

Question #1

~~Gift tax~~

Barb's income interest
and grandkids' remainder

Derek: Derek has made a completed gift of ~~100,000,000~~ trust. Although he has retained a power to control whether Art or Barb gets the income for 10 years (actually, trustee has power, but they need Derek's permission, so Derek is deemed to have retained the power §25.2511-2(c)). ~~Plus~~ The power to invade for Barb is not based on an ascertainable standard because it can be invaded for Barb's happiness. §25.2511-1(g)(2). So, Art's income interest is not a completed gift.

§2503 allows Derek to take \$10,000 annual exclusions for his gift to Barb, since it is a completed-present interest gift, and Nancy, since she has power to invade corpus (Crummey power). Derek has to pay gift tax each time Art receives an income distribution from the trust.

In 2025, Derek makes a \$50,000 gift to Barb in the purchase price of Blackacre. For each of the gifts listed above, Derek is responsible for paying the gift tax. No gift tax is due on Nancy's Crummey power, nor when the power

~~lapses~~ lapses because it is within the ^{by Nancy} 5% statutory exemption allowed by §2514(e).

~~Derek~~ Since Derek retained power to control who received the income from the trust, it would be included in his gross estate at death. However, the power terminates, as per its terms, one year before he died. For estate tax purposes, you must look at decedent's interests in property at the time of his death. Here, he had no powers over any part of the trust at his death, so

(2)

the trust would not be included in his estate. At the end of the 10 years, Art's income interest would vest and Derek would have had to pay gift tax on Art's life estate *pour autre vie* at that time. The gift tax paid on ~~the~~ Art's income interest would be included in D's gross estate because it was made within 3 years of his death (§ 2035(b)(2)). Derek's share of Blackacre would be included in his gross estate as well. Since BA is now worth \$750,000, \$500k would be included in D's estate. Although, Barb purchased her share of BA with income from the trust established by T, it is deemed to be her money ~~so~~ so long as she uses the income from the trust and not the actual trust corpus.

Generation Skipping Transfer did not take place when D set up trust because M and N did not have a present interest. ~~Therefore, GST~~

2 However, GST would be applicable at time of D's death. ~~Barb and Derek would be responsible for~~ D's estate would be responsible for paying the GST. (§ 2031) However, the first \$1m of GST is excluded, no GST is due on this amount (§ 2031). Tax equal to value of property * 6% + inclusion ratio (§ 2041).

There are no tax consequences to the trustee.

(3)

2 Sketchy whether Nancy's 10 day period for exercising Crummey power is sufficient length to qualify for Annual exclusion. 15 days has been held to be a sufficient length of time, but 10 days has never been challenged. Could go either way.

More question #1 answer on page 5.

Sorry

(4)

Question #2

~~Blended gift~~

A. Since loan to S was below market loan, §7872 would apply. It is not a gift of the whole loan amount, because legally binding agreement exists, M could collect at any time (demand loan). However, she doesn't, and is not charging S interest either, so this loan has below market value interest rate. A gift is made each year that interest is not paid, the rate used is the Applicable Federal Rate, compounded semi-annually. At the time of her death, no principal had been paid on the loan, so ~~the~~ it would go into her gross estate in full, and would be included for determining estate tax. ~~By the end of the first year, M's gift of forgone interest to S is equal to \$3,280. M would then be entitled to a \$10,000 annual exclusion under §2503(c), so her total gift would be~~ On Dec 31, 1996, when gift tax computed, M will have made a gift of \$16,000 to son.

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2
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2 After subtracting her annual exclusion of \$10,000 under §2503, she would owe tax on \$6,000 gift. Tax on loan would not be compounded again until July 1, 1997, so S barely missed getting another gift, then loan forgiven or will.

2 The ^{gift} tax paid by M (if she paid it) would ~~be~~ be included in her estate under §2035 because

the property is ^{not} included in her gross estate.

QUESTION 1!

As trustee of B's trust, none of that trust would be included in M's estate. However, the power of appt given to her by B may draw it in. Since she may assign the corpus to her creditors, it is a general power of appointment. It was not a general power of appt until B died (according to § 2041(b)(1)(C)(i)). However, at M's death, she did have a general power of appointment, ~~and~~ ∴ the full value of the trust is included in her gross estate.

~~65% but M's 1/3 remainder is 65% inclusion ratio (30/45).~~

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B. Residence: value based on fair market value (what would be paid between willing buyer and willing seller both having full knowledge of facts). To appraise the property, would probably look at comparable sales in same area within reasonable period before or after M's death. This method would most likely be used for the commercial real estate as well. A discount would probably be allowed on the commercial property due to the decrease in value brought on by the leases attached to the property.

Personal Effects: valuation of these items would be determined by subsequent sale price, if the items sold ~~over~~ within a reasonable time. The items that did not sell might be valued according to replacement cost, taking into account reductions for depreciation of the items.

Catering equipment: value would most likely be determined by subsequent sale price or replacement cost minus depreciation.

Catering business - ~~valued according to~~
since it was closed, business assets valued as per sale price discussed above.

Question 3

Trust 1: at time trust set up, completed gift to Nick of remainder, worth \$28,3790. ~~It would not be able to~~ (according to table S, $28379 \times 1m = \$28,3790$)
It would not be able to take annual exclusion for this gift because N's interest is a future interest, (\$2503). Since no annual exclusion is allowed, it would be of no benefit, unless H had used up his unified credit, to elect a split-gift for this gift with W. At the time of H's death, the full value of this trust is drawn into H's gross estate under § 2036 because he retained life estate in income. Since gift tax on trust paid within 3 years of H's death, the gift tax would also be drawn back into gross estate under § 2035.

Life Insurance: H's life insurance policy is not included in gross estate under § 2042 because it did not have any control over the policy, and had transferred ownership of it two years before. When he transferred ownership, gift tax was due on the amount H paid for the policy (\$700,000). He has no incidents of ownership, so it will no longer be included in his gross estate. However, since the transfer was made within 3 years of H's death, § 2035(d)(2) draws the policy back into his gross estate. The value would be the value on the date of H's death, taking into account

(Goodman v Granger)

that he had died, so it would be valued at \$1,000,000.
At the time of H's gift to N, no annual exclusion was allowed because N's interest was a future interest. ~~No annual exclusion allowed on remainder because not present interest~~

Trust 2: At time trust set up, no gift tax due for wife's income interest if she makes QTIP election under § 2056(b). Otherwise, since this is a terminable interest, gift tax would be due on her life estate. However, gift tax would be due on N's remainder interest. According to table S, the remainder factor after 60 year old's life estate is .78379, so value of N's remainder would be \$507,580. ~~One year of a 60 year old's life estate~~
No annual exclusion allowed on remainder because not present interest

When H dies, no part of this trust would be included in H's gross estate because QTIP election was made. This requires:

- ① N entitled to all income for life, payable at least annually
- ② no person has power of appointment over property.

§ 2056(b)(7).

2 The QTIP income which accumulates between ~~the~~ Jan 1 preceding W's death and her death, which shall be paid to N, does not disqualify this trust from QTIP election

according to reg § 20.2056(b)-7(d)(4).

When W dies in 2025, the full value of Trust Z is included in her gross estate. However, § 207A allows W's estate to recover the amount of the estate tax due on that trust from N, the remainderman.