



NORTHERN  
TRUST

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# SHINING LIGHT THROUGH THE DARKNESS

*(Planning in the Shadow of Uncertainty,  
Social Distancing, Fear, and the Election)*

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September 2020



# Fallout from the COVID-19 Pandemic & Response

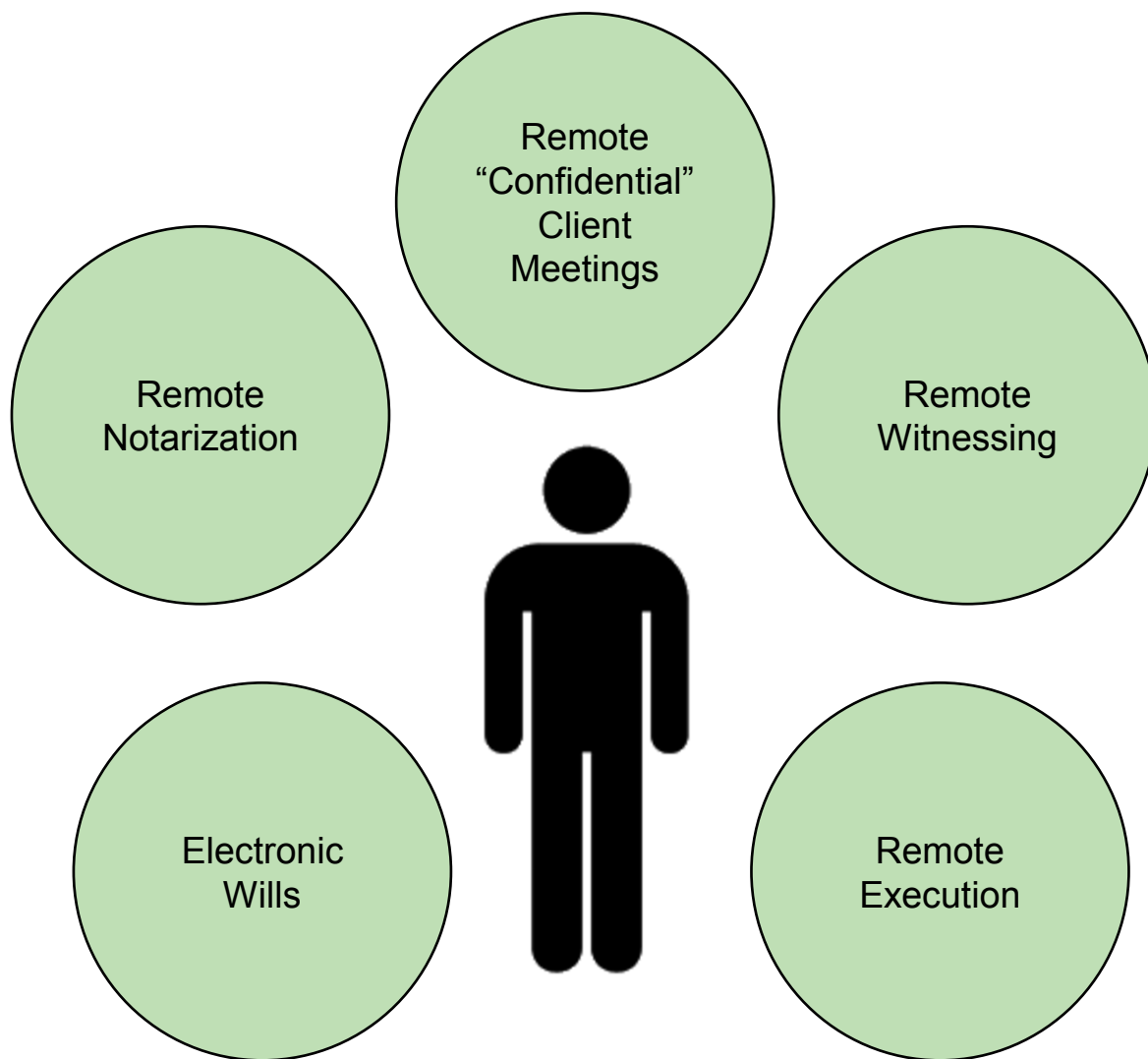
Global economy has stalled (Recession by Proclamation)
Asset values have fallen
Interest rates at historical lows
CARES Act: \$2.7T cost (more to come)
Liquidity at a premium
Market volatility will be high for an uncertain period of time
Uncertain timing for recovery (Economic and Medical)
Unpredictable and sudden mortality risks have spiked
Social distancing provides challenges to advice & execution



### Clients Are Feeling:

- Fear
- Anxiety
- Frustration
- Anger

Transfer wealth at depressed asset values
Planning that leverages the historically low interest rates
Strategies that transfer wealth but allow retained cash flow
Likely higher income tax rates in the future
Techniques that can defer payments as long as possible
Provide flexibility and the ability to abandon or change the plan
Need structures that provide access to the “gifted” asset, if needed
Prepare for unexpected and premature deaths
“Distance planning” is mandatory when timely advice is most needed



## Reviewing, Confirming or Amending

### Wills & Revocable Trusts

- Asset values and formula funding provisions
- Fiduciary appointments & successors
- Co-trustee appointment today on revocable trust

### Health Care Proxies & Living Wills

- Language re: intubation
- Appointments & successors

### Durable Powers of Attorney

- Authorizing agent to act remotely

### HIPAA releases

### "Irrevocable" Trusts

- Turning grantor trust status off (or on)
- Non-judicial modifications or decanting
- Exercise of power by trust protector
- Exercise of powers of appointment



# Preserving Capital or Increasing Cash Flow, As Needed...

## ■ CARES Act Options

- ◆ No 10% early withdrawal penalty up to \$100,000 from retirement accounts (incl. IRAs)
  - ▶ Income tax liability can be paid over a 3-year period
  - ▶ Option to “recontribute” funds within 3 years without contributions limits
  - ▶ Amend returns to get refunds on tax paid if “recontributed”
- ◆ Increase in loans from qualified retirement accounts from \$50,000 to \$100,000
- ◆ No RMDs for 2020 for all employer plans and IRAs
  - ▶ Includes inherited IRAs
  - ▶ Individuals do NOT need to meet COVID-19 qualifying criteria

Qualifying individuals include those diagnosed with COVID-19, family members diagnosed, or experience adverse financial consequences as a result of COVID-19, including quarantines, layoffs, business closures, or child care responsibility issues.

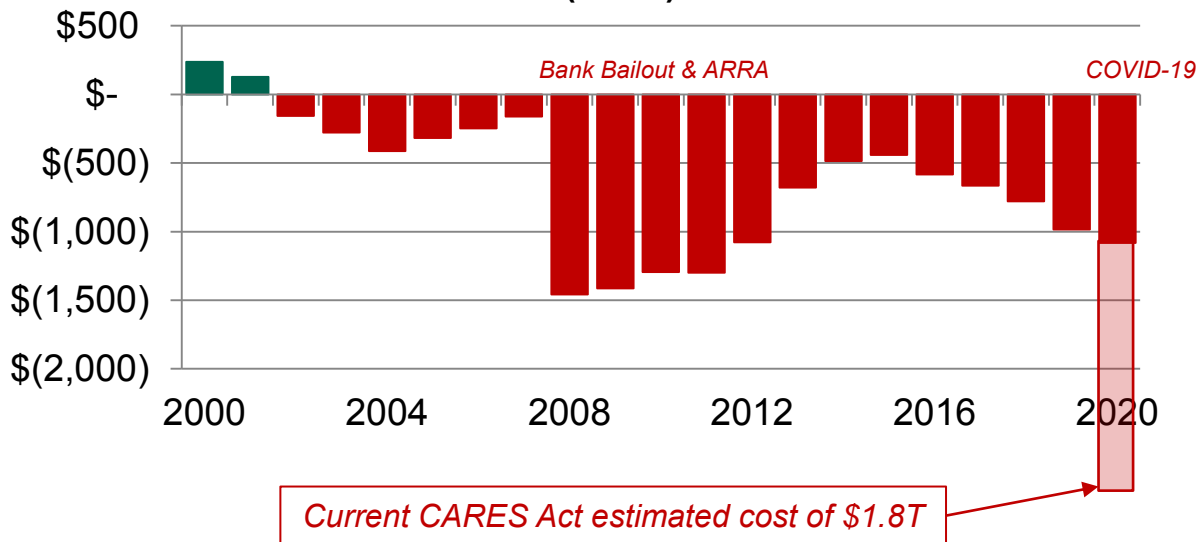
## ■ Other Options

- ◆ Securities-based lending instead of liquidation
  - ▶ Very low interest rates
  - ▶ Tax deductible to the extent of net investment income
- ◆ Trust Considerations
  - ▶ Loans to beneficiaries
  - ▶ Power to adjust from principal to income (or vice versa)
  - ▶ Unitrust conversion

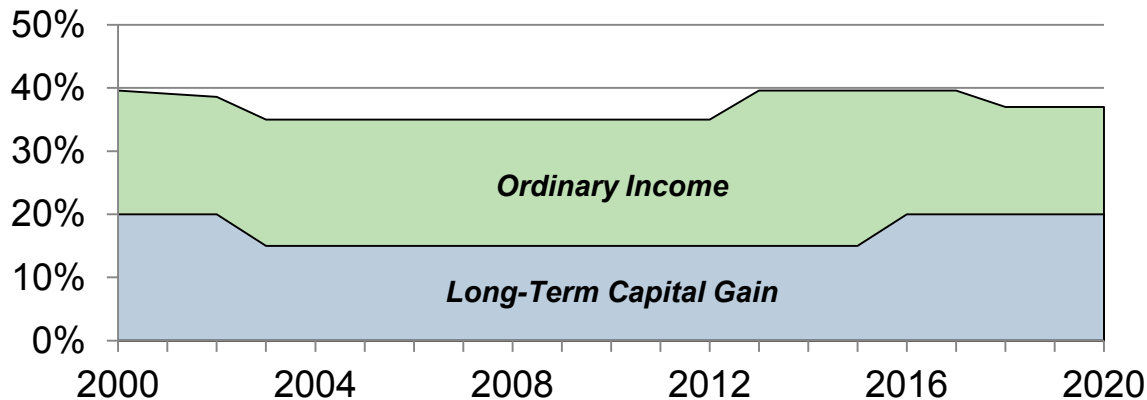


# Likely Higher Tax Rates in the Future

## U.S. Fed. Govt. Budget Surplus/Deficit (\$ Bil.)



## Highest Marginal Income Tax Rate

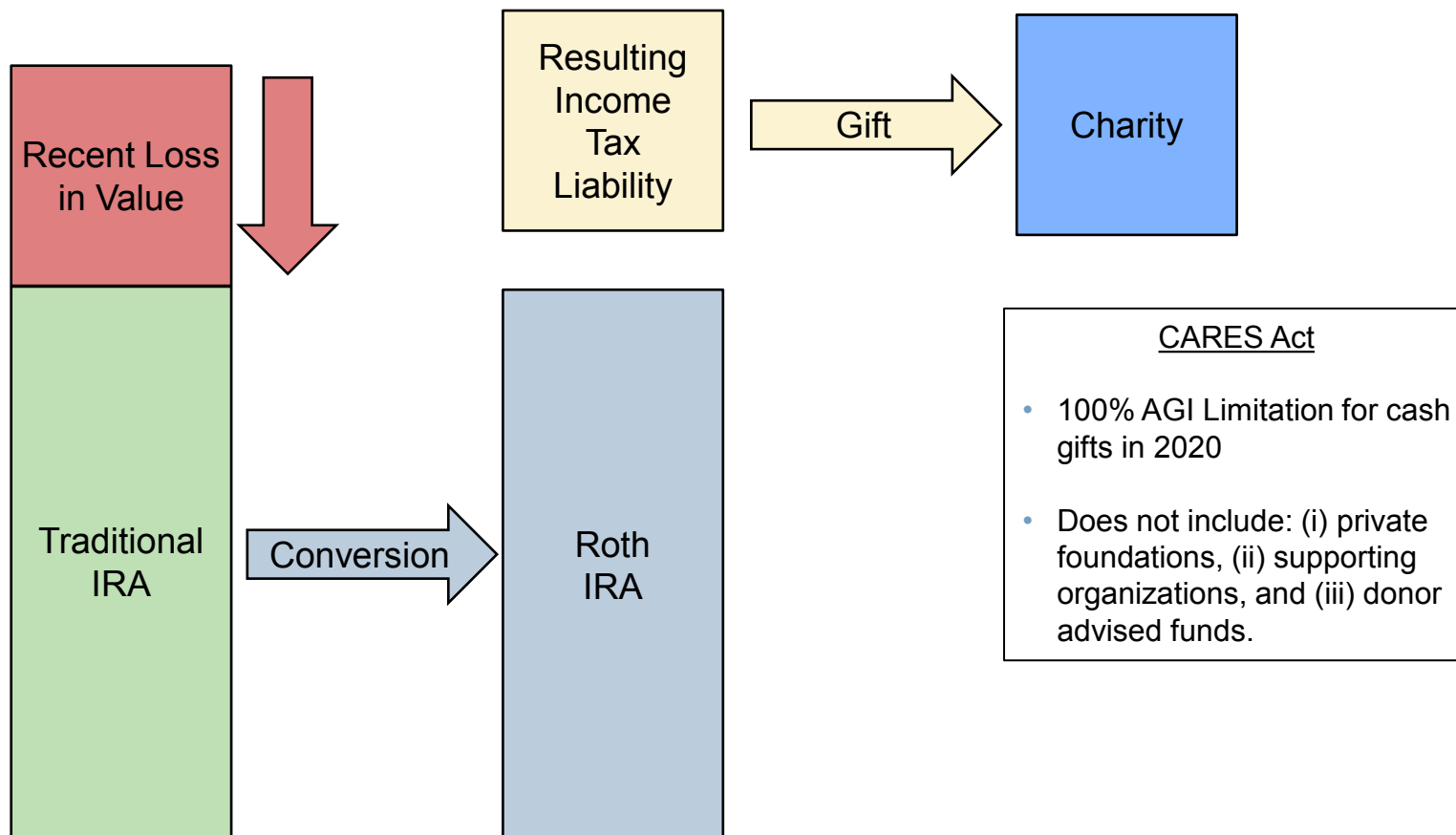


Source: Office of Management and Budget. Income tax rates do not include the 3.5% net investment income tax.



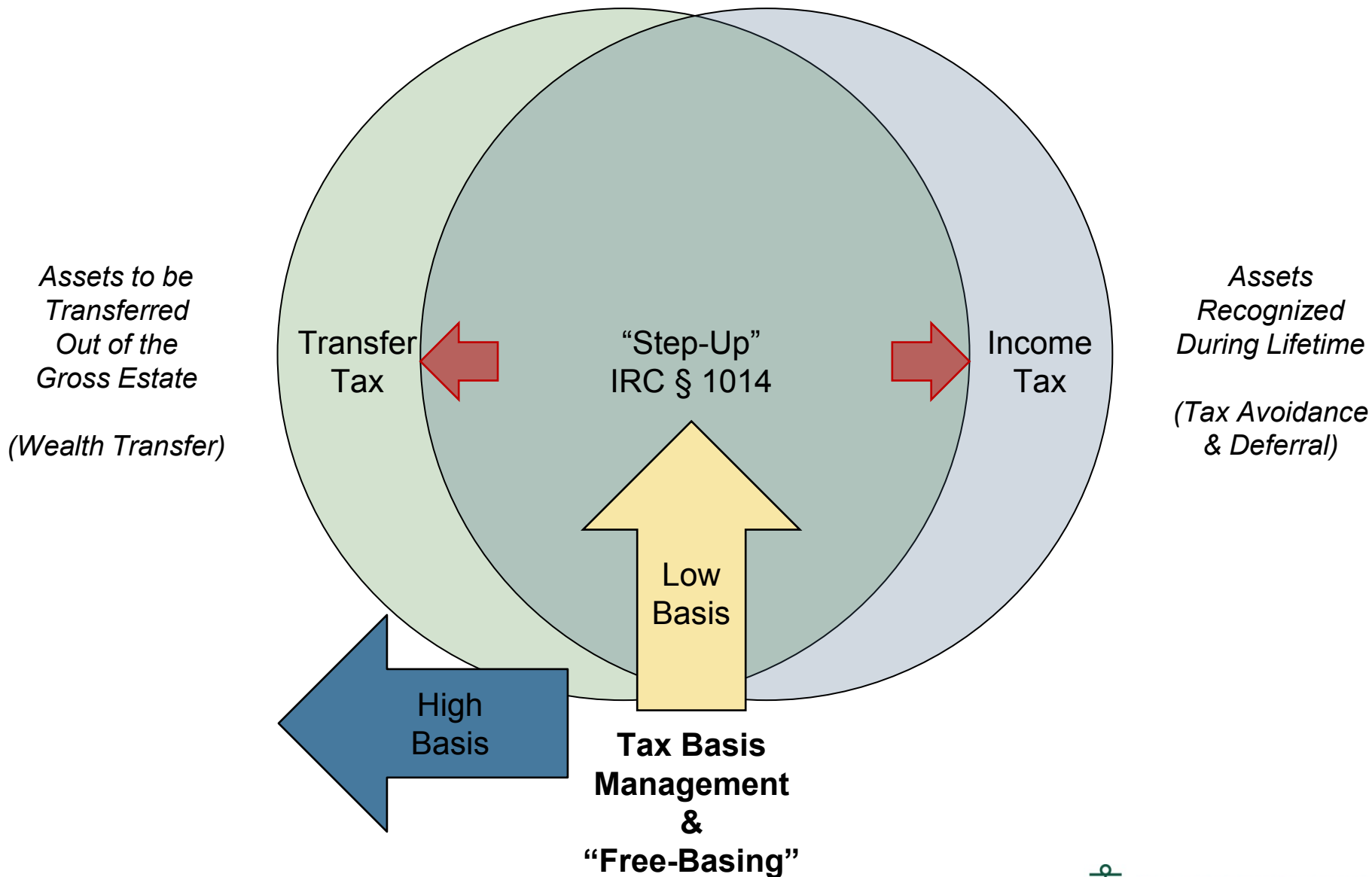
# Roth Conversion Now and Charitable Giving Today

*Out of the gross estate...*



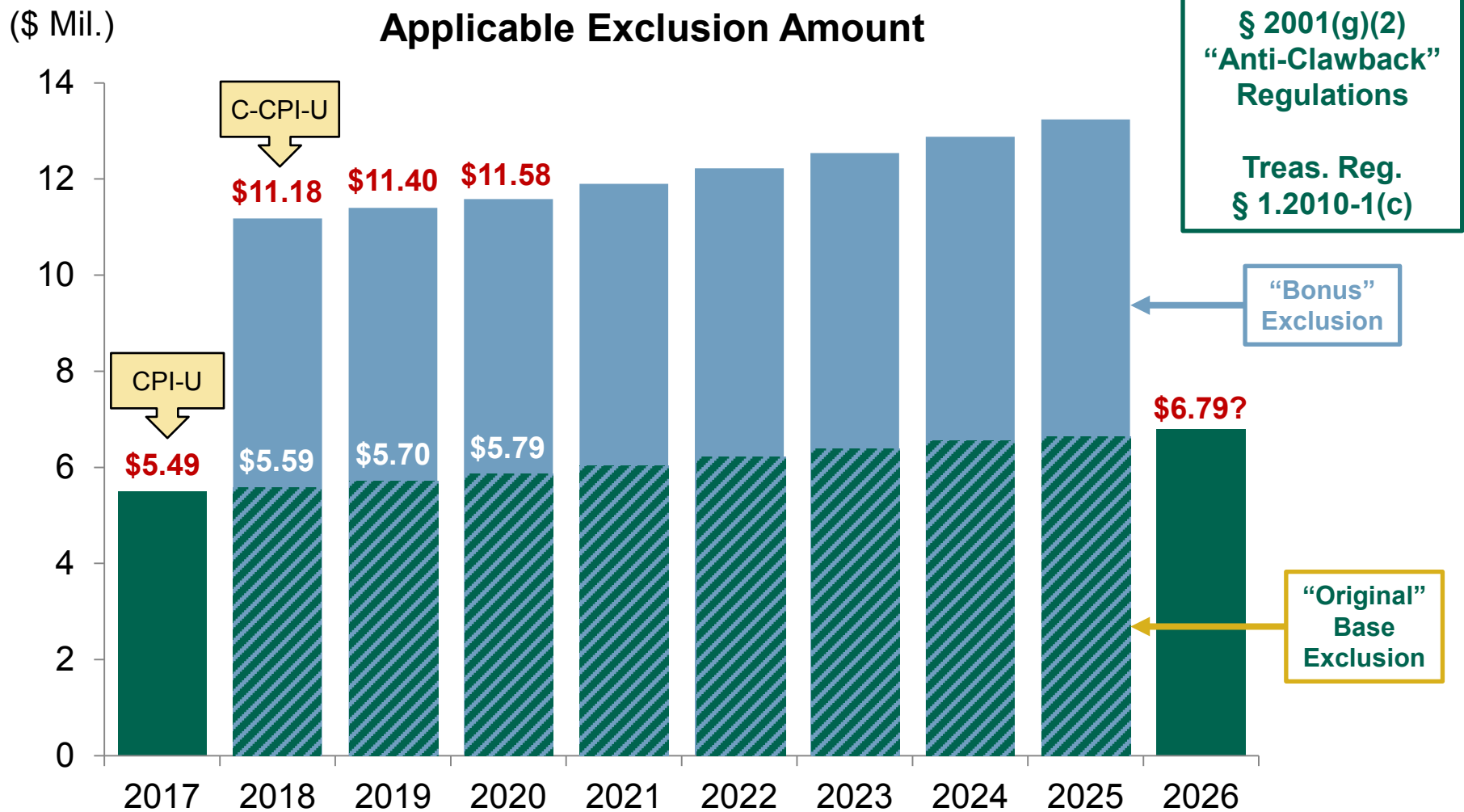


# The Temporary TCJA Transfer Tax Landscape: Venn Diagram





# 2012 All Over Again?







# Select Possible Election Outcomes

	Current	Trump “Plan”	Biden “Plan”
<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>• Extend TCJA provisions</li> </ul>	<ul style="list-style-type: none"> <li>• Top rate of 39.6%</li> <li>• Repeal SALT cap</li> <li>• Restore Pease limitations for income &gt;\$400,000</li> <li>• Limit itemized deduction to 28% rate</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>• Top rate of 15%</li> <li>• Index to inflation</li> <li>• Repeal of ACA and NIIT</li> <li>• “Expand” QOZs</li> </ul>	<ul style="list-style-type: none"> <li>• Tax long-term capital gains (and qualified dividends) at 39.6% on income &gt;\$1 million</li> </ul>
<b>Transfer Tax</b>	<ul style="list-style-type: none"> <li>• Estate, gift &amp; GST tax rate of 40%</li> <li>• Doubled applicable exclusion amount (exp. 12/31/25)</li> </ul>	<ul style="list-style-type: none"> <li>• Extend TCJA provisions</li> </ul>	<ul style="list-style-type: none"> <li>• Restore “historical norms”</li> </ul>
<b>“Step-Up” in Basis</b>	<ul style="list-style-type: none"> <li>• IRC section 1014</li> </ul>	<ul style="list-style-type: none"> <li>• No change</li> </ul>	<ul style="list-style-type: none"> <li>• “Eliminate” the “step-up” in basis</li> <li>• Possible: (i) carry-over basis; (ii) modified carry-over basis; or (iii) taxable event on DOD</li> </ul>
<b>Corporate Tax</b>	<ul style="list-style-type: none"> <li>• Top rate of 21%</li> </ul>	<ul style="list-style-type: none"> <li>• “Made in America” tax credit for companies that cease operations in China and create jobs domestically</li> <li>• Other credits for pharmaceutical companies that cease business in China and manufacture domestically</li> </ul>	<ul style="list-style-type: none"> <li>• Top rate of 28%</li> <li>• 15% minimum tax on “book income” of companies that report &gt;\$100 million in the U.S., but pay zero or negative federal income tax</li> </ul>
<b>Qualified Business Income</b>	<ul style="list-style-type: none"> <li>• 20% deduction on QBI of pass-thru entities</li> <li>• Exp. 12/31/25</li> </ul>	<ul style="list-style-type: none"> <li>• Extend TJCA provisions</li> </ul>	<ul style="list-style-type: none"> <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>



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

## *Up to Wealthy*

\$0 to ~\$11.58 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*

~\$11.58 Mil. to ~\$40.0 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 ~\$40.0 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:

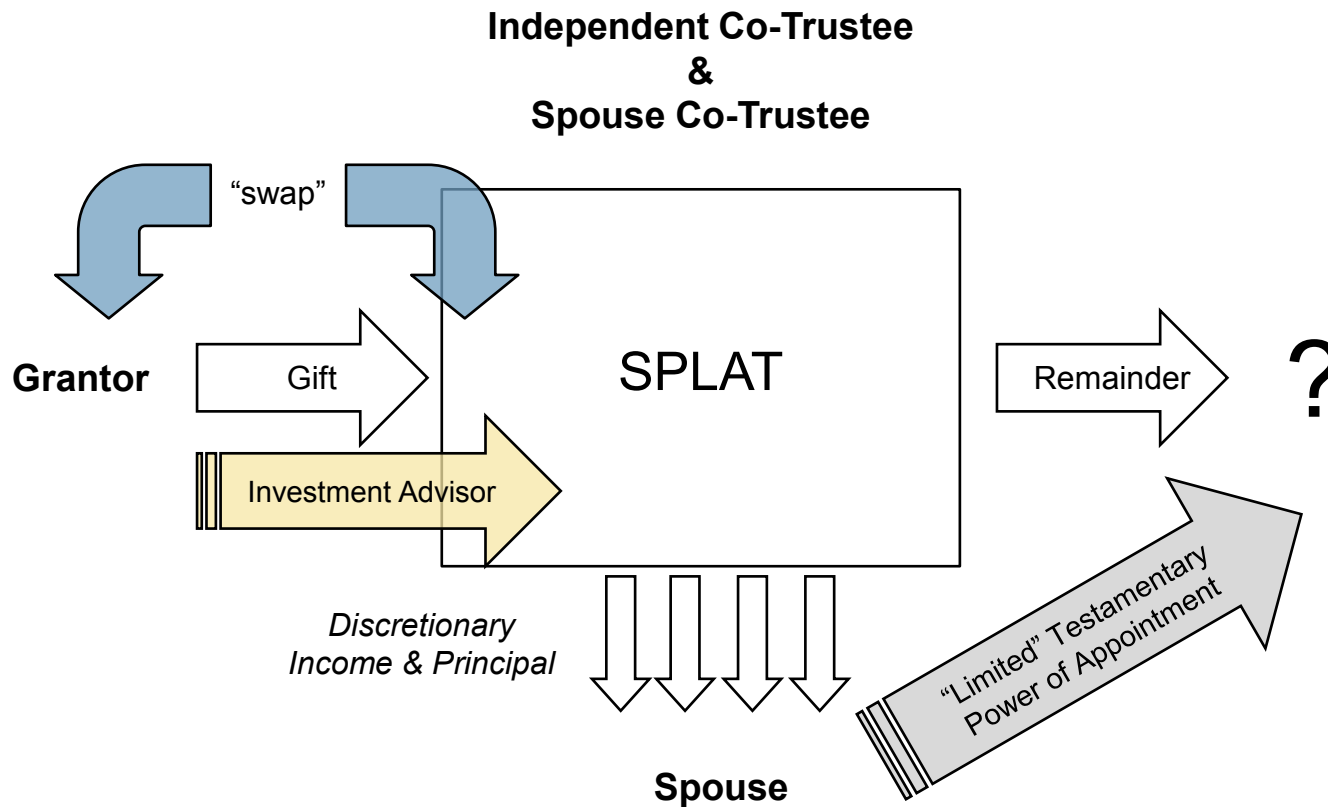
Applicable Exclusion gifts of cash (or marketable securities), and  
Exercise of “swap” power in the future.



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



# Spousal Lifetime Access Trust





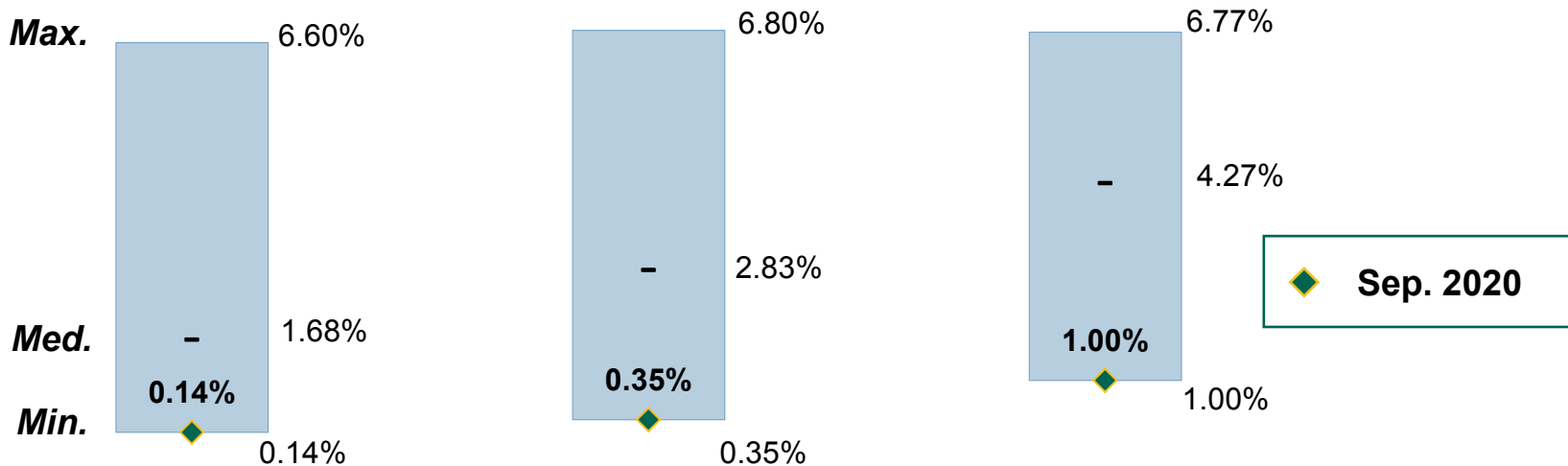
# *Intra-Family Loans & Sales to IDGTs*



# AFRs At Historical Lows

## Applicable Federal Rates

Jan. 1998 – Sep. 2020



**Oct. 2020**  
 Short- 0.14%  
 Mid- 0.38%  
 Long- 1.12%

- 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 Notes in the Future?

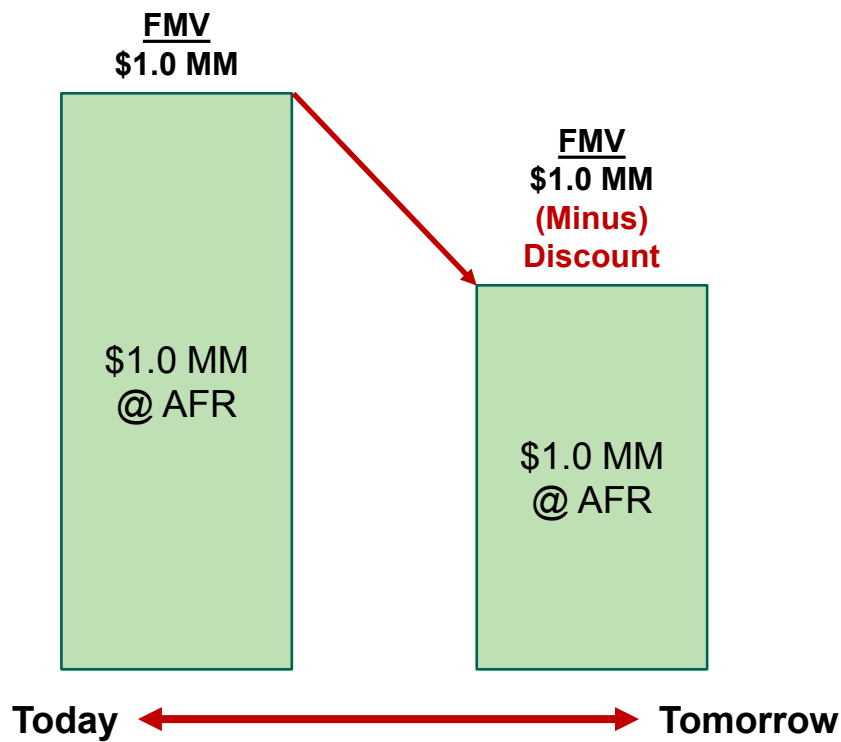
“In the case of an entity engaged in an active trade or business, at least 60 percent of whose value consists of the nonpassive assets of that trade or business, and to the extent that the liquidation proceeds are not attributable to passive assets within the meaning of section 6166(b)(9)(B), such proceeds 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.



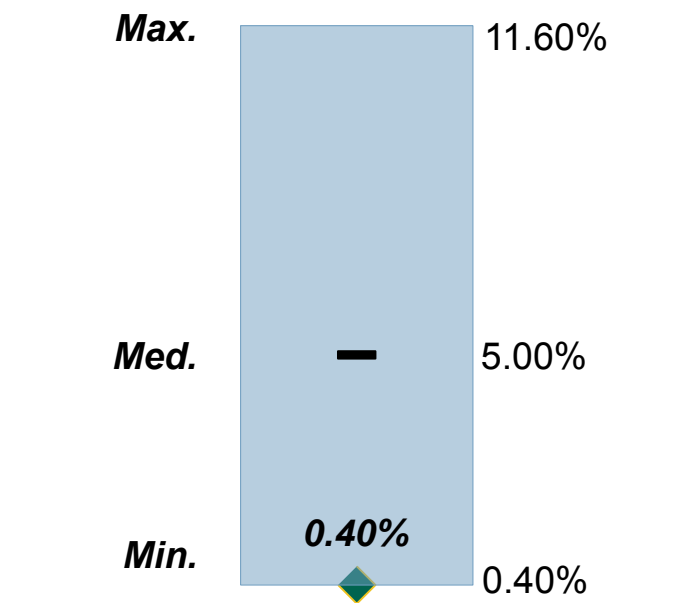
*Long-Term GRATs*  
*Back-Loaded Grantor CLATs*  
*Deferred & Increasing Private Annuities*





# Historically Low 7520 Rate

## Section 7520 Rate (Since Inception) Mar. 1989 – Sep. 2020



**7520 Rate**

◆ **Sep. 2020**



# 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	\$ 121,527.02
7520 Rate	0.4%
Years	100
PV of Grantor's Retained Interest	\$ 10,000,000
Annuity Factor	82.28622756
Life Factor	0.32914491
Remainder Factor	0.67085509

7520 Rate at Death	§ 20.2036-1(c)(2) Inclusion
1.0%	\$ 12,152,702
2.0%	\$ 6,076,351
3.0%	\$ 4,050,901
4.0%	\$ 3,038,175
5.0%	\$ 2,430,540
6.0%	\$ 2,025,450
7.0%	\$ 1,736,100

GRAT Asset Value	
Years	Annual Return 7%
5	\$ 13,326,647
10	\$ 17,992,442
15	\$ 24,536,460
20	\$ 33,714,785
25	\$ 46,587,859

### 365 Year GRAT

Annuity	\$ 52,145.36
7520 Rate	0.4%
Years	365
PV of Grantor's Retained Interest	\$ 10,000,000
Annuity Factor	191.7716031
Life Factor	0.767086413
Remainder Factor	0.232913587

7520 Rate at Death	§ 20.2036-1(c)(2) Inclusion
1.0%	\$ 5,214,536
2.0%	\$ 2,607,268
3.0%	\$ 1,738,179
4.0%	\$ 1,303,634
5.0%	\$ 1,042,907
6.0%	\$ 869,089
7.0%	\$ 744,934

GRAT Asset Value	
Years	Annual Return 7%
5	\$ 13,725,643
10	\$ 18,951,050
15	\$ 26,279,953
20	\$ 36,559,120
25	\$ 50,976,182

Private Split-Dollar Life Insurance Alternative?



# What About Very Long-Term GRATs?

## 50 Year GRAT

Annuity	\$ 221,064.63
7520 Rate	0.4%
Years	50
PV of Grantor's Retained Interest	\$ 10,000,000
Annuity Factor	45.23564004
Life Factor	0.18094256
Remainder Factor	0.81905744

7520 Rate at Death	\$ 20.2036-1(c)(2) Inclusion
1.0%	\$ 22,106,463
2.0%	\$ 11,053,231
3.0%	\$ 7,368,821
4.0%	\$ 5,526,616
5.0%	\$ 4,421,293
6.0%	\$ 3,684,410
7.0%	\$ 3,158,066

GRAT Asset Value	
Years	Annual Return
	7%
5	\$ 12,754,232
10	\$ 16,617,186
15	\$ 22,035,177
20	\$ 29,634,191
25	\$ 40,292,201

## 60 Year GRAT

Annuity	\$ 187,797.42
7520 Rate	0.4%
Years	60
PV of Grantor's Retained Interest	\$ 10,000,000
Annuity Factor	53.24886782
Life Factor	0.212995471
Remainder Factor	0.787004529

7520 Rate at Death	\$ 20.2036-1(c)(2) Inclusion
1.0%	\$ 18,779,742
2.0%	\$ 9,389,871
3.0%	\$ 6,259,914
4.0%	\$ 4,694,936
5.0%	\$ 3,755,948
6.0%	\$ 3,129,957
7.0%	\$ 2,682,820

GRAT Asset Value	
Years	Annual Return
	7%
5	\$ 12,945,543
10	\$ 17,076,820
15	\$ 22,871,150
20	\$ 30,997,997
25	\$ 42,396,320

## 70 Year GRAT

Annuity	\$ 164,072.93
7520 Rate	0.4%
Years	70
PV of Grantor's Retained Interest	\$ 10,000,000
Annuity Factor	60.94850675
Life Factor	0.243794027
Remainder Factor	0.756205973

7520 Rate at Death	\$ 20.2036-1(c)(2) Inclusion
1.0%	\$ 16,407,293
2.0%	\$ 8,203,646
3.0%	\$ 5,469,098
4.0%	\$ 4,101,823
5.0%	\$ 3,281,459
6.0%	\$ 2,734,549
7.0%	\$ 2,343,899

GRAT Asset Value	
Years	Annual Return
	7%
5	\$ 13,081,977
10	\$ 17,404,608
15	\$ 23,467,323
20	\$ 31,970,594
25	\$ 43,896,872



# Long-Term GRATs with a Bonus Exclusion Gift

\$10 Mil. Contribution - \$4.21 Mil. Retained Annuity = \$5.79 Mil. Taxable Gift

## 50 Year GRAT

Annuity	\$ 93,068.21
7520 Rate	0.4%
Years	50
PV of Grantor's Retained Interest	\$ 4,210,000
Annuity Factor	45.23564004
Life Factor	0.18094256
Remainder Factor	0.81905744

7520 Rate at Death	§ 20.2036-1(c)(2) Inclusion
1.0%	\$ 9,306,821
2.0%	\$ 4,653,410
3.0%	\$ 3,102,274
4.0%	\$ 2,326,705
5.0%	\$ 1,861,364
6.0%	\$ 1,551,137
7.0%	\$ 1,329,546

GRAT Asset Value	
Years	Annual Return 7%
5	\$ 13,490,306
10	\$ 18,385,642
15	\$ 25,251,602
20	\$ 34,881,468
25	\$ 48,387,852

## 60 Year GRAT

Annuity	\$ 79,062.71
7520 Rate	0.4%
Years	60
PV of Grantor's Retained Interest	\$ 4,210,000
Annuity Factor	53.24886782
Life Factor	0.212995471
Remainder Factor	0.787004529

7520 Rate at Death	§ 20.2036-1(c)(2) Inclusion
1.0%	\$ 7,906,271
2.0%	\$ 3,953,136
3.0%	\$ 2,635,424
4.0%	\$ 1,976,568
5.0%	\$ 1,581,254
6.0%	\$ 1,317,712
7.0%	\$ 1,129,467

GRAT Asset Value	
Years	Annual Return 7%
5	\$ 13,570,848
10	\$ 18,579,148
15	\$ 25,603,547
20	\$ 35,455,630
25	\$ 49,273,686

## 70 Year GRAT

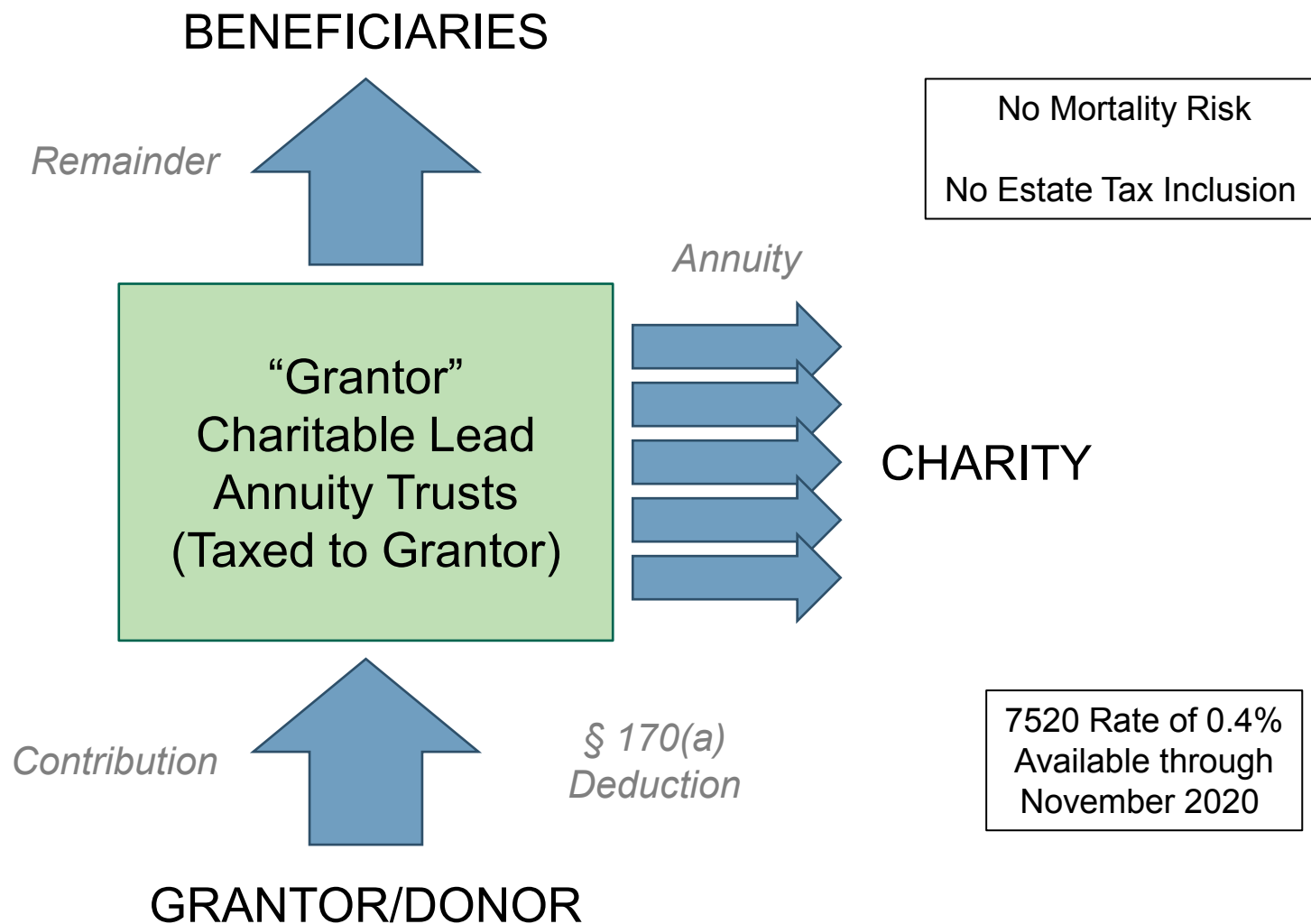
Annuity	\$ 69,074.70
7520 Rate	0.4%
Years	70
PV of Grantor's Retained Interest	\$ 4,210,000
Annuity Factor	60.94850675
Life Factor	0.243794027
Remainder Factor	0.756205973

7520 Rate at Death	§ 20.2036-1(c)(2) Inclusion
1.0%	\$ 6,907,470
2.0%	\$ 3,453,735
3.0%	\$ 2,302,490
4.0%	\$ 1,726,868
5.0%	\$ 1,381,494
6.0%	\$ 1,151,245
7.0%	\$ 986,781

GRAT Asset Value	
Years	Annual Return 7%
5	\$ 13,628,287
10	\$ 18,717,147
15	\$ 25,854,536
20	\$ 35,865,093
25	\$ 49,905,418



# “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. @ 0.4%)

Year	Level	20% Increase	50% Increase	"Shark-Fin"
1	\$ 521,265	\$ 56,984	\$ 1,616	\$ 1,000
2	\$ 521,265	\$ 68,381	\$ 2,424	\$ 1,000
3	\$ 521,265	\$ 82,057	\$ 3,636	\$ 1,000
4	\$ 521,265	\$ 98,468	\$ 5,454	\$ 1,000
5	\$ 521,265	\$ 118,162	\$ 8,182	\$ 1,000
6	\$ 521,265	\$ 141,794	\$ 12,272	\$ 1,000
7	\$ 521,265	\$ 170,153	\$ 18,409	\$ 1,000
8	\$ 521,265	\$ 204,183	\$ 27,613	\$ 1,000
9	\$ 521,265	\$ 245,020	\$ 41,419	\$ 1,000
10	\$ 521,265	\$ 294,024	\$ 62,129	\$ 1,000
11	\$ 521,265	\$ 352,829	\$ 93,193	\$ 1,000
12	\$ 521,265	\$ 423,395	\$ 139,790	\$ 1,000
13	\$ 521,265	\$ 508,074	\$ 209,685	\$ 1,000
14	\$ 521,265	\$ 609,688	\$ 314,527	\$ 1,000
15	\$ 521,265	\$ 731,626	\$ 471,791	\$ 1,000
16	\$ 521,265	\$ 877,951	\$ 707,687	\$ 1,000
17	\$ 521,265	\$ 1,053,542	\$ 1,061,530	\$ 1,000
18	\$ 521,265	\$ 1,264,250	\$ 1,592,295	\$ 1,000
19	\$ 521,265	\$ 1,517,100	\$ 2,388,443	\$ 1,000
20	\$ 521,265	\$ 1,820,520	\$ 3,582,665	\$ 10,811,364
<b>Total</b>	<b>\$ 10,425,309</b>	<b>\$ 10,638,200</b>	<b>\$ 10,744,762</b>	<b>\$ 10,830,364</b>

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



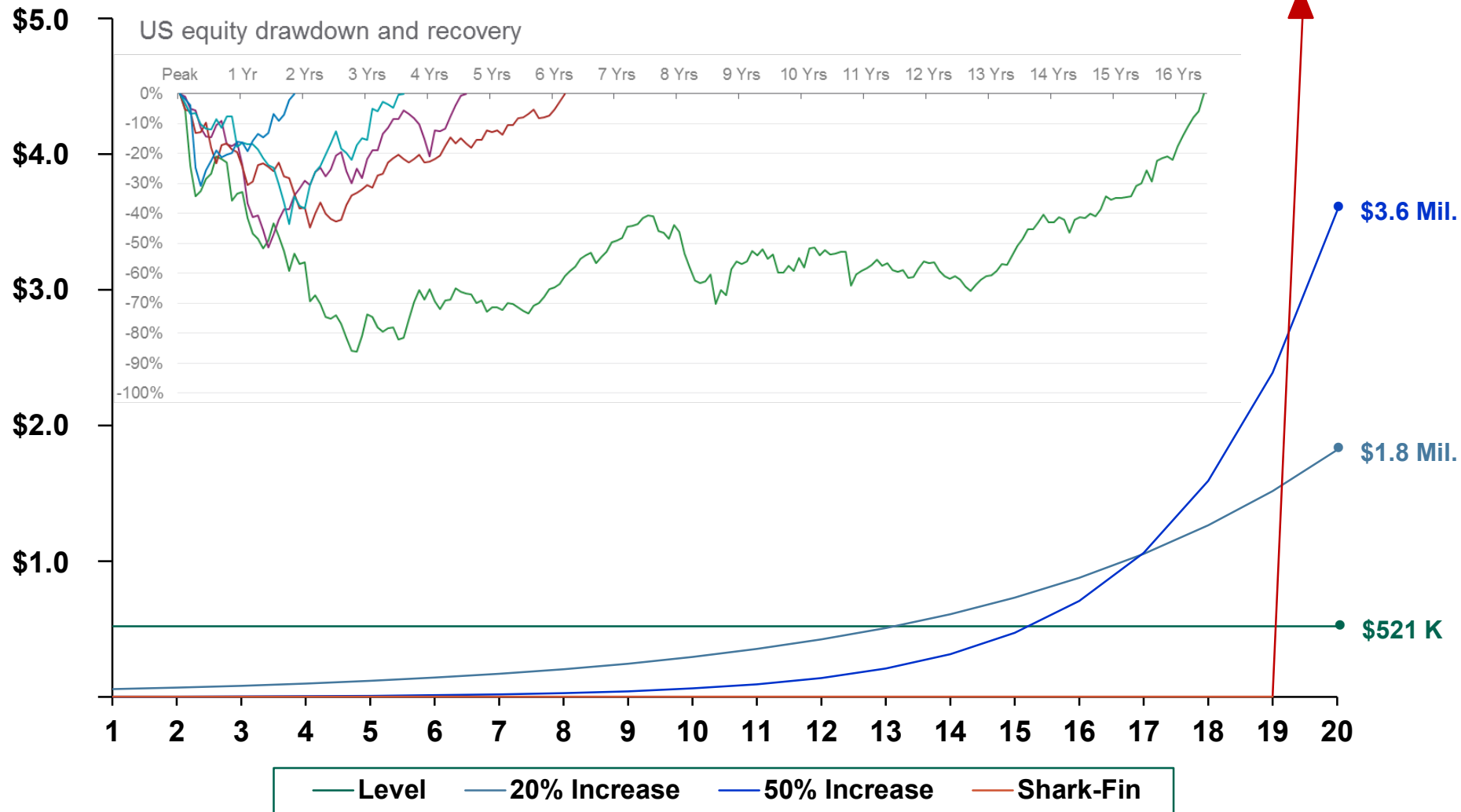
# Back-Loading: Allows for Volatility and More Wealth Transfer

Value  
(\$ Mil.)

## Annual Charitable Payments

Final Annuity

**\$10.8 Mil.**







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

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

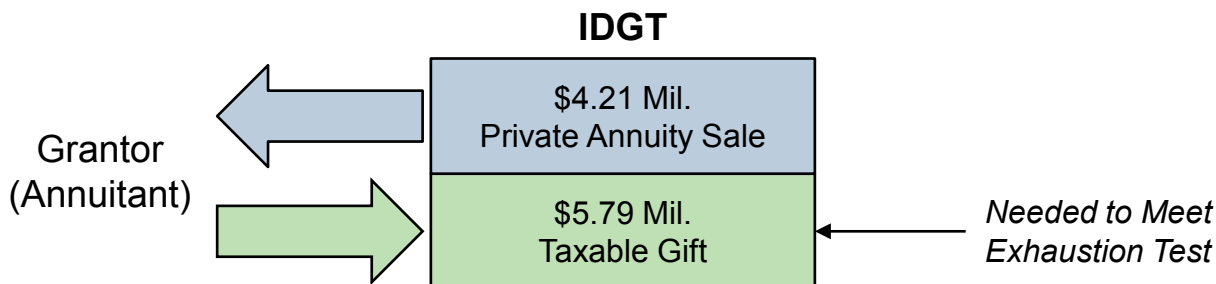
Return	Level	20% Increase	50% Increase	Shark-Fin
3%	\$ 4,054,515	\$ 5,815,791	\$ 6,633,287	\$ 7,223,878
5%	\$ 9,296,838	\$ 12,976,785	\$ 14,600,291	\$ 15,689,547
7%	\$ 17,327,311	\$ 23,588,273	\$ 26,213,721	\$ 27,845,486

### Aggregate Amount Paid to Charity Over Term

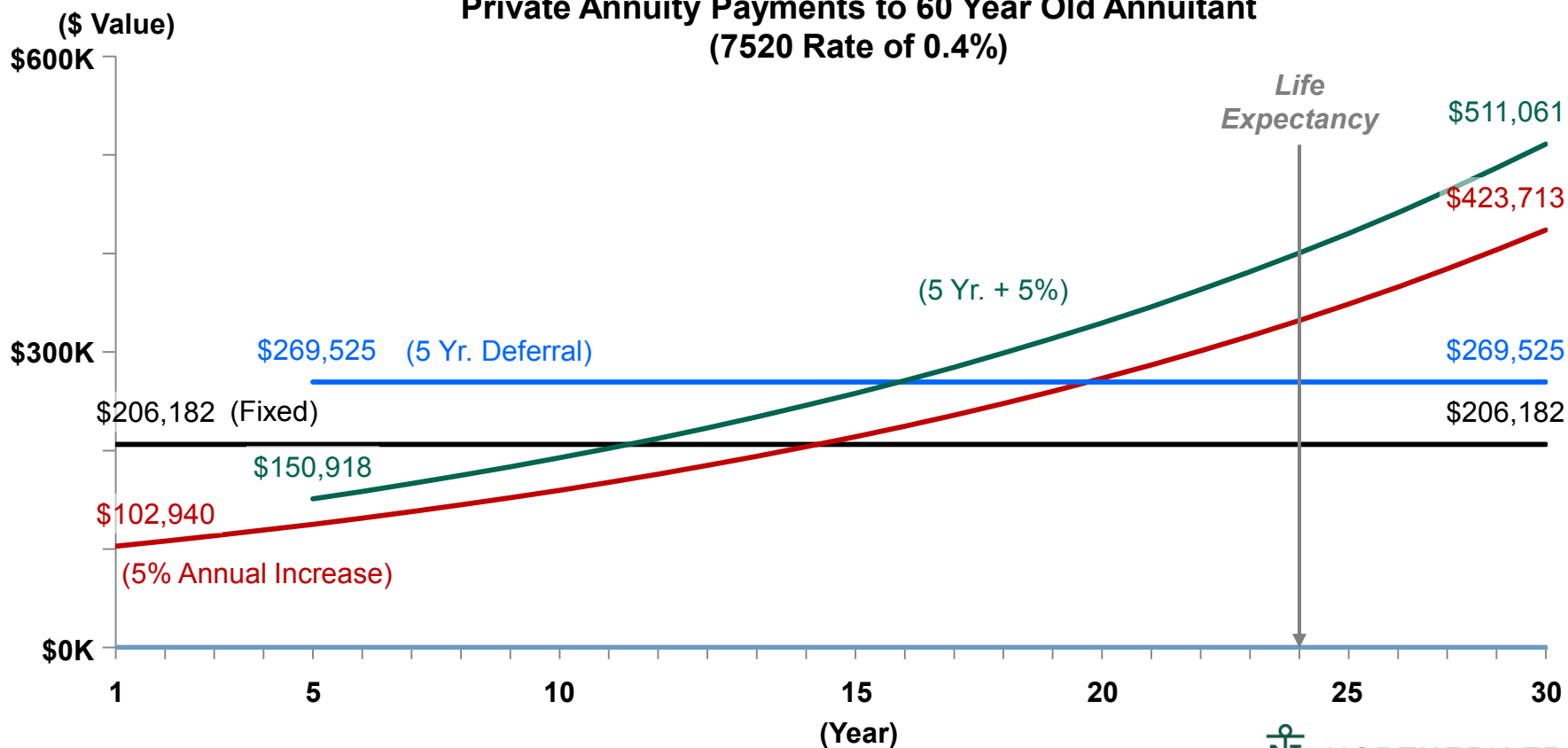
	Level	20% Increase	50% Increase	Shark-Fin
Charity	\$ 10,425,309	\$ 10,638,200	\$ 10,744,762	\$ 10,830,364



# Private Annuities



**Private Annuity Payments to 60 Year Old Annuitant  
(7520 Rate of 0.4%)**

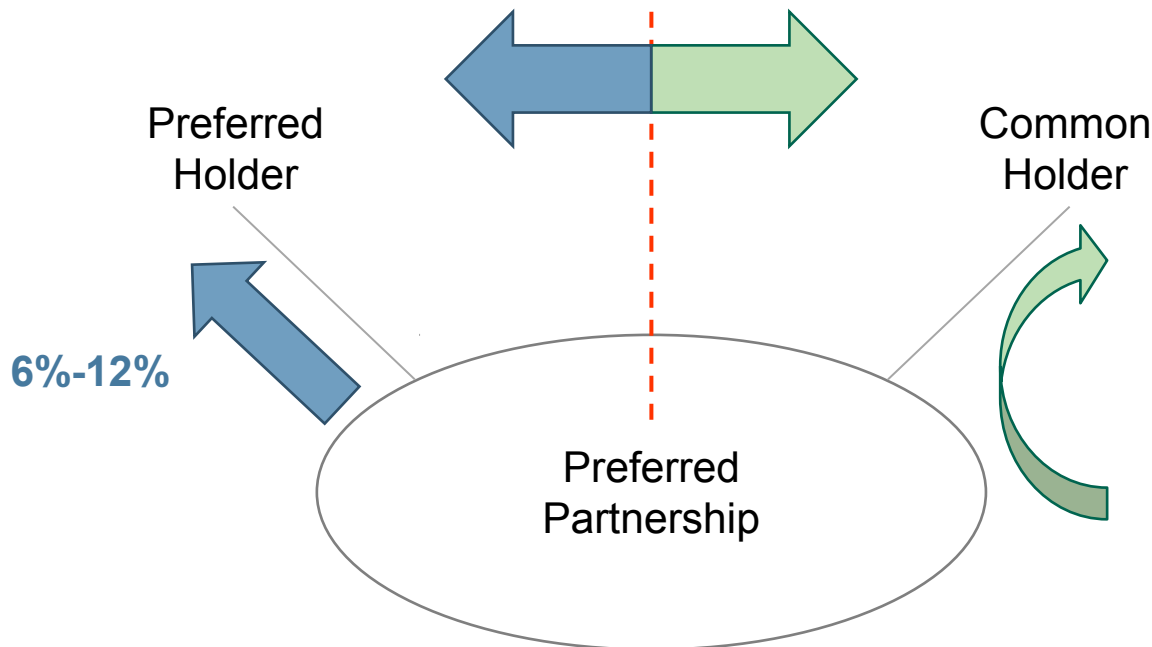




### *Preferred Partnerships: Qualified or Non-Qualified*



## Preferred & Common: Retain or Transfer?

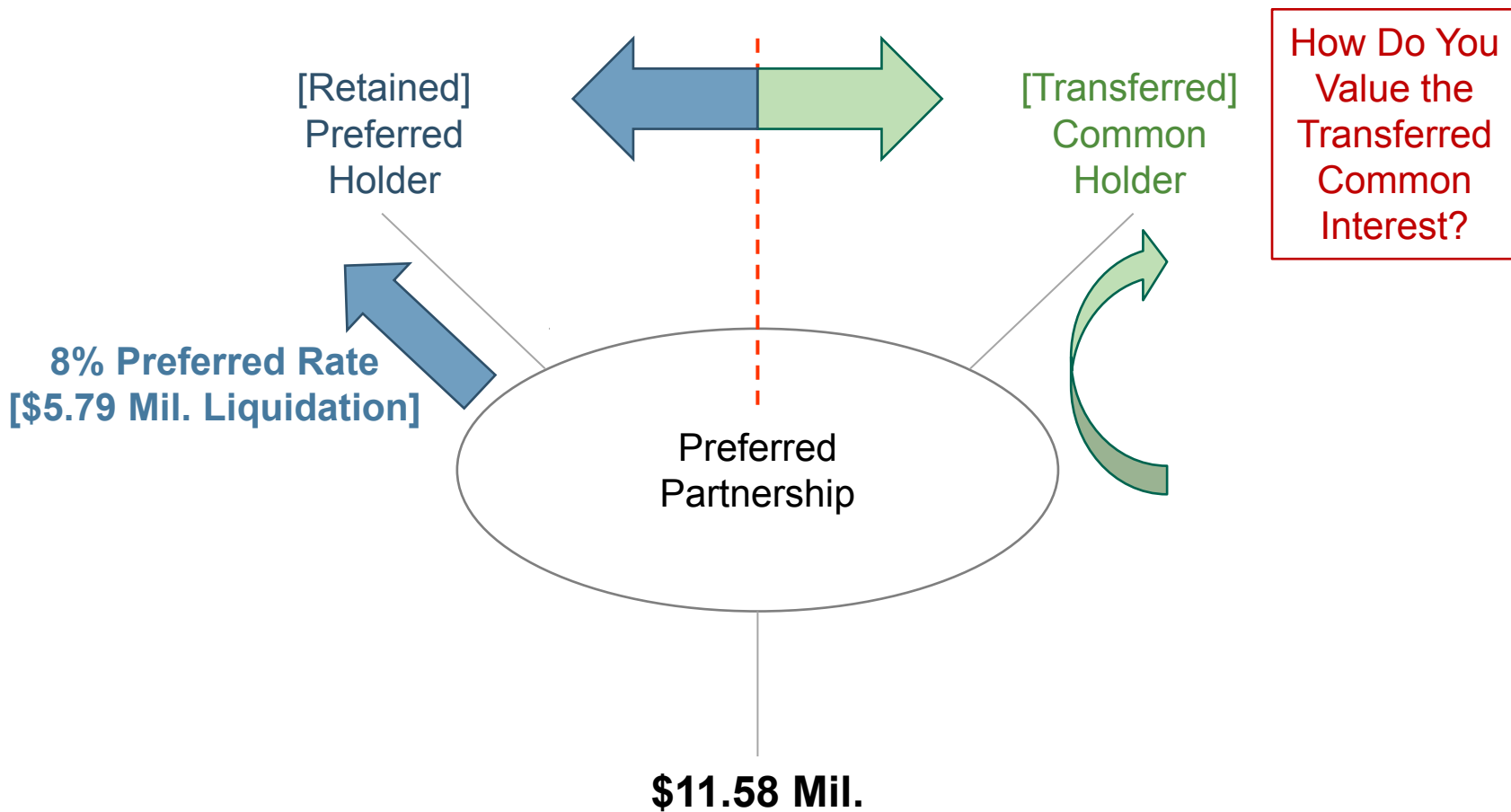


- Fixed Liquidation Value
- Annual Distribution at Fixed Rate/Amount
- Tax Items Preferentially Allocated
- Retain (Traditional), § 2701 Applies
- Transfer (Reverse), Normal Gift Tax Rules

- 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

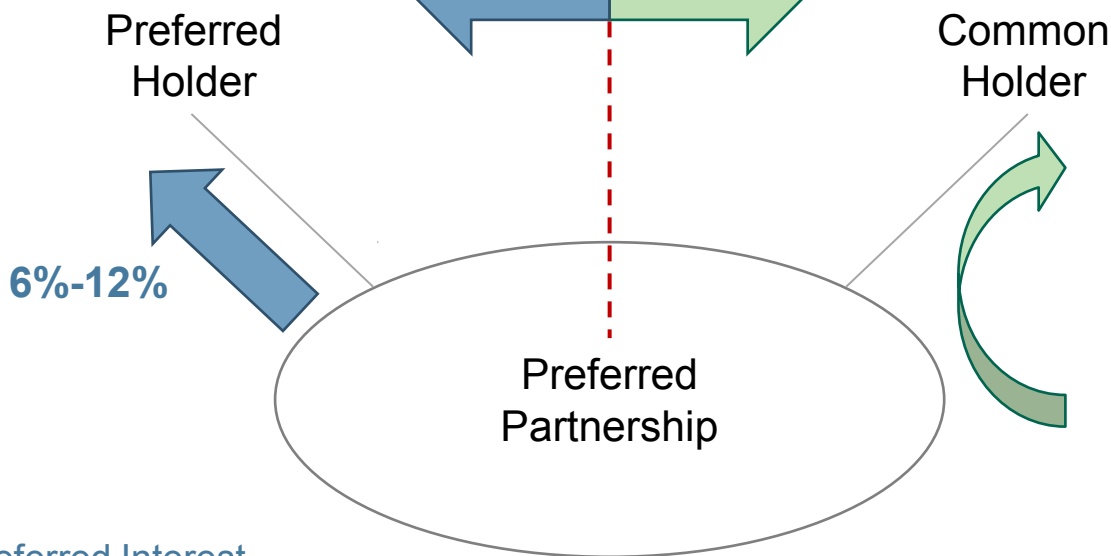
Fair Market Value  
(Liquidated at Death?)  
(Cost-of-Living Liquidation?)

*In The Estate*      *Out of The Estate*

## 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

Possible Way to Get Credit for 2 "Bonus" Exclusions?

### Common Interest

Family Interests  
less  
Zero



## *Maximizing the “Step-Up” in Basis*





# Some Assets Benefit from “Step-Up”—Some Do Not

“Step-Up” Important  
[Higher Valuation]



## Asset Type

## Tax Characteristic

Creator-Owned Copyrights, Trademarks, Patents & Artwork

Ordinary Transforms to Long-Term

“Negative Basis” Commercial Real Property LPs

Recapture & >100% Long-Term

**“Bonus Depreciation” Qualified Property under § 168(k)**

§ 1245 Recapture

Oil & Gas Investments

§ 1245 Recapture

Artwork, Gold & Other “Collectibles”

28% Long-Term

Low Basis Stock

20% Long-Term

Roth IRA Assets

Tax Free & No Surcharge

**Qualified Small Business Stock (QSBS)**

§ 1202 Gain [50, 60, 75 or 100%] Exclusion

High Basis Stock

Minimal Gain

Fixed Income

Typically Minimal Gain

Cash

Basis = Face Value

Passive Foreign Investment Company (PFIC) Shares

No “Step-Up”

Stock at a Loss

Capital Loss Erased

**Qualified Opportunity Zone (QOZ) Investments**

Converts to IRD

Traditional IRA & Qualified Plan Assets

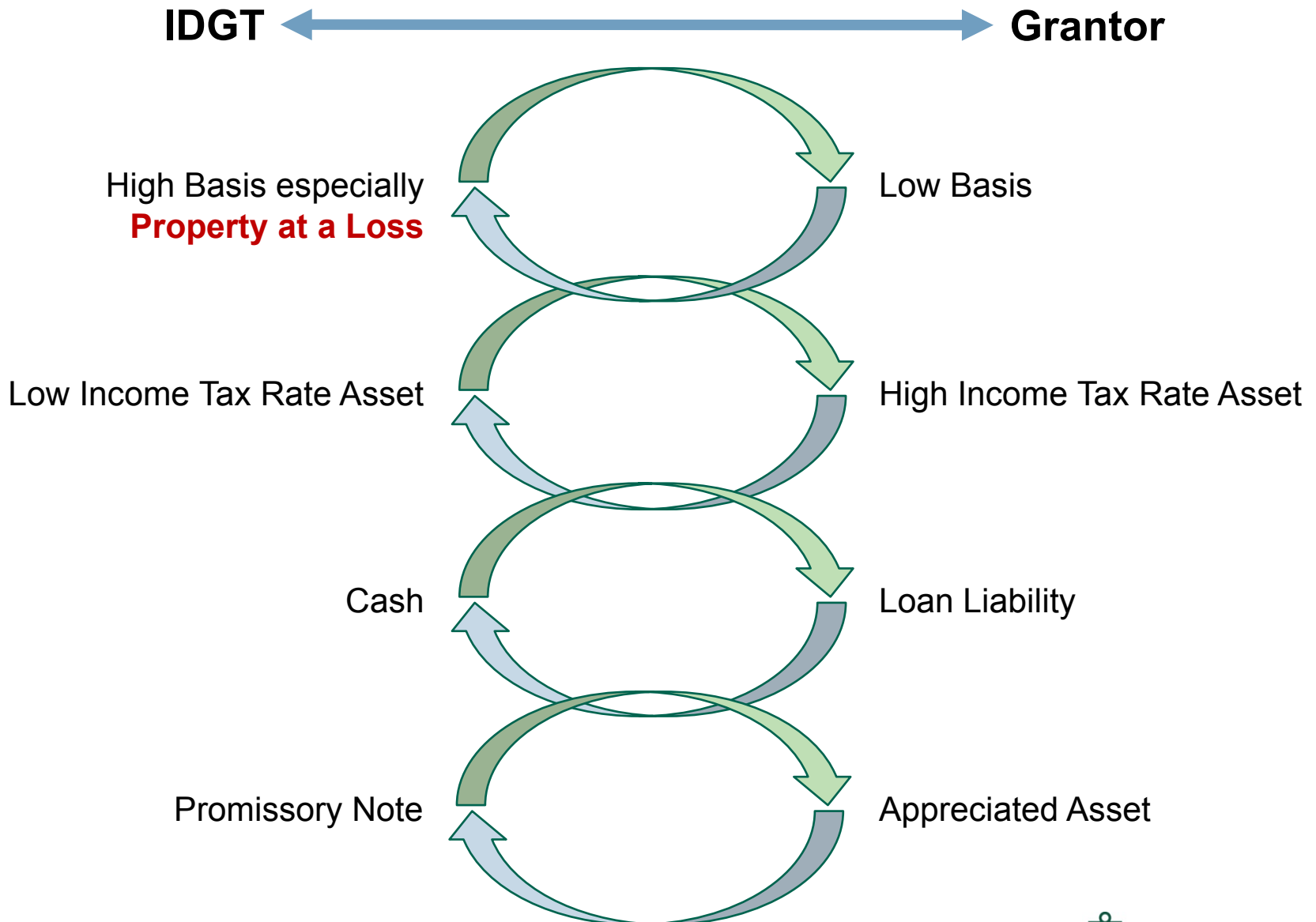
100% IRD

“Step-Up” not Important  
[Lower Valuation]





# Tax Basis Management Basics: Grantor Trust Swapping?

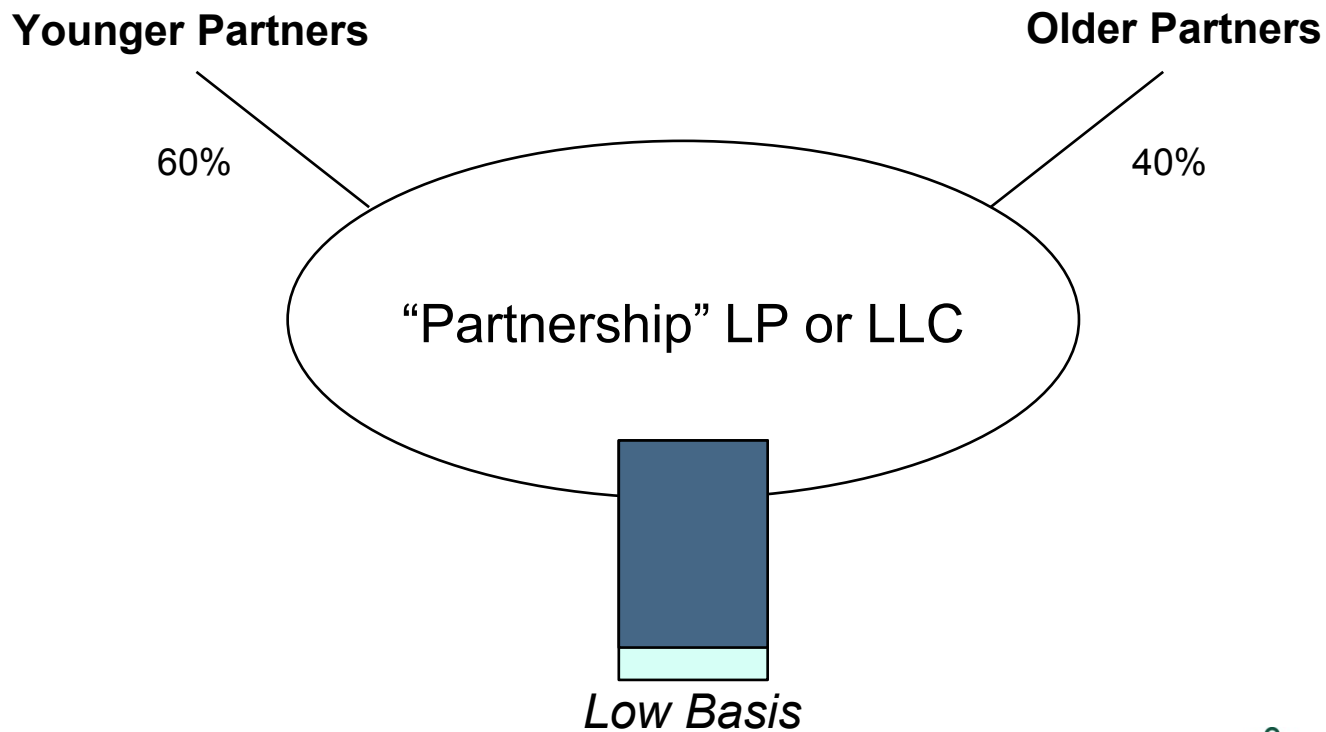




# *Eliminating Valuation Discounts On Pre-Existing FLP Interests Included in the Gross Estate*

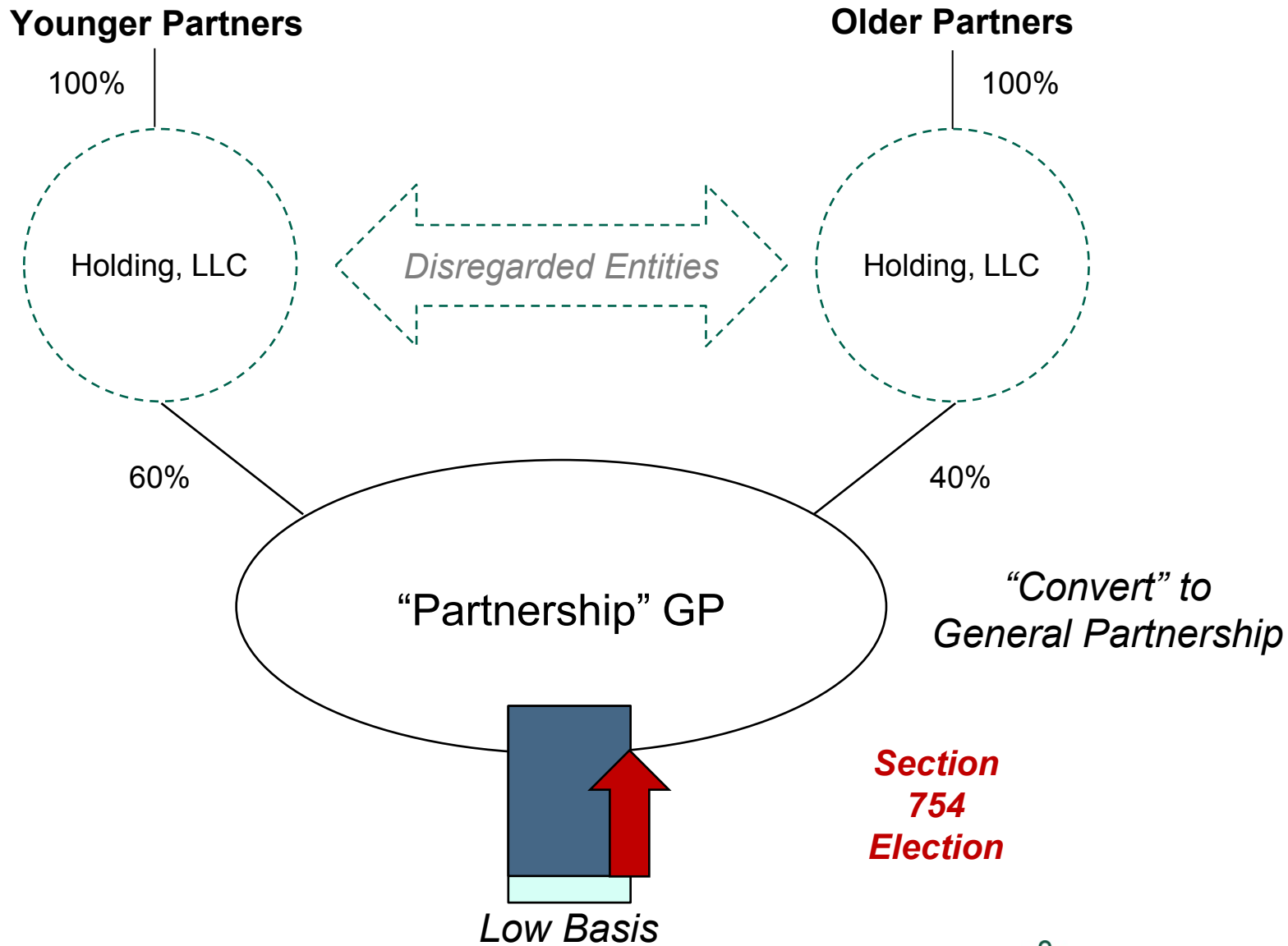


# Eliminating Valuation Discounts on Pre-Existing FLPs





# Eliminating Valuation Discounts on Pre-Existing FLPs

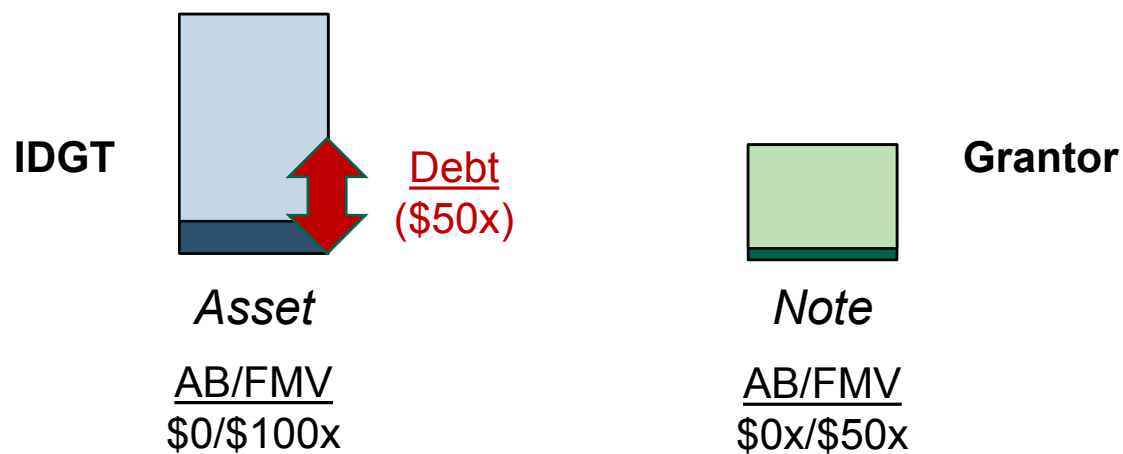




# *Eliminating Outstanding Installment Notes, Avoiding Gain At Death, and Getting A “Step-Up” On The IDGT Property*



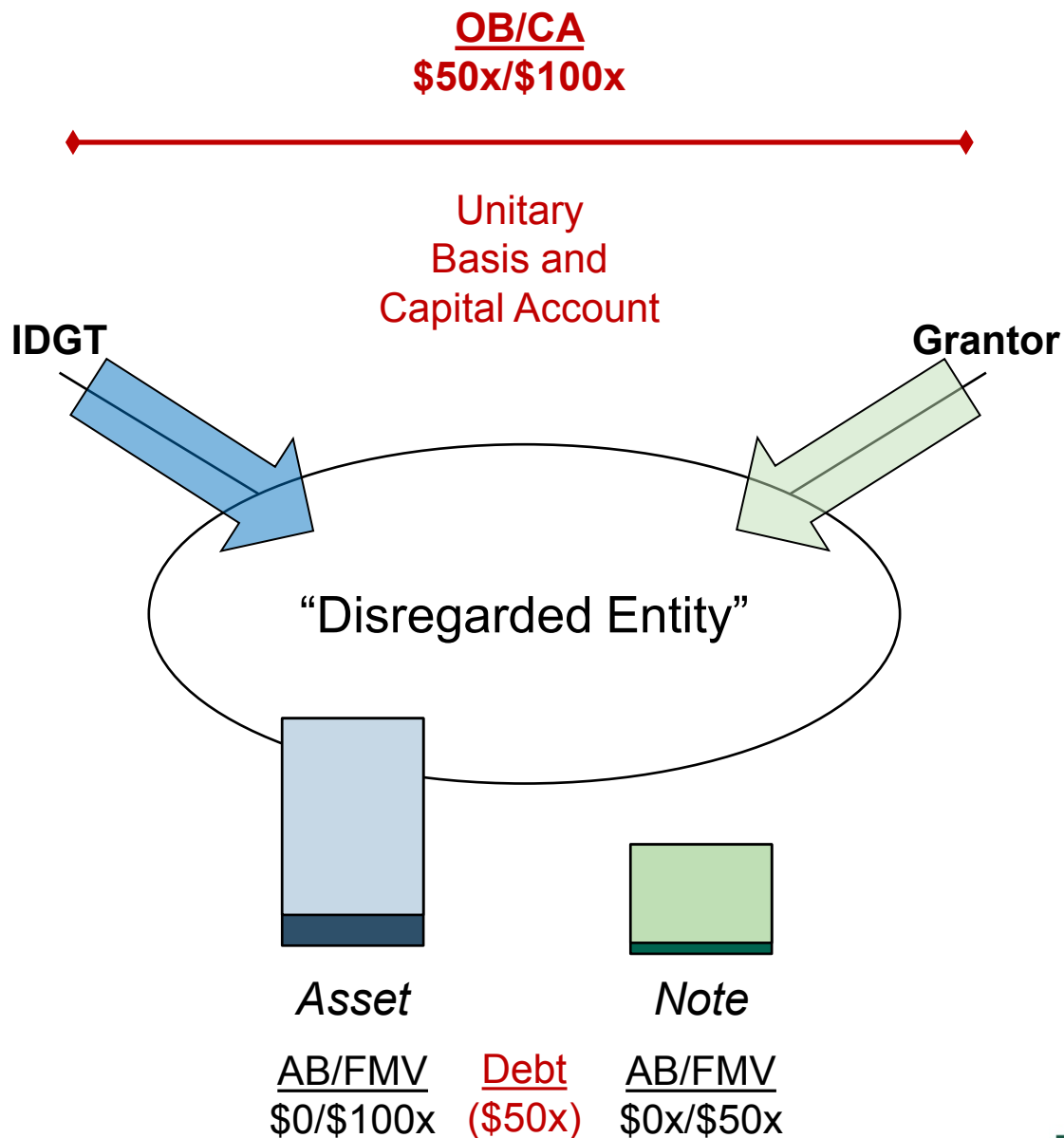
# Installment Sale to IDGT and Outstanding Note



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



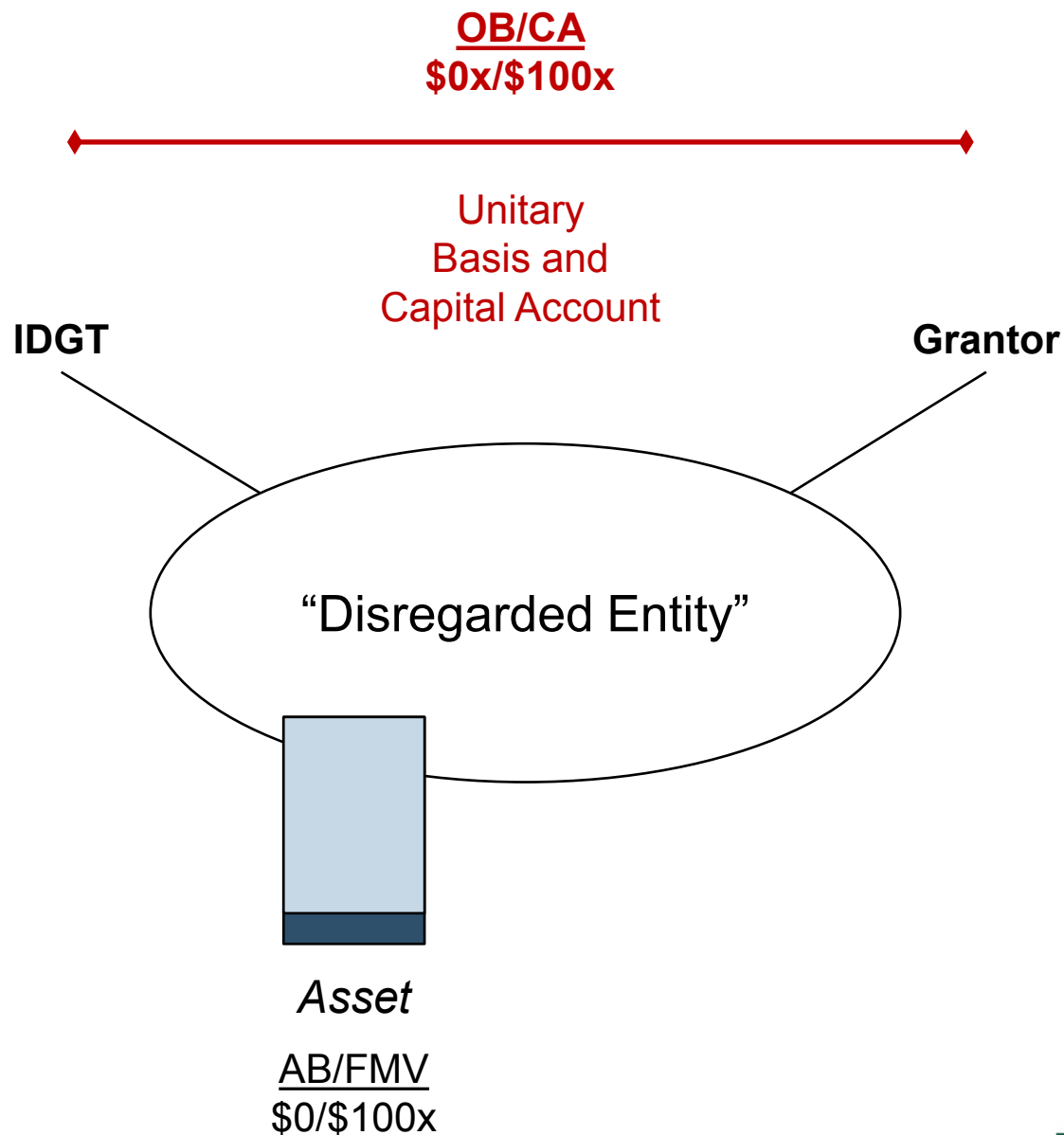
# Contribution to Disregarded Entity





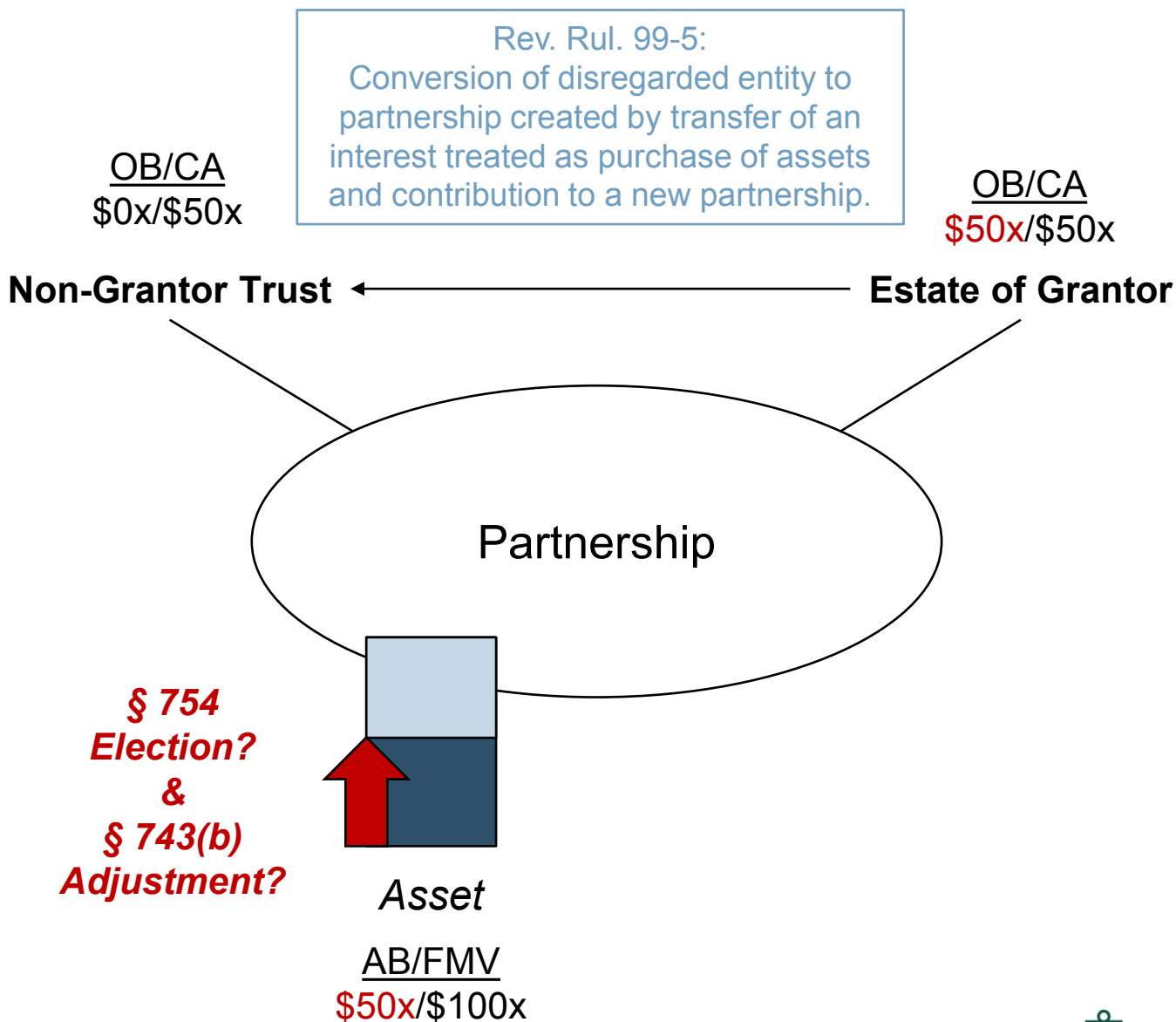


# Debt Merges and Disappears





# Conversion to Non-Grantor Trust & Partnership at Death





*Planning With  
“Grantors” and “Grantor Trusts”  
(BDOTs)*



# Making a Trust a “Grantor Trust” as to Another Trust?

## ■ PLR 201633021

### ◆ Trust 1

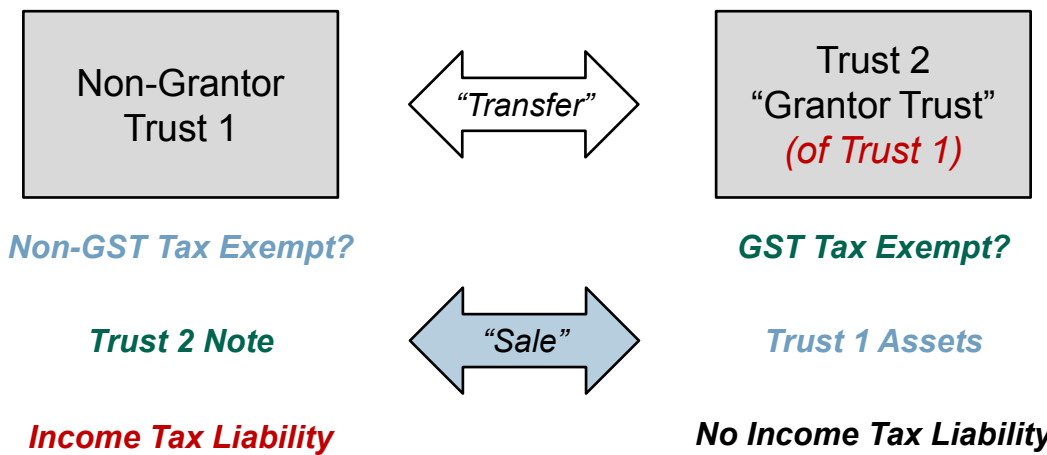
- ▶ Grantor deceased.
- ▶ F/B/O children, spouse, and issue.
- ▶ Trustee proposes to transfer assets to Trust 2.

### ◆ Trust 2

- ▶ F/B/O children, spouse, and issue.
- ▶ Trust 1 retains sole power to revest net income of Trust 2.
- ▶ Lapses on the last day of the calendar year.
- ▶ “Net income” includes income under § 643(b) and capital gain.

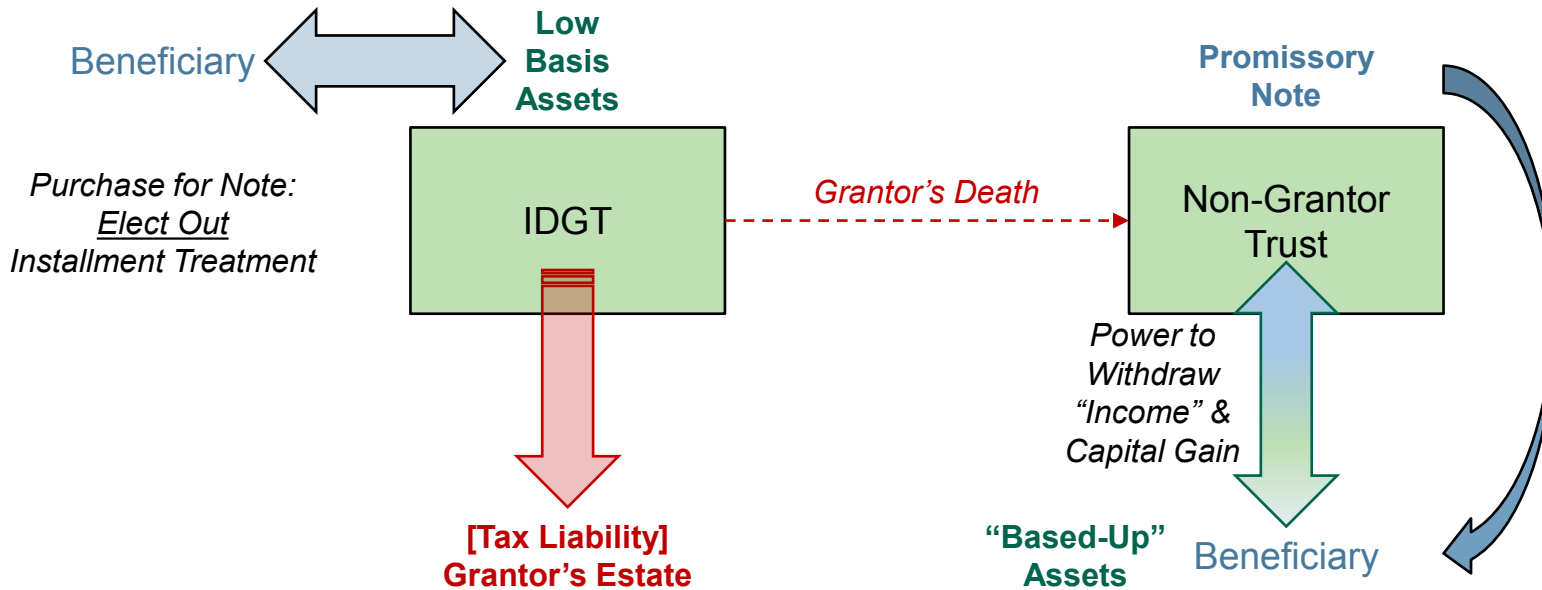
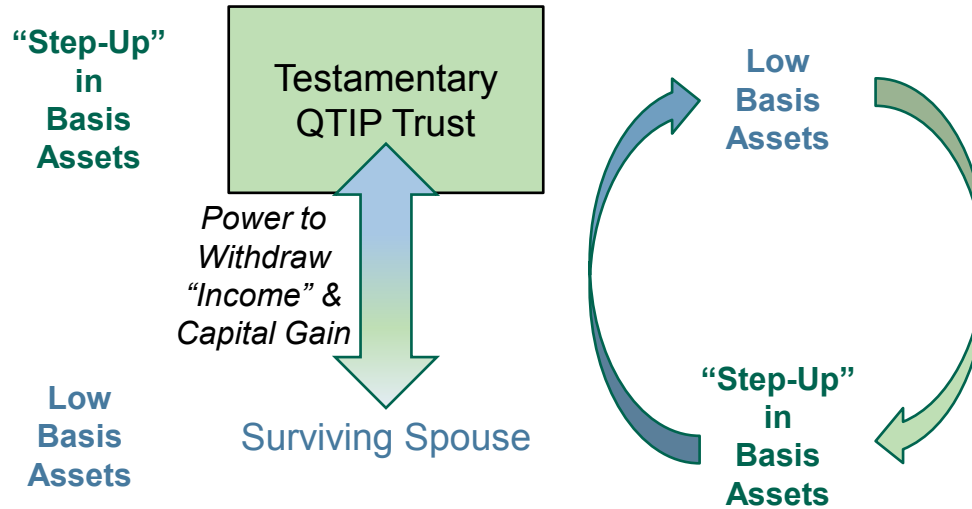
### RULING:

Trust 1 will be treated as the owner of the portion of Trust 2 over which they have the power to withdraw under § 678(a).





# Basis Opportunities with Grantor Trusts of a Beneficiary?





# Disclosures

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