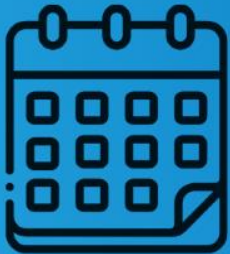


# DYNAMIC CHARITABLE PLANNING: RUNNING THE NUMBERS AND MORE

FLORIDA BAR NUMBER: 2403685N



SATURDAY,  
APRIL 6, 2024  
11 AM – 12 PM EST  
(60 MINUTES)



ALAN GASSMAN, JD, LL.M. (TAXATION), AEP®  
(DISTINGUISHED)  
AGASSMAN@GASSMANPA.COM



727-442-1200

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Clearwater, FL 33755

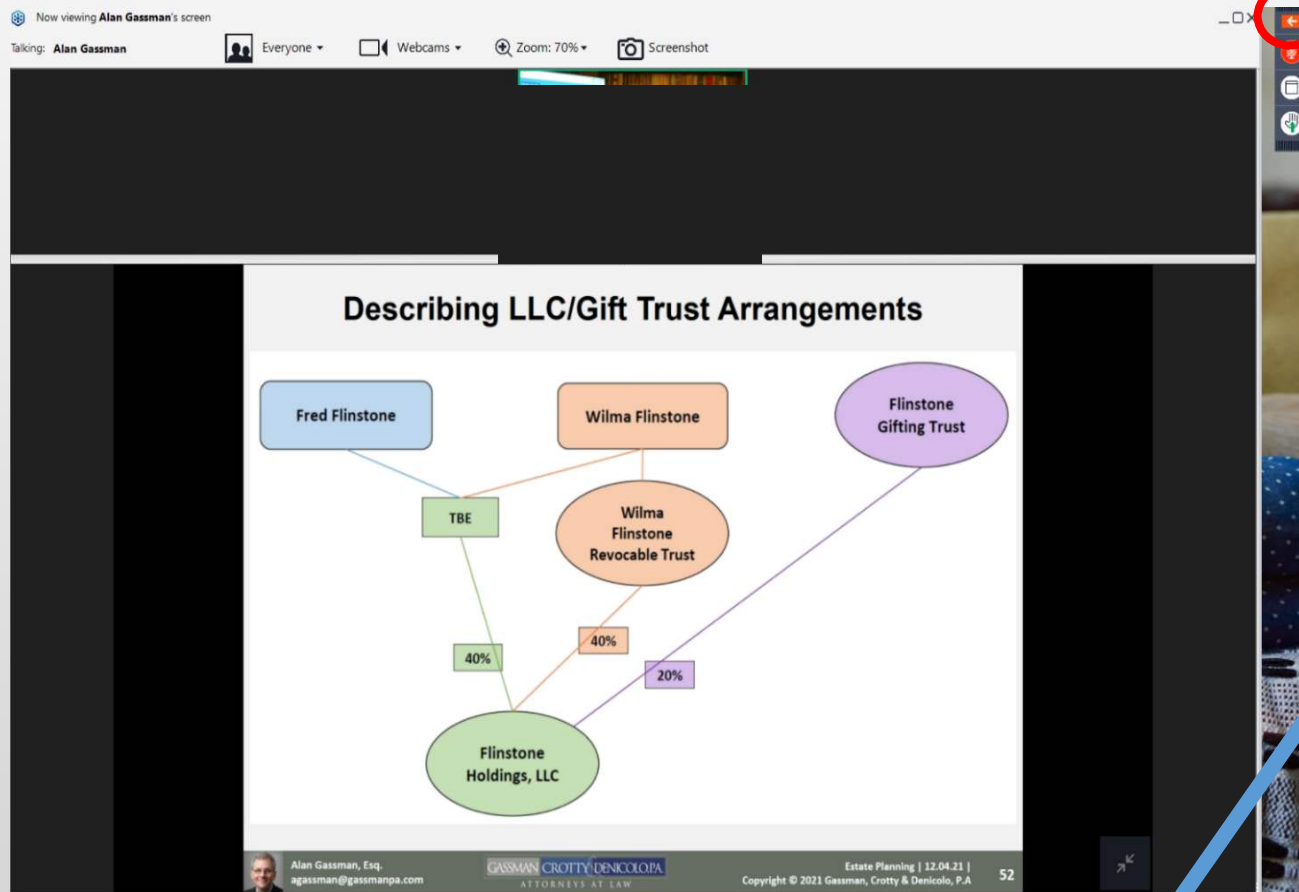
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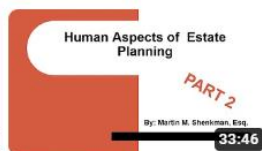
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# Guest Presenter

## Joey Kleiner

Joey@gassmanpa.com

- Law Clerk
- Stetson Law JD '23,
  - Business Concentration
  - Federal Income Tax TA
- Prior In-House experience at IRONMAN and Anchor Glass
- Previously Registered Broker at Morgan Stanley
- Studied Computer Engineering at USF Tampa



Career Goal: Advise clients on business taxes

# The Five Dimensional Charitable Plan

Noble Cause(s)	Tax Savings	Recognition	Who is Involved?	Desire for Control and Security
<ol style="list-style-type: none"> <li>Helping children</li> <li>Defending rights</li> <li>Helping the elderly</li> <li>Assisting with education</li> <li>Supporting Israel</li> <li>Helping animals</li> <li>Helping the ecology</li> <li>Helping your hometown</li> <li>Helping your school</li> <li>Scholarship funds</li> <li>Shelter for single mothers</li> <li>Helping the homeless</li> <li>Helping immigrants</li> <li>Helping homeless Ukrainians</li> <li>Curing cancer</li> <li>Curing Parkinson's disease</li> <li>Helping your church, synagogue, or mosque</li> </ol>	<ol style="list-style-type: none"> <li>Tax deduction—December 31 year end</li> <li>Getting above 50% AGI—income-producing assets transferred to charity for complex trust</li> <li>The liquidity event               <ol style="list-style-type: none"> <li>Place in CRT before sale</li> <li>Place in charity before sale</li> <li>Place in tax-deductible CLAT before sale</li> </ol> </li> <li>The \$105,000 (and growing with inflation) IRA Qualified Charitable Distribution by year end</li> <li>Avoid federal estate tax—CLAT now or later</li> </ol>	<ol style="list-style-type: none"> <li>We have our own family foundation</li> <li>Recognition by local or national organizations</li> <li>Involvement of spouse—who may have other motives</li> <li>Involvement of family</li> <li>Naming buildings and parts of buildings</li> <li>Sponsoring matching fund</li> <li>Hosting fundraiser parties and events</li> <li>Would your parents be proud?</li> </ol>	<ol style="list-style-type: none"> <li>Spouse</li> <li>Children</li> <li>The community/recognition</li> <li>Charitable professionals</li> <li>Tax advisors,</li> <li>Financial advisors</li> <li>Estate planning advisors</li> <li>Life insurance advisors</li> <li>Clergy</li> <li>National Public Radio and local affiliates</li> </ol>	<p><b><u>Control—may control:</u></b></p> <ol style="list-style-type: none"> <li>Private Foundation</li> <li>Account under donor advised fund</li> <li>Scholarship fund decisions</li> </ol> <p><b><u>Security</u></b></p> <ol style="list-style-type: none"> <li>May work for foundation to earn a living</li> <li>May receive payments from charitable remainder trust</li> <li>May save tax refunds in safe investments</li> </ol>

## (Outright Gifts)

<b>For non-itemizers:</b> \$300/per person and \$600/per married couple for non-itemizers for <b>2020 and 2021</b>	You had to give cash.	<b>Not available in 2022</b>
<b>For taxpayers who itemize deductions for tax year 2023:</b> When itemized deductions exceed \$13,850/single taxpayers, \$20,800 for heads of households and \$27,700 for married taxpayers.	You have automatic deduction for these amounts, unless the sum of property taxes up to \$10,000, plus medical expenses exceeding 7.5% of adjusted gross income, plus interest expense allowable on home mortgage, plus charitable deductions exceed these thresholds. Strategy is every other year or every third year; you pay a lot to get over the threshold to have the deduction – called bunching your deductions.	You can pay the excess money to a charity or to a donor advised fund and then later it is given to a charity.
<b>If you are over 70-1/2:</b> You can do a qualified IRA transfer.	You can transfer up to \$100,000 a year directly from your IRA to charity.	For 2020 and 2021, it is unlimited for anyone over 59-1/2.
<b>Depreciable buildings:</b>	Can be given to a Private Operation Foundation or Public Charity for fair market value of building without depreciation recapture – building may be subject to old debt if qualifies under the “old debt exception” to the Unrelated Business Taxable Income (“UBTI”) rules.	Donor can continue to manage the building and remit rent income to charity while getting a deduction for the total fair market value of the building.
<b>Part Ownership of Business:</b>	Donor retains control of business and gives part ownership to charity. Donor receives income tax deduction for value, and charity receives part of profits.	See LSI Charitable Planning Newsletter #280 - Alan Gassman, John Beck & Michael Lehmann: Donor Controlled Charitable Business System (March 11, 2019) at <a href="http://www.leimbergservices.com">http://www.leimbergservices.com</a> .
<b>Have a Party for Charity:</b>	Write off the cost, or have the charity reimburse you for the cost. Redecorate your house while you are at it.	Please Invite the Author
<b>Ask Clients Who Dispute Your Fees to Pay the Amount in Question to a Worthy Charity.</b>		




## 1. (Cont.)

## 50 WAYS TO LEAVE YOUR LEGACY


### (Outright Gifts)

<b>No More Free Consultations – Ask that a Donation Go to UJA if the Client Does Not Hire You.</b>		
<b>Move a Historical House to a Museum or Orphanage:</b>	Deduct the full value of the antique home if actively displayed by charity – What about if used by students who learn how to disassemble?	
<b>For Donors Who Would Like to Go Above the Maximum Adjusted Gross Income Donation Amounts:</b>	<p>2021 – Could create income by withdrawing from IRA or otherwise and give to charity adjusted gross income/cash rule that expired December 31, 2021.</p> <p>Make interest-free loans to the charity.</p> <p>Provide rental space without charging rent to a charity.</p> <p>Pay for advertising and sponsorship rights.</p> <p>Subsidize contributions made by friends and family members who can donate and receive tax deductions.</p>	
<b>Collectibles:</b> You can give collectibles like cars, jewelry and artwork.	Deduction can be based on fair market value, if the charity uses the item received as part of its mission.	<b>EXAMPLE:</b> Artwork displayed in a museum or university hallway.
<b>Buy Your Loved One New Jewelry and Donate the Old Jewelry at Fair Market Value:</b>	The fair market value of used jewelry may substantially exceed what it would actually sell for – valuation of jewelry can be based upon what the taxpayer would normally pay.	Must be used / displayed by the charity to deduct fair market value.
<b>Make Gifts from Low Income Bracket Taxpayers to High Bracket Taxpayers to Enable Them to Make a Donation:</b>	Example: Grandma is in the 15% bracket and wants to give \$20,000 to her church. Her son is in the highest bracket and makes a \$20,000 donation. Grandma may choose to give her son a \$20,000 disposition under her estate plan.	
<b>Gift Life Insurance Policies</b>	Gift equals value of policy-Minus any ordinary income that would have been recognized on sale-premiums tax deductible after charity owns the policy.	Must appraise life policy in appropriate manner.

### (Legacies on Death – Whether Directly on Death or Contingent Upon Others Not Surviving)

<b>Leave Cash in Your Will or Trust:</b>	No income tax deduction, but there will be an estate tax deduction.	
<b>Provide that Income from Your Estate or Trust Will Be Paid to the Charity:</b>	This carries out distributable net income to save income tax for Remainder Beneficiaries. Must have Section 642(c) language in original Trust Agreement	 Professor Dennis ("DNI") Calfee
<b>Give IRD (Income with Respect to a Decedent) Assets:</b> <b>Note-</b> This means give your IRA to charity	No income tax will be paid on IRA proceeds going directly to charity or passing through properly drafted trust to charity.	Distribution to charity will qualify for estate tax charitable deduction
<b>Life Insurance:</b>	Can deduct premiums if charity owns the policy.	
<b>Use Charitable Lead Annuity Trusts ("CLATs") to Zero Out Estate Tax:</b>	Jacqueline Kennedy Onassis – <b>EXAMPLE:</b> 15 annual payments to charity with remainder to family – zero estate tax and family can expect a significant inheritance after term of years for charity.	Can arrange as a disclaimer choice – I give the rest to my daughter, but anything she disclaims goes to CLAT for charity.
<b>Charitable Remainder Trusts:</b>	Pay my family annually for 20 years the maximum percentage that is allowed each year and can apply without incurring estate tax. Make annual payments for life of my son, and remainder to charity thereafter.	Remainder to charity chosen at the time.

**(Hybrid Donations – Promise During Lifetime for Gift on Death –  
Deduct the Value of the Tree – Keep the Fruit)**

<b>Give a Remainder Interest in a Personal Residence – Retain Life Estate:</b>	Good for elderly donor who may donate life estate later.	Will not detrimentally impact Medicaid planning?
<b>Give a Remainder Interest in the Family Farm:</b>	This works the same as giving the Remainder Interest in your home.	
<b>Charitable Remainder Trusts:</b> (CRATs and CRUTs are defined below)	Get tax deduction and tax deferred capital gains by giving away the tree and receive the fruit for a period of time – get tax deduction upon formation.	Some charities will form the CRT and serve as Trustee at no charge, if certain requirements are met.
<b>Charitable Remainder Annuity Trusts (“CRATs”):</b>	Donor will receive a fixed annual payment, notwithstanding the performance of the Trust until assets run out. May receive all back.	
<b>Charitable Remainder Unitrusts (“CRUTs”):</b> <b>Don't Hesitate To Do One</b> 	Donor will receive a percentage of value of Trust each year, and share in increasing values – presently approximately 11% per year of value for 20 years if not using a life payment. Upon inception, the table value for remainder to charity need not exceed 10% - Allows for deferral of capital gains.	Ideal for holding an asset that is about to be sold. Using FLIP NIMCRUT can allow for up to 14 years deferral of all income tax from a large transaction like the sale of a business or highly appreciated stock. May work best economically.
<b>Charitable Lead Annuity Trust (“CLATs”):</b>	Charity gets fixed payments for a term of years – remainder can pass estate and gift tax-free to next generation after term of payments.	Most often arranged so that Grantor gets a 100% charitable income tax deduction, even though much passes estate tax-free to family after term of years payments to charity.
<b>Charitable Life Annuity for Donor or Family for Lifetime Payments that May Start in the Future.</b>	Part Gift, Part Purchase – can give appreciated assets without paying taxes on “sale.”	Payments during “life expectancy” are part capital gains, part ordinary income and part return of capital. All ordinary income after life expectancy.
<b>Pooled Income Funds.</b>	All ordinary income when received.	

## (Liquidity Event Planning)

<b>Sell Asset or Company and Then Give Cash from Sale to Charity:</b>	Least effective.	<b>EXAMPLE:</b> Sell \$1,000,000 asset with zero basis and donate \$200,000 to charity. Pay capital gains tax on \$800,000. 23.8% of \$800,000 is \$190,400.  \$800,000 - \$190,400 = \$609,600.
<b>Gift Part Ownership of What Will Be Sold to Charity Immediately Before There is a Legally Binding Obligation:</b>	The tax deduction for the value of what is given will eliminate income tax on an equal portion sold.	<b>EXAMPLE:</b> Donate 20% of \$1,000,000 company to charity and sell 80% for \$800,000. \$190,400 - \$142,800 = \$47,000 tax savings  \$800,000 - \$142,800 = \$657,200.
<b>Defer All Income Tax From Sale for Approximately 14-15 Years Using Charitable Remainder Unitrust ("CRUT"):</b>		In Example above, donate 20% to charity before sale, and have 80% be given to and sold by Charitable Remainder Unitrust – Pay income taxes ratably, based upon 11% of value withdrawals over 20 years, or defer any distributions for up to 14-15 years using FLIP NIMCRUT.

**(Liquidity Event Planning)****Place Assets in a FLIP NIMCRUT that pays 90% of value under tables to Grantor.**

Grantor places NIMCRUT Unitrust income under LLC and sells 99% non-voting interest to Grantor Trust for note. The discount may be 50% because of the uncertainty and delay in receiving any distributions.

**Example:** \$1 million of investments into CRUT for \$900,000 Unitrust interest. Client gets \$100,000 tax deduction. Sell 99% non-voting interest in LLC that holds CRUT payment to SLAT or Dynasty Trust for a note for \$450,000.

Savings at 40% estate tax rate and with charitable deduction will be much more than the charity receives.



## (To Avoid Estate Tax)

**Use Administrative Note Exception to Prohibited Transaction Rules.**

Grandfather has \$10 million worth of stock in family business and is in 40% estate tax rate. On his death, IRS will receive \$4 million over 14 years, or within 9 months after date of death.

-----

The exception that should apply in this situation provides that a note given for the purchase of assets after the death of the owner based upon an existing option will not constitute self-dealing with respect to "estate property,"<sup>1</sup> regardless of when title vests under local law if the following requirements are satisfied:

- a. The administrator or trustee either possesses a power of sale with respect to the property, has the power to reallocate the property, or is required to sell the property under terms of any option subject to which the property was acquired.
- b. The transaction is approved by the probate court having jurisdiction over the estate (or by another court having jurisdiction over the estate (or trust) or over the Private Foundation).
- c. The transaction occurs before the estate is considered to be terminated for federal income tax purposes.
- d. The estate or trust receives at least fair market value for the interest or expectancy the purchasing entity has in the property.
- e. One of the following three requirements must also be met:
  - (i) the transaction is required under the terms of an option that is binding upon the trust or estate.

Instead, his Will says that the stock will go to Worthy Charity, but his children will have the option to buy the stock for a long-term low interest note from the estate and owe the note to a Family Foundation that will support the school. Now the children can pay Saint Petersburg College interest on \$10 million for 30 years at applicable federal rate (now just about 2% per annum or \$200,000 a year, income tax deductible), instead of paying \$4 million to the IRS.

(To Avoid Estate Tax)		
	<p>(ii) The transaction results in the foundation receiving an interest or expectancy as liquid as the one it would have received.</p> <p>(iii) The transaction results in the Foundation receiving an asset related to the active carrying out of its exempt purposes.</p> <p>f. If there are voting units issued by the company, the transaction can only involve the non-voting interest in the company if sale is to a Private Foundation. This is because indirect self-dealing will occur if a Private Foundation controls the organization that is a party to the transaction with a Disqualified Person.</p> <p>Strict compliance with the above requirements must occur for this exception to be effective.</p>	
Use Disclaimers:	I leave my \$10 million of stock in trust for my son, John Smith, Esquire, but if the trustee disclaims the stock goes to the CLAT for my son, but if the CLAT trustee disclaims then the stock goes to a 501(c)(3) organization named by the trustee.	

## (On Death)

<b>Leave a Devise to a High Income Child Who can Donate to Charity to get a Tax Deduction.</b>		
<b>Variable Annuities Laden with Ordinary Income</b>	Beneficiary can be charity in amount equal to all income in the contract within X months of death, with remainder to charity or elsewhere.	
<b>Leave IRA and Variable Annuity Income or other IRD to Pot Trust.</b>	Where trustee can pay IRD amounts to charities in the calendar year of receipts until age 13.	
<b>IRA and/or Pension Payable to Charitable Remainder Trusts:</b>	Stretch the IRA 20 years or over a lifetime or lifetimes by making it payable to a Charitable Remainder Trust ("CRT") or FLIP NIMCRUT to avoid 10-year payout rule.	
<b>Use Charitable Lead Annuity Trusts ("CLATs") to Zero Out Estate Tax:</b>	Jacqueline Kennedy Onassis – <b>EXAMPLE:</b> 15 annual payments to charity with remainder to family – zero estate tax and family can expect a significant inheritance after term of years for charity.	Can arrange as a disclaimer choice – I give the rest to my daughter, but anything she disclaims goes to CLAT for charity and her.
<b>Leave Assets to a "Non-Qualified Charitable Trust", Which can Pay its Income to Charity</b>	The trust will not be subject to the charitable organization rules, and can own S corporation stock and have Unrelated Business Taxable Income without penalty.	Be aware of IRC § 680, which may limit charitable deductions for income that would be UBTI, if the trust was a charity.

**(Using Family Foundations)**

<b>Establish A Private Operating Foundation to Receive/Control Donated Assets and Interactive Joint Venture with Public Charity.</b>	Usually the same tax result, control can stay with the family along with recognition of the name of the Foundation.	Must spend 4.25% of value each three out of every four years and/or use set-aside.
<b>Establish Non-Operating Private Foundation with Same Purposes as Above, But Without Active Participation Requirements.</b>	Private Foundations are subject to deduction limitation rules that do not apply to Private Operating Foundations – Must distribute approximately 5% each year to Public Charities.	The family can control and write checks to Public Charities or engage in active Joint Ventures.
<b>Fund an Incomplete Gift Family Foundation.</b>	Family receives recognition of the Family Foundation name and existence, but no tax deduction until the incomplete gift Foundation makes a transfer to charity. No tax return or formalities required – considered as owned by founders.	No need to register this with the IRS, no need to give minimum distributions, simple inexpensive way to see if the family would enjoy having a Foundation or to earmark assets for charitable purposes while receiving recognition.

# 2024 Charitable Deduction Percentage Summary Chart

## Special Notes:

1 Donations to charitable remainder annuity trusts and charitable remainder unitrusts can generate deductions in the same categories as shown on this chart.

\*A private operating foundation receives better tax treatment.

2 C corporation can deduct up to 10% of its taxable income

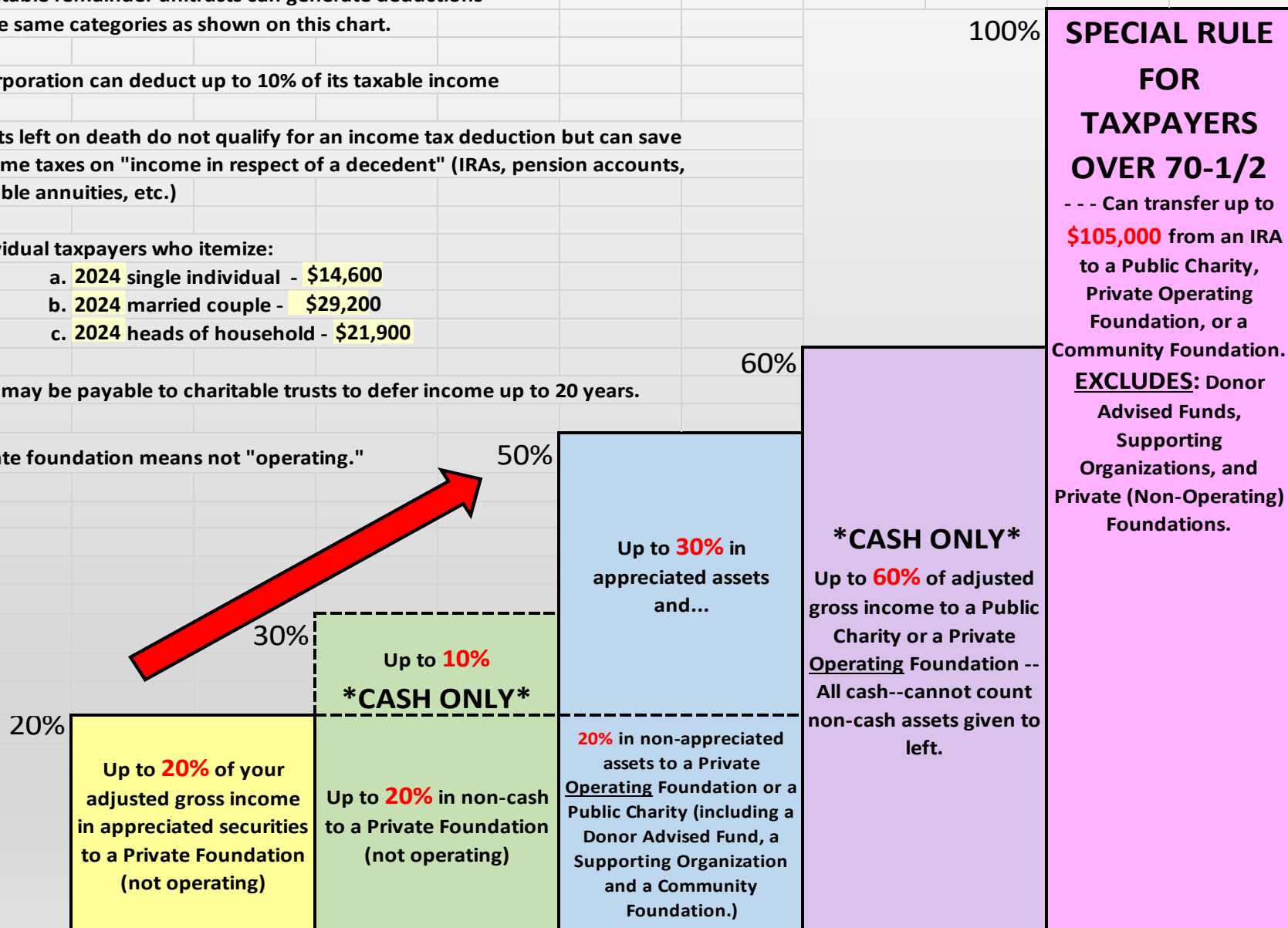
3 Assets left on death do not qualify for an income tax deduction but can save income taxes on "income in respect of a decedent" (IRAs, pension accounts, variable annuities, etc.)

4 Individual taxpayers who itemize:

- a. 2024 single individual - \$14,600
- b. 2024 married couple - \$29,200
- c. 2024 heads of household - \$21,900

5 IRAs may be payable to charitable trusts to defer income up to 20 years.

6 Private foundation means not "operating."





# Strategies to Transfer Money to Charity

Type of Charitable Donation/Strategy	Private Foundation	Public Charity	Donor Advised Fund
<b>Charitable Remainder Trust</b>	Can be a beneficiary, but charitable deduction subject to Private Foundation AGI limitations and Grantor should not control the foundation.	Yes, up to 50% of AGI deduction, 30% for capital gain property.	Same as listing a Public Charity as the charitable beneficiary, but donor should not advise the DAF after termination of the Charitable Remainder Trust.
<b>Qualified Charitable Donation</b>	QCDs cannot be made to Private Foundations.	Up to \$105,000 (for 2024) can be donated without the taxpayer paying any tax on the donation.	QCDs cannot be made to a Donor Advised Fund.
<b>IRA Beneficiary Designation</b>	Can be left to a Private Foundation on death for an estate tax charitable deduction.	Can be left to Public Charity on death of an estate tax charitable deduction.	Can be paid to Donor Advised Fund on death for estate tax charitable deduction.
<b>Charitable Gift Annuity</b>	Not allowed.	Yes. A deduction is allowed for the actuarial amount projected to go to charity.	No allowed.
<b>Charitable Lead Annuity Trust</b>	Allowed, but subject to 30% of AGI for cash and 20% for capital gain assets. Grantor cannot control Private Foundation.	Allowed, but deduction is subject to various AGI restrictions because donation is considered to be "for the use of the charity." AGI limited to 20% to 50% depending on assets contributed.	Allowed. Same as benefiting a Public Charity, but donor should not control the Donor Advised Fund.

# Public Charities by Definitions and Limitations

Common Name for Organization	Public Charity: <u>Broadly Supported</u>	Public Charity: <u>Operate a School, "Hospital," "Clinic", or Medical Research Organization</u>	Church or Community, Faith-Based, or Common Interest Foundation	Donor Advised Fund	Type I Supporting Organization (Asset Protection)	Type II Supporting Organization (Asset Protection)
How to Qualify	Received significant support from small donors – 33% from small (under 2%) donors, or 66% from donors and fundraising	Must operate a physical school, medical facility, research organization, or church	Will normally qualify as a public charity	Will normally qualify as a public charity	Operated, supervised, or controlled by the public charities they support  Protect assets that would otherwise be exposed to creditors of the operating charity.	Supervised or controlled in connection with the public charities they support
Prominent Limitations of Organization	No prominent limitations	IRS may require primary or sole donor to not control the board upon formation.	No prominent limitations	IRS strongly discourages contributions for events where the DAF pays the charitable portion and the donor pays the non-charitable portion, i.e., a benefit gala at \$1,000 a person – deductible for \$700 per person.	Must be organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more public charities.	Must be organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more public charities.
Qualifies for the "100% Cash" 2021 Donation	Yes	Yes	Yes	No	No	No

## Public Charities by Definitions and Limitations (continued)

Common Name for Organization	Type III Supporting Organization (Asset Protection)	Private Operating Foundation	Private Nonoperating Foundation	Charitable Remainder Trust	Charitable Lead Annuity Trust
How to Qualify	<p>Operated in connection with the public charities they support.</p> <p>Protect assets that would otherwise be exposed to creditors of the operating charity.</p>	<p>Actively operates for charitable purposes but not broadly supported by public and not considered to be a "Public Charity."</p> <p><u>Advantage:</u> Can be controlled by a single donor or family.</p>	<p>"Grants" money to other charitable organizations.</p> <p>"Grant" = writing a check</p>	<p>Donor or other beneficiary receives an income stream from the assets donated to this irrevocable trust for a term of years or for life. The named charity receives the remaining trust assets at the end of the trust term.</p>	<p>Irrevocable trust which pays to charity a fixed amount each year for a period of time. At the end of the trust term, the remaining assets of the trust go to the beneficiaries designated by the donor.</p>
Prominent Limitations of Organization	<p>Must meet a "responsiveness test" (the organization is required to "be responsive to the needs or demands of the publicly supported organization") and an "integral part test" (the organization is required to "maintain significant involvement in the operations of" at least one publicly supported organization and the publicly supported organizations are required to be "dependent upon the supporting organization for the type of support which it provides.")</p> <p>The "integral part test" is used to determine whether a Type III supporting organization is "functionally integrated" or "non-functionally integrated."</p>				
Qualifies for the "100% Cash" 2021 Donation	No	Yes	No	N/A	N/A

Summary of Restrictions Applicable to Different Types of Entities										
	Possible Cost	Full Tax Deduction	Private Inurement	Self-Dealing	Excess Business Holdings	Unrelated Business Taxable Income	Can Own S Corp Stock	Can Own Donor Controlled C Corp Stock*	Can Receive IRA Qualified Charitable Distributions	Can Directly Benefit a Foreign Charity
Public Charity	Legal & application fees. May need to hire employees	Yes	Prohibited	Not Prohibited, but Private Benefit Doctrine applies	Not prohibited, but Commensurate in Scope Doctrine applies	Yes	Yes, but will generate UBIT	Yes	Yes	No
Community Foundation	Little to no cost	Yes	Prohibited	Not Prohibited, but Private Benefit Doctrine applies	Prohibited	Yes	Yes, but will generate UBIT	Yes	Yes	No
Donor Advised Fund	Little to no cost	Yes	Prohibited	Prohibited	Prohibited	Yes	Yes, but will generate UBIT	Yes	No	No
Private Operating Foundation	Legal & application fees. May need to hire employees	Yes	Prohibited	Prohibited	Prohibited	Yes	Yes, but will generate UBIT	Yes	Yes	No
Private Foundation	Legal & application fees. May need to hire employees	Yes	Prohibited	Prohibited	Prohibited	Yes	Yes, but will generate UBIT	Yes	No	No

## Summary of Restrictions Applicable to Different Types of Entities (continued)

	Possible Cost	Full Tax Deduction	Private Inurement	Self-Dealing	Excess Business Holdings	Unrelated Business Taxable Income	Can Own S Corp Stock	Can Own Donor Controlled C Corp Stock*	Can Receive IRA Qualified Charitable Distributions	Can Directly Benefit a Foreign Charity
Charitable Remainder Trust	Legal fees to create and administer trust	Based on present value of interest going to charity	Prohibited, but some exceptions apply	Prohibited, but some exceptions apply	Not prohibited, unless an income beneficiary has an income interest	Yes. Taxed at 100% bracket	No	Yes	No	No
Charitable Lead Annuity Trust	Legal & application fees. May need to hire employees; plus possible income taxes	Only for a Grantor CLAT	Prohibited	Prohibited	Prohibited, if the deduction for the income interest is over 60%	Yes	Unclear and may generate UBIT. Grantor CLAT can own S Corp. stock	Yes	No	
501(c)(4)	Legal fees and application fees	Only a tax deduction – convert to charity on death	Prohibited	Do Not Apply	Do Not Apply	Yes	Do Not Apply	Yes	No	No
Incomplete Charitable Trust	Legal fees to create and administer- income taxes	Only receive a deduction when money is transferred to charity	Not Prohibited	Not Prohibited	Not Prohibited	No	Yes, if Grantor Trust or ESBT	Yes	No	Yes



# Consider Use of a 501(c)(4) Social Welfare Organization

1. No Income tax deduction for funding.
2. Contributions qualify for the federal gift tax deductions – Beware estate tax treatment. Donor should not control 501(c)(4) or 501(c)(4) assets should go to charity on donor's death.
3. The income of the 501(c)(4) is not subject to income tax.
4. 501(c)(4) organizations can enter into transactions that are not permitted for a Private Foundation because 501(c)(4) organizations are not subject to self-dealing or excess business holdings rules. However, 501(c)(4) organizations are subject to UBTI.
5. A 501(c)(4) organization can support political causes, lobbying and PACs (Political Action Committees). 501(c)(3) organizations cannot.
  - Rule of thumb: No more than 40% to be spent on political candidates and campaign-60% on social welfare messaging that may have political connotation's such as on immigration, abortion, and racism.
6. A 501(c)(4) may own all of the voting stock of an operating or investment company, with non-voting stock being held by a Private Foundation or Public Charity – whoever controls the 501(c)(4) controls the company, in a fiduciary manner, while avoiding self-dealing and excess business holdings rules.

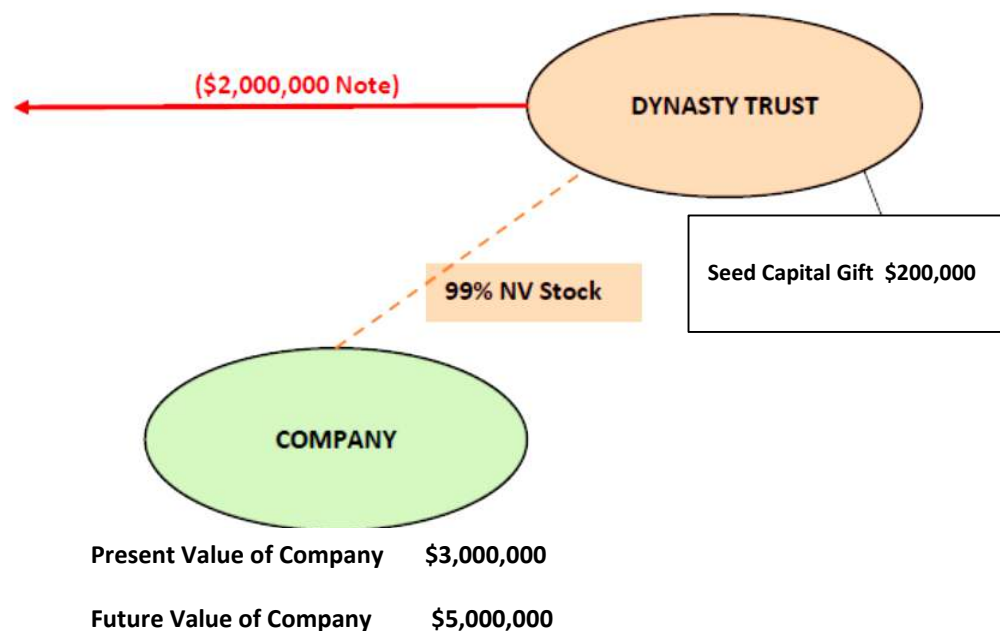
# Using a Dynasty Trust and Underlying NIMCRUT

## Estate, Tax and Charitable Planning for a Liquidity Event

(Assume Company Now Worth \$3,000,000 and will be Worth \$5,000,000 When Sold)

### Year One

- \* Establish Dynasty Trust
- \* Fund Dynasty Trust with Seed Capital Gift
- \* Sell 99% Non-Voting Stock in Company to Dynasty Trust for \$2M note (assume 33% discount)

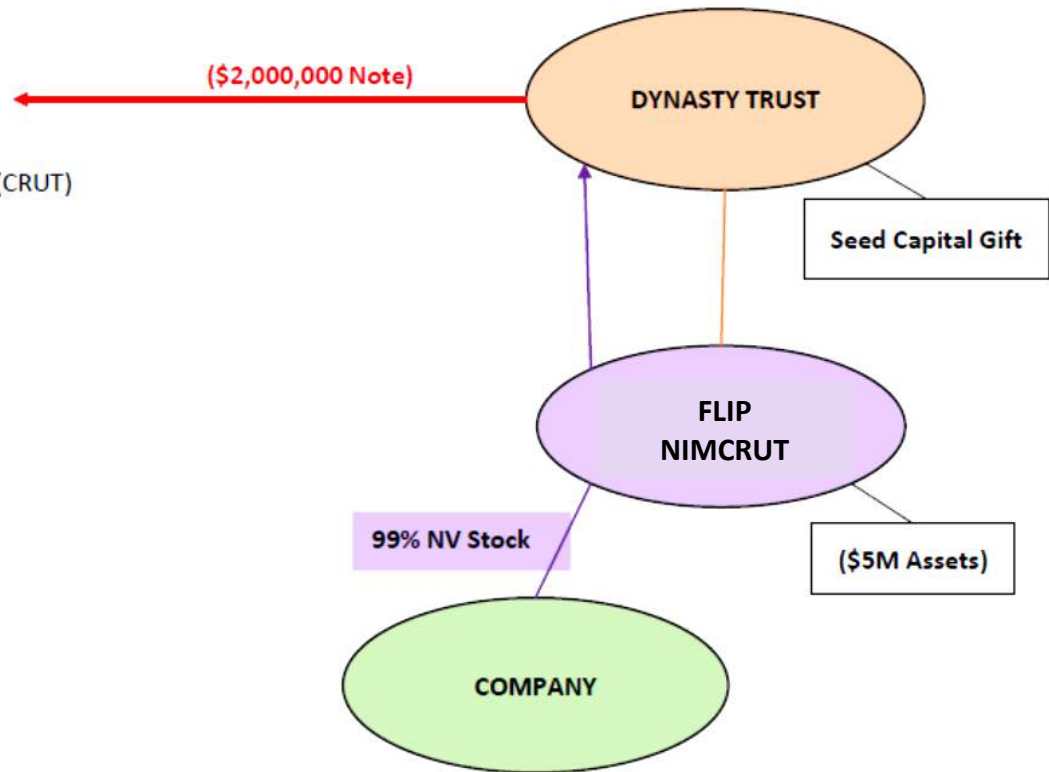


# Using a Dynasty Trust and Underlying Charitable Entity (Cont.)

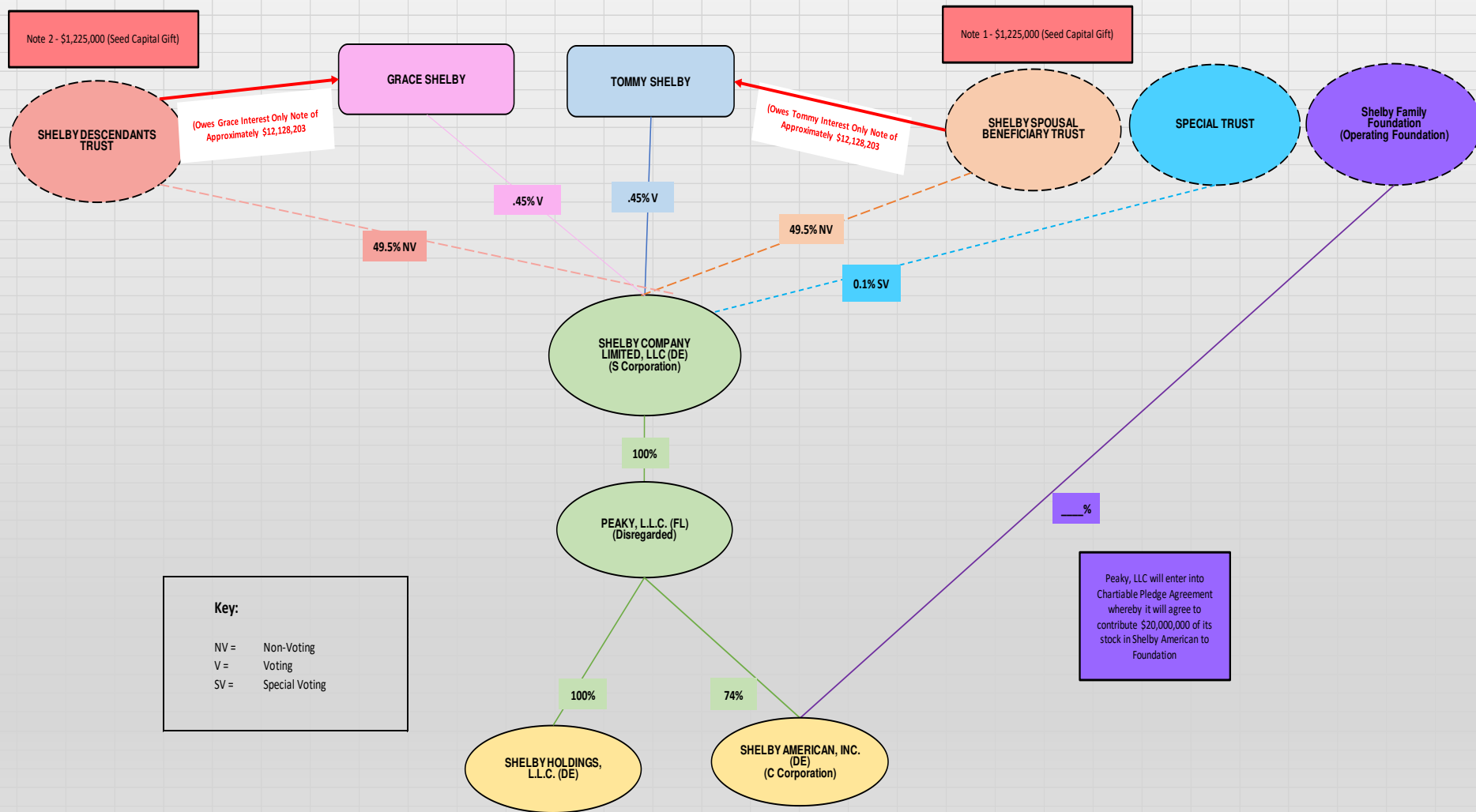
(Client Would Like to Defer Income Tax and Avoid Federal Estate Tax)

## Year Three

- \* Dynasty Trust donates stock to Charitable Remainder Unitrust (CRUT) shortly before stock is sold.
- \* FLIP NIMCRUT has \$5,000,000.
- \* Will pay no income tax for first 14 years.

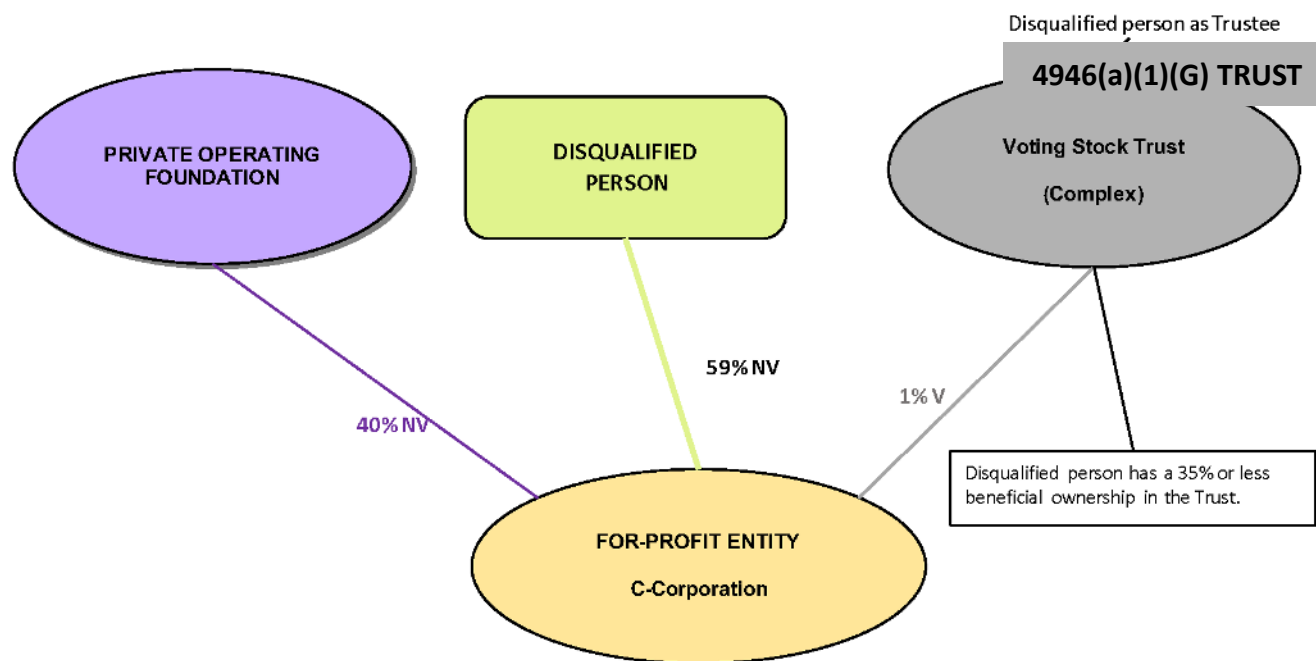


# Installment Sale to Intentionally Defective Grantor Trust (IGDT) / Donation to Charity



## Non-Profit Entity Owning For-Profit Business

### Permitted - Disqualified Person Retaining Non-Voting Interests



The above structure should not cause an excess business holdings issue for the POF because the POF will not be deemed to own any of the voting interest that are held by the Voting Stock Trust as the disqualified person has less than a 35% beneficial ownership interest in the Voting Stock Trust. Section 4946(a)(1)(G).

The disqualified person holds a 59% non-voting interest outside of the Voting Stock Trust, which does not lead to an excess business holdings issue because the excess business holdings statute is only concerned with ownership of voting stock. Thus, the disqualified person can continue to own any percentage of the non-voting interest in the company as long as such person controls the voting interest through the use of a non-disqualified Voting Stock Trust.



# Dispositions to Charity

## Under *McCord/Petter* Type Family Installment Sales

- Under the *McCord* and *Petter* arrangements, a small sliver of the applicable family entity was treated as going to charity at the moment of sale, and the only open question was whether a larger percentage of the entity was transferred to the charity at the time of the sale.
- In other words, as opposed to the agreements indicating that the charity was receiving a percent of the company and would therefore receive a greater percentage later if determined appropriate by a tax court or other court of competent jurisdiction, the agreement indicated that the charity was receiving a percentage of the applicable entity equal to a portion sufficient so that there would be no gift being considered as made to the family trust that was purchasing the rest of the applicable percentage for a fixed dollar amount.
- For instance, if the sales price was \$1 million for 25% and the charity was receiving 1% at the time of the transfer, if the Tax Court found that 25% of the entity was really worth \$2 million then the charity would be receiving 13.5% at the moment of the transaction, and the parties would correct percentages of ownership and provide makeup payments to take into account that the charity actually received 13.5% instead of 1% at the time of the sale.

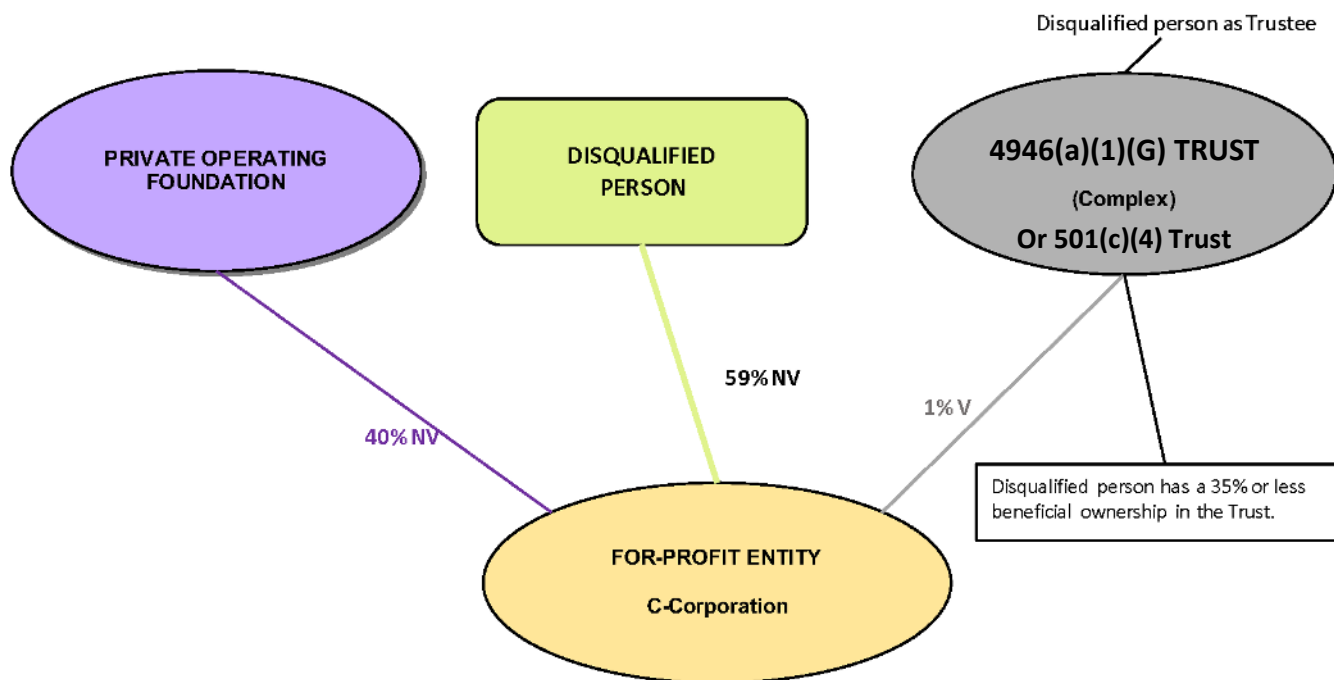
# Issues Presented by *McCord/Petter* Type Family Installment Sales (*cont'd*)

- Will the excess transfer qualify for an income tax deduction?
- Specifically, will the taxpayer know within 3 years of filing the income tax return for the tax year in question whether the charitable contribution is actually greater than what is reported on the income tax return?
- ❖ One strategy is to file the gift tax return as soon as possible in the year following the sale in order to get the 3 year statute on the audit of a gift tax return running, while filing an extension for the individual income tax return of the taxpayer, and probably filing the income tax return on the last possible day, or possibly even thereafter if this is legal, given that gift tax auditors will commonly request an extension of the statute of limitations and may be less likely to settle on favorable terms if the taxpayer does not grant an extension to some extent.

# Non-Profit Entity Owning For-Profit Business



## Permitted - Disqualified Person Retaining Non-Voting Interests



The above structure should not cause an excess business holdings issue for the POF because the POF will not be deemed to own any of the voting interest that are held by the Voting Stock Trust as the disqualified person has less than a 35% beneficial ownership interest in the Voting Stock Trust. Section 4946(a)(1)(G).

The disqualified person holds a 59% non-voting interest outside of the Voting Stock Trust, which does not lead to an excess business holdings issue because the excess business holdings statute is only concerned with ownership of voting stock. Thus, the disqualified person can continue to own any percentage of the non-voting interest in the company as long as such person controls the voting interest through the use of a non-disqualified Voting Stock Trust.

# Basic Principles of Transferring Real Estate to Charity

- While most charitable contributions consist of cash and marketable securities, many donors have and will prefer to give direct ownership of real estate or ownership of entities that own real estate.
- When the real estate is owned directly by the taxpayer or a LLC that is disregarded for income tax purposes, then the rules are fairly simple.
- The unencumbered real estate, or the ownership of an LLC that owns such real estate, can be transferred to the 501(c)(3) charitable organization, and the donor can receive an income tax deduction based upon the fair market value of the property given, to the extent that the donor would have had long term capital gain treatment if the property had been sold.



# Basic Principles of Transferring Real Estate to Charity (Cont.)

- Alternatively, if the property was not held for a full year and therefore would have received short term capital gain treatment on sale, or if the property was depreciated by the taxpayer using an accelerated depreciation method that would cause depreciation recapture to be recognized upon sale, then the charitable income tax deduction will be limited to the basis of the property, instead of being based upon fair market value.
- Many buildings have been subject to component depreciation upon acquisition, which will be recaptured upon sale.
- Therefore, the physical aspects of the property that were subject to component depreciation will have to be separately valued at the time of donation, and those portions such as plumbing, electrical, and other systems will not be deductible except possibly to the extent of any remaining basis thereon.



# Basic Principles of Transferring Real Estate to Charity (Cont.)

Some interesting dynamics apply with respect to variations of the rules provided on the previous slide, which can be explained as follows:

1. Appreciated assets, including real estate, donated to a Private Non-Operating Foundation will only be deductible based upon the income tax basis of the asset (which is normally cost minus depreciation taken) up to 20% of the adjusted gross income for the taxpayer in the year of donation, forward annually for up to five additional tax years.
2. When the donation of appreciated property is to a Private Operating Foundation or a Public Charity, then the limitation for the deduction of the fair market value of the property cannot exceed 30% of the donor's adjusted gross income for the year of the gift, the limitation will carry forward for up to five consecutive years thereafter.
3. The donation of non-appreciated assets to a Private Operating Foundation or Public Charity can be based upon up to 50% of adjusted gross income.
4. A taxpayer donating appreciated property may elect to have a tax deduction equal to the basis of the property, in lieu of the fair market value, in order to use the 50% of adjusted gross income basis.
5. A taxpayer may also donate a percentage ownership in real estate in lieu of a 100% interest.





# Basic Principles of Transferring Real Estate to Charity

## A. Basic Principles of Transferring Real Estate to Charities

The following describes important principles that apply to real estate and its involvement in charitable giving.

Many real estate and business-investment owners and operators love their families and charities but also love their properties and businesses. It is important that these entrepreneurs and owners be well informed about charitable opportunities and planning tactics that most tax and estate advisors do not understand.

Individuals, businesses, and affiliated entities engaged in real estate investment and development can dramatically reduce income and estate taxes and enhance creditor-protection planning by supporting charitable organizations and causes. This can be done while retaining control and flexibility.

Tax and estate planners often face challenges in understanding and explaining to their clients what arrangements are possible and how they will work. The rules are complex, and there is a lack of clear and comprehensive literature concentrating on how these rules apply to real estate investors and developers.

An interesting dynamic often exists when a senior generation member has funded significant charitable amounts to 501(c)(3) entities, Charitable Remainder Trusts (“CRT”), or Charitable Lead Annuity Trust entities (“CLAT”). When the next or subsequent generations take control of the entities, they often wish to redeploy the financial resources away from charity in ways that are consistent with their goals.



# Basic Principles of Transferring Real Estate to Charity, cont.

There are ways to use charitable resources to indirectly benefit and operate businesses and investment endeavors, while qualifying for charitable purposes. In this regard, real estate investors and developers normally have four goals:

1. Retain control,
2. Obtain a charitable income and/or estate tax deduction,
3. Receive recognition, and
4. Support a charity or charitable causes.

These goals are ordered from the perspective of a tax advisor. A development officer or employees and supporters of a 501(c)(3) entity would likely arrange these goals in the opposite order.

Certain charitable endeavors can indirectly benefit a real estate developer or owner or satisfy an investor's non-charitable objectives. For example, the following charitable activities were used to enhance entities or properties owned or controlled by donors and are further discussed in subsequent chapters.

- In Revenue Ruling 70-585, 1970-2 C.B. 115, the IRS stated that a nonprofit was allowed to undertake the construction and renovation of housing for sale to low-income families on favorable financing terms by providing that “where an organization is formed for charitable purposes and accomplishes its charitable purposes through a program of providing housing for low and, in certain circumstances, moderate income families, it is entitled to exemption under section 501 (c) (3) of the Code.” (Emphasis added.)
- In Private Letter Ruling (“PLR”) 200634036 (April 10, 2006), the IRS permitted a nonprofit to construct and operate a city-owned convention center.
- In PLR 200444030 (August 5, 2004), the IRS allowed a nonprofit to operate a comprehensive health center, including rehabilitation and fitness functions.
- In PLR 200148057 (July 17, 2001), the IRS allowed a nonprofit to fund and operate a golf course, marina, and common facilities as part of a state park system.
- The authors recently assisted with a Form 1023 (attached as Exhibit B) approval of a 501(c)(3) athletic and aquatic center to be built adjacent to a developer's property. The presence and operations of the center will benefit the general community.



# Donations of Real Estate to Charitable Remainder Trusts

- Unencumbered real estate can be donated to charitable remainder trusts, although the rent income from a donated property may not be sufficient to enable the trust to make its required annual payments.
- Often real estate will be donated to a “flip” net income makeup charitable remainder unitrust (a FLIP NIMCRUT) with payments to be deferred until the property is sold, as further described below in this outline.
- Real estate is one of the assets that can be identified under a FLIP NIMCRUT so that the sale thereof causes the trust to “flip” the switch to begin paying the annual unitrust amount.
- A transfer of encumbered property to a charitable remainder trust can be considered to be a gift only to the extent of the excess of the fair market value of the property over the amount owed.
- If handled properly, the donor who agrees to make all mortgage payments will receive a tax deduction for the initial contribution, followed by deductions for making the mortgage payments based upon the value of the remainder interest under the trust at the time that each payment is made.

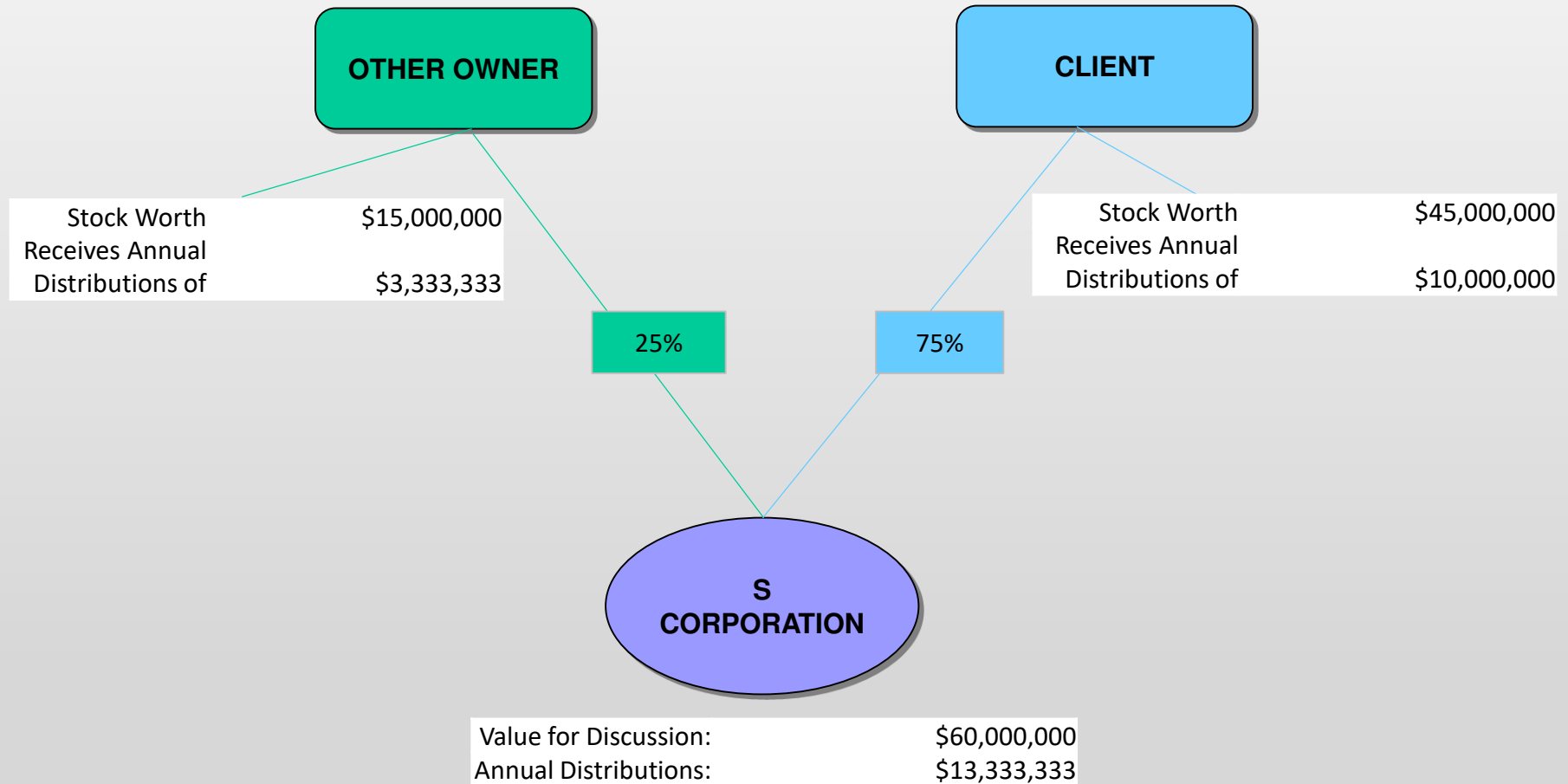


# Donations of Real Estate to Charitable Remainder Trusts *(Cont'd)*

- Transferring encumbered property to a charitable remainder trust implicates the self-dealing rules, which may be avoided if the mortgage has been on the property more than ten years before the gift is made or the mortgaged property was the sole initial asset transferred to the trust pursuant to Treasury Regulation Section 53.4941(d)-1(a).
- These rules need to be navigated very carefully.
- Please note that a charitable remainder trust is subject to a 100% excise tax on debt financed income, unless an exception applies.
- Real estate can also be donated to facilitate participation in Pooled Income Funds and Charitable Gift Annuities.
- Real estate can also work well with a charitable lead trust when it generates sufficient rent income to allow the lead trust to make its annual required charitable payments.

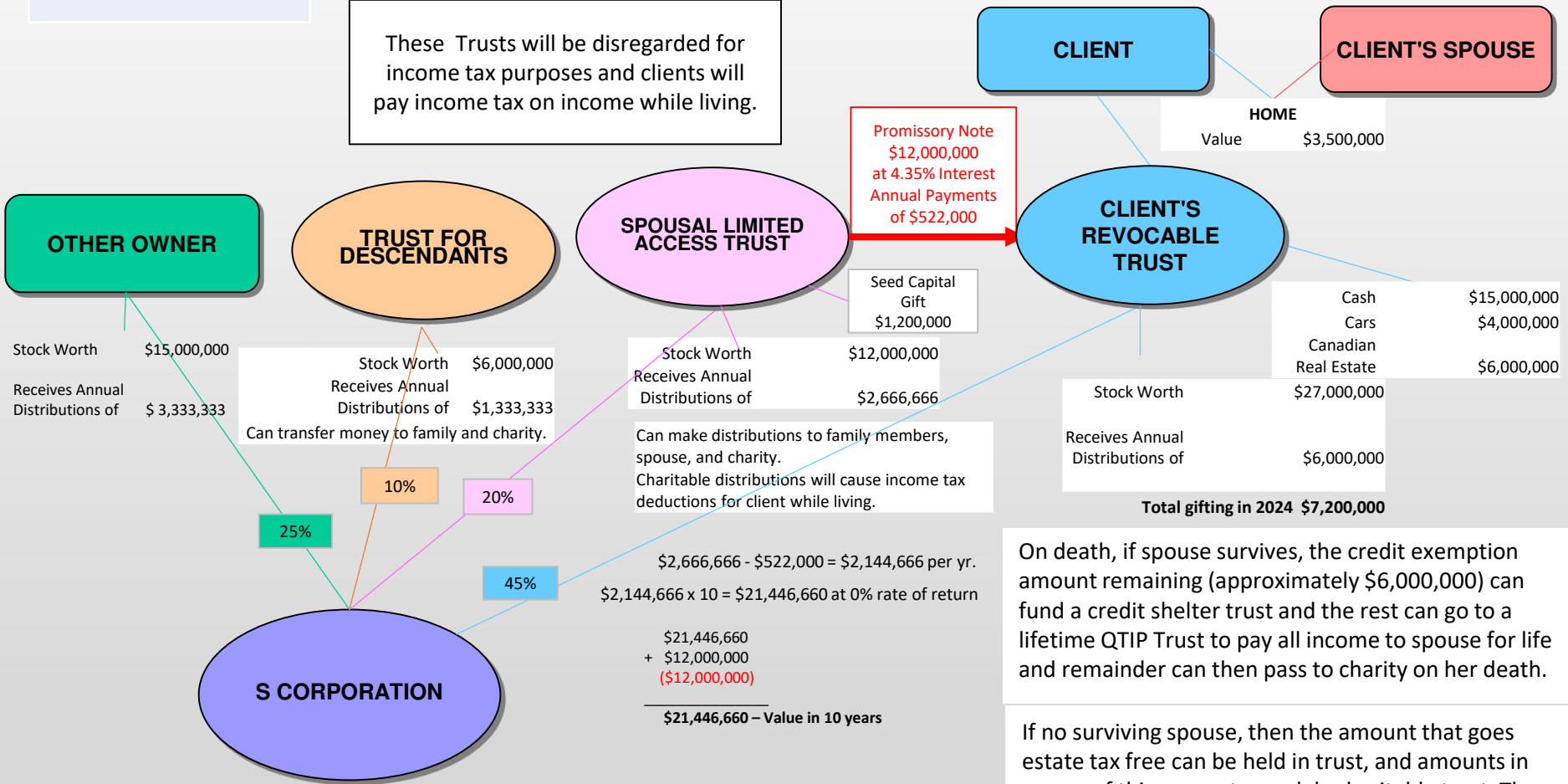


## BEFORE PLANNING



## AFTER PLANNING

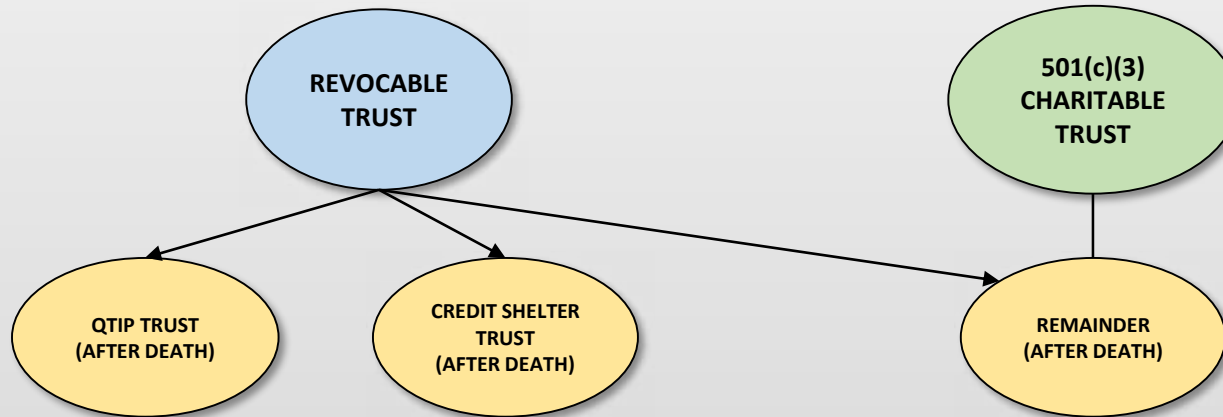
These Trusts will be disregarded for income tax purposes and clients will pay income tax on income while living.



## Without Administrative Note

### Revocable Trust Assets:

Home	\$ 4,000,000
Investments	\$28,610,000 (\$10,000,000 + \$13,610,000 + \$5,000,000)
Business	\$45,000,000 (Distributes \$5,000,000 a year in profits)
Business Dividends	\$ 7,000,000 (per year)



Home: \$ 4,000,000  
 Investments: \$10,000,000  
**Total: \$14,000,000**  
**(ENOUGH 😊)**

Distributes income annually to spouse with remainder passing to family and charity upon spouse's death.

Investments: \$13,610,000

Can make distributions to family members, spouse and charity.

Investments: \$ 5,000,000  
 Business (becomes C corp.): \$45,000,000  
 Receives in Dividends (per yr.) \$ 4,900,000 \*  
 Must Distribute 4.25% of net value to charity (per yr.) \$ 2,125,000

\*Business becomes C corporation  
 subject to income tax on its income – assume 30% rate)

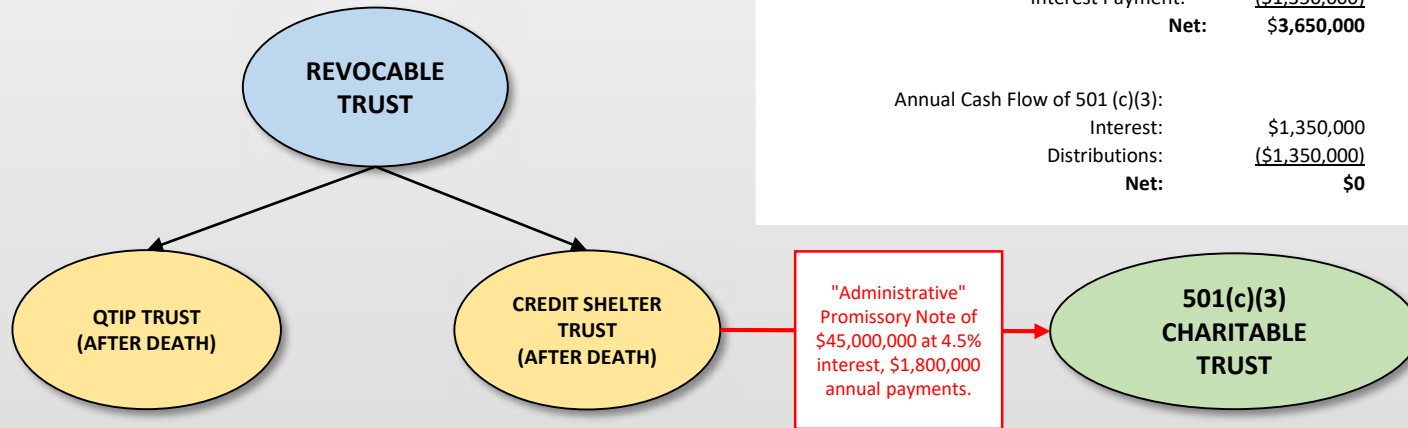
(Must distribute 4.25% year to charity. 4.25% x \$50,000,000  
 Is \$2,125,000)



## With Administrative Note

### Revocable Trust Assets:

Home	\$ 4,000,000
Investments	\$28,610,000 (\$10,000,000 + \$13,610,000 + \$5,000,000)
Business	\$45,000,000 (Distributes \$5,000,000 a year in profits)
Business Dividends	\$ 7,000,000 (per year)



### Annual Cash Flow of Credit Shelter Trust:

Business Income:	\$5,000,000
Interest Payment:	<u>(\$1,350,000)</u>
<b>Net:</b>	<b>\$3,650,000</b>

### Annual Cash Flow of 501 (c)(3):

Interest:	\$1,350,000
Distributions:	<u>(\$1,350,000)</u>
<b>Net:</b>	<b>\$0</b>

Home: \$ 4,000,000  
Investments: \$10,000,000  
**Total: \$14,000,000**  
**(ENOUGH 😊 )**

Distributes income annually to spouse with remainder passing to family and charity upon spouse's death.

Investments: \$13,610,000  
Business: \$45,000,000  
Promissory Note: **(\$45,000,000)**  
**Net Value: \$13,610,000**

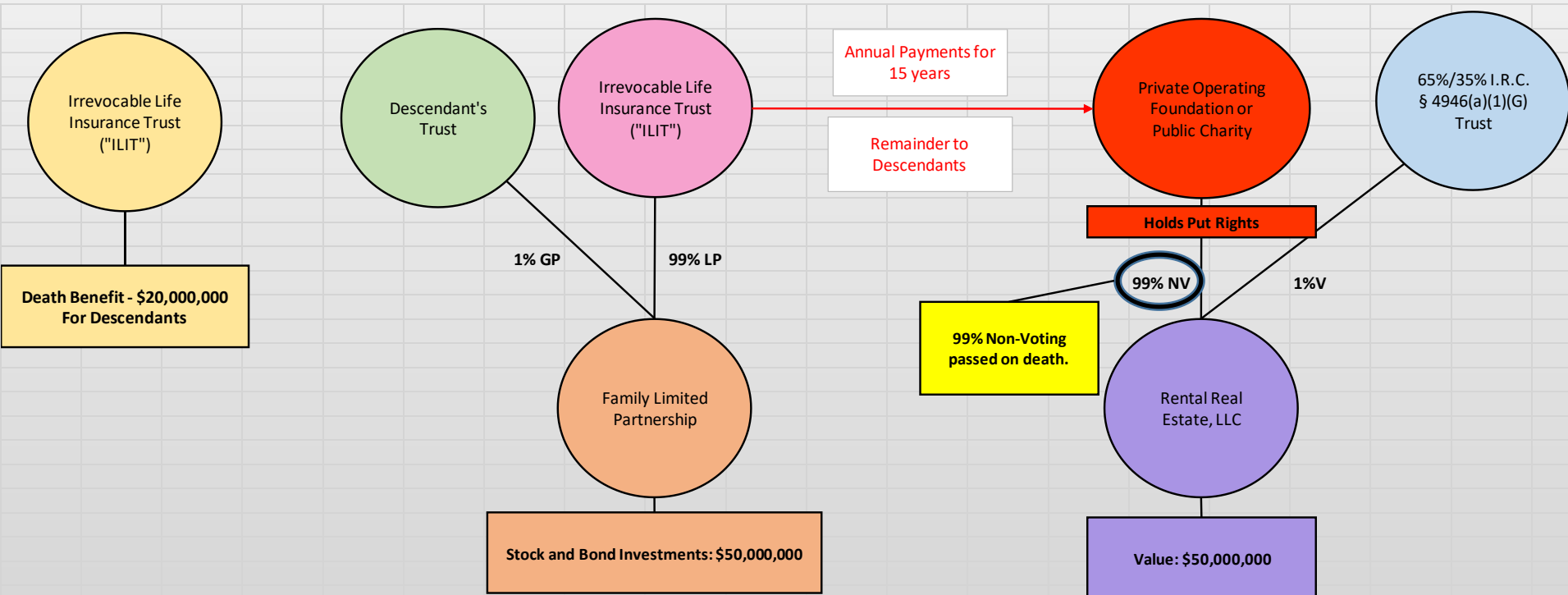
Can make distributions to family members, spouse and charity.

### Cash Flow:

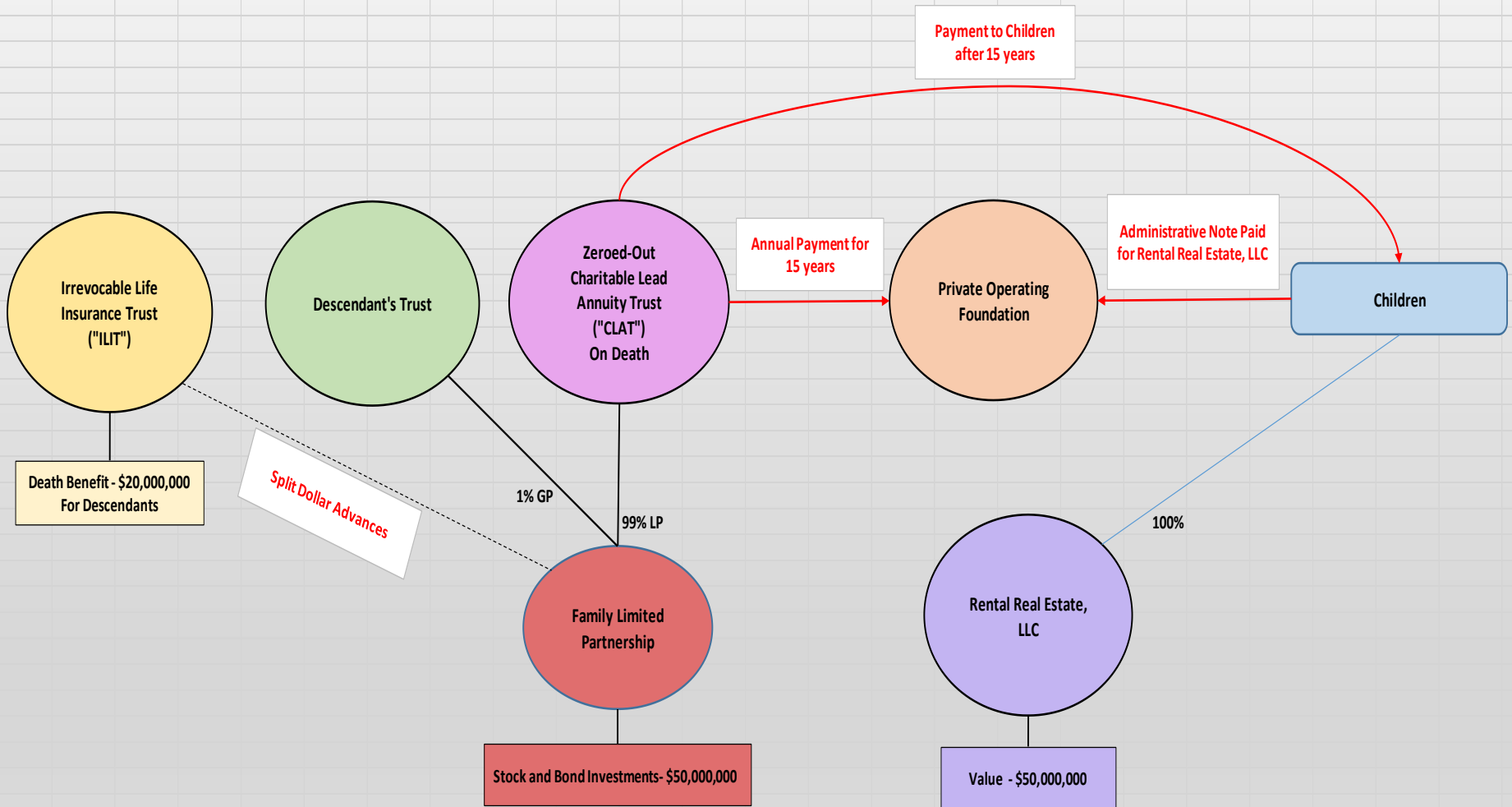
Dividends:	\$7,000,000
Interest Payment	<b>(\$1,800,000)</b>
<b>Positive Cash Flow</b>	<b>\$5,200,000</b>

Investments: \$ 5,000,000  
Promissory Note: \$45,000,000  
Receives in Interest 4.5%(per yr.) \$ 1,800,000  
Must Distribute 4.25% of net value to charity (per yr.) \$ 1,912,500

# Zero Estate Tax Plan for Charitable Families, Alternative Structure



# Zero Estate Tax Plan for Charitable Families **With Administrative Note Purchase**



# EZ Learning Tool for Charitable Tax Law

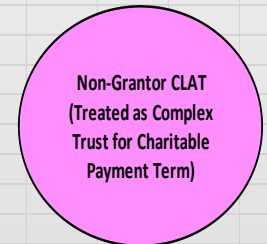
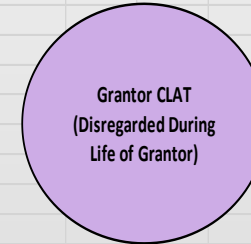
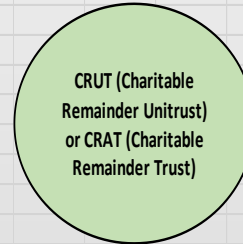
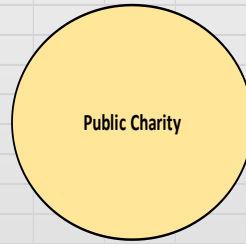
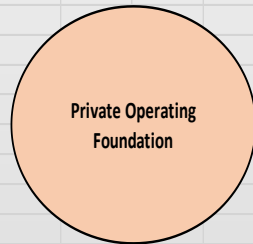
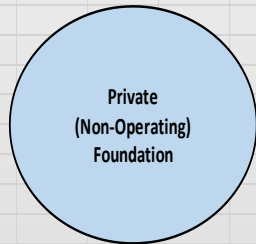
## Slide 1 of 6 – Deduction for Donation

Private (Non-Operating) Foundation	Private Operating Foundation	Public Charity	CRUT (Charitable Remainder Unitrust) or CRAT (Charitable Remainder Trust)	Grantor CLAT (Disregarded During Life of Grantor)	Non-Grantor CLAT (Treated as Complex Trust for Charitable Payment Term)
<p>Can be funded or controlled by one person or family.</p> <p>Charitable deduction limited to lower of basis or FMV of donated assets other than publicly traded securities.</p> <p>Donor can deduct only up to 20% of AGI for contributions of securities—and then carry forward up to 5 years.</p> <p>Subject to 1.39% annual excise tax on net income.</p> <p>Must generally distribute/spend 5% of net market value annually.</p>	<p><b>Same as Private Non-Operating Foundation</b>, but must “operate” a charitable activity or venture.</p> <p>Charitable deduction rules are the same as Public Charity—Up to 30% AGI for FMV of appreciated capital gain assets (not accelerated depreciation or dealer property gain). Up to 20% AGI for non-appreciated assets and up to 60% for cash.</p> <p>Must generally spend or distribute 4.25% of net market value each 3 of 4 years.</p>	<p>May qualify by being a physical school, medical facility (“hospital”), medical research organization, house of worship, or satisfying Over 33% Test or Over 66% Test.</p> <p>No minimum distribution requirements.</p> <p>No self-dealing prohibitions.</p> <p>Same donation deductibility rights as Private Operating Foundation contributions.</p>	<p>A simple CRUT or CRAT makes annual payments to one or more individuals, with remainder to charity.</p> <p>Remainder interest must be worth at least 10%, and normally the contributor will receive a tax deduction based thereon.</p> <p>Can contribute appreciated assets and defer income tax on sale by CRT and income thereon until payments are received.</p> <p>Charitable deduction for value of charitable remainder interest.</p>	<p>Considered as owned by Grantor for income tax purposes.</p> <p>Therefore, not subject to self-dealing and other rules.</p> <p>Grantor gets income tax deduction for contribution and pays income tax on net income during charitable term.</p> <p>Remainder passes estate and gift tax-free to family members or comes back to the Grantor.</p>	<p>Taxed as an irrevocable “complex” trust.</p> <p>No income tax deduction for contribution.</p> <p>Grantor not taxable on income.</p>

# EZ Learning Tool for Charitable Tax Law, Cont'd (UBTI)

**Slide 2 of 6 – Unrelated Business Taxable Income from Rent Based Upon Percentage of Profit or Dealer Sale Income Treatment and More than Incidental Leasing of Personal - Non-Real Estate - Assets and Income from Businesses Not Related to the Charitable Purpose of the Organization - (Assume there is no debt on property, or that debt qualifies under 10 year exception).**

**Taxation of Ownership of Real Estate – 100% Ownership or Ownership as Tenants-In-Common (“TIC”) – Not Taxed as Partnership**



No tax or UBTI on  
passive net rent  
income or non-  
dealer CAP gains.

Debt on property  
can cause rent or  
CAP gains to be  
taxable.

Active business  
income, sale of  
property as dealer,  
or income on  
property subject to  
certain debt results  
in UBTI.

Same as Private Non-Operating  
Foundation.

Same as Private Operating  
Foundation, which is the same as  
the Private Non-Operating  
Foundation.

**Inactive:**

Net rent not taxable.  
  
Debt on property  
can cause rent to be  
taxable.

**Active Rent or  
Dealer Income:**

100% excise tax.

Grantor pays tax  
on rent income  
minus  
depreciation  
deduction.

Grantor pays tax  
as if Grantor was  
the dealer or  
active landlord.

Taxed as an irrevocable trust - can  
probably deduct annual payments to  
charity under Section 642(c).

**\*\* Note - UBTI is taxed at corporate or trust rate, depending upon whether Foundation is a corporation or a Trust.**

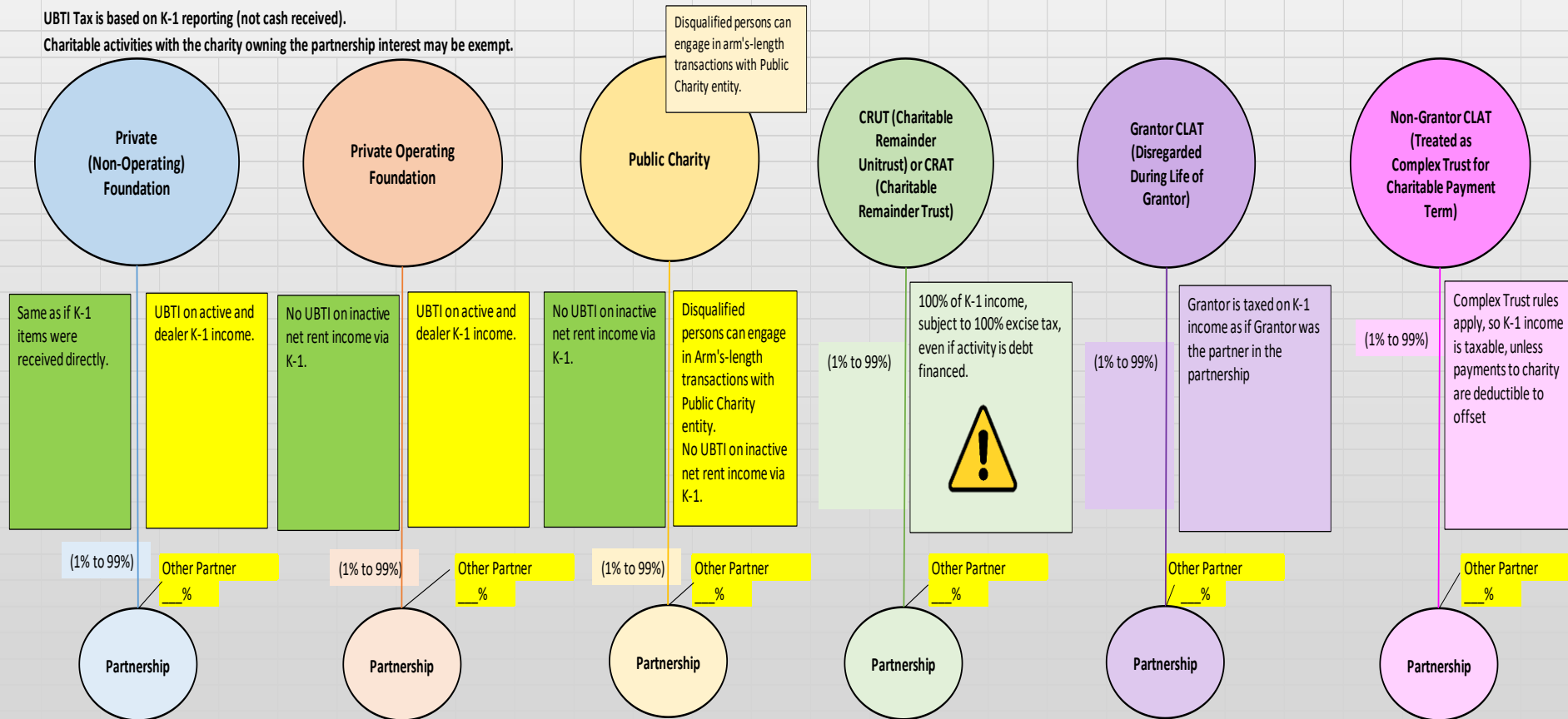
- Too much UBTI can cause loss of 501(c)(3) status.
- Entity may make distributions to other charities and receive deduction against UBTI subject to 10% limitation for charitable corporations and more complicated higher limitation for charitable trusts.
- Place taxable activity under C corporations to avoid UBTI – Will be taxed at C corporation level.
- No tax on receipt of dividends or other distributions from a C corporation.

# EZ Learning Tool for Charitable Tax Law, Cont'd

## Slide 3 of 6 – Ownership of Partnership Interests

UBTI Tax is based on K-1 reporting (not cash received).

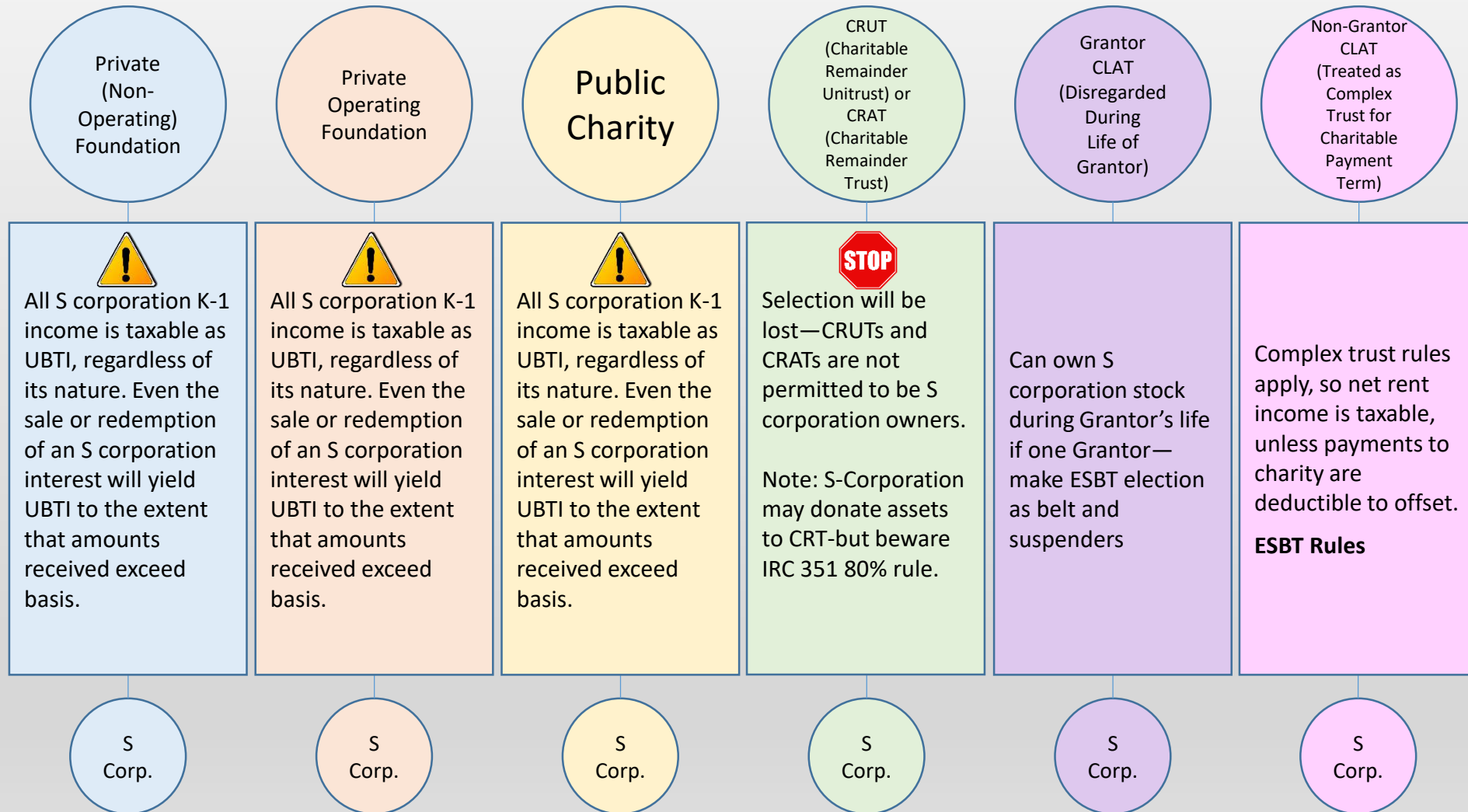
Charitable activities with the charity owning the partnership interest may be exempt.



Consider transferring partnership interests into C corporation owned by charity - This may trigger income tax if debt of partnership exceeds basis of partnership assets.

# EZ Learning Tool for Charitable Tax Law, Cont'd

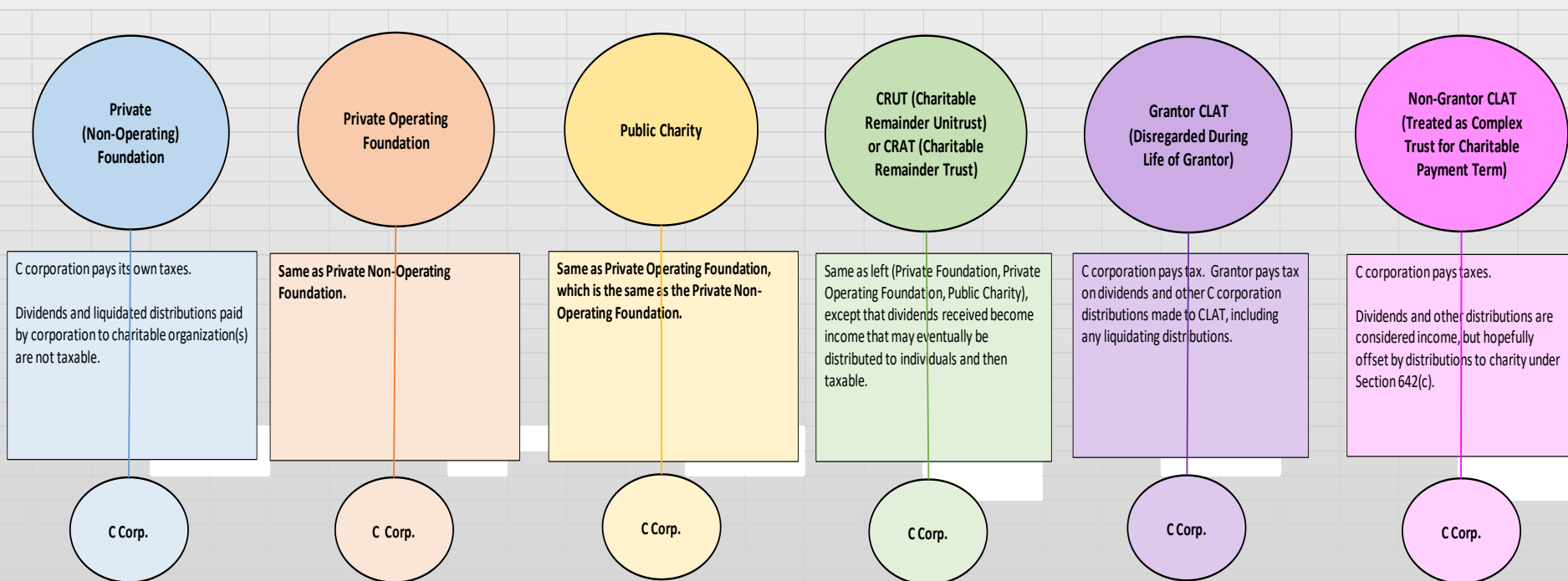
## Slide 4 of 6 – Ownership of S Corporation Interests





# EZ Learning Tool for Charitable Tax Law, Cont'd

## Slide 5 of 6 – Ownership of C Corporation Interests – Use as a blocker – C corporation dividends are not UBTI

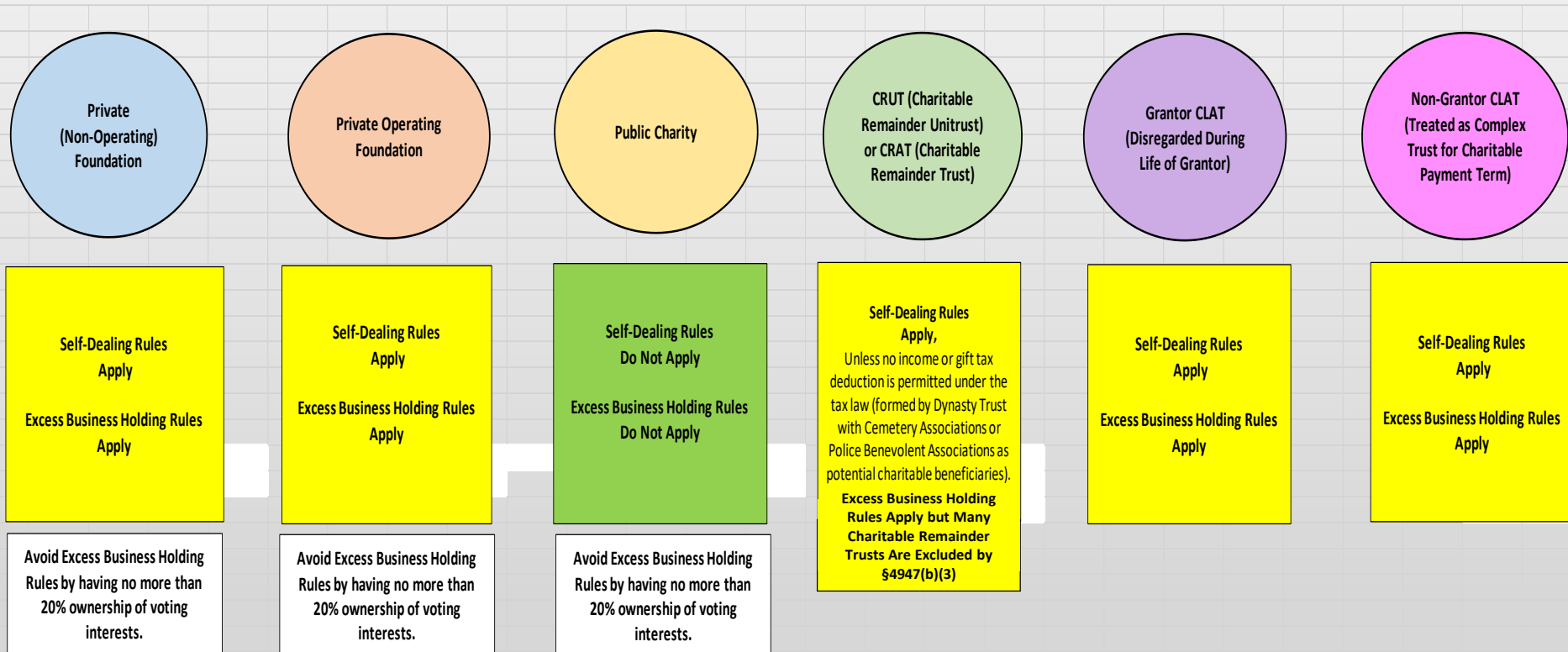


Excess Business Holding Rule

Self-Dealing issue

# EZ Learning Tool for Charitable Tax Law, Cont'd

## Slide 6 of 6 – Self-Dealing and Excess Business Holding Rules



# Maintaining Confidentiality When Giving to Charity

- Clients who wish to remain confidential in their giving can consider the following strategies:
  1. Form a limited liability company owned by the client but having its own separate name and taxpayer identification number.
    - That LLC can be the donor instead of the client, and will therefore be listed on charitable organization rosters and disclosure forms instead of the name of the client.
    - IRS rules preclude disclosure of the owner of an entity, and if the LLC is formed and maintained in a state that does not require or disclose ownership then confidentiality can be maintained.
    - For example, Wyoming does not even require disclosure to the State of Wyoming of the manager or managers of a Wyoming LLC, or its owners.
  2. To make it less likely that anyone will obtain information with respect to details or operations of a 501(c)(3) organization, put as much information as possible in exhibits to the Form 990.
    - Presently, the IRS discloses the Form 990, but not the exhibits to the Form 990.
    - Upon inspection of many Form 990s, we have noticed that almost all the information about the entity have been provided in the exhibits, because it is difficult and time consuming to request and receive the exhibits.

# 642(c) “Complex Trust” Charitable Deduction

In order to receive a charitable deduction, the following requirements of Section 642(c) must be met:

1. The distribution must be made from gross income
2. The distribution must be made pursuant to the terms of the governing instrument.

If the above requirements are met, the trust is entitled to a charitable deduction without being subject to the percentage of gross income limitations that apply to individuals.

As a result, charitable inclined individuals may want to consider making charitable contributions from pre-existing complex trusts (if the terms of the trust allows for this) or complex trusts that are created to plan for Section 199A so that the deduction is not limited and/or possibly lost as a result of the taxpayer no longer itemizing deductions.

Planners should also consider specifically including in trust instruments that the trustee is authorized to make distributions to one or more charitable organizations so that this option is available.

## **Subsidiary Partnership Strategy:**

**If the trust does not provide for the possibility of distributions to a charitable organization, then the trust might be able to invest in a partnership, which in turn makes the contributions to the charitable organization.**

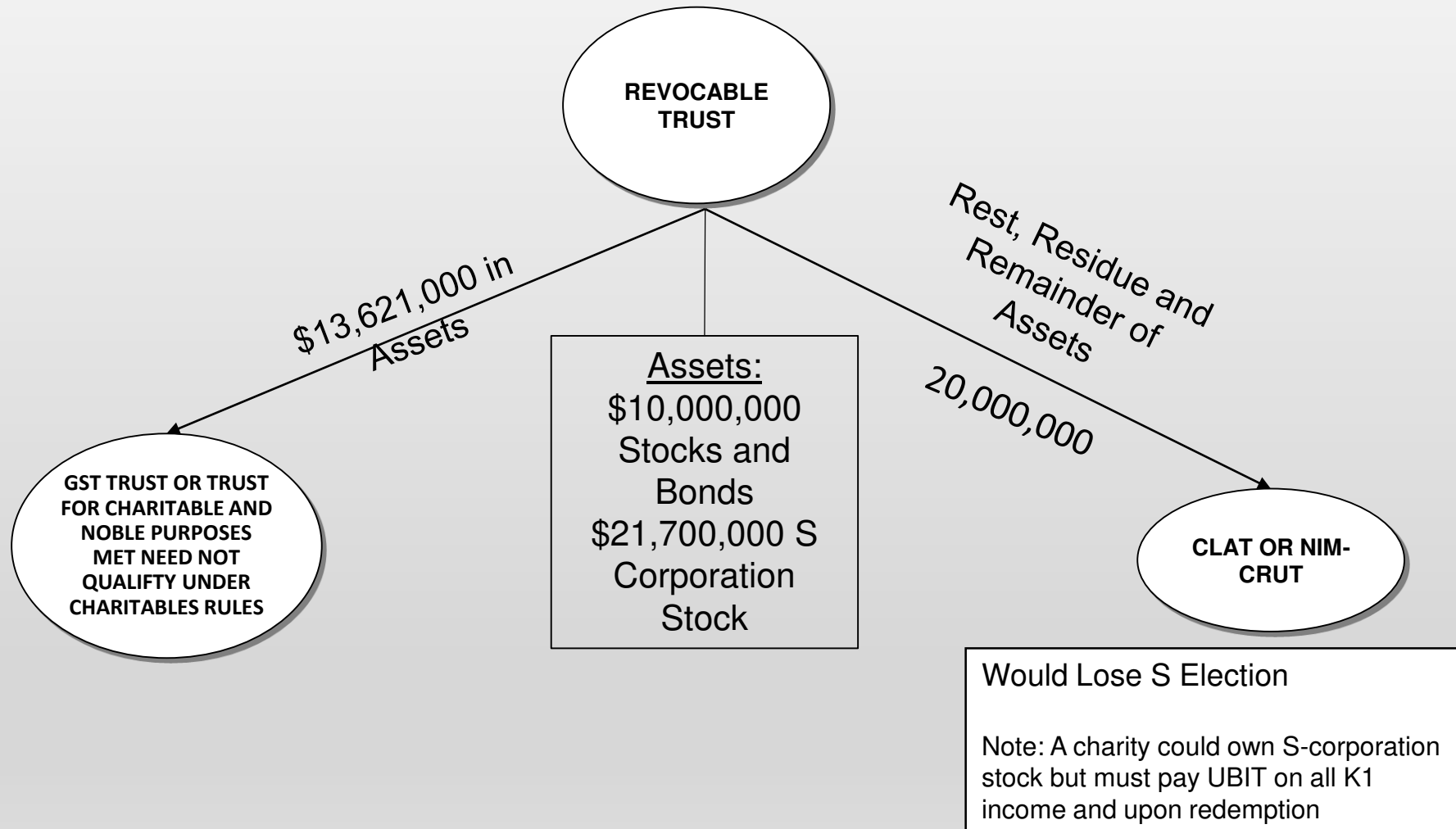
# THE 642(c) TRAP FOR “UNRELATED BUSINESS INCOME” AND DEDUCTIONS ATTRIBUTABLE TO TAX-EXEMPT INCOME.

To prevent complex trusts from having business or debt-financed income offset by the 642(c) deduction, Code Section 681(a) limits the deductions that will apply under 642(c).

Section 681(a) defines “unrelated business income” of a trust to mean the amount that would be computed to be its “unrelated business taxable income” under Section 512 if the trust was a 501(c)(3) organization.

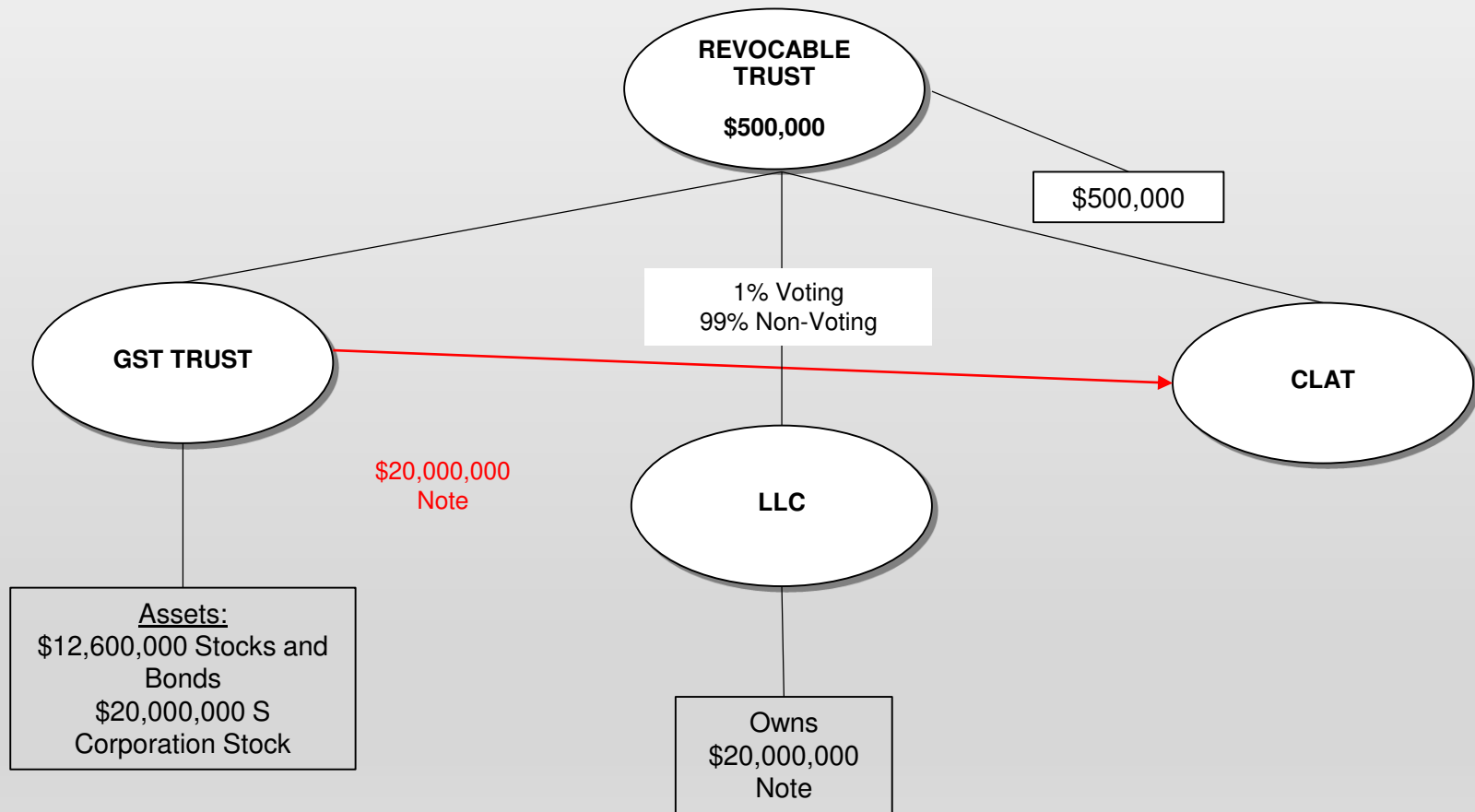
This therefore causes business income, including rent that is based upon the profits of a tenant and rent of personal property that is more than incidental to the leasing of real estate along with the sale of property by a trust that is a “dealer” to be offset only in a limited manner by distributions that the complex trust makes to charity by reason of the deduction permitted to charitable organizations who have UBTI and distribute it to other charitable organizations applying to a complex trust.

# Revocable Trust Immediately After Death of Grantor



# Fund GST Trusts with \$13,621,000 Devise

## Sell S Corporation Stock to GST Trust for \$20,000,000 in Notes Payable to New LLC Owned by Revocable Trust





# Donate Before an Arm's-Length Sale

When a building is going to be sold and before a binding contract is entered into, is it better to donate one-tenth of the building to charity before the Sale Contract is entered into than to give one-tenth of the net sales proceeds after the sale to charity?


The first alternative is much better because the contributor will not only save income tax by reason of receiving a charitable income tax deduction equal to the fair market value of the ten percent donation, but will also avoid paying income tax on the appreciation attributable to the ten percent.

- For example, Jerry owns a building worth \$1,000,000 with a \$100,000 income tax basis and has taken straight-line depreciation so that there will be no depreciation recapture upon sale.
- When Jerry sells the building, he will have a \$900,000 capital gain, and will pay \$225,000 in capital gains taxes, assuming a 25% combined capital gains and Net Investment Income Tax rate.
- If he donates \$100,000 after the sale to a charity, then he will have a \$40,000 income tax savings, assuming that he is in the 40% income tax bracket. The net tax attributable to the sale and gift will therefore be \$185,000.
- If he instead donates ten percent of the building to the charity and receives a \$100,000 tax deduction, his sale of ninety percent of the building to an arm's-length purchaser will result in a net capital gain of \$810,000 (\$900,000 sale price minus basis of \$90,000), and will pay \$202,500 in capital gains taxes, assuming a 25% combined capital gains and Net Investment Income rate.
- Jerry still receives an additional \$40,000 of income tax savings by reason of the \$100,000 donation, making the net tax attributable to the sale and gift \$162,500. This is a \$22,500 difference than if the donation to charity was made after the sale.
- In addition, to avoid a possible discount for partial ownership interest circumstances, Jerry can agree that the charity will have the right to put (demand that he purchase) the one-tenth ownership within ninety days of receiving written notice and demand therefore for the full value of one-tenth of the building without discounts.

# CHARITABLE CALCULATORS

CLAT	CRAT	CRUT	NIMCRUT
Charity paid first	Charity gets remainder	Charity gets remainder	Charity gets remainder
Level, increasing, or shark-fin	Pays fixed <u>A</u> mount	Pays <u>U</u> niform percent	Delays first payments

Hello, EstateView User


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Estate planning software

[FAQs](#)

Comprehensive Plans
Single Client
Married Clients
Sample Plan
NEST Retirement Calculator
⚡ Monte Carlo (Under Construction) ⚡
Life Insurance Estimator
\$ 7520 & AFR Table

Calculators

Large Gift / SLAT
SCIN/Conventional
Installment Sale with Income Tax Analysis
QPRT
Private Annuity
GRAT
Valuation Discount (Active Business)
⚡ Rolling GRATs (Under Construction) ⚡

CLAT

CRAT

CRUT & NIMCRUT

Life Estate / Remainder Interest

Amortization

Life Expectancy

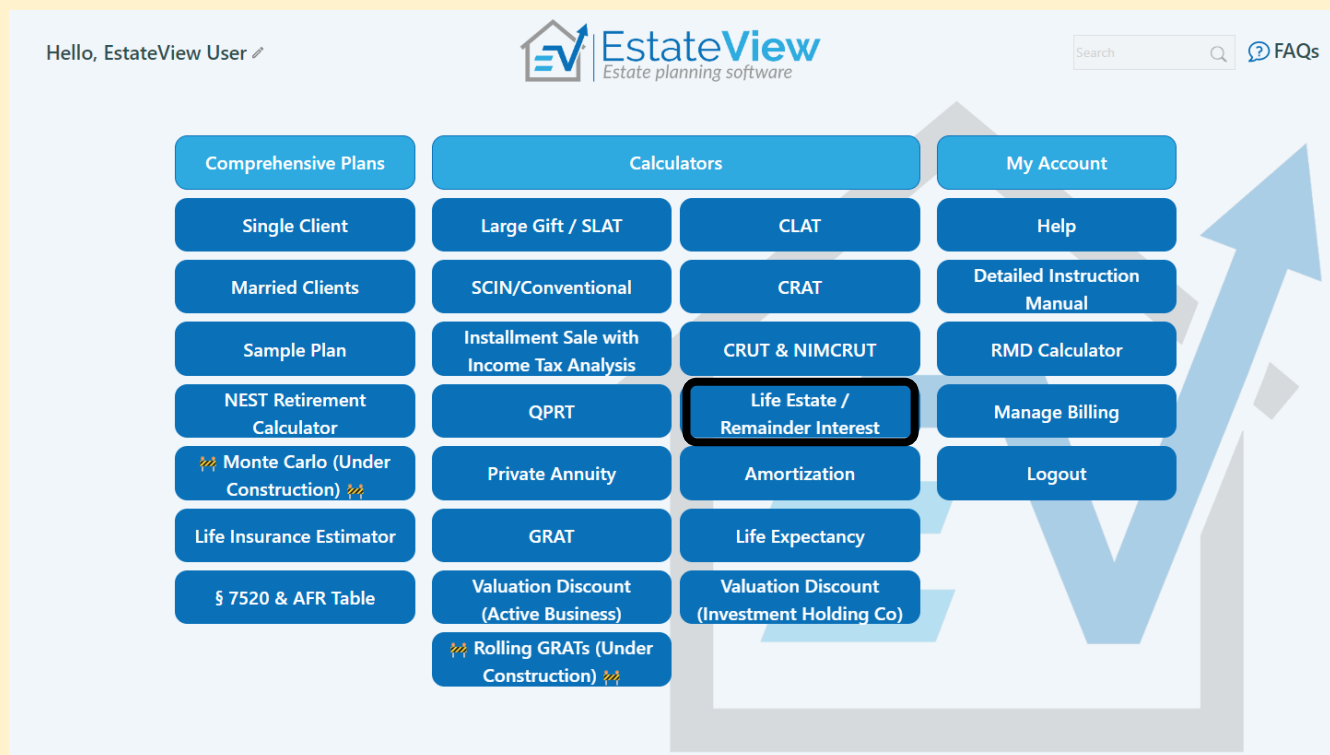
Valuation Discount (Investment Holding Co)

My Account
Help
Detailed Instruction Manual
RMD Calculator
Manage Billing
Logout

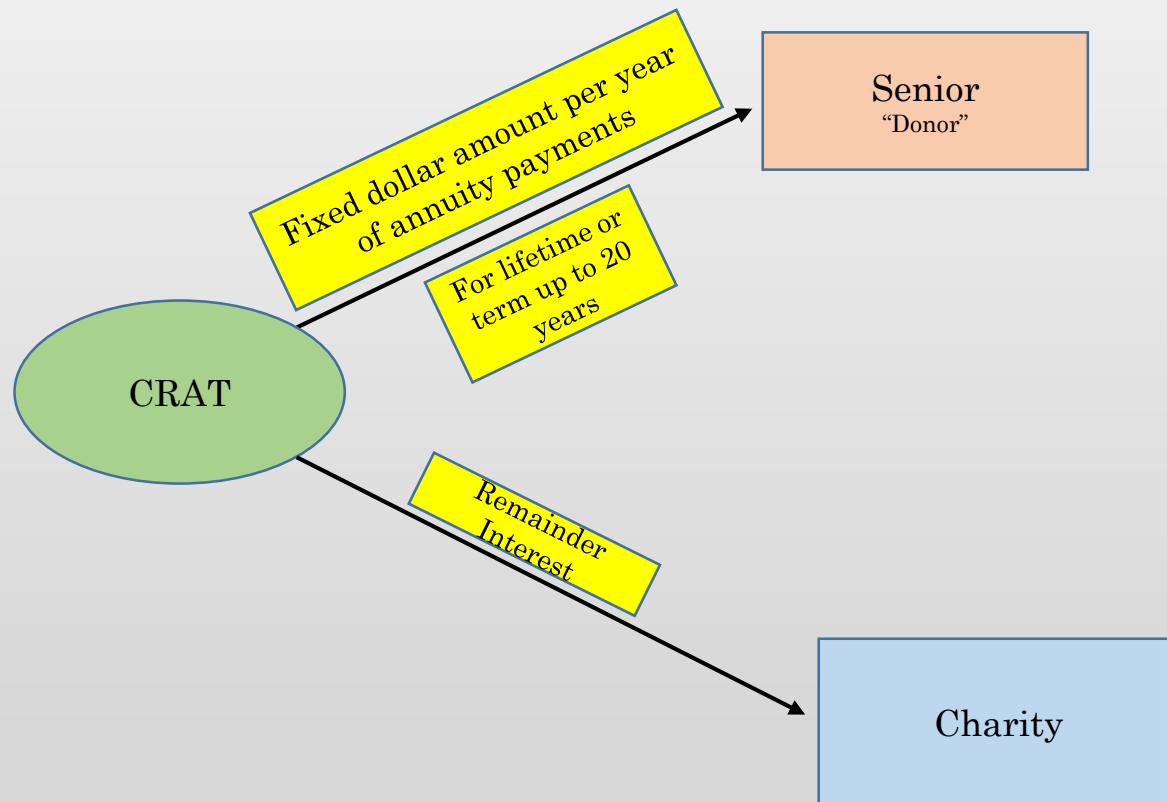
# CHARITABLE CALCULATORS

- **CLATs** make annual payments to Charity resulting in a first-year income tax deduction for the present value of all annual charitable payments.
- **CRATs/CRUTs** delay the charitable payment resulting in an immediate deduction for the present value of the trust's remainder.
  - Charitable Remainder = funding assets + growth – non-charitable lead payments

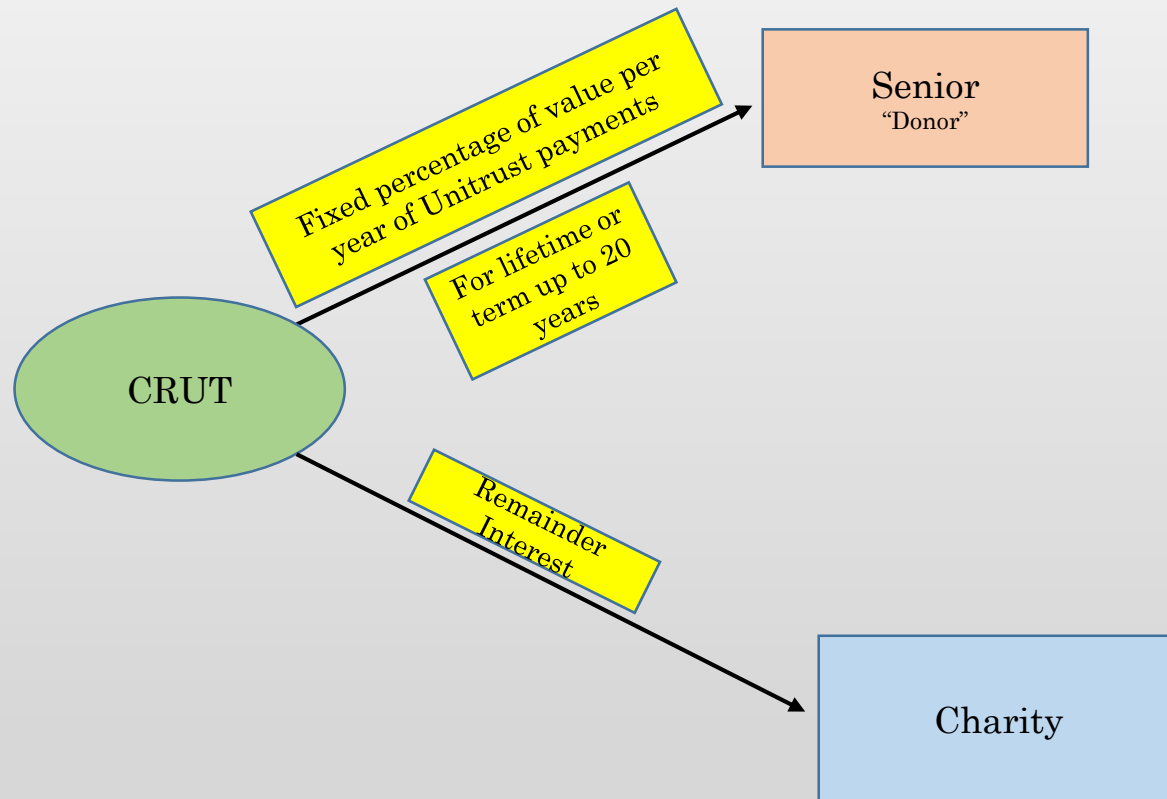
**Bonus tip:** Find your first-year deduction amount for CRATs and CRUTs with the “Life Estate / Remainder Interest” Calculator!



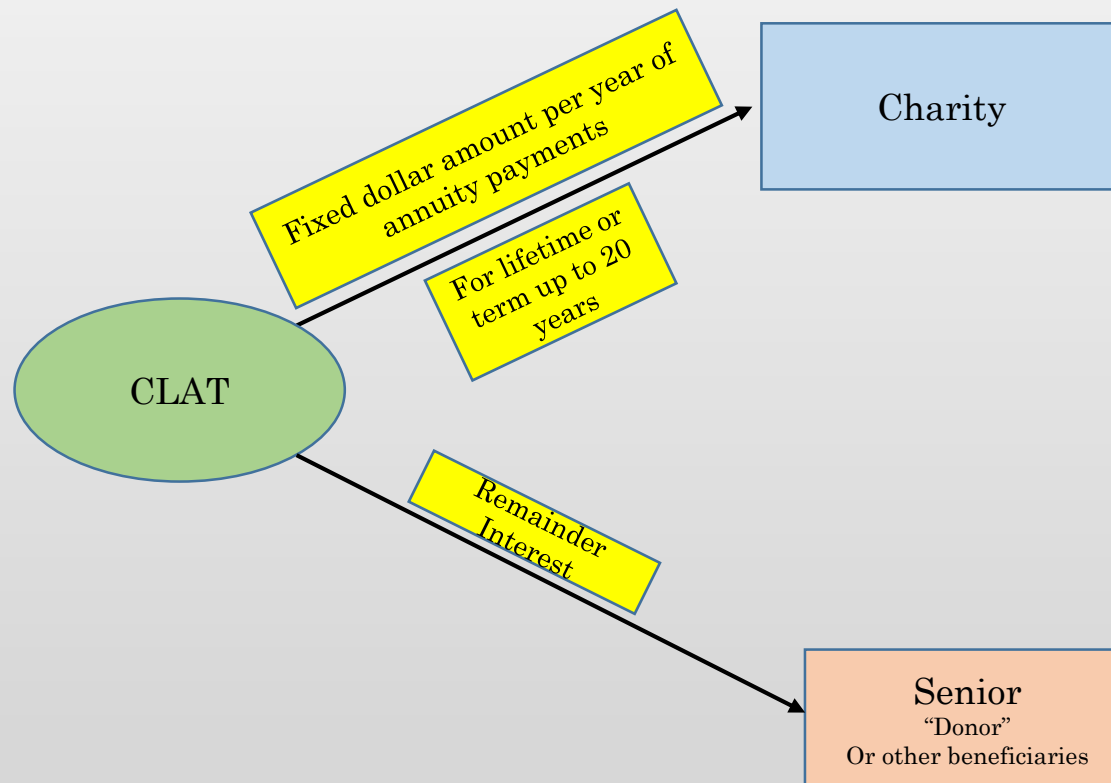
# Anatomy of a CRAT



# Anatomy of a CRUT



# Anatomy of a CLAT



# Charitable Remainder Trust

**Donor transfers cash or assets to Charitable Remainder Trust.**

Donor may receive:

- A. Income tax deduction based upon actuarial value of remainder interest to charity.
- B. Tax deferred income – The Charitable Remainder Trust may sell appreciated assets and is not itself taxed – Taxation comes with distributions to the beneficiary (“the worst first”).
- C. Creditor protection if a CRAT formed in a state that protects annuities from creditors.
- D. Availability of a good gifting device to keep beneficiaries receiving payments over the years.

CRUT  
or  
CRAT

```
graph TD; A((CRUT or CRAT)) --> B[Donor transfers cash or assets to Charitable Remainder Trust. Donor may receive: A. Income tax deduction... B. Tax deferred income... C. Creditor protection... D. Availability of a good gifting device...]; A --> C[Pays "Annuity" or "Unitrust" payments each year to donor or named individuals and/or charities. A. The payments will be annual... B. Can be set as term of years... C. A trustee other than the donor can "spray" the annual payments... D. To avoid gift donor can retain the right to terminate annual payment interests...]; A --> D[At the end of the payment term assets will pass to a Section 501(c)(3) organization: A. If required to be a public charity... B. If required to be a private foundation... C. If may pay to cemetery association...];
```

**Pays “Annuity” or “Unitrust” payments each year to donor or named individuals and/or charities.**

- A. The payments will be annual – or may be delayed until there is a “flip” or “net income” if a NIMCRUT or a FLIPNIMCRUT.
- B. Can be set as term of years (“up to 20”), for lifetime of one or more individuals, or for the shorter of a stated number of years (“not exceeding 20”) and one or more lives “not pur autre vie” – Must be for lifetime of payment recipient.
- C. A trustee other than the donor can “spray” the annual payments among multiple beneficiaries in the trustee’s discretion.
- D. To avoid gift donor can retain the right to terminate annual payment interests upon death of donor.

**At the end of the payment term assets will pass to a Section 501(c)(3) organization:**

- A. If required to be a public charity or private operating foundation 50% AGI deduction will apply.
- B. If required to be a private foundation or charity above 20%/30% AGI deduction applies.
- C. If may pay to cemetery association or police or fire benevolent association – No income tax charitable deduction, but deferral of income will apply, and the self dealing rule should not apply.

# Termination of Charitable Remainder Trust Slides





# Early Termination of Charitable Remainder Trusts

Several years ago, Senior contributed a corporate bond with a \$1,000,000 basis and a \$1,000,000 value to a charitable remainder unitrust (a “CRUT”) for Senior’s life. The bond pays 5.0% annual interest. Senior retained the right to receive an amount equal to 5.0% of the value of trust principal. Today, Senior is age 75, and the September 2022 §7520 rate is 3.6%.

Senior is considering whether to,

- (1) terminate the charitable remainder trust early
- (2) continue to receive \$50,000 for the rest of his life
- (3) sell the retained lead interest to a third-party for cash.

The following examples illustrate the value, as determined under §664(e), of the retained interest if the trust is a charitable remainder unitrust (a “CRUT”) paying \$50,000 annually ( $5.0\% \times \$1,000,000 = \$50,000$ ).

For illustrative purposes, assume Senior’s combined Federal and state income tax rate on ordinary income is 45.8% (37% + 3.8% + 5.0%) and on capital gain is 28.8% (20% + 3.8% + 5.0%).



# The first step is to evaluate the misleading actuarial assumptions with the 2000CM mortality tables that are required to be used under §7520?

The 2000CM mortality tables are now 22 years out of date.

The mortality tables use the U.S. Census data, covering the entire U.S. population.

Life expectancy does not mean an individual will only live to their life expectancy age. For an individual age 75, there is an 11.1-year life expectancy. For an individual age 75, there is a 50% probability that individual will still be living at age 86. Using the 2000CM mortality tables, the probability someone age 75 will live to age 90 is 36.1%.



# The 2000CM mortality tables understate life expectancy

- The 11.1 year life expectancy for age 75 uses the 2000CM mortality tables (the 2000 Census data). Under the 2010 mortality tables (the 2010 Census data), the life expectancy for age 75 is 12.7 years. The 2010 Census data is still 12 years out of date.
- A life insurance company estimates Senior's life expectancy to be 15 years (to age 90) as Senior is healthier than the average U.S. person of the same age. People who can afford sophisticated planning normally take better care of themselves, get better medical attention, and live longer than average.



# When can we expect updated mortality tables?

- The IRS was supposed to issue the 2010 mortality tables by May 1, 2019.
- CDC did not release the 2010 Census data to the IRS until August 7, 2020.
- The IRS issued proposed regulations May 4, 2022.
- Final regulations should be issued by year end.
- Can continue to use the old tables until proposed regulations are finalized.
- Even with new tables, they will still be 12 years old.

UPDATE: Table 2010CM was finalized by the IRS in November 2022



# 1. Senior terminates the CRUT early

- What is not well-understood is that a unitrust is not interest rate sensitive. The §7520 rate does not determine the values for the annual unitrust distributions and the charitable remainder interest.
- Using the \$1,000,000 corporate bond paying 5.0% annual interest, for age 75 the value of the unitrust interest that pays 5% of trust principal annually is \$396,150, and the charitable remainder beneficiary would receive \$603,850.
- Under §1001(e)(3) the basis of trust principal is allocated proportionally among the lead interest and the remainder interest. Only available if both interests in a trust are terminated.



If the basis in the asset contributed to the CRUT was \$1,000,000, the entire \$396,150 distribution would be a return of basis ( $39.615\% \times \$1,000,000$ ).

If the basis in the contributed asset is less than the value of the contributed asset, only 39.651% of the basis can be allocated to the unitrust interest. Therefore, a portion of the \$396,150 is capital gain

- Had the basis in the contributed asset been only \$400,000,  $39.651\% \times \$400,000 = 148,604$  of basis is allocated to the \$396,510 paid for the lead interest, resulting in a \$247,906 capital gain.
- 
- If the basis in the contributed asset was zero, the entire \$396,510 would be reported as a capital gain.



Suppose the \$1,000,000 contributed asset had a \$400,000 basis. The trustee sells the asset for \$1,000,000, reporting a \$600,000 gain. The trustee uses the cash to purchase a replacement asset and takes a \$1,000,000 cost basis in the purchased asset.

- The trust is terminated early when Senior is age 75.
- Can the trustee allocate 39.615% of the current \$1,000,000 trust basis to the unitrust interest?
- **You cannot make the \$600,000 gain disappear.** See Treas. Reg. §§ 1.1014-5(c) and 1.1014-5(d) examples 7 and 8. Only a portion of the \$400,000 at the time of contribution can be used



## 2. Senior continues to receive a \$50,000 annual distribution from the CRAT for the next 15 years and dies at age 90

Using the 3.6% §7520 rate as the discount rate, the present value of \$50,000 annually for 15 years is \$571,796. With a bond paying \$50,000 annual interest, the entire \$50,000 unitrust payment is characterized as ordinary income under §664(a)(1).

Taking into account the income taxes on \$50,000 of ordinary income for 15 years, the present value of the future income taxes is \$261,842 ( $45.8\% \times \$571,796 = \$261,882$ ). Therefore, the after-tax present value of receiving \$50,000 annually for 15 years is \$369,914. The \$369,914 is what should be used to decide whether to terminate the CRAT early.

**Key: Converting future ordinary income into current capital gain**





### 3. Sale of term interest in the CRUT to a third-party

Senior, age 75, decides to sell the unitrust interest in the CRUT to a third-party for cash. Using an asset valued at \$1,000,000, the value of the unitrust interest under §664(e) is \$396,150.

The CRUT is not terminated. Instead, the purchaser owns the unitrust interest and the charity continues to own the remainder interest. §1001(e)(3) only allocates basis proportionately if all trust interests are terminated.

If the trust continues, and the unitrust interest is sold, §1001(e)(1) does not allow the seller of a term interest in a trust to allocate any of the trust's basis in trust principal to the sale of the term interest. Therefore, the seller must report the entire **\$396,150** as a capital gain even though the basis in the contributed asset was \$1,000,000.



# Is it better to terminate the trust early or sell the unitrust interest and continue the trust?

Basis	39.615%	Sale proceeds	Capital gain
\$1,000,000	\$396,150	\$395,150	Zero
\$400,000	\$148,604	\$395,150	\$247,906
Zero	Zero	\$395,150	\$395,150
If there is	basis, sale only	makes sense	only if there was no basis at formation



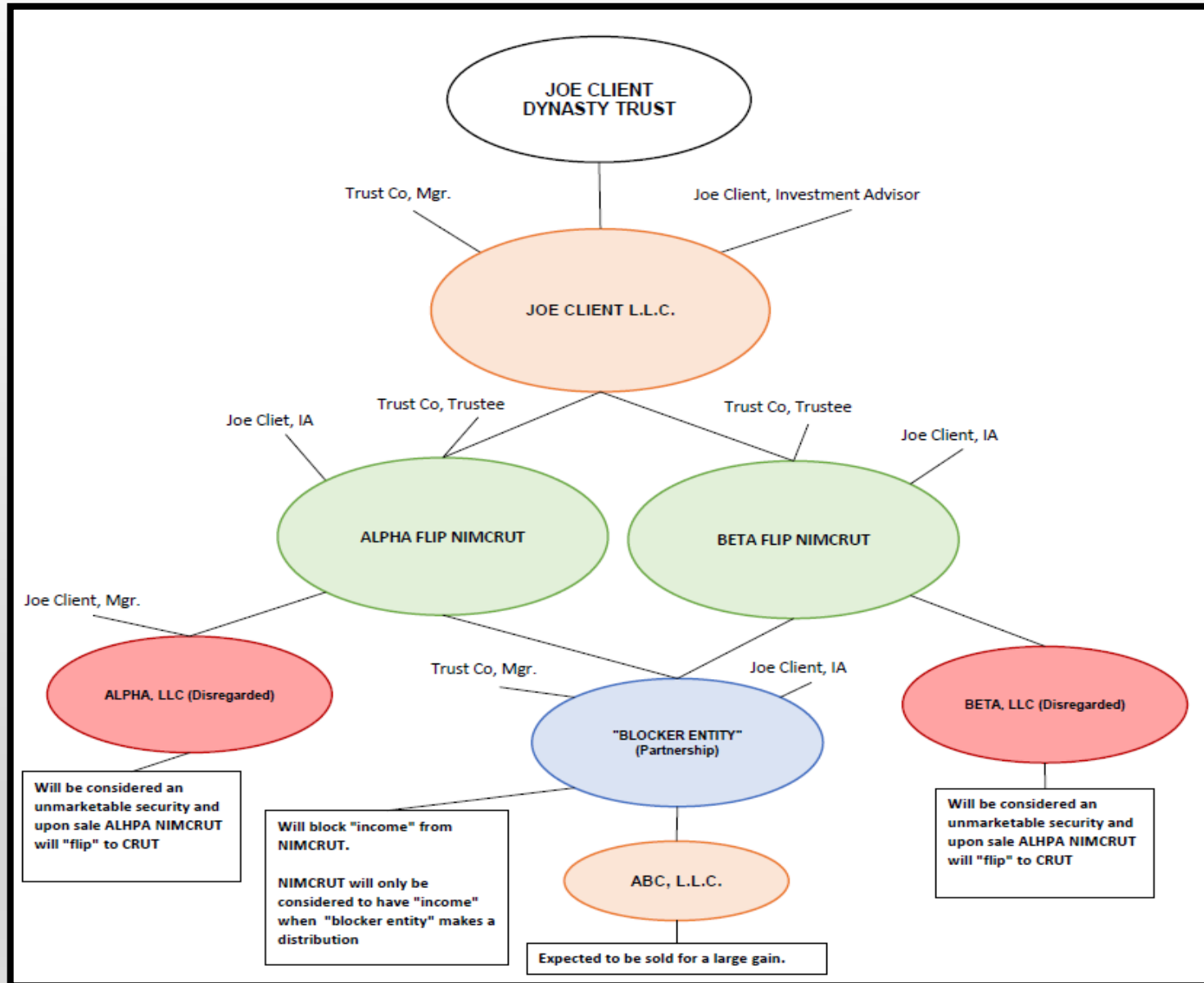
# CAUTION

*All other things being equal, a third-party sale may or may not yield more after taxes than an early termination. A careful financial analysis of the basis in the contributed assets is necessary in evaluating the offer under a third-party sale. In high basis situations the early termination can yield far better financial results than a sale to the third-party buyer. In low basis situations, because the third-party buyer is willing to pay more than the §664(e) value, the sale will almost always yield more than an early termination.*

If the holder of the term interest sells the lead interest to the third-party buyer, the charitable remainder trust will continue and thus postpone when the charitable remainder beneficiary receives its distribution. Whereas, upon an early termination of the charitable remainder trust, the charity receives the §664(e) value at that time instead of having to wait until the measuring life dies.



# Flip NIMCRUT





# Flip-NIMCRUT Requirements

- The Charitable Remainder Unitrust can “flip” to a regular Charitable Remainder Unitrust upon a “triggering event,” and thereafter simply pay out a annual percentage of the trust assets. The triggering event must be stated in the trust agreement.
- A triggering event could be a set date or an event, and the occurrence of such event must not be discretionary or under the control of the trustee or another person.
- A triggering event could be the sale of unmarketable securities. This would allow a CRUT to hold a subsidiary that holds unmarketable securities. When the donor or another person is ready to flip the NIMCRUT, it can sell the unmarketable securities or a portion thereof.
- The Final Regulations list 7 permissible triggering events as described on the next slide.





# Possible Triggering Events For The Flip-NIMCRUT

1. The sale of a non-marketable security - such as a corporation or a limited liability company that may own a promissory note from an unrelated party, real estate, or possibility even marketable securities.
2. Upon the donor's divorce.
3. Upon the donor's marriage.
4. When the income recipient has his or her first child.
5. When the income recipient's father passes away.
6. The sale of the donor's personal residence.
7. Upon the income recipient reaching a certain age.

It does not appear that these are the only possible triggering events, but these are the only ones listed, so it is safest to stick with the ones that are specifically provided for.

If a donor wants to use a triggering event that is not listed in the Final Regulations the donor should be careful to make sure that no person has control of whether the event is going to happen.



# NIMCRUT W/ Charitable Deduction



\$1,000,000 Contribution, With Only 1% Per Year In Distributable Income –  
Distributions received are used to pay income taxes thereon, and then invested  
at a 6% rate of return. Charitable Deduction taken.

Analysis of Net Income with Makeup Charitable Remainder Unitrust (NIMCRUT) (20 Year Term 8% Return)								
1	2	3	4	5	6	7	8	9
Year	NIMCRUT Balance (Assumes 8% Growth)	Distribution to Family (Lesser of Trust Income or Unitrust Amount with Make Up Distributions in Years in Which Trust Income Exceeds Unitrust Amount)	Taxes on Distribution	Net Distribution to Family	Charitable Tax Deduction Benefit	Total Value Family Receives (Includes Tax Deduction Benefit)	Total Amount Charity Receives at End of Twenty Year Term	Total Amount Received Under NIMCRUT if Distributions are Reinvested at 6% Rate of Return
1	\$ 1,000,000	\$ 10,000	\$ (4,080)	\$ 5,920	\$ 51,924	\$ 57,844	\$ -	\$ 5,920
2	\$ 1,070,000	\$ 10,700	\$ (4,366)	\$ 6,334	\$ -	\$ 64,179	\$ -	\$ 12,547
3	\$ 1,144,900	\$ 11,449	\$ (4,671)	\$ 6,778	\$ -	\$ 70,956	\$ -	\$ 19,944
4	\$ 1,225,043	\$ 12,250	\$ (4,998)	\$ 7,252	\$ -	\$ 78,209	\$ -	\$ 28,182
5	\$ 1,310,796	\$ 13,108	\$ (5,348)	\$ 7,760	\$ -	\$ 85,968	\$ -	\$ 37,334
6	\$ 1,402,552	\$ 14,026	\$ (5,722)	\$ 8,303	\$ -	\$ 94,272	\$ -	\$ 47,481
7	\$ 1,500,730	\$ 15,007	\$ (6,123)	\$ 8,884	\$ -	\$ 103,156	\$ -	\$ 58,711
8	\$ 1,605,781	\$ 16,058	\$ (6,552)	\$ 9,506	\$ -	\$ 112,662	\$ -	\$ 71,118
9	\$ 1,718,186	\$ 17,182	\$ (7,010)	\$ 10,172	\$ -	\$ 122,834	\$ -	\$ 84,803
10	\$ 1,838,459	\$ 18,385	\$ (7,501)	\$ 10,884	\$ -	\$ 133,717	\$ -	\$ 99,876
11	\$ 1,967,151	\$ 19,672	\$ (8,026)	\$ 11,646	\$ -	\$ 145,363	\$ -	\$ 116,455
12	\$ 2,104,852	\$ 21,049	\$ (8,588)	\$ 12,461	\$ -	\$ 157,824	\$ -	\$ 134,669
13	\$ 2,252,192	\$ 22,522	\$ (9,189)	\$ 13,333	\$ -	\$ 171,157	\$ -	\$ 154,654
14	\$ 2,409,845	\$ 24,098	\$ (9,832)	\$ 14,266	\$ -	\$ 185,423	\$ -	\$ 176,561
15	\$ 2,578,534	\$ 25,785	\$ (10,520)	\$ 15,265	\$ -	\$ 200,688	\$ -	\$ 200,548
16	\$ 2,759,032	\$ 27,590	\$ (11,257)	\$ 16,333	\$ -	\$ 217,021	\$ -	\$ 226,788
17	\$ 2,952,164	\$ 29,522	\$ (12,045)	\$ 17,477	\$ -	\$ 234,498	\$ -	\$ 255,468
18	\$ 3,158,815	\$ 31,588	\$ (12,888)	\$ 18,700	\$ -	\$ 253,198	\$ -	\$ 286,789
19	\$ 3,379,932	\$ 33,799	\$ (13,790)	\$ 20,009	\$ -	\$ 273,208	\$ -	\$ 320,965
20	\$ 3,616,528	\$ 3,663,139	\$ (877,975)	\$ 2,785,163	\$ -	\$ 3,058,371	\$ 242,711	\$ 3,173,908





## No Planning - Investment of Sales Proceeds in Hypothetical Investment Account and Receive Distribution Each Year

10	11	12	13	14	15
Balance of Hypothetical Investment Account (Assumes 8% Growth)	Distribution (Distribution Net of Taxes Equals After Tax CRUT Payment each year)	Taxes (1.00% of Assets)	Ending Balance of Hypothetical Investment Account	Cummulative Net Distribtuions With 6% Growth	Total Amount Received by Family (Net account + Cummulative Net Distributions) (Columns 13+14= Column 15)
\$ 809,600	\$ 14,664	\$ (8,744)	\$ 850,961	\$ 14,664	\$ 865,624
\$ 850,961	\$ 15,525	\$ (9,190)	\$ 894,322	\$ 30,188	\$ 924,511
\$ 894,322	\$ 16,436	\$ (9,659)	\$ 939,773	\$ 46,625	\$ 986,398
\$ 939,773	\$ 17,402	\$ (10,150)	\$ 987,403	\$ 64,027	\$ 1,051,430
\$ 987,403	\$ 18,424	\$ (10,664)	\$ 1,037,308	\$ 82,451	\$ 1,119,759
\$ 1,037,308	\$ 19,506	\$ (11,203)	\$ 1,089,584	\$ 101,957	\$ 1,191,540
\$ 1,089,584	\$ 20,652	\$ (11,768)	\$ 1,144,331	\$ 122,608	\$ 1,266,939
\$ 1,144,331	\$ 21,865	\$ (12,359)	\$ 1,201,654	\$ 144,473	\$ 1,346,127
\$ 1,201,654	\$ 23,150	\$ (12,978)	\$ 1,261,659	\$ 167,623	\$ 1,429,282
\$ 1,261,659	\$ 24,510	\$ (13,626)	\$ 1,324,456	\$ 192,133	\$ 1,516,588
\$ 1,324,456	\$ 25,950	\$ (14,304)	\$ 1,390,158	\$ 218,082	\$ 1,608,241
\$ 1,390,158	\$ 27,474	\$ (15,014)	\$ 1,458,883	\$ 245,557	\$ 1,704,440
\$ 1,458,883	\$ 29,089	\$ (15,756)	\$ 1,530,749	\$ 274,646	\$ 1,805,394
\$ 1,530,749	\$ 30,798	\$ (16,532)	\$ 1,605,878	\$ 305,444	\$ 1,911,322
\$ 1,605,878	\$ 32,608	\$ (17,343)	\$ 1,684,397	\$ 338,052	\$ 2,022,449
\$ 1,684,397	\$ 34,525	\$ (18,191)	\$ 1,766,432	\$ 372,577	\$ 2,139,009
\$ 1,766,432	\$ 36,554	\$ (19,077)	\$ 1,852,115	\$ 409,132	\$ 2,261,246
\$ 1,852,115	\$ 38,703	\$ (20,003)	\$ 1,941,578	\$ 447,835	\$ 2,389,413
\$ 1,941,578	\$ 40,978	\$ (20,969)	\$ 2,034,957	\$ 488,813	\$ 2,523,770
\$ 2,034,957	\$ 2,175,776	\$ (21,978)	\$ (0)	\$ 2,664,589	\$ 2,664,589







## Investment of Net Sales Proceeds in Hypothetical Investment Account and Receive Distributions Each Year Plus Make Charitable Contributions of Equal Present Value

16	17	18	19	20	21	22
Year	Distribution Received By Family	Payment to Charity	Charitable Deduction Benefit	Cummulative Net Distributions Received by Family	Future Value of Distributions to Charity (Assumes 8% Growth Rate)	Total Benefit Received by Family (Net account + Cummulative Net Distributions - Charity Payment + Value of Charitable Deduction)
1	\$ 14,664	\$ (5,304)	\$ 2,164	\$ 14,664	\$ 5,304	\$ 862,484
2	\$ 15,525	\$ (5,304)	\$ 2,164	\$ 30,188	\$ 11,032	\$ 917,864
3	\$ 16,436	\$ (5,304)	\$ 2,164	\$ 46,625	\$ 17,218	\$ 975,852
4	\$ 17,402	\$ (5,304)	\$ 2,164	\$ 64,027	\$ 23,899	\$ 1,036,565
5	\$ 18,424	\$ (5,304)	\$ 2,164	\$ 82,451	\$ 31,115	\$ 1,100,126
6	\$ 19,506	\$ (5,304)	\$ 2,164	\$ 101,957	\$ 38,908	\$ 1,166,661
7	\$ 20,652	\$ (5,304)	\$ 2,164	\$ 122,608	\$ 47,325	\$ 1,236,300
8	\$ 21,865	\$ (5,304)	\$ 2,164	\$ 144,473	\$ 56,414	\$ 1,309,179
9	\$ 23,150	\$ (5,304)	\$ 2,164	\$ 167,623	\$ 66,231	\$ 1,385,439
10	\$ 24,510	\$ (5,304)	\$ 2,164	\$ 192,133	\$ 76,833	\$ 1,465,225
11	\$ 25,950	\$ (5,304)	\$ 2,164	\$ 218,082	\$ 88,284	\$ 1,548,685
12	\$ 27,474	\$ (5,304)	\$ 2,164	\$ 245,557	\$ 100,650	\$ 1,635,976
13	\$ 29,089	\$ (5,304)	\$ 2,164	\$ 274,646	\$ 114,006	\$ 1,727,256
14	\$ 30,798	\$ (5,304)	\$ 2,164	\$ 305,444	\$ 128,431	\$ 1,822,690
15	\$ 32,608	\$ (5,304)	\$ 2,164	\$ 338,052	\$ 144,009	\$ 1,922,448
16	\$ 34,525	\$ (5,304)	\$ 2,164	\$ 372,577	\$ 160,833	\$ 2,026,702
17	\$ 36,554	\$ (5,304)	\$ 2,164	\$ 409,132	\$ 179,004	\$ 2,135,631
18	\$ 38,703	\$ (5,304)	\$ 2,164	\$ 447,835	\$ 198,628	\$ 2,249,420
19	\$ 40,978	\$ (5,304)	\$ 2,164	\$ 488,813	\$ 219,822	\$ 2,368,254
20	\$ 1,960,235	\$ (5,304)	\$ 2,164	\$ 2,449,048	\$ 242,711	\$ 2,492,327





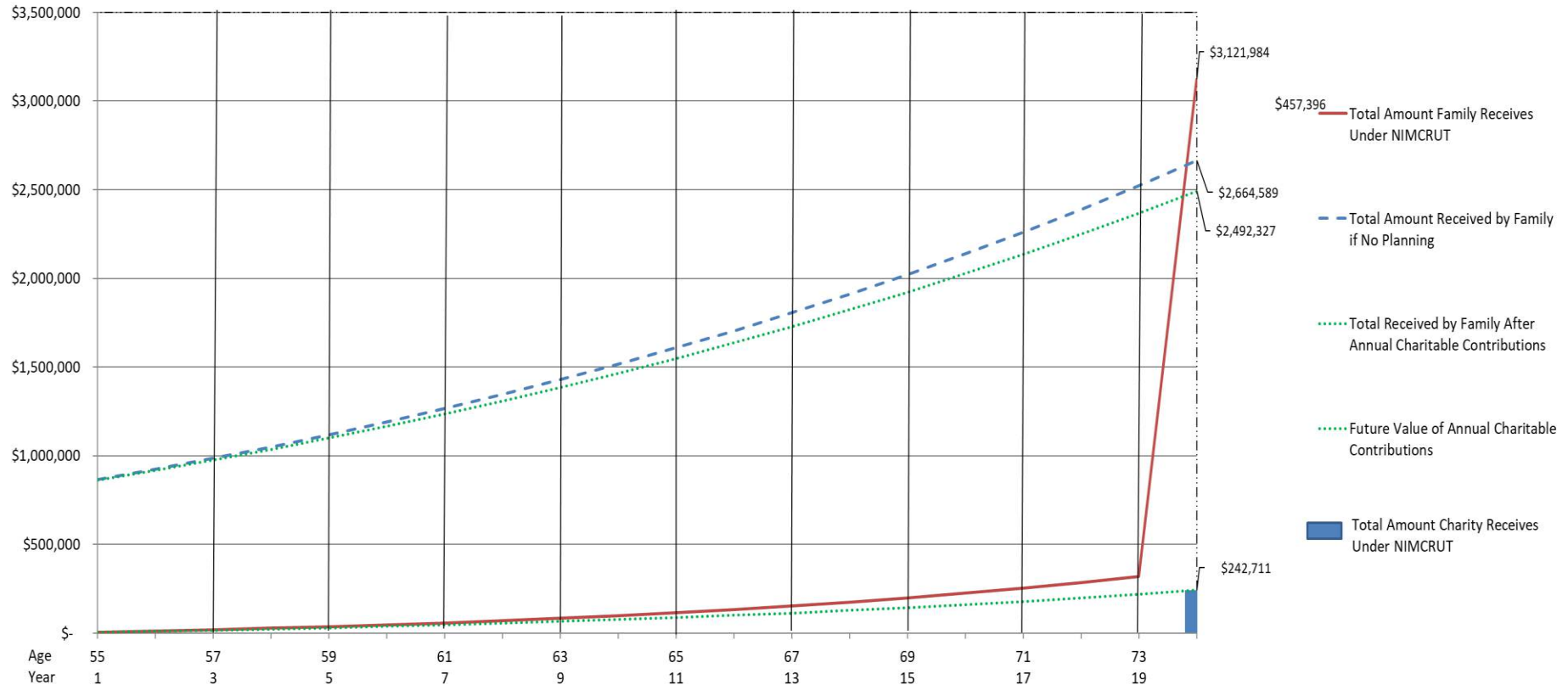
## Summary Columns

23	24	25	26	27	28	29	30
Year	Total Received By Family Under NIMCRUT (Column 9)	Total Received by Family Under Hypothetical Investment Account (Column 15)	Total Received by Family Under Hypothetical Investment Account with Charitable Contributions (Column 22)	Difference in Amount Family Receives if No Charitable Planning (Column 25-24)	Difference in Amount Family Receives if Charitable Distributions Made Each Year (Column 26-24)	Total Amount Charity Receives Under NIMCRUT at End of 20 Year Term	Total Tax Savings if NIMCRUT is Used
1	\$ 5,920	\$ 865,624	\$ 862,484	\$ 859,704	\$ 856,564	\$ -	\$ 195,064
2	\$ 12,547	\$ 924,511	\$ 917,864	\$ 911,964	\$ 905,317	\$ -	\$ 199,888
3	\$ 19,944	\$ 986,398	\$ 975,852	\$ 966,453	\$ 955,907	\$ -	\$ 204,876
4	\$ 28,182	\$ 1,051,430	\$ 1,036,565	\$ 1,023,248	\$ 1,008,383	\$ -	\$ 210,027
5	\$ 37,334	\$ 1,119,759	\$ 1,100,126	\$ 1,082,424	\$ 1,062,792	\$ -	\$ 215,343
6	\$ 47,481	\$ 1,191,540	\$ 1,166,661	\$ 1,144,059	\$ 1,119,179	\$ -	\$ 220,824
7	\$ 58,711	\$ 1,266,939	\$ 1,236,300	\$ 1,208,228	\$ 1,177,589	\$ -	\$ 226,468
8	\$ 71,118	\$ 1,346,127	\$ 1,309,179	\$ 1,275,009	\$ 1,238,061	\$ -	\$ 232,275
9	\$ 84,803	\$ 1,429,282	\$ 1,385,439	\$ 1,344,479	\$ 1,300,636	\$ -	\$ 238,243
10	\$ 99,876	\$ 1,516,588	\$ 1,465,225	\$ 1,416,712	\$ 1,365,349	\$ -	\$ 244,368
11	\$ 116,455	\$ 1,608,241	\$ 1,548,685	\$ 1,491,785	\$ 1,432,230	\$ -	\$ 250,646
12	\$ 134,669	\$ 1,704,440	\$ 1,635,976	\$ 1,569,771	\$ 1,501,307	\$ -	\$ 257,072
13	\$ 154,654	\$ 1,805,394	\$ 1,727,256	\$ 1,650,740	\$ 1,572,602	\$ -	\$ 263,639
14	\$ 176,561	\$ 1,911,322	\$ 1,822,690	\$ 1,734,761	\$ 1,646,130	\$ -	\$ 270,339
15	\$ 200,548	\$ 2,022,449	\$ 1,922,448	\$ 1,821,901	\$ 1,721,900	\$ -	\$ 277,162
16	\$ 226,788	\$ 2,139,009	\$ 2,026,702	\$ 1,912,221	\$ 1,799,914	\$ -	\$ 284,097
17	\$ 255,468	\$ 2,261,246	\$ 2,135,631	\$ 2,005,778	\$ 1,880,163	\$ -	\$ 291,129
18	\$ 286,789	\$ 2,389,413	\$ 2,249,420	\$ 2,102,624	\$ 1,962,631	\$ -	\$ 298,244
19	\$ 320,965	\$ 2,523,770	\$ 2,368,254	\$ 2,202,805	\$ 2,047,289	\$ -	\$ 305,423
20	\$ 3,121,984	\$ 2,664,589	\$ 2,492,327	\$ (457,396)	\$ (629,658)	\$ 242,711	\$ (550,574)



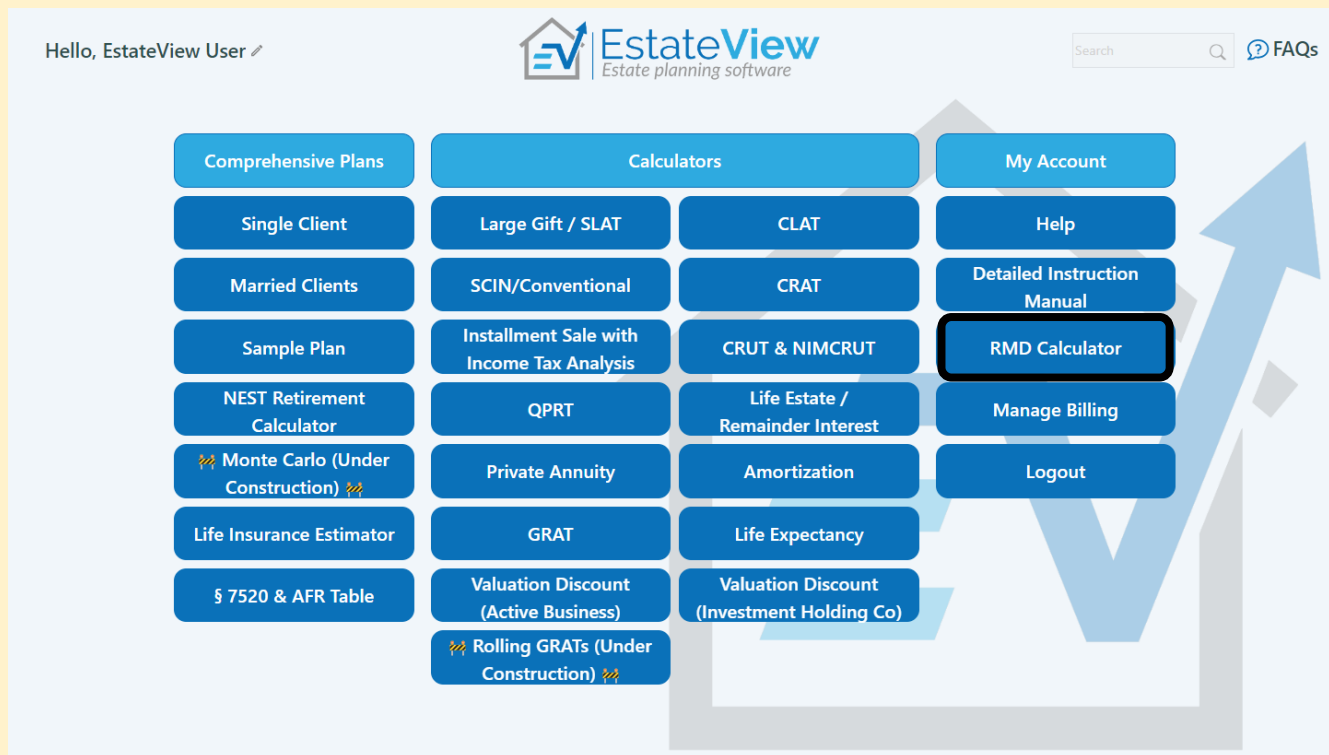
# NIMCRUT

Comparison of NIM-CRUT vs. No Planning



# CHARITABLE CALCULATORS

- **IRA** owners over 72\* are required to take out a minimum amount from their retirement account called a Required Minimum Distribution (RMD).  
\*RMDs start at age 73 if you reach 72 after December 31, 2022.
- **RMDs** can be satisfied through a Qualified Charitable Donation (QCD) to a Public Charity and the taxpayer would not owe taxes on donations up to \$105,000 for 2024.



# RMD CALCULATOR WITH CHARITABLE DISTRIBUTIONS

RMD Summaries [Alter Summary Columns](#)



RMD #	Grantor Age	Life Expectancy	Year of Death	Growth Rate	Current Value	Illustrated End Value	RMD Starting Age	1st Year RMD	Yr 1 RMD Amount	Max Charitable Donation	Tax Savings From Charitable	Cumulative Taxes on RMD
1	70	15.4	16	7.50%	\$1,000,000	\$1,745,712	73	2027	\$46,879	\$105,000	\$354,744	\$0

Show your clients when they must start taking distributions, the amount of their required distributions, their net after-tax distribution, and the impact of making direct qualified charitable distributions (QCDs).

Detail your client's annual RMDs, charitable donations, taxes and expected growth.

RMD 1

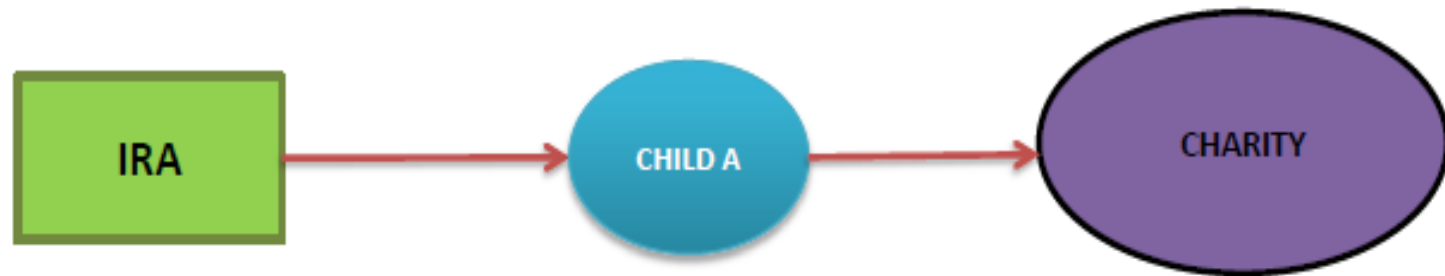
Show Every  Year(s) ☒ Year Of Death ☐ First Year RMD

Year	Year #	Grantor Age	Probability Survival To Year	Beginning Value	Growth	RMD Percentage	RMD Amount	Tax on RMD	Net After Taxes	End Value	Charitable Donation	Cumulative To Charity	Distribution After Charity	Cumulative After Charity	Tax on Net	Cumulative Taxes On Net	Tax Savings From Charity Transfer	Net After Taxes	Cumulative Net After Taxes	End Value (same as left)
2024	1	70	100.00%	\$1,000,000.00	\$75,000.00	0.00%	\$0.00	\$0.00	\$0.00	\$1,075,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,075,000.00
2025	2	71	98.04%	\$1,075,000.00	\$80,625.00	0.00%	\$0.00	\$0.00	\$0.00	\$1,155,625.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,155,625.00
2026	3	72	95.95%	\$1,155,625.00	\$86,671.88	0.00%	\$0.00	\$0.00	\$0.00	\$1,242,296.88	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,242,296.88
2027	4	73	93.70%	\$1,242,296.88	\$93,172.27	3.77%	(\$46,879.13)	(\$16,407.69)	(\$30,471.43)	\$1,288,590.02	(\$46,879.13)	\$46,879.13	\$0.00	\$0.00	\$0.00	\$0.00	\$16,407.69	\$0.00	\$0.00	\$1,288,590.02
2028	5	74	91.30%	\$1,288,590.02	\$96,644.25	3.92%	(\$50,532.94)	(\$18,697.19)	(\$31,835.75)	\$1,334,701.33	(\$50,532.94)	\$97,412.07	\$0.00	\$0.00	\$0.00	\$0.00	\$18,697.19	\$0.00	\$0.00	\$1,334,701.33
2029	6	75	88.73%	\$1,334,701.33	\$100,102.60	4.07%	(\$54,256.15)	(\$20,074.78)	(\$34,181.38)	\$1,380,547.78	(\$54,256.15)	\$151,668.22	\$0.00	\$0.00	\$0.00	\$0.00	\$20,074.78	\$0.00	\$0.00	\$1,380,547.78
2030	7	76	86.00%	\$1,380,547.78	\$103,541.08	4.22%	(\$58,250.96)	(\$21,552.86)	(\$36,698.11)	\$1,425,837.90	(\$58,250.96)	\$209,919.18	\$0.00	\$0.00	\$0.00	\$0.00	\$21,552.86	\$0.00	\$0.00	\$1,425,837.90
2031	8	77	83.09%	\$1,425,837.90	\$106,937.84	4.37%	(\$62,263.66)	(\$23,037.56)	(\$39,226.11)	\$1,470,512.07	(\$62,263.66)	\$272,182.85	\$0.00	\$0.00	\$0.00	\$0.00	\$23,037.56	\$0.00	\$0.00	\$1,470,512.07
2032	9	78	80.00%	\$1,470,512.07	\$110,288.41	4.55%	(\$66,841.46)	(\$24,731.34)	(\$42,110.12)	\$1,513,959.03	(\$66,841.46)	\$339,024.30	\$0.00	\$0.00	\$0.00	\$0.00	\$24,731.34	\$0.00	\$0.00	\$1,513,959.03
2033	10	79	76.70%	\$1,513,959.03	\$113,546.93	4.74%	(\$71,751.61)	(\$26,548.10)	(\$45,203.52)	\$1,555,754.34	(\$71,751.61)	\$410,775.92	\$0.00	\$0.00	\$0.00	\$0.00	\$26,548.10	\$0.00	\$0.00	\$1,555,754.34
2034	11	80	73.22%	\$1,555,754.34	\$116,681.58	4.95%	(\$77,017.54)	(\$28,496.49)	(\$48,521.05)	\$1,595,418.38	(\$77,017.54)	\$487,793.46	\$0.00	\$0.00	\$0.00	\$0.00	\$28,496.49	\$0.00	\$0.00	\$1,595,418.38
2035	12	81	69.54%	\$1,595,418.38	\$119,656.38	5.15%	(\$82,238.06)	(\$30,428.08)	(\$51,809.98)	\$1,632,836.70	(\$82,238.06)	\$570,031.52	\$0.00	\$0.00	\$0.00	\$0.00	\$30,428.08	\$0.00	\$0.00	\$1,632,836.70
2036	13	82	65.68%	\$1,632,836.70	\$122,462.75	5.41%	(\$88,261.44)	(\$32,656.73)	(\$55,604.71)	\$1,667,038.01	(\$88,261.44)	\$658,292.96	\$0.00	\$0.00	\$0.00	\$0.00	\$32,656.73	\$0.00	\$0.00	\$1,667,038.01
2037	14	83	61.65%	\$1,667,038.01	\$125,027.85	5.65%	(\$94,182.94)	(\$34,847.69)	(\$59,335.25)	\$1,697,882.92	(\$94,182.94)	\$752,475.90	\$0.00	\$0.00	\$0.00	\$0.00	\$34,847.69	\$0.00	\$0.00	\$1,697,882.92
2038	15	84	57.48%	\$1,697,882.92	\$127,341.22	5.95%	(\$101,064.46)	(\$37,393.85)	(\$63,670.61)	\$1,724,159.68	(\$101,064.46)	\$853,540.36	\$0.00	\$0.00	\$0.00	\$0.00	\$37,393.85	\$0.00	\$0.00	\$1,724,159.68
2039	16	85	53.11%	\$1,724,159.68	\$129,311.98	6.25%	(\$107,759.98)	(\$39,871.19)	(\$67,888.79)	\$1,745,711.68	(\$107,759.98)	\$961,300.34	\$0.00	\$0.00	\$0.00	\$0.00	\$39,871.19	\$0.00	\$0.00	\$1,745,711.68
Totals:					\$1,707,012.02		\$961,300.34	\$354,743.54	\$606,556.80		\$961,300.34		\$0.00		\$0.00		\$354,743.54	\$0.00		



# IRA TO CHILD A - ALLOWS DISCLAIMER TO CHARITY

## SCENARIO H



If Child A disclaims no tax triggered.



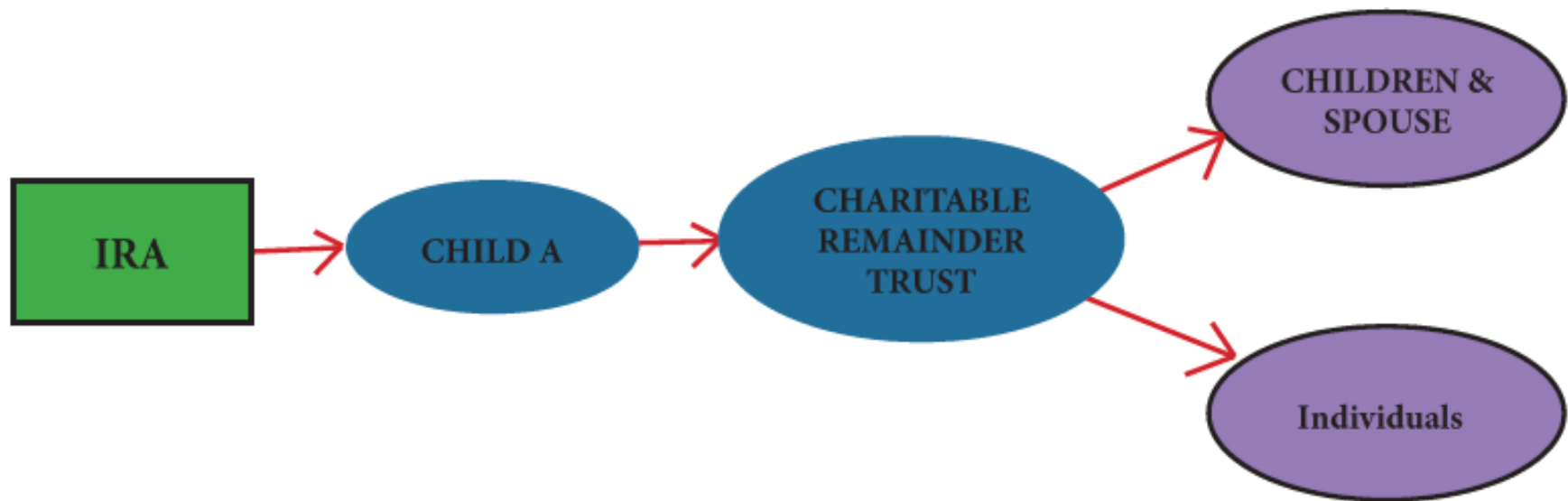
1. Charity cannot be private foundation over which the disclaimant is trustee or manager with power to direct the foundation's assets.
2. Disclaimant may recuse themselves from decision making power via a "Chinese Wall" provision - (please...no MSG) to avoid disclaimer being deemed invalid.
3. Disclaimant should consider recusing themselves from decisions over donor advised funds. One PLR has held that a disclaimer in favor of donor-advised fund does render disclaimer invalid due to the fact that the disclaimant is merely an advisor and cannot "direct" distributions. PLR 200518012.

Possible clause to facilitate the above:

I intend to have \$500,000 be paid to the A Museum, located in Any City, Florida, provided that it is a 501 (c)(3) organization, and have been advise that it would preferable to fund such devise from my IRA. I have therefore named my son, Eric as beneficiary of my IRA B, with such charity being the alternate beneficiary. I request that my son determine whether it works best for federal income tax and estate tax planning purposes to disclaim such devis so that the IRA can pass directly to the Museum, or to receive some or all of such devise as an inherited IRA, and to make contributions to the Museum individually to receive income tax deductions. I recognize that this provision is not binding upon my said son.

## ***IRA DISCLAIMABLE TO CHARITABLE REMAINDER TRUST***

### **SCENARIO K**



Payable to A, upon disclaimer to Charitable Remainder Trust which will make lifetime payments to children and spouse of Child A, remainder to Charity.

No Income Tax paid on benefits payable to Charitable Remainder Trust

Disclaimant cannot be an income beneficiary of the Charitable Remainder Trust, unless the disclaimant is the participant's surviving spouse.

Distributions to individuals will be carried out on a "worst first" basis.

# Charitable Planning with IRA and Pension Accounts

The 10-Year Payout Rule requirement under the SECURE Act has already made charitable planning a much bigger part of any conversation with charitably inclined individuals who have large pension or IRA holdings.

A great many families are already contributing to donor controlled or independent charitable organizations, or have established arrangements to assure that charities will inherit upon specified circumstances.

These families can review how they will leave assets to charity, taking into account that individuals who receive the benefit of non-spousal IRA inheritances or properly drafted “Stretch Trusts” for their benefit will have to pay income tax in the 11<sup>th</sup> year following the date of the IRA or pension holder’s death.

The charitable alternatives include outright dispositions to independent charities, dispositions to donor advised funds and family foundations that can result in charitable accounts and investments that can be directed to charities by family members or friends over a long period of time, income tax-free dispositions to family foundations that can engage in private and public investments and activities and customized charitable conduct, with reasonable compensation paid to family members, and charitable remainder trusts which can be expected to provide well over 90% of value to family members and provide tax deferral over a Stretch period that can be for 20 years, or longer, if based upon the life expectancy of one or more individuals.



# Charitable Planning with IRA and Pension Accounts, Cont'd

Each of the above alternatives is described below in more detail.

1. Passing Benefits Directly to Charity. The simplest and most direct method of charitable giving with IRA and pension accounts is to make a 501(c)(3) charity the beneficiary of the IRA or pension account on the beneficiary designation form.

This will permit the IRA or pension account to pass directly to a bona fide IRC Section 501(c)(3) charity on the death of the IRA owner or Plan Participant, and very little will need to be done after death to facilitate this tax-free transfer.

An exception from an income tax standpoint would be that a Section 501(c)(3) organization must pay income tax on any Unrelated Business Taxable Income, which would occur if the IRA or pension owned an active trade or business that produced Unrelated Business Taxable Income that was distributed to the charity. The vast majority of IRA and pension accounts do not have active trades or businesses that would generate Unrelated Business Taxable Income, or may qualify for the Section 199A 20% deduction on such income if appropriate circumstances exist.

Another exception is that a 501(c) private foundation or private operating foundation would be subject to a tax of 1.39% on its net investment income. Previously this tax would either be 1% or 2% of net investment income depending on the operations of the private foundation, but the SECURE Act simplified this tax by making it apply at a flat 1.39% rate.

Natalie Choate has indicated that some charities or plan sponsors may find it problematic to have the applications filled out, and to make the payments directly to one or more charities, so that it may be easier to name the donor advised fund affiliated with the Plan Administrator, and to have family members or advisors then direct the monies to the selected charities. This indirect payment method should work fine, unless any person who has the authority to direct the charitable payments under the donor advised fund acts contrary to the wishes of the deceased Plan Participant.

# Charitable Planning with IRA and Pension Accounts, Cont'd

If there is a complicated formula, then the Plan Sponsor may not be comfortable complying with the terms of the Trust Agreement or Will, or the instructions of the trustee or personal representative. For example, if a trust provides that “an amount equal to 15% of the net value of the trust will be payable to charity, or 40%, if I am not cohabitating with my present significant other,” the Plan Sponsor will not want to have responsibility for whether the proper amount was paid out. The alternative is to provide that “such amounts as is determined by the trustee to satisfy such provision shall be communicated to the Plan Sponsor, as a devise of a specific dollar amount, and the Plan Sponsor shall have no responsibility to determine whether such amount is accurate, and may rely upon a statement signed by the trustee of the trust in the presence of two witnesses and a Notary Public, or the order of a court of competent jurisdiction specifying the amount being transferred.

2. Disclaimer to Charity. The same income tax result discussed above can occur if the IRA is made payable to an individual or the trustee of a trust who disclaims the disposition within 9 months of the Plan Participant's death, where the alternate beneficiary is one or more charities. This will be treated in exactly the same way as would apply if the charities were the direct beneficiary.

This can allow a high income tax bracket beneficiary, or a trustee acting for that beneficiary, to decide whether to accept an entire inherited IRA, or to allow some or all of the IRA to pass to a pre-named charity, donor advised fund, or charitable foundation.

For example, an IRA might be payable to a trust for the benefit of a child, his descendants, and designated charities, with the trustee having the power to disclaim the disposition. If the alternate beneficiary under the IRA beneficiary designation is the individual, then the individual may also elect to receive the disposition or disclaim it, and if the individual disclaims the disposition, then it can pass to a preselected charity named in the beneficiary designation as the second contingent beneficiary.

# Charitable Planning with IRA and Pension Accounts, Cont'd

High income beneficiaries who may be inclined to donate more than the permitted percentage of adjusted gross income to charity may wish to speak with their parents, or other individuals who might leave IRA benefits to them, about these arrangements.

When disclaiming an interest in an IRA it is important that the disclaimant does not control the charity that will receive the funds as a result of the disclaimer. The disclaimant has to give up all control over the disclaimed interest. Pursuant to PLR 9008011, the disclaimant's spouse or children would be permitted to control the charity that receives the IRA proceeds. Alternatively, the disclaimed property could be held in a separate account with the charity that the disclaimant has no control over.

Further, if the disclaimer results in the IRA proceeds going to a charitable lead annuity trust, then the disclaimant is not allowed to be a beneficiary of the charitable lead annuity trust.<sup>1</sup>

Our book discusses the use of multiple disclaimers to maximize flexibility for such arrangements. For example, the charitable individual may want to be able to have a trustee decide whether he or she will be the primary beneficiary of a trust that will receive all or part of the IRA distributions within 11 years of the Plan Participant's death, or to be the lifetime beneficiary of a Charitable Remainder Trust, or to have the benefit pass all or in part to charity.

3. To an Estate or Trust That Provides for Charity. This can be a somewhat complicated area, as further described below, but provides for the most flexibility and contingency planning.

For example, a wealthy taxpayer may provide that his IRA will pass via his Living Trust to charity, but in an amount not exceeding 15% of the total net worth passing as the result of his death, or an amount sufficient so that his descendants receive at least \$10,000,000. In addition, this individual may wish to permit his children, to serve as the independent trustees, to elect to have more go to charity from their separate shares, if they wish to do so. All of this can be provided under a Trust Agreement or Last Will and Testament where the beneficiary of the IRA is the trust or the individual's estate. If the beneficiary of the IRA is the estate, then the IRA will have to be distributed in 5 years rather than 10 years.

<sup>1</sup>*Christansen v. Commissioner*, 130 TC 1 (2008)

# Charitable Planning with IRA and Pension Accounts, Cont'd

In the past having an IRA payable to an estate was a bigger problem because the beneficiary could potentially have received the IRA amounts over his or her lifetime, but the only negative not is that all IRA assets must be distributed in 5 years. If an IRA is left to the decedent's estate and the decedent leaves a surviving spouse that is the sole beneficiary of the decedent's estate, the surviving spouse could potentially be treated as the designated beneficiary of the IRA. Many companies managing IRA accounts will require a private letter ruling before rolling the IRA monies into an inherited IRA for the spouse, but this can be a costly process. For many individuals, it will not be worthwhile to incur the expense of obtaining a PLR simply to stretch the annuity over the surviving spouse's lifetime, since the filing fee alone for such a PLR as of 2020 would be over \$20,000. Fortunately, an IRA may be transferred after death to a new custodian that may be more willing to honor the beneficiary designation with a court order, which will be much less expensive and time consuming than obtaining an IRS Private Letter Ruling.

The disadvantages of naming an estate as beneficiary are described below.

As a general overview, a great many Plan Participants will prefer to have formulas and conditions that will apply to determine if and how much charities will receive under an estate plan, and will not want to be inconvenienced with having direct or somewhat complicated beneficiary designation arrangements that might run amuck if and when they ever change advisors, or update beneficiary designations. By having the beneficiary of an IRA be a trust that is established during the life of the Plan Participant, or as a Testamentary Trust upon his or her death, the specific formulas and contingencies, along with customized language that can provide limitations and detailed instructions to carry out charitable and non-charitable intentions are provided in the trust document, and can be modified and developed in future codicils and amendments without having to change the beneficiary designation.

When an IRA or pension account is payable to an estate or trust, the income is carried out into the estate or trust, but the estate or trust will receive up to a 100% income tax deduction under Internal Revenue Code Section 642(c), if amounts equal to the amounts that passed from the IRA or pension pass to charity within the applicable deadline.

# Charitable Planning with IRA and Pension Accounts, Cont'd

In order to meet the above deadline, a trust must make the applicable distribution before the end of the tax year following the year in which the IRA or plan distribution is received.<sup>2</sup>

For an estate, the distribution will be considered as having been made by such deadline, as long as the amounts received by the estate are “set aside” in a proper manner, and eventually paid to charity before the estate is closed. That is the one advantage of making the estate of the Plan Participant the beneficiary of an IRA or pension account that will be going in whole or in part to charity.

For the 642(c) deduction to apply, it is crucial that the Will or Trust document specifically authorizes or requires the trustee or personal representative to make payments to charity. It is not sufficient for this provision to be added by a Trust Protector or court order after the death of a testator or once a revocable or other trust becomes irrevocable. This rule does not apply to income passing through an estate or trust from a pension IRA account to charity.

It is important to note that money received from an IRA is not subject to the 3.8% Medicare Tax, but if IRA proceeds are distributed to a trust, the trust may eventually hold undistributed net investment income, which could be subject to the 3.8% Medicare tax.

Other disadvantages can include loss of the ability to use the 10-Year Rule, if the estate does not “pour” the IRA or pension benefit into a trust or to a person that would so qualify, or the loss of a lifetime payout for a disabled or chronically ill individual where the estate does not “pour” the benefit to an Accumulation Trust that would qualify for such an individual, or to the individual themselves.

<sup>2</sup> Treasury Regulation Section 1.642(c)-1(b)(1)

# Charitable Planning with IRA and Pension Accounts, Cont'd

4. When Does the September 30 After Year of Death Rule Impact the Above Planning? There are numerous examples of when charities and other non-individuals must not be beneficiaries, or in some cases even potential future beneficiaries, of trusts that would otherwise qualify for a lifetime payout for a surviving spouse, or certain other categories of beneficiaries,<sup>4</sup> or at least the 10-Year Rule would apply.

In these situations, the “See-Through Stretch Trust” rules can apply to the portions of distributions passing to separate, or, in some cases, combined trusts for the Designated Beneficiary, or plan benefit rights can pass directly through to such individuals or Gift to Minors Act accounts, or possible other vehicles for such individuals, as long as the charities and other non-persons<sup>5</sup> are completely paid out or otherwise eliminated as beneficiaries, so that they cannot receive anything after the September 30 following the date of death of the Plan Participant.

Here are the primary circumstances that will apply under most estate and trust plans:

1. Pay a specified amount or percentage to charity shortly after the death of the Plan Participant.
  - A. Where Charity Will Receive a Specific Amount or Percentage, Which Can Be Satisfied On or Before the September 30 Following the Date of the Plan Participant's Death. This will apply in most situations, and trusts and wills can be drafted accordingly. If it is not clear what portion of an estate or trust will pass to the charitable beneficiary or beneficiaries by the September 30<sup>th</sup> following the year of the Plan Participant's death, then the trustee or personal representative may be able to set aside a “combined charitable and individual” subtrust that will receive a portion of the plan benefits and the 5-Year Rule can apply to that portion. If that portion all goes to charity, and IRC Section 642(c) applies, then there will be no tax on the amounts distributed from the IRA or pension to the subtrust.

<sup>4</sup> An individual not more than 10 years younger than the Plan Participant, a disabled or chronically ill beneficiary, if the Plan Participant had reached his or her Required Beginning Date before death and the “Shadow Rule” applies, when the beneficiary is a minor child of the deceased Plan Participant, so that the Life Expectancy Rule may apply until the child reaches the age of majority, after which the 10-Year Payout Rule would apply.

<sup>5</sup> And in some situations, no person older than the applicable Designated Beneficiary.

# Charitable Planning with IRA and Pension Accounts, Cont'd

- B. The Interest Going to Charity or to Non-Charity Can Be Pecuniary or Fractional. Even when the charitable and non-charitable interests in an IRA or pension are to be directly segregated or divided before September 30 of the year following the Plan Participant's death, the question as to whether the distribution is couched in terms of being a pecuniary or fractional amount, which goes to charity or to the non-charitable beneficiaries will not matter. In other words, it is fine to provide a pecuniary disposition (eg. the charity or non-charity will receive \$400,000, and the other parties will receive the remainder of the IRA assets), or a fractional (eg. the charity or non-charity will receive 18% of the greater of the net amount of the IRA or pension or 8% of the total net value of the IRA passing upon death, with the remaining assets going to the charity or non-charity beneficiaries.

Fractional verses pecuniary clause differences occur is when a disclaimer is used to provide charity with a fractional portion of the IRA, in which case, the funds that are to go to charity must be segregated from the funds that can be used to benefit the non-charitable beneficiary. Additionally, when the IRA is payable to a trust before it goes to the charitable beneficiary, then a fractional share to charity will generally work well, but extra care needs to be taken with a pecuniary share following the Participant's death.

2. Charitable Gift Annuities. Charitable Gift Annuities allow for a gift to be made to charity followed by the charity paying the donor a fixed annuity for the rest of the donor's life. The donor can tax a deduction for the amount of the donation that is expected to the charity upon the death of the beneficiary and the beneficiary will receive an annuity with part of the payments being considered income and another part being considered a return of capital.

Due to the structure of a Charitable Gift Annuity, the non-charitable beneficiary will be limited to receiving the annuity amount each year, regardless of the beneficiary's needs.

An IRA owner can contribute his or her required minimum distribution amounts to the Charitable Gift Annuity. It is important that the IRA plan issues the money directly to the charity and that the donor uses funds from a traditional IRA. Donations from SEP IRAs will not provide a benefit.

# Charitable Planning with IRA and Pension Accounts, Cont'd

A Charitable Gift Annuity can be funded with IRA proceeds on the death of the IRA owner. The IRA proceeds would be paid directly to a charity and a designated non-charitable beneficiary would receive a certain amount of funds from the charity each year, using a formula based on the beneficiary's lifetime.

While the IRA's value would be included in the donor's estate, the estate would receive a partial charitable deduction and the estate would not be subject to income tax in relation to the IRA.<sup>6</sup>

<sup>6</sup> PLR 200230018



# Payable Directly to Charity, Donor Advised Fund or Community Foundation

RETIREMENT  
PLAN

CHARITY

Retirement plan payable to charity directly via beneficiary designation. It does not matter whether it is a pecuniary or a fractional devise.

RETIREMENT  
PLAN

DONOR ADVISED  
FUND  
or COMMUNITY  
FOUNDATION

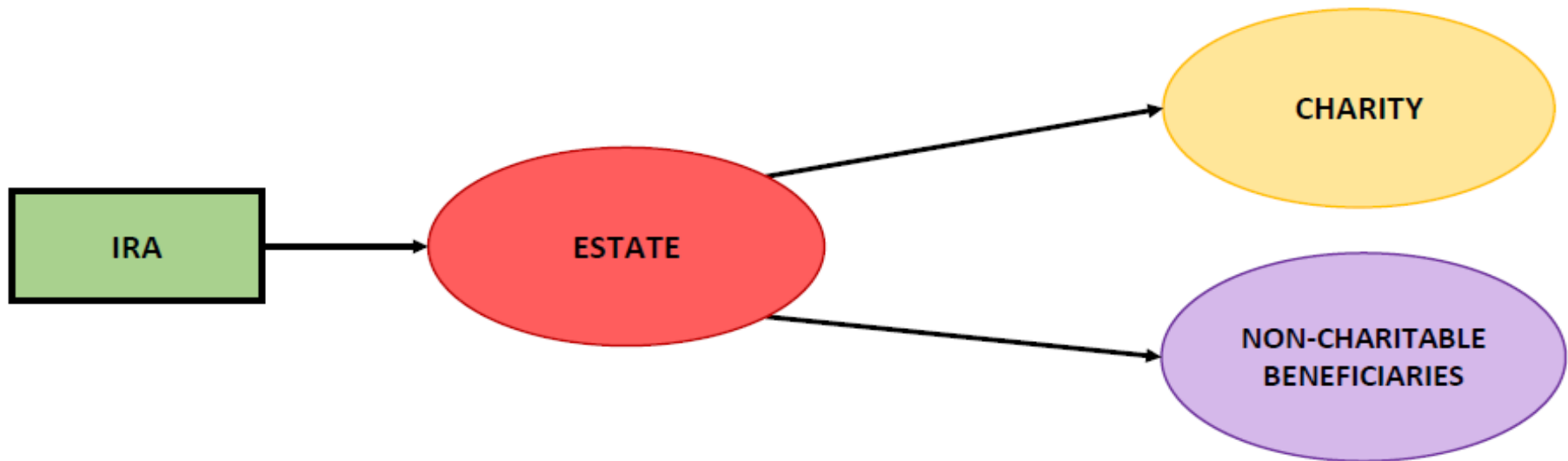
CHARITY A

CHARITY B

CHARITY C

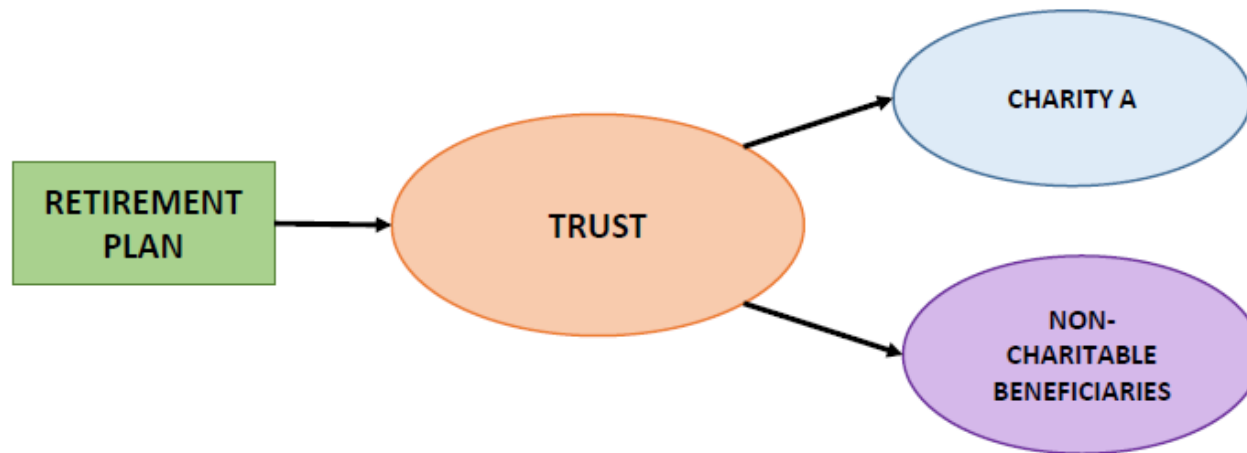
Retirement Plan payable by beneficiary designation to Donor Advised Fund, which can be controlled by owner's family. The family can decide which charity will benefit. This might provide the charities with more comfort as opposed to leaving the IRA directly to the charities. Family may also delay transfers from Donor Advised Fund for many years.

## Payable to Estate, Which in Turn Pays to Charity and Non-Charitable Beneficiaries



This is a sub-optimal disposition, because Required Minimum Distributions must be paid out within five years of Plan Participant's death (unless the At Least As Rapidly Rule applies). Nevertheless, the estate can receive an income tax deduction from amounts set aside to charity, assuming that the Last Will and Testament authorizes payment to charity. It would be prudent to provide under the Last Will and Testament that the Personal Representative can use income of the estate to pay any charitable devise in order to maximize the charitable deduction. An estate also can get the charitable deduction for amounts "set aside" for charity, in addition to amounts that are actually paid to charity. (This is different from a trust where the "set aside" option does not apply.)

# Payable to Trust, Which in Turn Pays to Charity and Non-Charitable Beneficiaries



Devise to charity must be made no later than September 30 of the year following the year of the owner's death in order to allow the trust to qualify as a "See-Through Trust" for RMD purposes.

The devise to charity should be specified in terms of a fractional devise (rather than a pecuniary devise) in order to avoid gains on funding the charitable devise.

Consider if the 3.8% N.I.I.T. tax will apply.

Consider whether charitable donation should be made in the same tax year or in the tax year after a liquidation of the retirement plan in order to "match" the charitable deduction and the income from liquidation of the retirement plan.

Section 642(C)(1) allows a charitable deduction to be carried back one year to offset income in the year prior to the year in which the amount is actually paid to charity.

# The Mathematics of Pension & IRA Minimum Distribution Rules

## PERCENTAGE TO CHARITY/PERCENTAGE TO INDIVIDUALS

SCENARIO A



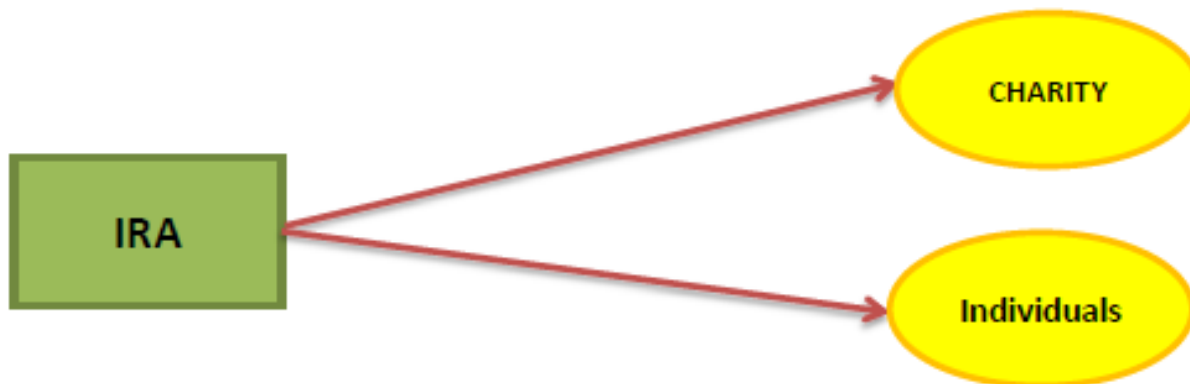
IRA goes in equal shares, %, or fractional share to charity and individual beneficiary i.e. "I name as beneficiary of my IRA A Charity, and my two sons in equal shares."

1. No income triggered on transfer or payment to charity
2. Portion of IRA passing to individuals will be subject to the 10-Year Rule, unless paid to a Eligible Designated Beneficiary.

# The Mathematics of Pension & IRA Minimum Distribution Rules

*PECUNIARY (FIXED DOLLAR) AMOUNT TO CHARITY / REMAINDER TO INDIVIDUALS*

SCENARIO B



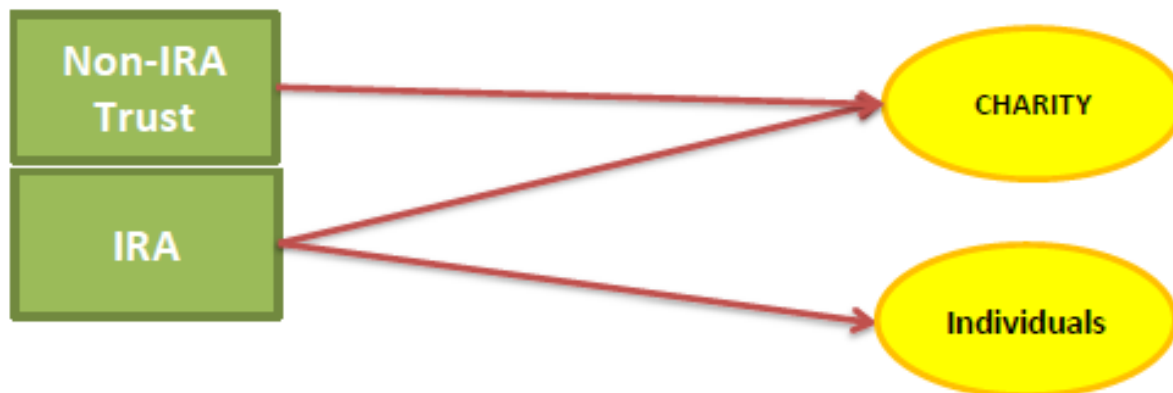
IRA goes dollar amount to charity, remainder to others  
i.e. "\$100,000 to Charity A, balance to my son."

1. No income triggered on payment to charity
2. Portion of IRA passing to individuals will be subject to the 10-Year Rule, unless paid to a Eligible Designated Beneficiary.
3. NOTE - If pecuniary amount is directed to charity via trust, then tax may be triggered at the trust level.

# The Mathematics of Pension & IRA Minimum Distribution Rules

*IRA GOES TO CHARITY ONLY TO THE EXTENT THAT CHARITABLE DISPOSITION IS NOT FUNDED FROM OTHER SOURCE*

SCENARIO D



IRA goes to charity to the extent that trust does not give the charity a full \$1,000,000 and the rest to children

1. If first paid to the Trust, and then to Charity, the Trust will receive an income tax deduction for amount paid to charity if (a) distribution was made pursuant to the governing instrument, and (b) payment was made out of income.
2. Portion of IRA passing to individuals will be subject to the 10-Year Rule, unless paid to a Eligible Designated Beneficiary.

# The Mathematics of Pension & IRA Minimum Distribution Rules

**NEVER-EVER-EVER HAVE THE IRA PAYABLE TO THE ESTATE, AND A WILL THAT THEN DIRECTS IT TO CHARITY**

SCENARIO E



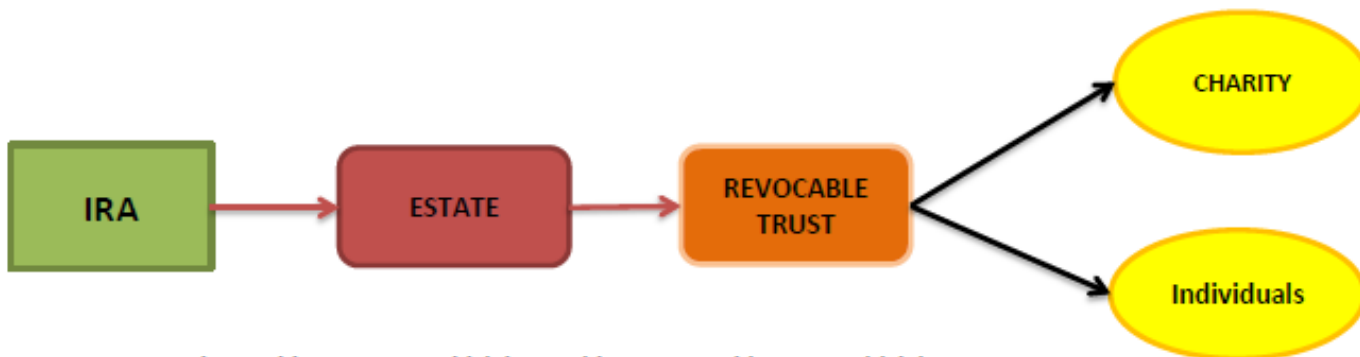
IRA is payable to estate and Last Will and Testament directs payment based upon one or more of the scenarios above.

1. Estate receives income tax deduction for amounts paid or set aside for charity
2. When IRA is payable to the estate there is no designated beneficiary (even if transferred in kind to individuals by September 30th) thus either the 5 year rule or the at least as rapidly rule would apply for Required Minimum Distribution purposes.

# The Mathematics of Pension & IRA Minimum Distribution Rules

**NEVER-EVER-EVER HAVE THE IRA PAYABLE TO THE ESTATE THAT IS PAYABLE TO A REVOCABLE TRUST THAT DIRECTS IT TO CHARITY**

SCENARIO F



IRA is payable to estate, which is payable to Revocable Trust, which is payable under one of the scenarios above.

1. When IRA is payable to the estate there is no designated beneficiary (even if transferred in kind to "see-through" trust by September 30th) thus either the 5 year rule or the at least as rapidly rule would apply for Required Minimum Distribution purposes.



# The Mathematics of Pension & IRA Minimum Distribution Rules

*ALWAYS DEFINE CHARITABLE GIFTS THROUGH TRUST AS A FRACTIONAL FORMULA RATHER THAN PECUNIARY*

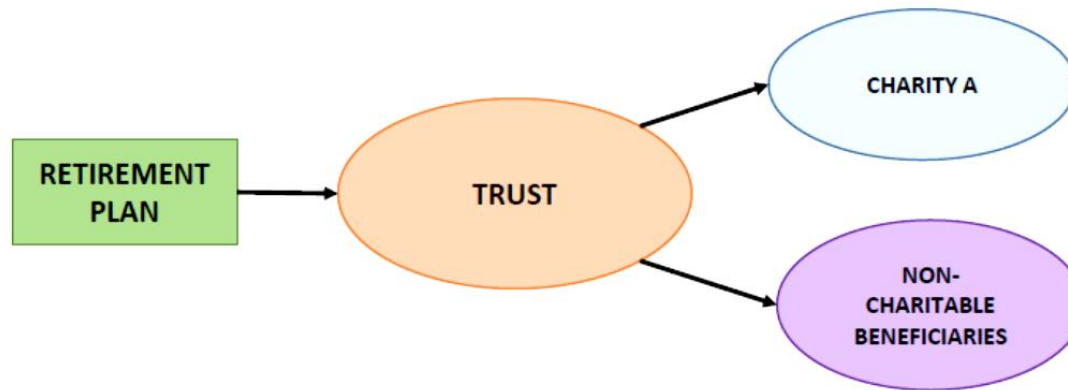
SCENARIO H



IRA is payable to Revocable Trust, which directs a pecuniary amount to charity, remainder to beneficiaries.

1. The pecuniary devise satisfies an obligation of the trust using property that no income tax has been paid upon, and is deemed to be a taxable distribution at the trust level.
2. When a gift is defined via fractional formula, the IRA is deemed to have been transferred intact, and the transferring entity is not taxed.

# Payable to Trust, Which in Turn Pays to Charity and Non-Charitable Beneficiaries



Devise to charity must be made no later than September 30 of the year following the year of the owner's death in order to allow the trust to qualify as a "See-Through Trust" for RMD purposes.

The devise to charity should be specified in terms of a fractional devise (rather than a pecuniary devise) in order to avoid gains on funding the charitable devise.

Consider if the 3.8% N.I.I.T. tax will apply.

Consider whether charitable donation should be made in the same tax year or in the tax year after a liquidation of the retirement plan in order to "match" the charitable deduction and the income from liquidation of the retirement plan.

Section 642(C)(1) allows a charitable deduction to be carried back one year to offset income in the year prior to the year in which the amount is actually paid to charity.



# Disclaimer Planning

This gives much more flexibility to the family and advisors, not to mention that it could have locked in the pre-SECURE Act IRA Required Minimum Distribution regime if the Plan Participant died in 2019.

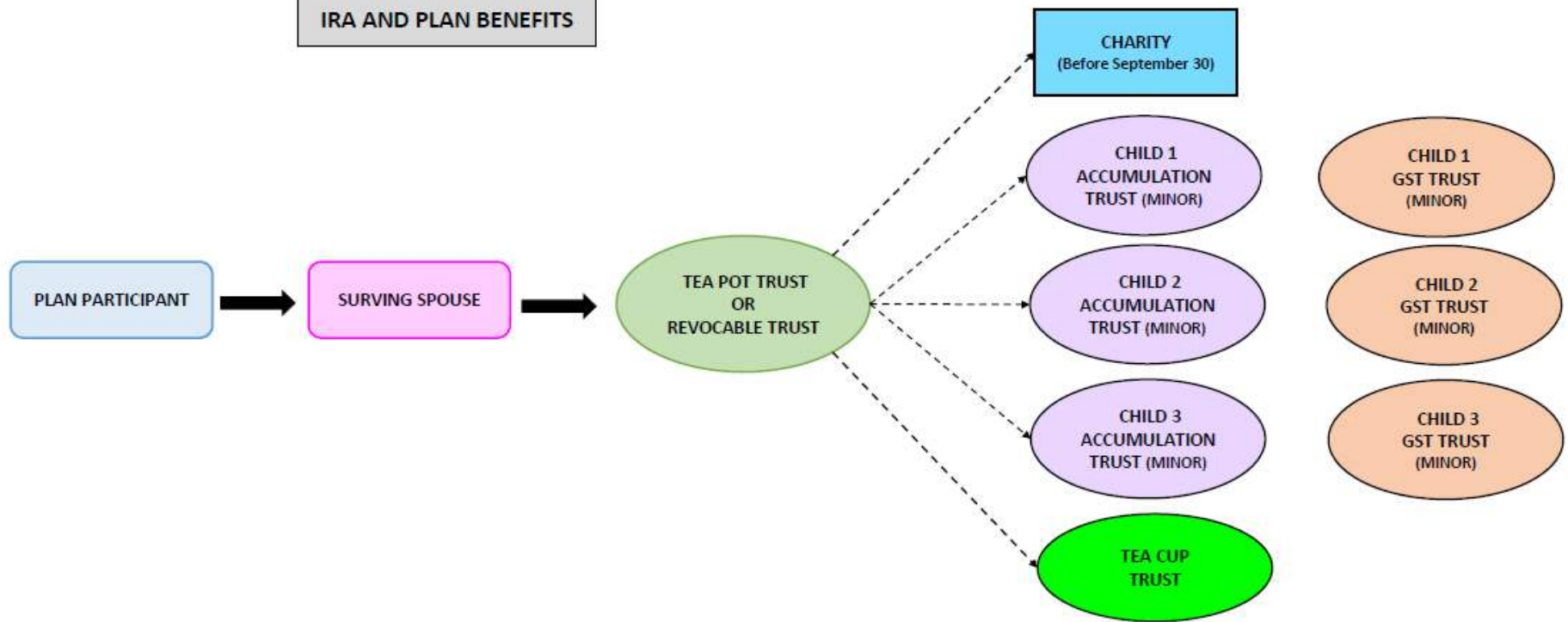
Disclaimer planning can be useful. For example, many clients will name the surviving spouse as the beneficiary of an IRA or pension account, with the alternate beneficiary being a Conduit Trust under provisions that would allow the trustee of the Conduit Trust to amend the trust to become an Accumulation Trust, or to disclaim the distribution with the alternate beneficiary being an Accumulation Trust. The trustee of the Accumulation Trust may have the right to disclaim the benefit so that it would pass to trusts for the descendants, and the trustees of the trusts for the descendants may have the right to disclaim the benefit to go to a public charity or a private foundation that might be formed by the family, and managed by family members who may receive reasonable compensation for charitable activities, and maintaining the investments of the foundation.

Another use of disclaimers is to have Retirement Plan benefits payable to a trust for the benefit of children which provides that the Trustee will be entitled disclaim assets to the Charitable Remainder Trust which will benefit the individual's descendants, in addition to a charity. This can help effectuate some of the family's charitable goals, while achieving income tax savings.

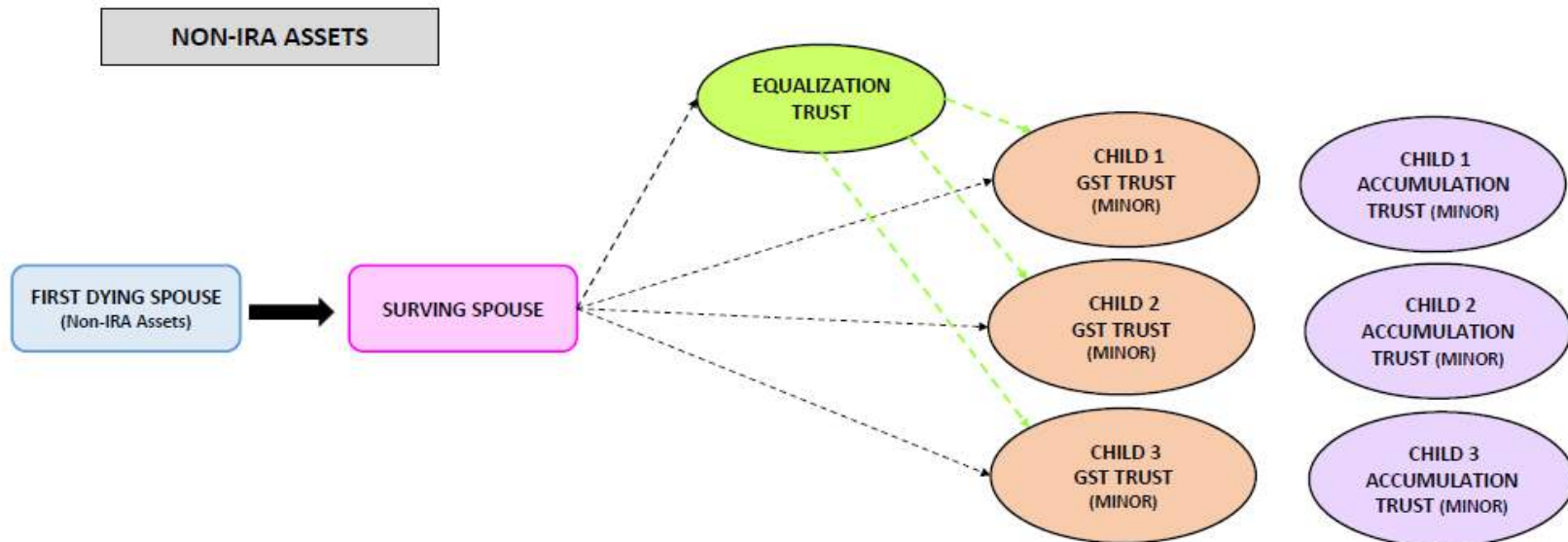
Please note that disclaimer planning will only work if the alternate beneficiary that eventually does not disclaim is an appropriate individual, individuals, a Conduit Trust, or an Accumulation Trust, and that beneficiary designations cannot be changed after the death of the Plan Participant.



## IRA AND PLAN BENEFITS



## NON-IRA ASSETS



# When An IRA Or Pension Account Is Payable To A Properly Drafted Charitable Remainder Trust

While the taxation and advantage of using a charitable remainder trust as the beneficiary of an IRA/Plan is not specifically provided for under the SECURE Act, the tax law is very clear that an IRA/Plan passing by beneficiary designation to a properly drafted and administered charitable remainder trust will not cause imposition of income tax on such distributions unless or until distributions are made by the charitable remainder trust, which can be paid out over the life expectancy of the individual charitable remainder trust beneficiary or over a fixed period of years not to exceed 20 years. A taxpayer would choose their life expectancy to base the charitable remainder trust term on if the beneficiary is reasonably expected to live at least 20 years.

A charitable remainder trust does not pay income taxes for the items of income it holds onto; income tax liability is only incurred if income is distributed to the non-charitable beneficiary. Thus, the IRA distribution amounts can be contributed to a charitable remainder trust over the 10-year required distribution period, and the charitable remainder trust will not have to pay income taxes on the assets that it continues to hold. This allows the charitable remainder trust to earn and accumulate income without paying taxes on such income until the distributions are made to the lifetime non-charitable beneficiary.

At least 10% of the charitable remainder trust assets must be projected to go to the ultimate charitable beneficiary based upon the life expectancy tables as described under Section 7520. These are referred to as the 2000 CM Mortality Tables, which likely understate the life expectancy for the non-charitable beneficiary because these numbers were compiled based upon data from the year 2000. As medical technology continues to improve, the life expectancy of individuals, especially for those who have the means to consider a charitable remainder trust for their IRA, will hopefully continue to rise. Thus, it is likely that the charitable remainder trust will continue to pay the non-charitable lifetime beneficiary for a period of time that is in excess of what the life expectancy tables would project, resulting in more value going to the non-charitable beneficiary and less going to the charity.



## When An IRA Or Pension Account Is Payable To A Properly Drafted Charitable Remainder Trust, Cont'd

This plan can work out very well for IRA owners who are somewhat charitably inclined and would like their beneficiaries to receive their IRA over an extended period of time to avoid and delay income tax liability.

A Charitable Remainder Trust can be created on the death of the surviving spouse to stretch the remaining IRA balances for their designated beneficiaries.

Taxpayers need to consider a number of factors when determining if a Charitable Remainder Trust would achieve their desired estate planning goals and taxpayers should consult a tax attorney to help them navigate the available options.

In most cases, the children will receive slightly less than what they would have received if they received all of the IRA money at year 10, but when taking into account the amount going to charity, the CRUT usually provides a greater overall benefit.

A very good recent article describing charitable remainder trusts and their utility as an income tax savings vehicle was published in Bloomberg's BNA Estates, Gifts and Trusts (EGT) Journal by Jerome N. Hesch and Stephen M. Brietstone entitled *Using Charitable Remainder Trusts to Defer Reporting the Gain Realized from the Sale of Marketable Securities for Cash*.





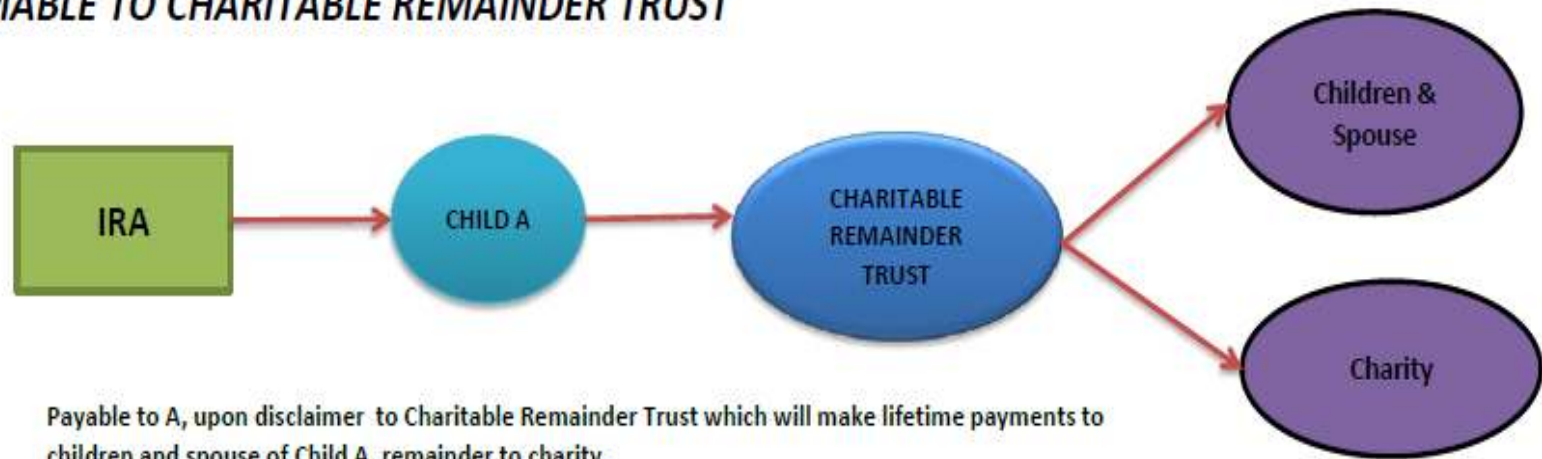
# Charitable Remainder Trusts for Multiple Beneficiaries May Not Be Divided After Formation

- A limiting factor of a Charitable Remainder Trust is that it likely cannot be divided after it is funded.
- Upon funding, a Charitable Remainder Trust will calculate the projected payment to non-charitable beneficiaries and the projected residuary for the charity based upon the 7520 rate, and the life expectancies of the non-charitable beneficiaries (if the Charitable Remainder Trust term is based on the beneficiaries' life expectancies).
- Due to the above, it does not appear that a Charitable Remainder Trust could be split into separate trusts for different beneficiaries after funding.



## IRA DISCLAIMABLE TO CHARITABLE REMAINDER TRUST

### SCENARIO J



Payable to A, upon disclaimer to Charitable Remainder Trust which will make lifetime payments to children and spouse of Child A, remainder to charity.

No Income Tax paid on benefits payable to Charitable Remainder Trust

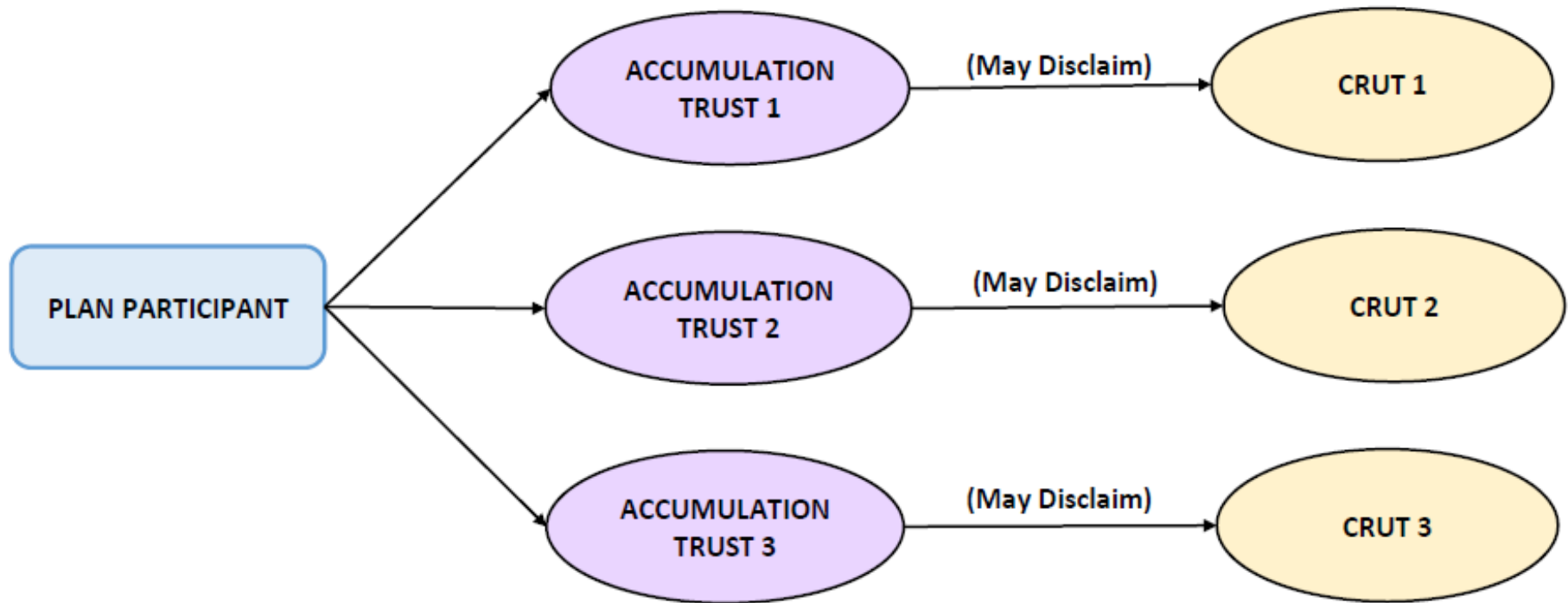
Disclaimant cannot be an income beneficiary of the Charitable Remainder Trust, unless the disclaimant is the participant's surviving spouse.

Distributions to Individuals will carry out taxable income on a "worst first" basis





# Disclaimer to CRUT?



# The Stretch CRUT

- While most beneficiaries that inherit an interest in an IRA will not be able to stretch payments over their lifetimes, it is possible to stretch the disbursements from an IRA over the beneficiary's lifetime using a Charitable Remainder Unitrust ("CRUT").
- The CRUT must be expected to provide the charitable remainder beneficiary with at least 10% of the initial value of the assets contributed to the CRUT.
- The CRUT can continue for the longer of the non-charitable beneficiary's lifetime or a fixed 20 year term.
- The assets held by the CRUT will continue to grow tax-free and may be distributed to the non-charitable beneficiary as capital gain.
- PLR 9237020 provides that the CRUT will not have to pay income taxes when it receives the IRA assets because CRUTs do not pay income taxes on income, unless the income constitutes unrelated business taxable income.



# 10 Year Rule vs. Charitable Remainder Trust

## Facts

- Taxpayer will die with a \$1,000,000 IRA, with his child as the intended beneficiary, who is taxed at the 37% tax bracket. Both the Taxpayer and his child are charitably inclined.
- The examples assume a 7% rate of return inside the IRA and CRUT, that the child will re-invest distributions from the IRA and CRUT into an account earning a 6% after tax rate of return.
- Assumes that distributions from CRUT consist of ordinary income until IRA has been distributed at which point distributions will be taxed at capital gain rates.
- Assumes AFR rate of 2.0%.



# Ten Year Rule

Year	Initial Balance of IRA	Growth (7%)	Distribution	Ending Balance	Tax	Net to Beneficiary	Balance of Reinvestment Account	Growth (6%)	Ending Balance
1	\$ 1,000,000	\$ 70,000	\$ -	\$ 1,070,000	\$ -		\$ -	\$ -	\$ -
2	\$ 1,070,000	\$ 74,900	\$ -	\$ 1,144,900	\$ -		\$ -	\$ -	\$ -
3	\$ 1,144,900	\$ 80,143	\$ -	\$ 1,225,043	\$ -		\$ -	\$ -	\$ -
4	\$ 1,225,043	\$ 85,753	\$ -	\$ 1,310,796	\$ -		\$ -	\$ -	\$ -
5	\$ 1,310,796	\$ 91,756	\$ -	\$ 1,402,552	\$ -		\$ -	\$ -	\$ -
6	\$ 1,402,552	\$ 98,179	\$ -	\$ 1,500,730	\$ -		\$ -	\$ -	\$ -
7	\$ 1,500,730	\$ 105,051	\$ -	\$ 1,605,781	\$ -		\$ -	\$ -	\$ -
8	\$ 1,605,781	\$ 112,405	\$ -	\$ 1,718,186	\$ -		\$ -	\$ -	\$ -
9	\$ 1,718,186	\$ 120,273	\$ -	\$ 1,838,459	\$ -		\$ -	\$ -	\$ -
10	\$ 1,838,459	\$ 128,692	\$ 1,967,151	\$ -	\$ 727,846	\$ 1,239,305	\$ -	\$ -	\$ 1,239,305
11	\$ -	\$ -	\$ -	\$ -			\$ 1,239,305	\$ 74,358	\$ 1,313,664
12	\$ -	\$ -	\$ -	\$ -			\$ 1,313,664	\$ 78,820	\$ 1,392,483
13	\$ -	\$ -	\$ -	\$ -			\$ 1,392,483	\$ 83,549	\$ 1,476,033
14	\$ -	\$ -	\$ -	\$ -			\$ 1,476,033	\$ 88,562	\$ 1,564,594
15	\$ -	\$ -	\$ -	\$ -			\$ 1,564,594	\$ 93,876	\$ 1,658,470
16	\$ -	\$ -	\$ -	\$ -			\$ 1,658,470	\$ 99,508	\$ 1,757,978
17	\$ -	\$ -	\$ -	\$ -			\$ 1,757,978	\$ 105,479	\$ 1,863,457
18	\$ -	\$ -	\$ -	\$ -			\$ 1,863,457	\$ 111,807	\$ 1,975,264
19	\$ -	\$ -	\$ -	\$ -			\$ 1,975,264	\$ 118,516	\$ 2,093,780
20	\$ -	\$ -	\$ -	\$ -			\$ 2,093,780	\$ 125,627	\$ 2,219,407
21	\$ -	\$ -	\$ -	\$ -			\$ 2,219,407	\$ 133,164	\$ 2,352,572
22	\$ -	\$ -	\$ -	\$ -			\$ 2,352,572	\$ 141,154	\$ 2,493,726
23	\$ -	\$ -	\$ -	\$ -			\$ 2,493,726	\$ 149,624	\$ 2,643,349
24	\$ -	\$ -	\$ -	\$ -			\$ 2,643,349	\$ 158,601	\$ 2,801,950
25	\$ -	\$ -	\$ -	\$ -			\$ 2,801,950	\$ 168,117	\$ 2,970,067



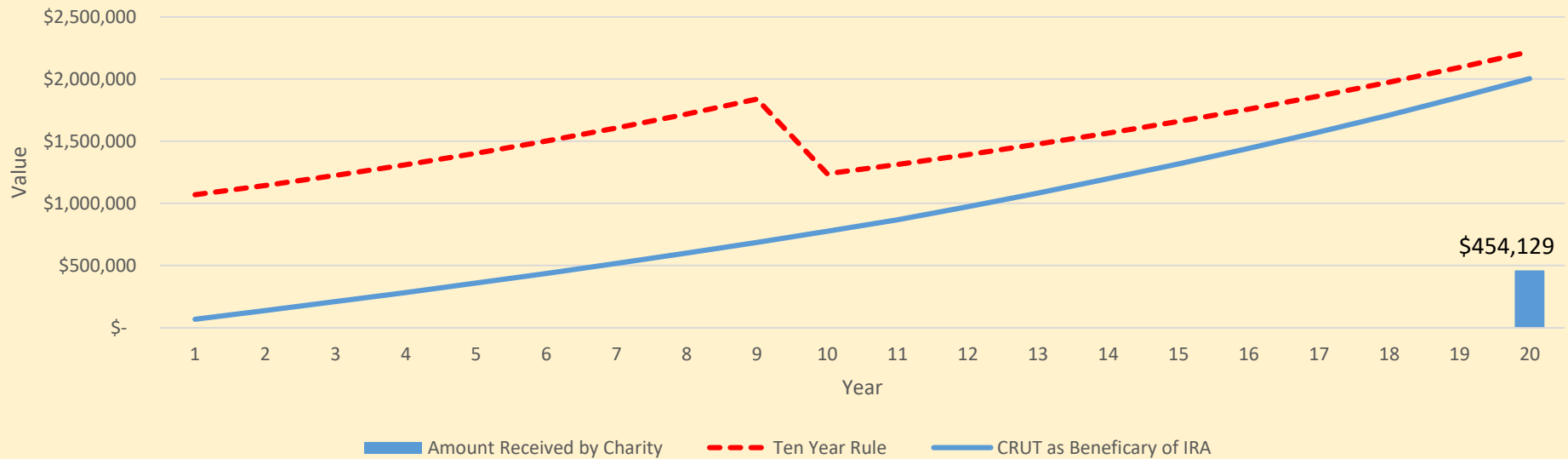
# Charitable Remainder Trust Beneficiary of IRA

Year	Initial Balance of CRUT	Growth (7%)	Distribution (10.87% of Account)	Ending Balance	Tax	Net Distribution	Balance of Reinvestment Account	Growth (6%)	Ending Balance
1	\$ 1,000,000	\$ 70,000	\$ 108,700	\$ 961,300	\$ 40,219	\$ 68,481	\$ -	\$ -	\$ -
2	\$ 961,300	\$ 67,291	\$ 104,493	\$ 924,098	\$ 38,663	\$ 65,831	\$ 68,481	\$ 4,109	\$ 72,590
3	\$ 924,098	\$ 64,687	\$ 100,449	\$ 888,335	\$ 37,166	\$ 63,283	\$ 138,421	\$ 8,305	\$ 146,726
4	\$ 888,335	\$ 62,183	\$ 96,562	\$ 853,957	\$ 35,728	\$ 60,834	\$ 210,009	\$ 12,601	\$ 222,610
5	\$ 853,957	\$ 59,777	\$ 92,825	\$ 820,908	\$ 34,345	\$ 58,480	\$ 283,444	\$ 17,007	\$ 300,450
6	\$ 820,908	\$ 57,464	\$ 89,233	\$ 789,139	\$ 33,016	\$ 56,217	\$ 358,930	\$ 21,536	\$ 380,466
7	\$ 789,139	\$ 55,240	\$ 85,779	\$ 758,600	\$ 31,738	\$ 54,041	\$ 436,682	\$ 26,201	\$ 462,883
8	\$ 758,600	\$ 53,102	\$ 82,460	\$ 729,242	\$ 30,510	\$ 51,950	\$ 516,924	\$ 31,015	\$ 547,940
9	\$ 729,242	\$ 51,047	\$ 79,269	\$ 701,020	\$ 29,329	\$ 49,939	\$ 599,890	\$ 35,993	\$ 635,883
10	\$ 701,020	\$ 49,071	\$ 76,201	\$ 673,891	\$ 28,194	\$ 48,007	\$ 685,822	\$ 41,149	\$ 726,972
11	\$ 673,891	\$ 47,172	\$ 73,252	\$ 647,811	\$ 27,103	\$ 46,149	\$ 774,978	\$ 46,499	\$ 821,477
12	\$ 647,811	\$ 45,347	\$ 70,417	\$ 622,741	\$ 16,759	\$ 53,658	\$ 867,625	\$ 52,058	\$ 919,683
13	\$ 622,741	\$ 43,592	\$ 67,692	\$ 598,641	\$ 16,111	\$ 51,581	\$ 973,341	\$ 58,400	\$ 1,031,741
14	\$ 598,641	\$ 41,905	\$ 65,072	\$ 575,473	\$ 15,487	\$ 49,585	\$ 1,083,322	\$ 64,999	\$ 1,148,322
15	\$ 575,473	\$ 40,283	\$ 62,554	\$ 553,203	\$ 14,888	\$ 47,666	\$ 1,197,907	\$ 71,874	\$ 1,269,781
16	\$ 553,203	\$ 38,724	\$ 60,133	\$ 531,794	\$ 14,312	\$ 45,821	\$ 1,317,447	\$ 79,047	\$ 1,396,494
17	\$ 531,794	\$ 37,226	\$ 57,806	\$ 511,213	\$ 13,758	\$ 44,048	\$ 1,442,316	\$ 86,539	\$ 1,528,855
18	\$ 511,213	\$ 35,785	\$ 55,569	\$ 491,429	\$ 13,225	\$ 42,343	\$ 1,572,903	\$ 94,374	\$ 1,667,277
19	\$ 491,429	\$ 34,400	\$ 53,418	\$ 472,411	\$ 12,714	\$ 40,705	\$ 1,709,620	\$ 102,577	\$ 1,812,198
20	\$ 472,411	\$ 33,069	\$ 51,351	\$ 454,129	\$ 12,222	\$ 39,130	\$ 1,852,902	\$ 111,174	\$ 1,964,077
21	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,003,206	\$ 120,192	\$ 2,123,398
22	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,123,398	\$ 127,404	\$ 2,250,802
23	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,250,802	\$ 135,048	\$ 2,385,851
24	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,385,851	\$ 143,151	\$ 2,529,002
25	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,529,002	\$ 151,740	\$ 2,680,742

Distributed to Charity at end of Year 20



## Comparison of CRUT Alternatives



\$454,129

Year	Ten Year Rule	CRUT as Beneficiary of IRA	CRUT Payment to Charity	CRUT Total Payout (Beneficiary and Charity Combined)
10	\$ 1,239,305	\$ 774,978		\$ 774,978
15	\$ 1,658,470	\$ 1,317,447		\$ 1,317,447
20	\$ 2,219,407	\$ 2,003,206	\$ 454,129	\$ 2,457,335

**Total Amount Received by Charity Under CRUT - \$454,129**



# Comparing Characteristics of an IRA CRUT and an Accumulation Trust

	CHARITABLE REMAINDER UNITRUST ADVANTAGES		ACCUMULATION TRUST ADVANTAGES
1	Longer Stretch	1	Simpler
2	No limit on what can go to charity	2	Families with no charitable intent do not have to worry about what goes to charity
3	Forces heirs to take money out slower	3	Over between 10 and 11 years
4	Family recognition and examples set for charitable purposes in the community	4	Less in professional fees
5	No multiple trust rule, so that a separate Equalization Trust can be used without income tax problems		
6	Low income bracket family members may serve as Trustees to have the family receive more – can count as earned income for a young adult to allow her to provide more than half of her support under the Kiddie Tax		



# Delayed Funding of Charitable Remainder Trust with IRA Assets

- One pitfall for Charitable Remainder Trusts is that they will not work to provide a lifetime stretch for a beneficiary that is too young. As of February 2020, the beneficiary of a Charitable Remainder Trust must be at least 28 years old.
- Language can provide that, if the beneficiary is too young for a lifetime Charitable Remainder Trust, a 20-year term could be used instead.
- There appears to be no restriction on delaying the funding of the charitable remainder trust after the death of the IRA plan participant, except that the IRA assets will need to be paid out within 5 years of the Plan Participant's death if the Designated Beneficiary is a trust that will become a Charitable Remainder Trust.
- It may be possible to create a sub-trust under a revocable trust, and list the sub-trust as the direct beneficiary of the IRA. That sub-trust can then be used to fund a Charitable Remainder Trust within 5 years if the beneficiary will then be old enough to be a beneficiary of a Charitable Remainder Trust based on that beneficiary's life expectancy.
- It is not presently clear exactly how a delayed Charitable Remainder Trust may work. Guidance will hopefully be forthcoming from commentators, the Treasury Department, or Private Letter Rulings.





# What If A Flip NIMCRUT Receives An IRA Distribution And Contributes It To An LLC That Is Considered To Be An “Entity” Under Florida Statute §738.401?

The LLC may distribute monies to the Trustee, which will be considered income if they do not exceed 20% or more of the Company. Parts of Florida Statute Section 738.401 are copied below in *italics*, with commentary in regular font:

*1) For purposes of this section, the term “entity” means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a fiduciary has an interest other than a trust or estate to which s. [738.402](#) applies, a business or activity to which s. [738.403](#) applies, or an asset-backed security to which s. [738.608](#) applies.*

*(2) Except as otherwise provided in this section, a fiduciary shall allocate to income money received from an entity.*

*If the distribution is 20% or more of the company it is allocated to principal:*

*(a) Property other than money*

*(b) To the extent the total amount of money and property received in a distribution or series of related distributions from an entity that is not listed on a public stock exchange exceeds 20 percent of the trust’s or estate’s pro rata share of the entity’s gross assets, as shown by the entity’s year-end financial statements immediately preceding the initial receipt.*

If the IRA proceeds were simply left to the NIMCRUT, absent using an “entity,” the IRA assets would be considered principal and could not be distributed to the non-charitable beneficiary. The entity can be used to essentially convert principal to income, allowing for distributions to the non-charitable beneficiary.



# What If A Flip NIMCRUT Receives An IRA Distribution And Contributes It To An LLC That Is Considered To Be An “Entity” Under Florida Statute §738.401? Continued

- Using the provisions of Florida Statute Section 738.401, the trustee of the Flip NIMCRUT can apparently convert what would otherwise be considered as principal to income.
- If the distribution from the LLC to the Flip NIMCRUT exceeds 20% of the NIMCRUT’s share of the assets of the LLC, then any distribution in excess of the 20% will be considered to be principal, and cannot be distributed from the Flip NIMCRUT to the non-charitable beneficiary.
- In any event, the IRA monies distributed to the Unitrust beneficiaries come out as ordinary income until all ordinary income has been paid out, then capital gain income (to the extent capital gain income is realized), followed by tax-free income.
  - For example, if the IRA assets are invested in capital gain generating investments, after the original amount of the IRA is distributed to the non-charitable beneficiary, the beneficiary will start to receive capital gain income. If these assets were instead held in the IRA, the income generated after the death of the IRA owner would be subject to ordinary gain amounts.



# What If A Flip NIMCRUT Receives An IRA Distribution And Contributes It To An LLC That Is Considered To Be An “Entity” Under Florida Statute §738.401? Continued

- This strategy could be used to essentially stretch IRA distributions over the lifetime of the beneficiary after the death of the Grantor.
- At least 10% of the NIMCRUT must be expected to go to charity at the end of the term of the NIMCRUT, assuming that the assets will grow at the rate prescribed in Section 7520, with yearly distributions being at least 5%.
- If basing the term of the NIMCRUT on the lifetime of the non-charitable beneficiary, the youngest a beneficiary could be is 28, assuming a 7520 rate of 2.0%. If a beneficiary was younger than age 28, then the NIMCRUT would not be expected to provide charity with at least 10% of its original assets. The minimum age changes in relation to the 7520 rate.
- Alternatively, the NIMCRUT could be based on a term not to exceed 20 years. If the intended non-charitable beneficiary has a short life expectancy, this could be a viable option. It may be better to simply chose a younger beneficiary and leave other assets to an older beneficiary.
- The new 5-year and 10-year IRA distribution requirements under the SECURE Act should not be used in this strategy because the NIMCRUT will not pay taxes on the IRA distribution, and the growth after the assets are contributed to the NIMCRUT could be capital gains, rather than ordinary income.





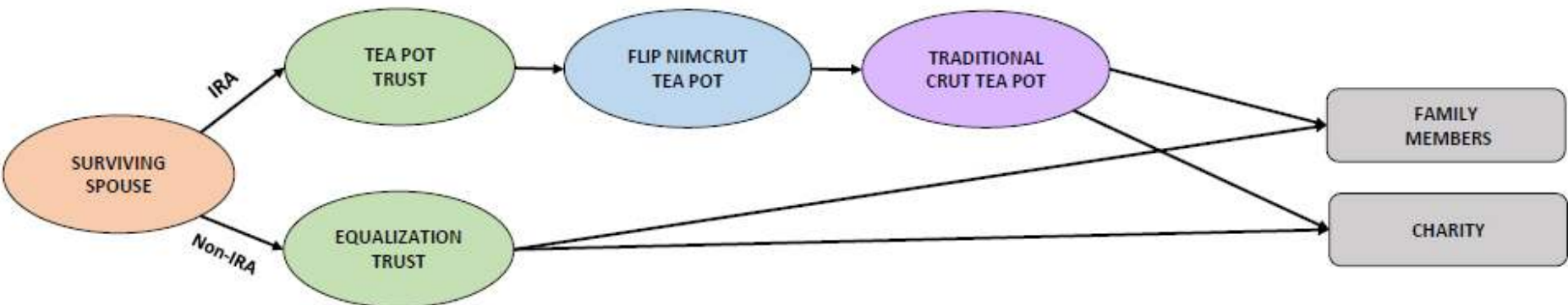
- 1 GST - health, education and maintenance inheritance trust.
- 2 Possible charities, if Charitable Remainder Trust is used.



- 1 GST - health, education and maintenance inheritance trust.
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- 1 GST - health, education and maintenance inheritance trust.
- 2 Possible charities, if Charitable Remainder Trust is used.



# CLAT CALCULATOR

## CLAT Summaries: Compare different Payment Terms and impact of Discounts

CLAT #	Term of CLAT	Value Before Discounts	Discount Rate	Value After Discounts	Asset Growth Rate	Payment Terms	1st Yr Annuity Amt	Total Charitable Payments	Yr 1 Income Tax Savings	Percent to Charity	Percent to Remainder	Yr 1 Inc Tx Savings + PV of Remaindr	Present Value Discount Rate	Present Value to Charity	Present Value of Remainder	Illustrated End Value
1	20	\$1,000,000	0%	\$1,000,000	7.50%	Level	\$78,887	\$1,577,747	\$362,614	71%	29%	\$759,212	5.00%	\$983,111	\$396,598	\$1,714,075
2	20	\$1,000,000	20%	\$800,000	7.50%	Level	\$63,110	\$1,262,198	\$288,556	52%	48%	\$1,010,974	5.00%	\$786,489	\$722,418	\$3,122,251
3	20	\$1,000,000	0%	\$1,000,000	7.50%	Increasing 20%	\$10,849	\$2,025,359	\$362,363	61%	39%	\$977,133	5.00%	\$972,715	\$614,770	\$2,657,001
4	20	\$1,000,000	20%	\$800,000	7.50%	Increasing 20%	\$8,679	\$1,620,288	\$288,355	46%	54%	\$1,185,311	5.00%	\$778,172	\$896,956	\$3,876,592
5	20	\$1,000,000	0%	\$1,000,000	7.50%	Sharkfin	\$10,000	\$2,430,272	\$362,360	56%	44%	\$1,117,985	5.00%	\$965,188	\$755,626	\$3,265,771
6	20	\$1,000,000	20%	\$800,000	7.50%	Sharkfin	\$8,000	\$1,944,218	\$288,352	43%	57%	\$1,297,993	5.00%	\$772,151	\$1,009,640	\$4,363,608

Easily calculate the payment amounts to find the first-year income tax deductions and remainder values that will go to your chosen beneficiaries.

The illustrated scenarios provide a comparison of charitable payments that are level, increasing by 20% per year, and utilizing a Sharkfin structure (starting at a low level with a sharp increase in the final year).

The illustration also compares contributions of discounted assets and the income tax deductions generated for the year of contribution, and income tax expenses in subsequent years.

Most meaningfully, the display shows the percentage of assets and total dollar amounts that will go to charity and the remainder assets that will pass to non-charitable beneficiaries using net present values.

# CLAT CALCULATOR

**CLAT Details:** See the annual growth, payments, and expenses of the trust

CLAT Details [Alter Detail Columns Below](#)

CLAT 1

2

3

4

5

6

Show Every  Year(s) ☐ Year Of Death ☒ End Of Term



Export to Excel

Year	Year #	Grantor Age	Probability Survival To Year	Beginning Value	Growth	Annuity Amount	End Value	Ordinary Income	Income Tax Savings / Expense	PV Inc Tx Savings / Expense
2025	1	71	98.04%	\$1,000,000.00	\$75,000.00	\$78,887.37	\$996,112.63	\$19,961.13	\$362,613.89	\$345,346.56
2026	2	72	95.95%	\$996,112.63	\$74,708.45	\$78,887.37	\$991,933.71	\$19,880.46	(\$7,355.77)	(\$6,671.90)
2027	3	73	93.70%	\$991,933.71	\$74,395.03	\$78,887.37	\$987,441.37	\$19,793.75	(\$7,323.69)	(\$6,326.48)
2028	4	74	91.30%	\$987,441.37	\$74,058.10	\$78,887.37	\$982,612.10	\$19,700.53	(\$7,289.20)	(\$5,996.84)
2029	5	75	88.73%	\$982,612.10	\$73,695.91	\$78,887.37	\$977,420.64	\$19,600.33	(\$7,252.12)	(\$5,682.23)
2030	6	76	86.00%	\$977,420.64	\$73,306.55	\$78,887.37	\$971,839.82	\$19,492.60	(\$7,212.26)	(\$5,381.90)
2031	7	77	83.09%	\$971,839.82	\$72,887.99	\$78,887.37	\$965,840.44	\$19,376.80	(\$7,169.42)	(\$5,095.17)
2032	8	78	80.00%	\$965,840.44	\$72,438.03	\$78,887.37	\$959,391.10	\$19,252.32	(\$7,123.36)	(\$4,821.37)
2033	9	79	76.70%	\$959,391.10	\$71,954.33	\$78,887.37	\$952,458.06	\$19,118.49	(\$7,073.84)	(\$4,559.86)
2034	10	80	73.22%	\$952,458.06	\$71,434.35	\$78,887.37	\$945,005.04	\$18,974.63	(\$7,020.61)	(\$4,310.05)
2035	11	81	69.54%	\$945,005.04	\$70,875.38	\$78,887.37	\$936,993.05	\$18,819.98	(\$6,963.39)	(\$4,071.35)
2036	12	82	65.68%	\$936,993.05	\$70,274.48	\$78,887.37	\$928,380.16	\$18,653.73	(\$6,901.88)	(\$3,843.23)
2037	13	83	61.65%	\$928,380.16	\$69,628.51	\$78,887.37	\$919,121.30	\$18,475.01	(\$6,835.75)	(\$3,625.15)
2038	14	84	57.48%	\$919,121.30	\$68,934.10	\$78,887.37	\$909,168.03	\$18,282.89	(\$6,764.67)	(\$3,416.62)
2039	15	85	53.11%	\$909,168.03	\$68,187.60	\$78,887.37	\$898,468.26	\$18,076.36	(\$6,688.25)	(\$3,217.16)
2040	16	86	48.61%	\$898,468.26	\$67,385.12	\$78,887.37	\$886,966.01	\$0.00	\$0.00	\$0.00
2041	17	87	44.02%	\$886,966.01	\$66,522.45	\$78,887.37	\$874,601.09	\$0.00	\$0.00	\$0.00
2042	18	88	39.38%	\$874,601.09	\$65,595.08	\$78,887.37	\$861,308.80	\$0.00	\$0.00	\$0.00
2043	19	89	34.77%	\$861,308.80	\$64,598.16	\$78,887.37	\$847,019.59	\$0.00	\$0.00	\$0.00
2044	20	90	30.26%	\$847,019.59	\$63,526.47	\$78,887.37	\$831,658.69	\$0.00	\$0.00	\$0.00
<b>Totals:</b>					<b>\$1,409,406.09</b>	<b>\$1,577,747.40</b>			<b>\$263,639.68</b>	<b>\$278,327.25</b>



# CLAT CALCULATOR

**Zeroed-Out CLAT:** Selecting a payout strategy to minimize the non-charitable remainder

- The zeroed-out CLAT strategy has a goal of reducing the remainder interest of the Trust to zero. This is calculated using the § 7520 rate.
- When the assets in the CLAT outperform the § 7520 rate, the trust remainder value is above zero. The excess assets then pass back to the remainder trust beneficiaries estate and gift tax free.
- While lower § 7520 rates make for easier “hurdles” to zero-out a CLAT, investment returns grow with interest rates as the market demands more interest making this strategy useful whenever you have an asset likely to outperform the lowest of the three previous monthly § 7520 rates.
- The § 7520 rate you select can be any of the previous three months according to the Internal Revenue Code.
- The § 7520 rate for each month is 120 percent of that month’s midterm applicable federal rate (AFR).

Month	120% of AFR	Section 7520 rate
February 2024	4.79%	4.80%
March 2024	4.97%	5.00%
April 2024	5.17%	5.20%

# Estate Planning with a Charitable Lead Annuity Trust (CLAT)



Prepared for:  
Sample Client



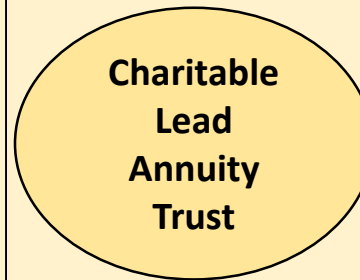
## Lifetime CLATs may be structured as Grantor or Non-Grantor for Income Tax Purposes

### A Grantor Lifetime CLAT

- Grantor gets charitable income tax deduction for full amount of gift. (charitable deduction is recaptured if Grantor dies during annuity term)
- Grantor pays income tax on trust income during the annuity term.
- The transfer does not use any lifetime gift tax exemption.

### Non-Grantor or Testamentary CLAT

- No charitable income tax deduction for the assets transferred.
- The trust is treated as a complex trust; the trust pays income tax on its distributable net income.
- The transfer does not use any lifetime gift tax exemption.



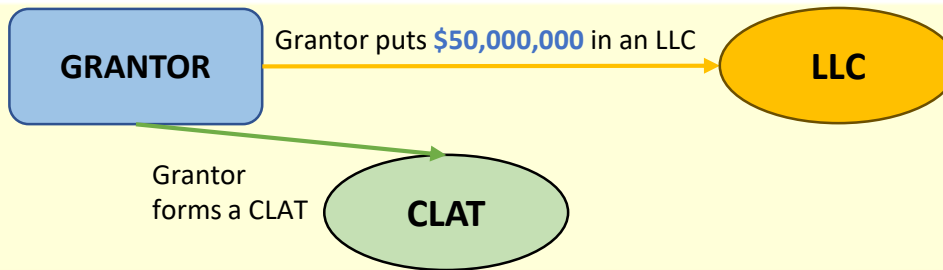
Trustee is not the Grantor

- Trustee can change the choice of charities.
- OR
- A Donor Advised Fund may be the designated charity so that specific charities are chosen at the time each charitable distribution is paid out.

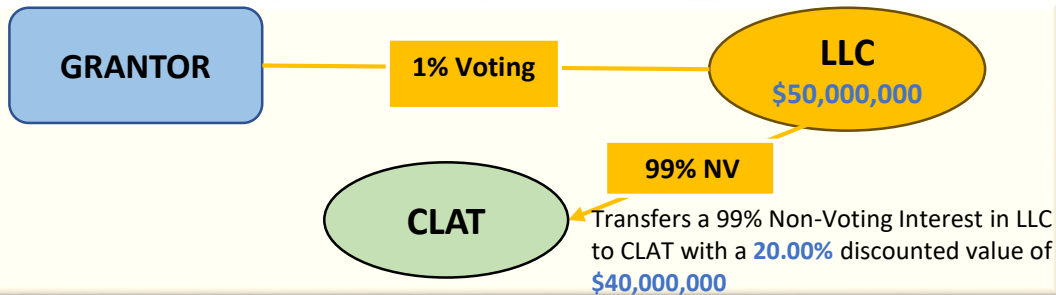
- Remaining assets after annuity payment term are transferred to children or to a trust for children or to other non-skip generation beneficiaries.
- Assets are includable in beneficiaries' estates.

## Set up CLAT (Using Discounts)

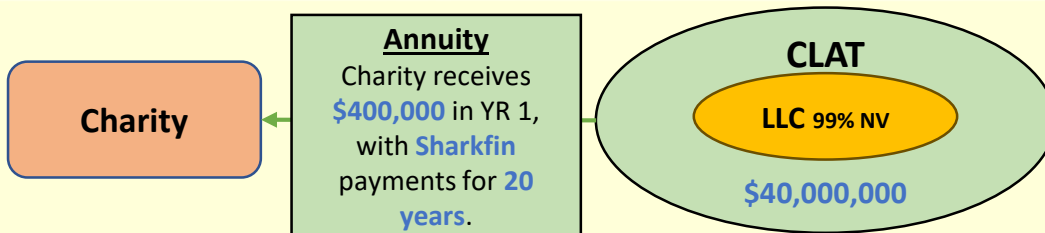
### Step 1



### Step 2



### Result

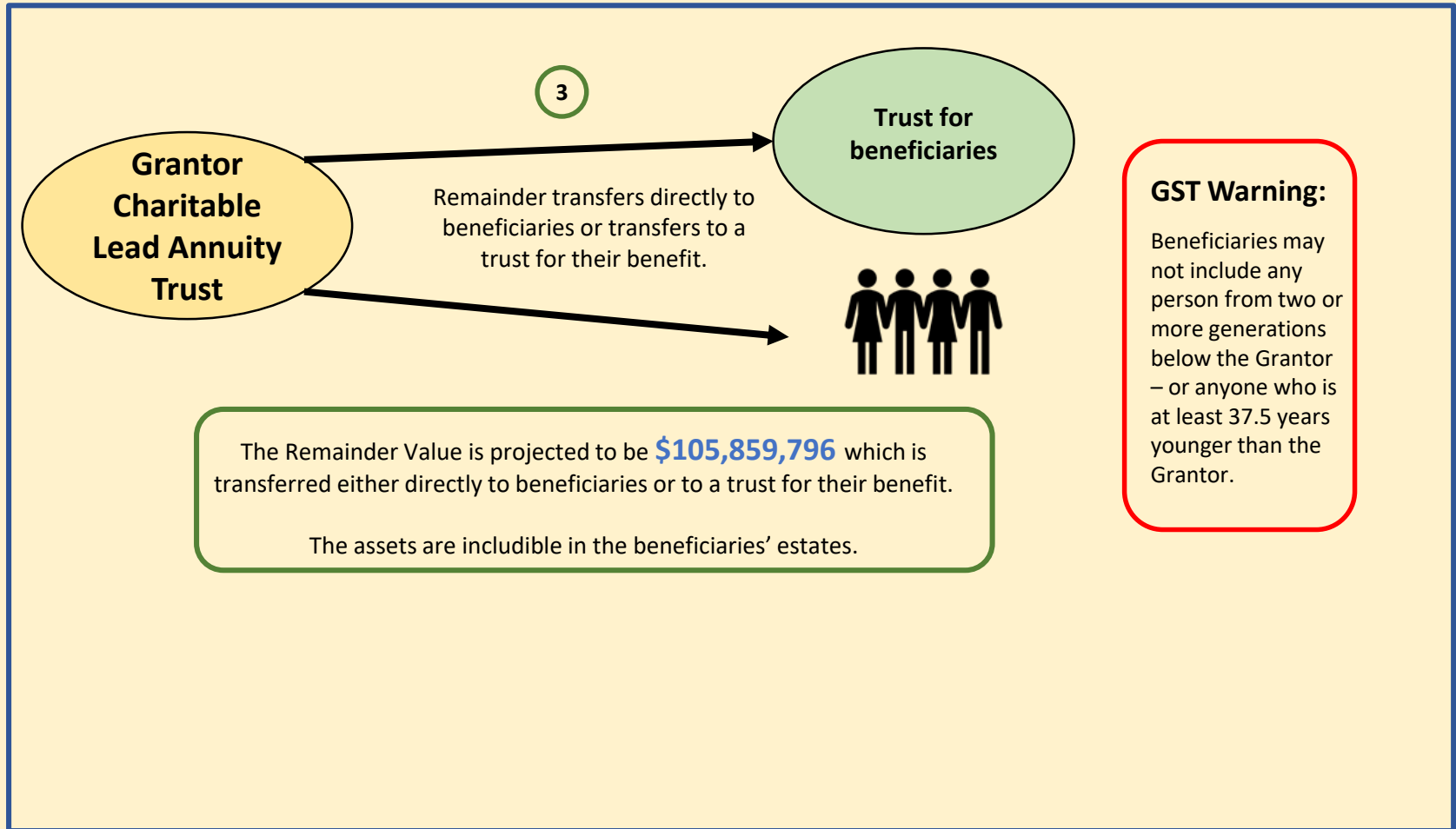


Discounted Assets may include partial interests of property and non-voting interests in LLCs or LLPs.

To minimize risk of taxable gifts resulting from gift tax audits:

- Trust document will include formula provision allowing flexibility to re-determine the annuity payment amounts to reduce or eliminate taxable gift on funding.

## After Grantor CLAT Term Ends . . .



## Summary

### Grantor Charitable Lead Annuity Trust

Using **Sharkfin** Charitable  
Annuity Payments  
During CLAT Annuity  
Payment Term

The **\$105,859,796** “End  
Value” at the termination of  
the annuity term is the  
remainder that passes to  
beneficiaries.

Year #	Grantor Age	Beginning Value	Growth	Annuity Amount	End Value
1	61	\$50,000,000	\$3,750,000	\$400,000	\$53,350,000
2	62	\$53,350,000	\$4,001,250	\$400,000	\$56,951,250
3	63	\$56,951,250	\$4,271,344	\$400,000	\$60,822,594
4	64	\$60,822,594	\$4,561,695	\$400,000	\$64,984,288
5	65	\$64,984,288	\$4,873,822	\$400,000	\$69,458,110
6	66	\$69,458,110	\$5,209,358	\$400,000	\$74,267,468
7	67	\$74,267,468	\$5,570,060	\$400,000	\$79,437,528
8	68	\$79,437,528	\$5,957,815	\$400,000	\$84,995,343
9	69	\$84,995,343	\$6,374,651	\$400,000	\$90,969,994
10	70	\$90,969,994	\$6,822,750	\$400,000	\$97,392,743
11	71	\$97,392,743	\$7,304,456	\$400,000	\$104,297,199
12	72	\$104,297,199	\$7,822,290	\$400,000	\$111,719,489
13	73	\$111,719,489	\$8,378,962	\$400,000	\$119,698,450
14	74	\$119,698,450	\$8,977,384	\$400,000	\$128,275,834
15	75	\$128,275,834	\$9,620,688	\$400,000	\$137,496,522
16	76	\$137,496,522	\$10,312,239	\$400,000	\$147,408,761
17	77	\$147,408,761	\$11,055,657	\$400,000	\$158,064,418
18	78	\$158,064,418	\$11,854,831	\$400,000	\$169,519,249
19	79	\$169,519,249	\$12,713,944	\$400,000	\$181,833,193
20	80	\$181,833,193	\$13,637,489	\$89,610,886	\$105,859,796

# Advanced CLAT Design Considerations

## Charitable Lead Annuity Trusts

A Charitable Lead Trust is a split-interest trust popularized by Jacqueline Kennedy Onassis and utilized in other large estates to transfer wealth to family members without using any lifetime gift tax exemption and to zero-out estate tax completely.

A Payment stream is paid to a charity for a term of years, and the remainder passes to non-charitable beneficiaries at the end of the term free of estate tax.



# Lifetime CLAT to Generate Charitable Income Tax Deduction and Estate Tax Savings:

CLAT design considerations include three variations of charitable payment streams (level, increasing annually by 20%, and a “shark-fin” payment stream).

Lower annuity payments to the charity in the beginning of the term allow the trust assets to grow more until the end of the term, leaving more remainder to the non-charitable beneficiaries.

A discount vehicle will reduce the income tax deduction but increase the amount that passes estate tax free.

The income tax deduction occurs immediately and the estate tax savings or windfall back to the grantor occurs in the final year of the CLAT term.



# Example

John is estate taxable and wants to receive a \$1,000,000.00 income tax deduction while also passing assets estate and gift tax free to a spousal limited access trust for his spouse and decedents.

He puts \$1,000,000.00 worth of assets into the CLAT and saves \$370,000.00 in income taxes.

Assuming the 7520 rate of 4.2% and the rate of return on investments of 7% and a 15 year term and life expectancy the remainder interest going to the SLAT would be worth \$467,178.56 (if using a level payment annuity to charity) saving \$186,871.42 in estate tax at the 40% federal rate.

OR: The remainder would be worth \$656,695.89 (if annuity payments increase by 20% annually) saving \$262,678.36 in estate tax at the 40% federal rate.

OR: The remainder would be worth \$665,170.72 (if using a shark-fin annuity payment stream) saving \$266,068.29 in estate tax at the 40% federal rate.

(continued on next slide) →



## Example (continued)

The alternative is to put the \$1,000,000.00 worth of assets into an LLC and transfer the 99% non-voting interest in the LLC to the CLAT, assuming a 20% discount for lack of control and marketability.

Now the charitable income tax deduction will be based upon 37% of 800,000.00, which is \$296,000.00

The income tax savings is reduced by \$74,000.00

(continued on next slide) →





## Example (continued)

Using a level charitable payment schedule:

The remainder for funding the SLAT is \$925,549 which is \$458,370 higher than making a non-discounted transfer. Additional estate tax savings is \$183,348.

Using a 20% annually increasing payment schedule:

The remainder for funding the SLAT is \$1,077,163 which is \$420,467 higher than making a non-discounted transfer. Additional estate tax savings is \$168,187.

Using a shark-fin payment schedule:

The remainder for funding the SLAT is \$1,083,943 which is \$418,773 higher than making a non-discounted transfer. Additional estate tax savings is \$167,509.

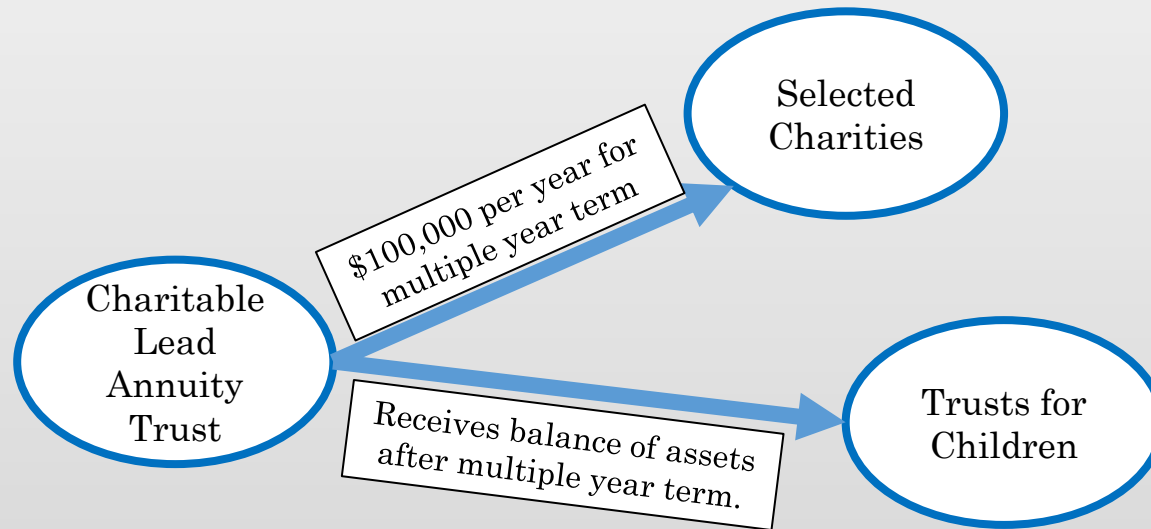
### QUESTION:

Is it worth paying \$74,000 of income tax savings now to save between \$ 167,500 - \$183,350 of estate tax savings in 15 years?\*

\*The Grantor will pay income tax on CLAT earnings during the term, but income could be mitigated with the trust investing in non-dividend, growth securities.



# Lifetime Charitable Lead Annuity Trust



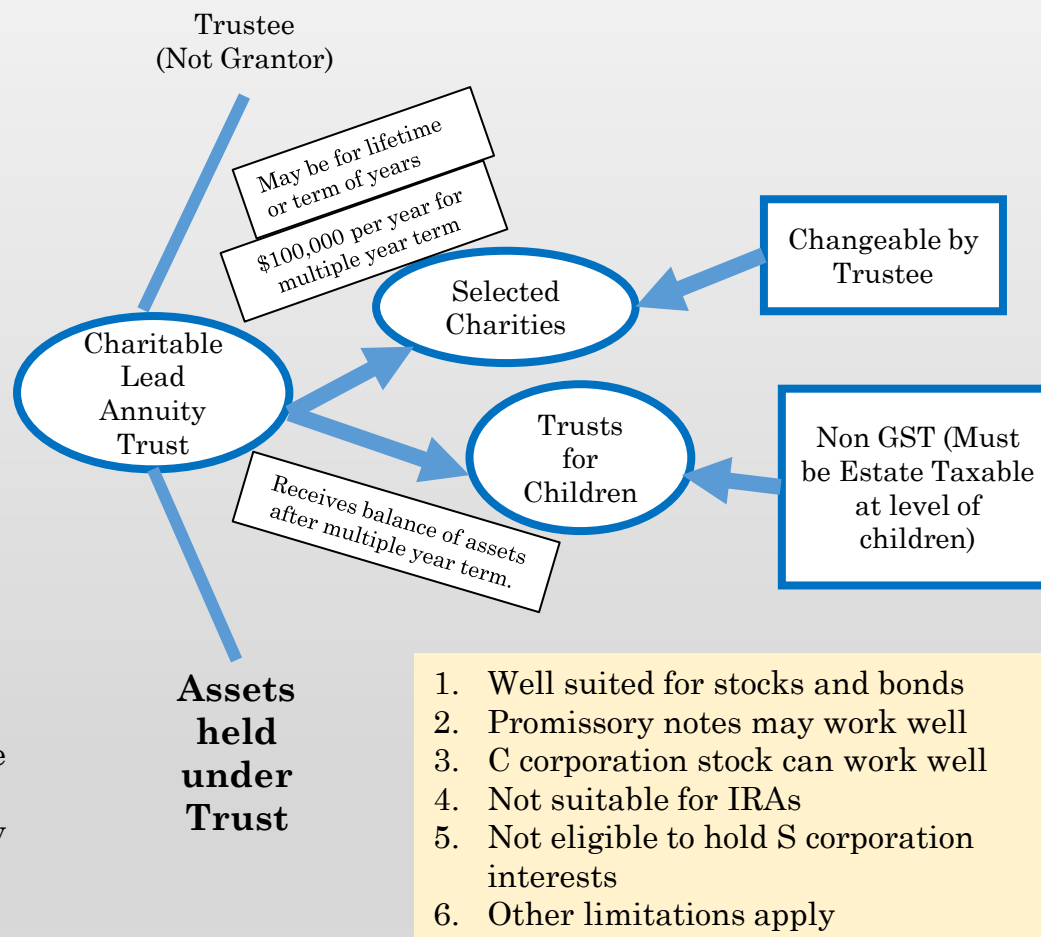
# Lifetime Charitable Lead Annuity Trust

## 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

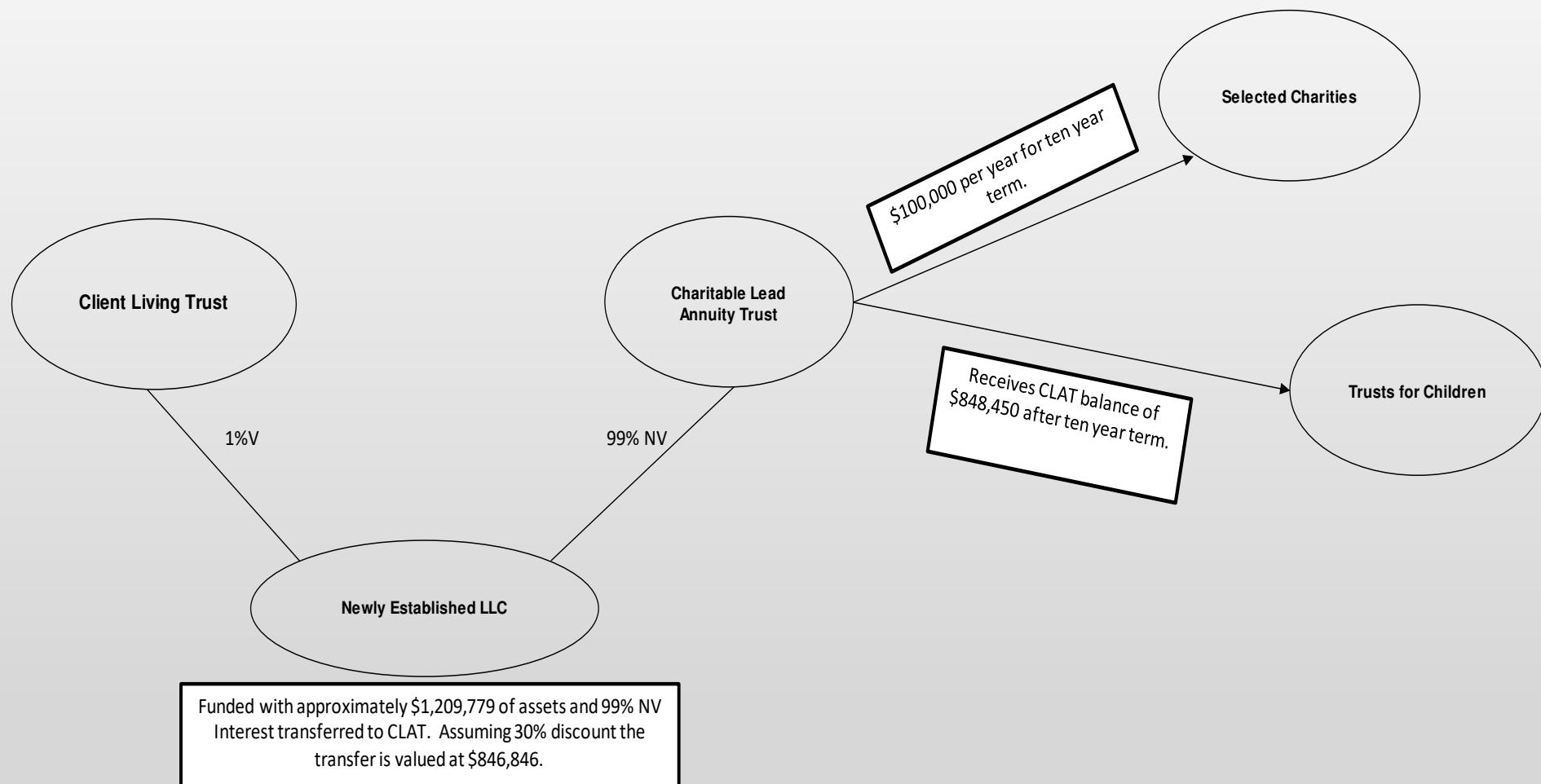
## Non Grantor CLAT

- 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





# Charitable Lead Annuity Trust



# Preferred Partnership CLAT

- Consider establishing or using a Preferred/Common Partnership Arrangement whereby an LLC owning real estate or other investments will pay an 8 or 9% Coupon Rate of Return to the Preferred Owner, which may be sufficient to satisfy Charitable Lead Annuity Trust Payments and assure that the next generation will receive the Preferred Interest intact at the end of the CLAT Term.
- The IRS gave rulings for high interest rate promissory notes owed to LLCs where LLC Interests were transferred to the CLAT – The IRS will no longer rule on the question of whether this constitutes self-dealing.



# **IRS No Longer Issues Favorable PLR's On Notes Contributed to LLCs That Are Partly Owned By CLAT's Or Other Charitable Vehicles**

In Revenue Procedure 2021-40, 2021-38, IRB that was published in September of 2021, the IRS announced that it will no longer issue letter rulings on whether self-dealing occurs when a private foundation (or other entity subject to IRC § 4941) owns or receives an interest in a limited liability company that holds a promissory note owed by a disqualified person. This has been a popular method of estate tax avoidance whereby a donor would sell assets to a dynasty trust and then contribute the note to an LLC, and then donate the 99% non-voting interest in the LLC to a zeroed-out CLAT that would make annual payments to one or more charities, with remaining assets after a term of years to pass to individuals without being subject to Federal estate tax.



# CHARITABLE LEAD ANNUITY TRUST

## Ten (10) Year Term Charitable Lead Annuity Trust - Grantor Trust (Receives Upfront Charitable Deduction)

A	B	C	D	E	F	G	H
Year	Value of CLAT	Reported Value of CLAT for Gift Tax Purposes	Growth of CLAT (6%)	Annuity Payment to Charity	Estimated Charitable Deduction Benefit	Taxes Paid by Grantor (1% of Assets)	Ending Balance of CLAT
1	\$ 1,209,779	\$ 846,845	\$ 72,587	\$ (100,000)	\$ 313,333	\$ (12,824)	\$ 1,182,365
2	\$ 1,182,365		\$ 70,942	\$ (100,000)		\$ (12,533)	\$ 1,153,307
3	\$ 1,153,307		\$ 69,198	\$ (100,000)		\$ (12,225)	\$ 1,122,506
4	\$ 1,122,506		\$ 67,350	\$ (100,000)		\$ (11,899)	\$ 1,089,856
5	\$ 1,089,856		\$ 65,391	\$ (100,000)		\$ (11,552)	\$ 1,055,247
6	\$ 1,055,247		\$ 63,315	\$ (100,000)		\$ (11,186)	\$ 1,018,562
7	\$ 1,018,562		\$ 61,114	\$ (100,000)		\$ (10,797)	\$ 979,676
8	\$ 979,676		\$ 58,781	\$ (100,000)		\$ (10,385)	\$ 938,456
9	\$ 938,456		\$ 56,307	\$ (100,000)		\$ (9,948)	\$ 894,764
10	\$ 894,764		\$ 53,686	\$ (100,000)		\$ (9,484)	\$ 848,450
Totals							

Taxable Gift on Funding to CLAT \$0.00

Estate Tax Savings Over No Planning (Assuming 40% Estate Tax Rate) \$ 339,380

Amount Passing to Beneficiaries Estate Tax Free \$ 848,450

Total Gifts to Charity at End of Year 20 \$ 1,000,000



# 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.





# 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.



# 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
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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.





# 12 Year - CLAT Summary – Assuming 6% Growth Rate

- **12 -Year, 33% Discount CLAT Flat Payments**

- Children get 61%
- Charity gets 29%

- **12-Year, 33% Discount CLAT With 20% Increasing Payments**

- Children get 59%
- Charity gets 41%

- **No CLAT**

- Children get 60%
- IRS gets 40%

- **12-Year No Discount CLAT Flat Payments**

- Children get 28%
- Charity gets 72%

- **12-Year No Discount CLAT With 20% Increasing Payments**

- Children get 35%
- Charity gets 65%



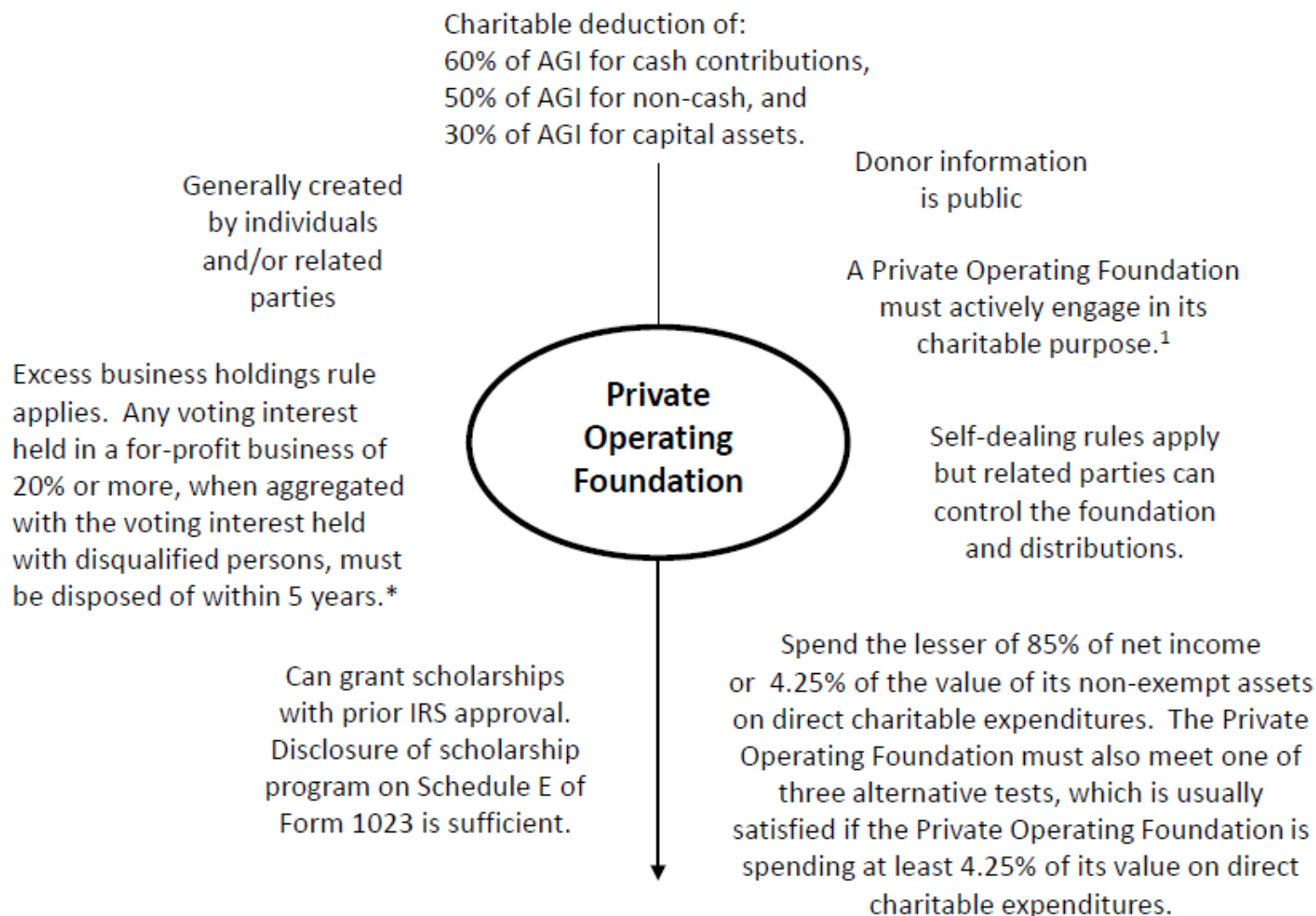
# 20 Year - CLAT Summary – Assuming 6% Growth Rate

- **20-Year, 33% Discount CLAT Flat Payments**
  - Children get 61%
  - Charity gets 29%
- **20-Year, 33% Discount CLAT With 20% Increasing Payments**
  - Children get 73%
  - Charity gets 27%

- **No CLAT**
  - Children get 60%
  - IRS gets 40%
- **20-Year No Discount CLAT Flat Payments**
  - Children get 45%
  - Charity gets 55%
- **20-Year No Discount CLAT With 20% Increasing Payments**
  - Children get 57%
  - Charity gets 43%



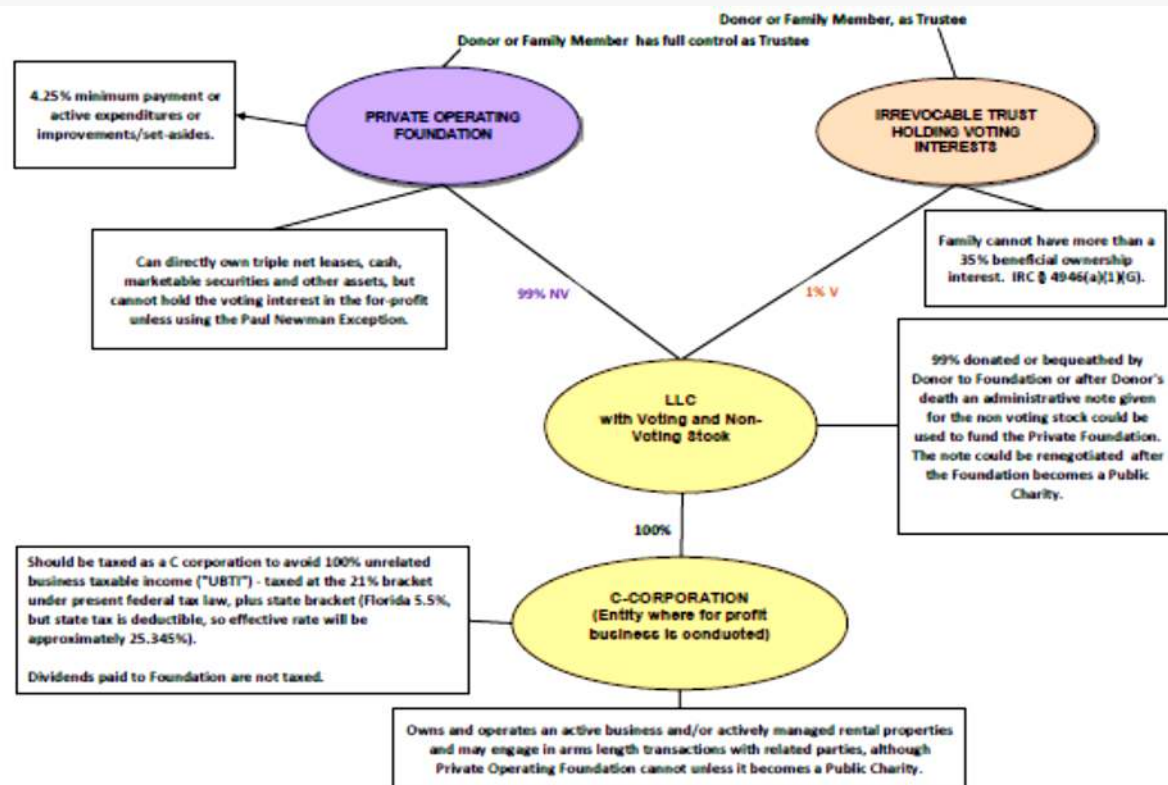
# Private Operating Foundations



# (What Paul Newman's Advisors Did Not Know About Charitable Entity Tax Planning – or Salad Dressing!)

By Alan S. Gassman, John N. Beck and Michael Lehmann

## (PRIVATE OPERATING FOUNDATION)



### Private Operating Foundation Rules:

### BOX A

1. Must expend at least 4.25% of its total value each year on active charitable purposes, or construction of charitable facilities that will be used for active charitable purposes.
2. The Private Operating Foundation can be solely managed by the Family Member as Trustee of the Foundation while the corporation can be managed by the Family Member as President, and as the voting stockholder as Trustee of the stock that holds the voting stock trust. The Family Member can receive reasonable compensation from the Foundation for services rendered to the Foundation and from the Company for services rendered to the Company.
3. The Private Operating Foundation does not need to satisfy Public Charity requirements.
4. The Private Operating Foundation cannot lend directly to a disqualified person or related party, but the Corporation would be able to lend money to disqualified persons and related companies at arm's-length and could exchange goods or services with a disqualified person at arm's-length.
5. The Family Member cannot be a beneficiary of more than 35% of the Voting Stock Trust's assets.
6. THE FOUNDATION CAN CONVERT TO A PUBLIC CHARITY BY OPERATING A SCHOOL, AND THEREAFTER ALL CHARACTERISTICS IN BOX B WILL APPLY.
7. The Trust is not able to purchase the 99% interest in the Company for a promissory note from the Donor during Donor's lifetime because there would be a self-dealing issue if that promissory note was going to be transferred to the Private Operating Foundation at the Donor's death. After the Donor's death, a note meeting the requirements of the "Administrative Note Exception" (no more than 25-years, interest only) could be given for the non voting stock that is owned by the Donor's revocable trust at the time of the Donor's death.

Such note cannot be negotiated or changeable as long as the note owed to the Foundation unless or until the Foundation becomes a Public Charity.



The diagram illustrates the structure of a Replacement Trust for a Public Charity. It shows the flow of assets and control between a Public Charity, an Irrevocable Trust, and an LLC or Regular Corporation.

- PUBLIC CHARITY** (Purple oval):
  - Family Member may be able to control the Board by retaining the ability to remove and replace Board Members.
  - Public Charity can engage in arm's-length sales and loans with Donor's family and associated entities.
  - Wholly owned LLC can own and operate schools, hospitals, public testing facilities or medical research organizations.
  - Same taxation as shown in box at left - 25.345% at corporate level and no tax on dividends paid to the Public Charity.
- IRREVOCABLE TRUST HOLDING VOTING INTERESTS** (Orange oval):
  - Donor or Family Member, as Trustee
  - Family can have more than 35% beneficial ownership.
  - 99% donated or bequeathed by Donor to Public Charity or Foundation that became a Public Charity.
- LLC or REGULAR CORPORATION with Voting and Non-Voting Stock** (Yellow oval):
  - 99% NV (Non-Voting) from Public Charity
  - 25% V (Voting) from Irrevocable Trust
  - Controlled by family Member, as Trustee of the Replacement Trust. Can engage in arms length sales and loans with related parties.

→ **Characteristics as to Public Charity, which may operate one more more schools from school buildings and an aquatic center fashioned like YMCA facilities and receive support only from the family:**

1. No minimum distribution requirements - reasonable funds must be spent to operate a school which qualifies as a charitable arrangement, and the public charity should spend more of its efforts and time on the operation of the school.
2. The foundation needs to operate the school as its primary operational function.
3. The family Member may be given the right to remove and replace Board Members, thus giving the family Member effective fiduciary control over the Public Charity.

In some situations, a Board that has over 50% unrelated and non-subordinate is required to ratify certain transactions. The family Member would likely be allowed to remove Board Members and appoint new unrelated Board Members in order to meet this standard and have transactions ratified.

4. The family Member can control the Company as Trustee under Voting Stock trust, or could even purchase the 1% Voting Member interest and own it individually, as long as the Non-Voting Member is a Public Charity.
5. The family Member and related parties could engage in arm's-length transactions with the Public Charity and with the Company. This includes borrowing money from the Public Charity at arm's-length. Business interests that would otherwise go to the Public Charity can be purchased with a promissory note as long as the transaction is done at arm's-length.
6. If the Company Non-Voting interests are owned by Donor on death, these could be purchased for an arm's-length note going to the Public Charity that could be renegotiated so that interest could be deferred, and the note might even be purchased in future years for less than the amount owed. The "Administrative Note Exemption" does need to be used.
7. The Public Charity can convert to being a Private Operating foundation by no longer operating the school, such as if it allowed another entity to operate its school, but this may cause some concerns with respect to related party transactions that are entered into while the entity was a public charity. For example, dealings with disqualified persons may cause issues for a Private Operating Foundation that was a Public Charity, and the now Private Operating Foundation may not have enough liquid funds to meet its

