

# It's Here...It's Now....It's Almost Final!!

The IRS Just “Pre-Released” Form 8939 To File For Deaths Occurring in 2010, And We Have The Form!

## **I. Recent Developments**

*Leo J. Cushing, Esq., CPA, LLM*

- HR 4853 – Senate Amendments
- State and Federal Estate Tax Compliance for 2010, including a look at a new proposed Form 8939
- Modified Carryover Basis Rules vs. Full step-up
- How to use QTIP trusts to obtain a step-up in basis for surviving spouse
- Gifting, Disclaimers & Planning Opportunities
- Joint Trusts & General Power of Appointment Trusts
- New Massachusetts Law would allow for Homesteads for Trusts

## **II. Medicaid Update - Planning Opportunities**

*Todd E. Lutsky, Esq., LLM*

- Effective Use of Annuities in Medicaid Planning
- Personal Care Contracts
- Life Estates and Medicaid Trust Planning

## **III. Miscellaneous Updates**

*Leo J. Cushing, Esq., CPA, LLM, Brian E. Hammell, Esq.,  
and Joblin C. Younger, Esq.*

- What you need to know about the New Uniform Probate Code Effective 7/1/2011
- Year-End Business Tax Savings Techniques

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# HR 4853, the senate amendment to house amendment, to senate amendment reinstating the Estate Tax in 2011 for your review

- Discounts survive
- Estate and gift exemptions are reunified at \$5 million per person beginning in 2011
- Estate and gift tax rates are reunified at 35% in 2011
- A \$5 million exemption with a full step-up in basis is available by election for deaths in 2010
- Election will eliminate Massachusetts basis uncertainty
- Exemption becomes portable
- Exemption will be indexed for inflation beginning in 2012
- Generation skipping rules clarified
- New law sunsets January 1, 2013

# Planning in the Twilight Zone

<u>Year</u>	<u>Mass. Exemption</u>	<u>Federal Exemption</u>
2003	\$700,000	\$1 million
2004	\$850,000	\$1.5 million
2005	\$950,000	\$1.5 million
2006	\$1 million	\$2 million
2007	\$1 million	\$2 million
2008	\$1 million	\$2 million
2009	\$1 million	\$3.5 million
2010	\$1 million	<b>No Federal Estate Tax</b>
2011	\$1 million	\$1 million (55% rate) \$5 million (35% rate)

**Comment:** A portable exemption may not eliminate a need for planning.

# 2001 Act – Modified Carryover Basis

Once the estate tax is repealed in 2010, a modified carryover basis structure will be established. Under this structure, recipients of property transferred at death generally will acquire a basis in the property equal to the lesser of the:

- Decedent's basis in the property immediately before death, or
- Date-of-death value of the property.

The so-called modified carry-over basis rules, which allow a basis increase up to \$1,300,000 (plus \$3,000,000 in the case of a spouse), applies to “property acquired from a decedent” by bequest, devise, or inheritance, or by the decedent’s estate from the decedent and any property passing from the decedent to the extent such property passed without consideration. New Code<sub>5</sub> 1022 (e)

# Types of Property to which the modified carryover basis rules apply

The modified carryover basis rules apply to property “owned by the decedent” and “acquired from the decedent.”

Property acquired from the decedent is:

- (1) property acquired by bequest, devise, or inheritance, New Code § 1022(e)(1)
- (2) property acquired by the decedent’s estate from the decedent, New Code § 1022(e)(1)
- (3) property transferred by the decedent during his or her lifetime to a qualified revocable trust as defined in IRC § 645(b)(1), New Code § 1022(e)(2)(A)
- (4) property transferred by the decedent during his lifetime in trust with the right reserved to the decedent at all times before his death to make any change to the enjoyment thereof through the exercise of a power to alter, amend or terminate the trust. New Code § 1022(e)(2)(B),
- (5) any other property acquired from a decedent by reason of the decedent’s death to the extent such property passed without consideration. New Code § 1022(e)(3)
- (6) the surviving spouse’s one-half share of certain community property owned by the decedent and the surviving spouse as community property. IRC § 1022(d)(1)(B)(iv)

## Planning Note:

- The decedent will not be treated as owning any property by reason of holding a general power of appointment. New Code § 1022 (d)(1)(B)(iii)
- What if exercised?
- There may be some question as to whether a reserved life estate is eligible for a step-up in basis

# Aggregate Increase in Basis

Under the 2001 ACT, the basis of such property shall be increased by a so-called “basis increase“. In the case of any estate, the aggregate basis increase is \$1,300,000. New Code § 1022 (b) (2) (B). Additionally, basis may be further increased by any unused capital losses, net operating losses, and certain built-in losses of the decedent.

An additional \$3 million of basis increase is available for property transferred to a surviving spouse for a total of \$4,300,000.

The executor chooses the property that will receive these basis increases. However, in no event can the basis of property be adjusted above its date-of-death value.

Non-residents who are not U.S. citizens will be allowed to increase the basis of property by up to \$60,000. The \$60,000, \$1,300,000 and \$3,000,000 amounts are to be adjusted for inflation occurring after 2010, but not less than \$5,000 in the case of \$60,000, not less than \$100,000 in the case of \$1,300,000, and not less than \$250,000 in the case of \$3,000,000.

# Property acquired by Surviving Spouse

The special \$3,000,000 spousal property basis increase applies to so-called “qualified spousal property.” The term “qualified spousal property” means (A) an outright transfer of property, and (B) qualified terminable interest property. New Code § 1022(c)(1)(2) and New Code § 1022(c)(1)(3).



# Qualified Terminable Interest Property – New Code § 1022(c)(1)(3)

1. All income must be payable for life to the spouse at least annually; and
2. No person has any power to appoint property to any person other than the surviving spouse.

**Planning Note:** Federal and Massachusetts QTIP election can differ. Same as IRC 2056(b)(7)

**Planning Note:** Great care will be needed in drafting and funding marital and by-pass trusts to maximize the benefit of the new basis rules.

# Special Rule Relating to Grantor Trusts

Any transfer of property in trust will be treated as a taxable gift under IRC § 2503 unless the trust is treated as wholly owned by the donor or the donor's spouse. New Code § 2511(c). This provision would be repealed under the 2010 Act.

**Planning Note:** Irrevocable Medicaid Planning Trusts must be grantor trusts and not just old fashioned “incomplete gifts” under Regs. 25.2511-2 (c). A power to control beneficial enjoyment exercisable only by Will does not cause the grantor to be treated as an owner under IRC section 674(a). Regs. 1.674(B)(1)(b)(2)

# Rules Allocable to Basis Increase

The basis increase will be allocated by the executor on an asset-by-asset basis (for example, basis increase can be allocated to a share of stock or a block of stock), however, in no case can the basis of an asset be adjusted above its fair market value.

If the amount of basis increase is less than the fair market value of the asset whose basis are eligible to be increased under these rules, the executor will determine which assets and to what extent each asset receives a basis increase. 2001 Act § 1022(d)(3)(A) and (B).

# Reporting Requirements: New Code § 6018

## a. Transfers at Death

For transfers at death of non-cash assets in excess of \$1,300,000 (so-called “large transfers”), and for transfers of certain gifts received by a decedent within three years of death, the executor of the estate (or the trustee of a revocable trust) will report to the IRS;

- the name and taxpayer identification number of the recipient of the property;
- an accurate description of the property;
- the adjusted basis of the property in the hands of the decedent and its fair market value at the time of death;
- the decedent’s holding period for the property;
- sufficient information to determine whether any gain on the sale of the property would be treated as ordinary income;
- the amount of basis increase allocated to the property; and
- any other information as the Treasury Secretary may prescribe.

The return must be filed with the decedent’s final income tax return and labeled IRC § 6018 Return.

## Reporting Requirements: New Code § 6018 Continued

Additionally, the person required to make this return must furnish to each person who receives property a written statement showing (1) the name, address, and telephone number of the person making the return and (2) the information included in the return with respect to the property acquired from, or passing from, the decedent to the person receiving the property. The statement must be filed within thirty (30) days after the return is filed.

# Reporting Requirements: New Code § 6018 Continued

- b. Property acquired by the decedent within three (3) years of death. New Code § 1022(d)(1)(C)

In general, there will be no step-up in the basis for property acquired by the decedent by gift or by inter vivos transfer for less than adequate and full consideration money or money's worth during the 3 year period ending or the decedent's death. This exclusion does not apply to property acquired by the decedent from the decedent's spouse unless the spouse had acquired the property by gift within such 3 year period.

## Lifetime Gifts – New Code § 6019 (b)

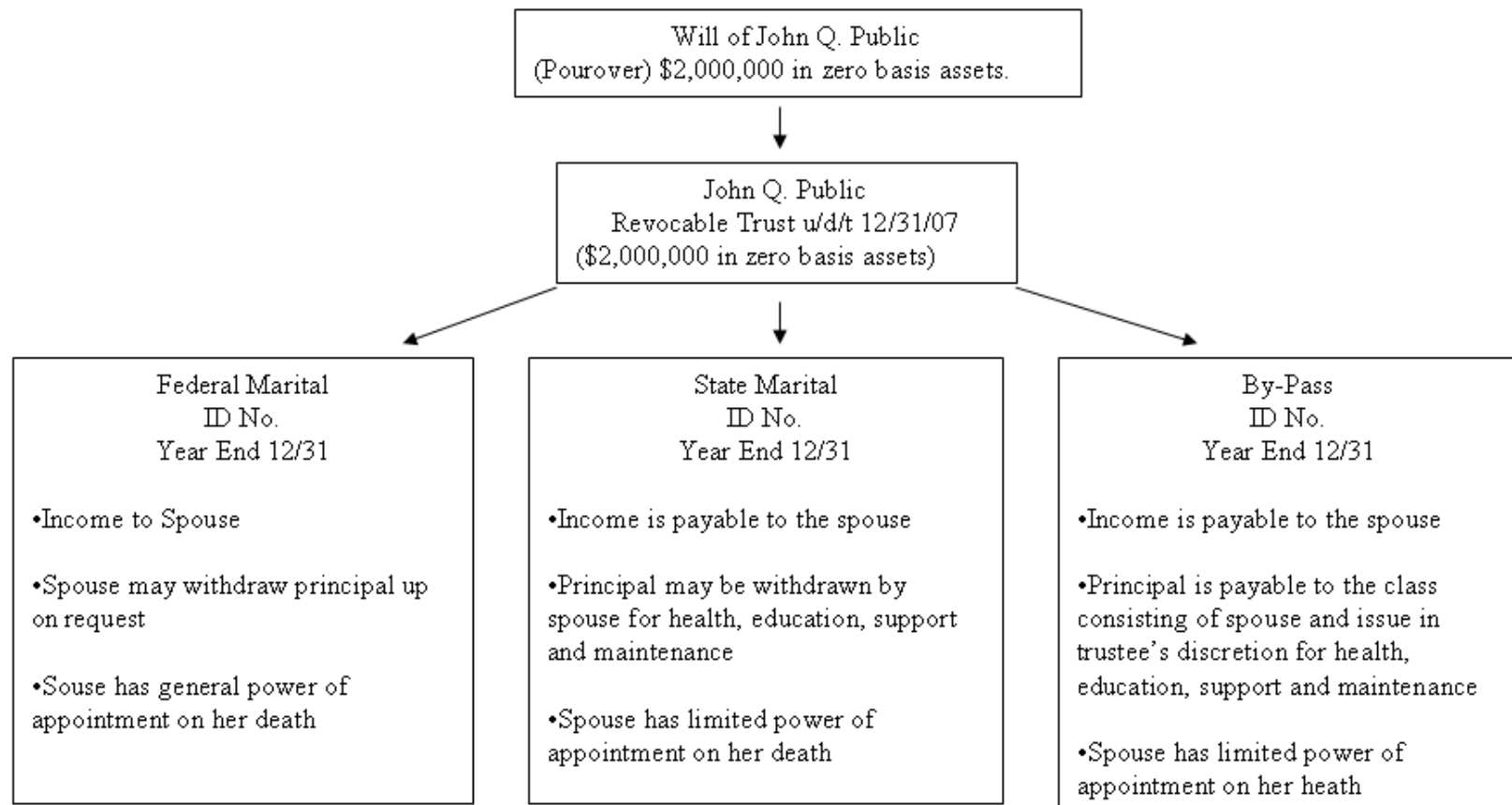
If a gift tax return is required to be filed under IRC § 6019, the donees must be provided with a written statement containing the name, address and telephone number of the person making the return within thirty (30) days after the date the return is filed and such person must receive the information contained in the return relative to the property received by such person. New Code § 6019 (b). Was this effective in 2002?

# Possible Planning Opportunities

- Transfer assets to sick spouse
- Recommend using a joint trust
  - PLR 200101021
  - PLR 200210051
- Give sick spouse a general power of appointment exercisable through December 31, 2012
  - PLR 200403094
  - PLR 200604028
  
- Consider significant gifting with discounted assets in 2011 and 2012



## II. Flow Chart



### YEAR

2008	→	\$2,000,000	\$1,000,000	\$1,000,000
2009	→	\$500,000	\$2,500,000	\$1,000,000
2010	→	Zero	\$3,000,000	\$1,000,000
2011	→	\$3,000,000	Zero	\$1,000,000

**Allocation of Increase in Basis for Property Received from a Decedent**

**2010**

Department of the Treasury  
Internal Revenue Service

To be filed for decedents dying after December 31, 2009, and before January 1, 2010.

**Part 1—Decedent and Executor**

1a Decedent's first name and middle initial (and maiden name, if any) **John**

1b Decedent's last name **Public**

1c Decedent's Social Security No. **123 45 6789**

2a County, state, and ZIP code, or foreign country, of legal residence (domicile) at time of death **Middlesex, MA 02451**

2b Year domicile established **1931**

2c Date of birth **05/05/1931**

2d Date of death **01/01/2010**

3a Name of executor (see instructions) **Jane Public**

3b Executor's address (including street including apartment or suite no., city, town, county, state, and ZIP code) and phone no. **375 Totten Pond Road, Waltham, MA, 02451**

3c Executor's social security number (see instructions) **012 34 5678**

3d Phone no. **617 523-1555**

7 Marital status of the decedent at time of death

Married

Widow or widower—Name, SSN, and date of death of deceased spouse ▶

Single

Legally separated

Divorced—Date divorce decree became final

8a Surviving spouse's name **Jane Public**

8b Social security number **012 34 5678**

8c Amount received (see instructions)

**Part 2—Basis Allocation Computation**

9 Individuals (other than the surviving spouse), trusts, or other estates who receive property from the estate (do not include charitable beneficiaries) (see instructions).

Name of individual, trust, or estate	Identifying number	Amount (see instructions)
John Public Family Trust, Remainder Share	38-1111111	\$1,000,000
John Public Family Trust, Special Marital Share	38-2222222	\$3,000,000

10 Built-in loss (see instructions). For non-resident alien decedents, enter zero	10		
11 Capital loss carryover (see instructions). For non-resident alien decedents, enter zero	11		
12 Net operating loss carryover (see instructions)	12		
13 Unadjusted aggregate basis increase. For non-resident alien decedents, enter zero. All others, enter \$1,300,000	13	\$1,300,000	00
14 Add lines 10 through 13. Non-resident aliens enter \$00,000	14	\$1,300,000	00
15 Spousal basis increase limit	15	\$3,000,000	00
16 Total aggregate basis increase limit. Add lines 14 and 15	16	\$4,300,000	00
17 Enter the amount from Schedule A, line 6	17	\$2,000,000	00
18 Subtract line 17 from line 16. Enter the result but not greater than line 14	18	\$2,300,000	00
19 Enter the total of the amounts from each Schedule B, line 6	19	0	00
20 Subtract line 19 from line 18	20	\$2,300,000	00

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than the executor) is based on all information of which preparer has any knowledge.

**Sign Here**

Signature of executor \_\_\_\_\_ Date \_\_\_\_\_

Signature of executor \_\_\_\_\_ Date \_\_\_\_\_

**Paid Preparer's Use Only**

Preparer's signature \_\_\_\_\_ Date \_\_\_\_\_ Check if self-employed

Firm's name (or yours if self-employed), address, and ZIP code **Cushing & Dolan, P.C., 375 Totten Pond Rd., Ste. 200, Waltham** EIN \_\_\_\_\_

Phone no. **617 523-1555**

Draft of 06/01/2010

Decedent's Social Security Number

Estate of: **John Public**

123 45 6789

**SCHEDULE A—Property Acquired by Surviving Spouse**

**Part I General Information**

**1a** Name of Executor

**Jane Public**

**1b** Executor's address (number and street including apartment or suite no., city, town, or village, office, state, and ZIP code) and phone no.

375 Cottonwood Rd

Waltham, MA, 02451

Phone no. 617 553-1555

**1c** Executor's social security number

012-34-5678

**2a** Name of Recipient

John Public Family Trust, Special Marital Share

**2b** Recipient's social security number

8-2222

**Part II Property Information**

**3** For all property acquired from the decedent (other than stock of a foreign personal holding company, DISC or former DISC, foreign investment company, or passive foreign investment company) the basis of which at the date of death is equal to or greater than its fair market value at the date of death, provide the following information:

Item No.	(a) Accurate description of the property	(b) Date decedent acquired the property (mm/dd/yyyy)	(c) Acquired by gift	(d) Adjusted basis at death	(e) Fair market value at death	(f) Check if any gain would be ordinary (Attach statement)
1	Norfolk MA Rental Prop	03/25/1965	<input type="checkbox"/>	-0-	\$2,000,000	<input checked="" type="checkbox"/>
			<input type="checkbox"/>			<input type="checkbox"/>
			<input type="checkbox"/>			<input type="checkbox"/>
			<input type="checkbox"/>			<input type="checkbox"/>
			<input type="checkbox"/>			<input type="checkbox"/>
			<input type="checkbox"/>			<input type="checkbox"/>
			<input type="checkbox"/>			<input type="checkbox"/>
			<input type="checkbox"/>	-0-	\$2,000,000	<input type="checkbox"/>
<b>3a</b>	Total for columns (d) and (e)				-0-	\$2,000,000

**4** Subtract the amount in line 3a, column (e) from the amount in line 3a, column (d) \$2,000,000 00

**5** For all property acquired from the decedent (other than stock of a foreign personal holding company, DISC or former DISC, foreign investment company, or passive foreign investment company) the basis of which at the date of death is equal to or greater than its fair market value at the date of death, provide the following information:

Item No.	(a) Accurate description of the property	Check as applicable:		(b) Date decedent acquired the property (mm/dd/yyyy)	(c) Acquired by gift	(d) Adjusted basis at death	(e) Fair market value at death	(f) Basis increase allocated to property	(g) Amount of gain that would be ordinary (Attach statement)
		Outright transfer	QTIP						
1	Norfolk MA Rental Prop	<input checked="" type="checkbox"/>	<input type="checkbox"/>	03/25/1965	<input type="checkbox"/>	-0-	\$2,000,000	\$2,000,000	\$2,000,000
		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>				

**6** Add the amounts in line 5, column (f). Do not enter a number greater than page 1, line 16. Enter this amount on page 1, line 17 \$2,000,000 00

Decedent's Social Security Number

Estate of:

**SCHEDULE B—Property Acquired Other Than by Surviving Spouse**

**Part I General Information**

1a Name of Executor

1b Decedent's address (number and street including apartment, suite no., city, town, county office, state, and ZIP code) and phone no.

1c Executor's social security number

Phone no. 1

2a Name of Recipient

2b Recipient's social security number

**Part II Property Information**

3 For all property acquired from the decedent (other than stock of a foreign personal holding company, DISC or former DISC, foreign investment company, or passive foreign investment company) the basis of which at the date of death is equal to or greater than its fair market value at the date of death, provide the following information.

Item No.	(a) Accurate description of the property	(b) Date decedent acquired the property (mm/dd/yyyy)	(c) Acquired by gift	(d) Adjusted basis at death	(e) Fair market value at death	(f) Check if any gain would be ordinary (Attach statement)
			<input type="checkbox"/>			<input type="checkbox"/>
			<input type="checkbox"/>			<input type="checkbox"/>
			<input type="checkbox"/>			<input type="checkbox"/>
			<input type="checkbox"/>			<input type="checkbox"/>
			<input type="checkbox"/>			<input type="checkbox"/>
			<input type="checkbox"/>			<input type="checkbox"/>
			<input type="checkbox"/>			<input type="checkbox"/>

3a Total for columns (c) and (e)

4 Subtract the amount in line 3a, column (e) from the amount in line 3a, column (c)

5 For all property acquired from the decedent (other than stock of a foreign personal holding company, DISC or former DISC, foreign investment company, or passive foreign investment company) the basis of which at the date of death is equal to or greater than its fair market value at the date of death, provide the following information. See instructions.

Item No.	(a) Accurate description of the property	(b) Date decedent acquired the property (mm/dd/yyyy)	(c) Acquired by gift	(d) Adjusted basis at death	(e) Fair market value at death	(f) Basis increase allocated to property	(g) Amount of gain that would be ordinary (Attach statement)
			<input type="checkbox"/>				
			<input type="checkbox"/>				
			<input type="checkbox"/>				
			<input type="checkbox"/>				
			<input type="checkbox"/>				
			<input type="checkbox"/>				

6 Add the amounts in line 3, column (e)

# The Irrevocable Medicaid Trust From Cradle to Grave

Presented by

Leo J. Cushing, Esq., CPA, LLM, and  
Todd E. Lutsky, Esq., LLM

A grateful appreciation for assistance in preparation  
by

Annette K. Eaton, Esq., and Matthew B. Guanci, Esq., LLM

# Hypothetical Fact Pattern for Mrs. Public

Surviving spouse, Mrs. Public, established an income only irrevocable Medicaid trust in 2002, naming herself and her oldest child as trustees. The trust provides as follows:

- (1) For so long as Mrs. Public is alive, income from the trust is payable to Mrs. Public.
- (2) Under no circumstances is the Trustee permitted to use principal for Mrs. Public's benefit.
- (3) The Trustee, in its discretion, may pay principal to or for the benefit of the class consisting of Mrs. Public's issue.
- (4) Mrs. Public reserved, in the trust instrument, the right to tell the Trustee to make a distribution of principal to or for the benefit of one or more of her issue.
- (5) Upon Mrs. Public's death, the property in the trust will be paid over to those persons selected from the class consisting of her issue, as designated in a Last Will and Testament referring to this power executed after the execution of the trust.
- (6) In the event the power is not exercised, the property shall be sold and the proceeds divided equally among the issue by right of representation.

The property in question was worth \$400,000 at the time of the transfer to the trust and the tax assessed value of the property was \$300,000. Mrs. Public had acquired the property from her husband six months earlier as the result of his death and the property had been owned jointly. The fair market value of the property at the time of Mr. Public's death was \$400,000. Mrs. Public was 75 years old at the time of the transfer into the trust. Simultaneous with the execution of the trust, Mrs. Public conveyed her home to the trust reserving a life estate as well as 1 million dollars in cash and securities. Let's look at the income, gift, estate and MassHealth consequences.

## Question 1:

Is the transfer of the property to the trust a completed gift?

### Answer 1:

The answer is no. Treasury Regulation 25.2511-2(c) provides that a transfer is an incomplete gift for gift tax purposes if the Donor retains the right to designate the final beneficiaries. See, Paragraph 5, above. Specifically, a gift will be incomplete (but only for gift tax purposes) under Regs. 25.2511-2(c) “if and to the extent that a reserved power giving the donor the power to name new beneficiaries or to change the interest of the beneficiaries as between themselves [make the gift incomplete] unless the power is a fiduciary power limited by a fixed or ascertainable standard.”

### Planning Note

*If the Deed transferred the real estate to a child and the Donor, Mrs. Public, reserved a life estate, there would have been a completed gift, which would need to be reported since the grantor did not reserve the right to designate the final beneficiaries. In addition, if the 1 million in cash and marketable securities had been transferred to a child, a gift tax would have been due since the total gifts would have exceeded the 1 million dollar gift tax exemption.*

## Question 2:

# Does a gift tax return need to be filed?

### Answer 2:

The answer probably should be yes, but only to provide disclosure. If the donor retained a provision in the trust rendering the gift incomplete, the Regulations provide that a gift tax return should be disclosed on a return but a failure to file would not render the taxpayer subject to any penalties or gift tax. In most cases, no gift tax return would have been filed. The risk is that the transfer was not incomplete and a gift tax would have been due giving rise to penalties and interest. Specifically, Regulation 25.6019-3(a) provides: “If a Donor contends that his retained power over property renders the gift incomplete and hence not subject to tax as of the calendar quarter or calendar year of the initial transfer, the transaction should be disclosed in the return for the calendar quarter or calendar year of the initial transfer and evidence showing all relevant facts, including the copy of the instrument of transfer, shall be submitted with the return.”

### Planning Note

*If the transfer is occurring in 2010, it may not be enough to simply reserve the right to designate the final beneficiaries. New IRC § 2511(c) provides that, “A transfer in trust shall be treated as a transfer of property by gift, unless the trust is treated as wholly owned by the donor or the donor’s spouse under the (grantor trust rules).”*



### Question 3:

How do you compute the amount of the gift for gift tax purposes if the transfer of the real estate had been to a child rather than to a trust?

#### Answer 3:

Assume the 7520 rate applicable for the date of the transfer was 2.4%. Using Table S, single life factors based on Life Table 90CM with interest at 2.4%, the life estate portion is worth .22012 and the remainder interest is worth .77988. Therefore, to compute the value of the gift, you would multiply the fair market value of the property of \$400,000 by .77988 (\$311,952).

## Question 4:

What is the value of the transfer of the real estate for MassHealth purposes?

### Answer 4:

Pursuant to MassHealth Eligibility Operations Memo 07-18, the same rate would be applicable by referring you to Table S. The difference, however, would be to use the assessed value rather than fair market value pursuant to MassHealth Regulation 103 CMR 520.007(G)(3)(a). The value of the transfer for MassHealth purposes will be \$300,000 multiplied by .77988 (\$233,964).

## Question 5:

What is Mrs. Public's basis in the property assuming the property was purchased for \$40,000 in 1970?

### Answer 5:

\$400,000 as a result of IRC § 2040(b) and *Gallenstein v. United States*, 92-2 USTC, P60,114 (Ed. KY 1991), aff'd 975 F.2d 286 (6th Cir. 1992). See, also *Patten*, 97-2 USTC, P60,279 (DC CA 1996), and *Anderson*, 96-2 USTC P60,235 (DC MD 1996). This Code Section and these cases stand for the proposition that, as to property acquired by a husband and wife prior to 1977, 100% of the property would be includible in the estate of the first spouse to die. There will be no estate tax because of the unlimited marital deduction, and the surviving spouse would have a full step-up in basis in the property.

### Planning Note

*If the property had been acquired after 1976, the surviving spouse would have a basis equal to \$220,000, determined by adding one-half of the purchase price (\$20,000), and one-half of the value on the date of death (\$200,000).*

### Planning Note

*It has been suggested that, notwithstanding this well established rule, if the spouse who dies first did not contribute to the purchase price because the deceased spouse was a home maker, for example, then the surviving spouse would receive no step up in basis (and not even one-half). This does not seem to be supported by the Regulations. Regulations 20.2040-1, joint interests, (a)(2) provides: "The entire value of jointly held property is included in a decedent's gross estate unless the executor submits the facts sufficient to show that property was not acquired entirely with consideration furnished by the decedent..." This provision suggests that an election is available to the executor rather than any mandatory rule. There is no case directly on point.*

## Question 6:

What is Mrs. Public's basis in the property for Massachusetts income tax purposes if different from the federal basis?

### Answer 6:

This depends upon when the first spouse died. The governing case is *Treat v. Commissioner*, 52 Mass.App.Ct. 208, 201. The Treat case involved a spouse who died in 1993, several years before Massachusetts completed the repeal of its estate tax system. Dealing with a 1993 death, the Appeals Court relied on General Laws Chapter 65C, §1(d), which is applicable to deaths occurring before January 1, 1997. This section provides:

“The federal gross estate’, the gross estate as defined under the Code except that, (1) notwithstanding Section 2035 of the Code, the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has, at any time made a transfer, relinquished the power or exercised a released a power of appointment, except in case of a bona fide sale for adequate and full consideration in money or money’s worth, by trust or otherwise, during the three year period ending with the date of the decedent’s death, provided however, the value of such property or interest therein so transferred or subject to the power so relinquished, exercised, or released, exceeds \$10,000 for any person during the calendar year; and (2) notwithstanding Section 2040 of the Code, one-half of the value of any interest in any property shall be included in the gross estate of such interest is held by the decedent and the decedent’s spouse as tenants by the entirety or joint tenants with rights of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants.”

This section does not apply to decedents who died on or after January 1, 1997. Under current law, the Massachusetts estate tax, and by implication the definition of gross estate is based upon the federal estate tax credit pursuant to IRC § 2011. As a result, the surviving spouse should acquire a full step-up in basis for Massachusetts income tax purposes, provided the decedent died on or after January 1, 1997. Therefore, in this case, since the decedent died after January 1, 1997 a full step up in basis will apply in Massachusetts as well.

## Question 7:

What would Mrs. Public's basis be if she had transferred the real estate to her children and not retained a life interest in the property, but continued to occupy the property as though she owned it and paid all expenses? None of the children reported any income attributable to rent.

### Answer 7:

In such a case, the decedent would have acquired a step-up in basis equal to the fair market value of the property on the date of death.

In the *Estate of Guynn*, 437 F.2d 1148 (4th Cir. 1971), the Circuit Court of Appeals ruled that where the donor and the donee are other than a husband and wife, such as a transfer of a home from a single parent to a child, then the IRS could successfully assert an argument that there was an implied life estate under IRC § 2036. See also, Rev. Rul. 70-155, 179-1CB 189.

Also, in *Estate of Maxwell*, 98 T.C. 39 (1992), the Tax Court ruled that the value of a decedent's former home should be included in the decedent's estate, even though the decedent "sold" the property to a child for \$270,000, required payments of interest only at 9% per year (no principal was required), the decedent's Will forgave the Note at death, and the decedent cancelled \$20,000 in a Note each year. The problem was that the decedent did not move out of the house and the Court found that an implied agreement to use and occupy the home existed under IRC § 2036(a).

On the other hand, in the *Estate of Powell v. Commissioner*, 63 T.C.M. 3192 (1992), the decedent transferred approximately 60% of his ownership interest in his principal residence to his children and their relatives. The decedent died owning 40%. The decedent continued to live in the home until he was forced to move because of his physical condition. The decedent paid all expenses, including real estate taxes, maintenance, and upkeep. The IRS unsuccessfully argued that the decedent retained a life estate under IRC § 2036. The Tax Court disagreed with the IRS's arguments finding that his continued occupation of the residence was consistent with his ownership interest as a tenant in common with his children. See, also *Estate of Wineman*, 79 T.C.M. 2189 (2000), 24% of the property gifted more than 20 years before death held not includible.

# Answer 7 Continued:

## Planning Note

*For a decedent dying in 2010, it does not appear as though a step-up in basis would be appropriate in the absence of a legal life estate. Under the so-called 2001 Act, in order for property to be eligible for the modified step-up in basis (up to \$1,300,000 in the case of a person other than the spouse and an additional \$3,000,000 in the case of property passing to the spouse), the property must have been “acquired” from the decedent. IRC § 1022(d). Property acquired from the decedent is specifically defined in the Internal Revenue Code as follows:*

*(1) property acquired by bequest, devise, or inheritance, or by the decedent’s estate from the decedent. IRC § 1022(e)(1);*

*(2) property transferred by the decedent during his or her lifetime to a qualified revocable trust as defined in IRC § 645(b)(1), IRC § 1022(e)(2)(A);*

*(3) property transferred by the decedent during his lifetime in trust with the right reserved to the decedent at all times before his death to make any change to the enjoyment thereof, through the exercise of a power to alter, amend, or terminate the trust. IRC § 1022(e)(2)(B);*

*(4) any other property acquired from the decedent by reason of a decedent’s death, to the extent such property passed without consideration IRC § 1022(e)(3) (e.g., property held as joint tenants with rights of survivorship or as tenants by the entirety); and*

*(5) the surviving spouse’s one-half share of certain community property owned by the decedent and the surviving spouse as community property. IRC 1022(d)(1)(B)(iv).*

## Planning Note

*The basis of property acquired from a decedent may be increased only if the property was owned by the decedent at the time of death. IRC 1022(D)(1)(A). “The decedant shall not be treated as owning any property by reason of holding a power of appointment with respect to such property.” IRC 1022(d)(1)(B)(iii). In the case of a life estate it appears that both criteria are met and that the property would be eligible for a step up in basis. Therefore, the situation described in the Estate of Guynn would not operate to obtain a step up in basis if the decedent dies in 2010.*

## Question 8:

Who is responsible for paying expenses attributable to the property after the property is transferred to the trust subject to a life estate?

### Answer 8:

The life tenant is responsible for paying all expenses associated with ownership, with the exception of capital improvements. This means that the life tenant would be paying property taxes and will be entitled to an income tax deduction with respect to such payments. If the property was rental income, then the rental income would simply be reported by the life tenant on Mrs. Public's Form 1040. A remainderman owes no duty of care to the life tenants, absent a duty voluntarily assumed by the remainderman. *Delprete v. Ferrante*, et al, L.W. No. 16-106, Judge King, Suffolk County No. 90-2152B.

### Planning Note

*It is important to remember that any net rental income generated from the property will be available to the donor of the trust under the terms of the trust, and as such will also be available to the nursing home for MassHealth purposes.*

## Question 9:

Was the transfer of the property subject to either a five year lookback or a three year lookback?

### Answer 9:

With respect to transfers occurring on or after February 8, 2006, a five year lookback applied to all transfers whether or not the property was transferred to an individual or to a trust. 130 CMR 520.019 (B)(2). With respect to transfers occurring prior to that time, a three year lookback applied in the case of a transfer to an individual, but a five year lookback applied to transfers of properties into a trust. 130 CMR 520.019(B)(2), 130 CMR 520.019(B)(3) and 130 CMR 520.023(A). In this case, the lookback will depend upon whether the transfer was made to an individual or to a trust. Since the property was transferred to a trust, a five year lookback is applicable.



## Question 10:

# How is the transfer penalty (or “period of ineligibility”) computed?

### Answer 10:

To determine the penalty (or “period of ineligibility”), the value of the gift (in this case \$1,233,964) is divided by the average daily cost of private nursing home coverage (also known as the adjustment divisor) on the date of application. 130 CMR 520.019(G)(1). For applications currently filed, the adjustment daily divisor is \$274 (or \$8,220 per month). In this case, the penalty would be 150.11 months ( $\$1,233,964 \div 8,220$ ).

### Planning Note

*Valuation of the remainder interest is accomplished by 130 CMR 520-019(I)(1). Remember that in Question 4 we computed the value of the remainder interest in the property for MassHealth purposes by multiplying the tax assessed value at the time of transfer, \$300,000 by the remainder interest of .77988, to get a total transfer of \$233,964. By adding the value of the 1 million in cash and securities transferred into the trust at the same time, a total transfer of \$1,233,964 took place on the creation of the trust.*

## Question 11: When does the penalty begin to run?

### Answer 11:

For transfers occurring prior to February 8, 2006, the penalty begins to run on the date of the transfer. 130 CMR 520.019(G)(3). In this case, notwithstanding the fact that the penalty period of 12 ½ years has not yet run, this transfer would be fully protected under the 5 year lookback rules applicable to transfers into trust.

### Planning Note

*For transfers occurring on or after February 8, 2006, the penalty does not begin to run until the later of when the applicant is institutionalized and otherwise eligible. This basically means that the penalty doesn't begin to run until after the donor is institutionalized and has less than \$2,000. Therefore, YOU MUST WAIT 5 YEARS TO PROTECT ANY TRANSFERS.*

## Question 12:

Assuming the property was sold on November 1, 2010 for \$600,000, what are the income tax and MassHealth consequences?

**Answer 12:**

- **Income Tax Consequences:**

In order to sell the property, Mrs. Public, as well as the trustees of the trust, would need to sign the deed. Since the life estate is a property interest, a portion of the proceeds would need to be paid directly to Mrs. Public and a portion would need to be paid directly to the irrevocable trust. The amount to be paid to each party is determined based upon the Table S using the 7520 rate. Basis in the property is similarly allocated.

Cash and the gain are allocated based upon these percentages. That portion of the sale proceeds allocated to the life tenant will be eligible for the capital gain tax exclusion under IRC § 121. As a single person who owned and occupied the residence as her home for two out of the last five years, she would be able to exclude up to \$250,000 in capital gain. The balance will be taxable at 15% and 5.3% (Massachusetts). Revenue Ruling 71-122. The portion of the proceeds allocated to the trust may or may not be taxable depending upon whether the trust is a grantor trust. If the property had been deeded to the child instead of the trust, the portion of the proceeds allocated to the child would be taxable as capital gain with no exclusion since the child did not live in and own the home for two of the last five years.

If the trust is a grantor trust, the trust must file Form 1041, identify itself as a grantor trust, and send a tax letter to the grantor informing the grantor that the grantor is responsible for reporting the trust's portion of the gain. In this case, the total gain is \$200,000 (\$600,000 - \$400,000). Assuming the same 7520 rate of 2.4%, the life estate portion is 14.8%, which means \$29,600 would be included, but the remaining \$170,400 would be reported by the remaindermen. If the remaindermen are the children, it would be fully taxable at capital gain rates. If the remainder portion was owned by a grantor trust, then that gain would be reallocated to the grantor and eligible for the capital gain tax exclusion making the full \$200,000 income tax free. Rev. Rul. 66-159 and Rev. Rul. 85-45.

As a result of the sale, a 1099-S will be issued to either Mrs. Public or her irrevocable trust, or both depending upon whether or not Mrs. Public directs the closing agent to issue separate 1099s (one to Mrs. Public and one to Mrs. Public's Irrevocable Trust) in order to reflect the appropriate percentage of the gross proceeds allocated to her (as the holder of the life estate) and to her trust (as the remainderman).

# Answer 12 Continued:

- MassHealth Consequences:

Sale of a life interest is governed by 130 CMR 520-019(I)(2). “If the nursing facility resident’s . . . life estate interest or property including the life estate interest is sold or transferred, the value of the life estate interest at the time of the sale (emphasis added) or transfer is calculated in accordance with the Life Estate Tables as determined by the MassHealth agency. The MassHealth agency will attribute the value of the life estate interest at the time of the sale or transfer to the person selling or transferring the life estate.”

The portion of the sale proceeds allocated to the life tenant becomes a countable asset, which is once again determined by looking to the applicable 7520 rate and Table S. If the grantor is in a nursing home, to the extent the life tenants share of the proceeds together with other assets exceed \$2,000, the applicant would be disqualified from MassHealth benefits unless further action is taken, such as an annuity or an additional gift.

## Planning Note

*This is probably the biggest disadvantage to retaining a life estate. In this case, assuming a life interest of 14.8%, \$88,800 would be allocated to the grantor disqualifying the grantor from receiving benefits. If instead of reserving a life estate the property had been transferred by fee simple interest into the trust, no portion of the sale proceeds would need to be reallocated to the grantor and the entire sale proceeds would be protected from MassHealth and the taxpayer would not have to pay any capital gain because the gain, even though realized by the trust, would be reallocated to the grantor for income tax purposes and it would be eligible for the capital gain tax exclusion under IRC § 121.*

### **Question 13:**

**Does it make sense to have these clients release/give away their life estate?**

### **Answer 13:**

Probably not since the transfer/release of a life estate would create a new penalty period subject to a new look back period. Remembering that the penalty does not begin to run until Mrs. Public is otherwise eligible with assets under \$2,000.

## Question 14:

Assume instead of selling the property that Mrs. Public dies owning the life estate. What are the estate and income tax ramifications?

### Answer 14:

The fair market value of the property is includible in the grantor's estate under IRC § 2036 and, as a result, the property would receive a full step-up in basis. IRC 1014.

Therefore, for deaths occurring prior to and after 2010, there is a full step-up in basis to the fair market value. This means that the trust would acquire a basis in the property equal to \$600,000, and a subsequent sale by the trust would be income tax free to the extent the sale proceeds do not exceed \$600,000.

### Planning Note

*For deaths occurring in 2010, a modified step-up in basis will be applicable pursuant to IRC § 1022. According to these rules, a total aggregate increase in basis of \$1,300,000 is permitted to be allocated by the executor to property passing from the decedent. It appears that a life estate is eligible for the modified step in basis.*

## Question 15:

# Is the life estate owned by Mrs. Public subject to estate recovery?

### Answer 15:

No, once the life tenant passes away the life estate ends, as does any lien that may have accrued on such property interest, although the legislation has had a tortured history. 130 CMR 515.001(c) followed legislation which subjected life estates to estate recovery for deaths occurring on or after July 1, 2003, but fortunately this legislation has been repealed retroactively to July 1, 2003.

General Laws Chapter 118E, § 31 was amended by striking subsection C (which limited estate recovery to “probate assets”) and inserted in place thereof one which read:

(c) This subsection shall apply to estates of members dying prior to July 1, 2003. For purposes of this section, “estate” shall mean all real and personal property and other assets includible in the decedent’s probate estate under the general laws.

The 2003 change also added the following subsection (c ½), but a revision the following year on July 1, 2004 deleted the same.

“This subsection shall apply to the estates of members dying on or after July 1, 2003. For purposes of this section, “estate” shall mean any interest in real and personal property and other assets in which the individual immediately prior to death on any legal title or interest, to the extent of such interest (emphasis added). This includes interests in real and personal property and other assets that would pass to a survivor, heir, or assignee of the decedent through joint tenancy, tenancy by the entirety, life estate (emphasis added), living trust, right of survivorship, beneficiary designation, or other arrangement.”

# Question 16:

## Is the trust a grantor trust?

### Answer 16:

Yes, as to both income and principal. Under IRC § 677(a)(1), the trust is a grantor trust as to income since income, without the approval or consent of any adverse party, is payable to the grantor. Also, under IRC § 677(a), the retained right of a trustee to distribute income and/or principal to the grantor would make the trust a grantor trust unless the distribution must be approved by an adverse party. In this case, however, no principal can be paid to the grantor, and under two private letter rulings, PLR 200531004 and PLR 200523003, the retention of a limited power to appoint by Will is insufficient to make the trust a grantor trust. Therefore, additional provisions are needed to ensure grantor trust status.

Reg. 1.674(b)(3) provides:

“Under IRC § 674(b), a power in any person to control beneficial enjoyment exercisable only by Will does not cause a grantor to be treated under IRC § 674(a).”

Under IRC § 674(a), the grantor is treated as the owner of any portion of the trust with respect to which the beneficial enjoyment is subject to a power of disposition by the grantor without the approval or consent of any adverse party. (IRC § 674(b)(5) creates limitations to grantor trust status, neither of which apply in this case since the grantor is free without any limitation subject to an ascertainable standard or any obligation to charge a distribution to a future beneficiary's share.) In Mrs. Public's case, the trustee has the power to add one or more 501(c)(3) organizations as beneficiaries of the trust, and as such would make the trust a grantor trust. *Madorin v. Commissioner*, 84 T.C. 667 (1985).



## Question 17:

What are the ramifications of the Doherty Case?

### Answer 17:

As a result of Doherty, practitioners are reluctant to give or to allow the grantor to retain the right to make discretionary distributions of principal to or for the benefit of their issue, but yet need to be sure the trust remains a grantor trust as to both income and principal. For this reason, the reservation of rights may be limited to appointing principal during life to one or more charitable organizations.

### Planning Note

*It is not advisable to use an IRC § 675(4)(c) power of administration to reacquire trust corpus by substituting property of an equivalent value to make the trust a grantor trust in a MassHealth/Medicaid setting.*

Form **1041** Department of the Treasury Internal Revenue Service **U.S. Income Tax Return for Estates and Trusts** **2009**

For calendar year 2009 or fiscal year beginning \_\_\_\_\_, 2009 and ending \_\_\_\_\_, 2009 and ending \_\_\_\_\_ OMB No. 1545-0042

<b>A</b> Type of entity: <input type="checkbox"/> Decedent's estate <input type="checkbox"/> Simple trust <input type="checkbox"/> Complex trust <input type="checkbox"/> Qualified disability trust <input type="checkbox"/> ESBT (S portion only) <input checked="" type="checkbox"/> Grantor type trust <input type="checkbox"/> Bankruptcy estate-Ch. 7 <input type="checkbox"/> Bankruptcy estate-Ch. 11 <input type="checkbox"/> Pooled income fund	Name of estate or trust (if a grantor type trust, see page 14 of the instructions) <b>MRS. PUBLIC IRREVOCABLE TRUST</b>	<b>C</b> Employer identification number 12-3456789
	Name and title of fiduciary <b>MRS. PUBLIC</b>	<b>D</b> Date entity created
Number, street, and room or suite no. (if a P.O. box, see page 16 of the instructions) <b>375 TOTTEN POND ROAD</b>	City or town, state, and ZIP code <b>WALTHAM MA 02451</b>	<b>E</b> Nonexempt charitable and split-interest trusts, check applicable boxes (see pg 16 of the instr.): <input type="checkbox"/> Described in section 4647(b)(1) <input type="checkbox"/> Not a private foundation <input type="checkbox"/> Described in section 4647(b)(2)
<b>B</b> No. of Schedules K-1 attached <b>f</b> Check applicable boxes: <input type="checkbox"/> Initial return <input type="checkbox"/> Final return <input type="checkbox"/> Amended return <input type="checkbox"/> Change in fiduciary <input type="checkbox"/> Change in fiduciary's name <input type="checkbox"/> Change in fiduciary's address		

**g** Check here if the estate or living trust made a section 645 election

Income	1	Interest income	1
	2a	Total ordinary dividends	2a
	b	Qualified dividends allocable tax (1) Beneficiaries (2) Estate or trust	
	3	Business income or (loss). Attach Schedule C or C-EZ (Form 1040)	3
	4	Capital gain or (loss). Attach Schedule D (Form 1041)	4
	5	Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040)	5
	6	Farm income or (loss). Attach Schedule F (Form 1040)	6
	7	Ordinary gain or (loss). Attach Form 4797	7
	8	Other income. List type and amount	8
9	Total income. Combine lines 1, 2a, and 3 through 8	9	
Deductions	10	Interest. Check if Form 4952 is attached <input type="checkbox"/> SECTIONS 671-678 IRC, 1986	10
	11	Taxes	11
	12	Fiduciary fees	12
	13	Charitable deduction (from Schedule A, line 7)	13
	14	Attorney, accountant, and return preparer fees	14
	15a	Other deductions not subject to the 2% floor (attach schedule)	15a
	b	Allowable miscellaneous itemized deductions subject to the 2% floor	15b
	16	Add lines 10 through 15b	16
	17	Adjusted total income or (loss). Subtract line 16 from line 9	17
	18	Income distribution deduction (from Schedule B, line 15). Attach Schedules K-1 (Form 1041)	18
Tax and Payments	19	Estate tax deduction including certain generation-skipping taxes (attach computation)	19
	20	Exemption	20
	21	Add lines 18 through 20	21
	22	Taxable income. Subtract line 21 from line 17. If a loss, see page 23 of the instructions	22
	23	Total tax (from Schedule G, line 7)	23
	24a	Payments: a 2009 estimated tax payments and amount applied from 2008 return	24a
	b	Estimated tax payments allocated to beneficiaries (from Form 1041-T)	24b
	c	Subtract line 24b from line 24a	24c
	d	Tax paid with Form 7004 (see page 24 of the instructions)	24d
	e	Federal income tax withheld. If any is from Form(s) 1099, check <input type="checkbox"/>	24e
	24f	Other payments: f Form 2439 ; g Form 4136 ; Total	24f
25	Total payments. Add lines 24c through 24e, and 24f	25	
26	Estimated tax penalty (see page 24 of the instructions)	26	
27	Tax due. If line 25 is smaller than the total of lines 23 and 26, enter amount owed	27	
28	Overpayment. If line 25 is larger than the total of lines 23 and 26, enter amount overpaid	28	
29	Amount of line 28 to be: a Credited to 2010 estimated tax ; b Refunded	29	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of fiduciary or officer representing fiduciary \_\_\_\_\_ Date \_\_\_\_\_ EIN of fiduciary if a financial institution \_\_\_\_\_

May the IRS discuss this return with the preparer shown below (see instr. 7)  Yes  No

<b>Paid Preparer's Use Only</b> Preparer's signature _____ Date _____ Check if self-employed <input type="checkbox"/> Preparer's SSN or PTIN _____ Firm's name (or yours if self-employed), address, and ZIP code _____ EIN _____ LHA _____ Phone no. _____	Signature of fiduciary or officer representing fiduciary _____ Date _____ EIN of fiduciary if a financial institution _____
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**Schedule A Charitable Deduction.** Do not complete for a simple trust or a pooled income fund.

1	Amounts paid or permanently set aside for charitable purposes from gross income (see page 25 of the instructions)	1
2	Tax-exempt income allocable to charitable contributions (see page 25 of the instructions)	2
3	Subtract line 2 from line 1	3
4	Capital gains for the tax year allocated to corpus and paid or permanently set aside for charitable purposes	4
5	Add lines 3 and 4	5
6	Section 1202 exclusion allocable to capital gains paid or permanently set aside for charitable purposes (see instructions)	6
7	Charitable deduction. Subtract line 6 from line 5. Enter here and on page 1, line 13	7

**Schedule B Income Distribution Deduction**

1	Adjusted total income (see page 26 of the instructions)	1
2	Adjusted tax-exempt interest	2
3	Total net gain from Schedule D (Form 1041), line 16, column (1) (see page 26 of the instructions)	3
4	Enter amount from Schedule A, line 4 (minus any allocable section 1202 exclusion)	4
5	Capital gains for the tax year included on Schedule A, line 1 (see page 26 of the instructions)	5
6	Enter any gain from page 1, line 4, as a negative number. If page 1, line 4, is a loss, enter the loss as a positive number	6
7	Distributable net income. Combine lines 1 through 6. If zero or less, enter -0-	7
8	If a complex trust, enter accounting income for the tax year as determined under the governing instrument and applicable local law	8
9	Income required to be distributed currently	9
10	Other amounts paid, credited, or otherwise required to be distributed	10
11	Total distributions. Add lines 9 and 10. If greater than line 8, see page 27 of the instructions	11
12	Enter the amount of tax-exempt income included on line 11	12
13	Tentative income distribution deduction. Subtract line 12 from line 11	13
14	Tentative income distribution deduction. Subtract line 2 from line 7. If zero or less, enter -0-	14
15	Income distribution deduction. Enter the smaller of line 13 or line 14 here and on page 1, line 18	15

**Schedule G Tax Computation** (see page 27 of the instructions)

1	Tax:		
	a Tax on taxable income (see page 27 of the instructions)	1a	
	b Tax on lump-sum distributions. Attach Form 4972	1b	
	c Alternative minimum tax (from Schedule I (Form 1041), line 58)	1c	
	d Total. Add lines 1a through 1c	1d	
2a	Foreign tax credit. Attach Form 1116	2a	
2b	Other nonbusiness credits (attach schedule)	2b	
2c	General business credit. Attach Form 3800	2c	
2d	Credit for prior year minimum tax. Attach Form 6801	2d	
3	Total credits. Add lines 2a through 2d	3	
4	Subtract line 3 from line 1d. If zero or less, enter -0-	4	
5	Recapture taxes. Check if from: <input type="checkbox"/> Form 4255 <input type="checkbox"/> Form 8611	5	
6	Household employment taxes. Attach Schedule H (Form 1040)	6	
7	Total tax. Add lines 4 through 6. Enter here and on page 1, line 23	7	

**Other Information**

	Yes	No
1 Did the estate or trust receive tax-exempt income? If "Yes," attach a computation of the allocation of expenses. Enter the amount of tax-exempt interest income and exempt-interest dividends		X
2 Did the estate or trust receive all or any part of the earnings (salary, wages, and other compensation) of any individual by reason of a contract assignment or similar arrangement?		X
3 At any time during calendar year 2008, did the estate or trust have an interest in or a signature or other authority over a bank, securities, or other financial account in a foreign country? See page 30 of the instructions for exceptions and filing requirements for Form TD F 90-22.1. If "yes," enter the name of the foreign country		X
4 During the tax year, did the estate or trust receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "yes," the estate or trust may have to file Form 3520. See page 30 of the instructions		X
5 Did the estate or trust receive, or pay, any qualified residence interest on seller-provided financing? If "Yes," see page 30 for required attachment		X
6 If this is an estate or a complex trust making the section 663(b) election, check here (see page 30 of the instructions)	<input type="checkbox"/>	
7 To make a section 643(e)(3) election, attach Schedule D (Form 1041), and check here (see page 30 of the instructions)	<input type="checkbox"/>	
8 If the decedent's estate has been open for more than 2 years, attach an explanation for the delay in closing the estate, and check here	<input type="checkbox"/>	
9 Are any present or future trust beneficiaries skip persons? See page 30 of the instructions		X

GRANTOR LETTER  
MRS. PUBLIC  
375 TOTTEN POND ROAD  
WALTHAM, MA 02451

Tax Year Ending: 12/31/09

Grantor Name & Address MRS. PUBLIC	Name of Trust MRS. PUBLIC IRREVOCABLE TRUST
Social Security Number:	Employer ID Number: 12-3456789

THE FOLLOWING INCOME, DEDUCTIONS AND CREDITS ARE TO BE REPORTED ON THE FEDERAL INCOME TAX RETURN OF THE ABOVE NAMED GRANTOR, IF REQUIRED.

FEDERAL INFORMATION	
INCOME	
INTEREST INCOME..... (ENTER ON FORM 1040, SCHEDULE B, PART I, LINE 1)	2,000.
TOTAL ORDINARY DIVIDEND INCOME..... (ENTER ON FORM 1040, SCHEDULE B, PART II, LINE 5)	3,000.
LONG-TERM CAPITAL GAIN (LOSS)..... (ENTER ON FORM 1040, SCHEDULE D, PART II)	170,400.
LONG TERM CAPITAL GAIN IS A RESULT OF THE SALE OF GRANTOR'S PRINCIPAL RESIDENCE	

390274  
01-29-09

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 FORM 1041 INTEREST INCOME STATEMENT 1
 

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DESCRIPTION	U. S. INTEREST	OTHER TAXABLE INTEREST
LOCAL BANK		2,000.
SUBTOTALS		2,000.
TOTAL TO GRANTOR LETTER		2,000.

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 FORM 1041 DIVIDEND INCOME STATEMENT 2
 

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DESCRIPTION	U.S. INTEREST	QUALIFYING DIVIDENDS	ORDINARY DIVIDENDS
LOCAL BANK			3,000.
SUBTOTALS			3,000.
TOTAL TO GRANTOR LETTER			3,000.

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 SCHEDULE D LONG-TERM STOCKS, SECURITIES, AND OTHER NON-PASSIVE TRANSACTIONS STATEMENT 3
 

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DESCRIPTION	DATE ACQUIRED /SOLD	GROSS SALES PRICE	COST OR OTHER BASIS	GAIN OR (LOSS)	28% GAIN OR (LOSS)
SALE OF GRANTOR'S HOME	06/01/70 06/01/09			170,400.	
TOTAL TO GRANTOR LETTER				170,400.	

CUSHING & DOLAN, P.C.  
375 TOTTEN POND ROAD, SUITE 200  
WALTHAM, MA 02451

DECEMBER 8, 2010

MRS. PUBLIC

RE: MRS. PUBLIC IRREVOCABLE TRUST

DEAR GRANTOR:

ATTACHED IS YOUR COPY OF THE FIDUCIARY FORM 1041 GRANTOR LETTER. THIS GRANTOR LETTER SUMMARIZES YOUR INFORMATION FROM THE TRUST. THIS INFORMATION HAS BEEN PROVIDED TO THE INTERNAL REVENUE SERVICE WITH THE U.S. INCOME TAX RETURN FOR ESTATES AND TRUSTS.

THE INFORMATION PROVIDED ON THIS GRANTOR LETTER SHOULD BE ENTERED ON YOUR TAX RETURN, IN ACCORDANCE WITH THE INSTRUCTIONS ON THE GRANTOR LETTER. IF YOUR RETURN WILL BE PREPARED BY YOUR ACCOUNTANT OR ATTORNEY, YOU SHOULD PROVIDE A COPY OF THIS GRANTOR LETTER TO THE PREPARER WITH YOUR OTHER TAX INFORMATION.

WE THANK YOU FOR THE OPPORTUNITY TO SERVE YOU.

VERY TRULY YOURS,

MRS. PUBLIC

GRANTOR LETTER  
MRS. PUBLIC  
375 TOTTEN POND ROAD  
WALTHAM, MA 02451

2

Tax Year Ending: 12/31/09

Grantor Name & Address MRS. PUBLIC	Name of Trust MRS. PUBLIC IRREVOCABLE TRUST
Social Security Number:	Employer ID Number: 12-3456789

THE FOLLOWING INCOME, DEDUCTIONS AND CREDITS ARE TO BE REPORTED ON THE FEDERAL INCOME TAX RETURN OF THE ABOVE NAMED GRANTOR, IF REQUIRED.

FEDERAL INFORMATION	
INCOME	
INTEREST INCOME..... (ENTER ON FORM 1040, SCHEDULE B, PART I, LINE 1)	2,000.
TOTAL ORDINARY DIVIDEND INCOME..... (ENTER ON FORM 1040, SCHEDULE B, PART II, LINE 5)	3,000.
LONG-TERM CAPITAL GAIN (LOSS)..... (ENTER ON FORM 1040, SCHEDULE D, PART II)	170,400.
LONG TERM CAPITAL GAIN IS A RESULT OF THE SALE OF GRANTOR'S PRINCIPAL RESIDENCE	

103971  
04-24-09

## MRS. PUBLIC IRREVOCABLE TRUST

12-3456789

FORM 1041 INTEREST INCOME STATEMENT 1

DESCRIPTION	U. S. INTEREST	OTHER TAXABLE INTEREST
LOCAL BANK		2,000.
SUBTOTALS		2,000.
TOTAL TO GRANTOR LETTER		2,000.

FORM 1041 DIVIDEND INCOME STATEMENT 2

DESCRIPTION	U.S. INTEREST	QUALIFYING DIVIDENDS	ORDINARY DIVIDENDS
LOCAL BANK			3,000.
SUBTOTALS			3,000.
TOTAL TO GRANTOR LETTER			3,000.

SCHEDULE D LONG-TERM STOCKS, SECURITIES, AND OTHER NON-PASSIVE TRANSACTIONS STATEMENT 3

DESCRIPTION	DATE ACQUIRED /SOLD	GROSS SALES PRICE	COST OR OTHER BASIS	GAIN OR (LOSS)	28% GAIN OR (LOSS)
SALE OF GRANTOR'S HOME	06/01/70 06/01/09			170,400.	
TOTAL TO GRANTOR LETTER				170,400.	

STATEMENT(S) 1, 2, 3



Form **1040** U.S. Individual Income Tax Return **2009**

IRS Use Only - Do not write or staple in this space.

3

<b>Label</b> (See instructions on page 14.)  <b>Use the IRS label.</b> Otherwise, please print or type.  <b>Presidential Election Campaign</b>	For the year Jan. 1-Dec. 31, 2009, or other tax year beginning _____, 2009, ending _____, 20	OMB No. 1545-0047	
	Your first name and initial <b>MRS.</b>	Last name <b>PUBLIC</b>	Your social security number <b>012 34 5678</b>
	If a joint return, spouse's first name and initial	Last name	Spouse's social security number
	Home address (number and street). If you have a P.O. box, see page 14. <b>375 TOTTEN POND ROAD</b>	Apt. no.	You must enter ▲ your SSN(s) above.▲
City, town or post office, state, and ZIP code. If you have a foreign address, see page 14. <b>WALTHAM, MA 02451</b>		Checking a box below will not change your tax or refund.	

Check here if you, or your spouse if filing jointly, want \$3 to go to this fund (see page 14)  You  Spouse

**Filing Status**

1  Single

2  Married filing jointly (even if only one had income)

3  Married filing separately. Enter spouse's SSN above and full name here. ▶

4  Head of household (with qualifying person). If the qualifying person is a child but not your dependent, enter this child's name here. ▶

5  Qualifying widow(er) with dependent child (see page 16)

**Exemptions**

6a  Yourself. If someone can claim you as a dependent, do not check box 6a

b  Spouse

c Dependents:		(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) If you are the child of a divorced or separated parent (see page 13)	(5) No. of children on this who lived with you and did not live with you due to divorce or separation (see page 13)

If more than four dependents, see page 17 and check here

d Total number of exemptions claimed **1**

Income	7	8a	9a	10	11	12	13	14	15a	15b	16a	16b	17	18	19	20a	20b	21	22	
Wages, salaries, tips, etc. Attach Form(s) W-2																				
Taxable interest. Attach Schedule B if required			3,000.																	
Tax-exempt interest. Do not include on line 8a		8b																		
Ordinary dividends. Attach Schedule B if required			3,000.																	
Qualified dividends (see page 22)		9b																		
Taxable refunds, credits, or offsets of state and local income taxes																				
Alimony received																				
Business income or (loss). Attach Schedule C or C-EZ																				
Capital gain or (loss). Attach Schedule D if required. If not required, check here <input type="checkbox"/>																				
Other gains or (losses). Attach Form 4797																				
IRA distributions	15a																			
Pensions and annuities	16a																			
Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E																				
Farm income or (loss). Attach Schedule F																				
Unemployment compensation in excess of \$1,400 per recipient (see page 27)																				
Social security benefits	20a																			
Other income. List type and amount (see page 29)																				
<b>Add the amounts in the far right column for lines 7 through 21. This is your total income</b>																				<b>6,000.</b>

Adjusted Gross Income	23	24	25	26	27	28	29	30	31a	32	33	34	35	36	37
Educator expenses (see page 29)															
Certain business expenses of reservists, performing artists, and fee-based government officials. Attach Form 2106 or 2106-EZ															
Health savings account deduction. Attach Form 8889															
Moving expenses. Attach Form 3903															
One-half of self-employment tax. Attach Schedule SE															
Self-employed SEP, SIMPLE, and qualified plans															
Self-employed health insurance deduction (see page 30)															
Penalty on early withdrawal of savings															
Alimony paid b Recipient's SSN ▶															
IRA deduction (see page 31)															
Student loan interest deduction (see page 34)															
Tuition and fees deduction. Attach Form 8917															
Domestic production activities deduction. Attach Form 8903															
Add lines 23 through 31a and 32 through 35															
Subtract line 36 from line 22. This is your adjusted gross income															<b>6,000.</b>

LHA For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 97. Form 1040 (2009)

Tax and Credits		38		6,000.	
36 Amount from line 37 (adjusted gross income)		38		6,000.	
39a Check <input type="checkbox"/> You were born before January 2, 1945, <input type="checkbox"/> Blind, <input type="checkbox"/> Total boxes checked ... <input type="checkbox"/> 39a		39a			
it <input type="checkbox"/> Spouse was born before January 2, 1945, <input type="checkbox"/> Blind, <input type="checkbox"/> Total boxes checked ... <input type="checkbox"/> 39b		39b			
b If your spouse itemizes on a separate return or you were a dual-status alien, see page 39 and check here					
40a Itemized deductions (from Schedule A) or your standard deduction (see left margin)		40a		5,700.	
b If you are increasing your standard deduction by certain real estate taxes, new motor vehicle taxes, or a net operating loss, attach Schedule L and check here (see page 95)					
41 Subtract line 40a from line 38		41		300.	
42 Exemptions. If line 38 is \$125,100 or less and you did not provide housing to a Midwestern displaced individual, multiply \$3,650 by the number on line 6d. Otherwise, see page 37		42		3,650.	
43 Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-		43		0.	
44 Tax. Check if any tax is from a <input type="checkbox"/> Form(s) 9814 b <input type="checkbox"/> Form 4972		44		0.	
45 Alternative minimum tax. Attach Form 6251		45			
46 Add lines 44 and 45		46		0.	
47 Foreign tax credit. Attach Form 1116 if required		47			
48 Credit for child and dependent care expenses. Attach Form 2441		48			
49 Education credits from Form 8863, line 29		49			
50 Retirement savings contributions credit. Attach Form 8880		50			
51 Child tax credit (see page 42)		51			
52 Credits from Form: a <input type="checkbox"/> 8395 b <input type="checkbox"/> 8839 c <input type="checkbox"/> 5695		52			
53 Other credits from Form: a <input type="checkbox"/> 3800 b <input type="checkbox"/> 6801 c <input type="checkbox"/>		53			
54 Add lines 47 through 53. These are your total credits		54			
55 Subtract line 54 from line 46. If line 54 is more than line 46, enter -0-		55		0.	
Other Taxes		56		56	
56 Self-employment tax. Attach Schedule SE		56			
57 Unreported social security and Medicare tax from Form: a <input type="checkbox"/> 4137 b <input type="checkbox"/> 8919		57			
58 Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required		58			
59 Additional taxes: a <input type="checkbox"/> AEIC payments b <input type="checkbox"/> Household employment taxes. Attach Schedule H		59			
60 Add lines 55 through 59. This is your total tax		60		0.	
Payments		61		61	
61 Federal income tax withheld from Forms W-2 and 1099		61			
62 2009 estimated tax payments and amount applied from 2008 return		62			
63 Making work pay and government retiree credits. Attach Schedule M		63			
64a Earned income credit (EIC)		64a			
b Nonrefundable combat pay election <input type="checkbox"/> 64b		64b			
65 Additional child tax credit. Attach Form 8812		65			
66 Refundable education credit from Form 8863, line 16		66			
67 First-time homebuyer credit. Attach Form 5405		67			
68 Amount paid with request for extension to file (see page 72)		68			
69 Excess social security and tier 1 RRTA tax withheld (see page 72)		69			
70 Credits from Form: a <input type="checkbox"/> 2439 b <input type="checkbox"/> 4196 c <input type="checkbox"/> 8601 d <input type="checkbox"/> 3885		70			
71 Add lines 61, 62, 63, 64a, and 65 through 70. These are your total payments		71			
Refund		72		72	
72 If line 71 is more than line 60, subtract line 60 from line 71. This is the amount you overpaid		72		0.	
73a Amount of line 72 you want refunded to you. If Form 8888 is attached, check here		73a			
b <input type="checkbox"/> Refund <input type="checkbox"/> Credit <input type="checkbox"/> Savings <input type="checkbox"/> Account <input type="checkbox"/> Other					
74 Amount of line 72 you want applied to your 2010 estimated tax		74		0.	
Amount You Owe		75		75	
75 Amount you owe. Subtract line 71 from line 60. For details on how to pay, see page 74		75		0.	
76 Estimated tax penalty (see page 74)		76			
Third Party Designee		77		77	
Do you want to allow another person to discuss this return with the IRS (see page 75)? <input type="checkbox"/> Yes. Complete the following. <input checked="" type="checkbox"/> No					
Sign Here		78		78	
Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.					
Your signature		Date	Your occupation	Daytime phone number	
Spouse's signature. If a joint return, both must sign.		Date	Spouse's occupation		
Paid Preparer's Use Only		79		79	
Preparer's signature		Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN	
Firm's name (or your self-employed address, and ZIP code)		Date		Preparer's SSN or PTIN	
CUSHING & DOLAN, P.C.		12/08/10		04-2871360	
375 TOTTEN POND ROAD, SUITE 200				617-523-1555	
WALTHAM, MA 02451					

**SCHEDULE B**  
(Form 1040A or 1040)

Department of the Treasury  
Internal Revenue Service  
(Name(s) shown on return)

**Interest and Ordinary Dividends**

▶ Attach to Form 1040A or 1040. ▶ See instructions.

OMB No. 1545-0074

**2009**

Attachment  
Sequence No. 08

Your social security number

**MRS. PUBLIC**

012 34 5678

**Part I  
Interest**

**1** List name of payer, if any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see page B-1 and list this interest first. Also, show that buyer's social security number and address ▶

**BIG BANK**

**MRS. PUBLIC IRREVOCABLE TRUST**

Amount

1,000.

2,000.

Note: If you received a Form 1099-INT, Form 1099-OID, or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total interest shown on that form.

**2** Add the amounts on line 1

**3** Excludable interest on series EE and I.U.S. savings bonds issued after 1989.

Attach Form 8815

**4** Subtract line 3 from line 2. Enter the result here and on Form 1040A, or Form 1040, line 8a ▶

Note: If line 4 is over \$1,500, you must complete Part III.

2

3,000.

3

4

3,000.

**Part II  
Ordinary  
Dividends**

**5** List name of payer ▶

**MRS. PUBLIC IRREVOCABLE TRUST**

Amount

3,000.

Note: If you received a Form 1099-DIV or substitute statement from a brokerage firm, list the firm's name as the payer and enter the ordinary dividends shown on that form.

**6** Add the amounts on line 5. Enter the total here and on Form 1040A, or Form 1040, line 9a ▶

Note: If line 6 is over \$1,500, you must complete Part III.

6

3,000.

**Part III  
Foreign  
Accounts  
and  
Trusts**

You must complete this part if you (a) had over \$1,500 of taxable interest or ordinary dividends; (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.

**7a** At any time during 2009, did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account? See page B-2 for exceptions and filing requirements for Form TD F 90-22.1

**8** If "Yes," enter the name of the foreign country ▶

**8** During 2009, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust?

If "Yes," you may have to file Form 3520. See page B-2

Yes No

X

X

327901  
12-29-08

LHA For Paperwork Reduction Act Notice, see Form 1040A or 1040 instructions.

Schedule B (Form 1040A or 1040) 2009

**SCHEDULE D  
(Form 1040)**

Department of the Treasury  
Internal Revenue Service (99)

**Capital Gains and Losses**

▶ Attach to Form 1040 or Form 1040NR. ▶ See Instructions for Schedule D (Form 1040).  
▶ Use Schedule D-1 to list additional transactions for lines 1 and 8.

OMB No. 1545-0047

**2009**  
Attachment  
Sequence No. 12

Name(s) shown on return

Your social security number

MRS. PUBLIC

012 | 34 | 5678

**Part I Short-Term Capital Gains and Losses - Assets Held One Year or Less**

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price	(e) Cost or other basis	(f) Gain or (loss) Subtract (e) from (d)
1					
2	Enter your short-term totals, if any, from Schedule D-1, line 2		2		
3	Total short-term sales price amounts. Add lines 1 and 2 in column (d)		3		
4	Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824				4
5	Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1				5
6	Short-term capital loss carryover. Enter the amount, if any, from line 10 of your Capital Loss Carryover Worksheet in the instructions				6
7	Net short-term capital gain or (loss). Combine lines 1 through 6 in column (f)				7

**Part II Long-Term Capital Gains and Losses - Assets Held More Than One Year**

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price	(e) Cost or other basis	(f) Gain or (loss) Subtract (e) from (d)
8					
SALE OF YOUR HOME	06/01/70	06/01/09	600,000.	400,000.	200,000.
SECTION 121 EXCLUSION					-200,000.
9	Enter your long-term totals, if any, from Schedule D-1, line 9		9		
10	Total long-term sales price amounts. Add lines 8 and 9 in column (d)		10	600,000.	
11	Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824				11
12	Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1				12
13	Capital gain distributions				13
14	Long-term capital loss carryover. Enter the amount, if any, from line 15 of your Capital Loss Carryover Worksheet in the instructions				14
15	Net long-term capital gain or (loss). Combine lines 8 through 14 in column (f). Then go to Part III on page 2				15

LHA For Paperwork Reduction Act Notice, see Form 1040 or Form 1040NR instructions.

Schedule D (Form 1040) 2009

**Part III Summary****16** Combine lines 7 and 15 and enter the result**16**

If line 16 is:

- A gain, enter the amount from line 16 on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below.
- A loss, skip lines 17 through 20 below. Then go to line 21. Also be sure to complete line 22.
- Zero, skip lines 17 through 21 below and enter -0- on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 22.

**17** Are lines 15 and 16 both gains?

- Yes. Go to line 18.  
 No. Skip lines 18 through 21, and go to line 22.

**18** Enter the amount, if any, from line 7 of the 28% Rate Gain Worksheet on page D-8 of the instructions**18****19** Enter the amount, if any, from line 18 of the Unrecaptured Section 1250 Gain Worksheet on page D-9 of the instructions**19****20** Are lines 18 and 19 both zero or blank?

- Yes. Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the Qualified Dividends and Capital Gain Tax Worksheet on page 39 of the Instructions for Form 1040 (or in the Instructions for Form 1040NR). Do not complete lines 21 and 22 below.  
 No. Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the Schedule D Tax Worksheet on page D-10 of the instructions. Do not complete lines 21 and 22 below.

**21** If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the smaller of:

- The loss on line 16 or
- (\$3,000), or if married filing separately, (\$1,500)

**21**

Note. When figuring which amount is smaller, treat both amounts as positive numbers.

**22** Do you have qualified dividends on Form 1040, line 5b, or Form 1040NR, line 10b?

- Yes. Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the Qualified Dividends and Capital Gain Tax Worksheet on page 39 of the Instructions for Form 1040 (or in the Instructions for Form 1040NR).  
 No. Complete the rest of Form 1040 or Form 1040NR.

Schedule D (Form 1040) 2009