Unedited transcript of

Estate, Gift, and GST Tax Planning (continued)

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Speaker(s)

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>>: So we are going to finish up our discussion about GST planning and then move along to portability and gift tax to finish it up. So stick with me. I know this is a lot of heavy material, but super, super important. Please continue to go ahead and ask questions as you think of them, and I know we're going to have plenty of time at the end of this, too, because we just have an ethics hypothetical to go through at the end. We'll have plenty of time for questions, as well, on this, and any other material that you can think of that you have questions over the last few days. So let's take a look at this little slide here. So again, same flow chart that we looked at before, right, but we've added some boxes. So if we are doing revocable trust planning for our clients, again, so this isn't a chart that's showing what happens if we create an irrevocable gifting trust for the benefit of grandchildren, this is clients doing their regular AB revocable trust, but they would like it to continue on for the benefit of grandchildren, right, so it needs GST carve-out provisions and it needs to be drafted to be designed to carry on in that way. So kind of like what we used to call dynasty trust planning, and of course we have a rule against perpetuities in Massachusetts. Some states have done away with it, but you all know from law school that trusts, aside from charitable trusts, cannot continue on in perpetuity, so they must end at some point. So while we do design these generation-skipping trusts to go on past that first generation below the grantors, all good things must come to an end, and so when those distributions or terminations happen, we want to be mindful of trying to mitigate GST exposure, which sometimes can catch people off guard because the trusts may have been in place for so long that they're not thinking about a GST consequence, or if you are administering that trust as

the trustee, you need to be mindful of that, and sometimes you're going back to see, oh, was GST ever allocated to this trust, do I need proof of that. Yes, you do. All of those kinds of things. So our little chart here, again, just a nice visual to sort of show the clients how it's going to work. It's all going to function the same as in the other chart, but then ultimately when the -- when it breaks down for the issue of the decedents, they're going to carve out exempt and non-exempt pieces. So if they have all of their exemptions left, it's all going to be exempt, perhaps they don't have all of their exemption left or they have no exemption left, in which case it would be non-exempt. And then you're going to sometimes tweak the provisions of those particular trusts. So if you're working with a client or you're serving as a trustee or you're counseling someone that's serving as trustee and they're administering a trust, and you see in the title GST exempt portion, something like that, you're going to be hopeful that it is indeed GST exempt, and that allocation was exemption was allocated to that. But you always want confirmation of that, particularly before you make any distributions ultimately before the trust terminates. Okay. So leaving our friend GST, or sometimes not our friend, but even if we don't like it, we still need to know about it, and it's still going to be a part of our practice, so feel free any additional questions that pop to your mind. Don't hesitate to put those in the chat as we go along. But we will move ahead now to portability. So portability is another relative newcomer to the estate planning block. You know, I say that -- it was enacted in 2010, which I realize was 11 and a half years ago, but it seems like it was just yesterday. And 2010 was kind of a crazy year for estate tax law in general, right, because we had one year without an estate tax and then we had a change in exemption amount. So that is something we all never thought would have happened, and it did, so that is also when I stopped predicting what I thought was going to happen with legislation. But it also was the year that George Steinbrenner died, so his estate had to pick whether they wanted to pay an estate tax or pay cap gains. And I honestly can't remember what they decided. But it was also part of all of that legislation that portability was born. It was not a wholly new concept. It was introduced originally back in 1988, so I've just got a GST question coming in, and is it an issue only if your gross estate is 11.7. No. And that's a question you're going to get from clients, too, because they always sort of mix all these things up because all of these transfer taxes are kind of mixed together and the

numbers are the same. But they're separate. So even if you don't have 11.7 million dollars worth of assets, if your client is thinking about making gifts to a skip person, if they are making a gift more than $15,000 to that skip person, they're going to utilize some of that 11.7 of GST exemption. So even if they have a million dollar estate, if they're making gifts to a skip person, they're going to need to report that and allocate some of their exemption, and they're going to do that either if they're making those transfers during their life, they're going to do it on a gift tax return, and if they're doing it at their death, they're going to do that on an estate tax return. That's actually a good question because sometimes you don't have a federal filing requirement, although we're going to talk about with portability, basically you should always file a federal return if they have a Mass taxable estate for portability purposes. But sometimes you have to file a federal 706 simply to make a GST exemption, even if there's no liability. So maybe they have a $2 million estate or maybe they don't have a taxable estate at all, but if they're making a bequest to a grandchild in their estate plan at death, you have to allocate GST. So you have to file a 706 to do that. So sometimes a client may be not thinking at all, like I have any estate tax return filing requirements, but they may because they may just have a Massachusetts return then to do. We're probably going to want to file a federal return for portability purposes, and that will make sense in a couple of minutes, or we may just need to file a 706 to make an allocation of GST. So good question. Back to portability. So first introduced in 1988 but not enacted into law until 2010. So what this does is it allows the surviving spouse to apply the amount received from the estate of his or her less deceased's spouse, the DSUE, against any tax liability arising from subsequent lifetime gifts made by that surviving spouse and transfers at death of their surviving spouse. Okay, so now follow-up question to that, allocate to where. So if you don't have a gross estate of 11.7, if someone passes away and there's a transfer that happens in the course of the estate administration to a skip person, you would allocate GST to that gift on a federal 706 so that GST transfer tax does not apply to the bequest or to the transfer to that skip person at death. So that happens at death, it would happen on a 706. If it's during a lifetime, you're going to allocate the GST on a 709. Okay, so the DSUE is basically the unused exemption amount. So the concept here is my husband passed away, and he only used a million dollars of his exemption. So there is this year 10.7 left. So

that unused exemption I can then port to me and add that on to my exemption. You know, some clients will say, I don't need to worry about this, I'm never going to have that much in assets. But if client has the likelihood of great appreciation in their estate or it's a fairly young -- someone passes away young, it's always good sense because -- and also it allows you to utilize this unused exemption during lifetime, and then if you don't use it during lifetime, at death. So why would you give away the opportunity to use free exemption amount? You wouldn't. But this is the discussion you need to have with your clients. It's not automatic. So if spouse passes and they had that unused exemption, you don't automatically get it. The only way the surviving spouse gets that unused exemption is by filing a federal form 706. Even for a non-taxable estate. So that's why I was just saying, most of the time, 99 percent of the time, even if they only have a Mass taxable estate, you're going to be filing a federal tax return, if it's their surviving spouse, to a portability election, and that is the only way that you can make the election, and it has to be timely. So you can't decide six years later, geez, I should have made that election. Nope, it has to be timely. So within nine months, so 706s as a general rule are due nine months from the date of death for both Mass and federal purposes. You can get a six-month extension, but beyond that, you're not going to be able to make a portability election if it's late. There was a little loosey-goosey amount of wiggle room when this was first enacted into law because it was this wholly new concept and people didn't know sort of -- they basically said, we'll file a shell of a federal estate tax return just to figure it out, and no one wants to file just a shell of a federal estate tax return, even if there is no tax liability, because that makes very little sense. Harkening back to my statement that you don't want to file anything with the IRS that you're not 100 percent comfortable is accurate. So there was some wiggle room there after this was enacted which did allow sort of late filings. Not the case anymore. So for those 706s filed only to make an election, and again, it's because that language that you must estimate the value of the assets in good faith and with due diligence, so I personally would never file a 706 where I am estimating the value of anything. You want to have all of those, that information. And the reason for that is it could always be looked at within the statute. So you don't want to file something and have it come back to bite either that decedent's estate or the estate of their surviving spouse. So you want to file a legit return.

You're pretty much always going to make this election because it makes good sense. Your clients are going to fight with you about it because they're going to say, I don't want to have the additional expense of you preparing a federal estate tax return for me when one is not required, and to that you will say, I actually have to prepare a federal estate tax return in order to prepare your Massachusetts estate tax return, which is true. Your software is largely going to do that for you. But it is true, right. And that goes back to me referencing the IRS regulations is how we figure out how much tax we owe in Massachusetts. So when you submit an M706, you are submitting attached to that a federal 706. So it's an old version of it because it's calculated based on that 2000 amount, but the work is already in there. So in order to press the button basically and have a 2021 706 generated is really not that much more work, and you're going to benefit the client by giving this additional exemption amount, and you're going to say it's basically a freebie, right, it gives you more say -- say they use all of their exemption during their lifetime to make lifetime gifts. Great, you just got this gift from your spouse which allows you to do perhaps more gifting or some more flexibility to have exemptions available at death. So you're always going to want to file that 706. If the client says no, I don't want you to spend the extra money, I don't want you to spend the extra time to do it, pay for your file, because their kids will come back when they pass away and say, why didn't you make a portability election for my mom, we would have avoided all of this expense that we have. So it makes good sense. And then, so just like a -- we have the issues with the non-spouses, we just need to be careful with non-resident surviving spouses, who is not a U.S. citizen, can't take the DSUE, so need to be mindful of that. But if there is a QDOT involved, they may be able to take some advantage. But again, always have to be mindful that if you're working with couples whose spouses are non-citizens, and even if they're resident green card holders, there are different rules that apply for citizens versus non-citizens and different rules that apply for non-citizens that are green card holders. So not for the faint of heart there in all regards. So there is this other sort of -- it's kind of funny, actually. So when portability came on the scene, we all got excited because it gave our clients -- so no. We just got a question about portability for Mass purposes, and there is no portability for Massachusetts purposes. This is federal only. So we all get super excited because it gave us this extra exemption amount, and quite frankly it

afforded a lot of additional planning opportunities, particularly in the gifting space, where maybe we wanted to make some more transfers, and now we have this extra exemption, and now surviving spouses could do that. But then there was this concept of, well, what if this person is like a serial monogamous -- they keep getting married. Their spouse dies and they remarry and they remarry and they remarry and they're going to amass all of these DSUEs and they're going to have all this exemption waiting around and they can gift the world. So they put some limits in there that basically give us a timeline of when that surviving spouse needs to use that so that they can't just amass these huge amounts of DSUE over time. A portability election is irrevocable. Why you would want to revoke that, I'm not sure. I can't think of one good reason why. But once that election is made, which is again made by filing a 706, it's irrevocable. And we just noted that there's no portability for Mass purposes. But GST exemption is not portable, either. So this is only for the estate tax exemption, gifting estate tax, because I'll talk about the same in a couple minutes but really they're the same. GST, no, so that's a totally separate exemption. If the decedent didn't use all of their GST exemption during their life time, they cannot port that over to their surviving spouse. And for gift tax purposes, like I was just noting, this could be advantageous because you're getting this unused exemption amount, so you can use it during your lifetime, or you can use it at death. So it could afford that surviving spouse a lot more planning potential because they could have this gift of exemption they didn't have more, but they can make gifts. Years ago when we had super low exemption amounts and clients would use those during lifetimes, and then over time we had this gradual increase of exemption amounts, so every year we'd do a little more gifting with that additional amount of exemption that they were afforded that particular year, this is like a gift of, great, I've used all my exemption, now I get $5 million worth of exemption to play with, so now I'm going to make some more gifts. So also can be a planning opportunity, which again is why you're never going to say to your client, no, you don't need to make this election. You're always going to tell them that they should. When portability came on the scene and we had larger exemption amounts that were introduced, a lot of folks said, I don't need to do any planning. I don't need a credit shelter trust, a revocable trust, because whatever I don't use, I'm just going to give to my spouse, and so if I didn't use the exemption, she can use it. We're not going to

have all of this estate tax liability and these exemption amounts are huge. That doesn't make any sense for two reasons. One, if they're in Massachusetts, and I am making assumption that if you are watching this MCLE that you practice in Massachusetts, your clients are Mass residents, and so if they have a million dollar exemption threshold, they can't rely on portability, number one, because it's not applicable in Massachusetts, and number two, because we have a much lower threshold. So they need to do AB trust planning so they can both leave the most amount estate tax free, so utilizing their Massachusetts estate tax exemption. The other reason for that is if your client is reluctant to do a revocable trust and they're going to rely on portability and the marital deduction to be their estate plan, they most certainly are going to be reluctant or their family will be reluctant to pay to have a federal estate tax return filed just to make that portability election. So you need to be clear with clients about the importance of this election, but the limitations that it gives in the planning space. It's not a substitute for a revocable trust plan. It's just a freebie that we got in 2010 that affords us to have some additional planning opportunities when portability is -- when the DSUE is ported. What's going to happen with portability? I don't know. That is also up for -- up on the chopping block potentially in some of these proposed legislations. So we'll see. Again, I'm not dipping my toe into getting into all the proposed legislations, but be mindful when you're having these discussions, and certainly it's top of mind when we're talking about transfer tax, that there is a lot of change being discussed, again, with all three transfer taxes, and perhaps they'll go away, perhaps the exemption amounts will be dropped to much lower. Transfer tax won't go away, but the gift tax exemption perhaps -- you may not have a gift tax exemption. Your estate tax exemption may drop significantly. We may lose the ability to utilize DSUE. We may have a capital gains issue if they do away with the step up in basis or limit it very significantly. So again, all things to be mindful of certainly while you're having discussions with clients about transfer tax, but again, we're not going to plan solely because change may be coming. So before we switch gears and talk about my favorite transfer tax, gift tax, we're going to talk about the importance of proper asset ownership, which Heidi talked a little bit about, and I mentioned this earlier this morning, and what we're talking about here is sometimes clients will say to you, all of our assets are jointly held; I don't need to do any planning or I don't need to retitle anything. I don't

need to put these in a revocable trust, we're just going to do this. Or perhaps, like I mentioned earlier, all of the assets are in one spouse's name versus the other. We want to make sure that both spouses are utilizing their exemptions to the greatest extent because if they aren't, it's like they're giving that exemption amount away and potentially increasing their tax liability. So the example here on the side is if all their assets are jointly held, by operation of law, when the first spouse dies, they're automatically going to pass to the other. And so when that second spouse dies, there's 1.9 in individually held assets, which is also going to be a probate problem, and the first spouse to die wasted their exemption. So all of that 1.9 is going to be taxable, and they're going to pay $92,000 in Massachusetts estate tax. If they had simply split their assets up evenly amongst them so that both could utilize their exemptions to the greatest extent, then there are not going to be any tax at the second death. Like how easy is that? You're simply just moving assets from column to column. That doesn't require any planning really. It does require that they have proper revocable trusts in place typically. But you know, the client may say, I don't know how to do that. If it's an investment account that's jointly held, great, establish two in the name of their revocable trusts and move 50 percent in one trust and 50 percent in the other, or maybe if you have assets that can't be split, sometimes like with real estate, maybe they have a primary residence and a vacation home. But the the primary resident in first spouse's name and the vacation home in the second spouse's name, and that way they're both taking advantage of their exemptions and really mitigating their estate tax exposure. So that's another reason why we're looking at that questionnaire when your clients first sit down with you at the table and you're saying, look, look at the savings that we can achieve just by moving some things around on the balance sheet. So super easy. But again, sometimes unless you show clients something like this, it makes no sense. But a bill of nearly $100,000 versus a bill of zero, that will make a lot of sense, too. So we are going to shift gears now, and we are going to talk about gift tax. So gift tax I had said was my favorite, and the reason for that is because it's a lot of fun. A lot of the planning that we're going to do during the lifetime of our clients is in the gift tax space. So what is the federal gift tax and what does it apply to? And remember, this is just federal. So we don't have a gift tax in Massachusetts and really all states don't have a gift tax except for little old Connecticut, which does. So the gift

tax, another transfer tax, is imposed on all transfers that take place during life for less than adequate consideration. So that's going to be pretty clear if I write you a check for $20,000 or I send you some securities or I deed you a house. Those are all clear gifts. I don't get anything back for those. It's a gift. But there are less obvious items that maybe don't look and feel like gifts but will be deemed gifts perhaps that you didn't intend to be if we're not careful. So if we make a sale and we sell an asset for less than fair market value, that can be deemed a gift. If we make a loan and it stayed below market rate loan or we're forgiving the interest to you on that loan or we're forgiving the principal on that loan, that can be a gift. And that's below market rate. So in order for an interest family loan to be considered legit, you have to charge at least whatever the applicable federal rate is, and I think that that was noted in one of Amy's slides yesterday. And those rates are ridiculously low right now. So you can do a sale or a loan between family members for ridiculously low interest rates and still have it be legit. But if it is below the AFR, which is hard to do in this environment but not so hard to do years ago, or you're forgiving interest due on that loan may be a gift. Or it could be an indirect gift, which parents do a lot, right. So you might be talking with this client at the end of the year or their CPA, or you in concert with the CPA are talking to the client, and I mention the CPA because gifts are reported on a federal gift tax return, which is a form 709, which I already mentioned because that is where you also allocate your GST exemption, but those gift tax returns are due at the same time your 1040 is due. So sometimes the CPA is going to prepare those gift tax returns, and sometimes the attorney is going to prepare those gift tax returns. It depends on how savvy that CPA might be with the preparation of these kinds of returns. We talked yesterday, too, about how some CPAs are crackerjacks at individual tax return preparation but don't want to touch 1041 tax return preparation, and so it may be that it's more appropriate for the attorney to prepare the 709 because they're well-versed in all of the planning that went on that needs to get reported on the tax return, but it could be that the CPA is going to do it. Either way, it's going to be due when the 1040 is due or you can also get an extension to file that. But anything that you're doing revolving gift taxes or any kind of tax really should involve a discussion with the CPA. We've all mentioned before that nothing that we do as the estate planning attorney should be done in a vacuum. So we have to work with our clients' advisors

collectively. There's three legs of the planning stool usually: Estate planning attorney, the tax professional, and a financial professional. Together we're quarterbacking all of these transactions for the client and making sure that they all make sense because something we do may impact their tax plan or financial plan and vice versa. Question that came in, are there assets that cannot be split, like retirement assets. So yes. And that's more of sort of evening up the columns. There are assets that either cannot be split or can't easily be split. So one way you could split a retirement account, although I would not recommend it, is make a distribution and then splitting it up that way. But obviously that would have pretty big income tax consequences. So when there are assets that you cannot split, what you're going to do is look at the assets that each spouse has in their column and say, okay, well, if spouse A has a 401(k) of a million and there's a piece of real estate in his name for a million, we'll take the real estate and plunk that in the other spouse's name, and that way those -- we're evening up the best that we can. So that's another reason why you're looking at that asset inventory when you're sitting down with clients. You're not only going to ask how the assets are held, if it's joint or remainder or individual, but you're going to see what type of assets that is. Is this a brokerage account, is this a qualified retirement account, is this a brokerage account, all of those kinds of things, because that will dictate how you move those things around. Another question that just came in about how do you value a power of appointment that is granted. That is a good question. That is a little bit beyond the scope of this course. But they can be tricky. But be mindful that the exercise or release of that power may be a gift. And I will speak a little bit more about that as I move through the rest of this slide. So we talked about loans, indirect gifts, if you're paying a bill on someone else's behalf, that's going to be a gift. So again, when you're sitting down with clients and you're asking them what gifts they made over the course of the year, maybe they wrote a check to Jimmy for 20,000 and did a similar gift to their other child for a similar amount, but then they might say, oh, well you know what, one month I paid my daughter's mortgage. Another month I gave them a check for such-and-such amount because they were having a hard time. Those are gifts, right, so even if you pay a bill on someone's behalf, unless you're paying it directly to a medical institution or an educational institution, that's not going to be a gift because it's excluded, but if you're paying a bill directly for

them, you paid their overdue electric bill or their mortgage or whatever it is, those are going to be gifts that have to be tallied to see whether there's a tax return that's going to be required. And then the pesky power of appointment. So powers of appointment that are granted under a trust can be a gift if we are exercising them in favor of someone else or we are releasing a power of appointment in favor of something else. So usually to try to begin to see what the value of that is, you're going to look at the underlying value in that trust and relate it to what portion of that trust, that beneficiary, is exercising or releasing that power, but before you even try to put a value on that, you need to just simply be aware that sometimes these powers of appointment which are pretty tricky for most clients anyway because they do not understand them or how they operate or quite frankly how they can be a good planning tool, then they certainly don't understand, well, gee, I wasn't making a gift, I just sort of relinquished a power that I had. But if it had a value and you're giving that really to somebody else, then you could potentially be making a gift. All right. So how do you value these gifts? More into the valuing discussion. Sometimes it's kind of simple, right. The fair market value of that on the date of the gift is going to be how that is valued. Cash is pretty clear, a $20 check is a $20 check. 25 shares of Pepsico, pretty easy to value. But there are actually a lot of things that are not so easy to value like a power of appointment relinquished, or other kinds of things. And sometimes those sort of specialty assets are more easy than others, right, so you may have a piece of jewelry or an antique car or a piece of real estate. Those you get an appraisal. Sometimes we might be gifting shares in a closely held business, right. Amy talked about this yesterday. And that requires a valuation. And those valuations are pretty substantial usually, and typically not inexpensive. So how we value a gift also has to be part of the larger planning discussion of what are we going to gift and what are we trying to accomplish because sometimes when you also look at that balance sheet, you may say, well, there's a clear path of least resistance here; these are pretty easy to value and pretty easy to transfer. A piece of real estate, great. Pretty easy to value that, and I know I'm not going to sell it, and I'm not relying on it for income. Perfect, I'm going to gift that to a trust. I'm going to be mindful of basis considerations, too, like we talked about yesterday, as well. Any time we're looking at doing gifting. But those are easier to determine. Other types of things which also may make a whole

lot of sense to gift are tricky. They're tricky to gift and they're tricky to value. So shares of a closely held business. When we're talking about succession planning, succession planning often people think, well, that's a corporate transaction, so why does that come under the umbrella of estate planning. Hopefully it is clear after yesterday, after Amy's presentation why it comes under the umbrella of estate planning, because usually the succession planning is often transferring that via gift, or in your estate planning documents ultimately when you pass, those interests in that business. So if we're going to give only shares at a time, those require a valuation of that closely-held business. And again, it requires a qualified appraisal. Anything that you're going to report on gift tax return requires a qualified appraisal or a qualified valuation. I don't think qualified is anywhere defined in the Internal Revenue Code, but it's pretty clear in practice what makes sense and what doesn't. So in the real estate space, right, if we're gifting a piece of real estate, it needs to be a qualified appraisal done by a qualified appraiser. You can't have a real estate agent do a fair market analysis of a piece of real estate and put that on a gift tax return. That's not going to pass muster. If you have a small closely held business or a large closely held business, you can't put the book value down that it's being carried on on a gift tax return. It has to be a legit valuation. Appraisals of real estate are often fairly reasonable in price. Appraisals of closely held businesses often are in the $15,000 to $20,000 range. So if a client is going to undertake gifting of some piece or all of their business as part of their estate and succession planning, they need to be mindful of all of these other things, and a lot of times even though there's expense and a lot of administration and a lot of complexities, it makes a lot of sense. We also still are allowed to take valuation discounts, although these are often always on the chopping block of legislation that is introduced annually and are so again. When we're giving a piece of real estate to -- that has a fractional ownership, we can say, well, this piece of real estate is owned by a trust or it's owned by seven different beneficiaries. So really it's worth a little bit less because it's harder to sell something with a fractionalized interest. Or if we're gifting shares in a closely held company, a discount might apply because it may be a gift of a minority interest where there is lack of control, or because these are shares that are not easily valuable. It's not something that you can look it up on Yahoo Finance and have a publicly traded security. So sometimes

we take advantage of that, the ability to apply discounts which allow us to use some of our exemption but at a lesser rate. So we might -- in this example, we're giving $20,000 worth of shares, but we're taking a discount, which then the gift value that we're reporting is $13,000, which is nice, right, because that's under the exclusion amount. But in any event you're getting way more bang for your gifting dollar by applying a discount. But again, discounts are always up on the chopping block and are again so. Further complexities, split-interest gifts. If I give my house to my neighbor but I retain the right to live there, the gift tax only applies to the remainder interest and not to the full value of the gift. So how do you value that remainder interest? You need to know the life expectancy of the life tenant. And again, this is referencing code, but in practice you're going to have that software number cruncher or something along those lines to help you value split-interest gifts. Question came in, what about a scenario where the donor gives her home to her child outright, deeds it to the child for less than fair market value because the child is taking care of the donor's fees and bills and donor is going to reside in the home rent-free, is there a difference in evaluating that asset for gift purposes. In that instance, you're going to want to -- I mean, it looks and feels like it's kind of not for less than fair market value, right, because maybe the child is paying less for it, but they're giving a service in return. But you know, that would have to be on the 709 in order to get credit for that. Is it going to pass muster with the IRS? Who knows. But you always want to substantiate anything that you're doing in order to get that clock ticking for the Statute of Limitations. If the donor is going to reside in a home rent free, that's also an issue, because if that donor has given that property away but then intends to live there, it seems like an incomplete gift. So typically where we are having the donor gift property but intending to stay, we have them pay rent, or if they continue to pay all of the expenses of the property, if that all told looks something like what fair market rent would be, then that makes sense. But you want to put all of that on a 709. Don't ever assume that the IRS is going to figure it out. So how do we calculate the gift tax? So it's basically the same as the estate tax because they're connected. We have this unified system. So let's take that apart because I know I keep saying that these are all separate transfer taxes. But the difference between GST and then the good old estate and gift exemption is that the estate and gift tax exemption is one exemption that you get. So you get 11.7. You can give

11.7 during your lifetime. If you utilize all of that exemption during your lifetime, you do not have any estate tax exemption left over, which again is why portability makes sense, because if you've given it all away, then maybe your spouse gives you some more that you can utilize when he passes away. So whatever you use during your lifetime to make gifts, you're eating away at what you have available for estate tax exemption when you pass. But if you're using any of your estate or gift tax exemption, it does not necessarily mean you're using some of your GST exemption. And yes, they're both that same 11.7. So when it says that it's this unified system, it's because you have this one exemption amount. All of this gets picked up on a form 709. You have that same rate schedule, 18 to 40 percent. The tax is paid by the donor. So you'll get that question a lot. Clients ask, are gifts that I make taxable to the donee. No, they're not. So if you give a gift to your child or whoever, that is not an income tax event for them. There could be a gift tax consequence, but only if it is above and beyond your available gift tax exemption, which right now with large exemptions is not applicable to a whole bunch of folks but was when we had much lower exemptions. And that tax, if there is a tax, is paid by the donor. Again, that note, but the donee does not pay any income tax on the gift. Exclusions and deductions and exemptions and the like. So again, it's 11.7. We've heard that number a whole bunch this morning. 11.7 is your gift tax exemption for '21. This gross index for inflation, the same as the estate tax because it's the same number. If you use it during your lifetime, you don't have it when you die. There's the annual exclusion, and we've seen this $15,000 before. This is separate from your GST annual exclusion. This means you can give $15,000 per individual as many times as you like within a year without utilizing any of your exemption. So lots of people like to sort of chip away at their -- the size of their estate by making annual exclusion gifts, and it also doesn't require that a 709 will need to be filed, but there are exceptions to that. So if it is -- if they're gift splitting with their spouse, they still need to file a 709. Or if they happen to be filing a 709 for other purposes, they have to show all these annual exclusion gifts on there, or sometimes you might make a gift to someone and then the return will actually automatically assume that the first $15,000 of that gift is an annual exclusion, so they'll chop that off and then just say the remainder is what starts to eat away at your exemption. Medical and tuition exclusion, again, so same like it is for GST without triggering a GST tax,

paying those medical or educational bills. The same applies here. You can make tuition payments. You can make medical bill payments, and it's not going to count as a gift. There are some deductions, marital and charitable. So marital deductions in the gifting space, we rely on a fair amount. And the reason for that is you can give amounts back and forth to your spouse as long as they're a U.S. citizen tax-free. You don't need to report that. And so a lot of times when we're splitting those assets amongst spouses to make sure they have equal columns, we're relying on the marital deduction. I'm going to give all of this to my spouse so it's in their name and we're going to rely on the marital deduction and we go on our merry way. Not so fast, if your spouse is not a U.S. citizen. Even if they're a resident green card holder, you can only give -- and this number changes every can you know will of years just like all the other numbers, $159,000 for '21. So if your spouse is a U.S. citizen you can give them whatever you want without any consequence. If your spouse is a non-citizen, even if they're a green card holder, you can only give them $159,000. So you can gift to lifetime QTIP trusts for your U.S. spouse, you have to make a timely filed QTIP election. That's kind of getting into the weeds, but just to be clear, because a lot of times we think of making a QTIP election in the estate tax space, right, we're making our election on our 706. But if we're doing a lifetime QTIP trust for whatever reason, we need to make a QTIP election on a 709. And of course for charitable gifts, so there's no gift tax on gifts that you're making to charity. You know, some practitioners do report that on a 709, others do not. I typically didn't. But you also need to make sure that whoever that charity is that they're qualified, and we're going to learn more about charities tomorrow and how we can determine if they're qualified before we make gifts to them to make sure we actually get that deduction. I know we're past our time here, but I promised that I would give you a little bit of extra time because it's really just a little bit more ethics discussion as we go along. So I'm going to go through these slides until we get to the end here. So a little more detail on the annual exclusion, again, that's the amount that you can give tax-free each year, as many individuals as you want. Like all of the other numbers, this is indexed. It says annually for inflation, but it actually doesn't change every year, so it's been $15,000 for a couple years. No limit on the number of donees. So you can give $15,000 to 200 people in 2021, and that's okay. Even though you've made a big chunk of gifting, that doesn't have to get reported on a

gift tax return. So that's why a lot of people like to use an exclusion gift to try to chip away at the size of their estate because they can do so without having the reporting requirement. You have to be careful with this -- remember I said that when you make gifts, when you report particular gifts on a return, it's automatically going to assume that the first $15,000 of that gift was annual exclusion. So you have to be careful on a 709 that you're not showing three different gifts to one donee as an annual exclusion, right. You can only have $15,000 per person, so any other amounts you gave to that person in the course of a year are going to eat away at the exemption, which is also what creeps up on clients because they say, I wrote him a check for $15,000, but I paid their mortgage and I pay this every month, and that all has to technically get reported, and that's above and beyond the $15,000. You can gift split, also. So even if one spouse is writing the check, they can double up and do $30,000 and attribute half of that to their spouse. Even though that's annual exclusion gifting, that does have to be recorded on a 709. So the only way to take advantage of that gift splitting is to report it on a 709. This doesn't roll over, right, so if you didn't make annual exclusion gifts in 2021, you don't get to double up in following years. You get it every year, it's per person, but you can't sort of tally these up to make larger gifts in subsequent years. We need to be mindful of gifts being completed, and we need to be mindful of gifts being present interest we're making annual exclusion gifts. So a lot of times clients will call folks, their attorney and their financial advisor typically, either the beginning of the year, which is great because they're getting it done and we know it's done, but a lot of times they will call at the end of the year, on like Christmas Eve, and say, I really would like you to make all of these annual exclusion gifts to all of these folks. And so we need to be careful that any gifts that happen at the tail end of the year are completed within that year because if they say they want to make the gift the end of '21 but the recipient, the donee, doesn't actually get that gift or cash that gift until the following year, it's not going to be an annual exclusion gift for '21, it's going to be into the next year. So be careful of that because, like I said, some clients are on top of things and they want to get all this done at the beginning of the year. Perfect. But a lot of them will tell you they want to make all of their annual exclusion gifts on Christmas Eve, and then you are scrambling to make sure these all are completed by the end of the year. You also want them to be present interest gifts, right, so we talked

about this with the Crummey powers that we have in irrevocable life insurance trusts. They are also trusts that may not have life insurance policies but that may have Crummey powers. And so those Crummey powers basically allow you to make gifts to that trust of $15,000 and have it qualify as an annual exclusion gift, even though you're obviously not giving that beneficiary a check, you're writing a check to a trust, but as long as the trust has Crummey powers and you've notified that Crummey benny and you've given them a notice, it's going to qualify as a present interest gift. Okay, gifts for education and medical care, we talked about that, there is no limit to that. You don't have to file a gift tax return for that. It doesn't use your annual exclusion, but you need to be mindful that those have to be paid directly to the institution. And then this just talks about sort of being careful about things. So you have to pay directly to the institutions. Medical does not mean payment of insurance premiums, or it may not mean payment for like an assisted living facility, say. So be careful. There are a bunch of sort of PLRs about people trying to challenge what's a medical expense and what is an educational expense. Tuition is not, books and room and board, but then people try to get kind of cute with tuition, right, what's a qualified tuition provider. It's clear if it's a university or a high school or something like that. A little less clear when it's for a day care facility, a preschool facility, a yoga class, a thing like that, and those yoga class selection of PLR was yes, day care center was sometimes -- sometimes you can get to the nitty-gritty of is there a curriculum and all those kinds of things. You have to be careful. It's hard to have your cake and eat it too, and if it seems too cute, it probably is. So handy little chart here for four types of gifts not to your spouse. When would you have to file a return versus when you would not, is this using your exemption versus is it not, so that's kind of handy. Handy for you, but that's also a nice little reference for clients. Then there's also sort of pros and cons for options for gifting. A lot of times in the planning space, we're not really talking about outright gifts unless it's annual exclusion. We're talking about gifting to a trust or some other kind of complex planning vehicle. But you know, they need to be careful that if they're gifting outright, there are consequences to that. If they're giving something outright, that person has full control over it and they can go take and do with it whatever they would like. Sometimes that might not be appropriate, sometimes they might be too young, sometimes they might be in a predicament where gifts of large sums of

money are not appropriate. All of these things, again, you can't do planning in a vacuum, you have to look at all the totality of the circumstances and then weigh all of those factors and see what makes sense for clients. Most of the time in the planning space, we're talking about doing gifts to irrevocable trusts. A lot of times clients don't like that it's going to be tied up for periods of time or that the beneficiaries don't have any access or control over those things, but usually that's the benefit, right, we're protecting beneficiaries from themselves, from their creditors, from all of those kinds of things. But an irrevocable trust is another entity, so there's, of course, administration that goes along with that, there's tax filing that goes along with that. So there is more cost and complexity that goes along with irrevocable trust planning, but usually in the complex planning space. That's what we're talking about, but of course we could be doing outright gifts, we could be making inclusion gifts, we could be doing gifts to 529 plans. Something we do talk with clients a lot about is front loading gifts to 529 plans so they can do five years' worth of $15,000 annual exclusion gifts to a 529 plan, so it's a nice way to sort of fund a big chunk to a 529 plan. However, if the donor dies within the five years, some of that's going to get applied back. So that is our gifting discussion. I know I had a couple questions come in. So I will address those and then we will shift gears and talk about our next ethics scenario. So can there be more than one check to the one individual that adds up to $15,000? Yes, right. So that's why you're going to sit with a client and say, okay, over the course of this past year, what did you do? How many gifts did you make to this person? So they could have written them a check for $15,000 and made other gifts to them. That's over the $15,000. They may have done five different gifts that all totaled $15,000. So good record keeping is important. And sometimes we're backtracking. So there is currently no penalty for late filing gift tax returns unless there is a gift tax that's due. Then you have a problem. But a lot of times clients didn't know they were supposed to report this or that they've begun to eat away at their exemption. So sometimes you're sitting with a client and you're recreating five years worth of gift tax returns, ten years worth of gift tax returns. Sometimes this happens, too, when they pass away. So I talked about how these exemptions, it's the same. So how do you know how much you have left when you die. You have to file gift tax returns to record how much exemption you've used to know how much you have left when you pass away. So that's where that's reported. So

that's why you need all those gift tax returns. Also, and if they have made gifts during their life time that have not yet been reported, you have to file those with a 706. So you will find sometimes in a practice that you're doing late filing of 706s, and again, there is no penalty for that unless a gift tax would have been due. Will a wire transfer be completed if acknowledged by the receiving institution? Yes. If it hits the account where it's supposed to go before the end of the year, that's going to be fine. Next question. Can you please explain how the gift estate and GST tax works together, as in the general tax consequences if grandma gifts a million dollars to 20 grandchildren in 2021. Okay. So if she is making a gift of a million dollars in 2021, she's utilizing a million dollars of her gift tax exemption. Because she's utilized a million dollars for gift tax exemption, that's a million dollars less that she will have at death, right. So think of estate and gift as the same. It's 11.7. If she uses a million dollars when she's living, there's only 10.7 left to be exempt when she passes away. Then she gets 11.7 of GST. So if she's giving a million dollars to 20 of her grandchildren, she is directly or in trust, she's going to utilize $1 million of her GST exemption to make that gift, which means that there is no GST consequence for those beneficiaries when they get that million dollars, or if it's to a trust when it's paid out to them. So we have to be careful because they sort of work together but they're separate, and sometimes when we are making a gift, we are also utilizing a million dollars of our GST exemption, sometimes we're not, because we're making a gift to non-skip persons, right. So just because we're making a gift or just because we're utilizing our estate tax exemption when we pass, it doesn't necessarily mean we're utilizing our GST exemption. A lot, a lot, a lot to digest there, to unpack there. You are not going to master all of this in the course of these few days or probably in the first few years of your practice. This takes a lot of time to figure out and to be comfortable with. And so if a client comes to you and they have any sort of taxable situation and you know that any of these transfer taxes have implications in the kind of planning that you need to do for them, you want to make sure that you're partnering with someone else who is a little more seasoned just to make sure that you are adequately planning for them, covering all of the bases, have brought up all the things they need to be thinking about, because when we don't do that, that's when the client comes back to us and says you didn't do your job or their kids come back to us and say you didn't do your job. We don't want that. Malpractice is not

our friend. So we need to be careful. There is a lot here, and we just have to be careful students of it and embrace it, and I promise with time it will make more sense.