

Calculating Trust Fiduciary Accounting Income: Interpreting Operating Documents, Applying UPIA and State Law

OCTOBER 18, 2018, 1:00-2:50 pm Eastern

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Calculating Fiduciary Accounting Income For Trusts/Estates
Interpreting Operating Documents, Applying UPIA and State Law

Strafford Presentation October 18, 2018

Trustees Can't Count

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18

By
Howard L. Sanger

19

Basic Theory Of Principal & Income Accounting

20

1. P&I Basic Concept: Slicing & Dicing

21

1.1. Vertical Slices: TIC; JTROS; CP [Chart #1]

22

1.2. Horizontal Slices: Leaseholds; Life Estates; Term For Years (QPRT; CRT);

23

Remainders

24

1.3. Different Owners: Proprietors; Corporations; Partnerships; Trusts [Chart #2]

25

2. Cash Basis Accounting

26

3. Terminology.

27

3.1. Classify or Define: Refers to the characterization of an item as either

28

“Principal” or “Income”.

29

3.2. Allocation: refers to the assignment of a “Principal” or “Income” item

30

between successive beneficiary interests (i.e. to a specific gift bene; to a current income interest;

31

to a successor income interest; to a remainder interest); blended family conflict situations [Chart

32

#3]

33

4. Principal & Income Law: Default Statute; also check the language of the governing document, which often contains language that provides guidance to the fiduciary regarding Principal & Income classification issues (NIMCRUT).

34

35

36

5. California Law Duty To Account: Probate Code §16062 REQUIRES trustees to account to beneficiaries:

37

1 5.1. At least annually

2 5.2. At the termination of a trust

3 5.3. When there is a change of trustees

4 6. Federal Income Tax Return Duty To Account — Form 1041 [Chart #4]

5 7. Use Of Computer Programs To Prepare Fiduciary Accounting Schedules:

6 7.1. Using a dedicated fiduciary accounting program allows users to enter a
7 transaction one time and have that single transaction populate all relevant schedules.

8 7.2. It is much easier to produce a fiduciary accounting using a dedicated
9 fiduciary accounting program than to produce a fiduciary accounting using a spreadsheet or
10 Quickbooks.

11 8. Purpose Of Fiduciary Accounting:

12 8.1. Court's Purpose: no theft; no malfeasance, no obvious breaches of fiduciary
13 duties; “surface level” review; historically, no careful scrutiny of Principal & Income accounting
14 issues. To summarize, the court looks to protect the interest of the beneficiaries as a group (i.e.,
15 no theft, malfeasance, obvious breach of fiduciary duty), not to protect the interests of each
16 individual beneficiary with regard to each individual beneficiary’s rights to the allocation of
17 principal and income; property funding of subtrusts.

18 8.2. Allows Beneficiaries To Assess Performance Of Fiduciary. Fiduciary
19 accounting also allows beneficiaries to assess how the fiduciary has discharged his duties (i.e.,
20 fiduciary accounting is a “performance accounting”).

21 9. Accountings = Insurance For Fiduciary:

22 9.1. Statutory Period to Challenge Fiduciary Accounting: 3 years. (Probate Code
23 § 16063(a)(6))

24 9.2. Can Fiduciary Shorten the 3-Year Period?

25 9.2.1. Option #1 To Shorten 3-Year Period: To 180 days if trust contains
26 Probate Code § 16461 “exculpatory language”.

27 9.2.2. Option #2 To Shorten 3-Year Period: If fiduciary filed accounting
28 with court and secured court order approving the accounting.

29 9.3. Accounting must adequately disclose the existence of a claim against
30 fiduciary for breach of trust.

31 9.4. Send to beneficiary via Certified Mail/Return Receipt Request to have
32 evidence the beneficiary in fact received the accounting.

1 10. Court Accountings Form: Look at Summary Schedule filed with court.

2 10.1. Charges:

3 10.1.1. “Property on Hand at beginning of account (or inventories)”
4 schedule

5 10.1.2. “Additional Property Received (or Supplemental Inventories)”
6 schedule. Avoid reporting later discovered assets as receipts.

7 10.1.3. “Receipts” schedule.

8 10.1.4. “Gains on Sale or Other Disposition” schedule.

9 10.1.5. “Net income from trade or business” schedule

10 10.2. Credits:

11 10.2.1. “Disbursements” schedule.

12 10.2.2. “Losses on Sale or Other Disposition” schedule.

13 10.2.3. “Net loss from trade or business” schedule.

14 10.2.4. “Distributions” schedule.

15 10.2.5. “Property on hand at close of account schedule” can be helpful to
16 segregate the assets on hand between (a) Principal assets on hand, and (b) Income assets on hand.

17 10.3. Probate Code §1063 Additional Required Schedules

18 11. Two Buckets: Income Cash & Principal Cash [Chart #5 & #6]

19 12. Reasons for P&I Accountings:

20 12.1. Beneficiaries: P&I scrutiny; blended families

21 12.2. Tax Return: Form 1041, page 1, line 9 “Total Income” versus page 2,
22 Schedule B, line 8 “Accounting Income” also applies to Schedule B, line 9.

23 13. Carry Value vs. FMV vs. Tax Basis:

24 13.1. Tax Accounting: Adjusted tax basis.

25 13.2. Fiduciary Accounting:

26 13.2.1. Carry Value

27 13.2.2. FMV

1 13.2.3. Why adjust carry value?

2 P&I
3 GENERAL: IRC INCOME VS. P&I FIDUCIARY INCOME
4

5 14. Facts #1: (P&I): H died. He was survived by his second wife, W, and two children
6 from his first marriage.

7 It took one year to probate H's estate. During that year, H's estate had the
8 following income and expenses:

9

10	Income:	
11	Interest Income	\$20,000
12	Rent Income	\$40,000
13	Expenses:	
14	Administration Expenses	\$10,000
15	Depreciation	\$20,000

16
17 Upon completing the probate, the Executor distributed H's assets as follows:

- 18
- 19 i) \$10,000 specific cash gift to H's uncle
 - 20 ii) Apartment building specific gift to H's brother
 - 21 iii) The residuary in trust. The residuary trust gift provides
22 25% to H's children outright; 75% to a QTIP testamentary
23 trust

24 The testamentary trust provides for a typical QTIP arrangement: all trust income goes to W. On
25 W's death, the remainder goes to H's children from his first marriage.
26

27 14.1. Question #1: During the one year probate administration period, what is the
28 estate's Form 1041 taxable income (assume no distribution deduction; disregard exemption)?

29 14.2. Question #2: What is the estate's "net income" for principal and income
30 ("P&I") purposes? P.C. §16340; UPIA §201 and §16372(b)(2); UPIA §503 (1997).

31 P&I
32 SPECIFIC GIFTS
33

34 14.3. Question #3: When the estate distributes \$10,000 to H's uncle, must the
35 estate pay the uncle (i) \$10,000 or (ii) \$10,000 plus the interest earned on \$10,000 during the one
36 year of probate administration? Would your answer be different if the \$10,000 were distributed
37 more than one year after H's death? P.C. §12001, §12003; P.C. §16340(b); UPIA §201 (1977).

38 14.4. Question #4: Assume the estate distributed the \$10,000, plus \$1,000 of
39 interest because the distribution occurred more than one year after the DOD. Does the \$1,000
40 interest get charged against (a) the residue gift i.e. out of principal, or (b) out of income?
41 §16340(b); UPIA §201.

1 14.5. Question #5: Instead of funding a \$10,000 specific gift to H's uncle, H's
2 will provides for a pecuniary formula lead bypass trust of \$2,000,000. The estate funds the
3 \$2,000,000 pecuniary lead bypass trust two years after H's DOD. Is interest owed on the
4 \$2,000,000 allocated to the bypass trust? P.C. §16340(a) §12003; P.C. §16340(b); UPIA §201.

5 14.6. Question #6: What rate of interest must the estate pay? P.C. §12001.

6 14.7. Question #7: Assume it takes two years to distribute the specifically
7 devised apartment building specific gift to H's brother. Must the estate also distribute to the
8 brother *interest* on the value of the specifically devised apartment building for the final year of
9 the two year probate delay? P.C. §16340(a), §12002(a); UPIA 201.

10 14.8. Question #8: Assume the specifically devised apartment building earned
11 \$100,000 of rental income after the DOD, during the probate/post death trust administration.
12 When the apartment building is distributed to H's brother, must the estate also distribute to the
13 brother the \$100,000 of rental income received/earned during probate administration? P.C.
14 §12002(b); §16340(a); UPAIA §201.

15 14.9. Question #9: Same facts as in Question #8, but of the \$100,000 rent income
16 received during probate administration, \$30,000 accrued prior to the DOD. Does the estate
17 distribute (a) \$100,000 rent income to the brother as the specific donee of the apartment building,
18 or (b) \$30,000 to the residue beneficiary, as \$30,000 of the rent was earned prior to the DOD,
19 and \$70,000 to the brother, as \$70,000 of the rent accrued subsequent to the DOD? P.C.
20 §16340(a)(1). But see §12002(b). UPAIA §201.

21 15. Facts #2: Prior to distributing the apartment building to H's brother, during the
22 probate period, the fiduciary

23 (a) received (i) \$10,000 of gross apartment rent income, and
24 (ii) \$8,000 of dividend income from the balance of the
25 estate's securities;

26 (b) paid (i) \$3,000 of expenses directly related to the apartment
27 building, and (ii) \$4,000 of general estate administration
28 expenses, i.e. legal and accounting fees, fiduciary fees, etc.

29 Assume the apartment building represented 25% of the total value of all probate assets. The
30 75% balance of the probate assets took the form of NYSE securities.

31 15.1. Question #10: When the fiduciary distributes the apartment building to H's
32 brother, how much additional income does the fiduciary distribute to the brother:

33 (a) \$6K [i.e. \$10K minus the sum of (i) \$3K of apartment
34 expenses, plus (ii) \$1K (i.e. ¼ of the \$4K) of general estate
35 expenses]; or

36 (b) \$7K (i.e. \$10K minus just the apartment's direct expenses
37 of \$3K)?

1 In other words, for P&I accounting purposes, does the fiduciary charge a portion of the estate's
 2 general administration expenses against the income of specifically gifted assets? P.C.
 3 §16340(a)(2); §12002(b). UPAIA §201.

4 16. Facts #3: Same facts as prior hypo, except the expenses attributable to the
 5 specifically gifted apartment building, exceeded the apartment gross rent income, by \$5,000 each
 6 year.

7 16.1. Question #11: Did the fiduciary (a) have to pay the \$5,000 of expenses that
 8 exceeded the building's income, or (b) could the fiduciary have insisted that H's brother who
 9 will inherit the apartment building, pay the \$5,000 of expenses not covered by the rent income?
 10 P.C. §12002(c)

11 16.2. Question #12: If the fiduciary distributed the apartment building to H's
 12 brother within one year of H's death, can the fiduciary withhold or lien the apartment building
 13 for the \$5,000 of expenses that exceeded the building's rent income? P.C. §12002(c).

14 16.3. Question #13: If the fiduciary distributed the apartment building to H's
 15 brother more than one year after H's death, can the fiduciary withhold or lien the distributed
 16 apartment building for the \$5,000 of expenses that exceeded the building's rent income after the
 17 first year? P.C. §12002(c); UPAIA § 201 (1997).

18 17. Facts #4: The fiduciary distributes the apartment building to H's brother two years
 19 after H's DOD. The net income attributable to the apartment totals \$15,000 as of the
 20 distribution. On the fiduciary's two Form 1041 tax returns, the fiduciary paid \$10,000 income
 21 taxes, of which \$3,000 was attributable to the apartment building's \$15,000 of net rent income.

22 17.1. Question #14: Does the fiduciary distribute to H's brother the apartment
 23 building plus (a) \$15,000, or (b) \$12,000, which is the \$15,000 minus the \$3,000 of income tax?
 24 In other words, who bears the \$3,000 income tax (i) H's brother, or (b) the residuary
 25 beneficiaries H's kids and the QTIP trust created for H's widow? §12002(b); UPAIA § 201
 26 (1997).

27 P&I Area #1

28 [How is income earned (a) during probate of an estate or (b) with a funded
 29 living trust, during the "administration period", allocated where it is
 30 distributable (a) to a trust, or (b) to specific outright bequests, or (c) to
 31 pecuniary gifts, or (d) the residue? §16340 and §16341.

32 Family Allowance Issue
 33 Second Marriage Situations

34
 35 18. Facts #5: H died while married to W#2. At death H owned a \$1,000,000 interest
 36 bearing savings account, paying 10% interest. H has children from his first marriage. H's estate
 37 plan provides a QTIP and a Bypass Trust for W#2, with all trust income going to W#2. When
 38 W#2 dies, the principal of the QTIP and Bypass Trust goes to H's children. During the

1 postdeath trust administration period, prior to funding the QTIP and the Bypass Trust, the
2 administrative trust earned \$100,000 of interest, and paid W#2 a \$100,000 family allowance.

3 18.1. Question #15: Is the \$100,000 family allowance paid to the W#2
4 stepmother (a) an “income expense” that gets charged against the \$100,000 of interest income
5 otherwise payable to the stepmother, or (ii) a “principal expense” that reduces the \$1,000,000 of
6 principal ultimately payable to H’s children from his first marriage? In other words, does the
7 family allowance reduce the “income” the stepmother gets, or the remainder gift that the children
8 from the first marriage get? §16340(c)(3); UPAIA §201.

9 18.2. Question #16: Given the P&I treatment of family allowances, if you are
10 advising W#2, with respect to a family allowance, what do you advise her to do?

11 Other Administration Period Expense Issues

12
13 19. Facts #6: At the time H died, \$5,000 of rent was accrued but unpaid on the apartment
14 building specifically gifted to H’s brother . The \$5,000 was received by H’s estate 120 days
15 after H died.

16 19.1. Question #17: Is the \$5,000 cash rent received (a) principal cash, or (b)
17 income cash? §16356

18 19.2. Question #18: Does the \$5,000 pre-death rent accrual go to (a) H’s brother,
19 the beneficiary of the specifically gifted apartment building, or (b) to the residuary trust
20 established for H’s children and H’s wife? §16340(a)(1) and §12002(b); UPAIA §201 (1997).

21 20. Facts #7: Following H’s death, during the probate (or during the “administrative
22 trust” period if H had a living trust), the fiduciary paid (a) \$100 of legal fees, (b) \$200 of CPA
23 fees, (c) \$300 of fiduciary fees, (d) \$400 of other administration expenses, (e) \$500 of interest on
24 unpaid estate taxes.

25 20.1. Question #19: Does the fiduciary charge any portion of the above expenses
26 against the income or principal of the apartment building specifically gift to H’s brother? P.C.
27 §12002(b) §16340(a)(2); UPAIA §201 (1997).

28 20.2. Question #20: Does the fiduciary charge any portion of the above expenses
29 against the \$10,000 pecuniary amount gift to the uncle? 16340(b); UPAIA §201.

30 20.3. Question #21: Does the fiduciary charge any portion of the above expenses
31 against the residuary gift to the testamentary trust? §16340(c).

32 Allocating Administration Period Income 33 To Residuary Beneficiaries

34
35 21. Facts #8: H died. After paying all administration expenses, the fiduciary is left with
36 the residue assets. Applying the marital deduction fractional share formula clause to the residue,
37 using date of death values, the trustee's "target" for (a) the QTIP trust is \$9,000,000, and (b) for
38 the Bypass Trust is \$1,000,000. The QTIP benefits W#2. The Bypass Trust benefits H's

1 children from his first marriage. W#2 and her stepchildren do not get along. During the
 2 administration period, the trust produces net fiduciary income of \$100,000. Both the QTIP and
 3 the Bypass trusts, are "simple" trusts that require the trustee to distribute all income currently.
 4 Assume QTIP Trust and the Bypass Trust had the following values:

	<u>A</u>	<u>B</u> I&A/DOD Values At H's Death	<u>C</u> Values 15 Months Later On Distribution Date Values When Adm done & Trustee Plans To Distribute \$100,000 Income
1	Bypass Trust	1,000,000	3,000,000
2	QTIP Trust	9,000,000	7,000,000

5

6 21.1. Question #22: Fifteen months after the DOD, the trustee distributes the
 7 \$100,000 of fiduciary income. Does the trustee distribute the \$100,000 of fiduciary income (a)
 8 10% to the Bypass Trust and 90% to the QTIP Trust; or (b) 30% to the Bypass Trust and 70% to
 9 the QTIP Trust? §16341(a) and (c); UPAIA § 202 (1997).

10 22. Facts #9: Same facts as above, except the Trust owned Blackacre and Whiteacre. At
 11 DOD, Blackacre had an equity of \$1,000,000. Whiteacre had a \$9,000,000 equity. Per the
 12 formula clause, using DOD values, the Bypass Trust target amount equals \$1,000,000 and the
 13 QTIP Trust's target amount is \$9,000,000 (see Column B in the below table). Fifteen months
 14 after the DOD, the fiduciary, having completed the post death trust administration, funds the
 15 Bypass Trust and the QTIP Trust as shown in Column C in the below table.

	<u>A</u>	<u>B</u> I&A/DOD Values At H's Death	<u>C</u> Values 15 Months Later When Adm done & Trustee Plans To Distribute \$100,000 Income
1	Bypass Trust	1,000,000	3,000,000 Equity (\$9M FMV minus \$6M TD)
2	QTIP Trust	9,000,000	7,000,000 Equity (\$13M FMV minus \$6M TD)

16

17 22.1. Question #23: Does the trustee distribute the \$100,000 of fiduciary income
 18 (a) 10% to the Bypass Trust and 90% to the QTIP Trust, using DOD values; or (b) 30% to
 19 Bypass Trust and 70% to QTIP Trust, using net date of distribution values? or (c) 9/22 to the

1 Bypass Trust and 13/22 to the QTIP Trust, using gross date of distribution values? §16341(a);
2 UPIA §202.

3 22.2. Question #24: On the distribution date 15 months after the DOD, the
4 fiduciary retains \$20,000 of the \$100,000 of fiduciary income. Twelve months later, when the
5 gross values of the assets have changed, does the fiduciary distribute the retained \$20,000 per (a)
6 the assets FMV on the date the \$80,000 was distributed, i.e. 15 months after DOD per Column C
7 in the above table, or (b) the assets' FMV 27 months after the DOD when the fiduciary makes the
8 second distribution of the \$20,000 of fiduciary income previously retained? §16341(b); UPIA
9 202.

10 P&I Area #2

11 [When an income interest in a trust BEGINS or ENDS, what property is
12 principal that goes to the remainder beneficiaries, and what is income? PC
13 §16346 and §16347]

14 First Spouse (H) Dies Apportionment Issues
15 Between Stepmother and H's Children
16

17 23. Facts #10: (Apportionment When Decedent Dies Or Income Interest Begins;
18 §16346): H died on January 5. W#2 is the beneficiary of her deceased H's estate plan that
19 provides her with typical mandatory income distributions Bypass/QTIP trust arrangement. W#2
20 gets all the trusts' income. The remainder beneficiaries are H's children from his first marriage.
21 H's children get the principal of the Bypass and QTIP trusts when W#2, their stepmother, dies.
22 W's estate plan leaves everything to her children from her first marriage. H and W#2's children
23 despise one another. And, there is no love between W#2 and H's children from his first marriage
24 (the remainder beneficiaries). In the eyes of H's children from his first marriage, W#2 is their
25 greedy stepmother that rides a broom.

26 (a) H is owed unpaid periodic January rent of \$100,000 due on
27 January 1, four days before H's DOD. The \$100,000 of
28 rent is paid on January 10, five days after H's DOD.

29 (b) H owned IBM stock, which had declared a dividend prior
30 to H's DOD, to shareholders of record prior to H's DOD,
31 but which is payable after H's DOD; H's IBM dividend is
32 \$30,000, and it is paid after H's DOD.

33 (c) H is owed a big tax refund plus \$50,000 of interest from the
34 IRS. \$20,000 of the interest had accrued at H's DOD. The
35 IRS pays the \$50,000 interest after H died.

36 23.1. Question #25: Is "rent" an "income receipt" or a "principal receipt"?
37 §16356; UPIA §405.

1 23.2. Question #26: Should the \$100,000 “income receipt” of rent (for the month
2 of January) due on January 1, prior to H’s death, but received after his death on January 10,

- 3 (a) be treated as principal and allocated to principal of the
4 QTIP/Bypass Trusts (effectively treating the rent “income
5 receipt” as a “principal receipt”, which will ultimately go
6 H’s children when W#2 dies), or
- 7 (b) be apportioned to W#2, and immediately distributed to
8 W#2 as FAI, with the result that the \$100,000 will go to
9 W#2 as a mandatory QTIP/Bypass income distribution, or
10 to W#2’s children according to the terms of W#2’s will?
11 §16346(a); UPIA §302. [Chart #7]

12 23.3. Question #27: For three years after H’s death, the QTIP and Bypass Trust
13 continue to receive the \$100,000/month rent and to distribute the \$100,000 as FAI to W#2. The
14 tenant breaches the lease, stops paying rent. Four years of litigation ensues. Two years into the
15 litigation, W#2 dies. Two years after W#2 dies, the trustee for the trust established for H’s
16 children from H’s first marriage, settles the cases for \$500,000, which is half of the unpaid rent.
17 Does the \$500,000 unpaid rent settlement received by the trustee four years after W#2’s DOD,
18 get distributed (a) to W#2’s estate, or (b) to H’s children from his first marriage, who are the
19 income beneficiaries of the trust when the \$500,000 rent settlement is received? §16346(b);
20 UPIA §302

21 23.4. Question #28: A trust rents Blackacre for \$10,000/month for 5 years.
22 Upon signing the lease, the tenant pays the trust \$30,000, to cover the first and last months’ rent,
23 and a \$10,000 security deposit. Is the \$30,000 receipt “income” or principal? §16356; UPAIA
24 §405.

25 23.5. Question #29: Is the IBM dividend (a) an income receipt, or (b) a principal
26 receipt? §16350(b); § UPIA §405.

27 23.6. Question #30: Is the IBM dividend received after H’s death, but which had
28 a record date prior to H’s death, (a) “principal” which will ultimately go to H’s children as
29 remaindermen, or (b) “income” payable to W#2, the income beneficiary, which will go to her
30 children according to the terms of her will? §16346(b) & (c); UPAIA §302.

31 23.7. Question #31: Is "interest" received (a) an income receipt, or (b) a principal
32 receipt? §16357(a); UPAIA §406.

33 23.8. Question #32: Is the \$50,000 of IRS interest received after H’s death (a)
34 income payable to W#2? or (b) principal to be added to the Bypass/QTIP trusts for W#2, which
35 ultimately will go to H’s children? or (c) partially principal and partially income? §16346(b);
36 UPIA §302.

37 Second Spouse (W#2) Dies Apportionment Issues
38 Between Stepmother’s Children and H’s Children
39

1 26.1. Question #39: For fiduciary accounting purposes, does the Trust have
2 “income” of (a) \$100,000 or (b) \$80,000? §16350(b); UPIA §401.

3 26.2. Question #40: For fiduciary accounting purposes, if the partnership
4 distributed to the trust (a) \$10,000 of cash, and (b) equipment worth \$3,000, would the trust have
5 \$13,000 of fiduciary income? §16350(b) and (c)(1); UPIA §401.

6 26.3. Question #41: If the partnership sold a tractor/capital asset for \$10,000 and
7 distributed the \$10,000 cash sales proceeds, would you report the \$10,000 as “income” because
8 the \$10,000 cash distribution is less than 10% of the \$200,000 FMV of the trust’s partnership
9 interest §16350(c)(3) and (d); UPIA §401.

10 26.4. Question #42: Assume the \$10,000 cash distribution traces to the sale of
11 raw land owned by the partnership. Is the \$10,000 “income” because it totals less than 10% of
12 the \$200,000 FMV of the partnership interest, and thus is not a “partial liquidation”?
13 §16350(d)(2).(3)(B).

14 27. Facts #14: A QTIP trust is a member of an LLC that owns a large apartment
15 building. The apartment building has skyrocketed in value, and the LLC refi’s the apartment
16 building and distributes \$200,000 to the QTIP Trust.

17 27.1. Question #43: Is the \$200,000 refi cash distributed to the QTIP (a) fiduciary
18 “income” the trustee distributes to the widow, W#2, or (b) “principal”, to be ultimately
19 distributed to the QTIP remainder beneficiary children? §16350(b)

20 28. Facts #15: The trust owns shares of a mutual fund. The mutual fund distributes \$10
21 to the trustee.

22 28.1. Question #44: If the \$10 mutual fund distribution were a long term capital,
23 is the \$10 (a) “income” distributable to W#2, or (b) “principal” that will ultimately be distributed
24 to the remainder beneficiaries, H’s children from his first marriage? §16350(c)(4); UPIA §401.

25 28.2. Question #45: If the \$10 mutual fund distribution represents \$7 of short-
26 term gains, and \$3 of long-term capital gains, of the mutual fund, is the \$10 (a) “income”
27 distributable to W#2? Or (b) “principal”? §16350(c)(4); UPIA §401.

28 28.3. Question #46: If the trustee had instructed the mutual fund to reinvest the
29 dividends to purchase additional shares of the mutual fund, so the \$10 is not distributed but
30 instead \$10 of new stock certificates of the mutual fund are issued to the trustee, then is the \$10
31 (a) “income” distributable to W#2, or (b) principal, or (c) not at all reflected on the trustee’s
32 principal and income accounting? §16350; UPIA §401.

33 Schedule C Issues -- § 16352

34 29. Facts #16: Following the Trustor’s death, by pour-over will, the Trustee receives
35 assets worth \$5,000,000 composed of (a) blue chip securities that generate \$200,000 of ordinary
36 income annually, and (b) a sole proprietorship date garden farming business that generates
37 \$200,000 of ordinary losses annually. Trustor’s surviving wife needs \$200,000 annually to live.

1 29.1. Question #47: Since for income tax purposes, the sole proprietorship date
2 garden business loss wipes out the securities income, what can you do to generate \$200,000 of
3 fiduciary income for the widow surviving spouse? §16352(a); UPIA UPIA §403.

4 29.2. Question #48: Can the fiduciary treat the securities as a separate business?
5 §16352(c); UPIA §403 (199).

6 29.3. Question #49: Can the fiduciary continue to use the same accounting
7 method for the date garden business as did the deceased trustor?

8 29.4. Question #50: If the date garden produced \$100,000 of net cash receipts,
9 must that \$100,000 be treated as fiduciary income? §16352(b); UPIA §403.

10 29.5. Question #51: If the date garden produced \$100,000 of net cash receipts,
11 and the fiduciary did not need to retain \$60,000 of the net cash receipts for the date garden, does
12 the fiduciary allocate the \$60,000 to principal or to income in the trust's fiduciary accounting?
13 §16352(b); UPIA §403..

14 29.6. Question #52: If the trustee sells the date garden for \$3,000,000, of which
15 \$1,000,000 represents payment for accounts receivable, is the \$1,000,000 treated as principal or
16 as income? §16352(b); UPIA §403.

17 Allocation Of Receipts During Administration Of Trust:
18 Not Normally Apportioned: Article 5.2.

19
20 30. Facts #17: A trust owns an apartment building. A tenant loses his job and can't pay
21 the rent. To avoid litigation, the trust agrees to release the tenant from his lease if the tenant pays
22 the trust a \$500 lease cancellation fee.

23 30.1. Question #53: Does the trustee report the \$500 lease cancelation fee as
24 principal or as income? §16356; UPAIA §405.

25 Allocation Of Receipts Normally Apportioned: Article 5.3.

26 31. Facts #18: (Insubstantial Allocations): The trust has assets worth \$1,000,000, which
27 include a working interest in an oil deal that pays the trust an annual royalty. Excluding the
28 working interest annual oil royalty, the trust has \$40,000/year of income. During the year, the
29 trust receives net receipts from the working interest.

30 31.1. Question #54: How do you allocate to P & I the working interest net
31 receipts if they total \$50,000/year? §16363(a)(4); UPAIA §411.

32 31.2. Question #55: How do you allocate to P&I the working interest net receipts
33 if they total \$400? §16360(a).

34 Deferred Compensation/Annuities
35

1 32. Facts #19 -- Deferred Compensation & Non-MD FAI Rules: H died. H is survived
 2 by W#2, and his children from his first marriage. H has a trust that provides that following H's
 3 death, the trust divides into a QTIP and Bypass Trust. The Bypass Trust beneficiaries are H's
 4 children from his prior marriage. W#2 is not a beneficiary of the Bypass Trust. The Bypass
 5 Trust requires all fiduciary income to go to H's children from his first marriage. At H's death, H
 6 has a \$1,000,000 non-qualified deferred compensation plan (i.e. a Rabbi Trust benefit; insurance
 7 commissions; Yankee/Jeter deferred baseball contract). The plan's death beneficiary is H's
 8 Bypass Trust. For IRC income tax purposes, the \$1,000,000 is ordinary income.

9 32.1. Question #56: Assume (a) the \$1,000,000 must be paid over 5 years in 5
 10 equal \$200,000 payments; (b) per the terms of the non-qualified deferred compensation
 11 agreement, following H's death, the \$1,000,000 deferred compensation is paid to the Bypass
 12 Trust; (c) the payer characterizes the first year's \$200,000 payment as including (i) \$50,000
 13 interest, and (ii) \$30,000 of dividends. How much of the \$200,000 is fiduciary "income"
 14 payable to H's children from the Bypass Trust, and how much is "principal" ultimately payable
 15 to H's children when they attain age 60? §16361(b); UPAIA 409.

16 32.2. Question #57: Same facts as prior question, but the payer does not
 17 characterize the first year's \$200,000 payment. The payer just issues a Form 1099 for \$200,000
 18 without any indication whether any of the \$200,000 is interest, dividends, etc. How much of the
 19 \$200,000 is fiduciary "income" payable to H's children from the Bypass Trust currently, and
 20 how much is "principal" ultimately payable to H's children at age 60? §16361(c); UPAIA 409.

21 32.3. Question #58: Same \$1,000,000 deferred compensation, but no annual
 22 required payment. The \$1,000,000 is all due at the end of 10 years. But, the employer
 23 voluntarily pays \$300,000 in the current year. How much of the \$300,000 is fiduciary "income"
 24 payable to H's kids, and how much is "principal" ultimately payable to H's children from his
 25 first marriage at age 60? §16361(c); UPAIA 409.

26 32.4. Question #59: Assume the \$1,000,000 deferred compensation payment did
 27 not have to be made, but was paid as a single \$1,000,000 lump sum distribution following H's
 28 death, to the trust. How much of the \$1,000,000 LSD payment is fiduciary "income" payable to
 29 W#2, and how much is "principal", ultimately payable to H's children from his first marriage?
 30 §16361(c); UPAIA 409.

31 32.5. Question #60: Would you change any of your answers to the above
 32 deferred compensation questions paid to the Bypass Trust, if the payments came from a qualified
 33 plan (pension or profit sharing) or from an IRA? §16361(a)(2); UPAIA 409.

34 33. Facts #20 -- A-Rod's Deferred Compensation & MD FAI Rules: Assume the same
 35 facts as in ¶32, but the \$1,000,000 is in an IRA, and the \$200,000 annual payments must go the
 36 QTIP Trust; not to the Bypass Trust. To facilitate discussion, let's add some color by changing
 37 the ¶32 facts slightly. H is the non-retired NY Yankee's 3B Alex Rodriguez. W#2 is Madonna.
 38 Alex died. Following his death, the IRA must pay to the QTIP Trust established in Alex's estate
 39 plan for Madonna, \$200,000 annually for 10 years. Note: The IRA payment goes to the QTIP
 40 Trust, and not directly from the IRA to Madonna.

1 33.1. Question #61: During the first year following A-Rod's death, the IRA
 2 account statement shows "internal income" of \$80,000. How much of the \$200,000 payment to
 3 the QTIP Trust, is fiduciary "income" payable by the QTIP to Madonna, and how much of the
 4 \$200,000 paid by the IRA to the QTIP is "principal", ultimately payable to A-Rod's children
 5 from his first marriage? §16361(f); UPAIA 409.

6 33.2. Question #62: Same facts as ¶33.1, except the IRA brokerage account
 7 statement shows "internal income" of \$300,000 for the year, but the IRA payment to the QTIP is
 8 \$200,000. What amount of the \$200,000 IRA payment to the QTIP, is fiduciary income that the
 9 QTIP must distribute to Madonna/W#2? §16361(f); UPAIA 409.

10 33.3. Question #63: In the prior question, the deemed QTIP FAI is \$300,000, but
 11 the IRA distribution received by the QTIP was only \$200,000. All the other QTIP assets are
 12 "principal". How does W#2 get \$300K of FAI, if the QTIP trustee has only \$200,000 of
 13 "income" distribution from the IRA? §16361(f); UPAIA 409.

14 33.4. Question #64: Same facts as ¶33.1 (i.e. \$200,000 distribution from the IRA
 15 to the QTIP Trust), except (a) the IRA brokerage account statement does NOT show "internal
 16 income"; (b) the IRA brokerage account statement shows a \$2,000,000 ending balance as of the
 17 end of the IRA's FYE prior to the current P&I computation year. How much of the \$200,000
 18 IRA payment to the QTIP Trust is "fiduciary income" payable to Madonna/W#2, and how much
 19 is principal ultimately payable to A-Rod's children from his first marriage? §16361(g); UPAIA
 20 409.

21 33.5. Question #65: Same facts as ¶33.1, except the brokerage account statement
 22 does NOT show either (a) "internal income" earned on the brokerage account; or (b) the
 23 brokerage account statement ending balance for the computation year. How much of the
 24 \$200,000 payment to the QTIP Trust is fiduciary income payable to W#2, and how much is
 25 principal ultimately payable to A-Rod's children from his first marriage? §16361(g); UPAIA
 26 409.

27 34. Facts #21 -- Insurance Paid In Installments. Assume an ILIT trust owned a
 28 \$1,000,000 life insurance policy on H. The ILIT says pay all income to W#2; remainder to H's
 29 kids from his first marriage. H died. The ILIT trustee elected to take the \$1,000,000 over 5
 30 years, \$200,000 annually. How much of the annual \$200,000 life insurance installment does the
 31 trustee pay to W#2 because it's "income", and how much of the \$200,000 is principal to be
 32 distributed to the children remainder men when W#2 dies? §16361(c)

33 34.1. Question #66: Assume the trustee elected to take the \$1,000,000 in a single
 34 lump sum. How much of the \$1,000,000 does the ILIT trustee distribute to W#2, as "income",
 35 10%? §16361(c)

36 35. Facts #22: A trust receives a \$100 royalty payment on account of the trust's interest
 37 in the Lipitor patent.

38 35.1. Question #67: Is the \$100 "income" or "principal"? §16362(b).

39 36. Facts #23: A trust receives \$1,000,000 from a DBPP.

1 36.1. Question #68: Is the \$1,000,000 "principal" or "income"? §16361(c).

2 37. Facts #24: Trust owns Blackacre for 10 years and earns nothing; Blackacre sits
3 vacant.

4 37.1. Question #69: Does the “unproductive property rule” create "income"?
5 §16365.

6 38. Facts #25: Trust owns an apartment building. The tax return reports \$30,000 of
7 depreciation annually.

8 38.1. Question #70: For fiduciary accounting purposes, does the \$30,000 get
9 charged to "principal" or to "income"? §16372.

10 39. Facts #26: (Receipt from Estate/Other Trust): The Trust receives a \$10,000
11 distribution from another trust or an estate.

12 39.1. Question #71: Is the trust’s receipt of \$10,000 from another trust/estate,
13 "principal" or "income"? §16351.

14 40. Facts #27: (Reimbursement): The Trust receives a \$3,000 reimbursement from Blue
15 Cross.

16 40.1. Question #72: Is the \$3,000 "principal" or "income"? §16355(c).

17 41. Facts #28: Wall Street invents a new instrument, called the “Sanger”. The Sanger
18 annually yields what Wall Street calls the “SangBoom”.

19 41.1. Question #73: For fiduciary accounting purposes, do you allocate the
20 SangBoom to "income" or to "principal"? §16335(a)(4).

21 P&I Area #4

22 [After an income interest begins and before it ends, how allocate
23 disbursements between income and principal?]

24 42. Facts #29: How much of the below disbursements do you charge to “income” and to
25 “principal”:

	Disbursements	Income	Principal
a	\$20,000 Trustee Fee computed based on 1% of principal, incurred during period of “administration trust” (i.e. before funding the subtrusts)? §16340(c)(2)		
b	\$20,000 Trustee Fee computed based on 1% of principal, incurred after administration ended and when the subtrusts are funded? §16370(a);16371(a)(1)		
c	\$2,000 of expenses incurred to prepare and file a court accounting. §16370(b)		

d	\$3,000 paid to an investment advisor. §16370(a)		
e	\$400 of legal fees. §16370 & §16371		
f	\$1,000 of premiums on policies insuring trust assets. §16370(d)		
g	\$1,000 of premium on a policy of title insurance. §16371(a)(5)		
h	\$3,000 of trustee fees incurred to prepare trust owned property for sale. §16371(a)(2)		
i	\$5,000 disbursed to pay the principal on a trust debt. §16371(a)(3); to pay the interest on a trust debt. §16370(c)		
j	\$25,000 of expenses paid in litigation to construe the trust instrument. §16371(a)(4)		
k	\$100,000 estate tax. §16371(a)(6)		
l	\$150,000 GSTT §16371(a)(6)		
m	\$8,000 of interest to IRS on late paid estate taxes. §16371(a)(6)		
n	\$80,000 paid relating to environmental matters. §16371(a)(7)		

1
2 43. Facts #30 -- Apartment Building: The trust owns an apartment building. The
3 monthly mortgage totals \$10,000, which is partly repayment of loan principal (\$1,000) and partly
4 interest (\$9,000). The monthly apartment rent receipt income constitutes the sole source to pay
5 the monthly mortgage. The annual apartment depreciation totals \$20,000.

6 43.1. Question #74: Do you charge the monthly \$10,000 mortgage payment to
7 "principal" or to "income"? §16371(a)(3) & §16370(c).

8 43.2. Question #75: If the trustee uses the rental "income" to pay the mortgage,
9 what must the trustee do? §16371(b).

10 44. Depreciation -- Transfers From Income To Principal For Non-Cash Depreciation
11 §16372:

12 44.1. Question #76: Is depreciation a "cash disbursement" (recall P&I rules deal
13 with "cash receipts" and "cash disbursements")?

14 44.2. Question #77: For P&I accounting purposes, must the trustee charge against
15 the apartment building's income any part of the annual depreciation? §16372(b).

16 44.3. Question #78: Can a trustee charge the depreciation on Bldg. A against the
17 income of Bldg B? §16372(b).

18 44.4. Question #79: Why would a trustee charge income cash for depreciation?

19 44.5. Question #80: Can the trustee charge against Bldg. A's fiduciary "income"
20 Bldg. A's depreciation incurred during the "administration of a decedent's estate"? during the
21 period of a trust's "administrative trust"? §16372(b)(2).

22 44.6. Question #81: Can the trustee charge against Bldg. A's fiduciary "income"
23 Bldg. A's depreciation if the value of the building has gone up in value? To wit, if Bldg A itself
24 has gone down in value because it needs a new roof, or because of a normal wear and tear,

1 requires new a/c units, a new pool, a new paint job, but Bldg A has gone up in value because of
 2 rent increases, and market values have increased because apartment buildings are good
 3 investments and the "cap rates" have gone from 6 to 5, driving up the FMV of apartment
 4 buildings? §16372(a); UAIA §503.

5 44.7. Question #82: If the property were not an apartment building, but the
 6 decedent's personal residence occupied by the surviving spouse, can the trustee charge income
 7 cash and credit principal cash for depreciation? §16372(b)(1).

8 Transfers From Income To Reimburse Principal For Cash Disbursements
 9 (i.e. not non-cash Depreciation) §16373:

10 45. Facts #31: Trustee wishes to hold back from "income cash" payable to W, the QTIP
 11 trust beneficiary, \$10,000 per year, as a reserve for future capital expenditures.

12 45.1. Question #83: May the trustee reduce income cash and establish a principal
 13 cash RESERVE for any of the following items that will be incurred in the future:

14 (a) extraordinary repairs? §16373(b)(1).

15 (b) a capital improvement to a principal asset? §16373(b)(2).

16 (c) disbursements made to prepare property for rent (i.e. TI's; broker
 17 commission) §16373(b)(3).

18 (d) principal disbursements on a monthly mortgage payment which are not
 19 covered from depreciation-income-to-principal charges. §16373(b)(4).

20 (e) Environmental disbursements. §16373(b)(5).

21 Income Taxes -- §16374

22 46. Facts #32: During the year, the trustee of a trust pays an INCOME tax of \$300.

23 46.1. Question #84: For fiduciary accounting purposes, do you charge the \$300
 24 against

25 (a) "income" payable to W#2 and thus reduce W#2's income
 26 by \$300, or

27 (b) against "principal" going to the remaindermen children
 28 from H's first marriage, and thus reduce their remainder gift
 29 by \$300,

30 where the \$300 INCOME tax traces to savings account interest receipts? §16374(a); UPIA
 31 §505(a).

1 46.2. Question #85: For fiduciary accounting purposes, do you charge the \$300
2 INCOME tax against "income" or "principal" where the \$300 INCOME tax traces to a capital
3 gain realized when the fiduciary sold IBM? §16374(b); UPIA §505(b).

4 46.3. Question #86: For fiduciary accounting purposes, do you charge the \$300
5 against "income" or "principal" where the \$300 INCOME tax traces to both capital gain receipts
6 and interest receipts (i.e. a payment on an installment note received when the trust sold real
7 estate)? §16374(a) & (b); UPIA §505(a) & (b).

8 Taxes & Entity Income Allocations & Entity Cash Distributions
9

10 47. Facts #33: A trust owns an interest in a partnership. The partnership issues the trust
11 a K-1. Assume (a) the K-1 allocates \$500 of partnership income (the \$500 is interest income i.e.
12 all ordinary income) to the trust, (b) the K-1 shows only \$200 of cash distributed to the trust, and
13 (c) the fiduciary did not distribute any of the \$200 to any trust beneficiary. Based on the K-1
14 \$500 income allocation, the trust paid a \$300 income tax.

15 47.1. Question #87: For fiduciary accounting purposes, do you charge the \$300
16 INCOME tax paid by the trust, against "income" or "principal" where the \$300 INCOME tax
17 traces to a K-1 that reports the trust's allocation of *partnership* income, where the income
18 allocation exceeds the trust's cash distribution reported on the K-1? §16374(c)(4); UPIA
19 §505(c)(4).

20 COMMENT: Assume much bigger bucks involved: \$100,000 K-
21 1 income allocation in yr #1, and CPA just looks at check book and
22 see a \$50K income tax check paid to IRS, and charges the entire
23 \$50K against W#2's income.

24 47.2. Question #88: For fiduciary accounting purposes, do you charge the \$300
25 INCOME tax paid by the trust, against "income" or "principal" where the \$300 INCOME tax
26 traces to a K-1 that reports the trust's allocation of *partnership* income, where the income
27 allocation exceeds the trust's cash distribution reported on the K-1? Assume (a) the K-1
28 allocates \$500 of partnership income (\$100 of which is ordinary income and \$400 of which is
29 capital gain) to the trust, (b) the K-1 shows only \$200 of cash distributed to the trust, and (c) the
30 fiduciary did not distribute any of the \$200 to any trust beneficiary. §16374(c); UPIA §505(c)(3)
31 & (4).

32 48. Facts #34: A QTIP Trust owns a partnership interest. The partnership issues a K-1 to
33 the trust. The Trust's K-1 reports a \$100 ordinary income allocation, and a \$80 cash distribution.
34 On the \$20 of income trapped in the QTIP trust (i.e. \$100 minus the \$80 cash distributed to the
35 surviving spouse), the Trust pays \$8 of income tax.

36 48.1. Question #89: For fiduciary accounting purposes, do you charge the \$8 of
37 income tax against "income" or against "principal"? §16374(c)

38 48.2. Question #90: If it's unfair to burden principal with the income tax on
39 phantom income (i.e. the K-1 of \$100 exceeded the \$80 distributed by the partnership), what can

1 the trustee do to deal equitably with the income tax paid by the trustee? §16375(a)(3); 53 USC
2 page 14-11.

3 Adjustments Between Principal & Income Because of Taxes -- §16375; UPIA §506

4 49. Facts #35: A decedent dies, leaving in trust \$3,010,000 of assets; all cash. A trustee
5 pays a \$10,000 expense which he properly charges against principal. On the trust's income tax
6 return, the trustee makes a valid election to treat the \$10,000 as an income tax deduction rather
7 than an estate tax deduction. The \$10,000 is the sole expense paid by the trustee.

8 49.1. Question #91: What is the gross estate reported on the Form 706?

9 49.2. Question #92: Can the trustee deduct the \$10,000 expense claimed for
10 income tax purposes on the trust's Form 1041?

11 49.3. Question #93: If the Applicable Exemption Amount equals \$1,000,000,
12 what is the maximum marital deduction the trustee can claim on the Form 706?

13 49.4. Question #94: What mandatory P&I adjustment must the trustee make
14 because of his election to claim the \$10,000 expense on the Form 1041 and not on the Form 706?
15 §16375(b); UPIA §506(b).

16 49.5. Question #95: What discretionary P&I adjustments may a trustee make
17 because of tax elections? §16375(a)(1) & (3); UPIA §506(a).

SUBTRUST FUNDING ISSUES

50. Jargon For Subtrust Funding.

50.1. Specific Gift

50.2. Residuary Gift

50.3. "Back Trust" vs. "Lead Trust". Discuss diagram of A-B-C Trust and Lead/Back Trusts, and proforma language of pecuniary ad fractional share formula clauses [Chart #9]

51. Facts #36 -- Subtrust Asset Issue and P&I Issue: Trust owns IBM and Google shares. At H's death the available AEA equals \$2,000,000. H dies survived by W#2, and his children from his first marriage. H's Trust provides for a pecuniary Bypass Trust/residuary QTIP Trust; value assets as of date of funding.

Table A				
	A	B IBM Stock	C Google Stock	D Total
1	Date Of Death Value	1,000,000	2,000,000	3,000,000
2	Date Of Funding Value	2,000,000	6,000,000	8,000,000
3	Appreciation at DOF	1,000,000	4,000,000	5,000,000

The children from H's first marriage are the beneficiaries of the Bypass Trust. Prior to funding the Bypass and QTIP subtrusts, the Trust instrument says the trust will function as an "Administrative Trust".

Opening Inventory Issues

51.1. Question #96: What is the trustee's opening inventory? PC §1061(a)

52. Facts #37: Assume H died on May 15, 2006; (b) IBM declared a dividend to shareholders of record on May 10, payable as of May 30; and (c) the dividend accrued on H's DOD equaled \$100,000.

52.1. Question #97: What assets does the fiduciary report on the Form 706: (a) Google Stock, and (b) IBM stock, and (c) \$100,000 IBM dividend accrued at H's DOD?

1 52.2. Question #98: Does the fiduciary report on the Trust's fiduciary accounting
2 opening inventory the same assets as reported on the Form 706: (a) Google Stock, and (b) IBM
3 stock, and (c) \$100,000 IBM dividend accrued at H's DOD?

4 52.3. Question #99: What value does the fiduciary report the assets at on the
5 Form 706: (a) DOD, or (b) alternative valuation date value?

6 52.4. Question #100: Does the fiduciary report on the Trust's fiduciary
7 accounting opening inventory the same values as the fiduciary used on the Form 706?

8 52.5. Question #101: What is the "Target Amount" for the Bypass Trust?

9 52.6. Question #102: If the trustee distributes from the Administrative Trust the
10 IBM stock, to fund the \$2,000,000 Bypass Trust, is there a taxable gain?

11 52.7. Question #103: Assume the Administrative Trust faces a combined state
12 and federal 20% capital gains tax rate. How much tax must the trustee pay upon funding the lead
13 Bypass Trust?

14 52.8. Question #104: Effectively, who must pay the \$200,000 tax: (a) H's kids
15 from his first marriage, or (b) W#2? In other words, is the \$200,000 tax charged against

16 (a) the lead Bypass Trust (which got the appreciated IBM),
17 reducing it from \$2,000,000 to \$1,800,000, or

18 (b) the back Marital Trust, reducing it from \$6,000,000 to
19 \$5,800,000?

20 Thus, who bears the \$200,000 tax, the children from the first marriage as beneficiaries of the
21 Bypass Trust, or (b) the stepmother, the beneficiary of the QTIP? PC §16340 & §16341.

22 52.9. Question #105: Is the \$200,000 tax charged against the Administrative
23 Trust (a) income or (b) principal? PC §16374(b).

24 52.10. Question #106: If the trustee charges the \$200,000 against the QTIP
25 principal, does the marital deduction get reduced by the \$200,000 tax paid out of the QTIP
26 principal?

27 52.11. Question #107: Who gets the \$100,000 IBM dividend received during the
28 postdeath trust administration period: (a) H's kids from his first marriage, because all the IBM
29 stock gets allocated to their pecuniary Bypass Trust, or (b) to W#2? In other words, does the
30 trustee allocate the \$100,000 IBM dividend to the Bypass Trust where the IBM shares got
31 allocated in the subtrust asset accounting, or to the QTIP Trust that didn't get the IBM shares?
32 PC §16340.

33 53. Facts #38: At H's DOD (a) H's Trust owns \$3,000,000 cash, (b) the available AEA
34 equals \$2,000,000. H dies survived by W#2, and by his children from his first marriage. H's

1 Trust provides for a pecuniary Bypass Trust/residuary Marital/QTIP Trust; value assets as of
2 date of funding.

3 53.1. Question #108: If the Trustee's C.P.A. claims the \$100,000 administration
4 expense on the Form 706, what will be the marital deduction claimed on the Form 706?

5 53.2. Question #109: If the Trustee's C.P.A. claims the \$100,000 administration
6 expense on the Trust's Form 1041, what will be the marital deduction claimed on the Form 706?

7 53.3. Question #110: For marital deduction purposes, what is the mathematical
8 relationship to administration expenses claimed on the Form 706?

9 53.4. Question #111: Assume

10 (a) the trustee paid \$100,000 of administration expenses and
11 claimed them on the Form 1041 since there will be no
12 estate tax because of the unlimited marital deduction; and

13 (b) on the date of funding the subtrusts, there exists \$2,900,000
14 (i.e. \$3M minus the \$100K of paid administration
15 expenses),

16 for subtrust accounting/funding, what is the dollar amount of the allocation (a) to the "lead"
17 Bypass Trust? and (b) to the "back" residuary Marital/QTIP Trust? Why?

18 53.5. Question #112: What is the estate tax consequences of claiming the
19 \$100,000 as a deduction on the Form 1041? *Estate of Lillian J. Lewis*, TC Memo 1995-168;
20 CCH Dec. 50,590(M); also see discussion at pg 22 of CEB Deduction Subtrust Funding (April
21 2005) Action Guide.

22 ===== End of Program Materials

23