Unedited transcript of

Post-Mortem Planning

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Speaker(s)

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>>: Okay, everybody, we're going to pick back up with post-mortem planning. Fun stuff. And we have Chris with us to chat about that. This is also with (unintelligible). So we've had a good line-up of (unintelligible) folks over the course of the program. There was a question that came in over the break regarding equalization of assets between husband and wife. The question didn't fully come in anyway, Lynn, if you want to repost that question, I will address that either after Chris is set or at the end when we have time for questions. Chris, if folks have questions as you go along, is it okay if I let you know?

>>: Sure, that works for me.

>>: All right. Sounds good. So without further ado, do you want to take it away, give everyone a brief intro about yourself and you can get started.

>>: sure. I'm going to try to share my screen. My name is Chris Voukidev, there's been a few of us Day Pitney folks. My focus is on estate planning, tax planning, trust and estate administration, and charitable giving and planning. So over the last three days I know you've gotten a great introduction into the fundamentals of preparing an estate plan, and the fundamentals of preparing estate planning documents, and estate and tax law. However, by no means does the estate planning process end once the estate planning documents have been signed and not even after the trust has been properly funded. So this portion of the program we're focused on taking the estate planning documents and putting them into action following the death of the testator. There are three primary

objectives to post-mortem planning. These objectives really serve as the theme for each of the techniques that we'll status today. So the first objective here is to implement the decedent's estate plan. Many of the strategies that we will discuss will be implemented by the decedent's personal representative making tax elections in the decedent's estate tax return. The second objective here is to minimize the estate tax -- the estate's overall tax burden. So we'll discuss tax minimization strategies that can be implemented in the decedent's final income tax return, the fiduciary income tax returns, and also the Massachusetts and federal estate tax returns. So the third objective is to fine tune the estate plan to adjust for circumstances not contemplated by the decedent when the decedent executed the estate plan. So circumstances often arise that are beyond what the testator for sees when the testator creates his or her plan. So this can include changed financial circumstances, family circumstances, so we'll discuss strategies that can be used to deal with these changed circumstances. So the course thus far has already provided a good overview of estate and gift tax planning and law. However as a brief reminder, you can see on this slide, in 2021 each person can transfer to any person free of federal estate tax up to $11.7 million, 23.4 million for married couples. This amount is called federal applicable exemption amount, and it's scheduled to index annually for inflation. So assets in excess of the federal applicable exemption amount will be taxed at a rate of 40%. In 2017 the federal applicable exemption amount was $5.5 million. And it was doubled by the tax cuts and jobs act resulting in our current exemption level, which has been inflation adjusted to 11.7 million dollars. So transfers covered by the federal applicable exemption amount can be made during life or at death, and should be mentioned at the exemption is scheduled to sunset on December 31st of 2025. And as of January 1st of 2026, we will have an applicable exemption "Back to the Future" down to the $5 million, adjusted for inflation. So in other words, the exemption is scheduled to revert to its 2017 level. So I know I and Katie and probably every other estate planner in the country has been inundated with questions since the 2020 election about whether any changes will be made to the estate tax laws, and what those changes will be. The safe answer I like to give is that I don't know, and really nobody knows. However I can say that to date the Biden administration has not formally proposed any reduction in the estate tax exemption or increase in the estate tax rate. The changes that the administration has proposed focus more on eliminating the step-up in basis at death and potentially imposing capital gains taxes on lifetime gifts. So I think that it is unlikely, very unlikely we'll see any changes this year, and even more unlikely that we would see any sort of reduction in the estate tax exemption or increase in the estate tax rate that would be retroactive to January 1st, 2021. That's another question that I receive often. So in that same vein, the IRS has come out and stated they will not attempt to claw back any gifts made during the period in which the exemption has been increased. So what does that mean? We have a temporary period where the exemption has been increased from $5 million inflation adjusted to $10 million inflation adjusted. So if an individual decides he would like to make a gift to take advantage of the increased exemption, it makes a $10 million gift in 2021, in 2026 when the exemption is reduced to $5 million, again, inflation adjusted, the IRS is not going to come back and attempt to subject that 2021 gift to gift tax. So just a briefly summarize the Massachusetts estate tax, so it has been decoupled from the federal estate tax, so Massachusetts impose as wholly separate state estate tax that has a filing threshold of $1 million. So an estate is above the 1 million filing threshold the Massachusetts estate tax return must be filed. If the Massachusetts gross estate is under $1 million, but the decedent made taxable gifts during the decedent's lifetime, that when added to the gross estate pushed the estate over $1 million, a Massachusetts estate tax return is required to be filed. So the Massachusetts estate tax rate is considerably lower than the federal estate tax rate and it ranges from 0.8% on a sliding scale up to 16%, and it will be applied to the entire estate, not just the portion that is in excess of the $1 million threshold. And also note that Massachusetts does not impose a gift tax, so while lifetime gifts will be added back into the gross estate for purposes of determining whether an estate tax return is required to be filed, there is no gift tax imposed on lifetime gifts. So with that background, some of the strategies that we will discuss, again, to serve our ultimate objectives of carrying out the decedent's estate plan while minimizing the estate and income tax burdens on the estate are listed here. So we'll discuss income tax planning strategies, the use of the QTIP election to keep assets in trust, (unintelligible) applicability of the marital deduction, we'll discuss the use of the decedent's generation skipping transfer tax exemption, the use of portability to simplify the process, and maximizing the use of each spouse's federal exemption amount. And we'll discuss techniques that can be used when preparing the estate tax return that will optimize our net tax result. Starting with income tax planning, and specifically the decedent's final income tax return, the first question is, who files the final income tax return? It's the decedent's personal representative or the person charged with the decedent's property will file the final return. If there is no personal representative appointed, those persons in possession of the decedent's property are responsible for preparing the decedent's final income tax return. However, in the vast majority of cases, it will be the decedent's personal representative. It is not uncommon that the personal representative will file multiple returns for the decedent. If, for example, the decedent dies prior to April 15th, the personal representative may be required to file a return for the income tax year prior to death, as well as an income tax return for the year of the decedent's death. So the personal representative is also responsible for filing any gift tax returns for gifts made by the decedent. And this includes gifts made in the year of death in addition to gifts made in the year before the decedent's death, and any gifts that were made in prior years that were not properly reported on a gift tax return. So final gift tax returns are due on the same date as the estate tax return which we'll discuss that due date in a further slide. So when is a final income tax return required to be filed? This is a simple answer. A final income tax return must be filed whenever the decedent's income exceeds the threshold filing requirements under code section 6012(a)(1)(A). So always remember that even if a final return is not required to be filed because the decedent's income didn't meet that threshold requirement, the personal representative may consider filing a return for the simple reason of starting statute of limitations against a potential IRS challenge. So what is the due date for the decedent's final income tax return? The final return is due the same day the return would have been due if the decedent was living. So therefore it's April 15th of the year following the decedent's death. Of course this can also be extended six months to October 15th by filing form 4868, if no personal representative has been appointed before the due date of the return, anyone in a close business or personal relationship with the decedent may file the form 4868. Also note that in Massachusetts 80% of the eventual tax liability must be paid with the extension in order to avoided a late filing penalty. And federally, late payment penalty will be assessed unless 90% of the tax is paid with the form 4868 extension. So it's also not uncommon that there won't be a personal representative that will have been appointed when the return is due. And as a result penalties will then be incurred if a return isn't filed. Note the code section provides for relief and that those penalties may be waived for reasonable cause if a personal representative hasn't been appointed to that -- at that point. So what income is included? As you would expect, that's just income received by the decedent before the decedent's death will be included on the final income tax return. I also want to point out, it's more of a fiduciary income tax planning issue, but it's important to keep in mind the effects of income in respect to a decedent or IRD. IRD includes items of income earned or accrued during life, but not received until after death. So according to code section 691, IRD has four characteristics. First, it is an item of income that would have been taxable to the decedent if the decedent had survived to receive the income. Second, the income did not mature sufficiently to have been properly included in the decedent's final income tax return. The receipt must be of income and not a capital asset. And if the item of IRD is payable to someone other than the decedent's estate, the taxpayer receiving the property must have acquired that property right solely because of the decedent's death. So the recipient of an item of IRD, which is often the decedent's estate, is responsible for reporting and paying any income tax associated with the receipt of IRD. And even though a decedent does not receive IRD before his or her date of death, the property is still included in the decedent's estate because it is considered property in which the decedent had an interest at death within the meaning of code section 2033. So IRD does not receive a step up in basis since the income has not been taxed on the decedent's income tax return, so in effect, IRD items are taxed twice under estate tax and income tax. So to compensate for this fact, IRD -- for the fact IRD is taxed twice, the recipient of IRD is entitled to a deduction for the amount of the estate tax attributable to the item of IRD, so the personal representative will need to be on the lookout for IRD and make the appropriate deduction on the fiduciary income tax return. I also have on the bottom a note that if there is a surviving spouse, then as long as the surviving spouse does not remarry before the end of the tax year, the personal representative is authorized to file a joint return with the surviving spouse. So keep in mind that generally filing a joint return will likely yield the most favorable tax result, however, by filing a joint return the estate is then jointly and severally liable for the entire tax of the estate and then -- the decedent's final income tax and then the income tax for the decedent's spouse. Finally some planning opportunities on the decedent's final income tax return. First is that the personal representative has the option of deducting unpaid medical expenses that are paid within one year of the decedent's death. Either on the decedent's income tax return, or on the decedent's -- or on the decedent's estate tax return. However, only medical expenses that exceed 10% of adjusted growth income will be deductible, therefore, the personal representative, it's his job to determine the optimal use of the medical expense deduction whether it should be taken on the income tax return or on the estate tax return. And second the personal representative may also consider using the decedent's capital losses to offset the surviving spouses capital gains, of course assuming that a joint return has been filed. So moving to fiduciary income tax planning, in addition to the decedent's final income tax return, we have fiduciary income tax returns. I'm going to provide planning opportunities. So the personal representative will also file an income tax return for the estate and in addition the trustee will file a return for the decedent's revocable trust if the decedent executed a trust. So very generally nongrants or trust in estates are separate taxable entities with their own rate structure, form 1041 is the federal income tax form for reporting and paying fiduciary income tax. The first planning opportunity will come in selecting a fiscal year. So given that assets of the decedent, or that the decedent owned during life will continue to earn income following the decedent's death, until the estate distributes those assets to the beneficiaries, the estate income tax return will report this income generating a schedule K1 to each eventual beneficiary. The personal representative can strategically choose a fiscal year for the purpose of deferring taxes, so as an example, if we have a decedent that dies this year and the personal representative elects a fiscal tax year that ends on January 21st, and makes a distribution on -- in February of 2021, to the surviving spouse, the distribution will not be included in the surviving spouse's income until 2022, so clearly the result here is that we deferred tax by a year. Next we have the deduction of administrative expenses. So code section 642a allows for this deduction. So what is an administration expense? This includes personal representative commissions, attorneys' fees, appraisal fees, accountant fees, expenses incurred in selling estate property, and expenses associated with the management and maintenance of estate property. However, note that administration expenses cannot be deducted on both the estate's income tax return and on the estate tax return. So as a result, a personal representative will need to once again do an analysis of which deduction will provide the best tax results. Obviously if we have an estate that is not taxable and there will be no estate tax, then the answer will be to take the deduction on the estate income tax return. At the bottom of the slide there discusses the 65-day rule. Code section 663b, and this provides that the estate may elect to treat distributions made in the first 65 education of the taxable year as if they were made on the last day of the proceeding year. So as an example, if we have a decedent that passed away in 2020, the personal representative underestimated the income earned by the estate in 2020, and receives forms 1099 in 2021, indicating unexpected income, the personal representative may distribute that income in 2021 and treat it as if it were distributed in 2020, allowing the estate to take a distribution deduction, just so long as that distribution is made within the first 65 days in this example in 2021. So just as an aside here, it's important to remember that trust and estates pay the highest marginal tax rate after just 12,950 dollars of income, so as a result, trustees and personal representative will typically find that it is most efficient to distribute income as opposed to accumulating it, assuming that the terms of the trust or will that's relevant here provide for outright distribution, and if that is consist ant with the testator's intentions. So we'll move forward to the QTIP election. This is really at the core of marital deduction planning. The federal and Massachusetts unlimited marital deductions apply to assets that are transferred to a surviving spouse and consequently these assets are not subject to federal or Massachusetts state estate tax in the estate of the first spouse to die. So generally the assets must be transferred to the surviving spouse outright and without restriction unless the property transferred can be characterized as qualified terminable interest property or QTIP property. So the QTIP election allows for assets to remain in trust for the benefit of the surviving spouse, giving the donor the ability to dictate the ultimate destination of the assets following the surviving spouse's death. Of course if assets are left outright to the surviving spouse, the surviving spouse can dispose of the assets in any manner that surviving spouse wishes. So the QTIP trust allows the donor of the trust to ensure that the principal will be preserved and ultimately disposed of as the donor intends, while still being available for the surviving spouse and qualifying for the marital deduction. So the starting point is that the decedent's trust must contain the proper QTIP language. Which provides that the surviving spouse is the sole beneficiary of the QTIP share and mandatory distributions of income must be made at least annually to the surviving spouse. So the mechanics of making the QTIP election, the QTIP election is made by listing the property, the personal representative wishes to be subject to the QTIP election in schedule M of the estate tax return. Note that if a partial election is going to be made, it must apply on a percentage basis to all property for which the QTIP election is made. So it's extremely important that the QTIP election is made properly. As the alternative, the marital deduction does not apply, and the assets would be subject to estate tax immediately in the death of the decedent. Notwithstanding the presence of a surviving spouse. So the personal representative under these circumstances will likely be liable for the increased estate tax as a result of an unintentional failure to make a QTIP election. And also I'll note that once the election is made, it is irrevocable. However, if the QTIP election is made on an estate tax return filed before the due date, the personal representative can change the election on a subsequently filed return so long as the subsequently filed return is filed before the original due date of the return. So if the surviving spouse is not a U.S. citizen, a QTIP election is prohibited. So instead, code section 2056 provides some relief in the form of qualified domestic trust, or QDOT. It's a very generally a QDOT must first be drafted to qualify for the marital deduction like a QTIP, so it will have to include the provisions for mandatory distributions of income the surviving spouse and the surviving spouse must be the sole beneficiary of the trust. Some other requirements the trust must also have, one trustee that is a U.S. citizen or corporate trustee that is located in the U.S. There are also a number of security requirements that are intended to ensure the ongoing compliance, or ongoing reporting to the IRS, but these are -- these requirements are onerous, so we won't get bogged down in these beyond the scope of this presentation. So with the QDOT, the primary difference from the QTIP is that there's an estate tax due on each principle distribution. Obviously with the QTIP trust, this is not the case. And a QTIP trust established for a surviving spouse that is a U.S. citizen, once distributions are made, there is no estate tax in post. With a QDOT, a tax is imposed each time a principal distribution is made. This is a major downside to the QDOT. The QTIP will defer estate tax until the death of the surviving spouse, regardless of whether principal distribution are made by the QDOT will only defer estate tax until a principal distribution is actually made to the surviving spouse. And on top of that, if the trust, the QDOT trust pays the tax on any principal distribution, the amount of the tax paid by the trust is deemed a taxable distribution that generates an additional tax. So in addition to the tax on lifetime distributions of principal, the QDOT like the QTIP is taxed on the amount remaining in the trust upon the death of a surviving spouse. As far as making the QDOT election, as with the QTIP election, it is made by the personal representative simply listing the property for which the QDOT election is to be made on schedule M of the estate tax return. And also like the QTIP election, QDOT election is irrevocable. So the practice point here is that when faced with a surviving spouse that is not a U.S. citizen, the personal representative should immediately review the decedent's revocable trust to confirm that it is eligible to make a QDOT election, and includes the proper QDOT provisions. If it is not drafted with the proper QDOT provisions, the personal representative will need to work with the trustee of the trust to see if a trust can be administratively amended to provide for the proper QDOT provisions, if the trust does not provide for administrative amendments, a judicial reformation will probably be necessary.

>>: Chris, we had a couple questions come in. One is sort of a question, slash, comment. And then the other is a QTIP question. The first was a year after a fiduciary income tax return was filed for a deceased person's estate, the IRS issued stimulus checks to the decedent, is this a common occurrence that the IRS has issued stimulus checks to deceased individuals? It doesn't seem correct that the decedent would receive a stimulus check of two years post-death. That I think is the U.S. treasury just being not able to catch up with itself. So I have seen -- for us that we're -- the IRS doesn't seem to know -- the left hand doesn't seem to know what the right hand is doing, which is often the case prepandemic, and now we find ourselves in the realm of they are just so beyond behind. So I think that's just the good old U.S. treasury department, and I am not at all surprised. The second is a good QTIP question. Can you give some practical examples of when a QTIP would be used? Would you use it for a

disabled spouse, a second or third marriage? Because of a prenuptial agreement?

>>: Yes. It's most commonly used for second and third marriages, that's a very good example. If we have a second marriage and the donor wants to ensure that the principal of the trust is preserved for his own children and that the -- a good way to do that is to keep the property tied up in a QTIP trust, the property is distributed outright to the surviving spouse, the surviving spouse has the ability to do whatever the surviving spouse wants to do with that property and can give it to -- can remarry and give it to that spouse, or can give it to that surviving spouse's own kids. In the context of a second marriage, it's definitely beneficial from that standpoint. If we have a disabled spouse as well, likely we would have done special needs or supplemental needs planning in advance, but it can also be used in that context as well to keep assets in trust for the benefit of a disabled spouse. I think those are two good points.

>>: Most commonly even though there are very clear reasons why we make QTIP elections, you really have to have the language within the trust more often than not in order to do that, and as a common practice, most folks who are drafting revocable trusts for their clients will certainly have this discussion with their clients, but will draft that with QTIP language within it. I think it's actually more rare that I see a trust that's been drafted that gives a surviving spouse a general appointment, because the spouse has access to the QTIP trust. So they get a mandatory payout of income, and they usually can just withdraw principle as they see fit or there may be a (unintelligible). The spouse really has access to it, and it's not really totally protected from a creditor standpoint in most instances. So often you might beef that language up if it is a subsequent marriage or with are concerned about, that but you'll see QTIP provisions more often than you don't.

>>: Yeah. And just to add that, when you have a second marriage, and the set letter's intention to preserve the principal of the trust, the benefit of his own kids, a way to provide some additional protection from the surviving spouse would be to just don't name the surviving spouse as the sole trustee. Add in a potential trustee that her happens -- professional or

independent trustee that has the ability to make, or the sole ability to make principal distributions. That way the surviving spouse will receive all of the income and can be involved in the administration, but wouldn't have the ability to withdraw principle. So this slide here is getting back shows the funding of a typical QTIP trust plan with a separate Massachusetts and federal QTIP trust. So John is our decedent here, and Jane is our surviving spouse. So John executed a pourover will and all of his assets following his death fund his revocable trust. So John dies in 2011, so it's federal exemption amount is $11.7 million. And here we're assuming John did not make any taxable gifts during his lifetime, so he has this full exemption available to him. So the family trust over to the right will be funded with the amount that will pass free of federal and state estate tax, which is $1 million. So this trust will be for the benefit of Jane in addition to the descendants of John. The assets of the trust will not be included in Jane's taxable estate, and therefore these assets will be sheltered from Massachusetts and federal estate tax, even following Jane's death. In the middle there is the Massachusetts only QTIP trust. So this trust will be funded with the difference between the Massachusetts and federal exemption, in other words, John's remaining federal exemption after the family trust has been funded, so in this case, that is $10.7 million. So here as you can see on the bottom, a QTIP election will be made and the assets will be listed on schedule M of the Massachusetts estate tax return only. And not on the federal estate tax return. Finally, federal and -- federal and Massachusetts QTIP share, and this will be funded with the balance of the estate, so these assets will be included on schedule M of both the Massachusetts and the federal estate tax returns. So we'll discuss in a moment how using portability can simplify this plan, and eliminate the need for carving out that separate family trust. And it wouldn't be needed to be funded during the lifetime of surviving spouse, but this is a good representation of how we would create the separate buckets to maximize use of the deductions available. Just to briefly touch on the generation skipping transfer tax, GST tax, it applies to transfers to skip persons. A skip person is any person that is a member of a skipped generation, for example, a grandchild or further decedent of a transfer, or individuals that are 37.5 years younger than the donor. So the GST tax is a 40% tax in addition to the federal and state estate tax that is imposed on transfers to skip persons. So each person has a GST exemption in an amount equal to the federal applicable exemption amount. So therefore, the current GST exemption is $11.7 million. Transfers to skip persons are characterized as direct skips or indirect skips. Direct skips are outright transfers to skipped persons while indirect skips are transfers to trusts for the benefit of skipped persons. With respect to lifetime gifts, GST exemption will be automatically applied to direct skips with respect to indirect skips, GST exemption must be allocated on a gift tax return to the trust as the recipient of the gift. So GST exemption may also be used at death, again, either by applying the exemption to direct skips or allocating GST exemption to transfers to trusts created by the decedent of which a skipped person either benefits or may benefit in the future. So where is this allocation made? You can see there it is made on schedules R and R-1 of the estate tax return. If GST exemption is not allocated on the estate tax return, it will be automatically allocated under code section 2632(c) it will be first allocated to direct skips and second pro rata to any trust which the decedent is the transferor. So the personal representative really should not just rely on automatic allocation as it will likely not produce the most efficient use of the GST exemption. The personal represent sieve going to want to direct that exemption to the trust that will most likely benefit skipped persons. We'll go through an example of the creation of a nonexempt GST family trust and an exempt GST family trust share in just a moment. But before that, I just want to briefly touch on the reverse QTIP election. So as we just discussed on the QTIP slide, assets held in a QTIP trust will be includable in the estate of the surviving spouse. So pursuant to code 62652A3, a personal representative is permitted to make an election to treat the decedent as the transferor of property to a QTIP trust for which the QTIP election has been made. So this election permits the allocation of all or a portion of the decedent's unused GST tax exemption to a QTIP trust, absent this election, the assets in a QTIP trust that would eventually benefit a skipped person would not be GST exempt, and subsequent distributions to a skipped person would be subject to the 40% GST tax. And this is known as a reverse QTIP election. And as I should have said in the beginning, GST exemption is not portable, so if the first spouse who died doesn't use all the GST exemption it's lost and it can't be used by the surviving spouse. So we have a chart here, it's a family trust, so this just visually represents the personal representatives, how the personal representative would elect to fund GST exempt share with assets equal in value to the decedent's remaining GST exemption. So that's over to the right. These assets will be included on schedule R of the federal estate tax return. They'll share to the left -- the share to the left will hold remaining assets, and this share will not be GST exempt, and distributions from the share to the extent they're made to a skipped person will be subject to the 40% GST tax. So disclaimer planning. The disclaimer is a very powerful tool that can be used to optimize fax results and allow for maximizing flexibility and dealing with unforeseen circumstances at the time an estate plan is prepared. So in setting up a revocable trust, I know I often draft trusts knowing that it's potentially that a disclaimer will be used following the death of the donor, to minimize the estate tax burden and to account for changes in the laws and so that changes in the laws that have come into effect since the time -- between the time was plan was drafted and the decedent's death. So what is a disclaimer? A disclaimer is an irrevocable and unqualified refusal to accept the ownership of an interest in property. And it's an exception to the tax imposed under code section 2501 on the transfer of property from one taxpayer to another. So when one exercise of valid qualified disclaimer, the disclaimant will be treated as if they predeceased the decedent under the will or trust and it will not be deemed as if the claim ant made a gift to the ultimate recipient of the property. So the requirements for a valid qualified disclaimer, again, to avoided the imposition of a gift, the first is that the disclaimer must be irrevocable and unconditional, second, it must be written explicit and signed, so it must identify the interest in property being disclaimed, and it must be signed by the disclaimant or his or her legal representative. So the written disclaimer must be delivered to the transferor of the interest or the transfer's legal representative. The holder of legal title of the property, or the person in possession of the property to which the interest relates, not later than nine months after the later of the date on which the transfer creating the interest is made, or the date on which the disclaimant attains the age 21. So post-mortem planning purposes, it's most important to remember that the disclaimer must be made within nine months of the decedent's death. Also the disclaimant must not have accepted the interest disclaimed or any of its benefits, either expressly or prior to making the disclaimer. Acceptance is shown by any affirmative act consistent with the ownership of the interest in property. This can be use I through using the property, accepting dividends, interest, rents from real estate, or directing others to act with respect to the property. And finally it just must pass without direction on the part of the disclaimant. So any express or implied agreement whereby the property passes to a person designated by the disclaimant will disqualify the disclaimer. Moving to portability, so what is portability? This refers to the concept that if upon the death of the first spouse to die, the deceased spouse does not use all of the deceased spouse's federal estate tax exemption, the personal representative of the deceased spouse can make an election on a timely filed estate tax return to pick up that unused exemption and add it to the surviving spouse's own example. Own exemption. As an example, if we have a decedent, we'll stick with John, if he dies in 2017, and only uses $1 million of his federal estate tax exemption, which in 2017 was $5.5 million, his wife Jane will be able to pick up the remaining 4.5 million of exemption and add it to her exemption. To do so, the personal representative of John's estate is required to make a portability election on a timely filed estate tax return. So consequently, if Jane dies in 2021, she will have $11.7 million of her own exemption in addition to the $4.5 million of John's exemption for a total of $16.2 million. So the 4.5 million portion is referred to as the deceased spouse's unused exemption amount, or the DSUE amount. To make the election, the deceased spouse, the personal representative of the first spouse to die must timely file a federal estate tax return and make the election claiming portability of the deceased spouse's remaining exemption. So this needs to be done even if the federal estate tax return is not otherwise required to be filed, we don't have a taxable estate. Oftentimes we'll file an estate tax return for the simple reason of making the portability election. So some of the benefits, it takes advantage of -- by taking advantage of portability allows for assets to be included in the surviving spouse's estate, and this will allow for a second step-up in basis upon the surviving spouse's death. It also allows just for greater flexibility and planning and simplicity. Some of the limitations, the election is not available for Massachusetts estate tax purposes. If the million dollars isn't sheltered for the benefit of a surviving spouse upon the death of a first spouse from Massachusetts estate tax, the ability to shelter those assets is lost. The DSUE is not indexed for inflation, so in our example the $4.5 million of DSUE that Jane will have will stay at $4.5 million, regardless of how long she lives. And then finally as I previously mentioned, GST exemption is not portable, so it must be used upon the death of the first spouse to die or that remaining GST exemption will be lost. So there's some techniques that may be utilized when preparing the estate tax return that the personal representative may elect to have -- may elect in order to reduce estate tax. The first one there is the ability to elect to have a estate property valued on the date of the decedent's death, or the alternate valuation date, which is six months after St. decedent's date of death. So as with the QTIP and q ed elections, this is irrevocable, if the alternate valuation date is elected, it applies to the entire estate. So all estate property. The personal representative does not have the ability to pick and choose assets that would be valued on the alternate valuation date, which is six months after the decedent's date of death. So to be a valid alternate valuation election, the election must decrease the estate tax and the value -- decrease the estate tax value and the value of the gross estate, which is an obvious one, otherwise I'm not sure why you'd want to do that. The election is made by checking the box on part three of line one of the estate tax return. The election may be made on a late filed federal estate tax return if the return is filed within one year of the due date of the return, including extensions. And the personal representative should also keep in mind that electing the alternate valuation late did have an effect on the basis of the property, so that's just something we'll have to bear in mind. And then finally at the bottom there, we have the section 6166 election, so this is an installment election that is available where the value of an interest in a closely held business accounts for greater than 35% of the value of the entire estate. So under these circumstances, we have really just a lack of liquidity can present an issue for the payment of estate tax. If greater than 35% of the entire estate consists of an interest in a closely held business, what may be required absent 6166 election, is the decedent's state would have to sell a share of the closely held business in order to pay the estate tax, which is not the result that we want. So very generally, if a 6166 election is properly made on a timely filed estate tax return, the estate tax attributable to the decedent's interest in the closely held business can be paid over a period of a total of 14 years. More specifically, the estate would pay only interest on the deferred tax for a period of five years after the normal due date for the estate tax return payment, and the deferred tax could be paid at the -- the personal representative's option in two to 10 equal installments starting at the end of that interest-only period. So the result is that we have 14 years in which that -- the payment of the estate tax can be deferred. So

6166 election can only be made by attaching a notice of election, again, to a timely filed federal estate tax return, including extensions. So an interest in a closely held business is not explicitly defined in the code, but it may consist of a sole proprietorship, a partnership interest or stock in a corporation, and I'm even working on an estate right now where we're doing it for a publicly traded company, which is even more rare. Finally at the bottom there, code section 2032a permits real property used as a farm or in a closely held business to be valued for estate tax purposes at its current use as opposed to its highest and best use. The maximum deduction or reduction in value by electing the special use valuation for 2021 is $1,190,000, and again, this election is made by filing a notice of election with a timely filed estate tax return. Just summarizing the topics and wrapping up each of the themes that we've discussed here, income tax planning is really the core post-mortem planning and the primary responsibility of the personal representative. So this planning will occur in the decedent's final income tax return as well as the fiduciary income tax returns. The QTIP planning allows the personal representative to choose the extent to which the marital deduction will be applied to the estate, and therefore may adjust for changes in estate tax laws since the decedent's estate plan was drafted, and also remember that when planning, if you have a noncitizen spouse, q ed provisions in a revocable trust will be necessary and when have you a surviving spouse in an estate, it's important that you look at the revocable trust as soon as possible in order to confirm that those QDOT provisions are there. GST planning, it's important to properly allocate GST exemptions, the transfers that may eventually benefit skipped persons. And just remember that portability does not apply to the GST tax, so it's vital that GST exemption is utilized during a life or on the estate tax return. Dis. Disclaimers, not only allow the surviving spouse to plan for unforeseen circumstances, but optimize tax results based on laws in place following the death of the first spouse to die. And portability, just remember that this can simplify the estate planning process by allowing the surviving spouse to take advantage of the first spouse to die, his or her unused exemption, and finally, the estate tax return also provides the personal representative with some flexibility as it relates to valuation and payment of estate tax liability. So with that, if there are any more questions we can tackle those now, if not we'll give you a little bit of a break.

>>: I don't see any other questions right now. If anyone has any, go ahead and type those in and we can address them, or we can certainly cover them when we have Q and A when we finish up this morning. Thank you very much for your time this morning. Important stuff that everyone needs to be mindful of. If we don't have any other questions right now I will give you a little bit more of a break. So you can have a nine-minute break instead of a five-minute break. How about that? So we can take a quick break, we will come back with Laura after the break, and we will talk about charitable planning. Chris, thank you so much, and I'll see everyone on the other side of the break at 11:25.