

What You Didn't Know About Charitable Giving Opportunities and How It Can Affect Pre-2026 Planning

Tuesday, October 29, 2024
12:00 PM to 1:00 PM EST
(60 minutes)

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

1245 Court St
Clearwater, FL 33756



Special Thanks



Martin Shenkman for running this conference and all of the other things that he does for charities, professionals and people in general.

Jerry Hesch for his contribution of slides, knowledge and leadership in this area.

Larry Katzenstein for his Bloomberg Portfolio on Charitable Remainder Trusts and the development of TigerTables .

Brandon Ketron for his many hours developing Charitable Remainder Trust slides and optimizing strategies.



Table of Contents

5 Dimensional Charitable Plan	4
50 Ways to Leave Your Legacy	5
2024 Charitable Deduction percentage Summary Chart	15
EZ Learning Tool for Charitable Tax Law	16
Dynasty Trusts	23
S Corp Owner Planning	30
Non-Profit Entity Owning for Profit Business	32
The Administrative Note Exception	55
IDGT	74
Charitable Remainder Trusts	78
Charitable Lead Annuity Trusts	143



The Five Dimensional Charitable Plan

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




(Outright Gifts)		
For taxpayers who itemize deductions for tax year 2024: When itemized deductions exceed \$14,600/single taxpayers, \$21,900 for heads of households and \$29,200 for married taxpayers.	You have automatic deduction for these amounts, unless the sum of property taxes up to \$10,000, plus medical expenses exceeding 7.5% of adjusted gross income, plus interest expense allowable on home mortgage, plus charitable deductions exceed these thresholds. Strategy is every other year or every third year; you pay a lot to get over the threshold to have the deduction – called bunching your deductions.	You can pay the excess money to a charity or to a donor advised fund and then later it is given to a charity.
If you are over 70-1/2: You can do a qualified IRA transfer.	You can transfer up to \$100,000 a year directly from your IRA to charity. Will be inflation adjusted after 2024.	For 2020 and 2021, it was unlimited for anyone over 59-1/2.
Depreciable buildings:	Can be given to a Private Operation Foundation or Public Charity for fair market value of building without depreciation recapture – building may be subject to old debt if qualifies under the “old debt exception” to the Unrelated Business Taxable Income (“UBTI”) rules.	Donor can continue to manage the building and remit rent income to charity while getting a deduction for the total fair market value of the building.
Part Ownership of Business:	Donor retains control of business and gives part ownership to charity. Donor receives income tax deduction for value, and charity receives part of profits.	See LISI Charitable Planning Newsletter #280 - Alan Gassman, John Beck & Michael Lehmann: Donor Controlled Charitable Business System (March 11, 2019) at http://www.leimbergservices.com .
Have a Party for Charity:	Write off the cost, or have the charity reimburse you for the cost. Redecorate your house while you are at it.	Please Invite the Author
Ask Clients Who Dispute Your Fees to Pay the Amount in Question to a Worthy Charity.		




1. (Cont.)

50 WAYS TO LEAVE YOUR LEGACY

No More Free Consultations – Ask that a Donation Go to charity if the Client Does Not Hire You.		
Move a Historical House to a Museum or Orphanage:	Deduct the full value of the antique home if actively displayed by charity – What about if used by students who learn how to disassemble?	
For Donors Who Would Like to Go Above the Maximum Adjusted Gross Income Donation Amounts:	<p>Make interest-free loans to the charity.</p> <p>Provide rental space without charging rent to a charity.</p> <p>Pay for advertising and sponsorship rights to get business deduction under IRC § 162.</p> <p>Subsidize contributions made by friends and family members who can donate and receive tax deductions.</p>	
Collectibles: You can put in a Charitable Remainder Unitrust.	Deduction can be based on fair market value, if the charity uses the item received as part of its mission.	EXAMPLE: Artwork displayed in a museum or university hallway.
Buy Your Loved One New Jewelry and Donate the Old Jewelry at Fair Market Value:	The fair market value of used jewelry may substantially exceed what it would actually sell for – valuation of jewelry can be based upon what the taxpayer would normally pay.	Must be used / displayed by the charity to deduct fair market value.
Make Gifts from Low Income Bracket Taxpayers to High Bracket Taxpayers to Enable Them to Make a Donation:	Example: Grandma is in the 15% bracket and wants to give \$20,000 to her church. Her son is in the highest bracket and makes a \$20,000 donation. Grandma may choose to give her son a \$20,000 disposition under her estate plan.	
Gift Life Insurance Policies	Gift equals value of policy-Minus any ordinary income that would have been recognized on sale-premiums tax deductible after charity owns the policy.	Must appraise life policy in appropriate manner.

(Legacies on Death – Whether Directly on Death or Contingent Upon Others Not Surviving)		
Leave Cash in Your Will or Trust:	No income tax deduction, but there will be an estate tax deduction.	
Provide that Income from Your Estate or Trust Will Be Paid to the Charity:	This carries out distributable net income to save income tax for Remainder Beneficiaries. Must have Section 642(c) language in original Trust Agreement	 Professor Dennis (“DNI”) Calfee
Give IRD (Income with Respect to a Decedent) Assets: Note-This means give your IRA to charity	No income tax will be paid on IRA proceeds going directly to charity or passing through properly drafted trust to charity.	Distribution to charity will qualify for estate tax charitable deduction
Life Insurance:	Can deduct premiums if charity owns the policy.	
Use Charitable Lead Annuity Trusts (“CLATs”) to Zero Out Estate Tax:	Jacqueline Kennedy Onassis – EXAMPLE: 15 annual payments to charity with remainder to family – zero estate tax and family can expect a significant inheritance after term of years for charity.	Can arrange as a disclaimer choice – I give the rest to my daughter, but anything she disclaims goes to CLAT for charity.
Charitable Remainder Trusts:	Pay my family annually for 20 years the maximum percentage that is allowed each year and can apply without incurring estate tax. Make annual payments for life of my son, and remainder to charity thereafter.	Remainder to charity chosen at the time.



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



(Liquidity Event Planning)		
Sell Asset or Company and Then Give Cash from Sale to Charity:	Least effective.	<p>EXAMPLE: Sell \$1,000,000 asset with zero basis and donate \$200,000 to charity. Pay capital gains tax on \$800,000. 23.8% of \$800,000 is \$190,400.</p> <p>$\\$800,000 - \\$190,400 = \\$609,600$.</p>
Gift Part Ownership of What Will Be Sold to Charity Immediately Before There is a Legally Binding Obligation:	The tax deduction for the value of what is given will eliminate income tax on an equal portion sold.	<p>EXAMPLE: Donate 20% of \$1,000,000 company to charity and sell 80% for \$800,000. $\\$190,400 - \\$142,800 = \\$47,000$ tax savings</p> <p>NET RESULT IS MUCH BETTER FOR THIS ONE THAN FIRST EXAMPLE ABOVE.</p>
Defer All Income Tax From Sale for Approximately 19 or More Years Using Charitable Remainder Unitrust ("CRUT"):		In Example above, donate 20% to charity before sale, and have 80% be given to and sold by Charitable Remainder Unitrust – Pay income taxes ratably, based upon 11% of value withdrawals over 20 years, or defer any distributions for up to 14-15 years using FLIP NIMCRUT.



(Liquidity Event Planning)		
Place Assets in a FLIP NIMCRUT that pays 90% of value under tables to Grantor.	<p>Grantor places NIMCRUT Unitrust income under LLC and sells 99% non-voting interest to Grantor Trust for note. The discount may be 50% because of the uncertainty and delay in receiving any distributions.</p> <p>Example: \$1 million of investments into CRUT for \$900,000 Unitrust interest. Client gets \$100,000 tax deduction. Sell 99% non-voting interest in LLC that holds CRUT payment to SLAT or Dynasty Trust for a note for \$450,000.</p> <p>Savings at 40% estate tax rate and with charitable deduction may be more than the charity receives.</p>	<p>Example: \$1 million of investments into CRUT for \$900,000 Unitrust interest. Client gets \$100,000 tax deduction. Sell 99% non-voting interest in LLC that holds CRUT payment to SLAT or Dynasty Trust or a note for \$450,000.</p> <p>Savings at 40% estate tax rate and with charitable deduction will be much more than the charity receives.</p>



(To Avoid Estate Tax)

Use Administrative Note Exception to Self-Dealing Rules.

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

The Administrative Exception Rule that should apply in this situation provides that a note given for the purchase of assets after the death of the owner based upon a qualifying option. option will not constitute self-dealing with respect to "estate property," if the following requirements are satisfied:

a. The administrator or trustee either possesses a power of sale with respect to the property, has the power to reallocate the property, or is required to sell the property under terms of any option subject to which the property was acquired.

b. The transaction is approved by the probate court having jurisdiction over the estate (or by another court having jurisdiction over the estate (or trust) or over the Private Foundation).

c. The transaction occurs before the estate is considered to be terminated for federal income tax purposes.

d. The estate or trust receives at least fair market value for the interest or expectancy the purchasing entity has in the property.

e. One of the following three requirements must also be met:

(i) The transaction is provided for under the terms of an option that is binding upon the trust or estate.

(ii) The transaction results in the foundation receiving an interest or expectancy as liquid as the one it would have received, or

(iii) The transaction results in the Foundation receiving an asset related to the active carrying out of its exempt purposes.

f. If there are voting units issued by the company, the transaction can only involve the non-voting interests in the company if sale is to a Private Foundation. This is because indirect self-dealing will occur if a Private Foundation controls the organization that is a party to the transaction with a Disqualified Person.

Strict compliance with the above requirements must occur for this exception to be effective.

Instead, his Will says that the stock will go to Worthy Charity, but his children will have the option to buy the stock for a long-term low interest note from the estate and owe the note to a Family Foundation that will support the school.

Now the children can pay Saint Petersburg College interest on \$4,000,000 for 30 years at applicable federal rate (now just about 3.1% per annum or \$124,000 a year, income tax deductible), instead of paying \$4 million to the IRS.

(To Avoid Estate Tax)		
Use Administrative Note Exception to Self-Dealing Rules.	<p>(ii) The transaction results in the foundation receiving an interest or expectancy as liquid as the one it would have received.</p> <p>(iii) The transaction results in the Foundation receiving an asset related to the active carrying out of its exempt purposes.</p> <p>f. If there are voting units issued by the company, the transaction can only involve the non-voting interests in the company if sale is to a Private Foundation. This is because indirect self-dealing will occur if a Private Foundation controls the organization that is a party to the transaction with a Disqualified Person.</p> <p>Strict compliance with the above requirements must occur for this exception to be effective.</p>	<p>Instead, his Will says that the stock will go to Worthy Charity, but his children will have the option to buy the stock for a long-term low interest note from the estate and owe the note to a Family Foundation that will support the school.</p> <p>Now the children can pay Saint Petersburg College interest on \$4,000,000 for 30 years at applicable federal rate (now just about 3.1% per annum or \$124,000 a year, income tax deductible), instead of paying \$4 million to the IRS.</p>
Use Disclaimers:	<p>I leave my \$10 million of stock in trust for my son, John Smith, Esquire, but if the trustee disclaims the stock goes to the CLAT for my son, but if the CLAT trustee disclaims then the stock goes to a 501(c)(3) organization named by the trustee.</p>	



(On Death)

Leave a Devise to a High Income Child Who can Donate to Charity to get a Tax Deduction.		
Variable Annuities Laden with Ordinary Income	Beneficiary can be charity in amount equal to all income in the contract within X months of death, with remainder to charity or elsewhere.	
Leave IRA and Variable Annuity Income or other IRD to Pot Trust.	Where trustee can pay IRD amounts to charities in the calendar year of receipts until age 13.	
IRA and/or Pension Payable to Charitable Remainder Trust:	Stretch the IRA 20 years or over a lifetime or lifetimes by making it payable to a Charitable Remainder Trust ("CRT") or FLIP NIMCRUT to avoid 10-year payout rule.	
Use Charitable Lead Annuity Trusts ("CLATs") to Zero Out Estate Tax:	Jacqueline Kennedy Onassis – EXAMPLE: 15 annual payments to charity with remainder to family – zero estate tax and family can expect a significant inheritance after term of years for charity.	Can arrange as a disclaimer choice – I give the rest to my daughter, but anything she disclaims goes to CLAT for charity and her.
Leave Assets to a "Non-Qualified Charitable Trust", Which can Pay its Income to Charity per IRC § 642(c)	The trust will not be subject to the charitable organization rules, and can own S corporation stock and have Unrelated Business Taxable Income without penalty.	Be aware of IRC § 680, which may limit charitable deductions for income that would be UBTI, if the trust was a charity.



(Using Family Foundations)

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



2024 Charitable Deduction Percentage Summary Chart

Special Notes:

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

*A private operating foundation receives better tax treatment.

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

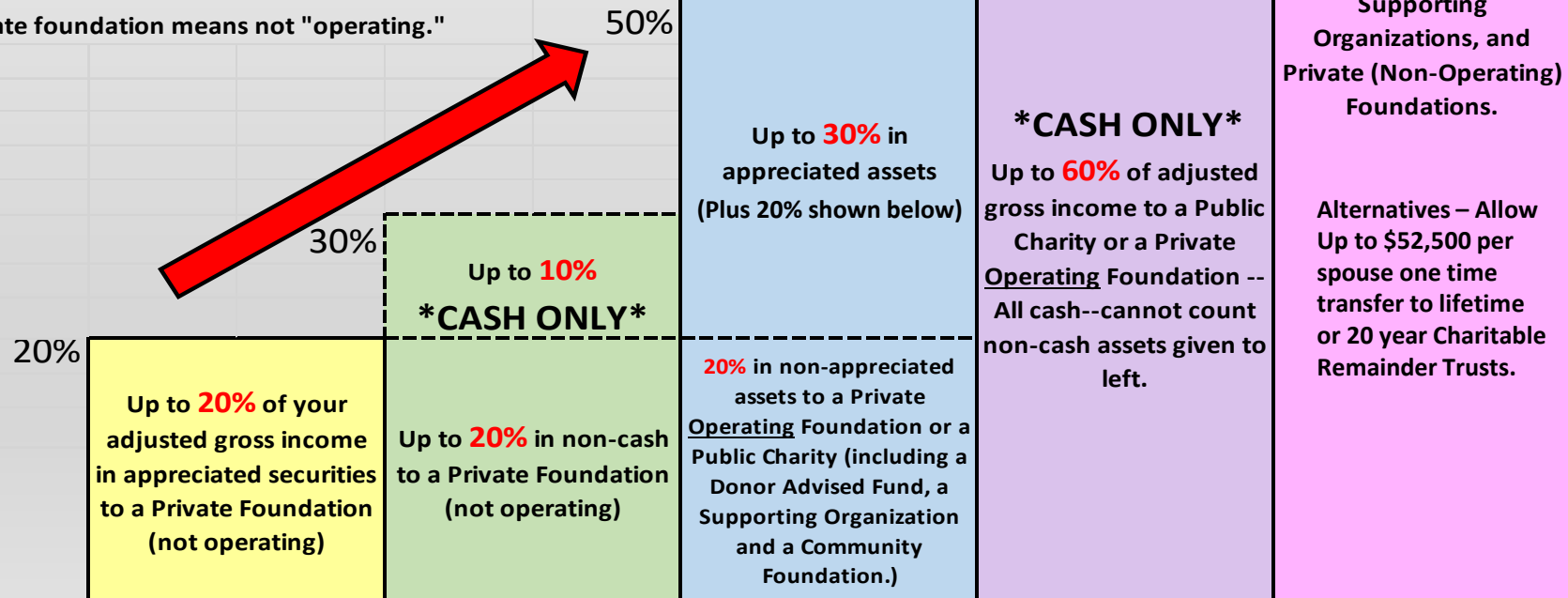
3 Assets left on death do not qualify for an income tax deduction but can save income taxes on "income in respect of a decedent" (IRAs, pension accounts, variable annuities, etc.)

4 Individual taxpayers who itemize:

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

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

6 Private foundation means not "operating."



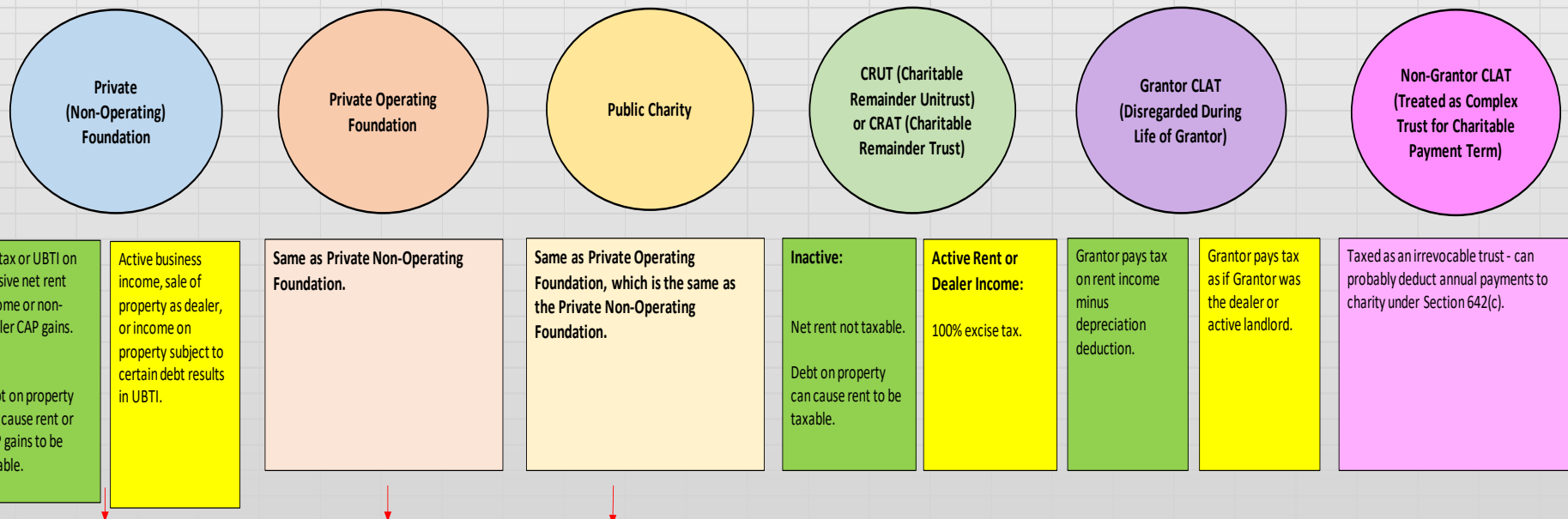
EZ Learning Tool for Charitable Tax Law

Slide 1 of 6 – Deduction for Donation

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

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

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



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

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



EZ Learning Tool for Charitable Tax Law, Cont'd

Certain Long Term Mortgages May Be “Assumed” by a Charitable Organization

There are three primary exceptions that may allow a Disqualified Person to contribute property subject to debt to a Private Foundation:

The 10-Year Rule

IRC § 4941(d)(2)(A) provides that contributions of mortgaged property will not be viewed as a sale or exchange if the Disqualified Person has placed the mortgage or lien on the property longer than 10 years before the transfer. Therefore, a Disqualified Person may transfer mortgaged property to a Private Foundation without violating the self-dealing rules if the mortgage is older than 10 years.

It should be noted that if the Disqualified Person has refinanced the property within those 10 years, it is not considered to be new debt so long as the principal of the debt has not increased. Therefore, to the extent that the outstanding principal does not increase, a refinance will be considered a continuation of a preexisting debt.

The Received Upon Death Exception

Where property subject to a mortgage is acquired by bequest or devise resulting from death, the pre-death principal indebtedness secured by such mortgage is not treated as acquisition indebtedness during the 10-year period following the date that the organization receives the property.

The Received by Gift and 5 Year Mortgaged / 5 Year Owned Exception

If an organization acquires property by gift subject to a mortgage, the outstanding principal indebtedness secured by such mortgage is not treated as acquisition indebtedness during the 10-year period following the date of such gift if the following has occurred:

The mortgage was placed on the property more than 5 years before the date of the gift, and

The property was held by the donor for more than 5 years before the date of the gift.

In addition, the 501(c)(3) organization will not be subject to UBTI on income earned by renting or operating the property for a period of 10 years if the recipient does not "assume or agree to pay" the debt. It is permissible for the 501(c)(3) organization recipient to *actually pay* the debt, but the donor still may not take on the recourse nature of the debt. In order to allow transfer, the bank will require “non-recourse carve-outs,” which if violated require the recipient to pay the debt.

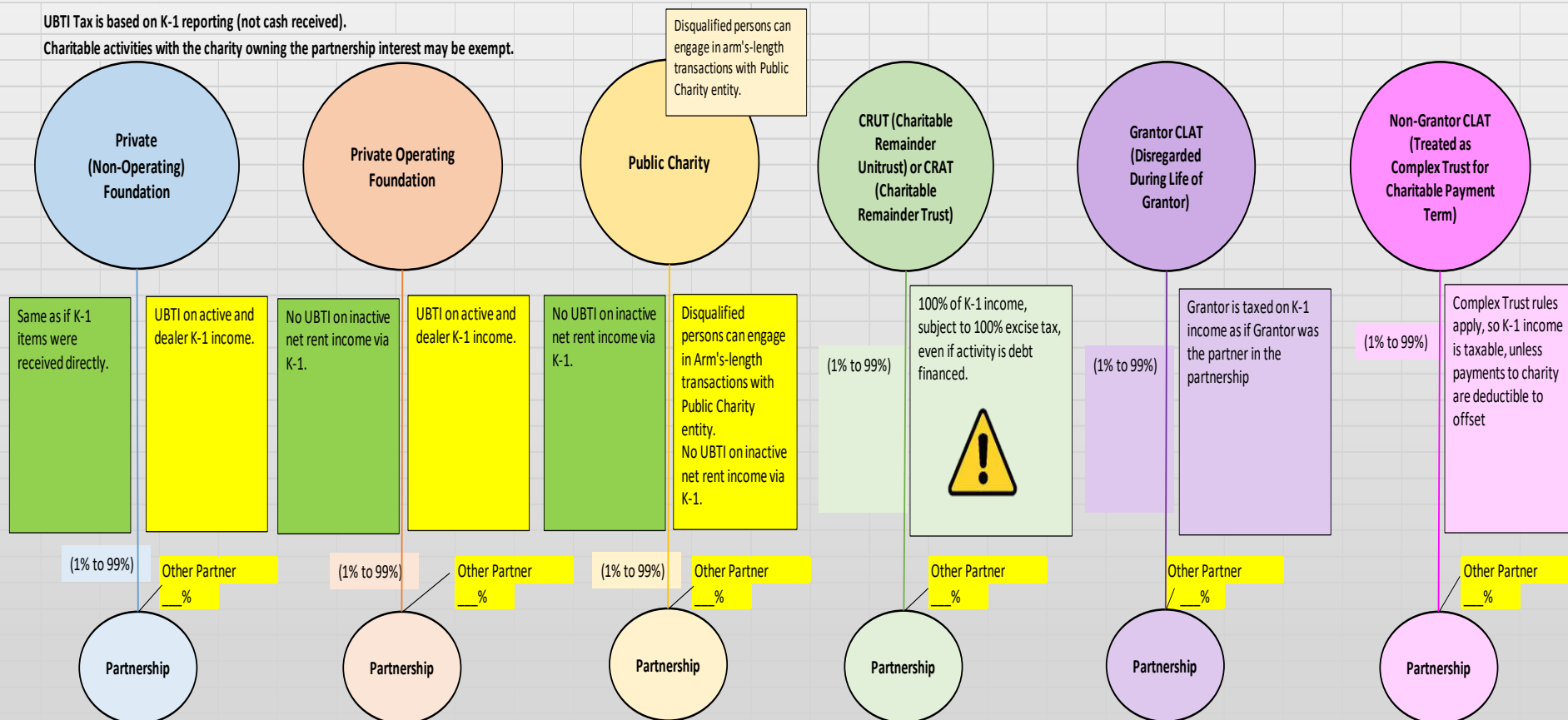


EZ Learning Tool for Charitable Tax Law, Cont'd

Slide 3 of 6 – Ownership of Partnership Interests

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

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



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



EZ Learning Tool for Charitable Tax Law, Cont'd

Slide 4 of 6 – Ownership of S Corporation Interests

Private
(Non-Operating)
Foundation



All S corporation K-1 income is taxable as UBTI, regardless of its nature. Even the sale or redemption of an S corporation interest will yield UBTI to the extent that amounts received exceed basis.

S
Corp.

Private
Operating
Foundation



All S corporation K-1 income is taxable as UBTI, regardless of its nature. Even the sale or redemption of an S corporation interest will yield UBTI to the extent that amounts received exceed basis.

S
Corp.

Public
Charity



All S corporation K-1 income is taxable as UBTI, regardless of its nature. Even the sale or redemption of an S corporation interest will yield UBTI to the extent that amounts received exceed basis.

S
Corp.

CRUT
(Charitable
Remainder
Unitrust) or
CRAT
(Charitable
Remainder
Trust)



S Election will be lost—CRUTs and CRATs are not permitted to be S corporation owners.

Note: S-Corporation may donate assets to CRT—but beware IRC 351 80% rule.

S
Corp.

Grantor
CLAT
(Disregarded
During
Life of
Grantor)

Can own S corporation stock during Grantor's life if one Grantor—make ESBT election as belt and suspenders

S
Corp.

Non-Grantor
CLAT
(Treated as
Complex
Trust for
Charitable
Payment
Term)

Complex trust rules apply, so net rent income is taxable, unless payments to charity are deductible to offset.

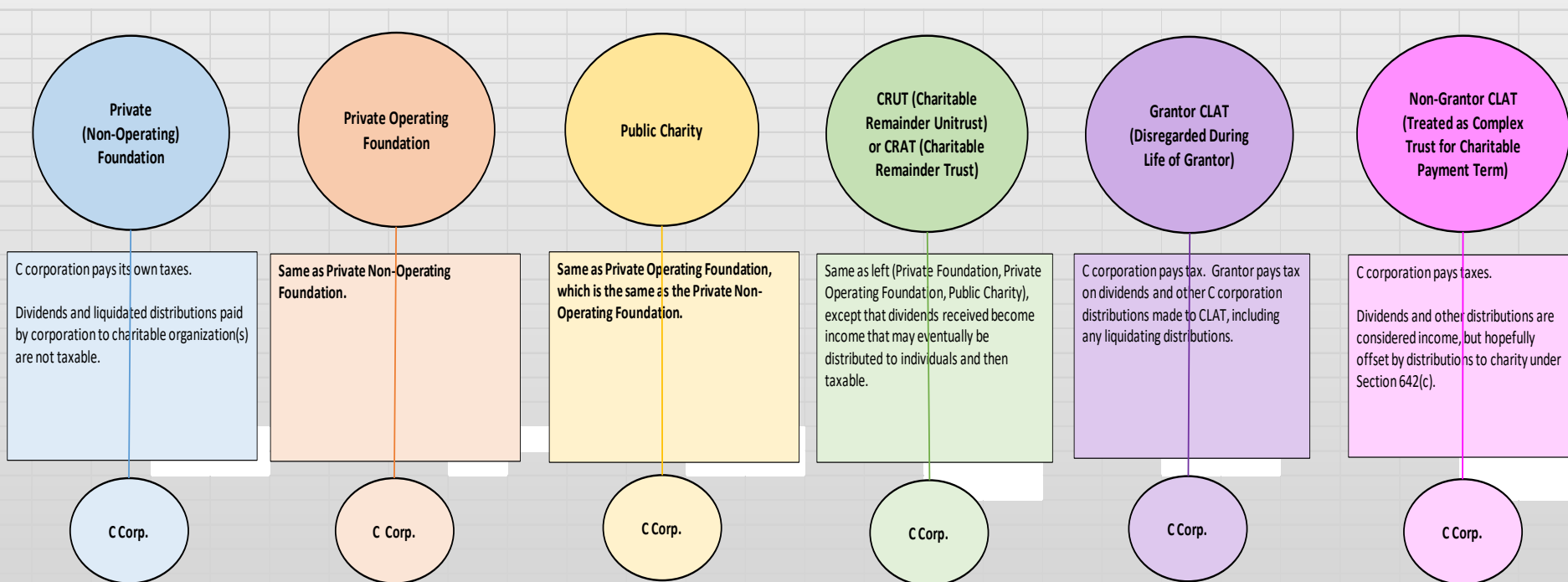
ESBT Rules

S
Corp.



EZ Learning Tool for Charitable Tax Law, Cont'd

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



Excess Business Holding Rule

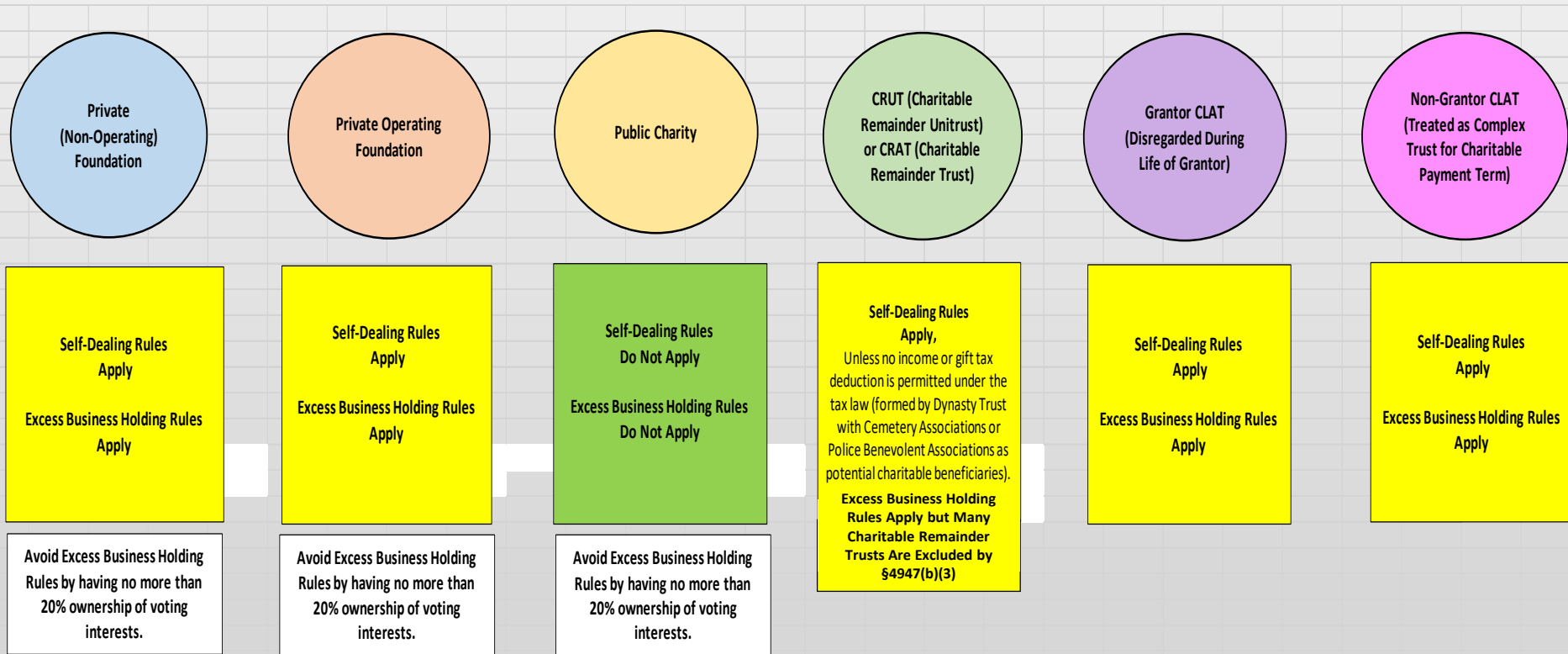
Self-Dealing issue

Self Dealing Rules?



EZ Learning Tool for Charitable Tax Law, Cont'd

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



How the Flip NIMCRUT fits into Dynasty Trusts and Installment Sale Planning

1. Enhance Discounts using the charitable remainder trusts to enhance discounts:
 - A. Transfer appreciated assets to the CRT in exchange for an “90% of value” annuity trust or annuity trust interest.
 - B. Place the Unitrust interest into an LLC, to allow for control by the Grantor, and sell or gift the 99% non voting member interest at an appropriate discount.
 - I. Income Tax Deferral.
 - II. A Coincidentally Greater Discount.



How the Flip NIMCRUT fits into Dynasty Trusts and Installment Sale Planning

2. Use the CRT to defer/shield Income tax liability of the Grantor of a SLAT or Dynasty Trust or possibly generate an interest expense deduction for a related parties:
 - A. Establish a Dynasty Trust or SLAT that is separate and apart from the Grantor for a federal estate tax purposes.
 - B. A Dynasty or SLAT independently funds the Flip NIMCRUT – there is no gift tax deduction because no gift is made by the grantor to the CRT. There is no income tax deduction if a possible beneficiary of the CRT is a cemetery association or police or fireman benevolent association.
3. The CRT sells appreciated assets and pays no income tax.
4. The CRT loans monies to related parties who use the monies for business purposes and conduct interest expenses paid to the CRT.




CHARITABLE REMAINDER TRUST CREATIVE PLANNING STRATEGIES

1. Can You Pay Deductible Rent to A FLIP NIMCRUT – The Possibility of Avoiding The Self Dealing Rules

A SLAT or Dynasty Trust that has the authority to form and fund a Charitable Remainder Trust may do so with the remainder interest charity being defined to possibly include a Cemetery Association or Police or Fireman Benevolent Society. The CRT transfer will not be considered to be a gift for gift tax purposes and the remainder interest will not qualify for an income tax deduction.

In such event, Internal Revenue Code Section 4947(b)(3) indicates that the Self-dealing rules, will not apply, so it should be possible for family members and entities to borrow money from the CRUT at market rates, and to pay deductible interest to the CRUT. The interest income will be recognized until it is distributed out to the individual Unitrust beneficiaries. Please note that the IRS will no longer rule on such arrangements, but it is in the Internal Revenue Code.

Avoid having an income tax deduction by allowing the remainder to go to a cemetery association or benevolent society – avoid having a gift tax deduction by having the donation come from an irrevocable trust.

 **Caution:** This is a no ruling area for the IRS – But it is in the statute.

Note - Be sure to draft irrevocable trusts to allow for all of the techniques discussed here. Many trusts cannot have their assets used for charity.

Reference: PLR 201713002

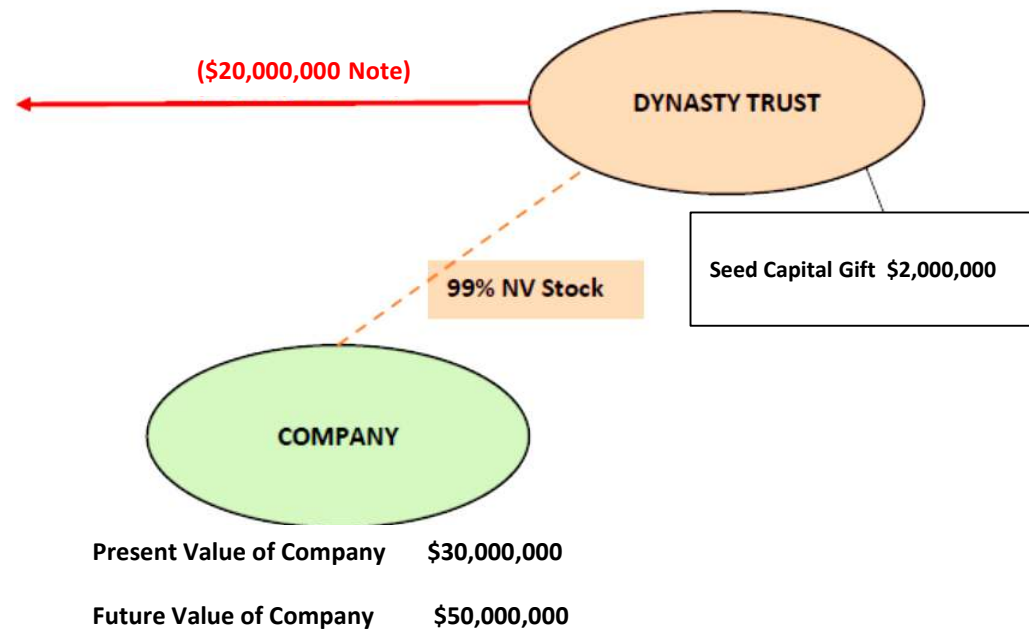
Using a Dynasty Trust and Underlying Charitable Entity

Estate, Tax and Charitable Planning for a Liquidity Event

(Assume Company Now Worth \$30,000,000 and will be Worth \$50,000,000 When Sold)

Year One

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

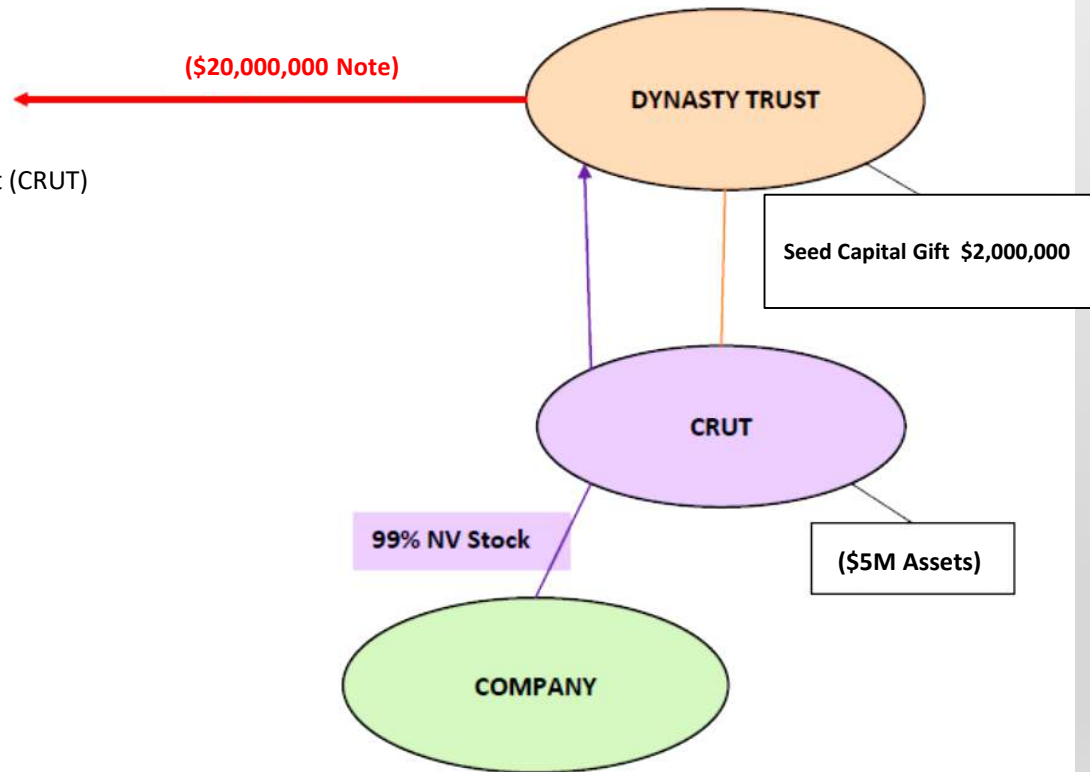


Using a Dynasty Trust and Underlying Charitable Entity (Cont.)

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

Year Three

- * Dynasty Trust donates stock to Charitable Remainder Unitrust (CRUT) well before stock is sold.
- * CRUT has \$50,000,000.
- * Will pay no income tax for first 14 years.



Dispositions to Charity Under *McCord/Petter* Type Family Installment Sales

- In the Tax Court cases of *McCord v. Commissioner of Internal Revenue* and *Petter v. Commissioner of Internal Revenue*, taxpayers sold privately owned investment or corporate interest to trusts for descendants in exchange for notes based upon sale agreements that included adjustment clauses to provide that any value in excess of the agreed sales price passed at the time of the sale to a 501(c)(3) Public Charity in a manner intended to qualify for the federal gift tax charitable deduction.
- At the same time, the transactional documents provided for a small portion of the business entity to pass to the 501(c)(3) charity, and the 501(c)(3) reviewed and participated in the negotiation of the documents and also reviewed the valuation reports, presumably exercising appropriate fiduciary duties to assure that the organization was properly represented.
- One apparent reason for use of the charitable overflow arrangement was to overcome the IRS argument that adjustment clauses are contrary to public policy because they prevent the IRS from recharacterizing value. The opinions in *McCord* and *Petter* specifically found that it would not violate public policy to have an adjustment clause where the excess value determined to exist for gift tax purposes would go to charity.



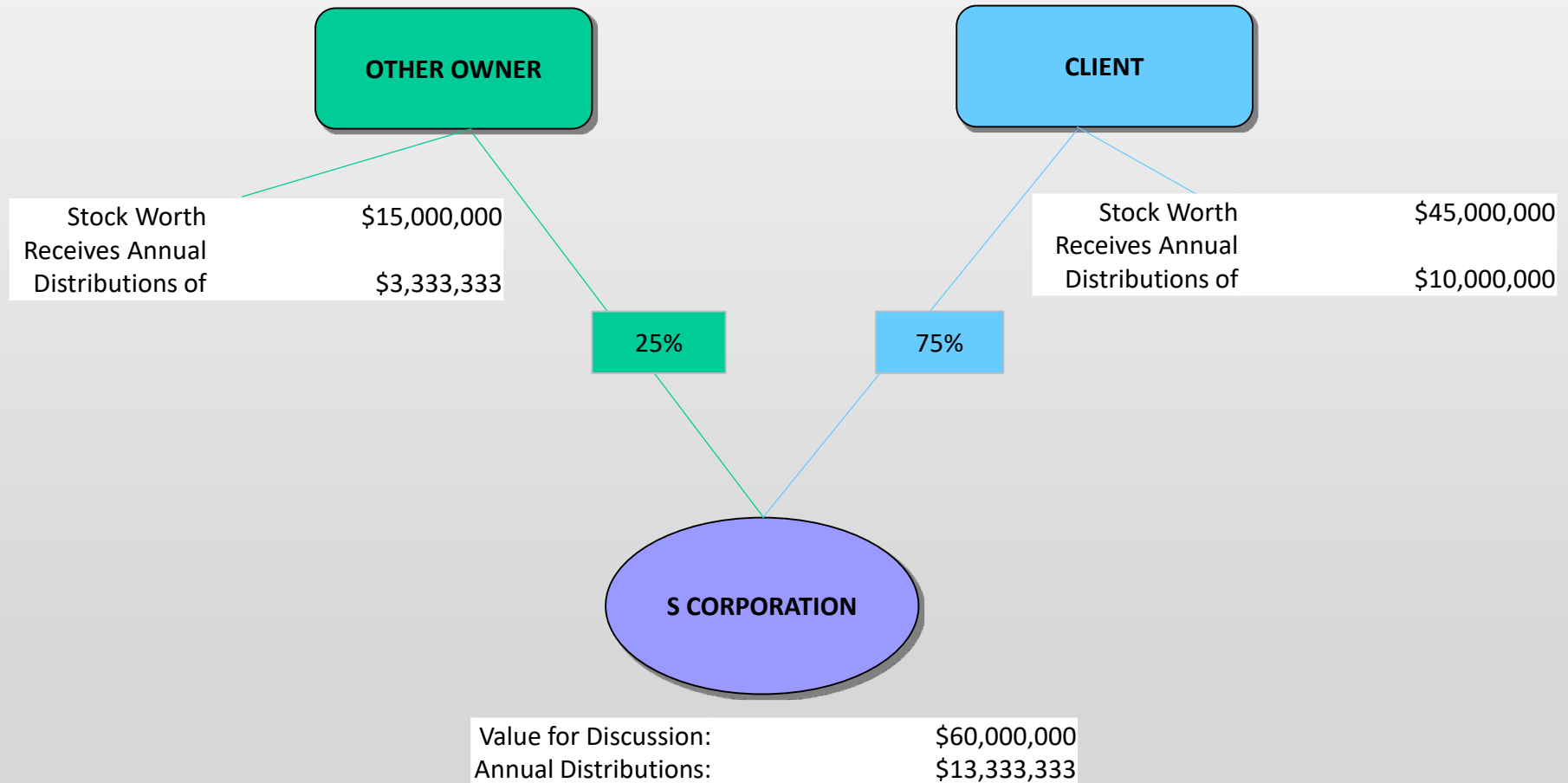
Dispositions to Charity Under *McCord/Petter* Type Family Installment Sales (*cont'd*)

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



BEFORE PLANNING

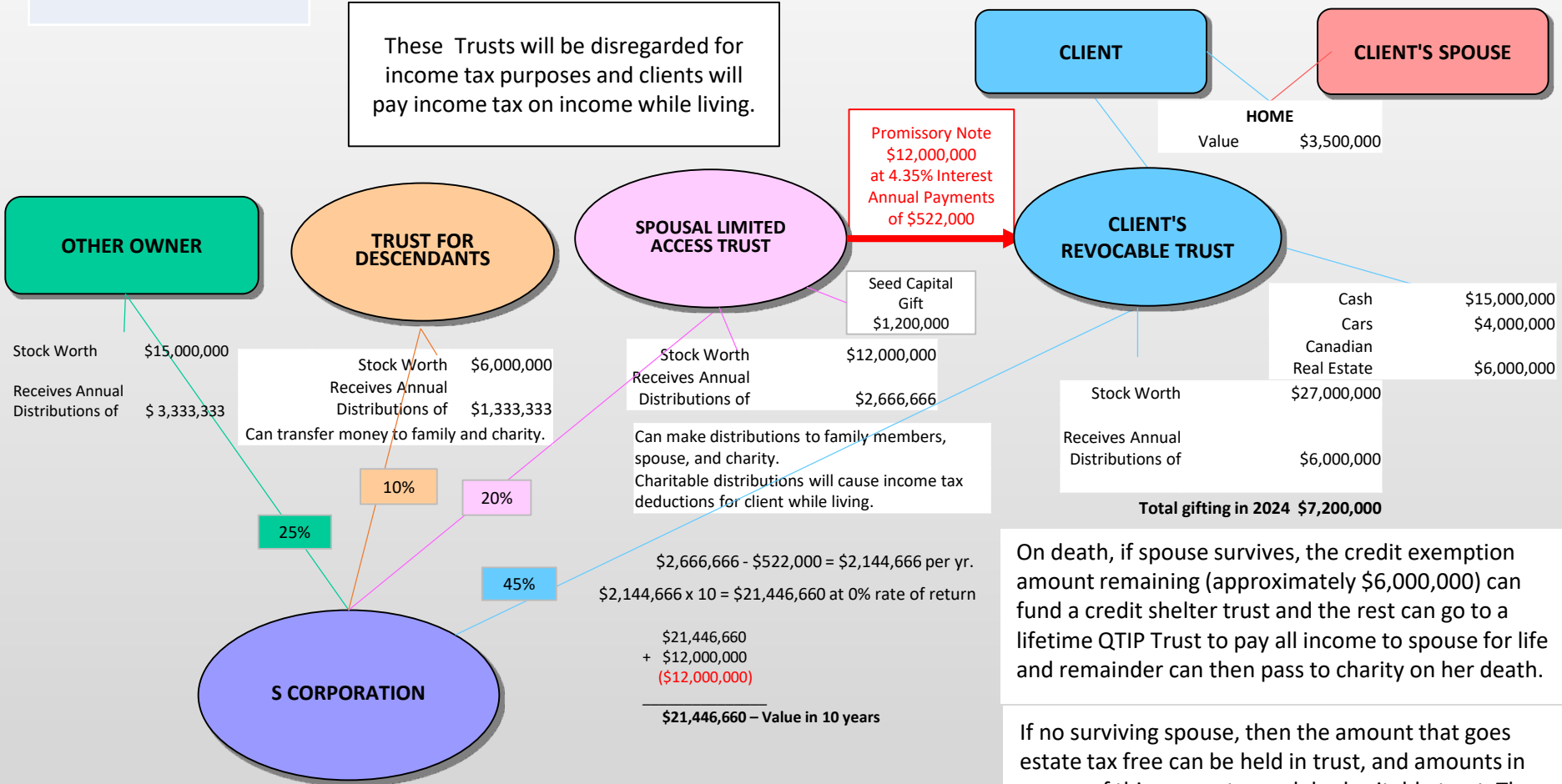
S Corp Owner Planning



S Corp Owner Planning

AFTER PLANNING

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



On death, if spouse survives, the credit exemption amount remaining (approximately \$6,000,000) can fund a credit shelter trust and the rest can go to a lifetime QTIP Trust to pay all income to spouse for life and remainder can then pass to charity on her death.

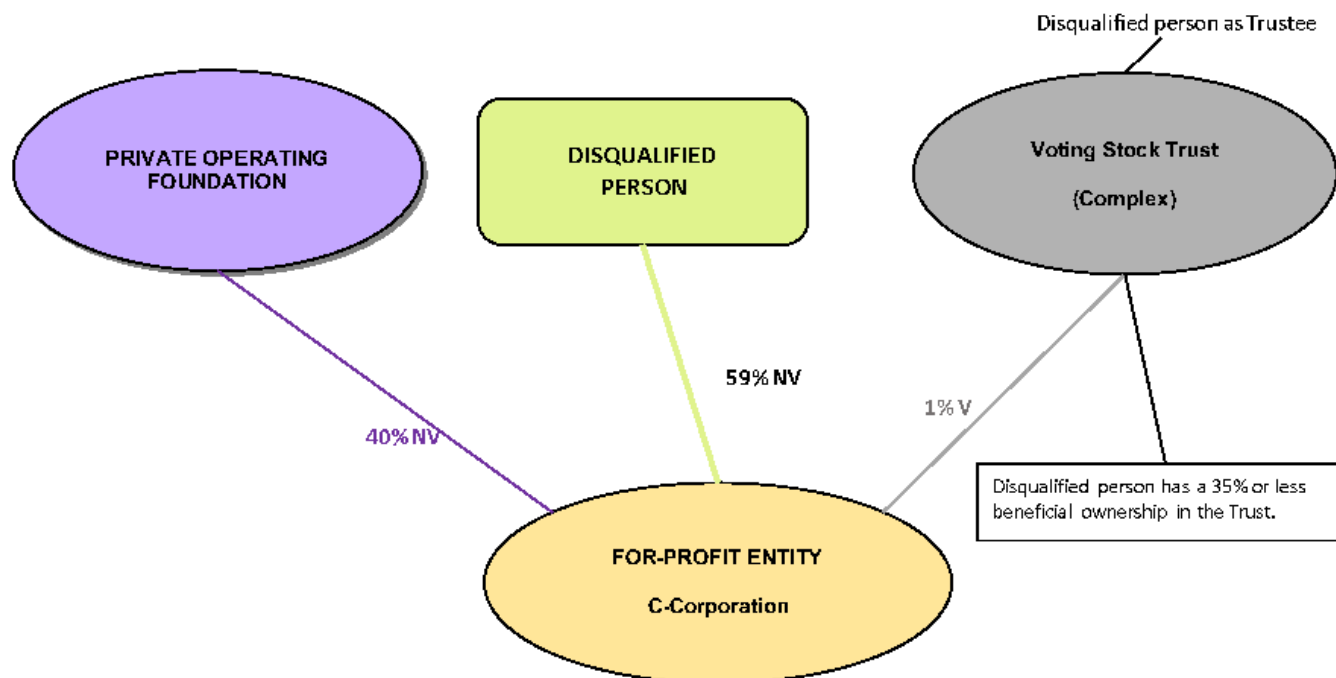
If no surviving spouse, then the amount that goes estate tax free can be held in trust, and amounts in excess of this can go to a solely charitable trust. The non-charitable trust can buy the company stock after death for a low interest note so that there will be plenty of cash flow for the non-charity trust to use to benefit family members and charity.

Value for Discussion: \$60,000,000
Annual Distributions: \$13,333,333



Non-Profit Entity Owning For-Profit Business

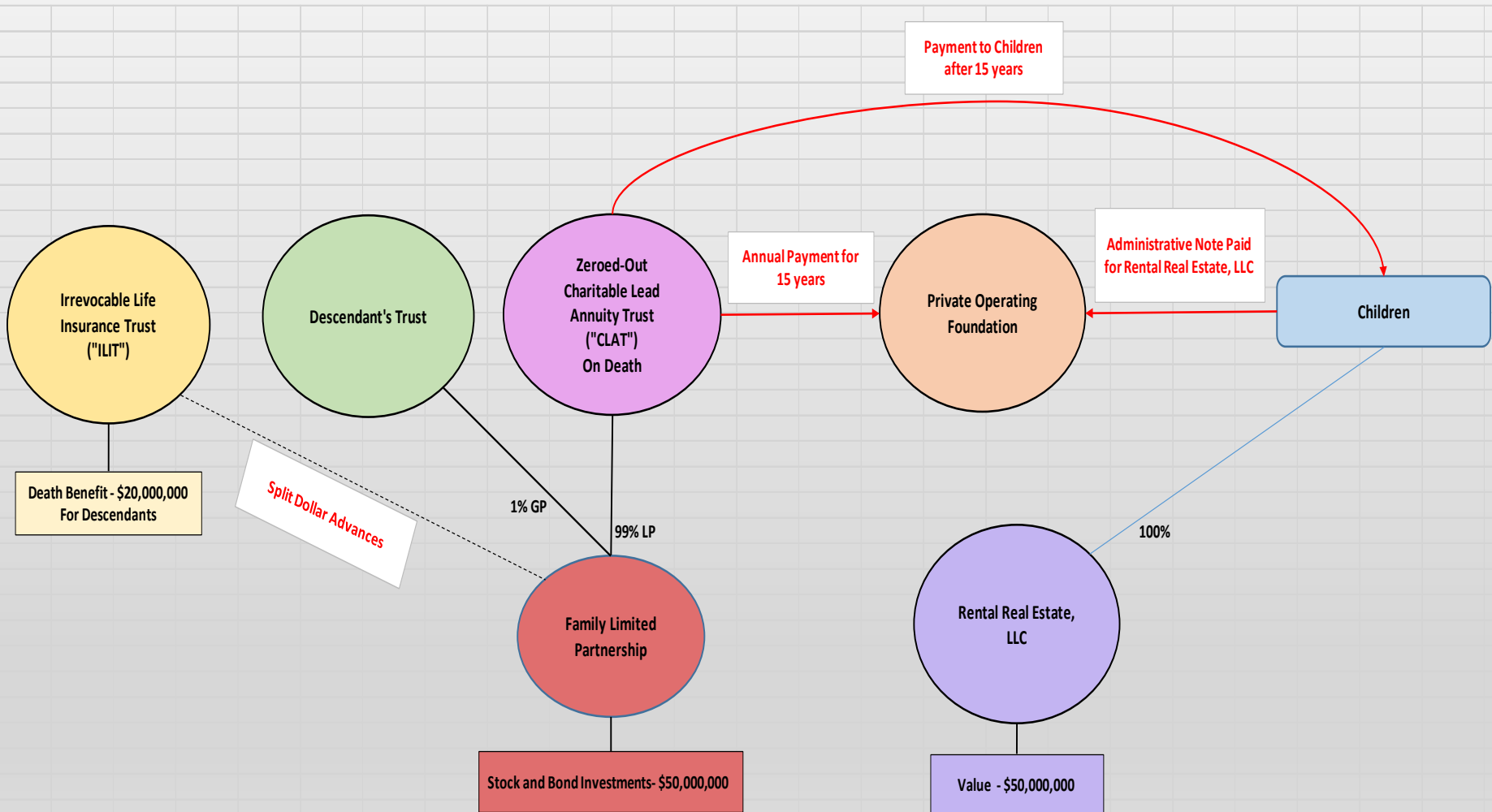
Permitted - Disqualified Person Retaining Non-Voting Interests



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

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

Zero Estate Tax Plan for Charitable Families



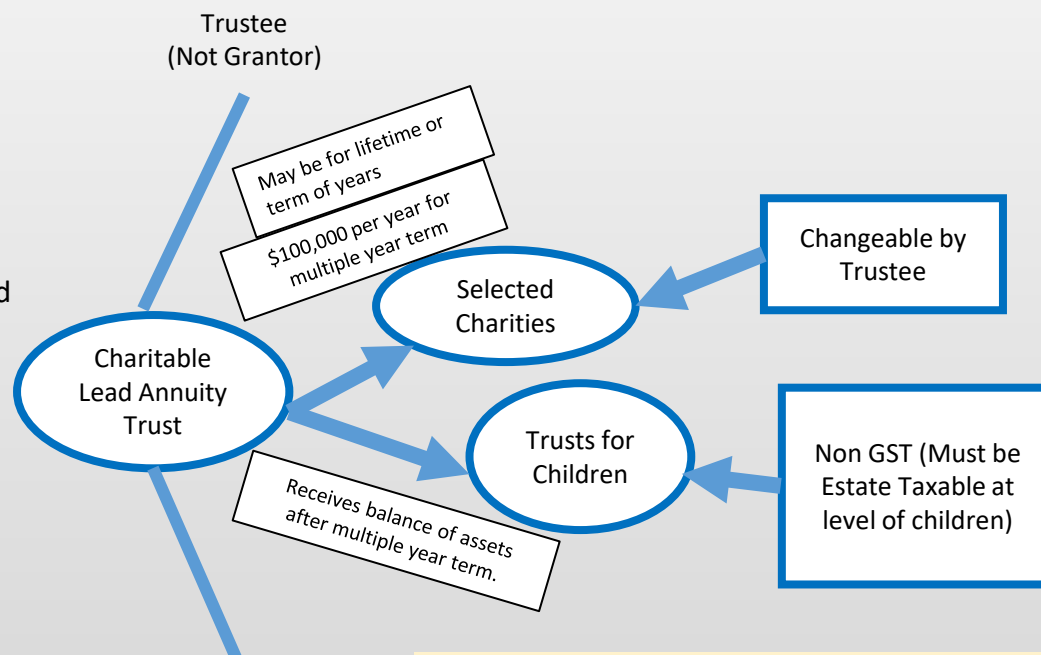
Lifetime Charitable Lead Annuity Trust

Grantor CLAT

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


Non Grantor CLAT

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



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



CLAT #	Term of CLAT	# of Years Illustrated	Income Tax Treatment 	Value Before Discounts	Discount Rate	Value After Discounts	Annual Growth Rate	Payment Terms	\$ 7520 Rate	1st Yr Annuity Amt	Total Charitable Payments	Percent to Charity	Percent to Remainder	Present Value Discount Rate	Present Value to Charity	Present Value of Remainder	Illustrated End Value
1	20	20	Testamentary	\$10,000,000	0%	\$10,000,000	6.00%	Level	4.40%	\$762,114	\$15,242,276	87%	13%	5.50%	\$9,107,551	\$1,383,442	\$4,036,548
2	20	20	Testamentary	\$10,000,000	0%	\$10,000,000	6.00%	Increasing 20%	4.40%	\$102,606	\$19,155,385	80%	20%	5.50%	\$8,590,213	\$2,167,464	\$6,324,134
3	20	20	Testamentary	\$10,000,000	0%	\$10,000,000	6.00%	Sharkfin	4.40%	\$50,000	\$23,107,497	75%	25%	5.50%	\$8,174,399	\$2,784,528	\$8,124,578
4	20	20	Testamentary	\$10,000,000	28%	\$7,200,000	6.00%	Level	4.40%	\$548,722	\$10,974,439	62%	38%	5.50%	\$6,557,437	\$4,073,777	\$11,886,294
5	20	20	Testamentary	\$10,000,000	28%	\$7,200,000	6.00%	Increasing 20%	4.40%	\$73,877	\$13,791,878	57%	43%	5.50%	\$6,184,954	\$4,638,273	\$13,533,355
6	20	20	Testamentary	\$10,000,000	28%	\$7,200,000	6.00%	Sharkfin	4.40%	\$36,000	\$16,637,398	54%	46%	5.50%	\$5,885,567	\$5,082,559	\$14,829,676
7	25	25	Testamentary	\$10,000,000	28%	\$7,200,000	6.00%	Sharkfin	4.40%	\$36,000	\$20,444,694	50%	50%	5.50%	\$5,608,179	\$5,611,510	\$21,398,891
8	20	20	Testamentary	\$10,000,000	28%	\$7,200,000	8.00%	Level	4.40%	\$548,722	\$10,974,439	47%	53%	5.50%	\$6,557,437	\$7,368,322	\$21,498,978
9	20	20	Testamentary	\$10,000,000	28%	\$7,200,000	8.00%	Increasing 20%	4.40%	\$73,877	\$13,791,878	41%	59%	5.50%	\$6,184,954	\$8,868,775	\$25,876,934
10	20	20	Testamentary	\$10,000,000	28%	\$7,200,000	8.00%	Sharkfin	4.40%	\$36,000	\$16,637,398	37%	63%	5.50%	\$5,885,567	\$9,954,475	\$29,044,743
11	25	25	Testamentary	\$10,000,000	28%	\$7,200,000	8.00%	Sharkfin	4.40%	\$36,000	\$20,444,694	32%	68%	5.50%	\$5,608,179	\$12,143,582	\$46,308,244



CLAT Calculator

Charitable Lead Annuity Trust



Prepared For: Bob Sample

Prepared On: Tuesday, October 29, 2024

Illustration #11



Disclaimer

This PowerPoint was prepared based upon an illustration produced with EstateView software by a mechanized system that is intended to illustrate and explain an estate planning or related concept.

This presentation should not be relied upon for accuracy, strategy selection or guidance, and should be carefully reviewed by an appropriate professional before making any decision regarding to your financial or tax situation or estate plan.

Potential distortion can occur with respect to intended and actual results due to the use of computerized models and human error in the use of software or programming and the resulting illustrations. EstateView specifically disclaims any liability or obligation for any inaccuracy or deviation between what is illustrated, what the tax law may be, and the expected or actual results.

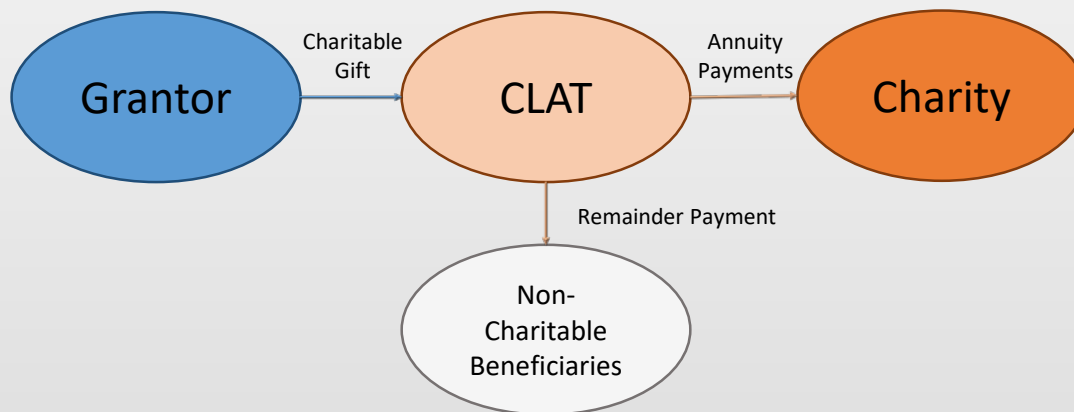


Executive Summary

- This is an illustration of a Charitable Lead Annuity Trust (CLAT), funded by a **\$7,200,000** gift (after a **28.00%** discount), thereby qualifying **Bob Sample** for an income tax deduction of **\$7,200,000**. The trust will make payments to one or more charities for a term of **25** years, while trust assets are expected to grow at **8.00%** per year.
 - Annuity payments may be structured as Level, Increasing by 20% each year, or “Shark-Fin” payments consisting of low annual payments to family followed by a large final payments to charity.
- For this illustration, **Bob Sample’s** CLAT is structured to pay out a first-year payment of **\$36,000**, and is structured to make **Sharkfin** payments over the **25** year term.



Structure of a CLAT



- The Grantor makes a gift to the CLAT, with discounts to possibly apply to the value of the gifted assets.
- The Grantor gets a charitable tax deduction against personal income taxes in year-1 (if it is a Grantor CLAT).
- The CLAT makes annual annuity payments to the charitable “lead” beneficiary for the trust term of years.
- At the end of the trust term, the remaining trust assets are held for the non-charitable beneficiaries, and not subject to estate or inheritance taxes.
- If a discount is used for valuation purposes there will be a lower income tax deduction but a higher remainder for family members. The present value of the income tax deduction can be compared to the present value of the reduction in federal estate tax to determine the utility of this technique.



Information on Possible Payment Terms

Good:

Level Payment Terms

- For the entire term of the CLAT, the “lead” beneficiary (charity) will receive annual payments that are equal in value.

Better:

20% Increasing Payment Terms

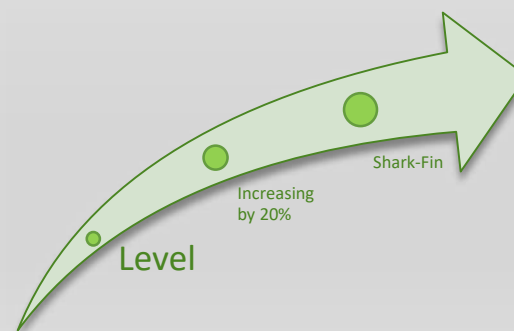
- After the first-year annuity payment to the charity, each subsequent annual payments will increase by 20% each year, until the end of the trust term.

Best (but safe?)¹:

Shark-Fin Payment Terms

- The charity receives a small but annual payment for most of the term, and a large final payment before the remaining trust assets become available to the Grantor’s family.

Your CLAT is illustrated as having **Sharkfin** payment terms.



¹ While many respected authorities are confident that a Shark-fin CLAT should be respected by the IRS, some are not so sure and the IRS has not issued guidance.

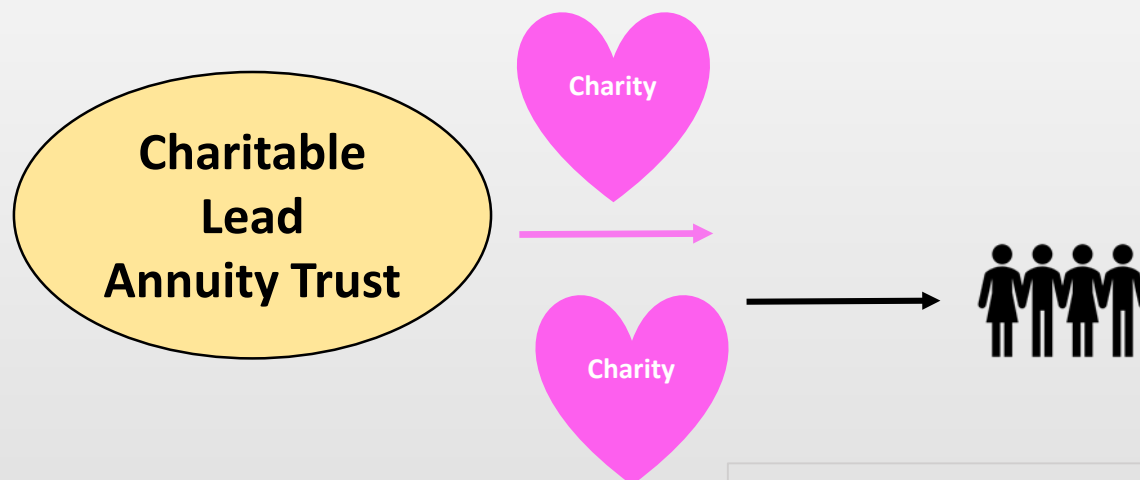
A Lifetime CLAT can be structured as a Grantor or Non-Grantor Trust for Income Tax Purposes

A “Grantor” CLAT funded during the Grantor’s Lifetime

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

Non-Grantor or Testamentary CLAT

- No charitable income tax deduction for the assets transferred.
- The trust is treated as a complex trust; The trust pays income tax on its distributable net income.²
- The transfer does not use any lifetime gift tax exemption if the CLAT is zeroed out.



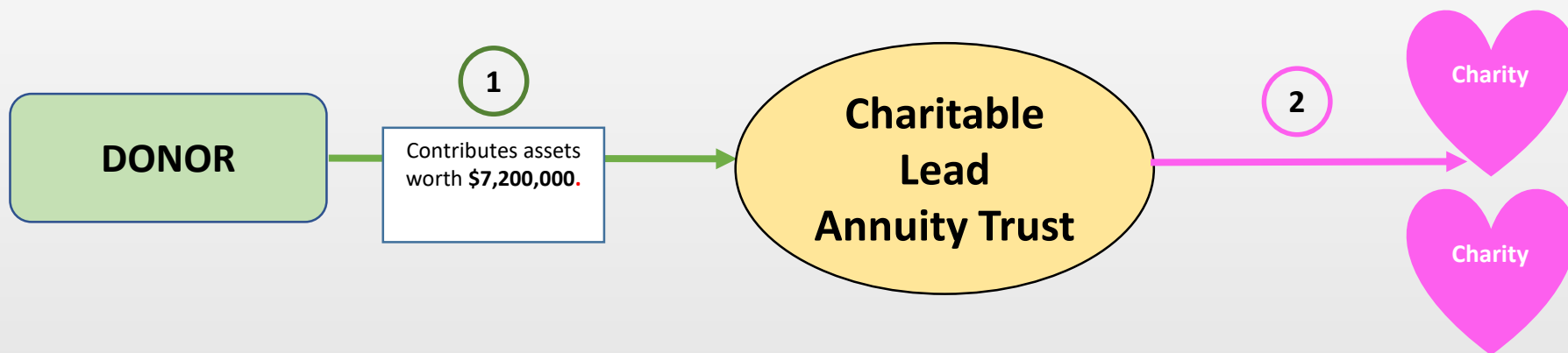
- Trustee can change the choice of charities.
- A Donor Advised Fund or certain family foundations can be the designated charity.

- Assets remaining after the death of the annuity payment payee can be transferred to children or to a trust for children or to other “non-skip” generation beneficiaries.
- Assets are includable in beneficiaries’ estates.
- The Grantor would receive the remaining assets if no estate tax planning is desired for a Grantor CLAT.

² The Trust will not receive an income tax deduction for its annual payments to charity.



Set up Lifetime CLAT



Donor transfers **\$7,200,000** worth of assets to CLAT and receives income tax deduction of approximately **\$7,200,000**.

Assets may include:

- Stocks & Bonds
- Promissory Notes
- Non-voting LLC interests
- C corporation stock

Not suitable for:

- IRAs
- S corporation stock
- Certain other assets

Trust makes payments to one or more charities for a term of **25 years**.

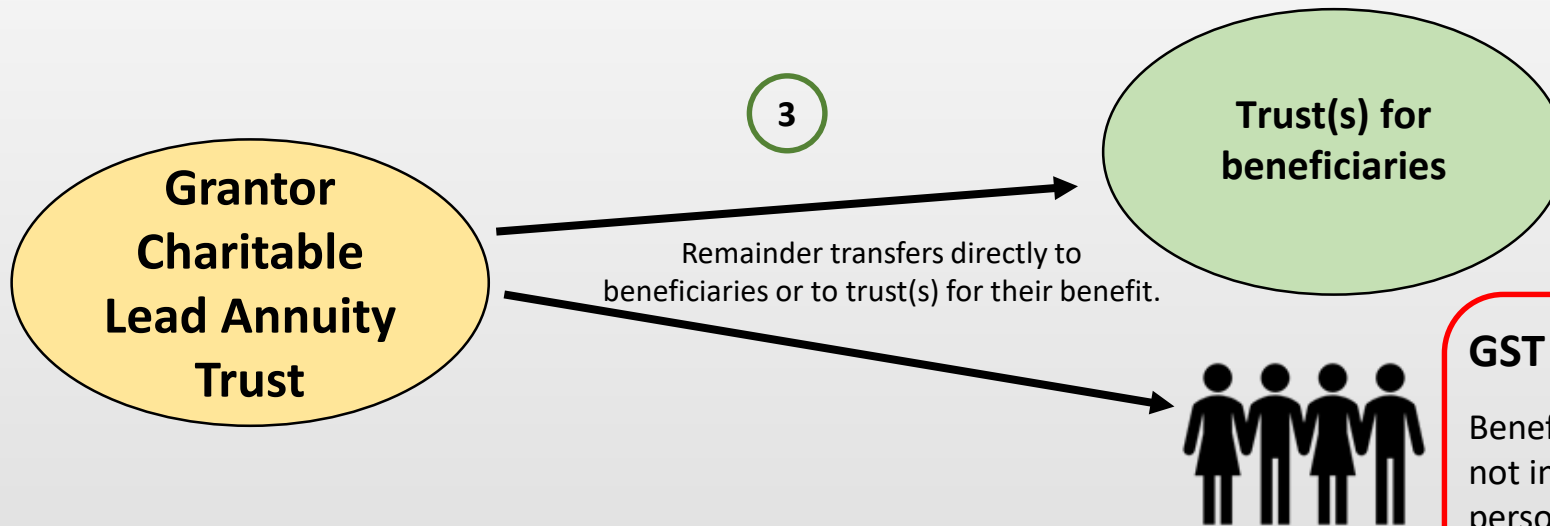
Payments are structured as **Sharkfin** payments to Charity for the term of 25 years.

The total payments to charity will be **\$20,444,694**.

Note: It is safe to “zero out” a CLAT so that there is no gift considered to have been made for federal estate tax purposes on inception. This may not be the case for a Grantor Retained Annuity Trust (“GRAT”)



After Grantor CLAT Term Ends . . .



The Remainder Value is projected to be **\$46,308,244** which can be transferred in year **2049** either directly to Beneficiaries or to a trust for their benefit.

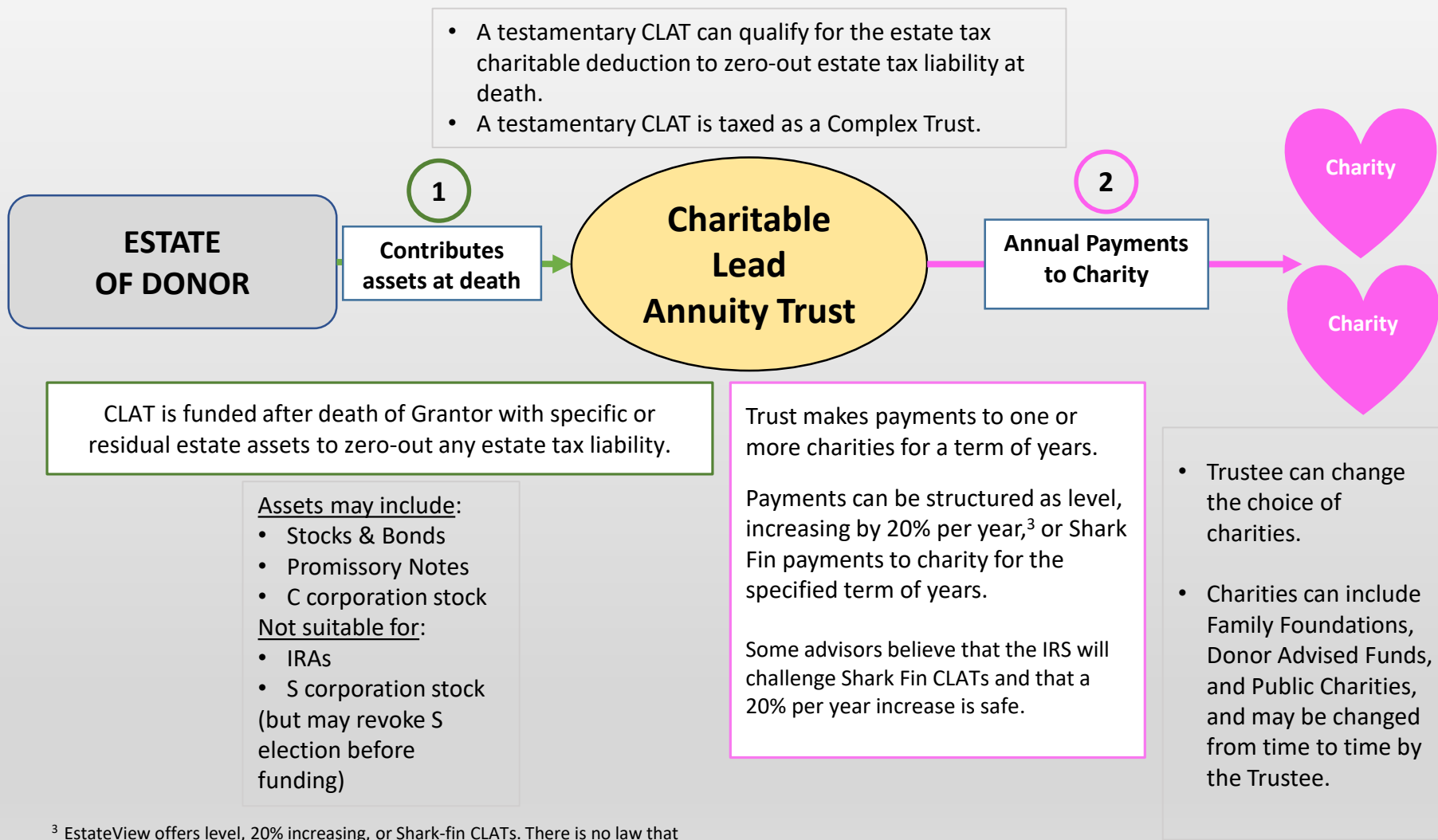
The assets are normally includible in the beneficiaries' estates for estate tax purposes.

GST Warning:

Beneficiaries may not include any person from two or more generations below the Grantor – or any unrelated person who is at least 37.5 years younger than the Grantor without having possible generation skipping implications.



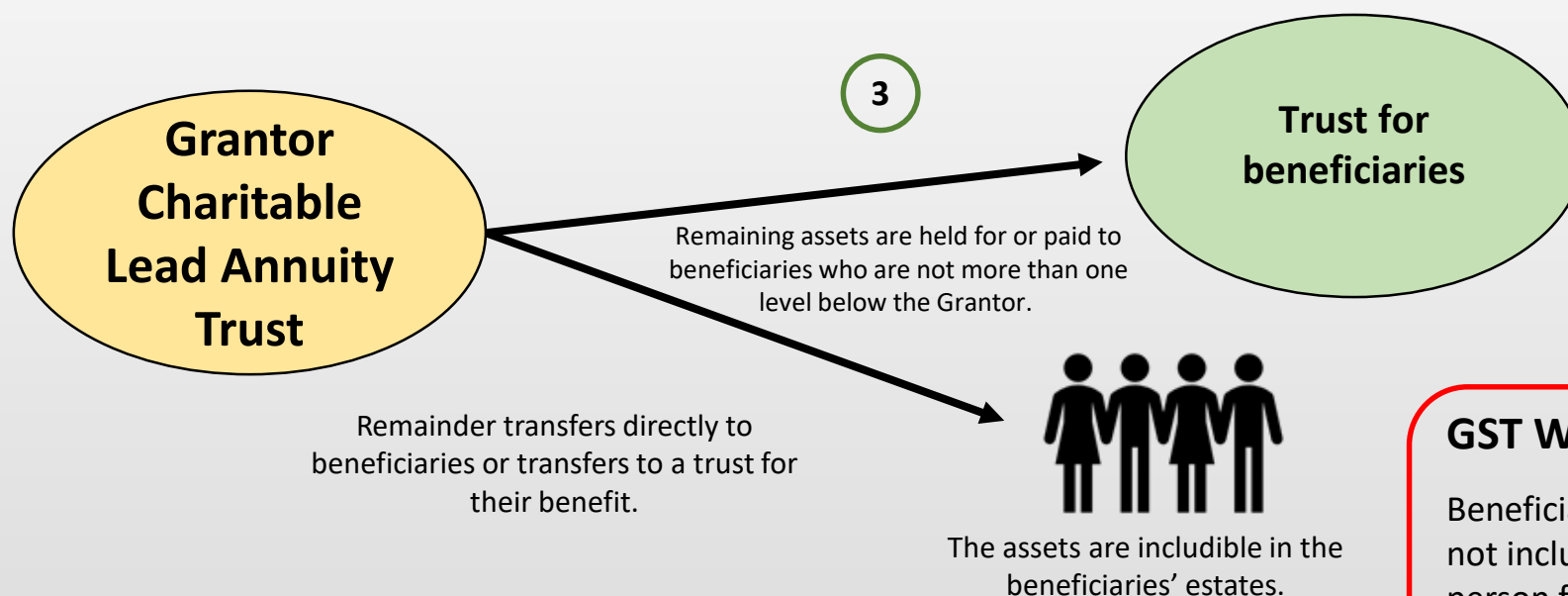
Pre-plan to Create a Testamentary CLAT



³ EstateView offers level, 20% increasing, or Shark-fin CLATs. There is no law that prevents the annual increase to be more or less than 20% a year.



After Testamentary CLAT Term Ends . . .



A testamentary CLAT can be funded with the Grantor's residual assets to completely eliminate estate tax liability.

GST Warning:

Beneficiaries may not include any person from two or more generations below the Grantor – or anyone who is at least 37.5 years younger than the Grantor without possible generation skipping tax implications.



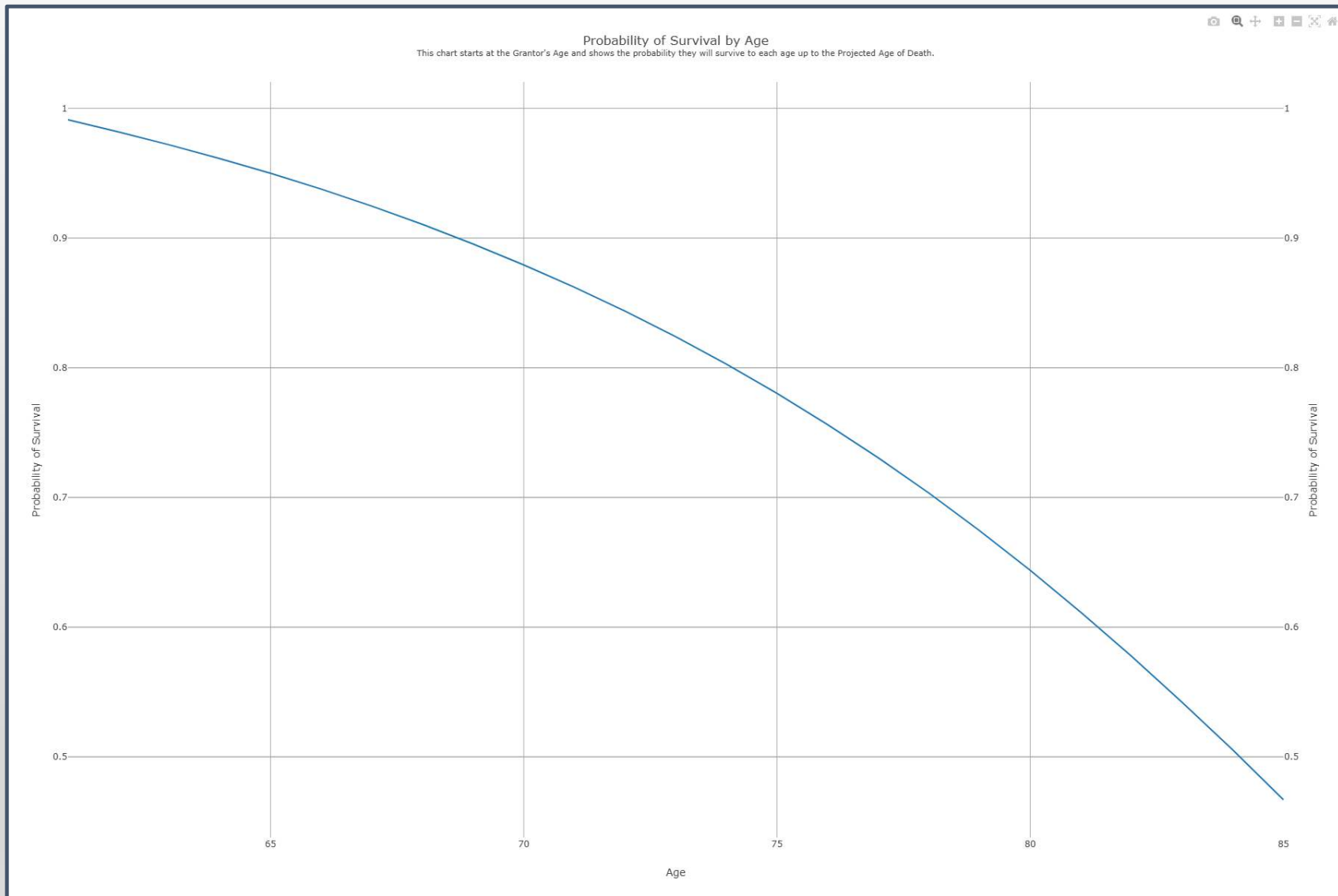
CLAT Assumptions

Income Tax Treatment:	Non-Grantor
Transfer Date:	10/28/2024
Lowest Available § 7520 Rate:	4.40%
Grantor Age (Nearest Birthday):	60
Table Life Expectancy:	23.0
Term of CLAT:	25
Grantor Yr of Death:	88
# of Years Illustrated:	25

Payment Terms:	Sharkfin
Annual Growth Rate:	8.00%
Income Tax Rate:	37.00%
Discountable Assets (e.g. Corp):	\$10,000,000
Discount Rate:	28.00%
Non-Discountable Assets (e.g. cash):	\$0
Time Value of Money, Illustration, Rate:	5.50%



Survival Probability Chart



CLAT Summary Table

CLAT #	Term of CLAT	Value After Discounts	Annual Growth Rate	Payment Terms	\$7520 Rate Selected
CLAT # 11	25 Years	\$7,200,000	8.00%	Sharkfin	4.40%

Grantor Age	Life Expectancy	Year of Death	# of Years Illustrated	Income Tax Treatment	Value Before Discounts	Discount Rate	Total Charitable Payments
60	23.0	88	25	NonGrantor	\$10,000,000	28.00%	\$20,444,694

Yr 1 Income Tax Savings	Present Value Discount Rate	Present Value of Remainder
\$0	5.50%	\$12,143,582

Year-1 Annuity Amount	Payout Rate	Annuity Factor	Present Value to Charity	Reportable Gift Value
\$36,000	0.50%	N/A	\$5,608,179	\$0

Percent to Charity	Percent to Remainder	YR 1 Inc Tx Savings + PV of Remainder
32%	68%	\$12,143,582

Trust Value at End of Term

\$46,308,244



CLAT Details Table

Show Every Year(s) ● Year Of Death ● End Of Term Export to Excel

Year	Year #	Grantor Age	Probability Survival To Year	Probability Of Death Each Year	Beginning Value	Growth	Annuity Amount	End Value	Ordinary Income	Income Tax Savings / Expense	PV Inc Tx Savings / Expense
2025	1	61	99.12%	0.94%	\$10,000,000.00	\$800,000.00	\$36,000.00	\$10,764,000.00	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2026	2	62	98.18%	1.00%	\$10,764,000.00	\$861,120.00	\$36,000.00	\$11,589,120.00	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2027	3	63	97.18%	1.06%	\$11,589,120.00	\$927,129.60	\$36,000.00	\$12,480,249.60	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2028	4	64	96.12%	1.13%	\$12,480,249.60	\$998,419.97	\$36,000.00	\$13,442,669.57	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2029	5	65	94.99%	1.22%	\$13,442,669.57	\$1,075,413.57	\$36,000.00	\$14,482,083.14	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2030	6	66	93.77%	1.31%	\$14,482,083.14	\$1,158,566.65	\$36,000.00	\$15,604,649.79	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2031	7	67	92.46%	1.41%	\$15,604,649.79	\$1,248,371.98	\$36,000.00	\$16,817,021.77	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2032	8	68	91.05%	1.51%	\$16,817,021.77	\$1,345,361.74	\$36,000.00	\$18,126,383.51	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2033	9	69	89.54%	1.61%	\$18,126,383.51	\$1,450,110.68	\$36,000.00	\$19,540,494.19	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2034	10	70	87.92%	1.72%	\$19,540,494.19	\$1,563,239.54	\$36,000.00	\$21,067,733.73	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2035	11	71	86.20%	1.84%	\$21,067,733.73	\$1,685,418.70	\$36,000.00	\$22,717,152.43	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2036	12	72	84.36%	1.97%	\$22,717,152.43	\$1,817,372.19	\$36,000.00	\$24,498,524.62	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2037	13	73	82.39%	2.11%	\$24,498,524.62	\$1,959,881.97	\$36,000.00	\$26,422,406.59	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2038	14	74	80.28%	2.26%	\$26,422,406.59	\$2,113,792.53	\$36,000.00	\$28,500,199.12	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2039	15	75	78.02%	2.40%	\$28,500,199.12	\$2,280,015.93	\$36,000.00	\$30,744,215.05	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2040	16	76	75.61%	2.56%	\$30,744,215.05	\$2,459,537.20	\$36,000.00	\$33,167,752.25	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2041	17	77	73.05%	2.72%	\$33,167,752.25	\$2,653,420.18	\$36,000.00	\$35,785,172.43	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2042	18	78	70.34%	2.90%	\$35,785,172.43	\$2,862,813.79	\$36,000.00	\$38,611,986.22	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2043	19	79	67.44%	3.06%	\$38,611,986.22	\$3,088,958.90	\$36,000.00	\$41,664,945.12	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2044	20	80	64.38%	3.23%	\$41,664,945.12	\$3,333,195.61	\$36,000.00	\$44,962,140.73	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2045	21	81	61.14%	3.39%	\$44,962,140.73	\$3,596,971.26	\$36,000.00	\$48,523,111.99	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2046	22	82	57.75%	3.55%	\$48,523,111.99	\$3,881,848.96	\$36,000.00	\$52,368,960.95	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2047	23	83	54.20%	3.67%	\$52,368,960.95	\$4,189,516.88	\$36,000.00	\$56,522,477.83	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2048	24	84	50.54%	3.84%	\$56,522,477.83	\$4,521,798.23	\$36,000.00	\$61,008,276.06	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
2049	25	85	46.69%	3.95%	\$61,008,276.06	\$4,880,662.08	\$19,580,693.82	\$46,308,244.32	Non-Grantor CLAT	Non-Grantor CLAT	Non-Grantor CLAT
Totals:						\$56,752,938.14	\$20,444,693.82			\$0.00	\$159,566.51

The selection of Grantor or Non-Grantor Trust status plays a large role in determining how much income or gift and estate tax might be saved by using a CLAT.

- In a Grantor Trust CLAT, the Grantor etc., can receive an income tax deduction on formation and would pay the federal income tax on trust income during the CLAT term.
- In a Non-Grantor Trust, the trust will pay its own federal income taxes on trust asset gains, but there is no income tax deduction on funding, or for the transfer of assets to charity.

CLATs can be designed to “toggle” Grantor Trust status on or off, according to estate planning needs.

Your CLAT is illustrated as having **Non-Grantor** Trust status.



Conclusion

Thank you!

Taking the time to learn about Charitable Lead Annuity Trusts is an important step to understanding your possible estate plan.

This presentation was generated by EstateView, software crafted to measure, design, illustrate & educate planners and their clients.

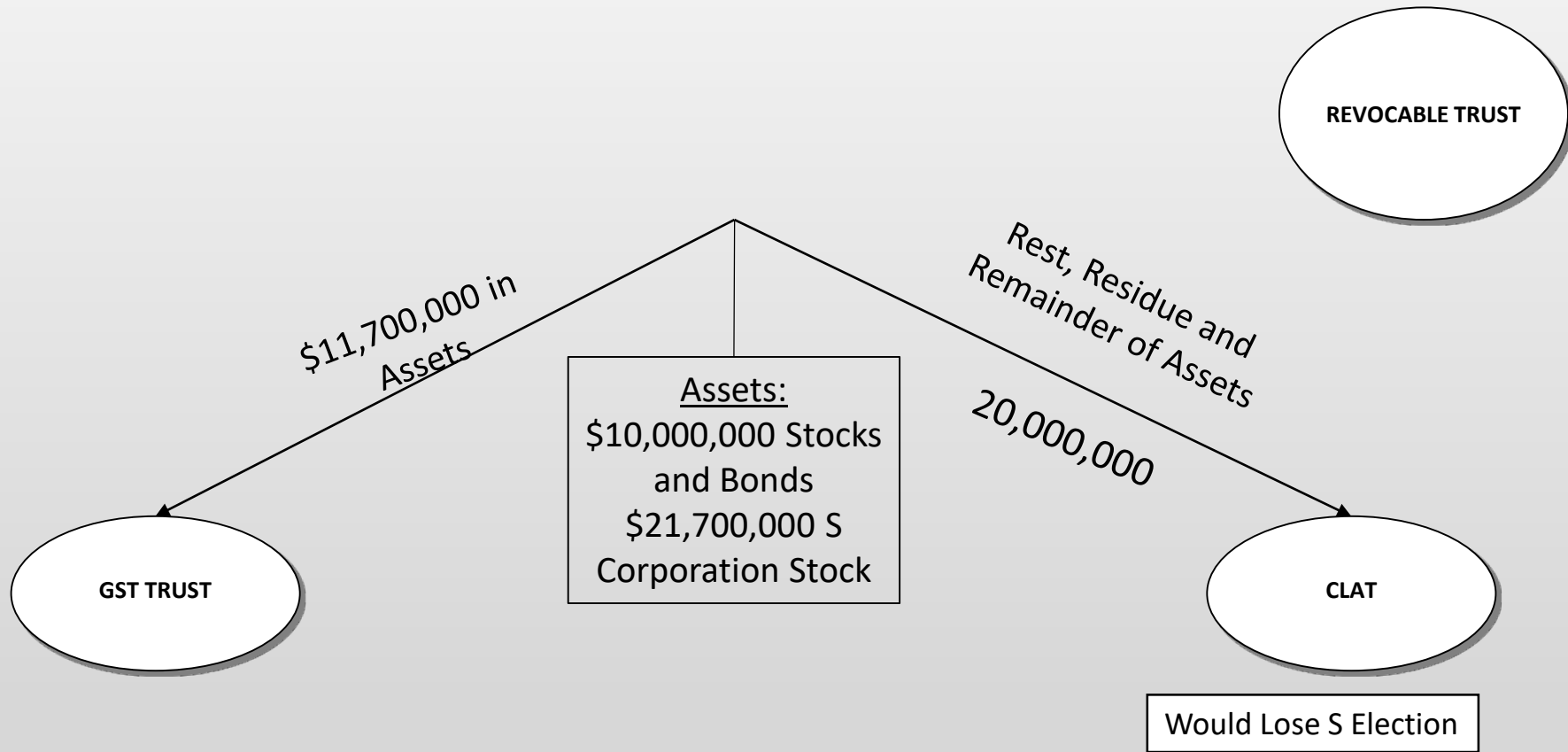
Do you have any questions or comments about the plan covered in this presentation?

We encourage you to reach out to discuss your specific situation in more detail with your trusted advisors:

[Planner Name] – [Planner Title]
[Planner's firm name]
[Planner email address]

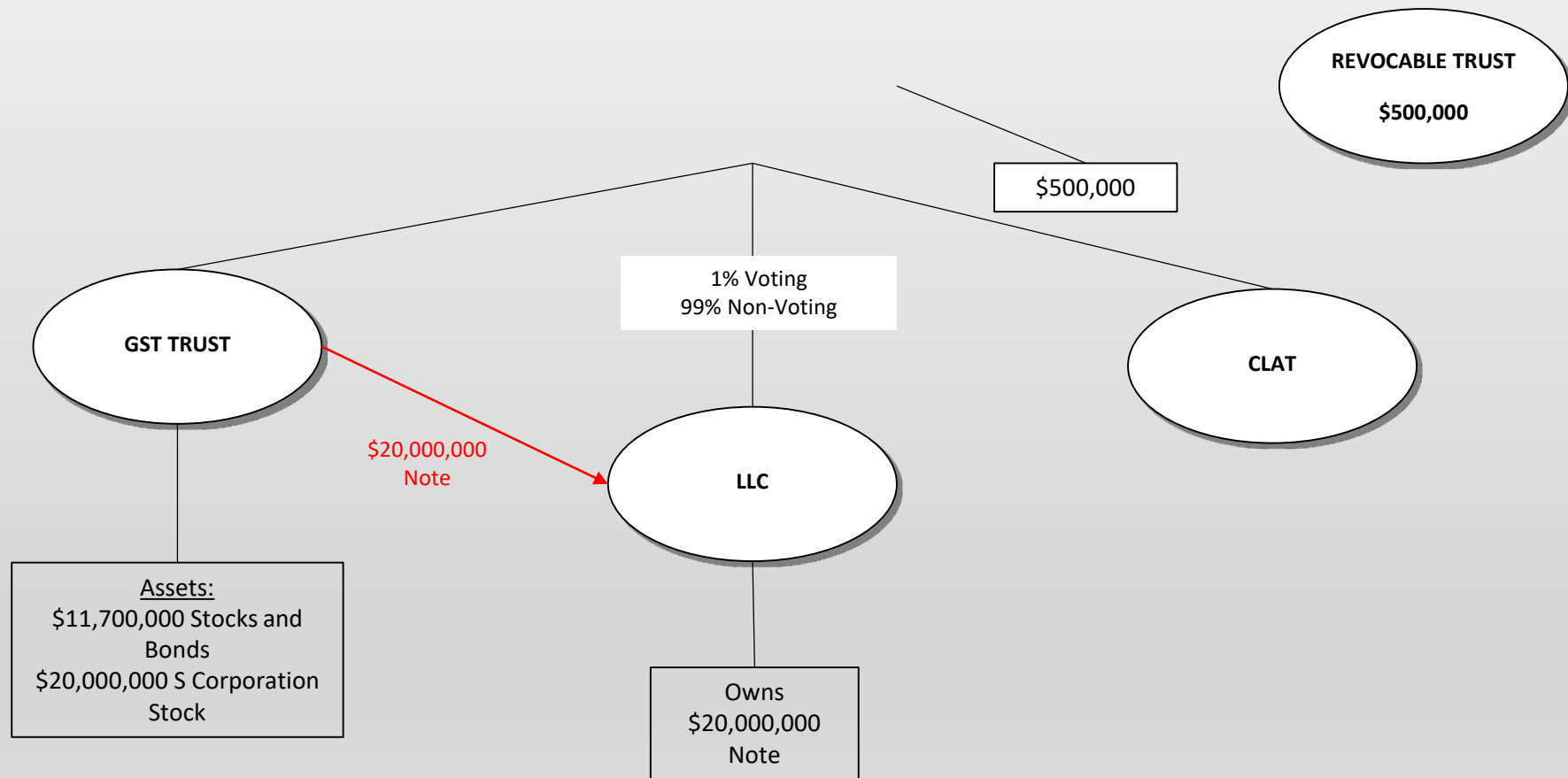


Revocable Trust Immediately After Death of Grantor

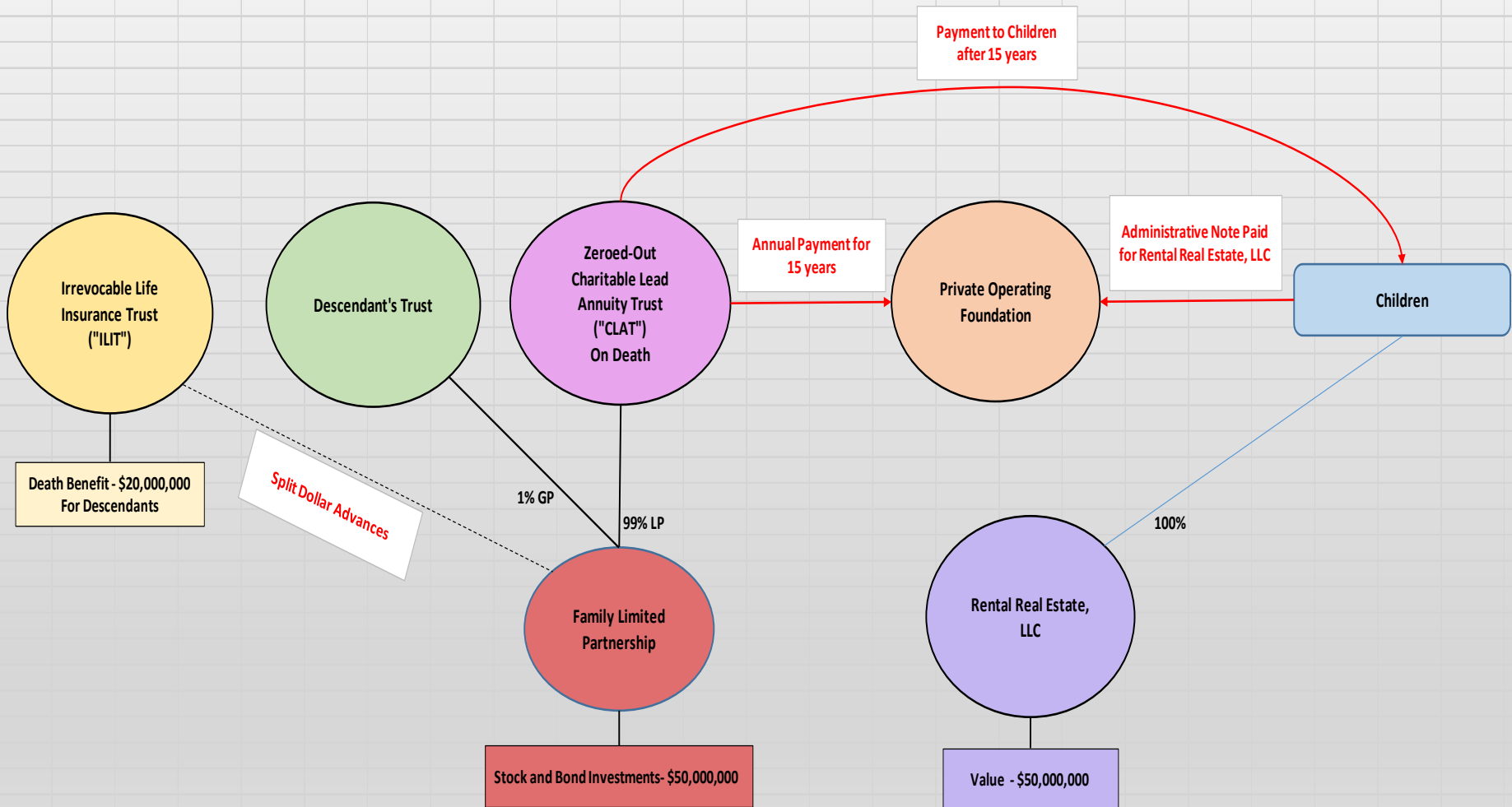


Fund GST Trusts with \$11,700,000 Devise

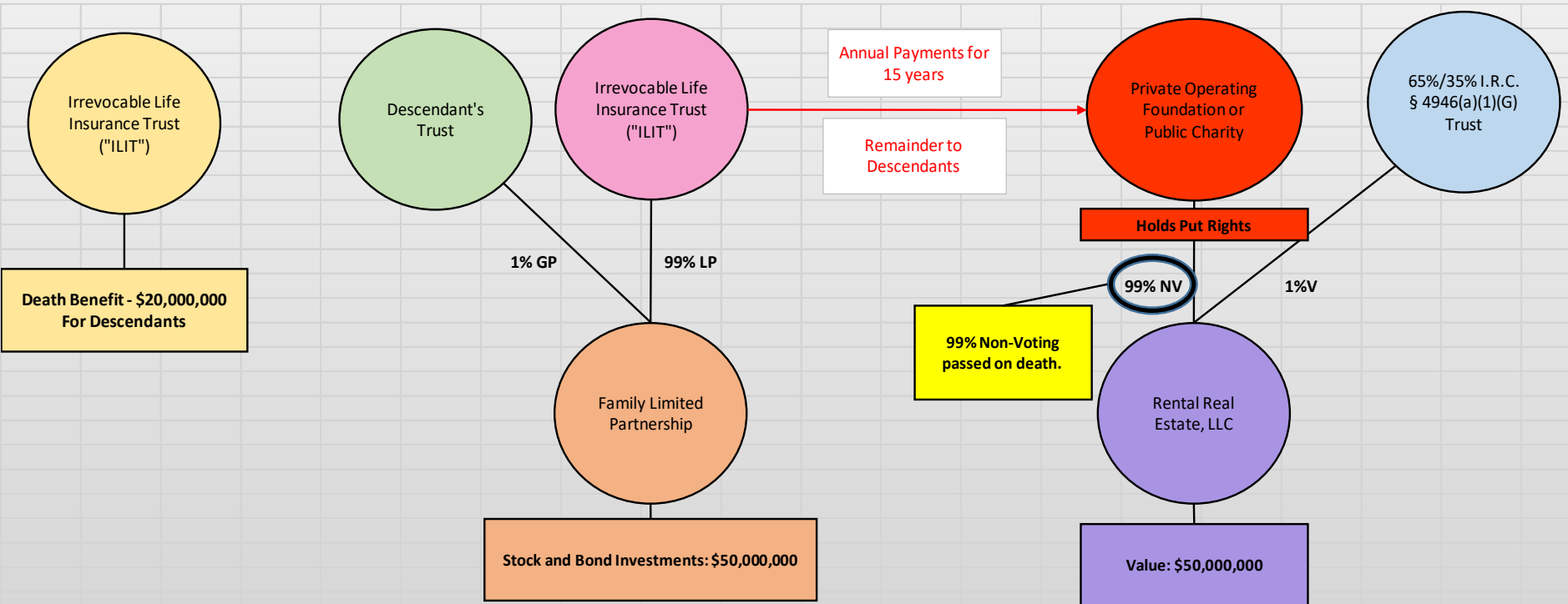
Sell S Corporation Stock to GST Trust for \$20,000,000 in Notes Payable to New LLC Owned by Revocable Trust



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



Zero Estate Tax Plan for Charitable Families, Alternative Structure



The Administrative Note Exception



Self-Dealing Rules – The Estate Administration Exception

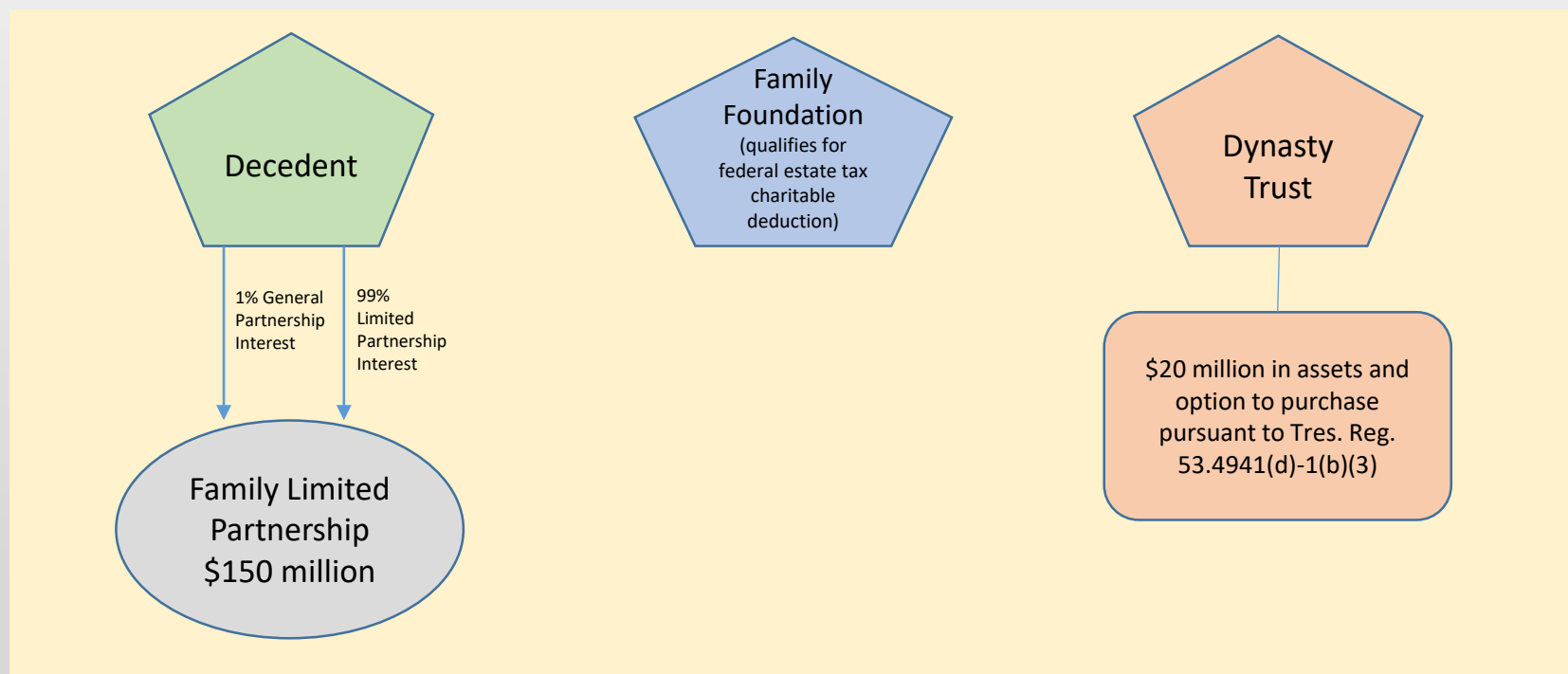
(3) Transactions during the administration of an estate or revocable trust.

The term “indirect self-dealing” shall not include a transaction with respect to a private foundation's interest or expectancy in property (whether or not encumbered) held by an estate (or revocable trust, including a trust which has become irrevocable on a grantor's death), regardless of when title to the property vests under local law, if:

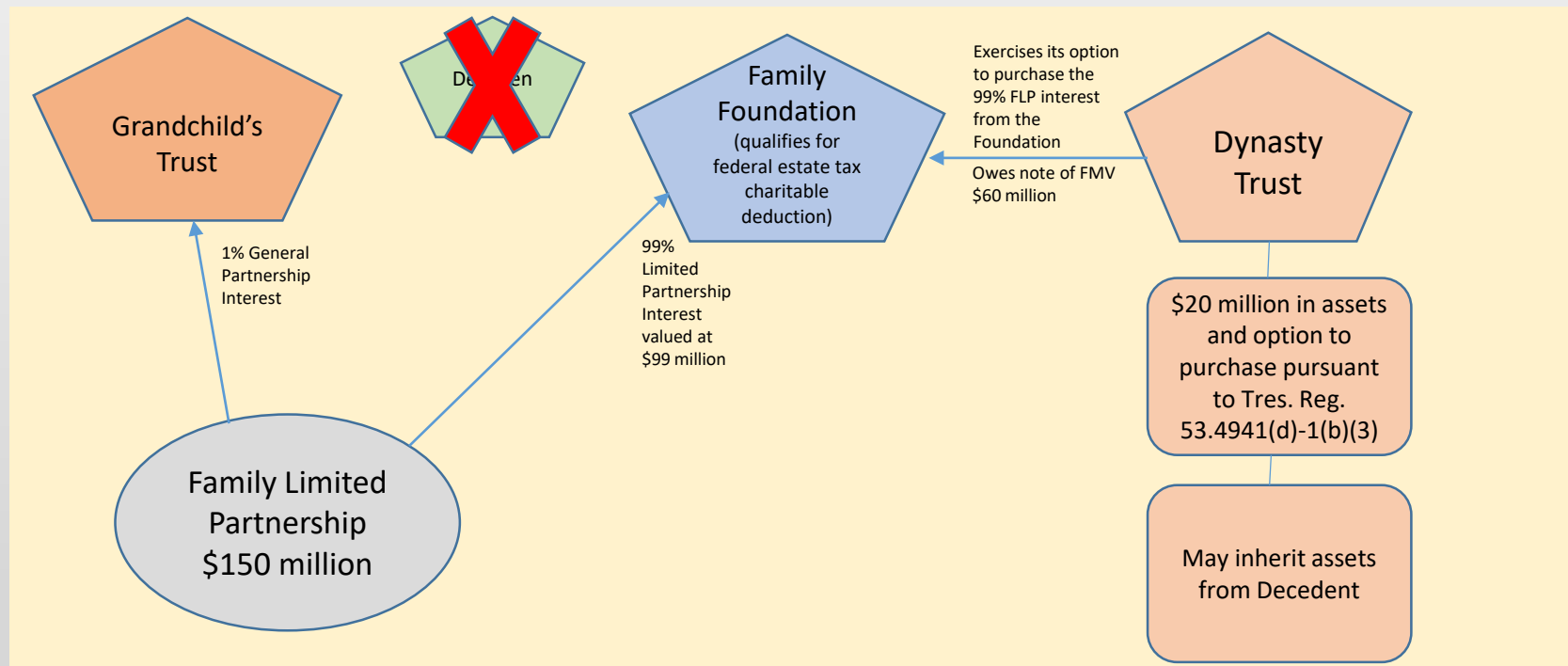
- (i) The administrator or executor of an estate or trustee of a revocable trust either:
 - (a) Possesses a power of sale with respect to the property,
 - (b) Has the power to reallocate the property to another beneficiary, or
 - (c) Is required to sell the property under the terms of any option subject to which the property was acquired by the estate (or revocable trust);
- (ii) Such transaction is approved by the probate court having jurisdiction over the estate (or by another court having jurisdiction over the estate (or trust) or over the private foundation);
- (iii) Such transaction occurs before the estate is considered terminated for Federal income tax purposes pursuant to paragraph (a) of § 1.641(b)-3 of this chapter (or in the case of a revocable trust, before it is considered subject to sec. 4947);
- (iv) The estate (or trust) receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by the estate (or trust); and
- (v) With respect to transactions occurring after April 16, 1973, the transaction either:
 - (a) Results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up,
 - (b) Results in the foundation receiving an asset related to the active carrying out of its exempt purposes, or
 - (c) Is required under the terms of any option which is binding on the estate (or trust).



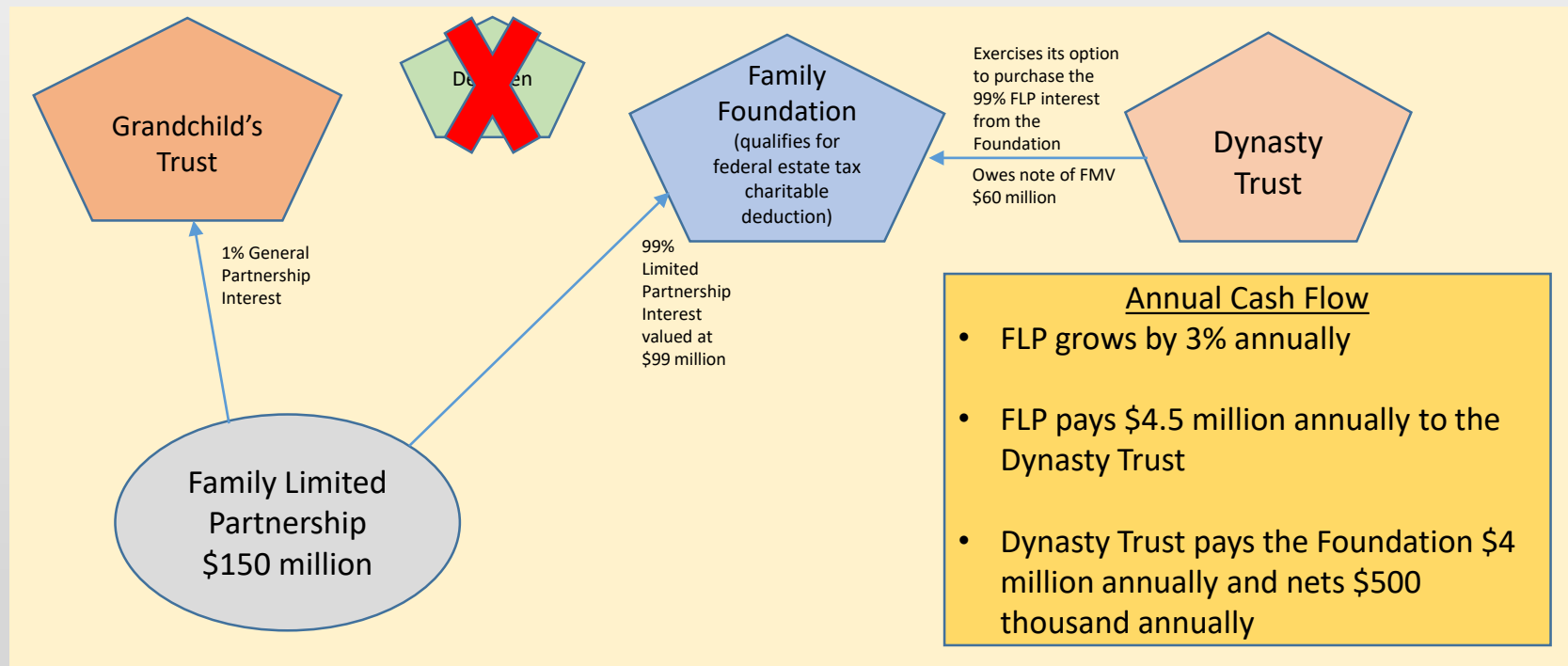
The Administrative Note Illustration



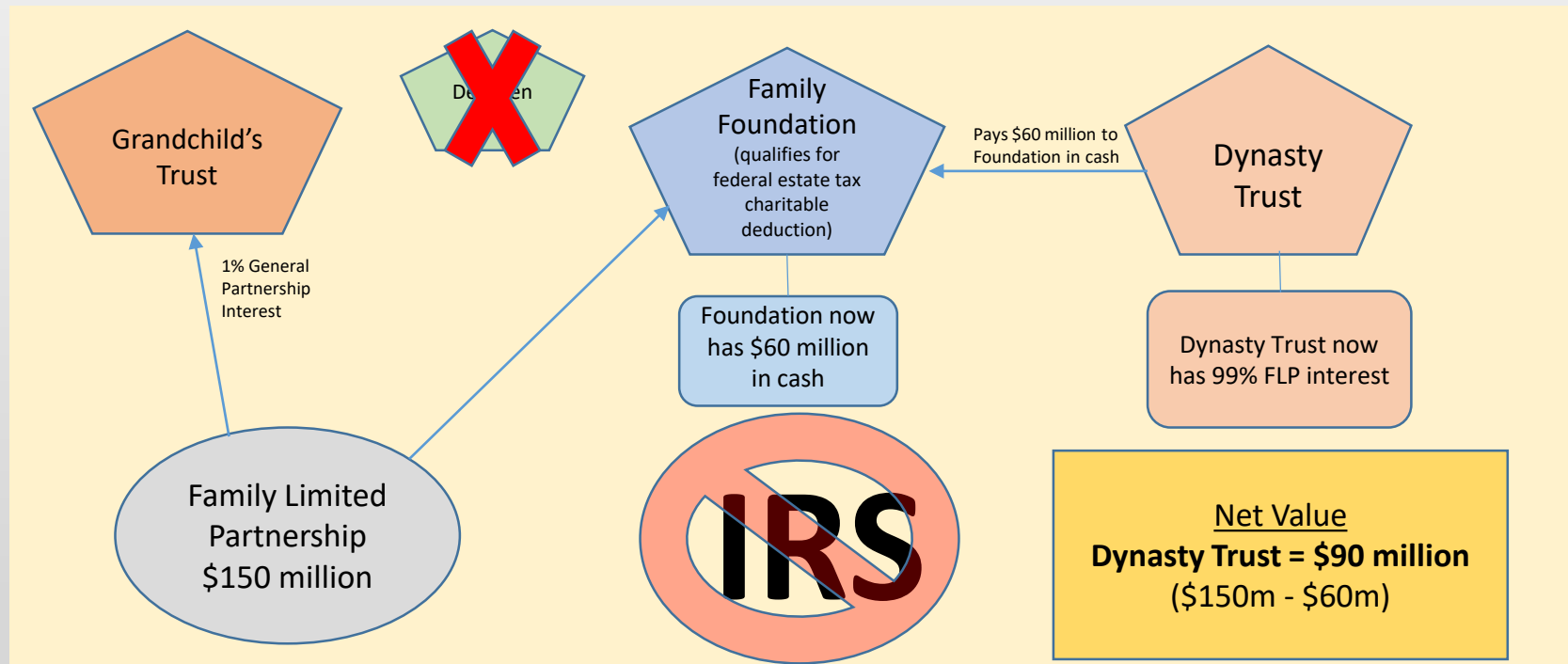
The Administrative Note Illustration



The Administrative Note Illustration



The Administrative Note Illustration



Steve Leimberg's Charitable Planning
Email Newsletter Archive Message #281

Date: 23-Apr-19

Subject: Richard Fox, Jonathan Blattmachr & Mitchell Gans - Ninth Circuit Affirms *Dieringer v. Com'r*; Post-Death Redemption of Stock Bequeathed to Private Foundation Reduces Estate Tax Charitable Deduction; A Flawed Result Because Taxpayer Apparently Sparred Section 4941 Self-Dealing Penalty

*"This commentary provides an update on *Dieringer v. Com'r*, a case decided by the Tax Court back in 2016, and now just recently affirmed by the Ninth Circuit, where the charitable estate tax deduction was reduced to the price at which stock specifically bequeathed to the family's private foundation under the decedent's revocable trust was subsequently redeemed by the family's closely held corporation while the stock was still in the hands of the trust. Unlike for estate tax valuation purposes applied for both gross estate inclusion and the estate tax charitable deduction originally claimed, the stock redemption price was determined based upon the application of multiple valuation discounts.*

While the tax result of the case was a substantial reduction in the originally claimed estate tax charitable deduction, the economic result was that the foundation received much less value that it would have received had the redemption never occurred. Although not raised by the IRS or addressed by the courts, as previously indicated in [Charitable Planning Newsletter #247](#), the authors believe that the estate tax charitable deduction should have been allowed at the estate tax value but that self-dealing tax under Section 4941 should have been imposed on the corporation and/or the decedents' children who wound up acquiring the stock redeemed at what was essentially a bargain price."

Richard Fox, Jonathan Blattmachr and Mitchell Gans provide members with their commentary on [Dieringer v. Commissioner](#), a case

Go to leimberg information services for a 10-day free trial to read this.

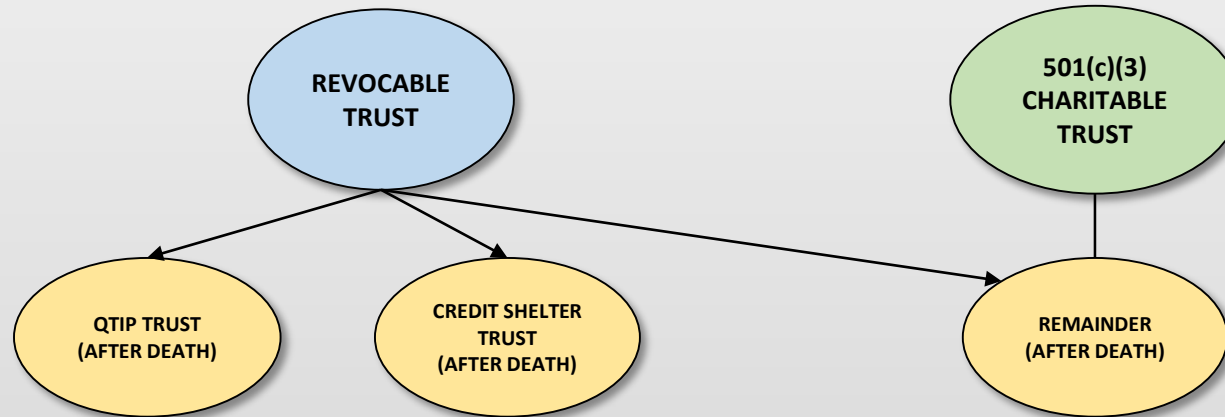
<https://leimbergservices.com/login/subscribe.cfm>



Without Administrative Note

Revocable Trust Assets:

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



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

Investments: \$13,610,000

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

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

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

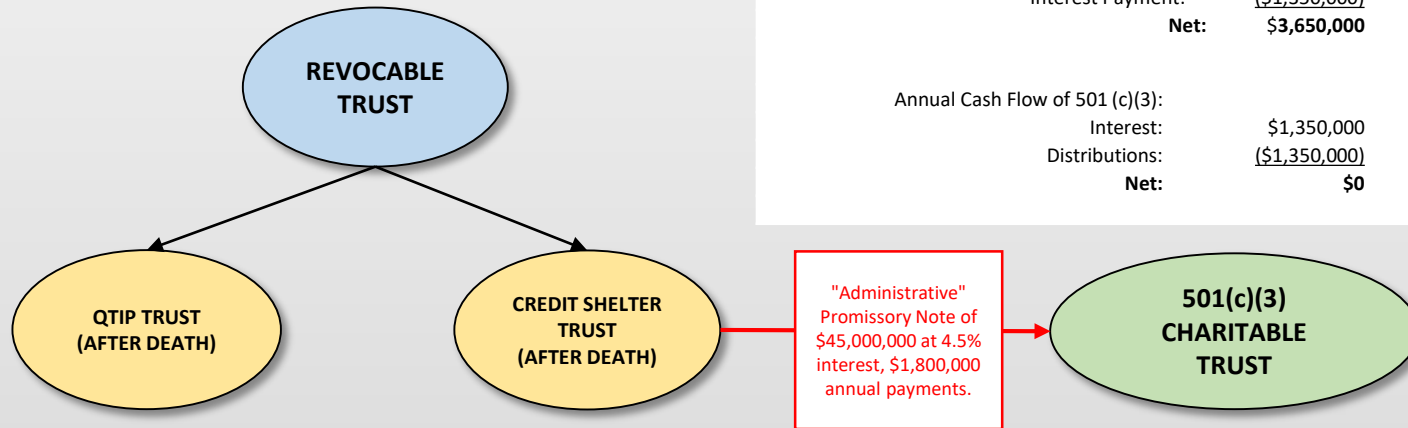
Distributes income annually to spouse with
 remainder passing to family and charity
 upon spouse's death.

Can make distributions to family
 members, spouse and charity.

With Administrative Note

Revocable Trust Assets:

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



Annual Cash Flow of Credit Shelter Trust:

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

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

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

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

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

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

Can make distributions to family members, spouse and charity.

Cash Flow:

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

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



The Administrative Note Exception

Many philanthropic families leave all assets above the estate tax exclusion amount to charity in order to completely avoid federal estate tax, but there is an alternative that many advisors are not aware of.

A provision of the Estate Administration Exception (discussed in Chapter 4) provides an exception to the self-dealing rules that can significantly benefit estates that leave assets to Private Operating Foundations.

Under this exception, the self-dealing rules will not apply where a Disqualified Person is entitled under an option agreement meeting certain requirements to purchase assets from an estate or the revocable trust of a decedent that would otherwise pass to a 501(c)(3) charity.

In other words, on the death of a person who leaves assets to charity, the tax law may permit the family or other trusts left by that person to buy assets from the estate or revocable trust for a note that is owed to the foundation after the person's death.

This can be a useful tool to provide family members with the option to purchase business interests that would otherwise go to charity upon a decedent's death, subject to a number of requirements listed in the above-mentioned regulations.

Treas. Reg. § 53.4941(d)-1(b)(3) (as amended in 1973).

The Administrative Note Exception, Cont'd

Many The basic requirements to qualify for this treatment are as follows:

a. The note must require the payment of at least interest only and must balloon within 25 years of when it is made. It must be made after the death of the philanthropic individual and during the reasonable term of administration of the individual's trust or estate.

It appears that the use of the Applicable Federal Rate, which is promulgated monthly by the Internal Revenue Service and generally correlates to the rate of interest that the government is paying on newly issued 10-year Treasury Bills, can be used for notes exceeding 9 years in duration. As of February 2024, the long-term Applicable Federal Rate is 4.18%. It is worth noting that the rules permit a 25-year interest only note, which can be at the long-term applicable federal rate, but the note cannot be renegotiated as long as it is owed to a Private Operating Foundation. Once the Private Operating Foundation is converted to a Public Charity, the note may be renegotiated.

b. The note must be equal in value to the asset or assets that it was used to purchase. This will happen if the applicable federal rate was used pursuant to Treasury Regulation Section 25.2512-4, which indicates that a note is equal in value to its face amount for federal estate and gift tax purposes. It is noteworthy that the interest should be compounded semiannually in order to comply with IRC § 1274(d).

I.R.S. Priv. Ltr. Rul. 201129049 (Apr. 26, 2011).

LISI Charitable Planning Newsletter #280 (March 11, 2019) at <http://www.leimbergservices.com> Copyright 2019 Leimberg Information Services, Inc. (LISI) Reproduction in Any Form or Forwarding to Any Person Prohibited Without Express Written Permission.

Jerry M. Hesch, Esq.; Alan S. Gassman, Esq.; and Christopher J. Denicolo, Esq., *Interesting Interest Questions: Interest Rates for Intra-Family Transactions, Estates, Gifts and Trusts Journal*, BNA Tax Management (2014).

I.R.S. Priv. Ltr. Rul. 201446024 (Aug. 21, 2014).

The Administrative Note Exception, Cont'd

- c. If an Option Agreement is not in place before death, then the following requirements must be met:
- i. The foundation must receive an interest or expectancy at least as liquid as the one given up. Fortunately, Private Letter Rulings have indicated that ownership of a 99% Non-Voting Member Interest in an LLC owning a promissory note is at least as liquid of the ownership of a business company, or
 - ii. The foundation must receive an asset related to the active carrying out of its exempt purpose.
 - iii. For most arrangements, there should be an Option Agreement in place before the death of the philanthropic individual that gives the family member or entity the right to purchase the asset or assets on the terms set forth above.
 - iv. The transaction must be approved by the probate court having jurisdiction over the estate.

While the Estate Administration Exception is specifically provided for under the Self-Dealing Rules for situations where there is a relationship between a private foundation and the philanthropic family, we see no reason that this technique cannot be used with respect to dispositions to Public Charities.

The Administrative Note Exception, Cont'd

One question is whether the family can satisfy its obligation to the charity by negotiating to prepay the note at a significant discount. There is nothing in the Estate Administration Exception, or the related literature known to us, to prevent an arm's-length prepayment discount from being negotiated with the charity. However, there may be self-dealing concerns. This prepayment would typically happen after the IRS has had the opportunity to review the Estate Tax Return, Form 706, and the deadlines have passed for audits and changes to the return.

Another question is how the entity that signs the note can budget to pay the note when it balloons in year 25 or before then.

There is a possible self-dealing issue when interest payments are made on the promissory note after the estate administration period ends. It appears that the safest course of action would be to place the note into an LLC and have the Disqualified Person purchase a 1% voting interest in the LLC. The 99% non-voting interest can then be distributed to the foundation, along with the cash the LLC received from the Disqualified Person in exchange for the 1% voting interest. The foundation is deemed to hold an interest in the LLC and not the note that it holds.

I.R.S. Priv. Ltr. Rul. 201446024 (Aug. 21, 2014).

I.R.S. Priv. Ltr. Rul. 201407023 (Nov. 18, 2013).

The Administrative Note Exception, Cont'd

One question is whether the family can satisfy its obligation to the charity by negotiating to prepay the note at a significant discount. There is nothing in the Estate Administration Exception, or the related literature known to us, to prevent an arm's-length prepayment discount from being negotiated with the charity. However, there may be self-dealing concerns. This prepayment would typically happen after the IRS has had the opportunity to review the Estate Tax Return, Form 706, and the deadlines have passed for audits and changes to the return.

Another question is how the entity that signs the note can budget to pay the note when it balloons in year 25 or before then.

There is a possible self-dealing issue when interest payments are made on the promissory note after the estate administration period ends. It appears that the safest course of action would be to place the note into an LLC and have the Disqualified Person purchase a 1% voting interest in the LLC. The 99% non-voting interest can then be distributed to the foundation, along with the cash the LLC received from the Disqualified Person in exchange for the 1% voting interest. The foundation is deemed to hold an interest in the LLC and not the note that it holds.

I.R.S. Priv. Ltr. Rul. 201446024 (Aug. 21, 2014).

I.R.S. Priv. Ltr. Rul. 201407023 (Nov. 18, 2013).



The Administrative Note

- The administrative note is a rarely used and grossly misunderstood planning opportunity for charitable families. The administrative note is referred to as a promissory note in IRS Private Letter Ruling 201446024.
- In lieu of incurring federal estate tax, beneficiaries can receive the assets free of estate tax, and owe a long-term interest note to a family controlled charity that may eventually be paid off at a significant discount.
- Example: Mrs. Jones has \$150,000,000 of investments or corporate stock held under a Limited Partnership.
- She gives the 1% General Partnership interest to an Irrevocable Trust held in whole or in part for her descendants.
- On her death, the 99% Limited Partnership interest passes to a Family Foundation that qualifies for the federal estate tax charitable deduction.





The Administrative Note

- Under an Option Agreement entered into before her death a Dynasty Trust for her children (or their children individually) have the option to purchase the 99% Limited Partnership interest for a 30-year interest only note that will balloon upon expiration thereof.
- The interest rate will be based upon the long-term Applicable Federal Rate, which is normally well below an arm's-length interest rate. For November 2024, the long-term applicable federal rate is 4.11%.
- The \$100 million note is unsecured, and may have a fair market value of \$60 million.
- The Dynasty Trust exercises the option and therefore owns the 99% FLP interest, and owes the Family Foundation the \$100 million note.
- The investment/company under the FLP earns income based upon 3% of the value of its investments, in addition to growth in value of 3% a year.
- The Dynasty Trust therefore receives approximately \$4.5 million a year of positive cash flow.





The Administrative Note

- The Dynasty Trust pays \$4 million a year in interest to the family charity, and has a positive cash flow of \$500 thousand a year.
- The family charity operates a school, a medical research operation, a church, synagogue or mosque, or a clinic for low income individuals that qualifies as a “hospital” under the public charity rules.
- Since the Family Foundation qualifies as a “Public Charity” the Dynasty Trust can enter into an arm’s-length transaction and purchases the note after the fifth year from Mrs. Jones’ death for \$60 million that is distributed from the partnership.
- The Dynasty Trust now has \$90 million worth of assets (\$150 million growing at 3% per year becomes \$150,000,000 minus \$60,000,000) and the Family Foundation has \$60 million.
- The alternative would have been for the IRS to receive \$40 million in estate taxes and for the State of New York to have received state taxes.





The Administrative Note

The family derives significant personal satisfaction educating, healing, studying, or operating a house of worship.

Alternatively, the \$100 million in value FLP interest could have passed to a 20 year Charitable Lead Annuity Trust which would have paid \$5,534,797 per year to charity. After 20 years the remainder beneficiaries will get \$124,469,901. The present value of that is \$41,858,723.

Pursuant to **§ 4941(d)(2)(F)**, an option agreement that permits a trust or estate to purchase a limited liability interest through a private foundation so that it does not violate § 4941, taxes on self-dealing, must abide by the following:

- (1) consideration for such purchase equaled or exceeded the fair market value of such stock,
- (2) the purchaser of such stock did not make any contribution to such foundation at any time during the 5-year period ending on the date of such purchase,
- (3) the aggregate contributions to such foundation by the purchaser before such date were less than \$10,000 and less than 2 percent of the total contributions received by the foundation as of such date, and
- (4) such purchase was pursuant to the settlement of litigation involving the purchaser.



Donate Before an Arm's-Length Sale

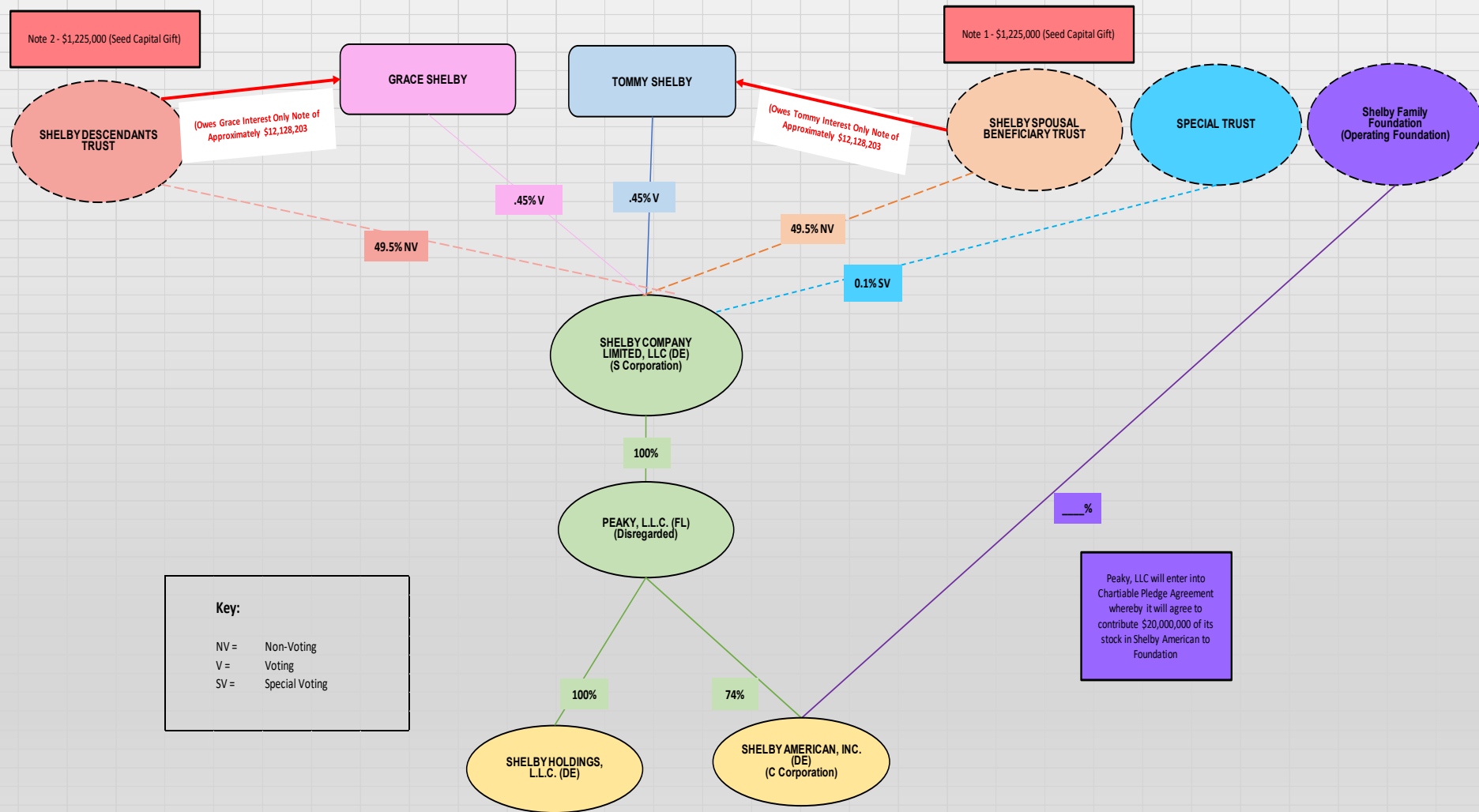
When a building is going to be sold and before a binding contract is entered into, is it better to donate one-tenth of the building to charity before the Sale Contract is entered into than to give one-tenth of the net sales proceeds after the sale to charity?

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

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



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



Charitable Deduction for Contribution of Remainder Interest in Personal Residence or Farm

- IRC Section 170(3)(B) provides that a charitable deduction is allowed for a contribution, not in trust, of a remainder interest in a donor's personal residence or farm.
- The donor is entitled to a charitable contribution income tax deduction equal to the present value of the charitable remainder interest. The calculation is made using the guidelines described in Reg. § 1.170A-12 and is based on the:
 - **Fair market value of the property (including improvements) on the date of transfer**
 - **Fair market value of depreciable improvements attached to or depletable resources associated with the property on the transfer date**
 - **Estimated useful life of the depreciable improvements**
 - **Estimated salvage value of the depreciable improvements at the end of their useful life**
 - **IRS 7250 rate at the time of the gift**
- With respect to contribution of an encumbered personal residence or farm to charity, in PLR 9329017, a donor purchased a farm for \$110,000, which he financed by paying \$30,000 in cash and obtaining a mortgage for \$80,000 from a financial institution.
- The donor proposed to donate a remainder interest in the farm to charity while still remaining liable for payment of the mortgage. The IRS ruled that because the property will be transferred subject to a mortgage, the transfer must be considered a bargain sale between the donor and the charity. The IRS additionally ruled that, upon the transfer of the remainder interest in a donor's farm to charity, the donor would realize the entire amount of the indebtedness for purposes of determining gain under the bargain sale rules, not just the debt attributable to the remainder.

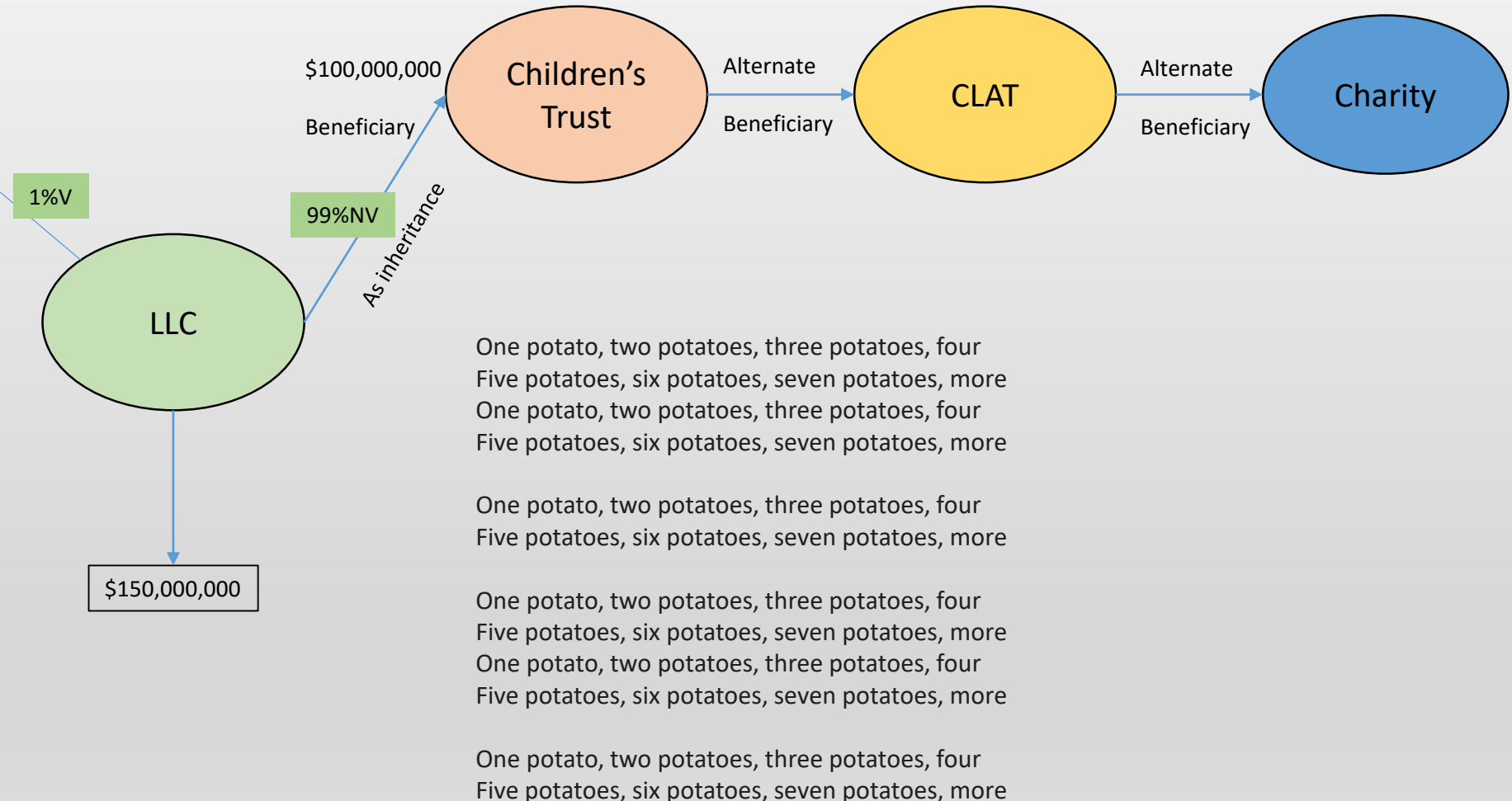


Treasury Regulations for Charitable Deduction for Contribution of Remainder Interest in Personal Residence or Farm

- 26 C.F.R. § 1.170A-7(b)
- **(b) Contributions of certain partial interests in property for which a deduction is allowed.** A deduction is allowed under section 170 for a contribution not in trust of a partial interest which is less than the donor's entire interest in property and which qualifies under one of the following subparagraphs:
- **(3) Contribution of a remainder interest in a personal residence.** A deduction is allowed under section 170 for the value of a charitable contribution not in trust of an irrevocable remainder interest in a personal residence which is not the donor's entire interest in such property. Thus, for example, if a taxpayer contributes not in trust to an organization described in section 170(c) a remainder interest in a personal residence and retains an estate in such property for life or for a term of years, a deduction is allowed under section 170 for the value of such remainder interest not transferred in trust. For purposes of section 170(f)(3)(B)(i) and this subparagraph, the term personal residence means any property used by the taxpayer as his personal residence even though it is not used as his principal residence. For example, the taxpayer's vacation home may be a personal residence for purposes of this subparagraph. The term personal residence also includes stock owned by a taxpayer as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216(b)(1) and (2)) if the dwelling which the taxpayer is entitled to occupy as such stockholder is used by him as his personal residence.
- **(4) Contribution of a remainder interest in a farm.** A deduction is allowed under section 170 for the value of a charitable contribution not in trust of an irrevocable remainder interest in a farm which is not the donor's entire interest in such property. Thus, for example, if a taxpayer contributes not in trust to an organization described in section 170(c) a remainder interest in a farm and retains an estate in such farm for life or for a term of years, a deduction is allowed under section 170 for the value of such remainder interest not transferred in trust. For purposes of section 170(f)(3)(B)(i) and this subparagraph, the term farm means any land used by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock. The term livestock includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive fur-bearing animals, chickens, turkeys, pigeons, and other poultry. A farm includes the improvements thereon.



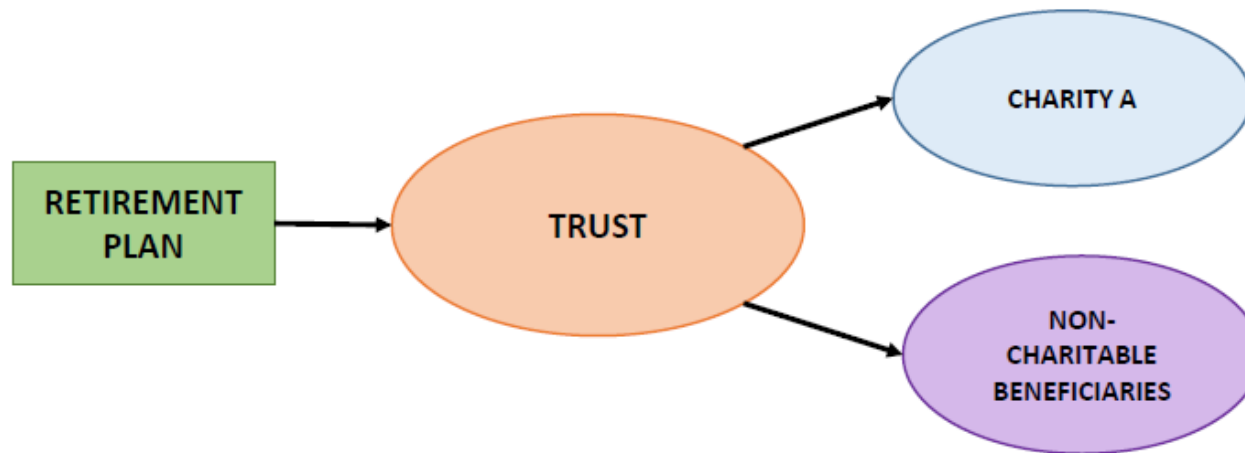
1 Disclaimer, 2 Disclaimer, 3 Disclaimer, 4?



Charitable Remainder Trusts (CRTs)



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



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

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

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

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

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



Excess to Charity Charitable Remainder Trust(s)

ASSETS

ANN SMITH (Has Exemption Plus DSUE of \$15 million)	
Home	\$3,000,000
IRA	\$20,000,000
TOTAL:	\$23,000,000

ALTERNATE A



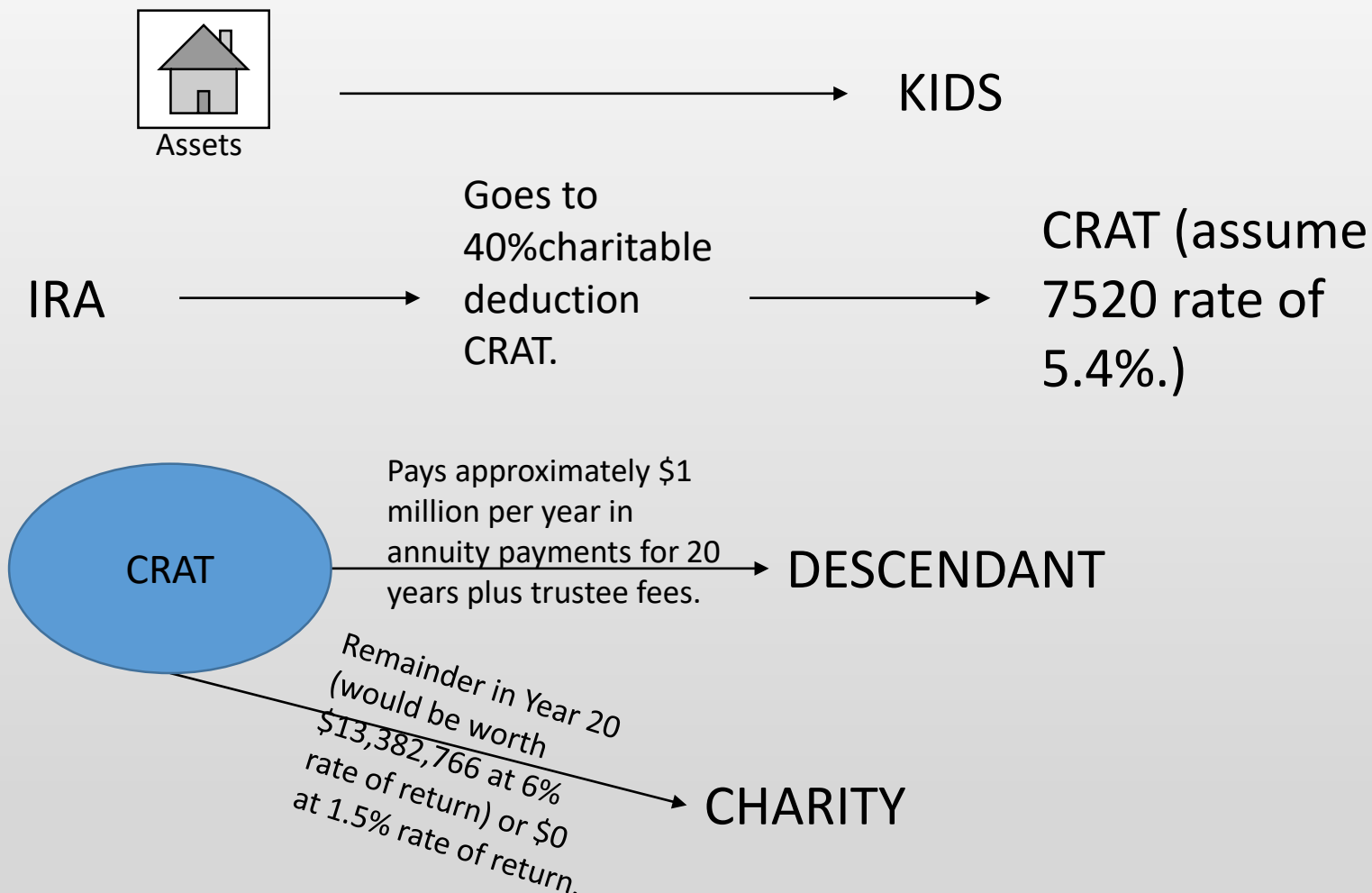
KIDS



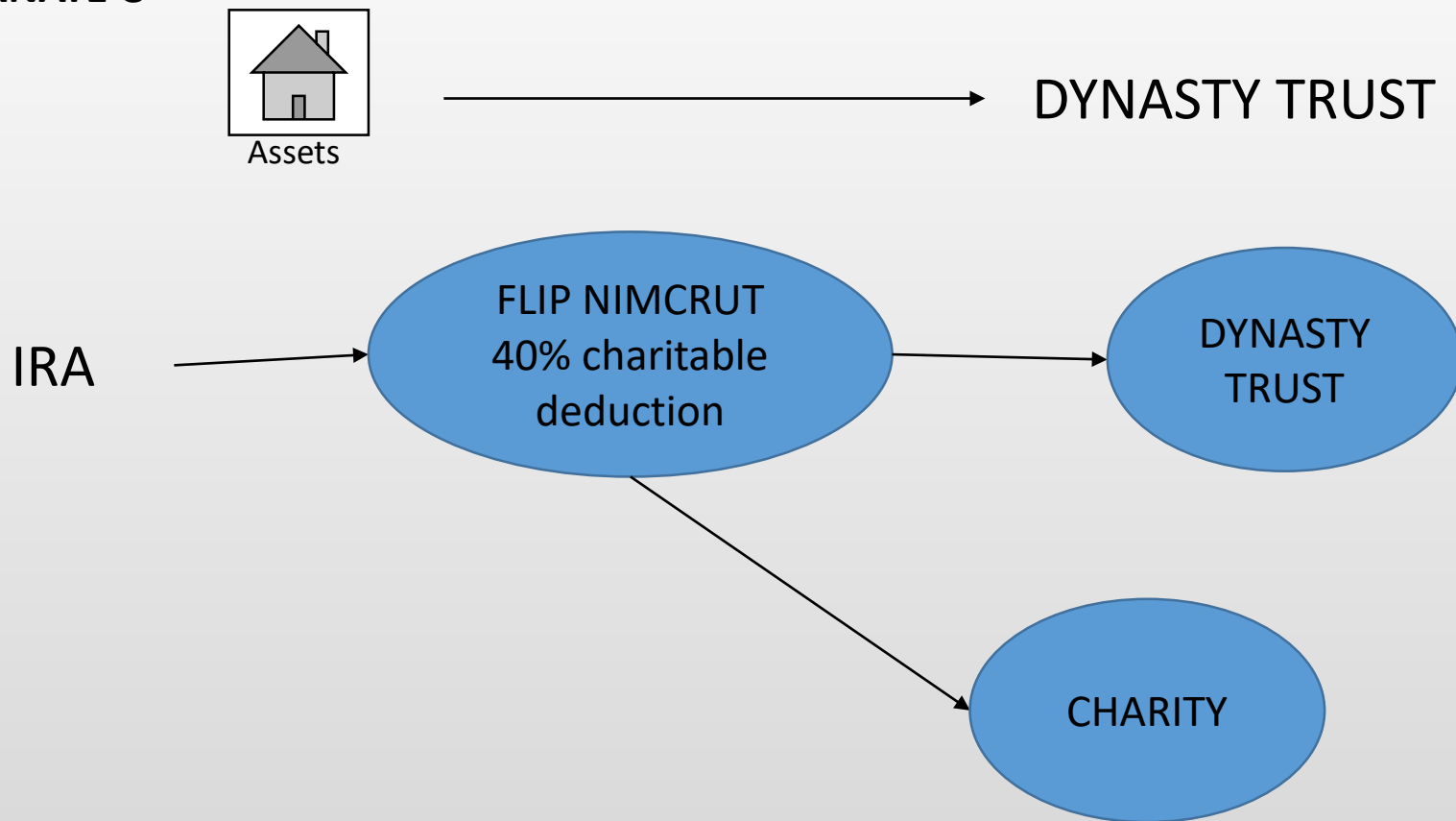
ZERO ESTATE TAX



ALTERNATE B



ALTERNATE C



(See Following Pages)





IRA PAYABLE TO 40% Charitable Deduction CRUT or FLIP NIMCRUT

For a CRUT to get a 40% charitable deduction and meet the 5% minimum payment test assuming a 7520 rate of 5.4%, you have to use an 18-year CRUT.

If growth is at 6% a year and payments are made annually, then payments average approximately \$1,100,000 a year over the 18 years, and charity receives approximately \$23,400,000 at the end of year 18.

Assuming a 5.8% discount rate, the present value of the annuity payments on Day 1 would be \$11,600,000, and the present value of the remainder interest would be \$8,000,000.

If growth is at 7.5% a year, then the average payment is approximately \$1,230,000 a year, and the remainder interest to charity is approximately \$30,500,000. The present value of the annuity payments is approximately \$12,900,000, and the present value of the remainder interest is approximately \$10,500,000.





IRA PAYABLE TO 40% Charitable Deduction CRUT or FLIP NIMCRUT, continued

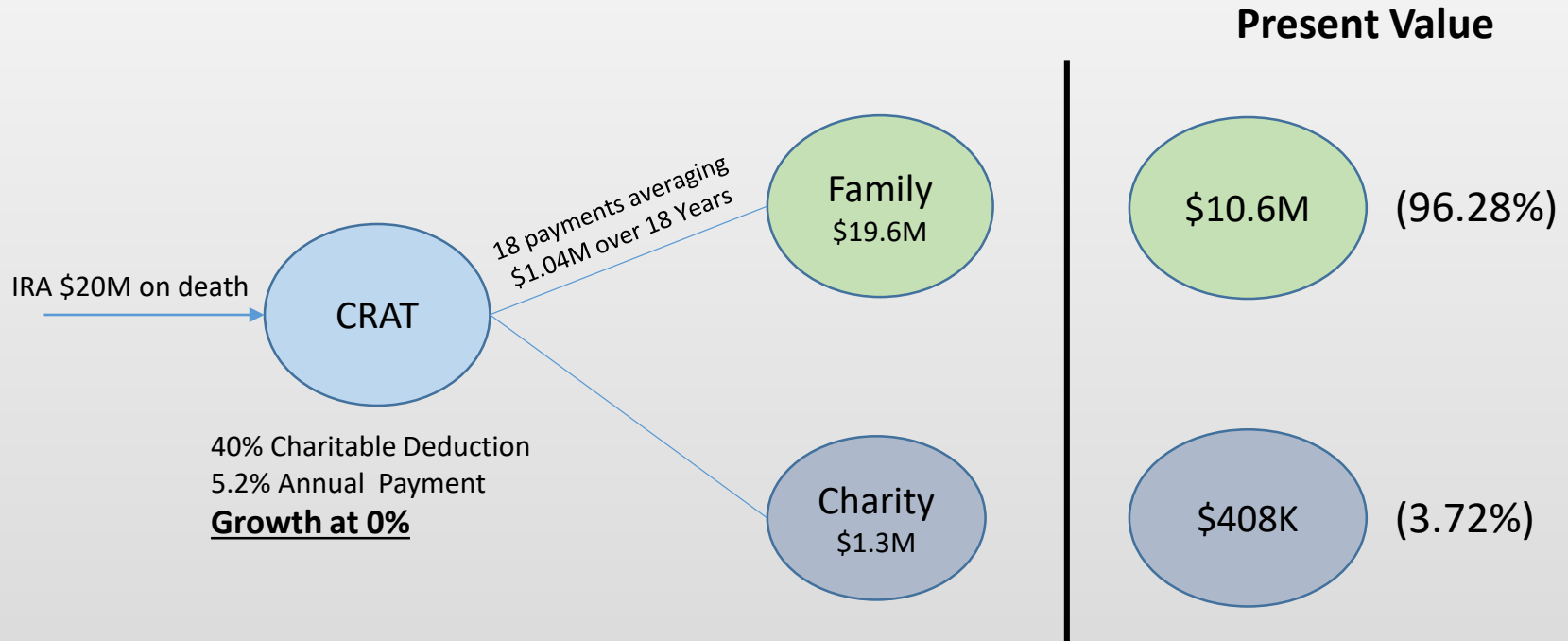
If the rate of return is 0%, then the average payment is approximately \$700,000 a year, and charity receives approximately \$7,650,000. The present value of the annuity payments would be approximately \$7,800,000, and the present value of the remainder interest payments is \$2,600,000.

If a FLIP-NIMCRUT is used with a 6% rate of return and an 11 year deferral, then the payment in year 11 would be \$12,302,000, with subsequent payments averaging \$1,185,000 per year, with charity receiving approximately \$23,900,000. The present value of the annuity is \$11,500,000, and the present value of the remainder interest payment is \$11,200,000.

If a FLIP-NIMCRUT is used with a 7.5% rate of return and an 11 year deferral, then the payment in year 11 would be \$15,140,000, with subsequent payments averaging \$1,450,000, and \$32,000,000 passing to charity. The present value of the annuity \$13,000,000, and the present value of the remainder interest would be \$11,000,000.



CRAT with 0% Growth



CRAT without Annual Growth

CRAT #	Term of CRAT	Number of Lives	Grantor Age	Survivor Age	IRS Table Life Expectancy	Year of Death	Actual Life Expectancy	Contribution Amount	1st Yr Pmt Rate	\$ 7520 Rate	Growth Rate	Annual Annuity Amount	Annuity Factor	\$ 7520 Reportable Value of Annuity	\$ 7520 Reportable Charitable Remainder	Total Annuity Payments	Illustrated End Value	Probability of Exhaustion	Yr 1 Income Tax Savings	Actual Present Value Discount Rate	Yr 1 Tax Savings + Actual PV of Annuity	Actual Present Value of Annuity	Actual Present Value of Remainder
1	18	1	55	N/A	27.1	27	20	\$20,000,000	5.20%	5.20%	0.00%	\$1,040,000	11.5091	\$11,969,424	\$8,030,576	\$19,574,795	\$1,280,000	0.00%	\$2,971,313	6.20%	\$13,532,516	\$10,561,203	\$408,173

CRAT 1 Duplicate Delete ▼

Transfer Date: 2024-10-28

Highest Available § 7520 Rate: 5.20%

Best to use highest rate.

Aug 5.20% Sep 4.80% Oct 4.40%

Term or Life: Term

Number of Lives: One

Grantor Age (Nearest Birthday): 55

Date of Birth: Age at Nearest Birthday: Date not entered

Table 2010CM Life Expectancy: 82.1 (27.1 years)

Term of CRAT (max: 20): 18

Grantor Yr of Death: 82 (Year 27)

Mortality Table: Table 2010CM (** Required)

Payout Rate: 5.20%

Annual Growth Rate: 0.00%

Income Tax Rate: 37.00%

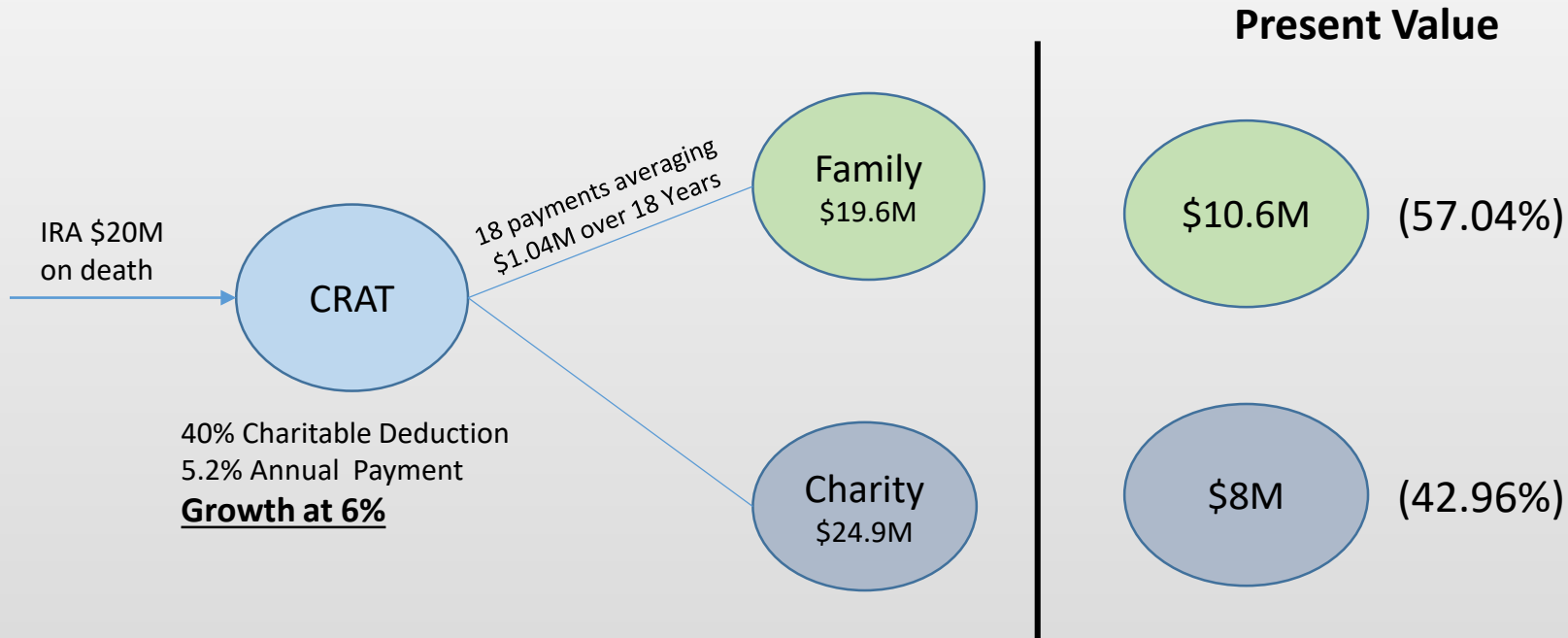
Trust Value: \$20,000,000

Time Value of Money, Illustration, Rate: 6.20%

Year	Year #	Grantor Age	Survivor Age	Probability Survival To Year	Probability Of Death Each Year	Beginning Value	Growth	Annuity Amount*	End Value	Yr 1 Pmt Rate	PV of Annuity Payments	PV of Remainder
2025	1	56	0	99.38%	0.66%	\$20,000,000.00	\$0.00	\$185,205.48	\$19,814,794.52	5.20%	\$174,393.11	\$18,657,998.61
2026	2	57	0	98.73%	0.70%	\$19,814,794.52	\$0.00	\$1,040,000.00	\$18,774,794.52	5.20%	\$1,096,506.45	\$16,646,623.58
2027	3	58	0	98.02%	0.75%	\$18,774,794.52	\$0.00	\$1,040,000.00	\$17,734,794.52	5.20%	\$1,964,786.43	\$14,806,506.81
2028	4	59	0	97.27%	0.80%	\$17,734,794.52	\$0.00	\$1,040,000.00	\$16,694,794.52	5.20%	\$2,782,375.87	\$13,124,507.37
2029	5	60	0	96.47%	0.85%	\$16,694,794.52	\$0.00	\$1,040,000.00	\$15,654,794.52	5.20%	\$3,552,234.10	\$11,588,434.97
2030	6	61	0	95.62%	0.91%	\$15,654,794.52	\$0.00	\$1,040,000.00	\$14,614,794.52	5.20%	\$4,277,147.69	\$10,186,983.75
2031	7	62	0	94.72%	0.96%	\$14,614,794.52	\$0.00	\$1,040,000.00	\$13,574,794.52	5.20%	\$4,959,740.52	\$8,909,670.58
2032	8	63	0	93.75%	1.02%	\$13,574,794.52	\$0.00	\$1,040,000.00	\$12,534,794.52	5.20%	\$5,602,483.30	\$7,746,777.55
2033	9	64	0	92.73%	1.09%	\$12,534,794.52	\$0.00	\$1,040,000.00	\$11,494,794.52	5.20%	\$6,207,702.49	\$6,689,298.28
2034	10	65	0	91.64%	1.17%	\$11,494,794.52	\$0.00	\$1,040,000.00	\$10,454,794.52	5.20%	\$6,777,588.73	\$5,728,888.03
2035	11	66	0	90.46%	1.27%	\$10,454,794.52	\$0.00	\$1,040,000.00	\$9,414,794.52	5.20%	\$7,314,204.78	\$4,857,817.13
2036	12	67	0	89.20%	1.36%	\$9,414,794.52	\$0.00	\$1,040,000.00	\$8,374,794.52	5.20%	\$7,819,492.96	\$4,068,927.57
2037	13	68	0	87.84%	1.46%	\$8,374,794.52	\$0.00	\$1,040,000.00	\$7,334,794.52	5.20%	\$8,295,282.21	\$3,355,592.65
2038	14	69	0	86.38%	1.56%	\$7,334,794.52	\$0.00	\$1,040,000.00	\$6,294,794.52	5.20%	\$8,743,294.68	\$2,711,679.29
2039	15	70	0	84.82%	1.66%	\$6,294,794.52	\$0.00	\$1,040,000.00	\$5,254,794.52	5.20%	\$9,165,152.00	\$2,131,513.01
2040	16	71	0	83.16%	1.78%	\$5,254,794.52	\$0.00	\$1,040,000.00	\$4,214,794.52	5.20%	\$9,562,381.11	\$1,609,845.28
2041	17	72	0	81.38%	1.90%	\$4,214,794.52	\$0.00	\$1,040,000.00	\$3,174,794.52	5.20%	\$9,936,419.82	\$1,141,823.13
2042	18	73	0	79.48%	2.04%	\$3,174,794.52	\$0.00	\$1,040,000.00	\$2,134,794.52	5.20%	\$10,288,622.00	\$722,960.85
2043	19	74	0	77.44%	2.18%	\$2,134,794.52	\$0.00	\$854,794.52	\$1,280,000.00	5.20%	\$10,561,203.21	\$408,172.89



CRAT with 6% Growth



CRAT with an Annual Growth of 6%

CRAT #	Term of CRAT	Number of Lives	Grantor Age	Survivor Age	IRS Table Life Expectancy	Year of Death	Actual Life Expectancy	Contribution Amount	1st Yr Pmt Rate	\$ 7520 Rate	Growth Rate	Annual Annuity Amount	Annuity Factor	\$ 7520 Reportable Value of Annuity	\$ 7520 Reportable Charitable Remainder	Total Annuity Payments	Illustrated End Value	Probability of Exhaustion	Yr 1 Income Tax Savings	Actual Present Value Discount Rate	Yr 1 Tax Savings + Actual PV of Annuity	Actual Present Value of Annuity	Actual Present Value of Remainder
1	18	1	55	N/A	27.1	27	20	\$20,000,000	5.20%	5.20%	6.00%	\$1,040,000	11.5091	\$11,969,424	\$8,030,576	\$19,574,795	\$24,948,688	0.00%	\$2,971,313	6.20%	\$13,532,516	\$10,561,203	\$7,955,764

CRAT 1 Duplicate Delete ▼

Transfer Date: 2024-10-28

Highest Available \$ 7520 Rate: 5.20%

Best to use highest rate.

Aug 5.20% Sep 4.80% Oct 4.40%

Term or Life: Term

Number of Lives: One

Grantor Age (Nearest Birthday): 55

Date of Birth: Age at Nearest Birthday: Date not entered

Table 2010CM Life Expectancy: 82.1 (27.1 years)

Term of CRAT (max: 20): 18

Grantor Yr of Death: 82 (Year 27)

Mortality Table: Table 2010CM (** Requi

Payout Rate: 5.20%

5.00% n 052 7.81% Min Max

Annual Growth Rate: 6.00%

Income Tax Rate: 37.00%

1.00% n 37 60.00%

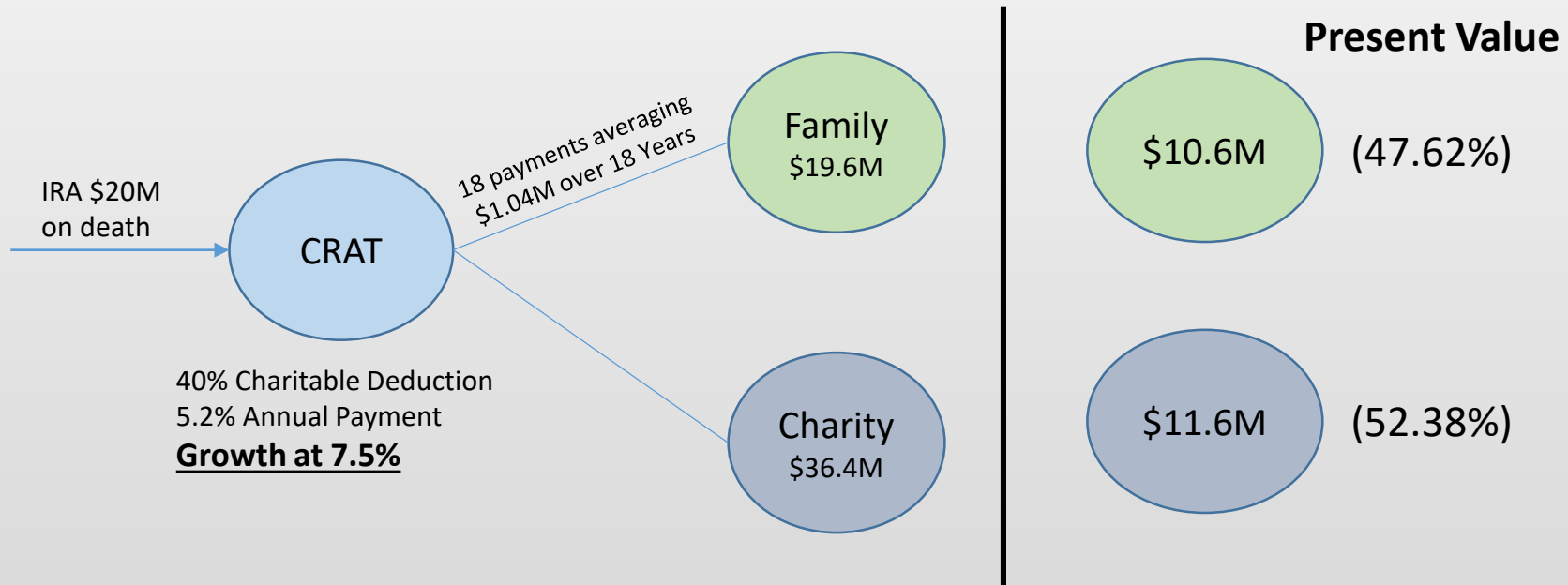
Trust Value: \$20,000,000

Time Value of Money, Illustration, Rate: 6.20%

Year	Year #	Grantor Age	Survivor Age	Probability Survival To Year	Probability Of Death Each Year	Beginning Value	Growth	Annuity Amount*	End Value	Yr 1 Pmt Rate	PV of Annuity Payments	PV of Remainder
2025	1	56	0	99.38%	0.66%	\$20,000,000.00	\$213,698.63	\$185,205.48	\$20,028,493.15	5.20%	\$174,393.11	\$18,859,221.42
2026	2	57	0	98.73%	0.70%	\$20,028,493.15	\$1,201,709.59	\$1,040,000.00	\$20,190,202.74	5.20%	\$1,096,506.45	\$17,901,591.66
2027	3	58	0	98.02%	0.75%	\$20,190,202.74	\$1,211,412.16	\$1,040,000.00	\$20,361,614.90	5.20%	\$1,964,786.43	\$16,999,598.69
2028	4	59	0	97.27%	0.80%	\$20,361,614.90	\$1,221,696.89	\$1,040,000.00	\$20,543,311.79	5.20%	\$2,782,375.87	\$16,149,994.94
2029	5	60	0	96.47%	0.85%	\$20,543,311.79	\$1,232,598.71	\$1,040,000.00	\$20,735,910.50	5.20%	\$3,552,234.10	\$15,349,722.41
2030	6	61	0	95.62%	0.91%	\$20,735,910.50	\$1,244,154.63	\$1,040,000.00	\$20,940,065.13	5.20%	\$4,277,147.69	\$14,595,901.63
2031	7	62	0	94.72%	0.96%	\$20,940,065.13	\$1,256,403.91	\$1,040,000.00	\$21,156,469.04	5.20%	\$4,959,740.52	\$13,885,821.22
2032	8	63	0	93.75%	1.02%	\$21,156,469.04	\$1,269,388.14	\$1,040,000.00	\$21,385,857.18	5.20%	\$5,602,483.30	\$13,216,928.12
2033	9	64	0	92.73%	1.09%	\$21,385,857.18	\$1,283,151.43	\$1,040,000.00	\$21,629,008.61	5.20%	\$6,207,702.49	\$12,586,818.30
2034	10	65	0	91.64%	1.17%	\$21,629,008.61	\$1,297,740.52	\$1,040,000.00	\$21,886,749.13	5.20%	\$6,777,588.73	\$11,993,228.07
2035	11	66	0	90.46%	1.27%	\$21,886,749.13	\$1,313,204.95	\$1,040,000.00	\$22,159,954.08	5.20%	\$7,314,204.78	\$11,434,025.91
2036	12	67	0	89.20%	1.36%	\$22,159,954.08	\$1,329,597.24	\$1,040,000.00	\$22,449,551.32	5.20%	\$7,819,492.96	\$10,907,204.72
2037	13	68	0	87.84%	1.46%	\$22,449,551.32	\$1,346,973.08	\$1,040,000.00	\$22,756,524.40	5.20%	\$8,295,282.21	\$10,410,874.60
2038	14	69	0	86.38%	1.56%	\$22,756,524.40	\$1,365,391.46	\$1,040,000.00	\$23,081,915.86	5.20%	\$8,743,294.68	\$9,943,255.96
2039	15	70	0	84.82%	1.66%	\$23,081,915.86	\$1,384,914.95	\$1,040,000.00	\$23,426,830.81	5.20%	\$9,165,152.00	\$9,502,673.11
2040	16	71	0	83.16%	1.78%	\$23,426,830.81	\$1,405,609.85	\$1,040,000.00	\$23,792,440.66	5.20%	\$9,562,381.11	\$9,087,548.19
2041	17	72	0	81.38%	1.90%	\$23,792,440.66	\$1,427,546.44	\$1,040,000.00	\$24,179,987.10	5.20%	\$9,936,419.82	\$8,696,395.45
2042	18	73	0	79.48%	2.04%	\$24,179,987.10	\$1,450,799.23	\$1,040,000.00	\$24,590,786.33	5.20%	\$10,288,622.00	\$8,327,815.88
2043	19	74	0	77.44%	2.18%	\$24,590,786.33	\$1,212,696.31	\$854,794.52	\$24,948,688.12	5.20%	\$10,561,203.21	\$7,955,764.08



CRAT with 7.5% Growth



CRAT with an Annual Growth of 7.5%

CRAT #	Term of CRAT	Number of Lives	Grantor Age	Survivor Age	IRS Table Life Expectancy	Year of Death	Actual Life Expectancy	Contribution Amount	1st Yr Pmt Rate	\$ 7520 Rate	Growth Rate	Annual Annuity Amount	Annuity Factor	\$ 7520 Reportable Value of Annuity	\$ 7520 Reportable Charitable Remainder	Total Annuity Payments	Illustrated End Value	Probability of Exhaustion	Yr 1 Income Tax Savings	Actual Present Value Discount Rate	Yr 1 Tax Savings + Actual PV of Annuity	Actual Present Value of Annuity	Actual Present Value of Remainder
1	18	1	55	N/A	27.1	27	20	\$20,000,000	5.20%	5.20%	7.50%	\$1,040,000	11.5091	\$11,969,424	\$8,030,576	\$19,574,795	\$36,428,865	0.00%	\$2,971,313	6.20%	\$13,532,516	\$10,561,203	\$11,616,621

CRAT 1 Duplicate Delete ▼

Transfer Date

Highest Available \$ 7520 Rate

Best to use highest rate.
 Aug 5.20% Sep 4.80% Oct 4.40%

Term or Life

Number of Lives

Grantor Age (Nearest Birthday)

Date of Birth:

Table 2010CM Life Expectancy

Term of CRAT (max: 20)

Grantor Yr of Death

Mortality Table

Payout Rate

5.00% Min 7.81% Max

Annual Growth Rate

Income Tax Rate

1.00% 60.00%

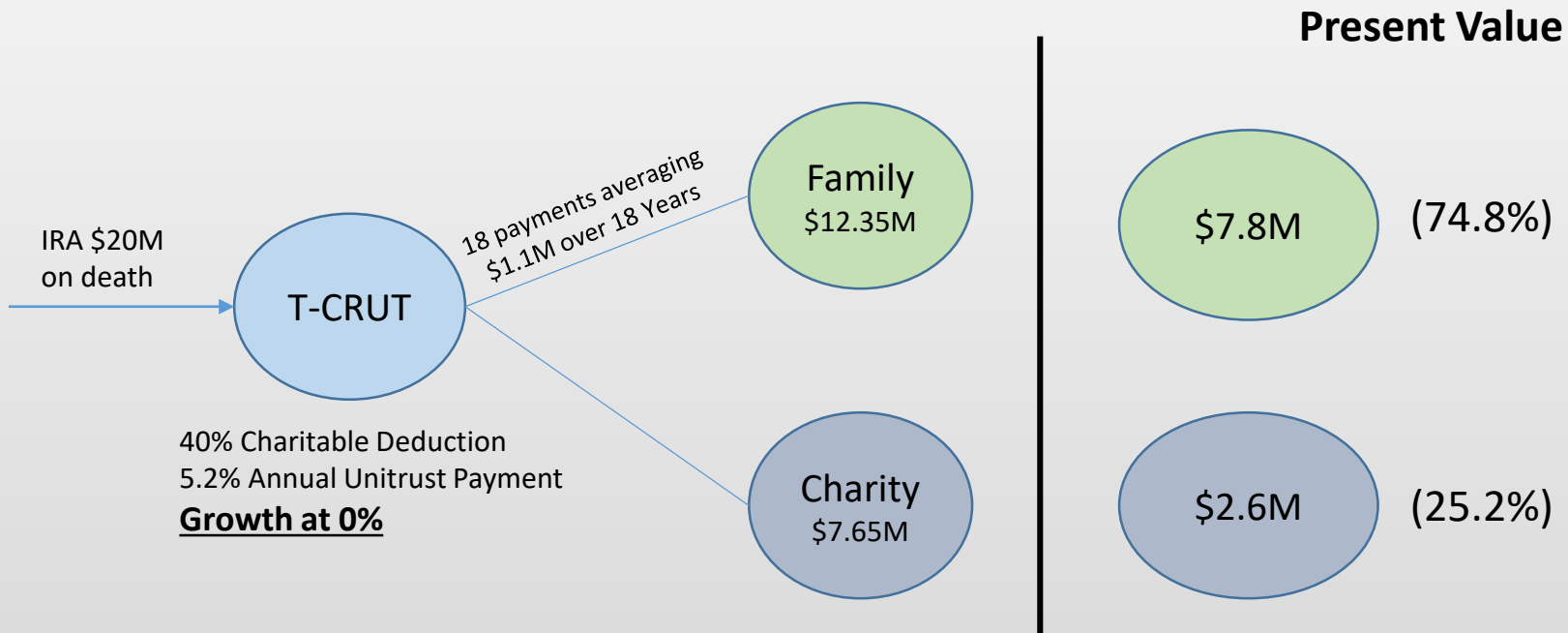
Trust Value

Time Value of Money, Illustration, Rate

Year	Year #	Grantor Age	Survivor Age	Probability Survival To Year	Probability Of Death Each Year	Beginning Value	Growth	Annuity Amount*	End Value	Yr 1 Pmt Rate	PV of Annuity Payments	PV of Remainder
2025	1	56	0	99.38%	0.66%	\$20,000,000.00	\$267,123.29	\$185,205.48	\$20,081,917.81	5.20%	\$174,393.11	\$18,909,527.13
2026	2	57	0	98.73%	0.70%	\$20,081,917.81	\$1,506,143.84	\$1,040,000.00	\$20,548,061.65	5.20%	\$1,096,506.45	\$18,218,886.34
2027	3	58	0	98.02%	0.75%	\$20,548,061.65	\$1,541,104.62	\$1,040,000.00	\$21,049,166.27	5.20%	\$1,964,786.43	\$17,573,624.74
2028	4	59	0	97.27%	0.80%	\$21,049,166.27	\$1,578,687.47	\$1,040,000.00	\$21,587,853.74	5.20%	\$2,782,375.87	\$16,971,155.00
2029	5	60	0	96.47%	0.85%	\$21,587,853.74	\$1,619,089.03	\$1,040,000.00	\$22,166,942.77	5.20%	\$3,552,234.10	\$16,409,041.61
2030	6	61	0	95.62%	0.91%	\$22,166,942.77	\$1,662,520.71	\$1,040,000.00	\$22,789,463.48	5.20%	\$4,277,147.69	\$15,884,992.00
2031	7	62	0	94.72%	0.96%	\$22,789,463.48	\$1,709,209.76	\$1,040,000.00	\$23,458,673.24	5.20%	\$4,959,740.52	\$15,396,848.22
2032	8	63	0	93.75%	1.02%	\$23,458,673.24	\$1,759,400.49	\$1,040,000.00	\$24,178,073.73	5.20%	\$5,602,483.30	\$14,942,579.11
2033	9	64	0	92.73%	1.09%	\$24,178,073.73	\$1,813,355.53	\$1,040,000.00	\$24,951,429.26	5.20%	\$6,207,702.49	\$14,520,272.84
2034	10	65	0	91.64%	1.17%	\$24,951,429.26	\$1,871,357.19	\$1,040,000.00	\$25,782,786.45	5.20%	\$6,777,588.73	\$14,128,130.05
2035	11	66	0	90.46%	1.27%	\$25,782,786.45	\$1,933,708.98	\$1,040,000.00	\$26,676,495.43	5.20%	\$7,314,204.78	\$13,764,457.22
2036	12	67	0	89.20%	1.36%	\$26,676,495.43	\$2,000,737.16	\$1,040,000.00	\$27,637,232.59	5.20%	\$7,819,492.96	\$13,427,660.51
2037	13	68	0	87.84%	1.46%	\$27,637,232.59	\$2,072,792.44	\$1,040,000.00	\$28,670,025.03	5.20%	\$8,295,282.21	\$13,116,239.99
2038	14	69	0	86.38%	1.56%	\$28,670,025.03	\$2,150,251.88	\$1,040,000.00	\$29,780,276.91	5.20%	\$8,743,294.68	\$12,828,784.13
2039	15	70	0	84.82%	1.66%	\$29,780,276.91	\$2,233,520.77	\$1,040,000.00	\$30,973,797.68	5.20%	\$9,165,152.00	\$12,563,964.66
2040	16	71	0	83.16%	1.78%	\$30,973,797.68	\$2,323,034.83	\$1,040,000.00	\$32,256,832.51	5.20%	\$9,562,381.11	\$12,320,531.72
2041	17	72	0	81.38%	1.90%	\$32,256,832.51	\$2,419,262.44	\$1,040,000.00	\$33,636,094.95	5.20%	\$9,936,419.82	\$12,097,309.31
2042	18	73	0	79.48%	2.04%	\$33,636,094.95	\$2,522,707.12	\$1,040,000.00	\$35,118,802.07	5.20%	\$10,288,622.00	\$11,893,190.96
2043	19	74	0	77.44%	2.18%	\$35,118,802.07	\$2,164,857.66	\$854,794.52	\$36,428,865.21	5.20%	\$10,561,203.21	\$11,616,621.11



T-CRUT with 0% Growth



T-CRUT without Annual Growth

CRUT #	Term of CRUT	Number of Lives	Grantor Age	Survivor Age	IRS Table Life Expectancy	Year of Death	Actual Life Expectancy	Contribution Amount	Payout Rate	Payout Schedule	Months Before First Payment	1st Year Pmt	\$ 7520 Rate	Table F Adjustment Factor	Adjusted Payout Rate (Table F)	Income Factor	Remainder Factor	\$ 7520 Reportable Charitable Remainder	\$ 7520 Reportable Value of Unitrust Interest	Total Payments	Illustrated End Value	Yr 1 Income Tax Savings	Type of CRUT	YR of FLIP	Actual Present Value Discount Rate	Actual PV of Annuity Payments	Actual PV of Remainder
1	18	1	70	N/A	15.4	15	19	\$20,000,000	5.20%	Annual	12	\$185,205	5.20%	0.950570	4.943	0.598418	0.401582	\$8,031,640	\$11,968,360	\$12,348,240	\$7,651,760	\$2,971,707	CRUT	N/A	5.80%	\$7,775,964	\$2,621,402

CRUT 1 Duplicate Delete ▼

Transfer Date: 2024-10-28

Highest Available \$ 7520 Rate: 5.20%

Best to use highest rate.

Aug 5.20% Sep 4.80% Oct 4.40%

Term or Life: Term

Number of Lives: One

Grantor Age (Nearest Birthday): 70

Date of Birth: Age at Nearest Birthday: Date not entered

Table 2010CM Life Expectancy: 85.4 (15.4 years)

Term of CRUT (max: 20): 18

Grantor Yr of Death: 85 (Year 15)

Mortality Table: Table 2010CM (** Requi

Always Maximize Payout Rate? ☐

Payout Rate: 5.20%

Annual Growth Rate: 0.00%

Income Tax Rate: 37.00%

Payout Schedule: Annual

Number of Months before First Payment: 12

Trust Value: \$20,000,000

Use FLIP NIMCRUT?: ☐

Time Value of Money, Illustration, Rate: 5.80%

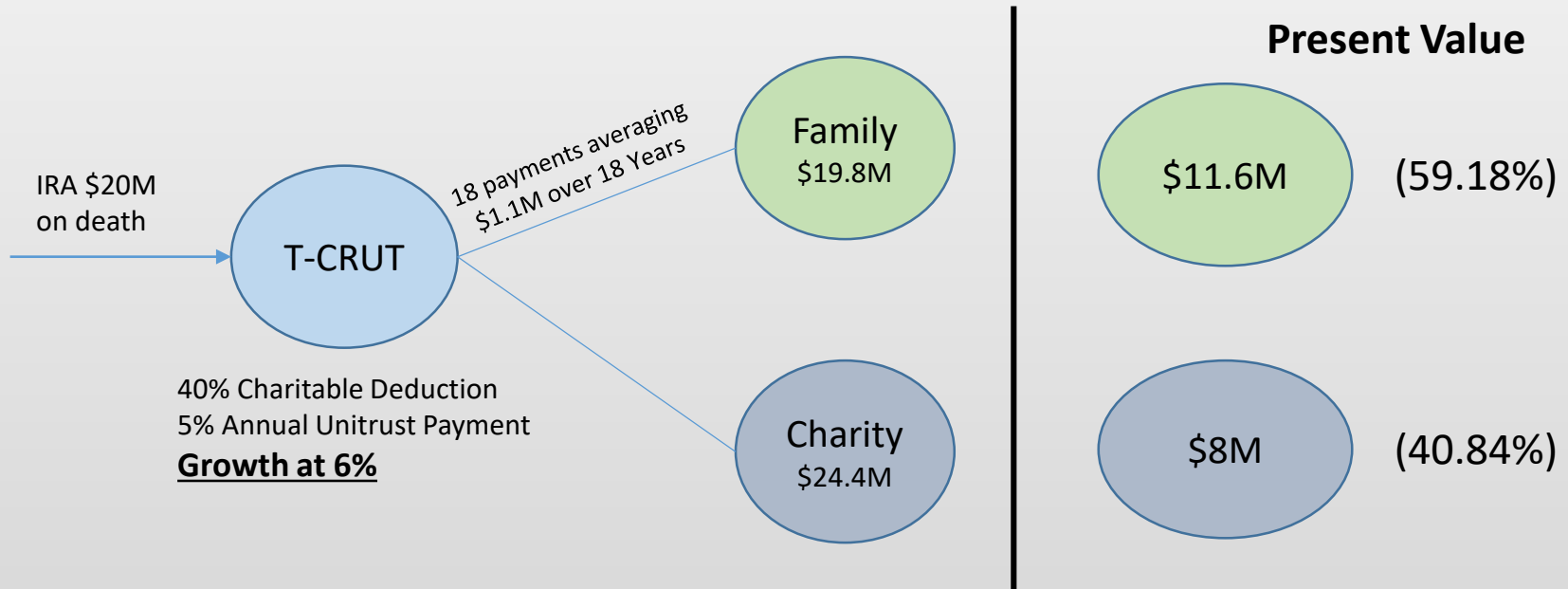
Change Remainder Factor Calculation Method?: Interpolation (most com

Open [Life Insurance Estimator](#) to Replace Remainder

Year	Year #	Grantor Age	Survivor Age	Probability Survival To Year	Probability Of Death Each Year	Beginning Value	Growth	Payout Rate	Annual Payment Amount	Actual Payment Made	Make-Up Payment Owed	Make-Up Payment Made	Cumulative Make-Up Owed	End Value	PV of Annuity Payments	PV of Remainder
2025	1	71	0	98.04%	2.09%	\$20,000,000.00	\$0.00	5.20%	\$185,205.48	\$185,205.48	\$0.00	\$0.00	\$0.00	\$19,814,794.52	\$175,052.44	\$18,728,539.24
2026	2	72	0	95.95%	2.24%	\$19,814,794.52	\$0.00	5.20%	\$1,030,369.32	\$1,030,369.32	\$0.00	\$0.00	\$0.00	\$18,784,425.20	\$1,095,547.75	\$16,781,337.62
2027	3	73	0	93.70%	2.40%	\$18,784,425.20	\$0.00	5.20%	\$976,790.11	\$976,790.11	\$0.00	\$0.00	\$0.00	\$17,807,635.09	\$1,920,339.39	\$15,036,586.07
2028	4	74	0	91.30%	2.57%	\$17,807,635.09	\$0.00	5.20%	\$925,997.02	\$925,997.02	\$0.00	\$0.00	\$0.00	\$16,881,638.07	\$2,659,377.65	\$13,473,235.91
2029	5	75	0	88.73%	2.73%	\$16,881,638.07	\$0.00	5.20%	\$877,845.18	\$877,845.18	\$0.00	\$0.00	\$0.00	\$16,003,792.89	\$3,321,578.28	\$12,072,426.89
2030	6	76	0	86.00%	2.91%	\$16,003,792.89	\$0.00	5.20%	\$832,197.23	\$832,197.23	\$0.00	\$0.00	\$0.00	\$15,171,595.66	\$3,914,930.07	\$10,817,259.63
2031	7	77	0	83.09%	3.09%	\$15,171,595.66	\$0.00	5.20%	\$788,922.97	\$788,922.97	\$0.00	\$0.00	\$0.00	\$14,382,672.69	\$4,446,591.23	\$9,692,591.80
2032	8	78	0	80.00%	3.30%	\$14,382,672.69	\$0.00	5.20%	\$747,898.98	\$747,898.98	\$0.00	\$0.00	\$0.00	\$13,634,773.71	\$4,922,975.70	\$8,684,855.42
2033	9	79	0	76.70%	3.48%	\$13,634,773.71	\$0.00	5.20%	\$709,008.23	\$709,008.23	\$0.00	\$0.00	\$0.00	\$12,925,765.47	\$5,349,830.60	\$7,781,893.13
2034	10	80	0	73.22%	3.68%	\$12,925,765.47	\$0.00	5.20%	\$672,139.80	\$672,139.80	\$0.00	\$0.00	\$0.00	\$12,253,625.67	\$5,732,305.50	\$6,972,811.62
2035	11	81	0	69.54%	3.86%	\$12,253,625.67	\$0.00	5.20%	\$637,188.53	\$637,188.53	\$0.00	\$0.00	\$0.00	\$11,616,437.13	\$6,075,014.58	\$6,247,850.11
2036	12	82	0	65.68%	4.03%	\$11,616,437.13	\$0.00	5.20%	\$604,054.73	\$604,054.73	\$0.00	\$0.00	\$0.00	\$11,012,382.40	\$6,382,092.28	\$5,598,262.67
2037	13	83	0	61.65%	4.17%	\$11,012,382.40	\$0.00	5.20%	\$572,643.88	\$572,643.88	\$0.00	\$0.00	\$0.00	\$10,439,738.52	\$6,657,243.18	\$5,016,212.67
2038	14	84	0	57.48%	4.37%	\$10,439,738.52	\$0.00	5.20%	\$542,866.40	\$542,866.40	\$0.00	\$0.00	\$0.00	\$9,896,872.11	\$6,903,786.72	\$4,494,678.27
2039	15	85	0	53.11%	4.50%	\$9,896,872.11	\$0.00	5.20%	\$514,637.35	\$514,637.35	\$0.00	\$0.00	\$0.00	\$9,382,234.76	\$7,124,697.18	\$4,027,367.68
2040	16	86	0	48.61%	4.59%	\$9,382,234.76	\$0.00	5.20%	\$487,876.21	\$487,876.21	\$0.00	\$0.00	\$0.00	\$8,894,358.56	\$7,322,639.64	\$3,608,643.25
2041	17	87	0	44.02%	4.63%	\$8,894,358.56	\$0.00	5.20%	\$462,506.64	\$462,506.64	\$0.00	\$0.00	\$0.00	\$8,431,851.91	\$7,500,002.06	\$3,233,453.50
2042	18	88	0	39.38%	4.61%	\$8,431,851.91	\$0.00	5.20%	\$438,456.30	\$438,456.30	\$0.00	\$0.00	\$0.00	\$7,993,395.61	\$7,658,924.16	\$2,897,272.13
2043	19	89	0	34.77%	4.52%	\$7,993,395.61	\$0.00	5.20%	\$341,635.54	\$341,635.54	\$0.00	\$0.00	\$0.00	\$7,651,760.07	\$7,775,964.44	\$2,621,402.19



T-CRUT with 6% Growth



T-CRUT with an Annual Growth of 6%

CRUT #	Term of CRUT	Number of Lives	Grantor Age	Survivor Age	IRS Table Life Expectancy	Year of Death	Actual Life Expectancy	Contribution Amount	Payout Rate	Payout Schedule	Months Before First Payment	1st Year Pmt	\$ 7520 Rate	Table F Adjustment Factor	Adjusted Payout Rate (Table F)	Income Factor	Remainder Factor	\$ 7520 Reportable Charitable Remainder	\$ 7520 Reportable Value of Unitrust Interest	Total Payments	Illustrated End Value	Yr 1 Income Tax Savings	Type of CRUT	YR of FLIP	Actual Present Value Discount Rate	Actual PV of Annuity Payments	Actual PV of Remainder
1	18	1	70	N/A	15.4	15	19	\$20,000,000	5.20%	Annual	12	\$185,205	5.20%	0.950570	4.943	0.598418	0.401582	\$8,031,640	\$11,968,360	\$20,050,334	\$23,329,714	\$2,971,707	CRUT	N/A	5.80%	\$11,553,524	\$7,992,483

CRUT 1 Duplicate Delete

Transfer Date: 2024-10-28

Highest Available \$ 7520 Rate: 5.20%

Best to use highest rate.

Aug 5.20% Sep 4.80% Oct 4.40%

Term or Life: Term

Number of Lives: One

Grantor Age (Nearest Birthday): 70

Date of Birth: Age at Nearest Birthday: Date not entered

Table 2010CM Life Expectancy: 85.4 (15.4 years)

Term of CRUT (max: 20): 18

Grantor Yr of Death: 85 (Year 15)

Mortality Table: Table 2010CM (** Required)

Always Maximize Payout Rate? ☐

Payout Rate: 5.20%

5.00% Min 12.63% Max

Annual Growth Rate: 6.00%

Income Tax Rate: 37.00%

1.00% Min 60.00% Max

Payout Schedule: Annual

Number of Months before First Payment: 12

Trust Value: \$20,000,000

Use FLIP NIMCRUT?: ☐

Time Value of Money, Illustration, Rate: 5.80%

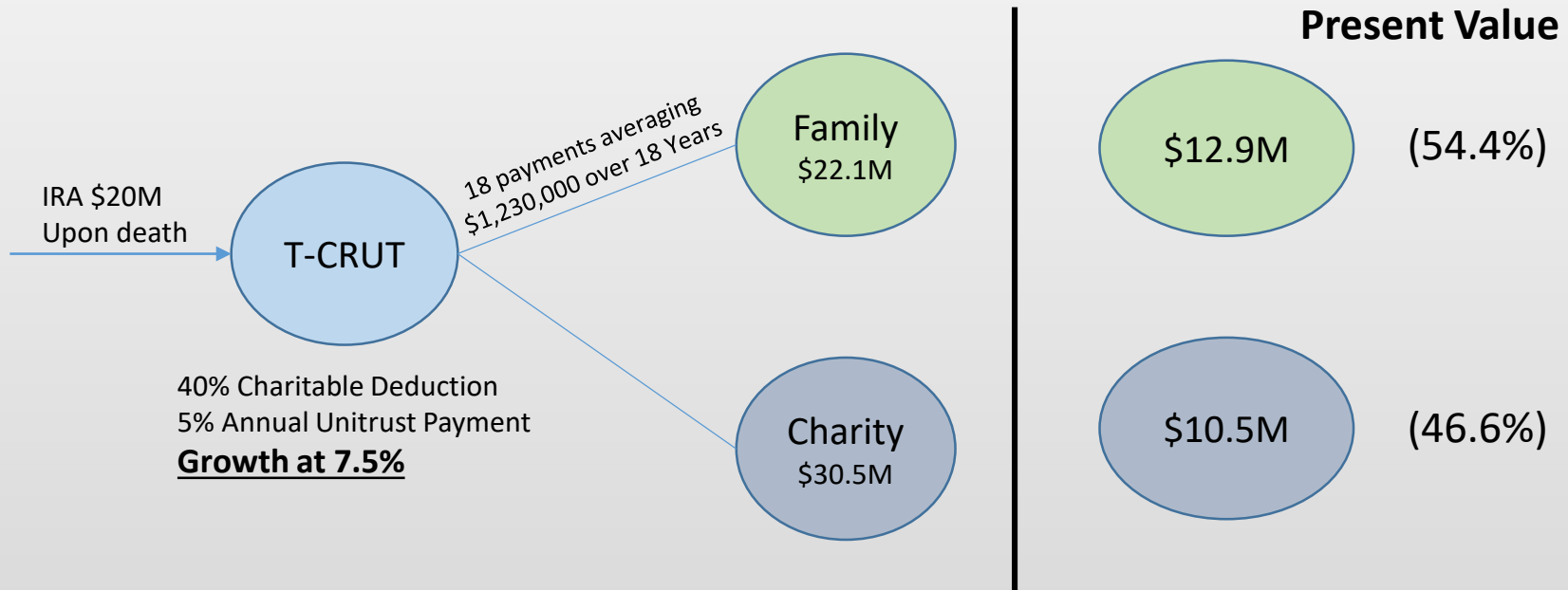
Change Remainder Factor Calculation Method? Interpolation (most common)

Open [Life Insurance Estimator](#) to Replace Remainder

Year	Year #	Grantor Age	Survivor Age	Probability Survival To Year	Probability Of Death Each Year	Beginning Value	Growth	Payout Rate	Annual Payment Amount	Actual Payment Made	Make-Up Payment Owed	Make-Up Payment Made	Cumulative Make-Up Owed	End Value	PV of Annuity Payments	PV of Remainder
2025	1	71	0	98.04%	2.09%	\$20,000,000.00	\$213,698.63	5.20%	\$185,205.48	\$185,205.48	\$0.00	\$0.00	\$0.00	\$20,028,493.15	\$175,052.44	\$18,930,522.83
2026	2	72	0	95.95%	2.24%	\$20,028,493.15	\$1,201,709.59	5.20%	\$1,041,481.64	\$1,041,481.64	\$0.00	\$0.00	\$0.00	\$20,188,721.10	\$1,105,475.11	\$18,035,885.64
2027	3	73	0	93.70%	2.40%	\$20,188,721.10	\$1,211,323.27	5.20%	\$1,049,813.50	\$1,049,813.50	\$0.00	\$0.00	\$0.00	\$20,350,230.86	\$1,991,926.96	\$17,183,528.10
2028	4	74	0	91.30%	2.57%	\$20,350,230.86	\$1,221,013.85	5.20%	\$1,058,212.00	\$1,058,212.00	\$0.00	\$0.00	\$0.00	\$20,513,032.71	\$2,836,485.99	\$16,371,452.10
2029	5	75	0	88.73%	2.73%	\$20,513,032.71	\$1,230,781.96	5.20%	\$1,066,677.70	\$1,066,677.70	\$0.00	\$0.00	\$0.00	\$20,677,136.97	\$3,641,132.03	\$15,597,753.99
2030	6	76	0	86.00%	2.91%	\$20,677,136.97	\$1,240,628.22	5.20%	\$1,075,211.12	\$1,075,211.12	\$0.00	\$0.00	\$0.00	\$20,842,554.07	\$4,407,751.32	\$14,860,620.05
2031	7	77	0	83.09%	3.09%	\$20,842,554.07	\$1,250,553.24	5.20%	\$1,083,812.81	\$1,083,812.81	\$0.00	\$0.00	\$0.00	\$21,009,294.50	\$5,138,140.96	\$14,158,322.32
2032	8	78	0	80.00%	3.30%	\$21,009,294.50	\$1,260,557.67	5.20%	\$1,092,483.31	\$1,092,483.31	\$0.00	\$0.00	\$0.00	\$21,177,368.86	\$5,834,013.14	\$13,489,214.46
2033	9	79	0	76.70%	3.48%	\$21,177,368.86	\$1,270,642.13	5.20%	\$1,101,223.18	\$1,101,223.18	\$0.00	\$0.00	\$0.00	\$21,346,787.81	\$6,496,999.11	\$12,851,727.95
2034	10	80	0	73.22%	3.68%	\$21,346,787.81	\$1,280,807.27	5.20%	\$1,110,032.97	\$1,110,032.97	\$0.00	\$0.00	\$0.00	\$21,517,562.11	\$7,128,653.03	\$12,244,368.41
2035	11	81	0	69.54%	3.86%	\$21,517,562.11	\$1,291,053.73	5.20%	\$1,118,913.23	\$1,118,913.23	\$0.00	\$0.00	\$0.00	\$21,689,702.61	\$7,730,455.64	\$11,665,712.06
2036	12	82	0	65.68%	4.03%	\$21,689,702.61	\$1,301,382.16	5.20%	\$1,127,864.54	\$1,127,864.54	\$0.00	\$0.00	\$0.00	\$21,863,220.23	\$8,303,817.67	\$11,114,402.41
2037	13	83	0	61.65%	4.17%	\$21,863,220.23	\$1,311,793.21	5.20%	\$1,136,887.45	\$1,136,887.45	\$0.00	\$0.00	\$0.00	\$22,038,125.99	\$8,850,083.19	\$10,589,147.10
2038	14	84	0	57.48%	4.37%	\$22,038,125.99	\$1,322,287.56	5.20%	\$1,145,982.55	\$1,145,982.55	\$0.00	\$0.00	\$0.00	\$22,214,431.00	\$9,370,532.77	\$10,088,714.82
2039	15	85	0	53.11%	4.50%	\$22,214,431.00	\$1,332,865.86	5.20%	\$1,155,150.41	\$1,155,150.41	\$0.00	\$0.00	\$0.00	\$22,392,146.45	\$9,866,386.42	\$9,611,932.46
2040	16	86	0	48.61%	4.59%	\$22,392,146.45	\$1,343,528.79	5.20%	\$1,164,391.62	\$1,164,391.62	\$0.00	\$0.00	\$0.00	\$22,571,283.62	\$10,338,806.54	\$9,157,682.34
2041	17	87	0	44.02%	4.63%	\$22,571,283.62	\$1,354,277.02	5.20%	\$1,173,706.75	\$1,173,706.75	\$0.00	\$0.00	\$0.00	\$22,751,853.89	\$10,788,900.57	\$8,724,899.62
2042	18	88	0	39.38%	4.61%	\$22,751,853.89	\$1,365,111.23	5.20%	\$1,183,096.40	\$1,183,096.40	\$0.00	\$0.00	\$0.00	\$22,933,868.72	\$11,217,723.62	\$8,312,569.77
2043	19	89	0	34.77%	4.52%	\$22,933,868.72	\$1,376,032.12	5.20%	\$980,187.27	\$980,187.27	\$0.00	\$0.00	\$0.00	\$23,329,713.57	\$11,553,524.14	\$7,992,482.99



T-CRUT with 7.5% Growth



T-CRUT with an Annual Growth of 7.5%

CRUT #	Term of CRUT	Number of Lives	Grantor Age	Survivor Age	IRS Table Life Expectancy	Year of Death	Actual Life Expectancy	Contribution Amount	Payout Rate	Payout Schedule	Months Before First Payment	1st Year Pmt	\$ 7520 Rate	Table F Adjustment Factor	Adjusted Payout Rate (Table F)	Income Factor	Remainder Factor	\$ 7520 Reportable Charitable Remainder	\$ 7520 Reportable Value of Unitrust Interest	Total Payments	Illustrated End Value	Yr 1 Income Tax Savings	Type of CRUT	YR of FLIP	Actual Present Value Discount Rate	Actual PV of Annuity Payments	Actual PV of Remainder
1	18	1	70	N/A	15.4	15	19	\$20,000,000	5.20%	Annual	12	\$185,205	5.20%	0.950570	4.943	0.598418	0.401582	\$8,031,640	\$11,968,360	\$22,875,187	\$30,512,667	\$2,971,707	CRUT	N/A	5.80%	\$12,890,387	\$10,453,278

CRUT 1 Duplicate Delete ▼

Transfer Date: 2024-10-28

Highest Available 7520 Rate: 5.20%

Best to use highest rate:
 Aug 5.20% Sep 4.80% Oct 4.40%

Term or Life: Term

Number of Lives: One

Grantor Age (Nearest Birthday): 70

Date of Birth: Age at Nearest Birthday: Date not entered

Table 2010CM Life Expectancy: 85.4 (15.4 years)

Term of CRUT (max: 20): 18

Grantor Yr of Death: 85 (Year 15)

Mortality Table: Table 2010CM (** Required)

Always Maximize Payout Rate? ☐

Payout Rate: 5.20%

Annual Growth Rate: 7.50%

Income Tax Rate: 37.00%

Payout Schedule: Annual

Number of Months before First Payment: 12

Trust Value: \$20,000,000

Use FLIP NIMCRUT: ☐

Time Value of Money, Illustration, Rate: 5.80%

Change Remainder Factor Calculation Method? Interpolation (most common)

Open [Life Insurance Estimator](#) to Replace Remainder

Year	Year #	Grantor Age	Survivor Age	Probability Survival To Year	Probability Of Death Each Year	Beginning Value	Growth	Payout Rate	Annual Payment Amount	Actual Payment Made	Make-Up Payment Owed	Make-Up Payment Made	Cumulative Make-Up Owed	End Value	PV of Annuity Payments	PV of Remainder
2025	1	71	0	98.04%	2.09%	\$20,000,000.00	\$267,123.29	5.20%	\$185,205.48	\$185,205.48	\$0.00	\$0.00	\$0.00	\$20,081,917.81	\$175,052.44	\$18,981,018.72
2026	2	72	0	95.95%	2.24%	\$20,081,917.81	\$1,506,143.84	5.20%	\$1,044,259.73	\$1,044,259.73	\$0.00	\$0.00	\$0.00	\$20,543,801.92	\$1,107,956.95	\$18,353,102.22
2027	3	73	0	93.70%	2.40%	\$20,543,801.92	\$1,540,785.14	5.20%	\$1,068,277.70	\$1,068,277.70	\$0.00	\$0.00	\$0.00	\$21,016,309.36	\$2,009,999.78	\$17,745,958.01
2028	4	74	0	91.30%	2.57%	\$21,016,309.36	\$1,576,223.20	5.20%	\$1,092,848.09	\$1,092,848.09	\$0.00	\$0.00	\$0.00	\$21,499,684.48	\$2,882,201.88	\$17,158,898.91
2029	5	75	0	88.73%	2.73%	\$21,499,684.48	\$1,612,476.34	5.20%	\$1,117,983.59	\$1,117,983.59	\$0.00	\$0.00	\$0.00	\$21,994,177.22	\$3,725,550.41	\$16,591,260.47
2030	6	76	0	86.00%	2.91%	\$21,994,177.22	\$1,649,563.29	5.20%	\$1,143,697.22	\$1,143,697.22	\$0.00	\$0.00	\$0.00	\$22,500,043.30	\$4,540,999.88	\$16,042,400.25
2031	7	77	0	83.09%	3.09%	\$22,500,043.30	\$1,687,503.25	5.20%	\$1,170,002.25	\$1,170,002.25	\$0.00	\$0.00	\$0.00	\$23,017,544.29	\$5,329,473.24	\$15,511,697.03
2032	8	78	0	80.00%	3.30%	\$23,017,544.29	\$1,726,315.82	5.20%	\$1,196,912.30	\$1,196,912.30	\$0.00	\$0.00	\$0.00	\$23,546,947.81	\$6,091,862.88	\$14,998,550.15
2033	9	79	0	76.70%	3.48%	\$23,546,947.81	\$1,766,021.09	5.20%	\$1,224,441.29	\$1,224,441.29	\$0.00	\$0.00	\$0.00	\$24,088,527.61	\$6,829,031.70	\$14,502,378.83
2034	10	80	0	73.22%	3.68%	\$24,088,527.61	\$1,806,639.57	5.20%	\$1,252,603.44	\$1,252,603.44	\$0.00	\$0.00	\$0.00	\$24,642,563.74	\$7,541,814.03	\$14,022,621.50
2035	11	81	0	69.54%	3.86%	\$24,642,563.74	\$1,848,192.28	5.20%	\$1,281,413.31	\$1,281,413.31	\$0.00	\$0.00	\$0.00	\$25,209,342.71	\$8,231,016.59	\$13,558,735.16
2036	12	82	0	65.68%	4.03%	\$25,209,342.71	\$1,890,700.70	5.20%	\$1,310,885.82	\$1,310,885.82	\$0.00	\$0.00	\$0.00	\$25,789,157.59	\$8,897,419.46	\$13,110,194.77
2037	13	83	0	61.65%	4.17%	\$25,789,157.59	\$1,934,186.82	5.20%	\$1,341,036.19	\$1,341,036.19	\$0.00	\$0.00	\$0.00	\$26,382,308.22	\$9,541,776.86	\$12,676,492.67
2038	14	84	0	57.48%	4.37%	\$26,382,308.22	\$1,978,673.12	5.20%	\$1,371,880.03	\$1,371,880.03	\$0.00	\$0.00	\$0.00	\$26,989,101.31	\$10,164,818.08	\$12,257,138.00
2039	15	85	0	53.11%	4.50%	\$26,989,101.31	\$2,024,182.60	5.20%	\$1,403,433.27	\$1,403,433.27	\$0.00	\$0.00	\$0.00	\$27,609,850.64	\$10,767,248.31	\$11,851,656.12
2040	16	86	0	48.61%	4.59%	\$27,609,850.64	\$2,070,738.80	5.20%	\$1,435,712.23	\$1,435,712.23	\$0.00	\$0.00	\$0.00	\$28,244,877.20	\$11,349,749.36	\$11,459,588.10
2041	17	87	0	44.02%	4.63%	\$28,244,877.20	\$2,118,365.79	5.20%	\$1,468,733.61	\$1,468,733.61	\$0.00	\$0.00	\$0.00	\$28,894,509.38	\$11,912,980.54	\$11,080,490.19
2042	18	88	0	39.38%	4.61%	\$28,894,509.38	\$2,167,088.20	5.20%	\$1,502,514.49	\$1,502,514.49	\$0.00	\$0.00	\$0.00	\$29,559,083.09	\$12,457,579.30	\$10,713,933.34
2043	19	89	0	34.77%	4.52%	\$29,559,083.09	\$2,216,931.23	5.20%	\$1,263,347.11	\$1,263,347.11	\$0.00	\$0.00	\$0.00	\$30,512,667.21	\$12,890,387.03	\$10,453,277.66

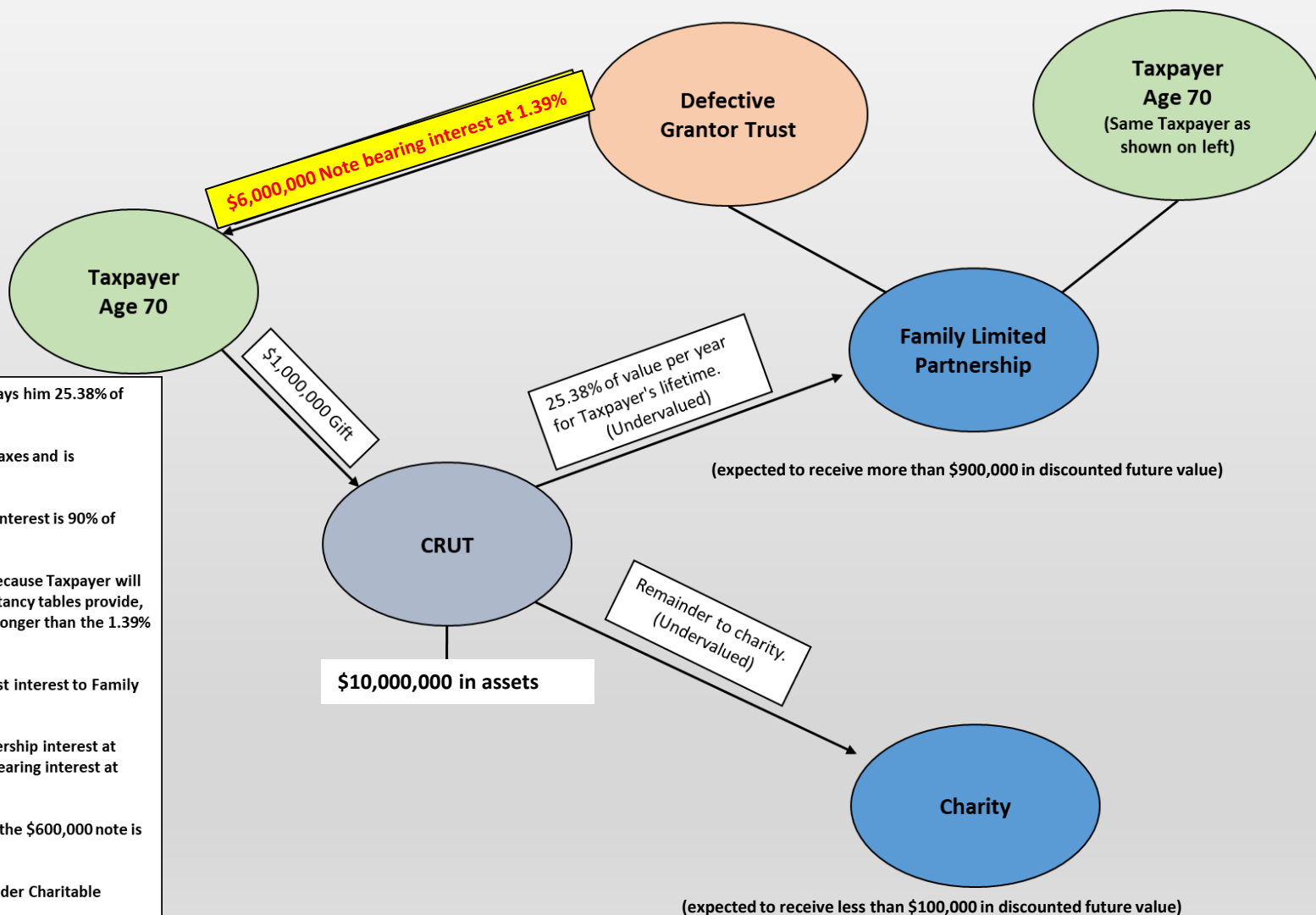


CHARITABLE REMAINDER TRUST CREATIVE PLANNING STRATEGIES

2. Increase Valuation Discounts By Gifting Or Selling Annuity Or Unitrust Interests Or Ownership Interests In Entities That Own Such Interests

First establish the CRUT or CRAT and then value the payment rights. Gift or sell the payment rights to a Grantor Trust in exchange for a promissory note.





Step 1: Taxpayer funds CRUT that pays him 25.38% of value per year for lifetime.

Taxpayer saves \$37,000 in income taxes and is appreciated by the charity.

Step 2: IRC §7520 value of unitrust interest is 90% of what is contributed to CRUT.

In the real world it is worth more because Taxpayer will probably live longer than life expectancy tables provide, and rate of return will probably be longer than the 1.39% applicable Federal rate.

Step 3: Taxpayer contributes unitrust interest to Family Limited Partnership.

Step 4: Taxpayer sells limited partnership interest at 33.3% discount for \$600,000 note bearing interest at 1.39%.

Step 5: After Taxpayer's death only the \$600,000 note is included in his estate.

Charity receives what is then left under Charitable Remainder Unitrust.



CHARITABLE REMAINDER TRUST CREATIVE PLANNING STRATEGIES

3. Consider Paying Trustee Fees From CRUT To Reduce What Charity Receives

Consider allowing the client and/or one or more family members to serve as a Trustee or Co-Trustee of the CRT in order to maximize the return provided to the family, even though these will be an after tax dollars, if the client wants to maximize what the family receives.

The Trustee fees will be reduce the income tax to be paid upon final distribution from the Charitable Remainder Trust but also the remainder going to charity will be reduced. The income received by the Trustee will be taxable and may be deferred as to payment. The right to receive Trustee fees may help to show that the family will have a tangible financial benefit from being able to control the trust during the payment term.

1. This may allow a Trustee to fund a Roth IRA – Up to \$7,000 a year for 2024. Give your Parent-In-Law a Roth IRA - \$8,000 for 50 or older.
2. This may also allow a young beneficiary to “support her or himself” to not be subject to the Kiddie Tax by having more than one half of support paid for by earned income.
3. Some young professional corporate owners can place any additional incremental income from Trustee fees into a tax deductible 401k or other pension plan.



NIMCRUT – 15 Year FLIP With Fee

Payout Rate	Annual Payment Amount	Make-Up Payment Owed	Make-Up Payment Made	Cumulative Make-Up Owed	Actual Payment Made	Cumulative Actual Payments Made	Trustee Fee	Taxes on Trustee Fee	Net Trustee Fee	End Value	PV of Annuity Payments
10.88%	\$1,769,798	\$1,769,798	\$0	\$1,769,798	\$0	\$0	\$81,370	(24,411)	\$56,959	\$15,307,760	\$0
10.88%	\$1,673,568	\$1,673,568	\$0	\$3,443,365	\$0	\$0	\$76,946	(23,084)	\$53,862	\$16,193,456	\$0
10.88%	\$1,769,406	\$1,769,406	\$0	\$5,212,772	\$0	\$0	\$81,352	(24,406)	\$56,946	\$16,839,866	\$0
10.88%	\$1,831,335	\$1,831,335	\$0	\$7,044,107	\$0	\$0	\$84,199	(25,260)	\$58,940	\$17,429,261	\$0
10.88%	\$1,895,432	\$1,895,432	\$0	\$8,939,539	\$0	\$0	\$87,146	(26,144)	\$61,002	\$18,039,286	\$0
10.88%	\$1,961,772	\$1,961,772	\$0	\$10,901,312	\$0	\$0	\$90,196	(27,059)	\$63,137	\$18,670,661	\$0
10.88%	\$2,030,434	\$2,030,434	\$0	\$12,931,746	\$0	\$0	\$93,353	(28,006)	\$65,347	\$19,324,134	\$0
10.88%	\$2,101,500	\$2,101,500	\$0	\$15,033,245	\$0	\$0	\$96,621	(28,986)	\$67,634	\$20,000,478	\$0
10.88%	\$2,175,052	\$2,175,052	\$0	\$17,208,297	\$0	\$0	\$100,002	(30,001)	\$70,002	\$20,700,495	\$0
10.88%	\$2,251,179	\$2,251,179	\$0	\$19,459,476	\$0	\$0	\$103,502	(31,051)	\$72,452	\$21,425,012	\$0
10.88%	\$2,329,970	\$2,329,970	\$0	\$21,789,446.34	\$0	\$0	\$107,125	(32,138)	\$74,988	\$22,174,888	\$0
10.88%	\$2,411,519	\$2,411,519	\$0	\$24,200,965.39	\$0	\$0	\$110,874	(33,262)	\$77,612	\$22,951,009	\$0
10.88%	\$2,495,922	\$2,495,922	\$0	\$26,696,887.60	\$0	\$0	\$114,755	(34,427)	\$80,329	\$23,754,294	\$0
10.88%	\$2,583,279	\$2,583,279	\$0	\$29,280,167.10	\$0	\$0	\$118,771	(35,631)	\$83,140	\$24,585,695	\$0
10.88%	\$2,673,694	\$2,673,694	\$9,295,122	\$22,658,739.09	\$9,295,122	\$9,295,122	\$122,928	(36,879)	\$86,050	\$16,151,072	\$3,878,530
10.88%	\$1,756,429				\$1,756,429	\$11,051,551	\$80,755	(24,227)	\$56,529	\$14,959,930	\$4,569,942
10.88%	\$1,626,892				\$1,626,892	\$12,678,444	\$74,800	(22,440)	\$52,360	\$13,856,635	\$5,174,111
10.88%	\$1,506,909				\$1,506,909	\$14,185,353	\$69,283	(20,785)	\$48,498	\$12,834,708	\$5,702,048
10.88%	\$1,395,775				\$1,395,775	\$15,581,127	\$64,174	(19,252)	\$44,921	\$11,888,149	\$6,163,369
10.88%	\$1,292,836				\$1,292,836	\$16,873,963	\$59,441	(17,832)	\$41,609	\$11,011,398	\$6,566,482
10.88%	\$1,197,489				\$800,494	\$17,674,457	\$55,057	(16,517)	\$38,540	\$10,596,303	\$6,801,951



NIMCRUT – 10 Year Flip No Fee

Year	Year #	Beginning Value	Growth (4%)	Payout Rate	Annual Payment Amount	Make-Up Payment Owed	Make-Up Payment Made	Cumulative Make-Up Owed	Actual Payment Made	Cumulative Actual Payments Made	End Value	PV of Annuity Payments
2022	1	\$16,274,000	(884,870)	10.88%	\$1,769,798	\$1,769,798	\$0	\$1,769,798	\$0	\$0	\$15,389,130	\$0
2023	2	\$15,389,130	\$881,272	10.88%	\$1,673,568	\$1,673,568	\$0	\$3,443,365	\$0	\$0	\$16,270,402	\$0
2024	3	\$16,270,402	\$650,816	10.88%	\$1,769,406	\$1,769,406	\$0	\$5,212,772	\$0	\$0	\$16,921,218	\$0
2025	4	\$16,921,218	\$676,849	10.88%	\$1,840,182	\$1,840,182	\$0	\$7,052,954	\$0	\$0	\$17,598,067	\$0
2026	5	\$17,598,067	\$703,923	10.88%	\$1,913,790	\$1,913,790	\$0	\$8,966,744	\$0	\$0	\$18,301,989	\$0
2027	6	\$18,301,989	\$732,080	10.88%	\$1,990,341	\$1,990,341	\$0	\$10,957,085	\$0	\$0	\$19,034,069	\$0
2028	7	\$19,034,069	\$761,363	10.88%	\$2,069,955	\$2,069,955	\$0	\$13,027,040	\$0	\$0	\$19,795,432	\$0
2029	8	\$19,795,432	\$791,817	10.88%	\$2,152,753	\$2,152,753	\$0	\$15,179,793	\$0	\$0	\$20,587,249	\$0
2030	9	\$20,587,249	\$823,490	10.88%	\$2,238,863	\$2,238,863	\$0	\$17,418,657	\$0	\$0	\$21,410,739	\$0
2031	10	\$21,410,739	\$856,430	10.88%	\$2,328,418	\$2,328,418	\$5,993,169	\$13,753,906	\$5,993,169	\$5,993,169	\$16,274,000	\$3,346,554
2032	11	\$16,274,000	\$650,960	10.88%	\$1,769,798				\$1,769,798	\$7,762,966	\$15,155,163	\$4,278,861
2033	12	\$15,155,163	\$606,207	10.88%	\$1,648,124				\$1,648,124	\$9,411,090	\$14,113,245	\$5,097,928
2034	13	\$14,113,245	\$564,530	10.88%	\$1,534,815				\$1,534,815	\$10,945,905	\$13,142,959	\$5,817,510
2035	14	\$13,142,959	\$525,718	10.88%	\$1,429,297				\$1,429,297	\$12,375,202	\$12,239,381	\$6,449,689
2036	15	\$12,239,381	\$489,575	10.88%	\$1,331,033				\$1,331,033	\$13,706,235	\$11,397,924	\$7,005,083
2037	16	\$11,397,924	\$455,917	10.88%	\$1,239,524				\$1,239,524	\$14,945,759	\$10,614,316	\$7,493,017
2038	17	\$10,614,316	\$424,573	10.88%	\$1,154,307				\$1,154,307	\$16,100,066	\$9,884,582	\$7,921,685
2039	18	\$9,884,582	\$395,383	10.88%	\$1,074,948				\$1,074,948	\$17,175,014	\$9,205,017	\$8,298,287
2040	19	\$9,205,017	\$368,201	10.88%	\$1,001,046				\$1,001,046	\$18,176,060	\$8,572,172	\$8,629,145
2041	20	\$8,572,172	\$342,887	10.88%	\$932,224				\$932,224	\$19,108,284	\$7,982,835	\$8,919,817
2042	21	\$7,982,835	\$319,313	10.88%	\$868,133				\$800,494	\$19,908,778	\$7,501,655	\$9,155,287



NIMCRUT – Current FLIP No Fee

Payout Rate	Annual Payment Amount	Make-Up Payment Owed	Make-Up Payment Made	Cumulative Make-Up Owed	Actual Payment Made	Cummulative Actual Payments Made	Trustee Fee	Taxes on Trustee Fee	Net Trustee Fee	End Value	PV of Annuity Payments
10.88%	\$1,769,798	\$1,769,798	\$0	\$1,769,798	\$0	\$0		0	\$0	\$15,389,130	\$0
10.88%	\$1,673,568	\$1,673,568	\$0	\$3,443,365	\$0	\$0		0	\$0	\$16,270,402	\$0
10.88%	\$1,769,406	\$1,769,406	\$0	\$5,212,772	\$1,769,406	\$1,769,406		0	\$0	\$15,151,812	\$1,485,628
10.88%	\$1,647,760				\$1,647,760	\$3,417,166		0	\$0	\$14,110,125	\$2,790,807
10.88%	\$1,534,476				\$1,534,476	\$4,951,642		0	\$0	\$13,140,054	\$3,937,457
10.88%	\$1,428,981				\$1,428,981	\$6,380,623		0	\$0	\$12,236,675	\$4,944,832
10.88%	\$1,330,738				\$1,330,738	\$7,711,361		0	\$0	\$11,395,404	\$5,829,849
10.88%	\$1,239,250				\$1,239,250	\$8,950,611		0	\$0	\$10,611,970	\$6,607,370
10.88%	\$1,154,052				\$1,154,052	\$10,104,663		0	\$0	\$9,882,397	\$7,290,452
10.88%	\$1,074,711				\$1,074,711	\$11,179,374		0	\$0	\$9,202,982	\$7,890,565
10.88%	\$1,000,824				\$1,000,824	\$12,180,198		0	\$0	\$8,570,277	\$8,417,786
10.88%	\$932,018				\$932,018	\$13,112,215		0	\$0	\$7,981,070	\$8,880,970
10.88%	\$867,941				\$867,941	\$13,980,157		0	\$0	\$7,432,372	\$9,287,895
10.88%	\$808,270				\$808,270	\$14,788,427		0	\$0	\$6,921,396	\$9,645,394
10.88%	\$752,702				\$752,702	\$15,541,129		0	\$0	\$6,445,550	\$9,959,470
10.88%	\$700,954				\$700,954	\$16,242,083		0	\$0	\$6,002,419	\$10,235,398
10.88%	\$652,763				\$652,763	\$16,894,846		0	\$0	\$5,589,752	\$10,477,811
10.88%	\$607,886				\$607,886	\$17,502,731		0	\$0	\$5,205,457	\$10,690,780
10.88%	\$566,093				\$566,093	\$18,068,825		0	\$0	\$4,847,582	\$10,877,881
10.88%	\$527,175				\$527,175	\$18,595,999		0	\$0	\$4,514,310	\$11,042,257
10.88%	\$490,931				\$800,494	\$19,396,493		0	\$0	\$3,894,389	\$11,277,726



NIMCRUT – Current FLIP With Fee

Payout Rate	Annual Payment Amount	Make-Up Payment Owed	Make-Up Payment Made	Cumulative Make-Up Owed	Actual Payment Made	Cumulative Actual Payments Made	Trustee Fee	Taxes on Trustee Fee	Net Trustee Fee	End Value	PV of Annuity Payments
10.88%	\$1,769,798	\$1,769,798	\$0	\$1,769,798	\$0	\$0	\$81,370	(24,411)	\$56,959	\$15,307,760	\$0
10.88%	\$1,673,568	\$1,673,568	\$0	\$3,443,365	\$0	\$0	\$76,946	(23,084)	\$53,862	\$16,193,456	\$0
10.88%	\$1,769,406	\$1,769,406	\$0	\$5,212,772	\$1,769,406	\$1,769,406	\$81,352	(24,406)	\$56,946	\$15,070,460	\$1,485,628
10.88%	\$1,638,913				\$1,638,913	\$3,408,319	\$75,352	(22,606)	\$52,747	\$13,959,013	\$2,783,800
10.88%	\$1,518,043				\$1,518,043	\$4,926,361	\$69,795	(20,939)	\$48,857	\$12,929,536	\$3,918,170
10.88%	\$1,406,087				\$1,406,087	\$6,332,448	\$64,648	(19,394)	\$45,253	\$11,975,983	\$4,909,406
10.88%	\$1,302,388				\$1,302,388	\$7,634,837	\$59,880	(17,964)	\$41,916	\$11,092,754	\$5,775,568
10.88%	\$1,206,337				\$1,206,337	\$8,841,174	\$55,464	(16,639)	\$38,825	\$10,274,664	\$6,532,439
10.88%	\$1,117,370				\$1,117,370	\$9,958,543	\$51,373	(15,412)	\$35,961	\$9,516,907	\$7,193,808
10.88%	\$1,034,964				\$1,034,964	\$10,993,507	\$47,585	(14,275)	\$33,309	\$8,815,035	\$7,771,726
10.88%	\$958,635				\$958,635	\$11,952,142	\$44,075	(13,223)	\$30,853	\$8,164,926	\$8,276,723
10.88%	\$887,936				\$887,936	\$12,840,078	\$40,825	(12,247)	\$28,577	\$7,562,763	\$8,718,000
10.88%	\$822,450				\$822,450	\$13,662,528	\$37,814	(11,344)	\$26,470	\$7,005,009	\$9,103,597
10.88%	\$761,795				\$761,795	\$14,424,323	\$35,025	(10,508)	\$24,518	\$6,488,390	\$9,440,540
10.88%	\$705,612				\$705,612	\$15,129,935	\$32,442	(9,733)	\$22,709	\$6,009,871	\$9,734,967
10.88%	\$653,573				\$653,573	\$15,783,509	\$30,049	(9,015)	\$21,035	\$5,566,643	\$9,992,244
10.88%	\$605,372				\$605,372	\$16,388,881	\$27,833	(8,350)	\$19,483	\$5,156,103	\$10,217,058
10.88%	\$560,726				\$560,726	\$16,949,608	\$25,781	(7,734)	\$18,046	\$4,775,841	\$10,413,505
10.88%	\$519,373				\$519,373	\$17,468,980	\$23,879	(7,164)	\$16,715	\$4,423,622	\$10,585,164
10.88%	\$481,069				\$481,069	\$17,950,049	\$22,118	(6,635)	\$15,483	\$4,097,380	\$10,735,164
10.88%	\$445,590				\$445,590	\$18,395,639	\$20,487	(6,146)	\$14,341	\$3,795,198	\$10,866,236



CHARITABLE REMAINDER TRUST CREATIVE PLANNING STRATEGIES

4. Put a Value On The Benefits That a Person or Family Will Derive From Having Control Over the Charitable Remainder Entity. Keep Job Availability for Family and Friends and Family and Business Goodwill Enhancement in Mind

Ask the family if it is worth perhaps 5% of the day one value of the entity to have a remainder interest charity that will benefit the community.. The ability to pay for services, and goodwill in the community adds more value for the family in the equation. Consider what percentage of the value of the family charity disposition at the end of the term might be. Businesses and professional practices may increase sales by having community goodwill.



CHARITABLE REMAINDER TRUST CREATIVE PLANNING STRATEGIES

5. Put a Value On The Benefits That a Person or Family Will Derive From Having Control Over the Charitable Remainder Entity. Keep Job Availability for Family and Friends and Family and Business Goodwill Enhancement in Mind

Ask the family if it is worth perhaps 5% of the day one value of the entity to have a remainder interest charity that will benefit the community.. The ability to pay for services, and goodwill in the community adds more value for the family in the equation. Consider what percentage of the value of the family charity disposition at the end of the term might be. Businesses and professional practices may increase sales by having community goodwill.



CHARITABLE REMAINDER TRUST CREATIVE PLANNING STRATEGIES

6. An S Corporation Can Contribute Assets To A Charitable Remainder Unitrust (But Not Substantially All Of Its Assets)

The income tax deduction and deferral will flow through the S Corporation to shareholders pro rata to ownership.

It is not otherwise applicable because of the second class of stock rules.

A Charitable Remainder Unitrust interest owned by an S Corporation may be worth significantly less than 90% of the value of the assets donated – even if a 20% remainder limitation applies because of the willing buyer – willing selling rules.



CHARITABLE REMAINDER TRUST CREATIVE PLANNING STRATEGIES

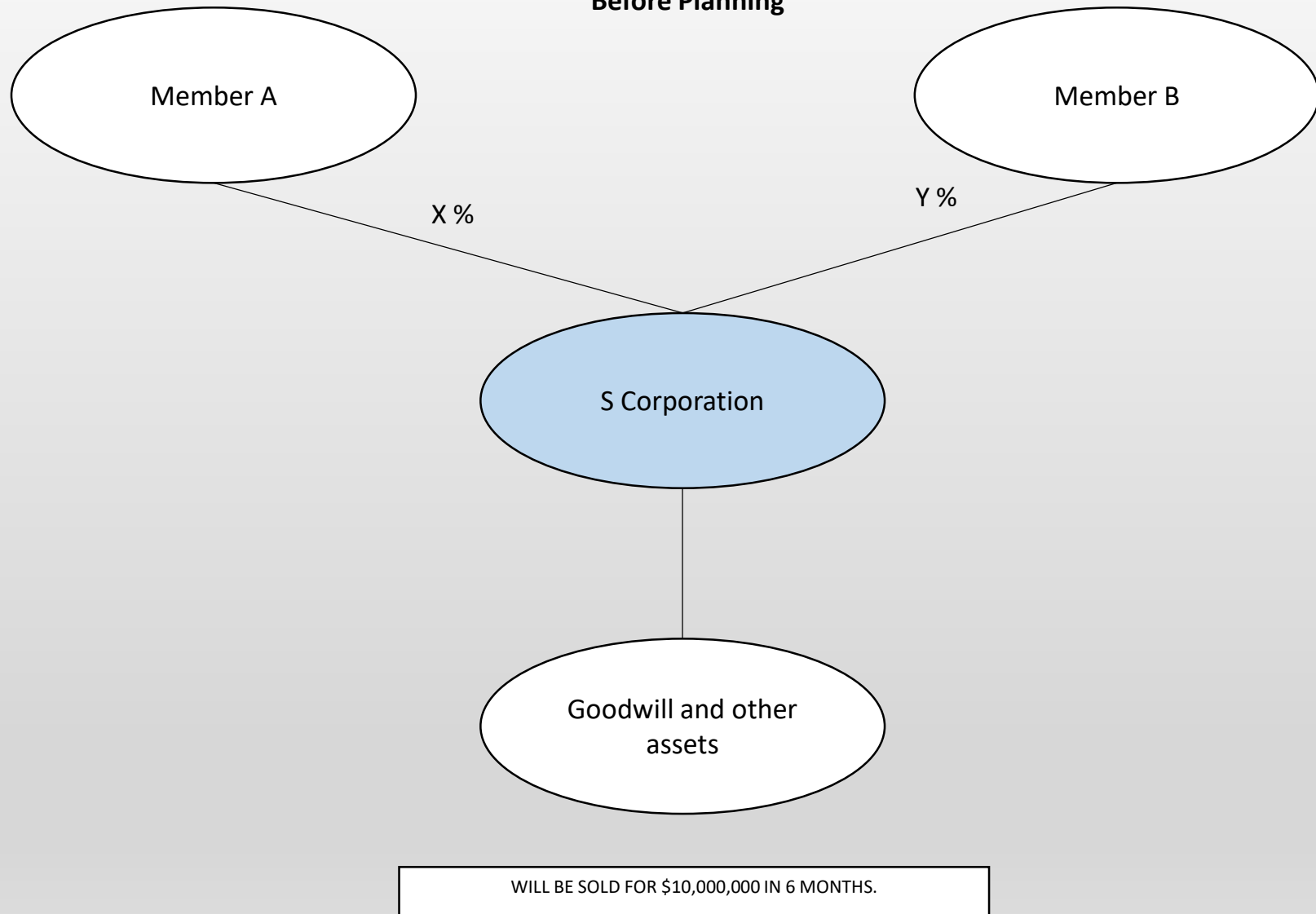
- 7. Sell The S Corporation To An Arms Length Purchaser After Placing 79% Of Value Into A NIMCRUT Using A New Parent F Reorganization**

See Next Slides



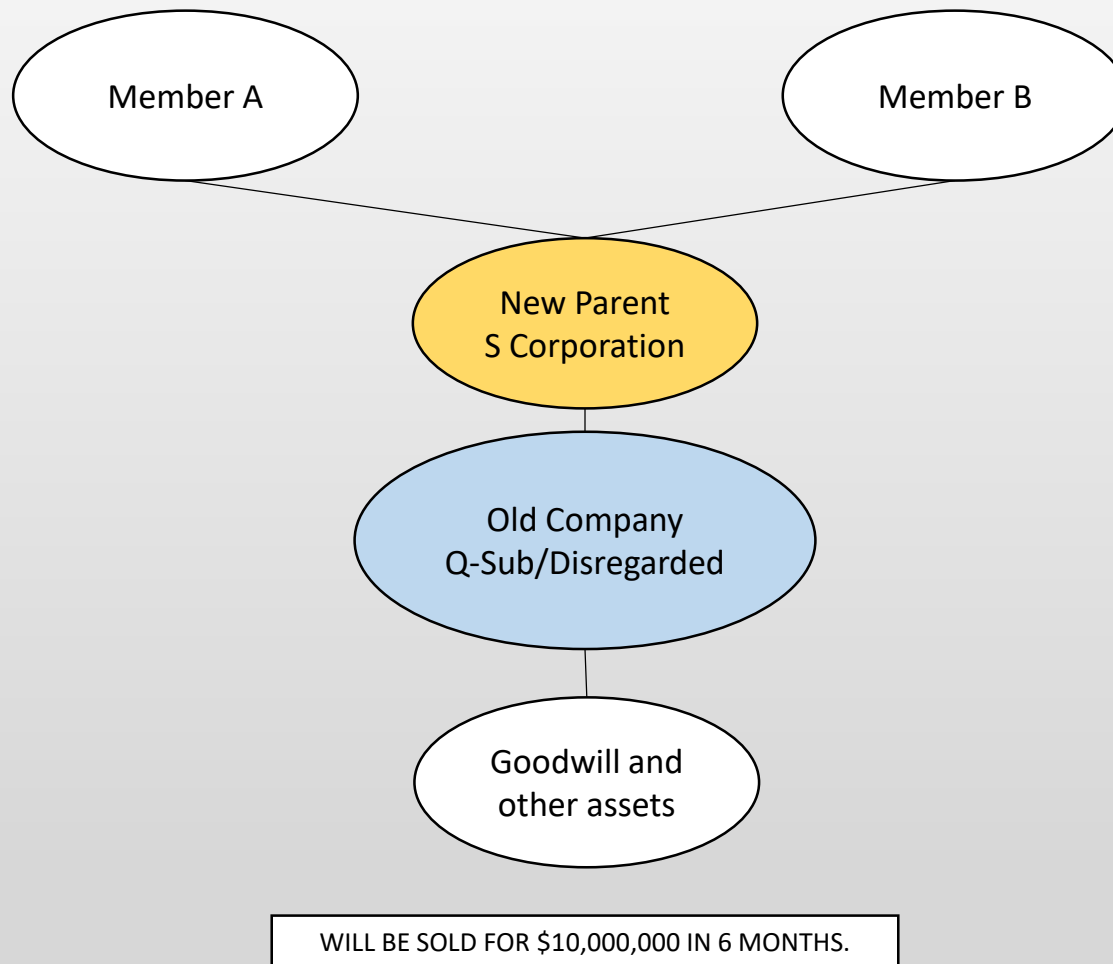
S Corp Transfers Assets to Charitable Remainder Unitrust Before Sale

Before Planning



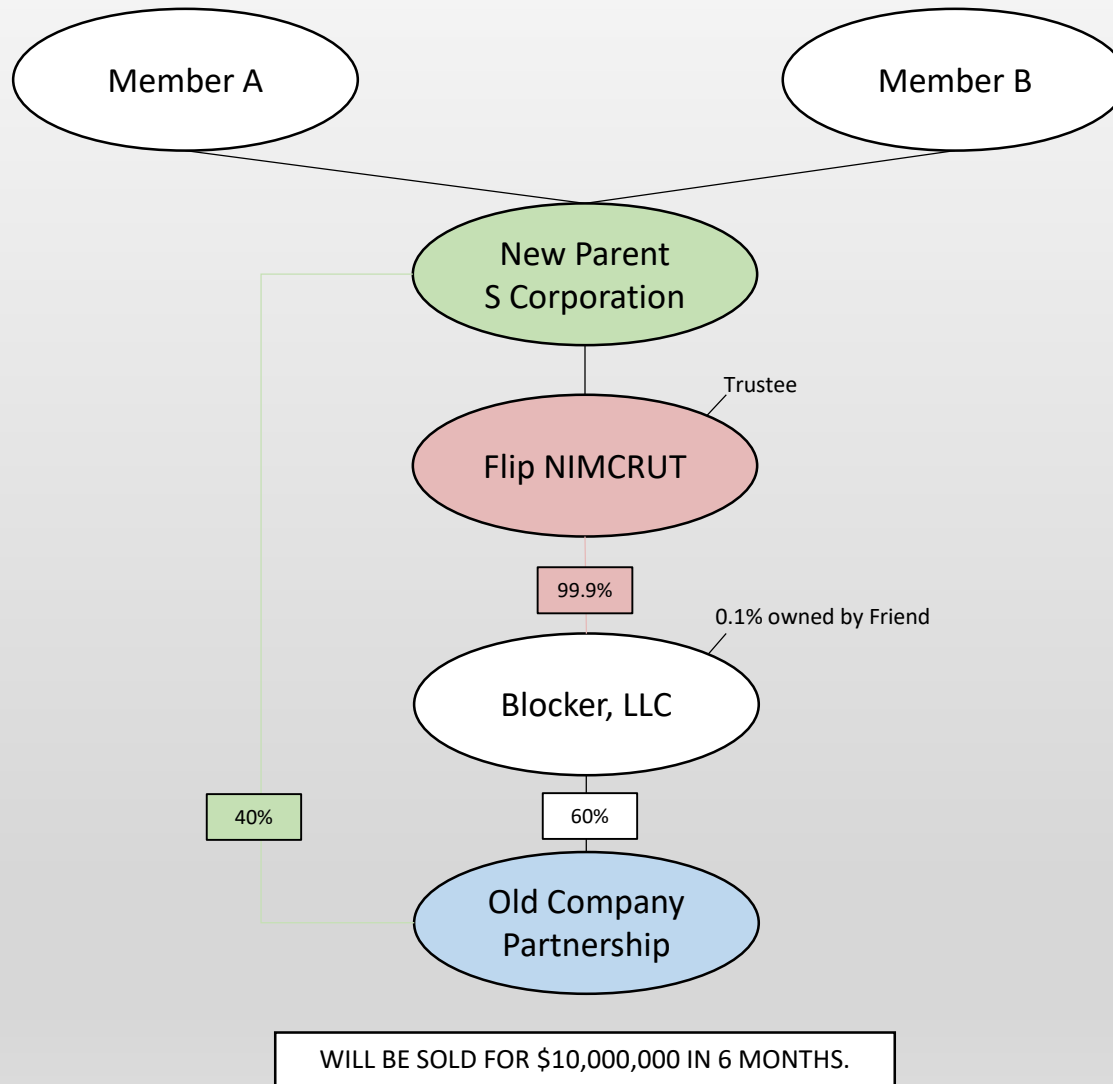
S Corp Transfers Assets to Charitable Remainder Unitrust Before Sale

Establish New Parent S Corporation So That Existing Corporation Becomes a QSUB



S Corp Transfers Assets to Charitable Remainder Unitrust Before Sale

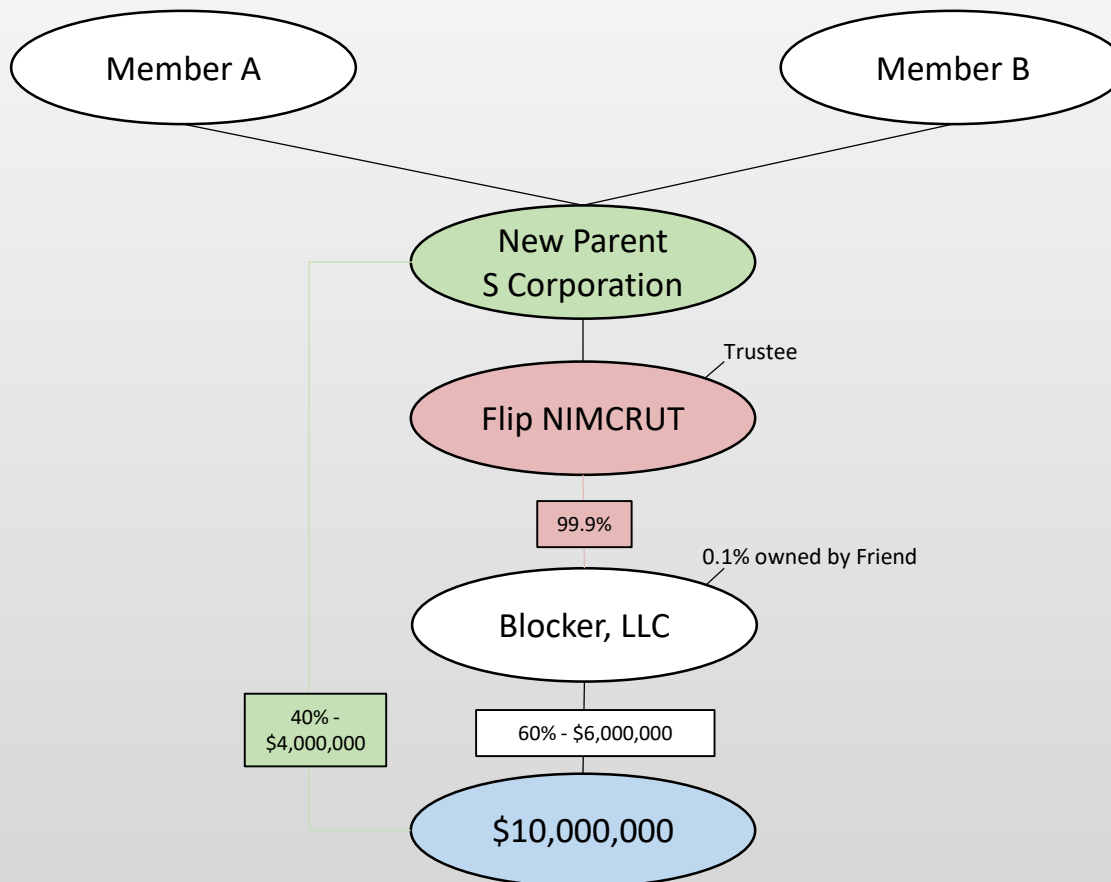
New Parent S Corporation Establishes Charitable Remainder Annuity Trust Which Owns Blocker, LLC
New Parent S Corporation Gifts 60% of QSUB to Blocker, LLC



S Corp Transfers Assets to Charitable Remainder Unitrust Before Sale

The Assets Are Sold For \$10 Million Dollars – 60% Goes To Blocker, LLC And 40% Goes To Member A And Member B In Proportion To Their Ownership

**AFTER THE
\$10,000,000 SALE**



THE CRUT DEFERS \$2,400,000 OF TAXABLE INCOME. SO, THEY CAN INVEST \$6,000,000 INSTEAD OF \$3,400,000. \$3,400,000 TIMES 6% WOULD BE \$204,000 A YEAR. AND \$6,000,000 TIMES 6% IS \$360,000 A YEAR. IT IS SAVING, EXTRA INCOME IS GOING TO BE \$154,000 A YEAR.



S Corp Transfers Assets to Charitable Remainder Unitrust Before Sale

CHOICE A

SAVE/DEFER MONEY ON INCOME TAXES

CRUT

- Receives \$6 million invested for \$360,000 a year (6% rate of return)
- 10.5% annual payment for 20 years
- Defer tax until cash is needed
- Remainder to charity

CHOICE B

PAY TAXES

NO CRUT

- \$3,600,000 invested at 6% will bring \$204,000 a year
- No income tax deferral
- No obligation to comply with CRUT rules
- No charitable requirements



Coming soon to a newsletter near you!

For a free trial subscription to LISI go to: <https://leimbergservices.com/login/subscribe.cfm>

Income Make-up Limitations Under NIMCRUT Regulations May Be Invalid Under *Loper Bright* and How to Maximize Distributions by Use of Subsidiary Entities

By Alan S. Gassman, Brandon L. Ketron, and Nickolas M. Tibbetts
September [21], 2024

The authors thank Jonathan Blattmachr and Howard Zaritsky for their thoughtful comments on a prior draft of this Letter, and Jonathan's co-authors Mitchell Gans, Martin Shenkman, Stephen Bigge and others who have written in this area-see footnotes 13, 24, and 25).

EXECUTIVE SUMMARY

The Treasury Regulations governing NIMCRUTS under Treasury Regulation 1.664-3 that limit trust or fiduciary accounting income from the sale or exchange of assets contributed to or purchased by the trust to only include appreciation in value since the date of the contribution to or purchase by the trust may be invalid under the United States Supreme Court's recent decision in *Loper Bright*. The plain language of the statute only requires a makeup payment of previously deferred but undistributed unitrust amounts to be made from trust income. The statutory language does not provide a specific grant of power to the Secretary of the Treasury to limit income and modify the definition of income that would otherwise apply under Internal Revenue Code Section 643(b) and the applicable regulations thereunder, although there is a general grant of authority to issue anti abuse regulations.



While a future challenge of the regulations may remove this limitation altogether, estate planners may be able to plan around this restriction by placing an LLC in between the assets and the CRUT, making the LLC the CRUT's asset, with any distributions from the LLC to the CRUT being treated as fiduciary accounting income, absent running afoul of the state law rules for liquating distributions being treated as principal distributions.

An example of the application of this situation would be where an individual transfers \$10,000,000 worth of investments to a NIMCRUT that is set to pay per 11.48% of the value of the NIMCRUT assets each year for 20 years. If the NIMCRUT has no income for the first 5 years and maintains a \$10,000,000 net worth then the potential make up account would be \$5,740,000 (11.48% times \$10,000,000 times 5 = \$5,740,000). Since the NIMCRUT has not appreciated in value above the initial \$10,000,000 contribution, the regulations would prevent any payment from being made even though there may be sufficient fiduciary accounting income by reason of capital gains from the sale of the investments being allocated to income. If the regulation is invalid then all or a portion of the \$5,740,000 could be distributed as a result of the allocation of capital gains to income with the remaining assets in the NIMCRUT being used to fund further payments over the remaining term of the NIMCRUT and payment of remainder to charity.

If Congress had intended for this to be the rule, then the charitable deduction would presumably be higher under a NIMCRUT than a CRUT, and that is not the case. This appears to be an inconsistency in the interpretation of the statute, and will harm many taxpayers and discourage charitable donations if it is valid.



FACTS

A NIMCRUT is a Net Income Make-up Charitable Remainder Unitrust, which is a subtype of a Charitable Remainder Trust (“CRT”). CRTs may provide significant tax benefits in the form of a charitable income tax deduction and deferral of income tax, but CRTs must be designed so that, after the CRT’s term, the remainder interest passing to charity is valued at a minimum of at least 10% of the initial value of the CRT based upon the initial fair market value of the assets contributed to the CRT upon the date of formation, the unitrust percentage (which can be no less than 5%), and actuarial and present value assumptions. Note that this does not mean that the charitable remainder beneficiary receive an amount of at least ten percent of the initial value of the trust; rather, it means that the actuarial or tax value of the remainder of the trust at inception must be at least ten percent.

I.R.C. section 664 governing Charitable Remainder Trusts (“CRT”) was enacted in 1969. Subsection (d)(3) of the statute has not been amended since section 664 was first enacted, and provides an exception to the general rule that the unitrust percentage must be paid out annually by stating that the trust instrument may provide that payments to the non-charitable beneficiary may be the lesser of (1) the amount of the trust’s (or fiduciary accounting) income, or (2) the applicable unitrust percentage amount for the year. Further, subsection (3)(B) provides that in years when income exceeds the applicable unitrust percentage in the current year, a prior year’s payments may be made up to the extent that income was less than the applicable unitrust percentage amounts in prior years.

Treasury Regulation section 1.664-3 was promulgated in 1972, but the limitation alluded to above was only promulgated in 1998.

The only general authority granted to the Treasury to issue regulations contained in Section 664(a) provides that “the provisions of this section shall, in accordance with regulations prescribed by the Secretary, apply in the case of [] charitable remainder [trusts].”



Section 643(a)(7), enacted in 1996, provides the Treasury with the general ability to create regulations to carry out the purposes of sections 641 through 685, with a specific focus in curbing abusive transactions:

Abusive Transactions — The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes.

On June 28, 2024, the U.S. Supreme Court decided *Loper Bright Enterprises v. Raimondo* and overturned *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, which had required wide judicial deference to an agency's interpretations of statutes where Congress was silent or ambiguous and was irreconcilable with the APA. Under the prior framework for interpreting statutory grants of agency authority, the U.S. Supreme Court held that "*Chevron* appl[ied] with full force in the tax context," applying to both interpretive and legislative regulations promulgated under the Code.

In *Loper Bright*, the Supreme Court confirmed that the new method of statutory interpretation applied to both legislative and interpretive regulations, even going further to state that deferring to an agency's interpretation of a statutory provision granting the agency legislative authority is "perhaps the occasion on which abdication in favor of the agency is *least* appropriate." The Supreme Court held that courts must find the "single best interpretation of that statute which is "fixed at the time of enactment."

So instead of declaring a particular party's reading "permissible" in such a case, courts use very tool at their disposal to determine the best reading of the statute and resolve the ambiguity. . . . It therefore makes no sense to speak of a "permissible" interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best. In the business of statutory interpretation, if it is not the best, it is not permissible.

I.R.C. § 643(a)(7).

Loper Bright Enterprises v. Raimondo, 144 S. Ct. 2244, 2273 (2024)



Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.

Mayo Found. for Med. Educ. & Research v. United States, 562 U.S. 44, 55 (2011).

Loper Bright, at 2266.

Id.

Id.

COMMENTARY

Loper Bright upended decades of administrative law, and the tax world is likely to quickly feel the full impact from this upheaval of judicial deference. Many sections of the Code far dwarf the Treasury Regulations that have been promulgated pursuant to said small statutes, mainly arising from the agency approach of filling in the gaps in the statute. This disparity gives the newly non-deferential courts ample opportunities to find that regulations veered from the “single, best interpretation” of the statute.

The IRS has postured that *Chevron*’s dethroning will not change its rulemaking approach, but recent proposed regulations include a novel section dedicated to citing the specific statutory grants of authority enabling the agency’s actions.

Id.

Vella, Lauren, *IRS Say Loper Bright Won’t Majorly Affect Issuing New Rules*, BLOOMBERG LAW NEWS, 2024-09-12T15:51:49301523541-04:00.

Sapirie, Marie, *News Analysis: The New Post-Loper Bright Authority Section in Proposed Regs*, TAX NOTES TAX ANALYST, 2024 TNF 37-4, <https://www.taxnotes.com/tax-notes-today-federal/credits/new-post-loper-bright-authority-section-proposed-regs/2024/09/10/715qy?highlight=new%20post-loper>.



It is currently unclear how the courts will apply *Loper Bright*, and tax professionals are split in their predictions. Some anticipate the prior precedent of *National Muffler* to be key precedent for future tax cases. Others look to *Skidmore*, as an existing precedent predating the *Chevron* framework. Both of these predictions have merit based upon the *Loper Bright* opinion and do not conflict with each other.

Skidmore was cited throughout the majority's opinion, where the Court used the case as an example of proper treatment of agency arguments and interpretations; they will only affect a court's interpretation to the point the court finds it persuasive, with no deference required.

While *National Muffler* was not cited to by the majority opinion, they did affirm a key holding of the case. Citing to *Skidmore*, the Court affirmed that "interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." Other relevant factors discussed in the *National Muffler* case include (1) the length of time the regulation has been in effect, (2) the reliance placed on it, (3) the consistency of the Commissioner's interpretation, and (4) the degree of scrutiny Congress has devoted to the regulation during subsequent reenactments of a statute.

Gans, Mitchell M. & Blattmachr, Johnathan G., *Mitchell M. Gans & Johnathan G. Blattmachr on Loper Bright Enterprises v. Raimondo, Where in a Generational Shirt, the Supreme Court Overruled the Chevron Doctrine*, LISI Estate Planning Newsletter #3130 (July 2, 2024) at <http://leimbergservices.com>.

Loper Bright, at 2263.



Only time will tell how courts will apply *Loper Bright* in tax cases, and the first indications have arrived.

The Tax Court's first application of *Loper Bright* to strike down a Treasury Regulation came quite rapidly after the Supreme Court's decision. In the Tax Court Opinion *Varian Medical Systems, Inc. v. C.I.R.* decided on August 26, the Tax Court struck down the Treasury Regulations promulgated under Internal Revenue Code Section 78. The Court held that, even though the Treasury had been granted a general grant of authority, these regulations were invalid because they clearly conflicted with the statute. The Court went further to say that this conflict was so clear that they would have been invalid even under *Chevron*.

Given that the Tax Court found the decisions in *Varian* to be so clear, it remains to be seen how *Loper Bright* will be applied when the facts are ambiguous.

Now that courts will independently determine the best interpretation of statutes and forego agency deference, many regulations are ripe for taxpayer challenges, where the outlook of such challenges looked bleak under *Chevron*.

The NIMCRUT regulations seem particularly vulnerable under *Loper Bright*. I.R.C. section 664(a) states:

Notwithstanding the provision of this subchapter, the provisions of this section shall, in accordance with regulations prescribed by the Secretary, apply in the case of a charitable remainder trust and a charitable remainder unitrust.

It is uncertain whether the statutory language would constitute Congress directly speaking on this issue, or if they were silent or otherwise unclear. Wading through such statutory interpretation murkiness is no longer a necessary hurdle for a court to provide its own interpretation of the statute, with the dethroning of the *Chevron* two-step.

Varian Medical Systems, Inc. v. C.I.R., 163 T.C. No. 4, at *18 (T.C. 2024)

Id. at *19.

Id. at *18.

I.R.C. § 664(a) (emphasis added).

Alan Gassman, JD, LL.M. (Taxation), AEP® (Distinguished)
agassman@gassmanpa.com



Regardless of the statute's clarity, according to the recent *Loper Bright* case, the regulations stemming from this statute can be overturned by the court if the court determines that the agency deviated from the best interpretation of the statute. The *Loper Bright* case and previous cases clearly show that a court can overrule a legislation or regulation that goes beyond what it was intended and, as the Tax Court did in *Varian*, will strike down regulations that conflict with the statute or are not the best interpretation of the statute. The NIMCRUT regulations have been in force for over 26 years, and therefore the Court may take this into consideration in determining the validity of the regulation under the *National Muffler* standard.

With respect to a NIMCRUT, payments are calculated based on the lesser of (1) the unitrust amount or (2) the fiduciary or trust accounting income of the trust (referred to in this article as simply "trust income."). If a payment for a year is less than the unitrust amount by reason of the trust income being insufficient, then such payment is tracked in what is known as a makeup account that can be distributed in later years when income exceeds the unitrust amount.

The definition of "income" is set by section 643(b), for purposes of these rules, which states that income is based upon fiduciary accounting income, which is determined under state law and to at least a limited degree the terms of the governing instrument, and is not based upon (or tax) income as would be measured under the Internal Revenue Code.

For purposes of this subpart and subparts B, C, and D, the term "income", when not preceded by the words "taxable", "distributable net", "undistributed net", or "gross", means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. Items of gross income constituting extraordinary dividends or taxable stock dividends which the fiduciary, acting in good faith, determines to be allocable to corpus under the terms of the governing instrument and applicable local law shall not be considered income.
I.R.C. § 643(b).

Loper Bright, at 2266.



The law of many jurisdictions, including Alaska and Delaware, provides that distributions of money from an entity to its owner is generally considered to be income under the Principal and Income Act.

Most state laws require that distributions from entities that are “liquidating distributions,” (which are often defined to be distributions, or a series of distributions in excess of 20% of the entities’ value) must be treated for fiduciary accounting purposes as principal distributions, rather than income distributions. As a result of this large distributions from an LLC in one of these states may not carry out sufficient “income” that would allow for a make-up payment.

For example, if an LLC with value of \$5,000,000 within a jurisdiction that classifies distributions exceeding 20% of the entity’s value as “liquidating distributions” made a distribution worth more than \$1,000,000, then that would be considered a principal distribution and cannot be allocated as an income distribution or allowed for a make-up payment.

Some state laws allow for more flexibility. For example, Delaware law contains an important exception that allows a trustee to receive a large payment as income if there is a statement issued from the entity making the distribution that the distribution constitutes income even though more than 20% of the entity’s value is being distributed. An “authorized statement” should be issued to the trustee that the source of the distribution is state law accounting income.

It may also be helpful to have the trust situated in the same jurisdiction as the LLC, but this may not be necessary.

With different categories of trust situs that may or may not align, this is an important issue to examine in every stage of estate planning. See Sager, Margaret E.W. & Terebelo, Bradley D., *Down the Rabbit Hole and Through the Looking Glass: The Wonderland of Trust Situs and Governing Law*, PENNSYLVANIA BAR INSTITUTE ESTATE LAW INSTITUTE, (January 2019).



Treasury Regulation section 1.664-3(a)(1)(i)(b)(3) indicates that income from the sale or exchange of assets by the CRT cannot exceed the initial fair market value of assets as of the date of contribution to the CRT. As a result, the make-up payment generally must be reduced to the extent necessary to allow the NIMCRUT to have remaining assets equal in value to the original value of the CRT assets. I.R.C. section 664 does not provide this limitation, and does not give the Treasury any specific authority to provide any such limitation. It simply indicates that the make-up payment can be equal to all income, to the extent that previous distributions have been less than the annual percentage distribution amount.

The statute reads as follows:

(3) Exception.--Notwithstanding the provisions of paragraphs (2)(A) and (B), the trust instrument may provide that the trustee shall pay the income beneficiary for any year--

(A) the amount of the trust income, if such amount is less than the amount required to be distributed under paragraph (2)(A), and

(B) any amount of the trust income which is in excess of the amount required to be distributed under paragraph (2)(A), to the extent that (by reason of subparagraph (A)) the aggregate of the amounts paid in prior years was less than the aggregate of such required amounts.

Nothing in the above statutory language indicates that Congress' intent was to limit the income of the trust to the extent of appreciation of assets contributed to the trust following the date of the contribution, and this significant limitation only applies as a result of regulations issued by the Treasury.

The confusing and possibly invalid language from the regulations that was drafted to limit trust income to the extent of appreciation following the date of contribution of an asset to the CRT reads as follows, with key language underlined for the convenience of the reader:

I.R.C. § 664(d)(3) (emphasis added).



For purposes of this paragraph (a)(1)(i)(b), trust income generally means income as defined under section 643(b) and the applicable regulations. However, trust income may not be determined by reference to a fixed percentage of the annual fair market value of the trust property, notwithstanding any contrary provision in applicable state law. Proceeds from the sale or exchange of any assets contributed to the trust by the donor must be allocated to principal and not to trust income at least to the extent of the fair market value of those assets on the date of their contribution to the trust. Proceeds from the sale or exchange of any assets purchased by the trust must be allocated to principal and not to trust income at least to the extent of the trust's purchase price of those assets. Except as provided in the two preceding sentences, proceeds from the sale or exchange of any assets contributed to the trust by the donor or purchased by the trust may be allocated to income, pursuant to the terms of the governing instrument, if not prohibited by applicable local law. A discretionary power to make this allocation may be granted to the trustee under the terms of the governing instrument but only to the extent that the state statute permits the trustee to make adjustments between income and principal to treat beneficiaries impartially.

If Congress had intended to limit trust income to the appreciation of an asset following its contribution to the trust (or purchased by the trust), then it would seem that Congress would have said so in the statute, and not relied on the Treasury to issue regulations that dramatically change the traditional definition of income that applies under 643(b) and state law principles.

Further, there is no difference in the charitable income tax deduction that applies for assets contributed to a CRUT and the charitable income tax deduction that applies for assets contributed to a NIMCRUT. Thus it would seem that the rules promulgated to calculate the income tax deduction amount were drafted under the assumption that principal could be distributed from a NIMCRUT, and that taxpayers would not be limited to only taking appreciation from the original fair market value of the asset contributed. If this regulation is valid, then taxpayers using a NIMCRUT are receiving a charitable deduction that is significantly lower than what can be expected to pass to charity at the end of its term.



For example, if a stock valued at \$10,000,000 is contributed to a NIMCRUT or a CRUT with the payout to the non-charitable beneficiary maximized the deduction would be 10% of the value, or \$1,000,000. Under a CRUT, the original principal balance would be depleted as the unitrust payments are made, even if the stock does not appreciate in value. However, under a NIMCRUT, unless the stock appreciates significantly in value, it is likely that the original principal would remain in the trust if the regulation is valid. Thus, if Congress had intended for this to be the rule, then the charitable deduction would presumably be higher under a NIMCRUT than a CRUT, and that is not the case. This appears to be an inconsistency in the interpretation of the statute, and will harm many taxpayers and discourage charitable donations if it is valid.

Thus, under a *Loper Bright* analysis and given the plain language of the statute, it appears that a court may find that this taxpayer unfriendly regulation is in conflict with the best and proper interpretation of the statute, as discussed above.

While estate planners and their clients will hopefully rejoice upon the regulation being thrown out under *Loper Bright*, in the meantime, there appears to be an effective planning arrangement to circumvent this regulation's limitation.

Jonathan Blattmachr, Martin Shenkman, and Stephen Bigge, who are each notable and well-respected commentators in this area, indicated in their March 1, 2024 article, *Potential Benefit of Paying Qualified Plan Benefits to a CRT* that “[a]lthough Treas. Reg. 1.664-3(b)(3) limits how much of the proceeds of sale can be allocated to the FAI [Fiduciary Accounting Income] of a NIMCRUT, there is no limit on how much can be distributed [if] the trust receives other forms of FAI, such as certain distributions from entities.”

This means that a possible solution to the issue is to contribute assets to an appropriately structured LLC, and later have the LLC ownership interest contributed to the NIMCRUT because then, according the Blattmachr, Shenkman, and Bigge, “there is no limit on how much can be distributed [if] the trust receives other forms of FAI, such as certain distributions from entities.”

Blattmachr, Johnathan G., Shenkman, Martin M., Bigge, Stephen J., *Potential Benefit of Paying Qualified Plan Benefits to a CRT*, THOMSON REUTERS CHECKPOINT, Estate Planning, Vol. 51, Issue 2 (March 1, 2024).

Id.



In other words, the regulation applies when a CRUT sells an asset, but it does not seem to apply when the CRUT's asset (the LLC) sells its own asset(s) and makes a distribution that would be considered income under state law to the CRUT.

When (a) the income of the NIMCRUT comes from a distribution from an LLC as income under the applicable state law Principal and Income Act, and (b) the NIMCRUT did not sell the LLC, which is the "asset," then there is a valid argument that the regulation's limitation does not apply. As a result, the full distribution that the LLC makes after selling some or all of its asset can be allocated to income of the NIMCRUT, and can be paid out as a make-up payment to the extent that prior payments have been less than the prior Unitrust Amounts, regardless of whether the value of underlying assets have gone down in value, or even have been sold at a loss by the LLC subject to applicable state law limitations that may apply with respect to liquidating distributions in excess of 20% of the LLC's assets.

If the regulation does apply to limit income, even if the source of the income comes from a distribution from an underlying entity then it limits the utility of NIMCRUTs to only those holding highly appreciating assets, or those assets that are anticipated to "explode" in value. This creates a challenge for taxpayers intending to use a NIMCRUT to defer gain and benefit charity upon the sale of a business. The taxpayer would be better served with a low valuation well prior to a sale so that when the business is sold there is a large jump in value from the contribution date value that can be allocated to income; however, this results in the taxpayer receiving a lower charitable deduction. In addition, taxpayers often wait as long as possible to make the contribution to the NIMCRUT to minimize potential taxes that apply under the Unrelated Business Taxable Income rules keeping in mind that the contribution must be before there is a binding commitment to sale under the Assignment of Income Doctrine. The closer the taxpayer makes the contribution to the sale, the more likely it is that the valuation will be higher, and therefore there will be less income to allocate, if any, from the sale of the business.



CONCLUSION

The recent Supreme Court decision in *Loper Bright* raises questions about the validity of Treasury Regulations limiting NIMCRUT makeup payments to income sufficient to preserve the CRT's initial asset value, as the statute only requires payments from "income" without further restrictions. While future challenges could potentially invalidate these regulations, estate planners can work around them by using an LLC structure, where distributions from the LLC to the CRUT are treated as income under state fiduciary accounting rules. This approach allows for full makeup payments, especially in favorable jurisdictions like Delaware, effectively circumventing the current regulatory limitations.



Disclaimer Planning

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

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

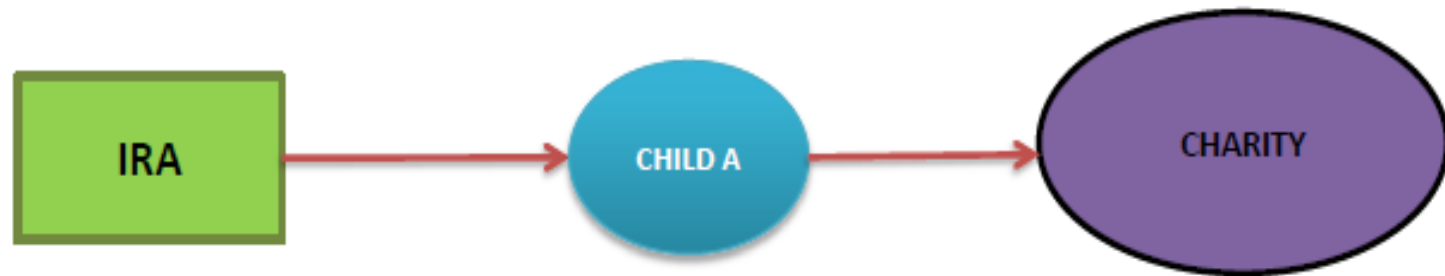
Another use of disclaimers is to have Retirement Plan benefits payable to a trust for the benefit of children which provides that the Trustee will be entitled disclaim assets to the Charitable Remainder Trust which will benefit the individual's descendants, in addition to a charity. This can help effectuate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

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



IRA TO CHILD A - ALLOWS DISCLAIMER TO CHARITY

SCENARIO H



If Child A disclaims no tax triggered.



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

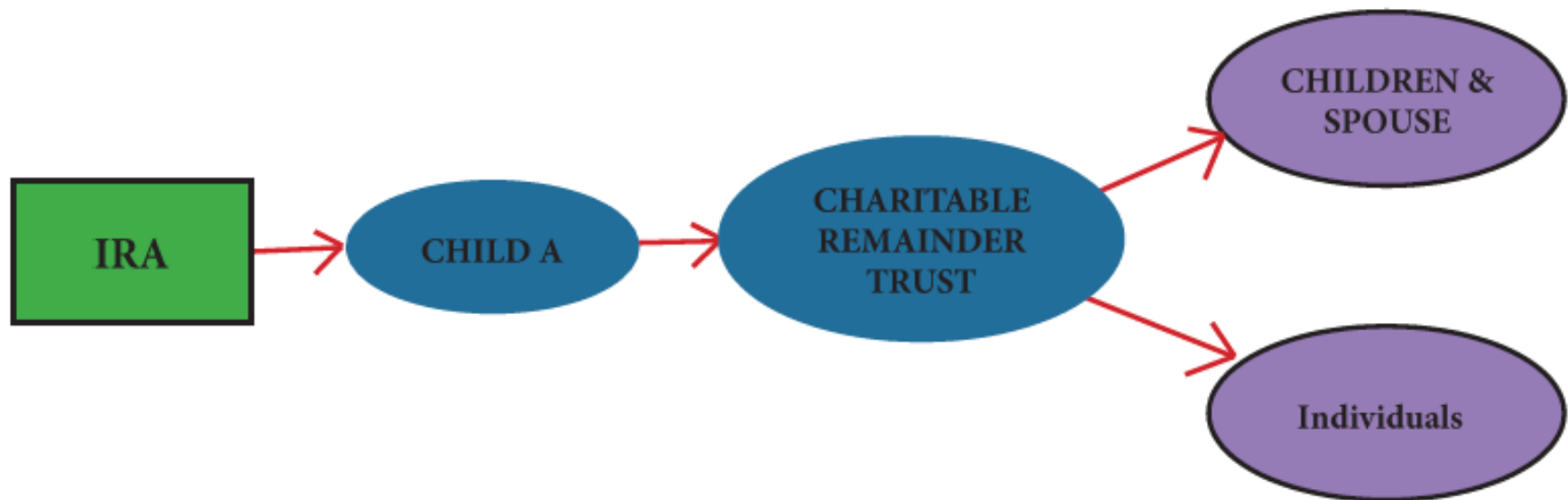
Possible clause to facilitate the above:

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



IRA DISCLAIMABLE TO CHARITABLE REMAINDER TRUST

SCENARIO K



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

No Income Tax paid on benefits payable to Charitable Remainder Trust

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

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



Charitable Planning with IRA and Pension Accounts

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

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

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

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



Charitable Planning with IRA and Pension Accounts, Cont'd

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

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

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

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

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

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



Charitable Planning with IRA and Pension Accounts, Cont'd

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

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

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

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



Charitable Planning with IRA and Pension Accounts, Cont'd

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

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

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

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

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

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

¹*Christansen v. Commissioner*, 130 TC 1 (2008)



Charitable Planning with IRA and Pension Accounts, Cont'd

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

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

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

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



Charitable Planning with IRA and Pension Accounts, Cont'd

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

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

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

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

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

² Treasury Regulation Section 1.642(c)-1(b)(1)



Charitable Planning with IRA and Pension Accounts, Cont'd

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

In these situations, the “See-Through Stretch Trust” rules can apply to the portions of distributions passing to separate, or, in some cases, combined trusts for the Designated Beneficiary, or plan benefit rights can pass directly through to such individuals or Gift to Minors Act accounts, or possible other vehicles for such individuals, as long as the charities and other non-persons⁵ are completely paid out or otherwise eliminated as beneficiaries, so that they cannot receive anything after the September 30 following the date of death of the Plan Participant.

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

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

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

⁵ And in some situations, no person older than the applicable Designated Beneficiary.

Charitable Planning with IRA and Pension Accounts, Cont'd

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

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

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

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

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



Charitable Planning with IRA and Pension Accounts, Cont'd

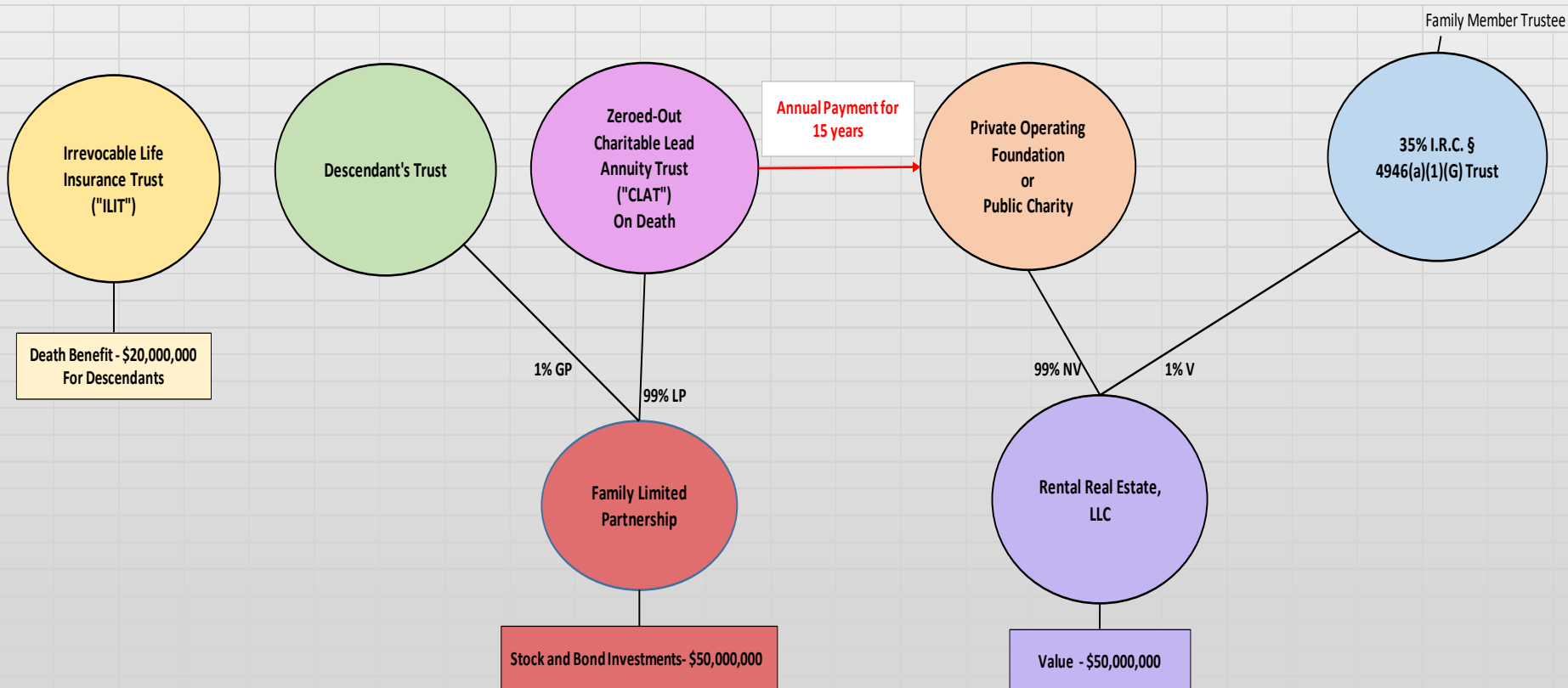
A Charitable Gift Annuity can be funded with IRA proceeds on the death of the IRA owner. The IRA proceeds would be paid directly to a charity and a designated non-charitable beneficiary would receive a certain amount of funds from the charity each year, using a formula based on the beneficiary's lifetime.

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

⁶ PLR 200230018



Zero Estate Tax Plan for Charitable Families, Alternative Structure



Strategies to Transfer Money to Charity

Type of Charitable Donation/Strategy	Private Foundation	Public Charity	Donor Advised Fund
Charitable Remainder Trust	Can be a beneficiary, but charitable deduction subject to Private Foundation AGI limitations and Grantor should not control the foundation.	Yes, up to 50% of AGI deduction, 30% for capital gain property.	Same as listing a Public Charity as the charitable beneficiary, but donor should not advise the DAF after termination of the Charitable Remainder Trust.
Qualified Charitable Donation	QCDs cannot be made to Private Foundations.	Up to \$100,000 can be donated without the taxpayer paying any tax on the donation.	QCDs cannot be made to a Donor Advised Fund.
IRA Beneficiary Designation	Can be left to a Private Foundation on death for an estate tax charitable deduction.	Can be left to Public Charity on death of an estate tax charitable deduction.	Can be paid to Donor Advised Fund on death for estate tax charitable deduction.
Charitable Gift Annuity	Not allowed.	Yes. A deduction is allowed for the actuarial amount projected to go to charity.	No allowed.
Charitable Lead Annuity Trust	Allowed, but subject to 30% of AGI for cash and 20% for capital gain assets. Grantor cannot control Private Foundation.	Allowed, but deduction is subject to various AGI restrictions because donation is considered to be "for the use of the charity." AGI limited to 20% to 50% depending on assets contributed.	Allowed. Same as benefiting a Public Charity, but donor should not control the Donor Advised Fund.



Payable Directly to Charity, Donor Advised Fund or Community Foundation

RETIREMENT
PLAN

CHARITY

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

RETIREMENT
PLAN

DONOR ADVISED
FUND
or COMMUNITY
FOUNDATION

CHARITY A

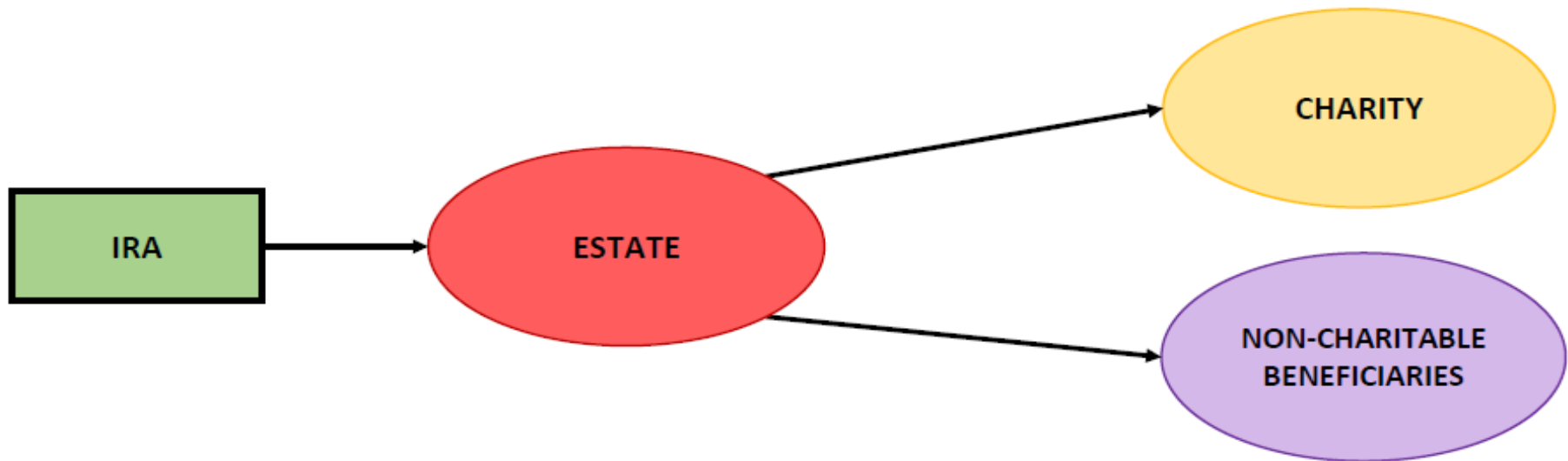
CHARITY B

CHARITY C

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



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



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



Charitable Lead Annuity Trusts (CLATs)



Jerry Hesch's CLAT Materials – Equal Payments, Increase By 20% A Year, Or Shark Fin?



- Taxpayers who use the increased standard deduction because it exceeds their itemized deductions no longer benefit from their charitable gifts.
- Fred, a single taxpayer, with gross income of \$210,000, traditionally gives \$10,000 in cash to charity each year. Fred's itemized deductions no longer exceed the standard deduction. Fred's taxable income for the year 2020 will be approximately \$198,000 (gross income of \$210,000 less a \$12,000 standard deduction). Fred's brokerage account generates \$210,000 of annual income.
- Fred establishes a non-grantor CLAT with a fixed term. Fred transfers to the CLAT \$250,000 of income producing assets, generating a 4.0% rate of return (\$10,000 annual income). The trust terms require the trustee to pay \$10,000 annually to charity. Fred will no longer make charitable gifts from his personal account. Fred's gross income will no longer include the \$10,000 of income.
- Fred's gross income will be \$200,000 rather than \$210,000. Fred will still use the \$12,000 standard deduction. Taxable income will be \$188,000 (gross income of \$200,000 less the standard deduction). As Fred was in the 32% income tax bracket, the assignment of \$10,000 of income saves \$3,200 in income taxes each year.
- As a separate taxpayer for federal income tax purposes, the CLAT reports \$10,000 of gross income and is entitled to offset up to 100% of its gross income with its charitable deduction. §642(c)



CLAT Level Annual Annuity:

Trust Type:	Term
Transfer Date:	10/2020
\$7520 Rate:	0.40%
FMV of Trust:	\$800,000
Growth of Trust:	5.00%
Payment Period:	Annual
Payment Timing:	End
Term:	20

First Annual Payment: \$41,702.00

Present Value of Annuity: \$800,000.00

Remainder Interest/ Taxable Gift: \$0.00

Charitable Deduction for Annuity Interest: \$800,000.00



<u>Year</u>	<u>Beginning Principal</u>	<u>5.00% Growth</u>	<u>Payment</u>	<u>Remainder</u>
1	\$800,000.00	\$40,000.00	\$41,702.00	\$798,298.00
2	\$798,298.00	\$39,914.90	\$41,702.00	\$796,510.90
3	\$796,510.90	\$39,825.55	\$41,702.00	\$794,634.45
4	\$794,634.45	\$39,731.72	\$41,702.00	\$792,664.17
5	\$792,664.17	\$39,633.21	\$41,702.00	\$790,595.38
6	\$790,595.38	\$39,529.77	\$41,702.00	\$788,423.15
7	\$788,423.15	\$39,421.16	\$41,702.00	\$786,142.31
8	\$786,142.31	\$39,307.12	\$41,702.00	\$783,747.43
9	\$783,747.43	\$39,187.37	\$41,702.00	\$781,232.80
10	\$781,232.80	\$39,061.64	\$41,702.00	\$778,592.44
11	\$778,592.44	\$38,929.62	\$41,702.00	\$775,820.06
12	\$775,820.06	\$38,791.00	\$41,702.00	\$772,909.06
13	\$772,909.06	\$38,645.45	\$41,702.00	\$769,852.51
14	\$769,852.51	\$38,492.63	\$41,702.00	\$766,643.14
15	\$766,643.14	\$38,332.16	\$41,702.00	\$763,273.30
16	\$763,273.30	\$38,163.67	\$41,702.00	\$759,734.97
17	\$759,734.97	\$37,986.75	\$41,702.00	\$756,019.72
18	\$756,019.72	\$37,800.99	\$41,702.00	\$752,118.71
19	\$752,118.71	\$37,605.94	\$41,702.00	\$748,022.65
20	\$748,022.65	\$37,401.13	\$41,702.00	\$743,721.78
Summary:	\$800,000.00	\$777,761.78	\$834,040.00	\$743,721.78

\$743,721 passes to children with no transfer taxes



CLAT 20% Annual Increase:

Trust Type:	Term
Transfer Date:	9/2020
\$7520 Rate:	0.40%
FMV of Trust:	\$800,000
Growth of Trust:	5.00%

Payment Period:	Annual
Payment Timing:	End
Term:	20

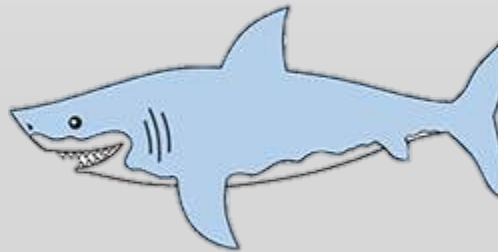
Vary Annuity Payments?	Yes
Annual Annuity Payment Growth:	20.00%

First Annual Payment:	\$4,568.00
Present Value of Annuity:	\$800,000.00
Remainder Interest/ Taxable Gift:	\$0.00
Charitable Deduction for Annuity Interest:	\$800,000.00



Shark-Fin Charitable Lead Annuity Trust

Interest Rate:	0.4%
Term of Years:	20
Contribution to Trust:	\$800,000.00
Investment Growth Rate:	\$5.0%
Payment Period:	Annual
Value of Annuity:	\$800,000.00
Value of Remainder/Taxable Gift:	\$0.00



ECONOMIC SCHEDULE

Year	Opening Balance	5.0% Growth	Annuity	Closing Balance
1	\$800,000	\$40,000	\$1,000	\$839,000
2	\$839,000	\$41,950	\$1,000	\$879,950
3	\$879,950	\$43,998	\$1,000	\$922,948
4	\$922,948	\$46,147	\$1,000	\$968,095
5	\$968,095	\$48,405	\$1,000	\$1,015,500
6	\$1,015,500	\$50,775	\$1,000	\$1,065,275
7	\$1,065,275	\$53,264	\$1,000	\$1,117,538
8	\$1,117,538	\$55,877	\$1,000	\$1,172,415
9	\$1,172,415	\$58,621	\$1,000	\$1,230,036
10	\$1,230,036	\$61,502	\$1,000	\$1,290,538
11	\$1,290,538	\$64,527	\$1,000	\$1,354,065
12	\$1,354,065	\$67,703	\$1,000	\$1,420,768
13	\$1,420,768	\$71,038	\$1,000	\$1,490,806
14	\$1,490,806	\$74,540	\$1,000	\$1,564,347
15	\$1,564,347	\$78,217	\$1,000	\$1,641,564
16	\$1,641,564	\$82,078	\$1,000	\$1,722,642
17	\$1,722,642	\$86,132	\$1,000	\$1,807,774
18	\$1,807,774	\$90,389	\$1,000	\$1,897,163
19	\$1,897,163	\$94,858	\$1,000	\$1,991,021
20	\$1,991,021	\$99,551	\$846,713	\$1,243,859

\$1,243,859 to children



Amount passing to children with no gift or estate tax exposure under level annual payments, 20% increasing annual payments and Shark Fin.

CLAT Trust	Distribution at end of 20 years.
Level annual payments	\$743,721
20% increasing payments	\$1,036,360
Shark Fin	\$1,213,859

Because CLATs have no minimum annual payments, unlike the 5% minimum for charitable remainder trusts, there is no statutory prohibition on using varying minimum payments as long as the present value of all fixed payments can be determined (i.e. all payments must be guaranteed).



Reasons To Terminate A Charitable Lead Annuity Trust Early

There are a number of reasons a family may want to terminate a CLAT before its stated term, even though the charity will otherwise receive all future annuity payments over the remaining scheduled term. These can include the following:

1. To allow monies or assets to be delivered to charity earlier in order to meet a family's current charitable objectives. Such as if the CLAT donor would like to see a building built or a charitable program started and would have to contribute additional funds to the charity but for it coming from the CLAT.
2. To get immediate recognition from a charity willing to provide positive publicity because it receives all the funds upon termination instead of annually over the remaining term.
3. To allow the non-charitable remainder beneficiaries to receive money or assets out earlier than having to wait until the end of the charitable term.
4. To reduce administrative and reporting obligations and expenses if the trust is continued.



Reasons To Terminate A Charitable Lead Annuity Trust Early, *Cont'd*

5. To allow for the funds delivered to charity to be used for purposes not permitted under the self-dealing, excess business holdings, or private foundation rules that apply to the charitable trusts.
6. To avoid the charitable deduction recapture that occurs if the grantor of a Grantor CLAT dies during the annuity term.
7. To allow the non-charitable beneficiaries to invest the funds that they receive early in a manner that would have violated the self-dealing or private foundation rules if such investment was made by the CLAT.
8. To allow the non-charitable and charitable beneficiaries to receive money or assets currently when they may desperately need it, which may be the difference in saving a business or investment property.



IRS Position on Early Termination.

In Rev. Rul. 88-27 and the annotation to its sample CLAT forms, a trustee is not permitted to prepay the charitable lead interest or terminate the trust early. Rev. Proc. 2007-45; Rev. Proc. 2008-45.

IRS position: A power to prepay disqualifies the charitable deductions (both income tax and gift tax). PLR 97-34-057

But, the IRS has issued several PLRs that approved prepaying the charity for its scheduled amounts:

PLR 98-44-027

PLR 1999-52-093

PLR 2002-25-045

PLRs contemplated a judicial approval of prepayment.

Caution: Do not include early termination language in trust agreement.

- In all three PLRs it was stipulated that the prepaid annuity payments would be made to charity on an undiscounted basis. This is inconsistent with general valuation principles under §7520, but may have been a limitation imposed by the IRS as a condition of issuing the PLR.

Prepayment to a private foundation is not an act of self-dealing.



Other Options For Early Termination:

Non-charitable remainder beneficiaries sell their remainder interest to the charity.



In More Detail - IRS Position on Early Termination of CLATs

In Revenue Ruling 88-27 1988-1 C.B. 331, the IRS concluded that there could be no discount of what is paid to the charity under an early CLAT termination so that the charity would receive the total dollar amount of all future annuity payments without discounting for the time value of money.

As a result of this ruling, the taxpayers involved would have suffered penalties for failing to comply with the terms of the CLAT, in the view of the IRS, if they had gone forward with an early termination with a discount for the time value of money. Violation of the self-dealing rules can result in penalties equal to 10% of the amount involved in the act of self-dealing, with such penalties imposed on the disqualified person, and a penalty equal to 5% % of the amount involved in the act of self-dealing can be imposed on a foundation manager that is acting only as a manager. The penalties increase to 200% if the self-dealing issue is not corrected in a timely manner. The imposition of this tax can therefore be devastating.



In More Detail - IRS Position on Early Termination of CLATs

Cont'd

It remains unclear whether a CLAT may be drafted to include language that allows for prepayment or early termination, with the charitable beneficiary receiving the balance of the remaining annuity payments, without discounting for the time value of money. Revenue Ruling 88-27 states that a CLAT cannot include such language but was issued in relation to a CLAT that would have provided a discount for prepayment of the charitable beneficiary. Further, in Rev. Proc. 2007-45, the IRS referenced Revenue Ruling 88-27 in a statement that a charitable lead annuity trust is not a guaranteed annuity interest if the trustee has the discretion to commute and prepay the charitable interest prior to the termination of the annuity period. PLR 9734057 goes even further by taking the position that a CLAT that does not include an anti-commutation clause will not qualify for the income tax and estate tax charitable deduction.

Because the IRS has provided negative guidance in relation to CLATS that have a no commutation clause, it is likely best not to test the waters.



Obstacles When Using Charitable Split Interest Trusts, Such As The Charitable Lead Annuity Trust

(The “CLAT”):

- Non-Grantor CLATs are governed by the same restrictions that apply to private foundations:

1. § 4941 Self-dealing
2. § 4942 Required minimum distributions do not apply to CLATs
3. § 4943 Excess business holdings
4. § 4944 Jeopardy investments
5. § 4945 Taxable expenditures
6. § 4946 Disqualified persons
7. § xxxx Unrelated business taxable income (“UBTI”)



What You Didn't Know About Charitable Giving Opportunities and How It Can Affect Pre-2026 Planning

THANK YOU FOR PARTICIPATING!

Tuesday, October 29, 2024
12:00 PM to 1:00 PM EST
(60 minutes)

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

