Estate Tax Planning Update

The State of The Nation

Alan S. Gassman
agassman@gassmanpa.com

Prof. Jerry Hesch
jhesch62644@gmail.com

PRESENTED BY:

ALAN GASSMAN AND PROFESSOR JERRY HESCH

YouTube Video (3:26)

Bryan Adams & Luciano Pavarotti - 'O Sole Mio


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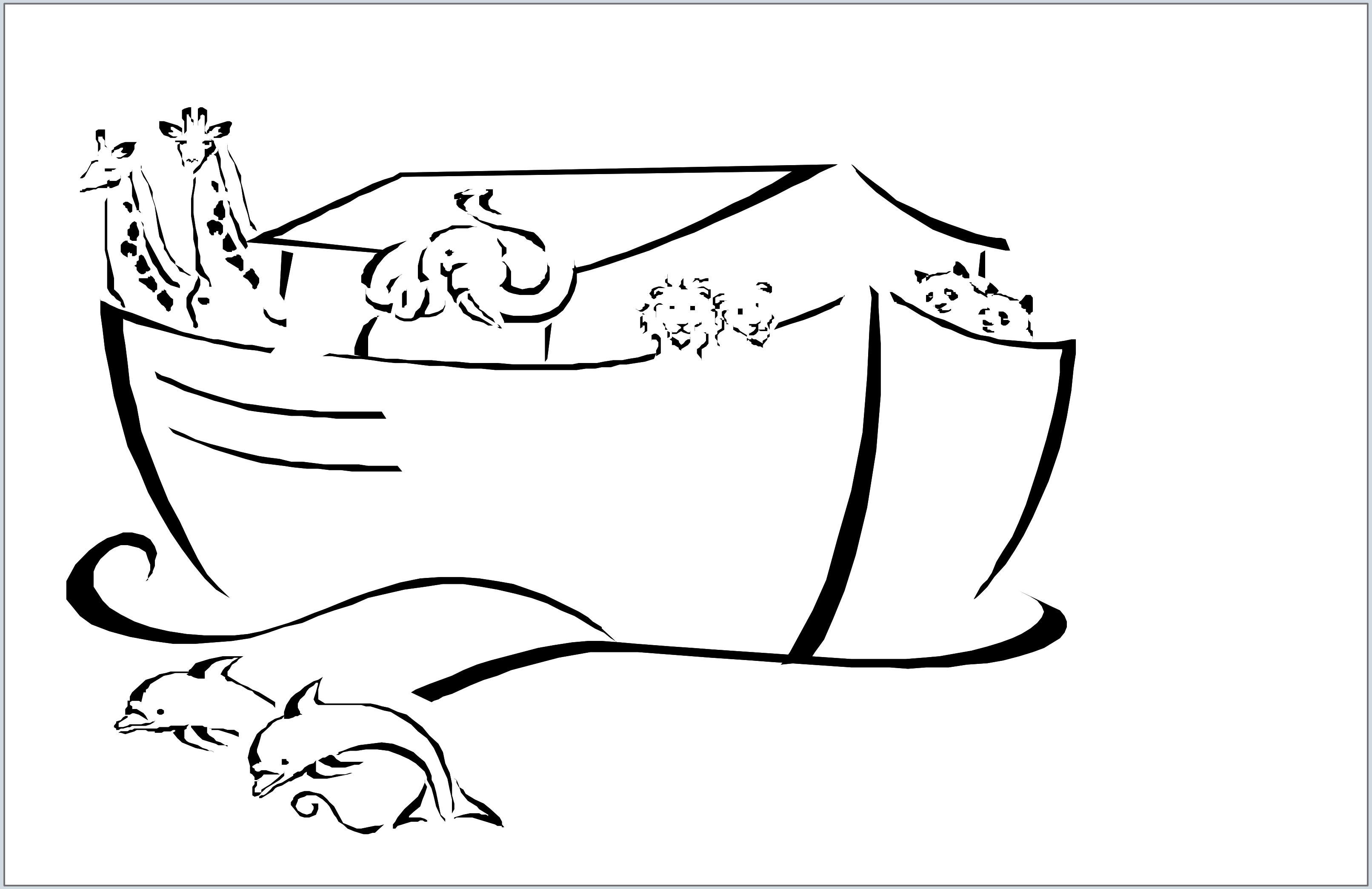
jhesch62644@gmail.com

"It wasn't raining when Noah built the ark."



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THE THURSDAY REPORT

OUR FIRM'S NEWSLETTER

Email info@gassmanpa.com to be added to our distribution list.

Thursday, September 23rd, 2021

- Issue 312 -

REVIEWED BY: ADRIANA OCHSNER

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Getting Ready to Get Ready – By: Dan Sullivan


agassman@gassmanpa.com
jhesch62644@gmail.com

Upcoming LISI Presentation

Leimberg Webinar Services
The place to learn

LISI | Bundles | On-Demand Webinars | Upcoming Webinars | 199A Analyzers & Tax Tools | Books | Lunch-n-Learn | Support

Estate Tax and Related Planning for Wealthy Clients in View of the House Ways and Means Committee Proposed Legislation - A Special Re-Broadcast

Tuesday September 28

3:00PM ET - 4:30PM ET

CLICK THE LINK BELOW TO REGISTER

https://new.leimbergservices.com/wdev/register.cfm?id=1395

Available Recordings

Leimberg Webinar Services
The place to learn

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All recorded webinars are available to view anytime on demand!

FREE - Estate and Related Planning Today: A Free Sampling of the Upcoming 46th Annual Notre Dame Tax & Estate Planning Institute

Watch Now!
Recording and Slides are Available Here

CLICK THE LINK BELOW TO REGISTER
https://leimbergservices.com/wdev/register.cfm?id=1344

GOING TO BAT WITH YOUR SLAT: SLATS, INSTALLMENT SALES, ADJUSTMENT CLAUSES, AND OTHER ESSENTIALS WITH FORM LANGUAGE, CLIENT FRIENDLY EXPLANATION LETTERS AND MORE - A Special Re-Broadcast

Watch Now!
Recording and Slides are Available Here

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https://www.ujafedny.org/event/view/ny-estate-tax-financial-planning-conference

52nd Annual Sidney Kess New York Estate, Tax & Financial Planning Conference

Oct 19th and 20th, 2021

Join some of the nation's leading experts for our virtual Sidney Kess New York Estate, Tax & Financial Planning Conference.

Alan Gassman presents:

"Planning for Real Estate Investors and Developers in View of Current and Expected Law Changes Using Planned Giving Techniques"

Wednesday, October 20, from 2:00 to 2:50 PM EDT

14 CLE/CPE Credits (Nontransitional, Including one CLE Ethics Credit); CFP Credits Will Be Offered

Conference Fee: $195 per person. UJA estimates that the fair market value of attending the conference is $195 and does not qualify for a charitable deduction. No other goods and services will be provided.

52ND ANNUAL SIDNEY KESS NEW YORK ESATE, TAX & FINANCIAL PLANNING CONFERENCE

Tuesday, October 19, 2021

10:00 AM - 5:50 PM

Virtual Event

52ND ANNUAL SIDNEY KESS NEW YORK ESATE, TAX & FINANCIAL PLANNING CONFERENCE

Wednesday, October 20, 2021

10:00 AM - 5:50 PM

Virtual Event

47

October 21-22, 2021

VIRTUAL PROGRAM

100% ONLINE

This year's 47th Annual Institute will be delivered in an online virtual format that will allow you to remotely watch broadcasts of live presentations. We plan to record all sessions, and your registration fee will include online access for later viewing at your convenience.

FORTY-SEVENTH

NOTRE DAME®

TAX & ESTATE PLANNING INSTITUTE

OCTOBER 21-22, 2021

SELECTED TOPICS & SPEAKERS FOR THIS YEAR'S PROGRAM:

- **Creative Planning Considering the Changing Political Landscape and Possible Tax Consequences**
  ~ Johnathan Blattmachr, Martin Shenkman & Sandra Glazier
- **When Worlds Collide: Beneficial Interests in Trusts and Dissolution of Marriage**
  ~ Sharon Klein & Sandra Glazier
- **Preferred Partnership Freezes**
  ~ Steve Breitstone, Todd Angkatavanich & Joseph Medina
- **Insecure About The Secure Act? How to Draft Retirement Plans, Beneficiary Designations and Estate Planning Documents**
  ~ Robert Kirkland
- **Cross-border Families: Planning Tips**
  ~ John M. Fusco
- **Partnership Income Tax Traps**
  ~ Todd Steinberg
- **Tools and Strategies to Avoid Ethical Issues in Estate Planning**
  ~ Alan Gassman & Jonathan Blattmachr
- **Community Property Tips and Traps for Lawyers in Common Law States: Strategies for Migrating Clients**
  ~ Gerry Beyer
- **More Than Creditor Protection: Practical Uses of a Domestic Asset Protection Trust for Estate Planning**
  ~ George Karibjanian
- **Freeze Planning for Non-GST Exempt Trusts and QTIP Trusts Exposed to §§2044 and 2519**
  ~ Edward Morrow
- **Impact of Mortality Tables and §7520 Rates on Charitable Split Interest Trusts**
  ~ Jason Havens
- **The Uniform Basis Rules and Terminating Interests in Trusts Early**
  ~ F. Ladson Boyle
- **When Tax, Estate and Business Planning Collides with the Interests of Family Members: Ethics Traps and Tips**
  ~ Robert Barton & Golnaz Yazdchi
- **Why Fiduciary Accounting May Be More Important Than You Think**
  ~ Daniel Ebner & Ray Prather
- **The Ethics of Multijurisdictional Practice When Crossing State Lines**
  ~ Roberta Mann
- **Existing Planning Techniques That Will Still Work Even if Proposals Are Enacted**
  ~ Austin Bramwell & Jessica Soojian
- **Disposing of Qualified Deferred Compensation to Charity**
  ~ Christopher Hoyt
- **GST Planning Flexibility and Common Mistakes**
  ~ Raj Malviya & Nathan Brown
- **Trust Income Tax Issues That Are Confusing**
  ~ Greg Gadarian

FOR FULL PROGRAM, OR TO REGISTER, PLEASE VISIT

http://law.nd.edu/estateplanning

For more information, call (574) 631-6691 or email dboulac@nd.edu

UNIVERSITY OF NOTRE DAME

PROGRAM INFORMATION

The Institute will be held October 21 and 22, 2021. Due to the Covid-19 situation, this year's program will be presented exclusively online via Zoom classrooms. This program will use Eastern Time (same as New York City).

REGISTER ONLINE AT:

http://law.nd.edu/estateplanning

Continuing Education Certification

For those attendees desiring certification of attendance at the program, the Institute will issue certificates of attendance with respect to the sessions viewed in real-time via Zoom. Attendees may be required to confirm their real-time participation in these sessions by responding to prompts integrated into the online delivery system or otherwise. Due to practical limitations, the Institute will seek pre-approval, and report attendance, only with respect to those accrediting agencies for which there are a significant number of attendees seeking credit. The program will afford up to 16 actual hours of continuing education in this manner, including up to 2 hours of ethics. Each continuing education accrediting agency determines the number of continuing education hours (including ethics) it will accept for accreditation. While the Institute intends to make recordings of all sessions available to attendees after the Institute (enabling, for example, an attendee to later watch a session that conflicted with the "real time" session the attendee participated in), the Institute is unable to track or confirm post-Institute self-viewing of these recordings. Attendees are advised to contact their accrediting agency to determine how much, if any, continuing education credit is available for this post-Institute self-viewing.

Registration and Availability of Materials

All registration is done online at http://law.nd.edu/estateplanning, and should be done by September 4 to assure your place. The fee for the Institute is $795, which includes real-time participation via Zoom in one session per time period of the Institute, as well as access after the Institute to online video recordings of all sessions (access to these post-Institute recordings may be available for a limited time, and may be subject to technological limitations). In addition, your registration fee includes online access to electronic versions of the extensive course outlines, made available for download in advance of the Institute. Physical copies of these materials are available for an additional fee, which includes the delivery cost ($70 for a set of printed books, and $20 for a flash drive). In order to enable delivery of these optional physical materials to you prior to the Institute, you must register by September 4, 2021 (registrations after that date will still be accepted but will have access to the optional physical materials only while limited supplies last). Registrations are cancellable and refundable (less a $35 processing fee) until September 4, 2021.

Confirmations

Confirmations will be emailed.

CLICK HERE!

System Requirements:

- Must have internet connection
- Must be logged into a valid Zoom account, which shares the same email address used during registration
- Must be using the latest version of Zoom's App
- Due to certification concerns, connecting to the Institue via telephone will not be an available option

Technical Support:

Technical support to assist with connecting to Zoom meeting sessions will be available on the day of the program. One week prior to the program an informational packet will be emailed containing basic logistic and technical information. Included will be a basic troubleshooting guide as well as direct contact information to gain assistance if required on the day of the program.

UNIVERSITY of NOTRE DAME

THE LAW SCHOOL

SLATs: How to Keep your SLATs from going Kersplat!

WEDNESDAY, OCTOBER 20, 2021

FROM 3:00 TO 5:00 PM EDT (60 MINUTES)

PRESENTED BY:

CHRISTOPHER DENICOLO AND BRANDON KETRON

WEDNESDAY

OCTOBER 20, 2021 — **2 credit hours**

3:00 - 5:00 pm (120 mins): SLATs: How to Keep Your SLATs from going Kersplat!
~ *Brandon Ketron & Chris Denicolo*

THURSDAY

OCTOBER 21, 2021 — **7 credit hours - 1 hour ethics**

8:00 - 8:10 am:
Welcoming Ceremonies
~ *Jerome M. Hesch*

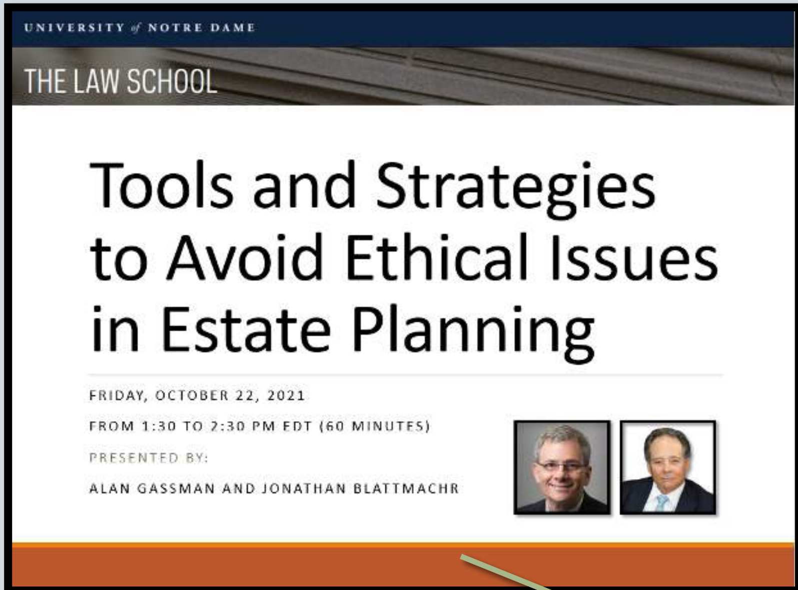
8:10-10:10 am | Session 1 (120 mins):
Current Developments of Importance to Estate Planners
~ *Turney Berry, Stephanie Loomis-Price & Charles Redd*

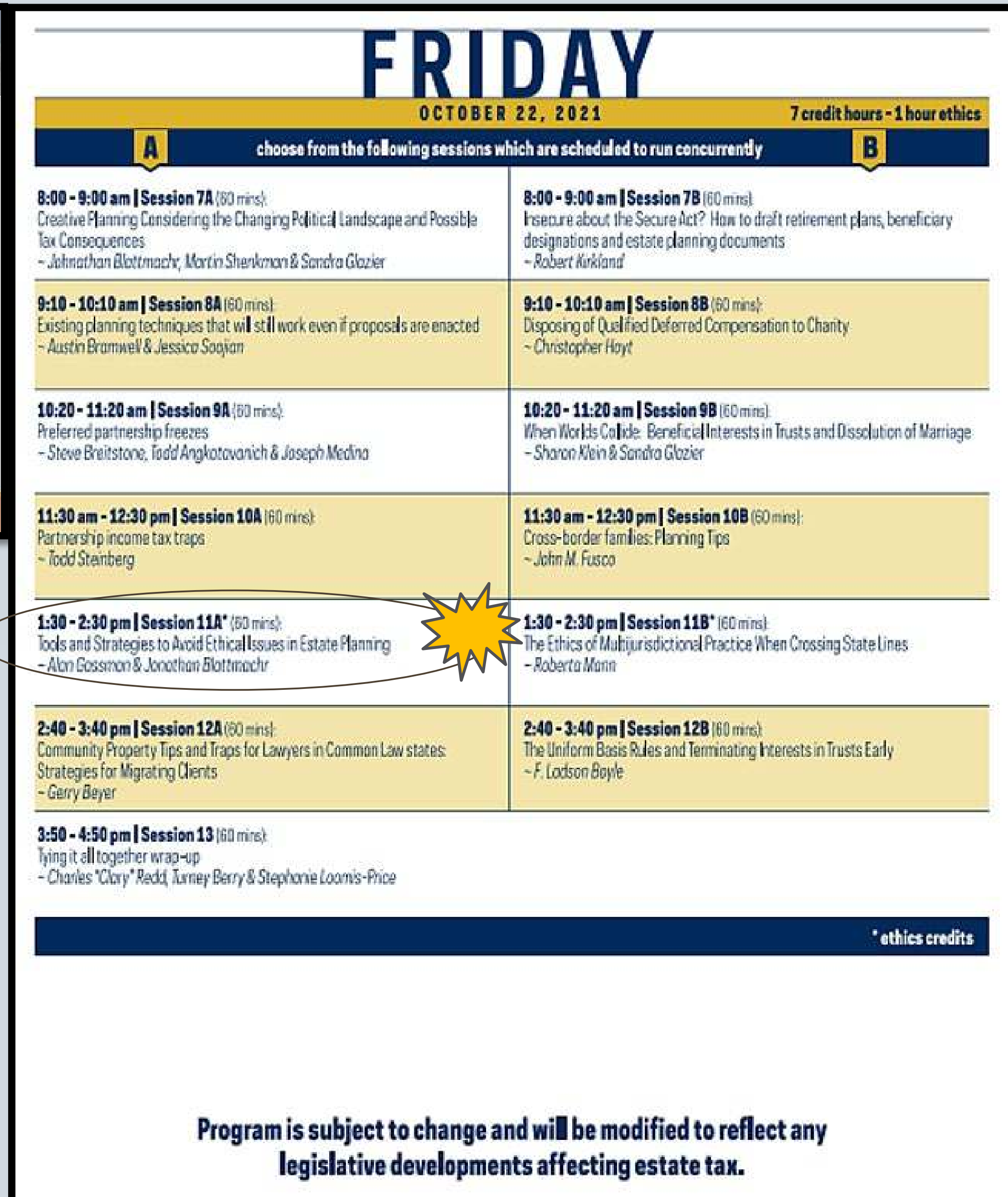
choose from the following sessions which are scheduled to run concurrently

A	B
10:20 - 11:20 am | Session 2A (60 mins): Structuring and Planning with Non-Grantor Trusts While an Individual is Living: It's Harder Than You Think ~ *David Handler & Christiana Lazo*	**10:20 - 11:20 am | Session 2B** (60 mins): GST Planning Flexibility and Common Mistakes ~ *Raj Malviya & Nathan Brown*
11:30 am - 12:30 pm | Session 3A* (60 mins): Why Fiduciary Accounting May Be More Important Than You Think ~ *Daniel Ebner & Ray Prother*	**11:30 am - 12:30 pm | Session 3B*** (60 mins): When Tax, Estate and Business Planning Collides with the interests of family members: Ethics traps and tips ~ *Robert Barton & Golnaz Yazdchi*
1:30 - 2:30 pm | Session 4A (60 mins): Trust Income Tax Issues That Are Confusing ~ *Greg Gadarian*	**1:30 - 2:30 pm | Session 4B** (60 mins): Impact of Mortality Tables and §7520 Rates on Charitable Split Interest Trusts ~ *Jason Havens*
2:40 - 3:40 pm | Session 5A (60 mins): More than creditor protection: Practical uses of a domestic asset protection trust for estate planning ~ *George Karibjanian*	**2:40 - 3:40 pm | Session 5B** (60 mins): Freeze Planning for non-GST exempt trusts and QTIP trusts exposed to §§2044 and 2519 ~ *Edward Morrow*
3:50 - 5:00 pm | Session 6A (70 mins): Diversity, Equity, and Inclusion Concerns For Your Practice ~ *Susan Lipp (Moderator), Martin Shenkman, Kim Kamin, Yaser Ali & Melisa Seyuhn*	**3:50 - 5:00 pm | Session 6B** (70 mins): Evaluating Life Insurance Products ~ *Rebecca Rosofsky & Lawrence Herman*

* ethics credits

CLICK HERE FOR MORE INFORMATION.





FRIDAY

OCTOBER 22, 2021 — 7 credit hours - 1 hour ethics

choose from the following sessions which are scheduled to run concurrently

A	B
8:00 - 9:00 am | Session 7A (60 mins): Creative Planning Considering the Changing Political Landscape and Possible Tax Consequences - *Johnathan Blattmachr, Martin Shenkman & Sandra Glazier*	**8:00 - 9:00 am | Session 7B** (60 mins): Insecure about the Secure Act? How to draft retirement plans, beneficiary designations and estate planning documents - *Robert Kirkland*
9:10 - 10:10 am | Session 8A (60 mins): Existing planning techniques that will still work even if proposals are enacted - *Austin Bramwell & Jessica Soojian*	**9:10 - 10:10 am | Session 8B** (60 mins): Disposing of Qualified Deferred Compensation to Charity - *Christopher Hoyt*
10:20 - 11:20 am | Session 9A (60 mins): Preferred partnership freezes - *Steve Breitstone, Todd Angkatavanich & Joseph Medina*	**10:20 - 11:20 am | Session 9B** (60 mins): When Worlds Collide: Beneficial Interests in Trusts and Dissolution of Marriage - *Sharon Klein & Sandra Glazier*
11:30 am - 12:30 pm | Session 10A (60 mins): Partnership income tax traps - *Todd Steinberg*	**11:30 am - 12:30 pm | Session 10B** (60 mins): Cross-border families: Planning Tips - *John M. Fusco*
1:30 - 2:30 pm | Session 11A* (60 mins): Tools and Strategies to Avoid Ethical Issues in Estate Planning - *Alan Gassman & Jonathan Blattmachr*	**1:30 - 2:30 pm | Session 11B*** (60 mins): The Ethics of Multijurisdictional Practice When Crossing State Lines - *Roberta Mann*
2:40 - 3:40 pm | Session 12A (60 mins): Community Property Tips and Traps for Lawyers in Common Law states: Strategies for Migrating Clients - *Gerry Beyer*	**2:40 - 3:40 pm | Session 12B** (60 mins): The Uniform Basis Rules and Terminating Interests in Trusts Early - *F. Ladson Boyle*

3:50 - 4:50 pm | Session 13 (60 mins): Tying it all together wrap-up - *Charles "Clary" Redd, Turney Berry & Stephanie Loomis-Price*

* ethics credits

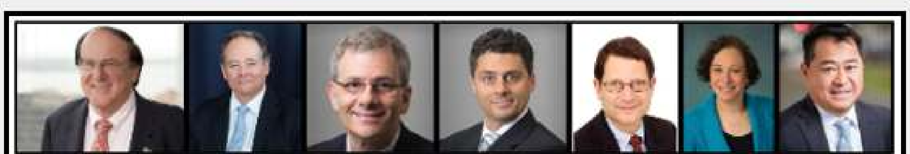
Program is subject to change and will be modified to reflect any legislative developments affecting estate tax.

CLICK HERE FOR MORE INFORMATION.

47th Annual Notre Dame Tax & Estate Planning Institute

Special Preview - A Tasting Menu of Planning Ideas

(60 minutes)



(left to right) Jerome Hesch, Esq., Jonathan Blattmachr, Esq., Alan Gassman, Esq., Christopher Denicolo, Esq., Marty Shenkman, Esq., Sandra Glazier, Esq., and Todd Angkatavanich, Esq.

TOPICS INCLUDE

Creative Planning and Possible Tax Changes
Freeze the QTIP and Non-GST Trust
Divorce and Beneficial Interest
Using Existing Income Tax Techniques
Preferred Partnership Freeze
Diversity
Spousal Lifetime Access Trusts (SLATs)
Using DAPTs for Other Reasons
Impact of Mortality Tables on Charitable Trusts

WATCH THIS SNEAK PREVIEW NOW

58th Annual NAEPC

Advanced Estate Planning Strategies Virtual Conference

November 2 - 4, 2021

General Information

REGISTRATION

The registration fee provides an "all access pass" so you can come and go as you please during the event and for 30 days following, choosing sessions that are most meaningful to you and your practice and visiting with sponsors and exhibitors at a time that is convenient for your schedule.

AEP® Designee or EPLS Certificant	Complimentary
Member / Member of Council	$95
Non-Member / Guest	$250

REGISTER HERE

CONTINUING EDUCATION CREDIT

Continuing education credit will be requested for Certified Financial Planner™ (CFP®) and Certified Trust and Fiduciary Advisor (CTFA) designees and will be available for Accredited Estate Planner® (AEP®) designees. Credit and certificates of completion will be available only to

NAEPC
NATIONAL ASSOCIATION OF ESTATE PLANNERS & COUNCILS

Tuesday, November 2nd

11:00 am	Doors Open
11:00 am-12:00 pm	Networking & Exhibit Hall
11:30 am-12:00 pm	Exclusive Sponsor Bonus Session: Life Settlements & Policy Valuations *Jamie L. Mendelsohn & Jon B. Mendelsohn* Ashar Group, LLC
12:10 pm-12:20 pm	Welcome
12:20 pm-12:40 pm	NAEPC Annual Meeting, Election & Presentation of Hartman Axley Lifetime Service Award to Natalie B. Choate, Esq., AEP® (Distinguished)
12:50 pm-1:50 pm	Recent Developments in Estate Planning **(CE)** *Samuel A. Donaldson, JD, LL.M., AEP® (Distinguished)*
1:50 pm-2:20 pm	Networking & Exhibit Hall
2:20 pm-3:20 pm	The 203 Best & Worst Planning Ideas for Your Client's Retirement Benefits **(CE)** *Natalie B. Choate, Esq., AEP® (Distinguished)*
3:20 pm-3:50 pm	Networking & Exhibit Hall
3:50 pm-4:50 pm	Just Like Starting Over – Decanting and Trust Modification **(CE)**

Wednesday, November 3rd

11:00 am	Doors Open
11:00 am-12:00 pm	Networking & Exhibit Hall
11:30 am-12:00 pm	Concurrent Sponsor Bonus Sessions
12:10 pm-12:20 pm	Welcome
12:20 pm-12:40 pm	AEP® Designation from A - Z
12:50 pm-1:50 pm	Income Tax Reform Including the Impact on Estate Planning **(CE)** *Robert S. Keebler, CPA/PFS, MST, AEP® (Distinguished), CGMA®*
1:50 pm-2:20 pm	Networking & Exhibit Hall
2:20 pm-3:20 pm	The Thief in your Family - Forensic Accounting **(CE)** *Tiffany R. Couch, CPA/CFF, CFE*
3:20 pm-3:50 pm	Networking & Exhibit Hall
3:50 pm-4:50 pm	The New Normal for Charitable Tax Planning **(CE)** *Justin T. Miller, JD, LL.M. (taxation), CFP®, AEP®*
5:00 pm-5:05 pm	Closing Remarks
5:15 pm-5:45 pm	Exclusive Sponsor Bonus Session
5:15 pm-6:00 pm	Networking & Exhibit Hall
6:00 pm	Doors & Exhibitors Close Tentative Sponsored Social

Thursday, November 4th

11:00 am	Doors Open
11:00 am-12:00 pm	Networking & Exhibit Hall
11:30 am-12:00 pm	Concurrent Sponsor Bonus Sessions
12:10 pm-12:20 pm	Welcome
12:20 pm-12:40 pm	NAEPC Estate Planning Hall of Fame® Induction
12:40 pm-1:40 pm	Possible Estate and Income Tax Changes Affecting Estate Planning **(CE)** *Jonathan G. Blattmachr, Esq., AEP® (Distinguished)*
1:40 pm-2:10 pm	Networking & Exhibit Hall
2:10 pm-3:10 pm	Review of the Past Year's Significant, Curious, or Downright Fascinating Fiduciary Cases **(CE)** *Dana G. Fitzsimons, Jr., JD*
3:10 pm-3:40 pm	Networking & Exhibit Hall
3:40 pm-4:40 pm	Psychological Implications of Business Succession Planning **(CE)** *Stephan R. Leimberg, JD, AEP® (Distinguished)*
4:50 pm-4:55 pm	Closing Remarks
4:55 pm-5:30 pm	Networking & Exhibit Hall
5:30 pm	Doors & Exhibitors Close

Continuing education credit will be available only to those who attend LIVE.
To attend this event, please click on this link to register: https://www.accelevents.com/e/58th-annual-naepc-advanced-estate-planning-strategies-virtual-conference0.

agassman@gassmanpa.com
jhesch62644@gmail.com

ESTATE PLANNING COUNCIL OF BIRMINGHAM, INC.

HOT TOPICS IN ESTATE TAX AND CREDITOR PROTECTION

Thursday, November 4, 2021

from 8:00 AM to 10:00 AM CT

Presented by:

Alan Gassman

agassman@gassmanpa.com

GASSMAN CROTTY DENICOLO P.A.
ATTORNEYS AT LAW
1245 Court Street, Clearwater, FL 33756

CLICK HERE FOR MORE INFORMATION.

The 23rd Annual
Estate, Tax, Legal & Financial Planning Seminar

Presenting Sponsor: NORTHERN TRUST

JOHNS HOPKINS
All Children's Hospital

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February 10, 2022
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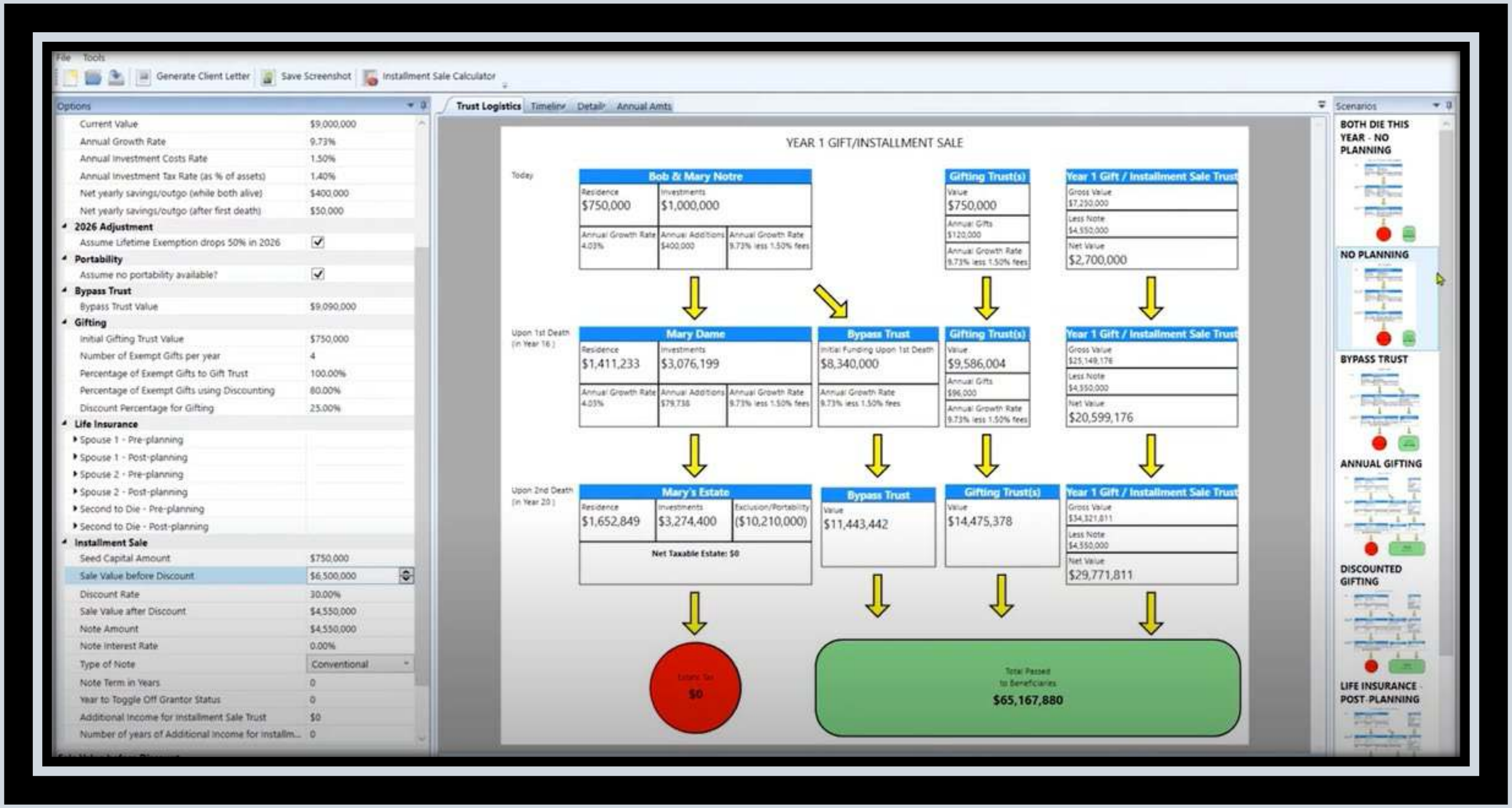
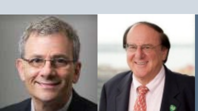
EstateView Software



To watch a free informational overview of this software, click this You Tube link:
https://www.youtube.com/watch?v=6uHE13Wg9PA

To apply for a one year subscription of $79.95, click on this link for a secure checkout:
https://checkout.square.site/merchant/6GYVP0XC0HHF1/checkout/QY5ACGZGAAUCZD7Z45QYYNYH



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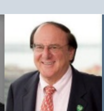
Jerry M. Hesch's Biography

Jerome ("Jerry") M. Hesch is a tax and estate planning consultant for lawyers throughout the country and is a Special Senior Tax Counsel for Jeffrey M. Verdon Law Group, LLP and Special Senior Tax Counsel for Oshins and Associates, LLC. He is a member of the America College of Trust and Estate Counsel (ACTEC) and an Adjunct Professor at the University of Miami School Law and Florida International University School of Law.

An accomplished author, Professor Hesch has published numerous articles, several Tax Management Portfolios, and co-authored a law school casebook on Federal Income Taxation.

A highly sought speaker, Professor Hesch has presented for groups such as the AICPA, the University of Miami Heckerling Institute on Estate Planning, the Southern California Tax Institute, and the New York University Institute on Federal Taxation. He has participated in several bar association projects, such as the Drafting Committee for the Federal Revised Uniform Partnership Act and preparing the ABA's comments on the IRS's proposed private annuity regulations.

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Single Estate Tax Exemption Spreadsheet

1	2	3	4	5	6	1	2	3	4	5
Year	Calendar Year	Exemption Without Reduction (2.5% inflation)	Exemption Goes to Half in 2026, then Grows with	Exemption Goes to Half in 2022, then Grows with Inflation (2.5%)	Example: Individual With $6 Million Increasing by 7% Annually	Year	Calendar Year	Estate Tax if Double the Exemption	Estate Tax if Exemption Goes to Half	Exemption Goes to Half in 2022, then Grows with Inflation (2.5%)
1	2021	$11,700,000	$11,700,000	$11,700,000	$6,000,000	1	2021	$0	$0	$0
2	2022	$11,992,500	$11,992,500	$5,996,250	$6,470,000	2	2022	$0	$0	$189,500
3	2023	$12,292,313	$12,292,313	$6,146,156	$6,972,900	3	2023	$0	$0	$330,698
4	2024	$12,599,620	$12,599,620	$6,299,810	$7,511,003	4	2024	$0	$0	$484,477
5	2025	$12,914,611	$12,914,611	$6,457,305	$8,086,773	5	2025	$0	$0	$651,787
6	2026	$13,237,476	$6,618,738	$6,618,738	$8,702,847	6	2026	$0	$833,644	$833,644
7	2027	$13,568,413	$6,784,206	$6,784,206	$9,362,047	7	2027	$0	$1,031,136	$1,031,136
8	2028	$13,907,623	$6,953,812	$6,953,812	$10,067,390	8	2028	$0	$1,245,431	$1,245,431
9	2029	$14,255,314	$7,127,657	$7,127,657	$10,822,107	9	2029	$0	$1,477,780	$1,477,780
10	2030	$14,611,697	$7,305,848	$7,305,848	$11,629,655	10	2030	$0	$1,729,523	$1,729,523
11	2031	$14,976,989	$7,488,495	$7,488,495	$12,493,731	11	2031	$0	$2,002,094	$2,002,094
12	2032	$15,351,414	$7,675,707	$7,675,707	$13,418,292	12	2032	$0	$2,297,034	$2,297,034
13	2033	$15,735,199	$7,867,600	$7,867,600	$14,407,572	13	2033	$0	$2,615,989	$2,615,989
14	2034	$16,128,579	$8,064,290	$8,064,290	$15,466,102	14	2034	$0	$2,960,725	$2,960,725
15	2035	$16,531,794	$8,265,897	$8,265,897	$16,598,729	15	2035	$26,774	$3,333,133	$3,333,133
16	2036	$16,945,089	$8,472,544	$8,472,544	$17,810,640	16	2036	$346,221	$3,735,238	$3,735,238
17	2037	$17,368,716	$8,684,358	$8,684,358	$19,107,385	17	2037	$695,468	$4,169,211	$4,169,211
18	2038	$17,802,934	$8,901,467	$8,901,467	$20,494,902	18	2038	$1,076,787	$4,637,374	$4,637,374
19	2039	$18,248,007	$9,124,003	$9,124,003	$21,979,545	19	2039	$1,492,615	$5,142,217	$5,142,217
20	2040	$18,704,207	$9,352,104	$9,352,104	$23,568,113	20	2040	$1,945,563	$5,686,404	$5,686,404
21	2041	$19,171,812	$9,585,906	$9,585,906	$25,267,881	21	2041	$2,438,428	$6,272,790	$6,272,790
22	2042	$19,651,108	$9,825,554	$9,825,554	$27,036,633	22	2042	$2,954,210	$6,884,432	$6,884,432
23	2043	$20,142,385	$10,071,193	$10,071,193	$28,929,197	23	2043	$3,514,725	$7,543,202	$7,543,202
24	2044	$20,645,945	$10,322,972	$10,322,972	$30,954,241	24	2044	$4,123,318	$8,252,507	$8,252,507
25	2045	$21,162,094	$10,581,047	$10,581,047	$33,121,038	25	2045	$4,783,578	$9,015,997	$9,015,997
26	2046	$21,691,146	$10,845,573	$10,845,573	$35,439,511	26	2046	$5,499,346	$9,837,575	$9,837,575
27	2047	$22,233,425	$11,116,712	$11,116,712	$37,920,277	27	2047	$6,274,741	$10,721,426	$10,721,426
28	2048	$22,789,260	$11,394,630	$11,394,630	$40,574,696	28	2048	$7,114,174	$11,672,026	$11,672,026
29	2049	$23,358,992	$11,679,496	$11,679,496	$43,414,925	29	2049	$8,022,373	$12,694,171	$12,694,171
30	2050	$23,942,967	$11,971,483	$11,971,483	$46,453,969	30	2050	$9,004,401	$13,792,994	$13,792,994
31	2051	$24,541,541	$12,270,770	$12,270,770	$49,705,747	31	2051	$10,065,683	$14,973,991	$14,973,991
32	2052	$25,155,079	$12,577,540	$12,577,540	$53,185,149	32	2052	$11,212,028	$16,243,044	$16,243,044
33	2053	$25,783,956	$12,891,978	$12,891,978	$56,908,110	33	2053	$12,449,662	$17,606,453	$17,606,453
34	2054	$26,428,555	$13,214,278	$13,214,278	$60,891,678	34	2054	$13,785,249	$19,070,960	$19,070,960
35	2055	$27,089,269	$13,544,634	$13,544,634	$65,154,095	35	2055	$15,225,930	$20,643,784	$20,643,784
36	2056	$27,766,501	$13,883,250	$13,883,250	$69,714,882	36	2056	$16,779,352	$22,332,653	$22,332,653
37	2057	$28,460,663	$14,230,332	$14,230,332	$74,594,923	37	2057	$18,453,704	$24,145,837	$24,145,837
38	2058	$29,172,180	$14,586,090	$14,586,090	$79,816,568	38	2058	$20,257,755	$26,092,191	$26,092,191
39	2059	$29,901,484	$14,950,742	$14,950,742	$85,403,728	39	2059	$22,200,897	$28,181,194	$28,181,194
40	2060	$30,649,021	$15,324,511	$15,324,511	$91,381,989	40	2060	$24,293,187	$30,422,991	$30,422,991

Single Person Asset Growth

7.00%

Year 1 Net Worth

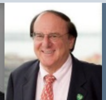
$6,000,000

Added Savings Per Year

$50,000

Number of Years

20

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Married Couple Estate Tax Exemption Chart

1	2	3	4	5	6
Year	Calendar Year	Double the Exemption Amount Without Reduction (2.5% inflation)	Exemption Goes to Half in 2026, then Grows with	Exemption Reduces to $3.5 Million in 2021, then Grows with Inflation (2.5%)	Example: Married Couple With $10 Million Increasing by 6.25% Annually
1	2021	$23,400,000	$23,400,000	$7,000,000	$10,000,000
2	2022	$23,985,000	$23,985,000	$7,175,000	$10,625,000
3	2023	$24,584,625	$24,584,625	$7,354,375	$11,289,063
4	2024	$25,199,241	$25,199,241	$7,538,234	$11,994,629
5	2025	$25,829,222	$25,829,222	$7,726,690	$12,744,293
6	2026	$26,474,952	$12,000,000	$7,919,857	$13,540,812
7	2027	$27,136,826	$12,300,000	$8,117,854	$14,387,112
8	2028	$27,815,247	$12,607,500	$8,320,800	$15,286,307
9	2029	$28,510,628	$12,922,688	$8,528,820	$16,241,701
10	2030	$29,223,393	$13,245,755	$8,742,041	$17,256,807
11	2031	$29,953,978	$13,576,899	$8,960,592	$18,335,358
12	2032	$30,702,828	$13,916,321	$9,184,607	$19,481,318
13	2033	$31,470,398	$14,264,229	$9,414,222	$20,698,900
14	2034	$32,257,158	$14,620,835	$9,649,577	$21,992,581
15	2035	$33,063,587	$14,986,356	$9,890,817	$23,367,117
16	2036	$33,890,177	$15,361,015	$10,138,087	$24,827,562
17	2037	$34,737,432	$15,745,040	$10,391,539	$26,379,285
18	2038	$35,605,867	$16,138,666	$10,651,328	$28,027,990
19	2039	$36,496,014	$16,542,133	$10,917,611	$29,779,740
20	2040	$37,408,414	$16,955,686	$11,190,551	$31,640,973
21	2041	$38,343,625	$17,379,578	$11,470,315	$33,618,534
22	2042	$39,302,215	$17,814,067	$11,757,073	$35,719,693
23	2043	$40,284,771	$18,259,419	$12,051,000	$37,952,173
24	2044	$41,291,890	$18,715,905	$12,352,275	$40,324,184
25	2045	$42,324,187	$19,183,802	$12,661,082	$42,844,446
26	2046	$43,382,292	$19,663,397	$12,977,609	$45,522,224
27	2047	$44,466,849	$20,154,982	$13,302,049	$48,367,363
28	2048	$45,578,520	$20,658,857	$13,634,600	$51,390,323
29	2049	$46,717,983	$21,175,328	$13,975,465	$54,602,218
30	2050	$47,885,933	$21,704,711	$14,324,852	$58,014,857
31	2051	$49,083,081	$22,247,329	$14,682,973	$61,640,785
32	2052	$50,310,158	$22,803,512	$15,050,047	$65,493,334
33	2053	$51,567,912	$23,373,600	$15,426,299	$69,586,668
34	2054	$52,857,110	$23,957,940	$15,811,956	$73,935,834
35	2055	$54,178,538	$24,556,889	$16,207,255	$78,556,824
36	2056	$55,533,001	$25,170,811	$16,612,436	$83,466,625
37	2057	$56,921,326	$25,800,081	$17,027,747	$88,683,290
38	2058	$58,344,360	$26,445,083	$17,453,441	$94,225,995
39	2059	$59,802,969	$27,106,210	$17,889,777	$100,115,120
40	2060	$61,298,043	$27,783,866	$18,337,021	$106,372,315

1	2	3	4	5
Year	Calendar Year	Estate Tax if Double the Exemption	Estate Tax if Exemption Goes to Half	Estate Tax if Exemption Goes to $3.5 Million
1	2021	$0	$0	$1,200,000
2	2022	$0	$0	$1,380,000
3	2023	$0	$0	$1,573,875
4	2024	$0	$0	$1,782,558
5	2025	$0	$0	$2,007,041
6	2026	$0	$616,325	$2,248,382
7	2027	$0	$834,845	$2,507,703
8	2028	$0	$1,071,523	$2,786,203
9	2029	$0	$1,327,605	$3,085,152
10	2030	$0	$1,604,421	$3,405,907
11	2031	$0	$1,903,384	$3,749,906
12	2032	$0	$2,225,999	$4,118,684
13	2033	$0	$2,573,868	$4,513,871
14	2034	$0	$2,948,699	$4,937,202
15	2035	$0	$3,352,305	$5,390,520
16	2036	$0	$3,786,619	$5,875,790
17	2037	$0	$4,253,698	$6,395,098
18	2038	$0	$4,755,730	$6,950,665
19	2039	$0	$5,295,043	$7,544,851
20	2040	$0	$5,874,115	$8,180,169
21	2041	$0	$6,495,582	$8,859,288
22	2042	$0	$7,162,250	$9,585,048
23	2043	$0	$7,877,102	$10,360,469
24	2044	$0	$8,643,312	$11,188,764
25	2045	$208,103	$9,464,257	$12,073,346
26	2046	$855,973	$10,343,531	$13,017,846
27	2047	$1,560,205	$11,284,952	$14,026,125
28	2048	$2,324,721	$12,292,586	$15,102,289
29	2049	$3,153,694	$13,370,756	$16,250,701
30	2050	$4,051,569	$14,524,058	$17,476,002
31	2051	$5,023,082	$15,757,382	$18,783,125
32	2052	$6,073,270	$17,075,929	$20,177,315
33	2053	$7,207,502	$18,485,227	$21,664,148
34	2054	$8,431,490	$19,991,158	$23,249,551
35	2055	$9,751,314	$21,599,974	$24,939,828
36	2056	$11,173,450	$23,318,326	$26,741,676
37	2057	$12,704,785	$25,153,283	$28,662,217
38	2058	$14,352,654	$27,112,365	$30,709,022
39	2059	$16,124,861	$29,203,564	$32,890,137
40	2060	$18,029,709	$31,435,380	$35,214,117

Married Couple Asset Growth	Year 1 Net Worth
7.00%	$10,000,000

Added Savings Per Year	Number of Years of Savings
$50,000	20


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ATTORNEYS AT LAW

Sample Estate Tax Planning Client Letter (LISI)

Click HERE to access the full PDF Version of the Sample Client Letter

Estate Tax Law Changes - What To Do Now
By Alan S. Gassman and Brandon Ketron

Dear Clients,

A great many wealthy taxpayers were given a not so welcome jolt of energy and fear last week when the Democrats on the House of Representative Ways and Means Committee released their 881 page proposal on how to raise over $3,000,000,000 in taxes from wealthy families and high earners. The opportunity to make proper use of the present $11,700,000 exemption and the opportunity to fund and sell to Grantor Trusts, form and fund Grantor Retained Annuity Trusts, fund Qualified Personal Residence Trusts and other planning techniques may be gone in just a few days.

While providing a comprehensive and extensive summary or analysis of the full 881 pages of proposed new laws would prove to be cumbersome, especially since the terms of any bill can be expected to be materially different than the House bill, we are able to cover many of the primary changes, points of confusion, and effective dates provided in the proposed legislation as relates to estate tax planning, along with some key planning ideas.

Those affected will be pleased to hear that only a few of the new rules would impact transactions or transfers made before the new Act would be enacted. Further, many of the provisions would not become effective until January 1, 2022, but those that wish to transfer significant values to irrevocable "Grantor Trusts" that are disregarded for income tax purposes before the exemption amounts are cut in half must act by the day that the law is enacted. Alternatively, based on the plain language of the bill, potentially affected individuals may plan to gift such amounts to individuals or entities other than grantor trusts, if they do this after the date of enactment and before year end.

The law of survival of the fittest will apply to cause many wealthy families to lose a great portion of their net worth to estate tax, while smarter and properly situated families may have little to no estate tax. The train may be leaving the station very soon, leaving much wealth exposed so please contact us without delay to discuss the impact of these proposals and to complete any planning that is in progress.

Below is a section by section analysis of the major proposed changes and effective dates, and thoughts relating to actions to take and not to take while we wait to see what changes are made to the Bill, and if any substantial bill will be passed this year. While all of this is subject to change as the Senate gets involved, but we do not expect to see anything more severe or taxpayer unfriendly than the House bill, and it could be a lot worse.

First in priority on the list of action items for many wealthy American families is to get their houses into order in preparation for increased federal estate taxes. After months of being presented with the prospect of a lower estate tax exemption, and the possibility that the exemption would come down before there was time to make large gifts, the reality of what is proposed must now sink in for a few days, and then action may need to be taken.

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Use It or Lose It - Estate/Gift Tax Exemption Cut in Half Effective January 1, 2022

The good news on this front is that the reduction of the estate and gift tax exemption from \$10,000,000 as adjusted for chained inflation (presently \$11,700,000 per person) will be intact through the end of 2021, but will be reduced to one half of the applicable amount effective January 1st, 2022. This means that the "use it or lose it" gifting decisions for wealthy individuals can be made up through the end of this year, but most well advised wealthy families will be better off making such gifts before such legislation is passed, because of the Grantor Trust and discount rules that would be changed as of the date of enactment.

The \$2,280,000 Mistake.

As an example, Grandma has used \$700,000 of her estate and gift tax exemption from prior gifting, and therefore has an \$11,000,000 exemption remaining that she may wish to use prior to the end of the year. If she has a \$21,000,000 estate and makes an \$11,000,000 gift, this her estate will be \$10,000,000. If Grandma then dies in 2022, or thereafter, she would have no exemption remaining, and the estate tax will be \$4,000,000 (\$10,000,000 x 40% = \$4,000,000). Fortunately, the proposed law would not increase the estate tax rate the way that the Bernie Sanders bill would have.

Alternatively, if Grandma does no gifting in 2021 and dies in 2022, or thereafter, when the exemption would be based upon one half of \$11,700,000 (\$5,850,000) adjusted for inflation to perhaps \$6,000,000, then her estate will be \$21,000,000 reduced by her remaining exemption amount of \$5,300,000 (\$6,000,000 less prior gifts of \$700,000), and estate taxes of \$6,280,000 (\$15,700,000 x 40% = \$6,280,000) will be owed to Uncle Sam 9 months after her death. It will not feel good to stroke that check for \$6,280,000 when it could have been \$4,000,000, and the \$2,280,000 difference does not take into account that growth on assets would be expected to make the difference greater.

Suppose however that Grandma does not make the gift but is on her death bed on December 31st, 2021, thinking about using the Living Will, while hoping for a miraculous recovery and a few more years in the very nice retirement home where she lives. Would you want her children or best friend to make her health care decisions at that time? One day of life could cost \$2,280,000. We would bet on the best friend being less likely to pull the plug in this situation!

It is important to note is the fact that there will be no "clawback" for use of the increased exclusion amount, meaning that Grandma will not be penalized for gifting \$11,000,000 of assets if she passes away in a year when the applicable exclusion amount is \$6,000,000.

Use Less Than Half and Uncle Sam Gets a Laugh.

Another factor that warrants consideration is that in order to use the temporary increased exemption, gifts must exceed what the exemption will be reduced to. For example, if Grandma were to gift \$5,000,000 in 2021 when the applicable exclusion amount is \$11,700,000 and then pass away in 2022, or thereafter, when the applicable exclusion amount is only $6,000,000, Grandma's applicable exclusion amount would only be $1,000,000. Therefore, in order to take full advantage of the increased exemption, Grandma will need to gift all $11,000,000 of her remaining exclusion. That being said, those who decide that they cannot afford to gift the full $11,700,000 may still be well advised to gift what they are comfortable with to get future growth in value out of the estate and to gift limited liability company or partnership interests when possible in order to lock in discounts that may not apply once the new Act is passed, and to make the gifts to Grantor Trusts while there is time to do so.

The good news is that families will have until the end of this year to make large gifts if the law passes. The bad news is the loss of very important vehicles that we commonly use for gifting and estate tax planning that may occur below then.

Is A Grantor Trust Really A Must?

Grantor Trusts can be separate and apart from the Grantor and contributor of the trust for estate tax purposes while still considered as owned by the Grantor for income tax purposes. Because the Grantor is considered to be the owner of the trust for income tax purposes, transactions between the trusts and the grantor are "disregarded," meaning that assets can be sold or exchanged with the trusts and the trusts can pay interest on low interest notes owed to the Grantor without triggering any income tax consequences.

The majority of well positioned wealthy clients who have engaged in estate planning have established these trusts, which permit the Grantor to pay the income tax on the trust assets on behalf of the beneficiaries, and also allow the Grantor to sell assets that may qualify for a discount, such as non-voting LLC interests for long term low interest notes without paying any income taxes on the sale. The numbers can be quite advantageous where instead of owning a valuable asset that may have income and growth at 7% or more the client has a note bearing interest at 2% that will not grow in value. An additional benefit of the Grantor Trust, is that the Grantor continues to pay the income taxes associated with the Trust's assets, and the payment of income taxes is not considered a gift to the trust, allowing the trust to grow income tax free and further reduce the Grantor's estate.

Our hypothetical Grandma from the examples above could place $14,000,000 of investments into an LLC and after waiting a proper amount of time gift the 99% non-voting membership interest in the LLC to a Grantor Trust for her descendants. Due to the discounts mentioned above this might result in an $11,200,000 gift (assuming a 20% discount applies). Grandma can pay the income tax on the income from the investments for her remaining lifetime, which will further reduce estate taxes for her family upon death, but only if she acts before the date of enactment of the new bill, if it passes.

A favorable provision of the new proposal allows Grantor Trusts established and funded before the enactment of the new law to be grandfathered, as would promissory notes in place at the time of enactment, so a great many estate tax planners expect to be very busy completing trusts and sale arrangements that are in progress now, and remain uncertain of how many more they have the capacity to handle given the short time frame Congress is providing us with here.

Potential Impacts on Discounts and Other Estate Planning Tools

In addition to preventing the use of post enactment contributions to Grantor Trusts for estate tax purposes, the new bill would also eliminate discounts after the date of enactment unless the asset gifted or sold is an "active trade or business."

The language and effect of the new bill may also cause us to lose other very powerful tools in our toolbox, such as Grantor Retained Annuity Trusts (GRATs), Qualified Personal Residence Trusts (QPRTs), and lifetime Grantor Charitable Lead Annuity Trusts (CLATs) depending upon how the bill is applied and interpreted. The bill may also change how life insurance trusts will be funded and structured in the future, but we expect that the life insurance lobby will do what it takes to preserve its status as a favored child of Congress.

The following discussion of what is available now that may not be available after a law is enacted is as follows.

Bye Bye QPRT's

A Qualified Personal Residence Trust ("QPRT") allows a homeowner to transfer his or her primary residence or a vacation property into a Trust that enables the Grantor to make use of the property at no rent charge for a term of years, and to report the gift of the ownership interest in the home to be less than the full value of the home because of the discount attributable to the present value of the free use possessory term.

Nevertheless, after the death of the Grantor, the entire value of the property held under the Trust escapes estate tax, and the Grantor will pay rent after the possessory term of years lapses, which further reduces the Grantor's estate and enables the Grantor to continue to use the property.

The QPRT can be drafted to be disregarded for income tax purposes, both during and after the possessory term, so that rent paid for use is not taxable to the Trust, and the property is treated as owned by the taxpayer in the event of sale, to qualify for the $250,000 or $500,000 exclusion for the sale of a primary residence.

Reading the newly proposed act literally, QPRTs that are entered into and funded by deed before the date of enactment will be grandfathered to receive the above benefits, but those that are executed and funded by deed after the date of enactment will lead to gain being recognized as if the property was considered to have been sold to the trust upon contribution, and then considered to be a gift by the Grantor following the possessory term when the property is transferred to the beneficiaries, although a credit may be received for gift taxes paid on the initial transfer when the second transfer occurs.

So Long and Farwell to GRATs

Similar to a QPRT, a Grantor Retained Annuity Trust ("GRAT") is an arrangement whereby an individual can transfer property to a trust which provides for payments back to the individual over a term of years in fixed dollar amounts that are sufficient to cause there to be no gift for gift tax purposes.

Nonetheless, if the assets in the GRAT appreciate in value by more than approximately 1.0% a year, based upon present rate for GRATs entered into this year, the excess value remaining after the term of years can pass estate and gift tax-free.

A GRAT is treated as a Grantor Trust while the Grantor is receiving annual payments, and can be considered to be a Grantor Trust thereafter, if drafted to facilitate that result.

Under the proposed new rules, the funding of a GRAT after the date that the law would be enacted could cause income tax to be imposed on the excess of the fair market value of the assets placed into the GRAT over the tax basis of such assets. Further, the excess value remaining after the GRAT term may be considered a gift when distributed, notwithstanding that Internal Revenue Code Section 2702 maintains under present law that no gift results when the actuarial value of the annual payments made to the Grantor equals the value of assets placed into the Trust.

While 2 and 3 and 4 year GRATs have been most common, longer term GRATs will lock in values for a longer period of time and should be more popular before the new law passes. Most planners will prefer to use long term installment sales to Grantor Trusts, for this reason, but GRAT's will normally be used when the risk of gift tax is high, or the value of assets is above what would typically fit under an installment sale.

I Must Form My Income Tax Deductible CLAT In Nothing Flat

A Charitable Lead Annuity Trust ("CLAT") functions in a manner similar to a GRAT, except that the fixed annual payments will go to a charity, and assets remaining in the CLAT after the term of years can be held for to family members without being considered to be a gift.

A Grantor CLAT is a variation of a CLAT that is drafted to be disregarded for income tax purposes to allow for an income tax deduction on funding, which causes the Grantor to be subject to income tax on the CLAT's income during the charitable payment term.

Unfortunately Grantor CLATs that are funded after the date of enactment may trigger income tax on the excess of the fair market value of the assets placed in the GRAT over the income tax basis, with the remainder interest passing to descendants being subject to federal gift tax when the payments to charity end.

The above analysis of the impact of the newly proposed rules on QPRTs, GRATs and CLATs may not be accurate or what the Ways and Means Committee is intending, and guidance with respect to this will likely be forthcoming in any legislation that would pass, or before or immediately after passage. Nevertheless, individuals and families who are considering the use of QPRTs, GRATs or Grantor CLATs should proceed without delay.

Although the loss of the vehicles and planning techniques reviewed above seems more than formidable, other techniques will continue to exist. Regardless, estate tax planners will feel like carpenters who have lost their hammers, nails and pliers, and have significant construction to do somehow without those tools. The result for wealthy families will be increased exposure to pay much more in estate taxes.

How About Some Good News?

We were pleased to find the absence of a number of items on the bill that had been tossed around by lawmakers, including the following:

1. No "capital gains tax on death" was included, or any rule that would detrimentally affect the present tax laws that permit the assets of a deceased individual to be considered to have been purchased for the fair market value thereof on the person's date of death to eliminate capital gains taxes attributable to appreciation and depreciation taken up through the date of death.

2. Proposals that would have imposed a tax on placing appreciated assets into separately taxed trusts, or transferring appreciated assets out of separately taxed trusts are also thankfully not mentioned.

3. Proposals which would have reduced the amount of annual gifts using *Crummey* withdrawal powers that an individual or married couple could have made to irrevocable trusts or otherwise were not included.

4. Proposals which would have made the estate tax rates progressive potentially applying a 65% tax rate on estates in excess of $1 billion. Thankfully under the current proposal the estate tax remains at a flat rate of 40%.

5. Proposals to decrease lifetime gifting allowance to as low as $1,000,000. Under the current proposal the estate and gift tax exemption remains the same, although reduced to one-half of what would have otherwise applied.

6. Specific provisions that would eliminate a step up in basis for assets held by a Grantor Trust. While it is unclear under present law if a step up in basis applies to assets held by Grantor Trusts, many practitioners take the position that a step up in basis does apply since the grantor is considered to be the owner of the assets for income tax purposes, and the inclusion of the elimination of step up in basis for Grantor Trusts in prior proposal further supports this proposition.

7. Proposals to apply generation skipping taxes via a deemed termination of Generation Skipping dynasty trusts every 50 years.

The good news for estate tax advisors is that there are very few proposed new rules in this arena under the new bill, so the changes will be relatively easy to learn and implement, and grandfathering will allow us to be proud of and continue the structures that have been put into place and properly maintained. The bad news is that if our spouses were upset because we have been working late up until now, then they have not seen anything yet!

Times like these call for courage, calmness, and smart thinking by planners who have much more work than they can do to help clients finish building their arcs before the hard rain begins. General non estate tax planning can be pushed off over the next few days/weeks as we size up our workload, and how to simplify and implement what we can while we can, while still hoping that none of these changes will come to fruition.

Income Tax Article (LISI)

Click **HERE** to access the full PDF Version of the Income Tax Article

Income Tax Changes Under the September 13th House Ways and Means Proposed Legislation

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The authors would like to thank Stetson University College of Law student, Grace Paul, for her patience and perseverance with regards to this article.

EXECUTIVE SUMMARY

The House Ways and Means Committee released 881 pages of proposed legislation on September 13th to give a nation full of underworked tax professionals something new to do in their ample spare time. Even some who work on the first floor of buildings thought about jumping out the window, but it could have been worse–there are very few complex changes. The new law would create many changes to income, estate, and gift taxes, and anyone who is about to send a Form 2553 in to file for S-election status should think twice and discuss this with the client before the deadline, as discussed below. The authors covered changes to the Estate and Gift Tax system in LISI Estate Planning Newsletter #2906 (September 20, 2021). Now, we are back, contrary to popular demand, to cover proposed income tax changes.

While we wait to see what alterations will have to be made to the bill before it would have sufficient support from 50 senators and Vice President Harris, if this is possible, we are providing this summary of some of the most significant proposed income tax changes, proposed effective dates, and our thoughts on what actions to take and not to take. As the Senate becomes

Summary of Tax Rate Changes

	Current	Proposed	Effective Date
Top Individual Income Tax Rate	37%	39.6%	January 1, 2022
Corporate Tax Rate	21% flat rate	18% on the first $400,000, 21% on income up to $5 million, and a rate of 26.5% on income in excess of $10,000,000	January 1, 2022
Capital Gains Tax	20%	25%	Effective immediately for transactions originating after September 13, 2021.
Modified Adjusted Gross Income Tax	N/A	Includes investment income derived in the ordinary course of a trade or business.	January 1, 2022
Grantor Trusts	Typically not included in grantor's estate, transfers not subject to sales tax	Included in "deemed owner's" estate and sales are subject to tax.	Only future trusts and future transfers.
Roth IRA's	IRA contributions are irrespective of account balance.	High income earners prohibited from contributing past $10 million.	January 1, 2022

Is There Any Good News?

We were pleased to see no mention of a number of things that had been tossed around by lawmakers, including the following:

1. No “capital gains tax on death” was included, or any rule that would detrimentally affect the present tax laws that permit the assets of a deceased individual to be considered to have been purchased for the fair market value thereof on the person’s date of death to eliminate capital gains taxes attributable to appreciation and depreciation taken up through the date of death.

2. Proposals that would have taxed placing appreciated assets into separately taxed trusts, or transferring appreciated assets out of separately taxed trusts are also thankfully not mentioned.

3. Proposals which would have reduced the amount of annual gifts that an individual or married couple could have made to irrevocable trusts or otherwise were not included.


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Is There Any Good News? (Cont.)

We were pleased to see no mention of a number of things that had been tossed around by lawmakers, including the following:

4. Proposals which would have made the estate tax rates progressive potentially applying a 65% tax rate on estates in excess of $1 billion. Thankfully under the current proposal the estate tax remains at a flat rate of 40%.

5. Proposals to decrease lifetime gifting allowance to as low as $1,000,000. Under the current proposal the estate and gift tax exemption remains the same, although reduced to one-half of what would have otherwise applied.

6. Specific provisions that would eliminate a step up in basis for assets held by a Grantor Trust. While it is unclear under present law if a step up in basis applies to assets held by Grantor Trusts, many practitioners take the position that a step up in basis does apply since the grantor is considered to be the owner of the assets for income tax purposes.

7. Proposals to apply generation skipping taxes via a deemed termination of Generation Skipping dynasty trusts every 50 years.


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Planning to Plan

Here are some examples of planning moves that may be considered at this time:

1. **If you have an estate plan in progress get it done as soon as possible.**

2. **Charitable individuals who are over age 59-1/2 with large IRA's may wish to consider withdrawing monies from their IRAs and giving those monies to charity, as IRA distribution rules are changed for the worse, and to receive a dollar-for-dollar charitable deduction that is permitted this year, and may not be allowed in the future. Until 2020, only taxpayers over age 70-1/2 can transfer IRA monies to charity on a tax-free basis, and were limited to $100,000 per year.**

3. **Accelerating income into 2021 - Quite likely, 2021 tax rates will be much lower than 2022, and this will hopefully apply to the entire tax year.**

That being the case, cash method taxpayers may accelerate income by transferring accounts receivable in late December, so that they become taxable, and may wish to defer the payment of expenses until 2022.

It is important to remember that there are advisors and others who stand to gain economically by making recommendations and implementing changes that may backfire on their clients, so caution is advised. For many individuals and families, the best thing to do is to get all of the information and documentation organized, and to see a reputable tax advisor in order to be farther up in line to get properly positioned once changes are (if they are) ratified.

Estate/Gift Tax Exemption Cut in Half Effective January 1, 2022

The present estate and gift tax exemption of $10,000,000 as adjusted for inflation (presently $11,700,000 per person) will be intact through the end of 2021, <u>but will be reduced to one half of the present amount effective January 1st, 2022</u>.

- This means that the "use it or lose it" gifting decisions for wealthy individuals can be made up through the end of this year, but most well advised wealthy families will be better off making such gifts before such legislation is passed, because of the Grantor Trust and discount rules described on the following slides.


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MRS. JONES EXAMPLE

As an example for a person who will not use a Grantor Trust or discounts, Mrs. Jones has used $700,000 of her estate and gift tax exemption from prior gifting, and therefore has an $11,000,000 exemption remaining that she may wish to use prior to the end of the year.

- If she has a $21,000,000 estate and makes an $11,000,000 gift, this will reduce her estate to $10,000,000.

- If Mrs. Jones then dies in 2022, or thereafter, she would have no exemption remaining, and the estate tax will be $4,000,000 ($10,000,000 x 40% = $4,000,000).

- If Mrs. Jones makes no gift and dies in 2022 she might only have $5,300,000 of exemption remaining ($6,000,000 less $700,000 in prior gifts = $5,300,000. Resulting in an estate tax of $6,280,000 ($15,700,000 x 40% = $6,280,000).

- $2,280,000 of estate taxes are saved by using the increased exemption amount.

MRS. JONES EXAMPLE (Cont.)

- **What if Mrs. Jones does not make the gift but is on her death bed on December 31, 2021 hoping for a miraculous recovery and a few more years in the very nice retirement home where she lives.**

- **Would you want her children or best friend to make her health care decisions at that time? One day of life could cost $2,280,000.**

- **It is also important to note that there will be no "clawback" for use of the increased exclusion amount, meaning that Mrs. Jones will not be penalized for gifting $11,000,000 of assets if she passes away at a time when the applicable exclusion amount is $6,000,000.**

MRS. JONES EXAMPLE (Cont.)

- **Another factor to consider is that in order to use the temporary increased exemption, gifts must exceed what the exemption will be reduced to.**

- **For Example:**

  If Mrs. Jones were to gift $5,000,000 in 2021 when the applicable exclusion amount is $11,700,000 and then passes away in 2022, or thereafter, when the applicable exclusion amount is only $6,000,000, Mrs. Jones's applicable exclusion amount would only be $1,000,000.

  Therefore, in order to take full advantage of the increased exemption, Mrs. Jones will need to gift all $11,000,000 of her remaining exclusion.

The fact that families will have until the end of this year to make large gifts if the law passes is the good news.

The loss of very important vehicles that we commonly used for gifting and estate tax planning is the bad news.

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Discounts and Other Estate Planning Tools May Also Be Impacted

- The new bill would not only stop the use of Grantor Trusts, but it would also eliminate discounts unless the asset gifted or sold is an “active trade or business”.

- The new bill may also stop planners from being able to use Irrevocable Life Insurance Trusts, at least to some degree, and also

  - **Grantor Retained Annuity Trusts (GRATs)**
  - **Qualified Personal Residence Trusts (QPRTs)**
  - **Grantor Charitable Lead Annuity Trusts (CLATs)**

- What we do not know is whether the anti-Grantor Trust provisions would prevent or significantly hinder the use of other types of trusts that are specifically permitted under the Internal Revenue Code, but may have different and completely ineffective tax results if established or funded after the date that the bill is enacted.

Possible Impact on the Use of a Qualified Personal Residence Trust (QPRT)

- A Qualified Personal Residence Trust (QPRT):

  - allows a homeowner to transfer his or her homestead or a vacation property into a Trust that permits the Grantor to make use of the property at no rent charge for a term of years, and considers the gift of the ownership interest in the home to be less than the full value of the home because of the discount attributable to the present value of the free use possessory term.

- After the death of the Grantor, the entire value of the property held under the Trust escapes estate tax, and the Grantor will pay rent after the possessory term of years expires, which further reduces the Grantor’s estate, and enables the Grantor to continue to use the property.

- The QPRT can be drafted to be disregarded for income tax purposes, both during and after the possessory term, so that rent paid for use is not taxable to the Trust, and the property is considered to be owned by the taxpayer in the event of sale, to qualify for the $250,000 or $500,000 exclusion for the sale of a primary residence.

- If the new proposed Act is read literally, then QPRTs that are entered into and funded by deed before the date of enactment will be grandfathered to receive the above benefits, but those that are executed and funded by deed after the date of enactment will cause the property to be considered to have been gifted in full when the trust is established, and then possibly again after the Grantor dies and the property is transferred to the beneficiaries, with a credit to be received for the initial transfer when the second transfer occurs.


QPRT Chart

1	2	3	4	5	6	7	8	9
Year	Calendar Year	Value of Home Growing at 2% Per Year	Annual Rent Paid (4% of the home value)	Total Rent Paid	Total Rent Invested at 8%	Estate Reduction (column 3 + column 6)	Use of Gift Exemption	Estate Tax Savings (column 7 - column 8) x 40%
1	2021	$1,000,000	$0	$0	$0	$0	$0	$0
2	2022	$1,020,000	$0	$0	$0	$0	$0	$0
3	2023	$1,040,400	$0	$0	$0	$0	$0	$0
4	2024	$1,061,208	$0	$0	$0	$0	$0	$0
5	2025	$1,082,432	$0	$0	$0	$0	$0	$0
6	2026	$1,104,081	$0	$0	$0	$0	$0	$0
7	2027	$1,126,162	$0	$0	$0	$0	$0	$0
8	2028	$1,148,686	$0	$0	$0	$0	$0	$0
9	2029	$1,171,659	$0	$0	$0	$0	$0	$0
10	2030	$1,195,093	$0	$0	$0	$0	$0	$0
11	2031	$1,218,994	$48,760	$48,760	$52,661	$1,271,655	$512,593	$303,625
12	2032	$1,243,374	$49,735	$49,735	$53,714	$1,297,088	$512,593	$313,798
13	2033	$1,268,242	$50,730	$100,465	$108,502	$1,376,744	$512,593	$345,660
14	2034	$1,293,607	$51,744	$152,209	$164,386	$1,457,992	$512,593	$378,160
15	2035	$1,319,479	$52,779	$204,988	$221,387	$1,540,866	$512,593	$411,309
16	2036	$1,345,868	$53,835	$258,823	$279,529	$1,625,397	$512,593	$445,122
17	2037	$1,372,786	$54,911	$313,734	$338,833	$1,711,619	$512,593	$479,610
18	2038	$1,400,241	$56,010	$369,744	$399,323	$1,799,565	$512,593	$514,789
19	2039	$1,428,246	$57,130	$426,874	$461,024	$1,889,270	$512,593	$550,671
20	2040	$1,456,811	$58,272	$485,146	$523,958	$1,980,769	$512,593	$587,270
21	2041	$1,485,947	$59,438	$544,584	$588,151	$2,074,098	$512,593	$624,602
22	2042	$1,515,666	$60,627	$605,211	$653,628	$2,169,294	$512,593	$662,680
23	2043	$1,545,980	$61,839	$667,050	$720,414	$2,266,394	$512,593	$701,520
24	2044	$1,576,899	$63,076	$730,126	$788,536	$2,365,435	$512,593	$741,137
25	2045	$1,608,437	$64,337	$794,463	$858,020	$2,466,458	$512,593	$781,546
26	2046	$1,640,606	$65,624	$860,088	$928,895	$2,569,501	$512,593	$822,763
27	2047	$1,673,418	$66,937	$927,024	$1,001,186	$2,674,604	$512,593	$864,805
28	2048	$1,706,886	$68,275	$995,300	$1,074,924	$2,781,810	$512,593	$907,687
29	2049	$1,741,024	$69,641	$1,064,941	$1,150,136	$2,891,160	$512,593	$951,427
30	2050	$1,775,845	$71,034	$1,135,975	$1,226,853	$3,002,697	$512,593	$996,042
31	2051	$1,811,362	$72,454	$1,208,429	$1,305,103	$3,116,465	$512,593	$1,041,549
32	2052	$1,847,589	$73,904	$1,282,333	$1,384,919	$3,232,508	$512,593	$1,087,966
33	2053	$1,884,541	$75,382	$1,357,714	$1,466,331	$3,350,872	$512,593	$1,135,312
34	2054	$1,922,231	$76,889	$1,434,603	$1,549,372	$3,471,603	$512,593	$1,183,604
35	2055	$1,960,676	$78,427	$1,513,030	$1,634,073	$3,594,749	$512,593	$1,232,862
36	2056	$1,999,890	$79,996	$1,593,026	$1,720,468	$3,720,358	$512,593	$1,283,106
37	2057	$2,039,887	$81,595	$1,674,622	$1,808,591	$3,848,479	$512,593	$1,334,354
38	2058	$2,080,685	$83,227	$1,757,849	$1,898,477	$3,979,162	$512,593	$1,386,628
39	2059	$2,122,299	$84,892	$1,842,741	$1,990,160	$4,112,459	$512,593	$1,439,946
40	2060	$2,164,745	$86,590	$1,929,331	$2,083,677	$4,248,422	$512,593	$1,494,332

Year 1 Home Value	Use of Gift Exemption	Percentage Rent Invested At
$1,000,000	$512,593	8%

Value of Home Growth Per Year	Rent Percentage of Home Value
2%	4%

56 YEAR OLD QPRT DISCOUNTED VALUE

VALUE OF HOME	$2,140,000
VALUE OF 50% OF HOME	$1,070,000
VALUE OF 50% OF HOME WITH 15% DISCOUNT	$909,500

	REPORTED GIFT AMOUNT		VALUE OF 1/2 OF RESIDENCE AT END OF TERM ASSUMING 7% GROWTH	ESTATE TAX ON VALUE AT END OF TERM ASSUMING 40% ESTATE TAX RATE	ESTATE TAX SAVINGS ON 1/2 OF RESIDENCE AT END OF QPRT	ESTATE TAX SAVINGS AFTER 25 YEARS ASSUMING 7% GROWTH ON 1/2 OF RESIDENCE
10 YEAR QPRT	GIFT %	63.924%	$1,789,124	$715,650	$483,094	$1,741,944
	VALUE OF GIFT	$581,389				
15 YEAR QPRT	GIFT %	48.793%	$2,509,339	$1,003,736	$826,227	$1,796,991
	VALUE OF GIFT	$443,772				
20 YEAR QPRT	GIFT %	37.244%	$3,519,478	$1,407,791	$1,272,299	$1,839,008
	VALUE OF GIFT	$338,730				
25 YEAR QPRT	GIFT %	28.428%	$4,936,250	$1,974,500	$1,871,078	$1,871,078
	VALUE OF GIFT	$258,555				

Probability of Death Before Certain Age
Current Age: 56

10 years (66)	10.70%
15years (71)	19.43%
20 years (76)	31.47%
25 years (81)	47.36%

Explanation of 15 year QPRT numbers -

A gift of 50% interest in a $2,140,000 home to the QPRT is reported to be a $443,772 gift. 50% of the home grows to $2,509339 in value over fifteen years. The estate tax on a $2,509,339 asset would be $1,003,736. The gift tax exemption used on a $443,772 gift at 40% is equal to $177,509. Assuming no further growth in the house the estate tax savings at that point would be $826,227 ($1,003,736 - $177,509 = $826,227). If the value pf the home continues to grow at 7% a year for another 10 years, the total estate tax savings will be $1,796,991.

If rent is paid for Years 15 through 25 equal to 8% of the value of ½ of the residence, then $2,773,612 rent will be paid. The rent paid will not be subject to estate tax. The estate tax saved on this amount is equal to $1,109,445 ($2,773,612 x 40% = $1,109,445).

The total estate tax savings including the rent paid would be equal to $2,906,436 ($1,796,991 + $1,109,445 = $2,906,436).

J:\C\Catherine\WORKING COPIES\QPRT TABLE DRAFT :cah 08-26-14

What About Grantor Retained Annuity Trusts  (GRATs)? 

- A Grantor Retained Annuity Trust ("GRAT"):

  - is an arrangement whereby an individual can transfer property to a trust which provides for payments back to the individual over a term of years in fixed dollar amounts that are sufficient to cause there to be no gift for gift tax purposes.

- Nevertheless, if the assets in the GRAT grow in value above approximately 1.0% a year, based upon present rates for GRATs entered into this year, the excess value remaining after the term of years can pass estate and gift tax-free.

- A GRAT is considered to be a Grantor Trust during the time that the Grantor receives annual payments, and can be considered to be a Grantor Trust thereafter, if drafted to facilitate that.

- Under the new rules, the funding of a GRAT after the date that this law would be enacted could cause income tax on the excess of the fair market value of the assets placed into the GRAT over the tax basis of such assets, and the excess value remaining after the GRAT term may be considered a gift when distributed, notwithstanding that Internal Revenue Code Section 2702 provides under present law that no gift results when the actuarial value of the annual payments made to the Grantor equals the value of assets placed into the Trust.

Charitable Lead Annuity Trusts (CLATs)

- A Charitable Lead Annuity Trust ("CLAT"):

  - works in a way very similar to a GRAT, except that the fixed annual payments will go to a charity, with what remains after the term of years that payments are made to pass to family members without being considered to be a gift.

- A Grantor CLAT is:

  - a CLAT that is drafted to be disregarded for income tax purposes, and therefore Grantor CLATs that are funded after the date of enactment may trigger income tax on the excess of the fair market value of the assets placed in the GRAT over the income tax basis, with the remainder interest passing to descendants being subject to federal gift tax when the payments to charity end.

The above discussion of QPRTs, GRATs and CLATs may not be accurate or what the Ways and Means Committee is intending, and guidance with respect to this will probably be forthcoming in any legislation that would pass, or before or immediately after passage, but individuals and families who are considering the use of QPRTs, GRATs or CLATs should proceed without delay.

While the loss of Grantor Trusts and discounting, not to mention Qualified Personal Residence Trusts, Grantor Retained Annuity Trusts and Charitable Lead Annuity Trusts would be formidable, other techniques will continue to exist.


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What Is the Big Deal About Grantor Trusts?

- A Grantor Trust is a trust that can be separate and apart from the Grantor and contributor of the trust for estate tax purposes, but be considered as owned by the Grantor for income tax purposes.

- Since the Grantor is considered as the owner of the trust for income tax purposes, transactions between the trusts and the grantor are “disregarded” meaning that assets can be sold or exchanged with the trusts without triggering any income tax consequences.

- The vast majority of well positioned wealthy clients who have engaged in planning have established these trusts, which allow the Grantor to pay the income tax on the trust assets on behalf of the beneficiaries, and also allow the Grantor to sell assets that may qualify for a discount, such as non-voting LLC interests for long term low interest notes without paying any income taxes on the sale.

- The numbers can be very advantageous where instead of owning a valuable asset that may have income and growth at 7% or more the client has a note bearing interest at 2% that will not grow in value. Not only that, but the Grantor can continue to pay the income taxes associated with the Trust’s assets without the payment of income taxes being considered a gift to the trust, which allows the trust to grow income tax free and further reduce the Grantor’s estate.


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What Is the Big Deal About Grantor Trusts? (Cont.)

- In the above example, **Mrs. Jones** could put $14,000,000 of investments in an LLC and gift the 99% non-voting membership interest in the LLC to a Grantor Trust for her descendants. Due to discounts associated with a non-controlling, non-marketable interest in the LLC allowed under present law, this might result in an $11,200,000 gift (assuming a 20% discount applies).

- **Mrs. Jones** can pay the income tax on the income from the investments for her remaining lifetime, which will further reduce estate taxes for her family upon death, but only if she acts before the date of enactment of the new bill.

Fortunately, Grantor Trusts established and funded before the enactment of the new law would be grandfathered, as would promissory notes in place at the time of enactment, so a great many estate tax planners expect to be very busy completing trusts and sale arrangements that are in progress now, and uncertain how many more they have the capacity to handle given the short time frame Congress is providing us with here.



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What Is the Big Deal About Grantor Trusts? (Cont.)

Grantor Trusts that are created after the act would result in the following:

1. Estate tax inclusion on death

2. Distributions from a grantor trust will be a deemed gift.

3. The conversion of a grantor trust to a non-grantor trust is considered a gift of the entire trust.

4. Sale transactions will not be disregarded.

5. If a “grandfathered” grantor trust is contributed to following the passage of the Act, then pro rata inclusion would result. For example, if the “grandfathered” trust has $9,000,000 of assets and an additional $1,000,000 of assets are gifted to the trust following the enactment of the Act, then 10% of the “grandfathered” grantor trust would be included in the estate of the grantor.

It remains to be seen how this will impact Life Insurance Trusts that are funded with annual exclusion gifts using *Crummey* withdrawal powers.


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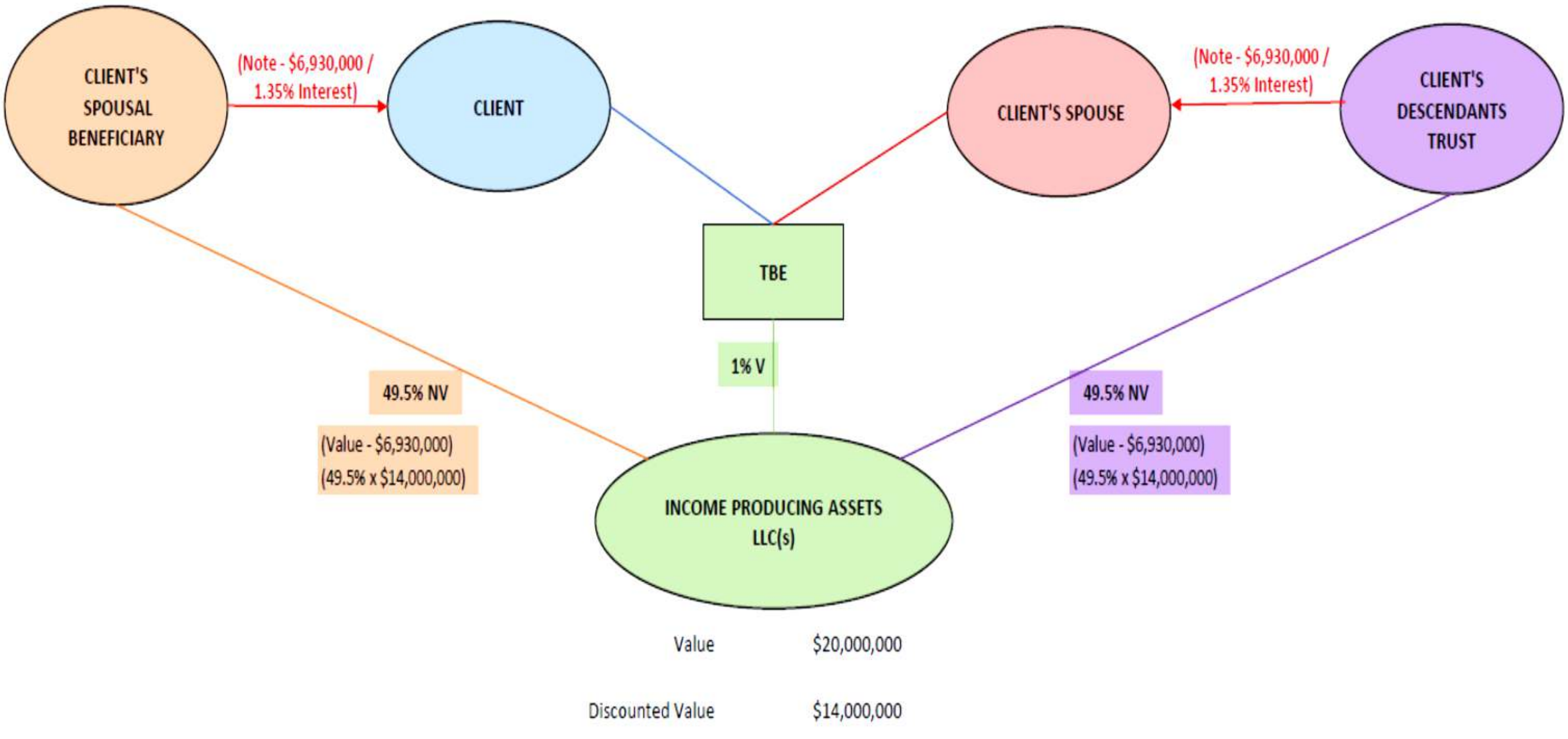
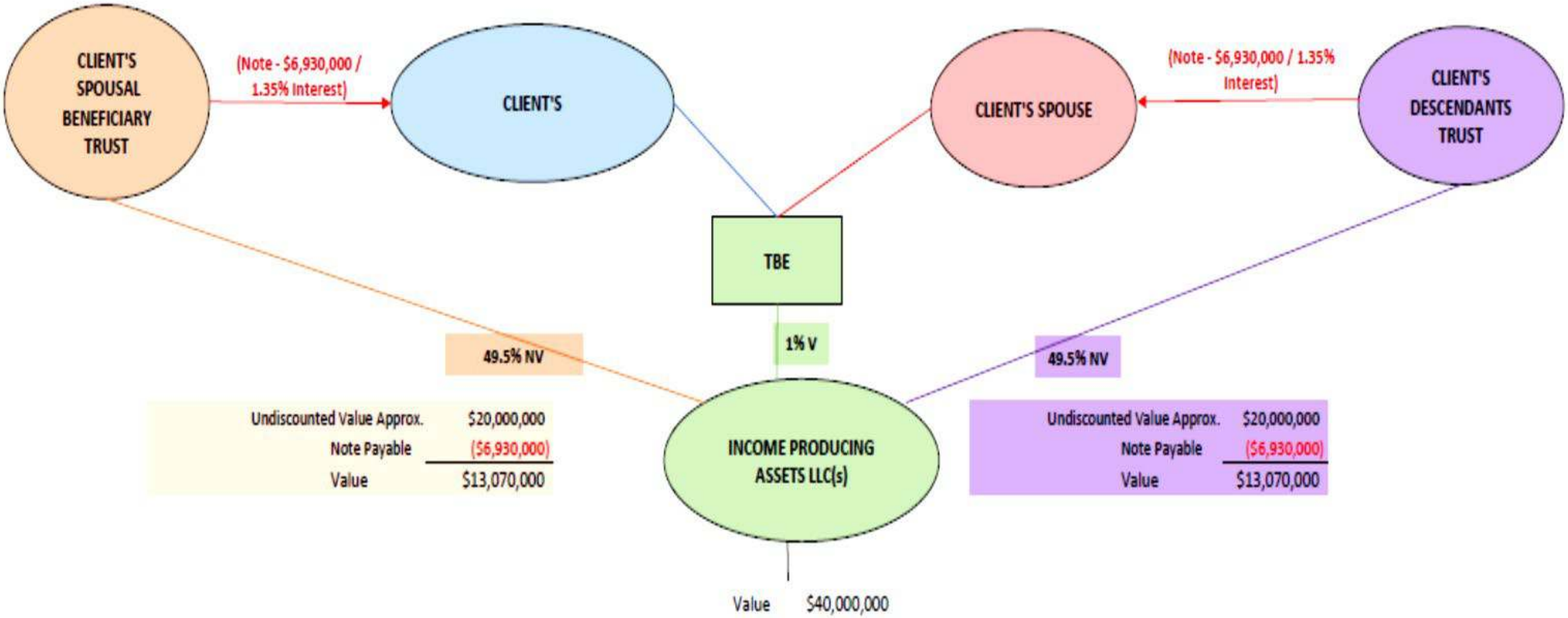
INSTALLMENT SALE (1 OF 2)



*NOTE: A separate trust for children may own a 1/10th of 1% Special Voting Member Interest that allows the Trustee of that trust to control if and when the LLC will make a distribution

INSTALLMENT SALE – 10 YEARS LATER (2 OF 2)



*NOTE: A separate trust for children may own a 1/10th of 1% Special Voting Member Interest that allows the Trustee of that trust to control if and when the LLC will make a distribution

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Example

Married Couple with Various Properties Who Would Like to Plan Quickly

Chart 1

HUSBAND

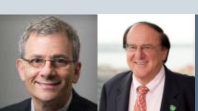
WIFE

JOINT

John's Interest in Business Properties	$934,000
Property 1	$750,000
Property 2	$60,000
Property 3	$200,000
TOTAL	**$1,944,000**

Jane's Interest in Business Properties	$1,890,000
Property 4	$2,000,000
TOTAL	**$3,890,000**

Property 5	$1,800,000
Property 6	$850,000
Property 7	$600,000
Property 8	$160,000
TOTAL	**$3,410,000**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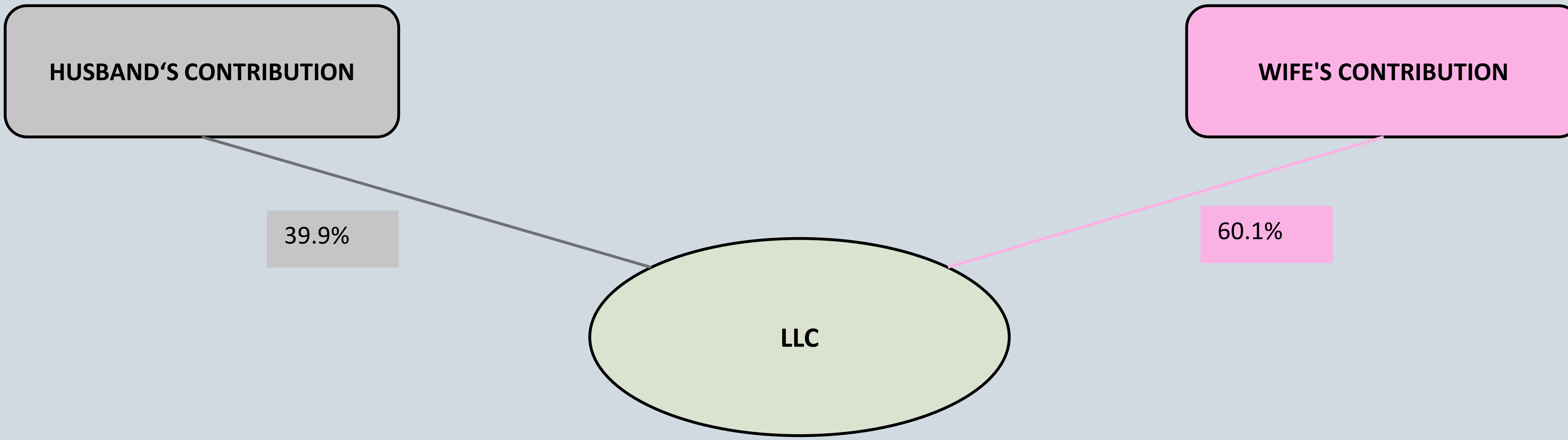
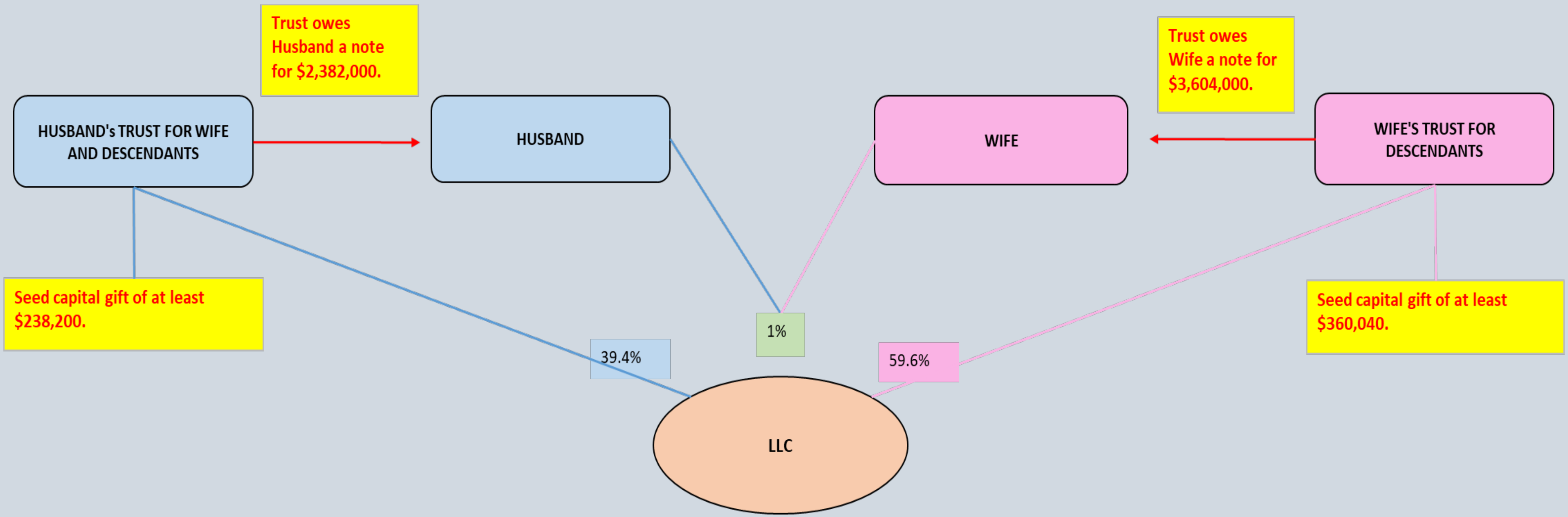
Relative Contributions Result in Relative Percentages of Ownership of LLC

Chart 2



Post Installment Sale – Assuming a 33-1/3% Discount

Chart 3



Approximate LLC Value = $9,069,697

Combined Notes = $5,986,000

Example

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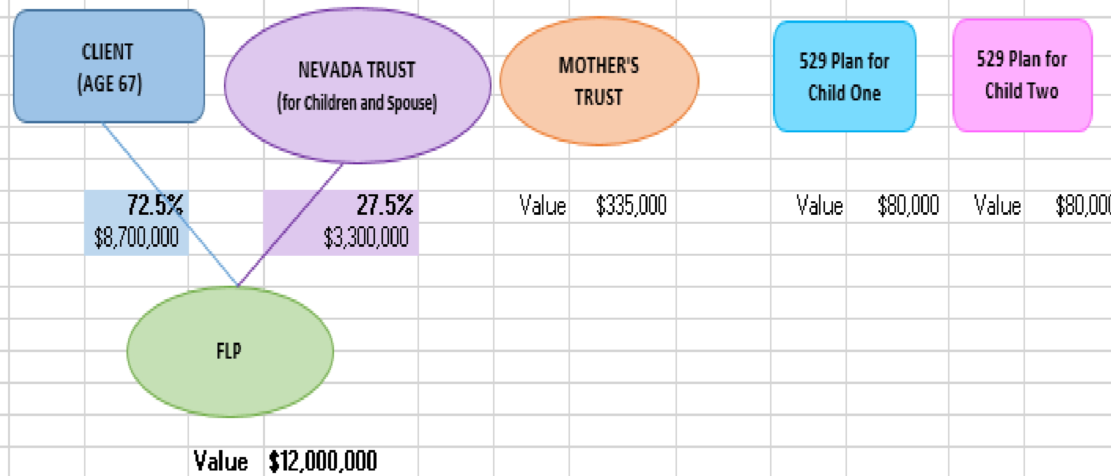
THE HAPPILY MARRIED CLIENT

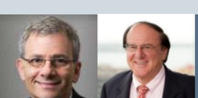
Age 67	Self-Canceling Installment Note ("SCIN")
Second Marriage	16 Year Balloon - 4.934% (1.2% + 3.734%)
	20 Year Balloon - 6% [?]
	Private Annuity - 6.938% for Life

Assets to Keep		Assets to Sell	
Cash	$600,000	Vacant Lot	$1,800,000
IRA	$433,000	Variable Annuit	$3,300,000
Home	$2,800,000	72.5% of FLP	$8,700,000
Personal Conc	$950,000		
TOTAL	**$4,783,000**	**TOTAL**	**$13,800,000**
		X	70%
[May do QPRTs in future]			$9,660,000



ESTATE TAXABLE *NOW* - $12,883,000

ESTATE TAX FREE *NOW* - $8,495,000



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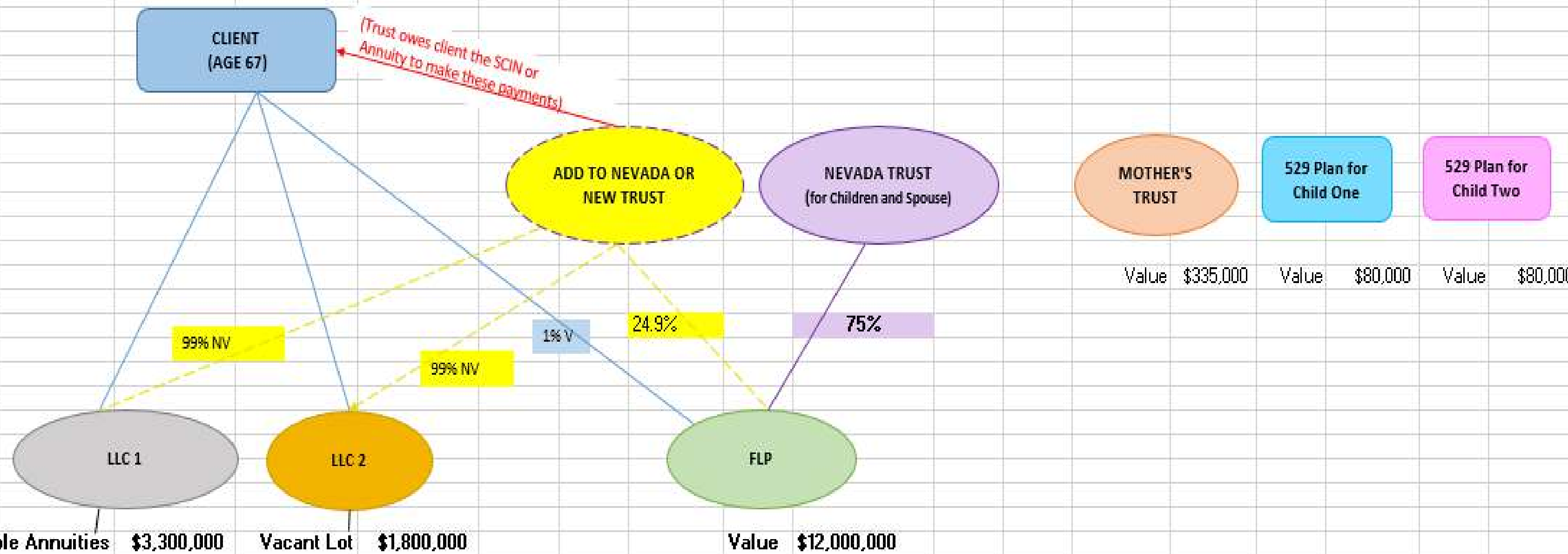
THE HAPPILY MARRIED CLIENT (Cont.)

Age 67
Second Marriage

Self-Canceling Installment Note ("SCIN")
16 Year Balloon - 4.934% (1.2% + 3.734%)
20 Year Balloon - 6% [?]
Private Annuity - 6.938% for Life



Assets Kept

Cash	$600,000
IRA	$433,000
Home	$2,800,000
Personal Conc	$950,000
1% of FLP	$30,000
TOTAL	**$4,813,000**

[May do QPRTs in future]

Assets Sold

Vacant Lot	$1,800,000
Variable Annuit	$3,300,000
24% of FLP	$2,970,000
TOTAL	**$8,070,000**

ESTATE TAXABLE *AFTER SALE* - $4,813,000

ESTATE TAX FREE *AFTER SALE* - $16,565,000

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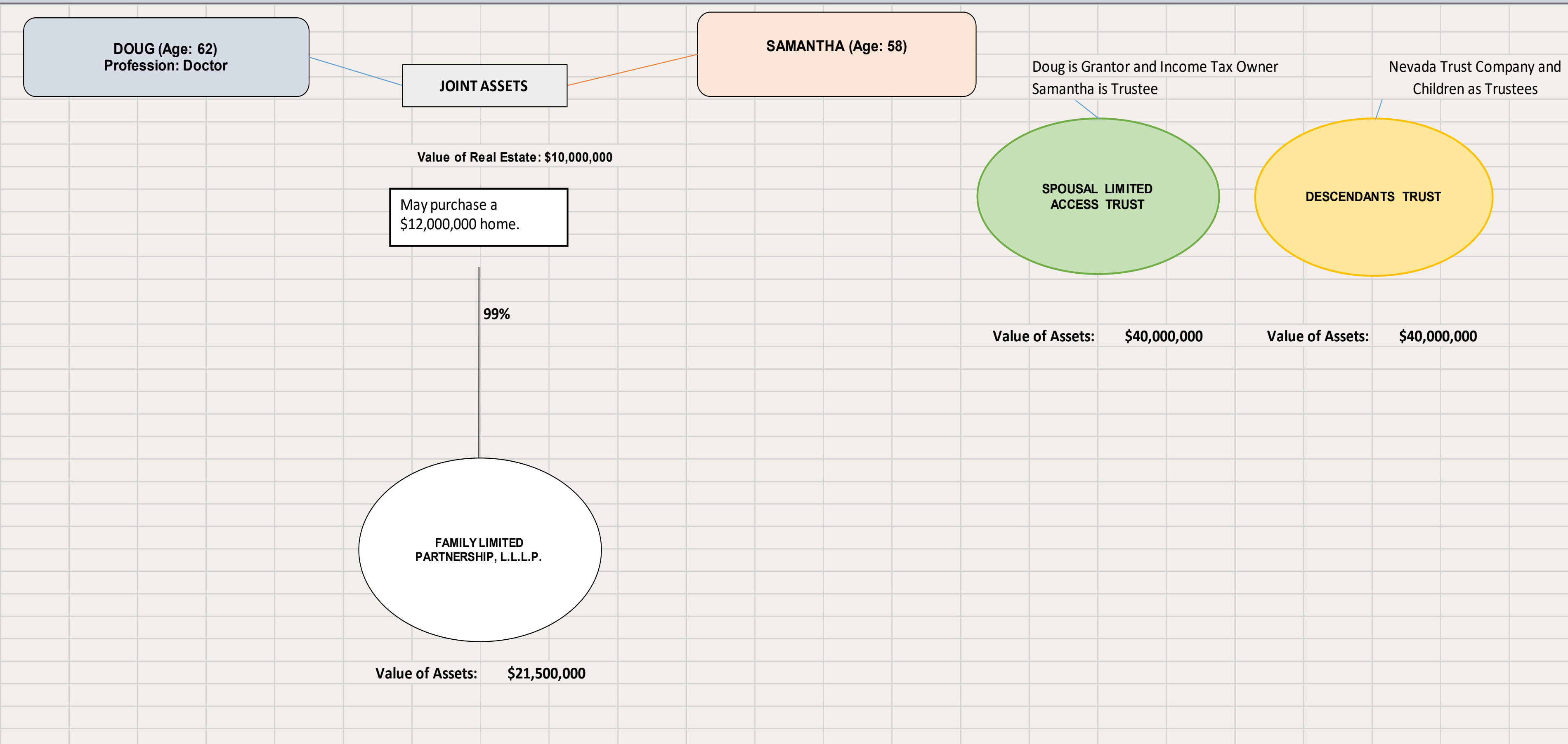
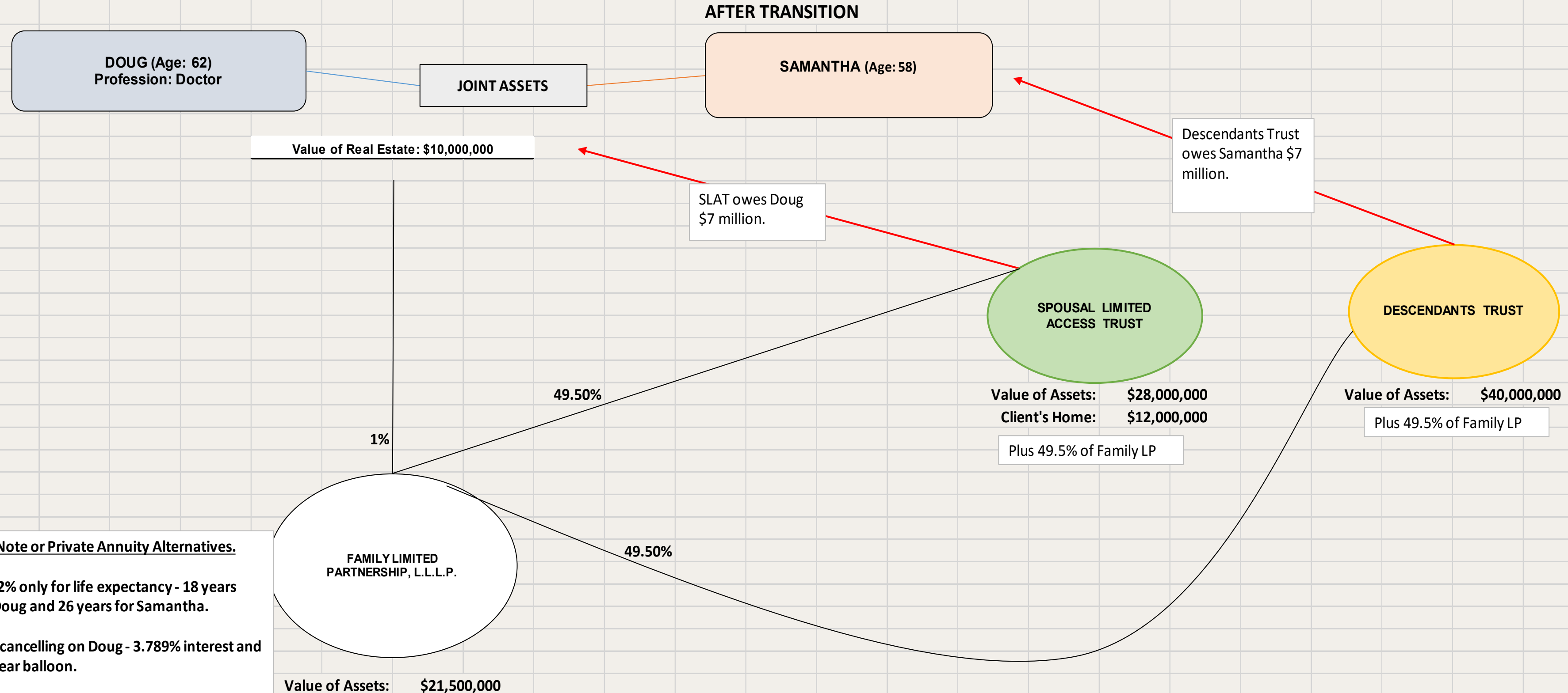
Example

Before Planning



After Planning



Promissory Note or Private Annuity Alternatives.

1. Pay 2% only for life expectancy - 18 years for Doug and 26 years for Samantha.
2. Self-cancelling on Doug - 3.789% interest and 19-year balloon.
3. Self-cancelling on death - 3.388% interest and 23 -year balloon.
4. Private annuity on Doug only - 5.66% of original sale price per year.

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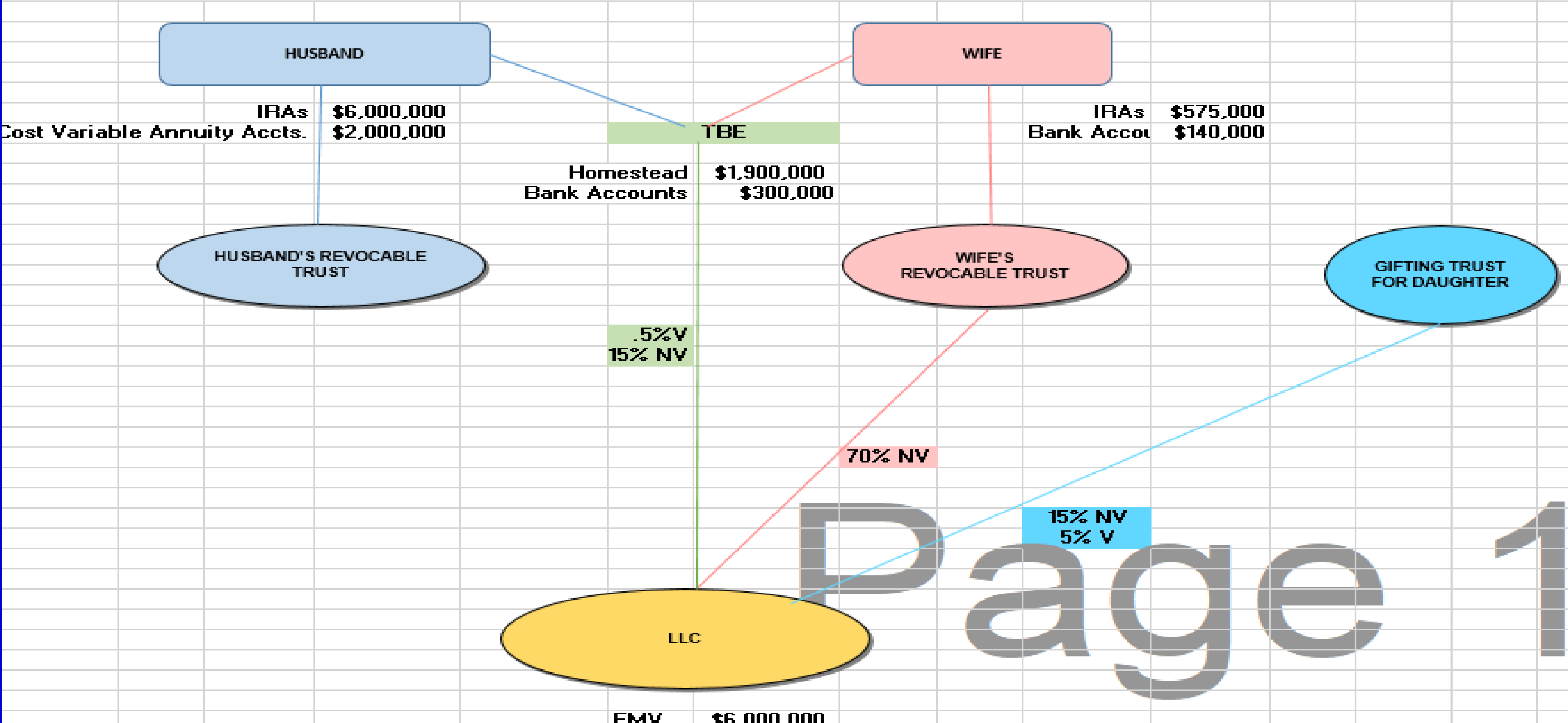
Example

Current Structure - No Planning



HUSBAND ESTATE (Death in Year 2 and Assumes Exemption Decreases by 1/2)		
Total Assets Included In Estate (Year 2)	Estate Tax Exemption	Taxable Estate
$9,500,000	($6,250,000)	$3,250,000

Estate Tax = $1,300,000

WIFE ESTATE (Death in Year 12 and Assumes Exemption Decreases by 1/2)			
Total Assets Included In Estate (Year 12)	Estate Tax Exemption	Portability Allowance	Taxable Estate
$23,823,486	($7,650,000)	$0	$16,173,486

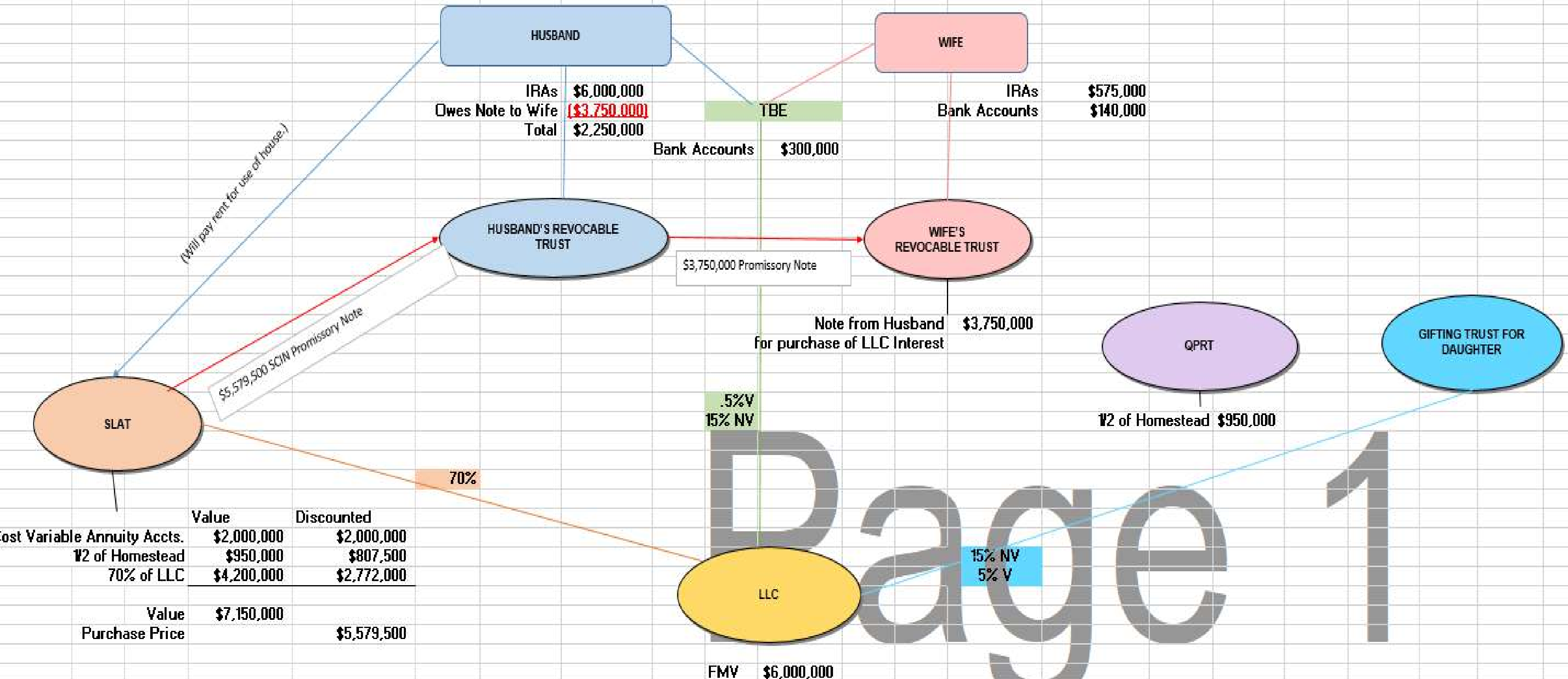
Estate Tax = $6,469,394

HUSBAND ESTATE (Death in Year 2 and Assumes No Change in Exemption)		
Total Assets Included In Estate (Year 2)	Estate Tax Exemption	Portability Allowance
$9,500,000	($11,800,000)	$2,300,000

WIFE ESTATE (Death in Year 12 and Assumes Exemption Decreases by 1/2)			
Total Assets Included In Estate (Year 12)	Estate Tax Exemption	Portability Allowance	Taxable Estate
$23,823,486	($7,650,000)	($2,300,000)	$13,873,486

Estate Tax = $5,549,394

After Proposed Planning - Including Annuity



HUSBAND ESTATE (Death in Year 2 and Assumes Exemption Decreases by 1/2)		
Total Assets Included In Estate (Year 2)	Estate Tax Exemption	Portability Allowance
$3,736,430	($6,250,000)	$2,513,570

WIFE ESTATE (Death in Year 12 and Assumes Exemption Decreases by 1/2)			
Total Assets Included In Estate (Year 12)	Estate Tax Exemption	Portability Allowance	Taxable Estate
$12,230,009	($7,650,000)	($2,513,570)	$2,066,439

Estate Tax Savings Over No Planning = $6,942,818

Estate Tax = $826,576

Estate Tax Savings if Annuity Included = $1,517,349

$5,859,812 - $2,066,439 = $3,793,373

$3,793,373 x 40% = $1,517,349

HUSBAND ESTATE (Death in Year 2 and Assumes No Change in Exemption)		
Total Assets Included In Estate (Year 2)	Estate Tax Exemption	Portability Allowance
$3,736,430	($11,800,000)	$8,063,570

WIFE ESTATE (Death in Year 12 and Assumes Exemption Decreases by 1/2)			
Total Assets Included In Estate (Year 12)	Estate Tax Exemption	Portability Allowance	Taxable Estate
$12,230,009	($7,650,000)	($8,063,570)	($3,483,561)

Estate Tax Savings Over No Planning = $5,549,394

Estate Tax = $0

Estate Tax Savings if Annuity Included = $123,925

$309,812 * 40% = $123,925

THE BIDEN 2-STEP:

ESTATE TAX AVOIDANCE
FOR HIGH NET WORTH TAXPAYERS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What Is The Biden 2-Step?

The Biden 2-Step is a multiple step planning protocol that may be used by high net value taxpayers that would like to both:

(A) eliminate or reduce federal estate taxes, and

(B) be well situated to make use of a large part of what remains of each taxpayer's $11,700,000 estate tax exemption, at least for the rest of the 2021 year.

(This $11,700,000 exemption increases each year with chained CPI, and will be reduced to one-half of its then applicable level on 1/1/2026, unless Congress and a President delay or eliminate this reduction.)

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What Is The Biden 2-Step? – *Cont’d*

It is possible that the exemption amount is reduced to a lower level effective January 1, 2021, but 2022 is much more likely. Legislation to raise tax revenues enacted any time during the 2021 year can be retroactive to the first day of the year.

Therefore, it will be best to be ready for the most effective manner of using the exemption, especially if there are other tax burdens that come with changes, such as loss of discounts, stepped up basis upon death, and paying a higher tax sooner on inherited IRA’s and other “IRD assets”.


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What Is The Biden 2-Step? – *Cont'd*

Step One - Exchange assets / net worth for a long-term low interest promissory note via a sale to an irrevocable "intentional grantor trust."

Many taxpayers will want to complete the intra-family installment sale as soon as possible so as not to wait until legislation is passed to implement the first step (the installment sale to a grantor trust) and lose significant discounts that might not apply under new legislation.

What Is The Biden 2-Step? – *Cont'd*

Step Two - **Before year-end, if necessary, make a gift of the promissory note via one or more of the following:**

(A) simply forgive some or all the note.

(B) gift the note to one or more individuals or other entities.

(C) gift the note to a Q-TIP Trust, so that it can be decided on or before 9/15/2022 whether to consider this a "complete gift" to a trust that will not be taxed in the spouse's estate, or a "marital deduction gift" that can result in the spouse receiving the note or other contributed assets, and later forgiving it.


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Step Transaction Doctrine

- *Senda, Holman*, and other court decisions.

- A transfer of assets to an LLC that is immediately followed by a transfer of non-voting member interests by gift will be considered to be a gift of the underlying assets, with no discount permitted.

- It is safest to wait 30 - 45 days between contribution and member interest transfer.

- The more volatile the asset contributed, the less waiting time required.

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Summary of cases where courts have addressed the step transaction doctrine by analyzing the close proximity between date of funding of entity and date of transfer of entity interests.

Case Name/ Court	Decision Date	Date Entity Formed	Date Assets Transferred	Date Interest Gifted	# of days in between	Court Found For	Type of Assets Invested	Court Held	Court's Dicta	Special notes
Holman v. Comr. (U.S. Tax Ct.)	5/27/08	11/3/99	11/2/99	11/8/99	6	Taxpayer	Shares of Dell stock	The limited partnership was formed and the shares of Dell stock were transferred to it almost 1 week in advance of the gift, so that on the facts before us, the transfer cannot be viewed as an indirect gift of the shares to the donees. Furthermore, the gift may not be viewed as an indirect gift of the shares to the donees under the step transaction doctrine.	This case is distinguishable from *Senda* because petitioners did not contribute the Dell shares to the partnership on the same day they made the 1999 gift; indeed, almost 1 week passed between petitioners' formation and funding of the partnership and the 1999 gift. Petitioners bore the risk that the value of an LP unit could change between the time they formed and funded the partnership and the times they chose to transfer the LP units. Therefore, the Court decided not to disregard the passage of time and treat the formation and funding of the partnership and the subsequent gifts as occurring simultaneously under the step transaction doctrine. Also, in this case, the IRS conceded that a 2-month separation is sufficient to give independent significance to the funding of a partnership and a subsequent gift of LP units.	There were other gifts and transfers, but the Court was only concerned with the November set of transactions.

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Summary of cases where courts have addressed the step transaction doctrine by analyzing the close proximity between date of funding of entity and date of transfer of entity interests.

Case Name/ Court	Deci-sion Date	Date Entity Formed	Date Assets Transf-erred	Date Interest Gifted	# of days in between	Court Found For	Type of Assets Inves-ted	Court Held	Court's Dicta	Special notes
Senda v. Comr. (U.S. Tax Ct.)	7/12/04	6/3/98 (SFLP I) 12/2/99 (SFLP II)	12/28/98 12/20/99	12/28/98 12/20/99	0 0	IRS	Shares of stock Shares of stock	The taxpayers' transfers of stock to partnerships, coupled with transfer of limited partnership interests to their children, were indirect gifts of stock to children, and thus, stock and not partnership interests, would be valued for gift tax purposes.	Petitioners presented no reliable evidence that they contributed the stock to the partnerships before they transferred the partnership interests to the children. It is unclear whether petitioners' contributions of stock were ever reflected in their capital accounts. At best, the transactions were integrated and, in effect, simultaneous. Therefore, the Court concluded that the value of the children's partnership interests was enhanced upon petitioners' contributions of stock to the partnerships and were indirect gifts.	On January 31, 2000, petitioner gave to each child an additional 4.5-percent limited partnership interest in SFLP II.

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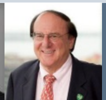
Summary of cases where courts have addressed the step transaction doctrine by analyzing the close proximity between date of funding of entity and date of transfer of entity interests.

Case Name/ Court	Deci-sion Date	Date Entity Formed	Date Assets Transf-erred	Date Interest Gifted	# of days in between	Court Found For	Type of Assets Inves-ted	Court Held	Court's Dicta	Special notes
Estate of Jones v. Comr. (U.S. Tax Ct.)	3/6/01	1/1/95 (JBLP) 1/1/95 (AVLP)	1/1/95 1/1/95	1/1/95 1/1/95	0 0	Tax-payer	Assets including real property	Transfers of property to partnerships were not taxable gifts.	All of the contributions of property were properly reflected in the capital accounts of the taxpayer, and the value of the other partners' interests was not enhanced by the contributions of decedent. Therefore, the contributions do not reflect taxable gifts.	

Summary of cases where courts have addressed the step transaction doctrine by analyzing the close proximity between date of funding of entity and date of transfer of entity interests.

Case Name/ Court	Deci-sion Date	Date Entity Formed	Date Assets Transf-erred	Date Interest Gifted	# of days in between	Court Found For	Type of Assets Inves-ted	Court Held	Court's Dicta	Special notes
Shepherd v. Comr. (U.S. Tax Ct.)	10/26/00	8/2/91	Leased Land (8/1/91) ; Bank Stock (9/9/91)	8/2/91	Varies	IRS	Fee interest in timberland subject to a long-term timber lease and stocks in three banks	Transfers represent separate indirect gifts to his sons of 25% undivided interests in the leased timberland and stocks.	Not every capital contribution to a partnership results in a gift to the other partners, particularly where the contributing partner's capital account is increased by the amount of his contribution, thus entitling him to recoup the same amount upon liquidation of the partnership. Here, however, petitioner's contributions of the leased land and bank stock were allocated to his and his sons' capital accounts according to their respective partnership shares. Upon dissolution of the partnership, each son was entitled to receive payment of the balance in his capital account.	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QUESTIONS EMAILED THIS WEEK

Questions for Professor Hesch:

1. How soon might a tax bill be passed and signed by the President?

2. How much time will there be between when the news reports the Senate and House are in general agreement and the law gets signed ("enacted") by the President?

3. If the SLAT that I fund for my spouse buys a house can I live there with my spouse without paying rent?

4. If I form a SLAT what are the chances that I will be able to "toggle off" grantor trust income tax status and make it pay its own taxes?

5. If I can't toggle off can my spouse and I file a joint tax return and then the SLAT pays half of the taxes on her behalf even though the majority of the income on the tax return is mine?

6. Why is it that the air conditioner in your Triumph never breaks?


IRREVOCABLE LIFE INSURANCE TRUST (ILIT) QUESTION

I am particularly interested in how this affects ILITs, such as:

1. Should grantor ILIT's be changed to non-grantor ILIT's now;
2. What to do about future contributions to ILIT's;
3. Any thoughts re sales of Insurance policies to ILIT's now/after the effective date of the law.

Thank you so much for conducting this seminar!!!

IRREVOCABLE LIFE INSURANCE TRUST (ILIT) QUESTION

In this webinar, would you please cover how the proposed tax law changes effect ongoing contributions of a grantor to an ILIT and how the death benefit of a policy may or may not be allocated back to the grantor's estate based on contributions to the ILIT after the law is passed.

Thank you very much for your kind consideration of my question.

IRREVOCABLE LIFE INSURANCE TRUST (ILIT) QUESTION

Hello Alan,

- What are your thoughts on setting up an Irrevocable Life Insurance Trust ("ILIT") for two large existing whole life policies?

- Husband and wife each have a policy.
  Should two separate trusts be set up? One for one spouse and another one for the other spouse?

- How does the existing CSV play into the lifetime exemption limits?

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IRREVOCABLE LIFE INSURANCE TRUST (ILIT) QUESTION

I am interested in the following:

How do you think ILIT insurance trusts will be treated under new law?

> - Could you prepay to avoid this (Insurance company will accept 20 yr. prepayment at very bad interest rates)? Would that be worth it?

Can you make GRATs now (before law is enacted) and expect that proceeds years from now (if the GRAT is successful) for beneficiaries will not be subject to the new tax rules?

I have two questions

1) For Grantor Trusts grandfathered in, will swapping of assets be allowed?

2) For Grantor Trusts grandfathered in, will beneficiaries be able to withdraw funds in the future without incurring gift or income taxes on the distribution?

Thank you.

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Please address effective date of new restrictions on use of Grantor Trusts -- I have read conflicting reports of whether the limitations would become effective upon the date of enactment, or on trusts/contributions after September 13, 2021.

Thank you.

Curious as to your thoughts on the proposed added 3% tax on estates and trusts with AGI of only $100,000 whereas this tax will only be applied to individuals who are in the $3 or 5 million AGI. Seems to tax the planning of keeping property in continuing trusts. Perhaps you can share thoughts on this during Saturday's webinar.

C. 1A. SURCHARGE ON HIGH INCOME INDIVIDUALS, ESTATES, AND TRUSTS.''(a) GENERAL RULE.—In the case of a taxpayer other than a corporation, there is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to 3 percent of so much of the modified adjusted gross income of the taxpayer as exceeds — ''(1) $5,000,000, in the case of any taxpayer not described in paragraph (2) or (3),''(2) $2,500,000, in the case of a married individual filing a separate return, and ''(3**)** **$100,000, in the case of an estate or trust.**

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Alan, here are a few questions:

(1) What is a summary of the procedural steps required for all or any portions of the House Dems plan to become law? Does this need to be done in connection with the budget reconciliation or budgeting process? Do we have any sense of the Senate’s appetite to adopt these proposals to kill grantor trusts?

(2) Clients have set up grantor trusts (GTs) relying on the flexibility that in the future they could swap assets or borrow from the trust without security if necessary or desirable. Under the new proposal, would that still be available for grandfathered GTs that are in existence now?

(3) Do we think that a grandfathered GT could simply turn off GT status next year to make new contributions if the exemptions increase? Any reason a Trust Protector couldn't still turn grantor trust status back on in the future (or the trustee could merge the trust assets into a new grantor trust) if the GT rules change back in the future?


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CAN YOU GIFT OR SELL NOW AND REVERSE IT IF CONGRESS DOES NOT ACT?

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THE DISCLAIMER BACK TO ME TRUST

Spouse 1 makes a gift to a Spousal Limited Access Trust ("SLAT"), which provides that the beneficiary spouse ("imaginatively named Spouse 2") may disclaim or cause a disclaimer of all beneficial rights under the Trust, in which event the Trust assets may return to Spouse 1.

1. Will this work?

2. This would provide a 9-month lookback.

A LIFETIME Q-TIP TRUST TO THE RESCUE

A Lifetime Q-TIP Trust to the Rescue

An alternative strategy that married taxpayers may use to have the client the ability to pull the plug on a large 2021 gift as late as September of 2022, would be to transfer the low interest long-term note in late December of 2021 to a “Lifetime Q-TIP Trust” that will qualify for the estate tax deduction to the extent necessary to avoid imposition of gift tax on the donor spouse.

A Q-TIP Trust is a trust that must pay all income to the spouse beneficiary, and can be used solely to benefit the spouse beneficiary during his or her lifetime. A trustee can be given the power to devise all assets under the trust to such spouse.

A Q-TIP Trust can be divided into two separate sub trusts, one of which can be considered to be a Credit Shelter Trust that will not be subject to estate tax on the death of the spouse beneficiary, with the other trust qualifying for the marital deduction and being considered to be a Grantor Trust owned by the spouse beneficiary during her lifetime.

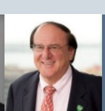
The Grantor of the Q-TIP Trust can elect what portion of the trust will be treated as the Credit Shelter Trust, and what portion of the trust will be considered to be the Marital Deduction Trust, in the manner described above by an election that must be filed by April 15 of the calendar year following the contribution to the Trust, or by October 15, if the Grantor spouse files a timely extension. It is essential that the election be made on time, because there is no relief available if not.

See Creative Trust Planning Strategies for Using Lifetime Q-Tips, by Richard S. Franklin, ABA Section of Real Property Trusts and Estates Law Webinar April 7, 2018. Richard Franklin can be contacted at rfranklin@fkl-law.com.

A Lifetime Q-TIP Trust to the Rescue, *Cont'd*

This mechanism allows a grantor who is uncertain as to whether he or she wants to use some or all of his or her remaining estate tax exemption amount, and also enables the Grantor to use a "Formula Clause", which may best be described by the following example:

> Harold has $10,000,000 of his $11,700,000 estate tax exclusion remaining in December, 2021. He also has a $15,000,000 low interest rate promissory note that pays interest annually and will balloon in 20 years. The note may be worth $12,000,000.
>
> Harold places the promissory note into a lifetime Q-TIP Trust for his wife, Dorothy in 2021. Harold then waits to see whether the estate tax exemption is reduced by legislation. On or before the due date in 2022 Harold may file an election to treat the entire Q-TIP Trust as a Marital Deduction Gift, and thus retain his exclusion amount, as if no gift was made. In that event, the trustee of the Q-TIP Trust may distribute the note to Dorothy, so that no large gift has essentially been made.
>
> Alternatively, if the estate tax exclusion is reduced, then Harold can make the gift to the Q-TIP Trust effective in 2021 as a "retroactive" gift of his remaining exemption amount by making a Formula Election which says "have an amount of assets in Credit Shelter portion of the Q-TIP Trust equal in value to my remaining exclusion amount divided by the total value of trust assets, with the remaining trust assets to be held as a Marital Deduction Trust."

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A Lifetime Q-TIP Trust to the Rescue, *Cont'd*

The Trustee hires a valuation expert after Harold has made his election, and the expert opines that 83.33% of the note should pass to the Credit Shelter portion of the Q-TIP Trust and 16.67% of the note should pass to the Marital Deduction portion. 83.33% of $15,000,000 is $12,500,000 in principal that the Credit Shelter Trust may receive if the note is paid off after a few years of having the trust receive interest payments. The remaining $2,550,000 portion of the note that is in the Q-TIP Marital Deduction sub trust will be included in his spouse's taxable estate, and may be subject to both a time value of money discount for the low interest rate situation and a partial ownership discount, as per the *Smith v. U.S.* case, which is discussed above.

If the IRS audits a gift tax return more of the note may have to be allocated to the Marital Deduction portion, but no gift tax will be owed.

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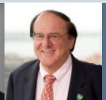
A Lifetime Q-TIP Trust to the Rescue, *Cont'd*

One disadvantage of the Credit Shelter Sub-trust feature of the Q-TIP Trust is that it must pay all income to the surviving spouse, which would mean all interest payments on the promissory note portion allocated to the Credit Shelter Trust will come out to the spouse, but the note may be paid in full, and then the money may be invested in growth stocks that pay no dividends.

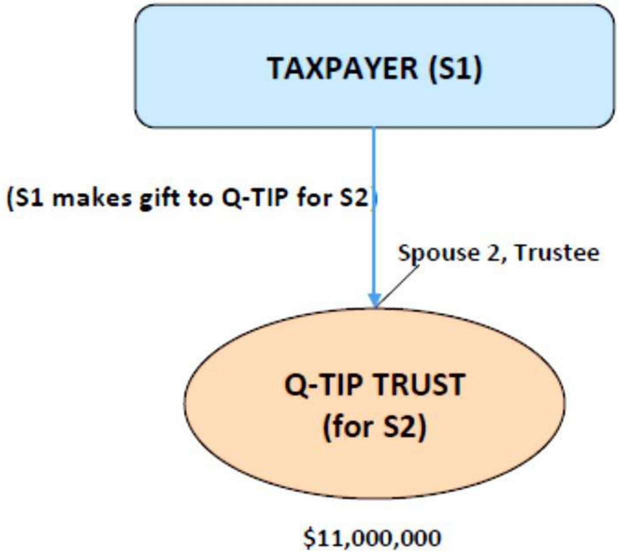
In the 1992 5th Circuit Court of Appeals decision of *Estate of Clayton* (976 F.2d 1486), the Court held that the portion of the Q-TIP Trust designated as a Credit Shelter Trust (to not qualify for the marital deduction) would not have to pay income to the surviving spouse if drafted to provide for this. The IRS responded to this case by establishing the "Clayton Q-TIP Election" regulations at Sec. 20.2056(b)-7(d) to allow for this for a Q-TIP trust formed at death, but it is not clear whether this treatment can apply for a lifetime Q-TIP gift.[1]

WAIT AND SEE Q-TIP TRUST

2021

Flexible Planning With A Q-Tip Trust



In 2021, S1 conveys assets (could be $11,000,000 worth) to Q-TIP Trust for S2.

Must pay all income to S2 and solely benefit S2 for S2's lifetime, plus can provide health, education and maintenance - and even more benefits and payments to S2.

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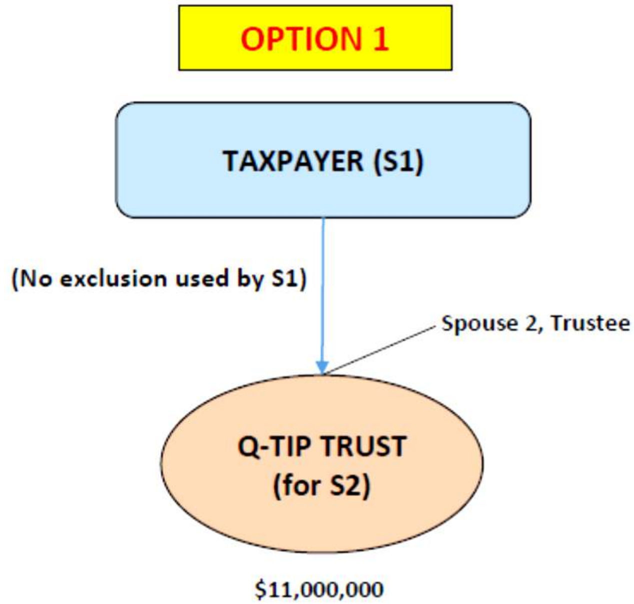
WAIT AND SEE Q-TIP TRUST

On or before September 15, 2022, S1 has the following choices:

2022

Treat The Entire Q-TIP Trust As A Marital Deduction Trust



OPTION

1 Treat the entire Q-TIP Trust as a Marital Deduction Trust -

- A No use of exemption has occurred.
- B Trustee can continue Trust - Trust assets protected from creditors.
- C Trust Protectors or Independent Trustee may cause all assets to be distributed to S2 to terminate the Trust
- D All income must be paid to S2
- E Some or all of Trust assets may be transferred to S2
- F S2 may exercise Power of Appointment, so that assets are held for lifetime health, education and maintenance of S1
- G Protected from creditors of S1, if S1 resides in Florida or another "Q-TIP Trust protection state."

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WAIT AND SEE Q-TIP TRUST

2021

Flexible Planning With A Q-Tip Trust

TAXPAYER (S1)

(S1 makes gift to Q-TIP for S2)

Spouse 2, Trustee

Q-TIP TRUST (for S2)

$11,000,000

In 2021, S1 conveys assets (could be $11,000,000 worth) to Q-TIP Trust for S2.

Must pay all income to S2 and solely benefit S2 for S2's lifetime, plus can provide health, education and maintenance - and even more benefits and payments to S2.

2022

S1 Elects To Have Entire Trust Be A "Completed Gift"

OPTION 2

TAXPAYER (S1)

(Total complete gift treatment - has used S1's $11,580,000 exclusion, based upon value at time of funding. Will not be included in S2's estate)

Spouse 2, Trustee

Q-TIP TRUST (for S2)

$11,000,000

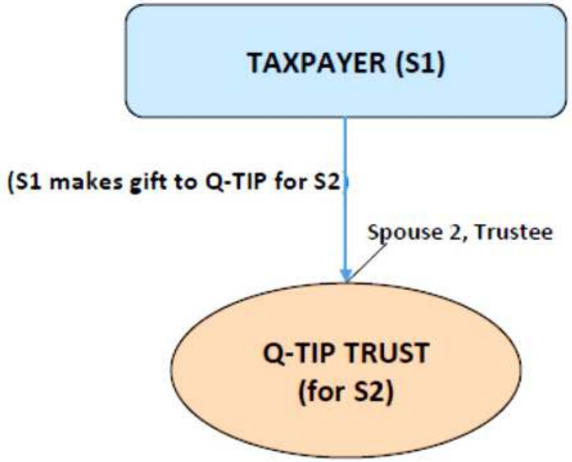
OPTION 2 S1 elects to have entire trust be a "completed gift":

- A Uses S1's $11,580,000 exemption to the extent of assets contributed.
- B Can limit payments to being (1) all income to S2, and (2) only amounts as needed for S2's health, education and maintenance.
- C Trust assets will not be taxed in estate of S1 or S2 - income received by S2 will be added to S2's estate, if not spent.
- D Trust can invest in low or no income assets, or may be able to use a "Blocker LLC" to reduce or eliminate income.
- * Treasury Regulations do not provide for a lifetime Q-TIP "Clayton" election that would cause the income interest to not apply.

WAIT AND SEE Q-TIP TRUST

2021

Flexible Planning With A Q-Tip Trust



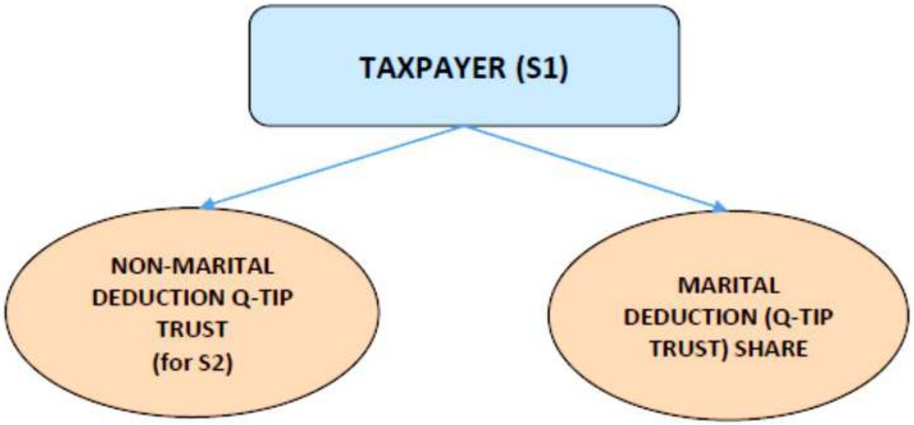
In 2021, S1 conveys assets (could be $11,000,000 worth) to Q-TIP Trust for S2.

Must pay all income to S2 and solely benefit S2 for S2's lifetime, plus can provide health, education and maintenance - and even more benefits and payments to S2.

2022

Partial Marital Deduction Election

OPTION 3



1. Not included in surviving spouse's estate
2. Must pay income to surviving spouse
3. May be appointed to benefit S1 after S2's death.

1. Pays income to surviving spouse.
2. Independent Trustee or Trust Protectors may transfer all assets to surviving spouse to terminate.
3. Will be considered to be owned by S2 for federal estate tax purposes when S2 dies.

OPTION

3 Partial marital deduction election exercise -

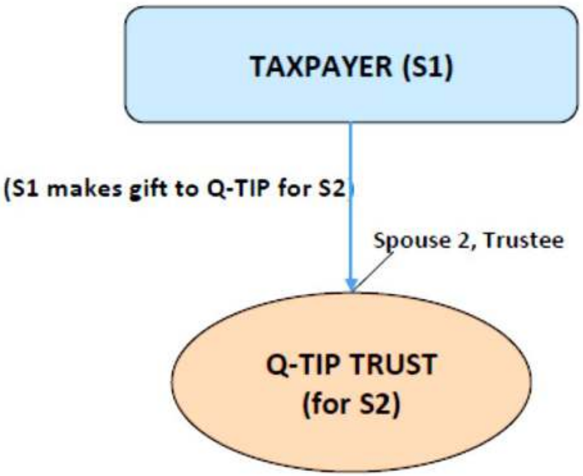
Example A Have marital deduction apply to the extent of $3,000,000 - the other $7,000,000 stays in Non-Marital Deduction Q-TIP Trust.

Example B Marital Deduction Trust to the extent exceeding $8,000,000 so that Non-Marital Deduction Trust is $3,000,000.

WAIT AND SEE Q-TIP TRUST

2021

Flexible Planning With A Q-Tip Trust



$11,000,000

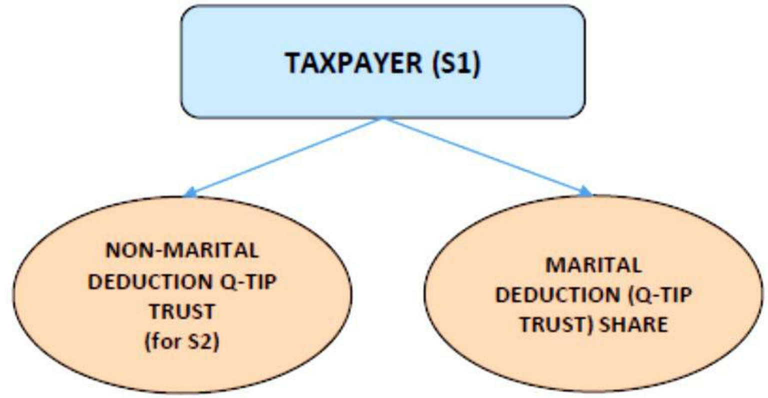
In 2021, S1 conveys assets (could be $11,000,000 worth) to Q-TIP Trust for S2.

Must pay all income to S2 and solely benefit S2 for S2's lifetime, plus can provide health, education and maintenance - and even more benefits and payments to S2.

2022

Formula Division When Assets May Exceed Exemption Amount

OPTION 4



1. Worth $11,580,000
2. Must pay income to surviving spouse
3. May be appointed to benefit S1 after S2's death.

1. Worth $ 2,420,000 in value

$14,000,000
-$11,580,000
= $2,420,000

OPTION

4 The September 15th election can provide that the amount that can pass gift tax-free will pass to Non-Marital Deduction Q-TIP Trust with remaining assets passing to Marital Deduction Trust.
The Taxpayer may claim that the assets are worth less than $11,580,000. If the IRS audits, there will be no gift tax due - but assets will be pushed to the Marital Deduction Trust.

STRONG WARNING - Failure to file a gift tax return with election on a timely basis causes loss of marital deduction-significant malpractice risk.

PLANNING TO PLAN

Income Tax Changes Under the September 13th Proposed Tax Law Changes

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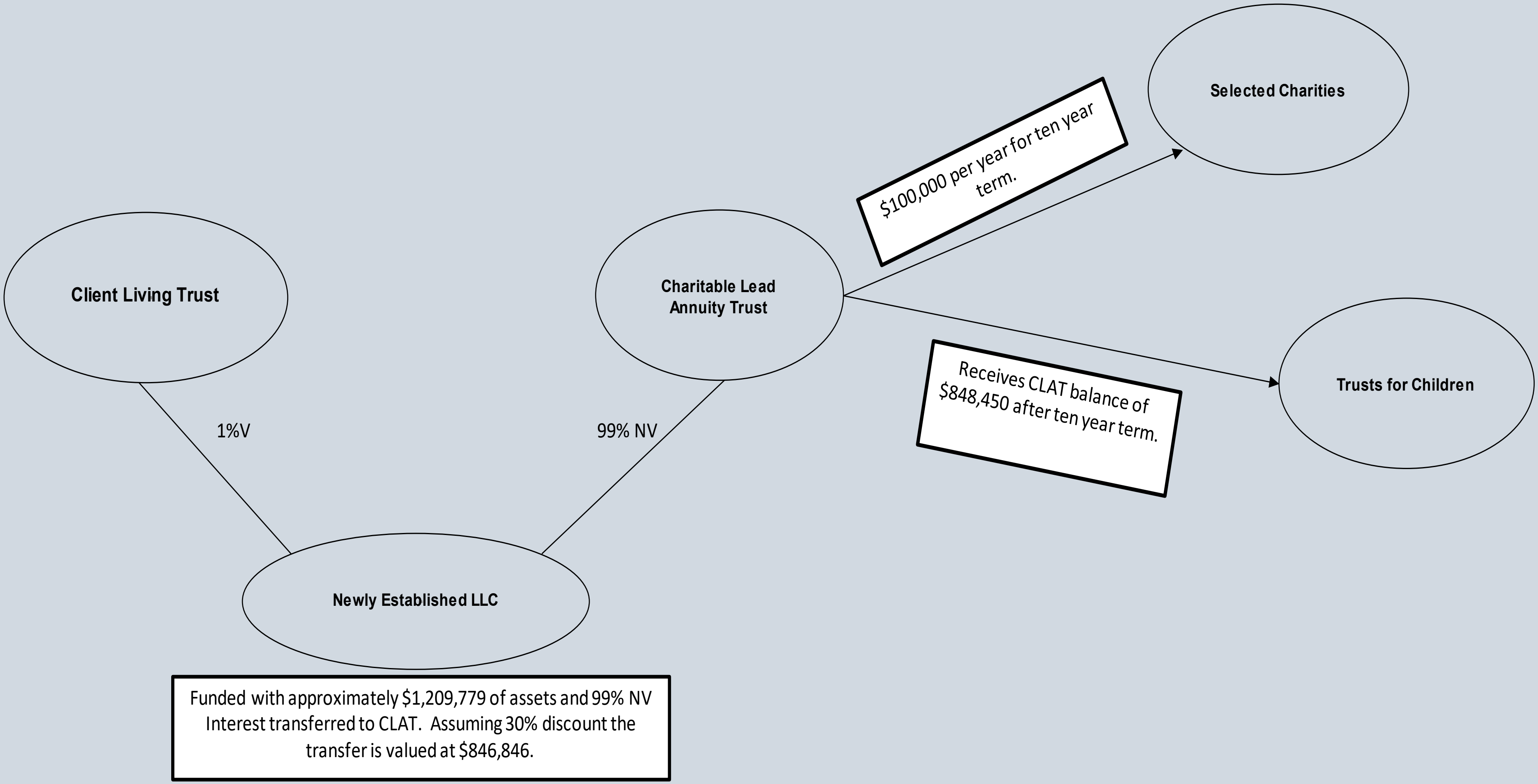
Charitable Lead Annuity Trust



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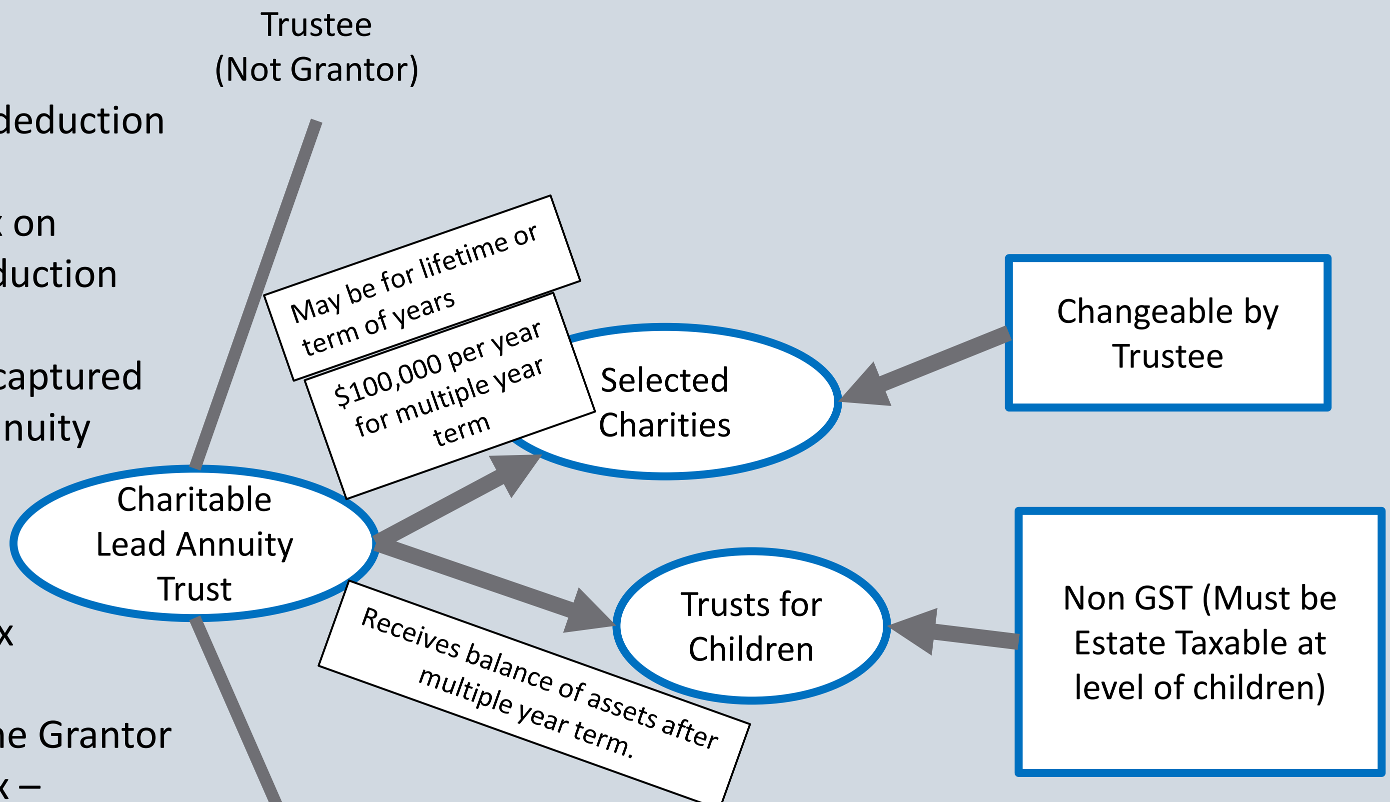
Lifetime Charitable Lead Annuity Trust

Grantor CLAT

- Grantor gets charitable deduction upon funding
- Grantor pays income tax on income – No further deduction for what goes to charity
- Charitable deduction recaptured if Grantor dies during annuity term

Non Grantor CLAT

- No charitable income tax deduction upon funding
- Income not taxable to the Grantor
- Trust is taxed as complex – Payments to charity carry out distributable net income
- Transfer of appreciated assets from CLAT to charity triggers income tax – Offset by value of what goes to charity



Assets held under Trust

1. Well suited for stocks and bonds
2. Promissory notes may work well
3. C corporation stock can work well
4. Not suitable for IRAs
5. Not eligible to hold S corporation interests
6. Other limitations apply

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Grantor CLATs

A Grantor CLATs main benefit is that it will provide an immediate income tax charitable deduction, based upon the present value of the future payments going to the charity(ies).

The Grantor can “zero-out” the CLAT to receive a 100% income tax charitable deduction.

Even if the CLAT is “zeroed-out,” the non-charitable beneficiaries will still likely receive assets at the end of the term of the CLAT because the hurdle rate is the 7520 rate.

- The investments made by the CLAT can generally grow at greater than the 7520 rate.
- The 7520 rate as of September 2021 is only 1.0%.

In the event that the Grantor dies before the term of the Grantor CLAT expires, the donor’s estate will recognize ordinary income in an amount equal to the excess of:

1. The charitable income tax deduction that the donor received on initial funding, over
2. The amount of payments that have been made to charity by the CLAT.

The funds held by the Grantor CLAT at the time of the Grantor’s death, will not be included in the Grantor’s estate as long as the trust was drafted in a manner that would not otherwise require the funds to be included in the Grantor’s estate. Thus, a Grantor CLAT can provide the same gift and estate tax deductions as the Non-Grantor CLAT as described on the next slide.

Non-Grantor CLATs

Funding a Non-Grantor CLAT is taxed as a Complex Trust, and will not provide the contributor with an immediate charitable income tax deduction, and is more of an estate and gift tax strategy.

Funds contributed to a Non -Grantor CLAT will be excluded from the Grantor's estate, and the remaining balance at the end of the term will pass to or for the benefit of non-charitable beneficiaries - - free of gift and estate tax.

The CLAT itself can take an income tax deduction for amounts donated to charity, meaning that most Non-Grantor CLATs do not pay income tax.

A Non-Grantor CLAT is useful for individuals who may not survive the term of the CLAT, and would otherwise have a taxable estate.

- The Grantor can see the effects of his or her charitable donations during their lifetime.

CLAT Result Illustration

Assumes a $10,000,000 contribution of assets that will grow at 6% per year – no discounts – zeroed out using the 1.86% October 2019 Section 7520 Rate.

	12-Year / Same Annual Payment Each Year	12-Year / 20% Increasing Payment Year Over Year	20-Year / Same Annual Payment Each Year	20-Year / 20% Increasing Payment Year Over Year
Total amount to charity, not taking into account growth on assets	$11,209,238	$11,209,238	$11,999,371	$11,999,371
Total amount to charity, assuming a 6% rate of return	$15,758,265	$13,965,661	$22,070,198	$16,128,647
Total to Children after CLAT term	$ 4,363,700	$ 6,156,304	$10,001,157	$15,942,708
Percentage to Children	28%	35%	45%	57%
Percentage to Charity	72%	65%	55%	43%

*A 20% increasing CLAT may have income tax liability if the annuity payment to charity is less than the gain the CLAT recognizes.


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CLAT Result Illustration
Assuming 33% Discount and a 6% Annual Growth Rate

	12-Year / Same Annual Payment Each Year with 33% Discount	12-Year / 20% Increasing Payment Year Over Year with 33% Discount	20-Year / Same Annual Payment Each Year with 33% Discount	20-Year / 20% Increasing Payment Year Over Year with 33% Discount
Total amount to charity, not taking into account growth on assets	**$ 7,510,164**	**$ 8,038,660**	**$ 7,512,379**	**$ 8,038,785**
Total amount to charity, assuming a 6% rate of return	**$10,558,002**	**$14,785,343**	**$ 9,359,721**	**$10,805,127**
Total to Children after CLAT term	**$ 9,563,963**	**$17,286,012**	**$10,762,243**	**$21,266,228**
Percentage to Children	**56%**	**59%**	**61%**	**73%**
Percentage to Charity	**44%**	**41%**	**29%**	**27%**

*A 20% increasing CLAT may have income tax liability if the annuity payment to charity is less than the gain the CLAT recognizes.

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Income Tax Rate Increases and Rate Bracket Adjustments

One of the most discussed propositions is the increase in income tax rates, bringing individual tax rates to 39.6% for ordinary income.

This new rate applies to:

- Married individuals who file jointly with taxable income over $450,000
- Heads of household with taxable income over $425,000
- Unmarried individuals with taxable income over $400,000
- Married individuals filing separate returns with taxable income over $225,000
- Trusts and estates with taxable income over $12,500, as adjusted for inflation in future tax years

Income Tax Rate Increases and Rate Bracket Adjustments (Cont.)

In addition to the tax rate increases, the rate brackets will also be adjusted and those on the upper end of the 32% and 35% rate brackets may see a tax rate increase as a result.

A year by year comparison of the rate brackets is as follows:

Married Filing Jointly			
2021		2022	
Tax Rate	**Taxable Income**	**Tax Rate**	**Taxable Income**
10%	$0 - $19,900	10%	NO CHANGE
12%	$19,901 - $81,050	12%	
22%	$81,051 - $172,750	22%	
24%	$172,751 - $329,850	24%	
32%	$329,851 - $418,850	32%	$329,851 - $400,000
35%	$418,851 - $628,300	35%	$400,001 - $450,000
37%	$628,301+	39.6%	$450,001+

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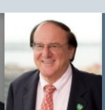
Income Tax Rate Increases and Rate Bracket Adjustments (Cont.)

In addition to the tax rate increases, the rate brackets will also be adjusted and those on the upper end of the 32% and 35% rate brackets may see a tax rate increase as a result.

A year by year comparison of the rate brackets is as follows:

Single Filers			
2021		2022	
Tax Rate	**Taxable Income**	**Tax Rate**	**Taxable Income**
10%	$0 - $9,950	10%	NO CHANGE
12%	$9,951 - $40,525	12%	
22%	$40,526 - $86,375	22%	
24%	$86,376 - $164,925	24%	
32%	$164,926 - $209,425	32%	$164,926 - $200,000
35%	$209,426 - $523,600	35%	$200,001 - $400,000
37%	$523,601+	39.6%	$400,001+

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Income Tax Rate Increases and Rate Bracket Adjustments (Cont.)

These increases will only apply to taxable years beginning after December 31, 2021 so earn as much as you can while you can at our present historically low rates:

- Keeping in mind that you may also pay much more in income taxes because of the limitations on the 20% Section 199A Qualified Business deduction, a 3% surcharge on ultra-high earners, and the 3.8% Net Investment Income Tax that will now apply to active business income for high earners
- Put together, these changes will have a profound impact on high earners and the motivation to keep on earning
- An ultra-high earner subject to the surcharge could end up with a tax rate of 46.4%
- Add that to a 13% state income tax for a California resident and the tax rate is close to 60%

25% Capital Gain Rate

The maximum capital gains are taxed would also increase, from 20% to 25%.

- This new rate will be effective for sales that occur on or after Sept. 13, 2021, and will also apply to Qualified Dividends
- The present rate of 20% will continue to apply to any gains and losses incurred prior to September 13, 2021, as well as any gains that originate from transactions entered into under binding written contracts prior to September 13, 2021
- Gains from sales before September 13, 2021 that are reported under the installment method, even if received after September 13, 2021, will still be taxed at the 20% rate when received in the later part of 2021 and in future years as long as the sale took place before September 13, 2021 or the sale takes place on or after September 13, 2021 and was pursuant to a binding written contract that was entered into prior to September 13, 2021



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Expansion of the 3.8% Net Investment Income Tax

- The 3.8% Net Investment Income Tax under Internal Revenue Code Section 1411 would be changed to expand the definition of net investment income to include any income derive in the ordinary course of business for single filers with greater than $400,000 in taxable income ($500,000 for joint filers) effective January 1, 2022.

- Under current law, the 3.8% tax generally only applies to passive investment income (interest, dividends, gain on the sale of stock, etc.)

Expansion of the 3.8% Net Investment Income Tax (Cont.)

- The Net Investment Income Tax applies to trusts and estates beginning at $13,050 of income in 2021 and that threshold will be slightly higher each year.

- Most trusts and estates that have ownership of profitable businesses or ownership interests in profitable entities taxed as partnerships will be subject to the 3.8% tax unless the income received is paid out to beneficiaries, in which event the beneficiaries will be subject to tax as if they received it.

- S corporation income received by a trust that has made what is called an ESBT ("Electing Small Business Trust") election are taxed at the highest bracket on K-1 income from the S corporation regardless of whether it is distributed and will also be subject to the 3.8% Net Investment Income Tax.

- Many trusts may sell S corporation ownership interests to beneficiaries who are in lower brackets.

- Consider delaying S-Corp Elections for new entities until filing deadline (75 days).

A New 3% Surcharge on High Income Individuals, Trusts and Estates

Effective January 1, 2022 a 3% tax will apply on individual taxpayers to the extent that they have Adjusted Gross Income (“AGI”) in excess of $5,000,000 ($2,500,000 if married filing separately), and on trust and estate income in excess of $100,000 per trust or estate.

- Since this tax applies to AGI in excess of the applicable threshold, AGI includes ordinary and capital gains, and is not reduced by charitable deductions (or any other itemized deduction).
- The time when this would likely apply to most taxpayers is when a business, or other large asset, is sold for a large gain.
- Savvy planners may consider selling to a related party under the installment method to spread out the gain over multiple tax years, although this would have to be done more than two years prior to the liquidation event to avoid acceleration of the gain when sold to a third party.
- Planners might also consider transferring interests that may be sold to a charitable remainder trust which can be used to spread income out over a number of years in order to avoid AGI in excess of the threshold.

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A New 3% Surcharge on High Income Individuals, Trusts and Estates (Cont.)

- This is a much bigger issue for trusts because the tax would apply to trust income in excess of $100,000, which will make distributions of Distributable Net Income (DNI) to reduce a trust’s remaining taxable income even more important.

  In overly simplified terms, when a trust makes a distribution of income to a beneficiary, the beneficiary will pay the tax on such income, and the trust will receive a deduction to reduce its taxable income. Fortunately, the 3% tax will only apply to the extent that income in excess of $100,000 remains in the trust after taking into account distributions made to the beneficiaries.

- Drafters of trust documents should take a close look at the applicable Principal and Income Act of the situs of the trust to confirm whether capital gains are treated as principal (and thus not distributable) or income.

- Most states permit trust documents to specify that a fiduciary will have the power to treat capital gains as income that can be distributed to beneficiaries and escape the additional 3% tax, distributed to its beneficiaries.


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Small Businesses Will Pay More Taxes In 2022

- The bill would also change the 21% flat corporate income tax on 'C Corporations" to an 18% tax on the company's net income of up to $400,000, a 21% tax on net income up to $5,000,000, and a 26% tax on net income in excess of $5,000,000. This is still much lower than what the corporate tax rates were before the 2017 tax cuts, and many S corporations will be converted to C corporations if this Act passes, especially given the 3.8% Medicare tax that would be imposed on S corporation flow through income for high earners.

- High income individuals who claim the 20% 199A deduction for qualified business income deductions will be disappointed to learn about the proposed maximum deduction of $500,000 for joint returns, $400,000 for individual returns, $250,000 for a married individual filing a separate return, and $10,000 for a trust or estate. This is in addition to the permanent removal of excess business losses for non-corporate taxpayers.

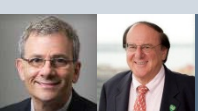
All of the aforementioned business tax changes will be effective after December 31, 2021.

The IRS vs. Over $10,000,000 IRA / Pension Holders

- In an effort to combat the hoarding of assets in massive IRA accounts, those who hold Roth and traditional IRA and retirement plan accounts with a combined balance that exceeds $10 million as of the end of a taxable year may not make further contributions if the account holder has taxable income over $400,000, or married taxpayers filing jointly with taxable income over $450,000.

- These large account holders will be required to make a minimum distribution equal to "50% of the amount by which the individual's prior year aggregate tradition IRA, Roth IRA, and defined contribution account balance exceeds the $10 million limit". Even more extreme treatment will apply to those who have over $20,000,000 in combined accounts.

A loophole that allowed indirect funding of Roth IRAs by the "backdoor Roth" technique could be eliminated for high earners.



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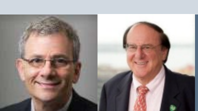
What About Charity?

- Charitable gifting does not seem to be impacted, except for what we call Grantor Charitable Lead Annuity Trusts, and with higher income tax brackets charities may receive more in donations, which would be good for charitable causes and those who work for charities.

- It may be time to set up the family foundation you have been considering and get it funded if you will be a high earner next year.

- The use of Charitable Remainder Trusts will be more popular to spread large gains over multiple tax years in order to avoid crossing applicable income thresholds.

- Some of the new provisions are applied based on Adjusted Gross Income (“AGI”) thresholds, and since AGI is determined prior to deductions for charitable contributions (or any other itemized deduction) large charitable donations will not prevent taxpayers from being subject to some of the new taxes on high earners.



Miscellaneous Changes

Other changes proposed changes in the bill that are noteworthy include the following:

1. The 100% gain exclusion on the sale of Section 1202 Qualified Small Business Stock will be limited to 50% of the gain for taxpayers with AGI exceeding $400,000 unless a binding contract was entered into prior to September 13th, 2021. (see slides that follow on 1202 basics)

2. Crypto currencies (Bitcoin, Ethereum, DOGEcoin, etc.) will be subject to the constructive and wash sale rules as of January 1, 2022, so if your crypto currency went "to the moon" and you want to lock in an offsetting position without triggering gain do so before the end of the year.

   You now have until the end of the year to sell your coins to harvest the loss and immediately buy back in, You would be in the same position economically, but with the added benefit of being able to recognize the loss and offset other passive income. This type of planning is prevented for most, if not all, other marketable securities, but somehow crypto currencies have managed to stay under the radar, until now.

3. IRAs can no long invest in entities in which the IRA owner has a 10% or greater ownership interest (this is presently 50%), or if the IRA owner is an officer. This will also be considered an IRA requirement rather than a prohibited transaction, which means that if the IRA invests even a small part of its holdings in such a business the entire IRA will be disqualified resulting in loss of creditor protection status and having taxes apply as if the IRA was liquidated. There is a proposed two year transition period of IRA's currently invested in these types of investments.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SECTION 1202 STOCK

A taxpayer may exclude up to 100% of the gain from the sale of a “Qualified Small Business” under Section 1202, if the following requirements are met:

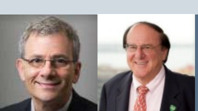
1. Must be stock of a C-Corporation acquired after 1993.

2. Stock must have been acquired at original issue in exchange for money or other property, or as compensation for services performed for the corporation.

3. The Corporation must be a “qualified small business” immediately before and immediately after the issuance of stock. (i.e. Cash and basis of property held by the corporation does not exceed $50,000,000)

4. During substantially all of the taxpayer’s holding period, the Corporation meets the active trade or business requirements of § 1202(e).

5. The qualifying stock must be held for more than five years.



Section 1202 – Active Trade or Business Requirement

80% of the assets of the corporation must be used in the active conduct of one or more "qualified trades or businesses". A qualified trade or business is defined by exclusion and means any business other than the following:

Specified Service Business Under Section 1202 (which also arise under Section 199A)

- Health
- Law
- Accounting
- Actuarial Science
- Performing Arts
- Consulting
- Athletics
- Financial Services
- Brokerage Services
- Investing Trading, or dealing in securities, commodities etc.
- Principal asset is reputation or skill of one or more employees.

Businesses Limited Under Section 1202, but Not Limited Under Section 199A

- Engineering
- Architecture
- Any banking, insurance, financing, leasing, investing, or similar business.
- Any farming business (including the business of raising and harvesting trees).
- Any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A (i.e. oil, gas, and mining businesses).
- Any business of operating a hotel, motel, restaurant, or similar business.

Section 1202 – Active Trade or Business Requirement

In determining whether 80% of the assets are used in a the active conduct of a qualified trade or business, any assets (including cash) held as part of the reasonably required working capital needs of the business are treated as used in the active conduct of such business.

Once a corporation has been in existence for more than two years, no more than 50% of the total assets of the corporation can qualify as used in the active conduct of a qualified trade or business by reason of being held as working capital.

A corporation will not satisfy the active trade or business requirement if more than 10% of the corporation's total assets (in excess of its liabilities) are stock or securities in other corporations which are not subsidiaries of such corporation, or held as part of the reasonably required working capital of the corporation.

A corporation will also fail the active trade or business requirement if it holds more than 10% of the total value of its assets in real property which is not used in the active conduct of a qualified trade or business.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SECTION 1202 – AMOUNT OF ELIGIBLE GAIN THAT CAN BE EXCLUDED

The amount of gain excluded cannot exceed the greater of:

1. *$10,000,000*

2. *Ten times the taxpayer's basis in the stock.*

Miscellaneous Changes (Cont.)

4. The IRS will receive approximately $80,000,000,000 to enforce the tax law and presumably audit many more taxpayers and bring in much more in tax revenues.

5. The employer tax credit for wages paid to employees during family and medical leave will expire in 2023 (2025 under present law).

6. S-Corporations, that elected S-Corp status prior to May 13, 1996, will be permitted to convert tax free to a partnership any time in the two years following passage of the act. Under present law this would result in deemed taxable sale of all of the assets of the S-Corporation at the time of conversion, so this will be a very good opportunity for many taxpayers.

   An S corporation can generally convert tax-free into a C corporation, but C corporations are not as flexible with respect to the distribution and allocation of income as an entity taxed as a partnership.

   This will be attractive for S corporation owners who wish to have greater flexibility and do not expect that the ability to have significant income excluded from the Net Investment Income Tax will come back any time soon.

7. There are many changes to international taxation that are better left to the international tax experts to explain.

8. Those who deal with tax-related stress by smoking tobacco products will be sad to hear of the proposed doubling of the excise taxes on cigarettes, small cigars, and roll-your-own tobacco, in addition to several other new imposed nicotine taxes not covered by this article.


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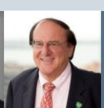
Partnership v. S Corporation- Which is Better to Hold Real Estate?

PARTNERSHIP	S CORPORATION
Advantages	*and Disadvantages*
Partners receive basis for indebtedness incurred by the partnership	Shareholders do not receive basis for indebtedness incurred by the corporate, unless the loan is made by such shareholder.
On the death of a partner, the partnership's (inside) tax basis of its assets can receive a step-up in income tax basis, if a Section 754 election is in place for the partnership	No similar basis adjustment mechanism applies to S corporations.
When a new partner buys into a partnership corporation, their depreciation write-off and underlying basis in their partnership interest will be based upon the price that they pay.	When a new shareholder buys into an S corporation, their depreciation write-off and underlying basis if and when the real estate is ever sold has to be based upon the historic basis and depreciation taken, versus being based upon the price they pay.
Appreciated real property can generally be distributed from the partnership tax-free to the partners.	Distributions of appreciated real property to the shareholders are treated as if the property was sold at its fair market value to the shareholders.
No restrictions apply as to who can own partnership interests.	S corporations can only be owned by certain individuals and trusts, and cannot be owned by non-resident aliens, corporations or partnerships
Partnerships can have more than one class of stock, and income and distribution preferences can be drafted in virtually any manner, so long as they have substantial economic effect	S corporations cannot have a "second class of stock," and income allocation and distribution rights must be pro rata to ownership
DOI income insolvency exclusion is determined at each partner's level.	DOI income insolvency exclusion is determined at the corporate level.

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INSTALLMENT SALES TO NON-DEFECTIVE TRUSTS AND INDIVIDUALS

Traditional Installment Sale to Grantor Trust

Assumptions:

Sale of 49% Interest in Company valued at $20,000,000 for $6,533,333 15 - Year Interest Only Promissory Note (Assumes 33.33% discount applies).

Interest Rate – 1.46%

Growth Rate – Assumes Company is sold in 5 Years for $30,000,000 and 7% Growth on Investments thereafter.

Year	Value of ABC (Assumes Sale in 5 Years for $30,000,000 and 7% Growth on Investments Thereafter)	Value of Trust Account (Seed Gift) (7% Growth)	Sale Price of 49% LLC Interest with 33.33% Discount	Net Value of Descendants Trust	Outstanding Balance of Note	Annual Note Payments Payable to Grantor	Trust Income Taxes Paid by Grantor* (33% Tax Rate)	Amount Included in Grantor's Estate if He/She Dies in Particular Year (Assuming that Note Payments are spent on income tax payments)	Value of Assets Shifted Outside of Grantor's Estate If Grantor Dies in a Particular Year	Estate Tax Savings if Grantor Dies in a Particular Year (Assumes 40% Estate Tax Rate)
1	$20,000,000.00	$653,333.33	$6,533,333.33	$3,824,613.33	$6,533,333.33	$95,386.67	($166,982.20)	$6,533,333.33	$3,266,666.67	$1,306,666.67
2	$21,000,000.00	$699,066.67		$4,264,960.00	$6,533,333.33	$95,386.67	($175,436.95)	$6,533,333.33	$3,756,666.67	$1,502,666.67
3	$22,000,000.00	$748,001.33		$4,708,508.00	$6,533,333.33	$95,386.67	($183,917.59)	$6,533,333.33	$4,246,666.67	$1,698,666.67
4	$23,000,000.00	$800,361.43		$5,155,481.43	$6,533,333.33	$95,386.67	($192,425.92)	$6,533,333.33	$4,736,666.67	$1,894,666.67
5	$30,000,000.00	$856,386.73		$8,546,120.06	$6,533,333.33	$95,386.67	($249,473.89)	$6,533,333.33	$8,166,666.67	$3,266,666.67
6	$32,100,000.00	$916,333.80		$9,539,680.46	$6,533,333.33	$95,386.67	($266,937.06)	$6,533,333.33	$9,195,666.67	$3,678,266.67
7	$34,347,000.00	$980,477.16		$10,609,467.16	$6,533,333.33	$95,386.67	($285,622.65)	$6,533,333.33	$10,296,696.67	$4,118,678.67
8	$36,751,290.00	$1,049,110.56		$11,760,816.00	$6,533,333.33	$95,386.67	($305,616.24)	$6,533,333.33	$11,474,798.77	$4,589,919.51
9	$39,323,880.30	$1,122,548.30		$12,999,436.32	$6,533,333.33	$95,386.67	($327,009.38)	$6,533,333.33	$12,735,368.01	$5,094,147.21
10	$42,076,551.92	$1,201,126.69		$14,331,437.13	$6,533,333.33	$95,386.67	($349,900.03)	$6,533,333.33	$14,084,177.11	$5,633,670.84
11	$45,021,910.56	$1,285,205.55		$15,763,355.06	$6,533,333.33	$95,386.67	($374,393.03)	$6,533,333.33	$15,527,402.84	$6,210,961.14
12	$48,173,444.29	$1,375,169.94		$17,302,184.31	$6,533,333.33	$95,386.67	($400,600.55)	$6,533,333.33	$17,071,654.37	$6,828,661.75
13	$51,545,585.39	$1,471,431.84		$18,955,408.68	$6,533,333.33	$95,386.67	($428,642.58)	$6,533,333.33	$18,724,003.51	$7,489,601.40
14	$55,153,776.37	$1,574,432.07		$20,731,035.82	$6,533,333.33	$95,386.67	($458,647.57)	$6,533,333.33	$20,492,017.09	$8,196,806.84
15	$59,014,540.72	$1,684,642.31		$22,637,633.93	$6,533,333.33	$6,628,720.00	($490,752.89)	$6,137,967.11	$22,779,157.85	$9,111,663.14

Taxes paid by Grantor: $4,656,358

Estate Tax Savings of "Grantor Trust Burn": $1,862,543

Interest Rate:	**1.460%**
Loan Amount:	**$6,533,333.33**
Annual Interest Payment	**$95,386.67**
Balloon Payment Amount	**$6,533,333.33**
Total Loan Payments	**$7,964,133.33**

Value of Assets Removed From Estate in Year 15:	**$22,779,158**
Estate Tax Savings:	**$10,974,206**


Installment Sale to Non-Grantor Trust

Assumptions:

Sale of 49% Interest in Company valued at $20,000,000 for $9,800,000 15-Year Interest Only Promissory Note (Assumes no discount applies).

Interest Rate – 1.46%

Growth Rate – Assumes Company is sold in 5 Years for $30,000,000 and 7% Growth on Investments thereafter.

Basis in 49% Interest of Company at time of Sale - $0


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Year	Value of ABC (Assumes Sale in 5 Years for $30,000,000 and 7% Growth on Investments Thereafter)	Value of Trust Account (Seed Gift) (7% Growth)	Sale Price of 49% LLC Interest with No Discount	Net Value of Descendants Trust	Outstanding Balance of Note	Annual Note Payments Payable to Grantor	Trust Income Taxes Paid by Trust* (33% Tax Rate)	Income Taxes Paid on Installment Sale by Grantor (Assumes 20% Capital Gain Rate)	Amount Included in Grantor's Estate if He/She Dies in Particular Year (Assuming that Note Payments are spent on income tax payments)	Value of Assets Shifted Outside of Grantor's Estate If Grantor Dies in a Particular Year	Estate Tax Savings if Grantor Dies in a Particular Year (Assumes 45% Estate Tax Rate)
1	$20,000,000.00	$980,000.00	$9,800,000.00	$667,296.70	$9,800,000.00	$143,080.00	($169,623.30)	($28,616.00)	$9,800,000.00	$0.00	$0.00
2	$21,000,000.00	$1,048,600.00		$1,074,177.07	$9,800,000.00	$143,080.00	($178,262.93)	($28,616.00)	$9,800,000.00	$490,000.00	$220,500.00
3	$22,000,000.00	$1,122,002.00		$1,485,820.61	$9,800,000.00	$143,080.00	($186,941.39)	($28,616.00)	$9,800,000.00	$980,000.00	$441,000.00
4	$23,000,000.00	$1,200,542.14		$1,902,560.76	$9,800,000.00	$143,080.00	($195,661.38)	($28,616.00)	$9,800,000.00	$1,470,000.00	$661,500.00
5	$30,000,000.00	$1,284,580.09		$4,489,180.09	$9,800,000.00	$143,080.00	($980,000.00)	($28,616.00)	$9,800,000.00	$4,900,000.00	$2,205,000.00
6	$32,100,000.00	$1,374,500.70		$6,174,379.36	$9,800,000.00	$143,080.00	($270,641.34)	($28,616.00)	$9,800,000.00	$5,929,000.00	$2,668,050.00
7	$34,347,000.00	$1,470,715.74		$7,209,599.51	$9,800,000.00	$143,080.00	($289,586.23)	($28,616.00)	$9,800,000.00	$7,030,030.00	$3,163,513.50
8	$36,751,290.00	$1,573,665.85		$8,327,300.68	$9,800,000.00	$143,080.00	($309,857.27)	($28,616.00)	$9,800,000.00	$8,208,132.10	$3,693,659.45
9	$39,323,880.30	$1,683,822.46		$9,533,256.53	$9,800,000.00	$143,080.00	($331,547.28)	($28,616.00)	$9,800,000.00	$9,468,701.35	$4,260,915.61
10	$42,076,551.92	$1,801,690.03		$10,833,644.88	$9,800,000.00	$143,080.00	($354,755.59)	($28,616.00)	$9,800,000.00	$10,817,510.44	$4,867,879.70
11	$45,021,910.56	$1,927,808.33		$12,235,076.03	$9,800,000.00	$143,080.00	($379,588.48)	($28,616.00)	$9,800,000.00	$12,260,736.17	$5,517,331.28
12	$48,173,444.29	$2,062,754.91		$13,744,622.95	$9,800,000.00	$143,080.00	($406,159.67)	($28,616.00)	$9,800,000.00	$13,804,987.70	$6,212,244.47
13	$51,545,585.39	$2,207,147.76		$15,369,853.75	$9,800,000.00	$143,080.00	($434,590.85)	($28,616.00)	$9,800,000.00	$15,457,336.84	$6,955,801.58
14	$55,153,776.37	$2,361,648.10		$17,118,866.32	$9,800,000.00	$143,080.00	($465,012.21)	($28,616.00)	$9,800,000.00	$17,225,350.42	$7,751,407.69
15	$59,014,540.72	$2,526,963.47		$19,000,325.36	$9,800,000.00	$9,943,080.00	($497,563.06)	($1,988,616.00)	$9,800,000.00	$19,117,124.95	$8,602,706.23

Interest Rate:	1.460%
Loan Amount:	$9,800,000.00
Annual Interest Payment	$143,080.00
Balloon Payment Amount	$9,800,000.00
Total Loan Payments	$11,946,200.00
Value of Assets Removed From Estate in Year 15:	$19,117,124.95
Estate Tax Savings:	$8,602,706.23

Complex Trust Advantages

1. Charitable Distributions. If the Trust Agreement authorizes distributions to charity, then such distributions can carry otherwise taxable income out to the charity that is not taxed. The family therefore gets the equivalent of a charitable deduction that might not otherwise be available because of the high itemized deduction threshold that now applies to individuals ($12,200 for single individuals and $24,400 for married couples filing jointly). For example, a $20,000 charitable contribution made by a 37% tax bracket individual will commonly not result in any tax deduction whatsoever because of the $24,000 standard deduction that now applies.

   Charitable contributions can be made by the end of a calendar year and still count to reduce the income of the trust for the previous year, assuming an election to do so is filed on the trust's amended tax return for the previous year. For example, if a trust makes a charitable contribution in Year 2, it can elect to have the contribution treated as if it was made in Year 1 as long as the election is made on an amended tax return for Year 1, which can be filed as late as the deadline for Year 2's tax return on April 15 of Year 3, or October 15 if extended. The distribution can reduce the trust's taxable income for Year 1 or Year 2, as decided by the Trustee.

   If the trust does not specifically provide for charitable distributions it may place assets into a legitimate entity taxed as a partnership and receive a deduction for its share of the partnership's charitable contributions.

2. State and Local Tax (SALT) Deduction. Complex trusts can deduct up to $10,000 of state and local taxes each year, including real estate taxes, so that they can own personal use real estate and receive a tax deduction that the grantor and other family members may not be eligible for because of the $10,000 per year, per taxpayer limit on the deductibility of state and local taxes, even if the trust is set up for the purpose of obtaining such a deduction. For example, a vacation home that is subject to $30,000 a year in property taxes could be owned one-third each by three separate trusts for the primary benefit of each separate child of a married couple, to enable all of the property taxes to be deductible, assuming that each of the trusts has $10,000 or more of otherwise taxable income.

Complex Trust Advantages, Continued

3. Spraying and Allocation Flexibility. The trustee can decide which beneficiaries receive how much each year. The trustee may exert polite pressure on the beneficiaries or even pay expenses on their behalf instead of outright to them to influence behavior in a way that can be far superior to letting them have direct ownership in a management or intellectual property company. This provides significant flexibility that is not available for S corporations and partnerships because of the second class of stock and substantial economic effect rules.

4. 65 Day Look Back. In addition, distributions made during the first 65 days of the calendar year can be considered to have been made in the previous calendar year for income distribution purposes. This allows the trustee and family members to confer with their tax advisors after December 31st to determine where income can best be allocated for the previous year. This extends for a full year for charitable distributions, meaning that a trustee can elect to treat distributions to charity as being made in the previous tax year if made before December 31 of the current tax year under Section 642(c)(1).

5. Reduced Chance of Audit. Having income payable to a trust and distributed to low bracket taxpayers can reduce the chances of audit. Complex trusts file a Form 1041, and 1041 audits are very rare, if existent at all. Audits of low bracket taxpayers occur at a much lower frequency than the audits of high bracket taxpayers.


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ATTORNEYS AT LAW

Complex Trust Advantages, Continued

6. Tax-Free Distributions of Appreciated Assets. Appreciated assets can be transferred out of a trust to beneficiaries without triggering income tax that would apply if a trust were taxed as a corporation, or as a partnership if certain "mixing bowl" and related rules apply.

7. New Income Tax Fair Market Value Basis on Death of Power Holders. Assets held in a trust can receive a new income tax basis to avoid payment of capital gains tax on appreciation that occurs up through the date of the grantor's death, if the grantor has what is known as general Power of Appointment over appreciated trust assets. Court Orders or non-judicial reformation agreements may provide an individual with a short life expectancy with the right to direct how trust assets might pass within reasonable parameters, which can result in a new fair market value date of death income tax basis as if the Power Holder was the owner of the assets. This would include a power to appoint assets to creditors of the estate of the Power Holder, even if such Power is only exercisable with the consent of an independent party. This would be consistent with the intention of a grantor who set up a trust for estate tax purposes and now wants to assert a reasonable degree of control because estate tax is no longer an issue, and the situation among family members may have changed.

   Depreciation recapture amounts do not "step-up" if the holder of the general Power of Appointment does not own the asset, pursuant to Section 1014(b)(9).

Complex Trust Disadvantages

1. Formation and Annual Carrying Costs. Costs and possible repercussions of forming or changing irrevocable trusts should of course be considered. This includes consideration of the cost of forming a trust or changing a disregarded trust to a complex trust, filing of income tax returns, and associated formalities.

2. Loss of 179 Deductions. Unlike a "special allocation partnership," depreciation and Section 179 deductions are not available for trusts, or for beneficiaries who receive trust distributions in the year that Section 179 property is acquired. Trusts may have to write off furniture, equipment, and other acquired business property under the Section 168 rules, which will, in many cases, give them the same deduction, but sometimes over a longer period of time.

   Fortunately, the Section 168(k) bonus depreciation will often be as good as the Section 179 deduction until January 1, 2023. The Tax Cut and Jobs Act expanded Section 168(k) to enable taxpayers to immediately expense 100% of qualified business property placed in service between September 27, 2017 and January 1, 2023. Although, the percentage of qualified business property that may be immediately expensed begins to decrease after 2023, and is eliminated after 2027, Section 168(k) bonus depreciation provides temporary relief from the inability of trusts to take a Section 179 deduction.

   For example, if a construction business purchases trucks for its workers to use, the company can choose to depreciate the property all at once (because it has a life of less than 20 years). A trust could have part-ownership in the company and be able to claim the deduction on its Form 1041 income tax return, assuming the company is a flow-through entity. In addition to the immediate deduction the company will get in the first year, the owners, including the trust, can continue to use the trucks as Qualified Property under Section 199A for at least 10 years.


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Complex Trust Disadvantages, Continued

3. Partnership Taxation May Apply. Trusts that engage in business may be taxed as partnerships instead of complex trusts if the case law that existed before the “check the box” regulations were issued in 1997 would have caused the trust to be considered to be an “association” under the Supreme Court decision of *Morrissey v. Commissioner*, and the subsequent Section 7701 Regulations. There are no known cases where this has occurred after 1997, and the result would be that the beneficiaries of the trust will be considered to be partners, and thus taxable on the retained income of the trust that would have otherwise been taxed at the trust level.

4. Disclosure and Fiduciary Duty Differences. The Trustee of a trust normally has a duty to account annually, disclose trust actions, and to act for the best interest of the beneficiaries. These fiduciary duties will commonly exceed the duties that a general partner has under a partnership, or that a manager has under an LLC, but may be altered by agreement with adult beneficiaries, and selecting an appropriate situs (“state or country of formation”) for a given trust.

Clients with irrevocable trusts currently in place that are treated as disregarded for income tax purposes should review the situation and discuss whether structures in place should be altered to take advantage of the income tax planning opportunities that may exist.


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Income Tax Deferral for Taxpayers Who Anticipate Selling Appreciated Assets While Living

Jerome M. Hesch

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Boston University On-Line LL.M. Program

Florida International University

Director

47th Annual Notre Dame Virtual Tax & Estate Planning Institute

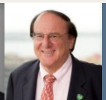
October 21 and 22, 2021

Proposed Legislation Impacting Grantor Trusts

Proposed Sections 2901 and 1062 will apply to all grantor trusts created after the effective date.

Newly created grantor trusts will be included in the grantor's gross estate at death and distributions while the grantor is living will be taxable gifts.

Installment sales to grantor trusts occurring after the effective date, will be treated as income tax realization events and reporting the gain can continue to be deferred under the installment method. Appears that it does not apply to post 2021 installment sales to a grandfathered grantor trust!!

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Proposed Legislation Impacting Grantor Trusts

If installment sales to grantor trusts are treated as sales between separate taxpayers for income tax purposes, and if grantor trusts will be included in the grantor's estate, consider using installment sales to non-grantor trusts.

Senior owns a family business with a value of $30,000,000 and a basis of $20,000,000. As an operating business, valuation discounts are still allowed.

The proposed legislation eliminates valuation discounts only for passive assets such as marketable securities and privately held passive investments.


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Senior sells the interest in the family business to a non-grantor trust for the benefit of Senior's descendants

Using the discounted $20,000,000 value, Senior takes back the trust's annual interest-only (at the 2.0% AFR) $20,000,000 promissory note with all principal due in 20 years.

No gain is realized because the sale price equals the basis for the asset sold.

Each year Senior reports $400,000 interest income and the trust reports a $400,000 interest deduction.

Each year the asset purchased by the trust earns 5% on its $30,000,000 value

Trust's income tax return.

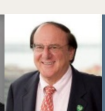
Gross income	$1,500,000
Less: interest	- 400,000
Taxable income before distributions	$1,100,000

Can the trust assign its taxable income to taxpayers in lower income tax brackets? With a grantor trust assignment of income was not available.

Use distributions to trust beneficiaries as the trust can deduct its "distributable net income."

Estate planning benefit? Each year the $1,100,000 of excess income is shifted to the trust without any gift or estate tax exposure. $1,100,000 of income is taxable to the trust and $400,000 of income reported by Senior.

The only drawback from a grantor trust is that the settlor of the trust does not pay the income taxes on the non-grantor trust's income

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Several years later Senior retires, and the trust sells the business for $36,000,000.

As the trust only pays $400,000 of interest on the promissory note, any increase in the operating profits beyond its current $1,500,000 are also passed on to the trust without any transfer taxes.

Upon the sale of the business for $36,000,000, with a $20,000,000 cost for the business, the trust reports a $16,000,000 capital gain.

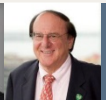
Consider the trust distributing its capital gain among its beneficiaries to take advantage of their lower capital gain rates.

I. The Installment Method of Accounting

Senior owns a 25% interest in an operating business valued at $16,000,000 with a basis of $4,000,000. Senior sells the 25% interest to a non-grantor trust for an interest-only, 20-year promissory note.

Senior realizes a $14,000,000 capital gain but does not report the entire gain until note principal payments are made at note maturity. Because the non-grantor trust acquired the asset by purchase, its cost basis is $16,000,000 and its holding period begins at the date of purchase.

If the trust later sells the asset for $18,000,000, its realized gain is only $2,000,000.

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The 2-year Resale Limitation

Section 453(e). If a seller who sells an appreciated asset to a “related party” (*the first sale*), defers the reporting of the realized gain under the installment method, and the related party resells the purchased asset any time within the next two years (*the second sale)*, the gain the seller previously deferred under the installment method is immediately accelerated upon the second sale. If the related party purchaser waits for 24 months and one day to resell the asset purchased from the related party seller, the gain on the first sale can continue to be deferred under the instalment method.

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Limitations On The Use Of The Installment Method Of Accounting

Payment of deficiency interest under§ 453A for installment sales in excess of $5,000,000.

Example: Senior sells an asset with a zero basis to a third party for a $7,000,000 installment note, realizing a $7,000,000 capital gain. The gain on the first $5,000,000 of the installment sale is not subject to this interest charge.

The taxes on a $2,000,000 capital gain (the excess over $5,000,000) would be $500,000. Each year Senior will have to pay deficiency interest at a rate of 5%* on the $500,000 of taxes deferred under the installment method ($25,000 annual deficiency interest) that cannot be deducted.


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The $5,000,000 threshold applies to each taxpayer and is based only on the installment sales that occurred in each tax year.

Husband and wife are separate taxpayers for the Federal income tax even though they file a joint income tax return.

And §453A only applies to the sales that occur in each year.

H and W each sell their interests in an appreciated asset for two $5,000,000 promissory notes during November 2021 and two additional $5,000,000 installment sales on January 1, 2022.

Have $20,000,000 of installment sales with no exposure to section 453A.


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Section 453(g) Prohibits The Use Of The Installment Method For The Sale Of Depreciable Property To A Related Party

Section 1239 provides that if depreciable property is sold to a related party, the entire gain is characterized as ordinary income.

Section 453(k)(2) prohibits the use of the installment method for the sale of marketable securities.

Section 453(i) prohibits the use of the installment method for Section 1245 recapture gain.

The installment method can be used for the unrecaptured Section 1250 capital gain taxable at a 25% rate

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Example:

Senior owns a 25% interest in an LLC operating business treated as a tax partnership.
The other 75% is owned by unrelated members.

The LLC buyout agreement currently values Senior's 25% interest at $16,000,000. Senior, age 68, intends to retire after reaching age 72½. At retirement, Senior will be paid in cash under the LLC's buyout agreement

Senior anticipates paying the income taxes on the gain realized under the buyout agreement when her 25% interest is redeemed by the LLC.

Senior estimates that the value of her 25% interest will appreciate by the time she retires and comes to you for estate planning.

Use two $5 Million sales in Dec. 2021 Use two $3 Million sales in Jan. 2022

Senior (W) gifts half of her 25% interest to her husband (H).

Senior creates an irrevocable trust for the benefit of only her descendants. The trust is not a grantor trust. If the trust is for the benefit of a spouse, it is a grantor trust.

H and W each sell a $5 Million interest to the non-grantor trust in December 2021 for interest-only installment notes with all principal due in 22 years.

H and W sell their remaining $3 Million interests in January 2022 for interest-only installment notes.



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The Redemption (A Second Sale) Occurs More Than 24 Months After The Jan. 2021 Sales

During February 2023, Senior retires, and the trust receives $18,000,000 in cash upon the redemption of a 25% interest in the LLC.

The § 453(e) two-year waiting period is not violated.

The trust reports and pays tax on a $2,000,000 long-term capital gain as the cost for the 25% interest was $16,000,000. So, there has been an estate freeze.

Senior and her spouse continue to defer reporting the $14,000,000 gain realized on the installment sales for another 20 years using the installment method.


Trust's 25% interest is redeemed for $18,000,000.

With a $16,000,000 cost, the trust's capital gain is only $2,000,000.

Income tax on trust's gain is 23.8% Federal and 5.0% state. 28.3% x $2,000,000 = $500,000.

$18,000,000 cash less $500,000 taxes = net cash of $17,500,000 in the trust.

The taxes on the $14,000,000 gain realized upon the installment sale to the trust continues to be deferred for the remaining note term.

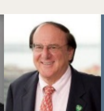
As "income in respect of a decedent" (IRD) there is no step-up in basis at death for the note. §1014(c).


Can Senior Create A Non-grantor Trust? Yes

What are the limitations if Senior creates the non-grantor trust?

a) Senior's spouse cannot be a beneficiary of the trust.
b) Senior cannot be a beneficiary.
c) Senior cannot have a special power of appointment.

If Senior is not the creator of the trust, Senior is not limited by the above.

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Senior’s mother (G1) creates a complex trust for the benefit of Senior (G2), Senior’s spouse and Senior’s descendants (G3), funding the trust with a nominal taxable gift.

The trust is not a grantor trust for Senior.

What are the advantages for having Senior's mother create an irrevocable trust for the benefit of her child (Senior), her child's souse and her child's descendants?

- Senior can have a special power of appointment as Senior did not create the trust.
- Senior and Senior's spouse can be a beneficiary of a non-grantor trust created by another.
- If Senior's parents are not living, who else can create the trust for Senior?
  - ✓ An aunt or uncle
  - ✓ A brother or sister


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Estate Tax Planning Update

The State of The Nation

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THANK YOU FOR PARTICIPATING!

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