Chapter Objectives

- Explain the concept of gift splitting by spouses
- Understand the operation of the gift tax annual exclusion
- Describe the kinds of transfers that qualify for the gift and estate tax marital deduction
- Define and distinguish the applicable credit amount and the applicable exemption amount for gift and estate tax purposes
- Discuss the income tax ramifications of gratuitous transfers

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Gift Tax Exclusions

Two major exclusion categories:

1. Annual gift: $17,000 per year per donee (as of 2023)*
   *remains at $17,000 per donee in 2023

2. Educational and Medical Expenses Exclusion

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Split Gift

- A gift tax technique allowing spouses to use two annual exclusions per donee by treating all gifts during a calendar year as coming from both spouses.

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Marital Deduction

- Six basic requirements to qualify for the marital deduction:
  - The deceased spouse must have been a United States citizen or resident at the time of death.
  - The deceased spouse must actually be survived by a surviving spouse.
  - The surviving spouse must be a citizen of the United States.

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Marital Deduction

- Six basic requirements to qualify for the marital deduction (continued):
  - The deceased spouse's gross estate must include the property.
  - The interest must pass from the deceased spouse to the surviving spouse, such as by will, through intestacy, or via a nonprobate transfer
  - The interest cannot be a nondeductible terminable interest.

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Q-TIP Property

- **Qualified terminable interest property**: property that qualifies for the gift and estate tax marital deduction even though the interest is terminable

[One technique to provide for spouse without permanent transfer. Next 2 slides show others]

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Bypass Trust

- A trust used to provide a surviving spouse with rights in a decedent's property without causing the property to qualify for the marital deduction; the trust bypasses the spouse's estate and qualifies for the decedent's applicable credit amount; also called credit shelter trust and B trust.

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Remainder Interest to Charity

- **Charitable remainder annuity trust (CRAT):** a trust paying a fixed sum per year to a noncharitable beneficiary for life, with a remainder to a charitable beneficiary.
- **Charitable remainder unitrust (CRUT):** a trust paying a fixed percentage of the value of trust property per year to a noncharitable beneficiary for life, with a remainder to a charitable beneficiary.
- **Pooled income fund:** a fund administered by a charitable beneficiary that pays each donor of property, for life, a rate of return on the value of the donor's gift equal to the rate of return earned on the fund, with a remainder to the charitable beneficiary.

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Portability

- The ability of a deceased spouse's executor to transfer the unused portion of the deceased spouse's applicable exclusion amount to the surviving spouse

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DSUE

- **Deceased spouse unused exemption**: the unused portion of the deceased spouse's applicable exclusion amount, which may be transferred to the surviving spouse

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Basis

- Generally, the adjusted purchase price of property used for computing income tax capital gains and losses.
  - **Carry-over basis**: for purposes of capital gains and losses, the basis of property received by the donee of an inter vivos gift is the same as it was in the hands of the donor.
  - **Stepped-up basis**: the tax law rule that, for purposes of capital gains and losses, the basis of property acquired from a decedent is the value of the property on the date of the decedent's death or on the alternate valuation date.

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Paralegal's Role in some of this Tax Stuff

- Locate and determine values of property and property interests
- Create itemized listing of property by type (conform to form 706 schedules)
- Create listing of properties passing under marital deduction
- Create listing of properties qualifying for charitable exclusion
- Gather information and create charts of deductible debts
- Help in entering data into 709 (gift tax returns) or 706 (estate tax returns)

Paralegal can also train in the actual preparation of tax returns and greatly increase their value to an estate and trust practice.

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