Estate And Gift Tax Planning – The Greatest Show on Earth

SUNCOAST ESTATE PLANNING COUNCIL

Thursday, December 16th

12:00 to 1:00 PM EST

(60 minutes)

Presented by:

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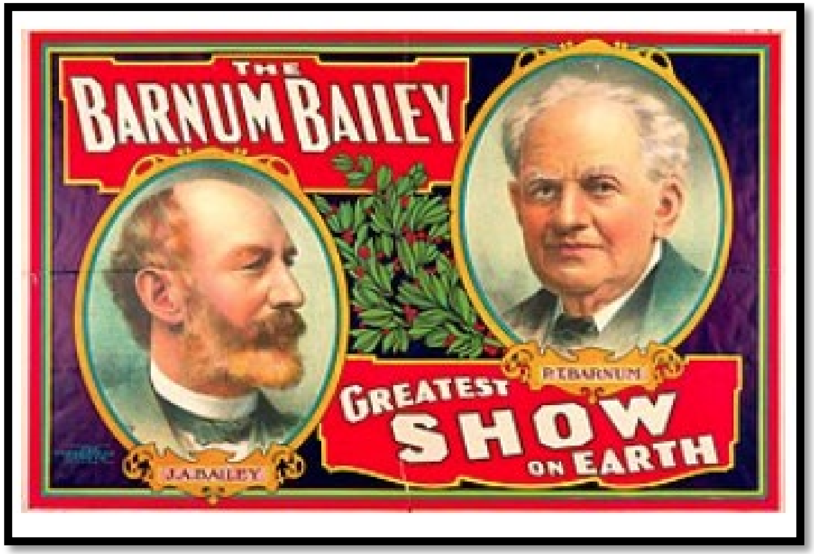

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The Ringling Bros. and Barnum & Bailey Circus was an American traveling circus company billed as The Greatest Show on Earth. It and its predecessor shows ran from 1871 to 2017. The circus started in 1919 when the Barnum & Bailey's Greatest Show on Earth, a circus created by P. T. Barnum and James Anthony Bailey, was merged with the Ringling Bros. World's Greatest Shows.

After 1957, the circus no longer exhibited under its own portable "big top" tents, instead using permanent venues such as sports stadiums and arenas. Acts included clowns, music performances, acrobats, tigers and elephants.

With weakening attendance, many animal rights protests, and high operating costs, the circus performed its final show on May 21, 2017, at Nassau Veterans Memorial Coliseum and closed after 146 years.

From Wikipedia, the free encyclopedia.

THE BARNUM & BAILEY CIRCUS – THE GREATEST SHOW ON EARTH

The Strobridge Litho. Co., Cincinnati & New York. Public domain. Wikimedia Commons.

Click **HERE** to watch a short clip about the Ringling Brother's Barnum Bailey Circus Still The Greatest Show On Earth (1998 TV Commercial).

Click **HERE** to watch a 5 minute children's documentary on The Barnum Bailey Circus -The Greatest Show On Earth.

Click **HERE** watch a 45 minute history documentary on The Barnum Bailey Circus -The Greatest Show On Earth.

IMPORTANT NEWS

2022 Federal Estate Tax Exemption

The federal estate tax exemption for decedents dying in 2022 will increase to $12.06 million per person or $24.12 million for a married couple.

2022 Gift Tax Exclusion

The annual exclusion for federal gift tax purposes jumps to $16,000 for 2022, up from $15,000 in 2021.

Estate Tax Basics

The federal estate tax is imposed on citizens and residents of the United States.

An estate tax return is due if the gross estate of the individual exceeds his or her exemption amount.

The total exemption amount for an individual in 2022 will be $12,060,000, minus previous "taxable gifts."

A gift in 2022 that exceeds the $16,000 per year per person gift tax "exclusion" causes reduction in the exemption of the donor.

Marital Deduction Trusts and Portability

If the first dying spouse has more than the amount that passes estate tax-free, then everything exceeding what passes to the “credit shelter trust” can go to a “marital deduction trust,” which must pay all income to the surviving spouse, and will be considered as owned by the surviving spouse on the surviving spouse’s subsequent death.

To the extent that the estate tax exemption of the first dying spouse is not totally used, then what is remaining of that exemption can be “ported” to the surviving spouse under the “portability rules.”

Portability Planning

This "portability allowance" does not grow with inflation like the estate tax exemption, and will be lost completely if the surviving spouse remarries, and the subsequent spouse dies before the surviving spouse - in which event the portability allowance of the surviving spouse will be limited to whatever portability allowance is received from the subsequent spouse.

After the first death, the well-drafted estate plan will allow the surviving spouse or fiduciaries to determine whether to use some or all of the exemption of the first dying spouse with a credit shelter trust, or to have the assets pass to a marital deduction trust to allow the surviving spouse to have the full portability allowance.

(From Alan Gassman's article on Portability Mistakes)

Credit Shelter Trusts vs. Relying on Exemption Portability

A married couple might provide for all assets to go to the surviving spouse, or to "lock up" up to $12,060,000 on the first death to facilitate a "credit shelter trust."

CREDIT SHELTER TRUST

SURVIVING SPOUSE INHERITS ALL ASSETS – USE PORTABILITY OF HIS OR HER $12,060,000 EXEMPTION

1. Uses the first dying spouse's $12,060,000 Generation Skipping Tax exemption (the ability to benefit children without being taxed at their level) – this is lost if portability is used.	**1. No preservation of first dying spouse's GST exemption, although a "reverse QTIP" election may be able to be made in some situations to preserve some of the first dying spouse's GST exemption.**
2. Assets can increase in value, to hopefully outpace inflation	2. No CPI or other value increase after first dying spouse's death.
3. Better investment opportunities can be channeled to shelter trust assets.	3. Combined assets will be used to pay personal expenses and to hold "wasting assets."
4. Co-Trusteeship can require conservatism.	4. Surviving spouse may lose or give away the assets in remarriage or otherwise.
5. Can be protected from creditors of the surviving spouse.	5. Not creditor protected.
6. Can borrow money from surviving spouse at the applicable Federal Rate (presently 1.89% for a 9-year Note), and it runs a greater rate of return on its own investment.	6. No ability to leverage with debt or otherwise.

The Strategies Which All Good Estate Tax Planners Should Be Familiar With Include The Following: (Cont.)

1. For the Charitable or Somewhat Charitable Client.

A) The Charitable Lead Annuity Trust

- The lifetime or testamentary Charitable Lead Annuity Trust permits the affluent client to gift or leave assets into a trust that can pay money or transfer assets over a term of years to a Family Foundation or other 501(c)(3) organization, with the remainder to be held for the family.

- Further, a lifetime Grantor CLAT can deliver a check from the IRS by generating an income tax deduction for the discounted value of the assets placed in the CLAT.

The Strategies Which All Good Estate Tax Planners Should Be Familiar With Include The Following: (Cont.)

B) The Administrative Note Arrangement.

- I leave my business to my son, John, provided that if he disclaims such inheritance in whole or in part, then it will pass to the Pinellas Community Foundation.
- My son will have the option of purchasing the company from the Pinellas Community Foundation for a 25-year note bearing interest at the long-term Applicable Federal Rate.
- This provides John with the choice of whether to pay federal estate tax on the value of the company, or to own the company estate tax-free and owe a long-term interest only promissory note to a friendly charity.
- If the business is worth $100,000,000, and the interest rate is 2%, then John can decide whether to pay $40,000,000 in federal estate tax (over a 14-year payment period), or $2,000,000 a year in interest to a public charity that may apply the funds as reasonably requested by John.
- Better yet, if the family forms a charitable organization that qualifies as a school, a medical research organization, a hospital/clinic, or a church/house of worship, then the note can be owed to the family controlled 501(c)(3) organization, and can be renegotiated at arm's-length.

The Strategies Which All Good Estate Tax Planners Should Be Familiar With Include The Following: (Cont.)

C) Layer In Charitable Remainder Trusts to get income tax deductions now while deferring income or avoiding income that can be diverted to charity.

The Strategies Which All Good Estate Tax Planners Should Be Familiar With Include The Following: (Cont.)

2. Fully Funding a Credit Shelter Trust as Opposed to Relying Upon Portability.

- This may involve using a Power of Appointment Trust or a Joint Exempt Step-Up Trust (“JEST”) to fully fund a Credit Shelter Trust on the first death which can make a significant difference.

- Under a JEST Trust, the couple can allocate ownership in shares of the JEST in any combination desired.

- The neurosurgeon spouse may have 3%, and the homemaker or executive spouse might have 97%.

- Nevertheless, up to all of the assets of the Trust (not exceeding the estate and gift tax exemption amount of the first dying spouse) can be used to fund a Credit Shelter Trust on the first death, while also receiving a new income tax basis (in the opinion of the presenter, and many others).

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The Strategies Which All Good Estate Tax Planners Should Be Familiar With Include The Following: (Cont.)

3. Maximize Annual Gifting.

- The annual gifting exclusion will go to $16,000 per person/per year in 2022.
- Annual exclusion gifts can be placed in trusts using crummey powers to include children, grandchildren, nephews and nieces, and other legitimate potential discretionary beneficiaries of a trust.
- This can be doubled with gift-splitting.
- Discounted gifting involves the transfer of non-voting or minority interest LLC or limited partnership interests.
- Over time, this can make a big difference.

The Strategies Which All Good Estate Tax Planners Should Be Familiar With Include The Following: (Cont.)

4. Gift Now to Exclude Growth from the Estate.

5. Installment Sales For Low-Interest Long-Term Promissory Notes.

- Use installment sales to facilitate discounts, freezing the value of assets, and locking in a low interest long-term rate of return while the Grantor pays the income tax.

6. Grantor Retained Annuity Trust - Use a GRAT instead of an Installment Sale, if there is significant concern of a possible taxable gift.

- Example - Client has $300,000,000 in assets - places $10,000,000 into a Dynasty Trust, and $150,000,000 into an LLC.
- Sells the 99% non-voting LLC interest to the Dynasty Trust for a $100,000,000 note.
- Places the other $140,000,000 in a separate LLC, and contributes 99% non-voting LLC interest to GRAT that pays back over ten years.
- Almost zero chance of the GRAT arrangement being considered to be a taxable gift.

The Strategies Which All Good Estate Tax Planners Should Be Familiar With Include The Following: (Cont.)

7. Using GRATs and Installment Sales for family businesses and professional practices.

8. Using Self-Cancelling Installment Notes ("SCINs") and Private Annuities.

9. Allow business and income opportunities to go to lower generation family members or estate tax exempt entities.

10. Use Irrevocable Life Insurance Trusts and Split Dollar Loan Funding.

EstateView Software

Reviewed in:

- ***American Bar Association***
- ***Probate & Property Magazine***

Technology
Probate

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Technology—Probate provides information on current technology and microcomputer software of interest in the probate and estate planning areas. The editors of *Probate & Property* welcome information and suggestions from readers.

Effective tax planning requires a careful analysis of the financial and tax implications of various estate planning strategies. Without adequate tools, it is easy to get lost in the numbers. Estate planning calculation software can help attorneys create, compare, and understand the tax and financial implications of various estate planning scenarios. Perhaps more importantly, this software can help attorneys accurately and efficiently illustrate various financial and estate planning strategies to clients, turning esoteric planning concepts into concrete economic decisions.

There are several programs designed to help attorneys and financial planners accurately and efficiently crunch the numbers for their clients. This article reviews a handful of the more popular solutions in today's market.

EstateView Software

EstateView Planning Software is a new entrant into the estate planning and calculation software field. EstateView's most striking feature is its elegant user interface. The software uses a multi-window design that incorporates a modern feel and strikes the right balance between user-friendliness and advanced customization options. Beginning users can jump right in and start using the software right out of the box. More advanced users have a wide range of customization options, including the ability to undock, hide, or reposition displays to match their personal preferences.

The user experience is further enhanced by simultaneous data updates across multiple screens. As the user enters information and tries out various scenarios, the relevant displays are instantly updated to show the results of the changing assumptions. This makes it easy for the user to make the necessary adjustments to achieve the desired results.

EstateView has preset scenarios to help design and illustrate the most common estate planning options. Baseline scenarios for a married couple include:

- no planning (which can be configured with or without portability),
- use of a credit shelter trust,
- use of a credit shelter trust with annual gifting,
- use of a credit shelter trust with discounted annual gifting,
- combination of a credit shelter trust, discounted annual gifting, and one or more irrevocable life insurance trusts, and
- installment sale to a defective grantor trust using a conventional or self-canceling installment note (with the ability to toggle grantor trust status in a given year).

These scenarios allow the user to illustrate most-often-used estate planning strategies with ease. Changing any of these scenarios will change the current illustration, which remains open throughout the entire process. This provides instant feedback without having to toggle between different screens.

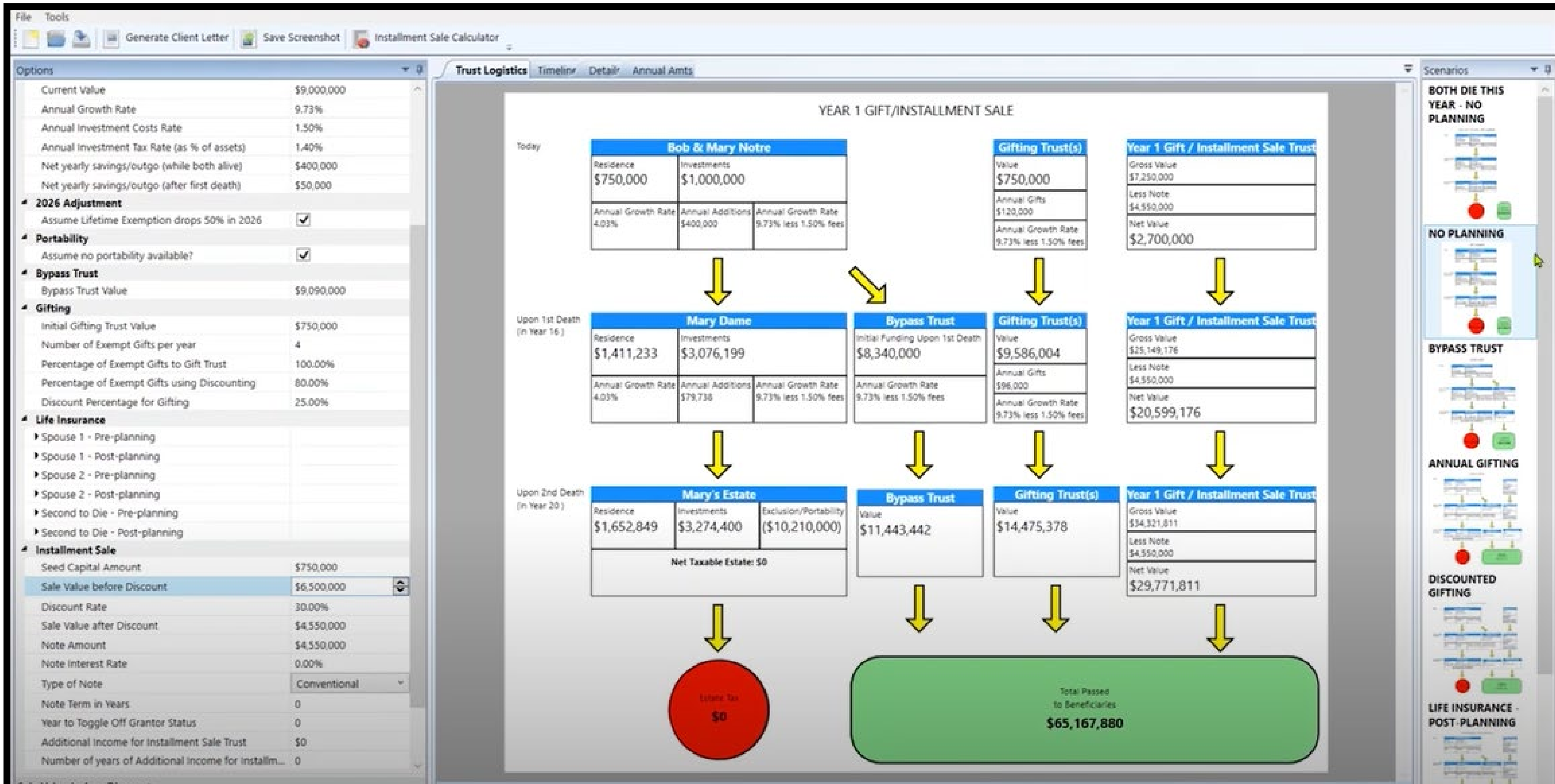
EstateView makes it easy to generate a customized client letter to explain estate planning scenarios to clients. Once all information is entered, the user can generate a client explanation letter that uses color illustrations to explain the estate planning techniques involved. This letter can be saved as a Microsoft Word document and modified as necessary before presentation to the client. If the estate planning assumptions are changed at a later time, a new letter can be easily produced to illustrate the new scenario.

EstateView is still in the beta testing phase and is currently free for use by interested planners. Interested professionals can e-mail estateview@gassmanpa.com and receive a link to download a free 180-day trial version of the software. ■

EstateView Software

To Watch An Informational Overview Of This Software, Click This You Tube Link:
https://www.youtube.com/watch?v=6uHE13Wg9PA
(17:00)

****ONLY Windows PC Compatible**



THREE FREE EXCEL SPREADSHEETS:

Please email info@gassmanpa.com "Spreadsheet" for these free tools.

1) Single/Individual Calculations
2) Married Couple Calculations
3) Qualified Personal Residence Trust Calculations

UPDATED Single/Individual Estate Tax Exemption Calculation Spreadsheet

Please email info@gassmanpa.com "Spreadsheet" for this free tool.

EstateView Spreadsheet - Single Person

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

Single Person Asset Growth

7.00%

Year 1 Net Worth

$6,000,000

Added Savings Per Year

$50,000

Number of Years of Savings

20

UPDATED Married Couple Estate Tax Exemption Calculation Spreadsheet

Please email info@gassmanpa.com "Spreadsheet" for this free tool.

EstateView Spreadsheet - Married Couple

1	2	3	4	5	6	1	2	3	4	5
Year	Calendar Year	Exemption Without Reduction (2.5% inflation)	Exemption Goes to Half in 2026, then Grows with Inflation (2.5%)	Exemption Goes to Half in 2022, then Grows with Inflation (2.5%)	Example: Married Couple With $10 Million Increasing by 7% Annually	Year	Calendar Year	Estate Tax if Double the Exemption	Estate Tax if Exemption Goes to Half	Exemption Goes to Half in 2022, then Grows with Inflation (2.5%)
1	2021	$23,400,000	$23,400,000	$23,400,000	$10,000,000	1	2021	$0	$0	$0
2	2022	$23,985,000	$23,985,000	$11,992,500	$10,750,000	2	2022	$0	$0	$0
3	2023	$24,584,625	$24,584,625	$12,292,313	$11,552,500	3	2023	$0	$0	$0
4	2024	$25,199,241	$25,199,241	$12,599,620	$12,411,175	4	2024	$0	$0	$0
5	2025	$25,829,222	$25,829,222	$12,914,611	$13,329,957	5	2025	$0		
6	2026	$26,474,952	$13,237,476	$13,237,476	$14,313,054	6	2026	$0		
7	2027	$27,136,826	$13,568,413	$13,568,413	$15,364,968	7	2027	$0		
8	2028	$27,815,247	$13,907,623	$13,907,623	$16,490,516	8	2028	$0		
9	2029	$28,510,628	$14,255,314	$14,255,314	$17,694,852	9	2029	$0		
10	2030	$29,223,393	$14,611,697	$14,611,697	$18,983,492	10	2030	$0		
11	2031	$29,953,978	$14,976,989	$14,976,989	$20,362,336	11	2031	$0		
12	2032	$30,702,828	$15,351,414	$15,351,414	$21,837,699	12	2032	$0		
13	2033	$31,470,398	$15,735,199	$15,735,199	$23,416,338	13	2033	$0		
14	2034	$32,257,158	$16,128,579	$16,128,579	$25,105,482	14	2034	$0		
15	2035	$33,063,587	$16,531,794	$16,531,794	$26,912,866	15	2035	$0		
16	2036	$33,890,177	$16,945,089	$16,945,089	$28,846,767	16	2036	$0		
17	2037	$34,737,432	$17,368,716	$17,368,716	$30,916,040	17	2037	$0		
18	2038	$35,605,867	$17,802,934	$17,802,934	$33,130,163	18	2038	$0		
19	2039	$36,496,014	$18,248,007	$18,248,007	$35,499,274	19	2039	$0		
20	2040	$37,408,414	$18,704,207	$18,704,207	$38,034,224	20	2040	$250,324		
21	2041	$38,343,625	$19,171,812	$19,171,812	$40,746,619	21	2041	$961,198		
22	2042	$39,302,215	$19,651,108	$19,651,108	$43,598,883	22	2042	$1,718,667		
23	2043	$40,284,771	$20,142,385	$20,142,385	$46,650,804	23	2043	$2,546,413		
24	2044	$41,291,890	$20,645,945	$20,645,945	$49,916,361	24	2044	$3,449,788		
25	2045	$42,324,187	$21,162,094	$21,162,094	$53,410,506	25	2045	$4,434,527		
26	2046	$43,382,292	$21,691,146	$21,691,146	$57,149,241	26	2046	$5,506,780		
27	2047	$44,466,849	$22,233,425	$22,233,425	$61,149,688	27	2047	$6,673,136		
28	2048	$45,578,520	$22,789,260	$22,789,260	$65,430,166	28	2048	$7,940,658		
29	2049	$46,717,983	$23,358,992	$23,358,992	$70,010,278	29	2049	$9,316,918		
30	2050	$47,885,933	$23,942,967	$23,942,967	$74,910,998	30	2050	$10,810,026		
31	2051	$49,083,081	$24,541,541	$24,541,541	$80,154,767	31	2051	$12,428,674		
32	2052	$50,310,158	$25,155,079	$25,155,079	$85,765,601	32	2052	$14,182,177		
33	2053	$51,567,912	$25,783,956	$25,783,956	$91,769,193	33	2053	$16,080,512		
34	2054	$52,857,110	$26,428,555	$26,428,555	$98,193,037	34	2054	$18,134,371		
35	2055	$54,178,538	$27,089,269	$27,089,269	$105,066,549	35	2055	$20,355,205		
36	2056	$55,533,001	$27,766,501	$27,766,501	$112,421,208	36	2056	$22,755,283		
37	2057	$56,921,326	$28,460,663	$28,460,663	$120,290,692	37	2057	$25,347,746		
38	2058	$58,344,360	$29,172,180	$29,172,180	$128,711,041	38	2058	$28,146,672		
39	2059	$59,802,969	$29,901,484	$29,901,484	$137,720,813	39	2059	$31,167,138		
40	2060	$61,298,043	$30,649,021	$30,649,021	$147,361,270	40	2060	$34,425,291		

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

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

UPDATED QPRT Chart – Email info@gassmanpa.com for this free spreadsheet.

EstateView QPRT Chart

Married Couple, Ages 74 and 75 - Each Spouse Places 1/2 of $1.9 Million Dollar Home Into 8 Year QPRT - With 15% Valuation Discount

1	2	3	4	5	6	7	8	9
Year	Calendar Year	Value of Home Growing at 3% Per Year	Annual Rent Paid (8% of the home value)	Total Rent Paid	Total Rent Invested at 7%	Estate Reduction (column 3 + column	Use of Gift Exemption	Estate Tax Savings (column 7 - column
1	2021	$1,900,000	$0	$0	$0	$0	$0	$0
2	2022	$1,957,000	$0	$0	$0	$0	$0	$0
3	2023	$2,015,710	$0	$0	$0	$0	$0	$0
4	2024	$2,076,181	$0	$0	$0	$0	$0	$0
5	2025	$2,138,467	$0	$0	$0	$0	$0	$0
6	2026	$2,202,621	$0	$0	$0	$0	$0	$0
7	2027	$2,268,699	$0	$0	$0	$0	$0	$0
8	2028	$2,336,760	$0	$0	$0	$0	$0	$0
9	2029	$2,406,863	$192,549	$192,549	$206,027	$2,612,891	$971,344	$656,618
10	2030	$2,479,069	$198,326	$390,875	$418,236	$2,897,305	$971,344	$770,384
11	2031	$2,553,441	$204,275	$595,150	$636,810	$3,190,251	$971,344	$887,563
12	2032	$2,630,044	$210,404	$805,553	$861,942	$3,491,987	$971,344	$1,008,257
13	2033	$2,708,946	$216,716	$1,022,269	$1,093,828	$3,802,774	$971,344	$1,132,572
14	2034	$2,790,214	$223,217	$1,245,486	$1,332,670	$4,122,884	$971,344	$1,260,616
15	2035	$2,873,920	$229,914	$1,475,400	$1,578,678	$4,452,598	$971,344	$1,392,502
16	2036	$2,960,138	$236,811	$1,712,211	$1,832,066	$4,792,204	$971,344	$1,528,344
17	2037	$3,048,942	$243,915	$1,956,126	$2,093,055	$5,141,997	$971,344	$1,668,261
18	2038	$3,140,411	$251,233	$2,207,359	$2,361,874	$5,502,285	$971,344	$1,812,376
19	2039	$3,234,623	$258,770	$2,466,129	$2,638,758	$5,873,381	$971,344	$1,960,815
20	2040	$3,331,662	$266,533	$2,732,662	$2,923,948	$6,255,610	$971,344	$2,113,706
21	2041	$3,431,611	$274,529	$3,007,191	$3,217,694	$6,649,305	$971,344	$2,271,184
22	2042	$3,534,560	$282,765	$3,289,956	$3,520,252	$7,054,812	$971,344	$2,433,387
23	2043	$3,640,596	$291,248	$3,581,203	$3,831,887	$7,472,484	$971,344	$2,600,456
24	2044	$3,749,814	$299,985	$3,881,188	$4,152,872	$7,902,686	$971,344	$2,772,537
25	2045	$3,862,309	$308,985	$4,190,173	$4,483,485	$8,345,794	$971,344	$2,949,780
26	2046	$3,978,178	$318,254	$4,508,427	$4,824,017	$8,802,195	$971,344	$3,132,340
27	2047	$4,097,523	$327,802	$4,836,229	$5,174,765	$9,272,289	$971,344	$3,320,378
28	2048	$4,220,449	$337,636	$5,173,865	$5,536,036	$9,756,485	$971,344	$3,514,056
29	2049	$4,347,063	$347,765	$5,521,630	$5,908,144	$10,255,207	$971,344	$3,713,545
30	2050	$4,477,474	$358,198	$5,879,828	$6,291,416	$10,768,891	$971,344	$3,919,018
31	2051	$4,611,799	$368,944	$6,248,772	$6,686,186	$11,297,985	$971,344	$4,130,656
32	2052	$4,750,153	$380,012	$6,628,784	$7,092,799	$11,842,952	$971,344	$4,348,643
33	2053	$4,892,657	$391,413	$7,020,197	$7,511,611	$12,404,268	$971,344	$4,573,169
34	2054	$5,039,437	$403,155	$7,423,352	$7,942,986	$12,982,423	$971,344	$4,804,432
35	2055	$5,190,620	$415,250	$7,838,601	$8,387,303	$13,577,924	$971,344	$5,042,632
36	2056	$5,346,339	$427,707	$8,266,308	$8,844,950	$14,191,289	$971,344	$5,287,978
37	2057	$5,506,729	$440,538	$8,706,847	$9,316,326	$14,823,055	$971,344	$5,540,684
38	2058	$5,671,931	$453,754	$9,160,601	$9,801,843	$15,473,774	$971,344	$5,800,972
39	2059	$5,842,089	$467,367	$9,627,968	$10,301,926	$16,144,015	$971,344	$6,069,068
40	2060	$6,017,351	$481,388	$10,109,356	$10,817,011	$16,834,363	$971,344	$6,345,207

Income Tax Analysis

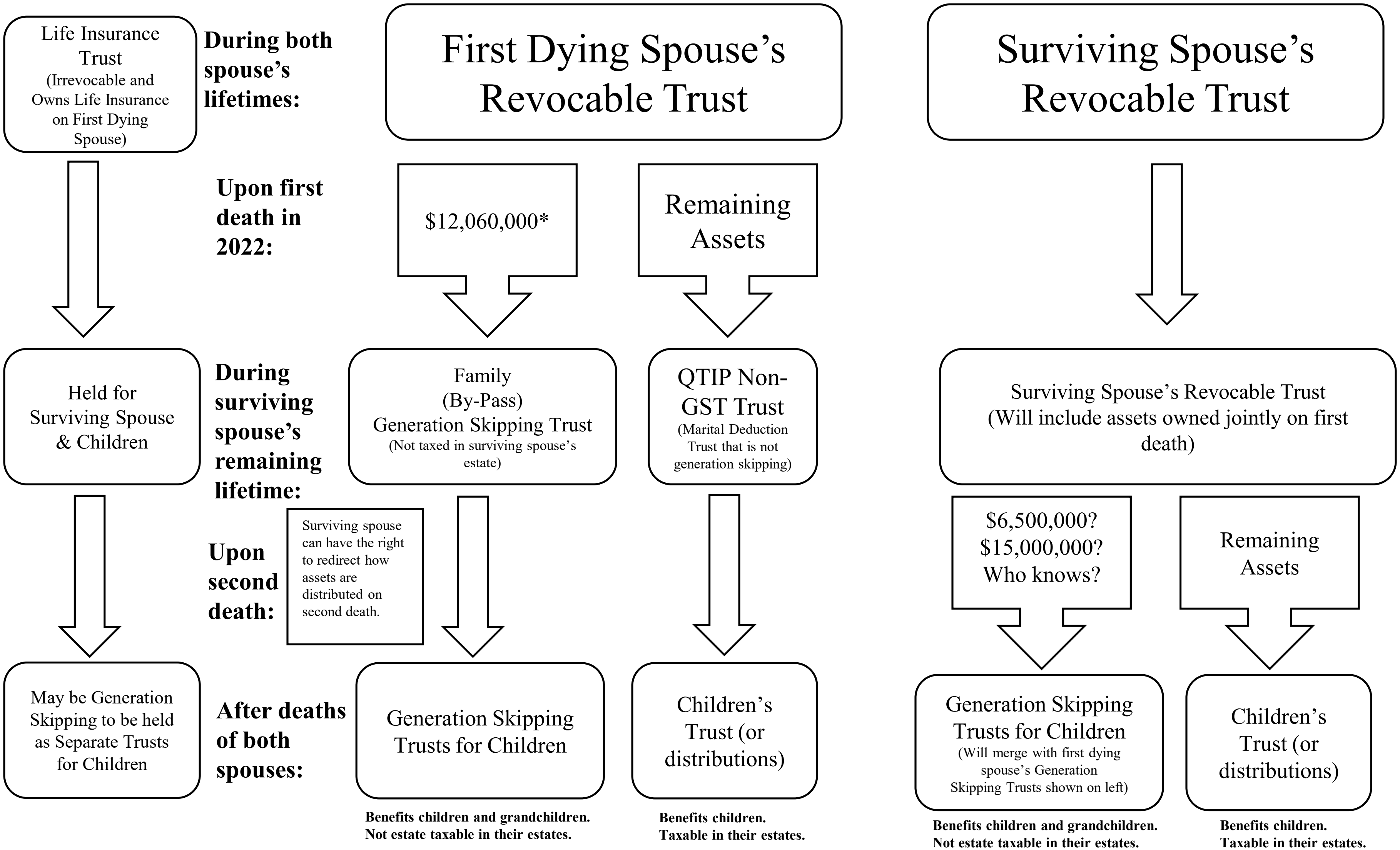
Year	Calendar Year	Value of Home Growing at 3% Per Year	Tax Basis	Gain on Sale	Income Taxes (28.8%)	Estate Tax Savings Less Income	Income Taxes (41.8%)	Estate Tax Savings Less Income
1	2021	$1,900,000	$1,655,000	$245,000	($70,560)	($70,560)	($102,410)	($102,410)
2	2022	$1,957,000	$1,655,000	$302,000	($86,976)	($86,976)	($126,236)	($126,236)
3	2023	$2,015,710	$1,655,000	$360,710	($103,884)	($103,884)	($150,777)	($150,777)
4	2024	$2,076,181	$1,655,000	$421,181	($121,300)	($121,300)	($176,054)	($176,054)
5	2025	$2,138,467	$1,655,000	$483,467	($139,238)	($139,238)	($202,089)	($202,089)
6	2026	$2,202,621	$1,655,000	$547,621	($157,715)	($157,715)	($228,905)	($228,905)
7	2027	$2,268,699	$1,655,000	$613,699	($176,745)	($176,745)	($256,526)	($256,526)
8	2028	$2,336,760	$1,655,000	$681,760	($196,347)	($196,347)	($284,976)	($284,976)
9	2029	$2,406,863	$1,655,000	$751,863	($216,537)	$440,082	($314,279)	$342,340
10	2030	$2,479,069	$1,655,000	$824,069	($237,332)	$533,052	($344,461)	$425,923
11	2031	$2,553,441	$1,655,000	$898,441	($258,751)	$628,812	($375,548)	$512,014
12	2032	$2,630,044	$1,655,000	$975,044	($280,813)	$727,444	($407,569)	$600,688
13	2033	$2,708,946	$1,655,000	$1,053,946	($303,536)	$829,035	($440,549)	$692,022
14	2034	$2,790,214	$1,655,000	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
15	2035	$2,873,920	$1,655,000					
16	2036	$2,960,138	$1,655,000					
17	2037	$3,048,942	$1,655,000					
18	2038	$3,140,411	$1,655,000					
19	2039	$3,234,623	$1,655,000					
20	2040	$3,331,662	$1,655,000					
21	2041	$3,431,611	$1,655,000					
22	2042	$3,534,560	$1,655,000					
23	2043	$3,640,596	$1,655,000					
24	2044	$3,749,814	$1,655,000					
25	2045	$3,862,309	$1,655,000					
26	2046	$3,978,178	$1,655,000					
27	2047	$4,097,523	$1,655,000					
28	2048	$4,220,449	$1,655,000					
29	2049	$4,347,063	$1,655,000					
30	2050	$4,477,474	$1,655,000					
31	2051	$4,611,799	$1,655,000					
32	2052	$4,750,153	$1,655,000					
33	2053	$4,892,657	$1,655,000					
34	2054	$5,039,437	$1,655,000					
35	2055	$5,190,620	$1,655,000					
36	2056	$5,346,339	$1,655,000					
37	2057	$5,506,729	$1,655,000					
38	2058	$5,671,931	$1,655,000					
39	2059	$5,842,089	$1,655,000					
40	2060	$6,017,351	$1,655,000					

Year 1 Home Value	Use of Gift Exemption	Percentage Rent Invested
$1,900,000	$971,344	7%

Value of Home Growth	Rent Percentage	QPRT Term Length (Years)
3.00%	8%	8

Do Not Use While Operating a Motor Vehicle or Chainsaw

Protective Trust Logistical Chart



*Assumes first spouse dies in 2022 when the exemption is $12,060,000, and that the surviving spouse dies in a later year when the estate tax exemption has changed. The estate tax exemption is $12,060,000, less any prior reportable gifts, for those that die in 2022, and increases with the "Chained CPI."

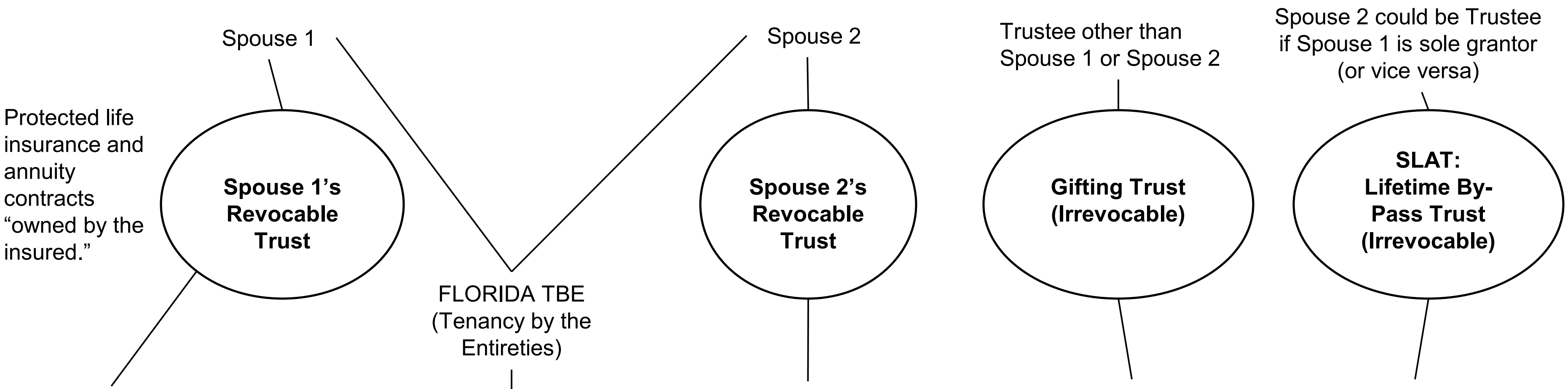
If the first spouse does not use the entire exemption amount, what remains may be added to the surviving spouse's allowance under the "portability rules" but will not grow with inflation, and will be lost if the surviving spouse remarries and the new spouse dies first, leaving no exemption.

Determining How to Best Allocate Assets as Between a Married Couple – Part 1

General Rules:

-Typically want each trust funded with at least $12,060,000 worth of assets on death for estate tax planning.

- May be funded from ½ of tenancy by the entireties assets via disclaimer and probate or by life insurance/pension/IRA assets.



Spouse 1's Revocable Trust

1. Assets held directly by revocable trust are subject to Spouse 1's creditor claims.
2. Direct ownership of limited partnership or LLC not in TBE may have charging order protection **(meaning that if a creditor obtains a lien on the limited partnership or LLC, the Spouse 1 cannot receive monies from the limited partnership or LLC without the creditor being paid).**

FLORIDA TBE (Tenancy by the Entireties)

1. Only exposed to creditors if **both spouses owe the creditor, if one spouse dies and the surviving spouse has a creditor, the spouses divorce, or state law or the state of residence changes.**
2. On death of one spouse, surviving spouse may disclaim up to ½ (if no creditor is pursuing the **deceased** spouse) to fund By-Pass Trust on first death.

Spouse 2's Revocable Trust

1. Safe from creditors of Spouse 1 but exposed to creditors of Spouse 2 (Maintain large umbrella liability insurance coverage to protect these assets.)
2. On Spouse 2's death, can be held **under a protective trust, which will** continue to be safe from creditors of Spouse 1, subsequent spouses, and "future new family."

Gifting Trust (Irrevocable)

1. Safe from creditors of both spouses.
2. If divorce occurs, should not be subject to rules for division of property between spouses.
3. May be controlled by the "entrepreneurial spouse" by using a Family Limited Partnership.

SLAT: Lifetime By-Pass Trust (Irrevocable)

1. **Safe from the creditors of the Grantor's spouse.**
2. If funded by one spouse, may benefit other spouse and children during the lifetime of both spouses.
3. Otherwise can be identical to gifting trust pictured to the left.

SEE NEXT PAGE FOR SECOND TIER PLANNING

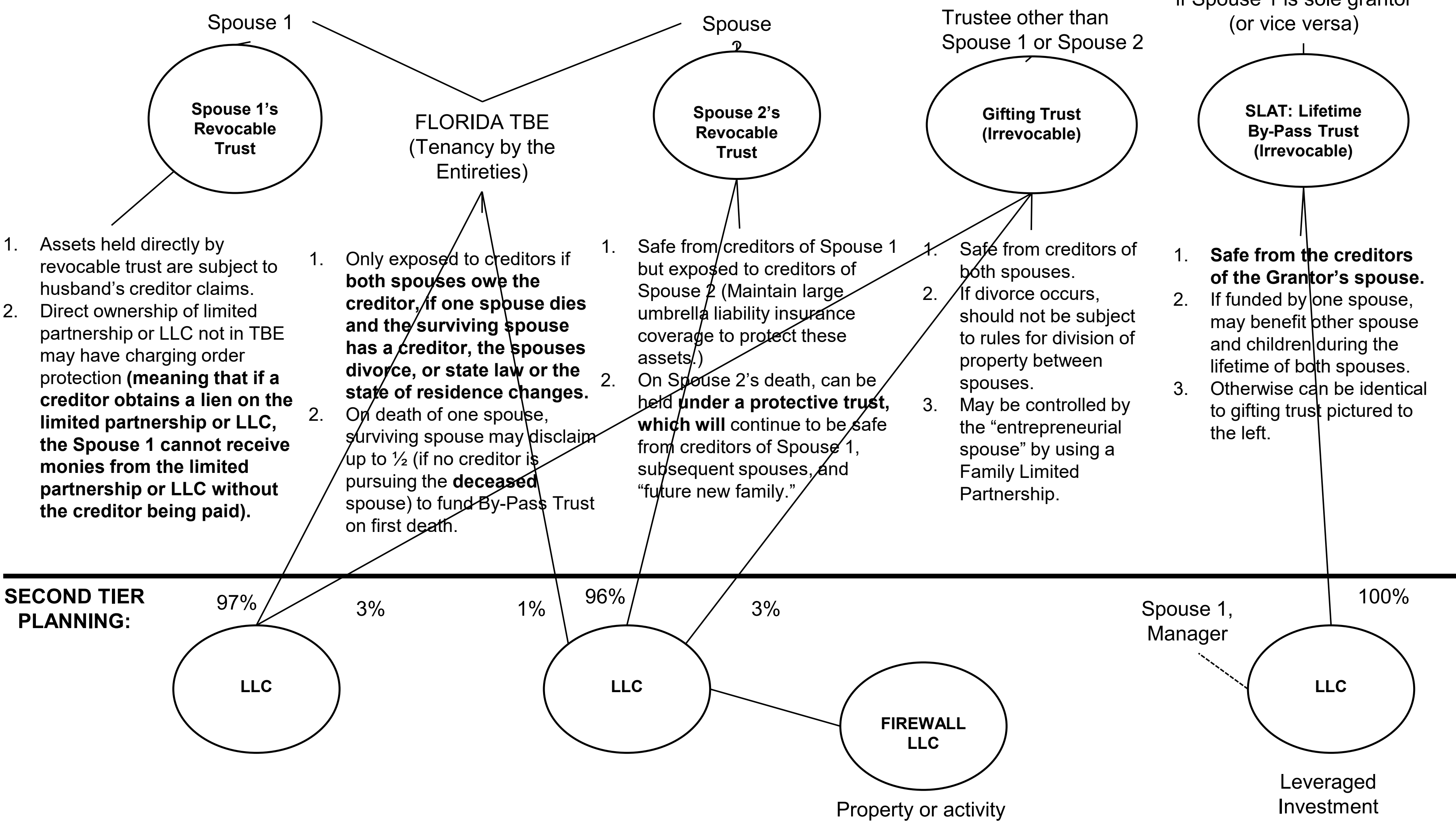
A COMMON SOLUTION - to use a limited partnership or similar mechanisms and have no assets directly in the "high risk" spouse's trust, half to two-thirds of the assets held as tenants by the entireties, and half to two-thirds of the assets directly in the "low risk" spouse's trust.

Determining How to Best Allocate Assets as Between a Married Couple – Part 2

<u>General Rules:</u>

-Typically want each trust funded with at least $12,060,000 worth of assets on death for estate tax planning.

- May be funded from ½ of tenancy by the entireties assets via disclaimer and probate or by life insurance/pension/IRA assets.



Spouse 1's Revocable Trust

1. Assets held directly by revocable trust are subject to husband's creditor claims.
2. Direct ownership of limited partnership or LLC not in TBE may have charging order protection **(meaning that if a creditor obtains a lien on the limited partnership or LLC, the Spouse 1 cannot receive monies from the limited partnership or LLC without the creditor being paid).**

Florida TBE

1. Only exposed to creditors if **both spouses owe the creditor, if one spouse dies and the surviving spouse has a creditor, the spouses divorce, or state law or the state of residence changes.**
2. On death of one spouse, surviving spouse may disclaim up to ½ (if no creditor is pursuing the **deceased** spouse) to fund By-Pass Trust on first death.

Spouse 2's Revocable Trust

1. Safe from creditors of Spouse 1 but exposed to creditors of Spouse 2 (Maintain large umbrella liability insurance coverage to protect these assets.)
2. On Spouse 2's death, can be held **under a protective trust, which will** continue to be safe from creditors of Spouse 1, subsequent spouses, and "future new family."

Gifting Trust (Irrevocable)

1. Safe from creditors of both spouses.
2. If divorce occurs, should not be subject to rules for division of property between spouses.
3. May be controlled by the "entrepreneurial spouse" by using a Family Limited Partnership.

SLAT: Lifetime By-Pass Trust (Irrevocable)

1. **Safe from the creditors of the Grantor's spouse.**
2. If funded by one spouse, may benefit other spouse and children during the lifetime of both spouses.
3. Otherwise can be identical to gifting trust pictured to the left.

<u>A COMMON SOLUTION</u> - to use a limited partnership or similar mechanisms and have no assets directly in the "high risk" spouse's trust, half to two-thirds of the assets held as tenants by the entireties, and half to two-thirds of the assets directly in the "low risk" spouse's trust.

THE MATH IS THE REALITY

There is a well-known saying, “the map is not the territory,”[1] that metaphorically illustrates the differences between belief and reality. Through our perception of the world, we create a ‘map’ of what we perceive to be reality. However, reality, or the “territory”, exists independent of our subjective experiences. We see as far as getting to the places where we want to go and do not always understand boundaries and directions that our senses do not perceive.

We find a similar conundrum in the estate tax planning world. Well-meaning advisors and their studious clients are not always running the numbers to help ensure the strategies and techniques they are using will provide the best-expected results. Their maps unfortunately leave a great deal of uncharted territory that can result in negative repercussions in the future.

We have found from years of experience that there is no substitute for taking out a calculator or spreadsheet and reviewing the most probable scenarios (as well as possible and unexpected situations) to determine the expected and non-expected outcome of any given technique in order to produce the most accurate map possible of the estate planning territory.

Some examples of fundamental principles and structural design situations that may be of interest to readers are as follows:

Mistake 1 – I Don’t have enough to be concerned

Many individuals and married couples believe that because the total value of their assets is under the $12,060,000 per person exemption, they do not have any need to plan for or have a concern about federal estate taxes.

More commonly, individuals or married couples who have approximately one-half or less of the exemption amount in assets and life insurance believe that they do not need to do any long-term planning.

These individuals often do not recognize the Time Value of Money and the fact that they continue to save even if they are not actively saving large sums.

The Time Value of Money is a term commonly given to the fact that over time and using conventional investment vehicles, the net worth of an individual or entity will grow in a geometric progression.

Mistake 1 – I Don't have enough to be concerned (Cont.)

While the New York Times has reported that it was not Albert Einstein who said, "Compound interest is the eighth wonder of the world. He who understands it, earns it ... he who doesn't ... pays it." Einstein likely recognized this principle, notwithstanding that he was reportedly not very materialistic.

The average rate of return for an appropriately allocated investment portfolio in the past 10 years has been approximately 7.28%, after taxes, according to credible literature.

The author's rate of return on the low-cost periodically reallocated portfolio of mutual funds that was selected in 1999 and changed rarely, and in only minor ways has grown at around 7% on average.

$1 million invested at 7% compounded annually reaches $1,967,151.36 in 10 years, $3,869,684.46 in 20 years, $6,612,255.04 in 30 years, and $14,974,457.84 in 40 years.

The author commonly tells clients that they can expect the value of their investment assets to double every ten years, which would assume a 7.2% annual after-tax rate of return.

Mistake 1 – I Don't have enough to be concerned (Cont.)

- The average annual rate of return of the S&P 500, which is what Warren Buffet has advised his wife to invest in after his death has been 10.71% since 1970, 11.83% since 1980, and 10.33% since 1990.
- At an average rate of growth of around 10%, $1 million invested today would turn into $2,593,742.46 in 10 years, $6,727,499.95 in 20 years, $17,449,402.27 in 30 years, $45,259,255.57 in 40
- Based upon the above, a married couple in their early 70s, who have a combined net worth of $10 million, and who will spend 2% of the value of their assets, may realize a 5% after-tax rate of return on their investments. This is in addition to social security, which averages approximately $35,000 a year for a married couple when at least one spouse was a higher earner plus any pension or other benefits and earnings from continuing to work. So, after ten years, assuming no further savings, their net worth will be $16,288,946.27 million, and if the estate tax exemption grows at 2.5% a year, based upon the chained inflation
- The chained inflation index does not include taxes not directly associated with the purchase of goods and services or investment items, such as stocks, bonds, real estate, and life insurance. The chained inflation index typically grows at approximately two-thirds of the average consumer price index - all items, which has been rising at 45.7% (for the consumer price index all items) and 39.7% open (for the chained inflation index) in the last 50 years index that applies to the estate and gift tax exemption. years.
- There are three main possibilities that the author cautions clients to be aware of regarding the current federal estate tax exemption. The current estate tax exemption of $11,700,000 per person may continue to grow at 2.5% per year. It may be slashed to one-half of its expected level on January 1, 2026, and then continue to grow at 2.5% a year. Lastly, the exemption may be reduced to $3.5 million in 2021 and grow with inflation. An illustration of how these different situations would affect a married couple with $10 million dollars saved is illustrated below.

1	2	3	4	5	6
Year	**Calendar Year**	**Exemption Without Reduction (2.5% inflation)**	**Exemption Goes to Half in 2026, then Grows with Inflation (2.5%)**	**Exemption Reduces to $3.5 Million in 2021, then Grows with Inflation (2.5%)**	**Example: Married Couple With $10 Million Increasing by 7% Annually**
1	2021	$23,400,000	$23,400,000	$7,000,000	$10,000,000
2	2022	$23,985,000	$23,985,000	$7,175,000	$10,700,000
3	2023	$24,584,625	$24,584,625	$7,354,375	$11,449,000
4	2024	$25,199,241	$25,199,241	$7,538,234	$12,250,430
5	2025	$25,829,222	$25,829,222	$7,726,690	$13,107,960
6	2026	$26,474,952	$13,237,476	$7,919,857	$14,025,517
7	2027	$27,136,826	$13,568,413	$8,117,854	$15,007,304
8	2028	$27,815,247	$13,907,623	$8,320,800	$16,057,815
9	2029	$28,510,628	$14,255,314	$8,528,820	$17,181,862
10	2030	$29,223,393	$14,611,697	$8,742,041	$18,384,592
11	2031	$29,953,978	$14,976,989	$8,960,592	$19,671,514
12	2032	$30,702,828	$15,351,414	$9,184,607	$21,048,520
13	2033	$31,470,398	$15,735,199	$9,414,222	$22,521,916
14	2034	$32,257,158	$16,128,579	$9,649,577	$24,098,450
15	2035	$33,063,587	$16,531,794	$9,890,817	$25,785,342
16	2036	$33,890,177	$16,945,089	$10,138,087	$27,590,315
17	2037	$34,737,432	$17,368,716	$10,391,539	$29,521,637
18	2038	$35,605,867	$17,802,934	$10,651,328	$31,588,152
19	2039	$36,496,014	$18,248,007	$10,917,611	$33,799,323
20	2040	$37,408,414	$18,704,207	$11,190,551	$36,165,275
21	2041	$38,343,625	$19,171,812	$11,470,315	$38,696,845
22	2042	$39,302,215	$19,651,108	$11,757,073	$41,405,624
23	2043	$40,284,771	$20,142,385	$12,051,000	$44,304,017
24	2044	$41,291,890	$20,645,945	$12,352,275	$47,405,299
25	2045	$42,324,187	$21,162,094	$12,661,082	$50,723,670
26	2046	$43,382,292	$21,691,146	$12,977,609	$54,274,326
27	2047	$44,466,849	$22,233,425	$13,302,049	$58,073,529
28	2048	$45,578,520	$22,789,260	$13,634,600	$62,138,676
29	2049	$46,717,983	$23,358,992	$13,975,465	$66,488,384
30	2050	$47,885,933	$23,942,967	$14,324,852	$71,142,570
31	2051	$49,083,081	$24,541,541	$14,682,973	$76,122,550
32	2052	$50,310,158	$25,155,079	$15,050,047	$81,451,129
33	2053	$51,567,912	$25,783,956	$15,426,299	$87,152,708
34	2054	$52,857,110	$26,428,555	$15,811,956	$93,253,398
35	2055	$54,178,538	$27,089,269	$16,207,255	$99,781,135
36	2056	$55,533,001	$27,766,501	$16,612,436	$106,765,815
37	2057	$56,921,326	$28,460,663	$17,027,747	$114,239,422
38	2058	$58,344,360	$29,172,180	$17,453,441	$122,236,181
39	2059	$59,802,969	$29,901,484	$17,889,777	$130,792,714
40	2060	$61,298,043	$30,649,021	$18,337,021	$139,948,204

1	2	3	4	5
Year	**Calendar Year**	**Estate Tax if Double the Exemption**	**Estate Tax if Exemption Goes to Half**	**Estate Tax if Exemption Goes to $3.5 Million**
1	2021	$0	$0	$1,200,000
2	2022	$0	$0	$1,410,000
3	2023	$0	$0	$1,637,850
4	2024	$0	$0	$1,884,878
5	2025	$0	$0	$2,152,508
6	2026	$0	$315,216	$2,442,264
7	2027	$0	$575,556	$2,755,780
8	2028	$0	$860,077	$3,094,806
9	2029	$0	$1,170,619	$3,461,217
10	2030	$0	$1,509,158	$3,857,021
11	2031	$0	$1,877,810	$4,284,369
12	2032	$0	$2,278,842	$4,745,565
13	2033	$0	$2,714,687	$5,243,078
14	2034	$0	$3,187,948	$5,779,549
15	2035	$0	$3,701,419	$6,357,810
16	2036	$0	$4,258,091	$6,980,891
17	2037	$0	$4,861,169	$7,652,039
18	2038	$0	$5,514,087	$8,374,730
19	2039	$0	$6,220,526	$9,152,685
20	2040	$0	$6,984,427	$9,989,890
21	2041	$141,288	$7,810,013	$10,890,612
22	2042	$841,363	$8,701,806	$11,859,420
23	2043	$1,607,699	$9,664,653	$12,901,207
24	2044	$2,445,363	$10,703,741	$14,021,210
25	2045	$3,359,793	$11,824,630	$15,225,035
26	2046	$4,356,814	$13,033,272	$16,518,687
27	2047	$5,442,672	$14,336,042	$17,908,592
28	2048	$6,624,062	$15,739,766	$19,401,630
29	2049	$7,908,160	$17,251,757	$21,005,167
30	2050	$9,302,655	$18,879,842	$22,727,087
31	2051	$10,815,788	$20,632,404	$24,575,831
32	2052	$12,456,388	$22,518,420	$26,560,433
33	2053	$14,233,918	$24,547,501	$28,690,564
34	2054	$16,158,515	$26,729,937	$30,976,577
35	2055	$18,241,039	$29,076,747	$33,429,552
36	2056	$20,493,125	$31,599,726	$36,061,351
37	2057	$22,927,238	$34,311,503	$38,884,670
38	2058	$25,556,729	$37,225,601	$41,913,096
39	2059	$28,395,898	$40,356,492	$45,161,175
40	2060	$31,460,065	$43,719,673	$48,644,473

Mistake 1 – I Don’t have enough to be concerned (Cont.)

For example, assuming chained inflation will increase the exemption amount by 2.5% per year and the couple has $10 million dollars that will increase in value by 7% a year, the estate tax in year 15 will be $6,357,810 if the estate tax exemption goes to $3,500,000 per person, or $3,701,419 if the estate tax exemption is reduced by half in 2026.

This couple would not have an estate tax issue until after the year 2041 if the $12,060,000 exemption is not reduced before then.

Under the Sanders Plan introduced in the Senate with some support in March of 2021, the exemption would go to $3,500,000 effective January 1, 2022.

Taking a look at the above chart, which should probably be shared with all married couples with net worth expected to well exceed $7 million, there is certainly a possible cause for concern. However there are fairly easy ways to handle the planning that does not have to be expensive or restrict the assets that may be needed to support the married couple, and then the surviving spouse, in a reasonable manner.

How Much to Give and When?

Seeing the above numbers can be a sobering experience, and while pessimistic clients may indicate that this result is not likely for a myriad of reasons, it should be recognized that the result is not unlikely. Things will be worse from a tax standpoint if the economics are better.

The question becomes what the married couple or individual can do to alleviate the risk of federal estate tax. Experienced estate and trust planners know to start with the low-hanging fruit, which includes the use of irrevocable life insurance trusts, split-dollar financing to enable the couple to access the surrender or loan values of permanent life insurance policies.

Other low-hanging fruit can include a Qualified Personal Residence Trust because the couple can continue to live in their present home without paying rent until many years up the road when less active and more able to afford rent. Included could be a home purchased with the proceeds from the sale of their current home that can be used in part to support one of the spouses. This is with the assumption that each spouse forms a QPRT, and that one QPRT is for the health, education, and maintenance of the spouse who has a longer life expectancy and will be funded with ownership of one-half of the home. After the possessory term, the other half of the home can transfer to a separate QPRT for the prime benefit of the descendants. Still, the other spouse may be added as a beneficiary to such a second QPRT if formed in an asset protection jurisdiction. And if formed and administered from an asset protection jurisdiction, and the grantor spouse has an unexpected financial need after establishing the trust, as verified by Trust Protectors acting in a non-fiduciary manner.

How Much to Give and When? (Cont.)

However, it is noteworthy that homes generally grow in value at a rate much lower than appropriately managed investment portfolios. While the median home may grow in value at a 3-3.5% rate on a national average, Your Home gets one year older every year and is not always 20 years old.

Approximately 80% of the average home consists of the physical structure, which typically has a useful life of 60 years. Therefore, a $1 million home loses 1.67% of $900,000 of value, growing each year geometrically, and may be growing at only 2% per year.

Nevertheless, if the value of a home will double in 20 years, it can make sense to use a small portion of a client's estate tax exemption amount now to reduce what will be subject to federal estate tax later.

As an example, assume that Mork and Mindy are married and would now be 70 years old. They each expect to live past age 85 and to stay in the home for their entire lifetimes.

How Much to Give and When? (Cont.)

Each of them transfers half of the home, worth $1 million, to a 10-year QPRT. They each take a 15% discount for partial interest ownership, so the total gift is $850,000. Based upon a 7520 rate of 1.2% the remainder value of a ten-year QPRT is $754,420.90. The taxable value of the gift is $512,593.

Using $512,593 each of Mork and Mindy's exemptions and assuming a 3% rate of return on the house. The home will be worth $598,287 in 15 years that will have escaped the estate tax system. Any major improvements made on the home are considered a gift to the trust. The amount of the taxable gift would be based on the fair market value of the improvement.

Further, assuming that rent rates will be 8% of the value of the home, working Mindy's estate will be reduced by 8% per year in rent, which could save $598,287 in estate tax if invested at 7% by year 15, assuming that Mork and Mindy do not pass away before the end of the QPRT term.

THE RULE OF (APPROXIMATELY) 72
By: Brandon Ketron Esq., CPA

The shorthand method of determining how many years it will take for money to double in value at any particular rate of return.

The Rule of 72 is an old trick used to determine how long it will take an investment to double at a fixed rate of annually compounded interest.

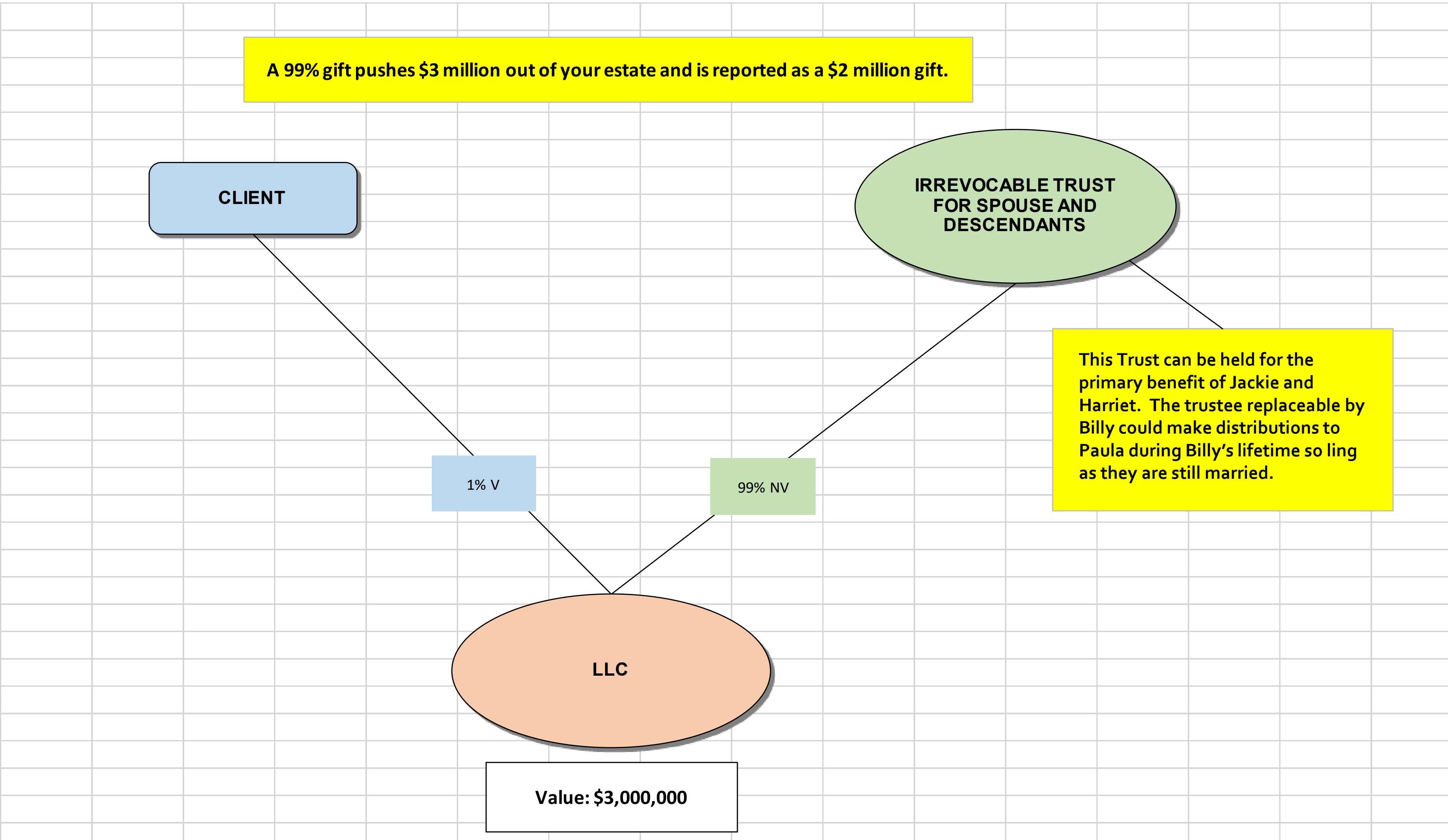
The Rule works by dividing 72 by the fixed interest rate. The result is how many years it will take the investment to double in value. For example if I invested $50,000 at 10% in year 1, it will take roughly 7.2 years (72 ÷ 10 = 7.2) for the investment to reach $100,000.

The Rule only provides an estimate and gets less accurate as the fixed interest rate becomes higher. However the Rule is a useful tool to use in order to give clients a quick estimate on how long it will take for their investment to double.

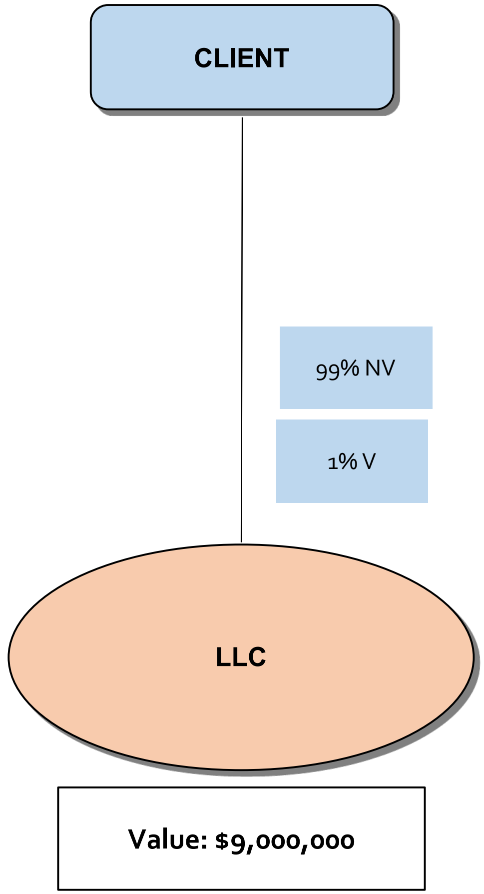
Here is a chart that shows the Rule of 72 compared to the actual number of years it takes an investment to double in order to get a better representation on how accurate the Rule of 72 is.

Rate of Return	Rule of 72	Actual # of Years	Difference
2%	36.00	35.00	1.00
3%	24.00	23.45	0.55
4%	18.00	17.67	0.33
5%	14.40	14.20	0.20
6%	12.00	11.89	0.11
7%	10.29	10.24	0.05
8%	9.00	9.01	-0.01
9%	8.00	8.04	-0.04
10%	7.20	7.26	-0.06
15%	4.80	4.96	-0.16
20%	3.60	3.79	-0.19
25%	2.88	3.10	-0.22
50%	1.44	1.67	-0.23
75%	0.96	1.19	-0.23
100%	0.72	1.00	-0.25

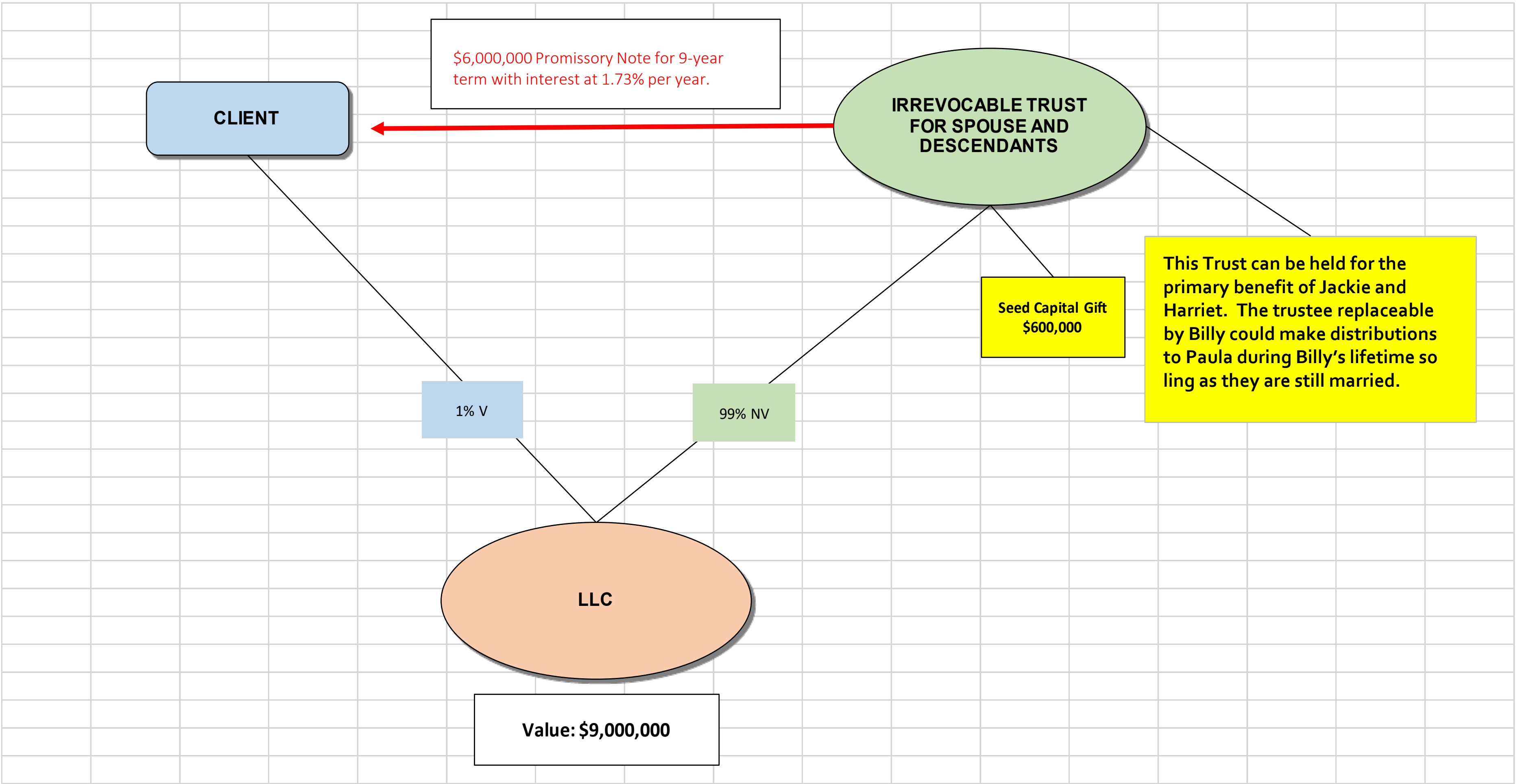
Gifting a 99% Non-voting Member Interest



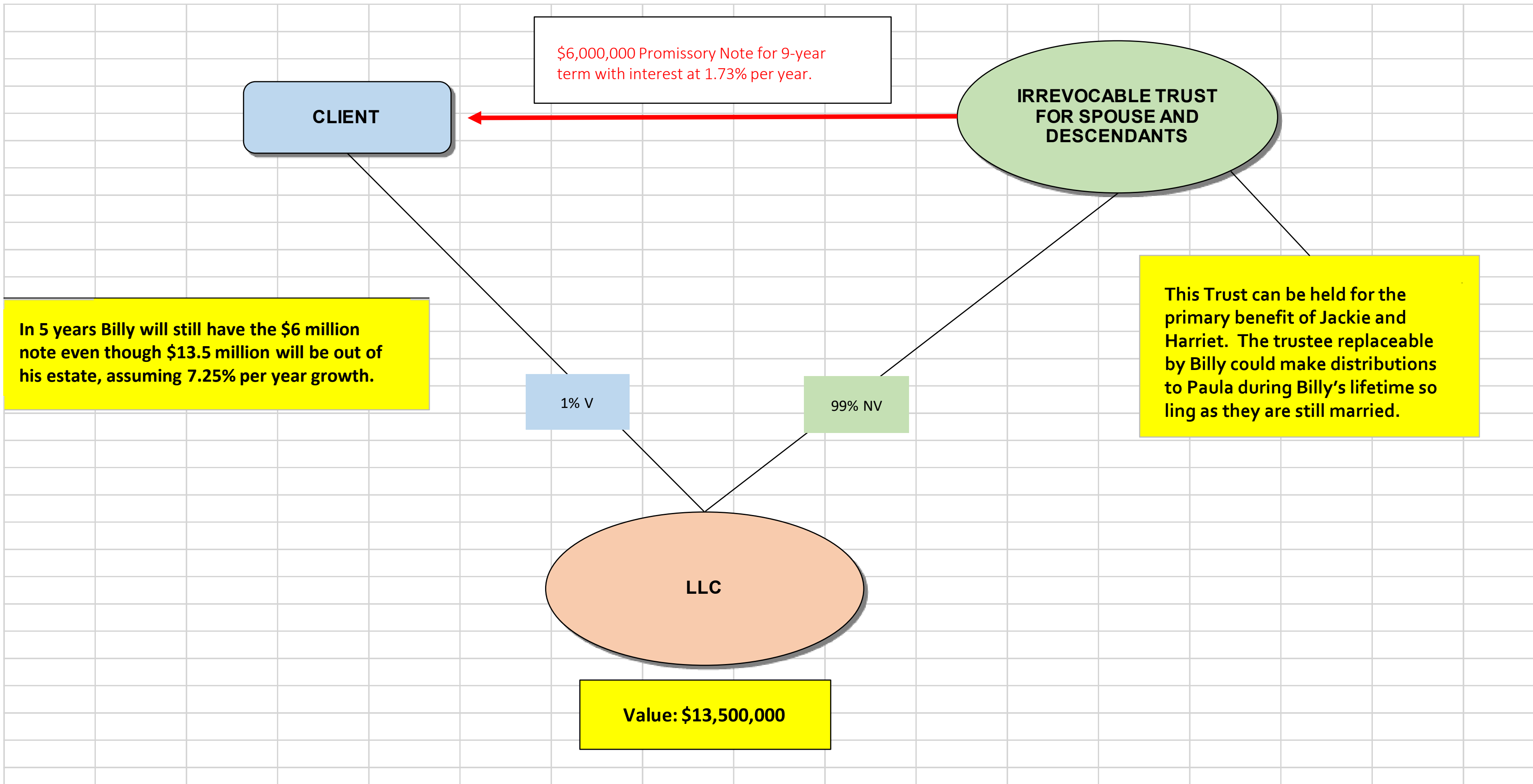
Before Installment Sale to Trust Planning



Immediately After Installment Sale Planning



5 Years After Installment Sale Planning



Tax Exclusive Nature Of Estate And Gift Tax

Calculations

	No Gift	Gift
Value of the estate	10,000,000	10,000,000
Gift amount	0	2,000,000
Gift tax (40%)	0	800,000
Value of the estate after deducting gift and gift tax	10,000,000	7,200,000
Estate tax (40%)	4,000,000	2,880,000
Value of the estate after estate tax	6,000,000	4,320,000
Amount family gets from the estate and gifts	6,000,000	6,320,000

Interest Rates That Can Be Used For A Note Between Family Members or Entities
(The Semi-Annual Applicable Federal Rate)

	Short Term Rates for 2021 If Loan is a Demand Loan or for 3 Years or Less No Penalty for Prepayment	Mid Term Rates for 2021 If Loan is for 3 Years or More But Not Over 9 Years No Penalty for Prepayment	Long Term Rates for 2021 If Loan is for More than 9 Years No Penalty for Prepayment
August	0.19%	1.00%	1.88%
September	0.17%	0.86%	1.72%
October	0.18%	0.91%	1.73%
November	0.22%	1.08%	1.85%
December	0.33%	1.26%	1.89%

$1,000,000 PROMISSORY NOTE/SCIN/PRIVATE ANNUITY/GRAT ALTERNATIVES

December 2021 / CLIENT AGE 73

Alternatives: (Using December 2021 Applicable Federal Rates and December 2021 7520 Rate of 1.6%)

TRUST (PURCHASER) → **CLIENT** (AGE 73)

- <3 Year Interest Only Installment Note @ .33% - **Payment = $3,300 per year***
- 9 Year Interest Only Installment Note @ 1.26% - **Payment = $12,600 per year***
- <9 Year Interest Only Installment Note @ 1.89% - **Payment = $18,900 per year***
- 12 Year Interest Only SCIN @ 6.587% - **Payment = $69,736 per year***
- Private Annuity Level Annual Payment - **Payment = $92,692 per year***
- 3 Year Level Payment GRAT @ .8% - **Payment = $344,056.43 per year***
- **3 Year GRAT @ .8% - **Initial Payment = $284,107.05 and Increases Annually by 20%**

* Notes would have no penalty for prepayment – minimum payments are shown above.
Self-cancelling installment Notes must balloon before life expectancy as measured at time of Note being made. Client's life expectancy is 12.33 years under IRS tables. The SCIN calculations above are based on a 12-year note term.

** This GRAT assumes that each annuity payment will increase by 20% each year. **All GRATs assume no taxable gift on funding**
If interest rates increase in the future, consider the use of a 20-year interest only note at the 2.07% long-term AFR, locking in a 2.07% rate for the next 20 years.

Note: December 2021 rates for annual compounding are:
Short-Term -- .33%
Mid-Term – 1.26%
Long-Term – 1.9%
} Usable through February 28, 2022 for a "sale or exchange"

$10,000,000 PROMISSORY NOTE/SCIN/PRIVATE ANNUITY ALTERNATIVES
JANUARY 2021
FRED AND WILMA FLINSTONE

ALTERNATIVES: (USING JANUARY 2021 APPLICABLE FEDERAL RATE AND 7520 RATE)

All Notes and the Private Annuity are based on an initial sale amount of $10,000,000

FRED (AGE 66 FOR TAX PURPOSES)

TRUST (PURCHASER)

- 3 Year Interest Only Installment Note @ .14% - **Payment = $14,000 per year***
- 9 Year Interest Only Installment Note @ .52% - **Payment = $52,000 per year***
- 10+ Year Interest Only Installment Note @ 1.35% - **Payment = $135,000 per year***
- 17 Year Interest Only SCIN @ 4.210% - **Payment = $421,000 per year***
- Private Annuity Level Annual Payments - **Payment = $626,532 per year**

* Notes would have no penalty for prepayment - minimum payments are shown above.
Self-Canceling Installment Notes (SCINs) must balloon before life expectancy as measured at time of Note being made. Fred's life expectancy is 17.05 years under IRS tables.
The SCIN calculation above is based on a 17-year note term.

Note: January 2021 rates are:
Short-Term – .14%
Mid-Term -- .52%
Long-Term – 1.35%
(Short-Term, Mid-Term, Long-Term:) Usable through March 31, 2021
Section 7520 Rate – .6%

ALTERNATIVES: (USING JANUARY 2021 APPLICABLE FEDERAL RATE AND 7520 RATE)

All Notes and the Private Annuity are based on an initial sale amount of $10,000,000

WILMA (AGE 66 FOR TAX PURPOSES)

TRUST (PURCHASER)

- 3 Year Interest Only Installment Note @ .14% - **Payment = $14,000 per year***
- 9 Year Interest Only Installment Note @ .52% - **Payment = $52,000 per year***
- 10+ Year Interest Only Installment Note @ 1.35% - **Payment = $135,000 per year***
- 17 Year Interest Only SCIN @ 4.210% - **Payment = $421,000 per year***
- Private Annuity Level Annual Payments - **Payment = $626,532 per year**

* Notes would have no penalty for prepayment - minimum payments are shown above.
Self-Canceling Installment Notes (SCINs) must balloon before life expectancy as measured at time of Note being made. Wilma's life expectancy is 17.05 years under IRS tables.
The SCIN calculation above is based on a 17-year note term.

Note: January 2021 rates are:
Short-Term – .14%
Mid-Term – .52%
Long-Term – 1.35%
(Short-Term, Mid-Term, Long-Term:) Usable through March 31, 2021
Section 7520 Rate – .6%

ALTERNATIVES: (USING JANUARY 2021 APPLICABLE FEDERAL RATE AND 7520 RATE)

All Notes and the Private Annuity are based on an initial sale amount of $10,000,000

FRED & WILMA, jointly

TRUST (PURCHASER)

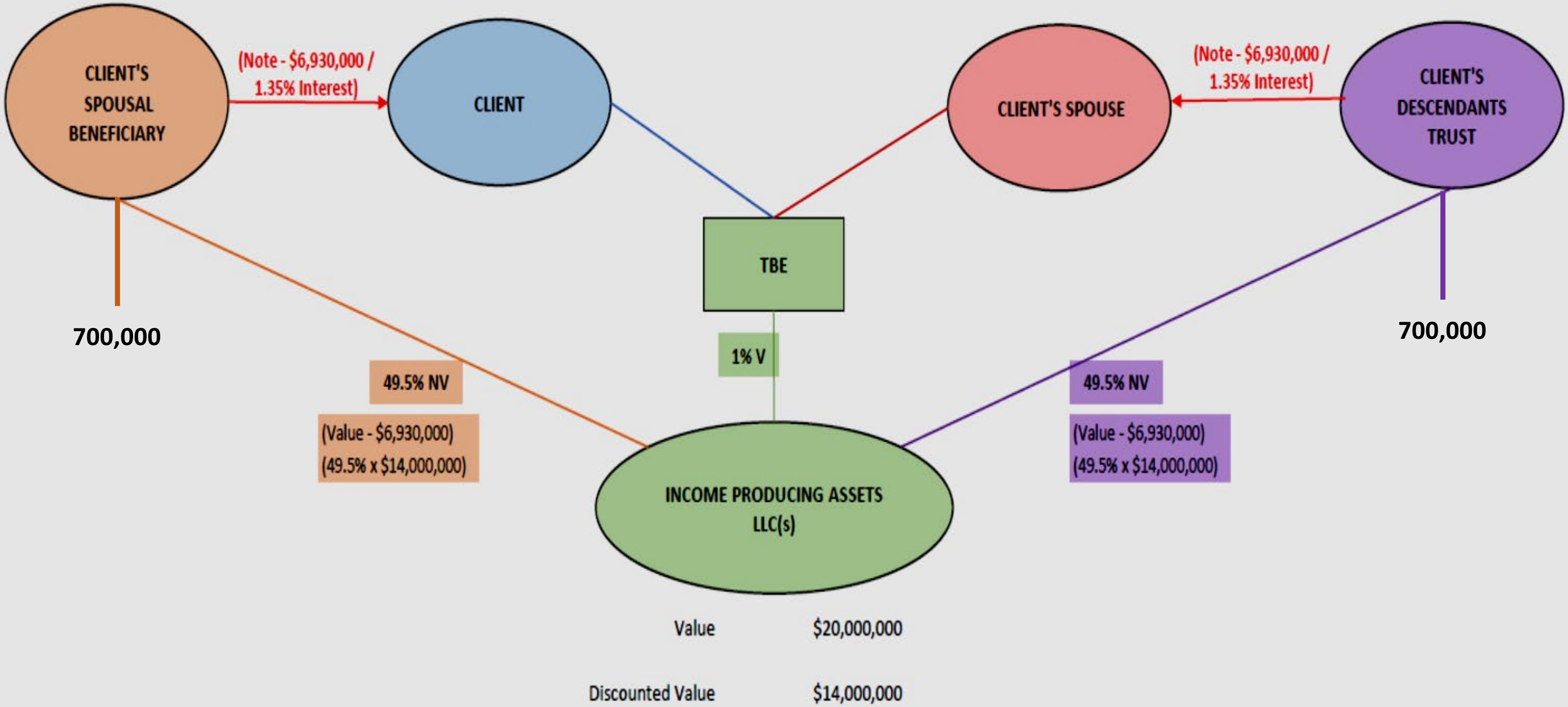
- 3 Year Interest Only Installment Note @ .14% - **Payment = $14,000 per year***
- 9 Year Interest Only Installment Note @ .52% - **Payment = $52,000 per year***
- 10+ Year Interest Only Installment Note @ 1.35% - **Payment = $135,000 per year***
- 21 Year Interest Only SCIN @ 3.205% - **Payment = $320,500 per year***
- Private Annuity Level Annual Payments - **Payment = $502,690 per year**

* Notes would have no penalty for prepayment - minimum payments are shown above.
Self-Canceling Installment Notes (SCINs) must balloon before life expectancy as measured at time of Note being made. Fred & Wilma's joint life expectancy is 21.96 years under IRS tables.
The SCIN calculation above is based on a 21-year note term.

Note: January 2021 rates are:
Short-Term -- .14%
Mid-Term – .52%
Long-Term -- 1.35%
(Short-Term, Mid-Term, Long-Term:) Usable through March 31, 2021
Section 7520 Rate – .6%

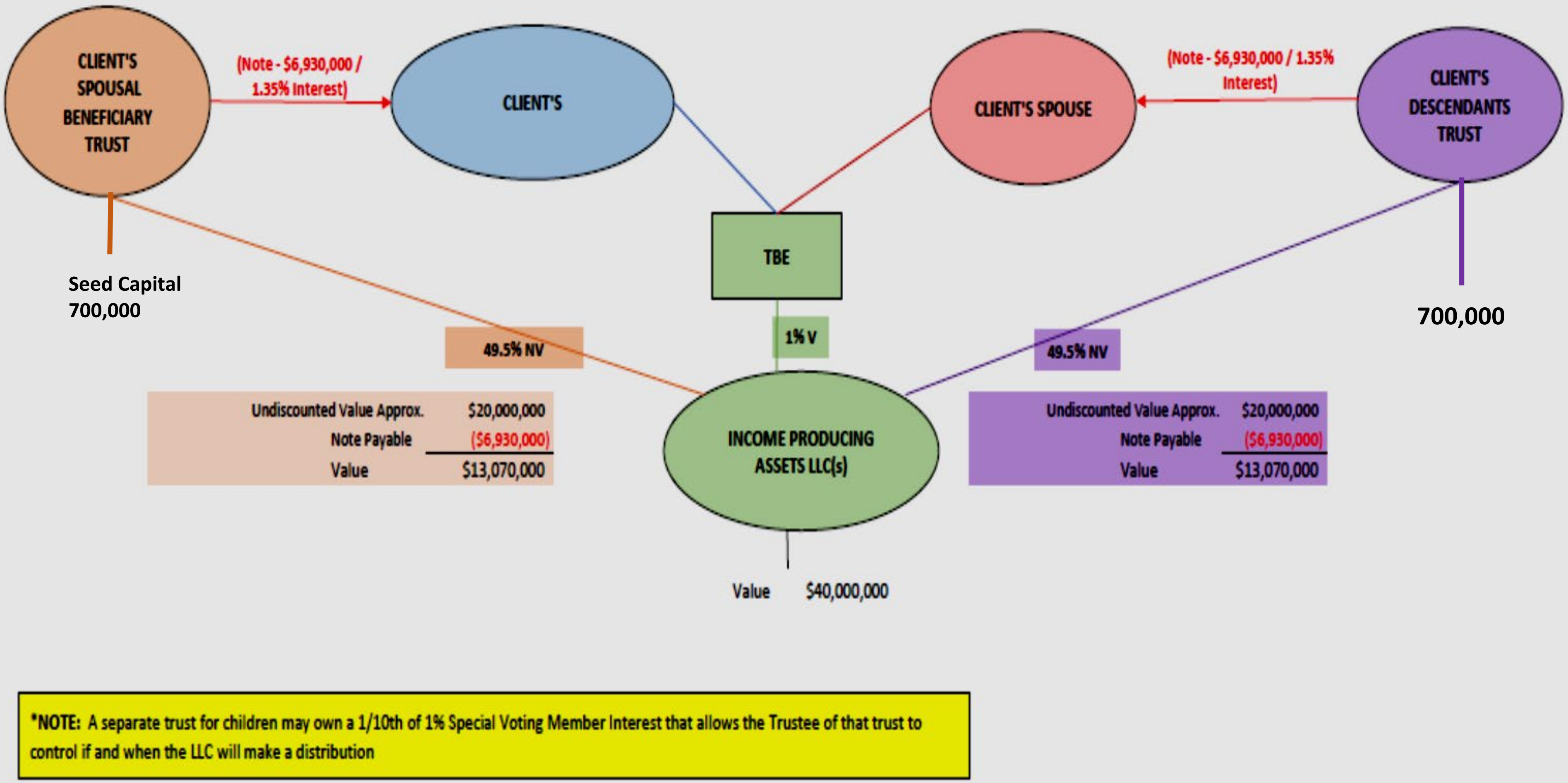
Use Of Installment Sales In Estate Planning

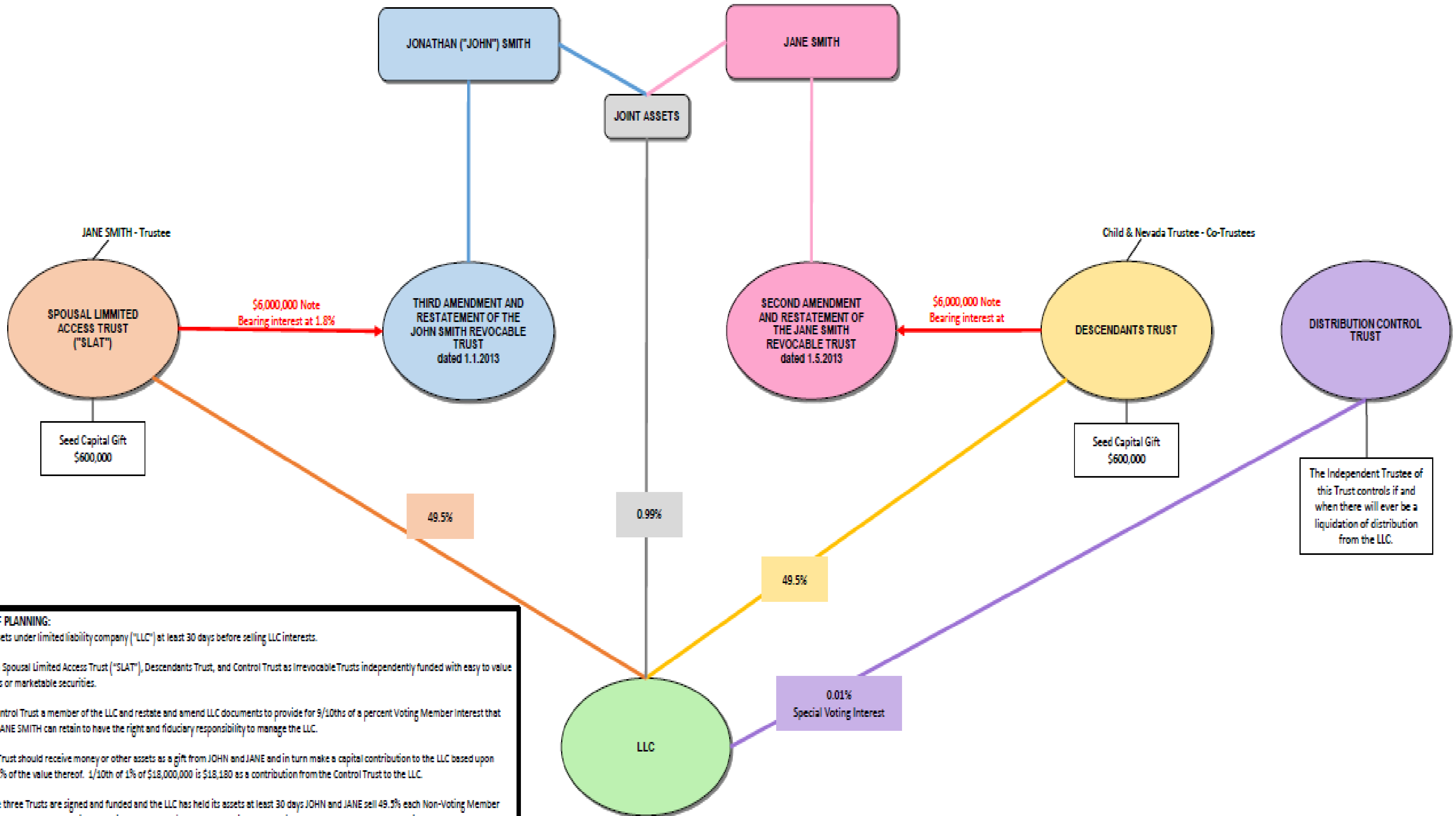
INSTALLMENT SALE (1 OF 2)



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

INSTALLMENT SALE – 10 YEARS LATER (2 OF 2)





ORDER OF PLANNING:

1. Place assets under limited liability company ("LLC") at least 30 days before selling LLC interests.

2. Establish Spousal Limited Access Trust ("SLAT"), Descendants Trust, and Control Trust as Irrevocable Trusts independently funded with easy to value cash, stocks or marketable securities.

3. Make Control Trust a member of the LLC and restate and amend LLC documents to provide for 9/10ths of a percent Voting Member Interest that JOHN and JANE SMITH can retain to have the right and fiduciary responsibility to manage the LLC.

4. Control Trust should receive money or other assets as a gift from JOHN and JANE and in turn make a capital contribution to the LLC based upon 1/10th of 1% of the value thereof. 1/10th of 1% of $18,000,000 is $18,180 as a contribution from the Control Trust to the LLC.

5. Once the three Trusts are signed and funded and the LLC has held its assets at least 30 days JOHN and JANE sell 49.5% each Non-Voting Member Interest in the LLC to the respective Trusts in exchange for $6,000,000 Promissory Notes (the actual amount of each Note will be based upon an appraisal report to be received from a professional valuation firm and the discount may range from 30% to 40% depending upon the assets of the LLC and its circumstances).

6. In 2022 file a gift tax return at least disclosing the seed capital gifts - recommended to disclose the installment sales so that the IRS would only have 3 years from the filing of the gift tax return with full disclosure to challenge these.

7. Watch the political process - can forgive Notes or turn them partially into elf-cancelling if and when the time is right <u>if there is warning.</u>

The Biden 2-Step: Estate Tax Avoidance For High Net Worth Taxpayers

Leimberg Information Services, Inc.

Steve Leimberg's Estate Planning
Email Newsletter Archive Message #2813

Date:10-Aug-20

Subject: Alan S. Gassman, Jerome B. Hesch & Martin B. Shenkman on the Biden 2-Step for Wealthy Families: Why Affluent Families Should Immediately Sell Assets to Irrevocable Trusts for Promissory Notes Before Year-End and Forgive the Notes If Joe Biden Is Elected, A/K/A What You May Not Know About Valuing Promissory Notes and Using Lifetime Q-Tip Trusts

"Wealthy individuals who postpone taking appropriate action to eliminate estate taxes may not be able to use the $11,580,000 gift tax exemption after 2020. A political change in November 2020 could lead to lower estate and gift tax exemptions effective as early as January 1, 2021. In Quarty v. U.S., the ninth Circuit Court of Appeals ruled that a retroactive tax increase does not violate the Constitution. The court held that the increase in the estate and gift tax rates was a rational means to raise revenue, noting that an increase in tax rate was merely an increase of an existing tax, not a wholly new tax, citing other court decisions as precedent. Reducing the exemption is not a new tax. The time to act is now!

Implementation of the planning process can take several months. Consideration of the step-transaction doctrine and the reciprocal trust doctrine might suggest planning for time between various components of a plan. Using valuation discounts often requires time for an appraisal. Changing the ownership of assets, may require getting approval from co-owners or lenders with due on change in ownership provisions, complying with terms of governing documents for the entities to be transferred, and more. Determining planning decisions, which can take time. Additionally, valuation discounts, note sale transactions, and other techniques, may be subject to gift tax return audits and possible IRS challenges. What is not always addressed is that the stress, costs, and risks of discount planning can be reduced significantly by using the '2-Step Process' described below.

This newsletter is designed to explain the fundamental legal and financial principles underlying the concepts we will discuss and why those concepts should be implemented over two calendar years (2020 and 2021), or better in 2020, to best position clients for a possible reduction in the estate tax

What Is The Biden 2-Step?

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

(A) eliminate or reduce federal estate taxes, and

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

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

Christopher@gassmanpa.com

What Is The Biden 2-Step? – *Cont'd*

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

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

What Is The Biden 2-Step? – *Cont'd*

(Back to the Biden 2-Step)

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

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

What Is The Biden 2-Step? – *Cont'd*

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

(A) simply forgive some or all the note.

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

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

This will be discussed on later slides.

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

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

a) (§ 2036(a)(1)) - The transferor had any written or oral agreement or understanding to be able to have to receive <u>any</u> "fruit from the tree." The ability to put one cow on a large farm is enough to cause the entire farm to be subject to estate tax.

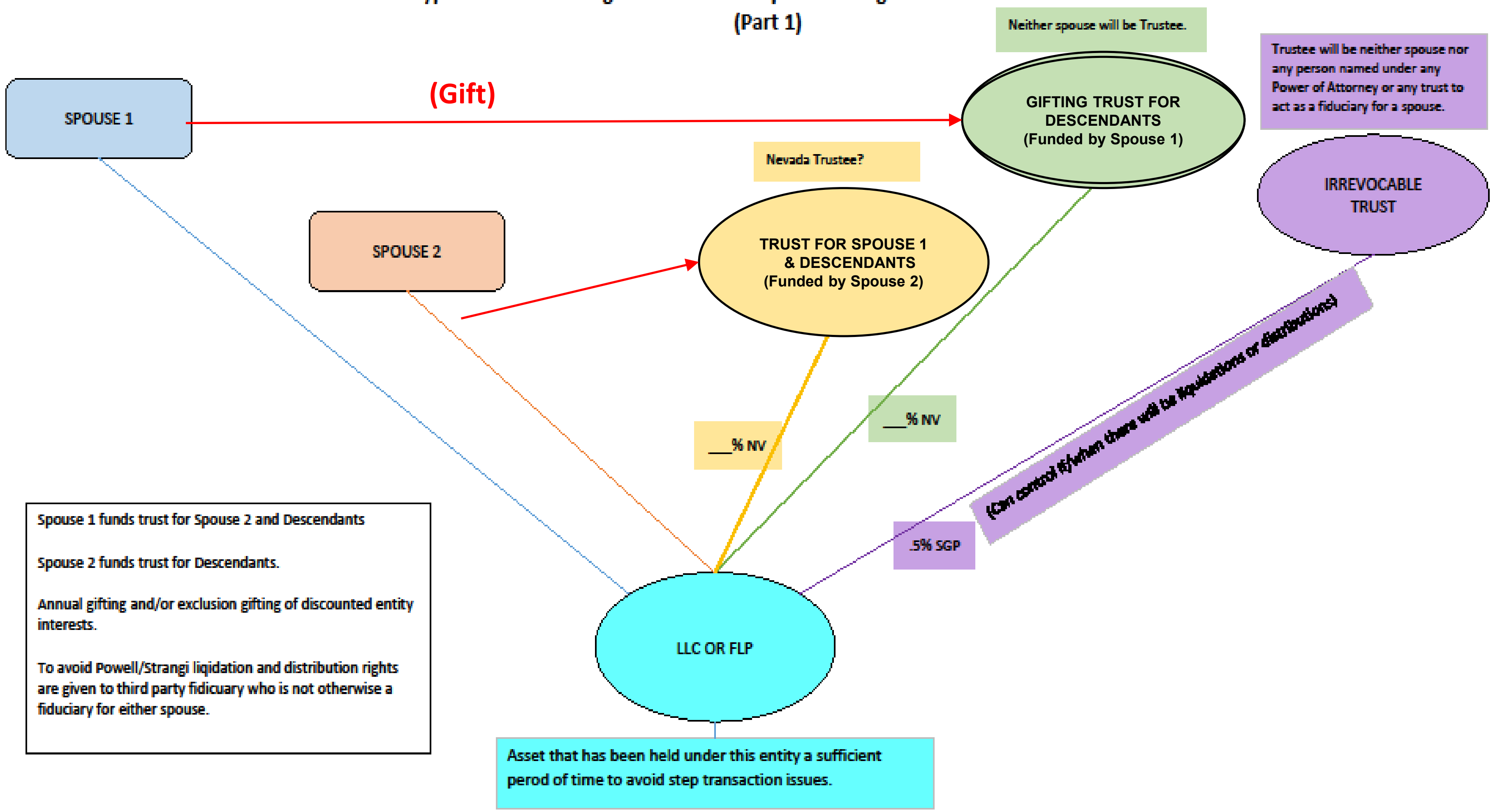
b) (§ 2036(a)(2)) - The grantor retains any right exercisable *in conjunction with anyone* to control if and when the property will be received by others.

The *Powell* and *Strangi* Tax Court cases rely on the language *"a power in conjunction with any other person."* **Example:** The sole general partner is a S corporation. Because decedent was a minority shareholder, decedent was not in control of the general partner. The "in conjunction" language was not limited to only a power that could control.

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

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

Typical Annual Gifting and Use of Exemption Gifting for Estate Taxable Clients (Part 1)



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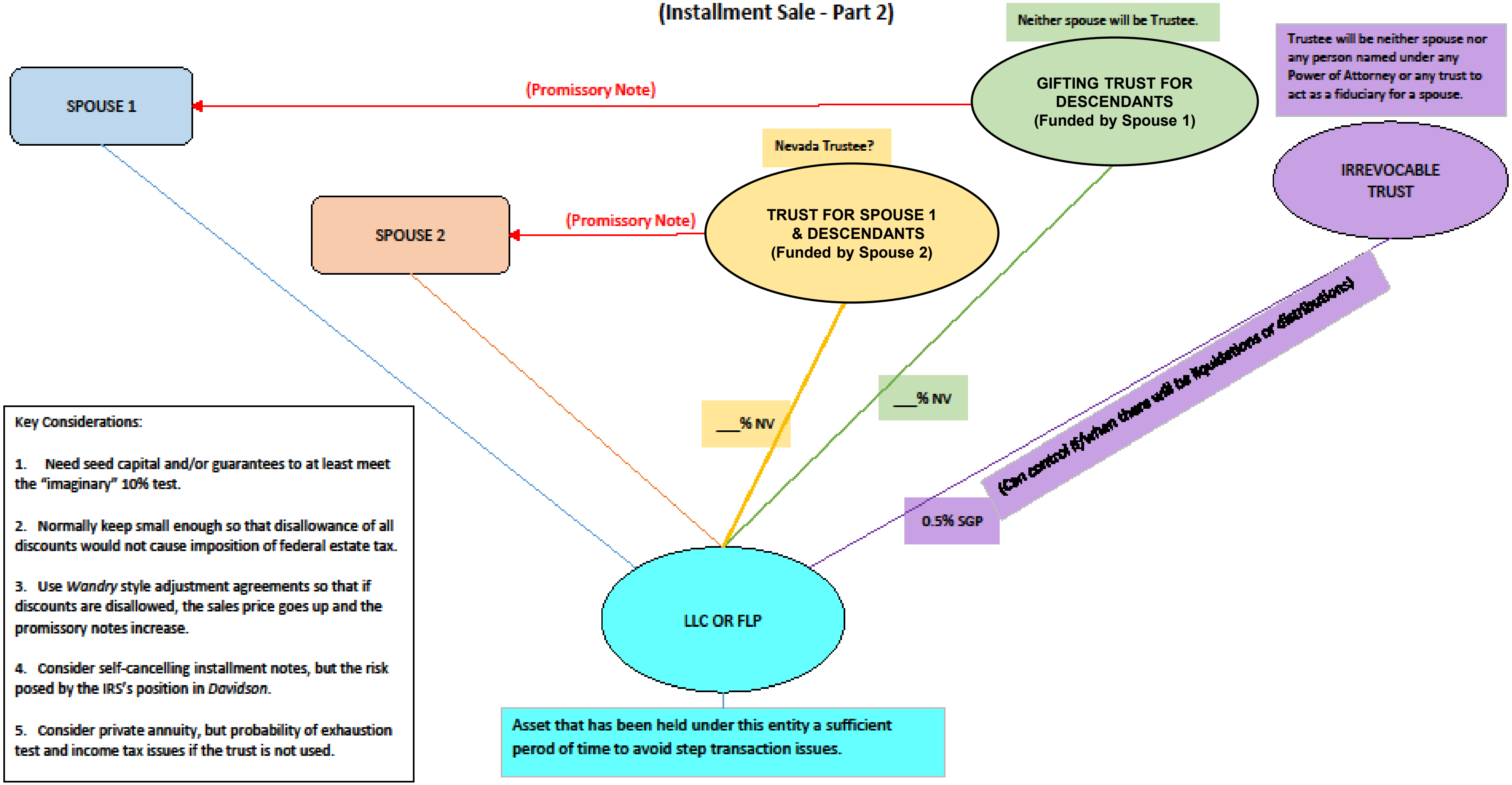
TYPICAL ANNUAL GIFTING AND USE OF EXEMPTION GIFTING FOR ESTATE TAXABLE CLIENTS
(Installment Sale - Part 2)



Key Considerations:

1. Need seed capital and/or guarantees to at least meet the "imaginary" 10% test.

2. Normally keep small enough so that disallowance of all discounts would not cause imposition of federal estate tax.

3. Use *Wandry* style adjustment agreements so that if discounts are disallowed, the sales price goes up and the promissory notes increase.

4. Consider self-cancelling installment notes, but the risk posed by the IRS's position in *Davidson*.

5. Consider private annuity, but probability of exhaustion test and income tax issues if the trust is not used.

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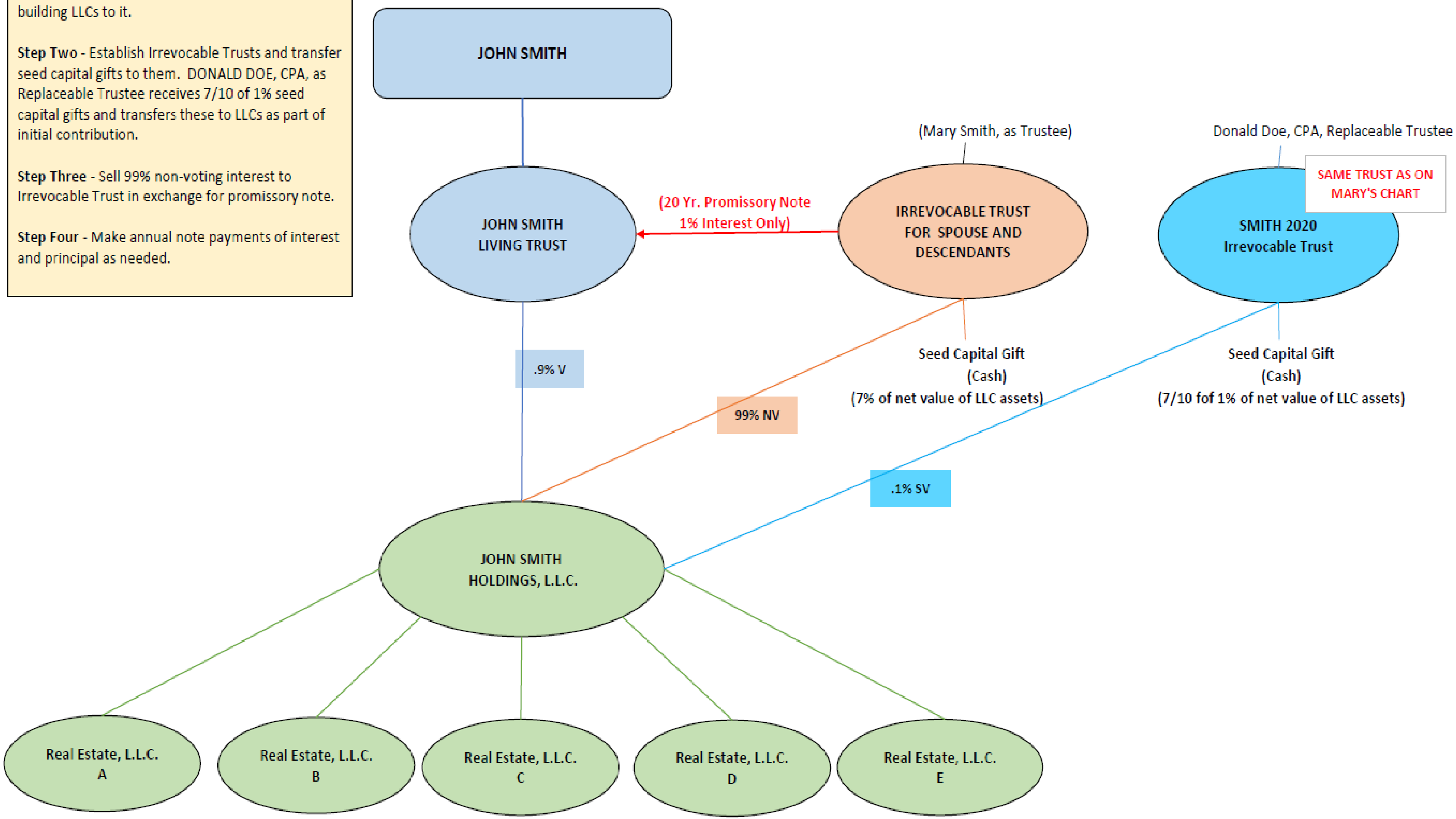
JOHN SMITH ILLUSTRATION CHART (2)

Step One - Establish Holdings, L.L.C. and transfer building LLCs to it.

Step Two - Establish Irrevocable Trusts and transfer seed capital gifts to them. DONALD DOE, CPA, as Replaceable Trustee receives 7/10 of 1% seed capital gifts and transfers these to LLCs as part of initial contribution.

Step Three - Sell 99% non-voting interest to Irrevocable Trust in exchange for promissory note.

Step Four - Make annual note payments of interest and principal as needed.



What Is The Biden 2-Step? – *Cont'd*

Back to Step One: **Sell Property Interests to a Trust for a Note**

Most of the Presenters' Clients Use LLC's as Family Holding Companies:

There are good business reasons to aggregate investment and business assets and entity ownership under a holding company.

(A) To allow multiple generations to have involvement with identification and management of the assets.

(B) To shield the assets from potential undue influence or lack of management that can occur if the taxpayer becomes incapacitated or compromised.

(C) To provide creditor protection in case the taxpayer is ever sued for a car accident or other activities or exposures.

(D) To facilitate sharing ownership of the assets during the taxpayer's lifetime using the techniques herein discussed, and thereafter by family members who inherit them.

What Is The Biden 2-Step? – *Cont'd*

Determining a Sales Price

Once it is decided what assets will go under the holding company and what assets may be sold directly to an irrevocable trust, these items can be valued, so that a sales price is determined.

Typically, there will be a discount if a non-voting membership interest in a family LLC is being sold. The same applies to transferring limited partnership interests in a limited partnership.

Size of the valuation discount for lack of control and lack of marketability? In the long run, the discount is insignificant. The more effective wealth transfer occurs with the grantor trust earning a rate of return greater than the 1% interest rate on the note and the grantor paying the income taxes on the grantor trust's taxable income. Aggressive valuation discounts increase the gift tax audit exposure!!

What Is The Biden 2-Step? – *Cont'd*

Using the Irrevocable Grantor Trust to Make the Purchase:

While or after the Family LLC is established and funded an irrevocable trust that may be held for a spouse and/or descendants and/or others, which may include charity, is established and has been funded by only the taxpayer who will sell the assets.

The trust is "disregarded" for income tax purposes.

The discussion of such a trust could go for hours and is beyond the scope of today's talk.

The irrevocable grantor trust purchases the non-voting member interest in the holding company, and whatever other assets are being sold, for a long-term note bearing interest at the applicable federal rate (which is presently 1.73% for notes that exceed 9 years).

The above completes Step One.

What Is The Biden 2-Step? – *Cont'd*

As Step Two, and before the estate tax exemption is reduced, the taxpayer can:

(A) Forgive the note, if desired, after receiving election results and report this as a gift in an amount equal to the stated principal (its face value).

(B) Consider valuing the note based upon its fair market value, as opposed to the face amount owed and then gifting it (forgiving the note is also a gift) For example, a $13,000,000 low interest long term note may be worth $11,000,000 because its interest rate is lower than market rates and other factors.

(C) In the future there may be a possible swap of the low interest long-term note for a higher interest shorter term note of equal value, but with a lower amount owed. That note would be forgiven or gifted at face value. For example, the $13,000,000 note above is traded for a current rate $11,000,000 demand note, and that note is forgiven as a gift.

(D) Transfer the note to a Q-TIP Trust for the spouse of the taxpayer and decide by the due date of the marital deduction election deadline in 2022 whether to have this be considered to be either (a) a 2021 gift to a non marital deduction trust, thus using part of the $11,700,000 exemption, or (b) a transfer to the spouse via the marital deduction being elected and the trustee distributing the note to the spouse, thus using none of the exemption, as if no transfer was made.

LIFETIME BYPASS GRAT

(GRANTOR RETAINED ANNUITY TRUST)

One spouse can fund a trust on a tax advantaged basis to benefit the other spouse and their descendants.

Based upon a two year GRAT with payments of 49.4208% of original contribution at the end of year one, and 59.305% of original contribution at the end of year two, the value of a gift caused by a $4,000,000 contribution is approximately $1,000.

Other Spouse = Trustee

GRANTOR SPOUSE

Contribution of $4,000,000

LIFETIME BYPASS GRAT

Repayment Obligations:
Year One: $1,976,832.00
Year Two: $2,372,198.40

Assuming 10% per year growth in assets, the GRAT Trust will have $293,286.40 after two years.

Assuming 15% per year growth in assets, the GRAT Trust will have $644,444.80 after two years

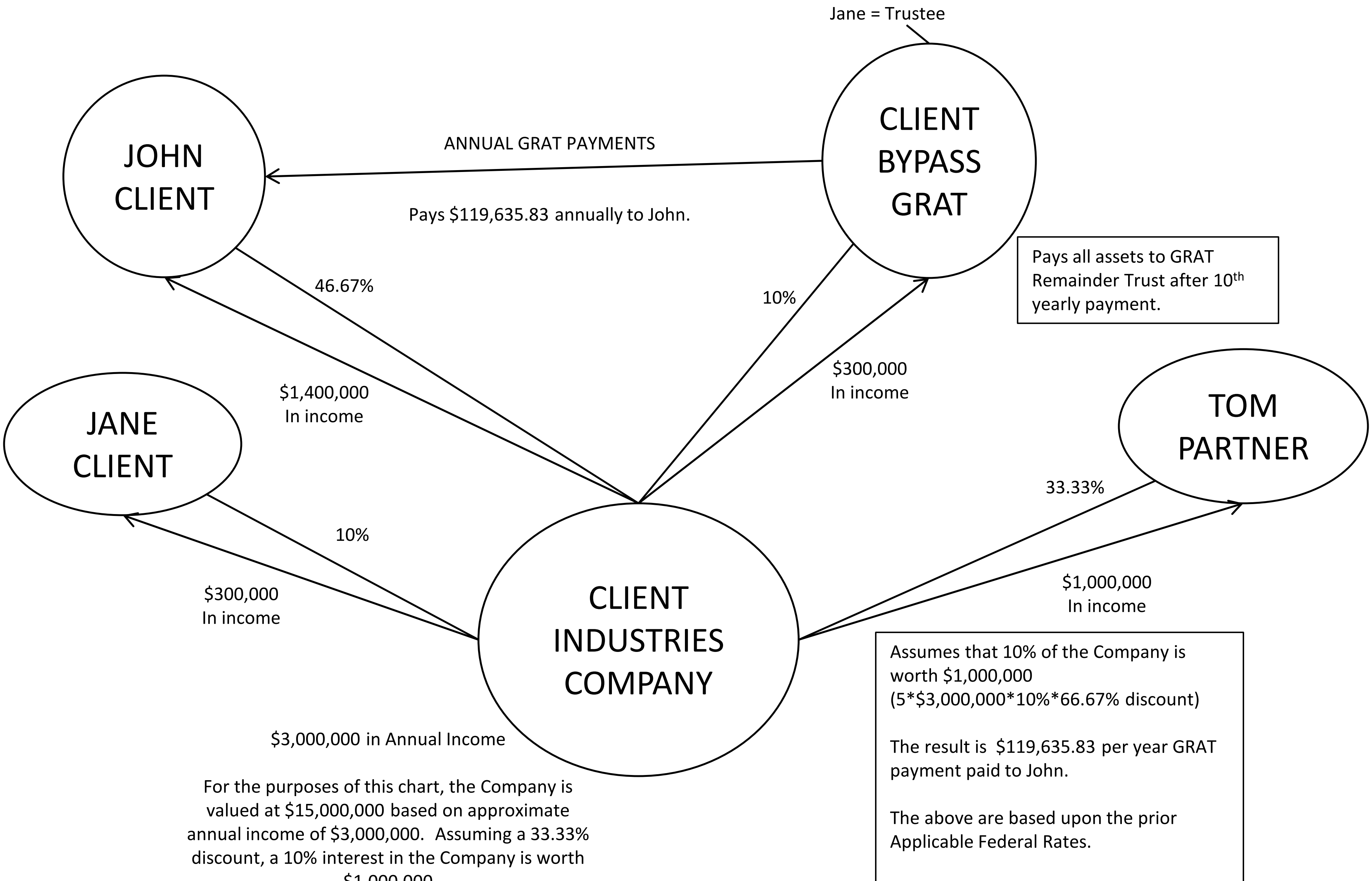
The above are based upon the prior Applicable Federal Rates.

After the second year, trust assets can be held for the lifetime benefit of Trustee Spouse and Descendants.

Assets not accessible to creditors of the Trustee/Beneficiary Spouse, or the descendants.

Annuity payments payable to the Grantor/Spouse who is a Florida resident should be protected from creditors under Florida Statute Section 222.

CLIENT – GRAT CHART

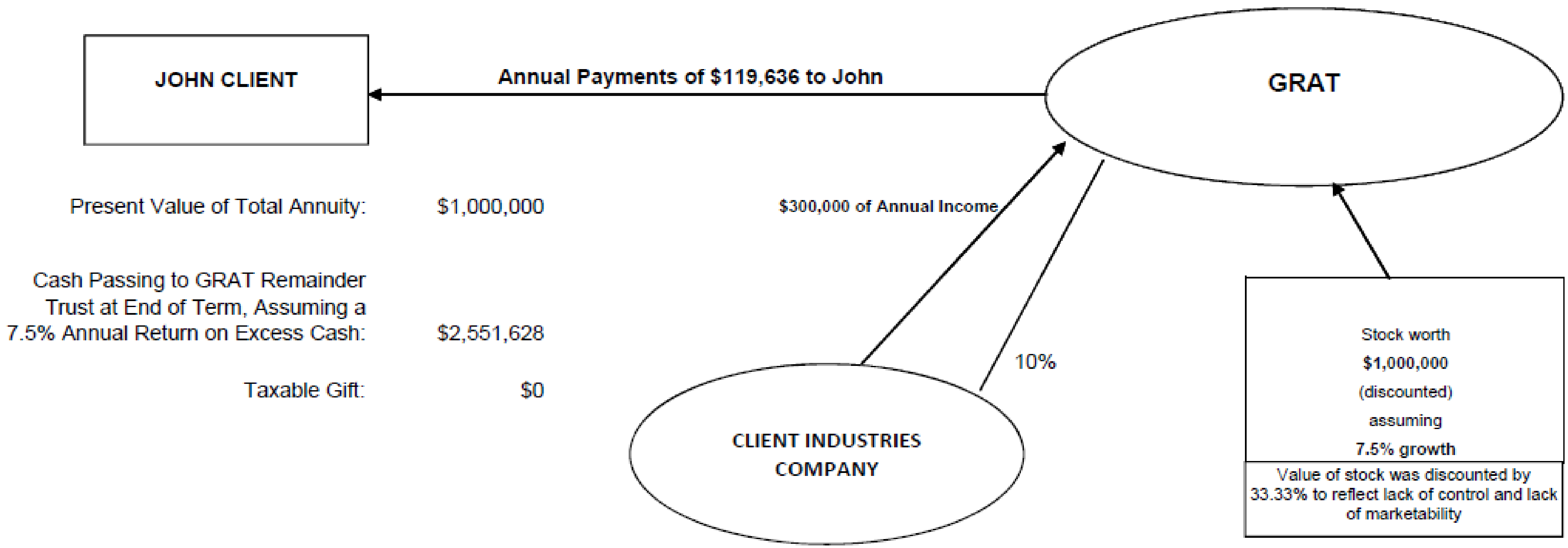


For the purposes of this chart, the Company is valued at $15,000,000 based on approximate annual income of $3,000,000. Assuming a 33.33% discount, a 10% interest in the Company is worth $1,000,000

CLIENT- GRAT CHART

$1,000,000 CONTRIBUTION--ZERO TAXABLE GIFT--LEVEL ANNUAL ANNUITY PAYMENT

Year	Annual Annuity	Percentage of Income Earned By Client Industries Company	Excess Cash--Assuming a 7.5% Annual Return	
1	$119,636	$300,000	$180,364	
2	$119,636	$300,000	$374,256	
3	$119,636	$300,000	$582,689	
4	$119,636	$300,000	$806,755	
5	$119,636	$300,000	$1,047,626	
6	$119,636	$300,000	$1,306,562	
7	$119,636	$300,000	$1,584,918	
8	$119,636	$300,000	$1,884,151	
9	$119,636	$300,000	$2,205,827	
10	$119,636	$300,000	$2,551,628	**plus 10% share of Company**



EXCERPT FROM: ESTATE TAX PLANNING

GRATS ARE STILL GREAT!

INTRODUCTION

The federal estate tax is here to stay. The very possibility of a decreased estate tax exclusion of $1,000,000 per person in 2022 demonstrates that the government is currently looking to earn more revenue through the estate tax, and shows just how permanent this tax is going to be.

While a great number of taxpayers will be informed that there is a federal estate tax for assets exceeding a certain amount in value, some wealthy taxpayers may never become taxable by reason of dynamic planning strategies which permit diversion of value to trusts outside of the taxpayer's "taxable estate." These strategies can provide significant family benefits during the lifetime of a wealthy taxpayer, and are not as complicated or convoluted as may at first seem.

Of these strategies, the Grantor Retained Annuity Trust (GRAT) is probably the most potent, yet least understood, vehicle.

BIG PICTURE

Congress' primary goal in enacting GRAT legislation in 1990 was to permit a Grantor to place assets into a trust and receive back a specified amount in value over a term of years. The assets held under the GRAT could grow in value and/or generate income that would remain under the GRAT, to be held on an estate tax-free basis after the GRAT term. Actuarially, the GRAT mechanism allows growth and income above an interest rate that is prescribed by the IRS (which is tied to the Treasury Bond Index level) to pass estate tax free.

Learning by example - the numbers can be fascinating.

Example 1

A Grantor might place $1,000,000 of cash or investments into a GRAT that would be held for the Grantor's spouse and children. The GRAT would be required to pay the Grantor $210,0000 per year in cash or other assets for 5 years.

Anything left in the GRAT after the fifth annual payment could be held for the lifetime benefit of the Grantor's spouse or descendants without being subject to federal estate tax at the level of the Grantor or his or her spouse.

If $1,000,000 in equity stocks were placed in the GRAT, and the stocks grow at 7% per year, then after the fifth year of paying the Grantor $210,000 per year, there would be $252,404 worth of stock in the GRAT that would never be subject to estate tax upon the death of the Grantor, or upon the death of the Grantor's spouse.

GRATS ARE STILL GREAT!

"Zeroed-Out" GRATs and Formula Clauses – Unique Features That Increase the Attractiveness of GRATs

- When a GRAT is funded, an actuarial calculation is performed by a software program which determines how much of a gift (if any) is considered to have been made upon funding of the GRAT. In Example 1 above, based upon the applicable federal rate in effect for November 2010 (2.0%), the gift element of a $1,000,000 transfer to a GRAT, with a $200,000 per year repayment for five years is only $57,300. If we use the 2011 - 2012 lifetime gifting exclusion level of $5,000,000 per person, this leaves $4,942,700 remaining that the Grantor is able to gift over his or her lifetime estate tax free.
- If the payments for the GRAT discussed in Example 1 above were $212,156.57 per year for the five years, then the gift element would be considered to be $0, and no gift tax return would have to be filed when the GRAT is established. This is called a "zeroed-out GRAT."
- When GRAT legislation first appeared in 1990, many academicians believed that it was not safe to attempt a zeroed-out GRAT. However, based upon case law and analysis that has occurred since then, most published authorities agree that zeroed-out GRATs are considered to be safe from a tax compliant standpoint.
- Another excellent feature of a GRAT relates to the ability to use a "formula valuation clause" in the GRAT document. In the example above, the GRAT document would not necessarily provide that the Grantor would receive exactly $200,000 in cash or other assets per year for five years. Instead, the GRAT document would provide that the Grantor would receive 20% of the initial contribution value of the GRAT per year, in five annual installments.
- This feature allows the GRAT to be especially favorable with assets that are "hard to value" or assets that do not have a clearly defined value. The reason for this is that it absolutely prevents the IRS from imposing a gift tax in a situation where assets placed in the GRAT may be considered to be worth much less than what the IRS eventually determines as an appropriate value.
- For example, assume that someone wants to put 1/3 ownership of a closely-held company into a GRAT, and values the stock at $1,000,000. If the IRS later determines that the stock was worth $2,000,000, then no gift tax will be due. Instead, by the terms of the GRAT document and applicable legislation, the annual payments will be redetermined to have been $400,000 per year (20% per year of the value of the assets at contribution for five years), and the Grantor will receive more cash and other assets from the GRAT, but the IRS will not be owed any gift tax.
- This significantly reduces the motivation of a gift tax auditor to challenge the values of assets that are contributed to a GRAT.
- The combination of the above techniques and valuation discounts makes the GRAT a very exceptional and often successful wealth transfer vehicle for closely-held businesses and/or investment income arrangements.

GRATS ARE STILL GREAT!

Example 2

Assume, for example, that a business owned by a family LLC generates $1,000,000 a year of income and is considered to be worth $5,000,000.

Thirty percent of the stock of the company would be worth $1,500,000 before discounts, but might be valued at $1,050,000, assuming a 30% valuation discount applicable to a minority interest in the company.

For a five-year GRAT established in November 2010, 30% of the stock of the company would be transferred into the GRAT in exchange for the right to receive annual payments of $222,765 per year for 5 years. Each payment represents 21.22% of the initial contribution amount of $1,050,000. ($222,765 ÷ $1,050,000 = 21.22%).

Assuming that the company pays dividends of $1,000,000 per year, the GRAT would receive $300,000 per year and would pay the Grantor $222,765 per year as the annual GRAT payment.

The GRAT would be able to invest $77,235 per year in an investment account or however else it determines appropriate. ($300,000 - $222,765 = $77,235)

After the fifth year, the GRAT would have accumulated $386,175 ($77,235 x 5), plus whatever earnings it might receive under the investment account, and would continue to own 30% of the stock of the company, at a zero gift tax cost!

Example 3

To use another example, assume that an LLC owns rental property worth $10,000,000, and has net positive cash flow of $800,000 per year.

A 10% ownership interest in the LLC may be worth $700,000, after applying a 30% valuation discount ($10,000,000 x 10% = $1,000,000; $1,000,000 x 70% = $700,000), and would be expected to receive $80,000 a year of rent income.

If a five-year GRAT were used, then 21.22% of $700,000 is $148,510, so the rental income on the 10% interest is not sufficient to make the GRAT payments alone.

GRATS ARE STILL GREAT!

The client might instead choose to use a 10-year GRAT. A 10-year zeroed-out GRAT would require payments of approximately 11.13% per year, which would result in an annual payment back to the Grantor of $77,929.

In this example, the GRAT would receive $80,000 a year in distributions from the LLC and make $77,929 per year in annual payments to the Grantor, which leaves $2,071 per year of excess rental income in the GRAT.

If the GRAT does not have sufficient cash flow to make the annual required payments then the GRAT payments can be made in cash or "in kind" by having the GRAT distribute property outright to the Grantor.

Therefore, part ownership of an LLC or other investment can be transferred back to the Grantor to satisfy a GRAT payment.

Example 4

For example, assume in the case of the operating company described in Example 2 above that the company chose to reinvest its earnings in the fourth and fifth years instead of paying dividends, and that the stock of the company owned by the GRAT was worth $2,250,000 during the fourth and fifth years.

The $222,765 annual GRAT payment divided by $2,250,000 is 9.9%. Because the GRAT owned 30% of the company, it would simply transfer 9.9% ownership of the company back to the Grantor in year four and 9.9% ownership of the company in year five.

As a result, the GRAT would still own 10.2% of the company after the fifth year, plus whatever it had saved from positive cash flow, and the earnings and appreciation thereon. Hopefully the company would have an increased value in the future based upon its reinvested earnings.

For a more in-depth discussion on GRATS please see the BNA Tax & Account Book "*Estate Tax Planning in 2011 and 2012*" by Alan S. Gassman, Christopher J. Denicolo and Kenneth J. Crotty, beginning at page 131.

COMBINATIONS OF TECHNIQUES CAN BE USED

Consider new installment sales to grantor trusts, GRATs, family limited partnerships, and other family wealth transfer techniques with what remains of the $12,060,000 gift exclusion, as a cushion for valuation issues that might arise from valuation questions.

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MORE THAN ONE WAY TO SCIN A GRAT? (The "SCGRAT") WHAT IF THERE IS NOT TIME TO APPRAISE THE UNDERLYING ASSETS AND ENTITY DISCOUNTS BEFORE COMPLETING A SELF-CANCELLING INSTALLMENT NOTE TRANSACTION?

GRAT provides that first $400,000 worth of assets remain in GRAT and any excess from initial contribution will be payable over 5 annual installments of excess amount plus the 7520 Rate.

GRAT

Can benefit spouse and descendants after 5 years of payments to Grantor.

100%

SCIN
$1,500,000

CLIENT/GRANTOR

LLC

Cash $500,000

Grandpa, 10%

90%

Assets estimated to be worth $2,000,000

($500,000 in cash plus $1,500,000 in Grandpa's LLC interest (90%))

GRANDPA LLC

$1,928,571 in assets
($1,928,571 x .9 x .7 = $1,500,000)

Step 1 – Client places assets in LLC owned by client and receives back a Self-Cancelling Installment Note.
Step 2 – Client gifts 100% ownership in the LLC to the GRAT.
Step 3 – A valuation firm values the assets under the LLC and actuarial tables are used to determine the SCIN value.
Step 4 – The excess of asset value over the SCIN value is the GRAT contribution amount.
Step 5 – The GRAT may provide for holding assets equal to $400,000, and distributing back 5 annual payments based upon any excess over $400,000.
$2,000,000 - $1,500,000 = $500,000 . $500,000 - $400,000 = $100,000. $100,000/5 = $20,000
Step 6 – If the IRS determines that the valuation assumptions used are incorrect, any excess value will pass back to the Grantor over 5 annual payments, and will qualify for the estate tax marital deduction if the grantor dies during the first 5 years survived by a spouse.

Qualified Personal Residence Trust (QPRT)

QPRT Basics

- A person transfers a "personal residence" to the QPRT.

- A personal residence is **either:** The principal residence of the client;

    1. One other residence of the client;
    2. Or an undivided fractional interest in either of the principal residence or one other residence of the client.

QPRT Basics

- The person retains the right to use the personal residence for a set period of years (the "retained term").

- At the end of the term, the personal residence is typically owned by a remainder trust.

- If the client dies in the retained term, then the value of the residence is included in the client's estate.

QPRT Basics

- The amount of the gift is equal to the fair market value of the personal residence minus the present value of the retained term.

- This present value is calculated based on:
  - The number of years of the retained term;
  - the age of the client when the trust is created; and the 7520 rate.

- The transfer would need to be reported on a gift tax return.

QPRT Basics

If the client wants to continue using the residence after the retained term is over, then the client will need to pay full fair market value to the trust or beneficiaries that own the residence after the retained term.

QPRT Basics

Typically, the residence would be held in a continuing trust:

- If this trust is structured as a Grantor Trust, then the payment of the rent is ignored for income tax purposes.
- In addition, the client can retain the ability to remove and replace the trustee of the trust to be certain that the residence will be available for the client's use.

56 YEAR OLD QPRT DISCOUNTED VALUE

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

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

Probability of Death Before Certain Age
Current Age: 56

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

Explanation of 15 year QPRT numbers -

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

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

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

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QPRT Trust Planning Demonstration

Age of Client	68
Initial Value of Home	$860,000
Fractional Discount Assumed	15.00%
Discounted Value of ½ of Home	$365,500

	Gift Component (with respect to each QPRT)		Value of ½ of Home at End of QPRT Term Assuming 7% Growth	Estate Tax on Value at End of Term Assuming 35% Estate Tax Rate	Estate Tax Savings on ½ of Home at End of QPRT	Estate Tax Savings on Entire Value of Home at End of QPRT	Estate Tax Savings After 16 Years Assuming 7% Growth on ½ of House	Estate Tax Savings After 16 Years Assuming 7% Growth on Entire House
6 Year QPRT	Gift %	**73.220%**						
	Value of Gift	$267,619.00	$645,314.05	$225,859.92	$132,193.23	$264,386.96	$350,633.96	$701,267.92
8 Year QPRT	Gift %	**64.328%**						
	Value of Gift	$235,118.84	$738,820.06	$258,587.02	$176,295.43	$352,590.85	$362,009.05	$724,018.10
10 Year QPRT	Gift %	**55.528%**						
	Value of Gift	$202,954.84	$845,875.08	$296,056.28	$225,022.09	$450,044.17	$373,266.45	$746,532.90
12 Year QPRT	Gift %	**46.916%**						
	Value of Gift	$171,477.98	$968,442.38	$338,954.83	$278,937.54	$557,875.08	$384,283.35	$768,566.70
14 Year QPRT	Gift %	**38.633%**						
	Value of Gift	$141,203.62	$1,108,769.68	$388,069.39	$338,648.12	$677,296.25	$394,879.38	$789,758.76
16 Year QPRT	Gift %	**30.840%**						
	Value of Gift	$112,720.20	$1,269,430.41	$444,300.64	$404,848.7	$809,697.15	$404,848.57	$809,697.15

Probability of Death Before Certain Age

Current Age 68

2 years (70)	4.18%	6 years (74)	14.31%	10 years (78)	27.33%	20 years (88)	68.53%
4 years (72)	8.92%	8 years (76)	20.45%	15 years (83)	47.24%		

The Stepped-Up Basis Conversation

	No Planning	JEST or Special Power of Appointment Trust Arrangements	Alaska Community Property Trust
Drafting and Design Time to Implement	None.	Requires sophisticated drafting and implementation.	Can be simple to install.
Creditor Protection Attributes	No effect.	Will typically expose assets to creditors to each owner spouse unless further planning is effectuated.	Alaska creditor protection law applies.
Annual Maintenance Costs	None beyond what client is already paying.	None but best to review assets and allocation within JEST periodically.	$3,000 per year payment to Alaska trust company and requiring that the clients follow appropriate formalities if they want to have creditor protection attributes.
Administration After Death of First Spouse	No special provisions needed.	Must meet with qualified planner to decide how to allocate assets between one or two credit shelter trusts and administration issues.	Can simply dissolve trust or maintain trust and step up has occurred.
Degree of Tax Certainty	Nonapplicable.	The Service may challenge the stepped-up basis and funding of a credit shelter trust from the assets of the first dying spouse.	Statutory support and over decades of community property case law eliminates stepped-up basis and full credit shelter trust funding issues.

From Howard Zaritsky – Lester Law January 2017 Heckerling Institute Fundamentals presentation (pgs 1-134 & 1-135):

GETTING A FULL STEP-UP USING POWERS OF APPOINTMENT ON FIRST DEATH – THE JEST TRUST

Consider the JEST Trust to fully fund a Credit Shelter Trust while receiving a stepped up basis for all joint and separate assets.

The Joint Estate Step-Up Trust (JEST)

A recently variation on the tax-basis revocable trust is the joint estate step-up trust, or JEST. See Gassman, ' Denicolo, & Hohnadell, *JEST Offers Serious Estate Planning Plus for Spouses - Parts I and 2,* 40 Est. Plan. 3, 14 (Oct., Nov. 2013).

1. Structure of the JEST

a) Joint Revocable Trust

A JEST is a joint revocable trust created by a married couple who reside in a non community property state. The JEST becomes irrevocable when the first spouse dies; both powers to revoke then terminate.

b) Separate Shares for Each Spouse

Each spouse owns a separate share of the trust.

c) Each Spouse Can Terminate Trust During Joint Lives

Each spouse has the power to terminate the trust during their joint lives, when each spouse's share will be distributed to him or her individually.

Note. The step-transaction doctrine is particularly a problem if the estate planner has documented in the planning memoranda that the surviving spouse can be added later.

2. Analysis of the JEST

The JEST has one noteworthy advantage over the tax-basis revocable trust, in that the assets contributed by the surviving spouse do not pass back to the surviving spouse at the first spouse's death. The assets passing subject to the power of appointment will, except to the extent appointed otherwise, pass to a trust for other family members. This should make application of Code § 1014(e) extremely difficult.

3. Analysis of the JEST

The IRS analysis of the tax-basis revocable trust turned on the application of Section I014(e), which denies a basis adjustment to assets transferred to the decedent within one year of the date of his or her death, that pass to the original transferor upon the decedent's death. The JEST gets around Section 1014(e) by not having the assets transferred to the decedent return to the original transferor, to the extent that the original transferor has unused applicable exclusion amount. Thus, there is no reason why the JEST should not work.

4. Asset Protection and the JEST

The JEST offers only limited asset protection benefits.

a) Assets Contributed by the First Spouse to Die

(1) Creditors of the First Spouse to Die

The assets contributed to the JEST by the first spouse to die should be as available to the first spouse to die as any other assets of that spouse's revocable trust.

(2) Creditors of the Surviving Spouse

The surviving spouse should be able to obtain the benefits of the spendthrift clause applicable to the assets contributed by the first spouse to die and then held either as Non-marital Trust A or as a QTIP.

(3) Creditors of the Descendants

The beneficiaries of Non-marital Trust B should be able to do the same

b**) Assets Contributed by the Surviving Spouse**

The assets contributed by the surviving spouse are also subject to a general testamentary power of appointment held by the first spouse to die. As noted above, these assets may be subjected to the claims of the creditors of the first spouse to die, even though they were originally assets of the surviving spouse.

Using General Power of Appointment to Receive Step-Up In Basis

Potential Exceptions:

1. Power Acquired Within One Year of Death – IRC 1014(e) and TAM 9308002

In the case of a decedent dying after December 31, 1981, if—

1. Appreciated property was acquired by the decedent by gift during the 1-year period ending on the date of the decedent's death, and

2. Such property is acquired from the decedent by (or passes from the decedent to) the donor of such property (or the spouse of such donor)

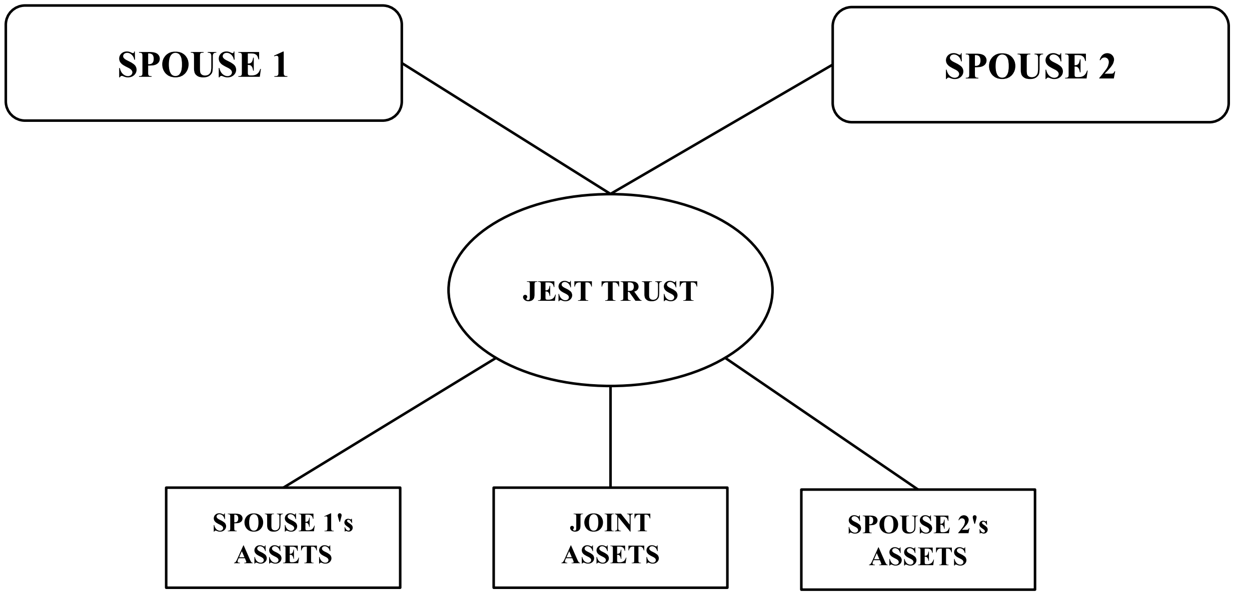
The basis of such property in the hands of such donor (or spouse) shall be the adjusted basis of such property in the hands of the decedent immediately before the death of the decedent.

2. Step Up May Not Apply to Extent the Property Has Been Depreciated – IRC 1014(b)(9)

"…if the property is acquired before the death of the decedent, the basis shall be … reduced by the amount allowed to the taxpayer … for exhaustion, wear and tear, obsolescence, amortization, and depletion on such property before the death of the decedent."

NOTE – Section 1014(b)(4) applies when the power is actually exercised and does not include a similar reduction for depreciation taken by the taxpayer

JEST Trust



On first death, up to exemption amount of first dying spouse (as much as $12,060,000), may pass to Credit Shelter Trust or Trusts to benefit surviving spouse and descendants, with a possible full step-up of all assets - excess assets going into QTIP Trusts, which may also qualify for full step-up.

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JEST Credit Shelter Trust B Planning

CREDIT SHELTER TRUST B

Formed from assets of the share of the surviving spouse.

Expected to be considered as being transferred to Credit Shelter Trust B by the first dying spouse for federal estate tax purposes pursuant to Private Letter Ruling 200101021 and Private Letter Ruling 200210051.

The IRS could claim that Credit Shelter Trust B was funded by the surviving spouse.

ALTERNATIVE A

Accepted as funded by first dying spouse.

Will not be subject to estate tax at the level of the surviving spouse.

Will not be subject to creditor claims of the surviving spouse.

<u>This is the optimum result</u>.

ALTERNATIVE B

Considered as funded by surviving spouse.

Might be subject to estate tax at the level of the surviving spouse.

Might be subject to creditor claims of the surviving spouse, unless local law of the Trust provides otherwise.

Strategy 1 - Incomplete Gift Treatment

The surviving spouse maintains a Power of Appointment over the Trust assets, which causes the Trust to be considered as an incomplete gift for federal gift tax purposes, and the Trust assets will be considered as owned by the surviving spouse for estate tax purposes on his or her death.

In light of the IRS' position in CCA 201208026, it is best to give the surviving spouse a lifetime Power of Appointment over the assets in Credit Shelter Trust B to assure that an incomplete gift results for federal gift tax purposes.

If there are separate children for each spouse or a concern that the surviving spouse might not appropriately exercise a Power of Appointment, then it could be limited to being exercisable only with a consent of non-adverse parties, or limited to the extent needed to avoid imposition of federal gift tax by funding under a formula clause.

Strategy 2 - Complete Gift Treatment

If the surviving spouse disclaims all Powers of Appointment over the Trust, then the transfer to Credit Shelter Trust B is considered to be a complete gift by the surviving spouse, and the Trust will not be subject to federal estate tax of the surviving spouse's estate.

The value of the assets passing to Credit Shelter Trust B would reduce the surviving spouse's $12,060,000 exemption.

Give the surviving spouse the power to replace Trust assets with assets of equal value, so then it can be considered a Defective Grantor Trust if this occurs.

Note (applicable to both Strategy 1 and Strategy 2): Situs Credit Shelter Trust B in an "asset protection trust jurisdiction" to avoid having creditors be able to reach into the Trust, and also to avoid the Trust being included in the surviving spouse's estate if the surviving spouse was considered as a contributor to the Trust for federal estate and gift tax purposes.

Joint Exempt Step-Up Trust (JEST) Chronology – The 4 Steps from Drafting to Implementing

Derived from articles that can be found on Leimberg Information Services (Estate Planning Newsletter #2086) and Estate Planning Magazine October and November 2013 Editions

Before Funding

Spouse 1's Assets

Joint Assets: Joint Tenants w/ Right of Survivorship

½ to each Spouse's share

Joint Assets: Tenancy by the Entireties

½ to each Spouse's share or actuarial value

Spouse 2's Assets

The IRS could find a gift upon contribution of TBE assets to the joint revocable trust, but this gift will qualify for the marital deduction if recipient spouse can withdraw what is added to Spouse 1 or Spouse 2's share. Also see PLR 200201021.

Step 2

Funding of Joint Revocable Trusts; each spouse has the right to revoke his/her share until first death

Spouse 1's Share

Spouse 1's Assets

½ of former JTWROS Assets

½ of former TBE Assets (or by other percentage)

Spouse 2's Share

Spouse 2's Assets

½ of former JTWROS Assets

½ of former TBE Assets (or by other percentage)

Step 3

Division upon First Dying Spouse's Death Assume Spouse 1 dies first

Credit Shelter Trust A
Funded from Spouse 1's Share in the amount of Spouse 1's available Estate Tax Exemption (ETE)

Q-TIP Trust A
If Spouse 1's Share exceeds Spouse 1's available ETE, the excess will fund this trust

Credit Shelter Trust B
If Spouse 1's Share is less than his available ETE, Spouse 2's Share will fund this trust in the amount of Spouse 1's remaining ETE (But not in excess of Spouse 2's available ETE)

Q-TIP Trust B
If Spouse 2's Share has any remaining assets, they will be used to fund this trust

Step 3 Note:

CST A and CST B can be merged if there is no concern with estate tax, stepped-up basis, creditor protection, or credit shelter trust effectiveness. Q-TIP Trust A and Q-TIP Trust B can be merged if there is no concern with respect to stepped-up basis or creditor protection effectiveness.

Step 4

Results of JEST Technique

-For Spouse 2 & Descendants benefit (limited by ascertainable standard)
- Assets will receive a stepped-up basis
-Assets are protected from Spouse 2's creditors
- Assets escape estate tax on Spouse 2's death

- Spouse 2 can be beneficiary of income and principal
-Assets will receive a stepped-up basis on Spouse 1's death, and then again on Spouse 2's death
-Assets included in Spouse 2's taxable estate
-Will be protected from Spouse 2's creditors

-Assets may receive a stepped-up basis, but this is more likely if Spouse 2 is not a beneficiary
-May escape estate tax liability on Spouse 2's death
-For creditor protection and estate tax exclusion purposes, CST B may be moved to an APT jurisdiction
Special Consideration: If Spouse 2 is found to have made a gift of trust assets to Spouse 1 upon Spouse 1's death, this gift may qualify for the marital deduction
If IRS argues that Spouse 2 has gifted to trust the gift will be incomplete because of Spouse 2's power of appointment

-Spouse 2 will be income beneficiary
-Assets may receive a stepped-up basis on Spouse 1's death & again on Spouse 2's death
-Assets included in Spouse 2's estate
-May not be protected from Spouse 2's creditors unless moved to APT trust jurisdiction
-If IRS argues that Spouse 2 has gifted to trust the gift will be incomplete because of Spouse 2's power of appointment

Basic JEST Anatomy

1993 Technical Advice & 2001 and 2002 Private Letter Rulings

SURVIVING SPOUSE → **Gift Upon Death of First Dying Spouse** (Qualifies for marital deduction) → **First Dying Spouse** → **Appoints to Credit Shelter Trust** (Included in 1STD's Estate – No Step up under 1014(e) as arranged → **CREDIT SHELTER TRUST** (Avoids Estate Tax on SS's Death)

Blattmachr Article

Credit Shelter Trust could be found to be funded by surviving spouse under step transaction doctrine so creditor may invade the trust in most states.

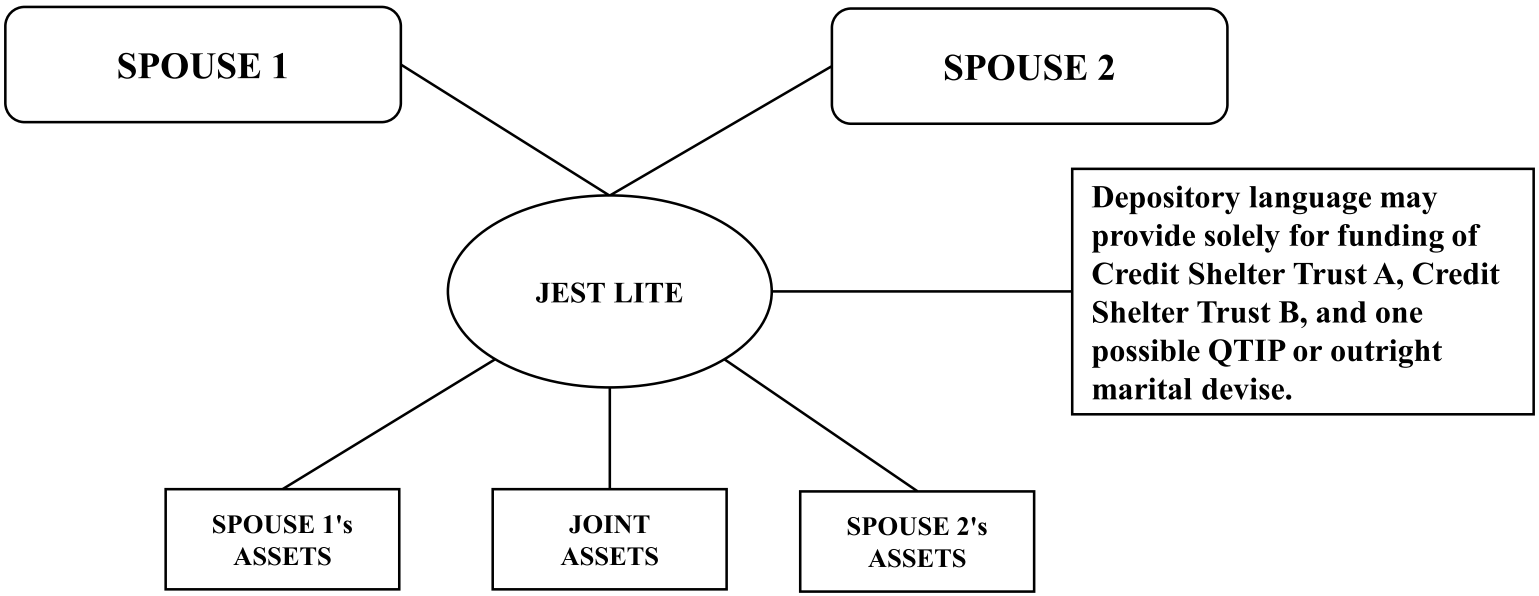
Mulligan

If first dying spouse needs approval of surviving spouse to appoint then 2041 may not apply, could be considered as a gift of ½ by the surviving spouse – but 1933 Johnston case held otherwise in a similar situation.

Zaritsky
2015 Heckerling Presentation.

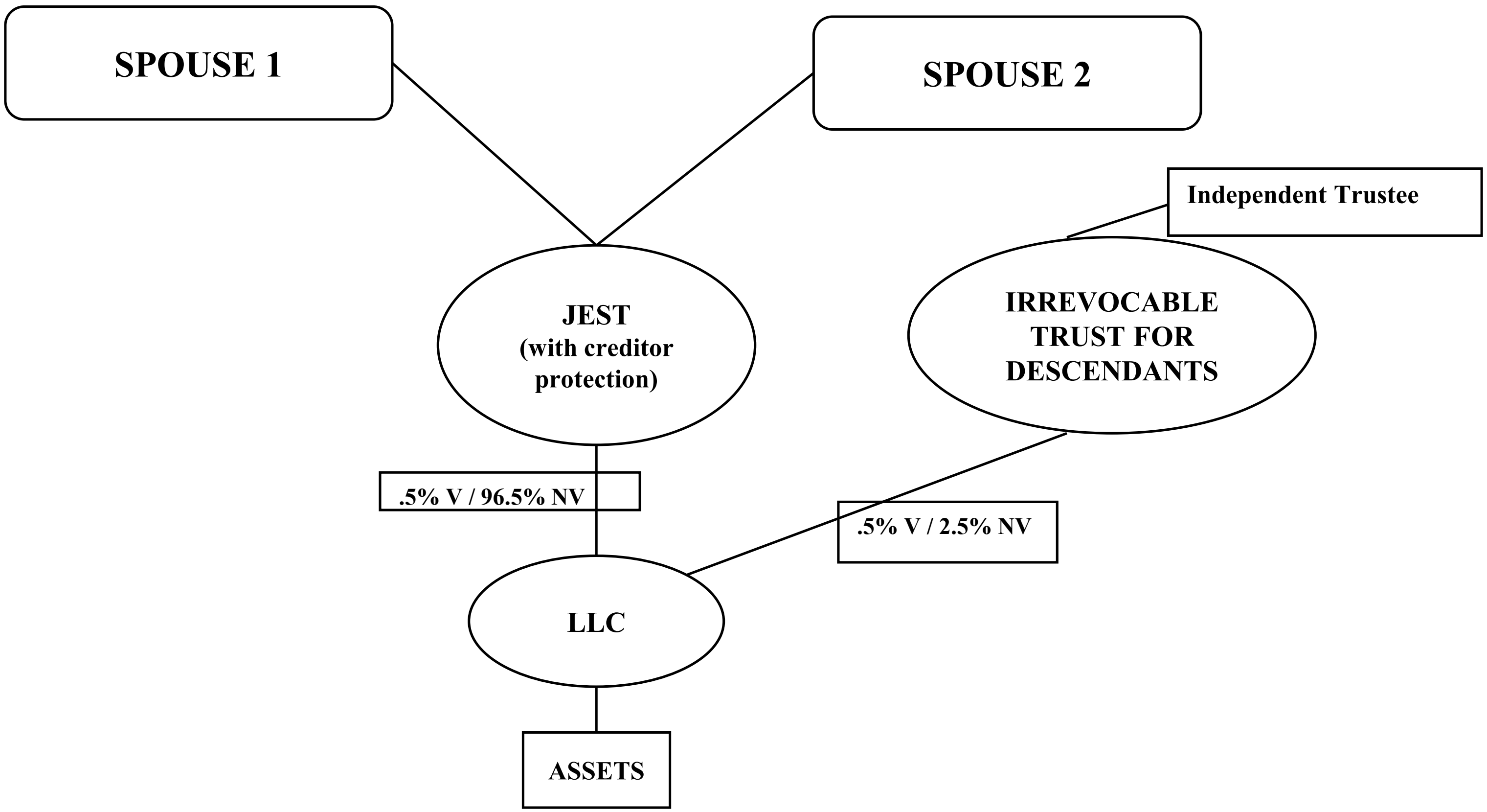
Will the service consider the surviving spouse to have funded the credit shelter trust or trusts by reason of the step transaction doctrine?

JEST Lite



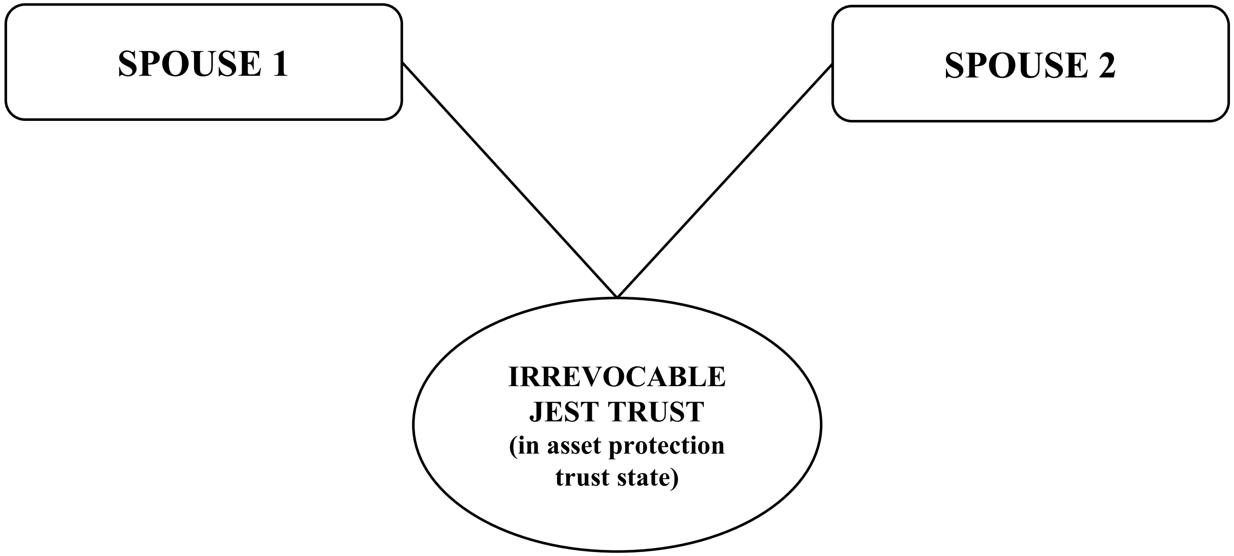
Same as JEST, but will only break into Credit Shelter Trust A, Credit Shelter Trust B, and at most one QTIP Trust for simpler drafting

JEST with Some Creditor Protection



Provides charging order protection and discounting.

Irrevocable JEST Trust



Where a couple has concerns that they may be subject to undue influence, distortion or loss of assets and direction from dementia, or otherwise, why not make the Trust irrevocable, and to also possibly provide that transfers are "incomplete gifts" by having each spouse reserve the right to veto distributions and to appoint the Trust assets (with the Power of Appointment being subject to the consent of a non-adverse party) in addition to having other JEST Trust terms to obtain a stepped-up basis on each spouse's death.

Irrevocable Multiple JESTs – Possession is 90% of the Law

SPOUSE 1

SPOUSE 2

(Mark Twain)

Spouse 1, Spouse 2, Son
Co-Trustees

Spouse 1, Spouse 2, Daughter
Co-Trustees

IRREVOCABLE JEST TRUST 1

IRREVOCABLE JEST TRUST 2

(One-half of assets)

(One-half of assets)

Becomes Generation-Skipping Trust for son and his descendants on death of surviving parent.

Becomes Generation-Skipping Trust for son and his descendants on death of surviving parent.

This trust has been funded for the primary purpose of benefitting the Grantor's during our lifetime, and then having a protective trust or trusts established for our daughter, Molly Hatchett, to the extent of assets then remaining. Our son, Leonard Skin-Us is the Trustee of another trust that will be held for his benefit. Distributions to my said child and his/her descendants shall therefore reduce his/her subsequent inheritance. Either child may require that a licensed trust company serve as additional Co-Trustee of each trust, and both of our children will receive annual accountings prepared by our certified public accountant of each trust. We, as Grantors, may further exercise our power to reappoint trust assets, but only after a four hour neurological examination and verification that we are not known to be subject to undue influence, and have received approval from any two of the following five trusted non-related individuals ...

Use of the Optimal Basis Increase Trust ("OBIT")

A concept developed by Edwin Morrow is the "Optimal Basis Increase Trust" where an older relative or friend of the grantor is made a beneficiary of an irrevocable trust, and is given a testamentary general power of appointment in order to cause a step-up in basis on assets upon the death of the older individual. Such general powers of appointment can be drafted where they are expressly provided to the older individual under the terms of the trust document, they can bestowed as an independent committee (such as trust protectors) determines in their discretion, or they can be drafted as a formula general power of appointment clause that only applies only to appreciated assets.

Therefore, an individual who is under the estate tax exemption levels can sell appreciated assets to a defective grantor trust in exchange for an installment note, where the trust provides an older relative or friend with a general power of appointment upon the individual's death. Upon the older beneficiary's death, the assets in the trust will receive a new, increased basis that can provide income tax savings upon ultimate liquidation of the asset, or an increased depreciation allowance, if the property is depreciable.

The trust document can provide that the beneficiary holding the general power of appointment can assign the assets to or for the benefit of the creditors of his or her estate, and also include the grantor's family (or even the grantor in certain situations) as potential appointees of the trust assets. The trust can further provide that, if such power of appointment is not exercised by the power holder, then the assets in the trust will be held for the grantor's family.

If the power holder exercises the power of appointment, the power holder will likely be considered the grantor of the trust containing assets subject to the power of appointment, which would trigger income tax on any outstanding amounts payable under the promissory note owed back to the grantor, which are in excess of the greater of $5,000 or 5% of the value of the trust assets.

CRUT Distribution Percentages

The below charts show the maximum amount a CRUT could payout to the non-charitable beneficiary while still qualifying based upon the individual's age, how many lives the payout is based on, and the June 2020 7520 Rates.

Length	Percentage
20 year term of years	10.87%
30-year-old's life	5.31%
40-year-old's life	6.92%
50-year-old's life	9.64%
60-year-old's life	14.90%

ON THE LIFE OF TWO PEOPLE	
Two 30-year-old individuals	Cannot distribute at least 5%
Two 40-year-old individuals	5.13%
Two 50-year-old individuals	6.60%
Two 60-year-old individuals	9.1%

ON THE LIFE OF THREE PEOPLE	
Three 30-year-old individuals	Cannot distribute at least 5%
Three 40-year-old individuals	Cannot distribute at least 5%
Three 50-year-old individuals	5.92%
Three 60-year-old individuals	7.91%

Flip-NIMCRUT

- It is possible for a Charitable Remainder Unitrust to be set up where payments only need to be made in years that the Charitable Remainder Unitrust receives income.

- In the event that the Charitable Remainder Unitrust does not receive income and does not pay its annual disbursement amount, the amount that was not distributed must be paid in future years.

- Income for the Charitable Remainder Unitrust is based on fiduciary accounting income so it is possible to set up a disregarded LLC that essentially blocks the income from being received by the Charitable Remainder Unitrust.

- Once the Charitable Remainder Unitrust is ready to start paying its annuity amount, it can release the income by making a distribution from the "blocker LLC" triggering fiduciary accounting income at the trust level to make up for the payments it missed.

- This allows the Flip-NIMCRUT to build value tax free, until the individuals controlling the disregarded entity decide it is time to start paying out the distribution amount.

Flip-NIMCRUT Requirements

- The Charitable Remainder Unitrust can “flip” to a regular Charitable Remainder Unitrust upon a “triggering event,” and thereafter simply pay out a annual percentage of the trust assets. The triggering event must be stated in the trust agreement.

- A triggering event could be a set date or an event, and the occurrence of such event must not be discretionary or under the control of the trustee or another person.

- A triggering event could be the sale of unmarketable securities. This would allow a CRUT to hold a subsidiary that holds unmarketable securities. When the donor or another person is ready to flip the NIMCRUT, it can sell the unmarketable securities or a portion thereof.

- The Final Regulations list 7 permissible triggering events as described on the next slide.

Possible Triggering Events For The Flip-NIMCRUT

1. The sale of a non-marketable security - such as a corporation or a limited liability company that may own a promissory note from an unrelated party, real estate, or possibility even marketable securities.

2. Upon the donor's divorce.

3. Upon the donor's marriage.

4. When the income recipient has his or her first child.

5. When the income recipient's father passes away.

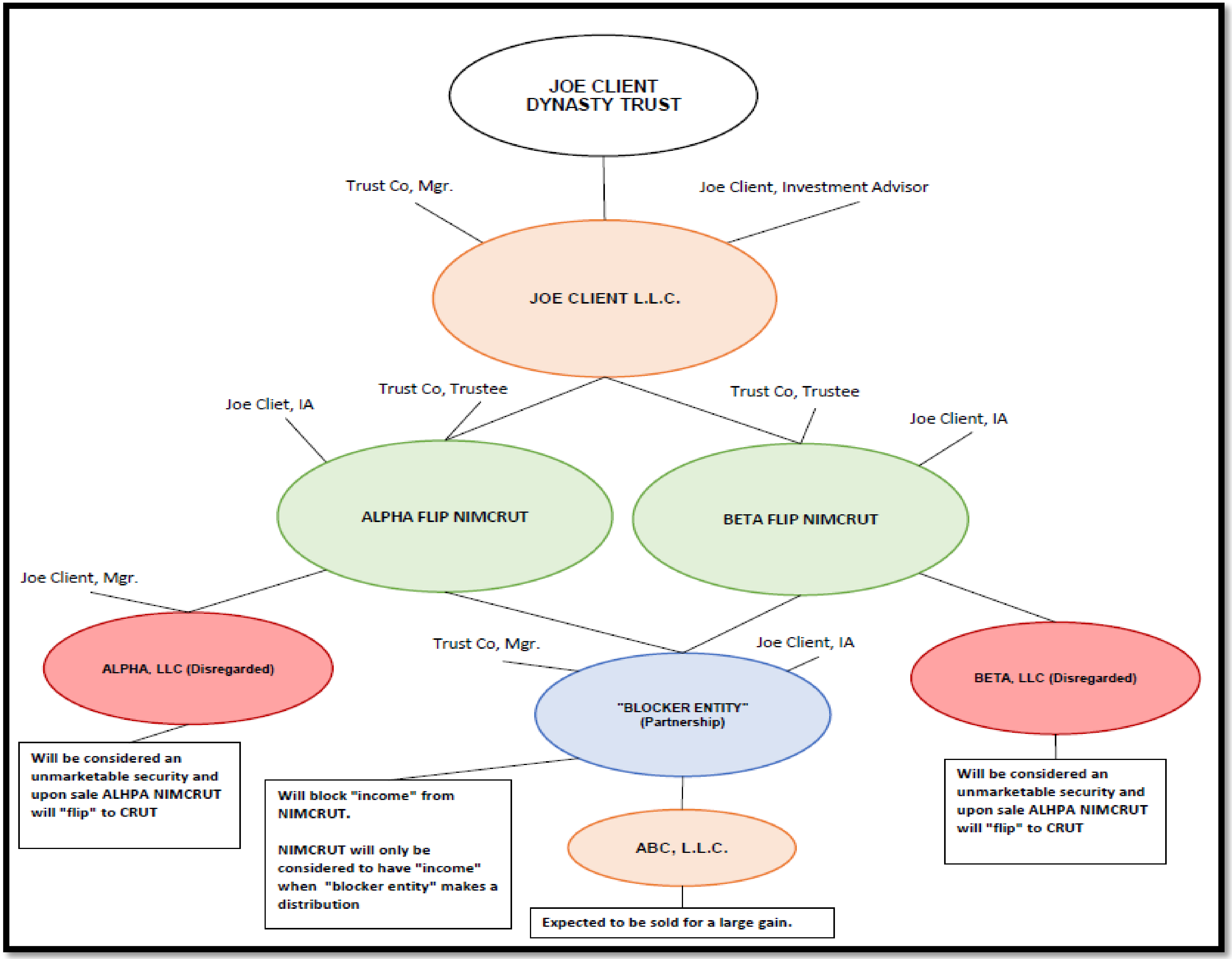
6. The sale of the donor's personal residence.

7. Upon the income recipient reaching a certain age.

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

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

Flip NIMCRUT



Charitable Remainder Trust Scenario

A is considering funding a Charitable Trust with stock of his closely held business, ABC Company, prior to the sale of ABC Company in order to defer the gain on the sale.

ABC Company is worth $1,000,000 and A has $200,000 of basis in ABC Company. A expects that he can receive an 8% rate of return after receiving the cash proceeds from the sale of ABC Company, consisting of 1% ordinary income and 7% capital gains.

A has asked whether the tax deferral under a NIMCRUT or a CRUT will leave him in a better position than if A just invests the after tax proceeds of the sale of ABC Company.

NIMCRUT

Summary Columns

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

NIMCRUT w/ Charitable Deduction

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

Analysis of Net Income with Makeup Charitable Remainder Unitrust (NIMCRUT)
(20 Year Term 8% Return)

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

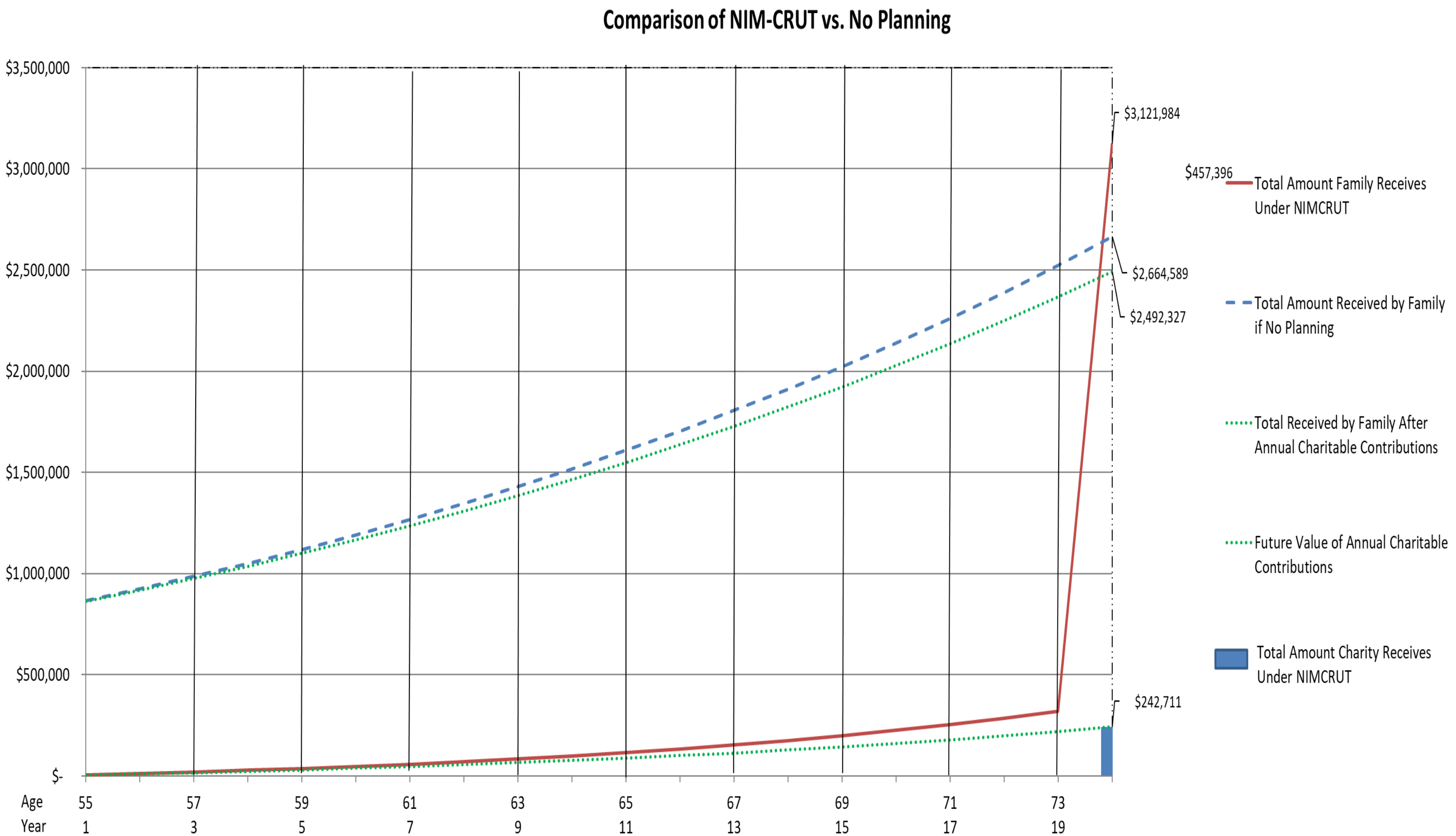
NIMCRUT

No Planning - Investment of Sales Proceeds in Hypothetical Investment Account and Receive Distribution Each Year					
10	11	12	13	14	15
Balance of Hypothetical Investment Account (Assumes 8% Growth)	Distribution (Distribution Net of Taxes Equals After Tax CRUT Payment each year)	Taxes (1.00% of Assets)	Ending Balance of Hypothetical Investment Account	Cummulative Net Distribtuions With 6% Growth	Total Amount Received by Family (Net account + Cummulative Net Distributions) (Columns 13+14= Column 15)
$ 809,600	$ 14,664	$ (8,744)	$ 850,961	$ 14,664	$ 865,624
$ 850,961	$ 15,525	$ (9,190)	$ 894,322	$ 30,188	$ 924,511
$ 894,322	$ 16,436	$ (9,659)	$ 939,773	$ 46,625	$ 986,398
$ 939,773	$ 17,402	$ (10,150)	$ 987,403	$ 64,027	$ 1,051,430
$ 987,403	$ 18,424	$ (10,664)	$ 1,037,308	$ 82,451	$ 1,119,759
$ 1,037,308	$ 19,506	$ (11,203)	$ 1,089,584	$ 101,957	$ 1,191,540
$ 1,089,584	$ 20,652	$ (11,768)	$ 1,144,331	$ 122,608	$ 1,266,939
$ 1,144,331	$ 21,865	$ (12,359)	$ 1,201,654	$ 144,473	$ 1,346,127
$ 1,201,654	$ 23,150	$ (12,978)	$ 1,261,659	$ 167,623	$ 1,429,282
$ 1,261,659	$ 24,510	$ (13,626)	$ 1,324,456	$ 192,133	$ 1,516,588
$ 1,324,456	$ 25,950	$ (14,304)	$ 1,390,158	$ 218,082	$ 1,608,241
$ 1,390,158	$ 27,474	$ (15,014)	$ 1,458,883	$ 245,557	$ 1,704,440
$ 1,458,883	$ 29,089	$ (15,756)	$ 1,530,749	$ 274,646	$ 1,805,394
$ 1,530,749	$ 30,798	$ (16,532)	$ 1,605,878	$ 305,444	$ 1,911,322
$ 1,605,878	$ 32,608	$ (17,343)	$ 1,684,397	$ 338,052	$ 2,022,449
$ 1,684,397	$ 34,525	$ (18,191)	$ 1,766,432	$ 372,577	$ 2,139,009
$ 1,766,432	$ 36,554	$ (19,077)	$ 1,852,115	$ 409,132	$ 2,261,246
$ 1,852,115	$ 38,703	$ (20,003)	$ 1,941,578	$ 447,835	$ 2,389,413
$ 1,941,578	$ 40,978	$ (20,969)	$ 2,034,957	$ 488,813	$ 2,523,770
$ 2,034,957	$ 2,175,776	$ (21,978)	$ (0)	$ 2,664,589	$ 2,664,589

NIMCRUT

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

NIMCRUT



Comparison of NIM-CRUT vs. No Planning
$3,500,000
$3,000,000
$2,500,000
$2,000,000
$1,500,000
$1,000,000
$500,000
$-
Age
55
57
59
61
63
65
67
69
71
73
Year
1
3
5
7
9
11
13
15
17
19
$3,121,984
$457,396
$2,664,589
$2,492,327
$242,711
Total Amount Family Receives Under NIMCRUT
Total Amount Received by Family if No Planning
Total Received by Family After Annual Charitable Contributions
Future Value of Annual Charitable Contributions
Total Amount Charity Receives Under NIMCRUT

Self-Dealing and Flip-NIMCRUTs

- A number of Private Letter Rulings state that "allowed" really means "taken" in the context of the charitable deduction.
- Despite issuing Private Letter Rulings on this as recent as 2017, the IRS is now reluctant to issue Private Letter Rulings on this topic, and it is unclear whether the IRS will take the position that "allowed" really means "taken."
- Thus, if the donor wants to avoid the application of the self-dealing rules, the donor should contribute funds through an entity that is not required to take a charitable deduction, such as a dynasty trust that specifically authorizes the creation of a charitable remainder trust.
- Due to the fact that the private foundation rules generally apply to charitable remainder trusts, it is important to make sure that disqualified persons do not transact with the entity directly. It may be possible to create subsidiaries that are controlled by specially designed trusts that have less than 35% of the beneficial interest being held or made available to disqualified persons.

The Stretch CRUT

- While most beneficiaries that inherit an interest in an IRA will not be able to stretch payments over their lifetimes, it is possible to stretch the disbursements from an IRA over the beneficiary's lifetime using a Charitable Remainder Unitrust ("CRUT").

- The CRUT must be expected to provide the charitable remainder beneficiary with at least 10% of the initial value of the assets contributed to the CRUT.

- The CRUT can continue for the longer of the non-charitable beneficiary's lifetime or a fixed 20 year term.

- The assets held by the CRUT will continue to grow tax-free and may be distributed to the non-charitable beneficiary as capital gain.

- PLR 9237020 provides that the CRUT will not have to pay income taxes when it receives the IRA assets because CRUTs do not pay income taxes on income, unless the income constitutes unrelated business taxable income.

10 Year Rule vs. Charitable Remainder Trust

Facts:

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

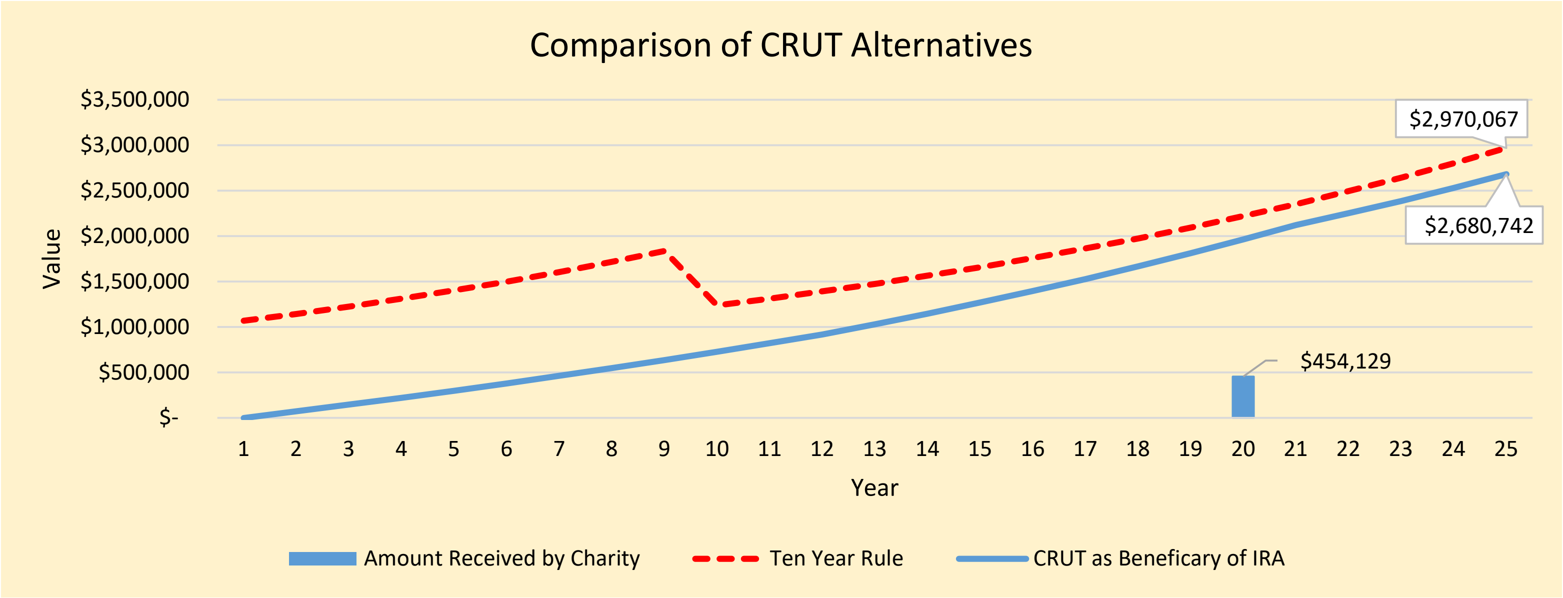
Ten Year Rule

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

Charitable Remainder Trust Beneficiary of IRA

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

Distributed to Charity at end of Year 20



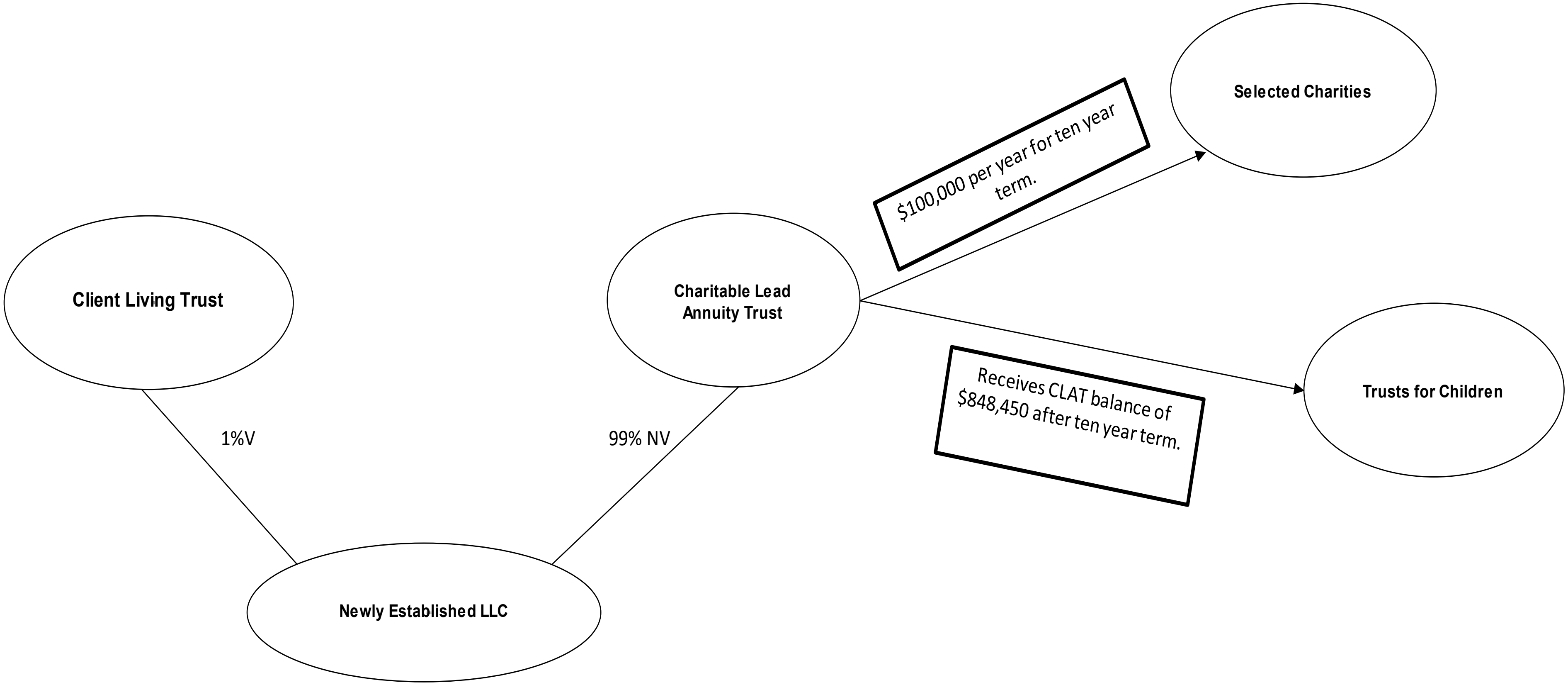
Year	Ten Year Rule	CRUT as Beneficiary of IRA	CRUT Total Payout (Beneficiary and Charity Combined)
10	$ 1,239,305	$ 774,978	$ 774,978
15	$ 1,658,470	$ 1,317,447	$ 1,317,447
20	$ 2,219,407	$ 2,003,206	$ 2,457,335
25	$ 2,970,067	$ 2,680,742	$ 3,134,871

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

Comparing Characteristics of an IRA CRUT and an Accumulation Trust

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

Charitable Lead Annuity Trust



Funded with approximately $1,209,779 of assets and 99% NV Interest transferred to CLAT. Assuming 30% discount the transfer is valued at $846,846.

CHARITABLE LEAD ANNUITY TRUST

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

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

Taxable Gift on Funding to CLAT	$0.00
Estate Tax Savings Over No Planning (Assuming 40% Estate Tax Rate)	$ 339,380
Amount Passing to Beneficiaries Estate Tax Free	$ 848,450
Total Gifts to Charity at End of Year 20	$ 1,000,000

CLAT Result Illustration

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

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

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

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

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

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

Private Operating Foundations – Now More Than Ever!

It is simple to establish an irrevocable trust to qualify as a Section 501(c)(3) Private Operating Foundation, which can be treated in the same manner as a Public Charity for most purposes.

Private Operating Foundations

Charitable deduction of:
60% of AGI for cash contributions,
50% of AGI for non-cash, and
30% of AGI for capital assets.

Generally created by individuals and/or related parties

Excess business holdings rule applies. Any voting interest held in a for-profit business of 20% or more, when aggregated with the voting interest held with disqualified persons, must be disposed of within 5 years.*

Can grant scholarships with prior IRS approval. Disclosure of scholarship program on Schedule E of Form 1023 is sufficient.

Private Operating Foundation

Donor information is public

A Private Operating Foundation must actively engage in its charitable purpose.[1]

Self-dealing rules apply but related parties can control the foundation and distributions.

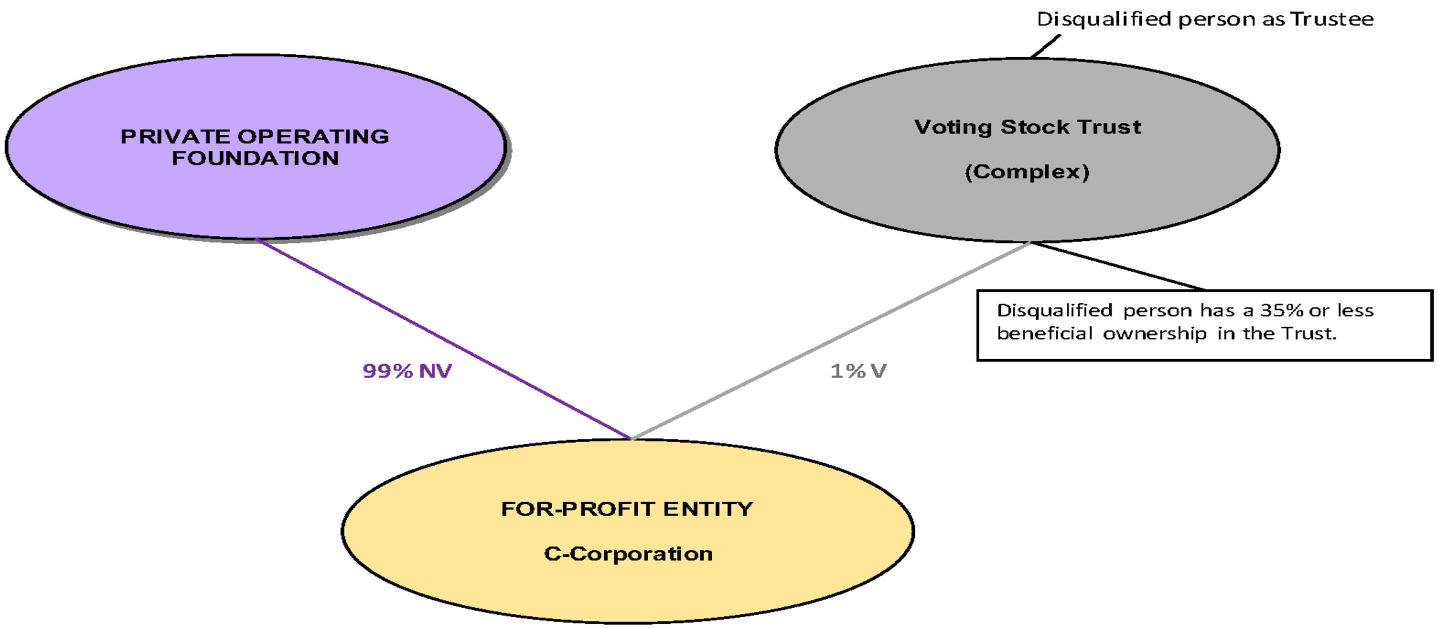
Spend the lesser of 85% of net income or 4.25% of the value of its non-exempt assets on direct charitable expenditures. The Private Operating Foundation must also meet one of three alternative tests, which is usually satisfied if the Private Operating Foundation is spending at least 4.25% of its value on direct charitable expenditures.

Private Operating Foundations and Scholarship Programs

- Generally, providing scholarships and doing nothing more does not meet the active conduct of a charitable purpose requirement for private operating foundations.
- There are exceptions to this rule as provided under Treasury Regulations Section 53.4942(b)-1(b)(2).
- The private operating foundation must do more than merely provide scholarships. The private operating foundation must:
- Actively contribute more than money such as providing direct educational services, mentoring recipients, hosting events that further the recipient's education, analyzing data from the operations of the scholarship program and assisting impoverished individuals.
- The Regulations states that it is easier to meet the standard when the foundation has a main goal of reducing poverty.
- Scholarship programs should be disclosed on Schedule H of the Form 1023 Application for preapproval.

Non-Profit Entity Owning For-Profit Business

Permitted - Voting Trust Strategy



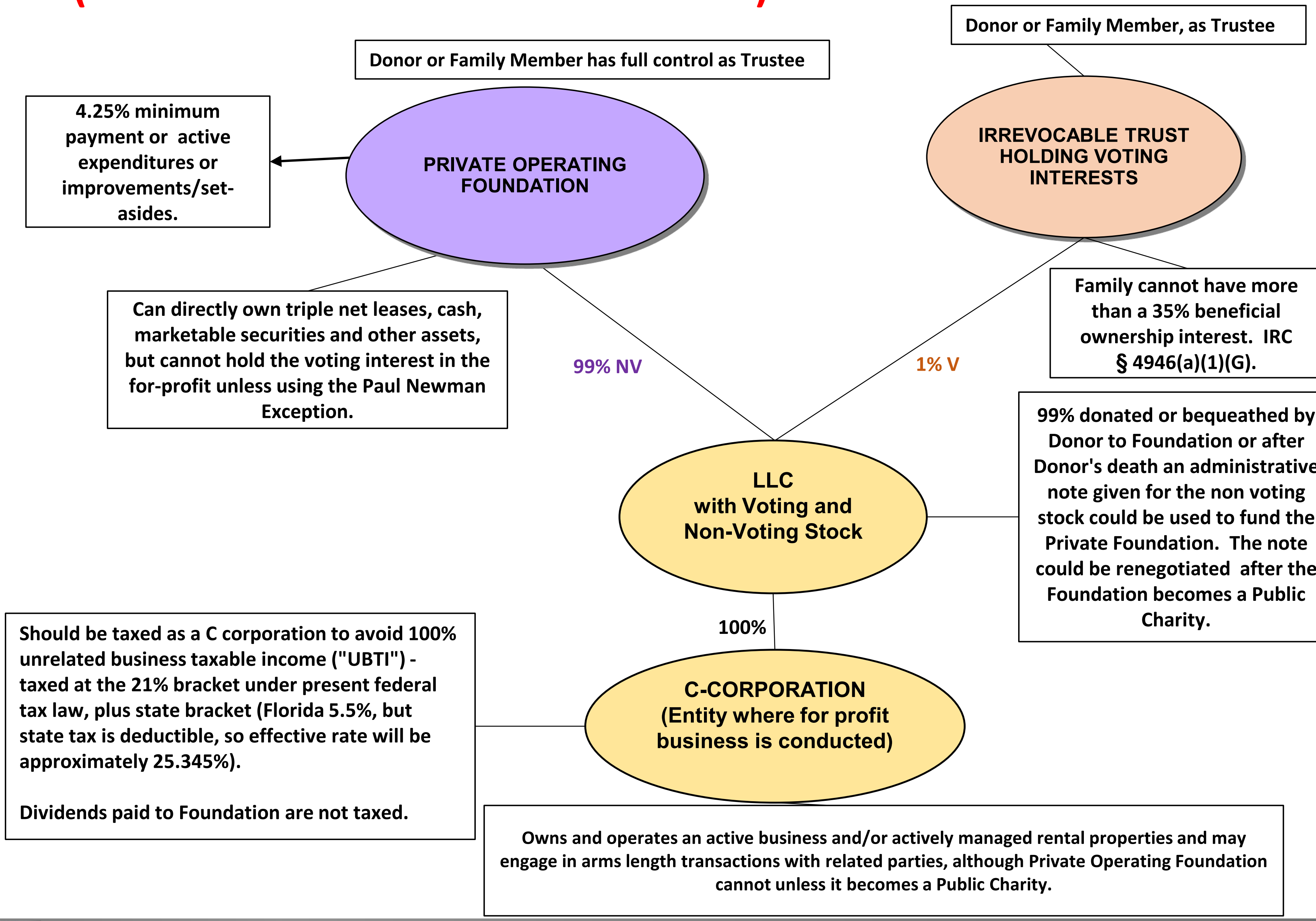
A Private Operating Foundation ("POF") will be deemed to have excess business holdings in the event that the POF holds more than 20% of the voting stock of a for profit company, as aggregated with disqualified persons. Section 4943(c)(2)(A). A trust will not be considered to be a disqualified person as long as a disqualified person does not hold more than a 35% beneficial interest in the trust. Section 4946(a)(1)(G).

In the above diagram, the disqualified person does not have more than a 35% beneficial interest in the Voting Stock Trust, so the Voting Stock Trust is not considered to be a disqualified person. The disqualified person can serve as the Trustee of the Voting Stock Trust controlling 100% of the voting interest in the for profit entity because such person is acting in his capacity as Trustee of the Voting Stock Trust and not individually.

The POF can maintain ownership in the 99% non-voting interest in the for profit without causing any excess business holding issues because the POF is not treated as owning over 20% of the voting stock of the for profit entity.

The best entity to use for this strategy, in most cases, is a C-corporation because it would not automatically pass Unrelated Business Taxable Income ("UBTI") up to the POF and dividends paid to the POF are not taxable.

(PRIVATE OPERATING FOUNDATION)



(PRIVATE OPERATING FOUNDATION)

Private Operating Foundation Rules:

1. Must expend at least 4.25% of its total value each year on active charitable purposes, or construction of charitable facilities that will be used for active charitable purposes.

2. The Private Operating Foundation can be solely managed by the Family Member as Trustee of the Foundation while the corporation can be managed by the Family Member as President, and as the voting stockholder as Trustee of the stock that holds the voting stock trust. The Family Member can receive reasonable compensation from the Foundation for services rendered to the Foundation and from the Company for services rendered to the Company.

3. The Private Operating Foundation does not need to satisfy Public Charity requirements.

4. The Private Operating Foundation cannot lend directly to a disqualified person or related party, but the Corporation would be able to lend money to disqualified persons and related companies at arm's-length and could exchange goods or services with a disqualified person at arm's-length.

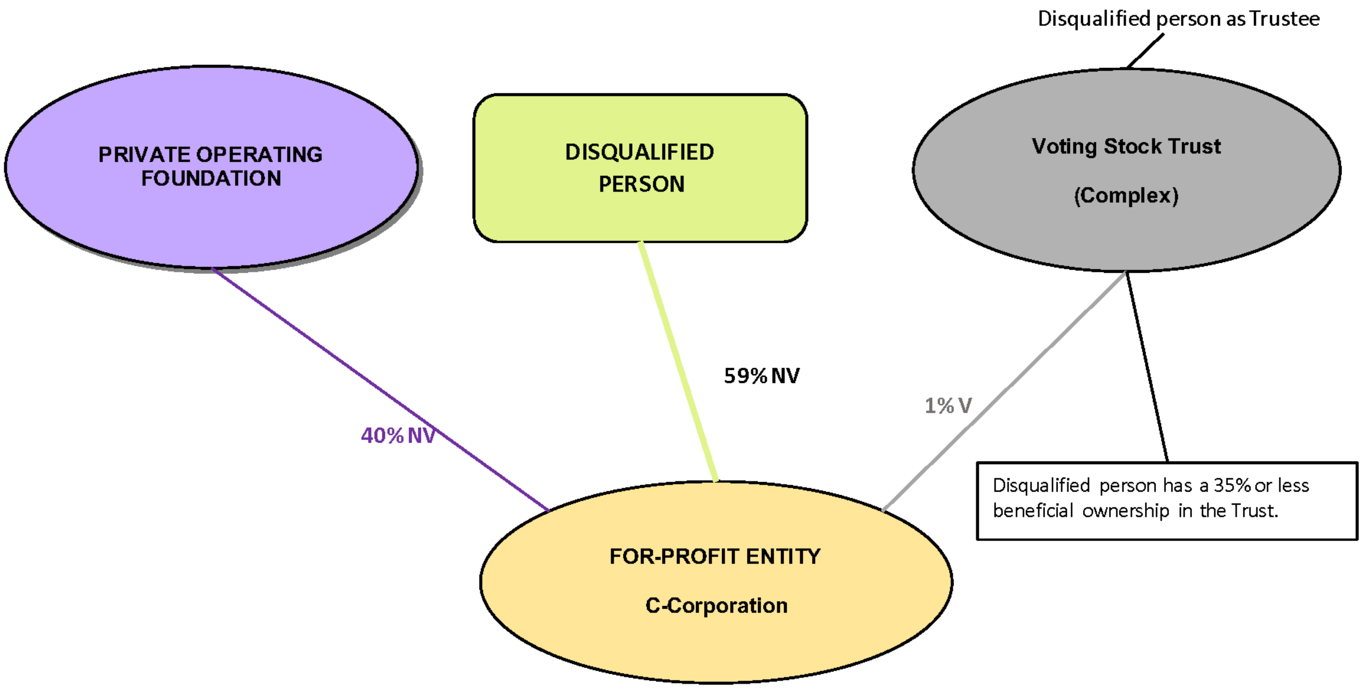
5. The Family Member cannot be a beneficiary of more than 35% of the Voting Stock Trust's assets.

6. The Trust is not able to purchase the 99% interest in the Company for a promissory note from the Donor during Donor's lifetime because there would be a self-dealing issue if that promissory note was going to be transferred to the Private Operating Foundation at the Donor's death. After the Donor's death, a note meeting the requirements of the "Administrative Note Exception" (no more than 25-years, interest only) could be given for the non voting stock that is owned by the Donor's revocable trust at the time of the Donor's death.

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

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.

Spousal Limited Access Trusts (SLATs)

Estate Planning Advice / SLAT Introduction

Stepped-up basis planning can be impacted by the above decision.

Assets in a "credit shelter trust" will normally not get a new income tax basis on the beneficiary spouse's death, unless the beneficiary spouse is given a power to appoint the trust assets at least to creditors of his or her estate upon death.

This "general power of appointment" would cause the assets in the trust to be considered as owned by the surviving spouse for estate tax purposes.

"Credit shelter trusts" now benefitting surviving spouses who are well below the estate tax exemption amount can be modified to facilitate this "stepped-up basis planning."

JEST ("Joint Exempt Step-up Trusts") and community property trusts may be used to allow a step-up of all non-IRA/non-pension/non-annuity assets owned by a married couple on the first death.

SLATs

On divorce, the SLAT can divide into two trusts: one trust that continues to be a SLAT, and another trust for descendants that the grantor can control by being able to control who the Trustees are.

The Trustees can make loans to the grantor at fair market value.

If the trust is based in an asset protection jurisdiction, then it should be possible for the grantor to be added as a beneficiary, if and when his or her own assets are no longer sufficient to provide support for the grantor.

The grantor can sell assets to a defective grantor trust at arm's-length, including discounted LLC or limited partnership interests, in exchange for long-term low interest notes.

THOUGHTS AND SUGGESTIONS FOR FUNDING AN IRREVOCABLE TRUST THAT WILL BENEFIT THE GRANTOR'S SPOUSE

1. The settlor's spouse may be a trustee of the trust.

2. The settlor's spouse can have the right to receive amounts as reasonably needed for health, education, maintenance and support.

3. The settlor's spouse may be the beneficiary of an outright disposition or General Power of Appointment Marital Trust provision to be funded if total contributions to the trust would otherwise cause gift tax responsibility.

4. Avoid the Reciprocal Trust Doctrine by not having the spouses form substantially equivalent trusts for one another.

5. Typically the trust will be disregarded for income tax purposes, so that the settlor can pay the income tax attributable to the trust's income.

THOUGHTS AND SUGGESTIONS FOR FUNDING AN IRREVOCABLE TRUST THAT WILL BENEFIT THE GRANTOR'S SPOUSE

6. The settlor's spouse may choose to "split the gift" on a gift tax return, which is permitted in limited circumstances notwithstanding that the spouse is a beneficiary as discussed later in the slides.

7. What if the assets used to fund the trust had recently been owed jointly by the settlor and the spouse, or were owned by the spouse and transferred to the settlor, who then transferred them to the trust?

8. Should the surviving spouse be given a limited power of appointment to direct how trust assets will pass?

9. Should there be a divorce clause?

10. If the trust also provides for health, education, maintenance and support or other payments to descendants, how <u>will the trust be protected from the spouse's or descendant's support claims or other items for which state law permits penetration of a trust</u>?

SLAT CHECKLIST

1. Is client the Grantor, or both spouses?

A. Will there be a "floating spouse" provision, so that the Grantor can benefit, if the beneficiary spouse dies by entering a new marriage with a spouse who can be a beneficiary?

B. In such event, will the new spouse have a Power of Appointment? - Perhaps only exercisable with consent of a majority of the Grantor's descendants and only in favor of descendants of the Grantor's parents?

C. Will a "floating spouse" only be eligible to benefit during the life of the Grantor, or thereafter?

D. If the spouse/beneficiary remarries and is a beneficiary of the SLAT, should he or she be required to obtain a Marital Agreement with the new spouse so that the new spouse agrees to not attempt to reach into the trust or to consider the trust for purposes of setting alimony or support in the event of a divorce? - Limit benefits payable to remarried spouse, unless new spouse signs binding Marital Agreement.

SLAT CHECKLIST

E. If Grantor and spouse divorce, does the trust divide into a SLAT as to one-half and a trust for the descendants of the Grantor as to the other half, with each spouse to control the trusteeship and do Trust Protectors change to "Spouse Protectors?"

F. Will an "adverse party" be named with the power to veto any distribution to the Grantor's spouse in order to be able to attempt to toggle off Grantor Trust status?

G. Will the spouse's Power of Appointment be:

   i. Exercisable during the life of the Grantor?

   ii. Exercisable during the life of the spouse or only upon death?

   iii. Subject to what limitations?

SLAT CHECKLIST

2. Will the SLAT be placed in an asset protection jurisdiction ("APT"), so that the Grantor may be added as a beneficiary if certain events occur.

3. Will Trust Protectors be appointed and able to change the beneficiaries?

4. Will children be required to receive Marital Agreements with their spouses where the spouse agrees not to pursue the trust for support or as a possible source of alimony for purposes of measuring alimony, etc., in order to allow the child to receive more than a specified amount from the trust?

SLAT CHECKLIST

5. Will distributions after the death of the Grantor be limited to not exceed a monthly or annual amount that may be adjusted with the Consumer Price Index to assure that the life journey of a beneficiary will not be unduly interfered with?

6. Does the Grantor want distributions to possibly be made to charity?

   If so, should it be limited to charities that the Grantor has supported during his lifetime, or charities named in the document?

   If so, should it be limited as to what percentage of each trust or what dollar amount may be transferred to charity each year, or upon what circumstances?

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

1. The settlor's spouse may be a trustee of the trust. As with all irrevocable trusts, administration should be well documented and according to the trust document.

SPECIAL LANGUAGE:

Removal and Replacement of Trustee. Grantor may remove any Trustee of a Trust under this instrument who is then serving or who is designated as a successor or alternate Trustee and may additionally name any "Eligible Person," as defined herein, to serve as Trustee in the place of the removed or retiring Trustee, or to be designated as successor or alternate Trustee.

An "Eligible Person" is a licensed trust company or an individual (other than Grantor) who is neither related nor subordinate to the Grantor. For this purpose, "related" and "subordinate" have the same meaning that they have under Code Section 672(c).

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

SPECIAL LANGUAGE (Cont.):

The right to remove and replace a Trustee under this Section may be exercised by a writing delivered to the then-serving Trustee, signed by Grantor, and indicating the effective date of the removal, the identity of such next-serving Trustee, and the agreement of that next-serving Trustee. No cause or justification shall be required for any removal or appointment under this Section.

If the Grantor is unable to exercise the above removal and replacement power, then the Grantor's spouse, MARY SMITH, shall have this removal and replacement power if exercised with the consent of any adult child of the Grantor.

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

2. <u>The settlor's spouse can have the right to receive amounts as reasonably needed for health, education, maintenance, and support.</u> It is best to provide that any such distributions for the spouse will be made only after taking into account the spouse's other assets and resources.

   Otherwise, consider whether the spouse might be considered to be gifting to the trust if he or she had the right to receive distributions and did not take them.

   Alternatively, limit distributions to the spouse by requiring an independent fiduciary to approve them.

   <u>SPECIAL LANGUAGE:</u>

   > Further, notwithstanding any provision herein to the contrary, no distribution shall be made for the Grantor's spouse from this Trust or any trust herein established unless clearly necessary whereby such spouse does not have sufficient income and/or investment resources to satisfy said spouse's reasonable needs for health, education, maintenance and support.

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

3. The settlor's spouse may be the beneficiary of an outright disposition or General Power of Appointment Marital Trust provision <u>to be funded if total contributions to the trust would otherwise cause gift tax responsibility</u>. Do not use a QTIP trust for this because of the harsh regulations requiring a marital deduction election to be filed for a lifetime QTIP trust gift.

<u>SPECIAL LANGUAGE:</u>

> <u>Contingent Martial Deduction Provision.</u> In the highly unlikely event that the Grantor's contributions to this Trust exceed the maximum amount that can be gifted by the Grantor without incurring Federal Gift Tax (based upon the assumption that the Grantor's spouse will sign a split gift Form 709 Gift Tax Return with respect to any contribution made while the Grantor is married), then the Trustee shall divide the Trust estate into two separate shares, hereinafter designated as the SMITH IRREVOCABLE BENEFICIARY TRUST SHARE and the SMITH MARITAL DEDUCTION TRUST SHARE. The SMITH IRREVOCABLE BENEFICIARY TRUST SHARE shall be a fraction of the Trust estate of which (a) the numerator shall be the largest amount that if allowed as a Federal Gift Tax Exemption would result in no Federal Estate Tax being payable by the Grantor or the Grantor's spouse by reason of the gift to this Trust by the Grantor which was split by the Grantor's spouse, and (b) the denominator shall be the value as finally determined for Federal Gift Tax purposes of the assets in the Trust estate. The SMITH MARITAL DEDUCTION TRUST shares shall be the remainder of the Trust estate. No property shall be allocated to the SMITH MARITAL DEDUCTION TRUST SHARE that would not qualify for the Estate Tax Marital Deduction. The SMITH IRREVOCABLE BENEFICIARY TRUST SHARE shall be held pursuant to the terms of Section __________ and Article _______________ of this Trust. The SMITH MARITAL DEDUCTION SHARE shall be held for the benefit of the Grantor's spouse, pursuant to Section ______ below.

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

SPECIAL LANGUAGE (Cont.):

Disposition of SMITH Marital Deduction Share. The SMITH Marital Deduction Share shall be held as a separate trust to be known as the SMITH MARITAL DEDUCTION TRUST, and shall be held, managed and distributed for the benefit of the Grantor’s spouse as follows:

(1) Income. Commencing with the date of the funding of the SMITH MARITAL DEDUCTION TRUST, the Trustee shall pay to or for the benefit of the Grantor’s spouse during such spouse's lifetime all the net income in convenient installments but no less frequently than annually.

(2) Principal. In addition, the Trustee may pay to or for the benefit of the Grantor’s spouse at any time and from time to time such sums from principal as are reasonably necessary for the Grantor’s spouse's health, education, maintenance and support. Furthermore, an Independent Trustee, if appointed, may pay to or for the benefit of the Grantor’s spouse at any time and from time to time such amounts, up to and including the whole thereof, as such Independent Trustee deems appropriate in its sole and absolute discretion, provided that no non-Independent Trustee then serving shall have any ability whatsoever to participate in such decision.

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

(3) IRAs and Qualified Plans. If this SMITH MARITAL DEDUCTION TRUST becomes the beneficiary of any individual retirement account (IRA), qualified retirement plan, or similar tax-deferred arrangement or annuity (the "Plan"), the Trustee shall withdraw from such Trust's share of the Plan, in each calendar year, and deposit in such Trust, at minimum the "minimum distribution amount" which is required to be withdrawn from such share under Section 401(a)(9) of the Code, the Regulations thereunder, or other applicable law, as then in force, provided that the Grantor's spouse may require, on an annual basis by signed writing delivered to the Trustee, that the Trustee so withdraw and deposit the greater of the minimum distribution amount or the net income on the Trust's share of such Plan for such year. The net income of this SMITH MARITAL DEDUCTION TRUST's share of the Plan shall be included in computation of the Trust's net income for the purpose of determining any required income distributions.

(4) Prohibited Distributions. Notwithstanding anything in this Trust Agreement to the contrary, no distribution of income or principal shall be made from the SMITH MARITAL DEDUCTION TRUST to or for the benefit of anyone but the Grantor's spouse during the Grantor's spouse's lifetime, unless the Grantor's spouse executes her inter vivos limited Power of Appointment as described below.

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

(5) Power of Appointment. The Grantor's spouse shall have a testamentary general Power of Appointment (as defined in Section 1.09 of this Trust Agreement) with respect to the SMITH MARITAL DEDUCTION TRUST, and upon the death of the Grantor's spouse, the Trustee shall pay the remaining principal, or such portion thereof over which said Power is exercised, as the Grantor's spouse directs pursuant to the exercise of such Power.

Further, the Grantor's spouse shall have an inter vivos limited Power of Appointment (as defined in Section 1.09 of this Trust Agreement) with respect to the SMITH MARITAL DEDUCTION TRUST, provided that the Grantor's spouse must exercise such power, if at all, by making specific reference to such power in a written document signed in the presence of two witnesses and a notary and delivered to the Trustee. Upon receipt of such document, the Trustee shall pay such principal or a portion thereof over which said power is exercised, as the Grantor's spouse directs pursuant to the exercise of such power.

(6) Disposition in Lieu of Exercise of Powers of Appointment. Upon the death of the Grantor's spouse and to the extent not otherwise effectively appointed, any property remaining in the SMITH MARITAL DEDUCTION TRUST shall be held, managed and distributed pursuant to Section 5.01(b) of this Trust Agreement, which are the protective trust provisions for descendants.

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

4. Typically the trust will be disregarded for income tax purposes, so that the settlor can pay the income tax attributable to the trust's income.

In case the settlor may want to "toggle off" defective grantor trust status (such as by reserving the right to replace trust assets with assets of equal value, and then releasing that right) an adverse party (another substantive beneficiary under the trust) must have the right to approve any distributions to the spouse.

Otherwise the trust will be a defective grantor trust under Internal Revenue Code Section 677, and the settlor will not be able to toggle that off (except by getting divorced!).

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

SPECIAL LANGUAGE:

(1) The Trustee may pay to or for the benefit of Grantor's spouse, so much of the income and/or principal of the Trust as the Trustee shall deem appropriate to provide said spouse with expenses of health, education, support or maintenance. This includes maintenance in health and reasonable comfort, support in said spouse's accustomed manner of living, education, including college and professional education, and medical, dental, hospital and nursing expenses and expenses of invalidism. The Trustee may also invade the principal of this Trust in such amounts as it may deem appropriate to provide for the maintenance, support, health and education of Grantor's descendants taking into consideration any other means of support they or any of them may have to the knowledge of the Trustee, provided that no such distribution shall satisfy any obligation of support of Grantor, or any legal obligation of Grantor or any Trustee hereof. The Trustee is encouraged to withhold payments that would otherwise be unwisely spent, would disqualify the beneficiary from receiving public assistance, or might be seized by creditors or any divorced spouse of such beneficiary. **Notwithstanding the above, no distribution shall be made to or for the benefit of the Grantor's spouse during the lifetime of the Grantor except as approved by an adverse party as defined in Section _______ of this Trust Agreement.**

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

5. The settlor's spouse may choose to "split the gift" on a gift tax return, which is permitted notwithstanding that the spouse is a beneficiary, so long as it is very unlikely that the spouse will need to receive benefits for health, education, maintenance and support when taking into account the spouse's other assets and resources. See Private Letter Ruling 200345038, *William H. Robertson vs. Commissioner, 26 TC 246 (1956), and BNA Portfolios 822-3rd: Estate, Gift and Generation-Skipping Tax Returns and Audits, Section X.M, and 826-2nd: Life Insurance, Section II.F.*

SPECIAL LANGUAGE:

Assets being transferred to make use of $4,000,000 of the lifetime gifting exclusion increase may be owned by one spouse or the other, and desired use of exclusions may not match the ownership of assets being transferred.

For example, husband has an $8,000,000 asset and Husband and Wife wish to each use $4,000,000 of their respective gifting exclusion. Is it best for Husband to transfer $4,000,000 worth of the asset to Wife, who can in turn gift this portion of the asset, or is it preferable for Husband to make the entire gift and for Wife to sign a split gift return in order to consider the gift to have been made half by Wife?

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

SPECIAL LANGUAGE (Cont.):

The split gift return technique works even if wife is a beneficiary of a trust that receives the gifts from husband, unless (1) the Trustee's power to distribute property for the benefit of the spouse is not limited by an ascertainable standard; and (2) the spouse does not have sufficient financial assets outside of the Trust and therefore it is likely that the Trustee will distribute assets from the Trust for the benefit of the spouse. For an excellent discussion of this see Qualifying Trust Transfers for Split-gift Treatment by William R. Swindle, July/August 2007, Vol. 81, No. 7, FL Bar Journal

However, if Husband transfers half the assets outright to Wife, and Wife then transfers these assets, the step transaction doctrine may apply. The step transaction doctrine was developed under the common law to provide that the substance of a transfer or transaction will be considered to have occurred, notwithstanding intermediary steps for predetermined intermediary structuring. Under the step transaction doctrine, a transfer from party A to party B followed by a transfer from party B to party C may be considered as a transfer directly from party A to party C. "The 'step-transaction' doctrine collapses 'formally distinct steps in an integrated transaction' in order to assess federal tax liability on the basis of a 'realistic view of the entire transaction.'"

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

6. What if the assets used to fund the trust had recently been owed jointly by the settlor and the spouse, or were owned by the spouse and transferred to the settlor, who then transferred them to the trust? Under the Step Transaction Doctrine, the assets and the economic risk associated therewith should be owned and held exclusively by the settlor for a reasonable period of time. In case the IRS argues that the contribution to the trust was really made by the settlor's spouse (in which event the settlor's spouse may be subject to federal estate tax under Internal Revenue Code Section 2036(a)(1) - retained life interests), it may be important to have trust language which provides that any trust assets considered as transferred to the trust by the spouse beneficiary will be held in a separate subtrust that the spouse will not be a beneficiary of.

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

SPECIAL LANGUAGE:

<u>If the Grantor's Spouse is a Contributor to this Trust. To take into account that the Grantor's spouse may be considered to be the contributor of certain assets to this Trust, and should thereby not have any right to receive distributions or benefits from any Trust assets that the Grantor's spouse has funded, in the event that for any reason the Grantor's spouse is considered to be the contributor of assets to this Trust or any trust herein established, then such assets shall be set aside and held as a separate trust, in a manner identical to the provisions set forth in Section 5.01(a) hereof, provided that no distributions whatsoever shall be made to the Grantor's spouse from such separate subtrust, and that no power of appointment otherwise exercisable by the Grantor's spouse shall be considered to be exercisable or exercised, notwithstanding any provision herein to the contrary.</u>

The purpose of this provision is to avoid having the Grantor's spouse be considered the owner of any Trust assets for purposes of Internal Revenue Code Section 2036(a)(1) and (2) or any Treasury Regulations set forth therein. Consistent therewith, the Grantor's spouse shall not be the Trustee of any such separate trust and any acting Co-Trustee shall have the power to act without joinder or consent of the Grantor's spouse as to any such trust.

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

Some courts have noted that the step transaction doctrine should only apply if tax savings is the sole motivation behind the taxpayer's actions. If the transaction has an "independent purpose or effect" in addition to the goal of tax savings such purpose or effect may be sufficient to avoid the application of the step transaction doctrine.

Planners will therefore need to consider whether the step transaction doctrine will apply, how to avoid the step transaction doctrine, and whether to use split gift returns if one spouse makes a gift that they wish to consider having been made ½ by the other spouse.

Clients who have been involved with installment sales shortly after the funding of the entity as to which the interests were sold may wish to unwind those sales or have the note paid off as part of estate tax law planning in order to reduce the likelihood that the IRS would attempt to apply the step transaction doctrine to the transaction that occurred.

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

7. Should the surviving spouse be given a limited power of appointment to direct how trust assets will pass? The grantor cannot be given this power if a completed gift to the trust is desired, but the spouse can. However, the power should not be exercisable in favor of her personally, her creditors, her estate, or creditors of her estate.

   At what point should the power of appointment exist and/or be terminated?

   (a) Immediately upon inception of the trust until the death of the surviving spouse?

   (b) Only after the death of the settlor until the death of the surviving spouse?

   (c) Only unless or until the parties are divorced or either party has a child who is not a beneficiary under the trust?

SPECIAL LANGUAGE:

If JANE C. JONES predeceases the Grantor and has left a Last Will and Testament or separate written document executed in the presence of two witnesses and a notary which changes the dispositive provisions of this Trust Agreement as would otherwise apply pursuant to Section 5.01(b) hereof, then the remaining Trust assets shall be held or distributed as set forth by the exercise of such testamentary "Power of Appointment," provided that the guidelines and limitations described in Section 1.09 of this Agreement shall apply with respect to such exercise.

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

<u>Power of Appointment.</u> The term "Power of Appointment" means a power of appointment under which the holder of the power shall be able to appoint all or a portion of the property to which the power applies, outright or in trust or otherwise, to or for the benefit of any person or persons as the power holder may select from among the lineal descendants of the parents of the Grantor (other than the power holder) and/or one or more charities that are named under this Trust Agreement, provided that this restriction to the lineal descendants of the parents of the Grantor shall not apply if there are no such descendants then surviving. The holder of a Power of Appointment must exercise such power, if at all, by making specific reference to such power in his or her Last Will and Testament duly admitted to probate. In disposing of any property subject to a Power of Appointment, the Trustee may rely upon an instrument admitted to probate in any jurisdiction as the Last Will and Testament of the holder of such power. If the Trustee has no written notice of the existence of such Will with a period of three (3) months after the power holder's death, it may presume that the power holder died intestate, and the Trustee shall be protected in acting in accordance with this presumption. Unless otherwise expressly provided, no Power of Appointment shall be exercisable in favor of the Grantor individually, the power holder, his or her creditors, his or her estate, or the creditors of his or her estate, nor shall any such Power be exercisable in satisfaction of any legal obligation, including any support obligation of the power holder, and the term shall be construed to be a limited power of appointment as defined in Sections 2041 and 2514 of the Code.

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

8. Should there be a divorce clause?

   Typically where the drafting lawyer is representing both spouses this can be discussed and a joint representation letter can be put into place. It is likely that the judge will consider the trust assets to be for the benefit of the beneficiary spouse, but this will vary from state to state and judge to judge.

   If the settlor's spouse is not a client then consider a clause that will provide that, upon divorce, the beneficiary spouse is no longer a beneficiary, trustee or otherwise entitled under the document.

ESTATE PLANNING JOINT REPRESENTATION DISCLOSURE

THE UNDERSIGNED, ____________________ and __________________________, being husband and wife, do hereby affirm that GASSMAN, CROTTY AND DENICOLO, P.A. has informed us of the following by providing this document:

PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

The Florida Bar Ethics Rules encourage that we inform both spouses in a marriage of their ability to procure independent legal counsel, of the possibility of differing economic interests that might be pursued in estate planning and shifting asset ownership, and that information made available to us becomes jointly available as part of an estate planning file. For example, under Florida law, signing a declaration which states that all personal property held by each spouse will be owned as tenants by the entireties with the other spouse will cause all personal property of each spouse, including wedding rings and other gifts that have been previously received by each spouse, to be owned jointly with the other spouse as tenants by the entireties. This may restrict each spouse's rights with respect to the sale or subsequent transfer of such personal property. Also, under Florida law there is something called the Elective Share which allows a surviving spouse to elect to receive up to 30% of total available assets if the spouse is not made the beneficiary of direct or certain indirect devises. If at any time either of us wishes to have the advice of separate counsel, before or after executing this Agreement, we understand that we are each able to do so.

Each of us acknowledges the above and has on our own volition proceeded with this estate planning on a joint basis. We further have had the opportunity to review the attached correspondence that was sent with or before the initial estate planning document package that we received, and each of us has had the opportunity to review this letter and to consider its implications.

____________________________________ HUSBAND

____________________________________ WIFE

Possible Impact of Divorce-Control Over Trusteeship

In the highly unlikely event that either the Grantor or JANE SMITH has filed for a dissolution of marriage, then at the time such dissolution is finalized (or sooner if determined appropriate by the unanimous consent of all acting Trustees) the Trustee shall divide the assets of this Trust and any separate trusts herein established, into separate equal trusts which will have equivalent values. The Grantor shall have the authority to remove and replace the Trustee as described above only with respect to one such described Trust (or Trusts equaling 50% of the value of the assets of this Trust prior to division), and JANE SMITH shall have the authority to remove and replace the Trustee as described above only with respect to the other Trust (or Trusts equaling 50% of the value of the assets of this Trust prior to division). In such event, the Trust Protectors of the separate trust that JANE SMITH will have the right to replace the Trusteeship of shall be ___________________, __________________ and ___________________, and the Trust Protectors for the separate trust that the Grantor shall have the power to replace the Trusteeship of shall be ______________________, _______________________ and ________________________. Further, in such event, the Trust Protectors may name alternate Trust Protectors to serve in lieu of one or more of the Trust Protectors then serving of each such separate trust, but only with the advanced written approval of JANE SMITH, as to the separate trust that she will have the power to replace the Trusteeship of, and only with the advanced written approval of the Grantor, with respect to the separate trust that he will have the power to replace the Trusteeship of.

Possible Impact of Divorce- Elimination of Ex-Spouse as a Beneficiary

If and when a spouse of the Grantor, including CURRENT SPOUSE, is no longer married to the Grantor during the Grantor's lifetime, or on the one-year anniversary of the filing of a Petition for Dissolution of Marriage by either of the Grantor or a spouse of the Grantor to terminate the marriage of the Grantor that is not withdrawn or settled without a divorce occurring, then such spouse of the Grantor shall no longer be eligible to be a beneficiary under this Trust, or to have or exercise any power of appointment or any right with reference to this Trust Agreement or any trust herein established, unless or until such individual and the Grantor revoke any and all divorce proceedings and continue to be married or re-marry, it being the intention of the Grantor that this Trust should benefit the Grantor's spouse during such spouse's marriage with the Grantor.

Possible Impact of Divorce- Elimination of Ex-Spouse as a Beneficiary, Continued

In the unlikely event that the Grantor and the Grantor's Spouse are no longer married during the Grantor's lifetime, or on the one-year anniversary of the filing of a Petition for Dissolution of Marriage by either of the Grantor or a spouse of the Grantor to terminate such marriage that is not withdrawn or settled without a divorce occurring within one year of such filing, then if this Trust has been funded solely from non-marital separate property of the Grantor the Grantor's spouse shall not be considered to be living or to have any power under this Trust Agreement, provided that if this Trust is funded with assets considered to be marital assets for marital law purposes, then an amount equal to one-half of the value of such assets that would be considered to be marital assets in the event of a divorce shall be set aside into a separate trust with terms equivalent to the terms of this Trust, provided that the Grantor's spouse shall have the right to determine the trusteeship of such trust, and shall be considered to continue to be married to the Grantor and thus eligible to receive benefits and otherwise have the beneficial rights set forth herein. In the event of such division the Grantor shall have the authority to remove and replace the Trustee(s) as described above only with respect to the trust that is not funded for the primary benefit of the Grantor's spouse as described above. By means of example, if this Trust is funded with $100,000 worth of marital assets and $900,000 worth of non-marital assets and by reason of income and growth in value is worth $2,000,000 at the time of a divorce, then $200,000 (10% of the Trust assets) would be considered to be marital assets, and the Grantor's spouse's share of such Marital Assets that would be set aside in a separate trust to be held for the primary benefit of such spouse would be one-half (½) of such Marital Assets or $100,000 ($200,000 / 2 = $100,000) in this example. In the unlikely event that the CLIENT MARITAL DEDUCTION TRUST SHARE is funded pursuant to Section 4.05 above, to the extent possible, such CLIENT MARITAL DEDUCTION TRUST SHARE shall be allocated to the Trust or Trusts over which ALICE CLIENT retains the authority to remove and replace the Trustee as described above.

Possible Impact of Divorce- What if the Trust is Inadvertently Funded with Marital Assets?

(a) Spouse's Marital Property Trust. It is the intention of the Grantor to fund this Trust solely with the Grantor's separate non-marital property, but in the unlikely and unexpected event that marital property is contributed by the Grantor to this Trust, then, if the Grantor's spouse survives the Grantor, the Trustee shall hold, administer and distribute the Trust property which is considered to be marital property during such spouse's lifetime under a separate trust that will be held, managed and administered pursuant to the following terms and conditions:

Possible Impact of Divorce- What if the Trust is Inadvertently Funded with Marital Assets?, Continued

Notwithstanding the paragraph above, it is the intention and expectation of the Grantor that this Trust is being funded solely with non-marital assets which constitute the separate property of the Grantor for marital law purposes, and that would not be considered to be marital assets, or assets that the Grantor's spouse would have access to in the event of a divorce or if the Grantor's spouse survived the Grantor. It is further the Grantor's intention and expectation that income produced by such separate property assets transferred to this Trust, appreciation in value, and assets subsequently purchased or acquired with such income and/or appreciation in value will also not be marital assets. It is further the intention of the Grantor to pay any and all income taxes attributable to the income of assets held under this Trust and any trust herein established from the Grantor's own separate non-marital assets, so that the Grantor's spouse is not disadvantaged by having such income taxes paid from assets that would be available to such spouse in the event of a divorce or upon the death of the Grantor. Therefore, with respect to the paragraph above (which would prevent the Grantor's spouse from receiving any benefit under this Trust in the event of a divorce or a divorce proceeding exceeding one year), to the extent that any assets held under this Trust or any trust herein established would be marital assets, the Grantor's spouse will not be excluded as a beneficiary with respect to a separate subtrust that would be established upon divorce and funded with an appropriate portion of the marital trust assets that would then be held for the benefit of the Grantor's spouse, consistent with Section 6.04 of this Agreement. The Grantor requests that the Trust Protectors would take such actions as are necessary and appropriate in such event, with the intention being that the Grantor's personal assets would not have to be transferred to the Grantor's spouse to make up for assets held under this Trust that may cause a change in how the assets held outside of this Trust would be allocated between the Grantor and the Grantor's spouse.

“Floating Spouse” Provision

- Sample language to define the “Grantor’s spouse”:

> Wherever used in this Trust Agreement, the term "Grantor" shall mean JOHN CLIENT, and the term "Grantor's spouse" shall mean the individual to whom the Grantor is married at the applicable time. It is acknowledged that the Grantor is currently married to ALICE CLIENT.

- Sample language to add a potential new spouse if the Grantor and the Grantor’s spouse divorce, or if the Grantor’s spouse predeceases the Grantor:

> Further, in the unlikely event of a divorce, or if ALICE CLIENT predeceased JOHN CLIENT, then a subsequent spouse of JOHN CLIENT may receive benefits for said spouse’s health, education, maintenance and support during the lifetime of JOHN CLIENT, based upon a conservative standard, provided that no such distribution to or for the benefit of a subsequent spouse of JOHN CLIENT shall be made from any trust held for the primary benefit of ALICE CLIENT while she is living.

Consider the Implications of the Repeal of IRC Section 682

- Under prior law, Internal Revenue Code Section 682 provided that, following the divorce of a Grantor and the Grantor's spouse, any income that the spouse "is entitled to receive" from a trust which would have otherwise been taxed to the Grantor will be taxed to the Grantor's (now ex-) spouse, and not to the Grantor. The phrase "is entitled to receive" has been interpreted to mean that the income of the trust can be paid or distributed to the ex-spouse, regardless of whether the spouse actually receives it.
- Thus, Section 682 generally had the effect of "turning off" grantor trust status of a Spousal Benefit Trust so that the Grantor would not be taxed on the income of the Trust after the Grantor and the Grantor's spouse divorce.
- However, Section 682 was repealed as part of the Tax Cuts and Jobs Act of 2017. As a result a Grantor will continue to be responsible for paying the income tax associated with a trust that benefits the Grantor's ex-spouse (such as a SLAT), even if the Grantor and the Grantor's spouse divorce.
- This is referred to by us as the "Section 682 issue."

Consider the Implications of the Repeal of IRC Section 682- Possible Solutions

- Provide for the beneficiary spouse to be eliminated as a beneficiary upon divorce.

  - Likely effective to avoid the Section 682 issue, but it may not be practical if the assets used to fund the SLAT are marital assets.

- Require that an "Adverse Party" (i.e., a person other than the Grantor's spouse who has a substantial interest in the SLAT) to approve any distribution made to the Grantor's (ex-) spouse.

  - Probably effective to avoid the Section 682 issue, but it is not clear. Even still, it seems that any distributions made to the Grantor's (ex-) spouse could be subject to grantor trust treatment, causing the Grantor to be income tax on any income that is so distributed.

- The spouses enter into a marital agreement defining who pays the income tax associated with the Trust's income in the event of a divorce.

Consider the Implications of the Repeal of IRC Section 682- Sample Language for a Marital Agreement

- Sample language for a marital agreement to cause the beneficiary spouse to be responsible for the income tax obligations associated with the Trust if a divorce occurs:

If a Dissolution of our Marriage occurs, then any income or other tax obligations resulting from the continuing existence of the CLIENT DESCENDANTS TRUST dated August 15, 2021 that has or will be executed and funded and/or the CLIENT SPOUSAL BENEFICIARY TRUST ____________ which has been executed and is in the process of being funded, shall be considered to be marital expenses mutually paid from the marital income and/or assets of the parties, and after a divorce has occurred, any and all income or other taxes attributable to the continuing existence of the CLIENT SPOUSAL BENEFICIARY TRUST and/or any subtrust or subsequent successor Trust created under or from such Trust Agreement shall be the sole responsibility of WIFE, to the extent that under federal income tax laws HUSBAND would otherwise be responsible for such taxes. Further, after a divorce, one-half of any and all taxes attributable to the CLIENT DESCENDANTS TRUST and/or any subtrust or subsequent successor Trust created under or from such Trust Agreement shall be timely paid by WIFE or reimbursed by WIFE to HUSBAND, so that each party is responsible for one-half of the income tax relating to that Trust. The parties will reasonably cooperate with applicable tax advisors to reduce federal income taxes, when possible, or to cause the subject Trusts to pay income taxes from Trust income or principal if and when one party requests that this occur, and such action is a reasonable and conventional method of trust planning.

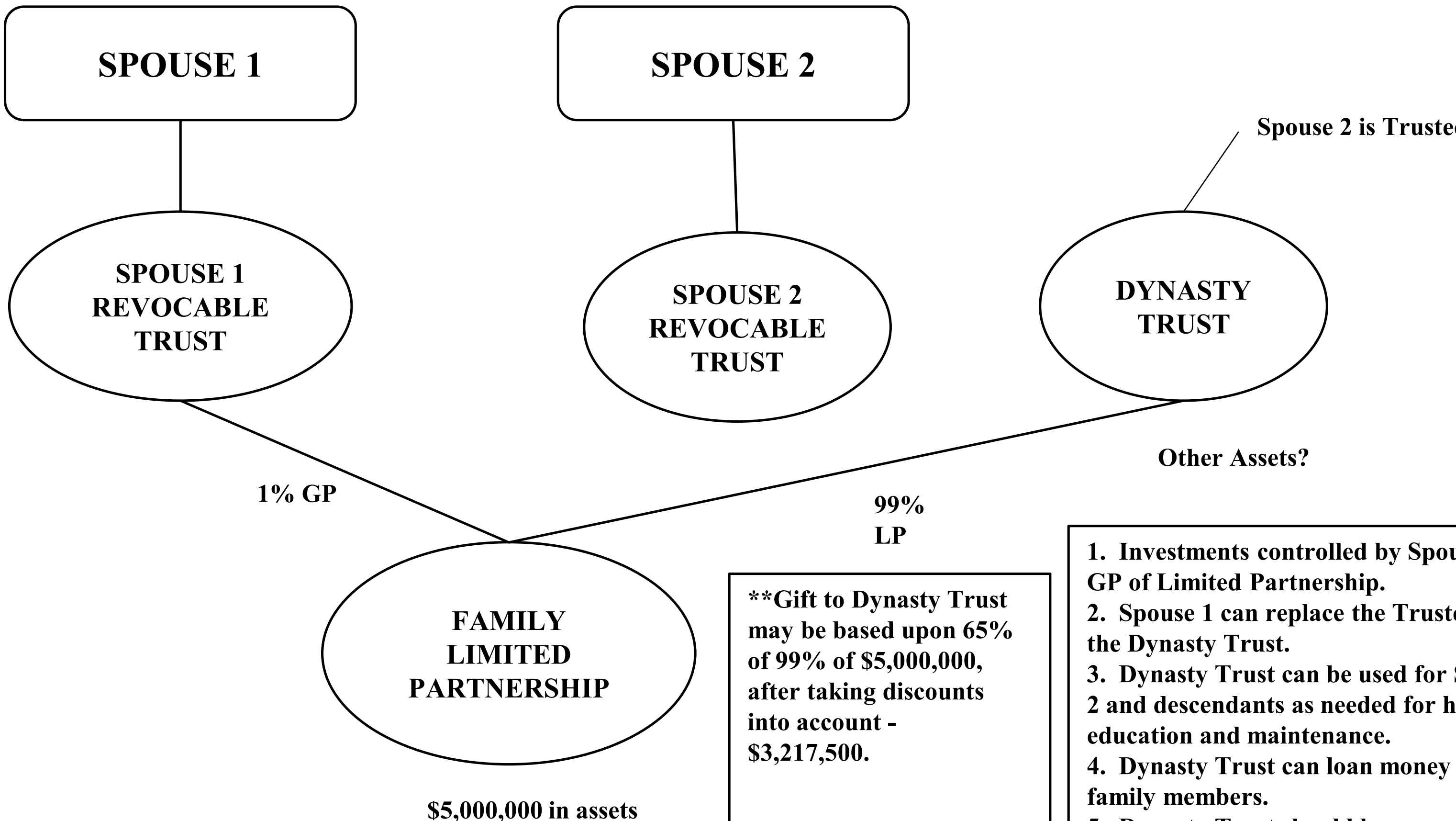
PLANNING FOR A DYNASTY TRUST WHERE THE SPOUSE OF THE SETTLOR/CONTRIBUTOR IS A BENEFICIARY - SPECIAL CONSIDERATIONS

9. If the trust also provides for health, education, maintenance and support or other payments to descendants, how will the trust be protected from a descendant's support claims or other items for which state law permits penetration of a trust?

   If the trust's primary beneficiary is your spouse, but your children can reach into it, do you have to worry that one of your children is going to have a nasty divorce and the ex-spouse of a child is going to be able to reach into this trust?

   Consider whether there should be a Flee (Cuba) Clause in the trust, or whether the trust should name an independent trust protector or trust protectors with the ability to remove descendant beneficiaries and/or the ability to move the situs of the trust to an appropriately protective jurisdiction.

The SLAT (Spousal Lifetime Access Trust) Example of Spouse 1/Spouse 2 Dynasty Trust Arrangement



1. Investments controlled by Spouse 1 as GP of Limited Partnership.
2. Spouse 1 can replace the Trustee of the Dynasty Trust.
3. Dynasty Trust can be used for Spouse 2 and descendants as needed for health, education and maintenance.
4. Dynasty Trust can loan money to family members.
5. Dynasty Trust should be exempt from estate tax, creditor claims, and divorce claims of both spouses and descendants.

Can You Wait To Get This Started?

Step Transaction Doctrine

- *Senda, Holman*, and other court decisions.
- A transfer of assets to an LLC that is immediately followed by a transfer of non-voting member interests by gift will be considered to be a gift of the underlying assets, with no discount permitted.
- It is safest to wait 30 - 45 days between contribution and member interest transfer.
- The more volatile the asset contributed, the less waiting time required.

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

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

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

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

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

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

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

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

Income Tax Consequences of the Installment Sale to a Grantor Trust

- If the Trust is structured as a grantor trust, then no income tax will result from the sale. Under the grantor trust rules, the grantor is treated as the income tax owner of the trust's assets(a disregarded entity for income tax purposes only). One cannot realize a gain if there is no sale of exchange. Rev. Rul. 85-13

- Not only is no income tax gain realized on the sale, no interest income no interest deduction is reported for income tax purposes.

- Any income, deduction and credit of the Trust must be reported on the grantor's individual income tax return.

- If the trust is no longer a grantor trust during the note term for reasons other than the grantor's death, then the assets are deemed to have been sold to the trust for federal income tax purposes, which results an income taxable installment sale by the grantor at the time the trust becomes a non-grantor trust. See Treas. Reg. §1.1001-2(c) Example (5).

What if the Grantor Dies During the Note Term?

- It is unclear whether income tax would be realized if the grantor dies during the note term.

- A few commentators believe that the promissory note represents income in respect of decedent, which does not get a step-up in basis under IRC Section 1014. Thus, in their view, gain would be recognized if the outstanding note balance exceeded the grantor's basis in the note immediately before death. This view is flawed!

  - If the deemed sale qualifies for installment treatment under Section 453, the realized gain would be reported only as principal payments are made; if the assets sold were marketable securities, the installment sale is not eligible for the installment method and gain is deemed to be reported, most likely on the sellers' final income tax return death.

- Because the note cannot be income in respect of a decedent, the holder of the note (i.e., the grantor's successor-in-interest) is entitled to a step-up in basis on the note upon the grantor's death pursuant to Section 1014, which presumably would equal the value of the note included in the gross estate. If the note is valued in the gross estate at a discount, that value must be used and a market discount debt obligation is created under § 1276.

- For an excellent discussion of both sides of this issue (and other issues applicable to the Installment Sale to a Grantor Trust), see Michael D. Mulligan's paper, "A 'Reality of Sale' Analysis of Installment Sales to Grantor Trusts: Properly Structured, the Best Transfer Tax Strategy" presented at the 2015 Notre Dame Tax & Estate Planning Institute.

1. **What is income in respect of a decedent?** Under § 691, IRD is income that was earned while the decedent was living but was not reported on the decedent's individual income tax returns.

   Example: A cash method taxpayer was not paid wages earned while living because the decedent used the cash method of accounting.

   Example. While living the decedent sold an appreciated asset in exchange for third-party buyer's installment note and used the installment method of accounting to report the gain "realized" while living to when the note principal is paid. The gain was "realized" by the seller while living but was not reported because the installment method of accounting deferred reporting the "realized" gain.

2. With an installment sale to a grantor trust no gain was "realized" while the decedent was living.

3. **Because the note included in decedent's gross estate is not IRD, its basis is determined under § 1014(a).** Caution: If note value is discounted, § 1276 creates a market discount debt obligation. When the note principal is paid, the excess of principal over basis is ordinary income.

4. Because death cannot be an income tax realization event, no gain can be reported when the grantor dies with the grantor trust's note still outstanding.

That leaves two choices.

a. Apply Section 1015(b): "If property is acquired by a transfer in trust, the basis shall be the same as it would be in the hands of the grantor." The note in the grantor's gross estate takes a Section 1014(a) basis and the grantor's basis continues as the non-grantor trust's basis. Because Section 1015 was only intended to apply to gifts in trust, and the grantor's sale was not a gift, Section 1015(b) should not apply to transfers at death.

b. Upon conversion to a non-grantor trust by reason of death, the transfer occurred simultaneously with death. The trust is deemed to acquire the asset by purchase and its basis in the asset purchased should be a cost basis under section 1012, equal to the outstanding principal on the note at the time of death.

Primary Estate Tax Planning Techniques to be Familiar With

1. Spend it and invest poorly ☹
2. Use annual gifting and "Crummey Trusts"
3. Use Irrevocable Life Insurance Trusts
4. Defective Grantor Trust
5. Use discount vehicles
6. Consider the installment sale to a Defective Grantor Trust
7. The Self Cancelling Installment Note or Private Annuity
8. Marital Planning

   - Use the estate tax marital deduction
   - Understand portability and its drawbacks
   - Use Spouse's exclusion and gifting ability by split gift returns

9. Qualified Personal Residence Trusts
10. Grantor Retained Annuity Trusts
11. Charitable Lead Trusts

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Thursday, December 16th

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(60 minutes)

Presented by:

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