



NORTHERN  
TRUST

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# Hot Topics In Estate Planning

## *(Finding Gems in the Ashes of the Dumpster Fire)*

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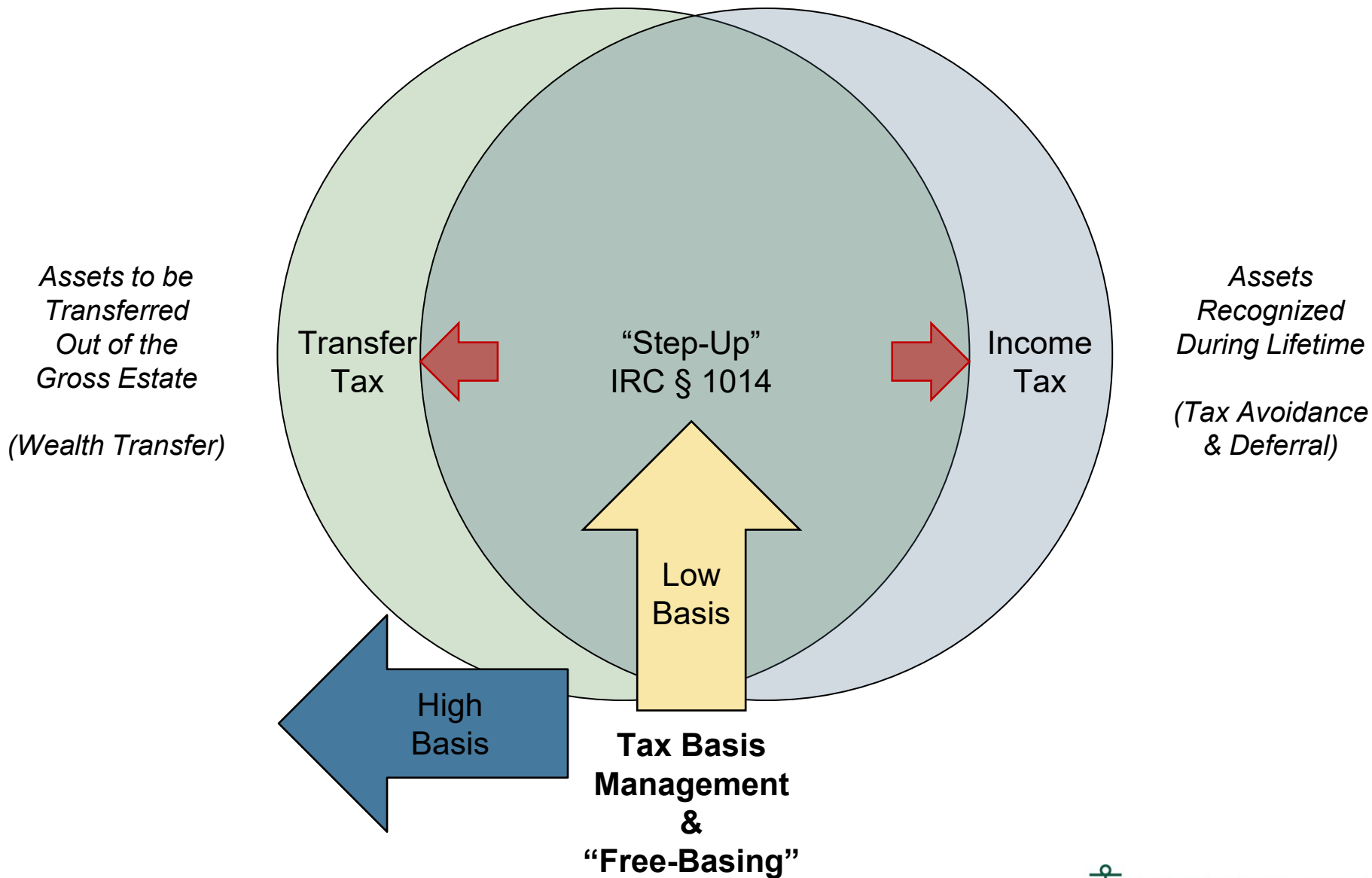
April 2022



***Expiring Tax Provisions  
&  
Potential Tax Legislation***

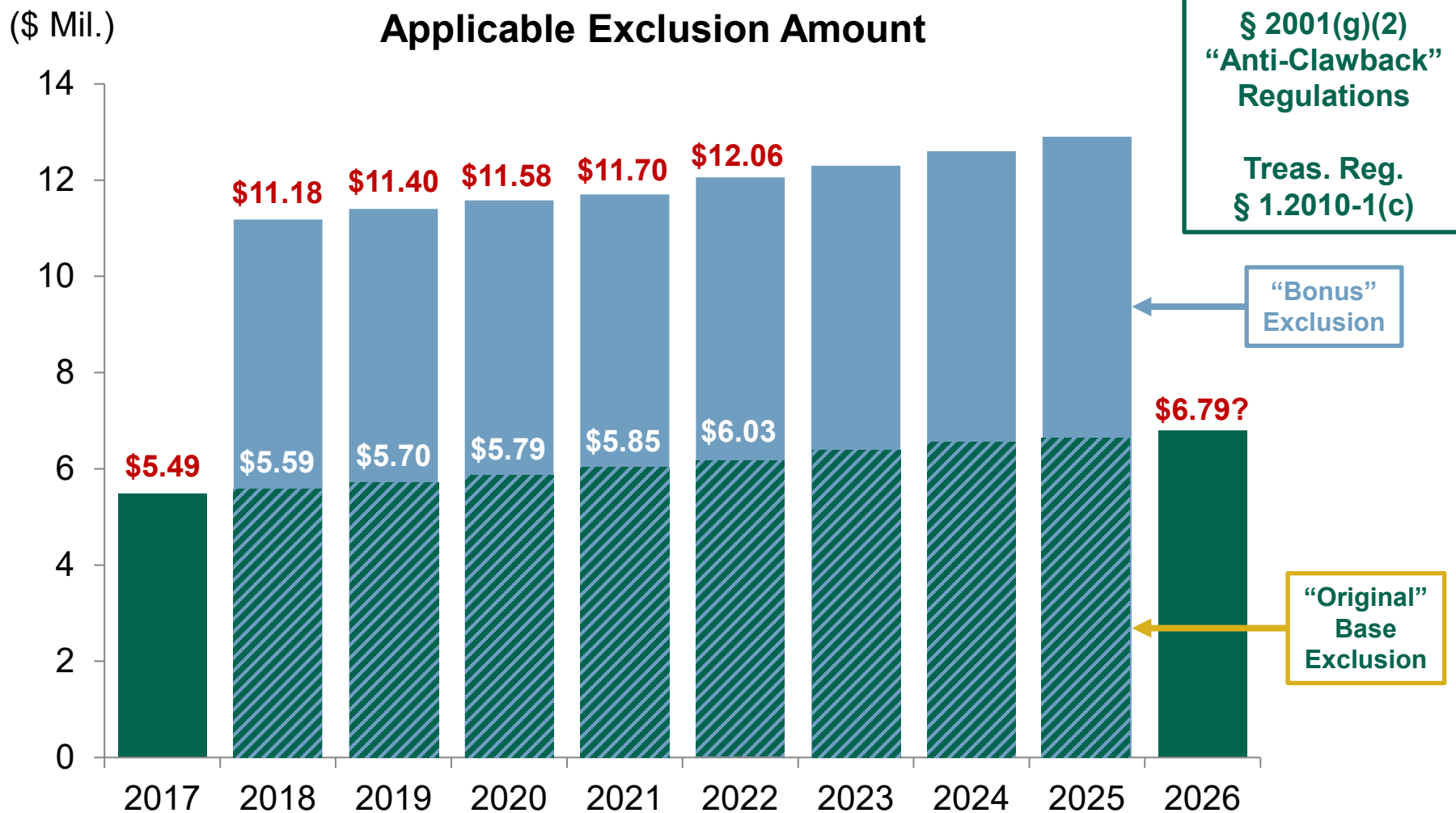


# The Temporary TCJA Transfer Tax Landscape: Venn Diagram



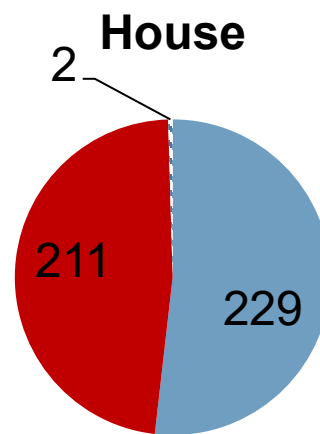
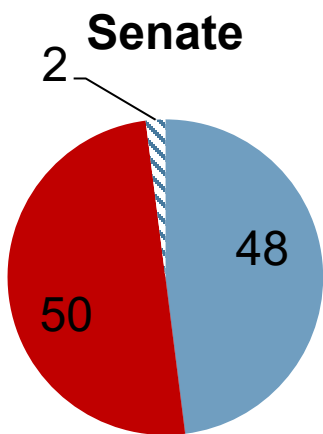


# 2012 All Over Again?





# Not Exactly a “Blue Wave,” But...



■ Democrat ■ Republican ▨ Independent

■ Democrat ■ Republican ▨ Independent



# Build It Up... Back Down... Better? Income Tax, Pt. 1

	BBB (H.R. 5376)	2023 Greenbook
<b>Rates for Individuals, Trusts &amp; Estates</b>	<ul style="list-style-type: none"> <li>• 5% surcharge on MAGI &gt;\$10 Mil./\$200K T&amp;E</li> <li>• § 642(c) deduction allowed in MAGI</li> <li>• 3% on MAGI &gt;\$25 Mil./\$500K T&amp;E</li> <li>• SALT cap of \$80,000</li> </ul>	<ul style="list-style-type: none"> <li>• 39.6% (\$400K Single/\$450K Joint)</li> </ul>
<b>Long-Term Capital Gains Rates</b>		<ul style="list-style-type: none"> <li>• 37%/39.6% &gt; \$1 million taxable income</li> <li>• Includes qualified dividends</li> <li>• <b>Eff. date of enactment</b></li> </ul>
<b>Recognition Events</b>		<ul style="list-style-type: none"> <li>• Gift or transfer on death is a recognition event (deductible for estate tax purposes)</li> <li>• Trust, partnership, or other non-corporate entity every 90 years (since 12/31/1939 = first recognition would occur 12/31/2030)</li> <li>• Includes transfer to or from trusts and partnerships (if gift)</li> <li>• Exceptions for transfers to U.S. spouses and charity (partially for split-interest trusts), tangible personal property (excluding collectibles)</li> <li>• \$5 mil. exclusion (portable &amp; indexed after 2022) + Base Exclusion Amount</li> <li>• \$250K exclusion on personal residences would be applicable</li> <li>• QSBS exclusion would be applicable</li> <li>• Election to defer recognition on family-owned and –operated businesses until sold or no longer family-owned and –operated.</li> <li>• 15-year fixed rate payment plan on transfers at death (other than liquid assets)</li> </ul>
<b>“Billionaire” Tax</b>		<ul style="list-style-type: none"> <li>• Minimum 20% tax on total income, including unrealized capital gain, for taxpayers with wealth greater than \$100 Mil.</li> <li>• Minimum 20% tax would be fully phased-in for taxpayers with wealth greater than \$200 Mil.</li> <li>• Elect to pay first year in 9 equal, annual installments, 5 annual installments in subsequent years</li> <li>• Taxpayers above \$100 Mil. required to report to IRS on annual basis</li> <li>• Non-tradable assets would be valued at the greater of adjusted cost basis, last valuation event, or other methods approved by IRS with adjustments at conservative floating return in between valuations</li> <li>• “Illiquid” taxpayers (tradeable assets less than 20% of wealth) may elect to include unrealized gain of only tradeable assets (subject to deferral charge not to exceed 10% of unrealized gains)</li> </ul>



# Build It Up... Back Down... Better? Income Tax, Pt. 2

	BBB (H.R. 5376)	2023 Greenbook
<b>IRAs &amp; Qualified Plans</b>	<ul style="list-style-type: none"> <li>• Prohibition on Roth conversions with \$400/\$450K AGI—<b>Eff. 1/1/32</b></li> <li>• Prohibition on Roth conversion from qualified plans, unless taxable</li> <li>• Prohibition of contributions to large qualified accounts (\$10 Mil.)- \$400K/\$450K AGI</li> <li>• Mandatory distributions (50%) from mega-IRAs (\$10-\$20 Mil.) then 100% (\$20+)-\$400K/\$450K ATI</li> </ul>	
<b>Corporate Taxes</b>	<ul style="list-style-type: none"> <li>• 15% (alternative minimum tax) on corporations with adjusted financial income &gt; \$1 billion</li> <li>• 1% tax on share repurchase of publicly-traded companies</li> </ul>	<ul style="list-style-type: none"> <li>• 28%</li> <li>• GILTI deduction constant (effective 20% applied on jurisdiction-by-jurisdiction basis)</li> </ul>
<b>Net Investment Income Tax</b>	<ul style="list-style-type: none"> <li>• NIIT on all passthrough business income of trusts, estates, and individuals with MAGI &gt;\$400K</li> </ul>	
<b>QSBS</b>	<ul style="list-style-type: none"> <li>• 100% &amp; 75% exclusion disallowed for individuals with AGI of \$400K or more and trusts &amp; estates—<b>Eff. sales after 9/13/21</b></li> </ul>	
<b>Carried Interest</b>		<ul style="list-style-type: none"> <li>• Income from “Investment Services Partnership Interest” is treated as ordinary income if taxable income &gt; \$400K (§ 1061 still applicable for partners &lt; \$400K in taxable income)</li> </ul>
<b>Basis Shifting</b>		<ul style="list-style-type: none"> <li>• Prohibit any partner in the partnership that is related to the distributee partner from benefiting from a basis increase until distributee partner has a taxable sale of the property</li> </ul>
<b>Like-Kind Exchanges</b>		<ul style="list-style-type: none"> <li>• Gains from like-kind exchanges in excess of \$500K (\$1 Mil. joint) would be recognized</li> </ul>
<b>Recapture</b>		<ul style="list-style-type: none"> <li>• § 1250 recapture treated as ordinary income to the extent of depreciation deductions taken after effective date for taxpayers with AGI of \$400K or above</li> </ul>



# Build It Up... Back Down... Better? Transfer Tax

	BBB (H.R. 5376)	2023 Greenbook
<b>GRATs</b>		<ul style="list-style-type: none"> <li>• Term of at least 10 years and not more than life expectancy of the grantor plus 10 years</li> <li>• No decreasing annuities</li> <li>• Taxable gift equal to the greater of 25% or \$500K</li> <li>• <b>Eff. trusts created on or after enactment</b></li> </ul>
<b>Grantor Trusts</b>		<ul style="list-style-type: none"> <li>• Transfer of an asset for consideration between grantor trust and its deemed owner as one that is regarded for income tax purposes (recognizing gain), including sales as well as the satisfaction of an obligation (i.e., annuity or unitrust payment)—<b>Eff. all transactions on or after enactment</b></li> <li>• Payment of income tax on grantor trust income is a gift on 12/31 of that year, immediately before death, or owner's renunciation of reimbursement right—<b>Eff. all trusts created on or after enactment</b></li> </ul>
<b>Promissory Notes</b>		<ul style="list-style-type: none"> <li>• Promissory notes with sufficient interest to avoid income and gift tax consequences must be valued for transfer tax purposes by limiting the discount rate to the greater of the actual rate of interest, or the applicable minimum interest rate for the remaining term of the note on date of death—<b>Eff. valuation dates or after introduction</b></li> </ul>
<b>GST Tax</b>		<ul style="list-style-type: none"> <li>• GST Exemption applies only to: (1) direct skips and taxable distributions to beneficiaries no more than two generations below the transferor, and to younger generation beneficiaries who were alive at the time of the creation of the trust; and (2) taxable terminations while any person described above is a beneficiary of the trust</li> <li>• No "reset" of generation assignment</li> <li>• <b>Eff. on or after enactment, but pre-enactment trust treated as created on date of enactment</b></li> </ul>
<b>Conservation Easements</b>		<ul style="list-style-type: none"> <li>• Qualified conservation deduction by a partnership is limited to 250% of each relevant partner's basis in the partnership, unless a 3-year holding requirement is satisfied</li> <li>• Limitation does not apply to pass-through entities where substantially all of the interests are held, directly or indirectly, by an individual and family members</li> <li>• <b>Eff. contributions after 12/23/16 (12/31/18 for certified historic structures)</b></li> </ul>
<b>Special Use Valuation</b>		<ul style="list-style-type: none"> <li>• Increase maximum reduction on "qualified real property" to \$11.7 Mil. (from \$1.23 Mil. in 2022)</li> <li>• <b>Eff. decedents dying on or after enactment</b></li> </ul>
<b>Trust Reporting</b>		<ul style="list-style-type: none"> <li>• Trusts administered in the U.S. will be required to report annually with information including name, address, and TIN of each trustee and grantor, and general information regarding the nature and estimated total value of trust's assets</li> <li>• Each trust with total value &gt; \$300K or gross income &gt; \$10K</li> </ul>





**If some portions of BBB Passes...**

*Income  
Tax  
Considerations*



# Surcharges Are More Than Another Marginal Tax Bracket

STCG/ Ordinary Rate	Single	Joint	Trusts & Estates
10%	\$0 to \$10,275 <b>Taxable Income</b>	\$0 to \$20,550 <b>Taxable Income</b>	\$0 to \$2,750 <b>Taxable Income</b>
12%	\$10,275 to \$41,775	\$20,550 to \$83,550	
22%	\$41,775 to \$89,075	\$83,550 to \$178,150	
24%	\$89,075 to \$170,050	\$178,150 to \$340,100	\$2,750 to \$9,850
32%	\$170,050 to \$215,950	\$340,100 to \$431,900	
35%	\$215,950 to \$539,900	\$431,900 to \$647,850	\$9,850 to \$13,450
37%	\$539,900+	\$647,850+	\$13,450+
(+5%) 43%	\$10,000,000+ <b>MAGI</b>	\$10,000,000+ <b>MAGI</b>	\$200,000+ <b>MAGI</b>
(+3%) 46%	\$25,000,000+ <b>MAGI</b>	\$25,000,000+ <b>MAGI</b>	\$500,000+ <b>MAGI</b>

LTCG/QD Rate with NIIT	Single	Joint	Trusts & Estates
0%	\$0 to \$41,675 <b>Taxable Income</b>	\$0 to \$83,350 <b>Taxable Income</b>	\$0 to \$2,800 <b>Taxable Income</b>
15%	\$41,675 to \$200,000 <i>MAGI</i>	\$83,350 to \$250,000 <i>MAGI</i>	\$2,800 to \$13,700
18.8%	\$200,000 <i>MAGI</i> to \$459,750	\$250,000 <i>MAGI</i> to \$517,200	
23.8%	\$459,750+	\$517,200+	\$13,700 + <i>MAGI</i>
(+5%) 28.8%	\$10,000,000+ <b>MAGI</b>	\$10,000,000+ <b>MAGI</b>	\$200,000+ <b>MAGI</b>
(+3%) 31.8%	\$25,000,000+ <b>MAGI</b>	\$25,000,000+ <b>MAGI</b>	\$500,000+ <b>MAGI</b>



# Tax Policy: Non-Grantor (Taxable) Trusts Are Evil

*Highest Bracket  
@  
\$500,000 of "Income"*

**Non-Grantor  
Trust**

**Non-Grantor  
Trust**

**Individual  
Beneficiary**

**Non-Grantor  
Trust**

**Individual  
Beneficiary**

**Non-Grantor  
Trust**

**Individual  
Beneficiary**

**Individual  
Beneficiary**

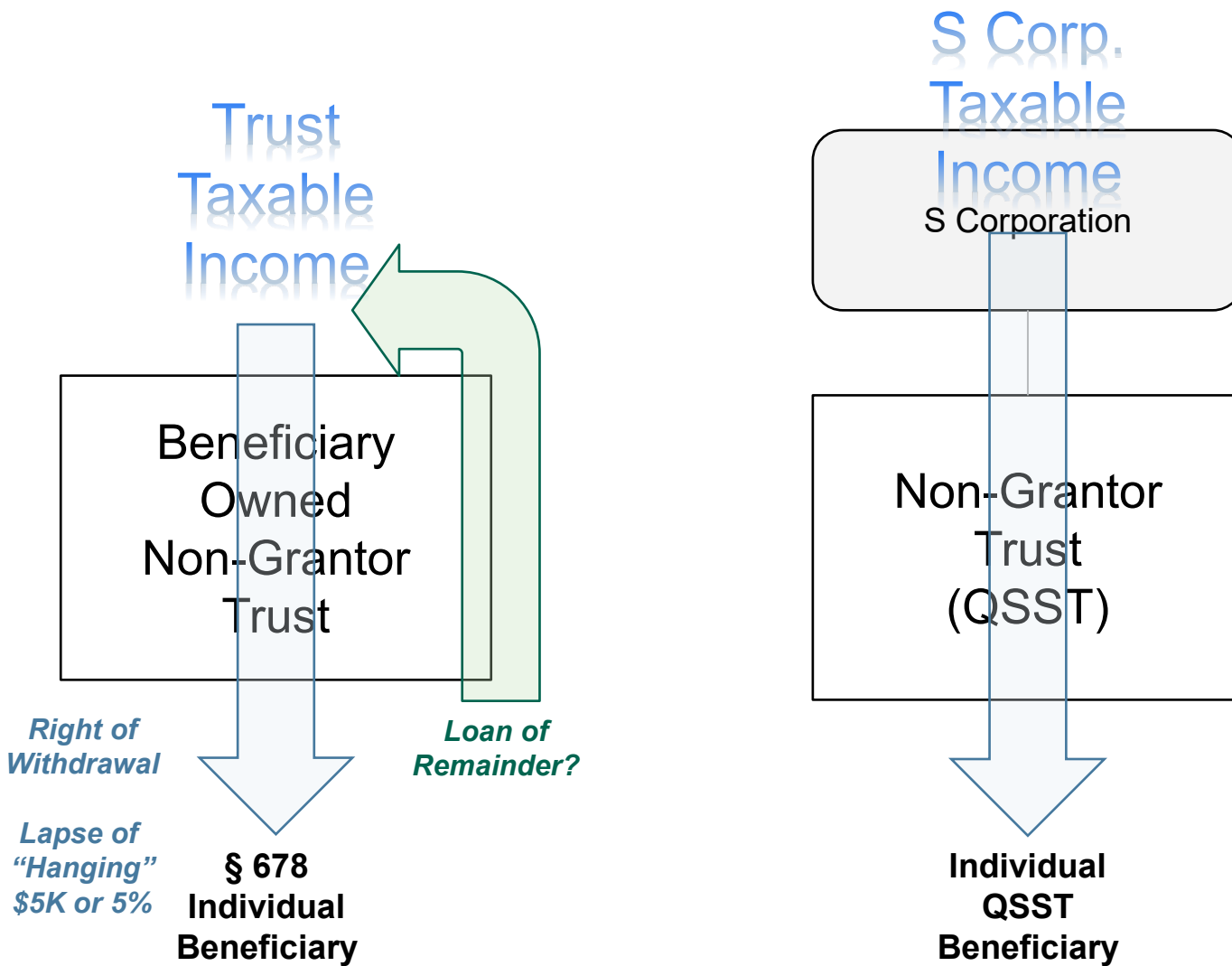
**Individual  
Beneficiary**

**Individual  
Beneficiary**

*Highest Bracket @ \$25,000,000 Mil. of "Income" Each*



# Other Options to Have Income Taxed to Individual Beneficiary





# Deferring and Stretching Out Gain Over Multiple Tax Years

## TAXABLE SALE

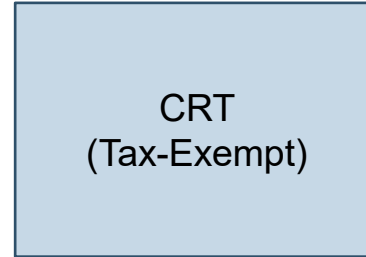


zero basis

### Effective Federal Rate

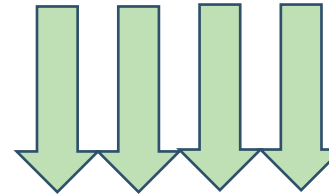
- \$1 Mil. Gain: 19.0%
- \$5 Mil. Gain: 22.8%
- \$10 Mil. Gain: 23.3%
- \$25 Mil. Gain: 26.5%
- \$50 Mil. Gain: 27.7%

Taxpayer  
(or Trust)



Charity

Tax  
Deduction



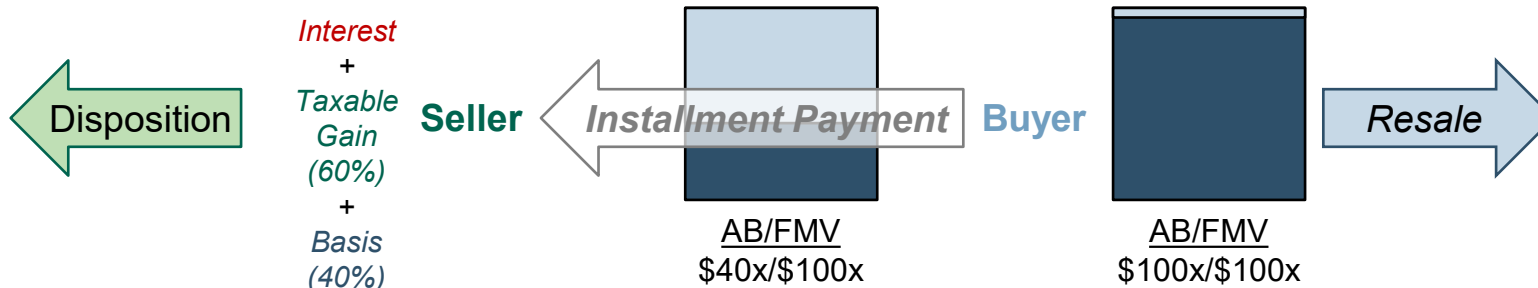
Taxpayer  
(or Trust)

- Tier: Character of Income
- 1(a): Ordinary
  - 1(b): Qualified Dividend
  - 2(a): Short-Term Gain
  - 2(b): Long-Term Gain
  - 3: Tax-Exempt
  - 4: Basis

LTCG/QD	Joint
0%	\$0 to \$83,350 <b>Taxable Income</b>
15%	\$83,350 to \$250,000 <b>MAGI</b>
18.8%	\$250,000 <b>MAGI</b> to \$517,200
23.8%	\$517,200+
(+5%) 28.8%	\$10,000,000+ <b>MAGI</b>
(+3%) 31.8%	\$25,000,000+ <b>MAGI</b>



# Taxable Installment Obligations



## ■ Death of Seller

- Installment note is IRD
- Estate distribution of note to the obligor is a taxable disposition

## ■ Taxable Dispositions

- Sale or exchange
- Gift, contribution to trust, and distribution to beneficiary

## ■ Not a Taxable Disposition

- Transfers between grantor and grantor trust
- Transfer to former spouse incident to divorce
- § 721 contributions and § 731 distributions (partnerships)
- § 351 contributions and § 361 distributions (corporations)

## ■ Taxation

- Gross profit percentage (profit divided by total contract price) determines gain
- Minimum interest at AFR
- Installment method by default (may elect out by due date of income tax return)
- Can have variable principal payments or interest only
- Only applies to gain, not loss

## ■ Installment Method Not Allowed

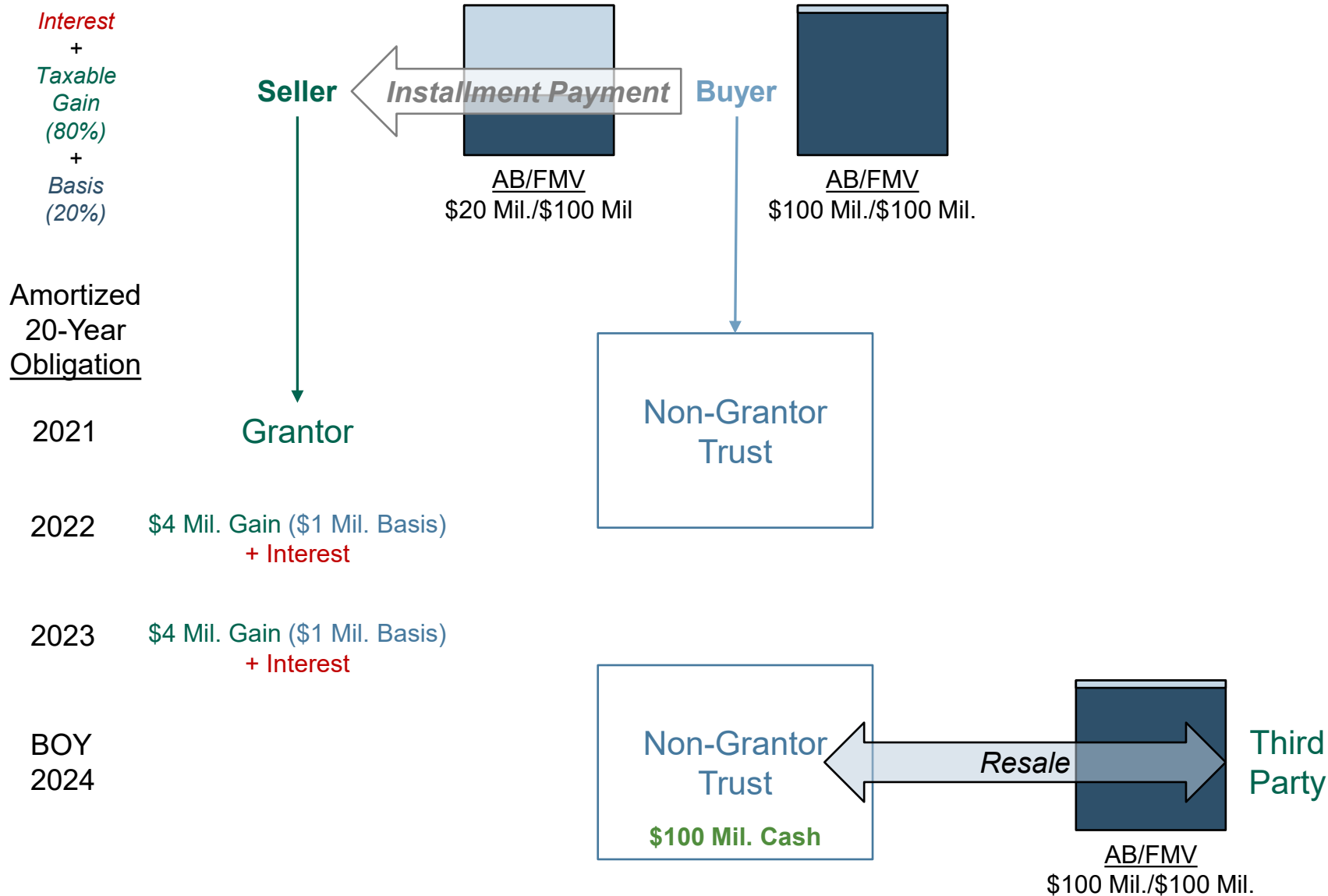
- Dealer Dispositions
- Inventory Sales
- Marketable Securities
- Depreciable Property Sales to Related Persons
- Portion of Gain Attributable to Recapture

## ■ Resales by Related Party

- Second disposition within 2 years of the first disposition
- Amount realized on second disposition treated as payment to original seller
- Tolling of 2-Year Period
  - Related party's risk of loss is substantially diminished
  - Put, short, right to acquire, or other transaction
- Second Disposition
  - Sale, exchange, **gift**, or cancellation of installment obligation
  - Does NOT include any transfer after earlier of death of original seller or related party



# Capturing Basis and “Rushing” a Subsequent Sale





**If BBB Passes or Doesn't Pass**

*Transfer  
Tax  
Considerations*





# To Gift or Not to Gift: That's the Question...

## *Up to Wealthy*

\$0 to ~\$12.06 Mil.

- ❑ Limit taxable gifts
- ❑ Preserve Applicable Exclusion
- ❑ Take advantage of free “step-up” in basis
- ❑ Limit valuation discounts
- ❑ Transfers of wealth in excess of the Applicable Exclusion via “zeroed-out” techniques
- ❑ Transfer high basis assets to IDGTs with “swap” power

## *“Middle Class” Wealthy*

~\$12.06 Mil. to ~\$50.0 Mil.

- ❑ Taxable gifts in excess of the “Original” Applicable Exclusion depend on whether taxpayer can afford to make such gift
- ❑ Careful consideration of “split-gift” election (or NOT) in certain years
- ❑ Spousal Lifetime Access Trusts
- ❑ Retained cash flow techniques (i.e., preferred partnership freezes)
- ❑ Trusts that provide maximum “flexibility”

## *Ultra-Wealthy*

Above ~\$50.0 Mil.

- ❑ Large taxable gifts to use “Original” and “Bonus” Applicable Exclusion
- ❑ Transfer to IDGTs (with “swap” power”)
- ❑ Valuation discount planning
- ❑ “Zeroed-out” techniques, leveraging taxable gifts (i.e., installment sale)
- ❑ “Free-basing” with marital deduction and estate reduction planning with surviving spouse

### Consider:

Applicable Exclusion gifts of cash (or marketable securities), and  
Exercise of “swap” power in the future.



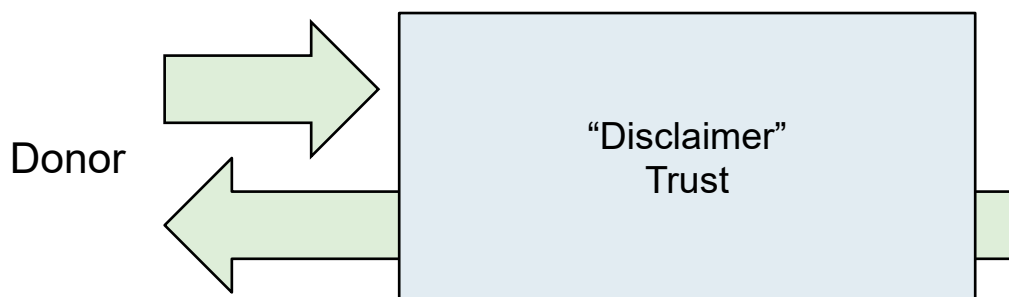
# *“Undoing” Taxable Gifts after the Transfer*



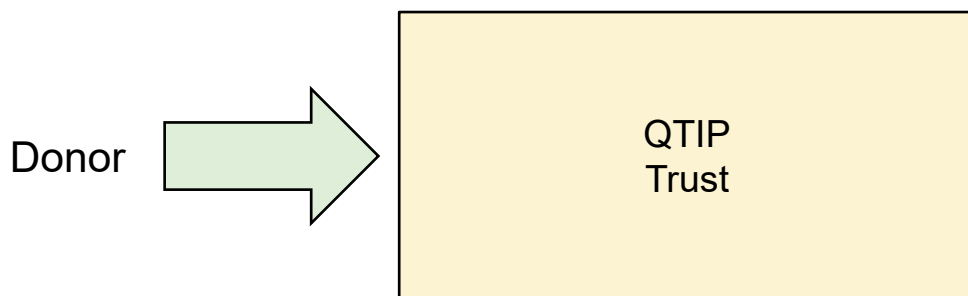
# Undoing Gifts: Disclaimer Trusts & QTIP Elections

## Reasons to “Undo” Taxable Gifts:

- Current Applicable Exclusion Amount becomes permanent
- Gifted asset depreciates in value
- Loss of “step-up” in basis
- NY donor dies soon after gift (gifts within 3 years of death are subject to NY estate tax but with no corresponding federal estate tax deduction): 49.6% v. 56% effective transfer tax



- *Trust provides if beneficiary disclaims interest in trust, property is returned to donor.*
- *If a qualified disclaimer (9 months), not a taxable gift*



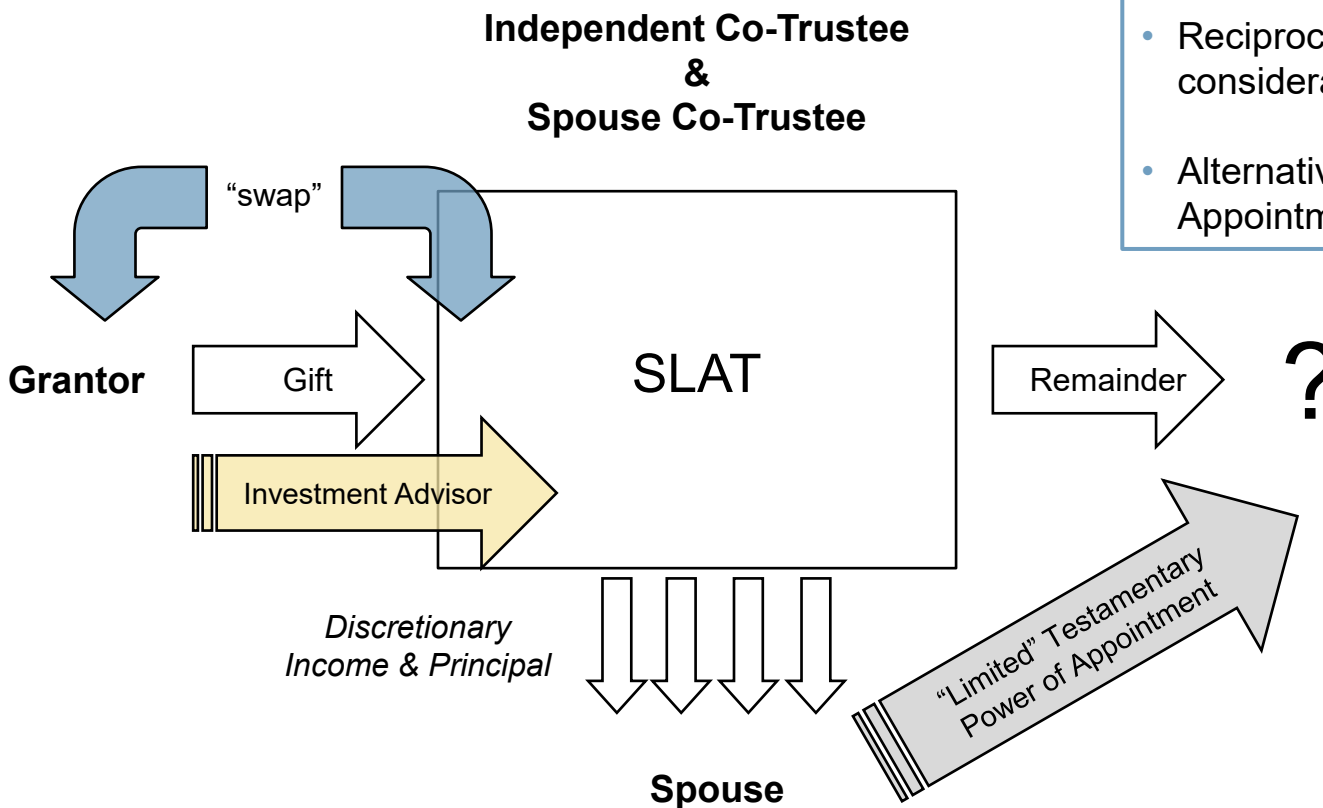
*If, before due date of the donor's gift tax return (April 15 or October 15), donor makes § 2523(f) QTIP election on gift tax return, transfer covered by the marital deduction and not a taxable gift that reduces Applicable Exclusion Amount*



# *Spousal Lifetime Access Trusts, Grantor Trusts & Flexibility*



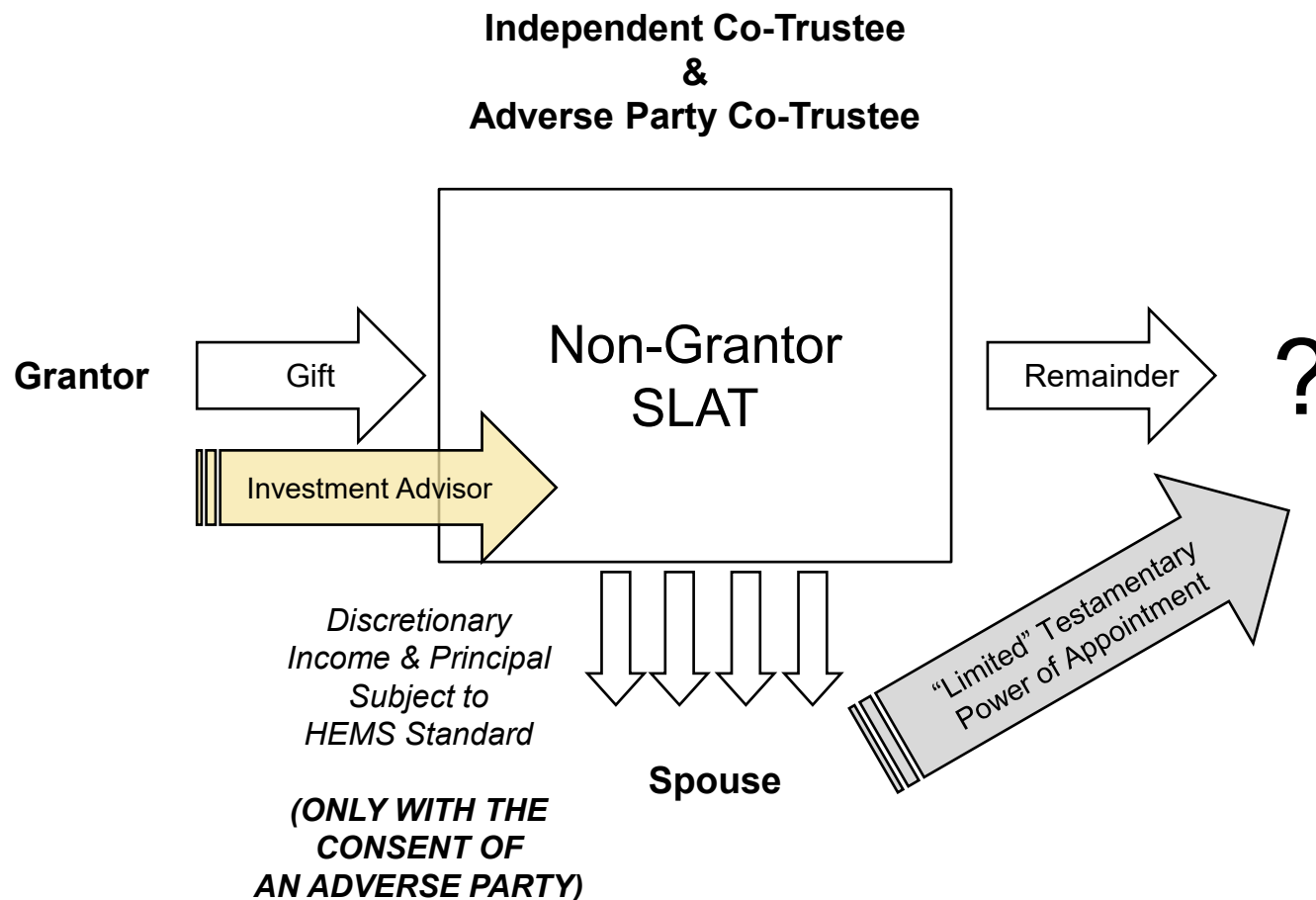
# Spousal Lifetime Access Trust



- Applicable state law on donor's creditor claims critical to know
- Reciprocal trust doctrine considerations (*Grace* or *Levy*)
- Alternative: Special Power of Appointment Trust (SPAT)



# Non-Grantor Spousal Lifetime Access Trust





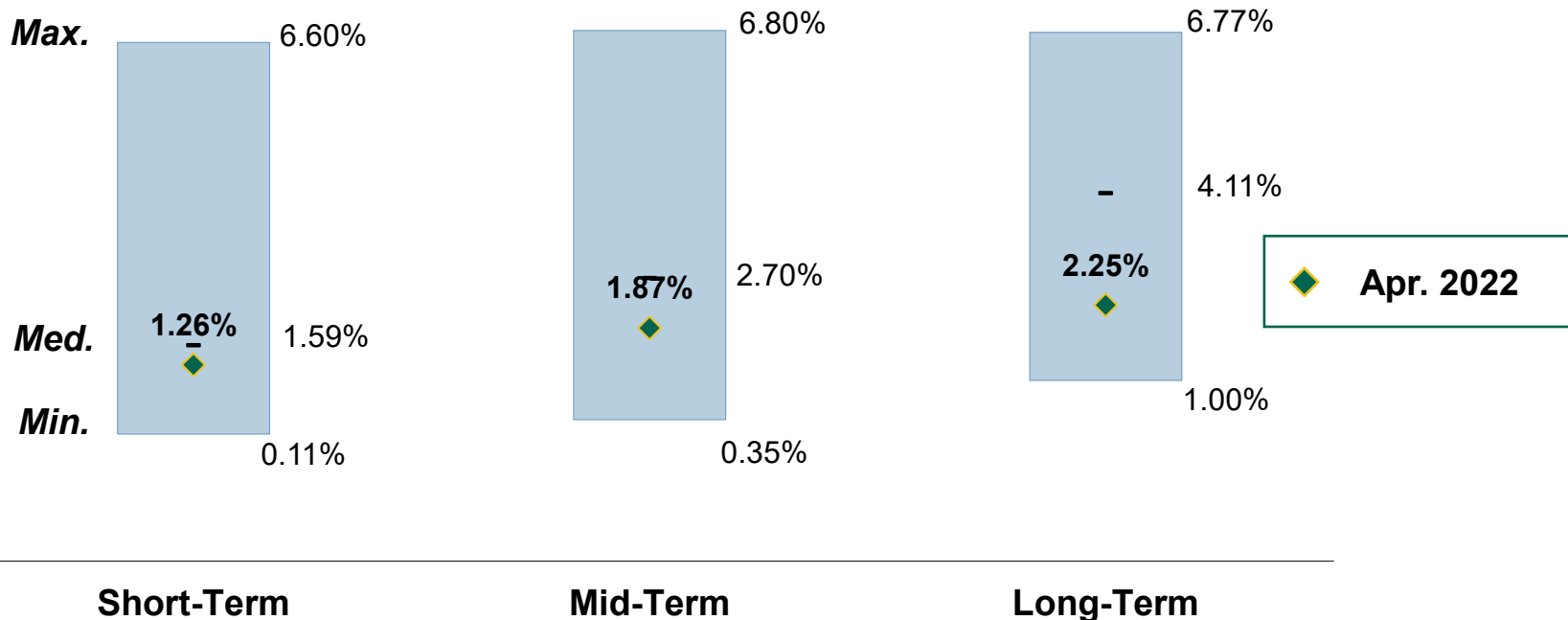
# *Intra-Family Loans & Sales to IDGTs*



# AFRs Are Low

## Applicable Federal Rates

Jan. 1998 – Apr. 2022



- Refinancing may require consideration.
- Consider prepaying debt and replace with new promissory note.
- Remember term of note should not be longer than life expectancy of holder.





# The Valuation of Promissory/Installment Notes in the Future?

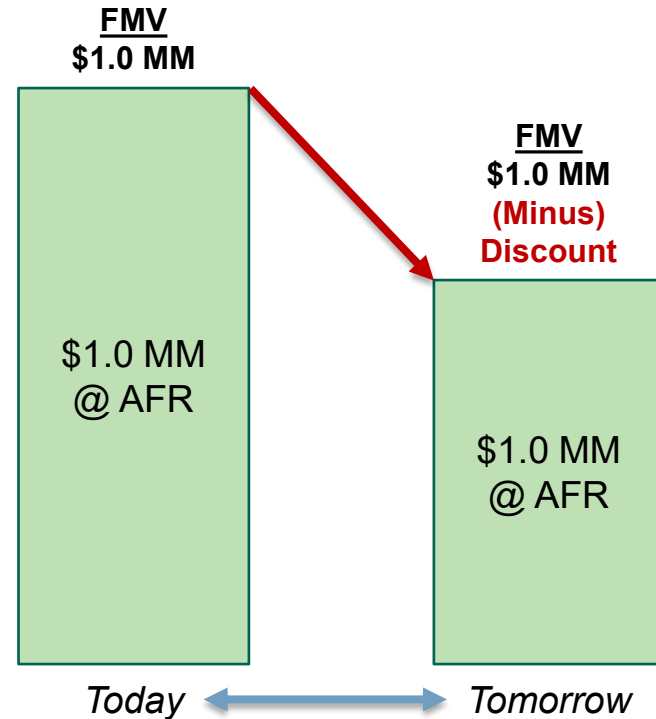
“In the case of an entity engaged in an active trade or business, at least 60 percent of whose value consists of the nonpassive assets of that trade or business, and to the extent that the liquidation proceeds are not attributable to passive assets within the meaning of section 6166(b)(9)(B), such proceeds may include such a note or other obligation if such note or other obligation is adequately secured, requires periodic payments on a non-deferred basis, is issued at market interest rates, and has a fair market value on the date of liquidation or redemption equal to the liquidation proceeds.” Prop. Treas. Reg. 25.2704-3(b)(iv).

## Loans and Installment Sales Today

- ◆ Applicable federal rate (long-term, not short or mid-term);
- ◆ 10% (or less) equity;
- ◆ No prepayment penalty; and
- ◆ Adequate security not required.

## Promissory Notes Will Need to Be:

- ◆ Adequately secured;
- ◆ Requires periodic payments on a non-deferred basis;
- ◆ Issued at market interest rates; and
- ◆ Has a fair market value equal to the liability.



### Using Notes to Avoid Section 2036 Issues:

- 1: Sell Family-Owned Entity to IDGT for FMV in Exchange for Installment Note.
- 2: Gift the Installment Note to IDGT (Borrower).

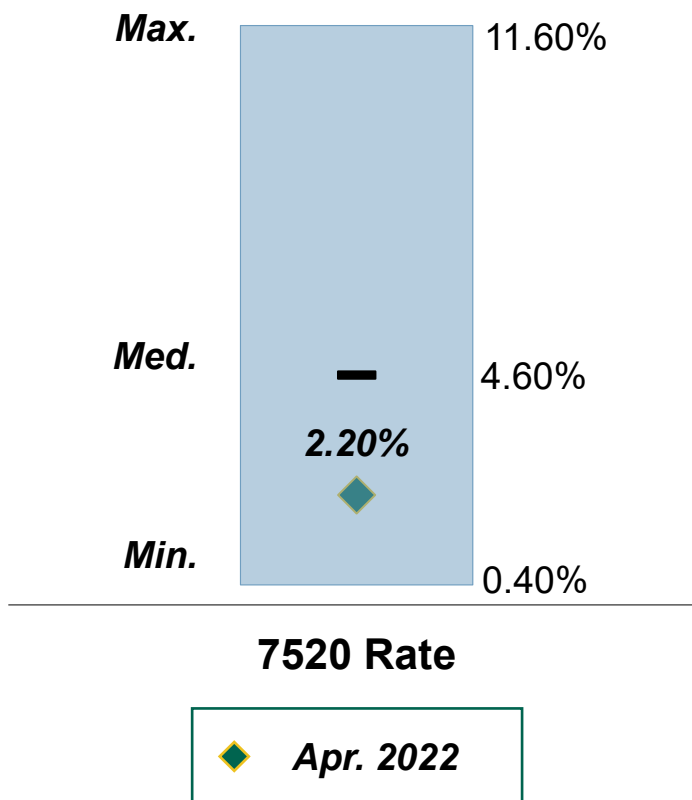


*Long-Term GRATs*  
*Back-Loaded CLATs*  
*Deferred & Increasing Private Annuities*



# Low Section 7520 Rate

## Section 7520 Rate (Since Inception) Mar. 1989 – Apr. 2022





# 100 Years? 365 Years?

**Estate Tax Inclusion is LESSER of:**

- FMV of GRAT assets; or
- Amount of Principal to Pay Annuity in PERPETUITY

$$= \frac{\text{Annuity Payment}}{\text{7520 Rate at Death}}$$

## 100 Year GRAT

Annuity	\$248,160.70
7520 Rate	2.2%
Years	100
PV of Grantor's Retained Interest	\$10,000,000
Annuity Factor	40.29646942
Life Factor	0.886522327
Remainder Factor	0.113477673

7520 Rate at Death	§ 20.2036-1(c)(2) Inclusion
1.0%	\$ 24,816,070
2.0%	\$ 12,408,035
3.0%	\$ 8,272,023
4.0%	\$ 6,204,017
5.0%	\$ 4,963,214
6.0%	\$ 4,136,012
7.0%	\$ 3,545,153

GRAT Asset Value	
Years	Annual Return 7%
5	\$ 12,598,410
10	\$ 16,242,814
15	\$ 21,354,280
20	\$ 28,523,375
25	\$ 38,578,401

## 365 Year GRAT

Annuity	\$220,078.16
7520 Rate	2.2%
Years	365
PV of Grantor's Retained Interest	\$10,000,000
Annuity Factor	45.43840186
Life Factor	0.999644841
Remainder Factor	0.000355159

7520 Rate at Death	§ 20.2036-1(c)(2) Inclusion
1.0%	\$ 22,007,816
2.0%	\$ 11,003,908
3.0%	\$ 7,335,939
4.0%	\$ 5,501,954
5.0%	\$ 4,401,563
6.0%	\$ 3,667,969
7.0%	\$ 3,143,974

GRAT Asset Value	
Years	Annual Return 7%
5	\$ 12,759,905
10	\$ 16,630,815
15	\$ 22,059,966
20	\$ 29,674,632
25	\$ 40,354,594

Private Split-Dollar Life Insurance Alternative? Good Place for Installment Notes?



# What About Very Long-Term GRATs?

## 50 Year GRAT

Annuity	\$331,757.22
7520 Rate	2.2%
Years	50
PV of Grantor's Retained Interest	\$10,000,000
Annuity Factor	30.14252399
Life Factor	0.663135528
Remainder Factor	0.336864472

7520 Rate at Death	§ 20.2036-1(c)(2) Inclusion
1.0%	\$ 33,175,722
2.0%	\$ 16,587,861
3.0%	\$ 11,058,574
4.0%	\$ 8,293,931
5.0%	\$ 6,635,144
6.0%	\$ 5,529,287
7.0%	\$ 4,739,389

GRAT Asset Value	
Years	Annual Return
	7%
5	\$ 12,117,668
10	\$ 15,087,807
15	\$ 19,253,581
20	\$ 25,096,294
25	\$ 33,291,001

## 60 Year GRAT

Annuity	\$301,777.31
7520 Rate	2.2%
Years	60
PV of Grantor's Retained Interest	\$10,000,000
Annuity Factor	33.13701708
Life Factor	0.729014376
Remainder Factor	0.270985624

7520 Rate at Death	§ 20.2036-1(c)(2) Inclusion
1.0%	\$ 30,177,731
2.0%	\$ 15,088,866
3.0%	\$ 10,059,244
4.0%	\$ 7,544,433
5.0%	\$ 6,035,546
6.0%	\$ 5,029,622
7.0%	\$ 4,311,104

GRAT Asset Value	
Years	Annual Return
	7%
5	\$ 12,290,075
10	\$ 15,502,023
15	\$ 20,006,947
20	\$ 26,325,335
25	\$ 35,187,202

## 70 Year GRAT

Annuity	\$281,326.46
7520 Rate	2.2%
Years	70
PV of Grantor's Retained Interest	\$10,000,000
Annuity Factor	35.5458926
Life Factor	0.782009637
Remainder Factor	0.217990363

7520 Rate at Death	§ 20.2036-1(c)(2) Inclusion
1.0%	\$ 28,132,646
2.0%	\$ 14,066,323
3.0%	\$ 9,377,549
4.0%	\$ 7,033,161
5.0%	\$ 5,626,529
6.0%	\$ 4,688,774
7.0%	\$ 4,018,949

GRAT Asset Value	
Years	Annual Return
	7%
5	\$ 12,407,682
10	\$ 15,784,581
15	\$ 20,520,857
20	\$ 27,163,728
25	\$ 36,480,699



# Long-Term GRATs with a Bonus Exclusion Gift

\$10 Mil. Contribution - \$3.97 Mil. Retained Annuity = \$6.03 Mil. Taxable Gift

## 50 Year GRAT

Annuity	\$131,707.62
7520 Rate	2.2%
Years	50
PV of Grantor's Retained Interest	\$ 3,970,000
Annuity Factor	30.14252399
Life Factor	0.663135528
Remainder Factor	0.336864472

7520 Rate at Death	§ 20.2036-1(c)(2) Inclusion
1.0%	\$ 13,170,762
2.0%	\$ 6,585,381
3.0%	\$ 4,390,254
4.0%	\$ 3,292,690
5.0%	\$ 2,634,152
6.0%	\$ 2,195,127
7.0%	\$ 1,881,537

GRAT Asset Value	
Years	Annual Return 7%
5	\$ 13,268,101
10	\$ 17,851,782
15	\$ 24,280,632
20	\$ 33,297,426
25	\$ 45,943,946

## 60 Year GRAT

Annuity	\$119,805.59
7520 Rate	2.2%
Years	60
PV of Grantor's Retained Interest	\$ 3,970,000
Annuity Factor	33.13701708
Life Factor	0.729014376
Remainder Factor	0.270985624

7520 Rate at Death	§ 20.2036-1(c)(2) Inclusion
1.0%	\$ 11,980,559
2.0%	\$ 5,990,280
3.0%	\$ 3,993,520
4.0%	\$ 2,995,140
5.0%	\$ 2,396,112
6.0%	\$ 1,996,760
7.0%	\$ 1,711,508

GRAT Asset Value	
Years	Annual Return 7%
5	\$ 13,336,547
10	\$ 18,016,226
15	\$ 24,579,718
20	\$ 33,785,355
25	\$ 46,696,738

## 70 Year GRAT

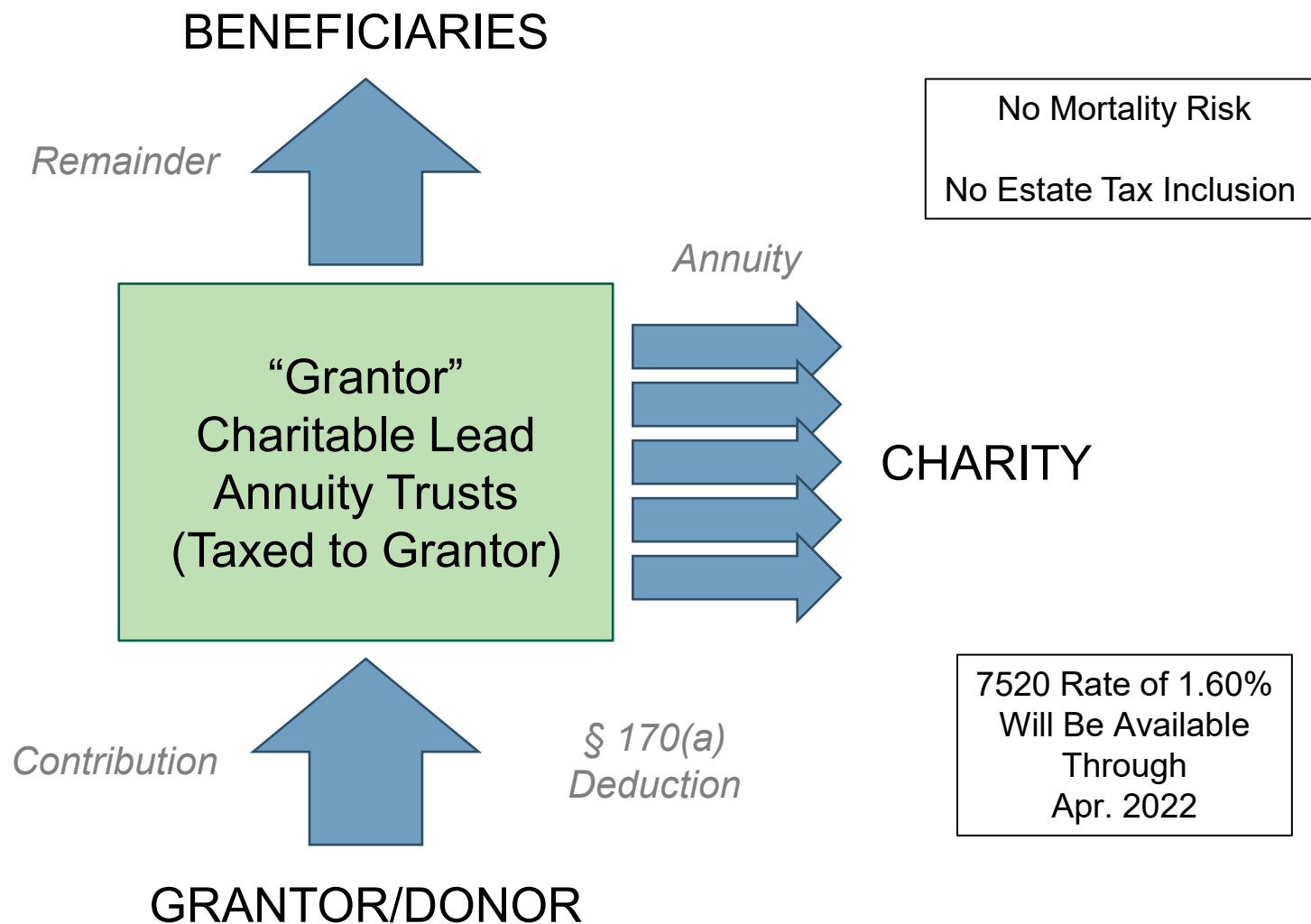
Annuity	\$111,686.60
7520 Rate	2.2%
Years	70
PV of Grantor's Retained Interest	\$ 3,970,000
Annuity Factor	35.5458926
Life Factor	0.782009637
Remainder Factor	0.217990363

7520 Rate at Death	§ 20.2036-1(c)(2) Inclusion
1.0%	\$ 11,168,660
2.0%	\$ 5,584,330
3.0%	\$ 3,722,887
4.0%	\$ 2,792,165
5.0%	\$ 2,233,732
6.0%	\$ 1,861,443
7.0%	\$ 1,595,523

GRAT Asset Value	
Years	Annual Return 7%
5	\$ 13,383,237
10	\$ 18,128,401
15	\$ 24,783,740
20	\$ 34,118,197
25	\$ 47,210,256



# “Intentionally Defective” Grantor Charitable Lead Trusts





- IRS Forms for Charitable Lead Trusts
  
- Guaranteed Annuity
  - ◆ Determinable amount
  - ◆ Paid periodically
  - ◆ Not less than annually
  
- Payment Requirements
  - ◆ Not subject to any minimum or maximum payout
  - ◆ May provide for an annuity amount that is
    - ▶ Fixed dollar
    - ▶ Increases during the annuity period
    - ▶ Provided that the value of the annuity is ascertainable at the time the trust is funded





# Possible Guaranteed Annuities (\$10 Mil. for 20 Yrs. @ 1.6%)

Year	Level	20% Increase	50% Increase	"Shark-Fin"
1	\$ 588,215	\$ 68,378	\$ 2,000	\$ 1,000
2	\$ 588,215	\$ 82,053	\$ 3,000	\$ 1,000
3	\$ 588,215	\$ 98,464	\$ 4,500	\$ 1,000
4	\$ 588,215	\$ 118,156	\$ 6,751	\$ 1,000
5	\$ 588,215	\$ 141,788	\$ 10,126	\$ 1,000
6	\$ 588,215	\$ 170,145	\$ 15,189	\$ 1,000
7	\$ 588,215	\$ 204,174	\$ 22,784	\$ 1,000
8	\$ 588,215	\$ 245,009	\$ 34,175	\$ 1,000
9	\$ 588,215	\$ 294,011	\$ 51,263	\$ 1,000
10	\$ 588,215	\$ 352,813	\$ 76,894	\$ 1,000
11	\$ 588,215	\$ 423,376	\$ 115,342	\$ 1,000
12	\$ 588,215	\$ 508,051	\$ 173,013	\$ 1,000
13	\$ 588,215	\$ 609,661	\$ 259,519	\$ 1,000
14	\$ 588,215	\$ 731,593	\$ 389,278	\$ 1,000
15	\$ 588,215	\$ 877,912	\$ 583,917	\$ 1,000
16	\$ 588,215	\$ 1,053,494	\$ 875,876	\$ 1,000
17	\$ 588,215	\$ 1,264,193	\$ 1,313,814	\$ 1,000
18	\$ 588,215	\$ 1,517,032	\$ 1,970,721	\$ 1,000
19	\$ 588,215	\$ 1,820,438	\$ 2,956,082	\$ 1,000
20	\$ 588,215	\$ 2,184,526	\$ 4,434,123	\$ 13,714,086
<b>Total</b>	<b>\$ 11,764,304</b>	<b>\$ 12,765,268</b>	<b>\$ 13,298,368</b>	<b>\$ 13,733,086</b>

*Present Value of \$10 Mil.*  
*(Gift or Estate Tax Deduction)*  
*(Income Tax Deduction if Grantor CLAT)*



# Back-Loading: Allows for Volatility and More Wealth Transfer

Value  
(\$ Mil.)

## Annual Charitable Payments

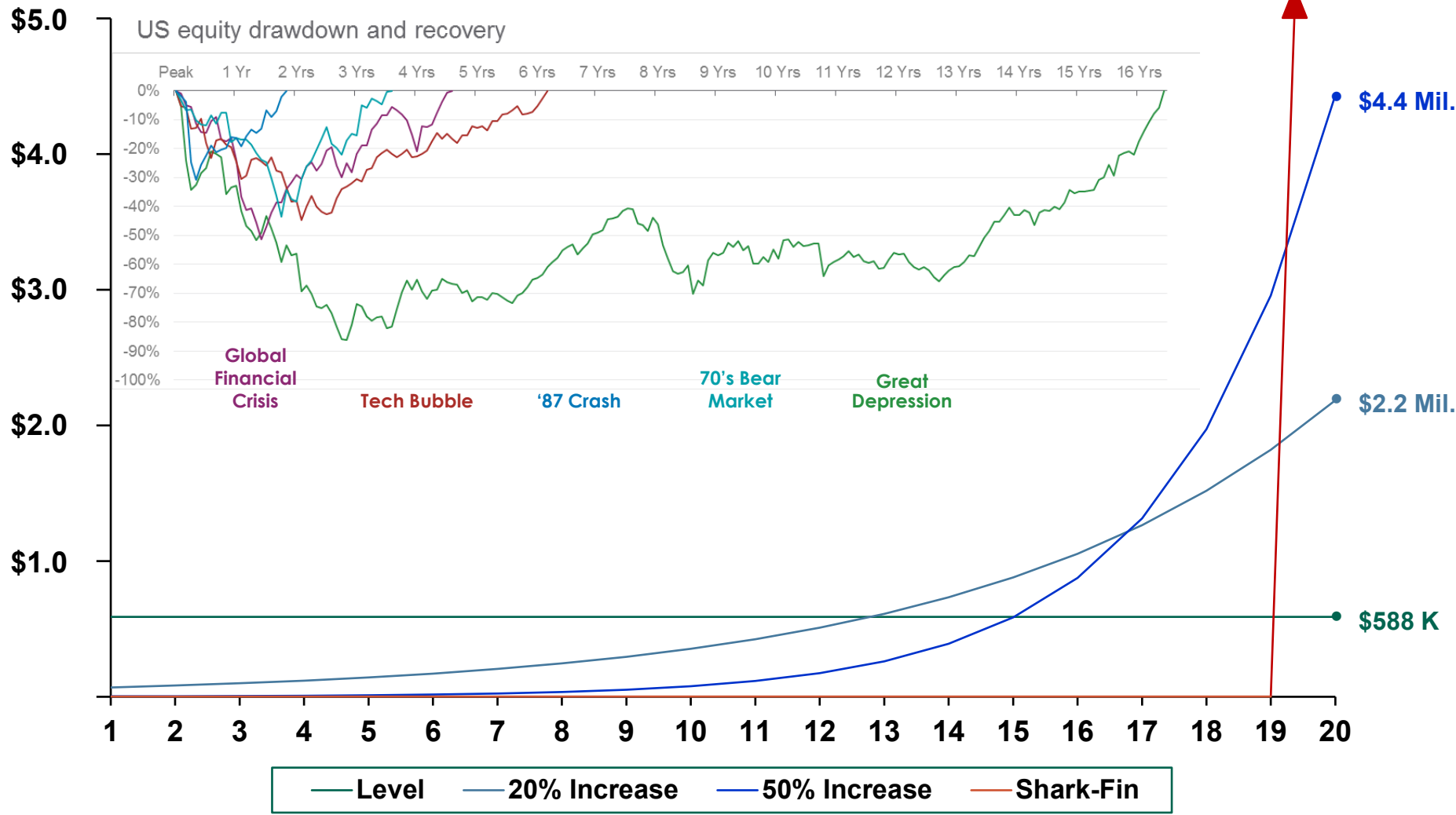
Final Annuity

\$13.7 Mil.

\$4.4 Mil.

\$2.2 Mil.

\$588 K





# Return Will Determine Value to Children at End of 20 Years

## Ending Remainder Value to Children (\$10 Mil. Contribution)

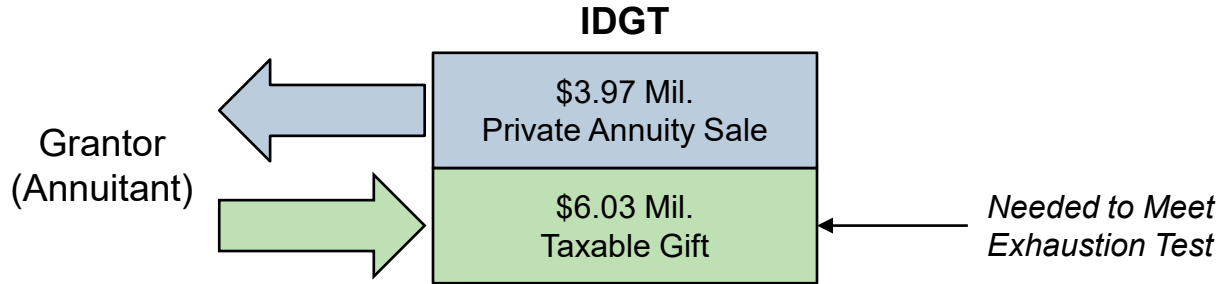
Return	Level	20% Increase	50% Increase	Shark-Fin
3%	\$ 2,255,549	\$ 3,367,385	\$ 3,917,343	\$ 4,321,156
5%	\$ 7,083,080	\$ 10,266,276	\$ 11,764,362	\$ 12,786,825
7%	\$ 14,582,672	\$ 20,567,371	\$ 23,246,975	\$ 24,942,763

## Aggregate Amount Paid to Charity Over Term

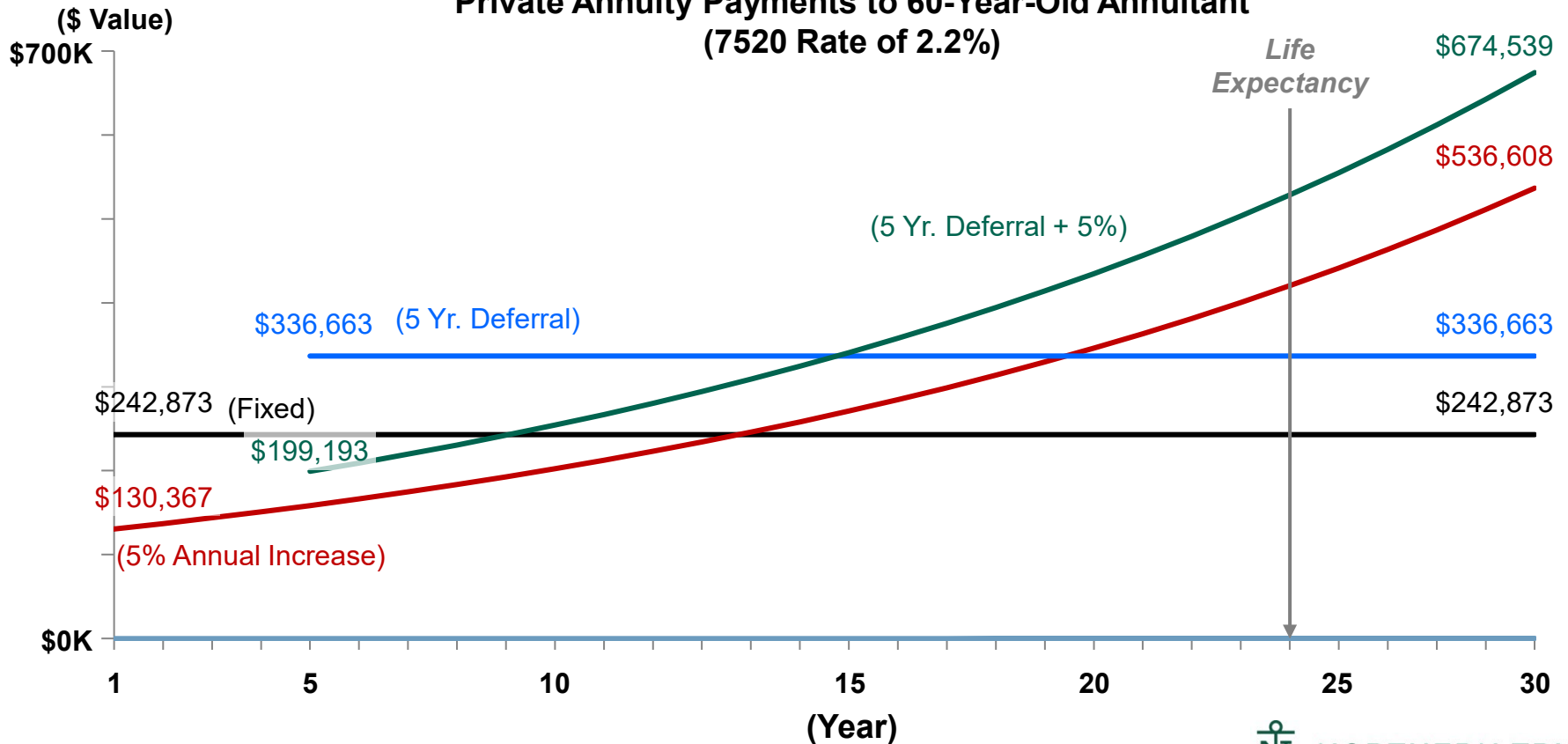
	Level	20% Increase	50% Increase	Shark-Fin
Charity	\$ 11,764,304	\$ 12,765,268	\$ 13,298,368	\$ 13,733,086



# Private Annuities: Flexible Annuity Pattern



**Private Annuity Payments to 60-Year-Old Annuitant  
(7520 Rate of 2.2%)**

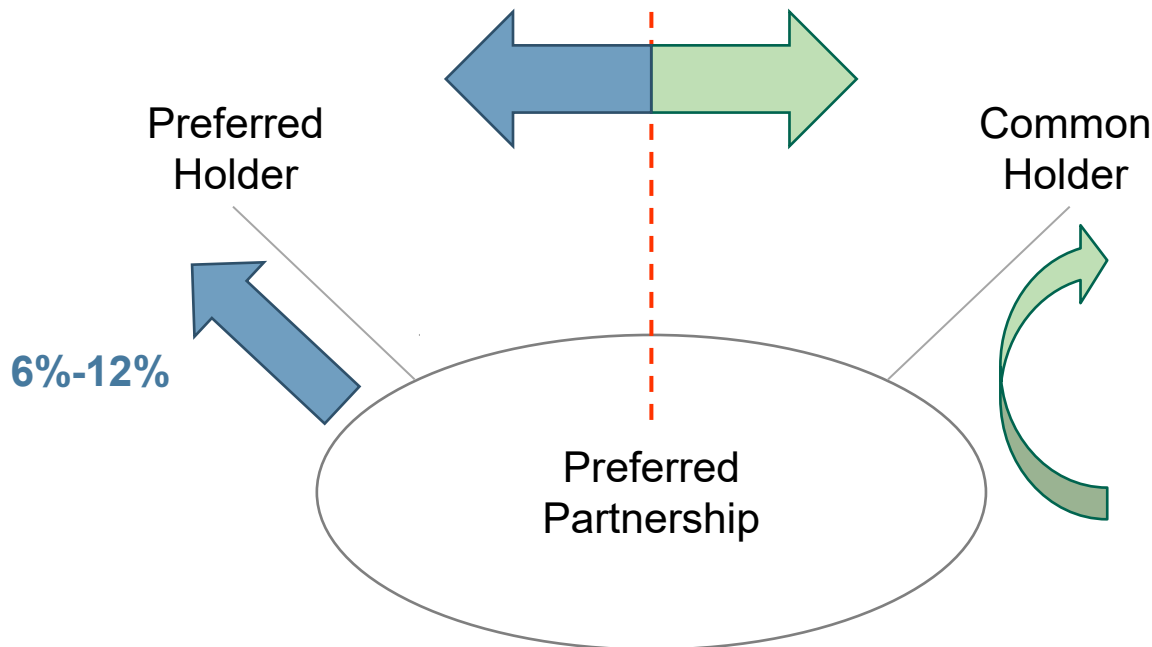




## *Non-Qualified Preferred Partnerships*



## Preferred & Common: Retain or Transfer?

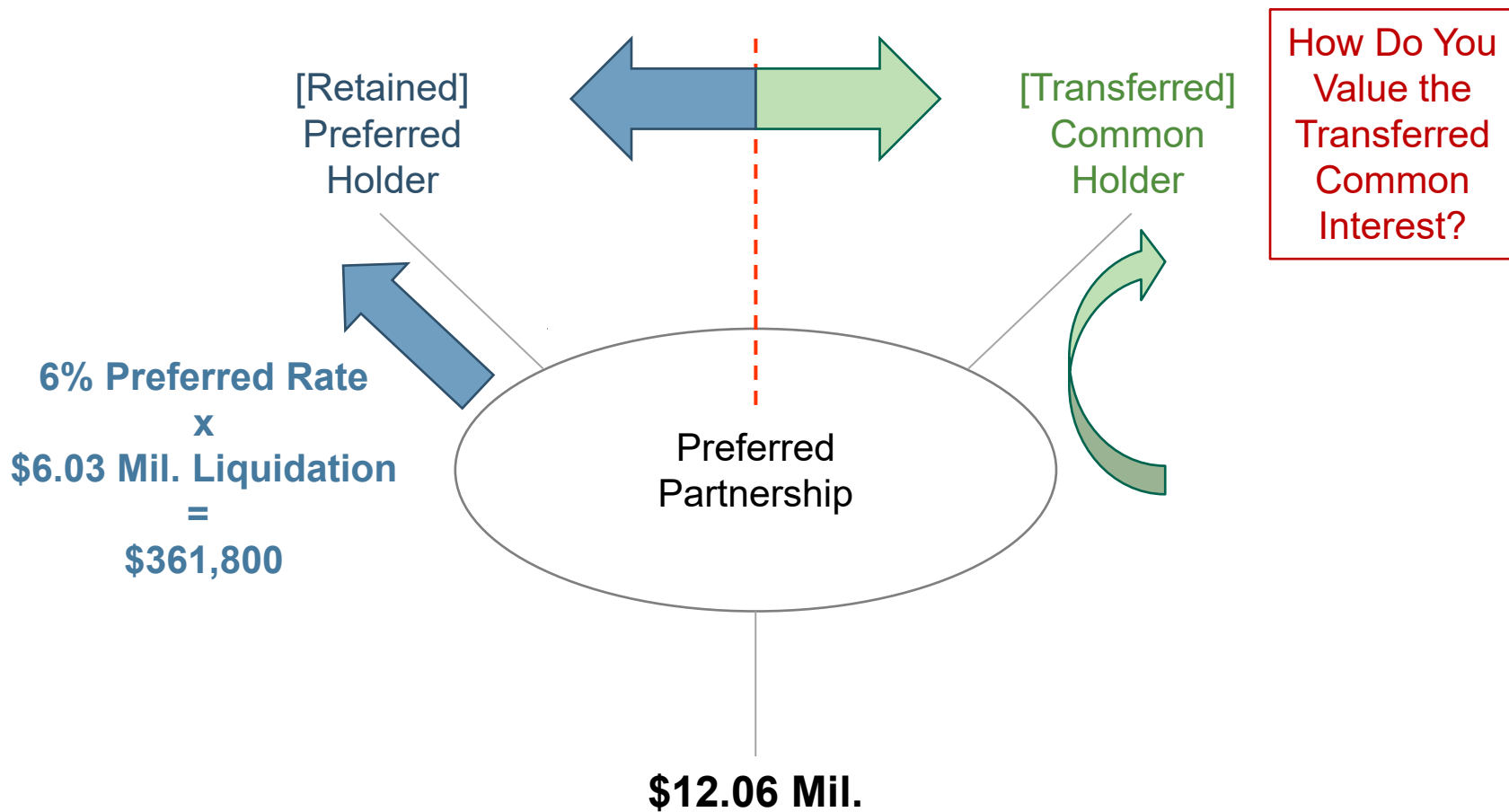


- Fixed Liquidation Value
- Annual Distribution at Fixed Rate/Amount
- Tax Items Preferentially Allocated
- Retain (Traditional), § 2701 Applies
- Transfer (Reverse), Normal Gift Tax Rules

- All Value in Excess of Preferred
- No Fixed Annual Distribution
- Residual Tax Items
- If Retain, Normal Gift Tax Rules
- If Transfer, § 2701 Applies



# "Forward Freeze" Preferred Partnership Transaction





# Forward Freeze: Subtraction Method (Valuing Common Interest)

- **Step 1: Determine**
  - ◆ Value of all family-held interests
  
- **Step 2: Subtract**
  - ◆ Value of senior equity interests
  
- **Step 3: Allocate**
  - ◆ Among the transferred interests
  
- **Step 4: Determine**
  - ◆ Value of the gift

**Section 2701**

Not liquidation value  
No minority interest discount

Zero OR  
Value of  
“Qualified Payment” Interest

**Minority interest discount**  
**Lack of marketability discount**  
**Subordination discount**

Qualified Payment  
Annual  
Cumulative  
Fixed Rate

Rev. Rul. 83-120

No ability to  
inflate value above  
liquidation





# Retain Preferred/Transfer Common: Qualified or Non-Qualified

## Estate Tax

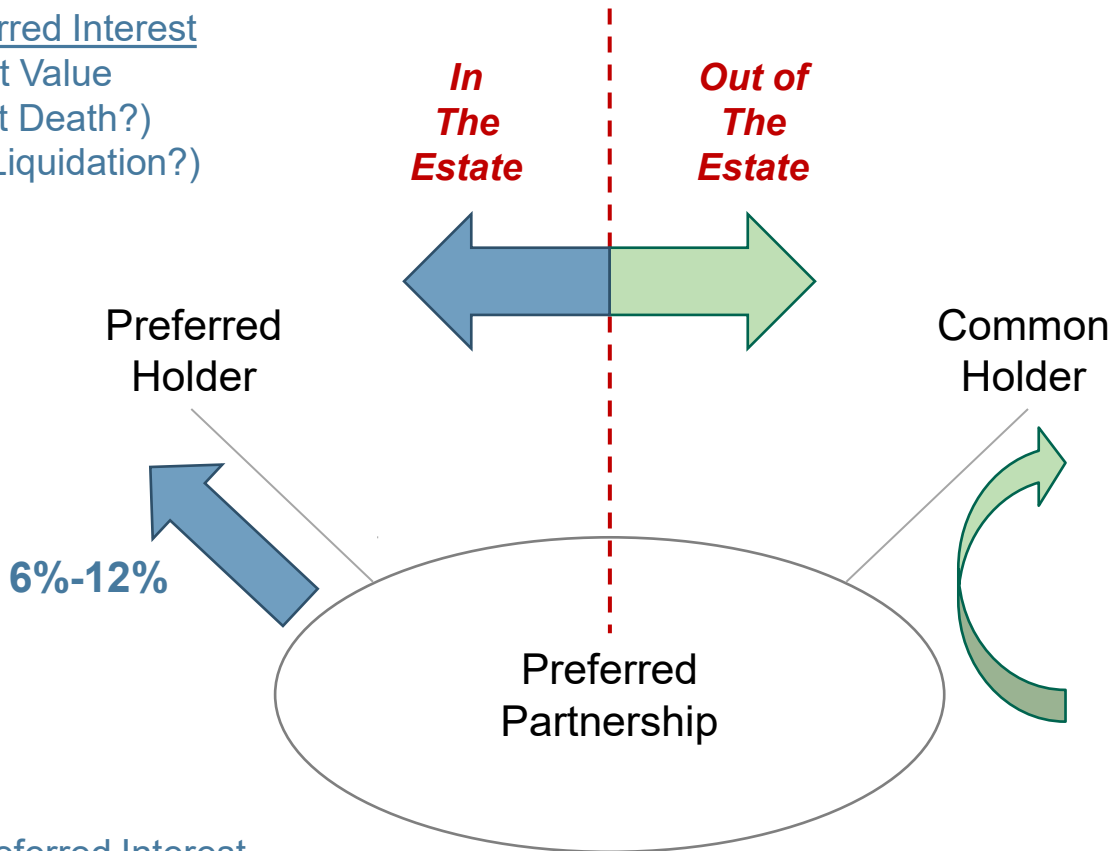
### Qualified Preferred Interest

Fair Market Value  
(Liquidated at Death?)  
(Cost-of-Living Liquidation?)

## Gift Tax

### Common Interest

Family Interests  
less  
Qualified Interest  
less  
Discounts



### Non-Qualified Preferred Interest

Fair Market Value (Liquidated?)  
less

Reg. § 25.2701-5(a)(3) Adjustment

### Common Interest

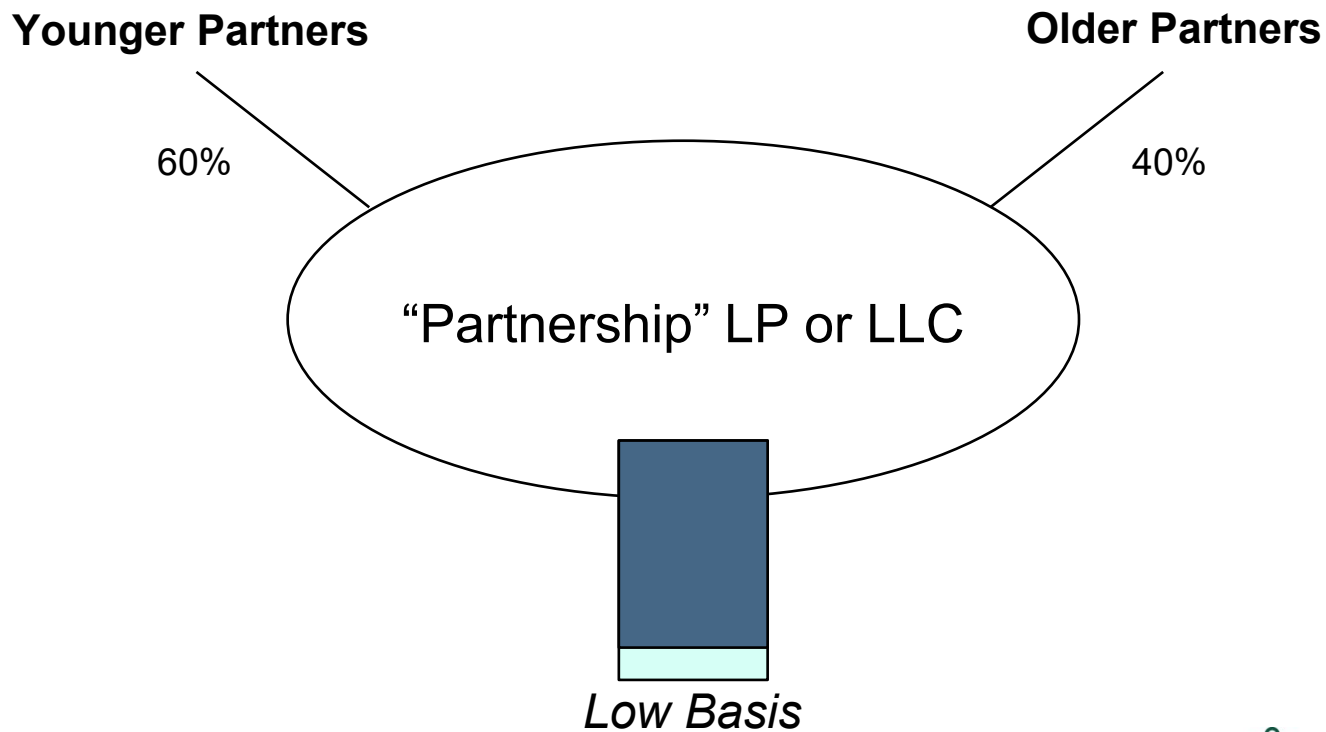
Family Interests  
less  
Zero



# *Eliminating Valuation Discounts On Pre-Existing FLP Interests Included in the Gross Estate*



# Eliminating Valuation Discounts on Pre-Existing FLPs





# Eliminating Valuation Discounts on Pre-Existing FLPs

**Younger Partners**

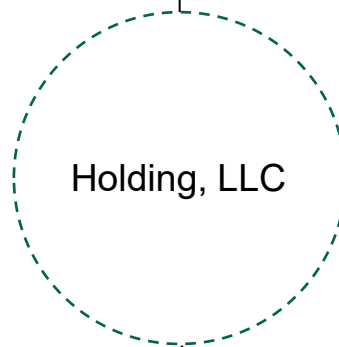
100%



Holding, LLC

**Older Partners**

100%

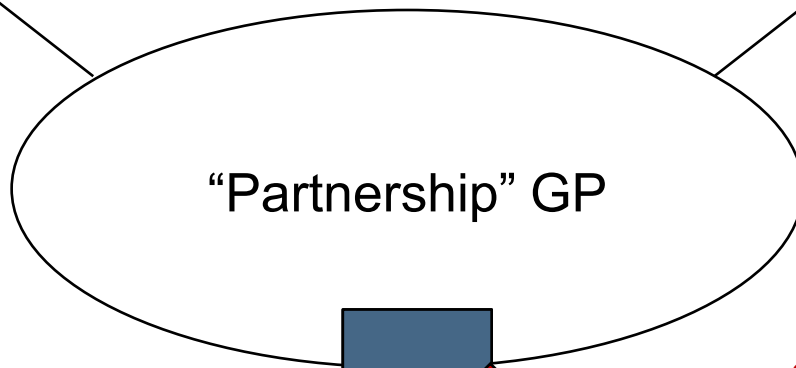


Holding, LLC

*Disregarded Entities*

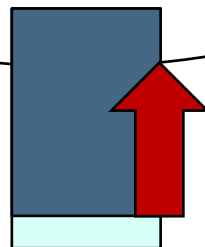
60%

40%



**"Partnership" GP**

*"Convert" to  
General Partnership*



*Low Basis*

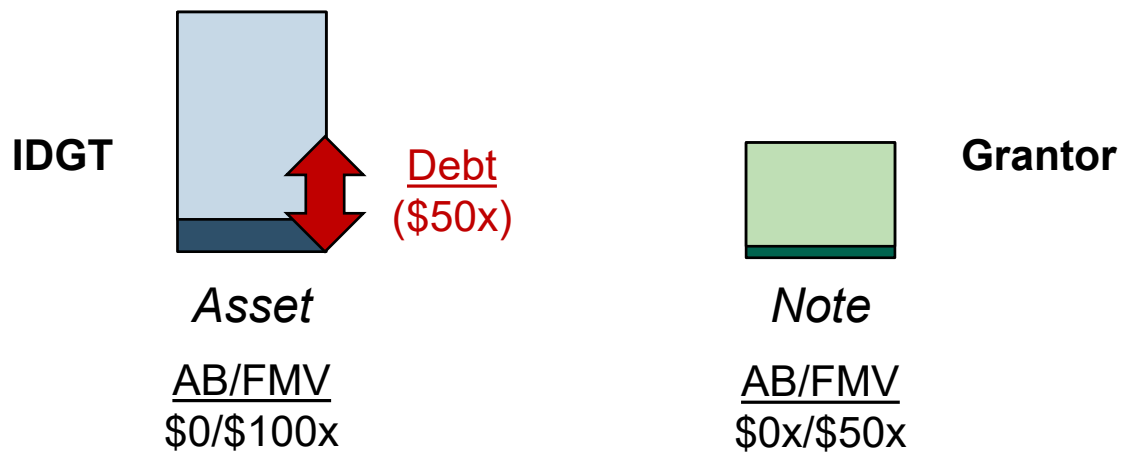
**Section  
754  
Election**



# *Eliminating Outstanding Installment Notes, Avoiding Gain At Death, and Getting A “Step-Up” On The IDGT Property*



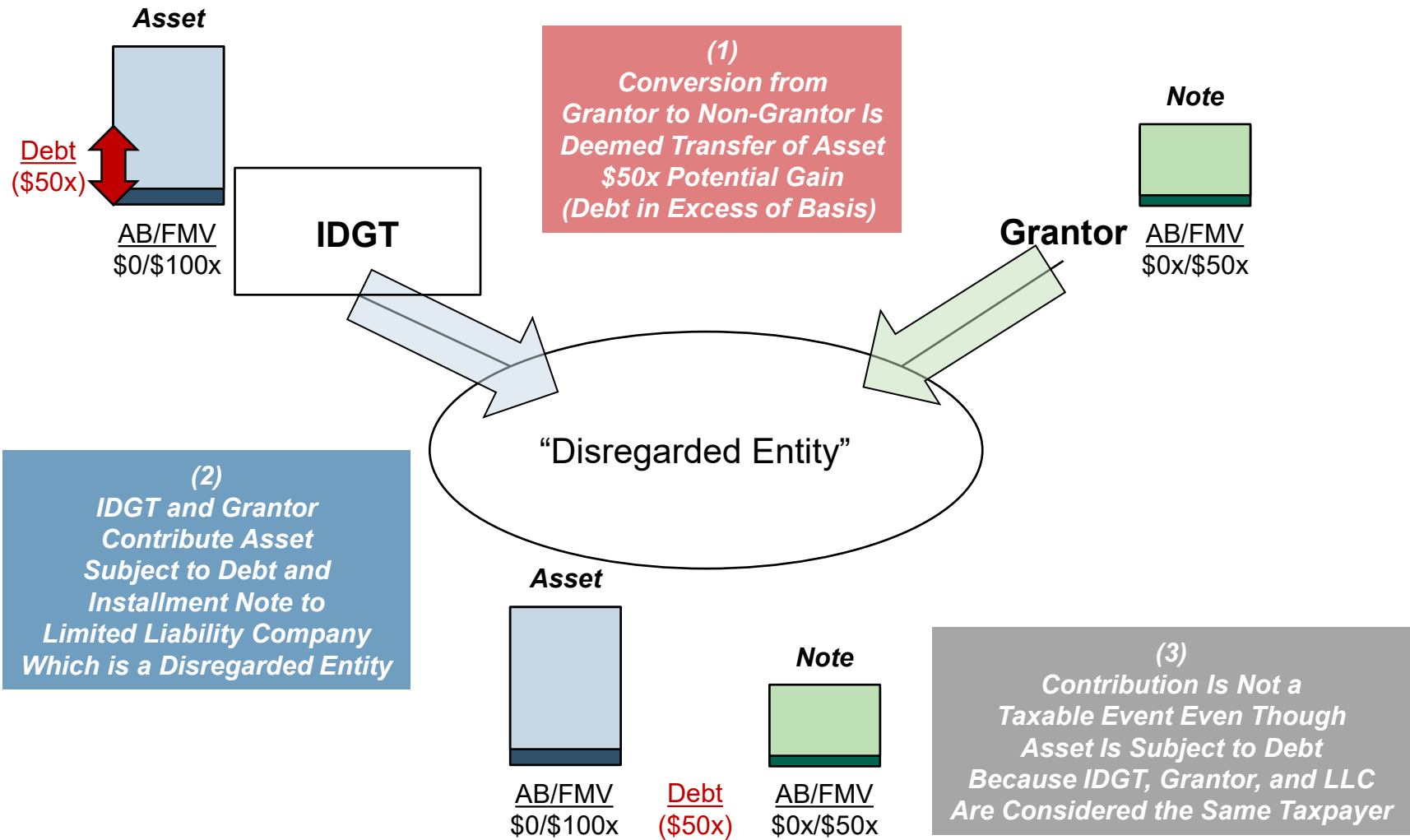
# Installment Sale to IDGT and Outstanding Note



**Potential \$50x Taxable Gain  
Upon Conversion of  
Grantor Trust to Non-Grantor Trust**

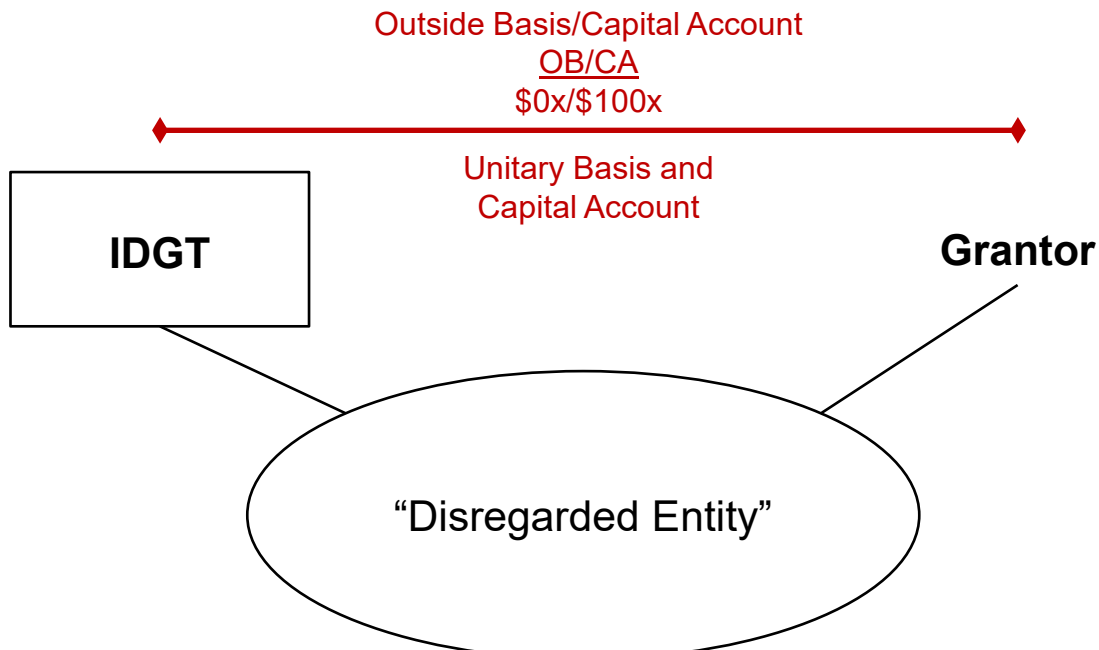


# Making the Debt Disappear with a Disregarded Entity

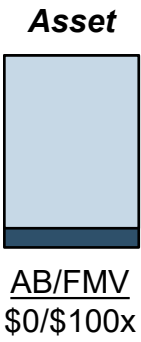




# Debt “Merges” and Disappears: Non-Taxable Event



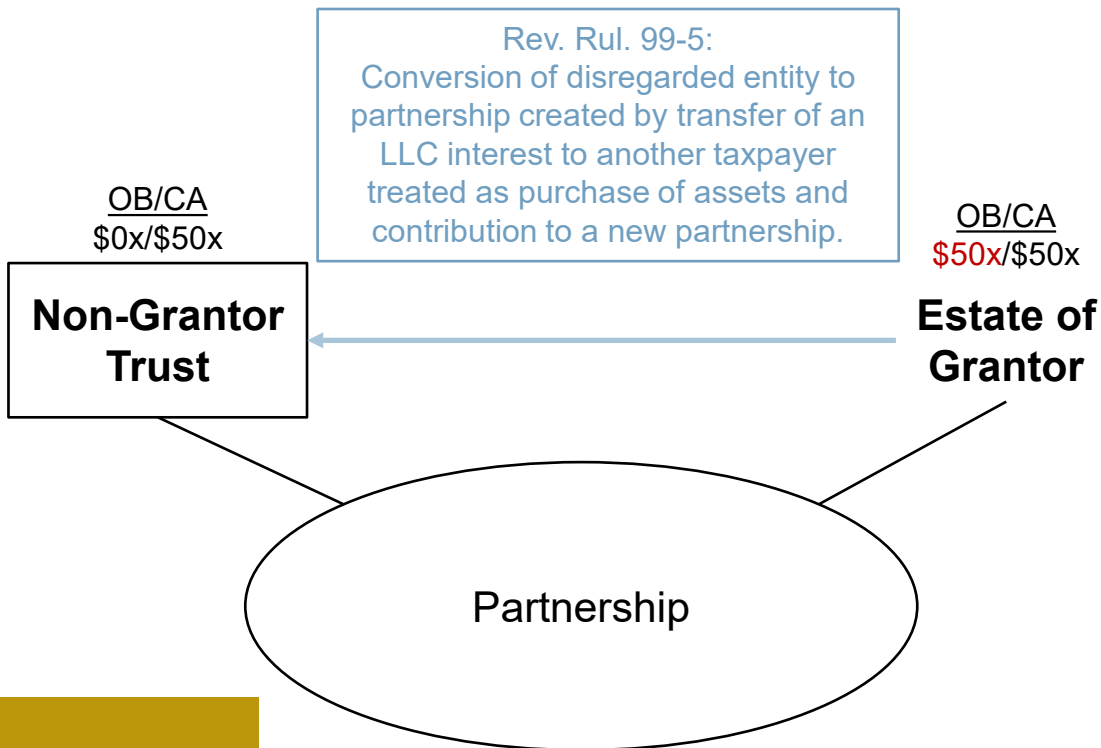
**(4)**  
*Debt Obligation and the Note “Merge” and the Debt is Deemed Extinguished. No Cancellation of Indebtedness Because IDGT, Grantor, and LLC Are Considered the Same Taxpayer*



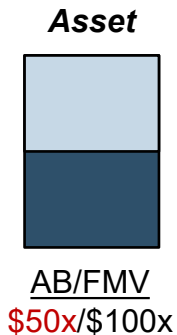




# Death of Grantor: Disregarded Entity to a Partnership



**(5)**  
*Grantor's Death Converts the LLC to a Partnership for Tax Purposes. Treated as the Creation of a New Partnership: Grantor's Portion of the Asset Gets a "Step-Up" in Basis and Is Contributed to a Newly Formed Partnership.*



**(6)**  
End Results:

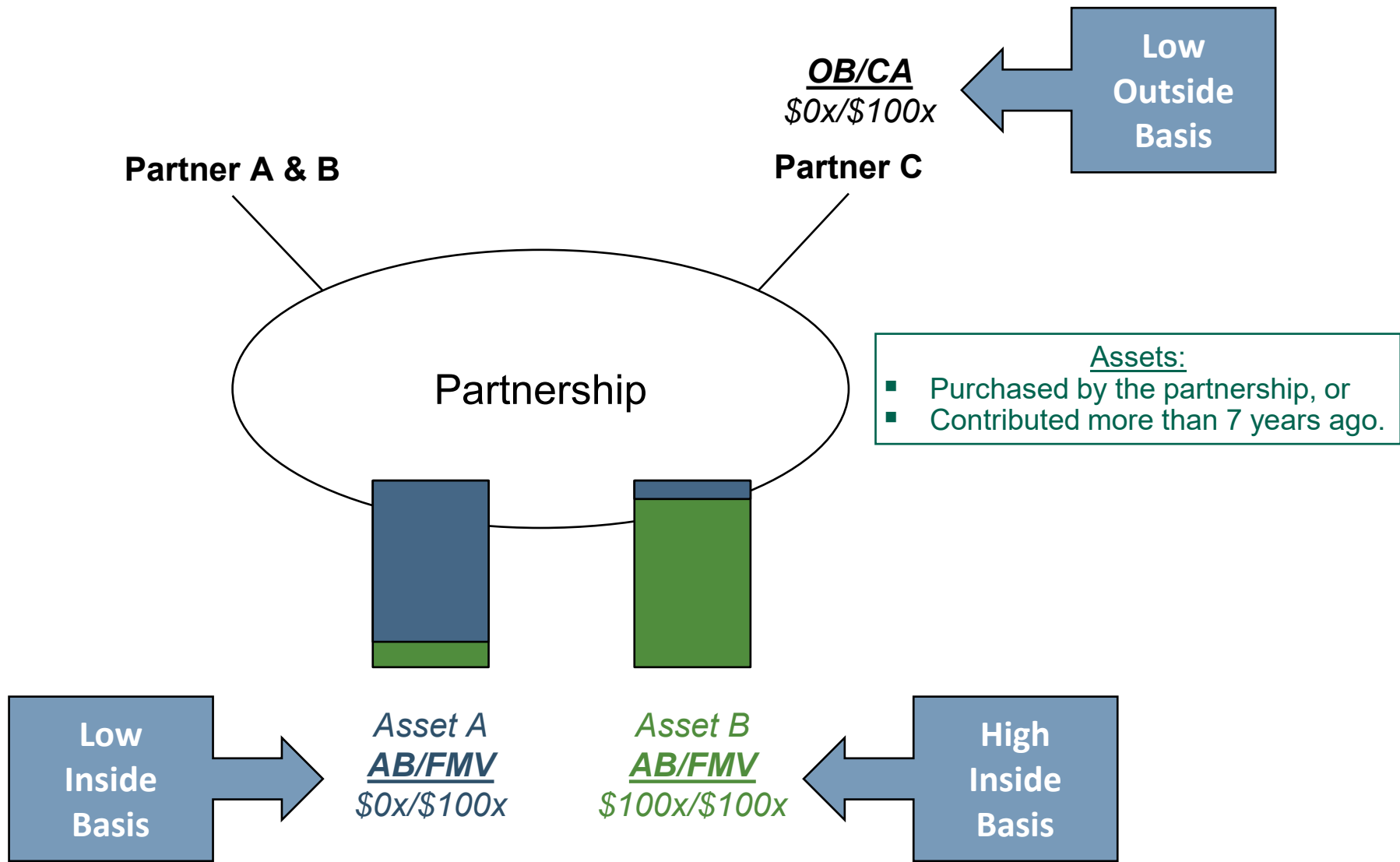
- a) *No Gain on the Grantor's Death;*
- b) *Asset in IDGT Gets a Partial Basis Adjustment under § 1014; and*
- c) *No Installment Note Included in Grantor's Estate.*



## *The Basics of Basis Stripping, Shifting, and Swapping*

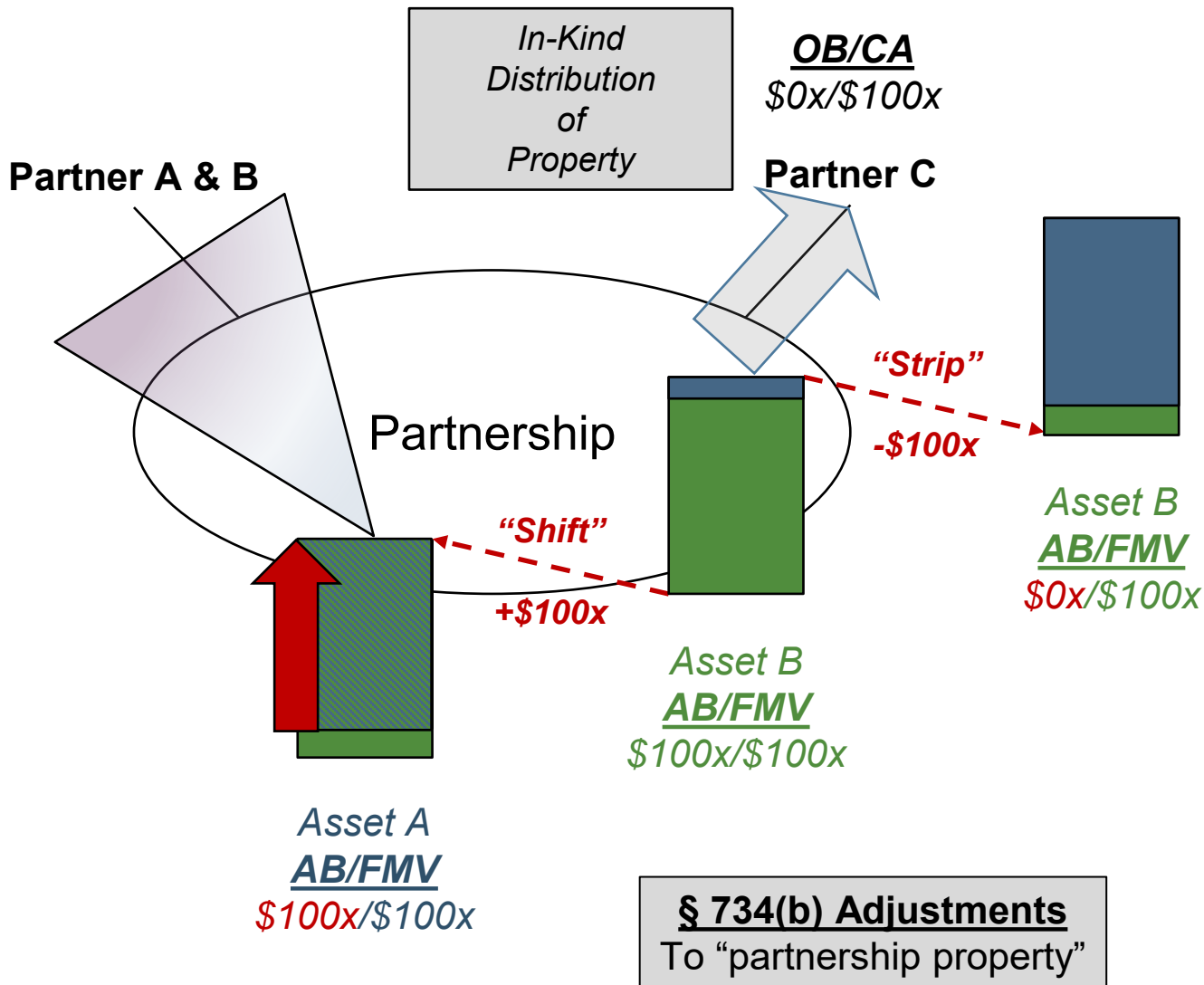


# The Basic Elements





# “Strip” Basis with Distribution & “Shift” with Election

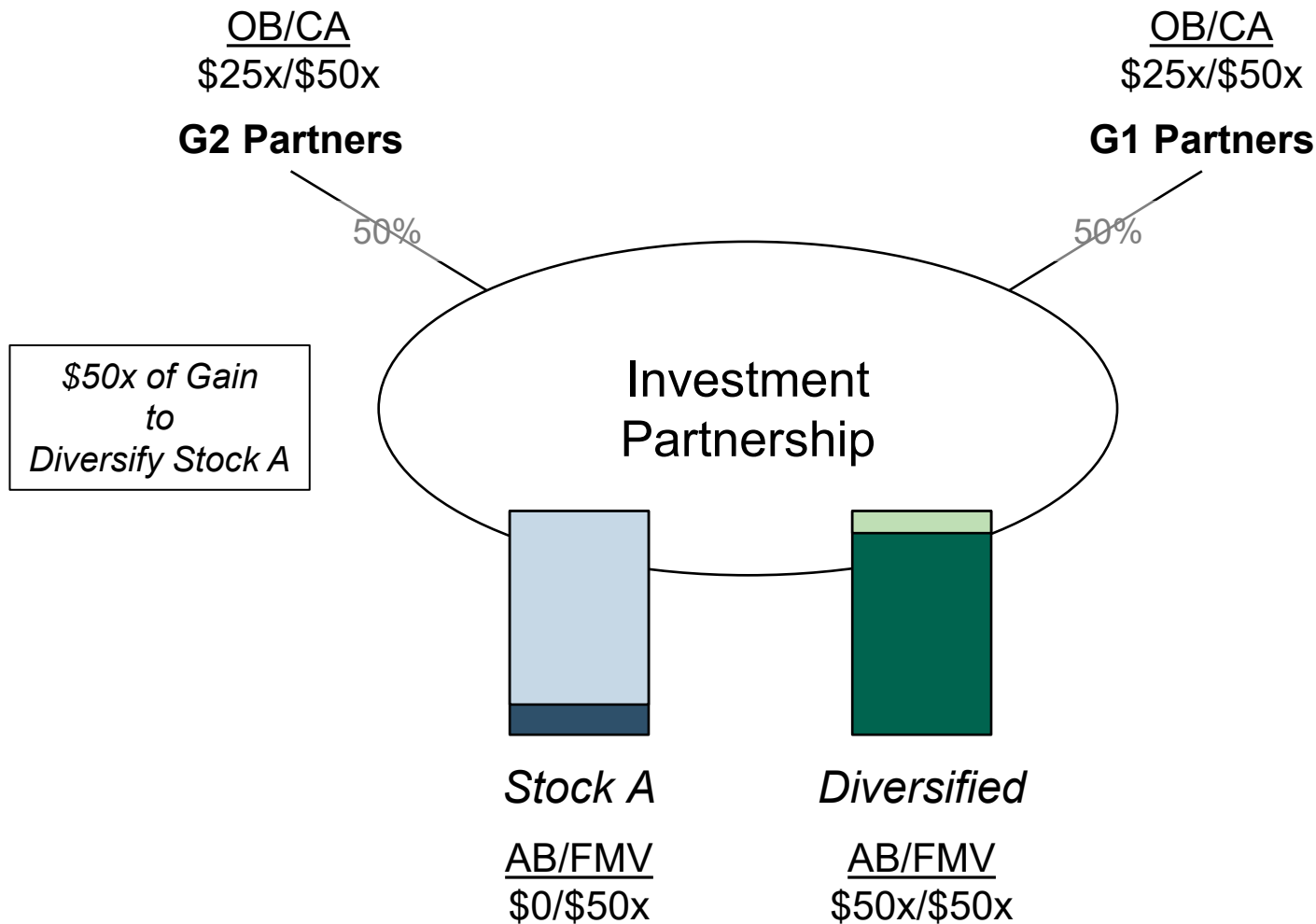




# *Creating, Stripping, and Shifting Basis (Even with Marketable Securities)*

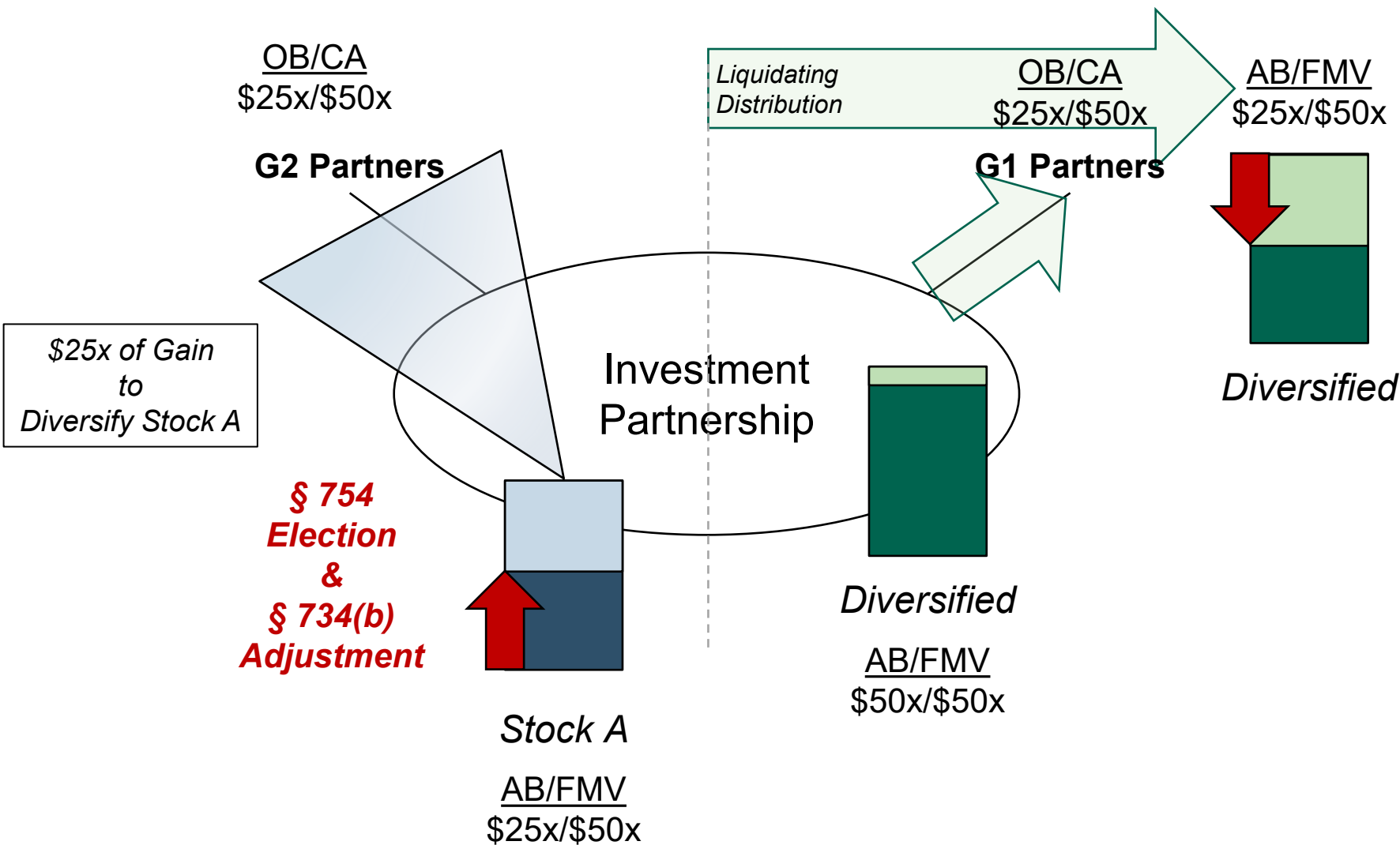


# Basis Shift From Diversified to Concentrated



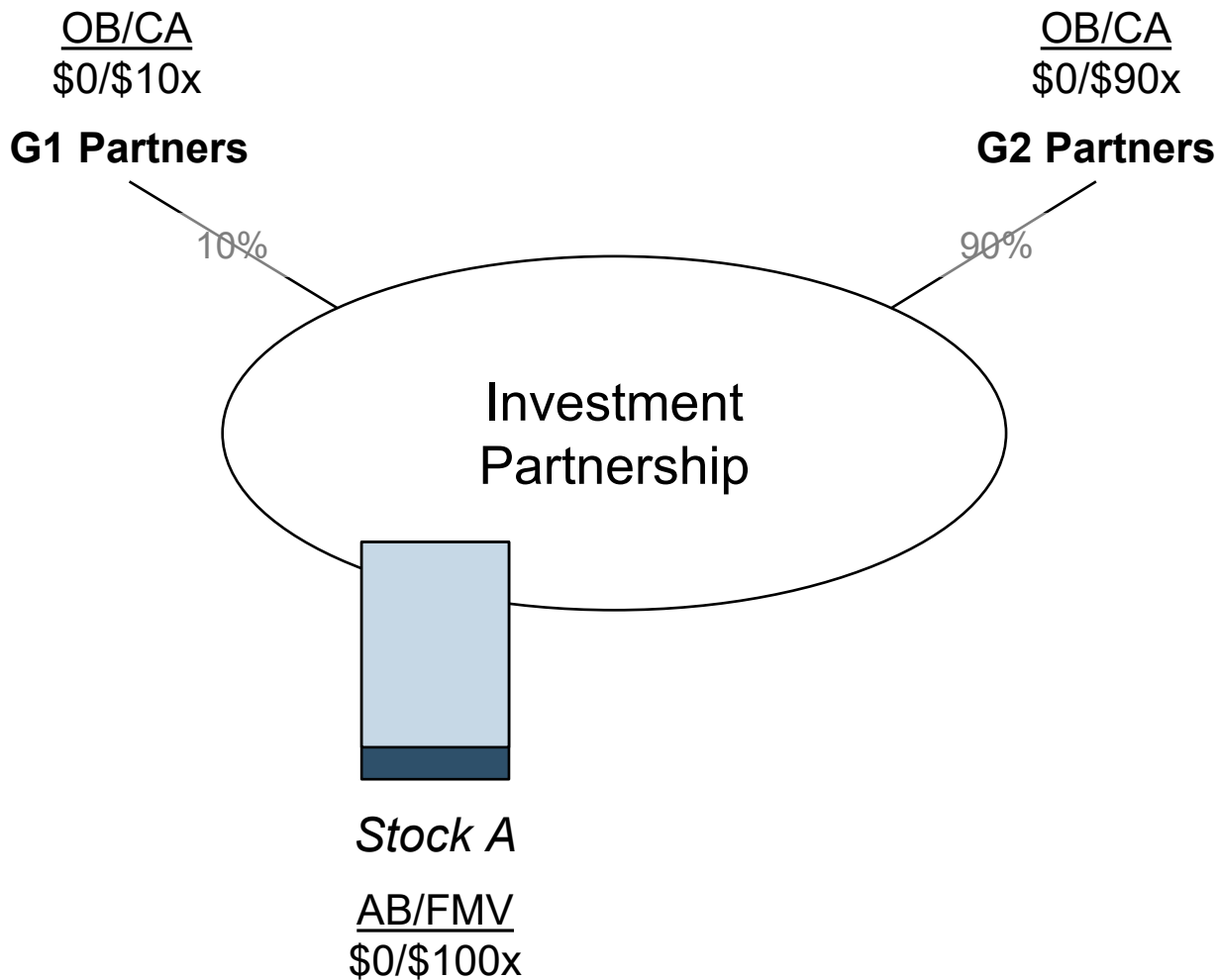


# Basis Shift From Diversified to Concentrated





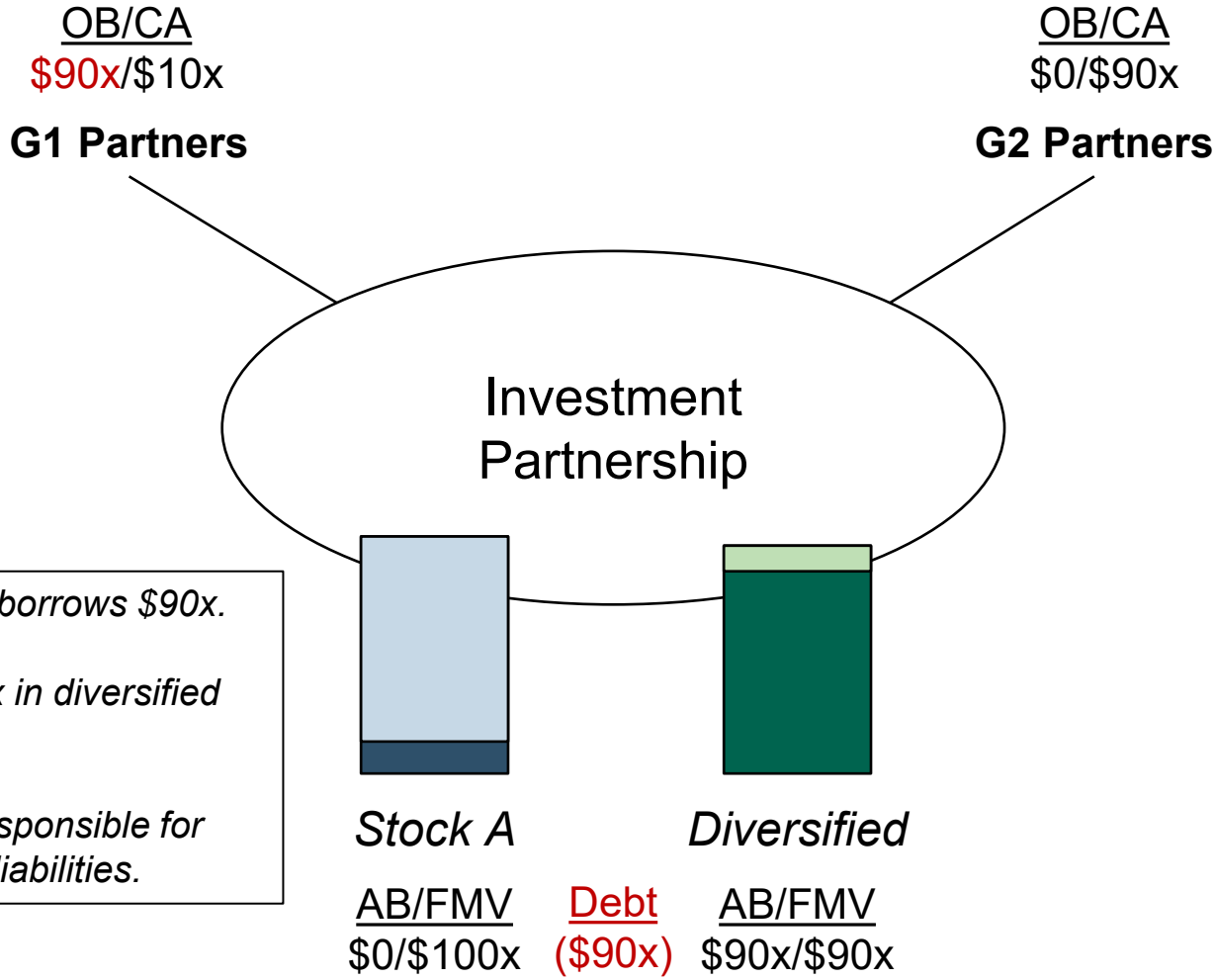
# Debt to Exchange Concentrated for Diversified Position







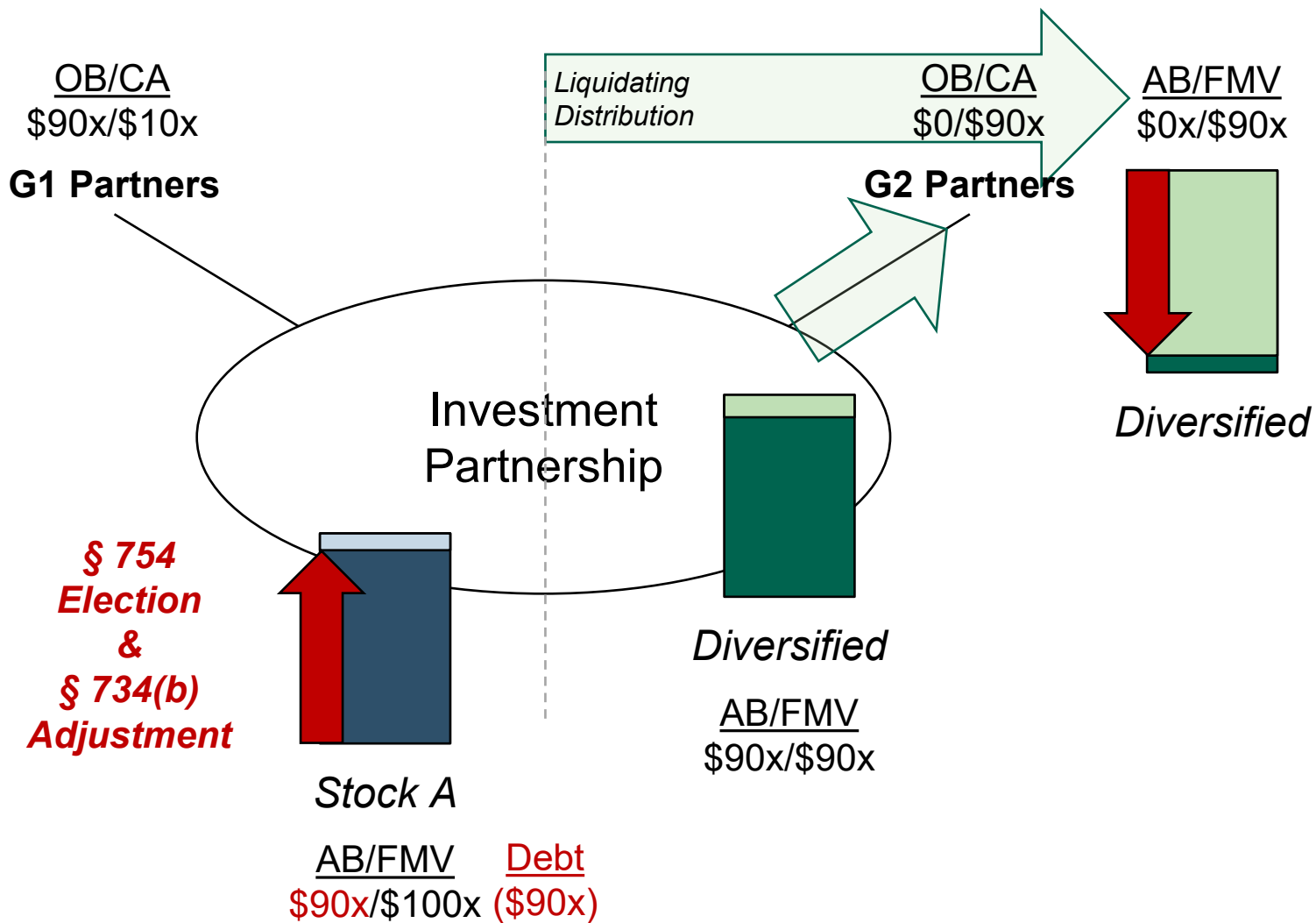
# Debt to Exchange Concentrated for Diversified Position



1. Partnership borrows \$90x.
2. Invests \$90x in diversified portfolio.
3. G1 solely responsible for partnership liabilities.



# Debt to Exchange Concentrated for Diversified Position

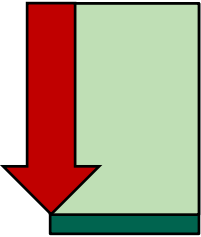




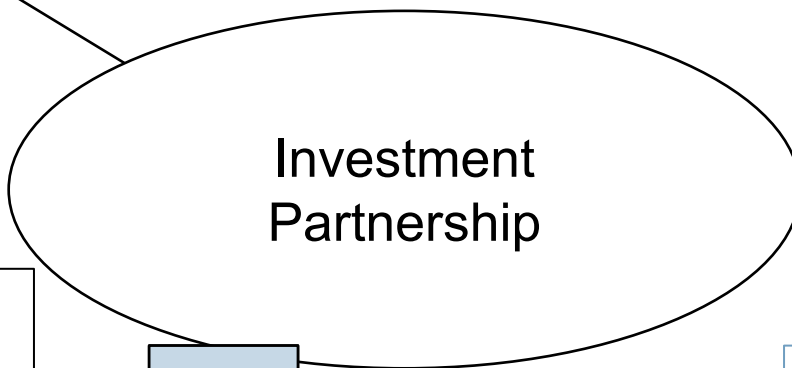
# Debt to Exchange Concentrated for Diversified Position

OB/CA  
**\$9x/\$10x**  
**G1 Partners**

AB/FMV  
**\$0x/\$90x**  
**Former G2 Partners**



*Diversified*



**Stock A**  
AB/FMV  
**\$9x/\$10x**

1. Sells 90x of Stock A (\$81x of AB).
2. Recognizes \$9x of gain (+9x OB of G1=\$99x).
3. Repays \$90x to lender (-\$90x OB of G1=\$9x).

Isn't this just an exchange fund?  
Can this be used with tangible personal property in lieu of a "like-kind" exchange?



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# Build It Up... Back Down... Better?

	Current	BBB (H.R. 5376)
<b>Individuals, Trusts &amp; Estates</b>	<ul style="list-style-type: none"> <li>• Top rate of 37%</li> <li>• SALT deductions capped at \$10,000</li> </ul>	<ul style="list-style-type: none"> <li>• 5% surcharge on MAGI &gt;\$10 Mil./ \$200,000 T&amp;E</li> <li>• 3% surcharge on MAGI &gt;\$25 Mil./\$500,000 T&amp;E</li> <li>• § 642(c) deduction allowed in MAGI</li> <li>• State and local tax deduction cap increased to \$80,000</li> </ul>
<b>Corporate Taxes</b>	<ul style="list-style-type: none"> <li>• Top tax rate of 21%</li> </ul>	<ul style="list-style-type: none"> <li>• 15% (alternative minimum tax) on corporations with adjusted financial income &gt; \$1 billion</li> <li>• 1% tax on share repurchase of publicly-traded companies</li> </ul>
<b>Net Investment Income Tax</b>		<ul style="list-style-type: none"> <li>• NIIT on all passthrough business income of trusts, estates, and individuals with MAGI &gt;\$400,000</li> </ul>
<b>IRAs &amp; Qualified Plans</b>		<ul style="list-style-type: none"> <li>• Prohibition on Roth conversions with \$400/\$450K AGI--Eff. 1/1/32</li> <li>• Prohibition on Roth conversion from qualified plans, unless taxable</li> <li>• Prohibition of contributions to large qualified accounts (\$10 Mil.)-\$400/\$450K AGI</li> <li>• Mandatory distributions (50%) from mega-IRAs (\$10-\$20 Mil.) then 100% (\$20+)-\$400K/\$450K ATI</li> </ul>
<b>QSBS</b>	<ul style="list-style-type: none"> <li>• 50%, 75% &amp; 100% exclusion</li> </ul>	<ul style="list-style-type: none"> <li>• 100% &amp; 75% exclusion disallowed for individuals with AGI of \$400,000 or more and trusts &amp; estates on sales after <b>9/13/21</b></li> </ul>



# House Ways & Means Committee Tax Proposal

	Current	Proposal (Eff. 1/1/22 unless noted)
<b>Individual Income Tax</b>	<ul style="list-style-type: none"> <li>• Top rate of 37%</li> <li>• SALT deductions capped at \$10,000</li> </ul>	<ul style="list-style-type: none"> <li>• Top rate of 39.6% (\$400,000 Single/\$450,000 Joint/\$12,500 T&amp;E)</li> <li>• No provision for SALT deductions</li> <li>• 3% surcharge on amounts of MAGI above (\$5 Mil. Single or Joint/\$100,000 T&amp;E)</li> </ul>
<b>Long-Term Capital Gains</b>	<ul style="list-style-type: none"> <li>• Top rate of 20%</li> <li>• 3.8% NIIT</li> </ul>	<ul style="list-style-type: none"> <li>• Top rate of 25%--<b>Eff. 9/13/21</b></li> <li>• Material participation exception for NIIT does not apply to high income (\$400K/\$500K MAGI) individual S corporation shareholders and partners, trusts &amp; estates</li> </ul>
<b>Transfer Tax</b>	<ul style="list-style-type: none"> <li>• Doubled base exclusion amount</li> <li>• 40% tax rate</li> <li>• \$1.19 Mil. (\$740K + Infl.) limit on special use valuation</li> </ul>	<ul style="list-style-type: none"> <li>• Doubling of base exclusion amount (and GST exemption) repealed</li> <li>• No rate changes</li> <li>• Increased to \$11.7 Mil. + Infl.</li> </ul>
<b>Valuation Discounts</b>	<ul style="list-style-type: none"> <li>• Marketability discounts allowed</li> </ul>	<ul style="list-style-type: none"> <li>• “Nonbusiness asset” (passive asset held for income and not used in the active conduct of a trade or business) in an entity will be treated as if transferred directly</li> <li>• <b>Eff. Date of Enactment</b></li> </ul>
<b>Corporate Tax</b>	<ul style="list-style-type: none"> <li>• Top tax rate of 21%</li> </ul>	<ul style="list-style-type: none"> <li>• Top tax rate of 26.5% (\$5 Mil.)-graduated rate benefit phases out above \$10 Mil.</li> </ul>
<b>Qualified Business Income Deduction</b>	<ul style="list-style-type: none"> <li>• 20% deduction on QBI of pass-thru entities (Exp. 12/31/25)</li> </ul>	<ul style="list-style-type: none"> <li>• Deduction capped (\$400,000 Single/\$500,000 Joint/\$10,000 T&amp;E)</li> </ul>
<b>QSBS</b>	<ul style="list-style-type: none"> <li>• 50%, 75% &amp; 100% exclusion</li> </ul>	<ul style="list-style-type: none"> <li>• 100% &amp; 75% exclusion disallowed for individuals with AGI of \$400,000 or more and trusts &amp; estates on sales after <b>9/13/21</b></li> </ul>
<b>IRAs Qualified Plans</b>		<ul style="list-style-type: none"> <li>• Prohibition on Roth conversions with \$400/\$450K AGI--<b>Eff. 1/1/32</b></li> <li>• Prohibition on Roth conversion from qualified plans, unless taxable (“backdoor”)</li> <li>• Prohibition of contributions to large qualified accounts (\$10 Mil.)-\$400/\$450K AGI</li> <li>• Mandatory distributions (50%) from mega-IRAs (\$10-\$20 Mil.) then 100% (\$20+)-\$400K/\$450K ATI</li> <li>• Prohibition of investment in entities if owner has a substantial interest (50%/10%)</li> <li>• Prohibition on “accredited investor/qualified purchaser” investments</li> </ul>
<b>Other</b>	<ul style="list-style-type: none"> <li>• 3-year holding period under § 1061</li> <li>• Taxable conversion of S corporation</li> </ul>	<ul style="list-style-type: none"> <li>• 5-year holding period under § 1061-\$400K AGI (otherwise 3-year)</li> <li>• <b>5/13/96</b> S corporations can convert tax free to partnership until <b>12/31/23</b></li> </ul>



# The Grantor Trust Provisions

	Section 2901	Section 1062
<b>Provision</b>	<p style="text-align: center;"><u>Assets of grantor trust of a deemed owner subject to:</u></p> <ul style="list-style-type: none"> <li>Estate tax upon <b>death</b> of deemed owner</li> <li>Gift tax on any <b>distribution</b> to beneficiary other than the deemed owner (and spouse)</li> <li>Gift tax on <b>conversion</b> to non-grantor trust</li> </ul> <p style="text-align: center;"><u>Exception/Adjustment:</u></p> <ul style="list-style-type: none"> <li>Any trust <b>includible</b> in gross estate of deemed owner</li> <li><b>“Proper adjustment”</b> for amounts previously treated as taxable gifts</li> </ul> <p style="text-align: center;"><u>Deemed owner defined:</u></p> <ul style="list-style-type: none"> <li>Any <b>person</b> treated as the owner of “a <b>portion</b> of a trust” under §§ 671-679</li> </ul>	<ul style="list-style-type: none"> <li>“In the case of <b>any transfer</b> of property between a <b>trust</b> and a <b>person</b> who is the <b>deemed owner</b> of the trust (or portion thereof), such treatment of the person as the <b>owner of the trust shall be disregarded</b> in determining whether the transfer is a <b>sale or exchange</b> for purposes of <b>this chapter.</b>”</li> <li>Exception for any trust that is <b>fully revocable</b> by the deemed owner</li> <li>Related party loss of § 267 amended to include transactions between grantor trust and owner under §§ 671-679</li> </ul>
<b>Effective Date/ Applicability</b>	<ul style="list-style-type: none"> <li>Trusts created on or after the <b>date of enactment</b></li> <li>Any portion of a trust established before the date of enactment which is attributable to a <b>contribution</b> made on or after such date</li> </ul>	
<b>Questions</b>	<ul style="list-style-type: none"> <li>Does “proper adjustment” include zeroed-out gifts? Does it include appreciation and income on the gift?</li> <li>Does this only apply to grantor (“with respect to which the <b>grantor</b> is the deemed owner”)? § 678 deemed owners? \$5k or 5% powers?</li> <li>Would ILITs be subject to estate tax upon the death of insured? How would “proper adjustment” be calculated?</li> <li>What happens upon termination of the term of GRAT or grantor CLAT and assets go to another grantor or non-grantor trust? What happens when grantor passes away?</li> <li>SLATs are almost always grantor trusts, so distributions to descendants could be subject to gift tax?</li> <li>When do you determine when a trust is includible and otherwise excepted from this rule?</li> <li>Is a new trust created on a decanting?</li> </ul>	<ul style="list-style-type: none"> <li>If grandfathered IDGT and grantor do an installment sale after the effective date, is this transaction disregarded or is it considered a “contribution”?</li> <li>If grandfathered non-grantor trust is converted to a grantor trust, is § 1062 applicable?</li> <li>If grandfathered IDGT converts to non-grantor trust, is that considered a “contribution” after the effective date?</li> <li>Does “person” include LLCs that are disregarded entities?</li> <li>Is a sale or exchange-type transaction required to trigger recognition under § 1062? What about contributions and distributions with respect to LLCs or partnerships?</li> </ul>
<b>Planning</b>	<ul style="list-style-type: none"> <li>Establish and fund trusts (GRATs, SLATs, grantor or non-grantor, etc.) before the effective date</li> <li>Funding level can be small apparently (at least as currently written)</li> <li>Leveraging transactions (bona fide sales, loans, etc.) seem allowable after enactment (at least as currently written)</li> </ul>	

How defined?  
By whom?





# Biden “Greenbook”

	Current	“Campaign Biden”	Biden “Greenbook”
<b>Individual Income Tax</b>	<ul style="list-style-type: none"> <li>• Top rate of 37%.</li> <li>• SALT deductions capped at \$10,000.</li> <li>• Pease limitations repealed.</li> <li>• Exp. 12/31/25</li> </ul>	<ul style="list-style-type: none"> <li>• Top rate of 39.6%.</li> <li>• Restore Pease limitations for income &gt;\$400,000</li> <li>• Limit itemized deduction to 28% rate.</li> </ul>	<ul style="list-style-type: none"> <li>• Top rate of 39.6% (+3.8%)</li> <li>• After 12/31/2021</li> </ul>
<b>Long-Term Capital Gains</b>	<ul style="list-style-type: none"> <li>• Top rate of 20%.</li> <li>• 3.8% NIIT.</li> <li>• QOZ investments.</li> </ul>	<ul style="list-style-type: none"> <li>• Tax long-term capital gains (and qualified dividends) at 39.6% for taxpayers with income &gt;\$1 million.</li> </ul>	<ul style="list-style-type: none"> <li>• Tax long-term capital gains (and qualified dividends) at 39.6% (+3.8%) for taxpayers with AGI greater than \$1,000,000 (\$500,000 for spouses filing separately)</li> <li>• Effective for gains “after the date of announcement”</li> </ul>
<b>“Step-Up” in Basis</b>	<ul style="list-style-type: none"> <li>• IRC § 1014.</li> </ul>	<ul style="list-style-type: none"> <li>• “Eliminate” the “step-up” in basis</li> </ul>	<ul style="list-style-type: none"> <li>• Capital gain tax realization on transfers of appreciated property by gift and at death</li> </ul>
<b>Transfer Tax</b>	<ul style="list-style-type: none"> <li>• 40% tax rate</li> <li>• Doubled applicable exclusion amount (exp. 12/31/25).</li> </ul>	<ul style="list-style-type: none"> <li>• Restore “historical norms”</li> </ul>	
<b>Other Tax Provisions of Note</b>	<ul style="list-style-type: none"> <li>• Corporate tax rate of 21%.</li> <li>• 20% deduction on Qualified Business Income of pass-thru entities (exp. 12/31/25).</li> </ul>	<ul style="list-style-type: none"> <li>• Corporate tax rate of 28%</li> <li>• 15% minimum tax on “book income” of corporations that report &gt;\$100 million in the U.S. but pay zero federal income tax</li> <li>• Phase out the QBI deduction for filers with taxable income &gt; \$400,000</li> <li>• QBI deduction would not be available to real estate investors</li> </ul>	<ul style="list-style-type: none"> <li>• Corporate tax rate of 28%</li> <li>• 15% minimum tax on “book tentative minimum tax” (BTMT) of corporations with such income in excess of \$2 billion</li> <li>• NIIT or SECA on all pass-through business income of taxpayers with AGI &gt;\$400,000</li> <li>• § 1031 Like-Kind Exchange: Limited to \$500k per taxpayer, per year</li> <li>• Carried Interest: ordinary income/Investment Services Partnership</li> <li>• All effective after 12/31/2021</li> </ul>





# The Game Changer

	<b>“Elimination” of the “Step-Up” in Basis</b>
<b>Proposal</b>	<ul style="list-style-type: none"> <li>• Transfers of appreciated property by gift or at death are recognition events</li> <li>• Effective Dates: Transfers after December 31, 2021, and property owned by trusts, partnerships, and other non-corporate entities on January 1, 2022</li> </ul>
<b>Exclusions</b>	<ul style="list-style-type: none"> <li>• Tangible personal property including household furnishings and personal effects (but not collectibles)</li> <li>• \$1,000,000 exclusion per person—Portable to surviving spouse &amp; indexed for inflation after 2022</li> <li>• \$250,000 exclusion on personal residences would be applicable</li> <li>• Transfers by a decedent (no mention of gifts) to a U.S. spouse or charity (carryover basis)</li> <li>• Transfers to grantor trusts “deemed wholly owned and revocable” by the donor</li> <li>• Transfers from revocable trusts to deemed owner or U.S. spouse (other than to discharge obligation of deemed owner)</li> </ul>
<b>Transfers</b>	<ul style="list-style-type: none"> <li>• Transfer is defined under gift and estate tax rules</li> <li>• Transfers of partial interest would be proportional share of fair market value of entire property (no valuation discounts)</li> </ul>
<b>Trusts Partnerships Non-Corporate Entities</b>	<ul style="list-style-type: none"> <li>• Transfers to and from trusts (other than revocable trusts), partnerships, and other non-corporate entities would be recognition events (no mention of disregarded entities)</li> <li>• All assets recognized in revocable trusts at death of grantor or whenever the trust becomes “irrevocable”</li> <li>• Transfers to split-interest charitable trusts are realization events with an exclusion for charitable portion</li> <li>• Gain recognized by a trust, partnerships, or other non-corporate entity on property that has not been the subject of a recognition event within the prior 90 years, starting January 1, 1940 (as early as December 31, 2030)</li> </ul>
<b>Payment of Tax</b>	<ul style="list-style-type: none"> <li>• Taxable income of the donor/decedent on gift or estate tax return or separate income tax return</li> <li>• Capital losses and carry-forwards allowed against gains</li> <li>• Taxes would be deductible on the decedent’s estate tax return (no mention of gift tax return)</li> <li>• Tax on “certain family-owned and –operated businesses” would not be due until business is sold or ceases to be family-owned and operated</li> <li>• 15-year “fixed-rate payment plan” for transfers at death (not gifts), other than liquid assets and businesses for which the deferral election is made</li> </ul>
<b>Other Details</b>	<ul style="list-style-type: none"> <li>• Treasury given broad regulatory authority on implementation, including determining the basis of assets where complete records are unavailable and reporting requirements on transfers</li> <li>• Other legislation including deductions for appraisal costs, liens, waiver of penalty for underpayment of estimated tax, right of recovery, consistency in valuation for transfer and income tax purposes</li> </ul>



# Can You Feel the Bern? He's Bernin' for You!



<b>Sanders &amp; Whitehouse: "For the 99.5 Percent Act"</b>	
<b>Estate, Gift, GST Tax Exclusions &amp; Rates</b>	<ul style="list-style-type: none"> <li>• \$3.5 Mil. (not increased by inflation) for Estate Tax</li> <li>• \$1.0 Mil. for Gift Tax</li> <li>• Transfer Tax Rates               <ul style="list-style-type: none"> <li>• 45% (Over \$3.5 Mil. to \$10.0 Mil.)</li> <li>• 50% (Over \$10.0 Mil. to \$50.0 Mil.)</li> <li>• 55% (Over \$50.0 Mil. to <b>\$1.0 Bil.</b>)</li> <li>• 65% (Over <b>\$1.0 Bil.</b>)</li> </ul> </li> </ul> <div style="border: 1px solid black; padding: 5px; display: inline-block; margin-top: 10px;"><b>Effective Date: 1/1/22</b></div>
<b>Valuation of Nonbusiness Assets &amp; Limitation on Minority Discounts</b>	<ul style="list-style-type: none"> <li>• "Nonbusiness asset" in an entity will be treated as transferred directly if interests in the entity are transferred. Defined as any asset not used in the active conduct of 1 or more trades or businesses. Does not include:               <ul style="list-style-type: none"> <li>• Inventory or property held primarily to sales to customers</li> <li>• Depreciable property used in a trade or business or in the production of income</li> <li>• Real property in a real property trade or business in which the taxpayer materially participates</li> </ul> </li> <li>• On a transfer of any interest in an entity, no discount is allowed by reason of the fact the transferee does not have control of such entity if the transferor, transferee and members of the family have control of the entity or own a majority (by value) of the ownership interests in such entity.</li> </ul>
<b>Grantor Retained Annuity Trusts</b>	<ul style="list-style-type: none"> <li>• Term of at least 10 years and not more than 10 years plus life expectancy of the grantor</li> <li>• No decreasing annuities</li> <li>• Taxable gift equal to the greater of 25% or \$500k</li> </ul>
<b>Intentionally Defective Grantor Trusts</b>	<ul style="list-style-type: none"> <li>• <b>No basis adjustment under § 1014 unless assets included in grantor's gross estate.</b></li> <li>• Sale or exchange (or comparable transaction) with IDGT will cause the property subject to such transaction (including all income and appreciation) to be:               <ul style="list-style-type: none"> <li>• Subject to estate taxes upon death of the deemed owner (grantor or beneficiary owner);</li> <li>• Subject to gift tax if grantor trust status terminated; or</li> <li>• Treated as a taxable gift if distributed to another beneficiary during grantor's life.</li> </ul> </li> <li>• Trusts subject to new law:               <ul style="list-style-type: none"> <li>• Trusts created on or after date of enactment</li> <li>• Any portion of a trust created before enactment attributable to a <b>contribution</b> on or after the enactment date</li> <li>• Any trust created before enactment that has a <b>sale or exchange</b> on or after the enactment date</li> </ul> </li> </ul>
<b>Generation-Skipping Transfer Tax</b>	<ul style="list-style-type: none"> <li>• GST tax exemption on assets in trust limited to <b>50 years.</b></li> <li>• GST exempt trusts created prior to enactment be exempt for no more than 50 years after the enactment date.</li> </ul>



# STEP Right Up and Take Your Medicine

	<b>Van Hollen: Sensible Taxation and Equity Promotion Act (Discussion Draft)</b>
<b>Realization at death (No “Step-Up” in Basis)</b>	<ul style="list-style-type: none"> <li>• Property treated as sold for its fair market value when transferred by gift, bequest, or to a non-grantor trust.</li> <li>• \$1 mil. (adjusted for inflation) exclusion for individuals.</li> <li>• \$100,000 exclusion can be used for gifts each year, reducing total \$1 mil. exclusion.</li> </ul>
<b>Grantor Trust</b>	<ul style="list-style-type: none"> <li>• Not treated as sold when assets are transferred to a grantor trust.</li> <li>• Treated as sold when: <ul style="list-style-type: none"> <li>• Assets are distributed to another person other than the grantor.</li> <li>• Grantor trust status is terminated.</li> </ul> </li> <li>• Property transferred to or held by a grantor trust will be treated as sold if the property would not be included in the grantor’s estate for estate tax purposes.</li> </ul>
<b>Non-Grantor Trusts</b>	<ul style="list-style-type: none"> <li>• Property held by a non-grantor trust will be treated as sold for its fair market value every <b>21 years</b>.</li> <li>• Trusts created prior to <b>December 31, 2006</b>, will have deemed realization event in 2026.</li> </ul>
<b>Special Rules</b>	<ul style="list-style-type: none"> <li>• Exceptions for: <ul style="list-style-type: none"> <li>• Tangible personal property (other than collectibles) not held in connection with a trade or business or for investment under § 212.</li> <li>• Transfers to spouses (only U.S. persons) or to marital deduction trusts, but realization occurs upon disposition of the property or death of spouse.</li> <li>• Transfers to charity.</li> </ul> </li> <li>• Related party disallowance of loss rules under § 267 would apply for gifts <b>but not at death</b>.</li> <li>• Capital gain tax recognized are deductible for estate tax purposes.</li> </ul>
<b>Extension of Time to Pay Resulting Tax</b>	<ul style="list-style-type: none"> <li>• 15-Year Period <ul style="list-style-type: none"> <li>• Realizations at death.</li> <li>• Non-grantor trusts subject to 21-year rule.</li> </ul> </li> <li>• Interest <ul style="list-style-type: none"> <li>• Interest only for up to 5 years.</li> <li>• Tax liability and interest for up to 10 years in annual installments.</li> </ul> </li> </ul>