

# Planning Ideas Worth Stealing

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# Our Agenda

- Understanding the status quo
  - *Income tax rates and brackets*
  - *Inflation adjustments*
  - *Interest rate fluctuations*
- Strategies when interest rates are low
- Strategies when interest rates are high
- Building a flexible plan for married couples
- Thoughts on large gifts
- Other fun planning ideas
  - *Avoiding the \$10,000 cap on the deduction for SALT*
  - *Charitable trusts as retirement plan beneficiaries*
  - *Maximizing the step-up in basis*

# 2024 Federal Income Tax Brackets for Individuals

Taxable Income Exceeding		Ordinary Income	Adjusted Net Cap Gain* & Qualified Dividends	Medicare Surtax on Earned Income**	Medicare Surtax on Net Investment Income
Single	Married Filing Jointly				
\$0	\$0	10%	0%	2.9%	0%
\$11,600	\$23,200	12%			
\$47,025	\$94,050				
\$47,150	\$94,300	22%			
\$100,525	\$201,050	24%			
\$191,950	<i>AGI over \$250,000</i>	32%			
<i>AGI over \$200,000</i>	\$383,900				
\$243,725	\$487,450	35%	20%	3.8%	3.8%
\$518,900	\$583,750				
\$609,350	\$731,200	37%			

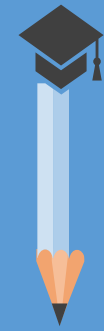
# 2024 Federal Income Tax Brackets for Trusts & Estates

<b>Taxable Income Exceeding</b>	<b>Ordinary Income</b>	<b>Adjusted Net Cap Gain* &amp; Qualified Dividends</b>	<b>Medicare Surtax on Net Investment Income</b>
\$0	10%	0%	0%
\$3,100	24%		
\$3,150			
\$11,150	35%	15%	
\$15,200	37%		
\$15,450			20%



**Federal  
Gift Tax  
Annual  
Exclusion  
Amount**

<b>Date of gift</b>	<b>Annual exclusion amount</b>
2001	\$10,000
2002 – 2005	\$11,000
2006 – 2008	\$12,000
2009 – 2012	\$13,000
2013 – 2017	\$14,000
2018 – 2021	\$15,000
2022	\$16,000
2023	\$17,000
<b>2024</b>	<b>\$18,000</b>



# Section 7520 Rates

Month	\$7520 Rate	Month	\$7520 Rate		
January 2022	1.6%	January 2023	4.6%		
February 2022	1.6%	February 2023	4.6%		
March 2022	2.0%	March 2023	4.4%		
April 2022	2.2%	April 2023	5.0%		
May 2022	3.0%	May 2023	4.4%		
June 2022	3.6%	June 2023	4.2%		
July 2022	3.6%	July 2023	4.6%	Month	\$7520 Rate
August 2022	3.8%	August 2023	5.0%	January 2024	5.2%
September 2022	3.6%	September 2023	5.0%	February 2024	4.8%
October 2022	4.0%	October 2023	5.4%	March 2024	5.0%
November 2022	4.8%	November 2023	5.6%	April 2024	5.2%
December 2022	5.2%	December 2023	5.8%	May 2024	5.4%

# ***Planning Strategies Affected by Interest Rate Changes***



**Short-Term GRATs**

**Ultra-Long-Term GRATs**



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

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

Annuity amount  
-----  
§7520 rate at death



**EXAMPLE:** \$10 million transfer to 60-year GRAT created in February, 2022, when §7520 rate was 1.6%

- Annuity amount = \$260,507
- If §7520 rate at death 25 years later is 6.8%, then gross estate inclusion = \$3,830,985
- But if assets grow at 7%, trust will have \$37,797,509
- So only 10% of trust assets included in gross estate!



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

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Annuity amount  
-----  
§7520 rate at death



**EXAMPLE:** \$10 million transfer to 60-year GRAT created in **February, 2024**, when §7520 rate is **4.8%**

- Annuity amount = **\$510,652**
- If §7520 rate at death 25 years later is 6.8%, then gross estate inclusion = **\$7,509,588**
- But if assets grow at 7%, trust will have **\$21,976,079**
- Here **34%** of trust assets included in gross estate

# ***Planning Strategies Affected by Interest Rate Changes***

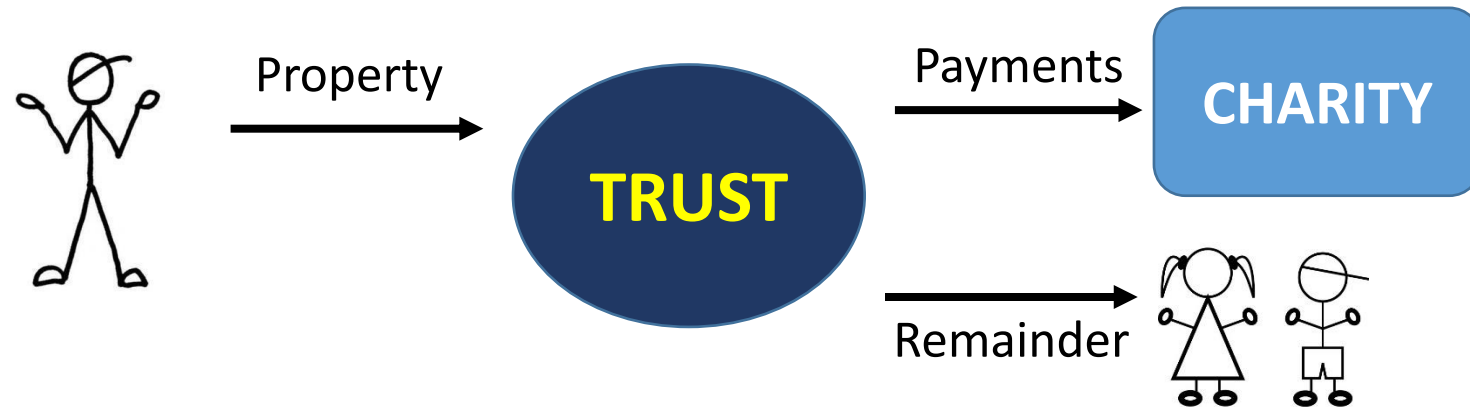


**Short-Term GRATs**

**Ultra-Long-Term GRATs**

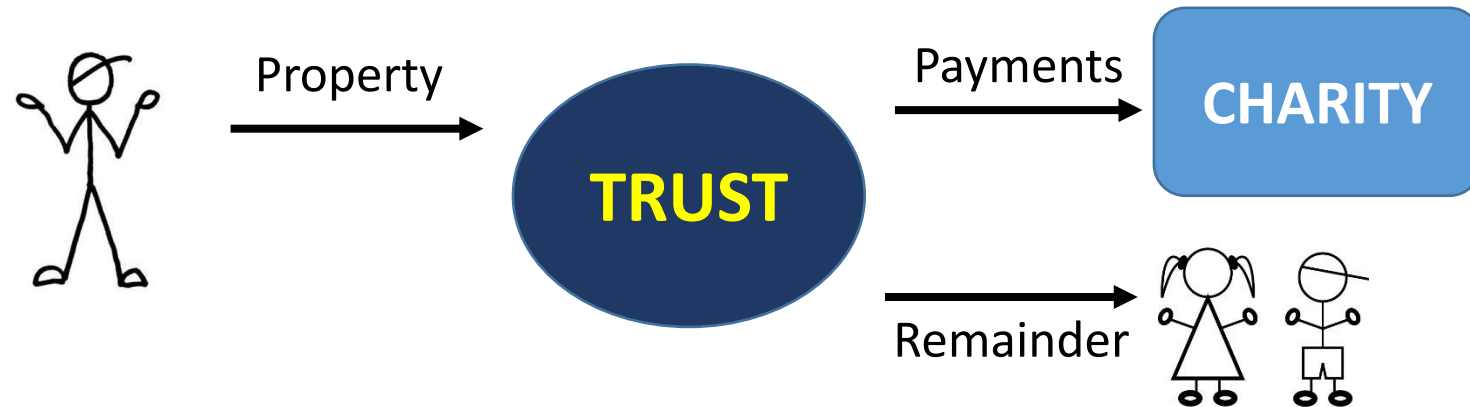
**Charitable Lead Trusts**

# Charitable Lead Trusts



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

# Charitable Lead Trusts



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

# Charitable Lead Trusts

A 20-year CLAT created in February 2022 (using §7520 rate of 1.6%) paying a **5.89% annuity** annually to charity results in a gift of the remainder interest worth **zero**.

The same CLAT created in February 2024 (using §7520 rate of 4.8%) must pay an **7.89% annuity** annually to charity to have a remainder interest worth **zero**.



ZERO  
OUT

# ***Planning Strategies Affected by Interest Rate Changes***



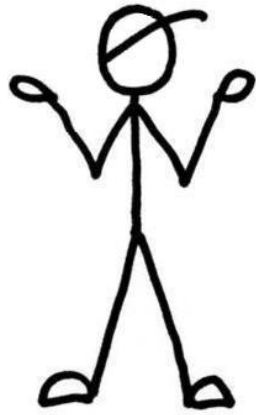
**Short-Term GRATs**

**Ultra-Long-Term GRATs**

**Charitable Lead Trusts**

**Installment Sales to Defective Trusts**

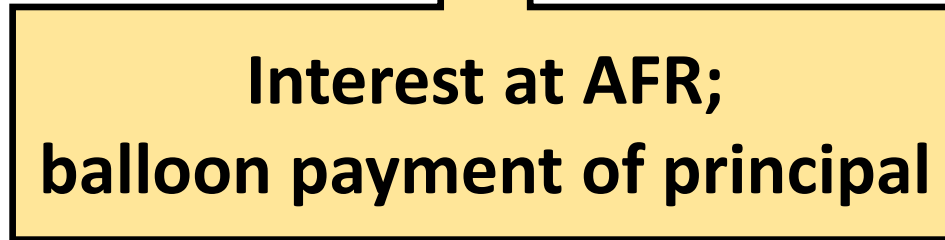
# Installment Sale Transactions



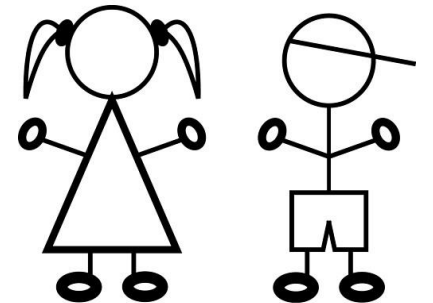
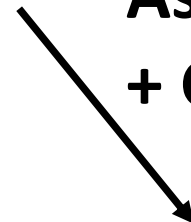
Asset(s)



Promissory Note



Asset(s)  
+ Growth



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



# ***Planning Strategies Affected by Interest Rate Changes***



**Short-Term GRATs**

**Ultra-Long-Term GRATs**

**Charitable Lead Trusts**

**Installment Sales to Defective Trusts**



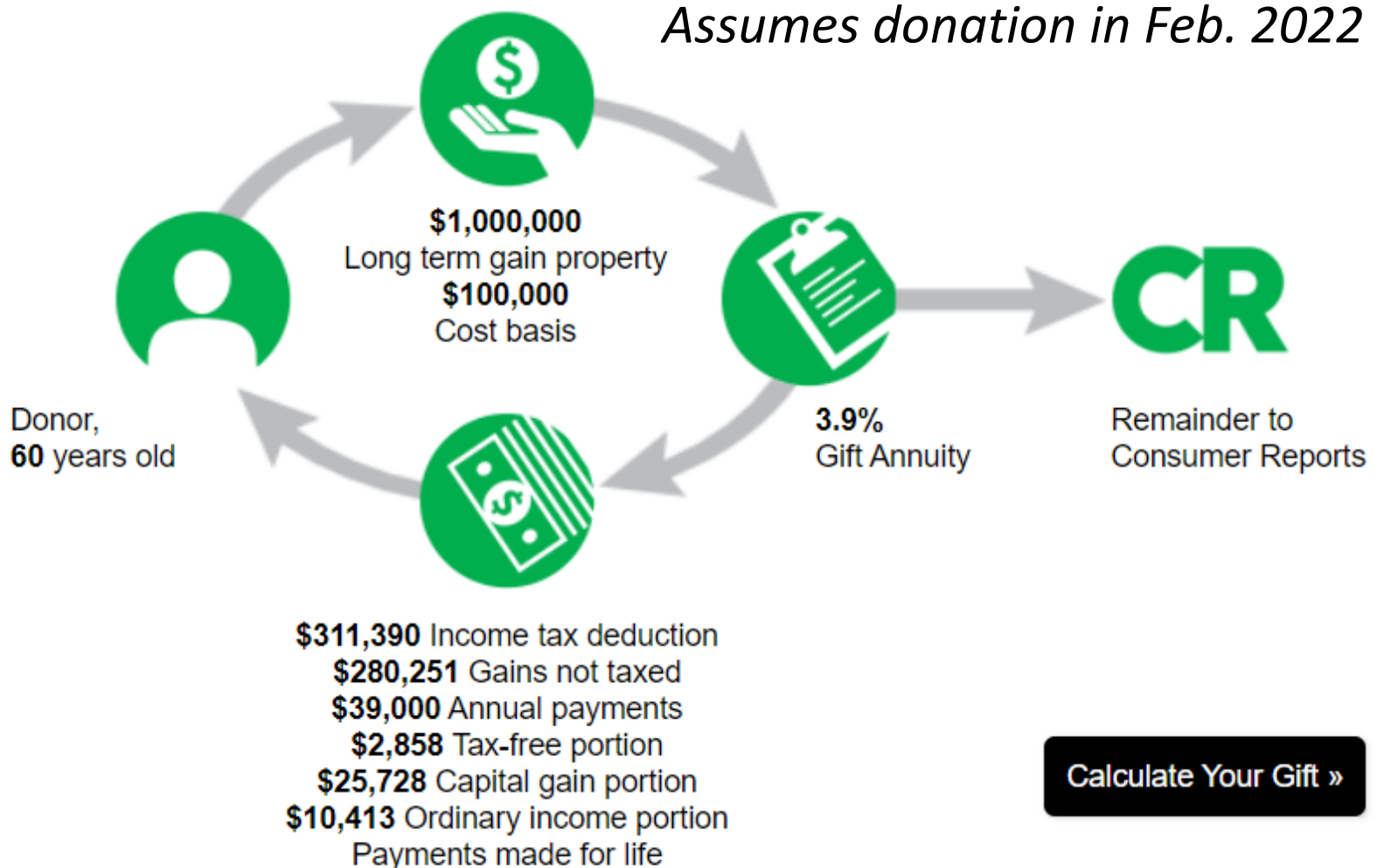
**Qualified Personal Residence Trusts**

**Charitable Remainder Trusts**

**Charitable Gift Annuities**

# Charitable Gift Annuities

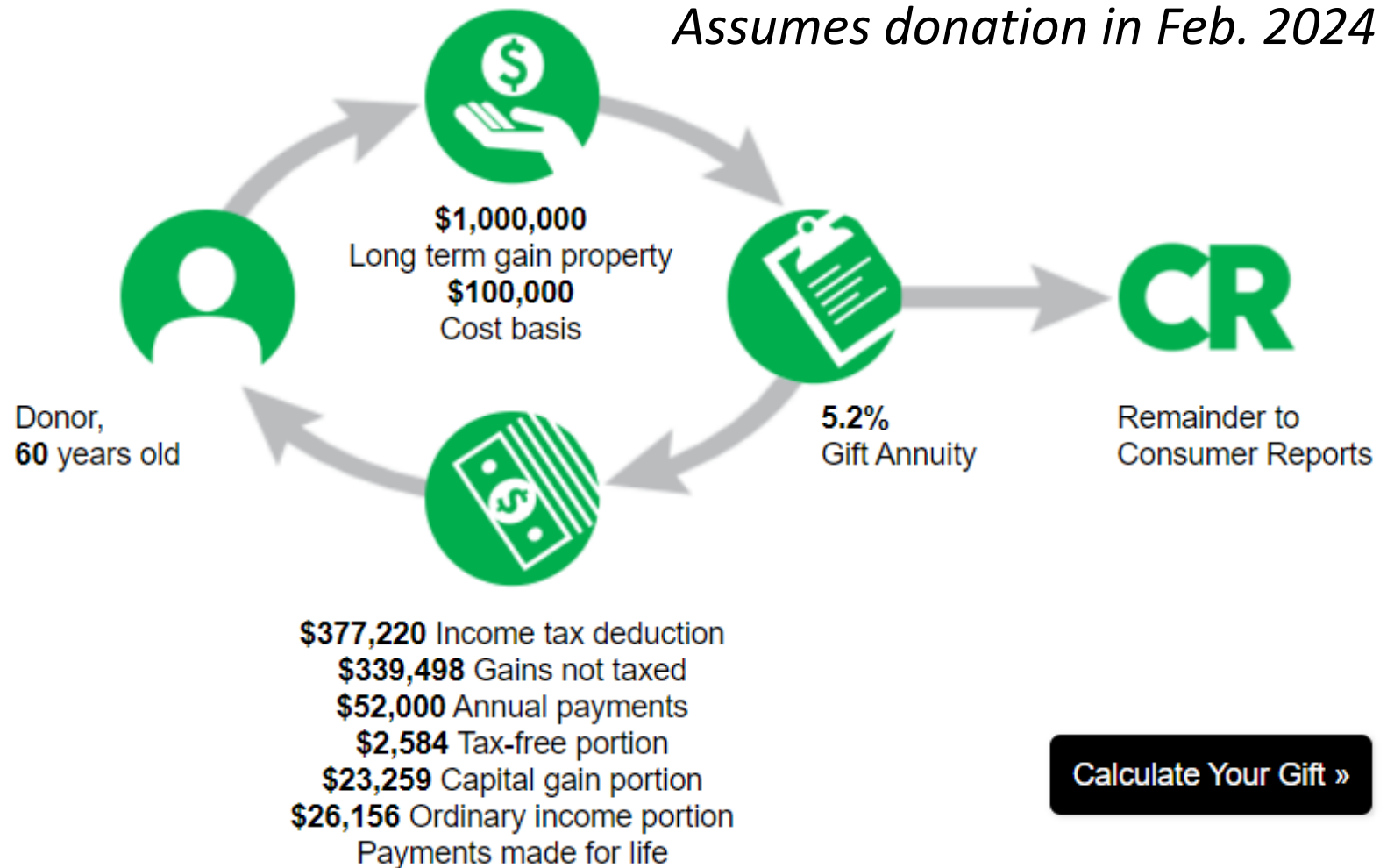
- Donor transfers cash or property to charity in exchange for right to fixed payments for life
- Donor gets income tax deduction for value of charity's interest (value of transfer less present value of donor's expected annuity payments)
- Payments to donor are part-income, part-basis



Total reportable capital gain of \$619,749.00 must be reported over 24.1 years, the expected lifetime of the donor age 60. After 24.1 years, the entire annuity becomes ordinary income.

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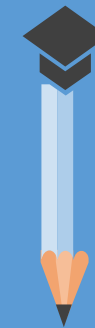


Total reportable capital gain of \$560,502.00 must be reported over 24.1 years, the expected lifetime of the donor age 60. After 24.1 years, the entire annuity becomes ordinary income.



# Estate Planning Templates for Married Couples





# Federal Wealth Transfer Tax Basic Exclusion Amount

Date of death	Basic exclusion amount	Date of death	Basic exclusion amount
2011	\$5,000,000	2018	\$11,180,000
2012	\$5,120,000	2019	\$11,400,000
2013	\$5,250,000	2020	\$11,580,000
2014	\$5,340,000	2021	\$11,700,000
2015	\$5,430,000	2022	\$12,060,000
2016	\$5,450,000	2023	\$12,920,000
2017	\$5,490,000	<b>2024</b>	<b>\$13,610,000</b>

# PLANNING PARADIGMS FOR MARRIED COUPLES



**BUCKET ONE**  
Up to \$13.61 million



**BUCKET TWO**  
\$13.61 - \$27.22 million



**BUCKET THREE**  
\$27.22+ million



# PLANNING PARADIGMS FOR MARRIED COUPLES



## **BUCKET ONE**

Up to \$13.61 million

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



# PLANNING PARADIGMS FOR MARRIED COUPLES



## BUCKET TWO

\$13.61 – 27.22 million

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


# PLANNING PARADIGMS FOR MARRIED COUPLES



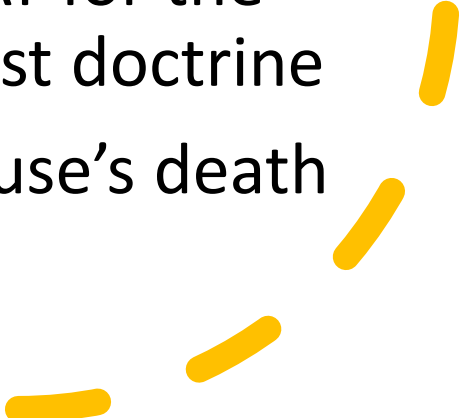
**BUCKET THREE**  
\$27.22+ million

- KEEP CALM AND CARRY ON
  - Charitable planning
  - Life insurance planning
  - Sale transaction planning
- SPOUSAL LIFETIME ACCESS TRUST?

# Spousal Lifetime Access Trusts (SLATs)

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

# Spousal Lifetime Access Trusts (SLATs)

- Once transferred, assets don't return to DS (but BS is free to share distributions voluntarily)
  - BS gets distributions for health, education, maintenance, and support – not whim
  - Upon divorce, BS's interest continues unless "spouse" is defined generically (or divorce serves as termination event)
  - If each spouse wants to create SLAT for the other, need to avoid reciprocal trust doctrine
  - No stepped-up basis at either spouse's death
- 

# Thinking About a Big Gift?

## Issues to Consider

- **Disclaimer** if value declines?



# Disclaimers

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

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

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



**DISCLAIMER**

# Thinking About a Big Gift?

## Issues to Consider

- **Disclaimer** if value declines?
- Give third party a power to confer a **general power of appointment** to the grantor





# Powers to Confer Powers of Appointment

## Common Trust Protector Powers

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



# Thinking About a Big Gift?

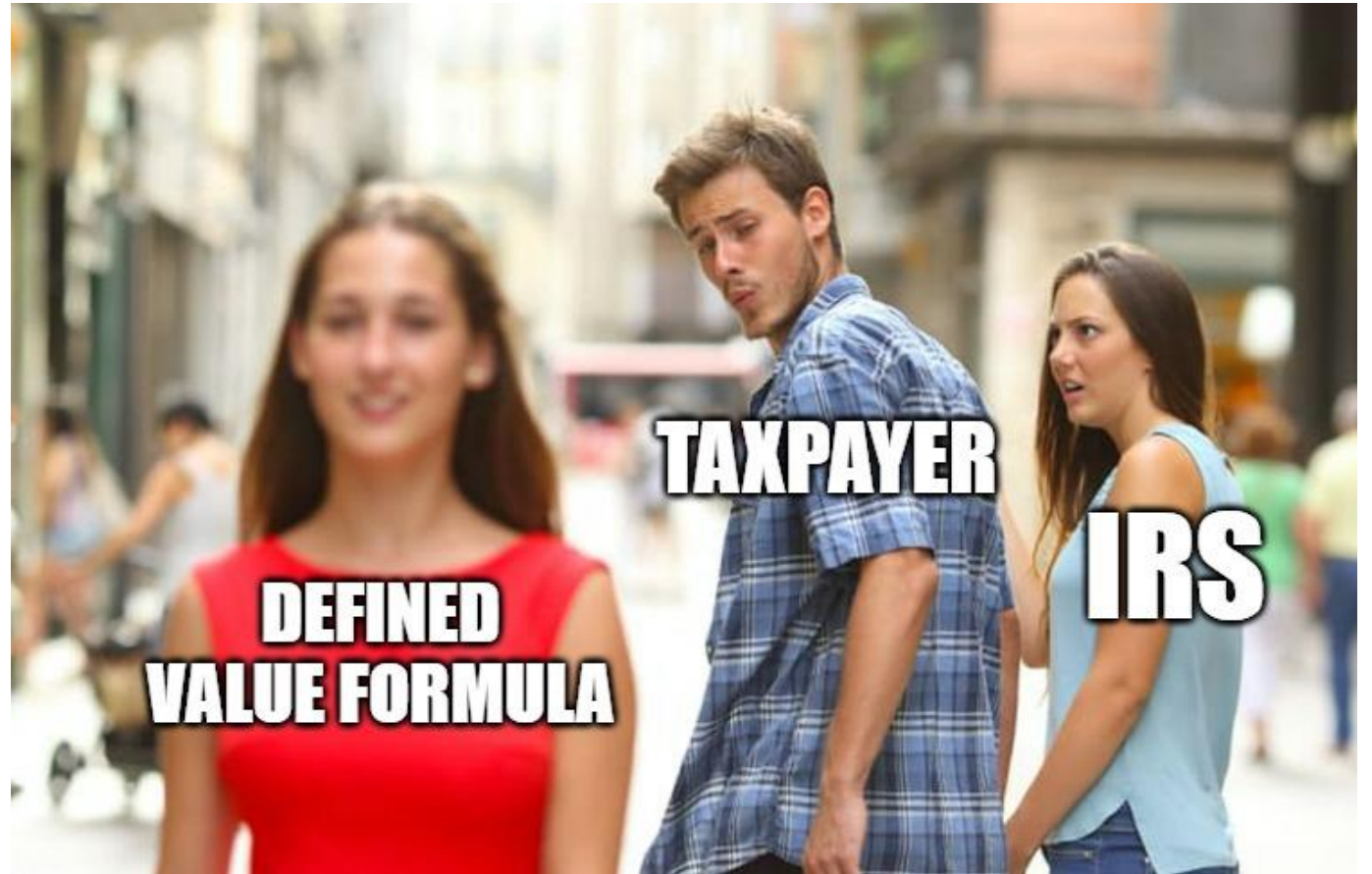
## Issues to Consider

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



# Inter Vivos Gifts Using Formula Clauses

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





# Defining the Transferred Property

→ “*Proctor* clause” (ineffective; condition subsequent)

- Gift expressed as a transfer of **property**, but if it is later established that the value exceeds the donor’s remaining basic exclusion amount, the excess reverts to grantor

→ “*Wandry* clause” (effective)

- Gift expressed as a certain **dollar amount** of property based on value as finally determined for transfer tax purposes
- Any value above stipulated amount reverts to grantor because it was never transferred
- Variations on a theme: (1) express gift as “lesser of” amount determined by appraisal or donor’s remaining exclusion; (2) pair with donee’s disclaimer of any excess value

→ “Charitable formula clause” (effective)

- Value above stipulated amount re-allocated to one or more charities / DAFs
- Worked in *McCord* (5th Cir.), *Petter* (T.C.), *Hendrix* (T.C.), and *Christiansen* (8th Cir.)





## Other Ideas for Planning in the Current Climate

- Avoiding the state and local tax deduction cap
- Charitable remainder trusts for retirement plans
- Maximizing the “step up” in basis

Avoiding the  
cap on the  
deduction for

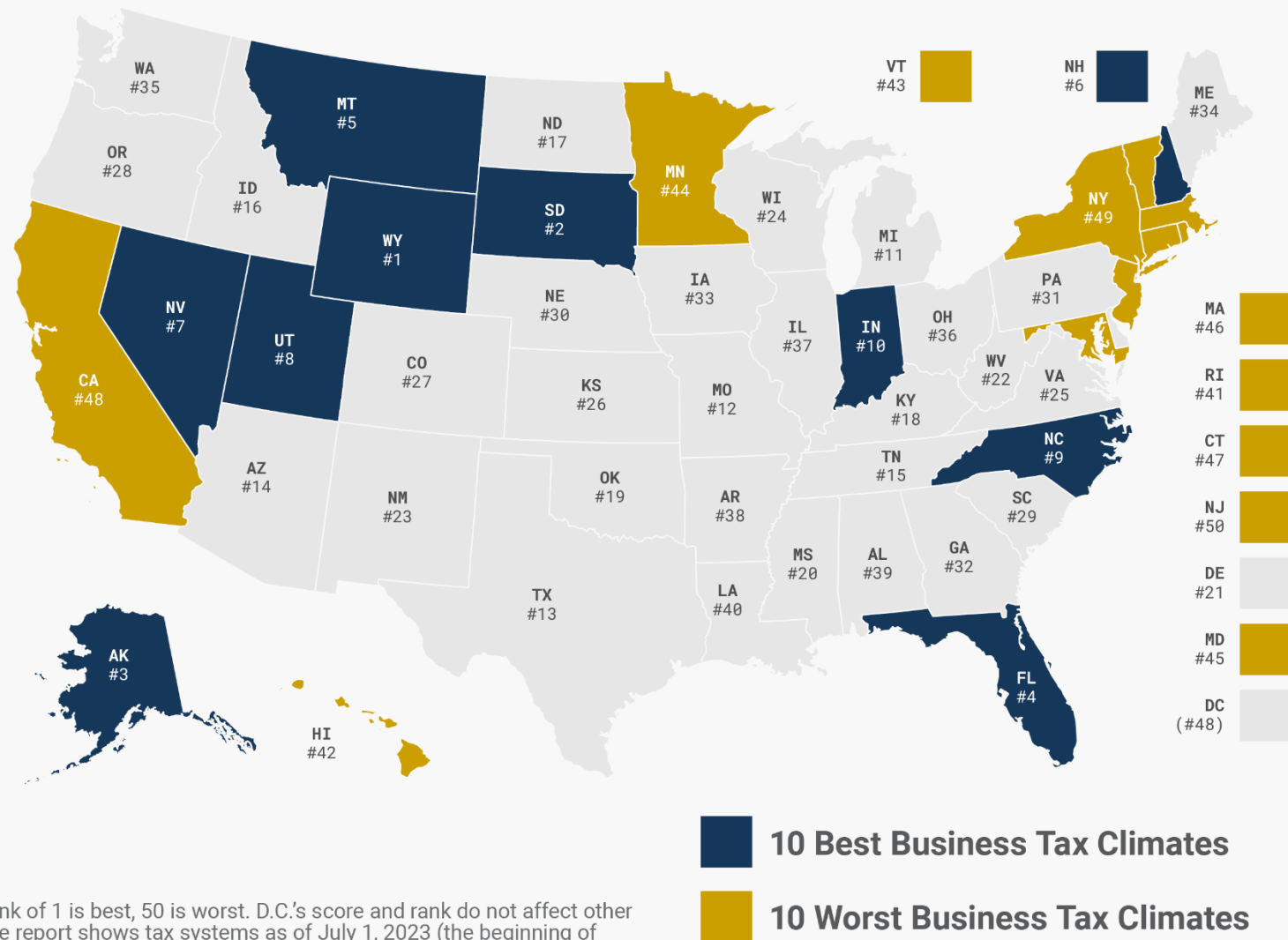
**S**TATE  
**A**ND  
**L**OCAL  
**T**AXES



# 2024 State Business Tax Climate Index

## Understanding the \$10,000 cap on state and local taxes

- (1) Same cap for singles and MFJ
- (2) Applies to personal taxes
- (3) Trusts may be helpful



Note: A rank of 1 is best, 50 is worst. D.C.'s score and rank do not affect other states. The report shows tax systems as of July 1, 2023 (the beginning of Fiscal Year 2024). Source: Tax Foundation.





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

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

The Original:  
**Setting**  
**Every**  
**Community**  
**Up for**  
**Retirement**  
**Enhancement**  
**Act**

# Charitable Remainder Trusts for Retirement Plans

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



# Ideas for Maximizing Stepped-Up Basis

- Exercise of grantor trust swap power near death
- Give trust beneficiaries narrow general power of appointment
- Upstream sales
- Establish trust in community property state







**Thanks  
for Listening**