

FEDERAL TAX UPDATE

Samuel A. Donaldson
Georgia State University College of Law
Atlanta, Georgia

What's Changed and Changing?



- Global pandemic and economy
 - Depressed asset values
 - Low interest rates
 - Likely decrease in revenue
 - Health issues
- Democratic control of legislative and executive branches

Our Agenda

- A Brief Look at the Federal **Income and Transfer Tax Landscape**
- Recap of December Legislation
 - The **COVID-related Tax Relief Act** of 2020
 - The **Taxpayer Certainty and Disaster Relief Act** of 2020
- Forthcoming(?) Tax Legislation
- What the Cool Kids are Doing (or Thinking About) Now
 - Making **lemonade** from lemons
 - **Gifts** in anticipation of reduced exclusion amounts
 - Creating ultra-long-term GRATs (**99-year GRATs**)
 - Spousal Lifetime Access Trusts (**SLATs**)
- Other **Developments of Note**

2021 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%
\$9,950	\$19,900	12%			
\$40,400	\$80,800		15%		
\$40,525	\$81,050	22%			
\$86,375	\$172,750	24%			
\$164,925	AGI over \$250,000	32%			
AGI over \$200,000	\$329,850				
\$209,425	\$418,850	35%	3.8%	3.8%	
\$445,850	\$501,600				
\$523,600	\$628,300	37%	20%		

* 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).

2021 Federal Income Tax Brackets for Trusts & Estates

FEDERAL INCOME TAX RATES FOR TRUSTS AND ESTATES FOR 2021

(Adapted from Rev. Proc. 2020-45)


Taxable Income Exceeding	Ordinary Income	Adjusted Net Cap Gain* & Qualified Dividends	Medicare Surtax on Net Investment Income
\$0	10%	0%	0%
\$2,650	24%		
\$2,700		15%	
\$9,550	35%		
\$13,050	37%		
\$13,250		20%	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	<i>\$11,700,000</i>




**Federal
Wealth
Transfer
Tax Basic
Exclusion
Amount**



Consolidated Appropriations Act

- Passed December 21, 2020, and signed into law December 27, 2020
- At 5,593 pages, the **longest bill ever passed by Congress**
- Estimated total cost of \$2.3 trillion (\$0.9 trillion for COVID relief)



Consolidated Appropriations Act

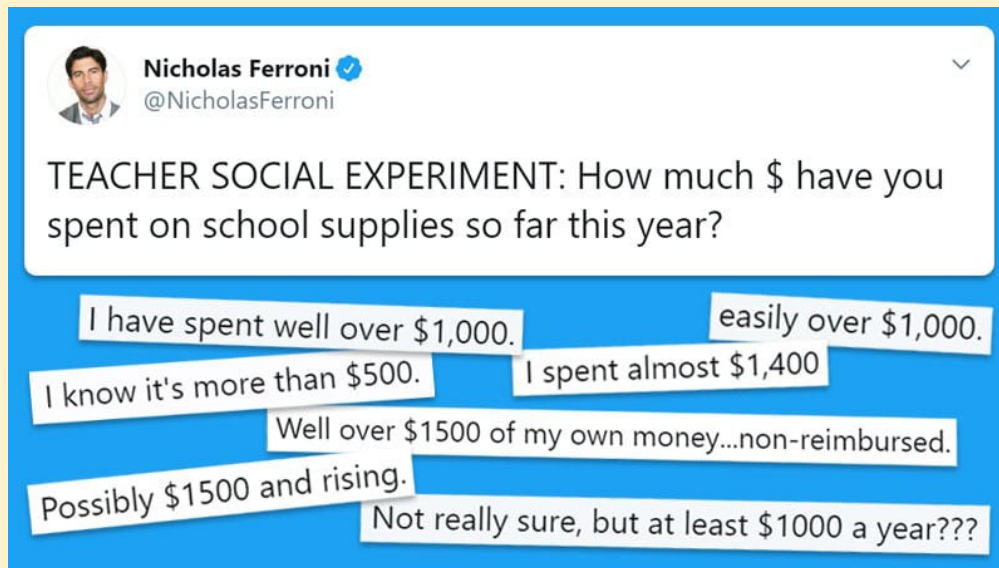
- Division N – Additional Coronavirus Response and Relief
 - Title II – Assistance to Individuals, Families, and Businesses
 - Subtitle B – **COVID-related Tax Relief Act of 2020**
- Division EE – **Taxpayer Certainty and Disaster Relief Act of 2020**

“Additional 2020 Recovery Rebates”



- \$600 per taxpayer and per qualifying child
- Phaseout once adjusted gross income exceeds threshold
 - MFJ: \$150,000 (completely phased out at \$174,000, if no kids)
 - Head of household: \$112,500
 - Unmarried or MFS: \$75,000 (compleeted phased out at \$87,000, if no kids)

\$250 Educator Expense Deduction Broadened



Personal protective equipment, disinfectant, and other supplies used for prevention of COVID-19 spread now included as “supplies ... used ... in the classroom”

Emergency Financial Aid for Students Excluded

- A “qualified emergency financial aid grant” made under the CARES Act after March 26, 2020, is generally excluded from gross income
- Excluded amounts are not considered for purposes of the American Opportunity Tax Credit
- Grants made as payments for teaching, research, or other services are not eligible for this exclusion



PAYCHECK PROTECTION PROGRAM

Additional COVID-19 Relief Now Available



U.S. Small Business
Administration

Paycheck Protection Program Loans

At least 60% of PPP proceeds are to be used to pay:

- Payroll
- Interest on pre-existing mortgages
- Rent under pre-existing leases
- Utilities under pre-existing contracts
- **Covered operations expenditures**
- **Covered property damage costs**
- **Covered supplier costs**
- **Covered worker protection expenditures**

PAYCHECK PROTECTION PROGRAM

Additional COVID-19 Relief Now Available



U.S. Small Business
Administration

Paycheck Protection Program Loans

- “No deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied” by reason of excluding a forgiven PPP loan from gross income.
 - Overrules Notice 2020-32 and Rev. Rul. 2020-27, disallowing deduction for expenses paid with PPP loan proceeds with a reasonable expectation of forgiveness
- S corps and partnerships will treat excluded loan proceeds as tax exempt income for pass-through purposes
 - S corp shareholder or partner will increase basis in the entity by share of the amount of the forgiven loan proceeds, thus preserving the tax-free nature of the proceeds

Cash Donations by Non-Itemizers

For 2021 only, an individual who does not elect to itemize deductions may deduct up to **\$300** in cash contributions made in 2021 to a public charity (but not a supporting organization or donor advised fund) in addition to the standard deduction

\$600 for joint filers!

	2020	2021
Amount deductible	\$300 per filing unit	\$300 per taxpayer (\$600 for joint filers)
Where deductible	Above the line (in determining AGI)	In addition to the standard deduction (but not above the line)
Eligible contributions	Cash contributions made to public charities (and not to supporting organizations or donor advised funds)	

Other Tax Provisions of Note

AM 2112

Hotel Childwold

LAUNDRY LIST

..... 190

Name

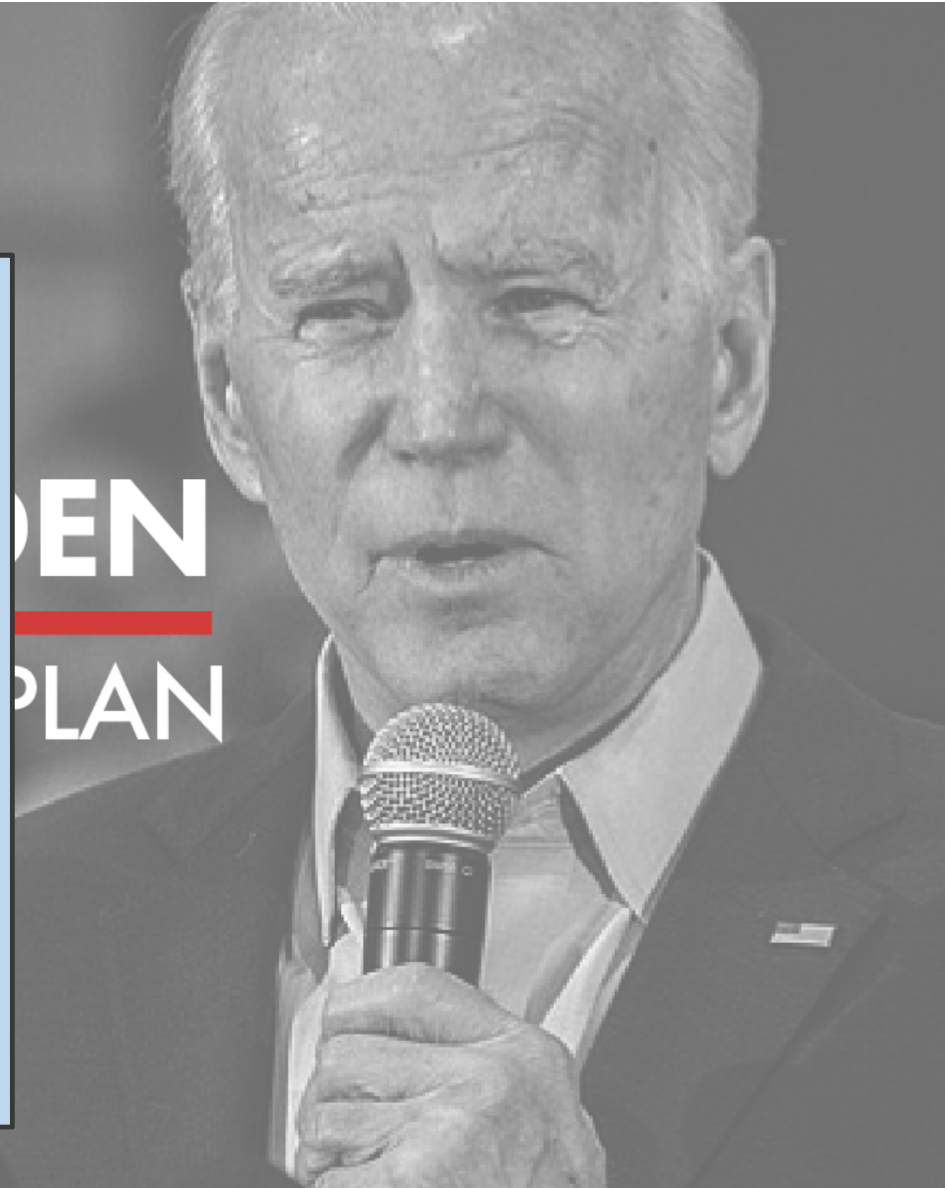
Room..... To be returned

Aprons	15
Bibs	10
Blankets	25 to 50
Bosoms	25
Caps	
Chemises	15 to 50
Coats	50
Collars	5
Corset Covers	25
Cuffs, pairs	5
Drawers	15
Dresses	50 to 1.50
" Children's	25 to 75
" Night	25 to 50
Handkerchiefs	5
Napkins	
Pillow Slips	
Pressing	
Skirts, Cotton	20 to 1.00
" Flannel	25 to 50
Sacques	25
Shirt Waists	25 to 50
Shirts	15
" w. Collars & Cuffs	20
" Cotton	15
" Flannel	15
" Night	10 to 20
Stockings, per pair	5
Ties	5
" Lace	10
Towels	5
Trousers	50
Under Vests	15
Vests	25 to 50
Pajamas	15
Guamps	10 to 15

- **Medical expense** floor permanently set at 7.5% of AGI
- Deduction for qualified **tuition and related expenses** replaced with higher income limits on **lifetime learning credit**
- Exclusion for **cancellation of qualified principal residence indebtedness** extended through 2025, but capped at \$375,000 (\$750,000 for MFJ)
- Treatment of **mortgage insurance** as qualified residence **interest** extended through 2021
- For 2021 and 2022 only, **100% deduction for business meals** furnished by a restaurant

Biden Tax Plan

- **CORPORATE TAX**
 - Raise rate to 28%
 - 15% minimum tax on book income
- **INDIVIDUAL TAX**
 - Return top rate to 39.6%
 - No capital gains preference for those making more than \$1 million
 - Increase child credit (\$3,600 under 6, \$3,000 ages 6-17)
 - Restore first-time homebuyers credit
- **ESTATE TAX**
 - Nothing on official website
 - Return to 2017? Return to 2009?
 - Repeal stepped-up basis?



Making Lemonade out of Lemons



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

Gifts in Anticipation of a Reduced Exclusion

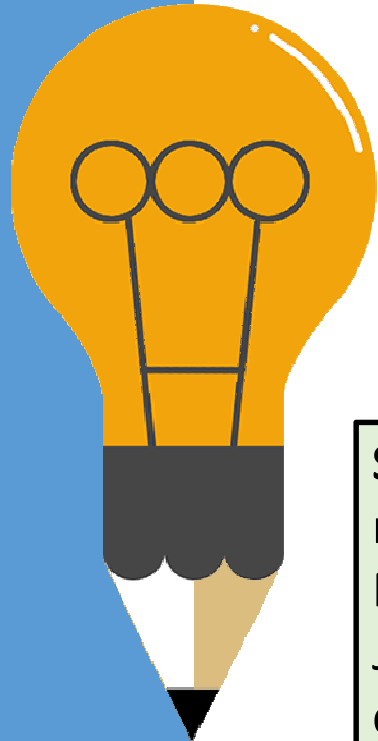
Some Great Techniques in the Current Climate

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

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!





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
(June 10,
2020)**

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 today when §7520 rate is 0.6%

- Annuity amount = \$198,957
- If §7520 rate at death 20 years later is 4%, then gross estate inclusion = \$4,973,925
- But if assets grow at 5%, trust will have \$19,954,274
- So only 25% of trust assets included in gross estate!



Spousal Lifetime Access Trusts (SLATs)

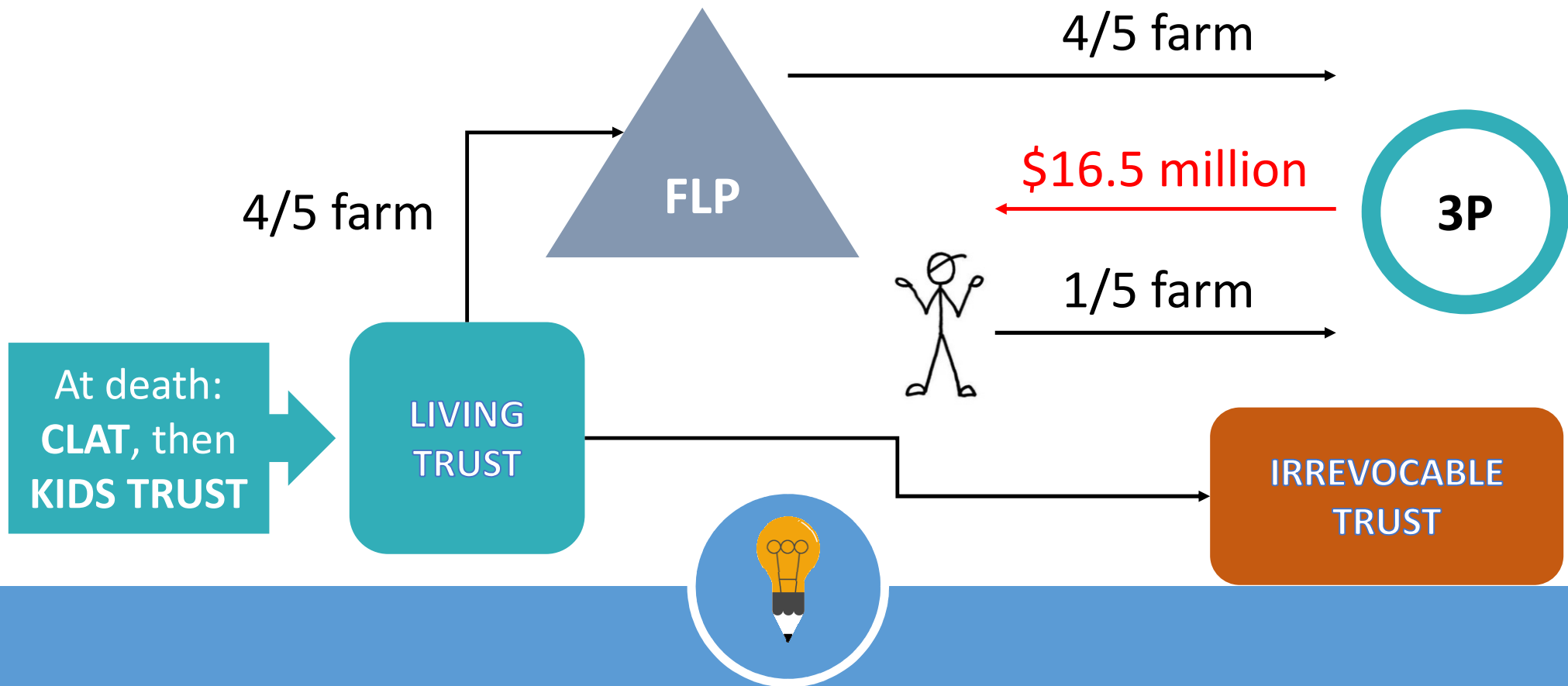
Anti-Clawback Regulations

- Basic exclusion amount is now the GREATER OF:
 - Exclusion amount at death, or
 - Exclusion amount previously used for lifetime taxable gifts
- No adverse effects on portability election
 - Deceased Spousal Unused Exclusion Amount (DSUE Amount) does not change
 - DSUE stays fixed regardless of what happens to basic exclusion amount

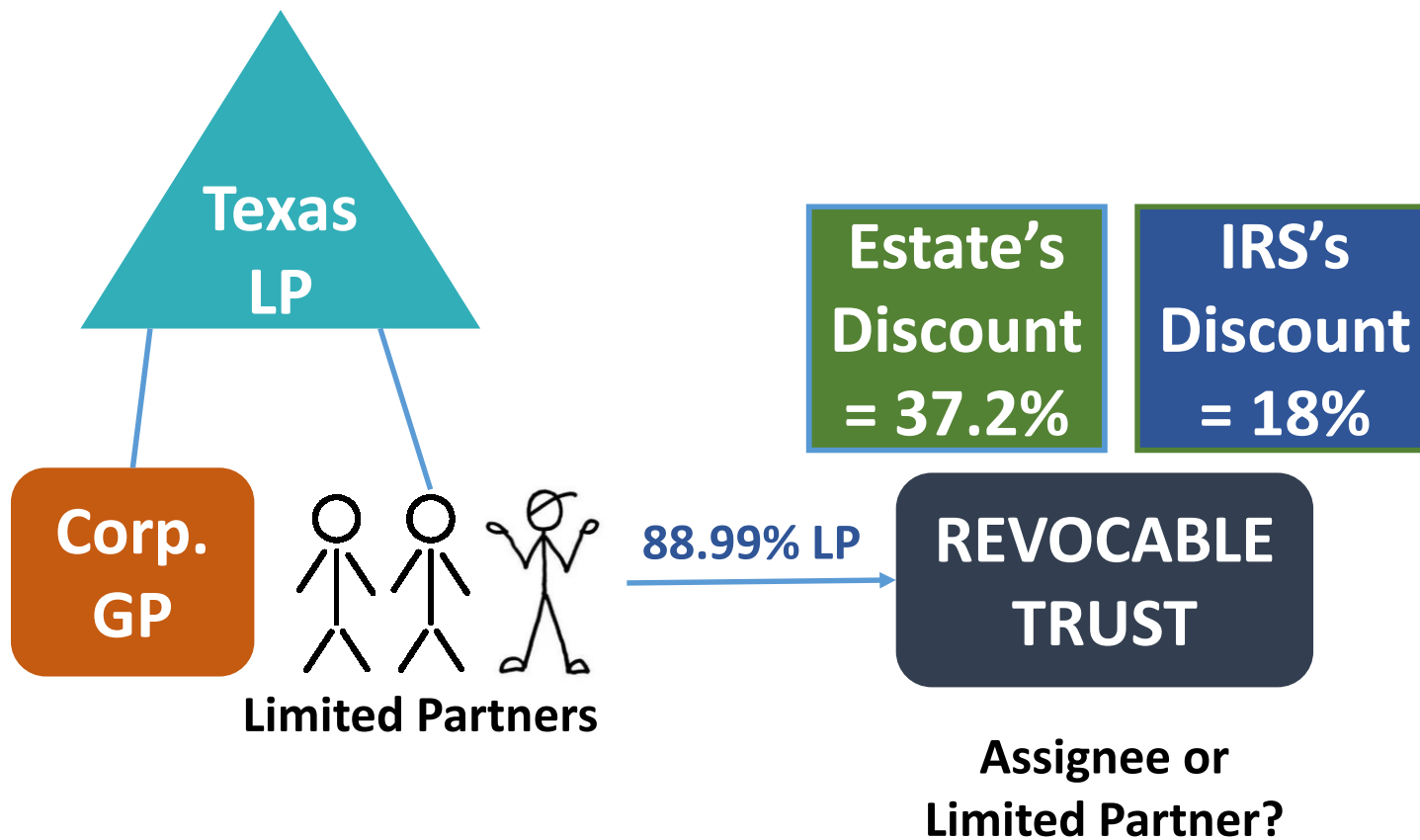


Spousal Lifetime Access Trusts (SLATs)

- 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

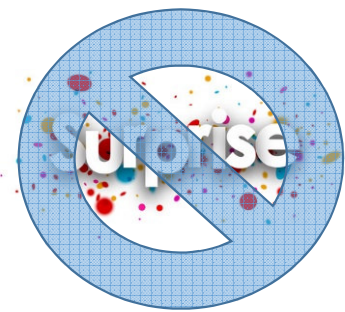


Estate of Moore v. Commissioner
T.C. Memo. 2020-40 (April 7, 2020)




Estate of
Streightoff v.
Comm'r
(5th Circuit)

Regulations on Itemized Deductions of Estates and Trusts

A circular icon with a blue grid background. A white diagonal line runs from the top-left to the bottom-right. The word "Surprise" is written in a white, stylized font across the center, with the line passing through it. There are small, colorful dots scattered around the word.

Reg. §1.67-4 = Deductions for costs unique to trust/estate administration are NOT “miscellaneous itemized deductions” (and thus not suspended)

A rectangular icon with a white background. The word "Surprise" is written in a white, stylized font. There are small, colorful dots scattered around the word.

Reg. §1.642(h)-2 = Each item in the §642(h)(2) excess deduction keeps its separate character as (1) above the line, (2) regular itemized, or (3) miscellaneous itemized

Loube v. Commissioner, T.C. Memo. 2020-3 (January 8)

Form 8283 (Rev. 11-2019) Page **2**

Name(s) shown on your income tax return		Identifying number
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Section B. Donated Property Over \$5,000 (Except Publicly Traded Securities, Vehicles, Intellectual Property or Inventory Reportable in Section A)—Complete this section for one item (or a group of similar items) for which you claimed a deduction of more than \$5,000 per item or group (except contributions reportable in Section A). Provide a separate form for each item donated unless it is part of a group of similar items. A qualified appraisal is generally required for items reportable in Section B. See instructions.

Part I Information on Donated Property

4 Check the box that describes the type of property donated.

a <input type="checkbox"/> Art* (contribution of \$20,000 or more)	d <input type="checkbox"/> Art* (contribution of less than \$20,000)	g <input type="checkbox"/> Collectibles**	j <input type="checkbox"/> Other
b <input type="checkbox"/> Qualified Conservation Contribution	e <input type="checkbox"/> Other Real Estate	h <input type="checkbox"/> Intellectual Property	
c <input type="checkbox"/> Equipment	f <input type="checkbox"/> Securities	i <input type="checkbox"/> Vehicles	

*Art includes paintings, sculptures, watercolors, prints, drawings, ceramics, antiques, decorative arts, textiles, carpets, silver, rare manuscripts, historical memorabilia, and other similar objects.

**Collectibles include coins, stamps, books, gems, jewelry, sports memorabilia, dolls, etc., but not art as defined above.

Note: In certain cases, you must attach a qualified appraisal of the property. See instructions.

5	(a) Description of donated property (if you need more space, attach a separate statement)	(b) If any tangible personal property or real property was donated, give a brief summary of the overall physical condition of the property at the time of the gift	(c) Appraised fair market value
A			
B			
C			
D			

(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) For bargain sales, enter amount received	See instructions	
				(h) Amount claimed as a deduction	(i) Date of contribution
A					
B					
C					
D					

Conservation Easement Cases

- *Oakbrook Land Holdings LLC v. Commissioner*
 - T.C. Memo. 2020-54 (May 12) → Charity not assured proportionate value upon extinguishment
 - 154 T.C. No. 10 (May 12) → And that regulation is valid!



Campbell v. Commissioner, T.C. Memo. 2020-41 (April 7)

- ZD Products sells block of 3,400 frames to TP
- TP holds them for a year, then donates to Lions in Sight
- TP claims a FMV deduction (~\$225,000) based on appraisal concluding the value of ~350,000 frames was ~\$2.4 million



Estate of Bolles v. Commissioner, T.C. Memo. 2020-71 (June 1)

- 1969 – 1989: Decedent loans over \$1 million to oldest son (Peter)
- 1989: Decedent executes living trust, with all of her children except Peter to take after death
- 1995: Decedent executes new living trust including Peter as an equal beneficiary
- 1996: Peter signs acknowledgment that the outstanding debt shall be taken into account for purposes of determining his share of the trust



PLR 202022002 (May 29)



- Trust 1 = §678 trust for the benefit of A
- Trust 2 = Grantor trust created by A
- Trust 1 sells LLC interests to Trust 2 for cash and a promissory note
- HELD → Transaction is not recognized for federal income tax purposes!

Thank
you

