

NAPFA FALL
2024 NATIONAL CONFERENCE
Nashville

OCTOBER 30-NOVEMBER 2 | OMNI NASHVILLE HOTEL

CHART-TOPPING STRATEGIES: HITTING HIGH NOTES FOR YOUR CLIENTS

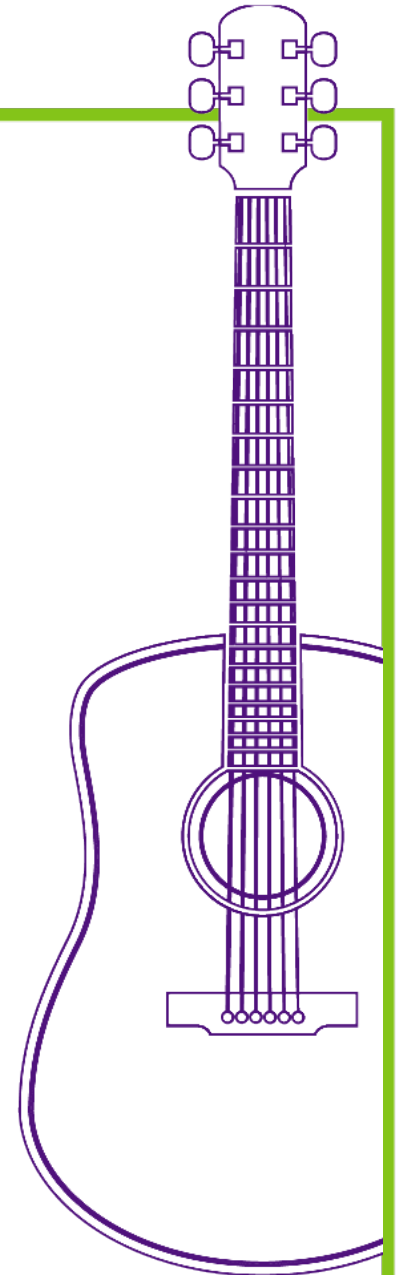
Estate and Estate Tax Planning by the Numbers

A Mathematical Mystery Tour

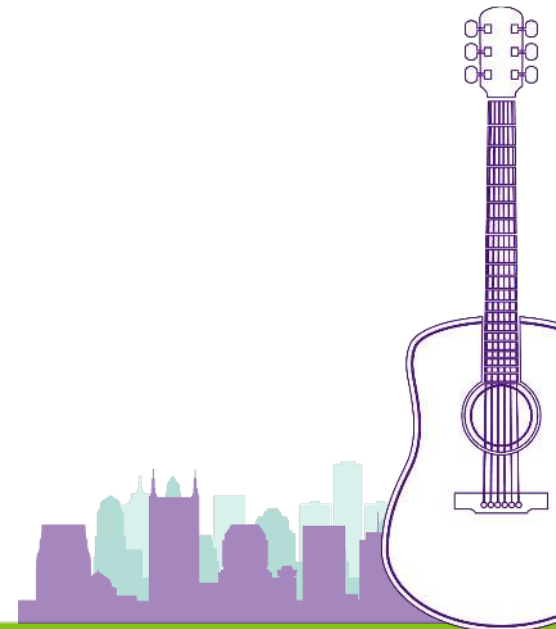


Alan Gassman, J.D., LL.M.
agassman@gassmanpa.com

Nashville



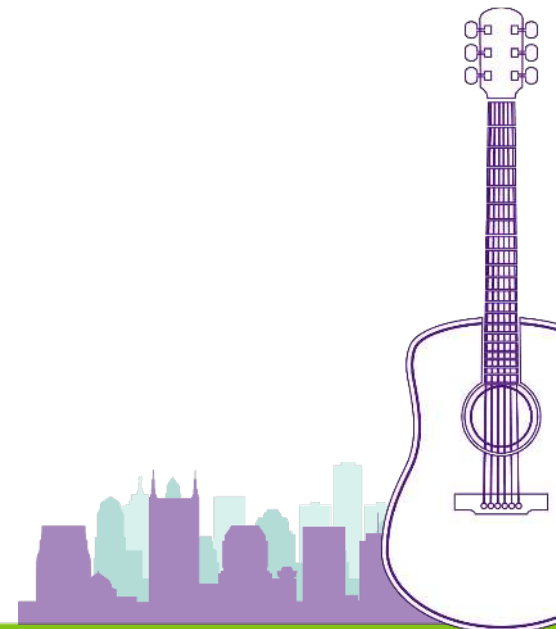
Learning Objectives



We are using EstateView Software for this presentation.
More information on EstateView can be found on
EstateView.info.

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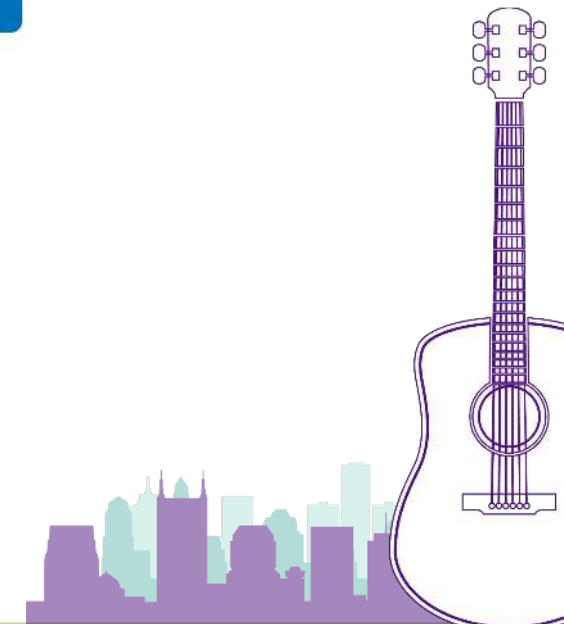
Comprehensive Plans	Calculators		My Account
Single Client	Large Gift / SLAT	CLAT	Help
Married Clients	SCIN/Conventional	CRAT	Getting Started Guide
Sample Plan	Installment Sale with Income Tax Analysis	CRUT & NIMCRUT	Detailed Instruction Manual
NEST Retirement Calculator	QPRT	Life Estate / Remainder Interest	Manage Billing
RMD Calculator	Private Annuity	Amortization	Logout
Monte Carlo	GRAT	Life Expectancy	
Life Insurance Estimator	Rolling GRATs	Holding Company Valuation	
\$ 7520 & AFR Table	⚠ Letter Writer (Under Construction) ⚠	Valuation Discount (Active Business)	



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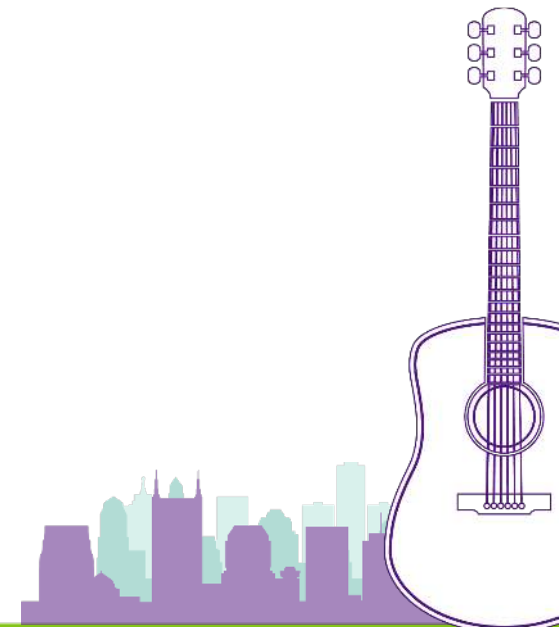
CHART-TOPPING STRATEGIES: HITTING HIGH NOTES FOR YOUR CLIENTS

Ira and Irene's Planning

The following slides were made with EstateView's Life Expectancy Calculator

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Life Expectancy

These inputs are from
EstateView's Life Expectancy
Calculator

LE #	Person 1 Age	Person 1 Life Expectancy	Person 2 Age	Person 2 Life Expectancy	Survivor Life Expectancy
1	65	19.1	63	20.6	25

Life Expectancy

Click to see results

Move to Left

Screenshot

Life 1

Duplicate

Delete

^

Number of Lives

Two

Person 1 Age

-

65

+

Person 2 Age

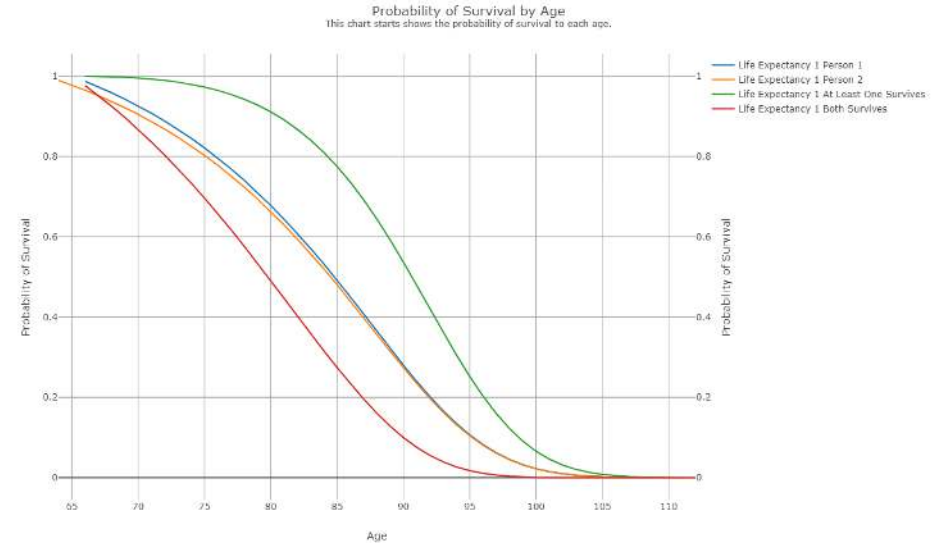
-

63

+

Mortality Table

Table 2010CM

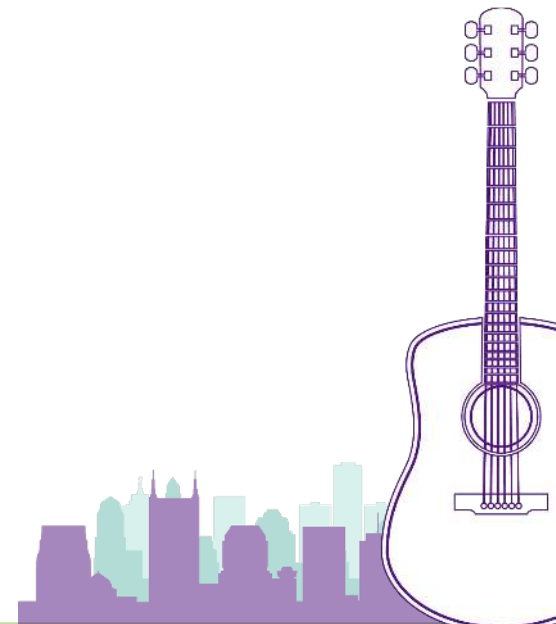


Year	Year #	Person 1 Age	Person 1 Probability of Survival	Person 2 Age	Person 2 Probability of Survival	Probability of Both Surviving	Probability of At Least One Surviving
2025	1	66	98.72%	64	98.91%	97.64%	99.99%
2030	6	71	90.75%	69	92.13%	83.61%	99.27%
2035	11	76	79.60%	74	82.60%	65.76%	96.45%
2040	16	81	64.37%	79	69.39%	44.67%	89.10%
2045	21	86	44.99%	84	52.00%	23.40%	73.60%
2050	26	91	23.98%	89	31.46%	7.54%	47.90%
2055	31	96	8.23%	94	13.17%	1.08%	20.32%
2060	36	101	1.50%	99	3.16%	0.05%	4.61%
2065	41	106	0.12%	104	0.36%	0.00%	0.48%
2070	46	111	0.00%	109	0.02%	0.00%	0.02%
2071	47	112	0.00%	110	0.00%	0.00%	0.00%

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Ira and Irene's Life Insurance Estimates

The following slides were made with EstateView's Life Insurance Estimator

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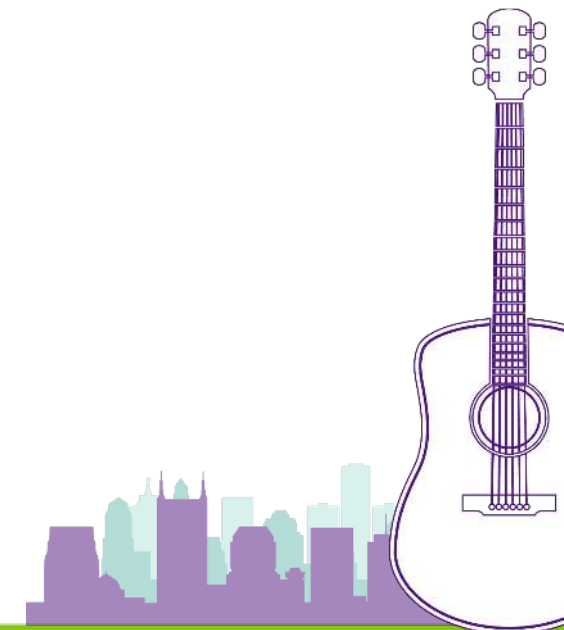


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Life Insurance Estimates

Life Insurance Estimates

Ira and Irene

Prepared by EstateView for John Planner

* Actual rates and availability may vary significantly.

EstateView does not sell or recommend any particular life insurance or confirm the need thereof.

Ira

Male

Age

- 65 +

Death Benefit

- \$3,000,000 +

IRS Table 2010CM Life Expectancy

19.1

Joint and Survivor Life Expectancy (For 63 yr old and 65 yr old)

25

	Risk Class	10 yr	20 yr	25 yr	30 yr	Universal For Life
Annual Premium Per \$3,000,000	Standard	\$27,147	\$47,700	Probably not available	Probably not available	\$115,095
Annual Premium Per \$3,000,000	Preferred	\$18,098	\$30,099	Probably not available	Probably not available	\$103,152

Life insurance estimates for:

Ira (Male age 65)

Irene (Female age 63)

Irene

Female

Age

- 63 +

Death Benefit

- \$3,000,000 +

IRS Table 2010CM Life Expectancy

20.6

	Risk Class	10 yr	20 yr	25 yr	30 yr	Universal For Life
Annual Premium Per \$3,000,000	Standard	\$18,409	\$25,194	Probably not available	Probably not available	\$89,163
Annual Premium Per \$3,000,000	Preferred	\$12,273	\$17,100	Probably not available	Probably not available	\$83,061

Standard Risk Class 20-year term \$3 million life insurance policies may cost around \$47,700 or \$25,194 for Ira and Irene, respectively.

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Monte Carlo Simulator

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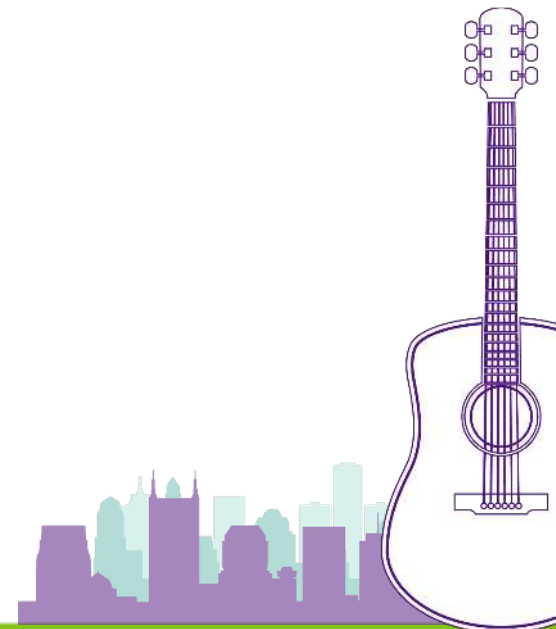
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Monte Carlo Simulations

Simulated returns for a \$38 million portfolio that is 40% Bonds and 60% Equities over 20 years.
These inputs are from EstateView's Monte Carlo Calculator

Monte Carlo #	Initial Value	Percentage Bonds	Percentage Equities	Number of Years Invested	Custom Percentile #1 Result	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile	Custom Percentile #2 Result
1	\$38,000,000	40.00%	60.00%	20	3.73%	5.97%	7.32%	8.78%	10.26%	11.55%	13.81%

Monte Carlo

Click to see results

Move to Left

Screenshot

Monte Carlo 1

Duplicate

Delete

Value of Portfolio

-

\$38,000,000

+

Percentage Bonds

-

40.00%

+

Percentage Equities

-

60.00%

+

Number of Years Invested

-

20

+

Custom Result Percentile #1 (1-99)

-

1.00%

+

Custom Result Percentile #2 (1-99)

-

99.00%

+

Annualized Growth Rates range from 3.73% to 13.81%

Final portfolio values range from \$79m to \$504m

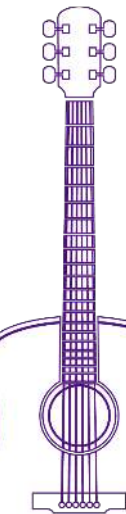
Removing Outliers (top and bottom 10% of results) constricts portfolio values to \$121m - \$338m

Year #	Custom Percentile #1	10th Percentile	25th Percentile	50th Percentile	75th Percentile	90th Percentile	Custom Percentile #2
1	\$32,806,075.91	\$36,820,084.64	\$39,063,590.60	\$41,522,314.22	\$44,014,728.55	\$46,137,726.55	\$49,845,245.95
2	\$32,443,211.36	\$38,291,166.20	\$41,361,206.60	\$45,074,456.40	\$48,974,043.16	\$52,771,498.58	\$58,873,160.84
3	\$33,172,556.56	\$40,038,680.04	\$44,268,816.29	\$49,068,239.55	\$54,381,466.48	\$59,415,630.71	\$68,670,577.80
4	\$34,468,653.61	\$42,257,074.30	\$47,270,525.89	\$53,404,300.55	\$59,919,918.73	\$66,510,994.65	\$78,788,462.43
5	\$35,641,969.10	\$44,617,972.80	\$50,554,241.37	\$58,051,462.69	\$66,000,148.23	\$74,380,546.18	\$90,458,811.82
6	\$36,878,492.10	\$47,392,161.61	\$54,394,731.62	\$63,103,104.01	\$73,032,480.29	\$82,487,467.59	\$102,833,992.22
7	\$39,028,007.30	\$50,435,719.58	\$58,387,679.56	\$68,402,007.89	\$80,035,534.54	\$91,809,618.94	\$114,860,126.56
8	\$40,959,501.44	\$53,637,184.71	\$62,698,064.22	\$74,439,749.52	\$88,161,987.98	\$102,429,301.09	\$131,363,052.08
9	\$42,269,283.80	\$57,420,917.54	\$67,637,590.11	\$80,882,698.94	\$97,018,781.88	\$113,644,492.49	\$148,464,924.91
10	\$44,417,475.27	\$60,755,753.39	\$72,807,453.37	\$88,186,640.41	\$106,750,735.68	\$125,470,409.23	\$166,703,343.97
11	\$46,495,195.99	\$65,398,829.67	\$78,547,536.71	\$95,891,431.67	\$116,919,500.43	\$139,340,228.46	\$185,345,344.73
12	\$49,312,753.31	\$70,005,853.05	\$84,460,468.82	\$104,293,224.71	\$128,013,676.48	\$154,073,162.43	\$205,996,101.79
13	\$52,558,023.51	\$74,907,880.05	\$91,302,993.22	\$113,417,751.00	\$140,519,138.50	\$170,217,098.71	\$232,290,115.14
14	\$55,237,484.39	\$80,248,943.22	\$98,479,965.08	\$123,238,658.23	\$154,219,200.03	\$188,613,838.30	\$259,181,969.17
15	\$57,606,384.12	\$86,255,182.00	\$106,252,627.10	\$134,235,455.96	\$169,286,160.82	\$207,351,666.17	\$291,856,796.88
16	\$60,540,304.34	\$92,133,014.30	\$115,195,241.87	\$145,875,743.51	\$186,460,665.35	\$228,079,967.11	\$327,879,367.04
17	\$64,127,830.17	\$98,337,624.93	\$124,450,751.07	\$159,307,976.87	\$203,563,396.90	\$253,255,017.41	\$372,534,830.94
18	\$67,933,569.27	\$105,266,671.40	\$133,708,764.64	\$173,327,984.47	\$222,809,583.92	\$279,830,581.27	\$414,368,023.20
19	\$73,857,089.62	\$112,695,741.70	\$144,869,897.34	\$188,227,801.24	\$244,738,636.20	\$308,373,531.61	\$458,163,754.31
20	\$79,093,713.64	\$121,110,030.06	\$156,040,594.38	\$204,613,076.46	\$267,978,092.33	\$338,104,748.99	\$504,754,874.20

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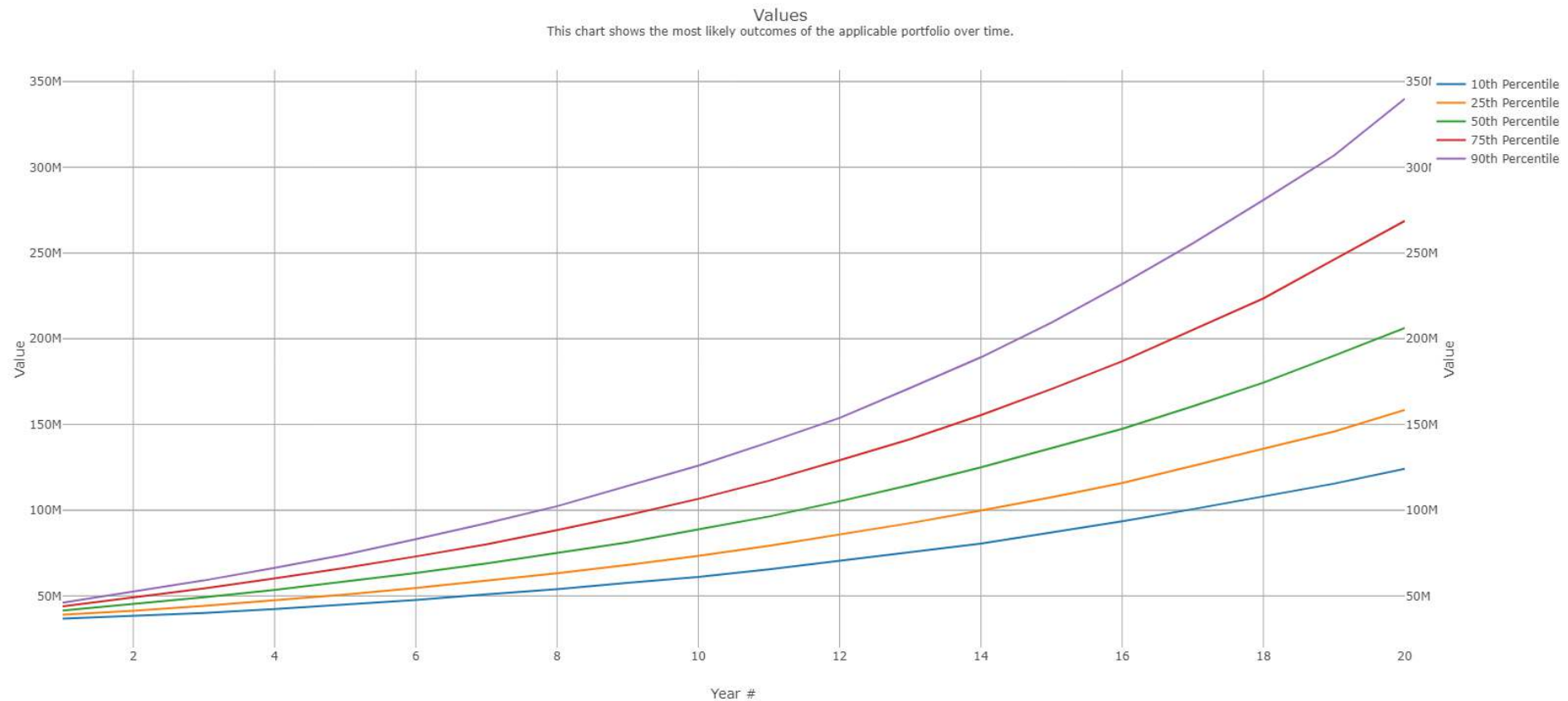
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CHART-TOPPING STRATEGIES: HITTING HIGH NOTES FOR YOUR CLIENTS



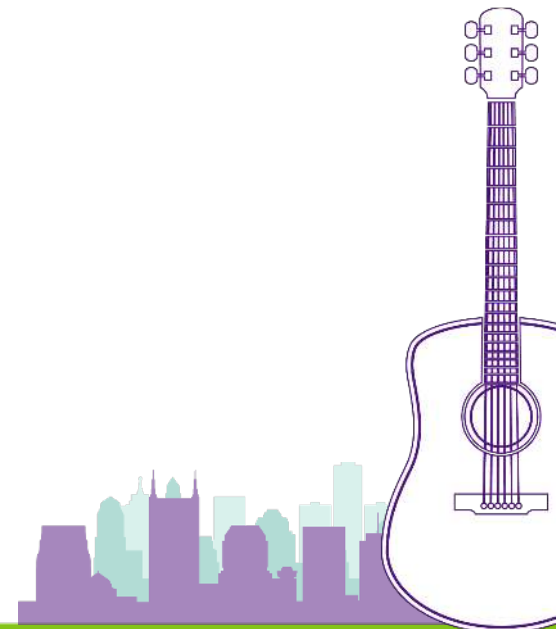
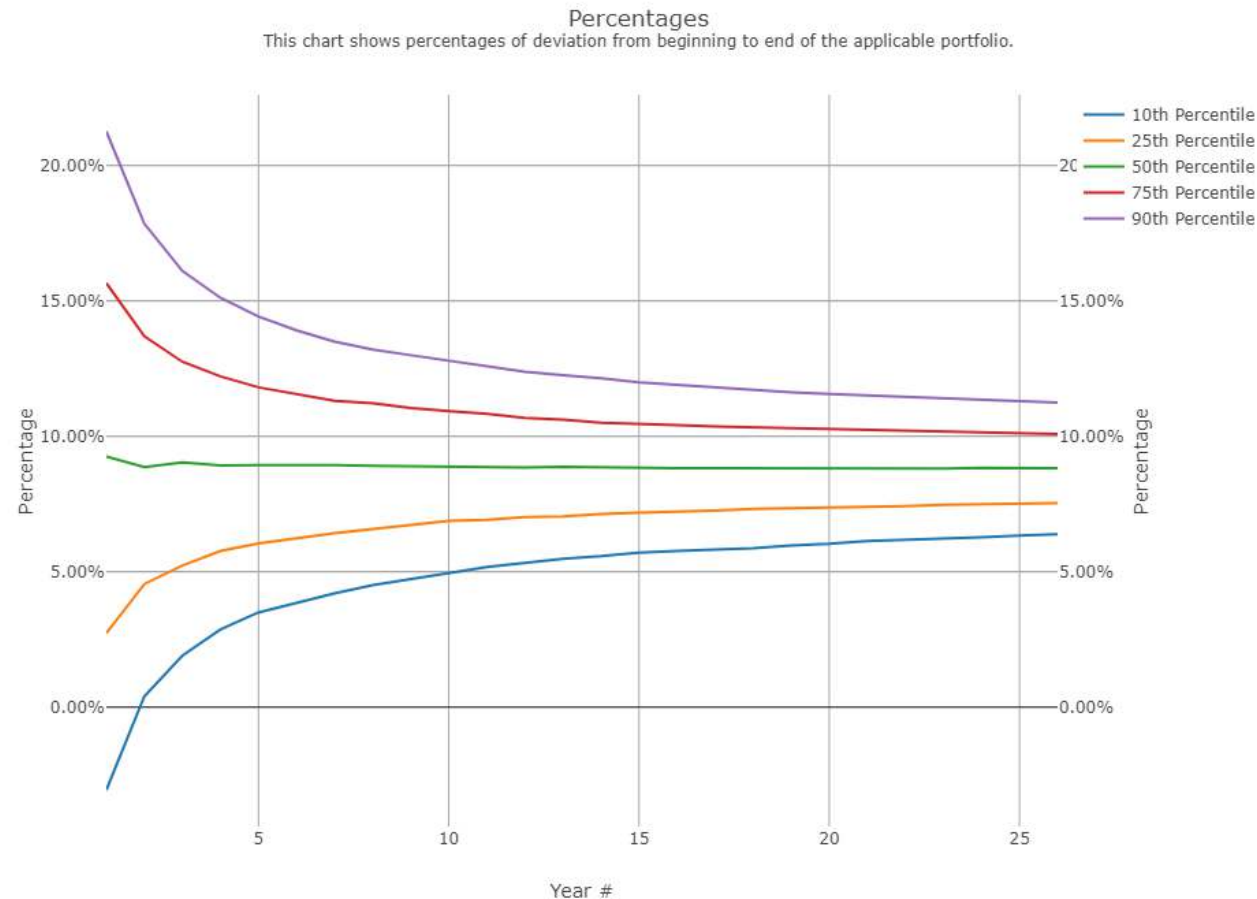
Monte Carlo Simulations

Simulated annual returns for a \$38 million portfolio that is 40% Bonds and 60% Equities over 20 years.



Monte Carlo Simulations

Simulated **value deviations** for a \$38 million portfolio that is 40% Bonds and 60% Equities over 20 years.



Tom and Sally's Comprehensive Estate Plan Illustration

The following slides were made with EstateView's Married Clients Calculator

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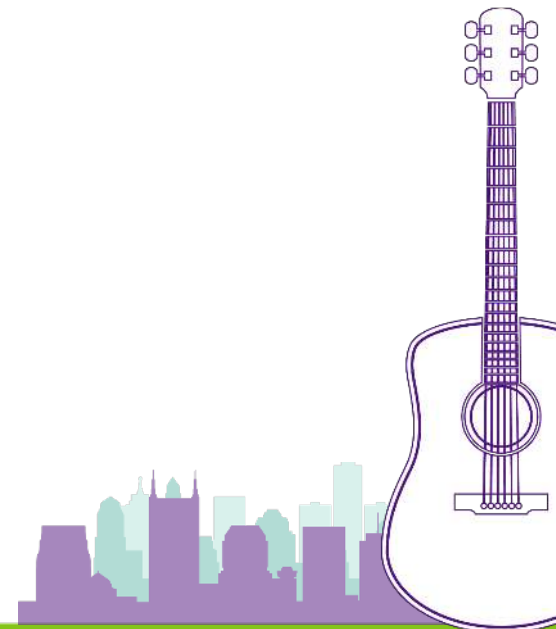
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Wealthier Married Clients (Inputs)

We will show Tom and Sally with \$60 million in investments and a house worth \$5m.

The other assumptions include:

Based on our Monte Carlo simulation, their investments are growing at 7.8%, and the house is growing at 4%.

We have shown their life expectancy as 20 and 26 years, slightly longer than average, because they have the resources to monitor their health and pay for advanced health care.

The couple can save \$300,000 per year for the next 5 years. Then John will retire, and they will spend \$300,000 per year for the rest of their lives, adjusted by inflation each year.

These assumptions leave the clients with **\$16m if they die today** and **\$93m if they die in years 20 and 26** in Estate Tax liability.



Wealthier Married Clients (Inputs)

Strategies To Activate	
Use Bypass Trust?	<input checked="" type="checkbox"/>
Use QPRT?	<input checked="" type="checkbox"/>
Use Annual Gifting?	<input checked="" type="checkbox"/>
Use Gift Discounts?	<input checked="" type="checkbox"/>
Use Life Insurance?	<input type="checkbox"/>
Use Large Gift?	<input checked="" type="checkbox"/>
Use Installment Sale?	<input checked="" type="checkbox"/>
Use Testamentary Charity?	<input checked="" type="checkbox"/>

Planner	
Firm Name	Gassman, Crotty & Denicolo, P.A.
Planner Name	

Portability Option	
Check Box if No Portability:	<input type="checkbox"/>

2026 Exemption Adjustment	
Check Box if Lifetime Exemption drops 50% in 2026:	<input checked="" type="checkbox"/>

Rates	
Click for Chained CPI & Inflation History	
Estate Tax Rate	- 40.00% +
Chained CPI	- 3.71% +
Real Inflation	- 4.01% +

Business and Investments	
Current Value	- \$60,000,000 +
Annual Growth Rate	- 7.80% +
Annual Investment Costs Rate	- 0.40% +
Annual Investment Tax Rate (as % of assets)	- 1.50% +
Add Explosive Asset? (in addition to above)	<input type="checkbox"/>

Personal Residence and Property	
Current Value	- \$5,000,000 +
Annual Growth Rate	- 4.00% +

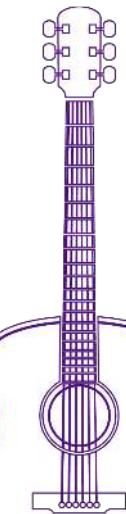
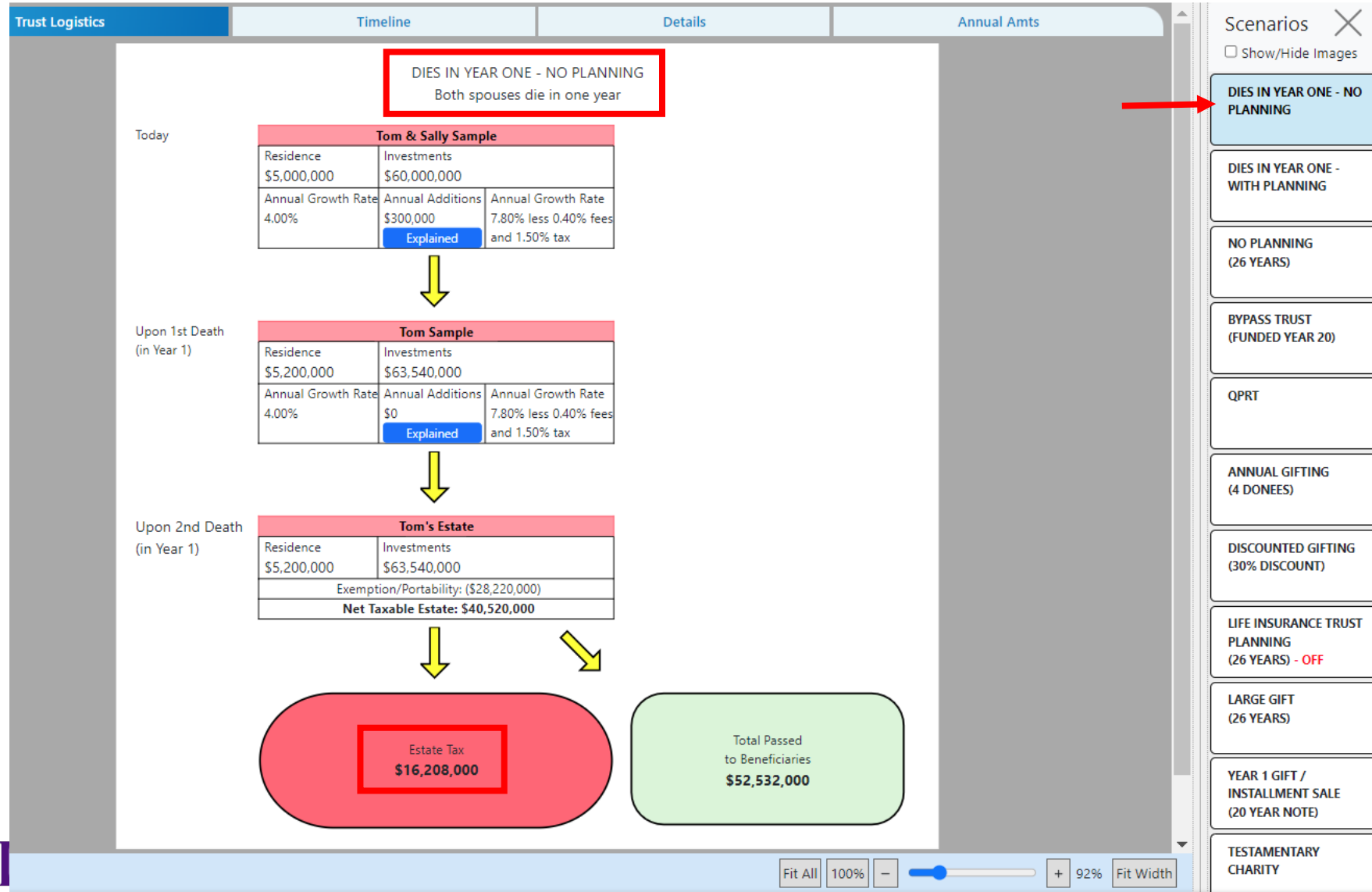
Client	
Spouse 1 Tom Sample	
First Name	Tom
Last Name	Sample
DOB	May 13 1955
Age	- 69 +
Sex	Male
Tobacco User?	<input type="checkbox"/>
Actuarial Year of Death (in Year 12)	2036
Illustrated Year of Death (in Year 20)	- 2044 +
Lifetime Gift Exemption Used	- \$0 +
Net Annual Savings/(Spending) While Both Alive to age 74 (in Year 5)	- \$300,000 +
Age of Savings/Spending Change (Year 5)	- 74 +
Net Annual Savings/(Spending) While Both Alive After Change	- (\$300,000) +
Spouse 2 <input type="checkbox"/> Deceased or None Sally Sample	
First Name	Sally
Last Name	Sample
DOB	May 13 1965
Age	- 59 +
Sex	Female
Tobacco User?	<input type="checkbox"/>
Actuarial Year of Death (in Year 23)	2047
Actuarial Year of Joint and Survivor Death (in Year 26)	2050
Illustrated Year of Death (in Year 26)	- 2050 +
Lifetime Gift Exemption Used	- \$0 +
Net Annual Savings/(Spending) After First Death to age 80 (in Year 21)	- (\$300,000) +
Age of Savings/Spending Change (Year 21)	- 80 +
Net Annual Savings/(Spending) After First Death And After Change	- (\$300,000) +

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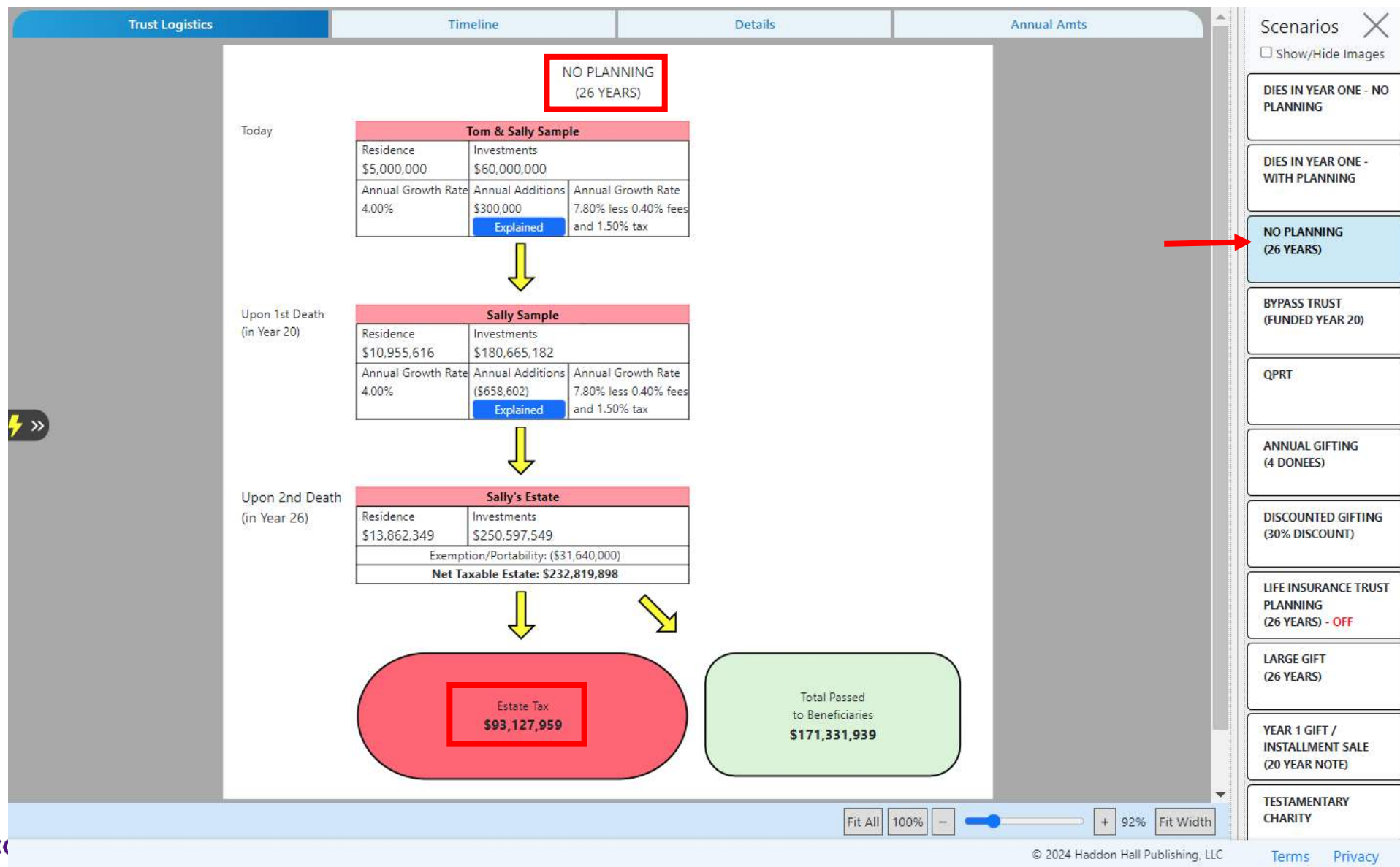
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Wealthier Married Clients (No Planning – This Year)



Wealthier Married Clients (No Planning – Year 26)



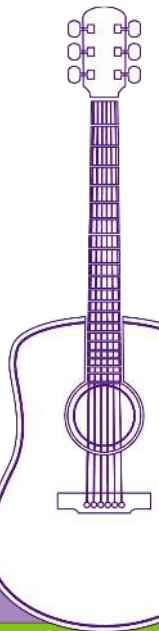
Wealthier Married Clients (Bypass Trust)

- A Bypass trust, or a Credit Shelter Trust, allows the clients to move assets outside of their taxable estate upon the first spouse's death.

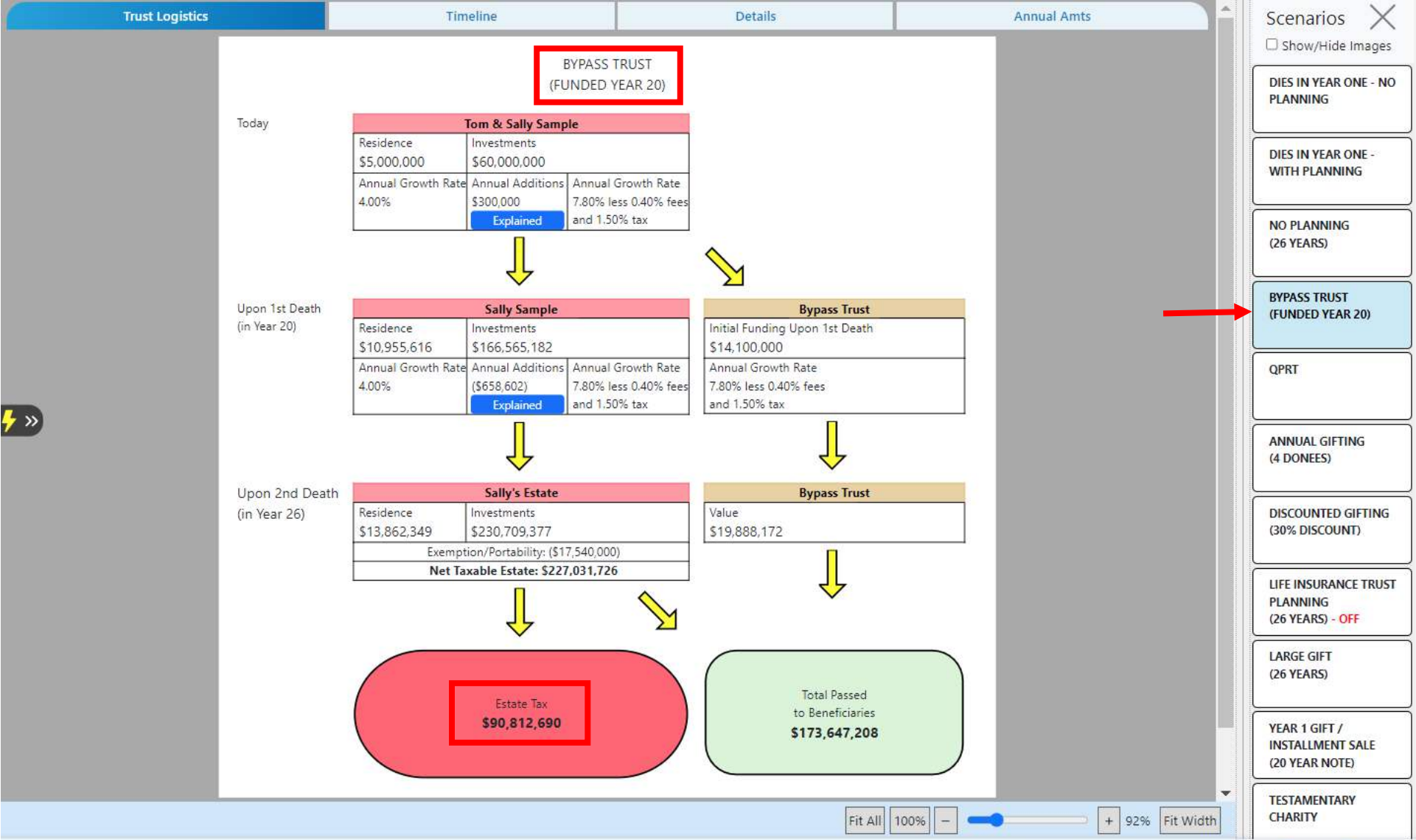
Bypass Trust	Will Show If Checked:	<input checked="" type="checkbox"/>
Always Maximize Bypass Trust Value?	<input checked="" type="checkbox"/>	
Max Bypass Trust Value	- \$14,100,000 +	
Limit Funding to Half of Available Assets?	<input type="checkbox"/>	

- Here, we show the lifetime exemption dropping 50% in 2026 and continuing to grow with inflation. This results in a maximum bypass trust value of \$14.1m in year 20, the projected death of Tom (spouse 1).
- A surviving spouse can use the funds in the Bypass trust for their lifetime health, education, maintenance and support needs. Any funds left in the trust upon the second spouse's death will pass free of estate and gift tax to his or her beneficiaries.

Using this plan, the clients' projected estate tax liability will decrease from **\$93m** to **\$91m**.

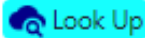


Wealthier Married Clients (Bypass Trust)

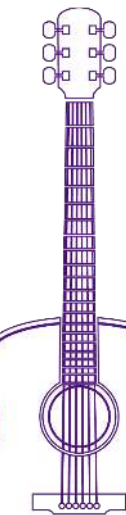


Wealthier Married Clients (QPRT)

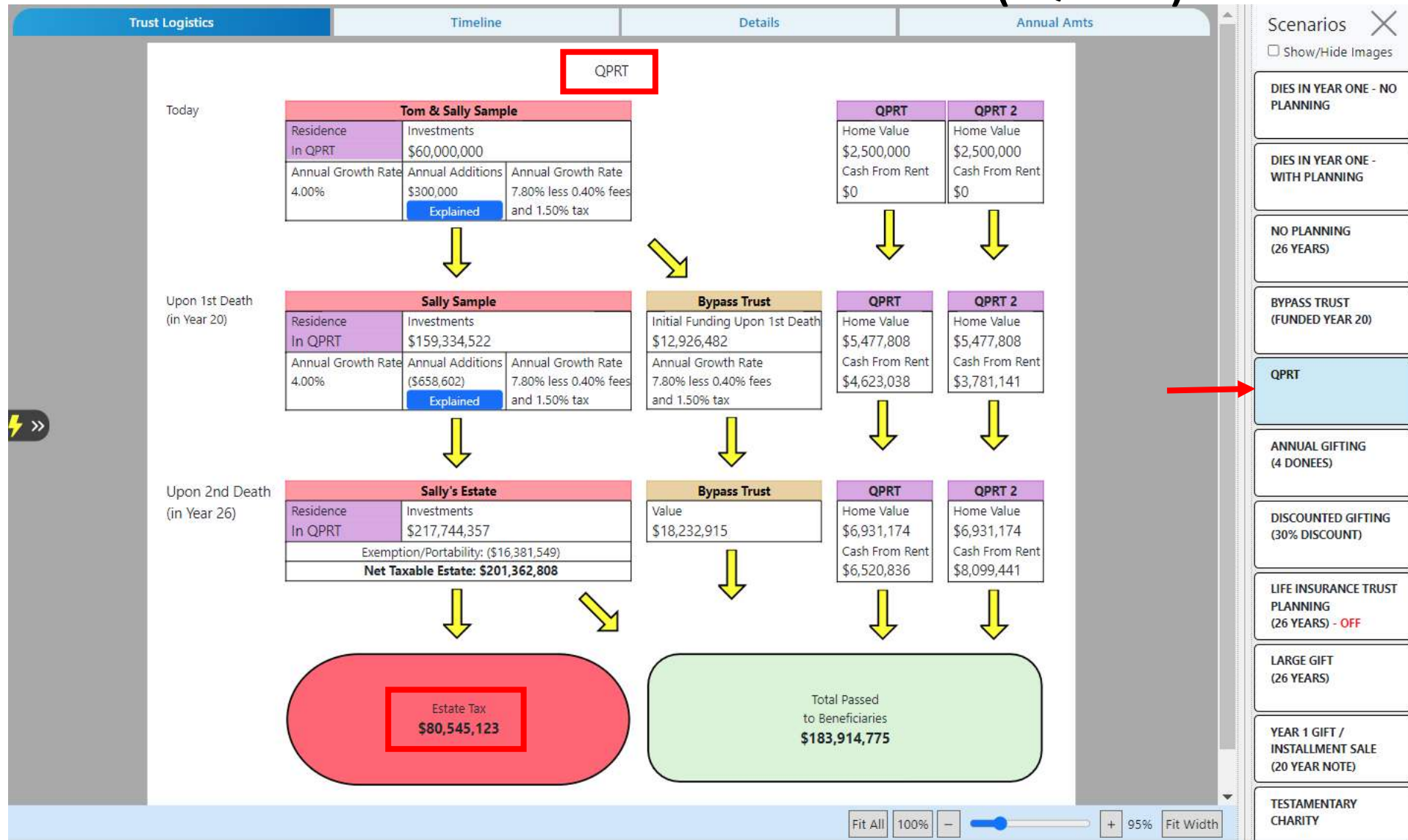
- A QPRT, or a Qualified Personal Residence Trust, allows the clients to move residence outside of their taxable estate while retaining a life estate.
- Here, we show two QPRTs where each spouse puts 50% interest of the residence in a separate trust. After each QPRT term is up, the spouses will pay rent at 6% of the home's value each year to continue to live in the home.
- The house can also be rented to others following the possessory term.

Qualified Personal Residence Trust		Will Show If Checked: <input checked="" type="checkbox"/>	
Number of QPRTs	-	2	+
Percentage of Residence Value to QPRT(s)	-	100.00%	+
QPRT Residence Value	\$5,000,000		
QPRT 1 - Spouse 1 (Age 69)			
QPRT Interest Rate (\$ 7520 Rate) 	-	5.40%	+
QPRT Term	-	8	+
QPRT Exemption Used	\$1,173,518.00		
QPRT Annual Rent % After Possessory Term	-	6.00%	+
QPRT Valuation Discount Rate	-	15.00%	+
QPRT 2 - Spouse 2 (Age 59)			
QPRT 2 Term	-	10	+
QPRT 2 Exemption Used	\$1,158,451.00		
QPRT 2 Annual Rent % After Possessory Term	-	6.00%	+
QPRT 2 Valuation Discount Rate	-	15.00%	+

Using this plan, the clients' projected estate tax liability will decrease from **\$91m** to **\$81m**.



Wealthier Married Clients (QPRT)



Wealthier Married Clients (Annual Gifting – No Discount)

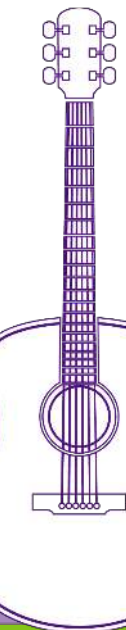
Today, Tom and Sally have two children and two grandchildren to whom they can gift \$18,000 each year, as adjusted by inflation.

After seven years, the couple expects two more grandchildren which brings their total gift recipients to 6 per year.

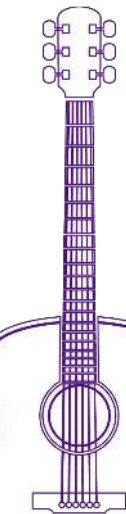
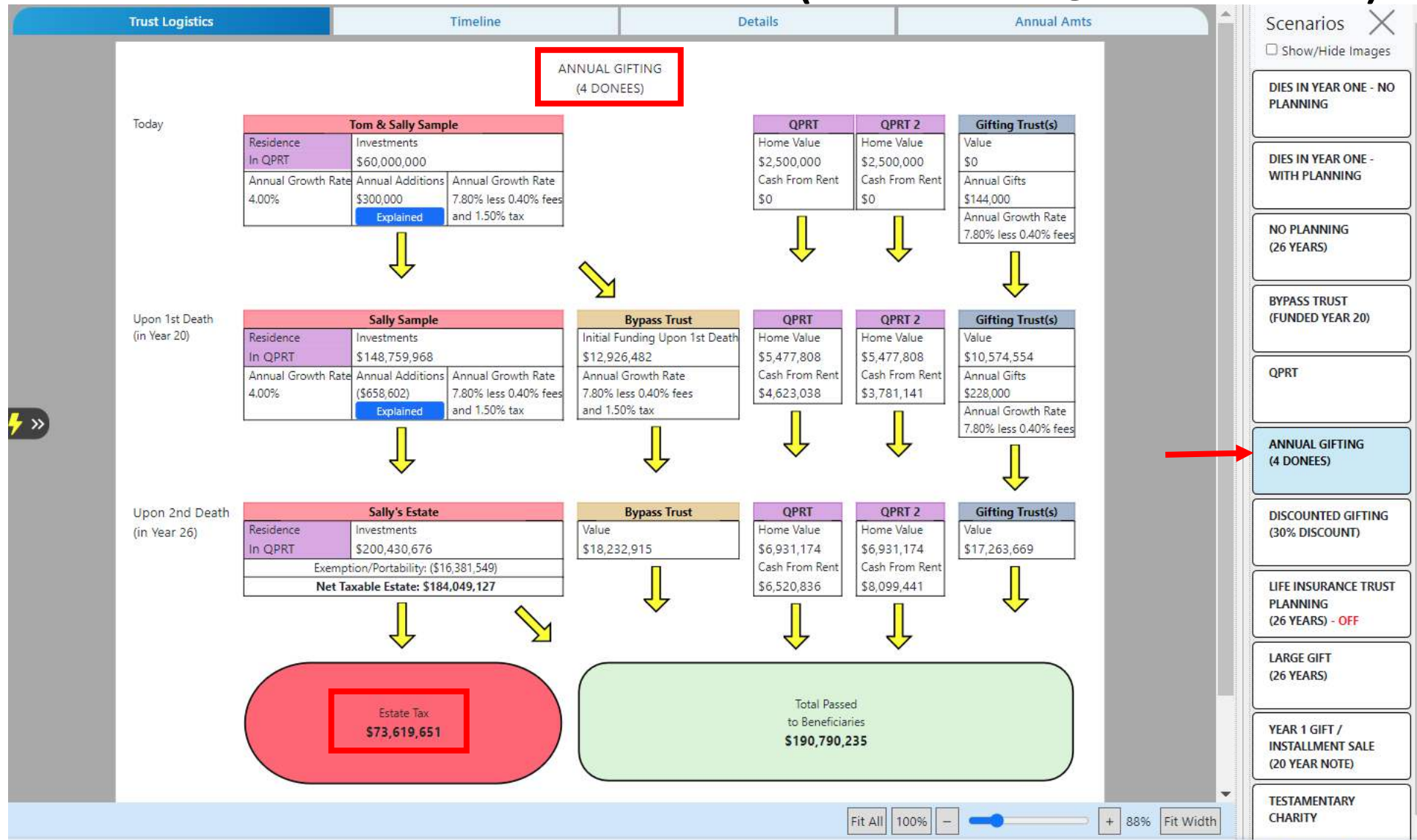
The gift recipients are self-supporting (this is fictional) so they are able to use Crummey Withdrawal powers to fully fund trusts for the recipients future benefit.

Using this plan, the clients' projected estate tax liability will decrease from **\$81m** to **\$74m**.

Gifting		Will Show If Checked: <input checked="" type="checkbox"/>						
Initial Gifting Trust Value		-	\$0	+				
Excluded Gifts Per Year		Number of Years		Subsequent Gifts Per Year				
-	4	+	-	7	+	-	6	+
Use Discounted Gifting?		<input type="checkbox"/>						
Percentage of Excluded Gifts to Gift Trust		-	100.00%	+				
Percentage of Excluded Gifts using Discounting		-	100.00%	+				
Discount Percentage for Gifting		-	25.00%	+				



Wealthier Married Clients (Annual Gifting – No Discount)



Wealthier Married Clients (Annual Gifting – 30% Discount)

Today, Tom and Sally have two children and two grandchildren to whom they can gift \$18,000 each year, as adjusted by inflation.

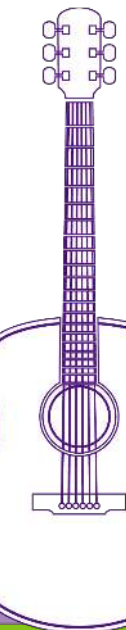
After seven years, the couple expects two more grandchildren which brings their total gift recipients to 6 per year.

By gifting discountable assets (such as LLC business interests), the couple can get more value outside their taxable estate without going over the annual exclusion.

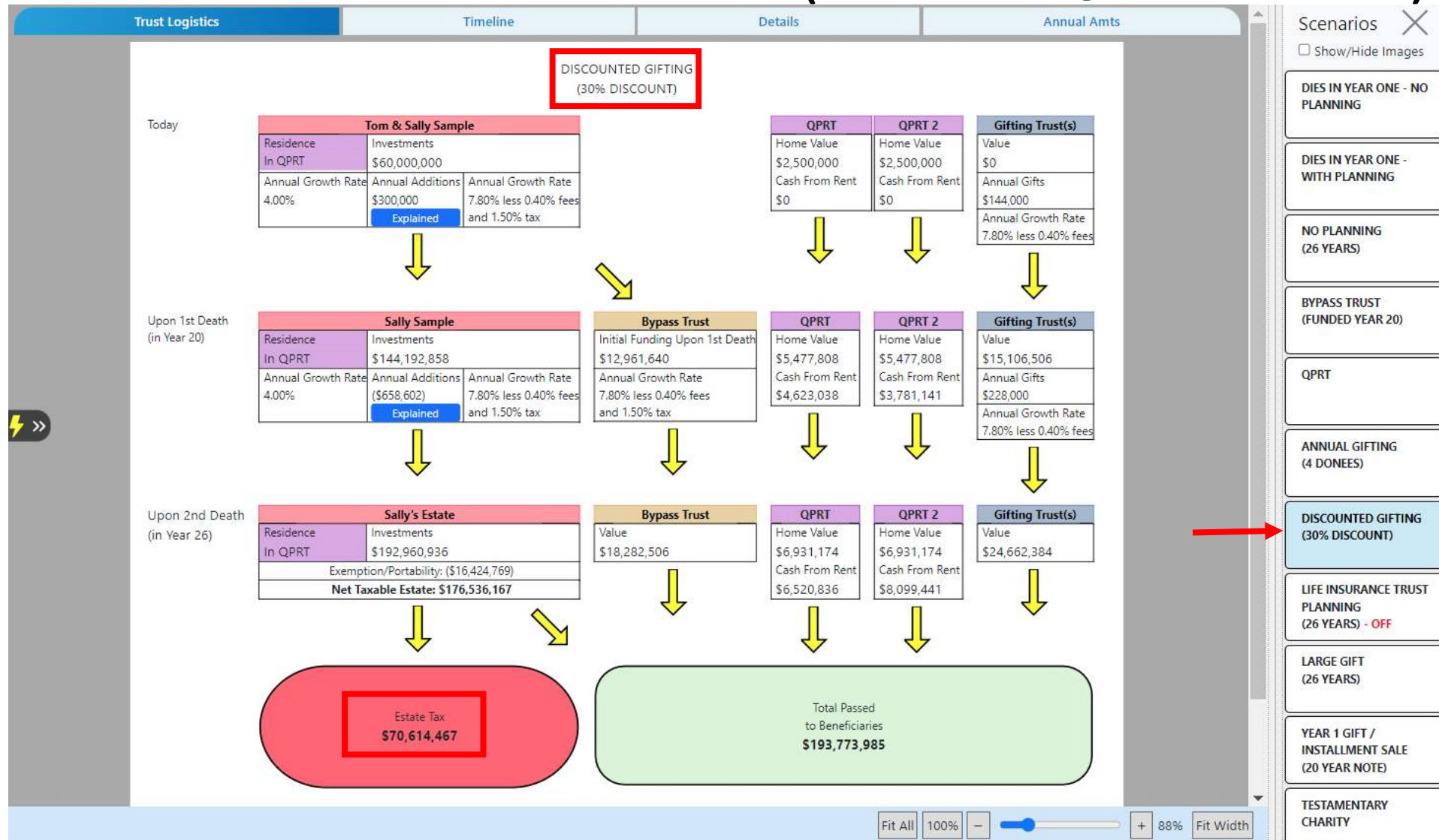
Any value gifted over the annual exclusion will result in the use of their lifetime estate and gift tax exemption. By gifting discountable assets, the assets are valued lower for gift tax purposes. This allows the clients to remove larger portions of their assets from their taxable estate.

Gifting		Will Show If Checked: <input checked="" type="checkbox"/>		
Initial Gifting Trust Value		-	\$0	+
Excluded Gifts Per Year	Number of Years	Subsequent Gifts Per Year		
- 4 +	- 7 +	- 6 +		
Use Discounted Gifting?		<input checked="" type="checkbox"/>		
Percentage of Excluded Gifts to Gift Trust		-	100.00%	+
Percentage of Excluded Gifts using Discounting		-	100.00%	+
Discount Percentage for Gifting		-	30.00%	+

Using this plan, the clients' projected estate tax liability will decrease from **\$74m** to **\$71m**.



Wealthier Married Clients (Annual Gifting – 30% Discount)



Wealthier Married Clients (Large Gift)

Tom and Sally can make a one-time large gift to exhaust their lifetime exemption in year one.

We projected using \$13.61m as a large gift from the couple to their gifting trust.

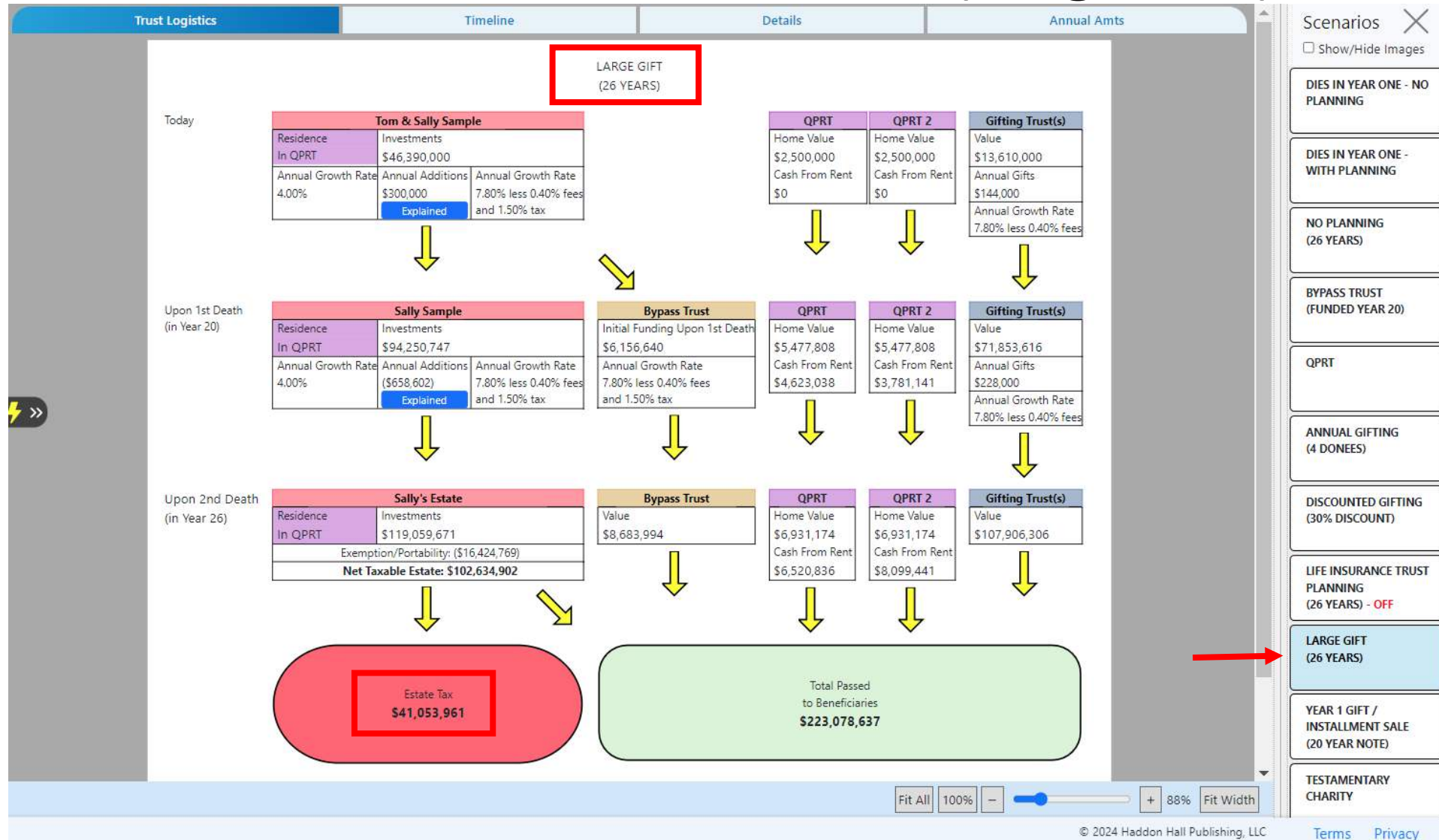
By gifting all at once, in addition to the previous techniques, the couple is able to make full use of their lifetime exemption and if the exemption drops by 50% in 2026, they will be grandfathered in as a gift was already made within the exemption at the time of transfer.

Large Gift To Trust	Will Show If Checked: <input checked="" type="checkbox"/>		
Value Gifted	-	\$13,610,000	+
Large Gift Discount Rate	-	0.00%	+
Large Gift Value After Discount	\$13,610,000		
Check Box to Split Large Gift	<input type="checkbox"/>		
Year to Toggle Off Grantor Status	-	Never	+

Using this plan, the clients' projected estate tax liability will decrease from \$71m to \$41m.



Wealthier Married Clients (Large Gift)



Wealthier Married Clients (Split Large Gift)

Tom and Sally can make a one-time large gift to exhaust their lifetime exemption in year one.

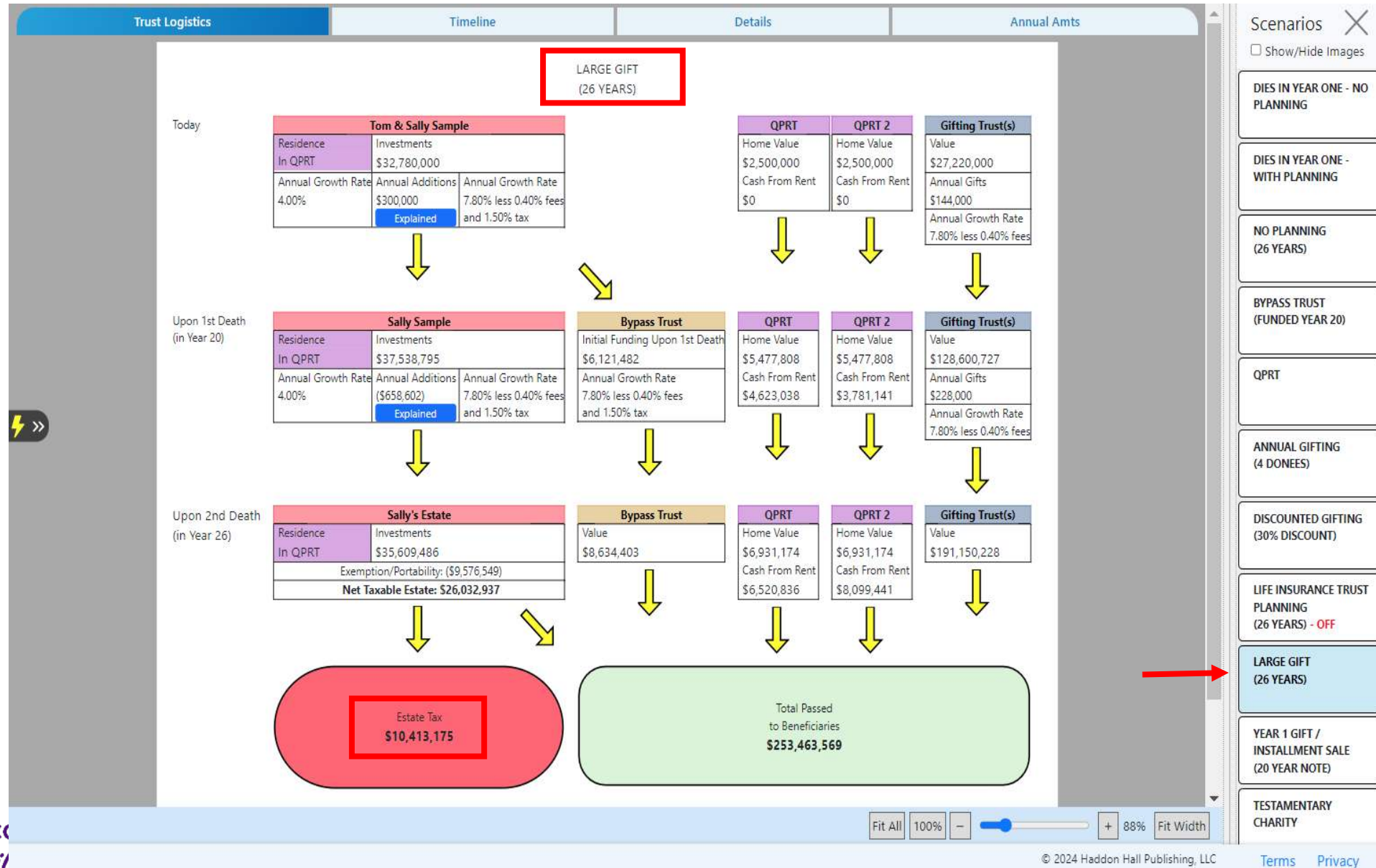
We projected using split gifts for a total of \$27.22m as a large gift from the couple to their gifting trust.

By gifting all at once, in addition to the previous techniques, the couple is able to make full use of their lifetime exemption and if the exemption drops by 50% in 2026, they will be grandfathered in as a gift was already made within the exemption at the time of transfer.

Large Gift To Trust		Will Show If Checked: <input checked="" type="checkbox"/>	
Value Gifted	-	\$27,220,000	+
Large Gift Discount Rate	-	0.00%	+
Large Gift Value After Discount		\$27,220,000	
Check Box to Split Large Gift		<input checked="" type="checkbox"/>	
Year to Toggle Off Grantor Status		-	Never +

Using this plan, the clients' projected estate tax liability will decrease from \$41m to \$10m.

Wealthier Married Clients (Split Large Gift)



Wealthier Married Clients (Installment Sale – No Discount)

*Includes Large Gift of \$13.61m

By selling assets today to a trust in return for an installment note, the married couple can remove the assets and associated growth/income from their taxable estate.

The clients also pay income tax on the Trust as it is a Grantor Trust, so their estate-taxable assets are spent. Some planners call the payments for this income tax liability “the burn” of estate-taxable assets.

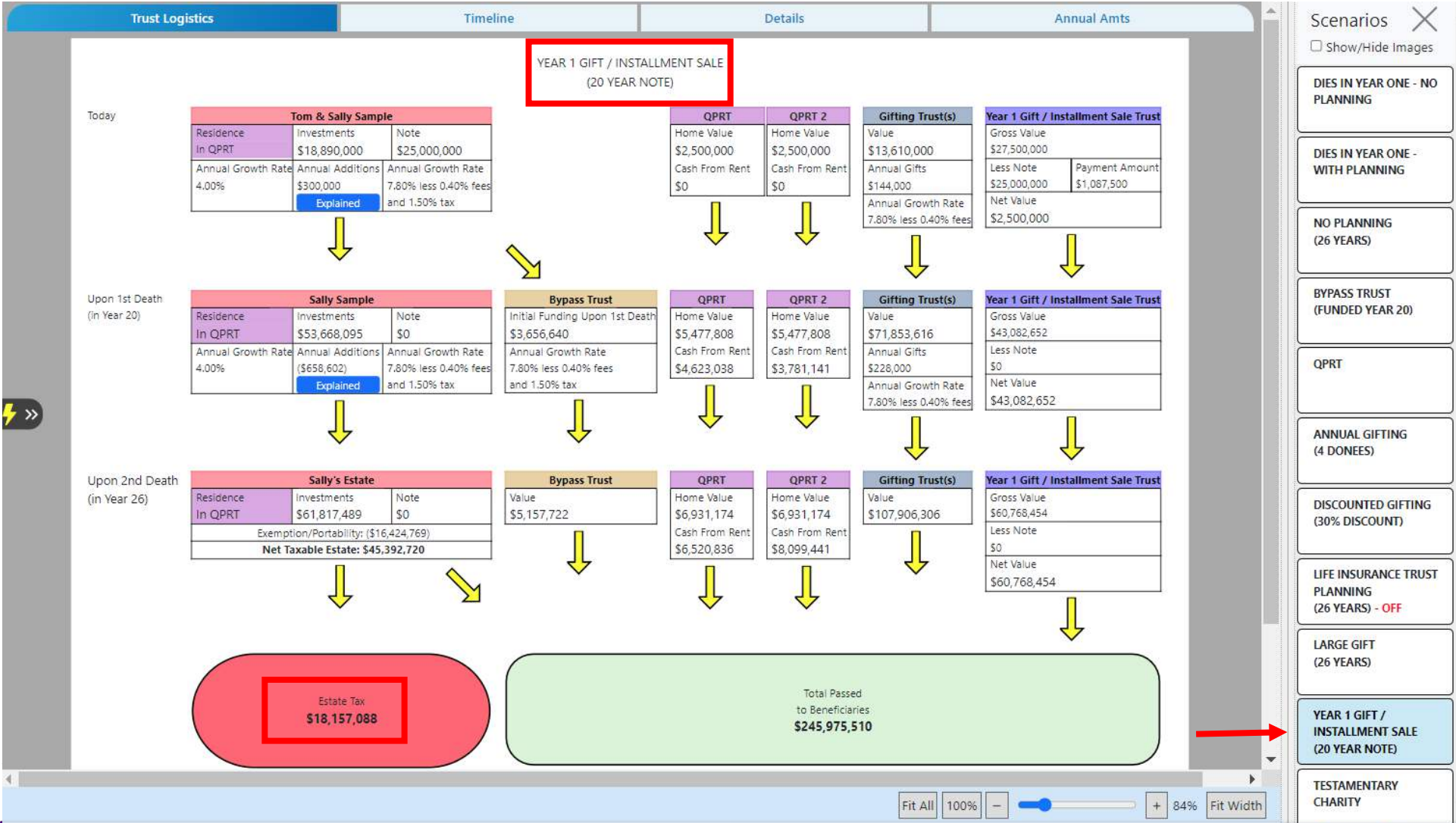
The installment note, which spans over 20 years, involves the purchase of \$25m worth of assets from the married couple. The note is structured with no discount rate and uses the lowest of the three previous months' long-term Applicable Federal Rates (AFR) of 4.35%. The note will pay the couple about \$1.1m each year.

Using this plan, the clients' projected estate tax liability will decrease from **\$41m** to **\$18m**.

Installment Sale / Year 1 Gift to Irrevocable Trust		Will Show If Checked: <input checked="" type="checkbox"/>	
Grantor of Trust	Spouse 1 <input type="button" value="v"/>		
Year One Gift	Lock to 10%? <input checked="" type="checkbox"/>	-	\$2,500,000 <input type="button" value="+"/>
Year One Gift Discount Rate		-	0.00% <input type="button" value="+"/>
Year One Gift after Discount	\$2,500,000		
Sale Value before Discount		-	\$25,000,000 <input type="button" value="+"/>
Discount Rate		-	0.00% <input type="button" value="+"/>
Sale Value after Discount		-	\$25,000,000 <input type="button" value="+"/>
Add Explosive Asset? (in addition to above)	<input type="checkbox"/>		
Total Sale Value	\$25,000,000		
Note Amount		-	\$25,000,000 <input type="button" value="+"/>
Note Interest Rate	<input type="button" value="Look Up AFR"/>	-	4.35% <input type="button" value="+"/>
Best to use lowest rate.			
Mar	Apr	May	
4.35%	4.40%	4.50%	
Type of Note	Conventional <input type="button" value="v"/>		
Note Payment Amount	\$1,087,500		
Note Term in Years	-	20	<input type="button" value="+"/>
Year to Toggle Off Grantor Status	-	Never	<input type="button" value="+"/>
Additional Income to Installment Sale Trust	-	\$0	<input type="button" value="+"/>
Number of Years of Additional Income	-	30	<input type="button" value="+"/>
Will the Note be Discounted on Death?	<input type="checkbox"/>		
Guarantee Fee?	<input type="checkbox"/>		

Wealthier Married Clients (Installment Sale – No Discount)

*Includes Large Gift of \$13.61m



Wealthier Married Clients (Installment Sale – 30% Discount)

*Includes Large Gift of \$13.61m

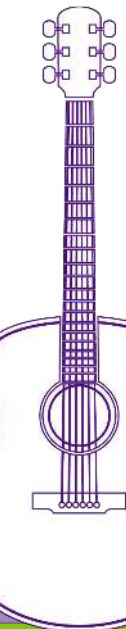
By selling assets today to a trust in return for an installment note, the married couple can remove the assets and associated growth/income from their taxable estate.

The clients also pay income tax on the Trust as it is a Grantor Trust, so their estate-taxable assets are spent. Some planners call the payments for this income tax liability “the burn” of estate-taxable assets.

The installment note, which spans over 20 years, involves the purchase of \$18m worth of assets from the married couple. The note is structured with a 30% discount rate and uses the lowest of the three previous months' long-term Applicable Federal Rates (AFR) of 4.35%. The note will pay the couple about \$550k each year.

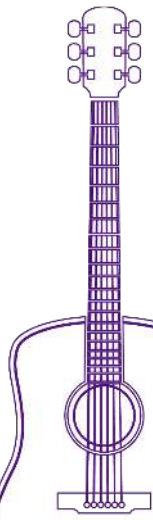
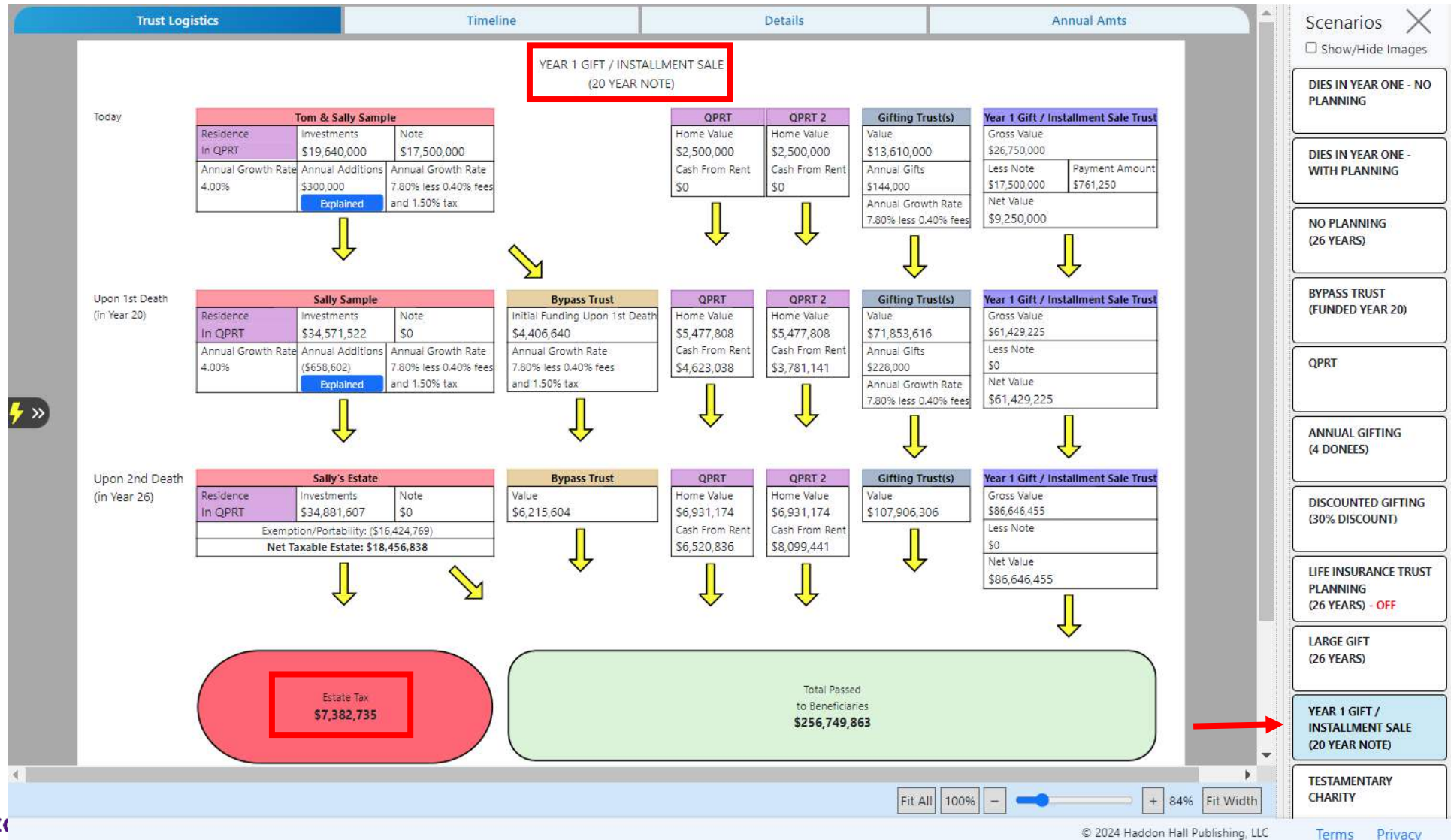
Using this plan, the clients' projected estate tax liability will decrease from **\$41m** to **\$7m**.

Installment Sale / Year 1 Gift to Irrevocable Trust		Will Show If Checked: <input checked="" type="checkbox"/>	
Grantor of Trust		Spouse 1	▼
Year One Gift	Lock to 10%? <input checked="" type="checkbox"/>	-	\$1,260,000 +
Year One Gift Discount Rate		-	0.00% +
Year One Gift after Discount			\$1,260,000
Sale Value before Discount		-	\$18,000,000 +
Discount Rate		-	30.00% +
Sale Value after Discount		-	\$12,600,000 +
Add Explosive Asset? (in addition to above)		<input type="checkbox"/>	
Total Sale Value			\$12,600,000
Note Amount		-	\$12,600,000 +
Note Interest Rate	Look Up AFR	-	4.35% +
Best to use lowest rate.			
Mar	Apr	May	
4.35%	4.40%	4.50%	
Type of Note	Conventional ▼		
Note Payment Amount	\$548,100		
Note Term in Years	-	20	+
Year to Toggle Off Grantor Status	-	Never	+
Additional Income to Installment Sale Trust	-	\$0	+
Number of Years of Additional Income	-	30	+
Will the Note be Discounted on Death?	<input type="checkbox"/>		
Guarantee Fee?	<input type="checkbox"/>		



Wealthier Married Clients (Installment Sale – 30% Discount)

*Includes Large Gift of \$13.61m



Wealthier Married Clients (Charity)

Clients can give outright to a Charity from their estate's residue, or through a Charitable Lead Annuity Trust (CLAT).

Charity	Will Show If Checked:	<input checked="" type="checkbox"/>
Charity or CLAT?	Charity	▼
Charity Name	Tom and Sally Sample I	
Percent of Residue to Charity	- 100.00%	+

Using this plan, the clients' projected estate tax liability will decrease from **\$7m** to **\$0**.

The beneficiaries sacrifice **\$11m** to fund Charitable Gifts.

CLAT Planning

Charity	Will Show If Checked:	<input checked="" type="checkbox"/>
Charity or CLAT?	CLAT	▼
Charity Name	Tom and Sally Sample I	
Percent of Residue to CLAT	- 100.00%	+
Percent of CLAT to Charity	- 60.00%	+
Number of Years	- 20	+
*Please note that the actual performance of a CLAT can vary significantly.		

Using this plan, the clients' projected estate tax liability will decrease from **\$7m** to **\$0**.

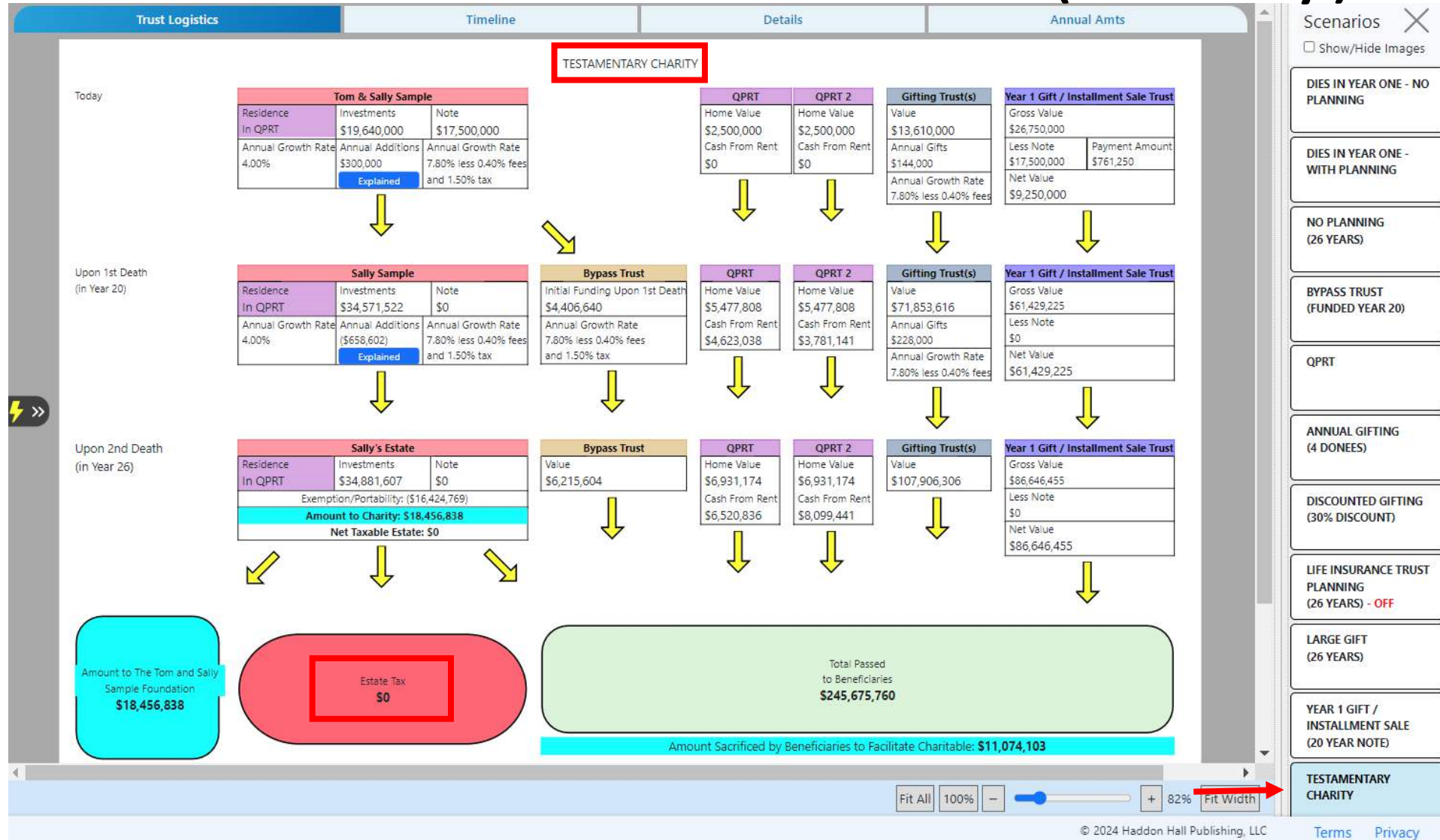
The beneficiaries sacrifice **\$3.7m** to fund Charitable Gifts, and must wait until the end of the CLAT term to receive **\$7m**.

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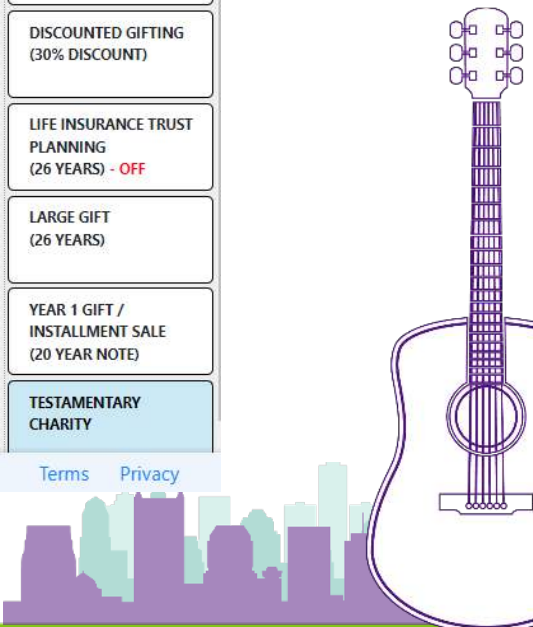
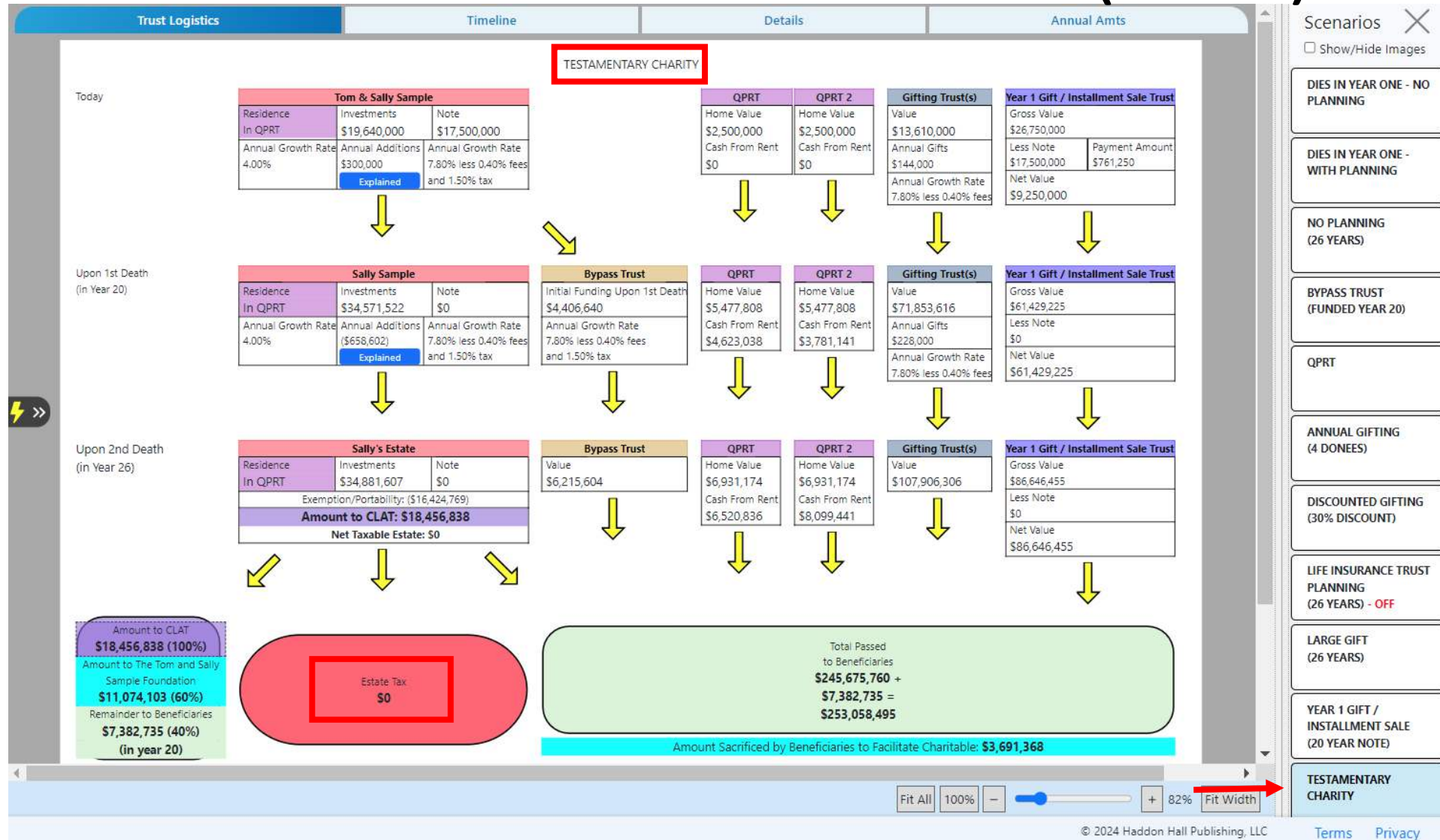
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CHART-TOPPING STRATEGIES: HITTING HIGH NOTES FOR YOUR CLIENTS

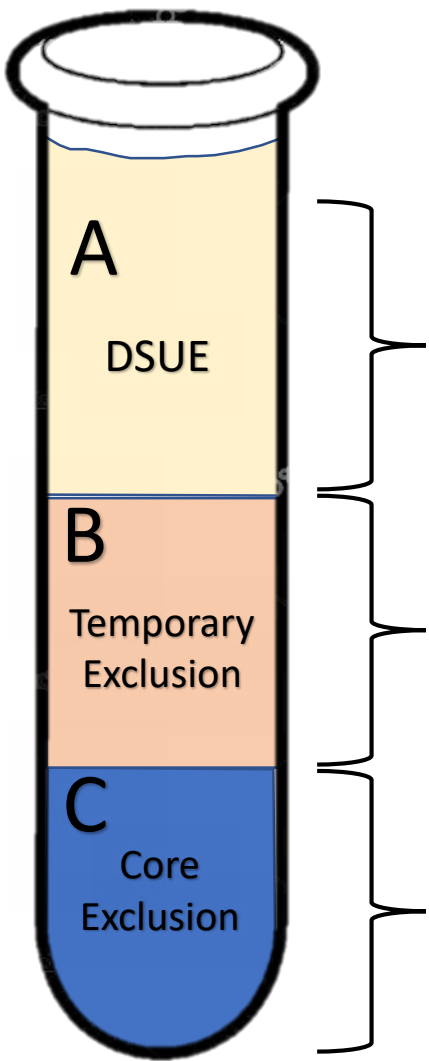
Wealthier Married Clients (Charity)



Wealthier Married Clients (CLAT)



BEA Order of Use



Must use 1st

Must use 2nd

Only usable until
12/31/2025 - after A
and B have been used.

EXAMPLE:

If DSUE is \$2,000,000,
must give over \$8,805,000
to use part of the
exemption that will be lost
in 2026.

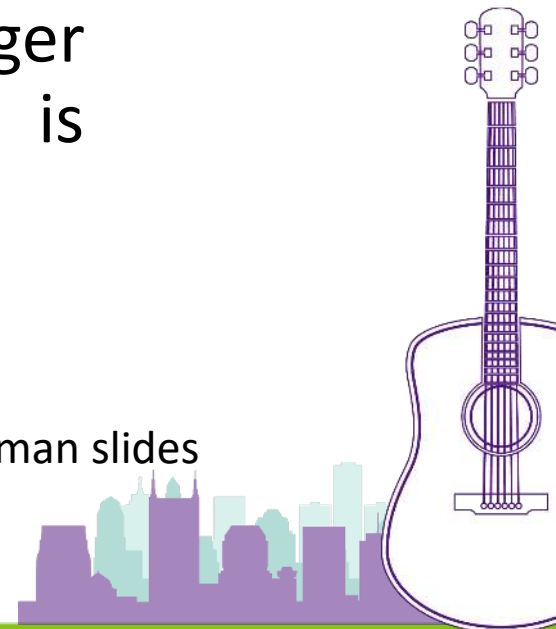


Insure the Risk of Anti-Clawback

Buy Term or Low Initial Premium Second-to-die life insurance policies before 2026 to lock-in insurability and death benefit.

Convert to permanent or begin paying larger premiums if and when the exemption amount is reduced.

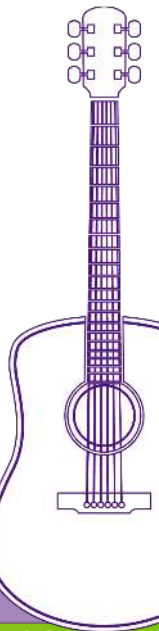
Gassman & Shenkman slides



The Basic and Bonus Exemption Explained

- In 2024, the basic and bonus exemption is \$13,610,000 (both are 6,805,000, respectively)
- What do taxpayers need to do to take advantage of the bonus exemption before it disappears?
- Easy answer for taxpayers who wish to make large gifts that will use both the basic and bonus exemption by simply transferring \$13,610,000 worth of assets as a gift, or whatever their combined basic and bonus exemption may now be.
- More difficult for taxpayers who do not wish to gift more than their basic exemption amount before the bonus exemption disappears because the first dollars gifted are allocated to the basic exemption and use of the bonus exemption will only occur after (1) the basic exemption has been completely used, and (2) any portability allowance has been received by a previous spouse has been used.

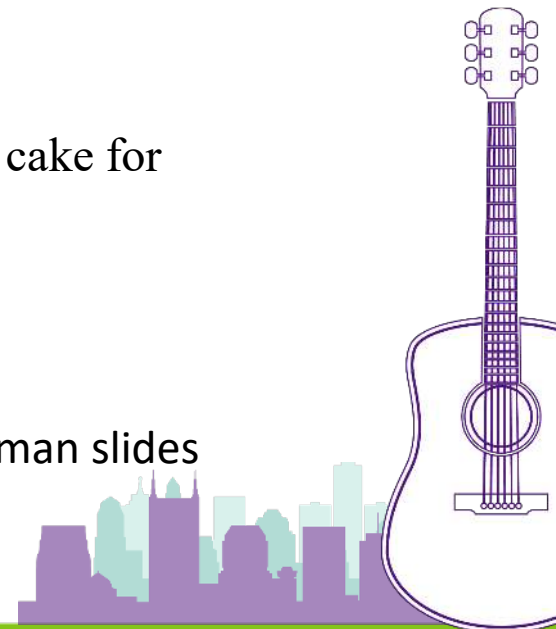
Gassman & Shenkman slides



The Basic and Bonus Exemption Explained, cont.

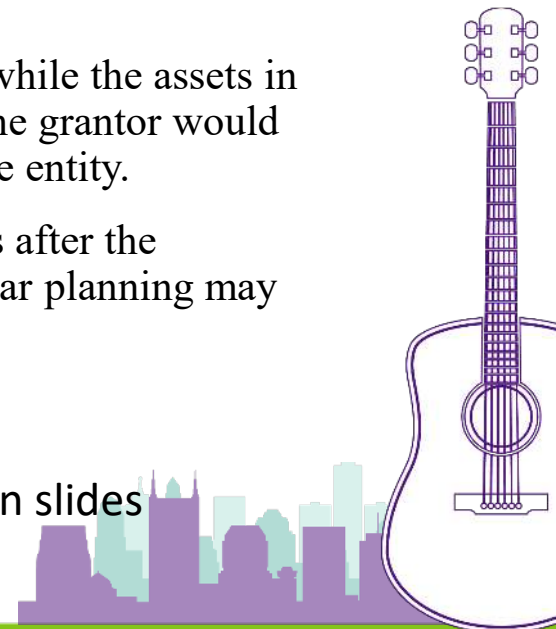
- Any non-excluded gifts made by a taxpayer are first allocated to any portability allowance that the taxpayer may have received from a predeceased spouse, then to the basic exclusion amount, followed by the bonus exemption amount.
- Taxpayers & advisors alike have sought ways to “lock in” use of the bonus exemption amount without actually transferring assets as “complete gifts” that will not be included in their estate for federal estate tax purposes
- In other words, many taxpayers would like to put \$13,610,000 worth of cake into a mechanism to ensure use of the \$13,610,000 exemption, while being able to eat the cake for their remaining lifetime, or at least for some time after January 1, 2026.

Gassman & Shenkman slides



The Basic and Bonus Exemption Explained, cont.

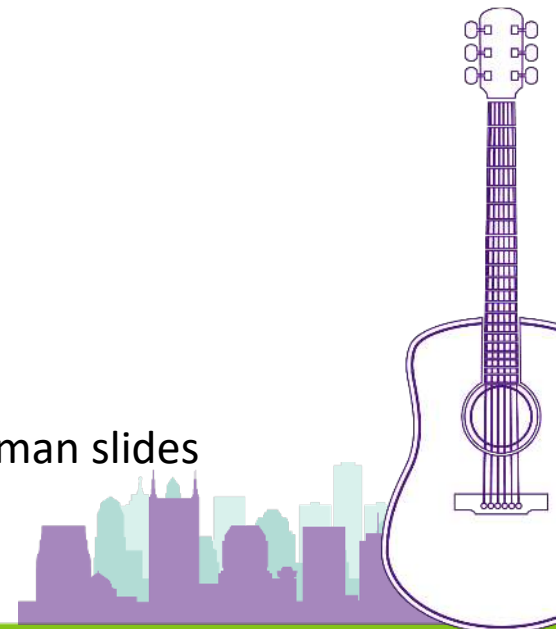
- **Examples:**
- 1. Use a Grantor Retained Income Trust (“GRIT”) which would pay income to the grantor and then pass to benefit the grantor’s spouse and/or descendants after the grantor’s death
- 2. Establish an LLC that would be taxed for income tax purposes as a partnership and pay the grantor an amount equal to 7% of the value of the partnership assets each year, with all remaining assets passing to the grantor’s children at the time of the grantor’s death, or earlier if caused by an independent party.
- In both of those situations the transfer to the entity can be considered to be a complete gift for estate and gift tax purposes, using the \$13,610,000 allowance, even though the assets held under the entity will be considered to be subject to federal estate tax on the death of the grantor.
- If not for the updated anti-clawback regulations, which were specifically authorized by the TCJA, while the assets in the entity are includible in the grantor’s estate for estate tax purposes, the estate tax exemption of the grantor would be used to offset the tax based on the estate tax exemption available at the time of the funding of the entity.
- The Proposed Regulations will not allow the bonus exemption amount to be used if the grantor dies after the exemption amount has been reduced (as presently scheduled, January 1, 2026), partnership or similar planning may still be useful for generation-skipping tax exemption purposes.



Question:

- Can I use my DSUE and bonus estate tax exclusion amount to fund a complete gift trust that will still be includable in my estate, thus reducing my exemption to the original exemption amount, and then make a gift of the original exemption amount to descendants or a trust for descendants?

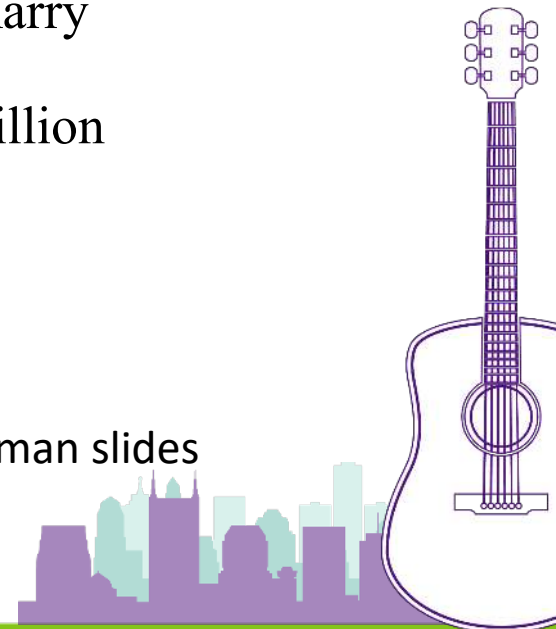
Gassman & Shenkman slides



Summary of Portability Allowance Treatment

- Many surviving spouses have a portability allowance from having survived a spouse who had significant remaining exemption, with a concern that remarriage and surviving a subsequent spouse after the bonus exemption is eliminated will cause an estate tax problem for descendants.
- In this situation, principles similar to what will occur if the bonus exemption is lost in 2026 will also apply.
- For example, a taxpayer who has received a \$12 million portability allowance and has a \$12,060,000 estate tax exemption may wish to remarry and may be expected to outlive a new spouse, which would reduce the taxpayer's portability allowance from \$12 million to an estimated \$8 million or less.

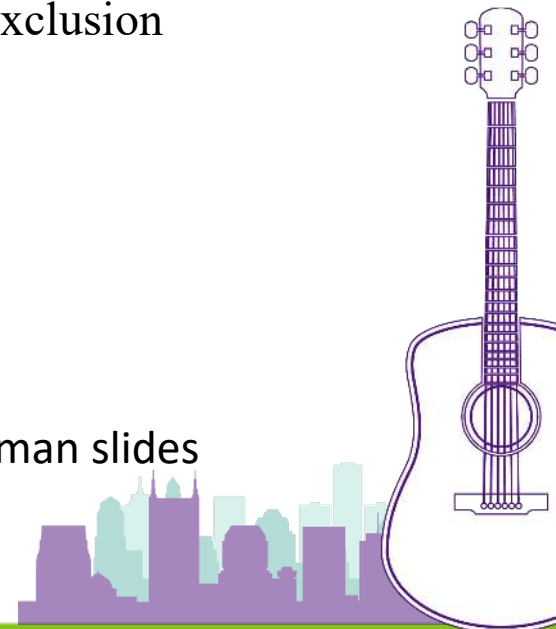
Gassman & Shenkman slides



Summary of Portability Allowance Treatment, cont.

- This same taxpayer is also facing the loss of half of his/her exemption amount, which might be expected to be \$7 million in 2026 (from \$14 million after including inflation to \$7 million).
- This taxpayer would need to gift \$12 million before 2026 to preserve use of the full portability allowance and the bonus exemption, but the clawback rules do not apply to the portability allowance, so a possible arrangement would be as follows:
- (A) Place \$12 million into a complete gift / retained interest arrangement, such as a Grantor Retained Income Trust (“GRIT”), a non-qualifying preferred partnership, to lock in the portability allowance which is used first when gifting above the \$16,000 per year exclusion occurs.

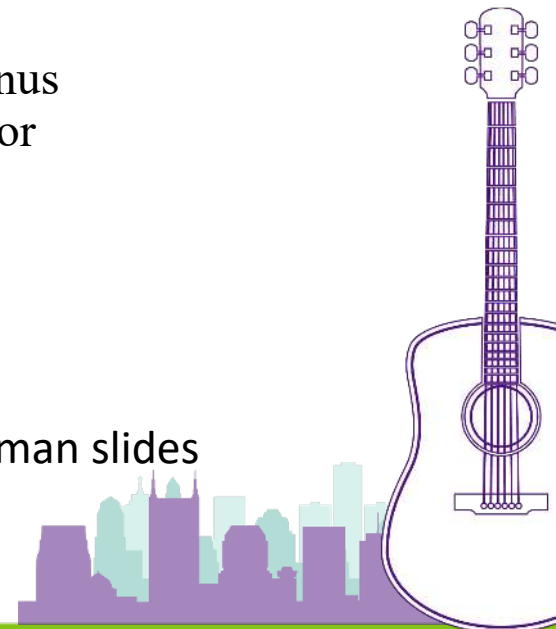
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Summary of Portability Allowance Treatment, cont.

- **(B)** If the taxpayer does not want to gift a full \$12 million into this arrangement, she can be informed that anything over approximately \$7 million will probably save the excess over \$7 million of the portability allowance if she remarries.
- In other words, she may wish to place more than approximately \$6,505,000 into a dynasty trust or other arrangement that will not be subject to the clawback rules.
- Her GST exemption should first be allocated to the portability gift under the section above, and thereafter to a GST exempt trust or other arrangement under the transfer described in this section B to the extent of her GST exemption, with any contributions above that going to a non-GST trust or other arrangement.
- **(C)** If she wants to fully save the first spouse's portability allowance and the bonus exemption then she will gift her GST exemption amount to an irrevocable trust or other arrangement with remaining amounts going to non-GST trusts.

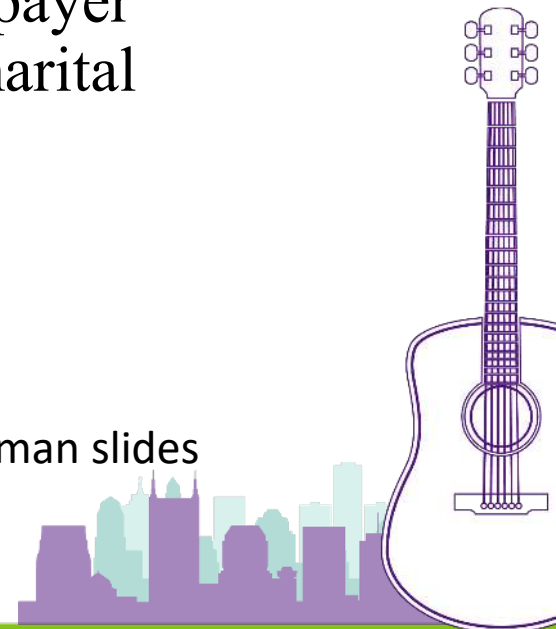
Gassman & Shenkman slides



The Double Whammy

- Losing the bonus exemption is difficult enough, but what about taxpayers who have received a portability allowance well exceeding \$6 million and have remarried or may remarry and have their new spouse die after January 1, 2026, when the portability allowance would go down to one half of what it would otherwise be?
- Replacement portability allowance will be based upon the estate tax exemption of the new spouse when he/she dies before the taxpayer minus whatever other assets pass that do not qualify for the marital and/or charitable estate tax deductions in the estate of such predeceasing spouse.

Gassman & Shenkman slides



Large Gift Planning

The following slides were made with EstateView's Large Gift/SLAT Calculator

We are using EstateView Software for this presentation, more information is at EstateView.info.

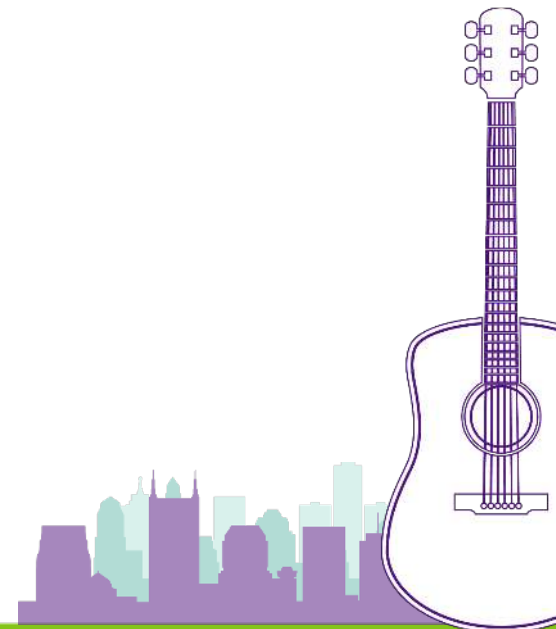
If you are interested in a trial subscription email agassman@gassmanpa.com and put the word "EstateView" in the subject line.



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Large Gift Inputs

These inputs are from EstateView's Large Gift/SLAT Calculator

Client has \$1m of DSUE

\$25m of Investments

And makes a \$1m gift

Gift 1		Duplicate	Delete	^
Check Box if Lifetime Exemption drops 50% in 2026:	<input checked="" type="checkbox"/>			
Check Box To Show Surviving Spouse:	<input type="checkbox"/>			
Check Box if Split Gift:	<input type="checkbox"/>			
Estate Tax Rate	40.00%	-	+	
Inflation / Chained CPI Rate	4.00%	-	+	
Age	65	-	+	
Table2010CM Life Expectancy	84.1 (19.1 years)			
Illustrated Yr of Death	84	-	+	
	(Year 19)			
Tier 1 - Annual Savings/(Spending)	\$200,000	-	+	
Tier 1 - Number of Years	10	-	+	
Tier 2 - Annual Savings/(Spending)	(\$200,000)	-	+	
Tier 2 - Number of Years	10	-	+	
Tier 3 - Annual Savings/(Spending)	(\$100,000)	-	+	
Prior Gifts / Lifetime Exemption Already Used	\$0	-	+	
Portability / DSUE	\$1,000,000	-	+	
Value of Home	\$750,000	-	+	
Home Value Growth Rate	3.75%	-	+	
Current Investments	\$25,000,000	-	+	
Investments Growth Rate	8.78%	-	+	
Annual Investment Tax Rate (as % of assets)	2.00%	-	+	
Year to Toggle Off Grantor Trust Status	Never	-	+	
Year One Gift (Max: \$14,610,000)	\$1,000,000	-	+	
Year One Gift Discount Rate	0.00%	-	+	
(Crummey Powers) Number of Children	0	-	+	
Year One Gift Reportable Value	\$1,000,000.00			
Check Box for Private Annuity Rescue:	<input type="checkbox"/>			
Check Box for SCIN:	<input type="checkbox"/>			



Large Gift Summary and Examples

Gift #	Age	Current Investments	DSUE	Year One Gift	Grantor Status Toggle Year	Value of Estate Upon Death	Value of Estate @ Age 100	Exemption Total	Estate Tax Liability	Trust Value	Amount to Beneficiaries	Estate Tax Savings	Savings Per Million Gifted	Incremental Savings Per Million Gifted	Estate Tax Due on 1st Death
1	65	\$25,000,000	\$1,000,000	\$1,000,000	Never	\$84,219,586	\$223,923,744	\$14,330,000	\$27,955,834	\$4,948,027	\$61,211,778	\$1,579,211	\$1,579,211	\$1,579,211	\$27,955,834
2	65	\$25,000,000	\$1,000,000	\$7,805,000	Never	\$50,548,264	\$94,490,738	\$7,525,000	\$17,209,306	\$38,619,348	\$71,958,307	\$12,325,739	\$1,579,211	\$1,579,211	\$17,209,306
3	65	\$25,000,000	\$1,000,000	\$9,000,000	Never	\$44,635,372	\$71,761,504	\$7,525,000	\$14,844,149	\$44,532,240	\$74,323,464	\$14,690,896	\$1,632,322	\$1,979,211	\$14,844,149
4	65	\$25,000,000	\$1,000,000	\$13,610,000	Never	\$21,824,969	(\$15,921,987)	\$7,525,000	\$5,719,988	\$67,342,643	\$83,447,625	\$23,815,057	\$1,749,821	\$1,979,211	\$5,719,988
5	65	\$18,000,000	\$1,000,000	\$13,610,000	Never	(\$2,519,845)	(\$85,463,658)	\$7,525,000	\$0	\$67,342,643	\$64,822,799	\$19,797,120	\$1,454,601	\$0	\$0
6	65	\$18,000,000	\$1,000,000	\$13,610,000	5	\$13,842,416	\$27,775,403	\$7,525,000	\$2,526,966	\$50,980,383	\$62,295,832	\$17,270,153	\$1,268,931	\$1,498,321	\$2,526,966

Gifts 1-4 are by a Single Client with \$1m DSUE and \$25m of assets

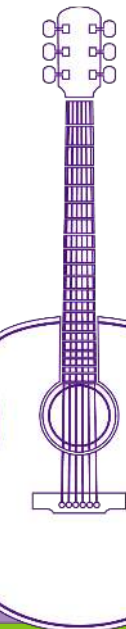
- Gift 1: \$1m gifted in year 1 = \$1,579,211 in Estate Tax Savings
- Gift 2: \$7.8m gift = \$12,325,739 in Estate Tax Savings
- Gift 3: \$9m gift = \$14,690,896 in Estate Tax Savings
- Gift 4: \$13.6m gift = \$23,815,057 in Estate Tax Savings, but client runs out of assets by age 100.

Gift 5: \$18m of assets, \$13.6m gift = client runs out of assets before life expectancy

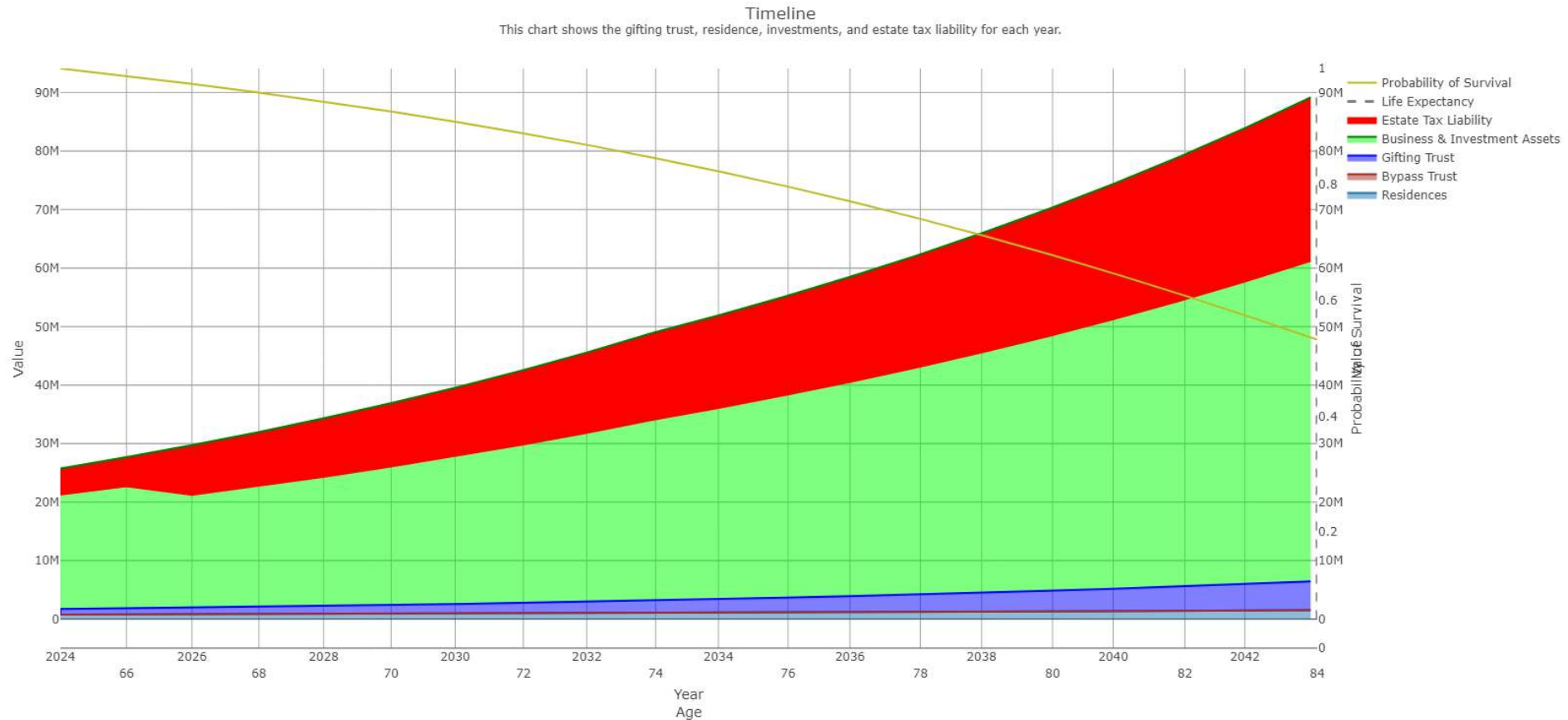
Gift 6: Grantor Trust status toggled off in year 5 = client retains assets through age 100!

Large Gift Example 1

Year #	Prob Survival Through Year	End of Year Investments Value	DSUE	Core Exemption	Temporary Exemption	Total Exemption	Estate Tax Liability	Income Tax (Burn) on Trust Income	Cumulative Burn and Lost Growth For Grantor	Estate Tax Savings From Burn	Estate Tax Savings	Savings Per Million Gifted
0	100.00%	\$25,000,000	\$1,000,000	\$6,805,000	\$6,805,000	\$14,610,000	\$4,456,000	\$0	\$0	\$0	\$0	\$0
0	100.00%	\$24,000,000	\$0	\$6,805,000	\$6,805,000	\$13,610,000	\$4,456,000	\$0	\$0	\$0	\$0	\$0
1	97.34%	\$25,807,200	\$0	\$7,070,000	\$7,070,000	\$14,140,000	\$4,978,130	(\$20,000)	(\$20,000)	\$8,000	\$35,120	\$35,120
2	95.85%	\$27,743,172	\$0	\$7,360,000	\$0	\$7,360,000	\$8,476,191	(\$21,756)	(\$43,512)	\$17,405	\$73,324	\$73,324
3	94.26%	\$29,816,813	\$0	\$7,650,000	\$0	\$7,650,000	\$9,201,757	(\$23,666)	(\$70,999)	\$28,399	\$114,881	\$114,881
4	92.56%	\$32,037,622	\$0	\$7,960,000	\$0	\$7,960,000	\$9,978,644	(\$25,744)	(\$102,976)	\$41,191	\$160,088	\$160,088
5	90.75%	\$34,415,740	\$0	\$8,270,000	\$0	\$8,270,000	\$10,818,926	(\$28,004)	(\$140,022)	\$56,009	\$209,264	\$209,264
6	88.81%	\$36,961,994	\$0	\$8,610,000	\$0	\$8,610,000	\$11,714,951	(\$30,463)	(\$182,779)	\$73,112	\$262,757	\$262,757
7	86.73%	\$39,687,944	\$0	\$8,950,000	\$0	\$8,950,000	\$12,683,362	(\$33,138)	(\$231,965)	\$92,786	\$320,947	\$320,947
8	84.51%	\$42,605,925	\$0	\$9,310,000	\$0	\$9,310,000	\$13,721,111	(\$36,047)	(\$288,379)	\$115,352	\$384,246	\$384,246
9	82.13%	\$45,729,108	\$0	\$9,680,000	\$0	\$9,680,000	\$14,837,487	(\$39,212)	(\$352,911)	\$141,164	\$453,103	\$453,103
10	79.60%	\$48,502,224	\$0	\$10,070,000	\$0	\$10,070,000	\$15,806,403	(\$42,655)	(\$426,552)	\$170,621	\$528,005	\$528,005
11	76.91%	\$51,448,226	\$0	\$10,470,000	\$0	\$10,470,000	\$16,841,060	(\$46,400)	(\$510,403)	\$204,161	\$609,484	\$609,484
12	74.05%	\$54,578,051	\$0	\$10,890,000	\$0	\$10,890,000	\$17,941,857	(\$50,474)	(\$605,691)	\$242,276	\$698,117	\$698,117
13	71.00%	\$57,903,330	\$0	\$11,330,000	\$0	\$11,330,000	\$19,113,467	(\$54,906)	(\$713,776)	\$285,510	\$794,532	\$794,532
14	67.77%	\$61,436,435	\$0	\$11,780,000	\$0	\$11,780,000	\$20,364,864	(\$59,727)	(\$836,172)	\$334,469	\$899,412	\$899,412
15	64.37%	\$65,190,519	\$0	\$12,250,000	\$0	\$12,250,000	\$21,697,334	(\$64,971)	(\$974,559)	\$389,823	\$1,013,500	\$1,013,500
16	60.80%	\$69,179,573	\$0	\$12,740,000	\$0	\$12,740,000	\$23,116,497	(\$70,675)	(\$1,130,800)	\$452,320	\$1,137,605	\$1,137,605
17	57.06%	\$73,418,471	\$0	\$13,250,000	\$0	\$13,250,000	\$24,628,332	(\$76,880)	(\$1,306,964)	\$522,786	\$1,272,607	\$1,272,607
18	53.20%	\$77,923,033	\$0	\$13,780,000	\$0	\$13,780,000	\$26,239,192	(\$83,630)	(\$1,505,346)	\$602,139	\$1,419,462	\$1,419,462
19	49.16%	\$82,710,078	\$0	\$14,330,000	\$0	\$14,330,000	\$27,955,834	(\$90,973)	(\$1,728,489)	\$691,396	\$1,579,211	\$1,579,211



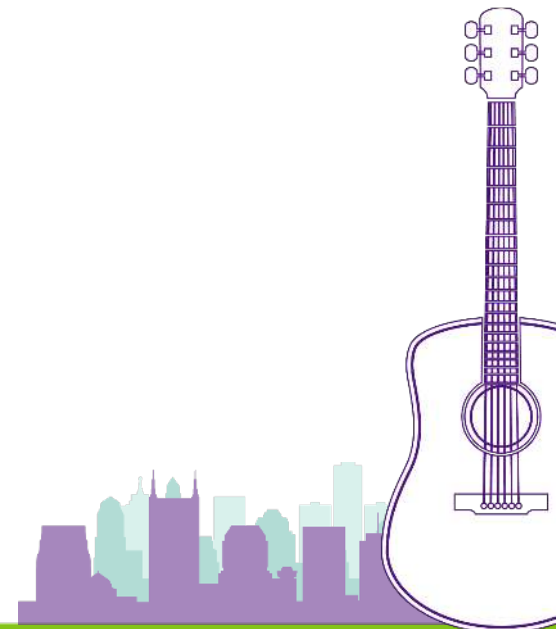
Large Gift Example 1



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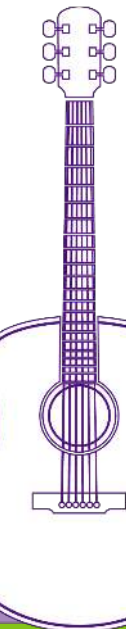
OCTOBER 30-NOVEMBER 2 | OMNI NASHVILLE HOTEL

CHART-TOPPING STRATEGIES: HITTING HIGH NOTES FOR YOUR CLIENTS

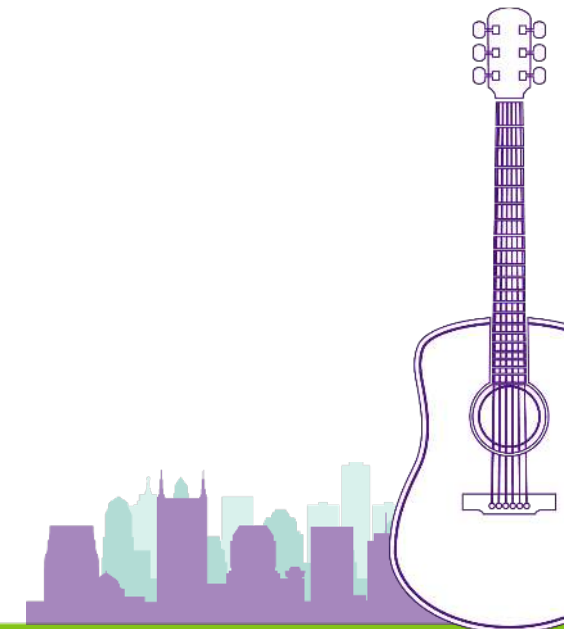
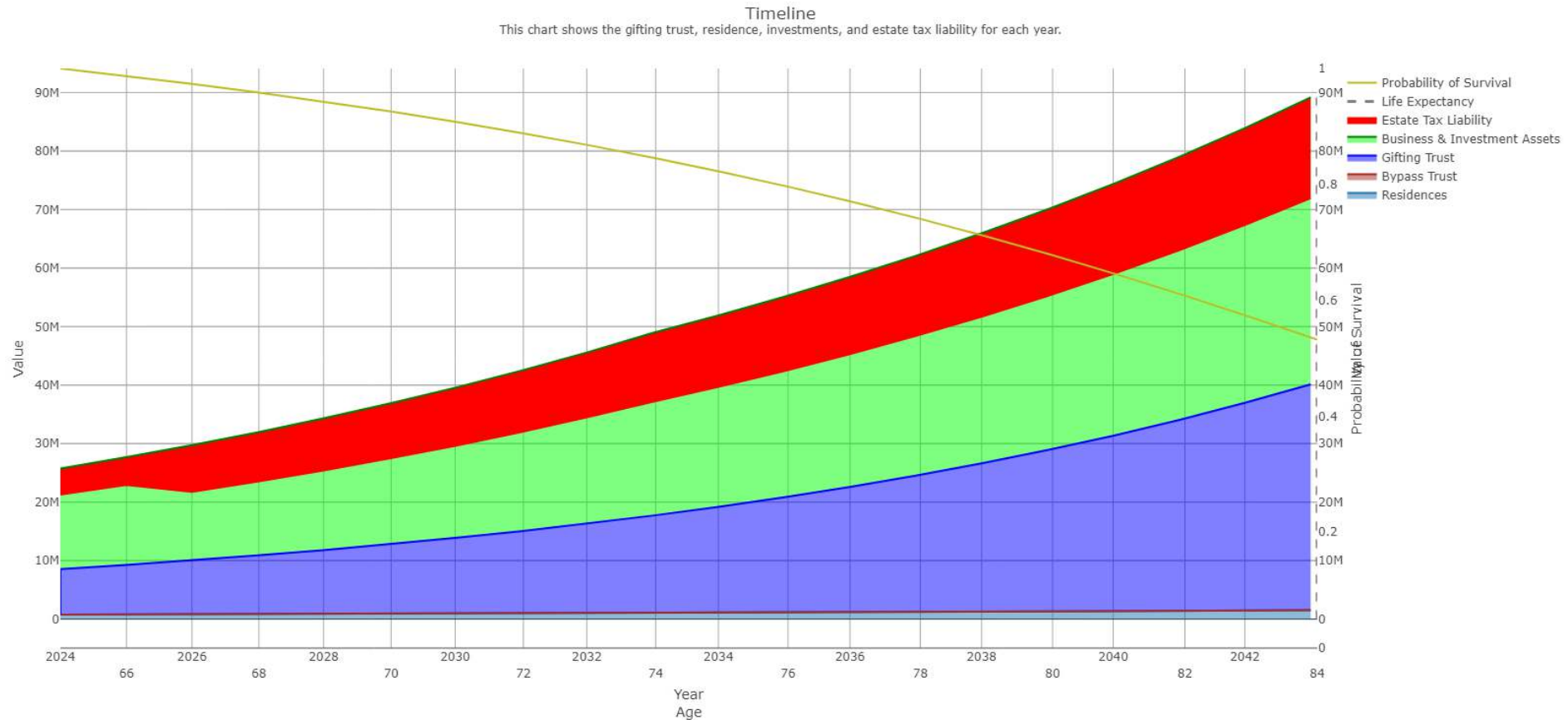


Large Gift Example 2

Year #	Prob Survival Through Year	End of Year Investments Value	DSUE	Core Exemption	Temporary Exemption	Total Exemption	Estate Tax Liability	Income Tax (Burn) on Trust Income	Cumulative Burn and Lost Growth For Grantor	Estate Tax Savings From Burn	Estate Tax Savings	Savings Per Million Gifted
0	100.00%	\$25,000,000	\$1,000,000	\$6,805,000	\$6,805,000	\$14,610,000	\$4,456,000	\$0	\$0	\$0	\$0	\$0
0	100.00%	\$17,195,000	\$0	\$0	\$6,805,000	\$6,805,000	\$4,456,000	\$0	\$0	\$0	\$0	\$0
1	97.34%	\$18,404,721	\$0	\$265,000	\$7,070,000	\$7,335,000	\$4,739,138	(\$156,100)	(\$156,100)	\$62,440	\$274,112	\$35,120
2	95.85%	\$19,690,756	\$0	\$555,000	\$0	\$555,000	\$7,977,224	(\$169,806)	(\$339,611)	\$135,844	\$572,290	\$73,324
3	94.26%	\$21,057,394	\$0	\$845,000	\$0	\$845,000	\$8,419,989	(\$184,715)	(\$554,144)	\$221,657	\$896,649	\$114,881
4	92.56%	\$22,509,126	\$0	\$1,155,000	\$0	\$1,155,000	\$8,889,245	(\$200,932)	(\$803,730)	\$321,492	\$1,249,486	\$160,088
5	90.75%	\$24,050,642	\$0	\$1,465,000	\$0	\$1,465,000	\$9,394,887	(\$218,574)	(\$1,092,872)	\$437,149	\$1,633,303	\$209,264
6	88.81%	\$25,686,841	\$0	\$1,805,000	\$0	\$1,805,000	\$9,926,890	(\$237,765)	(\$1,426,591)	\$570,636	\$2,050,818	\$262,757
7	86.73%	\$27,422,832	\$0	\$2,145,000	\$0	\$2,145,000	\$10,499,317	(\$258,641)	(\$1,810,486)	\$724,195	\$2,504,992	\$320,947
8	84.51%	\$29,263,936	\$0	\$2,505,000	\$0	\$2,505,000	\$11,106,316	(\$281,350)	(\$2,250,797)	\$900,319	\$2,999,042	\$384,246
9	82.13%	\$31,215,693	\$0	\$2,875,000	\$0	\$2,875,000	\$11,754,121	(\$306,052)	(\$2,754,469)	\$1,101,787	\$3,536,469	\$453,103
10	79.60%	\$32,714,531	\$0	\$3,265,000	\$0	\$3,265,000	\$12,213,326	(\$332,923)	(\$3,329,235)	\$1,331,694	\$4,121,083	\$528,005
11	76.91%	\$34,274,373	\$0	\$3,665,000	\$0	\$3,665,000	\$12,693,519	(\$362,154)	(\$3,983,695)	\$1,593,478	\$4,757,025	\$609,484
12	74.05%	\$35,896,334	\$0	\$4,085,000	\$0	\$4,085,000	\$13,191,170	(\$393,951)	(\$4,727,415)	\$1,890,966	\$5,448,804	\$698,117
13	71.00%	\$37,581,359	\$0	\$4,525,000	\$0	\$4,525,000	\$13,706,679	(\$428,540)	(\$5,571,022)	\$2,228,409	\$6,201,320	\$794,532
14	67.77%	\$39,330,194	\$0	\$4,975,000	\$0	\$4,975,000	\$14,244,368	(\$466,166)	(\$6,526,324)	\$2,610,530	\$7,019,908	\$899,412
15	64.37%	\$41,143,351	\$0	\$5,445,000	\$0	\$5,445,000	\$14,800,466	(\$507,095)	(\$7,606,431)	\$3,042,572	\$7,910,367	\$1,013,500
16	60.80%	\$43,021,063	\$0	\$5,935,000	\$0	\$5,935,000	\$15,375,093	(\$551,618)	(\$8,825,894)	\$3,530,358	\$8,879,009	\$1,137,605
17	57.06%	\$44,963,244	\$0	\$6,445,000	\$0	\$6,445,000	\$15,968,241	(\$600,050)	(\$10,200,858)	\$4,080,343	\$9,932,698	\$1,272,607
18	53.20%	\$46,969,437	\$0	\$6,975,000	\$0	\$6,975,000	\$16,579,754	(\$652,735)	(\$11,749,228)	\$4,699,691	\$11,078,900	\$1,419,462
19	49.16%	\$49,038,757	\$0	\$7,525,000	\$0	\$7,525,000	\$17,209,306	(\$710,045)	(\$13,490,855)	\$5,396,342	\$12,325,739	\$1,579,211

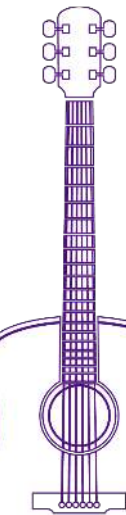


Large Gift Example 2

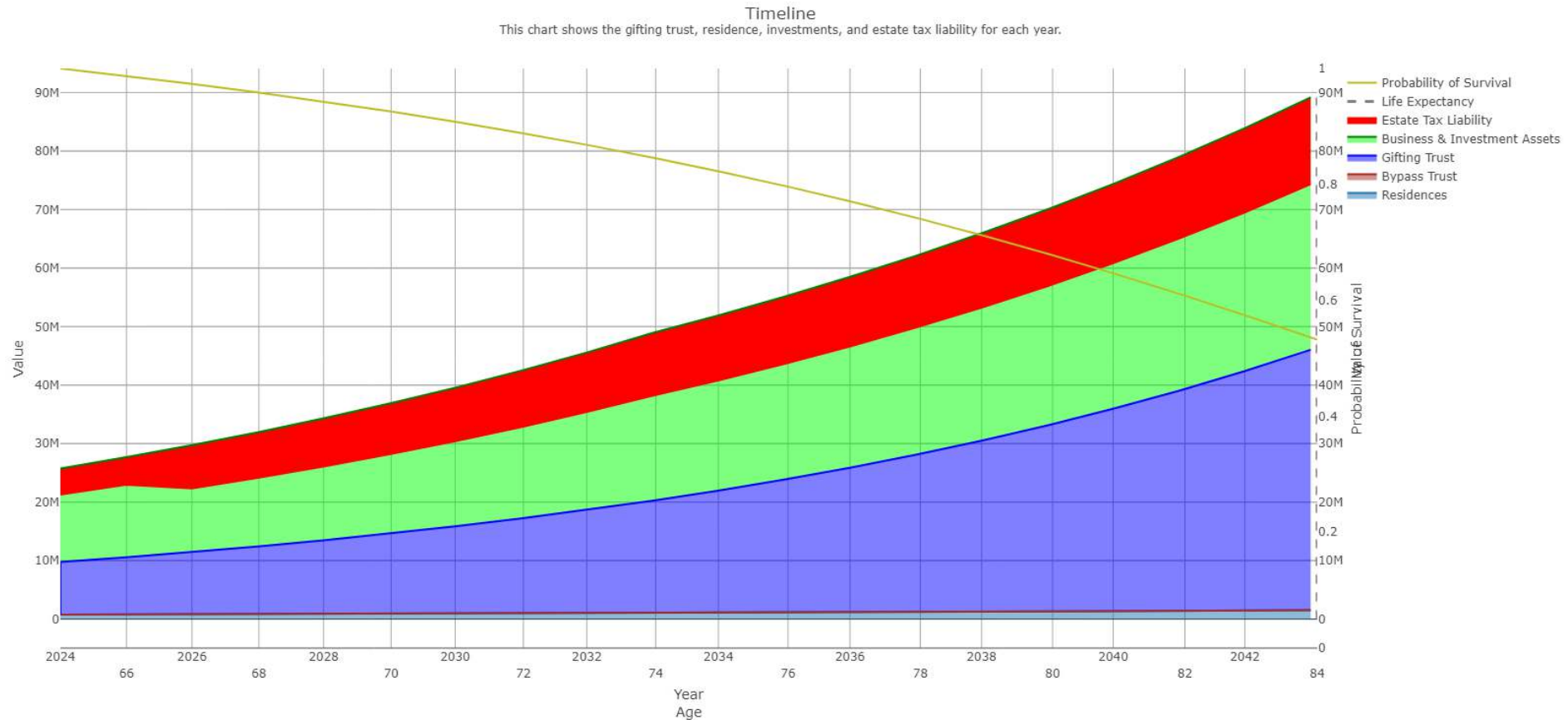


Large Gift Example 3

Year #	Prob Survival Through Year	End of Year Investments Value	DSUE	Core Exemption	Temporary Exemption	Total Exemption	Estate Tax Liability	Income Tax (Burn) on Trust Income	Cumulative Burn and Lost Growth For Grantor	Estate Tax Savings From Burn	Estate Tax Savings	Savings Per Million Gifted
0	100.00%	\$25,000,000	\$1,000,000	\$6,805,000	\$6,805,000	\$14,610,000	\$4,456,000	\$0	\$0	\$0	\$0	\$0
0	100.00%	\$16,000,000	\$0	\$0	\$5,610,000	\$5,610,000	\$4,456,000	\$0	\$0	\$0	\$0	\$0
1	97.34%	\$17,104,800	\$0	\$265,000	\$5,875,000	\$6,140,000	\$4,697,170	(\$180,000)	(\$180,000)	\$72,000	\$316,080	\$35,120
2	95.85%	\$18,276,701	\$0	\$555,000	\$0	\$555,000	\$7,411,602	(\$195,804)	(\$391,608)	\$156,643	\$1,137,912	\$126,435
3	94.26%	\$19,519,186	\$0	\$845,000	\$0	\$845,000	\$7,804,706	(\$212,996)	(\$638,987)	\$255,595	\$1,511,932	\$167,992
4	92.56%	\$20,835,863	\$0	\$1,155,000	\$0	\$1,155,000	\$8,219,940	(\$231,697)	(\$926,786)	\$370,715	\$1,918,791	\$213,199
5	90.75%	\$22,230,467	\$0	\$1,465,000	\$0	\$1,465,000	\$8,666,817	(\$252,040)	(\$1,260,198)	\$504,079	\$2,361,373	\$262,375
6	88.81%	\$23,706,854	\$0	\$1,805,000	\$0	\$1,805,000	\$9,134,895	(\$274,169)	(\$1,645,012)	\$658,005	\$2,842,813	\$315,868
7	86.73%	\$25,269,002	\$0	\$2,145,000	\$0	\$2,145,000	\$9,637,785	(\$298,241)	(\$2,087,685)	\$835,074	\$3,366,524	\$374,058
8	84.51%	\$26,921,001	\$0	\$2,505,000	\$0	\$2,505,000	\$10,169,142	(\$324,426)	(\$2,595,409)	\$1,038,164	\$3,936,216	\$437,357
9	82.13%	\$28,667,048	\$0	\$2,875,000	\$0	\$2,875,000	\$10,734,663	(\$352,911)	(\$3,176,197)	\$1,270,479	\$4,555,927	\$506,214
10	79.60%	\$29,942,115	\$0	\$3,265,000	\$0	\$3,265,000	\$11,104,359	(\$383,896)	(\$3,838,964)	\$1,535,585	\$5,230,049	\$581,117
11	76.91%	\$31,258,539	\$0	\$3,665,000	\$0	\$3,665,000	\$11,487,186	(\$417,602)	(\$4,593,627)	\$1,837,451	\$5,963,359	\$662,595
12	74.05%	\$32,615,709	\$0	\$4,085,000	\$0	\$4,085,000	\$11,878,920	(\$454,268)	(\$5,451,215)	\$2,180,486	\$6,761,054	\$751,228
13	71.00%	\$34,012,695	\$0	\$4,525,000	\$0	\$4,525,000	\$12,279,213	(\$494,153)	(\$6,423,985)	\$2,569,594	\$7,628,786	\$847,643
14	67.77%	\$35,448,202	\$0	\$4,975,000	\$0	\$4,975,000	\$12,691,571	(\$537,539)	(\$7,525,550)	\$3,010,220	\$8,572,705	\$952,523
15	64.37%	\$36,920,519	\$0	\$5,445,000	\$0	\$5,445,000	\$13,111,334	(\$584,735)	(\$8,771,029)	\$3,508,411	\$9,599,500	\$1,066,611
16	60.80%	\$38,427,467	\$0	\$5,935,000	\$0	\$5,935,000	\$13,537,655	(\$636,075)	(\$10,177,200)	\$4,070,880	\$10,716,448	\$1,190,716
17	57.06%	\$39,966,331	\$0	\$6,445,000	\$0	\$6,445,000	\$13,969,476	(\$691,922)	(\$11,762,680)	\$4,705,072	\$11,931,463	\$1,325,718
18	53.20%	\$41,533,795	\$0	\$6,975,000	\$0	\$6,975,000	\$14,405,497	(\$752,673)	(\$13,548,117)	\$5,419,247	\$13,253,157	\$1,472,573
19	49.16%	\$43,125,865	\$0	\$7,525,000	\$0	\$7,525,000	\$14,844,149	(\$818,758)	(\$15,556,399)	\$6,222,560	\$14,690,896	\$1,632,322



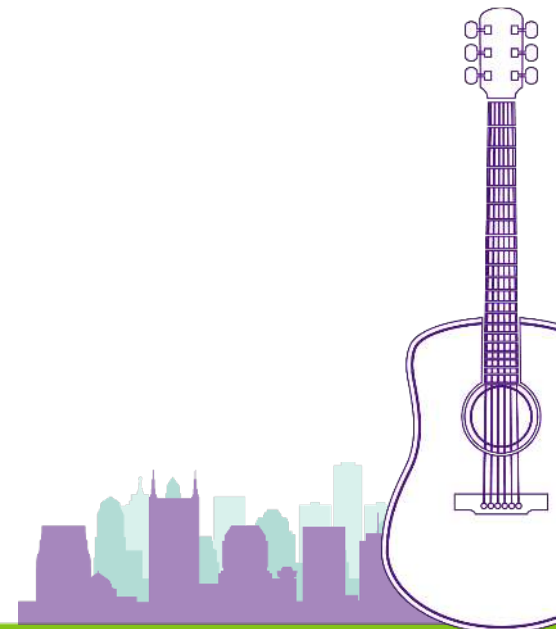
Large Gift Example 3



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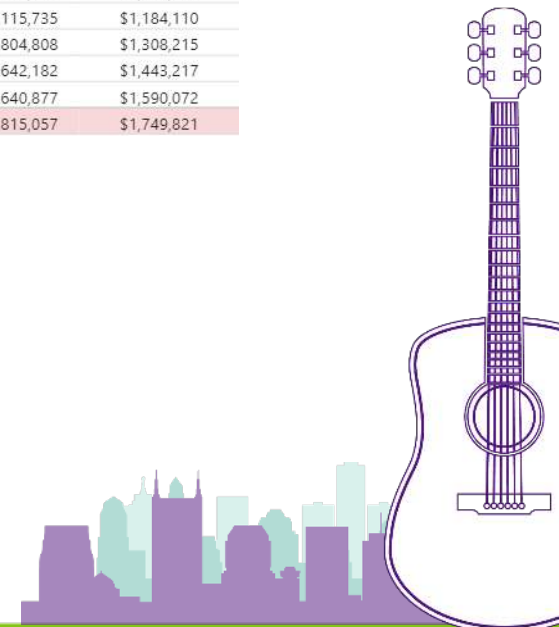
OCTOBER 30-NOVEMBER 2 | OMNI NASHVILLE HOTEL

CHART-TOPPING STRATEGIES: HITTING HIGH NOTES FOR YOUR CLIENTS

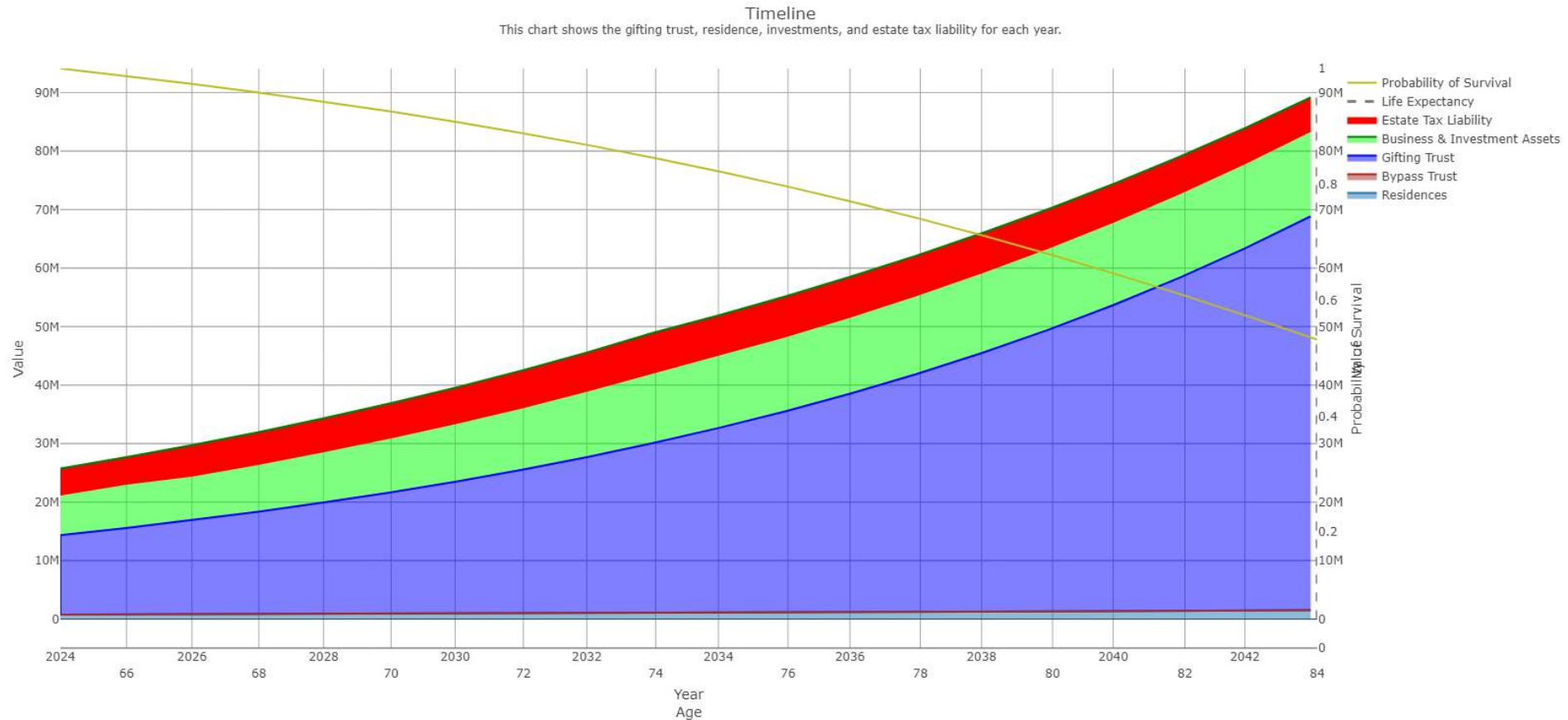


Large Gift Example 4

Year #	Prob Survival Through Year	End of Year Investments Value	DSUE	Core Exemption	Temporary Exemption	Total Exemption	Estate Tax Liability	Income Tax (Burn) on Trust Income	Cumulative Burn and Lost Growth For Grantor	Estate Tax Savings From Burn	Estate Tax Savings	Savings Per Million Gifted
0	100.00%	\$25,000,000	\$1,000,000	\$6,805,000	\$6,805,000	\$14,610,000	\$4,456,000	\$0	\$0	\$0	\$0	\$0
0	100.00%	\$11,390,000	\$0	\$0	\$1,000,000	\$1,000,000	\$4,456,000	\$0	\$0	\$0	\$0	\$0
1	97.34%	\$12,090,042	\$0	\$265,000	\$1,265,000	\$1,530,000	\$4,535,267	(\$272,200)	(\$272,200)	\$108,880	\$477,983	\$35,120
2	95.85%	\$12,821,648	\$0	\$555,000	\$0	\$555,000	\$5,229,581	(\$296,099)	(\$592,198)	\$236,879	\$3,319,933	\$243,933
3	94.26%	\$13,585,179	\$0	\$845,000	\$0	\$845,000	\$5,431,103	(\$322,097)	(\$966,290)	\$386,516	\$3,885,535	\$285,491
4	92.56%	\$14,380,850	\$0	\$1,155,000	\$0	\$1,155,000	\$5,637,935	(\$350,377)	(\$1,401,507)	\$560,603	\$4,500,797	\$330,698
5	90.75%	\$15,208,703	\$0	\$1,465,000	\$0	\$1,465,000	\$5,858,111	(\$381,140)	(\$1,905,699)	\$762,280	\$5,170,078	\$379,873
6	88.81%	\$16,068,580	\$0	\$1,805,000	\$0	\$1,805,000	\$6,079,586	(\$414,604)	(\$2,487,623)	\$995,049	\$5,898,123	\$433,367
7	86.73%	\$16,960,088	\$0	\$2,145,000	\$0	\$2,145,000	\$6,314,219	(\$451,006)	(\$3,157,043)	\$1,262,817	\$6,690,089	\$491,557
8	84.51%	\$17,882,563	\$0	\$2,505,000	\$0	\$2,505,000	\$6,553,767	(\$490,604)	(\$3,924,836)	\$1,569,934	\$7,551,591	\$554,856
9	82.13%	\$18,835,035	\$0	\$2,875,000	\$0	\$2,875,000	\$6,801,858	(\$533,680)	(\$4,803,116)	\$1,921,246	\$8,488,732	\$623,713
10	79.60%	\$19,246,852	\$0	\$3,265,000	\$0	\$3,265,000	\$6,826,254	(\$580,537)	(\$5,805,366)	\$2,322,146	\$9,508,154	\$698,615
11	76.91%	\$19,624,232	\$0	\$3,665,000	\$0	\$3,665,000	\$6,833,463	(\$631,508)	(\$6,946,585)	\$2,778,634	\$10,617,082	\$780,094
12	74.05%	\$19,959,910	\$0	\$4,085,000	\$0	\$4,085,000	\$6,816,600	(\$686,954)	(\$8,243,449)	\$3,297,380	\$11,823,373	\$868,727
13	71.00%	\$20,245,717	\$0	\$4,525,000	\$0	\$4,525,000	\$6,772,422	(\$747,269)	(\$9,714,493)	\$3,885,797	\$13,135,577	\$965,142
14	67.77%	\$20,472,483	\$0	\$4,975,000	\$0	\$4,975,000	\$6,701,283	(\$812,879)	(\$11,380,304)	\$4,552,122	\$14,562,992	\$1,070,021
15	64.37%	\$20,629,932	\$0	\$5,445,000	\$0	\$5,445,000	\$6,595,099	(\$884,250)	(\$13,263,744)	\$5,305,498	\$16,115,735	\$1,184,110
16	60.80%	\$20,706,566	\$0	\$5,935,000	\$0	\$5,935,000	\$6,449,295	(\$961,887)	(\$15,390,188)	\$6,156,075	\$17,804,808	\$1,308,215
17	57.06%	\$20,689,535	\$0	\$6,445,000	\$0	\$6,445,000	\$6,258,757	(\$1,046,340)	(\$17,787,787)	\$7,115,115	\$19,642,182	\$1,443,217
18	53.20%	\$20,564,496	\$0	\$6,975,000	\$0	\$6,975,000	\$6,017,777	(\$1,138,209)	(\$20,487,763)	\$8,195,105	\$21,640,877	\$1,590,072
19	49.16%	\$20,315,462	\$0	\$7,525,000	\$0	\$7,525,000	\$5,719,988	(\$1,238,144)	(\$23,524,733)	\$9,409,893	\$23,815,057	\$1,749,821



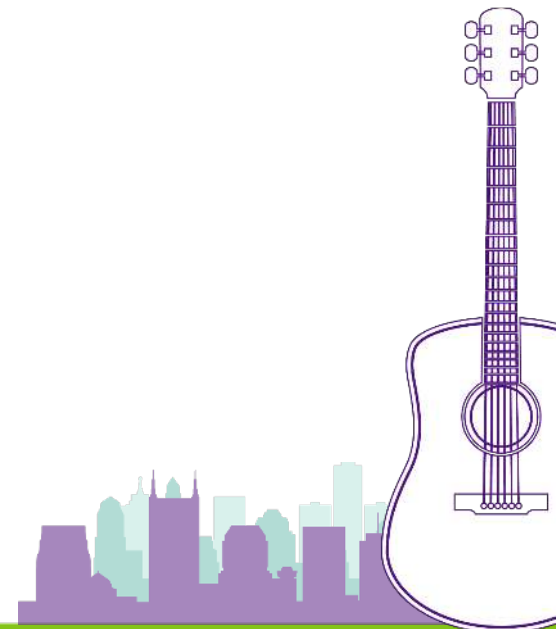
Large Gift Example 4



NAPFA FALL
2024 NATIONAL CONFERENCE
Nashville

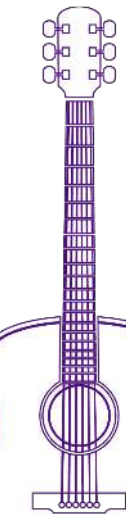
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CHART-TOPPING STRATEGIES: HITTING HIGH NOTES FOR YOUR CLIENTS

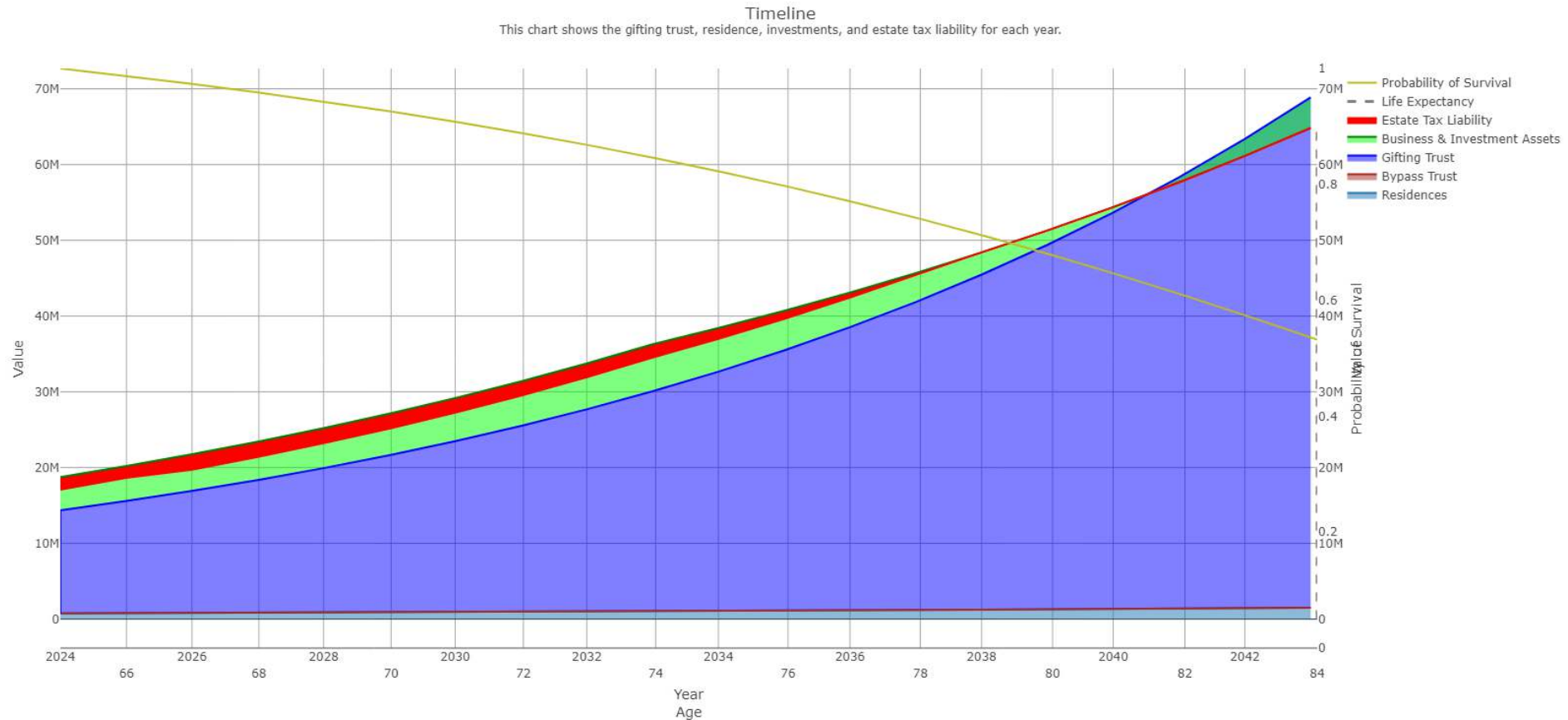


Large Gift Example 5

Year #	Prob Survival Through Year	End of Year Investments Value	DSUE	Core Exemption	Temporary Exemption	Total Exemption	Estate Tax Liability	Income Tax (Burn) on Trust Income	Cumulative Burn and Lost Growth For Grantor	Estate Tax Savings From Burn	Estate Tax Savings	Savings Per Million Gifted
0	100.00%	\$18,000,000	\$1,000,000	\$6,805,000	\$6,805,000	\$14,610,000	\$1,656,000	\$0	\$0	\$0	\$0	\$0
0	100.00%	\$4,390,000	\$0	\$0	\$1,000,000	\$1,000,000	\$1,656,000	\$0	\$0	\$0	\$0	\$0
1	97.34%	\$4,615,442	\$0	\$265,000	\$1,265,000	\$1,530,000	\$1,545,427	(\$272,200)	(\$272,200)	\$108,880	\$477,983	\$35,120
2	95.85%	\$4,840,270	\$0	\$555,000	\$0	\$555,000	\$2,037,030	(\$296,099)	(\$592,198)	\$236,879	\$3,319,933	\$243,933
3	94.26%	\$5,062,663	\$0	\$845,000	\$0	\$845,000	\$2,022,097	(\$322,097)	(\$966,290)	\$386,516	\$3,885,535	\$285,491
4	92.56%	\$5,280,508	\$0	\$1,155,000	\$0	\$1,155,000	\$1,997,798	(\$350,377)	(\$1,401,507)	\$560,603	\$4,500,797	\$330,698
5	90.75%	\$5,491,358	\$0	\$1,465,000	\$0	\$1,465,000	\$1,971,173	(\$381,140)	(\$1,905,699)	\$762,280	\$5,170,078	\$379,873
6	88.81%	\$5,692,399	\$0	\$1,805,000	\$0	\$1,805,000	\$1,929,113	(\$414,604)	(\$2,487,623)	\$995,049	\$5,898,123	\$433,367
7	86.73%	\$5,880,401	\$0	\$2,145,000	\$0	\$2,145,000	\$1,882,345	(\$451,006)	(\$3,157,043)	\$1,262,817	\$6,690,089	\$491,557
8	84.51%	\$6,051,675	\$0	\$2,505,000	\$0	\$2,505,000	\$1,821,411	(\$490,604)	(\$3,924,836)	\$1,569,934	\$7,551,591	\$554,856
9	82.13%	\$6,202,012	\$0	\$2,875,000	\$0	\$2,875,000	\$1,748,649	(\$533,680)	(\$4,803,116)	\$1,921,246	\$8,488,732	\$623,713
10	79.60%	\$5,757,310	\$0	\$3,265,000	\$0	\$3,265,000	\$1,430,437	(\$580,537)	(\$5,805,366)	\$2,322,146	\$9,508,154	\$698,615
11	76.91%	\$5,220,099	\$0	\$3,665,000	\$0	\$3,665,000	\$1,071,809	(\$631,508)	(\$6,946,585)	\$2,778,634	\$10,617,082	\$780,094
12	74.05%	\$4,579,177	\$0	\$4,085,000	\$0	\$4,085,000	\$664,307	(\$686,954)	(\$8,243,449)	\$3,297,380	\$11,823,373	\$868,727
13	71.00%	\$3,822,170	\$0	\$4,525,000	\$0	\$4,525,000	\$203,003	(\$747,269)	(\$9,714,493)	\$3,885,797	\$13,135,577	\$965,142
14	67.77%	\$2,935,419	\$0	\$4,975,000	\$0	\$4,975,000	\$0	(\$812,879)	(\$11,380,304)	\$4,552,122	\$14,249,450	\$1,046,984
15	64.37%	\$1,903,856	\$0	\$5,445,000	\$0	\$5,445,000	\$0	(\$884,250)	(\$13,263,744)	\$5,305,498	\$15,220,403	\$1,118,325
16	60.80%	\$710,862	\$0	\$5,935,000	\$0	\$5,935,000	\$0	(\$961,887)	(\$15,390,188)	\$6,156,075	\$16,255,821	\$1,194,403
17	57.06%	(\$661,878)	\$0	\$6,445,000	\$0	\$6,445,000	\$0	(\$1,046,340)	(\$17,787,787)	\$7,115,115	\$17,360,374	\$1,275,560
18	53.20%	(\$1,234,543)	\$0	\$6,975,000	\$0	\$6,975,000	\$0	(\$1,138,209)	(\$20,487,763)	\$8,195,105	\$18,539,038	\$1,362,163
19	49.16%	(\$4,029,352)	\$0	\$7,525,000	\$0	\$7,525,000	\$0	(\$1,238,144)	(\$23,524,733)	\$9,409,893	\$19,797,120	\$1,454,601



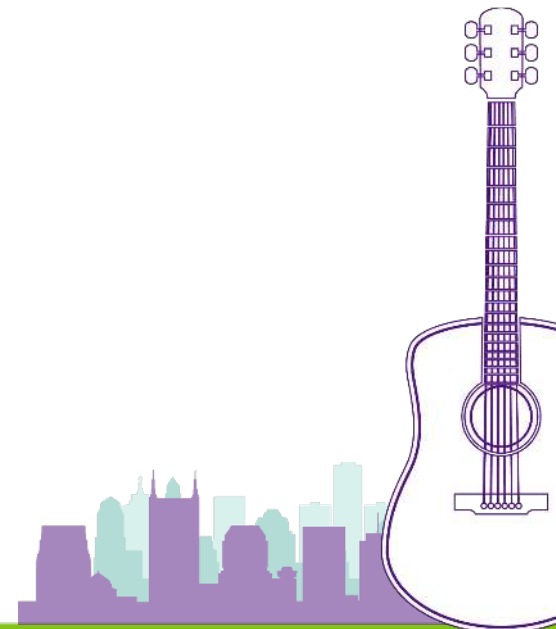
Large Gift Example 5



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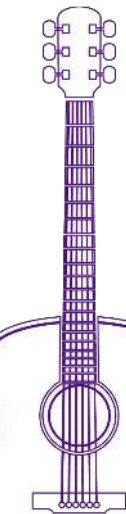
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CHART-TOPPING STRATEGIES: HITTING HIGH NOTES FOR YOUR CLIENTS

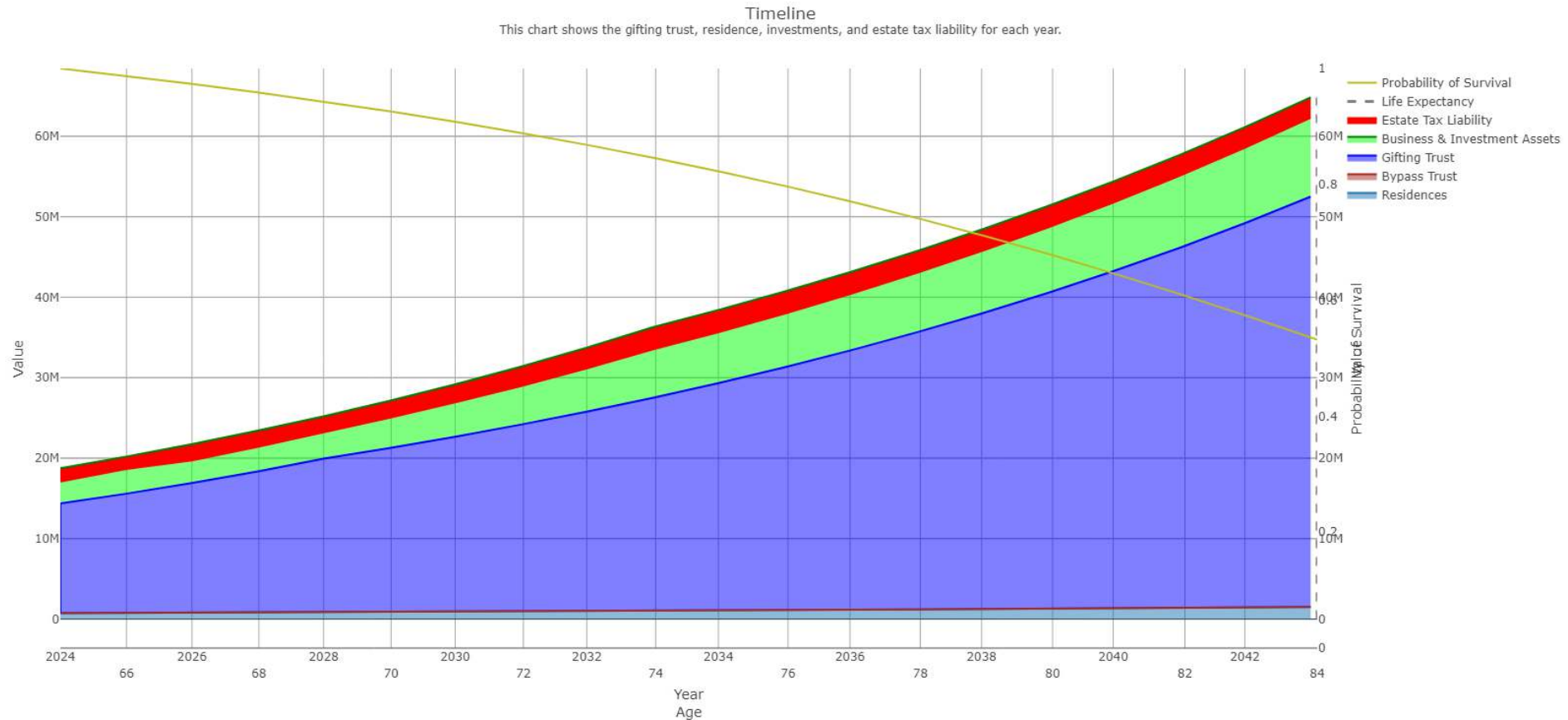


Large Gift Example 6

Year #	Prob Survival Through Year	End of Year Investments Value	DSUE	Core Exemption	Temporary Exemption	Total Exemption	Estate Tax Liability	Income Tax (Burn) on Trust Income	Cumulative Burn and Lost Growth For Grantor	Estate Tax Savings From Burn	Estate Tax Savings	Savings Per Million Gifted
0	100.00%	\$18,000,000	\$1,000,000	\$6,805,000	\$6,805,000	\$14,610,000	\$1,656,000	\$0	\$0	\$0	\$0	\$0
0	100.00%	\$4,390,000	\$0	\$0	\$1,000,000	\$1,000,000	\$1,656,000	\$0	\$0	\$0	\$0	\$0
1	97.34%	\$4,615,442	\$0	\$265,000	\$1,265,000	\$1,530,000	\$1,545,427	(\$272,200)	(\$272,200)	\$108,880	\$477,983	\$35,120
2	95.85%	\$4,840,270	\$0	\$555,000	\$0	\$555,000	\$2,037,030	(\$296,099)	(\$592,198)	\$236,879	\$3,319,933	\$243,933
3	94.26%	\$5,062,663	\$0	\$845,000	\$0	\$845,000	\$2,022,097	(\$322,097)	(\$966,290)	\$386,516	\$3,885,535	\$285,491
4	92.56%	\$5,280,508	\$0	\$1,155,000	\$0	\$1,155,000	\$1,997,798	(\$350,377)	(\$1,401,507)	\$560,603	\$4,500,797	\$330,698
5	90.75%	\$5,872,498	\$0	\$1,465,000	\$0	\$1,465,000	\$2,123,629	\$0	(\$1,524,559)	\$609,824	\$5,017,622	\$368,672
6	88.81%	\$6,513,984	\$0	\$1,805,000	\$0	\$1,805,000	\$2,257,747	\$0	(\$1,658,416)	\$663,366	\$5,569,489	\$409,220
7	86.73%	\$7,208,696	\$0	\$2,145,000	\$0	\$2,145,000	\$2,413,663	\$0	(\$1,804,025)	\$721,610	\$6,158,772	\$452,518
8	84.51%	\$7,960,632	\$0	\$2,505,000	\$0	\$2,505,000	\$2,584,994	\$0	(\$1,962,418)	\$784,967	\$6,788,008	\$498,751
9	82.13%	\$8,774,077	\$0	\$2,875,000	\$0	\$2,875,000	\$2,777,475	\$0	(\$2,134,718)	\$853,887	\$7,459,906	\$548,120
10	79.60%	\$9,084,297	\$0	\$3,265,000	\$0	\$3,265,000	\$2,761,232	\$0	(\$2,322,146)	\$928,859	\$8,177,360	\$600,835
11	76.91%	\$9,404,163	\$0	\$3,665,000	\$0	\$3,665,000	\$2,745,435	\$0	(\$2,526,031)	\$1,010,412	\$8,943,456	\$657,124
12	74.05%	\$9,733,875	\$0	\$4,085,000	\$0	\$4,085,000	\$2,726,186	\$0	(\$2,747,816)	\$1,099,127	\$9,761,494	\$717,230
13	71.00%	\$10,073,625	\$0	\$4,525,000	\$0	\$4,525,000	\$2,703,585	\$0	(\$2,989,075)	\$1,195,630	\$10,634,995	\$781,410
14	67.77%	\$10,423,602	\$0	\$4,975,000	\$0	\$4,975,000	\$2,681,731	\$0	(\$3,251,515)	\$1,300,606	\$11,567,719	\$849,943
15	64.37%	\$10,783,987	\$0	\$5,445,000	\$0	\$5,445,000	\$2,656,721	\$0	(\$3,536,998)	\$1,414,799	\$12,563,682	\$923,121
16	60.80%	\$11,154,953	\$0	\$5,935,000	\$0	\$5,935,000	\$2,628,649	\$0	(\$3,847,547)	\$1,539,019	\$13,627,172	\$1,001,262
17	57.06%	\$11,536,662	\$0	\$6,445,000	\$0	\$6,445,000	\$2,597,608	\$0	(\$4,185,362)	\$1,674,145	\$14,762,765	\$1,084,700
18	53.20%	\$11,929,268	\$0	\$6,975,000	\$0	\$6,975,000	\$2,563,686	\$0	(\$4,552,836)	\$1,821,135	\$15,975,353	\$1,173,795
19	49.16%	\$12,332,909	\$0	\$7,525,000	\$0	\$7,525,000	\$2,526,966	\$0	(\$4,952,575)	\$1,981,030	\$17,270,153	\$1,268,931



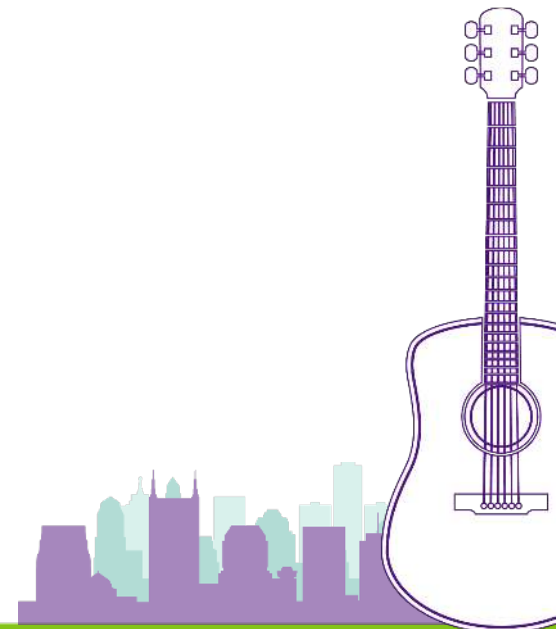
Large Gift Example 6



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CHART-TOPPING STRATEGIES: HITTING HIGH NOTES FOR YOUR CLIENTS

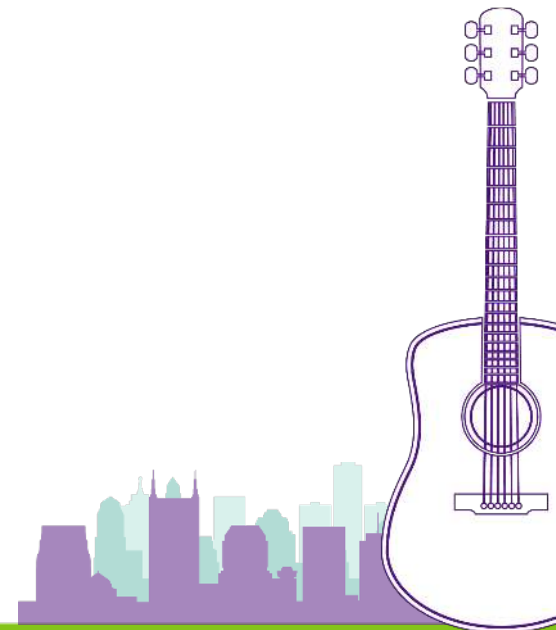


A LIFETIME Q-TIP TRUST TO THE RESCUE

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CHART-TOPPING STRATEGIES: HITTING HIGH NOTES FOR YOUR CLIENTS



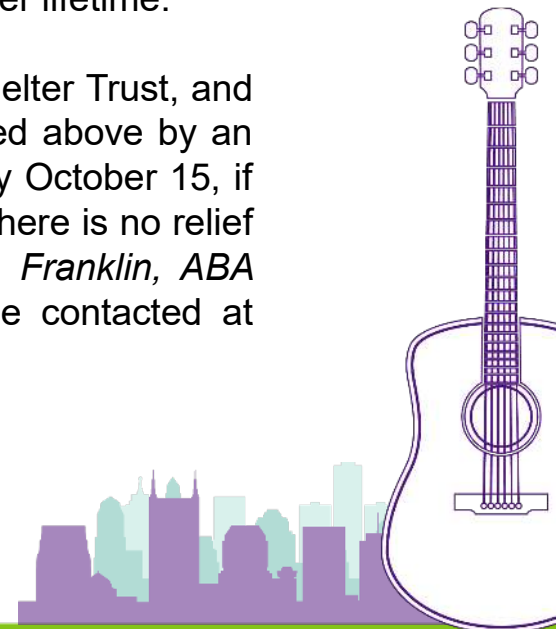
A Lifetime Q-TIP Trust to the Rescue

An alternative strategy that married taxpayers may use to have the client the ability to pull the plug on a large 2024 gift as late as September of 2025, would be to transfer the low interest long-term note in late December of 2024 to a “Lifetime Q-TIP Trust” that will qualify for the estate tax deduction to the extent necessary to avoid imposition of gift tax on the donor spouse.

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

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

The Grantor of the Q-TIP Trust can elect what portion of the trust will be treated as the Credit Shelter Trust, and what portion of the trust will be considered to be the Marital Deduction Trust, in the manner described above by an election that must be filed by April 15 of the calendar year following the contribution to the Trust, or by October 15, if the Grantor spouse files a timely extension. It is essential that the election be made on time, because there is no relief available if not. See *Creative Trust Planning Strategies for Using Lifetime Q-Tips*, by Richard S. Franklin, ABA Section of Real Property Trusts and Estates Law Webinar April 7, 2018. Richard Franklin can be contacted at rfranklin@fkl-law.com.



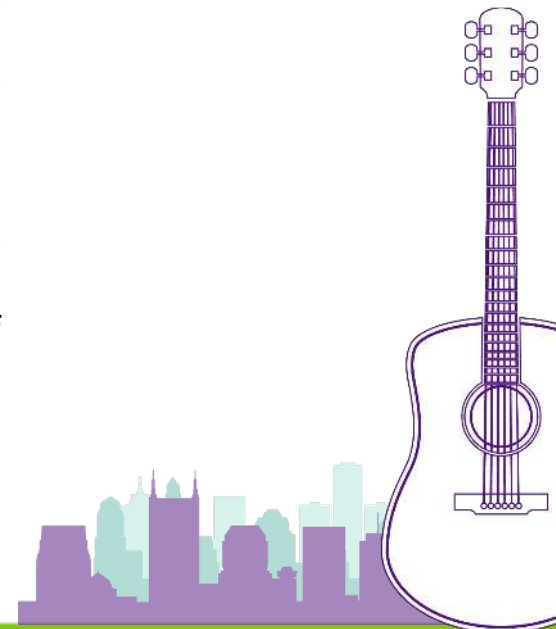
A Lifetime Q-TIP Trust to the Rescue, *Cont'd*

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

Harold has \$10,000,000 of his \$13,610,000 estate tax exclusion remaining in December, 2024. He also has a \$15,000,000 low interest rate promissory note that pays interest annually and will balloon in 20 years. The note may be worth \$12,000,000.

Harold places the promissory note into a lifetime Q-TIP Trust for his wife, Dorothy in 2024. Harold then waits to see whether the estate tax exemption is reduced by legislation. On or before the due date in 2025 Harold may file an election to treat the entire Q-TIP Trust as a Marital Deduction Gift, and thus retain his exclusion amount, as if no gift was made. In that event, the trustee of the Q-TIP Trust may distribute the note to Dorothy, so that no large gift has essentially been made.

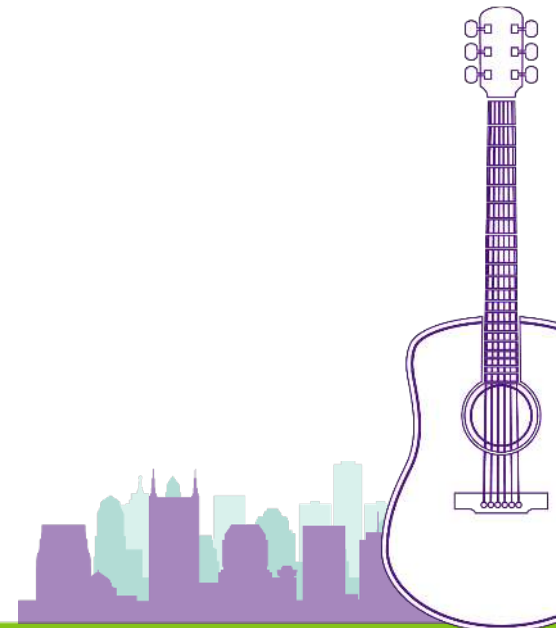
Alternatively, if the estate tax exclusion is reduced, then Harold can make the gift to the Q-TIP Trust effective in 2024 as a “retroactive” gift of his remaining exemption amount by making a Formula Election which says “have an amount of assets in Credit Shelter portion of the Q-TIP Trust equal in value to my remaining exclusion amount divided by the total value of trust assets, with the remaining trust assets to be held as a Marital Deduction Trust.”



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

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

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



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

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

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

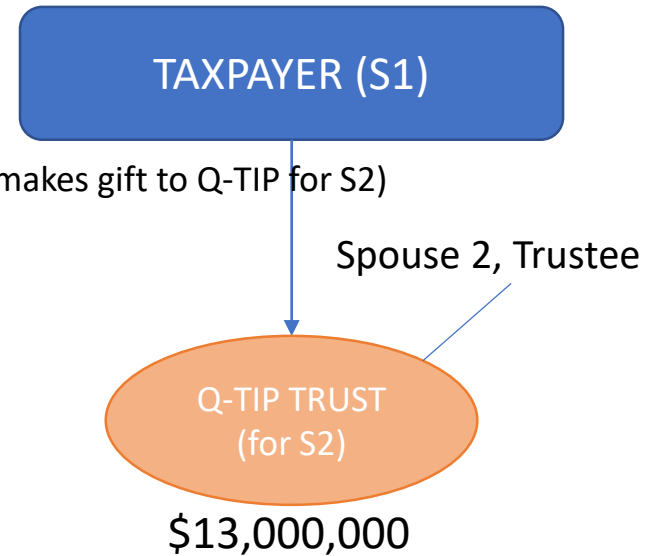
Bottom line – the Bypass trust part of the Clayton Lifetime Q-TIP must pay all income to surviving spouse but may be invested in growth stocks.



WAIT AND SEE Q-TIP TRUST

2025

Flexible Planning with A Q-Tip Trust



In 2024, S1 conveys assets (could be \$13,000,000 worth) to Q-TIP Trust for S2.

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

WAIT AND SEE Q-TIP TRUST

2026

Flexible Planning with A Q-Tip Trust

TAXPAYER (S1)

(S1 makes gift to Q-TIP for S2)

Spouse 2, Trustee

Q-TIP TRUST
(for S2)

\$13,000,000

In 2024, S1 conveys assets (could be \$13,000,000 worth) to Q-TIP Trust for S2.

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

On or before September 15, 2026, S1 has the following choices:

2026

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

OPTION 1

TAXPAYER (S1)

(No exclusion used by S1)

Spouse 2, Trustee

Q-TIP TRUST
(for S2)

\$13,000,000

Option 1 – Treat the Entire Q-TIP Trust as a Marital Deduction Trust:

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

WAIT AND SEE Q-TIP TRUST

2025

Flexible Planning with A Q-Tip Trust

TAXPAYER (S1)

(S1 makes gift to Q-TIP for S2)

Spouse 2, Trustee

Q-TIP TRUST
(for S2)

\$13,000,000

In 2024, S1 conveys assets (could be \$13,000,000 worth) to Q-TIP Trust for S2.

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

2026

S1 Elects To Have Entire Trust Be A “Completed Gift”

OPTION 2

TAXPAYER (S1)

(Total complete gift treatment – has used S1's \$13,610,000 exclusion, based upon value at time of funding. Will not be included in S2's estate)

Spouse 2, Trustee

Q-TIP TRUST
(for S2)

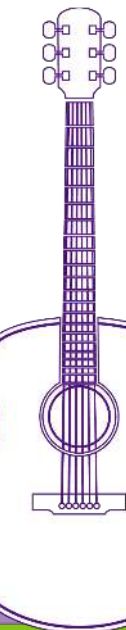
\$13,000,000

Option 2 – S1 elects to have entire trust be a “completed gift”:

- A. Uses S1's \$13,610,000 exemption to the extent of assets contributed.
- B. Can limit payments to being (1) all income to S2, (2) only amounts as needed for S2's health, education and maintenance.
- C. Trust assets will not be taxed in estate of S1 or S2 – income received by S2 will be added to S2's estate, if not spent.
- D. Trust can invest in low or no income assets, or may be able to use a “Blocker LLC” to reduce or eliminate income.

*Treasury Regulations do not provide for a lifetime Q-TIP “Clayton” election that would cause the income interest to not apply.

*This example assumes the exemption will not exceed \$13,610,000 in 2026.



WAIT AND SEE Q-TIP TRUST

2025

Flexible Planning with A Q-Tip Trust

TAXPAYER (S1)

(S1 makes gift to Q-TIP for S2)

Spouse 2, Trustee

Q-TIP TRUST
(for S2)

\$13,000,000

In 2024, S1 conveys assets (could be \$13,000,000 worth) to Q-TIP Trust for S2.

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

2026

Partial Marital Deduction Election

OPTION 3

TAXPAYER (S1)

NON-MARITAL
DEDUCTION
Q-TIP TRUST
(for S2)

MARITAL
DEDUCTION
(Q-TIP TRUST)
SHARE

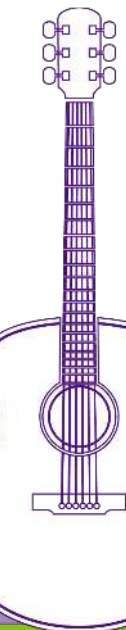
1. Not included in surviving spouse's estate
2. Must pay income to surviving spouse
3. May be appointed to benefit S1 after S2's death

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

Option 3 – Partial marital deduction election exercise:

Example A: Have marital deduction apply to the extent of \$3,000,000 – the other \$10,000,000 stays in Non-Marital Deduction Q-TIP Trust.

Example B: Marital Deduction Trust to the extent exceeding \$10,000,000 so that Non-Marital Deduction Trust is \$3,000,000.



WAIT AND SEE Q-TIP TRUST

2025

Flexible Planning with A Q-Tip Trust

TAXPAYER (S1)

(S1 makes gift to Q-TIP for S2)

Spouse 2, Trustee

Q-TIP TRUST
(for S2)

\$13,000,000

In 2024, S1 conveys assets (could be \$13,000,000 worth) to Q-TIP Trust for S2.

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

2026

Formula Division When Assets May Exceed Exemption Amount

OPTION 4

TAXPAYER (S1)

NON-MARITAL
DEDUCTION
Q-TIP TRUST
(for S2)

MARITAL
DEDUCTION
(Q-TIP TRUST)
SHARE

1. Worth \$13,610,000
2. Must pay income to surviving spouse
3. May be appointed to benefit S1 after S2's death

1. Worth \$ 1,390,000 in value
\$15,000,000
-\$13,610,000
= \$1,390,000

Option 4 – Formula Division When Assets May Exceed Exemption Amount:

The September 15th election can provide that the amount that can pass gift tax-free will pass to Non-Marital Deduction Q-TIP Trust with remaining assets passing the Marital Deduction Trust.

The taxpayer may claim that the assets are worth less than \$13,610,000. If the IRS audits, there will be no gift tax due – but assets will be pushed to the Marital Deduction Trust.

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

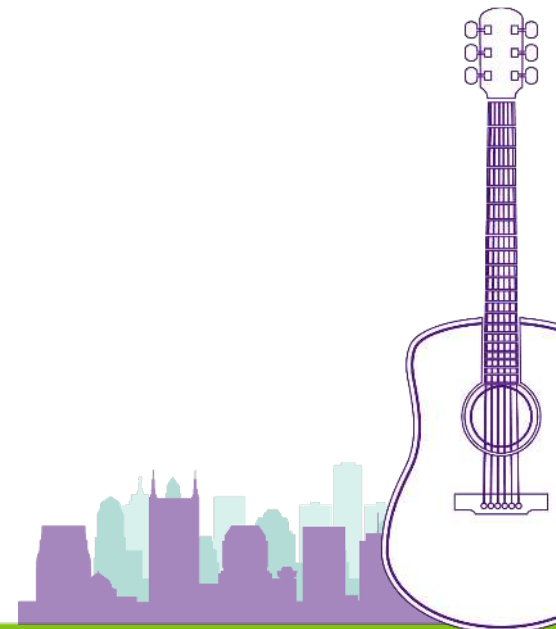
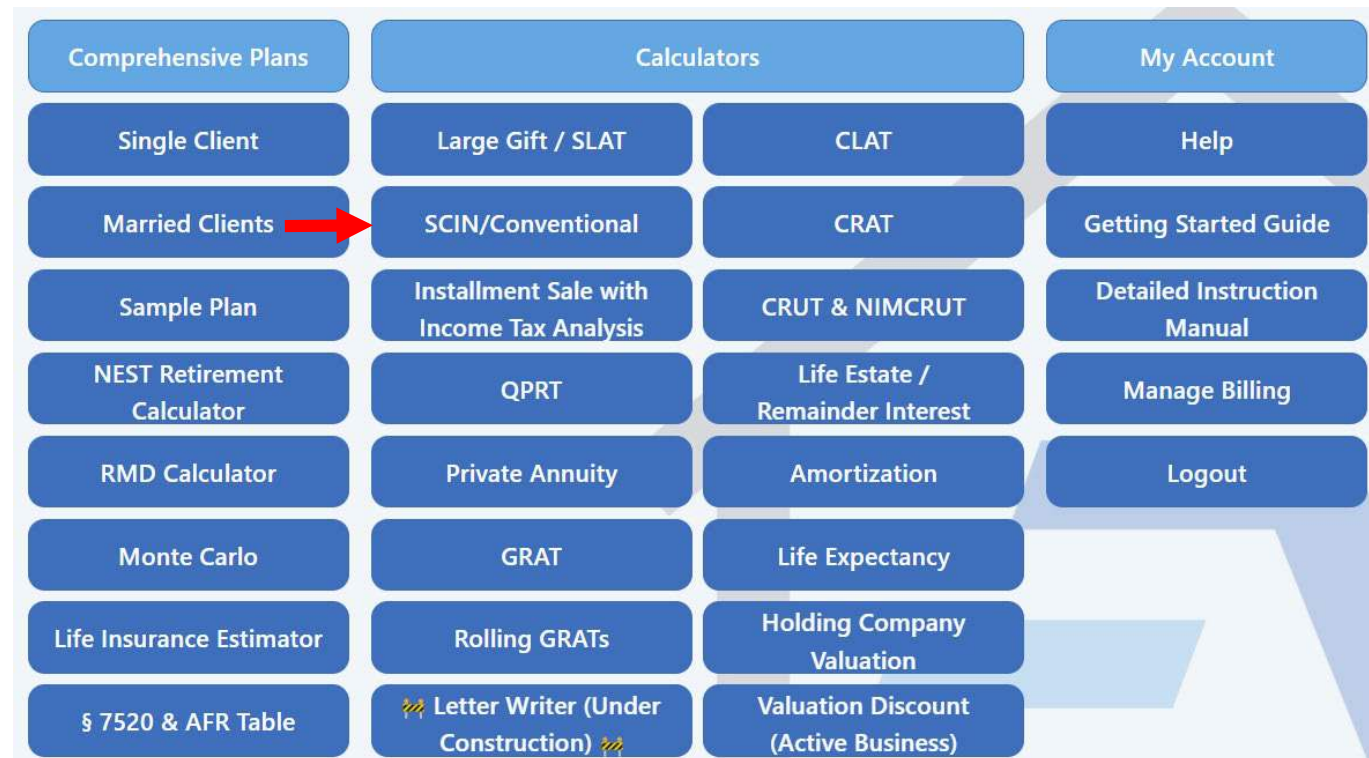
*This example assumes the exemption will not exceed \$13,610,000 in 2026.

Julie and Jacob's Installment Sales

The following slides were made with EstateView's SCIN/Conventional Calculator

We are using EstateView Software for this presentation, more information is at EstateView.info.

If you are interested in a trial subscription email agassman@gassmanpa.com and put the word "EstateView" in the subject line.



Julie and Jacob's Installment Sale – EstateView

These inputs are from EstateView's SCIN/Conventional Calculator

Transfer Date	05/23/2024	
\$ 7520 Rate	5.40%	
Lowest Available AFR	4.35%	
Best to use lowest rate.		
Mar	Apr	May
4.35%	4.40%	4.50%
Number of Lives	Two	
Grantor Age (Nearest Birthday)	70	
Date of Birth:	mm/dd/yyyy	Age at Nearest Birthday: 0
2nd Life Age (Nearest Birthday)	70	
Table 2010CM Life Expectancy	89.8 / 89.8 (19.8 years)	
Term of Note	20	
Grantor Yr of Death	90 (Year 20)	
2nd Life Yr of Death	90 (Year 20)	
# of Years Illustrated	30	
Mortality Table	Table 2010CM (** Required **)	
Self-Canceling or Conventional	Conventional	
Premium Type	Interest	
Payment Type	Amortized	
Estate Tax Rate (%)	40.00%	
Annual Growth Rate	7.50%	
Annual Investment Tax Rate (as % of assets)	2.00%	
Year to Toggle Off Grantor Trust Status	Never	

Year One Gift	
Year One Gift	\$14,000,000
Year One Gift Discount Rate	0.00%
Year One Gift Reportable Value	\$14,000,000.00

Sale Value	
Discountable Assets (i.e. Before Discount)	\$13,000,000
Discount Rate	0.00%
Discounted Value	\$13,000,000.00
Non-Discountable Assets (e.g. cash)	\$0
Combined Value Before Discounts	\$13,000,000.00
Combined Value After Discounts	\$13,000,000.00
Annual Addl Income (e.g. dividends)	\$0
Increase Annual Addl Income X% Per Year	2.00%
Income Tax Rate On Addl Income	37.00%

Julie and Jacob's Installment Sale Summary

Sale #	Life Expectancy	Year of Death	Term of Note	Annual Growth Rate	Year One Gift	Value After Discounts	Note Type	Payment Type	Note Amount	Interest Rate Risk Premium	Interest Rate With Premium	Annual Payment	Total Estate Tax Savings	Exhaustion Year
1	19.8	20	20	7.50%	\$14,000,000	\$13,000,000	Conv.	Amortized	\$13,000,000	N/A	4.3500%	\$986,442	\$35,958,218	23.65
2	19.8	20	20	7.50%	\$14,000,000	\$13,000,000	Conv.	Interest Only	\$13,000,000	N/A	4.3500%	\$565,500	\$39,521,281	19.00
3	19.8	20	20	7.50%	\$14,000,000	\$13,000,000	SCIN	Amortized	\$13,000,000	2.2652%	6.6152%	\$1,190,652	\$32,183,307	16.93
4	19.8	20	20	7.50%	\$14,000,000	\$13,000,000	SCIN	Interest Only	\$13,000,000	3.1659%	7.5159%	\$977,067	\$36,544,219	19.00

Note 1: Conventional – Principal and Interest Payments

Annual Payments: \$986,442 (\$82,203.50/month)

Note 2: Conventional – Interest-Only payments

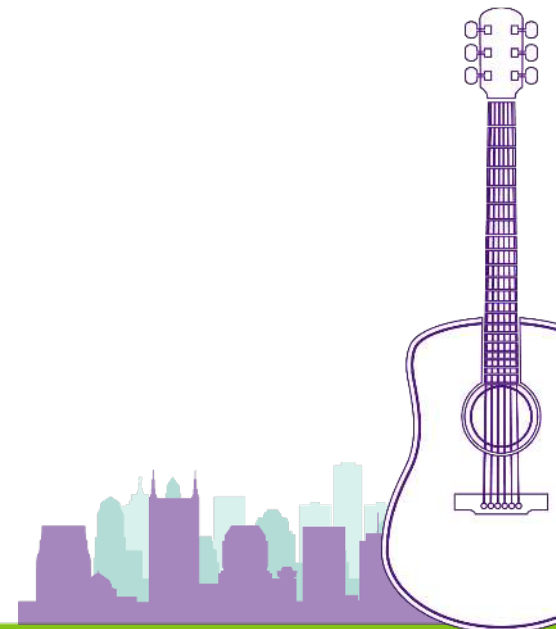
Annual Payments: \$565,500 (\$47,125/month)

Note 3: Self-Canceling – Principal and Interest Payments

Annual Payments: \$1,190,652 (\$99,221/month)

Note 4: Self-Canceling – Interest-Only payments

Annual Payments: \$977,067 (\$81,422.25/month)



Julie and Jacob's Installment Sale 1 Details

Year #	Growth	Tax on Growth	Payment	End Value	Beginning Note Balance	Interest	End Note Balance	Estate Tax Savings From Trust Assets	Income Tax (Burn) on Trust Income	Cumulative Burn and Lost Growth For Grantor	Estate Tax Savings From Burn	Total Estate Tax Savings
1	\$2,025,000.00	(\$540,000.00)	(\$986,442.39)	\$28,038,557.61	\$13,000,000.00	(\$565,500.00)	\$12,579,057.61	\$583,800.00	(\$540,000.00)	(\$540,000.00)	\$216,000.00	\$799,800.00
2	\$2,102,891.82	(\$560,771.15)	(\$986,442.39)	\$29,155,007.04	\$12,579,057.61	(\$547,189.01)	\$12,139,804.23	\$1,206,081.12	(\$560,771.15)	(\$1,141,271.15)	\$456,508.46	\$1,662,589.59
3	\$2,186,625.53	(\$583,100.14)	(\$986,442.39)	\$30,355,190.18	\$12,139,804.23	(\$528,081.49)	\$11,681,443.33	\$1,869,498.74	(\$583,100.14)	(\$1,809,966.63)	\$723,986.65	\$2,593,485.39
4	\$2,276,639.26	(\$607,103.80)	(\$986,442.39)	\$31,645,387.05	\$11,681,443.33	(\$508,142.79)	\$11,203,143.73	\$2,576,897.33	(\$607,103.80)	(\$2,552,817.93)	\$1,021,127.17	\$3,598,024.50
5	\$2,373,404.03	(\$632,907.74)	(\$986,442.39)	\$33,032,348.69	\$11,203,143.73	(\$487,336.76)	\$10,704,038.10	\$3,331,324.24	(\$632,907.74)	(\$3,377,187.02)	\$1,350,874.81	\$4,682,199.04
6	\$2,477,426.15	(\$660,646.97)	(\$986,442.39)	\$34,523,332.45	\$10,704,038.10	(\$465,625.66)	\$10,183,221.37	\$4,136,044.43	(\$660,646.97)	(\$4,291,123.02)	\$1,716,449.21	\$5,852,493.64
7	\$2,589,249.93	(\$690,466.65)	(\$986,442.39)	\$36,126,140.00	\$10,183,221.37	(\$442,970.13)	\$9,639,749.11	\$4,994,556.35	(\$690,466.65)	(\$5,303,423.89)	\$2,121,369.56	\$7,115,925.91
8	\$2,709,460.50	(\$722,522.80)	(\$986,442.39)	\$37,849,158.11	\$9,639,749.11	(\$419,329.09)	\$9,072,635.81	\$5,910,608.92	(\$722,522.80)	(\$6,423,703.48)	\$2,569,481.39	\$8,480,090.31
9	\$2,838,686.86	(\$756,983.16)	(\$986,442.39)	\$39,701,402.57	\$9,072,635.81	(\$394,659.66)	\$8,480,853.08	\$6,888,219.80	(\$756,983.16)	(\$7,662,464.41)	\$3,064,985.76	\$9,953,205.56
10	\$2,977,605.19	(\$794,028.05)	(\$986,442.39)	\$41,692,565.38	\$8,480,853.08	(\$368,917.11)	\$7,863,327.80	\$7,931,695.03	(\$794,028.05)	(\$9,031,177.29)	\$3,612,470.92	\$11,544,165.95
11	\$3,126,942.40	(\$833,851.31)	(\$986,442.39)	\$43,833,065.39	\$7,863,327.80	(\$342,054.76)	\$7,218,940.17	\$9,045,650.09	(\$833,851.31)	(\$10,542,366.89)	\$4,216,946.76	\$13,262,596.85
12	\$3,287,479.90	(\$876,661.31)	(\$986,442.39)	\$46,134,102.91	\$7,218,940.17	(\$314,023.90)	\$6,546,521.68	\$10,235,032.49	(\$876,661.31)	(\$12,209,705.72)	\$4,883,882.29	\$15,118,914.78
13	\$3,460,057.72	(\$922,682.06)	(\$986,442.39)	\$48,607,718.23	\$6,546,521.68	(\$284,773.70)	\$5,844,852.99	\$11,505,146.10	(\$922,682.06)	(\$14,048,115.70)	\$5,619,246.28	\$17,124,392.38
14	\$3,645,578.87	(\$972,154.36)	(\$986,442.39)	\$51,266,854.71	\$5,844,852.99	(\$254,251.11)	\$5,112,661.71	\$12,861,677.20	(\$972,154.36)	(\$16,073,878.75)	\$6,429,551.50	\$19,291,228.70
15	\$3,845,014.10	(\$1,025,337.09)	(\$986,442.39)	\$54,125,426.42	\$5,112,661.71	(\$222,400.79)	\$4,348,620.11	\$14,310,722.53	(\$1,025,337.09)	(\$18,304,756.75)	\$7,321,902.70	\$21,632,625.22
16	\$4,059,406.98	(\$1,082,508.53)	(\$986,442.39)	\$57,198,391.02	\$4,348,620.11	(\$189,164.98)	\$3,551,342.70	\$15,858,819.33	(\$1,082,508.53)	(\$20,760,122.03)	\$8,304,048.81	\$24,162,868.14
17	\$4,289,879.33	(\$1,143,967.82)	(\$986,442.39)	\$60,501,827.95	\$3,551,342.70	(\$154,483.41)	\$2,719,383.72	\$17,512,977.69	(\$1,143,967.82)	(\$23,461,099.00)	\$9,384,439.60	\$26,897,417.29
18	\$4,537,637.10	(\$1,210,036.56)	(\$986,442.39)	\$64,053,022.66	\$2,719,383.72	(\$118,293.20)	\$1,851,234.53	\$19,280,715.25	(\$1,210,036.56)	(\$26,430,717.99)	\$10,572,287.20	\$29,853,002.45
19	\$4,803,976.70	(\$1,281,060.45)	(\$986,442.39)	\$67,870,556.97	\$1,851,234.53	(\$80,528.71)	\$945,320.85	\$21,170,094.45	(\$1,281,060.45)	(\$29,694,082.29)	\$11,877,632.92	\$33,047,727.36
20	\$5,090,291.77	(\$1,357,411.14)	(\$986,442.31)	\$71,974,406.43	\$945,320.85	(\$41,121.46)	\$0.00	\$23,189,762.57	(\$1,357,411.14)	(\$31,921,138.46)	\$12,768,455.39	\$35,958,217.96

Julie and Jacob's Installment Sale 2 Details

Year #	Growth	Tax on Growth	Payment	End Value	Beginning Note Balance	Interest	End Note Balance	Estate Tax Savings From Trust Assets	Income Tax (Burn) on Trust Income	Cumulative Burn and Lost Growth For Grantor	Estate Tax Savings From Burn	Total Estate Tax Savings
1	\$2,025,000.00	(\$540,000.00)	(\$565,500.00)	\$28,459,500.00	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$583,800.00	(\$540,000.00)	(\$540,000.00)	\$216,000.00	\$799,800.00
2	\$2,134,462.50	(\$569,190.00)	(\$565,500.00)	\$30,028,462.50	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$1,211,385.00	(\$569,190.00)	(\$1,149,690.00)	\$459,876.00	\$1,671,261.00
3	\$2,252,134.69	(\$600,569.25)	(\$565,500.00)	\$31,715,097.19	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$1,886,038.88	(\$600,569.25)	(\$1,836,486.00)	\$734,594.40	\$2,620,633.28
4	\$2,378,632.29	(\$634,301.94)	(\$565,500.00)	\$33,528,229.48	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$2,611,291.79	(\$634,301.94)	(\$2,608,524.39)	\$1,043,409.76	\$3,654,701.55
5	\$2,514,617.21	(\$670,564.59)	(\$565,500.00)	\$35,477,346.69	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$3,390,938.67	(\$670,564.59)	(\$3,474,728.31)	\$1,389,891.33	\$4,780,830.00
6	\$2,660,801.00	(\$709,546.93)	(\$565,500.00)	\$37,572,647.69	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$4,229,059.08	(\$709,546.93)	(\$4,444,879.87)	\$1,777,951.95	\$6,007,011.02
7	\$2,817,948.58	(\$751,452.95)	(\$565,500.00)	\$39,825,096.27	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$5,130,038.51	(\$751,452.95)	(\$5,529,698.81)	\$2,211,879.53	\$7,341,918.03
8	\$2,986,882.22	(\$796,501.93)	(\$565,500.00)	\$42,246,478.49	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$6,098,591.39	(\$796,501.93)	(\$6,740,928.15)	\$2,696,371.26	\$8,794,962.65
9	\$3,168,485.89	(\$844,929.57)	(\$565,500.00)	\$44,849,464.37	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$7,139,785.75	(\$844,929.57)	(\$8,091,427.33)	\$3,236,570.93	\$10,376,356.68
10	\$3,363,709.83	(\$896,989.29)	(\$565,500.00)	\$47,647,674.20	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$8,259,069.68	(\$896,989.29)	(\$9,595,273.67)	\$3,838,109.47	\$12,097,179.15
11	\$3,573,575.56	(\$952,953.48)	(\$565,500.00)	\$50,655,749.76	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$9,462,299.91	(\$952,953.48)	(\$11,267,872.68)	\$4,507,149.07	\$13,969,448.98
12	\$3,799,181.23	(\$1,013,115.00)	(\$565,500.00)	\$53,889,431.00	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$10,755,772.40	(\$1,013,115.00)	(\$13,126,078.12)	\$5,250,431.25	\$16,006,203.65
13	\$4,041,707.32	(\$1,077,788.62)	(\$565,500.00)	\$57,365,638.32	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$12,146,255.33	(\$1,077,788.62)	(\$15,188,322.60)	\$6,075,329.04	\$18,221,584.37
14	\$4,302,422.87	(\$1,147,312.77)	(\$565,500.00)	\$61,102,561.20	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$13,641,024.48	(\$1,147,312.77)	(\$17,474,759.56)	\$6,989,903.83	\$20,630,928.30
15	\$4,582,692.09	(\$1,222,051.22)	(\$565,500.00)	\$65,119,753.29	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$15,247,901.31	(\$1,222,051.22)	(\$20,007,417.76)	\$8,002,967.10	\$23,250,868.42
16	\$4,883,981.50	(\$1,302,395.07)	(\$565,500.00)	\$69,438,234.78	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$16,975,293.91	(\$1,302,395.07)	(\$22,810,369.15)	\$9,124,147.66	\$26,099,441.57
17	\$5,207,867.61	(\$1,388,764.70)	(\$565,500.00)	\$74,080,602.39	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$18,832,240.96	(\$1,388,764.70)	(\$25,909,911.54)	\$10,363,964.61	\$29,196,205.57
18	\$5,556,045.18	(\$1,481,612.05)	(\$565,500.00)	\$79,071,147.57	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$20,828,459.03	(\$1,481,612.05)	(\$29,334,766.95)	\$11,733,906.78	\$32,562,365.81
19	\$5,930,336.07	(\$1,581,422.95)	(\$565,500.00)	\$84,435,983.64	\$13,000,000.00	(\$565,500.00)	\$13,000,000.00	\$22,974,393.46	(\$1,581,422.95)	(\$33,116,297.42)	\$13,246,518.97	\$36,220,912.42
20	\$6,332,698.77	(\$1,688,719.67)	(\$13,565,500.00)	\$77,203,182.41	\$13,000,000.00	(\$565,500.00)	\$0.00	\$25,281,272.96	(\$1,688,719.67)	(\$35,600,019.73)	\$14,240,007.89	\$39,521,280.86

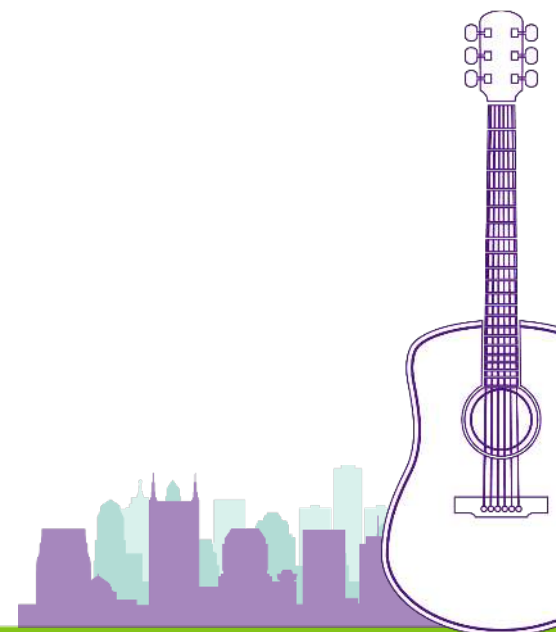
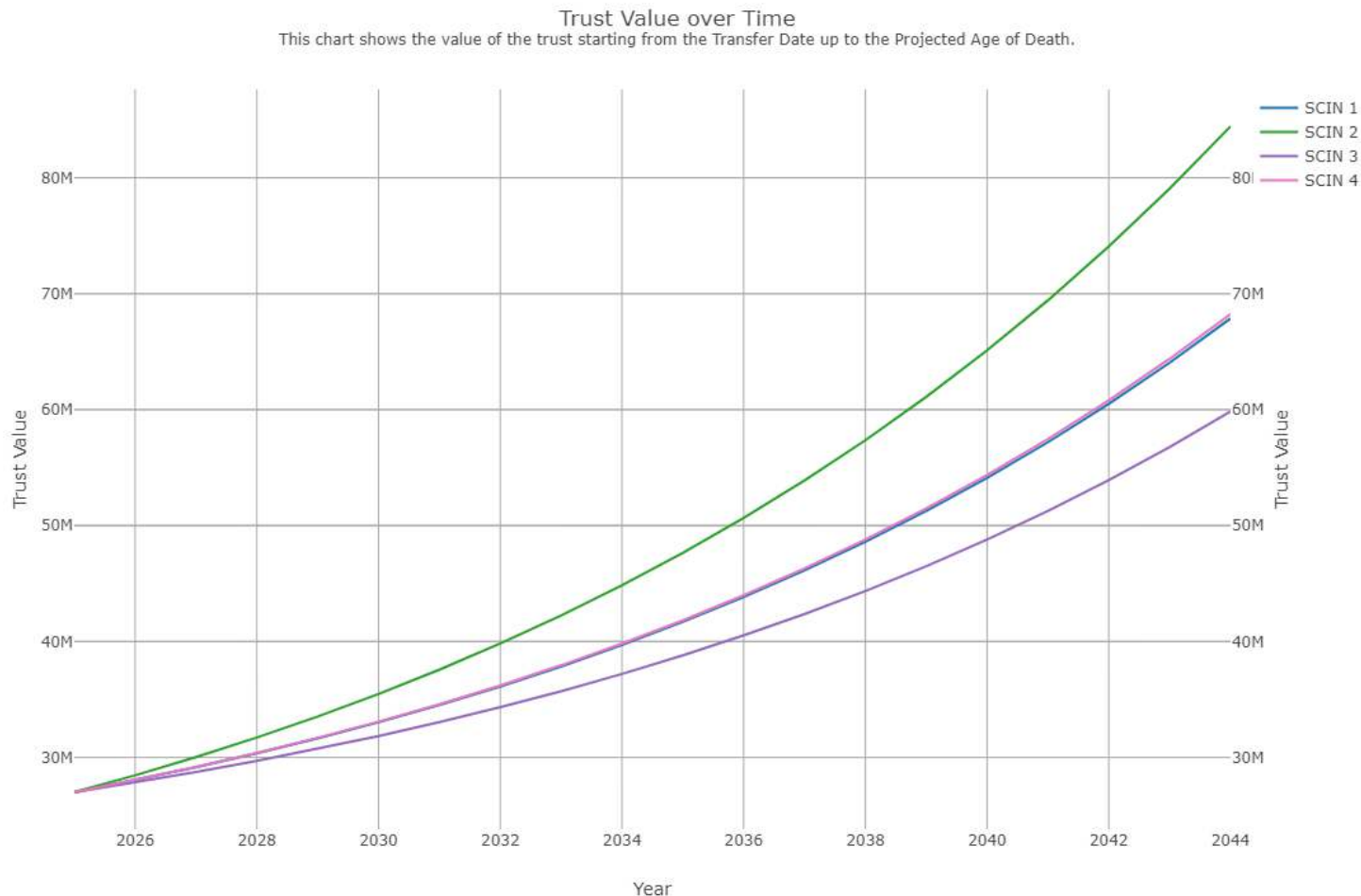
Julie and Jacob's Installment Sale 3 Details

Year #	Growth	Tax on Growth	Payment	End Value	Beginning Note Balance	Interest	End Note Balance	Estate Tax Savings From Trust Assets	Income Tax (Burn) on Trust Income	Cumulative Burn and Lost Growth For Grantor	Estate Tax Savings From Burn	Total Estate Tax Savings
1	\$2,025,000.00	(\$540,000.00)	(\$1,190,651.64)	\$27,834,348.36	\$13,000,000.00	(\$859,976.00)	\$12,669,324.36	\$5,533,739.34	(\$540,000.00)	(\$540,000.00)	\$216,000.00	\$5,749,739.34
2	\$2,087,576.13	(\$556,686.97)	(\$1,190,651.64)	\$28,731,272.85	\$12,669,324.36	(\$838,101.15)	\$12,316,773.87	\$5,892,509.14	(\$556,686.97)	(\$1,137,186.97)	\$454,874.79	\$6,347,383.93
3	\$2,154,845.46	(\$574,625.46)	(\$1,190,651.64)	\$29,695,466.67	\$12,316,773.87	(\$814,779.23)	\$11,940,901.46	\$6,278,186.67	(\$574,625.46)	(\$1,797,101.45)	\$718,840.58	\$6,997,027.25
4	\$2,227,160.00	(\$593,909.33)	(\$1,190,651.64)	\$30,731,975.03	\$11,940,901.46	(\$789,914.52)	\$11,540,164.34	\$6,692,790.01	(\$593,909.33)	(\$2,525,793.39)	\$1,010,317.36	\$7,703,107.37
5	\$2,304,898.13	(\$614,639.50)	(\$1,190,651.64)	\$31,846,221.52	\$11,540,164.34	(\$763,404.96)	\$11,112,917.66	\$7,138,488.61	(\$614,639.50)	(\$3,329,867.39)	\$1,331,946.96	\$8,470,435.56
6	\$2,388,466.61	(\$636,924.43)	(\$1,190,651.64)	\$33,044,036.49	\$11,112,917.66	(\$735,141.73)	\$10,657,407.75	\$7,617,614.60	(\$636,924.43)	(\$4,216,531.88)	\$1,686,612.75	\$9,304,227.35
7	\$2,478,302.74	(\$660,880.73)	(\$1,190,651.64)	\$34,331,687.59	\$10,657,407.75	(\$705,008.84)	\$10,171,764.95	\$8,132,675.04	(\$660,880.73)	(\$5,193,652.50)	\$2,077,461.00	\$10,210,136.04
8	\$2,574,876.57	(\$686,633.75)	(\$1,190,651.64)	\$35,715,912.52	\$10,171,764.95	(\$672,882.60)	\$9,653,995.91	\$8,686,365.01	(\$686,633.75)	(\$6,269,810.19)	\$2,507,924.08	\$11,194,289.08
9	\$2,678,693.44	(\$714,318.25)	(\$1,190,651.64)	\$37,203,954.32	\$9,653,995.91	(\$638,631.14)	\$9,101,975.41	\$9,281,581.73	(\$714,318.25)	(\$7,454,364.20)	\$2,981,745.68	\$12,263,327.41
10	\$2,790,296.57	(\$744,079.09)	(\$1,190,651.64)	\$38,803,599.25	\$9,101,975.41	(\$602,113.88)	\$8,513,437.65	\$9,921,439.70	(\$744,079.09)	(\$8,757,520.60)	\$3,503,008.24	\$13,424,447.94
11	\$2,910,269.94	(\$776,071.99)	(\$1,190,651.64)	\$40,523,217.55	\$8,513,437.65	(\$563,180.93)	\$7,885,966.94	\$10,609,287.02	(\$776,071.99)	(\$10,190,406.63)	\$4,076,162.65	\$14,685,449.68
12	\$3,039,241.32	(\$810,464.35)	(\$1,190,651.64)	\$42,371,807.23	\$7,885,966.94	(\$521,672.49)	\$7,216,987.79	\$11,348,722.89	(\$810,464.35)	(\$11,765,151.48)	\$4,706,060.59	\$16,054,783.49
13	\$3,177,885.54	(\$847,436.14)	(\$1,190,651.64)	\$44,359,041.13	\$7,216,987.79	(\$477,418.18)	\$6,503,754.33	\$12,143,616.45	(\$847,436.14)	(\$13,494,973.99)	\$5,397,989.60	\$17,541,606.05
14	\$3,326,928.09	(\$887,180.82)	(\$1,190,651.64)	\$46,495,317.58	\$6,503,754.33	(\$430,236.36)	\$5,743,339.05	\$12,998,127.03	(\$887,180.82)	(\$15,394,277.86)	\$6,157,711.14	\$19,155,838.18
15	\$3,487,148.82	(\$929,906.35)	(\$1,190,651.64)	\$48,791,814.76	\$5,743,339.05	(\$379,933.37)	\$4,932,620.78	\$13,916,725.90	(\$929,906.35)	(\$17,478,755.05)	\$6,991,502.02	\$20,908,227.92
16	\$3,659,386.11	(\$975,836.30)	(\$1,190,651.64)	\$51,260,549.22	\$4,932,620.78	(\$326,302.73)	\$4,068,271.87	\$14,904,219.69	(\$975,836.30)	(\$19,765,497.98)	\$7,906,199.19	\$22,810,418.88
17	\$3,844,541.19	(\$1,025,210.98)	(\$1,190,651.64)	\$53,914,438.78	\$4,068,271.87	(\$269,124.33)	\$3,146,744.56	\$15,965,775.51	(\$1,025,210.98)	(\$22,273,121.31)	\$8,909,248.52	\$24,875,024.03
18	\$4,043,582.91	(\$1,078,288.78)	(\$1,190,651.64)	\$56,767,370.04	\$3,146,744.56	(\$208,163.45)	\$2,164,256.37	\$17,106,948.02	(\$1,078,288.78)	(\$25,021,894.18)	\$10,008,757.67	\$27,115,705.69
19	\$4,257,552.75	(\$1,135,347.40)	(\$1,190,651.64)	\$59,834,271.16	\$2,164,256.37	(\$143,169.89)	\$1,116,774.62	\$18,333,708.46	(\$1,135,347.40)	(\$28,033,883.65)	\$11,213,553.46	\$29,547,261.92
20	\$4,487,570.34	(\$1,196,685.42)	(\$0.00)	\$64,321,841.49	\$1,116,774.62	(\$73,876.88)	\$0.00	\$20,128,736.60	(\$1,196,685.42)	(\$30,136,424.92)	\$12,054,569.97	\$32,183,306.57

Julie and Jacob's Installment Sale 4 Details

Year #	Growth	Tax on Growth	Payment	End Value	Beginning Note Balance	Interest	End Note Balance	Estate Tax Savings From Trust Assets	Income Tax (Burn) on Trust Income	Cumulative Burn and Lost Growth For Grantor	Estate Tax Savings From Burn	Total Estate Tax Savings
1	\$2,025,000.00	(\$540,000.00)	(\$977,067.00)	\$28,047,933.00	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$5,619,173.20	(\$540,000.00)	(\$540,000.00)	\$216,000.00	\$5,835,173.20
2	\$2,103,594.98	(\$560,958.66)	(\$977,067.00)	\$29,174,460.98	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$6,069,784.39	(\$560,958.66)	(\$1,141,458.66)	\$456,583.46	\$6,526,367.85
3	\$2,188,084.57	(\$583,489.22)	(\$977,067.00)	\$30,385,478.55	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$6,554,191.42	(\$583,489.22)	(\$1,810,557.28)	\$724,222.91	\$7,278,414.33
4	\$2,278,910.89	(\$607,709.57)	(\$977,067.00)	\$31,687,322.44	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$7,074,928.98	(\$607,709.57)	(\$2,554,058.65)	\$1,021,623.46	\$8,096,552.43
5	\$2,376,549.18	(\$633,746.45)	(\$977,067.00)	\$33,086,804.62	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$7,634,721.85	(\$633,746.45)	(\$3,379,359.49)	\$1,351,743.80	\$8,986,465.65
6	\$2,481,510.35	(\$661,736.09)	(\$977,067.00)	\$34,591,247.97	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$8,236,499.19	(\$661,736.09)	(\$4,294,547.55)	\$1,717,819.02	\$9,954,318.21
7	\$2,594,343.60	(\$691,824.96)	(\$977,067.00)	\$36,208,524.57	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$8,883,409.83	(\$691,824.96)	(\$5,308,463.57)	\$2,123,385.43	\$11,006,795.26
8	\$2,715,639.34	(\$724,170.49)	(\$977,067.00)	\$37,947,096.91	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$9,578,838.76	(\$724,170.49)	(\$6,430,768.83)	\$2,572,307.53	\$12,151,146.30
9	\$2,846,032.27	(\$758,941.94)	(\$977,067.00)	\$39,816,062.18	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$10,326,424.87	(\$758,941.94)	(\$7,672,018.43)	\$3,068,807.37	\$13,395,232.24
10	\$2,986,204.66	(\$796,321.24)	(\$977,067.00)	\$41,825,199.84	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$11,130,079.94	(\$796,321.24)	(\$9,043,741.06)	\$3,617,496.42	\$14,747,576.36
11	\$3,136,889.99	(\$836,504.00)	(\$977,067.00)	\$43,985,022.83	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$11,994,009.13	(\$836,504.00)	(\$10,558,525.64)	\$4,223,410.25	\$16,217,419.39
12	\$3,298,876.71	(\$879,700.46)	(\$977,067.00)	\$46,306,832.54	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$12,922,733.02	(\$879,700.46)	(\$12,230,115.51)	\$4,892,046.21	\$17,814,779.22
13	\$3,473,012.44	(\$926,136.65)	(\$977,067.00)	\$48,802,777.98	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$13,921,111.19	(\$926,136.65)	(\$14,073,510.83)	\$5,629,404.33	\$19,550,515.52
14	\$3,660,208.35	(\$976,055.56)	(\$977,067.00)	\$51,485,919.33	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$14,994,367.73	(\$976,055.56)	(\$16,105,079.70)	\$6,442,031.88	\$21,436,399.61
15	\$3,861,443.95	(\$1,029,718.39)	(\$977,067.00)	\$54,370,296.28	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$16,148,118.51	(\$1,029,718.39)	(\$18,342,679.06)	\$7,337,071.63	\$23,485,190.14
16	\$4,077,772.22	(\$1,087,405.93)	(\$977,067.00)	\$57,471,001.50	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$17,388,400.60	(\$1,087,405.93)	(\$20,805,785.92)	\$8,322,314.37	\$25,710,714.97
17	\$4,310,325.11	(\$1,149,420.03)	(\$977,067.00)	\$60,804,259.61	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$18,721,703.85	(\$1,149,420.03)	(\$23,515,639.89)	\$9,406,255.96	\$28,127,959.80
18	\$4,560,319.47	(\$1,216,085.19)	(\$977,067.00)	\$64,387,512.08	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$20,155,004.83	(\$1,216,085.19)	(\$26,495,398.08)	\$10,598,159.23	\$30,753,164.06
19	\$4,829,063.41	(\$1,287,750.24)	(\$977,067.00)	\$68,239,508.49	\$13,000,000.00	(\$977,067.00)	\$13,000,000.00	\$21,695,803.40	(\$1,287,750.24)	(\$29,770,303.18)	\$11,908,121.27	\$33,603,924.67
20	\$5,117,963.14	(\$1,364,790.17)	(\$0.00)	\$73,357,471.63	\$13,000,000.00	(\$977,067.00)	\$0.00	\$23,742,988.65	(\$1,364,790.17)	(\$32,003,075.91)	\$12,801,230.37	\$36,544,219.02

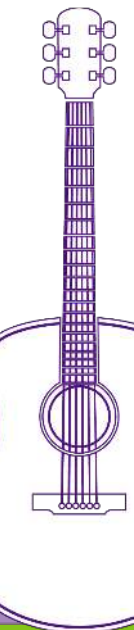
Julie and Jacob's Installment Sale Options Projected Trust Values



Consideration Required to Enforce Promissory Note Under Florida Law

- The delivery of a promissory note for consideration is enforceable. However...
- “The delivery of a promissory note or check, unsupported by consideration, is not an executed gift of the money, but is delivery of a promise to make a gift only, and will be revoked by the death of the promisor before actual payment and is not enforceable during the donor’s lifetime.” Sparber, Cofer, Ritchie, 7 Southeast Transaction Guide § 124.03 (Matthew Bender) (2022).
- "A gift is always revocable until executed, and a promissory note intended purely as a gift to the payee is but a promise to make a gift in the future. The gift is not executed until the note is paid." *Fla. Nat'l Bank & Tr. Co. v. Brown*, 47 So. 2d 748, 761 (Fla. 1950) (quoting *Meyer v. Meyer*, 39 N.E.2d 311, 314 (Ill. 1942).

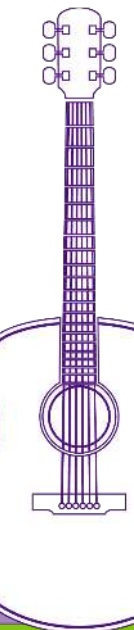
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Consideration Required to Enforce Promissory Note Under Florida Law (cont'd)

- “[C]onsideration ‘need not be money or anything having monetary value, but may consist of either a benefit to the promisor or a detriment to the promisee.’” *Fla. Power Corp. v. Pub. Serv. Com.*, 487 So. 2d 1061, 1063 (Fla. 1986) (quoting *Dorman v. Publix-Saenger-Sparks Theatres*, 135 Fla. 284, 290 (Fla. 1938)).
- “‘It is not necessary that a benefit should accrue to the person making the promise; it is sufficient that something valuable flows from the person to whom it is made, or that he suffers some prejudice or inconvenience, and that the promise is the inducement to the transaction. Indeed, there is a consideration that if the promisee, in return for the promise, does anything legal which he is not bound to do, or refrains from doing anything which he has a right to do, whether there is any actual loss or detriment to him or actual benefit to the promisor or not.’” *Harbeson v. Mering*, 147 Fla. 174, 182-83 (Fla. 1941) (quoting 13 C.J., Contracts, Sec. 150, pp. 315-316).
- “[I]t is well settled that the slightest detriment to the promisee is sufficient consideration to bind the promisor.” *Md. Cas. Co. v. Krasnek*, 174 So. 2d 541, 543 (Fla. 1965) (citing *Mangus v. Present*, 135 So.2d 417 (Fla. 1961)).

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Consideration Required to Enforce Promissory Note Under Florida Law (cont'd)

Florida jury instruction regarding the definition of “consideration”:

“Consideration is something of value that is given or agreed to be given in exchange for a promise. For a valid contract to be formed between two parties, each party has to have provided some type of consideration to the other party in exchange for the other party’s promise to [do/do or not do/not do] something.

It is not necessary that the thing of value offered by a party be of great or even moderate value. As long as the thing of value has some value, even if the value is slight, the party will have provided sufficient consideration.”

1 Florida Forms of Jury Instruction, Ch. no., 30.60 Definition of “Consideration” (Matthew Bender 2d ed.) (2022).

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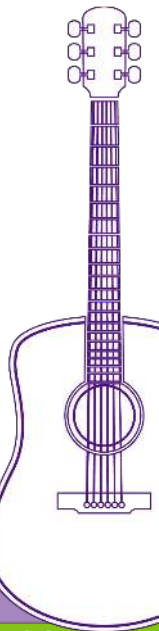


Consideration Required to Enforce Promissory Note Under Florida Law (cont'd)

Examples of adequate consideration:

- A movie theater owner conducted an advertising campaign that gave a cash prize to a person whose name was drawn after attending a special Bank Night at the movie theater. The Supreme Court of Florida found that registering for the drawing and attending the movie was sufficient consideration to form a contract between the movie theater owner and the winner. *Dorman v. Publix-Saenger-Sparks Theatres, Inc.*, 135 Fla. 284, 184 So. 886 (1938).
- An agreement between a vending machine operator and a business owner was held to have sufficient consideration despite the vending machine operator being able to cancel the contract if certain stated non-stringent conditions were met. *Lauren, Inc. v. Marc & Melfa, Inc.*, 446 So. 2d 1138 (Fla. Dist. Ct. App. 1984).
- In a famous case from the Court of Appeals of New York, a nephew's abstaining from drinking liquor, using tobacco, swearing, and playing cards or billiards for money until he was 21 was held to be sufficient consideration to enforce a contract with his uncle to pay him \$5,000. *Hamer v. Sidway*, 124 N.Y. 538, 27 N.E. 256 (1891).

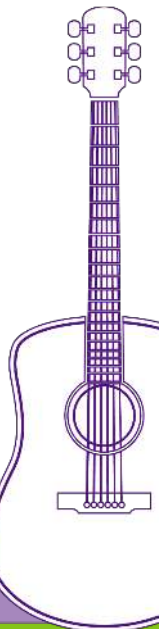
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The 18-Month Rule

- Under the 18 month rule, an obligation to make a payment to a family member or related entity must be paid in full more than 18 months before the death of the taxpayer who owes the debt in order to avoid loss of the ability to use the bonus exclusion with respect thereto.
- For example, if the taxpayer has a \$13.61 million total combined original and bonus exclusion and signs a 13 million note bearing interest at a market interest rate to an irrevocable trust for her descendants, she may pay \$9 million of the note more than 18 months before dying in 2028, and another \$2 million of the note less than 18 months before her death.
- Assuming no other gifts were made, her estate would have an \$9 million exclusion amount (based upon the basic exclusion amount which may be \$8.5 million in 2028), the amount equal to the value of assets paid within 18 months of death to reduce the note by an additional \$2 million is included as a taxable gift so that there is no estate tax benefit from the \$2 million payment.

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The 18-Month Rule, cont.

- In the prior example, the assets held under the GST trust after the death of the taxpayer, which would consist of whatever investments were purchased with the \$10 million in payments, and the remaining \$2 million promissory note could benefit the taxpayer's descendants without being subject to federal estate tax at the level of the taxpayer's children. Further, the growth in value of the \$9 million and \$2 million payments (and interest earned until they are paid) in addition to the remaining \$2 million owed escapes estate tax at the level of the taxpayer's children, assuming the proper GST exemption allocation methods were used and the taxpayer had a \$13,610,000, or more GST exemption.
- If the same taxpayer had survived her spouse, and received a \$10 million portability allowance from the spouse that was not lost as the result of remarriage and surviving the next spouse, then the same GST exemption allocation to the irrevocable trust described above will apply, and the taxpayer's total upon death would be \$18 million instead of \$9 million.

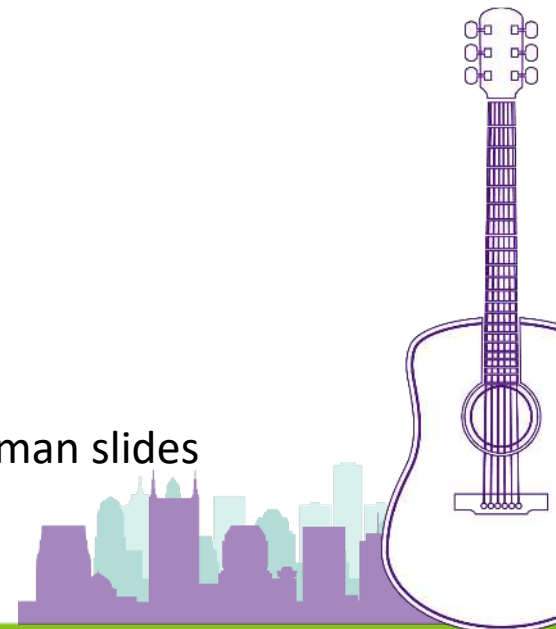
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Confusion Between 3-Year Rule and 18-Month Rule for Certain Special Rule Exclusions.

- IRC Section 2035 provides that a retained life interest will cause estate tax even if the decedent discarded or ended the interest if this occurred less than 3 years before death.
- This exception does not apply if a third party, such as a Trust Protector, caused the interest to cease.
- The 18 month rule does not extend the 3 year rule

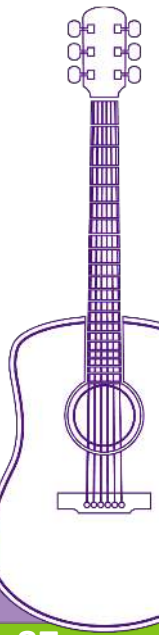
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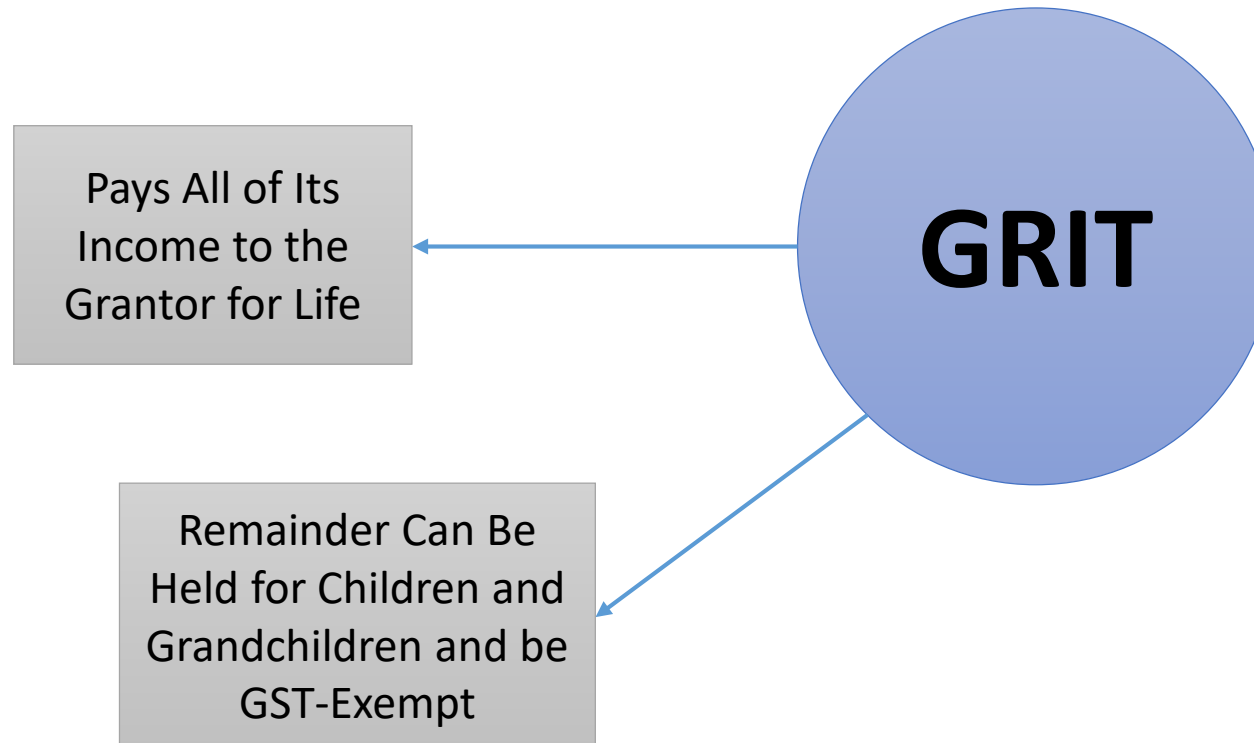
Grantor Retained Income Trusts (“GRITs”)

- A Grantor Retained Income Trust (“GRIT”) is a trust which provides that all of its’ income will be payable to the grantor of the trust, with the remaining assets to pass for the benefit of descendants after the grantor’s death. GRITs can work well when established for nephews, nieces, significant others, and other non-charitable beneficiaries.
- If the taxpayer makes a gift of \$12 million worth of assets to a GRIT and retains the right to receive income for his or her lifetime from the GRIT then (a) this will be considered to be a gift of \$12,000,000 worth of assets and (b) the entire value of the GRIT will be included in the grantor’s estate under IRC §2036(a)(1).
- Fortunately, IRC §2043 will give the grantor’s estate credit for the \$12,000,000 use of the estate and gift tax exemption when the GRIT was formed if \$12 million or more worth of assets from the GRIT are included in the grantor’s estate for federal estate tax purposes if the GRIT has less than \$12 Million of assets then whatever amount it has should qualify for the estate and gift tax exemption. For example, if the GRIT is worth \$9 Million on the Grantor’s death then \$ 9 Million of exemption would be available under section 2043, if the Proposed Regulations do not apply.

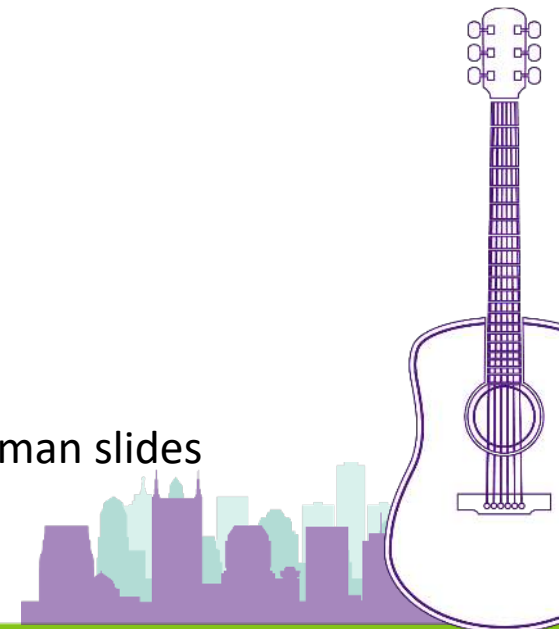
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Grantor Retained Income Trust



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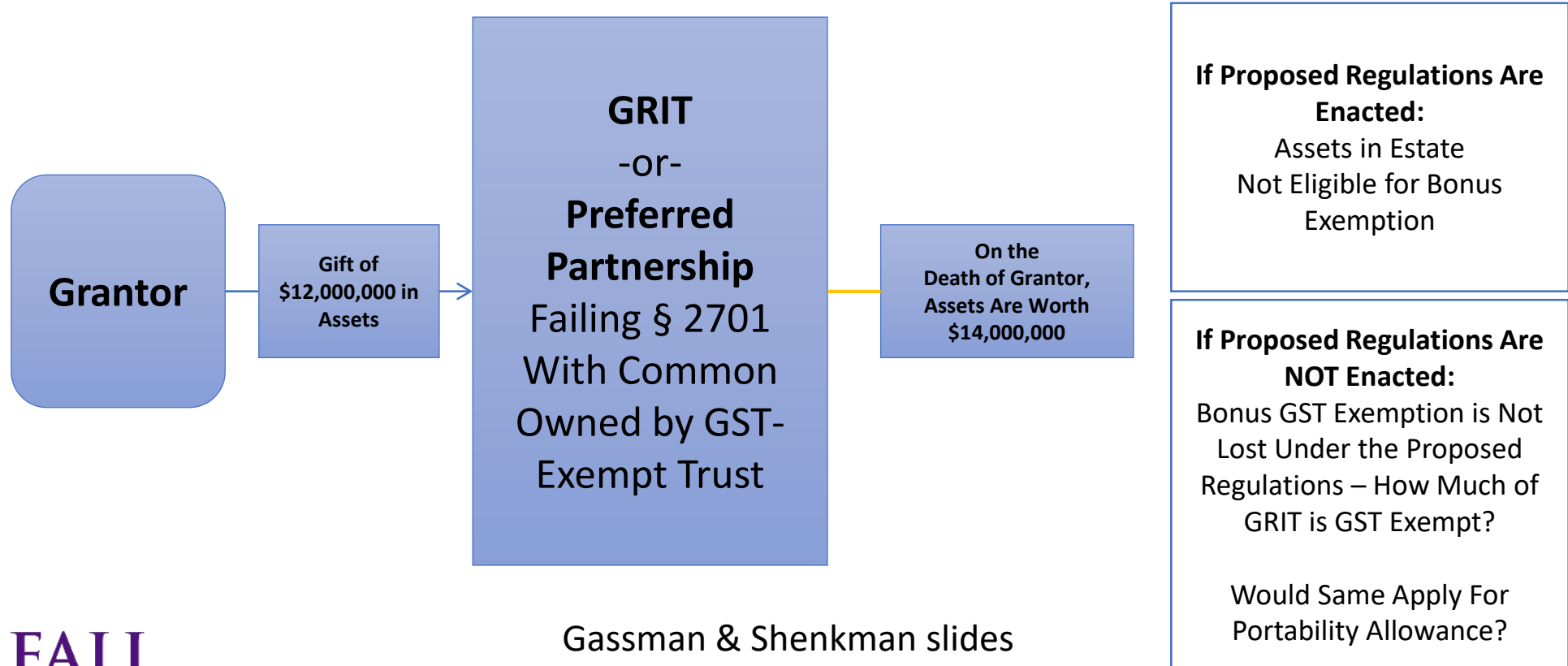
Example – Grandma's GRITs



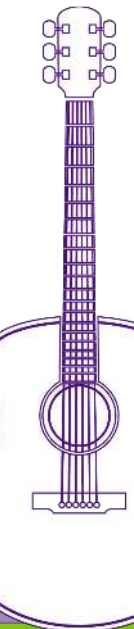
- Grandma has a \$30 million estate and does not feel comfortable gifting more than \$6,030,000 worth of assets outside of her control. She has never used the \$12,060,000 combined basic and bonus estate tax exclusion or her \$12,060,000 Generation Skipping Tax (“GST”) exclusion either.
- She gives \$12,060,000 to a lifetime grantor retained income trust (“GRIT”) that will pay her all income and may pay distributions of principle as and when needed.
- While the GRIT is irrevocable, Grandma can change the trustee to an alternate unrelated party, and the trustee she appoints can return the assets to her.
- Grandma allocates her \$12,060,000 GST exemption to the trust.
- The estate tax exemption goes to one half of its otherwise applicable level in 2026 and Grandma dies in 2027 with an exemption of \$7 million when the trust is worth \$13 million.
- While the value of the trust and grandma's other assets are subject to federal estate tax, with a \$7 million exemption, the trust assets can still be GST exempt and thus never subject to estate tax at the level of Grandma's children, who are all financially successful and pleased with the arrangement.

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Complete Gift / Forced Inclusion to Lock In Bonus GST Exemption



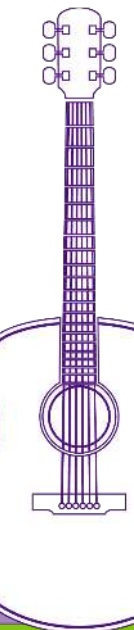
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Consequences of Proposed Regulations

- If the Proposed Regulations are not enacted, then the Grantor's estate can use the bonus exemption on GRIT assets if the Grantor dies after 2026.
- If the proposed regulations are enacted, then the bonus exemption will not be permitted for estate tax purposes, but the GRIT assets should be GST exempt.
- Under the new Proposed Regulations, if the Grantor dies after December 31st, 2025, only the then remaining credit would be available under IRC §2043, but the Grantor's \$12 million use of GST exemption will still be intact, and can save millions of dollars in federal estate tax when the Grantor's children and grandchildren eventually die and there is no estate tax or generation skipping tax imposed on the GRIT assets.

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2036 Retained Life Interests – Stay Away From the Fruit of the Tree

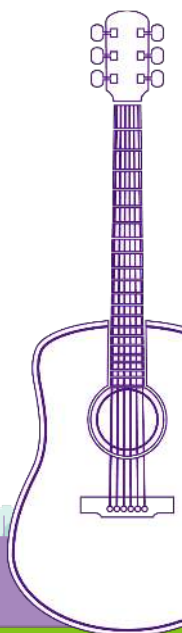
Assets transferred will still be considered as owned by the transferor:

- a) (2036(a)(1)) - The transferor had any written or oral agreement or understanding to be able to have to receive any “fruit from the tree.” The ability to put one cow on a large farm is enough to cause the entire farm to be subject to estate tax.
- b) (2036(a)(2)) - The grantor retains any right exercisable in conjunction with anyone to control if and when the property will be received by others.

The *Powell* and *Strangi* Tax Court cases have taken this beyond reason.

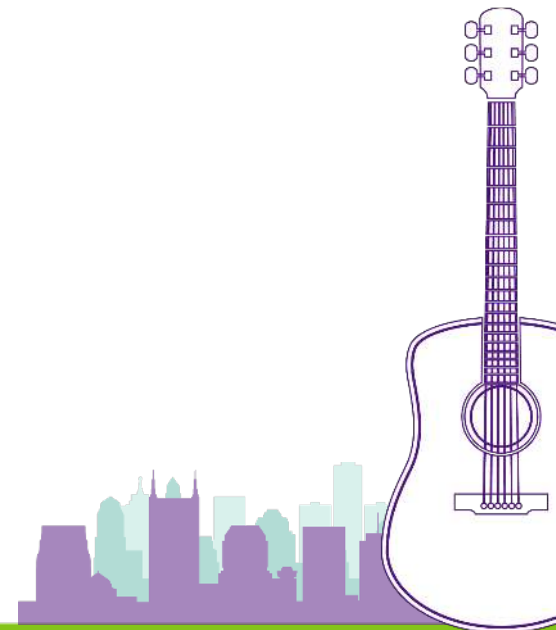
THREE YEAR RULE - 2036(a) can apply even after the rights are given up if the grantor dies within three years of giving the rights up.

BONA FIDE SALE EXCEPTION - 2036(a) will not apply if the arrangement was a bona fide sale for good and valuable consideration - this can be a very hard test to satisfy.



Revenue Ruling 2023-2

- Issued on March 29, 2023 by the IRS and held that there is no basis step up with respect to assets owned by an Irrevocable Grantor Trust upon the death of the Grantor
- The Ruling is limited to situations where the only asset of the Trust was received by a completed gift, and does not apply when the Trust received assets via a note sale.



Steve Leimberg's Income Tax Planning Email Newsletter - Archive Message #244

Date: 03-Apr-23

From: Steve Leimberg's Income Tax Planning Newsletter

Subject: Alan S. Gassman, Kenneth J. Crotty, Brandon L. Ketron & Peter M. Farrell: Revenue Ruling 2023-2 Got It Wrong? The Case for a Stepped-up Basis When the Grantor Dies

A short grantor trust walks into a bar. After a few too many drinks he starts flirting with a pretty beneficiary, promising her a step up in his assets. But before he seals the deal, the bartender pulls the stool out from under him, shouting, Get out! Youve got no basis stepping up here.

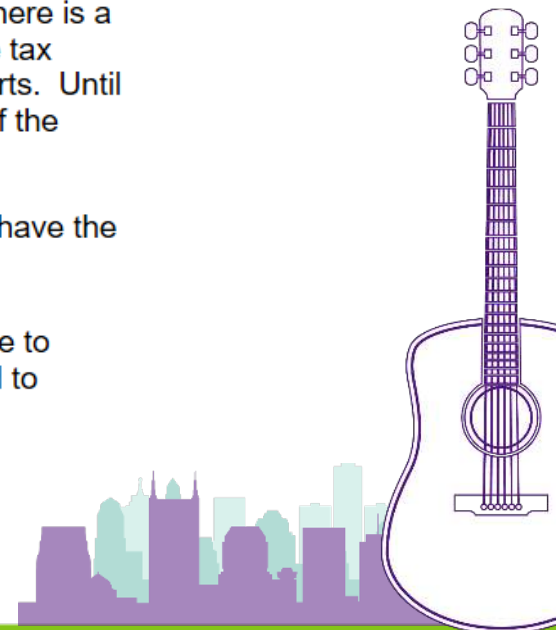
Based upon the detailed discussion that follows, we have concluded that there is a solid argument that there is a basis adjustment to the fair market value of the assets of a grantor trust on the death of the grantor.

EXECUTIVE SUMMARY:

It is the duty of a tax professional to advise and educate clients so that clients can make informed and intelligent decisions. We believe that reasonable professionals, courts, and appellate courts can disagree on the question of whether there is a step-up in basis on the death of the grantor for assets that are not included in the Grantors gross estate for estate tax purposes but are owned by the Grantor for income tax purposes. Eventually this issue will be decided by the courts. Until then, advisors are taking some degree of risk if they tell clients that there is no adjustment in basis on the death of the grantor. Courts may determine that there is a basis adjustment based on our analysis below.

A Revenue Ruling is binding on the IRS and can be relied upon by any taxpayer, but a Revenue Ruling does not have the same impact as a law or a Tax Court or appellate decision.

Revenue Rulings are not binding on any federal court, including the Tax Court.^[1] While most courts give deference to Revenue Rulings, the Tax Court does not give particular weight to Revenue Rulings because they are considered to represent the arguments of one of the parties before the court.^[2]



Our analysis in the Comment section was largely prepared before the IRS issued a Revenue Ruling on this issue. Now that Revenue Ruling 2023-2 has been issued, we do not believe that the IRS's position is beyond question. Although there is the risk of penalty, a taxpayer might consider paying the capital gains tax on the tax return as if the assets did not receive an adjustment in basis, and then filing an amended tax return requesting a refund based on the assets receiving a step-up in basis, and providing full disclosure that this position was taken. Then, if the step-up in basis is denied, the taxpayer did not make a substantial underpayment on the original return, and the risk of penalties being incurred by the taxpayer should be greatly reduced.

There will doubtlessly be many other newsletters that describe what the ruling says and argue that there is no adjustment in basis for these assets in this situation. In our opinion, there will likely be too few articles on why there should be an adjustment in basis on the death of the grantor.

FACTS:

The Treasury Department issued Revenue Ruling 2023-2 on March 29, 2023. The ruling held that assets owned by an irrevocable grantor trust should not receive an adjustment in basis on the death of the grantor, because the Trust's assets were not acquired from or were not passed from the decedent to the beneficiary for purposes of IRC § 1014(a).

The facts presented in the Revenue Ruling were as follows:

In Year 1, A, an individual, established irrevocable trust, T, and funded T with Asset in a transfer that was a completed gift for gift tax purposes. A retained a power over T that causes A to be treated as the owner of T for income tax purposes A did not hold a power over T that would result in the inclusion of T's assets in A's gross estate By the time of A's death in Year 7, the fair market value (FMV) of Asset had appreciated. At A's death, the liabilities of T did not exceed the basis of the assets in T, and neither T nor A held a note on which the other was the obligor.



IRC § 1014(b) defines the type of property that is entitled to this adjustment in basis at a decedent's death.^[iii] The Revenue Ruling held that none of the seven property types apply to the property owned by an irrevocable grantor trust upon the death of the grantor.

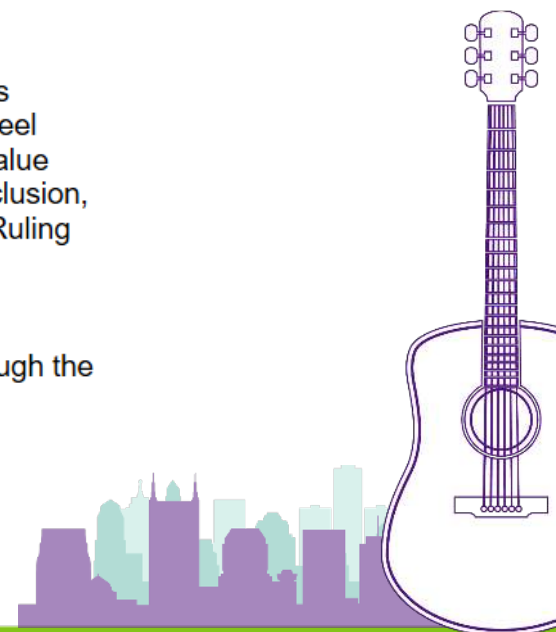
The IRS states in the Revenue Ruling that such assets are not bequeathed (giving property[,] usually personal property or money[,] by will), devised (giving property, especially real property, by will), or inherited (received from an ancestor under the laws of intestacy or property that a person receives by bequest or devise) (Section 1014(b)(1) property). The grantor did not retain a power to revoke or amend the trust, and did not hold a power of appointment over the trust asset (Sections 1014(b)(2), (3), and (4) property). The asset was not community property (Section 1014(b)(5) property) and it is not included in the grantors gross estate (Section 1014(b)(6) and (7) property).

In essence, because transfers to an irrevocable trust are "completed gifts" at the time of the transfer, when the grantor does not hold a beneficial interest in or a retained power over the Trust property (certain decision-making provisions that would require the trust asset to be included in the grantor's gross estate), the Revenue Ruling concludes that the beneficiary is not "inheriting" these assets from the grantor on the grantors death. Rather, the beneficiary is receiving the assets from the trust, which does not constitute assets being "bequeathed" or "devised" by the grantor on the grantors death. Therefore, the Revenue Ruling indicates that the assets held under the trust do not receive a basis adjustment, and the beneficiary carries over the decedents basis in the assets.

COMMENT:

Based upon the detailed discussion that follows, we have concluded that there is a solid argument that there is a basis adjustment to the fair market value of the assets of a grantor trust on the death of the grantor. As a result of this, we feel that it is appropriate to report income from any sale of the assets owned by a grantor trust based upon a fair market value date of death income tax basis for the applicable assets. The IRS and most tax commentators disagree with our conclusion, but we believe that this conclusion can be reached by the Tax Court or an appellate court, notwithstanding Revenue Ruling 2023-2.

Unfortunately for taxpayers and practitioners who represent them, many questions exist in the tax law. One of these questions is whether the assets of a grantor trust receive an adjustment in basis on the death of the grantor, even though the assets of the trust are outside of the grantors gross estate.



When a tax position is unsuccessfully taken on an income tax return, there are penalties and interest that can apply, which can be mitigated if there is what is known as Substantial Authority for the position taken. Substantial Authority and what is known as the Understatement Preparer Penalty rules are further discussed in this Comment.

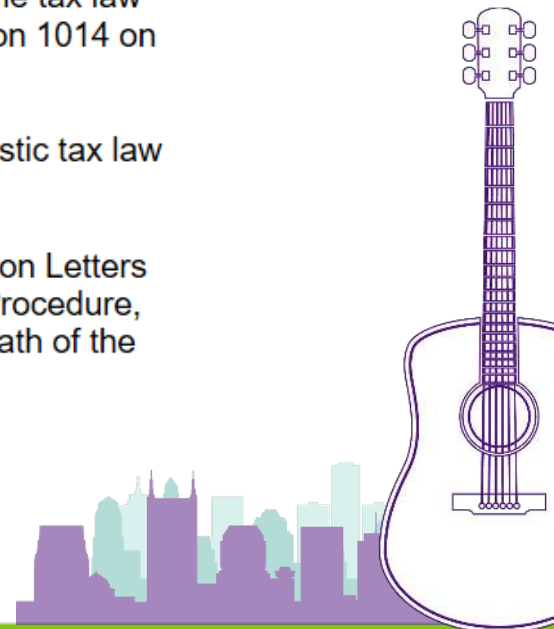
Now that the IRS has issued a Revenue Ruling on the issue, it may attempt to apply penalties on audit, claiming that there is no Substantial Authority for the position that an adjustment in basis occurred at the time of the death of the grantor of a trust, although we do not believe this to be the case. In the event that additional tax is owed, the taxpayer will have to pay interest on the amount owed because the interest requirement for underpayments is statutory and cannot be waived by the Internal Revenue Service.

Grantor trusts have been used by practitioners for years as an estate planning tool to help shift wealth to subsequent generations. A typical grantor trust is an irrevocable trust which has been designed so that it is not included in the gross estate of the grantor for the purposes of determining the size of the grantors gross estate and the grantors possible estate tax exposure. The grantor retains specific powers over the grantor trust so that the grantor trust is considered to be owned by the grantor for income tax purposes.

Prior to Revenue Ruling 2023-2, there was a common misconception (in our opinion) among practitioners that the tax law and IRS rules were clear that the assets of a grantor trust would not receive an adjustment in basis under Section 1014 on the death of the grantor, because the assets of the grantor trust were not included in the grantors gross estate.

The IRS issued Revenue Procedure 2022-3 on January 3, 2022. The Revenue Procedure listed areas of domestic tax law on which the IRS would not issue rulings or determination letters.

Section 5 of the Revenue Procedure was creatively entitled Areas Under Study In Which Rulings or Determination Letters Will Not Be Issued Until the Service Resolves the Issue Through Publication of a Revenue Ruling, a Revenue Procedure, Regulations, or Otherwise. Item 11 of this Section specifically applied to the basis of a grantor trust after the death of the grantor, and provided as follows:



Section 1014 - Basis of Property Acquired from a Decedent - Whether the assets in a Grantor Trust received a Section 1014 basis adjustment at the death of the deemed owner of the trust for income tax purposes when those assets are not includible in the gross estate of that owner under chapter 11 of subtitle B of the Internal Revenue Code.

The fact that this issue was an area under study in which Private Letter Rulings would not be issued to taxpayers, demonstrated that the IRS attorneys had not determined if there is an adjustment in basis to the assets of the grantor trust on the death of the grantor. With Revenue Ruling 2023-2, the IRS has now taken a position on the issue, but there remains contrary authority and arguments that can be used by the Tax Court, the Court of Claims, and an appellate court in reaching the opposite conclusion.

In September of 2002, tax law luminaries Jonathan G. Blattmachr, Prof. Mitchell M. Gans, and Hugh H. Jacobsen published an article entitled Income Tax Effects of Termination of Grantor Trust Status By Reason of the Grantors Death in the September 2002 edition of the Journal of Taxation. The article states that there is no clear answer as to what the basis of the grantor trust assets would be on the death of the grantor. Jonathan Blattmachr is one of the most well-respected tax lawyers in the United States, and Mitchell Gans is a well-respected Tax Professor who publishes extensively, and who also has also provided training courses for IRS personnel for many years.

The authors noted that Section 1014(b)(9) requires grantor trust assets to be included in the estate of the grantor to receive a basis adjustment, but section 1014(b)(1) does not require inclusion in the grantors estate. Section 1014(b)(1) only requires that the asset be acquired by bequest, devise, or inheritance.

Section 1014(b)(1) reads as follows:

Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;



The relevant portion of Section 1014(b)(9) reads as follows, with the bold emphasis added:

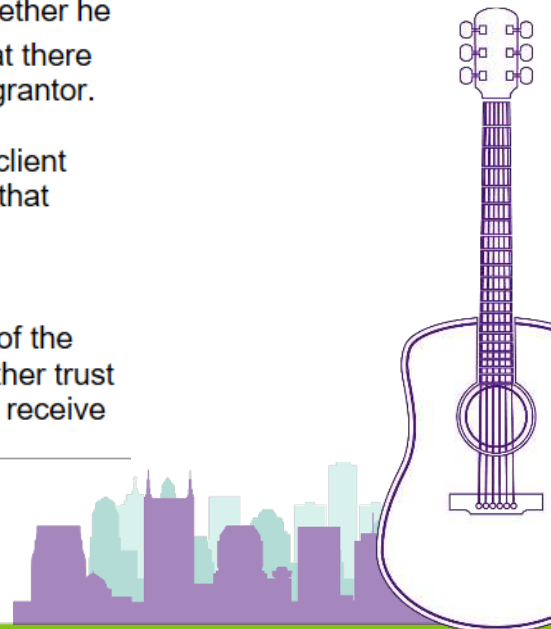
In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), **if by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B or under the Internal Revenue Code of 1939.** In such case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under subsection (a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this subtitle or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on such property before the death of the decedent. Such basis shall be applicable to the property commencing on the death of the decedent....

Nothing in the language of the Statute, the Regulations, or the legislative history related to the passage of the Statute affirmatively preclude[s] transfers made under a lifetime trust from qualifying as a bequest or devise.^[iv] [B]ecause a grantor trusts assets are deemed to be owned by the grantor for income tax purposes, a good argument can be made that the assets held in such trust should be viewed as passing as a bequest or devise when the trust ceases to be a grantor trust at the moment of death.^[v]

As reported by Steve Akers for the Bessemer Trust Company, at the Estate Planning for the Family Business Owner, which was co-sponsored by the ABA Section of Real Property Trusts and Estate Law and the ABA Section of Taxation which was held from July 8th through July 10th, 2015, noted author and lecturer, Howard Zaritsky, discussed the article and whether he believed that an adjustment in basis should occur on the death of the grantor.^[vi] Howard stated at the conference that there was a not bad argument that the assets of a grantor trust should receive an adjustment in basis on the death of the grantor.

According to Mr. Akers, Howard further stated that he would be willing to take that position on a return, advising the client that the IRS will fight the issue if it spots the issue. Howard believed there was a minimal risk of penalties for taking that position because it is not contrary to any existing law and he felt that it is supported by some law.

In Private Letter Ruling 201245006, a Taxpayer, who was a citizen of a foreign country, created an irrevocable trust. Pursuant to the terms of the trust, the assets were held for the taxpayer during the taxpayers lifetime. On the death of the taxpayer, absent the exercise of a power of appointment by the taxpayer, the assets of the trust would be held in further trust for the benefit of the taxpayers descendants. The taxpayer requested confirmation that the assets of the trust would receive an adjustment in basis equal to their fair market value as of the death of the taxpayer.



The IRS concluded that the basis of the trust assets would be equal to their fair market value as of the taxpayers death. Pursuant to the analysis of the Private Letter Ruling, Section 1014(b)(1) provides that property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent shall be considered to have been acquired from or to have passed from the decedent for purposes of Section 1014(a). The IRS acknowledged that Section 1014(b)(9), which requires assets receiving an adjustment in basis to be included in the estate of the decedent, does not apply to property described in any other paragraph of Section 1014(b).

The Private Letter Ruling indicated as follows:

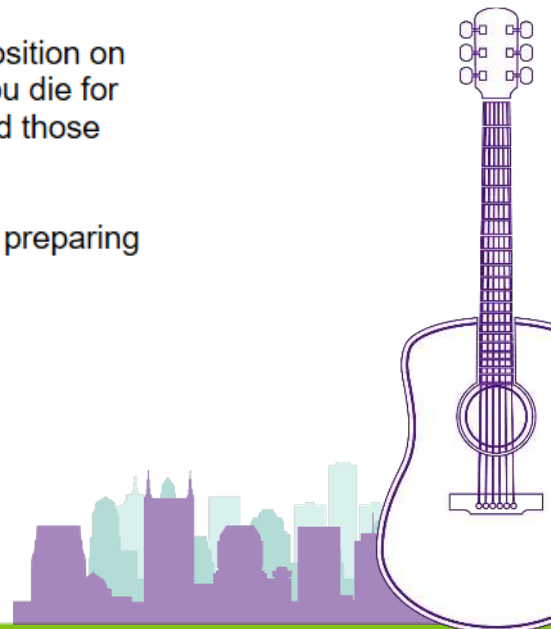
Taxpayer's issue will acquire, by bequest, devise, or inheritance, assets from Trust at Taxpayer's death. The assets acquired from Trust are within the description of property acquired from a decedent under Section 1014 (b)(1). Therefore, Trust will receive a step-up in basis in Trust assets under Section 1014(a) determined by the fair market value of the property on the date of Taxpayer's death.^[vii]

The above views were also confirmed by Diane Freda in her June 18, 2015 Bloomberg BNA article entitled IRS No-Rule on Basis in Grantor Trust Sales Reflects Clash of Opinions. In the article, Diane Freda quotes tax practitioner and authority Diana Zeydel, as stating that there are completely cogent, tax consistent arguments that when grantor trust status is turned off, there may be room to conclude that the trust gets a step-up in basis by reason of the Grantors death.

When asked about the situation in June of 2015, and many times thereafter, Mr. Blattmachr responded that his position on the issue has not changed since the publication of his 2002 article. You own those assets up until the moment you die for income tax purposes. We believe at that time, you, the individual, at your death, have for the first time, transferred those assets, which will not be to the trust, which did not exist for income tax purposes until the moment you die.

Section 6694(a) provides that a tax preparer can be subject to accuracy related and understatement penalties for preparing a tax return without providing Adequate Disclosure if such Adequate Disclosure is necessary.

Specifically, Section 6694(a) provides that this liability can occur if:



- (1) the preparer knew of the position; and (2) either
 - (a) the position is related to a tax shelter or reportable transaction;
 - (b) **the position is not disclosed in the manner provided in Section 6662(d)(2)(B)(ii) (related to Adequate Disclosure on a tax return) and there was not substantial authority for the position**(emphasis added); or
 - (c) the position was disclosed but there was no reasonable basis for the position.

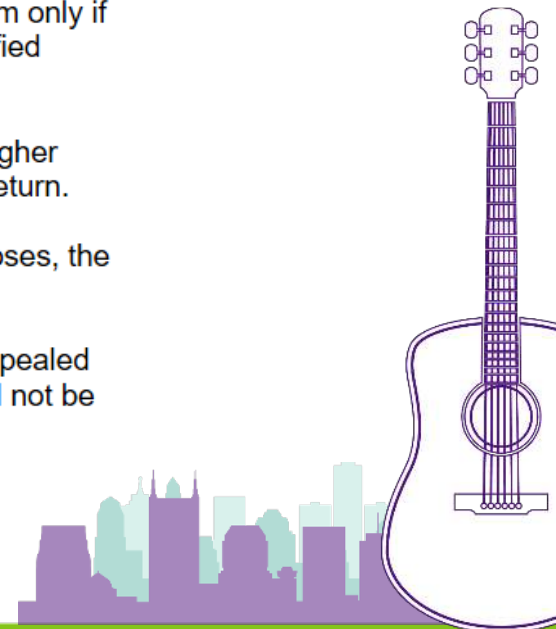
Because the IRS now takes the position that the assets of the grantor trust do not receive an adjustment in basis on the death of the grantor, it may also conclude that there is no Substantial Authority that can be relied upon to take the position that the assets of the grantor trust do receive an adjustment in basis, regardless of whether this is correct. A return preparer would need to provide Adequate Disclosure of this position. A taxpayer provides Adequate Disclosure of the tax treatment of an item if either: (a) the disclosure is made on a properly completed Form 8275 (or Form 8275-R if the treatment of an item is contrary to the treatment stated in a Regulation issued by the IRS), which is attached to the taxpayers return; or (b) the tax treatment is disclosed on the taxpayers return in accordance with the Revenue Procedure specifically providing that disclosure of the tax treatment on a tax return is sufficient. If the Revenue Procedure does not provide such authority, then the disclosure must be made on a properly filed Form 8275 or 8275-R, as applicable.

Revenue Procedure 2022-41 provides that certain positions can be adequately disclosed on an income tax return without attaching a Form 8275. Based on our review, the Form 1041 tax return which will be filed by the Trust after the death of the grantor does not qualify under this Revenue Procedure as providing Adequate Disclosure. Treas. Reg. 1.6662-4(f)(2) provides that if Revenue Procedure 2022-41 does not include an item, disclosure is adequate with respect to that item only if made on a properly completed Form 8275 or 8275-R, as appropriate, attached to the return for the year or to a qualified amended return.

In *Rothstein v. Commissioner* 735 F.2d 704 (2d Cir. 1984), the Taxpayer sold property which had a basis that was higher than its fair market value to an irrevocable disregarded grantor trust and claimed the loss on his federal income tax return.

The IRS challenged the Taxpayers position, by claiming that because the trust was disregarded for income tax purposes, the sale between the taxpayer and the trust should be disregarded.

The Tax Court agreed with the IRS that the sale would be disregarded for income tax purposes, but the Taxpayer appealed the Tax Courts decision to the Second Circuit Court of Appeals, which agreed with the Taxpayer that the trust should not be disregarded for purposes of the sale.



The IRS disagreed with the result and issued Revenue Ruling 85-13 to have all such sales disregarded, apparently without thinking through that in the long run the ability of Taxpayers to sell appreciated assets to irrevocable trusts that are disregarded for income tax purposes would cause a significant tax advantage for federal estate and gift tax purposes. This occurred during the Reagan administration, when Donald Regan was the Treasury Secretary. It is unknown to the authors whether the real purpose of the IRS issuing Revenue Ruling 85-13 was to help taxpayers who would want to reduce federal estate and gift taxes by making sales to irrevocable trusts, but this is what has occurred.

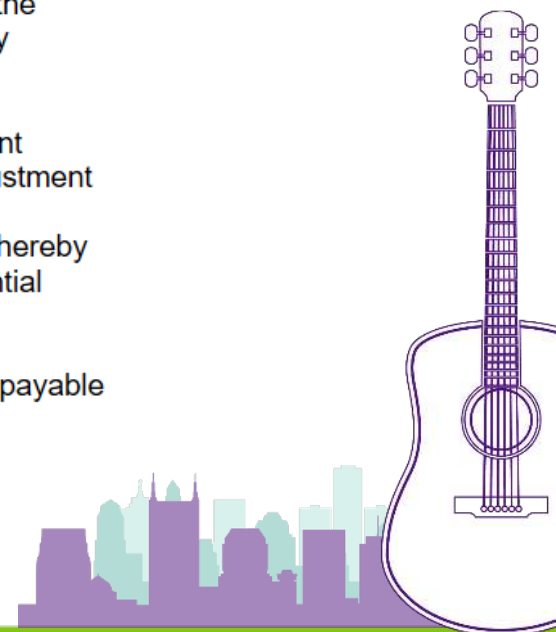
Given that the IRS took the position in Revenue Ruling 85-13 that the income tax treatment of a transaction between the grantor of an irrevocable disregarded trust and the trust itself would be disregarded, it is not a far leap to conclude that the assets in that same disregarded trust would be considered as having been devised or bequeathed by the grantor at the time of the grantors death for purposes of IRC Section 1014(b)(1). Because of the IRSs opposition to the Rothstein appellate courts conclusion and the issuance of Revenue Ruling 85-13, it seems to the authors that there could have been and could continue to be Substantial Authority for the proposition that there should be a step up in basis on the death of the Grantor.

The very fact that the IRS issued a Private Letter Ruling in 201245006 which followed this position, and did not rule or provide any official indication of having an opinion one way or the other on the issue is further evidence that there was and still is Substantial Authority for this.

It would be expected that a future Tax Court or Court of Claims and appellate court decision on the issue will note that the issuance of Revenue Ruling 2023-2 followed extreme political pressure put on Secretary of the Treasury Yellen and the Biden administration in general by prominent Senators who have significant support from interest groups that strongly encourage the removal of tax advantages that exist for the wealthy.

While not providing disclosure of this position may expose a taxpayer and his or her tax advisors to an understatement penalty, we believe that it is safer for a tax return to take the position that the assets of a grantor trust receive an adjustment of basis on the death of the grantor rather than risking a malpractice claim from the grantors heirs in future years. If necessary, a tax advisor may want to consider entering into an Indemnification Agreement with the grantors family whereby they would agree to indemnify the tax advisor if he or she becomes exposed to any penalties associated with a potential understatement.

Causing the grantors estate to be estate taxable could save even more income tax than the estate tax that becomes payable if leveraged property is owned by the trust.



For example, if a completely depreciated apartment building worth \$20,000,000 and subject to a \$17,000,000 mortgage is owned by the trust and the Grantor is given a power to appoint the apartment building subject to the mortgage to creditors of the Grantors estate then there would be \$20,000,000 of new depreciation that could be taken or the building could be sold, and \$20,000,000 of depreciation recapture income would be saved, plus any state income tax savings, would apply.

The entire value of the building would be considered to be in the gross estate of the Grantor for estate tax purposes, but the mortgage thereon would be considered to be a liability of the grantor, even if it is not recourse, under the US Supreme Court case of Crane v. Commissioner (331 U.S. 1 (1947)) resulting in net estate tax inclusion of only \$3,000,000 of value.

Alternate Strategies

Clients who do not want to rely on the death of the grantor causing the assets of a grantor trust to receive a new fair market value income tax basis, have other ways to receive such an adjustment.

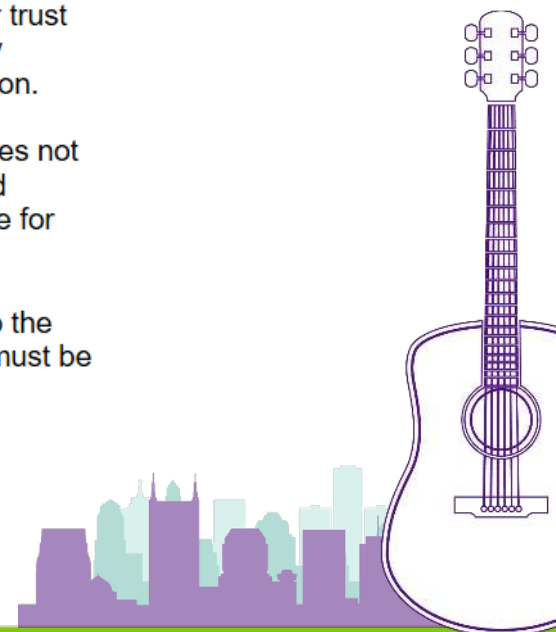
Methods to achieve this on the death of the Grantor are as follows:

1. **SWAP CASH OR HIGH BASIS ASSETS OWNED BY THE GRANTOR WITH THE TRUST.** The grantor can swap non-appreciated asset, less appreciated assets, or cash with the trust before death so that the appreciated assets received from the trust will receive a new fair market value income tax basis.

Pursuant to Revenue Ruling 85-13 the sale or exchange of assets between the grantor of a disregarded grantor trust and the trust itself is not subject to federal income tax. Although certain Senators have called upon the Treasury Department to reverse this Revenue Ruling, that has not yet occurred, and is not expected to occur any time soon.

2. **THE GRANTOR CAN BORROW MONEY AND BUY LOW BASIS ASSET FROM THE TRUST.** If the grantor does not wish to swap assets with the trust or does not have low-basis assets to swap with the trust, then the grantor could borrow money from a banking institution, family member, or entity and purchase assets from the trust in exchange for cash.

After the grantors death, the appreciated assets could be sold, and the money borrowed could then be repaid to the lender, with interest. The cost of paying interest, which will further reduce the size of the estate of the grantor, must be considered in determining whether this strategy is worthwhile.



3. **THE GRANTOR CAN PURCHASE ASSETS FROM THE TRUST FOR A NOTE.** The grantor could purchase the assets from the Trust in exchange for a promissory note and pay fair market value interest on the note. The interest paid by the grantor to the trust would further reduce the value of the grantors estate, but if the asset or assets purchased increase in value after the sale in excess of the interest rate charged on the promissory note, then this technique would add to the size of the grantors estate.

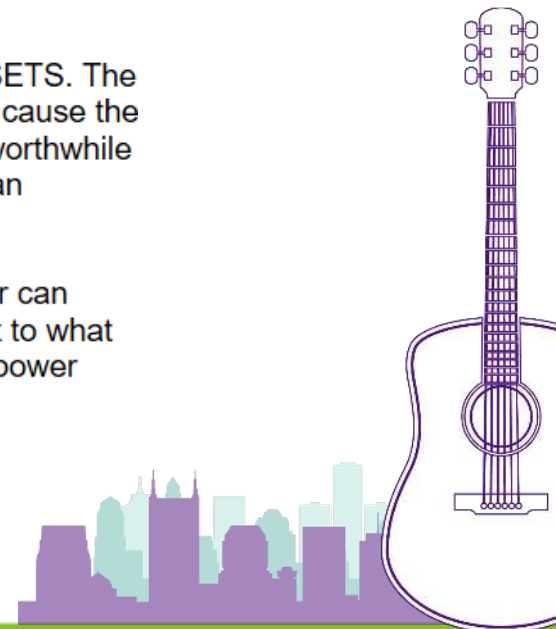
Upon the death of the grantor, the assets received in exchange for the note would receive a step up in income tax basis, and could then be transferred back to the Trust in satisfaction of the promissory note. There should be no gain or loss reported on the installment obligation when paid as the assets sold received a step up in income tax basis on the death of the grantor.

4. **USING A PREFERRED COMMON PARTNERSHIP AND SALE FOR NOTE.** The Trust could place assets into a limited liability company that would be treated as a partnership for income tax purposes, the partnership could issue preferred and common shares, and then the Trust could sell the commons shares to the Grantor.

For example, the preferred shares might grow at a guaranteed rate of 8% per year and the common shares would be entitled to most growth exceeding 8% per year.

If the Grantor buys the preferred interest from the trust in exchange for a promissory note bearing interest at 7% a year, then there would only be a 1% per year plus limited growth arbitrage to add to the Grantors estate for estate tax purposes.

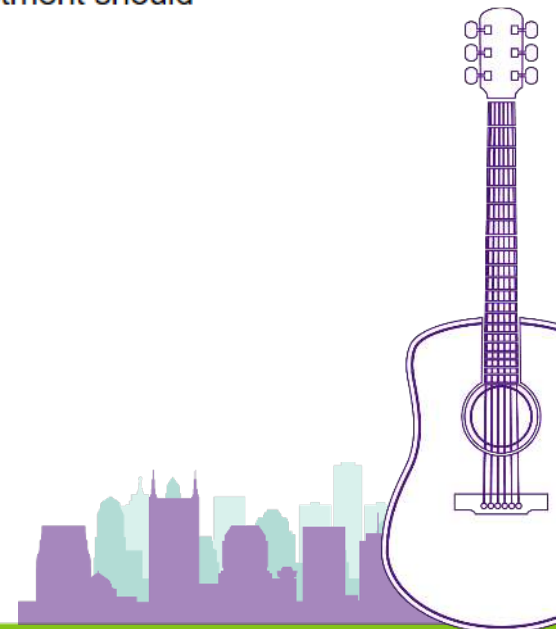
5. **GIVE A NON ESTATE TAXABLE GRANTOR A GENERAL POWER OF APPOINTMENT OVER TRUST ASSETS.** The grantor could be given a power to direct trust assets to creditors of the grantors estate upon death. This would cause the assets of the trust to be considered as owned by the Grantor for federal estate tax purposes, but this may be worthwhile if the grantors net worth is less than the estate tax exemption amount. This may be installed by a court order, an agreement among the interested parties, or by Trust Protectors.
6. **STEP UP ON THE DEATH OF A PERSON OTHER THAN THE GRANTOR.** Someone other than the grantor can have a Power of Appointment over trust assets. Under Internal Revenue Code Section 1014(b), assets subject to what is known as a general power of appointment receive a fair market value income tax basis on the death of the power holder.



The Grantor of the trust may have a family member or even close friend with a similar or shorter life expectancy than the Grantor who may be given a power to appoint assets to creditors of such individuals estate. This would cause the assets that the power of appointment is exercisable over to be considered as owned by the power holder on death, and will cause a step up in income tax basis, even if the power holder is not a beneficiary of the trust, and even if the power is exercisable only with the consent of one or more individuals who do not have any beneficial interest in the trust or a fiduciary duty to exercise or not exercise the power.

Tax advisors, including both CPAs and attorneys, owe a duty to their clients to help minimize the potential taxes that the client faces. To fulfill this obligation, advisors should provide each client with all of the potential options available to the client, especially in any area which is uncertain under the tax law. If an advisor simply assumes that no adjustment in basis is possible for the assets of a grantor trust on the death of the grantor, then the client will be forced to take a carry-over basis for the assets, instead of having the basis of each asset adjusted to its fair market value at the time of the grantors death.

Practitioners should at least make their clients aware of the uncertainty regarding this issue. An informed client can decide to take the position that an adjustment in basis occurred on the death of the grantor, instead of accepting a carry-over basis. Such client would need to understand that on audit, the IRS may be expected to take the position that no adjustment should have occurred, although they could be wrong. Stay tuned for future litigation.

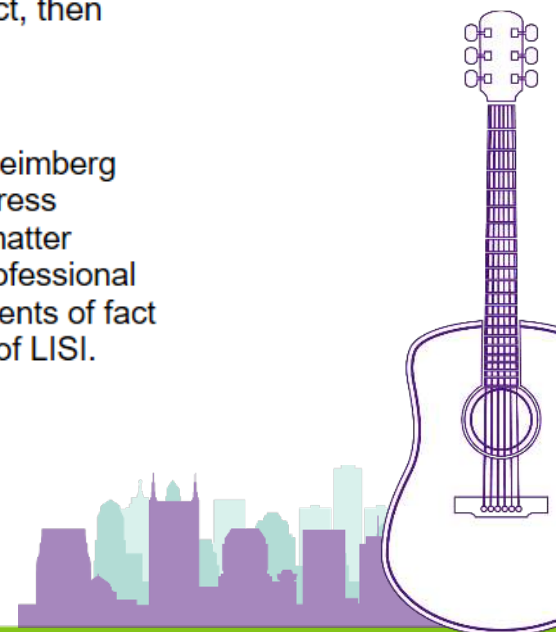


Conclusion

The Internal Revenue Service waited more than a decade to reverse the position that was taken in Private Letter Ruling 201245006 with respect to whether the assets in an irrevocable trust that is disregarded for income tax purposes but considered to be a complete gift and outside of the estate of the Grantor for estate tax purposes will receive a step-up in income tax basis on the death of the Grantor. Revenue Ruling 2023-2 is an important event for advisors who wish to help assure that their clients have the advantage of a new fair market value income tax basis, which we believe is supported by the language of Internal Revenue Code Section 1014.

It is of interest to us that some members of the tax community have generally cast aspersions on those who support the proposition that a step-up does occur. If and when the Tax Court, the Court of Claims, and/or an appellate court agree with the position that a step-up in basis has occurred on the death of a Grantor, then tax practitioners and their clients will question whether the best advice was to not take the step-up, or to take the step-up and advise the IRS in the conventional manner available of the position taken. Many taxpayers will file an income tax return and pay the tax as if no step-up occurred, and then file an amended return with prominent disclosure to reduce or eliminate the IRS's ability to impose negligence and substantial understatement penalties. Until then, we must continue to educate our clients in the best manner possible. If the opinions of Jonathan Blattmachr, Mitchell Gans, Howard Zaritsky, and Diana Zeydel are incorrect, then maybe the world is flat!^[viii] Galileo would probably disagree.

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^[i] *Rauenhorst v. Commissioner*, 119 T.C. 157, 171 (2002) (citing *Frazier v. Commissioner*, 111 T.C. 243, 248 (1998); *N. Ind. Pub. Serv. Co. v. Commissioner*, 105 T.C. 341, 350 (1995), affd. 115 F.3d 506 (7th Cir. 1997)).

^[ii] Linda Galler, *Judicial Deference to Revenue Rulings: Reconciling Divergent Standards*, 56 Ohio St. L.J. 1037, 1039 (1995).

^[iii] Fortunately, there are forty-nine ways to leave your lover without dying, but there are only seven ways to get a basis adjustment under § 1014(b). There are also seven words that you cannot say on television or in a Leimberg newsletter. *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978). The seven types of property that are considered to have been acquired from or to have passed from the decedent for purposes of IRC § 1014(a) are as follows:

1. Section 1014(b)(1) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;
2. Section 1014(b)(2) Property transferred by the decedent during life in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before death to revoke the trust;
3. Section 1014(b)(3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during life in trust to pay the income for life or on the order or direction of the decedent with the right reserved to the decedent at all times before death to make any change in its enjoyment through the exercise of a power to alter, amend, or terminate the trust;
4. Section 1014(b)(4) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;
5. Section 1014(b)(6) Property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, or United States territory or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 or § 811 of the Internal Revenue Code of 1939 (1939 Code);
6. Section 1014(b)(9) Property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property must be included in determining the value of the decedent's gross estate under chapter 11 or under the 1939 Code. In this case, if the property is acquired before the death of the decedent, the basis commencing on the death of the decedent is the amount determined under § 1014(a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under subtitle A of the Code or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on the property before the death of the decedent. However, § 1014(b)(9) does not apply to:
 - (A) annuities described in § 72;
 - (B) stock or securities of a foreign corporation that would have been a foreign personal holding company prior to the repeal of § 552 of its next preceding taxable year prior to the decedent's death to which § 1014(b)(5) would apply if the stock or securities had been acquired by bequest; and
 - (C) property described in any other paragraph of § 1014(b);
7. Section 1014(b)(10) Property includible in the gross estate of the decedent under § 2044 (relating to certain property for which the marital deduction was previously allowed). In any such case, the basis is determined under § 1014(b)(9) as if such property were described in the first sentence of § 1014(b)(9).

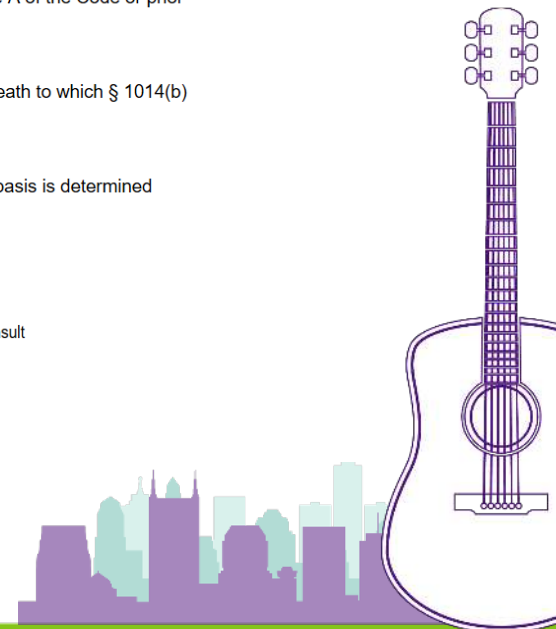
^[iv] Jonathan G. Blattmachr, et al., *Income Tax Effect of Termination of Grantor Trust Status by Reason of the Grantors Death*, 97 J. Tax'n 142, 154 (2002).

^[v] Id.

^[vi] Howard M. Zaritsky is an attorney who specializes entirely in estate tax and estate planning issues, who has written numerous books, articles, and treatises on estate planning. Estate planning professionals regularly consult with Howard.

^[vii] Diane Freda, *IRS No-Rule on Basis in Grantor Trust Sales Reflect Clash of Opinions*, BNA Tax and Accounting Center (June 22, 2015).

^[viii] At the 2023 Heckerling Institute a speaker remarked that, those who believed that there is a step-up on death may also believe that the world is flat.



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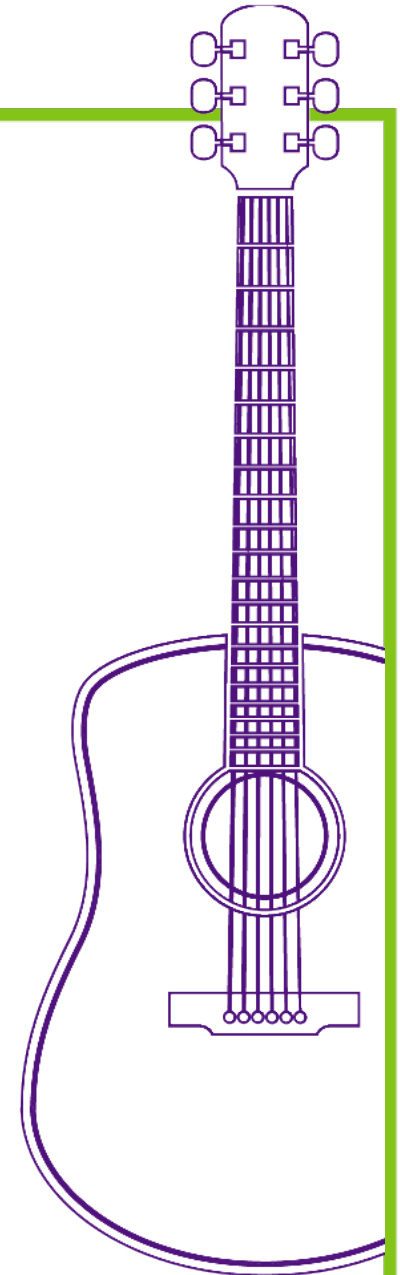
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