



# Deathbed Income Tax and Transfer Tax Planning Opportunities

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# Powers of Attorney: Ability of Agent to Act for Income and Transfer Tax Planning

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- Uniform Power of Attorney Act (“UPOAA”)
  - *Specific Authorities/Hot Powers:*
    - § 201 of UPOAA
    - Create, amend, revoke, or terminate an inter vivos trust
    - Create or change rights of survivorship
    - Create or change a beneficiary designation
  - *Authority to do all acts that a principal could do (§ 201 of UPOAA)*
  - *UPOAA Rubrics:*
    - Operation of Entity or Business (§ 209 of UPOAA)
    - Estates, Trusts, and Other Beneficial Interests (§ 211 of UPOAA)
    - Retirement Plans (§ 215 of UPOAA)
    - Taxes (§ 216 of UPOAA)

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# Powers of Attorney: Gifting Issues

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- Language saying that the agent can do all acts that the principal could do does also grant to the agent the authority to make gifts, but only gifts that conform with the requirements of UPOAA §217.
- UPOAA §201: Limitations on Gifts
  - §201(b): Gifts by Agent to himself or individuals to whom he owes a legal obligation of support
  - §201(d): all gifts subject to UPOAA §217.
- Important to remember that the gifting authority can be customized by the principal when drafting the POA, but be cognizant of inadvertent grants of general powers of appointment to the agent over the principal's property.
- Consider making distributions to individuals whom the principal has customarily supported under UPOAA §213—personal and family maintenance

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# Transfer Tax Planning: Simple Gifting Techniques

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- Utilize Annual Exclusion; issue with equality
- Gifts to non-charitable beneficiaries by check must have cleared before death: Rev. Rul. 96-561
- *Estate of Demuth v. Commissioner*, T.C. Memo 2022-72.
- Utilize unlimited exemption for direct payment of education and medical expenses, can prepay tuition: TAM 199941013
- Gifting high basis assets

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# Transfer Tax Planning: Spousal Trust Planning/GSTT Planning

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- Full prefunding of bypass trust
- Reverse QTIP election
- Cf. portability election

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# Transfer Tax Planning: Maximizing Valuation Discounts

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- **Principle of non-aggregation**
- **Fractional gifting**
- **Depreciating assets**
- **Closely-held entities**

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# Transfer Tax Planning: State Tax Considerations

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- **Avoiding Ancillary Probate**
- **Consider residency of Trustee for state fiduciary income tax**
- **Consider state estate/inheritance tax planning options**

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# Income Tax Planning: Final 1040: Acceleration of Income

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- Utilizing carryforwards/carryovers and deductions
- Cf. individual v. estate/trust tax brackets and decedent's tax brackets v. beneficiary's tax brackets
- Examples:
  - Withdrawals from tax-deferred retirement accounts
  - Roth conversions
  - Sale of capital assets
  - Installment obligations



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## Income Tax Planning: Final 1040: Acceleration of Deductions

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- Accelerate charitable bequests by making lifetime gifts, but be cognizant of “doubling up.”
- Dispose of a taxpayer’s entire interest in a passive activity to utilize suspended losses.
- Harvest capital losses before death.

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## Income Tax Planning: Basis Planning

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- **Consider a trust distribution or termination to a dying client to receive the basis step-up in the assets**
- **Consider an asset swap of low basis assets for high basis assets in a trust in which the grantor has a swap power**

# Income Tax Planning: IRC §§ 1014(e) and 1015

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- Consider Ricochet Gift
- Appreciated property acquired by a decedent does not receive a basis adjustment when such property:
  - (1) passes to an individual from whom or from whose spouse the decedent acquired property by gift within one year before the decedent's death; and
  - (2) the fair market value of the property exceeds its adjusted basis.
- In general, the basis of property acquired by gift equals the donor's basis in the property, or the basis of the last preceding owner who did not acquire the property by gift; however, the gift basis rules under I.R.C. §1015 do not apply if the value of the property is includible in the donor's gross estate for estate tax purposes.
- Unrealized loss preservation
- I.R.C. §§1015(e) and 1041(b)2

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## Questions & Thank You

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