

THE THURSDAY REPORT

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Making Thursday a Better Day for Most of Humanity

Thursday, April 15th, 2021 - **Issue 302**

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Thanks to Bernie Sanders - Estate Tax Planning Lawyers are Really Busy

Alan Gassman



The Bernie Sanders proposed estate tax bill that was introduced on March 25, 2021 has certainly turned the heads of a great many tax advisors and their clients.

This bill cut to the core of the primary estate tax planning techniques that are used for large and middle-sized estates.

The proposed reduction of the estate tax exemption to \$11,700,000 to \$3,500,000, and the reduction of the gift tax exemption to only \$1,000,000 would have a tremendous impact upon "middle-sized" estates and families who thought that they were completely in the clear under an \$11,700,000 per person exemption.

Even though the exemption is scheduled to go down by one-half on January 1, 2026, many families in the \$10-20 million net worth range were complacent to see what would happen before doing major planning.

Many of these families are sophisticated but have not made estate tax planning a priority, or have been less than comfortable moving assets into limited liability companies and setting up trusts and then selling non-voting interests for the sake of creditor protection and estate planning is not a top priority when compared to other things such as building a business, planning family events, or engaging in charitable activities.

As the result of this, a typical estate tax planning lawyer knows that only a certain percentage of clients have done what they reasonably can to avoid federal estate tax.

It sometimes comes to mind that in the economic struggle to come out on top many families do not make it to the final round of the "survival of the fittest" in the United States because they do not make wise decisions about what to do with wealth once they have earned it or received it by gift or inheritance.

Some of the wealthiest people in the United States owe a good deal of their net worth to proper tax and estate planning that was done by their parents or great-grandparents.

Many more estate plans are being completed this year because of the scare caused by the Sanders Bill.

This may result in significant estate tax savings for the very families that Mr. Sanders was attempting to tap into.

More information on the proposed Sanders Bill can be viewed by clicking [HERE](#).

What should we know about 501(c)(6) Industry Business Entities?

Alan Gassman



We have recently been writing about 501(c)(6) organizations, which include “business leagues” which are to be formed and operated to support the purposes of an industry or profession.

It appears to us that many of these organizations started with that end in mind, but involved to being exclusive organizations operated for the primary benefit of a very small percentage of members of the profession or industry due to exclusionary practices.

These organizations, nevertheless, continue to do well and to have large surpluses in their budgets that are not subject to income tax unless the I.R.S. audits the organization and determines that it is not following the rules, which require that the organization be operated to benefit the entire industry and not just the members of the organization. An organization that only allows 3% of the people working in the industry to join and builds them up will probably not qualify for 501(c)(6) status. It may do more harm to an industry than good.

Anyone can simply Google the name of a profession and the words “Academy”, “College”, and “Fellow” to see which organizations may be engaged in this type of activity.

A fictional example would be the Academy of Lasik Surgeons, which might include 2/3rds of the best 10% of Lasik surgeons in the United States, and it might have noble goals and activities beyond limiting membership to those approved by 95% of the members in each geographical area and advertising that their members are called “Fellows” and provide the best services in the industry and can be found on the Academy website.

A layman would think that an Academy is a university and that “Fellows” have been through significant training, but that is typically not the case with these organizations.

Apparently these organizations are not aware of the case law and I.R.S. Pronouncements which have been released in this area.

Even public universities and state-run associations and organizations may joint-venture with these “Academies” on noble projects, which indirectly and substantially benefit the members of the academy and take resources away

from the community of businesses or professionals who the academy tells the I.R.S. that it is primarily benefitting.

This appears to be a long-time ignored situation that may deserve some attention, at least on Thursdays. For more information, email agassman@gassmanpa.com.

Questions and Answers with Alan Gassman: Estate Tax Planning

"What is the likelihood of Congress passing legislation to reduce the gift exemption amount within the year 2021 and make it retroactive to the beginning of the year?"

"I think the likelihood of that is less than 1%. I don't think that all the multimillionaires who support Democrats would be very happy if they don't have some warning. So I think there will be some warning on reducing the exemption if it does get reduced. Remember, it automatically comes down to half in 2026. There may not be warning as to the loss of discounts or the loss of defective grantor trusts. So we are asking clients, if you're going to do a defective grantor trust like a SLAT or a Nevada trust, please get with us sooner rather than later or of course get with the lawyer of your choice."

"I have two trusts from my mother's estate. One is generation skipping tax exempt which means it will never be taxed at my level. The other is a non-exempt trust. How will these fit into my estate plan?"

"Well, fortunately, the GST exempt trust will never be subject to estate tax on your death no matter how big your estate is. But unfortunately, the non-exempt trust will be considered as owned by you for estate tax purposes. So if the total of your personal assets plus the non-exempt trust assets are subject to estate tax, or over the estate tax exemption, you will pay estate tax so you should be doing planning with a non-exempt trust and don't take anything out of the exempt trust. The exempt trust should be investing in the better investments. If that is possible. Number two, I'm divorced with two children ages 23 and 24. What can I do to reduce estate tax as well? The first thing you can do is loan money to your children so that they can start businesses. That will definitely reduce your estate. Then you can marry somebody and give them a lot of money, and then divorce them and give them even more money."

"How should clients in the mid 60s, with 8 to 10 million net worth best prepare for potential future tax changes?"

"I would like specific suggestions for actions to be taken in 2021. The first action is to see a good tax lawyer who can run the numbers for you. But most likely, I would form a Spousal Limited Access Trust for one of you and have the other of you put significant assets into that Spousal Limited Access Trust. The problem is, you know, at 8 or 10 million, you're really middle class compared to what a millionaire was 30 years ago. So that's why the Spousal Limited Access Trust allows you to live off of it and put in a divorce clause so that if there's a divorce that divides into two SLATs and puts it in an asset protection jurisdiction. So, if you're in poor health, but you have at least a reasonable period of time to live, you should consider a self-cancelling installment note. The IRS doesn't like these, and they've challenged them. But there's ways to handle that. If you are lucky enough to die within the term, and you don't

have to ever file an estate tax return, the IRS is unlikely to challenge it. The answer is give a lot of the money to lawyers, and then the rest of the money will go into promissory notes."

"For younger single clients in their 30s, what's the general structure of estate planning, I would recommend?"

"We have clients in their 20s and 30s, who are on their second trip to making over \$10 million by starting a business and selling it in the tech industry. So, hats off to you guys that all the stories about the young people and the millennials are completely wrong when the 32 year old walks into your office with a \$30 million net worth and he actually earned it. But what that 32 year old can do is go ahead and put \$11 million in a trust or put 5 million in the trust and sell a discounted LLC interest in that trust. The trust is for your future descendants and your future spouse. In fact, it's called a Floating Spouse Provision, it's whoever you happen to be married to, at a time, can live off of that trust to pay half of your living expenses. And you can replace the trustee of the trust and the trustee of the trust also has the discretion to give to charity, and the trust is formed in an asset protection jurisdiction. And you can be added as a beneficiary of the trust if your networth ever goes below a certain amount. So that works well. And I have one client, a good friend of mine who is in his 60s who did one of these trusts before he was married, before he had children and now he's married and has a beautiful child and he's very happy he did it because he's out of harm's way from the estate tax, because of planning that we did in the 1990s."

"Assuming that the currently pending legislation looks as if it's going to pass, Can you discuss the possible methods you use to protect a Roth IRA?"

"That's a really tough one. Because it's stuck in the Roth IRA, you could have the Roth IRA paid to a trust that will qualify for the marital deduction, but then it will be taxed on the surviving spouses death, if she's over the exemption, you could have a Roth IRA payable to a charity, that may not be what you want to do. Or you could withdraw the Roth IRA now, and forego the future tax free appreciation that you would have had, and put it into a gifting structure or a structure similar to what I showed you for the farm. When people have big, big IRAs, it's difficult. Now, you could give a promissory note to your spouse. So you have \$6,300,000 in a Roth IRA, but you owe your spouse 4 million, and then you die and your estate is not \$6,300,000. It's \$2,300,000. You file an estate tax return reporting that but now your spouse has a larger estate, you don't pay an estate tax. I wish I had a better answer for you. But the promissory note maybe -- what are the odds of the exemption really going down to 7 million? I would say less than 3%. But the other stuff, taking away my blessed discounts and defective grantor trust, maybe 30 or 40%."

Back by popular demand!

Even More

Questions and Answers on Estate Tax Planning

Presented by:

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Saturday, April 17, 2021
11:00 AM to 11:30 AM EDT (30 minutes)

GASSMAN CROTTY DENICOLA PA
ATTORNEYS AT LAW

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Saturday, April 17th

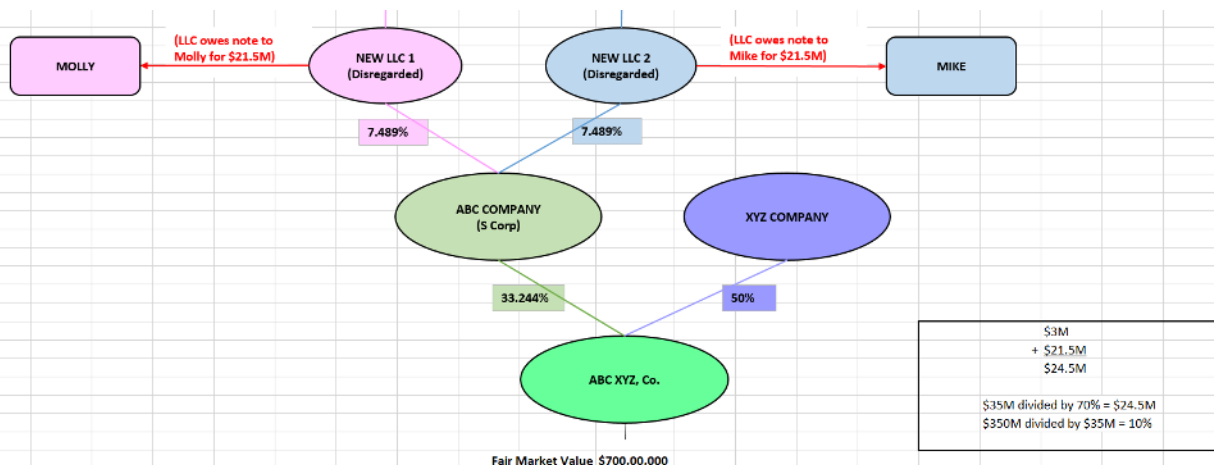
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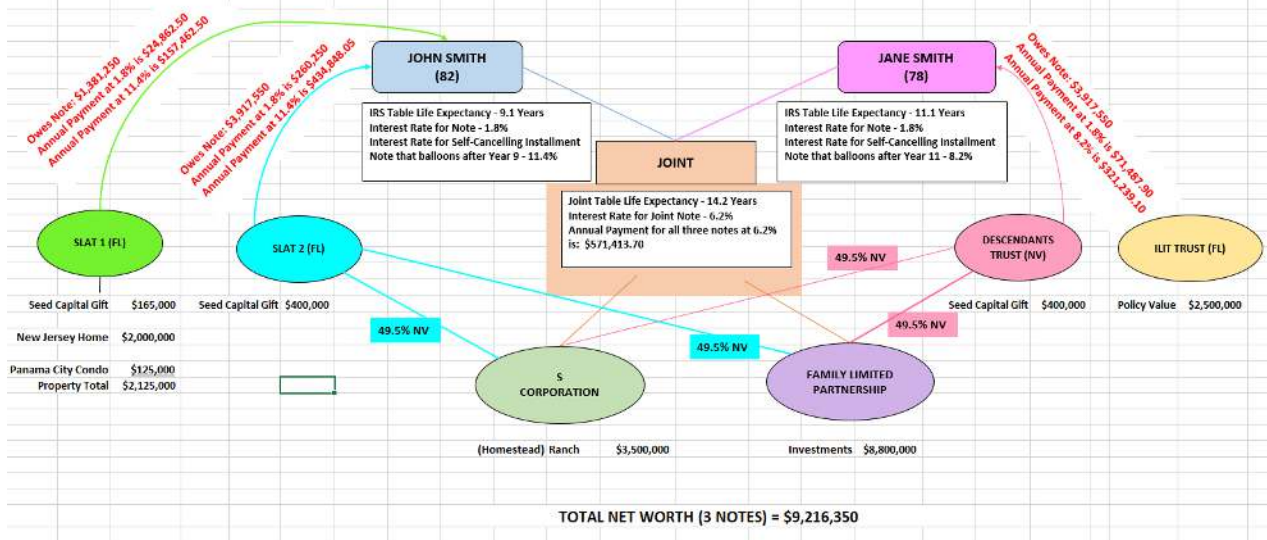
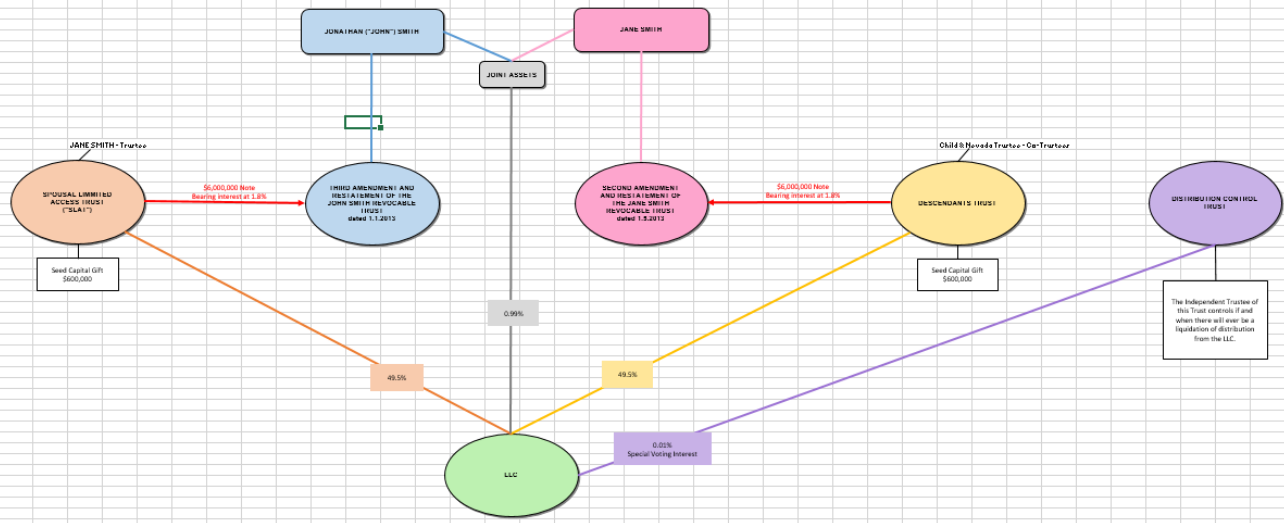
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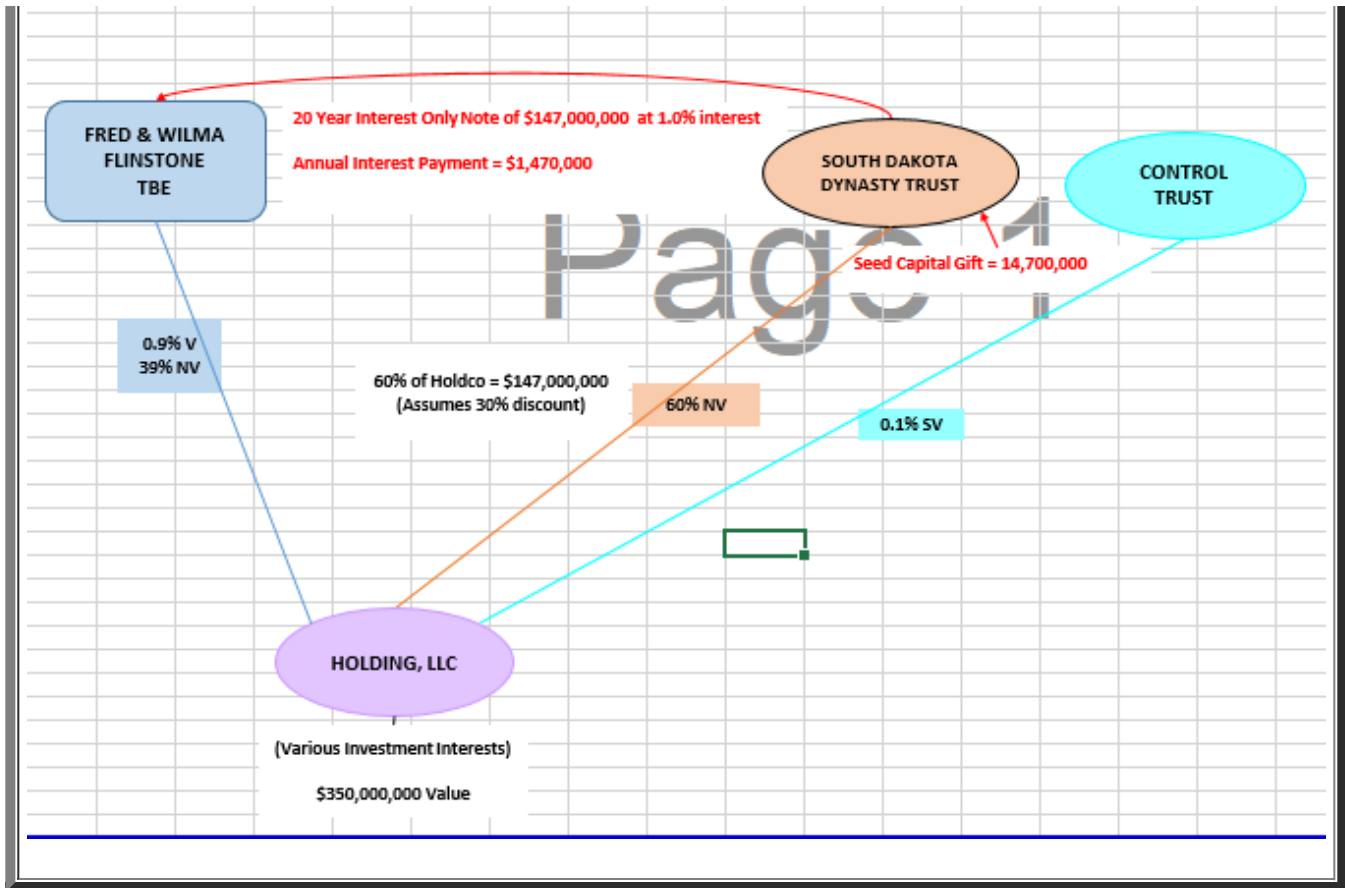
Tune in this Saturday for *Even More* Questions and Answers on Estate Tax Planning for 2021

Email your question in to info@gassmanpa.com by Friday 12:00 PM EST

During the webinar, we will be featuring these updated charts:







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