
Date: 8/26/16

**COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD**

Docket No. C327773

**M. CHRISTINE SHAFFER
AS EXECUTRIX OF THE
ESTATE OF ADELAIDE P. CHUCKROW
v.**

COMMISSIONER OF REVENUE

**EXHIBITS FOR STATEMENT
OF AGREED FACTS**

THE COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD

DOCKET NO. C327773

M. CHRISTINE SHAFFER, AS	)
EXECUTRIX OF THE ESTATE	)
OF ADELAIDE P. CHUCKROW,	)
Appellant	)
v.	)
	)
COMMISSIONER OF REVENUE,	)
Appellee	)

APPENDIX 25

1

CERTIFICATE OF VITAL RECORD
 VERIFY PRESENCE OF WATERMARK HOLD TO LIGHT TO VIEW
The Commonwealth of Massachusetts
 TOWN AND COUNTY OF NANTUCKET
 OFFICE OF THE TOWN AND COUNTY CLERK

03674

Record of Death

Registered Number: 41

Name	Adelaide Phillips Chuckrow
Date Of Death	August 14, 2011
Age	93
Place of Death	25 Qualse Road
Sex	Female
Race	White
Marital Status	Widowed
Residence	1611 Cold Spring Rd., Williamstown, MA
Occupation	Teacher 01/26/7
Place of Birth	Philadelphia, PA
Spouse's Name	Robert Chuckrow
Father's Name	Robert Phillips
Father's Place of Birth	PA
Maiden Name of Mother	Carrie Morwitz
Mother's Place of Birth	PA
Cause of Death	Respiratory Arrest
Place of Interment	Fair Ridge Cemetery Chappaqua, NY
Date of Record	16th day of August, 2011


 Town and County Clerk

I hereby certify that I am the Town and County Clerk of Nantucket that as such I have
 custody of the records of birth, marriage, and death required by law to be kept in my
 office; and I do hereby certify that the above is a true copy from said records.

VOID WITHOUT ATTACHMENT

APPENDIX 26

2

99-000012

Form M-706
Massachusetts Estate Tax Return

Rev. 8/11

Massachusetts
Department of
Revenue

For every estate with date of death on or after January 1, 2003.

Decedent's first name and middle initial	Last name	Date of death	Check if an amended return
Adelaide	P. Churkron	08/14/2011	☐ Social Security number
Street address of residence or domicile at time of death		City/Town	State Zip
1511 Cold Spring Road		Williamstown	MA 01267-
Probate court	Docket number	Check if previously filed	Form U-470A
Worcester City Probate	19019065528	☐ Form U-470 ☐ Form U-470A	Defendant
Name of executor(s) (has husband?)	City/Town	State Zip	
M. Christine Shaffer	Chilmark	MA 02596	
Street address	City/Town	State Zip	
10803 Montrose Avenue, P.O. Box 95 Gumpk Park	Chilmark	MA 02596	
Name of attorney(s) representing the estate (if any)	City/Town	State Zip	
Abba Shapiro	Chilmark	MA 02596	
Street address	City/Town	State Zip	
Fox Rothschild LLP	100 Park Avenue	New York, NY 10017	

Power of Attorney. Authorization to receive confidential information under MGL, Ch. 62C, s.21 and Power of Attorney.
I (We) hereby appoint the undersigned nominee, subject to written revocation, as attorney(s)-in-fact to represent the taxpayer before any office of the Massachusetts Department of Revenue (DOR), to receive confidential information and to perform on my (our) behalf the following acts for this estate:
(Strike any of the following that are not granted.)

- To receive, but not to endorse and collect, checks in payment of any refund of Massachusetts taxes, penalties or interest.
- To execute waivers, closing agreements and consents extending the statutory period for assessment or collection of taxes.
- To delegate authority or to substitute another representative.
- Other acts (specify):

Send copies of notices and other written communications addressed to the taxpayer(s) in proceedings involving the above estate to:

Name	Telephone
Abba Shapiro, Esq., Fox Rothschild LLP	212-878-7900
Street address	City/Town State Zip
100 Park Avenue, Suite 1500	New York, NY 10017
Signature of nominee	Date
Abba Shapiro	08/14/2012

Do you elect to claim a marital deduction for Qualified Terminable Interest Property (QTIP) under IRC section 2056(b)(7)? ☐ Yes ☒ No

Declaration. The personal representative of the estate is personally liable for transfers of estate assets before all taxes are paid.

Under penalties of perjury, I declare that to the best of my knowledge and belief this return and enclosures are true, correct and complete.

Signature(s) of executor(s), administrator(s), etc.	Date
Michael J. Shaffer Esq.	08/14/2012
Signature and address of preparer (other than executor, administrator, etc.)	Date
Abba Shapiro	08/14/2012

Mail to: Massachusetts Department of Revenue, Bureau of Estate Administration, Estate Tax Unit, PO Box 7013, Boston, MA 02204.

Note: The Massachusetts estate tax is computed using the Internal Revenue Code (IRC) in effect on December 31, 2000. Changes to the IRC enacted after December 31, 2000 do not affect the computation of the Massachusetts estate tax. All references to the U.S. Form 706 are to the form with a revision date of July 1999. This form and instructions are available from DOR's website at www.mass.gov/dor. All estates are required to submit a completed U.S. Form 706 with a revision date of July 1999 in addition to the Massachusetts Form M-706. If the estate is required to file a current U.S. Form 706, attach a copy of that return, with all attachments, in addition to the U.S. Form 706 with a revision date of July 1999 and the Massachusetts Form M-706. For Privacy Act Notice see Instructions.

Form and/or 650

192412 2.010

100011

Part 1. Tentative Massachusetts Estate Tax

- 1 Total gross estate. Enter the amount from the July 1989 revision of U.S. Form 706, page 1, line 1 **2,302,140**
- 2 Credit for state death taxes. Enter the amount from the July 1989 revision of U.S. Form 706, page 1, line 15, if this return is for the estate of a Massachusetts resident decedent who did not own real estate and/or tangible personal property in another state, omit Parts 2 and 3 and enter this amount in Part 4, line 1. If this return is for the estate of a Massachusetts resident decedent who owned real estate and/or tangible personal property in other states, complete Parts 2 and 4 and omit Part 3. If this return is for the estate of a nonresident decedent with Massachusetts property, omit Part 2 and complete Parts 3 and 4 **100,997**

Part 2. Computation of Tax for Estate of Massachusetts Resident Decedent with Property in Another State

- 1 Total gross estate, wherever situated. Enter the amount from Part 1, line 1
- 2 Credit for state death taxes. Enter the amount from Part 1, line 2
- 3 Estate or inheritance taxes actually paid to other states
- 4 Gross value of real estate and tangible personal property in other states. Attach schedule
- 5 Percentage of estate in other states. Divide line 4 by line 1. Note: Complete computation to six decimal places
- 6 Prorated credit. Multiply line 2 by line 5
- 7 Deduction allowable for taxes paid to other states. Enter the smaller of line 3 or line 6
- 8 Massachusetts estate tax. Subtract line 7 from line 2. Enter result here and in Part 4, line 1

Part 3. Computation of Tax for Estate of Nonresident Decedent with Massachusetts Property

- 1 Total gross estate, wherever situated. Enter the amount from Part 1, line 1
- 2 Credit for state death taxes. Enter the amount from Part 1, line 2
- 3 Gross value of real estate and tangible personal property in Massachusetts. Enter the total reported on Form M-NRA, line 28. Do not deduct the value of any mortgage or lien
- 4 Percentage of estate in Massachusetts. Divide line 3 by line 1. Note: Complete computation to six decimal places
- 5 Massachusetts nonresident estate tax. Multiply line 2 by line 4. Enter result here and in Part 4, line 1

Part 4. Massachusetts Estate Tax Due

- 1 Massachusetts estate tax. Enter the amount from Part 1, line 2, Part 2, line 8 or Part 3, line 5, whichever applies **100,997**
- 2 Late file and/or late pay penalties **0**
- 3 Interest **0**
- 4 Total amount due. Add lines 1 through 3 **100,997**
- 5 Payments made with extension. Attach a copy of Form M-4760 and/or Form M-4769A **0**
- 6 Other amounts previously paid. Attach copies of any prior filings with payment dates and amounts **0**
- 7 Total payments. Add lines 5 and 6 **0**
- 8 Overpayment. If line 4 is smaller than line 7, subtract line 4 from line 7. This is the amount of your refund. If line 4 is larger than line 7, omit line 8 and complete line 9. If lines 4 and 7 are equal, enter "0" in line 8 and omit line 9 **0**
- 9 Balance due. If line 4 is larger than line 7, subtract line 7 from line 4. This is the amount of the payment due at time of filing **100,997**

Make check payable to Commonwealth of Massachusetts. Mail to: Massachusetts Department of Revenue, Bureau of Desk Audit, Estate Tax Unit, P.O. Box 7023, Boston, MA 02204. Deliver to: Massachusetts Department of Revenue, Bureau of Desk Audit, Estate Tax Unit, 200 Arlington St., Rm. 4300, Chelsea, MA 02150.

1002473-2 600

706 United States Estate (and Generation-Skipping Transfer) Tax Return

OMB No. 1545-0045

1a Decedent's first name and middle initial (and maiden name, if any) **Adelaide**

1b Decedent's last name **P. Chubb**

2 Decedent's Social Security No. **7341**

3a Legal residence (domicile) at time of death (county, state, and ZIP code, or foreign country) **Berkshire MA 01257-**

3b Year domicile established **over 10 years**

4 Date of birth **03/14/1918**

5 Date of death **08/14/2011**

6a Name of executor (see page 4 of the instructions) **M. Christine Shaffer**

6b Executor's address (number and street including apartment or suite no. or rural route or city, town, or post office, state and ZIP code) **10803 Montrose Avenue P.O. Box 96 Garrett Park, MD 20896**

6c Executor's social security number (see page 4 of the instructions) **160-40-3171**

7a Name and location of court where will was probated or estate administered **Berkshire County Probate and Family Court, Pittsfield, MA**

7b Case number **BS11P0655**

8 If decedent died testate, check here ☒ and attach a certified copy of the will. ☐ If Form 4768 is attached, check here ☐

9 If Schedule C is attached, check here ☐

1 Total gross estate less exclusion (from Part 6, Recapitulation, page 3, line 12) **2,382,148**

2 Total allowable deductions (from Part 6, Recapitulation, page 3, line 23) **352,749**

3 Taxable estate (subtract line 2 from line 1) **2,019,399**

4 Adjusted taxable gifts (total taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts that are includable in decedent's gross estate (section 2001(b))) **6,035,016**

5 Add lines 3 and 4 **8,054,415**

6 Tentative tax on the amount on line 5 from Table A on page 12 of the instructions **4,518,728**

7a If line 5 exceeds \$10,000,000, enter the lesser of line 5 or \$17,184,000. If line 5 is \$10,000,000 or less, skip lines 7a and 7b and enter -0- on line 7c

7b Subtract \$10,000,000 from line 7a

7c Enter 6% (.06) of the 7b **350,200**

8 Total tentative tax (add lines 6 and 7c) **4,868,928**

9 Total gift tax payable with respect to gifts made by the decedent after December 31, 1976, includable in the decedent's gross estate (see instructions) **4,868,928**

10 Gross estate tax (subtract line 9 from line 8) **1,815,659**

11 Maximum unified credit (applicable credit amount) against estate tax **345,800**

12 Adjustment to unified credit (applicable credit amount). (This adjustment may not exceed \$5,000. See page 4 of the instructions.) **0**

13 Allowable unified credit (applicable credit amount) (subtract line 12 from line 11) **345,800**

14 Subtract line 13 from line 10 (but do not enter less than zero) **1,469,859**

15 Credit for state death taxes. Do not enter more than line 14. Figure the credit by using the amount on line 3 less \$50,000. See Table B in the instructions and attach credit evidence (see instructions) **100,997**

16 Subtract line 15 from line 14 **1,368,872**

17 Credit for Federal gift taxes on pre-1977 gifts (section 2012) (attach computation) **0**

18 Credit for foreign death taxes (from Schedule F) (attach Form(s) 706-CE) **0**

19 Credit for tax on prior transfers (from Schedule C) **0**

20 Total (add lines 17, 18, and 19) **0**

21 Net estate tax (subtract line 20 from line 16) **1,368,872**

22 Generation-skipping transfer taxes (from Schedule R, Part 2, line 10) **0**

23 Total transfer taxes (add lines 21 and 22) **1,368,872**

24 Prior payments. Explain in an attached statement **0**

25 United States Treasury bonds redeemed in payment of estate tax **0**

26 Total (add lines 24 and 25) **0**

27 Balance due (or overpayment) (subtract line 26 from line 23) **1,368,872**

Under penalties of perjury, I declare that I have prepared this return, including accompanying statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than the decedent) is based on the best knowledge of such preparer.

Signature(s) of executor(s) **180 Park Avenue, 15th Floor New York, NY 10017**

Signature of preparer other than executor **Address (and ZIP code)**

Date

APPENDIX 27

3

Form 706 (Rev. August 2011)		United States Estate (and Generation-Skipping Transfer) Tax Return		OMB No. 1545-0015																																																																			
Department of the Treasury Internal Revenue Service		Estate of a citizen or resident of the United States (see instructions). To be filed for decedents dying after December 31, 2010, and before January 1, 2012.																																																																					
1a Decedent's full name (last, first, middle name, if any) <u>Abbas Shafiq, Esq.</u>		1b Decedent's last name <u>Shafiq</u>		3 Decedent's Social Security no. <u>88888-7344</u>																																																																			
2a Country, state, and ZIP code, or foreign country, of legal residence (subpart 2) (if foreign, attach Form 706-INT) <u>USA 01067</u>		3b Year domicile established <u>over 10 years</u>		4 Date of birth <u>03/14/1918</u>																																																																			
5a Name of executor (see instructions) <u>Abbas Shafiq, Esq.</u>		5b Executor's address (street and street address, apartment or suite no., city, state, and ZIP code) and phone no. <u>10805 Montrose Avenue P.O. Box 96 Garrett Park, MD 20856</u>		6 Date to test <u>06/04/2011</u>																																																																			
7a Name and location of estate (see instructions) (if foreign, attach Form 706-INT) <u>Abbas Shafiq, Esq. Executor and Family Trust, Elmhurst, NY</u>		7b EIN number <u>00110665</u>		8 Phone no. <u>(301) 923-2260</u>																																																																			
9 If decedent died testate, check box ☒ 9a If decedent died intestate, check box ☐ 9b If decedent died this time to file this Form 706, attach Form 706-INT																																																																							
10 If Schedule R-1 is attached, check box ☐																																																																							
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">1 Total gross estate less exclusion (from Part 5—Recapitalization, line 12)</td> <td style="width: 5%;">1</td> <td style="width: 35%; text-align: right;">15,693,413</td> </tr> <tr> <td>2 Tentative taxable estate (from Part 5—Recapitalization, line 22)</td> <td>2</td> <td style="text-align: right;">15,693,413</td> </tr> <tr> <td>3a Tentative taxable estate (before state death tax deduction) (subline 2a from line 2)</td> <td>3a</td> <td style="text-align: right;">15,693,413</td> </tr> <tr> <td>3b State death tax deduction</td> <td>3b</td> <td style="text-align: right;">100,597</td> </tr> <tr> <td>3c Tentative estate (subline 3a from line 3a)</td> <td>3c</td> <td style="text-align: right;">15,592,816</td> </tr> <tr> <td>4 Adjusted taxable gifts (total taxable gifts within the meaning of section 2503 made by the decedent after December 31, 1976, other than gifts that are includable in decedent's gross estate (section 2041(b)))</td> <td>4</td> <td style="text-align: right;">6,634,016</td> </tr> <tr> <td>5 Add lines 3c and 4</td> <td>5</td> <td style="text-align: right;">22,226,832</td> </tr> <tr> <td>6 Tentative tax on the amount on line 5 from Table A in the instructions</td> <td>6</td> <td style="text-align: right;">2,662,410</td> </tr> <tr> <td>7 Total gift tax paid or payable with respect to gifts made by the decedent after December 31, 1976, includable in the gross estate (see instructions) (only if the decedent was the donor of those gifts and they are includable in the decedent's gross estate (see instructions))</td> <td>7</td> <td style="text-align: right;">786,291</td> </tr> <tr> <td>8 Gross estate tax (subline 6 from line 6)</td> <td>8</td> <td style="text-align: right;">16,345,219</td> </tr> <tr> <td>9 Maximum unified credit (applicable credit amount) against estate tax (see instructions)</td> <td>9</td> <td style="text-align: right;">1,730,800</td> </tr> <tr> <td>10 Allowable unified credit (applicable credit amount) (the adjustment may not exceed \$2,000, see instructions)</td> <td>10</td> <td style="text-align: right;">0</td> </tr> <tr> <td>11 Allowable unified credit (applicable credit amount) (subline 10 from line 10)</td> <td>11</td> <td style="text-align: right;">1,730,800</td> </tr> <tr> <td>12 Subline 11 from line 11 (but do not enter less than zero)</td> <td>12</td> <td style="text-align: right;">1,730,800</td> </tr> <tr> <td>13 Credit for foreign death taxes (from Schedule P, (Attach Form 706-CE))</td> <td>13</td> <td style="text-align: right;">0</td> </tr> <tr> <td>14 Credit for tax on prior transfers (from Schedule Q)</td> <td>14</td> <td style="text-align: right;">0</td> </tr> <tr> <td>15 Total credits (add lines 12 and 14)</td> <td>15</td> <td style="text-align: right;">0</td> </tr> <tr> <td>16 Net estate tax (subline 8 from line 8)</td> <td>16</td> <td style="text-align: right;">14,614,419</td> </tr> <tr> <td>17 Generation-skipping transfer (GST) taxes payable (from Schedule R, Part 2, line 10)</td> <td>17</td> <td style="text-align: right;">0</td> </tr> <tr> <td>18 Total transfer taxes (add lines 16 and 17)</td> <td>18</td> <td style="text-align: right;">14,614,419</td> </tr> <tr> <td>19 Prior payments, credits in an attached statement</td> <td>19</td> <td style="text-align: right;">0</td> </tr> <tr> <td>20 Net amount due for estate and gift taxes (line 18 minus line 19)</td> <td>20</td> <td style="text-align: right;">14,614,419</td> </tr> </table>						1 Total gross estate less exclusion (from Part 5—Recapitalization, line 12)	1	15,693,413	2 Tentative taxable estate (from Part 5—Recapitalization, line 22)	2	15,693,413	3a Tentative taxable estate (before state death tax deduction) (subline 2a from line 2)	3a	15,693,413	3b State death tax deduction	3b	100,597	3c Tentative estate (subline 3a from line 3a)	3c	15,592,816	4 Adjusted taxable gifts (total taxable gifts within the meaning of section 2503 made by the decedent after December 31, 1976, other than gifts that are includable in decedent's gross estate (section 2041(b)))	4	6,634,016	5 Add lines 3c and 4	5	22,226,832	6 Tentative tax on the amount on line 5 from Table A in the instructions	6	2,662,410	7 Total gift tax paid or payable with respect to gifts made by the decedent after December 31, 1976, includable in the gross estate (see instructions) (only if the decedent was the donor of those gifts and they are includable in the decedent's gross estate (see instructions))	7	786,291	8 Gross estate tax (subline 6 from line 6)	8	16,345,219	9 Maximum unified credit (applicable credit amount) against estate tax (see instructions)	9	1,730,800	10 Allowable unified credit (applicable credit amount) (the adjustment may not exceed \$2,000, see instructions)	10	0	11 Allowable unified credit (applicable credit amount) (subline 10 from line 10)	11	1,730,800	12 Subline 11 from line 11 (but do not enter less than zero)	12	1,730,800	13 Credit for foreign death taxes (from Schedule P, (Attach Form 706-CE))	13	0	14 Credit for tax on prior transfers (from Schedule Q)	14	0	15 Total credits (add lines 12 and 14)	15	0	16 Net estate tax (subline 8 from line 8)	16	14,614,419	17 Generation-skipping transfer (GST) taxes payable (from Schedule R, Part 2, line 10)	17	0	18 Total transfer taxes (add lines 16 and 17)	18	14,614,419	19 Prior payments, credits in an attached statement	19	0	20 Net amount due for estate and gift taxes (line 18 minus line 19)	20	14,614,419
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10 Allowable unified credit (applicable credit amount) (the adjustment may not exceed \$2,000, see instructions)	10	0																																																																					
11 Allowable unified credit (applicable credit amount) (subline 10 from line 10)	11	1,730,800																																																																					
12 Subline 11 from line 11 (but do not enter less than zero)	12	1,730,800																																																																					
13 Credit for foreign death taxes (from Schedule P, (Attach Form 706-CE))	13	0																																																																					
14 Credit for tax on prior transfers (from Schedule Q)	14	0																																																																					
15 Total credits (add lines 12 and 14)	15	0																																																																					
16 Net estate tax (subline 8 from line 8)	16	14,614,419																																																																					
17 Generation-skipping transfer (GST) taxes payable (from Schedule R, Part 2, line 10)	17	0																																																																					
18 Total transfer taxes (add lines 16 and 17)	18	14,614,419																																																																					
19 Prior payments, credits in an attached statement	19	0																																																																					
20 Net amount due for estate and gift taxes (line 18 minus line 19)	20	14,614,419																																																																					
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 taxpayer) is based on all information of which preparer has any knowledge.																																																																							
Sign Here Signature of taxpayer <u>Abbas Shafiq, Esq.</u>		Date <u>05/14/2012</u>		Signature of executor <u>Abbas Shafiq, Esq.</u>																																																																			
Paid Preparer's name <u>Abbas Shafiq, Esq.</u>		Preparer's signature <u>Abbas Shafiq, Esq.</u>		Date <u>05/14/2012</u>																																																																			
Preparer Use Only Preparer's address <u>100 Park Avenue, 15th Floor New York, NY 10017</u>		Preparer's EIN <u>800757865</u>		Phone no. <u>212-676-1900</u>																																																																			

Estate of:

Adelaide P. Chukron

Decedent's social security number

7343

Part 3 - Elections by the Executor

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

Note. Some of these elections may influence the priority of bonds or liens.

	Yes	No
1. Do you elect to file the return?		☒
2. Do you elect special-use valuation?		☒
3. Do you elect to pay the taxes in installments as described in section 6167?		☒
4. Do you elect to postpone the part of the taxes attributable to a revocatory or remainder interest as described in section 6167?		☒

Part 4 - General Information

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

(See instructions.)

Information to complete this form is required under Reg. sec. 301.2041-10(a)(2)(ii) to be used as the estate's representative before the IRS and to make written or oral representations to the IRS.

Name of representative (print or type)

State

Address (number, street, and room or suite no., city, state, and ZIP code)

Box Rothschild LLP

200 West Avenue, New York, New York 10017

Estate of Adelaide P. Chukron

CAF number

Date

Telephone number

1/14/12

212-878-7500

1. Decedent's full name and living authority (attach a copy of the death certificate to this return).

US654

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

Teacher

3. Marital status of the decedent at time of death (see instructions if more than one marriage).

Married

Widow or widower - Name, SSN, and date of death of deceased spouse

Robert Chukron

082-14-8803

07/11/1993

Single

Legally separated

Divorced - Date divorce decree became final

Equivalent

4a. Surviving spouse's name

None

4b. Social security number

4c. Amount received (see instructions)

0

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

Name of individual, trust, or estate receiving \$5,000 or more

Identifying number

Relationship to decedent

Amount (see instructions)

Marian Anderson

139-28-0253

None

5,000

Amy Chukron

057-38-3786

Daughter

7,463,980

Carol C. Guernsey

053-38-0852

Daughter

7,463,182

Katie Guernsey

011-68-9715

Granddaughter

5,000

Margo Guernsey

011-68-7917

Granddaughter

5,000

6. Unascertained beneficiaries and those who receive less than \$5,000

10,500

Total

10,500,000

Please check the "Yes" or "No" box for each question.

7a. Does the gross estate contain any section 2041 property (qualified terminable interest property (QTIP)) from a prior gift or estate?

Yes

No

7b. Have federal gift tax returns ever been filed?

Yes

No

If "Yes," please attach copies of the returns, if available, and furnish the following information:

7c. Internal Revenue office(s) where filed

1992-2011

8a. Was there any insurance on the decedent's life that is not included on the return as part of the gross estate?

Yes

No

8b. Did the decedent own any insurance on the life of another that is not included in the gross estate?

Yes

No

(continued on next page)

State of Rhode Island & Providence

7341

Beneficiaries (Page 2)

Name of individual, trust or estate receiving \$5,000 or more	Identifying Number	Relationship to Decedent	Amount
Matthew Guernsey	015-70-1087	Grandson	5,000
Harwood Guernsey	131-36-0946	Son-in-law	10,000
Judith Shaffer Marullo	265-72-4362	None	5,000
Jonathan Stulgis	015-38-0588	Son-in-law	10,000
Beth Stulgis	021-68-5107	Grandson	5,000
Victoria Stulgis	012-72-4854	Granddaughter	5,000

Part 4 - General Information (continued)

If you answer "Yes" to any of questions 9-15, you must attach additional information as described in the instructions.		Yes	No
9	Did the decedent at the time of death own any property as a joint tenant with right of survivorship in which (a) one or more of the other joint tenants was someone other than the decedent's spouse, and (b) less than the full value of the property is included on the return as part of the gross estate? If "Yes," you must complete and attach Schedule E.	X	
10a	Did the decedent, at the time of death, own any interest in a partnership (for example, a family limited partnership, an unincorporated business, or a limited liability company) or own any stock in an inactive or closely held corporation?	X	
b	If "Yes," was the value of any interest owned (from above) discounted on this estate tax return? If "Yes," see the instructions on reporting the total accumulated or effective discounts taken on Schedule F or G.	X	
11	Did the decedent make any transfer described in section 2035, 2036, 2037, or 2038? (see the instructions) If "Yes," you must complete and attach Schedule G.	X	
12a	Were there in existence at the time of the decedent's death any trusts created by the decedent during his or her lifetime?	X	
b	Were there in existence at the time of the decedent's death any trusts not created by the decedent under which the decedent possessed any power, beneficial interest, or trusteeship?	X	
c	Was the decedent receiving income from a trust created after October 22, 1986, by a parent or grandparent?	X	
d	If "Yes," was there a GST taxable termination (under section 2612) on the death of the decedent? If "Yes," see the instructions on reporting the total accumulated or effective discounts taken on Schedule F or G.	X	
e	If there was a GST taxable termination (under section 2612), attach a statement to explain. Provide a copy of the trust or will creating the trust, and give the name, address, and phone number of the current trustee(s).	X	
f	Did the decedent at any time during his or her lifetime transfer or sell an interest in a partnership, limited liability company, or closely held corporation to a trust described in question 12a or 12b? If "Yes," provide the EIN number for this trust.	X	
13	Did the decedent ever possess, exercise, or release any general power of appointment? If "Yes," you must complete and attach Schedule H.	X	
14	Did the decedent have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account?	X	
15	Was the decedent, immediately before death, receiving an annuity described in the "General" paragraph of the instructions for Schedule I or a private annuity? If "Yes," you must complete and attach Schedule I.	X	
16	Was the decedent ever the beneficiary of a trust for which a deduction was claimed by the estate of a pre-deceased spouse under section 2056(b)(7) and which is not reported on this return? If "Yes," attach an explanation.	X	

Part 5 - Recapitulation

Item number	Gross estate	Amounts	Value at decedent's death
1	Schedule A - Real Estate	1	0
2	Schedule B - Stocks and Bonds	2	329
3	Schedule C - Mortgages, Notes, and Cash	3	2,455
4	Schedule D - Insurance on the Decedent's Life (attach Form(s) 712)	4	0
5	Schedule E - Jointly Owned Property (attach Form(s) 712 for life insurance)	5	18,838
6	Schedule F - Other Miscellaneous Property (attach Form(s) 712 for life insurance)	6	33,501,869
7	Schedule G - Transfers During Decedent's Life (attach Form(s) 712 for life insurance)	7	2,589,565
8	Schedule H - Powers of Appointment	8	0
9	Schedule I - Annuities	9	388,325
10	Total gross estate (add items 1 through 9)	10	45,633,537
11	Schedule U - Qualified Conservation Easement Exclusion	11	0
12	Total gross estate (less exclusion) (subtract item 11 from item 10). Enter here and on line 1 of Part 2 - Tax Computation	12	45,633,537
Item number	Deductions	Amounts	
13	Schedule J - Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims	13	226,572
14	Schedule K - Debts of the Decedent	14	72,927
15	Schedule L - Mortgages and Liens	15	0
16	Total of items 13 through 15	16	299,500
17	Allowable amount of deductions from item 16 (see the instructions for item 17 of the Recapitulation)	17	299,500
18	Schedule M - Net Losses During Administration	18	0
19	Schedule N - Expenses Incurred in Administering Property Not Subject to Claims	19	0
20	Schedule O - Bequests, etc., to Surviving Spouse	20	0
21	Schedule P - Charitable, Public, and Similar Gifts and Deductions	21	64,000
22	Total allowable deductions (add items 17 through 21). Enter here and on line 2 of the Tax Computation	22	363,500

Form 706 (2008, 6-2011)

Estate of:

Ardenide P. Chackraborty

Decedent's social security number

7381

SCHEDULE A - Real Estate

- For jointly owned property that must be disclosed on Schedule E, see instructions.
- Real estate that is part of a sole proprietorship should be shown on Schedule F.
- Real estate that is included in the gross estate under section 2035, 2036, 2037, or 2038 should be shown on Schedule G.
- Real estate that is included in the gross estate under section 2041 should be shown on Schedule H.
- If you elect section 2032A valuation, you must complete Schedule A and Schedule A-1.

Real estate interest	Description	Alternate valuation date	Alternate value	Value at date of death
	None			
Total from continuation schedules or additional sheets attached to this schedule				0
TOTAL (Also enter on Part 5 - Recapitulation, page 3, at item 1.)				0

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

Schedule A - Page 4

U.S.A.
681001 2.000

Form 706 (Rev. 8-2013)

Estate of

Adelaide P. Chackrav

Date of death

7/24/11

SCHEDULE B - Stocks and Bonds

(For jointly owned property that must be disclosed on Schedule E, see instructions.)

Item number	Description, including first account of bonds or number of shares and par value (for Washington, give CERS number, if real, partnership, or jointly held property, give EIN)	Unit value	Alameda valuation date	Alameda value	Value at date of death
1	10 Shares MetLife Policyholder Trust 200 Park Avenue New York, New York 10165 Investor ID 8065 7320 2947 See annexed Exhibit 12 for valuation. CUSIP: 59156R108	33.8800			339
Total from continuation schedules (or additional sheets) attached to this schedule					0
TOTAL (Also enter on Part 5 - Recapitulation, page 3, at item 2.)					339

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

Schedule B - Page 9

JSA
CEN2009 2 009

Estate of:

Decedent's social security number

Adelaide P. Chuckrow

7391

SCHEDULE C - Mortgages, Notes, and Cash

(For jointly owned property that must be disclosed on Schedule E, see instructions.)

Item number	Description	Attends valuation date	Attends value	Value at date of death
1	Dossener Trust, 630 Fifth Avenue, New York, New York 10111 Account number: 372 See annexed Exhibit 13 for valuation.			103
2	Williamstown Savings Bank 795 Main Street Williamstown, Massachusetts 01267 savings account number: 3662 See annexed Exhibit 13 for valuation.			795
3	TD Bank F&M 90 West Street Pittsfield, Massachusetts 01201 Checking account number: 4015 was titled Adelaide Chuckrow or Sherwood Guernsey II. Sherwood Guernsey was listed on the account for convenience purposes only; he did not contribute monies into the account. See annexed Exhibit 13 for valuation.			1,005
4	Deutsche Bank Trust Co. Americas 345 Park Avenue New York, New York 10154 Checking account number: 8-807 See annexed Exhibit 13 for valuation.			360
Total from continuation schedules (or additional sheets) attached to this schedule				0
TOTAL. (Also enter on Part 5 - Form 706, from 3, at item 3.)				2,263

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

Form 706 (Rev. 6-20-11)

Estate of:

Decedent's social security number

Adelaide P. Chackrow

7347

SCHEDULE D - Insurance on the Decedent's Life

You must list all policies on the life of the decedent and attach a Form 712 for each policy.

Item number	Description	Alternate valuation date	Alternate value	Value at date of death
1.	FOR INFORMATIONAL PURPOSES ONLY Wahner Life Insurance Company 3275 Bennett Creek Avenue Frederick, Maryland 21704 policy number: 0555 The owner and beneficiary of the policy is the Adelaide P. Chackrow Irrevocable Insurance Trust dated December 4, 1995. The face amount and proceeds of the policy is \$2,800,000.00. See annexed Exhibit 14 for copy of Form 712.			
Total from continuation schedule (or additional sheets) attached to this schedule				0
TOTAL. (Also enter on Part 5 - Recapitulation, item 3, of Form 706.)				0

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

Schedule D - Page 11

Estate of:

Decedent's social security number

Addinsie, P. Chuckrow

SCHEDULE E - Jointly Owned Property

(If you elect section 2052A valuation, you must complete Schedule E and Schedule A-1.)

PART 1. Qualified Joint Interests - Interests Held by the Decedent and His or Her Spouse as the Only Joint Tenants (Section 2040(b)(2))

Item number	Description. For securities, give CUSIP number, if trust, partnership, or closely held entity, give EIN	Alternate valuation date	Alternate value	Value at date of death
	None			

Total from continuation schedules for additional sheets attached to this schedule

1c. Totals

1b. Amounts included in gross estate (from top of line 1c)

PART 2. All Other Joint Interests

2a. State the name and address of each surviving co-tenant. If there are more than three surviving co-tenants, list the additional co-tenants on an attached sheet.

Name	Address (number and street, city, state, and ZIP code)
Carol L. Guernsey	Williamstown, MA 01267
A. Amy Chuckrow	4. 62128
B.	

Item number	Enter letter for co-tenant	Description (including alternate valuation date if any). For securities, give CUSIP number, if trust, partnership, or closely held entity, give EIN	Percentage includible	Includible alternate value	Includible value at date of death
1	A	2010 Toyota Prius Hatchback The decedent owned a 51% interest in the car, and her daughter, Carol Guernsey, owned the remaining 49%. The blue book value of the car, which is in good condition, is \$18,275. A 51% interest equals \$9,320.25. See annexed Exhibit 14 for valuation.	50.9986		9,320

Total from continuation schedules for additional sheets attached to this schedule

2b. Total other joint interests

3. Total includible joint interests (add lines 1b and 2b). Also enter on Part 5 - Recapture, page 3, at item 5

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

Estate of: Adelaide P Chuckrow

7341

Schedule E Part 2 (Page 2)

Item No.	Qty	Description	Unit Value	Percent Includible	Alternate Value	Value at Date of Death
2	1	2010 Toyota Prius Hatchback The decedent owned a 34% interest in the car, and her daughter, Amy Chuckrow, owned the remaining 66%. The blue book value of the car, which is in fair condition, is \$17,625. A 34% interest equals \$9,517.50. See annexed Exhibit 14 for valuation.		34.0025		9,518

Total (Carry forward to main schedule)

9,518

Estate of:

Decedent's Social Security Number

Adelaide P. Chuckrow

-7321

SCHEDULE F - Other Miscellaneous Property Not Reportable Under Any Other Schedule

(For jointly owned property that must be disclosed on Schedule E, see instructions.)

(If you elect Section 2032A valuation, you must complete Schedule F and Schedule A-1.)

- 1 Did the decedent own any works of art, items, or any collections whose artistic or collectible value at date of death exceeded \$3,000? Yes ☐ No ☒
 If "Yes," submit full details on this schedule and attach appraisals.
- 2 Has the decedent's estate, spouse, or any other person received (or will receive) any bonus or award as a result of the decedent's employment or death? Yes ☐ No ☒
 If "Yes," submit full details on this schedule.
- 3 Did the decedent at the time of death have, or have access to, a safe deposit box? Yes ☐ No ☒
 If "Yes," state location, and if held jointly by decedent and another, state name and relationship of joint depositor.

If any of the contents of the safe deposit box are omitted from the schedules in this return, explain fully why omitted.

Item number	Description. For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN	CUSIP number or EIN, where applicable	Alternate valuation date	Alternate value	Value at date of death
	Item numbers 1-126 are titled Trust D/W/O Robert Chuckrow ("Trust"). This Trust was established for the benefit of Adelaide Chuckrow (the surviving spouse of Robert Chuckrow) under the Last Will and Testament of Robert Chuckrow ("Will"), who died on July 11, 1993. See annexed Exhibit 11 for a copy of the Will.				
	Item numbers 1-22 are held under Schwab Institutional account number [REDACTED] 4454, Matrix Capital Advisors LLC, 200 S. Wacker Drive, Chicago, Illinois 60606. See annexed Exhibit 15 for valuations.				
1	387 Shares Buckeye Partners LP Unit Value: \$2.7650 CUSIP:	128220101			24,290
Total from continuation schedules (or additional sheets) attached to this schedule					23,477,559
TOTAL. (Also enter on Part 5 - Recapitulation, page 3, at item 6.)					23,501,849

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

Schedule F - Page 13

Estate of:

Distributions of capital property included:

Adeline P. Chappelow

7341

CONTINUATION SCHEDULE

Continuation of Schedule F (Page 2)

(Enter letter of schedule you are continuing)

Item number	Description For securities, give CUSIP number. (If trust, partnership, or closely held entity, give EIN.)	Unit value (Check, if N/A)	Alternate valuation date	Alternate value	Value at date of death or distribution (Check, if N/A)
2	1,150 Shares Copano Energy LLC Unit Value: 33.3396 CUSIP: 217202106				38,410
3	3,300 Shares Crosshox Energy Inc. Unit Value: 11.0750 CUSIP: 227650904				36,548
4	2,766 Shares Hagle Rock Energy Partners LP Unit Value: 10.7325 CUSIP: 26985R104				29,741
5	800 Shares El Paso Pipeline Partners LP Unit Value: 36.2550 CUSIP: 283702108				29,004
6	900 Shares Energy Transfer Equity LP Unit Value: 38.5600 CUSIP: 29273V193 Dividend accrued on 8/14/2011				34,754 563
7	500 Shares Enterprise Prods Partners LP Unit Value: 42.8155 CUSIP: 293792107				25,689
8	1,100 Shares Genesis Energy LP Unit Value: 24.4700 CUSIP: 371927104				26,917
9	400 Shares Holly Energy Partners LP 400 units Unit Value: 51.4625 CUSIP: 435762107				20,585
TOTAL (Carry forward to main schedule)					242,291

Continuation Schedule - Page 28

Estate of:

Decedent's social security number

Adelaida P. Chackrow

7341

CONTINUATION SCHEDULE

Continuation of Schedule F, (Page 31)

(Enter value of schedule you are including.)

Item number	Description For each item, enter: If trust, partnership, or entity, the EIN	Unit value (See 1.5 or 6.02)	Alternate valuation date	Alternate value	Value of estate with or without deductions
10.	204 Shares Kinder Morgan Management LLC (stock split after date of death, 1.033 for 1, resulting in 210.732 shares) Unit Value: 60.8281 CUSIP: 494650100				12,409
11.	550 Shares Magellan Midstream Partners LP Unit Value: 59.4725 CUSIP: 969491109				32,710
12.	300 Shares Markwest Energy Partners LP Unit Value: 46.9870 CUSIP: 570759100				14,096
13.	1,500 Shares Oilbanking Partners LP Unit Value: 23.6150 CUSIP: 678949107				35,423
14.	300 Shares Oronok Partners LP Unit Value: 42.6200 CUSIP: 68268N109				12,786
15.	550 Shares Plains All American Pipeline LP Unit Value: 60.6975 CUSIP: 726503105				33,384
16.	1,300 Shares Regency Energy Partners LP Unit Value: 24.8700 CUSIP: 75885N107				32,331
17.	150 Shares Sunoco Logistics Partners LP Unit Value: 85.3500 CUSIP: 66764L108				12,803
TOTAL (Carry forward to main schedule), ...					165,942

Continuation Schedule - Page 28

CONTINUATION SCHEDULE

Continuation of Schedule 7 (Page 41)
(Enter letter of schedule you are continuing)

Item number	Description If final payment of estate tax, the EIN	Unit value (ash, b, c, or d only)	Alternate valuation date	Alternate value	Value plus 10% of death or marital deduction
18	1,300 Shares Targa Resources Partners LP Unit Value: 34.7175 CUSIP: 87611X135				45,133
19	1,500 Shares Teneco Logistics LP Unit Value: 24.0575 CUSIP: 86160T107				36,086
20	1,470 Shares Williams Partners LP Unit Value: 54.3700 CUSIP: 86950F184				79,924
21	756 Shares Sagile Rock Energy Partners LP Warrants Unit Value: 4.4950 CUSIP: 26955R120				3,443
22	Schwab Advisor Cash Reserves				34,549
Item numbers 23-50 are held under Schwab Institutional account number <u>88882245</u> , Matrix Capital Advisors LLC, 200 S. Wacker Drive, Chicago, Illinois 60606. See annexed Exhibit 18 for valuations.					
23	307 Shares 3M Co Unit Value: 82.2975 CUSIP: 88579X101				25,265
24	85 Shares Allegheny Corp Del Com Unit Value: 300.2850 CUSIP: 017175100				25,524
25	1,830 Shares Altera Corp Com Unit Value: 38.8925 CUSIP: 021442190				71,203
TOTAL (Carry forward to main schedule):					321,127

Continuation Schedule - Page 28

CONTINUATION SCHEDULE

Continuation of Schedule F (Page 8)
 (Enter value of schedule you are continuing.)

Item number	Description For accounts, give CUSIP number. If trust, partnership, or closely held entity, give EIN.	Unit value (Box B, E, or G only)	Alternate valuation date	Alternate value	Amount of gain or loss or amount of distribution
	Dividend accrued on 8/14/2011				154
26	711 Shares American Express Co Com Unit Value: 45.5900 CUSIP: 025816109				92,414
27	192 Shares Apache Corp Com Unit Value: 204.4675 CUSIP: 037411105 Dividend accrued on 8/14/2011				40,847 59
28	16 Shares Ascent Cap Grp Inc Com Ser A Unit Value: 44.5700 CUSIP: 042632108				713
29	848 Shares Coca Cola Co Com Unit Value: 67.4575 CUSIP: 191216100				57,204
30	2,094 Shares Comcast Corp New Cl A Spl Unit Value: 20.4275 CUSIP: 200101200				42,775
31	202 Shares ConocoPhillips Com Unit Value: 66.8670 CUSIP: 200250104 Dividend accrued on 8/14/2011				13,507 139
32	136 Shares Costco Whsl Corp New Com Unit Value: 72.9675 CUSIP: 22160K105 Dividend accrued on 8/14/2011				9,924 33
33	867 Shares Directv Com Cl A Unit Value: 43.5500 CUSIP: 25490A101				37,758
TOTAL (Carry forward to main schedule)					235,521

Continuation Schedule - Page 28

CONTINUATION SCHEDULE

Continuation of Schedule Z (Page 51)
(Enter name of schedule you are continuing)

Item number	Asset description, including CUSIP number, for publicly traded securities, or other identifying information	Unit value (per share, etc.)	Abnormal value (if any)	Alternate value	Value at date of death or amount included in estate
34	224 Shares Discovery Communications New Com Ser A Unit Value: 39.0112 CUSIP: 25470F104				8,739
35	162 Shares Discovery Communications New Com Ser C Unit Value: 35.9700 CUSIP: 25470F162				5,827
36	515 Shares Kreaser-Band Group Inc Com Unit Value: 39.8425 CUSIP: 261608103				24,011
37	385 Shares Koolha Inc Com Unit Value: 47.0400 CUSIP: 278855100				18,110
38	227 Shares L-3 Communications Holdings Inc Com Unit Value: 62.0025 CUSIP: 502472104				15,554
39	465 Shares Liberty Global Inc Class A Unit Value: 39.7625 CUSIP: 530551019				18,490
40	1,005 Shares Liberty Global Inc Class C Unit Value: 37.7475 CUSIP: 530552098				37,936
41	86 Shares Liberty Media Corporation Lib Star Com A Unit Value: 71.8525 CUSIP: 53071M708				6,179
TOTAL (Carry forward to main schedule)					136,656

Continuation Schedule - Page 28

Estate of:

Decedent's social security number

Arlene L. P. Chapparo

7341

CONTINUATION SCHEDULE

Continuation of Schedule F (Page 7)

(Enter value of schedule you are continuing.)

Item number	Description For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN.	Unit value (Box 9, E, or G only)	Alternate valuation date	Alternate value	Value at date of death or amount distributable
42	160 Shares Liberty Media Corporation Lib Cap Com A Unit Value: 71.0975 CUSIP: 53071M102				11,376
43	1,088 Shares Liberty Interactive Corporation Int Com Ser A Unit Value: 14.8550 CUSIP: 53071M104				16,162
44	1,863 Shares Microsoft Corp Com Unit Value: 25.1788 CUSIP: 594918104				46,908
45	781 Shares National Instruments Corp Com Unit Value: 24.1600 CUSIP: 636518102 Dividend accrued on 8/14/2011				18,869 78
46	258 Shares Newfield Expl Co Com Unit Value: 55.5850 CUSIP: 651290108				16,564
47	2,629 Shares News Corp Cl A Unit Value: 16.4550 CUSIP: 65248E104				43,260
48	245 Shares Peabody Energy Corp Com Unit Value: 49.2275 CUSIP: 704549104 Dividend accrued on 8/14/2011				12,061 21
49	537 Shares Franklin Int Com Unit Value: 98.4225 CUSIP: 74005P104				52,853
TOTAL (Carry forward to main schedule)					218,152

Continuation Schedule - Page 25

Estate of:

Decedent's social security number

Adelaide P. Churchman

7261

CONTINUATION SCHEDULE

Continuation of Schedule 7 (Page 8)

(Enter letter of schedule you are continuing)

Item number	Description For securities, give CUSIP number. If final, partnership, or closely held entity, give EIN.	Unit value (Box 8, E, or G only)	Alternate valuation date	Alternate value	Value at time of death or alternate valuation date
50	946 Shares Progressive Corp Ohio Com Unit Value: 18.4775 CUSIP: 743315103				17,480
51	548 Shares Scripps Networks Interact Inc Cl A Com Unit Value: 42.0125 CUSIP: 811065101				23,461
52	1,410 Shares GLM Corp Com Unit Value: 14.1850 CUSIP: 784427106				20,001
53	312 Shares Pharmco Fisher Scientific Inc Com Unit Value: 53.8650 CUSIP: 883856102				16,806
54	992 Shares UnitedHealth Group Inc Unit Value: 45.0331 CUSIP: 913249102				44,673
55	701 Shares Wal Mart Stores Inc Com Unit Value: 49.7400 CUSIP: 831142103 Dividend accrued on 8/14/2011				34,068 256
56	1,245 Shares Waste Mgmt Inc Del Com Unit Value: 30.9513 CUSIP: 941065109				38,534
57	1,082 Shares Willis Group Holdings Public L Shs Unit Value: 35.8103 CUSIP: 956655108				39,829
58	76 Shares Nestle S A Sponsored ADR Unit Value: 63.1325 CUSIP: 641069406				4,798
TOTAL (Carry forward to next schedule)					210,706

Continuation Schedule - Page 28

Estate of:

Decedent's social security number

Adelaide E. Chuchrow

-7741

CONTINUATION SCHEDULE

Continuation of Schedule D (Page 5)

(Enter last 4 of schedule you are continuing)

Item number	Description For description, also CUSIP number. If listed, put in parentheses or check only, Row 501.	Unit value Per D, E, or G value	Alternate valuation date	Alternate value	Value at date of death or amount deductible
59	230 Shares Teva Pharmaceutical Inds Ltd ADR Unit Value: 40.0575 CUSIP: 801624209 Dividend accrued on 8/14/2011				9,213 45
60	Schwab Advisor Cash Reserves				364
	Item numbers 61-113 are held under Schwab Institutional account number 882223144, Matrix Capital Advisors LLC, 200 S. Wacker Drive, Chicago, Illinois 60606. See annexed Exhibit 17 for valuations.				
61	3,025 Shares 1 800 Flowers Com Cl A Unit Value: 2.5125 CUSIP: 68243Q106				5,088
62	2,275 Shares A H Belo Corp Com Cl A Unit Value: 5.3175 CUSIP: 001282102 Dividend accrued on 8/14/2011				12,097 137
63	1,425 Shares Acme United Corp. Unit Value: 9.5481 CUSIP: 048161046				13,606
64	550 Shares Alamo Group Inc. Com Unit Value: 22.4125 CUSIP: 011311167				12,327
65	1,725 Shares American Reprographics Co Com Unit Value: 3.9275 CUSIP: 029263100				6,792
66	325 Shares Amara Inc Com Unit Value: 19.1125 CUSIP: 032744104				6,212
TOTAL (Carry forward to main schedule)					65,804

Continuation Schedule - Page 28

Estate of:

Decedent's social security number:

Adelaide P. Chuchran

-7347

CONTINUATION SCHEDULE

Continuation of Schedule F (Page 10)

(Enter value of schedule page in thousands.)

Item number	Description For company, give CUSIP number. If trust, partnership, or closely held entity, give EIN.	Unit value (Col. A, B, or G only)	Alternate valuation data	Alternate value	Value at date of death or alternate valuation date
67	475 Shares Berry R & Cory Ohio Com Unit Value: 9.7575 CUSIP: 062798107				4,635
68	225 Shares B&I Puro Inc Cl B Unit Value: 17.6105 CUSIP: 077347300				3,962
69	650 Shares Bowl Amar Inc Cl A Unit Value: 12.8570 CUSIP: 102565108 Dividend accrued on 8/14/2011				8,357 104
70	1,250 Shares Chix Inc Com Unit Value: 6.5175 CUSIP: 124805102				8,147
71	525 Shares Conrad Inds Inc Com Unit Value: 12.4750 CUSIP: 208305102				5,549
72	300 Shares Consolidated Communications Holdings Inc. Unit Value: 18.5625 CUSIP: 250034107				5,569
73	11,100 Shares Cosd Inc Com Unit Value: 0.7186 CUSIP: 221222101				7,988
74	4,725 Shares Dennys Corp Com Unit Value: 3.8425 CUSIP: 248691104				18,156
75	350 Shares Destination Maternity Corp Com Unit Value: 14.6425 CUSIP: 250650100				5,125

TOTAL (Carry forward to main schedule)

GB-436

Continuation Schedule - Page 28

JSA
0000000000

Estate of:

Decedent's social security number:

Adelaida E. Chuchron

7342

CONTINUATION SCHEDULE

Continuation of Schedule B (Page 11)

(Enter letter of schedule you are continuing.)

Item number	Description For each asset, give CUSIP number. If trust, partnership, or closely held entity, give EIN.	Unit value (No. B, E, or G only)	Alternate valuation date	Alternate value	Value at date of death or alternate valuation date
76	1,175 Shares Dover Saddlery Inc Com Unit Value: 3.4583 CUSIP: 250412101				4,075
77	425 Shares Ducommun Inc Del Com Unit Value: 16.8025 CUSIP: 264147109				7,141
78	650 Shares Eastern Co Com Unit Value: 18.4750 CUSIP: 276317104				12,009
79	775 Shares Ecology & Environment Inc Cl A Unit Value: 17.2282 CUSIP: 278878103				13,352
80	525 Shares Electro Rent Corp Com Unit Value: 15.3273 CUSIP: 285210103				14,178
81	3,375 Shares Force Protection Inc Com New Unit Value: 3.6175 CUSIP: 345203202				12,209
82	450 Shares Heritage Crystal Clean Inc Com Unit Value: 17.0575 CUSIP: 427264106				7,676
83	800 Shares Houston Wire & Cable Co Com Unit Value: 12.9850 CUSIP: 442444109				10,388
84	2,550 Shares Jamba Inc Com Unit Value: 1.8575 CUSIP: 470263101				4,737
TOTAL (Carry forward to main schedule)					95,755

Continuation Schedule - Page 28

Estate of:

Decedent's social security number

Adelaide P. Chackrow

7741

CONTINUATION SCHEDULE

Continuation of Schedule B (Page 12)

(Enter letter of schedule you are continuing)

Item number	Description For securities, give CUSIP number. For trust, partnership, or closely held entity, give EIN.	Unit value per S, P, or trust	Alternate valuation date	Alternate value	Value at date of death or amount distributable
85	275 Shares Johnson Outdoors Inc Cl A Unit Value: 15.8270 CUSIP: 479157108				4,352
86	500 Shares KMG Chemicals Inc Com Unit Value: 15.2150 CUSIP: 482564101				7,608
87	1,200 Shares Leacrosse Footwear Inc Com Unit Value: 13.5275 CUSIP: 505688101				16,221
88	900 Shares Lando Corp Com Unit Value: 5.8236 CUSIP: 514766104				5,331
89	5,200 Shares Leapfrog Enterprises Inc Cl A Unit Value: 2.8650 CUSIP: 52166X136				14,898
90	1,025 Shares Le-Jack Corp Com Unit Value: 3.3250 CUSIP: 539451104				3,400
91	500 Shares Mac-Gray Corp Com Unit Value: 13.8450 CUSIP: 554153106				6,923
92	700 Shares National Beverage Corp Com Unit Value: 14.8400 CUSIP: 635017106				10,388
93	1,250 Shares Ohio Art Co Com Unit Value: 4.5000 CUSIP: 677143109				5,625
TOTAL (Carry forward to main schedule)					74,784

Continuation Schedule - Page 28

Estate of:

Decedent's social security number

Adeline W. Chappard

7341

CONTINUATION SCHEDULE

Continuation of Schedule A (Page 13)

(Enter letter of schedule you are continuing.)

Item number	Description: For securities, give CUSIP number. If unit, partnership, or closely held stock, give EIN.	Unit value (per S, P, or 6 box)	Alternate valuation date	Alternate value	Value at date of death or alternate valuation date
94	3,300 Shares Orion Energy Systems Inc Com Unit Value: 3.1950 CUSIP: 686275105				10,544
95	4,200 Shares Peerless Sys Corp Com Unit Value: 3.7875 CUSIP: 705536100				15,908
96	1,550 Shares Prophase Labs Inc Com Unit Value: 0.8250 CUSIP: 74345M108				1,279
97	400 Shares Richardson Electric Ltd Com Unit Value: 14.3675 CUSIP: 763165107 Dividend accrued on 8/14/2011				5,747 20
98	300 Shares Seneca Foods Corp New Cl A Unit Value: 20.6525 CUSIP: 817070501				6,195
99	1,275 Shares Smart Balance Inc Com Unit Value: 5.0025 CUSIP: 63169Y108				6,378
100	850 Shares Spartan Corp Com Unit Value: 7.5100 CUSIP: 847235108				6,384
101	550 Shares Standard Mtr Prods Inc Com Unit Value: 12.2325 CUSIP: 853666105				6,726
102	980 Shares Standard Parking Corp Com Unit Value: 15.7150 CUSIP: 852790103				14,144
TOTAL (Carry forward to main schedule)					73,328

Continuation Schedule - Page 28

CONTINUATION SCHEDULE

Continuation of Schedule F (Page 14)

(Enter value of schedule you are continuing)

Item Number	Description For securities, give CUSIP number, if trust, partnership, or closely held entity, give EIN	Unit value (Box 2, 3, or 4 only)	Alternate valuation date	Alternate value	Value of stock or security or interest
103	425 Shares Starratt L S Co Cl A Unit Value: 10.9975 CUSIP: 855668109				4,674
104	250 Shares Steinway Musical Instrs Inc Com Unit Value: 24.9825 CUSIP: 858495104				6,246
105	300 Shares Terrano Rity Corp Com Unit Value: 15.4350 CUSIP: 881402101				4,631
106	2,350 Shares United Online Inc Com Unit Value: 5.1850 CUSIP: 911268100 Dividend accrued on 8/14/2011				12,185 235
107	180 Shares United States Lime & Minerals Com Unit Value: 40.8300 CUSIP: 911922102				6,125
108	1,800 Shares Universal Sec Instrs Inc Com New Unit Value: 5.1072 CUSIP: 913821302				9,193
109	375 Shares USA Mobility Inc Com Unit Value: 15.4922 CUSIP: 903416103				5,810
110	550 Shares Warwick Valley Tel Co Com Unit Value: 13.8949 CUSIP: 936750108				7,642
111	1,700 Shares Westell Technologies Inc Cl A Unit Value: 2.5450 CUSIP: 957541105				4,327
TOTAL (Carry forward to main schedule)					63,064

Continuation Schedule - Page 28

CONTINUATION SCHEDULE

Continuation of Schedule P (Page 15)

(Enter later if schedule you are continuing)

Item number	Description For securities, give CUSIP number. (If trust, partnership, or closely held entity, give EIN.)	Unit value (Sec. 615 or D.C.M.)	Alternate valuation date	Alternate value	Value at time of death or alternate valuation
112	1,950 Shares Winn Dixie Stores Inc Com Unit Value: \$6.9175 CUSIP: 974280109				13,489
113	Cash Reserves				68,354
Item numbers 114-119 are held under Charles Schwab account number 7303 at Matrix Capital Advisors LLC, 200 S. Wacker Street, Chicago, Illinois. See annexed Exhibit 18 for valuations.					
114	35,851.72 Shares Matthews Intl Fds Asian GW & Inc Inv Unit Value: 16.8600 CUSIP: 577230206				601,320
115	42,998.82 Shares Wintergreen Fd Inc Com Unit Value: 13.9100 CUSIP: 97607W202				598,113
116	69,677.12 Shares Doubleline Fds Tr Tm Rtn Bd I Unit Value: 11.2200 CUSIP: 258620103				781,777
117	41,805.54 Shares Neonix Bayles Bond Instl Unit Value: 14.5550 CUSIP: 543958409				608,481
118	39,001.78 Shares Templeton Income Tr GLB Bd Advac Unit Value: 13.6300 CUSIP: 880208400				531,594
119	Cash Reserves				9,892
TOTAL (Carry forward to main schedule)					3,233,079

Continuation Schedule - Page 20

Estate of:

Decedent's social security number:

Adelaide P. Chuckrow

-7251

CONTINUATION SCHEDULE

Continuation of Schedule P (Page 15)

(Enter name of schedule you are continuing)

Item number	Description If trust, partnership, or other entity, the title	Unit value (as of 5/5/06)	Alternate valuation date	Alternate value	Value at date of death or amount received
120	Giovino Investment Partners LP See annexed Exhibit 19 for valuation.				1,040,818
121	Viking Global Equities LP See annexed Exhibit 19 for valuation.				1,194,662
122	Taconic Capital Partners L.P. See annexed Exhibit 19 for valuation.				995,736
123	Brauvin Net Capital, LLC See annexed Exhibit 19 for valuation.				500,000
124	Brauvin Net Lease Inc. See annexed Exhibit 19 for valuation.				305,000
125	The Trust U/W/O Robert Chuckrow owned a 50% limited partnership interest in Chuckrow Smith Associates, L.P. ("LP"). The LP owned a 49.5% general partner interest in Glens Gardens Associates, L.P., which owned real property located at 175 West 87th Street, New York, New York. See annexed Exhibit 20 for appraisal prepared by Greenwich Realty Advisors Incorporated.				3,800,000
126	Darnot Pacific Partners, L.P. See annexed Exhibit 21 for valuation.				150,000
127	Blue Cross and Blue Shield Association Premium refund See annexed Exhibit 21 for copy of refund check.				1,347
128	Quincy Mutual Fire Insurance Company refund check See annexed Exhibit 22 for copy of check statement.				31
TOTAL (Carry forward to main schedule)					7,997,564

Continuation Schedule - Page 28

CONTINUATION SCHEDULE

Continuation of Schedule 1 (Page 27)

Item number	Description For Real Estate, Real Estate, or other property, see EOL	Unit value per E.O. 12812	Alternate valuation date	Alternate value	Value of gift of death or marital deduction
129	Tangible Personal Property: Appraisal of fine art, furniture and sterling silver prepared by Sixkind Appraisals. See annexed Exhibit 23 for copy of appraisal.				9,745
130	Tangible Personal Property: Appraisal of jewelry prepared by Sixkind Appraisals. See annexed Exhibit 24 for copy of appraisal.				9,596
131	American Express refund check. See annexed Exhibit 25 for copy of check.				10
132	Foreign Currency Fee Litigation Settlement Fund See annexed Exhibit 25 for copy of check.				18
133	Refund from Sweetwood of Williamstown Retirement Living Community See annexed Exhibit 26 for valuation.				225,076
134	2011 New York State income tax return refund				3,007
135	Other miscellaneous tangible personal property				750
TOTAL (Carry forward to main schedule)					249,002

Continuation Schedule - Page 28

Estate of:

Decedent's social security number

Adelaide P. Chackrow

3331

SCHEDULE G - Transfers During Decedent's Life

(If you elect section 2032A valuation, you must complete Schedule G and Schedule A-1.)

Item number	Description. For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN	Alternate valuation date	Alternate value	Value at date of death
A.	Gift tax paid or payable by the decedent or the estate for all gifts made by the decedent or his or her spouse within 3 years before the decedent's death (section 2036(c)).	X X X X X		276,057
B.	Transfers includible under section 2035(a), 2036, 2037, or 2038: Items numbers 1 - 35 are titled in the name of the Adelaide P. Chackrow Family Trust ("Trust"). See annexed Exhibit 3 for a copy of the Trust, and Exhibits 4-6 for copies of the Restatements and Amendment to the Trust.			
Total from continuation schedules (or additional sheets) attached to this schedule				276,057
TOTAL (Also enter on Part 5 - Recapitulation, page 3, item 7.)				276,057

SCHEDULE H - Powers of Appointment

(Include "S and S lapsing" powers (section 2041(b)(2)) held by the decedent.)

(If you elect section 2032A valuation, you must complete Schedule H and Schedule A-1.)

Item number	Description	Alternate valuation date	Alternate value	Value at date of death
None				
Total from continuation schedules (or additional sheets) attached to this schedule				0
TOTAL (Also enter on Part 5 - Recapitulation, page 3, item 2.)				0

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

Schedules G and H - Page 14

Estate of:

Decedent's social security number

Adelaide P. Chantrow

7341

CONTINUATION SCHEDULE

Continuation of Schedule G (Page 2)

(Enter letter of schedule you are continuing.)

Item number	Description, For securities, give CUSIP number, If trust, partnership, or closely held entity, give EIN	Unit value (Sec. 6, E, or G only)	Alternate valuation date	Alternate value	Value allocated to decedent or surviving spouse
	Item numbers 1-14 are held under account number 257 at Bessemer Trust, 630 Fifth Avenue, New York, New York 10111. See annexed Exhibit 27 for valuations.				
1	30,539.9 Shares BK DOLLAR DEPOSIT - BNYM CUSIP: 396039038	0.1282			3,918
2	3,115.3 Shares SG DOLLAR DEPOSIT - BNYM CUSIP: 396035046	0.2272			2,860
3	11,691.87 Shares MO DOLLAR DEPOSIT - BNYM CUSIP: 396039053	0.1825			2,133
4	10,054.82 Shares EA DOLLAR DEPOSIT - BNYM CUSIP: 396039061	0.1294			1,402
5	325 Shares ECOLAR INC COM CUSIP: 278865100	47.0400			15,288
6	300 Shares JOHNSON CTLS INC COM CUSIP: 478366107	32.5453			9,764
7	350 Shares METLEVE INC COM CUSIP: 591562108	33.8779			11,857
8	1,745.614 Shares OLD WESTBURY FDS INC REAL RETURN 7D CUSIP: 660414703	10.4400			18,224
TOTAL (Carry forward to main schedule)					65,246

Continuation Schedule - Page 26

Form 706 (Rev. 4-2011) (Make copies of this schedule if considering if you will need more than one schedule.)
 Estate of: Adelaide P. Chaddock Decedent's social security number 7361

CONTINUATION SCHEDULE

Continuation of Schedule C (Page 3)

(Enter letter of schedule you are continuing.)

Item number	Description For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN	Unit value (Sec. 6, 8, & d only)	Alternate valuation date	Alternate value	Value at date of death or alternate valuation date
9	160 Shares ST JUDE MED INC COM CUSIP: 799848103	42.6525			6,856
10	140 Shares STANLEY BLACK & DECKER COM CUSIP: 854501101	61.5875			6,622
11	1,289,683 Shares OLD WESTBURY FDS INC GLOBAL SMDCAP FD CUSIP: 680414604	14.2300			18,352
12	1,424,379 Shares OLD WESTBURY FDS INC GLOB CPPTYS FD CUSIP: 680414802	7.4100			10,553
13	1,848,977 Shares OLD WESTBURY FDS INC NON US LCAP ID CUSIP: 680414109	9.5800			18,515
14	BESSEMER SWEET PROGRAM CUSIP: 999999998				281,021
15	Mortgage dated December 9, 2005. Violeta Mathew is the mortgagor. The amount of the indebtedness is \$100,000.00. See annexed Exhibit 28 for copies of the Loan Payment Schedule, Mortgage, Mortgage Note, Loan Modification Agreement, Partial Cancellation of Indebtedness, and Assignment of Mortgage of Real Estate.				35,904
TOTAL (Copy forward to main schedule)					275,028

Continuation Schedule - Page 28

Estate of:

Decedent's social security number:

Schlafke P. Chackrow

7341

CONTINUATION SCHEDULE

Continuation of Schedule A (Page 4)

(Enter letter of schedule you are continuing)

Item number	Description For complete, give CUSIP number, if trust, partnership, or closely held entity, give EIN	Unit value (cost, FMV, or S. sec)	Alternate valuation date	Alternate value	Value at date of death or amount excluded
	Item numbers 16-33 are held under account number 531 at Deutsche Bank Trust Co. Americas, 345 Park Avenue, New York, New York 10154. See annexed Exhibit 29 for valuations.				
16	ICT TREASURY INVESTMENT MONEY MARKET FUND Interest accrued to 8/14/2011				37,262 0
17	40 Shares EXXON MOBIL CORP COM CUSIP: 30211G102 Dividend accrued on 8/14/2011	72.9552			2,918 19
18	270 Shares GENERAL ELECTRIC CO COM CUSIP: 369604103	16.1000			4,347
19	160 Shares ORACLE CORP COM CUSIP: 68389X105	27.4500			4,394
20	80 Shares EXPRESS SCRIPTS INC COM CUSIP: 302182100	47.2575			3,781
21	110 Shares JPMORGAN CHASE & CO COM CUSIP: 46625K100	36.7400			4,000
22	355 Shares ADM INTEL MUT FDS INVSC EURO GRW X CUSIP: 005892573	28.5000			10,473
TOTAL (Copy forward to main schedule)					57,863

Continuation Schedule - Page 28

Form 706 (Rev. 6-2011) (Make copies of this schedule) (attach only if it would add more than insignificant.)

Estate of: Adelaide P. Chubbuck Decedent's social security number: 7341

CONTINUATION SCHEDULE

Continuation of Schedule A (Page 5)

Item number	Description For each item, give CUSIP number. If trust, partnership, or closely-held entity, give EIN.	Unit value Per U.S. E. or Cash.	Alternate valuation date	Alternate value	Value (date of death) or amount distributed
23	688.316 Shares ARTIO GLOBAL INV FDS GLBL HYLD I CUSIP: 041150880	9.8000			6,550
24	70 Shares BARCLAYS BK PLC DOWD CREDIT ENTP 36 CUSIP: 067380778	47.4384			3,321
25	10,654.647 Shares DWS TAX FREE TR INTXANT INETL CUSIP: 23337X707	11.6300			124,030
26	450 Shares DWS INVESTMENT TR CAP GRTH INETL CUSIP: 233380707	50.2600			22,617
27	575 Shares KARON VANCE MUT FDS TR PRMER STR EMRG I CUSIP: 277523751	14.1800			8,154
28	159 Shares ISHARES INC MSCI PAC J IDX CUSIP: 464266665	42.9503			6,831
29	1,035 Shares MFS SZR TR I VALUE FD CL I CUSIP: 552803694	21.2800			22,025
30	184.284 Shares SCHRODER SER TR US SMLCAPD INV CUSIP: 808092704	10.9200			2,012
31	161.0532 Shares GNMA PASS-THRU X SINGLE FAMILY CUSIP: 362091V99	1.0195			164
TOTAL (Carry forward to main Schedule A)					135,704

Continuation Schedule - Page 28

365a

Form 706 (Rev. 5-22-11) (Attach copies of this schedule) (Don't check if you will need more than one attachment)
 Estate of: Decedent's social security number
 Adelaide B. CHURCHMAN 7341

CONTINUATION SCHEDULE

Continuation of Schedule C (Page 61)

(Enter listing of assets you are continuing.)

Item number	Description For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN.	Unit value (Sec. 203, E, or G table)	Alternate valuation date	Alternate value	Value at date of death or amount receivable
12	270 Shares BLACKROCK FDS II INFLPROBD INVT CUSIP: 081937748	11.5800			3,154
13	1,350 Shares PRMCO FDS BOLD MKT INETL CUSIP: 72201F409	10.8000			14,580
34	Shares of Silicon Realty Corp. See annexed Exhibit 30 for valuation.				152,983
35	QTV Media Group, Inc. (worthless)				0
TOTAL (Carry forward to main schedule).					170,717

Continuation Schedule - Page 28

366a

Form 706 (Rev. 8-23-81)

Estate of:

Adelaide P. Chubbrow

Decedent's social security number

7361

SCHEDULE I - Annuities

Note: Generally, no exclusion is allowed for the estates of decedents dying after December 31, 1998 (see instructions).

A Are you excluding from the decedent's gross estate the value of a lump-sum distribution described in section 2039(f)(2) (as in effect before its repeal by the Deficit Reduction Act of 1984)?

Yes No

X

If "Yes," you must attach the information required by the instructions.

Item number	Description. Show the entire value of the annuity before any exclusions	Alternate valuation date	Includible alternate value	Includible value at date of death
1	Metropolitan Life Insurance Company P.O. Box 10342 Des Moines, Iowa 50306-0342 Annuity contract number 5872. The beneficiary of the annuity is the decedent's daughter, Carol Guernsey. See annexed Exhibit 31 for valuation.			476,213
2	Metropolitan Life Insurance Company P.O. Box 10342 Des Moines, Iowa 50306-0342 Annuity contract number 5885. The beneficiary of the annuity is the decedent's daughter, Amy Chubbrow. See annexed Exhibit 31 for valuation.			476,213
Total from continuation schedule (or additional sheets) attached to this schedule				952,426

TOTAL (Also enter on Part 5 - Recombination, also 3, at item 9.)

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

Schedule I - Page 15

JSA
000016-1-800

Form 706 (Rev. 8-2011)

Estate of

Adeline S. Macdonald

Decedent's social security number

7991

SCHEDULE J - Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims

Note. Do not list expenses of administering property not subject to claims on this schedule. To report these expenses, see instructions. If executor's commissions, attorney fees, etc., are claimed and allowed as a deduction for estate tax purposes, they are not allowable as a deduction in computing the taxable income of the estate for federal income tax purposes. They are allowable as an itemized deduction on Form 1041, U.S. Income Tax Return for Estates and Trusts, if a waiver is filed to waive the deduction on Form 706 (see instructions for Form 706).

Item number	Description	Expense amount	Total amount
1	A. Funeral expenses: Lewis Funeral Home (Massachusetts)	5,992	
	Total from continuation schedules	7,325	
	Total funeral expenses		13,571
	B. Administration expenses:		
1	Executor's commissions - amount estimated/agreed upon/paid. (Strike out the words that do not apply.)		20,000
2	Attorney fees - amount estimated/agreed upon/paid. (Strike out the words that do not apply.)		125,000
3	Accountant fees - amount estimated/agreed upon/paid. (Strike out the words that do not apply.)		10,000
	4. Miscellaneous expenses:		
		Expense amount	
1	Sweetwood of Williamstown Retirement Living Community (maintenance)	5,008	
2	Scante Valuations & Pricing Systems, Inc. (fee for obtaining date of death values on securities)	355	
3	Siskind Appraisals (fees for appraising tangible personal property and jewelry)	810	
4	Frederick D. Royal, Esq. (Massachusetts counsel)	13,801	
5	Expenses related to probate proceedings: filing fees, publication, letters of appointment, postage	697	
6	Law Offices of Sherwood Guernsey PC	13,637	
7	Postage	71	
8	Singham McCutchen LLP (legal fees for Glen Gardens Associates matter)	10,576	
	Total miscellaneous expenses from continuation schedule (or additional sheets) attached to this schedule	13,143	
	Total miscellaneous expenses		58,101
	TOTAL (Enter on Part 5 - Recommendation page 3, at item 13.)		725,672

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

Schedule J - Page 16

12A
cr02-11-2 010

Estate of: Adelaide P. Chackrow

-7341

Schedule J Part A (Page 2)

Item No.	Description	Amount
2	Beecher Funeral Home, Inc. (New York)	2,430
3	New England Newspapers (obituary)	196
4	Office of the Town Clerk (death certificates)	300
5	Church Minister Ted Anderson (funeral service)	500
6	Reception (refreshments) in Massachusetts	135
7	Luncheon in New York	105
8	Transportation	100
9	Whispering Pines of Chappaqua (florist)	363
10	Fair Ridge Cemetery (cemetery grave opening)	950
11	Nantucket Academy of Music (soloist at funeral)	200
12	Maria Kessel (organist)	100
13	Pulver-Hausen Memorials (headstone)	2,000

Total (Carry forward to main schedule)

7,579

Estate of Adolph A. Chackrow

7341

Schedule C Part 2 (Page 2)

Item No.	Description	Amount
1	Greenwich Realty Advisors Incorporated (fee for appraising decedent's interest in Glenn Gardens Associates, L.P.)	13,144

Total (Carry forward to main schedule)

13,144

Estate of:

Decedent's social security number

Adeline P. Chackos

2247

SCHEDULE K - Debts of the Decedent, and Mortgages and Liens

Item number	Debt of the Decedent - Creditor and terms of claim, and allowable death taxes	Amount unpaid in debt	Amount in contest	Amount claimed as a deduction
1	At Home TLC, Inc.	0	0	3,429
2	Massachusetts Division of Unemployment	0	0	140
3	Rhoda Laraway (reimbursement of expenses to caregiver)	0	0	164
4	Joy Fisher (reimbursement to caregiver)	0	0	97
5	The Hartford (workers compensation insurance for caregivers)	0	0	218
6	Verizon	0	0	122
7	Estate Respite Inc. (creditor: American Express)	0	0	3,253

Total from continuation schedules (or additional sheets) attached to this schedule

68,354

TOTAL (Also enter on Part 5 - Reconciliation, page 3, of Form 706)

72,307

Item number	Mortgages and Liens - Description	Amount
	None	

Total from continuation schedules (or additional sheets) attached to this schedule

0

TOTAL (Also enter on Part 5 - Reconciliation, page 3, of Form 706)

0

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

Schedule K - Page 17

Estate of: Adelride P. Chuchrow.

7341

Schedule E Part 1 (Page 2)

Item No.	Debit of decedent	Amount unpaid	Amount in contest	Amount claimed
8	Second Congregational Meeting House Society (fulfillment of pledge account)	0	0	3,500
9	Frederick D. Royal, Esq. (for services from July 28, 2011 - August 1, 2011)	0	0	1,150
10	2011 IRS Form 1040 income tax payment	0	0	68,025
11	2011 Massachusetts Resident income tax payment	0	0	11,739
12	Caregiver & transportation	0	0	100

Total (Carry forward to main schedule)

66,054

Estate of:

Decedent's social security number

Adelaide P. Chackron

2301

**SCHEDULE L - Net Losses During Administration and
Expenses Incurred in Administering Property Not Subject to Claims**

Item number	Net losses during administration (Note. Do not deduct losses claimed on a federal income tax return.)	Amount
None		
Total from continuation schedule(s) (or additional sheets) attached to this schedule		0
TOTAL (Also enter on Part 5 - Recapitulation, page 3, of form 706.)		0
Item number	Expenses incurred in administering property not subject to claims. (Indicate whether reflected, unpaid upon, or paid.)	Amount
None		
Total from continuation schedule(s) (or additional sheets) attached to this schedule		0
TOTAL (Also enter on Part 5 - Recapitulation, page 3, of form 706.) (If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)		0

Schedule L - Page 18

Estate of:

Adelaide P. Chynoweth

Decedent's social security number

7331

SCHEDULE O - Charitable, Public, and Similar Gifts and Bequests

	Yes	No
1a If the transfer was made by will, has any action been instituted to contest or have interpreted any of its provisions affecting the charitable deductions claimed in this schedule? If "Yes," full details must be submitted with this schedule.		☒
b According to the information and belief of the person or persons filing this return, is any such action planned? If "Yes," full details must be submitted with this schedule.		☒
2 Did any property pass to charity as the result of a qualified disclaimer? If "Yes," attach a copy of the written disclaimer required by section 2518(b).		☒

Item number	Name and address of beneficiary	Character of institution	Amount
1	General Bequest to United Negro College Fund, Inc. 8760 Willow Oaks Corporate Drive Fairfax, VA 22031		2,000
2	General Bequest to Metropolitan Opera Association Inc. Lincoln Plaza New York, NY 10023		2,000
3	General Bequest to American Red Cross National Headquarters P.O. Box 37243 Washington DC 20013		3,000

Total from continuation schedules (if additional sheets attached to this schedule)

57,000

3	Total	3	57,000
4a	Federal estate tax payable out of property interests listed above	4a	0
b	Other death taxes payable out of property interests listed above	4b	0
c	Federal and state GST taxes payable out of property interests listed above	4c	0
d	Add items 4a, 4b, and 4c	4d	0
5	Net value of property interests listed above (subtract 4d from 3). Also enter on Part 5 - Recapitulation, page 3, of Item 21.	5	54,000

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

Estate of: Adalaida P. Chackryw

-7341

Schedule D (Page 2)

Item No.	Name and address of beneficiary	Character of institution	Amount
4	General Bequest to The Unitarian Universalist Church on Nantucket Island 11 Orange Street P.O. Box 1023 Nantucket, MA 02554		8,000
5	General Bequest to Memorial Sloan-Kettering Cancer Center 1275 York Avenue New York, NY 10065		8,000
6	General Bequest to Alzheimer's Research Foundation One Intrepid Square, West 46th Street & 12th Avenue New York, NY 10036		5,000
7	General Bequest to Children's Aid Society 105 West 22nd Street New York, NY 10010		1,000
8	General Bequest to Williamstown Community Chest P.O. Box 204 Williamstown, MA 01267		3,000
9	General Bequest to Salvation Army World Service Office P.O. Box 1428 Alexandria, VA 22313		3,000
10	General Bequest to Unitarian Universalist Association 25 Beacon Street Boston, MA 02108		500
11	General Bequest to John Fitzgerald Kennedy Library Foundation, Inc. Columbia Point Boston, MA 02125		500
12	General Bequest to Nantucket Chamber Music Center MA		500
13	General Bequest to Mothers Against Drunk Driving 511 E. John Carpenter Freeway Irving, TX 75062		500
Total (Carry forward to main schedule)			30,000

Estate of: Adelaide P Chackrow

-7341

Schedule O (Page 3)

Item No.	Name and address of beneficiary	Character of institution	Amount
14	General Request to Habitat for Humanity International Inc. 121 Habitat Street Americus, GA 31709		500
15	General Request to National Federation of the Blind, Inc. 1800 Johnson Street Baltimore, MD 21230		500
16	General Request to American Jewish Committee Jacob Blaustein Building 151 East 56th Street New York, NY 10022		500
17	General Request to American Diabetes Association, Inc. 1701 N. Monroegard Street Alexandria, VA 22311		500
18	General Request to Cornell University Library 341 Pine Tree Road Ithaca, NY 14850		500
19	General Request to The William J. Clinton Foundation 2200 President Clinton Avenue Little Rock, AR 72207		500
20	General Request to The Franklin and Eleanor Roosevelt Institute 570 Lexington Avenue New York, NY 10022		1,000
21	General Request to Environmental Defense Fund Incorporated 257 Park Avenue S New York, NY 10010		1,000
22	General Request to American Society for the Prevention of Cruelty to Animals 520 Eighth Avenue New York, NY 10018		1,000
23	General Request to Nantucket Cottage Hospital 57 Prospect Street Nantucket, MA 02554		1,000
Total (Carry forward to main schedule)			7,500

Estate of: Adelaide P Chackrow

-7341

Schedule O (Page 4)

Item No.	Name and address of beneficiary	Character of institution	Amount
24	General Bequest to Disabled American Veterans 3725 Alexandria Pike Cold Spring, NY 41076		1,000
25	General Bequest to Hospice Care in Westchester and Putnam Inc. 540 White Plains Road Tarrytown, NY 10591		1,000
26	General Bequest to Planned Parenthood Federation of America, Inc. 434 West 32nd Street New York, NY 10001		1,000
27	General Bequest to Educational Broadcasting Corp. 825 Eighth Avenue New York, NY 10019		1,000
28	General Bequest to Nantucket Land Council Inc 8 Ash Lane Nantucket, MA 02554		2,000
29	General Bequest to Nantucket Conservation Foundation Inc. P.O. Box 13, 118 Cliff Road Nantucket, MA 02554		2,000
30	General Bequest to North Adams Regional Hospital 71 Hospital Avenue North Adams, MA 01247		2,000
31	General Bequest to Feed the Children, Inc. P.O. Box 36 Oklahoma City, OK 73101		3,000
32	General Bequest to The Democratic National Committee 430 South Capital Street SE Washington, D.C. 20003		5,000
33	General Bequest to Brady Center to Prevent Gun Violence 1225 "I" Street NW Washington, DC 20005		2,000
Total (Carry forward to main schedule)			20,000

The GST tax is imposed on taxable transfers of interests in property located outside the United States as well as property located inside the United States. (see instructions)

Part 1. GST Exemption Reconciliation (Section 2631) and Section 2652(a)(3) (Special QTIP) Election

You no longer need to check a box to make a section 2652(a)(3) (special QTIP) election. If you list qualifying property in Part 1, line 8 below, you will be considered to have made this election. See instructions for details.

1	Maximum allowable GST exemption, ...	3	5,000,000
2	Total GST exemption allocated by the decedent against decedent's lifetime transfers	2	0
3	Total GST exemption allocated by the executor, using Form 706, against decedent's lifetime transfers	3	0
4	GST exemption allocated on the 6 of Schedule R, Part 2, ...	4	25,000
5	GST exemption allocated on line 6 of Schedule R, Part 3, ...	5	0
6	Total GST exemption allocated on line 4 of Schedule(s) R-1	6	0
7	Total GST exemption allocated to inter vivos transfers and direct skips (add lines 2-6)	7	25,000
8	GST exemption available to allocate to trusts and section 2032A interests (subtract line 7 from line 1)	8	4,975,000
9	Allocation of GST exemption to trusts (as defined for GST tax purposes):		

A Name of trust	B Trust's EIN (if any)	C GST percentages allocated on lines 2-4, above (see instructions)	D Adjusted GST exemption claimed (see instructions)	E Trust's inclusion ratio (exemption - see instructions)
Abolition of Slavery Insurance Trust		0	2,500,000	0.0000

9D Total. May not exceed line 8, above 9D 2,600,000

10 GST exemption available to allocate to section 2032A interests received by individual beneficiaries (subtract line 8D from line 9). You must attach separate allocation schedule (see instructions) 10 2,175,000

Estate of:

Adelaide P. Chukrov

Decedent's social security number

7341

Part 2. Direct Skips Where the Property Interests Transferred Bear the GST Tax on the Direct Skips

Name of skip person	Description of property interest transferred	Estate tax value
Victoria Stulgis	General Bequest	5,000
Seth Stulgis	General Bequest	5,000
Matthew Guernsey	General Bequest	5,000
Margo Guernsey	General Bequest	5,000
Katia Guernsey	General Bequest	5,000

1	Total estate tax values of all property interests listed above	25,000
2	Estate taxes, state death taxes, and other charges borne by the property interests listed above	0
3	GST taxes borne by the property interests listed above but imposed on direct skips other than those shown on this Part 2 (see instructions)	0
4	Total fixed taxes and other charges (add lines 2 and 3)	0
5	Total tentative maximum direct skips (subtract line 4 from line 1)	25,000
6	GST exemption allocated	25,000
7	Subtract line 6 from line 5	0
8	GST tax due (divide line 7 by 2.857143)	0
9	Enter the amount from line 8 of Schedule R, Part 3	0
10	Total GST taxes payable by the estate (add lines 8 and 9). Enter here and on line 17 of Part 2 - Tax Computation	0

Estate of:

Decedent's social security number

Adeline P. Chackrav

2361

Part 3. Direct Skips Where the Property Interests Transferred Do Not Bear the GST Tax on the Direct Skips

Name of skip person	Description of property interest transferred	Estate tax value
None		

1	Total estate tax values of all property interests listed above	1	0
2	Estate taxes, state death taxes, and other charges borne by the property interests listed above	2	0
3	GST taxes borne by the property interests listed above but imposed on direct skips other than those shown on this Part 3 (see instructions)	3	0
4	Total fixed taxes and other charges (add lines 2 and 3)	4	0
5	Total tentative maximum direct skips (subtract line 4 from line 1)	5	0
6	GST exemption allocated	6	0
7	Subtract line 6 from line 5	7	0
8	GST tax due (multiply line 7 by .35). Enter here and on Schedule R, Part 2, line 6	8	0

APPENDIX 28

4



MASSACHUSETTS DEPT. OF REVENUE
200 ARLINGTON ST RM 4000
CHELSEA, MA 02150

Leo Haroutunian Desk Assist
Telephone: (617) 867-2838

NOTICE OF INTENT TO ASSESS

This is an official notice from the Massachusetts Dept. of Revenue.

EST OF ADELAIDE P. CHUCKROW
FOX ROTHSCHILD LLP
100 PARK AVE # 61500
NEW YORK NY 10017-6518

Relate Date: September 27, 2013

Taxpayer ID Number: XXX-XX-7241
Document Number: 2482 2003 3443
Total Assessment: \$1,910.565
Relate Date: October 27, 2013
Tax Type: Estate

The Massachusetts Department of Revenue has conducted an audit for the periods 06/14/11 to 06/14/11. As a result of that audit, the Department has adjusted the tax reported for some or all of those periods. Please see page 3 "Assessment Detail" for a breakdown of the changes.

Interest and, in some cases, penalties will continue to accrue until you pay the full amount owed. If you decide to dispute the proposed assessment, you are not required to pay while your dispute is pending. (See page 6 for information regarding appeals.) You may want to pay, however, to avoid additional interest and penalty charges. If your appeal is successful, any money paid will be refunded with applicable interest. Mail your check or money order along with the Payment Coupon shown below.

If you wish to discuss this notice with the Department of Revenue's Audit Division, please call Leo Haroutunian at (617) 867-6638. If someone will be representing you, you must complete and submit a Power of Attorney Form (M-2848). This form is available from several sources (see page 2 - "What Type of Assistance is Available").

If you do not respond by October 27, 2013, you will receive a bill that reflects the tax that you owe, plus interest and any applicable penalties. Interest and penalties will continue to accrue until you pay the full amount due (see "Understanding the Notice of Intent to Assess" for more information).



Page 1 of 6

Please check the appropriate boxes.

☐ Submit payment.

I am paying the following amount:

Write your
check or money order
for \$

Mail check or money order payable to:

Commonwealth of Massachusetts



EST OF ADELAIDE P. CHUCKROW
FOX ROTHSCHILD LLP

Taxpayer ID Number: XXX-XX-7241
Document Number: 2482 2003 3443
Total Assessment: \$1,910.565
Relate Date: October 27, 2013
Tax Type: Estate

Payment Coupon

☐ Address or phone number change.

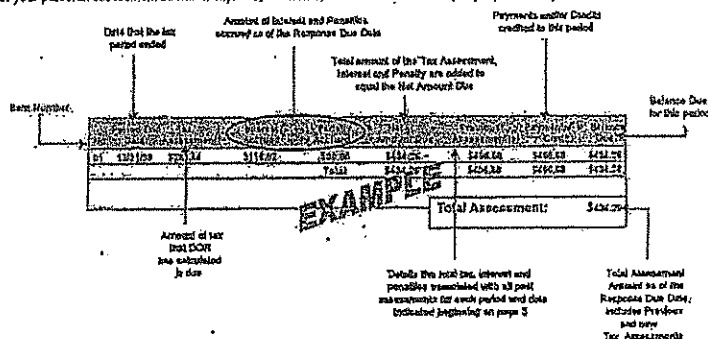
See reverse side.

Massachusetts Department of Revenue
P.O. Box 7072
Boston, MA 02204

73432030422003943001916565769

Guide to Understanding Your Assessment Details

The diagram shown below will help you to understand your personal assessment information. (See page 3 - "Assessment Data" for your personal assessment information.) Note, the numbers used are for example purposes only.



What Type of Assistance is Available?

- ☒ **Call the Department of Revenue (DOR)**
Contact the representative or Bureau listed on the front page of this notice if you have questions or need assistance.
- ☒ **Interactive Voice Response (IVR)**
617-887-8100 (6307) or toll-free within Massachusetts at 1-800-382-6889.
Call 24 hours a day to access our automated IVR system to order forms.
- ☒ **Massachusetts Department of Revenue website: www.mass.gov/dor**
Our Website offers a variety of information including "Your Taxpayer Bill of Rights", notices and regulations, Power of Attorney Form (M-2649), as well as many other tax forms and publications.

CUT HERE AND RETURN THE FORM BELOW IN THE ENVELOPE PROVIDED

Please mail this Response Form with all written correspondence.

☐ Address or phone number change.
Please complete only if your address or phone has changed.

Street _____ Apt. No. _____
City _____ State _____ Zip _____
Home Phone () _____ Work Phone () _____



EST OF ADELAIDE P. CHUCKROW
FOX ROTHSCHILD LLP

Notice Date: September 27, 2013
Taxpayer ID Number: 7241
Detached Number: 012 2803 3143
Total Assessment: \$1,915,565
Response Due Date: October 27, 2013
Tax Type: Estate

MASSACHUSETTS DEPARTMENT OF REVENUE
LEO NAROUTUNIAN
200 ARLINGTON ST RM 4300
CHELSEA, MA 02150

(1)
203

Response

7341203048220033443001915565769



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
Law Administration Desk 4022
Telephone: 617-725-4272

Taxpayer Name: Est Of Adelaide P. Chockrow
Fox Rothschild LLP

Notice Date: September 27, 2012
Taxpayer ID Number: XXX-XX-7341
Document Number: 0422 2003 2443
Amount/Assessment: \$1,515,565
LRC/Date Due: 10/27/12 October 27, 2012
Tax Type: Estate

Assessment Detail (for Audit Period 10/01/11 to 10/01/12)

For help understanding this section, see page Z - "Guide to Understanding the Assessment Detail".

Category	Amount	Amount	Amount	Amount	Amount	Amount	Amount
1. 001-011	\$1,000,000	\$107,422.00	10.00	\$1,215,565	\$102,007.00	\$102,007.00	\$1,015,565
TOTAL	\$1,000,000	\$107,422.00	10.00	\$1,215,565	\$102,007.00	\$102,007.00	\$1,015,565

TOTAL AMOUNT DUE: \$1,515,565

Comments:

To include assets held in the Robert Chockrow Trust which were taken as a QTIP deduction on the first-to-die spouse's return. Assets are then includable in the second to die's estate under section 2041. Since Massachusetts has adopted the IRC in effect on October 31, 2000, these assets are included in the gross estate for the purpose of computing the state death tax credit.

Understanding the Notice of Intent to Assess

What is the Notice of Intent to Assess (NOIA)?

The Notice of Intent to Assess (NOIA) is not a tax. It is a notification that DOR intends to assess tax liabilities that it determines are owed to the Commonwealth of Massachusetts. It is also an opportunity to resolve matters before a tax is levied.

What if a payment was not credited?

If you believe that you previously made a payment for the amount shown on this Notice of Intent to Assess, contact the representative or Bureau listed on the last page of this notice.

What if I would like to appeal this notice?

If you would like to appeal, you have a right to a pre-assessment conference, to request informal consideration, or both, with the Office of Appeals. This request must be received within 30 days, or be postmarked within 30 days of the notice date indicated on page 1 of this NOIA. Having a case file not entitled to request a pre-assessment conference or informal consideration.

What happens if I do not respond to this notice?

At the end of 30 days, you will be sent a bill called a Notice of Assessment (NOA) indicating the amount due, interest and penalties will continue to accrue until the balance is paid in full.

How do I stop interest and penalties from continuing to accrue?

If you agree with the amount assessed, pay the amount indicated within the 30-day period plus interest. If you are disputing the amount assessed, you may want to pay some interest and, in some cases, penalties will continue to accrue on any unpaid amount for which you are ultimately held responsible. A refund, with applicable interest, will be issued to you if your appeal is successful.

If you pay the full amount indicated on the NOA within the given 30-day period, you will receive a Notice of Assessment (NOA), with a "zero-balance", which serves as your receipt of full payment.

If you make a partial payment or do not pay the amount owed, you will receive a Notice of Assessment. The NOA will indicate the balance due, including interest and penalties. Please note that interest and penalty charges will continue to accrue until the amount owed is paid in full.

What if I cannot afford to pay the balance due?

You may make a partial payment with this notice. When you receive the NOA, there will be instructions on how to request a payment agreement with DOR.

What if this notice indicates an overpayment and a refund?

If the Department has determined that you are due a credit and/or refund, the amounts are reflected in this Notice of Intent to Assess. At the end of the 30-day period following issuance of this NOIA, your account will be adjusted and the credit/refund will be processed automatically. Therefore, if you agree with the findings, you need to take no further action. Please note, the Department may apply any credit/refund to outstanding liabilities for other tax types or tax periods if those circumstances exist. Generally, you will receive a separate notification if this occurs. If you disagree with the Department's proposed credit/refund you may follow the appeal procedures.

What are the most common penalties?

Under Massachusetts law, penalties are automatically imposed on late returns and late payments and when taxpayers have failed to meet other filing requirements. The five most common penalties are:

Late Return - A late return will generate a late fee penalty of 1% per month on the unpaid tax. The total penalty charge cannot exceed 25% of the unpaid tax. It is calculated from the due date of the return to the date the return is filed.

Late Payment - An unpaid balance will generate a 1% penalty per month on the unpaid tax. The total penalty charge cannot exceed 25% of the unpaid tax.

Underpayment of Estimated Tax - Income and corporate taxpayers who fail to pay the required amount of tax by the proper due date through estimated tax payments may be subject to this addition to tax. Individuals whose liabilities exceed \$250 are required to make estimated payments equal to 90% of their current year's tax liability or 100% of their prior year's tax liability. Corporations whose liabilities exceed \$1000 for any taxable year are required to make estimated tax payments equal to 90% of the current year's tax or 100% of the prior year's tax.

Federal Change in Compliance Penalty - If you are notified by the IRS, you must report the changes affecting your Massachusetts taxable income and pay any additional tax due plus interest. You are required to report these changes within one year under Chapter 62 (Personal Income Tax), within three months under Chapter 63 (Corporate Tax) and within two months under Chapter 64B (Estate Tax) of receipt of the final determination from the IRS. Failure to report within these time frames will result in a penalty of ten percent of the additional tax found to be due.

Failure to File (G.L. c. 62C § 26) - If you failed to file a required return, DOR may determine the tax due according to the best information available. A penalty may be assessed at not more than double the amount so determined.

How is interest assessed?

Effective July 1, 2002, the interest rate on overpayments in the Federal short-term rate plus two percentage points, simple interest. The rate for underpayments is the Federal short-term rate plus four percentage points, compounded daily. Interest will accrue on unpaid interest and penalties as well as on unpaid tax. It is calculated as:

- 1) unpaid failure-to-file penalty and underpayment of estimated tax penalties starting on the due date through the date of full payment; and
- 2) unpaid failure-to-pay penalties starting on the 31st day after the date of the NOA and continuing to the date of full payment.

Additional information on interest and penalties

To obtain additional information on interest and penalty charges, contact the Customer Service Bureau (CSB) at 617-627-4400 (TDD) or toll-free in Massachusetts at 1-800-322-6009. You may also obtain rate information on our website at www.mta.gov/dor.



MASSACHUSETTS DEPT. OF REVENUE
300 ARLINGTON ST RM 4300
CHELSEA, MA 02157
Lee Hirschman, Comptroller
Telephone: (617) 857-6833

NOTICE OF INTENT TO ASSESS
This is an official notice from the Massachusetts Dept. of Revenue.

Notice Date: September 27, 2013
Taxpayer ID Number: XXX-XX-7391
Document Number: 0482 2003 3943
Total Assessment: \$1,916,563
Assessment Due Date: October 27, 2013
Tax Type: Estate

EST OF ADELAIDE P. CHUCKROW
FOX ROTHSCHILD LLP
180 PARK AVE # 51500
NEW YORK NY 10017-5515

0112

If you would like to discuss this notice or if you want to provide additional information, please contact the representative of Bureau listed above by OCTOBER 27, 2013.

The Office of Appeals is a separate office within the Department of Revenue that: (1) conducts conferences relating to taxpayer appeals of proposed tax assessments; and (2) may settle tax disputes when there is a factual or legal issue in dispute.

If you wish to appeal this Notice of Intent to Assess, through the Office of Appeals, you may: (1) request a conference to dispute the proposed assessment pursuant to G.L. Ch. 62C, Sec. 25(b); (2) request settlement consideration pursuant to G.L. Ch. 62C, Sec. 37C; or (3) request both a conference and settlement consideration.

If you wish to request a conference and/or settlement consideration, please submit your request in writing on a Form DR-1/Appeals Form. See the Department of Revenue's website at www.mass.gov/dor/dr-1 for a Form DR-1/Appeals Form.

Please submit the Form DR-1/Appeals Form, together with a statement of facts and legal issues in dispute, along with any supporting documentation. Conferences may be conducted by telephone so please include a telephone number on the Appeals Form.

You must send your Form DR-1/Appeals Form with supporting documentation to the address shown in the "Mail to" box on the bottom of page 2 of this notice. Your request must be received by the Department of Revenue by OCTOBER 27, 2013 or be postmarked within 25 days of the above Notice Date in order for your appeal to be timely filed.

If you do not respond by OCTOBER 27, 2013, you will receive a bill that reflects the tax that you owe, plus interest and any applicable penalties. Interest and in some cases penalties will continue to accrue until you pay the full amount due. See "Understanding the Notice of Intent to Assess" on page 4 for more information.

You also have the right to appeal your assessment and/or request settlement consideration at the Office of Appeals after it is billed by filing a Form CA-6/Application for Abatement.



Taxpayer Bill of Rights

DOR must be objective, impartial, professional and ethical in its administration of the tax laws; any information that you as a taxpayer provide to the Department will be handled with the utmost confidentiality and professionalism.

DOR must maintain a Problem Resolution Office and an Office of Internal Affairs to safeguard taxpayers' rights.

DOR may not establish or enforce individual collection goals or collection quotas for its employees.

If you are unable to satisfy a tax liability in full, the Commissioner of Revenue may enter into a payment agreement if the Commissioner determines it will facilitate collection of the tax.

You may obtain representation at any point in your dealings with the Department.

You may be entitled to appeal any DOR decision regarding your tax liability. DOR is obligated to make abatement decisions as promptly as possible and to issue any refunds resulting from abatement decisions within 30 days of such decisions.

You will not be subject to statutory penalties if you make a mistake because you relied on erroneous written advice from DOR representatives acting in their official capacities.

You can find more comprehensive details on your rights as a taxpayer in "A Guide to the Department of Revenue: Your Taxpayer Bill of Rights". To obtain a copy, visit our website at www.mass.gov/dor or call 617-867-4400 (6367) or toll-free in Massachusetts at 1-800-392-6889.

MASSACHUSETTS DEPARTMENT OF REVENUE
BUREAU OF DESK AUDIT
ESTATE TAX BUREAU
200 ARLINGTON STREET, 4TH FLOOR
CHELSEA, MA 02150NOTICE OF INTENTION TO ASSESS
WORK PAPERS

DATE 08/28/2013

Examiner: Leo Haroutunian
Phone Number: 617-867-6638

NAME OF DECEDENT

DATE OF DEATH:

ESTATE DEFICIENCY/
(OVERASSESSMENT) \$Adelaide P
Chickrow

08/14/2011

\$1,808,141.68

In accordance with the provisions of General laws, Chapter 62C, section 26(b), you are hereby notified of the intention of the Commissioner of revenue to assess, at the expiration of thirty (30) days from the date of this notice, the above named tax in the amount, and for the reason(s) shown on the attached pages.

During this thirty-day period you, or your representative with a properly executed Power of Attorney (Form M-2848), will be given an opportunity to confer as to the proposed assessment(s). If you wish to request a conference, so indicate by checking the box below and mailing this notice to the address shown above. You may also attach and submit a statement in support of your position if you request a conference.

If you wish to pay within the thirty-day period, payments should be mailed with one copy of the Form Estate Tax-3 to the Department of Revenue, Estate Tax Unit, 200 Arlington Street, 4th Floor, Chelsea, MA 02150. If payment is not received, a formal bill will be issued with additional interest and penalties where applicable.

Massachusetts now has a Taxpayer Bill of rights. For more information about your individual rights as a Taxpayer, you can request a copy of "Taxpayers Guide to the Department of Revenue," by calling (617) 887-6367 or by writing the Customer Service Bureau, P.O. Box 7010, Boston, MA 02204.

REQUEST FOR A CONFERENCE

As provided by the Massachusetts General laws, Chapter 62C, section 26(b), you are hereby notified of the proposed tax deficiency/overassessment on the above estate. You may request a conference on this determination within 30 days from the date of this notice before assessment is made.

CONFERENCE REQUEST ☒CONFERENCE NOT REQUESTED ☐

Executor / Taxpayer Date

Executor / Taxpayer Date

COMMONWEALTH OF MASSACHUSETTS
EXPLANATION OF CHANGES TO ESTATE

Estate of	Social Security Number	Date of Death
Adelaide P Chuckrow	xxx-xx-7341	08/14/2011

	Reported	Corrected
Schedule F		
Items 1 - 12g		
Robert Chuckrow QTIP Trust	\$ - 0 -	\$ 13,251,469
Increase	\$ 13,251,469	

The decedent was the beneficiary of trust assets held in the Robert Chuckrow QTIP Trust. The trust assets were included in the decedent's pre-deceased spouse's estate as a marital deduction under section 2058. The QTIP assets were included in the the second-to-die spouse's federal estate tax return per section 2044. The Massachusetts estate tax is equal to the state death tax credit allowed by section 2011 of the IRC in effect on December 31, 2000. Having Massachusetts domicile, the assets are includable on line 1 of the 706 (7/99) for the purposes of determining the state death tax credit. IRC section 2031.

Commonwealth of Massachusetts - Department of Revenue
Adjustments to Taxable Estate

Page 2

Estate of: Adelaide P Chuszkow	Social Security Number xxx-xx-7341	Date of Death: 08/14/2011

GROSS ESTATE ON RETURN:		\$2,382,148.00
SCHEDULE A - Real Estate:	\$0.00	
SCHEDULE B - Stocks and Bonds:	\$0.00	
SCHEDULE C - Mortgages, Notes and Cash:	\$0.00	
SCHEDULE D - Insurance:	\$0.00	
SCHEDULE E - Jointly Owned Property:	\$0.00	
SCHEDULE F - Other Misc. Property:	\$13,251,469.00	
SCHEDULE G - Transfers During Decedent's Life:	\$0.00	
SCHEDULE H - Powers of Appointment:	\$0.00	
SCHEDULE I - Annuities:	\$0.00	
NET CHANGE TO GROSS ESTATE:	\$13,251,469.00	
CORRECTED GROSS ESTATE:		\$15,633,617.00
TOTAL DEDUCTIONS AND EXEMPTIONS ON RETURN:		\$582,749.00
SCHEDULE J - Expenses:	\$0.00	
SCHEDULE K - Debts:	\$0.00	
SCHEDULE L - Administration Losses, Expenses:	\$0.00	
SCHEDULE M - Marital Deduction:	\$0.00	
SCHEDULE O - Gifts and Bequests:	\$0.00	
NET CHANGE IN DEDUCTIONS:	\$0.00	
CORRECTED DEDUCTIONS AND EXEMPTIONS:		\$582,749.00
TAXABLE ESTATE AS CORRECTED:		\$15,270,868.00

Commonwealth of Massachusetts - Department of Revenue
Computation of Estate Tax

Page 3

Estate of:
Arlaide P
Chuckrow

Social Security Number
xxx-xx-7341

Date of Death
08/14/2011

1. TAXABLE ESTATE ON RETURN	\$2,019,399.00
2. INCREASE / DECREASE (From Adjustments Schedule)	\$13,251,459.00
3. TAXABLE ESTATE AS CORRECTED (Combine Lines 1 and 2)	\$15,270,858.00
4. ADJUSTED TAXABLE GIFTS	\$6,835,016.00
5. TOTAL, Combine Lines 3 and 4	\$22,105,864.00
6. TENTATIVE TAX (See enclosed Unified Rate calculation)	\$11,799,035.20
8a. If Line 5 exceeds \$10,000,000, enter lesser of line 5 or \$17,184,000 (Otherwise skip to Line 8d)	\$17,184,000.00
8b. Subtract \$10,000,000 from 8a	\$7,184,000.00
8c. Enter 5% of 8b	\$359,200.00
8d. TOTAL TENTATIVE TAX (Add Lines 6 and 8c)	\$12,158,235.20
7. AGGREGATE GIFT TAXES PAYABLE	\$0.00
8. SUBTRACT LINE 7 FROM 6	\$12,158,235.20
9. UNIFIED CREDIT AGAINST ESTATE TAX (From IRS Table C)	\$345,800.00
10. ADJUSTMENT TO UNIFIED CREDIT:	\$0.00
11. SUBTRACT LINE 10 FROM 9	\$345,800.00
12. GROSS FED ESTATE TAX LESS UNIFIED CREDIT	\$11,812,435.20
13. STATE DEATH TAX CREDIT (See enclosed State Credit calculation)	\$1,910,138.68

Computation continued on next page.

Commonwealth of Massachusetts - Department of Revenue
Computation of Estate Tax

Page 4

Estate of:	Social Security Number	Date of Death:
Aglaide P Chickrow	xxx-xx-7341	08/14/2011

Part 1. Tentative Massachusetts Estate Tax

1 - Corrected Gross Estate.....	\$15,633,617.00
2 - Corrected Credit for State Death Taxes. If this estate is of a Massachusetts resident domiciled who did not own real estate and/or tangible property in another state, enter this amount in Part 4, line 1.	\$1,910,138.88

Part 2. Computation of Tax for Estate of Massachusetts Resident Decedent with Property in Another State

1 - Corrected Gross Estate, wherever situated. Enter the amount from Part 1, line 1.....	\$15,633,617.00
2 - Corrected Credit for State Death Taxes. Enter the amount from Part 1, line 2.....	\$1,910,138.88
3 - Estate or Inheritance Taxes actually paid to other states.....	\$0.00
4 - Gross Value of Real Estate and Tangible Personal Property in other states.....	\$0.00
5 - Percentage of Estate in Other State. Divide line 4 by line 1.....	
6 - Prorated Credit. Multiply line 2 by line 5.....	
7 - Deduction Allowable for Taxes Paid to Other States. The smaller of line 3 or line 6.....	\$0.00
8 - Massachusetts Estate Tax. Subtract line 7 from line 2. Enter result here and in Part 4, line 1.....	\$0.00

Part 3. Computation of Tax for Estate of Nonresident Decedent with Massachusetts Property

1 - Corrected Gross Estate, wherever situated. Enter the amount from Part 1, line 1.....	\$15,633,617.00
2 - Corrected Credit for State Death Taxes. Enter the amount from Part 1, line 2.....	\$1,910,138.88
3 - Gross Value of Real Estate and Tangible Personal Property in Massachusetts.....	0.00
4 - Percentage of Estate in Massachusetts.....	
5 - Massachusetts Nonresident Estate Tax. Enter result here and in Part 4, line 1.....	

Part 4. Massachusetts Estate Tax

1 - Massachusetts Estate Tax. Enter the amount from Part 1, line 2, Part 2, line 8, or Part 3, line 5, whichever applies.....	\$1,910,138.88
2 - Estate Tax previously paid.....	\$100,997.00
3 - Total Tax Adjustment.....	\$1,809,141.88

Commonwealth of Massachusetts - Department of Revenue
Estate Tax Bureau

Table A. Unified Rate Schedule

Column A	Column B	Column C	Column D
Taxable Amount Over	Taxable Amount Not Over	Tax on Amount in Column A	Rate of Tax on Excess Over Amount in Column A (Percent)
\$0	10,000	0	18
10,000	20,000	1,800	20
20,000	40,000	3,800	22
40,000	60,000	5,200	24
60,000	80,000	7,000	26
80,000	100,000	9,200	28
100,000	150,000	13,800	30
150,000	250,000	23,800	32
250,000	500,000	37,800	34
500,000	750,000	55,800	37
750,000	1,000,000	78,300	39
1,000,000	1,250,000	103,800	41
1,250,000	1,500,000	131,800	43
1,500,000	2,000,000	163,800	45
2,000,000	2,500,000	200,800	49
2,500,000	3,000,000	242,800	53
3,000,000	and over	289,800	55

Table B. Maximum Credit for State Death Taxes

1	2	3	4.0
Adjusted Taxable Estate Equal to or More than	Adjusted Taxable Estate Less than	Credit on Amount in Column 1	Rate of Credit on Excess Over Amount in Column 1 (Percent)
Zero	40,000	0	None
40,000	90,000	0	0.8
90,000	140,000	400	1.8
140,000	240,000	1,200	2.4
240,000	440,000	3,600	3.2
440,000	640,000	10,000	4.0
640,000	840,000	18,000	4.8
840,000	1,040,000	27,600	5.6
1,040,000	1,540,000	36,800	6.4
1,540,000	2,040,000	70,800	7.2
2,040,000	2,540,000	106,800	8.0
2,540,000	3,040,000	146,800	8.8
3,040,000	3,540,000	190,800	9.6
3,540,000	4,040,000	238,800	10.4
4,040,000	5,040,000	290,800	11.2
5,040,000	6,040,000	402,800	12.0
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	788,800	14.4
9,040,000	10,040,000	938,800	15.2
10,040,000	-----	1,082,800	16.0

APPENDIX 29

5



Form DR-1
Appeals Form

Rev. 1/04
Massachusetts
Department of
Revenues

Taxpayer name ESTATE OF ADELAIDE D. CHUCKERON Social Security or Federal Identification number [REDACTED]
Mailing address 10803 MONTROSE AVENUE, P.O. BOX 96, GARRETT PARK, MD. 20896 City/Town Garrett Park State MD
Name and telephone number of contact person M. CHRISTINE SHAFFER, EXECUTOR Attorney-in-fact (attach completed Form MA-2040, Power of Attorney) ABBE SHAPIRO, ESQ.
Tax amount in dispute \$1,916,565 Tax year 2011 (DATE OF DEATH: 8/14/2011)

Tax Type(s)
☐ Individual income tax ☐ Corporate excise ☐ Sales/use ☒ Other: ESTATE TAX

Type of Request

Pre-assessment. Are you requesting:

- ☒ Confirmation pursuant to G.L. c. 62C, sec. 23(b);
☐ Settlement consideration pursuant to G.L. c. 62C, sec. 37C; or
☐ Both

If you have answered "Both," please indicate which process you wish to pursue first: _____

Post-assessment. Are you requesting:

- ☐ Hearing pursuant to G.L. c. 62C, sec. 37;
☐ Settlement consideration pursuant to G.L. c. 62C, sec. 37C; or
☐ Both

If you have answered "Both," please indicate which process you wish to pursue first: _____

Note: If you wish to request a post-assessment hearing, you must first file an Application for Abatement/Amended Return, Form CA-6.

Issues in Dispute

Please state the facts and legal issues involved. Explain why you believe the tax amount in question is excessive or in error. Include any relevant legal references. Attach additional sheets and exhibits if helpful.

SEE ATTACHED

Estate of Adelaide P. Chuckrow

SSN: [REDACTED]

Date of Death: August 14, 2011

Form DR-1 (Appeals Form)
Attachment: Issues in Dispute

My office represents M. Christine Shaffer, Executor of the Estate of Adelaide Chuckrow (the "Estate"), who died a resident of Massachusetts on August 14, 2011. On behalf of the Estate, we filed Form M-706 (Massachusetts Estate Tax Return) with the Massachusetts Department of Revenue (the "DOR") on May 14, 2012. On September 11, 2013, my office received by e-mail from Mr. Leo Haroutunian of the DOR's Audit Division a Notice of Intention to Assess Work Papers, which was followed by a Notice of Intent to Assess, dated September 27, 2013, stating a total assessment of \$1,916,565, consisting of \$1,809,141 in additional tax plus \$107,423.90 in interest accrued.

Mr. Haroutunian has stated that the assets existing in a qualified terminable interest property trust ("QTIP trust") established under the Will of the decedent's predeceased spouse, Robert Chuckrow, upon his death in 1993, are includible in the decedent's estate for Massachusetts estate tax purposes. The authority which Mr. Haroutunian set forth for this position is as follows:

"The decedent was the beneficiary of trust assets held in the Robert Chuckrow QTIP Trust. The trust assets were included in the decedent's pre-deceased spouse's estate as a marital deduction under section 2056. The QTIP assets were included in the second-to-die spouse's federal estate tax return per section 2044. The Massachusetts estate tax is equal to the state death tax credit allowed by section 2011 of the IRC in effect on December 31, 2000. Having Massachusetts domicile, the assets are includable on line 1 of the 706 (709) for the purposes of determining the state death tax credit. IRC 2031."

The foregoing describes the manner in which the Massachusetts estate tax is calculated but it does not accurately describe what is includible in the "gross estate" of a Massachusetts domiciliary for Massachusetts estate tax purposes. By referencing IRC 2031, Mr. Haroutunian suggests that the gross estate of a Massachusetts resident includes the value of all property to the extent of the decedent's interest in such property. Although that is the general rule set forth in Regulation 830 CMR 65C.2.1(1)(a), which defines property included in a decedent's Massachusetts gross estate as property included in the decedent's federal gross estate, this position fails to take into account 830 CMR 65C.2.1(b)2, which modifies the general rule as follows:

"The Massachusetts gross estate of a decedent includes the value of QTIP property for which a Massachusetts marital deduction was allowed in the estate of the first spouse to die. For an explanation of QTIP property included in a decedent's Massachusetts gross estate, see 830 CMR 65C.2.1(5)."

ACTIVE 22595401v1 10/21/2013

With respect to QTIP assets, 830 CMR 65C.2.1(5) also clearly imposes a limitation on Massachusetts' authority to tax QTIP assets when the first spouse to die was not a resident of Massachusetts and did not give himself or herself a Massachusetts marital deduction. In brief, 830 CMR 65C.2.1(5) provides that QTIP property is only includible in the Massachusetts gross estate of a surviving spouse when a Massachusetts marital deduction was allowed for this QTIP property in the estate of the first spouse to die.

In our previous correspondence with the DOR, we have submitted copies of Robert Chuckrow's federal and New York estate tax returns, evidencing that no marital deduction was allowed for the QTIP property in Massachusetts.

Our considerable research indicates that 830 CMR 65C.2.1, a regulation promulgated in May of 1989, remains in full force and effect as of this date. The decoupling of the federal and Massachusetts estate taxes and the calculation of the Massachusetts tax in accordance with the state death tax credit in effect on December 31, 2000, does not alter this fact. All of the various Massachusetts Department of Revenue directives we have reviewed, including A Guide to Estate Taxes (Applicable to dates of death on or after January 1, 2003) do not address, much less contradict, the estate's position.

We have asked Mr. Haroutunian to provide authority to support his position, and he suggested that we request a hearing with the Office of Appeals. We would appreciate a Conference pursuant to G.L. c. 62C, sec 37 to discuss this matter further, as we believe that the entire amount of \$1,916,565 was assessed in error.

ACTVIL2295341v1 10/2/2013

APPENDIX 30

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The Commonwealth of Massachusetts
Department of Revenue
Office of Appeals
PO Box 9551
Boston, MA 02114-9551

AMY A. PITTER
COMMISSIONER
DEBRA S. ROKOSZ
DIRECTOR

March 10, 2014

Estate of Adelaide Chuckrow
c/o Christine Shaffer Exec.
10803 Montrose Ave.
P.O. Box 96
Garret Park, MD 20896

RE: Notice of Intention to Assess Estate Tax for the
5/14/12 Taxable Period

Dear Ms. Shaffer:

Christine Shaffer, in her capacity as executrix of the Estate of Adelaide Chuckrow (the "Taxpayer"), requested a conference pursuant to G.L. c. 62C, §26(b) relating to the proposed assessment of estate tax for the May 14, 2012 tax period (the "Tax Period"). The conference regarding the referenced matter was conducted at this Office on February 12, 2014 with the Taxpayer's representatives, Leo Cushing Esq. and Luke Bean Esq. The sole issue presented for consideration is whether the assets of Trust U/W/O Robert Chuckrow which are included in Adelaide Chuckrow's (the "Decedent") federal gross estate pursuant to IRC §2044 may be excluded from the calculation of credit for state death tax and

Massachusetts Estate Tax. For the reasons discussed below, we determine that the assets of Trust U/W/O Robert Chuckrow are properly includible in Decedent's federal gross estate pursuant to IRC §2044; therefore, they shall be included in the calculation of the credit for state death tax which is the Massachusetts estate tax.

BACKGROUND

The Decedent died on August 14, 2011. At the time of her death the decedent was a resident of Massachusetts and the beneficiary of the Trust U/W/O Robert Chuckrow (the Estate of Adelaide P. Chuckrow "Trust"). The Trust was a Qualified Terminable Interest Property ("QTIP") as proscribed by IRC §2056(b)(7), allowing the interest passing to qualify for a marital deduction upon election of the Estate of taxpayer. The Trust was created by the Will of Robert Chuckrow on July 11, 1993 at the time both the Decedent and Robert Chuckrow were New York residents. An election was made to treat the interest in the Trust passing to the Decedent as qualifying for the marital deduction for federal estate tax purposes.

The Massachusetts Estate Tax Return ("M-706") was timely filed on May 14, 2012 reporting a total gross estate of \$2,382,148.00 and a Massachusetts Estate Tax of \$100,997.00. The return was selected for audit. A Notice of Intention to Assess was issued on August 29, 2013 giving notice of the adjustment to increase the estate by \$13,251,469.00 reflecting the value of the assets held by the Trust and resulting in \$1,809,141.88 of proposed additional estate tax.

The Taxpayer requested a conference pursuant to G.L. c. 62C, §26(b) which was held on

February 12, 2014. At the conference the Taxpayer's representative argued that imposition of the Massachusetts estate tax on property held by the Trust was not proper because the trust assets were not the subject of a Massachusetts QTIP election upon the death of Robert Chuckrow; therefore, the assets are not includible in pursuant to G.L. c. 65C, §1 (f). The representative also argued that the tax should not be assessed because Robert Chuckrow was not a Massachusetts resident and the Decedent did not have transferrable interest that would be subject to the Massachusetts estate tax under Massachusetts Law.

DISCUSSION

The Decedent died on August 14, 2011 and as such the estate is subject to the provisions of G.L. c. 65C, §2A. This provides in relevant part that the Massachusetts estate tax is equal to the credit for state death taxes as computed under IRC §2011 as in effect on December 31, 2000, less taxes paid or credits allocable to other jurisdictions, adjustments not relevant here.

The Massachusetts estate tax is the credit for state death tax calculated by reference to the federal taxable estate which is calculated with reference to federal gross estate. The Trust property is includible in the Decedent's federal gross estate pursuant to IRC §2044 therefore Estate of Adelaide P. Chuckrow value of the property is used on the calculation of the estate tax due pursuant to I.R.C. §2011 and G.L. c. 65C, §2A.

DISPOSITION

We are returning this matter to the Audit Division for assessment consistent with our determination.

If the Taxpayer continues to disagree with the proposed adjustments, then after the Taxpayer has received a Notice of Assessment, the Taxpayer may file an Application for Abatement with the Customer Service Bureau. A hearing requested in connection with an Application for Abatement will only be granted if the Taxpayer first establishes to the satisfaction of the Commissioner that a further hearing is necessary, either due to the availability of new factual information or new legal precedent not available to the Taxpayer at the time of the pre-assessment conference.

This letter may not be relied upon as precedent in subsequent or other matters. It represents the application of previously established Department policy and statutory or case law only to this particular set of facts of this particular Taxpayer for the tax period in issue.

Very truly yours,

COMMISSIONER OF REVENUE

By /s/ Leonard R. Spector

Leonard R. Spector, Deputy Director

Barbara K. Savage, Appeals Officer

cc: Leo Cushing Esq.
Steven Dodd, Chief, Bureau of Desk Audit
#420215

APPENDIX 31

7



MASSACHUSETTS DEPT. OF REVENUE
PO BOX 7055
BOSTON, MA 02204
Customer Service Bureau
Telephone: (617) 857-6357
www.mass.gov/dor

Notice Date: March 18, 2014

Taxpayer ID Number: XXX-XX-7341
Bill Number: 0412 2008 7638
Total Amount Due: \$1,553,032
Payment Due Date: April 17, 2014
Tax Type: Estate

NOTICE OF ASSESSMENT

This is an official notice from the Massachusetts Dept. of Revenue.

EST OF ADELAIDE P. CHUCKROW
LUKE C BEAN, ESQ
375 TOTTEN POND RD STE 200
WALTHAM MA 02451-2026

You are receiving this Notice of Assessment because...

The records of the Massachusetts Department of Revenue indicate that you have an outstanding liability of \$1,553,032 that you owe to the Commonwealth of Massachusetts. This amount includes tax, interest and penalties. Interest and penalties will continue to accrue until the balance is paid in full (see page 4 for more information). To avoid additional interest and penalty charges, you must pay the total amount due by April 17, 2014.

Actions you should take...

Submit Payment - Make your payment electronically via our website: <http://www.mass.gov/dor>, make a phone payment with an agent at the number listed above, or mail your payment along with the coupon shown below for the total amount assessed. Include your ID # on your check or money order. If you decide to dispute the assessed amount, you are not required to pay but may want to in order to avoid additional interest and penalty charges. If your appeal is successful, any money paid will be refunded with applicable interest.

Enter into a payment agreement - You may be eligible to pay the total amount due through monthly installments. Visit our website to arrange for monthly payments or to see if you can pay this amount by credit card or call our automated telephone system at (617) 857-ADOR (6367) or toll-free in Massachusetts at 1-800-392-6089. For amounts over \$5000 call 617-857-6400.

Dispute the assessment - You have the right to appeal. If you believe that the information on this notice is incorrect and wish to dispute this assessment, you may file an Application for Abatement/Amended Return (see page 2 - "What Type of Assistance is available" for details).

Interest and penalties will continue to accrue until you pay the full amount.

CUT HERE AND RETURN THE COUPON BELOW IN THE ENVELOPE PROVIDED

Page 1 of 4



Your payment must be postmarked by April 17, 2014

EST OF ADELAIDE P. CHUCKROW
LUKE C BEAN, ESQ
375 TOTTEN POND RD STE 200
WALTHAM MA 02451-2026

Please complete only if your address or phone has changed
Street _____ Apt/Flt _____
City _____ State _____ Zip _____
Home Phone () _____ Work Phone () _____

Taxpayer ID Number: 7341
Bill Number: 0412 2008 7638
Payment Due Date: April 17, 2014
Total Amount Due: \$1,553,032

Enter Amount Enclosed

\$

Write your Taxpayer ID # on your check or money order and make it payable to Commonwealth of Massachusetts

MASSACHUSETTS DEPARTMENT OF REVENUE
P. O. Box 7055
Boston, MA 02204-7055

(1)
218

7341216041220087638001453032344

Guide to Understanding the Assessment Detail

The diagram shown below will help you to understand your personal assessment information. (See page 3 - "Details of What You Owe" for your personal assessment information.) Note, the numbers used are for example purposes only.

Type of Tax Owed	Filing Entity	Indemnity DOR (transaction code)	Date that the tax period ended	Date of assessment	Amount of tax assessed	Amount of interest and penalties accrued as of Payment Due Date	Payments and/or Credits previously received	Balance of each line number
Tax Type	FE Code	Period End Date	Trans Type	Assessment Date	Tax Liability	Interest Accrued	Payments and Credits	Balance Due
SALES TAX	AA	12/31/2008	101	02/12/09	\$1,000.00	\$10.00	\$1,010.00	\$21.78
MEALS TAX	AA	12/31/2008	101	02/12/09	\$216.52	\$2.17	\$218.69	\$23.85
					Subtotal			\$45.63
					Total Amount Due as of the Payment Due Date			\$45.63

Most Common Tax Types

ESTATE	Estate Tax	INCOME	Individual Income Tax	CORP	Corporate
SALES/USE	Sales Use Tax	ROOM OCC	Room Occupancy Tax	FIDO	Fiduciary Income
MEALS	Meals Tax	WITH INC	Withholding Tax		

What Type of Assistance is Available?

 Massachusetts Department of Revenue website: <http://www.mass.gov/dor>
Our Website offers a variety of information and electronic payment options including "Your Taxpayer Bill of Rights", rulings and regulations, Form CA-6, Application for Abatement/Amended Return, as well as many other tax forms and publications.

 Interactive Voice Response (IVR) 617-627-7000 (6367) or toll-free within Massachusetts 1-800-382-8069
Call 24 hours a day to access our automated IVR system to order forms, enter a small payment agreement or check the status of your refund.

 Call the Department of Revenue (DOR)
Contact the representative or Bureau listed on the front page of this notice if you have questions or need assistance.

Page 2 of 4

Make check or money order payable to:
Commonwealth of Massachusetts

John Taxpayer 100 Cambridge St. Boston, MA 02104	DATE 03/18/14	1234
PAY TO THE ORDER OF Commonwealth of Massachusetts	\$1,000.00	
One Thousand and 00/100		
Bank of America	<i>John Taxpayer</i>	
005-00-2121		

Do not forget to write your
Taxpayer ID Number

Do not forget to
sign your check



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
Customer Service Bureau
Telephone: (617) 867-6367

Taxpayer Name: Est Of Adelaide P. Chuckrow
Luka C Bean, Esq

Notice Date: March 18, 2014

Taxpayer ID Number: XIX-XX-7341

Bill Number: 0412 2088 7638

Total Amount Due: \$1,953,032

Payment Due Date: April 17, 2014

Tax Type: Estate

Details of What You Owe

For help understanding this section, see page 2 - "Guide to Understanding the Assessment Detail".

Tax Type	Code	Rate	Assessed Value	Amount Due	Amount Due	Amount Due	Amount Due	Amount Due
ESTATE	03/14/11	700	03/15/14	\$1,953,032	\$1,953,032	\$0.00	\$0.00	\$1,953,032
Subtotal:								\$1,953,032

* See explanation of the Most Common Tax Types on page 2.
Recent payments may not be reflected.

TOTAL AMOUNT DUE: \$1,953,032

Is this notice clear? If not, tell us.
www.mass.gov/dor/daas





Taxpayer Bill of Rights

DOR must be objective, impartial, professional and ethical in its administration of the tax laws; any information that you as a taxpayer provide to the Department will be handled with the utmost confidentiality and professionalism.

DOR must maintain a Problem Resolution Office and an Office of Internal Affairs to safeguard taxpayers' rights.

DOR may not establish or enforce individual collection goals or collection quotas for its employees.

If you are unable to satisfy a tax liability in full, the Commissioner of Revenue may enter into a payment agreement if the Commissioner determines it will facilitate collection of the tax.

You may obtain representation at any point in your dealings with the Department.

You are entitled to appeal any DOR decision regarding your tax liability. DOR is obligated to make abatement decisions as promptly as possible and to issue any refunds resulting from abatement decisions within 30 days of such decisions.

You will not be subject to statutory penalties if you make a mistake because you relied on erroneous written advice from DOR representatives acting in their official capacities.

You can find more comprehensive details on your rights as a taxpayer in "A Guide to the Department of Revenue: Your Taxpayer Bill of Rights". To obtain a copy, visit our website at www.mass.gov/dor or call 617-887-MDOR (6367) or toll-free in Massachusetts 1-800-392-6089.

Understanding the Notice of Assessment

What is the Notice of Assessment?

The Notice of Assessment (NOA) is a bill that is sent when DOR determines you owe a tax liability to the Commonwealth of Massachusetts. The liability may be the result of an audit, a late and/or unpaid return or an error on a return.

What if a payment was not credited?

If you believe that you previously made a payment for the amount shown on this Notice of Assessment, contact the representative or Bureau listed on the front page of this notice. WFB users can check payments online.

What if I disagree with this notice or would like to appeal?

You may appeal electronically on our website www.mass.gov/dor or WebFile for Income or WebFile for Business within the time allowed for making application. Filing online offers a safer, more convenient, and the fastest means of resolving your issue.

Should I pay even if I am disputing this assessment?

You are not obligated to pay an amount that you are disputing. However, you may want to pay some interest and, in some cases, penalties will continue to accrue on any unpaid amount for which you are ultimately held responsible. A refund resulting from an abatement will include interest computed from the date a complete application was filed.

What if I do not have the money to pay?

If you cannot pay the full amount that you owe, you may be able to pay the total liability through monthly installments or credit card. To request a payment agreement for amounts under \$5,000, visit our website or call 617-887-MDOR (6367) or toll-free in Massachusetts at 1-800-392-6089. For amounts over \$5,000, call 617-887-6400.

Note: DOR may refuse to allow a payment agreement if a taxpayer has a history of delinquency; has the resources to settle the debt immediately; or if the agreement jeopardizes the ultimate collection of the tax due.

What happens if I do not respond to this notice?

If you do not pay the amount due and do not dispute the assessment by filing an application for abatement, DOR will pursue full payment using a variety of collection tools up to and including your name being published on our website.

What are the most common penalties?

Under Massachusetts law, penalties are automatically imposed on late returns and late payments and when taxpayers have failed to meet other filing requirements. The four most common penalties are:

Late Return - A late return will generate a late fee penalty of 1% per month on the unpaid tax. The total penalty charge cannot exceed 25% of the unpaid tax. It is calculated from the due date of the return to the date the return is filed.

Late Payment - An unpaid balance will generate a 1% penalty per month on the unpaid tax. The total penalty charge cannot exceed 25% of the unpaid tax.

Underpayment of Estimated Tax - Income and corporate taxpayers who fail to pay the required amount of tax by the proper due date through estimated and/or withholding payments may be subject to this addition to tax. Individuals whose liabilities exceed \$200, \$400 for tax year beginning 01/01/05, are required to make estimated payments equal to 80% of their current year's tax liability or 100% of their prior year's tax liability. Corporations whose liabilities exceed \$1000 for any taxable year are required to make estimated tax payments equal to 80% of the current year's tax or 100% of the prior year's tax.

Penalty for failure to comply with Efile Mandate:

A penalty of \$100 for each payment extension payment (Form type 82A) or return extension filing (82B) not submitted electronically when required.

How is interest accrued?

Effective July 1, 2003, the interest rate on overpayments is the Federal short-term rate plus two percentage points, simple interest. The rate for underpayments is the Federal short-term rate plus four percentage points, compounded daily. Interest will accrue on unpaid interest and penalties as well as on unpaid tax. It is calculated on:

- 1) unpaid failure-to-file penalties and underpayment of estimated tax penalties starting on the due date through the date of full payment; and
- 2) unpaid failure-to-pay penalties starting on the 31st day after the date of the NOA and continuing to the date of full payment.

Additional Information on Interest and Penalties

To obtain additional information on interest and penalty charges, contact the Customer Service Bureau (CSB) at 617-887-MDOR (6367) or toll-free in Massachusetts at 1-800-392-6089. You may also obtain rate information on our website at www.mass.gov/dor, Legal Library, Administrative Procedure 612.

APPENDIX 32

8

MASSACHUSETTS DEPT. OF REVENUE
P.O. BOX 7010
BOSTON, MA 02204
Customer Service Bureau
Telephone: (617) 697-4367
WWW.MASS.GOV/DOR

Notice Date: March 19, 2014
Taxpayer ID Number: XXX-XX-7341
Bill Number: 0412 2008 7838
Total Amount Due: \$1,953.032
Payment Due Date: April 17, 2014
Tax Type: Estate

NOTICE OF ASSESSMENT

This is an official notice from the Massachusetts Dept. of Revenue.

EST OF ADELAIDE P. CHUCKROW
LUKE O SEAN, ESQ
376 TOTTEN POND RD STE 200
WALTHAM MA 02451-2028

You are receiving this Notice of Assessment because...

The records of the Massachusetts Department of Revenue indicate that you have an outstanding liability of \$1,953.032 that you owe to the Commonwealth of Massachusetts. This amount includes tax, interest and penalties. Interest and penalties will continue to accrue until the balance is paid in full (see page 4 for more information). To avoid additional interest and penalty charges, you must pay the total amount due by April 17, 2014.

Actions you should take...

Submit Payment - Make your payment electronically via our website: <http://www.mass.gov/dor>, make a phone payment with an agent at the number listed above, or mail your payment along with the coupon below today for the total amount assessed. Include your ID # on your check or money order. If you intend to dispute the assessed amount, you are not required to pay but may want to in order to avoid additional interest and penalty charges. If your appeal is successful, any money paid will be refunded with applicable interest.

Enter into a payment agreement - You may be eligible to pay the total amount due through monthly installments. Visit our website to arrange for monthly payments or to see if you can pay this amount by credit card or call our automated telephone system at (617) 697-4367 or toll-free in Massachusetts 800-392-6009. For amounts over \$5000 call 617-697-0400.

Dispute this assessment - You have the right to appeal. If you believe that the information on this notice is incorrect and wish to dispute this assessment, you may file an Application for Abatement/Amended Return (see page 2 - "What Type of Abatement is Available" for details.)

Interest and penalties will continue to accrue until you pay the full amount.

CUT HERE AND RETURN THE COUPON BELOW IN THE ENVELOPE PROVIDED

Page 1 of 4



Your payment must be postmarked by April 17, 2014

EST OF ADELAIDE P. CHUCKROW
LUKE O SEAN, ESQ
376 TOTTEN POND RD STE 200
WALTHAM MA 02451-2028

Please complete only if your address or phone has changed.

Address: _____
City: _____ State: _____ Zip: _____
Home Phone: () _____ Work Phone: () _____

Taxpayer ID Number: 7341
Bill Number: 0412 2008 7838
Payment Due Date: April 17, 2014
Total Amount Due: \$1,953.032

Payment Method: ☐ Cash ☐ Check ☐ Money Order ☐ Credit Card

Use your ID # on your check or money order and mail to: Department of Revenue, Commonwealth of Massachusetts

Massachusetts Department of Revenue
P. O. Box 7065
Boston, MA 02204-7065

7341216041220087638001953032344

The diagram shown below will help you to understand your personal assessment information. (See page 3 - "Details of What You Owe" for your personal assessment information.) Note, the numbers used are for example purposes only.



ESTATE.....Estate Tax	INCOME.....Individual Income Tax	CORP.....Corporate
SALE/USE.....Sales Use Tax	ROOM OCC.....Room Occupancy Tax	FIDO.....Fluctuating Income
MEALS.....Meal Tax	WITH INC.....Withholding Tax	

 Massachusetts Department of Revenue
website: <http://www.mass.gov/dor>
Our Website offers a variety of information and electronic
payment options including "Your Taxpayer Bill of Rights",
rulings and regulations, Form CA-6, Application for
Assignment/Appealed Return, as well as many other tax
forms and publications.

 Interactive Voice Response (IVR) 817-687-4008 (toll-free) or toll-free within Massachusetts at 1-800-302-4008. Call 24 hours a day to confirm our automated IVR system to your terms, enter a email payment agreement or check the status of your refund.

Call the Department of Revenue (DDR)
Contact the representative or Bureau listed on the front page of this notice if you have questions or need assistance.

Page 2 of 4

Make check or money order payable to:
Commonwealth of Massachusetts

John T. J. J. J.	1234
100 Cambridge St.	
Boston, MA 02204	DATE 03/18/94
PAY TO THE ORDER OF Commonwealth of Massachusetts	\$1,000.00
One Thousand and 00/100	DOLLARS
Bank of America	
123-45-6789	

Do not forget to write your
Takeover ID Number

Do not forget to
sign your check



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
Customer Service Bureau
Telephone: (617) 887-6337

Taxpayer Name: Est Of Adelaide P. Chuckrow
Luke O Bean, Esq

Notice Date: March 18, 2014

Taxpayer ID Number: K00-KX-7841
BRI Number: 0412 2088 7838
Taxable Amount: \$1,953,632
Due Date: April 17, 2014
Tax Type: Estate

Details of What You Owe

For help understanding this section, see page 2 - "Guide to Understanding the Assessment Detail".

ESTATE	04/11	700	03/14	\$1,953,632	\$1,953,632	\$0.00	\$0.00	\$1,953,632
Subtotal:								\$1,953,632

* See explanation of the total Common Tax Types on page 2.
Amount payments may not be reconciled.

TOTAL AMOUNT DUE: \$1,953,632

Is this notice clear? If not, tell us.
www.mass.gov/dor/does





TAXPAYER BILL OF RIGHTS

DOR must be objective, impartial, professional and efficient in its administration of the tax laws. Any information that you as a taxpayer provide to the Department will be handled with the utmost confidentiality and professionalism.

DOR must maintain a Problem Resolution Office and an Office of Internal Affairs to safeguard taxpayers' rights.

DOR may not establish or enforce individual collection goals or collection quotas for its employees.

If you are unable to satisfy a tax liability in full, the Commissioner of Revenue may enter into a payment agreement if the Commissioner determines it will facilitate collection of the tax.

You may obtain representation at any point in your dealings with the Department.

You are entitled to appeal any DOR decision regarding your tax liability. DOR is obligated to make statement decisions as promptly as possible and to issue any refunds resulting from statement decisions within 30 days of such decisions.

You will not be subject to statutory penalties if you make a mistake because you relied on erroneous written advice from DOR representatives acting in their official capacities.

You can find more comprehensive details on your rights as a taxpayer in "A Guide to the Department of Revenue: Your Taxpayer Bill of Rights". To obtain a copy, visit our website at www.mass.gov/dor or call 617-887-MDOR (6367) or toll-free in Massachusetts 1-800-392-6089.

Understanding the Notice of Assessment

What is the Notice of Assessment?

The Notice of Assessment (NOA) is a bill that is sent when DOR determines you owe a tax liability to the Commonwealth of Massachusetts. The liability may be the result of an audit, a late and/or unpaid return or an error on a return.

What if a payment was not credited?

If you believe that you previously made a payment for the amount shown on this Notice of Assessment, contact the representative or Bureau listed on the front page of this notice. WFS users can check payments online.

What if I disagree with this notice or would like to appeal?

You may appeal electronically on our website www.mass.gov/dor or WebFile for Income or WebFile for Business within the time allowed for filing applications. Filing online offers a safer, more convenient, and the fastest means of resolving your issue.

Should I pay even if I am disputing this assessment?

You are not obligated to pay an amount that you are disputing. However, you may want to pay since interest and, in some cases, penalties will continue to accrue on any unpaid amount for which you are ultimately held responsible. A refund resulting from an assessment will include interest computed from the date a complete application was filed.

What if I do not have the money to pay?

If you cannot pay the full amount that you owe, you may be able to pay the total liability through monthly installments or credit card. To request a payment agreement for amounts under \$5,000, visit our website at www.mass.gov/dor or call 617-887-MDOR (6367) or toll-free in Massachusetts at 1-800-392-6089. For amounts over \$5,000, call 617-887-4400.

Note: DOR may refuse to allow a payment agreement if a taxpayer has a history of delinquency, has the resources to settle the debt immediately, or if the agreement jeopardizes the ultimate collection of the tax due.

What happens if I do not respond to this notice?

If you do not pay the amount due and do not dispute the assessment by filing an application for statement, DOR will pursue full payment using a series of collection tools up to and including your name being published on our website.

What are the most common penalties?

Under Massachusetts law, penalties are automatically imposed on late returns and late payments and when taxpayers have failed to meet other filing requirements. The four most common penalties are:

Late Return - A late return will generate a late fee penalty of 1% per month on the unpaid tax. The total penalty charge cannot exceed 25% of the unpaid tax. It is calculated from the due date of the return to the date the return is filed.

Late Payment - An unpaid balance will generate a 4% penalty per month on the unpaid tax. The total penalty charge cannot exceed 25% of the unpaid tax.

Underpayment of Estimated Tax - Taxpayers and corporate taxpayers who fail to pay the required amount of tax by the proper due date through withheld and/or withholding payments may be subject to this addition to tax. Individuals whose liabilities exceed \$200, \$400 for tax year beginning 01/01/03, are required to make estimated payments equal to 80% of their current year's tax liability or 100% of the prior year's tax liability. Corporations whose liabilities exceed \$100,000 for any taxable year are required to make estimated tax payments equal to 80% of the current year's tax or 100% of the prior year's tax.

Penalty for failure to comply with Efile standards

A penalty of \$100 for each payment/extension payment (from type 02A) or return/extension filing (02B) not submitted electronically when required.

How is interest accrued?

Effective July 1, 2003, the interest rate on overpayments is the Federal short-term rate plus four percentage points, simple interest. The rate for underpayments is the Federal short-term rate plus four percentage points, compounded daily. Interest will accrue on unpaid interest and penalties as well as on unpaid tax. It is calculated on:

- 1) unpaid future-to-go penalties and underpayment of estimated tax penalties starting on the due date through the date of full payment; and
- 2) unpaid future-to-go penalties starting on the 31st day after the date of the NOA and continuing to the date of full payment.

Additional information on interest and penalties

To obtain additional information on interest and penalty charges, contact the Customer Service Bureau (CSB) at 617-887-MDOR (6367) or toll-free in Massachusetts at 1-800-392-6089. You may also obtain rate information on our website at www.mass.gov/dor, Legal Library, Administrative Procedures 612.

TRUST U/W/O ROBERT CHUCKROW DEC'D CAROL G GUERNSEY TRUSTEE AMY CHUCKROW TRUSTEE		142 10-7546213 121
Trf 10# : [REDACTED] 7341	4-8-14	
Pay to the Order of <u>Massachusetts DOR</u>	\$1,955,032.80	
one million, nine hundred fifty three thousand, thirty two ^{00/100} 00/100	0	
TD Bank America's Most Convenient Bank®		
For Nature of Assignment 3/15/14	Carol Guernsey, Trustee	
[REDACTED]	0142	

APPENDIX 33

9

CUSHING & DOLAN, P.C.
ATTORNEYS AT LAW
TOTTEN POND ROAD OFFICE PARK
375 TOTTEN POND ROAD, SUITE 200
WALTHAM, MA 02451
TEL. (617) 523-1555
FAX (617) 523-5653

November 11, 2014

Massachusetts Department of Revenue
Estate Tax Unit
Attention: Julie Clifford
200 Arlington Street, Room 4300
Chelsea, MA 02150
RE: Estate of Adelaide P. Chuckrow
SSN: xxx-xx-7341

Dear Ms. Clifford:

Enclosed please find an Application for Abatement, Form CA-6, together with a statement explaining the issues involving the request, as well as a two-volume binder with relevant supporting document, in support of the application for abatement of the tax, penalties assessed on the above-referenced estate.

Should you have any questions please feel free to contact me.

Very truly yours,
Luke C. Bean, Esq.

Enclosures

cc: Christine Shaffer
Amy Chuckrow
Carol Guernsey
Abbe G. Shapiro, Esq.

CUSHING & DOLAN, P.C.
ATTORNEYS AT LAW
TOTTEN POND ROAD OFFICE PARK
375 TOTTEN POND ROAD, SUITE 200
WALTHAM, MA 02451
TEL (617) 523-1555
FAX (617) 523-5653
EMAIL: LINDA.DOLAN@CUSHINGDOLAN.COM
WWW.CUSHINGDOLAN.COM

*AND L. CUSHING
KEVIN N. DOLAN

*ALSO ADMITTED NEW HAMPSHIRE BAR
**ALSO ADMITTED PENNSYLVANIA BAR
***ALSO ADMITTED NEW YORK BAR
****ALSO ADMITTED FLORIDA BAR
*****ALSO ADMITTED ILLINOIS BAR

*ARN M. CUSHING
OLEN R. SUTHERLAND
**TODD D. LUTSKY
JULIO M. PALMADICCO
***JOSEPH C. YOUNGER
CATLIN B. CONNER
PAMELA R. DANIEL
****JOSEPH E. HEDGECOCK
BAILEY A. CHOLDSBRO
CATHERINE B. ALONZ
ADRIANNE E. LEVI
**LUCAS C. BARN
JENNIFER C. DANIELAN
***KATHA N. LARSEN
THOMAS J. MCINTYRE
KERRY KELLY

OF COUNSEL
MARSHALL R. DAVIS

November 11, 2014

Massachusetts Department of Revenue
Estate Tax Unit
Attention: Julie Clifford
200 Arlington Street, Room 4300
Chelsea, MA 02150

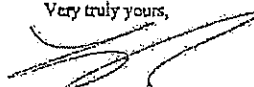
RE: Estate of Adelaide P. Chuckrow
SSN: [REDACTED]-7341

Dear Ms. Clifford:

Enclosed please find an Application for Abatement, Form CA-6, together with a statement explaining the issues involving the request, as well as a two-volume binder with relevant supporting documentation, in support of the application for abatement of the tax, and penalties assessed on the above-referenced estate.

Should you have any questions please feel free to contact me.

Very truly yours,



Luke C. Bean, Esq.

Enclosures

cc: Christine Shaffer
Amy Chuckrow
Carol Guernsey
Abbe G. Shapiro, Esq.

* BOSTON
TEL (617) 523-1555
FAX (617) 523-5653

* NORWOOD
TEL (781) 278-9901
FAX (781) 278-9911

* WESTBOROUGH
TEL (617) 523-1555
FAX (617) 523-5653

* WOBURN
TEL (617) 523-1555
FAX (617) 523-5653

GO TO MASS.GOV/DOR/AMEND TO FIND OUT IF YOU CAN FILE THIS ONLINE.

Rev. 03/12

MASSACHUSETTS Application for Abatement/Amended ReturnTAXPAYER NAME OF INDIVIDUAL ENTER LAST NAME FOLLOWED BY FIRST, IF BUSINESS, ENTER FULL LEGAL NAME
ESTATE OF ADELAIDE P. CHUCKROWSTATE IDENTITY OR FEDERAL IDENTIFICATION NUMBER
7341SPOUSE'S NAME (if applicable)
C/O M. CHRISTINE

SHAFER, P.R.

SPOUSE'S SOCIAL SECURITY NUMBER

ADDRESS
10803 MONTROSE AVE., PO BOX 96CITY/TOWN/VISIT OFFICE
GARRETT PARKSTATE ZIP + 4
MD 20896If your address has changed since you last filed a return, check the box ☐**Prerequisites for Filing an Application for Abatement**

Three requirements must be met for an application for abatement to be valid. First, the required return must have been filed for the period stated on the application, unless the abatement application is founded on the assertion that no return is required. Second, the application must be fully substantiated. Third, the application must be submitted to DOR within the applicable time limits (see Instructions on page 2).

Explanation of Issues Involved in Request

1. Please state the issues involved, including all facts and relevant statutory references, and enclose any exhibits that substantiate this change in tax or request for penalty waiver. Attach additional statement if necessary.

See attached.

2. Are you filing to ☐ increase your tax? ☒ decrease your tax? ☐ dispute penalties? ☐ dispute an audit? ☐ dispute a responsible person determination? ☐ other:
3. Tax type originally filed (select one): ☐ personal income ☐ sales ☐ withholding ☐ estate tax on assets ☐ corporate excise ☒ other: ESTATE
4. Are you requesting your return as a result of a federal change? ☐ Change made by another state? ☐ If Yes, enclose copy of federal or other state's results, if available.
5. Fill in box if you are filing for a reduction in sales, meals, room occupancy or withholding tax(es), and have not withheld or collected the tax: ☐
6. Fill in box if you would like to request a statutory hearing: ☒ If we agree with your claim, no hearing will be necessary.

Line Item Information. If disputing penalties, complete tax period and filing frequency items only.For the period in which a change to tax is being made, enter below: the line item number being changed in col. A; the original amount reported in col. B; and enter the corrected amount in col. C. If more than one period is being adjusted, consolidate this information on a spreadsheet, or use Form CA-8A which is available at www.mass.gov/dor. Form CA-8A provides space for additional line item information. If you have completed and enclosed a revised tax return, check items A, B and C and enter the net change below.**Tax period**Tax period ends: Month 08 Year 11 Filing frequency: ☐ Annual ☐ Monthly ☐ Quarterly

	A	B. Original amount	C. Corrected amount
Line item no. 1		15,633,617.	2,382,148.

Line item no.

Line item no.

Note: You do not have to compute the change to your tax. DOR will notify you of any additional taxes or refund due. However, if you do wish to compute the change, complete and enclose a revised copy of your return with this form. If you owe additional tax, please enclose a check or money order payable to the Commonwealth of Massachusetts and write your identification number on the front of your check or money order in the lower left corner.

Net change. If you have completed and enclosed a revised tax return, enter the net change to tax here.

-1,809,142.

If making a payment, mail to: Massachusetts Department of Revenue, Customer Service Bureau, PO Box 7029, Boston, MA 02204. Otherwise, mail to: Massachusetts Department of Revenue, Customer Service Bureau, PO Box 7031, Boston, MA 02204.

FORM CA-6 PAGE 2

03-12-2011

Instructions

Complete this application carefully. Explain why you are requesting an abatement/amendment and attach all pertinent information (Forms W-2 and 1099, schedules, invoices, credit memos, etc.). To determine the appropriate documentation to include, see DOR's online Tax Guide at www.mass.gov/dor or call the Customer Service Bureau at (617) 867-6400 or toll-free in Massachusetts 1-800-392-6039. If you would prefer that DOR discuss this application with someone other than yourself, complete the Power of Attorney section at the bottom of this page. An abatement may be denied if the information necessary to support the application is not provided. The application must be submitted to DOR within the time limits provided in MGL, Ch. 62C, sec. 37.

Generally:

- Within three years from the date of the filing of the return (or within three years from the due date, if the return was filed before the due date);*
- Within two years from the date the tax was assessed or deemed to be assessed;
- Within one year from the date the tax was paid;
- Within two years of DOR's determination of a responsible person's liability;
- Within any agreed-upon extension of time for assessment of taxes under MGL, Ch. 62C, sec. 27;
- Within one year from the date of the final federal determination, including acceptance of an amended federal return by the Internal Revenue Service under MGL, Ch. 62C, sec. 30; or
- Within one year from the date of another state's final determination, including acceptance of an amended return under MGL, Ch. 62C, sec. 30A.

*Under the law prior to July 1, 2011, the three-year period for filing an application for abatement was "within three years from the due date for filing the return (regardless of any extension of time to file)." As set out above, the three-year period of sec. 37 does not apply for any tax period for which the statute of limitations for filing an abatement had expired as of July 1, 2011. See TIR-11-5, Part VIII(8).

Notes: Interest and, in some cases, penalties will accrue on any unpaid amount for which you are ultimately liable. The statute of limitations on collections will generally be suspended during the appeal process. You may wish to pay the amount you are disputing to stop the accrual of interest and application penalties. A refund, with applicable interest, will be issued if the abatement is approved and the assessment has been paid.

To request settlement consideration, you must submit Form DR-1, Appeals Form, with this application for abatement. See AP 628 at www.mass.gov/dor.

Pursuant to MGL, Ch. 62-55C, 121A and 12B, the taxpayer named herein makes application for abatement of the tax assessed for the period(s) stated, to the extent set forth herein. [Consent is hereby given, pursuant to Chapter 63A, Section 6, for the Commissioner of Revenue to act upon this application after six months from the date of filing.] This consent is provided to protect your rights where processing of your application for abatement is delayed for any reason. Your consent may be withdrawn at any time. If you do not consent, or withdraw your consent, the application for abatement is deemed denied (1) at the expiration of six months from the date of filing or (2) the date consent is withdrawn, whichever is later. If you choose not to consent, you must check out the guidance in brackets and fill in this box ☐.

Sign here. Under penalty of perjury, I declare that, to the best of my knowledge and belief, the information herein is true, correct and complete.

Taxpayer's signature: M. Christine Shaffer, Esquire Date: 10/27/11
Signature of spouse (if filing jointly): _____
Taxpayer's name (last): _____
First name (last): _____
Middle name (last): _____
Estate of ADELAIDE P. CHUCKROW
Title of company (if any): _____ Daytime phone number: _____

M. CHRISTINE SHAFFER, P.R.

Properly signed and attested. (Fill in the box ☒) I attest that I prepared this form, and that the statements contained herein, including information furnished to me by the taxpayer, are true and correct to the best of my knowledge, information and belief.

Preparer's signature (if not filing jointly, complete Power of Attorney below): _____ Preparer's title: ATTORNEY

Power of Attorney. (Fill in the box ☒) I, the undersigned taxpayer shown on this application, hereby appoint the following individual(s) as attorney(s)-in-fact to represent me before any office of the Massachusetts Department of Revenue for the specified tax period(s).

Name of attorney-in-fact (last): _____
First name (last): _____
Middle name (last): _____
Phone number: 617-523-1555

Address: 375 TOTTEN POND ROAD, SUITE 200 WALTHAM MA 02451

The attorney(s)-in-fact is authorized, subject to limitations set forth below or to revocation, to receive confidential information and to perform any and all acts that the taxpayer(s) can perform with respect to the above-specified tax matters. The authority does not include the power to substitute another representative (unless specifically added below) or to receive refund checks.

Attorney-in-fact is not authorized to:

Taxpayer's signature: M. Christine Shaffer, Esquire Signature of spouse (if filing jointly): _____

32702 04/24/10

Form M-2848
Power of Attorney and
Declaration of Representative

Rev. 6/71
Massachusetts
Department of
Revenue

See separate instructions. Please print or type.

Part 1. Power of Attorney

A Name of taxpayer(s) John P. Chickson, c/o M. Christy Social Security number(s) 7331
Shaffer, P.R. 10803 Montrose Ave., P.O. Box 86 Federal identification number
Shaffer, P.R. State PR Zip 00886

B Hereby appoint(s) the following individual(s) as attorney(s)-in-fact to represent the taxpayer(s) before any office of the Massachusetts Department of Revenue for the following tax matter(s) (specify the type(s) of tax and year(s) or period(s) (date of death if estate tax)):

Name	Address	Telephone number
<u>Lisa V. Cushman, Esq.</u>	<u>431 State</u>	<u>333 State</u>
<u>Duke C. Bann, Esq.</u>	<u>375 Tolton Pond Road, Suite 200</u>	<u>617-523-1555</u>
	<u>Waltham, MA 02451</u>	

Type of tax (individual, corporate, etc.)	Year(s) or period(s) (date of death if estate tax)
<u>Estate and Spouse's Tax Abatement</u>	<u>date of death 9/8/1972</u>

C The attorney(s)-in-fact (or any of them) are authorized, subject to any limitations set forth below or to revocation, to receive confidential information and to perform any and all acts that the principal(s) can perform with respect to the above specified tax matters, such as the authority to sign any agreements, consents or other documents. The authority does not include the power to substitute another representative (unless specifically added below) or the power to receive refund checks.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney:

D Originals of notices and other written communications go to the taxpayer(s). Send copies of all notices and all other written communications addressed to the taxpayer(s) in proceedings involving the above tax matters to:

1 ☐ the appointee first named above, or
 2 ☒ (name of another appointee designated above) Lisa V. Cushman, Esq.

This power of attorney revokes all earlier powers of attorney on file with the Department of Revenue for the same tax matters and years or periods covered by this power of attorney, except the following (specify to whom granted, date and address including Zip code or attach copies of earlier powers):

Attorney Nilsa Shaleo, 100 Park Avenue, New York, New York, 10017

E Signature of or for taxpayer(s). If signed by a corporate officer, partner, or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

Signature [Signature] Title (if applicable) Personal Representative Date 10/27/14
 If signing for a taxpayer who is not an individual, type or print your name

F If the power of attorney is granted to a person other than an attorney, certified public accountant, public accountant or enrolled agent, the taxpayer(s) signature must be witnessed or notarized below.

The taxpayer(s) signing on or for the taxpayer(s) (check and complete one):

☒ Taxpayer known to and signed in the presence of two disinterested witnesses whose signatures appear here:

Signature of witness _____ Date _____

Signature of witness _____ Date _____

☐ appeared this day before a notary public and acknowledged this power of attorney as a voluntary act and deed.

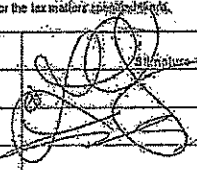
Signature of notary _____ Date _____

Part 2. Declaration of Representative. All representatives must complete this section.

I declare that I am not currently under suspension or disbarment from practice within the Commonwealth or in any jurisdiction, that I am aware of regulations governing the practices of attorneys, certified public accountants, public accountants, enrolled agents and others, and that I am one of the following:

- 1 a member in good standing of the bar of the highest court of the jurisdiction shown below;
- 2 duly qualified to practice as a certified public accountant or public accountant in the jurisdiction shown below;
- 3 enrolled as an agent under the requirements of Treasury Department Circular No. 230;
- 4 a bona fide officer of the taxpayer organization;
- 5 a full-time employee of the taxpayer;
- 6 a member of the taxpayer's immediate family (spouse, parent, child or sibling);
- 7 a fiduciary for the taxpayer;
- 8 other (attach statement)

and that I am authorized to represent the taxpayer identified in Part 1 for the tax matters indicated below.

Designation (insert appropriate number from above list)	Jurisdiction (state, etc.) or enrollment card number	Signature	Date
1	MA		10/27/14
2	MA		

Form M-2848
Power of Attorney and
Declaration of Representative

Rev. #11,
Massachusetts
Department of
Revenue

See separate instructions. Please print or type.

Part 1. Power of Attorney

A Name of taxpayer(s) Estate of Adelaide P. Chokros, a/o M. Christine Social Security number(s) 7341
 Number and street, including apartment number or rural route Shafter, P.R. 10903 Highway Ave., P.O. Box 96 Federal Identification number
 City/Town Shafter, P.R. State PR Zip 00954

B I hereby appoint(s) the following individual(s) as attorney(s)-in-fact to represent the taxpayer(s) before any office of the Massachusetts Department of Revenue for the following tax matter(s) (Specify the type(s) of tax and year(s) or period(s) of death if estate tax):

Name	Address	Telephone number
<u>Lee H. Christine, Esq.</u>	<u>417 State</u>	<u>874-1141</u>
<u>John P. Bonn, Esq.</u>	<u>375 Totten Pond Road, Suite 200</u>	<u>617-523-1558</u>
	<u>Waltham, MA 02451</u>	

Type of tax (estate, gift, etc.) Estate and Application for Abatement Year(s) or period(s) (date of death if estate tax) Date of Death 08/19/2001

C The attorney(s)-in-fact (or any of them) are authorized, subject to any limitations set forth below or to revocation, to receive confidential information and to perform any and all acts that the principal(s) can perform with respect to the above specified tax matters, such as the authority to sign any agreements, consents or other documents. The authority does not include the power to substitute another representative (unless specifically stated below) or the power to receive refund checks.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney:

D Originals of notices and other written communications go to the taxpayer(s). Send copies of all notices and all other written communications addressed to the taxpayer(s) in proceedings involving the above tax matters to:

- 1 ☐ the appointee first named above, or
 2 ☒ name of another appointee designated above John P. Bonn, Esq.

This power of attorney revokes all earlier powers of attorney on file with the Department of Revenue for the same tax matters and years or periods covered by this power of attorney, except the following (specify to whom granted, date and address including Zip code or attach copies of earlier powers):

Attorney Abba Shandor, 100 Park Avenue, New York, New York, 10017

E Signature of or for taxpayer(s). If signed by a corporate officer, partner, or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this power of attorney on behalf of the taxpayer.

Signature A. Christine Title (if applicable) 10/27/04
 If signing for a taxpayer who is not an individual, type or print your name Personal Representative
 Signature _____ Title (if applicable) _____ Date _____

18-000012

F If the power of attorney is granted to a person other than an attorney, certified public accountant, public accountant or enrolled agent, the taxpayer(s) signature must be witnessed or notarized below.

The person(s) signing as or for the taxpayer(s) (check and complete one):

☐ is/are known to and signed in the presence of the two disinterested witnesses whose signatures appear here:

Signature of witness	Date
Signature of witness	Date

☐ appeared this day before a notary public and acknowledged this power of attorney as a voluntary act and deed.

Signature of notary	Date

Part 2. Declaration of Representative. All representatives must complete this section.

I declare that I am not currently under suspension or disbarment from practice within the Commonwealth or in any jurisdiction, that I am aware of regulations governing the practice of attorneys, certified public accountants, public accountants, enrolled agents and others, and that I am one of the following:

- 1 a member in good standing of the bar of the highest court of the jurisdiction shown below;
- 2 duly qualified to practice as a certified public accountant or public accountant in the jurisdiction shown below;
- 3 enrolled as an agent under the requirements of Treasury Department Circular No. 230;
- 4 a bona fide officer of the taxpayer organization;
- 5 a full-time employee of the taxpayer;
- 6 a member of the taxpayer's immediate family (spouse, parent, child or sibling);
- 7 a fiduciary for the taxpayer;
- 8 other (attach statement).

and that I am authorized to represent the taxpayer identified in Part 1 for the tax matters specified below:

Designation (insert appropriate number from above list)	Jurisdiction (state, etc.) or enrollment card number	Signature	Date
1	CA		10/2/14
1	CA		

Estate of Adelaide P. Chuckrow
Application for Abatement

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Estate of Adelaide P. Chuckrow

Application for Abatement

Explanation of Issues Involved in Request

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I. Introduction

The question presented is whether the Commonwealth of Massachusetts may impose an estate tax on the surviving spouse based on the transfer of property into a New York trust by a New York resident, where the only plausible connection to Massachusetts is that the surviving spouse—an income beneficiary under the trust—moved to Massachusetts after her husband's death. As a matter of constitutional law and statutory interpretation, the answer must be no.

Robert Chuckrow's executrix made a federal QTIP election on the value of property that funded a testamentary trust. By making a QTIP election, this transfer qualified for the federal unlimited marital deduction, thus delaying collection of the tax until the second spouse's death. Because Robert Chuckrow was a resident of New York with no Massachusetts real or tangible personal property, his executrix did not file a Massachusetts estate tax return (as none was required), and so did not make a Massachusetts QTIP election. His wife Adelaide moved to Massachusetts and died there August 14, 2011. Now, Massachusetts insists that it may collect a tax on the value of federally elected QTIP property, because the Massachusetts gross estate is defined as the federal gross estate. This assertion is incorrect, for the following reasons.

First, the attempt to collect this tax is unconstitutional under the Fourteenth Amendment. The estate tax is a tax on the privilege of transferring property at death, rather than a tax on the property itself. *Knowlton v. Moore*, 178 U.S. 41 (1900). The taxing authority may tax only the transfer of the assets. In this case, there was no transfer by Adelaide. The only transfer took place when Robert died, at which time the estate tax would have been imposed, but for the marital deduction.

Federal law provides for an unlimited marital deduction, meaning that all property transferred from the decedent spouse to the surviving spouse passes tax free—it is expected that the tax will be collected on the second spouse's death. As a general rule, terminable interest property (property which the surviving spouse's interest terminates at

her death) does not qualify for a marital deduction. But the code creates a statutory exception for qualified terminable interest property. To qualify, a terminable interest must meet three conditions:

- (1) the surviving spouse must receive all income from the property for life, payable at least annually;
- (2) No person can have a power to appoint any part of the property to any person other than the surviving spouse; and
- (3) A QTIP election must be made by the executor of the deceased spouse's estate, and this election is irrevocable once made.

The quid pro quo is that the QTIP election merely delays collection of the tax, because there is no separately taxable transfer at the second spouse's death. To ensure the tax is eventually collected, the code creates a fictional second transfer, from surviving spouse to beneficiaries. See I.R.C. § 2044. This transfer is just that—fictional; the only true transfer occurs on the first-to-die spouse's death. See *In re Estate of Bracken*, 175 Wash. 2d 549 (2012). And because estate tax may only be collected on a transfer, Massachusetts cannot constitutionally tax this New York transfer.

Second, the attempt to collect this tax runs afoul of the statutory definition of Massachusetts gross estate. Determining Massachusetts gross estate begins with the federal gross estate, but it does not end with it. Indeed, the last sentence of G.L. c. 65C, § 1(f) provides, in relevant part, that “[t]he Massachusetts gross estate shall not include the value of any property in which the decedent had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph.” Although the first sentence of § 1(f) references the federal gross estate, that portion of the last sentence seeks to include only property for which a Massachusetts QTIP election was made. If it referred back to the federal estate, it would render this last sentence inoperable, in violation of a fundamental tenet of statutory construction. Further, the last sentence serves to prevent unnecessary double taxation of

assets that would have been already been taxed on the first spouse's death. This provision was necessary because Massachusetts maintained a 50% marital deduction, even after federal law moved to an unlimited—meaning that executors would regularly make federal QTIP elections in excess of the state QTIP election.

II. Facts

Robert Chuckrow and Adelaide Chuckrow, a married couple, lived in and were residents of Chappaqua, New York. Robert died on July 11, 1993, while the couple was living in New York, leaving a Last Will and Testament. Article Third of Robert's Will established a trust that would qualify for a Qualified Terminable Interest Property Trust election under I.R.C. § 2056(b)(7). A Form 706, United States Estate (and Generation Skipping Transfer) Tax Return, was filed.

The federal estate tax return contained the following information about Robert's estate:

- Robert's total federal gross estate was \$1,996,043.24.
- A total marital deduction of \$1,436,025.39 was taken.
- Of that amount, \$591,924.12 passed outright to Adelaide, as a surviving spouse.
- The remaining \$844,101.27 passed into the Trust established by Article Third of Robert's Will, which is now known as the "Trust w/o Robert Chuckrow."

Pursuant to I.R.C. § 2056(b)(7), the co-exematrix elected to have the Trust treated as a qualified terminable interest property trust for federal estate tax purposes.

This \$844,101.27 thus qualified for the federal estate tax marital deduction.

Because Robert Chuckrow was a resident of New York and owned no real or tangible property in Massachusetts, his estate did not file a Massachusetts estate tax return.

At some point in time after Robert's death, Adelaide moved to Massachusetts to be cared for by her daughter. She died while living in Williamstown, Massachusetts on

August 14, 2011. Adelaide's niece, the executrix of her estate, filed a Form 706, United States Estate (and Generation Skipping Transfer) Tax Return and a Form M-706, Massachusetts Estate Tax Return.

Adelaide's federal estate, as reflected on Form 706, was as follows:

- Adelaide's total federal gross estate was \$15,633,617.
- Of that amount, \$13,251,469 consisted of assets held by the Trust u/w/o Robert Chuckrow, which was includible in Adelaide's federal gross estate under I.R.C. § 2044, by virtue of the I.R.C. § 2056(b)(7) election made for the Trust at Robert's death.

Accordingly, Adelaide's estate paid \$5,225,419 in federal estate taxes.

Meanwhile, on Form M-706, the executrix reported a Massachusetts gross estate of \$2,382,148 (representing the difference between Adelaide's federal gross estate and the amount attributable to the QTIP trust property). Adelaide's estate paid \$100,997 in Massachusetts estate taxes.

Adelaide's estate was selected for audit. On August 29, 2013, the Department of Revenue issued a Notice of Intention to Assess, determining that the Massachusetts gross estate should have included the assets of the Trust u/w/o Robert Chuckrow, and thus asserting that the estate owed additional taxes in the amount of \$1,809,141.88. Disagreeing with the intended assessment, Adelaide's estate requested a conference pursuant to G.L. c. 62C, § 26(b), which was held on February 12, 2014. The Department of Revenue issued its decision letter on March 10, 2014, denying the state's requested relief and returning the matter to the audit division for assessment.

On March 18, 2014, Adelaide's estate received a Notice of Assessment for \$1,953,032, representing the additional tax of \$1,809,141.88 plus accrued interest thereon. The estate paid the assessed tax on April 11, 2014, and noted that an application for abatement would be forthcoming.

The Trust w/o Robert Chuckrow did not terminate on Adelaide's death. It continues to operate at the present time, and it remains sited in New York, where it has always been.

III. Background of the federal and Massachusetts estate tax and marital deduction

A. History of the federal estate tax

Prior to the current estate tax system, Congress imposed temporary death taxes to raise revenue during or after times of war. The first three iterations (in 1797, 1862, and 1898) were temporary revenue raisers, and were repealed after their need dissipated. The War Revenue Act of 1898 led to the Supreme Court case of *Knox v. Lee*, 178 U.S. 41 (1900), holding that death taxes were constitutional and that Congress may properly tax the *transfer* of property, but not the *value* of property.

The estate tax as we know it came into existence in 1916, again to fund a war. See Revenue Act of 1916, ch. 463, 39 Stat. 756. This time, however, the estate tax was not repealed. Until World War II, the federal estate tax treated citizens of common-law states differently from those in community-property states, such that citizens of community-property states paid significantly less in estate taxes due to the form of ownership.

To reconcile this difference, Congress introduced the marital deduction in 1948, thus equalizing tax benefits in common-law and community-property states. See Revenue Act of 1948, Pub. L. No. 80-471, 62 Stat. 110. Under the 1948 legislation, the decedent spouse would receive a deduction for one-half of the property that passed to the surviving spouse. *Id.* § 361. Notably, the 1948 legislation disqualified "terminable interest" property from the marital deduction, out of fear that estate tax might be avoided on the death of the surviving spouse.¹ *Id.* In 1976, Congress increased the maximum

¹ A "terminable interest" is an interest in property that terminates upon "the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur." I.R.C. § 2056(b)(1). See also Black's Law Dictionary 886 (9th ed. 2009).

allowable marital deduction to the greater of \$250,000 or one-half of the decedent's adjusted gross estate. See Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520, § 2002.

Significant changes to the marital deduction (and estate taxes generally) came in 1981, under the Economic Recovery Tax Act. See Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 172. First, the marital deduction was made unlimited. *Id.* § 403. Second, the marital deduction was expanded to allow for certain terminable interests to be eligible for a marital deduction—known as qualified terminable interests. *Id.* For a terminable interest that passes from the decedent spouse to the surviving spouse to be considered a qualified terminable interest three conditions must be met:

- (1) The surviving spouse must receive all income from the property for life, payable at least annually;
- (2) No person can have a power to appoint any part of the property to any person other than the surviving spouse; and
- (3) A QTIP election must be made by the executor of the deceased spouse's estate, and this election is irrevocable once made.

See I.R.C. § 2056(b)(7). The tradeoff is that property for which a QTIP election was made under § 2056(b)(7) is includible in the surviving spouse's federal gross estate pursuant to I.R.C. § 2044.

Hence the QTIP trust was born. The QTIP trust, has two major advantages, one practical and one tax-related. The practical advantage is that the first-to-die spouse controls the ultimate disposition of the property upon his spouse's death. The tax advantage is that the surviving spouse can delay paying estate taxes until her death. And further, with proper planning, married couples can maximize both of their federal exemption to minimize estate taxes paid on family assets.

B. History of the Massachusetts estate tax

Massachusetts enacted its first death tax in 1926, which took advantage of the state death tax credit under federal estate tax law—otherwise known as a “sponge tax.” St. 1926, c. 355 (establishing estate tax). This tax was suspended (though never repealed) when the legislature enacted a stand-alone Massachusetts estate tax under St. 1975, c. 684, § 74 (creating G.L. c. 65C). Under the stand-alone estate tax, there was no unlimited marital deduction, because federal law did not yet have an unlimited deduction. Nor was there a provision for QTIP, because QTIP property was (again) not yet in existence under federal law. Rather, Massachusetts mirrored federal law by providing for a 50% marital deduction.

Massachusetts, mirroring the federal changes of 1981, added a QTIP section to its estate tax regime in 1985. St. 1985, c. 711, § 12 (inserting G.L. c. 65C, § 3A). The Massachusetts QTIP statute provided definitions nearly identical to those in I.R.C. § 2056(b)(7). But the Massachusetts QTIP required a state-level election that was “separate from and independent of” the federal QTIP election. G.L. c. 65C, § 3A. Despite mirroring the federal statute, Massachusetts did not permit an unlimited state marital deduction until July 1, 1994. See St. 1992, c. 133, §§ 422, 597.²

The stand-alone Massachusetts estate tax was phased out beginning in 1993, when the legislature enacted G.L. c. 65C, § 2A, which (for decedents dying after January 1, 1997) imposed a tax equal to the state death tax credit under federal law. This was a second sponge tax that was in effect for decedents dying between 1997 and 2003.

In 2001, Congress began a decade-long phase out of the federal estate tax, including an elimination of the state estate tax credit. See Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (“EGTRRA”). Responding to EGTRRA, the Massachusetts legislature decoupled the Massachusetts

² There have been two subsequent amendments to the Massachusetts estate tax: St. 1992, c. 133, § 422, and St. 1994, c. 342, § 4. Both became effective for decedent's dying after July 1, 1994, so these amendments were inapplicable at the time of Robert's death in 1993.

estate tax from the federal estate tax. See St. 2002, c. 185, § 28. See also St. 2002, c. 364, § 10. Thus, for those dying after January 1, 2003, the amount of the Massachusetts estate tax is computed by determining what would have been the federal credit for state estate tax on December 31, 2000. So when determining Massachusetts estate tax liability, it is still necessary to fill out the 1999 version of federal Form 706.

Thus, the Massachusetts estate tax from the 1980s forward was patchwork reaction to federal laws that has led to much confusion, even for seasoned practitioners.

- From 1981 to December 31, 1985, federal law provided for an unlimited marital deduction and a QTIP election. Massachusetts permitted a 50% marital deduction, but had no provision for QTIP elections.
- From 1986 to June 30, 1994, federal law provided for an unlimited marital deduction and a QTIP election. Massachusetts added a provision for QTIP elections, but still limited the state marital deduction to 50%.³
- From July 1, 1994 to December 31, 1996, federal law maintained the unlimited marital deduction and QTIP elections. Massachusetts finally provided the same.
- From 1997 to December 31, 2002, federal law provided for an unlimited marital deduction and QTIP elections. Massachusetts provided the same, but altered its estate tax regime to a sponge tax.
- From January 1, 2003 to the present, the Massachusetts estate tax is calculated based on the state estate tax credit that would have applied under the 2000 Internal Revenue Code.

The above documents differences in federal and Massachusetts law with regard to the marital deduction and QTIP elections. But this does not even take into account the differences between federal and Massachusetts law regarding the estate tax exemptions. Because the exemption amounts were different, the executor would, to minimize estate tax liability, have to make a federal QTIP election on a different amount than the state

³ Robert Chuckrow died on July 11, 1993.

QTIP election. This chart (also attached as an exhibit) attempts to visualize the differences:

Date of Death	Fed. Exemption	Mass. exemption	Fed. marital deduction	Mass. marital deduction	Fed. QTIP	Mass. QTIP
1982	\$225,000	\$30,000 ⁴	unlimited	50%	yes	no
1983	\$225,000	\$30,000	unlimited	50%	yes	no
1984	\$325,000	\$30,000	unlimited	50%	yes	no
1985	\$400,000	\$30,000	unlimited	50%	yes	no
1986	\$500,000	\$200,000 ⁵	unlimited	50%	yes	yes
1987	\$600,000	\$200,000	unlimited	50%	yes	yes
1988	\$600,000	\$200,000	unlimited	50%	yes	yes
1989	\$600,000	\$200,000	unlimited	50%	yes	yes
1990	\$600,000	\$200,000	unlimited	50%	yes	yes
1991	\$600,000	\$200,000	unlimited	50%	yes	yes
1992	\$600,000	\$200,000	unlimited	50%	yes	yes
1993	\$600,000	\$300,000	unlimited	50%	yes	yes
1994	\$600,000	\$400,000	unlimited	unlimited ⁶	yes	yes
1995	\$600,000	\$500,000	unlimited	unlimited	yes	yes
1996	\$600,000	\$600,000	unlimited	unlimited	yes	yes
1997	\$600,000	\$600,000	unlimited	unlimited	yes	yes
1998	\$625,000	\$625,000	unlimited	unlimited	yes	yes
1999	\$650,000	\$650,000	unlimited	unlimited	yes	yes
2000	\$675,000	\$675,000	unlimited	unlimited	yes	yes
2001	\$675,000	\$675,000	unlimited	unlimited	yes	yes
2002	\$1,000,000	\$1,000,000	unlimited	unlimited	yes	yes

⁴ Through 1985, Massachusetts had an exemption of \$30,000 for all Massachusetts decedents. But if the Massachusetts net estate was \$60,000 or less, then the exemption would be equal to that amount, thus eliminating Massachusetts estate tax.

⁵ Beginning in 1986, the Massachusetts exemption was not applicable to every decedent. In the event that a Massachusetts decedent had a net estate equal to or lower than this threshold amount, then the decedent is entitled to an estate tax exemption equal to the amount of his net estate, thus eliminating any state estate tax. If the decedent has a net estate worth just \$1 more than the threshold amount, then the estate must pay an estate tax on the entire estate.

⁶ The unlimited marital deduction went into effect for decedents dying after July 1, 1994.

2003	\$1,000,000	\$700,000	unlimited	unlimited	yes	yes
2004	\$1,500,000	\$250,000	unlimited	unlimited	yes	yes
2005	\$1,500,000	\$950,000	unlimited	unlimited	yes	yes
2006	\$2,000,000	\$1,000,000	unlimited	unlimited	yes	yes
2007	\$2,000,000	\$1,000,000	unlimited	unlimited	yes	yes
2008	\$2,000,000	\$1,000,000	unlimited	unlimited	yes	yes

IV. Argument

A. The taxable transfer of QTIP occurs at the death of the first spouse, and because Robert Chudcrow died in New York, there is no constitutional basis for Massachusetts to impose a tax.

1. The estate tax does not (and constitutionally cannot) tax the value property, but rather taxes the transfer of property.

The United States constitution forbids direct taxes unless they are apportioned among the states. U.S. Const. Art. I, § 9, cl. 4. In *Knowlton v. Moore*, 178 U.S. 41 (1900), the estate tax imposed by the War Revenue Act of 1898 was challenged as a direct tax that was not properly apportioned. The Supreme Court rejected this argument, holding that the estate tax (and taxes of that general character) are not taxes on the property or the value of the property itself, but on the privilege of transferring the property at death: "death is the generating source from which the particular taxing power takes its being, and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested." *Id.* at 56.

Accordingly, estate taxes at the state and federal level are imposed not on the value of property, but on the transfer of the taxable estate from the decedent to the beneficiaries. See I.R.C. § 2001(a) ("A tax is hereby imposed on the transfer of the taxable estate . . ."); 830 Code Mass. Regs. § 65C1.1 ("The Massachusetts estate tax is a transfer tax imposed on the value of all property in the estate of a decedent at the date of death."). This is illustrated in Treasury Regulation 20.2033-1, where it is said that "a

cemetary lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of that part of the lot which is not designed for the interment of the decedent and members of his family." This is so because the occupied portion of the burial lot is not transferable to anyone else by the decedent's beneficiaries.

2. The marital deduction is unlike other tax deductions because it merely delays the collection of tax.

The marital deduction is unlike other tax deductions. The typical tax deduction is given to offset expenses or costs that are incurred by the taxpayer, thus permanently eliminating the basis for taxation. The marital deduction, on the other hand, is not an elimination of taxation; it is a deferral or postponement of a tax that would otherwise be imposed on the first-to-die spouse. That is, if the entire taxable estate of the first-to-die spouse is transferred to the second-to-die, there will be no estate tax due from the estate of first-to-die spouse because of the unlimited marital deduction. But the taxing authority will eventually be able to tax that transferred property when the surviving spouse dies.

An example: H and W are married in a jurisdiction with an unlimited marital deduction and no estate tax exemption. H has \$2 million in assets, and W has \$0. When H dies, he can transfer the entire \$2 million to W without incurring any estate tax liability, because of the unlimited marital deduction. If W dies a year later, the taxing authority will then be able to assess a tax on W's \$2 million when she transfers it to the beneficiaries. The taxing authority merely had to delay enforcement of the tax on the \$2 million, though it is the same \$2 million that was originally owned by H. Of course, in this situation there are two transfers: one from H to W, and another from W to beneficiaries.

Contrast the above with a hypothetical where H's executor makes a QTIP election using a trust identical to the Trust w/o Robert Chuckrow. H has \$2 million; W has \$0. When H dies, his entire \$2 million is transferred into the trust. His executor makes a QTIP election (which qualifies for the marital deduction), so no estate tax is due on H's

death. W does not receive outright any of the \$2 million. She still has \$0, but she receives all income from the trust, payable annually. When W dies, her estate owes estate taxes on the \$2 million, but only by virtue of I.R.C. § 2044, and not § 2031.⁷ The trust remains in existence; only an income beneficiary has been removed by death. In this situation, however, there was only one transfer—the transfer from H into the trust. (This is explored more fully below.) W never had any dominion or control over the property; nor could she control its disposition. The trust's terms controlled. So W never had the money, but her estate is taxed under I.R.C. § 2044.

3. QTIP trust assets are transferred only one time, at the death of the first-to-die spouse, and there is thus no basis for Massachusetts to tax that transfer.

The estate tax is a tax on the transfer of property at death. When the property transferred is qualified terminable interest property, there is only one transfer—and that transfer occurs on the death of the first-to-die spouse. There is no transfer when the surviving spouse later dies.

a. A background of QTIP trusts.

QTIP trusts are commonly used in modern estate planning to minimize estate taxes for families while preserving assets for the benefit of a surviving spouse during her lifetime. QTIP trusts are an exception to the general IRS rule that terminable interest property cannot qualify for the marital deduction. Thus, if properly established, QTIP trusts qualify for the marital deduction.

Typically, property passing from the decedent spouse to the surviving spouse qualifies for the unlimited federal marital deduction. I.R.C. § 2056(a). There are some

⁷ I.R.C. § 2031 defines gross estate to include, at the decedent's death, "all property, real or personal, tangible or intangible, wherever situated"—in other words, all assets the decedent owns. I.R.C. § 2044, on the other hand, adds to the gross estate the value of any property "in which the decedent had a qualifying income interest for life." Section 2044 creates a fictional transfer of property from the surviving spouse to the ultimate beneficiaries of a QTIP trust.

limitations. One is that no marital deduction can be taken for terminable interest property. I.R.C. § 2056(b). But if the terminable interest property is *qualified* terminable interest property (QTIP), it does qualify for the marital deduction, and so the applicable estate tax is deferred until the surviving spouse's death. I.R.C. § 2056(b)(7).

Qualified terminable interest property is defined as property "(I) which passes from the decedent, (II) in which the surviving spouse has a qualifying income interest for life, and (III) to which an election under this paragraph applies." I.R.C. § 2056(b)(7)(B)(i). And the surviving spouse has a qualifying income interest for life if "(I) the surviving spouse is entitled to all income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse." I.R.C. § 2056(b)(7)(B)(ii).

The ordinary federal estate plan for a decedent who plans to use a QTIP trust proceeds in this manner. Before his death, the decedent sets up a plan to use two trusts. Upon death, an amount equal to the federal exemption passes into a Credit Shelter Trust, thus utilizing the decedent's federal estate tax exemption. And the balance of the decedent's estate would fund a Marital Trust, which would be eligible for a QTIP election.

The Marital Trust is purposefully structured so as to preserve the marital deduction. First, the surviving spouse must be paid income from the trust at least annually. Second, no person may have the power to appoint any portion of the trust property to anyone other than the surviving spouse. And third, the language of the trust will allow for a QTIP election to be made by the decedent spouse's executor, and this election is irrevocable. See I.R.C. § 2056(b)(7).

b. The taxable transfer of the Trust occurs at the death of the first-to-die spouse, not the second-to-die spouse.

When Robert Chuckrow died, the executrix of his estate made an irrevocable federal QTIP election on a timely filed Form 706 for the Trust assets. Under the terms of the Trust, Adelaide had no general power of appointment over the property the Trust, and she was unable to exercise any dominion or control over the Trust property. Her interest in the Trust was limited to her right to receive income distributions from the Trust, and principal distributions but only in the trustee's sole and absolute discretion.

The best way to conceptualize the estate tax liability of QTIP is as a taxable transfer on the death of the first spouse, but a deferment on the collection of those taxes until the second spouse dies. This comports with general theories of both property law and federal tax law.

First, as a matter of general property law, the transfer of trust property is completed when the Donor puts the property into an irrevocable trust. See *In re Estate of Bracken*, 175 Wash. 2d 549, 566 (2012), citing *Coolidge v. Long*, 282 U.S. 582, 605 (1931). The Donor establishes the trust terms, nominates a trustee, and dictates the ultimate disposition of the property by listing the beneficiaries. Once the property is transferred into an irrevocable trust (assuming the Donor retains no interest in the trust), the Donor relinquishes all rights to dominion or control over the property. This is why a gift tax return is required when a Donor creates an irrevocable trust in which he is neither the trustee nor beneficiary.

The Trust established by Robert's will was no different. Robert, through his executrix, made the irrevocable election to treat the property transferred into the Trust as QTIP property. See I.R.C. § 2056(b)(7)(v). None of this property was ever transferred to Adelaide, and she had no authority or power to alter the Trust's terms, to control its principal, to change its beneficiaries, or to alter the principal's ultimate disposition.⁶

⁶ This is also illustrated in Treas. Reg. 20.2033-1, where it is said, "[a] cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the saleable value of that part

In short, Robert controlled the ultimate disposition of his property by setting the terms of the trust, and it was his death that constituted the transferring event that the federal government (or any state government, for that matter) could constitutionally tax. Adelaide had no control or dominion over the property that was in the Trust. She could not remove it, add to it, or otherwise manipulate it. When Adelaide died, there was no further transfer of the Trust property. Rather, the property remained (and still remains) held in the same Trust for the benefit of the class selected by Robert per the terms of the Trust as he established it. Adelaide's death merely changed the class of beneficiaries eligible to receive Trust property. Because she had no power or control over the assets of the Trust, Adelaide cannot be said to have transferred any of the Trust property upon her death. Therefore, as a matter of property law, the *only* transfer with regard to this QTIP trust was upon the Robert's death.

Second, under the Internal Revenue Code and applicable regulations, the death of the first-to-die spouse is the taxable event with regard to QTIP trust assets. As discussed above, the marital deduction (which QTIP-elected trusts qualify for) is not a typical deduction that eliminates taxation completely. Rather, the election only delays or postpones the collection of the tax (which would otherwise be due at the decedent spouse's death) until the surviving spouse dies.

The value of the first-to-die spouse's federal gross estate includes property that he passes into a trust for which a QTIP election is intended to be made. See I.R.C. § 2033 (value of gross estate includes the value of all property to the extent of the interest of the decedent); Treas. Regs. §§ 20.0-2(a), 20.2033-1(a), 20.2044-1(e) (Ex. 1). Ordinarily, terminable interest property passed to a surviving spouse would not qualify for the marital deduction. But I.R.C. § 2056(b)(7) provides an exception for qualified terminable interest property, which does qualify for the marital deduction. To perfect a QTIP trust,

of the lot which is not designed for the interment of the decedent and members of his family.” The reason is obvious: the portion of the burial plot is used exclusively by the decedent, and is not transferrable by any of his beneficiaries.

one of the conditions is that property *actually pass* from the first-to-die spouse into the trust. I.R.C. § 2056(b)(7)(B)(i)(I) (property “which passes from the decedent”). Only by virtue of a QTIP election, and corresponding allowance of a marital deduction, is such decedent spouse’s property not taxed immediately. The quid pro quo of the marital deduction created by specific legislative rule, however, is that estate taxes on the trust assets are ultimately paid when the surviving spouse dies. The Code essentially creates a fictional transfer to reach QTIP property in the surviving spouse’s estate—*treating* it as having passed to the surviving spouse. See Rev. Proc. 2001-38 (“For purposes of § 2056(a), qualified terminable interest property is treated as passing to the surviving spouse, and no part of the property is treated as passing to any person other than the surviving spouse.”). It is only *treated* as passing to the surviving spouse for purposes of § 2056 because the property was *actually* transferred into the QTIP trust—forever out of reach of the surviving spouse.

This point is reiterated in the tax procedures for the surviving spouse. At the death of the surviving spouse, where a QTIP election has been made and the marital deduction previously allowed, the Code again creates a fictional transfer. Internal Revenue Code § 2044(c) provides that, for estate tax purposes, qualified terminable interest property is “includible in the gross estate of the decedent [the surviving spouse] under subsection (a) shall be treated as property passing from the decedent [the surviving spouse].” Again, it is *treated* as passing, but it does not actually pass from the surviving spouse. This is no accident of phrasing either. In subsection (b), the Code specifies that this section applies to property for which “a deduction was allowed with respect to the transfer of such property to the decedent [the surviving spouse].” Thus, under a plain reading, I.R.C. § 2044 recognizes the differences between property that is actually transferred and property that is only treated as transferred.

Furthermore, the Code recognizes that there is only one transfer by its inclusion of I.R.C. § 2207A. Under § 2207A, the second-to-die’s estate is entitled to recover from the

QTIP trust the portion of the second-to-die's estate tax that is attributable to the § 2044 inclusion of QTIP trust—i.e., the portion the surviving spouse fictionally transfers to the ultimate beneficiaries by virtue of § 2044. Thus, even the Code recognizes that the surviving spouse does not and cannot actually transfer any property from a QTIP trust on her death, which is why § 2207A allocates the ultimate tax liability for taxes assessed on the value of QTIP property to the QTIP assets themselves.

This is not some novel or unique interpretation. Indeed, the Supreme Court of Washington reached the very same conclusion in *In re Estate of Bracken*, 175 Wash. 2d 549 (2012). The court held that the taxable transfer of property passing to a trust for which a QTIP election was made is on first-to-die's death. *Id.* at 567–568. Therefore, the state could not retroactively impose Washington estate taxes on the second-to-die spouse attributable to assets of a QTIP trust for her benefit. *Id.* at 566–568, 575–576. *Bracken* is discussed in further detail below.⁹

Accordingly, under general principles of property law and federal and state tax law, the only transfer of QTIP assets occurs at the death of the first-to-die spouse. And this true transfer is the transfer of assets from the decedent into the qualifying trust. Nevertheless, the Code supposes a two-step fictional transfer of QTIP assets: first from the decedent spouse to the surviving spouse, and then a second fictional transfer from the surviving spouse to the ultimate beneficiaries. But these two transfers are just that—fictional. The Code creates these fictional events in order to collect, on the death of the second spouse, the tax that otherwise would be collectible upon the death of the first-to-die spouse. Without the first fictional transfer (from decedent spouse to surviving

⁹ Other courts have discussed the fictional transfer on the surviving spouse's death. See *Estate of Bonner v. United States*, 84 F.3d 196, 198 (5th Cir. 1996) (“Although § 2044 contemplates that the QTIP property will be treated as having passed from Bonner for estate tax purposes, the statute does not require, nor logically contemplate that in so passing, the QTIP assets would merge with other assets.”); *Estate of Mellinger v. Comm’r*, 112 T.C. 26, 35 (1999) (“[QTIP] property is ‘treated as property passing from the’ surviving spouse, sec. 2044(c), and is taxed as part of the surviving spouse’s estate at death, but QTIP property does not actually pass to or from the surviving spouse.”).

spouse), taxes would be immediately due. But, if the first fictional transfer were allowed without the second fictional transfer from the surviving spouse to the ultimate beneficiaries, the trust assets would escape estate taxation altogether, since an income interest in a trust created by a third party expires at death with no general power of appointment over such assets would not be includible in the decedent's gross estate—but for the fiction created by I.R.C. § 2044.

Adelaide, having no control over the Trust assets, had nothing to actually transfer on her death. The true transfer, and thus the taxable event, occurred on the death of Robert.

4. The taxable event occurred when Robert Chuckrow died in New York; thus the QTIP property is beyond the reach of Massachusetts's taxing jurisdiction.

Because the taxable transfer occurred on the death of Robert Chuckrow, the Massachusetts Department of Revenue is powerless to impose a tax on the Trust assets at the death of Adelaide Chuckrow.

a. The Fourteenth Amendment and art. 10 prohibits a state from taxing a transaction that occurs outside its borders.

The due process clause of the Fourteenth Amendment prohibits a state from imposing a tax on a transaction that occurs entirely outside its borders. "[T]he exaction by a State of a tax which it is without power to impose is a taking of property without due process of law in violation of the Fourteenth Amendment." *Frick v. Pennsylvania*, 268 U.S. 473, 488–489 (1925) (holding statute that attempts to tax tangible property with situs in another state unconstitutional). *Frick* tracks Chief Justice Marshall's statement in *McCulloch v. Maryland* that the power to tax "is an incident of sovereignty, and is co-extensive with that to which it is an incident. All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation." *McCulloch v. Maryland*, 4

Wheat (17 U.S.) 316, 429 (1819). Similarly, art. 10 of the Massachusetts Declaration of Rights proscribes the collection of estate taxes on a person who is not a citizen of Massachusetts.

b. Massachusetts is reaching beyond its taxing jurisdiction in seeking to impose a tax on Adelaide based on Robert's transfer of property into the Trust.

Here, Massachusetts is attempting to reach beyond its borders—beyond its sovereignty—to collect a tax on a transfer made in New York by a New York resident. By doing so, Massachusetts is attempting to exact “a tax which it is without power to impose,” in violation of the due process clause of Fourteenth Amendment of the United States Constitution. *Frick v. Pennsylvania*, 268 U.S. 473, 488-489 (1925).

The Supreme Judicial Court has recognized that Massachusetts may constitutionally impose an estate tax on gifts made within three years of death by a Massachusetts decedent, even though the gifts were of Maryland intangible securities and even though the decedent was a Maryland resident at the time the gifts were made. See *Page v. Comm'r of Revenue*, 389 Mass. 388, 394-395 (1983). In reaching this decision, the SJC relied, in part, on *Curry v. McGanless*, 307 U.S. 357 (1939). In *Curry*, both Alabama and Tennessee attempted to impose death taxes on the transfer of an interest in intangibles. *Id.* at 360. The decedent was a domiciled resident of Tennessee, and the intangibles were held in trust by an Alabama trustee—a trust established by the decedent and over which she maintained the power to dispose of the trust estate by her will (a general power of appointment). *Id.* at 360-361. The Court held that both states could constitutionally levy a tax on the transfer of these assets. *Id.* at 372-373.

Of course, there are several major distinctions between taxing the assets of the individuals in *Page* and *Curry* and taxing the Trust assets here. In *Page*, the decedent maintained absolute control and dominion over the ultimate transfer of the property. She could have sold them, gifted them, or bequeathed them. Similarly, the decedent in *Curry*, by her trust instrument, maintained a right to bequeath the trust assets, thus controlling

their ultimate transfer. What is more, in *Page and Curry*, the decedents were both the taxpayer and the transferor.

Not so in the case of Adelaide Chuckrow. In the Trust created under Robert's Will, Adelaide had no power or control to transfer the principal. Contrast *Pearson v. McGraw*, 308 U.S. 313, 318 (1939) (noting that the jurisdiction of a state "is dependent not on the physical location of the property in the state but on control over the owner"). Unlike *Page and Curry*, here the transferor and the taxpayer are not one and the same. In *Page and Curry*, the states taxed their residents on the transfers made by their residents. In the present case, however, the transfer was made by Robert Chuckrow, but the Department seeks to tax Adelaide. Robert was not a Massachusetts resident at the time of this transfer (his death), and he never subjected himself to the estate taxing jurisdiction of the Commonwealth, as he owned no real or tangible personal property sited in Massachusetts. Further, Robert was the person who determined the ultimate disposition of the property by deciding the terms of the trust, and he was the one who through his executrix will transferred the property into the Trust. Therefore, unlike the taxpayers in *Page and Curry*, the present taxpayer, Adelaide, had no say in the initial transfer of the property and no control over the ultimate disposition of the property at her death. The only reason that the Trust relates to Adelaide's estate at all is because of the special rules of I.R.C. § 2056(b)(7) and I.R.C. § 2044.

Indeed, the better analogy is to a situation where a Donor completes an inter vivos gift by transferring the property into an irrevocable trust, where he is neither the trustee nor a beneficiary. Under general principles of property law, the gift is completed once the property is delivered to the trustee. See *In re Estate of Bracken*, 175 Wash. 2d 549, 556 (2012), citing *Coolidge v. Long*, 282 U.S. 582, 605 (1931). At that moment, the Donor has relinquished all rights in the property he transferred into trust (thus triggering the requirement of filing a gift tax return). In *Wuesthoff v. Wisconsin Dep't of Taxation*, the state of Wisconsin attempted to impose a tax on a gift made into an irrevocable inter

vivos trust by a nonresident donor to a nonresident trustee. 261 Wis. 98, 99-100 (1952). The only connection to Wisconsin was that the gift consisted of Wisconsin securities. *Id.* at 104. Because the gift was completed outside the state, and because donor and donee were not residents of Wisconsin, the court held that the transfer was beyond the taxing jurisdiction of the state of Wisconsin. *Id.* at 104-105.

The Supreme Court of Washington reached a similar conclusion regarding federal QTIP and its interplay with state estate taxes in *In re Estate of Bracken*, 175 Wash. 2d 549 (2012). In 2006 the Washington legislature enacted a stand-alone state estate tax and authorized the Washington Department of Revenue to create, for the first time, a separate state QTIP election. *Id.* at 559-560. The first-to-die husbands died before the enactment of this statute and their executors made federal QTIP elections; the second-to-die wives died after. The Department attempted to impose a tax on the estates of second-to-die wives attributable to the QTIP trusts established by their husbands. *Id.* at 556. The court held that the state could not impose a tax on the federal QTIP trusts because no transfer occurred at the surviving spouses' death. *Id.* at 575-576. That is, the estate tax requires a transfer of property to impose a tax; the transfer of assets of a QTIP trust occurred when the first spouses die; and because no taxable transfer occurred at the surviving spouses' deaths, the state could not impose an estate tax. *Id.* Although Massachusetts had a QTIP election at the time of Robert's death, he was a New York resident and the transfer occurred in New York. Massachusetts cannot constitutionally tax a transfer that occurred in a different state. The difference between *Bracken* and this case is that Washington attempted to impose a retroactive estate tax on in-state transfers. Here, not only is Massachusetts attempting to impose a retroactive tax, but it is also attempting to tax an out-of-state event. The legitimacy of the present tax is thus even more tenuous. See *McCulloch v. Maryland*, 4 Wheat. (17 U.S.) 316, 429 (1819) ("All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation.").

The right to collect a tax on the Trust occurred on the death of Robert, because that is when the taxable transfer of the property occurred. Even under *Page*, where the Commonwealth was permitted to impose a tax, the court held that "it is the domicile of the decedent at the time the right to impose the tax arises that determines the propriety of the tax." *Page*, 389 Mass. at 395. In *Page*, the taxable event was the decedent's death, which occurred in Massachusetts. But here, the taxable event was the transfer upon Robert's death, which occurred in New York. Therefore, the estate tax imposed by Massachusetts on the assets of the Trust violates the due process clause of the Fourteenth Amendment of the United States Constitution because it exceeds the permissible reach of Massachusetts's sovereignty. See *McCulloch v. Maryland*, 4 Wheat. (17 U.S.) 316, 429 (1819). Consequently, the estate is entitled to an abatement in the full amount of \$1,953,032.

B. Under the terms of the Massachusetts estate tax statute, the value of the federally elected QTIP property is not properly includible in Adelaide's Massachusetts gross estate.

The Massachusetts estate tax, as it existed through 1996, was the result of patchwork legislation in response to federal code changes, thus resulting in a highly convoluted maze of state statutes and regulations. Massachusetts lagged years behind innovative updates to the federal code, such as the unlimited marital deduction and the QTIP. The federal QTIP was introduced in 1981, but the Massachusetts QTIP did not become effective until January 1, 1986. See St. 1985, c. 711, §§ 12, 19. The federal code also moved to an unlimited marital deduction in 1981, but Massachusetts did not do so until July 1, 1994. See St. 1992, c. 133, §§ 422, 597. Couple these issues with the phase out of the Massachusetts estate tax beginning in the early 1990s (in favor of the sponge tax, G.L. c. 65C, § 2A, which went into effect on January 1, 1997), and the result was a

complicated morass for anyone trying to navigate between the federal and Massachusetts estate tax.

1. The executor may make a Massachusetts QTIP election that is separate from and independent of the federal QTIP election and the Massachusetts QTIP election.

The executrix of Robert Chuckrow's estate did not make a Massachusetts QTIP election; no such election was required. An executor may make separate and independent QTIP elections for purposes of federal and Massachusetts taxation. See G.L. c. 65C, § 3A(f), as inserted by St. 1985, c. 711, § 12 ("Such election, once made, shall be irrevocable and shall be separate from and independent of any election made for federal estate tax purposes.").¹⁰ This was true when Massachusetts had a stand-alone estate tax, and it remained true even after Massachusetts returned to a sponge tax beginning in 2003. Not only has the legislature never repealed G.L. c. 65C, § 3A, but the Department of Revenue's Directive 03-2 (which was issued after Massachusetts reverted to a sponge tax) states that "[t]he executor . . . is not required to have made the same QTIP election for federal estate tax purposes in order to make the election for Massachusetts purposes." Accordingly, an executor could and can make a federal QTIP election on certain property but not make a Massachusetts QTIP election on the same property, or vice versa.

2. Because the state and federal QTIP elections can be different, the analysis does not end simply by defining the Massachusetts gross estate as the federal gross estate.

At the settlement conference, the decision's reasoning began and ended with the observation that Massachusetts estate tax is calculated by reference to the as the federal gross estate—of which the assets of the Trust u/w/o Robert Chuckrow would be included. However, because it is possible for separate federal and state QTIP elections, bare reference to the federal gross estate runs the risk of double taxing property for which a

¹⁰ Section 3A(f) has never been amended.

federal QTIP election was made, but for which no Massachusetts QTIP election was made. This issue was confronted when the legislature amended the stand-alone estate tax to allow for state QTIP elections, yet kept the 50% state marital deduction. The solution then was to alter the definition of Massachusetts gross estate so as to exclude property for which a federal QTIP election was made, but no state QTIP election was made. See G.L. c. 65C, § 1(f). Indeed, this is the only logical construction of § 1(f).

Under the familiar tenets of statutory interpretation, a statute is construed "in accord with 'the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.' . . ."

Champigny v. Commonwealth, 422 Mass. 249, 251 (1996), quoting *Telesetsky v. Wight*, 395 Mass. 868, 872-873 (1985). Further, "a statute must be construed so that 'effect is given to all its provisions, so that no part will be inoperative or superfluous.'" *Wheatley v. Mass. Insurers Insolvency Fund*, 456 Mass. 594, 601 (2010), quoting *Bankers Life & Cos. Co. v. Comm'r of Ins.*, 427 Mass. 136, 140 (1998). Because this is a tax statute, it is also necessary to note that the statute should avoid double taxation where possible. *O'Brien v. State Tax Comm'n*, 339 Mass. 56, 62 (1959).

3. The last sentence of G.L. c. 65C, § 1(f), explicitly excludes, from the Massachusetts gross estate, the value of property for which a federal QTIP election was made, but no Massachusetts QTIP election was made.

Any analysis of G.L. c. 65C, § 1, must begin with the language of the statute itself:

"When used in this chapter the following words or terms shall have, unless the context clearly indicated otherwise, the following meanings:—

(f) "Massachusetts gross estate", the federal gross estate, whether or not a federal estate tax return is required to be filed, plus the value of any property (i) in which the decedent had at death a qualifying income interest for life described in subsection (c) of section three A . . . and (ii) for which a deduction was allowed for Massachusetts estate tax purposes with respect to the transfer of such property of the decedent; and less the value of real and tangible personal property having an actual situs outside the commonwealth. The Massachusetts gross estate shall not include the value of any property in which the decedent [the surviving spouse] had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent's estate to recover federal or Massachusetts estate taxes from such property."

G.L. c. 65C, § 1 (f), as amended by St. 1985, c. 711, § 6.¹¹

The starting point is to determine the decedent's federal gross estate. The statute then adds "the value of any property (i) in which the decedent [the surviving spouse] had at death a qualifying income interest for life described in [G.L. c. 65C, § 3A(c)] . . . and (ii) for which a deduction was allowed for Massachusetts estate tax purposes with respect to the transfer of such property to the decedent." G.L. c. 65C, § 1(f). The purpose of this portion of the statute is to capture the value of any property for which a Massachusetts QTIP election was made. See 830 Code Mass. Regs. § 65C.2.1(1)(b), (5). Without this provision, property for which a Massachusetts QTIP election was made would not be able to be taxed on the surviving spouse's death, because this property would not be included by mere reference to the federal gross estate.¹²

Finally, we arrive at the final sentence of the statute:

"The Massachusetts gross estate shall not include the value of any property in which the decedent [the surviving spouse] had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent's estate to recover federal or Massachusetts estate taxes from such property."

¹¹ Prior to the 1985 amendment, the definition simply read: "the federal gross estate, whether or not a federal estate tax return is required to be filed, less the value of real and tangible personal property having an actual situs outside the commonwealth." St. 1975, c. 684, § 74.

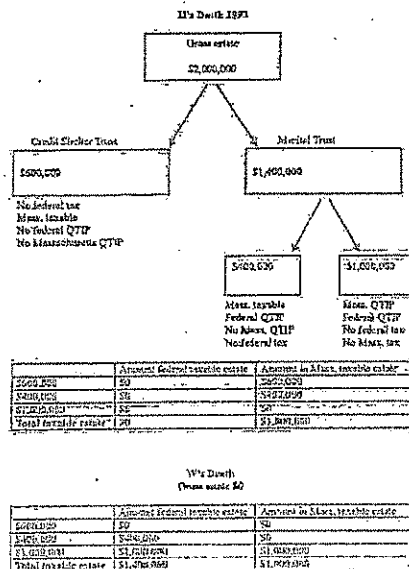
¹² The next step is to subtract out-of-state real and tangible personal property, but that is not relevant to the present circumstances.

To fully understand this sentence of the statute, it is necessary to examine the context in which it was added. See *Champigny v. Commonwealth*, 422 Mass. 249, 251 (1996). When this sentence was added in 1985, federal law had already moved to an unlimited marital deduction, in addition to permitting QTIP elections. Massachusetts followed the federal lead regarding QTIP elections under this 1985 amendment, but chose to maintain its 50% marital deduction. This created a serious disconnect between federal QTIP elections and Massachusetts QTIP elections. Hence, the executor is permitted to make a Massachusetts QTIP election that is "separate from and independent of" any federal QTIP election. See G.L. c. 65C, § 3A(f). And due to the 50% Massachusetts marital deduction, a proper estate-tax-minimizing estate plan would always make a federal QTIP election in excess of the Massachusetts QTIP election. But this, in turn, would have created a serious double taxation problem—that is, the excess amount elected under the federal QTIP would already have been taxed by Massachusetts on the state estate taxes. So the legislature needed to create a way to eliminate from the Massachusetts gross estate the excess value of federal QTIP property.

Thus the last sentence of the statute was added: "The Massachusetts gross estate shall not include the value of any property in which the decedent [the surviving spouse] had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph." G.L. c. 65C, § 1(f). Understood in the proper context, it is clear that the intent of this sentence is to eliminate the excess federal QTIP election from the Massachusetts gross estate.

The following hypothetical demonstrates why: H has \$2 million, and W has \$0. Assume that no federal exemption exists. H dies in 1993, and the entire \$2 million funds a trust that could qualify for a QTIP election. H's executor makes a federal QTIP election only, thus deferring collection of the federal estate tax until W dies. See I.R.C. §§ 2044, 2056(b)(7). No Massachusetts QTIP election was made, and so state estate tax would be assessed on the \$2 million at H's death. W never receives the property; she merely has a

qualifying income interest for life in the trust. At W's death, her federal gross estate would be \$2 million, by virtue of I.R.C. § 2044. And if the first words of G.L. c. 65C, § 1(f), or the formula for the sponge tax under § 2A, are to be taken literally without regard to the last sentence—i.e., the Massachusetts gross estate is the federal gross estate—then W's Massachusetts gross estate would be \$2 million, even though tax was already paid on this \$2 million and even though W never owned or had control of the \$2 million. The final sentence of G.L. c. 65C, § 1(f), remedied this problem: it would exclude from W's Massachusetts gross estate her qualifying income the \$2 million from W's Massachusetts gross estate. (The chart is also attached as an exhibit).



The same situation could apply in the present day, even with Massachusetts now using a sponge tax. See G.L. c. 65C, § 2A. The executor could choose to make only a

federal QTIP election, and simply pay the Massachusetts estate tax on the decedent spouse's death. Accordingly, simply referencing the federal estate in the current estate tax regime would create the same problems, and would lead to double taxation of the value of assets for which estate tax was already paid.

4. Under the rules of statutory interpretation, and the rule of construction that taxing statutes should avoid double taxation, this analysis of the last sentence of G.L. c. 65C, § 1, is correct.

For two reasons, this is the only logical construction of the last sentence of this statute. And it shows the significant flaw of simply referencing the federal gross estate in calculating Massachusetts estate tax.

First, the rules of statutory interpretation require that the last sentence take precedence over the previously enacted first words of the statute. Effect must be given to all provisions in a statute. See *Wheatley v. Mass. Insurers Insolvency Fund*, 456 Mass. 594, 601 (2010). So the analysis cannot stop at the words "the federal gross estate"; otherwise, the last sentence of G.L. c. 65C, § 1, would be extraneous, superfluous, and entirely ineffective. The portion of the statute referencing the "federal gross estate" has been in the statute since it was originally enacted in 1975, see St. 1975, c. 684, § 74, while the final sentence was added in 1985. Not only did the amendment come later in time, it is undoubtedly the more specific provision and, as such, controls over the general. See *Doe v. Attorney General (No. 1)*, 425 Mass. 210, 215–216 (1997) ("[W]hen two statutes (or provisions within those statutes) conflict, . . . the more specific provision, particularly where it has been enacted subsequent to a more general rule, applies over the general rule.").¹³

¹³ The last sentence does not exclude property that is "otherwise includible in the Massachusetts gross estate under the first sentence." This, technically, points back to the words "federal gross estate," which by virtue of I.R.C. § 2044 would include the federal QTIP property. But this would also create an endless circle, because it would then be excluded once again by the last sentence. Such a construction would also make the last sentence inoperative. Rather, the better interpretation of "the first sentence" would be to ensure that the last sentence did not exclude Massachusetts QTIP property.

Second, this construction avoids the problem of double taxation. "Massachusetts taxing statutes will be interpreted so as not to cause double taxation unless no other reasonable construction is practicable." *O'Brien v. State Tax Comm'n*, 339 Mass. 56, 62 (1959), quoting *DeBlois v. Comm'r of Corps. & Taxation*, 276 Mass. 437, 439-440 (1931). Returning to the example above, W's federal gross estate would include the \$2 million. See I.R.C. § 2044. Under the Department's reading, this \$2 million would be subject to Massachusetts estate tax on W's death, even though the same \$2 million was already taxed at H's death. Moreover, not only would Massachusetts be attempting to tax the same assets twice, it would also be attempting to tax the same transfer twice—the transfer from H into the trust.¹⁴ Cf. *Rohrbough, Inc. v. Comm'r of Revenue*, 385 Mass. 830, 831 (1982) (double taxation of proceeds from the same transaction should be avoided).

At bottom, the definition of Massachusetts gross estate is inarticulate. The last sentence was added to avoid including federal QTIP property for which no Massachusetts QTIP election was made in the definition of Massachusetts gross estate. At the very least, this statute is ambiguous. "Taxing statutes are to be construed strictly against the taxing authority, and all doubts resolved in favor of the taxpayer." *Comm'r of Revenue v. AMIFoodbroke, Inc.*, 418 Mass. 92, 94 (1994), quoting *Dennis v. Comm'r of Corps. & Taxation*, 340 Mass. 629, 631 (1960).

5. Adelaide Chuckrow had a qualifying income interest for life in Trust property for which a federal QTIP election was made, but no Massachusetts QTIP election was made; her situation falls directly in line with the last sentence of G.L. c. 65C, § 1(f), and so the value of Robert Chuckrow's federal QTIP property must be excluded from Adelaide's estate.

Under G.L. c. 65C, § 1(f), the value of the property in the Trust w/o Robert Chuckrow would have been excluded from Adelaide's Massachusetts gross estate. The

¹⁴ Even more offensive, W never had any dominion or control over the property, but received only a qualifying income interest from the trust.

same result should apply under the current sponge tax. Robert's executor did not make a Massachusetts QTIP election, but she did make a federal QTIP election. Adelaide had a qualifying income interest for life in the Trust u/w/o Robert Chuckrow, and this interest would not otherwise have been includible under the first sentence—*i.e.*, it was not Massachusetts QTIP property. G.L. c. 65C, § 1(f). And reference cannot be made back to "federal gross estate," because this would have rendered the entire final sentence inoperative. Indeed, this was the purpose of the last sentence. Therefore, Adelaide's Massachusetts gross estate would "not [have] include[d] the value of any property in which [she] had a qualifying income interest for life." So it would not have included the value of the assets in the Trust u/w/o Robert Chuckrow. *Id.* The result should be no different under the current sponge tax. The Massachusetts legislature already confronted the issue of how to tax an estate where a federal QTIP election was made, but no state QTIP election was made. The fact that Massachusetts now uses a sponge tax does not eliminate the potential for double taxation. And so the analysis should not change.

Therefore, Adelaide's estate is entitled to a full abatement of \$1,953,032.

C. Even if the Chuckrows had been Massachusetts residents at the time of Robert's death, Robert's executor could only have made a Massachusetts QTIP election on 48.11% of his estate, and so, at the very least, abatement in that amount is due Adelaide's estate.

The unfairness and injustice of the Massachusetts estate tax regime in the 1980s and mid-1990s is demonstrated by looking at what would have happened if Robert Chuckrow was a Massachusetts resident at his death. Robert Chuckrow's estate plan demonstrated that he intended to minimize estate taxes where possible. Yet he would have been limited to only a 50% marital deduction and no state estate tax exemption.

- Robert Chuckrow's gross estate was \$1,996,043.24.
- Taking half of that number, the Massachusetts marital deduction would have been limited to \$998,021.62.

- Of that amount, \$591,924.12 passed directly to Adelaide.
- And so the maximum Massachusetts QTIP election that Robert's executor could have made would have been \$406,097.50.¹⁵

Thus, only 48.11% of the federal QTIP (which was \$844,101.27) could have qualified for a Massachusetts QTIP election. So the Department of Revenue would have assessed a tax on \$438,003.77 (51.89%) of the federal QTIP that would not qualify for the Massachusetts marital deduction. But now the Department wants to tax the entire \$844,101.27, even though 51.89% of which it already would have been taxed on Robert's death. Such a result would be unjust, violating principles against double taxation. See *O'Brien v. State Tax Comm'n*, 339 Mass. 56, 62 (1959).

Accordingly, at the very least, Adelaide's estate should only be required to pay tax on 48.11% of the total assessment of \$1,953,032 (which comes to \$939,603.70). And so she is to an abatement of \$1,013,428.30.

V. Conclusion

The estate tax assessed on Adelaide's estate for the present value of Robert's federally elected QTIP trust has no basis in the law. Both constitutionally and statutorily, this tax cannot be collected.

This assessment is unconstitutional because Massachusetts is attempting to assess a tax on a transfer that occurred in New York by a New York resident into a New York trust. Massachusetts is attempting to tax the trust's income beneficiary, who never received the principal, never controlled the principal, and never had a say how the principal would ultimately be disposed. All those decisions were made by Robert Chuckrow in his will, and the taxable transfer occurred at his death. Adelaide's estate, of course, must pay this amount in federal estate tax because of the delayed collectibility of the marital deduction. But the internal revenue code is clear that it is not taxing a new

¹⁵ Compare that to his executor's federal QTIP election: \$844,101.27

transfer, but is merely creating a fictional transfer to make the mechanics work. Massachusetts insists it can tax this fictional transfer. But in reality, this is merely a change in the class of beneficiaries to the Trust. Massachusetts cannot constitutionally reach across its borders—beyond its sovereignty—to tax this New York transfer.

This assessment also mangles the definition of Massachusetts gross estate. The final sentence excludes from the Massachusetts gross estate the value of any property in which the second-to-die spouse had a qualifying income interest for life, but which is not otherwise includible in the Massachusetts gross estate by virtue of the first sentence. When examined in context of Massachusetts's retaining its 50% marital deduction, it is clear that the legislature inserted this provision to prevent the inclusion of federal QTIP election that was in excess of the Massachusetts QTIP election. So the analysis cannot end simply by saying that the Massachusetts gross estate is the federal gross estate. If it could, the final sentence of G.L. c. 65C, § 1(f), would be rendered ineffective, violating a fundamental tenet of statutory construction. By its own laws, then, Massachusetts cannot tax Adelaide's estate for the value of the federal QTIP property.

In conclusion, the Commonwealth is attempting to tax the transfer of property into a New York trust, effectuated by a New York resident's death more than twenty years ago. It attempts to tax the income beneficiary who had no control over the property or its ultimate disposition. And it attempts to do so in contravention of its own definition for calculating what is taxable.

For these reasons, the application for abatement should be allowed, and the estate of Adelaide Chuckrow should be refunded the entire \$1,953,032.

APPENDIX 34

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The Commonwealth of Massachusetts
Department of Revenue
Office of Appeals
PO Box 9551
Boston, MA 02114

MARK E. NUNNELLY
COMMISSIONER
DEBRA S. ROKOSZ
DIRECTOR

May 4, 2015

Estate of Adelaide Chuckrow
c/o Christine Shaffer Executrix
10803 Montrose Ave.
P.O. Box 96
Garret Park, MD 20896

RE: Hearing Request Application for Abatement of
Estate Tax for the Estate of Adelaide Chuckrow

Dear Ms. Shaffer,

On November 11, 2014 Christine Shaffer, Executrix of the Estate of Adelaide Chuckrow (the "Taxpayer") filed an application for abatement and requested a hearing pursuant to G.L. c.62C, § 37 relating to the above-referenced matter. The Office of Appeals is denying the Taxpayer's request for hearing.

In accordance with to G.L. c. 62C, § 37, a taxpayer requesting a post-assessment abatement hearing who previously received a pre-assessment conference will be granted a hearing only if the taxpayer first establishes that a further hearing is necessary, either due to the availability of new factual information or new legal precedent not

available to the applicant at the time of the pre-assessment conference. The Commissioner conducted a pre-assessment conference in connection with these disputes on February 12, 2014. Your abatement application raises no new relevant factual information or new legal precedent that was not available at the time of the pre-assessment conference. Thus, there is no basis under the applicable statutory provisions for conducting a further hearing at the Office of Appeals on your abatement application.

The Office of Appeals is closing its case and returning this matter to the Customer Service Bureau for its determination on your abatement requests.

Very truly yours,

COMMISSIONER OF REVENUE

By /s/ Leonard R. Spector

Leonard R. Spector, Deputy Director

Barbara K. Savage, Appeals Officer

cc: Jean Fairweather, Deputy Chief, Customer Service Bureau

#455912

Deliveries: 100 Cambridge St., Boston, MA 02114 •

Phone: (617)626-3300 • Fax (617)626-3349

www.mass.gov/dor/appeals

APPENDIX 35

11

Massachusetts
Department
Of
Revenue

PO BOX 7010 BOSTON, MA 02204



AMY A. PITTER, COMMISSIONER
MICHAEL J. LIVIDOTTI, DEPUTY COMMISSIONER

Leo J. Cushing, Esq.
Cushing & Dolan
375 Totten Pond Rd.
Sulla 200
Waltham, MA 02461

Notice: Abatement Denial
T/P ID: 7341

Bureau: CSS Estate Unit

Phone: (617) 887-8367
Tax Type: Estate

Date: 05/19/15

NOTICE OF ABATEMENT DETERMINATION

Dear Taxpayer,

This notice is to inform you that the Massachusetts Department of Revenue (DOR) has completed review of your Application for Abatement.

Your application has been denied. The reason that your claim has been denied is stated on the following page, which is a part of this notice.

This determination is final. You may appeal this decision to the Appellate Tax Board (the "Board"), which is not part of the Department of Revenue. In accordance with the provisions of Massachusetts General Laws, Chapter 82C, § 39. If you choose to file an appeal with the Board, your petition must be postmarked or received in the Board's offices at 100 Cambridge Street, Suite 200, Boston, MA 02114 within sixty (60) days of the date of this notice together with a minimum filing fee made payable to the Board in the amount of \$65.00 for appeals up to \$55,000 of tax abatement requested and an additional \$10 for every \$100.00 of additional abatement requested up to a maximum of \$5,000.00. Please note that certain taxpayers may qualify to file an appeal with a reduced filing fee under the small claims procedure. See Massachusetts General Laws, Chapter 58A, section 7B and Section 1.10: FEES of the Code of Massachusetts Regulations 831 CMR 1.00: Appellate Tax Board Rules of Practice and Procedure. Visit the Board's website at www.mass.gov/atb for additional information.

A copy of any petition filed with the Board must be served upon the Commissioner of Revenue, Litigation Bureau, P.O. Box 9555, Boston, MA 02114-5555 pursuant to Rule 1.04 of the Rules of Practice and Procedure of the Board.

In certain estate and inheritance tax cases arising under Chapter 650 or former Chapter 65 of the Massachusetts General Laws, you may appeal to the Probate Court having jurisdiction of the estate of the decedent in accordance with applicable provisions of those statutes and/or § 30 of Chapter 82C. In the case of an appeal to the Probate Court, the time limits for filing a petition and the amount of the required filing fee may be governed by statutory provisions and court rules other than those in § 39 of Chapter 82C. Service of Probate Court petitions upon the Commissioner, at the above address, and upon the Massachusetts Attorney General at its offices should be made in accordance with the rules applicable to Probate Court practice, including the Massachusetts Rules of Civil Procedure.

If you decide to appeal this determination to the Board, you generally are not required to pay and will not be subjected to involuntary collection activities on tax, interest or penalties that are in dispute while any denial of your abatement claim is on appeal at the Appellate Tax Board. However, interest and in some cases penalties will accrue on any unpaid amount for which you are ultimately held responsible. Therefore, you may wish to pay the amount you are disputing to stop the accrual of interest and penalties. Please note that the statute of limitations on collections will be suspended during the appeal process.

Please note, a 33(c) late pay penalties will not be charged during the appeal process. If your bill was paid in full on or after July 1, 1999, you may receive a refund of a 33(c) (late pay) penalties paid.

Very truly yours,

Michael J. Lividotti
Deputy Commissioner

ATTACHMENT TO NOTICE OF ABATEMENT DETERMINATION

Page 2

Estate of Adelaide Chuckrow
7340
Abatement Denial

REASON:

THE MASS. ESTATE TAX IS THE CREDIT FOR STATE DEATH TAX CALCULATED BY REFERENCE TO THE FEDERAL TAXABLE ESTATE. THEREFORE, THE QTIP TRUST ASSETS MUST BE INCLUDED IN THE FEDERAL GROSS ESTATE PER IRC S2044 AND THE VALUE OF THE QTIP ASSETS MUST BE INCLUDED IN THE CALCULATION OF THE MASS. ESTATE TAX CREDIT AMOUNT UNDER IRC S2011 IN EFFECT ON DEC.31, 2000 AND M.G.L. C.85C, S2A.

PER THE LETTER DATED MAY 4, 2016 FROM THE OFFICE OF APPEALS, THE HEARING IS DENIED SINCE NO NEW FACTUAL INFORMATION OR LEGAL PRECEDENT WAS PRESENTED SINCE THE PREV ASSESSMENT CONFERENCE HELD BY THAT OFFICE.

PERIODS INCLUDED IN THIS DETERMINATION:

DOD=08/14/2011

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APPENDIX 36

12

FORM M.E.C.L.

Massachusetts Department of Revenue
Bureau of Desk Audit
Estate Tax Unit
PO Box 7023
Boston, MA 02204
Phone# (617) 887-6930

I- PROBATE COURT COPY Date: 4/25/2014

LUKE C BEAN, ESQ
375 TOTTEN POND RD STE 200
WALTHAM, MA 02451

ESTATE TAX CLOSING LETTER
THIS IS NOT A BILL

Estate of ADELAIDE P CHUCKROW
Probate Court BERKSHIRE

Social Security No. XXX-XX-7341
Probate Number BE1 1P0655E
Date of Death August 14, 2011

The following is a summary from the Department's records of the Massachusetts Estate tax liability for the taxpayer named above, including the net balance (if any). This letter is the certificate or "closing letter" that may be required by the Probate Court under G.L. c. 65C, s6(b). If there is a balance due, you will receive a separate Notice of Assessment that contains payment instructions. The amount shown due on the Notice of Assessment may include additional interest or penalty. You should retain a copy of this letter with the records of the Estate. For dates of death prior to January 1, 1997, your

attorney may need to file this letter with the probate court in order to close the probate proceedings, if any.

Very truly yours,
Commissioner of Revenue
By /s/
Bureau of Desk Audit
Estate Tax Unit

Massachusetts Estate Tax (including returns, audit assessments etc.).....	\$1910138.88
Interest	142606.35
Penalty.....	0.00
Total Massachusetts Estate Tax Liabilities.....	2052745.23
Less Total Payments.....	2052745.23
Net Balance	\$ 0.00

Note: Massachusetts G.L. c. 65C, S6(b) was amended in 1998 as follows: "For dates of death on or after January 1, 1997, said certificates shall not be required". (Chapter 202, S 32, relating to foreign executors was similarly amended.)

APPENDIX 37

13

DEPARTMENT OF HEALTH		CERTIFICATE OF DEATH	
5958		ROBERT CHUCKROW	
AGE		DATE OF BIRTH	
205 Millwood Rd., Chappaqua, N.Y.		July 13 1992 1:30	
205 Millwood Rd., Chappaqua, N.Y.		New Castle, Westchester	
DATE OF DEATH		PLACE OF DEATH	
Jan 20 1938		Springfield, Mass.	
SEX		RACE	
Male		White	
SOCIAL SECURITY NUMBER		MARRIAGE	
[REDACTED]		Married	
OCCUPATION		BUILDING CONSTRUCTION	
Owner & President		Robert Chuckrow Construction Co.	
New York		New Castle	
205 Millwood Rd., Chappaqua, New York		10511 New Castle	
Charles Mortimer Chuckrow		Mollie Goldenburg	
Adelaide P. Chuckrow		225 Millwood Rd., Chappaqua, New York 10511	
Burial		Fair Ridge Cemetery Chappaqua, New York	
Clark Associates Funeral Home, Inc. 4 Woods Bridge Rd., Katonah, N.Y. 10026		Bruce E. Reisdorf	
Signature of Registrar		Signature of Physician	
[Signature]		[Signature]	
DATE		DATE	
July 13 1992		July 13 1992	
DEATH		CAUSE OF DEATH	
Metastatic carcinoma involving liver & lungs		14 months	

STATE OF NEW YORK
COUNTY OF WESTCHESTER

I, KATHRYN A. MEYER, REGISTRAR OF VITAL STATISTICS, of the Town of New Castle, do hereby certify that this is a true transcript of the original filed in the Town Clerk's office, 200 South Greeley Avenue, Chappaqua, New York 10514.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Town Seal this 12 day of July 1992.

Kathryn A. Meyer
Registrar of Vital Statistics

APPENDIX 38

14

I, ROBERT CHUCKROW, residing in Chappaqua, County of Westchester and State of New York, being of sound and disposing mind and memory, do hereby make, publish and declare the following document as, for and to be my Last will and Testament, hereby revoking all former Wills and Codicils heretofore made by me.

FIRST: I direct that all my just debts and funeral expenses be paid as soon after my death as may be convenient and practicable.

SECOND: A. I give and bequeath to my wife, ADELAIDE P. CHUCKROW, if she survives me, all of my jewelry, clothing, automobiles, if any, books, pictures and other household furniture and furnishings and personal effects; and if she predeceases me, then in equal shares to my surviving children, in specie, as far as is practicable, as they shall agree; or, if both my said wife and one of my children shall predecease me, then the whole thereof to my surviving child.

B. I give devise and bequeath to my said wife, ADELAIDE, if she survives me, any interest I may have at my death in the premises known as 68 Maple Avenue, Mount Kisco, New York, together with all buildings and improvements thereon, rights and easements, appurtenant thereto and all insurance policies relating thereto.

C. I give, devise and bequeath to my said wife, ADELAIDE, if she survives me, any interest in real property used by me as a residence at the time of my death and in any cooperative or condominium apartment that I may own and occupy at the time of my death, wherever located, together with all buildings and improvements thereon, rights

and easements appurtenant thereto and all insurance policies relating thereto.

THIRD: I give, devise and bequeath to my Trustees, hereinafter named, an amount equal to the largest amount which can qualify for the exemption from the generation-skipping tax by reason of the allocation available to my estate pursuant to I.R.C. §2631; provided, however, that my Executors shall reduce the amount that shall pass pursuant to this Paragraph THIRD to reflect (a) any exercise of this allocation during my lifetime and (b) any allocation by my Executors to other property, whether disposed of by me during my lifetime or under this Will.

A. My Trustees shall hold, manage, invest and reinvest the same and the proceeds thereof, and collect and receive the income thereof and, after paying all charges incident to the administration of said trust, shall, if my said wife, ADELAIDE, survives me, pay to her the income, or apply the same for her benefit, in quarterly or more frequent installments.

B. My Trustees may pay to, or apply for the benefit of, my said wife, so much of the principal, up to the whole thereof, as my Trustees shall, at any time and from time to time, in their sole and absolute discretion, determine.

C. Upon the death of my said wife, or upon my death if she predeceases me, my Trustees shall divide the then principal, or such bequest, as the case may be, into two (2) equal parts in respect of each of my children, CAROL and AMY, and shall hold each such part, in separate trust, in respect of the child for whom such separate trust is created (hereinafter in this Paragraph THIRD referred to as

"the Beneficiary"), upon the following uses and purposes:

(1) My Trustees shall pay to, or apply for the benefit of, any one or more of the Beneficiary and her issue so much of the income as my Trustees, in their sole and absolute discretion, shall determine and any income not so paid or applied shall be accumulated and added to the principal, annually.

(2) My Trustees may pay to, or apply for the benefit of, any one of more of the Beneficiary and her issue, so much of the principal, up to the whole thereof, as my Trustees shall, at any time and from time to time, in their sole and absolute discretion, determine.

(3) Upon the death of the Beneficiary, or upon the death of the survivor of my said wife, ADELAIDE, and me if the Beneficiary is then deceased, my Trustees shall pay over and distribute the then principal or such part, as the case may be, to or among my grandchildren, in equal shares, per capita; but if any of them are not then living but leave issue then surviving, the issue of such deceased grandchild shall take the share, per stirpes, which such grandchild would have taken had he or she survived; and if there are no such grandchildren or issue of grandchildren then surviving, to my surviving child. Any distributions made under this Paragraph THIRD (C) (3) shall be subject to the provisions of Paragraph SIXTH below.

(4) Anything herein to the contrary notwithstanding, if the Beneficiary has attained the age of fifty (50) years and there is no grandchild of mine or issue thereof then living, then

this trust shall terminate and the then principal shall be paid over to the Beneficiary.

FOURTH: A. My "residuary estate" is hereby defined as meaning all the rest, residue and remainder of my estate, real or personal and mixed, wheresoever and whatsoever the same may be (including, but not being limited to, lapsed legacies or devises or any testamentary provisions herein contained which cannot be given effect), of which I may die seized or possessed, or to which I may be in any way entitled at the time of my death.

B. I direct that all estate, transfer, succession, legacy, inheritance or other death taxes or duties, and any interest thereon, which may be payable upon or with respect to any property included in my gross estate, under the provisions of any tax law of the United States or any state thereof, or any foreign country or subdivision thereof (including any such taxes or duties on property taxable in accordance with sections 2044 and 2207A, but not including transfer taxes imposed by Chapter 13 of the I.R.C. or a corresponding provision of State law), regardless of whether such property passes under this Will or otherwise, shall be paid by my Executors solely out of my residuary estate.

FIFTH: I give, devise and bequeath my residuary estate to my said wife, ADELAIDE, if she survives me. If my said wife predeceases me, then I give, devise and bequeath my residuary estate to my issue, in equal shares, per stirpes, subject, however, to the provisions of Paragraph SIXTH next below.

SIXTH: Notwithstanding anything to the contrary herein contained, if and so often as any and all property becomes payable or distributable under this Will to a person who is then under the age of

thirty (30) years, such property shall not vest in such person, but shall be set apart and held by my Trustees, hereinafter named, IN TRUST, for the following uses and purposes:

1. My Trustees shall pay to, or apply for the benefit of, the person for whom such property shall be set apart, so much of the income therefrom as my Trustees in their sole and absolute discretion, shall determine. Any income not so paid or applied shall be added to principal, annually.

2. My Trustees shall pay to, or apply for the benefit of, such person so much of the principal, up to the whole thereof, as my Trustees in their sole and absolute discretion shall determine.

3. Upon the death of such person prior to attaining the age of thirty (30) years, my Trustees shall pay over and distribute the then trust principal, together with all accumulated income, to such person's issue, per stirpes, or, if there be none, to the issue, per stirpes, of that one of my children from whom such person is descended or, if there be none, to my issue, per stirpes.

4. Upon such person attaining the age of thirty (30) years, my Trustees shall pay over and distribute to him or her the then principal of the trust held for his or her benefit, together with all accumulated income, and the trust shall thereafter cease and terminate,

5. Any payments or distributions pursuant to this Paragraph SIXTH may be

made by my Trustees directly to such person, or to his custodian, selected by my Trustees, under the New York Uniform Gifts to Minors Act (or under the corresponding act of any other jurisdiction) even if the custodian so selected be one of my Executors and/or Trustees, or to his guardian, or to his other legal representative, if any, or to the person with whom he resides, or otherwise, as my Trustees in their sole discretion may determine, and the receipt in writing of the person or persons to whom any such payment or distribution is so made shall be a full and sufficient discharge therefor.

6. Unless sooner terminated as heretofore provided, all trusts established under this Paragraph SIXTH shall terminate twenty-one (21) years after the death of the last surviving descendant of mine living on the date of my death, and the principal of each share shall thereupon be distributed to the current income beneficiary.

SEVENTH: The discretions granted my Trustees herein with respect to the distributions of income and/or principal are intended to be broad and absolute. Any and all discretionary determinations at any time made by my Trustees shall not be open to question by, and shall be binding and conclusive upon, each and every person interested in any trust hereunder, including (without limitation) any one or more individuals who may be partially or wholly excluded from all such distributions. I empower my Trustees, in their discretion, to make such determinations without regard to other sources of income or support available to any of such individuals or to the needs of any of them. Any

discretionary distributions by my Trustees of income and/or principal may be applied directly for the benefit of the beneficiary thereof so that a discretionary distribution may be made, for example, directly to an educational institution on behalf of the beneficiary.

EIGHTH: A. I nominate, constitute and appoint my daughters, CAROL and AMY, to be the Executrices of, and Trustees under, this, my Last Will and Testament. I authorize my said daughters, or the survivor of them, at any time, and from time to time, to appoint an individual as Trustee hereunder, to serve jointly with either or both of them, or to be substituted for either or both of them, as Trustee. In addition, if either of my said daughters shall predecease me or, having survived me, shall thereafter die, resign, become incapacitated or incompetent or, for any reason of like or unlike nature, shall fail to qualify or cease to act as such Executrix and/or Trustee, then I nominate, constitute and appoint, such daughter's husband (if he is then, or was at her death, married to such daughter and living with her) as substituted Executor and/or substituted Trustee in her place and stead.

B. If at any time the number of my Executors and/or Trustees and their named successors acting hereunder shall be reduced to one, I authorize my surviving Executor and/or Trustee to designate and appoint an individual as successor Executor and/or Trustee to serve jointly with said surviving Executor and/or Trustee upon qualifying in the manner hereinafter provided.

(2) The appointment of any such successor Executor and/or Trustee hereinabove

provided for shall be in writing signed by the Executor and/or Trustee making it and acknowledged as deeds of real estate are required by laws of the State of New York to be acknowledged and shall be filed in the court granting probate to this, my Last Will and Testament. The Executor and/or Trustee so appointed or designated shall accept such appointment or designation by joining in the execution and acknowledgment of the instrument of appointment. Upon his or her duly qualifying as required by law, such successor Executor and/or Trustee shall become an Executor and/or Trustee hereunder, together with the surviving Executor and/or Trustee who designated him, with the same powers, discretions and duties as if originally appointed by me, including (without limitation) the power to designate and select a successor Executor and/or Trustee in the manner herein set forth as often as the number of my Executors and/or Trustees from time to time qualified and acting shall be reduced to one.

C. The exercise of any power, right, duty, function, privilege or discretion shall be by majority vote of my at-any-time acting and qualified Trustees (if more than two be qualified and acting), and the decision of such majority shall be, for all purposes, binding upon all persons interested in my estate and no dissenting Trustee shall be liable by reason of any action thus resolved upon.

D. To the extent to which such direction may be lawful, I direct that no bond or other security be required in any jurisdiction of any Executor or Trustee under this my Will, whether specifically named herein or appointed in accordance with subparagraph B above, for the faithful performance of her, his or its duties in those behalfs or either of

them; and that no bond or other security be required in any jurisdiction of an Executor or Trustee for payment on account of any such fiduciary's commissions.

E. It is further my wish and will that, where any power, right, duty, function, privilege or discretion is conferred, either by law or by any provision of this my Will, upon my Executors and Trustees, it be deemed to be conferred upon such of those as may be from time to time qualified and acting, with the same force and effect as though it had been so specifically conferred upon them by a specific provision to that effect in this my Will.

F. Notwithstanding any other provision of this, my Last Will and Testament, I specifically direct that any Trustee who is a beneficiary of the trust that he or she is administering hereunder shall not have the right to take part in the determination by his or her co-Trustee or co-Trustees of the manner in which he or she shall exercise the following discretionary powers: (i) to determine whether principal or income is to be paid over and delivered to him or her and, if so, the proportion and amount thereof; and (ii) any other like or unlike power of any nature whatsoever the possession or exercise of which would cause all or any portion of the principal or income of such trust to be taxed to such Trustee or to be included in such Trustee's taxable estate pursuant to the applicable provisions of the I.R.C.

NINTH: In the administration of my estate, and the trusts and powers hereby, or in any codicil hereto established or created, and with respect to any lawful accumulation of income authorized therein, my Executors and Trustees shall, in either or both capacities, in addition to and not in

limitation of the powers provided by the law of the State of New York, have the following rights, powers, privileges and discretions, which may be exercised, from time to time, as they in their absolute discretion may deem advisable, without authorization by any court, and which shall continue until the completion of the administration of my estate and the ultimate distribution of the trusts herein created; and the exercise by them of any such right, power, privilege or discretion shall be binding upon and conclusive against all persons interested in my estate:

A. To grant options, without limitation of time, for and to sell any real estate or chattels real, or any interest therein, or to exchange the same, either at public or private sale, in their discretion, at such time and upon such terms and provisions as my Executors and/or Trustees, in the exercise of their sound judgment, may deem prudent; and to convey the same by good and sufficient deeds and other instruments in writing for such purpose; and to mortgage the same upon such terms and conditions as my Executors and/or Trustees may think proper.

B. To continue, in their absolute discretion, in whole or in part, any business in which I may be engaged or in which I might have an interest, whether as owner, partner, stockholder, creditor, or otherwise (whether of like or unlike nature), at the time of my decease and to keep invested in any such business, in whole or in part, for such length of time as to them may seem proper, any portion of my estate which may be invested therein at the time of my decease, if agreeable to my partners and/or associates, and/or to invest an additional portion of my estate therein, as creditor,

owner, stockholder or partner or otherwise, for such period and upon such terms as to my Executors and/or Trustees may seem proper, or in their discretion, to exchange and transfer my interest, in whole or in part, in any such business for shares of stock or bonds, or both of a corporation which may then exist or be thereafter formed with the consent of my Executors and/or Trustees, for the more convenient conduct of such business, and to dispose of such stock or bonds in whole or in part, or to retain the same, and to use and employ the proceeds thereof in their discretion in carrying out the provisions of this, my Will, and/or in their discretion to sell and dispose of such business or my interest therein, in whole or in part, either at public or private sale, upon such terms as in their judgment shall be most beneficial to my estate.

C. In any case in which my Executors and/or Trustees are required by this Will to make a division of property into parts or shares, or to satisfy any pecuniary legacy, I authorize them in their discretion to make such division or distribution in kind, or partly in kind and partly in money. In making the division or distribution as among separate legatees, devisees or separate trusts, my Executors and/or Trustees may, in their discretion allocate, as among the separate legatees, devisees and/or separate trusts, property like in kind to, or different from, the property allocated to any other legatee, devisee or trust.

D. At the risk of the fund administered, and without responsibility to my Executors and/or Trustees, to continue to hold any stocks, bonds or other securities, mortgages, notes or real estate, in which any portion of such fund may be invested at the time of my decease for such length of time as to

my Executors and/or Trustees may seem proper, and, in their discretion, to employ the same or any part thereof in the erection, maintenance and continuance of any trusts herein provided as the whole or any portion of the principal thereof, and/or to sell the same in their discretion from time to time, and/or to invest and reinvest the proceeds and the principal of any trusts hereinbefore created.

E. To retain, employ, and discharge attorneys, accountants, investment, management or real estate agents and advisors, custodians, clerks, bookkeepers and such other persons as they may from time to time select; to determine and pay from my estate the fees, salaries, charges and disbursements of such employees; all without in any wise diminishing the commissions or other compensation to which my Executors or Trustees or their counsel are entitled.

F. Upon such terms as they may deem advisable, and without personal liability for the same, to borrow money, whether to pay inheritance, estate, or other taxes, to make subscriptions, exercise options, pay assessments, or to accomplish any other purpose of any nature and in connection with any loan, to pledge, mortgage or create liens or charges upon any portion thereof.

G. To lend any part of my estate (or to extend the time of payment of any indebtedness owed to me at the time of my death), with or without security, in any amount, upon any terms and conditions, at any reasonable rate of interest, for any period or periods of time, even if for longer than the probable duration of the administration of my estate or of any trust holding the same, and to any person, firm or corporation.

H. Whenever required or permitted to divide securities or other property into parts, shares or portions to be held pursuant to a trust or power, to hold the same, in whole or in part, in one or more consolidated funds in which such separate trusts or powers shall have undivided interests.

I. To determine, from time to time, by a written authorization and consent signed by all of them whether one of them singly or any of them, shall have the power (1) to sign checks on and to make withdrawals from any bank account maintained by them in any bank or trust company (2) to have access to and control of any safe deposit box maintained by them in any safe deposit company, and (3) to make deposits of cash, securities and other property in, and withdrawals from, any custody account maintained by them in any bank or trust company or in any account maintained by them with any broker or dealer whose customers are protected by the insurance and other provisions of the Securities Investor Protection Act of 1970, as amended.

J. If my Executors shall, in their discretion, elect or fail to elect (i) to qualify assets for the marital deduction under Section 2056(h)(7) of the Internal Revenue Code, or under any similar provision in effect at the time of my death, so as to increase the total estate taxes payable at my death and/or at the termination of any trust hereunder, or (ii) to treat certain expenses of administration, funeral expenses, claims and/or any other items of expense as deductions on the income tax returns of my estate (or on my final income tax return) rather than as deductions on the estate tax returns of my estate, I direct that any such election or failure to elect shall not give rise to any credit or allowance to,

or for the benefit of, any residuary legatee or remainderman (any rule of law to the contrary notwithstanding), except to the extent that my Executors, in their sole discretion, may determine.

K. Whenever, pursuant to any provision of this, my last will and testament, my Executors or Trustees shall be directed or permitted to pay a legacy to a minor or to pay to income or principal of a trust hereunder to, or for the benefit of any minor, my Executors or Trustees may, and shall be authorized to pay any such legacy, income or principal to such minor's custodian, selected by my Executors or Trustees under the New York Uniform Gifts to Minors Act (or under the corresponding act of any other jurisdiction) even if the custodian so selected be one of my Executors and/or Trustees, or to a parent or guardian, or the person with whom such minor resides, without obligation by my Executors or Trustees to look to the proper application or use of any payments so made, or my Executors or Trustees may expend such sums in such manner in their discretion as they believe will benefit such minor and may also pay to the minor directly such sums as my Executors or Trustees approve as an allowance.

TENTH: As provided in Section 315(5) of the New York surrogate's Court Procedure Act (or the comparable provision in effect from time to time), when a party to a judicial proceeding relating to my estate or the trusts hereunder has the same interest as a person under a disability, it shall not be necessary to serve the person under a disability.

ELEVENTH: A. In the event that my wife, ADELAIDE, and I should die under circumstances such that there is no sufficient evidence to determine

who predeceased the other, it shall be presumed that my said wife survived me and I direct that this, my Will, shall in all respects be construed as though, in truth and in fact, she survived me.

B. If any person herein named (other than my said wife) and I shall die together or under such circumstances as to render it difficult readily to determine which of us survived the other, I direct that I shall be deemed to have survived such person and my Will shall be so construed.

TWELFTH: A. Wherever a pronoun in the third person is used in this, my Will, it shall be read in the appropriate number and gender. The masculine, feminine and neuter shall be deemed mutually to include each of the others. Wherever the words "Executrix", "Executrices", "Executor", "Executors", "Trustee" or "Trustees" are used in this, my Will, they shall be read in the appropriate number and shall be deemed to include and mean any and all of my original, substituted and/or successor Executor(s) and Trustee(s) as the context of my Will may require under the circumstances.

B. The word "issue", as used in this, my Will, shall mean lawful issue and shall include persons lawfully adopted prior to attaining the age of fourteen (14) years by any of my lawful issue, and the lawful issue of such adopted person.

C. Any reference hereinto "I.R.C. " or to the "Internal Revenue Code" shall mean the Internal Revenue Code of 1986 as it shall have been amended as at the date of my death; and any reference to a particular "§", "Section" or "Sections" of the I.R.C. shall mean that section, or any successor section, in effect at my death.

IN WITNESS WHEREOF, I, ROBERT CHUCKROW, have hereunto set my hand and seal to this, my Last Will and Testament, on the 1st day of March, 1993.

/s/ Robert Chuckrow [L.S.]
Robert Chuckrow

The foregoing instrument was on the date hereof subscribed by ROBERT CHUCKROW, the Testator named in the foregoing Will, in the presence of us and each of us, and at the time of making such subscription the foregoing instrument was declared by the above Testator to be his Last Will and Testament, and each of us, at the request of said Testator, and in his presence, and in the presence of each other, have hereunto signed our names as witnesses to said Will on the 1st day of March, 1993.

/s/ Frank H. Klein residing at 134 Acqueduct Drive,
Scarsdale, NY 10583

/s/ Brian J. McCarthy residing at 34 Maschester Dr.,
Mt. Kisco, NY 10549

STATE OF NEW YORK)
) ss.:
COUNTY OF)

AFFIDAVIT OF SUBSCRIBING
WITNESSES PURSUANT TO SCPA
406 MADE AT REQUEST OF
TESTATOR

In the City, County and State of New York, on the 1st day of March, 1993, personally appeared the within named Frank H. Klein, and Brian J. McCarthy who being duly sworn, depose and say, and each for himself and herself deposes and says that on the 1st day of March, 1993, they witnessed the execution of the within Will of the within named Testator, ROBERT CHUCKROW, at 225 Millwood Road, Chappaqua, New York 10514, which was executed under the supervision of FRANK H. KLEIN, an attorney with offices at 230 Park Avenue, in the City, County and State of New York; that said ROBERT CHUCKROW subscribed said Will and, in their sight and presence, published and declared the same to be his Last Will and Testament, stated that he had read it, that it had been prepared in accordance with his instructions, and correctly set forth his testamentary desires; and at the request of said ROBERT CHUCKROW they thereafter subscribed said Will as witnesses in the sight and presence of said Testator and in the sight and presence of each other on that said date; that said Testator at the time of the execution of said Will was over the age of 18 years and, in their respective opinions, under no restraint, competent to make a Will and of sound mind, memory and understanding and could read, write and converse in the English

language and was suffering from no defect of sight, hearing or speech, or from any other physical or mental impairment which would affect the Testator's capacity to make a Will; that the Will was executed as a single, original instrument and not in counterparts; and that they make this affidavit at the request of said Testator.

/s/ Frank H. Klein

/s/ Brian J. McCarthy

Subscribed and sworn to
before me this 1st day
of March, 1993

/s/
Notary Public

APPENDIX 39

15

Form 706

(Rev. August 1993)

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

Estate of a citizen or resident of the United States (see separate instructions). To be filed for decedents dying after December 31, 1981, for Paperwork Reduction Act (Notice: see page 1 of the instructions).

OMB No. 1545-0045
Expires 12-31-98Department of the Treasury
Internal Revenue ServicePart 1.—
Decedent
and
Executor

1a Decedent's first name and initials (and maiden name, if any) Robert	1b Decedent's last name Chudrow	2 Decedent's SSN 8803
3a Decedent's date of death (month and year, or foreign country) 225 Millwood Rd., Chappaqua, N.Y. 10514	3b Year decedent established 1970	4 Date of birth 01/28/78
5a Name of executor (see instructions) Carol Chudrow Guernsey	5b Executor's address (number and street (including apartment or suite no., or rural locality, town, or post office); state; and ZIP code) 402 Hancock Road Williamstown, MA 01267	6 Date of death 07/11/93
6c Executor's social security number (see instructions) 053-38-0952		
7a Name and location of court where will was probated or estate administered Westchester County Surrogate's Court, White Plains, New York		7b Check number box 1845/1853
8 Under decedent's last name, check here: ☒ If and where certified copy of the will. ☐ If Form 706 is attached, check here: ☐		

Part 2.—
Tax Com-
putation

1 Total gross estate (from Part 6, Reconciliation, page 3, item 10)	1	1,996,043.24
2 Total allowable deductions (from Part 6, Reconciliation, page 3, item 20)	2	1,996,043.24
3 Taxable estate (subtract line 2 from line 1)	3	0.00
4 Adjusted taxable gifts (total taxable gifts (within the meaning of section 2504) made by the decedent after Dec. 31, 1978, other than gifts that are includable in decedent's gross estate (section 2001(b)))	4	600,000.00
5 Add lines 3 and 4	5	600,000.00
6 Tentative tax on the amount on line 5 from Table A in the instructions	6	192,800.00
7a If line 5 exceeds \$10,000,000, enter lesser of line 5 or \$21,040,000. If line 5 is \$10,000,000 or less, skip lines 7a and 7b and enter -0- on line 7c	7a	
b Subtract \$10,000,000 from line 7a	7b	
c Enter 6% (.06) of line 7b	7c	0.00
8 Total tentative tax (add lines 6 and 7c)	8	192,800.00
9 Total gift tax payable with respect to gifts made by the decedent after December 31, 1978, including gift taxes paid by the decedent's spouse for such spouse's share of split gifts (section 2013) only if the decedent was the donor of those gifts and they are includable in the decedent's gross estate (see instructions)	9	0.00
10 Gross estate tax (subtract line 9 from line 8)	10	192,800.00
11 Maximum unified credit against estate tax	11	192,800.00
12 Adjustment to unified credit. (This adjustment may not exceed \$5,000. See page 6 of the instructions.)	12	0.00
13 Allowable unified credit (subtract line 12 from line 11)	13	192,800.00
14 Subtract line 13 from line 10 (but do not enter less than zero)	14	0.00
15 Credit for state death taxes. Do not enter more than line 14. Compute the credit by using the amount on line 5 less \$20,000. See Table B in the instructions and attach credit evidence (see instructions)	15	0.00
16 Subtract line 15 from line 14	16	0.00
17 Credit for Federal gift taxes on pre-1977 gifts (see instructions)	17	0.00
18 Credit for foreign death taxes (from Schedule(s) F). Attach Form(s) 706-ef	18	0.00
19 Credit for tax on prior transfers (from Schedule C)	19	0.00
20 Total (add lines 17, 18, and 19)	20	0.00
21 Net estate tax (subtract line 20 from line 16)	21	0.00
22 Generation-skipping transfer taxes (from Schedule R, Part 2, line 10)	22	0.00
23 Section 4980A increased estate tax (from Schedule S, Part 1, line 17) (see instructions)	23	0.00
24 Total transfer taxes (add lines 21, 22, and 23)	24	0.00
25 Prior payments. Explain in an attached statement	25	0.00
26 United States Treasury bonds redeemed in payment of estate tax	26	0.00
27 Total (add lines 24 and 26)	27	0.00
28 Balance due (or overpayment) (subtract line 27 from line 24)	28	0.00

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.

Signature(s) of executor(s)

Date

230 Park Avenue
New York, NY 10169-0069

Signature of preparer other than executor

Address (and ZIP code)

Date

H733 RTF 2271

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Part 3. — Elections by the Executor

Part 3. — Elections by the Executor

Yes	No

1	Do you elect alternate valuation?	X
2	Do you elect special use valuation? If "Yes," you must complete and attach Schedule A-1	X
3	Do you elect to pay the taxes in installments as described in section 6167? If "Yes," you must attach the additional information described in the instructions.	X
4	Do you elect to postpone the part of the taxes attributable to a revocatory or remainder interest as described in section 6167?	X

4. The taxpayer is required to furnish information under Section 6042(a)(1) to assist the related representative before the Internal Revenue Service, and to make written or oral presentation on behalf of the taxpayer in any proceeding by an attorney, accountant, or other designated person for the taxpayer.

Name of representative (print or type)	State	Address (number, street, and room or suite no., city, state, and ZIP code)
Donald A. Stein	Massachusetts	See Schedule attached

return for the executor. I am not under suspension or disbarment from practice before the IRS & am qualified to practice in the state shown above.

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

- 1 Death certificate number and issuing authority (attach a copy of the death certificate to this return).
 NYS Dept. of Health Town of New Castle Registrar of Vital Statistics
- 2 Decedent's busin. or occupation, if retired, check box ☒ (2) and state decedent's former business or occupation.
 Owner of Robert Chuckrow Construction Company of New York

3. Medical status of the decedent at time of death
☒ Married
☐ Widow or widower — Name, BSN, and date of death of deceased spouse: _____

- ☐ Single
☐ Legally separated
☐ Divorced -- Date divorce decree became final >

5 Individuals (other than the surviving spouse) to which or other estate who receive benefits from the estate (do not include charitable or political

- 5 Individuals (other than the surviving spouse), trusts, or other estates who receive benefits from the estate (do not include charitable beneficiaries shown in Schedule O) (see instructions). For Privacy Act Notice (if applicable to individual beneficiaries only), see the instructions for Form 1040.
- | Names of individual, trust, or estate receiving \$1,000 or more | Identifying number | Relationship to decedent | Amount (see instructions) |
|---|--------------------|--------------------------|---------------------------|
| | | | |

Name of individual, trust, or estate (receiving \$1,000 or more)	Identifying number	Relationship to decedent	Amount (see list)

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

Total	0.00

(Continued on next page)

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Part 4. — General Information (continued)

Please check the "Yes" or "No" box for each question.		Yes	No
6	Does the gross estate contain any section 2042 property (qualified terminable interest property (QTIP)) from a prior gift or testament (see page 5 of the instructions)?		☒
7a	Have Federal gift tax returns ever been filed?	☒	
If "Yes," please attach copies of the returns, if available, and furnish the following information:			
7b	Period(s) covered	7c Internal Revenue office(s) where filed	
1992		Boltsville, New York	
If you answer "Yes" to any of questions 8-10, you must attach additional information as described in the instructions.			
8a	Was there any insurance on the decedent's life that is not included on the return as part of the gross estate?		☒
8b	Did the decedent own any insurance on the life of another that is not included in the gross estate?		☒
9	Did the decedent at the time of death own any property as a joint tenant with right of survivorship in which (a) one or more of the other joint tenants was someone other than the decedent's spouse, and (b) less than the full value of the property is included on this return as part of the gross estate? If "Yes," you must complete and attach Schedule E.		☒
10	Did the decedent, at the time of death, own any interest in a partnership or unincorporated business or any stock in an inactive or closely held corporation?	☒	
11	Did the decedent make any transfer described in section 2036, 2038, 2037, or 2038 (see the instructions for Schedule G)? If "Yes," you must complete and attach Schedule G.		☒
12	Were there in existence at the time of the decedent's death:		
a	Any trusts created by the decedent during his or her lifetime?		☒
b	Any trusts not created by the decedent under which the decedent possessed any power, beneficial interest, or trust interest?		☒
13	Did the decedent ever purchase, transfer, or release any portion of an annuity to which this estate is entitled and attach Schedule H?		☒
14	Was marital deduction computed under transitional rule of Public Law 87-94, sec. 403(a)(2) (Estate's Recovery Tax Act of 1981)? If "Yes," attach a separate computation of the marital deduction, enter the amount on line 16 of the Recapitulation, and note on item 16 "Computation attached."		☒
15	Was the decedent, immediately before death, receiving an annuity described in the "General" paragraph of the instructions for Schedule I? If "Yes," you must complete and attach Schedule I.	☒	
16	Did the decedent have a total "excess retirement accumulation" (as defined in section 402(a)(4)) in qualified employer plans and individual retirement plans? If "Yes," you must complete and attach Schedule B.		☒

Part 5. — Recapitulation

Item no.	Gross estate	Alternate value	Value at date of death
1	Schedule A — Real Estate		150,000.00
2	Schedule B — Stocks and Bonds		536,890.72
3	Schedule C — Mortgages, Notes, and Cash		107,982.07
4	Schedule D — Insurance on the Decedent's Life (attach Form(s) 712)		98,033.63
5	Schedule E — Jointly Owned Property (attach Form(s) 712 for life insurance)		13,008.68
6	Schedule F — Other Miscellaneous Property (attach Form(s) 712 for life insurance)		785,671.32
7	Schedule G — Transfers During Decedent's Life (attach Form(s) 712 for life insurance)		0.00
8	Schedule H — Powers of Appointment		0.00
9	Schedule I — Annuities		304,457.41
10	Total gross estate (add items 1 through 9). Enter here and on line 1 of the Tax Computation.		1,996,043.24
Item no.	Deductions	Amount	
11	Schedule J — Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims	67,972.87	
12	Schedule K — Debts of the Decedent	488,185.98	
13	Schedule L — Mortgages and Liens	23,860.06	
14	Total of items 11 through 13	560,017.88	
15	Allowable amount of deductions from item 14 (see the instructions for item 15 of the Recapitulation)	560,017.88	
16	Schedule M — Net Losses During Administration	0.00	
17	Schedule N — Expenses Incurred in Administering Property Not Subject to Claims	0.00	
18	Schedule O — Bequests, etc., to Surviving Spouse	3,436,625.39	
19	Schedule P — Charitable, Public, and Similar Gifts and Bequests	0.00	
20	Total allowable deductions (add items 15 through 19). Enter here and on line 2 of the Tax Computation		1,996,043.24

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Estate of: **Robert Chuckrow**

-8803

SCHEDULE A — Real Estate

(For jointly owned property that must be disclosed on Schedule E, see the instructions for Schedule E.)

(Real estate that is part of a sole proprietorship should be shown on Schedule F. Real estate that is included in the gross estate under section 2036, 2038, 2039, or 2041 should be shown on Schedule G. Real estate that is included in the gross estate under section 2041 should be shown on Schedule H.)

(If you elect section 2032A valuation, you must complete Schedule A and Schedule A-1.)

Item No.	Description	Alternate valuation date	Alternate value	Value at date of death
	See Schedule attached			
Total from continuation schedule(s) (or additional sheet(s)) attached to this schedule . . .				150,000.00
TOTAL. (Also enter on Part 6, Reconciliation, page 5, at Item 1.)				150,000.00

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

(See the instructions on page 6.)

Schedule A — Page 4

H113 NTF 3273

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Estate of: **Robert Cuckrow**

-8803

SCHEDULE B — Stocks and Bonds

(For jointly owned property that must be disclosed on Schedule E, see the instructions for Schedule E.)

Item no.	Description including face amount of bonds or number of shares and par value where needed for identification. Give CUSIP number if available.	Unit years	Alternate valuation date	Market value	Value at date of death
	See Schedule attached				
Total from continuation schedule(s) for additional sheet(s) attached to this schedule.					536,890.73
TOTAL. (Also enter on Part 5, Recapitulation, line 3, at item 2.)					536,890.73

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)
(The instructions to Schedule B are in the separate instructions.)

R153 NTF 2273

Schedule B — Page 12

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Estate of: Robert Chuckrow

-8803

SCHEDULE B -- Stocks and Bonds

Item No.	Description	Unit Value	Alternate Val. Date	Alternate Value	Value at Date of Death
	~~UNITED STATES GOVERNMENT~~	.2605			60.18
2	13,000 shs. First Australia Prime Income Fund Inc.	10.7033			139,142.90
	Dividend on item 2 of \$.090 per share, declared on payable on 7/16/93 to stockholders of record on 6/30/93	.090			1,170.00
3	\$170,000 Federal Home Loan Banks Cons ED 7.50% due 6/27/94	103.6643			176,229.31
	Interest on item 3 from 6/27/93 to 7/11/93				531.25
4	\$100,000 United States Treasury Notes 7.625% due 5/31/96	108.8283			108,828.30
	Interest on item 4 from 5/31/93 to 7/11/93				895.00
5	\$100,000 United States Treasury Notes 7.875% due 6/30/96	109.7970			109,797.00
	Interest on item 5 from 6/30/93 to 7/11/93				256.79

TOTAL (Carry forward to main schedule)

536,890.73

Estate of Robert Crucharow

-9903

SCHEDULE C — Mortgages, Notes, and Cash

(For jointly owned property that must be disclosed on Schedule E, see the instructions for Schedule E.)

Item no.	Description	Alternate valuation date	Alternate value	Value at date of death
	See Schedule attached			
Total from continuation schedule(s) for additional sheet(s) attached to this schedule...				107,982.07
TOTAL (Also enter on Part 6, Reconciliation, page 9, of Form 706.)				107,982.07

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)
(See the instructions on page 14.)

Schedule C — Page 13

Estate of: Robert Chackrow

[REDACTED]-9803

SCHEDULE C -- Mortgages, Notes, and Cash

Item No.	Description	Alternate Val. Date	Alternate Value	Value at Date of Death
1	Bankers Trust Company Investment Advisory Account No. [REDACTED] 5328 BT Investment Funds - NY Tax Free Money Fund			75,794.13
2	Bankers Trust Company Super Now Checking Acct. No. [REDACTED] 1-620			32,187.94

TOTAL (Carry forward to main schedule)

107,982.07

Estate of Robert C. Cuckrow

-8803

SCHEDULE D -- Insurance on the Decedent's Life

You must list all policies on the life of the decedent and attach a Form 712 for each policy.

Item no.	Description	Alternate valuation date	Alternate value	Value at date of death
	See schedule attached			
Total from contribution schedule(s) (or additional schedule) attached to this schedule...				98,033.63
TOTAL (Also enter on Part 6, Homesteaded, page 2, of Form 706.)				98,033.63

(If more space is needed, attach the continuation schedule from the end of the package or additional sheets of the same size.)

(See the instructions on page 18.)

Schedule D -- Page 15

H793 NTF 2245

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Page :

Estate of: Robert Chuckrow

-880

SCHEDULE D -- Insurance on the Decedent's Life

Item No.	Description	Alternate Val. Date	Alternate Value	Value at Date of Death
1	Veterans Administration Insurance Policy No. [REDACTED] 38 04 Beneficiary: Adelaide Chuckrow (See Form 712 annexed)			10,152.16
2	Fidelity Mutual Life Insurance Company Policy No. [REDACTED] 488 Beneficiary: Adelaide Chuckrow (See Form 712 annexed)			83,098.12
3	Mass Mutual Life Insurance Company Policy No. [REDACTED] 344 Beneficiary: Adelaide Chuckrow (See Form 712 annexed)			4,396.81
4	Mass Mutual Life Insurance Company Policy No. [REDACTED] 892 Beneficiary: Adelaide Chuckrow (See Form 712 annexed)			385.60

TOTAL (Carry forward to main schedule)

98,032.69

Estate of Robert Chudacow

-8803

SCHEDULE E -- Jointly Owned Property

(If you elect Section 2013A valuation, you must complete Schedule E and Schedule A-1.)

PART 1. -- Qualified Joint Interests -- Interests Held by the Decedent and His or Her Spouse as the Only Joint Tenants (Section 2040(b)(2)).

Item no.	Description For securities, give CUSIP number, if available.	Alternate valuation date	Alternate value	Value at date of death
	See Schedule attached			
Total from continuation schedule(s) (or additional sheet(s)) attached to this schedule...				26,016.11
1a. Totals...				26,016.11
1b. Amount included in prior estate (one-half of line 1a)				13,008.05

PART 2. -- All Other Joint Interests:

2a. State the name and address of each surviving co-tenant. If there are more than three surviving co-tenants, list the additional co-tenants on an attached sheet.

Name	Address, business and private, city, state, and ZIP code
A.	
B.	
C.	

Item no.	Enter letter for entry on	Description (including alternate valuation date, if any) For securities, give CUSIP number, if available.	Percentage includible	Includible interest value	Includible value at date of death
		None			
Total from continuation schedule(s) (or additional sheet(s)) attached to this schedule...					0.00
2b. Total other joint interests					0.00
3. Total includible joint interests (add lines 1b and 2b). Also enter on Part 6.					13,008.05

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

(See the instructions on page 18.)

Schedule E -- Page 17

Estate of: Robert Chudnow

-8803

SCHEDULE B, Part 1 -- Qualified Joint Interests

Item No.	Description	Alternate Val. Date	Alternate Value	Value at Date of Death
1	Chase Manhattan Bank Checking Account No. [REDACTED] 5356			26,016.11

TOTAL (Carry forward to main schedule)

26,016.11

Estate of: Robert Chackrow

-8803

SCHEDULE F -- Other Miscellaneous Property Not Reportable Under Any Other Schedule

(For jointly owned property that must be disclosed on Schedule E, see the instructions for Schedule E.)

(If you elect section 2032A valuation, you must complete Schedule F and Schedule A-1.)

1	Did the decedent at the time of death own any estate or collectible value in excess of \$5,000 or any collectible whose estate or collectible value combined at date of death exceeded \$10,000?	Yes	No
	If "Yes," submit full details on this schedule and attach appropriate.		
2	Has the decedent's estate, spouse, or any other person, received (or will receive) any bonus or award as a result of the decedent's employment or death?		X
	If "Yes," submit full details on this schedule.		
3	Did the decedent at the time of death have, or have access to, a safe deposit box?		
	If "Yes," state location, and if held in joint names of decedent and another, state names and relationship of joint depositor.		

If any of the contents of the safe deposit box are omitted from this schedule in this return, explain fully why omitted.

Item no.	Description For securities, give CUSIP number, if available.	Alternate valuation date	Alternate value	Value at date of death
	See Schedule attached			
Total from continuation schedule(s) for additional sheet(s) attached to this schedule ...				765,671.32
TOTAL (Also enter on Part 5, "Recollateralization" items 3, at item B.)				765,671.32

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)
(See the instructions on page 26.)

11723 NTF 2252

Schedule F -- Page 16

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Estate of: Robert Chackrow

-B601

SCHEDULE F -- Other Miscellaneous Property Not Reportable Under Any Other Schedule

Item No.	Description	Alternate Val. Date	Alternate Value	Value at Date of Death
12	~~12-25-1993-100% interest in partnership of~~ Hess, A General Partnership and its wholly-owned subsidiary Spoutman's Edge Restaurant, Inc. (See annexed appraisal by Farnell Kerr Ralston)			451,307.00
13	Medicare reimbursement			98.09
14	American Express - refund			1,209.34
15	Schalman Partnership Securities - litigation settlement			872.89
16	Silicon, Inc. - solely owned by decedent (annexed is a balance sheet as of the decedent's death and an appraisal of the corporation's lease agreement with Kinney Shires)			190,086.00
17	1987 Mercedes 300 (4 door) ID#W33230D3H56741 Blue Book Value			15,625.00
18	1989 Jeep Grand Wagoneer ID# J4PW76LJKL490002 Blue Book Value			10,500.00
19	Paintings and Prints - (See annexed appraisal by Red Fox Fine Art)			55,650.00
20	Southern Insurance Co. of Virginia - premium refund			223.00
21	Due the decedent as commission for the sale of partnership units (Bernie Rodin Housing Limited Partnership)			9,000.00

TOTAL (Carry forward to main schedule)

734,914.32

Estate of: Robert Coudrow

-5803

SCHEDULE G -- Transfers During Decedent's Life

(If you elect section 2032A valuation, you must complete Schedule G and Schedule A-1.)

Item No.	Description For annuities, give CRAT/CRUT number, if available.	Alternate valuation date	Alternate value	Value at date of death
A.	Gift tax paid by the decedent or the estate for all gifts made by the decedent or his or her spouse within 3 years before the decedent's death (section 2035(c))	X X X X		
B.	Transfers includible under section 2036(a), 2038, 2037, or 2039: None			
Total from continuation schedule(s) for additional sheet(s) attached to this schedule				0.00
TOTAL. (Also enter on Part 5, Reconciliation, page 5, at item 8.)				0.00

SCHEDULE H -- Powers of Appointment

(Include "G" and "S" tapping powers (section 2041(b)(2)) held by the decedent.)

(If you elect section 2032A valuation, you must complete Schedule H and Schedule A-1.)

Item No.	Description	Alternate valuation date	Alternate value	Value at date of death
	None			
Total from continuation schedule(s) for additional sheet(s) attached to this schedule				0.00
TOTAL. (Also enter on Part 5, Reconciliation, page 5, at item 9.)				0.00

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

(The instructions to Schedules G and H are in the separate instructions.)

Schedules G and H -- Page 21

Estate of: Robert Chudrow

-8803

SCHEDULE I -- Annuities

Note: Generally, no exclusion is allowed for the estate of decedents dying after December 31, 1954, (see instructions).

A. Are you excluding from the decedent's gross estate the value of a lump-sum distribution described in section

2039(f)(2)?

Yes	No
	☒

If "Yes," you must attach the information required by the instructions.

Item no.	Description Show the entire value of the annuity before any exclusions.	Alternate valuation date	Includible alternate value	Includible value at date of death
	See Schedule attached			
Total from continuation schedule(s) (or additional sheet(s)) attached to this schedule . . .				304,457.44
TOTAL. (Also enter on Part 5, Reconciliation, printed at item B.)				304,457.44

(If more space is needed, attach the continuation schedule from the end of the package or additional sheets of the same size.)

Schedule I -- Page 22

(The instructions to Schedule I are in the separate instructions.)

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Estate of: Robert Chackrow

Page :

-8800

SCHEDULE I -- Annuities

Item No.	Description	Alternate Val. Date	Alternate Value	Value at Date of Death
1	Metropolitan Life Insurance Company Annuity Policy No. [REDACTED] 0000 Beneficiary: Adelaide Chackrow (See Form 712 annexed)			304,457.44

TOTAL (Carry forward to main schedule)

304,457.44

Estate of: Robert C. Chubb

-9803

SCHEDULE J -- Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims

Note: Do not list on this schedule expenses of administering property not subject to claims. For those expenses, see instructions for Schedule L.

If executor's commissions, attorney fees, etc., are claimed and allowed as a deduction for estate tax purposes, they are not allowable as a deduction in computing the taxable income of the estate for Federal income tax purposes. They are allowable as an income tax deduction on Form 1041 if a waiver is filed to waive the deduction on Form 706 (see the Form 1041 instructions).

Item no.	Description	Expense amount	Total Amount
A. Funeral expenses:			
	See Schedule attached		
Total funeral expenses			12,737.87
B. Administration expenses:			
1	Executor's commissions -- amount estimated/agreed upon/paid. (Strike out the words that do not apply.)		
2	Attorney fees -- amount estimated/agreed upon/paid. (Strike out the words that do not apply.)		30,000.00
3	Accountant fees -- amount estimated/agreed upon/paid. (Strike out the words that do not apply.)		2,500.00
Miscellaneous expenses:		Expense amount	
See Schedule attached			
Total miscellaneous expenses from continuation schedule(s) (or additional sheet(s)) attached to this schedule		12,734.00	12,734.00
Total miscellaneous expenses			
TOTAL. (Also enter on Part 5, Return/Information, page 3, of Form 706.)			57,971.87

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)
(See the instructions on page 24.)

Schedule J -- Page 23

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Estate of: Robert Chackrow

-8803

SCHEDULE J, Part A -- Funeral Expenses

Item No.	Description	Amount
1	Clark Associates Funeral Home	11,162.87
2	Pulver-Hewes Materials - tombstone	1,575.00

TOTAL (Carry forward to main schedule)

12,737.87

Estate of: Robert Chudnow

-8803

SCHEDULE J, Part B -- Administration Expenses

Item No.	Description	Amount
4	Equity Resources Group, Inc. - valuation fee of limited partnerships	3,300.00
5	Pannell Kerr Forster - valuation fee	5,434.00
6	Brien O'Toole - appraisal fee	450.00
7	Red Fox Film Art - appraisal fee	2,550.00

TOTAL. (Carry forward to main schedule)

12,734.00

Estate of: Robert Chas. Crow

-2863

SCHEDULE K — Debts of the Decedent, and Mortgages and Liens

Item no.	Debt of the Decedent — Creditor and nature of claim, and allowable death taxes	Amount unpaid to date	Amount in cash	Amount claimed as a deduction
	See Schedule attached			

Total from continuation schedule(s) (or additional schedule(s)) attached to this schedule..... 488,185.98

TOTAL (Also enter on Part 5, Recombination, page 3, of item 12)..... 488,185.98

Item no.	Mortgages and Liens — Description	Amount
	See Schedule attached	

Total from continuation schedule(s) (or additional schedule(s)) attached to this schedule..... 13,860.00

TOTAL (Also enter on Part 5, Recombination, page 3, of item 13)..... 13,860.00

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)
(The instructions to Schedule K are in the separate instructions.)

Schedule K — Page 25

M735 NTF 2228

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Estate of: Robert Chudrow

-880-

SCHEDULE K, Part 1 -- Debts of the Decedent

Item No.	Description	Amount unpaid to date	Amount in contest	Deduction amount
1	Mt. Kisco Medical Group			25.00
2	Roche Biomedical Labs Inc.			28.00
3	Howard Silbert, M.D.			450.00
4	VNA Health Care Services (nursing)			217.50
5	David Voorhees, M.D.			9.52
6	DeGraff, Foy, Holt-Harris, Mealey - legal fees incurred before date of death			3,824.39
7	Dorian McCarthy, CPA - accountant fees incurred before date of death			1,687.50
8	Chin, Hibben, Myers & Cook - legal fees incurred before date of death			2,675.36
9	Amy Chudrow - frame for painting			308.00
10	State of New York - tax liability in settlement of a matter in which NYS was contesting the decedent's, and his wife's, 1982 and 1983 NYS income taxes			118,643.59
11	Beaufort Associates - required capital payment due under partnership agreement			60,000.00
12	Bossier Associates - required capital payment due under partnership agreement			60,000.00
13	Dickenson Associates - required capital payment due under partnership agreement			60,000.00
14	Hilltop Associates - required capital payment due under partnership agreement			60,000.00
15	Silicon, Inc. - debt due and owing at decedent's death			115,785.00
	TOTAL (Carry forward to main schedule)			483,843.96

Estate of: Robert Chuckrow

Page

-880

SCHEDULE K, Part 1 -- Debts of the Decedent

Item No.	Description	Amount unpaid to date	Amount in contest	Deduction amount
16	Commissioner of Taxation & Finance - penalty for failure to pay NYS estimated gift tax			342.02
17	Sherwood Gurnsey, II - legal fee in connection with the collection of the commission due to the decedent at the date of his death			4,000.00

TOTAL (Carry forward to main schedule)

4,342.02

Estate of: Robert Chickrow

-8603

SCHEDULE K, Part 2 -- Mortgages and Liens

Item No.	Description	Amount
1	Deoples Westchester Bank - balance of mortgage due on premises known as 68 Maple Ave., Mt. Kisco (Sched. A - Item 1)	13,660.00

TOTAL (Carry forward to main schedule)

13,660.00

Estate of: Robert Chodorow

-8803

**SCHEDULE L — Net Losses During Administration and
Expenses Incurred in Administering Property Not Subject to Claims**

Item no.	Net losses during administration (Note: Do not deduct losses claimed on a Federal income tax return.)	Amount
	None	
Total from continuation schedule(s) for additional sheets attached to this schedule		0.00
TOTAL (Also enter on Part 6, Recapitulation, page 6, of Form 706)		0.00
Item no.	Expenses incurred in administering property not subject to claims (Indicate whether estimated, agreed upon, or paid.)	Amount
	None	
Total from continuation schedule(s) for additional sheets attached to this schedule		0.00
TOTAL (Also enter on Part 6, Recapitulation, page 6, of Form 706)		0.00

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)
(The instructions to Schedule L are in the separate instructions.)

Schedule L — Page 26

K753 KIT 1287

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Estate of: Robert Chackrow

-8803

SCHEDULE M -- Bequests, etc., to Surviving Spouse

Election To Deduct Qualified Terminable Interest Property Under Section 2056(b)(7). -- If a trust (or other property) meets the requirements of qualified terminable interest property under section 2056(b)(7), and

a. The trust or other property is listed on Schedule M, and

b. The value of the trust (or other property) is entered in whole or in part as a deduction on Schedule M, then unless the executor specifically identifies the trust (all or a fractional portion or percentage) or other property to be excluded from the election the executor shall be deemed to have made an election to have such trust (or other property) treated as qualified terminable interest property under section 2056(b)(7).

If less than the entire value of the trust (or other property) that the executor has included in the gross estate is entered as a deduction on Schedule M, the executor shall be considered to have made an election only as to a fraction of the trust (or other property). The numerator of the fraction is equal to the amount of the trust (or other property) deducted on Schedule M. The denominator is equal to the total value of the trust (or other property).

Election To Deduct Qualified Domestic Trust Property Under Section 2056A. -- If a trust meets the requirements of a qualified domestic trust under section 2056A(e) and this return is filed no later than 1 year after the time prescribed by law (including extensions) for filing the return, and

a. The entire value of a trust or trust property is listed on Schedule M, and

b. The entire value of the trust or trust property is entered as a deduction on Schedule M, then unless the executor specifically identifies the trust to be excluded from the election, the executor shall be deemed to have made an election to have the entire trust treated as qualified domestic trust property.

- 1 Did any property pass to the surviving spouse as a result of a qualified disclaimer? Yes No
 If "Yes," attach a copy of the written disclaimer required by section 2518(b). X
- 2a In what country was the surviving spouse born? United States
- b What is the surviving spouse's date of birth? 03/18/18
- c Is the surviving spouse a U.S. citizen? Yes
- d If the surviving spouse is a naturalized citizen, when did the surviving spouse acquire citizenship?
- e If the surviving spouse is not a U.S. citizen, of what country is the surviving spouse a citizen?
- 3 Election out of QTIP Treatment of Annuities. -- Do you elect under section 2056(b)(7)(C) not to treat as qualified terminable interest property any joint and survivor annuities that are included in the gross estate and would otherwise be treated as qualified terminable interest property under section 2056(b)(7)(C)? Yes No

Item No.	Description of property interests passing to surviving spouse	Amount
	See Schedule attached	
Total from continuation schedule(s) (or additional sheet(s)) attached to this schedule		1,436,025.39
4	Total amount of property interests listed on Schedule M	1,436,025.39
5a	Federal estate taxes (including section 4980A taxes) payable out of property interests listed on Schedule M	0.00
5b	Other death taxes payable out of property interests listed on Schedule M	0.00
5c	Federal and state GST taxes payable out of property interests listed on Schedule M	0.00
5d	Add items a, b, and c	0.00
6	Net amount of property interests listed on Schedule M (subtract 5d from 4). Also enter on Part 5, Redistribution, page 3, at item 10	1,436,025.39

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)

(See the instructions on page 20.)

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Schedule M -- Page 27

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Estate of: Robert Chackow

-8803

SCHEDULE M -- Requests, etc., to Surviving Spouse

Item No.	Description	Amount
1	Item 1 on Schedule A	150,000.00
2	Item 1 on Schedule D	10,152.10
3	Item 2 on Schedule D	83,098.12
4	Item 3 on Schedule D	4,396.81
5	Item 4 on Schedule D	986.60
6	Item 1 on Schedule E - Part 1	13,008.05
7	Item 17 on Schedule F	15,925.00
8	Item 18 on Schedule F	10,500.00
9	Item 1 on Schedule I	304,457.44
10	Trust under Paragraph THIRD of the Will (QTIP)	84,102.37

TOTAL (Carry forward to main schedule)

Estate of: Robert Chackrow

-8803

SCHEDULE O -- Charitable, Public, and Similar Gifts and Bequests

1a	If the transfer was made by will, has any action been instituted to have interpreted or to contest the will or any of its provisions affecting the charitable deductions claimed in this schedule?	Yes	No
b	According to the information and belief of the person or persons filing this return, is any such action planned?	Yes	No
2	Did any property pass to charity as the result of a qualified disclaimer?	Yes	No

Item no.	Name and address of beneficiary	Character of institution	Amount
	None		

Total from continuation schedule(s) (if additional sheet(s) attached to this schedule) 0.00

3	Total	3	0.00
4a	Federal estate tax (including section 6901A taxes) payable out of property interests listed above	4a	0.00
b	Other death taxes payable out of property interests listed above	4b	0.00
c	Federal and state GST taxes payable out of property interests listed above	4c	0.00
d	Add items a, b, and c	4d	0.00
5	Net value of property interests listed above (subtract 4d from 3). Also enter on Part 5, Recapitulation, sheet 5, of form 706	5	0.00

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)
 (The instructions to Schedule O are in the separate instructions.)

Estate of: Robert Chackos

-8803

SCHEDULE P — Credit for Foreign Death Taxes

List all foreign countries to which death taxes have been paid and for which a credit is claimed on this return.

None

If a credit is claimed for death taxes paid to more than one foreign country, compute the credit for taxes paid to one country on this sheet and attach a separate copy of Schedule P for each of the other countries.

The credit computed on this sheet is for the

(Name of death tax or taxes)

Imposed in

(Name of country)

Credit is computed under the

(Insert title of treaty or "statute")

Citizenship (nationality) of decedent at time of death:

(All amounts and values must be entered in United States money)

1	Total of estate, inheritance, legacy, and succession taxes imposed in the country named above attributable to property situated in that country, subjected to those taxes, and included in gross estate (as defined by statute) . . .	
2	Value of the gross estate (adjusted, if necessary, according to the instructions for item 2)	
3	Value of property situated in that country, subjected to death taxes imposed in that country, and included in the gross estate (adjusted, if necessary, according to the instructions for item 3)	
4	Tax imposed by section 2001 reduced by the total credits claimed under sections 2010, 2011, & 2012 (see instructions)	
5	Amount of Federal estate tax attributable to property specified in item 3. (Divide item 3 by item 2 and multiply the result by item 4)	
6	Credit for death taxes imposed in the country named above (the smaller of item 1 or item 5). Also enter on line 18 of Part 2, Tax Computation	0.00

SCHEDULE Q — Credit for Tax on Prior Transfers**Part 1. — Transferor Information**

	Name of transferor	Social security number	IRS office where estate tax return was filed	Date of death
A	None			
B				
C				

Check here ☐ if section 2013(f) (special valuation of farm, etc., real property) adjustments to the computation of the credit were made (see instructions).**Part 2. — Computation of Credit (see instructions)**

Item	Transferor			Total A, B, & C
	A	B	C	
1	Transferor's tax apportioned (from which, line 7 of Form 706) for each column			
2	Transferor's tax (from each column of which, line 20)			
3	Maximum amount before percentage requirement (for each column, enter amount from line 1 of 2, whichever is smaller)			
4	Percentage allowed (each column) (see instructions)			
5	Credit allowable (line 2 & line 4 for each column)			
6	TOTAL credit allowable (add columns A, B, and C of line 5). Enter here and on line 18 of Part 2, Tax Computation			0.00

Schedules P and Q — Page 32

(The instructions to Schedules P and Q are in the separate instructions.)

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SCHEDULE R — Generation-Skipping Transfer Tax

Note: To avoid application of the deemed allocation rules, Form 706 and Schedule R should be filed to allocate the GST exemption to trusts that may later have taxable terminations or distributions under section 2032A even if the form is not required to be filed to report estate or GST tax.

The GST tax is imposed on taxable transfers of interests in property located outside the United States as well as property located inside the United States.

Part 1. — GST Exemption Reconciliation (Section 2031) and Section 2052(a)(3) (Special QTIP Election)

Check box ☒ If you are making a section 2052(a)(3) (special QTIP) election (see instructions)

1	Maximum allowable GST exemption	1	81,000.00
2	Total GST exemption allocated by the decedent against decedent's lifetime transfers	2	0.00
3	Total GST exemption allocated by the executor, using Form 706, against decedent's lifetime transfers	3	0.00
4	GST exemption allocated on line 8 of Schedule R, Part 2	4	0.00
5	GST exemption allocated on line 8 of Schedule R, Part 3	5	0.00
6	Total GST exemption allocated on line 4 of Schedule(s) R-1	6	0.00
7	Total GST exemption allocated to lifetime transfers and direct skips (add lines 2-6)	7	0.00
8	GST exemption available to allocate to trusts and section 2032A interests (subtract line 7 from line 1)	8	1,000,000.00
9	Allocation of GST exemption to trusts (as defined for GST tax purposes):		

A Name of trust	B Trust's EIN (if any)	C GST exemption allocated on lines 2-6, above (see instructions)	D Additional GST exemption allocated (see instructions)	E Trust's inclusion ratio (optional — see instructions)
Paragraph THIRD Trust			844,101.26	

9D Total. May not exceed line 8, above

10 GST exemption available to allocate to section 2032A interests received by individual beneficiaries (subtract line 9D from line 8). You must attach special-use valuation schedule (see instructions)

(The instructions to Schedule R are in the separate instructions.)

Schedule R -- Page 33

U723 RFP 5251

Partners Income Statement (Form 1065) states the corporation's

Estate of: Robert C. Galloway

-B303

Part 3. — Direct Skips Where the Property Interests Transferred Do Not Bear the GST Tax on the Direct Skips

Name of skip person	Description of property interest transferred	Estate tax value
None		

1	Total estate tax value of all property interests listed above	0.00
2	Estate taxes, state death taxes, and other charges borne by the property interests listed above	0.00
3	GST taxes borne by the property interests listed above but imposed on direct skips other than those shown on this Part 3. (See instructions.)	0.00
4	Total fixed taxes and other charges. (Add lines 2 and 3.)	0.00
5	Total tentative maximum direct skips. (Subtract line 4 from line 1.)	0.00
6	GST exemption allocated	0.00
7	Subtract line 6 from line 5	0.00
8	GST tax due (multiply line 7 by .06). Enter here and on Schedule R, Part 3, line 8	0.00

Estate of: Robert Crawford

-8803

SCHEDULE S -- Increased Estate Tax on Excess Retirement Accumulations
 (Under section 4980A(d) of the Internal Revenue Code)

Tax Computation

1 Check this box if a section 4980A(d)(2) special election is being made. ☐
 You must attach the statement described in the instructions.

2 Enter the name and employer identification number (EIN) of each qualified employer plan and individual retirement account in which the decedent had an interest at the time of death:

	Name	EIN
Plan #1		
Plan #2		
Plan #3		
IRA #1		
IRA #2		
IRA #3		

	A Plan #1	B Plan #2	C Plan #3	D All IRAs
3 Value of decedent's interest				
4 Amounts rolled over after death				
5 Total value (add lines 3 and 4)				
6 Amounts payable to certain alternate payees (see instructions)				
7 Decedent's investment in the contract under section 72(f)				
8 Excess life insurance amount				
9 Decedent's interest as a beneficiary				
10 Total reductions in value (add lines 6, 7, 8, and 9)				
11 Net value of decedent's interest (subtract line 10 from line 5)				
12 Decedent's aggregate interest in all plans and IRAs (add columns A-D of line 11)				12 0.00
13 Present value of hypothetical life annuity (from Part III, line 4)	13	0.00		
14 Remaining unused grandfathered amount (from Part II, line 4)	14	0.00		
15 Enter the greater of line 13 or line 14				15 0.00
16 Excess retirement accumulation (subtract line 15 from line 12)				16 0.00
17 Increased estate tax (multiply line 16 by 15%). Enter here and on line 23 of the Tax Computation on Form 706 (The instructions to Schedule S are in the separate instructions)				17 0.00

Part III Grandfather Election

- 1 Was a grandfather election made on a previously filed Form 709? ☐ Yes ☒ No
 If "Yes," complete lines 2-4 below. You may not make or revoke the grandfather election after the due date
 (with extensions) for filing the decedent's 1985 income tax return. If "No," enter -0- on line 4 and skip to
 Part III.

2 Initial grandfather amount	2	
3 Total amount previously recovered	3	
4 Remaining unused grandfather amount (subtract line 3 from line 2). Enter here and on Part I, line 14, of page 38	4	0.00

Part IV Computation of Hypothetical Life Annuity

1 Decedent's attained age at date of death (in whole years, rounded down)	1	75
2 Applicable annual annuity amount (see instructions)	2	
3 Present value multiplier (see instructions)	3	0.0000
4 Present value of hypothetical life annuity (multiply line 2 by line 3). Enter here and on Part I, line 13, of page 38	4	0.00

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For office use only

New York State Department of Taxation and Finance

New York State Estate Tax Return

For estates of decedents dying after May 25, 1980

Has there been a change to any previously reported information regarding the decedent, attorney or executor? ☐ Yes ☒ No

Decedent's name, Address, City, State and Zip Code

Chackrow, Robert

225 Millwood Road
Chappaqua, NY 10524

Decedent's Social Security Number

Date of death 07/11/93

County of residence Westchester

On the date of death, decedent was a ☒ Resident of New York State ☐ Nonresident of New York State

Executor --- If you are submitting Letters Testamentary or Letters of Administration with this form, indicate in this box the type of letters. Enter L if regular, LL if limited. If you are not submitting letters with this form, enter N.

Name of attorney (last, first, middle initial) Check box if POA attached ☐ Name of executor (if more than one, check box and see instructions)

Barnes Klein Rocca & Blum Carol Chackrow Guernsey

Address of attorney 230 Park Avenue Address of executor 402 Hancock Road

City, Village or post office State ZIP code City, Village or post office State ZIP code

New York NY 10169-0059 Williamstown MA 01267

Social Security number of attorney Telephone number of attorney Social Security number of executor Telephone number of executor

(212) 856-5800

Waivers are requested ☐ Attach Form(s) ET-69 (see instructions) Release of lien is requested (enter number of estates) ☐ Attach Form(s) ET-117 (see instructions) Total (see omitted)

If a proceeding for probate or administration has commenced in a Surrogate's Court in New York State, enter county ☒ Westchester Was a copy of this return filed with the Surrogate's Court? ☒ Yes ☐ No

Federal estate tax return required ☒ Yes ☐ No Federal gross estate 1,996,043.24

1	New York adjusted gross estate (from page 2, line 34)	1	1,996,043.24
2	Total New York allowable deductions (from page 2, line 60)	2	1,996,043.24
3	New York adjusted taxable estate (subtract line 2 from line 1)	3	0.00
4	New York adjusted taxable gifts (from Worksheet I in the instructions)	4	600,000.00
5	Preliminary tentative tax base (add lines 3 and 4)	5	600,000.00
6	Preliminary tentative tax on the amount on line 5 (from Table A in the instructions)	6	26,000.00
7	Unified credit (from Table B in the instructions)	7	500.00
8	Net preliminary tentative tax (subtract line 7 from line 6)	8	25,500.00
9	Tax attributable to New York adjusted taxable gifts (line 4 divided by line 5; multiplied by line 8)	9	25,500.00
10	Tax not attributable to NY adjusted taxable gifts (line 8 minus line 9)	10	0.00
11	Multiply line 10 by the decimal on line 37	11	0.00
12	New York tentative tax (add lines 9 and 11)	12	25,500.00
13	Gift tax payable for gifts made after 1982 (from Worksheet II in the instructions)	13	25,500.00
14	New York estate tax before other credits (subtract line 13 from line 12)	14	0.00
15	Agricultural exemption credit (from Form ET-411)	15	0.00
16	Credit for NY estate tax on prior transfers (from Form ET-190)	16	0.00
17	Credit for NY gift tax paid on prior gifts (from Form ET-412)	17	0.00
18	Total other credits (add lines 15, 16 and 17)	18	0.00
19	New York net estate tax (subtract line 18 from line 14), or minimum tax (see instructions)	19	0.00
20	Prior tax payments (attach a schedule of date(s) and amount(s) of payment(s))	20	0.00
21	If line 20 is less than line 19, enter balance due (payable to Commissioner of Taxation and Finance)	21	
22	If line 20 is greater than line 19, enter overpayment (to be refunded)	22	

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.

Signature of executor Date Signature of coexecutor Date

Signature of preparer other than executor Date

Address of preparer City State ZIP code

230 Park Avenue New York, NY 10169-0059

See instructions regarding your obligation to file a copy of this return with the Surrogate's Court.

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Estate of: Robert Chuckrow

Executor

Carol Chuckrow Guernsey
402 Hancock Road
Williamstown, MA 02667
S.S.N.: [REDACTED]

Amy P. Chuckrow
120 High Street
Charlestown, MA 02129
S.S.N.: [REDACTED]

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.

Date _____

Carol Chuckrow Guernsey

Amy P. Chuckrow

Do you, the executor, elect alternate valuation in accordance with section 654(b) of the Tax Law?

☐ Yes ☒ No

Gross assets (see instructions)

	Value at Date of Death or Alternate Value
23 Schedule A -- Real Estate	150,000.00
24 Schedule B -- Stocks and Bonds	536,890.73
25 Schedule C -- Mortgages, Notes, Cash and Bank Deposits	107,982.07
26 Schedule D -- Insurance on the Decedent's Life	98,033.53
27 Schedule E -- Jointly Owned Property	13,008.05
28 Schedule F -- Other Miscellaneous Property	785,671.32
29 Schedule G -- Transfers During Decedent's Life	0.00
30 Schedule H -- Powers of Appointment	0.00
31 Schedule I -- Annuities	304,457.44
32 Total (add lines 23 through 31)	1,996,043.24
33 * Enter the net amount of additions (or subtractions) from line 69, page 3	0.00
34 New York adjusted gross estate (line 32 & add or subtract line 33; enter here and on line 1, page 1)	1,996,043.24

Computations

35 For resident decedent (enter amount from line 70, page 3)	
36a New York gross estate for resident decedent (subtract line 35 from line 34)	1,996,043.24
36b New York gross estate for nonresident decedent (enter amount from line 71, page 4)	
37 Divide line 36a or 36b by line 34 (carry the decimal to four places; cannot be more than 1.0)	1.0000

Deductions (see instructions)

38 Schedule J -- Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims	57,971.87
39 Schedule K -- Debts of Decedent, Including Mortgages and Liens	502,045.98
40 Schedule L -- Net Losses During Administration	0.00
41 Add lines 38, 39 and 40	560,017.85
42 * Federal estate tax on excess retirement accumulations (section 4980A(d) of the IRC), if any	0.00
43 Subtract line 42 from line 41	560,017.85
44 Enter the amount from Form ET-90.4, Sch. M, line 8 or from federal Form 706, page 3, Recapitulation Schedule, line 19	1,436,025.39
45 * Enter amount, if any, from line 72, page 4	0.00
46 New York bequests to surviving spouse (line 44 and add of subtract line 45)	1,436,025.39
47 Enter the amount from Form ET-90.4, Sch. N, line 9 or from federal Form 706, page 3, Recapitulation Schedule, line 19	0.00
48 * Enter amount, if any, from line 73, page 4	0.00
49 New York charitable deduction (add lines 47 and 48)	0.00
50 Total New York allowable deductions (Add lines 43, 48 and 49; also enter on line 2, page 1)	1,996,043.24

* For use only when a federal estate tax return, Form 706, is attached.

51 Decedent's business or occupation (if retired, check the box ☒ and state decedent's former business or occupation below)Business or occupation Owner of Robert Chuckrow Construction Company of New YorkOccupation code
(in instructions) 060

52 Marital status of decedent at the time of death.

☐ Single	☐ Legally separated	☐ Divorced -- date divorce decree became final
☐ Widow or widower		
Name of deceased spouse		
Social security number of deceased spouse		Date of death of deceased spouse
☒ Married		
Name of surviving spouse <u>Adelaide Chuckrow</u>		
Social security number of surviving spouse		Amount distributed <u>\$1,436,025.39</u>

Executor	Date	Surviving spouse	Date

Estate of Robert Chodorow Social security number

Check the Yes or No box for each question.

- 53 Do you elect a marital deduction for qualified terminable interest property under section 655(e) (QTIP)? ☒ Yes ☐ No
- 54 Do you elect the special use valuation in accordance with section 654-2 of the Tax Law? ☒ Yes ☐ No
- 55 Do you elect to pay the tax in installments as described in IRC section 6166 (NY 687)? If Yes attach Form ET-415 in duplicate ☐ Yes ☒ No
- 56 Did the decedent, at the time of death, own any interest in a partnership or unincorporated business; own stock in an inactive or closely held business; or have an interest in any commercial property or incorporated business? ☒ Yes ☐ No
- 57 Does the gross estate contain any IRC section 2044 property? ☐ Yes ☒ No
- 58 Was there any insurance on the decedent's life, or were there any annuities or lump sum distributions that are not included on the return as part of the gross estate? ☐ Yes ☒ No
- 59 Was the decedent a party to litigation within three years preceding death, or is there any pending or contemplated cause of action relative to decedent's death? ☐ Yes ☒ No
- 60 Were there in existence at the time of the decedent's death any trusts created by the decedent during his or her lifetime or any trusts not created by the decedent under which the decedent possessed any power, beneficial interest or trusteeship? ☐ Yes ☒ No
- 61 Are there any assets wholly or partially excluded from the gross estate other than jointly-held assets with the surviving spouse? ☐ Yes ☒ No
- 62 Did the decedent at the time of death own any artwork, stamp collections, coin collections or other collections? ☒ Yes ☐ No

Schedule 1 — Adjustments to Federal Gross Estate

	Additions	Subtractions
63 Property subject to a limited power of appointment created prior to September 1, 1930, includable in the New York estate under section 657 of the Tax Law	63 0.00	
64 Federal gift tax, if any, included on Sch. G of fed. Form 706		64 0.00
65 New York State gift tax, if any, paid by decedent or decedent's estate for gifts made by decedent or spouse within three years of decedent's death	65 0.00	
66 Enter full value of property included in federal gross estate under provisions of section 2044 of the Internal Revenue Code (QTIP)		66 0.00
67 Enter full value of property includable in New York gross estate under the provisions of sections 94(4) and (5) of the Tax Law	67 0.00	
68 Totals (add lines 63, 65 and 67 in Additions column and add lines 64 and 66 in Subtractions column)	68 0.00	68 0.00
69 Net difference — plus/minus (enter here & line 33, page 2)	69 0.00	

Schedule 2 — Real Property and Tangible Personal Property Having an Actual Situs Outside New York State

To determine the New York gross estate of a resident decedent:

List each property, indicating the item number and the schedule on which it is listed (do not include bank accounts or other intangible assets located outside New York State).

70 Total value of property listed on this schedule (enter here and on line 35, page 2) 70 0.00

Schedule 3 — Real Property and Tangible Personal Property Having an Actual Situs In New York State

To determine the New York gross estate of a nonresident decedent:

List each property, indicating the item number and the schedule on which it is listed (do not include bank accounts or other intangible assets located in New York State).

71 Total value of property listed on this schedule (enter here and on line 36a, page 2)

71

Schedule 4 — Adjustment to Federal Marital Deduction

If an addition to, or deduction from, the federal marital deduction is required:

List this property and indicate the federal schedule(s) on which it is listed. Also, indicate the amount of the adjustment (See instructions).

72 Total value of property listed on this schedule (if negative amount, enter minus; enter here and on line 45, page 2)

72

0.00

Schedule 5 — Additions to Federal Deduction for Charitable, Public and Similar Gifts and Bequests

List property passing under a limited power of appointment created prior to September 1, 1930, which passes, or has passed to a qualified charitable organization, where such property is included in the amount on line 23, page 3 (Tax Law, section 657(c)).

73 Total value of property listed on this schedule (enter here and on line 48, page 2)

73

0.00

New York State Estate Tax Return / Schedules A - D

Estate of Robert Chackow	Social security number [REDACTED]

Schedule A -- Real Estate (report jointly owned property on Schedule E; attach additional sheets if necessary)

A Item No.	B Description	C Assessed Value	D Alternate Valuation Date	E Alternate Value	F Value at Date of Death
1	House and Lot located at 68 Maple Avenue, Mount Kisco, New York. Designated on the Tax Map of the Town of Mount Kisco, as Section 12, Lot 34. (See annexed appraisal by Martone & O'Toole Appraisal Co.)	0.00			\$150,000.00
Total from additional sheet(s) attached to this schedule					0.00

1 Total -- If alternate valuation was elected, enter the total of column E on Form
ET-90, page 2, line 25; otherwise, enter the total of column F

150,000.00

Schedule B -- Stocks and Bonds (report jointly owned property on Schedule E; attach additional sheets if necessary)

A Item No.	B Description	C Unit Value	D Alternate Valuation Date	E Alternate Value	F Value at Date of Death
1	231 shs. United Merchants & Mfrs. Inc.	.2605			\$60.18
2	13,000 shs. First Australia Prime Income Fund Inc.	10.7033			\$139,142.90
2	Dividend on item 2 of \$.090 per share, declared on payable on 7/16/93 to stockholders of record on 6/30/93	.090			\$1,170.00
3	\$170,000 Federal Home Loan Banks Cons BD 7.50% due 6/27/94 (continued on attached schedule)	103.6643			\$176,229.31
Total from additional sheet(s) attached to this schedule					220,283.34

2 Total -- If alternate valuation was elected, enter the total of column E on Form
ET-90, page 2, line 25; otherwise, enter the total of column F

536,890.73

SCHEDULE B - Continuation
Estate of Robert Cruckrow

Page 1

Item No	Description	Unit Value	Alternate Val. Date	Alt. Value	Value at Date of Death
3	Interest on item 3 from 6/27/93 to 7/11/93				\$531.25
4	\$100,000 United States Treasury Notes 7.625% due 5/31/96	108.8283			\$108,828.30
4	Interest on item 4 from 5/31/93 to 7/11/93				\$875.00
5	\$100,000 United States Treasury Notes 7.875% due 6/30/96	109.7970			\$109,797.00
5	Interest on item 5 from 6/30/93 to 7/11/93				\$256.79
TOTAL					\$220,288.34

Schedule C — Mortgage, Notes, Cash and Bank Deposits (report jointly owned property on Schedule E)

A Item No.	B Description	C Alternate Valuation Date	D Alternate Value	E Value at Date of Death
1	Bankers Trust Company Investment Advisory Account No. [REDACTED] BT Investment Funds - NY Tax Free Money Fund			\$75,794.13
2	Bankers Trust Company Super Now Checking Acct. No. [REDACTED]			\$32,187.94
Total from additional sheet(s) attached to this schedule				0.00
3 Total — If alternate valuation was elected, enter the total of column D on Form ET-70, page 2, line 25; otherwise, enter the total of column E				107,982.07

Schedule D — Insurance on the Decedent's Life

A Item No.	B Description	C Alternate Valuation Date	D Alternate Value	E Value at Date of Death
1	Veterans Administration Insurance Policy No. FV [REDACTED] Beneficiary: Adelaide Chudorow (See Form 712 annexed)			\$10,152.10
2	Fidelity Mutual Life Insurance Company Policy No. [REDACTED] Beneficiary: Adelaide Chudorow (See Form 712 annexed)			\$83,098.12
3	Mass Mutual Life Insurance Company Policy No. [REDACTED] Beneficiary: Adelaide Chudorow (See Form 712 annexed)			\$4,395.81
4	Mass Mutual Life Insurance Company Policy No. [REDACTED] Beneficiary: Adelaide Chudorow (See Form 712 annexed)			\$385.50
Total from additional sheet(s) attached to this schedule				0.00
4 Total — If alternate valuation was elected, enter the total of column D on Form ET-70, page 2, line 25; otherwise, enter the total of column E				98,033.63

New York State Estate Tax Return / Schedules E - G

Estate of
Robert Cruckrow

Social Security number

Schedule E -- Jointly Owned Property (attach additional sheets if necessary)

Part I -- Qualified Joint Interests (interests held by the decedent and decedent's spouse as the only joint tenants)

A Item No.	B Description	C Alternate Valuation Date	D Alternate Value	E Value at Date of Death
1	Chase Manhattan Bank Checking Account No. [REDACTED]			\$26,016.11
Total from additional sheet(s) attached to this schedule (Qualified joint interests)				

1	Total (Qualified joint interests)	1	26,016.11
2	Amounts included in gross estate (one half of line 1 total)	2	13,008.05

Part II -- All other joint interests

A Item No.	B Description	C Name of Joint Tenant & Relationship to Decedent	D Alternate Valuation Date	E Alternate Value	F Value at Date of Death

Total from additional sheet(s) attached to this schedule (All other joint interests)					
3	Total (All other joint interests)	3			
Part III -- Summary Add Part I, line 2 and Part II, line 3 (each column). If alternate valuation was elected, enter total of the Alternate Value column on Form ET-90, page 1. See 21 otherwise, enter total of the Value at Date of Death column					
4		4			13,008.05

NY 9021 - NYS 5163

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Schedule F — Other Miscellaneous Property not Reportable Under Any Other Schedule

A Item No.	B Description	C Alternate Valuation Date	D Alternate Value	E Value at Date of Death
1	24.54% interest in Glen Gardens Associates (See annexed appraisal by Equity Resources Group, Inc.)			\$5,000.00
2	6.50% interest in 414-424 West 48th Street Redevelopment Co. (See annexed appraisal by Equity Resources Group, Inc.)			\$9,000.00
3	24.24% interest in 328-336 West 53rd Street Redevelopment Co. (See annexed appraisal from Equity Resources Group, Inc.)			\$12,500.00
4	28% interest in Beaufort Associates (See annexed appraisal by Equity Resources Group, Inc.)			\$0.00
5	17.04% interest in Hilltop Associates (See annexed appraisal by Equity Resources Group, Inc.)			\$0.00
(continued on attached schedule)				
Total from additional sheet(s) attached to this schedule				759,171.32
6 Total — If alternate valuation was elected, enter the total of column D on Form ET-60, page 2. If not, enter the total of column E				785,671.32

Schedule G — Transfers During Decedent's Life

A Item No.	B Description	C Alternate Valuation Date	D Alternate Value	E Value at Date of Death
1	NY gift tax paid (under Article 26A) by the decedent or decedent's estate for all gifts made by the decedent or decedent's spouse within three years before the decedent's death (section 654(c) — see inst.)			0.00
2	Transfers made by decedent after December 31, 1982, (under section 1005 of Article 26A) in accordance with provisions of IRC sections 2035(a), 2036, 2037 or 2038			0.00
Total from additional sheet(s) attached to this schedule				
6 Total — If alternate valuation was elected, enter the total of column D on Form ET-60, page 2. If not, enter the total of column E				0.00

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SCHEDULE F - Continuation
Estate of Robert Chuckrow

Page 1

Item No	Description	Alternate Val. Date	Alt. Value	Value at Date of Death
6	24.50% interest in Bossier Associates (See annexed appraisal Equity Resources Group, Inc.)			\$0.00
7	25.14% interest in Dickinson Associates (See annexed appraisal by Equity Resources Group, Inc.)			\$0.00
8	.82% interest in Detroit Pacific Partners L.P. (See annexed appraisal by Equity Resources Group, Inc.)			\$24,070.00
9	6.19% interest in Marjan Associates (See annexed appraisal by Equity Resources Group, Inc.)			\$100.00
10	.32% interest in Sharptown Center Associates (See annexed appraisal by Equity Resources Group, Inc.)			\$100.00
11	Schulman Partnership Trust (See annexed appraisal by Equity Resources Group, Inc.)			\$0.00
12	25.8335% interest in Sportmen's Lodge Hotel, A General Partnership and its wholly-owned subsidiary Sportmen's Lodge Restaurant, Inc. (See annexed appraisal by Parnell Kerr Forster)			\$451,507.00
13	Medicare reimbursement			\$98.09
14	American Express - refund			\$1,309.34
15	Schulman Partnership Securities - litigation settlement			\$872.89
16	Silicon, Inc. - solely owned by decedent (annexed is a balance sheet as of the decedent's death and an appraisal of the corporation's lease agreement with Kinsey Shoes)			\$190,086.00
17	1987 Mercedes 300 (4 door) ID#WDBEA3CD1HA56741 Blue Book Value			\$15,925.00
18	1989 Jeep Grand Wagoneer			\$10,500.00

SCHEDULE F - Continuation
Estate of Robert Chuckrow

Page 2

Item No	Description	Alternate Val. Date	Alt. Value	Value at Date of Death
	ID# J4FN78LWKA90002 Blue Book Value			
19	Paintings and Prints - (See annexed appraisal by Red Fox Fine Art)			\$55,650.00
20	Southern Insurance Co. of Virginia - premium refund			\$223.00
21	Due the decedent as commission for the sale of partnership units (Bernie Rodin Housing Limited Partnership)			\$9,000.00
	TOTAL			\$759,171.32

New York State Estate Tax Return / Schedules H - L

Estate of
Robert Chudrow

Social security number

Schedule H -- Powers of Appointment (attach additional sheets if necessary)

A Item No.	B Description	C Alternate Valuation Date	D Alternate Value	E Value at Date of Death
Total from additional sheet(s) attached to this schedule				
1	Total -- If alternate valuation was elected, enter the total of column D on Form ET-90, page 2, line 32; otherwise, enter the total of column E			1

Schedule I -- Annuities (attach additional sheets if necessary)

A Item No.	B Description	C Alternate Valuation Date	D Alternate Value	E Value at Date of Death
1	Metropolitan Life Insurance Company Annuity Policy No. [REDACTED] Beneficiary: Adelaida Chudrow (See Form 712 annexed)			\$304,487.44
Total from additional sheet(s) attached to this schedule				0.00
2	Total -- If alternate valuation was elected, enter the total of column D on Form ET-90, page 2, line 31; otherwise, enter the total of column E			2 304,487.44

Schedule J -- Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims (attach additional sheets if necessary)

A Item No.	B Description	C Amount Claimed as a Deduction
1	Funeral expenses -- Identify: (See schedule attached) Total funeral expense	12,732.87
2	Administration expenses -- Identify: Total administration expense	0.00
3	Executor's commissions -- Identify: Total executor's commissions	0.00
4	Attorney fees -- Identify: (See schedule attached) Total attorney fees	30,000.00
5	Accountant fees -- Identify: (See schedule attached) Total accountant fees	2,500.00
6	Miscellaneous fees -- Identify: (See schedule attached) Total miscellaneous fees	12,732.00
Total from additional sheet(s) attached to this schedule		
3	Total amounts claimed as a deduction (enter here and on Form ET-90, page 2, line 52)	57,971.87

ATTACHMENTS AND WORKSHEETS
Estate of Robert Chackrow
SCHEDULE J

3/28/94
Page 1

1. Funeral Expenses

Attachment

Clark Associates Funeral Home 11,162.87

Pulver-Hewess Memorials - tombstone 1,575.00

Total -----
\$12,737.87

4. Attorney fees (identify)

Attachment

Attorney fees 30,000.00

Total -----
\$30,000.00

5. Accountant fees (identify)

Attachment

Accountant fees 2,500.00

Total -----
\$2,500.00

6. Miscellaneous fees

Attachment

Equity Resources Group, Inc. - valuation fee 3,300.00
of
limited partnerships

ATTACHMENTS AND WORKSHEETS
Estate of Robert Chackrow
SCHEDULE J

3/28/94
Page: 2

6. Miscellaneous fees

Attachment

Pannell Kerr Forster - valuation fee	6,434.00
Brien O'Toole - appraisal fee	450.00
Red Fox Fine Art - appraisal fee	2,550.00
Total	\$12,734.00

Schedule K — Debts of Decedent, Including Mortgages and Liens (attach additional sheets if necessary)

A Item No.	B Debits of Decedent	C Amount Claimed as a Deduction
	List creditor and nature of claim	
1	Mt. Kisco Medical Group	\$25.00
2	Roche Biomedical Labs Inc.	\$28.00
3	Howard Silbert, M.D.	\$450.00
(continued on attached schedule)		
Total from additional sheet(s) attached to this schedule		487,682.98
4	Total amount claimed as a deduction	488,185.98
	List mortgages or liens (describe)	
1	Peoples Westchester Bank - balance of mortgage due on premises known as 68 Maple Ave., Mt. Kisco (Schd. A - Item 1)	\$13,860.00
Total from additional sheet(s) attached to this schedule		0.00
5	Total amount claimed as a deduction	13,860.00
6	Total amount of debts claimed as a deduction (add lines 4 and 5; enter here and on Form ET-90, page 2, line 39)	502,045.98

Schedule L — Net Losses During Administration and Expenses Incurred in Administering Property Not Subject to Claims (attach supplemental schedules; attach additional sheets if necessary)

A Item No.	B Description	C Amount
	List net losses during administration	
Total from supplemental schedules or additional sheet(s) attached to this schedule		
7	Total net losses during administration	
	List expenses incurred in administering property not subject to claims	
Total from supplemental schedules or additional sheet(s) attached to this schedule		
8	Total expenses incurred in administering property not subject to claims	
9	Total (add lines 7 and 8; enter here and on Form ET-90, page 2, line 40)	0.00

SCHEDULE K - Continuation
Estate of Robert Chackrow

Page 1

Item No	Creditor and Nature of Claim	Amount
4	VNA Health Care Services (nursing)	\$217.50
5	David Voorhees, M.D.	\$9.62
6	DeGraff, Foy, Holt-Harris, Mealey - legal fees incurred before date of death	\$3,824.39
7	Brian McCarthy, CPA - accountant fees incurred before date of death	\$1,687.50
8	Cain, Hibben, Myers & Cook - legal fees incurred before date of death	\$2,675.36
9	Amy Chackrow - frame for painting	\$300.00
10	State of New York - tax liability in settlement of a matter in which NYS was contesting the decedent's, and his wife's, 1982 and 1983 NYS income taxes	\$118,841.59
11	Beaufort Associates - required capital payment due under partnership agreement	\$60,000.00
12	Bossier Associates - required capital payment due under partnership agreement	\$60,000.00
13	Dickenson Associates - required capital payment due under partnership agreement	\$60,000.00
14	Hilltop Associates - required capital payment due under partnership agreement	\$60,000.00
15	Silicon, Inc. - debt due and owing at decedent's death	\$115,735.00
16	Commissioner of Taxation & Finance - penalty for failure to pay NYS estimated gift tax	\$342.02
17	Sherwood Guernsey, II - legal fee in connection with the collection of the commission due to the decedent	\$4,000.00

SCHEDULE K - Continuation
Estate of Robert Chuckrow

Page 2

Item No	Creditor and Nature of Claim ----- at the date of his death	Amount -----
	TOTAL	\$487,682.98

New York State Estate Tax Return / Schedules M - N

Estate of Robert Chickrow Social security number [REDACTED]

Schedule M — Bequests, etc., to Surviving Spouse (attach continuation schedules or additional sheets if necessary)

Did any property pass to the surviving spouse as a result of a qualified disclaimer?

☐ Yes☒ No

(If Yes, attach a copy of the written disclaimer required by IRC section 2518(b).)

Terminable Interest (QTIP) Marital Deduction — Do you elect to claim a marital deduction for qualified

☒ Yes☐ No

terminable interest property (QTIP) under section 655(c)?

(If Yes, you must complete Part II of this schedule.)

Part I — Property interests which are not subject to a QTIP election

A Item No.	B Description of Property Interests Passing to Surviving Spouse	C Value
	(See schedule attached)	

Total from continuation schedule(s) or additional sheet(s) attached to this schedule

1 Total value of property interests not subject to a QTIP election. 1 591,924.12

Part II — Property interests which are subject to a QTIP election

A Item No.	B Description of Property Interests Passing to Surviving Spouse (describe portion of trust for which allocation is made)	C Value
	(See schedule attached)	

Total from continuation schedule(s) or additional sheet(s) attached to this schedule

2 Total value of property interests subject to a QTIP election. 2 844,101.27

Part III — Reconciliation

3	Total interests passing to surviving spouse (add lines 1 and 2 above)	3	1,436,025.39
4	New York State estate taxes payable out of property interests listed on Parts I and II above	4	0.00
5	Other state or death taxes payable out of property interests listed on Parts I and II above	5	0.00
6	State GST taxes payable out of property interests listed on Parts I and II above	6	0.00
7	Add lines 4, 5 and 6	7	0.00
8	Net value of property interests listed on Schedule M (subtract line 7 from line 3) enter here and on Form ET-90, page 2, line 4d	8	1,436,025.39

ATTACHMENTS AND WORKSHEETS
Estate of Robert Chackrow
SCHEDULE M

3/29/94
Page 1

1. Total value of property interests NOT subject to a
QMP election

Attachment

Item 1 on Schedule A	150,000.00
Item 1 on Schedule D	10,152.10
Item 2 on Schedule D	83,098.12
Item 3 on Schedule D	4,396.61
Item 4 on Schedule D	386.60
Item 1 on Schedule E - Part 1	13,008.05
Item 17 on Schedule F	15,925.00
Item 18 on Schedule F	10,500.00
Item 1 on Schedule I	304,457.64
Total	\$591,924.12

APPENDIX 40

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

Docket No. 327773

M. CHRJSTINE SHAFFER,

as Executrix of the Estate

of Adelaide P. Chuckrow,

Appellant,

v.

COMMISSIONER OF REVENUE,

Appellee.

APPELLANT'S BRIEF

I. Introduction

The question is whether the Commonwealth may impose an estate tax on the surviving spouse based on the transfer of property into a New York testamentary trust by reason of a New York resident's death, where the only plausible connection to Massachusetts is that the surviving spouse-an income beneficiary under the trust-moved to Massachusetts after her husband's death. As a matter of constitutional law and statutory interpretation, the answer must be no.

Robert Chuckrow's executrix made a federal QTIP election on the value of property that funded a testamentary trust. Because Robert Chuckrow was a resident of New York with no Massachusetts real or tangible personal property, his executrix did not file a Massachusetts estate tax return (as none was required), and thus did not make a Massachusetts

QTIP election. His wife Adelaide moved to Massachusetts and died there August 14, 2011. Now, Massachusetts attempts to collect a tax on the value of federally elected QTIP property. This assertion is incorrect.

First, the attempt to collect this tax is unconstitutional under the Fourteenth Amendment. The estate tax is a tax on the privilege of transferring property at death, rather than a tax on the property itself. *Knowlton v. Moore*, 178 U.S. 41 (1900). The taxing authority may tax only the transfer of the assets. In this case, there was no transfer by Adelaide; The only transfer took place when Robert died, at which time the estate tax would have been imposed but for the marital deduction.

Federal law provides for an unlimited marital deduction, meaning that all property transferred from the decedent spouse to the surviving spouse passes tax free-it is expected that the tax will be collected on the second spouse's death. As a general rule, terminable interest property (property which the surviving spouse's interest terminates at her death) does not qualify for a marital deduction. But the code creates a statutory exception for qualified terminable interest property. To qualify, a terminable interest must meet three conditions:

- (1) the surviving spouse must receive all income from the property for life, payable at least annually;
- (2) No person can have a power to appoint any part of the property to any person other than the surviving spouse; and

- (3) A QTIP election must be made by the executor of the deceased spouse's estate, and this election is irrevocable once made.

The quid pro quo is that the QTIP election merely delays collection of the tax, because there is no separately taxable transfer at the second spouse's death. To ensure the tax is eventually collected, the code creates a *fictional* second transfer, from surviving spouse to beneficiaries. See I.R.C. § 2044. This transfer is just that—fictional; the only true transfer occurs on the first-to-die spouse's death. See *In re Estate of Bracken*, 175 Wash. 2d 549 (2012). And because estate tax may only be collected on a transfer, Massachusetts cannot constitutionally tax this New York transfer.

Second, the attempt to collect this tax runs afoul of the statutory definition of Massachusetts gross estate. Determining Massachusetts gross estate begins with the federal gross estate, but it does not end with it. Indeed, the last sentence of G.L. c. 65C, § 1(f) provides, in relevant part, that "[t]he Massachusetts gross estate shall not include the value of any property in which the decedent had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph." Although the first sentence of § 1(f) references the federal gross estate, that portion of the last sentence seeks to include only property for which a Massachusetts QTIP election was made. If it referred back to the federal estate, it would render this last sentence inoperable, in violation of a fundamental tenet of statutory construction. Further, the last sentence serves to prevent unnecessary double taxation of assets that would

have been already been taxed on the first spouse's death. This provision was necessary because Massachusetts maintained a 50% marital deduction, even after federal law moved to an unlimited-meaning that executors would regularly make federal QTIP elections in excess of the state QTIP election.

II. Facts

Robert Chuckrow and Adelaide Chuckrow, a married couple, lived in and were residents of Chappaqua, New York. Statement of Agreed Facts ¶¶ 17-18 (hereinafter, SAF ¶__ "). Robert died on July 11, 1993, while the couple was living in New York, leaving a Last Will and Testament. Article Third of Robert's Will established a trust that would qualify for a Qualified Terminable Interest Property Trust election under I.R.C. § 2056(b)(7). SAF ¶¶ 18-19. The executrix filed a Form 706, United States Estate (and Generation Skipping Transfer) Tax Return. SAF ¶ 20.

The federal estate tax return contained the following information about Robert's estate:

- Robert's total federal gross estate was \$1,996,043.24.
- A total marital deduction of \$ 1,436,025.39 was taken.
- Of that amount, \$591,924.12 passed outright to Adelaide, as a surviving spouse.
- The remaining \$844,101.27 passed into the Trust established by Article Third of Robert's Will, which is now known as the "Trust u/w/o Robert Chuckrow." Pursuant to I.R.C. § 2056(b)(7), the co-executrix elected to have the Trust treated as a qualified terminable

interest property trust for federal estate tax purposes. This \$844,101.27 thus qualified for the federal estate tax marital deduction.

See SAF ¶ 23; Exhibits 15-16. Because Robert Chuckrow was a resident of New York and owned no real or tangible property in Massachusetts, his estate did not file a Massachusetts estate tax return. SAF ¶¶ 27-28.

At some point in time after Robert's death, Adelaide moved to Massachusetts to be cared for by her daughter. SAF ¶ 1. She died while living in Williamstown, Massachusetts on August 14, 2011. SAF ¶ 1. Adelaide's niece, the executrix of her estate, filed a Form 706, United States Estate (and Generation Skipping Transfer) Tax Return and a Form M-706, Massachusetts Estate Tax Return. SAF ¶ 12.

Adelaide's federal estate, as reflected on Form 706, was as follows:

- Adelaide's total federal gross estate was \$15,633,617.
- Of that amount, \$13,251,469 consisted of assets held by the Trust u/w/o Robert Chuckrow, which was includible in Adelaide's federal gross estate under I.R.C. § 2044, by virtue of the I.R.C. § 2056(b)(7) election made for the Trust at Robert's death.

SAF ¶ 14; Exhibit 3. Accordingly, Adelaide's estate paid \$5,225,419 in federal estate taxes. Exhibit 3.

Meanwhile, on Form M-706, the executrix reported a Massachusetts gross estate of \$2,382,148 (representing the difference between Adelaide's federal gross estate and the amount attributable to

the QTIP trust property). SAF ¶¶ 13, 15. Adelaide's estate paid \$100,997 in Massachusetts estate taxes. SAF ¶ 2.

Adelaide's estate was selected for audit. SAF ¶ 3. On August 29, 2013, the Department of Revenue issued a Notice of Intention to Assess, determining that the Massachusetts gross estate should have included the assets of the Trust u/w/o Robert Chuckrow, and thus asserting that the estate owed additional taxes in the amount of \$1,809,141.88. SAF ¶ 3. Disagreeing with the intended assessment, Adelaide's estate requested a conference pursuant to G.L. c. 62C, § 26(b), which was held on February 12, 2014. SAF ¶ 4. The Department of Revenue issued its decision letter on March 10, 2014, denying the estate's requested relief and returning the matter to the audit division for assessment. Exhibit 4.

On March 18, 2014, Adelaide's estate received a Notice of Assessment for \$1,953,032, representing the additional tax of \$1,809,141.88 plus accrued interest thereon. SAF ¶ 5. The estate paid the assessed tax on April 11, 2014, and noted that an application for abatement would be forthcoming. SAF ¶ 6.

III. Background of the federal and Massachusetts estate tax and marital deduction

A. History of the federal estate tax

Prior to the current estate tax system, Congress imposed temporary death taxes to raise revenue during or after times of war. The first three iterations (in 1797, 1862, and 1898) were temporary revenue raisers, and were repealed after their need dissipated. The War Revenue Act of 1898 led to the Supreme Court case of *Knowlton v. Moore*, 178 U.S.

41 (1900), holding that death taxes were constitutional and that Congress may properly tax the *transfer* of property, but not the *value* of property.

The estate tax as we know it came into existence in 1916, again to fund a war. See Revenue Act of 1916, ch. 463, 39 Stat. 756. This time, however, the estate tax was not repealed. Until World War II, the federal estate tax treated citizens of common-law states differently from those in community-property states, such that citizens of community-property states paid significantly less in estate taxes due to the form of ownership.

To reconcile this difference, Congress introduced the marital deduction in 1948, thus equalizing tax benefits in common-law and community-property states. See Revenue Act of 1948, Pub. L. No. 80-471, 62 Stat. 110. Under the 1948 legislation, the decedent spouse would receive a deduction for one-half of the property that passed to the surviving spouse. *Id.* § 361. Notably, the 1948 legislation disqualified "terminable interest" property from the marital deduction, out of fear that estate tax might be avoided on the death of the surviving spouse.¹ *Id.* In 1976, Congress increased the maximum allowable marital deduction to the greater of \$250,000 or one-half of the decedent's adjusted gross estate. See Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520, § 2002.

¹ A "terminable interest" is an interest in property that terminates upon "the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur." I.R.C. § 2056(b)(7). See also Black's Law Dictionary 886 (9th ed. 2009).

Significant changes to the marital deduction (and estate taxes generally) came in 1981, under the Economic Recovery Tax Act. See Pub. L. No. 97-34, 95 Stat. 172. First, the marital deduction was made unlimited. *Id.* § 403. Second, the marital deduction was expanded to allow for certain terminable interests to be eligible for a marital deduction-known as qualified terminable interests. *Id.* For a terminable interest that passes from the decedent spouse to the surviving spouse to be considered a qualified terminable interest three conditions must be met:

- (1) The surviving spouse must receive all income from the property for life, payable at least annually;
- (2) No person can have a power to appoint any part of the property to any person other than the surviving spouse; and
- (3) A QTIP election must be made by the executor of the deceased spouse's estate, and this election is irrevocable once made.

See I.R.C. § 2056(b)(7). The tradeoff is that property for which a QTIP election was made under § 2056(b)(7) is includible in the surviving spouse's federal gross estate. See I.R.C. § 2044.

Hence the QTIP trust was born. The QTIP trust, has two major advantages, one practical and one tax-related. The practical advantage is that the first-to-die spouse controls the ultimate disposition of the property upon his spouse's death. The tax advantage is that the surviving spouse can delay paying estate taxes until her death. And further, with proper planning, married couples can maximize

both of their federal exemption to minimize estate taxes paid on family assets.

B. History of the Massachusetts estate tax

Massachusetts enacted its first death tax in 1926, which took advantage of the state death tax credit under federal estate tax law—otherwise known as a "sponge tax." St. 1926, c. 355 (establishing estate tax). This tax was suspended (though never repealed) when the legislature enacted a stand-alone Massachusetts estate tax. St. 1975, c. 684, § 74 (creating G.L. c. 65C). Under the stand-alone estate tax, there was no unlimited marital deduction, because federal law did not yet have an unlimited deduction. Nor was there a provision for QTIP, because QTIP property was (again) not yet in existence under federal law. Rather, Massachusetts followed federal law by providing for a 50% marital deduction.

Massachusetts, mirroring the federal changes of 1981, added a QTIP section to its estate tax regime in 1985. St. 1985, c. 711, § 12 (inserting G.L. c. 65C, § 3A). The Massachusetts QTIP statute provided definitions nearly identical to those in I.R.C. § 2056(b)(7). But the Massachusetts QTIP required a state-level election that was "separate from and independent of the federal QTIP election. G.L. c. 65C, § 3A. Despite mirroring the federal statute, Massachusetts did not permit an unlimited state marital deduction until July 1, 1994. See St. 1992, C. 133, §§ 422, 597.²

² There have been two subsequent amendments to the Massachusetts estate tax: St. 1992, c. 133, § 422, and St. 1994, c. 342, § 4. Both became effective for decedent's dying after July 1, 1994, so these amendments were inapplicable at the time of Robert's death in 1993.

The stand-alone Massachusetts estate tax was phased out beginning in 1993, when the legislature enacted G.L. c. 65C, § 2A, which (for decedents dying after January 1, 1997) imposed a tax equal to the state death tax credit under federal law. This was a second sponge tax that was in effect for decedents dying between 1997 and 2003.

In 2001, Congress began a decade-long phase out of the federal estate tax, including an elimination of the state estate tax credit. See Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 ("EGTRRA"). Responding to EGTRRA, the Massachusetts legislature decoupled the Massachusetts estate tax from the federal estate tax. See St. 2002, c. 186, § 28. See also St. 2002, c. 364, § 10. Thus, for those dying after January 1, 2003, the amount of the Massachusetts estate tax is computed by determining what would have been the federal credit for state estate tax on December 31, 2000. When determining Massachusetts estate tax liability, it is therefore still necessary to fill out the 1999 version of federal Form 706.

The Massachusetts estate tax from the 1980s forward was patchwork reaction to federal laws that has led to much confusion, even for seasoned practitioners.

- From 1981 to December 31, 1985, federal law provided for an unlimited marital deduction and a QTJP election. Massachusetts permitted a 50% marital deduction, but had no provision for QTIP elections.
- From 1986 to June 30, 1994, federal law provided for an unlimited marital deduction and a QTIP election. Massachusetts added a

provision for QTIP elections, but still limited the state marital deduction to 50%.³

- From July 1, 1994 to December 31, 1996, federal law maintained the unlimited marital deduction and QTIP elections. Massachusetts finally provided the same.

- From 1997 to December 31, 2002, federal law provided for an unlimited marital deduction and QTIP elections. Massachusetts provided the same, but altered its estate tax regime to a sponge tax.

- From January 1, 2003 to the present, the Massachusetts estate tax is calculated based on the state estate tax credit that would have applied under the 2000 Internal Revenue Code.

The above documents differences in federal and Massachusetts law with regard to the marital deduction and QTIP elections. But this does not even take into account the differences between federal and Massachusetts law regarding the estate tax exemptions. Because the exemption amounts were different, the executor would, to minimize estate tax liability, have to make a federal QTIP election on a different amount than the state QTIP election. This chart attempts to visualize the differences:

³ Robert Chuckrow died on July 11, 1993.

CHART⁴⁵⁶

Date of Death	Fed. Exemption	Mass. exemption	Fed. marital deduction	Mass. marital deduction	Fed. QTIP	Mass. QTIP
1982	\$225,000	\$30,000 ⁴	unlimited	50%	yes	no
1983	\$275,000	\$30,000	unlimited	50%	yes	no
1984	\$325,000	\$30,000	unlimited	50%	yes	no
1985	\$400,000	\$30,000	unlimited	50%	yes	no
1986	\$300,000	\$200,000 ⁵	unlimited	50%	yes	yes
1987	\$600,000	\$200,000	unlimited	50%	yes	yes
1988	\$600,000	\$200,000	unlimited	50%	yes	yes
1989	\$600,000	\$200,000	unlimited	50%	yes	yes
1990	\$600,000	\$200,000	unlimited	50%	yes	yes
1991	\$600,000	\$200,000	unlimited	50%	yes	yes
1992	\$600,000	\$200,000	unlimited	50%	yes	yes
1993	\$600,000	\$300,000	unlimited	50%	yes	yes
1994	\$600,000	\$400,000	unlimited	unlimited ⁶	yes	yes
1995	\$600,000	\$500,000	unlimited	unlimited	yes	yes
1996	\$600,000	\$600,000	unlimited	unlimited	yes	yes
1997	\$600,000	\$600,000	unlimited	unlimited	yes	yes
1998	\$625,000	\$625,000	unlimited	unlimited	yes	yes
1999	\$650,000	\$650,000	unlimited	unlimited	yes	yes
2000	\$675,000	\$675,000	unlimited	unlimited	yes	yes
2001	\$675,000	\$675,000	unlimited	unlimited	yes	yes
2002	\$1,000,000	\$1,000,000	unlimited	unlimited	yes	yes
2003	\$1,000,000	\$700,000	unlimited	unlimited	yes	yes
2004	\$1,500,000	\$850,000	unlimited	unlimited	yes	yes
2005	\$1,500,000	\$950,000	unlimited	unlimited	yes	yes
2006	\$2,000,000	\$1,000,000	unlimited	unlimited	yes	yes
2007	\$2,000,000	\$1,000,000	unlimited	unlimited	yes	yes
2008	\$2,000,000	\$1,000,000	unlimited	unlimited	yes	yes

⁴Through 1985, Massachusetts had an exemption of \$30,000 for all Massachusetts decedents. But if the Massachusetts net estate was \$60,000 or less, then the exemption would be equal to that amount, thus eliminating Massachusetts estate tax.

⁵ Beginning in 1986, the Massachusetts exemption was not applicable to every decedent. In the event that a Massachusetts decedent had a net estate equal to or lower than this threshold amount, then the decedent is entitled to an estate tax exemption equal to the amount of his net estate, thus eliminating any state estate tax. If the decedent has a net estate worth just \$1 more than the threshold amount, then the estate must pay an estate tax on the entire estate.

⁶ The unlimited marital deduction went into effect for decedents dying after July 1, 1994.

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⁶ The unlimited marital deduction went into effect for decedents dying after July 1, 1994.

IV. Argument

A. The taxable transfer of QTIP occurs at the death of the first spouse, and because Robert Chuckrow died in New York, there is no constitutional basis for Massachusetts to impose a tax.

1. The estate tax does not (and constitutionally cannot) tax the value property, but rather taxes the transfer of property.

The United States constitution forbids direct taxes unless they are apportioned among the states. U.S. Const. Art. I, § 9, cl. 4. In *Knowlton v. Moore*, 178 U.S. 41 (1900), the estate tax was challenged as a direct tax that was not properly apportioned. The Supreme Court rejected this argument, holding that the estate tax (and taxes of that general character) are not taxes on the property or the value of the property itself, but on the privilege of *transferring* the property at death: "[D]eath is the generating source from which the particular taxing power takes its being, and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested." *Id.* at 56.

Accordingly, estate taxes at the state and federal level are imposed not on the value of property, but on the transfer of the taxable estate from the decedent to the beneficiaries. See I.R.C. § 2001(a) ("A tax is hereby imposed on the transfer of the taxable estate"); 830 Code Mass. Regs. § 65C1.1 ("The Massachusetts estate tax is a

transfer tax imposed on the value of all property in the estate of a decedent at the date of death.").⁷

2. The marital deduction is unlike other tax deductions because it merely delays the collection of tax.

The marital deduction is unlike other tax deductions. The typical tax deduction is given to offset expenses or costs that are incurred by the taxpayer, thus permanently eliminating the basis for taxation. The marital deduction, on the other hand, is not an elimination of taxation; it is a deferral or postponement of a tax that would otherwise be imposed on the first-to-die spouse. That is, if the entire taxable estate of the first-to-die spouse is transferred to the second-to-die, there will be no estate tax due from the estate of first-to-die spouse because of the unlimited marital deduction. But the taxing authority will eventually be able to tax that transferred property when the surviving spouse dies. See I.R.C. § 2044.

An example: H and W are married in a jurisdiction with an unlimited marital deduction and no estate tax exemption. H has \$2 million in assets, and W has \$0. When H dies, he can transfer the entire \$2 million to W without incurring any estate tax liability, because of the unlimited marital deduction. If W dies a year later, the taxing authority will then be able to assess a tax on W's \$2 million when it is transferred to her beneficiaries.

⁷ This is colorfully illustrated by Treasury Regulation 20.2033-1: "[A] cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of that part of the lot which is not designed for the interment of the decedent and members of his family." This is so because the occupied portion of the burial lot is not transferrable to anyone else by the decedent's beneficiaries

The taxing authority merely had to delay enforcement of the tax on the \$2 million, though it is the same \$2 million that was originally owned by H. Of course, in this situation there are two transfers: one from H to W, and another from W to the beneficiaries.

Contrast the above with a hypothetical where H's executor makes a QTIP election using a trust identical to the Trust u/w/o Robert Chuckrow. H has \$2 million; W has \$0. When H dies, his entire \$2 million is transferred into the trust. His executor makes a QTIP election (which qualifies for the marital deduction), so no estate tax is due on H's death. W does not receive any of the \$2 million. She still has \$0, but she receives all income from the trust, payable annually. When W dies, her estate owes estate taxes on the \$2 million, but only by virtue of I.R.C. § 2044, and not § 2031.⁸ The trust remains in existence; only an income beneficiary has been removed by death. In this situation, however, there was only one transfer-the transfer from H into the trust. (This is explored more fully below.) W never had any dominion or control over the property; nor could she change its ultimate disposition. The trust's terms controlled. So W never had the money, but her estate is taxed under I.R.C. § 2044.

⁸ I.R.C. § 2031 defines gross estate to include, at the decedent's death, "all property, real or personal, tangible or intangible, wherever situated"-in other words, all assets the decedent owns. I.R.C. § 2044, on the other hand, adds to the gross estate the value of any property "in which the decedent had a qualifying income interest for life." Section 2044 creates a fictional transfer of property from the surviving spouse to the ultimate beneficiaries of a QTIP trust.

3. QTIP trust assets are transferred only once, at the death of the first-to-die spouse, so there is no basis for Massachusetts to tax that transfer.

The estate tax is a tax on the transfer of property at death. When the property transferred is qualified terminable interest property, there is only one transfer-and that transfer occurs on the death of the first-to-die spouse. There is no transfer when the surviving spouse later dies.

a. A background of QTIP trusts.

QTIP trusts are commonly used in modern estate planning to minimize estate taxes for families while preserving assets for the benefit of a surviving spouse during her lifetime. QTIP trusts are an exception to the general IRS rule that terminable interest property cannot qualify for the marital deduction. Thus, if properly established, QTIP trusts qualify for the marital deduction.

Typically, property passing from the decedent spouse to the surviving spouse qualifies for the unlimited federal marital deduction. I.R.C. § 2056(a). There are some limitations. One is that no marital deduction can be taken for terminable interest property. I.R.C. § 2056(b). But if the terminable interest property is *qualified* terminable interest property (QTIP), it will qualify for the marital deduction. And so the applicable estate tax is deferred until the surviving spouse's death. I.R.C. § 2056(b)(7).

Qualified terminable interest property is defined as property "(I) which passes from the decedent, (II) in which the surviving spouse has a qualifying income interest for life, and (III) to which

an election under this paragraph applies." I.R.C. § 2056(b)(7)(B)(i). And the surviving spouse has a qualifying income interest for life if "(I) the surviving spouse is entitled to all income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse." I.R.C. § 2056(b)(7)(B)(ii).

The ordinary federal estate plan for a decedent who plans to use a QTIP trust proceeds in this manner. Before his death, the decedent sets up a plan to use two trusts. Upon death, an amount equal to the federal exemption passes into a Credit Shelter Trust, thus utilizing the decedent's federal estate tax exemption. And the balance of the decedent's estate funds a Marital Trust, which would be eligible for a QTIP election.

The Marital Trust is purposefully structured so as to preserve the marital deduction. First, the surviving spouse must be paid income from the trust at least annually. Second, no person may have the power to appoint any portion of the trust property to anyone other than the surviving spouse. And third, the language of the trust will allow for a QTIP election to be made by the decedent spouse's executor, and this election is irrevocable. See I.R.C. § 2056(b)(7).

b. The taxable transfer of the Trust occurs at the death of the first-to-die spouse, not the second-to-die spouse.

When Robert Chuckrow died, the executrix of his estate made an irrevocable federal QTIP election on a timely filed Form 706 for the Trust assets. Under the terms of the Trust, Adelaide had no

general power of appointment over the Trust property, and she was unable to exercise any dominion or control over the Trust property. Her interest in the Trust was limited to her right to receive income distributions from the Trust, and principal distributions in the trustee's sole and absolute discretion.

The best way to conceptualize the estate tax liability of QTIP is as a taxable transfer on the death of the first spouse, but a deferment on the collection of those taxes until the second spouse dies. This comports with general theories of both property law and federal tax law.

First, as a matter of general property law, the transfer of trust property is completed when the Donor puts the property into an irrevocable trust. See *In re Estate of Bracken*, 175 Wash. 2d 549, 566 (2012), citing *Coolidge v. Long*, 282 U.S. 582, 605 (1931). The Donor establishes the trust terms, nominates a trustee, and dictates the ultimate disposition of the property by listing the beneficiaries. Once the property is transferred into an irrevocable trust (assuming the Donor retains no interest in the trust), the Donor relinquishes all rights to dominion or control over the property. This is why a gift tax return is required when a Donor creates an irrevocable trust in which he is neither the trustee nor beneficiary.

The Trust established by Robert's will was no different. Robert, through his executrix, made the irrevocable election to treat the property transferred into the Trust as QTIP property. See I.R.C. § 2056(b)(7)(v). None of this property was ever transferred to Adelaide, and she had no authority or power to alter the Trust's terms, to control its

principal, to change its beneficiaries, or to alter the principal's ultimate disposition.⁹

In short, Robert controlled the ultimate disposition of his property by setting the terms of the trust, and it was his death that constituted the transferring event that the federal government (or any state government, for that matter) could constitutionally tax. Adelaide had no control or dominion over the property that was in the Trust. She could not remove it, add to it, or otherwise manipulate it. When Adelaide died, there was no further transfer of the Trust property. Rather, the property remained (and still remains) held in the same Trust for the benefit of the class selected by Robert per the terms of the Trust. Adelaide's death merely changed the class of beneficiaries eligible to receive Trust property. Because she had no power or control over the assets of the Trust, Adelaide cannot be said to have transferred any of the Trust property upon her death. Therefore, as a matter of property law, the *only* transfer with regard to this QTIP trust was upon the Robert's death.

Second, under the Internal Revenue Code and applicable regulations, the death of the first-to-die spouse is the taxable event with regard to QTIP trust assets. As discussed above, the marital deduction (which QTIP-elected trusts qualify for) is not a typical deduction that eliminates taxation completely. Rather, the election only delays or

⁹ This is also illustrated in Treas. Reg. 20.2033-1: "[A] cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of that part of the lot which is not designed for the interment of the decedent and members of his family." The reason is clear: the portion of the burial plot is used exclusively by the decedent, and is not transferrable to any of his beneficiaries.

postpones the collection of the tax (which would otherwise be due at the decedent spouse's death) until the surviving spouse dies.

The value of the first-to-die spouse's federal gross estate includes property that he passes into a trust for which a QTIP election is intended to be made. See J.R.C. § 2033 (value of gross estate includes the value of all property to the extent of the interest of the decedent); Treas. Regs. §§ 20.0-2(a), 20.2033-1(a), 20.2044-1(e). Ordinarily, terminable interest property passed to a surviving spouse would not qualify for the marital deduction. But I.R.C. § 2056(b)(7) provides an exception for qualified terminable interest property, which does qualify for the marital deduction. To perfect a QTIP trust, one of the conditions is that property *actually pass* from the first-to-die spouse into the trust. I.R.C. § 2056(b)(7)(B)(i)(I) (property "which passes from the decedent"). Only by value of a QTIP election, and corresponding allowance of a marital deduction, is such decedent spouse's property not taxed immediately. The tradeoff, however, is that estate taxes on the trust assets are ultimately paid when the surviving spouse dies. The Code essentially creates a fictional transfer to reach QTIP property in the surviving spouse's estate—*treating* it as having passed to the surviving spouse. See Rev. Proc. 2001-38 ("For purposes of § 2056(a), qualified terminable interest property is treated as passing to the surviving spouse, and no part of the property is treated as passing to any person other than the surviving spouse."). It is only *treated* as passing to the surviving spouse for purposes of § 2056 because the property was *actually* transferred into the QTIP trust—forever out of reach of the surviving spouse.

This point is reiterated in the tax procedures for the surviving spouse. At the death of the surviving spouse, where a QTIP election has been made and the marital deduction previously allowed, the Code again creates a fictional transfer. Internal Revenue Code § 2044(c) provides that, for estate tax purposes, qualified terminable interest property is "includible in the gross estate of the decedent [the surviving spouse] under subsection (a) shall be treated as property passing from the decedent [the surviving spouse]." Again, it is *treated* as passing, but it does not actually pass from the surviving spouse. This is no accident of phrasing. In subsection (b), the Code specifies that this section applies to property for which "a deduction was allowed with respect to the transfer of such property to the decedent [the surviving spouse]." Thus, under a plain reading, I.R.C. § 2044 recognizes the differences between property that is actually transferred and property that is only treated as transferred.

The Code also recognizes only a single transfer by its inclusion of I.R.C. § 2207A. Under § 2207A, the second-to-die's estate is entitled to recover from the QTIP trust the portion of the second-to-die's estate tax that is attributable to the § 2044 inclusion of QTIP *trust—i.e.*, the portion the surviving spouse fictionally transfers to the ultimate beneficiaries by virtue of § 2044. Thus, even the Code recognizes that the surviving spouse does not and cannot actually transfer any property from a QTIP trust on her death, which is why § 2207A allocates the ultimate tax liability for taxes assessed on the value of QTIP property to the QTIP assets themselves.

This is not some novel or unique interpretation. Indeed, the Supreme Court of Washington reached the very same conclusion in *In re Estate of Bracken*, 175 Wash. 2d 549 (2012). The court held that the taxable transfer of property passing to a trust for which a QTIP election was made is on first-to-die's death. *Id.* at 567-568. Therefore, the state could not retroactively impose Washington estate taxes on the second-to-die spouse attributable to assets of a QTIP trust for her benefit. *Id.* at 566-568, 575-576. *Bracken* is discussed in further detail below.¹⁰

Accordingly, under general principles of property law and federal and state tax law, the only transfer of QTIP assets occurs at the death of the first-to-die spouse. And this true transfer is the transfer of assets from the decedent into the qualifying trust. Nevertheless, the Code supposes a two-step fictional transfer of QTIP assets: first from the decedent spouse to the surviving spouse, and then a second fictional transfer from the surviving spouse to the ultimate beneficiaries. But these two transfers are just that-fictional. The Code creates these fictional events in order to collect, on the death of the second spouse, the tax that otherwise would be

¹⁰ Other courts have discussed the fictional transfer on the surviving spouse's death. See *Estate of Bonner v. United States*, 84 F.3d 196, 198 (5th Cir. 1996) ("Although § 2044 contemplates that the QTIP property will be treated as having passed from Bonner for estate tax purposes, the statute does not require, nor logically contemplate that in so passing, the QTIP assets would merge with other assets."); *Estate of Mellinger v. Comm'r*, 112 T.C. 26, 35 (1999) ("[QTIP] property is 'treated as property passing from the' surviving spouse, sec. 2044(c), and is taxed as part of the surviving spouse's estate at death, but QTIP property does not actually pass to or from the surviving spouse.").

collectible upon the death of the first-to-die spouse. Without the first fictional transfer (from decedent spouse to surviving spouse), taxes would be immediately due. But, if the first fictional transfer were allowed without the second fictional transfer from the surviving spouse to the ultimate beneficiaries, the trust assets would escape estate taxation altogether, since an income interest in a trust created by a third party expires at death with no general power of appointment over such assets would not be includible in the decedent's gross estate-but for the fiction created by I.R.C. § 2044.

Adelaide, having no control over the Trust assets, had nothing to actually transfer on her death. The true transfer, and thus the taxable event, occurred on the death of Robert.

4. The taxable event occurred when Robert Chuckrow died in New York; thus the QTIP property is beyond the reach of Massachusetts's taxing jurisdiction.

Because the taxable transfer occurred on the death of Robert Chuckrow, the Massachusetts Department of Revenue is powerless to impose a tax on the Trust assets at the death of Adelaide Chuckrow.

a. The Fourteenth Amendment and art.10 prohibit a state from taxing a transaction that occurs outside its borders.

The due process clause of the Fourteenth Amendment prohibits a state from imposing a tax on a transaction that occurs entirely outside its borders. "[T]he exaction by a State of a tax which it is without power to impose is a taking of property without due

process of law in violation of the Fourteenth Amendment." *Frick v. Pennsylvania*, 268 U.S. 473, 488-489 (1925) (holding statute that attempts to tax tangible property sited in another state unconstitutional). *Frick* tracks Chief Justice Marshall's statement in *McCulloch v. Maryland* that the power to tax "is an incident of sovereignty, and is co-extensive with that to which it is an incident. All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation." *McCulloch v. Maryland*, 4 Wheat. (17 U.S.) 316, 429 (1819). Similarly, art. 10 of the Massachusetts Declaration of Rights proscribes the collection of estate taxes on a person who is not a citizen of Massachusetts.

b. Massachusetts is reaching beyond its taxing jurisdiction in seeking to impose a tax on Adelaide based on Robert's transfer of property into the Trust.

Here, Massachusetts is attempting to reach beyond its borders-beyond its sovereignty to collect a tax on a transfer made in New York by a New York resident. By doing so, Massachusetts is attempting to exact "a tax which it is without power to impose," in violation of the due process clause of Fourteenth Amendment of the United States Constitution. *Frick v. Pennsylvania*, 268 U.S. 473, 488-489 (1925).

The Supreme Judicial Court has recognized that Massachusetts may constitutionally impose an estate tax on gifts made within three years of death by a Massachusetts decedent, even though the gifts were of Maryland intangible securities and even though the decedent was a Maryland resident at the time the gifts were made. See *Page v. Comm'r of*

Revenue, 389 Mass. 388, 394-395 (1983). In reaching this decision, the SJC cited *Curry v. McCanless*, 307 U.S. 357 (1939). In *Curry*, both Alabama and Tennessee attempted to impose death taxes on the transfer of an interest in intangibles. *Id.* at 360. The decedent was a domiciled resident of Tennessee, and the intangibles were held in trust by an Alabama trustee—a trust established by the decedent and over which she maintained the power to dispose of the trust estate by her will (a general power of appointment). *Id.* at 360-361. The Court held that both states could constitutionally levy a tax on the transfer of these assets. *Id.* at 372-373.

Of course, there are several major distinctions between taxing the assets of the individuals in *Page* and *Curry* and taxing the Trust assets here. In *Page*, the decedent maintained absolute control and dominion over the ultimate transfer of the property. She could have sold them, gifted them, or bequeathed them. Similarly, the decedent in *Curry*, by her trust instrument, maintained a right to bequeath the trust assets, thus controlling their ultimate transfer. What is more, in *Page* and *Curry*, the decedents were both the taxpayer and the transferor.

Not so in the case of Adelaide Chuckrow. In the Trust created under Robert's Will, Adelaide had no power or control to transfer the principal. Contrast *Pearson v. McGraw*, 308 U.S. 313, 318 (1939) (noting that the jurisdiction of a state "is dependent not on the physical location of the property in the state but on control over the owner"). Unlike *Page* and *Curry*, here the transferor and the taxpayer are not one and the same. Here, the transfer was made by Robert Chuckrow, but the Commonwealth seeks to tax Adelaide. Robert was

not a Massachusetts resident at the time of this transfer (his death), and he never subjected himself to the estate taxing jurisdiction of the Commonwealth, as he owned no real or tangible personal property sited in Massachusetts. Further, Robert was the person who determined the ultimate disposition of the property by deciding the terms of the trust, and he was the one who, through his executrix, transferred the property into the Trust. Therefore, unlike the taxpayers in *Page* and *Curry*, the present taxpayer, Adelaide, had no say in the initial transfer of the property and no control over the ultimate disposition of the property at her death. The only reason that the Trust relates to Adelaide's estate at all is because of the special rules of I.R.C. § 2056(6)(7) and I.R.C. § 2044.

The better analogy is to a situation where a Donor completes an inter vivos gift by transferring the property into an irrevocable trust, where he is neither the trustee nor a beneficiary. Under general principles of property law, the gift is completed once the property is delivered to the trustee. See *In re Estate of Bracken*, 175 Wash. 2d 549, 566 (2012), citing *Coolidge v. Long*, 282 U.S. 582, 605 (1931). At that moment, the Donor has relinquished all rights in the property he transferred into trust (thus triggering the requirement of filing a gift tax return). In *Wuesthojf v. Wisconsin Dep't of Taxation*, the state of Wisconsin attempted to impose a tax on a gift made into an irrevocable inter vivos trust by a nonresident Donor to a nonresident trustee. 261 Wis. 98, 99-100 (I 952). The only connection to Wisconsin was that the gift consisted of Wisconsin securities. *Id.* at 104. Because the gift was completed outside the state, and because donor and donee were not residents of Wisconsin, the court held that the

transfer was beyond the taxing jurisdiction of the state of Wisconsin. *Id.* at 104-105.

The Supreme Court of Washington reached a similar conclusion regarding federal QTIP and its interplay with state estate taxes in *In re Estate of Bracken*, 175 Wash. 2d 549 (2012). In 2006 the Washington legislature enacted a stand-alone state estate tax and authorized the Washington Department of Revenue to create a separate state QTIP election. *Id.* at 559-560. The first-to-die husbands died before the enactment of this statute and their executors made federal QTIP elections; the second-to-die wives died after. The Department attempted to impose a tax on the estates of second-to-die wives attributable to the QTIP trusts established by their husbands. *Id.* at 556. The court held that the state could not impose a tax on the federal QTIP trusts because no transfer occurred at the surviving spouses' death. *Id.* at 575-576. That is, the estate tax requires a transfer of property to impose a tax; the transfer of assets of a QTIP trust occurred when the first spouses die; and because no taxable transfer occurred at the surviving spouses' deaths, the state could not impose an estate tax. *Id.* Although Massachusetts had a QTIP election at the time of Robert's death, he was a New York resident and the transfer occurred in New York. Massachusetts cannot constitutionally tax a transfer that occurred in a different state. The difference between *Bracken* and this case is that Washington attempted to impose a retroactive estate tax on in-state transfers. Here, not only is Massachusetts attempting to impose a retroactive tax, but it is also attempting to tax an out-of-state event. The legitimacy of the present tax is thus even more tenuous. See *McCulloch v. Maryland*, 4 Wheat. (17

U.S.) 316, 429 (1819) ("All subjects over which the sovereign power of a state extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation.").¹¹

The right to collect a tax on the Trust occurred on the death of Robert, because that is when the taxable transfer of the property occurred. Even under *Page*, where the Commonwealth was permitted to impose a tax, the court held that "it is the domicile of the decedent at the time the right to impose the tax arises that determines the propriety of the tax." *Page*, 389 Mass. at 395. In *Page*, the taxable event was the decedent's death, which occurred in Massachusetts. But here, the taxable event was the transfer upon Robert's death, which occurred in New York. Therefore, the estate tax imposed by Massachusetts on the assets of the Trust violates the due process clause of the Fourteenth Amendment of the United States Constitution because it exceeds the permissible reach of Massachusetts's sovereignty. See *McCulloch v. Maryland*, 4 Wheat. (17 U.S.) 316, 429 (1819). Consequently, the estate is entitled to an abatement in the full amount of \$1,953,032.

¹¹ This issue has once again been raised in the Connecticut Supreme Court, on facts similar to the present controversy. See *Estate of Brooks v. Sullivan*, No. SC19577. In that case, a widow moved to Connecticut after her husband's prior death in Florida. The husband's estate plan funded a QTIP trust upon his death of which the surviving wife was a beneficiary. At the Superior Court level, the state succeeded. The matter is now on appeal at the Connecticut Supreme Court; it has been fully briefed, but has not yet been argued.

B. Under the terms of the Massachusetts estate tax statute, the value of the federally elected QTIP property is not properly includible in Adelaide's Massachusetts gross estate.

The Massachusetts estate tax, as it existed through 1996, was the result of patchwork legislation in response to federal code changes, resulting in a highly convoluted maze of state statutes and regulations. Massachusetts lagged federal updates to the code, such as the unlimited marital deduction and the QTIP. The federal QTIP was introduced in 1981, but the Massachusetts QTIP did not become effective until January 1, 1986. See St. 1985, c. 711, §§ 12, 19. The federal code moved to an unlimited marital deduction in 1981, but Massachusetts did not do so until July 1, 1994. See St. 1992, c. 133, §§ 422, 597. Couple these issues with the phase out of the Massachusetts estate tax beginning in the early 1990s (in favor of the sponge tax, G.L. c. 65C, § 2A, which went into effect on January 1, 1997), and the result was a complicated morass for anyone trying to navigate between the federal and Massachusetts estate tax.

1. The executor may make a Massachusetts QTIP election that is separate from and independent of the federal QTIP election and the Massachusetts QTIP election.

The executrix of Robert Chuckrow's estate did not make a Massachusetts QTIP election; no such election was required. An executor may make separate and independent QTIP elections for purposes of federal and Massachusetts taxation. See G.L. c. 65C, § 3A(f), as inserted by St. 1985, c. 711, § 12 ("Such election, once made, shall be irrevocable and shall be separate from and independent of any

election made for federal estate tax purposes").¹² This was true when Massachusetts had a stand-alone estate tax, and it remained true after Massachusetts returned to a sponge tax beginning in 2003. Not only has the legislature never repealed G.L. c. 65C, § 3A, but the Department of Revenue's Directive 03-2 (which was issued after Massachusetts reverted to a sponge tax) states that "[t]he executor . . . is not required to have made the same QTIP election for federal estate tax purposes in order to make the election for Massachusetts purposes." Accordingly, an executor could and can make a federal QTIP election on certain property but not make a Massachusetts QTIP election on the same property, or vice versa.

2. Because the state and federal QTIP elections can be different, the analysis does not end simply by defining the Massachusetts gross estate as the federal gross estate.

The Commonwealth cannot rely simply on the fact that the Massachusetts estate tax is calculated by reference to the as the federal gross estate. Because it is possible for separate federal and state QTIP elections, bare reference to the federal gross estate runs the risk of double taxing property for which a federal QTIP election was made, but for which no Massachusetts QTIP election was made. This issue was confronted when the legislature amended the standalone estate tax to allow for state QTIP elections, yet kept the 50% state marital deduction. The solution was to change the definition of Massachusetts gross estate so as to exclude property for the executor made a federal QTIP

¹² Section 3A(f) has never been amended.

election, but did not make a Massachusetts QTIP election. See G.L. c. 65C, § 1(f). Indeed, this is the only logical construction of § 1(f).

Under the familiar tenets of statutory interpretation, a statute is construed "in accord with 'the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.' ... " *Champigny v. Commonwealth*, 422 Mass. 249,251 (1996), quoting *Telesetsky v. Wight*, 395 Mass. 868, 872-873 (1985). Further, "a statute must be construed so that 'effect is given to all its provisions, so that no part will be inoperative or superfluous.'" *Wheatley v. Mass. Insurers Insolvency Fund*, 456 Mass. 594, 601 (2010), quoting *Bankers Life & Cas. Co. v. Comm'r of Ins.*, 427 Mass. 136, 140 (1998). Because this is a tax statute, it is also necessary to note that the statute should avoid double taxation where possible. *O'Brien v. State Tax Comm'n*, 339 Mass. 56, 62 (1959).

3. The last sentence of G.L. c. 65C, § 1(f), explicitly excludes, from the Massachusetts gross estate, the value of property for which a federal QTIP election was made, but no Massachusetts QTIP election was made.

Any analysis of G.L. c. 65C, § 1, begins with the language of the statute itself:

"When used in this chapter the following words or terms shall have, unless the context clearly indicated otherwise, the following meanings:-

(f) "Massachusetts gross estate", the federal gross estate, whether or not a federal estate tax return is required to be filed, plus the value of any property (i) in which the decedent had at death a qualifying income interest for life described in subsection (c) of section three A ... and (ii) for which a deduction was allowed for Massachusetts estate tax purposes with respect to the transfer of such property of the decedent; and less the value of real and tangible personal property having an actual situs outside the commonwealth. The Massachusetts gross estate shall not include the value of any property in which the decedent [the surviving spouse] had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent's estate to recover federal or Massachusetts estate taxes from such property."

G.L. c. 65C, § 1(f), as amended by St. 1985, c. 711, § 6.¹³

The starting point is to determine the decedent's federal gross estate. The statute then adds "the value of any property (i) in which the decedent [the surviving spouse] had at death a qualifying income interest for life described in [G.L. c. 65C, § 3A(c)] ... and (ii) for which a deduction was

¹³ Prior to the 1985 amendment, the definition simply read: "the federal gross estate, whether or not a federal estate tax return is required to be filed, less the value of real and tangible personal property having an actual situs outside the commonwealth." St. 1975, c. 684, § 74.

allowed for Massachusetts estate tax purposes with respect to the transfer of such property to the decedent." G.L. c. 65C, § 1(f). The purpose of this portion of the statute, similar to I.R.C. § 2044, is to capture the value of any property for which a Massachusetts QTIP election was made. See 830 Code Mass. Regs. § 65C.2.1(1)(b), (5). Without this provision, property for which a Massachusetts QTIP election was made would not be able to be taxed on the surviving spouse's death, because this property would not be included by mere reference to the federal gross estate.¹⁴

Finally, we arrive at the final sentence of the statute:

"The Massachusetts gross estate shall not include the value of any property in which the decedent [the surviving spouse] had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent's estate to recover federal or Massachusetts estate taxes from such property."

To fully understand this sentence of the statute, it is necessary to examine the context in which it was added. See *Champigny v. Commonwealth*, 422 Mass. 249, 251 (1996). When this sentence was added in 1985, federal law had already moved to an unlimited marital deduction, in addition to permitting QTIP elections. Massachusetts followed the federal lead regarding QTIP elections under this 1985

¹⁴ The next step is to subtract out-of-state real and tangible personal property, but this is not relevant to the present circumstances.

amendment, but chose to maintain its 50% marital deduction. This created a serious disconnect between federal QTIP elections and Massachusetts QTIP elections. Hence, the executor is permitted to make a Massachusetts QTIP election that is "separate from and independent of" any federal QTIP election. See G.L. c. 65C, § 3A(f). And due to the 50% Massachusetts marital deduction, a proper estate-tax-minimizing estate plan would always make a federal QTIP election in excess of the Massachusetts QTIP election. But this, in turn, would have created a serious double taxation problem—that is, the excess amount elected under the federal QTIP would already have been taxed by Massachusetts on the state estate taxes of the first-to-die spouse. So the legislature needed to create a way to eliminate from the Massachusetts gross estate the excess value of federal QTIP property.

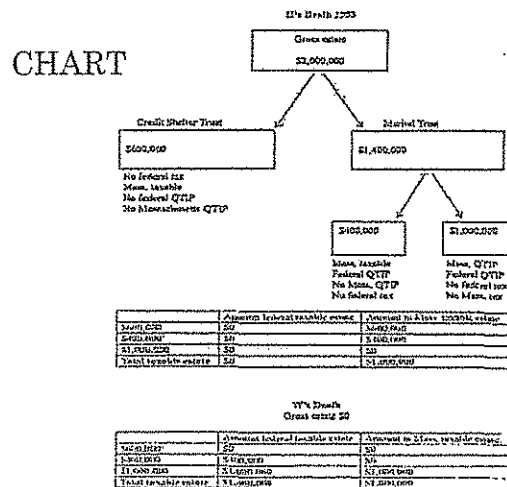
Thus the last sentence of the statute was added: "The Massachusetts gross estate shall not include the value of any property in which the decedent [the surviving spouse] had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph." G.L. c. 65C, § 2(f). Understood in the proper context, it is clear that the intent of this sentence is to eliminate the excess federal QTIP election from the Massachusetts gross estate.

The following hypothetical demonstrates the issue: H has \$2 million, and W has \$0. (Assume that no federal exemption exists.) H dies in 1993, and the entire \$2 million funds a trust that could qualify for a QTIP election. H's executor makes a federal QTIP election only, thus deferring collection of the federal estate tax until W dies. See I.R.C. §§ 2044,

2056(b)(7). No Massachusetts QTIP election was made, and so state estate tax would be assessed on the \$2 million at H's death. H's estate pays Massachusetts taxes on this \$2 million. W never receives the property; she merely has a qualifying income interest for life in the trust. At W's death, her federal gross estate would be \$2 million, by virtue of I.R.C. § 2044. And if the first words of G.L. c. 65C, § 1 (f), or the formula for the sponge tax under § 2A, are to be taken literally without regard to the last sentence—i.e., the Massachusetts gross estate is the federal gross estate—then W's Massachusetts gross estate would be \$2 million, even though tax was already paid on this \$2 million on H's death and even though W never owned or had control of the \$2 million. The final sentence of G.L. c. 65C, § 1(f), remedied this problem: it would exclude from W's Massachusetts gross estate her qualifying income the \$2 million from W's Massachusetts gross estate.

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2056(b)(7). No Massachusetts QTIP election was made, and so state estate tax would be assessed on the \$2 million at H's death. H's estate pays Massachusetts taxes on this \$2 million. W never receives the property; she merely has a qualifying income interest for life in the trust. At W's death, her federal gross estate would be \$2 million, by virtue of I.R.C. § 2044. And if the first words of G.L. c. 65C, § 1 (f), or the formula for the sponge tax under § 2A, are to be taken literally without regard to the last sentence—i.e., the Massachusetts gross estate is the federal gross estate—then W's Massachusetts gross estate would be \$2 million, even though tax was already paid on this \$2 million on H's death and even though W never owned or had control of the \$2 million. The final sentence of G.L. c. 65C, § 1(f), remedied this problem: it would exclude from W's Massachusetts gross estate her qualifying income the \$2 million from W's Massachusetts gross estate.



The same situation could apply in the present day, even with Massachusetts now using a sponge tax. See G.L. c. 65C, § 2A. The executor could choose to make only a federal QTIP election, and simply pay the Massachusetts estate tax on the decedent spouse's death. Accordingly, simply referencing the federal estate in the current estate tax regime would create the same problems, and would lead to double taxation of the value of assets for which estate tax was already paid.

4. Under the rules of statutory interpretation, and the rule of construction that taxing statutes should avoid double taxation, this analysis of the last sentence of G.L. c. 65C, § 1, is correct.

For two reasons, this is the only logical construction of the last sentence of this statute. And it shows the significant flaw of simply referencing the federal gross estate in calculating Massachusetts estate tax.

First, the rules of statutory interpretation require that the last sentence take precedence over the previously enacted first words of the statute. Effect must be given to all provisions in a statute. See *Wheatley v. Mass. Insurers Insolvency Fund*, 456 Mass. 594, 601 (2010). So the analysis cannot stop at the words "the federal gross estate"; otherwise, the last sentence of G.L. c. 65C, § 1(f), would be extraneous, superfluous, and entirely ineffective. The position of the statute referencing the "federal gross estate" has been in the statute since it was originally enacted in 1975, see St. 1975, c. 684, § 74, while the final sentence was added in 1985. Not only did the amendment come later in time, it is undoubtedly the more specific provision

and, as such, controls over the general. See *Doe v. Attorney General (No. 1)*, 425 Mass. 210, 215-216 (1997) ("[W]hen two statutes (or provisions within those statutes) conflict, ... the more specific provision, particularly where it has been enacted subsequent to a more general rule, applies over the general rule.").¹⁵

Second, this construction avoids the problem of double taxation. "Massachusetts taxing statutes will be 'interpreted so as not to cause double taxation unless no other reasonable construction is practicable.'" *O'Brien v. State Tax Comm'n*, 339 Mass. 56, 62 (1959), quoting *DeBlois v. Comm'r of Corps. & Taxation*, 276 Mass. 437, 439-440 (1931). Returning to the example above, W's federal gross estate would include the \$2 million. See I.R.C. § 2044. Under the Department's reading, this \$2 million would be subject to Massachusetts estate tax on W's death, even though the same \$2 million was already taxed at H's death. Moreover, not only would Massachusetts be attempting to tax the same assets twice, it would also be attempting to tax the same transfer twice—the transfer from H into the trust.¹⁶ Cf. *Rohrbaugh, Inc. v. Comm'r of Revenue*, 385

¹⁵ The last sentence does not exclude property that is "otherwise includible in the Massachusetts gross estate under the first sentence." This, technically, points back to the words "federal gross estate," which by virtue of I.R.C. § 2044 would include the federal QTIP property. But this would also create an endless circle, because it would then be excluded once again by the last sentence. Such a construction would also make the last sentence inoperative. Rather, the better interpretation of the first sentence would be to ensure that the last sentence did not exclude Massachusetts QTIP property.

¹⁶ Even more offensive, W never had any dominion or control over the property, but received only a qualifying income interest from the trust.

Mass. 830, 831 (1982) (double taxation of proceeds from the same transaction should be avoided).

At bottom, the definition of Massachusetts gross estate is inarticulate. The last sentence was added to avoid including federal QTIP property for which no Massachusetts QTIP election was made. At the very least, this statute is ambiguous. "Taxing statutes are to be construed strictly against the taxing authority, and all doubts resolved in favor of the taxpayer." *Comm'r of Revenue v. AMI Woodbroke, Inc.*, 418 Mass. 92, 94 (1994), quoting *Dennis v. Comm'r of Corps. & Taxation*, 340 Mass. 629, 631 (1960).

5. Adelaide Chuckrow had a qualifying income interest for life in Trust property for which a federal QTIP election was made, but no Massachusetts QTIP election was made; her situation falls directly in line with the last sentence of G.L. c. 65C, § 1(f), and so the value of Robert Chuckrow's federal QTIP property must be excluded from Adelaide's estate.

Under G.L. c. 65C, § 1(f), the value of the property in the Trust u/w/o Robert Chuckrow would have been excluded from Adelaide's Massachusetts gross estate. The same result should apply under the current sponge tax. Robert's executor did not make a Massachusetts QTIP election, but she did make a federal QTIP election. Adelaide had a qualifying income interest for life in the Trust u/w/o Robert Chuckrow, and this interest would not otherwise have been includible under the first sentence—i.e., it was not Massachusetts QTIP property. G.L. c. 65C, § 1(f). And reference cannot be made back to "federal gross estate," because this would have rendered the

entire final sentence inoperative. Indeed, this was the purpose of the last sentence. Therefore, Adelaide's Massachusetts gross estate would "not [have] include[d] the value of any property in which [she] had a qualifying income interest for life." So it would not have included the value of the assets in the Trust u/w/o Robert Chuckrow. *Id.* The result should be no different under the current sponge tax. The Massachusetts legislature already confronted the issue of how to tax an estate where a federal QTIP election was made, but no state QTIP election was made. The fact that Massachusetts now uses a sponge tax does not eliminate the potential for double taxation. And so the analysis should not change.

Therefore, Adelaide's estate is entitled to a full abatement of \$1,953,032.

C. Even if the Chuckrows had been Massachusetts residents at the time of Robert's death, Robert's executor could only have made a Massachusetts QTIP election on 48.11 % of his estate, and so, at the very least, abatement in that amount is due Adelaide's estate.

The unfairness and injustice of the Massachusetts estate tax regime in the 1980s and mid 1990s is demonstrated by looking at what would have happened if Robert Chuckrow was a Massachusetts resident at his death. Robert Chuckrow's estate plan demonstrated that he intended to minimize estate taxes where possible. Yet he would have been limited to only a 50% marital deduction and no state estate tax exemption.

- Robert Chuckrow's gross estate was \$1,996,043.24.

- Taking half of that number, the Massachusetts marital deduction would have been limited to \$998,021.62.
- Of that amount, \$591,924.12 passed directly to Adelaide.
- And so the maximum Massachusetts QTIP election that Robert's executor could have made would have been \$406,097.50.¹⁷

Thus, only 48.11 % of the federal QTIP (which was \$844,101.27) could have qualified for a Massachusetts QTIP election. So the Department of Revenue would have assessed a tax on \$438,003.77 (51.89%) of the federal QTIP that would not qualify for the Massachusetts marital deduction. But now the Department wants to tax the entire \$844,101.27, even though 51.89% of which it already would have been taxed on Robert's death. Such a result would be unjust, violating principles against double taxation. See *O'Brien v. Slate Tax Comm'n*, 339 Mass. 56, 62 (1959).

Accordingly, at the very least, Adelaide's estate should only be required to pay tax on 48.11 % of the total assessment of \$1,953,032 (which comes to \$939,603.70). And so she is to an abatement of \$1,013,428.30.

V. Conclusion

The estate tax assessed on Adelaide's estate for the present value of Robert's federally elected QTIP trust has no basis in the law. Both constitutionally and statutorily, this tax cannot be collected.

¹⁷ Compare that to his executor's federal QTIP election: \$844,101.27

This assessment is unconstitutional because Massachusetts is attempting to assess a tax on a transfer that occurred in New York by a New York resident into a New York trust. Massachusetts is attempting to tax the trust's income beneficiary, who never received the principal, never controlled the principal, and never had a say how the principal would ultimately be disposed; those decisions were made by Robert Chuckrow in his will. Thus, the taxable transfer occurred at the time of his death in New York. Adelaide's estate, of course, must pay this amount in federal estate tax because of the delayed collectibility of the marital deduction. But the internal revenue code is clear that it is not taxing a new transfer, but is merely creating a fictional transfer to make the mechanics work. Massachusetts insists it can tax this fictional transfer. But in reality, this is merely a change in the class of beneficiaries to the Trust. Massachusetts cannot constitutionally reach across its borders-beyond its sovereignty-to tax this New York transfer.

This assessment also mangles the definition of Massachusetts gross estate. The final sentence excludes from the Massachusetts gross estate the value of any property in which the second-to-die spouse had a qualifying income interest for life, but which is not otherwise includible in the Massachusetts gross estate by virtue of the first sentence. When examined in context of Massachusetts's retaining its 50% marital deduction, it is clear that the legislature inserted this provision to prevent the inclusion of federal QTIP election that was in excess of the Massachusetts QTIP election. The statute itself, then, prohibits assessing an estate tax on a second-to-die spouse for property on which the executor of the first-to-die spouse made a federal

QTIP election, but not a Massachusetts QTIP election. The analysis cannot end simply by rote recitation that the Massachusetts gross estate is the federal gross estate. If it could, the final sentence of G.L. c. 65C, § 1(f), would be rendered ineffective and superfluous, violating a fundamental tenet of statutory construction. By its own laws, then, Massachusetts cannot tax Adelaide's estate for the value of the federal QTIP property.

In conclusion, the Commonwealth is attempting to tax the transfer of property into a New York trust, effectuated by a New York resident's death more than twenty years ago. It attempts to tax the income beneficiary who had no control over the property or its ultimate disposition. And it attempts to do so in contravention of its own definition for calculating what is taxable.

For these reasons, the Appellate Tax Board should order that the Commonwealth refund the entire \$1,953,032 to the estate of Adelaide Chuckrow.

Respectfully Submitted,
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Dated: November 4, 2016

Certificate of Service

I, Thomas J. McIntyre, hereby certify that on this 4th day of November, 2016, I caused a true copy of the within document to be served by hand on the following attorney of record:

John J. Connors, Jr., Esq.
Counsel to the Commissioner
Department of Revenue
Litigation Bureau
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Boston, MA 02114-9565

/s/ Thomas J. McIntyre
Thomas J. McIntyre

APPENDIX 41

**COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD
DOCKET NO. C327773**

**M. CHRISTINE SHAFFER, AS
EXECUTRIX OF THE ESTATE
OF ADELAIDE P. CHUCKROW**
Appellant

v.

COMMISSIONER OF REVENUE,
Appellee

**THE COMMISSIONER OF REVENUE'S
BRIEF**

I. INTRODUCTION AND ISSUE

This action concerns the calculation of Massachusetts estate tax of the Estate of Adelaide P. Chuckrow (The "Estate") under G.L. c. 65C, §2A.¹ Adelaide P. Chuckrow (the "Decedent") was domiciled in Massachusetts at her death in the year 2011. The Estate filed Federal and Massachusetts Estate Tax Returns reporting different amounts for the Gross Estate² on the respective returns. The difference, \$13,251,469, was the inclusion of the value of the assets of the Trust under the Will of Robert Chuckrow (the "QTIP Trust") in the

¹ The full text of G.L. c. 65C, §2A is attached as Appendix A.

² On the Massachusetts and Federal Estate Tax Returns, the title for this amount is "Total gross estate". On the Federal Return, Ex. 3, the Total gross estate is found on Page 1, Part 2 - Tax Computation, Line 1. On Massachusetts Estate Tax Return, Ex. 2, the Total gross estate is found on the second page at Part 1, Line 1.

calculation of the Gross Estate on the Federal Return, but the exclusion of the value of the QTIP Trust from the Gross Estate reported on the Massachusetts Return. The Estate did not file estate tax returns in any state other than Massachusetts. The Commissioner of Revenue (the "Commissioner") assessed additional Massachusetts estate tax, in the amount of \$1,809,141.88, against the Estate based upon the inclusion of the value of the QTIP Trust in the Gross Estate for the calculation of the Massachusetts estate tax.

By way of background, "QTIP" is an abbreviation for "qualified terminal interest property", which is defined in IRC §2056(b)(7). Pursuant to this provision, the estate of a first-to-die-spouse may elect to qualify certain assets for the marital deduction, for which the assets would not ordinarily qualify. In return for the inclusion of these assets in the marital deduction of the first-to-die-spouse, the assets are included in the Gross Estate of the surviving spouse. The election is a deferral of estate tax, not a forgiveness of tax.

In the matter at issue, the Decedent's husband died in the year 1993, domiciled in New York. Only Federal and New York Estate Tax Returns were filed by the husband's estate. On both the Federal and New York Estate Tax Returns, the husband's estate claimed 100% marital deductions, with most of which were based upon QTIP Trust elections. Based upon constitutional and statutory arguments, the Estate claims it is entitled to exclude the value of the QTIP Trust from the calculation of the Gross Estate on the Massachusetts return.

The question for this Board is whether the assets of the QTIP Trust are includible in the Gross

Estate of the Estate of the Decedent for purposes of the measure of the Massachusetts estate tax pursuant to G.L. c. 65C, §2A.

II. JURISDICTION AND FACTS

A. THE ESTATE OF ADELAIDE P. CHUCKROW

The Decedent died on August 14, 2011, domiciled in Williamstown, Massachusetts. (A.F. 1 and Ex. 1.)³ On May 14, 2012, the Estate filed a Massachusetts Estate Tax Return, Form M-706, (the "Massachusetts Return") reporting a tax due in the amount of \$100,997.00, along with payment of this amount. (A.F. 2 and Ex. 2.) On Part 1, Line 1 of the Massachusetts Return, the Estate reported a Gross Estate of \$2,382,148. (See Ex. 2, on the second page, Part 1, Line 1 "Total gross estate".)

The Commissioner selected the Massachusetts Return for audit and sent the Estate a Notice of Intention to Assess, dated September 27, 2013, (the "NIA"). The Commissioner also sent the Estate Notice of Intention to Assess Work Papers, dated August 29, 2013, (the "Work Papers"), which showed the Commissioner proposed to assess additional estate taxes in the amount of \$1,809,141.88, based upon increasing the Gross Estate by \$13,251,469. (AF. 3 and Ex. 4.) The Estate requested a conference on the NIA, which was held with the Commissioner on February 12, 2014. (A.F. 4 and Ex. 5 and 6.) The Commissioner assessed the tax as proposed and sent the Estate a Notice of Assessment (the "NOA"), dated March 18, 2014. In addition to the tax, the

³ (A.F.) Shall be a reference to the Statement of Agreed Facts. (Ex.) Shall be a reference to the Exhibits attached to the Statement of Agreed Facts.

NOA showed the assessment of interest in the amount of \$143,890, which resulted in a total balance due in the amount of \$1,953,032. (AF. 5 and Ex. 7.)

On November 12, 2014, the Commissioner received the Estate's Abatement Application, Form CA-6, seeking abatement of the audit assessment. (A.F. 8 and Ex. 9.) The Estate requested a conference with respect to its Abatement Application. The Commissioner denied the conference request because no new facts or legal precedent was presented in the Abatement Application, citing G.L. c. 62C, §37. (A.F. 9 and Ex. 10.) The Commissioner denied the Estate's Abatement Application and sent the Estate a Notice of Abatement Determination, dated May 19, 2015. (A.F. 10 and Ex. 11.) The Estate appealed the Commissioner's abatement denial by filing a Petition with this Board on June 25, 2015. (A.F.11.)

The Assessment at issue has been paid in full. The Commissioner's records show the following Massachusetts Return and Audit assessments and payments:

	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
	<u>Assessed</u>	<u>Assessed</u>	<u>Paid</u>
Massachusetts			
Return	100,997.00	0.00	100,997.00
Audit	<u>1,809,141.88</u>	<u>142,606.35</u>	<u>1,951,748.23</u>
Total	1,910,138.88	142,606.35	2,052,745.23

(A.F. 12 and Ex. 12.)

On the Massachusetts Return, the Estate reported a Gross Estate of \$2,382,148. (A.F. 13 and Ex. 2 on the second and third pages.) On the Estate Tax Return (the "Federal Return") filed with the United States Internal Revenue Service (the "IRS"), the Estate reported a Gross Estate of \$15,633,617. (A.F. 14 and Ex. 3 on the first page.) The difference

between the Gross Estate reported on the Federal Return and the Gross Estate reported on the Massachusetts Return, \$15,633,617 - \$2,382,148 = \$13,251,469, was the value of the QTIP Trust, the Trust under the Last Will and Testament of the Decedent's spouse, Robert Chuckrow; (A.F. 15, Ex. 2, 3, 13, 14, 15) The Estate has not filed a New York Estate Tax Return and has not paid any New York Estate Tax based upon the death of the Decedent. (A.F. 16.)

B. THE ESTATE OF ROBERT CHUCKROW

The Decedent was the widow of Robert Chuckrow. (A.F. 17.) Robert Chuckrow died on July 11, 1993, domiciled in Chappaqua, New York. (A.F. 18, Ex. 13.) The Estate of Robert Chuckrow filed a Federal Estate Tax Return reporting no tax due. (A.F. 20, Ex. 15.) The Estate of Robert Chuckrow filed a New York Estate Tax Return reporting no tax due. (A.F. 19, Ex. 16.) On both the Federal and New York Estate Tax Returns of the Estate of Robert Chuckrow, the Estate of Robert Chuckrow elected a QTIP as part of the marital deduction in order to defer estate taxes to the estate of the surviving spouse, the Estate of the Decedent.

All of the assets in the QTIP Trust were intangible personal property. (A.F. 32.) There was no real estate or tangible personal property located in Massachusetts reported on the Federal or New York Estate Tax Returns of Robert Chuckrow. (A.F. 27, Ex. 15 and 16.) The Estate of Robert Chuckrow did not file a Massachusetts Estate Tax Return; and, therefore, made no Massachusetts QTIP election. (A.F. 28.) The Estate of Robert Chuckrow has not filed an amended New York Estate Tax Return, and has not paid any New York Estate Tax, based upon

either the death of Robert Chuckrow or the death of Adelaide Chuckrow. (A.F. 29, 30 and 31.)

C. THE ASSETS IN THE QTIP TRUST

All of the assets held in the Trust under Article Third of the Will of Robert Chuckrow, which is the QTIP Trust, were intangible personal property, primarily shares of stock and interests in limited partnerships. (A.F. 32 and Ex. 3, the eleventh through twenty-fifth pages. Items numbers 1 through 126.)

III. THE STATUTORY SCHEME

A. A SHORT HISTORY OF THE MASSACHUSETTS ESTATE TAX.

A basic understanding of the history of the Massachusetts estate tax is important for at least one of the arguments in the matter at issue and will help with the context of some of the other arguments. The Massachusetts estate tax evolved over several decades. It changed from a stand-alone estate tax based upon the Federal estate tax in effect in 1976; to a sponge tax based upon the Federal credit for state death taxes in effect at the date of death of the decedent; to a stand-alone estate tax that uses a sponge tax calculation based upon the Federal credit for state death taxes that would have been allowable to a decedent's estate in the year 2000. Some of the provisions of the original stand-alone estate tax are still published in G.L. c. 65C, but have no relevance to the calculation of the estate tax at issue under G.L. c. 65C, §2A.

January 1, 1976 was the starting date of the Massachusetts stand-alone estate tax.⁴ G.L. c. 65C. This Massachusetts estate tax was based upon the Federal estate tax in effect in 1976, but with some express differences. Effective January 1, 1986, the Legislature amended the Massachusetts estate tax to allow, among other changes, a deduction by the first-to-die-spouse and the inclusion of the value of a QTIP election in the estate of the surviving spouse.

In 1992, the Legislature enacted legislation⁵ and changed the estate tax to a system that is commonly known as a sponge tax. A sponge tax is designed to capture the credit for state death taxes that was allowed against Federal Estate taxes, IRC §2011. Under this Legislation, the original stand-alone estate tax was phased out over the years from 1993 to 1996. Effective January 1, 1997, Massachusetts had a sponge tax. In addition, for the

⁴ Massachusetts has a long history with taxes at death. Initially, Massachusetts had an inheritance tax. The inheritance tax taxed the privilege of receiving transfers from decedents by their beneficiaries at the time when the beneficiary received the inheritance. The inheritance tax was suspended for deaths after December 31, 1975.

Massachusetts also has had provisions for an estate tax going back to the 1920's under G.L. c. 65A. G.L. c. 65A was a sponge tax or pick-up tax. It was designed to capture the credit for state death taxes that was allowed against Federal Estate taxes, IRC §2011. The sponge tax under G.L. c. 65A was coordinated with the inheritance tax, G.L. c. 65, to make sure the Commonwealth was receiving the benefit of the credit for state death taxes. The sponge tax under G.L. c. 65A was not assessed in addition to the inheritance tax. When, the Legislature replaced the inheritance tax with the Massachusetts Estate Tax, G.L. c. 65C, and until the adoption of G.L. c. 65C, §2A, the sponge tax under G.L. c. 65A remained in effect as a minimum estate tax.

⁵ St. 1992, c. 133, §419

dates of death occurring after June 30, 1994, the marital deduction was no longer limited to 50% of the Massachusetts Adjusted Gross Estate, as it was prior to July 1, 1994.

From January 1, 1997 to December 31, 2002, for a decedent domiciled in Massachusetts, under the sponge tax, there was no separate calculation of the tax from the amount reported as the credit for state death tax on the Federal Estate Tax Return. The credit for state death tax reported on the Federal Estate Tax Return also was reported on the Massachusetts Estate Tax Return.⁶ The Gross Estate for the Massachusetts estate tax was the Gross Estate reported on the Federal return. G.L. c. 65C, §2A used the United States Internal Revenue Code in effect on the date of death of the decedent.

The Federal government phased out the credit for state death tax over the years 2001 to 2005. The elimination of the credit for state death tax credit also eliminated the Massachusetts estate tax as it then existed. The Legislature responded to the phase out of the state death tax credit by amending G.L. c. 65C, §2A to its present form.⁷ The amendments applied to the estates of all decedents dying on or after January 1, 2003.⁸ The amendments decoupled the Massachusetts estate tax from the Federal estate tax by making the Massachusetts tax calculation based upon the Code in effect on December 31, 2000, as opposed to using the provisions of the Internal

⁶ The only variation from the Massachusetts Estate Tax being the amount of the Credit was in the case of another state being entitled to the Credit as well in which case the Massachusetts tax was apportioned to account for tax paid to another state. G.L. c. 65C, §2A(a)(i) and (ii).

⁷ St. 2002, c. 186, §28 and St. 2002, c. 364, §10.

⁸ St. 2002, c. 186, §34 and St. 2002, c. 364, §23.

Revenue Code in effect at the date of death of the decedent as had been the law from 1997 through 2002. The calculation of the Massachusetts estate tax effective January 1, 2003 remained a sponge tax, except there was no Federal credit for state death taxes to offset the tax paid to Massachusetts or any other jurisdiction.

B. A SUMMARY OF A QTIP ELECTION, THE MARITAL DEDUCTION AND OTHER EFFECTS

The matter at issue concerns the inclusion or exclusion of the value of a QTIP trust in the calculation of the Gross Estate of the Decedent. Following is a summary of the benefits, responsibilities and technical aspects of a QTIP election.

Generally, where on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to a surviving spouse will terminate or fail, no marital deduction will be allowed with respect to such interest. IRC §2056(b)(1). An exception to this general rule is the transfer of property that is called: "qualified terminable interest property" ("QTIP"). QTIP means property:

1. which passes from the decedent,
2. in which the surviving spouse has a qualifying income interest for life (Which means: the surviving spouse is entitled to all of the income from the property, payable annually or more often, and no person has power to appoint any part of the property to any person other than the surviving spouse.), and,

3. to which an election under IRC 2056(b)(7)(B)(v) is made, Which means the executor shall make the election on the estate tax return and the election once made becomes irrevocable.)

See IRC §2056(b)(7).

When a QTIP election is made, the value of the QTIP assets are part of the marital deduction for the estate of the first-to-die-spouse. IRC §2056(b)(7)(A); the surviving spouse receives the income interest and the ability to receive all of the interest in the assets per a power of appointment, IRC §2056(b)(7)(B); the surviving spouse is treated as the person transferor of the QTIP assets as opposed to the first-to-die-spouse, IRC §2044(c); the value of the QTIP assets are included in the surviving spouse's gross estate and are valued as of the date of death of the surviving spouse, IRC §2044. There is a quid-pro-quo: the estate of the first-to-die-spouse is allowed a marital deduction for assets which would normally not qualify for the marital deduction, and the estate of the surviving spouse is required to include the value of the QTIP assets, at the value as of the date of death of the surviving spouse, in the calculation of the surviving spouse's gross estate.

If the surviving spouse subsequently gifts the interest in the QTIP Trust, the gift would be treated as a gift from the surviving spouse and the entire value of the property is treated as gifted, not just the income interest to which the surviving spouse was entitled. IRC §2519. The surviving spouse could also be treated as the transferor of the property for generation-skipping transfer tax. IRC §2652(a).

The surviving spouse's estate has the ability to recover the tax owed due to inclusion of the value of the QTIP in the Gross Estate from the persons in possession of those assets pursuant to IRC §2207A, as long as the surviving spouse does not waive the right of recovery.

Massachusetts has a statute governing estate tax payment in the event of a QTIP election. G.L. c. 190B, §3-9160), and the previous law G.L. c. 65A, §5(3)⁹, apportions the estate tax liability in case of a QTIP and requires payment of the tax from the assets making up the QTIP.

In addition to the effects that the QTIP election has on the spouses' estate tax returns, the QTIP election gives the remainder beneficiaries receiving the QTIP assets a stepped-up basis at the value on surviving spouse's date of death. IRC §1014.

Through the QTIP election the first-to-die-spouse's estate chooses to treat the surviving spouse as transferor of the QTIP property, in addition, the election creates lights, characteristics and responsibilities in the QTIP assets that are consistent with ownership of the assets by the surviving spouse. The surviving spouse's estate has rights to recover for taxes apportioned; the value of the basis of the transferred property is the value at the date of death of the surviving spouse, not the first spouse to die; any transfer of the surviving spouse's income interest without consideration will trigger a gift, and possibly a generation skipping, tax to the surviving spouse on the entire value of the QTIP assets.

⁹ G.L. c. 65A, §5 was repealed, St. 2008, c. 521, §1, and replaced by G.L. c. 190B, §3-916, St. 2008, c. 521, §9.

At the death of the surviving spouse, there is a transfer of the beneficial interests in the QTIP property from the surviving spouse to the remainder beneficiaries. There is a transfer at the death of the surviving spouse and it is by statute and election a transfer from the surviving spouse.

C. ASSESSMENT OF THE MASSACHUSETTS ESTATE TAX UNDER G.L. c. 65C, §2A

For a date of death of August 14, 2011, G.L. c. 65C, §2A, provided, in relevant part, as follows:

(a) A tax is hereby imposed upon the transfer of the estate of each person dying on or after January 1, 1997 who, at the time of death, was a resident of the commonwealth. The amount of the tax shall be the sum equal to the amount by which the credit for state death taxes that would have been allowable to a decedent's estate as computed under Code section 2011, as in effect on December 31, 2000, hereinafter referred to as the "credit", exceeds the lesser of: ...

(e) For the estate of decedents dying on or after January 1, 2003, all references and provisions in this chapter to the Internal Revenue Code or Code, unless the context clearly indicates otherwise, shall be to the Code as in effect on December 31, 2000.

The calculation of the Credit begins with the determination of the Gross Estate as defined by Internal Revenue Code or Code as in effect on December 31, 2000, in IRC §2031, which began as follows:

(a) General. - The value of the gross estate of the decedent shall be determined by

including to the extent provided in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

The Gross Estate included the value of property for which a QTIP trust, or trusts, was elected in the estate of the first-to-die-spouse. IR.C §2044, as in effect on December 31, 2000, provided in relevant part that:

(a) General rule. - The value of the gross estate shall include the value of any property to which this section applies in which the decedent had a qualifying income interest for life.

(b) Property to which this section applies. - This section applies to any property if -

(1) a deduction was allowed with respect to the transfer of such property to the decedent -

(A) under section 2056 by reason of subsection (b)(7) thereof, ...

After determination of the Gross Estate, allowable deductions are subtracted to determine the Taxable Estate. IRC §2051. To calculate the Credit, \$60,000.00 is subtracted from the Taxable Estate to determine the Adjusted Taxable Estate and the Credit is calculated per a table of dollar amounts and additional percentages. IRC §2011(b).

The Estate reported a Gross Estate to the IRS on the Federal Return in the amount of \$15,633,617. (A.F. 14 and Ex. 3 on the first page at Part 2 - Tax Computation Line 1.) The Estate reported a Gross Estate to the Commissioner in the amount of \$2,382,148. (A.F. 13 and Ex 2 on the second page at

Part 1, Line 1.) The Estate calculated the Massachusetts estate tax as required, except for one item. The Estate did not include the value of the QTIP Trust in the calculation of the Gross Estate on the Massachusetts Return. The value of the QTIP Trust was \$13,251,469. (A.F. 15.) The difference between including the QTIP Trust in the Gross Estate and excluding the QTIP Trust from the Gross Estate is \$1,809,141.88 in tax. (See A.F. 3 and 12.)

IV. ARGUMENT

As discussed below, G.L. c. 65C; §2A requires the inclusion of the value of the QTIP Trust in the calculation of the Massachusetts estate tax and the statute is constitutional.

A. THE VALUE OF THE QTIP TRUST BELONGS IN THE CALCULATION OF THE MASSACHUSETTS ESTATE TAX

Since the Decedent was domiciled in Massachusetts, and the Estate did not file an estate tax return with any other state, the Massachusetts estate tax "shall be the sum equal to the amount by which the credit for state death taxes that would have been allowable to a decedent's estate as computed under Code section 2011, as in effect on December 31, 2000" G.L. c. 65C, §2A(a). The calculation only requires the calculation of the Federal credit for state death taxes. There are no other provisions of G.L. c. 65C, §2A, no other laws, and no facts, which would reduce the amount of the tax as claimed by the Estate. There is no basis for the exclusion, exemption or deduction of the value of the QTIP Trust from the calculation of the Massachusetts estate tax.

When interpreting a statute, "[s]tatutory language is the principal source of insight into legislative purpose." Commonwealth v. Lightfoot, 391 Mass. 718, 720 (1984). "[W]here the language of a statute is plain there is no room for speculation as to its meaning or its implication. The Legislature must be presumed to have meant what the words plainly say, and it must be presumed the Legislature knew the preexisting law and decisions of this court." Condon v. Haitsma, 325 Mass. 371 373 (1950). "A taxing statute should receive a practical construction. [Citations omitted.] (Where no ambiguity in tax statute appears, rule of resolving all doubts in favor of taxpayer does not arise.)" Page v. Commissioner of Revenue, 389 Mass. 388, 392 (1983).

There is no ambiguity in G.L. c. 65C, §2A(a). The amount of the credit for state death taxes allowable to the Decedent in this matter at issue includes the value of the QTIP Trust.

B. G.L. c. 65C, §1(F) DOES NOT APPLY TO G.L. c. 65C, §2A

The Estate suggests that G.L. c. 65C, § 1(f)¹⁰ which defines "Massachusetts gross estate", provides

¹⁰ G.L. c. 65C, §1(f) provides:

(f) "Massachusetts gross estate", the federal gross estate, whether or not a federal estate tax return is required to be filed, plus the value of any property (i) in which the decedent had at death a qualifying income interest for life described in subsection (c) of section three A, or to the extent of any such interest therein of which the decedent has at any time made a transfer, by trust or otherwise under any circumstances which would require the property to be included in the gross

statutory support for its exclusion of the value of the QTIP Trust from its calculation of the Massachusetts estate tax. The Estate's argument is flawed. There is no mention of "Massachusetts gross estate" in G.L. c. 65C, §2A. If the Legislature intended to include "Massachusetts gross estate" as a factor in the calculation of the Massachusetts estate tax, it would have specified it in the enabling legislation.

There is no ambiguity in the language of the statute. G.L. c. 65C, §2A refers only to the "the credit for state death taxes that would have been allowable to a decedent's estate as computed under Code section 2011, as in effect on December 31, 2000" and "all references and provisions in this chapter to the Internal Revenue Code or Code, unless the context clearly indicates otherwise, shall be to the Code as in effect on December 31, 2000."

G.L. c. 65C, §2A uses the United States Internal Revenue Code as the starting point of the calculation of the Massachusetts tax and does not provide for a Massachusetts modification of the "Code". In Boston Safe Deposit & Trust Co. v.

estate under the provisions of this chapter and (ii) for which a deduction, as allowed for Massachusetts estate tax purposes with respect to the transfer of such property to the decedent; and less the value of real and tangible personal property having an actual situs outside the commonwealth. The Massachusetts gross estate shall not include the value of any property in which the decedent had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent' estate to recover federal or Massachusetts estate taxes from such property. [Emphasis added.]

Commissioner of Revenue, 406 Mass. 195 (1989), the Supreme Judicial Court held that the reference to "Code" in the statute in that case clearly referred to only the Federal statute. The Court declined to read in a Massachusetts taxation factor where there was no such language in the statute. The Court stated:

Had the Legislature chosen to include such a modification [, i.e. include a Massachusetts taxation factor] in the calculation of the ... tax, it could have made its intentions clear.

Id. at 198.

The same is true of the statute at issue. The Legislature clearly intended that the Massachusetts estate tax for a death occurring in the year 2011 be based upon the Internal Revenue Code as in effect on December 31, 2000. There is no language in G.L. c. 65C, §2A modifying the word "Code" that provides for the Estate's calculation of the tax at issue, which excludes the value of assets that are included in the Federal Gross Estate of the return filed with the IRS. G.L. c. 65C, §2A requires the inclusion of all assets reported in the Federal gross estate.

C. THE EXCLUSION OF THE QTIP TRUST FROM THE GROSS ESTATE WOULD BE A RADICAL CHANGE TO THE STATUTE THAT IS NOT MANIFESTED IN THE AMENDMENT

The Estate's argument leads to a change in the calculation of the Massachusetts estate tax that is not contemplated in the amended statute. A rule of statutory interpretation is that "[a] statute should not be interpreted to 'require a radical change ... in the existing law [if] the act does not manifest any intent that such a change should be effected.'" In the

Matter of Segal, 430 Mass. 359, 363 (1999), quoting Dexter v. Commissioner of Corporations & Taxation, 316 Mass. 31, 38 (1944).

Prior to the amendment of G.L. c. 65C, §2A, which was the statute in effect from January 1, 1997 to December 31, 2002, G.L. c. 65C, §2A(a) provided:

(a) A tax is hereby imposed upon the transfer of the estate of each person dying on or after January 1, 1997 who, at the time of death, was a resident of this Commonwealth. The amount of this tax is a sum equal to **the amount by which the credit for state death taxes allowable to a decedent's estate under Code section 2011, as in effect as of the date of death of the decedent**, hereinafter referred to as the "credit", exceeds the lesser of: ... [Emphasis added.]

From January 1, 2003 to the Decedent's date of death, G.L. c. 65C, §2A(a) provided:

(a) A tax is hereby imposed upon the transfer of the estate of each person dying on or after January 1, 1997 who, at the time of death, was a resident of the commonwealth. **The amount of the tax shall be the sum equal to the amount by which the credit for state death taxes that would have been allowable to a decedent's estate as computed under Code section 2011, as in effect on December 31, 2000**, hereinafter referred to as the "credit", exceeds the lesser of: ... [Emphasis added.]

These changes to the statute made little change to the calculation of the tax. Prior to January 1, 2003, the tax calculation was "the credit for state death taxes allowable to a decedent's estate under Code section 2011", and the amended, the decoupled,

Massachusetts estate tax calculation was "the credit for state death taxes that would have been allowable to a decedent's estate as computed under Code section 2011". The only difference in the tax calculation was the year in which the Code was in effect. Prior to January 1, 2003, it was the Code "in effect as of the date of death of the decedent"; after December 31, 2002, it was the Code in effect on December 31, 2000." The Code in both of these time periods included IRC §2044 and included the value of any QTIP property in the calculation of the Gross Estate of the surviving spouse.

If the Legislature intended to limit the items included in the Gross Estate of the surviving spouse, it could have made it clear in the statute. The only significant change to the statute was to fix the year the Code was in effect; the Board should not read into the statute an intention to radically change the tax calculation beyond the expressed change.

D. A TRANSFER OF THE QTIP ASSETS OCCURS AT DEATH OF THE SURVIVING SPOUSE

The Estate argues that the transfer of the property occurs when the first spouse dies, not when the surviving spouse dies. This argument ignores the effect of the QTIP election by the estate of the first spouse to die and the statutory scheme. By statute, and by the election of the estate of the first-to-die-spouse, the QTIP election results in the property of the QTIP trust being treated as passing from the surviving spouse's estate. IRC §2044(c). The executor of the estate of the first-to-die-spouse makes an irrevocable choice to elect QTIP treatment. IRC §2056(b)(7)(B)(v). Once the election is made, IRC §2044(c) provides:

For the purposes of this chapter and Chapter 13, property includible in the gross estate of the decedent under subsection [2044](a) shall be treated as property passing from the decedent.

The QTIP election not only provides the estate of the first spouse to die with the benefit of a delay of the tax, it confers responsibilities on the surviving spouse and the surviving spouse's estate that are consistent with ownership of the QTIP property. The QTIP election also changes the relationship between the first-to-die-spouse's estate and the remainder beneficiaries by changing the date for determination of the remainder beneficiaries' basis from that date of death of the first spouse to die to the date of death of the surviving spouse. The QTIP election also gives the estate of the surviving spouse rights to contribution towards payment of estate taxes, wider both Federal and Massachusetts law.

The QTIP election has gift tax consequences for the surviving spouse. Any attempt to transfer the surviving spouse's income interest in the QTIP property, by gift or for inadequate consideration, triggers a gift tax. IRC §2519. In Revenue Ruling 98-8 (Copy attached as Appendix B.), the IRS describes how an attempt to escape estate taxation on the value of the QTIP assets through a complicated series of transactions resulted in a gift tax, not in the reduction of the assets included in the gross estate of the surviving spouse through an alleged sale of the remainder assets. The transactions were an attempt to reduce the gross estate of the surviving spouse, by transferring the surviving spouse's income interest from the QTIP assets. The consideration was determined to be for less than adequate and full consideration. There can be no transfer of the assets

out of the surviving spouse's estate, which does not replace the full value of the transferred assets, with assets of the same value. In the Revenue Ruling, the transaction were found to be for less than full and adequate consideration, and resulted in gift tax consequences.

In some cases, the QTIP election has generation skipping tax consequences. In the absence of an election pursuant to IRC §2652(a)(3), by the first spouse to die to not treat the QTIP election as having been made, the surviving spouse is treated as the transferor of the property for generation-skipping transfer tax. IRC §2652(a). See also Rev. Proc. 2001-38. (Copy attached as Appendix C.)

The QTIP election changes the relationship between the first-to-die-spouse and the remainder beneficiaries. Due to the fact that the QTIP Trust assets transfer at the surviving spouse's date of death and are included in the surviving spouse's gross estate, the assets of a QTIP trust receive a stepped-up basis at the value on surviving spouse's date of death. IRC § 1014. If the transfer occurred on the date of the first-to-die-spouse, the basis of the property would be the fair market value of the property on the date of death of the first-to-die-spouse. IRC §1014(a)(1). The QTIP election gives the remainder beneficiaries the advantage of appreciation of the value of the assets to the value at the death of the surviving spouse. IRC §1014(a)(10). The remainder beneficiaries receive the basis that they would receive if the property had passed directly from the surviving spouse, as if the surviving spouse had been the owner of the QTIP Trust property.

The QTIP election gives the estate of the decedent rights under both Federal and Massachusetts law to seek apportionment and payment of the estate tax owed due to the inclusion of the QTIP assets in the Gross Estate of the surviving spouse. IRC §2207A entitles the surviving spouse's estate to recover taxes paid on account of inclusion of the QTIP property in the Gross Estate. However, the surviving spouse may waive that entitlement. This provision is similar to other provisions for contribution towards payment of the estate tax by persons: receiving life insurance benefits,¹¹ powers of appointment,¹² assets transferred from the decedent with retained interests,¹³ under Federal law. Under G.L. c. 190B, §3-916, the surviving spouse's estate may seek apportionment and collection of funds to pay the Massachusetts and Federal estate taxes from persons in possession of property included in the Gross Estate of the surviving spouse, but not in the possession and control of the estate.

The QTIP election brings about more than just a deferral of tax. It creates new relationships between the property and the parties involved in the transaction.

In Morgens v. Commissioner of Internal Revenue, 678 F. 3d 769, 776, footnote 7 (2012), when addressing the taxpayer's argument that the QTIP property belonged to the first spouse to die and not the surviving spouse, the U.S. Appeals Court stated:

This argument ignores the underlying premise of the QTIP regime, that the entire QTIP

¹¹ IRC §2206

¹² IRC §2207

¹³ IRC §2207B

property, rather than just the income interest, is deemed to pass to, and then from, the surviving spouse. Thus, the two spouses are treated as a single economic unit with respect to the QTIP property while still allowing the first-to-die-spouse to control the eventual disposition of the property. The Estate cannot first use that favorable tax deferral (the §2056 marital deduction) and then claim that the property never actually passed to [the surviving spouse].

In its Abatement Application (Ex. 9), the Estate argued that the transfer occurred upon the death of the first-to-die-spouse rather than at the death of the surviving spouse. The Estate relied on the Washington State case of In Re Estate of Bracken, 175 Wash 2d 549 (2012) for this argument. This case had similar facts to the matter at issue. The estates of the first-to-die-spouses had made Federal QTIP elections, but had not made Washington State QTIP elections, because there was no Washington estate tax when the first-to-die-spouses had passed away.¹⁴ The Washington State tax authorities assessed estate taxes against the surviving spouse's estates, based upon the inclusion of the value of the QTIP assets in the Washington State Gross Estates of the surviving spouses. The

¹⁴ The State of Connecticut Supreme Court is currently deciding a case with closer facts to the matter at issue than the Washington State cases. In this Connecticut case, the first-to-die-spouse was domiciled in Florida and the surviving spouse then moved to Connecticut. This Connecticut case is still pending before the Court. It is: Estate of Brooks v. Sullivan, Connecticut Supreme Court Docket No. SC 19577. (A copy of the online Docket Sheet is Appendix D.) The trial court found for the Connecticut Commissioner of Revenue. See, 2015 Conn. Super. Lexis 950. (A copy of the Decision is Appendix E.)

Washington Supreme Court in Bracken found that the transfer of the QTIP trust assets had occurred at the death of the first-to-die-spouses. The Court found that the legislature did not intend to measure the tax on the QTIP trust assets for which a Washington estate tax marital deduction had not been made.

The Bracken decision was superseded by legislation in Washington State. The Washington legislature passed a bill that made it clear that the Washington estate tax statute included any QTIP assets in the surviving spouse's Federal gross estate. The Washington Supreme Court addressed the clarified statute in Estate of Hambleton v. The Department of Revenue, 181 Wash. 2d 802 (2014); 2014 Wash. Lexis 773 (U.S. Supreme Court certiorari denied 2015 U.S. Lexis 6490 (U.S., Oct. 13, 2015)).

In Hambleton at 832-833, the Washington Supreme Court found that there was a transfer from the surviving spouse. The Court stated:

¶59 A tax is an "excise" or "transfer" tax if the government is taxing "a particular use or enjoyment of property or the shifting from one to another of any power or privilege incidental to the ownership or enjoyment of property. Fernandez [v. Wiener], 326 U.S. [340] at 352 [1945)]. An estate tax is an excise tax because the tax is not levied on the property of which an estate is composed. Rather it is imposed upon the shifting of economic benefits and the privilege of transmitting or receiving such benefits." West (v. Oklahoma Tax Commission), 334 U.S. [717] at 727 [1948].

¶60 Transfers are broadly construed at death under federal estate tax law the system on

which the Act is based. For example, the United States Supreme Court stated:

[T]he [federal] estate tax as originally devised and constitutionally supported was a tax upon transfers. But the power of Congress to impose death taxes is not limited to the taxation of transfers at death. It extends to the creation, exercise, acquisition, or relinquishment of any power or legal privilege which is incident to the ownership of property, and when any of these is occasioned by death, it may as readily be the subject of the federal tax as the transfer of the property at death.

Fernandez, 326 U.S. at 352 (citations omitted). The First Circuit Court of Appeals has stated that the estate tax is not "in a strict sense a tax upon a 'transfer' of the property by the death of the decedent. It is an excise tax upon the happening of an event, namely, death: where the death brings about certain described changes in legal relationships affecting property." Chickering v. Commissioner, 118 F.2d 254, 257-58 (1st Cir. 1941).

¶61 Following these general principles, taxing QTIP assets upon the death of a surviving spouse qualifies as an excise tax. The surviving spouse had the economic benefit of using the income from QTIP assets during his or her life. And, upon the surviving spouse's death, the remainder beneficiaries of the trust gained a present interest in the assets and income. The death of the surviving spouse

brought about "changes in legal relationships affecting property. " Id. . . .

By making the QTIP election, the estate of the first-to-die-spouse elected to have the surviving spouse treated as the owner of the property that qualifies for QTIP treatment. The QTIP election not only creates a deduction in the estate of the first-to-die-spouse and obligation to report in the surviving spouse's estate, it also grants benefits and responsibilities to the surviving spouse and remainder beneficiaries that are consistent with ownership by the surviving spouse. The Decedent was the transferor of the QTIP property.

E. THE STATUTE IS CONSTITUTIONAL

1. The Domicile of the Decedent Provides the Constitutional Basis for Inclusion of the Value of the QTIP Trust in the Gross Estate of the Decedent.

The Estate claims the tax at issue violates due process of law as provided in the Fourteenth Amendment of the U.S. Constitution and Article X of the Massachusetts Constitution because the Commonwealth in taxing a transaction that occurs outside of its borders. Even if the statute can be applied in an unconstitutional manner, it must be upheld if it can be applied in a constitutional manner. "[W]here a statute may be construed as either constitutional or unconstitutional, a construction will be adopted which avoids an unconstitutional interpretation." Demetropoulos v. Commonwealth, 342 Mass. 658,660 (1961). See also, Ferguson v. Commissioner of Corporations and Taxation, 316 Mass. 318, 322 (1944) and Kennedy v. Commissioner of Corporations and Taxation, 256 Mass. 426, 430 (1926).

The Decedent was domiciled in Massachusetts at her death and all of the property in the QTIP Trust was intangible personal property. Domicile provides sufficient nexus to calculate the estate tax based upon the amount of the Federal gross estate. "From the beginning of our constitutional system control over the person at the place of [her] domicile and [her] duty there, common to all citizens, to contribute to the support of government have been deemed to afford an adequate constitutional basis for imposing on [her] a tax on the use and enjoyment of rights in intangibles measured by their value." Curry v. McCanless, 307 U.S. 357,366 (1938). See also Page v. Commissioner of Revenue, 389 Mass. 388, 393 (1983). At the Decedent's death, the QTIP benefits transferred from the Decedent to the remainder beneficiaries. There is no due process violation in an excise tax based on the transfer from the Decedent.

Both the U.S. Supreme Court and the Massachusetts Supreme Judicial Court hold that if the person or the assets of the person receive the benefits and protections of the jurisdiction of the person's domicile and/or the jurisdiction, that jurisdiction may levy inheritance/estate taxes with respect to the intangible assets.

(State of decedent's domicil may constitutionally impose estate tax on securities held by trustees in another State). We decline to interpret art. 10 [Part 1, Article X of the Massachusetts Declaration of Rights] more broadly than its Federal counterpart in this context.

Page v. Commissioner of Revenue, 389 Mass. 388, 393 (1983), citing Curry v. McCanless, 307 U.S. 357, 370-374 (1939).

G.L. c. 190B, §3-916 is an example of how Massachusetts law protects the Estate with respect to the Federal and Massachusetts tax consequences of the QTIP election. G.L. c. 190B, §3-916(f) apportions estate taxes with respect to QTIP property. G.L. c. 190B, §3-916(d) allows for the recovery of the apportioned tax from persons who receive property included in the Gross Estate.¹⁵ During the time she was domiciled in Massachusetts, the Decedent received the protection of Massachusetts laws, including laws that protected her rights with respect to her income distributions from the QTIP Trust. The Decedent enjoyed the protection of Massachusetts laws and as a result was a person obligated to contribute to the expenses of the Commonwealth.

The Estate properly included the QTIP Trust value in the Gross Estate for the calculation of its Federal estate tax. (See A.F. 15.) The U.S. Supreme Court recognizes that the estate tax can apply to a broad range of transactions.

[T]he power of Congress to impose death taxes is not limited to the taxation of transfers at death. It extends to the creation, exercise, acquisition, or relinquishment of any power or legal privilege which is incident to the ownership of property, and when any of these

¹⁵ The Commonwealth would be able to enforce its apportionment against a New York trust through the operation of New York Estate Law c. 124, §124.017, through reciprocity because of G.L. c. 190B, §3-916(h). (A copy of New York Estate Law c. 124, is attached under Appendix F.)

is occasioned by death, it may as readily be the subject of the federal tax as the transfer of the property at death.

Fernandez v. Weiner, 326 U.S. 340, 352 (1945).

The Massachusetts Constitution also grants broad powers to lay excise taxes on death of the owner.

The language of the Constitution of Massachusetts is general and may well be held to authorize the laying of excises upon all such gainful employment and privileges as are created or may be regulated by law, and commonly have been considered legitimate subjects of taxation on other States and countries. We are of the opinion the privilege of transmitting or receiving by will or descent property on the death of the owner is a commodity with the meaning of this word in the Constitution, and that an excise may be laid upon it.

Minot v. Winthrop, 162 Mass. 113, 122 (1894), which concerned inheritance tax. See also Frost v. Commissioner of Corporations and Taxation, 363 Mass. 235, 253- 254 (1972), which concerned the sponge tax, G.L. c. 65A, §1.

As discussed above, the assets of the QTIP Trust are treated as passing from the Decedent due to the election by her husband's estate to claim a marital deduction based upon the value of the QTIP Trust. In addition, by electing QTIP treatment for the QTIP Trust, there are incidents of ownership in the QTIP Trust assets that attach to the surviving spouse.

In Massachusetts, the Legislature has the constitutional authority "to impose and levy, reasonable duties and excises, upon any produce,

goods, wares, merchandise, and commodities, whatsoever, brought into, produced, manufactured, or being within the same." Constitution of the Commonwealth of Massachusetts, Part 2, C. 1, § 1, Art. IV. The Supreme Judicial Court has held that "the privilege of transmitting or receiving by will or descent property on death of the owner, is a commodity within the meaning of this word in the Constitution, and that an excise may be laid upon it." Minot v. Winthrop, at 122. While rendering an opinion on whether the Legislature could impose an excise tax upon the sale of shares or certificates of stock in any domestic or foreign association, company or corporation, the Supreme Judicial Court stated:

we are of the opinion that the intention of the (Constitutional] Convention was to give the General Court of the Commonwealth, under the Constitution, the same power of imposing and levying imposts and excises which had heretofore practiced in England in in the Provinces. And we are further of the opinion that the power of the General Court in imposing and levying an excise duty is not less extensive than that of Congress ... "

Opinion of the Justices, 196 Mass. 603, 617-618 (1908). This language is discussed in the Opinion of the Justices, 408 Mass. 1201 (1990), which concerned the imposition of sales tax on services. In all of these discussions, citing Minot v. Winthrop, the transfer of property at death is accepted as a proper subject of an excise tax by the Legislature.

By making the QTIP election, the Estate of Robert Chuckrow agreed that the Estate of Adelaide Chuckrow would be treated as the transferor of the

property in the QTIP Trust. Under both Federal and Massachusetts law the QTIP Trust could be compelled, at Adelaide Chuckrow's option, to contribute to payment of the estate tax at issue. For both Federal and Massachusetts estate tax calculations; the value of QTIP Trust belongs in the Gross Estate.

F. THERE IS NO DOUBLE TAXATION IN THIS MATTER

The Estate argues that the Massachusetts statute risks causing double taxation. The argument is misplaced. To the extent other states may seek to assess an estate tax, G.L. c. 65C, §2A(a), provides a means of apportioning the tax. In the matter at issue, the Estate seeks to avoid all state estate taxes calculated on the QTIP Trust. Based upon its position that the transfer occurred in New York, one would expect the Estate to have filed a return in New York, but that is not the case. The Estate seeks to avoid New York tax with the argument that the Decedent was not domiciled in New York at her death, so New York had no jurisdiction over her. At the same time, the Estate claims the Decedent was domiciled in Massachusetts, but her domicile is insufficient reason to measure her Massachusetts estate tax by the value of the assets in the QTIP Trust, assets from which she had the exclusive benefit of, during her life in Massachusetts, and that transferred at her death.

As discussed above, even if the QTIP Trust were included in the estate tax calculation of more than one state, the inclusion would not be a problem as the assets of the QTIP Trust were intangible personal property. Curry v. McCanless, 307 U.S.

357, 366 (1938). See also Page v. Commissioner of Revenue, 389 Mass. 388, 393 (1983).

Contrary to the Estate's argument, there is no issue of double taxation in this matter. If the value of the QTIP Trust escapes taxation in Massachusetts, it will not be taxed in any state.

G. 100% OF THE VALUE OF THE QTIP TRUST IS INCLUDIBLE IN THE TAX CALCULATION

At the time the Decedent's spouse passed, Massachusetts only allowed a 50% marital deduction. The fact that the Massachusetts estate tax only had a 50% marital deduction when the first-to-die-spouse passed is irrelevant to this litigation. The Estate of Robert Chuckrow did not file a Massachusetts estate tax return, so there was no tax paid to Massachusetts. Had the Decedent's spouse paid Massachusetts estate tax and claimed a 50% marital deduction, the Estate would have an argument to only include 50% of the value of the QTIP Trust in the calculation of the Massachusetts estate tax.¹⁶ In the matter at issue, the Estate of Robert Chuckrow claimed a 100% marital deduction of his New York Estate Tax Return as well as a 100% marital deduction on his Federal Estate Tax

¹⁶ In Estate of Frances B. Markell, Lorraine R. Balkin, A William Markell and H. Kenneth Fish, as Executors, Petitioner, v. Commissioner of the Massachusetts Department of Revenue, Respondent, IN RE: Petition of Appeal From Denial of Application for Abatement

Norfolk Probate Court Docket No. 09P 0593 PA, the Norfolk Probate ordered the Commissioner to abate the tax related to inclusion of the 50% of the QTIP trust for which estate tax had been calculated in the first-to-die-spouse's Massachusetts estate tax return. (A copy of the Decision is Appendix G.)

Return. The Estate has received the maximum benefit from the QTIP election. It should not receive a credit for a tax that it did not pay.

V. CONCLUSION

For all of the reasons stated above, the Estate is not entitled to the requested abatement requested.

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APPENDIX 42

M.G.L.A. 65C § 2A

§ 2A. Transfer of estate and real property; tax

Effective: July 24, 2002

(a) A tax is hereby imposed upon the transfer of the estate of each person dying on or after January 1, 1997 who, at the time of death, was a resident of the commonwealth. The amount of the tax shall be the sum equal to the amount by which the credit for state death taxes that would have been allowable to a decedent's estate as computed under Code section 2011, as in effect on December 31, 2000, hereinafter referred to as the "credit", exceeds the lesser of:

(i) the aggregate amount of all estate, inheritance, legacy and succession taxes actually paid to the several states of the United States, other than the commonwealth, in respect to any property owned by that decedent or subject to those taxes as part of or in connection with his estate; or

(ii) an amount equal to the proportion of such allowable credit as the value of properties taxable by other states bears to the value of the entire federal gross estate wherever situated.

(b) A tax is hereby imposed upon the transfer of real property situated in this Commonwealth and upon tangible personal property having an actual situs in this Commonwealth of every person who at the time of his death was not a resident of this Commonwealth. The amount of this tax is a sum equal to the proportion of the credit which the value of Massachusetts real and tangible personal property taxed in this Commonwealth which

qualifies for such credit bears to the value of the decedent's total federal gross estate.

(c) Notwithstanding any other provision of law, the tax imposed by subsections (a) and (b) shall be computed upon the value of any property subject to a power of appointment which is includible in the federal gross estate, notwithstanding that a tax has been paid thereon pursuant to section fourteen of chapter sixty-five.¹

(d) For the purposes of computing the tax imposed by subsections (a) and (b), the provisions of section three shall not apply.

(e) For the estate of decedents dying on or after January 1, 2003, all references and provisions in this chapter to the Internal Revenue Code or Code, unless the context clearly indicates otherwise, shall be to the Code as in effect on December 31, 2000.

APPENDIX 43

B

*Rev. Rul. 98-8; 1998-1 C.B. 541;
1998 IRB LEXIS 40, *; 1998-7 I.R.B. 24*

Revenue Ruling 98-8

Rev. Rul. 98-8; 1998-1 C.B. 541; 1998 IRB, LEXIS
40; 1998-7 I.R.B. 24

February 17, 1998

SUBJECT MATTER: Section 2519.-Dispositions of
Certain Life Estates

APPLICABLE SECTIONS:

26 CFR 25.2519-1: Dispositions of certain life
estates. (Also sections 2044; 2056; 2511; 2512;
20.2044-1; 20.2056 (b)-7; 25.2511-1; 25.2512-8)

TEXT:

Disposition of qualifying income interest. If a
surviving spouse acquires the remainder interest in
a trust subject to a QTIP election under section 2056
(b) (7) of the Code in connection with the transfer by
the surviving spouse of property or cash to the
holder of the remainder interest, the surviving
spouse makes a gift under sections 2511, 2512, and
2519 of the Code.

ISSUE

What are the gift tax consequences to the surviving
spouse of the acquisition by the surviving spouse of
the remainder interest in a trust subject to a
qualified terminable interest property (QTIP)
election under § 2056 (b) (7) of the Internal
Revenue Code?

FACTS

The decedent, D, died in 1993 survived by S, D's spouse. Under the terms of D's will, a trust (the QTIP Trust) was established under which S was to receive all of the trust income, payable at least annually, for S's life. On S's death, the remainder was to be distributed outright to C, D's [*2] adult child. S was not given a general power of appointment over the trust property.

On the federal estate tax return filed for D's estate, the executor made an election under § 2056 (b) (7) to treat the trust property as QTIP, and a marital deduction was allowed to D's estate for the value of the property passing from D to the QTIP Trust.

Subsequently, S, C, and the trustee of the QTIP Trust entered into the following transaction: (1) S acquired C's remainder interest in the QTIP Trust; (2) S gave C a promissory note in the face amount of x dollars (the value of the remainder interest) for the remainder interest; (3) the trustee distributed all of the QTIP Trust assets (having a value of x + y dollars) to S; and (4) S thereupon paid x dollars from those assets to C In satisfaction of the promissory note.

At the conclusion of the transaction, the QTIP Trust was terminated; S held QTIP Trust assets having a value of y dollars (which was equal to the value of S's life interest In the trust); and C held assets having a value of x dollars (which was equal to the value of the remainder interest in the trust). S contended that the transaction was not subject to gift tax because S received full [*3] and adequate consideration (the x dollar remainder interest in the QTIP Trust) in exchange for the x dollar promissory note given by S TO C.

LAW AND ANALYSIS

Section 2044 (a) provides that the value of the gross estate includes the value of any property described in § 2044 (b) in which the decedent had a qualifying income interest for life. Section 2044 (b) provides that § 2044 applies to any property if a deduction was allowed with respect to the transfer of the property to the decedent under § 2056 (b) (7).

Section 2056 (a) provides that the value of the taxable estate is, except as limited by § 2056 (b), determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse.

Under § 2056 (b) (1), if an interest passing to the surviving spouse will terminate, no deduction is allowed with respect to such interest if, after termination of the spouse's interest, an interest in the property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than the surviving spouse (or the estate of such spouse).

Section 2056 (b) (7) (A) [*4] provides that qualified terminable interest property, for purposes of § 2056 (a), is treated as passing to the surviving spouse, and no part of such property is treated as passing to any person other than the surviving spouse. In general, qualified terminable interest property is property in which the spouse receives a qualifying income interest for life and with respect to which the executor makes an election to treat the property as QTIP.

Section 2511 (a) provides that the gift tax applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2512 (b) provides that where property is transferred for less than an adequate and full consideration in money or money's worth, the amount by which the value of the property exceeds the value of the consideration is deemed a gift.

Section 2519 (a) provides that any disposition of all or part of a qualifying income interest for life in any property to which the section applies is treated as a transfer of all interests in the property other than the qualifying income interest. Section 2519 (b) provides that the section applies to any property [*5] if a deduction was allowed with respect to the transfer of such property to the donor under § 2056 (b) (7).

The estate tax marital deduction provisions are intended to provide a special tax benefit that allows property to pass to the surviving spouse without the decedent's estate paying tax on its value. Tax is deferred on the transfer until the surviving spouse either dies or makes a lifetime disposition of the property: Under either circumstance, a transfer (estate or gift) tax is paid. *United States v. Stapf*, 375 U.S. 118, 128 (1963), 1964-1 (Part 1) C.B. 535, 537; *Estate of Clayton v. Commissioner*, 976 F.2d 1486, 1491 (5th Cir. 1992); *Estate of Letts v. Commissioner*, 109 T.C. 290 (1997), ("It is a basic policy of the marital deduction that property that passes untaxed from a predeceasing spouse to a surviving spouse is included in the estate of the surviving spouse.")

The statutory scheme of the QTIP provisions is consistent with this congressional Intent. Thus, a marital deduction is allowed under § 2056 (b) (7) for property passing from a decedent to a QTIP trust in which the surviving spouse possesses a lifetime income interest. Sections 2519 and 2044 act to defer the taxable event [*6] on the marital deduction property only so long as the surviving spouse continues to hold the lifetime Income Interest.

Under § 2519, if a surviving spouse disposes of any part of the qualifying income interest, the spouse is treated as making a gift of the remainder interest in the underlying property (i.e., all interests in the property other than the income interest). Correspondingly, under § 2511, the disposition of the income interest by the spouse is treated as a gift, to the extent the income interest is transferred to another for less than adequate consideration. The term "disposition," as used in § 2519, applies broadly to circumstances in which the surviving spouse's right to receive the income is relinquished or otherwise terminated, by whatever means. See H. Rep. No. 201, 97th Cong., 1st Sess. 161 (1981) that states:

The bill provides that property subject to a [QTIP election] will be subject to transfer taxes at the earlier of (1) the date on which the spouse disposes (either by gift, sale, or otherwise) of all or part of the qualifying income interest, or (2) upon the spouse's death.

A commutation, which is a proportionate division of trust property between the life beneficiary [*7] and remainderman based on the respective values of

their interests is, in the context of a QTIP trust, a taxable disposition by the spouse of the qualifying income interest, resulting in a gift under § 2519 of the value of the remainder- interest. The commutation of the spouse's income interest in the QTIP trust is essentially a sale of the income interest by the spouse to the trustee (or the remainderman) in exchange for an amount equal to the value of the income interest. Sales and commutations are expressly characterized as dispositions in the applicable legislative history and regulations. Section 25.2519-1 (g), Example 2 (illustrating that the sale by the spouse of the spouse's income interest to the trust remaindermen is a disposition of the income interest); § 25.2519-1 (f) providing that "[T]he sale of qualified terminable interest property, followed by the payment to the donee-spouse of a portion of the proceeds equal to the value of the donee-spouse's income interest, is considered a disposition of the qualifying income interest". See also, *Estate of Novotny v. Commissioner*, 93 T.C. 12 (1989), in which the surviving spouse and remainderman divided the sale proceeds of QTIP property [*8] proportionately on the basis of the respective values of their interests; the court indicated that the commutation constituted a disposition by the spouse of the income interest for purposes of § 2519 and was thus subject to gift tax.

There is little distinction between the sale and commutation transactions treated as dispositions in the regulations and the transaction presented here, where S acquired the remainder interest. In both cases, after the transaction the spouse's income interest in the trust is terminated and the spouse receives outright ownership of property having a net

value equal to the value of the spouse's income interest. Similarly, the remainderman receives ownership of property equal in value to the remainder interest. Thus, the transaction in the instant case essentially effectuates a commutation of S's income interest in the trust, a transaction that is a disposition of S's income interest under § 2519. Therefore, under § 2519, S is regarded as making a gift of x dollars, the value of the remainder interest in the QTIP Trust. Section :25.2519-1 (f).

This conclusion that S has made a gift is also supported by an additional analysis. S acquired an asset (the remainder [*9] interest in the QTIP Trust) that is already subject to inclusion in S's transfer tax base under § 2044. In analogous situations, the courts have recognized that the receipt of an asset that does not effectively increase the value of the recipient's gross estate does not constitute adequate consideration for purposes of the gift and estate tax. See *Commissioner v. Wemyss*, 324 U.S. 303, 307, 89 L. Ed. 958, 65 S. Ct. 652, 1945 C.B. 416 (1945), 1945 C.B. 416, ("The section taxing as gifts transfers that are not made for "adequate and full [money] consideration" aims to reach those transfers which are withdrawn from the donor's estate.")

A companion case to *Commissioner v. Wemyss*, *Merrill v. Fahs*, 324 U.S. 308, 89 L. Ed. 963, 65 S. Ct. 655, 1945 C.B. 418 (1945)¹ 1945 C.B. 4181 and the cases that preceded it, involved situations where A, an individual, transferred property to B, A's spouse (or future spouse), in exchange for B's relinquishment of marital rights in A's property. The Court held that B's relinquishment of the marital rights did not constitute adequate and full consideration for A's transfer because the assets subject to the marital rights were already includible

in A's taxable [* 10] estate. The property subject to dower and marital rights is clearly included in the gross estate of the property owner. Thus, to conclude that the relinquishment of dower and marital rights by the spouse of the property owner constituted adequate and full consideration for a transfer by the property owner for gift tax purposes would effectively subvert the legislative intent and statutory scheme of the gift tax provisions. *Merrill v. Fahs*, at 311-312. See also, *Commissioner v. Bristol*, 121 F.2d 129, 136 (1st Cir. 1941).

Likewise, in the present situation, property subject to the QTIP election was intended to be subject to either gift or estate tax. S's receipt of the remainder interest does not increase the value of S's taxable estate because that property is already subject to inclusion in S's taxable estate under § 2044. Rather, S's issuance of the note results in a depletion of S's taxable estate that is not offset by S's receipt of the remainder interest. Thus, for estate and gift tax purposes, S's receipt of the remainder interest cannot constitute adequate and full consideration under § 2512 for the promissory note transferred by S to C. As was the case in *Merrill v. Fahs*, any other [*11] result would subvert the legislative intent and statutory scheme underlying § 2056 (b) (7). Therefore, under § 2511, S has made a gift to C equal to the value of the promissory note S gave to C.

In addition, a gift to would be imposed under the above alternative rationales even if S acquired only a portion of C's remainder interest; e.g., S acquired 60 percent of C's remainder interest. If, under applicable state law, such a transaction results in a partial termination of the trust, s would be treated as disposing of part of S's income interest in the

trust, and the commutation analysis would apply. See, e.g., Restatement (Second) of Trusts § 340 (2) (1959). See also, § 25.2519-1 (g), Example 4, (Illustrating the estate and gift tax consequences of the disposition of a portion of the spouse's income interest). If the trust does not terminate, S would nonetheless be treated as making a transfer under § 2511 and 2512 for less than adequate and full consideration to the extent of the value of the property or cash S transfers in exchange for the partial remainder interest.

Further, the conclusion of this revenue ruling would be the same if S transferred to C property or cash rather than the promissory [*12] note. The economic effect of the transaction is identical, regardless whether S uses S's own funds to finance the transaction or gives a promissory note and discharges the note using some of the QTIP Trust assets received in the transaction. Thus, the result is the same for transfer tax purposes.

HOLDING

If a surviving spouse acquires the remainder interest in a trust subject to a QTIP election under § 2056 (b) (7) in connection with the transfer by the surviving spouse of property or cash to the holder of the remainder interest, the surviving spouse makes a gift both under § 2519 and under § 2511 and 2512. The amount of the gift is equal to the greater of (i) the value of the remainder interest (pursuant to § 2519), or (ii) the value of the property or cash transferred to the holder of the remainder interest (pursuant to § 2511 and 2512).

DRAFTING INFORMATION

The principal author of this revenue ruling is Deborah Ryan of the office of Assistant Chief Counsel (Pass through and Special Industries. For further information regarding this revenue ruling contact Ms. Ryan on (202) 622-3090 (not a toll-free call).

APPENDIX 44

C

*Rev. Proc. 2001-38; 2001-2 C.B. 124;
2001 IRB LEXIS 226, *; 2001-24 I.R.8. 1335*

Revenue Procedure 2001-38

Rev. Proc. 2001-38; 2001-2 C.B. 124; 2001 IRB
LEXIS 226; 2001-24 I.R.B. 1335

June 11, 2001

[*1]

APPLICABLE SECTIONS:

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability. (Also Part I, §§ 2044, 2056, 2519, 2652; 20.2044-1, 20.2056 (b)-7, 25.2519-1, 26.2652-1.)

TEXT:

SECTION 1. PURPOSE

This revenue procedure provides relief for surviving spouses and their estates in situations where a predeceased spouse's estate made an unnecessary qualified terminable interest property (QTIP) election under § 2056 (b) (7) of the Internal Revenue Code that did not reduce the estate tax liability of the estate. This revenue procedure describes the circumstances in which these QTIP elections will be treated as a nullity for federal estate, gift, and generation-skipping transfer tax purposes, so that the property will not be subject to transfer tax with respect to the surviving spouse.

SECTION 2. BACKGROUND

Section 2056 (a) provides that, except as limited by § 2056 (b) the value of a taxable estate is determined by deducting from the value of the gross estate an

amount equal to the value of any interest in property which passes or has passed from the decedent to the surviving spouse. Section 2056 (b) (1) denies a marital deduction for an interest passing to the [*2] surviving spouse that is a "terminable interest." An interest is a terminable interest if the interest passing to the surviving spouse will terminate or fall on the lapse of time or on the occurrence of an event or contingency or on the failure of an event or contingency to occur, and on termination, an interest in the property passes to someone other than the surviving spouse.

Section 2056 (b) (7) (A) provides an exception to this terminable interest rule in the case of qualified terminable interest property. For purposes of § 2056 (a), qualified terminable interest property is treated as passing to the surviving spouse, and no part of the property is treated as passing to any person other than the surviving spouse. Under § 2056 (b) (7) (B) (1), qualified terminable interest property is property which passes from the decedent, in which the surviving spouse has a qualifying income interest for life, and to which an election under §2056 (b) (7) (B) (v) applies.

Section 2056 (b) (7) (B) (v) provides that the election to treat property as QTIP under § 2056 (b) (7) is made by the executor on the return of tax imposed by §.2001. This election, once made, is Irrevocable.

Section 20.2056 (b)-7 (b) (4) (!) [*3] of the Estate Tax Regulations provides that the QTIP election is made on the return of tax imposed by § 2001 (or § 2101). The term "return of tax imposed by§ 2001" means the last estate tax return (*Form 706-United States Estate (and Generation Skipping Transfer) Tax Return*) filed by the executor on or before the due

date of the return, including "extensions or, if timely return is not filed, the first estate tax return filed after the due date. Section 20.2056 (b)-7 (b) (4) (ii) provides that the election, once made, is irrevocable.

A QTIP election has transfer tax consequences for the surviving spouse. Section 2044 (a) and (b) provides generally that the value of the gross estate includes the value of any property in which the decedent has a qualifying income interest for life and with respect to which a deduction was allowed for the transfer of the property to the decedent under § 2056 (b) (7). Under § 2519 (a) and (b), any disposition of all or part of a qualifying income interest for life in any property with respect to which a deduction was allowed under § 2056 (b) (7) is treated as a transfer of all interests in the property other than the qualifying income interest. Further, the [*4] surviving spouse will, in the absence of a "reverse QTIP" election under § 2652 (a) (3), be treated as the transferor of the property for generation-skipping transfer tax purposes under § 265.2 (a).

The Internal Revenue Service has received requests for relief in situations where an estate made an unnecessary QTIP election. In some cases, a QTIP election was made when the taxable estate (before allowance of the marital deduction) was less than the applicable exclusion amount under § 2010 (c). The QTIP election was not necessary, because no estate tax would have been imposed whether or not the QTIP election was made. In other cases, the decedent's will provided for a "credit shelter trust" to be funded with an amount equal to the applicable exclusion amount under § 2010 (c), with the balance of the estate passing to a marital trust intended to qualify under § 2056 (b) (7). The estate made QTIP elections for both the credit shelter trust and the

marital trust. The QTIP election for the credit shelter trust was not necessary, because no estate tax would have been imposed whether or not the QTIP election was made for that trust. In these situations, as a consequence of the unnecessary QTIP election, [*5] the property subject to the election would be included in the surviving spouse's gross estate under § 2044 (a), or if that spouse disposes of the income interest, would be subject to gift tax under § 2519. Further, the surviving spouse would, in the absence of a "reverse QTIP" election under § 2652 (a) (3), be treated as the transferor of the property for generation-skipping transfer tax purposes under § 2652 (a).

SECTION 3. SCOPE

This revenue procedure applies to elections under § 2056 (b) (7) to treat property as qualified terminable interest property where the election was not necessary to reduce the estate tax liability to zero, based on values as finally determined for federal estate tax purposes. This revenue procedure does not apply in situations where a partial QTIP election was required with respect to a trust to reduce the estate tax liability and the executor made the election with respect to more trust property than was necessary to reduce the estate tax liability to zero. This revenue procedure also does not apply to elections that are stated in terms of a formula designed to reduce the estate tax to zero. *See*, for example, § 20.2056 (b)-7 (h), *Examples 7 and 8*. In addition, this [*6] revenue procedure does not apply to protective elections under § 20.2056 (b)-7 (c).

SECTION 4. PROCEDURE

In the case of a QTIP election within the scope of this revenue procedure, the Service will disregard

the election and treat it as null and void for purposes of §§ 2044 (a), 2056 (b) (7), 2519 (a), and 2652. The property for which the election is disregarded under this procedure will not be includible in the gross estate of the surviving spouse under § 2044, and the spouse will not be treated as making a gift under § 2519 if the spouse disposes of the income interest with respect to the property. Further, the surviving spouse will not be treated as the transferor of the property for generation-skipping transfer tax purposes under § 2652 (a). To establish that an election is within the scope of this revenue procedure, the taxpayer must produce sufficient evidence to that effect. For example, the taxpayer may produce a copy of the estate tax return filed by the predeceased spouse's estate establishing that the election was not necessary to reduce the estate tax liability to zero, based on values as finally determined for federal estate tax purposes. Such Information, including an explanation [*7] of why the election should be treated as void under this revenue procedure, should be submitted either with the Form 706 filed for the surviving spouse's estate, or with a request for a private letter ruling submitted at any time prior to filing that Form 706.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective as of June 4, 2001, and applies to elections within the scope of this revenue procedure, whenever made. If prior to June 4, 2001, property subject to an election within the scope of this revenue procedure was subject to transfer tax (for example, because the surviving spouse has died or disposed of all or part of an income interest), the taxpayer may file a claim for refund provided the time prescribed by § 6511 for filing the claim has not expired,

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Scott S. Landes of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Landes at (202) 622-3090 (not a toll-free call).

APPENDIX 45

D

*2015 Conn. Super. LEXIS 950/**

Estate of Helen B. Brooks et al. v.

Kevin Sullivan, Commissioner of Revenue Services

CV136021058

SUPERIOR COURT OF CONNECTICUT, .JUDICIAL
DISTRICT OF NEW BRITAIN, TAX AND
ADMINISTRATIVE APPEALS SESSION AT NEW
BRITAIN

2015 Conn. Super. LEXIS 950

April 29, 2015, Decided

April 29, 2015, Filed

NOTICE: THIS DECISION IS UNREPORTED AND
MAY BE SUBJECT TO FURTHER APPELLATE
REVIEW. COUNSEL IS CAUTIONED TO MAKE AN
INDEPENDENT DETERMINATION OF THE STATUS
OF THIS CASE.

CORE TERMS: intangible, decedent, gross estate, estate
tax purposes, resident, estate tax, personal property,
surviving spouse, ownership, marital deduction, estate
tax, taxable estate, tangible, spouse, summary
judgment, taxation, fiction, dies, property situated, tax
statute, federal tax, actual situs, retroactively,
retroactive, includible, clarify, situs, matter of law,
entitled to judgment, property owned

JUDGES: [*1] Arnold W. Aronson, Judge Trial Referee.

OPINION BY: Arnold W. Aronson

OPINION

MEMORANDUM OF DECISION ON PLAINTIFFS' AND DEFENDANT'S CROSS MOTIONS FOR SUMMARY JUDGMENT

The co-executors of the estate of Helen B. Brooks, Dorothy B. Newberth, Nancy B. Jackman and David S. Brooks, move for summary judgment against the commissioner of revenue services (commissioner), claiming that there are no genuine issues of material fact to be decided at trial and that as a matter of law, the plaintiffs are entitled to judgment in their favor. The commissioner also moves for summary judgment claiming that, as a matter of law, he is entitled to judgment in his favor.

The decedent, Helen Brooks (Helen), died on September 22, 2009 domiciled in Connecticut. She was the widow of Everett M. Brooks (Everett), who died domiciled in Florida on January 31, 2000.

Prior to his death, Everett executed a last Will and Testament (Will) in which he created a Qualified Terminable Interest Property (QTIP) marital deduction trust. The trust was divided into Trust A and Trust B, both created under Article Eighth of the Will. Trust A is entirely exempt from generation-skipping transfer taxes and Trust B is subject to generation-skipping transfer [*2] taxes.¹

¹ The Marital Deduction, §2056(a) of the Internal Revenue Code (IRC), "provides that an estate may deduct the value of any interest in property passing from the decedent to his or her surviving spouse ... to the extent such interest is included in determining the value of the gross estate. The policy behind the marital deduction is that property passes untaxed from a predeceasing spouse to a surviving spouse, but is then included in the estate of the surviving spouse ... Thus, as a general rule, the marital deduction does not eliminate the estate tax on marital assets, but merely permits a deferral of tax

The QTIP trust that was created in Everett's Will provided for the benefit of Helen during her lifetime and on her death, the trust principal was to be transferred to Everett's children. The trust property consisted solely of cash, publicly traded stocks and bonds owned by Everett and transferred on his death to the QTIP trust. See ¶18 of affidavit of Attorney Herbert J. Hummers (Entry No. 111) in support of plaintiffs' motion for summary judgment. Everett's Will granted a life use of the trust property to Helen which provided income to Helen [*3] during the remaining years of her life. Upon Helen's death, the trust property, by operation of the trust created by Everett's Will, passed automatically to Everett's children.

Helen and Atty. Hummers were appointed as trustees of the QTIP trust. As a trustee, Atty. Hummers was given the power to invade the trust principal for Helen's benefit, but never did so. See Atty. Hummers' affidavit, ¶19. Atty. Hummers was not given a general power of appointment. Helen, as trustee, was neither given the power to invade the trust principal nor a general power of appointment.

In the preparation of Everett's federal estate tax return in Florida, the estate made an election to treat the QTIP property as qualifying for the marital deduction, the effect of which delayed the federal estate tax due on such property until Helen's death. Based on that election, the QTIP property was required to be included in Helen's federal estate tax return.² See joint stipulation of facts (Stip.), Entry No. 141, ¶11.

until the death of the surviving spouse." (Citation omitted.) *Estate of Kite v. Commissioner*, T.C. Memo. 2013-43 (2013), p. 31.

² As noted in *Estate of Morgens v. Commissioner*, 133 T.C. 402, 412 (2009), "[§]2056(b)(7) provides in pertinent part: (A) ... In the case of qualified terminable interest property-(1) for purposes of subsection (a), such property shall be treated as passing to the surviving

Following Helen's death, her estate paid the Connecticut estate taxes that included taxes on the QTIP property in her Connecticut taxable estate within six months of her death and requested an extension to file the Connecticut estate tax return. On November 4, 2010, the plaintiffs filed the estate's Connecticut estate tax return (Form CT 706/709) intentionally omitting the QTIP property. The plaintiffs sought a refund of estate taxes in the amount of \$988,827 claiming that the value of Helen's estate should have been reduced by the removal of the QTIP trust assets.

The plaintiffs contend that the only assets in the QTIP trust were cash, stocks and bonds and, as Intangibles, must have been owned by the decedent in order to be taxed by the state of Connecticut. The plaintiffs argue that Helen was not the owner of these [*5] assets because she only had life use of the QTIP trust assets.

The commissioner's position is that ownership of intangibles is not an issue in this case because the taxation of the assets of an estate of a Connecticut resident begins with the assets contained in the federal gross estate. Therefore, all of the assets listed in Helen's federal estate tax return; including the intangibles in the QTIP trust, must be listed in the Connecticut estate tax return.

Prior to its amendment in 2013, General Statutes §12-391(d)(3) provided as follows: "Property of a resident estate over which this state has jurisdiction for estate

spouse, and (ii) [*4] for purposes of [¶](1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

"Although only a life interest actually passes from the first spouse to die to his or her surviving spouse, the entire QTIP obtains the deferral benefit of the marital deduction and escapes inclusion in the gross estate of the first spouse to die."

tax purposes includes real property situated in this state, tangible personal property having an actual situs in this state and intangible personal property *owned by* the decedent, regardless of where it is located." (Emphasis added.) Subsequently, the legislature enacted §120 of P.A. 13-247 which eliminated the words "owned by" from the statute.

Thereafter, §12-391(d)(3) reads as follows: "For a resident estate, the state shall have the power to levy the estate tax upon real property situated in this state, tangible personal property having an actual situs in this state and *intangible personal property included in the [*6] gross estate of the decedent*, regardless of where It is located."³ (Emphasis added.)

The plaintiffs argue that the elimination of the phrase "owned by" the decedent was a significant change in §12-391(d)(3). Therefore, the plaintiffs contend that [*7] they are entitled to judgment as a matter of law because the QTIP property is not includible in Helen's Connecticut taxable estate for the following reasons: (1) the assets in the QTIP trust were not owned by Helen as required by §12-391(d)(3) before it was amended in §120 of P.A. 13-

³ The legislative history of §120 of P.A. 13-247 shows that it was encompassed in emergency certified bill 6706. Senator Kelly asked the question: "Section 120, the state tax makes technical changes on the estate tax and how it's calculated for Connecticut residents who have an estate property in other states conforming to DRS regulations. What exactly does that mean?" Senator Fonfara responded: "The language preserves the current tax treatment of real and tangible property, which Connecticut has jurisdiction to tax." Senator Frantz inquired: "In the description of that bill it says it provides for both residents and nonresident estates that the state may calculate and levy the tax to the fullest extent permitted by the U.S. Constitution." Senator Fonfara responded: "Through you, Madam President, the revision is technical and is consistent with how we've always implemented this procedure so it doesn't change the way Connecticut has implemented this provision previously."

247, (2) the QTIP election pertaining to the QTIP property was not made in Connecticut but in Florida and (3) Connecticut does not have jurisdiction over Everett's QTIP property or Everett's transfer of property at his death.

The plaintiffs disregard the fact that the estate tax in Connecticut is not governed by what happened in Florida, but on what happens to residents who die in Connecticut. General Statutes §12-391(c)(1)(A) defines, for estate tax purposes, a "Connecticut taxable estate," with respect to the estates of decedents dying on or after January 1, 2005, but prior to January 1, 2010, to mean the "(i) the gross estate less allowable deductions, as determined under Chapter 11 of the [IRC], plus (ii) the aggregate amount of all Connecticut taxable gifts ... " The fact that it was the executor of Everett's estate that elected to recognize the QTIP trust in Florida does not affect the validity of the transfer of the QTIP assets to Helen in Connecticut. As the [*8] commissioner notes in his brief, the start of the determination of the estate tax of a Connecticut resident begins with Helen's federal gross estate. See defendant's memorandum, Entry No. 133, p. 24.

The commissioner argues that the assets In the QTIP trust, created under Everett's Will, have escaped the payment of estate taxes In Florida, and pursuant to the plaintiffs' argument, will also escape the Connecticut estate tax. Although the plaintiffs agree that the same trust assets must be included in Helen's estate for the payment of federal estate taxes, the plaintiffs contend that these same assets should be removed from Helen's estate in order to escape state taxation.

The plaintiffs discount the fact that the assets in a QTIP trust are not taxed in the estate of the spouse first-to-die because the estate of the first-to-die spouse is allowed to

take a marital deduction on the basis of a fiction that the entire property has passed from Everett to Helen and no part of the assets of the QTIP trust has passed to any other person other than the surviving spouse.⁴

Putting aside the fiction that Helen, as the surviving spouse, had received all of the assets contained in the QTIP trust, the plaintiffs side-step the plain language in §12-391(c)(3) that specifically states that the "[g]ross estate" for Connecticut estate tax purposes "means the gross estate, for federal estate tax purposes[.]" which in this case, includes the assets of the QTIP trust.

As discussed above, in 2013, the legislature enacted P.A. 13-247, amending § 12-391 eliminating the term "owned by" in favor of the language "Included in the gross estate of the decedent ... "

The plaintiffs' reliance on the term "owned by" in §12-391(d)(3) prior to its removal by the 2013 amendment is misplaced. The elimination of the words "owned by," in reference to intangible personal property, was not a substantial change. Whereas real estate and personal property have a situs which can be a basis for taxation, intangible personal property has no situs because it has no physical presence. See 3 W. Locke & P. Kohn, Connecticut Probate Practice, p. 42. The situs of intangible [* 10] personal property lies with the one who possesses and controls the right of the intangible. See *Curry v. McCanless*, 307 U.S. 357, 365-66, 59 S.Ct. 900, 83 L.Ed. 1339 (1939): "Very different considerations, both theoretical and practical, apply to the taxation of

⁴ See *In re Bracken*, 175 Wn.2d 549, 290 P.3d 99 (Wash. 2012), referring to I.R.C. §2056(b) (7)(A), "In response to *In re Bracken*, the legislature [in Washington] amended the Estate and Transfer Tax Act. [*9] in 2013, retroactive to estates of decedents ... who died on or after May 17, 2005." *Bloch v. Washington State Dept. of Revenue*, 44802-5-II, 2014 Wash. App. LEXIS 3045 (Wash.App. 12-30-2014).

intangibles, that is, rights which are not related to physical things. Such rights are but relationships between persons, natural or corporate, which the law recognizes by attaching to them certain sanctions enforceable in courts. The power of government over them and the protection which it gives them cannot be exerted through control of a physical thing. They can be made effective only through control over and protection afforded to those persons whose relationships are the origin of the rights."

The original succession tax statute in Connecticut, the Act of 1889, made no mention of ownership when describing intangible property. The Act of 1889 described the property subject to tax as "all property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, .. " G, Wilhelm, *Death Taxes in Connecticut* 4th, §6.2, pp. 6-6, 6-7.

In 2004, the Connecticut succession tax was repealed for estates of decedents dying [* 11] after December 31, 2004 and was replaced with an expanded Connecticut estate tax in P.A. 05- 251⁵ that is the basis for General Statutes §12-340. With the new tax, the Connecticut legislature did away with the "pick-up" tax which was a tax tied to the federal estate tax.

The enactment of §12-340 described the property contained in the estate of a resident decedent as "(1) real

⁵ P.A. 05-251 recited as follows: "(d)(1) With respect to the estates of decedents who die on or after January 1, 2005, a tax is imposed upon the transfer of the estate of each person who at the time of death was a resident of this state . . . (3) Property of a resident estate over which this state has jurisdiction for estate tax purposes includes real property situated in this state, tangible personal property having an actual situs in this state and intangible personal property owned by the decedent, regardless of where it is located."

property situated in this state; (2) tangible personal property, except such as has an actual situs without this state; (3) all intangible personal property ... " Again, no mention was made of "ownership" of intangible personal property. However, in comparison, when the issue of ownership of intangibles was specifically [*12] addressed by the legislature, the legislature expressly excluded intangible personal property owned *by a nonresident*. See G. Wilhelm, *supra*, pp. 6-8.

As previously noted, §12-391(c)(3) defines the gross estate in a Connecticut taxable estate as "the gross estate, for federal estate tax purposes." In a sense, the Connecticut taxable estate piggybacks the filing of a decedent's federal estate tax return.

When our Connecticut statutes are so intertwined with Federal tax concepts, federal tax concepts are considered to be incorporated into state law. *Berkley v. Gavin*, 253 Conn, 761, 773, 756 A.2d 248 (2000). In the present case, the federal tax concept that is key to the resolution of the issue in this case is the fiction that Helen, having only a life use in the QTIP property, is deemed to be the sole owner of the property for tax purposes. See I.R.C. §2044(a): "The value of the gross estate shall include the value of any property to which this section applies in which the decedent had a qualifying income interest for life." Section 2044(c) provides that "[f]or purposes of this chapter and chapter 13 ... property includible in the gross estate of the decedent under subsection (a) shall be treated as property passing from the decedent." There is no clearer example of Federal tax statutes being incorporated into our tax statutes [*13] than §12-391(c) (3), which specifically incorporates a decedent's "gross estate, for federal estate tax purposes" into Connecticut tax statutes.

This federal tax concept introduced into Connecticut tax laws controls in the present case and supports the commissioner's argument that "ownership" of the QTIP assets is not at issue here. The inclusion of intangibles in the decedent's federal gross estate is incorporated into the decedent's Connecticut gross estate.

The plaintiffs set forth, in their supplemental memorandum of law (Entry No. 145), p. 14, the following questions (Q1-Q2-Q3) for this court to answer:

Q1. Is the QTIP property properly includible in the decedent's Connecticut taxable estate under the pre-P.A. 13-247 version of General Statutes §12-391, which was in effect at the time of the decedent's death in 2009?

Q2. Can the State of Connecticut constitutionally apply a substantive change to the law retroactively? In other words, is it constitutional for a substantive change to the Connecticut estate tax laws, which effectively create a new tax obligation, to be given retroactive effect? Even if this Court decides that the elimination of a requirement of ownership by the decedent as a predicate to the imposition of [*14] Connecticut estate tax is not substantive, can the State of Connecticut retroactively apply a statutory change in 2014 to a transfer that occurred on January 1, 2000, 14 years earlier?

Q3. Can the State of Connecticut constitutionally tax intangible property which was never owned by a Connecticut decedent or transferred from a Connecticut decedent?

The court answers as follows:

Q1. Yes, the QTIP assets are includible in Helen's estate because of the fiction expressed in IRC §2056(b)(7) that Everett, as the first-to-die spouse; has passed the QTIP property to Helen, his

surviving spouse, and because §12-391(d)(3) defines a Connecticut gross estate as that of a federal gross estate.

Q2: No. There was no substantive change in §12-391(d)(3) when the word "ownership" was eliminated in §120 of P.A. 13-247. The change was an expression of the legislature clarifying its intent to tax Intangibles contained in the federal gross estate tax but only those intangibles that were in possession and control of Helen at the time of her death. Since the fiction created by 26 U.S.C. 2056(a)-(b) places the assets of the QTIP trust in possession of Helen, she was the owner of the intangible assets in the QTIP trust. As presented by the plaintiffs, the only situation that [*15] would involve the issue of ownership would entail Helen being a Connecticut resident and having assets with a situs outside the jurisdiction of Connecticut. Since intangibles follow the person having the possession and control of an intangible, a person who dies a Connecticut resident would be the "owner" of the intangible even if the intangible was located outside the jurisdiction of Connecticut.

As to the issue of the retroactivity of §120 of P.A. 13-247 It is clear that the legislature intended to clarify §12-391(d)(3). See *Nash v. Yap*, 247 Conn. 638, 661, 726 A.2d 92 (1999): "When the legislature is clarifying prior legislation, the correction has retroactive effect. According to well established principles of statutory construction, an amendment that construes and clarifies a prior statute operates as the legislature's declaration of the meaning of the original act." (Internal quotation marks omitted.) Indeed, the legislature in making the amendment went so far as to specifically clarify its

intent that the removal of "ownership" in §12-391 was to be applied retroactively. See §12 of P.A. 14-155.⁶

Our courts have recognized that there is no precise definition of substantive or procedural law. "[A] substantive law creates, defines and regulates rights while a procedural law prescribes the methods of enforcing such rights or obtaining redress." (Internal quotation marks omitted.) *Carr v. Planning & Zoning Commission*, 273 Conn. 573, 593, 872 A.2d 385 (2005). As noted in *Samnard Associates, LLC v. New Britain*, 140 Conn.App. 290, 298, 58 A.3d 377 (2013), whether or not a legislative change is substantive or procedural, the legislative history and circumstances surrounding the amendment are important in ascertaining legislative intent.

Public Act 14-155 clearly expresses the legislative intent that §120 of P.A. 13-247 was to be applied retroactively and was, not substantive in nature. See also *Andersen Consulting, LLP v. Gavin*, 25S Conn. 498, 517, 767 A.2d 692 (2001), "[w]here an amendment is intended to clarify the original intent of an earlier statute, it necessarily has retroactive effect ... "

Q3 Answer:

Connecticut cannot tax intangibles that are not in the control and possession of a person residing in Connecticut at the time of his or her death. Such a tax would be in violation of the U.S. Constitution, as referenced in P.A. 13-247. In [*17] the present case,

⁶ Public and Special Acts February 2014 Regular Session, p. 1081: "Section 12 (*effective from passage*). Section 120 of P.A. 13-247, shall take effect June 19, 2013. It is the intent of [*16] the General Assembly that the amendments made by §120 of P.A. 13-247 to subsections (d) and (e) of §12-391 of the general statutes, as amended by this act, are clarifying in nature and apply to all open estates."

there was no violation of the U.S. Constitution because Helen (under the fictional concept) had possession and control of the stocks, bonds and cash contained in her estate. Therefore, as a resident of Connecticut at the time of her death, Connecticut had jurisdiction to tax these intangibles. There was no violation of the rights of the plaintiffs as remaindermen because "[t]he estate tax does not deprive the remaindermen of their interest in the [QTIP] property or change the nature of their Interest. It simply taxes the transfer of assets." *In re Estate of Hambleton*, 181 Wn,2d 802, 335 P.3d 398, 412 (Wash. 2014), As noted In *United States v. Carlton*, 512 U.S. 26, 33, 114 S.Ct. 2018, 129 L.Ed.2d 22 (1994), "[t]ax legislation is not a promise, and a taxpayer has no vested right in the [IRC] . . . Taxation is [not] a penalty imposed on the taxpayer, ... but a way of apportioning the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens ... " (Citation omitted; internal quotation marks omitted.)

Accordingly, for the above stated reasons, judgment may enter in favor of the defendant commissioner on his motion for summary judgment. The plaintiffs' motion for summary judgment is denied. No costs are awarded to any party.

Arnold W. Aronson

Judge Trial Referee

APPENDIX 46

E



Supreme and Appellate Court

Case Detail

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Case Information

 SC 19577 ESTATE OF HELEN B. BROOKS ET AL. v. KEVIN SULLIVAN,
 COMMISSIONER OF REVENUE SERVICES

Status: Ready

Appeal Case Information

Date Filed:	05/19/2015	Disposition Method:	
Appeal By:	Plaintiff	Disposition Date:	
Argued/Submitted Date:		Cite:	
Standby Date(s):		Petition(s) For Certification:	
Panel:			

Cross Appeal/Amended Appeal

Trial Court Case Information

Docket Number:	HHBCV1360216595	Court:	TAX SESSION AT NEW BRITAIN
Judgment For:	Defendant	Judgment Date:	04/29/2015
Trial Judge(s):	HON. ARNOLD W. ARONSON	Case Type:	CIVIL - TAXATION

Party/Attorney or Self-Represented Information

	Trial Court Party Class	Appellate Party Class
DAVID S BROOKS Jurat: 409144 ANDERSON KILL P.C. Jurat: PHV PATRICIO SUAREZ	Plaintiff	Appellant
DOROTHY B NEWBERTH Jurat: 409144 ANDERSON KILL P.C. Jurat: PHV PATRICIO SUAREZ	Plaintiff	Appellant
ESTATE OF HELEN B. BROOKS Jurat: 409144 ANDERSON KILL P.C. Jurat: PHV PATRICIO SUAREZ	Plaintiff	Appellant
NANCY B JACKMAN Jurat: 409144 ANDERSON KILL P.C. Jurat: PHV PATRICIO SUAREZ	Plaintiff	Appellant
KEVIN B SULLIVAN, COMMISSIONER OF REVENUE SERVICES Jurat: 421627 LOUIS P BUCARI JR Jurat: 421694 DINAH J BEE Jurat: 426493 MARILEE C CLARK	Defendant	Appellee

Transcripts and Exhibits

Party	Transcripts Ordered	Estimated Delivery Date	Delivered To Party	Exhibits Received By Court: Pages	Delivered To Court

<http://appellateinquiry.jud.ct.gov/AppcalNoInq.aspx>

11/03/2016

DAVID S. BROOKS
NANCY B. JACKMAN
DOROTHY B. NEWBETH
ESTATE OF HELEN B. BROOKS

05/29/2015 05/29/2015 05/29/2015 104 02/10/2016

Preliminary Papers

Party Name	Preliminary Statement of Issues	Designation Contents of Record	Certificate re Transcript Received	Docketing Statement	PAC Statement	Draft Judgment File	Constitutionality Notice	Sealing Notice
DAVID S. BROOKS, NANCY B. JACKMAN, DOROTHY B. NEWBETH, ESTATE OF HELEN B. BROOKS	05/28/2015		05/29/2015	05/29/2015	05/29/2015	05/29/2015		

Briefs and Prepared Record

Party Name	Type	Original Due Date	Record Filed: 02/10/2016	Due Date	Date Filed
DAVID S. BROOKS Appellant NANCY B. JACKMAN Appellant DOROTHY B. NEWBETH Appellant ESTATE OF HELEN B. BROOKS Appellant	Brief	07/13/2015		02/10/2016	02/10/2016
KEVIN B. SULLIVAN, COMMISSIONER OF REVENUE SERVICES Appellee	Brief	02/11/2016		06/08/2016	06/07/2016
DAVID S. BROOKS Appellant NANCY B. JACKMAN Appellant DOROTHY B. NEWBETH Appellant ESTATE OF HELEN B. BROOKS Appellant	Reply Brief	06/27/2016		07/19/2016	07/15/2016

Case Documents

Brief by - Appellant Uploaded By: 409144: 409144:ANDERSON KILL P.C. Description: Upload Date: 2/10/2016 10:41:07 AM	Appendix Part 1 by - Appellant Uploaded By: 409144: 409144:ANDERSON KILL P.C. Description: Upload Date: 2/10/2016 10:42:13 AM
Appendix Part 2 by - Appellant Uploaded By: 409144: 409144:ANDERSON KILL P.C. Description: Upload Date: 2/10/2016 12:42:53 PM	Combined Brief/Appendix by - Appellee Uploaded By: 421664: 421664:DEMAH J BEE Description: Upload Date: 6/8/2016 4:41:06 PM
Reply Brief by - Appellant Uploaded By: 409144: 409144:ANDERSON KILL P.C. Description: Upload Date: 7/15/2016 10:11:11 AM	

Case Activity

Activity	Number	Date filed	Initiated By	Description	Action	Action Date	Notice Date
TRANSFER FROM			Court	Transfer Case from AC 55373	Transferred	11/09/2015	

TO MOTION	SC 155137	11/12/2015	DAVID S BROOKS, NANCY B JACKMAN, DOROTHY B NEWBETH, ESTATE OF HELEN B. BROOKS	Motion for Articulation	Denied	11/25/2015 12/04/2015
MOTION FOR EXTENSION	SC 1510233	11/12/2015	DAVID S BROOKS, NANCY B JACKMAN, DOROTHY B NEWBETH, ESTATE OF HELEN B. BROOKS	Appellant Brief Extension Date:01/04/2016	Granted	11/16/2015 11/16/2015
TO MOTION	SC 155159	11/13/2015	DAVID S BROOKS, NANCY B JACKMAN, DOROTHY B NEWBETH, ESTATE OF HELEN B. BROOKS	Motion for Articulation	Denied	11/25/2015 12/04/2015
MOTION FOR EXTENSION	SC 1510302	12/18/2015	DAVID S BROOKS, NANCY B JACKMAN, DOROTHY B NEWBETH, ESTATE OF HELEN B. BROOKS	Appellant Brief Extension Date:02/03/2016	Granted	12/16/2015 12/16/2015
 MOTION	SC 150201	1/27/2016	DAVID S BROOKS, NANCY B JACKMAN, DOROTHY B NEWBETH, ESTATE OF HELEN B. BROOKS	Request for Additional Pages in Motion, Petition or Brief	Granted	01/28/2016 01/28/2016
 MOTION FOR EXTENSION	SC 1510403	2/2/2016	DAVID S BROOKS, NANCY B JACKMAN, DOROTHY B NEWBETH, ESTATE OF HELEN B. BROOKS	Appellant Brief Extension Date:02/16/2016	Granted	02/02/2016
 MOTION FOR EXTENSION	SC 1510448	2/28/2016	KEVIN B SULLIVAN, COMMISSIONER OF REVENUE SERVICES	Appellee Brief Extension Date:04/11/2016	Granted	02/28/2016 3/29/2016
 MOTION FOR EXTENSION	SC 1510521	3/31/2016	KEVIN B SULLIVAN, COMMISSIONER OF REVENUE SERVICES	Appellee Brief Extension Date:05/11/2016	Granted	04/01/2016 4/1/2016
 MOTION FOR EXTENSION	SC 1510562	4/28/2016	KEVIN B SULLIVAN, COMMISSIONER OF REVENUE SERVICES	Appellee Brief Extension Date:05/25/2016	Granted	04/28/2016 4/28/2016
 MOTION FOR EXTENSION	SC 1510604	5/18/2016	KEVIN B SULLIVAN, COMMISSIONER OF REVENUE SERVICES	Appellee Brief Extension Date:08/08/2016	Granted	05/20/2016 5/23/2016
 MOTION FOR EXTENSION	SC 1510655	6/20/2016	DAVID S BROOKS, NANCY B JACKMAN, DOROTHY B NEWBETH, ESTATE OF HELEN B. BROOKS	Appellant Reply Extension Date:07/18/2016	Granted	06/21/2016 6/21/2016
 PRELIMINARY PAPER/APPEAL DOCUMENTS		10/6/2016		Supreme Court Assignment Form (Response to Docket)	Fled	

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APPENDIX 47

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ESTATES CODE
TITLE 2. ESTATES OF DECEDENTS; DURABLE
POWERS OF ATTORNEY
SUBTITLE C. PASSAGE OF TITLE AND
DISTRIBUTION OF DECEDENTS '
PROPERTY IN GENERAL
CHAPTER 124. VALUATION AND TAXATION OF
ESTATE PROPERTY
SUBCHAPTER A. APPORTIONMENT OF TAXES

Sec. 124.001. DEFINITIONS. In this subchapter:

(1) "Court" means:

(A) a court in which proceedings for administration of an estate are pending or have been completed; or

(B) if no proceedings are pending or have been completed, a court in which venue lies for the administration of an estate.

(2) "Estate" means the gross estate of a decedent as determined for the purpose of estate taxes.

(3) "Estate tax" means any estate, inheritance, or death tax levied or assessed on the property of a decedent 's estate because of the death of a person and imposed by federal, state, local, or foreign law, including the federal estate tax and the inheritance tax imposed by former Chapter 211, Tax Code, and including interest and penalties imposed in addition to those taxes. The term does not include a tax imposed under Section 2601 or 2701(d)(1)(A), Internal Revenue Code of 1986 (26 U.S.C. Section 2601 or 2701(d)).

(4) "Person" includes a trust, natural person, partnership, association, joint stock company, corporation, government, political subdivision, or governmental agency.

(5) "Person interested in the estate" means a person, or a fiduciary on behalf of that person, who is entitled to receive or who has received, from a decedent or because of the death of the decedent, property included in the decedent's estate for purposes of the estate tax. The term does not include a creditor of the decedent or of the decedent's estate.

(6) "Representative" means the representative, executor, or administrator of an estate, or any other person who is required to pay estate taxes assessed against the estate.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1161 (S.B. 752), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 844 (H.B. 2271), Sec. 8, eff. September 1, 2017.

Sec. 124.002. REFERENCES TO INTERNAL REVENUE CODE. A reference in this subchapter to a section of the Internal Revenue Code of 1986 refers to that section as it exists at the time in question. The reference also includes a corresponding section of a subsequent Internal Revenue Code and, if the referenced section is renumbered, the section as renumbered.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.003. APPORTIONMENT DIRECTED BY FEDERAL LAW. If federal law directs the apportionment of the federal estate tax, a similar state tax shall be apportioned in the same manner.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.004. EFFECT OF DISCLAIMERS. This subchapter shall be applied after giving effect to any disclaimers made in accordance with Chapter 240, Property Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 8, eff. September 1, 2015.

Sec. 124.005. GENERAL APPORTIONMENT OF ESTATE TAX; EXCEPTIONS. (a) A representative shall charge each person interested in the estate a portion of the total estate tax assessed against the estate. The portion charged to each person must represent the same ratio as the taxable value of that person's interest in the estate included in determining the amount of the tax bears to the total taxable value of all the interests of all persons interested in the estate included in determining the amount of the tax. In apportioning an estate tax under this subsection, the representative shall disregard a portion of the tax that is:

- (1) apportioned under the law imposing the tax;
- (2) otherwise apportioned by federal law;
- or
- (3) apportioned as otherwise provided by this subchapter.

(b) Subsection (a) does not apply to the extent the decedent, in a written inter vivos or testamentary instrument disposing of or creating an interest in property, specifically directs the manner of apportionment of estate tax or grants a discretionary power of apportionment to another person. A direction for the apportionment or nonapportionment of estate tax is limited to the estate tax on the property passing under the instrument unless the instrument is a will that provides otherwise.

(c) If directions under Subsection (b) for the apportionment of an estate tax are provided in two or more instruments executed by the same person and the directions in those instruments conflict, the instrument disposing of or creating an interest in the property to be taxed controls. If directions for the apportionment of estate tax are provided in two or more instruments executed by different persons and the directions in those instruments conflict, the direction of the person in whose estate the property is included controls.

(d) Subsections (b) and (c) do not:

(1) grant or enlarge the power of a person to apportion estate tax to property passing under an instrument created by another person in excess of the estate tax attributable to the property; or

(2) apply to the extent federal law directs a different manner of apportionment.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.006. EFFECT OF TAX DEDUCTIONS, EXEMPTIONS, OR CREDITS. (a) A deduction, exemption, or credit allowed by law in connection with the estate tax inures to a person interested in the estate as provided by this section.

(b) If the deduction, exemption, or credit is allowed because of the relationship of the person interested in the estate to the decedent, or because of the purpose of the gift, the deduction, exemption, or credit inures to the person having the relationship or receiving the gift, unless that person's interest in the estate is subject to a prior present interest that is not allowable as a deduction. The estate tax apportionable to the person having the present interest shall be paid from the corpus of the gift or the interest of the person having the relationship.

(c) A deduction for property of the estate that was previously taxed and a credit for gift taxes or death taxes of a foreign country that were paid by the decedent or the decedent's estate inure proportionally to all persons interested in the estate who are liable for a share of the estate tax.

(d) A credit for inheritance, succession, or estate taxes, or for similar taxes applicable to property or interests includable in the estate, inures to the persons interested in the estate who are chargeable with payment of a portion of those taxes to the extent that the credit proportionately reduces those taxes.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.007. EXCLUSION OF CERTAIN PROPERTY FROM APPORTIONMENT. (a) To the extent that property passing to or in trust for a surviving spouse or a charitable, public, or similar gift or devise is not an allowable deduction for purposes of the estate tax

solely because of an inheritance tax or other death tax imposed on and deductible from the property:

- (1) the property is not included in the computation provided for by Section 124.005; and
- (2) no apportionment is made against the property.

(b) The exclusion provided by this section does not apply if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d), Internal Revenue Code of 1986, for a state death tax on a transfer for a public, charitable, or religious use.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.008. EXCLUSION OF CERTAIN TEMPORARY INTERESTS FROM APPORTIONMENT. (a) Except as provided by Section 124.009(c), the following temporary interests are not subject to apportionment:

- (1) an interest in income;
- (2) an estate for years or for life; or
- (3) another temporary interest in any property or fund.

(b) The estate tax apportionable to a temporary interest described by Subsection (a) and the remainder, if any, is chargeable against the corpus of the property or the funds that are subject to the temporary interest and remainder.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.009. QUALIFIED REAL PROPERTY. (a) In this section, "qualified real property" has the meaning assigned by Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A).

(b) If an election is made under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A), the representative shall apportion estate taxes

according to the amount of federal estate tax that would be payable if the election were not made. The representative shall apply the amount of the reduction of the estate tax resulting from the election to reduce the amount of the estate tax allocated based on the value of the qualified real property that is the subject of the election. If the amount of that reduction is greater than the amount of the taxes allocated based on the value of the qualified real property, the representative shall:

(1) apply the excess amount to the portion of the taxes allocated for all other property; and

(2) apportion the amount described by Subdivision (1) under Section 124.005(a).

(c) If additional federal estate tax is imposed under Section 2032A(c), Internal Revenue Code of 1986 (26 U.S.C. Section 2032A), because of an early disposition or cessation of a qualified use, the additional tax shall be equitably apportioned among the persons who have an interest in the portion of the qualified real property to which the additional tax is attributable in proportion to their interests. The additional tax is a charge against that qualified real property. If the qualified real property is split between one or more life or term interests and remainder interests, the additional tax shall be apportioned to each person whose action or cessation of use caused the imposition of additional tax, unless all persons with an interest in the qualified real property agree in writing to dispose of the property, in which case the additional tax shall be apportioned among the remainder interests.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.010. EFFECT OF EXTENSION OR DEFICIENCY IN PAYMENT OF ESTATE TAXES;

LIABILITY OF REPRESENTATIVE. (a) If the date for the payment of any portion of an estate tax is extended:

(1) the amount of the extended tax shall be apportioned to the persons who receive the specific property that gives rise to the extension; and

(2) those persons are entitled to the benefits and shall bear the burdens of the extension.

(b) Except as provided by Subsection (c), interest on an extension of estate tax and interest and penalties on a deficiency shall be apportioned equitably to reflect the benefits and burdens of the extension or deficiency and of any tax deduction associated with the interest and penalties.

(c) A representative shall be charged with the amount of any penalty or interest that is assessed due to delay caused by the representative's negligence.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.011. APPORTIONMENT OF INTEREST AND PENALTIES. (a) Interest and penalties assessed against an estate by a taxing authority shall be apportioned among and charged to the persons interested in the estate in the manner provided by Section 124.005 unless, on application by any person interested in the estate, the court determines that:

(1) the proposed apportionment is not equitable; or

(2) the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative.

(b) If the apportionment is not equitable, the court may apportion interest and penalties in an equitable manner.

(c) If the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative, the court may charge the representative

with the amount of the interest and penalties assessed attributable to the representative's conduct.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.012. APPORTIONMENT OF REPRESENTATIVE'S EXPENSES. (a) Expenses reasonably incurred by a representative in determination of the amount, apportionment, or collection of the estate tax shall be apportioned among and charged to persons interested in the estate in the manner provided by Section 124.005 unless, on application by any person interested in the estate, the court determines that the proposed apportionment is not equitable.

(b) If the court determines that the proposed apportionment is not equitable, the court may apportion the expenses in an equitable manner.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.013. WITHHOLDING OF ESTATE TAX SHARE BY REPRESENTATIVE. A representative who has possession of any estate property that is distributable to a person interested in the estate may withhold from that property an amount equal to the person's apportioned share of the estate tax.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.014. RECOVERY OF ESTATE TAX SHARE NOT WITHHELD. (a) If property includable in an estate does not come into possession of a representative obligated to pay the estate tax, the representative shall:

(1) recover from each person interested in the estate the amount of the estate tax apportioned to the person under this subchapter; or

(2) assign to persons affected by the tax obligation the representative's right of recovery.

(b) The obligation to recover a tax under Subsection (a) does not apply if:

(1) the duty is waived by the parties affected by the tax obligation or by the instrument under which the representative derives powers; or

(2) in the reasonable judgment of the representative, proceeding to recover the tax is not cost-effective.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.015. RECOVERY OF UNPAID ESTATE TAX; REIMBURSEMENT. (a) A representative shall recover from any person interested in the estate the unpaid amount of the estate tax apportioned and charged to the person under this subchapter unless the representative determines in good faith that an attempt to recover the amount would be economically impractical.

(b) A representative who cannot collect from a person interested in the estate an unpaid amount of estate tax apportioned to that person shall apportion the amount not collected in the manner provided by Section 124.005(a) among the other persons interested in the estate who are subject to apportionment.

(c) A person who is charged with or who pays an apportioned amount under Subsection (b) has a right of reimbursement for that amount from the person who failed to pay the tax. The representative may enforce the right of reimbursement, or the person who is charged with or who pays an apportioned amount under Subsection (b) may enforce the right of reimbursement directly by an assignment from the representative. A person assigned the right under this subsection is subrogated to the rights of the representative.

(d) A representative who has a right of reimbursement may petition a court to determine the right of reimbursement.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.016. TIME TO INITIATE ACTIONS TO RECOVER UNPAID ESTATE TAX. (a) A representative required to recover unpaid amounts of estate tax apportioned to persons interested in the estate under this subchapter may not be required to initiate the necessary actions until the expiration of the 90th day after the date of the final determination by the Internal Revenue Service of the amount of the estate tax.

(b) A representative who initiates an action under this subchapter within a reasonable time after the expiration of the 90-day period is not subject to any liability or surcharge because a portion of the estate tax apportioned to a person interested in the estate was collectible during a period after the death of the decedent but thereafter became uncollectible.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.017. TAX OR DEATH DUTY PAYABLE TO ANOTHER STATE. (a) A representative acting in another state may initiate an action in a court of this state to recover from a person interested in the estate who is domiciled in this state or owns property in this state subject to attachment or execution, a proportionate amount of:

- (1) the federal estate tax;
- (2) an estate tax payable to another state; or
- (3) a death duty due by a decedent's estate to another state.

(b) In the action, a determination of apportionment by the court having jurisdiction of the

administration of the decedent 's estate in the other state is prima facie correct.

(c) This section applies only if the state in which the determination of apportionment was made provides a substantially similar remedy.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.018. PAYMENT OF EXPENSES AND ATTORNEY'S FEES. The court shall award necessary expenses, including reasonable attorney's fees, to the prevailing party in an action initiated by a person for the collection of estate taxes from a person interested in the estate to whom estate taxes were apportioned and charged under Section 124.005.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. SATISFACTION OF CERTAIN PECUNIARY GIFTS Sec. 124.051. VALUATION OF PROPERTY DISTRIBUTED IN KIND IN SATISFACTION OF PECUNIARY GIFT. Unless the governing instrument provides otherwise, if a will or trust contains a pecuniary devise or transfer that may be satisfied by distributing assets in kind and the executor, administrator, or trustee determines to fund the devise or transfer by distributing assets in kind, the property shall be valued, for the purpose of funding the devise or transfer, at the value of the property on the date or dates of distribution.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

Sec. 124.052. SATISFACTION OF MARITAL DEDUCTION PECUNIARY GIFTS WITH ASSETS IN KIND. (a) This section applies to an executor, administrator, or trustee authorized under the will or

trust of a decedent to satisfy a pecuniary devise or transfer in trust in kind with assets at their value for federal estate tax purposes, in satisfaction of a gift intended to qualify, or that otherwise would qualify, for a United States estate tax marital deduction.

(b) Unless the governing instrument provides otherwise, an executor, administrator, or trustee, in order to implement a devise or transfer described by Subsection (a), shall distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of the devise or transfer.

Added by Acts 2009, 81st Leg., R.S., Ch. 680, Sec. 1, eff. January 1, 2014.

APPENDIX 48

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the benefit of Spouse 2. When Spouse 1 died, the Estate Executors timely exercised an election pursuant to Internal Revenue Code ("IRC" or the "IRC Code") section 2056 to include and exclude from the taxable estate these three trusts; the result being that the trusts were treated differently for federal versus Massachusetts estate tax calculations. The essence of the controversy is that the Respondent did not permit Massachusetts estate tax deductibility treatment to two of the trusts contrary to the deductibility treatment the Executor was permitted to and did elect according to the federal IRC Code. The offending result: double taxation in the Massachusetts estate tax calculation when Spouse 2 died which was not imposed by the IRC Code in the federal estate tax calculation for Spouse 2's death.

Both the United States ("federal") and the Commonwealth of Massachusetts have separate and, in some respects, different estate tax schemes: that is, the items and amounts eligible for deduction, as well as the calculation and rates of such taxes differ in material respects. Among the differences was treatment of the marital deduction. The difference, as well as the federal and Massachusetts statutes, have changed over the years.

In 1989 there was a significant difference between the treatment by federal and Massachusetts estate tax authorities with respect to the marital deduction. In 1989, the year of Spouse 1 death, IRC Code section 2056 permitted and required an election by the estate representative of a marital deduction amount: that is, an amount, without limit, of assets which if passing to a surviving spouse would be deducted from the amount of the taxable state of Spouse 1, in effect reducing the amount of estate tax owed. If all decedent's assets passed to the surviving spouse; the net effect if the Executor elected marital deduction as to all such passed

assets would be a taxable estate of zero, no matter the total amount of a decedent's assets. IRC Code permitted such an unlimited amount of decedent's assets to be deducted, so long as the property passed in some way to a surviving spouse. However, the marital-deduction-elected QTIP assets endured peculiar treatment, causing these assets to thereafter be included in the federal gross estate of Spouse 2 when she died. That QTIP assets were involved added a variable to the serpentine scenario, described below. Conversely, if no marital deduction had been elected for assets held in a QTIP Trust or otherwise passing to a surviving spouse, these non-elected assets would be subject to estate tax when Spouse 1 died but not taxed again when Spouse 2 died, thus avoiding the spectre of double federal taxation.

The notion of QTIP demands specific explanation here. Ordinarily, assets from which a Surviving spouse was entitled to benefit from but which terminated upon the happening of a specific future event such a, death (so-called "Terminable Interest Property") could not qualify for the unlimited marital deduction unless the asset was "Qualified" Terminable Interest Property: that is, the property satisfied an exception enumerated within the IRC Code. The exception for QTIP (and hence eligibility as a "passed" asset to a surviving spouse and eligible for marital deduction treatment) is found at IRC 2056(b)(7). The parties agree that the assets held in the Subtrusts 1, 2 and 3 were all in a form which qualified for federal and Massachusetts QTIP marital deduction treatment at time of death of both Spouse 1 and Spouse 2.

In 1989, the federal and Massachusetts estate tax schemes did not differ in the resulting inclusion in the taxable estate of Spouse 2 of the QTIP property elected for marital deduction treatment in the taxable estate of Spouse 1. Similarly, both taxing schemes then prescribed that failure to elect QTIP treatment when

Spouse 1 died would subsequently shield that unelected QTIP property from being included in Spouse 2 taxable estate when Spouse 2 died, to avoid double taxation. See IRC Code sec. 2044 and sec. 2056; see also M.G.L. ch. 65C sec. 1 and 3A.

Spouse 1 filed a US Form 706 United States Estate and Generation-Skipping Transfer Tax Return ("federal return") and an amended federal return in which Spouse 1 Executor elected and claimed a deduction from the federal gross estate in the total amount of \$13,891,567.76 for Schedule M "Bequests to Surviving, Spouse" (the marital deduction) in the form of QTIP type property passing to Spouse 2 and represented by all three Subtrusts: Subtrust 1 (the "Edward Markell Federal and Massachusetts GST Taxable QTIP Trust") Subtrust 2 ("Edward Markell Federal GST Taxable QTIP Trust"), Subtrust 3 (Edward Markell Federal GST Exempt QTIP "Trust"). The result was that the value of all three Subtrusts escaped federal estate taxation when Spouse 1 died due to the concept of the unlimited federal (but not Massachusetts, see below) marital deduction.

In 1989 and unlike the federal IRC Code treatment then in effect, Massachusetts permitted decedent's estates to elect on the Massachusetts estate tax return not an unlimited marital deduction like the IRC Code but a marital deduction amount only up to 50% of the Massachusetts "Adjusted Gross Estate" (see M.G.L. ch. 65C sec. 1(e) and 3(b)). With this in mind, Executor for Spouse 1 elected for marital deduction on the Massachusetts estate tax return only the assets in one Subtrust (Subtrust 1, the Edward Markell Federal and Massachusetts GST Exempt QTIP Trust") of the three trust shares created by Spouse 1 in his estate plan. Due to the amount in that Subtrust 1, the election of only Subtrust 1 (\$7,758,159.20) for Massachusetts QTIP treatment used up the entire 50% available for

Massachusetts marital deduction. Consequently, because of the unavailability to elect Subtrust 2 and Subtrust 3 for Massachusetts marital deduction treatment, the full amount (\$6,185,921.90 total) of both Subtrust 2 and Subtrust 3 were thus included in and taxed under the Massachusetts estate tax return of Spouse 1. The Massachusetts result of this election and non-election was that the Subtrust assets were excluded from (and not taxed) by Massachusetts in 1989 for Spouse 1; but Subtrust 2 (total assets \$5,651,456.14) and Subtrust 3 (total assets \$534,465.82) were both included in and taxed by Massachusetts in 1989 for Spouse 1. The total Massachusetts gross estate for Spouse 1 in 1989 was \$17,724,851.39 (per alternate valuation election) with a marital deduction claimed in the amount of \$8,686,036.36. After successful abatement request, Spouse 1 Executors ultimately paid Massachusetts estate tax in the amount of \$1,279,831.35 which included the tax on Subtrust 2 and Subtrust 3. Subtracting Subtrust 2 and Subtrust 3 total assets, the Massachusetts taxable estate for Spouse 1 in 1989 would instead have been only \$2,467,216.96 instead of \$8,589,570.94 and the corresponding Massachusetts estate tax would have been only \$317,082.54 instead of \$1,279,831.35, a tax difference of \$962,748.81 additional paid to the Commonwealth of Massachusetts. Thus were Subtrust 2 and Subtrust 3 taxed in the amount of \$962,748.81 for the first time by Respondent Commonwealth of Massachusetts.

When Spouse 2 died February 23, 2003 as a Massachusetts resident, Subtrust 1, 2 and 3 survived her and remained qualified as QTIP property. Petitioners, the Executors for Spouse 2, filed a Federal Estate Tax return (Form 706) which included in the gross taxable estate the date of death amount of assets (all since appreciated in value) in Subtrusts 1

(\$8,602,958.96), 2 (\$10,004,062.86) and 3 (\$1,182,325.02) (all not previously taxed in Spouse 1 federal estate tax returns due to the QTIP election); but on the Massachusetts estate tax return (Form M-706) the Petitioner Executors did disclose Subtrusts 2 and 3 (both previously taxed in Spouse 1 Massachusetts estate due to the Spouse 1 Executors purposeful and mindful failure to elect QTIP treatment on the Spouse 1 Massachusetts return for Subtrusts 2 and 3) but with a caveat and argument that the assets of Subtrusts 2 and 3, having already once been taxed, were non-taxable as to Spouse 2 Massachusetts estate. Petitioners thus argued that the taxable Massachusetts Estate should only include the value of Subtrust 1 assets (\$8,602,958.96) and should not include Subtrust 2 assets (\$10,004,062.86) and Subtrust 3 assets (\$1,182,325.02), resulting in a total gross estate for Spouse 2 of \$14,033,766.66. Spouse 2 Executors showed a federal gross estate of \$25,220,154.54. After a series of extension requests, Spouse 2 Executors paid in advance an estimated estate tax to the Commonwealth in the amount of \$3,472,877.23. Spouse 2 Executor thereafter requested a refund in the amount of \$1,821,822.06, based on the rationale that the Subtrusts 2 and 3 had already been taxed by Massachusetts when Spouse 1 died and thus should not be taxed again. Had the refund been granted, the Massachusetts estate tax liability for Spouse 2 estate would be \$1,651,055.17, not \$3,472,877.23. On November 16, 2006 Respondent Commissioner Massachusetts Department of Revenue ("Respondent") issued an additional tax assessment in the amount of \$1,789,821.92. The total assessment of estate tax due and paid by Petitioners was \$3,440,877.09. Thus the amount in controversy in this case is refund/additional tax of \$1,789,821.92.

ANALYSIS:

When the smoke of both spouses' deaths cleared, the federal and State bottom line that estate planners anticipated and planned for their clients Edward and Frances Markell based on then existing tax laws would have been that the Subtrust assets were taxed once either at death of Spouse 1 (if no QTIP treatment had then been elected) or at death of Spouse 2 (if QTIP treatment had been elected at death of Spouse 1), but not after each death. See IRC Code sec. 2044 and sec. 2056; see also M.G.L. ch. 65C sec. 1 and 3A.

The Respondent Commissioner denied the request for refund, citing a change in tax laws between the time Spouse 1 and Spouse 2 died, and determined that double taxation was the legislatively intended if not unequivocally statutorily prescribed result. Respondent denied the refund and included the full amount of assets in all three Subtrusts in calculating the Massachusetts estate tax owed by Spouse 2 estate. In support of its thesis, Respondent points to a series of federal and State legislative enactments, intended or unwitting but presumed to have been prescient which warranted foisted upon Petitioners the unpalatable double taxation result. The Respondent's logic is based on the notion that because all three Subtrusts were required to be included in the federal estate when Spouse 2 died due to the language of the IRC Code in effect when Spouse 2 died, the values of all three Subtrusts specifically including the previously Massachusetts estate-taxed Subtrusts 2 and 3, must also be included and, alas, taxed again. Respondents points to the change over time in how Massachusetts calculated and collected its own estate tax. For decedents dying on and after January 1, 1997 and up to December 31, 2001, Massachusetts had relied on a scheme colloquially referred to as a "sponge tax". In pedestrian parlance, the Massachusetts estate

tax imposed was the exact amount of a "credit" (seemingly illusory in that the federal government anticipated a state estate tax not then calculable by Massachusetts) that the federal estate tax afforded, offsetting the federal estate tax owed, to decedent's estates for any estate taxes payable to a State. That federal estate tax credit was calculated by completing the federal estate tax return Form 706. After calculation of the credit, the amount of federal credit was what the decedent estate ended up owing in estate tax to the Commonwealth of Massachusetts. However, the Federal estate tax underwent overhaul which Congress legislated by way of a phaseout of the credit over a four year period.

The Massachusetts State legislature ("Legislature"), anticipating the loss of revenue, enacted changes to the Massachusetts estate tax which resulted in the State's estate tax no longer being derived from or dependent on ("sponging" from) a calculation of the soon to disappear federal credit. For decedents dying on or after January 1, 2003, the Massachusetts estate tax became independent of ("decoupled from" the federal estate tax. One of the outcomes of this independence was Massachusetts establishing its own estate asset value thresholds: for a decedent estate to be liable for Massachusetts estate tax: beginning in 2003 at \$700,000 and increasing by a factor of \$100,000 for each year until capping out at \$1,000,000 in 2006. Estates worth less than these threshold amounts did not owe Massachusetts estate tax. Gone too was the separate multi-page Massachusetts estate tax return, to be replaced by a single page Form M-706 to which must be attached a copy of the Federal Form 706, even if the size of the estate did not exceed different (and more generous) federal thresholds and therefor did not even require a federal estate tax return filing. Most significantly, issues of Massachusetts estate tax would

be decided on the basis of the IRC Code in effect only as of December 31, 2000. That version of the IRC Code does not address the issue of estates electing State-only QTIP elections.

Both parties agree that the controversy turns on the interpretation of M.G.L. 65C ch. 2A which prescribes the formula for the calculation of the estate tax for the estate of Spouse 2: "The amount of the tax shall be the sum equal to the amount by which the credit for state death taxes that would have been allowable to a decedent's estate as computed under Code section 2011, as in effect on December 31, 2000, ... ,". M.G.L. 65C ch. 2A(e) states: "For the estate of decedents dying on or after January 1, 2003, all references and provisions in this chapter to the Internal Revenue Code or Code, unless the context clearly indicates otherwise, shall be to the Code as in effect on December 31, 2000." The problem lies in the fact that when Spouse 2 died on February 22, 2003 there no longer was a "credit" but the Massachusetts estate tax scheme in 2003 remained tied to the IRC Code as it was in effect on December 31, 2000 when the Credit was still recognized.

If Spouse 2's 2003 estate is to be calculated on the basis of 2000 law (i.e. as if she died in the year 2000), which changed substantially in the interim, this results in the values of Subtrust 2 assets (\$10,004,062.86) and Subtrust 3 assets (\$1,182,325.02) being necessarily included, for a second time, in Spouse 2 federal gross estate tax return and, hence taxed for a second time by Massachusetts because it would have been taxable federally. If strict construction prevails, this seemingly quixotic result is required in order to have been able to calculate the since disappeared "credit" as if Massachusetts still recognized a "sponge tax" scheme. Also, because when Spouse 1 died Massachusetts only permitted a maximum 50% marital deduction for QTIP-

asset elections and included in the taxable estate QTIP assets which exceeded the 50% threshold, in all Massachusetts Spouse 2 death scenarios thereafter all second--to-die (Spouse 2) spouse estates would again be taxed on the marital deduction QTIP trust assets which had exceeded the 50% threshold and could not enjoy the deduction when Spouse 1 died,

If the Massachusetts Legislature is presented to have known this double taxation windfall in 2002 when M.G.L. 65C ch. 2A was amended but remained tied to the December 31, 2000 federal IRC Code, the Legislature must also be presumed to have known the effect of the specific language it then legislated and declined to include in the ultimate version of M.G.L. 65C ch. 2A(c). Curiously but perhaps instructively, the Legislature in M.G.L. 65C ch. 2A(e) did not use the words "values" or "amounts" when its 2002 legislation tied Massachusetts estate tax to the December 31, 2000 federal IRC Code. Instead, the legislative history to the 2002 amendments to MGL ch. 65C sec. 2A reveals that a second iteration to the proposed amendment did use the term. "values" tied to the federal IRC Code but this was stricken and replaced with the more generic current version of (e) which strikes A quantity-neutral "references and provisions" chord. Similarly, a proposed but ultimately deleted subsection (f) would have tied the words "federal gross estate" to the Massachusetts estate tax. The ultimate passage of either of those versions would have given specific and readily construable statutory backdrop that taxpayers were to be guided by the quantitative numbers on a federal return, not merely by the tax principles under the federal IRC Code. Because the State Legislature considered and then affirmatively declined to pass the "numbers centric" versions of subsections (e) and (f), the Legislature must be presumed to have rejected such an analysis that

Respondent now urges. Indeed, M.G.L. 65C ch. 2A(e) contains the further caveat "unless the context clearly indicates otherwise" (emphasis added). It would not be an unreasonable stretch of construction that such repeat taxation which the Respondent would impose upon Spouse 2 estate is the type of double whammy which is contextually antithetical to the strict construction that "references and provisions" necessarily includes federal values and federal grossed up estate. Legislative intent may be presumed to lurk behind tax statute construction. Whiteside v. Commissioner of Revenue, 394 Mass. 206 (1985). But in strict construction of any tax statutes, any doubts are necessarily resolved on the taxpayer's side. State Tax Commission v. John Hancock Mutual Life Insurance Company, 361 Mass. 125 (1972); Dennis v. Commissioner of Corporations & Taxation, 340 Mass. 629 (1960), Davisson v. Commissioner of Revenue, 18 Mass. App. Ct. 748 (1984). The Legislature's prior knowledge of existing case law may be presumed. Page v. Commissioner of Revenue, 389 Mass. 388 (1983).

Reasonable statutory construction to avoid double taxation is permissible. New England Mutual Life Insurance Co. v. Boston, 321 Mass. 683 (1947). A taxing statute should receive a practical construction. Lowell Gas Co. v. Commissioner of Corporations & Taxation, 377 Mass. 255 (1979).

Unlike in Board of Assessors of Holyoke v. State Tax Commission, 355 Mass. 223 (1969) here there was no demonstration by Respondent of any long standing and unopposed administrative construction of M.G.L. 65C ch. 2A under similar circumstances which would give weight to Respondent's administrative stance in the instant case. Instead, Respondent demonstrated a contrary administrative stance in its circa February 19, 2003 Directive 03-2 "Issues Arising from Decoupling the Massachusetts Estate Tax" wherein the Commissioner

clearly acknowledged that estate executors were permitted to elect disparate QTIP treatment on federal versus Massachusetts estate tax returns. The Respondent Commissioner went even further in specifically acknowledging that M.G.L. ch. 65C sec. 2A does not require the same QTIP marital deduction election be made for federal and Massachusetts estate tax purposes. That QTIP specific and federal-Massachusetts distinction were further recognized by Respondent Commissioner in its Massachusetts Estate Tax Instructions/Form M706 specifically with reference to first-to-die and second-to-die spouse estates, eerily echoing Petitioner's argument in the instant case that the federal and Massachusetts gross estate amounts (emphasis added) may indeed be different as the result of such disparate elections. The right to tax must be strictly construed and if not plainly conferred it can not rest on implications. Commissioner of Corporations & Taxation v. Fopiano, 324 Mass. 304 (1949). See also Commissioner of Corporations & Taxation v. Malesworth, 408 Mass. 580 (1990).

To answer the question whether the Massachusetts Legislature intended, unwittingly devised, or did not address a legislative scheme of double taxation that befell the estate of Spouse 2, the legislative history of the Massachusetts Estate Tax must be reviewed. If the tax laws should be construed according to the strict construction urged by Respondent to exact a double taxation, should an exception be carved out here for Petitioners as the Respondent did with respect to elements of estate taxation in recognition of the same sex marriage case law in Massachusetts?

As the result of Goodridge et al. v. Department of Public Health, 440 Mass. 309 (2003) (see below) but in the seeming absence of statutory reform or authority, Respondent thereafter published guidance that it would

permit disparately beneficial tax treatment potentially affecting future estate tax liability of same sex spouses that the federal IRC Code did not and still does not recognize, notwithstanding the Respondent's oft-repeated mantra is its memorandum of law that the Massachusetts estate tax law must be interpreted in light of the IRC Code in effect as of certain dates. If uniform application of the Massachusetts estate tax law as tied to the federal Code is to be exerted in all instances, Petitioners argue that the Respondent's exceptional treatment for same sex couples in light of Goodridge is inconsistent with Respondent's treatment of the non-same sex couple Edward and Frances Markell, an arbitrary and capricious application of the Respondent's double taxation construction of M.G.L. ch. 65C sec. 2A.

Respondent argues that the Massachusetts Estate Tax code (M.G.L. ch. 65C sec. 2A) in effect for Massachusetts decedents dying in year 2003 (Spouse 2) was hitched to the Internal Revenue Code in effect on December 31, 2000. M.G.L. 65C sec 2A(e) states: "For the estate of decedents dying on or after January 1, 2003 (i.e., Spouse 2) all references and provisions in this chapter to the Internal Revenue Code, unless the context clearly indicates otherwise (emphasis added) shall be to the Code as in effect on December 31, 2000."

The IRC Code in effect on December 31, 2000 permitted, in the context of the deaths in succession of two spouses, a deduction from the gross estate value of any terminable interest property which qualified as so-called QTIP type property (sections 2044 and 2056(b)(7)). For federal estate tax purposes, the QTIP asset value was deductible in the total amount so elected from the federal estate of the spouse who died first. That December 31, 2000 version of the IRC Code does not address whether estates are permitted to elect QTIP

treatment only for State estate tax purposes when no federal QTIP treatment had been elected. The parties do not dispute that Spouse 1 at death so elected, for federal estate tax purposes, for all three Subtrusts 1, 2, 3 but only so elected for Massachusetts purposes Subtrust 1, electing instead to pay the additional Massachusetts estate tax owed by the inclusion of Subtrusts 2 and 3 in the Massachusetts taxable estate of Spouse 1, a choice compelled because the Massachusetts 50% marital deduction treatment maximum had been reached by marital deduction selection of Subtrust 1. The Respondent now argues that applying strict construction of the statute, given the absence of language which permits a different calculation in the Massachusetts estate tax return of Spouse 2 if Spouse 1 at death elected different marital deduction treatment of these same subtrusts on the Spouse 1 Massachusetts return, does indeed require the anomalous double taxation result: a taxation of Subtrusts 2 and 3 by Massachusetts at the death of not only Spouse 1 but again at the death of Spouse 2, over the same assets.

This anomaly was triggered by a seismic change in the way Massachusetts calculated the amount of estate tax owed when in 2002 the Legislature enacted changes to M.G.L. ch. 65C sec. 2 in response to the federal Code changing the way it gave credit against federal estate tax owed for State estate taxes paid to any of the, States, as explained above.

Federal IRC Code allowed, as of January 1, 1982, a 100% ("unlimited") marital deduction for property passing to a surviving spouse. See Code sec. 2056 amended by P.L. 97-34, sec. 403(n). Although, the language there is nearly impenetrable to common apprehension an examination of sec. 2056 in the aftermath of the legislation clearly prescribe this result Massachusetts estate tax allowed a QTIP marital

deduction beginning January 1, 1986. See Acts of 1985, ch. 711, sec. 12, which particularly referred to section 2056 of the Code. This Court notes that said sec. 12 does not refer to the Code in effect on any particular date whereas sec. 11 of the Act of 1985 does refer with particularity to the Code in effect on January 1, 1985. Sec 12(f) permits a Massachusetts specific QTIP election "separate from and independent of any election made by the executor for federal estate tax purposes." The amount of marital deduction which could be deducted from the Massachusetts estate assets became unlimited in 1994. See Acts of 1994 ch. 342 sec 2-4., amending M.G.L. 65C sec. 3. M.G.L. 65C, sec. 2A was ultimately amended by the Acts of 2002 at ch. 186 sec. 28, effective for decedent estates with date of death on or after January 1, 2003. That change specifically incorporated the IRC Code but only as it was in effect as of December 31, 2000. It is that change and a broadly inclusive reading upon which Respondent hangs its double taxation hat.

The Respondent's supplemental memorandum of law addresses the disparate and apparently arbitrary deference afforded to the estates of same sex couples illustrated by the Commissioner's treatment announced July 7, 2004 in Technical Information Release ("TIR") 04-17 which grants, but only to same sex couples, an estate tax result not afforded to any other non-same sex couples under the existing IRC Code in effect on December 31, 2000. Specifically, and by default, under TIR 04-17 Respondent allows same sex couples to exclude from the gross estate for estate tax calculation purposes one-half of jointly owned assets in the estate of the first-to-die spouse of same sex couples.

Despite the Respondent's adherence to the position that "Code in effect as of December 31, 2000" is inviolable, the estate tax result produced by application of TIR 04-

17's guidance is not countenanced under the IRC Code in effect as of December 31, 2000 for same sex couples because the federal "Defense of Marriage Act", 1 USC 7 applies its definition of marriage between one man and one women across all laws, including those congressionally and regulatorily spawned like the IRC Code. Respondent amended its Estate Tax instructions and, contrary to the treatment Respondent afforded to the Frances Markell non-same sex couple estate, instructed taxpayers to ignore the Code in effect on December 31, 2000 in the case of joint property and estate tax calculations for same sex couples guidance whose effect could be reduction in the size of decedents' taxable estates. Respondents lack of deference to its own lodestar "Code in effect as of December 31, 2000" position was explained in the Respondent's supplemental memorandum of law as adherence to principle in the wake of the Massachusetts highest court's Goodridge ruling (see Goodridge v. Department of Public Health, 440 Mass. 309 (2003) decided by the Commonwealth's Supreme Judicial Court on November 18, 2003). Problematically, this Respondent position finds no basis in any Massachusetts Legislative ruminations on the IRC Code and is unsupported under any strict interpretation of IRC Code sec. 2040 (the federal estate tax treatment of joint property) which was in effect on December 31, 2000.

Respondent compounded this disparate and legislatively unsupported position, again purportedly in adhering to the guiding principle of Goodridge when the Respondent acknowledged the need to modify the December 31, 2000 federal Code with respect to same sex marriages. Respondent failed to adequately explain how the sanctity of adherence to the December 31, 2000 Code could be administratively nuanced by Respondent for same sex couples, the Respondent further carves an

administrative niche for same sex couples in recognizing and tolerating in the DOR Estate Tax instructions a Massachusetts exception for gifts made by same sex couples eligible for "split-gift" treatment (and hence potentially reducing the size of a taxable estate) which is not cognizable under sec. 2513 (the federal split-gift law) of the IRC Code. Surely, in Goodridge, by declaring that same sex couples should not be bereft of the protections afforded opposite sex couples, the Massachusetts Supreme Court did not intend to strip those same tax protections which should continue to equally apply to non-same sex couples. The Respondent, as an administrative agency of the Commonwealth, does not possess nor has it been delegated nor imbued by law the authority to have wrought as it did via administrative announcement TIR 04-17 the disparate treatment in favor of same sex couples in the circumstance of joint property and gift-splitting which mathematically may affect the ultimate amount of a decedent's taxable estate and hence the amount of tax owed.

Respondent's pronouncements on joint property and gift-splitting, in contravention of the Code in effect on December 31, 2000, are unsupported by law (see Telles v. Commissioner of Insurance, 410 Mass. 560 (1991) disparately favor same sex couples in calculation of values which may affect how and if estates are subject to estate taxation, are at the least inconsistent with Respondent's estate tax treatment of the Frances Markell estate, and thus constitute legislating beyond its authority. In the conspicuous absence of any legal authority for Respondent to have so promulgated and especially contrary to Respondent's assertion that the statute must be plainly read (see Allen v. Commissioner of Corporations & Taxation, 272 Mass. 502 (1930), this Court concludes that the Respondent's perception of public policy and how the Commonwealth's tax policy

should be driven by Goodridge were the catalyst for TIR 04-17 and the Estate Tax Instructions. To deny similar exceptional estate tax treatment to the Frances Markell estate and thus induce double taxation is arbitrary and capricious.

Respondent's willingness to apply or not apply an exception was flexed in Directive 03-2 (February 19, 2003) when Respondent took an opposite view of the strict interpretation of 65C sec. 2A by declaring that because there was no specific prohibition in the statute against a decedent estate electing a QTIP on a Massachusetts estate tax return when no such QTIP had been claimed on the federal return, an executor could do so contrary to Respondent's primacy of the IRC Code argument as in effect on December 31, 2000 (which did not expressly permit such a sequence of QTIP elections). If public policy is driving the strict versus liberal construction train with respect to the recognition or non-recognition of portions of the December 31, 2000 Code, then Respondent is not advanced any argument why the notion of double taxation should not be part of that policy mix.

Even Respondent concedes in its supplemental memorandum of law that where Massachusetts tax law incorporates Federal provisions those should be interpreted by Massachusetts as interpreted federally and that we should be reluctant to infer a State legislative intent when to do so would require the disregard of unambiguous federal statutory tax law. Grady et al. v. Commissioner of Revenue, 421 Mass. 374 (1995). When no contrary legislative intent is apparent, Respondent should adhere to federal statutory tax law incorporated in a state statute. DeCordova & Dana Museum & Park v. Director of the Division of Employment Security, 370 Mass. 175 (1976). Yet Respondent, in its brief, suggests that "The Legislature

has had seven years to voice an objection to TIR 04-17 but has not done so. To the extent one can infer the asset of the Legislature to the Commissioner's interpretation of the statute from inaction, this would be such a case."

Indeed, Goodridge did not specifically address taxation at all but for a brief allusion to "joint Massachusetts income tax filing (G.L. c. 62C, s.6)" and a more tax-tangential reference to spouse dependency classification as being among myriad benefits accessible by way of a marriage license. Instead, Goodridge in broad strokes implicated the "protections, benefits) and obligations of civil marriage" which necessarily includes the tax treatment of married persons. Both parties agree that despite Goodridge, the State Legislature has not addressed the issue of the Respondent's same sex couple tax instructions nor amended the Massachusetts Estate Taxation statute, M.G.L. 65C sec. 2A, notwithstanding it incorporated in numerous locations therein the IRC Code which in turn remains subject to the federal Defense of Marriage Act, 1 USC 7. Respondent argues that this legislative silence should be entitled to an inference of legislative acquiescence to Respondent's tax guidance on same sex couples. Petitioners argue that M.G.L. 65C sec. 2A in its present unamended (since Goodridge) iteration has and continues to violate the Massachusetts Constitution and the equality principle enunciated in Goodridge because the serial incorporation by Massachusetts of federal tax law (by M.G.L. 65C sec. 2A of IRC Code 2056 and the incorporation of IRC Code 2056 and all other tax law by 1 USC 7) begs that result. The State Legislature has not thereafter amended or repealed and replaced the Massachusetts estate tax statute nor exercised the offending portions of M.G.L. 65C sec. 2A which run counter to Goodridge. Neither in Goodridge not any constitutional decisional progeny has the Supreme Judicial Court amended M.G.L. ch. 65C

sec. 2A. Our case law does not permit an inference of retroactive application to statutory law of subsequent Court pronounced constitutional requirements. See Commonwealth v. Upton, 394 Mass. 363 (1985).

State administrative decisions are arbitrary and capricious when an agency's actions demonstrate lack of uniformity or are unpredictable respecting similar matters. Fafard v. Conservation Commission of Reading, 41 Mass. App. Ct. 565 (1996). The Massachusetts Constitution, at a minimum, requires that the exercise of the State's regulatory authority not be arbitrary or capricious. Commonwealth v. Henry's Drywall Co., 366 Mass. 539 (1974). There is certainly an anomaly in M.G.L. 65C sec. 2A which would similarly affect the estate taxation of the Edward and Frances Markell estates which would trigger a different estate tax treatment than if Frances had been Francis. What was good for the goose was not similarly beneficial for the December 31, 2000 Code gander of Frances Markell's gross estate. Query would the Respondent's treatment have been different with respect to the QTIP includability if the Markells had been a same sex couple, given the Respondent's due deference to Goodridge's equality principle despite the December 31, 2000 IRC Code?

Respondent asserts in a supplemental brief that Petitioner's argument of disparate treatment is inharmonious with Respondent's responsibility to interpret and correct the offending outcomes of federal statutory law when it is inconsistent with Massachusetts law. While that responsibility may be genuinely believed, the authority to have done as Respondent did in response to Goodridge is unsupported by any law Respondent can point to. Mere lack of affirmative corrective action by the Massachusetts legislature to Respondent's TI 04-17 since July 7, 2004

should not be the resting place for Respondent's reliance of legislative approval. Even if Respondent could articulate authority for its public guidance in light of Goodridge, what then prohibits Respondent from invoking its responsibility to correct the inconsistency of application of the federal tax statute when to so literally comply would result in double taxation to the Frances Markell estate, a result the Commonwealth's case law does not favor?

SUMMARY JUDGMENT

The Summary Judgment Standard of Review:

"The standard of review of a grant of summary judgment is whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." Augat, Inc. v. Liberty Mutual Ins. Co., 410 Mass. 117, 120 (1991). "The party moving for summary judgment assumes the burden of affirmatively demonstrating that there is no genuine issue of material fact on every relevant issue, even if he would have no burden on an issue if the case were to go to trial." Pederson v. Time, Inc., 404 Mass. 14, 17 (1989). Failure to establish the absence of a genuine issue of material fact must, without any evidence from the non-moving party, defeat a motion for summary judgment. See Community Nat'l Bank v. Dawes, 369 Mass. 550, 554 (1976). If the moving party establishes the absence of a triable issue, the party opposing the motion must respond and allege specific facts establishing the existence of a genuine issue or issues of fact. See Pederson, 404 Mass. at 17. The non-moving plaintiff is not required to prove its case at summary judgment, Lawrence v. City of Cambridge, 422 Mass. 406 (1996).

The current version of Rule 56(c) of the Massachusetts Rules of Civil Procedure prescribes that summary

judgment is appropriate '... if the pleadings, depositions, answers to interrogatories, and responses to requests for admissions under Rule 36, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law'. " If the burden of proving no genuine issues of material facts has not been met, Rule 56(d) instructs the Court, to "if practicable ascertain what material facts are actually and in good faith controverted" and "... make an order specifying the facts that appear without substantial controversy ... and directing such further proceedings in the action are just."

Burden of proof as to abatement of tax is on the taxpayer. Staples v. Commissioner of Corporations & Taxation, 305 Mass. 20 (1940); Blakeley et al. v. Commissioner of the Department of Revenue, 28 Mass. App. Ct. 499 (1990). This burden includes establishing the statutory authority for the abatement. Commissioner of Corporations & Taxation v. Adams, 316 Mass. 484 (1944). Both deductions and exemptions are statutory offspring of legislative enactments. Drapkin v. Commissioner of Revenue, 420 Mass. 333 (1995), citing Adams. Statutory language is the principal (but not exclusive) source of the crystal ball of legislative intent. Commonwealth v. Lightfoot, 391 Mass. 718 (1984), citing Hoffman v. Howmedica, Inc., 373 Mass. 32 (1977).

Statutory language ordinarily should be given its plain meaning, if capable of being so construed. Bolster v. Commissioner of Corporations and Taxation, 319 Mass. 810 (1946). It is especially helpful if the language is clear, unambiguous and plain. Pyle et al. v. School Committee of South Hadley, 423 Mass. 283 (1996). If the statute is susceptible to such plain meaning, then the Legislature is entitled to the presumption that it knew of what it spoke and must have known about the preexisting law

as it was interwoven with that statute. *Condon v. Haitsme*, 325 Mass. 371 (1950). Bestowing generic legislature prescience of all laws then existing may be a tenuous default position, especially given the murky complexities demonstrated by the estate tax regime and the specie QTIP. The Massachusetts Legislature's reference to the word "Code" means the Internal Revenue Code and does not necessarily also encompass the Massachusetts Tax Code. *Boston Safe Deposit & Trust Co. v. Commissioner of the Department of Revenue*, 406 Mass. 195 (1998).

CONCLUSIONS OF LAW AND SUMMARY JUDGMENT:

After consideration of the submissions by the moving party in each motion, this Court determines that:

No questions of fact as to these issues have been fairly raised that prevent this Court from entering judgment by summary judgment.

Respondent Commissioner of the Department of Revenue of the Commonwealth of Massachusetts motion for summary judgment is DENIED.

The Petitioner Estate of Frances B. Markell, by Lorraine R. Balkin, A. William Markell, and H. Kenneth Fish., Executors motion for summary judgment is ALLOWED and Judgment for said Petitioner is so entered AS FOLLOWS.

1. Massachusetts General Laws chapter 65C section 2A did not contemplate and does not permit double taxation in the form of a second Massachusetts estate tax amount on assets for which no prior Qualified Terminable Interest Property ("QTIP") marital deduction had been claimed for Massachusetts estate tax purposes on a previously filed and accepted estate tax return for which appropriate estate tax had been paid.

2. The imposition for a second time of an estate tax on the estate of Frances Markell, in the form of including in the taxable Massachusetts estate the value of trust assets upon which taxes had already been fully paid on a previously filed Massachusetts return, shall be set aside in the amount of refund/additional tax of \$1,789,821.92 because such imposition is arbitrary and capricious, given disparately favorable instruction by Respondent on estate tax matters in the tax treatment to be afforded the estates of same sex couples, given Respondent's construction of Massachusetts General Laws chapter 65C section 2A, and given Respondent's public instructions how that statute should be interpreted in light of the equality principles enunciated in Goodridge v. Department of Public Health, 440 Mass. 309 (2003).

3. Because it continues, post-Goodridge to incorporate federal tax law which is constrained by 1 U.S.C. 7 in its application to non-same sex spouses, thus posing anathema to the equality principle and State constitutional underpinnings cited by the Supreme Judicial Court in Goodridge, Massachusetts General Laws chapter 65C section 2A as it was applied by the Respondent Commissioner in the tax treatment accorded to the Frances Markell estate offends the Massachusetts Constitution.

4. The amount of tax owed by the Frances Markell estate is determined to be \$1,651,055.17.

5. For all the abovestated reasons, the Respondent Commissioner shall, within ten days hereof, abate and refund such tax to Petitioner in the amount of \$1,789,821.92, with the statutorily prescribed interest.

Date 3/5/12

/s/ George F. Phelan
George F. Phelan, Judge
Probate and Family Court

APPENDIX 49

COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD
Docket No. 327773

M. CHRISTINE SHAFFER,
As Executrix of the Estate
Of Adelaide P. Chuckrow,
Appellant,

v.

COMMISSIONER OF REVENUE,
Appellee.

APPELLANT'S REPLY BRIEF

At oral argument, the Commissioner of Revenue conceded that the Appellant's analysis of G.L. c. 65C, § 1(f) was absolutely correct and that the Commonwealth would not be able to collect the tax attributed to the QTIP property. However, the Commissioner argues that § 1(f) somehow is not applicable. The Appellate Tax Board requested further briefing on the issue. Therefore, the question further briefed here focuses on the statutory argument of whether G.L. c. 65C, § 1(f), is still applicable now that Massachusetts has enacted § 2A.⁷

⁷ The Appellant argues in this reply brief about its statutory argument related to § 1(f). The Appellant maintains that the transfer of the QTIP property took place in New York, which was beyond the taxing jurisdiction of the Commonwealth, and therefore an unconstitutionally imposed tax. The Connecticut Supreme Court case on this issue, *Brooks v. Sullivan*, No. SC-19577, was argued on December 5, 2016, and is currently under advisement. Once a

As argued at length in the Appellant's brief, the definition of "Massachusetts gross estate" provided for in § 1(f) clearly excludes QTIP property for which a federal QTIP election was made but not a Massachusetts QTIP election.⁸ Section 1(f) was designed to take into account the difference between the Massachusetts and federal gross estates in order to come to the correct Massachusetts gross estate to compute the appropriate Massachusetts estate tax. In other words, under the plain definition provided under § 1(f), Adelaide Chuckrow's Massachusetts gross estate would not include the QTIP property and the estate would be entitled to the abatement of \$1,953,032.

The Commissioner, at oral argument, conceded that the Appellant's analysis regarding § 1(f) was correct, but argued instead that § 1(f) is no longer an

decision is released, the Appellant will advise the Commissioner and the Board.

⁸ General Laws c. 65C, § 1(f) provides in full as follows:

"(f) 'Massachusetts gross estate', the federal gross estate, whether or not a federal estate tax return is required to be filed, plus the value of any property (i) in which the decedent had at death a qualifying income interest for life described in subsection (c) of section three A, or to the extent of any such interest therein of which the decedent has at any time made a transfer, by trust or otherwise, under any circumstances which would require the property to be included in the gross estate under the provisions of this chapter and (ii) for which a deduction was allowed for Massachusetts estate tax purposes with respect to the transfer of such property to the decedent; and less the value of real and tangible personal property having an actual situs outside the commonwealth. The Massachusetts gross estate shall not include the value of any property in which the decedent had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent's estate to recover federal or Massachusetts estate taxes from such property."

applicable definition with regard to the estate tax imposed by § 2A.⁹ Sections 1(f) and 2A must be read in conjunction with each other, and not in contradiction. It is clear that the Commissioner continues to rely on § 1(f) when it suits its purpose—such as enforcement of the automatic lien on estate funds and allowance of a separate Massachusetts QTIP election—but ignores § 1(f) when it hinders its purpose. Such selective enforcement is arbitrary and should not be permitted. The Appellate Tax Board should require that § 1(f) be applied as to Adelaide Chuckrow's estate taxes and order the full abatement.

II. Factual Background

The Appellant briefly restates the facts for the convenience of the Board:

Robert Chuckrow and Adelaide Chuckrow were a married couple living in New York. SAF ¶17-18. Robert died on July 11, 1993. SAF ¶ 18. His will established a QTIP trust and his executrix made a federal QTIP

⁹ General Laws c. 65C, § 2A provides in relevant part as follows:

(a) A tax is hereby imposed upon the transfer of the estate of each person dying on or after January 1, 1997 who, at the time of death, was a resident of the commonwealth. The amount of the tax shall be the sum equal to the amount by which the credit for state death taxes that would have been allowable to a decedent's estate as computed under Code section 2011, as in effect on December 31, 2000, hereinafter referred to as the "credit", exceeds the lesser of:

(i) the aggregate amount of all estate, inheritance, legacy and succession taxes actually paid to the several states of the United States, other than the commonwealth, in respect to any property owned by that decedent or subject to those taxes as part of or in connection with his estate; or

(ii) an amount equal to the proportion of such allowable credit as the value of properties taxable by other states bears to the value of the entire federal gross estate wherever situated.

election. SAF ¶¶ 18-20. This QTIP trust under Robert's will was funded with \$844,101.27. SAF ¶ 23.

Following Robert's death, Adelaide moved to Massachusetts. She died on August 14, 2011 while living in Williamstown, Massachusetts. SAF ¶ 1. At the time of Adelaide's death, she had a total federal gross estate of \$15,633,617. SAF ¶ 14. This amount included the assets held in the QTIP trust under Robert's will, the value of which was \$13,251,469. SAF ¶ 14.

Adelaide reported a Massachusetts gross estate of \$2,382,148 (which is the difference between the federal gross estate and the amount attributable to QTIP trust property). SAF ¶ 13, 15. Adelaide's estate paid \$100,997 in Massachusetts estate taxes. SAF ¶ 2. The Commissioner selected Adelaide's estate for audit, and asserted that the estate owed taxes on the QTIP property. SAF ¶ 3. Adelaide's estate paid the additional tax assessed by the Commissioner plus the accrued interest, a total of \$1,953,032, and began the abatement process. SAF ¶ 5, 6.

III. Analysis

Before analyzing the principal question here—whether G.L. c. 65C, § 1(f) remains applicable to the estate taxes imposed by § 2A—a brief summary of the Appellant's statutory argument is necessary. As argued at length in the Appellant's principal brief, § 1(f) creates a definition of "Massachusetts gross estate" that harmonizes with the federal gross estate and avoids thorny problems of double taxation that otherwise would be present. Section 1(f) provides:

"Massachusetts gross estate', the federal gross estate, whether or not a federal estate tax return is required to be filed, plus the value of any property (i) in which the decedent had at death a

qualifying income interest for life described in subsection (c) of section three A,^[10] or to the extent of any such interest therein of which the decedent has at any time made a transfer, by trust or otherwise, under any circumstances which would require the property to be included in the gross estate under the provisions of this chapter and (ii) for which a deduction was allowed for Massachusetts estate tax purposes with respect to the transfer of such property to the decedent; and less the value of real and tangible personal

¹⁰ General Laws c. 65C, § 3A is the provision of law that permits a Massachusetts QTIP election, and in relevant part provides:

(a) In the case of qualified terminable interest property, (i) for purposes of subsection (a) of section two thousand and fifty-six of the Code, such property shall be treated as passing to the surviving spouse, and (ii) for purposes of subsection (b)(1)(A) of section two thousand and fifty-six of the Code, no part of such property shall be treated as passing to any person other than the surviving spouse; provided, however, that a deduction with respect to such terminable interest property shall not be limited by subsection (c) of section two thousand and fifty-six of the Code.

(b) For purposes of this section, the term "qualified terminable interest property" shall mean property (i) which is included in the Massachusetts gross estate, (ii) which passes from the decedent, (iii) in which the surviving spouse has a qualifying income interest for life, and (iv) to which an election under this section applies.

(c) The surviving spouse has a qualifying income interest for life if (i) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, and (ii) no person has a power to appoint any part of the property to any person other than the surviving spouse. Clause (ii) of this subsection shall not apply to a power exercisable only at or after the death of the surviving spouse.

property having an actual situs outside the commonwealth. The Massachusetts gross estate shall not include the value of any property in which the decedent had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent's estate to recover federal or Massachusetts estate taxes from such property."

The starting point of the statute is the federal gross estate. Added to this amount is the value of any property for which a Massachusetts QTIP election was made when the first-to-die spouse died. Next, the value of real and tangible personal property situated outside the Commonwealth is subtracted. The last sentence makes one final adjustment:

"The Massachusetts gross estate shall not include the value of any property in which the decedent had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent's estate to recover federal or Massachusetts estate taxes from such property."

This final sentence removes from the calculation the value of any property for which a federal QTIP election was made but for which no Massachusetts QTIP election was made. At oral argument, the Commissioner conceded that this was the correct interpretation of § 1(f), but argued that § 1(f) was inapplicable to the estate tax as computed under § 2A.

However, the Commissioner continues to rely on the definition of "Massachusetts gross estate" in other tax

statutes, applying § 1(f) when it benefits the Commissioner. Such selective enforcement is arbitrary, and the Commissioner cannot claim here that the "Massachusetts gross estate" is no longer applicable to the estate tax as computed under § 2A.

1. There has been no repeal of G.L. c. 65C, § 1(f), express or implied.

First and foremost, there is no dispute that the legislature has never repealed G.L. c. 65C, § 1(f), and thus it still is in full force and effect. Like all statutes, an implied repeal of a tax statute is not favored. See *Dexter v. Comm'r of Corps. & Taxation*, 316 Mass. 31, 51 (1944). In *Dexter*, the Commissioner attempted to impose inheritance tax originally inserted by St. 1907, c. 563, which for the first time in Massachusetts imposed a tax on property passing to the decedent's spouse or lineal descendants.¹¹ *Dexter, supra* at 33-34. The tax was assessed on the estate of Alice Meyer (who died in 1934), who was the beneficiary of a trust under the will of her father, Charles Appleton (who died in 1874). The Commissioner attempted to impose a tax on the transfer from Appleton to Meyer, even though such a tax was not in force at the death of Appleton. The Commissioner argued that the legislature's passing of St. 1916, § 268, § 4, caused an implied repeal of a certain portion of St. 1907, c. 563, which implied repeal would have permitted the Commissioner to recover the tax from Appleton to Meyer. The Court rejected this argument, holding: "No implication of a repeal of said section 25 is to be drawn from St. 1916, c. 268, § 4, or any other part of the

¹¹ Prior to this statute, inheritance taxes were imposed only on the transfer of property to the decedent's collateral relatives and to other beneficiaries. St. 1891, c. 425; *Dexter, supra* at 33-34. Prior to the 1891 statute, there was no inheritance tax in the Commonwealth. *Dexter, supra* at 33

statute, especially where, as here, such a repeal would make a radical change in existing law." *Id.* at 51-52.

So too here. The Commissioner claims, in effect, that the 2002 amendment of G.L. c. 65C, § 2A caused an implied repeal of G.L. c. 65C, § 1(f), sweeping away the definition of "Massachusetts gross estate." However, nothing done by the legislature expressly repealed § 1(f), and likewise, there is no implied repeal. See *Dexter, supra*.

2. The Commissioner's argument is untenable and marked by inconsistent application when viewed through the practicalities of administration.

The Commissioner argues that § 2A uses only the word "estate," and so the definition for Massachusetts Gross Estate contained in § 1(f) is inapplicable. This ignores the practice of the Commissioner with respect to other aspects of the estate tax—most notably the lien on the decedent's assets and on QTIP elections.

a. The separate Massachusetts QTIP election is authorized under G.L. c. 65C, § 3A, but this statute too uses only the term "Massachusetts gross estate."

The Commissioner permits the decedent's personal representative to elect a state QTIP election that is separate and distinct from the federal QTIP election. This ignores both the affirmative allowance of a separate QTIP allowance under § 3A and the practical manner in which estate taxes are calculated under § 2A. The Commissioner, for this position, relies on the statutory silence.

Nothing in § 2A permits the personal representative to elect a separate Massachusetts QTIP election. Yet the Commissioner has permitted personal

representatives to make separate QTIP elections even after the implementation of § 2A. This was the subject of Directive 03-2, which provides: "There is no provision in G.L. c. 65C, § 2A that requires an estate to make the same election regarding a marital deduction for QTIP property for Massachusetts and for federal estate tax purposes. This is similar to that provided for by G. L. c. 65C, § 3A."

Practically, the estate tax is computed by filling out the federal 706 for tax year 1999. After this form is filled out, it provides the tax credit for state death taxes, and it is this amount that becomes the estate tax payable to the Commonwealth. The federal 706 for tax year 1999 offers a federal QTIP election, but does not include a state QTIP election. Under Directive 03-2, a personal representative, in practice, may elect a separate QTIP election for Commonwealth purposes. But that is due to Directive 03-2; there is nothing in the text of § 2A that would permit such an election, and the reference in § 3A is only to the Massachusetts gross estate.

The only lawful way to make a separate QTIP election for state estate taxes lies in G.L. c. 65C, § 3A. The very definition of "qualified terminal interest property" (i.e., QTIP property) makes reference to the "Massachusetts gross estate." QTIP property is defined as "property (i) which is included in the Massachusetts gross estate, (ii) which passes from the decedent, (iii) in which the surviving spouse has a qualifying income interest for life, and (iv) to which an election under this section applies." G.L. c. 65C, § 3A(b). There are two issues here. First, QTIP property constitutes property that "is included in the Massachusetts gross estate." This suffers from the same issue outlined above-if the Commissioner's argument is correct, there is no property to QTIP, because there is no longer a Massachusetts

gross estate. The analysis need not be repeated in full here.

Second, a QTIP can be made only to property for "which an election under this section applies." See *id.* The Commissioner argues that § 2A is the only statute that controls with regard to a payment of estate taxes. If that were correct, an election could never be made "under this section[§ 3A]. See also G.L. c. 65C, § 3A(f) ("An election *under this section* with respect to any property shall be made by the executor "). This reading is supported by Directive 03-2, which suggests that § 3A is no longer applicable, by its use of the past tense. From Directive 03-2: "There is no provision in G.L. c. 65C, § 2A that requires an estate to make the same election regarding a marital deduction for QTIP property for Massachusetts and for federal estate tax purposes. This is similar *to that provided for* by G. L. c. 65C, § 3A." (emphasis added). This suggests that § 3A is no longer applicable, but that the same result can be reached under § 2A due to its silence.

"An administrative agency, however, has only the powers and duties expressly conferred upon it by statute and such as are reasonably necessary to carry out its mission." *Morey v. Martha's Vineyard Comm'n*, 409 Mass. 813, 818 (1991). "The commissioner's authority to assess taxes is derived from either express or implied statutory authority." *Gillette Co. v. Comm'r of Revenue*, 425 Mass. 670, 678 (1997). Thus, the Commissioner may only assess an estate tax is explicitly authorized by the legislature. See *Id.* It follows that the Commissioner may authorize state QTIP elections if authorized by the legislature. Indeed, this why G.L. c. 65C, § 3A originally was implemented. If the Commissioner is correct that § 2A is the only applicable statute with respect to estate tax assessments, then separate state QTIP elections could not be permitted, by statute or by agency policy.

Any such policy or regulation implemented by the Commissioner would be beyond its authority. See *Gillette Co., supra*.

The following examples demonstrate that the separate and distinct Massachusetts QTIP election is dependent on the continued recognition of the "Massachusetts gross estate."

Example I: In this example, assume that the estate tax law of 1993 is in effect for a married couple, meaning an unlimited federal marital deduction, but a 50% Massachusetts marital deduction. H dies in 1993 with an estate of \$1 million. H's executor makes a 100% federal QTIP election (\$1 million), but is permitted only to make a 50% Massachusetts QTIP election and does so (\$500,000), leaving \$500,000 for which no Massachusetts QTIP election was made. When W later dies in 2017 (after enactment of § 2A), bare reference to the federal gross estate would result in the entire \$1 million being includible in W's estate for Massachusetts estate tax purposes. The definition of "Massachusetts gross estate" in § 1(f) corrected this problem with its last sentence, which excludes from the Massachusetts gross estate property for which a federal QTIP election was made but no Massachusetts QTIP election was made.

Example 2: In this example, assume the laws that are currently in effect in 2017 (a \$5,490,000 federal exemption and a \$1 million Massachusetts exemption). H dies with a \$6 million estate, all of which is paid into a trust that qualifies for QTIP election. H's estate plan puts \$1 million into a bypass share for which no federal or state QTIP election is made. Next, \$4,490,000 funds a Massachusetts marital share for which a Massachusetts QTIP election is made, but no federal QTIP election is made. The balance of \$510,000 funds the federal marital share, for which a QTIP election is made for both federal

and Massachusetts purposes. If W later dies with no other assets of her own, her federal gross estate would be worth only \$510,000 (the other \$5,490,000 was completely shielded from federal estate taxes by virtue of the federal exemption amount in conjunction with no federal QTIP election). By bare reference to G.L. c. 65C, § 2A, Massachusetts could collect tax only based on this \$510,000, and no Massachusetts estate tax would be due because this falls below the \$1 million exemption. This, of course, is not what happens in practice, because pursuant to § 1(f), the Commissioner is able to add to this \$510,000 property for which a Massachusetts QTIP election was made. The Commissioner currently takes this position, meaning that the Commissioner would assert that W's gross estate was actually \$5,000,000 (the \$4,490,000 of Massachusetts-only QTIP-elected property, plus the \$510,000 of Massachusetts and federal QTIP elected property). This demonstrates that the Commissioner continues to rely on the definition of "Massachusetts gross estate"; otherwise, millions of dollars would escape Massachusetts estate taxation.

Thus, § 1(f) remains an important part of the current estate tax regime, and the Commissioner continues to rely on it with respect to QTIP property to accurately assess Massachusetts estate taxes.

b. The automatic lien placed on the decedents property is authorized by G.L. c. 65 C, § 14, but this statute applies liens only over the "Massachusetts gross estate."

By operation of statute, the Commissioner places a lien on all the property of the decedent until estate taxes are paid to the Commonwealth. See G.L. c. 65C, § 14. The applicable portion of the statute is as follows:

"Unless the *tax imposed by this chapter* is sooner paid in full, it shall be a lien for ten years from the date of death *upon the Massachusetts gross estate* of the decedent, except that such part of the Massachusetts as is used for the payment of charges against the estate and expenses of its administration, allowed by the probate court, having jurisdiction thereof, shall be divested of such lien."

(emphasis added). If the Commissioner's argument is correct in the present case, there is nothing to place a lien on, for the Massachusetts gross estate is no longer applicable. Therefore, the Commissioner should not have been placing liens on decedents' property for the last decade, as this lien language was not amended when § 2A was added to the chapter.

Certainly, the Commissioner has not ceased its lien practice since the implementation of § 2A. The Commissioner even went so far as to publish a guide when § 2A was implemented to explain procedures with respect to the lien. See *A Guide to Estate Taxes (Applicable to dates of death on or after January 1, 2003)*, http://www.mass.gov/dor/individuals/_taxpayer-help-andresources/tax-guides/estate-tax-information/estate-tax-guide.html.

Under G.L. c. 65C, § 14, a lien is placed "upon the Massachusetts gross estate of the decedent." The Commissioner cannot read "estate" into language where it specifically uses "Massachusetts gross estate" for purposes of one procedure, and then ignore entirely a definition of "Massachusetts gross estate" in another. This is the very definition of arbitrary enforcement.

Continuing the analysis, the Commissioner presses in this case that "Massachusetts gross estate" is no longer an applicable definition by virtue of the

passage of § 2A, which does not use the term "Massachusetts gross estate" but simply the term "estate." So, the argument goes, the term "Massachusetts gross estate" no longer applies anywhere in the Massachusetts estate tax regime, having been replaced by the amount procedures of § 2A. If this argument is correct, then the Commissioner's use of estate tax liens has been unlawful and beyond its permitted scope for well over a decade. Of course, this argument that "Massachusetts gross estate" is no longer a concept under the revised estate tax regime would fall on deaf ears, if made to the Commissioner with respect to an estate tax lien. Put another way, the Commissioner has been arbitrarily choosing when it wants to use "Massachusetts gross estate" and when it does not. If "estate" can be substituted for "Massachusetts gross estate" where context may require, surely "Massachusetts gross estate" can be substituted for "estate" where context may require.

This issue has even arisen as against the Appellant. The moment Adelaide Chuckrow died, the Commissioner assessed a ten-year lien "upon the Massachusetts gross estate of [Adelaide]." G.L. c. 65C, § 14. With this asserted lien in place, Adelaide's heirs and beneficiaries could not have transferred property to themselves with free and clear title until the estate taxes had been fully paid. The Commissioner never would have allowed it, and would have cited G.L. c. 65C, § 14, claiming that the Commonwealth has a lien over all the assets in Adelaide's "Massachusetts gross estate." Of course, the problem with such an assertion is that it relies on the "Massachusetts gross estate" continuing to exist as a concept, which the Commissioner explicitly denies in its briefing in the present case. Having already enforced a lien on the Massachusetts gross estate, the

Commissioner is estopped from reversing that argument with respect to the tax on the QTIP Trust.

The logical conclusion from this is that the legislature did not intend to disregard the provisions of G. L. c. 65C, including the definitions contained in § 1(f). Rather, the legislature intended to change only the method for computing the tax, not effect a wholesale repeal of G.L. c. 65C. Surely, the legislature intended to preserve the automatic lien, G.L. c. 65C, § 14, and the Commissioner has determined that the legislature intended to preserve the separate state QTIP election, G.L. c. 65C, § 3A. The legislature intended for all the provisions of G.L. c. 65C to work as a harmonious whole.

3. The interpretation argued by the Commissioner would result in the decedent's estate paying taxes on real and tangible personal property situated outside the Commonwealth.

Bare reference to "estate" in G.L. c. 65C, § 2A is troublesome on many levels with respect to residents who own real property or tangible personal property that is situated outside the Commonwealth. But under the literal reading pushed by the Commissioner, such property is taxable under § 2A. Such an attempted tax would be patently unconstitutional. See *Frick v. Pennsylvania*, 268 U.S. 473,492 (1925). In *Frick*, Pennsylvania had levied an estate tax on its residents that attempted to impose a tax on all property owned by decedents, whether in state or out-of-state. See *id.* at 487-488. The Supreme Court held:

"[T]o impose either tax the State must have jurisdiction over the thing that is taxed, and to impose either without such jurisdiction is mere extortion and in contravention of due process of law. Here the tax was imposed on the transfer of

tangible personalty having an actual situs in other States—New York and Massachusetts. This property, by reason of its character and situs, was wholly under the jurisdiction of those States and in no way under the jurisdiction of Pennsylvania. True, its owner was domiciled in Pennsylvania, but this neither brought it under the jurisdiction of that State nor subtracted anything from the jurisdiction of New York and Massachusetts. In these respects the situation was the same as if the property had been immovable realty. The jurisdiction possessed by the States of the situs was not partial but plenary, and included power to regulate the transfer both inter vivos and on the death of the owner, and power to tax both the property and the transfer."

Id. at 492. The Supreme Judicial Court has recognized the applicability of *Frick*. See *Page v. Comm'r of Revenue*, 389 Mass. 388, 392-393 (1983). In *Page*, the taxpayer argued that *Frick* was controlling, but the Court distinguished *Frick* due to the fact that the property could be taxed because it was intangible property. See *id.*

The legislature itself must have recognized this, given that the very next paragraph of § 2A assesses a tax on real property and tangible personal property situated within the Commonwealth but owned by nonresidents. Massachusetts may impose such a tax on nonresidents due to the situs of the property. See *Frick, supra*. To the contrary, Massachusetts cannot impose a tax on its residents for real property or tangible personal property owned by its residents but sited in other jurisdictions. See *id.* The Constitution flatly prohibits this, and even more to the point, Massachusetts has no sovereignty over land in other jurisdictions just because

said land happens to be owned by a Massachusetts resident. See *id.*

"[T]he Legislature is presumed to be aware of constitutional requirements." See *Verrochi v. Commonwealth*, 394 Mass. 633, 638 (1985). Accordingly, the legislature would not have passed such a blatantly unconstitutional estate tax unless it intended to preserve the definitions within the chapter that resolve the constitutional issue entirely. The definition of "Massachusetts gross estate" provided for in G.L. c. 65C, § 1(f) solves the constitutional problem by removing the taxability of real property and tangible personal property sited outside the Commonwealth.

Because the legislature did not repeal the remainder of G.L. c. 65C, and because of the arguments made above, it is clear that the legislature never intended to completely do away with G.L. c. 65C, § 1(f)—or § 3A or § 14, or any other provision of c. 65C—when it enacted § 2A. The legislature intended a harmonious reading of the statute that comported with the longstanding understandings constitutional requirements, as codified in § 1(f).

IV. Conclusion

The Commissioner conceded at oral argument that the taxpayers analysis of G.L. c. 65C, § 1(f) is correct, but argues instead that § 1(f)—and specifically, the definition of "Massachusetts gross estate"—is no longer applicable since the passage of § 2A. The Commissioner presses this argument even though it contradicts not only the legislature's intent when passing § 2A, but also contradicts the Commissioner's practice with respect to the estate tax in the last decade. The Commissioner relies on the continued validity of the "Massachusetts gross estate" when it is convenient—such as enforcement of the estate tax lien or allowance of

separate QTIP—but refuses to accept its validity when it works to its detriment, such as here.

The clear import of this analysis is that § 1 (t) continues to have validity even after the implementation of § 2A. It is the only mechanism that permits the Commonwealth's estate tax to function constitutionally.

The Appellant maintains that it should be successful under both the constitutional argument, which is presented in its principal blief, and the statutory argument, which is argued here and in the principal brief. The Appellate Tax Board should order that the Commonwealth refund the entire \$1,953,032 to the estate of Adelaide Chuckrow.

Respectfully Submitted,
The Appellant,
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as Executrix of the Estate of
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Garret Park, MD 20896
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Certificate of Service

I, Luke C. Bean, hereby certify that on this __ day of August, 2017, I caused a true copy of the within document to be served by hand on the following attorney of record:

John J. Connors, Jr., Esq.
Counsel to the Commissioner
Department of Revenue
Litigation Bureau
100 Cambridge Street, 7th Floor
Boston, MA 02114-9565

/s/ Luke C. Bean

Luke C. Bean

APPENDIX 50

*The Commonwealth of Massachusetts
Department of Revenue
Resolution Division – Litigation Bureau
P.O. Box 9565
100 Cambridge Street, 7th Floor
Boston, Massachusetts 02114-9565*

May 24, 2017

William J. Doherty, Clerk
Appellate Tax Board
100 Cambridge Street, Suite 200
Boston, MA 02114

Re: M. Christine Shaffer, as Executrix of the Estate of
Adelaide P. Chuckrow, v. Commissioner of
Revenue
Appellate Tax Board Docket No. C327773

Dear Mr. Doherty:

In footnote 17, found on page 22 of the Commissioner of Revenue's Brief for the above-reference matter, the Commissioner mentioned the Connecticut Supreme Court matter of the Estate of Brooks v. Sullivan, Connecticut Supreme Court Docket No. 19577. This case is also mentioned in footnote 1 found on page 1 of the Appellant's Reply Brief. This Connecticut case has now been decided by the Connecticut Supreme Court. Attached please find a copy of the Decision as found on Lexis¹ and another copy as found on the Connecticut Supreme Court's web site. Please inform the Board, in particular Commissioner Patricia Good, of this Connecticut Decision.

¹ Lexis Decision intentionally omitted.

If you have any questions, please feel free to contact me at the phone number or Email address below.

Thank you for your attention to this matter.

Very truly yours,

/s/ John J. Connors, Jr.

John J. Connors, Jr. (BBO #552409)

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ESTATE OF HELEN B. BROOKS
ET AL. v. COMMISSIONER
OF REVENUE SERVICES
(SC 19577)

Palmer, Eveleigh, McDonald, Espinosa and Robinson, Js. *Argued December 5, 2016—officially released May 23, 2017* Dennis A. Zagroba, with whom were Heather Spaide and Patricio Suarez, for the appellants (plaintiffs).

Dinah J. Bee, assistant attorney general, with whom were Matthew Budzik, assistant attorney general, and, on the brief, George Jepsen, attorney general, for the appellee (defendant).

Opinion

EVELEIGH J. The plaintiffs, the coexecutors of the estate of Helen B. Brooks,¹ appeal from the trial court's rendering of summary judgment in favor of the defendant, the Commissioner of Revenue Services.² The trial court upheld the decision of the defendant to deny the plaintiffs' request for a refund of estate taxes paid by the estate of the decedent,

¹ The coexecutors are Dorothy Newberth, Nancy B. Jackman, and David S. Brooks. We note that, although the summons lists the named plaintiff as the estate of Helen B. Brooks, the present action is maintained on its behalf by the coexecutors. See *Estate of Rock v. University of Connecticut*, 323 Conn. 26, 32, 144 A.3d 420 (2016). We have, however, retained the caption of the present case for the sake of consistency with the trial court's memorandum of decision.

² The plaintiffs appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

Helen B. Brooks (decedent). On appeal, the plaintiffs claim that the trial court incorrectly concluded that the defendant had statutory authority to include in the decedent's gross estate the value of certain qualified terminable interest property (QTIP) in which the decedent enjoyed a life interest and levy an estate tax upon such property. The plaintiffs also assert that the defendant's construction of the statute resulted in a violation of the plaintiffs' due process rights. We disagree with the plaintiffs and, accordingly, affirm the judgment of the trial court.

The following facts and procedural history are relevant to this appeal. The material facts in this case are not in dispute. The decedent died on September 22, 2009, domiciled in Connecticut. She was predeceased by her husband, Everett Brooks (Everett), who died January 31, 2000. Everett was a resident of Florida at the time of his death. At that time, Florida and Connecticut each had an estate tax based on the amount of the federal credit allowed for state death taxes. See 26 U.S.C. § 2011 (2000); General Statutes (Rev. to 1999) § 12-391; Fla. Stat. § 198.02 (2000). Everett's will was probated in Florida. Pursuant to Everett's will, two trusts were created to hold certain assets of the estate.³ The decedent, acting as executor of Everett's estate, elected to qualify both trusts as QTIP marital deduction trusts. See 26 U.S.C. § 2056 (b) (7) (2000). Pursuant to Everett's will, the decedent enjoyed a beneficial life interest in the assets of the trusts. Everett's will also

³ Everett's estate elected to separate the trust set forth in Everett's will into two parts in order to allocate a portion of the generation skipping tax exemption to part of the trust. See 26 U.S.C. § 2652 (a) (3) (2000). Neither the separation of the trust into two parts nor the generation skipping tax exemption allocation affects the resolution of this appeal.

granted the decedent a testamentary limited power of appointment to direct the remainder of the trusts among Everett's children. In the absence of such an appointment by the decedent, the principal of the trusts was to be distributed according to Everett's will. The trusts consisted of intangible personal property—namely, cash and publicly traded stocks and bonds. The decedent and Attorney Herbert J. Hummers were appointed trustees of the trusts. Hummers was given the power to invade the principal of the trusts for the benefit of the decedent.⁴ The decedent did not have the power to invade the principal of the trust. In or about 2002, the decedent moved to Connecticut and lived in the state continuously until her death.

After the decedent's death, the plaintiffs timely filed a request for extension and made an estimated tax payment of \$1,435,000. On November 4, 2010, the plaintiffs timely filed a Connecticut estate tax return for the decedent's estate that intentionally omitted the value of the trusts and claimed a refund in the amount of \$988,827. The plaintiffs included a statement on the return asserting that the value of

⁴ Specifically, Everett's will provided in relevant part: "During the life of my wife my trustee or trustees other than my wife may encroach upon the principal of this residuary trust for her benefit from time to time and pay any portions or all thereof to her or apply the same to her use, if such trustees in such trustees' uncontrolled discretion shall deem the same to be desirable for any reason, and this discretion shall expressly include the power to terminate this trust by such encroachments. It shall not be necessary for such trustees to inquire as to any other income or property of my said wife. Any decision of such trustees with respect to the exercise of said discretionary power, made in good faith, shall fully protect such trustees, and shall be conclusive and binding upon all interested persons. . . ."

those assets was not properly includable in the Connecticut gross estate of the decedent. The defendant's audit division disallowed the plaintiffs' request for a refund. The plaintiffs subsequently filed a timely appeal to the defendant's appellate division, which affirmed. The plaintiffs then filed a timely appeal from that decision to the trial court pursuant to General Statutes §§ 12-395 (a) (1) and 12-554. See generally *Coyle v. Commissioner of Revenue Services*, 142 Conn. App. 198, 203–205, 69 A.3d 310 (2013), appeal dismissed, 312 Conn. 282, 91 A.3d 902 (2014). On cross motions for summary judgment, the trial court concluded that the assets of the trusts were properly included in the decedent's gross estate and, therefore, were subject to the estate tax. In addition, the trial court concluded that the imposition of the tax upon the estate did not violate the due process clause of the fourteenth amendment to the United States constitution. Accordingly, the trial court denied the plaintiffs' motion for summary judgment and granted the defendant's motion. The trial court then rendered judgment thereon in favor of the defendant. This appeal followed. Additional facts and procedural history will be set forth as necessary.

“Because the decision to grant a motion for summary judgment is a question of law, our review of the trial court's decision is plenary.” *Dattco, Inc. v. Commissioner of Transportation*, 324 Conn. 39, 44, 151 A.3d 823 (2016). “On appeal, we must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court.” (Internal quotation marks omitted.) *Cefaratti v. Aranow*, 321 Conn. 637, 645, 138 A.3d 837 (2016).

I

We begin by discussing the background of the federal tax concepts implicated in the present case. In 1981, Congress enacted “the most dramatic and expansive liberalization of the [m]arital [d]eduction in history.” *Estate of Clayton v. Commissioner of Internal Revenue*, 976 F.2d 1486, 1492 (5th Cir. 1992). Such a feat was achieved in two ways. First, Congress provided for the unlimited marital deduction. Economic Recovery Tax Act of 1981, Pub. L. 97-34, § 403 (a), 95 Stat. 301; see also 26 U.S.C. § 2056 (a).⁵ Federal law did not, however, previously allow for the deduction of terminable interests. *Estate of Clayton v. Commissioner of Internal Revenue*, supra, 1492. Mindful of rising divorce and remarriage rates, Congress created an exception to the general rule against allowing a deduction for the interspousal transfer of terminable interests so that a decedent may exert more control over the ultimate disposition of certain assets while still financially providing for the surviving spouse with such assets unburdened by front end taxation. See *id.*, 1492–93 and n.26. Thus, the concept of QTIP was born. *Id.*, 1493.

Federal tax law currently operates by granting the marital deduction to the first to die spouse in the

⁵ The general marriage deduction provision, which is set forth in 26 U.S.C. § 2056 (a), provides: “For purposes of the tax imposed by section 2001, the value of the taxable estate shall, except as limited by subsection (b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.”

amount of the value of certain property, subject to certain qualifications, so long as the first to die spouse gives a beneficial life interest in such property to the surviving spouse. 26 U.S.C. § 2056 (b) (7).⁶ In order to ensure that the property does not pass to the remainder beneficiaries untaxed, the

⁶ We note, in particular, that 26 U.S.C. § 2056 (b) (7) (B) provides: “Qualified terminable interest property defined

“For purposes of this paragraph—

“(i) In general

“The term ‘qualified terminable interest property’ means property—

“(I) which passes from the decedent,

“(II) in which the surviving spouse has a qualifying income interest for life, and

“(III) to which an election under this paragraph applies.

“(ii) Qualifying income interest for life

“The surviving spouse has a qualifying income interest for life if—

“(I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and

“(II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

“Subclause (II) shall not apply to a power exercisable only at or after the death of the surviving spouse. To the extent provided in regulations, an annuity shall be treated in a manner similar to an income interest in property (regardless of whether the property from which the annuity is payable can be separately identified).

“(iii) Property includes interest therein

“The term ‘property’ includes an interest in property.

“(iv) Specific portion treated as separate property

“A specific portion of property shall be treated as separate property.

“(v) Election

“An election under this paragraph with respect to any property shall be made by the executor on the return of tax imposed by section 2001. Such an election, once made, shall be irrevocable.”

federal tax code imposes a tax upon the happening of two events. During the life of the surviving spouse, any disposition of a qualifying life interest in property is treated as a transfer of the remainder interest in such property for purposes of the gift tax. See 26 U.S.C. § 2519 (a).⁷ To the extent that the surviving spouse did not make any inter vivos disposition of any qualifying life interest in property, the entire value of the property in which the surviving spouse enjoyed a qualifying life interest is included in his or her gross estate and is treated as property passing therefrom. See 26 U.S.C. § 2044.⁸ In short, a fictional transfer occurs from the first to die spouse to the surviving spouse, and a second fictional transfer occurs upon the death of the surviving spouse to the remainder beneficiaries. We note that, in the present case, it is undisputed that the assets contained within the trusts established pursuant to Everett's will were properly included in the decedent's federal gross estate.

⁷ Section 2519 (a) of title 26 of the United States Code provides: "For purposes of this chapter and chapter 11, any disposition of all or part of a qualifying income interest for life in any property to which this section applies shall be treated as a transfer of all interests in such property other than the qualifying income interest."

⁸ Section 2044 of title 26 of the United States Code provides in relevant part as follows: "(a) General rule

"The value of the gross estate shall include the value of any property to which this section applies in which the decedent had a qualifying income interest for life. . . .

"(c) Property treated as having passed from decedent

"For purposes of this chapter and chapter 13, property includible in the gross estate of the decedent under subsection (a) shall be treated as property passing from the decedent."

II

First, we address the plaintiffs' claim that, pursuant to General Statutes § 12-391 (c) (3),⁹ the assets contained within the trusts are not includable in the decedent's gross estate. Specifically, the plaintiffs claim that the relevant federal estate tax provisions have been incorporated into the state estate tax provisions and, therefore, the assets contained within the trusts form part of the decedent's state gross estate only if the state allowed a deduction with respect to the transfer of such property to the decedent following Everett's death. The defendant claims that such an interpretation of § 12-391 (c) (3) is inconsistent with the plain meaning of the provision—namely, that the gross estate for state estate tax purposes is the same as the gross estate for federal estate tax purposes. We agree with the defendant.

The plaintiffs' claim implicates a matter of statutory construction. Our standard of review for statutory construction claims is well established. "When construing a statute, [the court's] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, [the court seeks] to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the

⁹ As discussed in part III of this opinion, the legislature has made certain amendments to § 12-391 that are relevant to the present appeal. See Public Acts 2013, No. 13-247, § 120; Public Acts 2014, No. 14-155, § 12. We note, however, the subdivisions discussed in this section, namely § 12-391 (c) (3) and (f) (2), have remained unchanged since the death of the decedent. For the sake of simplicity, all references to § 12-391 in this opinion, unless otherwise noted, are to the current revision of the statute.

question of whether the language actually does apply. . . . In seeking to determine that meaning . . . [General Statutes] § 1-2z directs [the court] first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation.” (Internal quotation marks omitted.)

Allen v. Commissioner of Revenue Services, 324 Conn. 292, 307–308, 152 A.3d 488 (2016). “[A]long with these principles, we are also guided by the applicable rules of statutory construction specifically associated with the interpretation of tax statutes. . . . [W]hen the issue is the imposition of a tax, rather than a claimed right to an exemption or a deduction, the governing authorities must be strictly construed . . . in favor of the taxpayer. . . . Nevertheless, [i]t is also true . . . that such strict construction neither requires nor permits the contravention of the true intent and purpose of the statute as expressed in the language used.” (Internal quotation marks omitted.) *Groton v. Commissioner of Revenue Services*, 317 Conn. 319, 328–29, 118 A.3d 37 (2015).

We acknowledge that “when our tax statutes refer to the federal tax code, federal tax concepts are incorporated into state law.” (Internal quotation marks omitted.) *Allen v. Commissioner of Revenue Services*, *supra*, 324 Conn. 305 n.15. Nevertheless, we have explained that “this rule does not require the wholesale incorporation of the entire body of federal tax principles into our state income tax

scheme” (Internal quotation marks omitted.) Id. Instead, “where a reference to the federal tax code expressly is made in the language of a statute, *and where incorporation of federal tax principles makes sense in light of the statutory language at issue*, our prior cases uniformly have held that incorporation should take place.” (Emphasis added; internal quotation marks omitted.) Id.

In the present case, the statutory language provides that the term gross estate “means the gross estate, for federal estate tax purposes.” General Statutes § 12-391 (c) (3). The plain language of the statute requires nothing more than the gross estate as reported on the federal estate tax return. The construction urged by the plaintiffs would result in a value of the gross estate for state estate tax purposes that would differ from the value of the gross estate for federal estate tax purposes. Specifically, looking at whether Connecticut deducted the value of a QTIP trust from the estate of the first to die spouse in order to ascertain whether such assets are to be included in the state gross estate of the surviving spouse would not be “for federal estate tax purposes.” General Statutes § 12-391 (c) (3). Thus, according to § 12-391 (c) (3), if assets are included in a decedent’s federal gross estate, they are included in his or her state gross estate as well.

In addition, this construction is buttressed by § 12-391 (f) (2), which provides: “An election under said [26 U.S.C. § 2056 (b) (7)] may be made *for state estate tax purposes* regardless of whether any such election is made for federal estate tax purposes. The value of the gross estate shall include the value of any property in which the decedent had a qualifying income interest for life for which an election was made under this subsection.” (Emphasis added.)

Thus, the legislature has created a separate state QTIP election and inclusion provision. Construing § 12-391 (c) (3) to require the state to have first granted a deduction for the value of a QTIP trust from the gross estate of the first to die spouse in order to properly include the value of such in assets in the gross estate of the surviving spouse would, in essence, create a state QTIP election by incorporation that would render a separate election under § 12-391 (f) (2) superfluous. See, e.g., *Allen v. Commissioner of Revenue Services*, supra, 324 Conn. 309 (“statutes shall not be construed to render any sentence, clause, or phrase superfluous or meaningless” [internal quotation marks omitted]). Accordingly, we conclude that the plain language of the statute, when read in context with other related provisions, clearly provides that the assets contained within the trusts at issue are includable in the decedent’s gross estate pursuant to § 12-391 (c) (3) because they were included in the decedent’s gross estate for federal estate tax purposes.

Not advancing a textual basis for their construction of the provision, the plaintiffs rely principally upon case law for their claim that the federal estate tax code is incorporated into § 12-391 (c) (3). At first blush, our holding in *Berkley v. Gavin*, 253 Conn. 761, 772–75, 756 A.2d 248 (2000), would appear to strongly support the plaintiffs’ position in the present case. In *Berkley*, the issue was whether the phrase “as determined for federal income tax purposes” in the statute defining adjusted gross income; General Statutes (Rev. to 1999) § 12-701 (a) (19); “means as determined in accordance with federal income tax methodology, or as reported on a taxpayer’s federal income tax return.” *Berkley v. Gavin*, supra, 772. Relying on case law, this court

held that the phrase meant the former because the pertinent federal tax provisions for determining adjusted gross income were incorporated into this state's income tax provisions. *Id.*, 774. This included the tax benefit rule. 26 U.S.C. § 111.¹⁰ As a result, whether certain recovered losses were included in Connecticut adjusted gross income in the present year would depend on whether the taxpayer had reduced his *state* income tax liability, but not necessarily his federal income tax liability, in a previous year as a result of such previously reported losses. In essence, the incorporation of the federal tax benefit rule resulted in a “*Connecticut* tax benefit rule” (Emphasis in original.) *Id.*, 783 (*Sullivan, J.*, dissenting).¹¹ This is precisely the interpretation the plaintiffs seek in the present

¹⁰ The tax benefit rule, 26 U.S.C. § 111 (a), provides: “Gross income does not include income attributable to the recovery during the taxable year of any amount deducted in any prior taxable year to the extent such amount did not reduce the amount of tax imposed by this chapter.”

¹¹ In his dissent, Justice Sullivan illustrated the consequence of incorporating the tax benefit rule as follows: “A taxpayer, in year one, incurs a loss and receives a federal tax benefit because his income is reduced by that loss. For some reason, however, he receives no Connecticut tax benefit from the loss. In year two, the taxpayer recovers the loss. The taxpayer must pay federal income tax on the recovered income in year two, pursuant to the inclusionary aspect of the tax benefit rule. . . . [B]ecause the taxpayer received no Connecticut tax benefit in year one, he may exclude the recovered income for Connecticut income tax purposes in year two.

Accordingly, the adjusted gross income reported on the taxpayer's federal income tax return in year two would have to be modified on his Connecticut income tax return to reflect the exclusion of the recovered loss for Connecticut income tax purposes.” (Footnote omitted.) *Berkley v. Gavin*, *supra*, 253 Conn. 783.

case—namely, that the inclusion of a QTIP marital deduction trust in a decedent’s state gross estate requires the state to have granted a corresponding deduction to the estate of the first to die spouse. Justice Sullivan, in his dissent in *Berkley*, pointed out that the result reached by the majority in that case was inconsistent with the plain language of the statute because such a modification of Connecticut adjusted gross income was not “for federal income tax purposes” (Internal quotation marks omitted.) *Id.*, 784. Indeed, as a result of the holding in *Berkley*, the legislature subsequently clarified the definition of adjusted gross income by adding the phrase “and as properly reported on such person’s federal income tax return.” Public Acts, Spec. Sess., June, 2001, No. 01-6, § 35; see also Public Acts, Spec. Sess., June, 2001, No. 01-6, § 36 (stating legislative intent). To construe the provision defining gross estate in the present case to incorporate the federal estate tax code would result, as Justice Sullivan pointed out in *Berkley*, in a construction inconsistent with the plain language of the relevant statute. We conclude, especially in light of the principles of § 1-2z, which was not in effect when *Berkley* was decided, that incorporation of federal tax statutes into our statutory provisions should be determined in the first instance with reference to the plain meaning of § 12-391 (c) (3).

Next, we disagree with the plaintiffs’ contention that our holding in *New York Trust Co. v. Doubleday*, 144 Conn. 134, 145, 128 A.2d 192 (1956), incorporated all provisions of the federal estate tax into our estate tax code. In that case, we stated the following “The Connecticut estate tax statute . . . adopts as the base for computing the tax 80 [percent] of the amount of the basic federal estate tax. Inferentially, then, our

statute incorporates within itself the provisions of the federal estate tax statute, governing the computation of the federal estate tax, including all of the provisions of the latter statute for exemptions and deductions.” *Id.* The estate tax statute at issue in that case bears no resemblance to the estate tax at issue in the present case.¹² The previous estate tax, known as the pick up tax, was principally based upon the federal credit available under 26 U.S.C. § 2011. See G. Wilhelm & L. Weintraub, *Connecticut Estate Practice: Death Taxes in Connecticut* (4th Ed. 2013) § 1:2, p. 1-6. Under the previous estate tax, “[t]he amount of the tax was the amount by which such credit exceeded the total amount of all death taxes, including the Connecticut succession tax, actually paid to the several states and territories.” *Id.*, pp. 1-6 through 1-7. We described our estate tax at that time as one that did “no more than to divert into the state treasury what would otherwise be taken by the federal government as a part of the federal estate tax.” *New York Trust Co. v. Doubleday*, *supra*, 145. After Congress repealed the

¹² The applicable tax statute in *New York Trust Co. v. Doubleday*, *supra*, 144 Conn. 144, “imposed [a tax] upon the transfer of the estate of each person who at the time of death was a resident of this state, the amount of which shall be the amount by which [80 percent] of the estate tax payable to the United States under the provisions of the federal revenue act in force at the date of such decedent’s death shall exceed the aggregate amount of all estate, inheritance, legacy, transfer and succession taxes actually paid to the several states and territories of the United States, including this state, in respect to any property owned by such decedent or subject to such taxes as a part of or in connection with his estate.” General Statutes (1949 Rev.) § 2065.

state death tax credit,¹³ the legislature enacted a new, stand alone estate tax applicable to decedents dying on or after January 1, 2005. See Public Acts 2005, No. 05-251, § 69. The decedent's estate is being taxed under the present, stand-alone estate tax, not the pick up tax. Accordingly, we construe the present estate tax statute anew, unbound by this court's construction of a substantively different and inoperative tax statute.

In sum, we conclude that the value of the QTIP marital deduction trusts at issue in the present case are included in the decedent's gross estate for Connecticut estate tax purposes because those assets are included in the decedent's gross estate for federal estate tax purposes.

III

We next address the plaintiffs' claim that § 12-391 does not permit the defendant to tax the assets contained within the QTIP marital deduction trusts because the decedent did not own the property subject to the tax. In particular, the plaintiffs claim that the statutory language in effect at the time of the decedent's death; General Statutes (Rev. to 2009) § 12-391 (d) (3);¹⁴ limits the authority of the defendant to impose a tax upon intangible personal property to only such property owned by the decedent and that, therefore, the assets contained

¹³ See Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 532 (a), 115 Stat. 73.

¹⁴ General Statutes (Rev. to 2009) § 12-391 (d) (3) provides: "Property of a resident estate over which this state has jurisdiction for estate tax purposes includes real property situated in this state, tangible personal property having an actual situs in this state and intangible personal property owned by the decedent, regardless of where it is located."

within the trusts at issue are not taxable. The defendant claims that No. 13-247, § 120, of the 2013 Public Acts (P.A. 13-247), and No. 14-155, § 12, of the 2014 Public Acts (P.A. 14-155), clarified the original intention of the legislature with respect to the meaning of the relevant provision and, therefore, applies retroactively. Specifically, P.A. 13-247, § 120, amended § 12-391 (d) (3) to, *inter alia*, replace the words “owned by the decedent” with “included in the gross estate of the decedent,” and P.A. 14-155, § 12, expressly declared the legislative intent of P.A. 13-247, § 120, to be “clarifying in nature and applicable to all open estates.” The defendant points to the legislative history of both acts in support of his claim. The plaintiffs counter that, notwithstanding the legislature’s belated attempt in P.A. 14-155 to declare its intent regarding the amendments, P.A. 13-247 amounted to a substantive change to the law that can only be applied prospectively. As evidence, the plaintiffs point to the effective date of January 1, 2013, contained in P.A. 13-257, § 120. The plaintiffs further claim that if § 12-391 (d) (3) were construed in accordance with its plain meaning, it would be evident that the amendment amounted to a substantive change. The plaintiffs also dispute that the legislative history is sufficient to support the conclusion that the amendment was clarifying in nature. We agree with the defendant.

We begin by discussing the legal standard we apply in determining whether the legislature intended statutory amendments to be clarifying in nature. “We presume that, in enacting a statute, the legislature intended a change in existing law. . . . This presumption, like any other, may be rebutted by contrary evidence of the legislative intent in the particular case. An amendment which in effect

construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act. . . . Furthermore, an amendment that is intended to clarify the intent of an earlier act necessarily has retroactive effect.” (Citation omitted; internal quotation marks omitted.) *Bhinder v. Sun Co.*, 263 Conn. 358, 368–69, 819 A.2d 822 (2003). “This court has a long tradition of embracing clarifying legislation.” *Greenwich Hospital v. Gavin*, 265 Conn. 511, 520, 829 A.2d 810 (2003); accord *State v. Banks*, 321 Conn. 821, 841–42, 146 A.3d 1 (2016); see also *FairwindCT, Inc. v. Connecticut Siting Council*, 313 Conn. 669, 685 n.21, 99 A.3d 1038 (2014) (“there is no question that the legislature has the power to enact clarifying legislation”).¹⁵ “[W]e have often held . . . that it is as much within the legislative power as the judicial power—subject, of course, to constitutional limits other than the separation of powers—for the legislature to declare what its intent was in enacting previous legislation.” (Internal quotation marks omitted.) *Greenwich Hospital v. Gavin*, *supra*, 520. Accordingly, as a matter of statutory construction, we need not construe the original statutory language

¹⁵ The plaintiffs cite General Statutes §§ 1-1 (u) and 55-3 for the proposition that newly enacted legislation shall not affect pending litigation or be applied retroactively. These statutes, however, create presumptions against retroactivity and application to pending litigation, not a *per se* bar. *Gil v. Courthouse One*, 239 Conn. 676, 687–89, 687 A.2d 146 (1997); see also *Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 417 n.45, 119 A.3d 462 (2015) (describing § 1-1 [u] as embodying “rule of *presumed* legislative intent” [emphasis added]); *Andersen Consulting, LLP v. Gavin*, 255 Conn. 498, 517, 767 A.2d 692 (2001) (“we have uniformly interpreted § 55-3 as a rule of *presumed* legislative intent that statutes affecting substantive rights shall apply prospectively only” [emphasis altered; internal quotation marks omitted]).

upon finding that subsequent legislation is clarifying in nature. See *id.*, 517 and n.8; see also *Raftopol v. Ramey*, 299 Conn. 681, 685–86 n.7, 12 A.3d 783 (2011).

“To determine whether the legislature enacted a statutory amendment with the intent to clarify existing legislation, we look to various factors, including, but not limited to (1) the amendatory language . . . (2) the declaration of intent, if any, contained in the public act . . . (3) the legislative history . . . and (4) the circumstances surrounding the enactment of the amendment, such as, whether it was enacted in direct response to a judicial decision that the legislature deemed incorrect . . . or passed to resolve a controversy engendered by statutory ambiguity” (Citations omitted; internal quotation marks omitted.) *Middlebury v. Dept. of Environmental Protection*, 283 Conn. 156, 174, 927 A.2d 793 (2007). Not each factor is given equal weight. We have previously observed that the legislature “simplifie[s] our task of determining its intention in adopting [amendatory legislation] by incorporating into the text of the act an explicit statement of the legislature’s intention.” *Greenwich Hospital v. Gavin*, *supra*, 265 Conn. 519.

First and foremost, the legislature enacted express language manifesting its intention to clarify its original intent with respect to the relevant provision. Section 12 of P.A. 14-155 provides in relevant part: “It is the intent of the General Assembly that the amendments made by section 120 of public act 13-247 to subsections (d) and (e) of section 12-391 of the general statutes, as amended by this act, are clarifying in nature and apply to all open estates.” The plaintiffs concede that such expressions of

legislative intent are often taken as conclusive evidence of original legislative intent.

Nevertheless, the plaintiffs rightfully point out that, when the legislature enacted P.A. 13-247, § 120, it made the provision applicable to the estates of decedents dying after January 1, 2013.¹⁶ The plaintiffs argue that the express declaration of intent to clarify should not be given effect because it directly conflicts with the effective date of P.A. 13-247, § 120, and there is no other evidence that the legislature intended that amendment to be clarifying. Contrary to the plaintiffs' claim, the legislative history of P.A. 13-247, § 120, does support the conclusion that the amendatory language was, in fact, clarifying in nature. To be sure, the legislative history is scant, but it points in favor of the defendant. Senator John W. Fonfara, in response to a question from Senator L. Scott Frantz, remarked that the revision to the estate tax statute is "technical and is consistent with how we've always implemented this procedure so it doesn't change the way Connecticut has implemented this provision previously." 56 S. Proc., Pt. 17, 2013 Sess., p. 5459.¹⁷

¹⁶ In a legislative hearing on the relevant provision, the defendant, in testimony before the legislature, described P.A. 14-155, § 12, as "truly technical. It overturns a drafting error, a really, truly drafting error of last session and restores the intention that [the legislature] had in—in the applicability of the estate tax." Conn. Joint Standing Committee Hearings, Finance, Revenue and Bonding, 2014 Sess., p. 153, remarks of Kevin B. Sullivan, Commissioner of Revenue Services. We do not, however, accord this testimony any weight in our determination of whether the amendments are clarifying in nature.

¹⁷ Whether Senator Fonfara's testimony pertained to the amendatory language at issue in the present case is the source of disagreement between the parties. The Office of Legislative

Research, in its bill analysis, described P.A. 13-247, § 120, as follows: “[1] Makes technical changes to how estate taxes are calculated for Connecticut residents who have estate property in other states. This conforms to current Department of Revenue Services. [2] Provides, for both resident and nonresident estates, that the state may calculate and levy the tax to the fullest extent permitted by the [United States] [c]onstitution.” Office of Legislative Research, Bill Analysis for House Bill No. 6706, “An Act Implementing Provisions of the State Budget for the Biennium Ending June 30, 2015 Concerning General Government,” (2013), § 120, available at <https://www.cga.ct.gov/2013/BA/2013HB-06706-R00-BA.htm> (last visited May 4, 2017). The testimony regarding P.A. 13-247, § 120, was limited to two questions. The first question, from Senator Kevin C. Kelly, related to the first point listed in the bill analysis. 56 S. Proc., supra, pp. 5457–58. Senator Fonfara responded that “the section makes a correction that goes back to the decoupling of the state tax from the federal tax and . . . preserves the current tax treatment of real and tangible property, which Connecticut has jurisdiction to tax.” Id., p. 5458. Next, Senator Frantz inquired about the second point listed in the bill analysis as follows: “In the description of that bill, it says it provides for both residents and nonresident estates that the state may calculate and levy the tax to the fullest extent permitted by the [United States] [c]onstitution. May I ask . . . what the fullest extent . . . permitted by the [United States] [c]onstitution is?” Id., p. 5459. We understand the second point in the bill analysis as pertaining to, inter alia, § 12-391 (d) (3). The purpose set forth in the bill analysis was served by amending (d) (3) by substituting the phrase “owned by” with “included in the gross estate of,” and adding the following language: “The state is permitted to calculate the estate tax and levy said tax to the fullest extent permitted by the [c]onstitution of the United States.” P.A. 13-247, § 120. The changes ensured that the state could continue to levy the tax to the greatest extent permitted by the federal constitution, which according to Senator Fonfara is how the state has always implemented the estate tax; 56 S. Proc., supra, p. 5459; without the risk that a court would strictly construe the phrase “owned by” thereby statutorily narrowing the class of intangible personal property in the gross estate upon which the state could levy the tax. Thus, we understand Senator Fonfara’s

We have previously recognized that testimony in which amendatory language is described as technical tends to support the conclusion that the legislature intended the language to be clarifying. See *Greenwich Hospital v. Gavin*, supra, 265 Conn. 523. Additionally, it is not disputed that the claims made by the plaintiffs in the present case, as well as other taxpayers, were the impetus behind P.A. 13-247, § 120. Thus, the amendment “invokes the principle of statutory construction that [i]f the amendment was enacted soon after controversies arose as to the interpretation of the original act, it is logical to regard the amendment as a legislative interpretation of the original act” (Internal quotation marks omitted.) *State v. Blasko*, 202 Conn. 541, 558, 522 A.2d 753 (1987); see also *Caron v. Inland Wetlands & Watercourses Commission*, 222 Conn. 269, 279, 610 A.2d 584 (1992).

Finally, the plaintiffs claim that the plain meaning of the term “owned by” in General Statutes (Rev. to 2009) § 12-391 operated as a substantive limitation on the state’s authority to levy the estate tax on certain property included in the gross estate. Thus, according to the plaintiffs, notwithstanding the legislature’s declaration of intent in P.A. 14-155, § 12, the amendatory language in P.A. 13-247, § 120, broadened the class of intangible personal property subject to the estate tax and, thereby, effected a substantive change to the law that must be applied prospectively. We acknowledge that, at some point, a change in the law is so substantial that, no matter how forcefully the legislature expresses its intent to clarify, the change must be regarded as substantive.

response to Senator Frantz’ question to implicate all changes to § 12-391 (d) (3), including the amendatory language at issue in the present case.

See *State v. Blasko*, supra, 202 Conn. 558 (“[t]he legislature could not, even by extensive protestations of legislative intent, convert an act that is truly curative into one that is effectively clarifying”). Nevertheless, the plaintiffs have failed to persuade us to discount the clear expression of legislative intent in the present case.¹⁸ First, this is not a case in which the legislature “attempt[ed] to clothe a retroactive substantive change in clarifying garb by, for example, attempting to ‘clarify’ the meaning of a statute to mean something different from a court’s repeated and consistent interpretation of the same statute.” *Connecticut National Bank v. Giacomi*, 242 Conn. 17, 44 n.33, 699 A.2d 101 (1997). Furthermore, it is far from clear that the ordinary meaning of “owned by” furnished the proper statutory construction when that language was

¹⁸ The plaintiffs’ claim that the fact that the trial court did not first construe the original statutory language before concluding that the amendatory language was clarifying in nature amounted to an abdication of judicial responsibility resulting in a violation of the plaintiffs’ right to separation of powers is wholly without merit. First, we note that the plaintiffs have failed to fully develop this argument. Specifically, the plaintiffs have failed to cite to a single separation of powers case or to explain how their claims fit into our separation of powers doctrine. We briefly observe that, the trial court, in reaching its conclusion, cited the legislative history of P.A. 13-247, cited the express statement of legislative intent in P.A. 14-155, and noted that the amendatory language did not amount to a substantial change in the law. Resolution of the question of whether amendatory language is clarifying in nature does not first require full statutory construction of the original language or a predicate finding of ambiguity. See *Middlebury v. Dept. of Environmental Protection*, supra, 283 Conn. 174. Rather, courts apply the multifactor test set forth and applied in this opinion. Indeed, the plaintiffs essentially concede this point in their reply brief by citing *Middlebury*. In short, there was nothing improper about the trial court’s analysis of this issue.

operative. A narrow construction of the phrase “owned by” would arguably operate to prevent the state from ever levying the estate tax upon any qualifying life interest—whether the property is included in the gross estate because the decedent held a federally qualifying life interest in a trust under § 12-391 (c) (3) or a state qualifying life interest under § 12-391 (f) (2)—because, as the plaintiffs urge, the surviving spouse did not *own* the trust assets in which he or she enjoyed the life interest. Thus, we reject the plaintiffs’ claim that the amendment effected such a significant change to the law that the only conclusion to be drawn, notwithstanding a declaration of express legislative intent to the contrary, is that the change was substantive. The effective date indicated in P.A. 13-247, § 120, is an outlier among all the evidence that points to the conclusion that the amendatory language was clarifying in nature. Accordingly, we conclude that P.A. 13-247, § 120, is clarifying in nature and, therefore, necessarily applies retroactively to the decedent’s estate in the present case.

The plaintiffs also claim that retroactive application of the amended statute to the estate of the decedent would result in a violation of the due process clause of the fourteenth amendment to the United States constitution. This claim fails because the amendment was not a substantive change to the law. *Connecticut National Bank v. Giacomi*, supra, 242 Conn. 44. “The necessarily retroactive effect of clarifying legislation is not to be confused with the retroactive effect of legislation that changes the law. The former clarifies the substantive provisions to which a person has always been subject. The latter applies substantive provisions to a person heretofore

not subject to those provisions.” *Id.* To the extent that clarifying legislation must satisfy the rational basis test set forth in *United States v. Carlton*, 512 U.S. 26, 30–31, 114 S. Ct. 2018, 129 L. Ed. 2d 22 (1994), because the legislature merely clarified its intent when enacting the Connecticut estate tax, the application of P.A. 13-257, § 120, to the present case clearly satisfies the rational basis test. See *Bhinder v. Sun Co.*, supra, 263 Conn. 374. Accordingly, we reject the plaintiffs’ claim that the retroactive application of the amendment to the decedent’s estate violates due process.

IV

Lastly, we address the issue of whether, at the death of the decedent, a transfer of the assets contained within the QTIP marital deduction trusts occurred such that it was proper to levy the estate tax based on the value of those assets. By its terms, the Connecticut estate tax is a tax “imposed upon the *transfer* of the estate of each person who at the time of death was a resident of this state.” (Emphasis added.) General Statutes § 12-391 (d) (1) (B). The plaintiffs claim that no transfer occurs at the death of a life beneficiary of a QTIP marital deduction trust; rather, a “deemed” or “fictional” transfer occurs in order to collect the tax that was deferred when the actual taxable transfer was made at the death of the first to die spouse. In other words, because Connecticut did not defer imposition of the estate tax upon Everett’s actual transfer of assets into the trusts when he died in Florida, it cannot now properly tax the “fictional” transfer of those assets from the decedent’s estate. As a result, according to the plaintiffs, the imposition of the estate tax on the decedent’s estate in the present case results in an impermissible tax upon an out-of-

state transfer in violation of the due process clause of the fourteenth amendment. The defendant claims that the Connecticut estate tax is properly levied upon the transfer of the QTIP trust assets at the decedent's death. The defendant maintains that a transfer can be characterized by the shift in legal relationships to property occasioned by death, and a tax on such shifts is a proper excise tax within the state's taxing authority. In turn, because the decedent was a domiciliary of the state at her death, the defendant maintains that imposing the tax on this transfer comports with the due process clause. We agree with the defendant.

The underlying basis for the assets of these trusts being included in the decedent's gross estate is that those assets qualified as QTIP under the federal tax code. See part II of this opinion. But in order to be very clear, we set aside the fictions of the QTIP provisions. The defendant seeks to levy the estate tax on certain assets in which the decedent enjoyed a life interest. The issue that we must resolve is whether the defendant may impose the estate tax based on the value of trust assets in which a decedent enjoyed only a life interest.

As an initial matter, it is clear that the legislature intended "transfer" to be construed as broadly as possible. As the discussion in part II of this opinion demonstrates, the legislature intended for all property in the federal gross estate to be included in the state gross estate. See General Statutes § 12-391 (c) (3). Second, as the discussion in part III of this opinion demonstrates, § 12-391 (d) (3), as amended, reveals a clear legislative intent to calculate and levy the estate tax upon all intangible personal property included in the gross estate to the greatest extent permitted by the federal constitution. It would be

illogical for the legislature to have called for the inclusion of QTIP marital deduction trusts in the gross estate of the decedent, but also have intended a narrow definition of “transfer” that would operate to prevent the defendant from levying the tax on the value of such property. Accordingly, “transfer” must be construed to embrace the shifting in relationships to property attendant to the death of a life beneficiary.

The crux of the plaintiffs’ statutory claims in the present case is that the defendant’s construction of the estate tax statute results in the imposition of an unconstitutional tax upon the decedent’s estate. The plaintiffs are correct “that this court has a duty to construe statutes, whenever possible, to avoid constitutional infirmities” (Internal quotation marks omitted.) *State v. Cook*, 287 Conn. 237, 245, 947 A.2d

307, cert. denied, 555 U.S. 970, 129 S. Ct. 464, 172 L. Ed. 2d 328 (2008). “[W]hen called [on] to interpret a statute, we will search for an effective and constitutional construction that reasonably accords with the legislature’s underlying intent.” (Internal quotation marks omitted.) *Id.* Accordingly, we turn to the issue of whether this construction of the estate tax statute is constitutionally infirm.

We first set forth the appropriate standard of review. “With respect to a statutory challenge on constitutional grounds, [a] validly enacted statute carries with it a strong presumption of constitutionality, [and] those who challenge its constitutionality must sustain the heavy burden of proving its unconstitutionality beyond a reasonable doubt. . . . The court will indulge in every presumption in favor of the statute’s

constitutionality. . . . Therefore, [w]hen a question of constitutionality is raised, courts must approach it with caution, examine it with care, and sustain the legislation unless its invalidity is clear. . . . In other words, we will search for an effective and constitutional construction that reasonably accords with the legislature’s underlying intent.” (Citation omitted; internal quotation marks omitted.) *A. Gallo & Co. v. Commissioner of Environmental Protection*, 309 Conn. 810, 822, 73 A.3d 693 (2013), cert. denied, U.S. , 134 S. Ct. 1540, 188 L. Ed. 2d 581 (2014).

The state’s right “to exercise the widest liberty with respect to the imposition of internal taxes always has been recognized in the decisions of [the Supreme Court of the United States].” *Shaffer v. Carter*, 252 U.S. 37, 51, 40 S. Ct. 221, 64 L. Ed. 445 (1920); accord *Allen v. Commissioner of Revenue Services*, supra, 324 Conn. 314–15. The imposition of an estate tax falls within the broad authority of the sovereign to impose an excise tax. See, e.g., *West v. Oklahoma Tax Commission*, 334 U.S. 717, 727, 68 S. Ct. 1223, 92 L. Ed. 1676 (1948); *Whitney v. State Tax Commission of New York*, 309 U.S. 530, 538, 60 S. Ct. 635, 84 L. Ed. 909 (1940); *United States Trust Co. v. Helvering*, 307 U.S. 57, 60, 59 S. Ct. 692, 83 L. Ed. 1104 (1939). “[T]he estate tax as originally devised and constitutionally supported was a tax upon transfers.” *Fernandez v. Wiener*, 326 U.S. 340, 352, 66 S. Ct. 178, 90 L. Ed. 116 (1945); see generally *Knowlton v. Moore*, 178 U.S. 41, 20 S. Ct. 747, 44 L. Ed. 969 (1900). A proper excise or estate tax, however, is levied not only upon literal transfers at death. Rather, any “creation, exercise, acquisition, or relinquishment of any power or legal privilege which is incident to the ownership of property” at the death of the decedent is subject to tax as a

transfer at death. *Fernandez v. Wiener*, supra, 352.¹⁹ In other words, a sovereign may tax the transmutation of legal rights in property occasioned by death. See id., 358 (“[w]e find no basis for the contention that the tax is arbitrary and capricious because it taxes transfers at death and also the shifting at death of particular incidents of property”); see also *United States Trust Co. v. Helvering*, supra, 60 (“[the estate tax] is an excise imposed upon the transfer of or shifting in relationships to property at death”).

In *Fernandez*, the heirs of the decedent challenged, on various federal constitutional grounds, the imposition of the estate tax on the one-half share of marital community property owned by a surviving spouse at the death of the decedent. *Fernandez v. Wiener*, supra, 326 U.S. 346–47. The heirs had argued that, at the decedent’s death, the surviving spouse “acquire[d] no new or different interest in the property” and the death of neither spouse “operate[d] to transfer, relinquish or enlarge any legal or economic interest in the property of the other spouse.” Id., 346. The court rejected the heirs’ claims, noting that, notwithstanding the fact that the surviving spouse’s rights were vested, the surviving spouse was liberated of the burdens of the

¹⁹ The plaintiffs claim that the fact the decedent had an ownership interest in the property was integral to the United States Supreme Court’s analysis in *Fernandez*. Ownership, in the strict sense, was not integral to the analysis. See *Whitney v. State Tax Commission of New York*, supra, 309 U.S. 538 (“the state is not confined to that kind of wealth which was, in colloquial language, ‘owned’ by a decedent before death”). As the court in *Fernandez* makes clear, it is the transmutation of rights related to property, not ownership itself, that is the touchstone of a properly taxable transfer. *Fernandez v. Wiener*, supra, 326 U.S. 352.

decedent's rights over the survivor's share and enjoyed greater rights in the property. *Id.*, 355–56. The court summarized that, “[i]t is enough that death brings about changes in the legal and economic relationships to the property taxed, and the earlier certainty that those changes would occur does not impair the legislative power to recognize them, and to levy a tax on the happening of the event which was their generating source.” *Id.*, 356–57.

We conclude that taxing the assets contained within the QTIP marital deduction trusts upon the death of the decedent in the present case fits comfortably with the general principles set forth in *Fernandez*. The termination of the decedent's beneficial life interest in those assets, and the remainder beneficiaries coming into possession and enjoyment of their successive interests, is a sufficient “shifting at death of particular incidents of property” to properly impose an excise tax. *Id.*, 358.

The plaintiffs' claim that the reasoning of *Coolidge v. Long*, 282 U.S. 582, 51 S. Ct. 306, 75 L. Ed. 562 (1931), compels the conclusion that a properly taxable transfer of property does not occur when, at the death of the decedent, the decedent's life interest in the property terminates. In that case, before the operative state succession tax law took effect, the decedent executed a trust declaration reserving for herself and her spouse life interests in certain property with remainders to take effect in possession upon the death of the surviving spouse. *Id.*, 593–94. The operative statute in that case subjected to a tax “[a]ll property . . . which shall pass by . . . deed, grant or gift . . . made or intended to take effect in possession or enjoyment after [the grantor's] death. . . .” (Internal quotation marks omitted.) *Id.*, 595.

The United States Supreme Court rebuffed the Massachusetts Supreme Judicial Court's conclusion that the death of the survivor of the settlors of the trust was a "taxable commodity under the statute enacted after the creation of the trust," and held that the tax was an unconstitutional retroactive tax under the due process clause of the fourteenth amendment and the contract clause. *Id.*, 595–99. The court reasoned that the grant of the remainder to each of the beneficiaries was "a grant in praesenti," to be enjoyed at the death of the surviving spouse. *Id.*, 597. The court stated that the provision of income for the life of the settlors "did not operate to postpone the vesting in the sons of the right of possession or enjoyment," and the trustees were bound to turn over the property at the death of the survivor. *Id.* Thus, the decedent's death was not the "generating source of any right in the remaindermen. . . . There was no transmission then." (Citation omitted.) *Id.*, 597–98. "The succession, when the time came, did not depend upon any permission or grant of the [c]ommonwealth." *Id.*, 598. The reasoning of that case does not, however, alter our conclusion in the present case.

First, the United States Supreme Court has sharply criticized cases that, like *Coolidge v. Long*, *supra*, 282 U.S. 598, were "decided during an era characterized by exacting review of economic legislation under an approach that 'has long since been discarded.'" *United States v. Carlton*, *supra*, 512 U.S. 34, quoting *Ferguson v. Skrupa*, 372 U.S. 726, 730, 83 S. Ct. 1028, 10 L. Ed. 2d 93 (1963). In fact, in *Carlton*, the United States Supreme Court specifically referred to *Nichols v. Coolidge*, 274 U.S. 531, 47 S. Ct. 710, 71 L. Ed. 1184 (1927), in its criticism of case law from that era. That case

involved application of the federal estate tax to the very same trust at issue in *Coolidge v. Long*, supra, 582. The court's conclusion in *Coolidge v. Long*, supra, 597–98, hinged on the fact that the trust deed was a present grant that resulted in “vested” rights in the beneficiaries. Vested rights no longer form the touchstone of the analysis of economic regulation. See *Honeywell, Inc. v. Minnesota Life & Health Ins. Guaranty Assn.*, 110 F.3d 547, 554 (8th Cir. 1997) (noting that law had “drift[ed] away from the *Lochner* [v. *New York*, 198 U.S. 45, 25 S. Ct. 539, 49 L. Ed. 937 (1905)] era's strict protection of economic freedom and vested rights”). The court in *Fernandez* clearly subordinated the fact that the surviving spouse's rights were vested to the practical legal and economic shift occasioned by the decedent. *Fernandez v. Wiener*, supra, 326 U.S. 356.²⁰

It is clear from the reasoning in *Fernandez* that the court embraced a broader concept of transfer than when the court considered *Coolidge v. Long*, supra, 282 U.S. 582. The court in *Coolidge v. Long*, supra, 597, reasoned that the death of the settlor was not the “generating source of any right in the remaindermen.” In *Fernandez v. Wiener*, supra, 326 U.S. 356–57, the court took a more practical approach and looked not to whether death was the generating source of “rights,” but rather whether death was the generating source of “changes in the legal and economic relationships to the property taxed” This more encompassing language employed by the court reflects its embrace of an

²⁰ The relative importance the court in *Fernandez* placed on the fact that the surviving spouse's property rights in that case were vested is revealed by the fact the court, in a seemingly scoffing manner, placed the word vested in quotation marks. *Fernandez v. Wiener*, supra, 326 U.S. 356.

evaluation of the practical economic and legal shifts occasioned by death rather than a reliance of formalistic property law distinctions in determining whether a properly taxable transfer has occurred.

To the extent the reasoning of *Coolidge v. Long*, supra, 282 U.S. 582, survives, the case can be distinguished by the type of tax at issue. In that case, the statute imposed a tax on a grant in trust to take effect at the death of the settlor or the settlor's surviving spouse. See *id.*, 595–96. Put more simply, the statute, by its terms, taxed the transfer in trust of the property. In the present case, the statute does not purport to tax the transfer of assets from Everett; rather, the statute taxes property in which the decedent had a federally qualifying life interest. See 26 U.S.C. § 2044 (a); General Statutes § 12-391 (c) (3). The tax in the present case is directly targeting the changes in legal and economic relationships to the property, not a prior transfer.

Finally, *Coolidge v. Long*, supra, 282 U.S. 582, was decided long before the evolution of state and federal tax schemes that employ complex fictions designed to effectuate certain public policy—such as treating a married couple as a single economic unit—while ensuring that such tax schemes do not form apertures through which it would be possible to avoid taxation. In order to effectuate social and economic policy, legislators have crafted ever more complex tax laws than those that simply tax the transfer of title to property at death. For example, one court described the concept of QTIP as one that had been invented by Congress “[o]ut of thin air and from whole cloth,” noting that “[i]f unlimiting the [m]arital [d]eduction was a flight into the wild blue yonder, Congress truly slipped the surly bonds of earth with the advent of QTIP.” (Footnote omitted;

internal quotation marks omitted.) *Estate of Clayton v. Commissioner of Internal Revenue*, supra, 976 F.2d 1493. Connecticut, too, seeks to impose the estate tax when federally qualified terminable interest property leaves the marital unit, irrespective of whether this state, another state, or no state deducted the value of that property from the taxable estate of the first to die spouse. “Nothing can be less helpful than for courts to go beyond the *extremely limited restrictions* that the [c]onstitution places upon the states and to inject themselves in a merely negative way into the delicate processes of fiscal [policymaking]. We must be on guard against imprisoning the taxing power of the states within formulas that are not compelled by the [c]onstitution” (Emphasis added.)

Wisconsin v. J. C. Penney Co., 311 U.S. 435, 445, 61 S. Ct. 246, 85 L. Ed. 267 (1940). “The [c]onstitution is not a formulary. It does not demand of states strict observance of rigid categories nor precision of technical phrasing in their exercise of the most basic power of government, that of taxation.” *Id.*, 444. In sum, we would conclude that *Coolidge v. Long*, supra, 582, does not foreclose the defendant from taxing the assets within the QTIP marital deduction trusts at issue in the estate of the decedent as a transfer.

The plaintiffs’ claim that the tax in the present case violates the fourteenth amendment as a tax on out-of-state property is also unavailing. It is well settled that “[t]he due process clause denies to the state power to tax or regulate the [entity’s] property and activities elsewhere.” (Internal quotation marks omitted.) *Allen v. Commissioner of Revenue Services*, supra, 324 Conn. 315. With respect to the transfer of real and tangible personal property, the

constitutional rule is simple—namely, the state in which the property has an actual situs has the exclusive jurisdiction to levy a tax. *Treichler v. Wisconsin*, 338 U.S. 251, 256–57, 70 S. Ct. 1, 94 L. Ed. 37 (1949); *Frick v. Pennsylvania*, 268 U.S. 473, 487–88, 45 S. Ct. 603, 69 L. Ed. 1058 (1925). The plaintiffs’ claim that the rule in those cases as applied to the trusts in the present case stretches the rule too far.

Unlike real and personal property, intangible personal property is characterized by “legal relationships between persons and which in fact have no geographical location” *Graves v. Schmidlapp*, 315 U.S. 657, 660, 62 S. Ct. 870, 86 L. Ed. 1097 (1942). For this reason, “intangibles themselves have no real situs” *Greenough v. Tax Assessors of Newport*, 331 U.S. 486, 493, 67 S. Ct. 1400, 91 L. Ed. 1621 (1947). Accordingly, the rule of situs is not controlling with respect to the issue of jurisdiction to levy the estate tax upon intangible personal property. *Curry v. McCanless*, 307 U.S. 357, 369–70, 59 S. Ct. 900, 83 L. Ed. 1339 (1939). The proper inquiry with respect to the jurisdiction to levy the estate tax on intangibles is whether “by the practical operation of a tax the state has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly, civilized society.” (Internal quotation marks omitted.) *State Tax Commission of Utah v. Aldrich*, 316 U.S. 174, 178–79, 62 S. Ct. 1008, 86 L. Ed. 1358 (1942), quoting *Wisconsin v. J. C. Penney Co.*, supra, 311 U.S. 444. The state’s authority to impose a tax is at its apogee with respect to a domiciliary. “From the beginning of our constitutional system control over the person at the place of his domicile and his duty

there, common to all citizens, to contribute to the support of government have been deemed to afford an adequate constitutional basis for imposing on him a tax on the use and enjoyment of rights in intangibles measured by their value.” *Curry v. McCanless*, *supra*, 366.

Under these principles, we conclude that Connecticut did not lack jurisdiction to tax the transfer of the assets contained within the QTIP marital deduction trust as part of the decedent’s estate. The decedent was a domiciliary of this state at the time of her death. She enjoyed all of the benefits of the state attendant to residence therein. During that time, she enjoyed the economic benefits of her beneficial life interest in the trusts. This nexus is sufficient for due process.²¹ Accordingly, we conclude that the imposition of the estate tax on the transfer of the assets contained within relevant trusts did not violate due process.

To summarize, we conclude that the trial court properly rendered summary judgment in favor of the defendant because the defendant properly included the value of the assets contained within the QTIP marital deduction trusts in the decedent’s gross estate and levied the estate tax thereupon in accordance with § 12-391 without violating due process.

The judgment is affirmed.

In this opinion the other justices concurred.

²¹ We also note that, at her death, the decedent also served as trustee of the QTIP marital deduction trusts. In addition, as noted previously in this opinion, she held a limited testamentary power of appointment over the trust property.

APPENDIX 51

COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD
Docket No. 327773

M. CHRISTINE SHAFFER,
As Executrix of the Estate
Of Adelaide P. Chuckrow,
Appellant,

v.

COMMISSIONER OF REVENUE,
Appellee.

APPELLANT'S SUPPLEMENTAL BRIEF

I. Introduction

At oral argument, reference by both the Appellant and Appellee was made to the pending Connecticut case of Estate of Brooks v. Sullivan, 325 Conn. 705 (2017), which involved similar facts and questions of law in the instant case. At that time, the case had been argued before the Supreme Court of Connecticut on December 5, 2016, but no decision had been issued at the time of the hearing. On May 23, 2017, the Supreme Court of Connecticut issued its decision and a copy of the decision was submitted to the Board on May 24, 2017. In summary, the Brooks case held that, based on the facts and applicable Connecticut statutes and case law, the

She exercised the power in her will, which was probated in Connecticut, to appoint certain property in one of the trusts.

Connecticut Department of Revenue Services had the authority to impose an estate tax on a so-called QTIP trust established for a Connecticut decedent by her predeceased spouse who was resident of another jurisdiction at the time of the predeceased spouse's passing. Estate of Brooks v. Sullivan, 325 Conn. 705 (2017). In connection with the issuance of that decision, the Appellant filed a Motion for Leave to File Supplemental Brief to address the issues raised in the Brooks decision on July 11, 2017, which the Board allowed. This Supplemental Brief is submitted to outline the facts of the Brooks case and identify the distinguishing factor – namely the significant difference in the Massachusetts and Connecticut definitions of "gross estate" - which requires this Board to reach the opposite result concluded by the Supreme Court of Connecticut in the Brooks-decision. Because of these differences, the decision in Brooks is irrelevant to the controversy in this case. Ostensibly, the facts are similar but because Connecticut law differs in so many respects from the applicable Massachusetts statutes, the case is irrelevant.

II. Factual Background

The Appellant briefly restates the facts for the convenience of the Board:

Robert Chuckrow and Adelaide Chuckrow were a married couple living in New York. SAF ¶17-18. Robert died on July 11, 1993. SAF ¶18. His will established a QTIP trust and his executrix made a federal QTIP election. SAF ¶¶ 18-20. This QTIP trust under Robert's will was funded with \$844,101.27. SAF ¶123.

Following Robert's death, Adelaide moved to Massachusetts. She died on August 14, 2011, while

living in Williamstown, Massachusetts. SAF ¶ 1. At the time of Adelaide's death, she had a total federal gross estate of \$15,633,617. SAF ¶ 14. This amount included the assets held in the QTIP trust under Robert's will, the value of which was \$13,251,469. SAF ¶14.

Adelaide reported a Massachusetts gross estate of \$2,382,148 (which is the difference between the federal gross estate and the amount attributable to QTIP trust property). SAF ¶ 13, 15. Adelaide's estate paid \$100,997 in Massachusetts estate taxes. SAF ¶ 2. The Commissioner selected Adelaide's estate for audit, and asserted that the estate owed taxes on the QTIP property. SAF ¶ 13. Adelaide's estate paid the additional tax assessed by the Commissioner plus the accrued interest, a total of \$1,953,032, and began the abatement process. SAF ¶ 5, 6.

III. Analysis

Estate of Brooks v. Sullivan is a case which involved a Florida resident who died and established what was essentially a "QTIP" trust, meaning all income is payable to the surviving spouse for life and principal is payable to the spouse in the trustee's discretion. See generally, Estate of Brooks v. Sullivan, 325 Conn. 705 (2017). In Brooks; the surviving spouse was a co-trustee with an independent trustee and also had a so-called limited power of appointment. Id. At the time of her death, the surviving spouse had relocated from Florida to Connecticut where she died. Id.

In the decision the Supreme Court of Connecticut upheld the Department and Trial Court's determination that the QTIP trusts established by a predeceased spouse residing in

Florida at his death for the surviving spouse were includable in the surviving spouse's estate for Connecticut estate tax purposes. Id. In reaching its decision, the Supreme Court of Connecticut rested its ruling primarily on the interpretation of the definition of the Connecticut gross estate.²² In this regard, the Brooks decision is not relevant to the instant case as the statutory language in Connecticut does not mirror the Massachusetts statutory language.

Specifically, Conn. Gen. Stat. § 12-391 defines the gross estate as "the gross estate, for federal estate tax purposes." There are no elaboration and there are exceptions or adjustments - unlike Massachusetts. The Court interpreted the plain meaning of this definition to mean that all assets includable in the federal gross estate for estate tax purposes are included in the Connecticut gross estate.

Conversely, the definition of the Massachusetts gross estate is much more nuanced. The Massachusetts statute, M. G. L. ch. 65C §1(f) (emphasis added) provides:

"Massachusetts gross estate', the federal gross estate, whether or not a federal estate tax return is required to be filed, plus the

²² A significant portion of the decision addressed the question of whether an amendment to the Connecticut statute that changed the requirement that the property subject to the estate tax must be owned by the decedent to simply stating that it would need to be includible in the gross estate, was a substantive change or a clarifying change. No such analysis is needed in this case and therefore the finding by the Connecticut Supreme Court that the change was clarifying in nature rather than substantive and therefore could be applied retroactively, has no application in this case.

value of any property (i) in which the decedent had at death a qualifying income interest for life described in subsection (c) of section three A, or to the extent of any such interest therein of which the decedent has at any time made a transfer, by trust or otherwise, under any circumstances which would require the property to be included in the gross estate under the provisions of this chapter and (ii) for which a deduction was allowed for Massachusetts estate tax purposes with respect to the transfer of such property to the decedent; and less the value of real and tangible personal property having an actual situs outside the commonwealth. *The Massachusetts gross estate shall not include the value of any property in which the decedent had a qualifying income interest for life which is not otherwise includible in the Massachusetts gross estate under the first sentence of this paragraph, notwithstanding the right of the executor of the decedent's estate to recover federal or Massachusetts estate taxes from such property. "*

Unlike the Connecticut statute, which makes no distinction between QTIP trusts for which a state QTIP election was allowed, the Massachusetts statute specifically contemplates separate QTIP elections and recognizes that if a Massachusetts QTIP election was not elected for Massachusetts purposes under M.G.L. ch. 65C § 3A, the interest is not included in the definition of the Massachusetts gross estate. This final sentence functions to remove from the calculation of the Massachusetts gross estate the value of any property for which a federal QTIP election was made but for which no

Massachusetts QTIP election was made pursuant to § 3A. At oral argument, the Commissioner conceded that this was the correct interpretation of § 1(f), but argued that § 1 (f) was inapplicable to the estate tax as computed under § 2A. However, for the reasons stated in the Appellant's Reply Brief, § 1(f) is applicable. The statute could not be clearer and if and to the extent the statute is ambiguous, any ambiguity must be resolved in favor of the taxpayer.

Because of this key difference between the Massachusetts and Connecticut statutes defining the state's gross estate for estate tax purposes, the Brooks decision does not support the assertions of the Department of Revenue that the QTIP trust in the instant case is subject to Massachusetts estate tax. Rather, the distinction only further emphasizes the fact that, at least in Massachusetts, the statute requires that a state QTIP election have been made on the death of the first spouse to die in order for a QTIP trust to be included in the estate of the surviving spouse.

The Connecticut case also concludes that, notwithstanding the fact that the imposition of an estate tax requires the transfer of property, somehow the termination of the QTIP trust upon the death of the surviving spouse represented a taxable transfer. This, of course, is not and cannot be the case. The only reason QTIP property is includible in the estate of the decedent's spouse is by virtue of the artificial marital deduction allowed pursuant to I.R.C. § 2056(b)(7) and the corresponding I.R.C. § 2044, which requires inclusion to the extent that a QTIP election was made on the first death. It should be noted that the symmetry here is only fair in that, if a deduction is allowed on the first death, then

estate taxes are deferred and should be imposed on the death of the survivor.

The Commonwealth in this case disregards this fundamental rule inasmuch as no QTIP election was made for Massachusetts on the first death, no such amount should be includible in the estate of the surviving spouse. There are a number of cases from other jurisdictions that conclude that the mere termination of a life interest is not a sufficient transfer upon which to impose an estate tax. See e.g., In re Estate of Bracken, 175 Wash. 2d 549 (2012).

In the Brooks case, it should also be noted that the surviving spouse was a co-trustee and, in fact, had a limited power of appointment. In this case, the surviving spouse was not even a trustee and therefore had no control whatsoever over the distribution of principal and did not have any limited power of appointment so had no ability to direct the disposition of funds in the QTIP trust upon her death.

For these reasons, the Connecticut finding that the termination of the QTIP beneficiary was somehow a transfer is inapplicable in Massachusetts. This concept is embodied in the very first provisions of the Internal Revenue Code and Regulations thereunder relating to the concept of estate taxes, as noted in footnotes 7 and 9 of Appellant's Brief.

IV. Conclusion

The Brooks decision is not relevant to the instant case. The Brooks decision is based on Connecticut's estate tax statute which, in relevant and key part, differs from the Massachusetts estate

tax statute. Since Massachusetts, unlike Connecticut, specifically provides in defining the gross estate for state estate tax purposes that QTIP trusts for which no Massachusetts QTIP election was made is not included in the Massachusetts gross estate, the decision reached by the Supreme Court of Connecticut in the Brooks case is immaterial to the instant case. Further, the Supreme Court's analysis of the issue of a transfer of the assets is inconsistent with applicable Internal Revenue Code sections and regulations, and therefore is not relevant to the facts at hand in this case.

The Appellant maintains that it should be successful under both the constitutional argument, which is presented in its principal brief, and the statutory argument, which is argued here and in the principal brief and that the Brooks decision has no bearing on the result which should be reached in this case. The Appellate Tax Board should order that the Commonwealth refund the entire \$1,953,032 to the Estate of Adelaide Chuckrow.

Respectfully Submitted,
The Appellant,
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Certificate of Service

I, Luke C. Bean, hereby certify that on this __ day of August, 2017, I caused a true copy of the within document to be served by hand on the following attorney of record:

John J. Connors, Jr., Esq.
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Department of Revenue
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/s/ Luke C. Bean
Luke C. Bean

APPENDIX 52

Department of
Taxation and Finance

Technical Memorandum
TSB-M-19(1)E
Estate Tax

November 20, 2019

Summary of Estate Tax Legislation Enacted in 2019

New York qualified terminable interest property (QTIP) election

The Tax Law now requires a New York QTIP election to be made directly on a New York estate tax return for decedents dying on or after April 1, 2019. Any election made under this subsection is irrevocable.

In addition, the value of any QTIP for which a New York marital deduction was previously allowed must be included in the surviving spouse's New York gross estate, whether the QTIP election was made on the transferring spouse's New York estate tax return or on a federal **pro forma** return if an actual federal return was not otherwise required.

[Part F of Chapter 59 of the Laws of 2019; Tax Law §§ 954(a)(4) and 955(c)]

Gift addback

The requirement to add back taxable gifts has been extended to apply to estates of decedents who died on or after January 16, 2019 and before January 1, 2026. This addback requirement applies to any taxable gift under Internal Revenue Code (IRC) § 2503 that was made during the preceding three-year period ending on the decedent's date of death and that is not already included in the decedent's federal gross estate, except any gift made:

- when the decedent was not a resident of New York State;
- before April 1, 2014;
- between January 1, 2019 and January 15, 2019; or
- that is real or tangible personal property located outside New York State at the time the gift was made.

[Part F of Chapter 59 of the Laws of 2019; Tax Law § 954(a)(3)]

Relief provisions regarding the disposition of estates to surviving spouses who are not U.S. citizens

The relief provisions for the disposition of an estate when the surviving spouse is not a U.S. citizen were extended and are now scheduled to expire on July 1, 2022. The relief provisions are described in TSB-M-14(5)M, *2013 Legislation Amending the New York State Estate Tax*.

[Chapter 89 of the Laws of 2019]

Note: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.