

What the Cool Kids Are Doing in Estate Planning

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Our Agenda

A green pen is positioned diagonally on the right side of the image. In the center, there is a hand-drawn square box containing a green checkmark. The background is a sheet of white graph paper with a light gray grid.

- The 2022 Federal Income and Transfer Tax Landscape
- Taking advantage of the current climate (making **lemonade** from lemons?)
- Strategies with **leveraged wealth transfers**
- Creating “**non-grantor trusts**” to defer or avoid state income tax
- Using **charitable remainder trusts** as IRA and retirement plan beneficiaries
- Maximizing the **step-up in basis** for income tax purposes
- Ultra-long-term GRATs (**99-year GRATs**)
- Spousal Lifetime Access Trusts (**SLATs**) and Planning for Married Couples

2022 Federal Income Tax Brackets for Individuals

Taxable Income Exceeding		Ordinary Income	Adjusted Net Cap Gain* & Qualified Dividends	Medicare Surtax on Earned Income**	Medicare Surtax on Net Investment Income
Single	Married Filing Jointly				
\$0	\$0	10%	0%	2.9%	0%
\$10,275	\$20,550	12%			
\$41,675	\$83,350				
\$41,775	\$83,550	22%			
\$89,075	\$178,150	24%			
\$170,050	AGI over \$250,000	32%	15%		
AGI over \$200,000	\$340,100				
\$215,900	\$431,900	35%		3.8%	3.8%
\$459,750	\$517,200				
\$539,900	\$647,850	37%			

* Other long-term capital gains could be taxed as high as 25% (building recapture) or 28% (collectibles and §1202 stock).

** Includes employer contribution of 1.45% (§3111(b)(6)), individual contribution of 1.45% (§3101(b)(1)), and additional tax of 0.9% for adjusted gross income over \$200,000 for an unmarried individual and \$250,000 on a joint return (§3101(b)(2), for years after 2012).

2022 Federal Income Tax Brackets for Trusts & Estates

FEDERAL INCOME TAX RATES FOR TRUSTS AND ESTATES FOR 2022

(Adapted from Rev. Proc. 2021-45)

Taxable Income Exceeding	Ordinary Income	Adjusted Net Cap Gain* & Qualified Dividends	Medicare Surtax on Net Investment Income
\$0	10%	0%	0%
\$2,750	24%		
\$2,800		15%	
\$9,850	37%		
\$13,450		20%	
\$13,700	3.8%		

* Other long-term capital gains could be taxed as high as 25% (building recapture) or 28% (collectibles and §1202 stock).

Date of death	Basic exclusion amount
2011	\$5,000,000
2012	\$5,120,000
2013	\$5,250,000
2014	\$5,340,000
2015	\$5,430,000
2016	\$5,450,000
2017	\$5,490,000
2018	\$11,180,000
2019	\$11,400,000
2020	\$11,580,000
2021	\$11,700,000
2022	<i>\$12,060,000</i>



**Federal
Wealth
Transfer
Tax Basic
Exclusion
Amount**

Making Lemonade out of Lemons?



- Harvesting capital gains
- Roth IRA conversions
- Leveraged wealth transfers

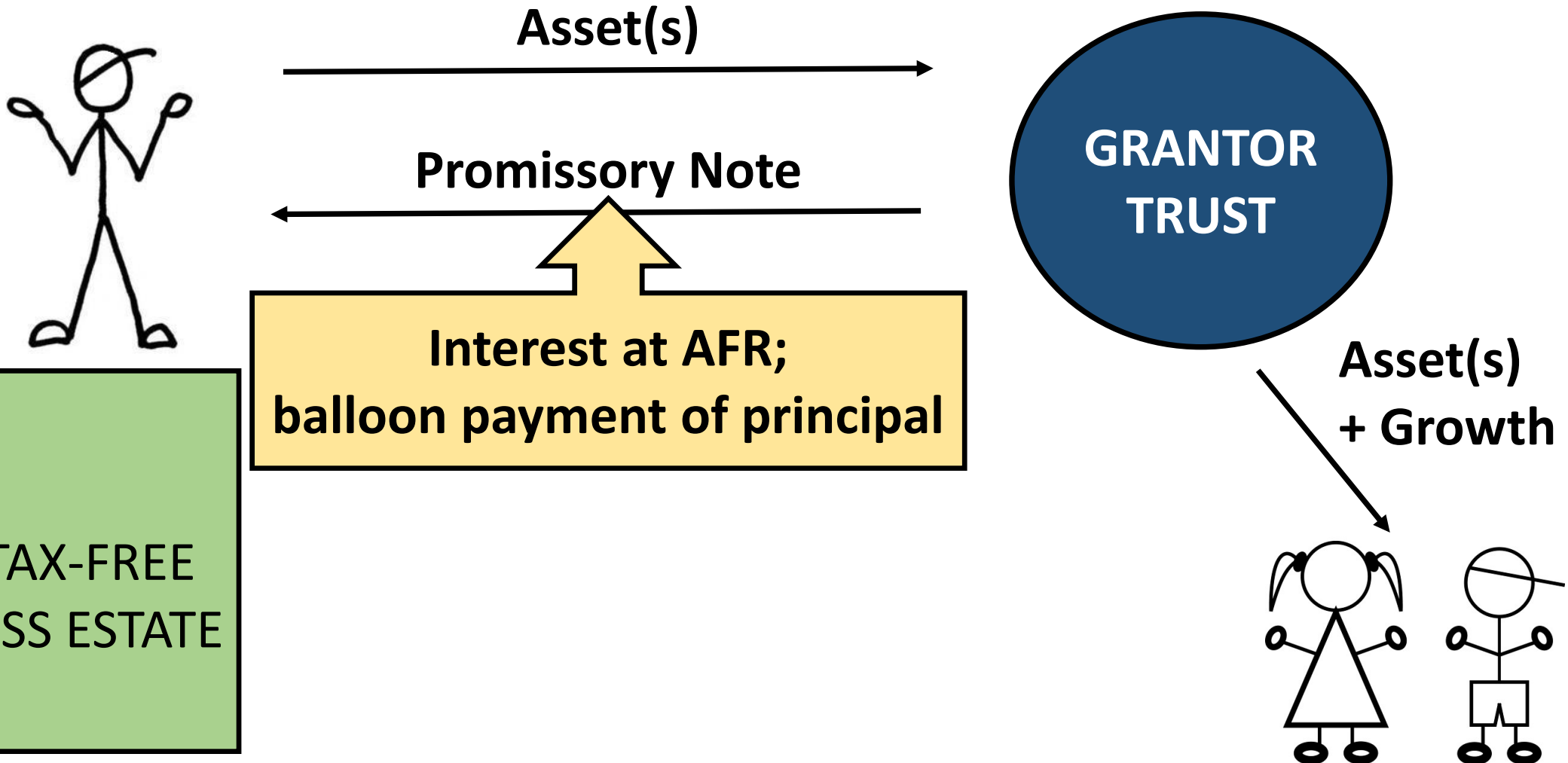
Gifts in Anticipation of a Reduced Exclusion

Some Great Techniques in the Current Climate

- Installment **Sales to Defective Trusts**



Installment Sale Transactions



- NO GIFT
- NO GAIN
- INTEREST TAX-FREE
- FIXED GROSS ESTATE INCLUSION

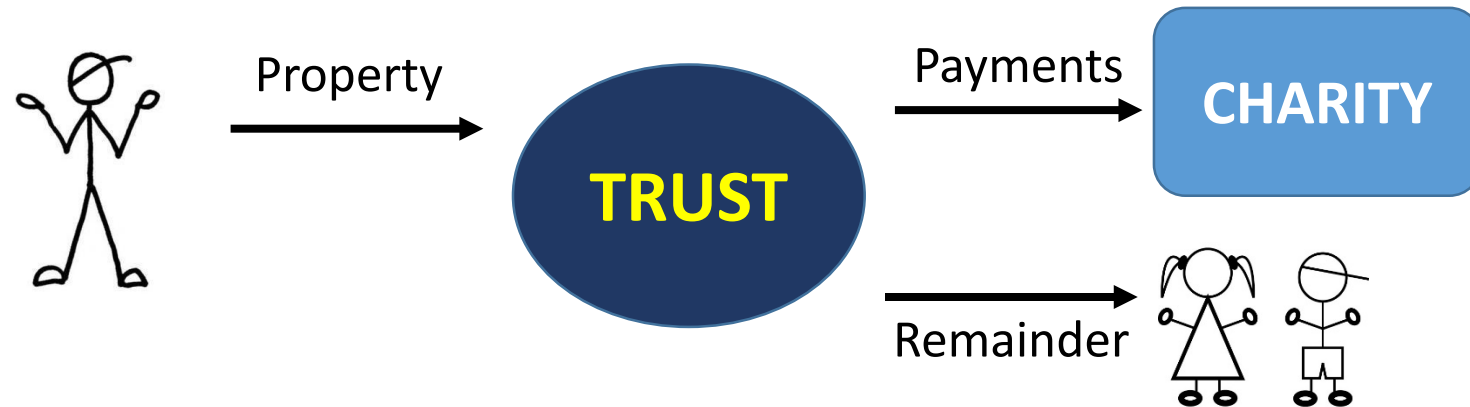
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Some Great Techniques in the Current Climate

- Installment **Sales to Defective Trusts**
- Charitable Lead Annuity Trusts (**CLATs**)

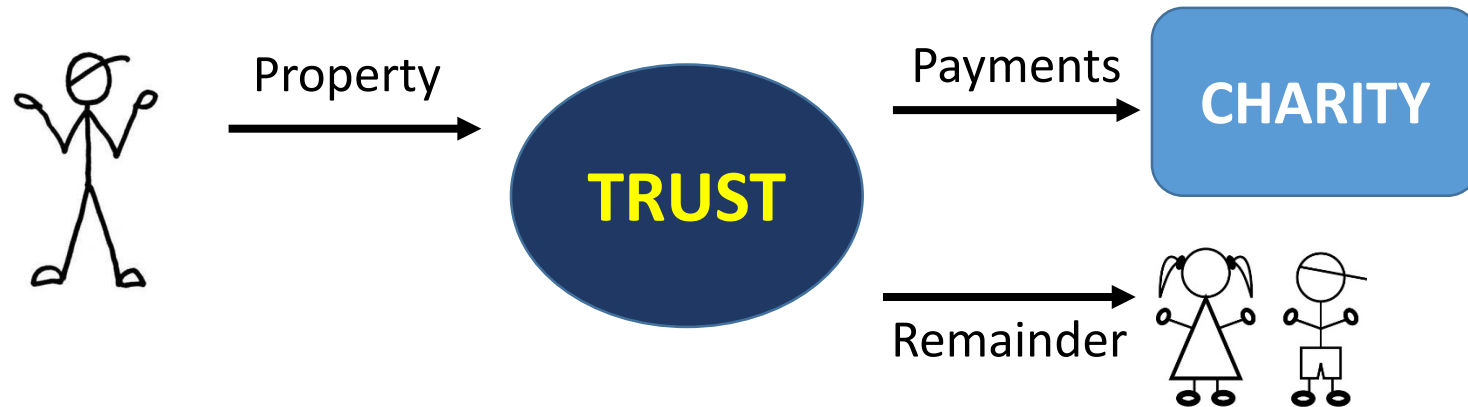


Charitable Lead Trusts



- Charity receives annual payments and noncharitable beneficiaries take the remainder
- More flexible than “charitable remainder trust,” as there are no restrictions on amounts paid to charity
- Income Tax Aspects
 - No deduction on formation
 - Annual payments to charity are deductible by trust
- Transfer Tax Aspects
 - Donor makes gift of present value of remainder interest
 - Assets excluded from Donor’s gross estate

Charitable Lead Trusts



- Works well where—
 - Donor **does not need cash** flow from gifted assets
 - Donor wants to **benefit charity now**
 - Donor **does not need income tax deduction**
 - Donor can tolerate **complexity** (step-CLATs, shark-fin CLATs, etc.)

Charitable Lead Trusts

A 20-year CLAT created in October 2021 (\$7520 rate = 1.0%) paying a 5.53% annuity annually to charity results in a gift of the remainder interest worth **zero**.

Image from: lpb.giftlegacy.com

Lead Annuity Trust for Term of 1-35 Years			
Donor:		Gift Amount:	Gift Date:
Donor		\$10,000,000	10/4/2021
Beneficiary:		Term of Years	
Beneficiary		20	
Payment Frequency: Quarterly (Payments at End of Selected Period)			
Calculation			
	Initial Trust %:	5.53%	
(A)	Annuity Trust Payout: AFR of the Month: 1.0%	\$553,000	(A)
(B)	Factor: IRS Pub. 1457, Table B	18.0456	(B)
(C)	Adjustment for time of Payment: (IRS Pub. 1457, Table K) End of Period 1 Annual 1.0 2 Semi-Annual 1.0025 3 Quarterly 1.0037 4 Monthly 1.0046	1.0037	(C)
(D)	Adjusted Factor: Line(B) x Line(C)	18.1124	(D)
(E)	Present Value of Annuity: Line(D) x Line(A) (Charitable Deduction)	\$10,000,000.00	(E)
(F)	Amount Transferred to Trust:	\$10,000,000.00	(F)
(G)	Line(F) Less Line(E):	\$0.00	(G)
Present Value Remainder Charitable Deduction (Taxable Transfer)		\$0.00	

*This educational illustration is not professional tax or legal advice; consult a qualified tax advisor about your specific situation. This charitable education worksheet is provided by Friends of LPB as a service for our members and supporters.

Gifts in Anticipation of a Reduced Exclusion

Some Great Techniques in the Current Climate

- Installment **Sales to Defective Trusts**
- Charitable Lead Annuity Trusts (**CLATs**)

Issues to Consider

- **Disclaimer** if exclusion stays steady or value declines



Disclaimers

§2518(a) = if a person makes a **QUALIFIED DISCLAIMER** with respect to any gift, such gift is treated for federal estate and gift tax purposes as if it had never been made

§2518(b) defines **QUALIFIED DISCLAIMER**

- **Irrevocable** and unqualified **refusal**
- In **writing**
- Not later than **9 months** after the transfer*
- Donee has **not accepted** the gift or any of its benefits
- Gift **passes without Donee's direction** to someone **other than Donee**



DISCLAIMER

Gifts in Anticipation of a Reduced Exclusion

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Issues to Consider

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- Give third party a power to confer a **general power of appointment** to the grantor



Powers to Confer Powers of Appointment

Common Trust Protector Powers

- Power to amend trust instrument
- Power to remove and replace trustee
- Power to change governing law
- Power to grant general power of appointment



Gifts in Anticipation of a Reduced Exclusion

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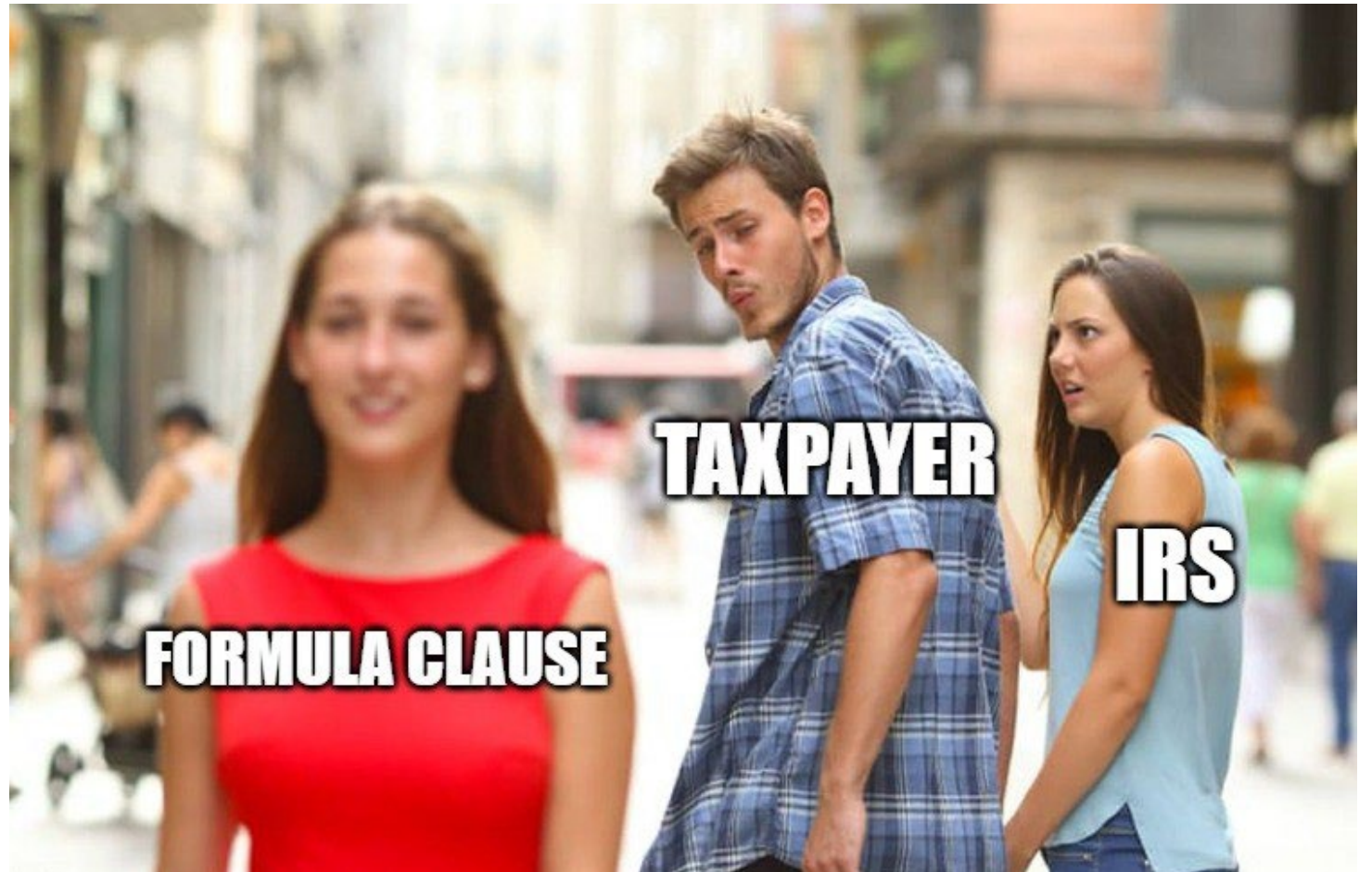
Issues to Consider

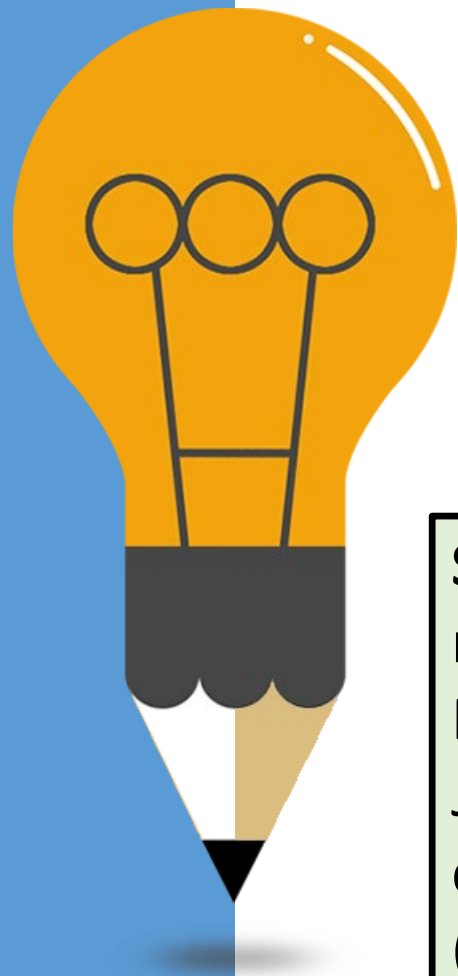
- **Disclaimer** if exclusion stays steady or value declines
- Give third party a power to confer a **general power of appointment** to the grantor
- **Give value**, not property!



Inter Vivos Gifts Using Formula Clauses

In gifting any illiquid asset, a donor should give VALUE, not property.





Gift of “a limited partner interest having a fair market value of TWO MILLION NINETY-SIX THOUSAND AND NO/100THS DOLLARS (\$2,096,000.00) as of December 31, 2008 ***, as determined by a qualified appraisal within ninety (90) days of ... this Assignment”

Sale of “a limited partner interest having a fair market value of TWENTY MILLION AND NO/100THS DOLLARS (\$20,000,000.00) as of January 2, 2009 ***, as determined by a qualified appraisal within one hundred eighty (180) days of ... this Assignment”



**Nelson v.
Comm’r,
T.C. Memo.
2020-81**



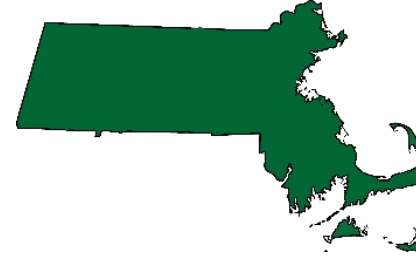
Non-grantor Trusts to Save on State Income Tax



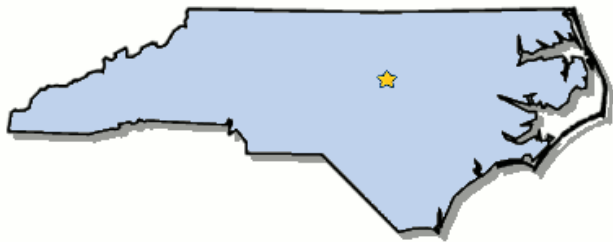
Grantor



Trustee

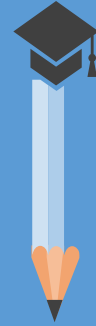


Assets



Beneficiary

**NONGRANTOR
TRUST**
*with undistributed
income*



**North
Carolina
Dept. of
Revenue
v. The
Kimberley
Rice
Kaestner
1992 Family
Trust**



Non-grantor Trusts to Save on State Income Tax

- Create a non-grantor trust administered in a state without income tax
 - Local trustee
 - Spendthrift clause
 - Beneficiary has no say in trustee removal or replacement
- Transfer income-producing assets to the trust as “incomplete gift” (often by keeping a power to appoint by will)
 - Trustee pays federal income tax
 - No current state income tax
- No state income tax until distribution made to in-state beneficiary!
- Stepped up basis at grantor’s death!

Charitable Remainder Trusts for Retirement Plans



Replaces life expectancy payout with **10-year payout** for all BUT “*eligible designated beneficiaries*”

- (1) Surviving spouse
- (2) Participant’s minor child
- (3) Disabled beneficiary
- (4) Chronically ill beneficiary
- (5) Beneficiary less than 10 years younger than participant

Age for starting RMDs raised from 70½ to 72 for those born after 6/30/49

No more age cap for traditional IRA contributions

For pre-2020 deaths, 10-year payout starts at designated beneficiary’s death

**Setting
Every
Community
Up for
Retirement
Enhancement
Act**

Charitable Remainder Trusts for Retirement Plans

- Name a CRT as the beneficiary of an IRA or qualified plan
 - Pays annuity to individual beneficiary for life
 - Remainder to charitable organization
- Although a 5-year payout period applies, the CRT is tax-exempt
 - Income will be taxed to individual beneficiary as payments are made
 - Thus resembles a lifetime stretch-out!



Ideas for Maximizing Stepped-Up Basis

EVERYONE

- Near-death exercise of grantor trust swap power
- Give trust beneficiaries a narrowly-crafted general power of appointment
- Upstream sales

MARRIED COUPLES

- Use QTIP trust on death of first spouse
- Establish a trust in a community property state



Ultra-Long-Term GRATs (aka “99-Year GRATs”)

- Create traditional zeroed-out GRAT but with very long term
- If (when) the grantor dies, gross estate inclusion determined by the formula to the right →
- If the §7520 rate at death is higher than §7520 rate when GRAT formed, likely only a portion of the assets will be subject to estate tax at death

Annuity amount

§7520 rate at death



EXAMPLE: \$10 million transfer to 60-year GRAT created in October when §7520 rate was 1.0%

- Annuity amount = \$222,445
- If §7520 rate at death 20 years later is 6.0%, then gross estate inclusion = \$3,707,417
- But if assets grow at 5%, trust will have \$19,914,058
- So only 19% of trust assets included in gross estate!

Spousal Lifetime Access Trusts (SLATs)

- Donor Spouse (DS) creates irrevocable trust for benefit of Beneficiary Spouse (BS) and others
- Structured like a “credit shelter trust” or “exemption trust” or “bypass trust”
- Gift to the SLAT does not qualify for the marital deduction, so it uses up the DS’s exclusion
- Usually structured as a grantor trust for income tax purposes
- No estate tax upon BS’s death
- BS can have testamentary limited power of appointment

Spousal Lifetime Access Trusts (SLATs)

- Once transferred, assets don't return to DS (but BS is free to share distributions voluntarily)
- Upon divorce, BS's interest continues unless "spouse" is defined generically or divorce serves as triggering event
- If each spouse wants to create SLAT for the other, need to avoid reciprocal trust doctrine

PLANNING PARADIGMS FOR MARRIED COUPLES



BUCKET ONE

Up to \$12.06 million



BUCKET TWO

\$12.06 - \$24.12 million



BUCKET THREE

\$24.12+ million

PLANNING PARADIGMS FOR MARRIED COUPLES



BUCKET ONE

Up to \$12.06 million

- TRUST OR NO TRUST?
- STEPPED-UP BASIS FOR EVERYTHING
 - Outright gift
 - Trust with general power of appointment
 - QTIP trust
- PROTECTIVE PORTABILITY ELECTION

PLANNING PARADIGMS FOR MARRIED COUPLES



BUCKET TWO

\$12.06 – 24.12 million

- TRUST OR NO TRUST?
- If NO TRUST (outright gift)
 - All to surviving spouse
 - Disclaimed amounts pass to credit shelter trust
- If TRUST
 - *Clayton* QTIP
 - Unelected amounts pour into credit shelter trust

PLANNING PARADIGMS FOR MARRIED COUPLES



BUCKET THREE
\$24.12+ million

- **KEEP CALM AND CARRY ON**
 - Charitable planning
 - Life insurance planning
 - Sale transaction planning

Thank
you

