

BACK TO BASICS ADMINISTRATION

PART 2:
What Remains: Closing
the Post Death Admin &
Opening the Ongoing
Trust Management

About me



Leah Del Percio, Esq.

Founder and CEO,  trustate

- Settled **hundreds** of estates, nationwide.
- Administered over **\$50B** via estate administrations.
- **12+ years experience** as estate attorney (JD & LLM) with multi-jurisdictional estate/trust admin practice.
- Learn more: trustate.com



The 6 Phases of Estate Administration

Trustate's six-phase model for estate administration is a comprehensive approach to managing the process, helping to ensure that all relevant aspects of the process are taken care of in an efficient and timely manner.

01	02	03	04	05	06
Estate Opening	Asset & Liability Discovery	Asset & Liability Management	Payments & Taxes	Distributions	Estate Closure, Settlement, & Final Distributions
Includes the "probate part" of the process, which is the legal process of proving the validity of a will and appointing an executor to manage the estate. This phase also includes obtaining death certificates, notifying relevant parties, and opening an estate account.	Identifying and locating all assets and liabilities belonging to the deceased person. This includes real estate, bank accounts, investments, personal property, and any outstanding debts.	Managing and preserving the assets and paying off any debts or liabilities. This may include transferring, retitling or closing accounts, selling real estate, collecting rent, or liquidating investments.	Paying any outstanding taxes or debts, including income taxes and estate taxes.	Distributing the assets to the beneficiaries according to the terms of the will or state laws if there is no will.	Closing the estate, settling any disputes or claims, and making final distributions to the beneficiaries. This phase also includes filing the final tax returns and obtaining a release from the executor's responsibilities

Portability

DSUE: Deceased Spousal Unused Exemption

To take the first-to-die spouse's unused estate/gift tax exemption and TRANSFER (i.e. "port") it to the surviving spouse.

Example:

- A dies at age 41 with a taxable estate of \$2,610,000, all passing to his surviving spouse, B in a QTIP trust. B (age 40) has \$500,000 in her retirement, a home in her name worth \$1,000,000, and a \$2,000,000 term life insurance policy that names her children as beneficiaries (\$3,500,000 total).
- B is a young physician and has a lot of future earning potential.
 - We also don't know what the estate tax exemption will look like (could drop to \$5mm) in 2026, let alone when B is at death's door which will hopefully be many years from now.
- Since 2024 is A's year of death, he has \$11,000,000 of UNUSED Exemption (Current exemption is \$13.61mm).
- B is already at 3.5mm (+2.61mm she inherited and all appreciation in value) – if we do a "portability return" for A, we can GIVE A B's \$11mm DSUE in addition to whatever exemption is available at her time of death (could be a lot, could be a little, depending on her future year of death).



Portability

Portability Return

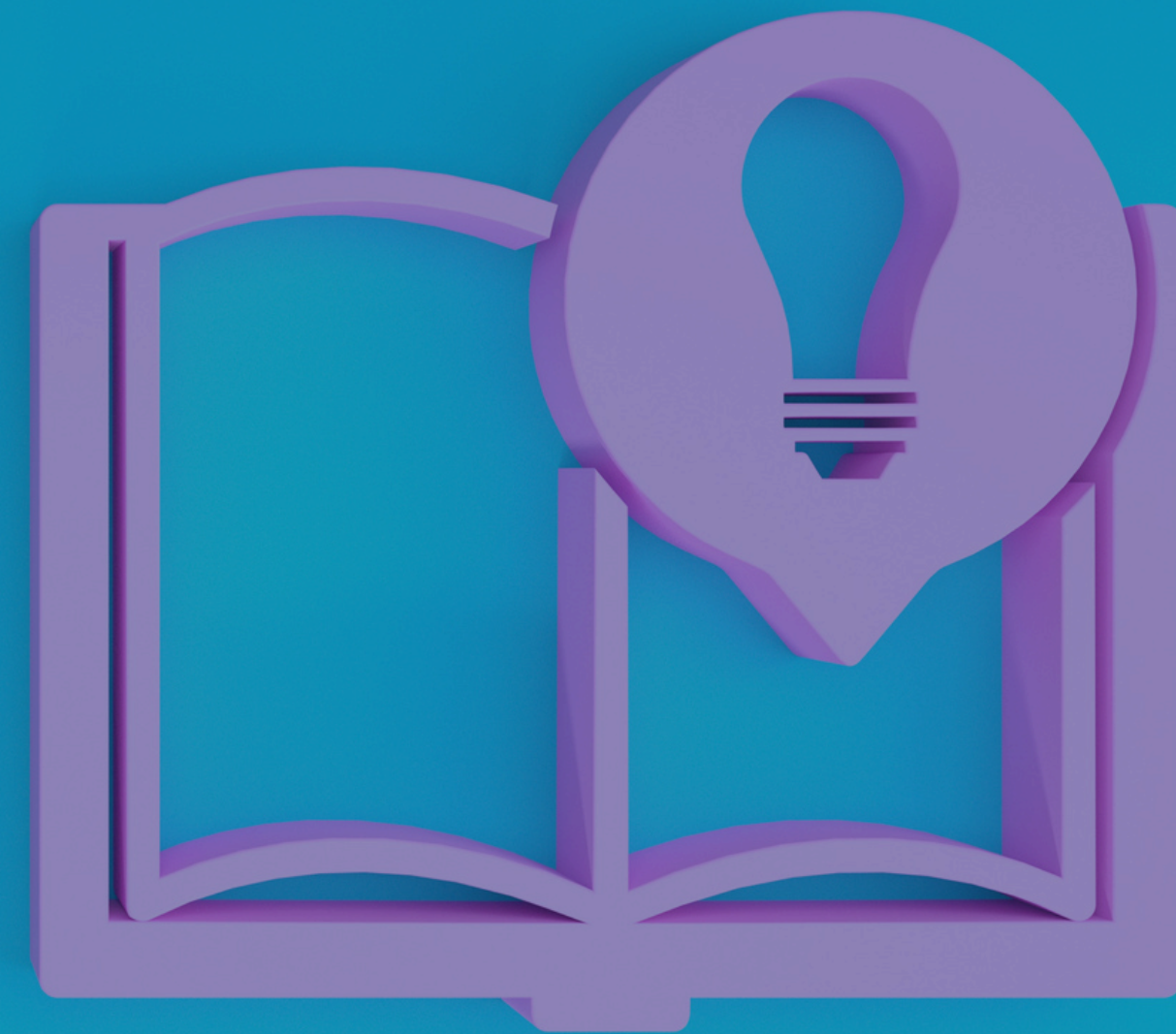
An informational IRS Form 706 for the decedent to record the leftover exemption and memorialize it's transfer to the surviving spouse.

Informational return = that snapshot of all values of A's taxable estate on his date of death, including those passing in the QTIP trust.

- NO TAX IS DUE since there was leftover exemption
- There is an election made on this return - which involves completing the following sections:
 - Part 6, Section A: Indicate that you are making the portability election by checking the box in Section A, which is the "Portability of Deceased Spousal Unused Exclusion" section.
 - Part 6, Section C: Report the DSUE amount in Section C.
- Due date: On or before the fifth anniversary of the decedent's date of death. (Rev proc 2022-32)



Portability



Fun stuff

- If the surviving spouse remarries, and the new spouse dies, that spouse cannot "stack" DSUE, they would then lose the earlier DSUE.
- Loophole: DSUE from first spouse can be used by the surviving spouse for gifts until spouse 2 dies.
- ? What about where SS and Executor are different people, and possibly in conflict? Can SS sue and win for breach of fiduc duty if Exec doesn't prepare/file a portability return?
- ? Who pays for the portability return?



A photograph of two women sitting at a white table in a modern office setting. The woman on the left is older, with short blonde hair, wearing a light blue blazer and dark trousers. The woman on the right is younger, with long brown hair, wearing a white t-shirt and dark trousers. They are both looking at a laptop on the table. The background shows a large window with a view of a city skyline.

Welcome!

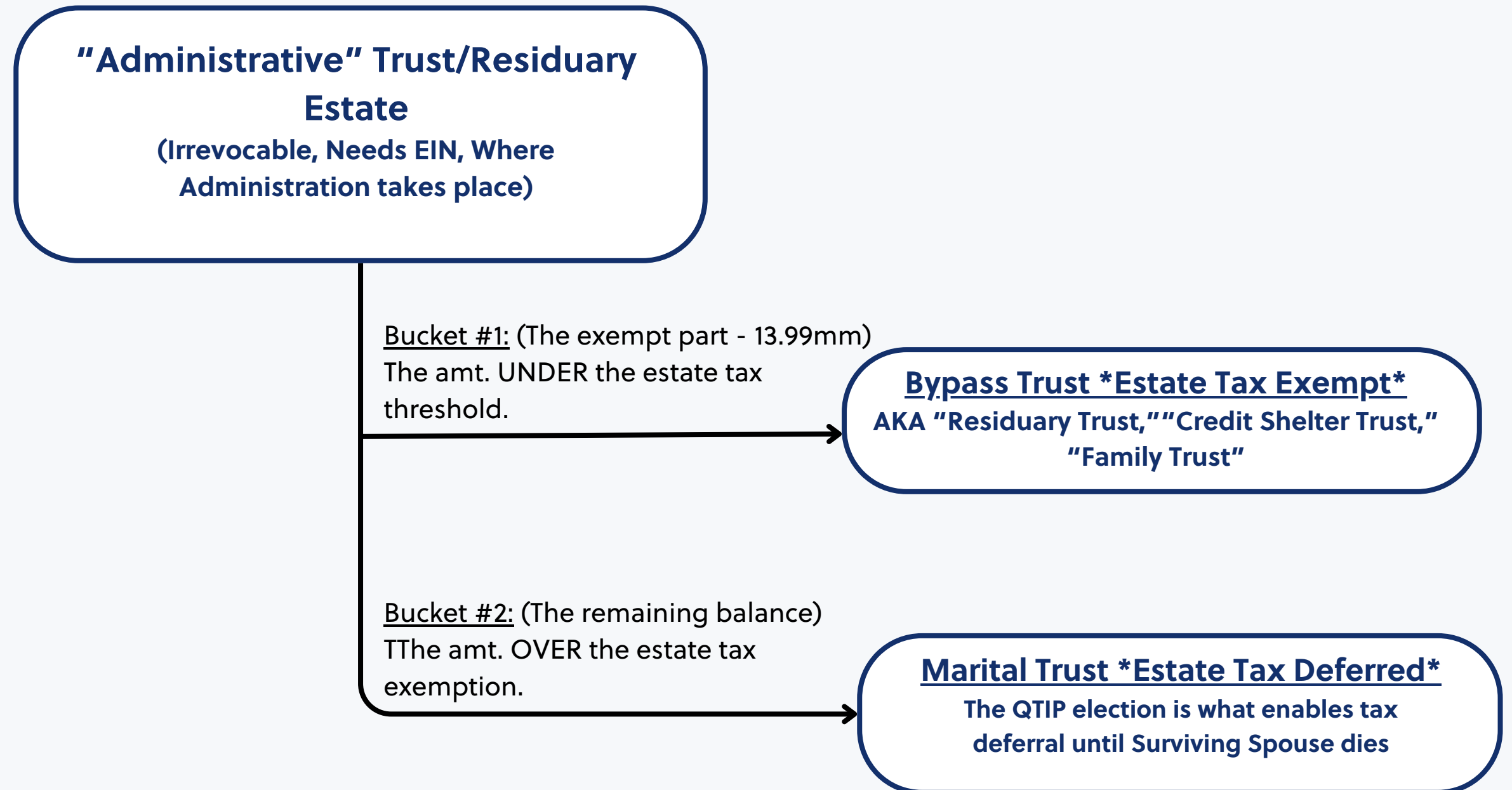
Objectives

- ✓ Learn the responsibilities and tasks after the funding of beneficiary subtrusts.
- ✓ Get practical tips and best practices for ongoing trust administration.



Note on Trust Formula Funding

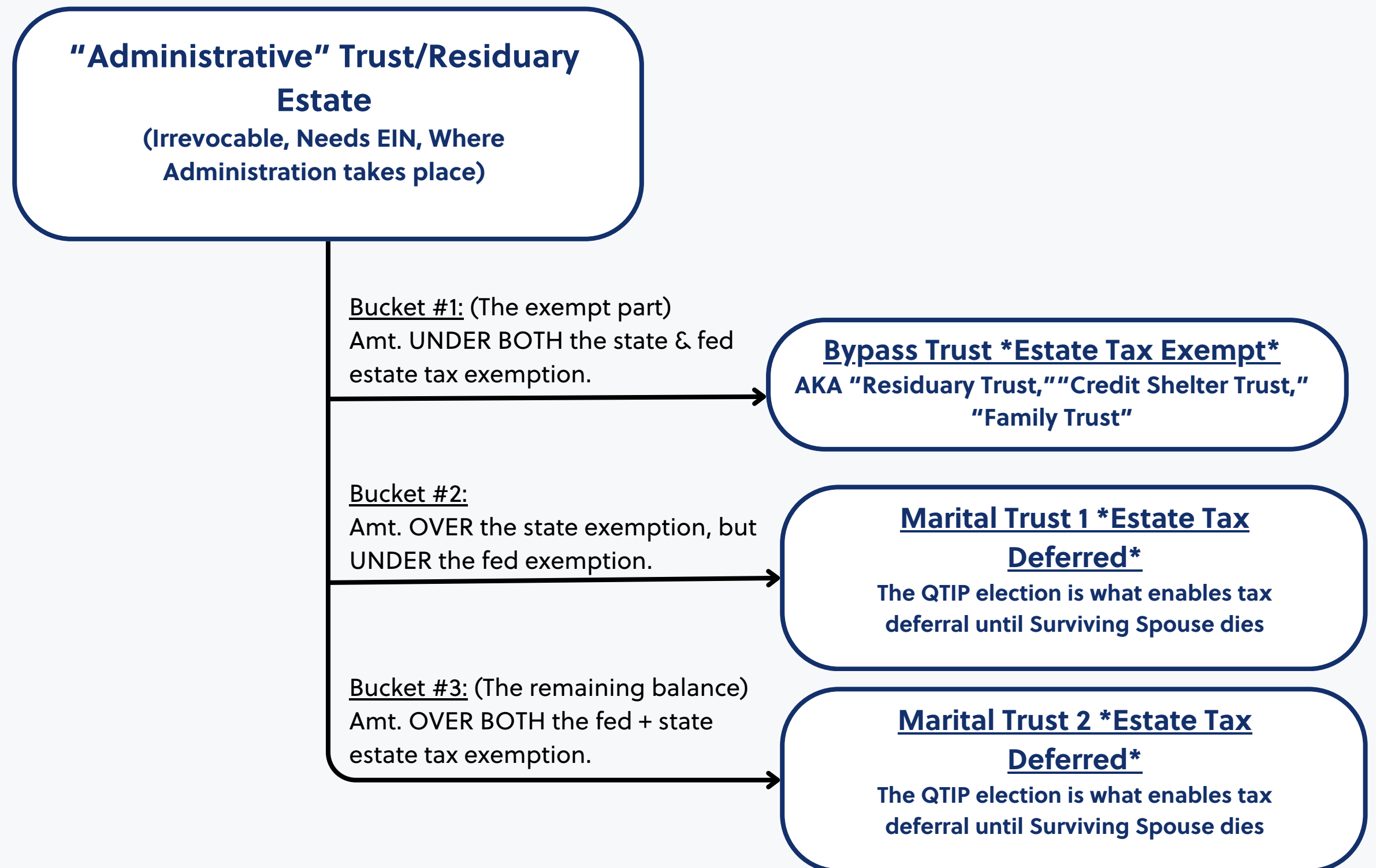
Demystifying Sub-Trust Funding - Marital Trust(s) STATES WITH NO ESTATE TAX - 2 BOX PLANNING



Many people ask: Why use a Marital Trust with the exemptions so high? **FUTURE PROOFING**

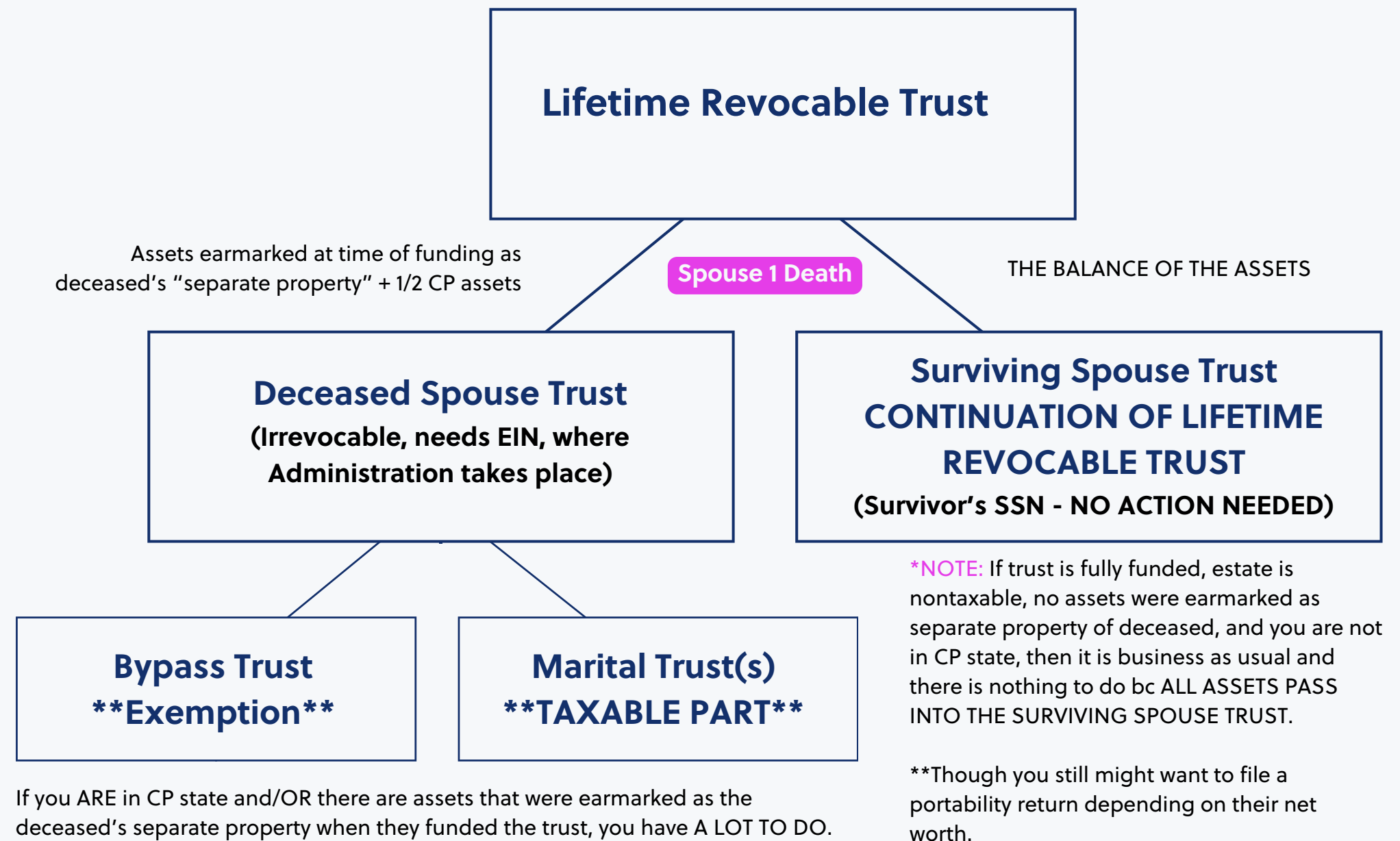
Note on Trust Formula Funding

Demystifying Sub-Trust Funding - Marital Trust(s) STATES WITH ESTATE TAX - 3 BOX PLANNING



Note on Trust Formula Funding

Demystifying Sub-Trust Funding - Joint Revocable Trust - ONE TRUST DOCUMENT



Payments, Taxes, and Accountings

Prior to closing “administrative” trust and/or estate

- ✔ Paying any outstanding taxes or debts, including income taxes and estate taxes.
- ✔ The executor will also have to file the final income tax returns of the deceased, as well as prepare and file an estate tax return if necessary.

FOR DECEDENTS



IRS Form 1040

FOR ESTATES



IRS Form 1041

IF THERE IS A REVOCABLE TRUST OR POUR OVER WILL



645 Election





Things to keep track of

- ☐ Asset inflows and outflows
 - ☐ Underlying investment performance
 - ☐ Disbursements
 - ☐ Distributions
 - ☐ Payments of expenses
- ☐ Regular Accounting and Reporting
 - ☐ Prepare periodic accountings to keep track of trust assets and transactions
 - ☐ Required reports for beneficiaries and tax authorities
 - ☐ Look at your state law, see what is required of the Trustee / Fiduciary both (1) during ongoing administration and (2) at close
- ☐ Tax Obligations and Considerations
 - ☐ Understanding trust tax returns and filing requirements
 - ☐ Strategies for minimizing tax liabilities





Estate and Inheritance Taxes

	Estate Tax	Inheritance Tax
	A tax on your right to transfer property worth over a certain amount at your death.	A tax on your relationships with the beneficiaries of your estate.
Who pays?	The executor pays.	The beneficiary pays.
Federal Taxes	Federal Estate Tax - Levied on any assets in an estate over \$13.99mm for people dying in 2025 (\$27.98mm for married couple).	None.
State Taxes	State Estate Tax - Some states have it, some don't.	State Inheritance Tax - Some states have it, some don't.

*Note on Portability: If you are working on a higher net worth estate that is “below the threshold” where the decedent left a surviving spouse, you may want to file an estate tax return to transfer the decedent’s remaining estate tax exemption to the survivor.





Income Tax

For beneficiaries

The transferees of wealth **do NOT** pay income taxes on assets received.

Gifts received	→	not income taxable
Inheritance received	→	not income taxable

However, post-transfer, they will bear the tax burden of any income generated by the asset received. More to come on this...

...THIS INCLUDES DISTRIBUTE TRUSTS



JAKE'S TRUSTS

Jake files Form 1040

Jake dies

Jake's Estate**

- Takes title to any property owned in Jake's name.
- Taxed like Non-Grantor Trust. Files Form 1041.

Jake's Revocable Trust

- Grantor Trust
- Reports income on Jake's Form 1040

Jake's Revocable Trust**

- Non-Grantor Trust ---> splits into distributee trusts
- Irrevocable after death
- Files its own Form 1041 --->each new trust has its own EIN and files its own 1041

Dad's Trust for Jake

- Non-Grantor Trust
- Files Form 1041

Dad's Trust for Jake

- Non-Grantor Trust
- Continues filing Form 1041

**** Personal Representative of Jake's Estate may be able to file a single Form 1041 for the Estate & Revocable Trust collectively. See § 645.**





Fiduciary Accounting Income (FAI)

FAI categorizes receipts and distributions as either “Principal” or “Income.”

Principal	Income
Includes essentially everything transferred to a trust or estate	Includes interest, dividends, rents, etc. generated by the assets of a trust or estate
Increased by capital gains and additional transfers	
Decreased by capital losses and expenses allocated to capital	



Generate instant accountings with truststate.

PRIVILEGED AND CONFIDENTIAL

Jane Doe's Estate Balance Sheet

 Client Details  Find Accounts  Calculations  Hide Column  Account Summary  Estate Dashboard  Estate Vault  Beneficiaries  Share




Assets

 Asset Type	 Asset Desc
Real Property	802 E. Whiting
Bank Account (Liquid)	Bank of Americ
Investment Account	Merrill Lynch A
Life Insurance	Metlife Policy #
Outright Stock	Computershare
Bank Account (Liquid)	JP Morgan Cha
Pension	Boeing Pension
Retirement Account	Fidelity Investm
Businesses	22% Interest in
Bank Account (Liquid)	Chase Bank

Total Assets	\$ 25,501,967
Total Liabilities	\$ 27,728
Total Deductible Liabilities	\$ 27,728
Probate Assets	\$ 130,989
Non-Probate Assets (Taxable)	\$3,370,978
Non-Probate Assets (Non-Taxable)	\$ 22,000,000
Gross Estate For Estate Tax Purposes	\$ 3,501,967

Federal Exemption for Year of Death	\$ 12,060,000
Exemption used per last Form 709	\$ 4,244,661
Exemption Available	\$ 7,815,339

Non-Exempt Taxable Estate	\$ 0
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 Value Date	 Appreciation	 Distribution Type
		Non-Probate
		Non-Probate
		Non-Probate
1/3/22		Non-Probate
1/3/22		Probate
1/3/22		Probate
		Non-Probate
1/3/22		Non-Probate
1/3/22		Non-Probate
1/3/22		Probate



A photograph of two men sitting at a table in a modern office setting. The man on the left, with a beard and grey hair, is wearing a light-colored button-down shirt and is gesturing with his right hand while holding a document. The man on the right, who is bald with a grey beard and glasses, is wearing a dark blazer over a light shirt and is also holding a document. They appear to be in a collaborative discussion. A laptop is visible on the table in the foreground.

Investment Management

- ✓ Developing and maintaining an investment strategy.
- ✓ Balancing growth, income, and risk according to the trust's goals and beneficiary needs.

Regular Updates and Reports

- ✓ Schedule for providing updates to beneficiaries.
- ✓ Contents of regular reports (financial status, distributions, etc.).



Income Taxes

For decedents	For estates	If there is a Revocable Trust / Pour Over Will
IRS Form 1040	IRS Form 1041	645 Election
<p>Final for year of death -- may be needed even if decedent died on Jan 1 -- look at filing thresholds. Good idea to file anyway to have "final."</p> <p>If you don't have prior returns and aren't sure if decedent was up to date in filing taxes, order IRS Transcripts manually using IRS Form 4506-T or automatically using other tech products.</p>	<p>If income came in for decedent after the date of death- this needs to be reported on estate tax return.</p>	<p>Possibly needed and legal decision.</p> <p>Merits of 645 Election include:</p> <ul style="list-style-type: none">• fiscal year selections• charitable permanent set aside• additional allowable losses• increased personal exemption• extended payment deadlines• extended S Corp stock holding periods





Issues with Interested Parties

✓ Addressing Beneficiary Concerns

- Effective communication strategies.
- Methods for handling disputes and disagreements

✓ Managing Trust Modifications and Terminations

- Process for modifying or terminating a trust.
- Legal requirements and beneficiary consent.





Distributions

- ✔ Distributing the assets to the beneficiaries according to the terms of the will or state laws if there is no will.
- ✔ This phase may also include preparing and executing any necessary deeds or documents to transfer assets to the beneficiaries.
- ✔ In the context of estate administration, preliminary distributions and final distributions refer to the distribution of assets to the beneficiaries of the estate at different stages of the process.

Preliminary Distributions & Advances	Final Distributions
The distribution of assets to the beneficiaries before the estate is fully settled and closed.	The distribution of assets to the beneficiaries after the estate has been fully settled and closed.
<ul style="list-style-type: none">• These distributions may be made for the purpose of paying off debts or taxes, or to provide funds for the beneficiaries to cover living expenses while the estate administration is ongoing.• These distributions are generally made after the probate process and the asset discovery phase.• The executor will have to get the court's approval before making preliminary distributions.	<ul style="list-style-type: none">• These distributions are typically made after all taxes and debts have been paid and all necessary documents have been filed.• The final distributions are made according to the terms of the will or state laws if there is no will.• Final distributions are usually made after the completion of the estate closure and settlement phase, which means that the estate administration process is complete and the executor can be released from his/her responsibilities.

In summary, preliminary distributions are made before the estate is fully settled and closed, usually to pay off debts or taxes, or to provide funds for the beneficiaries, while final distributions are made after the estate is fully settled and closed, according to the terms of the will or state laws, and the process of estate administration is completed.



PRO TIP

✓ Releases, Waivers of Accounting, Indemnification Agreement

- Make each distributee sign an *informed* waiver, release, and indemnification agreement to minimize the future liability of the executor (and you), even where not required by state law.

✓ Virtual Representation

- Make sure they sign on behalf of heirs, assigns, minor, and unborn (!) children

✓ What does informed mean?

- Distributees need to have enough information about your client's activities as executor and the estate itself for such a release to be valid.
- Inform them of their right to counsel.



Draft releases, waivers, and indemnification agreements with trustate.

Phase 3: Asset & Liability Management

2 tasks completed

Task	Status	Push to Trustate	Point Person
<input type="checkbox"/> Begin estate bookkeeping to record and track assets, liabilities, income, and appreciation.	• Not Started	Yes	+person ...
<input checked="" type="checkbox"/> Notify credit bureaus and SSA of death.	• Completed	Yes	+person ...
<input type="checkbox"/> Obtain appraisals for jewelry/artwork/ other tangible goods and list on estate spreadsheet. <small>Ensure appraisal is qualified if included in the taxable estate if you've determined need to file an estate tax return (state or federal) or inheritance tax return if in a state that requires one.</small>	• Not Started		+person ...
<input type="checkbox"/> Obtain deeds for real property. <small>Have Trustate obtain the deeds for you.</small>	• Not Started	Yes	+person ...
<input type="checkbox"/> Notify employers and request unpaid benefits/survivor benefits. <small>Have Trustate notify the decedent's prior employers of the death, inquire as to any orphaned retirement accounts, unpaid compensation, unpaid employee benefits, or survivor's benefits.</small>	• Not Started	Yes	+person ...
<input type="checkbox"/> Prepare IRS Form 56 and file it. <small>Have Trustate prepare IRS Form 56 for you at the click of a button.</small>	• Not Started	Yes	+person ...
<input type="checkbox"/> Request the date of death value for each asset and/or liability.	• Not Started	Yes	+person ...
<input type="checkbox"/> Counsel client and beneficiaries on whether or not they plan to disclaim anything from the estate to which they are entitled. <small>Though a disclaimer is not always a qualified disclaimer, if an estate beneficiary is making a qualified disclaimer, ensure this gets done within the correct timeframe. Click here for more info on the deadlines for this.</small>	• Not Started		+person ...



The Final 3 Steps

01

Holdbacks

Be sure to hold back a certain amount of money for latent unanticipated expenses or estimated tax liability.

02

Executor/PR's Commission

Calculate commission amount for your client, allow them to make a decision on whether to take or not.

DO NOT FORGET TO INFORM THEM THAT THEY CAN TAKE THIS & EXPLAIN YOUR STATE'S PROCESS FOR DOING SO.

03

Distributions

Once releases signed, make distributions.





Estate Closure, Settlement, and Final Distributions

- ✓ Closing the estate, settling any disputes or claims, and making final distributions to the beneficiaries.
- ✓ Also includes filing the final tax returns and obtaining a release from the executor's responsibilities from all beneficiaries.
- ✓ The executor may also have to prepare and file a final accounting of the estate with the court, and obtain court approval for the distribution of the assets. After the court approves the final accounting, the estate will be closed and the executor can be released from his/her duties.





Estate Closure, Settlement, and Final Distributions

What is a “Holdback”?

In estate administration, a holdback amount refers to a portion of the assets that are being held back from distribution to the beneficiaries until certain conditions are met or certain events occur.

The purpose of a holdback amount is to ensure that there are sufficient funds available to pay for any outstanding debts, taxes, or other expenses that may arise after the preliminary distributions have been made.

- ▶ For example, if there are taxes that will be due at a later date, the executor may hold back a portion of the assets to pay those taxes when they become due.
- ▶ The holdback amount is usually a percentage of the assets or a specific dollar amount, and it is determined by the executor in consultation with the beneficiaries. The executor is responsible for managing the holdback amount and ensuring that it is used for the intended purpose. Once the conditions for releasing the holdback amount have been met, the assets will be distributed to the beneficiaries.
- ▶ It is important to note that the holdback amount is not a permanent withholding of assets from the beneficiaries, but a temporary measure until certain conditions are met, and the executor should release the holdback amount as soon as possible to avoid any delays in the distribution of the assets.





Estate Closure, Settlement, and Final Distributions

How to determine a "Holdback" amount

The amount that is typically advised to be held back in a normal estate administration to pay for potential taxes due at a later date can vary depending on the specific circumstances of the estate.

However, a common practice is to hold back a certain percentage of the assets, usually between 10-20%.

- This percentage is intended to provide a cushion for any potential taxes that may be due at a later date, such as estate taxes or income taxes. The exact percentage will depend on factors such as the size of the estate, the likelihood of taxes being due, and the executor's discretion.
- However, this percentage holdback may not be sufficient to cover all taxes that may be due, and the executor will have to keep in mind the potential for additional taxes or other expenses that may come up. The executor should also consult with a tax professional to ensure that the holdback amount is adequate and to understand the specific tax implications of the estate.
- The holdback amount should be released as soon as the taxes are paid and it should not be kept for a longer period than necessary. This can be done by obtaining a tax clearance certificate from the tax authorities, which confirms that all taxes have been paid and the estate is cleared from any tax liability.



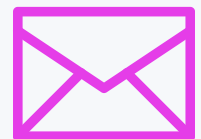
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