

ESTATE PLANNING IN 2024 & BEYOND

PREPARED FOR: AAOC 2024 GENERAL MEMBERSHIP MEETING

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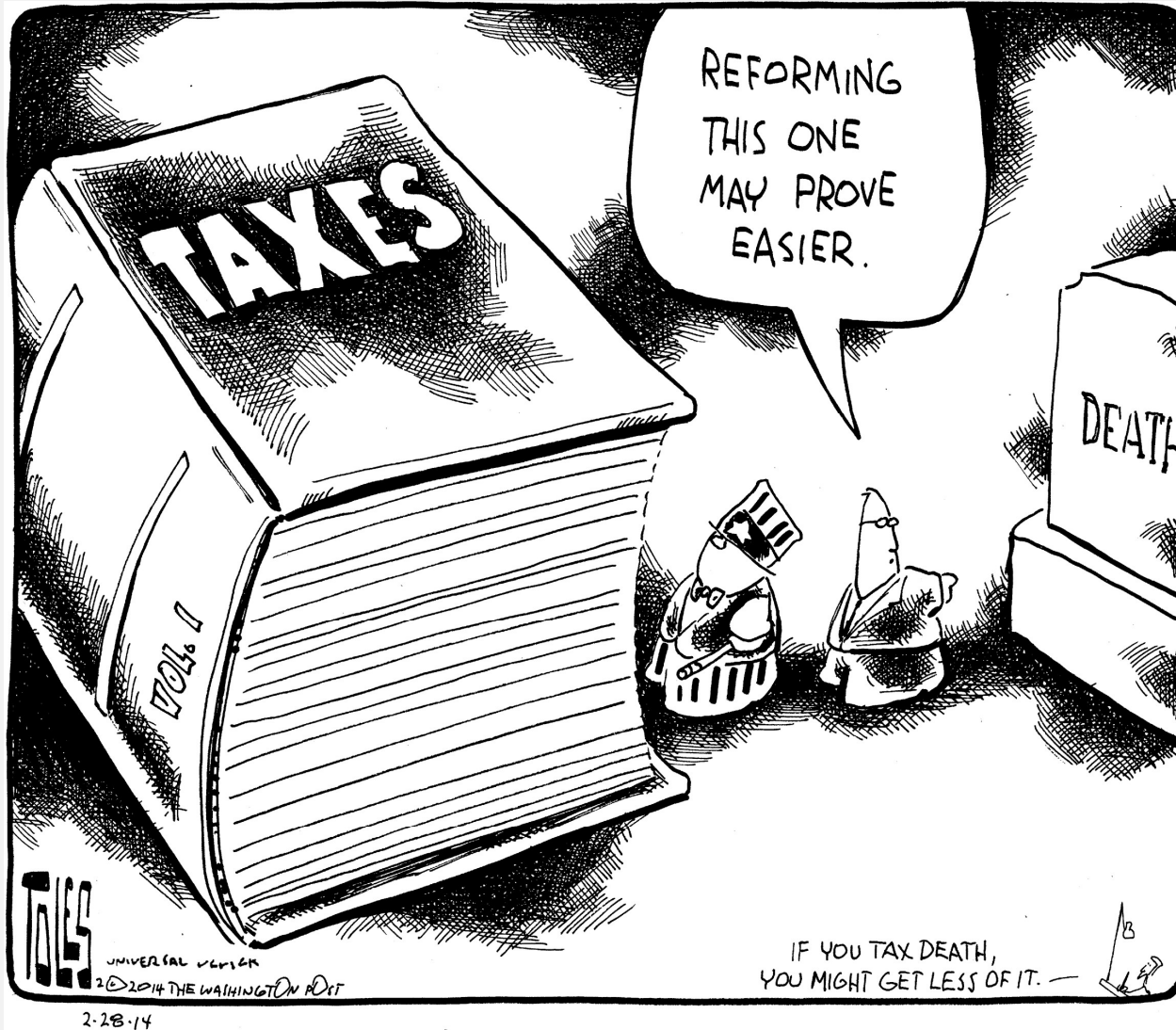
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TODAY'S TOPICS

- (1) Taxes and Possible Changes to Tax Laws**
- (2) Review of the Fundamental Estate Plan**
- (3) Two Most Common Advanced Estate Planning Tools**
 - Trusts for Children, Grandchildren, or Others
 - Trusts for Spouses or even Yourself
- (4) Desire to Transfer Real Estate – But Outstanding Issues**
 - Worried About who Controls the Real Estate?
 - How to Transfer Real Estate, but Retain an Income Stream
 - How to Avoid Property Tax Reassessment on Transfers



TOPIC I

TAXES AND POSSIBLE CHANGES TO TAX LAWS

CALIFORNIA TAX LEGISLATION

- **California Wealth Tax**

- After 1/1/2026 – Anyone with a net worth over \$25M or \$50M (married, filing jointly, would be subject to a 1.5% annual tax.
- Status - AB 259 failed to make it out of its first legislative committee. This Bill is dead.

- **California Exit Tax**

- Proposal to impose a 0.4% annual tax on a taxpayer's worldwide wealth above \$30M (not counting real estate), based on FMV at end of each calendar year.
- This would apply to California residents who leave California, and could apply for up to 10 years.
- Status – Failed to make it out of its first legislative committee. This Bill is dead.

- **California State Disability Insurance**

- Previously - 1.1% tax on income up to \$145,600
- There is NO limit on the income this tax applies to.

GREENBOOK 2025 TAX LEGISLATIVE PROPOSALS FROM THE BIDEN ADMINISTRATION

- **Change Business Tax Provisions**

- Increase Corporate Income Tax Rate from 21% to 28%
- Increase Corporate Alternative Minimum Tax Rate from 15% to 21%
- Increase Corporate Stock Repurchase Excise Tax from 1% to 4%

- **Change in Individual Taxes**

- Increase Top Marginal Income Tax Rate from 37% to 39.6%
- Capital Gains Taxed at ORDINARY Income Tax Rates if taxable income exceeds \$1M for a married couple, or \$500K for a single individual
- Increase Net Investment Income Tax Rate from 3.8% to 5% if taxable income exceeds \$400K
- Increase Medicare Tax from 3.8% to 5% if taxable income exceeds \$400K
- Elimination of Step-up In Basis on Assets Included in Estate at Death
 - Instead, any transfer of appreciated property at death (or in life by gift) would be a realization event, subject to ordinary income taxes or capital gains.
- Add the “Billionaire Income Tax” – impose a 25% minimum ANNUAL tax on taxpayers with AGI of \$100M or assets worth more than \$1B.
- Eliminate real estate like-kind exchanges for gains in excess of \$500K for a single individual, or \$1M for taxpayers who are married and filing jointly.

GREENBOOK 2025 TAX LEGISLATIVE **PROPOSALS** FROM THE BIDEN ADMINISTRATION

- **Change in Gift/Estate Taxes**

- Limit Annual Exclusion Gifts

- **Current law** - \$18K per donor; per donee **New Proposed Law** - \$50K per donor, max

- Remove Grantor Trust Rules

- A Grantor Trust is a trust where the Grantor/Creator is required to pay the income taxes of the trust. When the taxes are paid, it is NOT a gift to the Trust. Additionally, any transaction between the Grantor and the Trust is ignored for income tax recognition purposes.

- Remove Ability to Discount Assets

- Grantor Retained Annuity Trusts – Must have at least a 10-year term, with 25% going to the remainder beneficiary.

- Loans from a Trust to a Beneficiary treated as a distribution, and cause income taxes to the beneficiary.

- Reduce the Gift/Estate/GST Exemption Amount Prior to January 1, 2026

- **2024** - \$13,610,000 **January 1, 2026** - \$5,000,000, indexed for inflation (\$7,000,000 estimate)

OVERALL TAX SUMMARY

- There is a desire to **INCREASE Taxes**
- There is a desire to **REMOVE or REDUCE Deductions**
- Tax Legislation in 2024 is **unlikely**
 - Given the split Congress (Democrats control the Senate and Republicans control the House)
- 2024 Elections is Important, but any tax legislation is unlikely until middle of 2025, if at all

This shows what the government DESIRES to do....what we don't know is WHEN it will occur.

BEST RECOMMENDATION – PLAN NOW WHILE YOU CAN

NEW LAW CORPORATE TRANSPARENCY ACT

- **Beginning January 1, 2024**
 - Entities Formed Before January 1, 2024 – Have until December 31, 2024 to comply
 - Entities Formed On or After January 1, 2024 – Have 90 days from formation to comply
 - Entities Formed On or After January 1, 2025 – Have 30 days from formation to comply
- **Who Has to Comply** - Any legal entity registered with a Secretary of State (Corporation, LLCs, LPs, etc.)
- **Whose Information Has to be Provided to be Filed with the Financial Crimes Enforcement Network (FINCEN)?**
 - Anyone who helped form the entity
 - Any Owner who has 25% or more ownership interest of the Entity
 - Anyone who Controls the Entity, or is an officer of the entity
 - If a Trust owns 25% or more: (1) Grantor; (2) Trustee; (3) Beneficiary over Age 18; (4) Anyone who has control of investments/distributions; (5) Anyone who has the power to change the Trustee.
 - What Information Has to be Provided
 - **OPTION 1** - (1) Name; (2) Physical Residential Residence; (3) Copy of Passport or Driver's License
 - **OPTION 2** – FINCEN Identifier
- **Penalty** - \$500 a day (up to \$10K) + up to 2 years Jail

For More Information - <https://www.fincen.gov/boi>



"Hheads we create an estate plan, tails we leave it to the courts to decide."

TOPIC 2

REVIEW OF THE FUNDAMENTAL ESTATE PLAN

MAIN PURPOSES OF AN ESTATE PLAN

- **Take control to override State law as to:**
 - Who gets to control your assets at your incapacity/death
 - Who gets to inherit your assets at your death
- **Avoid probate** and the long, public, and costly administration that probate entails
- **Name guardians** to care for minor children
- **Minimize Taxes** so that there is more for your beneficiaries to inherit
 - Transfer Taxes
 - Income Taxes
 - Property Taxes

MOST ARE FAMILIAR WITH THE COMPONENTS OF A BASIC ESTATE PLAN

- Revocable Living Trust
- Pour-Over Will
- Power of Attorney for Assets
- Advance Health Care Directive
- HIPAA Waiver

THESE DOCUMENTS ARE USED TO SATISFY A NUMBER OF MAIN PURPOSES

PURPOSE OF A REVOCABLE LIVING TRUST

- (1) Allows for the **avoidance of probate** upon your death.
- (2) Allows you to **determine to whom your assets will be distributed** and in what manner the assets will be received.
- (3) Allows you to **appoint who will hold the keys to your trust** to execute the instructions you have given (*i.e.*, the trustee).
- (4) Allows you to **make tax efficient choices** so that your loved ones pay the least amount of estate taxes and income taxes possible.
- (5) Allows for your financial affairs to **remain private**.

PURPOSE OF A POUR-OVER WILL

- (1) In the event an asset is not properly titled in the name of your trust during your life, the **Pour-Over Will overrides the default rules of California** and directs the asset to be added to your trust so that the trust terms control the disposition of the asset.
- (2) Determine **guardianship for minor children** (under age 18).
- (3) Allow flexibility for the **distribution of personal affects**.

PURPOSE OF POWER OF ATTORNEY

- (1) Allows you to **appoint one or more people to sign your name** on your behalf (often becomes effective upon incapacity).
- (2) Allows you to **avoid the need for a Conservator** or guardian.
- (3) Only **applies to decisions regarding assets or accounts in your name** (not in the trust).

PURPOSE OF ADVANCE HEALTH CARE DIRECTIVE AND HIPAA WAIVERS

- (1) Allows you to **pick your agent to make medical decisions** for you when you no longer are able to make those decisions yourself.
- (2) Allows you to **leave directions** regarding how to make various personal medical decisions on your behalf.
- (3) Allows you to **avoid potential family conflict** or the need for a conservator or guardian.

WHY HAVE AN ESTATE PLAN REVIEWED?

(1) CHECK TITLE

- Helps make sure your assets are properly titled in the name of your trust to avoid probate.

(2) TAX LAWS CHANGE

- Specifically, if you have not had your estate plan reviewed since 2012, I strongly recommend you have it looked at as tax laws are vastly different now than they were then.

(3) STATE OR LOCAL LAWS CHANGE

- Examples: no contest provisions, language to avoid California property tax reassessments

(4) FRIENDS AND FAMILY MEMBERS CHANGE

- As a result, you may need to revise one or more of your Beneficiaries, Trustees, Agents for your financial Power of Attorney or for your Advance Health Care Directive, and/or Guardians for your minor children.

(5) YOU CHANGE

TOPIC 3

TRANSFER TAXES REVISITED
&
TWO MOST COMMON ADVANCED ESTATE PLANNING TOOLS

TRANSFER TAXES - EXPLAINED

- **This is a tax on the transfer of your assets**
 - LIFETIME transfers – subject to GIFT TAXES
 - DEATH transfers – subject to ESTATE TAXES
- **Currently, the IRS gives you a cumulative exemption amount that allows you to transfer assets without paying gift or estate taxes so long as you don't transfer more than your available exemption amount.**
 - You must keep track of the gifts you make during your lifetime, as it reduces your cumulative exemption amount. This is done by filing Federal gift tax returns (Form 709).
- **The Exemption Amount changes from year to year**
 - 2023 - \$12,920,000
 - 2024 - \$13,610,000
 - 2025 - \$14,000,000 (estimated)
 - 2026 - \$5,000,000 indexed for inflation, estimated \$7,000,000

TRANSFER TAXES – TIMING IS EVERYTHING

- **Might Be Running Out of Time**

- This is the rush of planning we are now dealing with. Clients generally want to utilize this cumulative exemption amount before it reduces at the end of 2025.
 - Only hesitation is whether the law will sunset. A lot of this may depend on who wins the 2024 election.
- Hard Part – if clients wait too long to engage in transfer planning, then there won't be any good estate planning attorneys or appraisers available to help clients accomplish their goals at the end of 2025.

- **Freeze the Asset Before it Appreciates**

- Generally, the goal is to remove an asset from your estate before it highly appreciates in value. By transferring an asset NOW at its current value, the value of the gift is frozen, and the appreciation is removed from your taxable estate, versus keeping the asset, along with its growth and appreciation, to be transferred at your death.
- Generally, \$1 now will be worth more 20 years from now, so a lot of your exemption amount can be saved by transferring the asset now at the \$1 value instead of waiting to transfer it at a higher value.
- The sooner you transfer assets out of your estate, the quicker the value of that assets freezes!

TRANSFER TAXES – BY PICKING THE RIGHT ASSET, YOU CAN DISCOUNT ITS VALUE!

- Once you decide you want to do transfer tax planning and freeze the value of various assets, the next question is whether you have assets that allow you to discount the assets fair market value for gift/estate tax purposes.
 - Lack of Control
 - Lack of Marketability
 - Fractional Interest in Real Estate
- **These types of discounts can generally be taken when giving:**
 - Interests in a corporation, limited partnership, or limited liability company
 - Fractional interests in real estate
 - Other certain assets

TWO MOST COMMON ADVANCED ESTATE PLANNING TOOLS

(1) Irrevocable Trusts for Children/Grandchildren/Others

(1) Irrevocable Trusts for a Spouse or Yourself

ORDER TO THINK ABOUT THESE STRATEGIES

(1) Gifts to Others - have the client establish SEPARATE irrevocable gifting trusts for children and/or grandchildren, or others.

- However, most clients are only willing to give away so much to others.

(2) Gifts to Spouse – once the client hits their limit of what they are willing to give away to others – utilize a Spousal Lifetime Access Trust or “SLAT.”

- This is only available if the client is married.

(3) Keep Assets for Self - have someone (still to be determined) establish a Beneficiary Defective Inheritor’s Trust (“BDIT”) for the client.

- Useful for clients who either (a) do not have a spouse or (b) have used up all of their gift tax exemption, but still want to engage in further estate planning.
- After someone establishes the BDIT for the benefit of the client, the client can sell assets to the BDIT. The client is the beneficiary of the BDIT, the client retains investment control of the BDIT assets, and the client has a rewrite power over further beneficiaries... all in a trust that is outside of the client’s estate, that avoids GST tax, and that is protected from the client’s creditors and divorce.

WHY ARE THESE OPTIONS SO POPULAR? BENEFITS OF A TRUST

- **Creditor Protection** – advanced trusts can protect assets from a beneficiary's creditors.
- **Divorce Protection** – advanced trusts can protect assets from a beneficiary's spouse, in the event of a divorce.
- **Avoids Future Estate Taxes** – assets in the trust are NOT included in the beneficiary's estate at his or her death, under current law.
- **Allows for Separation of Control and Beneficial Enjoyment**
 - Control = Trustee. The Trustee can be the Grantor (creator of the trust), the beneficiary, or anyone well suited for the role.
 - Beneficiary = whoever you want to benefit from the trust, pursuant to the rules outlined in the trust document.
- **Set Default Rules for Where Assets Go at Beneficiary's Death**
 - Normal default is that the remaining assets go to the Beneficiary's descendants.
 - However, you can set whatever rules as you see fit. For example, you could say 50% to descendants and 50% to charity.
- **NEW BENEFIT – Flexibility in an irrevocable trust**
 - Trust Protector – allows for changes to be made at the request of the Grantor.
 - Testamentary Power of Appointment – allows for the beneficiary to revise the default rules of where assets go at death.

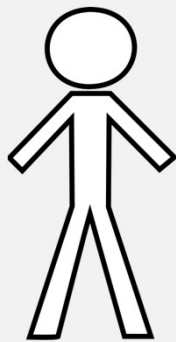
COMPONENTS OF IRREVOCABLE TRUSTS FOR OTHERS

- **The Trusts for the children or grandchildren will be established by the Grantor so that each Trust allows the Grantor more control over the Trusts' assets.**
- **The Primary Beneficiary** = each child or grandchild is the primary beneficiary of the trust established for that person.
- **The Grantor can act as the Distribution Trustee and the Investment Trustee.**
 - The Trustee can make all of the trust distribution decisions.
 - The Trustee can make all of the trust investment decisions.
 - No distribution or investment can be made by the Administrative Trustee without receiving prior direction. This is statutory.
- **Trust Protector**
 - The Trust Protector has the ability to make modifications to an irrevocable trust.
 - The Trust Protector should be an independent third party. The Trust Protector cannot be the Grantor or any beneficiary.
- **Major Trust Benefits**
 - Protects Assets
 - **From Grantor's Creditors** – they cannot reach these assets.
 - **From the Beneficiary's Creditors** – they cannot reach these assets.
 - **From the Beneficiary's Divorcing Spouse** – they cannot reach these asset.
 - Assets Removed From Everyone's Gross Estate
 - Assets of the trusts are not includible in the Grantor's gross estate or the primary beneficiary's gross estate for estate tax purposes. Also, the assets of the trust are not subject to GST taxes.
 - As an Intentionally Defective Grantor Trust ("IDGT"), Continues to Reduce Grantor's Estate Without Making Gifts
 - **If a trust is an IDGT, then the Grantor MUST pay the income taxes associated with the assets of that trust.**
 - Thus, the trust assets are not reduced by any income taxes.
 - Instead, the Grantor pays the taxes and **the payment of these taxes is NOT a gift.** This is known as the "estate tax burn."

IRREVOCABLE TRUSTS FOR CHILDREN/GRANDCHILDREN/OTHERS

- **Step 1 – Establish one irrevocable intentionally defective grantor trust for each beneficiary**
 - Separate Trusts for each Beneficiary avoids conflict in regard to distributions, investments, and control of the trust.
 - Tax as a Grantor Trust - all of the income taxes (losses and deductions) of the Trust will be reported on the Grantor's income tax return. By the Grantor paying the income taxes of the Trust, the Grantor will make tax free gifts to the Trust, which will inevitably help reduce the Grantor's overall taxable gross estate. If these taxes become too great, flexibility in the trust provisions will allow the Trusts to pay their own income taxes.
 - All transactions between the Trust and the Grantor are ignored for income tax purposes.
 - As a grantor trust, distributions to a beneficiary do not result in any income taxes to the beneficiary.
 - Not In Estate – assets in the Trust are not included in the Grantor's estate or the Beneficiary's estate, under current law.
 - No Annual Exclusion Distribution Limits - distributions to the Trust beneficiary are not subject to annual exclusion limits.
- **Step 2 – Grantor uses gift tax exemption to gift assets to the Trust**
 - We generally recommend obtaining current appraisals, valuing the gift as of the date the gift is made.

STEP I – ESTABLISH CHILDREN’S TRUSTS



Grantor

Gifts Assets Up to \$13.61M

Child 1’s Trust

Child 2’s Trust

Child 3’s Trust

The Trusts are established and funded by the Grantor using the Grantor’s remaining gift and GST tax exemption.

- Some clients make gifts using **ONLY** their annual exclusion amount (\$18K in 2024).
- Other clients decide to use part or all of their \$13.61M gift tax exemption to gift more.

Under current law, the assets of these Trusts will be outside of the Grantor’s gross estate and will not be included in any Beneficiary’s gross estates.

STEP 2 – HOW CHILDREN’S TRUSTS ARE ADMINISTERED

Child 1’s Trust

Child 2’s Trust

Child 3’s Trust

Trust Beneficiary Distributions



Child 1
Child 2
Child 3

- The Trustee (can be the Grantor, Beneficiary, or someone else) can make distributions from a child’s Trust to that child or the child’s descendants for their health, education and living expenses.
- Additionally, a Special Trustee (cannot be the Grantor or a Beneficiary) can make distributions to the Beneficiary at any time for any reason; or to charity to obtain an income tax deduction.
- The Trustee can also invest the assets of the Trust as the Trustee sees fit.
- Provisions at a Child’s Death:
 - *Default Rule* - the remaining balance of a deceased child’s Trust is divided equally between that child’s children and continues to be held in trust. If no children, the assets go to the deceased child’s siblings.
 - *Rewrite Power* – each child will have the power to rewrite how their Trust is distributed following their death. The exercise of this power can be revised at any time down the road, or even multiple times. This gives the child flexibility to deal with future facts and circumstances.

SECOND MOST POPULAR TOOL

SPOUSAL LIFETIME ACCESS TRUSTS

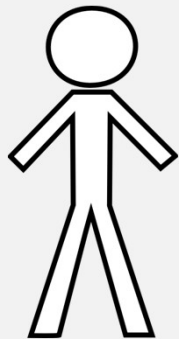
“SLATs”

For those that want to use their estate tax exemption, but aren't ready to give assets to their kids or grandchildren yet.

GRANTOR'S PLAN FOR THE SPOUSAL LIFETIME ACCESS TRUSTS ("SLATS")

- **Step 1 – Grantor 1 uses Grantor 1's remaining gift tax exemption to establish and fund a SLAT for Grantor 2**
 - This is an irrevocable trust where Grantor 2 is the primary beneficiary. Due to California law issues, distributions from the SLAT cannot be made to Grantor 2 to satisfy Grantor 1's legal obligation to support their spouse. However, distributions that go above and beyond Grantor 1's obligation to support Grantor 2 can be made to Grantor 2. The distributions will be more expansive after Grantor 1's death.
 - While the SLAT will have its own taxpayer identification number, all of the income taxes of the SLAT will be reported on Grantor 1's income tax return as the Grantor of this SLAT is Grantor 1. By Grantor 1 paying the income taxes of this SLAT, Grantor 1 is making tax free gifts to the SLAT, which will inevitably help reduce Grantor 1's overall taxable gross estate.
 - The assets owned by the SLAT will not be includible in Grantor 1's or Grantor 2's gross estate at their deaths under current law.
- **Step 2 – Grantor 2 uses Grantor 2's remaining gift tax exemption to establish and fund a SLAT for Grantor 1**
 - This is an irrevocable trust where Grantor 1 is the primary beneficiary. Due to California law issues, distributions from the SLAT cannot be made to Grantor 1 to satisfy Grantor 2's legal obligation to support their spouse. However, distributions that go above and beyond Grantor 2's obligation to support Grantor 1 can be made to Grantor 1. The distributions will be more expansive after Grantor 2's death.
 - While the SLAT will have its own taxpayer identification number, all of the income taxes of the SLAT will be reported on Grantor 2's income tax return as the Grantor of this SLAT is Grantor 2. By Grantor 2 paying the income taxes of this SLAT, Grantor 2 is making tax free gifts to the SLAT which will inevitably help reduce Grantor 2's overall taxable gross estate.
 - The assets owned by the SLAT will not be includible in Grantor 2's or Grantor 1's gross estate at their deaths under current law.

ESTABLISH SLATS



Gift Remaining Exemption

SLATs

Grantor 1's SLAT is established and funded by Grantor 2 using Grantor 2's remaining gift and GST tax exemption.
Grantor 2's SLAT is established and funded by Grantor 1 using Grantor 1's remaining gift and GST tax exemption.

In 2024, the current gift and GST tax exemption amount is at \$13,610,000 less anything that has been previously used.

Under current law, the assets in the SLATs will be outside Grantor 1's and Grantor 2's gross estates.

HOW THE SLAT IS ADMINISTERED

SLAT

Trust Beneficiary Distributions



Spouse
(and descendants)

- The Spouse (and descendants) can receive distributions as a beneficiary of the SLAT at the discretion of the Trustee for their health, education and living expenses (but cannot satisfy the Grantor's obligation to support their spouse). The Grantor can be the trustee, or the Grantor's spouse can be their own Trustee, so long as the powers are limited.
- Additionally, the Spouse (and descendants) can receive distributions as a beneficiary of the SLAT at the discretion of the Special Trustee for any reason. Neither the Grantor nor the Spouse can be the Trustee.
- Provisions at Spouse's Death
 - *Default Rule* – The remaining balance of the SLAT can be held in trust for the benefit of the Grantor's descendants, or in any other manner the Grantor wishes for this default rule.
 - *Rewrite Power* – the Spouse can have the power to rewrite how the SLAT is distributed following the Spouse's death. This power can be exercised at any time down the road, or even multiple times.
- Investment Decisions – Controlled by the Trustee.

ADDITIONAL DETAILS REGARDING THE SLAT

- **The Grantor uses their gift tax exemption to establish and fund a SLAT for their Spouse.**
- **The SLAT is an intentionally defective grantor trust (“IDGT”).**
 - This means the SLAT will have its own taxpayer identification number, but all of the income taxes of the SLAT will be reported on the the Grantor’s income tax return. By the Grantor paying the income taxes of the SLAT, the Grantor will be making tax free gifts to the SLAT which will inevitably help reduce their overall taxable gross estates. This is another instance of the estate tax burn.
- **The SLAT is administered primarily for the Spouse’s benefit.**
 - The SLAT defines the primary beneficiary to be the Spouse (and children are secondary beneficiaries). Due to California law issues, distributions from the SLAT cannot be made to the Spouse to satisfy the Grantor’s legal obligation to support the Grantor’s Spouse. However, distributions that go above and beyond the Grantor’s obligation to support the Spouse can always be made. The distributions will be more expansive after the Grantor’s death.
- **Pursuant to current law, the assets owned by the SLAT (and the appreciation of those assets) will not be includible in the Grantor’s or Spouse’s gross estates at their deaths, or in the estates of their children.**

SUMMARY OF SLAT BENEFITS

- The SLAT allows a Married Couple to utilize their current gift tax exemption to remove assets out of their estate, along with the future appreciation of those assets. The SLAT also keeps these assets out of the Primary Beneficiary's estate for estate tax purposes.
 - Allows the ability to move real estate out of your estate **without property tax reassessment**.
 - Allows Each Spouse to Control the SLAT of which the Spouse is the Beneficiary.
 - Most distributions (varies).
 - All Investments.
 - Ability to rewrite where the remaining assets of the SLAT go at the Spouse's death.
- While we know that you have an \$13.61M exemption amount for the year of 2024 (less any previously used exemption amount), we do not know how much longer that exemption amount will remain available. It is possible that we may see the exemption reduced to \$3.5M or \$5M before 2026 (or at least to \$5M in 2026).

GOOD GRIEF!



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TOPIC 4

DESIRE TO TRANSFER REAL ESTATE
BUT THERE ARE OUTSTANDING ISSUES

CONTROL

INCOME

PROPERTY TAXES

ISSUE – DEALING WITH CONTROL

- **A Common Problem**

- For many, their children or grandchildren have little to no understanding of real estate and the challenges in owning, operating, maintaining, and renting that real estate. How do you engage in good estate planning by removing the asset from your estate, but continue to maintain control?
- Or maybe you have multiple children and only one really has the mindset to run the real estate business. How do you keep everything equal between your children, without risking the operations of the real estate business?

- **Solutions**

- Limited Liability Companies (LLCs) – structured with Managing Members and Non-Managing Members
 - **Managing Member** – Parent/Child with business mindset, controls the LLC.
 - **Non-Managing Member** – does not Control the LLC but receives their proportionate percentage of profits.
- Limited Partnerships (LPs) – structured with a General Partner and Limited Partners
 - **General Partner** – Parent/Child with business mindset, controls the LP.
 - **Limited Partner** – does not control the LP but receives their proportionate percentage of profits.
- Trust – Remember, the Trustee controls the Trust. So have the Trustee be someone who has a business mindset in real estate.

ISSUE – DEALING WITH INCOME

- **A Common Problem**

- When you do estate planning and gift an asset away, you also give away the associated income. While this gets the appreciation and growth out of your estate, this leaves some people in a difficult spot as they were using that income for their lifestyle.

- **Solutions**

- Instead of Gifting the Asset, Sell the Asset to a Trust

- **Why sell to a Trust?** – No income tax recognition on the sale, or the payments on the note, if the trust is an IDGT.
- **Terms of the Sale?** – Generally, you sell the real estate (or LLC) to a Trust, and the Trust gives you a promissory note.
 - The payments on the promissory note allow you to retain an income stream from the assets.
 - However, you also achieve getting the appreciation of the real estate out of your estate. This is maximized by taking discounts.

- Gift Assets to a SLAT

- **Direct and Indirect Access** – While the asset is outside of your estate, your spouse is the primary beneficiary and can use the assets from the SLAT for the spouse's benefit. This allows you indirect access to those benefits as well.

ISSUE – DEALING WITH PROPERTY TAXES

- **A Common Problem** – How to engage in estate planning with real estate without triggering property taxes?
 - Transfers of Real Estate by Deed – Besides the interspousal exclusion, the only current (and limited) exclusion applies when a parent transfers his/her primary residence to a child who then uses that real estate as his/her primary residence.
- **Solutions**
 - Transfer Interests in an LLC or LP to a Trust for Others
 - Generally, an LLC/LP allows you to transfer no more than 50% of the LLC/LP without any property tax reassessment.
 - If the LLC/LP bought the real estate, then you can transfer collectively more than 50% so long as no one acquires more than 50%.
 - After You Transfer the Maximum of 50% of the LLC/LP to Others, Transfer Remaining Interest to a SLAT
 - Once you hit the limit of what can be transferred in an LLC/LP without property tax reassessment, transfer the remaining ownership in the LLC/LP to a SLAT for the benefit of your spouse.
 - Transfers to your spouse, or into a trust for the benefit of your spouse, are excluded from property tax reassessment.
 - By Using BOTH of these Strategies, You Can Remove 100% of the Real Estate From Your Estate Without Property Tax Reassessment

COMBINE THE TOOLS TO MAXIMIZE BENEFITS

- **Set Up One or More Trusts for Your Children/Grandchildren**
 - Use of Exemption – use part or all of your gift tax exemption to get assets out of your estate.
 - Keep Income – if keeping the income is a priority, then sell the assets to the IDGT Trust
 - Control – you can be the Trustee and maintain control over the assets in the Trust.
- **Set Up a Spousal Lifetime Access Trust**
 - Use of Exemption – use part or all of your gift tax exemption to get assets out of your estate.
 - Keep Income – your Spouse is the beneficiary and has access to income. If a priority, you can also sell assets to the SLAT.
 - Control – you can be the Trustee and maintain control over the assets in the SLAT.
 - If No Spouse – have someone create a Beneficiary Defective Inheritor's Trust (BDIT) for your benefit.
- **Have the Real Estate Owned by an LLC/LP**
 - Control – have the managing membership interest or general partnership interest owned by those who have a business mindset.
 - Avoid Property Tax Reassessment on Transfers

THANK YOU FOR YOUR TIME
CONTACT ME TO DISCUSS FURTHER

REMEMBER TO CREATE YOUR BASIC ESTATE PLAN (AND HAVE IT PERIODICALLY REVIEWED). IF YOU WOULD LIKE TO SCHEDULE A MEETING TO CREATE AN ESTATE PLAN, REVIEW AN ESTATE PLAN, OR TO DISCUSS ADVANCED ESTATE PLANNING TECHNIQUES, **PLEASE CONTACT ME FOR A COMPLIMENTARY PHONE CALL OR ZOOM MEETING.**

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