

**SOME OF THE BEST FAMILY LIMITED PARTNERSHIP  
PLANNING IDEAS WE SEE OUT THERE ©**  
(That Also Have the Merit of Playing Havoc With Certain “Conventional Wisdom”)

**S. Stacy Eastland  
Houston, Texas**

Goldman Sachs does not provide legal, tax or accounting advice. Any statement contained in this communication (including any attachments) concerning U.S. tax matters is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties imposed on the relevant taxpayer. Clients of Goldman Sachs should obtain their own independent tax advice based on their particular circumstances.

Table of Contents

I. INTRODUCTION.....1

II. BEST NON-TAX PLANNING IDEA – OR WHY INVESTMENT PROFESSIONALS LOVE LIMITED LIABILITY COMPANIES AND/OR LIMITED PARTNERSHIPS .....2

A. Introduction.....2

B. Investment and Trustee Management Reasons For the Use of Closely Held Limited Partnerships for the Investor Who Wishes to Create Trusts and Invest in Alternative Investment Classes, as Modern Portfolio Theory Seems to Require. ....2

C. If the Closely Held Family Limited Partnership Facilitates the Indirect Ownership of a Fully Diversified Portfolio By Smaller Trusts and Income Only Trusts, Will that Partnership Be Recognized For Transfer Tax Purposes? .....25

III. BEST FAMILY LIMITED PARTNERSHIP PLANNING IDEA – SELL IT .....32

A. Introduction.....32

B. A Perspective of Modern Integrated Estate Planning. ....32

C. The I.R.C. Section 2036(a)(1) Problem For Decedents’ Who Retain a Significant Family Limited Partnership Interest. ....33

D. The I.R.C. Section 2036(a)(1) Problem Does Not Exist if There is a Substantive Non-Tax Reason For the Creation of the Family Limited Partnership. ....50

E. If a Sale of a Partnership Interest Occurs During a Client’s Lifetime, the Gift Tax Equivalent of I.R.C. Section 2036 Does Not Exist (i.e., There Is No I.R.C. Section 2536 Under Chapter 12 of the Code). ....56

F.	There Are Many Other Reasons, Other Than Avoiding I.R.C. Section 2036(a)(1) Inclusion, for Transferring the Partnership Interest During the Taxpayer’s Lifetime For a Note.....	57
IV.	BEST VALUATION IDEA FOR FAMILY LIMITED PARTNERSHIP INTERESTS – THE DEFINED VALUE ALLOCATION FORMULA CLAUSE.....	62
A.	Introduction.....	62
B.	Defined Value Allocation Clauses Involving a Charity.....	64
C.	Transfer of a LLC That Owns a Leveraged Partnership Interest to a GRAT in Order to Avoid a Gift Tax Surprise. ....	79
D.	Defined Value Allocation Clauses Involving a Residual Gift to a Marital Deduction Trust. ....	105
E.	Defined Value Allocation Clauses Involving Gifts to a Grantor Trust and a GRAT.....	106
F.	Transfers to an Incomplete Gift Trust.....	109
G.	Achieving Finality.....	111
H.	Administrative Issues.....	112
V.	THE BEST LEGAL ARGUMENT AGAINST APPLICATION OF I.R.C. SECTION 2036 TO A DECEDENT’S PARTNERSHIP INTEREST – I.R.C. SECTION 2033 INCLUSION SUPERSEDES I.R.C. SECTION 2036 INCLUSION.....	112
A.	Introduction.....	112
B.	First Fundamental: Except For a Brief Period (1987 to 1990), I.R.C. Section 2033 Has Always Superseded I.R.C. Section 2036 For Estate Inclusion Purposes. ....	117
C.	Second Fundamental: Unless Manifestly Incompatible With the Intent of the Internal Revenue Code, the Courts Are Directed By Section 7701(a)(2) of the Code to Prioritize That Estate Tax Inclusion Section ( <i>viz.</i> , I.R.C.	

	Section 2033) Which Recognizes the Existence of the Partnership Apart From Its Owners For Estate Tax Inclusion Purposes.....	119
D.	Third Fundamental: Congress Intends a Consistent Treatment of Transfers of Assets (Including Partnership Interests) During a Taxpayer’s Lifetime and at Death Under Chapters 11 and 12. The application of I.R.C. Section 2036 Inclusion Instead of I.R.C. Section 2033 Inclusion Generates Inconsistent Treatment. The Application of I.R.C. Section 2033 Inclusion Instead of I.R.C. Section 2036 Inclusion Generates Consistent Treatment. ....	121
E.	Fourth Fundamental: In 1990, Congress Made it Clear That the Application of I.R.C. Section 2036(a) Instead of I.R.C. Section 2033 to Family Partnerships Was Poor Tax Policy, Revoked the Application of I.R.C. Section 2036(a) With Respect to the Inclusion of Family Partnership Interests and Reaffirmed the Priority of I.R.C. Section 2033 Inclusion Over I.R.C. Section 2036(a) Inclusion. ....	123
F.	Conclusion. ....	126
VI.	THE BEST GST PLANNING IDEA FOR A FAMILY LIMITED PARTNERSHIP – THE POSSIBLE USE OF A LEVERAGED GRAT .....	126
A.	Introduction.....	126
B.	Is There a 5% Exception? .....	127
C.	Is There a Technique That Uses the Leverage of the GRAT to Indirectly Profit a GST Trust in Which a Skip Person is Not the Remainderman of the GRAT at the Beginning or End of the ETIP (and Does the Technique Work)? .....	129
D.	The Creation of a GRAT For Full and Adequate Consideration. ....	132
VII.	THE BEST POST-MORTEM FAMILY LIMITED PARTNERSHIP PLANNING IDEA (AND A GOOD INSURANCE PLANNING IDEA) – THE NOTE “FREEZE” PARTNERSHIP .....	140
A.	Introduction.....	140
B.	Non-Tax Reasons For the Creation of a Note Freeze Partnership.....	141

C.	A Partnership That is Created After the Death of a Spouse May Take Advantage of the Estate Assets Receiving a New Basis At Death. ....	142
D.	I.R.C. § 2701 May Apply To Postmortem Partnership “Freeze” Transactions, But Should Not Apply to Note Freeze Partnerships. ....	143
E.	The Advantage of Life Insurance Being Owned By a Note “Freeze” Partnership. ....	144
F.	Other Advantages of the Technique.....	153
G.	The Comparative Results of the Proposed Post-Mortem Plan.....	154
H.	Conclusions.....	154
VIII.	BEST LIFE-TIME CHARITABLE PLANNING IDEA – PARTNERSHIP, OR A LIMITED LIABILITY COMPANY, CREATES A CHARITABLE REMAINDER TRUST WITH THE PARTNERSHIP UNITS EVENTUALLY BEING SOLD TO A GRANTOR TRUST.....	154
A.	Introduction and Case Study Example.....	154
B.	A General Review of the Solution. ....	155
C.	The Concepts. ....	156
D.	The Rules. ....	157
E.	What is the Outcome?.....	163
IX.	BEST TESTAMENTARY CHARITABLE PLANNING IDEA FOR THE FAMILY LIMITED PARTNERSHIP – THE LEVERAGED BUY-OUT CHARITABLE LEAD ANNUITY TRUST.....	166
A.	Introduction.....	166
B.	What is a CLAT? .....	168
C.	What is a Leveraged Buyout Testamentary CLAT? .....	169
D.	What is the Outcome?.....	169

X.	BEST INSURANCE PLANNING IDEA (AND A VERY GOOD ESTATE PLANNING IDEA) – THE LEVERAGED REVERSE FREEZE WITH A CASCADING SALE OF GROWTH PARTNERSHIP INTERESTS .....	172
A.	Introduction.....	172
B.	Example. ....	172
C.	Valuation Advantage: IRS Concedes Preferred Partnership Interests Should Have a High Coupon. ....	174
D.	IRC Section 2036 Advantage: Strong Legislative History Suggests IRC Section 2036 Should Not Apply to Partnerships With Significant Preferred Interests. ....	175
E.	The Valuation Rules of IRC Section 2701 Should Not Apply, if One Generation Transfers the Preferred Partnership Interests to the Second Generation.....	182
F.	The Effect of Cascading Sales to an Intentionally Defective Grantor Trust. ....	183
G.	What is the Comparative Outcome Under the Proposed Plan. ....	183
H.	Use of High Yield Preferred Partnership Interests in Conjunction With Long Term GRATs. ....	186
I.	Conclusions.....	187
XI.	THE BEST IDEAS FOR ALLOWING A CLIENT TO BE IN CONTROL OF FAMILY LIMITED PARTNERSHIP IN THE CONTEXT OF I.R.C. SECTION 2036(a) (2) – REVENUE RULINGS 73-143, 95-58 AND 81-15 .....	187
A.	Brief Summary.....	187
B.	Analysis of Case Law.....	188
C.	Six Separate Methodologies For Avoiding I.R.C. Section 2036(a)(2) Inclusion With Respect to Managing Partner Donors and Owners of Partnership Interests.....	193

SOME OF THE BEST FAMILY LIMITED PARTNERSHIP  
PLANNING IDEAS WE SEE OUT THERE<sup>©1</sup>  
(That Also Have the Merit of Playing Havoc With Certain “Conventional Wisdom”)

I. INTRODUCTION

This is a fun paper for the author. One of the many benefits of the job that I and others at my employer have is that we get to see some outstanding family partnership planning ideas by practitioners.<sup>2</sup> One of the other benefits of this job is that I get to work with some outstanding practitioners in our group, who have helped me with certain ideas presented in this paper.<sup>3</sup> While probably having no hope of being introduced on the Late Show with David Letterman, the purpose of this paper is to introduce to the reader the top 10 ideas that the author has seen in the past year that the author finds himself in the position of talking about with our client’s tax advisors.

As the reader will be able to ascertain, the paper largely adopts the case study approach. The examples, in most cases, assume very significant estates. There is a method to that madness. Each of the ideas presented are inherently being “stress tested” by those significant estates. Stated differently, if the idea performs well in the large estate environment, chances are the idea will also perform very well for smaller estates.

The paper explores not only some of the top ideas that this author has stumbled across, but also tries to focus on a wide range of family limited partnership planning topics and/or purpose based planning strategies that the practitioner may encounter.

---

<sup>1</sup> This material is intended for educational purposes only. The conclusions expressed are those of the author and do not necessarily reflect the views of Goldman Sachs & Co. or any of its affiliates. Goldman, Sachs & Co. does not provide tax or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. While this material is based on information believed to be reliable, no warranty is given as to its accuracy or completeness. Concepts expressed are current as of the date appearing in this material only and are subject to change without notice. Goldman, Sachs & Co. is a member NASD/SIPC.

With respect to the charts throughout this outline, simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. Some of the results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

<sup>2</sup> This list includes Jonathan Koslow and Dan Hastings of Skadden, Arps, Slate, Meagher & Flom LLP; John Porter and Stephen Dyer of Baker Botts L.L.P.; Carlyn McCaffrey of Weil, Gotshal & Manges LLP; Ellen Harrison of Pillsbury Winthrop Shaw Pittman LLP; Richard Dees of McDermott, Will & Emory; Ron Aucutt of McGuireWoods LLP; Mil Hatcher of Jones Day; Dan Daniel of Wiggin & Dana LLP; Dave Cornfeld of Husch & Eppenberger, LLC; and Jonathan Blattmacher of Milbank, Tweed, Hadley & McCloy LLP.

<sup>3</sup> Many thanks to Jeff Daly, Cliff Schlesinger, Karey Dye, Melinda Kleehamer, Michael Duffy and Cathy Bell.



## II. BEST NON-TAX PLANNING IDEA – OR WHY INVESTMENT PROFESSIONALS LOVE LIMITED LIABILITY COMPANIES AND/OR LIMITED PARTNERSHIPS

### A. Introduction.

The conventional wisdom this author sometimes hears on this subject is as follows: “for the passive trustee investor, there does not exist any substantive non-tax investment reason to invest in a family limited partnership;” or “Congress has not expressed its intent in the Internal Revenue Code as to under what circumstances, for transfer tax purposes, family limited partnerships should be recognized apart from its owners as a permissible organizational form for passive investors in marketable stocks and bonds.” This “conventional wisdom,” under the circumstances discussed below, is incorrect.

Congress, for tax purposes, has generally allowed the taxpayer to conduct his financial affairs in the form the taxpayer wishes and does not by statute “second guess” the investment reasons why the taxpayer chooses that form. In fact, for the passive investor who wishes to create trusts for his family and invest in alternative investments, as modern portfolio theory seems to require, the use of the family limited partnership “wrapper” around those is almost a requirement. This section of the paper explores why.

### B. Investment and Trustee Management Reasons For the Use of Closely Held Limited Partnerships for the Investor Who Wishes to Create Trusts and Invest in Alternative Investment Classes, as Modern Portfolio Theory Seems to Require.

#### 1. The case for diversification into several asset classes, including so-called alternative investments.

##### a. Introduction.

During the latter half of the 1990s, the United States witnessed explosive growth in the scope and breadth of wealth held by executives and entrepreneurs. As a result, many very wealthy individuals and families hold a significant portion of their wealth in the stock of one corporation. Over time, and particularly the period 2000 to 2002 with respect to the technology sector, the number of fortunes that have been made and lost as a result of the performance of a single stock brings into focus the risks associated with ownership of large, concentrated stock positions. A successful wealth preservation and estate plan for individuals and families with concentrated stock positions should address preservation of the value of the position and tax efficient diversification. With apologies to many of my economist colleagues who systematically quantify and measure risk, the following discussion is intended merely to highlight for my fellow civilians the benefits of asset diversification.

Most commentators credit Harry Markowitz, a 1990 Nobel Prize winner in Economic Science, with presenting and focusing on the notion that investors should be interested in risk as well as return. Prior to 1950, judgments about the performance of a security were expressed in terms of how much money the investor made or lost. Markowitz’s key insight was the role of diversification. Most investors today grasp that the use of a diversified portfolio will improve risk

by decreasing volatility (i.e., variance of return). Developing a sound asset allocation policy that seeks to identify an appropriate mix of assets (e.g., cash, fixed income, domestic equities, international equities and alternative investments) can improve the return of a portfolio as compared with the desired level of risk.

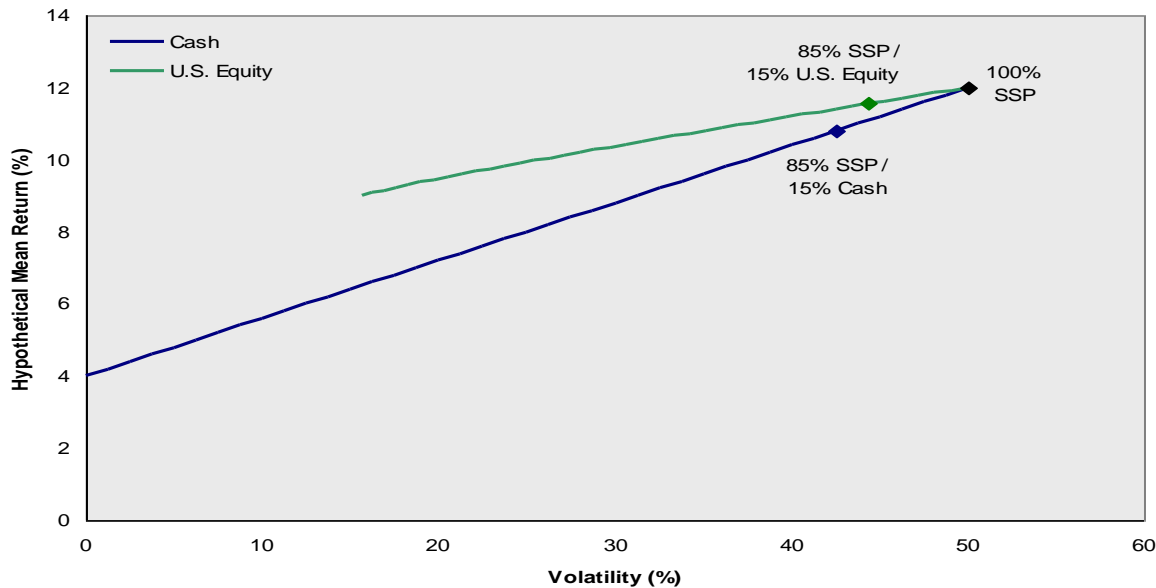
The volatility of the NASDAQ during April 2000 provides a clear example of how quickly wealth can evaporate. Days like April 14, 2000 where the NASDAQ fell 9.7% tend to make even the most optimistic single stockholders consider taking stock off the table.

One important factor is to understand the difference between mean and median. The mean value of a one-dollar lottery ticket is 90¢. The median value of a lottery ticket is, obviously, near “0”. Generally, only about 1/3 of the stocks beat the mean average of their respected index. Stated differently, for the universe of clients who have most of their wealth in one stock, two out of three of those clients will *not* beat the mean average of the stock market. The role of diversification is to achieve for those clients a return closer to the mean than the median.

b. Simplified examples analyzing the effect of diversification.

Individuals who have a concentrated single stock position (SSP) often establish barbell positions – all investable assets in cash and all equity in the concentrated position. The straight line in Figure 1 illustrates the risk/return tradeoff for cash ranging from 100% of assets (the leftmost point of the line) to 0% of assets (the rightmost point of the line, or 100% SSP).

**Figure 1.**



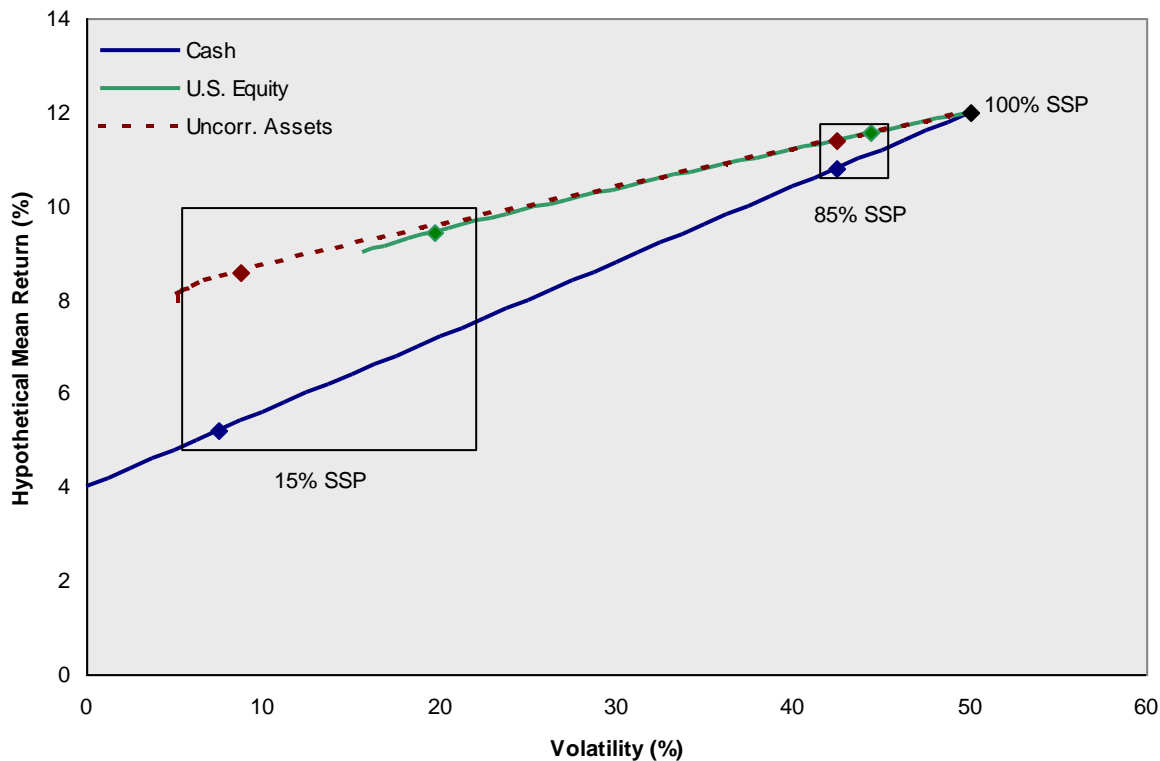
As an example, please note the above 85% SSP/15% cash point. With this allocation, the investor modestly reduces the volatility of the portfolio to 43% from the hypothetical 100% SSP volatility of 50%. This SSP/cash strategy offers a measure of security and peace of mind while providing the flexibility to take advantage of unusual investment opportunities. The disadvantage is the lowering of hypothetical return potential.

As an alternative to holding investable assets in cash, an aggressive investor might place those assets in a well-diversified U.S. equity portfolio. However, if the performance of the SSP is fairly highly correlated with the performance of the broad U.S. equity market, adding U.S. equity will result in only a slight reduction in portfolio risk.

The allocation of 85% SSP/15% U.S. equity is representative of the portfolios of many single stockholders. However, other asset classes, such as uncorrelated alternative assets (e.g. market neutral hedge funds, private equity investments in real estate or oil and gas) and international equity, with lower correlations to the SSP, may act as better diversifiers. Figure 2 illustrates the effect of mixing the SSP with “ideal” uncorrelated assets. In comparison to cash, with 15% invested in uncorrelated assets (and 85% in the SSP), a modest gain in return may be achieved at the same level of volatility (42%) as the SSP/cash portfolio. However, truly uncorrelated investments are difficult to obtain. Even many hedge funds that claim market neutrality are found to have significant correlations to other asset classes. For example, because many long-short equity managers tend to tilt long during bull markets, these managers are likely to show substantial positive correlations with the equity market.

**Figure 2.**

**Barbell Portfolios Consisting of SSP and Other Asset Classes.**



All three portfolios with 85% SSP are clustered near a volatility of 42%-46%. This volatility is around three times the historical 14% volatility of the S&P 500.<sup>4</sup> Regardless of how the remaining 15% of the portfolio is invested, the total risk is dominated by the volatility of the SSP. This observation implies that theoretical asset allocation can do little to improve the risk/return tradeoff if the equity position is highly concentrated. Shareholders who wish to reduce their overall portfolio risk over time generally consider a regular selling program that will gradually reduce the stock concentration.<sup>5</sup>

As holdings of the SSP drop below 50% of assets, the importance of asset allocation increases. Figure 2 shows that with only 15% of assets in the SSP, a wide range of portfolio volatilities and returns are possible, depending on the asset allocation. At this level of SSP exposure, some very high net worth investors choose a hybrid strategy in which they establish a pool of very safe money. For example, suppose one third of total assets invested in short duration fixed income was sufficient to support the current lifestyle forever, even if all other investments went to zero. In this case, the investor might choose a “barbell” strategy in which the non-fixed income assets are invested very aggressively, reasoning that the upside potential is unlimited, and even disastrous equity market performance will have no lifestyle impact.

For investors whose total wealth is overwhelmingly dominated by the SSP, another approach to managing assets is to view the investable portion of assets separately. In this case, an asset allocation policy for the investable assets that is consistent with long-term goals and objectives can be established. As shares of the SSP are liquidated, the proceeds could be invested in a wide range of asset classes in the proportions prescribed by the long-term asset allocation plan. However, one disadvantage to this simple approach occurs when, at the outset, only modest funds are available for investment. In this case, the dollar amount available for investment in certain asset classes may be insufficient to meet various investment minimums (e.g. uncorrelated alternative assets and private equity).

An alternative plan might be to select a target allocation based on where an investor wants to be in a few years. At the outset, the investor may fill in asset class “buckets” that tend to have low correlation with the SSP position: fixed income, international equity, and uncorrelated alternative assets. As the SSP position is further reduced, there will be a gradual increase in the commitment to U.S. Equity.

In contrast to public investments, private equity commitments might be made at the onset since drawdowns for these investments typically extend for several years after commitment. Once SSP holdings are reduced to a small fraction of assets (e.g. 15%), the investor will have steadily moved toward a well-diversified allocation with significant allotments to U.S. equity, international equity, and private equity. Figure 3 shows how the broad asset class allocation may ultimately be broken down into tactical implementations. The actual proportions invested in each

---

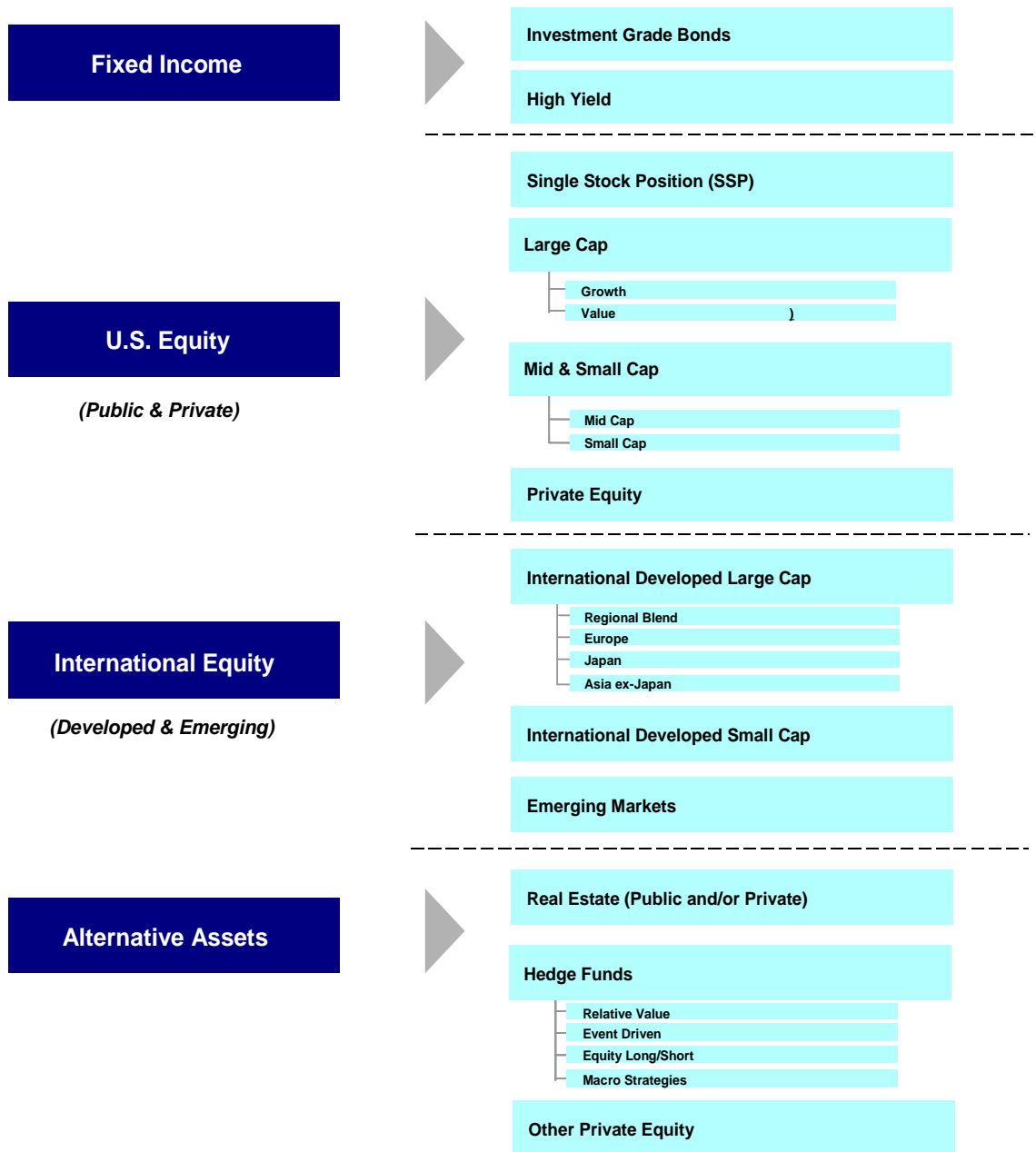
<sup>4</sup> Monthly return data obtained from Wilshire Associates (1975-1999).

<sup>5</sup> If an investor has the ability to use leverage by borrowing against the SSP position, that might allow greater exposure to diverse asset classes while still holding the SSP. However, utilization of leverage leads to a greater risk of monetary loss.

asset class will be determined by an investor’s goals, risk tolerance, tax status, and a combination of qualitative and quantitative judgments.

The problem with private equity commitments, which are very important in reducing risk for the desired return for an investor, is that the *trust* investor has great difficulty, in many cases, investing in that desired asset class. The reasons are noted below. The cure is the use of a closely held family limited partnership or a family limited liability company “wrapper”.

**Figure 3.**  
**Sample Strategic Asset Allocation Implementation Plan**



2. The first investment reason certain trusts are benefitted by the creation of family limited partnerships: closely held family limited partnerships may facilitate the ability of smaller trusts to hold alternative investments and follow modern portfolio theory.

*Example 1: Client Wishes to Create Several Trusts For the Benefit Of Family Members and Follow Modern Portfolio Theory*

*Marvin and Maggie Modern have substantial assets including over \$30,000,000 in financial assets. They are believers in modern portfolio theory and the need for an asset class of alternative investments.*

*Marvin and Maggie Modern wish to give \$300,000 to separate trusts for each of their grandchildren. Marvin and Maggie understand modern portfolio theory and the importance of diversification. They want the grandchildren's trusts to invest for the greatest risk-adjusted return and are concerned that the trusts will not be large enough to meet SEC limitations on who may invest in certain alternative asset classes.*

*In addition to current gift planning, Marvin and Maggie want to provide a qualified terminable interest marital deduction trust ("QTIP") for the surviving spouse under their estate plans. Many of their personal alternative asset investments are held in private equity partnerships now. Marvin and Maggie worry that these investments could cause income tax fairness issues for the QTIP trust – that is, they worry that the surviving spouse, as income beneficiary, may bear a disproportionate amount of income tax liability on the alternative investments - but still feel strongly that the QTIP trust should have exposure to alternative asset classes.*

*When Marvin and Maggie asked their investment adviser to fund a series of GRATs with alternative investments, their advisor explained that the alternatives manager might not be willing to divide the title to those investments to make annuity payments over time. Even if the manager did permit the division of the alternative investment between two separate owners (the annuitant and the GRAT), potential transfer complications may make it difficult to make the annuity payment within 105 days of its due date if the request to divide is not timely.*

*Marvin and Maggie ask their attorney, Pam Planner, how to structure their investment portfolio so the trustees for their grandchildren's individual trusts, the survivor's QTIP trust and the proposed GRATs can invest in the broad array of asset classes necessary to maximize risk-adjusted return under modern portfolio theory.*

Pam Planner recommends that Marvin and Maggie transfer their significant investment portfolio to a partnership or limited liability company so they have an investment entity that meets the accredited investor and qualified purchaser tests under applicable securities laws. The family limited partnership ("FLP") will not be created for the purpose of accessing a specific hedge fund or private equity investment, and the FLP will have a mix of investment assets. At a later date,

Marvin and Maggie could give \$300,000 worth of partnership interests to their grandchildren's trusts instead of cash. The survivor's QTIP trust could own partnership interests as well. The partnership, with its larger pool of capital common to all trusts, could own a diversified portfolio.<sup>6</sup>

a. Securities laws.

Alternative investments often come in partnership or LLC wrappers for a reason. Managers of hedge funds and private equity funds generally seek one or more exemptions from registration under U.S. securities laws for two reasons. First, the cost to comply with the initial disclosure and ongoing reporting requirements of major U.S. securities legislation is substantial. Large companies who seek to raise capital in the public market can more easily bear these costs than smaller funds which target more narrow investment objectives. Second, federal law strictly limits the amount of leverage fund managers can use in certain funds available to the general investing public. That limitation prevents managers from using a number of debt-financed investment techniques. Some sophisticated investors, however, want access to portfolios that employ leverage.

Generally, private equity and hedge fund partnerships operate under two basic formats. In broad brush, these partnerships either (1) admit no more than 100 investors who are "accredited investors" (defined below), or (2) in the case of U.S. organized partnerships, admit no more than 499 investors who are "qualified purchasers" (defined below) and in the case of non-U.S. organized partnerships, admit no more than 299 investors who are "qualified purchasers."

Most hedge fund managers seek the latitude to pursue a broad array of investment strategies, some of which are not available within the regulatory and leverage restrictions under the Investment Company Act of 1940 (the "1940 Act"). But first, to understand the background of that legislation and to review the definition of "accredited investor," it is helpful to understand the history of two significant securities laws enacted in the 1930s.

b. The Securities Act of 1933 and the Securities Exchange Act of 1934.

Congressional members introduced major legislation to address the securities market after the U.S. financial market crash of 1929. It enacted many of these legislative initiatives during the Great Depression. The thesis of the 1930s legislation is that the securities markets operate more efficiently and transparently if investors have more information to evaluate a company generally and its proposed offering of securities specifically before making a purchase. Accordingly, the Securities Act of 1933 (the "1933 Act") regulates securities offered or sold to the general investing public in the United States by the original issuer. "Securities" for this purpose is broadly defined and can include partnership interests in private equity, hedge funds and other alternative investments. To ensure prospective investors have a significant amount of financial information,

---

<sup>6</sup> The investing benefits to a trust investing in a closely held family partnership is one of the reasons the Tax Court rejected the IRS's Internal Revenue Code Sections 2035(a)(1), 2036(a)(2), 2038 and 2035 arguments in *Mirowski v. Commissioner*, T.C. Memo 2008-74 (March 26, 2008). See pages 10-12, 18-19 and 40 of that Opinion.

a company must file an extensive registration statement with the Securities and Exchange Commission (“SEC”) about its operations and a detailed prospectus about the specific securities for sale unless an exemption from registration applies.

Most securities trading occurs between holders who have no direct relationship with the issuing company. Those transactions fall under the rubric of “secondary trading.” The 1933 Act addressed only the original issuance of securities. To cover secondary trading, Congress enacted the Securities Exchange Act of 1934 (the “1934 Act”). The 1934 Act created the SEC. It provided rules for securities associations and exchanges.<sup>7</sup> It also required companies with regulated securities available in the secondary market to file extensive updated company information with the SEC regularly.

The 1933 Act provides issuing companies with a number of exemptions from registration. Because the registration requirements of the 1933 and 1934 Acts are time consuming and expensive, especially for smaller companies or funds, and failure to comply leads to substantial penalties, finding an exemption is highly desirable. Regulation D under the 1933 Act grants an exemption from registration to a company that sells its securities in a private placement to what are known as “accredited investors.”<sup>8</sup>

As defined by Rule 501 of Regulation D, the term “accredited investor” includes, among other things:

- Any natural person whose individual net worth, or joint net worth with the person’s spouse, exceeds \$1 million at the time of the purchase;
- Any natural person whose individual income exceeded \$200,000 in each of the two most recent years or whose joint income with that person’s spouse exceeded \$300,000 for those years and who has a reasonable expectation of the same income level in the current year;
- Any corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5 million;
- A trust with total assets in excess of \$5 million, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) (for this purpose, Rule 506 (b)(2)(ii) defines a “sophisticated person” as “one who has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment”); and
- Any entity in which all of the equity owners are accredited investors.

---

<sup>7</sup> Examples include the New York Stock Exchange (NYSE), the American Stock Exchange (AMEX) and the National Association of Securities Dealers (the association that operates NASDAQ), brokers, transfer agents and clearinghouses.

<sup>8</sup> 17 C.F.R. § 230.501 *et seq.*



Marvin and Maggie easily qualify as accredited investors under Regulation D because of their income and personal net worth. As such, they are free to acquire investments that can be offered only to accredited investors. When they fund the FLP with cash and various investments, the FLP will also qualify as an accredited investor since all the equity owners of the FLP will be accredited investors. In addition, the FLP itself will qualify because it will own well over \$5 million in assets and will not be formed with the acquisition of a specific investment in mind.

If the Moderns sell LP interests to the grandchildren's trusts through a private sale without a general solicitation, the sale will generally not trigger 1933 or 1934 Act registration requirements. However, in the absence of full disclosure at the time of sale, the purchaser could technically later seek to exercise a rescission right pursuant to Rule 10b-5 of the 1934 Act. The successful exercise of a rescission right would be to the detriment of the FLP only to the extent that the assets of the FLP have declined in value since the time that the sale was made, and accordingly a rescission right will not negatively impact the FLP if its assets have increased in value since the time of sale. In addition, the Moderns will need to consult with their counsel to determine whether any state law requirements must be met in connection with such a sale. In certain circumstances, state laws may also provide for rescission rights similar to those that exist under Rule 10b-5 of the 1934 Act. Alternatively, if the Moderns were to give FLP interests to their grandchildren's trusts and the GRATS as a bona fide gift, neither federal securities law nor state law would apply to such gift.

c. Investment Company Act of 1940.

The 1940 Act regulates companies that at the same time invest and trade in securities, and also offer their own securities for purchase to investors. The most common examples of entities subject to the 1940 Act are publicly traded open-end and closed-end mutual funds. Mutual funds allow investors with smaller amounts of capital to own a diversified portfolio of stocks, bonds or other securities. The 1940 Act can also apply to private equity funds, hedge funds and other alternative investments, but it impacts hedge funds most directly. If the 1940 Act applies, a company must make extensive disclosures to prospective investors about the company, the fund it offers and the fund's investment objectives.

The 1940 Act goes beyond disclosure requirements. An investment company registered under the 1940 Act has strict limits on the amount of leverage it can use. It may not issue debt or other senior securities unless its asset coverage (i.e., its assets to debt ratio) is at least 300% after considering the debt issuance. Moreover, an investment company registered under the 1940 Act may not pay any dividends on its common stock if its asset coverage in respect of outstanding indebtedness drops below 300%. Debt holders must also be given control of the board of directors of the investment company if asset coverage drops below 100% for a year or more. Leverage can substantially increase an investor's return, although it can also quickly magnify losses as well. For widely traded public mutual funds accessed by investors with limited capital, the debt coverage ratio is protective. Many hedge fund managers, however, wish to employ leverage either as a consistent investment strategy or opportunistically, and some investors want access to those strategies.

The key exemption to registration under The 1940 Act for hedge fund managers is called the “qualified purchaser” exemption. It provides an exemption for issuers whose outstanding securities are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers.<sup>9</sup>

The 1940 Act goes on to define a “qualified purchaser” as one of the following:

- A natural person (including any person who holds a joint, community property or other similar shared ownership interest in an issuer with that person's qualified purchaser spouse) who owns not less than \$5 million in "investments" (as defined by the SEC);
- Any person acting for its own account or the accounts of other qualified purchasers who in the aggregate owns and invests on a discretionary basis at least \$25 million in "investments";
- A company that owns not less than \$5 million in "investments" and that is owned directly or indirectly by two or more natural persons who are related as siblings, spouses, direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, trusts or charitable organizations established by or for the benefit of such persons (a "family company");
- A trust not formed for the specific purpose of acquiring the securities offered and as to which the trustee or other person authorized to make decisions with respect to the trust, and each person who has contributed assets to the trust are qualified purchasers; and
- A company in which all beneficial owners of all securities issued are qualified purchasers which was not formed for the specific purpose of acquiring the securities offered.<sup>10</sup>

Section 2(a)(8) of the 1940 Act also provides:

“Company” means a corporation, a *partnership*, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his capacity as such. (*Emphasis added*).

---

<sup>9</sup> Investment Company Act of 1940 § 3(c)(7) provides an exemption from registration for “any issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of such securities. Securities that are owned by persons who received the securities from a qualified purchaser as a gift or bequest, or in a case in which the transfer was caused by legal separation, divorce, death, or other involuntary event, shall be deemed to be owned by a qualified purchaser, subject to such rules, regulations, and orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.”

<sup>10</sup> Section 2(a)(51) of the 1940 Act and Rule 2a51-3 of the 1940 Act.

Marvin and Maggie's joint net worth in excess of \$30 million exceeds the threshold of \$5 million in investments for an individual to be a qualified purchaser. When they fund the FLP with cash and investments of \$20 million, the FLP itself will be a qualified purchaser because all of the initial equity owners of the FLP (Marvin and Maggie) are qualified purchasers. The FLP will also qualify as a qualified purchaser under a different provision if its investment portfolio grows to \$25 million. The FLP also qualifies under the "family company" exception which requires only \$5 million in investments because of the family relationship between the Moderns and the future owners.<sup>11</sup> Finally, Marvin and Maggie's transfers to the grandchildren's trusts and the GRATs are acceptable because securities received from a qualified purchaser as a gift or bequest are deemed to be owned by a qualified purchaser.<sup>12</sup>

d. The outcome.

Marvin and Maggie want to move forward with their advisor's recommendations. At a recent family meeting they described the plan to their sons. Marvin and Maggie propose to establish an FLP in which each of them will initially own a .3% interest as a GP and a 49.5% interest as an LP, so that together they will own 99.6% of the partnership interests. They invite each of their sons to invest a *pro rata* amount equal to .2% of the partnership's initial value in exchange for GP interests. As GPs, Marvin and Maggie, and the survivor of them, will control the FLP's investment policy and administrative decisions. Their sons, as GPs, will determine the partnership's distribution policy.

Marvin and Maggie intend to invest the FLP in a \$20 million diversified portfolio of investments. A reasonable portion of the portfolio, based on the GPs' statement of the FLP's investment objectives and risk parameters, will access alternative investment vehicles designed to participate in a wide variety of market opportunities, including risk arbitrage, venture, mezzanine, real estate and distressed investing. To fill in their specific asset allocation to these categories, Marvin and Maggie, with the help of their investment advisor, will select individual managers as well as "fund-of-funds" investments.

Once Marvin and Maggie have fully funded the FLP's investment portfolio, they will transfer LP interests to the grandchildren's trusts and to a series of nearly zeroed-out GRATs for their children. To the extent Marvin or Maggie receive LP interests as annuity payments from the GRATs, they plan to transfer the interests to new GRATs or to trusts for the grandchildren over time. Their ultimate goal is to transfer 100% of the LP interests to their children and grandchildren before the death of the surviving spouse. With proper planning, however, any FLP interests that have not been transferred by the death of the first spouse can be held in a marital trust for the surviving spouse.

---

<sup>11</sup> Section 2(a)(51)(ii) of the 1940 Act; *Cf.* ABA Letter, SEC No-Action Letter, at Section C, Question 4 (Apr. 22, 1999); Meadowbrook Real Estate Fund, SEC No-Action Letter (August 26, 1998).

<sup>12</sup> See footnote 8.

Marvin and Maggie explain to their family that the FLP is necessary to satisfy investment managers with large minimums, to keep a diversified pool of assets together, and to facilitate transfers for investment and estate planning purposes. They intend to engage a qualified appraiser to determine the fair market value of their LP interests at the time of each gift. On the administrative side, they will hire tax preparers to keep the books of the FLP and to make all the required federal and state tax filings. They will maintain separate bank and brokerage accounts for the FLP.

3. The second investment reason certain trusts are benefitted by the creation of family limited partnerships: closely held family limited partnerships facilitate income only (so-called simple) trusts to be fully diversified, as modern portfolio theory seems to require.

Smaller trusts may access alternative investments through a closely held partnership as described above. The second investment advantage of family limited partnerships for certain trusts is for income only trusts. Even income only trusts with an asset base large enough to permit stand alone alternative investing can benefit from a partnership wrapper because of the way distributions from a closely held partnership are characterized for income and principal trust accounting. Although mandatory income trusts are not as common today as they were in the past, they continue to be important for QTIP.

- a. Closely held limited partnerships could be a tool to manage distribution fairness issues associated with distributions (or lack of distributions) from alternative investments for income only trusts.

Hedge funds and private equity investments are generally offered as private partnership structures to certain investors. These investments pose certain challenges to mandatory income and income-only trusts. Hedge funds tend to produce short-term capital gains due to their short-term tactical trading strategies. Private equity investments, on the other hand, tend to generate long-term capital gains due to their buy and hold strategies.<sup>13</sup> In either case, these private investment partnerships generally distribute little or no “income” as that term is defined for fiduciary accounting purposes, which means that their cash returns are not income which the trustee is obligated to distribute.<sup>14</sup> As a consequence, to produce the requisite income, a trustee may be forced to invest the trust portfolio in high dividend and high interest bearing investments, and away from growth stocks, hedge funds and private equity, thereby skewing the desired risk adjusted return profile of the trust’s portfolio. Recent changes in the laws of many states permitting adjustments between principal and income by the trustee, and/or permitting trust “income” to be defined as a unitrust amount (a fixed percentage of the trust’s value, revalued annually) have eased this pressure somewhat, but do not solve the problem presented by hedge fund and private equity investments. Unlike marketable securities, hedge fund and private equity investments may be difficult to revalue annually, as required under a unitrust definition of income.

---

<sup>13</sup> See generally IRC §1222; private equity managers generally produce long-term capital gains through selling their underlying investments in portfolio companies, IPOs, and leveraged recapitalizations.

<sup>14</sup> IRC §2056(b)(7).

Often it will not be possible to distribute units of such interests to trust beneficiaries in satisfaction of the unitrust amount or as part of an adjustment from principal to income, because beneficiaries are not and perhaps cannot qualify as investors in the fund. Additionally, most general partners of alternative investments have the right to decline transfer requests. Satisfaction of an adjustment or of a unitrust amount may therefore require other trust assets to be distributed, potentially distorting the trust's overall asset allocation.

b. Trusts: Income-Only Marital Trusts.

Generally, for estate tax purposes the federal government allows a married couple to be treated as a single economic unit, which means that a married couple who plans properly may defer all federal estate taxation on the couple's assets until the death of the surviving spouse. U.S. citizens commonly use a "marital deduction power of appointment trust" or a "qualified terminable interest property trust" ("QTIP") to obtain this estate tax deferral. To qualify for the marital deduction, a surviving spouse must receive an income interest for life.<sup>15</sup> The trustee cannot circumvent this mandatory income requirement by investing in non-income producing property unless the surviving spouse gives the trustee permission to make that investment.<sup>16</sup>

A trustee who holds a partnership interest must exercise special care to observe the "qualifying income interest for life" requirement in a power of appointment trust or a QTIP trust as set forth in the Internal Revenue Code ("Code").<sup>17</sup> There is no bright-line rule that applies to a partnership interest but, in addition to the surviving spouse's right to compel the trustee to make the property productive, at least one expert suggests that the partnership might have to pay at least 3% of its net asset value per year to satisfy the income requirement of the Code and Treasury Regulations.<sup>18</sup> However, no case or published ruling actually sets forth this percentage requirement.

---

<sup>15</sup> Treas. Reg. §20.2056(b)-7(d)(2) (concerning QTIP trusts) provides for the application of the principles of Treas. Reg. §20.2056(b)-5 and in particular §20.2056(b)-5(f) (power of appointment trusts) regarding the surviving spouse's right to all income for life; Treas. Reg. §20.2056(b)-5(f)(1) provides: "[T]he surviving spouse is 'entitled for life to all the income from the entire interest or a specific portion of the entire interest'...if the effect of the trust is to give her substantially that degree of beneficial enjoyment of the trust property during her life which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust. Such degree of enjoyment is given only if it was the decedent's intention, as manifested by the terms of the trust instrument and the surrounding circumstances, that the trust should produce for the surviving spouse during her life such an income, or that the spouse should have such use of the trust property as is consistent with the value of the trust corpus and with its preservation. The designation of the spouse as sole income beneficiary for life of the entire interest or a specific portion of the entire interest will be sufficient to qualify the trust unless the terms of the trust and the surrounding circumstances considered as a whole evidence an intention to deprive the spouse of the requisite degree of enjoyment."

<sup>16</sup> Treas. Regs. §20.2056(b)-5(f)(5); *See, e.g.*, I.R.S. Priv. Ltr. Rul. 8931005 (marital trust funded solely with closely held stock qualified for marital deduction because wife had power to request sale).

<sup>17</sup> IRC §2056(b)(7)(B)(i)(II).

<sup>18</sup> Carol A. Cantrell, "Comparing S Corporations and Partnerships in Estate Planning," *ALI-ABA: Planning for Large Estates* (April 28 – May 2, 2008).

c. Partnerships: Basic Income Tax Primer.

Under Subchapter K of the Code, a FLP is treated as a pass-through entity for income tax purposes.<sup>19</sup> This means that while income and loss is determined at the partnership level and reported on IRS Form 1065 for informational purposes, items of partnership income or loss are allocated to each partner on Schedule K-1 of IRS Form 1065.<sup>20</sup> Each partner must then report his or her *pro rata* share of partnership income and loss, including certain separately stated items of partnership income, gain, loss, deduction or credit, on his or her individual IRS Form 1040.<sup>21</sup>

d. Trusts: Basic Income Tax Primer.

Under Subchapter J of the Code a trust can be treated as a separate tax paying entity, a conduit that distributes income and deductions to its beneficiaries, or a combination of both.<sup>22</sup> A trust must use a calendar year and pay income tax using tax tables set forth in the Code.<sup>23</sup>

A trustee must file an annual federal tax return, IRS Form 1041, for any domestic trust that has: (i) any taxable income for the year, (ii) gross income of \$600 or more (regardless of taxable income), or (iii) a beneficiary that is a nonresident alien.<sup>24</sup>

Trust taxation is similar to the taxation of individuals.<sup>25</sup> The biggest exception is that a trust is generally allowed a deduction for amounts distributed to beneficiaries.<sup>26</sup> After a trustee has determined a trust's adjusted total income, it must complete Schedule B of IRS 1041 to determine whether there is a distribution deduction.<sup>27</sup> For simple trusts, like income-only marital trusts, the deduction will be the lesser of: (1) fiduciary accounting income (discussed immediately below) or (2) distributable net income (discussed below).<sup>28</sup> Failure to compute either trust accounting income or DNI correctly can result in the wrong taxpayer being taxed.

---

<sup>19</sup> IRC §710.

<sup>20</sup> IRC §§702, 6031(a)&(b).

<sup>21</sup> A more detailed description of partnership taxation is set forth in Goldman Sachs Strategic Wealth Advisory Team, "Investment Rationales for Investment Partnerships," *SWAT Case Study* Vol. 1, Issue 3 (Part One).

<sup>22</sup> One notable exception to the separate tax paying entity classification is when a trust is classified as a grantor trust under IRC §§671-677, which causes all income and deductions to pass directly through to the grantor's personal tax return.

<sup>23</sup> IRC §644; IRC §1(e) (the top income tax bracket of 35% for trusts and estates in 2009 is reached when taxable income exceeds \$11,150).

<sup>24</sup> See *2007 Instructions for Form 1041 and Schedules A, B, D, G, I, J and K-1* (p. 4).

<sup>25</sup> IRC §641(b).

<sup>26</sup> "In effect, the concept of distributable net income gives statutory expression to the principle underlying trust taxation of estates and trusts, that is, that these separate taxable entities are only *conduits* through which income flows to beneficiaries except where income is accumulated by the estate or trust for future distribution," Senate Report No. 1622: 83d Congress 2d Session; H.R. 8300 (emphasis added).

<sup>27</sup> See *2007 Instructions for Form 1041 and Schedules A, B, D, G, I, J and K-1* (p. 25).

<sup>28</sup> See generally *IRS Form 1041; Schedule B*.

A trust must report and pay income tax on its *pro rata* share of partnership income regardless of whether the trust receives partnership distributions. When distributions from a partnership are less than the trust's *pro rata* share of income from the partnership, the trust will need to find other sources of cash to pay tax on the undistributed income.<sup>29</sup>

e. Trusts: Basic Fiduciary Accounting Income Primer.

Fiduciary accounting is an accounting methodology that categorizes trust receipts, expenditures and disbursements; the ultimate goal of which is to determine the amounts a trustee may distribute or charge against an income beneficiary's share versus a remainder beneficiary's share. Consequently, a trustee is required to keep two sets of books; an income account for the income beneficiaries and a principal account for the remainder beneficiaries. Fiduciary accounting rules address these allocations; they do not address trust taxation.

If the document is silent as to which set of books an item of income or expense should be charged, a determination is made by looking at state law, which in most cases will be some version of the Uniform Principal and Income Act ("UPIA").<sup>30</sup>

f. Trusts: Distributable Net Income.

To determine the proportions of the income tax burden to be borne between the trust and its beneficiaries a trustee must calculate a trust's distribution deduction, which is the lesser of fiduciary accounting income ("FAI") or distributable net income ("DNI").<sup>31</sup>

While FAI is an accounting concept that is concerned with properly allocating income and expenses between beneficiaries, DNI is a federal tax concept that: (i) places a ceiling on the income distribution deduction of a trust, (ii) determines the amount that is includible in a beneficiary's income, and (iii) determines the character of the distribution received by a beneficiary.<sup>32</sup>

DNI is basically a trust's taxable income; modified as follows: (i) no distribution deduction, (ii) no personal exemption, (iii) capital gains not included, unless allocated to FAI or paid, credited, or required to be distributed to a beneficiary or paid or set aside for charitable purposes, (iv) capital losses are not taken into account, except to the extent they reduce the amount of capital gains actually paid or credited to beneficiaries, (v) no exclusion for gain from certain small business stock under IRC §1202, and (vi) tax-exempt interest is included, net of disallowed deductions attributable to such interest.<sup>33</sup>

---

<sup>29</sup> Steve B. Gorin, "Effect of Tax Distributions From Flow-Through Entities to Trusts: Proposed Changes to the Uniform Principal & Income Act," *Memorandum to Joint Editorial Board for Uniform Trusts and Estates Act* (March 20, 2008).

<sup>30</sup> IRC §643(b).

<sup>31</sup> See generally IRC §661(a).

<sup>32</sup> IRC §643(a); §661; Treas. Regs. §§1.652(b)-2(a), 1.662(b)-1.

<sup>33</sup> IRC §643(b); Treas. Reg. §1.643(d)-2; IRS *Form 1041, Schedule B* (lines 1-7).

g. Trusts: Uniform Principal and Income Act.

Completed by the Uniform Law Commissioners in 1997 and most recently amended in 2008, the UPIA revised the Uniform Principal and Income Act of 1931 and 1962. The model act has been adopted by a majority of States.<sup>34</sup> The latest version of the UPIA is intended to reflect changes in a trustee's fiduciary accounting obligations brought about by the recognition of modern portfolio theory, in particular the Prudent Investor Act.<sup>35</sup>

Under the UPIA, a trustee must allocate a distribution from an entity like a FLP to the income ledger.<sup>36</sup> Distributions received in a partial liquidation of an entity are credited to the principal ledger.<sup>37</sup>

To the extent tax is required to be paid by a trust, the trustee must fairly allocate the cost of the tax payment between the income beneficiaries and the remainder beneficiaries.<sup>38</sup>

h. Trusts: Prudent Investor Act.

Promulgated by the Uniform Law Commissioners in 1994, the Uniform Prudent Investor Act has been adopted by most States. The Uniform Act allows for a wide variety of trust investments so long as such investments in the aggregate would be deemed reasonable given the purpose of the trust. This is a break from common law which tended to limit investments by creating lists of appropriate and inappropriate investment choices. Under old trust doctrine, each investment was considered to stand on its own. There was no consideration given towards how one investment worked in tandem with another investment.

---

<sup>34</sup> Adopted by 41 States as of March 2009. *See generally* website for The National Conference for Commissioners on Uniform State Laws at <http://www.nccusl.org>.

<sup>35</sup> *Id.*

<sup>36</sup> Unif. Principal & Income Act §401(b) (1997 Act).

<sup>37</sup> Unif. Principal & Income Act §401(d) (1997 Act); A distribution will be considered a "partial" liquidation if the entity indicates that it is such, or if the total amount distributed equals 20 percent of the entity's gross assets. A well-known example occurred in 2004 when Microsoft declared a dividend that exceeded 30 percent of its then book value. Because the distribution exceeded 20 percent of Microsoft's gross assets, it was a "partial" liquidation and trustees should have classified its receipt as principal, despite the fact that Microsoft did not intend to liquidate its business.

<sup>38</sup> Unif. Principal & Income Act §505(c) (1997 Act).



According to the Commissioners' website, forty-four States, as well as the District of Columbia and Virgin Islands, had adopted the Uniform Prudent Investor Act by the end of 2009.<sup>39</sup> However, in the six states that are missing from that list (Delaware, Florida, Georgia, Kentucky, Louisiana and New York), there are prudent investor statutes that adopt the overall-portfolio standard and reject the old law investment-by-investment test.<sup>40</sup> In this regard, at least, the principles of the Uniform Act have been adopted in all the States.

Using new prudent investor standards, trusts are no longer restricted to using common trust funds, U.S. large cap stocks and U.S. Treasury securities. Today, modern portfolio theory has greatly expanded trust investment options. In theory, trustees are free to invest among a broad spectrum of asset classes if the trust's portfolio, taken as a whole, is designed to achieve the desired level of risk and return. Depending on the purpose of the trust, investments in alternative investment partnerships and other alternative investments (e.g., real property, art, etc.) can be prudent.

i. Trusts: Allocating taxes between trust and beneficiaries.

When a trust owns an interest in a partnership, the trust must report its *pro rata* share of the partnership's taxable income each year, regardless of whether the partnership makes a distribution to the trust. The trust must pay the income taxes and then allocate the tax burden between income and principal. In 2008 the Uniform Law Commission amended Section 505 of the UPIA to help clarify how to allocate the taxable income received from a pass-through entity. The goal of newly amended Section 505 is to ensure that the trustee will have enough money to pay the trust's taxes before making distributions to income beneficiaries.<sup>41</sup>

---

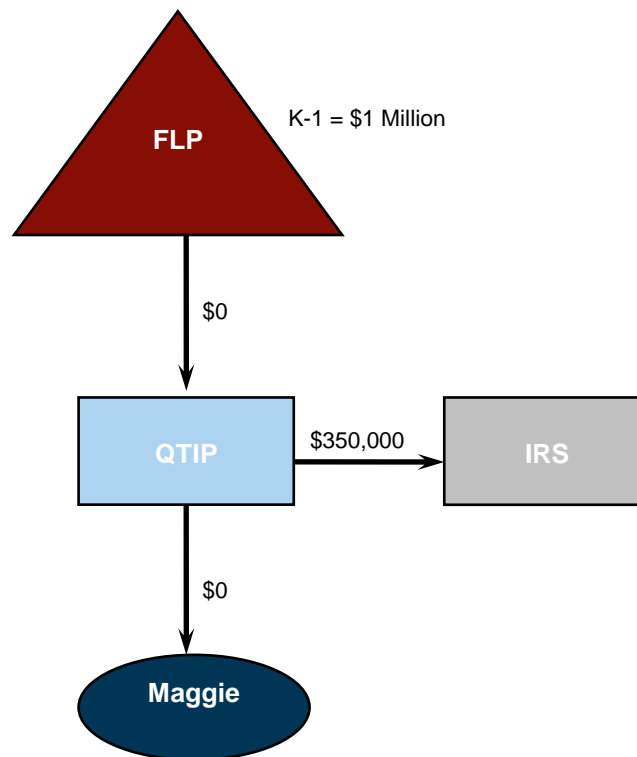
<sup>39</sup>See generally the website for The National Conference for Commissioners on Uniform State Laws, <http://www.nccusl.org>.

<sup>40</sup> Delaware: Del. Code Title 12, §3302(b); Florida: Fla. Stat. 518.11(1)(a)&(b); Georgia: O.C.G.A. § 53-8-1(c); Kentucky: KRS § 286.3-277(2)(corporate trustees), KRS § 386.454(1) (elective for individual trustees); Louisiana La. R.S. 9:2127; New York: EPTL §11-2.3(b)(2) & (b)(4)(A).

<sup>41</sup> Steven B. Gorin and Carol A. Cantrell, "UPIA Amendment Clarifies Tax Allocation Between Income and Principal When Mandatory Income Trust Owns Pass-Through Entity," *Probate & Property*, (January/February 2009); Steve B. Gorin, "The 505 Fix: Trustees of Mandatory Income Trusts Saved by a Change to the UPIA" *Trusts & Estates* (December 2008).

**Example 1(a) Partnership distributes nothing.** In year 1 alternative investment partnership makes no distributions during the year. The K-1 indicates that QTIP is subject to tax on \$1 million.

Result - In year 2 the FLP must file IRS Form 1065 for informational purposes. Since the alternative investment partnership made no distributions to the QTIP there is no FAI. Assuming that the QTIP and the spouse, Maggie, are in the 35% bracket, the QTIP must file IRS Form 1041 and find other resources to pay income taxes of \$350,000.<sup>42</sup> The taxes should be charged against principal under UPIA §103(a)(4) and §505(c)(4). If the partnership distributes this income in later years the trustee must then decide whether to reduce the income beneficiary's distribution and allocate the difference to principal under UPIA §506(a)(3) in order to maintain tax fairness between the beneficiaries.

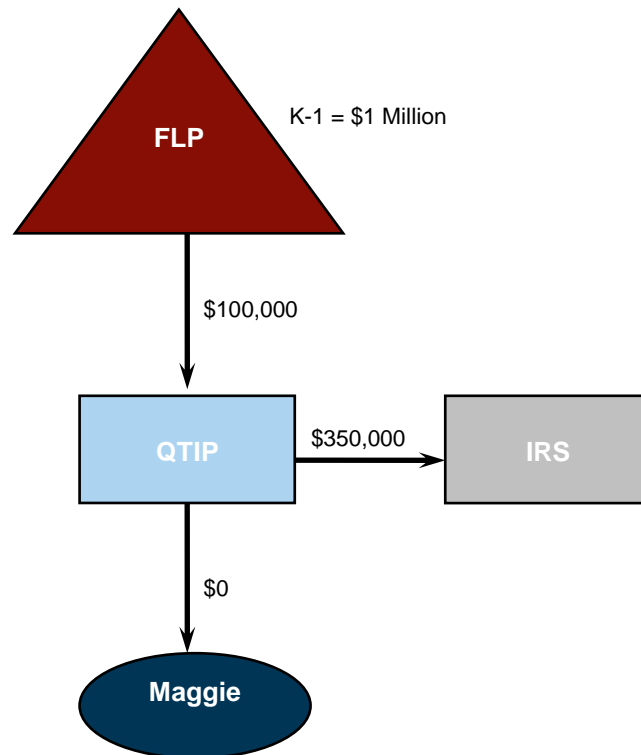


---

<sup>42</sup> \$1 million multiplied by 35% = \$350,000.

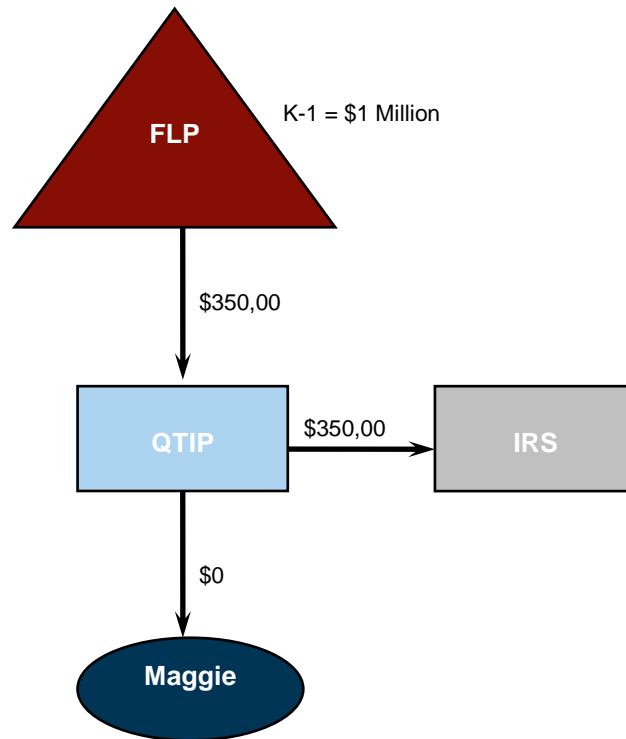
**Example 1(b) Partnership distributes less than tax due, trust distributes nothing –** *QTIP receives a Schedule K-1 reflecting taxable income of \$1 million. The partnership distributes \$100,000 to QTIP.*

*Result - QTIP's tax is \$350,000. QTIP must use the entire \$100,000 to pay its tax and raise another \$250,000 to pay the balance of the tax. The remaining \$250,000 should be charged against principal. Maggie receives nothing.*



**Example 1(c) Partnership distributes tax due – QTIP receives a Schedule K-1 reflecting taxable income of \$1 million; partnership distributes \$350,000 designated as tax distribution.**

*Result – QTIP’s tax is \$350,000. QTIP uses entire \$350,000 to pay its taxes. Maggie receives nothing.*



In every case a trustee must allocate taxes between income and principal.<sup>43</sup> The comments to the recently amended UPIA Section 505 provide:

Because the trust’s taxes and amounts distributed to a beneficiary are interrelated, the trust may be required to apply a formula to determine the correct amount payable to a beneficiary. This formula should take into account that each time a distribution is made to a beneficiary, the trust taxes are reduced and amounts distributable to a beneficiary are increased. The formula assures that after deducting distributions to a beneficiary, the trust has enough to satisfy its taxes on its share of the entity’s taxable income as reduced by distributions to beneficiaries.

---

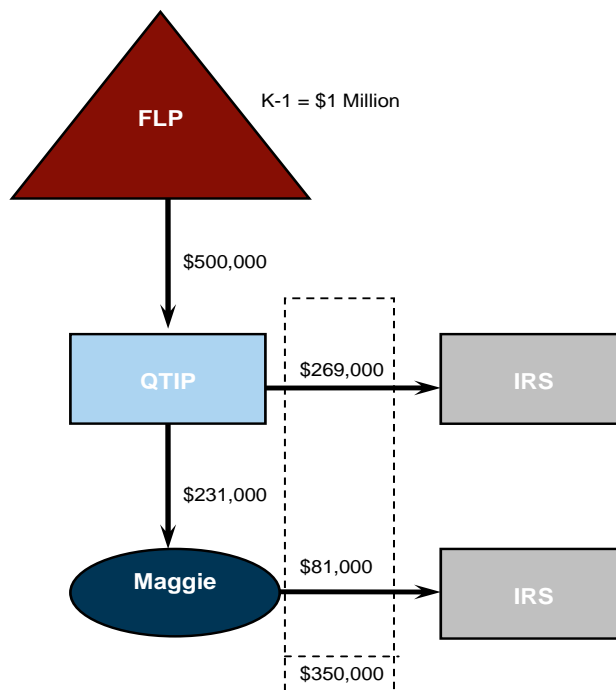
<sup>43</sup> Unif. Principal & Income Act §505(c)&(d)(1997 Act as amended by 2008 technical correction to codify interrelated calculation for distribution deductions (*aka* “Gamble Ordering Rule”).

The algebraic formula is called “an infinite series approaching a finite sum” and it is expressed as follows:  $D = (C - R * K) / (1 - R)$ , where: D = distribution to income beneficiary, C = cash paid by the entity to the trust, R = tax rate on income and K = entity’s taxable income.

**Example 1(d) Partnership distributes more than tax due, trust makes required income distribution** – QTIP receives a Schedule K-1 reflecting taxable income of \$1 million. FLP distributes \$500,000 to QTIP designated as income.

*Result* - QTIP’s tax is \$269,231. Applying the algebraic formula, QTIP must pay \$230,769<sup>44</sup> to Maggie so that after deducting the payment, QTIP has exactly enough (\$269,231) to pay its tax on the remaining taxable income from FLP. Maggie will report \$230,769 on her own personal income tax return, paying taxes of \$80,769.

Because QTIP withheld \$269,231 to pay its taxes and Maggie paid \$80,769 in tax, Maggie essentially bore the entire \$350,000 tax burden on the \$1 million of entity taxable income.<sup>45</sup> Depending upon how future distributions from the partnership, and the taxes attributable to them, are allocated between principal and income, an adjustment from principal in favor of Maggie under UPIA §506(a)(3) may be warranted at some point.



<sup>44</sup> Payment to beneficiary = \$230,769;  $D = (\$500,000 - 350,000) / (1 - .35) = \$230,769$ .

<sup>45</sup> See comments under Amendment 2 to UPIA §505(c)&(d), part of the 2008 Amendments to the UPIA, available at <http://www.nccusl.org>.

The interrelated calculation in Example 1(d) occurs only when the entity distributes an amount greater than enough to pay the tax on its taxable income, but less than its total taxable income. When the entity distributes less than enough to pay the tax on the trust's share of the entity's taxable income as in Example 1(b), the trust must retain the entire distribution to pay its income tax. When the entity distributes more than its taxable income, the trust's tax liability attributable to its share of the entity's taxable income is zero because the distributions to the income beneficiary of the trust are enough to fully reduce the trust's share of the entity's taxable income to zero.

j. Possible Equitable and Flexibility Solution For the Trustee That Owns or Desires to Own Alternative Investments: Placing Alternative Investments in FLP Structures.

Placing assets in a partnership arguably gives a trustee greater flexibility to treat income and remainder beneficiaries fairly on distribution and tax apportionment issues. For example, before selling a capital asset that was held longer than twelve months, a trustee could place the asset inside a FLP, sell the asset, and distribute less than 20% of the sales proceeds. For tax purposes, any gain would be taxed as long-term capital gains. But for UPIA purposes, the distributed gains would be characterized as income (i.e., not principal) and credited to the income beneficiary's ledger.

This practice may allow a trustee of a marital trust to be a partner in a FLP that invests in private equity investments which traditionally produce long-term capital gain. Stated differently, a FLP could invest in low distribution investments that are appropriate on a risk-adjusted return basis and the distribution policy of the partnership can, in effect, fairly convert what would be considered principal distributions into income distributions for trust accounting purposes.<sup>46</sup> As a result, the FLP can create the investment and distribution flexibility that a family may need to comply with modern portfolio theory, a flexibility that is not subject to the same fiduciary constraints that would apply under a statutory power to adjust from principal to income, or a fiduciary power to distribute principal.

In addition, by careful management of a closely held limited partnership, an income-only trust could operate like the best features of a unitrust without the negative attributes. A unitrust may operate more evenly when there is a smoothing formula that takes into account the average trust value over several years (a period of time which many QTIPs do not have) and a "collar" provision to ensure that the distributions are neither too high nor too low. The problem is that under some of the state statutes permitting a unitrust definition of income, an income-only trust that is converted into a unitrust may not have a "smoothing" formula or a "collar" provision. Those correcting features for a unitrust are not needed with an income-only trust that invests in a closely held limited partnership, assuming the cash distribution policy of the partnership

---

<sup>46</sup> See *Crisp v. United States*, 34 Fed. Cl. 112 (1995); Stacy Eastland, Managing Director of Goldman, Sachs & Co., "Family Limited Partnerships: Current Status and New Opportunities," *ALI-ABA Planning Techniques for Large Estates Course of Study* (November 18, 2008).

management is reasonable or the partnership agreement provides for a “smoothing” formula subject to a “collar” provision.<sup>47</sup>

Limited partnerships could also be a tool for income-only trusts to manage fairness issues of who pays income taxes on the alternative investments between income and remainder beneficiaries. As noted above, there are two possible areas of tax fairness contention for income-only trusts under UPIA Section 505. They occur when a private equity partnership does not distribute enough money for the trust beneficiary to pay taxes and when the private equity partnership does distribute enough to pay taxes, but distributes less than its total income.<sup>48</sup> Consider the following:

**Example 1(e) A FLP owns a wide variety of assets in different asset classes –** *The FLP makes two distributions a year to the QTIP. The first FLP cash distribution is designated as trust accounting income by the FLP. The second distribution to the QTIP is specifically designated to pay the trust’s taxes on its undistributed taxable income from its FLP investment. The first distribution is \$2,500,000. The second distribution is \$75,000. The FLP owns an alternative asset class investment like the asset in Example 1(d). Like Example 1(d), the FLP receives a \$500,000 cash distribution from the alternative investment on taxable earnings of \$1,000,000. The FLP’s other asset classes produce \$1,500,000 of ordinary net income and \$500,000 of net long-term capital gain. The source for both FLP distributions could be from existing FLP cash or cash flow from any asset class owned by the FLP, including cash that would not be FAI of the current year if held directly by the QTIP but becomes FAI because it is a distribution from an entity. By boosting the QTIP’s FAI beyond what it would be if the FLP assets were held directly, the FLP helps the QTIP to “match” FAI and DNI, so that nothing need be withheld by the QTIP and the full \$2,500,000 of ordinary income is both distributed, and taxed, to Maggie.*

*Result - The first distribution is paid to Maggie and she pays income taxes on that distribution, to the extent it carries out DNI. The FLP, with that second distribution, has effectively designated the character of the payment as corpus (i.e., it is not to be distributed to Maggie) under UPIA Section 401(f) by stating that it is to pay the trust’s income taxes. The \$75,000 enables the trust to pay its tax (at 15%) on the \$500,000 capital gain that was not part of DNI. Unlike Example 1(d), in this case there may not be any need in the future to make an adjustment from principal in favor of Maggie. The FLP does not eliminate the need to make distributions and pay taxes in a way that is fair to the income and remainder beneficiaries, but it increases the flexibility available to attain these goals.<sup>49</sup>*

---

<sup>47</sup> *Id.* at p.13.

<sup>48</sup> See Examples 1(c) and 1(d) in this paper.

<sup>49</sup> See I.R.S. Priv. Ltr. Ruls. 200531008, 200531009 and 20053202 (payment made by entity to a trust, where entity designated payment for taxes, was allocated to corpus).

4. The third investment reason certain trusts are benefitted by family limited partnerships: the closely held family limited partnership has the management capacity to carry out the partnership's capital gains income to the income-only beneficiary for income tax purposes.

The third advantage of a closely held family limited partnership for certain trusts is that it may be possible under the operation of I.R.C. Section 643(a) to allow all or a portion of the closely held family limited partnership capital gain to be included in DNI that is carried out to the income beneficiaries for tax purposes. Under UPIA Section 401, a distribution of cash from an entity to a trust may be deemed to have carried out capital gain income as trust accounting income. Final regulations under I.R.C. Section 643(a) avoided the question by stating:

One commentator [the AICPA<sup>50</sup>] requested examples of the effect on DNI of capital gains from a passthrough entity and income from a passthrough entity that is more or less than the trust accounting income from that entity. These issues are beyond the scope of this project.<sup>51</sup>

The reason why the IRS “ducked” this question is that gains from the sale of assets held by a partnership are typically gains in which the trustee has no absolute authority or control. Therefore, the trustee cannot directly allocate those gains to corpus or to income or establish a regular practice of doing one or the other, a key determinant of whether gains are in DNI under I.R.C. Section 643(a). The trustee can only allocate receipts from the entity between income and principal according to the trust agreement or UPIA Section 401. See also *Crisp v. United States*.<sup>52</sup> That court held that it was reasonable for the trustee to allocate capital gain profits from a privately held partnership to income.

- C. If the Closely Held Family Limited Partnership Facilitates the Indirect Ownership of a Fully Diversified Portfolio By Smaller Trusts and Income Only Trusts, Will that Partnership Be Recognized For Transfer Tax Purposes?

It is clear, under certain Supreme Court holdings, in determining the value for gift and estate tax purposes of any asset that is transferred, the legal rights and interests inherent in that transferred property must first be determined under state law (*unless federal law supersedes state law, and in the case of determining if an asset is to be recognized as a partnership interest, as will be addressed below, federal tax law has even more liberal standards than state law*).<sup>53</sup> After that determination is made, the federal tax law then takes over to determine how such rights and interests will be taxed.<sup>54</sup> In its legislative history to various revenue acts, Congress has endorsed

---

<sup>50</sup> Tax Notes Today, 2001 TNT 97-26 (May 17, 2001) (Comments by the AICPA to Treasury regarding the proposed regulations to revise the definition of trust income under Section 643(b)).

<sup>51</sup> T.D. 9102.

<sup>52</sup> *Crisp v. United States*, 34 Fed. Cl. 112 (1995).

<sup>53</sup> Occasionally, federal law does supersede state law in this context. For instance, federal law determines what is charity for purposes of I.R.C. § 2055, not state property law.

<sup>54</sup> See *United States v. Bess*, 357 U.S. 51 (1958); *Morgan v. Commissioner*, 309 U.S. 78 (1940).



these principles, which had been developed under case law. For instance, the reports to the 1948 changes in the estate taxation of community property provide that those changes restore the rule by which estate and gift tax liabilities are to depend upon the ownership of property under state law.<sup>55</sup>

In a 1996 federal district court case in New Hampshire, *Hilco Property Services, Inc. v. United States*,<sup>56</sup> District Judge Joseph A. Di Clerico, Jr. found that the estate tax lien statutes were not applicable to the assets of the partnership and would only apply to the partnership interest in a case where an individual, through a gift deed, conveyed property to an oral partnership on her death bed and was incoherent at the time of that conveyance. The Court found that under the laws of New Hampshire, a valid partnership existed with respect to that property (because of estoppel theories) and that the Service would be bound by the state law property rights and encumbrances with respect to that property. The court delineated an excellent synopsis of the controlling authorities:

[The Government argues] that although the taxpayer's property rights are defined by state law, the extent of the IRS interest, including the priority of the lien, are determined by federal law.

Federal law governs issues of federal tax lien priority. *E.g.*, *Progressive Consumers Federal Credit Union v. United States*, 79 F.3d 1228, 1234-35 (1st Cir. 1996) (listing authorities); *Gardner v. United States*, 34 F.3d 985, 987 (10th Cir. 1994); *In re Adler*, 869 F. Supp. 1021, 1026-27 (E.D.N.Y. 1994). However, "it is equally well-settled that in the application of a federal revenue act, state law controls in determining the nature of the legal interest . . . in the property to be reached by the statute." *Progressive Consumers Federal Credit Union*, 79 F.3d at 1235 (quoting *Aquilino v. United States*, 363 U.S. 509, 513, 80 S. Ct. 1277, 1280, 4 L. Ed. 2d 1365 (1960)); accord *Avco Delta Corp., Canada Ltd. v. United States*, 459 F.2d 436, 440 (7th Cir. 1972) ("federal court must look to state law to determine the nature of the legal interest which the taxpayer had in the property sought to be reached.") (citing *Aquilino*, 363 U.S. at 512-13, 80 S. Ct. at 1280). This is because "state law created legal interests and rights in property [while] federal law determined whether and to what extent those interests will be taxed." *United States v. Irvine*, 511 U.S. 242, —, 114 S. Ct. 1473, 1481, 128 L. Ed. 2d 168 (1994); accord *United States v. Bess*, 357 U.S. 51, 55, 78 S. Ct. 1054, 1057, 2 L. Ed. 2d 1135 (1958) (federal tax laws "creat[e] no property rights but merely

---

<sup>55</sup> See H. REP. NO. 2543, 83rd Cong. 2nd Sess., 58-67 (1954); H.R. REP. NO. 1274, 80th Cong. 2nd Sess., 4 (1948-1 C.B. 241, 243); S. REP. NO. 1013, 80th Cong., 2nd Sess., 5 (1948-1 C.B. 285, 288) where the Committee Reports on the 1948 changes in the estate taxation of community property states: "Generally, this restores the rule by which estate and gift tax liabilities are dependent upon the ownership of property under state law." See also the reports of the Revenue Act of 1932 that define "property" to include "every species of right or interest protected by law and having an exchangeable value." H.R. REP. NO. 708, 72nd Cong., 1st Sess., 27-28 (1932); S. REP. NO. 665, 72nd Cong., 1st Sess., 39 (1932).

<sup>56</sup> 929 F. Supp. 526 (D. N.H. 1996).

atta[ch] consequences, federally defined, to rights created under state law”). Finally, in the federal tax lien context, it makes no difference whether the state law principles used to determine the relevant property interest arise under statute or common law, *e.g.*, *Gardner v. United States*, 814 F. Supp. 982, 984-85 (D. Kan. 1993), or arise through equitable doctrines of estoppel, *e.g.*, *Avco Delta Corp. Canada, Ltd.*, 459 F.2d at 440-41.<sup>57</sup>

Another excellent synopsis of the relevant case law and authorities for the proposition that state law controls in determining the nature of the legal interest that is transferred for estate tax purposes and, in particular, a partnership interest is found in a brief filed by the government in a Fifth Circuit Court of Appeals Case.<sup>58</sup> The case concerned the estate taxation of a Louisiana partnership interest. The Justice Department, in one of its briefs in that case, provided that synopsis, which the Court quoted in its opinion:

It is now well established that state law is determinative of the rights and interests in property subject to federal estate taxation. In *Morgan v. Commissioner*, 309 U.S. 78 [626], 60 S. Ct. 424, 84 L. Ed. 585 (1940), the Supreme Court said (p. 80): ‘State law creates legal interests and rights. The federal revenue acts designate what interests or rights, so created, shall be taxed.’ *Estate of Rogers v. Commissioner*, 320 U.S. 410, 414, 64 S. Ct. 172, 88 L. Ed. 134 (1943); *United States v. Dallas Nat. Bank*, 152 F.2d 582 (C.A. 5th 1945); *Smith’s Estate v. Commissioner*, 140 F.2d 759 (C.A. 3d 1944). See *Aquilino v. United States*, 363 U.S. 509, 513, 80 S. Ct. 1277, 4 L. Ed. 2d 1365 (1960); *Commissioner v. Chase Manhattan Bank, supra* [259 F.2d 231 (5th Cir. 1958)], p. 249; *United States v. Hils* (C.A. 5th 1963) [318 F.2d 56]. \* \* \*

The courts must determine the substance of the state property law provisions and apply the estate tax provisions to the property interests so determined.<sup>59</sup>

In a 1999 tax court case, *Estate of Ethel S. Nowell v. Commissioner*<sup>60</sup>, then Chief Tax Court Judge Cohen held that, as a matter of law, in granting the taxpayer’s motion for summary judgment, a hypothetical willing buyer would only assume that he could purchase an assignee interest and not a limited partnership (because of the limitations of state property law):

In determining the value of an asset for Federal estate tax purposes, State law first determines precisely what property is transferred. *Morgan v. Commissioner*, 309 U.S. 78, 80, 60 S.Ct. 424, 84 L.Ed. 585 (1940); *Estate of Bright v. United States*, 658 F.2d 999, 1001 (5th Cir. 1981). After that

---

<sup>57</sup> *Id.* at 547-48.

<sup>58</sup> *Aldrich v. United States*, 346 F.2d. 37 (5th Cir. 1965).

<sup>59</sup> *Id.* at 38, 39.

<sup>60</sup> TC Memo 1999-15 (Jan. 26, 1999).

determination is made, the Federal tax law takes over to determine how such rights and interests will be taxed. *United States v. Bess*, 357 U.S. 51, 55, 78 S.Ct. 1054, 2 L.Ed.2d 1135 (1958). Thus, State law must be consulted to determine what property interests were transferred at a decedent's death.

State law determines the nature of the interest being transferred. Federal law determines how the transferred interest is taxed. However, in applying this principle, it is not the label used by state law that is determinative, but rather the substantive rights and obligations conferred by state law. Thus, state law could label an entity a "charity", but whether the entity is exempt from federal taxation depends on whether it is organized and operated, as permitted by state law, in a manner that meets the requirements of I.R.C. Section 501(c)(3).

Similarly, state law may label an entity a "partnership", but its federal tax treatment turns whether the rights and obligations of the parties, as determined by state law, fit within the Internal Revenue Code's definition of "partnership". Here, however, the Code is more liberal than state law. Congress clearly intends that partnerships in which the family partners follow the agreement and conduct a financial operation should be regarded as partnerships for federal tax purposes and the partners should be treated as owning partnership interests and not treated as owning undivided interests in the partnership assets.<sup>61</sup>

Stated differently, federal tax law has a more liberal standard than state law in recognizing a partnership apart from its owners. Under federal tax law (including federal transfer tax law), a partnership is considered to be created and recognized independent of its owners if that group of owners agree to divide profits and carries on *any* financial operation (i.e., it does not have to be a trade or business operation). I.R.C. Section 7701(a)(2) provides that for estate, gift and generation-skipping tax purposes, where not otherwise *distinctly expressed or manifestly incompatible* with the intent of the collective provisions of the Internal Revenue Code:

*The term partnership includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or joint venture is carried on, and which is not within the meaning of this title, a trust, estate or corporation.*<sup>62</sup> (*Emphasis added.*)

Clearly, Congress has provided for a very liberal definition for determining when a partnership (including a family partnership) will be recognized for transfer tax purposes apart from its family owners. It is not necessary for a family group to conduct an operating business to have a recognized partnership. By the explicit terms of I.R.C. § 7701(a)(2), any financial operation (e.g., a passive investment in stocks and bonds) by a family group which is not conducting its affairs as a trust, an estate, or a corporation will be a tax recognized partnership

---

<sup>61</sup> In *Mirowski v. Commissioner*, T.C. Memo 2008-74 (2008), Judge Chiechi specifically found that financial activities are sufficient (i.e., lack of business activities is not important) to demonstrate substantive non-tax reasons for the recognition of a family limited partnership. See pages 50-51, and 54-55 of that Opinion.

<sup>62</sup> I.R.C. § 7701(a)(2) (emphasis added).

under all provisions of Chapters 1, 11, 12, 13 and 14 of the I.R.C..<sup>63</sup> Congress clearly intended that an individual would always be treated as a partner of a partnership for purposes of Chapters 1, 11, 12, 13, and 14 of the Code, if that individual is a member of a group that conducts any financial operation, including investing in stocks and bonds, unless that group is a trust, an estate, or a corporation.

A key question which is addressed by the “check the box” regulations under I.R.C. § 7701(a)(2) is whether an arrangement or undertaking constitutes a separate entity (*e.g.*, a partnership or a corporation) recognized apart from the owners. Treas. Reg. § 301.7701-1(a) (effective January 1, 1997) retains the existing concept that undertakings, arrangements, or entities that do not have a joint profit motive would not be treated as separate entities for federal income tax purposes.<sup>64</sup> The regulations retain the examples found in the old regulations. *However, it is clear that if a joint profit motive does exist, the family entity will be recognized for federal estate tax purposes apart from its owners.*

The regulations define “business entity” as an entity recognized for federal tax purposes that is not a trust under Treas. Reg. § 301.7701-4 or otherwise subject to special treatment under the I.R.C. A business entity with two or more owners is classified as either a corporation or a partnership for all federal tax purposes (including federal estate, gift or generation-skipping tax purposes). Any business entity having two or more members that is not a *per se* corporation, as defined in the Regulations, is defined to be a partnership.<sup>65</sup>

Congress and the Treasury have long recognized that it is common and proper (and should be recognized for tax purposes) for groups to use the partnership form of organization to hold only passive securities:

a. The IRS, because of I.R.C. § 7701(a)(2), has always recognized that “passive investment clubs,” through which investors engage in passive investment activities, may be conducted in the partnership form of ownership for *all* federal tax purposes.<sup>66</sup>

b. In addition to I.R.C. § 7701(a)(2), the I.R.C. liberally defines the term “partnership” in sections 761(a) and 6231(a).

c. Specific rules that apply only to partnerships holding passive investment assets appear in the I.R.C. and the Treasury Regulations:

---

<sup>63</sup> *Id.*

<sup>64</sup> Treas. Reg. § 301.7701-1(a).

<sup>65</sup> Treas. Reg. § 301.7701-2(c)(1).

<sup>66</sup> See Rev. Rul. 75-523, 1975-1 C.B. 257 (because of I.R.C. § 7701(a)(2), a partnership was recognized for tax purposes even though the only purpose of the partnership was to invest in certificates of deposit) and Rev. Rul. 75-525, 1975-1 C.B. 350 (because of I.R.C. § 7701(a)(2), a partnership form of ownership was recognized for tax purposes even though the only purpose of the partnership was to invest in marketable stocks and bonds).

(1) Under I.R.C. § 721, taxpayers contributing assets to a partnership that is deemed an “investment company” (generally, one made up of over 80% *marketable*<sup>67</sup> stocks or securities, or interests in regulated investment companies or real estate investment trusts) will recognize gain or loss on contribution unless each partner’s contributed stock portfolio is substantially diversified (see the regulations under section 368 and the discussion in this paper concerning the avoidance of income tax problems).

(2) I.R.C. § 731(c)(3)(A)(iii) addresses the favorable tax treatment of distributions of marketable securities made to partners of “investment” partnerships (which is defined under I.R.C. § 731(c)(3)(C)(i) as a partnership which has never engaged in a trade or business and substantially all of whose assets are passive securities).

(3) Treas. Reg. § 1.704-3(e)(3) contains a special aggregation rule for “securities” partnerships (at least 90% of the partnership’s non-cash assets consist of stocks, securities and similar instruments tradable on an established securities market).

(4) Treas. Reg. § 1.761-2(a) expressly confirms that investment partnerships are to be treated as partnerships under subchapter K (unless a contrary election is made).

(5) The final anti-abuse regulation acknowledges that the “business” activity of a partnership may be investing assets: “Subchapter K is intended to permit taxpayers to conduct joint business (*including investment*) activities through a flexible economic arrangement without incurring an entity-level tax.”<sup>68</sup>

The Service has not only provided in its regulations for a liberal definition of when a partnership is created and recognized, but has also taken that position in its revenue rulings. For instance, as noted above, the Service, because of I.R.C. § 7701(a)(2), has always recognized that “passive investment clubs,” through which investors engage in passive investment activities, may be conducted in the partnership form of ownership for all federal tax purposes.<sup>69</sup>

---

<sup>67</sup> It should be noted that “marketable” is broadly defined.

<sup>68</sup> Treas. Reg. § 1.701-2(a) (emphasis added). The parenthetical language referring to investment as a business activity was added after the release of the proposed regulation. *Compare* Prop. Reg. § 1.701-2(a).

<sup>69</sup> *See*, Rev. Rul. 75-523, 1975-2 C.B. 257 and Rev. Rul. 75-525, 1975-2 C.B. 350, summarized at ftn. 66 above.

Case law, interpreting I.R.C. Section 7701(a)(2), has also taken a very liberal view of when a partnership is created and recognized for federal tax purposes apart from its owners.<sup>70</sup>

The *Winkler*<sup>71</sup> case is very instructive as to how liberal the courts have been in applying I.R.C. Section 7701(a)(2) to family partnerships and upholding the creation and recognition of family partnerships for estate and gift tax purposes. The Tax Court upheld the recognition of a partnership (and denied the Service gift tax and estate tax deficiencies), even though: (i) the only assets of the partnership were lottery tickets; (ii) the partnership was initially an oral partnership where many of the provisions were undefined; (iii) the accountants for the Winkler's initially reported the cash consideration involved in the lottery tickets as a gift; (iv) the patriarch was in poor health and died shortly after the creation of the partnership; (v) the division of the profits did not follow state law; (vi) all of the consideration for the winning Lotto ticket was provided by the matriarch; and (vii) the descendants of the patriarch and matriarch were 50% owners of the partnership.<sup>72</sup>

The Tax Court found that the Winklers engaged in an activity that constitutes permissible partnership activity under I.R.C. Section 7701(a)(2) for federal gift, and estate tax purposes: the activity of pooling their money to purchase family Lotto tickets. Thus, the Court found that the Winklers, in good faith and acting with that financial purpose, intended to join together in the present conduct of a partnership enterprise.<sup>73</sup> As a consequence, the Court found that there were no gift tax or estate tax deficiencies.

The *70 Acre Recognition Equipment Partnership*<sup>74</sup> case is another case that is instructive as to the liberal standard the courts are applying in determining whether a partnership is created and recognized for federal tax purposes. The Court found in this case that a partnership was created and recognized for federal tax purposes independent of the two owners (Booth Creek Investment, Inc. and State Savings & Loan Association of Lubbock) even though: (i) the owner's accounting firm had admitted the nonexistence of a valid partnership in a letter to the Service; (ii) there was no written partnership agreement; (iii) State Savings did not contribute capital services except for a promise to extend credit; (iv) State Savings had no right to jointly manage the subject real estate; and (v) State Savings did not agree to share in the losses.<sup>75</sup>

---

<sup>70</sup> See *Commissioner v. Culbertson*, 337 U.S. 733 (1949); *Lusthaus v. Commissioner*, 327 U.S. 293 (1946); *Commissioner v. Tower*, 327 U.S. 280 (1945); *Evans v. Commissioner*, 447 F.2d 547, 550 (7th Cir. 1971); *Winkler v. Commissioner*, 73 T.C.M. (CCH) 1657 (1997); *70 Acre Recognition Equip. Partnership v. Commissioner*, 72 T.C.M. (CCH) 1508 (1996); *Frazell v. Commissioner*, 88 T.C. 1405, 1412 (1987); *Wheeler v. Commissioner*, 37 T.C.M. (CCH) 883 (1978).

<sup>71</sup> *Winkler*, 73 T.C.M. (CCH) 1657 (1997).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 1663.

<sup>74</sup> *70 Acre Recognition Equip. Partnership*, 72 T.C.M. (CCH) 1508 (1996).

<sup>75</sup> *Id.*

### III. BEST FAMILY LIMITED PARTNERSHIP PLANNING IDEA – SELL IT

#### A. Introduction.

The “conventional wisdom” this author sometimes hears on this subject is as follows: “do not engage in family limited partnership planning unless it can be demonstrated that the partnership uniquely solves a substantive non-tax problem;” or “discounting a client’s assets is a much better estate planning tool than grantor trusts or freezing a client’s estate.” This “conventional wisdom,” under the circumstances discussed below, is incorrect.

#### B. A Perspective of Modern Integrated Estate Planning.

It is useful for the reader to have a healthy perspective of where we are in the estate planning world, at the current time, in developing a context with respect to the problems associated with I.R.C. Section 2036(a)(1) and I.R.C. Section 2036(a)(2). The IRS has lost almost all of its major attacks against using the family limited partnership for estate planning purposes, other than potentially applying those two sections. For instance, its substance over form attack, I.R.C. Section 2703(a) attack, and its gift on formation attack all have been spectacularly unsuccessful. The IRS has had some success on the amount of the appropriate discount associated with the limited partnership interest when it is transferred during lifetime. Transfers of limited partnership interests during a donor partner’s lifetime are entitled to a discount (albeit the amount of the discount may be subject to dispute). Generally (because of operation of I.R.C. Section 2036), the only arena in which the IRS is currently successful in denying any discount is with partnership interests that are held by a decedent at his death, when there are not any financial reasons for the creation of the partnership.

Furthermore, not only are valuation discounts being allowed for partnership transfers during a donor partner’s lifetime, but the IRS currently concedes that most of the important aspects of the sale to defective grantor trust technique, including: (i) there is not any capital gains tax with respect to the sale of a family limited partnership interest to a properly capitalized grantor trust and (ii) the donor/selling partner does not owe any gift taxes when that donor is indirectly paying the income taxes on behalf of the beneficiaries of a grantor trust. Thus, the estate planning context, or perspective, of discussing the applicability of I.R.C. Section 2036 inclusion may be summarized by the following example.

#### *Example 2: The Sweet Deal*

*Cal Client is in his office when Dan Deal knocks on his door and tells Cal that he has “a heck of a deal for him.” Dan states that he would like to sell most of his assets to Cal for 65¢ on the dollar. Cal tells Dan that he likes the price, but he does not want to buy any of the assets for cash. Cal wonders if Dan would still be willing to sell his assets for 65¢ on the dollar, if it was all for a seller financed note from Cal. Dan tells Cal that because he likes him so much he will be happy to accept a note from Cal. Cal then informs Dan that while he likes the 65¢ on the dollar, he likes the fact that he can buy all the assets for a seller financed note, he does not like to pay much interest on the note and wonders if Dan will still offer that deal if the interest rates are comparable to US Treasury interest rates. Again, Dan tells Cal that because he likes him so much*

*he will be happy to do that deal. Cal then informs Dan that while he likes the price of 65¢ on the dollar, and he also likes the fact that he can purchase the assets for a seller financed note at US Treasury interest rates, he will only buy the assets if he will have no personal liability on the note (i.e., the note will be non-recourse). Dan, once again agrees to Cal demands. An increasingly impatient Dan asks Cal if there are any other deal points. Cal says there is just one more. Cal tells Dan that he does not like paying income taxes. Cal will only do the deal if Dan will agree to pay all of the income taxes associated with the assets he is purchasing from Dan. Dan agrees.*

This writer suspects that the above “deal” may not be made commercially very often. However, something very similar to that deal can be made by one generation to a grantor trust for the benefit of the next generation and few, if any, gift taxes may be owed, assuming the trust for the next generation is adequately capitalized. If a taxpayer sells a limited partnership interest to an adequately capitalized grantor trust in exchange for a note, from the perspective of the beneficiaries of the trust, the above “deal” in Example 2 is effectuated. The beneficiaries of the trust are acquiring the assets (at least in the long-run) for a note that is equal to 65% of the eventual liquidation value of the partnership interest that is non-recourse to the beneficiaries, individually, at the low AFR rates and which can be paid back with pretax dollars (since the trust is a grantor trust).

The interesting fact is the IRS generally does not contest (assuming the trust is adequately capitalized) the legal efficacy of this technique, with the exception of the amount of the discount associated with the partnership interest.<sup>76</sup> As will be demonstrated later in this paper, the partnership valuation discount, assuming the taxpayer has a reasonable life expectancy, is the *least* important factor in shifting wealth from one generation to another. Being able to sell an asset with a relatively modest interest rate and indirectly pay the income taxes associated with that asset, are much more important factors from an estate planning perspective than the valuation discount (over the long term). However, being able to take the discount is important over the short term (thus, making it more important for the taxpayer who has a short life expectancy), or if a sale or some other transfer is not effectuated and the taxpayer dies owning the partnership interest. The most important consideration is to structure the transaction where the note is considered a bona fide note for state property law purposes. Otherwise the transaction could be treated as a retained interest in a trust.

C. The I.R.C. Section 2036(a)(1) Problem For Decedents’ Who Retain a Significant Family Limited Partnership Interest.

1. Brief summary.

The I.R.C. Section 2036(a)(1) attack involves partnerships where the taxpayer dies still owning the vast majority of the partnership interests (unless, as in a handful of cases, the taxpayer transfers the partnership interests during his lifetime and retains the income associated with the

---

<sup>76</sup> See *Pierre v. Comm’r*, T.C. Memo 2010-106 (5/13/10) in which the IRS did not contest the technique, but did contest whether the gift of partnership units to the grantor trust should be separated. The IRS won on that issue, which made a small difference in the discount.



transferred partnerships interests). While the IRS has not enjoyed success with most of its attacks on valuation discounts with respect to retained partnership interests, it has enjoyed some success with its I.R.C. Section 2036(a)(1) attack. The good news for the taxpayer is this attack is entirely preventable.

*If* the taxpayer does not transfer the partnership interests during her lifetime (whether by sale or gift), the courts may ignore the valuation discount at death, assuming the following factors are present:

- a. Either the taxpayer fails to demonstrate that there is at least *one* substantial non-tax reason to establish the partnership, or the capital accounts of the partnership do not reflect interests proportionate to the contributed property; and
- b. The taxpayer and the partnership have practices that demonstrate an implied or actual agreement to retain possession or enjoyment of the income of the contributed assets to the partnership back to the taxpayer.

It should be noted that the above attack is not available to the IRS on lifetime transfers of partnership interests (which occur at least three years before the taxpayer's death). Stated differently, there is not a gift tax equivalent of I.R.C. Section 2036(a)(1).

If prerequisites of I.R.C. Section 2036(a)(1) inclusion apply, presumably, the taxpayer will also not be taxed under I.R.C. Section 2033 for the fair market value of his retained interest in the partnership since that would result in over a 100% inclusion. That would also seem to be manifestly incompatible with Congressional intent. In fact, as this paper will explore, the presence of I.R.C. Section 2033 inclusion may preclude I.R.C. Section 2036 inclusion.

## 2. Analysis of case law.

- a. Key cases that have not been reviewed by a circuit court.

The I.R.S. was successful in applying I.R.C. Section 2036(a)(1) to bring back contributed assets to a partnership in the *Estate of Charles E. Reichardt v. Commissioner*.<sup>77</sup> Judge Colvin agreed with the I.R.S. that the substance of the partnership transaction was that Mr. Reichardt and his children had an implied agreement to allow Mr. Reichardt to continue to substantively enjoy the property contributed to the partnership and retain the right to income from the partnership assets during his lifetime in the same manner he had before the creation of the partnership. The Court found that the transfers to the partnership did not affect Mr. Reichardt's enjoyment of the property. Mr. Reichardt also continued to manage the property in the same fashion that he had before. The Court also found that Mr. Reichardt commingled partnership and personal funds, enjoyed the use of the personal residence, which was contributed to the partnership, without

---

<sup>77</sup> 114 T.C. 144 (March 1, 2000).

paying rent, and that Mr. Reichardt was solely responsible for the partnership's business activities.

The Service was successful in arguing the applicability of I.R.C. Section 2036 in the *Estate of Harper v. Commissioner*, T.C. Memo. 2002-121 (May 15, 2002). The decedent, at age 85 and under treatment for advanced cancer, created a partnership shortly before he died. The initial partners were his daughter and son as general partners and the decedent had a 99% limited partnership interest (which was held in a revocable trust). The decedent transferred almost 94% of his assets to the partnership. He subsequently transferred a 60% limited partnership interest to his children. The decedent retained the remaining limited partnership interest and converted it to a preferred limited partnership interest paying a guaranteed return of 4.25%.

The Service argued that the partnership should be ignored because it lacked economic substance, or alternatively, all of the assets the decedent transferred to the partnership should be included in his estate under I.R.C. Section 2036. The Estate argued that the partnership assets should not be included under I.R.C. Section 2036 either because there was full consideration for the transfers, or the decedent did not have the legal right to retain the income of the property that was transferred to the partnership or did not retain the legal right to affect the income that was distributed from the partnership.

The full Tax Court disagreed with the Estate's position with respect to the I.R.C. Section 2036 issue based on the following facts: (i) there was a significant delay in transferring the assets to the partnership; (ii) the decedent's assets and the partnership's assets were commingled; (iii) the general partners seemed indifferent to formalities of the operation of the partnership; (iv) there were disproportionate distributions to the decedent and his Estate; (v) partnership assets were sold to generate funds to pay estate taxes; (vi) distributions were not based on considerations relating to the partnership, but were instead based on the decedent's contemporaneous debts and needs, which "buttresses the inference that the decedent and his Estate had ready access to the partnership cash when needed"; (vii) distributions were made before the partnership had hired an accountant to maintain appropriate accounting records; (viii) guaranteed payments were not made according to a fixed schedule; (ix) the Court observed "the objective record belies any significant predeath change, particularly from the standpoint of economic benefit..."; (x) the unilateral nature of the formation of the partnership by only the decedent; and (xi) almost all of the decedent's assets were transferred to the partnership.

The Tax Court and other courts in several other cases have found that there is a "transfer" for I.R.C. Section 2036(a)(1) purposes when there is no business purpose to the partnership other than saving taxes, because the meaning of the term "bona fide" as it is used in I.R.C. Section 2036(a)(1) is not satisfied in that situation.<sup>78</sup> It should be noted that the term "bona fide," as used

---

<sup>78</sup> See *Estate of Schauerhamer v. Commissioner*, T.C. Memo 1997-242; *Estate of Thompson v. Commissioner*, T.C. Memo 2002-246; *Kimbell v. United States*, 2003-1 USTC ¶ 60,455 (N.D. Tex. 2002) (discussed below); *Estate of Strangi v. Commissioner*, T.C. Memo 2003-145 (discussed below); *Estate of Ida Abraham*, T.C. Memo 2004-39; and *Estate of Lea k. Hillgren*, T.C. Memo 2004-46; *Estate of Rosen*, T.C. Memo 2006-115; *Estate of Erickson*, T.C. Memo 2007-107; *Estate of Rector*, T.C. Memo 2007-367; *Estate of Hurford*, T.C. Memo 2008-278; and *Estate of Jorgensen v. Comm'r*, T.C. Memo 2009-66.

in the gift tax regulations (Treas. Reg. Section 25.2512-8), according to many of these same courts, is satisfied for gift tax purposes, if the transaction is not a sham (a much easier test to satisfy).<sup>79</sup>

Usually, under these cases, some combination of the following facts is also present: (1) personal use assets are contributed (with no rental arrangement); (2) personal expenses are directly paid out of the partnership; (3) the donor partner has no other source of income, other than the partnership assets and the partnership could distribute under the agreement an amount that is lower than those needs; and (4) there is no change in management rights. Obviously, each of those factors needs to be eliminated if there is any danger that the original contribution to the partnership will not be treated as a bona fide “transfer” for I.R.C. Section 2036(a)(1) purposes.

In the Estate of *Bongard v. Comm’r*,<sup>80</sup> the full Tax Court reviewed two different near-simultaneous transfers involving the same family’s wealth and found that one of the transfers involved an I.R.C. Section 2036 transaction, but the other transfer did not.

Empak, Inc., a successful manufacturer of electronics materials packaging, was established by Mr. Bongard in 1980. In 1996, Empak’s shareholders, Mr. Bongard and trusts for Mr. Bongard’s children, transferred all of their stock to a family-owned limited liability company (“WCB Holdings”). Almost immediately thereafter, a significant portion of WCB Holdings’ nonvoting equity interests were transferred to a family limited partnership (“BFLP”). Certain partnership interests in BFLP were then given to Mr. Bongard’s wife as part of a post-nuptial agreement.

Mr. Bongard, a healthy individual, died unexpectedly on November 16, 1998. In 1999, shortly after the decedent’s death, Empak merged with a competitor and the surviving entity shortly thereafter went public.

A majority of the Tax Court found that there was a “transfer” for I.R.C. Section 2036 purposes to both WCB Holdings and to BFLP. The Court reasoned that the meaning of the word “transfer” as used in I.R.C. Section 2036 has a different meaning than it does for gift tax purposes (and has a much broader application).

The Court found, in determining whether a transfer meets a “bona fide sale for full and adequate consideration” exception, the phrase needs to be analyzed in two different sections. That is, the “bona fide” section and the “full and adequate consideration” section need to be analyzed separately.

---

<sup>79</sup> Another reason these courts may be reluctant to find a gift on formation is that according to Treas. Reg. § 2511-1(h)(1) the only possible gift is to the partners of the partnership, and if the taxpayer is essentially the only partner, one cannot metaphysically make a gift to one’s self. See also, *Estate of Strangi*, 115 T.C. 478 (2000) and *Estate of Jones v. Comm’r*, 116 T.C. 121 (2001) in which the IRS theory of gift on formation was rejected by the full Tax Court. See also, *Holman v. Comm’r*, 130 T.C. 170 (May 27, 2008); and *Gross v. Comm’r*, 96 TCM (CCH) 187 (Sept. 29, 2008) in which gifts were made shortly after the formation of the partnership and the Tax Court allowed valuation discounts.

<sup>80</sup> See *Bongard v. Comm’r*, 124 T.C. 95 (March 15, 2005).

The “full and adequate consideration” section is a test that is applied by the Tax Court in virtually the same objective way it was applied by the Fifth Circuit in *Kimbell*:

Generally, so long as the interest received by contributors of the partners to a partnership or LLC corresponds to the percentage value of the property contributed, this test will be met.

However, with respect to the “bona fide” section, the majority of the Tax Court applied an arguably subjective standard:

In the context of family limited partnerships, [this section] is met where the record establishes the existence of a legitimate and significant non-tax reason for creating the family limited partnership...

The Tax Court found the existence of legitimate and significant non-tax reasons for creating WCB Holdings, but did not find that those reasons existed with respect to the creation of BFLP. The court found that many of the protections that the partnership (BFLP) purported to provide were already provided by WCB Holdings. The Court found that positioning the family company to facilitate a liquidity event, protection from creditors and lowering management fees was already adequately addressed by the formation of WCB Holdings. The Court found that other potential purposes of the partnership such as teaching family members how to manage assets, making gifts of family limited partnership interests and business management reasons did not exist because of the conduct of the decedent.

The majority of the Tax Court also points to a list of factors that would support the finding that the transaction of creating a partnership or limited liability company was *not* motivated by a legitimate and significant non-tax purpose: (i) the taxpayer standing on both sides of the transaction; (ii) the decedent’s dependence on distributions from the partnership; (iii) the decedent’s commingling of personal and partnership funds; and (iv) the decedent’s actual failure to transfer property to the partnership.

The final prerequisite for applying I.R.C. Section 2036(a)(1) was whether Mr. Bongard had the right to possess assets or income of the partnership. The Court found that the decedent, in effect, possessed the enjoyment of the partnership assets because of an implied agreement with respect to that enjoyment. Even though Mr. Bongard had not used any of the income of the partnership, nor had he contributed personal use assets to the partnership, the Court found an “implied” agreement existed. The evidence for that implied agreement was Mr. Bongard’s indirect “practical” control through his partial control of Empak and WCB Holdings. There is a vigorous dissent filed by Judge Chiechi pointing out that this part of the opinion flew in the face of the Supreme Court case *United States v. Byrum*<sup>81</sup>. As the dissent points out, Mr. Byrum retained many more controls than Mr. Bongard retained. It is interesting to note that the majority opinion of the Tax Court did not cite or distinguish *Byrum*.

---

<sup>81</sup> 408 U.S. 125 (1972).

Stated differently, the Supreme Court in *Byrum* required in order for possession or enjoyment of property to exist within the meaning of I.R.C. Section 2036(a)(1) that the decedent must retain a “substantial economic benefit” from the property as opposed to a “speculative contingent benefit which may or may not be realized”. It would seem that the Tax Court did not comply with this standard. That is certainly the standard that is now being applied in the Fifth Circuit, as noted below in the discussion with respect to the *Strangi* case.

Furthermore, it would seem that even if “practical” control had existed, that is not enough under I.R.C. Section 2036(a)(1), unless it is unilateral control. The important phrase “or in conjunction with someone else” does not exist for purposes of I.R.C. Section 2036(a)(1) as it does for I.R.C. Section 2036(a)(2) or I.R.C. Section 2038. It appears from the facts of *Bongard* that Mr. Bongard would have to persuade certain other individuals, who controlled the managing member interest of the underlying LLC, before there could be a “cash out”. Under the facts, Mr. Bongard’s so-called “practical” control was not unilateral; therefore, I.R.C. Section 2036(a)(1) should not have been applied.

It should also be noted that the Tax Court and other courts have found that IRC Section 2036(a)(1) does not apply because there has not been a transfer for purposes of Section 2036(a)(1) because the meaning of the term “bona fide” has been satisfied under the facts of the case.<sup>82</sup> Under the facts of these cases, it was found that substantive non-tax reasons existed for the formation of the family partnerships and that it did not matter for the bona fide test that the fair market values of the partnership interests that the decedents received for their contribution to the partnerships were less than the value of their contributions.

- b. Tax Court and Fifth Circuit analysis in the *Estate of Strangi* of whether I.R.C. Section 2036(a)(1) could include assets contributed to a partnership by a decedent, if the decedent never makes a taxable gift.

Judge Cohen amplified the Court’s holdings in *Harper* in *Estate of Strangi v. Commissioner*, T.C. Memo 2003-145 (May 20, 2003). The Tax Court considered the applicability of I.R.C. Section 2036 to the Strangi family partnership on remand from the Fifth Circuit. *See Gulig on behalf of Estate of Strangi v. Commissioner*, 293 F.3d. 279 (5th Cir. 2002). The Fifth Circuit affirmed the full Tax Court’s opinion in *Estate of Strangi v. Commissioner*, 115 T.C. 478 (2000), that Chapter 14 arguments, gift on formation arguments and lack of economic substance arguments did not apply to the *Strangi* facts, but nevertheless reversed the decision because the Tax Court had not considered the applicability of I.R.C. Section 2036, saying the Tax

---

<sup>82</sup> *Church v. United States*, 85 A.F.T.R.2d (RIA) 804 (W.D. Tex. 2000), *aff’d without published opinion*, 268 F.3d 1063 (5<sup>th</sup> Cir. 2001) (per curiam), unpublished opinion available at 88 A.F.T.R.2d 2001-5352 (5<sup>th</sup> Cir. 2001); *Estate of Stone v. Comm’r*, 86 T.C.M. (CCH) 551 (2003); *Estate of Schutt v. Comm’r*, T.C. Memo 2005-126 (May 26, 2005); *Estate of Mirowski v. Comm’r*, T.C. Memo 2008-74; *Estate of Miller v. Comm’r*, T.C. Memo 2009-119; *Rayford L. Keller, et al. v. United States of America*, Civil Action No. V-02-62 (S.D. Tex. August 20, 2009); *Estate of Murphy v. United States*, No. 07-CV-1013, 2009 WL 3366099 (W.D. Ark. Oct. 2, 2009); and *Estate of Samuel P. Black, Jr., v. Comm’r*, 133 T.C. No. 15 (December 14, 2009); and *Shurtz v. Comm’r*, T.C. Memo 2010-21.

Court was wrong in finding that the I.R.S. did not raise the I.R.C. Section 2036 issue in a timely fashion.

Under the facts of *Strangi*, the general partner (Stranco, a corporation) of the subject family limited partnership had the power to distribute the assets of the partnership “in the sole and absolute discretion of the managing general partner.” The decedent owned all of the limited partnership units of the partnership, representing 99% of the partners' initial contributions. The decedent also owned 47% of the stock of Stranco, the 1% general partner. The decedent’s issue owned the remaining 53% of Stranco. In the original *Strangi* case, the full Tax Court made the following fact-findings:

- (i) The partnership was valid under state law and would be recognized for estate tax purposes.
- (ii) The decedent’s transfers of assets to the limited partnership and to the corporate general partner were not taxable gifts.
- (iii) The decedent’s interest in the limited partnership and the corporate general partner should be valued using the discounts applied by the I.R.S.’ expert.
- (iv) The Tax Court found that the I.R.S. would have the burden of proof of any fact issues relating to the application of I.R.C. Section 2036.

Judge Cohen held that I.R.C. Section 2036(a) applies to the decedent’s contribution of assets to the partnership and to Stranco, and operates to include in the decedent’s estate the underlying property of the partnership and the corporate general partner, even though the decedent under Texas law did not retain an interest in that property (for state law property purposes the partnership and/or the general partner were considered the owner of those contributed properties at the time of the decedent’s death). The exception in I.R.C. Section 2036(a) for transfers for full consideration did not apply, because “no bona fide sale, in the sense of an arm’s length transaction, occurred in connection with the decedent’s transfer of property to [the limited partnership and the corporate general partner].” Additionally, according to Judge Cohen, full and adequate consideration as that term is used in I.R.C. Section 2036 “does not exist where, as here, there has been ‘recycling’ of value through partnership or corporation solution.” Judge Cohen found that both I.R.C. Section 2036(a)(1) (retention of income) and I.R.C. Section 2036(a)(2) (retention of control over income) applied. The latter holding is particularly significant because it could be extended to partnership interests gifted by the decedent before death, though *Strangi* did not involve gifted interests.

Judge Cohen found that the facts and circumstances of this case indicated the probability of an implicit agreement to retain the income (or possession and enjoyment) of property transferred to the partnership in addition to the decedent's explicit rights as limited partner under the partnership agreement and applicable law. (Judge Cohen also suggested that the decedent's explicit rights under the arrangement might constitute a retention of income under I.R.C. Sec.

2036(a)(1), but this was *dictum* and was not the basis for the holding.)<sup>83</sup> Facts indicating an implied agreement sufficient to invoke I.R.C. Section 2036(a)(1) included the following: the transfer of most of the decedent's assets to the partnership, continued occupation of transferred property (notably, the decedent's residence), use of entity funds for personal expenses and testamentary characteristics of the arrangement. The Court found that "[f]undamentally, the preponderance of the evidence shows that decedent as a practical matter retained the same relationship to his assets that he had before formation of [the limited partnership and the corporate general partner]... Furthermore, the record suggests that the impetus underlying a number of significant [partnership] disbursements was needs of decedent or his estate, rather than exigencies pertaining to [the corporate general partner] or the partnership itself."

The damage done by applying I.R.C. Sec. 2036 is that the partnership assets, because they are included directly in the gross estate, will be valued without the discounts applicable to a valuation of the partnership interests.

The Fifth Circuit affirmed Judge Cohen's holding on I.R.C. Section 2036(a)(1), by holding that clear error was not made by her in applying the facts to the law. *Strangi v. Commissioner*, 417 F.3d 468 (5<sup>th</sup> Cir. 2005). The Fifth Circuit declined to comment on Judge Cohen's analysis of I.R.C. Section 2036(a)(2). However, the Fifth Circuit, while not reversing the Tax Court on I.R.C. Section 2036(a)(1), differed with Judge Cohen in its analysis as to the standards or prerequisites as to when I.R.C. Section 2036(a)(1) should apply.

The Fifth Circuit, as it did in *Kimbell* (which is discussed below) delineate the prerequisites that must be demonstrated before I.R.C. Section 2036(a)(1) applies. One of the prerequisites is that the transferor must retain *substantial present* "possession or enjoyment" of property within the meaning of I.R.C. Section 2036(a)(1):

... if he retains a 'substantial present economic benefit' from the property, as opposed to 'a speculative contingent benefit which may or may not be realized.' United States v. Byrum, 408 U.S. 125, 145, 150 (1972). IRS regulations further require that there be an 'express or implied' agreement 'at the time of the transfer'

---

<sup>83</sup> More specifically Judge Cohen found as follows:

As a threshold matter, we observe that our analysis above of the express documents suggests inclusion of the contributed property under section 2036(a)(1) based on the "right to the income" criterion, without need further to probe for an implied agreement regarding other benefits such as possession or enjoyment. The governing documents contain no restrictions that would preclude decedent himself, acting through Mr. Gulig, from being designated as a recipient of income from SFLP and Stranco. Such scenario is consistent with the reach of the right to income phrase as we described it in *Estate of Pardee v. Commissioner*, 49 T.C. 140, 148 (1967): Section 2036(a)(1) refers not only to the possession or enjoyment of property but also to "right to the income" from property. The section does not require that the transferor pull the "string" or even intend to pull the string on the transferred property; it only requires that the string exist. See *McNichol's Estate v. Commissioner*, 265 F.2d 667, 671 [3 AFTR 2d 1838] (C.A. 3, 1959), affirming 29 T.C. 1179 (1958). \*\*\* .

that the transferor will retain possession or enjoyment of the property. 26 C.F.R. § 20.2036-1(a).

Arguably, this differs from the more lenient standard the Tax Court seems to be adopting (see the discussion of *Bongard* above) that a speculative benefit (e.g., the transferor partner has the practical control to possibly turn partnership assets into cash (when in fact that has not occurred)) is enough. The Fifth Circuit found that the payments made prior to Mr. Strangi's death, the continued use of his transferred home and the post death payment of various taxes, debts and expenses were clearly "substantial and present" as opposed to speculative and contingent.

Particularly noteworthy, is the fact that the partnership seemed to determine its payments based on the need of Mr. Strangi or his estate. For instance, when it was necessary to pay the estate taxes, instead of the Estate selling its partnership interest to family members, or selling it through redemption, or borrowing money from a third party, the partnership made a significant proportionate distribution. Also, prior to Mr. Strangi's death, the partnership made monthly distributions from the partnership of \$7,000 each month to supplement Mr. Strangi's social security and pension benefits and the Fifth Circuit found that if that \$7,000 had not been paid, the \$187,000 in retained liquid assets was not potentially enough to maintain Mr. Strangi in his lifestyle for his remaining life expectancy. This finding is somewhat difficult to understand, given that the Tax Court also found Mr. Strangi was suffering from a terminal illness. Based on those facts, the Fifth Circuit found that it was not clear error that an implied agreement existed to pay Mr. Strangi or his estate a substantial present economic benefit.

Another prerequisite before I.R.C. Section 2036(a)(1) can apply to the underlying assets of the partnership is that there does not exist a bona fide sale for adequate and full consideration in money or money's worth upon the creation of the partnership. The Fifth Circuit, as it did in *Kimbell*, noted the exception contains two discrete requirements: (1) a bona fide sale and (2) adequate and full consideration. The Fifth Circuit noted the "adequate and full consideration" requirement was clearly satisfied because the capital accounts were properly and proportionately accounted for upon creation of the partnership. 417 F.3d at 478-479.

The Fifth Circuit, as it did in *Kimbell* (see the discussion below) noted that the inquiry as to whether a transfer of assets is "bona fide" is a purely objective inquiry. However, the Court noted that in *Kimbell* it had not stated precisely what this objective inquiry entails. The Court rejected the estate's contention that the only objective inquiry is whether the transferor actually parted with the transferred property and the transferee (e.g., the partnership) actually parted with partnership interests. The Court noted that the purported transfer in *Strangi* arguably deprives the transferor of literally nothing. As the Court noted:

As such, the Estate's interpretation of the exception would render the term 'bona fide' superfluous, and must therefore be rejected. 417 F.3d at 479.

The Court said the proper approach is that a sale will be considered "bona fide" if, as an objective matter, it serves a "substantial business [or] other non-tax' purpose." 417 F.3d at 479, quoting *Kimbell*, 371 F.3d at 267.



The Estate offered five non-tax rationales for Mr. Strangi's transfer of the assets to the partnership: (1) deterring potential tort litigation by a former housekeeper; (2) deterring a potential will contest; (3) encouraging a potential corporate executor to decline to serve; (4) joint investment reasons for the partners; and (5) permitting centralized, active management for certain working interests. The Court found that there was not clear error by the Tax Court in rejecting these rationales. As the Court noted:

In reviewing for clear error, we ask only whether the Tax Court's findings are supported by evidence in the record as a whole, not whether we would necessarily reach the same conclusions. 417 F.3d at 480.

The most interesting discussion is the analysis with respect to the fourth rationale offered with respect to the joint investment vehicle. The Tax Court rejected this rationale because of the *de minimis* nature of the contribution by the other partners. The Fifth Circuit found that the Tax Court had not made clear error for the following reason:

It is certainly true that the de minimis contribution of a minority partner is not, in itself, sufficient grounds for finding that a transfer of assets to a partnership is not bona fide. However, where a partnership has made no actual investments, the existence of minimal minority contributions may well be insufficient to overcome an inference by the finder of fact that joint investment was objectively unlikely. Such appears to have been the case here. Thus, it was not clear error for the Tax Court to reject the Estate's 'joint investment' rationale. 417 F.3d at 481.

...

In short, although Strangi may have transferred a substantial percentage of assets that might have been actively managed under SFLP, the Tax Court concluded, based on substantial evidence, that no such management ever took place. From this, the Tax Court fairly inferred that active management was objectively unlikely as of the date of SFLP's creation. As such, we cannot say that the Tax Court clearly erred in rejecting the Estate's 'active management' rationale. 417 F.3d at 481-482.

- c. District Court and Fifth Circuit analysis in the *Estate of Kimbell* of whether I.R.C. Section 2036(a) could include assets contributed to a partnership by a decedent, if the decedent never makes a taxable gift.

The Fifth Circuit, under the facts of the estate of Ruth Kimbell, had the opportunity to provide an analysis of what factors would need to be present for I.R.C. Section 2036 to apply to include assets contributed to a partnership.<sup>84</sup> Ruth Kimbell created a revocable trust in 1991 naming herself and her son, David, as co-trustees. On January 7, 1998, the trust, along with David and his wife, formed a limited liability company (LLC). The LLC had \$40,000 in capital. Of the capital, \$20,000 came from the trust for a 50% interest and David and his wife each contributed \$10,000 for a 25% interest each. On January 28, 1998, the revocable trust and the LLC formed a Texas limited partnership. The limited partnership had \$2.5 million in capital. Around \$2.5 million was contributed by the revocable trust for a limited partnership interest and \$25,000 was contributed from the LLC for a 1% general partnership interest. The revocable trust had a 99% limited partnership interest. Thus, Ruth Kimbell owned 99.5% of the partnership (99% through her limited partnership interest and .5% through her half interest in the LLC). On March 25, 1998, Ruth Kimbell died at the age of 96 (around two months after the partnership was created).

The partnership was to have a 40 year term. The partnership negated some of the fiduciary duties that are normally owed by a general partner. The owner of a 70% or more limited partnership interest (Ruth had a 99% limited partnership interest) could remove the general partner at any time.

At the time of Ruth Kimbell's death, the partnership assets were worth about \$2.4 million. Approximately 15% of the partnership assets were oil and gas interests (with a vast majority being working interests) and approximately 85% of the assets were cash or marketable securities. The executor of Ruth Kimbell's estate filed an estate tax return reporting a 49% discount for lack of control and marketability. The I.R.S. took the position that the estate should include the assets that Ruth Kimbell originally contributed to the partnership and, thus, denied any discount. The executors paid the additional estate taxes and sued for a refund in the district court.

On January 14, 2003, the District Court held for the I.R.S. on a motion for summary judgment.<sup>85</sup> The District Court agreed with the I.R.S. that the assets contributed to the partnership should be included in Ruth Kimbell's estate because of the operation of I.R.C. Section 2036. The Court held that the prerequisites of I.R.C. Section 2036 were met because the transaction was not a bona fide sale for adequate and full consideration. The Court reasoned that it was not an arm's-length transaction because she was on both sides of the transaction. The Court was of the opinion that she did not receive adequate and full consideration because the transaction was a "paper transaction" and nothing changed in terms of the property's management. Relying on the *Harper* decision, the District Court also referred to the transaction as a mere "recycling of value" and, thus, not a transfer for consideration. The court found that Ruth Kimbell had retained the

---

<sup>84</sup> *Estate of Kimbell v. United States*, 371 F.3d 257 (5<sup>th</sup> Cir. 2004).

<sup>85</sup> *Kimbell v. United States*, 244 F. Supp. 2d 700 (2003).

enjoyment of the property because her limited partnership interest gave her the right at any time to remove the general partner and appoint herself or someone else as general partner. Since the general partner had unlimited control and discretion as to making income distributions, Ruth Kimbell “retained the power to either personally benefit from the income of the partnership or to designate who could benefit from the income of the partnership.” 244 F. Supp. 2d at 705.

On May 20, 2004, the Fifth Circuit reversed the District Court opinion and remanded the case back to the District Court for valuation considerations relating to whether the interest owned by Ruth Kimbell at the moment of death was a limited partnership interest or an assignee interest. It is this writer’s understanding that this case was settled on those valuation considerations. The Fifth Circuit held that the contribution of assets for a limited partnership interest was not a transfer for purposes of the statutory prerequisite to I.R.C. Section 2036. It was not a transfer because it was a bona fide sale and it was for adequate and full consideration.

In general, with respect to the bona fide sale prerequisites the Fifth Circuit stated that the transferor must actually part with his or her interest and the transferee must actually part with the requisite adequate and full consideration. The requirement receives heightened scrutiny in intrafamily transfers. However, the absence of negotiation is not a compelling factor, particularly when the exchange value is set by objective factors.

The Fifth Circuit followed its prior opinion in *Wheeler* in determining whether the transaction is a bona fide sale. It is not a bona fide transaction if the transaction is a disguised gift or a sham transaction. The Court noted that under the regulations, a bona fide sale requirement is complied with if it is made in good faith. The presence of tax planning motives do not prevent a sale from being bona fide if it is otherwise real, actual or genuine for tax planning purposes.

The Court took the view that objective facts need to be considered in determining whether a bona fide sale took place. The Court noted several objective facts that supported the proposition that a bona fide sale occurred: (i) there was no commingling of personal assets; (ii) the decedent retained sufficient assets for support even if no distributions were made from the partnership; (iii) all partnership formalities were satisfied; (iv) assets were actually assigned to the partnership; (v) some of the assets contributed to the partnership required active management; (vi) certain business and financial strategies were satisfied that could not be satisfied by holding the assets in a revocable trust; (vii) certain administrative costs were lowered; (viii) certain recording costs were lowered by having the oil and gas properties in the partnership; (ix) certain marital property advantages could accrue from preserving the property as separate property for descendant owners; (x) an efficient vehicle for determining current and future management of the properties; (xi) alternative dispute resolutions were in place which may not have been possible using the trust alternative; and (xii) in general, the objective facts confirmed the purposes that were stated in the partnership agreement.

The Court concluded that the bona fide sale transaction was still present even though there were still *de minimis* contributions. In general, there is no *de minimis* test for determining whether the transaction is a sham.

The Court also determined that the transfer met the full consideration exception. The Court noted that the hypothetical willing buyer, willing seller test is not appropriate for determining whether or not adequate and full consideration has been received. That is a test that is used in measuring a gift when in fact a gift has occurred. It does not necessarily determine if a gift has occurred:

We would only add to the Tax Court's rejection of the government's inconsistency argument that it is a classic mixing of apples and oranges: The government is attempting to equate the venerable "willing buyer-willing seller" test of fair market value (which applies when calculating gift or estate tax) with the proper test for adequate and full consideration under § 2036(a). This conflation misses the mark: The business decision to exchange cash or other assets for a transfer-restricted, non-managerial interest in a limited partnership involves financial considerations other than the purchaser's ability to turn right around and sell the newly acquired limited partnership interest for 100 cents on the dollar. Investors who acquire such interests do so with the expectation of realizing benefits such as management expertise, security and preservation of assets, capital appreciation and avoidance of personal liability. Thus there is nothing inconsistent in acknowledging, on the one hand, that the investor's dollars have acquired a limited partnership interest at arm's length for adequate and full consideration and, on the other hand, that the asset thus acquired has a present fair market value, i.e., immediate sale potential, of substantially less than the dollars just paid – a classic informed trade-off. 371 F.3d at 266.

Thus, in the context of transfers to a partnership, the Fifth Circuit took the view that in determining whether adequate and full consideration was present, the following is an appropriate test:

The proper focus therefore on whether a transfer to a partnership is for adequate and full consideration is: (1) whether the interests credited to each of the partners was proportionate to the fair market value of the assets each partner contributed to the partnership, (2) whether the assets contributed by each partner to the partnership were properly credited to the respective capital accounts of the partners, and (3) whether on termination or dissolution of the partnership the partners were entitled to distributions from the partnership in amounts equal to their respective capital accounts. . . .The answer to each of those questions in this case is yes. Mrs. Kimbell received a partnership interest that was proportionate to the assets she contributed to the Partnership. There is no question raised as to whether her partnership account was properly credited with the assets she contributed. Also, on termination and liquidation of the Partnership, the Partnership Agreement requires distribution to the Partners according to their capital account balances. 371 F.3d at 266.

The Fifth Circuit also rejected the "recycling of value" position of the Tax Court and the District Court in the I.R.C. Section 2036 cases. The Court was of the view that that issue is better addressed by the bona fide sale prerequisite of the statute.

The Court did not analyze whether the prerequisites of the statute were met with respect to the transfer to the LLC. Perhaps they were. On the other hand, perhaps those prerequisites were not satisfied by Mrs. Kimbell because the Court analyzed whether or not she retained an I.R.C. Section 2036(a)(2) power. Perhaps, although not stated, the fact that Mrs. Kimbell did not retain management rights while David Kimbell, in contributing assets to the LLC, did acquire management rights made the Court uncomfortable as to whether Mrs. Kimbell had received full and adequate consideration in comparison to the contribution that David had made. At any rate, the Court took the view that I.R.C. Section 2036(a)(2) did not apply because David Kimbell had the management rights to determine what the distributions would be to the partners of the partnership.

- d. Tax Court and Third Circuit analysis in *Turner* (the so-called *Thompson* case) of whether I.R.C. Section 2036(a)(1) could include assets contributed to a partnership by a decedent, if the decedent never makes a taxable gift.

On September 1, 2004, the Third Circuit issued its opinion in *Turner*, executrix of the *Estate of Thompson v. Commissioner* (“the *Thompson* case”).<sup>86</sup> The underlying facts in *Thompson*, most commentators agree, are extreme in establishing a pattern that supports an implied agreement that the partnership assets would be made available as desired by the decedent. The Third Circuit’s analysis of whether a transfer has occurred for purposes of I.R.C. Section 2036 is quite different than the Tax Court’s analysis in prior I.R.C. Section 2036 cases. While the analysis is similar to the Fifth Circuit’s analysis in *Kimbell*, there are important differences.

Unlike the implication of certain of the Tax Court opinions, the Third Circuit determines that the “bona fide” requirement does not require an arms-length transaction. However, the *Thompson* court seems to emphasize “legitimate business interests” more than the *Kimbell* opinion. The full consideration analysis of determining whether a transfer was made on contribution of assets to the partnership is also different than the Tax Court analysis. However this portion of the opinion clearly has a different analysis than the Fifth Circuit’s analysis in *Kimbell*. The Third Circuit adopts what certain cases have characterized as “equilibrium rule” (i.e. there was a dissipation of value in the estate when cash and near cash was transferred in return for discounted limited partnership interests). There are, of course, many transactions in which transfers will result in immediate discount, however, hopefully over the long haul value is added by the creation of an entity. The Third Circuit recognized that concern and said that the automatic transfer of marketable assets to an entity, the acquisition of closely-held enterprises, or the acquisition of undivided interests in real estate would not automatically constitute inadequate consideration for purposes of I.R.C. Section 2036(a). The Third Circuit took the view that it would not be applied in “routine commercial circumstances” or ordinary commercial transactions, even within families. However, their analysis would be applied to transactions that “obviously were used as tax dodges in circumstances that I.R.C. Section 2036(a) was intended for”.

---

<sup>86</sup> 382 F.3d 367 (3<sup>rd</sup> Cir. 2004).

The *Kimbell* case, obviously, takes a more objective approach than the subjective approach of the Third Circuit. The Third Circuit's subjective approach can be satisfied if adequate non-tax business reasons for the partnership are demonstrated.

e. Tax Court and First Circuit analysis in *Abraham*.

In *Estate of Ida Abraham*, 87 TCM 975 (2004), the Tax Court held that family limited partnership property was included in the decedent's estate under I.R.C. Sec. 2036(a)(1) because she retained rights in the income from such property. Unlike some of the prior cases discussed above, in this case, based on the documented evidence, including the stipulated decree of the probate court and the understanding of the decedent's children and legal representatives, the Tax Court found there was an *actual* agreement (as opposed to an implied agreement) for the decedent to have all partnership funds for her support first. The Tax Court also found the transfer of the decedent's assets into the partnership was for less than full and adequate consideration. The decedent's daughters had purchased partnership interests for \$160,000. The IRS offset this amount against the value of the family limited partnership property included in the gross estate.

The estate appealed the Tax Court determination to the First Circuit. The appeals court affirmed the lower court decision. *Estate of Abraham v. Commissioner*, 408 F.3d 26 (1<sup>st</sup> Cir. 2005). The First Circuit noted the following:

The Estate next argues that the Tax Court erred in holding that Mrs. Abraham "retained the right to the income that the FLPs generated to the extent necessary to meet her needs." *Estate of Abraham*, 87 TCM (CCH) at 981. The Estate makes two intertwined arguments: (1) Mrs. Abraham did not retain a legally enforceable "right" within the meaning of §2036, and (2) there was no agreement that Mrs. Abraham would retain a first-access interest in all the income from the FLPs to the extent necessary for her support.

In order for §2036 to apply, it is not necessary that the decedent-transferor retain a *legally enforceable interest* in the property. See *Estate of Maxwell v. Comm'r*, 3 F.3d 591, 593-94 (2d Cir. 1993); *Guynn v. United States*, 437 F.2d 1148, 1150 (4<sup>th</sup> Cir. 1971). "An interest retained pursuant to an understanding or arrangement comes within §2036." *Guynn*, 437 F.2d at 1150. "The existence or nonexistence of such an understanding is determined from all of the facts and circumstances surrounding both the transfer itself and the subsequent use of the property." *Estate of Harper v. Comm'r*, 83 TCM (CCH) 1641, 1648 (2002). The finding by the Tax Court that such an understanding existed is reviewed for clear error. See *Estate of Maxwell*, 3 F.3d at 594. As with other issues, the Estate "bears the burden (which is especially onerous for transactions involving family member) of proving that an implied agreement or understanding between [Mrs. Abraham] and [her] children did not exist." *Estate of Reichardt v. Comm'r*, 114 T.C. 144, 151-52 (2000).

We may dispose of the first part of the Estate's argument quickly. The Tax Court did not find that Mrs. Abraham retained a legally enforceable "right" to all the income from the FLPs. Therefore the arguments that the Tax Court decision is in conflict with vested property interests of the children is irrelevant.

What the Tax Court did find was that "[he] documentary evidence, including the stipulated decree of the probate court, and the understanding of decedent's children and legal representatives demonstrate that decedent was entitled to any and all funds generated from the partnership for her support *first*." Estate of Abraham, 87 TCM (CCH) at 981 (emphasis in original). This finding is not clearly erroneous.

f. Tax Court and Eighth Circuit analysis in *Korby*

In the *Estate of Korby v. Commissioner*, 471 F.3d 848 (8<sup>th</sup> Cir. 2006), *aff'g* 89 T.C.M. CCH 1150 (2005), the 8<sup>th</sup> Circuit affirmed the Tax Court and applied I.R.C. Section 2036(a)(1) to include the assets of a partnership in the *Korbys*' gross estates. The Tax Court found that Mr. and Mrs. Korby had an implied agreement to retain the income of the assets of the partnership and that the creation of the partnership was not a bona fide sale for adequate and full consideration. The Tax Court found that Mr. and Mrs. Korby had an implied agreement because the partnership was formed while they were in poor health, they transferred almost all of their assets to the partnership and even though they gave away 98% of the limited partnership interest, all distributions made during the term of the partnership were made to Mr. and Mrs. Korby to provide for their nursing home care, medical expenses and other living expenses. The trust to which they made their gifts (even though it owned 98% of the interest) never received distributions from the partnership.

The Tax Court determined that the bona fide sale exception did not apply because the *Korbys* were financially dependent upon the distributions from the partnership and that Mr. and Mrs. Korby created the partnership with no input from the other partners.

The 8<sup>th</sup> Circuit found no clear error in the Tax Court's findings. The 8<sup>th</sup> Circuit rejected the arguments that the payments to Mr. and Mrs. Korby were fees for managing the partnership because of the manner in which the payments were made and Mr. and Mrs. Korby's failure to report the payments as self-employment income.

The 8<sup>th</sup> Circuit also found that there was no clear error in the Tax Court's finding that the bona fide sale exception did not apply. The 8<sup>th</sup> Circuit cited with approval the 3<sup>rd</sup> Circuit's decision in the *Estate of Thompson* (discussed above). The Court noted that "the transaction must be made in good faith which requires an examination as to whether there was some potential for benefit other than the potential estate tax advantages that might result from holding assets in the partnership form." 471 F.3d at 853.

g. Tax Court and Ninth Circuit analysis in *Bigelow*.

In *Estate of Bigelow v. Comm'r*, 503 F.3d 955 (9<sup>th</sup> Cir. 2007), *aff'g* 89 T.C.M. (CCH) 954 (2005), Virginia Bigelow created a revocable trust in 1991. In December of 1994, the trust

contributed investment property to a family limited partnership. At that time Mrs. Bigelow was 85 years old and was living in an assisted living facility. A \$450,000 liability secured by the property remained a liability of the trust and was not transferred to the partnership. The trust was the sole general partner and received most of the limited partnership units. After the transfer, Mrs. Bigelow was left with an insufficient amount to meet her living expenses or to satisfy her liability for the indebtedness.

Despite the fact that the loan was not an obligation of the partnership, the partnership made the principal and interest payments and paid some of Mrs. Bigelow's living expenses. Mrs. Bigelow's son, acting as agent for Mrs. Bigelow, made 40 transfers between the partnership and the trust during a period of approximately two years.

During 1994 and 1995, the son, as agent for Mrs. Bigelow, made gifts of some of the partnership units (after the units were transferred from the trust to Mrs. Bigelow) to himself, his sisters and to Mrs. Bigelow's grandchildren. Gift tax returns were not filed until Mrs. Bigelow died in 1997.

The Tax Court judge agreed that Section 2036(a)(1) applied to the assets contributed by the trust to the partnership, finding an implied agreement that Mrs. Bigelow would retain the income from enjoyment of the rental property that was contributed.

The Tax Court further held that the bona fide sale exception to Section 2036 did not apply because the transfers to the partnership were not in good faith and were not made for legitimate non-tax purposes. The Tax Court further noted that the parties failed to respect partnership formalities, including (1) a failure to maintain partnership capital accounts, (2) the balance sheets improperly reflected the \$350,000 liabilities or liability to the partnership, (3) K-1's did not properly reflect capital accounts, (4) the trust's capital account was not adjusted to reflect payments on a \$350,000 loan made by the partnership as required by the partnership agreement, and (5) Mrs. Bigelow's capital account never reflected the value of the trust contribution of the rental property. At bottom, the Tax Court found that the Bigelows did not comply with the terms of the partnership agreement.

The Tax Court also held that the transfer did not provide and there was no potential to provide non-tax benefits to Mrs. Bigelow as a result of the creation of the entity "because management of the assets did not change as a result of the transfer and there was no pooling of assets." The non-tax purposes for creating the Partnership relied upon by the estate included (1) creditor protection, (2) continuity of management, and (3) gifting efficiency. The Tax Court distinguished each of these. First, the Tax Court opined that no additional creditor protection was provided because Mrs. Bigelow's Trust was the sole general partner and the general partner was not protected from liability associated with the rental property. Second, the Tax Court noted that there was no change in continuity of management because the Partnership would terminate when the Trust terminated as the Trust was the general partner. Third, the Tax Court opined that gifting efficiency was not a sufficient non-tax reason because "a transfer made solely to reduce taxes and to facilitate gift giving is not considered in this context to be made in good faith or for a bona fide purpose."



On September 14, 2007, the Ninth Circuit upheld the Tax Court's decision. The Ninth Circuit noted that "In reviewing for clear error, we ask only whether the Tax Court's findings are supported by evidence in the record as a whole, not whether we would necessarily reach the same conclusions." 503 F.3d at 964. The Court also noted that Section 2036(a)(1) "is designed to recapture the value of certain assets transferred by the decedent during his or her lifetime where the decedent has retained economic benefits from the transferred asset." 503 F.3d at 963.

With respect to the bona fide sale exception, the Court noted that the term "adequate and full consideration in money or money's worth" did not preclude discounts "due to lack of control and marketability." The Ninth Circuit noted that "the validity of the adequate and full consideration prong cannot be gauged independently of the non-tax related business purposes involved in making the bona fide transfer inquiry." 503 F.3d. at 969.

The Court, however, rejected the estate's non-tax purposes for creating the partnership, which included limited personal liability, efficient management and ease of gifting. The Ninth Circuit noted that there was no evidence that any of the partners "reasonably faced any genuine exposure to liability that might have validated the partnership formation for a non-tax purpose." 503 F.3d at 971. Regarding efficient management, the Court noted that without some active management, this is not a credible non-tax reason for creating the partnership. Finally, the Court noted, as have other courts, that "gift giving is considered a testamentary purpose and cannot be justified as a legitimate, non-tax business justification." 503 F.3d at 972. Accordingly, the Ninth Circuit found that the Tax Court did not commit clear error in determining that the transfer to the partnership was not a bona fide sale for an adequate and full consideration under Section 2036.

D. The I.R.C. Section 2036(a)(1) Problem Does Not Exist if There is a Substantive Non-Tax Reason For the Creation of the Family Limited Partnership.

If substantial partnership interests are to be held by the taxpayer at death, it is important to document and demonstrate at least one substantial non-tax reason to establish a partnership and capital accounts should reflect interests proportionate to the contributed property.

In order to demonstrate that the original creation of the partnership is "bona fide" for estate tax purposes (and a transfer for estate tax purposes has not occurred) one substantive non-tax reason for its creation should be demonstrated. That demonstration should be documented in correspondence with the taxpayer and in the partnership agreement recitals. That non-tax reason should specifically relate to the taxpayer's concerns and goals. There are many financial advantages of a partnership that are unrelated to potential transfer tax savings. Among such financial advantages are the following:

1. A taxpayer, by using the partnership vehicle, has the ability to transfer capital without killing the transferee's productivity and initiative, because the taxpayer may have some indirect control over distributions, which may not be possible with the trust vehicle.

Many successful clients fear that substantial gifts to descendants may hinder their productivity and initiative. In particular, clients with a substantial portfolio of stocks and bonds

believe that giving a child or grandchild a readily marketable asset would not be doing him or her any developmental favors. Most clients believe that no one understands their children better than they do. By creating a family limited partnership and transferring only a limited partnership interest to a descendant, a donor controls the marketability of the wealth transferred because the interest effectively cannot be sold, and because the donor can reinvest the partnership's cash flow rather than making distributions to the partners. As we have seen from the discussion above, this retained, indirect power to affect the marketability of the transferred partnership interests, if properly structured, does not subject the transferred interest to estate taxes on the donor's death.<sup>87</sup> By contrast, a retained power as trustee to determine the amount of distributions to trust beneficiaries may subject the trust assets to estate tax on the donor's death.

2. By using the partnership vehicle, the pooling of partnership assets will lower operating costs, increase diversity, and may solve the accredited investor rule problem for investors with limited assets (including smaller trusts).

Families often have many members, and often several trusts have been created over time in conjunction with prior gifts. Keeping up with investments for multiple parties can be frustrating and expensive. By consolidating assets into one partnership, however, these problems over the long term are solved. It is easier and cheaper for a partnership to diversify investments because the size of the portfolio is larger. Likewise, it is easier and cheaper to diversify across several money managers because larger accounts generally are less expensive on a percentage basis and because minimum size requirements are more easily met. This is why unrelated individuals have used the partnership form of ownership for their investment clubs.<sup>88</sup> Related individuals also like forming "investment clubs." The partnership form of doing business is as attractive to families as it is to unrelated parties because of its potential lower "per-unit" administration expenses and its greater potential for diversification. Generally, under modern portfolio theory part of the assets should be allocated to private equity and uncorrelated asset classes such as "hedge funds". This is difficult to do for smaller trusts (absent investing in a partnership that qualifies as an accredited investor) because they are not considered, standing alone, as being an accredited investor.<sup>89</sup> Thus, over time, the pooling of assets will lead to greater value and wealth for all of the partners. Because of the asset diversity and cheaper per-unit

---

<sup>87</sup>See *United States v. Byrum*, 408 U.S. 125 (1972). Earlier rulings, relying on *Byrum*, indicated that in a typical family limited partnership, the managing partner will not be considered as having retained an I.R.C. § 2036(a)(2) or I.R.C. § 2038 power over the transferred limited partnership interest. Tech. Adv. Mem. 91-31-006 (Apr. 30, 1991), citing *Byrum*. See also Rev. Rul. 81-15, 1981-1 C.B. 457; P.L.R. 94-15-007 (Jan. 12, 1994); P.L.R. 93-32-006 (Aug. 20, 1992); P.L.R. 93-10-039 (Dec. 16, 1992), and P.L.R. 90-26-021 (Mar. 26, 1990); G.C.M. 38,984 (May 6, 1983); G.C.M. 38,375 (May 12, 1980). The cases discussed above have cast doubt on these rulings for purposes of IRC Section 2036(a)(2) and IRC Section 2038, but the application of those sections to FLPs has yet to be fully articulated by the cases, which have focussed mainly on IRC Sec. 2036(a)(1). In any case, the application of IRC Sec. 2036(a)(2) and IRC Sec. 2038(a) is negated if the contribution to the partnership qualifies under the exception for a bona fide sale for adequate and full consideration in IRC Sec. 2036(a) and IRC Sec. 2038(a)(1), discussed above.

<sup>88</sup> See Rev. Rul. 75-523, 1975-2 C.B. 257; Rev. Rul. 75-525, 1975-2 C.B. 350.

<sup>89</sup> See the discussion in Article II B of this paper.

operating costs, a significant comparative advantage could exist for each partner in comparison to their situation if they had not pooled their assets. For investors who are not concerned with short-term lack of control and marketability, and who wish to realize long-term growth of their assets for themselves and their family, the family partnership is an excellent institutional tool.

3. The partnership vehicle simplifies annual giving for private equity investments.

Many assets are extremely difficult to value and are not prone to gifts of undivided fractional interests. Good examples of such assets are private equity, hedge funds, rural land and closely held unincorporated businesses. Contributing those assets to a family limited partnership not only allows for proper asset allocation, but also allows a donor to assign partnership interests to a descendant with the use of a simple form. A fractional interest is given away, yet there is no immediate risk of partition, and management of the asset remains consolidated. If a client wishes to transfer part of his limited partnership to his issue, it generally will qualify for the annual exclusion.<sup>90</sup> The difficulties associated with the *Hackl* and *Price* cases may be avoided if the donor gives the donee in the assignment document the right to “put” the partnership units back to the donor for cash equal to the fair market value of the units (with fair market value of the units determined as if the “put” right does not exist) for a period of time.

4. Partnership vehicle facilitates assets that are important to be kept in the family.

Family partnership agreements often are drafted with certain buy-sell provisions to ensure that the partnership’s assets will stay in the family. Under such provisions, if any partner attempts to assign his or her interest in the partnership to a person outside of the family, the other partners or the partnership itself may acquire that interest on the same terms, or, in the case of a gratuitous transfer, at its fair market value. Secondly, even without buy-sell provisions, no outsider can have any rights as a partner unless all of the partners admit that outsider as a partner (and can only be an assignee with limited distribution rights).

5. Partnership vehicle provides some protection against a taxpayer’s future unforeseeable creditors, which cannot be provided to that taxpayer under most states law by using trusts.

A family partnership can be a flexible vehicle to provide some protection of an individual’s assets from future creditors. This is very important to wealthy clients since studies indicate one out of four Americans (which tend to be the wealthiest Americans) will be sued. Under the trust laws of most states, creditor protection cannot be achieved for the grantor of self-settled trusts. The principal remedy of a partner’s “outside” creditors, as distinguished from the partnerships “inside” creditors, is to receive a “charging order” against the partner’s interest in

---

<sup>90</sup>See Tech. Adv. Mem. 91-31-006 (Apr. 30, 1991). *But see* Tech. Adv. Mem. 97-51-003 (August 28, 1997); *Hackl v. Comm’r*, 118 T.C. 279 (2002), aff’d, 335 F.3d 664 (7th Cir. 2003); *Price v. Comm’r.*, T.C. Memo 2010-2.

the partnership. Under many states' limited partnership laws, unless a partner has made a fraudulent conveyance to the partnership or a conveyance deemed to be fraudulent, his or her creditors cannot reach the partnership's assets. Instead, a creditor may obtain a charging order against the partner's interest in the partnership, which does not give the creditor any management rights but entitles the creditor only to the partner's share of partnership distributions (*i.e.*, an assignee's interest). In addition, the partnership agreement can be drafted so that an involuntary transfer of a partnership interest to a creditor or any other third party triggers buy-sell provisions that allow the other partners or the partnership itself to purchase that interest at its fair market value. Since the fair market value of a limited partnership interest is usually much less than the underlying asset value, the creditor effectively is paid with less money, and the family assets are more likely to survive the creditor's claims. Furthermore, partnership agreements can be drafted to prohibit the pledging of partnership interests for the debts of a partner.

6. The partnership vehicle provides greater protection of gifted assets against failed marriages.

The risk of a gift to a descendant being awarded to his or her spouse upon divorce can affect an estate plan, and prenuptial or postnuptial agreements may be distasteful or impractical in many situations. In particular, stocks and bonds are very prone to being commingled with assets of the marriage and in community property states effectively might become community property. Since some studies indicate that one out of two future marriages may end in failure, this consideration is very important to many wealthy clients. Limited partnership agreements, however, can be drafted so that gifts of limited partnership interests are protected from the risk of divorce. Many jurisdictions will not award separate property to a divorced spouse or will limit that award. A partnership provides a convenient means of segregating a descendant's separate property so that commingling is avoided. In addition, a partnership agreement can provide that an involuntary transfer of a partnership interest required by a divorce court will trigger buy-sell provisions under which the other partners or the divorced partner can buy that interest at its fair market value. Because the fair market value of the limited partnership interest is usually less than the underlying asset values, a divorced partner is protected even if a court awards his or her interest to a former spouse.

7. Unlike irrevocable, non-amendable trust agreements, partnership agreements are comparatively flexible.

In comparison to an irrevocable, unamendable trust, a limited partnership is a very flexible arrangement. If all of the partners agree, the partnership agreement may be amended or the partnership may be terminated. If all of the partners are family members, in some family situations, the change of the agreement is fairly straightforward to obtain. By contrast, an irrevocable trust generally may not be amended or terminated without court participation and participation by a guardian or an attorney ad litem for certain beneficiaries. As compared to corporations, a partnership requires fewer formalities and may be terminated without the potential adverse tax consequences associated with the termination of a corporation.

8. Business judgment rule of partnership law offers greater flexibility in investment management than trust law.

The “prudent man” or “prudent investor” rule applicable to trustees is a stricter standard than the business judgment rule applicable to the managing partners of a partnership. Many financial investments, such as options and commodities, and many business decisions, such as wildcat oil drilling, may be reasonable in terms of normal business judgment, but could be considered imprudent under trust law. Most families want to protect the family member who is charged with the responsibility of making investment decisions. In particular, families often want that family member who is managing the assets to be protected from the “20/20 hindsight” of a court or jury.

9. Partnership agreements could be drafted to mandate arbitration of family disputes and avoid court litigation, which is generally not possible under most state laws with respect to trusts.

Recent history is replete with examples of highly publicized intrafamily litigation involving the management of family assets. It is extremely difficult to replace a trust beneficiary’s right to sue his trustee with a commitment to binding arbitration. Stated differently, the state law right of a beneficiary to sue his or her trustee in many jurisdictions may not be removed by a trust agreement. Because a partnership agreement is a mere contract, however, it can be written so that all of the partners agree to settle disputes by arbitration. When compared to a jury trial, arbitration is usually preferable, especially in the family context. The publicity associated with family disputes can provide an unfair advantage to the person bringing a lawsuit against the family’s decision maker. With a well-drafted partnership agreement, such publicity can be avoided through the arbitration process and enforced by a confidentiality provision. In addition, an experienced business person or financial advisor may serve as arbitrator and fact finder. Thus, where the client determines there is an advantage to arbitration, the partnership vehicle is clearly superior to the use of a trust in many jurisdictions.

10. Partnership agreements could be drafted to mandate the “English” rule for disputes (loser pays); that is generally not possible under most state laws with respect to trusts.

Under trust law, frivolous actions can be difficult to prevent and may be brought by beneficiaries just to provoke a resignation or distribution by the trustee. It is difficult to charge a trust beneficiary with the costs associated with legal action. Furthermore, even though a trustee may be reimbursed for legal costs out of the trust’s properties, the other beneficiaries of the trust suffer because of that reimbursement. By contrast, a partnership agreement can require a partner who brings an unsuccessful arbitration action against the management of the partnership to pay all of the costs associated with the arbitration. Thus, a family limited partnership more easily avoids frivolous claims and harassment actions.

11. Partnership arrangements facilitate and institutionalize family communication and education on financial matters.

One of the more enjoyable aspects of a family limited partnership is that it can serve to institutionalize the education of younger family members on the family's wealth management philosophies. Many people see nothing wrong with wealth *per se*, but fear that it can be abused and therefore want to oversee the financial experiences of younger family members. In addition, prudent investment can generate employment and serve other altruistic purposes. The collectivism provided by a partnership agreement institutionalizes this education process.

12. Partnerships eliminate or lower out-of-state probate costs for real estate investments.

Many people in our mobile society own passive real estate investments, including vacation property, outside of their home state. Contributing that property to a family limited partnership avoids the costs associated with out-of-state probate of those assets. Also, if the home state jurisdiction does not have a basic inheritance tax, the basic inheritance tax of the ancillary jurisdiction may be avoided in certain instances through the use of a family limited partnership.

13. The partnership vehicle indirectly facilitates trust partners that only pay income to current trust beneficiaries to follow modern portfolio theory.

A trustee may have difficulty following modern portfolio theory because there is a natural conflict between the investment philosophies of income beneficiaries, who prefer current income to growth, and remainder beneficiaries, who prefer growth to current income. In general, modern portfolio or asset allocation theory teaches that rational investors should seek to achieve the highest rate of return consistent with their tolerance for risk, *from whatever source*. For example, sometimes stocks may be preferred to bonds, and at other times the reverse is true. One type of trust, known as a "unitrust," pays current beneficiaries a percentage of the value of the unitrust's assets, thus allowing the trustee to follow modern portfolio theory; however, most trusts are not unitrusts. A limited partnership, on the other hand, can serve as a "wrapper" around family assets and allow those assets to be managed like a unitrust.<sup>91</sup> The managing partner can invest in a way that produces the highest rate of return consistent with his or her tolerance for risk, whether the source of that return is appreciation or current income. The managing partner then may distribute the percentage of the partnership's assets that he or she deems appropriate to the current "beneficiaries" (*i.e.*, partners) of the partnership. Those distributions, under the Uniform Principal and Income Act, are generally considered trust accounting income, even if they come from capital gain profits of the partnership.

---

<sup>91</sup> See the discussion in Article II B of this paper.

14. A partnership is advantageous compared to a “C” corporation because it has one level of income tax and is advantageous compared to an “S” corporation because it allows a greater variety of ownership structures.

Partnerships are “pass through” entities that do not pay income tax. Since the repeal of the General Utilities Doctrine, “C” corporations and business trusts have become very inefficient tax entities because there will always be two levels of income tax, even on unrealized gains.

15. A partnership is advantageous compared to a corporate structure because in many jurisdictions there is no franchise tax or intangibles tax to pay with the use of partnerships.

In almost all jurisdictions, corporations and business trusts are subject to franchise taxes and/or intangible taxes. However, in many of those same jurisdictions, partnerships do not pay those taxes.

- E. If a Sale of a Partnership Interest Occurs During a Client’s Lifetime, the Gift Tax Equivalent of I.R.C. Section 2036 Does Not Exist (i.e., There Is No I.R.C. Section 2536 Under Chapter 12 of the Code).

There is not an equivalent gift tax statute equivalent to I.R.C. Section 2036(a)(1). For gift tax purposes, a substantive non-tax reason for the contribution to the partnership does not need to exist. As noted above, for gift tax purposes, the taxpayer needs to demonstrate that the partnership is a partnership for state law purposes and is a group that conducts financial operations.<sup>92</sup> Stated differently “the bona fide” requirement for gift tax purposes appears to only require only that a sham transfer has not occurred and that it is a partnership for state law property purposes. Secondly, there needs to exist a proper crediting of capital accounts. Thus, if the donor transfers all of his interest in the partnership and lives three years (*see* I.R.C. Section 2035) I.R.C. Section 2036(a)(1) will not apply. See the example below.

*Example 3: Lacy Lucky Sells Her  
Partnership Interest During Her Lifetime*

*Lacy Lucky lives in the great state of Nirvana. In the state of Nirvana, plaintiff’s lawyers have been banned. In this enlightened state, wealthier spouses always receive all of the marital assets, if there is a failed marriage. Because this state is so enlightened, the SEC is very impressed and has waived its qualified purchaser and accredited investor rules with respect to trusts created under this state’s laws. Because of all of these reasons (and because all children in this state are born with above average intelligence), Lacy Lucky is worried that a substantive non-tax reason may not exist for the creation of her family limited partnership. After the creation of the partnership, Lacy will own a 1% general partnership interest and a 98% limited partnership interest. Lacy asks her attorney, Tom Taxadvisor, what she could do to avoid the*

---

<sup>92</sup> See the discussion above in Article I B and C. See *Knight* 115 TC 506 (2000); *Estate of Strangi* 115 TC 478 (2000) aff’d on Chapter 14 issues 293 F.3d 279 (5<sup>th</sup> Cir. 2002).

*application of I.R.C. Section 2036(a)(1) other than avoiding behavior that might constitute an implied agreement to use the partnership asset income?*

Tom may advise Lacy to sell all of her limited partnership interest for adequate and full consideration. Even if the sale is not for adequate and full consideration (e.g. part sale, part gift or all a gift), if Lacy lives longer than three years after the transfer, then I.R.C. Section 2036(a)(1) should not apply to the resulting note (assuming the note is a note for state law property purposes) and/or cash she receives from that sale. (However, I.R.C. Section 2036(a)(2) may apply to the retained general partnership interest and the transferred limited partnership interest, if the sale is not for adequate and full consideration.)

F. There Are Many Other Reasons, Other Than Avoiding I.R.C. Section 2036(a)(1) Inclusion, for Transferring the Partnership Interest During the Taxpayer's Lifetime For a Note.

1. The valuation principles of Revenue Ruling 93-12 apply to lifetime transfers, but they do not apply to transfers at death.

Under Revenue Ruling 93-12, the Internal Revenue Service, after losing several court cases, including one court case where attorney's fees were ordered to be paid to the taxpayer, acquiesced to the view that family attribution does not exist for gift tax valuation purposes. For instance, if a taxpayer who owns 100% of a business transfers by gift a 20% interest in that business to each of his five children, the measure of the gift is what a hypothetical willing buyer would pay a hypothetical willing seller for 20% of the interest in the enterprise (times five). On the other hand, if that same taxpayer transferred 100% of his interest in the business enterprise to those same five children at the time of his death by a will, the valuation of the transfer for estate tax purposes is what a hypothetical willing buyer would pay a hypothetical willing seller for 100% of the enterprise. The differences between those two valuation methodologies may be profound.

For instance, assume a taxpayer wishes to make a transfer to a charity, marital deduction trust and a trust for his family. There may be problems of achieving full deductibility for estate tax purposes for the charitable bequest at death and the marital deduction bequest at death, if the estate largely consists of an entity in which a valuation discount is not allowed for estate tax purposes. There may not be the same concerns for an inter vivos gift because for gift tax valuation purposes one focuses on what is transferred, not what is retained before the transfer.

2. Growth of the underlying assets of the partnership, if a transfer occurs during the lifetime of a taxpayer, will not be subject to estate tax.

If a taxpayer transfers his or her partnership interest either by gift or sale, assuming the underlying assets of the partnership grow in value (and in the case of a sale grow faster than the interest carry on the note) part of that growth (in the case of a sale) or all of that growth (in the case of a gift) will not be subject to estate taxes. If the taxpayer does not transfer the partnership interest during his or her lifetime, while the partnership discount may be available at death, the discount will only apply to the then value of the assets of the partnership, which may have grown at a much greater rate than the said valuation discount.



3. There is a significant transfer tax advantage for the taxpayer who transfers his partnership interests during his lifetime to a grantor trust in exchange for a note.

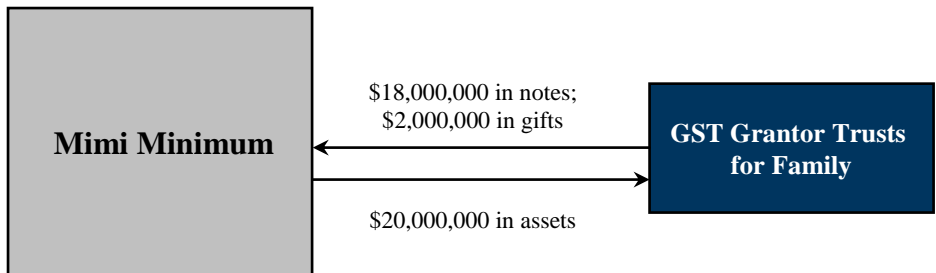
The IRS ruled in Revenue Ruling 2004-64<sup>93</sup> that a taxpayer does not owe gift taxes with respect to a grantor trust in which the taxpayer is liable for the income taxes. Over time, this may be a significant transfer tax benefit for a donor. Normalized growth on the part of the partnership assets, coupled with the sale to a grantor trust, generates synergistic transfer tax benefits. These benefits may substantially, over time, exceed the benefits from any valuation discount associated with the partnership interest. Consider the following example:

*Example 4: Mimi Minimum Wonders What Additional Transfer Tax Benefit Accrues From a Partnership Valuation Discount Over Her Life Expectancy*

*Mimi Minimum is a very healthy 50 year old female. Both of her parents are still alive and she has only recently buried her grandparents. Her doctor assures her that she easily has a 30 year life expectancy. Mimi likes the relative simplicity of making a \$2,000,000 gift of some of her highly appreciated stock to fund a grantor trust and then selling her highly appreciated stock worth \$18,000,000 to that grantor trust for a low interest note. After the sale for the note is completed, the grantor trust would then sell all \$20,000,000 of its stock (“Alternative One” below). Mimi asks her estate planner, Les Rates, what is gained by transferring a family limited partnership (which holds \$18,000,000 of her stock) to a grantor trust from a transfer tax standpoint, assuming she does live a 30 year period (“Alternative Two” below). Mimi is concerned about the costs of creating a family limited partnership (legal costs, accounting costs, administrative costs and valuation expert costs). Mimi tells Les Rates to assume that she will earn 8% pretax return with respect to the proceeds of the sale of the appreciated stock (with 2% being taxed at ordinary income rates and 6% being taxed at capital gains rates with a 30% turnover) and that her consumption needs will be \$350,000 a year before inflation. What does Les Rates’ analysis demonstrate?*

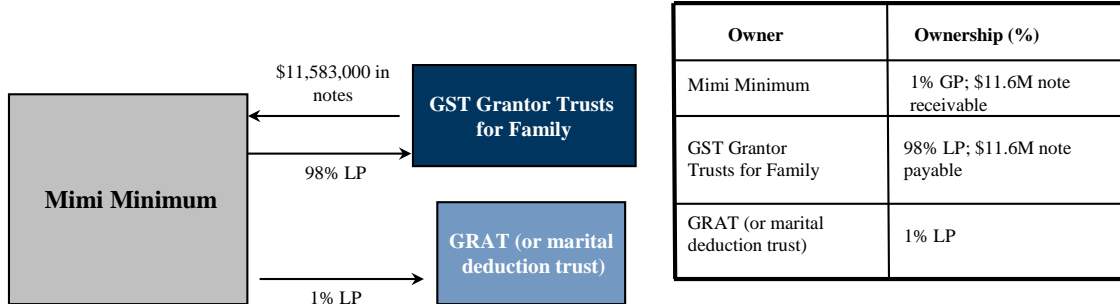
Please see the illustrations below:

**Alternative One**  
**Mimi Minimum Gifts and Sells Her Assets to GST Grantor Trusts**



<sup>93</sup> 2004-2 C.B. 7.

**Alternative Two**  
**Mimi Minimum Forms a Limited Partnership and Then Makes a Defined Value Formula Transfer of Her Limited Partnership Interests to GST Grantor Trusts and to a GRAT (or Marital Deduction Trust)**



Please see Schedule 1 attached to this paper. A summary of the schedule is below:

**Table 1**  
**Summary of Results For \$20 Million of Assets Growing at 8% Per Year (Pre-Tax) – No Further Planning vs. Two Hypothetical Integrated Income and Estate Tax Plans; 30 Year Future Values; Post-Death Scenarios (assuming Mimi Minimum dies in 30 years)**

Technique	Minimum Family	Consumption – Direct Cost	Consumption – Investment Opportunity Cost	IRS – Income Tax	IRS – Investment Opportunity Cost	IRS – Estate Tax (at 45%)	Total
No Further Planning; Bequeaths Estate To Family (Without Discount)	\$38,798,412	\$16,651,395	\$36,796,365	\$19,551,445	\$57,711,366	\$31,744,155	\$201,253,138
No Further Planning; Bequeaths Estate To Family (With Discount)	\$49,908,866	\$16,651,395	\$36,796,365	\$19,551,445	\$57,711,366	\$20,633,701	\$201,253,138
Technique #1: Hypothetical Integrated Income and Estate Tax Plan With a Gift/Sale to a GST; Bequeaths Estate To Family	\$68,330,271	\$16,651,395	\$36,796,365	\$21,277,059	\$57,711,366	\$486,681	\$201,253,138
Technique #2: Hypothetical Integrated Income and Estate Tax Plan With a Partnership and With a Gift/Sale to a GST; Bequeaths Estate To Family	\$68,598,127	\$16,651,395	\$36,796,365	\$21,397,537	\$57,711,366	\$98,347	\$201,253,138

As the above chart clearly demonstrates, over a 30 year period, given Mimi’s consumption needs, there is not an inherent transfer tax advantage associated with coupling the sale to a defective grantor trust technique with a partnership vehicle. The advantage of using the partnership vehicle, from a transfer tax viewpoint, does occur if Mimi has a relatively early death. For instance, if Mimi’s death should occur in year 10 as opposed to year 30, the results would be as follows, please see attached Schedule 2 to this paper:

**Table 2**

**Summary of Results For \$20 Million of Assets Growing at 8%  
Per Year (Pre-Tax) – No Further Planning vs. Two Hypothetical  
Integrated Income and Estate Tax Plans; 10 Year Future Values;  
Post-Death Scenarios (assuming Mimi Minimum dies in 10 years)**

<b>Technique</b>	<b>Minimum Family</b>	<b>Consumption – Direct Cost</b>	<b>Consumption – Investment Opportunity Cost</b>	<b>IRS – Income Tax</b>	<b>IRS – Investment Opportunity Cost</b>	<b>IRS – Estate Tax (at 45%)</b>	<b>Total</b>
<b>No Further Planning; Bequeaths Estate To Family (Without Discount)</b>	\$14,857,342	\$4,012,358	\$1,692,703	\$6,076,989	\$4,383,101	\$12,156,007	\$43,178,500
<b>No Further Planning; Bequeaths Estate To Family (With Discount)</b>	\$19,111,945	\$4,012,358	\$1,692,703	\$6,076,989	\$4,383,101	\$7,901,405	\$43,178,500
<b>Technique #1: Hypothetical Integrated Income and Estate Tax Plan With a Gift/Sale to a GST; Bequeaths Estate To Family</b>	\$21,421,417	\$4,012,358	\$1,692,703	\$6,781,228	\$4,383,101	\$4,887,694	\$43,178,500
<b>Technique #2: Hypothetical Integrated Income and Estate Tax Plan With a Partnership and With a Gift/Sale to a GST; Bequeaths Estate To Family</b>	\$23,986,573	\$4,012,358	\$1,692,703	\$6,627,131	\$4,383,101	\$2,476,635	\$43,178,500

In addition to hedging against an early death, Mimi should, of course, consider the non-tax benefits of using the partnership vehicle. Mimi, in evaluating whether or not to do the partnership vehicle should consider the costs of the partnership vehicle versus the transfer tax benefit of an early death with the other non-tax benefits noted in this paper.

What is clear, from a transfer tax benefit perspective, is that over time the most important estate planning benefits accrue from freezing (e.g., a sale for a low interest note) and the value shifting that is associated with the grantor paying the income taxes of that trust. The least important benefit is the discount inherent in using family limited partnerships.

4. A future Congress could change the current law with respect to valuation discounts associated with family limited partnerships.

If a taxpayer currently sells a limited partnership interest it locks in the current law with respect to valuation discounts for transfers of limited partnership interest. Under the last three budgets under President Clinton’s administration, it was proposed by President Clinton that valuation discounts associated with certain family limited partnerships be eliminated. Recently, one of the potential revenue raisers that have been discussed by the Joint Committee staff has been the elimination of discounts for family limited partnership agreements. The IRS has a regulation project under authorization of I.R.C. Section 2704(b)(4). More recently, President Obama’s “Green Book” proposals include changes to IRC Sec. 2704(b) that would tend to reduce discounts for family limited partnership interests.

It is not enough to “grandfather” current law, with respect to valuation discounts for family limited partnerships, to currently create the partnership and not make a transfer. The limited partnership interests that accrue from such planning, also need to be transferred before the law changes. Stated differently, it is hard to imagine that the law with respect to valuation discounts for family limited partnership interests will be better in the future. On the other hand, it is reasonable to believe that the law with respect to valuation discounts with respect to family limited partnership interests may be worse in the future.

As the charts above demonstrate, the difference between selling units before the valuation discount is legislated away could be profound if Congress changes the law.

5. The taxpayer may have the ability to indirectly access all of the partnership distributable cash flow for consumption needs.

One factor that may deter certain taxpayers from doing significant estate planning, other than the mere creation of a family limited partnership, is the fear that the taxpayer may need most of the distributable cash flow of the partnership. There is no question that any estate planning technique should only go forward after considering the consumption needs of the client. Many of the successful I.R.C. Section 2036 cases brought by the IRS have been facilitated by taxpayers disproportionately utilizing, for their own personal consumption needs, the cash that should have been distributed to other partners.

A possible attraction of selling a limited partnership interest to a grantor trust, in exchange for a note, is that a significant amount of the distributable cash flow to the trustee partner could be utilized to service interest and principal payments on the subject note. It has been this writer’s experience (assuming there is a companion sale to a grantor trust associated with that technique) that when spreadsheets have been formulated demonstrating that the prospective capacity of the servicing of the note may more than satisfy the consumption needs of the taxpayer, that the taxpayer is much more enthusiastic about utilizing the partnership technique.

6. Generally, the sale of a family limited partnership interest to a trust, is a flexible arrangement that can be modified in response to changed circumstances.

Another factor that could deter a taxpayer from doing all of the estate planning that he or she should do, is the understandable desire to have exit strategies, if circumstances change with respect to the objects of their bounty or their own personal financial circumstances. A sale of a limited partnership interest (particularly to a grantor trust) is much more flexible and has many more exit strategies than an outright gift of a limited partnership interest.

For instance, if a beneficiary of a trust disappoints the seller of a limited partnership interest to that trust, perhaps a call feature could be triggered in the note which pays off the note “in kind” with partnership units. That mechanism could substantially limit the amount that child will have available in the trust in the future. The same mechanism could be utilized if the taxpayer, at a future time, becomes uncomfortable with his financial circumstances. That mechanism (i.e., calling the note and having it paid “in-kind”) would obviously increase the net

worth of that taxpayer under those circumstances. Another exit strategy that could limit the amount that a trust receives and/or increase the net worth of a grantor is to convert the trust from a grantor trust to a complex trust. Assuming there are separate trusts for each of the client's children, another point of flexibility is that each of the trusts could pay down the principal of the note that is owed on different timetables. In that manner, each child's different consumption needs could be met.

7. The sale of a limited partnership interest for a note facilitates testamentary charitable planning, because the note is a more attractive asset for a charity to receive than family limited partnerships interests.

Many taxpayers are interested in testamentary charitable planning, especially if in their lifetime transfer tax planning has been successful. Almost all charities would rather receive a note than a family limited partnership interest. In addition to avoiding unrelated taxable income problems, it may be a much more favorable asset for the liquidity investment purposes of the charity.

Additionally, if a note is left to a charitable lead annuity trust, it is possible under I.R.C. Section 4941, during probate administration, to refinance the note (assuming the requirements of the regulations under I.R.C. Section 4941 with respect to fair market value and liquidity constraints are met) whereby the note could be converted into a longer term note with a balloon payment at the end of the term. Alternatively, the note could be refinanced before the death of the taxpayer to be a long term note suitable for charitable lead trust purposes. One of the few exceptions to the self-dealing rules under I.R.C. Section 4941 is for court approved transactions that occur during estate administration. This may work very well for the testamentary charitable desires of the client and for the family.

#### IV. BEST VALUATION IDEA FOR FAMILY LIMITED PARTNERSHIP INTERESTS – THE DEFINED VALUE ALLOCATION FORMULA CLAUSE

##### A. Introduction.

The “conventional wisdom” this author sometimes hears on this subject is as follows: “the IRS will always contest the valuation of a family limited partnership interest because the IRS could increase the transfer taxes, if they can demonstrate that the valuation discount is too high;” or “all valuation clauses in an assignment document are against public policy.” The above “conventional wisdom,” under the circumstances discussed below, is incorrect.

The Internal Revenue Service will almost always scrutinize significant transfers of “hard to value” assets. Reasonable people (and, of course, unreasonable people) can differ on the value of certain assets (*e.g.*, a family limited partnership interest). From the Service's point of view, scrutiny of those assets may represent a significant revenue opportunity. One approach that may reduce the chance of an audit of a transfer of a hard to value asset, or a gift tax surprise, if an audit

does occur, is to utilize a formula defined value allocation transfer.<sup>94</sup> A formula defined value allocation transfer may increase the retained interest of the donor (as in the case of a grantor retained annuity trust); may define the portion of the property interest that is transferred or may provide that a defined portion of the property transferred passes to a “tax sheltered recipient.” For example, a transfer may provide that an undivided part of a “hard to value” asset, which exceeds a defined value of the transferred entity interest, will pass either to a grantor retained annuity trust,<sup>95</sup> the transferor’s spouse,<sup>96</sup> charity<sup>97</sup> or a trust in which the grantor has retained an interest that makes the gift incomplete.<sup>98</sup>

“Formula defined value allocation” clauses should be distinguished from “price reimbursement” clauses like the ones discussed in Revenue Ruling 86-41, 1986-1 C.B. 442, and in *Procter*.<sup>99</sup> In Rev. Rul. 86-41, the IRS said that a clause that increased the consideration to be paid for the transferred property, or that caused a portion of the transferred property to revert to the transferor, were conditions subsequent that are not effective to avoid a taxable gift from being made on the transfer of the property. By contrast, formula clauses defining the amount of the transfer or the identity of the transferee are ubiquitous in the transfer tax context. In fact, such arrangements are specifically permitted in the tax law.<sup>100</sup> If an adjustment occurs in a formula

---

<sup>94</sup> See Tech. Adv. Mem. 86-11-004 (Nov. 15, 1985) discussed below. See also Hood, “Defined Value Gifts: Does IRS Have It All Wrong?” Estate Planning (Dec. 2001); Abbin, “Is Valuation the Best Planning Game Remaining?” ALI-ABA Course of Study Planning Techniques for Large Estates (Nov. 2001); McCaffrey, Carlyn “Tax Tuning the Estate Plan by Formula” 33rd Phillip E. Heckerling Institute on Estate Planning 4-1 (1999); Moore, “Attempting to Achieve Finality in Potentially ‘Open’ Transactions”, 29th Phillip E. Heckerling Institute on Estate Planning 13 (1995); Cornfeld, “Formulas, Savings Clauses and Statements of Intent,” 27 U. Miami Inst. on Est. Plan. 14 (1990); Peterson, “Savings Clauses in Wills and Trusts,” 13 Est., Gifts & Tr. J. 83 (1988); Moore and Buchanan, “Valuation Readjustment Clauses: What’s Possible?”, 45th NYU Tax Inst. (1987); and C. S. McCaffrey and M. Kalik, Using Valuation Clauses to Avoid Gift Taxes, 125 TRUSTS AND ESTATES 47 (October 1986).

<sup>95</sup> E.g., the excess could be transferred to a grantor retained annuity trust under I.R.C. § 2702 that is nearly “zeroed out” with respect to the grantor and uses the required revaluation clause in the trust agreement with respect to a retained annuity.

<sup>96</sup> E.g., the excess could be transferred to a spouse or a marital deduction trust pursuant to a formula marital deduction clause.

<sup>97</sup> E.g., the excess could be transferred to a charity (see Example 7 below).

<sup>98</sup> Handler, David, Dunn, Deborah, “The LPA Lid: A New Way to ‘Contain’ Gift Revaluations” 27 Estate Planning, 206 (June 2000).

<sup>99</sup> See *Commissioner v. Procter*, 142 F.2d 824 (4th Cir. 1944); see also *Charles W. Ward v. Comm.*, 87 TC 78 (1986).

<sup>100</sup> See Treas. Reg. 25.2518-3(c) (allowing defined value formula for disclaimer of pecuniary amount); Treas. Reg. 25.2702-3(b)(2) (allowing value of grantor retained annuity trust annuity to be stated in terms of a fraction or percentage of fair market value); Treas. Reg. § 25.2702-39(c)(2) (requiring the annuity of a grantor retained annuity trust to be increased if an incorrect determination of the fair market value of the trust assets is made); Rev. Proc. 64-19, 1964-1 C.B. 682 (relating to defined value formula for funding the marital deduction); Treas. Reg. § 1.664-2(a)(1)(iii) (allowing defined value dollar amount of charitable remainder annuity trust to be expressed as a fraction or percentage of the initial net fair market value of the property passing in trust as finally determined for Federal tax purposes); Rev. Rul. 72-395, 1972-2 C.B. 340, 344, modified by Rev. Rul. 80-123, 1980-1 C.B. 205 and Rev. Rul. 82-128, 1982-2 C.B. 71 (allowing value definition clauses in charitable remainder trusts); Treas. Reg. § 1.664-3(a)(1)(iii) (requiring

defined value allocation clause, a change in the identity of the transferee may occur (e.g., the credit shelter trust owns less of the asset and the marital trust owns more of the asset). If an adjustment occurs in a price adjustment clause, the initial transfer is partially unwound and the identity of the transferee does not change (e.g., the transferee pays an additional amount for the asset). Price reimbursement clauses were found to be against public policy in *Procter* because, if such clauses were effective, the result of an audit of the gift tax return could never result in a deficiency and there is no other penalty of assets passing to a different transferee. Although part of the same public policy argument applies to formula defined value allocation clauses, they are so commonly used that an argument that they are void is not persuasive. Secondly, the public policy argument could be addressed by deliberately structuring the formula to produce a small deficiency on audit. Thirdly, formula clauses that are discussed below have a penalty in that the transferred assets could pass to an unintended transferee.

Any formula defined value allocation clause needs a mechanism to bring finality to the question of who owns what. Where the transfer involves a gift, finality can be achieved by filing a gift tax return that adequately discloses the formula transfer. When the statute of limitations expires on assessing a gift tax deficiency and none has been asserted, the ownership fractions will have been determined. If there is no gift tax return, however, finality cannot be achieved unless there is another mechanism that does not involve any action by the transferor that can be viewed as donative.

#### B. Defined Value Allocation Clauses Involving a Charity.

Assume a client and/or her family has some charitable intent. That intent could be incorporated in a plan in order to help bring finality to an “open” valuation question. Additionally, that charitable intent could preclude the Service from unfairly contesting a good faith appraisal of the interest in the family entity as of that client’s death.

##### *Example 5: Disclaimer Formula Gift to a Charity*

*Sally Saint dies with most of her assets in a family limited partnership interest. The underlying asset value of Sally’s interest in the partnership, if the partnership were liquidated, would be \$10,000,000. Audrey Appraiser, however, believes a willing buyer would only pay \$6,500,000 for Sally’s interest in the partnership. Sally’s Will provides that the rest, residue of her estate passes to her daughter, Connie Clever. The Will also provides that if Connie disclaims, or partially disclaims, an interest in her estate that asset, or assets, will pass to her donor advised fund in the Greater Metro Community Foundation. Connie partially disclaims that part of Sally’s estate that she would otherwise receive that has a “fair market value that exceeds \$6,400,000.” “Fair market value” is defined in the disclaimer document the same way it is defined in the Treasury regulations. The charity hires independent counsel and an independent expert appraiser. After the charity consults with its advisors, it agrees with Audrey Appraiser’s appraisal. The charity, approximately one year after Sally’s death, sells its rights under the disclaimer document for \$100,000 to Connie. The IRS audits the Saint Estate one year after the*

---

adjustments in annuity amounts if an incorrect determination of the fair market value of the charitable remainder trust has been made).

*sale. The IRS believes the discount is excessive and the charity should have sold its interest for \$1,000,000. What happens now?*

It would appear that no matter what the size of Sally Saint's estate, the Service should only collect revenues on the first \$6,400,000 of her estate. The remainder of Sally Saint's estate (as a matter of state property law) goes to charity. Thus, assuming a good faith appraisal report is made and is persuasive to the independent charity, the Service may accept the estate tax return as filed with the discounts that are shown in that appraisal. The value of the gift to Connie Clever for state law property and estate tax purposes should be the same – \$6,400,000.

Definition clauses with respect to transfers pursuant to a will are very common. Almost all modern wills of a married testator contain one, sometimes known as the formula marital deduction clause. It is submitted that it is unlikely that marital deduction and charitable deduction definition clauses would be invalidated for tax purposes by a court. First of all, in determining the value for gift and estate tax purposes of any asset that is transferred, the legal rights and interests inherent in that property must first be determined under state law (unless federal law supersedes state law).<sup>101</sup> After that determination is made, the federal tax law then takes over to determine how such rights and interests will be taxed.<sup>102</sup> In its legislative history to various revenue acts, Congress has endorsed these principles that had been developed under case law. For instance, the reports to the 1948 changes in the estate taxation of community property provide that those changes restore the rule by which estate and gift tax liabilities are to depend upon the ownership of property under state law.<sup>103</sup> The taxable value of Sally Saint's estate is defined under state property law to be worth only \$6,400,000. The federal estate tax consequences should be consistent with that definition. Secondly, to invalidate definition clauses would be to invalidate almost all "formula" defined value marital deduction gifts and formula defined value allocation disclaimers (which have always been acceptable by the Service in its regulations, the courts, and Congress).<sup>104</sup> Thirdly, if such a definition clause were invalidated, it would be impossible to determine the amount of the gift since the clause defines the amount of the transfer.

---

<sup>101</sup> Occasionally, federal law does supersede state law in this context. For instance, federal law determines what is charity for purposes of I.R.C. § 2055, not state property law.

<sup>102</sup> See *United States v. Bess*, 357 U.S. 51 (1958); *Morgan v. Commissioner*, 309 U.S. 78 (1940).

<sup>103</sup> See H. REP. NO. 2543, 83rd Cong. 2nd Sess., 58-67 (1954); H.R. REP. NO. 1274, 80th Cong. 2nd Sess., 4 (1948-1 C.B. 241, 243); S. REP. NO. 1013, 80th Cong., 2nd Sess., 5 (1948-1 C.B. 285, 288) where the Committee Reports on the 1948 changes in the estate taxation of community property states: "Generally, this restores the rule by which estate and gift tax liabilities are dependent upon the ownership of property under state law." See also the reports of the Revenue Act of 1932 that define "property" to include "every species of right or interest protected by law and having an exchangeable value." H.R. REP. NO. 708, 72nd Cong., 1st Sess., 27-28 (1932); S. REP. NO. 665, 72nd Cong., 1st Sess., 39 (1932).

<sup>104</sup> See Treas. Reg. 25.2518-3(c) (allowing defined value formula for disclaimer of pecuniary amount); Treas. Reg. 25.2702-3(b)(2) (allowing value of grantor retained annuity trust annuity to be stated in terms of a fraction or percentage of fair market value); Treas. Reg. § 25.2702-3(c)(2) (requiring the annuity of a grantor retained annuity trust to be increased if an incorrect determination of the fair market value of the trust assets is made); Rev. Proc. 64-19, 1964-1 C.B. 682 (relating to defined value formula for funding the marital deduction); Treas. Reg. § 1.664-2(a)(1)(iii) (allowing defined value dollar amount of charitable remainder annuity trust to be expressed as a fraction or percentage of the initial net fair market value of the property passing in trust as finally determined for Federal tax purposes); Rev.



Clearly a “downside” in the technique from Connie’s point of view is that the charity has every incentive and a fiduciary duty to make sure it is allocated the correct property interest. Obviously, the charity may disagree with the estate’s appraisal. Charities are not going to accept unreasonable appraisals (nor would any state attorney general allow them).

Assume that, under the facts of Example 5, the Service believes the discount should be 25%, but both the charity and the probate court believe it should be 35% (Audrey Appraiser is very convincing, except as to the IRS). Assume no collusion by the charity. The IRS discount would produce a value for the estate of \$7,500,000, entitling the charity to \$1,100,000. Has the charity made a taxable gift of \$1,000,000 to Connie by accepting Audrey Appraiser’s appraisal and selling all of its right to Connie for \$100,000 in a subsequent sale? No gift tax should result if the charity did not enforce its “IRS right” to recover the excess partnership interest allocated to Connie, even if that failure to recover results in a deemed “bargain” transfer to Connie, because the gift tax is only imposed upon transfers by individuals.<sup>105</sup> Secondly, and perhaps more importantly, the charity did not make a transfer to Connie when it sold its rights, because the charity believed in good faith that it received adequate and full consideration.<sup>106</sup> The charity is not a “transferor” for purposes of I.R.C. § 2512. Even if the charity were potentially a transferor, assuming the parties were not in collusion, Connie is not an insider of the charity, the charity had independent counsel, and the charity used independent appraisers, the charity’s sale of its rights should meet the requirements of Treas. Reg. §25.2512-8, which provides that “a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth.” Those assumptions also mean that the “private inurement” and “excess benefit” rules under I.R.C. Sections 501(c)(3) and 4958 should not be applicable,<sup>107</sup>

While it is not authority, the IRS in 2001 indicated a willingness to test defined value formulas involving charities. The IRS (according to FSA 200122011) is apparently attacking, through litigation, a defined value clause that it assumes was executed without “[any] evidence of arm's length negotiations” and which the IRS assumes “the transactional documents were accepted by charity as presented.”<sup>108</sup> Thus, on that basis, the IRS concludes the possibility of “any additional transfer to charity under the formula clause was illusory.” Of course, if those are the facts, the IRS is right.

---

Rul. 72-392, 1972-2 C.B. 340, 344, modified by Rev. Rul. 80-123, 1980-1 C.B. 205 and Rev. Rul. 82-128, 1982-2 C.B. 71 (allowing valuation definition clauses in charitable remainder trusts); Treas. Reg. § 1.664-3(a)(1)(iii) (requiring adjustments in annuity amounts if an incorrect determination of the fair market value of the charitable remainder trust has been made).

<sup>105</sup> See I.R.C. § 2501(a)(1); Treas. Reg. § 25.2501-1(a).

<sup>106</sup> See Treas. Reg. § 25.2512-8.

<sup>107</sup> See Treas. Reg. § 53.4958.

<sup>108</sup> The Field Service Advice Memorandum was apparently written in connection with *McCord v. Commissioner* (T.C. No. 7048-00, 120 T.C. No. 13, 5/14/03) (see discussion below) a case in which this writer was a fact witness.

Clearly, more problematic is the following IRS "alternative" analysis in FSA 200122011 (for which the IRS does not cite any authority, because such authority does not exist and, it is respectfully submitted, may never exist), even if good faith arms length negotiations did take place:

Though *Procter* involved a savings clause as opposed to a formula clause, the principles of *Procter* are applicable to this case. If formula clauses like the one at issue actually function to require payment of any increased value to the charitable donee, these clauses would be similar in effect to savings clauses in that they recharacterize the transaction in a manner that would render any adjustment nontaxable. A valuation increase resulting from an examination would serve only to increase the charitable deduction, but would not otherwise generate any gift tax deficiency. Moreover, the adjustment would substantiate a claim for an increase in the income tax charitable deduction claimed by the donor. The sole justification for the Commissioner's examination would be to insure that charity received all that it was entitled to under the transfer documents. This would place federal tax administrators in the position of policing charitable transactions, a role more appropriately performed by the states' attorneys general.

It is respectfully submitted that the IRS analysis misses several key points, including: (i) the IRS does have a "revenue incentive" to examine a charity's actions in agreeing to the amount of a formula gift, because the charity and the "offending" individual will be subject to IRS sanctions (which potentially increases Treasury revenue), if there is any excess benefit to that individual; (ii) state attorneys general *do* have a duty to enforce the formula; (iii) the charity has a fiduciary duty under state property law to enforce the formula (and, as noted above, it is clear law that federal gift tax consequences follow state property law); (iv) assuming the charity does engage in arms length negotiations, it is irrelevant whether the formula clause "works," because under gift tax valuation cases and the IRS's own regulations, it is clear arms length negotiations are the best evidence of value;<sup>109</sup> (v) as noted above, the IRS itself mandates formula clauses for charitable split interest trusts and grantor retained annuity trusts, both of which involve the same public policy considerations; (vi) as noted above, the IRS has long accepted formula marital deduction clauses and formula pecuniary disclaimers, which have no more (or less) public policy considerations than formula gifts to charity; and (vii) there is a key distinction between price adjustment clauses such as the one discussed in *Procter* and defined value formula clauses (*e.g.* marital deduction clauses). One distinction is that the price adjustment clause involves a condition subsequent. In addition, in some defined value formula clauses, the identity of the recipient could change (which is clearly not in the donor's best interest).

Moreover, the objection that no deficiency will result upon an audit can be easily defeated. Suppose that, instead of Connie's disclaiming all interests having a value in excess of \$6,400,000 (the defined amount), Connie disclaimed only 99 percent of such excess. In that case, 1 percent of any valuation adjustment would produce a deficiency. Thus, the audit would not be without any consequence, just without much consequence.

---

<sup>109</sup> See *Morrissey v. Comm.*, 243 F3d 1145 (9<sup>th</sup> Circuit, 2001).

Many of these issues were addressed by the full Tax Court in the *Estate of Christiansen v. Commissioner*.<sup>110</sup> This case involves a testamentary bequest of the decedent's estate to the decedent's daughter. The primary asset was an interest in a family limited partnership. The decedent's daughter disclaimed those limited partnership units to the extent the value exceeded a formula amount:

determined by reference to a fraction, the numerator of which is the fair market value of the Gift (before payment of debts, expenses and taxes) on [the date of the decedent's death], less...\$6,350,000 and the denominator of which is the fair market value of the Gift (before payment of debts, expenses and taxes) on [the date of the decedent's death]...[all] as such value is finally determined for federal estate tax purposes.

The portion that was disclaimed passed by the terms of the decedent's will, three-quarters to a CLAT and 25% to a private foundation. Since the daughter was a beneficiary of the CLAT, if she is living at the end of the lead term, this did not meet the technical requirements for a valid disclaimer as to that portion. However, the portion that passed to the private foundation was found by the full Tax Court to be a valid disclaimer. The unanimous court (there was a dissent, but not on this point):

We do recognize that the incentive to the IRS to audit returns affected by such disclaimer language will marginally decrease if we allow the increased deduction for property passing to the foundation. Lurking behind the Commissioner's argument is the intimation that this will increase the probability that people . . . will lowball the value of an estate to cheat charities. There's no doubt that this is possible.

But . . . executors and administrators of estates are fiduciaries, and owe a duty to settle and distribute an estate according to the terms of the will . . . . Directors of foundations . . . are also fiduciaries . . . [and] . . . the state attorney general has authority to enforce these fiduciary duties. . . .

We therefore hold that allowing an increase in the charitable deduction to reflect the increase in the value of the estate's property going to the Foundation violates no public policy and should be allowed.

Thus, court rejected the IRS' assertion that defined value formula provisions that discourage the government from litigating valuation questions are invalid as against public policy. The full Tax Court refused to extend or apply the authority of *Procter* to defined value clauses.

The Internal Revenue Service appealed *Christiansen* to the Eight Circuit. The Eight Circuit rejected the public policy argument. *Estate of Christiansen v. Comm'r*, 586 F.3d 1061 (8<sup>th</sup> Cir. 2009). The Court gave three reasons for rejecting the Internal Revenue Service argument that the defined valued disclaimer is against public policy: (1) the Internal Revenue Service role is to

---

<sup>110</sup> *Estate of Christiansen v. Commissioner*, 130 T.C. 1 (2008), *aff'd* 586 F.3d 1061 (8<sup>th</sup> Cir. 2009).

enforce tax laws, not to just maximize tax receipts; (2) there is no clear congressional intent for the policy to maximize incentive to audit (and indeed, there is congressional policy favoring gifts to charity); and (3) other mechanisms, including certain fiduciary obligations, exist to ensure values are accurately reported.

Consider the following defined value formula for a lifetime transfer to a public charity and a donor's family.

*Example 6: Gift or Sale of Limited Partnership  
Interest to a Grantor Trust and Gift to a Charity*

*Steve owns a 99% limited partnership interest in Supersavers LP. The interest is appraised for \$3,000,000. Steve creates a grantor trust with an independent trustee and funds that trust with \$400,000. Steve transfers his 99% interest in Supersavers as follows: (i) Steve assigns to the trust that fraction of his interest the numerator of which is \$2,950,000 and the denominator of which is the fair market value of the interest and (ii) the excess to a public charity. Steve's instrument of assignment provides that the fraction to be allocated to each transferee is to be determined using the value of Steve's interest in Supersavers determined under the principles of Rev. Rul. 59-60. The trust give Steve a note for \$2,950,000. (Alternatively, Steve could gift the interest to the trust.) Subsequently, but prior to any audit of the transaction by the IRS, the trust and the charity negotiate an agreement determining what fraction each is entitled to own and the trust purchases the charity's interest for \$50,000. Steve does not participate in the negotiations. Steve deducts the value of the interest given to charity. The IRS audits the transaction and decides that the value of Steve's transferred interest in Supersavers was \$4,000,000 instead of \$3,000,000, so that the fraction allocated to the trust by the agreement between the trustee and the public charity is too great (and the amount paid by the trust for the charity's interest is too small). The IRS asserts that Steve made a gift to the trust of \$1,000,000, the excess of what the trust has actually received over the face amount of the promissory note.*

Since Steve had no role in determining the arrangements between the trust and the charity, how can it be that Steve has made a gift? If the amount allocated to charity was too small, is Steve entitled to an additional income tax deduction? See the discussion of the *McCord* case below.

The full Tax Court and the Fifth Circuit recently dealt with many of the issues in Example 6. In *McCord v. Comm.*, 120 T.C. 358 (2003), the Tax Court interpreted the meaning of a defined value formula clause where a public charity received a residual gift under a pecuniary defined value formula clause. The Tax Court rejected the IRS argument that the charitable deduction should be limited by the amount that the public charity ultimately received because of either the substance over form doctrine, public policy considerations or the integrated transaction doctrine. However, a majority of the Tax Court found that despite the pecuniary language of the assignment document, under Texas property law, specific undivided interests were intended to be conveyed by the donors, because the assignment agreement contemplated that donee bargaining was to take place. Thus, the possibility existed that the children and grandchildren could "win" that later bargain and the donors should be liable for the gift taxes associated with that later bargaining process (even if the donors did not participate in that bargaining process).

Certain key facts and fact-findings of the *McCord* case include the following:

1. The IRS (not the donors) had the burden of proof.
2. On June 30, 1995, Mr. and Mrs. McCord received \$20,000 of Class A preferred limited partnership interest (which was eventually given away to public charities), and a little over an 82% interest of Class B limited partnership interest. Mr. and Mrs. McCord's sons received general partnership interests and the remaining Class B limited partnership interests.
3. Certain key provisions of the partnership agreement provided that (i) regardless of the identity of the assignee, no assignee of the partnership interest could attain a legal status of a partner in the partnership without the unanimous consent of all the remaining partners under the partnership agreement, and (ii) the partnership could purchase the interest of any charity assignee at any time for fair market value as determined under the partnership agreement.
4. On January 12, 1996 (which the Tax Court refers to as the valuation date), the donors assigned all of their Class B limited partnership interest. Pursuant to a pecuniary defined value formula clause, the donors' children and grandchildren received the percentage interest of the assigned partnership interest that had a fair market value of \$6,910,933 on that date. If the value of the gift exceeded \$6,910,933 on the date of the gift (i) the Shreveport Symphony (the "Symphony") would receive a percentage interest having a fair market value equal to the excess up to \$134,000 and (ii) the value over \$7,044,933, if any, would pass to CFT, another public charity.

Fair market value was defined and any disputes regarding the same were to be determined as follows:

For purposes of this paragraph, the fair market value of the Assigned Partnership Interest as of the date of this Assignment Agreement shall be the price at which the Assigned Partnership Interest would change hands as of the date of this Assignment Agreement between a hypothetical willing buyer and a hypothetical willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. Any dispute with respect to the allocation of the Assigned Partnership Interests among Assignees shall be resolved by arbitration as provided in the Partnership Agreement.

5. In March 1996, without any participation by the donors, the donees (including the charitable donees) agreed that as a result of the donors' formula assignment the two charities received undivided interests of 5.1208888% (equal to \$458,345) and that the children and grandchildren

and/or trusts for the children and grandchildren received the remaining undivided interests of the gifted partnership interests pursuant to the defined value formula under the assignment agreement.

6. On June 26, 1996, the family partnership exercised its above-described call right and purchased all of the rights and interests that the charities received under the original assignment document for \$479,008. The donors did not participate in the negotiations with respect to the indirect purchase by the children and grandchildren using the family limited partnership call right.
7. The Tax Court found that there was no evidence of an implicit or explicit agreement between the donors and the subject charities that the charities would accept less than that which the donors transferred to each organization. In fact, the parties stipulated that “before the call right was exercised, there was no agreement among Mr. and Mrs. McCord, the McCord brothers, the Symphony or CFT as to when such a buyout would occur or to the price at which the buyout would occur.”
8. The charities had experienced independent counsel for both key transactions (the agreement as to the percentage interests each donee received under the donor’s original assignment document and the redemption by the partnership of those interests). The Tax Court found that the charities could have availed themselves of an independent appraisal and could have participated in an arbitration proceeding described in the partnership agreement. The Tax Court found that on advice of the charities independent counsel, both charities’ chose not to hire an independent appraiser (because their internal review showed the appraisal to be reasonable) and also as a consequence chose not to avail themselves of the arbitration procedure described in the partnership agreement. Nonetheless, it felt the charities were not to be considered adverse parties during those negotiations, because “it is against the economic interests of a charitable organization to look a gift horse in the mouth.”

It is respectfully submitted by this prejudiced writer (when practicing law, this writer was responsible for the planning of the McCord matter) that this last fact-finding (the charities were not adverse parties), which is crucial to the logic of the majority’s opinion, is the most controversial fact-finding. The charitable organizations had to look this “gift horse in the mouth” when they exercised their duties under the formula, and it was very much in their economic interest to make sure they received as large a horse as they were given by the donors (i.e., to acquire all of the transferred partnership interests above the pecuniary amount allocated to the children and grandchildren). Furthermore, the directors of the subject charities were subject to criminal and civil sanctions from both the Texas State Attorney General and the Internal Revenue Service, if they acted in a manner that directly or indirectly privately benefited an individual that was not a ward of the subject charities. In effect the majority concludes that the charities chose not to exercise their right to seek a larger gift in arbitration as a tacit *quid pro quo* for receiving any

gift at all. The majority states this without specific findings of fact that would support its conclusion.

The IRS argued that the form of the assignment document (limiting what the children and grandchildren could receive) should be ignored and the charitable deduction should be limited by the amount that the charities ultimately received under the redemption agreement (i.e., \$479,008). The IRS contended that the formula should be ignored because either the substance over form doctrine applied, the pecuniary defined value formula clause was against public policy or the integrated transaction doctrine applied. The donors argued that their gift taxes were limited to the amount of gift taxes appropriate for a \$6,910,933 transfer (the formula amount for children and grandchildren) minus the value received back in consideration for that transfer. The donors argued that their gift taxes could not exceed that dollar amount because: (i) the percentage interests that were allocated were consistent with that dollar amount (that is, the valuation discounts assumed by the various parties were accurate); (ii) under settled tax law there is no better indication of value than bargaining between unrelated and legally adverse parties as to the value under that agreement; or (iii) as a matter of Texas state property law, assuming no collusion by the donors and the subject charities, the amount transferred to noncharitable beneficiaries was equal to \$6,910,933 and any other amounts that were directly or indirectly transferred to the noncharitable donees were a result of bargaining among donees that had nothing to do with the donor's transfer under Texas property law. Stated differently, the donors should not owe gift taxes because of a bargain purchase their children made with the subject charities in a subsequent transaction.

A majority of the Court held that under Texas state property law, the donors did not transfer an interest in their partnership interest equal to a specific dollar amount to their children and grandchildren, but rather conveyed to their children and grandchildren an undivided percentage interest in their partnership interest that could only be determined by the Court under Texas state property law, because the term "fair market value" was used. The donees, according to the Court, were not in the position to make a good faith determination of what the term fair market value means under the assignment. The Court also held that the donees had underestimated the fair market value of the donor's interest in the partnership. As a consequence, the percentage interests to be received by each donee, pursuant to the donees' mutual agreement, were incorrect. Thus, even though the donors had nothing to do with those negotiations by the donees, the donors' intentions, conveyances, and promises under the assignment agreement were subject to the results of the later determination by the donees of what the term "fair market value" meant under the assignment document.

The Court spent several pages discussing what it thought was the proper allocation of the undivided interests that the donors transferred. The Court's analysis was fairly exhaustive, because as it noted "valuation necessarily involves an approximation." (It is respectfully submitted that the donees in determining their interests in the gift also probably felt that bargaining process "necessarily involves an approximation.") After that exhaustive analysis, the Court split the discount down the middle between the taxpayer's position and the IRS position. One interesting aspect of the Court's valuation analysis is that the Court found that the transferred interests in question were assignee interests. As a result, the Court found that the marketability discount was considerably greater than it would otherwise have approximated, because there were

certain voting rights that did not accrue to an assignee interest in comparison to a Class B limited partnership interest. The Court concluded that under the facts of the donor's assignment, a discount approximating 32% would be appropriate (almost exactly halfway between the donor's experts and the IRS experts).

As noted above, the Court then analyzed the assignment document that the donors executed and determined that, under Texas state property law, the donors' intentions, conveyances, and promises should be interpreted as requiring a transfer of undivided interests to their children and grandchildren that had a fair market value of \$9,269,089, instead of \$6,910,933, at the date of the assignment.

A majority of the Tax Court concluded that the donors were entitled to a charitable deduction equal to \$614,743. This amount was approximately 28% more than what the charities actually received (\$479,008). The Court reasoned that even though the donors' family was assigned a specific dollar amount, the assignment document for Texas state property law purposes should be interpreted as requiring specific percentages to all of the donees (as determined in a later bargaining process) and, as a consequence, the donors are entitled to a charitable deduction for the fair market value (as determined by the court) of the specific percentage interest (as determined under that bargaining process).

Only two of the judges (Judge Laro and Judge Vasquez) would have followed as least some of the IRS tax common law arguments (i.e., *Procter* public policy arguments) and would have allowed a deduction only for the amount actually passing to the charity. What is interesting is that those two judges also found that the majority's Texas state law property contractual argument did not have any merit.

Judges Chiechi and Foley also rejected the majority's interpretation of the assignment document under Texas state property law. Those two judges also disagreed with Judges Laro and Vasquez that the application of public policy doctrine, substance over form doctrine, or integration doctrine would apply under the facts of this case. Judges Chiechi and Foley found that the limit of the taxable gift under the donors' assignment agreement under Texas State property law must be limited to \$6,910,933 and that a charitable deduction to the donor for Federal gift tax purposes, should be allowed for \$2,972,899. Key portions of Judge Foley's analysis (Judge Foley was the trial judge for the McCord case) are reproduced below:

Undaunted by the facts, well-established legal precedent, and respondent's failure to present sufficient evidence to establish his determinations, the majority allow their olfaction to displace sound legal reasoning and adherence to the rule of law. The gift closed on January 12, 1996, and on that date petitioners transferred to CFT all of petitioners' [donors'] assigned partnership interests exceeding \$7,044,933 (i.e., the amount exceeding the \$6,910,933 transferred to the sons and the trusts plus the \$134,000 transferred to the Symphony).

As the trial judge, I concluded that, on January 12, 1996, petitioners transferred \$2,838,899 assignee interest to CFT. On that date, the interest was accepted and received by CFT, and not subject to a condition precedent or



subsequent. . . Furthermore, I concluded that respondent fell woefully short of meeting his burden [footnote omitted] regarding the applicability of the substance over form, violation of public policy, and reasonable probability of receipt doctrines.[footnote omitted] Inexplicably, the majority ignore respondent's primary contentions (i.e., that the substance over form and violation of public policy doctrines are applicable) and base their holding on an interpretation of the assignment agreement that respondent [IRS] never raised. . .

....

Contrary to the valuation clauses in *Commissioner v. Procter, supra*, and *Ward v. Commissioner, supra*, which adjusted the amount transferred based upon a condition subsequent petitioners' valuation clause defined the amount of property transferred. Simply put, petitioners' gift does not fail upon a judicial redetermination of the transferred property's value. Petitioners made a legally enforceable transfer of assignee interests to CFT, with no provision for the gift to revert to petitioners or pass to any other party on the occurrence of adverse tax consequences. CFT merely failed to protect its interest adequately. *Procter and Ward* are distinguishable. Petitioners' formula clause was not against public policy.

Judge Wiener<sup>111</sup>, on behalf of the unanimous Fifth Circuit panel, reversed and rendered against the IRS on appeal of the *McCord* tax court decision. Key parts of Judge Wiener's opinion are as follows:

With the exception of the ultimate fact question of the taxable and deductible values of the limited partnership interests in MIL that comprise the completed, irrevocable inter vivos donations (the 'gifts') made by the Taxpayers to the exempt and non-exempt donees on January 12, 1996, the discrete facts framing this case are largely stipulated or otherwise undisputed. Having lived in Shreveport, Louisiana, for most of their adult lives, and having accumulated substantial and diversified assets, these octogenarian Taxpayers embarked on a course of comprehensive family wealth preservation and philanthropic support planning, including transfer tax aspects of implementing such a plan. This was done in consultation with Houston-based specialists in that field.

....

All gifts were complete on execution of the Assignment Agreement on January 12, 1996. No other agreements – written or oral, express or implied – were found to have existed between the Taxpayers and (1) the Sons, (2) the GST trusts, (3) the Symphony, or (4) CFT, as to what putative percentage interest in MIL belonged to, or might eventually be received by, any of the donees under the

---

<sup>111</sup> *McCord v. Commissioner*, 461 F.3d 614 (5th Cir. 2006).

dollar-value formula clause. Rather, because the interests donated by the Taxpayers to the GST trusts, the Sons, the Symphony were expressed in dollars, ‘fair market value’ is defined in the Assignment Agreement in terms of the applicable ‘willing-buyer, willing-seller’ test specified in the applicable Treasury Regulation.

....

Neither the Majority Opinion nor any of the four other opinions filed in the Tax Court found evidence of any agreement – not so much as an implicit, ‘wink-wink’ understanding – between the Taxpayers and any of the donees to the effect that any exempt donee was expected to, or in fact would, accept a percentage interest in MIL with a value less than the full dollar amount that the Taxpayers had given to such a donee two months earlier.

....

#### 1. Commissioner’s Theory on Appeal.

At the outset, we reiterate that, although the Commissioner relied on several theories before the Tax Court, including doctrines of form-over-substance, violation-of-public policy, and, possibly, reasonable-probability-of-receipt, he has not advanced any of those theories on appeal. Accordingly, Commissioner has waived them, and has instead – not surprisingly – devoted his efforts on appeal solely to supporting the methodology and holdings of the Majority. . . [Emphasis added.]

....

. . . the Commissioner specifically opposed a discount grounded in Mr. Frazier’s contention that the Taxpayers had transferred less than full limited partners interests. The Commissioner does not, however, advance such a contention on appeal; so it too is waived, and we do not address that issue. Our failure to address it should not, however, be viewed as either agreeing or disagreeing with the Majority’s determination on this point. Rather, as shall be shown, we have no need to reach it. [Emphasis added.]

....

Contributing to the framework of our review in this section is the sometimes overlooked fact that this family-partnership case is not an estate tax case, but a gift tax case. Thus, the aggressive and sophisticated estate planning embodied here is not typical of the estate plans that have produced the vast majority of post-mortem estate tax valuation cases. Also helping to frame our review is the fact that this is not a run-of-the-mill fair market value gift tax case. Rather, as recognized by the Majority and by Judges Chiechi and Foley in dissent, the feature that most fractionated the Tax Court here is the Taxpayers’ use of the

dollar-formula, or ‘defined value,’ clause specified in the Assignment Agreement (the gift instrument, not either the original or the amended partnership agreement nor the Confirmation Agreement) to quantify the gifts to the various donees in dollars rather than in percentages, the latter being more commonly encountered in gifts and bequests that parcel out interests in such assets as corporate stock, partnerships, large tracts of land, and the like.

....

The Majority’s key legal error was its confecting sua sponte its own methodology for determining the taxable or deductible values of each donee’s gift valuing for tax purposes here. This core flaw in the Majority’s inventive methodology was its violation of the long-prohibited practice of relying on post-gift events. Specifically, the Majority used the after-the-fact Confirmation Agreement to mutate the Assignment Agreement’s dollar-value gifts into percentage interests in MIL. It is clear beyond cavil that the Majority should have stopped with the Assignment Agreement’s plain wording. By not doing so, however, and instead continuing on to the post-gift Confirmation Agreement’s intra-donee concurrence on the equivalency of dollars to percentage of interests in MIL, the Majority violated the firmly-established maxim that a gift is valued as of the date that it is complete; the flip side of that maxim is that subsequent occurrences are off limits. [Emphasis added.]

In this respect, we cannot improve on the opening sentence of Judge Foley’s dissent:

Undaunted by the facts, well-established legal precedent, and respondent’s failure to present sufficient evidence to establish his determinations, the majority allow their olfaction to displace sound legal reasoning and adherence to the rule of law. [Footnote omitted.]

Jude Foley’s ‘facts’ are those stipulated and those adduced (especially the experts’ testimony) before him as the lone trial judge, including the absence of any probative evidence of collusion, side deals, understandings, expectations, or anything other than arms-length, unconditional completed gifts by the Taxpayers on January 12, 1996, and arm’s-length conversions of dollars into percentages by the donees alone in March. Judge Foley’s ‘well-established legal precedent’ includes, without limitation, constant jurisprudence that has established the immutable rule that, for inter vivos gifts and post-mortem bequests or inheritances alike, fair market value is determined, snapshot-like, on the day that the donor completes that gift (or the date of death or alternative valuation date in the case of a testamentary or intestate transfer).

....

We obviously agree with Judge Foley’s unchallenged baselines that the gift was complete on January 12, 1996, and that the courts and the parties alike are governed by § 2512(a). We thus agree as well that the Majority reversibly erred when, ‘in determining the charitable deduction, the majority rely on the [C]onfirmation [A]greement without regard to the fact that [the Taxpayers] were not parties to this agreement, and that this agreement was executed by the donees more than 2 months after the transfer.’ In taking issue with the Majority on this point, Judge Foley cogently points out that ‘[t]he Majority appear to assert, without any authority, that [the Taxpayers’] charitable deduction cannot be determined unless the gifted interest is expressed in terms of a percentage or a fractional share.’ As implied, the Majority created a valuation methodology out of the whole cloth. We too are convinced that ‘[r]egardless of how the transferred interest was described, it had an ascertainable value’ on the date of the gift. That value cannot, of course, be varied by the subsequent acts of the donees in executing the Confirmation Agreement. Consequently, the values ascribed by the Majority, being derived from its use of its own imaginative but flawed methodology, may not be used in any way in the calculation of the Taxpayers’ gift tax liability.

....

In the end, whether the controlling values of the donated interests in MIL on the date of the gifts are those set forth in the Assignment Agreement based on Mr. Frazier’s appraisal of \$89,505 per one per cent or those reached by the Majority before it invoked the Confirmation Agreement (or even those reached by the Commissioner in the deficiency notices or those reached by the Commissioner’s expert witness for that matter), have no practical effect on the amount of gift taxes owed here. . . In sum, we hold that the Majority erred as a matter of law. [Emphasis added.]

[Footnotes omitted.]

\* \* \*

The facts of Example 6 are also very similar to the recent *Petter v. Comm’r* case.<sup>112</sup> In mid 2001, Mrs. Petter transferred her UPS stock to an LLC. In March 2002, Mrs. Petter made gifts of sales to a trust that she had established in late 2001. The gifts reflected about 10% of the trust assets. The gift and sale transactions were implemented by formula transfers with any amounts above certain dollar amount as finally determined for federal gift tax purposes to be allocated to certain donor advised funds. The appraisal indicated that the valuation discount should be 53.2%. The Internal Revenue Service audited. The Internal Revenue Service and the taxpayer finally agreed on using a 35% discount. The Internal Revenue Service did not allow any gift tax charitable deduction for the additional units that were passed to charities based on this valuation. The Court found that the formula allocation provisions are not “void as contrary to public policy,

---

<sup>112</sup> See, *Estate of Anne Y. Petter v. Comm’r*, T.C. Memo 2009-280 (December 7, 2009).

and there was no severe and immediate frustration of public policy as a result, and no over arching public policy gets these types of arrangements in the first place.” The Court allowed a gift tax charitable deduction for the year of the original transfer. The Court held that public policy is not violated for four principal reasons: (1) general public policy encourages charitable gifts; (2) the gifts were not susceptible to abuse as the IRS maintained because there were other potential sources of enforcement; primarily from the fiduciary duties that were owed and the enforcers of those fiduciary duties through the State Attorney General and/or the IRS Commissioner through revoking the foundations’ exempt status; (3) this case does not invoke a moot issue because the judgment regarding the gift tax value would trigger a reallocation, therefore, it is not just a declaratory judgment; and (4) the existence of other sanctioned formula clauses suggest no general public policy against formula clauses.

What conclusions, at this time, can be drawn from the *Petter* case, *Christiansen* case and the *McCord* case with respect to defined value formula clauses that involve a gift to charity?

1. If the assignment document provides that the donee is an assignee, and other surrounding facts are consistent with the assignment document, the Tax Court will recognize that what a hypothetical willing buyer will pay for the transferred interest is only based on assignee rights. That recognition by the Court may have a profound effect on the amount of the marketability discount that is allowed.
2. It appears that the current Tax Court, Fifth Circuit and Eight Circuit will find a formula defined value allocation clause is not against public policy when it involves a charity and will even allow a charitable deduction that may be substantially above what the charity actually receives (if the charity later sells its interest). In *McCord*, a majority of the Tax Court allowed the donors a charitable deduction that was approximately 28% above what the charities ultimately received. In *McCord*, Judges Foley and Chiechi also allowed a charitable deduction that was much greater than what the majority would have allowed. Stated differently, in *McCord* the current Tax Court seemed reluctant to allow common law doctrines to negate the state law property result of a formula defined value allocation clause. (There was, obviously, vigorous disagreement as to what the assignment document mandated under Texas state property law.) It would also appear that the Fifth Circuit would not be sympathetic to the “common law” doctrines being applied to deny the taxpayer the ability to use dollar denominated defined value clauses, as Judge Weiner found that it was not “surprising” that the IRS did not wish to appeal based on that argument. In *Christiansen*, the full Tax Court rejected the IRS’s public policy arguments.
3. These cases strongly suggests that the Tax Court would be prepared to allow formula defined value allocation clauses, with a gift over to entities or trusts other than charities, which incorporated the phrase “as finally determined for federal gift tax purposes” and under which a fiduciary duty exists to enforce the clause. This seems especially so where the value as finally determined will be divided among the donees and be retained by them in the proportions provided by the formula, with no “buyout” by one donee of another prior to final valuation. For instance,

formula defined value allocation clauses incorporating that phrase in which the excess value over a stated dollar amount goes to a grantor retained annuity trust, or to a marital deduction trust, which also have independent trustees, appear likely to have the support of the Tax Court.

4. The addition of the phrase “as finally determined for federal gift tax purposes” was obviously found to be an unnecessary addition by the Fifth Circuit. There may be key reasons why a donor, in his assignment document, would not wish to add that phrase. One reason is a practical one: over ten years is too long to wait to find out who owns what after an assignment of a closely held enterprise (the facts of *McCord*). Another reason may be a tactical one: an arms-length transaction is the best evidence of value. Thus, by the time the IRS audited the *McCord* matter, the taxpayers had three arguments: (i) the evidence supported the discounts; (ii) as a matter of state property law, which determines the nature of the property transferred for gift tax purposes, the taxable portion of the gift assignment was defined to be \$6.9 million; and (iii) a subsequent arms-length transaction indicated that the taxable gift was \$6.9 million. The donors (Mr. and Mrs. McCord) may have wanted the sons and the independent charity to bargain (in a binding fashion) as to what they received pursuant to the assignment document. The donors may have wanted them to engage in that bargaining and not to passively wait for a final determination by third parties as to what the assignment document meant. There may have been other reasons.
  5. It should be noted that in *King v. United States*, 545 F.2d 700 (10<sup>th</sup> Cir. 1976), the Tenth Circuit also found that *Procter* did not apply where the transaction did not contain “contingencies which, upon fruition, alter, change or destroy the nature of the transaction.”
- C. Transfer of a LLC That Owns a Leveraged Partnership Interest to a GRAT in Order to Avoid a Gift Tax Surprise.

1. What is a GRAT?

The first inquiry is what is a GRAT? A GRAT (a grantor retained annuity trust) is an irrevocable trust to which the grantor transfers an asset in exchange for the right to receive a fixed amount annuity for a fixed number of fiscal years (the “Annuity Period”).<sup>113</sup> When the trust term expires, any GRAT balance remaining is transferred tax-free to a designated remainder beneficiary (*e.g.*, the grantor’s issue or a “defective grantor trust” for the benefit of the issue).<sup>114</sup> If

---

<sup>113</sup> The GRAT may also be structured to terminate on the earlier of a period of years or the grantor’s death, with a reversion of the entire corpus to the grantor’s estate on premature death, but doing so will reduce the value of the retained interest.

<sup>114</sup> I.R.C. § 2702 provides the statutory authority for such transfers after October 8, 1990. I.R.C. § 2702(a) uses the “subtraction-out” method to value retained interests of split interests transfers. Under I.R.C. § 2702(b), a qualified interest includes any interest that consists of a right to receive fixed amounts. The value of a remainder interest in a GRAT that meets the requirements of § 2702 is computed by subtracting the present value of the grantor’s

a grantor makes a gift of property in trust to a member of the grantor's family while retaining an interest in such property, the taxable gift generally equals the fair market value of the gifted property without reduction for the fair market value of the retained interest.<sup>115</sup> However, I.R.C. Section 2702 provides that for a gift of the remainder of a GRAT in which the grantor retains a "qualified interest", defined to include a guaranteed annuity, the taxable gift will be reduced by the present value of the qualified interest, as determined pursuant to a statutory rate determined under I.R.C. Section 7520(a)(2) (the "Statutory Rate"). In general, the Statutory Rate requires an actuarial valuation under prescribed tables using an interest rate equal to 120 percent of the Federal midterm rate in effect for the month of the valuation.<sup>116</sup>

A grantor's ability to determine the size of the guaranteed annuity and the annuity period at the outset allows the GRAT to be constructed so that the present value of the grantor's retained interest approximately equals the value of the property placed in the GRAT, resulting in a "zeroed out" GRAT.<sup>117</sup> Thus, a GRAT could be structured, where there is no, or a relatively modest,

---

annual annuity payments from the contributed properties' current fair market value. The grantor must recognize a taxable gift to the extent of any computed remainder interest. The present value of the grantor's annual annuity payment is computed by discount rates set by the Service under I.R.C. § 7520. The IRS Tables change monthly to reflect an interest rate assumption of 120% of the mid-term adjusted Federal Rate for that month under § 1274(d)(1).

<sup>115</sup> See I.R.C. Section 2702(a)(2)(A). Absent Section 2702, the amount of the gift would be reduced by the value of the retained interest. See Regulations section 25.2511-1(e).

<sup>116</sup> See, I.R.C. Section 7520(a)(2). Certain exceptions set forth in Regulations section 25.7520-3(b) do not appear to be applicable to the facts discussed in this case study.

<sup>117</sup> The possibility of completely "zeroing out" a GRAT was negated by Example 5 of Regulations section 25.2702-3(e). Example 5 was invalidated by *Walton v. Comm'r*, 115 T.C. 589 (2000), acq., Notice 2003-72, 2003-44 I.R.B. 964. Final regulations reflecting *Walton* and containing a revised Example 5, have been issued. T.D. 9181 (February 24, 2005), 70 F.R. 9,222-24 (February 25, 2005). Prior to its acquiescence, the Service, in Revenue Procedure 2002-3, 2002-1 C.B. 117, §4.01(51), announced that it will not issue a favorable private letter ruling in circumstances where the amount of the guaranteed annuity payable annually is more than 50 percent of the initial net fair market value of the property transferred to the GRAT or if the present value of the remainder interest is less than 10 percent of the transferred property's initial net fair market value. The regulations do not include any such 50/10 limitation, nor would such a limitation be consistent with the *Walton* case itself, which involved a zeroed-out GRAT. The 50/10 limitation is not mentioned in the Obama administration's recent reform proposals with respect to GRATs and the lack of such limitation seems to be conceded in its explanation. See, Treasury Department's "General Explanation of the Administration's Fiscal Year 2010 Revenue Proposals" (Greenbook, May 11, 2009.) In particular the Greenbook notes:

#### **Reasons for Change**

GRATs have proven to be a popular and efficient technique for transferring wealth while minimizing the gift tax cost of transfers, providing that the grantor survives the GRAT term and the trust assets do not depreciate in value. The greater the appreciation, the greater the transfer tax benefit achieved. Taxpayers have become more adept at maximizing the benefit of this technique, often by minimizing the term of the GRAT (thus reducing the risk of the grantor's death during the term), in many cases to 2 years, and by retaining annuity interests significant enough to reduce the gift tax value of the remainder interest to zero or to a number small enough to generate only a minimal gift tax liability.

#### **Proposal**

This proposal would require, in effect, some downside risk in the use of this technique by imposing the requirement that a GRAT have a minimum term of 10 years.<sup>5</sup> Although a minimum term would

taxable gift. If the GRAT does not earn a yield or otherwise appreciate at a rate equal to the Statutory Rate, all the trust property will be returned to the grantor in payment of the retained annuity, and no transfer of property to the GRAT's beneficiaries will occur. If the grantor dies during the GRAT term, all or most of the GRAT property should be included in the grantor's gross estate and be subject to estate tax, with a reduction for any gift tax paid upon creation of the GRAT. If, however, the grantor survives the GRAT term and the GRAT earns a yield or otherwise appreciates at a rate that exceeds the Statutory Rate, the amount of such excess value should pass to the GRAT's designated beneficiaries free of transfer tax.

## 2. Brief Summary of the Technique.

There is no question that the GRAT is one of the most popular estate planning tools that the practitioner utilizes. While it is a very popular estate planning tool, it is probably a fair statement that it is not always an effective estate planning tool. The advantages and disadvantages of the GRAT technique are briefly addressed below.

The purpose of the discussion below is to introduce the reader to a technique that accentuates and improves upon some of the advantages of the GRAT (i.e., its synergy with other estate planning techniques, its grantor trust status, its valuation advantage, its low hurdle rate, its high leverage and its non-recourse risk to remainderman) that also eliminates or ameliorates some of the disadvantages of a GRAT (i.e., the possibility that a GRAT may be disqualified because the hard to value assets used to satisfy the annuity are valued improperly, the contribution of assets to a GRAT must be made at the exact point of the creation of the GRAT, the retained annuity interest is valued using the valuation principles under IRC Section 7520, and a GRAT will not be successful if the grantor does not survive until the end of the term of the GRAT).

The technique substantially improves the estate planning results of the GRAT in many situations. For instance, if the assets of a three year GRAT grow annually by 8% a year for three years this technique will improve the estate planning result by over 70%.

The technique is to contribute and sell a partnership interest in exchange for a note to a single member LLC and then to contribute the LLC to an irrevocable GRAT.

---

not prevent "zeroing-out" the gift tax value of the remainder interest, it would increase the risk of the grantor's death during the GRAT term and the resulting loss of any anticipated transfer tax benefit.

This proposal would apply to trusts created after the date of enactment.

However, the no-ruling policy is still in effect. Rev. Proc. 2010-3, 2010-1 I.R.B. 110, §4.01(53).



### 3. Some of the Advantages of a GRAT

#### a. Valuation advantage of a GRAT.

Under the regulations, the grantor's retained annuity rights may be defined in the trust instrument as a percentage of the fair market value of the property contributed by the grantor to the trust, *as such value is finally determined for federal tax purposes*. For example, the trust agreement might provide for payments of 53% per year for two years, where the 53% annual payment amount is derived from the initial value. This type of language operates as a built-in revaluation clause, mitigating the risk of a surprise gift on revaluation of the transferred property by the Service. This feature can be especially beneficial with contributed assets of which reasonable people (and unreasonable people) could differ as to the initial value (e.g., a private derivative, closely held limited partnership interest, or closely held subchapter S corporation stock).

#### b. Ability of grantor to pay for income taxes associated with GRAT gift tax-free and substitute assets of the GRAT income tax-free.

A GRAT can be designed to be an effective trust for estate and gift tax purposes and income tax purposes (i.e., a so-called grantor trust). That is, the trust will not pay its own income taxes, rather the grantor of the trust will pay the income taxes associated with any taxable income earned by the trust.

I.R.C. Section 671 through 677 contain rules under which the grantor of a trust will be treated as the owner of all or any portion of that trust, referred to as a "grantor trust." If a grantor retains certain powers over a trust, it will cause the trust to be treated as a grantor trust. If the grantor is treated as the owner of any portion of a trust, I.R.C. Section 671 provides that those items of income, deductions, and credits against the tax of the trust that are attributable to that portion of the trust are to be included in computing the taxable income and credits of the grantor to the extent that such items will be taken into account in computing the taxable income or credits of an individual. An item of income, deduction or credit included under I.R.C. Section 671 in computing the taxable income and credits of the grantor is treated as if received or paid directly to the grantor.<sup>118</sup> Thus, if the private investor contributes assets to an intentionally defective grantor trust, the assets will grow (from the point of view of the trust beneficiaries) income-tax free. Furthermore, the IRS now agrees that there is no additional gift tax liability, if the private investor continues to be subject to income taxes on the trust assets and there is no right of reimbursement from the trust.<sup>119</sup>

Under Rev. Rul. 85-13,<sup>120</sup> a grantor is treated as the owner of trust assets for federal income tax purposes to the extent the grantor is treated as the owner of any portion of the trust under I.R.C. Section 671-77. In that ruling, it was held that a transfer of trust assets to the grantor

---

<sup>118</sup> Treas. Reg. Section 1.671-2(c).

<sup>119</sup> See Rev. Rul. 2004-64, 2004-2 C.B. 7 (July 1, 2004).

<sup>120</sup> Rev. Rul. 85-13, 1985-1 CB 184.

in exchange for the grantor's unsecured promissory note is not recognized as a sale for federal income tax purposes.<sup>121</sup>

Similarly, if the grantor is treated as the owner of the trust property and transfers property into the trust in exchange for property previously held by the trust, such transfer will not be recognized as a sale, exchange or disposition for federal income tax purposes.<sup>122</sup> Thus, no gain or loss is realized by the grantor or the trust. The basis of the property transferred into the trust is unaffected by the transfer, and neither the grantor or the trust acquires a cost basis in the assets transferred from or to the trust.

c. Synergy with other techniques.

A GRAT may be a means to transfer enough wealth to a trust for the benefit of the next generation in order to provide leverage for other future estate planning techniques. If the GRAT, or GRATs, that a grantor and a grantor's spouse create are successful (e.g. 10% of the family's wealth is transferred downstream to the grantor's family or to trusts for the grantor's family), further leveraging with respect to other transfer tax planning techniques could occur. For instance, assume that a GRAT or GRATs that are created by a grantor and a grantor's spouse transfer approximately 10% of the family's net worth to a grantor trust for the benefit of their family. The grantor and the grantor's spouse could transfer their remaining assets to a trust in exchange for a note that is equal to the fair market value of what has been transferred. In that fashion, the grantor has achieved a freeze of his or her estate (except for the interest carry on the note) while paying no (or very little) gift tax.

d. Comparatively low hurdle rate.

Currently, the Statutory Rate has been ranging between 3% and 3.6%. In today's relatively low interest rate environment for US Treasury obligations, it is certainly possible, and for certain investments probable, that the investments of a GRAT will exceed that hurdle rate.

e. High leverage.

A GRAT can be created where the grantor retains an annuity amount that is almost equal to the value of the assets there were originally placed in the GRAT. Stated differently, significant leverage can be created by creating an annuity that is almost equal to the value of the assets placed into the GRAT. As noted above, if there is appreciation above the Statutory Rate, the appreciation above the Statutory Rate will accrue to the remainderman. In comparison, most practitioners believe that other leveraged gifting techniques, including a sale to a grantor trust, should have more equity associated with the transaction (e.g., for example, some practitioners advocate at least 10% equity with a sale to a grantor trust, which usually results in a taxable gift).

---

<sup>121</sup> See also, PLR 9146025 (August 14, 1991) (finding that transfer of stock to grantor by trustees of grantor trust in satisfaction of payments due grantor under the terms of the trust does not constitute a sale or exchange of the stock).

<sup>122</sup> See PLR 9010065 (December 13, 1989).

f. Non-recourse risk to remaindermen.

Another financial advantage of the GRAT technique is that if the asset goes down in value, the remaindermen have no personal exposure. Furthermore, there is no added cost of wasting significant gift tax exemptions of the grantor. For instance, assume for the sake of comparison, that at the time of the sale to the grantor trust, the grantor trust had 10% - 15% equity. If the asset goes down in value, that equity of the trust could be eliminated and the exemptions that were originally used to create that equity could also be wasted.

g. Administration's legislative proposal.

President Obama has proposed revisions to the rules governing GRATs. A minimum ten-year term for GRATs was proposed in May, 2009, as part of the Administration's revenue proposals for fiscal year 2010. In February, 2010, the Administration's revenue proposals for fiscal year 2011 reiterated this proposal and added (1) a requirement that a GRAT remainder have a value greater than zero, and (2) a prohibition on any decrease in the annuity during the GRAT term. The latest statement of the proposal is:

The proposal would require, in effect, some downside risk in the use of this technique by imposing the requirement that a GRAT have a minimum term of ten years.<sup>123</sup> The proposal would also include a requirement that the remainder interest have a value greater than zero and would prohibit any decrease in the annuity during the GRAT term. Although a minimum term would not prevent "zeroing-out" the gift tax value of the remainder interest, it would increase the risk of the grantor's death during the GRAT term and the resulting loss of any anticipated transfer tax benefit. [emphasis added]

This proposal would apply to trusts created after the date of enactment. *General Explanations of the Administration's Fiscal Year 2011 Revenue Proposals* (Department of the Treasury, February 2010)(also known as the "Green Book"), p. 126.

The fiscal year 2010 proposal did not include the underscored text, which was added in the fiscal 2011 proposal. There is a contradiction between the added sentence and the first clause of the sentence that follows it, since requiring the remainder interest to have a value greater than zero would prevent "zeroing out".

President Obama's proposed revisions to the rules governing GRATs have been included in legislation approved by the House Ways and Means Committee. The President proposed a minimum ten-year term for GRATs in May, 2009, as part of the Administration's revenue proposals for fiscal year 2010. In February, 2010, the Administration's revenue proposals for

---

<sup>123</sup> Cf. section 673 as applicable to a so-called *Clifford* trust created before or on March 1, 1986, with a ten-year minimum term.

fiscal year 2011 reiterated this proposal and added a requirement that a GRAT remainder have a value greater than zero, and a prohibition on any decrease in the annuity during the GRAT term.

All three of the President's proposals are included in H.R. 4849, which was approved by the House Ways and Means Committee on March 17, 2010. Section 307 of H.R. 4849 would amend IRC Sec. 2702(b) to group existing paragraphs (1), (2) and (3) into a single paragraph (1) as subparagraphs (A), (B), and (C), and then add new paragraph (2) to read as follows:

(2) ADDITIONAL REQUIREMENTS WITH RESPECT TO GRANTOR RETAINED ANNUITIES.—For purposes of subsection (a), in the case of an interest described in paragraph (1)(A) (determined without regard to this paragraph) which is retained by the transferor, such interest shall be treated as described in such paragraph only if—

(A) the right to receive the fixed amounts referred to in such paragraph is for a term of not less than 10 years,

(B) such fixed amounts, when determined on an annual basis, do not decrease relative to any prior year during the first 10 years of the term referred to in subparagraph (A), and

(C) the remainder interest has a value greater than zero determined as of the time of the transfer.

The bill applies only to “an interest described in paragraph (1)(A)” (as renumbered by the bill) and therefore does not apply to grantor retained unitrusts.

Sec. 307(b) of the bill provides:

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers made after the date of the enactment of this Act.

The bill does not specify what the required remainder value must be, either absolutely or as a percentage of the trust's value. The specifics are left to the regulations, and there is no grant of special “legislative” regulatory authority in the bill. Given the language of the bill, it would seem difficult for an interpretive regulation to impose any requirement greater than a bare minimum positive value. One approach that Treasury and the IRS might be tempted to take is to return to the rule that applied under former Example (5) of Treas. Reg. §25.2702-3(e) prior to its amendment in T.D. 9181 (Feb. 24, 2005). The amendment reflected the decision in *Walton v. Commissioner*, 115 T.C. 589 (2000), holding Example (5) invalid. Under Example (5), in valuing the retained annuity no actuarial weight was given to payments made after the grantor's death. Since there was always some chance that the grantor would die during the GRAT term, the resulting “mortality contingency” meant that the remainder would have some value, and made zeroing out impossible. The impact of a return to former Example (5) would be increased by the requirement that the GRAT have at least a ten year term, since a grantor is more likely to die within ten years than within two. A return to former Example (5) seems to go well beyond the language of the bill, and to be precluded absent a special grant of regulatory authority.

The ability to “zero out” has been a key feature of GRATs. Since any positive value for the remainder should meet the bill's new requirement, the ability to use GRATs while paying no

or minimal gift tax remains intact. The bill does not include provisions that would have effectively shut down the use of GRATs, such as requiring a ten percent remainder and/or putting a cap on the annuity.

The prohibition of any decrease in the annuity during the first ten years of the GRAT term seems the least significant of the three changes. Few GRATs or GRAT strategies have utilized a decreasing GRAT annuity. The current rule of Treas. Reg. §25.2702-3(b)(1)(ii)(A), permitting annual 20% increases in the GRAT annuity, would be unaffected by the bill.

The minimum ten-year term is a significant change that will make GRATs less effective, but will not end their utility. The ten year term will increase interest in techniques that may remove the GRAT from the grantor's gross estate, some of which are discussed in this paper. In addition to the risk of inclusion, the bill would curtail the effectiveness of GRATs in other ways. Most GRATs are zeroed out (or nearly so) to avoid gift tax upon creation. A zeroed-out GRAT is successful in passing property to the remaindermen only to the extent that its assets outperform the IRC Sec. 7520 rate during the GRAT term. The investment performance on the whole will reflect good years and bad years during the term. A series of short terms, such as five two-year terms, means that the return during good periods is not offset by that of the bad periods. The return in the good period is "captured" when the trust ends, and a subsequent bad period, while not itself successful, does not reduce the captured benefit of the good period. The ten year minimum means that ups and downs over that period will average out, and the result will not be as good as five two year terms.

The effect of good investment performance during one period can be protected against subsequent losses by a sale and shift to less volatile investments, at the possible cost of lower returns thereafter. This can be done without capital gains tax if the GRAT is a grantor trust and the grantor repurchases assets from the GRAT. If the grantor is also the trustee, a self-dealing issue (in the fiduciary, not tax sense) is presented that can be dealt with in the trust instrument. The bill does not negate this technique. It is relevant where the GRAT experiences an extraordinary valuation increase, as upon the sale of a company.

Upon payment of the annuity some grantors transfer the payment to a new GRAT immediately so as to keep as much property as possible earning for the benefit of the GRAT remainderman. Such re-transfers (sometimes called "cascading" GRATs) will now require a ten-year commitment instead of two-year one, as of the date of retransfer.

The bill requires a minimum ten year term only if the GRAT annuity is "retained by the transferor." These words will have to be interpreted by the regulations. Efforts will be made to devise structures that avoid this requirement without giving rise to adverse gift or income tax consequences.

Notwithstanding the disadvantages of a ten year term, the technique discussed below is compatible with a ten year term and will remain highly effective even if the bill becomes law.

4. Some of the disadvantages of a GRAT.

a. Financial reasons why a GRAT may not succeed.

A famous University of Texas football coach, Darrell Royal, once explained why he disdained the forward pass, “Three things can happen when you throw a pass and two of them are bad.” To a certain extent the same thing can be said about investments that are placed in a GRAT. If the investment goes down (the equivalent of a pass interception), or if an investment only increased modestly (the equivalent of a pass incompleteness), the GRAT will be unsuccessful in transferring wealth to the remainderman. Thus, because of investment performance, many GRATs may not be successful.

(1) Some assets are not volatile.

Generally, assets that have a chance to have a significant result over the Annuity Period have a wide variance of possible investment outcomes. A stable asset portfolio, while in another context generally desirable, is not a desirable portfolio for a GRAT. If the leading objective of the GRAT is to produce a transfer of wealth to the remainderman, variance of return (or risk) is a friend, not an enemy. Thus, the challenge for the practitioner for clients that have a stable portfolio of assets is how to make the GRAT an effective technique.

(2) Some GRAT investments are only profitable if the investment is long.

Another challenge for the practitioner in dealing with many clients’ normal asset portfolio is that the assets are only profitable if the markets in which the assets are invested increase. Markets do not always increase in value, nor do the assets which find much of their return related to that market always increase in value. Thus, if the markets are flat, or if the markets are decreasing in value, many of the GRATS created during that period will be unsuccessful.

b. If a GRAT is not administered properly, the retained interest by the grantor may not be deemed to be a qualified interest.

(1) The *Atkinson* worry.

The U.S. Court of Appeals for the Eleventh Circuit (*see Atkinson*, 309 F.3<sup>rd</sup> 1290 (11<sup>th</sup> Cir. 2002), cert denied, 540 U.S. 945 (2003))<sup>124</sup>, has held that an inter vivos charitable remainder annuity trust’s (CRAT’s) failure to comply with the required annual payment regulations during the donor’s lifetime resulted in complete loss of the charitable deduction. The Court found that the trust in question was not properly operated as a CRAT from its creation. Even though the subject CRAT prohibited the offending acts of administration, the Court held that the CRAT fails.

In a similar fashion, the Internal Revenue Service could take the position that if the regulations under IRC Section 2702 are violated by the trustee of the GRAT’s administrative

---

<sup>124</sup> See also CCA 200628028 (July 14, 2006).

practices, then the interest retained by the grantor will not be a qualified interest. Just as in the *Atkinson* case, it may not matter if appropriate savings language is in the document. As explored below, there are many areas in which the administration of a GRAT may fail, including the following: (i) not timely paying the annuity amount due to the grantor; (ii) inadvertently making more than one contribution to the GRAT; (iii) inadvertently engaging in an activity that would constitute an underpayment of the amount owed to the grantor, which would constitute a deemed contribution; and/or (iv) inadvertently engaging in an activity that would constitute an acceleration of the amounts owed to the grantor (a commutation).

(2) The annuity amount must be paid annually.

An annuity amount payable based on the anniversary date of the creation of the trust must be paid no later than 105 days after the anniversary date. An annuity amount payable based on the taxable year of the trust may be paid after the close of the taxable year, provided that the payment is made no later than the date on which the trustee is required to file the federal income tax return of the trust for the taxable year (without regard to extensions).<sup>125</sup> Failure to pay the annuity amount within these time limits may jeopardize the retained interest by the grantor of the trust from being a qualified interest. If a retained interest in the GRAT is not a qualified interest, then it will have a value of zero for purposes of determining the gift tax associated with the grantor's contribution of assets to the trust.

(3) Paying the grantor in satisfaction of his retained annuity interest with hard to value assets may disqualify his retained interest from being a qualified interest, if the assets are valued improperly.

In order to have a successful GRAT, it is obviously desirable to have an asset that has significant potential for appreciation. It is desirable from a volatility and potential growth standpoint to contribute, in many instances, a hard to value asset to the GRAT. Many of the asset classes that have that potential for appreciation (e.g., closely held partnership interests, stock in subchapter S corporations, real estate, hedge funds and other private equity investments) are very difficult to value accurately.

The problem with a GRAT that owns hard to value volatile assets is that when it is time to pay the retained annuity amounts to the grantor, it is often difficult to value the asset that is being used to satisfy the annuity obligation. If the distributed asset is finally determined to have had too low a value when it is used to satisfy the annuity amount owed by the GRAT, it could be deemed to be an additional contribution by the annuitant to the GRAT, which is prohibited. *See* Treas. Reg. Sec. 25.2702-3(b)(5). On the other hand, if it is finally determined that the hard to value asset that is distributed in satisfaction of the annuity payment to the grantor had too high a value, it could be determined by the IRS that such a payment is a commutation, which is also prohibited. *See* Treas. Reg. Sec. 25.2702-3(d)(5). Thus, the trustee of the GRAT, which is frequently also the

---

<sup>125</sup> *See* Treas. Reg. Section 25.2702-3(b)(4).

grantor, must be very careful, like Goldilocks, to make sure that the annuity payments are “just right”. Using hard to value assets, to make the “just right” payments, may be highly problematic.

- (4) The contribution of assets to the GRAT must be made at the exact point of the creation of the GRAT.

As noted above, there cannot be any additional contributions to a GRAT. If an assignment to a GRAT is not effective at the same time of assignment of another asset to a GRAT is made, that could be finally determined to violate the prohibition against additional contributions to a GRAT. That additional contribution could cause the retained interest in the GRAT by the grantor to not be considered a qualified interest for purposes of IRC Section 2702.

- c. The retained annuity interest is valued using the valuation principles under IRC Section 7520.

One of the disadvantages of a GRAT in comparison to sales to intentionally defective grantor trusts is that the qualified interest is valued under IRC Section 7520, which is inherently higher than the AFR that may be used for notes received for sales to intentionally defective grantor trusts.

- d. A successful GRAT could regress to the mean by the end of the term of the GRAT.

As noted above, one of the disadvantages of the GRAT is that it cannot be commuted. The GRAT must last its designated term and the only permissible beneficiary of the GRAT during the term of the GRAT is the holder of the annuity interest. Assume a grantor creates a three year GRAT with a volatile stock in which there has been a significant increase in value by the end of year two. If the stock then regresses to a lower price before the end of the third year of the GRAT, less value will pass to the remainderman beneficiaries of the GRAT, than would have been the case, if the GRAT could have been commuted in two years.

- e. The GRAT may not satisfy a client’s stewardship goals because the investments of the GRAT may have been too successful.

Many clients, in developing their future stewardship goals for their assets, have a view that only a certain percentage of their assets should go to their descendants. If a GRAT is more successful than a grantor anticipated, the possibility exists that the stewardship balance the client wishes to maintain may be upset.

- f. The GST tax exemption may be difficult to leverage through the use of a GRAT.

It is difficult to leverage the GST exemption with a GRAT. (This may change for GRATs created in 2010 because under current law there is no generation-skipping tax for that year or an estate tax inclusion period (“ETIP”) and the gift to a generation-skipping trust may be deemed



completed upon the GRATs creation.)<sup>126</sup> It is generally thought that the generation-skipping tax exemption of the grantor may not be leveraged, like the gift tax exemption may be leveraged, through the use of a GRAT. This is because of the ETIP rule found in IRC Section 2642(f)(3), which provides as follows:

Any period after the transfer described in paragraph (1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under Chapter 11 if he died. The transferor's exemption for generation-skipping tax purposes cannot be allocated until after the ETIP period.

Since a grantor is the only beneficiary of a GRAT during the Annuity Period, if the grantor dies during that term a significant portion (usually all) of the assets of the GRAT will be included in the grantor's estate under IRC Section 2036 of Chapter 11. Only after the Annuity Period passes, and it is clear that the property will not be included in the grantor's estate for estate tax purposes, may a grantor's GST exemption be allocated.

- g. A GRAT will not be successful in transferring assets if the grantor does not survive until the end of the term of the GRAT.

If a grantor does not survive the Annuity Period a significant portion or all of the assets of the GRAT will be included in the grantor's estate. The amount of corpus of the GRAT that will be included in the grantor's estate is that amount that is necessary to yield the annuity payment to the grantor without reducing or invading the principle of the GRAT. The annual annuity receivable divided by the Section 7520 interest rate equals the amount includable under Section 2036. *See* Treas. Reg. Section 20.2036-1(c)(2) and Treas. Reg. Section 20.2036-1(c)(2)(iii), Example 2.

- 5. Possible structural planning solution to (i) lower the leverage cost of a GRAT; (ii) avoid paying the retained annuity with hard to value assets; (iii) assure the contribution of assets to a GRAT is made at the exact point of the creation of the GRAT; and (iv) minimize the amount that would be included in the grantor's estate if the grantor died before the end of the term of the GRAT

- a. Introduction.

If the Statutory Rate is 3.2%, what rate of annual return would an asset contributed to a three year GRAT need to earn in order to produce a value to the remainderman equal to three times the value of the asset contributed to the GRAT? The answer is 100.35% annual return as shown below:

---

<sup>126</sup> Legislation restoring the generation-skipping tax for all or part of 2010 is possible. How such legislation would treat a GRAT created in 2010 and terminating in a subsequent year is uncertain. To hedge this uncertainty, a donor could create a GRAT in 2010 and direct that the remainder interest not subject to the GST tax (if any) be allocated to a properly structured dynasty trust and the balance to the donor's children.

Table 3

	Beginning of Year Value	Annuity	Amount before Appreciation	Growth	End of Year Value
Year 1	\$1,001,000	(\$354,532)	\$646,468	\$648,705	\$1,295,173
Year 2	\$1,295,173	(\$354,532)	\$940,641	\$943,896	\$1,884,536
Year 3	\$1,884,536	(\$354,532)	\$1,530,004	\$1,535,298	\$3,065,303

What if a technique existed that simulated that result, even if a client's portfolio only earned a 4% annual return? That technique does exist: the leveraged reverse freeze in combination with a GRAT. (Please compare this result with the result in section b below, if a \$10,000,000 preferred partnership interest subject to a \$8,999,000 debt is contributed to a three year GRAT.)

As noted above, four potential disadvantages of using the GRAT are: (i) the Statutory Rate is higher than the AFR rate; (ii) satisfying annuity payments with hard to value assets, which may be finally determined by the Internal Revenue Service as either violating the prohibition against commutation or additional contributions; (iii) assuring the contribution of assets to the GRAT is made at the exact point of the creation of the GRAT, and (iv) the inclusion of most of the assets of a GRAT in the grantor's estate, if the grantor dies before the end of the term of the GRAT.

A possible solution to these potential disadvantages of using the GRAT technique is to consider contributing and/or selling property in exchange for a note to a single member LLC. At a later time the LLC membership units could be contributed to an irrevocable GRAT. If the LLC has significant leverage (for example, 90% leverage) the disadvantage of the Statutory Rate hurdle and the grantor dying before the end of the term of the GRAT is greatly ameliorated, the disadvantage of having to pay annuity payments with hard to value assets is likely eliminated, and the concern of having more than one deemed contribution of assets to a GRAT is also likely eliminated. The following example may illustrate the concept:

*Example 7: Use of GRAT With Mortgaged Property*

*Grant Gratuitous approaches his attorney, Lenny Leverage and tells him that he would like to transfer, through the use of a GRAT, the maximum amount that he can transfer using a three year GRAT or a ten year GRAT to his children. Grant Gratuitous tells Lenny Leverage that he has around \$30,000,000 in financial assets. Grant is willing to have about one-third of his assets subject to the three year GRAT and all of his assets subject to a ten year GRAT.*

*Lenny likes many of the aspects of a GRAT, including its built-in revaluation clause. Lenny also likes using family limited partnerships because of the substantive nontax investment reasons that are sometimes associated with partnerships and because of the possibility of valuation discounts with family limited partnerships. Lenny particularly likes in today's credit markets the use of a family limited partnership with preferred partnership units.*

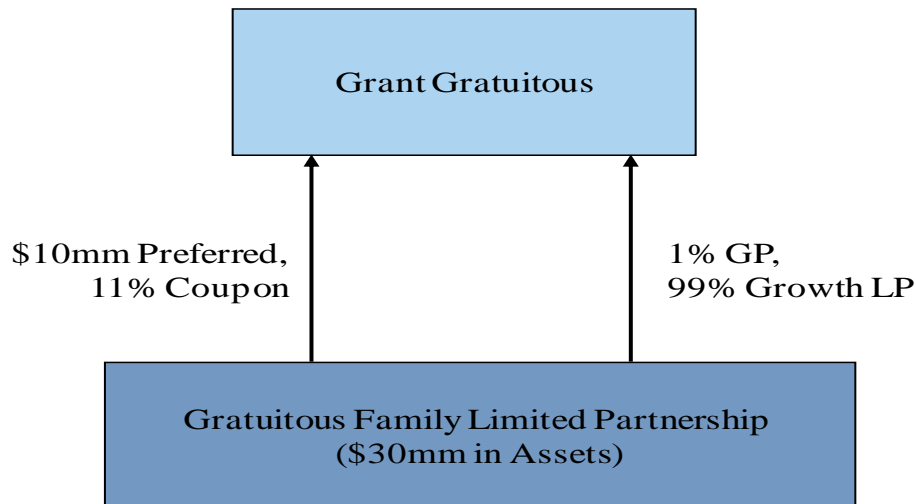
Despite the advantages of GRATs and the possibility of valuation discounts of family limited partnerships, Lenny feels that there are certain disadvantages with contributing partnership units to a GRAT in comparison to a sale of partnership units to a grantor trust, including the disadvantage of the higher Statutory Rate and the potential difficulties in paying the retained annuity amounts in a GRAT with hard to value partnership units.

Lenny suggests that Grant consider structuring the transaction using partnership interests that are both contributed and sold to a single member LLC. The consideration for the sale could be a note equal to 90% of the value of the transferred partnership units. At a later time Grant could contribute most of the LLC member interests to a GRAT. Lenny would also like to compare the results that would be obtained using a two class partnership (with preferred and growth interests) and a simple pro rata partnership.

Grant and Lenny assume the pro rata partnership will distribute 3% of the value of its assets to its partners. Grant and Lenny assume the partnership assets will grow at an 8% return pre-tax. They assume that a preferred partnership interest will pay an 11% dividend.<sup>127</sup> The 8% return will be taxed at 3% ordinary income rate and 5% long term capital gains rates (with a 30% turnover). Grant and Lenny assume that the annual interest rate on a three year intra-family note is .69% (i.e., the short term AFR) and on a nine year intra-family note is 2.45% (i.e., the mid-term AFR). Grant and Lenny assume that the Statutory Rate for a GRAT is 3.2%. Grant and Lenny assume the pro rata partnership discount is 35%.

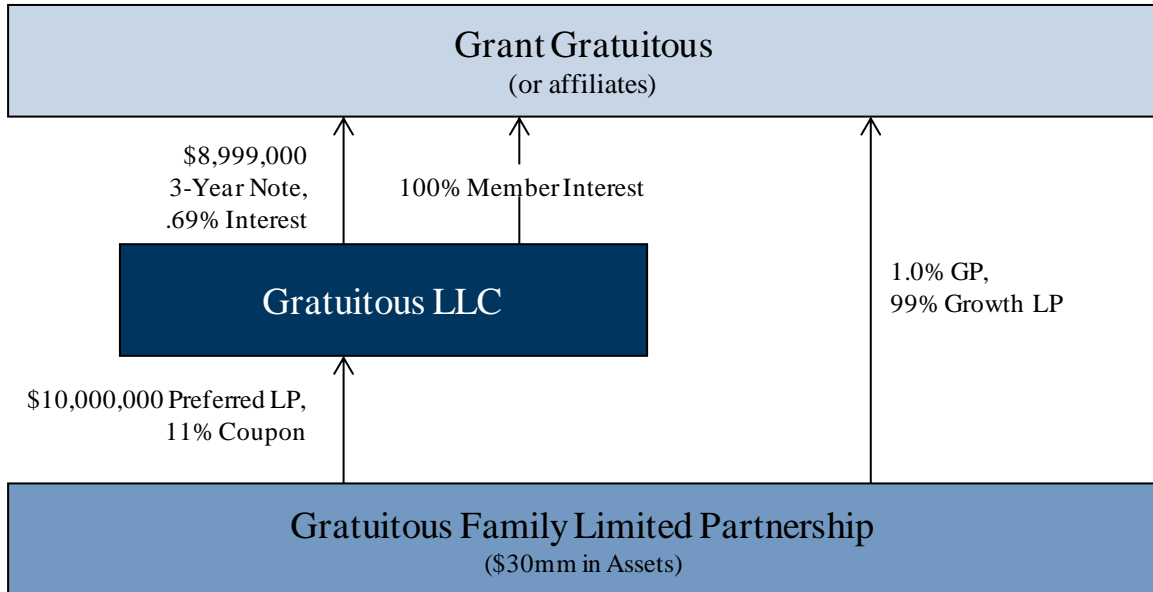
b. Use of a Leveraged LLC With a Three Year GRAT.

Grant Gratuitous could create a family limited partnership or a family limited liability company that has a structure similar to the structure illustrated below (Scenario 1):

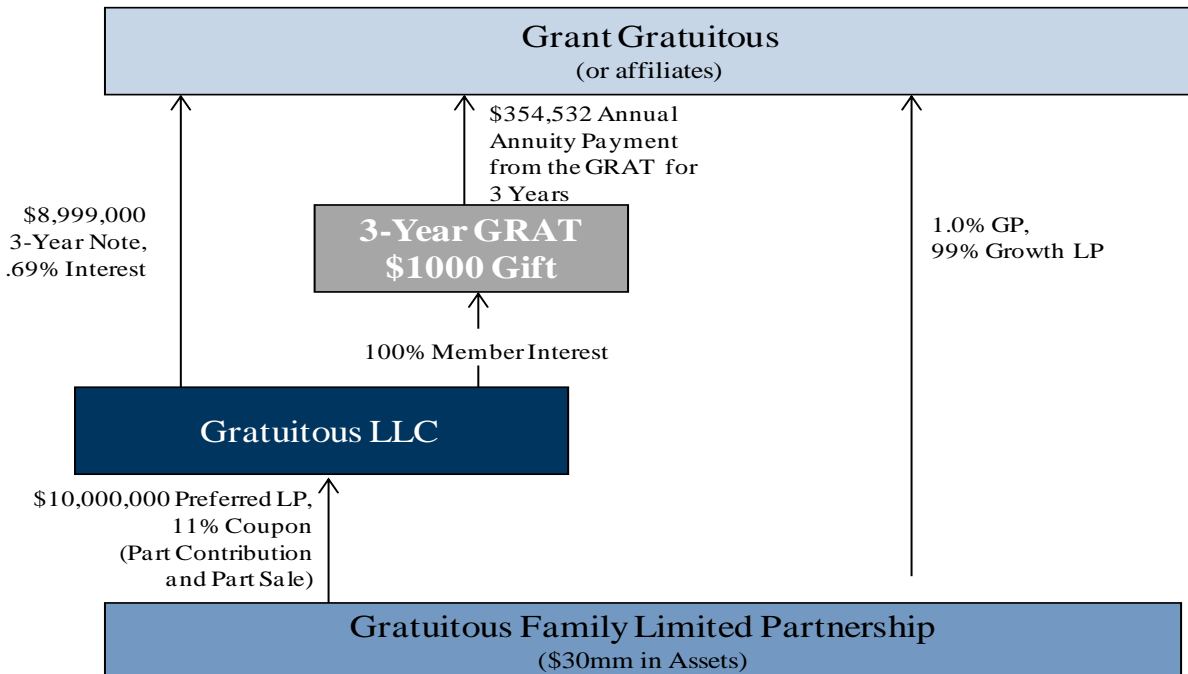


<sup>127</sup> For a discussion of the valuation of preferred partnership interests, see Section X of this outline.

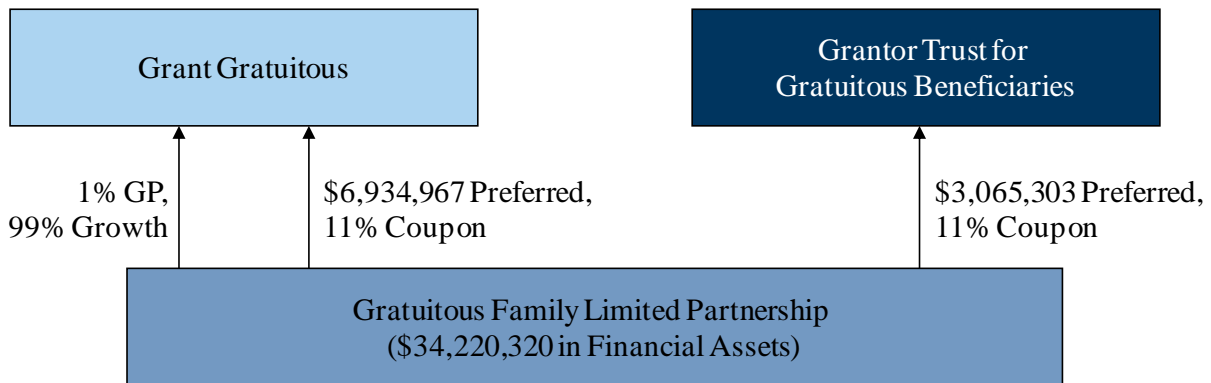
Grant Gratuitous could then gift \$1,001,000 of his preferred interest to a single member LLC and sell his remaining preferred interest to that single member LLC for an \$8,999,000 for a three year balloon note that annually pays the short term AFR annual interest (assumed to be .69% for this illustration). That transaction (Scenario 1, Transaction 2) is illustrated below:



After all of the assignments are completed, Grant could contribute most of the LLC membership interests to a near “zeroed out” GRAT. The GRAT could pay Grant an annual annuity of \$354,532 for the next three years (subject to a revaluation adjustment under the GRAT instrument). That transaction (Scenario 1, Transaction 3) is illustrated below:

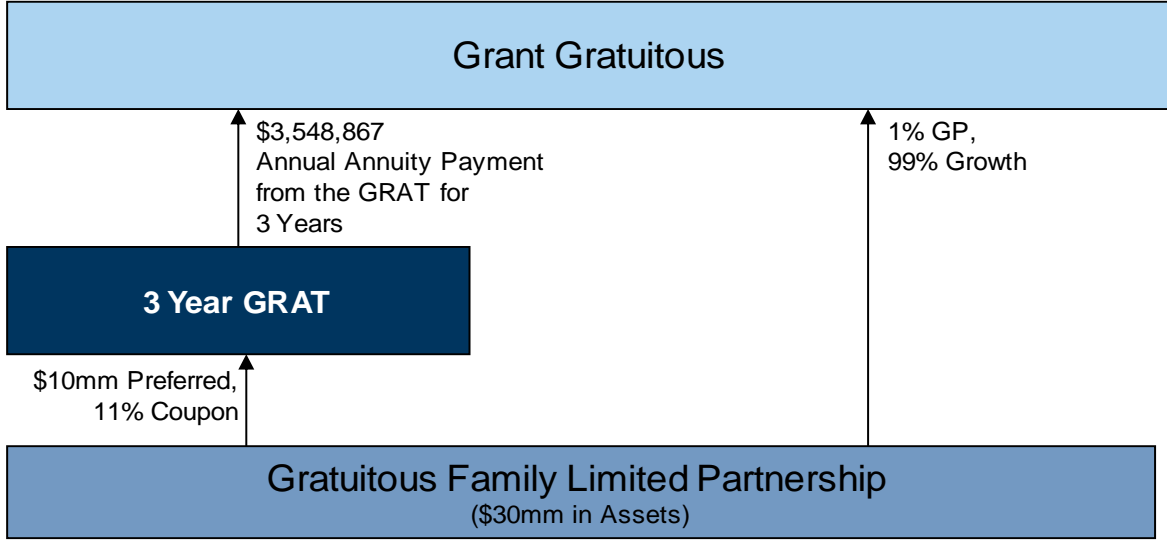


At the end of three years, after the GRAT and LLC terminates and after the note is paid in kind by the remainder beneficiaries (the grantor trust) under the above assumptions, \$3,065,303 of the preferred interests will remain with the remainder beneficiaries of the GRAT that Grant created, as illustrated below (also see attached Schedule 3):

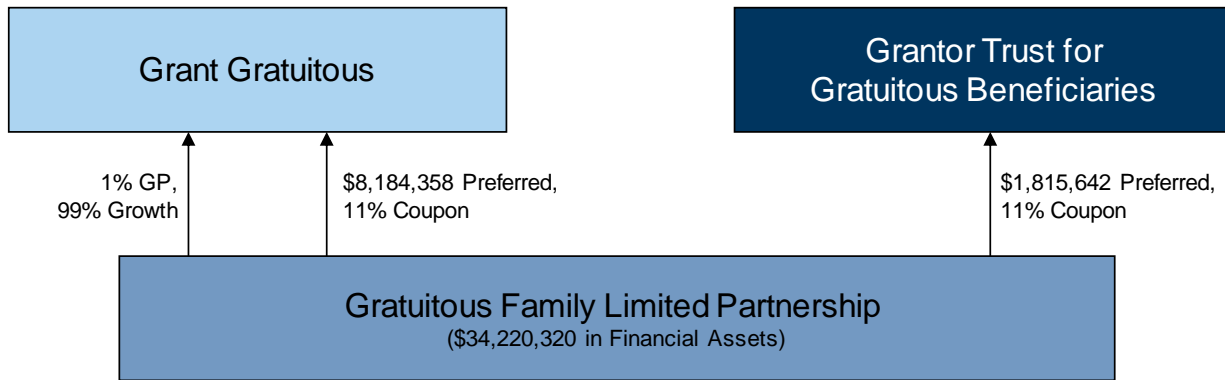


The “estate planning” results of this technique simulate the results of a three year GRAT that is blessed with a portfolio (that is not mortgaged) that annually earns 100%. See Table 3 above.

Lenny also compares what would happen if Grant contributes \$10,000,000 preferred to a GRAT without first mortgaging the preferred. If the preferred interest was simply contributed to a GRAT, the transaction would be similar to the illustration below (Scenario 2):

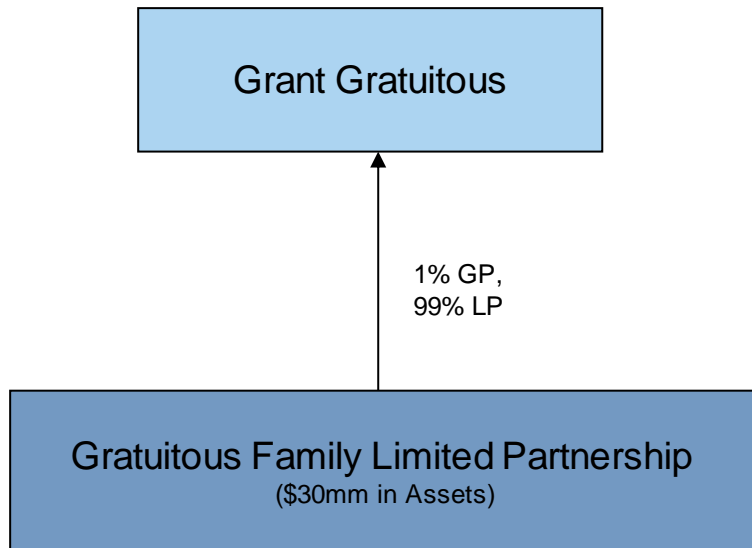


At the end of three years, under the above assumptions, \$1,815,642 of the preferred interests would have been transferred to the remainder beneficiaries of the GRAT, as illustrated below (also see attached Schedule 3):

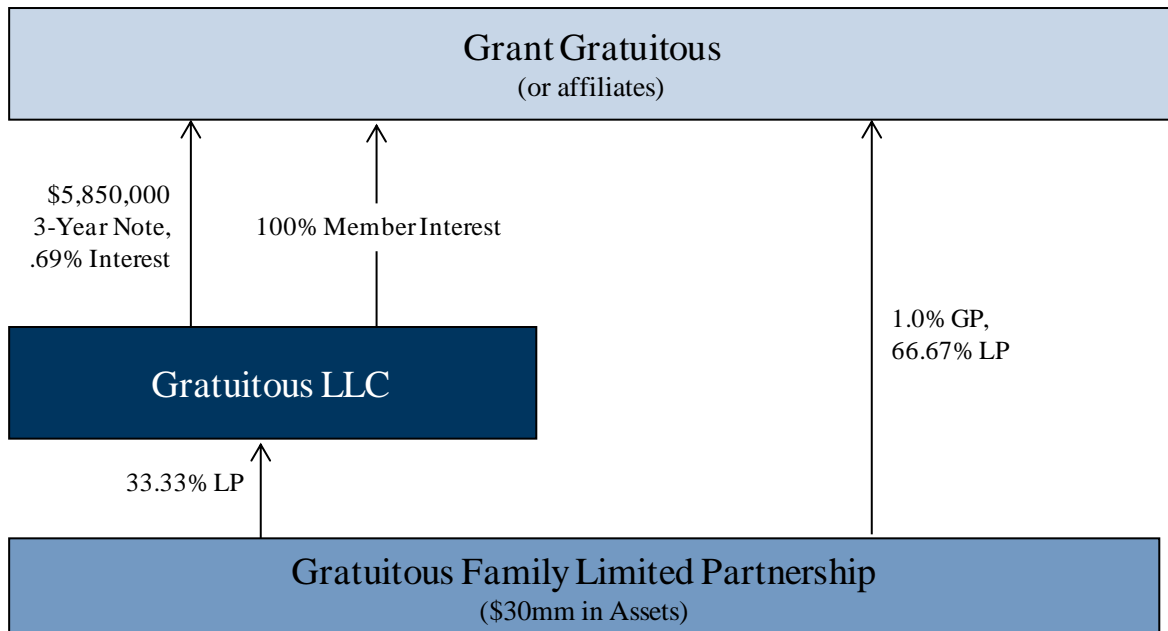


Obviously, the use of leverage substantially improves the result of the GRAT and also avoids having to pay the retained GRAT annuity with hard to value assets.

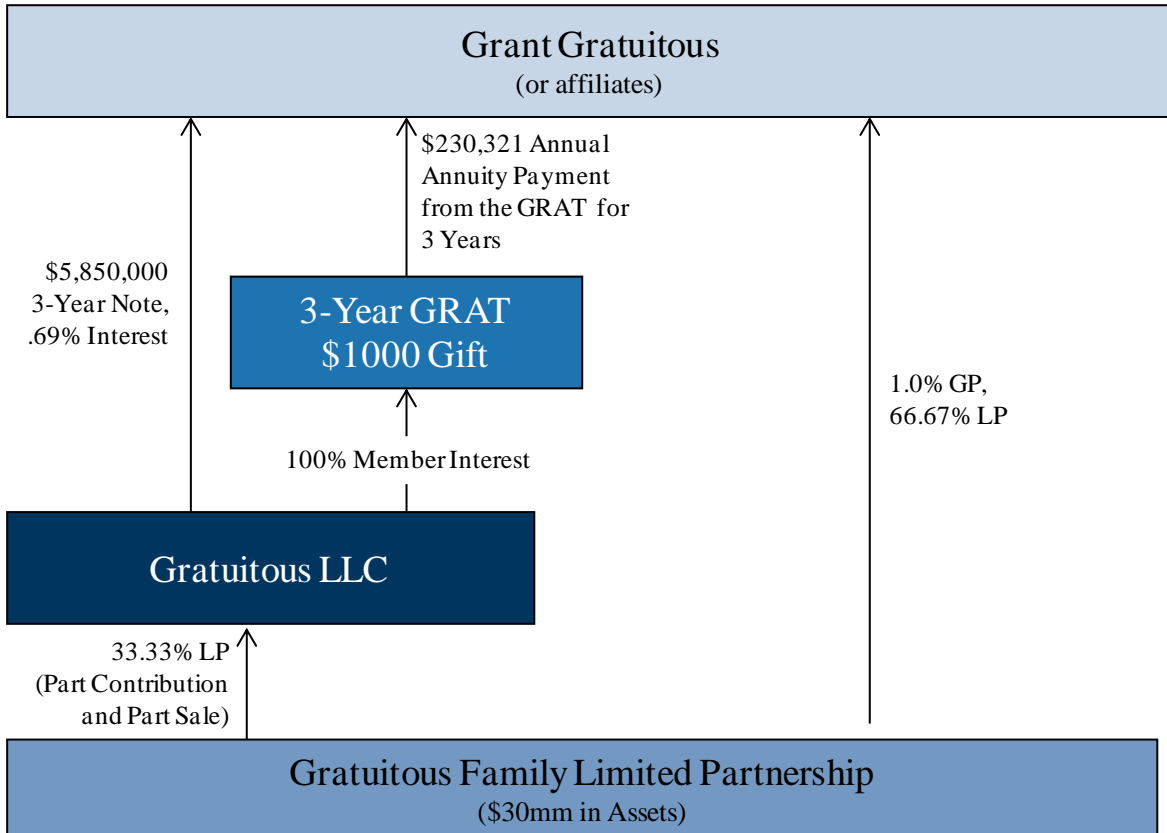
Lenny would also like to compare the two tiered partnership of using preferred and growth interests with a simpler structure of using a pro rata partnership or a pro rata limited liability company. See the illustration below:



Again, assuming Grant would like to maximize the benefits of a GRAT in transferring one-third of his financial assets (which represent \$10,000,000) of partnership assets on a liquidation basis) to the proposed GRAT, Lenny suggests a structure in which a family limited partnership is created and then one-third of the partnership units are first contributed and/or sold, using 90% leverage, to a LLC of which he is the sole owner. That transaction (Scenario 3, Transaction 2) is illustrated below:

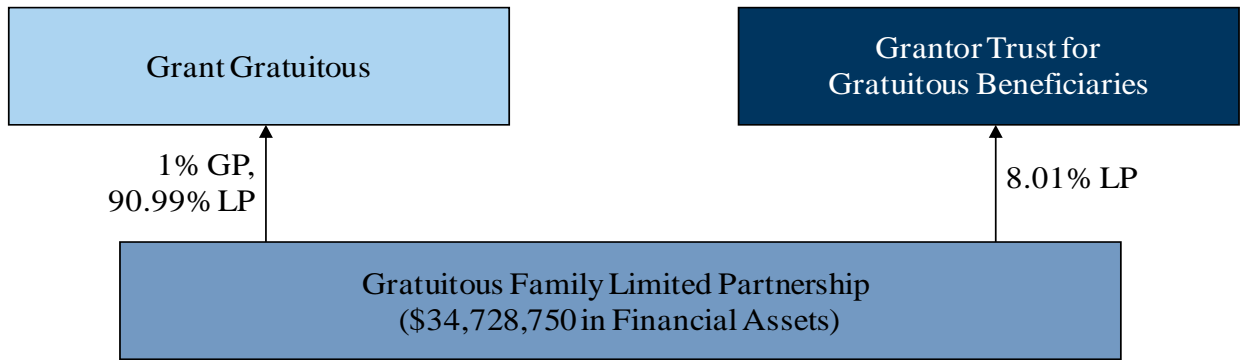


After all assignments have been completed, Grant could contribute the LLC membership units to a near “zeroed out” GRAT. The transaction is illustrated below (Scenario 2, Transaction 3):

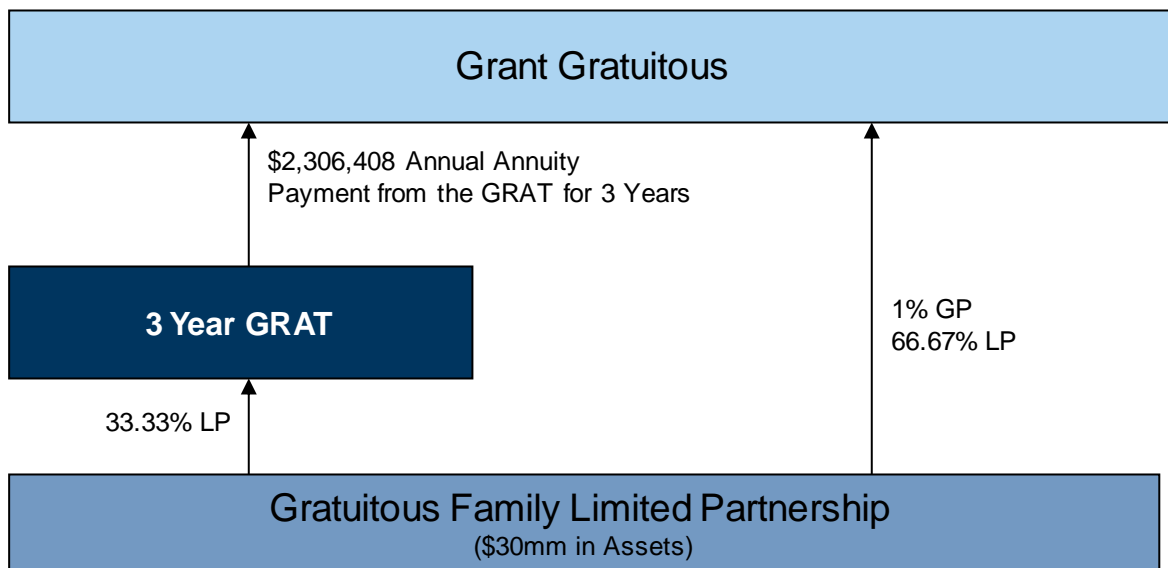


Three years later, under the assumptions noted above, after the LLC and the GRAT terminates and after the note is paid by the remainder beneficiaries (the grantor trust) is paid in kind, 8.01% of the limited partnership interest will remain with the remainder beneficiaries, as illustrated below (see Schedule 3):

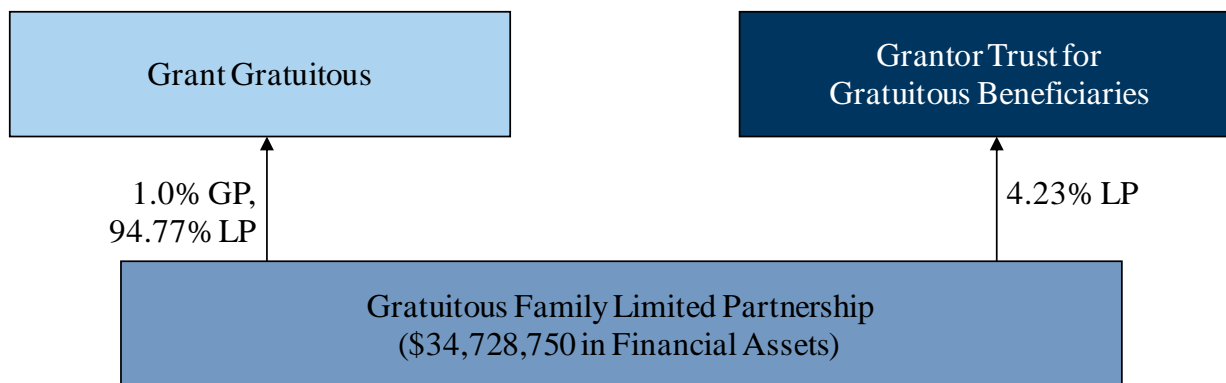




Finally, Lenny wishes to illustrate to Grant what the transaction would be like without any leverage. Thus, a 33.33% pro rata limited partnership interest is contributed to a GRAT in a transaction similar to the illustration below (Scenario 4):



At the end of three years, under the above assumptions, 4.23% of the limited partnership interest will be transferred to the remainderman beneficiaries of the trust as illustrated below (see Schedule 3):



c. Certain Conclusions and Observations.

When an LLC that is leveraged is owned by a GRAT, under the assumptions above, there is enough cash flow coming out of the partnership to the LLC to pay all of the GRAT annuity amounts during the Annuity Period in cash. This eliminates the problems associated with satisfying the GRAT annuity with hard to value assets.

The note associated with the mortgage before the GRAT is created could be finally satisfied by the remainderman (the Grantor Trust) with hard to value assets after the GRAT terminates. However, the use of payments in kind to satisfy the loan, after the GRAT terminates, does not run the “deemed contribution” danger that may be inherent in satisfying GRAT annuity payments with hard to value assets.

Another advantage of the technique is that because of the relatively modest annuity payment in comparison to value of the partnership interest passing to the remainder beneficiary, if a death of the grantor of the GRAT occurs before the Annuity Period ends, there is a much greater chance that some of the assets of the GRAT will not be included in the grantor’s estate under IRC Section 2036.

As the chart below illustrates, not only is the technique more structurally conservative, as far as preserving qualified interest status of a GRAT, the technique of using a mortgaged interest also has the desirable effect of significantly increasing the “estate planning” success of the GRAT (a 69% to 89% improvement under the investment assumptions of this example):

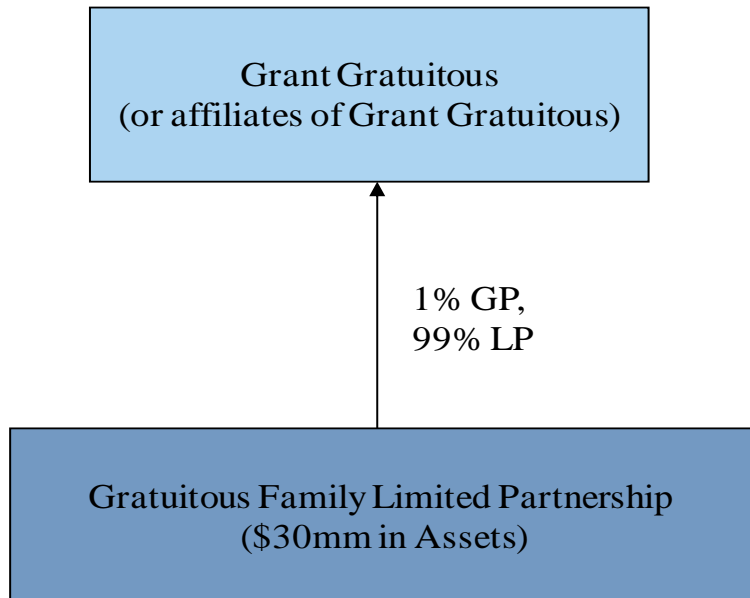
**Table 4**

Comparison of Various Partnership Scenarios in which Partnership Units with a Liquidation Value of \$10mm are Transferred to a GRAT	Grant Gratuitous	Grantor Trust for Beneficiaries	Estimated Income Taxes	Estimated Gift Taxes	Total
Scenario #1: Creation of a 90% Mortgaged Preferred Interest with the Contribution of the Mortgaged Preferred to a GRAT	\$33,269,422	\$3,065,303	\$1,456,635	\$0	\$37,791,360
Scenario #2: The Contribution of the Preferred to a GRAT Without any Leverage	\$34,519,083	\$1,815,642	\$1,456,635	\$0	\$37,791,360
Scenario #3: Creation of a 90% Mortgaged 33.33% Pro-Rata Partnership Interest, with the Contribution of the Mortgaged Pro-Rata Partnership Interest to a GRAT	\$33,553,004	\$2,781,721	\$1,456,635	\$0	\$37,791,360
Scenario #4: The Contribution of the 33.33% Interest in a Pro-Rata Partnership to a GRAT Without Any Leverage	\$34,865,173	\$1,469,552	\$1,456,635	\$0	\$37,791,360

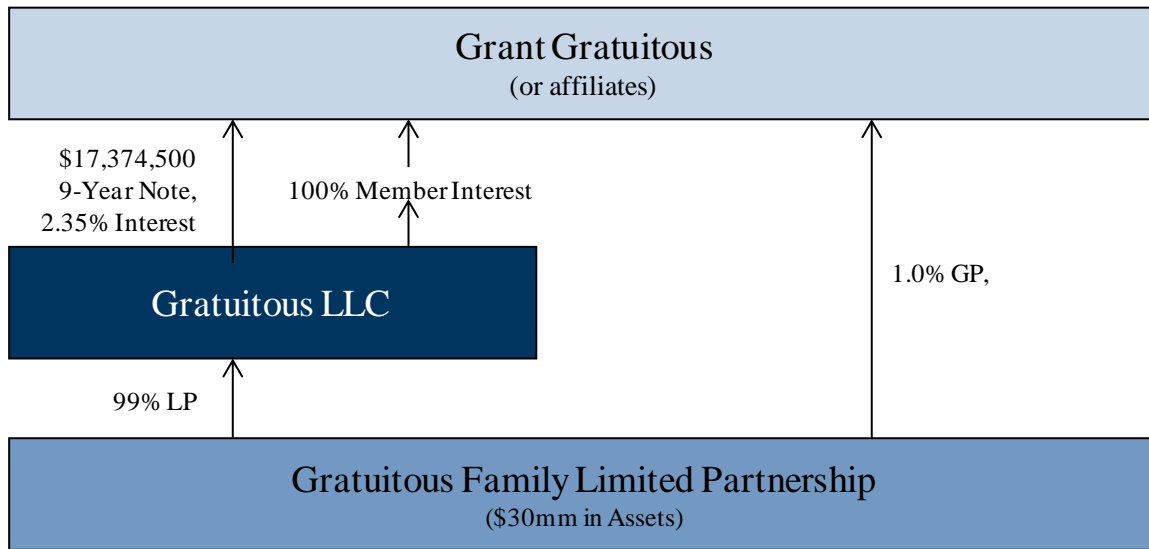
The reason for the substantial improvement is two-fold: (i) the annuity amount is always paid with undiscounted cash and (ii) the average hurdle rate “cost” of that leverage is below 1% (instead of the Statutory Rate of 3.2%).

d. Use of a Leveraged LLC With a Ten Year GRAT.

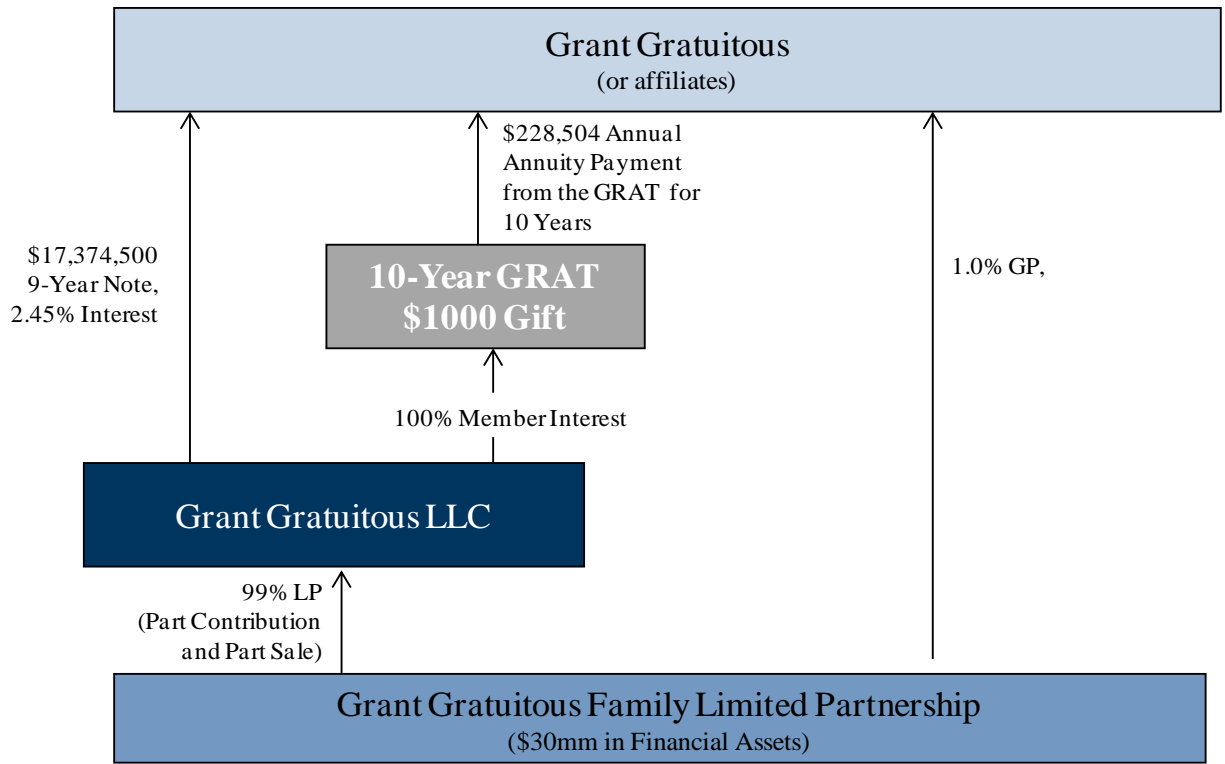
Assume the same facts as Example 7, except that Grant wishes to transfer 99% of his partnership interests to a ten year GRAT and the partnership is structured as a pro rata partnership (without a preferred interest). See the illustration below:



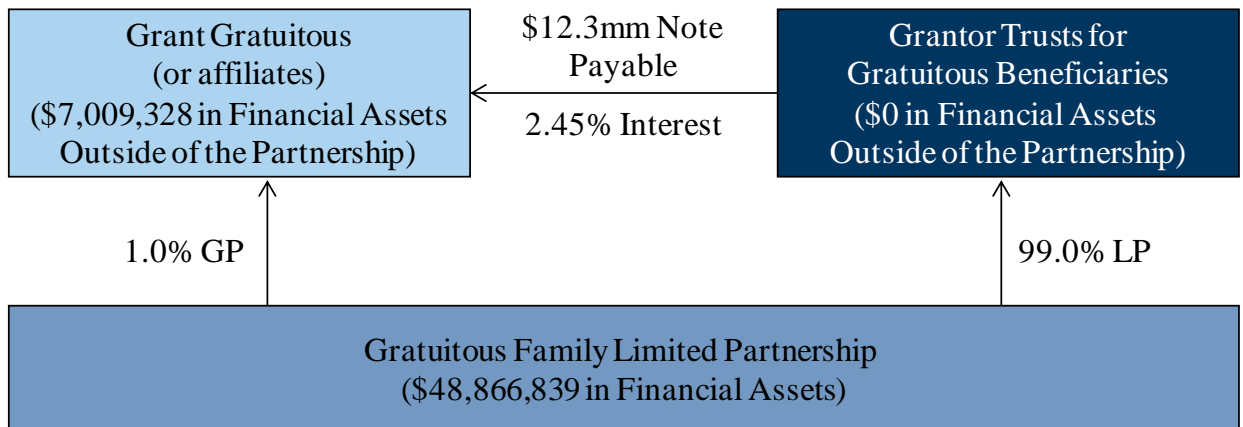
Again, assuming Grant would like to maximize the benefits of a ten year GRAT, Lenny suggests a structure in which a family limited partnership is created and the limited partnership units are contributed and/or sold, using 90% leverage, to a LLC of which he is the sole owner. That transaction is illustrated below (Scenario 1, Transaction 2):



After all assignments have been completed, Grant could contribute most of the LLC membership interests to a 10 year near “zeroed out” GRAT. The transaction is illustrated below (Scenario 1 Transaction 3):

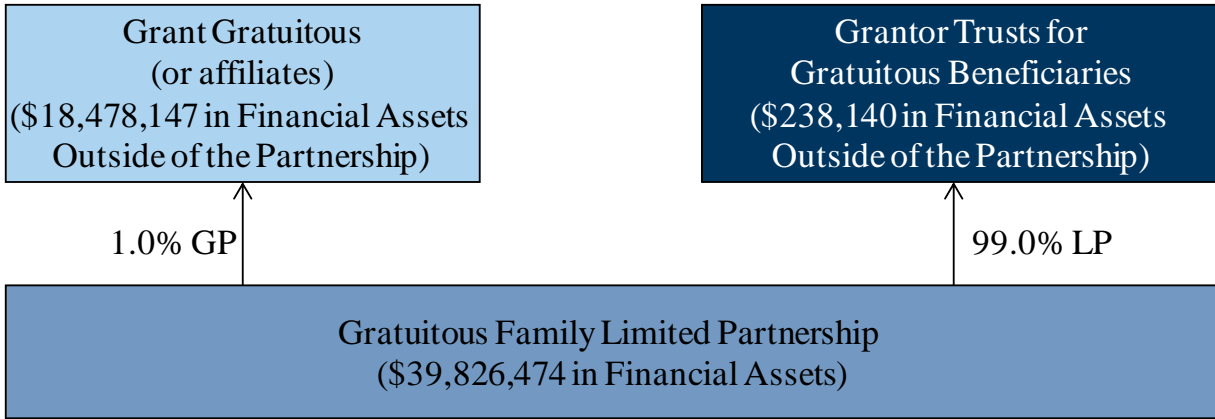


After ten years, the GRAT terminates and the GRAT assets and liabilities are paid to the remainderman (the Grantor Trust).

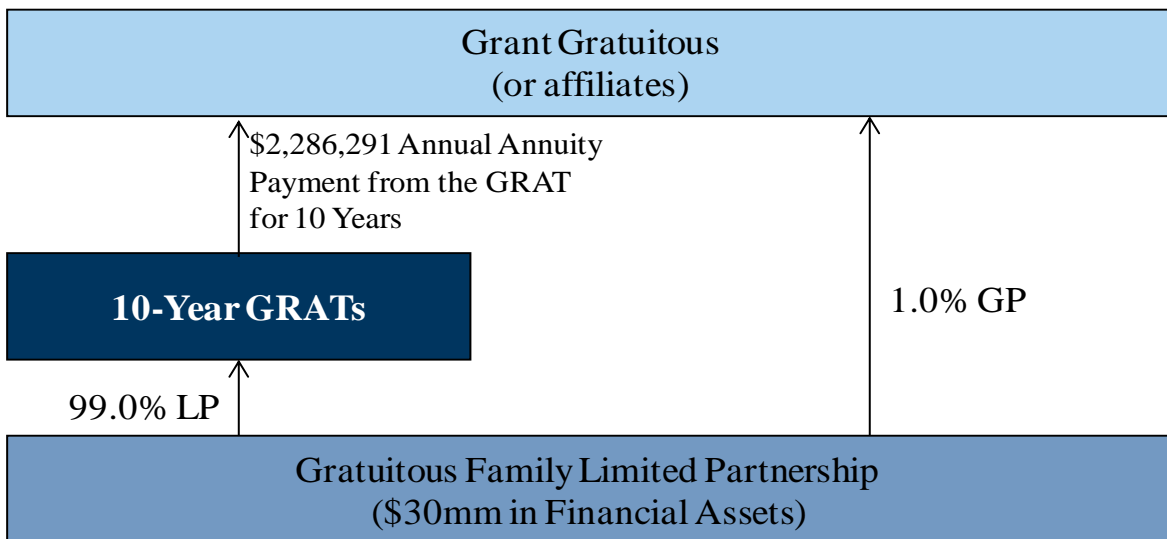


At the beginning of year 11, the family limited partnership could make a special pro rata distribution of 24.45% of its assets and the Grantor Trusts could use its share of the distribution to

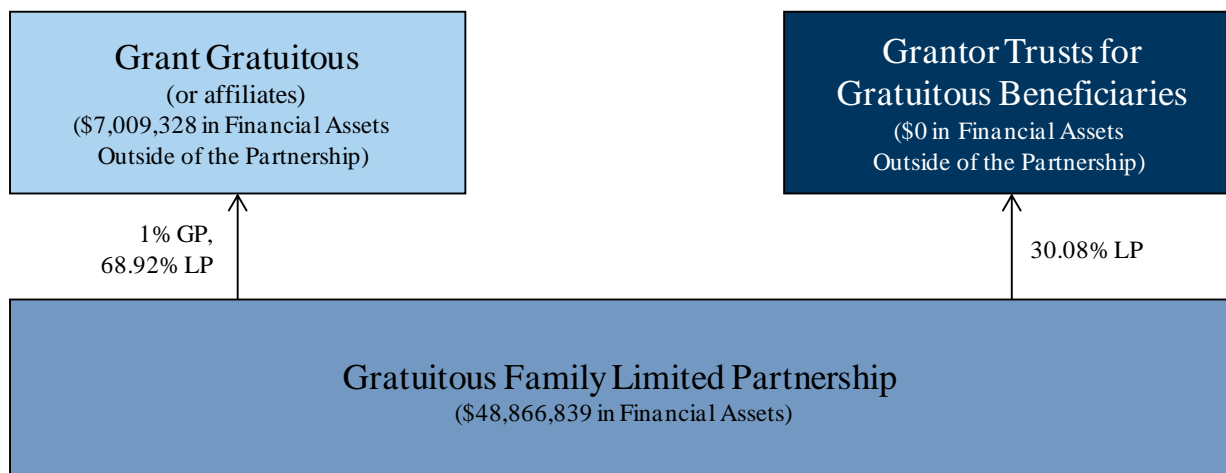
pay the note obligations or alternatively, the notes could be paid over time by the Grantor Trusts with the normal distributions from the partnership (see Schedule 4):



Lenny also wishes to illustrate to Grant what the transaction would be like without any leverage. Thus, a 99% pro rata limited partnership interest is contributed to GRATs in a transaction similar to the illustration below (Scenario 2):



At the end of ten years, under the above assumptions, 30.08% of the limited partnership interest will be transferred to the remainderman beneficiaries of the trust as illustrated below (see Schedule 4):



When an LLC that is leveraged is owned by a GRAT, under the assumptions above, there is enough cash flow coming out of the partnership to the LLC to pay all of the GRAT the annuity amounts during the Annuity Period in cash. This eliminates the problems associated with satisfying the GRAT annuity with hard to value assets.

The note associated with the mortgage before the GRATs are created could be finally satisfied by the remainderman (the Grantor Trust) with hard to value assets after the GRAT terminates. However, the use of payments in kind to satisfy the loan after the GRAT terminates does not run the “deemed contribution” danger that may be inherent in satisfying GRAT annuity payments with hard to value assets.

Another advantage of the technique is that because of the relatively modest annuity payment in comparison to value of the partnership interest passing to the remainder beneficiary, if a death of the grantor of the GRAT occurs before the Annuity Period ends, there is a much greater chance that some of the assets of the GRAT will not be included in the grantor’s estate under IRC Section 2036.

As the chart below illustrates, not only is the technique more structurally conservative, as far as preserving qualified interest status of a GRAT, the technique of using a leveraged LLC with a GRAT also has the desirable effect of significantly increasing the “estate planning” success of the GRAT (by over 157%):

**Table 5**

Comparison of Various Partnership Scenarios in which Partnership Units are Transferred to a 10-Year GRAT	Grant Gratuitous	Grantor Trust for Beneficiaries	IRS - Income Taxes	IRS - Investment Opportunity Costs	Total
No Further Planning	58,545,204	-	8,287,317	3,116,649	69,949,170
Scenario #1: Hypothetical Integrated Income & Estate Tax Plan with the Creation of a Family Limited Partnership and the Contribution of Leveraged Limited Partnership Interests to a 10-Year GRAT	18,878,855	39,666,348	8,287,317	3,116,649	69,949,170
Scenario #2: Hypothetical Integrated Income & Estate Tax Plan with the Creation of a Family Limited Partnership and the Contribution of Limited Partnership Interests to a 10-Year GRAT (No Leverage)	43,110,792	15,434,412	8,287,317	3,116,649	69,949,170

The reason for the substantial improvement is two-fold: (i) the annuity amount is always paid with undiscounted cash and (ii) the average hurdle rate “cost” of that leverage is below 2.525% (instead of the Statutory Rate of 3.2%).

**D. Defined Value Allocation Clauses Involving a Residual Gift to a Marital Deduction Trust.**

Assume a client does not have charitable intent and wishes to transfer a “hard to value” asset. Consider the following example:

*Example 8: Formula Marital Deduction Clause*

*Marvin and Mary Madeinheaven are very happily married. Marvin is considering making a significant transfer of his partnership units to trusts for the benefit of his children and grandchildren. Marvin is worried that reasonable people (and unreasonable people) could differ as to the value of the proposed transfer of partnership interests. Assume that Marvin owns a limited partnership interest that according to an independent appraisal has a fair market value of \$5,000,000. The assignment document could provide the following formula: “that undivided part of my limited partnership interest, as finally determined for federal gift tax purposes, that is equal to \$4.9 million passes to the ABC Trust for the benefit of my children with the remaining undivided part of my partnership interest passing to the Qualifying Marital Deduction Trust for the benefit of Mary.” ABC Trust is adequately funded and issues a \$4,900,000 note to Marvin. Will the IRS find the assignment clause is against public policy?*



If upon examination, it is determined that the discount associated with the independent appraisal was excessive, that undivided interest that would otherwise have passed to the ABC Trust will instead pass to the marital deduction trust for the benefit of Mary. The IRS has approved the applicability of formula marital clauses since 1964.<sup>128</sup> Thus, the stated goal of Marvin avoiding a gift tax surprise should be achieved using a formula marital deduction clause.

E. Defined Value Allocation Clauses Involving Gifts to a Grantor Trust and a GRAT.

There has been a debate from time to time between academics and commentators as to which form of making transfers is superior, a transfer to a grantor retained annuity trust or a transfer to an intentionally defective grantor trust pursuant to an installment sale. While much of the debate sometimes sounds like a beer commercial as to whether the commentator's favorite method of transfer is less filling or tastes great, there are some advantages to each technique. Among the advantages of a GRAT is the built-in revaluation clause required by the Treasury Regulations under Section 2702 (see the discussion above). The disadvantage of the GRAT in comparison to a sale for a note to an intentionally defective grantor trust is that the GRAT will not work, if the client dies before the end of the term of the GRAT. If cascading GRATs are used to ameliorate against that surprise, interest rates may increase in the future which makes the return on future GRATs problematic. Is there a way to combine the best features of both the GRAT and the sale to the intentionally defective trust? Consider the following example:

*Example 9: Formula Defined Value Allocation Gift to Trusts and a GRAT*

*Sam Single, who is the cousin of Marvin Madeinheaven, owns a limited partnership interest that according to an independent appraisal has a fair market value of \$5,000,000. Sam transfers his partnership interest to a trust for the benefit of his children and a grantor retained annuity trust ("GRAT"), which is nearly "zeroed out," pursuant to a formula defined value allocation assignment. The assignment document provides the following formula: "that undivided part of my limited partnership, as finally determined for federal gift tax purposes, that is equal to \$4,900,000 passes to the ABC Trust for the benefit of my children with the remaining undivided part of my partnership interest passing to the XYZ GRAT." ABC Trust is adequately funded and issues a \$4,900,000 note to Sam. Under the terms of the GRAT, Sam retains an annuity that is defined as a percentage of the initial value transferred to the GRAT and that annuity will be worth \$99,000, if the IRS finally accepts Sam's expert valuation of the partnership interest. Assume the IRS contends that the partnership interest has a value of \$7,000,000. If Sam agrees to accept the IRS valuation, what is the size of the additional gift that has Sam made?*

According to the Regulations under Section 2702, the grantor's retained annuity rights may be defined in the trust instrument as a percentage "of the initial fair market value of the property contributed by the grantor to the trust, as finally determined for federal tax purposes." For example, the trust agreement might provide for annual payments of 55% per year for 2 years, where the 55% annual payment amount is derived from the initial value. This type of language operates as a built-in revaluation clause, mitigating the risk of a surprise gift on revaluation of the

---

<sup>128</sup> Rev. Proc. 64-19, 1964-1CB 682.

transferred property by the Service. This feature can be especially beneficial with hard to value assets such as Sam's partnership interest.

Under Example 9, on audit the Service claims the value of the limited partnership interest is \$7,000,000. As a result, under the formula defined value allocation, the value given to the GRAT becomes \$2,100,000 instead of \$100,000. If Sam accepts the results of the audit, the terms of the GRAT provide for an increase in the amount payable to Sam in the form of the annuity without much increase in taxable gift. The GRAT trustee simply pays the grantor an additional annuity amount (for a total of \$2,079,000 in present value terms), and the taxable gift is increased by only \$20,000. Therefore, by using GRATs in conjunction with formula defined value allocation clauses, owners of hard to value assets may be able to make gifts with little risk of a gift tax surprise. Of course, an audit by the Service could result in a greater retained annuity (which would later be taxed in the grantor's estate). Because under the facts of Example 9, the GRAT will in fact receive the additional partnership interest comprising the \$2,000,000 of additional value assessed by the Service, the facts are distinguishable from those of the *McCord* case.<sup>129</sup>

Technical Advice Memorandum 86-11-004<sup>130</sup> illustrates the effect of a defined value clause when the excess value above the defined value accrues to the donor, instead of to a spouse or a charity. Under the facts in Technical Advice Memorandum 86-11-004, a man ("the donor") transferred a sole proprietorship to a partnership in exchange for a 99.9982% interest in the partnership. The other .0018% interest in the partnership was owned by trusts for the donor's children. The donor transferred a portion of his partnership interest equal to a stated dollar amount to the trusts for his children each year from 1971 through 1982. The donor and trustees agreed on the capital ownership attributable to the gifts, and partnership income was allocated accordingly. The Service concluded that the interests transferred by the donor were those having a fractional equivalent to the stated fair market values of the gifts, based upon the fair market value of the partnership at the time of each gift determined according to recognized valuation principles. The donor's interest extended to the rest of the partnership because he could have asserted ownership to the extent that the gifted fractional interests reflected in the partnership agreement and income tax returns exceeded the fractional interests actually conveyed in the gift assignments. If, however, he were ever barred from enforcing his ownership right to the excess interest, he would be treated as having made an additional gift to the trusts. To the extent that income was allocated to the donees in an amount exceeding the partnership interest to which they were actually entitled, the donor made gift assignments of the income, with the implicit right to revoke the assignments by asserting his right to the excess partnership interest. Therefore, according to the Technical Advice Memorandum the gifts of income were to be regarded as complete when each distribution of excess income became irrevocable as a result of the lapse of the statute of limitations.

---

<sup>129</sup> However, for concerns that the valuation adjustment could be treated as a prohibited additional contribution to the GRAT, and that use of a GRAT may run afoul of the *Procter* doctrine, see Covey & Hastings, "No More, No Less: Savings Clauses, Formulas and Defined Values, Part II," *Practical Drafting* (October 2006, pp. 8688-8689).

<sup>130</sup> Tech. Adv. Mem. 86-11-004 (Nov. 15, 1985).

Consider another example of using both a GRAT and a sale to an intentionally defective grantor trust:

*Example 10: Transfer to a GRAT Followed By a Formula  
Defined Value Allocation Transfer of the Retained Annuity in the  
GRAT to an Intentionally Defective Grantor Trust*

*Carl Careful owns a limited partnership interest that according to an independent appraisal has a fair market value of \$5,000,000. Carl transfers his partnership interest to a grantor retained annuity trust (GRAT), which is nearly “zeroed out”. Carl then transfers a substantial portion of his retained annuity amount from the GRAT to an intentionally defective grantor trust in exchange for a note that is equal to the value of that retained annuity amount under the following formula: “That undivided part of my retained annuity in the GRAT, as finally determined for federal gift tax purposes, that is equal to \$4.9 million passes to the intentionally defective ABC Trust for the benefit of my children and grandchildren.” If the IRS finds that the limited partnership interest discount assumed in the gift to the GRAT is excessive, is there a gift tax surprise?*

Assume that the GRAT is a short-term GRAT (e.g., two years). As in the prior Example 9, if the assumed discount by the independent appraisal is excessive, there will be additional gift tax owed, but the additional gift tax should be relatively small. The annuity amount could be satisfied in kind (e.g., partnership units). Those partnership units used to “pay” the annuity receivable, after the above assignment, will be paid to the ABC Trust rather than to the grantor. If there is significant growth in the partnership assets during the term of the GRAT, that growth will largely accrue to the benefit of the remainder beneficiary of the GRAT (which would be a trust different than the ABC Trust) and will not accrue to the grantor or the grantor’s assignee, the ABC Trust.

It should be emphasized that the GRAT will not be commuted. It will stay in existence. I.R.C. Section 2702 and the Regulations under that Section provide that a qualified interest is an interest that consists of the *right to receive a fixed amount* (i.e., the statute and the regulations require only that a receivable exist, the terms of which the statute and regulations then define). It is clear under I.R.C. Section 2702 and the underlying Regulations that the grantor must have a receivable. At a later time, a grantor beneficiary of a GRAT could elect to transfer his or her receivable to another trust.

Assuming that both the GRAT and the ABC Trust are grantor trusts for income tax purposes, no income tax consequences should accrue pursuant to the transfer of the annuity receivable, nor with respect to the payment of the annuity receivable to the ABC Trust.

Assuming the grantor lives beyond the two-year term of the original GRAT, many of the disadvantages of using GRATs and cascading GRATs are avoided by this technique: (i) the relatively modest interest rates that exist today can be “locked in”; and (ii) if the grantor should die early (but beyond the initial GRAT period), there is no Section 2039 or Section 2036 inclusion that would occur under the cascading GRAT technique. Finally, the inherent advantage of the built-in revaluation clause with GRATs can be utilized with this technique, without any risk of the original assignment being categorized as against public policy.

F. Transfers to an Incomplete Gift Trust.

Sales to incomplete gift trusts are not against public policy and may constitute effective estate planning. Consider the following example:

*Example 11: Ann and Aaron Appointment Wish to Make Transfers of Family Limited Partnership Interests and Maintain Maximum Flexibility*

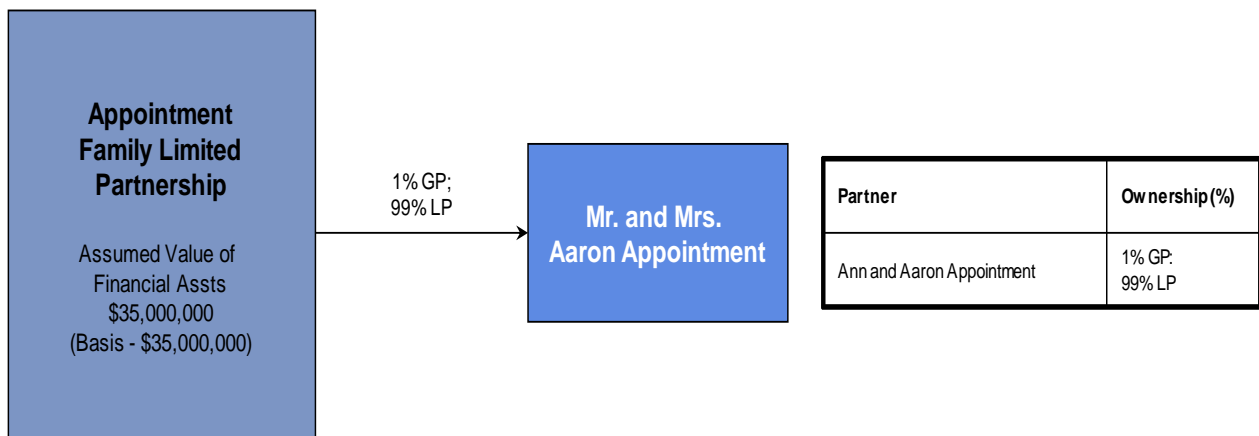
*Ann and Aaron Appointment approach their attorney, Ray Reciprocal, and tell him they would like to transfer their family limited partnership interests in a manner that maintains maximum future flexibility and ensures that there will be no gift tax surprises.*

*Ray suggests they consider creating trusts for each other as discretionary beneficiaries (with different provisions) that will not be considered reciprocal trusts and under which each would have a testamentary power of appointment (also with different provisions). The trusts will be grantor trusts to the spouse who creates the trust.*

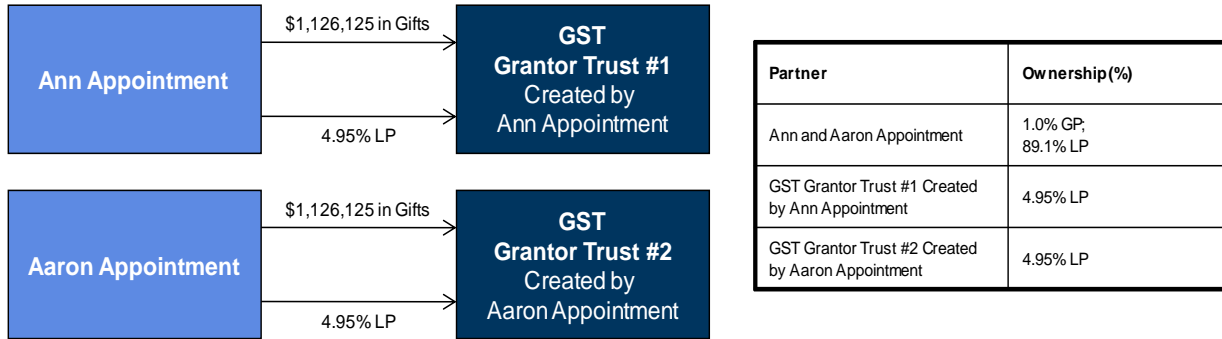
*Ann and Aaron Appointment have \$5,000,000 in financial assets outside the partnership. The partnership owns \$35,000,000 in financial assets. Ann and Aaron ask Ray to assume the following: (i) Ann and Aaron will have a joint life expectancy of 25 years; (ii) the annual pre-tax rate of return of their assets will be 7% (with 3% being taxed at ordinary rates and 4% taxed at capital gain rates with a 30% turnover); (iii) the distribution policy of the partnership will be 4% of the value of the assets; and (iv) the assumed valuation discount from their appraiser will be 35%.*

*Ray suggests that after the trusts are created that Ann sell her limited partnership interests to the trust Aaron created for her benefit and Aaron sell his limited partnership interests to the trust Ann created for his benefit.*

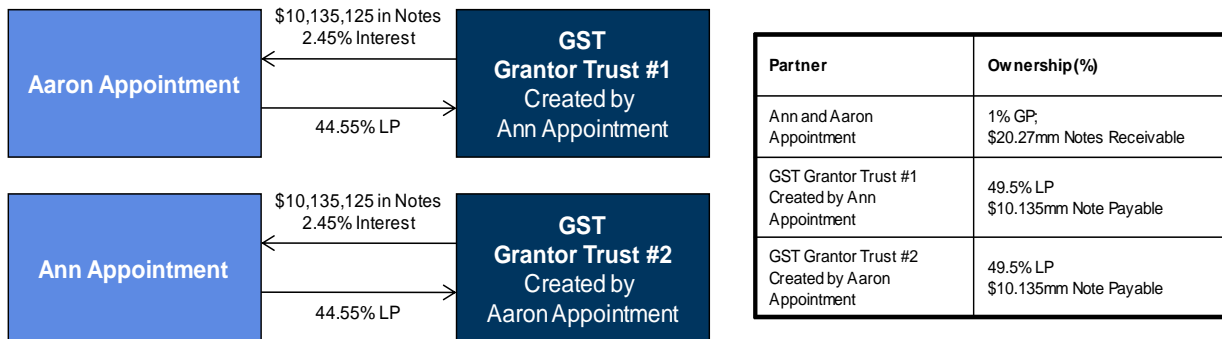
The ownership of the partnership is illustrated below:



The proposed gift to create the proposed trusts is illustrated below:



The proposed sale of partnership interests is illustrated below:



A sale by a grantor’s spouse to the grantor’s trust should not be recognized for income tax purposes because of IRC Sections 1041 and 671. However, interest on the notes will be recognized for income tax purposes.

Generally, the interest will produce an offsetting deduction and income to the spouses. The principal and income of the notes can be paid with cash flow that is naturally distributed to the partners in order to pay their income taxes.

Because of the presence of the testamentary power of appointment, if the IRS determines the notes received by Aaron is inadequate consideration, there will not be any gift taxes owed because the gift will be incomplete for gift tax purposes. *See* Treas. Reg. Section 25.2511-2(b). Instead, Aaron will be considered the grantor of that portion of the trust consisting of the excess value. If the IRS does finally determine Aaron has made a gift, under state law or the trust agreement, the trust may be able to be divided into two trusts. Under those circumstances, the trust could perhaps be divided in a manner in which Aaron is considered the grantor of one trust and Ann is considered the grantor of the other trust. IRC Sec. 2511(c), which under current law is

effective only for transfers in 2010, does not change these results so long as the statute's reference to a trust that "is treated as wholly owned by the donor or the donor's spouse" applies to a trust with both spouses as grantors, *i.e.*, if the "or" in the quoted language is inclusive rather than exclusive. Notice 2010-19, 2010-7 I.R.B., does not address this issue.

Assuming the terms of the sale are accepted by the IRS as providing adequate consideration, the estate planning results of such a structure under the above assumptions are impressive (see attached Schedule 5):

**Table 6**

	Appointment Children (1)	Appointment Children and Grandchildren (2)	Consumption - Direct Cost (3)	Consumption - Investment Opportunity Cost (4)	IRS - Income Tax (5)	IRS - Investment Opportunity Costs (6)	IRS - Estate Tax (at 45%) (7)	Total: (8)
<b>Future Values</b>								
No Further Planning; Bequeaths Estate to Family	\$45,516,984	\$0	\$36,459,264	\$46,882,103	\$22,464,953	\$28,532,833	\$37,241,169	\$217,097,306
Hypothetical Integrated Income & Estate Tax Plan	\$724,802	\$79,991,794	\$36,459,264	\$46,882,103	\$23,913,489	\$28,532,833	\$593,020	\$217,097,306
<b>Present Values (discounted at 3%)</b>								
No Further Planning; Bequeaths Estate to Family	\$21,739,165	\$0	\$17,413,148	\$22,391,154	\$10,729,387	\$13,627,440	\$17,786,590	\$103,686,882
Hypothetical Integrated Income & Estate Tax Plan	\$346,169	\$38,204,526	\$17,413,148	\$22,391,154	\$11,421,216	\$13,627,440	\$283,230	\$103,686,882

**G. Achieving Finality.**

In Examples 5 and 6, the transferees must determine the fair market value of the subject property. Once the transferees agree to that value, then the percentage interest each transferee is to receive is only then finally determined. Assuming a good faith negotiation, final determination should determine the transfer tax result because, as discussed above, that is the best evidence of value and because of state property law considerations.

In Examples 7, 8, 9, 10 and 11 the final determination of ownership percentages is not completed until the IRS is bound by the determination. Thus, Examples 7, 8, 9, 10 and 11 are not effective unless a gift tax return is filed that satisfies the adequate disclosure standard. Unless the statute of limitations on asserting a gift tax deficiency expires before the expiration of the donor's right to recover an alleged excess portion of his or her gift, gift tax consequences are postponed and not avoided. On audit of the estate tax return, the IRS may assert that a gift was made when the donor's right to recover the excess gift expired. Alternatively, the IRS may argue that the estate still owns the excess amount.

Generally, Examples 7, 8, 9, 10 and 11 language should be used except where the parties are independent and can conduct an arms length negotiation and a faster final determination is desired (*e.g.*, when an independent charity is one of the transferees).

#### H. Administrative Issues.

Defined value clauses cause practical problems as to the administration of the transferred property before a final determination has been made as to the portion of the property that has actually been transferred. For instance, issues may arise as to the distribution of income earned on the transferred property, the exercise of ownership rights and the reporting of the income for income tax purposes.

Generally, these issues could be avoided by using a trustee as the transferee of the legal title to the property. The defined value clause could be a clause internal to the trust document creating the trust and could direct that the trustee is to allocate the interest in the hard to value asset between two trusts in which the trustee is the trustee. One trust could be held for the benefit of the client's family and the other trust is held in a manner that is not subject to gift tax. The trustee, pursuant to that internal defined value clause, would take a position with respect to the allocation. If the Service successfully completes a valuation challenge, the document would require the trustee to change its position to conform to the finally determined value.

In a similar fashion perhaps an escrow agent could also be utilized.

In order to avoid certain income tax reporting uncertainties it is recommended that all of the "transferee" trusts be considered potentially defective grantor trust.

### V. THE BEST LEGAL ARGUMENT AGAINST APPLICATION OF I.R.C. SECTION 2036 TO A DECEDENT'S PARTNERSHIP INTEREST – I.R.C. SECTION 2033 INCLUSION SUPERSEDES I.R.C. SECTION 2036 INCLUSION

#### A. Introduction.

The "conventional wisdom" this author sometimes hears on this subject is as follows: "the courts could apply both I.R.C. Sections 2033 and 2036 to a decedent's partnership interest resulting in an over 100% estate tax inclusion"; "the courts will apply I.R.C. Section 2036 to the exclusion of I.R.C. Section 2033 with respect to a decedent's partnership interest, because I.R.C. 2036 inclusion will include more in the decedent's estate"; and "application of I.R.C. Section 2043 solves the double inclusion problem of applying both I.R.C. Sections 2033 and 2036 to a decedent's partnership interest." This "conventional wisdom" may be incorrect.

The argument on which this writer wishes some court would focus, when it is considering whether to apply I.R.C. Section 2036(a), because of a decedent's investment in a family limited partnership: the dual application of I.R.C. Section 2033, the application of I.R.C. Section 7701(a)(2), the non-application of Chapter 12 and the potential application of Chapter 14 (and the legislative history with respect to repeal of I.R.C. Section 2036(c) application) should prohibit the

application of I.R.C. Section 2036 (in lieu of I.R.C. Section 2033 application), even when the prerequisites of I.R.C. Section 2036 are otherwise satisfied. Consider the following example:

*Example 12: An Executor Thanks His Lucky Stars  
For a Benevolent IRS Auditor, or Should He?*

*Al Administrator is the executor of an estate that owns a significant interest in a family limited partnership. The partnership owns \$10,000,000 in assets. The decedent owned a 98% limited partnership interest in that partnership. Under I.R.C. Section 2033, after taking into account certain valuation discounts, \$7,000,000 is included in the decedent's estate with respect to the partnership interest. Audrey Auditbreath examined the estate tax return. It was Audrey's view that under the case law with respect to the Circuit in which the decedent died, the prerequisites of I.R.C. Section 2036(a)(1) inclusion are satisfied. Thus, under I.R.C. Section 2036(a)(1), \$9.8 million was included in the decedent's estate, because of the decedent's retained ownership of the subject partnership interest. However, Audrey notifies Al that she is not going to include the subject partnership interest under I.R.C. Section 2033. The estate will only owe estate taxes on \$9.8 million instead of \$16.8 million.*

*At first, Al is delighted with Audrey's benevolence, but he starts thinking about it. Al asks his attorney, Yurie Youkneverknow, if Audrey's leniency is caused by the IRS's warm and fuzzy feeling about family limited partnerships, or could there be another reason? Al asks Yurie if the courts, in calculating a decedent's estate tax, had ever used more than one section of Chapter 11 for inclusion (which, of course, would generate more than 100% inclusion of that asset for estate tax purposes)?*

If two sections simultaneously apply to include an asset in a decedent's estate, which section applies? Is it the section that includes the most value in the decedent's estate? Or is it the section that is designed to generally include the most value (whether it does so or not)? Al asked Yurie, to the extent there is case law, what does that case law tell us about double inclusion, and if double inclusion is not to prevail, which section supersedes the other? Al asks Yurie if it matters if a family partnership is involved in determining which inclusion section prevails over the other inclusion section? Al asks Yurie, to the extent that there is legislative history regarding partnerships and enterprises, does Congress indicate which section of the Internal Revenue Code (I.R.C. Section 2033 or I.R.C. Section 2036) should prevail for inclusion purposes? Al asks Yurie, which section (I.R.C. Section 2033 or I.R.C. Section 2036) is more consistent with the gift tax framework (i.e., if the decedent makes a transfer of the partnership during lifetime, what is the measure of that transfer for gift tax purposes and with which is estate tax treatment section the most consistent)?

As noted above,<sup>131</sup> the IRS and the taxpayer, over the last several years, have made spirited arguments in numerous cases about whether the prerequisites of I.R.C. Section 2036(a) apply to a taxpayer's ownership of a particular partnership. (Also as noted in this paper, I.R.C. Section 2036(a) can be easily avoided by transferring the taxpayer's limited partnership interests during

---

<sup>131</sup> See Article IV B of this paper.



the taxpayer's lifetime, provided the taxpayer survives for three years.)<sup>132</sup> The problem, from this writer's perspective, with the taxpayer's defenses (while in certain cases, are no doubt valid defenses) is that the issue may not have been defined correctly. Except for a brief period (1987 to 1990), it is clear that Congress does not intend for I.R.C. Section 2036 to apply (in lieu of I.R.C. Section 2033) in determining what is included in a decedent's estate with respect to partnership interests or other "enterprise" interests. Clearly, I.R.C. Section 2033 also applies to include the decedent's partnership interests in the I.R.C. Section 2036 cases that have been decided in the last several years. It is my understanding that the IRS in those cases has taken the practical view that I.R.C. Section 2033 inclusion and I.R.C. Section 2036 inclusion cannot both apply and has not attempted to apply them both. In effect, without discussion, the parties and the courts have assumed I.R.C. Section 2036 supersedes I.R.C. Section 2033 when they both apply. It is respectfully submitted that this assumption may not be correct.

Three thoughts keep exploding into this writer's so-called thought process. The first thought is that courts are not considering whether I.R.C. Section 2033 should also apply to include a decedent's ownership of a family partnership interest (thus, resulting in an inclusion over 100%). It is easy to understand why the taxpayers' attorneys fail to raise the question that the taxpayer might actually be taxed worse than the IRS has proposed. It is less clear why the IRS has not argued for higher taxation. We can be sure that it is not because the IRS has warm and friendly feelings toward family partnerships. Rather, raising the possibility of double taxation would focus the courts (as it has focused the courts in the past) on the proposition that Congress did not intend for an estate tax inclusion to exceed 100% by the simultaneous application of two or more sections of Chapter 11. History shows that only one section of the code can be used for estate inclusion. If the IRS raises that issue or the taxpayers' counsel realizes the advantage of arguing the less than obvious, it would focus the courts (as it has focused the courts in the past) on which section of the Code should apply to the exclusion of the other section (in order to prevent over 100% inclusion). Thus, this writer's first thought is that the IRS has not avoided the "I.R.C. Section 2033" double "inclusion" argument out of benevolence, but rather out of the fear that once focused on I.R.C. Section 2033 inclusion, the courts would apply that section rather than I.R.C. Section 2036.

My second thought is, "here we go again." This writer remembers another dark period (1987 to 1990) when I.R.C. Section 2036 superseded I.R.C. Section 2033 and was applied to ignore the terms of partnership interests for estate tax purposes. (One of the advantages of being old is that 1987 happened so long ago I can still remember it). Congress imposed I.R.C. Section 2036(a) on "enterprises" in 1987, if the requirements of I.R.C. Section 2036(c) were met. Before I.R.C. Section 2036(c) was repealed, Congress provided in I.R.C. Section 2036(c)(5), that I.R.C. Section 2036 inclusion superseded I.R.C. Section 2033 inclusion. Congress determined by 1990 that applying I.R.C. Section 2036(a) to enterprises to the exclusion of I.R.C. Section 2033 was unnecessary and constituted poor tax policy. Both reasons still exist. It is clear that since 1990 Congress adopts the "enterprise" concept specifically to include the assets of a financial activity in an estate without regard to the ownership interests in the entity or entities through which the

---

<sup>132</sup> See Article IV D of this paper.

activity is conducted. When it repealed the enterprise concept, Congress intended that a decedent's ownership of family limited partnership interests, in which the taxpayer retains a preferred partnership interest, is to be included only under I.R.C. Section 2033 (with the modifications introduced to the taxpayer's gift taxes by Chapter 14) in lieu of I.R.C. Section 2036(a). It would be a bizarre interpretation of legislative intent to assume that Congress favored "freeze" partnerships over "pro rata" partnerships when I.R.C. Section 2036(c) made it into the law only after the Conference Committee refused to enact any family attribution rule applicable to pro rata interests. Applying I.R.C. Section 2033 inclusion (with the modifications introduced by Chapter 14) in lieu of I.R.C. Section 2036(a) inclusion for both "freeze" and "pro rata" partnerships is a sounder policy and a more consistent policy with limited partnership interest transfers that are subject to gift taxes. This writer respectfully suggests that the courts should respect that Congressional policy.<sup>133</sup>

My third thought is that I.R.C. Section 2033, in conjunction with Chapter 14, has the capacity to fairly deal in almost any fact pattern that the courts consider abusive. I.R.C. Section 2033 includes in a decedent's estate the partnership interest valued under the agreed upon terms of the bargain that the decedent has *actually* made. The real issue in most of the I.R.C. Section 2036 cases should not be whether I.R.C. Section 2036 applies to ignore the existence of the partnership entity (the dual application of I.R.C. Section 2033, I.R.C. Section 7701(a)(2) and the potential application of Chapter 14 and the non-application of Chapter 12 says it cannot), but rather the estate tax value of the partnership interest transferred at the time of death under I.R.C. Section 2033. The partnership interest should be valued in accordance with its *actual* terms. The real agreement of the partners is evidenced by their actions. Many of taxpayers in those cases continued to have access to assets of the partnership for their lifetime needs.

Neither I.R.C. Section 2033 nor Chapter 14 requires that the value of their partnership interests be based on the literal terms of their subject partnership agreements when those terms did not reflect the real agreement of the partners for state law property purposes. Some of those taxpayers, in the I.R.C. Section 2036 cases, did not have any real restrictions on their lifetime access to the partnership assets represented by their ownership of partnership interests. Thus, the estate's partnership interest should be valued assuming ready access to the partnership's underlying asset value. In other words, in these cases the decedent's partnership interest should be valued without any restriction due to lack of marketability or lack of control. This alternative "I.R.C. Section 2033" analysis appears to produce the same tax result as the I.R.C. Section 2036 analysis adopted in most of the I.R.C. Section 2036 cases (i.e., taxpayers lose) without violating the key fundamental principles noted below. Nor does this analysis rely on proof that the partnership is a sham.

Some critics might argue that this alternative analysis is inadequate in that it requires the decedent to have unilateral control over the partnership assets to reach the same result as in *Strangi*, rather than merely a conspiracy of family members. The problem with that argument is

---

<sup>133</sup> A "freeze" partnership also should satisfy the requirements of "Strangi" and similar cases in that a partnership or other business entity is the only way to apportion the different equity interests in the financial activity among different owners.

that when the Fifth Circuit found I.R.C. Section 2036(a)(1) applies to the partnership in *Strangi*, it necessarily found that the decedent had retained alone the enjoyment of the partnership assets. Unlike I.R.C. Section 2036(a)(2), which permits the decedent to retain control with others, I.R.C. Section 2036(a)(1) requires the decedent to have retained the *sole* enjoyment of the assets. Thus the *Strangi* court found the existence of the requisite control over the partnership assets that would permit it to value the assets in Mr. Strangi's estate under an alternative I.R.C. Section 2033 analysis.

The one alleged abuse that I.R.C. Section 2033 does not "handle," according to the critics of family partnerships, is that sometimes a substantive economic reason does not exist for the creation of the partnership. Stated differently, in the eyes of certain family limited partnership critics, the taxpayer could have achieved the same economic result, using some other vehicle, without going to the trouble of creating the family limited partnership entity. However, what Congress makes clear is that it is not abusive for transfer tax purposes for a taxpayer to use with his family the partnership form of doing business, even if he could have used another form of business (e.g., a sole proprietorship). Congress expresses the intent (by statute and legislative history) that even if there is not any substantive reason for the taxpayer and her family to pool their assets in a partnership, as long as that group conducts a business or financial operation that the federal tax laws will recognize the partnership as an entity apart from its owners. Congress does not want the IRS or the courts "second guessing" related taxpayers as to the reasons they created these entities so long as the taxpayers' entities had terms comparable to, and were operated like, those of unrelated persons.

Naturally, at this point the reader (like Cal in the above example) may have several questions, including the following. First, do the courts ever simultaneously apply both I.R.C. Section 2033 and a "power" section of Chapter 11 (e.g. I.R.C. Section 2036 or I.R.C. Section 2042) for an estate tax inclusion that exceeds 100%? Second, if the courts are only to use one section of the Code for inclusion in a taxpayer's estate, what are the criteria for choosing one section over the other: is it the section that includes the greatest value? Is it the section that does not recognize a partnership apart from its owners, even if the partnership conducts financial operations? Is it the section that is broader in scope whether or not it includes the greatest value? Do any other sections of the Internal Revenue Code give us guidance as to which section should have priority? Does it matter which section's application would provide the most consistency with the gift taxation of lifetime transfers of partnership interests or which section's application is consistent with Congressional intent? Finally, is it possible that Congress intended with its 1990 legislation to remove only preferred partnership structures from I.R.C. Section 2036(a) application while leaving pro rata partnerships subject to I.R.C. Section 2036(a) despite Congress seeing the preferred partnership structure as potentially a greater abuse?

Hopefully, the discussion below provides a logical viewpoint with respect to these questions.

B. First Fundamental: Except For a Brief Period (1987 to 1990), I.R.C. Section 2033 Has Always Superseded I.R.C. Section 2036 For Estate Inclusion Purposes.

Occasionally, assets that are owned by the partnership may be included directly, or indirectly, in a decedent's gross estate under two different sections of Chapter 11 of the Internal Revenue Code. For instance, if a decedent is a general partner, or managing partner, of a partnership that owns life insurance policies on his or her life, the possibility exists that an inclusion, directly or indirectly, of over 100% of the value of the life insurance policy could occur in computing the value of the decedent's estate. The life insurance might be included in the decedent's estate, because the decedent, as a general partner, perhaps in conjunction with others, possesses incidents of ownership with respect to that life insurance policy. See I.R.C. Section 2042(2). Part of the value of that life insurance policy could also be included in the decedent's estate under I.R.C. Section 2033, at least to the extent of the decedent's proportionate interest in the partnership assets.

In order to avoid that potential for "double inclusion" the Tax Court and the I.R.S. have held that only I.R.C. Section 2033 applies, either because I.R.C. Section 2033 inclusion supersedes I.R.C. Section 2042, or because I.R.C. Section 2042 should not apply because of the operation of state property law. The I.R.S.' preferred analysis, in order to prevent an over 100% inclusion of the life insurance proceeds owned by the partnership, is that I.R.C. Section 2033 application "trumps" I.R.C. Section 2042 application.<sup>134</sup> Essentially the same result is reached for life insurance owned by a controlled corporation under the estate tax regulations. Treas. Reg. § 20.2042-1(c)(6). The IRS in Revenue Ruling 83-147 concludes that I.R.C. Section 2033 inclusion should "trump" I.R.C. Section 2042 inclusion in order to avoid double inclusion of the family partnership interests:

In *Estate of Knipp v. Commissioner*, 25 T.C. 153 (1955), acq. in result, 1959-1 C.B. 4, aff'd on another issue 244 F.2d 436 (4<sup>th</sup> Cir.), cert. denied, 355 U.S. 827 (1957), a partnership held 10 policies on the decedent-partner's life, at his death. The insurance proceeds were payable to the partnership. The court stated at page 168, 'the acquisition of the insurance appears to have been nothing more than the purchase of a partnership asset in the ordinary course of business.' The court found that the decedent, in his individual capacity, had no incidents of ownership in the policies, and held that the insurance proceeds were not includible in the gross estate under the predecessor to section 2042(2) of the Code. The Service acquiesces in the result of *Estate of Knipp* on the basis that in that case the insurance proceeds were paid to the partnership and inclusion of the proceeds under the predecessor of section 2042 would have resulted in the unwarranted double taxation of a substantial portion of the proceeds, because the decedent's

---

<sup>134</sup> See *Estate of Knipp v. Commissioner*, 25 T.C. 153 (1955) *aff'd, on another issue*, 244 F.2d 436 (4<sup>th</sup> Cir. 1957); *Estate of Tompkins v. Commissioner*, 13 T.C. 1054 (1949); *Watson v. Commissioner*, 36 T.C.M. (CCH) 1084 (1977); *Infante v. Commissioner*, 29 T.C.M. (CCH) 903 (1970); Rev. Rul. 83-147, 1983-2 C.B. 158; and G.C.M. 39,034 (Sept. 21, 1983), which reviewed Rev. Rul. 83-147.

proportionate share of the proceeds of the policy were included in the value of the decedent's partnership interest [under section 2033 of the Code]. See also section 20.2042-1(c)(6) of the regulations (which adopts a similar rule with regard to life insurance proceeds paid to or for the benefit of a corporation). Although the Service continues to agree with the result in *Estate of Knipp*, it does not agree with any implication therein that incidents of ownership possessed by a partnership should not be attributed to an insured partner when the policy proceeds are paid other than to or for the benefit of the partnership. [Emphasis added.]

Is the priority of applying I.R.C. Section 2033 rather than I.R.C. Section 2042 to a partnership owning life insurance an aberration? Does the same priority apply to I.R.C. Section 2033 with the other “power” sections of Chapter 11 (e.g., I.R.C. Section 2036 or I.R.C. Section 2038)? Assuming, as the courts do in some of the above family partnership I.R.C. Section 2036(a) inclusion cases, the decedent's powers are “I.R.C. Section 2036” powers, which inclusion section under Chapter 11 supersedes the other -- the section that taxes those retained powers (e.g., I.R.C. Section 2036) or the section that taxes both retained powers and interests (I.R.C. Section 2033)? Professor Dodge notes in his Tax Management Portfolio:

“As far as the other provisions are concerned [e.g., I.R.C. Section 2036], it has been held repeatedly that no power rises to the level of an ‘interest’ subject to inclusion under Section 2033.”<sup>135</sup>

Judge Kunzig in *Tully Estate v. U.S.* noted the more inclusive nature of “interest” as follows: “Interest” as used in I.R.C. Section 2033 connotes a stronger control than “power” as used in I.R.C. Section 2038(a)(1).<sup>136</sup>

Because the control power (and any other power) does not rise to the level of an “interest,” it would also seem that the Section (i.e., I.R.C. Section 2033) that includes an interest is more inclusive (because it also includes the powers associated with the subject assets). For consistency with the general rule discussed above and for the common sense reason that assets directly or indirectly cannot be included twice, the courts in the above “I.R.C. Section 2036” cases, if they had been presented with the argument, should have concluded that I.R.C. Section 2033 should be the section including the partnership assets in the gross estate, rather than I.R.C. Section 2036(a). Although some have argued that double-counting should be avoided by the consideration offset provided by I.R.C. Section 2043, it is generally not helpful because all of the growth of the partnership after its creation would be included in the donor's estate. Section 2043 cannot cure a “double counting” problem created by the application of two different code sections as the discussion of the cure of the double counting problem with partnership life insurance makes clear.

---

<sup>135</sup> Dodge, 50-5<sup>th</sup> T.M., Transfers With Retained Interest In Powers (page A-42).

<sup>136</sup> *Tully Est. v. U.S.*, 528 F2d 1401 (Ct. Cl. 1976); see also the discussion of the forerunner of Section 2033 in *Helvering v. Safe Deposit & Trust Co. of Baltimore*, 316 U.S. 56 (1942).

In resolving the conflict over which statute supersedes the other, does it matter which statute adds the greatest value to the taxpayer's estate? In all of the life insurance cases, I.R.C. Section 2042(2) could have included more than I.R.C. Section 2033. As noted above, under the terms of the *Strangi* arrangement, I.R.C. Section 2033 would have included as much as I.R.C. Section 2036. However, in certain so-called "I.R.C. Section 2036" situations, if the taxpayer and his family do follow the terms of the partnership (and those terms are the actual terms as evidenced by the partner's actions), under I.R.C. Section 2033 a valuation discount may be appropriate, even if the taxpayer could have conducted the financial operation as a sole proprietor and does not have a substantive non-tax reason for not conducting it as a sole proprietorship. Some might consider that as an abuse; however, Congress does not.

Also, I.R.C. Section 2033 inclusion priority over I.R.C. Section 2042 inclusion cannot be distinguished from I.R.C. Section 2036 inclusion on the basis that I.R.C. Section 2036 is technically including assets owned by the partnership and I.R.C. Section 2042 does not. Clearly, I.R.C. Section 2042 application also would include life insurance assets owned by the partnership.

Further, I.R.C. Section 2033 inclusion priority over I.R.C. Section 2042 inclusion cannot be distinguished from I.R.C. Section 2036 inclusion on the basis that I.R.C. Section 2042 is not as inclusive as I.R.C. Section 2036. In fact, the opposite is the case (e.g., it is possible for a taxpayer to be both a grantor and trustee with I.R.C. Section 2036 not applying, on the other hand, if a taxpayer is both the grantor and trustee of an insurance trust that holds insurance on her life, I.R.C. Section 2042 will apply).

Finally, *and most importantly from the perspective of legislative intent as to which section should take precedence*, from 1987 to 1990, in order to avoid the clear precedent and law that when I.R.C. Section 2033 and I.R.C. Section 2036 both apply, I.R.C. Section 2033 "trumps" I.R.C. Section 2036, Congress, when it passed I.R.C. Section 2036(c), provided that I.R.C. Section 2036(a) would "trump" I.R.C. Section 2033 (and I.R.C. Section 2033 would not apply). *See*, I.R.C. Section 2036(c)(5) before its repeal in 1990. Clearly, Congress felt that statute was necessary to reverse the traditional priority of I.R.C. Section 2033 inclusion over I.R.C. Section 2036(a) inclusion. It was. It is also clear that when Congress repudiated and repealed I.R.C. Section 2036(c)(5) in 1990, the previous priority of I.R.C. Section 2033 inclusion over I.R.C. Section 2036 inclusion returned.

- C. Second Fundamental: Unless Manifestly Incompatible With the Intent of the Internal Revenue Code, the Courts Are Directed By Section 7701(a)(2) of the Code to Prioritize That Estate Tax Inclusion Section (*viz.*, I.R.C. Section 2033) Which Recognizes the Existence of the Partnership Apart From Its Owners For Estate Tax Inclusion Purposes.

As noted above, it is possible that I.R.C. Section 2033 and a "power" section of the Internal Revenue Code (e.g., I.R.C. Section 2036, I.R.C. Section 2038 or I.R.C. Section 2042) could both apply. Obviously, the courts and Congress are not going to tolerate an inclusion by two different sections, which results in more than a 100% inclusion. The traditional rule has been that the power and interest section (e.g., I.R.C. Section 2033) supersedes any power section (e.g.

I.R.C. Section 2036, I.R.C. Section 2038 or I.R.C. Section 2042). As noted above, it does not matter under that analysis if I.R.C. Section 2033 or the “power” section (2036, 2038 or 2042) leads to the same inclusion of asset value, a lower value or a greater value. The property interest takes precedence over the control interest.

I.R.C. Section 7701(a)(2) adds support to the proposition that I.R.C. Section 2033 should apply rather than I.R.C. Section 2036. I.R.C. Section 7701(a)(2) makes it clear that Congress intends, with respect to recognizing the actual terms of a partnership, that any doubt as to which statute takes priority (e.g., I.R.C. Section 2033 or I.R.C. Section 2036) should be resolved in favor of the Code provision that recognizes and taxes the partnership apart from its owners (I.R.C. Section 2033). It would also appear that it is the clear intent of Congress to recognize the existence of partnerships for estate tax inclusion purposes, even those family partnerships in which only financial operations are conducted, and even if there is no substantive reason to operate as a partnership instead of a sole proprietorship. The test, according to Congress, is not whether the taxpayer has met the burden of demonstrating that there was a valid non-tax reason for the creation of the partnership with the taxpayer’s family (as opposed to continuing the sole proprietorship). The test is whether there is a group and whether it conducts a financial operation.

It is clear, under certain Supreme Court holdings, in determining the value for gift and estate tax purposes of any asset that is transferred, the legal rights and interests inherent in that property must first be determined under state law (*unless federal law supersedes state law, and in that case, as will be addressed below, federal tax law is even more liberal than state law*).<sup>137</sup> After that determination is made, the federal tax law then takes over to determine how such rights and interests will be taxed.<sup>138</sup> In the legislative history of various revenue acts, Congress has endorsed these principles, which had been developed under case law. For instance, the reports to the 1948 changes in the estate taxation of community property provide that those changes restore the rule by which estate and gift tax liabilities are to depend upon the ownership of property under state law.<sup>139</sup>

These crucial property law distinctions are lost when one applies I.R.C. Section 2036 to ignore the partnership entity formed by a family and include assets transferred to that partnership in an estate. When I.R.C. Section 2036 applies to assets given to a traditional trust, the current assets of the trust are included in the decedent’s estate. The trust interests are not separately included in the estate under I.R.C. Section 2033 because of state property law considerations (i.e., under state property law the grantor of the trust may not own the trust assets). A trust divides the interests in the trust property; under state law the equity interests in the partnership are separate property divorced entirely from the assets originally transferred to the partnership.

---

<sup>137</sup> Occasionally, federal law does supersede state law in this context. For instance, federal law determines what is charity for purposes of I.R.C. § 2055, not state property law.

<sup>138</sup> See *United States v. Bess*, 357 U.S. 51 (1958); *Morgan v. Commissioner*, 309 U.S. 78 (1940).

<sup>139</sup> See the discussion in Article II C of this paper.

If a decedent dies owning partnership interests, however, those interests are included in her estate under I.R.C. Section 2033. An estate tax is imposed on the privilege of transferring those partnership interests to her heirs. Under state law neither the decedent nor the heirs have any interest in the assets she previously transferred to the partnership in exchange for partnership interests. Although the decedent's will could dispose of her partnership interests, her will could not dispose of the partnership assets. (However, as noted above (as in the *Strangi* facts), if the parties to the partnership agreement ignore some, or all of its terms -- the "real deal" under state property law -- I.R.C. Section 2033 will also ignore those terms.)

Congress occasionally intends federal estate tax law to supersede state property law. However, Congress did not intend that partnerships in which the family partners follow the agreement should be disregarded in order to tax the underlying assets. When Congress enacted Chapter 14 to repeal and replace I.R.C. Section 2036(c), it dispensed with the unique "enterprise" concept in favor of partnerships, corporations and trusts as traditionally defined for all federal tax purposes.

In fact, this federal tax law has a more liberal standard than state law in recognizing a partnership apart from its owners. Under federal tax law (including federal transfer tax law), a partnership is considered to be created and recognized independent of its owners if that group of owners agrees to divide profits and carries on any financial operation.

D. Third Fundamental: Congress Intends a Consistent Treatment of Transfers of Assets (Including Partnership Interests) During a Taxpayer's Lifetime and at Death Under Chapters 11 and 12. The application of I.R.C. Section 2036 Inclusion Instead of I.R.C. Section 2033 Inclusion Generates Inconsistent Treatment. The Application of I.R.C. Section 2033 Inclusion Instead of I.R.C. Section 2036 Inclusion Generates Consistent Treatment.

Further support for the proposition that I.R.C. Section 2033 should supersede I.R.C. Section 2036, if there is potential dual application, is found in Chapter 12. I.R.C. Section 2033 application is consistent with Chapter 12 treatment. I.R.C. Section 2036 application is inconsistent with the principles of Chapter 12.

To illustrate the inconsistency under Chapters 11 and 12, if I.R.C. Section 2036 "trumps" I.R.C. Section 2033, consider the result if each of the taxpayers in the above I.R.C. Section 2036 cases had transferred his partnership interests during his lifetime (and lived for three years) instead of at his death. There is no I.R.C. Section 2036 equivalent for gift tax purposes. There is no "I.R.C. Section 2536." Thus, if the real terms of the partnership in those cases were the literal terms of the agreement, a different result would obtain for gifts of the subject limited partnership interests in comparison to transfers of partnership interests at death.<sup>140</sup>

I.R.C. Sec. 2036 requires a "transfer" of an asset to which the statute can attach. Almost seven decades after the enactment of I.R.C. Sec. 2036, no definition of "transfer" has been given.

---

<sup>140</sup> See the discussion in Article IV D of this paper.



A fundamental question for family limited partnerships is whether placing assets in a partnership is such a transfer. The classic I.R.C. Sec. 2036 transfer is a transfer to a trust, retaining a life interest. In the absence of I.R.C. Sec. 2036, upon the transferor's death I.R.C. Sec. 2033 does not include the trust assets, which therefore are outside the gross estate and do not add any value to the taxable estate. The situation with a partnership is different. The partnership interest is includible under I.R.C. Sec. 2033. Through the partnership interest, the transferred assets remain part of the gross estate; the assets have not disappeared for estate tax purposes, they have merely changed form. The argument may be made that no transfer within the meaning of I.R.C. Sec. 2036 occurs upon such a change in form, if the new form of ownership is subject to I.R.C. Sec. 2033. Alternatively, some would state the test this way: no transfer occurs unless there is a transfer for gift tax purposes.

In *Church v. United States*, 2000-1 U.S. Tax Cas. (CCH) ¶60,369, 85 A.F.T.R. 2d (RIA) 804, 2000 U.S. Dist LEXIS 714 (W.D. Tex. 2000), *aff'd without opinion*, 268 F.3d 1063 (5<sup>th</sup> Cir. 2001), the court said:

I.R.C. §§2036 and 2038 likewise require a “transfer” as a predicate to their application. *Shafer v. Commissioner*, 749 F.2d 1216, 1221 (6th Cir. 1984); *Estate of Harrison v. Commissioner*, 52 T.C.M. (CCH) 1306, 1309 (1987). Since the gift and estate taxes are considered in *pari materia*, *Wheeler v. United States*, 116 F.3d 749, 761 (5th Cir. 1997), the term “transfer” must be given the same meaning in construing I.R.C. Sections 2036 and 2038 as it is in the taxation of gifts. Having previously concluded that there was no gratuitous donative transfer in the formation of Stumberg Ranch Partners, Ltd. in connection with the Government's contention on a gift on formation, I likewise conclude that I.R.C. Sections 2036 and 2038 do not apply to the transaction in issue. *Estate of Harrison v. Commissioner*, 52 T.C.M. (CCH) 1306, 1309 (1987); *Estate of Michelson v. Commissioner*, 37 T.C.M. (CCH) 1534, 1538 (1978).

Despite the success of this argument in *Church*, most cases that have applied I.R.C. Sec. 2036 to family limited partnerships have ignored the transfer requirement. Why more taxpayers have not presented this argument to the courts is something of a mystery.

It is not necessary for a previous transfer to have occurred for the application of I.R.C. Section 2033. More specifically, it is necessary before I.R.C. Section 2036 can apply to find that the “decendent has at any time made a transfer (except in the case of a bona fide sale for adequate and full consideration in money or money's worth).” That is the same test that exists under I.R.C. Section 2511 and I.R.C. Section 2512 for determining when a transfer constitutes a transfer that is subject to gift taxes. Treasury Regulation 25.2512-8 provides that a transfer, which is “bona fide, at arms-length, and free from any donative intent” will not be subject to gift taxes. The difference between the terms used in I.R.C. Section 2036 and as delineated in the Regulations under Chapter 12 are distinctions without a difference. The Regulations under Chapter 12 also make it clear that if a gift occurs, the gift cannot be made, of course, to the partnership as an entity (it is difficult to shake hands with a partnership); it can only be made to the partners (i.e., some identifiable partner must receive the benefit of a transfer, *see* Treas. Reg. 25.2511-1(h)(1)).

According to the Tax Court, a transfer for gift tax purposes did not occur when Mr. Strangi contributed his assets to the partnership. *See Strangi I* discussed above. Thus, the creation of the partnership was deemed to be a transfer for Chapter 12 purposes that was “bona fide” and free of donative intent. Since Mr. Strangi did not make any other transfers, it would appear that the prerequisite for the application of I.R.C. Section 2036 would not be appropriate. This writer knows of no legislative history or Treasury Regulation where the meaning of the term “bona fide” was intended by Congress or Treasury to have a different meaning for gift tax purposes than it does for estate tax purposes. Stated differently, if I.R.C. Section 2511 and I.R.C. Section 2512 do not apply to the creation of the partnership, or any transfers of partnership interests during the taxpayer’s lifetime, because all transfers are bona fide and free of donative intent for gift tax purposes, it would appear that a prerequisite for the application of I.R.C. Section 2036 does not exist.

In at least some of the cases discussed above, I.R.C. Section 2033 should apply rather than I.R.C. Section 2036 because I.R.C. Section 2033 inclusion gives a more consistent result with Chapter 12. Otherwise, you have the inconsistent result (which exists under *Strangi*) that complete transfers of family partnership interests during a taxpayer’s lifetime are treated differently than limited partnership interests transferred at death. It is respectfully submitted that it is doubtful that Congress intended that inconsistency.

When Congress enacted I.R.C. Section 2036(c), it modified I.R.C. Section 2036 to operate more consistently with the gift tax. First, it provided that a gift would occur if the prerequisites for its application ceased to exist at any time. Second, it provided a modified consideration offset so that would “grow” any consideration paid at the same rate as the assets included in the estate under I.R.C. Section 2036(c) grew. Congress enacted these special rules to provide for greater unity between the gift and estate taxes. It is reasonable to assume that Congress would want I.R.C. Section 2033 to apply rather than I.R.C. Section 2036 without these modifications.

- E. Fourth Fundamental: In 1990, Congress Made it Clear That the Application of I.R.C. Section 2036(a) Instead of I.R.C. Section 2033 to Family Partnerships Was Poor Tax Policy, Revoked the Application of I.R.C. Section 2036(a) With Respect to the Inclusion of Family Partnership Interests and Reaffirmed the Priority of I.R.C. Section 2033 Inclusion Over I.R.C. Section 2036(a) Inclusion.

Further support for the proposition that I.R.C. Section 2033 inclusion should supersede I.R.C. Section 2036 inclusion, if there is potential dual application, is found in legislative history. There was clear legislative intent expressed in 1990 that applying I.R.C. Section 2036(a) in lieu of I.R.C. Section 2033 to enterprises was poor tax policy, and not necessary, if certain valuation abuses that could occur with respect to family partnerships were addressed in Chapter 14.

For a very brief period, 1987 to 1990, I.R.C. Section 2036(a), upon application of I.R.C. Section 2036(c) did operate to include any partnership interest, or other “business enterprise” interest in a decedent’s estate to the exclusion of I.R.C. Section 2033. (While I.R.C. Section 2033 also could have applied in 1987 to include the same partnership interests, Congress was very careful to reverse the traditional priority of I.R.C. Section 2033 inclusion over I.R.C. Section 2036 inclusion with the passage of I.R.C. Section 2036(c)(5)). In 1987, Congress explored whether or

not to do away with minority and marketability discounts with respect to family partnership and family corporations and whether to attack so-called estate freezes. At that time, Congress decided not to attack family limited partnership discounts or discounts associated with family corporations. However, Congress decided to attack so-called estate freezes by making estate freezes that met six defined tests (described in I.R.C. Section 2036(c)) subject to the auspicious I.R.C. Section 2036(a) inclusion.<sup>141</sup>

One might advance the argument that the history discussed in Article X D of this paper only means that Congress does not intend for I.R.C. Section 2036(a) to apply to partnerships where the taxpayer disproportionately retains a preferred partnership interest and that Congress intends to apply I.R.C. Section 2036(a) in lieu of I.R.C. Section 2033 with respect to pro rata partnerships. If that argument is true, “Section 2036(a) priority” could be easily avoided by the taxpayer retaining a disproportionate preferred interest. Secondly, that argument ignores clear legislative intent that I.R.C. Section 2033 is to continue to apply to all interests in family partnerships. Congress made it clear that the application of I.R.C. Section 2033 principles was not just limited to partnerships with preferred interests; pro rata partnerships were also to receive I.R.C. Section 2033 treatment and valuation discounts were to continue.

When Congress repealed the priority of I.R.C. Section 2036 over I.R.C. Section 2033 in 1990, it also wished to make it clear that it did not wish to affect valuation discounts inherent in the use of pro rata partnerships or corporations that do not have a senior equity interest. That repeal and Chapter 14 were added by the Omnibus Budget Reconciliation Act of 1990 (sometimes referred to as “the bill” below). The Senate Report on the bill made it clear that the bill was not to affect the valuation discounts that may be found under I.R.C. Sections 2511 and 2033 associated with creating an entity, including pro rata partnerships or corporations that do not have a senior equity interest:

The value of property transferred by gift or includable in the decedent’s gross estate generally is its fair market value at the time of the gift or death. Fair market value is the price at which the property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts (Treas. Reg. sec. 20.2031-1(b)). This standard looks to the value of the property to a hypothetical seller and buyer, not the actual parties to the transfer. Accordingly, courts generally have refused to consider familiar relationships among co-owners in valuing property. For example, courts allow corporate stock to be discounted to reflect minority ownership even when related persons together own most or all of the underlying stock.

....

*The bill does not affect minority discounts or other discounts available under present law.*

---

<sup>141</sup> See the discussion in Article X D of this paper.

....

*... the bill does not affect the valuation of a gift of a partnership interest if all interests in the partnership share equally in all items of income, deduction, loss and gain in the same proportion (i.e., straight-up allocations).*<sup>142</sup>

It would seem to be very unlikely, and would violate all normal rules of interpretation of legislative history, to assume that Congress intended for the courts in the future to target “entity discounts,” for pro rata partnerships through I.R.C. Section 2036(a) priority over I.R.C. Section 2033 inclusion, or continued Treasury litigation attempting to apply family attribution in valuation under I.R.C. Section 2033, in light of the above legislative intent.

To the IRS’s credit, the IRS never pursued the application of I.R.C. Section 2036 in lieu of the application of I.R.C. Section 2033 for the inclusion of property relating to pro rata partnership ownership until strongly invited to do so by the Tax Court.

It is noteworthy that the IRS, fresh from this legislative history, consistently refused to apply I.R.C. Section 2036(a) to family partnerships.<sup>143</sup>

It is noteworthy that the IRS, fresh from this legislative history, announced in a public revenue ruling, Rev. Rul. 93-12, that it was abandoning its litigation strategy of applying family attribution valuation principles for gift tax purposes, which was directed at pro rata partnership and corporate interests.

It is noteworthy that the IRS, fresh from this legislative history, narrowly applied I.R.C. Section 2704(b) (part of Chapter 14) to family partnerships. I.R.C. Section 2704(b) could have been interpreted by Treasury to broadly apply in many family situations where partnerships achieved valuation discounts. Treasury Regulation Section 25.2704-2(b) instead chose to define a liquidation restriction by reference to the default provisions of state law that would apply in the absence of the restriction. One can quarrel with this approach as unrelated parties almost never rely on the default provisions of state law to determine their business deal. But it was consistent with Chapter 14’s intent to treat family members and strangers alike when the terms of their agreements are consistent.<sup>144</sup>

It is also noteworthy that the IRS, fresh from its legislative history, narrowly applied Treasury Regulation Section 1.701-2. In Treasury Decision 8588 (December 29, 1994) the Treasury finalized Treasury Regulation Section 1.701-2, providing that under appropriate circumstances the Secretary could disregard the partnership entity when its purpose was

---

<sup>142</sup> 136 CONG. REC. § 15629, 15681 (October 18, 1990) (emphasis added).

<sup>143</sup> See Tech. Adv. Mem. 91-31-006; See P.L.R. 94-15-007 (Jan. 12, 1994); P.L.R. 93-32-006 (Aug. 20, 1992); P.L.R. 93-10-039 (Dec. 16, 1992); P.L.R. 90-26-021 (Mar. 26, 1990); G.C.M. 38,984 (May 6, 1983); G.C.M. 38,375 (May 12, 1980).

<sup>144</sup> President Obama’s “Green Book” proposals would eliminate state law as the touchstone under IRC Sec. 2704(b) and substitute a standard to be promulgated by regulation.

inconsistent with the purposes of Subchapter K. As originally enacted, this regulation applied for transfer tax as well as income tax purposes. Examples 5 and 6 of these regulations dealt specifically with whether gifts of partnership interests would be valued for gift tax purposes at a discount. Treasury Decision 8592, however, amended these “final” regulations to provide that they would not apply for transfer tax purposes. Furthermore, the final version of the regulation acknowledges that the “business” activity of a partnership may be investing assets: “Subchapter K is intended to permit taxpayers to conduct joint business (*including investment*) activities through a flexible economic arrangement without incurring an entity-level tax.”<sup>145</sup>

#### F. Conclusion.

Except for a brief period of time from 1987 to 1990, when I.R.C. Section 2036(a) inclusion applied rather than I.R.C. Section 2033 inclusion (*see* prior I.R.C. Section 2036(c)(5)), I.R.C. Section 2033 inclusion has always “trumped” I.R.C. Section 2036 inclusion when both statutes apply. Congress has not changed the law. In fact, to the extent that Congress has changed the law (i.e., repeal of I.R.C. Section 2036(c) and passage of Chapter 14), that legislative history clearly points to the priority of I.R.C. Section 2033 inclusion and I.R.C. Section 2511 application, as modified by the valuation principles of Chapter 14, over I.R.C. Section 2036(a) inclusion when both of those statutes could apply.

Because of the strong legislative history in 1990, strong prior case law which traditionally applies I.R.C. Section 2033 rather than any “power” section of the Code, and the consistent application of the principles of I.R.C. Section 2511 and 7701(a)(2), it would seem to this writer that an act of Congress would be required (as it was in 1987) to reverse this priority.

However, until there is definitive case law stating I.R.C. Section 2033 inclusion trumps I.R.C. Section 2036 inclusion for family limited partnerships, the reader cannot rely (and should not rely) on this writer’s analysis that I.R.C. Section 2033 inclusion should trump I.R.C. Section 2036 inclusion. Hence, the reader will be well advised to avoid I.R.C. Section 2036(a)(1) inclusion by adopting one of the methodologies discussed elsewhere in this paper.

## VI. THE BEST GST PLANNING IDEA FOR A FAMILY LIMITED PARTNERSHIP – THE POSSIBLE USE OF A LEVERAGED GRAT

### A. Introduction.

The “conventional wisdom” this author sometimes hears on this subject is as follows: “the remainderman of a GRAT cannot be a generation-skipping trust” or “you can use the leverage of a GRAT for gift tax purposes, but you cannot use that leverage for generation-skipping tax purposes.” This “conventional wisdom,” under the circumstances described below, may be incorrect.

---

<sup>145</sup> Treas. Reg. Section 1.702-2(a) (emphasis added). The parenthetical language referring to “investment” as a business activity was added after the release of the proposed regulation. Compare Prop. Reg. Section 1.701-2(a).

As noted above,<sup>146</sup> a GRAT can be structured to have almost no value attributable to the remainderman, valued as of the creation of the trust.<sup>147</sup> If the asset that has been contributed to a GRAT outperforms the I.R.C. Section 7520 interest rate, that outperformance results in a gift tax free gift to the remainderman. Thus, the gift tax exemption can be substantially leveraged using the GRAT technique. It is generally thought that the generation-skipping tax exemption of the grantor may not be leveraged in a similar fashion. This is because of the estate tax inclusion period (“ETIP”) rule found in I.R.C. Section 2642(f)(3), which defines the ETIP as follows:

Any period after the transfer described in paragraph (1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under Chapter 11 if he died. The transferor’s exemption for generation-skipping tax purposes cannot be allocated until after the ETIP period.

Stated differently, whether a generation-skipping transfer has occurred cannot be determined until after it is determined whether the property will be included in the grantor’s estate. If the period passes, and it is clear the property will not be included in the grantor’s estate, then and only then, may the grantor’s GST exemption be allocated.

B. Is There a 5% Exception?

Treas. Reg. Section 26.2632-1(c)(2) contains the regulatory definition of ETIP and then provides an exception, as follows:

For purposes of paragraph (c)(2) of this section, the value of transferred property is not considered as being subject to inclusion in the gross estate of the transferor or the spouse of the transferor if the possibility that the property will be included is so remote as to be negligible. A possibility is so remote as to be negligible if it can be ascertained by actuarial standards that there is less than a 5 percent probability that the property will be included in the gross estate.

For a short term GRAT there will often be less than a 5% probability that the grantor will die during the GRAT term. For example, this will be true for a two-year GRAT unless the grantor is above 70 years of age. In such a case, the exception noted above would literally apply. On this reading of the exception, the ETIP rules will not apply to an allocation of GST exemption, because there is less than a 5% chance that the grantor will die during the GRAT term. Thus, a grantor age 70 or younger can create a two-year GRAT in which the remainderman is a generation-skipping trust, make an allocation of the GST exemption that is equal to the amount of the taxable gift of the GRAT remainder, and produce a zero inclusion ratio for generation-skipping tax purposes. Is this a correct reading of the exception? There is not any

---

<sup>146</sup> See Article III B of this paper.

<sup>147</sup> The latest version of President Obama’s “Green Book” proposals would impose an unspecified minimum value for a GRAT remainder.

definitive authority on this subject, but most commentators believe the IRS will resist this result.<sup>148</sup> Ed Manigault and Mil Hatcher discuss this possibility and note the following problem:<sup>149</sup>

Although it appears that some GRATs should fall outside of the ETIP rule—depending on the age of the grantor and the term of the annuity period—it is not clear *how much* GST exemption would need to be allocated to the GRAT to provide for a zero inclusion ratio. If the allocable amount necessary to produce a zero inclusion ratio was tied to the taxable *gift* amount, then using a nearly zeroed-out GRAT would seem to permit the allocation of an amount only equal to the minimal taxable gift.

The provisions for allocation of GST exemption, however, do not clearly define the allocation amount based on the amount of the taxable gift. Instead, the regulations arguably point to the *amount of the property transferred*, not to the amount of the taxable gift. See Treas. Reg. § 26.2632-1(b)(1)(i), (2)(i) and (ii), and (4). This approach is consistent with the determination of the applicable fraction (for purposes of calculating the inclusion ratio), which has as its denominator the value of the property transferred to the trust. See Treas. Reg. § 26.2642-1(c)(1). It might then be the position of the IRS that, if the above interpretation of the ETIP exception is accurate, a grantor must allocate GST exemption equal to the amount transferred to the GRAT, not the minimal taxable gift created as a result of the funding of the GRAT.

The argument that the authors make is that the amount transferred for generation-skipping tax purposes should be offset by the consideration received by the grantor. In the case of the GRAT, the consideration received is the present value of the amount of the annuities that the grantor is to receive. In the case of a transfer to a generation-skipping trust, pursuant to a bargain sale, it is commonly accepted that the amount of the GST exemption that needs to be allocated is the amount of the transfer after subtracting the value of the consideration received. The natural question is, why should the result be different if the consideration received is an annuity (from a GRAT) as opposed to a seller financed note from a non-GRAT trust? To take the analogy a little bit further, assume that a grandparent makes a bargain sale to an “old and cold” adequately funded trust (presumably a defective grantor trust) in which the consideration for the “sale” part of the bargain sale is not a seller financed note, but a private annuity. One would assume that the selling grandparent should be able to insulate the trust from GST taxes by allocating her GST exemption in an amount equal to the “bargain” gift component (this assumes the annuity will be recognized on its own terms and not as a disguised retained income interest that is subject to I.R.C. Section 2036). Thus, the question is why should a transaction involving a bargain sale private annuity be

---

<sup>148</sup> See Private Letter 200107015: Covey and Hastings, Recent Developments 2007, 42nd Annual Heckerling Institute of Estate Planning, University of Miami School of Law (page 295). See Manigault and Hatcher, GRATs and GST Planning – Potential Pitfalls and Possible Planning Opportunity, 20 Prob. & Prop. 28 (2006).

<sup>149</sup> See Manigault and Hatcher, GRATs and GST Planning – Potential Pitfalls and Possible Planning Opportunity, 20 Prob. & Prop. 28, 32 (2006).

treated differently than a transaction involving an annuity from a GRAT, as far as determining the amount of the property transferred for GST tax exemption allocation purposes?

- C. Is There a Technique That Uses the Leverage of the GRAT to Indirectly Profit a GST Trust in Which a Skip Person is Not the Remainderman of the GRAT at the Beginning or End of the ETIP (and Does the Technique Work)?

Another interesting inquiry is whether a grandparent who creates a GRAT will be deemed to have made a transfer that is subject to generation-skipping taxes, if the remainderman at the beginning and at the end of the ETIP period of the GRAT is not a skip person? The answer would seem to be no.

However, does that answer change if the original remainderman, who is not a skip person, during the ETIP period transfers, for full and adequate consideration, her remainder interest to a generation-skipping trust that the remainderman has created and at a later time buys back that remainder interest (presumably before the ETIP period ends)? In other words, has the grandparent who created the GRAT made a generation skipping transfer despite naming a non-skip person as the remainderman who in fact receives the remainder after the ETIP period ends? If the original remainderman and the remainderman at the end of the ETIP period is a non-skip person, but during the ETIP period there are non-taxable transfers by the remainderman to and from a generation-skipping trust, has a generation-skipping transfer been made? Consider the following example:

*Example 13: Granny Selfmade Creates a GRAT  
That, Because of the Non-Skip Remainderman's  
Actions, Indirectly Benefits a Generation-Skipping Trust*

*Granny Selfmade creates a GRAT with a retained annuity amount that results in a very low gift for gift tax purposes to the remainderman, her daughter, Betsy Bosssdaughter. The terms of the trust agreement creating the GRAT provide that if Granny survives the two year term of the GRAT, but Betsy does not survive the term of the GRAT, the remaining proceeds of the GRAT, if any, are to pass to Betsy's two children, Bob and Brenda Bosssdaughter.*

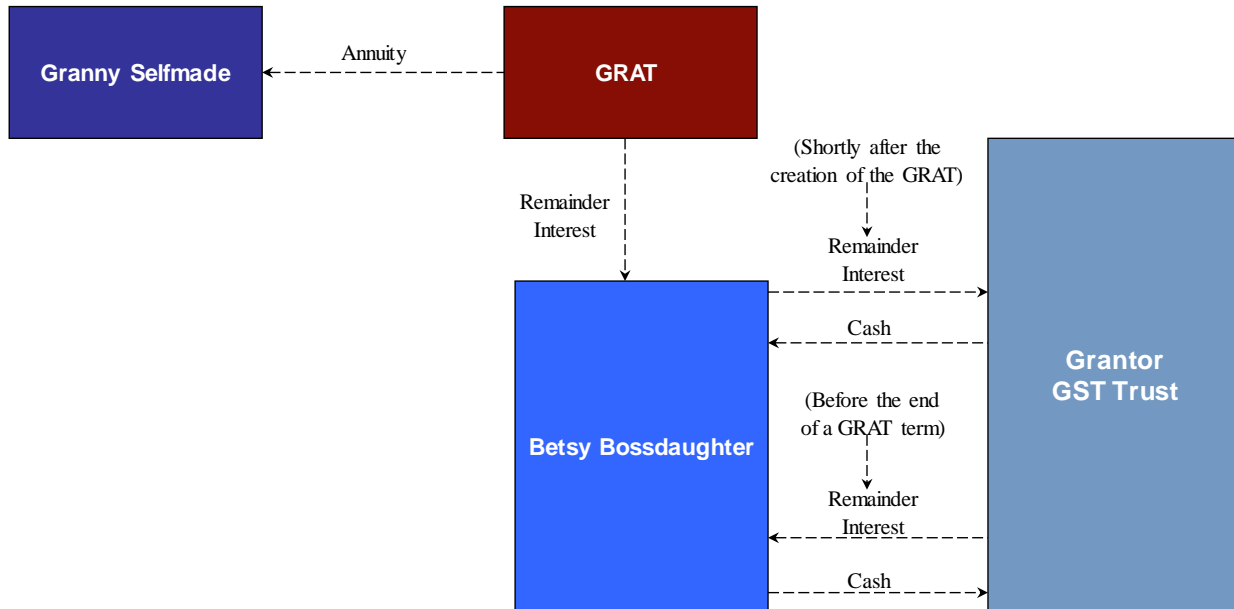
*Betsy is grateful for the creation of the GRAT by her mother, but she feels that her mother has already done enough estate planning for her benefit. Betsy is interested in transferring wealth to her children. Thus, Betsy makes an independent gift to a generation-skipping trust in which the primary beneficiaries are her children, Bob and Brenda. The generation-skipping trust is an intentionally defective grantor trust with Betsy being the grantor. In the early days of the GRAT, while the actuarial value of the remainder interest is very low, Betsy, for full and adequate consideration, sells her remainder interest to the GST trust she created.*

*The GRAT is very successful. Before the end of the two year term (or ETIP period) Betsy decides to buy back the remainder interest for full and adequate consideration (perhaps with a seller financed note). Thus, on termination of the GRAT, Betsy is once again, the only remainderman beneficiary.*



*Granny asked her tax advisor, Pam Planner, whether she owes any generation-skipping transfer taxes on termination of the GRAT, because of Betsy's actions.*

The proposed transaction is illustrated below:



Before Pam, or anyone, can answer this question, certain key concepts must be understood in addition to the applicability of the ETIP rules. What is a “transfer” for purposes of Chapter 13? In certain contexts “transfer” is shorthand for “generation-skipping transfer”, which is a defined term. The generation-skipping transfer is one of the three defined GST taxable events: taxable termination, taxable distribution, or direct skip. However, in certain other contexts of Chapter 13, “transfer” refers to the original transfer of property establishing a trust. The transferor, for generation-skipping tax purposes is “the individual with respect to whom property was most recently subject to federal, estate or gift tax.” See Treas. Reg. Section 26.2652-1(a)(1).

Another area where it is important, under Chapter 13, to determine whether a generation-skipping tax transfer has occurred is determining the inclusion ratio when additional transfers are made to a trust. Any addition requires a recompilation of the trust’s applicable fraction and, thus, its inclusion ratio and requires allocation of GST exemption to preserve a zero inclusion ratio. Treas. Reg. Section 26.2642-4 seems to suggest that no addition to a trust can occur without a gift or an estate taxable transfer. A transfer for full and adequate consideration is not such a transfer and should not be an addition.

Under these definitions, Pam Planner advises Granny that there appears to be no transfer that would incur GST tax or require an allocation of GST exemption to avoid tax. However, consideration must be given to Private Letter Ruling 200107015. This ruling involved a zeroed-out charitable lead annuity trust (“CLAT”) and a proposed gift assignment by a child who was a one-sixth vested remainderman. The gift would be to a trust, which is a generation-skipping

trust with respect to the grantor of the CLAT. The purpose of the ruling was to determine whether the child would be treated as the transferor for GST purposes instead of as the grantor of the CLAT. The IRS refused to grant the request of a favorable ruling:

Section 2642(e) provides a special ruling for determining the inclusion ratio for any ‘charitable lead annuity trust.’ Under §2642(e) and the applicable regulations, in the case of a charitable lead annuity trust the applicable fraction (1) the numerator of which is the adjusted generation-skipping transfer tax exemption (‘adjusted GST exemption’), and (2) the denominator of which is the value of all property in the trust immediately after the termination of the charitable lead annuity. The adjusted GST exemption is the amount of GST exemption allocated to the trust increased by an amount equal to the interest that would accrue if an amount equal to the allocated GST exemption were invested at the rate used to determine the amount of the estate or gift tax charitable deduction, compounded annually, for the actual period of the charitable lead annuity. The amount of GST exemption allocated to a charitable lead annuity trust is not reduced even though it is ultimately determined that the allocation of a lesser of GST exemption would have resulted in an inclusion ratio of zero. Under §2642(e)(3), a ‘charitable lead annuity trust’ is defined as any trust providing an interest in the form of a guaranteed annuity for which the transferor is allowed a charitable deduction for Federal estate or gift tax purposes under §§2055 and 2522.

In the absence of §2642(e), little or no GST tax would ever be imposed with respect to certain charitable lead annuity trusts, even if no GST exemption is allocated to the trust. That is, if the value of the assets transferred to the trust was equal to the estate tax charitable deduction allowed with respect to the transfer, then under the general rules of §2642, the inclusion ratio with respect to the trust would be zero and the trust would be exempt from GST tax. Even if the charitable deduction did not equal the value of the transferred assets, an allocation of only a small amount of GST exemption would have resulted in no GST tax. Congress was concerned that allowing the present value of the charitable interest to reduce the denominator of the applicable fraction permitted the leveraging of the GST tax exemption. If the trust assets sufficiently outperform the rate of return assumed in computing the present value of the charitable interest, the amount passing to noncharitable persons can exceed the amount which would have passed to them had there been no charitable interest in the trust. S. Rep. No. 445, 100<sup>th</sup> Cong., 2d Sess. 368 (1988).

...

We also note that under the facts presented in the ruling request, the form of the transaction might be disregarded and the series of transactions viewed as the designation by the Trustee of Child A’s children as remainder beneficiaries. Under this analysis, Decedent would be treated as the transferor of the entire Trust estate for GST tax purposes. See *Estate of Bies v. Commissioner*, T.C. Memo.

2000-338; *Estate of Cidulka v. Commissioner*, T.C. Memo. 1996-149; *Griffin v. United States*, 42 F. Supp. 2d 700 (W.D. Tex. 1998).

The ruling's basic holding can be viewed as uniquely applicable to the charitable lead annuity trust. However, it is clear that the IRS will look for other opportunities to apply equitable doctrines in similar contexts. Stated differently, the ruling's reasoning could apply just as easily to a GRAT, if the reader substituted the phrase "ETIP rules" for "I.R.C. Section 2642(e)." Using the same logic, the Service could find that a gift by a GRAT remainderman is avoidance of the Congressional intent in enacting the ETIP rules. However, would the equitable doctrines inherent in the ruling apply to a sale by Betsy in above Example 13? It would appear that the answer should be no.

In using a sale for full and adequate consideration, the issue is not whether Granny or Betsy is the transferor of the property that moves from the GRAT to the dynasty trust. The issue is whether there is an addition to the dynasty trust for GST purposes. There should not be an addition to the dynasty trust for GST purposes when Betsy transfers the remainder interest to the GST trust for full and adequate consideration and when Betsy buys the remainder interest back for full and adequate consideration.

If Granny is only 67 years of age or less, Granny might wish to allocate an amount of GST exemption to her transfer to the GRAT that is equal to the gift passing to the remaindermen (whoever they may be). This would provide a back-up defense against even a broad substance over form/step transaction equitable argument that the IRS could make with respect to this transaction. It will be a difficult hurdle for the IRS when, in addition to the above analysis, a GST exemption has been effectively allocated in a case where the ETIP rules may not apply because of the 5% exception that may apply given Granny's age (assuming Granny allocates an amount of GST exemption equal to the gift). Another hurdle for the IRS is that for property law purposes and gift tax purposes, Granny's only transferee is a non-skip person (Betsy Bosdaughter). It would seem that the IRS, in order to be successful, would have to argue that a generation-skipping tax transfer occurred by Granny when Betsy sold for full consideration the remainder interest to the generation-skipping trust she created, even though you could not determine whether a generation-skipping transfer has occurred until after it was determined if Granny Selfmade survived the annuity term (and at that point, the only beneficiary of the GRAT was a non-skip person). The cumulative hurdle of those positions may be very difficult for the IRS to surmount.

#### D. The Creation of a GRAT For Full and Adequate Consideration.

##### 1. The technique.

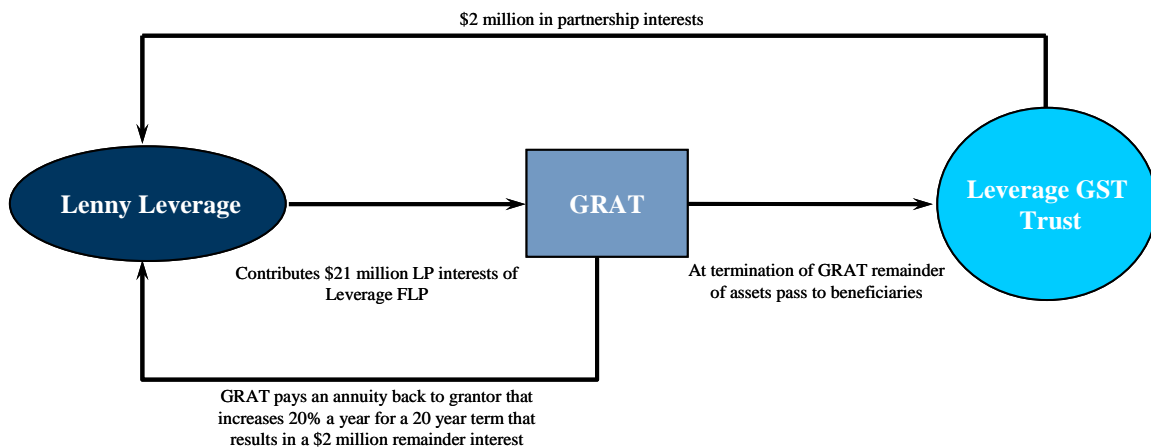
Consider a GRAT that is created with a substantial remainder interest, however, because of a purchase of a remainder interest of the GRAT, there is not a gift. That is, instead of making a gift of the remainder interest, what if the grantor of a GRAT sold it for full and adequate consideration to a pre-existing trust? IRC Section 2036 inclusion does not apply if the grantor dies before the GRAT term ends, and as a consequence, the ETIP limitation may also not apply

and the creation of the GRAT may not constitute a transfer to the GST trust. Consider the following example.<sup>150</sup>

*Example 14: Lenny Leverage Enters Into a GRAT  
With the Remainderman Being a Generation-Skipping  
Transfer Trust With the Generation-Skipping Transfer Trust  
Purchasing the Remainder Interest For Full Consideration*

*Several years ago, Lenny Leverage created a generation-skipping transfer trust that is also a grantor trust. The GST trust and Lenny contributed certain assets to a family limited partnership. Lenny's interest in the partnership, after considering valuation discounts, is worth \$21 million and the GST trust's interest in the partnership is worth \$2,000,000. The GST trust transfers that \$2,000,000 partnership interest to Lenny Leverage in full consideration for Lenny Leverage contributing his \$21 million interest in the family limited partnership to a GRAT that is designed with a formula defined value allocation annuity which increases 20% a year. The formula produces a remainder value of \$2 million under IRC Section 7520. The liquidation value of the partnership interest that is transferred to the GRAT is \$30 million and the appraised fair market value of the transferred partnership interest is \$21 million (30% discount). The partnership, at that time, has 15 years to operate before it terminates. Lenny has \$1,500,000 outside the partnership. Lenny is 50 years old.*

The technique is illustrated below:



It is crucial to avoid valuation issues with this technique. The purchase price for the remainder interest must be consistent with the valuation assumptions of the GRAT. Thus, using

<sup>150</sup> There are other alternative forms of designing a GRAT that is formed for adequate and full consideration. In order to avoid estate tax inclusion of the value of the remaining annuity payments and future estate income taxes, if the grantor does not live past the annuity term, the GRAT annuity payments (which will have to be higher to provide full consideration) could be designed to terminate at the shorter of the grantor's life or the stated term. The GRAT could be designed to be a joint contribution GRAT. In that circumstance, care should be taken to make sure the same assets (e.g., partnership units of the same partnership) are being contributed by the grantor and the GST trust to the GRAT.

“apples to apples”, such as partnership units in the same partnership, will facilitate adequate and full consideration being paid for the remainder interest in the GRAT.

Please note the table below, which delineates the amount that is projected to be transferred to Lenny’s children, grandchildren and great grandchildren pursuant to this technique in comparison to not doing any further planning with respect to the partnership. The table assumes Lenny’s death at the end of year 20, Lenny consumes \$100,000 a year with a 3% inflation rate, an 8% pre-tax rate of return with 2% being taxed at ordinary income rates (35%) and 6% at capital gains rates (15%, with a 30% turnover). Assume that the partnership, at the time of the creation of the purchase GRAT, has only 15 years remaining and that the valuation discount is 30%. See Schedule 6 attached to this paper.

**Table 7**

Technique	Leverage Children	Leverage GST Trust	Consumption – Direct Cost	Consumption – Investment Opportunity Cost	IRS – Income Tax	IRS – Investment Opportunity Cost	IRS – Estate Tax (at 45%)	Total
No Further Planning; Bequeaths Estate To Family	\$55,282,583	\$13,317,021	\$2,687,037	\$3,022,654	\$20,916,430	\$19,680,241	\$45,231,204	\$160,137,171
Hypothetical Integrated Income and Estate Tax Plan With a Partnership and GRAT; Bequeaths Estate To Family	\$9,687,257	\$98,772,116	\$2,687,037	\$3,022,654	\$20,778,989	\$17,263,179	\$7,925,938	\$160,137,171

The results are obviously very significant. Will this work? An argument can certainly be made that the creation of the purchase GRAT is not subject to the ETIP rules and the creation of the GRAT does not constitute a transfer to the GST trust. If Lenny died during the 20 year term of the GRAT, the GRAT property will not be includible in his gross estate.<sup>151</sup> Only the remaining actuarial value of the unpaid annuity amounts of the GRAT would be included under Section 2033.

What would be the results, if the GRAT was for the shorter of 20 years or Lenny’s death? The annuity amounts would be higher. The technique would have income tax and estate tax advantages if Lenny died during the 20 years. See Schedule 6a attached to this paper.

---

<sup>151</sup> See *Wheeler v. United States*, 116 F.3d 749 (5<sup>th</sup> cir. 1997); *Estate of D’Ambrosio v. Comm’r*, 101 F.3d 309 (3d Cir. 1996); *Estate of Magnin v. Comm’r*, 183 F.3d 1074 (9<sup>th</sup> Cir. 1999); *contra, Gradov v. United States*, 11 Cl. Ct. 808 (1987), *aff’d*, 897 F.2d 516 (Fed. Cir. 1990).

See the results below:

**Table 8**

Technique	Leverage Children	Leverage GST Trust	Consumption – Direct Cost	Consumption – Investment Opportunity Cost	IRS – Income Tax	IRS – Investment Opportunity Cost	IRS – Estate Tax (at 45%)	Total
No Further Planning; Bequeaths Estate To Family	\$55,282,583	\$13,317,021	\$2,687,037	\$3,022,654	\$20,916,430	\$19,680,241	\$45,231,204	\$160,137,171
Hypothetical Integrated Income and Estate Tax Plan With a Partnership and GRAT; Bequeaths Estate To Family	\$19,236,810	\$81,703,110	\$2,687,037	\$3,022,654	\$20,485,173	\$17,263,179	\$15,739,208	\$160,137,171

There could be abusive situations where the remainder interest is very small and the logic of the *Wheeler*, *D’Ambrosio* and *Magnin* cases would not be applied. However, under the facts assumed under this case, the remainder interest is significant and would seem to be analogous to the remainderman values considered in the Circuit Court cases cited below in the footnote.

2. Need for a transfer before GST tax can apply.

Possible further support of the argument that a GST tax under the facts of Example 13 or 14 cannot apply when there has not been a transfer for estate and gift tax purposes is the proposition that an imposition of a generation-skipping transfer tax under those circumstances would constitute a direct tax on the property contributed to the trust rather than an indirect (excise) tax on a transfer. Before an excise tax (known as the generation-skipping tax) on a transfer can occur, there must be a transfer. There does appear to be a transfer under the above assumed facts. See the discussion above under Examples 13 and 14.

The generation-skipping tax valuation must be based on the value of that interest when transferred from one person to another, not the value when held by the transferor, because of the limit in the Constitution on the federal government’s ability to tax. The Constitution provides that “[n]o Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.”<sup>152</sup> In plain terms, therefore, all *direct* taxes are unconstitutional unless levied across the country in proportion to the states’ populations. This clear constitutional prohibition against direct taxes raises two questions: (i) what is meant by a

---

<sup>152</sup> U.S. CONST. art. I, § 9, cl. 4.

direct tax; and (ii) under what circumstances will a gift, estate, or generation-skipping tax not be considered a direct tax?

a. What constitutes a direct tax?

The definition of direct taxes is found in *Pollock v. Farmers' Loan & Trust Co.*<sup>153</sup> The issue before the Supreme Court in *Pollock* was the constitutionality of a federal income tax. The taxpayer argued that a tax on the income from property is the same thing as a direct tax on the property itself.<sup>154</sup> In agreement, the Supreme Court held clearly and conclusively as follows:

*First.* We adhere to the opinion already announced, that, taxes on real estate being indisputably direct taxes, taxes on the rents or income of real estate are equally direct taxes.

*Second.* We are of opinion that taxes on personal property, or on the income of personal property, are likewise direct taxes.<sup>155</sup>

The Court's lengthy analysis rests heavily on the substance-over-form rationale advanced by the taxpayer that a tax on the income from property simply cannot be distinguished from a tax on the property itself.<sup>156</sup> After *Pollock*, therefore, there could be no federal income tax without an amendment to the Constitution, and the Supreme Court's decision in *Pollock* in fact led to the Sixteenth Amendment.

*It is quite clear since Pollock that a tax on the value of either real or personal property is a direct tax.* Further, a tax merely on the income from either type of property is a direct tax, but one that is permitted by the Sixteenth Amendment. *Therefore, the generation-skipping tax cannot be valid unless it is a tax on something other than the value of the transferor's property per se.*

b. The generation-skipping tax will avoid being considered a direct tax only to the extent it operates as an excise tax on the transfer of property.

The Supreme Court often has held or stated that succession taxes, inheritance taxes, estate taxes, and other death taxes will not be considered direct taxes on property if they are applied in a manner that is merely an excise tax on the transfer of property at death.<sup>157</sup>

---

<sup>153</sup> 157 U.S. 429, *reh'g granted*, 158 U.S. 601 (1895).

<sup>154</sup> *Pollock*, 157 U.S. at 555.

<sup>155</sup> *Pollock*, 158 U.S. at 637.

<sup>156</sup> *Pollock*, 157 U.S. at 580-83.

<sup>157</sup> *See, e.g.,* *Scholey v. Rew*, 90 U.S. (23 Wall.) 331 (1874); *Knowlton v. Moore*, 178 U.S. 41 (1900); *Murdock v. Ward*, 178 U.S. 139 (1900); *New York Trust Co. v. Eisner*, 256 U.S. 345 (1921); *Greiner v. Lewellyn*, 258 U.S. 384 (1922); *Young Men's Christian Ass'n v. Davis*, 264 U.S. 47 (1924); *Chase Nat'l Bank v. United States*, 278 U.S. 327 (1929); *Reinecke v. Northern Trust Co.*, 278 U.S. 339 (1929); *Tyler v. United States*, 281 U.S. 497 (1930); *United States v. Jacobs*, 306 U.S. 363 (1939); *United States Trust Co. v. Helvering*, 307 U.S. 57 (1939);

The seminal case on the matter is *Knowlton v. Moore*,<sup>158</sup> in which the Court stated as follows:

Taxes of this general character are universally deemed to relate, not to property *eo nomine*, but to its passage by will or by descent in cases of intestacy, as distinguished from taxes imposed on property, real or personal, as such, because of its ownership and possession. In other words, the public contribution which death duties exact is predicated on the passage of property as a result of death, as distinct from a tax on property disassociated from its transmission or receipt by will, or as the result of intestacy.<sup>159</sup>

After considering the approach used in other nations and colonies, the Court in *Knowlton* concluded that the “tax laws of this nature in all countries rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being, and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested.”<sup>160</sup>

In *United States v. Wells Fargo Bank*,<sup>161</sup> Justice Brennan’s opinion recognizes that the estate tax, unlike the income tax, is not a direct tax but rather is an excise tax that may be levied only upon the use or transfer of property. That opinion states:

Of course, we begin our analysis of § 5(e) with the statutory language itself. This section states that “[Project Notes], including interest thereon, . . . shall be exempt from all taxation now or hereafter imposed by the United States.” Well before the Housing Act was passed, an exemption of property from all taxation had an understood meaning: the property was exempt from *direct* taxation, but certain privileges of ownership, such as the right to transfer the property, could be taxed. Underlying this doctrine is the distinction between an excise tax, which is levied upon the use or transfer of property even though it might be measured by the property’s value, and a tax levied upon the property itself. The former has historically been permitted even where the latter has been constitutionally or statutorily forbidden. The estate tax is a form of excise tax.<sup>162</sup>

In *United States v. Manufacturers Nat’l Bank*,<sup>163</sup> the Supreme Court observed that “[f]rom its inception, the estate tax has been a tax on a class of events which Congress has chosen to label, in the provision which actually imposes the tax, ‘the *transfer* of the net estate of every

---

Fernandez v. Wiener, 326 U.S. 340 (1946); *United States v. Manufacturers Nat’l Bank of Detroit*, 363 U.S. 194 (1960); *United States v. Wells Fargo Bank*, 485 U.S. 351 (1988).

<sup>158</sup> *Knowlton v. Moore*, 178 U.S. 41 (1900).

<sup>159</sup> *Knowlton*, 178 U.S. at 47.

<sup>160</sup> *Id.* at 56.

<sup>161</sup> 485 U.S. 351 (1988).

<sup>162</sup> *Id.* at 355.

<sup>163</sup> 363 U.S. 194 (1960).



decedent.”<sup>164</sup> In that case, the Court sought to find a transfer, reflecting the critical threshold test of every case in which an estate tax is to be assessed: identify the transfer.

If Congress wanted to tax all property interests owned by a decedent, irrespective of the taxes associated with any transfer that may have occurred as a result of the decedent’s death, it could do so simply by amending I.R.C. § 102 to make bequests, devises, and inheritances subject to the income tax. This is true because the federal income tax is a permissible direct tax on property under the Sixteenth Amendment to the Constitution. Because income is by definition taxed only when received, even the repeal of I.R.C. Section 102 would tax only the transfer-receipt of property. However, until a similar constitutional amendment is adopted with respect to generation-skipping, estate and gift taxes, it is unconstitutional to assess the generation-skipping transfer tax in a manner that constitutes an unapportioned direct tax.

Therefore, only that property which is *transferred* as a result of a taxpayer’s death or by gift during the taxpayer’s life can be subjected to taxation under the federal generation-skipping transfer tax system. The tax cannot be a “wealth tax” or “property tax” on the intrinsic value of an asset to the decedent or donor at the time the transfer occurs; rather, it must be a tax only on the value transferred.

I.R.C. § 2033 expansively defines a decedent’s gross estate to include all assets owned by the decedent at the time of his death for purposes of calculating the decedent’s estate tax, irrespective of whether all or part of those assets are to be transferred to the decedent’s heirs. Specifically, I.R.C. § 2033 provides that “the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.”<sup>165</sup>

Although the I.R.C. expansively defines a decedent’s gross estate to include all assets owned by the decedent at the moment of his death, the U.S. Treasury through its own regulations recognizes that in certain instances such inclusion would be unconstitutional. The decedent’s property must not only be owned by the decedent at the moment of his death, but must also be transferable. The Treasury Regulations provide that “the estate tax . . . is an excise tax on the transfer of property at death and is not a tax on the property transferred.”<sup>166</sup> The Regulations add the following helpful example of an asset of the decedent that in many cases has significant value at the moment of death, but very little transferable value (and, thus, very little value for estate tax purposes):

[A] cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of that part of the lot which is not designed for the interment of the decedent and the members of his family.<sup>167</sup>

---

<sup>164</sup> *Id.* at 198.

<sup>165</sup> I.R.C. § 2033.

<sup>166</sup> Treas. Reg. § 20.2033-1(a).

<sup>167</sup> Treas. Reg. § 20.2033-1(b).

A cemetery lot could be sold for considerable value at the moment of death. However, under the regulations that part of a cemetery lot in which the decedent is buried is not included in the gross estate and is not subject to tax because it is not transferred to the decedent's heirs at death; rather, it is taken or encumbered by the decedent's remains. The logic of the cemetery lot exception in the Treasury Regulations is a tangible example showing that the estate tax is an excise tax on the transfer of property at death and not a tax on the property transferred.

The following example may be even more indicative of the constitutional limitation on the estate tax than the Treasury's example of the cemetery lot: what would be the estate tax result if a decedent died owning the Coca-Cola formula and directed in her will that her executor was to retrieve the formula from her safe deposit box and burn it? What would be the value of that formula for estate tax purposes if the executor burned the formula six months after the decedent's death? Is the value of the transfer equal to what a hypothetical willing buyer would pay for the Coca-Cola formula at the moment of death or what a hypothetical willing buyer would pay for the ashes? The answer is well stated in the Court's opinion in *Ahmanson Found. v. United States*,<sup>168</sup> in which the Ninth Circuit opined:

[T]he valuation of property in the gross estate must take into account any changes in value brought about by the fact of the distribution itself. *It is undisputed that the valuation must take into account changes brought about by the death of the testator.* Ordinarily death itself does not alter the value of property owned by the decedent. However, in a few instances such as when a small business loses the services of a valuable partner, death does change the value of property. *See United States v. Land, supra*, 303 F.2d at 172. *The valuation should also take into account transformations brought about by those aspects of the estate plan, which go into effect logically prior to the distribution of property in the gross estate to the beneficiaries.* Thus, for example, if a public figure ordered his executor to shred and burn his papers, and then to turn the ashes over to a newspaper, the value to be counted would be the value of the ashes, rather than the papers. Similarly, if a will provides that prior to the distribution of the estate a close corporation owned by the testator is to be recapitalized, with one class of stock in the gross estate exchanged for another, the value of the gross estate would be based on the shares resulting from the recapitalization. *Provident Nat'l Bank v. United States, supra*, 581 F.2d at 1086-87.

. . . The estate tax is a tax upon a transfer. . . . [I]t is a tax on the privilege of passing on property not a tax on the privilege of receiving property.<sup>169</sup>

It is clear that the valuation of what is transferred and subject to estate tax, in the words of *Ahmanson*, takes "into account transformations. . . which go into effect logically prior to the distribution of property in the gross estate to the beneficiaries."<sup>170</sup>

---

<sup>168</sup> 674 F.2d 761 (9th Cir. 1981) (emphasis added).

<sup>169</sup> *Id.* at 768.

In another Ninth Circuit case, *Estate of McClatchy v. Commissioner*, 147 F.3d 1089 (9th Cir. 1998) the court also analyzed the affect changing transfer restrictions had on valuation of stock. The decedent, prior to his death, owned two classes of common stock of a corporation, one class of which was subject to federal securities law transfer restrictions on sales as an affiliate of the corporation. Upon the decedent's death, the restricted stock passed to the executor of his estate. The executor, which was not an affiliate, was not subject to the securities law restrictions applicable to the decedent.

The court held that the restricted stock should be valued in the hands of the decedent and should reflect the discount applicable to the restriction on transfer of the stock. The court ruled that death alone in this instance, did not *logically* alter the value of the stock. Instead, the change in value was occasioned by the identity of the transferee (i.e., the executor) and not by death. Thus, according to the court, the property was not transformed prior to the distribution to the heirs of the estate by the lapsing security law restrictions.

## VII. THE BEST POST-MORTEM FAMILY LIMITED PARTNERSHIP PLANNING IDEA (AND A GOOD INSURANCE PLANNING IDEA) – THE NOTE “FREEZE” PARTNERSHIP

### A. Introduction.

The “conventional wisdom” this author sometimes hears on this subject is as follows: “using a family limited partnership always creates administrative problems, it does not solve them;” or “life insurance will be included in an insured's estate if the insurance is owned by a partnership in which he is a partner.” This “conventional wisdom,” under the circumstances discussed below, is incorrect.

The death of a spouse is usually a traumatic experience to the surviving spouse.<sup>171</sup> On top of that experience, the surviving spouse may suddenly be asked to assume new responsibilities because of a will that (from the spouse's perspective) is complicated.

Please consider the following example.

*Example 15: Connie Confused Wishes to Simplify Her Post-Mortem Administrative Life and Also Accomplish Some Estate Planning Goals*

*Carl Confused dies in a year in which the estate tax exemption and the GST exemption are \$2,000,000. Carl and Connie live in a community property state. The financial assets of their community property estate equal \$12,000,000. Carl and Connie, at Carl's death, have not created a family limited partnership. Connie is 70 years of age and is in very good health. Connie is the lifetime beneficiary of the by-pass trust, which is also a generation-skipping trust that Carl created under his will. Connie also wishes to create a generation-skipping trust using her \$1,000,000 gift tax exemption. In order to help defray the cost of paying estate taxes, Connie*

---

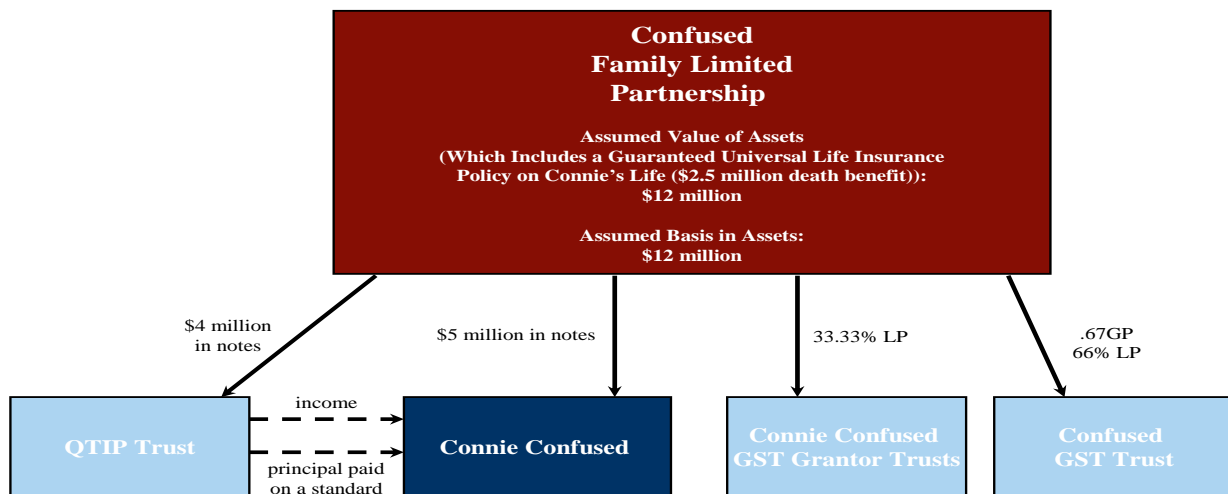
<sup>170</sup> *Id.*

<sup>171</sup> Mrs. Eastland is not sure it would be.

is contemplating purchasing a \$2,500,000 life insurance policy on her life that is a guaranteed universal life policy.

Connie asks her estate planner, Pam Planner, if there is any way to organize the multiple trusts and her financial assets where there is a simplified structure that consolidates the community estate assets and saves future estate taxes. She asks Pam to assume that she will spend \$250,000 a year, after income taxes, with a 3% inflation adjustment.

Pam suggests that Connie and the various trusts form a partnership with the various parties either receiving a note for their contribution to the partnership or receiving partnership interests for their contribution to the partnership. The \$2,000,000 GST trust, in which Connie is a lifetime beneficiary, receives a partnership interest for its \$2,000,000 contribution. The \$1,000,000 GST trust that Connie creates will receive a partnership interest for its \$1,000,000 contribution. Connie receives a 1% partnership interest for her contribution of equity to the partnership on a proportionate basis. Connie receives a note for the remainder of her assets. The various QTIP trusts receive notes for their contribution to the partnership. The notes pay the AFR interest rate. The diagram below illustrates the concept:



### B. Non-Tax Reasons For the Creation of a Note Freeze Partnership.

Under the unified transfer tax system, the first spouse to die typically creates at least one trust in order to take advantage of the exemption equivalent (the typical by-pass trust). In order to utilize the exemption from the generation-skipping transfer tax on large estates, it is not uncommon to create three trusts under the will of the first spouse to die: (i) a by-pass trust which is designated as an exempt trust for generation-skipping transfer tax purposes; (ii) a marital trust which is also exempt for generation-skipping transfer tax purposes; and (iii) a residual marital trust which is not exempt for generation-skipping transfer tax purposes (this third portion sometimes may be given outright to the surviving spouse instead of in trust).

The potential to have multiple trusts, especially when compared to a family's financial management situation immediately prior to the death of the first spouse, may cry out for the need

to have the trusts function in a coordinated fashion. In many cases, perhaps most, there is not any trust at all prior to the first spouse's death. All of a sudden the family's assets are divided and may be subject to different financial management standards because the trusts have different distribution provisions and beneficiaries.

The complexities and expense associated with multiple trusts can be overwhelming for some clients, but can be alleviated with the use of family limited partnerships (or L.L.C.s) in combination with notes, as explained further below. The trustees of the various trusts (after the trusts are funded) could join with the surviving spouse to contribute assets to a family limited partnership (or L.L.C.) during estate administration and receive either partnership interests or notes in consideration for those contributions.

C. A Partnership That is Created After the Death of a Spouse May Take Advantage of the Estate Assets Receiving a New Basis At Death.

Under the general rule of I.R.C. § 1014(a), the basis of property in the hands of a person acquiring the property from a decedent equals the fair market value of the property at the date of the decedent's death.<sup>172</sup> Basis thus "steps up" or "steps down," depending on the value at the date of death as compared to the decedent's pre-death basis in the property. The new basis at death rule allows postmortem planning opportunities, which are not available immediately prior to a person's death because assets may be sold or exchanged without triggering any taxable gain or loss.

The new basis at death rule also impacts pre-death planning for families with highly appreciated assets who are considering a family limited partnership. In addition to considering whether the assets are of a type, which a family ever would sell, special attention must be given to the "754 election" and its impact on distributions of appreciated assets to partners and on sales or exchanges of partnership interests.

For example, assume no gain is recognized on a partner's contribution of appreciated assets to a partnership under I.R.C. § 721(b). The partner's "outside basis" in the partnership interest received equals the exchanged or substituted basis from the property contributed under I.R.C. § 722, and the partnership's "inside basis" in the property itself equals that same amount. Thus, gain is not recognized but is preserved.

Now assume a partner dies and transfers his or her partnership interest by will. The legatee's outside basis generally equals the date of death value under I.R.C. § 742, but the partnership's inside basis in its assets is not changed as a result of that transfer under the general rule of I.R.C. § 743. Thus, the partnership might sell an asset at a gain, and the legatee could owe a share of the gain even though he or she should have enough basis to avoid at least some of the gain because of the "step-up" under I.R.C. § 1014.

---

<sup>172</sup> I.R.C. § 1014(a).

Because of marketability and minority interest discounts which are attributable to partnership interests, however, the value of a partnership interest passing at death is usually less than the proportionate share of the value of the underlying partnership assets. Consequently, depending on the discounted value of the partnership interest at the date of death, and further depending on the basis in the hands of the decedent when the partnership was created (the starting point), it is possible for there to be a “step-down” in basis.

Assuming that a basis “step-up” is warranted, in order to avoid taxing the legatee on the appreciation of his or her proportionate share of partnership assets prior to the date of the transferor’s death, the partnership may elect under I.R.C. § 754 to adjust the basis of its assets under I.R.C. § 743(b), but for the legatee only. The mechanics of the election are quite complicated, in that it is not the same thing as changing the basis of all of the partnership’s assets. Only the legatee has a special inside basis in his share of partnership assets, and capital accounts do not change.

If the client is not engaged in partnership planning before his death there is, of course, no “step-down” in basis from partnership planning. The beneficiaries of the client’s estate could contribute assets to a partnership in exchange for notes and there would be (in all likelihood) very little (if any) capital gain generated by that contribution.

D. I.R.C. § 2701 May Apply To Postmortem Partnership “Freeze” Transactions, But Should Not Apply to Note Freeze Partnerships.

The indirect ownership rules of I.R.C. § 2701(e)(3) and Treas. Reg. § 25.2701-6(a)(4) might treat a postmortem recapitalization partnership freeze or a new straight-up partnership freeze as if it were done by the beneficiaries of the estate. I.R.C. § 2701 applies to transfers of junior interests in entities to certain family members if the transferor or certain other family members hold or retain a senior interest in the entity and the family controls the entity. The deemed transfer rules of I.R.C. § 2701 apply to the creation of a new entity in addition to the recapitalization of an existing entity.<sup>173</sup>

In general, if an owner transfers a junior interest in the entity down the family tree, and the transferor or another family member higher up on the family tree holds or retains a preferred interest in the entity, then the subtraction method must be used to determine the value of the transfer for gift tax purposes. To determine the value of the deemed gift, the transferor generally must start with the total value of the enterprise and then subtract the value of the interests retained. However, akin to the approach taken by I.R.C. § 2702, only certain retained interests are given any value, limiting an estate planner’s ability to achieve what had been viewed by the Service as abusive entity freezes. In general, zero value may be assigned to distribution, liquidation, put, call or conversion rights other than rights to receive cumulative preferred distributions payable on a periodic basis at a fixed rate. Thus, discretionary rights, which are not likely to be exercised in the family context, receive no value for purposes of lowering the amount of the gift.

---

<sup>173</sup> I.R.C. § 2701(e)(5); Treas. Reg. § 25.2701-1(b)(2)(i)(A).

Debt and certain guaranteed payment entity interests are not subject to the valuation rules under I.R.C. § 2701.<sup>174</sup> Thus, if a “note” freeze is effectuated with the creation of the partnership, the valuation rules of I.R.C. § 2701 may not apply.

E. The Advantage of Life Insurance Being Owned By a Note “Freeze” Partnership.

1. Introduction.

Assume that Connie, because of her age, is considering purchasing guaranteed universal life insurance on her life. Connie believes that, coupled with her other planning, a \$2,500,000 life insurance policy would defray most, if not all, of her future estate taxes. The use of life insurance trusts for planning for clients’ ownership of life insurance has certainly been a popular device for several years. The estate planner has always known that there were some inherent disadvantages of using an irrevocable trust arrangement in an effort to remove life insurance from estate taxation of the insured’s estate: (i) the arrangement is irrevocable; (ii) the insured could not be the trustee of the trust; and (iii) most importantly, it involved the use of a trust.

A life insurance trust is, after all, a trust. The complexities and “restraints” of trust law, and the tax consequences associated with trust ownership, obviously follow from using a trust. However, the trust ownership form offers the planner the advantages that are inherent in trust law including protection of the corpus of the trust from a beneficiary’s creditors, centralized control, and the possible “tying-up” of property for several generations.

The partnership form of owning an asset as opposed to the trust form of owning an asset is governed by significantly different legal principles than exist under trust law. A partnership is a form of doing business governed by certain state statutes and contract law principles. The owners of a partnership, the managers of a partnership, and dispositive pattern of distributions from a partnership, all may be changed without the necessity of court involvement. Tax law has an entirely different scheme for taxing partnerships, both for income tax purposes and estate tax purposes, than it does for trusts. Those flexibility and tax differences have led this writer to conclude that in many circumstances partnerships may have an advantage over trusts in the ownership of insurance.

2. Flexibility advantage of entities over trusts.

An irrevocable (nonamendable) insurance trust is inherently an inflexible document. A patriarch or matriarch who wishes to retain ownership strings over an insurance trust that allows a “change” in the instrument is asking for trouble. An agreement creating an entity can be a flexible arrangement. For instance, a partnership agreement is a contract. Like all contracts, if all parties to the contract wish to change it, a contract may be changed. A patriarch or matriarch, who is a

---

<sup>174</sup> See I.R.C. § 2701(c)(1)(B)(iii); Treas. Reg. §§ 25.2701-1(a)(1); 25.2701-2(b)(1) (providing that, for I.R.C. § 2701 to apply, applicable family members must hold an applicable retained interest; and an applicable retained interest is defined as an *equity* interest). See also Ronald D. Aucutt, *Section 2701 Estate Freezes*, ALI-ABA Course of Study--Planning for Large Estates (New York, April 1995).

small minority economic partner, may retain certain control aspects of the partnership without any additional adverse tax consequences that are not already inherent in that partner's economic interest. For instance, as noted in the discussion under 3 below, even if a partner has a 10% economic interest in a partnership (and has certain management controls), the fact that that partner has the power to terminate or force a liquidation of the partnership should not affect adversely his or her estate taxes beyond that 1% economic interest.

One of the more commonly mentioned drawbacks of the use of irrevocable insurance trusts is the possibility that the object of the insured's bounty may change at a time when the insured is no longer insurable. For instance, if one of a client's children becomes a "major disappointment," at a time when the client is no longer insurable, significant complications arise with respect to the client's insurance that is being held by the trustee of an insurance trust. An independent trustee may be reluctant to assign that policy from the insurance trust to the client even for full and adequate consideration. If a client is a managing partner of a partnership, that client may be willing to risk any fiduciary liability that may be inherent in assigning an asset of the partnership to the client for full and adequate consideration. Additionally, the family partners of a family partnership all may elect to terminate the partnership before the end of its designated term. Through the dissolution process, the managing partner may have the freedom to allocate to some partners cash and to other partners assets in kind (including insurance policies).

### 3. The control advantage of using entities.

One of the disadvantages of the insurance trust form of ownership is that generally the insured may not be the trustee of an insurance trust which owns insurance on the life of the insured. The Service had formerly maintained for many years that even if the decedent had no beneficial interest in the trust, a decedent's ability under the terms of the trust to control enjoyment of the insurance proceeds through his authority to obtain loans and to cancel or convert the policy was enough to constitute an incident of ownership.<sup>175</sup> The Service had mixed success on this position in the courts. The Service, in Rev. Rul. 84-179,<sup>176</sup> moderated its position. The proceeds of the policy are not included in the insured-trustee's estate if (i) the insured-trustee did not retain any powers as a settlor, but his discretionary powers were conferred on him by another person in an unrelated transaction; (ii) the insured-trustee did not transfer the policy or provide consideration for maintaining the policy; and (iii) the insured-trustee could not exercise the power to his own benefit.

#### *Example 16: Does a Managing Partner Have Incidents of Ownership in a Life Insurance Policy Which Is Payable to a Partnership?*

*Connie Confused is the managing partner of a partnership ("the Partnership") that has many investments (including an investment in another family partnership). Among the investments of the Partnership is a life insurance policy on her life payable to the Partnership. Connie Confused is a 1% partner of the Partnership and is managing partner of the Partnership. Generation skipping trusts are the other partners of the Partnership. What are the income tax*

---

<sup>175</sup> See Rev. Rul. 76-261, 1976-2 C.B. 276.

<sup>176</sup> Rev. Rul. 84-179, 1984-2 C.B. 195.



*consequences and estate tax consequences of a payment of the insurance proceeds to the Partnership?*

Please note that in this example, joint profit making activities were being carried on in addition to the partnership's investment in life insurance. It is important that those activities exist in order to ensure that the entity is considered a "partnership" under I.R.C. § 7701(a)(2).

The following income tax and estate tax results should accrue:

(1) The basis of each partner's partnership interest in the Partnership will be increased as a result of the Partnership's receipt, as the designated beneficiary, of insurance proceeds payable under a policy covering Connie Confused's life.

(2) The insurance proceeds payable to the Partnership pursuant to an insurance policy owned by the Partnership covering Connie Confused's life will not be included in the Taxpayer's estate for federal estate tax purposes under I.R.C. § 2042. Only Connie's 1% interest in the Partnership will be taxable in her estate under I.R.C. § 2033 (and, thus, indirectly, 1% of the proceeds will be taxable in her estate, perhaps on a discounted basis).

a. Law and authorities supporting the proposition that the partners' basis in partnership interest will be increased as a result of insurance proceeds paid directly to the partnership.

Any insurance proceeds paid to the Partnership as a result of Connie Confused's death, pursuant to a Partnership-owned policy on Connie Confused's life, is excluded from the Partnership's income and accordingly should result in an increase in the basis of each partner's partnership interest, according to his or her distributive share thereof.

I.R.C. § 705(a) sets forth the general rule for determining a partner's basis in his partnership interest:

The adjusted basis of a partner's interest in a partnership shall, except as provided in subsection (b), be the basis of such interest determined under section 722 (relating to contributions to a partnership) or section 742 (relating to transfers of partnership interests) –

(1) increased by the sum of his distributive share for the taxable year and prior taxable years of –

(A) taxable income of the partnership as determined under section 703(a),

(B) income of the partnership exempt from tax under this title, and

(C) the excess of the deductions for depletion over the basis of the property subject to depletion;

(2) decreased (but not below zero) by distributions by the partnership as provided in section 733 and by the sum of his distributive share for the taxable year and prior taxable years of –

(A) losses of the partnership; and

(B) expenditures of the partnership not deductible in computing its taxable income and not properly chargeable to capital account; and

(3) decreased (but not below zero) by the amount of the partner's deduction for depletion for any partnership oil and gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such partner under section 613A(c)(7)(D).<sup>177</sup>

The purpose of the I.R.C. § 705(a) adjustments is to keep track of a partner's "tax investment" in the Partnership, with a view toward preventing double taxation or exclusion from taxation of income items upon ultimate disposition of the partnership interest. If a partner's basis is not increased by his share of the partnership's income, he would be taxed on such income a second time upon the sale of his interest. While double taxation of this nature is characteristic of corporate taxation, it is not intended to be characteristic of partnership taxation.

Under I.R.C. § 705(a)(1)(B), as reflected above, a partner's basis is to be increased by his distributive share of partnership tax-exempt income.<sup>178</sup> Treas. Reg. § 1.705-1(a)(2)(ii) refers to this as "tax-exempt receipts of the partnership."<sup>179</sup> This increase in basis is necessary to prevent taxation of such income upon sale of the partner's interest, and has the effect of making permanent the tax-exempt character of the income.

I.R.C. § 101(a) provides generally that gross income does not include amounts received under a life insurance contract, if such amounts are paid by reason of the death of the insured.<sup>180</sup> As a result of this statutory exemption, the Partnership will not recognize income upon its receipt of insurance proceeds payable under an insurance policy on Connie Confused's life. Accordingly, the basis of each partner in the Partnership should be increased by his distributive share of such insurance proceeds, so that such proceeds are not indirectly taxed thereafter.

---

<sup>177</sup> I.R.C. § 705(a).

<sup>178</sup> *Id.*

<sup>179</sup> Treas. Reg. § 1.705-1(a)(2)(ii).

<sup>180</sup> I.R.C. § 101(a).

- b. Law and authorities supporting the proposition that insurance proceeds payable as a result of Connie Confused's death to the partnership (or other entity) will only be included under I.R.C. § 2033 and will not be included in Connie Confused's estate pursuant to I.R.C. § 2042.

It should be noted that the partnership in this Example 16 owned many assets, including an insurance policy. If a partnership only owns an insurance policy, it may not be considered a partnership for state law purposes because it only owns a "personal use" asset--the insurance. It is recommended that the partnership own assets which will qualify the partnership as a partnership under state law and I.R.C. § 7701(a)(2). For instance, the partnership could own an interest in another partnership (which could be used to service the insurance contract) and the insurance contract.

Any proceeds payable upon Connie Confused's death to the Partnership pursuant to an insurance policy on the life of Connie Confused which is owned and paid for by the Partnership should not be includible in Connie Confused's gross estate pursuant to I.R.C. § 2042 because (i) no amount of the insurance proceeds would be receivable by the executor of Connie Confused's estate; and (ii) Connie Confused does not possess, nor could she exercise, either alone or in conjunction with any other person, any of the incidents of ownership of any such policy; instead, the value of Connie Confused's ownership percentage interest in the Partnership will be increased by a corresponding percentage interest of the value of the proceeds payable to the Partnership, pursuant to I.R.C. § 2033.

I.R.C. § 2033 provides that the value of a decedent's gross estate shall include the value of all property to the extent of the decedent's interest therein at the time of his death.<sup>181</sup> Treas. Reg. § 20.2031-3 provides in part that the fair market value of any interest of a decedent in a business, whether a partnership or a proprietorship, is the net amount which a willing purchaser would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts; the net value is to be determined on the basis of all relevant factors, which include factors set forth in paragraph (f) of Treas. Reg. § 20.2031-2 relating to the valuation of corporate stock.<sup>182</sup>

Treas. Reg. § 20.2031-2(f) provides in part that, in valuing a corporate interest, consideration must be given to non-operating assets, including proceeds of life insurance policies payable to or for the benefit of the company, but only to the extent such non-operating assets have not already been taken into account in the determination of net worth, prospective earning power, and dividend-earning capacity.<sup>183</sup> The Treasury Regulation does not intend that the business-owned non-operating assets are to be included more than once in determining value.

---

<sup>181</sup> I.R.C. § 2033.

<sup>182</sup> Treas. Reg. § 20.2031-3.

<sup>183</sup> Treas. Reg. § 20.2031-2(f).

Therefore, I.R.C. § 2033, when applied to the valuation considerations set forth in Treas. Regs. §§ 20.2031-2 and 20.2031-3, would include, within the value of Connie Confused's interest in the Partnership, a percentage share of the insurance proceeds payable to the Partnership at the time of her death for federal estate purposes.<sup>184</sup>

I.R.C. § 2042(1) requires the proceeds of life insurance on a decedent's life to be included in the decedent's gross estate if such proceeds are receivable by the decedent's executor.<sup>185</sup> Treas. Reg. § 20.2042-1(b)(1) explains that:

Section 2042 requires the inclusion in the gross estate of the proceeds of insurance on the decedent's life receivable by the executor or administrator, or payable to the decedent's estate. It makes no difference whether or not the estate is specifically named as the beneficiary under the terms of the policy. Thus, if under the terms of an insurance policy the proceeds are receivable by another beneficiary but are subject to an obligation, legally binding upon the other beneficiary, to pay taxes, debts, or other charges enforceable against the estate, then the amount of such proceeds required for the payment in full (to the extent of the beneficiary's obligation) of such taxes, debts, or other charges is includible in the gross estate. Similarly, if the decedent purchased an insurance policy in favor of another person or a corporation as collateral security for a loan or other accommodation, its proceeds are considered to be receivable for the benefit of the estate.<sup>186</sup>

The proceeds of the proposed insurance policy will be payable directly to the Partnership. The Partnership will not be subject to any obligation to pay any taxes, debts, or other charges that may be enforceable against Connie Confused's estate, nor will the Partnership allow the proceeds of the proposed insurance policy to be used as collateral security for a loan or other accommodation of Connie Confused. Therefore, inasmuch as the proposed insurance proceeds shall be payable to the Partnership and in no way to or for the benefit of Connie Confused's estate, I.R.C. § 2042(1) should not be applicable to cause inclusion of the insurance proceeds in Connie Confused's gross estate.

I.R.C. § 2042(2) requires the proceeds of life insurance on a decedent's life to be included in the decedent's gross estate if the decedent possessed at his death any incidents of ownership, exercisable either alone or in conjunction with any other person.<sup>187</sup> Treas. Reg. § 20.2042-1(c)(2) elaborates on the meaning of the term "incidents of ownership":

For purposes of this paragraph, the term "incidents of ownership" is not limited in its meaning to ownership of the policy in the technical legal sense. Generally speaking, the term has reference to the right of the insured or his estate

---

<sup>184</sup> I.R.C. § 2033.

<sup>185</sup> I.R.C. § 2042(1).

<sup>186</sup> Treas. Reg. § 20.2042-1(b)(1).

<sup>187</sup> I.R.C. § 2042(2).

to the economic benefits of the policy. Thus, it includes the power to change the beneficiary, to surrender or cancel the policy, to assign the policy, to revoke an assignment, to pledge the policy for a loan, or to obtain from the insurer a loan against the surrender value of the policy, etc. See subparagraph (6) of this paragraph for rules relating to the circumstances under which the incidents of ownership held by a corporation are attributable to a decedent through his stock ownership.<sup>188</sup>

Treas. Reg. § 20.2042-1(c)(6) clarifies that a corporation's ownership of a policy on a controlling shareholder's life will not be attributed to such shareholder merely because of his stock ownership:

In the case of economic benefits of a life insurance policy on the decedent's life that are reserved to a corporation of which the decedent is the sole or controlling stockholder, the corporation's incidents of ownership will not be attributed to the decedent through his stock ownership to the extent the proceeds of the policy are payable to the corporation. Any proceeds payable to a third party for a valid business purpose, such as in satisfaction of a business debt of the corporation, so that the net worth of the corporation is increased by the amount of such proceeds, shall be deemed to be payable to the corporation for purposes of the preceding sentence. . . . Except as hereinafter provided with respect to a group-term life insurance policy, if any part of the proceeds of the policy are not payable to or for the benefit of the corporation, and thus are not taken into account in valuing the decedent's stock holdings in the corporation for purposes of I.R.C. § 2031, any incidents of ownership held by the corporation as to that part of the proceeds will be attributed to the decedent through his stock ownership where the decedent is the sole or controlling stockholder. . .<sup>189</sup>

As indicated by Treasury Reg. § 20.2042-1(c)(6), in the corporate context, control of a corporation will not cause the proceeds of a corporate-owned insurance policy on the life of the controlling shareholder to be included in the shareholder's gross estate, to the extent the insurance proceeds are payable to the corporation. This same position, while not specifically addressed in the Treasury Regulations, should be applicable to the proceeds of an insurance policy owned by a partnership on the life of the controlling partner, to the extent the insurance proceeds are payable to the partnership.<sup>190</sup>

Where the beneficiary of an insurance policy on the life of a partner owned by a partnership is the *partnership*, both the Tax Court and the Service have previously held that I.R.C. § 2042 does not apply to such insurance proceeds, even if the insured is a *managing* or *controlling*

---

<sup>188</sup> Treas. Reg. § 20.2042-1(c)(2).

<sup>189</sup> Treas. Reg. § 20.2042-1(c)(6).

<sup>190</sup> See P.L.R. 96-23-024 (Mar. 6, 1996).

partner.<sup>191</sup> The *Estate of Knipp* decision concerns a decedent who at the time of his death was a 50% partner in a partnership, which held ten insurance policies on his life. The partnership paid the premiums on all of the policies, and the insurance proceeds were payable to the partnership. The Tax Court examined whether at the time of his death the decedent possessed incidents of ownership over such policies exercisable either alone or in conjunction with another person. The Tax Court notes that the insurance policies were assets of the partnership, and that the partnership had complete control over them, holding all of the incidents of ownership: “Decedent, as an individual, had no power to exercise rights of ownership over the assets and sale of his partnership interest would not have transferred any rights in specific assets of the firm.”<sup>192</sup> The Tax Court applied the “entity” theory (as opposed to the “aggregate” theory) in analyzing a partner’s rights to partnership assets. Under the Uniform Partnership Act (and the Revised Uniform Partnership Act), a partner has no rights with respect to partnership assets. Accordingly, the Tax Court held that the proceeds of the ten policies were not includible in the gross estate under the predecessor to I.R.C. § 2042(2).<sup>193</sup>

In Rev. Rul. 83-147, the Service indicates that it agrees with the result in *Estate of Knipp*.<sup>194</sup> This Revenue Ruling examines the issue of whether an insured partner is deemed to possess the requisite incidents of ownership under I.R.C. § 2042(2) by virtue of his position as a partner in a partnership that owns an insurance policy on his life, the proceeds of which are payable other than to or for the benefit of the partnership. The Service reviews *Estate of Knipp* and states that it continues to acquiesce in the result therein on the basis that “in that case the insurance proceeds were paid to the partnership and inclusion of the proceeds under the predecessor of I.R.C. § 2042 would have resulted in the unwarranted double taxation of a substantial portion of the proceeds, because the decedent’s proportionate share of the proceeds of the policy were included in the value of the decedent’s partnership interest.”<sup>195</sup> The Service then refers to Treas. Reg. § 20.2042-1(c)(6), “which adopts a similar rule with regard to life insurance proceeds paid to or for the benefit of a corporation.”<sup>196</sup> The Service will not include the life insurance under I.R.C. § 2042, because it is already partially included under I.R.C. § 2033. The Service concluded that although it continues to agree with the result in *Estate of Knipp*, “it does not agree with any implication therein that incidents of ownership possessed by a partnership should not be attributed to an insured partner *when the policy proceeds are paid other than to or for the benefit of the partnership*.”<sup>197</sup> Despite state statutory law, which rejects the aggregate theory of partnerships, the Service believes the aggregate theory is the correct theory.<sup>198</sup>

---

<sup>191</sup> *Estate of Knipp v. Commissioner*, 25 T.C. 153 (1955), *aff’d, on another issue*, 244 F.2d 436 (4th Cir. 1957), *cert. denied*, 355 U.S. 827 (1957), *acq. in result*, 1959-1 C.B. 4.

<sup>192</sup> *Id.* at 169.

<sup>193</sup> *Id.*

<sup>194</sup> Rev. Rul. 83-147, 1983-2 C.B. 158.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.* (emphasis added).

<sup>198</sup> See G.C.M. 39,034 (Sept. 21, 1983), which reviewed Rev. Rul. 83-147.

*Estate of Knipp* is not the only case in which the Tax Court applies the “entity” theory in determining whether I.R.C. § 2042(2) is applied. In *Watson v. Commissioner*,<sup>199</sup> the insured was associated with an individual (“Sellers”) in a variety of business ventures under an oral partnership agreement. Each of the insured and Sellers purchased insurance on the other’s life, the proceeds of which were to be used for partnership purposes. Although each person paid for the first year’s premium for the policy he purchased out of his individual funds, the premiums for renewal were paid out of a partnership bank account and were charged on the partnership books as a partnership expense. The record was not clear as to whether Sellers were the actual owner of the policy on the insured’s life after the first year or whether the partnership became the owner at the end of that year and remained such owner at the time of the insured’s death; however, the Court held that, “if the latter is the case, the [insured] would still not be considered as possessing the requisite incidents of ownership merely by virtue of his control as a 50% partner.”<sup>200</sup>

The Tax Court extends its position that I.R.C. § 2042(2) does not cause inclusion of insurance proceeds in an insured’s estate merely because of the insured’s status as a partner, where the proceeds of the policy are payable to the partnership pursuant to the terms of an agreement irrevocably committing them to the purchase of the insured’s partnership interest. In the *Estate of Fuchs v. Commissioner*,<sup>201</sup> insurance was taken out on each partner’s life, with the agent being instructed to make each designated beneficiary the owner of the policy. The insurance was acquired pursuant to the terms of an oral buy-sell agreement. The agent failed to carry out their instructions; the policies were issued with the insured as the owner. The Court concludes that the insured’s authority over the policy is so circumscribed as the result of the oral buy-sell agreement as to preclude the finding that such authority constituted an incident of ownership.<sup>202</sup> Further examples of the Tax Court’s position on this issue are found in *Estate of Infante v. Commissioner*,<sup>203</sup> and *Estate of Tompkins v. Commissioner*.<sup>204</sup>

The Tax Court is reluctant to ascribe incidents of ownership to a partner-insured of an insurance policy owned by a partnership. As noted above, the Service agrees with that position where the partnership is the sole beneficiary. Underlying the Service’s reasoning seems to be the analogy to the treatment of insurance held by a corporation controlled by the insured-majority shareholder, as addressed in Treas. Reg. § 20.2042-1(c)(6). If the partnership is *not* the sole beneficiary of such an insurance policy, then the implications of I.R.C. § 2042(2) could be serious with respect to each general partner who may be a “control person” with respect to such partnership-owned insurance.

---

<sup>199</sup> 36 T.C.M. (CCH) 1084 (1977).

<sup>200</sup> *Id.* at 1088.

<sup>201</sup> 47 T.C. 199 (1966).

<sup>202</sup> 47 T.C. at 203-04.

<sup>203</sup> 29 T.C.M. (CCH) 903 (1970).

<sup>204</sup> 13 T.C. 1054 (1949).

It is advisable for the partnership agreement to negate the implication of any power of a partner to exercise any incident of ownership with respect to partnership-owned policies on such partner's life. Consider the following provision for this purpose:

If the partnership shall own any life insurance policy insuring the life of any partner or possess any incident of ownership with respect to any such policy, the insured partner shall have no right or power to exercise or to participate in the exercise of any of the incidents of ownership with respect to such policy, including, but not limited to, the right to borrow from the insurance company or any other person using such policy as collateral, to change or to prevent any change in the beneficiary designation under such policy, and to surrender the policy or any portion thereof for its cash surrender value or to cancel or terminate any such policy. Any exercise of any incident of ownership in any such policy shall be exercised only by a majority of the partners other than the insured partner. Any decision of the partnership to acquire or dispose of a life insurance policy insuring the life of any partner shall be made by a majority in interest of the partners other than the insured partner and without any participation by the insured partner.<sup>205</sup>

F. Other Advantages of the Technique.

One of the significant advantages of this plan is that future changes in the law with respect to the ability to take valuation discounts with respect to partnerships should not be a concern for Connie. First of all, what is taxable in her estate will be notes. She will not be the owner of any of the partnership interests, except perhaps a very small amount, which may only give her the power to control the investments of the partnership.

IRC Section 2036 should also not be a concern. Connie is not the grantor of the GST trust that is created for her benefit. While Connie is the grantor of the GST trust created for the benefit of her family, she will not be the trustee or beneficiary of that trust. Thus, the applicability of I.R.C. Section 2036 may not be a concern.

This arrangement may ensure that Connie has plenty cash flow for her consumption needs during her lifetime. She is entitled to interest and principal of the notes that are made by the partnership, either because those notes are paid to her individually or because she is a beneficiary of the QTIP trusts that are drafted to maintain her standard of living. If at a later time the notes are totally consumed in payment of her needs, she will still be the beneficiary of the trust, which is entitled to two-thirds of the then cash flow of the partnership (i.e., she is a beneficiary of the GST trust).

Another advantage is that the arrangement is relatively simple to administer. The first cash flow (except for what is necessary to pay income taxes at the trust level) can be utilized by the partnership to retire the notes that are either owned by Connie or the marital deduction trust.

---

<sup>205</sup> David L. Cornfeld, *Partnerships as a Panacea for Life Insurance Problems (Penicillin or Placebo)*, The Twenty-Ninth Annual Philip E. Heckerling Institute on Estate Planning (1995).



G. The Comparative Results of the Proposed Post-Mortem Plan.

Please note the following table, which compares the result that would have accrued had Connie not done any further planning with the hypothetical plan (assuming she lives 20 years, consumes \$250,000 a year, after inflation) the family assets earn 8% before taxes, with 2% being taxed as ordinary income and 6% being taxed as capital gains rates with an assumed 30% turnover. See Schedule 7 attached to this paper.

Table 9

Technique	Confused Children	Confused GST Trust	Consumption – Direct Cost	Consumption – Investment Opportunity Cost	Investment Opportunity Cost/(Benefit) of Buying Life Insurance	IRS – Income Tax	IRS – Investment Opportunity Cost	IRS – Estate Tax (at 45%)	Total
No Further Planning; Bequeaths Estate To Family	\$14,538,178	\$7,041,630	\$6,717,594	\$7,556,636	\$0	\$5,569,070	\$5,477,142	\$9,031,236	\$55,931,486
Hypothetical Integrated Income and Estate Tax Plan With a Partnership; Bequeaths Estate To Family	\$3,701,671	\$25,629,169	\$6,717,594	\$7,556,636	\$377,325	\$5,777,962	\$5,187,944	\$983,185	\$55,931,486

H. Conclusions.

Not only does the proposed structure greatly simplify the administration problems for Connie, but it also has the potential of saving considerable transfer taxes. If Connie should die early (e.g., in 5 years) the life insurance policy forms a substantial “hedge” against an early death.

VIII. BEST LIFE-TIME CHARITABLE PLANNING IDEA – PARTNERSHIP, OR A LIMITED LIABILITY COMPANY, CREATES A CHARITABLE REMAINDER TRUST WITH THE PARTNERSHIP UNITS EVENTUALLY BEING SOLD TO A GRANTOR TRUST

A. Introduction and Case Study Example.

The “conventional wisdom” this author sometimes hears on this subject is as follows: “you can no longer use the CRUT technique and benefit your family;” or “the problem with charitable planning is that it will greatly decrease what a client’s family will receive.” This “conventional wisdom,” under the circumstances discussed below, is incorrect.

Charitable remainder trusts, particularly charitable remainder unitrusts (“CRUTs”) are a very popular planning technique for the charitably inclined client. While the technique has significant benefits to the client and his favorite charitable causes, one downside is the perception

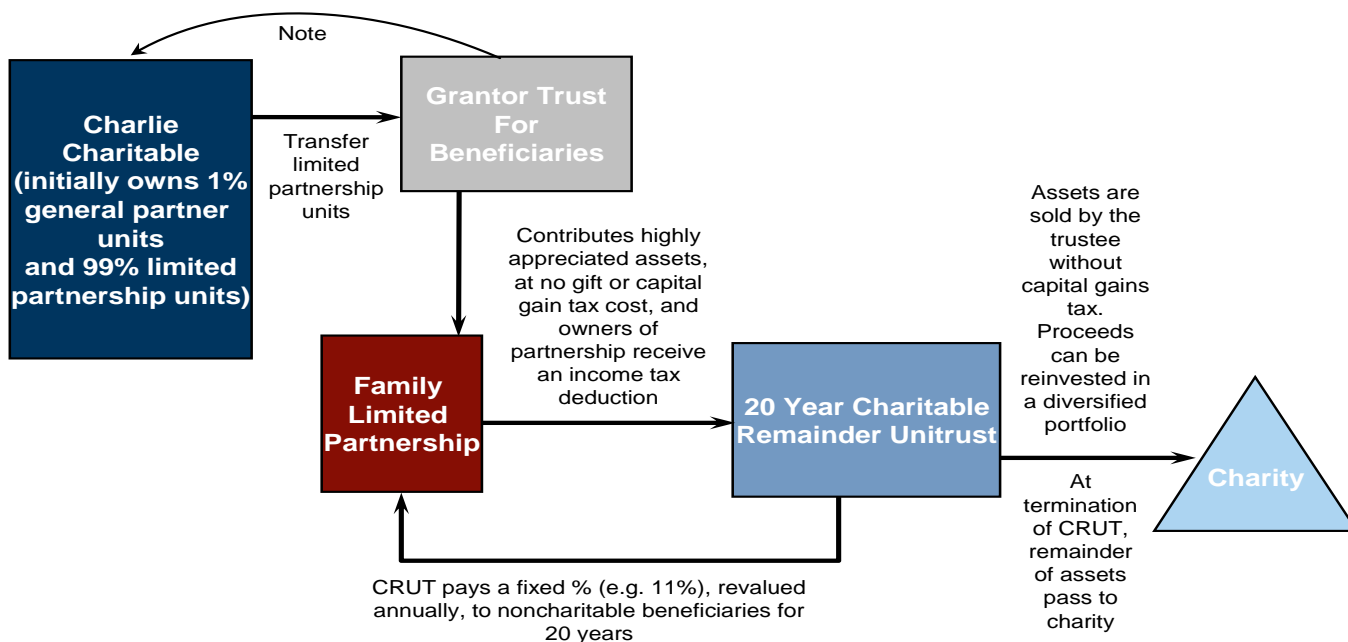
that it is difficult to benefit a client's family with the technique. Perhaps that is not true, if the technique is used synergistically with certain other estate planning techniques, that is, sale of limited liability company or limited partnership units to a grantor trust. What if that synergistic planning simulated a capital gains tax and estate tax holiday for the client and his family with the client's family charity receiving 23% of his wealth on his death? Consider the following example:

*Example 17: Charlie Charitable Wishes to Benefit His Family,  
His Charitable Causes and Himself With a Monetization Strategy*

*Charlie Charitable, age 63, is widowed and has three adult children. Charlie owns \$10 million of a publicly traded stock with a zero basis. He plans to spend \$150,000 per year, indexed for inflation. If Charlie's spending needs are secure, he would like to give a large proportion of his after-tax wealth to his family, but he would still like to give between one-quarter and one-third of what he owns to his favorite charity. Charlie wants to diversify his stock position, but does not want to incur a big capital gains tax. Charlie has considered a CRUT, but he is concerned that charity could receive a windfall at the expense of his family if he dies prematurely. He is not certain he will qualify for favorable life insurance rates to insure against that risk and he generally dislikes insurance as a pure investment vehicle. Charlie would like his family to be eligible to receive some funds now, but he does not want to bear the gift tax consequences of naming family members as current CRUT beneficiaries. Charlie is also willing to take steps to reduce potential estate tax, and he needs help sorting through his options. He would like to involve his children in his estate planning discussions so they can learn about their obligations as fiduciaries and beneficiaries and can start to plan their own family and financial affairs.*

B. A General Review of the Solution.

Charlie's lawyer, Pam Planner, has a plan to help Charlie achieve his objectives which significantly reduces the capital gains tax on the sale of his appreciated stock and minimizes the estate tax cost of transferring the stock proceeds to his family. Pam suggests that Charlie fund a family limited partnership with his stock, and that the partnership create a twenty year term charitable remainder unitrust ("CRUT"). The partnership will keep an up front stream of payments for twenty years that represents a 90% actuarial interest in the CRUT. Charlie's favorite charity will receive the remaining CRUT assets at the end of the twenty year term. The trustee of the CRUT could sell the stock and construct a diversified investment portfolio without triggering immediate capital gains tax consequences. If Charlie owns most of the partnership when the CRUT is created, most of the income tax charitable deduction for charity's 10% actuarial interest will flow through to him. Charlie could then sell his limited partnership interests to an intentionally defective grantor trust in exchange for a note. Charlie can allocate GST exemption to the grantor trust so his family's wealth is potentially protected from gift, estate and GST taxes forever. See the Illustration below:



Charlie is interested in Pam’s idea but it seems complicated, so he wonders if the plan is really that much better than just selling his stock. He also wonders how much taxation truly affects the real wealth he can transfer to his family over time. Charlie has already created a successful intentionally defective GST exempt trust so he has been through the planning process before. Still, he is eager to get a lucid explanation of some planning techniques to start educating his children and he wants to understand how the techniques can be combined to achieve his objectives. To address these questions, Pam reviews the basic concepts underlying the strategy, the rules that apply to each component and the projected outcome.

### C. The Concepts.

Clients and their advisors often focus on an asset’s return without adjusting for the timing and cost of taxes. Surprisingly, real wealth over time depends less upon the return clients earn and more about the return clients keep. Although understanding the details of certain estate planning techniques requires mastery of an arcane language, the basic engineering relies on a few key concepts.

#### 1. Leverage.

Simply stated, leverage occurs when a relatively small tool produces disproportionately large results. When Charlie transfers assets which are entitled to legitimate gift tax discounts to his descendants, such as limited partner interests in a properly formed and managed partnership, the underlying asset value in the partnership starts generating returns immediately for his descendants even though Charlie reports the discounted value of the interests for gift tax purposes. When Charlie sells an asset to a trust for his descendants at a modest interest rate, the trust keeps the returns above the amount needed to pay the interest. That means the rest of

Charlie's asset is working for his descendants, not for Charlie. Selling discounted partnership interests to a grantor trust combines both examples of leverage.

## 2. Opportunity costs.

If tax rates stay the same, it is better for Charlie to defer paying taxes so he can use those tax dollars to generate investment returns. Paying taxes earlier than necessary is an opportunity cost. Spending money on consumption also generates its own set of opportunity costs, because Charlie cannot invest the dollars he spends on consumption costs either. Some clients benefit from controlling both kinds of opportunity costs. Charlie thinks his standard of living is reasonable, so he will concentrate on tax deferral.

## 3. Allocating tax liabilities and layering tax effects.

Deferring taxes is only a partial solution, because some day the inevitable tax bill will be due. But planning opportunities do not end with deferral. If Charlie is legally liable for the tax burden that falls on assets destined to benefit his family, the tax liability will reduce Charlie's own estate and, in effect, enhance the return that accrues to the family as a whole. In addition, income and transfer taxes have different effects and these effects need to be layered. Sometimes the cost of paying one tax mitigates the cost of paying another. For example, Charlie might want to avoid the capital gains tax, but the capital gains tax may be only half as costly as Charlie assumes if his estate has to pay estate taxes too, because Charlie's estate will not pay estate tax on the money Charlie spent to pay capital gains tax.

## 4. Integration.

Charlie can use a combination of gift and estate planning techniques to achieve his objectives. But the plan also requires investment strategies that support the income tax, cash flow and appreciation targets necessary to promote its success. In addition, Charlie must involve the other general partners of the proposed partnership, the trustees of the grantor trust and the CRUT, and one or more investment advisors, to properly implement the plan.

### D. The Rules.

Pam next reviews the rules that govern the CRUT, the partnership and the sale to the intentionally defective grantor trust for Charlie and his children.

#### 1. What is a charitable remainder unitrust ("CRUT")?

A CRUT is an irrevocable trust, often called a "split interest" trust. When a donor creates a CRUT, he can keep or give away a continuing payment stream from the CRUT for a period of time. This payment stream is made to the "noncharitable" beneficiaries.<sup>206</sup> The time period can last for up to twenty years or for the lifetimes of one or more currently living noncharitable

---

<sup>206</sup> I.R.C. §644(d)(2)(A); Treas. Reg. § 1.664-3(a)(1).

beneficiaries.<sup>207</sup> In private letter rulings, the IRS has permitted partnerships and corporations to create CRUTs where the unitrust term is measured in years instead of the lives of individuals.<sup>208</sup> In Charlie's case, the partnership will be both the donor and the noncharitable beneficiary. The CRUT must pay a fixed percentage of the annual value of its assets to the partnership each year, so the unitrust payments will fluctuate along with the value of the CRUT's investments.

At the end of the unitrust period, the trustees of the CRUT will distribute the remaining assets to one or more qualified charitable beneficiaries or will hold the assets solely for charitable purposes.<sup>209</sup> These charitable beneficiaries can include private foundations and donor advised funds.<sup>210</sup>

The partnership, as the donor, will pass through a current income tax deduction for the value of charity's interest to the partners in the year it funds the CRUT. The value of the deduction depends on the value of the assets contributed to the CRUT, how long charity must wait to receive its interest, the size and timing of the partnership's reserved unitrust payment, and an assumed investment rate of return (called the Section 7520 rate) that the IRS publishes monthly.<sup>211</sup> Because Charlie will own almost all of the partnership when the CRUT is created, he will receive most of the deduction. Generally, Charlie can deduct up to 30% of his adjusted gross income for the transfer of appreciated marketable securities to the CRUT (20% if the remainderman is a private foundation), and he can carry forward any excess deduction for five years.<sup>212</sup>

Pam lists some of the key CRUT rules for Charlie:

- a. The partnership, as the noncharitable beneficiary, must receive an annual unitrust payment.<sup>213</sup> This unitrust payment is a fixed percentage of the fair market value of

---

<sup>207</sup> Treas. Reg. §1.664-2(a)(1).

<sup>208</sup> See Letter Rulings 9340043 (C corporation), 9400043 (S corporation) and 9419021 (partnership). Under Treas. Reg. § 1.671-2(e)(4), if a partnership or corporation (an "entity") makes a gratuitous transfer to a trust for a business purpose, the entity is generally treated as the grantor of the trust. However, if an entity makes a gratuitous transfer to a trust for the personal purposes of one or more partners or shareholders, the gratuitous transfer is treated as a constructive distribution to the partners or shareholders and they in turn are treated as the grantors of the trust. The IRS has taken the position that a CRT with multiple grantors is an association taxable as a corporation; Letter Rulings 9547004 and 200203034. If the IRS takes the position that Charlie's partnership created the CRUT all or in part for the personal purposes of its partners, then the CRUT may not be valid. If a practitioner is concerned about this result, Charlie could accomplish the transaction by funding a single member LLC, having the LLC create the CRUT, and then selling a portion of the LLC to a grantor trust so that there is only one grantor and income tax owner for the entire series of transactions.

<sup>209</sup> I.R.C. §664(d)(2)(C).

<sup>210</sup> Qualified organizations are described in I.R.C. §§170(c), 2055(a) and 2522(a).

<sup>211</sup> The Section 7520 and is 120% of the federal midterm rate. The partnership can choose the rate in effect for the month of the gift or for either of the two immediately preceding months.

<sup>212</sup> I.R.C. §170(b)(1)(B), (b)(1)(D). If a private foundation were the named remainderman and the stock of XYZ Company were not publicly traded, the deduction would be limited to basis (here, zero), and could not exceed 10% of XYZ Company's stock. I.R.C. §170(e)(1)(b)(ii); I.R.C. §170(e)(5)(C).

<sup>213</sup> I.R.C. §§664(d)(1)(B), (2)(B); Treas. Reg. Sec 1.664-3(a)(1)(i).

the trust's assets, revalued annually. There are exceptions to this rule that allow some CRUTs to distribute net income instead, but these extra rules are not relevant for Charlie.

- b. The unitrust payment must be at least 5%,<sup>214</sup> but not more than 50%,<sup>215</sup> of the fair market value of the trust's assets, determined annually.
- c. At the CRUT's inception, the actuarial value of charity's interest in the CRUT must be worth at least 10%.<sup>216</sup> The CRUT can receive additional contributions as long as each additional contribution satisfies the 10% rule.<sup>217</sup>
- d. The CRUT does not pay income taxes.<sup>218</sup> The CRUT distributions carry out income tax consequences to the noncharitable beneficiary in a specific order: First, as ordinary income to the extent of the trust's current and past undistributed ordinary income (dividends that are taxed at 15% are included in this tier); second, as capital gains to the extent of the trust's current and past capital gains; third, as tax-exempt income to the extent of the trust's current and past tax exempt income; and finally, as a nontaxable return of capital.<sup>219</sup>
- e. Charlie must factor in additional legal, accounting and administrative costs. Since every unitrust payment depends on an annual valuation of the CRUT's assets, hard to value assets might generate appraisal costs, too.<sup>220</sup>
- f. The trustees of the CRUT do not have unlimited investment flexibility. There is a 100% excise tax on unrelated business taxable income (UBTI) generated in a CRUT. Broadly defined, UBTI is income derived from any trade or business. UBTI includes debt financed income, so certain investment strategies that use borrowing might be off limits. Also, the self-dealing rules that apply to charitable trusts prohibit Charlie from transacting with the CRUT, even if the transaction is completely fair.<sup>221</sup>

---

<sup>214</sup> Treas. Reg. §1.644-2(a).

<sup>215</sup> I.R.C. §664(d)(1)(A), as amended by The Taxpayer Relief Act of 1997, H.R. 2014, August 5, 1997.

<sup>216</sup> I.R.C. §664(d)(1)(D).

<sup>217</sup> Treas. Reg. §1.664-3(b).

<sup>218</sup> I.R.C. §664(c)(1). Charlie's advisors will also want to ascertain the tax treatment of the CRUT under applicable state law. Most states recognize CRUTs as tax exempt, but some, *e.g.* New Jersey, do not. It will usually be possible to establish the partnership and CRUT in a state recognizing the exemption regardless of where Charlie lives.

<sup>219</sup> I.R.C. §664(b); Treas. Reg. §1.664-1(d)(1).

<sup>220</sup> Treas. Reg. §1.664-1(a)(7).

<sup>221</sup> I.R.C. §4941.

## 2. Why use a term of years CRUT?

Charlie could use a term of years CRUT as long as it does not exceed 20 years. For instance, Charlie could stagger gifts to his foundation by using five, ten, fifteen and twenty year CRUTs. Pam explains why she thinks Charlie could use a CRUT measured by a term of years in his plan:

- a. Charlie wants to diversify a low basis single stock concentration without taking an immediate tax hit. The noncharitable beneficiary pays income taxes as the CRUT makes distributions. Although the partnership is the noncharitable beneficiary, most of its income tax liability will flow through to Charlie, and this will remain true when Charlie sells most of the partnership to a grantor trust.
- b. Charlie has a legitimate desire to benefit charity as well as his family.
- c. Charlie needs a continuing payment stream for a period of time. The CRUT distributions will enable the grantor trust to pay down the debt it owes to Charlie for buying his limited partnership interest.
- d. Charlie does not want to buy life insurance to replace the wealth his family would lose if Charlie kept a lifetime interest in a CRUT and died prematurely.

## 3. Advantages of a family limited partnership in this context.

Family limited partnerships offer many non-tax advantages.<sup>222</sup> Among them, partnerships:

- a. Allow a family to consolidate its assets for investment efficiency, investment diversity and economies of scale.
- b. Protect limited partners from creditors, divorcing spouses and financial inexperience.
- c. Give Charlie the opportunity to exercise some continuing investment control over the partnership's assets.
- d. Create a forum for younger family members to participate in investment and other business decisions.
- e. Protect management by use of the business judgment rule and provide non-litigation mechanisms like arbitration to resolve disputes.

---

<sup>222</sup> See Article I and Article IV C of this paper.

4. Consideration of a family limited partnership in this context.

Charlie and his partners must observe certain partnership considerations or he could lose some of the benefits described above. Pam and Charlie review the following:

- a. For gift tax purposes, to demonstrate the legitimacy of the partnership, it may be enough that Charlie and his partners are engaged in a permissible partnership activity organized for profit.<sup>223</sup>
- b. Charlie and his other general partners should be prepared to hold regular partnership meetings and to share relevant partnership information.
- c. Charlie cannot completely control the partnership, although he can control the partnership investments if he chooses. If Charlie keeps too much control over distributions, or if he does not honor the partnership agreement, or if he makes disproportionate distributions, the IRS may attempt to tax the partnership interests or the underlying partnership property in Charlie's estate.<sup>224</sup> Charlie wants to use discounting to help move appreciation from his estate now, so these adverse estate tax consequences (although unlikely, because Charlie is giving away or selling all of his limited partner interests now) would defeat his current gift strategy.
- d. Like the CRUT, the partnership will have its own legal, accounting and administrative costs, and Charlie must engage a professional appraiser to set the value of the limited partner interests.
- e. It is difficult, and sometimes impossible, to use partnership interests as collateral for a loan.
- f. Partnership income tax rules are complicated and transferring property to and from a partnership can trigger surprising income tax consequences. Charlie and his family must make a long-term commitment to conducting their affairs inside the partnership.
- g. The IRS may closely scrutinize a partnership's operating history and valuation discounts.

5. What are the considerations of an installment sale to an IDGT in this context?

---

<sup>223</sup> See *Knight v. Commissioner*, 115 T.C. No. 36, (2000); *Estate of Strangi v. Commissioner*, 417 F.3d., 468 (5th Cir. 2005); *Winkler*, 73 T.C.M. (CCH) 1657; and I.R.C. §7701(a)(2). However, care should be taken to make sure the creation of the partnership and the transfer of the partnership interests are sequential, independent acts; otherwise partnership discounts may not be recognized for gift tax purposes. See *Shepherd v. Commissioner*, 283 F.3d., 1258 (11<sup>th</sup> Cir. 2002) and *Mark W. Senda and Michele Senda v. Commissioner*, 433 F.3d., 1044 (8<sup>th</sup> Cir. 2006).

<sup>224</sup> *But see* the discussion in Article IV and XI of this paper.



Pam lists a number of other considerations:

- a. Since Charlie is selling limited partner interests that are valued by appraisal to the trust, he will not know for sure if he is making a gift. The IRS may challenge the discount applied to Charlie's limited partner interests. Charlie might try to use a formula to define the value of the limited partner interests he wishes to give.<sup>225</sup>
- b. Pam reviews a few of the common techniques for creating grantor trust status.<sup>226</sup> Charlie can have the power, in a non-fiduciary capacity, to reacquire trust property by substituting property of equivalent value.<sup>227</sup> If Charlie was married, he could name his wife as a trust beneficiary.<sup>228</sup> Charlie can give a trusted friend the power to add trust beneficiaries.<sup>229</sup> Charlie likes the idea that someone could add the spouses of his descendants as beneficiaries, especially a parent of Charlie's grandchildren. If Charlie approves, it may be desirable to include more than one of these techniques in the trust.
- c. Like the CRUT and the partnership, the sale to the trust will generate its own set of legal and administrative costs.
- d. The trust will issue an installment note for the value of Charlie's limited partner interests. To avoid gift tax consequences, the trust must pay Charlie a minimum interest rate. The IRS publishes these rates monthly; the short-term rate applies to notes that are three years or less, the midterm rate applies to notes of between three and nine years; and the long-term rate applies to notes of over nine years.<sup>230</sup>
- e. Charlie can require the trust to amortize his note – that is, to pay it down over a certain schedule. Alternatively, he can agree to a balloon note, which means the trust will repay the principal to Charlie in a lump sum at the end of the term.
- f. If the limited partner interests Charlie sells to the trust appreciate more than the amount needed to repay the interest on the note, the additional appreciation passes tax free to Charlie's beneficiaries. However, the limited partner interests could decline in value. Not only would Charlie's beneficiaries receive no appreciation, but they might lose the other trust assets Charlie gave to the trust previously. The discount on the limited partner interests buffers the loss, but that is still no guarantee of success.

---

<sup>225</sup> See the discussion in Article IV of this paper.

<sup>226</sup> I.R.C. §§671 through 677 contain rules under which a grantor will be treated as the income tax owner of a portion or all of a trust.

<sup>227</sup> I.R.C. §675(4)(c); Treas. Reg. § 1.675-1(b)(4).

<sup>228</sup> I.R.C. §67(a).

<sup>229</sup> I.R.C. §§674(b), (c) and (d).

<sup>230</sup> I.R.C. §§7872(f), 1274(d).

- g. If Charlie dies before the trust repays his note, his estate will pay estate taxes on the note's outstanding balance, but any appreciation Charlie has managed to transfer is out of his estate. There is no settled authority on how much income tax gain, if any, Charlie must recognize when the trust loses grantor status upon his death.<sup>231</sup>

6. What are the risks of the combined techniques?

Pam also reviews some of the risks of the combined techniques. No one can guarantee Charlie the right partnership discount. The trustees of the grantor trust must repay Charlie's note, but the source of repayment cannot be limited to trust income. If the value of the CRUT assets drops unexpectedly, the plan will not work as projected and Charlie's previous gift to his GST exempt trust might be wasted. Charlie must relinquish some control to his fellow general partners and the trustees. The law changes frequently and new legislation could affect the outcome too. There is no definitive answer to what happens for tax purposes if Charlie dies before the grantor trust repays his note.

Charlie recognizes these concerns and is glad that his children are hearing them too so the family can cooperate to support the plan.

E. What is the Outcome?

Charlie wants to go forward with Pam's plan. His children agree to be co-general partners in the new partnership. Charlie will be in charge of partnership investments, but his children will handle other partnership decisions. A corporate trust company and one of Charlie's trusted friends are the co-trustees of Charlie's GST exempt grantor trust. Charlie and the children, as general partners, select Charlie's sister and a corporate trust company as the trustees of the new CRUT. Charlie could also be a trustee (for investment purposes only) of the CRUT and/or the grantor trust, but chooses not to do so.

Charlie, his children and the trustees then show the plan to their investment advisor. The advisor constructs a sample diversified portfolio inside the CRUT that targets an annual 8% pre-tax return, with 25% of the return (or 2%) coming from ordinary income and the balance (or 6%) coming from capital appreciation. Generally, the advisor projects an annual 30% turnover – that is, on average she will need to sell and reinvest 30% of the portfolio every year.

Charlie, the children, the trustees and their investment advisor consider how to produce the annual CRUT payments; how much could be in cash and in kind; what happens when the CRUT distributes its unitrust payments to the partnership and the partnership distributes some or all of the unitrust payments to the grantor trust; the grantor trust's repayments of Charlie's note; and how to reinvest those distributions to meet the differing objectives for Charlie, charity, the partnership and the grantor trust. They think through contingency plans to cope with inevitable investment volatility, or the ups and downs that happen in every diversified investment plan.

---

<sup>231</sup> Some commentators suggest electing out of installment treatment. Theoretically, all gain should be "recognized" in the first year of the sale, although not reported under Rev. Rul. 85-13, 1985-1 C.B. 184.

They analyze the different types of note: a “slow” note that preserves leverage for a longer time, and a “fast” note that eliminates the uncertain tax issues at Charlie’s death. Charlie decides he would like the trust to repay his note as soon as possible, so the repayment is built into the plan.

To show Charlie the difference that taxes play in accumulating family wealth over time, Pam projects what would happen if there were no initial capital gains taxes when Charlie sells his stock and no estate taxes. She also projects what would happen if Charlie sold partnership interests to a grantor trust without including the CRUT component. If the investment plan produced smooth returns until Charlie’s death (which the group agrees to project twenty-five into the future), the results would look like this (see Schedule 8):

**Table 10**

Scenario	Charlie's Children	Charlie's Descendants (GST Exempt)	Charity	Charlie's Consumption Direct Costs	Consumption Investment Opportunity Costs	IRS – Income Taxes	IRS – Investment Opportunity Costs	IRS – Estate Taxes	Total
Stock Sale, No Planning	14,795,841	2,000,000	-	5,468,890	8,795,202	7,413,154	16,269,613	13,742,052	68,484,752
Simulated Tax Holiday (No Initial Capital Gains Tax and No Estate Tax) 77% - 23% Split Between Family and Charity	-	28,084,515	8,479,812	5,468,890	8,795,202	8,008,304	9,648,029	-	68,484,752
FLP/CRUT/ Grantor Trust Sale, Charlie gives remaining estate to charity	-	27,867,024	8,479,812	5,468,890	8,795,202	7,655,137	10,218,688	-	68,484,752
FLP/ Grantor Trust Sale, Charlie gives remaining estate to family	-	29,679,447	-	5,468,890	8,795,202	8,113,649	16,269,613	157,954	68,484,752

Using the above assumptions, Charlie will not pay tax on approximately half of the capital gains generated when the CRUT sells the stock. Under the CRUT tiered income distribution rules, approximately half the gain will still be inside the CRUT at the end of twenty years when charity receives the remainder. Although Charlie does pay some capital gains tax on the other half of the gain, he still takes advantage of two of Pam’s key concepts: He defers the capital gains tax

payment until the CRUT makes distributions, and his estate does not pay estate tax on those capital gains tax payments. In effect, the grantor trust repays Charlie's installment note using pre-tax dollars.

Charlie is currently subject to a combined federal and state transfer tax rate of 45%. On the one-half of the capital gains taxed to Charlie (because the rest of the capital gain is still embedded in the CRUT when it passes to charity), Charlie avoids transfer tax on the dollars he spends to pay capital gains tax. Charlie has already paid those dollars to the IRS and so they have been eliminated from his transfer tax base. That means Charlie's total effective capital gains rate on his \$10 million stock sale turns out to be less than 4% (prior to considering the charitable income tax subsidy described below).

Although the simple stock sale generates the lowest amount of income tax -- \$7.4 million -- the combined total income tax cost of nearly \$24 million is dramatically more than in the next two sets of projections (the simulated tax holiday and Pam's CRUT plan) because the early stock sale tax payment contributes to \$16.3 million in opportunity costs. Since Charlie pays capital gains tax immediately on the stock sale, his family loses the benefit of reinvesting those tax dollars. On top of that, the simple stock sale piles on another \$13.7 million of estate tax. Together, those taxes consume almost 55% of the \$68.5 million of total assets projected at the end of twenty-five years. In contrast, there is no estate tax liability at all in the next two projections.

Because Charlie will own more than 99% of the partnership when the partnership funds the CRUT, the partnership will pass through more than 99% of the charitable income tax deduction to Charlie. The deduction equals 10% of the fair market value of the assets contributed to the CRUT, or \$1,000,000. In Charlie's case, the deduction offsets \$1,000,000 of his ordinary income, so it yields a \$350,000 income tax benefit. In effect, the income tax deduction pays Charlie a 3.5% subsidy for his \$10,000,000 transaction.

The two middle rows of numbers compare Pam's plan to a simulated tax holiday. Both sets of projections shows a total tax burden that is less than one-half of the aggregate \$37.4 million tax bill generated by the simple stock sale. Charlie detects only one difference between Pam's plan and the simulated tax holiday. In Pam's plan, the total projected tax cost is an additional \$322,000 (or less than 2% of the roughly \$18 million tax burden in both Pam's plan and the simulated tax holiday). That \$322,000 reduces what Charlie's family would keep in a world with no initial capital gains tax on big stock sales and no estate taxes.

Pam asks Charlie to consider the projected outcome if he sells partnership interests to a grantor trust, but the partnership does not transfer its appreciated securities to a CRUT first. Those projections are in the final row. Charlie sees that his descendants would end up with \$29.7 million if the partnership did not create the CRUT, or nearly \$2 million more than they would have received if the partnership did create the CRUT. However, Charlie notes that the column showing what charity would receive is blank. Pam explains that when the partnership creates the CRUT, the trustees do not pay immediate capital gains tax when they sell the stock, and Charlie receives a charitable income tax deduction up front. Without the CRUT, the early payment of taxes and lack of income tax subsidy compounds over time, so that at the end of the day, Charlie's family pays an additional \$6.5 million in taxes and opportunity costs. If Charlie adds the \$2

million his descendants receive to that increased tax bill, the result equals the \$8.5 million that would have gone to charity with the CRUT technique. In other words, it costs Charlie \$6.5 million to transfer \$2 million to his descendants, and charity does not benefit at all.

Although Charlie clearly sees that the two middle rows of numbers – Pam’s plan against a simulated tax holiday – produce a nearly identical result, Pam presses the benefits of understanding leverage and opportunity costs even further. Without additional planning, Charlie can only protect \$2,000,000 from future gift, estate and GST tax. If Charlie allocates GST exemption to a 10% seed gift to the grantor trust, or if he sells partnership interests to an existing GST exempt grantor trust, he will protect almost fourteen times that from further transfer taxes by the time of his death. This benefit compounds as the property moves down the generations. By using his GST exemption wisely, Charlie not only solves some of his tax problems, but he also solves some of his descendants’ tax problems as well.

Without mastering technical details, Charlie and his children have a good understanding of the plan by appreciating leverage, opportunity costs, layering tax effects and integration, and, by engaging professional investment advisors and trustees, they have some of the key resources they need to work toward the projected results.

## IX. BEST TESTAMENTARY CHARITABLE PLANNING IDEA FOR THE FAMILY LIMITED PARTNERSHIP – THE LEVERAGED BUY-OUT CHARITABLE LEAD ANNUITY TRUST

### A. Introduction.

The “conventional wisdom” this author sometimes hears on this subject is as follows: “one can never self-deal, even on a fair basis, with a foundation or a CLAT;” “the problem with testamentary gifts to charity is that the decedent’s family always ends up with substantially less;” or “the problem with testamentary CLATs is that the decedent’s family has to wait a long time to have access to the decedent’s assets.” This “conventional wisdom,” under the circumstances discussed below, is incorrect.

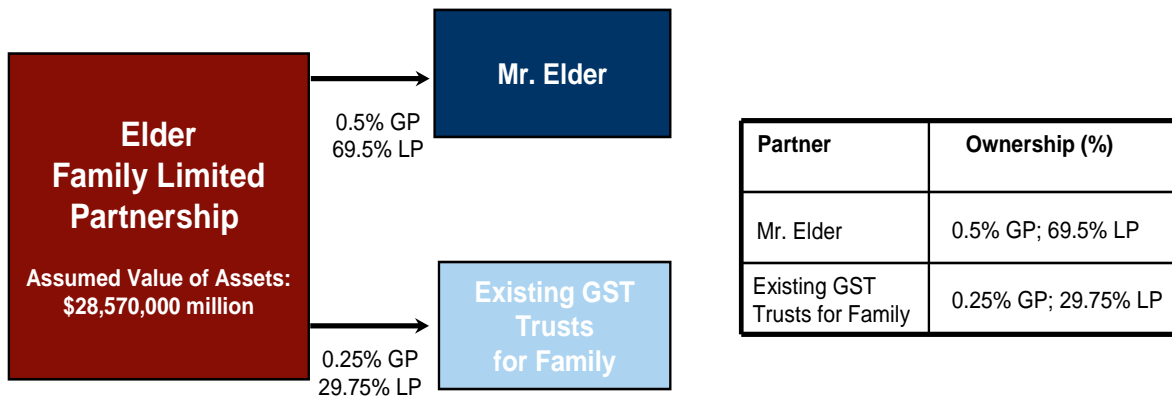
Assume a client, at his death, wishes for part of his estate to go to his family and the rest to his favorite charitable causes. One technique that is generally considered under those circumstances is the testamentary charitable lead annuity trust (“CLAT”).

#### *Example 18: Use of a Testamentary CLAT in Conjunction With a Leveraged Redemption of a Partnership Interest Held by a Decedent*

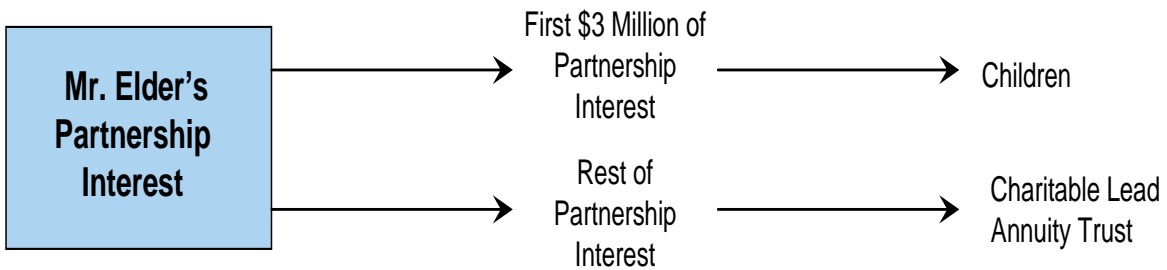
*Ed Elder and his family create a partnership. Ed Elder owns 70% of the partnership units after contributing \$20 million in assets to the partnership. However, Ed dies unexpectedly a few months after the creation of the partnership before he has had a chance to make transfers of limited partnership units to trusts for the benefit of his family. What would be the effect on Ed’s estate plan, under those circumstances, if his will bequeaths an upfront dollar gift to trusts for the benefit of his family and the rest to a “zeroed out” testamentary charitable lead annuity trust (CLAT)?*

Assume Ed’s will provided that the first \$3 million of his estate goes to trusts for the benefit of his family and the rest to a 100% “zeroed out” CLAT that is to last for 20 years. Assume that the partnership buys out the charitable lead annuity trust interest in a probate trust proceeding that fits the requirements of the regulations under I.R.C. Section 4941.<sup>232</sup> Assume the partnership interest is redeemed with an interest only note (which pays interest equal to the dollar amount that is owed for the annuity payments to the charitable beneficiaries of the CLAT) with the principal of the note being paid in the 20<sup>th</sup> year. Finally, it is assumed that the I.R.C. Section 7520 rate is 5%. Please see the illustrations below:

During Ed’s lifetime he creates a partnership with his family.

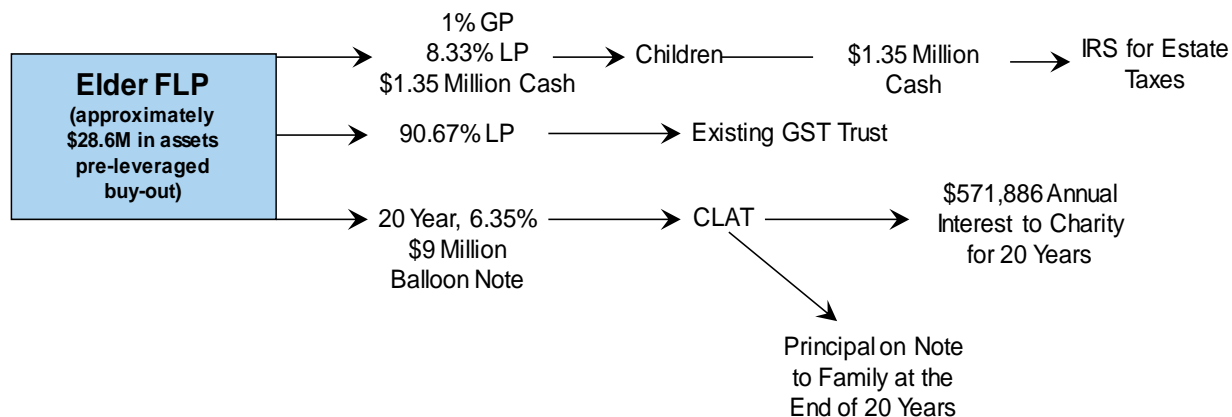


After Ed’s death his will conveys his partnership interest as follows:



<sup>232</sup> See PLR’s 200207029, 200124029 and 20024052. See also Daniels, Leibell, “Planning for the Closely Held Business Owner: The Charitable Options,” 40<sup>th</sup> Annual Heckerling Institute, Chapter 12 (2006).

After a probate hearing Ed's testamentary CLAT is redeemed as follows:



B. What is a CLAT?

1. A charitable lead annuity trust is a trust in which the lead interest is payable to a charity and is in the form of an annuity amount for the term of the lead interest.
2. In the charitable lead annuity trust, the annual payment is not based on the income of the trust. Since the annuity amount is not based on the income of the trust, that amount must be paid to the charity even if the trust has no income. If the trust's current income is insufficient to make the required annual payment, the short-fall must be made up out of the invasion of the trust principle. If the current income exceeds the required annual payment, it does not have to be paid over to the charity; however, the excess income would then be accumulated and added to the trust corpus.
3. The lead interest in a charitable lead annuity trust can be for a fixed term of years. Unlike a charitable remainder trust, the fixed term can be indefinite.<sup>233</sup> The lead interest can also be measured by the life of an existing individual or the joint lives of existing individuals.
4. Charitable lead annuity trusts are not subject to the minimum payout requirements associated with charitable remainder trusts. Thus, there is no 5% minimum payout for charitable lead annuity trusts.
5. The charitable lead annuity trust is not a tax exempt entity. Thus, if taxable income is accumulated in the trust it will be subject to income taxes. The CLAT will receive a charitable income tax deduction when it makes the distribution to the charity.

---

<sup>233</sup> I.R.C. Section 170(f)(2)(B).

6. Charitable lead trusts are characterized as private foundations for purposes of certain restrictions placed on such organizations. Accordingly, CLATs are subject to private foundation excise tax provisions.<sup>234</sup> The governing trust instrument must contain specific prohibitions against (i) self dealing; (ii) excess business holdings; (iii) jeopardy investments; and (iv) taxable expenditures.<sup>235</sup> If the specified prohibited transactions occur onerous significant excess taxes could accrue.

C. What is a Leveraged Buyout Testamentary CLAT?

During probate administration, one of the exceptions to the self dealing rules, with respect to foundations and CLATs, is that a self dealing transaction may occur if certain restrictions are met. For instance, if a partnership interest which is to pass to a CLAT is redeemed for a note, that may be a permissible transaction.<sup>236</sup> One requirement is that the note has a fair market value that is at least equal to or greater than the fair market value of the existing redeemed partnership interest. Another requirement is that the note must be just as liquid, if not more liquid, than the existing partnership interest. Assuming the appropriate probate court approves the leverage buyout, the note could be structured to be an interest only negotiable note, with the interest rate being higher than the existing AFR rate (e.g. 8% in comparison to an AFR of 5%), with a balloon payment at the end of 20 years (assuming a 20 year testamentary CLAT).

D. What is the Outcome?

What would the results be for Ed's family and his charitable beneficiaries under those circumstances in comparison to a gift only to his family (with the IRS allowing a full discount for the partnership units)? What would be the comparison if the IRS did not allow any discount for the gift to the family? What difference would it make in comparison of the various alternatives if the family earned 3% before taxes, 8% before taxes and 10% before taxes during the 20 year period after Ed's death? What difference would it make if instead of bequeathing \$3 million to Ed's family, Ed had bequeathed \$10 million to his family with the rest to the zeroed out CLAT? The results of those comparisons are summarized below (please see attached Schedules 9 to 11).

---

<sup>234</sup> I.R.C. Section 4947(a)(2).

<sup>235</sup> See I.R.C. Sections 4941(a), 4941(b), 4943(a) and 4943(b).

<sup>236</sup> See Treas. Reg. Section 53.4941(d)-2; see also Madson, "Funding a CLAT with a Note," 30 Est. Plan 495, 2003 WL 22213736 (2005).



**Chart IX A**

**Summary of Results For \$28.57 Million of Assets Growing at 3% Per Year (Pre Tax) –  
No Further Planning vs. 20 Year Testamentary CLAT Technique; 30 Year  
Future Values; Post-Death Scenarios (assuming Mr. Elder dies in year 1)**

<b>Technique</b>	<b>Elder Children</b>	<b>Elder GST Trust</b>	<b>Charity</b>	<b>IRS – Income Tax</b>	<b>IRS – Investment Opportunity Cost</b>	<b>IRS – Estate Taxes</b>	<b>Total</b>
No Further Planning Without a Discount 3%, 30 Years	22,381,854	17,120,821	-	5,858,591	14,989,091	9,000,000	69,350,357
No Further Planning With a Discount 3%, 30 Years	25,649,265	17,120,821	-	8,252,959	12,927,313	5,400,000	69,350,357
CLAT Redemption With a Discount and \$3 Million to Family 3%, 30 Years	17,607,370	19,563,744	20,651,682	5,013,781	5,163,780	1,350,000	69,350,357
CLAT Redemption With a Discount and \$10 Million to Family 3%, 30 Years	22,899,604	19,056,537	4,589,271	7,310,651	10,994,295	4,500,000	69,350,357

**Chart IX B**

**Summary of Results For \$28.57 Million of Assets Growing at 8% Per Year (Pre Tax) –  
No Further Planning vs. 20 Year Testamentary CLAT Technique; 30 Year  
Future Values; Post-Death Scenarios (assuming Mr. Elder dies in year 1)**

<b>Technique</b>	<b>Elder Children</b>	<b>Elder GST Trust</b>	<b>Charity</b>	<b>IRS – Income Tax</b>	<b>IRS – Investment Opportunity Cost</b>	<b>IRS – Estate Taxes</b>	<b>Total</b>
No Further Planning Without a Discount 8%, 30 Years	74,723,823	55,481,827	-	29,497,788	118,801,049	9,000,000	287,504,487
No Further Planning With a Discount 8%, 30 Years	84,904,303	55,481,827	-	33,691,823	108,026,533	5,400,000	287,504,487
CLAT Redemption With a Discount and \$3 Million to Family 8%, 30 Years	46,374,710	92,379,335	56,500,420	30,013,402	60,886,619	1,350,000	287,504,487
CLAT Redemption With a Discount and \$10 Million to Family 8%, 30 Years	74,166,232	65,866,823	12,555,671	32,874,812	97,540,948	4,500,000	287,504,487

**Chart IX C**  
**Summary of Results For \$28.57 Million of Assets Growing at 10% Per Year (Pre Tax) –**  
**No Further Planning vs. 20 Year Testamentary CLAT Technique; 30 Year**  
**Future Values; Post-Death Scenarios (assuming Mr. Elder dies in year 1)**

Technique	Elder Children	Elder GST Trust	Charity	IRS – Income Tax	IRS – Investment Opportunity Cost	IRS – Estate Taxes	Total
No Further Planning Without a Discount 10%, 30 Years	123,192,353	90,396,643	-	48,656,063	227,309,299	9,000,000	498,554,358
No Further Planning With a Discount 10%, 30 Years	139,510,717	90,396,643	-	54,254,602	208,992,396	5,400,000	498,554,358
CLAT Redemption With a Discount and \$3 Million to Family 10%, 30 Years	71,245,398	160,754,913	84,957,439	51,480,571	128,766,037	1,350,000	498,554,358
CLAT Redemption With a Discount and \$10 Million to Family 10%, 30 Years	121,173,406	109,208,237	18,879,464	53,639,178	191,154,073	4,500,000	498,554,358

The primary reason the leveraged buy out CLAT technique has a good result for both the client’s family and the client’s favorite charities, is that, in effect, the client’s family is getting two tax deductions for the interest payments that they are making on the note. There is an estate tax deduction (i.e., the zeroed out CLAT annuity payments) and the family owners of the partnership are also receiving an income tax deduction on the interest payments. The secondary reason the technique has a good result for the family is that they are not out-of-pocket cash to pay the principal of the note to a third party. From the family’s perspective, the principal of the note is, in effect, paid to themselves. Also, from the family’s perspective, they have the assets now subject to the interest obligations of the note held by the CLAT (which could be satisfied with a sinking fund of laddered bonds).

As noted, above the appropriate probate court will need to find that the note has a fair market value equal to or greater than the partnership interest that is being redeemed and the note needs to be more liquid than the redeemed limited partnership interest. The second requirement should be relatively easy to satisfy and the first requirement should also be easy to satisfy because subject interest rate should be equal to or greater than the true “fair market value” interest rate.

X. BEST INSURANCE PLANNING IDEA (AND A VERY GOOD ESTATE PLANNING IDEA) – THE LEVERAGED REVERSE FREEZE WITH A CASCADING SALE OF GROWTH PARTNERSHIP INTERESTS

A. Introduction.

The “conventional wisdom” this author sometimes hears on this subject is as follows: “using a preferred partnership interest is dead after the passage of I.R.C. Section 2701;” or “it is impossible, after the split dollar reform, for a trust to pay for premiums on a significant life insurance policy without paying significant gift taxes.” This “conventional wisdom,” under the circumstances discussed below, is incorrect.

One of the somewhat unexplored areas of estate planning is the utilization of what some practitioners call “reverse freeze” planning. This planning takes advantage of the truism that investors have the potential of making a successful investment, if they engage in a leveraged purchase of a high yield preferred interest. The following idea exploits the current differentiation in yields between high yield fixed income and treasuries.

B. Example.

Consider the following example, which illustrates the potential of combining a leveraged sale of a high yielding preferred to a grantor trust with the trust using its excess cash flow to purchase life insurance and make cascading purchases of the growth partnership interests:

*Example 19: Ian and Inez Insurance Wish to Transfer \$103,000,000 of Their Financial Assets to Their Children in the Most Efficient Transfer Tax Manner Possible*

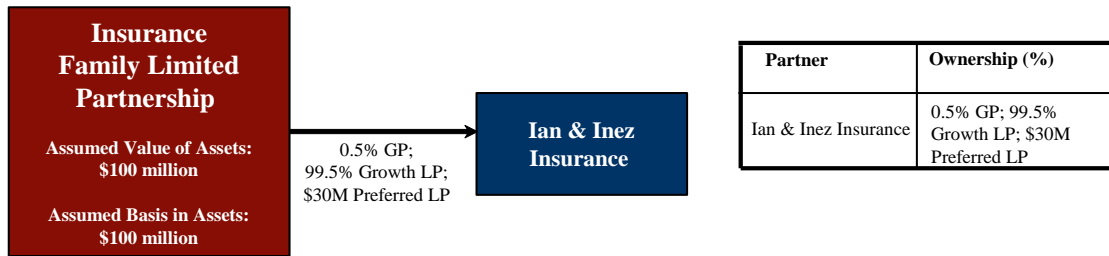
*Ian and Inez Insurance own significant financial assets, \$103,000,000. They are not fond of paying substantial gift taxes. Ian and Inez want their tax planner, Pam Planner, to devise a plan in which their consumption needs are addressed and in which their stewardship goals are met.*

*Ian and Inez tell Pam that they are both 60 years of age and are in excellent health. Ian and Inez would like Pam to assume that they will consume \$2,000,000 a year with a 3% inflation adjustment for the next 30 years above whatever is necessary to pay their income tax bill. Ian and Inez ask Pam to assume that the assets will earn 9% pre-tax, with 2% of the 9% being taxed at ordinary income rates and 7% being taxed at capital gains rates, with a 30% turnover in capital gains investments.*

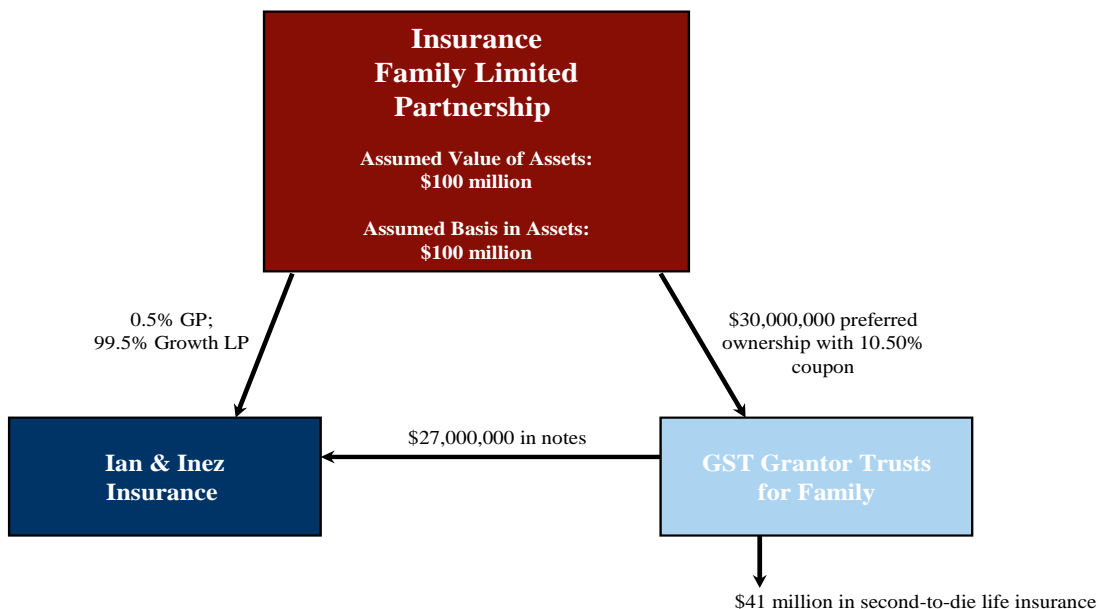
*Ian and Inez desire for Pam to develop a plan in which there are minimum gift tax consequences, and which eliminates, as much as possible, their estate taxes, even if they both die in 10 years. Ian and Inez tell Pam to also assume the survivor will live 30 years.*

Pam tells Ian and Inez that she believes that a plan exists, under the assumptions that they have asked her to incorporate, which could accomplish their goals. The first step of the plan is to create a partnership or a limited liability company between Ian and Inez that has growth and preferred partnership interests. Pam engages a valuation expert and asks her to apply the

Service's valuation parameters inherent in Revenue Ruling 83-120.<sup>237</sup> Assume, for purposes of the analysis below, the expert appraiser tells Pam that a non-cumulative preferred partnership interest, under those parameters and under the facts of the proposed family limited partnership interest, should have a coupon equal to 10.5% in order to support par value for the preferred. Ian and Inez Insurance will initially own a \$30,000,000 preferred partnership interest with the rest of the \$100,000,000 they have contributed to the partnership being represented by a general partnership interest or a growth limited partnership interest. See the chart below:



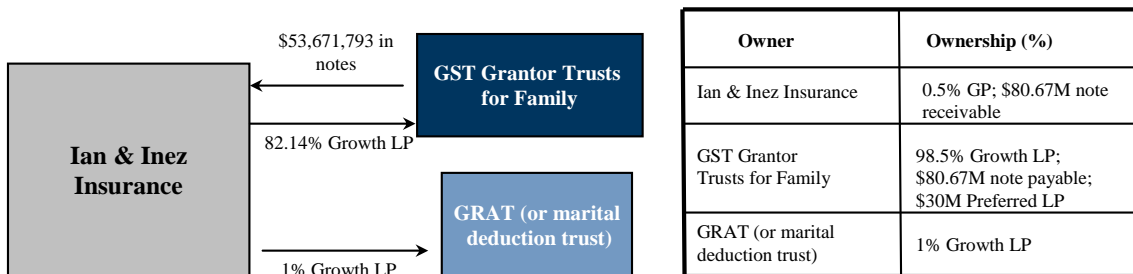
After the partnership has been created Ian and Inez Insurance transfer, by gift, a \$3,000,000 preferred partnership interest to some generation-skipping transfer trusts for the benefit of their children, grandchildren and future descendants. In January of 2009 Ian and Inez also sell the remaining \$27,000,000 preferred interests to those trusts in exchange for notes that will pay a blended AFR rate of 2.06%. (For purposes of the calculations and the chart below, it is assumed that the coupon of the preferred partnership interest will be 10.5%) See the illustration below:



<sup>237</sup> 1983-2 C.B. 170.

The grantor trusts, after that sale, will purchase \$41,000,000 in second-to-die life insurance. Ian and Inez will be the insureds. It is assumed that the GST will use its net cash flow to pay the \$400,000 annual insurance premium. The remaining cash flow inherent in the trust (the difference between the yield on the 10.5% preferred interest owned by the trust and the interest on the \$27,000,000 note) will be utilized to pay either interest and principal on the notes or to purchase additional growth limited partnership interests from Ian and Inez.

Approximately three years after the transfer of the preferred partnership interests, the GST grantor trust could purchase from Ian and Inez their remaining growth interests that have not been sold in prior years in exchange for notes (on which, it is again assumed there will be a blended 2.06% interest rate). During the interim three year period, it is assumed that around 9% of the growth limited partnership units will have been purchased. The purchase of the remaining growth interests could occur in a manner in which there is a defined value sale and in which a stated dollar amount (around \$61,000,000) in value of the transferred growth limited partnership interest, as finally determined for federal gift tax purposes, passes to the generation-skipping trusts and any excess in value passes to a near zero GRAT or a marital deduction trust. Please see the illustration below:



C. Valuation Advantage: IRS Concedes Preferred Partnership Interests Should Have a High Coupon.

Prior to passage of I.R.C. Section 2036(c) in 1987 (which was repealed in 1990) and prior to the passage of I.R.C. Section 2701 as part of Chapter 14 in 1990, the Internal Revenue Service did not have many tools with which to fight, from their perspective, abusive estate freezes, except valuation principles. In 1983, the Service issued a Revenue Ruling,<sup>238</sup> which promulgated the factors for determining what an appropriate coupon should be on preferred stock of a closely held corporation or what an appropriate coupon should be on a preferred partnership interest in a closely held family limited partnership. Generally, the IRS took the view that a secondary market does not exist for interests in family limited partnerships. Accordingly, with respect to a preferred partnership interest in a family limited partnership, the coupon should be very high in order to reflect the embedded marketability discount of the preferred partnership interest. In other words, according to the IRS, to have a preferred partnership interest valued at “par”, a hypothetical willing buyer would demand a significant return on that preferred partnership interest, in

<sup>238</sup> Rev. Rul. 83-120, 1983-2 C.B. 170.

comparison to other comparable fixed income instruments, in order to compensate that hypothetical willing buyer for the lack of marketability that would be inherent in that family limited preferred partnership interest.

D. IRC Section 2036 Advantage: Strong Legislative History Suggests IRC Section 2036 Should Not Apply to Partnerships With Significant Preferred Interests.

Another advantage of a family limited partnership that has a significant preferred interest is that the legislative history associated with the repeal of I.R.C. Section 2036(c) makes clear the strong desire of Congress that I.R.C. Section 2036 should not apply to partnerships that have a significant preferred partnership interest component. For a very brief period, 1987 to 1990, I.R.C. Section 2036(a), when it applied, did operate to include the partnership assets of a partnership in which a preferred partnership interest was created to the exclusion of I.R.C. Section 2033. (While I.R.C. Section 2033 also could have applied in 1987 to include the same partnership interests, Congress was very careful to reverse the traditional priority of I.R.C. Section 2033 inclusion over I.R.C. Section 2036 inclusion with the passage of I.R.C. Section 2036(c)(5)). In 1987, Congress explored whether or not to do away with minority and marketability discounts with respect to family partnership and family corporations and whether to attack so-called estate freezes. At that time, Congress decided not to attack family limited partnership discounts or discounts associated with family corporations. However, Congress decided to attack so-called estate freezes by making estate freezes that met six defined tests (described in I.R.C. Section 2036(c)) subject to the I.R.C. Section 2036(a) inclusion.

This writer's paper on this subject in 1989 stated that the reasons for the application of I.R.C. Section 2036(a) instead of I.R.C. Section 2033 were as follows:<sup>239</sup>

The House of Representatives Ways and Means Committee Conference Report accompanying TAMRA<sup>240</sup> stated that there were two reasons why Congress decided to punitively tax estate freezes. The first stated reason was inherent

---

<sup>239</sup> "The Legacy of I.R.C. Section 2036(c): Saving The Closely Held Business After Congress Made 'Enterprise' A Dirty Word." S. Stacy Eastland, Real Property Probate and Trust Journal, Volume 24, Number 3, Fall 1989.

<sup>240</sup> See H.R. Rep. No. 100-795, 100<sup>th</sup> Cong., 2<sup>nd</sup> Sess. 418-419 (1988) (hereinafter cited as 1988 House Report). The six primary sources establishing and explaining the new section 2036(c) transaction tax are the statute itself, the 1987 joint Committee of Taxation Conference Report on the Omnibus Budget Reconciliation Act, H.R. Rep. No. 100-495, 100<sup>th</sup> Cong., 1<sup>st</sup> Sess. 995 (1987) (hereafter cited as 1987 Conference Committee Report), the 1988 House Report, the Senate Report issued in conjunction with RAMRA, S. Rep. No. 100-445, 100<sup>th</sup> Cong., 2<sup>nd</sup> Sess. 522 (1988) (hereafter cited as 1988 Senate Report), the Statement of Managers, issued by the Joint Committee on Taxation in conjunction with TAMRA, TAMRA 1988 Stand. Fed. Tax Rep. (CCH No. 53, 92 (Oct. 24, 1988) (hereafter cited as 1988 Managers' Report), and Notice 89-99, 1989-39 I.R.B. 4 (hereafter cited as Notice). The key source at this time is the Notice, however, because of the tremendous power that has been delegated by Congress to the Treasury Department under Section 2036(c)(8):

The secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purpose of this subsection, including such regulations as may be necessary or appropriate to prevent avoidance of the purposes of this subsection through distributions or otherwise.

difficulties exist in valuing common stock that is sold or given away by a transferor in conjunction with an estate freeze transaction. According to the 1988 House Report, the Internal Revenue Service did not have the resources to either adequately value the common stock or, in some cases, even to detect that a gift had been made.<sup>241</sup> The second stated reason for penalizing estate freeze transactions was that essentially these transactions are testamentary in nature, because the transferor retains income in the enterprise and, thus, retains enjoyment of the whole enterprise until the moment of death. If a transferor creates a trust and retains the right to receive income from the trust for life, the trust corpus will be includible in the transferor's gross estate for federal estate tax purposes under Section 2036(a)(1). Courts have refused, however, to treat preferred stock in an enterprise as if it were a retained life estate for purposes of including the value of the enterprise in the decedent's estate under Section 2036(a)(1) [and have applied Section 2033 to the exclusion of Section 2036].<sup>242</sup> According to the 1988 House Report, it was necessary for Congress to remedy that refusal by adopting Section 2036(c).

By 1990, it became apparent to many commentators<sup>243</sup>, including this one, I.R.C. Section 2036(a) inclusion, in lieu of I.R.C. Section 2033 inclusion with respect to ownership in partnerships and other "enterprises" should be repealed because of numerous problems. Those problems included the following:

Sometimes the transfer tax system is abused by estate freeze planning but the abuse does not lie in the retention of preferred stock or a preferred partnership interest by the transferor. There is nothing sinister or improper about owning preferred stock or a preferred partnership interest. The economic rights associated with preferred ownership interests serve an extremely useful purpose in the capital market. Many capital investors find an equity interest that bestows a preferred income stream, preferred voting rights, and preferred liquidation preferences suitable for their investment goals. In the closely held family business context, preferred interests are an extremely useful capital concept because it is extremely rare to find a family whose members have equal abilities to run the business, or who all have a desire to participate as employees in the family business. Preferred ownership interests fairly compensate those family members who are not receiving compensation as employees of the business. Occasionally, family owners reach retirement and no longer are employed by the family business. In those circumstances, preferred ownership interests are extremely useful capital

---

<sup>241</sup> 1988 House Report at 418-419 (cited in note 3).

<sup>242</sup> Courts have reasoned that the receipt of income from the retained preferred stock is only a retention of income from the preferred stock, not from the assets of the entire enterprise and accordingly should be included under Section 2033, not Section 2036(a). See *Estate of Boykin v. Commissioner*, 53 T.C.M. (CCH) 345 (1987).

<sup>243</sup> See Dees, Section 2036(c): The Monster That Ate Estate Planning And Installment Sales, Buy-Sells, Options Employment Contracts and Leases, 66 Taxes 876 (1988).

structures that allow a portion of the income stream of the business to be directed to that family owner.

Congress implicitly recognized that there is nothing inherently evil in the ownership of preferred interests for enterprises that are not closely held. For example, an individual of significant wealth may convert that wealth into ownership of preferred stock and common stock of General Motors. That individual could convey the common stock to a child without Section 2036(c) applying to bring the future value of that common stock into the individual's gross estate.

The clear discrimination against closely held businesses under Section 2036(c) is justified, according to the legislative history, because the common stock or growth partnership interest of a closely held enterprise is more difficult to value than the common stock of General Motors. Because Section 2036(c) did not eliminate the need to value the transferred common stock or growth partnership interest, the way to attack the valuation problem would be to aid the Internal Revenue Service in valuing transferred common stock or growth partnership interests.

\* \* \*

A second criticism of Section 2036(a) inclusion is that it is based on a flawed analogy and concept. Besides the valuation problems noted by Congress, the other reason given for adoption of Section 2036(c) was that a transferor's retention of preferred stock after a conveyance of common stock is analogous to creation of a trust in which the settler retains only an income interest, in which case Section 2036(a)(1) would include the entire value of the trust in the transferor's gross estate. Transferred common stock is not includible in a deceased transferor's estate by operation of Section 2036(a)(1), operating without Section 2036(c), because the transferor has not retained rights in the transferred common stock. Thus, the asserted analogy is not appropriate.

To illustrate this, assume a transferor (T) creates two trusts. One trust will be includible in T's estate under Section 2036(a)(1) because T retains an income interest, but the other trust will not be includible in T's estate because T is not a beneficiary of the trust (assume T's children are the sole beneficiaries of the trust.) Finally, assume that T transfer General Motors preferred stock into the retained income trust and transfers General Motors common stock into the trust created for the children. General Motors will allocate a disproportionate amount of the income generated by its assets to the retained income trust and a disproportionate amount of the appreciation of its assets to the trust created for T's children. Under Section 2036(a)(1) the only trust that will be included in T's estate is the retained income trust because T retained no interest in the General Motors common stock that was transferred to the children's trust. T did not retain the right to income, either directly or indirectly, of that common stock. If the facts were changed to



assume stock in Family Co. Ranching Operations, the common stock would be includible in T's estate, not under Section 2036(a)(1) but, instead, under Section 2036(c), which ignores the fact that T has not retained an income interest in the common stock.

Even if the analogy to Section 2036(a) were appropriate, and if Congress wished to reform the transfer tax system to make the treatment of trusts consistent with the treatment of family enterprises, the solution would not be to create Section 2036(c) to bring enterprises within the fold of Section 2036(a). Instead, the solution would be to eliminate Section 2036(a) in its present form. The estate taxation of trusts because of retained income interests, particularly in light of the unified transfer tax system that has existed since 1976, is unfair and unnecessary. [See Treasury I]

\* \* \*

The third principal flaw [in application of I.R.C. Section 2036(c) for Section 2036(a) inclusion] is that, while it discourages the utilization of preferred ownership interests, it does not eliminate "freezes" or solve valuation problems. Taxpayers may pay a heavy tax cost under Section 2036(c) if they convert a growth interest in a family business to a preferred ownership interest, which discourages taxpayers from using an equity tool that can solve many family business ownership problems. Meanwhile, Section 2036(c) has compounded the valuation problems inherent in determining the value of transferred growth interests and has not eliminated numerous freezes in family businesses, some of which have been endorsed specifically by Congress. Having failed in its two objectives, Section 2036(c) should not be left also to dissuade legitimate nontax planning in family businesses.

Because the language of Section 2036(c) abandons traditional property law concepts, and applies to transfers that have no inherent gift element, a fourth criticism of it is that application of the tax cannot be predicted with certainty, which is always bad in a voluntary compliance system. Moreover, Section 2036(c) encourages investment in self-gratification assets instead of job-producing enterprises, which also is a poor policy result. Indeed, because of the Service's interpretation that personal use assets are not subject to Section 2036(c), Congress appears to have passed an estate tax statute that opposes the Section 162 and 212 income tax policy of encouraging investment in enterprises.

\* \* \*

. . . with respect to transactions that are pure economic bargains, Section 2036(c) has a doubtful constitutional basis. This section converts the estate tax from a transfer tax to a transaction tax. As is obvious from the literal wording of Section 2036(c)(2), a transfer with a gift element is not required. All Section 2036(c) requires is that a transaction described in Section 2036(c)(1) has occurred.

If no donative transfer has occurred, application of Section 2036(c) to a pure economic bargain may be an unconstitutional direct tax on property. Under Article I, Section 9, of the United States Constitution, “[n]o capitation, or other direct, Tax shall be laid unless in Proportion to the Census or Enumeration hereinbefore directed to be taken.” An estate tax directly levied on property is an unapportioned direct tax. To be constitutional, the estate tax must be an indirect levy against *transfer*. [Application of Section 2036(c) for Section 2036(a) inclusion] is not an indirect levy on the privilege of transferring property if it applies to a transaction in which the growth of an enterprise accrues to a transferee *only* because of the economic bargain made by the transferee and not because of any gift made by the transferor.

\* \* \*

Finally, the [application of Section 2036(c) for Section 2036(a) inclusion] also may be unconstitutional because it is either a discriminatory denial of due process (the tax ignores the contractual rights of a party who purchases growth interests, if the contract with the transferor requires the transferor to pay all taxes attributable to the sale), a discriminatory denial of equal protection (no rational basis exists to penalize employment of a family member as opposed to a non-family member), or too vague to fairly enforce (no one can calculate the tax at this time). This constitutionally suspect tax out to be repealed and, before it is replaced, Congress should schedule meaningful hearings for debate about the property solution to the valuation problems that justify action in this arena.

Commentators were not the only persons by 1990 who concluded that I.R.C. Section 2036 (a) inclusion in lieu of I.R.C. Section 2033 inclusion for preferred interest partnerships was poor policy. Several prominent Republican Senators also did. What is perhaps noteworthy is that several powerful Democrat Senators felt the same way. Thus, the removal of I.R.C. Section 2036(a) priority over I.R.C. Section 2033 in determining inclusion enjoyed rare bi-partisan consensus. Consider the following statements before the Senate on October 17, 1990:<sup>244</sup>

MR. BENTSEN. Mr. President, I am introducing legislation today that will repeal section 2036(c) of the Internal Revenue Code and provide new rules to limit evasion of Federal estate and gift taxes by means of estate freezes.

The Omnibus Reconciliation Act of 1987 contained section 2036(c). . . . Unfortunately, the cure 3 years ago turned out to be worse than the disease. The complexity, breadth and vagueness of the new rules have posed an unreasonable impediment to the transfer of family businesses.

. . .

---

<sup>244</sup> Congressional Record, 101<sup>st</sup> Congress S. 3113: pg 1-4 (October 17, 1990).

Senators Boren and Daschle, in particular, have labored long and hard on this issue. I commend them on their efforts, as this bill would not have been possible without their assistance. Earlier this year, they chaired a joint hearing of the Subcommittee on Taxation and Debt Management and the Subcommittee on Energy and Agricultural Taxation. At that hearing the subcommittee members reviewed proposals from the American Bar Association and American College of Probate, the Tax Section of the D.C. Bar, the U.S. Chamber of Commerce, and the American Institute of Certified Public Accountants. In addition, they heard from a wide range of estate planners, small business representatives and the Treasury Department. All witnesses agreed that the current rules should be repealed. Most witnesses testified that these rules should be replaced with a rule that is targeted to valuation abuses. That is exactly what this bill does.

We have worked hard to balance taxpayers concerns with our concerns about transfer tax abuses. I'm convinced that this proposal is a reasonable approach to the problem.

\* \* \*

MR. BOREN. Mr. President, I am pleased today to join with my colleagues Senator Bentsen and Senator Daschle in introducing this legislation that will repeal section 2036(c) of the Internal Revenue Code. At a time when we should be doing all that we can to help keep small family owned businesses afloat section 2036(c), known as the estate freeze provision, poses a real treat to their survival.

...

The legislation we are introducing today repeals section 2036(c) and instead provides for special valuation rules for estate freezes. The current law is overly broad and unintelligible to even the most sophisticated counsel, let alone counsel representing many small family owned business or farms throughout the United States. It is worth nothing that even supporters of 2036(c), few though they may be, concede that the 1987 law was clumsily fashioned. What they really mean is that virtually every knowledgeable observer has concluded that the new rules are simply unadministrable and not at all subject to a patch-up job of revision. While Treasury and other academics have suggested modifications, very few have come forward with hard and fast revisions. Given the tremendous burdens this rule places upon family owned small business the only fair and meaningful course is to cleanly and clearly start over with repeal.

...

I believe the most efficient way to solve this problem is to repeal section 2036(c) and start over. We should begin with a clean slate, only then can we begin to consider a much more narrow, focused and equitable alternative to the current

section 2036(c). I believe the legislation we are introducing today is such an alternative. I urge my colleagues to join us in supporting this legislation.

\* \* \*

MR. DASCHLE. Mr. President, I am pleased to join my distinguished colleagues, Senator Lloyd Bentsen, chairman of the Finance Committee, and Senator David Boren, in introducing legislation to repeal section 2036(c) of the Internal Revenue Code and replace it with a significantly more limited measure that is fairer to family businesses.

Last year, I introduced a bill, S. 349, that would repeal section 2036(c). At that time, I indicated that I would be open to consideration of a more limited substitute – one that was targeted strictly at the estate tax abuses that allegedly were occurring prior to the enactment of section 2036(c). I also expressed an interest in working with Senator Bentsen in this endeavor.

After extensive review of alternative options, including meetings with small business groups and hearings on this issue in the Finance Committee, Senator Bentsen and I have what we believe is a reasonable alternative to current law section 2036(c).

Our bill addresses three major concerns I have about current law. First, current law takes an approach that throws the baby out with the bathwater. Consequently, a wide range of otherwise legitimate transactions are suspect under its provisions. The bill we are introducing today takes the opposite approach. It says, ‘These specifically identified abuses are impermissible.’ Period. In this way, family business owners who wish to pass the business on to their children gradually during their lifetimes can do so with a clear understanding of those means which are permissible.

Second, under [application of Section 2036(a) in lieu of Section 2033], *the IRS can find a transaction unenforceable for estate tax purposes years, perhaps decades, after the transaction occurs. Like a number of other substitute proposals that have been advanced, our bill addresses potential abuses at the time the transaction occurs. This ensures that the appropriate amount of gift tax is paid at that time, leaving owners of businesses with confidence that the transaction will not be found invalid years later when they die and it is too late to do anything about it.*

Finally, section 2036(c) is simply too ambiguous and confusing. Senator Bentsen and I have sought to make our bill much simpler and straightforward. This should make the IRS pursuant to the measure much easier and faster to draft. [Emphasis added.]

\* \* \*

Congress did retroactively repeal the application of I.R.C. Section 2036 inclusion to business and other financial enterprises in lieu of I.R.C. Section 2033 inclusion. Among the reasons cited by the Senate in their legislative history were the following:

The [Senate Finance] committee believes that an across-the-board inclusion rule [application of Section 2036(a)] is an inappropriate and unnecessary approach to the valuation problems associated with estate freezes. The committee believes that the amount of any tax on a gift should be determined at the time of the transfer and not upon the death of the transferor . . . . In developing a replacement for current section 2036(c) the committee sought to accomplish several goals: (1) to provide a well defined and administrable set of rules; (2) to allow business owners who are not abusing the transfer tax system to freely engage in standard intra-family transactions without being subject to severe transfer tax consequences; and (3) to deter abuse by making unfavorable assumptions regarding certain retained rights.<sup>245</sup>

Congress adopted the suggestion of numerous commentators and approached the reform with respect to inclusion of partnership interest and corporate interest as a valuation problem. It reaffirmed the traditional inclusion and taxation of partnership interests, in which part of the partnership is held in preferred form, under I.R.C. Section 2511 and I.R.C. Section 2033. Those sections were modified, however, through the passage of new valuation rules under Chapter 14.

Furthermore, due to the bifurcated economic interest of preferred and growth interests an inherent substantial investment reason, or stated differently, a substantial non-tax reason, exists for the creation of a family limited partnership interest with those bifurcated asset classes. Generally, the tax court and the circuit courts have indicated a willingness to not apply I.R.C. Section 2036 if a non-tax reason, preferably an investment non-tax reason, exists for the creation of the partnership.

E. The Valuation Rules of IRC Section 2701 Should Not Apply, if One Generation Transfers the Preferred Partnership Interests to the Second Generation.

As noted above, there are now new valuation rules under I.R.C. Section 2701 with respect to partnerships that have both preferred interests and growth interests. Would those new valuation rules apply to a transfer of a preferred interest from the older generation to a younger generation, as opposed to the older generation retaining the preferred interest and giving away the growth interest? Stated differently, if a patriarch or matriarch reorganized his or her business and transferred a high-yielding preferred equity interest to his or her issue (or to a partnership in which his or her issue were the major owners), would this transfer and reorganization be a transaction that is subject to the valuation rules under I.R.C. § 2701, which was passed as part of Chapter 14? The answer is no.<sup>246</sup>

---

<sup>245</sup> Informal Senate report accompanying the Revenue Reconciliation Bill of 1990 (S. 3209) as printed in the Oct. 18, 1990, Congressional Record, vol. 136, s. 15679 (Daily Edition) (emphasis added).

<sup>246</sup> See I.R.C. § 2701(c)(1)(B)(i).

If a retained distribution right exists, there must exist a senior equity interest (*i.e.*, the transferor must have retained preferred stock or, in the case of a partnership, a partnership interest under which the rights as to income and capital are senior to the rights of all other classes of equity interest).<sup>247</sup> The Senate legislative history of Chapter 14 indicates that retention of common stock, after the gift of preferred stock, is not a transaction which is subject to the valuation rules under I.R.C. § 2701 because retained ownership of the common stock generally does not give the transferor the right to manipulate the value of the transferred interest. (This reasoning also supports exclusion of an option arrangement from I.R.C. § 2701.) Any transferred preferred stock that has a cumulative right to a dividend, or any transferred note in a corporation which has a cumulative right to interest, is not subject to value manipulation by the common stock owner. For instance, if a dividend or an interest payment is missed, the preferred stock owner or bondholder, as the case may be, continues to have the right to that dividend payment or interest payment. It is true that in certain instruments the preferred stockholder would not enjoy the compounding effect of receiving a late dividend. However, the “lowering” of value to a transferee, by not paying the transferee’s dividend, or delaying the payment of the dividend, does not hurt the fisc since that tends to help or increase the junior equity interest owner’s net worth (*i.e.*, it increases the transferor’s net worth). Thus, even though a transferee may receive a valuable asset in a junk bond or a junk preferred interest, it is a type of security in which the junior equity interest cannot manipulate value, except to *decrease* the value of the transferred interest at a later date.

#### F. The Effect of Cascading Sales to an Intentionally Defective Grantor Trust.

Another largely unexplored estate planning area is the effect of cascading sales to an intentionally defective grantor trust. Certain commentators believe that in order to have an effective sale to an intentionally defective grantor trust in consideration for a note and to have the note treated as a note for property law purposes and tax purposes instead of a retained interest in the trust, it is necessary to have around 10% equity in that intentionally defective grantor trust. However, certain clients are resistant, in significant situations, to making significant gifts to an intentionally defective trust to support the proposition that the trust has at least 10% equity at the time of the note sale. One way to ameliorate that concern is for the client, over time, to have cascading sales to that grantor trust. That is, sales could be made to that intentionally defective grantor trust over a period of time as that trust has sufficient equity to support the cascading sales to that trust. The increase in value of previously sold property would constitute equity for purposes of subsequent sales. Arguably, however, only the value of trust property in excess of currently outstanding notes should “count” as equity for this purpose.

#### G. What is the Comparative Outcome Under the Proposed Plan.

Please see attached Schedules 12 to 13. Over time, substantial wealth will be transferred from Ian and Inez Insurance to their children and future descendants because of the power of the estate freeze and the power of indirectly paying the income taxes for the benefit of their family using the intentionally defective grantor trust technique. However, both for the estate freeze and

---

<sup>247</sup> See I.R.C. §§ 2701(c)(1)(B)(i) and 2701(a)(4)(B); Treas. Reg. § 25.2701-2(b)(3)(i). See also P.L.R. 92-04-016 (Oct. 24, 1991).

for the inherent power in paying future income taxes to work, a substantial period of time is required.

Ian and Inez may not have that period of time, since they are mortals. The \$41,000,000 second-to-die life insurance policy provides an interesting hedge to the strategy. Obviously, if Ian and Inez both die before their time (e.g., when they are 70) the second-to-die policy will be a spectacular investment that could put their descendants in almost the same position, as they would have been if Ian and Inez would have had the full benefit of the estate freeze and the full benefit of indirectly paying the income taxes for their family for 30 years.

The tables below indicate the results that could accrue under the assumptions given to Pam Planner by Ian and Inez and also assuming a \$400,000 a year premium and a 40% discount on the growth partnership interests (because of the effect of the preferred partnership interests). The results are extremely powerful. Assuming that Ian and Inez die in 10 years, the 30 year future values and present values (assuming a 3% inflation present value discount) of the hypothetical integrated plan in comparison to not doing any further planning is as follows (see attached Schedule 12):

**Table 11**  
**30 Year Future Values (Death in 10 Years)**

Technique	Insurance Children	Insurance Children & Grandchildren	Consumption – Direct Cost	Consumption – Investment Opportunity Cost	IRS – Income Tax	IRS – Investment Opportunity Cost	IRS – Estate Tax (at 45%)	Investment Opportunity Cost/(Benefit) of Buying Life Insurance	Total
No Further Planning; Bequeaths Estate To Family	\$417,679,967	\$0	\$22,927,759	\$168,266,209	\$94,874,217	\$580,465,509	\$82,357,221	\$0	\$1,366,570,882
Hypothetical Integrated Income and Estate Tax Plan With a Partnership; Bequeaths Estate To Family	\$173,319,917	\$572,273,337	\$22,927,759	\$168,266,209	\$159,136,543	\$432,194,150	\$34,174,842	(\$195,721,874)	\$1,366,570,882

**Table 12**  
**Present Value of the 30 Year Future Values (Death in 10 Years)**

Technique	Insurance Children	Insurance Children & Grandchildren	Consumption – Direct Cost	Consumption – Investment Opportunity Cost	IRS – Income Tax	IRS – Investment Opportunity Cost	IRS – Estate Tax (at 45%)	Investment Opportunity Cost/(Benefit) of Buying Life Insurance	Total
No Further Planning; Bequeaths Estate To Family	\$172,078,616	\$0	\$9,445,933	\$69,323,450	\$39,086,921	\$239,144,104	\$33,930,085	\$0	\$563,009,109
Hypothetical Integrated Income and Estate Tax Plan With a Partnership; Bequeaths Estate To Family	\$71,405,511	\$235,769,038	\$9,445,933	\$69,323,450	\$65,562,149	\$178,058,267	\$14,079,582	(\$80,634,821)	\$563,009,109

If the survivor of Ian and Inez Insurance dies in 30 years, the future value in 30 years of what their descendants will receive under the hypothetical plan in comparison to no further planning and the present values of those future values (assuming a 3% present value discount) are as follows (see attached Schedule 13):

**Table 13**  
**Future Value (Death in 30 Years)**

Technique	Insurance Children	Insurance Children & Grandchildren	Consumption – Direct Cost	Consumption – Investment Opportunity Cost	IRS – Income Tax	IRS – Investment Opportunity Cost	IRS – Estate Tax (at 45%)	Investment Opportunity Cost/(Benefit) of Buying Life Insurance	Total
No Further Planning; Bequeaths Estate To Family	\$337,941,016	\$0	\$95,150,831	\$266,196,369	\$124,662,541	\$266,122,930	\$276,497,195	\$0	\$1,366,570,882
Hypothetical Integrated Income and Estate Tax Plan With a Partnership; Bequeaths Estate To Family	\$7,205,005	\$586,008,373	\$95,150,831	\$266,196,369	\$133,704,220	\$258,888,064	\$5,895,004	\$13,523,015	\$1,366,570,882



**Table 14**

**Present Value of the 30 Year Future Values (Death in 30 Years)**

Technique	Insurance Children	Insurance Children & Grandchildren	Consumption – Direct Cost	Consumption – Investment Opportunity Cost	IRS – Income Tax	IRS – Investment Opportunity Cost	IRS – Estate Tax (at 45%)	Investment Opportunity Cost/(Benefit) of Buying Life Insurance	Total
No Further Planning; Bequeaths Estate To Family	\$139,227,224	\$0	\$39,200,883	\$109,669,379	\$51,359,316	\$109,639,123	\$113,913,183	\$0	\$563,009,109
Hypothetical Integrated Income and Estate Tax Plan With a Partnership; Bequeaths Estate To Family	\$2,968,367	\$241,427,691	\$39,200,883	\$109,669,379	\$55,084,368	\$106,658,455	\$2,428,664	\$5,571,303	\$563,009,109

H. Use of High Yield Preferred Partnership Interests in Conjunction With Long Term GRATs.

1. The technique.

Mr. and Mrs. Insurance could also take the preferred interests and contribute them to long term GRATs. For instance, Mr. and Mrs. Insurance could take their proportionate share of the \$30,000,000 of preferred partnership interests, which are presumed to pay a 10.5% coupon, and contribute those interests to either 10 year or 11 year term GRATs. Assume the annuity amount that will be paid each year by the 10 year or 11 year GRAT to the grantor of the GRAT will be equal to the preferred coupon, 10.5% or \$3,050,000. Trusts for the benefit of their children could be the remainderman beneficiaries of the GRAT. If both Mr. and Mrs. Insurance live longer than the annuity period of the GRATs, the \$30,000,000 of preferred interests would pass to the trusts for the benefit of their children.

2. Outcome.

If Mr. and Mrs. Insurance create GRATs that last 10 years, with the payouts described above, the gift will be \$905,120.50, assuming the IRC Section 7520 rate is 2.8%, even though trusts for their children will receive \$30,000,000 of preferred partnership interests at the end of 10 years. If the term of the GRAT is 11 years, assuming the IRC Section 7520 rate is 2.8%, the gift will be \$170,620. If the appraisers find that the rate of return on the preferred interests should be equal to 11.60375%, in order to support par value of the preferred interests, and the 10 year GRATs are created with \$30,000,000 of preferred interest paying a 11.60375% coupon, the GRATs will be a near zeroed out GRATs.

Thus, in each of these scenarios, Mr. and Mrs. Insurance could be in the position to receive substantial cash flows for a 10 year or 11 year period, and assuming the gift tax exemption that they each have is \$1,000,000, they will each transfer preferred interests that are equal in value to over \$30,000,000 to trusts for the benefit of their children without paying gift taxes.

#### I. Conclusions.

Significant wealth may be able to be transferred from one generation to the next using the valuation arbitrage that may exist between a coupon on a preferred partnership interest determined under the parameters of Revenue Ruling 83-120 and the AFR rate on intra-family notes. This valuation arbitrage has an inherent advantage over the valuation arbitrage that exists for a sale of a pro rata partnership interest for two reasons. The “rate of return” difference between the arbitrage for high yield non-marketable preferred and an AFR denominated notes is probably greater, in the current market, than the difference between a pro rata partnership interest and an AFR denominated note. Secondly, the IRS agrees that the marketability discount exists for closely held preferred partnership interests.

This arbitrage may make possible the purchase of significance life insurance without the payment of gift taxes and could operate to have a “Pac-man” effect in buying the retained growth interest held by the senior generation. That takes time. In order to hedge against the possibility that long planning period may not exist, due to the early deaths of clients the insurance could also serve a role to put the family in almost the same position they would have been in if the patriarch and matriarch had lived their life expectancies or beyond their life expectancies.

### XI. THE BEST IDEAS FOR ALLOWING A CLIENT TO BE IN CONTROL OF FAMILY LIMITED PARTNERSHIP IN THE CONTEXT OF I.R.C. SECTION 2036(a) (2) – REVENUE RULINGS 73-143, 95-58 AND 81-15

#### A. Brief Summary.

The “conventional wisdom” this author sometimes hears on this subject is as follows: “a partner should never retain any management control of a family limited partnership” or a “partner may not have any input, directly or indirectly, on the distribution policy of a family limited partnership.” This “conventional wisdom,” under the circumstances discussed below, is incorrect.

The taxpayer can retain investment control of a partnership. However, if a taxpayer has control of partnership distributions, according to one judge in an advisory opinion, there may not be a discount available on retained partnership interests at death, or even possibly any partnership interests that were given away before death. Obviously, a taxpayer could only retain investment control, give away those management interests that control distributions, and this doctrine would not apply. The good news is, even for those who believe that the judge in that advisory opinion may have it right, that the courts and the IRS have provided three safe harbors for taxpayers who wish to at least, indirectly, have an impact on the level of partnership distributions.

What should the taxpayer who wishes to have some impact on partnership distributions do to avoid this potential I.R.C. Section 2036(a)(2) attack? The taxpayer should either adopt a strategy of selling all partnership interests, except the management interest, for full consideration, *or* take one of the following actions:

1. The retained distribution power is subject to a standard that could be enforced by a court;
2. The general partnership interest that has distribution power could be contributed by the taxpayer to a trust where the taxpayer has the right to remove and replace the trustee, as long as the replacement is not related or subordinate; *or*
3. The general partnership interest, that has the distribution power, could be contributed by the taxpayer to a corporation and the taxpayer could retain the voting stock and transfer the non-voting stock to his family.

B. Analysis of Case Law.

1. Supreme Court Analysis.

Even if a general partner controls partnership distributions, the partnership agreement could be designed to avoid I.R.C. § 2036(a) from including any previously transferred limited partnership interests or assignee interests in his estate. The Supreme Court's analysis in *United States v. Byrum*<sup>248</sup> provides authority that I.R.C. § 2036(a)(1), I.R.C. § 2036(a)(2) and I.R.C. § 2038 do not apply (under the right facts).

A transferred partnership interest will not be included in the donor's estate under I.R.C. Section 2036(a)(2) where the only distribution power is one subject to a definite external standard, which could be enforced by a court. If a distribution power is so constrained, the donor does not have the legal right to designate the persons who shall possess or enjoy the property or the income therefrom. The original source of this doctrine is *Jennings v. Smith*,<sup>249</sup> and several other cases (*e.g.*, see the discussion by Justice Powell of *Northern Trust Co.* and *King* cases below) have followed that logic. That court-made doctrine, or exception, to I.R.C. Section 2036(a)(2) was approved by the I.R.S. in Rev. Rul. 73-143. The *Jennings v. Smith* line of cases involved retained trustee powers by a donor of a trust. In the corporate or partnership context the external standard may be satisfied, if normal fiduciary constraints exist in the corporation or partnership. *United States v. Byrum* endorsed the proposition that this may be all that is required.

*United States v. Byrum* involved a case in which the I.R.S. determined that certain transferred stock of a closely held corporation was included in a decedent's estate under I.R.C. § 2036(a)(2). The decedent had transferred stock to a trust and retained the rights to vote the stock and also retained the power to disapprove the transfer of any trust assets, investments and reinvestments, and to remove the trustee and designate a corporate trustee. The decedent's right

---

<sup>248</sup> 408 U.S. 125 (1972).

<sup>249</sup> 161 F2d, 74 (2nd Cir., 1947).

to vote the stock of the trust corpus, together with his right to vote the stock he owned individually, gave him the right to vote 71% of the stock.

The I.R.S. argued that under I.R.C. § 2036(a)(2), Mr. Byrum, the decedent, retained the right to designate the persons who had enjoyed the income from the transferred property. The Service argued that he had this right because he had control over the corporate dividend policy and could liquidate the corporation. By increasing, decreasing, or stopping the dividends completely, Byrum could indirectly “regulate the flow of the income to the trust” and thereby shift or defer the beneficial enjoyment of the trust income between the beneficiaries.

The Supreme Court rejected the Service’s reasoning based on three different theories. The first theory was that the power to manage transferred assets that affect the income of a transferee, and the power to determine the inherent distributions associated with the transferred assets within a court enforceable standard, are not powers that are subject to I.R.C. § 2036(a)(2):

At the outset we observe that this Court has never held that trust property must be included in a settlor’s gross estate solely because the settlor retained the power to manage trust assets. On the contrary, since our decision in *Reinecke v. Northern Trust Co.*, 278 U.S. 339, 49 S.Ct. 123, 73 L.Ed. 410, 66 A.L.R. 397 (1929), it has been recognized that a settlor’s retention of broad powers of management does not necessarily subject an inter vivos trust to the federal estate tax. Although there was no statutory analogue to § 2036(a)(2) when *Northern Trust* was decided, several lower court decisions decided after the enactment of the predecessor of § 2036(a)(2) have upheld the settlor’s right to exercise managerial powers without incurring estate-tax liability. In *Estate of King v. Commissioner*, 37 T.C. 973 (1962), a settlor reserved the power to direct the trustee in the management and investment of trust assets. The Government argued that the settlor was thereby empowered to cause investments to be made in such a manner as to control significantly the flow of income into the trust. The Tax Court rejected this argument, and held for the taxpayer. Although the court recognized that the settlor had reserved “wide latitude in the exercise of his discretion as to the types of investments to be made,” *id.* at 980, it did not find this control over the flow of income to be equivalent to the power to designate who shall enjoy the income from the transferred property.

Essentially the power retained by Byrum is the same managerial power retained by the settlors in *Northern Trust* and in *King*. Although neither case controls this one--*Northern Trust*, because it was not decided under § 2036(a)(2) or a predecessor; and *King*, because it is a lower court opinion--the existence of such precedents carries weight. The holding of *Northern Trust*, that the settlor of a trust may retain broad powers of management without adverse estate-tax consequences, may have been relied upon in the drafting of hundreds of inter vivos trusts. The modifications of this principle now sought by the Government could have a seriously adverse impact, especially upon settlors (and their estates) who happen to have been “controlling” stockholders of a closely held corporation.

Courts properly have been reluctant to depart from an interpretation of tax law, which has been generally accepted when the departure could have potentially far-reaching consequences. When a principle of taxation requires reexamination, Congress is better equipped than a court to define precisely the type of conduct, which results in tax consequences. When courts readily undertake such tasks, taxpayers may not rely with assurance on what appear to be established rules lest they be subsequently overturned. Legislative enactments, on the other hand, although not always free from ambiguity, at least afford the taxpayers advance warning.<sup>250</sup>

Secondly, the Supreme Court held that *Byrum* did not have a retained “right” as that term is used in I.R.C. § 2036(a)(2) because of the fiduciary duty *Byrum* owed to the corporation:

It must be conceded that *Byrum* reserved no such “right” in the trust instrument or otherwise. The term “right,” certainly when used in a tax statute, must be given its normal and customary meaning. It connotes an ascertainable and legally enforceable power, such as that involved in *O’Malley*. Here, the right ascribed to *Byrum* was the power to use his majority position and influence over the corporate directors to “regulate” the flow of dividends” to the trust. That “right” was neither ascertainable nor legally enforceable and hence was not a right in any normal sense of that term.

....

A majority shareholder has a fiduciary duty not to misuse his power by promoting his personal interests at the expense of corporate interests. Moreover, the directors also have a fiduciary duty to promote the interests of the corporation. However great *Byrum*’s influence may have been with the corporate directors, their responsibilities were to all stockholders and were enforceable according to legal standards entirely unrelated to the needs of the trust or to *Byrum*’s desires with respect thereto.<sup>251</sup>

Thirdly, the Supreme Court ruled that *Byrum* was not in control of determining the dividends of the corporation because of the many practical difficulties and business realities involved in such a determination, over which *Byrum* had no control:

There is no reason to suppose that the three corporations controlled by *Byrum* were other than typical small businesses. The customary vicissitudes of such enterprises--bad years; product obsolescence; new competition; disastrous litigation; new, inhibiting Government regulations; even bankruptcy--prevent any certainty or predictability as to earnings or dividends. There is no assurance that a

---

<sup>250</sup>*Byrum, supra* at 132-35.

<sup>251</sup> *Byrum*, 408 U.S. at 136, 137, 138 (footnotes omitted).

small corporation will have a flow of net earnings or that income earned will in fact be available for dividends. Thus, Byrum’s alleged de facto “power to control the flow of dividends” to the trust was subject to business and economic variables over which [he] had little or no control.

....

These various economic considerations are ignored at the directors’ peril. Although vested with broad discretion in determining whether, when, and what amount of dividends shall be paid, that discretion is subject to legal restraints. If, in obedience to the will of the majority stockholder, corporate directors disregard the interests of shareholders by accumulating earnings to an unreasonable extent, they are vulnerable to a derivative suit. They are similarly vulnerable if they make an unlawful payment of dividends in the absence of net earnings or available surplus, or if they fail to exercise the requisite degree of care in discharging their duty to act only in the best interest of the corporation and its stockholders.<sup>252</sup>

All three of the considerations that led the Supreme Court to rule that I.R.C. § 2036(a)(2) does not exist in the corporate context could also apply in the partnership context. First of all, the partnership agreement could be designed where the donor general partner does not have the “legal right” to enjoy any of the income of that transferred limited partnership interest or that assignee interest, or to determine who does enjoy that income because he may only retain a distribution power that relates to partnership objectives that may be enforced by a court. Secondly, the partnership agreement could be designed where the donor general partner has a fiduciary duty not to misuse his power to promote his personal interest at the expense of the partnership (just as a majority shareholder has a fiduciary duty not to misuse his power by promoting his personal interests at the expense of the corporation). Thus, it is important not to negate normal state law fiduciary duties a partner owes to the partnership. Thirdly, the customary vicissitudes of enterprises that affect a corporation’s ability to make distributions also affect a partnership’s ability to make distributions (even with securities partnerships, the vicissitudes of the Dow certainly affect distribution). Thus, just as Byrum was not in control of the dividend policy of the corporations because of these outside factors, a general partner may not be in control of the cash flow of the partnership because of those same outside factors.

## 2. Tax Court Analysis By Judge Cohen in the *Strangi* Case.

In the past, the I.R.S. has ruled privately that because of the controlling case authority in *United States v. Byrum*, I.R.C. § 2036(a)(2) does not apply with a properly worded partnership agreement where the partners follow the agreement.<sup>253</sup> However, *Byrum* was distinguished, and

---

<sup>252</sup>*Byrum*, 408 U.S. at 139, 140, 141, 142 (footnotes omitted).

<sup>253</sup>*See* Tech. Adv. Mem. 91-31-006, citing *Byrum*, for the proposition that the Service will not consider the managing partner in a typical family limited partnership, because of his or her fiduciary duty obligations, as having retained an I.R.C. § 2036(a)(2) power over the transferred limited partnership interest. *See also* Rev. Rul. 81-15,

the private rulings disavowed, by Judge Cohen in dicta in a memorandum opinion in the *Strangi* case discussed above.

In addition to whether I.R.C. Section 2036(a)(1) applies to the facts of *Strangi* (discussed above), Judge Cohen addressed whether I.R.C. Section 2036(a)(2) applies to the facts of *Strangi*. Judge Cohen, citing *United States v. O'Malley*, 383 U.S. 627, 631 (1966), held that I.R.C. Section 2036(a)(2) applies because the decedent, in conjunction with other individuals, had the power to accumulate partnership income for the benefit of each partner, rather than disperse that income, which in turn constituted a “right to designate” under I.R.C. Section 2036(a)(2). The Court distinguished the facts under *United States v. Byrum*, supra, finding that the decedent, along with others, had management rights that exceeded the administrative powers in *Byrum* and, most important, that management in *Strangi* did not owe fiduciary duties that would limit its distribution powers as they were limited in *Byrum*.

Judge Cohen's holding in effect attributes the power of the corporate general partner to the decedent, among others, both because of the decedent's 47% ownership of, and board membership in, the corporate general partner, and because the general partner hired as managing partner the decedent's attorney-in-fact. Since the general partner's right to distribute income or not distribute it does not include a right to shift ownership of the income among partners or to a non-partner, Judge Cohen's holding endorses (without discussing) the idea that a power to control only the timing of receipt of income is a power to designate under I.R.C. Sec. 2036(a)(2).

### 3. Full Tax Court Analysis in the *Cohen* case.

The I.R.C. Section 2036(a)(2) position taken by Judge Cohen in *Strangi* is contrary in certain respects to the position taken by the full Tax Court in *Estate of Cohen v. Comm'r*, 79 T.C. 1015 (1982). In *Cohen* the decedent was a co-trustee of a Massachusetts business trust. The trust agreement gave the decedent and his co-trustees broad management powers with respect to the property of the trusts, including the discretionary power to determine whether to declare dividends on common shares of the business trust. Similar to *Strangi*, the Internal Revenue Service argued that the dividend power possessed by the decedent and the co-trustees gave them the “right” to designate the persons who enjoy trustee income.

The *Cohen* emphasized the similarities between the Massachusetts business trust and the corporation in *Byrum*, and stated that “the very fact that we are concerned here with the declaration of *dividends* on *shares* representing interests in the entity bolsters the corporate analogy, and thus the relevance of *Byrum*.” *Id.* at 1025. The Court further opined that:

In *Byrum*, the critical impediments to the transformation of the power to affect dividend policy into a right to designate enjoyment where the fiduciary obligations imposed by local law on *Byrum* as a controlling shareholder and on the corporate directors he could elect. Therefore, the issue here must turn upon the construction

---

1981-1 C.B. 457; P.L.R. 94-15-007 (Jan. 12, 1994); P.L.R. 93-32-006 (Aug. 20, 1992); P.L.R. 93-10-039 (Dec. 16, 1992); P.L.R. 90-26-021 (Mar. 26, 1990); G.C.M. 38,984 (May 6, 1983); G.C.M. 38,375 (May 12, 1980).

of this trust agreement under Massachusetts law. ***If the agreement may be said to give the trustees unlimited discretion in this respect, so that dividends could be arbitrarily and capriciously withheld or declared, then the dividend power would constitute a “right” under section 2036(a)(2); if, on the other hand, the power is circumscribed by cognizable limits on the exercise of discretion, then no such “right” exists.***

*Id.* (emphasis added).

The Court determined that a fair reading of the trust agreement would permit the omission of the dividend (or a reduction in amount) “only if the determination to eliminate or reduce the dividend were made in good faith and in the exercise of a bona fide business judgment.” *Id.* at 1026. Thus, the Court held that

In view of the perceived limitations on the dividend power in the trust agreement in question, and the apparent willingness of the Massachusetts courts to hold business trustees to a fair standard of conduct, we conclude that the decedent and his sons did not have the power to withhold dividends arbitrarily. Thus, they did not have an “ascertainable and legally enforceable” *right* to shift income between the classes of shareholders, and the dividend power does not require inclusion of either the common or preferred shares in the decedent’s estate under section 2036(a)(2). We think *Byrum* is controlling.

*Id.* at 1027.

C. Six Separate Methodologies For Avoiding I.R.C. Section 2036(a)(2) Inclusion With Respect to Managing Partner Donors and Owners of Partnership Interests.

Clearly, an I.R.C. Section 2036(a)(2) attack could be avoided, if the taxpayer did not retain a distribution power. Other than not retaining any input in distribution decisions by the partnership, what should a potential donor of partnership interests do to avoid an I.R.C. Section 2036(a) attack? The following actions should assist:

1. Successfully Making the Argument That the *O’Malley* Analysis and the Prerequisites of I.R.C. Section 2036(a)(2) Are Not Applicable to a Donor Partner, Who Retains a Distribution Power Over a Family Partnership.

No other court has reviewed Judge Cohen’s analysis. This writer believes that if another court reviews her analysis that Court may find her analysis problematic for two reasons: (i) that court may find that it is a matter in which I.R.C. Section 2033 supersedes I.R.C. Section 2036 for estate inclusion purposes (see the above argument as discussed in Article III C 1 of this paper) and/or (ii) that court may find that, unlike the situation with the trust described in the *O’Malley* case, *supra*, cited by Judge Cohen in *Strangi*, the decedent did not retain the “legal right to designate” who would receive the income of the partnership assets, because each donee partner beneficially owns, through the partnership, any past, current or future income that belongs to his partnership interest, whether it is distributed to him or not.



I.R.C. Section 2036(a)(2) will apply to assets contributed to a partnership, if the decedent at the moment of his death had the legal right, either alone or in conjunction with any person, to designate the *persons* who shall possess or enjoy the property or the income therefrom, and not solely the power to affect the *timing* of distributions to such persons, particularly when those persons have the power to receive value for any distributions that are not currently paid.

Assuming the managing partner acts in that capacity with others, it is generally existing precedent that the phrase “in conjunction with any person” in I.R.C. Section 2036(a)(2) does not apply to a decedent, like the decedent in *Strangi*, who would have to persuade others (in a non-trusteeship capacity) to act. As Professor Dodge noted:

... a ‘power’ to persuade others to act, or join in acting, in a way that could affect possession or enjoyment of the transferred property is not considered to be a taxable power. This rule is not limited to the obvious situation where the transferor is not a member of the decision-making body (if such were deemed to be a taxable power, nothing would be immune from §§2036(a)(2) and 2038). The rule applies even to cases in which the transferor is a member of the decision-making group, provided that such body is not a trusteeship (or equivalent body) whose sole purpose is to administer the transferred property. Thus, the doctrine has been applied to irrevocable death-benefit and stock-transfer situations in which the transferor was a major stockholder, executive committee member, and/or member of the board of directors. These holdings probably cover the situation in which the transferor has more than 50% control over the entity, although there is authority in other areas [life insurance and contractual death benefits] lending support to the contrary position. . .<sup>254</sup>

*See Estate of Tully v. United States*, 528 F.2d 1401 (Ct. Cl. 1976). *But see Estate of Levin v. Commissioner*, 90 T.C. 723 (1988).

A court may also find that I.R.C. Section 2036(a)(2) does not apply, even if the court finds the decedent managing partner had control, because the managing partner did not have the *legal right to designate the persons* who shall possess or enjoy the property or the income therefrom. The managing partner in the subject partnership may have the power to accumulate income owed to a partner and pay it at a later time to the partner (or to the partner’s estate). However, that income will always be paid or held for the benefit of *that partner* and not some other person. That partner, directly or indirectly, has the ability to enjoy the benefit of any accumulation of income, without interference from the managing partner, by selling his partnership interest. Stated differently, any partner, by simply selling his interest, has the right, in effect, to veto a managing partner’s attempt to deny that partner the economic benefit of accumulating the current income.

A court may conclude that Judge Cohen incorrectly compares the trust in *O’Malley* (in which the current beneficiaries may not receive all of the trust estate) to a vested partnership

---

<sup>254</sup> Dodge, 50-5<sup>th</sup> T.M. , Transfers With Retained Interest In Powers (page A-46).

interest. Trusts, of course, are significantly different legal relationships than partnerships. In *O'Malley* the trustee had the ability to withhold income and that withheld income would be accumulated in the trust estate, which could then pass to beneficiaries at the time of the termination of the trust. If the beneficiary did not live beyond the term of the trust, then that property would pass to a different beneficiary (i.e., a different person).

Assume, instead of the facts of *O'Malley*, that a beneficiary of a trust had, at any time, the right to enjoy the income of the trust without trustee interference. For instance, if the beneficiary of the trust in *O'Malley* had a unilateral, unlimited power to enjoy the benefit of the past, current and future income of the trust by vetoing the trustee's accumulation exercise and/or a power to sell the past, current or future income rights of the trust, at any time before the trust terminates, without trustee interference, the trustee would not have the *legal right to designate* which trust beneficiary would enjoy the income.

Similarly, the partners in *Strangi* (and almost all other partnerships and/or business trusts as analyzed in the *Estate of Cohen*) had the right at any time to sell the past, current and future income of the partnership, without managing partner interference, through their right to sell their partnership interests (subject to any rights of first refusal that may have existed under the partnership agreement). The managing partner in *Strangi* did not retain the *legal right to designate* that another person (i.e., another partner) had the right to enjoy that partner's past, current or future income of the partnership. Thus, another court may conclude the distribution powers of the managing partner may affect valuation under I.R.C. Section 2033, but those powers do not constitute a *legal right to designate* that another person receives the benefit of that partner's income.

2. Taxpayers Should Consider Adopting a Strategy of Selling Partnership Interests (Perhaps to Defective Grantor Trusts) in Exchange For a Note or Other Full Consideration.

Also, see the discussion in this paper about avoiding I.R.C. Section 2036(a)(1) inclusion by sales for full consideration. Obviously, the preference is that those sales should be made for full and adequate consideration. If there is any gift element, and if the prerequisites of I.R.C. Section 2036(a)(2) are met, I.R.C. Section 2036(a)(2) could apply, at least with respect to the growth in value of the partnership interest, to cause inclusion in the donor's estate. Thus, that transferor partner may wish to sell his or her partnership interest, pursuant to a formula defined value allocation (assuming the formula can be structured, and is structured, in a manner that is not contrary to public policy). Even if the transferor retains a potential I.R.C. Section 2036(a)(2) power, if the transfer is for full and adequate consideration (i.e., if the formula is honored), I.R.C. Section 2036(a)(2) does not apply. (Additionally, if there is some consideration, but not full consideration, I.R.C. Section 2043 would provide for partial inclusion.)

3. I.R.C. Section 2036(a)(2) Inclusion Should Be Avoided if the Partnership Agreement is Structured to Provide the Same Fiduciary Constraints That Mr. Byrum Had.

Normal partnership fiduciary duties should be affirmed in the partnership agreement, including fiduciary constraints on the distribution power that are consistent with Mr. Byrum's constraints. In order to provide protection for management that is acceptable under I.R.C. Section 2036(a)(2), consider providing for arbitration for any partner disagreements with management decisions. Consider providing that management will only be liable for decisions that are not within the confines of the business judgment rule. Also consider providing in the partnership agreement that any party who loses that arbitration action shall pay for all costs associated with that arbitration action.

4. I.R.C. Section 2036(a)(2) Inclusion Should Be Avoided if the Donor Partner's Distribution Power is Limited By Standards That a Court Could Enforce.

If the donor partner is going to retain a distribution power, consideration should be given to having the distribution power of the managing partner limited to a standard that may be enforced by a court. See Rev. Rul. 73-143, 1973-1 C.B. 407. This may be crucial. If the donor of a partnership interest is the sole managing partner, any gifts of partnership interests may be brought back into the donor's estate under I.R.C. Section 2036(a)(2), if the ability to accumulate income for a partner is considered to be a legal right to designate that another person (i.e. another partner) enjoys the past, current or future income of the partnership. Stated differently, if *O'Malley* analysis applies to partnerships and if the transfer of the partnership interest is not for adequate and full consideration, I.R.C. Section 2036(a)(2) may apply unless the dispositive powers are limited by standards that a court can enforce. If the dispositive powers retained by the donor partner are not limited by standards, it may not matter what other actions or drafting constraints are present (with the possible exception of a sale for adequate and full consideration). On the other hand, the transferred partnership interest will not be included in the donor's estate under I.R.C. Section 2036(a)(2) where the only distribution power is one subject to a definite external standard subject to supervision by a court. If a power is so constrained, the donor does not have the legal right to designate the persons who shall possess or enjoy the property or the income therefrom. The original source of this doctrine is *Jennings v. Smith*,<sup>255</sup> but it has been approved by the I.R.S. in Rev. Rul. 73-143.

A caveat: the application of the doctrine to powers that, though subject to an enforceable standard, are exercisable in favor of the creator of the power is uncertain. Thus, this approach has greater certainty in negating I.R.C. Sec. 2036(a)(2) with respect to gifted partnership interests than with respect to partnership assets deemed retained by the decedent under I.R.C. Sec. 2036(a)(1). Obviously, this is not a concern, if the taxpayer only retained *de minimis* partnership interests (i.e., that partner has already transferred all

---

<sup>255</sup> 161 F2d 74 (2<sup>nd</sup> Cir. 1947).

but a small portion of the partnership interests). Secondly, in those situations where significant partnership interests have been retained, if as a matter of partnership practice, the partnership distributions pursuant to the standard are different than the income earned by the partnership assets, the standard may buttress the argument that the decedent-managing partner did not retain income rights with respect to the underlying partnership assets. Furthermore, if the managing partner retains most of his limited partnership interest, there is significant authority that the underlying assets of the partnership that the managing partner originally contributed will not be brought back into that partner's estate under I.R.C. Section 2036(a)(1), because the retained right with respect to the distributions is *a retained right with respect to the partnership interest* and not a retained right with respect to the underlying assets of the partnership. See *Estate of Boykin v. Commissioner*, TC Memo 1987-134, 53 TCM 345, (1987). *Boykin* (according to legislative history) led to the passage of the infamous I.R.C. Section 2036(c), in which Congress overturned existing case law and applied I.R.C. Section 2036 to include the contributed assets to an "enterprise" back into the partner or shareholder's estate. In 1990, Congress repudiated its previous work and repealed I.R.C. Section 2036(c) (thus, implicitly approving the result of *Boykin*). Stated differently, the prevailing case law with respect to entities, and recent Congressional legislative history, may be persuasive that rights with respect to income of significant retained partnership interests should not be considered rights to possess the partnership assets or income.

An example of partnership drafting that provides a distribution power that is subject to court enforcement is the following:

No Other Distributions. Except as provided in this Article, the Partnership shall make no distributions of cash or other property to any Partner until its liquidation as provided in Section \_\_\_\_.

Distributable Cash. Distributable Cash includes only that cash held by the Partnership at the end of a Fiscal Year after reasonable reserves of cash have been set aside by the Partnership Management, subject to the duties imposed by Section \_\_\_\_, for working capital and other cash requirements, including current and reasonably projected expenses, current and reasonably projected investment opportunities, and reasonably anticipated contingencies. For purposes of this Section, any of the Partnership Assets which are contributed to the Partnership by the Partners, any borrowed funds, and any cash generated upon the sale of any of the Partnership Assets, including Partnership Assets which are purchased with borrowed funds and including the cash attributable to appreciation in value, shall be considered as necessary for investment purposes.

Operating Distributions. From time to time during each Fiscal Year, the Partnership may distribute any part or all of the Distributable Cash proportionately to each of the Partners based on their Percentage Interests; provided that no more than sixty days after each Fiscal Year, the

Partnership shall distribute all of the Distributable Cash proportionately to each of the Partners based on their Percentage Interests. No distributions under this Section shall have the effect of changing any of the Percentage Interests.

Caution would indicate that this method of avoiding I.R.C. Section 2036(a)(2) listed above should be implemented, even if the donor is not a general partner or manager, because the donor may be imputed with the actions of other partners, as per the analysis of the Court in *Strangi*, and because of the Court's interpretation of the "in conjunction with any person" rule of I.R.C. Section 2036(a)(2).

If discretion is not removed from the general partner or manager, is it sufficient protection under I.R.C. Section 2036(a)(2) for the transferor not to act as general partner or manager? The answer should be yes. In this regard, however, it should be noted that under Judge Cohen's analysis there are two pitfalls that must be avoided. First, the donor must not bear such a relationship to any of the general partners or managers that their powers will be attributed to him. For example, in *Strangi* the manager was the donor's attorney-in-fact, who had established the partnership, and the manager's powers were imputed to the donor. Whether this principle would be extended to, for example, the donor's children or spouse, is uncertain, but a strong argument can be made that it should not be extended to anyone, such as a child or spouse, who could serve as trustee of a trust created by the donor without triggering I.R.C. Sec. 2036(a)(2). However, it should be noted that the person who had Mr. Strangi's power of attorney (Mr. Gulig) could have served as trustee without triggering I.R.C. Sec. 2036(a)(2). Second, the donor must not have any rights as limited partner that could affect the timing of distribution of income. One such right identified by Judge Cohen was the right as limited partner to participate in a vote to dissolve the partnership. While this holding was questionable (see the discussion of joint action as a retained "power" above), it cannot be ignored until it is overturned. In effect the limited partners (or at least the donor as limited partner) must be stripped of any rights normally pertaining to limited partners under state law that could implicate I.R.C. Section 2036. It is difficult to say where the line must be drawn; as a practical matter safety is achieved only by stripping the transferor of all voting rights he would otherwise have as limited partner.

5. I.R.C. Section 2036(a)(2) Inclusion Should Be Avoided if the Donor Partner Contributes the Partnership Interest That Controls the Distribution Power to a Trust and Retains the Power to Remove and Replace the Trustee in a Manner That Complies With Revenue Ruling 95-58.

If a donor partner wishes to have some influence on distributions, but does not wish to have distributions subject to an enforceable standard, the donor partner could utilize Rev. Rul. 95-58. For instance, the potential donor-managing partner could bifurcate the powers of the general partner. That is, one general partnership interest could have all of the powers of management, except the discretionary right to make distributions. Another general partnership interest would only have rights with respect to determining the distributions of the partnership. The donor general partner would not own the general partnership interest that has the distribution power. The "distribution power" general partnership interest then could be contributed to a trust. The donor could retain the right to remove the trustee, and under Rev. Rul. 95-58, 1995-2 C.B.

151, as long as the successor trustee is not related or subordinate to the donor, application of I.R.C. Section 2036(a)(2) is avoided.

6. I.R.C. Section 2036(a)(2) Inclusion Should Be Avoided if the Donor Partner Contributes the Partnership Interest That Controls Distribution Powers to a Corporation That Has the Same Considerations and Constraints in its Structure as Existed in *Byrum* and Complies With Revenue Ruling 81-15.

If a donor partner, wishes to retain the distribution power (and not delegate it to a “removable” independent trustee) and have that power “free” of an enforceable standard, except to the extent restraints exist in the corporation consistent with the *Byrum* case, consideration should be given to utilizing the safe harbor under Revenue Ruling 81-15, 1981-1 C.B. 457. The managing partner interest, including all powers with respect to making discretionary distributions of the partnership, could be contributed by the taxpayer to a Subchapter S corporation. The voting rights of the stock of the corporation could be bifurcated between full voting stock and limited voting stock (e.g., a ratio of 1:99). The “limited” voting stock may be allowed to only vote on decisions with respect to dissolution of the partnership or the corporation. The potential donor could then transfer both limited partnership units and a majority of the stock that has the limited voting rights to a trust for the benefit of others in his family. Even though the taxpayer controls a corporation, which in turn controls distributions from the partnership, Revenue Ruling 81-15, in combination with the reasoning of the *Byrum* case, appears to provide a safe harbor from application of I.R.C. Section 2036(a)(2) to such transfers.

---

This material represents the views of the Strategic Wealth Advisory Team (“SWAT”), which is part of the Investment Management Division of Goldman Sachs and is not a product of the Goldman Sachs Tax Department. This information is provided to private clients and their advisors to provide education and wealth planning across a variety of areas, including income tax techniques, executive compensation, structural planning (estate and gift tax) and philanthropy. The views and opinions expressed herein may differ from the views and opinions expressed by other departments or divisions of Goldman Sachs.

This material is intended for educational purposes only. While it is based on information believed to be reliable, no warranty is given as to its accuracy or completeness and it should not be relied upon as such. Information and opinions provided herein are as of the date of this material only and are subject to change without notice.

This material is based on the assumptions stated herein. In the event any of the assumptions used do not prove to be true, results are likely to vary substantially from the examples shown herein. These examples are for illustrative purposes only and no representation is being made that any client will or is likely to achieve the results shown.

Goldman Sachs does not provide accounting, tax or legal advice to its clients, and all investors are strongly urged to consult with their own advisors before implementing any structure, investment plan or strategy. Notwithstanding anything in this document to the contrary, and except as required to enable compliance with applicable securities law, you may disclose to any person the US federal and state income tax treatment and tax structure of the transaction and all materials of any kind (including tax opinions and other tax analyses) that are provided to you relating to such tax treatment and tax structure, without Goldman Sachs imposing any limitation of any kind.

Goldman, Sachs & Co. is not a licensed insurance company. Insurance products are offered through our affiliate The Ayco Company L.P. This material is intended for educational or informational purposes only and does not constitute an offer or solicitation to invest in any insurance product. While it is based on information believed to be reliable as of the date of this material, no representation or warranty is given as to its accuracy or completeness, and it should not be relied upon as such. For any questions you may have on insurance, you should speak to the appropriate representative at Ayco.

This material is intended only to facilitate your discussions with Goldman Sachs as to the opportunities available to our private clients and is provided solely in our capacity as a broker-dealer. This material does not constitute an offer or solicitation with respect to the purchase or sale of any security in any jurisdiction in which such offer or solicitation is not authorized, or to any person to whom it would be unlawful to make such offer or solicitation. This material is based upon information which we consider reliable, but we do not represent that such information is accurate or complete, and it should not be relied upon as such. Any historical price(s) or value(s) is as of the date indicated. Information and opinions are as of the date of this material only and are subject to change without notice.

Services offered through Goldman, Sachs & Co. Member SIPC/FINRA.  
© Copyright 2010, The Goldman Sachs Group, Inc. All rights reserved.  
Date of Revision: October 2010

**MINIMUM FAMILY  
HYPOTHETICAL INTEGRATED INCOME AND ESTATE TAX PLAN COMPARISONS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

**NO FURTHER PLANNING; BEQUEATHS ESTATE TO  
FAMILY (NO DISCOUNT)**

	<b>Pre-Death</b>	<b>Post Death</b>	<b>Percentage of Total</b>
Mimi Minimum	70,542,566	-	0.00%
Minimum Family	-	38,798,412	19.28%
Consumption - Direct Cost	16,651,395	16,651,395	8.27%
Consumption - Investment Opportunity Cost	36,796,365	36,796,365	18.28%
IRS - Income Tax	19,551,445	19,551,445	9.71%
IRS - Investment Opportunity Costs	57,711,366	57,711,366	28.68%
IRS - Estate Tax (at 45%)	-	31,744,155	15.77%
Total	\$201,253,138	\$201,253,138	100.00%

**NO FURTHER PLANNING; BEQUEATHS ESTATE TO  
FAMILY (WITH DISCOUNT)**

Mimi Minimum	70,542,566	-	0.00%
Minimum Family	-	49,908,866	24.80%
Consumption - Direct Cost	16,651,395	16,651,395	8.27%
Consumption - Investment Opportunity Cost	36,796,365	36,796,365	18.28%
IRS - Income Tax	19,551,445	19,551,445	9.71%
IRS - Investment Opportunity Costs	57,711,366	57,711,366	28.68%
IRS - Estate Tax (at 45%)	-	20,633,701	10.25%
Total	\$201,253,138	\$201,253,138	100.00%

**HYPOTHETICAL INTEGRATED INCOME & ESTATE  
TAX PLAN WITH A GIFT/SALE TO A GST; BEQUEATHS  
ESTATE TO FAMILY**

Mimi Minimum	1,081,514	-	0.00%
Minimum Family	67,735,438	68,330,271	33.95%
Consumption - Direct Cost	16,651,395	16,651,395	8.27%
Consumption - Investment Opportunity Cost	36,796,365	36,796,365	18.28%
IRS - Income Tax	21,277,059	21,277,059	10.57%
IRS - Investment Opportunity Costs	57,711,366	57,711,366	28.68%
IRS - Estate Tax (at 45%)	-	486,681	0.24%
Total	\$201,253,138	\$201,253,138	100.00%

**TAX PLAN WITH A PARTNERSHIP AND WITH A  
GIFT/SALE TO A GST; BEQUEATHS ESTATE TO  
FAMILY**

Mimi Minimum	218,548	-	0.00%
Minimum Family	68,477,925	68,598,127	34.09%
Consumption - Direct Cost	16,651,395	16,651,395	8.27%
Consumption - Investment Opportunity Cost	36,796,365	36,796,365	18.28%
IRS - Income Tax	21,397,537	21,397,537	10.63%
IRS - Investment Opportunity Costs	57,711,366	57,711,366	28.68%
IRS - Estate Tax (at 45%)	-	98,347	0.05%
Total	\$201,253,138	\$201,253,138	100.00%



**Schedule 1**  
**MINIMUM FAMILY**  
**ASSET PAGE**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Family Limited Partnership

Asset: Miscellaneous Assets	\$18,000,000
Basis: Miscellaneous Assets	\$0

Other Miscellaneous Assets

Asset: Miscellaneous Assets	\$2,000,000
Basis: Miscellaneous Assets	\$0

<b>Total Assets*</b>	<b>\$20,000,000</b>
<b>Total Basis</b>	<b>\$0</b>

\* There is not any proposed planning for Mimi Minimum's other assets

## MINIMUM FAMILY

## NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY (NO DISCOUNT)

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (with 3% inflation adjustment each year)	350,000

*Mimi Minimum*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Consumption</b>	<b>End of Year</b>
Year 1	20,000,000	400,000	1,200,000	(3,411,980)	(350,000)	17,838,020
Year 2	17,838,020	356,760	1,070,281	(220,592)	(360,500)	18,683,969
Year 3	18,683,969	373,679	1,121,038	(253,075)	(371,315)	19,554,297
Year 4	19,554,297	391,086	1,173,258	(280,334)	(382,454)	20,455,852
Year 5	20,455,852	409,117	1,227,351	(304,127)	(393,928)	21,394,266
Year 6	21,394,266	427,885	1,283,656	(325,709)	(405,746)	22,374,352
Year 7	22,374,352	447,487	1,342,461	(345,978)	(417,918)	23,400,404
Year 8	23,400,404	468,008	1,404,024	(365,582)	(430,456)	24,476,399
Year 9	24,476,399	489,528	1,468,584	(384,993)	(443,370)	25,606,149
Year 10	25,606,149	512,123	1,536,369	(404,559)	(456,671)	26,793,411
Year 11	26,793,411	535,868	1,607,605	(424,544)	(470,371)	28,041,970
Year 12	28,041,970	560,839	1,682,518	(445,150)	(484,482)	29,355,695
Year 13	29,355,695	587,114	1,761,342	(466,540)	(499,016)	30,738,594
Year 14	30,738,594	614,772	1,844,316	(488,849)	(513,987)	32,194,846
Year 15	32,194,846	643,897	1,931,691	(512,192)	(529,406)	33,728,835
Year 16	33,728,835	674,577	2,023,730	(536,675)	(545,289)	35,345,178
Year 17	35,345,178	706,904	2,120,711	(562,394)	(561,647)	37,048,751
Year 18	37,048,751	740,975	2,222,925	(589,444)	(578,497)	38,844,711
Year 19	38,844,711	776,894	2,330,683	(617,918)	(595,852)	40,738,517
Year 20	40,738,517	814,770	2,444,311	(647,912)	(613,727)	42,735,960
Year 21	42,735,960	854,719	2,564,158	(679,522)	(632,139)	44,843,176
Year 22	44,843,176	896,864	2,690,591	(712,848)	(651,103)	47,066,679
Year 23	47,066,679	941,334	2,824,001	(747,996)	(670,636)	49,413,381
Year 24	49,413,381	988,268	2,964,803	(785,078)	(690,755)	51,890,618
Year 25	51,890,618	1,037,812	3,113,437	(824,208)	(711,478)	54,506,182
Year 26	54,506,182	1,090,124	3,270,371	(865,512)	(732,822)	57,268,342
Year 27	57,268,342	1,145,367	3,436,101	(909,119)	(754,807)	60,185,884
Year 28	60,185,884	1,203,718	3,611,153	(955,167)	(777,451)	63,268,136
Year 29	63,268,136	1,265,363	3,796,088	(1,003,804)	(800,775)	66,525,009
Year 30	66,525,009	1,330,500	3,991,501	(479,645)	(824,798)	70,542,566

## MINIMUM FAMILY

## NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY (WITH DISCOUNT)

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (with 3% inflation adjustment each year)	350,000

*Mimi Minimum*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Consumption</b>	<b>End of Year</b>
Year 1	20,000,000	400,000	1,200,000	(3,411,980)	(350,000)	17,838,020
Year 2	17,838,020	356,760	1,070,281	(220,592)	(360,500)	18,683,969
Year 3	18,683,969	373,679	1,121,038	(253,075)	(371,315)	19,554,297
Year 4	19,554,297	391,086	1,173,258	(280,334)	(382,454)	20,455,852
Year 5	20,455,852	409,117	1,227,351	(304,127)	(393,928)	21,394,266
Year 6	21,394,266	427,885	1,283,656	(325,709)	(405,746)	22,374,352
Year 7	22,374,352	447,487	1,342,461	(345,978)	(417,918)	23,400,404
Year 8	23,400,404	468,008	1,404,024	(365,582)	(430,456)	24,476,399
Year 9	24,476,399	489,528	1,468,584	(384,993)	(443,370)	25,606,149
Year 10	25,606,149	512,123	1,536,369	(404,559)	(456,671)	26,793,411
Year 11	26,793,411	535,868	1,607,605	(424,544)	(470,371)	28,041,970
Year 12	28,041,970	560,839	1,682,518	(445,150)	(484,482)	29,355,695
Year 13	29,355,695	587,114	1,761,342	(466,540)	(499,016)	30,738,594
Year 14	30,738,594	614,772	1,844,316	(488,849)	(513,987)	32,194,846
Year 15	32,194,846	643,897	1,931,691	(512,192)	(529,406)	33,728,835
Year 16	33,728,835	674,577	2,023,730	(536,675)	(545,289)	35,345,178
Year 17	35,345,178	706,904	2,120,711	(562,394)	(561,647)	37,048,751
Year 18	37,048,751	740,975	2,222,925	(589,444)	(578,497)	38,844,711
Year 19	38,844,711	776,894	2,330,683	(617,918)	(595,852)	40,738,517
Year 20	40,738,517	814,770	2,444,311	(647,912)	(613,727)	42,735,960
Year 21	42,735,960	854,719	2,564,158	(679,522)	(632,139)	44,843,176
Year 22	44,843,176	896,864	2,690,591	(712,848)	(651,103)	47,066,679
Year 23	47,066,679	941,334	2,824,001	(747,996)	(670,636)	49,413,381
Year 24	49,413,381	988,268	2,964,803	(785,078)	(690,755)	51,890,618
Year 25	51,890,618	1,037,812	3,113,437	(824,208)	(711,478)	54,506,182
Year 26	54,506,182	1,090,124	3,270,371	(865,512)	(732,822)	57,268,342
Year 27	57,268,342	1,145,367	3,436,101	(909,119)	(754,807)	60,185,884
Year 28	60,185,884	1,203,718	3,611,153	(955,167)	(777,451)	63,268,136
Year 29	63,268,136	1,265,363	3,796,088	(1,003,804)	(800,775)	66,525,009
Year 30	66,525,009	1,330,500	3,991,501	(479,645)	(824,798)	70,542,566

**Schedule 1**  
**MINIMUM FAMILY**  
**HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
<b>Mimi Minimum</b>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	350,000
Intra-Family Note Interest Percentage	2.06%

**Mimi Minimum**

	<b>Beginning of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Gift to Minimum GST Grantor Trust</b>	<b>Note Payments</b>	<b>Income Taxes</b>	<b>Consumption</b>	<b>End of Year</b>
Year 1	2,000,000	40,000	120,000	(2,000,000)	5,770,800	(3,411,980)	(350,000)	2,168,820
Year 2	2,168,820	43,376	130,129	-	1,519,560	(220,592)	(360,500)	3,280,793
Year 3	3,280,793	65,616	196,848	-	1,367,604	(253,075)	(371,315)	4,286,470
Year 4	4,286,470	85,729	257,188	-	1,230,844	(280,334)	(382,454)	5,197,444
Year 5	5,197,444	103,949	311,847	-	1,107,759	(304,127)	(393,928)	6,022,944
Year 6	6,022,944	120,459	361,377	-	996,983	(325,709)	(405,746)	6,770,308
Year 7	6,770,308	135,406	406,218	-	897,285	(345,978)	(417,918)	7,445,321
Year 8	7,445,321	148,906	446,719	-	807,556	(365,582)	(430,456)	8,052,466
Year 9	8,052,466	161,049	483,148	-	726,801	(384,993)	(443,370)	8,595,102
Year 10	8,595,102	171,902	515,706	-	654,121	(404,559)	(456,671)	9,075,601
Year 11	9,075,601	181,512	544,536	-	588,709	(424,544)	(470,371)	9,495,444
Year 12	9,495,444	189,909	569,727	-	529,838	(445,150)	(484,482)	9,855,285
Year 13	9,855,285	197,106	591,317	-	476,854	(466,540)	(499,016)	10,155,005
Year 14	10,155,005	203,100	609,300	-	429,169	(488,849)	(513,987)	10,393,738
Year 15	10,393,738	207,875	623,624	-	386,252	(512,192)	(529,406)	10,569,890
Year 16	10,569,890	211,398	634,193	-	347,627	(536,675)	(545,289)	10,681,145
Year 17	10,681,145	213,623	640,869	-	312,864	(562,394)	(561,647)	10,724,459
Year 18	10,724,459	214,489	643,468	-	281,578	(589,444)	(578,497)	10,696,052
Year 19	10,696,052	213,921	641,763	-	253,420	(617,918)	(595,852)	10,591,386
Year 20	10,591,386	211,828	635,483	-	228,078	(647,912)	(613,727)	10,405,136
Year 21	10,405,136	208,103	624,308	-	205,270	(679,522)	(632,139)	10,131,157
Year 22	10,131,157	202,623	607,869	-	184,743	(712,848)	(651,103)	9,762,441
Year 23	9,762,441	195,249	585,746	-	166,269	(747,996)	(670,636)	9,291,072
Year 24	9,291,072	185,821	557,464	-	149,642	(785,078)	(690,755)	8,708,167
Year 25	8,708,167	174,163	522,490	-	134,678	(824,208)	(711,478)	8,003,812
Year 26	8,003,812	160,076	480,229	-	121,210	(865,512)	(732,822)	7,166,992
Year 27	7,166,992	143,340	430,020	-	109,089	(909,119)	(754,807)	6,185,515
Year 28	6,185,515	123,710	371,131	-	98,180	(955,167)	(777,451)	5,045,918
Year 29	5,045,918	100,918	302,755	-	88,362	(1,003,804)	(800,775)	3,733,376
Year 30	3,733,376	74,668	224,003	-	79,526	(2,205,260)	(824,798)	1,081,514

**Schedule 1**  
**MINIMUM FAMILY**  
**HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
<b>Mimi Minimum</b>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	350,000
Intra-Family Note Interest Percentage	2.06%

**Minimum GST Grantor Trust**

	<b>Beginning of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Gift From Mimi Minimum</b>	<b>Note Payments</b>	<b>Income Taxes</b>	<b>End of Year</b>
Year 1	18,000,000	360,000	1,080,000	2,000,000	(5,770,800)	-	15,669,200
Year 2	15,669,200	313,384	940,152	-	(1,519,560)	-	15,403,176
Year 3	15,403,176	308,064	924,191	-	(1,367,604)	-	15,267,826
Year 4	15,267,826	305,357	916,070	-	(1,230,844)	-	15,258,409
Year 5	15,258,409	305,168	915,505	-	(1,107,759)	-	15,371,322
Year 6	15,371,322	307,426	922,279	-	(996,983)	-	15,604,044
Year 7	15,604,044	312,081	936,243	-	(897,285)	-	15,955,083
Year 8	15,955,083	319,102	957,305	-	(807,556)	-	16,423,933
Year 9	16,423,933	328,479	985,436	-	(726,801)	-	17,011,047
Year 10	17,011,047	340,221	1,020,663	-	(654,121)	-	17,717,810
Year 11	17,717,810	354,356	1,063,069	-	(588,709)	-	18,546,526
Year 12	18,546,526	370,931	1,112,792	-	(529,838)	-	19,500,410
Year 13	19,500,410	390,008	1,170,025	-	(476,854)	-	20,583,589
Year 14	20,583,589	411,672	1,235,015	-	(429,169)	-	21,801,108
Year 15	21,801,108	436,022	1,308,066	-	(386,252)	-	23,158,945
Year 16	23,158,945	463,179	1,389,537	-	(347,627)	-	24,664,034
Year 17	24,664,034	493,281	1,479,842	-	(312,864)	-	26,324,292
Year 18	26,324,292	526,486	1,579,458	-	(281,578)	-	28,148,658
Year 19	28,148,658	562,973	1,688,919	-	(253,420)	-	30,147,131
Year 20	30,147,131	602,943	1,808,828	-	(228,078)	-	32,330,824
Year 21	32,330,824	646,616	1,939,849	-	(205,270)	-	34,712,020
Year 22	34,712,020	694,240	2,082,721	-	(184,743)	-	37,304,238
Year 23	37,304,238	746,085	2,238,254	-	(166,269)	-	40,122,308
Year 24	40,122,308	802,446	2,407,339	-	(149,642)	-	43,182,451
Year 25	43,182,451	863,649	2,590,947	-	(134,678)	-	46,502,370
Year 26	46,502,370	930,047	2,790,142	-	(121,210)	-	50,101,349
Year 27	50,101,349	1,002,027	3,006,081	-	(109,089)	-	54,000,368
Year 28	54,000,368	1,080,007	3,240,022	-	(98,180)	-	58,222,218
Year 29	58,222,218	1,164,444	3,493,333	-	(88,362)	-	62,791,633
Year 30	62,791,633	1,255,833	3,767,498	-	(79,526)	-	67,735,438

**Schedule 1**  
**MINIMUM FAMILY**  
**HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
<b>Mimi Minimum</b>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	350,000
Intra-Family Note Interest Percentage	2.06%

*Note Between Mimi Minimum and Minimum GST Grantor Trust*

	<b>Beginning of Year</b>	<b>Interest</b>	<b>Note Payment</b>	<b>End of Year</b>
Year 1	18,000,000	370,800	(5,770,800)	12,600,000
Year 2	12,600,000	259,560	(1,519,560)	11,340,000
Year 3	11,340,000	233,604	(1,367,604)	10,206,000
Year 4	10,206,000	210,244	(1,230,844)	9,185,400
Year 5	9,185,400	189,219	(1,107,759)	8,266,860
Year 6	8,266,860	170,297	(996,983)	7,440,174
Year 7	7,440,174	153,268	(897,285)	6,696,157
Year 8	6,696,157	137,941	(807,556)	6,026,541
Year 9	6,026,541	124,147	(726,801)	5,423,887
Year 10	5,423,887	111,732	(654,121)	4,881,498
Year 11	4,881,498	100,559	(588,709)	4,393,348
Year 12	4,393,348	90,503	(529,838)	3,954,014
Year 13	3,954,014	81,453	(476,854)	3,558,612
Year 14	3,558,612	73,307	(429,169)	3,202,751
Year 15	3,202,751	65,977	(386,252)	2,882,476
Year 16	2,882,476	59,379	(347,627)	2,594,228
Year 17	2,594,228	53,441	(312,864)	2,334,805
Year 18	2,334,805	48,097	(281,578)	2,101,325
Year 19	2,101,325	43,287	(253,420)	1,891,192
Year 20	1,891,192	38,959	(228,078)	1,702,073
Year 21	1,702,073	35,063	(205,270)	1,531,866
Year 22	1,531,866	31,556	(184,743)	1,378,679
Year 23	1,378,679	28,401	(166,269)	1,240,811
Year 24	1,240,811	25,561	(149,642)	1,116,730
Year 25	1,116,730	23,005	(134,678)	1,005,057
Year 26	1,005,057	20,704	(121,210)	904,551
Year 27	904,551	18,634	(109,089)	814,096
Year 28	814,096	16,770	(98,180)	732,687
Year 29	732,687	15,093	(88,362)	659,418
Year 30	659,418	13,584	(79,526)	593,476

**Schedule 1**  
**MINIMUM FAMILY**  
**HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
<u>Mimi Minimum</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	350,000
Intra-Family Note Interest Percentage	2.06%

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Mimi Minimum's Percentage Ownership in Minimum FLP	1.00%
GST Grantor Trust's Ownership in Minimum FLP	99.00%
Minimum FLP Valuation Discount	35.00%

**Minimum FLP**

	<b>Beginning of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Distributions</b>	<b>End of Year</b>
Year 1	18,000,000	360,000	1,080,000	(4,780,782)	14,659,218
Year 2	14,659,218	293,184	879,553	(1,577,071)	14,254,885
Year 3	14,254,885	285,098	855,293	(1,553,300)	13,841,975
Year 4	13,841,975	276,840	830,519	(1,522,194)	13,427,139
Year 5	13,427,139	268,543	805,628	(1,486,363)	13,014,948
Year 6	13,014,948	260,299	780,897	(1,447,640)	12,608,503
Year 7	12,608,503	252,170	756,510	(1,407,309)	12,209,875
Year 8	12,209,875	244,197	732,592	(1,366,261)	11,820,403
Year 9	11,820,403	236,408	709,224	(1,325,116)	11,440,920
Year 10	11,440,920	228,818	686,455	(1,284,296)	11,071,898
Year 11	11,071,898	221,438	664,314	(1,244,089)	10,713,561
Year 12	10,713,561	214,271	642,814	(1,204,686)	10,365,960
Year 13	10,365,960	207,319	621,958	(1,166,209)	10,029,028
Year 14	10,029,028	200,581	601,742	(1,128,734)	9,702,616
Year 15	9,702,616	194,052	582,157	(1,092,302)	9,386,524
Year 16	9,386,524	187,730	563,191	(1,056,933)	9,080,513
Year 17	9,080,513	181,610	544,831	(1,022,628)	8,784,326
Year 18	8,784,326	175,687	527,060	(989,380)	8,497,692
Year 19	8,497,692	169,954	509,862	(957,173)	8,220,335
Year 20	8,220,335	164,407	493,220	(925,986)	7,951,976
Year 21	7,951,976	159,040	477,119	(895,794)	7,692,340
Year 22	7,692,340	153,847	461,540	(866,573)	7,441,154
Year 23	7,441,154	148,823	446,469	(838,295)	7,198,151
Year 24	7,198,151	143,963	431,889	(810,933)	6,963,070
Year 25	6,963,070	139,261	417,784	(784,459)	6,735,657
Year 26	6,735,657	134,713	404,139	(758,845)	6,515,664
Year 27	6,515,664	130,313	390,940	(734,065)	6,302,852
Year 28	6,302,852	126,057	378,171	(710,093)	6,096,987
Year 29	6,096,987	121,940	365,819	(686,902)	5,897,844
Year 30	5,897,844	117,957	353,871	(808,316)	5,561,356

**Schedule 1**  
**MINIMUM FAMILY**  
**HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
<u>Mimi Minimum</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	350,000
Intra-Family Note Interest Percentage	2.06%

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Mimi Minimum's Percentage Ownership in Minimum FLP	1.00%
GST Grantor Trust's Ownership in Minimum FLP	99.00%
Minimum FLP Valuation Discount	35.00%

***Mimi Minimum***

	Gift to Minimum GST Grantor							Consumption	End of Year
	Beginning of Year	Income	Growth	Trust Distribution from Partnership	Note Payments	Income Taxes			
Year 1	2,000,000	40,000	120,000	(2,000,000)	47,808	4,732,974	(3,411,980)	(350,000)	1,178,802
Year 2	1,178,802	23,576	70,728	-	15,771	1,561,300	(220,592)	(360,500)	2,269,085
Year 3	2,269,085	45,382	136,145	-	15,533	1,537,767	(253,075)	(371,315)	3,379,521
Year 4	3,379,521	67,590	202,771	-	15,222	1,506,972	(280,334)	(382,454)	4,509,289
Year 5	4,509,289	90,186	270,557	-	14,864	1,471,499	(304,127)	(393,928)	5,658,340
Year 6	5,658,340	113,167	339,500	-	14,476	1,433,164	(325,709)	(405,746)	6,827,193
Year 7	6,827,193	136,544	409,632	-	14,073	16,375	(345,978)	(417,918)	6,639,920
Year 8	6,639,920	132,798	398,395	-	13,663	-	(99,727)	(430,456)	6,654,593
Year 9	6,654,593	133,092	399,276	-	13,251	-	(104,080)	(443,370)	6,652,762
Year 10	6,652,762	133,055	399,166	-	12,843	-	(107,015)	(456,671)	6,634,141
Year 11	6,634,141	132,683	398,048	-	12,441	-	(108,873)	(470,371)	6,598,069
Year 12	6,598,069	131,961	395,884	-	12,047	-	(109,886)	(484,482)	6,543,594
Year 13	6,543,594	130,872	392,616	-	11,662	-	(110,209)	(499,016)	6,469,518
Year 14	6,469,518	129,390	388,171	-	11,287	-	(109,946)	(513,987)	6,374,433
Year 15	6,374,433	127,489	382,466	-	10,923	-	(109,160)	(529,406)	6,256,745
Year 16	6,256,745	125,135	375,405	-	10,569	-	(107,885)	(545,289)	6,114,680
Year 17	6,114,680	122,294	366,881	-	10,226	-	(106,137)	(561,647)	5,946,296
Year 18	5,946,296	118,926	356,778	-	9,894	-	(103,916)	(578,497)	5,749,481
Year 19	5,749,481	114,990	344,969	-	9,572	-	(101,209)	(595,852)	5,521,950
Year 20	5,521,950	110,439	331,317	-	9,260	-	(97,996)	(613,727)	5,261,243
Year 21	5,261,243	105,225	315,675	-	8,958	-	(94,249)	(632,139)	4,964,712
Year 22	4,964,712	99,294	297,883	-	8,666	-	(89,935)	(651,103)	4,629,516
Year 23	4,629,516	92,590	277,771	-	8,383	-	(85,015)	(670,636)	4,252,610
Year 24	4,252,610	85,052	255,157	-	8,109	-	(79,443)	(690,755)	3,830,729
Year 25	3,830,729	76,615	229,844	-	7,845	-	(73,174)	(711,478)	3,360,380
Year 26	3,360,380	67,208	201,623	-	7,588	-	(66,153)	(732,822)	2,837,823
Year 27	2,837,823	56,756	170,269	-	7,341	-	(58,325)	(754,807)	2,259,058
Year 28	2,259,058	45,181	135,543	-	7,101	-	(49,627)	(777,451)	1,619,806
Year 29	1,619,806	32,396	97,188	-	6,869	-	(39,993)	(800,775)	915,491
Year 30	915,491	18,310	54,929	-	8,083	-	(9,081)	(824,798)	162,935



**Schedule 1**  
**MINIMUM FAMILY**  
**HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
<u>Mimi Minimum</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	350,000
Intra-Family Note Interest Percentage	2.06%

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Mimi Minimum's Percentage Ownership in Minimum FLP	1.00%
GST Grantor Trust's Ownership in Minimum FLP	99.00%
Minimum FLP Valuation Discount	35.00%

**Minimum GST Grantor Trust**

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Gift From Mimi Minimum</u>	<u>Distribution from Partnership</u>	<u>Note Payments</u>	<u>Income Taxes</u>	<u>End of Year</u>
Year 1	-	-	-	2,000,000	4,732,974	(4,732,974)	-	2,000,000
Year 2	2,000,000	40,000	120,000	-	1,561,300	(1,561,300)	-	2,160,000
Year 3	2,160,000	43,200	129,600	-	1,537,767	(1,537,767)	-	2,332,800
Year 4	2,332,800	46,656	139,968	-	1,506,972	(1,506,972)	-	2,519,424
Year 5	2,519,424	50,388	151,165	-	1,471,499	(1,471,499)	-	2,720,978
Year 6	2,720,978	54,420	163,259	-	1,433,164	(1,433,164)	-	2,938,656
Year 7	2,938,656	58,773	176,319	-	1,393,236	(16,375)	-	4,550,610
Year 8	4,550,610	91,012	273,037	-	1,352,599	-	(265,855)	6,001,403
Year 9	6,001,403	120,028	360,084	-	1,311,864	-	(280,913)	7,512,467
Year 10	7,512,467	150,249	450,748	-	1,271,453	-	(297,544)	9,087,373
Year 11	9,087,373	181,747	545,242	-	1,231,648	-	(315,671)	10,730,340
Year 12	10,730,340	214,607	643,820	-	1,192,639	-	(335,264)	12,446,142
Year 13	12,446,142	248,923	746,768	-	1,154,547	-	(356,331)	14,240,049
Year 14	14,240,049	284,801	854,403	-	1,117,446	-	(378,903)	16,117,796
Year 15	16,117,796	322,356	967,068	-	1,081,379	-	(403,033)	18,085,566
Year 16	18,085,566	361,711	1,085,134	-	1,046,363	-	(428,790)	20,149,985
Year 17	20,149,985	403,000	1,208,999	-	1,012,402	-	(456,257)	22,318,129
Year 18	22,318,129	446,363	1,339,088	-	979,486	-	(485,528)	24,597,538
Year 19	24,597,538	491,951	1,475,852	-	947,601	-	(516,709)	26,996,232
Year 20	26,996,232	539,925	1,619,774	-	916,726	-	(549,916)	29,522,741
Year 21	29,522,741	590,455	1,771,364	-	886,836	-	(585,272)	32,186,124
Year 22	32,186,124	643,722	1,931,167	-	857,907	-	(622,913)	34,996,009
Year 23	34,996,009	699,920	2,099,761	-	829,912	-	(662,982)	37,962,620
Year 24	37,962,620	759,252	2,277,757	-	802,824	-	(705,634)	41,096,819
Year 25	41,096,819	821,936	2,465,809	-	776,614	-	(751,034)	44,410,145
Year 26	44,410,145	888,203	2,664,609	-	751,257	-	(799,358)	47,914,854
Year 27	47,914,854	958,297	2,874,891	-	726,725	-	(850,794)	51,623,973
Year 28	51,623,973	1,032,479	3,097,438	-	702,992	-	(905,540)	55,551,343
Year 29	55,551,343	1,111,027	3,333,081	-	680,033	-	(963,810)	59,711,673
Year 30	59,711,673	1,194,233	3,582,700	-	800,233	-	(2,316,657)	62,972,183

**Schedule 1**  
**MINIMUM FAMILY**  
**HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
<u>Mimi Minimum</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	350,000
Intra-Family Note Interest Percentage	2.06%

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Mimi Minimum's Percentage Ownership in Minimum FLP	1.00%
GST Grantor Trust's Ownership in Minimum FLP	99.00%
Minimum FLP Valuation Discount	35.00%

*Note Between Mimi Minimum and Minimum GST Grantor Trust*

	<u>Beginning of Year</u>	<u>Interest</u>	<u>Note Payment</u>	<u>End of Year</u>
Year 1	11,583,000	238,610	(4,732,974)	7,088,636
Year 2	7,088,636	146,026	(1,561,300)	5,673,362
Year 3	5,673,362	116,871	(1,537,767)	4,252,465
Year 4	4,252,465	87,601	(1,506,972)	2,833,094
Year 5	2,833,094	58,362	(1,471,499)	1,419,957
Year 6	1,419,957	29,251	(1,433,164)	16,044
Year 7	16,044	331	(16,375)	-
Year 8	-	-	-	-
Year 9	-	-	-	-
Year 10	-	-	-	-
Year 11	-	-	-	-
Year 12	-	-	-	-
Year 13	-	-	-	-
Year 14	-	-	-	-
Year 15	-	-	-	-
Year 16	-	-	-	-
Year 17	-	-	-	-
Year 18	-	-	-	-
Year 19	-	-	-	-
Year 20	-	-	-	-
Year 21	-	-	-	-
Year 22	-	-	-	-
Year 23	-	-	-	-
Year 24	-	-	-	-
Year 25	-	-	-	-
Year 26	-	-	-	-
Year 27	-	-	-	-
Year 28	-	-	-	-
Year 29	-	-	-	-
Year 30	-	-	-	-

**MINIMUM FAMILY****HYPOTHETICAL INTEGRATED INCOME AND ESTATE TAX PLAN COMPARISONS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

**NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY (NO DISCOUNT)**

	<b>Pre-Death</b>	<b>Post Death</b>	<b>Percentage of Total</b>
Mimi Minimum	27,013,350	-	0.00%
Minimum Family	-	14,857,342	34.41%
Consumption - Direct Cost	4,012,358	4,012,358	9.29%
Consumption - Investment Opportunity Cost	1,692,703	1,692,703	3.92%
IRS - Income Tax	6,076,989	6,076,989	14.07%
IRS - Investment Opportunity Costs	4,383,101	4,383,101	10.15%
IRS - Estate Tax (at 45%)	-	12,156,007	28.15%
<b>Total</b>	<b>\$43,178,500</b>	<b>\$43,178,500</b>	<b>100.00%</b>

**NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY (WITH DISCOUNT)**

	<b>Pre-Death</b>	<b>Post Death</b>	<b>Percentage of Total</b>
Mimi Minimum	27,013,350	-	0.00%
Minimum Family	-	19,111,945	44.26%
Consumption - Direct Cost	4,012,358	4,012,358	9.29%
Consumption - Investment Opportunity Cost	1,692,703	1,692,703	3.92%
IRS - Income Tax	6,076,989	6,076,989	14.07%
IRS - Investment Opportunity Costs	4,383,101	4,383,101	10.15%
IRS - Estate Tax (at 45%)	-	7,901,405	18.30%
<b>Total</b>	<b>\$43,178,500</b>	<b>\$43,178,500</b>	<b>100.00%</b>

**TAX PLAN WITH A GIFT/SALE TO A GST; BEQUEATHS ESTATE TO FAMILY**

Mimi Minimum	10,861,543	-	0.00%
Minimum Family	15,447,568	21,421,417	49.61%
Consumption - Direct Cost	4,012,358	4,012,358	9.29%
Consumption - Investment Opportunity Cost	1,692,703	1,692,703	3.92%
IRS - Income Tax	6,781,228	6,781,228	15.71%
IRS - Investment Opportunity Costs	4,383,101	4,383,101	10.15%
IRS - Estate Tax (at 45%)	-	4,887,694	11.32%
<b>Total</b>	<b>\$43,178,500</b>	<b>\$43,178,500</b>	<b>100.00%</b>

**TAX PLAN WITH A PARTNERSHIP AND WITH A GIFT/SALE TO A GST; BEQUEATHS ESTATE TO FAMILY**

Mimi Minimum	5,503,634	-	0.00%
Minimum Family	20,959,574	23,986,573	55.55%
Consumption - Direct Cost	4,012,358	4,012,358	9.29%
Consumption - Investment Opportunity Cost	1,692,703	1,692,703	3.92%
IRS - Income Tax	6,627,131	6,627,131	15.35%
IRS - Investment Opportunity Costs	4,383,101	4,383,101	10.15%
IRS - Estate Tax (at 45%)	-	2,476,635	5.74%
<b>Total</b>	<b>\$43,178,500</b>	<b>\$43,178,500</b>	<b>100.00%</b>

**Schedule 2**  
**MINIMUM FAMILY**  
**ASSET PAGE**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Family Limited Partnership

Asset: Miscellaneous Assets	\$18,000,000
Basis: Miscellaneous Assets	\$0

Other Miscellaneous Assets

Asset: Miscellaneous Assets	\$2,000,000
Basis: Miscellaneous Assets	\$0

<b>Total Assets*</b>	<b>\$20,000,000</b>
<b>Total Basis</b>	<b>\$0</b>

\* There is not any proposed planning for Mimi Minimum's other assets

**MINIMUM FAMILY****NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY (NO DISCOUNT)**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (with 3% inflation adjustment each year)	350,000

***Mimi Minimum***

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Consumption</b>	<b>End of Year</b>
Year 1	20,000,000	400,000	1,200,000	(3,411,980)	(350,000)	17,838,020
Year 2	17,838,020	356,760	1,070,281	(220,592)	(360,500)	18,683,969
Year 3	18,683,969	373,679	1,121,038	(253,075)	(371,315)	19,554,297
Year 4	19,554,297	391,086	1,173,258	(280,334)	(382,454)	20,455,852
Year 5	20,455,852	409,117	1,227,351	(304,127)	(393,928)	21,394,266
Year 6	21,394,266	427,885	1,283,656	(325,709)	(405,746)	22,374,352
Year 7	22,374,352	447,487	1,342,461	(345,978)	(417,918)	23,400,404
Year 8	23,400,404	468,008	1,404,024	(365,582)	(430,456)	24,476,399
Year 9	24,476,399	489,528	1,468,584	(384,993)	(443,370)	25,606,149
Year 10	25,606,149	512,123	1,536,369	(184,620)	(456,671)	27,013,350

**MINIMUM FAMILY****NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY (WITH DISCOUNT)**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (with 3% inflation adjustment each year)	350,000

***Mimi Minimum***

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Consumption</b>	<b>End of Year</b>
Year 1	20,000,000	400,000	1,200,000	(3,411,980)	(350,000)	17,838,020
Year 2	17,838,020	356,760	1,070,281	(220,592)	(360,500)	18,683,969
Year 3	18,683,969	373,679	1,121,038	(253,075)	(371,315)	19,554,297
Year 4	19,554,297	391,086	1,173,258	(280,334)	(382,454)	20,455,852
Year 5	20,455,852	409,117	1,227,351	(304,127)	(393,928)	21,394,266
Year 6	21,394,266	427,885	1,283,656	(325,709)	(405,746)	22,374,352
Year 7	22,374,352	447,487	1,342,461	(345,978)	(417,918)	23,400,404
Year 8	23,400,404	468,008	1,404,024	(365,582)	(430,456)	24,476,399
Year 9	24,476,399	489,528	1,468,584	(384,993)	(443,370)	25,606,149
Year 10	25,606,149	512,123	1,536,369	(184,620)	(456,671)	27,013,350

**Schedule 2**  
**MINIMUM FAMILY**  
**HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
<u>Mimi Minimum</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	350,000
Intra-Family Note Interest Percentage	2.06%

*Mimi Minimum*

	<b>Beginning of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Gift to Minimum GST Grantor Trust</b>	<b>Note Payments</b>	<b>Income Taxes</b>	<b>Consumption</b>	<b>End of Year</b>
Year 1	2,000,000	40,000	120,000	(2,000,000)	4,870,800	(3,411,980)	(350,000)	1,268,820
Year 2	1,268,820	25,376	76,129	-	561,600	(220,592)	(360,500)	1,350,833
Year 3	1,350,833	27,017	81,050	-	549,806	(253,075)	(371,315)	1,384,316
Year 4	1,384,316	27,686	83,059	-	538,260	(280,334)	(382,454)	1,370,534
Year 5	1,370,534	27,411	82,232	-	526,957	(304,127)	(393,928)	1,309,079
Year 6	1,309,079	26,182	78,545	-	515,891	(325,709)	(405,746)	1,198,241
Year 7	1,198,241	23,965	71,894	-	505,057	(345,978)	(417,918)	1,035,262
Year 8	1,035,262	20,705	62,116	-	494,451	(365,582)	(430,456)	816,496
Year 9	816,496	16,330	48,990	-	484,068	(384,993)	(443,370)	537,521
Year 10	537,521	10,750	32,251	-	11,626,550	(888,859)	(456,671)	10,861,543

**Schedule 2**  
**MINIMUM FAMILY**  
**HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
<u>Mimi Minimum</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	350,000
Intra-Family Note Interest Percentage	2.06%

*Minimum GST Grantor Trust*

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Gift From Mimi Minimum</u>	<u>Note Payments</u>	<u>Income Taxes</u>	<u>End of Year</u>
Year 1	18,000,000	360,000	1,080,000	2,000,000	(4,870,800)	-	16,569,200
Year 2	16,569,200	331,384	994,152	-	(561,600)	-	17,333,136
Year 3	17,333,136	346,663	1,039,988	-	(549,806)	-	18,169,980
Year 4	18,169,980	363,400	1,090,199	-	(538,260)	-	19,085,318
Year 5	19,085,318	381,706	1,145,119	-	(526,957)	-	20,085,187
Year 6	20,085,187	401,704	1,205,111	-	(515,891)	-	21,176,111
Year 7	21,176,111	423,522	1,270,567	-	(505,057)	-	22,365,143
Year 8	22,365,143	447,303	1,341,909	-	(494,451)	-	23,659,903
Year 9	23,659,903	473,198	1,419,594	-	(484,068)	-	25,068,628
Year 10	25,068,628	501,373	1,504,118	-	(11,626,550)	-	15,447,568



**Schedule 2**  
**MINIMUM FAMILY**  
**HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
<u>Mimi Minimum</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	350,000
Intra-Family Note Interest Percentage	2.06%

*Note Between Mimi Minimum and Minimum GST Grantor Trust*

	<u>Beginning of Year</u>	<u>Interest</u>	<u>Note Payment</u>	<u>End of Year</u>
Year 1	18,000,000	370,800	(4,870,800)	13,500,000
Year 2	13,500,000	278,100	(561,600)	13,216,500
Year 3	13,216,500	272,260	(549,806)	12,938,954
Year 4	12,938,954	266,542	(538,260)	12,667,235
Year 5	12,667,235	260,945	(526,957)	12,401,224
Year 6	12,401,224	255,465	(515,891)	12,140,798
Year 7	12,140,798	250,100	(505,057)	11,885,841
Year 8	11,885,841	244,848	(494,451)	11,636,238
Year 9	11,636,238	239,707	(484,068)	11,391,877
Year 10	11,391,877	234,673	(11,626,550)	-

**Schedule 2**  
**MINIMUM FAMILY**  
**HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
<u>Mimi Minimum</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	350,000
Intra-Family Note Interest Percentage	2.06%

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Mimi Minimum's Percentage Ownership in Minimum FLP	1.00%
GST Grantor Trust's Ownership in Minimum FLP	99.00%
Minimum FLP Valuation Discount	35.00%

***Minimum FLP***

	<b>Beginning of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Distributions</b>	<b>End of Year</b>
Year 1	18,000,000	360,000	1,080,000	(4,780,782)	14,659,218
Year 2	14,659,218	293,184	879,553	(1,577,071)	14,254,885
Year 3	14,254,885	285,098	855,293	(1,553,300)	13,841,975
Year 4	13,841,975	276,840	830,519	(1,522,194)	13,427,139
Year 5	13,427,139	268,543	805,628	(1,486,363)	13,014,948
Year 6	13,014,948	260,299	780,897	(1,447,640)	12,608,503
Year 7	12,608,503	252,170	756,510	(1,407,309)	12,209,875
Year 8	12,209,875	244,197	732,592	(1,366,261)	11,820,403
Year 9	11,820,403	236,408	709,224	(1,325,116)	11,440,920
Year 10	11,440,920	228,818	686,455	(1,552,441)	10,803,753

**Schedule 2**  
**MINIMUM FAMILY**  
**HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
<u>Mimi Minimum</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	350,000
Intra-Family Note Interest Percentage	2.06%

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Mimi Minimum's Percentage Ownership in Minimum FLP	1.00%
GST Grantor Trust's Ownership in Minimum FLP	99.00%
Minimum FLP Valuation Discount	35.00%

***Mimi Minimum***

	Beginning of Year	Income	Growth	Gift to Minimum GST Grantor			Income Taxes	Consumption	End of Year
				Trust	Distribution from Partnership	Note Payments			
Year 1	2,000,000	40,000	120,000	(2,000,000)	47,808	4,732,974	(3,411,980)	(350,000)	1,178,802
Year 2	1,178,802	23,576	70,728	-	15,771	1,561,300	(220,592)	(360,500)	2,269,085
Year 3	2,269,085	45,382	136,145	-	15,533	1,537,767	(253,075)	(371,315)	3,379,521
Year 4	3,379,521	67,590	202,771	-	15,222	1,506,972	(280,334)	(382,454)	4,509,289
Year 5	4,509,289	90,186	270,557	-	14,864	1,471,499	(304,127)	(393,928)	5,658,340
Year 6	5,658,340	113,167	339,500	-	14,476	1,433,164	(325,709)	(405,746)	6,827,193
Year 7	6,827,193	136,544	409,632	-	14,073	16,375	(345,978)	(417,918)	6,639,920
Year 8	6,639,920	132,798	398,395	-	13,663	-	(365,582)	(430,456)	6,388,738
Year 9	6,388,738	127,775	383,324	-	13,251	-	(384,993)	(443,370)	6,084,727
Year 10	6,084,727	121,695	365,084	-	15,524	-	(734,762)	(456,671)	5,395,596

**Schedule 2**  
**MINIMUM FAMILY**  
**HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
<u>Mimi Minimum</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	350,000
Intra-Family Note Interest Percentage	2.06%

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Mimi Minimum's Percentage Ownership in Minimum FLP	1.00%
GST Grantor Trust's Ownership in Minimum FLP	99.00%
Minimum FLP Valuation Discount	35.00%

***Minimum GST Grantor Trust***

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Gift From Mimi Minimum</u>	<u>Distribution from Partnership</u>	<u>Note Payments</u>	<u>Income Taxes</u>	<u>End of Year</u>
Year 1	-	-	-	2,000,000	4,732,974	(4,732,974)	-	2,000,000
Year 2	2,000,000	40,000	120,000	-	1,561,300	(1,561,300)	-	2,160,000
Year 3	2,160,000	43,200	129,600	-	1,537,767	(1,537,767)	-	2,332,800
Year 4	2,332,800	46,656	139,968	-	1,506,972	(1,506,972)	-	2,519,424
Year 5	2,519,424	50,388	151,165	-	1,471,499	(1,471,499)	-	2,720,978
Year 6	2,720,978	54,420	163,259	-	1,433,164	(1,433,164)	-	2,938,656
Year 7	2,938,656	58,773	176,319	-	1,393,236	(16,375)	-	4,550,610
Year 8	4,550,610	91,012	273,037	-	1,352,599	-	-	6,267,257
Year 9	6,267,257	125,345	376,035	-	1,311,864	-	-	8,080,502
Year 10	8,080,502	161,610	484,830	-	1,536,916	-	-	10,263,859

**MINIMUM FAMILY****HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
<u>Mimi Minimum</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	350,000
Intra-Family Note Interest Percentage	2.06%

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Mimi Minimum's Percentage Ownership in Minimum FLP	1.00%
GST Grantor Trust's Ownership in Minimum FLP	99.00%
Minimum FLP Valuation Discount	35.00%

*Note Between Mimi Minimum and Minimum GST Grantor Trust*

	<u>Beginning of Year</u>	<u>Interest</u>	<u>Note Payment</u>	<u>End of Year</u>
Year 1	11,583,000	238,610	(4,732,974)	7,088,636
Year 2	7,088,636	146,026	(1,561,300)	5,673,362
Year 3	5,673,362	116,871	(1,537,767)	4,252,465
Year 4	4,252,465	87,601	(1,506,972)	2,833,094
Year 5	2,833,094	58,362	(1,471,499)	1,419,957
Year 6	1,419,957	29,251	(1,433,164)	16,044
Year 7	16,044	331	(16,375)	-
Year 8	-	-	-	-
Year 9	-	-	-	-
Year 10	-	-	-	-

**Schedule 3**  
**Grant Gratuitous**  
**Hypothetical Integrated Income and Estate Tax Plan Comparisons**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

**Table 3**

	<b>Beginning of Year Value</b>	<b>Annuity</b>	<b>Amount before Appreciation</b>	<b>Growth</b>	<b>End of Year Value</b>
Year 1	\$1,001,000	(\$354,532)	\$646,468	\$648,705	\$1,295,173
Year 2	\$1,295,173	(\$354,532)	\$940,641	\$943,896	\$1,884,536
Year 3	\$1,884,536	(\$354,532)	\$1,530,004	\$1,535,298	\$3,065,303

**Table 4**

<b>Comparison of Various Partnership Scenarios in which Partnership Units with a Liquidation Value of \$10mm are Transferred to a GRAT</b>	<b>Grant Gratuitous</b>	<b>Grantor Trust for Beneficiaries</b>	<b>Estimated Income Taxes</b>	<b>Estimated Gift Taxes</b>	<b>Total</b>
Scenario #1: Creation of a 90% Mortgaged Preferred Interest with the Contribution of the Mortgaged Preferred to a GRAT	\$33,269,422	\$3,065,303	\$1,456,635	\$0	\$37,791,360
Scenario #2: The Contribution of the Preferred to a GRAT Without any Leverage	\$34,519,083	\$1,815,642	\$1,456,635	\$0	\$37,791,360
Scenario #3: Creation of a 90% Mortgaged 33.33% Pro-Rata Partnership Interest, with the Contribution of the Mortgaged Pro-Rata Partnership Interest to a GRAT	\$33,553,004	\$2,781,721	\$1,456,635	\$0	\$37,791,360
Scenario #4: The Contribution of the 33.33% Interest in a Pro-Rata Partnership to a GRAT Without Any Leverage	\$34,865,173	\$1,469,552	\$1,456,635	\$0	\$37,791,360

**Schedule 3**

**Scenario #1: Creation of a 90% Mortgaged Preferred Interest with the Contribution of the Mortgaged Preferred to a GRAT**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>General Assumptions:</b>	
Trust Term	3
Initial Gross Assets of Trust	\$10,000,000
Sale Amount to GRAT	\$8,999,000
Initial Net Assets of Trust (net of debt)	\$1,001,000
GRAT Gift	\$1,000
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%

<b>General Assumptions (continued):</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	5.00%
Turnover Rate - Financial Assets (% of Capital Gains Recogniz	30.00%
Preferred Interest	\$10,000,000
Preferred Coupon	11.00%
Annuity Payment	\$354,532
Intra-Family Note Interest Percentage (short-term)	0.69%
IRS 7520 Rate	3.20%

**Grant Gratuitous Family Limited Partnership (all amounts estimated)**

	Beginning of Year - Financial Assets				End of Year - Financial Assets
	Assets	Income	Growth	Distributions	Assets
Year 1	30,000,000	900,000	1,500,000	(1,100,000)	31,300,000
Year 2	31,300,000	939,000	1,565,000	(1,100,000)	32,704,000
Year 3	32,704,000	981,120	1,635,200	(1,100,000)	34,220,320

**Grant Gratuitous (all amounts estimated)**

	Beginning of Year - Financial Assets							End of Year - Financial Assets	Beginning of Year - Preferred	In-Kind Payments of Preferred	End of Year - Preferred	End of Year - Total Assets
	Assets	Income	Growth	Annuity Payments	Cash Payments	Income Taxes	Assets	Preferred	Preferred	Preferred	Total Assets	
Year 1	-	-	-	354,532	745,468	(382,500)	717,500	-	-	-	717,500	
Year 2	717,500	21,525	35,875	354,532	745,468	(455,473)	1,419,427	-	-	-	1,419,427	
Year 3	1,419,427	42,583	70,971	354,532	745,468	(518,576)	2,114,405	-	6,934,697	6,934,697	9,049,102	

**Gratuitous Holdco, LLC**

	Beginning of Year - Financial Assets				Preferred Partnership Interest	Annuity Payments	Cash Note Payments	End of Year - Financial Assets	Beginning of Year - Preferred	In-Kind Payments	GRAT Terminates	End of Year - Preferred	End of Year - Total Assets
	Assets	Income	Growth	Distribution	Payments	Payments	Assets	Preferred	Payments		Preferred	Total Assets	
Year 1	-	-	-	1,100,000	(354,532)	(745,468)	-	10,000,000	-	-	-	10,000,000	10,000,000
Year 2	-	-	-	1,100,000	(354,532)	(745,468)	-	10,000,000	-	-	-	10,000,000	10,000,000
Year 3	-	-	-	1,100,000	(354,532)	(745,468)	-	10,000,000	(6,934,697)	(3,065,303)	-	-	-

**Schedule 3**

**Scenario #1: Creation of a 90% Mortgaged Preferred Interest with the Contribution of the Mortgaged Preferred to a GRAT**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>General Assumptions:</b>	
Trust Term	3
Initial Gross Assets of Trust	\$10,000,000
Sale Amount to GRAT	\$8,999,000
Initial Net Assets of Trust (net of debt)	\$1,001,000
GRAT Gift	\$1,000
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%

<b>General Assumptions (continued):</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	5.00%
Turnover Rate - Financial Assets (% of Capital Gains Recogniz	30.00%
Preferred Interest	\$10,000,000
Preferred Coupon	11.00%
Annuity Payment	\$354,532
Intra-Family Note Interest Percentage (short-term)	0.69%
IRS 7520 Rate	3.20%

**Gratuitous Holdco, LLC**

	Beginning of Year - Financial Assets	Income	Growth	Preferred Partnership Interest Distribution	Annuity Payments	Cash Note Payments	End of Year - Financial Assets	Beginning of Year - Preferred	In-Kind Payments	GRAT Terminates	End of Year - Preferred	End of Year - Total Assets
Year 1	-	-	-	-	(354,532)	354,532	-	10,000,000	-	-	10,000,000	10,000,000
Year 2	-	-	-	-	(354,532)	354,532	-	10,000,000	-	-	10,000,000	10,000,000
Year 3	-	-	-	-	(354,532)	354,532	-	10,000,000	-	(10,000,000)	-	-

**Grantor Trust for Beneficiaries (all amounts estimated)**

	Beginning of Year - Preferred	GRAT Terminates - Preferred	End of Year - Preferred
Year 1	-	-	-
Year 2	-	-	-
Year 3	-	3,065,303	3,065,303

**Note Between Grant Gratuitous and GRAT (all amounts estimated)**

	Beginning of Year	Interest	Cash Note Payment	In-Kind Note Payments	End of Year
Year 1	8,999,000	62,093	(745,468)	-	8,315,625
Year 2	8,315,625	57,378	(745,468)	-	7,627,535
Year 3	7,627,535	52,630	(745,468)	(6,934,697)	-



**Schedule 3**

**Scenario #2: The Contribution of the Preferred to a GRAT Without any Leverage**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>General Assumptions:</b>	
Trust Term	3
Initial Gross Assets of Trust	\$10,000,000
Sale Amount to GRAT	\$10,000,000
Initial Net Assets of Trust (net of debt)	\$0
GRAT Gift	\$0
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%

<b>General Assumptions (continued):</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	5.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Preferred Interest	\$10,000,000
Preferred Coupon	11.00%
Annuity Payment	\$3,548,867
Intra-Family Note Interest Percentage (short-term)	0.69%
IRS 7520 Rate	3.20%

**Grant Gratuitous Family Limited Partnership (all amounts estimated)**

	Beginning of Year - Financial Assets	Income	Growth	Distributions	End of Year - Financial Assets
Year 1	30,000,000	900,000	1,500,000	(1,100,000)	31,300,000
Year 2	31,300,000	939,000	1,565,000	(1,100,000)	32,704,000
Year 3	32,704,000	981,120	1,635,200	(1,100,000)	34,220,320

**Grant Gratuitous GRAT (all amounts estimated)**

	Beginning of Year - Financial Assets	Income	Growth	Preferred Partnership Interest Distribution	Cash Payments	End of Year - Financial Assets	Beginning of Year - Preferred	In-Kind Payments	GRAT Terminates	End of Year - Preferred	End of Year Financial Assets & Preferred
Year 1	-	-	-	1,100,000	(1,100,000)	-	10,000,000	(2,448,867)	-	7,551,133	7,551,133
Year 2	-	-	-	830,625	(830,625)	-	7,551,133	(2,718,242)	-	4,832,891	4,832,891
Year 3	-	-	-	531,618	(531,618)	-	4,832,891	(3,017,249)	(1,815,642)	-	-

**Grant Gratuitous (all amounts estimated)**

	Beginning of Year - Financial Assets	Income	Growth	Preferred Partnership Interest Distribution	Cash Payments	Income Taxes	End of Year - Financial Assets	Beginning of Year - Preferred	In-Kind Payments of Preferred	End of Year - Preferred	End of Year Financial Assets & Preferred
Year 1	-	-	-	-	1,100,000	(382,500)	717,500	-	2,448,867	2,448,867	3,166,367
Year 2	717,500	21,525	35,875	269,375	830,625	(455,473)	1,419,427	2,448,867	2,718,242	5,167,109	6,586,536
Year 3	1,419,427	42,583	70,971	568,382	531,618	(518,576)	2,114,405	5,167,109	3,017,249	8,184,358	10,298,763

**Schedule 3**

**Scenario #2: The Contribution of the Preferred to a GRAT Without any Leverage**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>General Assumptions:</b>	
Trust Term	3
Initial Gross Assets of Trust	\$10,000,000
Sale Amount to GRAT	\$10,000,000
Initial Net Assets of Trust (net of debt)	\$0
GRAT Gift	\$0
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%

<b>General Assumptions (continued):</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	5.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Preferred Interest	\$10,000,000
Preferred Coupon	11.00%
Annuity Payment	\$3,548,867
Intra-Family Note Interest Percentage (short-term)	0.69%
IRS 7520 Rate	3.20%

**Grantor Trust for Beneficiaries** (all amounts estimated)

	Beginning of Year - Preferred	GRAT Terminates - Preferred	End of Year - Preferred
Year 1	-	-	-
Year 2	-	-	-
Year 3	-	1,815,642	1,815,642

**Schedule 3**

**Scenario #3: Creation of a 90% Mortgaged 33.33% Pro-Rata Partnership Interest, with the Contribution of the Mortgaged Pro-Rata Partnership Interest to a GRAT**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	5.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%

<b>Assumptions (continued):</b>	
Intra-Family Note Interest Rate	0.69%
Partnership Distributions	3.00%
Partnership Valuation Discount	35.00%
Annual Annuity Payment	\$230,321
IRS 7520 Rate	3.20%

**Grant Gratuitous Family Limited Partnership (all amounts estimated)**

	Beginning of Year - Financial Assets	Income	Growth	Partnership Distributions	End of Year - Financial Assets
Year 1	30,000,000	900,000	1,500,000	(900,000)	31,500,000
Year 2	31,500,000	945,000	1,575,000	(945,000)	33,075,000
Year 3	33,075,000	992,250	1,653,750	(992,250)	34,728,750

	Ownership (at end of year)		
	Grant Gratuitous	GRAT	Grantor Trust for Beneficiaries
Year 1	66.67%	33.33%	0.00%
Year 2	66.67%	33.33%	0.00%
Year 3	91.99%	0.00%	8.01%

**Grant Gratuitous (all amounts estimated)**

									Partnership Units (Valued on an Undiscounted Basis)			End of Year - Financial Assets and Partnership Units
	Beginning of Year - Financial Assets	Income	Growth	Partnership Distributions	GRAT Annuity	Cash Note Payments	Income Taxes	End of Year - Financial Assets	Beginning Value of Partnership	In-Kind Note Payments and Annuity Payments	End of Year - Value of Partnership	
Year 1	-	-	-	600,030	230,321	69,649	(382,500)	517,500	21,001,050	-	21,001,050	21,518,550
Year 2	517,500	15,525	25,875	630,032	230,321	84,648	(455,473)	1,048,427	22,051,103	-	22,051,103	23,099,529
Year 3	1,048,427	31,453	52,421	661,533	230,321	100,396	(518,576)	1,605,975	23,153,658	8,793,372	31,947,029	33,553,004

**Gratuitous Holdco, LLC (all amounts estimated)**

									Partnership Units (Valued on an Undiscounted Basis)			End of Year - Financial Assets and Partnership Units
	Beginning of Year - Financial Assets	Income	Growth	Partnership Distributions	Distributions	Cash Note Payments	End of Year - Financial Assets	Beginning Value of Partnership	In-Kind Annuity & Note Payments	GRAT Terminates	End of Year - Value of Partnership	
Year 1	-	-	-	299,970	(230,321)	(69,649)	-	10,498,950	-	-	10,498,950	10,498,950
Year 2	-	-	-	314,969	(230,321)	(84,648)	-	11,023,898	-	-	11,023,898	11,023,898
Year 3	-	-	-	330,717	(230,321)	(100,396)	-	11,575,092	(8,793,372)	(2,781,721)	-	-

**Schedule 3**  
**Scenario #3: Creation of a 90% Mortgaged 33.33% Pro-Rata Partnership Interest, with the Contribution of the Mortgaged Pro-Rata Partnership Interest to a GRAT**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	5.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%

<b>Assumptions (continued):</b>	
Intra-Family Note Interest Rate	0.69%
Partnership Distributions	3.00%
Partnership Valuation Discount	35.00%
Annual Annuity Payment	\$230,321
IRS 7520 Rate	3.20%

**Gratuitous GRAT (all amounts estimated)**

	Beginning of Year - Financial Assets		Income	Growth	LLC Distributions	Annuity Payments	GRAT Terminates	End of Year - Financial Assets
Year 1	-	-	-	-	230,321	(230,321)	-	-
Year 2	-	-	-	-	230,321	(230,321)	-	-
Year 3	-	-	-	-	230,321	(230,321)	-	-

**Grantor Trust for Beneficiaries (all amounts estimated)**

	Beginning of Year - Financial Assets		Income	Growth	GRAT Terminates	End of Year - Financial Assets	Partnership Units (Valued on an Undiscounted Basis)	End of Year - Financial Assets and Partnership Units
Year 1	-	-	-	-	-	-	-	-
Year 2	-	-	-	-	-	-	-	-
Year 3	-	-	-	-	-	-	2,781,721	2,781,721

**Note Between GRAT and Grant Gratuitous for the Purchase of Partnership Interests**

(all amounts estimated)

	Beginning of Year - Principal		Note Payments		End of Year - Principal
	Principal	Interest	Cash Note Payment	In-Kind Note Payments (Partnership Units Valued on a Discounted Basis)	
Year 1	5,850,000	40,365	(69,649)	0	5,820,716
Year 2	5,820,716	40,163	(84,648)	0	5,776,231
Year 3	5,776,231	39,856	(100,396)	(5,715,692)	0

**Schedule 3**

**Scenario #4: The Contribution of the 33.33% Interest in a Pro-Rata Partnership to a GRAT Without Any Leverage**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	5.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%

<b>Assumptions (continued):</b>	
Partnership Distributions	3.00%
Partnership Valuation Discount	35.00%
Annuity Payment (on an Undiscounted Basis)	\$2,306,408
IRS 7520 Rate	3.20%

**Grant Gratuitous Family Limited Partnership (all amounts estimated)**

	Beginning of Year - Financial Assets				End of Year - Financial Assets
	Income	Growth	Partnership Distributions		
Year 1	30,000,000	900,000	1,500,000	(900,000)	31,500,000
Year 2	31,500,000	945,000	1,575,000	(945,000)	33,075,000
Year 3	33,075,000	992,250	1,653,750	(992,250)	34,728,750

	Ownership (at end of year)		
	Grant Gratuitous	GRAT	Grantor Trust for Beneficiaries
Year 1	76.47%	23.53%	0.00%
Year 2	86.16%	13.84%	0.00%
Year 3	95.77%	0.00%	4.23%

**Grant Gratuitous (all amounts estimated)**

	Beginning of Year - Financial Assets							Partnership Units (Valued on an Undiscounted Basis)			End of Year - Financial Assets and Partnership Units
	Income	Growth	Partnership Distributions	GRAT Annuity	Income Taxes	End of Year - Financial Assets	Beginning of Year - Value of Partnership	Change in Partnership Value	In-Kind Annuity Payments	End of Year - Value of Partnership	
Year 1	-	-	600,000	300,000	(382,500)	517,500	20,000,000	1,000,000	3,086,782	24,086,782	24,604,282
Year 2	517,500	15,525	722,603	222,397	(455,473)	1,048,427	24,086,782	1,204,339	3,206,171	28,497,292	29,545,719
Year 3	1,048,427	31,453	854,919	137,331	(518,576)	1,605,975	28,497,292	1,424,865	3,337,041	33,259,198	34,865,173

**Grant Gratuitous GRAT (all amounts estimated)**

	Beginning of Year - Financial Assets			End of Year - Financial Assets	Partnership Units (Valued on an Undiscounted Basis)				End of Year - Financial Assets and Partnership Units
	Partnership Distributions	Cash Annuity Payment			Beginning of Year - Value of Partnership	Beginning of Year - Value of Partnership	In-Kind Annuity Payments	GRAT Terminates	
Year 1	300,000	(300,000)	-	10,000,000	500,000	(3,086,782)	-	7,413,218	7,413,218
Year 2	222,397	(222,397)	-	7,413,218	370,661	(3,206,171)	-	4,577,708	4,577,708
Year 3	137,331	(137,331)	-	4,577,708	228,885	(3,337,041)	(1,469,552)	-	-

**Schedule 3**

**Scenario #4: The Contribution of the 33.33% Interest in a Pro-Rata Partnership to a GRAT Without Any Leverage**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	5.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%

<b>Assumptions (continued):</b>	
Partnership Distributions	3.00%
Partnership Valuation Discount	35.00%
Annuity Payment (on an Undiscounted Basis)	\$2,306,408
IRS 7520 Rate	3.20%

**Grantor Trust for Beneficiaries** (all amounts estimated)

	Beginning of Year - Financial Assets				GRAT Terminates	End of Year - Financial Assets	Value of Partnership on an Undiscounted Basis	End of Year - Financial Assets and Partnership Units (Valued on an Undiscounted Basis)
	Income	Growth						
Year 1	-	-	-	-	-	-	-	-
Year 2	-	-	-	-	-	-	-	-
Year 3	-	-	-	-	-	1,469,552	1,469,552	

**Schedule 4**  
**Grant Gratuitous**  
**Hypothetical Integrated Income and Estate Tax Plan Comparisons**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

**Table 5**

<b>Comparison of Various Partnership Scenarios in which Partnership Units are Transferred to a 10-Year GRAT</b>	<b>Grant Gratuitous</b>	<b>Grantor Trust for Beneficiaries</b>	<b>IRS - Income Taxes</b>	<b>IRS - Investment Opporutnity Costs</b>	<b>Total</b>
No Further Planning	58,545,204	-	8,287,317	3,116,649	69,949,170
Scenario #1: Hypothetical Integrated Income & Estate Tax Plan with the Creation of a Family Limited Partnership and the Contribution of Leveraged Limited Partnership Interests to a 10-Year GRAT	18,878,855	39,666,348	8,287,317	3,116,649	69,949,170
Scenario #2: Hypothetical Integrated Income & Estate Tax Plan with the Creation of a Family Limited Partnership and the Contribution of Limited Partnership Interests to a 10-Year GRAT (No Leverage)	43,110,792	15,434,412	8,287,317	3,116,649	69,949,170



## Schedule 4

### Grant Gratuitous

### Hypothetical Integrated Income and Estate Tax Plan Comparisons

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

	Pre-Death	Post Death	Present Values (Discounted at 3%)	Percentage of Total
<b>No Further Planning</b>				
Grant Gratuitous	58,545,204	-	-	0.00%
Gratuitous Children	-	32,199,862	23,261,865	46.03%
IRS - Income Tax	8,287,317	8,287,317	5,986,934	11.85%
IRS - Investment Opportunity Costs	3,116,649	3,116,649	2,251,533	4.46%
IRS - Estate Tax (at 45%)	-	26,345,342	19,032,435	37.66%
Total:	69,949,170	69,949,170	50,532,769	100.00%
<b>Scenario #1: Hypothetical Integrated Income &amp; Estate Tax Plan with the Creation of a Family Limited Partnership and the Contribution of Leveraged Limited Partnership Interests to a 10-Year GRAT</b>				
Grant Gratuitous	18,878,855	-	-	0.00%
Gratuitous Children	39,666,348	50,049,719	36,156,982	71.55%
IRS - Income Tax	8,287,317	8,287,317	5,986,934	11.85%
IRS - Investment Opportunity Costs	3,116,649	3,116,649	2,251,533	4.46%
IRS - Estate Tax (at 45%)	-	8,495,485	6,137,319	12.15%
Total:	69,949,170	69,949,170	50,532,769	100.00%
<b>Scenario #2: Hypothetical Integrated Income &amp; Estate Tax Plan with the Creation of a Family Limited Partnership and the Contribution of Limited Partnership Interests to a 10-Year GRAT (No Leverage)</b>				
Grant Gratuitous	43,110,792	-	-	0.00%
Gratuitous Children	15,434,412	39,145,348	28,279,432	55.96%
IRS - Income Tax	8,287,317	8,287,317	5,986,934	11.85%
IRS - Investment Opportunity Costs	3,116,649	3,116,649	2,251,533	4.46%
IRS - Estate Tax (at 45%)	-	19,399,856	14,014,869	27.73%
Total:	69,949,170	69,949,170	50,532,769	100.00%



**Schedule 4**  
**Grant Gratuitous**  
**No Further Planning**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Trust Term	10
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	5.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%

**Grant Gratuitous (all amounts estimated)**

	Beginning of Year - Financial Assets				End of Year - Financial Assets
	Assets	Income	Growth	Income Taxes	
Year 1	30,000,000	900,000	1,500,000	(382,500)	32,017,500
Year 2	32,017,500	960,525	1,600,875	(455,473)	34,123,427
Year 3	34,123,427	1,023,703	1,706,171	(518,576)	36,334,725
Year 4	36,334,725	1,090,042	1,816,736	(575,464)	38,666,039
Year 5	38,666,039	1,159,981	1,933,302	(628,757)	41,130,565
Year 6	41,130,565	1,233,917	2,056,528	(680,349)	43,740,662
Year 7	43,740,662	1,312,220	2,187,033	(731,628)	46,508,287
Year 8	46,508,287	1,395,249	2,325,414	(783,626)	49,445,323
Year 9	49,445,323	1,483,360	2,472,266	(837,130)	52,563,819
Year 10	52,563,819	1,576,915	2,628,191	(892,757)	55,876,167
Year 11	55,876,167	1,676,285	2,793,808	(1,801,057)	58,545,204

**Schedule 4**

**Grant Gratuitous**

**Scenario #1: Hypothetical Integrated Income & Estate Tax Plan with the Creation of a Family Limited Partnership and the Contribution of Leveraged Limited Partnership Interests to a 10-Year GRAT**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	5.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%

<b>Assumptions (continued):</b>	
Partnership Valuation Discount	35.00%
Partnership Distribution	3.00%
Intra-Family Note Interest Rate - Mid-Term Rate	2.45%
Annual Annuity Payment	\$228,504
IRS 7520 Rate	3.20%

**Grant Gratuitous**

	Beginning of Year - Financial Assets	Income	Growth	Partnership Distributions	GRAT Annuity	Cash Note Payments	Income Taxes	End of Year - Financial Assets
Year 1	-	-	-	9,000	228,504	662,496	(382,500)	517,500
Year 2	517,500	15,525	25,875	9,450	228,504	707,046	(455,473)	1,048,427
Year 3	1,048,427	31,453	52,421	9,923	228,504	753,824	(518,576)	1,605,975
Year 4	1,605,975	48,179	80,299	10,419	228,504	802,940	(575,464)	2,200,851
Year 5	2,200,851	66,026	110,043	10,940	228,504	854,512	(628,757)	2,842,119
Year 6	2,842,119	85,264	142,106	11,487	228,504	908,663	(680,349)	3,537,793
Year 7	3,537,793	106,134	176,890	12,061	228,504	965,521	(731,628)	4,295,274
Year 8	4,295,274	128,858	214,764	12,664	228,504	1,025,222	(783,626)	5,121,660
Year 9	5,121,660	153,650	256,083	13,297	228,504	1,087,909	(837,130)	6,023,972
Year 10	6,023,972	180,719	301,199	13,962	228,504	1,153,729	(892,757)	7,009,328
Year 11	7,009,328	210,280	350,466	129,497	-	12,582,076	(1,801,057)	18,480,591

**Gratuitous Family Limited Partnership**

	Beginning of Year - Financial	Income	Growth	Partnership Distributions	End of Year - Financial
Year 1	30,000,000	900,000	1,500,000	(900,000)	31,500,000
Year 2	31,500,000	945,000	1,575,000	(945,000)	33,075,000
Year 3	33,075,000	992,250	1,653,750	(992,250)	34,728,750
Year 4	34,728,750	1,041,863	1,736,438	(1,041,863)	36,465,188
Year 5	36,465,188	1,093,956	1,823,259	(1,093,956)	38,288,447
Year 6	38,288,447	1,148,653	1,914,422	(1,148,653)	40,202,869
Year 7	40,202,869	1,206,086	2,010,143	(1,206,086)	42,213,013
Year 8	42,213,013	1,266,390	2,110,651	(1,266,390)	44,323,663
Year 9	44,323,663	1,329,710	2,216,183	(1,329,710)	46,539,846
Year 10	46,539,846	1,396,195	2,326,992	(1,396,195)	48,866,839
Year 11	48,866,839	1,466,005	2,443,342	(12,949,712)	39,826,474

<b>Partnership Ownership (at end of year)</b>		
Grant Gratuitous	Gratuitous GRAT	Gratuitous Grantor Trust
1.00%	99.00%	0.00%
1.00%	99.00%	0.00%
1.00%	99.00%	0.00%
1.00%	99.00%	0.00%
1.00%	99.00%	0.00%
1.00%	99.00%	0.00%
1.00%	99.00%	0.00%
1.00%	99.00%	0.00%
1.00%	99.00%	0.00%
1.00%	0.00%	99.00%
1.00%	0.00%	99.00%

**Schedule 4**

**Grant Gratuitous**

**Scenario #1: Hypothetical Integrated Income & Estate Tax Plan with the Creation of a Family Limited Partnership and the Contribution of Leveraged Limited Partnership Interests to a 10-Year GRAT**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	5.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%

<b>Assumptions (continued):</b>	
Partnership Valuation Discount	35.00%
Partnership Distribution	3.00%
Intra-Family Note Interest Rate - Mid-Term Rate	2.45%
Annual Annuity Payment	\$228,504
IRS 7520 Rate	3.20%

**Gratuitous Holdco, LLC**

	Beginning of Year - Financial Assets							End of Year - Financial Assets
	Income	Growth	Partnership Distributions	Distributions	Note Payments	LLC Terminates		
Year 1	-	-	891,000	(228,504)	(662,496)	-	-	
Year 2	-	-	935,550	(228,504)	(707,046)	-	-	
Year 3	-	-	982,328	(228,504)	(753,824)	-	-	
Year 4	-	-	1,031,444	(228,504)	(802,940)	-	-	
Year 5	-	-	1,083,016	(228,504)	(854,512)	-	-	
Year 6	-	-	1,137,167	(228,504)	(908,663)	-	-	
Year 7	-	-	1,194,025	(228,504)	(965,521)	-	-	
Year 8	-	-	1,253,726	(228,504)	(1,025,222)	-	-	
Year 9	-	-	1,316,413	(228,504)	(1,087,909)	-	-	
Year 10	-	-	1,382,233	(228,504)	(1,153,729)	-	-	
Year 11	-	-	-	-	-	-	-	

**Gratuitous GRAT**

	Beginning of Year - Financial Assets						End of Year - Financial Assets
	Income	Growth	Gratuitous Holdco, LLC Distributions	Annuity Payments	GRAT Terminates		
Year 1	-	-	228,504	(228,504)	-	-	
Year 2	-	-	228,504	(228,504)	-	-	
Year 3	-	-	228,504	(228,504)	-	-	
Year 4	-	-	228,504	(228,504)	-	-	
Year 5	-	-	228,504	(228,504)	-	-	
Year 6	-	-	228,504	(228,504)	-	-	
Year 7	-	-	228,504	(228,504)	-	-	
Year 8	-	-	228,504	(228,504)	-	-	
Year 9	-	-	228,504	(228,504)	-	-	
Year 10	-	-	228,504	(228,504)	-	-	
Year 11	-	-	-	-	-	-	

**Schedule 4**

**Grant Gratuitous**

**Scenario #1: Hypothetical Integrated Income & Estate Tax Plan with the Creation of a Family Limited Partnership and the Contribution of Leveraged Limited Partnership Interests to a 10-Year GRAT**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	5.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%

<b>Assumptions (continued):</b>	
Partnership Valuation Discount	35.00%
Partnership Distribution	3.00%
Intra-Family Note Interest Rate - Mid-Term Rate	2.45%
Annual Annuity Payment	\$228,504
IRS 7520 Rate	3.20%

**Gratuitous Grantor Trust**

	Beginning of Year - Financial Assets	Income	Growth	Partnership Distributions	GRAT Terminates	Note Payments	End of Year - Financial Assets
Year 1	-	-	-	-	-	-	-
Year 2	-	-	-	-	-	-	-
Year 3	-	-	-	-	-	-	-
Year 4	-	-	-	-	-	-	-
Year 5	-	-	-	-	-	-	-
Year 6	-	-	-	-	-	-	-
Year 7	-	-	-	-	-	-	-
Year 8	-	-	-	-	-	-	-
Year 9	-	-	-	-	-	-	-
Year 10	-	-	-	-	-	-	-
Year 11	-	-	-	12,820,215	-	(12,582,076)	238,140

**Note Between Gratuitous Holdco, LLC and Grant Gratuitous for the Purchase of Partnership Interests**

	Note Payments				
	Beginning of Year - Principal	Interest	Cash Note Payment	In-Kind Note Payments (Partnership Units Valued on a Discounted Basis)	End of Year - Principal
Year 1	17,374,500	425,675	(662,496)	-	17,137,679
Year 2	17,137,679	419,873	(707,046)	-	16,850,506
Year 3	16,850,506	412,837	(753,824)	-	16,509,520
Year 4	16,509,520	404,483	(802,940)	-	16,111,064
Year 5	16,111,064	394,721	(854,512)	-	15,651,273
Year 6	15,651,273	383,456	(908,663)	-	15,126,066
Year 7	15,126,066	370,589	(965,521)	-	14,531,133
Year 8	14,531,133	356,013	(1,025,222)	-	13,861,924
Year 9	13,861,924	339,617	(1,087,909)	-	13,113,632
Year 10	13,113,632	321,284	(1,153,729)	-	12,281,187
Year 11	12,281,187	300,889	(12,582,076)	-	0

**Schedule 4**

**Grant Gratuitous**

**Scenario #2: Hypothetical Integrated Income & Estate Tax Plan with the Creation of a Family Limited Partnership and the Contribution of Limited Partnership Interests to a 10-Year GRAT (No**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	5.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%

<b>Assumptions (continued):</b>	
Partnership Valuation Discount	35.00%
Partnership Distribution	3.00%
Intra-Family Note Interest Rate - Mid-Term Rate	2.45%
Annual Annuity Payment	\$2,286,291
IRS 7520 Rate	3.20%

<i>Grant Gratuitous</i>								<b>Partnership Units (Valued on an Undiscounted Basis)</b>			<b>End of Year - Financial Assets and Partnership Units</b>	
	<b>Beginning of Year - Financial Assets</b>	<b>Income</b>	<b>Growth</b>	<b>Partnership Distributions</b>	<b>Cash Annuity Payments</b>	<b>Income Taxes</b>	<b>End of Year - Financial Assets</b>	<b>Beginning Value of Partnership</b>	<b>Change in Value</b>	<b>In-Kind Annuity Payments</b>		<b>End of Year - Value of Partnership</b>
Year 1	-	-	-	9,000	891,000	(382,500)	517,500	300,000	15,000	2,443,720	2,758,720	3,276,220
Year 2	517,500	15,525	25,875	82,762	862,238	(455,473)	1,048,427	2,758,720	137,936	2,487,969	5,384,625	6,433,051
Year 3	1,048,427	31,453	52,421	161,539	830,711	(518,576)	1,605,975	5,384,625	269,231	2,536,472	8,190,328	9,796,303
Year 4	1,605,975	48,179	80,299	245,710	796,153	(575,464)	2,200,851	8,190,328	409,516	2,589,639	11,189,483	13,390,334
Year 5	2,200,851	66,026	110,043	335,684	758,271	(628,757)	2,842,119	11,189,483	559,474	2,647,918	14,396,876	17,238,994
Year 6	2,842,119	85,264	142,106	431,906	716,747	(680,349)	3,537,793	14,396,876	719,844	2,711,801	17,828,521	21,366,313
Year 7	3,537,793	106,134	176,890	534,856	671,230	(731,628)	4,295,274	17,828,521	891,426	2,781,827	21,501,774	25,797,048
Year 8	4,295,274	128,858	214,764	645,053	621,337	(783,626)	5,121,660	21,501,774	1,075,089	2,858,586	25,435,448	30,557,108
Year 9	5,121,660	153,650	256,083	763,063	566,646	(837,130)	6,023,972	25,435,448	1,271,772	2,942,725	29,649,946	35,673,918
Year 10	6,023,972	180,719	301,199	889,498	506,697	(892,757)	7,009,328	29,649,946	1,482,497	3,034,955	34,167,399	41,176,727
Year 11	7,009,328	210,280	350,466	1,466,005	-	(1,801,057)	7,235,023	34,167,399	1,708,370	-	35,875,769	43,110,792

<i>Gratuitous Family Limited Partnership</i>					<b>End of Year - Financial</b>
	<b>Beginning of Year - Financial</b>	<b>Income</b>	<b>Growth</b>	<b>Partnership Distributions</b>	
Year 1	30,000,000	900,000	1,500,000	(900,000)	31,500,000
Year 2	31,500,000	945,000	1,575,000	(945,000)	33,075,000
Year 3	33,075,000	992,250	1,653,750	(992,250)	34,728,750
Year 4	34,728,750	1,041,863	1,736,438	(1,041,863)	36,465,188
Year 5	36,465,188	1,093,956	1,823,259	(1,093,956)	38,288,447
Year 6	38,288,447	1,148,653	1,914,422	(1,148,653)	40,202,869
Year 7	40,202,869	1,206,086	2,010,143	(1,206,086)	42,213,013
Year 8	42,213,013	1,266,390	2,110,651	(1,266,390)	44,323,663
Year 9	44,323,663	1,329,710	2,216,183	(1,329,710)	46,539,846
Year 10	46,539,846	1,396,195	2,326,992	(1,396,195)	48,866,839
Year 11	48,866,839	1,466,005	2,443,342	(1,466,005)	51,310,181

<b>Partnership Ownership (at end of year)</b>		
<b>Grant Gratuitous</b>	<b>Gratuitous GRAT</b>	<b>Gratuitous Grantor Trust</b>
8.76%	91.24%	0.00%
16.28%	83.72%	0.00%
23.58%	76.42%	0.00%
30.69%	69.31%	0.00%
37.60%	62.40%	0.00%
44.35%	55.65%	0.00%
50.94%	49.06%	0.00%
57.39%	42.61%	0.00%
63.71%	36.29%	0.00%
69.92%	0.00%	30.08%
69.92%	0.00%	30.08%

**Schedule 4**

**Grant Gratuitous**

**Scenario #2: Hypothetical Integrated Income & Estate Tax Plan with the Creation of a Family Limited Partnership and the Contribution of Limited Partnership Interests to a 10-Year GRAT (No**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	5.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%

<b>Assumptions (continued):</b>	
Partnership Valuation Discount	35.00%
Partnership Distribution	3.00%
Intra-Family Note Interest Rate - Mid-Term Rate	2.45%
Annual Annuity Payment	\$2,286,291
IRS 7520 Rate	3.20%

								<b>Partnership Units (Valued on an Undiscounted Basis)</b>					
	<b>Beginning of Year - Financial Assets</b>		<b>Income</b>	<b>Growth</b>	<b>Partnership Distributions</b>	<b>Annuity Payments</b>	<b>GRAT Terminates</b>	<b>End of Year - Financial Assets</b>	<b>Beginning of Year - Value of Partnership</b>		<b>In-Kind Annuity Payments</b>	<b>GRAT Terminates</b>	<b>End of Year - Value of Partnership</b>
Year 1	-	-	-	891,000	(891,000)	-	-	29,700,000	1,485,000	(2,443,720)	-	28,741,280	28,741,280
Year 2	-	-	-	862,238	(862,238)	-	-	28,741,280	1,437,064	(2,487,969)	-	27,690,375	27,690,375
Year 3	-	-	-	830,711	(830,711)	-	-	27,690,375	1,384,519	(2,536,472)	-	26,538,422	26,538,422
Year 4	-	-	-	796,153	(796,153)	-	-	26,538,422	1,326,921	(2,589,639)	-	25,275,704	25,275,704
Year 5	-	-	-	758,271	(758,271)	-	-	25,275,704	1,263,785	(2,647,918)	-	23,891,571	23,891,571
Year 6	-	-	-	716,747	(716,747)	-	-	23,891,571	1,194,579	(2,711,801)	-	22,374,349	22,374,349
Year 7	-	-	-	671,230	(671,230)	-	-	22,374,349	1,118,717	(2,781,827)	-	20,711,239	20,711,239
Year 8	-	-	-	621,337	(621,337)	-	-	20,711,239	1,035,562	(2,858,586)	-	18,888,215	18,888,215
Year 9	-	-	-	566,646	(566,646)	-	-	18,888,215	944,411	(2,942,725)	-	16,889,900	16,889,900
Year 10	-	-	-	506,697	(506,697)	-	-	16,889,900	844,495	(3,034,955)	(14,699,440)	-	-
Year 11	-	-	-	-	-	-	-	-	-	-	-	-	-

			<b>Partnership Units (Valued on an Undiscounted Basis)</b>			<b>End of Year - Partnership Interest</b>	<b>End of Year - Financial and Other Assets</b>
	<b>Beginning of Year - Financial Assets</b>	<b>GRAT Terminates</b>	<b>End of Year - Financial Assets</b>	<b>Beginning of Year - Partnership Interest</b>	<b>Change in Value</b>		
Year 1	-	-	-	-	-	-	-
Year 2	-	-	-	-	-	-	-
Year 3	-	-	-	-	-	-	-
Year 4	-	-	-	-	-	-	-
Year 5	-	-	-	-	-	-	-
Year 6	-	-	-	-	-	-	-
Year 7	-	-	-	-	-	-	-
Year 8	-	-	-	-	-	-	-
Year 9	-	-	-	-	-	-	-
Year 10	-	-	-	-	14,699,440	14,699,440	14,699,440
Year 11	-	-	-	14,699,440	734,972	-	15,434,412



## Schedule 5

### Aaron and Ann Appointment

#### Hypothetical Integrated Income and Estate Tax Plan Comparisons

(Assuming Mr. and Mrs. Appointment have a joint life expectancy of 25 years)

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

	Pre-Death	Post Death	Present Values (Discounted at 3%)	Percentage of Total
<b>No Further Planning; Bequeaths Estate to Family</b>				
Aaron and Ann Appointment	82,758,152	-	-	0.00%
Appointment Children	-	45,516,984	21,739,165	20.97%
Appointment Children and Grandchildren	-	-	-	0.00%
Consumption - Direct Cost	36,459,264	36,459,264	17,413,148	16.79%
Consumption - Investment Opportunity Cost	46,882,103	46,882,103	22,391,154	21.59%
IRS - Income Tax	22,464,953	22,464,953	10,729,387	10.35%
IRS - Investment Opportunity Costs	28,532,833	28,532,833	13,627,440	13.14%
IRS - Estate Tax (at 45%)	-	37,241,169	17,786,590	17.15%
Total:	\$217,097,306	\$217,097,306	\$103,686,882	100.00%
<b>Hypothetical Integrated Income &amp; Estate Tax Plan</b>				
Aaron and Ann Appointment	1,317,822	-	-	0.00%
Appointment Children	-	724,802	346,169	0.33%
Appointment Children and Grandchildren	79,991,794	79,991,794	38,204,526	36.85%
Consumption - Direct Cost	36,459,264	36,459,264	17,413,148	16.79%
Consumption - Investment Opportunity Cost	46,882,103	46,882,103	22,391,154	21.59%
IRS - Income Tax	23,913,489	23,913,489	11,421,216	11.02%
IRS - Investment Opportunity Costs	28,532,833	28,532,833	13,627,440	13.14%
IRS - Estate Tax (at 45%)	-	593,020	283,230	0.27%
Total:	\$217,097,306	\$217,097,306	\$103,686,882	100.00%

**Schedule 5**  
**Aaron and Ann Appointment**  
**Asset Page\***

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Mr. and Mrs. Aaron Appointment

FMV: Financial Assets	\$40,000,000
Basis: Financial Assets	\$40,000,000
<b>Total Assets**</b>	<b>\$40,000,000</b>
<b>Total Basis</b>	<b>\$40,000,000</b>

\* Information provided by client.

\*\* There is no proposed planning for Mr. and Mrs. Appointment's other assets.



**Schedule 5**  
**Aaron and Ann Appointment**  
**No Further Planning; Bequeaths Estate to Family**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	4.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate (TX)	15.00%
Ordinary Tax Rate (TX)	35.00%
Consumption (increasing at 3% per year)	\$1,000,000

<b>Additional Assumptions:</b>	
Partnership Distributions	4.00%
Partnership Valuation Discount	35.00%
Intra-Family Note Interest Rate (January 2010 Mid-Term Rate)	2.45%

**Aaron Appointment**

	Beginning of Year - Financial Assets	Income	Growth	Income Taxes	Consumption	End of Year - Financial Assets
Year 1	40,000,000	1,200,000	1,600,000	(492,000)	(1,000,000)	41,308,000
Year 2	41,308,000	1,239,240	1,652,320	(558,488)	(1,030,000)	42,611,072
Year 3	42,611,072	1,278,332	1,704,443	(611,444)	(1,060,900)	43,921,502
Year 4	43,921,502	1,317,645	1,756,860	(655,054)	(1,092,727)	45,248,226
Year 5	45,248,226	1,357,447	1,809,929	(692,268)	(1,125,509)	46,597,825
Year 6	46,597,825	1,397,935	1,863,913	(725,166)	(1,159,274)	47,975,233
Year 7	47,975,233	1,439,257	1,919,009	(755,218)	(1,194,052)	49,384,229
Year 8	49,384,229	1,481,527	1,975,369	(783,461)	(1,229,874)	50,827,791
Year 9	50,827,791	1,524,834	2,033,112	(810,630)	(1,266,770)	52,308,336
Year 10	52,308,336	1,569,250	2,092,333	(837,249)	(1,304,773)	53,827,897
Year 11	53,827,897	1,614,837	2,153,116	(863,691)	(1,343,916)	55,388,242
Year 12	55,388,242	1,661,647	2,215,530	(890,224)	(1,384,234)	56,990,960
Year 13	56,990,960	1,709,729	2,279,638	(917,042)	(1,425,761)	58,637,525
Year 14	58,637,525	1,759,126	2,345,501	(944,288)	(1,468,534)	60,329,330
Year 15	60,329,330	1,809,880	2,413,173	(972,066)	(1,512,590)	62,067,727
Year 16	62,067,727	1,862,032	2,482,709	(1,000,459)	(1,557,967)	63,854,042
Year 17	63,854,042	1,915,621	2,554,162	(1,029,528)	(1,604,706)	65,689,590
Year 18	65,689,590	1,970,688	2,627,584	(1,059,324)	(1,652,848)	67,575,689
Year 19	67,575,689	2,027,271	2,703,028	(1,089,890)	(1,702,433)	69,513,665
Year 20	69,513,665	2,085,410	2,780,547	(1,121,259)	(1,753,506)	71,504,856
Year 21	71,504,856	2,145,146	2,860,194	(1,153,466)	(1,806,111)	73,550,619
Year 22	73,550,619	2,206,519	2,942,025	(1,186,538)	(1,860,295)	75,652,329
Year 23	75,652,329	2,269,570	3,026,093	(1,220,503)	(1,916,103)	77,811,386
Year 24	77,811,386	2,334,342	3,112,455	(1,255,388)	(1,973,587)	80,029,209
Year 25	80,029,209	2,400,876	3,201,168	(840,307)	(2,032,794)	82,758,152

**Schedule 5**  
**Aaron and Ann Appointment**  
**Hypothetical Integrated Income & Estate Tax Plan**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	4.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate (TX)	15.00%
Ordinary Tax Rate (TX)	35.00%
Consumption (increasing at 3% per year)	\$1,000,000

<b>Additional Assumptions:</b>	
Partnership Distributions	4.00%
Partnership Valuation Discount	35.00%
Intra-Family Note Interest Rate (Nov. 2009 Mid-Term Rate)	2.45%

**Appointment Family Limited Partnership**

	Beginning of Year - Financial Assets				End of Year - Financial Assets
	Assets	Income	Growth	Distributions	Assets
Year 1	35,000,000	1,050,000	1,400,000	(1,400,000)	36,050,000
Year 2	36,050,000	1,081,500	1,442,000	(1,442,000)	37,131,500
Year 3	37,131,500	1,113,945	1,485,260	(1,485,260)	38,245,445
Year 4	38,245,445	1,147,363	1,529,818	(1,529,818)	39,392,808
Year 5	39,392,808	1,181,784	1,575,712	(1,575,712)	40,574,593
Year 6	40,574,593	1,217,238	1,622,984	(1,622,984)	41,791,830
Year 7	41,791,830	1,253,755	1,671,673	(1,671,673)	43,045,585
Year 8	43,045,585	1,291,368	1,721,823	(1,721,823)	44,336,953
Year 9	44,336,953	1,330,109	1,773,478	(1,773,478)	45,667,061
Year 10	45,667,061	1,370,012	1,826,682	(1,826,682)	47,037,073
Year 11	47,037,073	1,411,112	1,881,483	(1,881,483)	48,448,185
Year 12	48,448,185	1,453,446	1,937,927	(1,937,927)	49,901,631
Year 13	49,901,631	1,497,049	1,996,065	(1,996,065)	51,398,680
Year 14	51,398,680	1,541,960	2,055,947	(2,055,947)	52,940,640
Year 15	52,940,640	1,588,219	2,117,626	(2,117,626)	54,528,860
Year 16	54,528,860	1,635,866	2,181,154	(2,181,154)	56,164,725
Year 17	56,164,725	1,684,942	2,246,589	(2,246,589)	57,849,667
Year 18	57,849,667	1,735,490	2,313,987	(2,313,987)	59,585,157
Year 19	59,585,157	1,787,555	2,383,406	(2,383,406)	61,372,712
Year 20	61,372,712	1,841,181	2,454,908	(2,454,908)	63,213,893
Year 21	63,213,893	1,896,417	2,528,556	(2,528,556)	65,110,310
Year 22	65,110,310	1,953,309	2,604,412	(2,604,412)	67,063,619
Year 23	67,063,619	2,011,909	2,682,545	(2,682,545)	69,075,528
Year 24	69,075,528	2,072,266	2,763,021	(2,763,021)	71,147,794
Year 25	71,147,794	2,134,434	2,845,912	(2,845,912)	73,282,228

Ownership		
Mr. and Mrs. Aaron Appointment	GST Grantor Trust #1 Created by Mrs. Appointment	GST Grantor Trust #2 Created by Mr. Appointment
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%
1.00%	49.50%	49.50%

**Schedule 5**  
**Aaron and Ann Appointment**  
**Hypothetical Integrated Income & Estate Tax Plan**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	4.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate (TX)	15.00%
Ordinary Tax Rate (TX)	35.00%
Consumption (increasing at 3% per year)	\$1,000,000

<b>Additional Assumptions:</b>	
Partnership Distributions	4.00%
Partnership Valuation Discount	35.00%
Intra-Family Note Interest Rate (Nov. 2009 Mid-Term Rate)	2.45%

**Mr. and Mrs. Aaron Appointment**

	Beginning of Year - Financial Assets	Income	Growth	Note Payments	Partnership Distributions	Distributions from GST Grantor Trust #1	Distributions from GST Grantor Trust #2	Income Taxes	Consumption	End of Year - Financial Assets
Year 1	5,000,000	150,000	200,000	1,340,072	14,000	-	45,928	(492,000)	(1,000,000)	5,258,000
Year 2	5,258,000	157,740	210,320	1,360,862	14,420	-	66,718	(558,488)	(1,030,000)	5,479,572
Year 3	5,479,572	164,387	219,183	1,382,276	14,853	-	88,131	(611,444)	(1,060,900)	5,676,057
Year 4	5,676,057	170,282	227,042	1,404,332	15,298	-	110,187	(655,054)	(1,092,727)	5,855,418
Year 5	5,855,418	175,663	234,217	1,427,050	15,757	-	132,905	(692,268)	(1,125,509)	6,023,233
Year 6	6,023,233	180,697	240,929	1,450,449	16,230	-	156,304	(725,166)	(1,159,274)	6,183,402
Year 7	6,183,402	185,502	247,336	1,474,551	16,717	-	180,406	(755,218)	(1,194,052)	6,338,644
Year 8	6,338,644	190,159	253,546	1,499,375	17,218	-	205,230	(783,461)	(1,229,874)	6,490,838
Year 9	6,490,838	194,725	259,634	1,524,944	17,735	-	230,799	(810,630)	(1,266,770)	6,641,274
Year 10	6,641,274	199,238	265,651	1,551,280	18,267	-	257,135	(837,249)	(1,304,773)	6,790,823
Year 11	6,790,823	203,725	271,633	1,578,407	18,815	-	284,262	(863,691)	(1,343,916)	6,940,056
Year 12	6,940,056	208,202	277,602	1,606,347	19,379	-	312,202	(890,224)	(1,384,234)	7,089,329
Year 13	7,089,329	212,680	283,573	1,635,125	19,961	-	340,980	(917,042)	(1,425,761)	7,238,845
Year 14	7,238,845	217,165	289,554	1,664,766	20,559	-	370,621	(944,288)	(1,468,534)	7,388,690
Year 15	7,388,690	221,661	295,548	1,117,905	21,176	-	401,152	(972,066)	(1,512,590)	6,961,475
Year 16	6,961,475	208,844	278,459	647,072	21,812	-	432,599	(1,000,459)	(1,557,967)	5,991,835
Year 17	5,991,835	179,755	239,673	647,072	22,466	-	464,989	(1,029,528)	(1,604,706)	4,911,557
Year 18	4,911,557	147,347	196,462	647,072	23,140	-	498,351	(1,059,324)	(1,652,848)	3,711,757
Year 19	3,711,757	111,353	148,470	647,072	23,834	1,000,000	532,714	(1,089,890)	(1,702,433)	3,382,878
Year 20	3,382,878	101,486	135,315	647,072	24,549	1,000,000	568,107	(1,121,259)	(1,753,506)	2,984,642
Year 21	2,984,642	89,539	119,386	-	25,286	1,251,635	1,251,635	(1,153,466)	(1,806,111)	2,762,546
Year 22	2,762,546	82,876	110,502	-	26,044	1,289,184	1,289,184	(1,186,538)	(1,860,295)	2,513,504
Year 23	2,513,504	75,405	100,540	-	26,825	1,327,860	1,327,860	(1,220,503)	(1,916,103)	2,235,387
Year 24	2,235,387	67,062	89,415	-	27,630	1,367,695	1,367,695	(1,255,388)	(1,973,587)	1,925,911
Year 25	1,925,911	57,777	77,036	-	28,459	1,408,726	1,408,726	(2,288,843)	(2,032,794)	584,999

**Schedule 5**  
**Aaron and Ann Appointment**  
**Hypothetical Integrated Income & Estate Tax Plan**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	4.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate (TX)	15.00%
Ordinary Tax Rate (TX)	35.00%
Consumption (increasing at 3% per year)	\$1,000,000

<b>Additional Assumptions:</b>	
Partnership Distributions	4.00%
Partnership Valuation Discount	35.00%
Intra-Family Note Interest Rate (Nov. 2009 Mid-Term Rate)	2.45%

**GST Grantor Trust #1 Created by Mrs. Appointment**

	Beginning of Year - Financial Assets	Income	Growth	Partnership Distributions	Note Payments	Distributions to Mr. Appointment	Income Taxes	End of Year - Financial Assets
Year 1	-	-	-	693,000	(693,000)	-	-	-
Year 2	-	-	-	713,790	(713,790)	-	-	-
Year 3	-	-	-	735,204	(735,204)	-	-	-
Year 4	-	-	-	757,260	(757,260)	-	-	-
Year 5	-	-	-	779,978	(779,978)	-	-	-
Year 6	-	-	-	803,377	(803,377)	-	-	-
Year 7	-	-	-	827,478	(827,478)	-	-	-
Year 8	-	-	-	852,303	(852,303)	-	-	-
Year 9	-	-	-	877,872	(877,872)	-	-	-
Year 10	-	-	-	904,208	(904,208)	-	-	-
Year 11	-	-	-	931,334	(931,334)	-	-	-
Year 12	-	-	-	959,274	(959,274)	-	-	-
Year 13	-	-	-	988,052	(988,052)	-	-	-
Year 14	-	-	-	1,017,694	(1,017,694)	-	-	-
Year 15	-	-	-	1,048,225	(470,833)	-	-	577,392
Year 16	577,392	17,322	23,096	1,079,671	-	-	-	1,697,481
Year 17	1,697,481	50,924	67,899	1,112,062	-	-	-	2,928,366
Year 18	2,928,366	87,851	117,135	1,145,423	-	-	-	4,278,775
Year 19	4,278,775	128,363	171,151	1,179,786	-	(1,000,000)	-	4,758,076
Year 20	4,758,076	142,742	190,323	1,215,180	-	(1,000,000)	-	5,306,321
Year 21	5,306,321	159,190	212,253	1,251,635	-	(1,251,635)	-	5,677,763
Year 22	5,677,763	170,333	227,111	1,289,184	-	(1,289,184)	-	6,075,206
Year 23	6,075,206	182,256	243,008	1,327,860	-	(1,327,860)	-	6,500,471
Year 24	6,500,471	195,014	260,019	1,367,695	-	(1,367,695)	-	6,955,504
Year 25	6,955,504	208,665	278,220	1,408,726	-	(1,408,726)	-	7,442,389

**Schedule 5**  
**Aaron and Ann Appointment**  
**Hypothetical Integrated Income & Estate Tax Plan**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	4.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate (TX)	15.00%
Ordinary Tax Rate (TX)	35.00%
Consumption (increasing at 3% per year)	\$1,000,000

<b>Additional Assumptions:</b>	
Partnership Distributions	4.00%
Partnership Valuation Discount	35.00%
Intra-Family Note Interest Rate (Nov. 2009 Mid-Term Rate)	2.45%

**GST Grantor Trust #2 Created by Mr. Appointment**

	Beginning of Year - Financial Assets	Income	Growth	Partnership Distributions	Note Payments	Distributions to Mrs. Appointment	Income Taxes	End of Year - Financial Assets
Year 1	-	-	-	693,000	(647,072)	(45,928)	-	-
Year 2	-	-	-	713,790	(647,072)	(66,718)	-	-
Year 3	-	-	-	735,204	(647,072)	(88,131)	-	-
Year 4	-	-	-	757,260	(647,072)	(110,187)	-	-
Year 5	-	-	-	779,978	(647,072)	(132,905)	-	-
Year 6	-	-	-	803,377	(647,072)	(156,304)	-	-
Year 7	-	-	-	827,478	(647,072)	(180,406)	-	-
Year 8	-	-	-	852,303	(647,072)	(205,230)	-	-
Year 9	-	-	-	877,872	(647,072)	(230,799)	-	-
Year 10	-	-	-	904,208	(647,072)	(257,135)	-	-
Year 11	-	-	-	931,334	(647,072)	(284,262)	-	-
Year 12	-	-	-	959,274	(647,072)	(312,202)	-	-
Year 13	-	-	-	988,052	(647,072)	(340,980)	-	-
Year 14	-	-	-	1,017,694	(647,072)	(370,621)	-	-
Year 15	-	-	-	1,048,225	(647,072)	(401,152)	-	-
Year 16	-	-	-	1,079,671	(647,072)	(432,599)	-	-
Year 17	-	-	-	1,112,062	(647,072)	(464,989)	-	-
Year 18	-	-	-	1,145,423	(647,072)	(498,351)	-	-
Year 19	-	-	-	1,179,786	(647,072)	(532,714)	-	-
Year 20	-	-	-	1,215,180	(647,072)	(568,107)	-	-
Year 21	-	-	-	1,251,635	-	(1,251,635)	-	-
Year 22	-	-	-	1,289,184	-	(1,289,184)	-	-
Year 23	-	-	-	1,327,860	-	(1,327,860)	-	-
Year 24	-	-	-	1,367,695	-	(1,367,695)	-	-
Year 25	-	-	-	1,408,726	-	(1,408,726)	-	-



**Schedule 5**  
**Aaron and Ann Appointment**  
**Hypothetical Integrated Income & Estate Tax Plan**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>	
Rate of Return Taxed at Ordinary Rates - Financial Assets	3.00%
Rate of Return Taxed at Capital Gains Rates - Financial Assets	4.00%
Turnover Rate - Financial Assets (% of Capital Gains Recognized/Year)	30.00%
Long-Term Capital Gain Tax Rate (TX)	15.00%
Ordinary Tax Rate (TX)	35.00%
Consumption (increasing at 3% per year)	\$1,000,000

<b>Additional Assumptions:</b>	
Partnership Distributions	4.00%
Partnership Valuation Discount	35.00%
Intra-Family Note Interest Rate (Nov. 2009 Mid-Term Rate)	2.45%

**Note #1 Between Aaron Appointment and GST Grantor Trust #1**  
**for the Purchase of Partnership Interests**

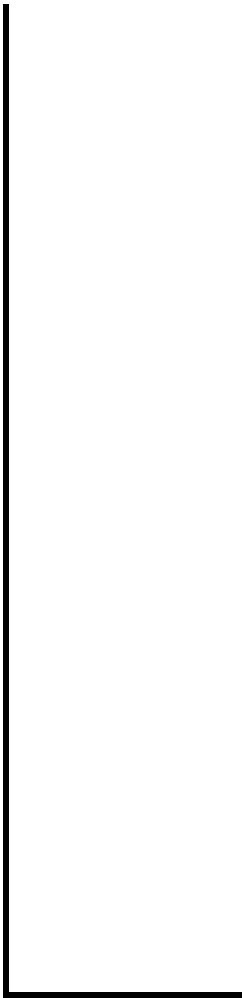
	Beginning of Year - Principal	Interest	Note Payment	End of Year - Principal
Year 1	10,135,125	248,311	(693,000)	9,690,436
Year 2	9,690,436	237,416	(713,790)	9,214,061
Year 3	9,214,061	225,745	(735,204)	8,704,602
Year 4	8,704,602	213,263	(757,260)	8,160,605
Year 5	8,160,605	199,935	(779,978)	7,580,562
Year 6	7,580,562	185,724	(803,377)	6,962,909
Year 7	6,962,909	170,591	(827,478)	6,306,022
Year 8	6,306,022	154,498	(852,303)	5,608,217
Year 9	5,608,217	137,401	(877,872)	4,867,747
Year 10	4,867,747	119,260	(904,208)	4,082,799
Year 11	4,082,799	100,029	(931,334)	3,251,493
Year 12	3,251,493	79,662	(959,274)	2,371,881
Year 13	2,371,881	58,111	(988,052)	1,441,939
Year 14	1,441,939	35,328	(1,017,694)	459,573
Year 15	459,573	11,260	(470,833)	-
Year 16	-	-	-	-
Year 17	-	-	-	-
Year 18	-	-	-	-
Year 19	-	-	-	-
Year 20	-	-	-	-
Year 21	-	-	-	-
Year 22	-	-	-	-
Year 23	-	-	-	-
Year 24	-	-	-	-
Year 25	-	-	-	-

**Note #2 Between Mrs. Appointment and GST Grantor Trust #2**  
**for the Purchase of Partnership Interests**

	Beginning of Year - Principal	Interest	Note Payment	End of Year - Principal
Year 1	10,135,125	248,311	(647,072)	9,736,363
Year 2	9,736,363	238,541	(647,072)	9,327,832
Year 3	9,327,832	228,532	(647,072)	8,909,291
Year 4	8,909,291	218,278	(647,072)	8,480,496
Year 5	8,480,496	207,772	(647,072)	8,041,196
Year 6	8,041,196	197,009	(647,072)	7,591,133
Year 7	7,591,133	185,983	(647,072)	7,130,043
Year 8	7,130,043	174,686	(647,072)	6,657,656
Year 9	6,657,656	163,113	(647,072)	6,173,696
Year 10	6,173,696	151,256	(647,072)	5,677,880
Year 11	5,677,880	139,108	(647,072)	5,169,915
Year 12	5,169,915	126,663	(647,072)	4,649,506
Year 13	4,649,506	113,913	(647,072)	4,116,346
Year 14	4,116,346	100,850	(647,072)	3,570,124
Year 15	3,570,124	87,468	(647,072)	3,010,520
Year 16	3,010,520	73,758	(647,072)	2,437,205
Year 17	2,437,205	59,712	(647,072)	1,849,844
Year 18	1,849,844	45,321	(647,072)	1,248,093
Year 19	1,248,093	30,578	(647,072)	631,598
Year 20	631,598	15,474	(647,072)	-
Year 21	-	-	-	-
Year 22	-	-	-	-
Year 23	-	-	-	-
Year 24	-	-	-	-
Year 25	-	-	-	-

**Schedule 5**

Value	\$	35,000,000		
Discounted	\$	22,750,000		
GST #1 Gift	\$	1,126,125	4.95%	9.90%
GST #2 Gift	\$	1,126,125		
GST #1 Note	\$	10,135,125	44.55%	89.10%
GST #2 Note	\$	10,135,125		
	99.00%	\$	22,522,500	99.00%
		\$	22,522,500	



FUTURE VALUES

	Appointment Children (1)	Appointment Children and Grandchildren (2)	Consumption - Direct Cost (3)	Consumption - Investment Opportunity Cost (4)	IRS - Income Tax (5)	IRS - Investment Opportunity Costs (6)	IRS - Estate Tax (at 45%) (7)	Total: (8)
<b>Future Values</b>								
No Further Planning; Bequeaths Estate to Family	\$45,516,984	\$0	\$36,459,264	\$46,882,103	\$22,464,953	\$28,532,833	\$37,241,169	\$217,097,306
Hypothetical Integrated Income & Estate Tax Plan	\$724,802	\$79,991,794	\$36,459,264	\$46,882,103	\$23,913,489	\$28,532,833	\$593,020	\$217,097,306
<b>Present Values (discounted at 3%)</b>								
No Further Planning; Bequeaths Estate to Family	\$21,739,165	\$0	\$17,413,148	\$22,391,154	\$10,729,387	\$13,627,440	\$17,786,590	\$103,686,882
Hypothetical Integrated Income & Estate Tax Plan	\$346,169	\$38,204,526	\$17,413,148	\$22,391,154	\$11,421,216	\$13,627,440	\$283,230	\$103,686,882



**LEVERAGE FAMILY****HYPOTHETICAL INTEGRATED INCOME AND ESTATE TAX PLAN COMPARISONS - 20 YEAR TERM SCENARIO**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

**NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY**

	<b>Pre-Death</b>	<b>Post-Death</b>	<b>Present Value (Discounted at 3%)</b>	<b>Percentage of Total</b>
Lenny Leverage	100,513,787	-	-	0.00%
Leverage Children	-	55,282,583	30,608,626	34.52%
Leverage GST Trust	13,317,021	13,317,021	7,373,312	8.32%
Consumption - Direct Cost	2,687,037	2,687,037	1,487,747	1.68%
Consumption - Investment Opportunity Cost	3,022,654	3,022,654	1,673,570	1.89%
IRS - Income Tax	20,916,430	20,916,430	11,580,920	13.06%
IRS - Investment Opportunity Costs	19,680,241	19,680,241	10,896,472	12.29%
IRS - Estate Tax (at 45%)	-	45,231,204	25,043,421	28.25%
<b>Total</b>	<b>\$160,137,171</b>	<b>\$160,137,171</b>	<b>\$88,664,069</b>	<b>100.00%</b>

**HYPOTHETICAL INTEGRATED INCOME & ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS REMAINING ESTATE TO FAMILY**

Lenny Leverage	17,613,195	-	-	0.00%
Leverage Children	-	9,687,257	5,363,600	6.05%
Leverage GST Trust	98,772,116	98,772,116	54,687,726	61.68%
Consumption - Direct Cost	2,687,037	2,687,037	1,487,747	1.68%
Consumption - Investment Opportunity Cost	3,022,654	3,022,654	1,673,570	1.89%
IRS - Income Tax	20,778,989	20,778,989	11,504,822	12.98%
IRS - Investment Opportunity Costs	17,263,179	17,263,179	9,558,204	10.78%
IRS - Estate Tax (at 45%)	-	7,925,938	4,388,400	4.95%
<b>Total</b>	<b>\$160,137,171</b>	<b>\$160,137,171</b>	<b>\$88,664,069</b>	<b>100.00%</b>

**Schedule 6**  
**LEVERAGE FAMILY**  
**ASSET PAGE**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>FLP</u>	
Asset: Miscellaneous Investments	\$30,000,000
Basis: Miscellaneous Investments	\$30,000,000

<u>GST Trust</u>	
Asset: Cash	\$2,857,143
Basis: Cash	\$2,857,143

<u>Other Miscellaneous Assets</u>	
Asset: Cash	\$1,500,000
Basis: Cash	\$1,500,000

<b>Total Assets*</b>	<b>\$34,357,143</b>
<b>Total Basis</b>	<b>\$34,357,143</b>

\* There is not any proposed planning for Lenny Leverage's other assets

**LEVERAGE FAMILY****NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	18.25%
Ordinary Tax Rate	38.25%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (with 3% inflation adjustment each year)	100,000

*Lenny Leverage*

	<u>Beg. of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Income Taxes</u>	<u>Consumption</u>	<u>End of Year</u>
Year 1	31,500,000	630,000	1,890,000	(375,695)	(100,000)	33,544,305
Year 2	33,544,305	670,886	2,012,658	(479,554)	(103,000)	35,645,296
Year 3	35,645,296	712,906	2,138,718	(565,757)	(106,090)	37,825,072
Year 4	37,825,072	756,501	2,269,504	(640,277)	(109,273)	40,101,528
Year 5	40,101,528	802,031	2,406,092	(707,383)	(112,551)	42,489,716
Year 6	42,489,716	849,794	2,549,383	(770,140)	(115,927)	45,002,826
Year 7	45,002,826	900,057	2,700,170	(830,769)	(119,405)	47,652,878
Year 8	47,652,878	953,058	2,859,173	(890,898)	(122,987)	50,451,223
Year 9	50,451,223	1,009,024	3,027,073	(951,739)	(126,677)	53,408,905
Year 10	53,408,905	1,068,178	3,204,534	(1,014,212)	(130,477)	56,536,928
Year 11	56,536,928	1,130,739	3,392,216	(1,079,042)	(134,392)	59,846,449
Year 12	59,846,449	1,196,929	3,590,787	(1,146,810)	(138,423)	63,348,931
Year 13	63,348,931	1,266,979	3,800,936	(1,218,011)	(142,576)	67,056,258
Year 14	67,056,258	1,341,125	4,023,376	(1,293,075)	(146,853)	70,980,831
Year 15	70,980,831	1,419,617	4,258,850	(1,372,398)	(151,259)	75,135,641
Year 16	75,135,641	1,502,713	4,508,138	(1,456,353)	(155,797)	79,534,342
Year 17	79,534,342	1,590,687	4,772,061	(1,545,306)	(160,471)	84,191,313
Year 18	84,191,313	1,683,826	5,051,479	(1,639,622)	(165,285)	89,121,712
Year 19	89,121,712	1,782,434	5,347,303	(1,739,674)	(170,243)	94,341,532
Year 20	94,341,532	1,886,831	5,660,492	(1,199,716)	(175,351)	100,513,787

**LEVERAGE FAMILY****NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	18.25%
Ordinary Tax Rate	38.25%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (with 3% inflation adjustment each year)	100,000

*Leverage GST Trust*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>End of Year</b>
Year 1	2,857,143	57,143	171,429	-	3,085,714
Year 2	3,085,714	61,714	185,143	-	3,332,572
Year 3	3,332,572	66,651	199,954	-	3,599,177
Year 4	3,599,177	71,984	215,951	-	3,887,112
Year 5	3,887,112	77,742	233,227	-	4,198,080
Year 6	4,198,080	83,962	251,885	-	4,533,927
Year 7	4,533,927	90,679	272,036	-	4,896,641
Year 8	4,896,641	97,933	293,798	-	5,288,372
Year 9	5,288,372	105,767	317,302	-	5,711,442
Year 10	5,711,442	114,229	342,687	-	6,168,357
Year 11	6,168,357	123,367	370,101	-	6,661,826
Year 12	6,661,826	133,237	399,710	-	7,194,772
Year 13	7,194,772	143,895	431,686	-	7,770,354
Year 14	7,770,354	155,407	466,221	-	8,391,982
Year 15	8,391,982	167,840	503,519	-	9,063,341
Year 16	9,063,341	181,267	543,800	-	9,788,408
Year 17	9,788,408	195,768	587,304	-	10,571,481
Year 18	10,571,481	211,430	634,289	-	11,417,199
Year 19	11,417,199	228,344	685,032	-	12,330,575
Year 20	12,330,575	246,612	739,835	-	13,317,021

**LEVERAGE FAMILY****HYPOTHETICAL INTEGRATED INCOME & ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS REMAINING ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
<u>Lenny Leverage</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	100,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Lenny Leverage Percentage Ownership in Leverage FLP	8.70%
GRAT Percentage Ownership in Leverage FLP	91.30%
GRAT Annuity* (20% Increasing Annuity)	146,297 * based on nominal amount of \$21,000,000 [\$30,000,000 * (1-
Leverage FLP Valuation Discount	30.00% 30%)]

**Leverage FLP**

	<b>Beginning of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Distributions</b>	<b>End of Year</b>
Year 1	32,857,143	657,143	1,971,429	(1,961,571)	33,524,143
Year 2	33,524,143	670,483	2,011,449	(2,063,491)	34,142,583
Year 3	34,142,583	682,852	2,048,555	(2,145,143)	34,728,847
Year 4	34,728,847	694,577	2,083,731	(2,212,623)	35,294,532
Year 5	35,294,532	705,891	2,117,672	(2,270,239)	35,847,855
Year 6	35,847,855	716,957	2,150,871	(2,321,032)	36,394,652
Year 7	36,394,652	727,893	2,183,679	(2,367,154)	36,939,070
Year 8	36,939,070	738,781	2,216,344	(2,410,124)	37,484,072
Year 9	37,484,072	749,681	2,249,044	(2,451,017)	38,031,781
Year 10	38,031,781	760,636	2,281,907	(2,490,595)	38,583,729
Year 11	38,583,729	771,675	2,315,024	(2,529,397)	39,141,030
Year 12	39,141,030	782,821	2,348,462	(2,567,806)	39,704,506
Year 13	39,704,506	794,090	2,382,270	(2,606,096)	40,274,771
Year 14	40,274,771	805,495	2,416,486	(2,644,461)	40,852,291
Year 15	40,852,291	817,046	2,451,137	(2,683,041)	41,437,432

Schedule 6

LEVERAGE FAMILY

HYPOTHETICAL INTEGRATED INCOME & ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS REMAINING ESTATE TO FAMILY

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
<u>Lenny Leverage</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	100,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%

FLP	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Lenny Leverage Percentage Ownership in Leverage FLP	8.70%
GRAT Percentage Ownership in Leverage FLP	91.30%
GRAT Annuity* (20% Increasing Annuity)	146,297 * based on nominal amount of \$21,000,000 [\$30,000,000 * (1-
Leverage FLP Valuation Discount	30.00% 30%)]

GRAT

	Undiscounted Beg. of Year Value	Income	Growth	Distribution from Partnership	Cash Portion of Annuity Payment	Partnership Share Portion of Annuity Payment (Pre-discount)	Undiscounted End of Year Value	Percentage Ownership of FLP by GRAT At End of Year	Percentage Ownership of FLP by Lenny Leverage At End of Year
Year 1	30,000,000	-	-	1,791,000	(146,297)	-	32,253,703	91.30%	8.70%
Year 2	32,253,703	32,894	98,682	1,884,057	(175,556)	-	34,658,443	91.30%	8.70%
Year 3	34,658,443	69,696	209,087	1,958,609	(210,668)	-	37,220,451	91.30%	8.70%
Year 4	37,220,451	110,230	330,690	2,020,221	(252,801)	-	39,945,285	91.30%	8.70%
Year 5	39,945,285	154,397	463,191	2,072,827	(303,361)	-	42,837,547	91.30%	8.70%
Year 6	42,837,547	202,138	606,414	2,119,203	(364,034)	-	45,900,517	91.30%	8.70%
Year 7	45,900,517	253,412	760,237	2,161,314	(436,841)	-	49,135,718	91.30%	8.70%
Year 8	49,135,718	308,175	924,524	2,200,548	(524,209)	-	52,542,366	91.30%	8.70%
Year 9	52,542,366	366,356	1,099,067	2,237,885	(629,050)	-	56,116,705	91.30%	8.70%
Year 10	56,116,705	427,841	1,283,522	2,274,021	(754,860)	-	59,851,181	91.30%	8.70%
Year 11	59,851,181	492,451	1,477,354	2,309,449	(905,832)	-	63,733,444	91.30%	8.70%
Year 12	63,733,444	559,920	1,679,759	2,344,519	(1,086,999)	-	67,745,120	91.30%	8.70%
Year 13	67,745,120	629,864	1,889,591	2,379,479	(1,304,399)	-	71,860,331	91.30%	8.70%
Year 14	71,860,331	701,754	2,105,263	2,414,508	(1,565,278)	-	76,043,879	91.30%	8.70%
Year 15	76,043,879	774,879	2,324,638	2,449,733	(1,878,334)	-	80,249,055	91.30%	8.70%
Year 16	80,249,055	1,604,981	4,814,943	-	(2,254,001)	-	84,414,978	-	-
Year 17	84,414,978	1,688,300	5,064,899	-	(2,704,801)	-	88,463,375	-	-
Year 18	88,463,375	1,769,268	5,307,803	-	(3,245,761)	-	92,294,684	-	-
Year 19	92,294,684	1,845,894	5,537,681	-	(3,894,914)	-	95,783,345	-	-
Year 20	95,783,345	1,915,667	5,747,001	-	(4,673,897)	-	98,772,116	-	-

**LEVERAGE FAMILY****HYPOTHETICAL INTEGRATED INCOME & ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS REMAINING ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

**Assumptions:****Lenny Leverage**

Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	100,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%

**FLP**

Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Lenny Leverage Percentage Ownership in Leverage FLP	8.70%
GRAT Percentage Ownership in Leverage FLP	91.30%
GRAT Annuity* (20% Increasing Annuity)	146,297 * based on nominal amount of \$21,000,000 [\$30,000,000 * (1-
Leverage FLP Valuation Discount	30.00% 30%)]

**Lenny Leverage**

	<b>Beginning of Year*</b>	<b>Income</b>	<b>Growth</b>	<b>Distribution from Partnership</b>	<b>Cash Annuity Payment</b>	<b>Income Taxes</b>	<b>Consumption</b>	<b>End of Year</b>
Year 1	1,500,000	30,000	90,000	170,571	146,297	(333,264)	(100,000)	1,503,604
Year 2	1,503,604	30,072	90,216	179,434	175,556	(420,658)	(103,000)	1,455,225
Year 3	1,455,225	29,105	87,314	186,534	210,668	(493,867)	(106,090)	1,368,888
Year 4	1,368,888	27,378	82,133	192,402	252,801	(557,812)	(109,273)	1,256,519
Year 5	1,256,519	25,130	75,391	197,412	303,361	(616,010)	(112,551)	1,129,252
Year 6	1,129,252	22,585	67,755	201,829	364,034	(670,995)	(115,927)	998,533
Year 7	998,533	19,971	59,912	205,839	436,841	(724,604)	(119,405)	877,087
Year 8	877,087	17,542	52,625	209,576	524,209	(778,191)	(122,987)	779,859
Year 9	779,859	15,597	46,792	213,132	629,050	(832,775)	(126,677)	724,979
Year 10	724,979	14,500	43,499	216,573	754,860	(889,135)	(130,477)	734,798
Year 11	734,798	14,696	44,088	219,948	905,832	(947,894)	(134,392)	837,077
Year 12	837,077	16,742	50,225	223,288	1,086,999	(1,009,563)	(138,423)	1,066,343
Year 13	1,066,343	21,327	63,981	226,617	1,304,399	(1,074,582)	(142,576)	1,465,508
Year 14	1,465,508	29,310	87,930	229,953	1,565,278	(1,143,345)	(146,853)	2,087,781
Year 15	2,087,781	41,756	125,267	233,308	1,878,334	(1,216,220)	(151,259)	2,998,967
Year 16	6,602,222	132,044	396,133	-	2,254,001	(1,293,559)	(155,797)	7,935,045
Year 17	7,935,045	158,701	476,103	-	2,704,801	(1,375,716)	(160,471)	9,738,464
Year 18	9,738,464	194,769	584,308	-	3,245,761	(1,463,044)	(165,285)	12,134,974
Year 19	12,134,974	242,699	728,098	-	3,894,914	(1,555,909)	(170,243)	15,274,533
Year 20	15,274,533	305,491	916,472	-	4,673,897	(3,381,846)	(175,351)	17,613,195

\* Assumes \$2.86 million of LP interests is paid from Leverage GST Trust for purchase of remainder interest

**LEVERAGE FAMILY**

**HYPOTHETICAL INTEGRATED INCOME & ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS REMAINING ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
<u>Lenny Leverage</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	100,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Lenny Leverage Percentage Ownership in Leverage FLP	8.70%
GRAT Percentage Ownership in Leverage FLP	91.30%
GRAT Annuity* (20% Increasing Annuity)	146,297 * based on nominal amount of \$21,000,000 [\$30,000,000 * (1-
Leverage FLP Valuation Discount	30.00% 30%)]

*Leverage GST Trust*

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Remainder Interest from GRAT</u>	<u>Income Taxes</u>	<u>End of Year</u>
Year 1	-	-	-	-	-	-
Year 2	-	-	-	-	-	-
Year 3	-	-	-	-	-	-
Year 4	-	-	-	-	-	-
Year 5	-	-	-	-	-	-
Year 6	-	-	-	-	-	-
Year 7	-	-	-	-	-	-
Year 8	-	-	-	-	-	-
Year 9	-	-	-	-	-	-
Year 10	-	-	-	-	-	-
Year 11	-	-	-	-	-	-
Year 12	-	-	-	-	-	-
Year 13	-	-	-	-	-	-
Year 14	-	-	-	-	-	-
Year 15	-	-	-	-	-	-
Year 16	-	-	-	-	-	-
Year 17	-	-	-	-	-	-
Year 18	-	-	-	-	-	-
Year 19	-	-	-	-	-	-
Year 20	-	-	-	98,772,116	-	98,772,116



**LEVERAGE FAMILY****HYPOTHETICAL INTEGRATED INCOME AND ESTATE TAX PLAN COMPARISONS - SHORTER OF LENNY LEVERAGE'S DEATH OR 20 YEARS SCENARIO**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

**NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY**

	<b>Pre-Death</b>	<b>Post-Death</b>	<b>Present Value (Discounted at 3%)</b>	<b>Percentage of Total</b>
Lenny Leverage	100,513,787	-	-	0.00%
Leverage Children	-	55,282,583	30,608,626	34.52%
Leverage GST Trust	13,317,021	13,317,021	7,373,312	8.32%
Consumption - Direct Cost	2,687,037	2,687,037	1,487,747	1.68%
Consumption - Investment Opportunity Cost	3,022,654	3,022,654	1,673,570	1.89%
IRS - Income Tax	20,916,430	20,916,430	11,580,920	13.06%
IRS - Investment Opportunity Costs	19,680,241	19,680,241	10,896,472	12.29%
IRS - Estate Tax (at 45%)	-	45,231,204	25,043,421	28.25%
<b>Total</b>	<b>\$160,137,171</b>	<b>\$160,137,171</b>	<b>\$88,664,069</b>	<b>100.00%</b>

**HYPOTHETICAL INTEGRATED INCOME & ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS REMAINING ESTATE TO FAMILY**

Lenny Leverage	34,976,018	-	-	0.00%
Leverage Children	-	19,236,810	10,650,955	12.01%
Leverage GST Trust	81,703,110	81,703,110	45,237,031	51.02%
Consumption - Direct Cost	2,687,037	2,687,037	1,487,747	1.68%
Consumption - Investment Opportunity Cost	3,022,654	3,022,654	1,673,570	1.89%
IRS - Income Tax	20,485,173	20,485,173	11,342,144	12.79%
IRS - Investment Opportunity Costs	17,263,179	17,263,179	9,558,204	10.78%
IRS - Estate Tax (at 45%)	-	15,739,208	8,714,418	9.83%
<b>Total</b>	<b>\$160,137,171</b>	<b>\$160,137,171</b>	<b>\$88,664,069</b>	<b>100.00%</b>

**Schedule 6a**  
**LEVERAGE FAMILY**  
**ASSET PAGE**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>FLP</u>	
Asset: Miscellaneous Investments	\$30,000,000
Basis: Miscellaneous Investments	\$30,000,000
<u>GST Trust</u>	
Asset: Cash	\$2,857,143
Basis: Cash	\$2,857,143
<u>Other Miscellaneous Assets</u>	
Asset: Cash	\$1,500,000
Basis: Cash	\$1,500,000
<b>Total Assets*</b>	<b>\$34,357,143</b>
<b>Total Basis</b>	<b>\$34,357,143</b>

\* There is not any proposed planning for Lenny Leverage's other assets

**Schedule 6a**  
**LEVERAGE FAMILY**  
**NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	18.25%
Ordinary Tax Rate	38.25%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (with 3% inflation adjustment each year)	100,000

***Lenny Leverage***

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Consumption</b>	<b>End of Year</b>
Year 1	31,500,000	630,000	1,890,000	(375,695)	(100,000)	33,544,305
Year 2	33,544,305	670,886	2,012,658	(479,554)	(103,000)	35,645,296
Year 3	35,645,296	712,906	2,138,718	(565,757)	(106,090)	37,825,072
Year 4	37,825,072	756,501	2,269,504	(640,277)	(109,273)	40,101,528
Year 5	40,101,528	802,031	2,406,092	(707,383)	(112,551)	42,489,716
Year 6	42,489,716	849,794	2,549,383	(770,140)	(115,927)	45,002,826
Year 7	45,002,826	900,057	2,700,170	(830,769)	(119,405)	47,652,878
Year 8	47,652,878	953,058	2,859,173	(890,898)	(122,987)	50,451,223
Year 9	50,451,223	1,009,024	3,027,073	(951,739)	(126,677)	53,408,905
Year 10	53,408,905	1,068,178	3,204,534	(1,014,212)	(130,477)	56,536,928
Year 11	56,536,928	1,130,739	3,392,216	(1,079,042)	(134,392)	59,846,449
Year 12	59,846,449	1,196,929	3,590,787	(1,146,810)	(138,423)	63,348,931
Year 13	63,348,931	1,266,979	3,800,936	(1,218,011)	(142,576)	67,056,258
Year 14	67,056,258	1,341,125	4,023,376	(1,293,075)	(146,853)	70,980,831
Year 15	70,980,831	1,419,617	4,258,850	(1,372,398)	(151,259)	75,135,641
Year 16	75,135,641	1,502,713	4,508,138	(1,456,353)	(155,797)	79,534,342
Year 17	79,534,342	1,590,687	4,772,061	(1,545,306)	(160,471)	84,191,313
Year 18	84,191,313	1,683,826	5,051,479	(1,639,622)	(165,285)	89,121,712
Year 19	89,121,712	1,782,434	5,347,303	(1,739,674)	(170,243)	94,341,532
Year 20	94,341,532	1,886,831	5,660,492	(1,199,716)	(175,351)	100,513,787

**LEVERAGE FAMILY****NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	18.25%
Ordinary Tax Rate	38.25%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (with 3% inflation adjustment each year)	100,000

*Leverage GST Trust*

	<u>Beg. of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Income Taxes</u>	<u>End of Year</u>
Year 1	2,857,143	57,143	171,429	-	3,085,714
Year 2	3,085,714	61,714	185,143	-	3,332,572
Year 3	3,332,572	66,651	199,954	-	3,599,177
Year 4	3,599,177	71,984	215,951	-	3,887,112
Year 5	3,887,112	77,742	233,227	-	4,198,080
Year 6	4,198,080	83,962	251,885	-	4,533,927
Year 7	4,533,927	90,679	272,036	-	4,896,641
Year 8	4,896,641	97,933	293,798	-	5,288,372
Year 9	5,288,372	105,767	317,302	-	5,711,442
Year 10	5,711,442	114,229	342,687	-	6,168,357
Year 11	6,168,357	123,367	370,101	-	6,661,826
Year 12	6,661,826	133,237	399,710	-	7,194,772
Year 13	7,194,772	143,895	431,686	-	7,770,354
Year 14	7,770,354	155,407	466,221	-	8,391,982
Year 15	8,391,982	167,840	503,519	-	9,063,341
Year 16	9,063,341	181,267	543,800	-	9,788,408
Year 17	9,788,408	195,768	587,304	-	10,571,481
Year 18	10,571,481	211,430	634,289	-	11,417,199
Year 19	11,417,199	228,344	685,032	-	12,330,575
Year 20	12,330,575	246,612	739,835	-	13,317,021

**LEVERAGE FAMILY****HYPOTHETICAL INTEGRATED INCOME & ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS REMAINING ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

**Assumptions:****Lenny Leverage**

Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	100,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%

**FLP**

Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Lenny Leverage Percentage Ownership in Leverage FLP	8.70%
GRAT Percentage Ownership in Leverage FLP	91.30%
GRAT Annuity* (20% Increasing Annuity)	207,119 * based on nominal amount of \$21,000,000 [\$30,000,000 * (1-
Leverage FLP Valuation Discount	30.00% 30%])

**Leverage FLP**

	<b>Beginning of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Distributions</b>	<b>End of Year</b>
Year 1	32,857,143	657,143	1,971,429	(1,961,571)	33,524,143
Year 2	33,524,143	670,483	2,011,449	(2,063,491)	34,142,583
Year 3	34,142,583	682,852	2,048,555	(2,145,143)	34,728,847
Year 4	34,728,847	694,577	2,083,731	(2,212,623)	35,294,532
Year 5	35,294,532	705,891	2,117,672	(2,270,239)	35,847,855
Year 6	35,847,855	716,957	2,150,871	(2,321,032)	36,394,652
Year 7	36,394,652	727,893	2,183,679	(2,367,154)	36,939,070
Year 8	36,939,070	738,781	2,216,344	(2,410,124)	37,484,072
Year 9	37,484,072	749,681	2,249,044	(2,451,017)	38,031,781
Year 10	38,031,781	760,636	2,281,907	(2,490,595)	38,583,729
Year 11	38,583,729	771,675	2,315,024	(2,529,397)	39,141,030
Year 12	39,141,030	782,821	2,348,462	(2,567,806)	39,704,506
Year 13	39,704,506	794,090	2,382,270	(2,606,096)	40,274,771
Year 14	40,274,771	805,495	2,416,486	(2,644,461)	40,852,291
Year 15	40,852,291	817,046	2,451,137	(2,683,041)	41,437,432

Schedule 6a

LEVERAGE FAMILY

HYPOTHETICAL INTEGRATED INCOME & ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS REMAINING ESTATE TO FAMILY

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
<u>Lenny Leverage</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	100,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%

FLP	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Lenny Leverage Percentage Ownership in Leverage FLP	8.70%
GRAT Percentage Ownership in Leverage FLP	91.30%
GRAT Annuity* (20% Increasing Annuity)	207,119 * based on nominal amount of \$21,000,000 [\$30,000,000 * (1-
Leverage FLP Valuation Discount	30.00% 30%)]

GRAT

	Undiscounted Beg. of Year Value	Income	Growth	Distribution from Partnership	Cash Portion of Annuity Payment	Partnership Share Portion of Annuity Payment (Pre-discount)	Undiscounted End of Year Value	Percentage Ownership of FLP by GRAT At End of Year	Percentage Ownership of FLP by Lenny Leverage At End of Year
Year 1	30,000,000	-	-	1,791,000	(207,119)	-	32,192,881	91.30%	8.70%
Year 2	32,192,881	31,678	95,033	1,884,057	(248,543)	-	34,519,769	91.30%	8.70%
Year 3	34,519,769	66,922	200,766	1,958,609	(298,251)	-	36,983,099	91.30%	8.70%
Year 4	36,983,099	105,483	316,449	2,020,221	(357,902)	-	39,583,845	91.30%	8.70%
Year 5	39,583,845	147,168	441,504	2,072,827	(429,482)	-	42,321,071	91.30%	8.70%
Year 6	42,321,071	191,808	575,425	2,119,203	(515,378)	-	45,191,378	91.30%	8.70%
Year 7	45,191,378	239,230	717,689	2,161,314	(618,454)	-	48,188,234	91.30%	8.70%
Year 8	48,188,234	289,225	867,675	2,200,548	(742,145)	-	51,301,148	91.30%	8.70%
Year 9	51,301,148	341,531	1,024,594	2,237,885	(890,574)	-	54,514,666	91.30%	8.70%
Year 10	54,514,666	395,800	1,187,400	2,274,021	(1,068,689)	-	57,807,151	91.30%	8.70%
Year 11	57,807,151	451,571	1,354,712	2,309,449	(1,282,426)	-	61,149,297	91.30%	8.70%
Year 12	61,149,297	508,237	1,524,710	2,344,519	(1,538,912)	-	64,502,329	91.30%	8.70%
Year 13	64,502,329	565,008	1,695,023	2,379,479	(1,846,694)	-	67,815,822	91.30%	8.70%
Year 14	67,815,822	620,864	1,862,592	2,414,508	(2,216,033)	-	71,025,055	91.30%	8.70%
Year 15	71,025,055	674,503	2,023,508	2,449,733	(2,659,239)	-	74,047,820	91.30%	8.70%
Year 16	74,047,820	1,480,956	4,442,869	-	(3,191,087)	-	76,780,559	-	-
Year 17	76,780,559	1,535,611	4,606,834	-	(3,829,304)	-	79,093,699	-	-
Year 18	79,093,699	1,581,874	4,745,622	-	(4,595,165)	-	80,826,030	-	-
Year 19	80,826,030	1,616,521	4,849,562	-	(5,514,198)	-	81,777,914	-	-
Year 20	81,777,914	1,635,558	4,906,675	-	(6,617,038)	-	81,703,110	-	-

**LEVERAGE FAMILY****HYPOTHETICAL INTEGRATED INCOME & ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS REMAINING ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

**Assumptions:****Lenny Leverage**

Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	100,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%

**FLP**

Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Lenny Leverage Percentage Ownership in Leverage FLP	8.70%
GRAT Percentage Ownership in Leverage FLP	91.30%
GRAT Annuity* (20% Increasing Annuity)	207,119 * based on nominal amount of \$21,000,000 [\$30,000,000 * (1-
Leverage FLP Valuation Discount	30.00% 30%)]

**Lenny Leverage**

	<b>Beginning of Year*</b>	<b>Income</b>	<b>Growth</b>	<b>Distribution from Partnership</b>	<b>Cash Annuity Payment</b>	<b>Income Taxes</b>	<b>Consumption</b>	<b>End of Year</b>
Year 1	1,500,000	30,000	90,000	170,571	207,119	(333,264)	(100,000)	1,564,426
Year 2	1,564,426	31,289	93,866	179,434	248,543	(420,658)	(103,000)	1,593,899
Year 3	1,593,899	31,878	95,634	186,534	298,251	(493,867)	(106,090)	1,606,240
Year 4	1,606,240	32,125	96,374	192,402	357,902	(557,812)	(109,273)	1,617,959
Year 5	1,617,959	32,359	97,078	197,412	429,482	(616,010)	(112,551)	1,645,728
Year 6	1,645,728	32,915	98,744	201,829	515,378	(670,995)	(115,927)	1,707,672
Year 7	1,707,672	34,153	102,460	205,839	618,454	(724,604)	(119,405)	1,824,570
Year 8	1,824,570	36,491	109,474	209,576	742,145	(778,191)	(122,987)	2,021,078
Year 9	2,021,078	40,422	121,265	213,132	890,574	(832,775)	(126,677)	2,327,018
Year 10	2,327,018	46,540	139,621	216,573	1,068,689	(889,135)	(130,477)	2,778,829
Year 11	2,778,829	55,577	166,730	219,948	1,282,426	(947,894)	(134,392)	3,421,223
Year 12	3,421,223	68,424	205,273	223,288	1,538,912	(1,009,563)	(138,423)	4,309,134
Year 13	4,309,134	86,183	258,548	226,617	1,846,694	(1,074,582)	(142,576)	5,510,017
Year 14	5,510,017	110,200	330,601	229,953	2,216,033	(1,143,345)	(146,853)	7,106,605
Year 15	7,106,605	142,132	426,396	233,308	2,659,239	(1,216,220)	(151,259)	9,200,202
Year 16	12,803,457	256,069	768,207	-	3,191,087	(1,293,559)	(155,797)	15,569,465
Year 17	15,569,465	311,389	934,168	-	3,829,304	(1,375,716)	(160,471)	19,108,140
Year 18	19,108,140	382,163	1,146,488	-	4,595,165	(1,463,044)	(165,285)	23,603,628
Year 19	23,603,628	472,073	1,416,218	-	5,514,198	(1,555,909)	(170,243)	29,279,964
Year 20	29,279,964	585,599	1,756,798	-	6,617,038	(3,088,030)	(175,351)	34,976,018

\* Assumes \$2.86 million of LP interests is paid from Leverage GST Trust for purchase of remainder interest

**LEVERAGE FAMILY**

**HYPOTHETICAL INTEGRATED INCOME & ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS REMAINING ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
<u>Lenny Leverage</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	100,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Lenny Leverage Percentage Ownership in Leverage FLP	8.70%
GRAT Percentage Ownership in Leverage FLP	91.30%
GRAT Annuity* (20% Increasing Annuity)	207,119 * based on nominal amount of \$21,000,000 [\$30,000,000 * (1-
Leverage FLP Valuation Discount	30.00% 30%)]

*Leverage GST Trust*

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Remainder Interest from GRAT</u>	<u>Income Taxes</u>	<u>End of Year</u>
Year 1	-	-	-	-	-	-
Year 2	-	-	-	-	-	-
Year 3	-	-	-	-	-	-
Year 4	-	-	-	-	-	-
Year 5	-	-	-	-	-	-
Year 6	-	-	-	-	-	-
Year 7	-	-	-	-	-	-
Year 8	-	-	-	-	-	-
Year 9	-	-	-	-	-	-
Year 10	-	-	-	-	-	-
Year 11	-	-	-	-	-	-
Year 12	-	-	-	-	-	-
Year 13	-	-	-	-	-	-
Year 14	-	-	-	-	-	-
Year 15	-	-	-	-	-	-
Year 16	-	-	-	-	-	-
Year 17	-	-	-	-	-	-
Year 18	-	-	-	-	-	-
Year 19	-	-	-	-	-	-
Year 20	-	-	-	81,703,110	-	81,703,110



**CONFUSED FAMILY****HYPOTHETICAL INTEGRATED INCOME AND ESTATE TAX PLAN COMPARISONS - CONNIE CONFUSED DIES END OF YEAR 20**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY</b>	<b>Pre-Death</b>	<b>Post Death</b>	<b>Present Value (Discounted at 3%)</b>	<b>Percentage of Total</b>
Connie Confused	23,569,414	-	-	0.00%
Confused Children	-	14,538,178	8,049,437	25.99%
Confused GST Trust	7,041,630	7,041,630	3,898,780	12.59%
Consumption - Direct Cost	6,717,594	6,717,594	3,719,369	12.01%
Consumption - Investment Opportunity Cost	7,556,636	7,556,636	4,183,926	13.51%
IRS - Income Tax	5,569,070	5,569,070	3,083,459	9.96%
IRS - Investment Opportunity Costs	5,477,142	5,477,142	3,032,561	9.79%
IRS - Estate Tax (at 45%)	-	9,031,236	5,000,377	16.15%
<b>Total</b>	<b>\$55,931,486</b>	<b>\$55,931,486</b>	<b>30,967,908</b>	<b>100.00%</b>

**HYPOTHETICAL INTEGRATED INCOME & ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Connie Confused	4,684,856	-	-	0.00%
Confused Children	-	3,701,671	2,049,525	6.62%
Confused GST Trust	25,629,169	25,629,169	14,190,249	45.82%
Consumption - Direct Cost	6,717,594	6,717,594	3,719,369	12.01%
Consumption - Investment Opportunity Cost	7,556,636	7,556,636	4,183,926	13.51%
Investment Opportunity Cost/(Benefit) of Buying Life Insurance	377,325	377,325	208,916	0.67%
IRS - Income Tax	5,777,962	5,777,962	3,199,117	10.33%
IRS - Investment Opportunity Costs	5,187,944	5,187,944	2,872,439	9.28%
IRS - Estate Tax (at 45%)	-	983,185	544,366	1.76%
<b>Total</b>	<b>\$55,931,486</b>	<b>\$55,931,486</b>	<b>30,967,908</b>	<b>100.00%</b>

**Schedule 7**  
**CONFUSED FAMILY**  
**ASSET PAGE**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Family Limited Partnership

Asset: Miscellaneous Assets	\$12,000,000
Basis: Miscellaneous Assets	\$12,000,000

<b>Total Assets*</b>	<b>\$12,000,000</b>
<b>Total Basis</b>	<b>\$12,000,000</b>

\* There is not any proposed planning for Connie Confused's other assets

**CONFUSED FAMILY****NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (with 3% inflation adjustment each year)	250,000

*Connie Confused*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Consumption</b>	<b>End of Year</b>
Year 1	10,000,000	200,000	600,000	(97,000)	(250,000)	10,453,000
Year 2	10,453,000	209,060	627,180	(120,294)	(257,500)	10,911,446
Year 3	10,911,446	218,229	654,687	(138,827)	(265,225)	11,380,309
Year 4	11,380,309	227,606	682,819	(154,102)	(273,182)	11,863,450
Year 5	11,863,450	237,269	711,807	(167,183)	(281,377)	12,363,966
Year 6	12,363,966	247,279	741,838	(178,828)	(289,819)	12,884,437
Year 7	12,884,437	257,689	773,066	(189,575)	(298,513)	13,427,104
Year 8	13,427,104	268,542	805,626	(199,812)	(307,468)	13,993,992
Year 9	13,993,992	279,880	839,639	(209,817)	(316,693)	14,587,001
Year 10	14,587,001	291,740	875,220	(219,795)	(326,193)	15,207,973
Year 11	15,207,973	304,159	912,478	(229,898)	(335,979)	15,858,734
Year 12	15,858,734	317,175	951,524	(240,239)	(346,058)	16,541,135
Year 13	16,541,135	330,823	992,468	(250,909)	(356,440)	17,257,077
Year 14	17,257,077	345,142	1,035,425	(261,978)	(367,133)	18,008,531
Year 15	18,008,531	360,171	1,080,512	(273,508)	(378,147)	18,797,559
Year 16	18,797,559	375,951	1,127,854	(285,550)	(389,492)	19,626,322
Year 17	19,626,322	392,526	1,177,579	(298,152)	(401,177)	20,497,099
Year 18	20,497,099	409,942	1,229,826	(311,359)	(413,212)	21,412,295
Year 19	21,412,295	428,246	1,284,738	(325,215)	(425,608)	22,374,455
Year 20	22,374,455	447,489	1,342,467	(156,621)	(438,377)	23,569,414

**CONFUSED FAMILY****NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (with 3% inflation adjustment each year)	250,000

*Confused GST Trust*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>End of Year</b>
Year 1	2,000,000	40,000	120,000	(19,400)	2,140,600
Year 2	2,140,600	42,812	128,436	(24,544)	2,287,304
Year 3	2,287,304	45,746	137,238	(28,879)	2,441,410
Year 4	2,441,410	48,828	146,485	(32,689)	2,604,034
Year 5	2,604,034	52,081	156,242	(36,178)	2,776,178
Year 6	2,776,178	55,524	166,571	(39,494)	2,958,778
Year 7	2,958,778	59,176	177,527	(42,743)	3,152,738
Year 8	3,152,738	63,055	189,164	(46,003)	3,358,953
Year 9	3,358,953	67,179	201,537	(49,336)	3,578,334
Year 10	3,578,334	71,567	214,700	(52,786)	3,811,814
Year 11	3,811,814	76,236	228,709	(56,391)	4,060,369
Year 12	4,060,369	81,207	243,622	(60,181)	4,325,017
Year 13	4,325,017	86,500	259,501	(64,184)	4,606,834
Year 14	4,606,834	92,137	276,410	(68,422)	4,906,959
Year 15	4,906,959	98,139	294,418	(72,920)	5,226,596
Year 16	5,226,596	104,532	313,596	(77,698)	5,567,026
Year 17	5,567,026	111,341	334,022	(82,778)	5,929,609
Year 18	5,929,609	118,592	355,777	(88,184)	6,315,795
Year 19	6,315,795	126,316	378,948	(93,937)	6,727,122
Year 20	6,727,122	134,542	403,627	(223,661)	7,041,630

**CONFUSED FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such. No Further Planning!A8:H9

<u>Assumptions:</u>	
<u>Connie Confused</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	250,000
Intra-Family Note Interest Percentage	2.97%
7520 Rate	3.60%
Annual Insurance Premium	666,711
Death Benefit Value of Insurance	2,500,000

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Connie Confused's Percentage Ownership in Confused FLP	1.00%
GST Grantor Trust's Ownership in Confused FLP	33.00%
GST Trust's Ownership in Confused FLP	66.00%
Confused FLP Valuation Discount	35.00%

*Confused FLP*

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Note Payments to Connie Confused</u>	<u>Note Payments to Confused QTIP Grantor Trust</u>	<u>Partnership Distributions</u>	<u>Single Insurance Premium</u>	<u>Death Benefit of Insurance</u>	<u>End of Year</u>
Year 1	12,000,000	240,000	720,000	(348,500)	(278,800)	(142,845)	(666,711)	-	11,523,144
Year 2	11,523,144	230,463	691,389	(286,560)	(229,248)	(159,873)	-	-	11,769,314
Year 3	11,769,314	235,386	706,159	(277,963)	(222,371)	(182,392)	-	-	12,028,134
Year 4	12,028,134	240,563	721,688	(269,624)	(215,699)	(201,052)	-	-	12,304,009
Year 5	12,304,009	246,080	738,241	(261,536)	(209,228)	(217,174)	-	-	12,600,392
Year 6	12,600,392	252,008	756,024	(253,690)	(202,952)	(231,700)	-	-	12,920,082
Year 7	12,920,082	258,402	775,205	(246,079)	(196,863)	(245,303)	-	-	13,265,444
Year 8	13,265,444	265,309	795,927	(238,696)	(190,957)	(258,469)	-	-	13,638,557
Year 9	13,638,557	272,771	818,313	(231,536)	(185,228)	(271,550)	-	-	14,041,328
Year 10	14,041,328	280,827	842,480	(224,589)	(179,672)	(284,807)	-	-	14,475,566
Year 11	14,475,566	289,511	868,534	(217,852)	(174,281)	(298,436)	-	-	14,943,042
Year 12	14,943,042	298,861	896,582	(211,316)	(169,053)	(312,589)	-	-	15,445,527
Year 13	15,445,527	308,911	926,732	(204,977)	(163,981)	(327,385)	-	-	15,984,826
Year 14	15,984,826	319,697	959,090	(198,827)	(159,062)	(342,923)	-	-	16,562,799
Year 15	16,562,799	331,256	993,768	(192,863)	(154,290)	(359,289)	-	-	17,181,382
Year 16	17,181,382	343,628	1,030,883	(187,077)	(149,661)	(376,557)	-	-	17,842,597
Year 17	17,842,597	356,852	1,070,556	(181,464)	(145,172)	(394,800)	-	-	18,548,569
Year 18	18,548,569	370,971	1,112,914	(176,021)	(140,816)	(414,084)	-	-	19,301,534
Year 19	19,301,534	386,031	1,158,092	(170,740)	(136,592)	(434,476)	-	-	20,103,849
Year 20	20,103,849	402,077	1,206,231	(2,856,559)	(2,285,247)	(843,805)	-	2,500,000	18,226,546

**CONFUSED FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such. No Further Planning!A8:H9

<u>Assumptions:</u>	
<u>Connie Confused</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	250,000
Intra-Family Note Interest Percentage	2.97%
7520 Rate	3.60%
Annual Insurance Premium	666,711
Death Benefit Value of Insurance	2,500,000

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Connie Confused's Percentage Ownership in Confused FLP	1.00%
GST Grantor Trust's Ownership in Confused FLP	33.00%
GST Trust's Ownership in Confused FLP	66.00%
Confused FLP Valuation Discount	35.00%

*Connie Confused*

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Note Payments from Confused FLP</u>	<u>Distributions from Confused QTIP Trust</u>	<u>Partnership Distribution from Confused FLP</u>	<u>Income Taxes</u>	<u>Consumption</u>	<u>End of Year</u>
Year 1	-	-	-	348,500	278,800	1,428	(101,322)	(250,000)	277,406
Year 2	277,406	5,548	16,644	286,560	229,248	1,599	(108,139)	(257,500)	451,366
Year 3	451,366	9,027	27,082	277,963	222,371	1,824	(115,113)	(265,225)	609,295
Year 4	609,295	12,186	36,558	269,624	215,699	2,011	(121,025)	(273,182)	751,166
Year 5	751,166	15,023	45,070	261,536	209,228	2,172	(126,220)	(281,377)	876,597
Year 6	876,597	17,532	52,596	253,690	202,952	2,317	(130,943)	(289,819)	984,922
Year 7	984,922	19,698	59,095	246,079	196,863	2,453	(135,366)	(298,513)	1,075,231
Year 8	1,075,231	21,505	64,514	238,696	190,957	2,585	(139,612)	(307,468)	1,146,408
Year 9	1,146,408	22,928	68,784	231,536	185,228	2,715	(143,768)	(316,693)	1,197,139
Year 10	1,197,139	23,943	71,828	224,589	179,672	2,848	(147,897)	(326,193)	1,225,929
Year 11	1,225,929	24,519	73,556	217,852	174,281	2,984	(152,044)	(335,979)	1,231,098
Year 12	1,231,098	24,622	73,866	211,316	169,053	3,126	(156,240)	(346,058)	1,210,782
Year 13	1,210,782	24,216	72,647	204,977	163,981	3,274	(160,510)	(356,440)	1,162,927
Year 14	1,162,927	23,259	69,776	198,827	159,062	3,429	(164,871)	(367,133)	1,085,275
Year 15	1,085,275	21,706	65,117	192,863	154,290	3,593	(169,336)	(378,147)	975,360
Year 16	975,360	19,507	58,522	187,077	149,661	3,766	(173,915)	(389,492)	830,486
Year 17	830,486	16,610	49,829	181,464	145,172	3,948	(178,617)	(401,177)	647,716
Year 18	647,716	12,954	38,863	176,021	140,816	4,141	(183,447)	(413,212)	423,851
Year 19	423,851	8,477	25,431	170,740	136,592	4,345	(188,413)	(425,608)	155,415
Year 20	155,415	3,108	9,325	2,856,559	2,285,247	8,438	(377,125)	(438,377)	4,502,591

**CONFUSED FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such. No Further Planning!A8:H9

<u>Assumptions:</u>	
<u>Connie Confused</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	250,000
Intra-Family Note Interest Percentage	2.97%
7520 Rate	3.60%
Annual Insurance Premium	666,711
Death Benefit Value of Insurance	2,500,000

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Connie Confused's Percentage Ownership in Confused FLP	1.00%
GST Grantor Trust's Ownership in Confused FLP	33.00%
GST Trust's Ownership in Confused FLP	66.00%
Confused FLP Valuation Discount	35.00%

*Confused QTIP Trust*

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Note Payments from Confused FLP</u>	<u>Distributions to Connie Confused</u>	<u>Income Taxes</u>	<u>End of Year</u>
Year 1	-	-	-	278,800	(278,800)	-	-
Year 2	-	-	-	229,248	(229,248)	-	-
Year 3	-	-	-	222,371	(222,371)	-	-
Year 4	-	-	-	215,699	(215,699)	-	-
Year 5	-	-	-	209,228	(209,228)	-	-
Year 6	-	-	-	202,952	(202,952)	-	-
Year 7	-	-	-	196,863	(196,863)	-	-
Year 8	-	-	-	190,957	(190,957)	-	-
Year 9	-	-	-	185,228	(185,228)	-	-
Year 10	-	-	-	179,672	(179,672)	-	-
Year 11	-	-	-	174,281	(174,281)	-	-
Year 12	-	-	-	169,053	(169,053)	-	-
Year 13	-	-	-	163,981	(163,981)	-	-
Year 14	-	-	-	159,062	(159,062)	-	-
Year 15	-	-	-	154,290	(154,290)	-	-
Year 16	-	-	-	149,661	(149,661)	-	-
Year 17	-	-	-	145,172	(145,172)	-	-
Year 18	-	-	-	140,816	(140,816)	-	-
Year 19	-	-	-	136,592	(136,592)	-	-
Year 20	-	-	-	2,285,247	(2,285,247)	-	-

**CONFUSED FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such. No Further Planning! A8:H9

<u>Assumptions:</u>	
<u>Connie Confused</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	250,000
Intra-Family Note Interest Percentage	2.97%
7520 Rate	3.60%
Annual Insurance Premium	666,711
Death Benefit Value of Insurance	2,500,000

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Connie Confused's Percentage Ownership in Confused FLP	1.00%
GST Grantor Trust's Ownership in Confused FLP	33.00%
GST Trust's Ownership in Confused FLP	66.00%
Confused FLP Valuation Discount	35.00%

*Connie Confused GST Grantor Trust*

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Partnership Distribution from Confused FLP</u>	<u>Income Taxes</u>	<u>End of Year</u>
Year 1	-	-	-	47,139	-	47,139
Year 2	47,139	943	2,828	52,758	-	103,668
Year 3	103,668	2,073	6,220	60,189	-	172,151
Year 4	172,151	3,443	10,329	66,347	-	252,270
Year 5	252,270	5,045	15,136	71,667	-	344,119
Year 6	344,119	6,882	20,647	76,461	-	448,110
Year 7	448,110	8,962	26,887	80,950	-	564,908
Year 8	564,908	11,298	33,894	85,295	-	695,396
Year 9	695,396	13,908	41,724	89,611	-	840,639
Year 10	840,639	16,813	50,438	93,986	-	1,001,876
Year 11	1,001,876	20,038	60,113	98,484	-	1,180,510
Year 12	1,180,510	23,610	70,831	103,154	-	1,378,105
Year 13	1,378,105	27,562	82,686	108,037	-	1,596,391
Year 14	1,596,391	31,928	95,783	113,165	-	1,837,267
Year 15	1,837,267	36,745	110,236	118,565	-	2,102,813
Year 16	2,102,813	42,056	126,169	124,264	-	2,395,302
Year 17	2,395,302	47,906	143,718	130,284	-	2,717,210
Year 18	2,717,210	54,344	163,033	136,648	-	3,071,235
Year 19	3,071,235	61,425	184,274	143,377	-	3,460,311
Year 20	3,460,311	69,206	207,619	278,456	-	4,015,591



**CONFUSED FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such. No Further Planning!A8:H9

<u>Assumptions:</u>	
<u>Connie Confused</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	250,000
Intra-Family Note Interest Percentage	2.97%
7520 Rate	3.60%
Annual Insurance Premium	666,711
Death Benefit Value of Insurance	2,500,000

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Connie Confused's Percentage Ownership in Confused FLP	1.00%
GST Grantor Trust's Ownership in Confused FLP	33.00%
GST Trust's Ownership in Confused FLP	66.00%
Confused FLP Valuation Discount	35.00%

*Confused GST Trust*

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Partnership Distribution from Confused FLP</u>	<u>Income Taxes</u>	<u>End of Year</u>
Year 1	-	-	-	94,278	(15,078)	79,200
Year 2	79,200	1,584	4,752	105,516	(30,232)	160,821
Year 3	160,821	3,216	9,649	120,379	(44,411)	249,654
Year 4	249,654	4,993	14,979	132,694	(56,139)	346,182
Year 5	346,182	6,924	20,771	143,335	(66,244)	450,967
Year 6	450,967	9,019	27,058	152,922	(75,319)	564,647
Year 7	564,647	11,293	33,879	161,900	(83,786)	687,933
Year 8	687,933	13,759	41,276	170,589	(91,955)	821,602
Year 9	821,602	16,432	49,296	179,223	(100,049)	966,504
Year 10	966,504	19,330	57,990	187,973	(108,238)	1,123,559
Year 11	1,123,559	22,471	67,414	196,968	(116,648)	1,293,764
Year 12	1,293,764	25,875	77,626	206,309	(125,382)	1,478,191
Year 13	1,478,191	29,564	88,691	216,074	(134,521)	1,678,000
Year 14	1,678,000	33,560	100,680	226,329	(144,134)	1,894,435
Year 15	1,894,435	37,889	113,666	237,130	(154,283)	2,128,837
Year 16	2,128,837	42,577	127,730	248,528	(165,025)	2,382,648
Year 17	2,382,648	47,653	142,959	260,568	(176,413)	2,657,415
Year 18	2,657,415	53,148	159,445	273,295	(188,501)	2,954,802
Year 19	2,954,802	59,096	177,288	286,754	(201,342)	3,276,598
Year 20	3,276,598	65,532	196,596	556,911	(526,340)	3,569,297

**CONFUSED FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such. No Further Planning!A8:H9

<u>Assumptions:</u>	
<u>Connie Confused</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	250,000
Intra-Family Note Interest Percentage	2.97%
7520 Rate	3.60%
Annual Insurance Premium	666,711
Death Benefit Value of Insurance	2,500,000

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Connie Confused's Percentage Ownership in Confused FLP	1.00%
GST Grantor Trust's Ownership in Confused FLP	33.00%
GST Trust's Ownership in Confused FLP	66.00%
Confused FLP Valuation Discount	35.00%

*Note Between Connie Confused and Confused FLP*

	<b>Beginning of Year</b>	<b>Interest to be Paid</b>	<b>Note Payment - Interest</b>	<b>Note Payment - Principal</b>	<b>End of Year</b>
Year 1	5,000,000	148,500	(148,500)	(200,000)	4,800,000
Year 2	4,800,000	142,560	(142,560)	(144,000)	4,656,000
Year 3	4,656,000	138,283	(138,283)	(139,680)	4,516,320
Year 4	4,516,320	134,135	(134,135)	(135,490)	4,380,830
Year 5	4,380,830	130,111	(130,111)	(131,425)	4,249,405
Year 6	4,249,405	126,207	(126,207)	(127,482)	4,121,923
Year 7	4,121,923	122,421	(122,421)	(123,658)	3,998,266
Year 8	3,998,266	118,748	(118,748)	(119,948)	3,878,318
Year 9	3,878,318	115,186	(115,186)	(116,350)	3,761,968
Year 10	3,761,968	111,730	(111,730)	(112,859)	3,649,109
Year 11	3,649,109	108,379	(108,379)	(109,473)	3,539,636
Year 12	3,539,636	105,127	(105,127)	(106,189)	3,433,447
Year 13	3,433,447	101,973	(101,973)	(103,003)	3,330,443
Year 14	3,330,443	98,914	(98,914)	(99,913)	3,230,530
Year 15	3,230,530	95,947	(95,947)	(96,916)	3,133,614
Year 16	3,133,614	93,068	(93,068)	(94,008)	3,039,606
Year 17	3,039,606	90,276	(90,276)	(91,188)	2,948,418
Year 18	2,948,418	87,568	(87,568)	(88,453)	2,859,965
Year 19	2,859,965	84,941	(84,941)	(85,799)	2,774,166
Year 20	2,774,166	82,393	(82,393)	(2,774,166)	-

**CONFUSED FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such. No Further Planning!A8:H9

<u>Assumptions:</u>	
<u>Connie Confused</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	250,000
Intra-Family Note Interest Percentage	2.97%
7520 Rate	3.60%
Annual Insurance Premium	666,711
Death Benefit Value of Insurance	2,500,000

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Connie Confused's Percentage Ownership in Confused FLP	1.00%
GST Grantor Trust's Ownership in Confused FLP	33.00%
GST Trust's Ownership in Confused FLP	66.00%
Confused FLP Valuation Discount	35.00%

*Note Between Confused QTIP Trust and Confused FLP*

	<u>Beginning of Year</u>	<u>Interest to be Paid</u>	<u>Note Payment - Interest</u>	<u>Note Payment - Principal</u>	<u>End of Year</u>
Year 1	4,000,000	118,800	(118,800)	(160,000)	3,840,000
Year 2	3,840,000	114,048	(114,048)	(115,200)	3,724,800
Year 3	3,724,800	110,627	(110,627)	(111,744)	3,613,056
Year 4	3,613,056	107,308	(107,308)	(108,392)	3,504,664
Year 5	3,504,664	104,089	(104,089)	(105,140)	3,399,524
Year 6	3,399,524	100,966	(100,966)	(101,986)	3,297,539
Year 7	3,297,539	97,937	(97,937)	(98,926)	3,198,612
Year 8	3,198,612	94,999	(94,999)	(95,958)	3,102,654
Year 9	3,102,654	92,149	(92,149)	(93,080)	3,009,575
Year 10	3,009,575	89,384	(89,384)	(90,287)	2,919,287
Year 11	2,919,287	86,703	(86,703)	(87,579)	2,831,709
Year 12	2,831,709	84,102	(84,102)	(84,951)	2,746,757
Year 13	2,746,757	81,579	(81,579)	(82,403)	2,664,355
Year 14	2,664,355	79,131	(79,131)	(79,931)	2,584,424
Year 15	2,584,424	76,757	(76,757)	(77,533)	2,506,891
Year 16	2,506,891	74,455	(74,455)	(75,207)	2,431,685
Year 17	2,431,685	72,221	(72,221)	(72,951)	2,358,734
Year 18	2,358,734	70,054	(70,054)	(70,762)	2,287,972
Year 19	2,287,972	67,953	(67,953)	(68,639)	2,219,333
Year 20	2,219,333	65,914	(65,914)	(2,219,333)	-

## ANALYSIS OF FLP CREATING CRUT FOLLOWED BY SALE TO GRANTOR TRUST

**Assumptions**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>Assumptions:</b>		
Gross Proceeds	10,000,000	
Cost Basis	-	
Capital Gain	10,000,000	
Income Rate of Return on Assets	2.00%	
Growth Rate of Return on Assets	6.00%	8.00% Client's Aggregate Annual Rate of Return
Combined Federal and State Long-Term Capital Gain Tax Rate	15.00%	
Combined Federal and State Ordinary Tax Rate	35.00%	
Combined Federal Estate Tax and State Inheritance Tax Rate	45.00%	
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%	
Valuation Discount on Partnership	35.00%	
Unitrust Rate on CRT	11.037%	
Charitable Deduction	\$1,000,000	
Income Tax Benefit to Charlie	\$350,000	
Interest Rate on Private Annuity (Section 7520 Rate)	2.40%	
Charlie Charitable Percentage Ownership in FLP (Children's GP interests ignored)	1.00%	
Grantor Trust Subsequent Ownership in FLP	99.00%	
Charlie Charitable's Annual Assumed Consumption With 3% Inflation Adjustment	150,000	
Interest Rate on Loan from Grantor Trust	3.57%	
Discount Rate for NPV Calculations	3.00%	
<b>Note Between Charlie Charitable and Grantor Trust - FLP/CRUT</b>		
CRUT Starting Value	10,000,000	
CRUT Actuarial Discount (10%)	(1,000,000)	
Value of Partnership Actuarial Interest in CRUT - Year 1	9,000,000	
Partnership Discount (35%)	(3,150,000)	
Discounted Value of Partnership Actuarial Interest	5,850,000	
Note Face Value (99% Transferred to the Grantor Trust)	5,791,500	
<b>Note Between Charlie Charitable and Grantor Trust - FLP (No CRUT)</b>		
FLP Starting Value	10,000,000	
Partnership Discount (35%)	(3,500,000)	
Discounted Value of Partnership Interest	6,500,000	
Face Value of Note (99% Transferred to Grantor Trust)	6,435,000	

Schedule 8  
 ANALYSIS OF FLP CREATING CRUT FOLLOWED BY SALE TO GRANTOR TRUST  
**Numerical Summary of Alternatives - Future Values**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

**Future Values at the end of 25 Years assuming an Annual Compounded Rate of Return at 8%**

Scenario	Charlie's Children	Charlie's Descendants (GST Exempt)	Charity	Charlie's Consumption - Direct Costs	Consumption - Investment Opportunity Costs	IRS - Income Taxes	IRS - Investment Opportunity Costs	IRS - Estate Taxes	Totals
Stock Sale, No Planning	14,795,841	2,000,000	-	5,468,890	8,795,202	7,413,154	16,269,613	13,742,052	68,484,752
Simulated Tax Holiday (No Initial Capital Gains Tax and No Estate Tax) 77% - 23% Split Between Family and Charity	-	28,084,515	8,479,812	5,468,890	8,795,202	8,008,304	9,648,029	-	68,484,752
FLP/CRUT/Grantor Trust Sale, Charlie gives remaining estate to charity	-	27,867,024	8,479,812	5,468,890	8,795,202	7,655,137	10,218,688	-	68,484,752
FLP/Grantor Trust Sale, Charlie gives remaining estate to family	-	29,679,447	-	5,468,890	8,795,202	8,113,649	16,269,613	157,954	68,484,752

## ANALYSIS OF FLP CREATING CRUT FOLLOWED BY SALE TO GRANTOR TRUST

*Stock Sale, No Planning*

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Income Rate of Return on Assets	2.00%
Growth Rate of Return on Assets	6.00%
Capital Gains Tax Rate on Growth	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%

*Charlie Charitable*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Consumption</b>	<b>Income Taxes</b>	<b>End of Year</b>
Year 1	10,000,000	200,000	600,000	(150,000)	(1,597,000)	9,053,000
Year 2	9,053,000	181,060	543,180	(154,500)	(106,714)	9,516,026
Year 3	9,516,026	190,321	570,962	(159,135)	(122,646)	9,995,527
Year 4	9,995,527	199,911	599,732	(163,909)	(136,180)	10,495,080
Year 5	10,495,080	209,902	629,705	(168,826)	(148,150)	11,017,710
Year 6	11,017,710	220,354	661,063	(173,891)	(159,151)	11,566,085
Year 7	11,566,085	231,322	693,965	(179,108)	(169,610)	12,142,654
Year 8	12,142,654	242,853	728,559	(184,481)	(179,837)	12,749,748
Year 9	12,749,748	254,995	764,985	(190,016)	(190,059)	13,389,653
Year 10	13,389,653	267,793	803,379	(195,716)	(200,447)	14,064,662
Year 11	14,064,662	281,293	843,880	(201,587)	(211,131)	14,777,117
Year 12	14,777,117	295,542	886,627	(207,635)	(222,213)	15,529,438
Year 13	15,529,438	310,589	931,766	(213,864)	(233,777)	16,324,152
Year 14	16,324,152	326,483	979,449	(220,280)	(245,894)	17,163,910
Year 15	17,163,910	343,278	1,029,835	(226,888)	(258,627)	18,051,507
Year 16	18,051,507	361,030	1,083,090	(233,695)	(272,036)	18,989,897
Year 17	18,989,897	379,798	1,139,394	(240,706)	(286,174)	19,982,209
Year 18	19,982,209	399,644	1,198,933	(247,927)	(301,099)	21,031,759
Year 19	21,031,759	420,635	1,261,906	(255,365)	(316,865)	22,142,070
Year 20	22,142,070	442,841	1,328,524	(263,026)	(333,528)	23,316,882
Year 21	23,316,882	466,338	1,399,013	(270,917)	(351,147)	24,560,169
Year 22	24,560,169	491,203	1,473,610	(279,044)	(369,784)	25,876,155
Year 23	25,876,155	517,523	1,552,569	(287,416)	(389,503)	27,269,329
Year 24	27,269,329	545,387	1,636,160	(296,038)	(410,371)	28,744,467
Year 25	28,744,467	574,889	1,724,668	(304,919)	(201,211)	30,537,894

## ANALYSIS OF FLP CREATING CRUT FOLLOWED BY SALE TO GRANTOR TRUST

*Simulated Tax Holiday (No Initial Capital Gains Tax and No Estate Tax) 77% - 23% Split Between Family and Charity*

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Income Rate of Return on Assets	2.00%
Growth Rate of Return on Assets	6.00%
Capital Gains Tax Rate on Growth	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized)	30.00%

*Charlie Charitable*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Consumption</b>	<b>Income Taxes</b>	<b>End of Year</b>
Year 1	10,000,000	200,000	600,000	(150,000)	(97,000)	10,553,000
Year 2	10,553,000	211,060	633,180	(154,500)	(121,264)	11,121,476
Year 3	11,121,476	222,430	667,289	(159,135)	(141,053)	11,711,005
Year 4	11,711,005	234,220	702,660	(163,909)	(157,839)	12,326,138
Year 5	12,326,138	246,523	739,568	(168,826)	(172,667)	12,970,736
Year 6	12,970,736	259,415	778,244	(173,891)	(186,285)	13,648,219
Year 7	13,648,219	272,964	818,893	(179,108)	(199,231)	14,361,738
Year 8	14,361,738	287,235	861,704	(184,481)	(211,894)	15,114,302
Year 9	15,114,302	302,286	906,858	(190,016)	(224,562)	15,908,868
Year 10	15,908,868	318,177	954,532	(195,716)	(237,449)	16,748,413
Year 11	16,748,413	334,968	1,004,905	(201,587)	(250,721)	17,635,977
Year 12	17,635,977	352,720	1,058,159	(207,635)	(264,506)	18,574,714
Year 13	18,574,714	371,494	1,114,483	(213,864)	(278,913)	19,567,914
Year 14	19,567,914	391,358	1,174,075	(220,280)	(294,032)	20,619,036
Year 15	20,619,036	412,381	1,237,142	(226,888)	(309,944)	21,731,726
Year 16	21,731,726	434,635	1,303,904	(233,695)	(326,725)	22,909,844
Year 17	22,909,844	458,197	1,374,591	(240,706)	(344,448)	24,157,478
Year 18	24,157,478	483,150	1,449,449	(247,927)	(363,183)	25,478,966
Year 19	25,478,966	509,579	1,528,738	(255,365)	(383,002)	26,878,916
Year 20	26,878,916	537,578	1,612,735	(263,026)	(403,980)	28,362,224
Year 21	28,362,224	567,244	1,701,733	(270,917)	(426,193)	29,934,092
Year 22	29,934,092	598,682	1,796,046	(279,044)	(449,721)	31,600,054
Year 23	31,600,054	632,001	1,896,003	(287,416)	(474,648)	33,365,995
Year 24	33,365,995	667,320	2,001,960	(296,038)	(501,064)	35,238,173
Year 25	35,238,173	704,763	2,114,290	(304,919)	(1,187,981)	36,564,327

## ANALYSIS OF FLP CREATING CRUT FOLLOWED BY SALE TO GRANTOR TRUST

*FLP/CRUT/Grantor Trust Sale, Charlie gives remaining estate to charity*

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
<u>Charlie Charitable</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Capital Gains Tax Rate on Growth	15.00%
Ordinary Tax Rate	35.00%
Consumption (increasing at 3% per year)	150,000
Intra-Family Note Interest Percentage	3.57%
7520 Rate	2.40%
<u>FLP - CRUT</u>	
Unitrust Percentage	11.037%
Charitable Deduction	1,000,000
Income Tax Benefit to Charlie	350,000
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Charlie Charitable Percentage Ownership in FLP (Children's GP interest ignored)	1.00%
Grantor Trust Subsequent Ownership in FLP	99.00%
Value of Partnership Actuarial Interest in CRUT - Year 1	9,000,000
Charlie Charitable FLP Valuation Discount	35.00%

<u>Note Between Charlie Charitable and Grantor Trust</u>	
CRUT Starting Value	10,000,000
CRUT Actuarial Discount (10%)	(1,000,000)
Value of Partnership Actuarial Interest in CRUT - Year 1	9,000,000
Partnership Discount (35%)	(3,150,000)
Discounted Value of Partnership Actuarial Interest	5,850,000
Face Value of Note (99% Transferred to Grantor Trust)	5,791,500

*FLP*

	<u>Cash - Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Unitrust Payments</u>	<u>Distributions</u>	<u>Cash - End of Year</u>
Year 1	-	-	-	1,103,700	(705,555)	398,145
Year 2	398,145	7,963	23,889	1,070,181	(703,174)	797,003
Year 3	797,003	15,940	47,820	1,037,679	(701,743)	1,196,700
Year 4	1,196,700	23,934	71,802	1,006,165	(701,031)	1,597,570
Year 5	1,597,570	31,951	95,854	975,608	(700,880)	2,000,103
Year 6	2,000,103	40,002	120,006	945,978	(701,181)	2,404,909
Year 7	2,404,909	48,098	144,295	917,249	(701,857)	2,812,694
Year 8	2,812,694	56,254	168,762	889,392	(702,860)	3,224,242
Year 9	3,224,242	64,485	193,454	862,381	(704,157)	3,640,405
Year 10	3,640,405	72,808	218,424	836,191	(705,729)	4,062,100
Year 11	4,062,100	81,242	243,726	810,796	(707,565)	4,490,299
Year 12	4,490,299	89,806	269,418	786,172	(709,662)	4,926,033
Year 13	4,926,033	98,521	295,562	762,296	(712,022)	5,370,389
Year 14	5,370,389	107,408	322,223	739,145	(714,651)	5,824,514
Year 15	5,824,514	116,490	349,471	716,697	(717,555)	6,289,617
Year 16	6,289,617	125,792	377,377	694,931	(720,748)	6,766,970
Year 17	6,766,970	135,339	406,018	673,826	(724,241)	7,257,912
Year 18	7,257,912	145,158	435,475	653,362	(728,049)	7,763,858
Year 19	7,763,858	155,277	465,831	633,519	(732,190)	8,286,296
Year 20	8,286,296	165,726	497,178	614,279	(736,680)	8,826,799
Year 21	8,826,799	176,536	529,608	-	(630,610)	8,902,333
Year 22	8,902,333	178,047	534,140	-	(634,528)	8,979,991
Year 23	8,979,991	179,600	538,799	-	(637,654)	9,060,736
Year 24	9,060,736	181,215	543,644	-	(640,245)	9,145,350
Year 25	9,145,350	182,907	548,721	-	(825,572)	9,051,406



## ANALYSIS OF FLP CREATING CRUT FOLLOWED BY SALE TO GRANTOR TRUST

*FLP/CRUT/Grantor Trust Sale, Charlie gives remaining estate to charity*

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
<u>Charlie Charitable</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Capital Gains Tax Rate on Growth	15.00%
Ordinary Tax Rate	35.00%
Consumption (increasing at 3% per year)	150,000
Intra-Family Note Interest Percentage	3.57%
7520 Rate	2.40%
<u>FLP - CRUT</u>	
Unitrust Percentage	11.037%
Charitable Deduction	1,000,000
Income Tax Benefit to Charlie	350,000
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Charlie Charitable Percentage Ownership in FLP (Children's GP interest ignored)	1.00%
Grantor Trust Subsequent Ownership in FLP	99.00%
Value of Partnership Actuarial Interest in CRUT - Year 1	9,000,000
Charlie Charitable FLP Valuation Discount	35.00%

<u>Note Between Charlie Charitable and Grantor Trust</u>	
CRUT Starting Value	10,000,000
CRUT Actuarial Discount (10%)	(1,000,000)
Value of Partnership Actuarial Interest in CRUT - Year 1	9,000,000
Partnership Discount (35%)	(3,150,000)
Discounted Value of Partnership Actuarial Interest	5,850,000
Face Value of Note (99% Transferred to Grantor Trust)	5,791,500

*Charitable Remainder Unitrust*

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Unitrust Payment</u>	<u>Payment to Charity</u>	<u>End of Year</u>
Year 1	10,000,000	200,000	600,000	(1,103,700)	-	9,696,300
Year 2	9,696,300	193,926	581,778	(1,070,181)	-	9,401,823
Year 3	9,401,823	188,036	564,109	(1,037,679)	-	9,116,290
Year 4	9,116,290	182,326	546,977	(1,006,165)	-	8,839,428
Year 5	8,839,428	176,789	530,366	(975,608)	-	8,570,975
Year 6	8,570,975	171,419	514,258	(945,978)	-	8,310,674
Year 7	8,310,674	166,213	498,640	(917,249)	-	8,058,279
Year 8	8,058,279	161,166	483,497	(889,392)	-	7,813,549
Year 9	7,813,549	156,271	468,813	(862,381)	-	7,576,252
Year 10	7,576,252	151,525	454,575	(836,191)	-	7,346,161
Year 11	7,346,161	146,923	440,770	(810,796)	-	7,123,058
Year 12	7,123,058	142,461	427,383	(786,172)	-	6,906,731
Year 13	6,906,731	138,135	414,404	(762,296)	-	6,696,973
Year 14	6,696,973	133,939	401,818	(739,145)	-	6,493,586
Year 15	6,493,586	129,872	389,615	(716,697)	-	6,296,376
Year 16	6,296,376	125,928	377,783	(694,931)	-	6,105,155
Year 17	6,105,155	122,103	366,309	(673,826)	-	5,919,742
Year 18	5,919,742	118,395	355,184	(653,362)	-	5,739,959
Year 19	5,739,959	114,799	344,398	(633,519)	-	5,565,636
Year 20	5,565,636	111,313	333,938	(614,279)	(5,396,608)	-

## ANALYSIS OF FLP CREATING CRUT FOLLOWED BY SALE TO GRANTOR TRUST

*FLP/CRUT/Grantor Trust Sale, Charlie gives remaining estate to charity*

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
<u>Charlie Charitable</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Capital Gains Tax Rate on Growth	15.00%
Ordinary Tax Rate	35.00%
Consumption (increasing at 3% per year)	150,000
Intra-Family Note Interest Percentage	3.57%
7520 Rate	2.40%
<u>FLP - CRUT</u>	
Unitrust Percentage	11.037%
Charitable Deduction	1,000,000
Income Tax Benefit to Charlie	350,000
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Charlie Charitable Percentage Ownership in FLP (Children's GP interest ignored)	1.00%
Grantor Trust Subsequent Ownership in FLP	99.00%
Value of Partnership Actuarial Interest in CRUT - Year 1	9,000,000
Charlie Charitable FLP Valuation Discount	35.00%

<u>Note Between Charlie Charitable and Grantor Trust</u>	
CRUT Starting Value	10,000,000
CRUT Actuarial Discount (10%)	(1,000,000)
Value of Partnership Actuarial Interest in CRUT - Year 1	9,000,000
Partnership Discount (35%)	(3,150,000)
Discounted Value of Partnership Actuarial Interest	5,850,000
Face Value of Note (99% Transferred to Grantor Trust)	5,791,500

*Charlie Charitable*

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Distribution from Partnership</u>	<u>Note Payments</u>	<u>Income Taxes</u>	<u>Consumption</u>	<u>End of Year</u>
Year 1	-	-	-	7,056	698,499	144,445	(150,000)	700,000
Year 2	700,000	14,000	42,000	7,032	696,143	(209,964)	(154,500)	1,094,710
Year 3	1,094,710	21,894	65,683	7,017	694,725	(213,684)	(159,135)	1,511,210
Year 4	1,511,210	30,224	90,673	7,010	694,021	(218,685)	(163,909)	1,950,544
Year 5	1,950,544	39,011	117,033	7,009	693,871	(224,753)	(168,826)	2,413,888
Year 6	2,413,888	48,278	144,833	7,012	694,169	(231,749)	(173,891)	2,902,540
Year 7	2,902,540	58,051	174,152	7,019	694,839	(239,581)	(179,108)	3,417,911
Year 8	3,417,911	68,358	205,075	7,029	695,831	(248,198)	(184,481)	3,961,525
Year 9	3,961,525	79,230	237,691	7,042	697,115	(257,573)	(190,016)	4,535,015
Year 10	4,535,015	90,700	272,101	7,057	698,671	(267,698)	(195,716)	5,140,131
Year 11	5,140,131	102,803	308,408	7,076	37,426	(278,581)	(201,587)	5,115,674
Year 12	5,115,674	102,313	306,940	7,097	-	(290,241)	(207,635)	5,034,149
Year 13	5,034,149	100,683	302,049	7,120	-	(302,704)	(213,864)	4,927,433
Year 14	4,927,433	98,549	295,646	7,147	-	(316,004)	(220,280)	4,792,490
Year 15	4,792,490	95,850	287,549	7,176	-	(330,183)	(226,888)	4,625,994
Year 16	4,625,994	92,520	277,560	7,207	-	(345,283)	(233,695)	4,424,302
Year 17	4,424,302	88,486	265,458	7,242	-	(361,357)	(240,706)	4,183,426
Year 18	4,183,426	83,669	251,006	7,280	-	(378,457)	(247,927)	3,898,997
Year 19	3,898,997	77,980	233,940	7,322	-	(396,643)	(255,365)	3,566,230
Year 20	3,566,230	71,325	213,974	7,367	-	(415,979)	(263,026)	3,179,890
Year 21	3,179,890	63,598	190,793	6,306	-	(325,602)	(270,917)	2,844,069
Year 22	2,844,069	56,881	170,644	6,345	-	(346,112)	(279,044)	2,452,784
Year 23	2,452,784	49,056	147,167	6,377	-	(366,783)	(287,416)	2,001,185
Year 24	2,001,185	40,024	120,071	6,402	-	(387,931)	(296,038)	1,483,713
Year 25	1,483,713	29,674	89,023	8,256	-	(845,837)	(304,919)	459,910

## ANALYSIS OF FLP CREATING CRUT FOLLOWED BY SALE TO GRANTOR TRUST

*FLP/CRUT/Grantor Trust Sale, Charlie gives remaining estate to charity*

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
<u>Charlie Charitable</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Capital Gains Tax Rate on Growth	15.00%
Ordinary Tax Rate	35.00%
Consumption (increasing at 3% per year)	150,000
Intra-Family Note Interest Percentage	3.57%
7520 Rate	2.40%
<u>FLP - CRUT</u>	
Unitrust Percentage	11.037%
Charitable Deduction	1,000,000
Income Tax Benefit to Charlie	350,000
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Charlie Charitable Percentage Ownership in FLP (Children's GP interest ignored)	1.00%
Grantor Trust Subsequent Ownership in FLP	99.00%
Value of Partnership Actuarial Interest in CRUT - Year 1	9,000,000
Charlie Charitable FLP Valuation Discount	35.00%

<u>Note Between Charlie Charitable and Grantor Trust</u>	
CRUT Starting Value	10,000,000
CRUT Actuarial Discount (10%)	(1,000,000)
Value of Partnership Actuarial Interest in CRUT - Year 1	9,000,000
Partnership Discount (35%)	(3,150,000)
Discounted Value of Partnership Actuarial Interest	5,850,000
Face Value of Note (99% Transferred to Grantor Trust)	5,791,500

*Charlie Charitable Family's Grantor Trust*

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Distribution from Partnerships</u>	<u>Note Payments</u>	<u>Income Taxes</u>	<u>End of Year</u>
Year 1	-	-	-	698,499	(698,499)	-	-
Year 2	-	-	-	696,143	(696,143)	-	-
Year 3	-	-	-	694,725	(694,725)	-	-
Year 4	-	-	-	694,021	(694,021)	-	-
Year 5	-	-	-	693,871	(693,871)	-	-
Year 6	-	-	-	694,169	(694,169)	-	-
Year 7	-	-	-	694,839	(694,839)	-	-
Year 8	-	-	-	695,831	(695,831)	-	-
Year 9	-	-	-	697,115	(697,115)	-	-
Year 10	-	-	-	698,671	(698,671)	-	-
Year 11	-	-	-	700,489	(37,426)	-	663,063
Year 12	663,063	13,261	39,784	702,566	-	-	1,418,674
Year 13	1,418,674	28,373	85,120	704,902	-	-	2,237,070
Year 14	2,237,070	44,741	134,224	707,504	-	-	3,123,540
Year 15	3,123,540	62,471	187,412	710,380	-	-	4,083,803
Year 16	4,083,803	81,676	245,028	713,540	-	-	5,124,048
Year 17	5,124,048	102,481	307,443	716,999	-	-	6,250,970
Year 18	6,250,970	125,019	375,058	720,769	-	-	7,471,816
Year 19	7,471,816	149,436	448,309	724,868	-	-	8,794,429
Year 20	8,794,429	175,889	527,666	729,313	-	-	10,227,296
Year 21	10,227,296	204,546	613,638	624,304	-	-	11,669,784
Year 22	11,669,784	233,396	700,187	628,183	-	-	13,231,550
Year 23	13,231,550	264,631	793,893	631,278	-	-	14,921,352
Year 24	14,921,352	298,427	895,281	633,843	-	-	16,748,903
Year 25	16,748,903	334,978	1,004,934	817,317	-	-	18,906,132

## ANALYSIS OF FLP CREATING CRUT FOLLOWED BY SALE TO GRANTOR TRUST

*FLP/CRUT/Grantor Trust Sale, Charlie gives remaining estate to charity*

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
<u>Charlie Charitable</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Capital Gains Tax Rate on Growth	15.00%
Ordinary Tax Rate	35.00%
Consumption (increasing at 3% per year)	150,000
Intra-Family Note Interest Percentage	3.57%
7520 Rate	2.40%
<u>FLP - CRUT</u>	
Unitrust Percentage	11.037%
Charitable Deduction	1,000,000
Income Tax Benefit to Charlie	350,000
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Charlie Charitable Percentage Ownership in FLP (Children's GP interest ignored)	1.00%
Grantor Trust Subsequent Ownership in FLP	99.00%
Value of Partnership Actuarial Interest in CRUT - Year 1	9,000,000
Charlie Charitable FLP Valuation Discount	35.00%

<u>Note Between Charlie Charitable and Grantor Trust</u>	
CRUT Starting Value	10,000,000
CRUT Actuarial Discount (10%)	(1,000,000)
Value of Partnership Actuarial Interest in CRUT - Year 1	9,000,000
Partnership Discount (35%)	(3,150,000)
Discounted Value of Partnership Actuarial Interest	5,850,000
Face Value of Note (99% Transferred to Grantor Trust)	5,791,500

*Charity*

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>CRUT Distribution</u>	<u>End of Year</u>
Year 1	-	-	-	-	-
Year 2	-	-	-	-	-
Year 3	-	-	-	-	-
Year 4	-	-	-	-	-
Year 5	-	-	-	-	-
Year 6	-	-	-	-	-
Year 7	-	-	-	-	-
Year 8	-	-	-	-	-
Year 9	-	-	-	-	-
Year 10	-	-	-	-	-
Year 11	-	-	-	-	-
Year 12	-	-	-	-	-
Year 13	-	-	-	-	-
Year 14	-	-	-	-	-
Year 15	-	-	-	-	-
Year 16	-	-	-	-	-
Year 17	-	-	-	-	-
Year 18	-	-	-	-	-
Year 19	-	-	-	-	-
Year 20	-	-	-	5,396,608	5,396,608
Year 21	5,396,608	107,932	323,796	-	5,828,337
Year 22	5,828,337	116,567	349,700	-	6,294,604
Year 23	6,294,604	125,892	377,676	-	6,798,172
Year 24	6,798,172	135,963	407,890	-	7,342,026
Year 25	7,342,026	146,841	440,522	-	7,929,388

## ANALYSIS OF FLP CREATING CRUT FOLLOWED BY SALE TO GRANTOR TRUST

*FLP/CRUT/Grantor Trust Sale, Charlie gives remaining estate to charity*

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
<u>Charlie Charitable</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Capital Gains Tax Rate on Growth	15.00%
Ordinary Tax Rate	35.00%
Consumption (increasing at 3% per year)	150,000
Intra-Family Note Interest Percentage	3.57%
7520 Rate	2.40%
<u>FLP - CRUT</u>	
Unitrust Percentage	11.037%
Charitable Deduction	1,000,000
Income Tax Benefit to Charlie	350,000
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Charlie Charitable Percentage Ownership in FLP (Children's GP interest ignored)	1.00%
Grantor Trust Subsequent Ownership in FLP	99.00%
Value of Partnership Actuarial Interest in CRUT - Year 1	9,000,000
Charlie Charitable FLP Valuation Discount	35.00%

<u>Note Between Charlie Charitable and Grantor Trust</u>	
CRUT Starting Value	10,000,000
CRUT Actuarial Discount (10%)	(1,000,000)
Value of Partnership Actuarial Interest in CRUT - Year 1	9,000,000
Partnership Discount (35%)	(3,150,000)
Discounted Value of Partnership Actuarial Interest	5,850,000
Face Value of Note (99% Transferred to Grantor Trust)	5,791,500

*Note Between Charlie Charitable and Charlie Charitable Family's Grantor Trust - FLP*

	<u>Beginning of Year</u>	<u>Interest</u>	<u>Note Payment</u>	<u>End of Year</u>
Year 1	5,791,500	206,757	(698,499)	5,299,757
Year 2	5,299,757	189,201	(696,143)	4,792,816
Year 3	4,792,816	171,104	(694,725)	4,269,194
Year 4	4,269,194	152,410	(694,021)	3,727,584
Year 5	3,727,584	133,075	(693,871)	3,166,787
Year 6	3,166,787	113,054	(694,169)	2,585,673
Year 7	2,585,673	92,309	(694,839)	1,983,143
Year 8	1,983,143	70,798	(695,831)	1,358,110
Year 9	1,358,110	48,485	(697,115)	709,479
Year 10	709,479	25,328	(698,671)	36,136
Year 11	36,136	1,290	(37,426)	-
Year 12	-	-	-	-
Year 13	-	-	-	-
Year 14	-	-	-	-
Year 15	-	-	-	-
Year 16	-	-	-	-
Year 17	-	-	-	-
Year 18	-	-	-	-
Year 19	-	-	-	-
Year 20	-	-	-	-
Year 21	-	-	-	-
Year 22	-	-	-	-
Year 23	-	-	-	-
Year 24	-	-	-	-
Year 25	-	-	-	-

## Schedule 8

## ANALYSIS OF FLP CREATING CRUT FOLLOWED BY SALE TO GRANTOR TRUST

*FLP/Grantor Trust Sale, Charlie gives remaining estate to family*

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
<u>Charlie Charitable</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Capital Gains Tax Rate on Growth	15.00%
Ordinary Tax Rate	35.00%
Consumption (increasing at 3% per year)	150,000
Intra-Family Note Interest Percentage	3.57%
7520 Rate	2.40%
<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Charlie Charitable Percentage Ownership in FLP (Children's GP interest ignored)	1.00%
Grantor Trust Subsequent Ownership in FLP	99.00%
Charlie Charitable FLP Valuation Discount	35.00%

<u>Note Between Charlie Charitable and Grantor Trust</u>	
FLP Starting Value	10,000,000
Partnership Discount (35%)	(3,500,000)
Discounted Value of Partnership Interest	6,500,000
Face Value of Note (99% Transferred to Grantor Trust)	6,435,000

*FLP*

	<u>Cash - Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Distributions</u>	<u>Cash - End of Year</u>
Year 1	10,000,000	200,000	600,000	(2,347,000)	8,453,000
Year 2	8,453,000	169,060	507,180	(734,869)	8,394,371
Year 3	8,394,371	167,887	503,662	(740,209)	8,325,711
Year 4	8,325,711	166,514	499,543	(741,497)	8,250,271
Year 5	8,250,271	165,005	495,016	(739,950)	8,170,342
Year 6	8,170,342	163,407	490,221	(736,428)	8,087,542
Year 7	8,087,542	161,751	485,253	(731,537)	8,003,009
Year 8	8,003,009	160,060	480,181	(725,705)	7,917,544
Year 9	7,917,544	158,351	475,053	(719,237)	7,831,710
Year 10	7,831,710	156,634	469,903	(712,345)	7,745,902
Year 11	7,745,902	154,918	464,754	(705,179)	7,660,395
Year 12	7,660,395	153,208	459,624	(697,846)	7,575,381
Year 13	7,575,381	151,508	454,523	(690,420)	7,490,991
Year 14	7,490,991	149,820	449,459	(682,954)	7,407,316
Year 15	7,407,316	148,146	444,439	(675,485)	7,324,416
Year 16	7,324,416	146,488	439,465	(668,037)	7,242,332
Year 17	7,242,332	144,847	434,540	(660,630)	7,161,089
Year 18	7,161,089	143,222	429,665	(653,276)	7,080,700
Year 19	7,080,700	141,614	424,842	(645,982)	7,001,174
Year 20	7,001,174	140,023	420,070	(638,754)	6,922,514
Year 21	6,922,514	138,450	415,351	(631,598)	6,844,717
Year 22	6,844,717	136,894	410,683	(624,514)	6,767,781
Year 23	6,767,781	135,356	406,067	(617,504)	6,691,700
Year 24	6,691,700	133,834	401,502	(610,569)	6,616,467
Year 25	6,616,467	132,329	396,988	(746,414)	6,399,370

Schedule 8  
ANALYSIS OF FLP CREATING CRUT FOLLOWED BY SALE TO GRANTOR TRUST  
*FLP/Grantor Trust Sale, Charlie gives remaining estate to family*

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
<u>Charlie Charitable</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Capital Gains Tax Rate on Growth	15.00%
Ordinary Tax Rate	35.00%
Consumption (increasing at 3% per year)	150,000
Intra-Family Note Interest Percentage	3.57%
7520 Rate	2.40%
<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Charlie Charitable Percentage Ownership in FLP (Children's GP interest ignored)	1.00%
Grantor Trust Subsequent Ownership in FLP	99.00%
Charlie Charitable FLP Valuation Discount	35.00%

<u>Note Between Charlie Charitable and Grantor Trust</u>	
FLP Starting Value	10,000,000
Partnership Discount (35%)	(3,500,000)
Discounted Value of Partnership Interest	6,500,000
Face Value of Note (99% Transferred to Grantor Trust)	6,435,000

*Charlie Charitable*

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Distribution from Partnership</u>	<u>Note Payments</u>	<u>Income Taxes</u>	<u>Consumption</u>	<u>End of Year</u>
Year 1	-	-	-	23,470	2,323,530	(1,597,000)	(150,000)	600,000
Year 2	600,000	12,000	36,000	7,349	727,520	(106,714)	(154,500)	1,121,655
Year 3	1,121,655	22,433	67,299	7,402	732,807	(122,646)	(159,135)	1,669,816
Year 4	1,669,816	33,396	100,189	7,415	734,082	(136,180)	(163,909)	2,244,810
Year 5	2,244,810	44,896	134,689	7,400	732,551	(148,150)	(168,826)	2,847,368
Year 6	2,847,368	56,947	170,842	7,364	729,063	(159,151)	(173,891)	3,478,543
Year 7	3,478,543	69,571	208,713	7,315	724,221	(169,610)	(179,108)	4,139,645
Year 8	4,139,645	82,793	248,379	7,257	587,561	(179,837)	(184,481)	4,701,318
Year 9	4,701,318	94,026	282,079	7,192	-	(190,059)	(190,016)	4,704,540
Year 10	4,704,540	94,091	282,272	7,123	-	(200,447)	(195,716)	4,691,864
Year 11	4,691,864	93,837	281,512	7,052	-	(211,131)	(201,587)	4,661,546
Year 12	4,661,546	93,231	279,693	6,978	-	(222,213)	(207,635)	4,611,600
Year 13	4,611,600	92,232	276,696	6,904	-	(233,777)	(213,864)	4,539,791
Year 14	4,539,791	90,796	272,387	6,830	-	(245,894)	(220,280)	4,443,630
Year 15	4,443,630	88,873	266,618	6,755	-	(258,627)	(226,888)	4,320,360
Year 16	4,320,360	86,407	259,222	6,680	-	(272,036)	(233,695)	4,166,939
Year 17	4,166,939	83,339	250,016	6,606	-	(286,174)	(240,706)	3,980,019
Year 18	3,980,019	79,600	238,801	6,533	-	(301,099)	(247,927)	3,755,928
Year 19	3,755,928	75,119	225,356	6,460	-	(316,865)	(255,365)	3,490,632
Year 20	3,490,632	69,813	209,438	6,388	-	(333,528)	(263,026)	3,179,717
Year 21	3,179,717	63,594	190,783	6,316	-	(351,147)	(270,917)	2,818,346
Year 22	2,818,346	56,367	169,101	6,245	-	(369,784)	(279,044)	2,401,231
Year 23	2,401,231	48,025	144,074	6,175	-	(389,503)	(287,416)	1,922,586
Year 24	1,922,586	38,452	115,355	6,106	-	(410,371)	(296,038)	1,376,090
Year 25	1,376,090	27,522	82,565	7,464	-	(901,706)	(304,919)	287,016

## Schedule 8

## ANALYSIS OF FLP CREATING CRUT FOLLOWED BY SALE TO GRANTOR TRUST

*FLP/Grantor Trust Sale, Charlie gives remaining estate to family*

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
<u>Charlie Charitable</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Capital Gains Tax Rate on Growth	15.00%
Ordinary Tax Rate	35.00%
Consumption (increasing at 3% per year)	150,000
Intra-Family Note Interest Percentage	3.57%
7520 Rate	2.40%
<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Charlie Charitable Percentage Ownership in FLP (Children's GP interest ignored)	1.00%
Grantor Trust Subsequent Ownership in FLP	99.00%
Charlie Charitable FLP Valuation Discount	35.00%

<u>Note Between Charlie Charitable and Grantor Trust</u>	
FLP Starting Value	10,000,000
Partnership Discount (35%)	(3,500,000)
Discounted Value of Partnership Interest	6,500,000
Face Value of Note (99% Transferred to Grantor Trust)	6,435,000

*Charlie Charitable Family's Grantor Trust*

	<u>Beginning of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Distribution from Partnerships</u>	<u>Note Payments</u>	<u>Income Taxes</u>	<u>End of Year</u>
Year 1	-	-	-	2,323,530	(2,323,530)	-	-
Year 2	-	-	-	727,520	(727,520)	-	-
Year 3	-	-	-	732,807	(732,807)	-	-
Year 4	-	-	-	734,082	(734,082)	-	-
Year 5	-	-	-	732,551	(732,551)	-	-
Year 6	-	-	-	729,063	(729,063)	-	-
Year 7	-	-	-	724,221	(724,221)	-	-
Year 8	-	-	-	718,448	(587,561)	-	130,887
Year 9	130,887	2,618	7,853	712,045	-	-	853,403
Year 10	853,403	17,068	51,204	705,221	-	-	1,626,897
Year 11	1,626,897	32,538	97,614	698,127	-	-	2,455,176
Year 12	2,455,176	49,104	147,311	690,868	-	-	3,342,458
Year 13	3,342,458	66,849	200,547	683,516	-	-	4,293,371
Year 14	4,293,371	85,867	257,602	676,125	-	-	5,312,965
Year 15	5,312,965	106,259	318,778	668,730	-	-	6,406,732
Year 16	6,406,732	128,135	384,404	661,357	-	-	7,580,628
Year 17	7,580,628	151,613	454,838	654,024	-	-	8,841,102
Year 18	8,841,102	176,822	530,466	646,743	-	-	10,195,133
Year 19	10,195,133	203,903	611,708	639,522	-	-	11,650,266
Year 20	11,650,266	233,005	699,016	632,367	-	-	13,214,654
Year 21	13,214,654	264,293	792,879	625,282	-	-	14,897,108
Year 22	14,897,108	297,942	893,826	618,268	-	-	16,707,145
Year 23	16,707,145	334,143	1,002,429	611,329	-	-	18,655,045
Year 24	18,655,045	373,101	1,119,303	604,463	-	-	20,751,912
Year 25	20,751,912	415,038	1,245,115	738,950	-	-	23,151,015



Schedule 8  
ANALYSIS OF FLP CREATING CRUT FOLLOWED BY SALE TO GRANTOR TRUST  
*FLP/Grantor Trust Sale, Charlie gives remaining estate to family*

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
<u>Charlie Charitable</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Capital Gains Tax Rate on Growth	15.00%
Ordinary Tax Rate	35.00%
Consumption (increasing at 3% per year)	150,000
Intra-Family Note Interest Percentage	3.57%
7520 Rate	2.40%
<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	6.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Charlie Charitable Percentage Ownership in FLP (Children's GP interest ignored)	1.00%
Grantor Trust Subsequent Ownership in FLP	99.00%
Charlie Charitable FLP Valuation Discount	35.00%

<u>Note Between Charlie Charitable and Grantor Trust</u>	
FLP Starting Value	10,000,000
Partnership Discount (35%)	(3,500,000)
Discounted Value of Partnership Interest	6,500,000
Face Value of Note (99% Transferred to Grantor Trust)	6,435,000

*Note Between Charlie Charitable and Charlie Charitable Family's Grantor Trust - FLP*

	<u>Beginning of Year</u>	<u>Interest</u>	<u>Note Payment</u>	<u>End of Year</u>
Year 1	6,435,000	229,730	(2,323,530)	4,341,200
Year 2	4,341,200	154,981	(727,520)	3,768,660
Year 3	3,768,660	134,541	(732,807)	3,170,394
Year 4	3,170,394	113,183	(734,082)	2,549,494
Year 5	2,549,494	91,017	(732,551)	1,907,961
Year 6	1,907,961	68,114	(729,063)	1,247,011
Year 7	1,247,011	44,518	(724,221)	567,309
Year 8	567,309	20,253	(587,561)	-
Year 9	-	-	-	-
Year 10	-	-	-	-
Year 11	-	-	-	-
Year 12	-	-	-	-
Year 13	-	-	-	-
Year 14	-	-	-	-
Year 15	-	-	-	-
Year 16	-	-	-	-
Year 17	-	-	-	-
Year 18	-	-	-	-
Year 19	-	-	-	-
Year 20	-	-	-	-
Year 21	-	-	-	-
Year 22	-	-	-	-
Year 23	-	-	-	-
Year 24	-	-	-	-
Year 25	-	-	-	-

**Schedule 9**  
**ELDER FAMILY**  
**3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Elder LP Discount	40.00%
Gross Proceeds	28,571,429

*Future Values at the end of 30 Years of Annual Compounded Growth at 3%*

	<b>Elder Children's Future Values</b>	<b>Elder GST Trust Future Values</b>	<b>Charity</b>	<b>IRS - Income Taxes</b>	<b>IRS - Investment Opp. Costs</b>	<b>IRS - Estate Taxes</b>	<b>Totals</b>
No Further Planning - No Discount Allowed	22,381,854	17,120,821	-	5,858,591	14,989,091	9,000,000	69,350,357
No Further Planning - Discount Allowed	25,649,265	17,120,821	-	8,252,959	12,927,313	5,400,000	69,350,357
CLAT Redemption - Discount Allowed - \$3 Million to Family	17,607,370	19,563,744	20,651,682	5,013,781	5,163,780	1,350,000	69,350,357
CLAT Redemption - Discount Allowed - \$10 Million to Family	22,899,604	19,056,537	4,589,271	7,310,651	10,994,295	4,500,000	69,350,357

**NO FURTHER PLANNING - NO DISCOUNT ALLOWED**

Elder Children	22,381,854	32.27%
Elder GST Trust	17,120,821	24.69%
Charity	-	0.00%
IRS (income and estate taxes)	14,858,591	21.43%
IRS (investment opportunity costs)	14,989,091	21.61%
Total	69,350,357	100.00%

**NO FURTHER PLANNING - DISCOUNT ALLOWED**

Elder Children	25,649,265	36.99%
Elder GST Trust	17,120,821	24.69%
Charity	-	0.00%
IRS (income and estate taxes)	13,652,959	19.69%
IRS (investment opportunity costs)	12,927,313	18.64%
Total	69,350,357	100.00%

**CLAT REDEMPTION - DISCOUNT ALLOWED - \$3 MILLION TO FAMILY**

Elder Children	17,607,370	25.39%
Elder GST Trust	19,563,744	28.21%
Charity	20,651,682	29.78%
IRS (income and estate taxes)	6,363,781	9.18%
IRS (investment opportunity costs)	5,163,780	7.45%
Total	69,350,357	100.00%

**CLAT REDEMPTION - DISCOUNT ALLOWED - \$10 MILLION TO FAMILY**

Elder Children	22,899,604	33.02%
Elder GST Trust	19,056,537	27.48%
Charity	4,589,271	6.62%
IRS (income and estate taxes)	11,810,651	17.03%
IRS (investment opportunity costs)	10,994,295	15.85%
Total	69,350,357	100.00%

**ELDER FAMILY****NO FURTHER PLANNING - NO DISCOUNT ALLOWED****3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Estate Tax Rate	45.00%

*Elder Children*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Estate Taxes</b>	<b>End of Year</b>
Year 1	20,000,000	200,000	400,000	(91,360)	(9,000,000)	11,508,640
Year 2	11,508,640	115,086	230,173	(66,053)	-	11,787,846
Year 3	11,787,846	117,878	235,757	(71,042)	-	12,070,439
Year 4	12,070,439	120,704	241,409	(75,121)	-	12,357,431
Year 5	12,357,431	123,574	247,149	(78,573)	-	12,649,581
Year 6	12,649,581	126,496	252,992	(81,601)	-	12,947,467
Year 7	12,947,467	129,475	258,949	(84,343)	-	13,251,548
Year 8	13,251,548	132,515	265,031	(86,900)	-	13,562,194
Year 9	13,562,194	135,622	271,244	(89,342)	-	13,879,718
Year 10	13,879,718	138,797	277,594	(91,718)	-	14,204,391
Year 11	14,204,391	142,044	284,088	(94,063)	-	14,536,460
Year 12	14,536,460	145,365	290,729	(96,402)	-	14,876,153
Year 13	14,876,153	148,762	297,523	(98,753)	-	15,223,685
Year 14	15,223,685	152,237	304,474	(101,129)	-	15,579,266
Year 15	15,579,266	155,793	311,585	(103,539)	-	15,943,105
Year 16	15,943,105	159,431	318,862	(105,991)	-	16,315,407
Year 17	16,315,407	163,154	326,308	(108,490)	-	16,696,379
Year 18	16,696,379	166,964	333,928	(111,040)	-	17,086,230
Year 19	17,086,230	170,862	341,725	(113,645)	-	17,485,172
Year 20	17,485,172	174,852	349,703	(116,307)	-	17,893,421
Year 21	17,893,421	178,934	357,868	(119,028)	-	18,311,196
Year 22	18,311,196	183,112	366,224	(121,811)	-	18,738,720
Year 23	18,738,720	187,387	374,774	(124,658)	-	19,176,224
Year 24	19,176,224	191,762	383,524	(127,570)	-	19,623,941
Year 25	19,623,941	196,239	392,479	(130,550)	-	20,082,109
Year 26	20,082,109	200,821	401,642	(133,599)	-	20,550,973
Year 27	20,550,973	205,510	411,019	(136,719)	-	21,030,783
Year 28	21,030,783	210,308	420,616	(139,912)	-	21,521,795
Year 29	21,521,795	215,218	430,436	(143,178)	-	22,024,270
Year 30	22,024,270	220,243	440,485	(303,144)	-	22,381,854

**ELDER FAMILY****NO FURTHER PLANNING - NO DISCOUNT ALLOWED****3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Estate Tax Rate	45.00%

*Elder GST Trust*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Estate Taxes</b>	<b>End of Year</b>
Year 1	8,571,429	85,714	171,429	(39,154)	-	8,789,418
Year 2	8,789,418	87,894	175,788	(45,928)	-	9,007,172
Year 3	9,007,172	90,072	180,143	(51,114)	-	9,226,273
Year 4	9,226,273	92,263	184,525	(55,196)	-	9,447,865
Year 5	9,447,865	94,479	188,957	(58,513)	-	9,672,788
Year 6	9,672,788	96,728	193,456	(61,302)	-	9,901,670
Year 7	9,901,670	99,017	198,033	(63,733)	-	10,134,987
Year 8	10,134,987	101,350	202,700	(65,923)	-	10,373,113
Year 9	10,373,113	103,731	207,462	(67,955)	-	10,616,352
Year 10	10,616,352	106,164	212,327	(69,887)	-	10,864,955
Year 11	10,864,955	108,650	217,299	(71,762)	-	11,119,142
Year 12	11,119,142	111,191	222,383	(73,608)	-	11,379,108
Year 13	11,379,108	113,791	227,582	(75,446)	-	11,645,035
Year 14	11,645,035	116,450	232,901	(77,292)	-	11,917,095
Year 15	11,917,095	119,171	238,342	(79,155)	-	12,195,452
Year 16	12,195,452	121,955	243,909	(81,045)	-	12,480,271
Year 17	12,480,271	124,803	249,605	(82,966)	-	12,771,713
Year 18	12,771,713	127,717	255,434	(84,923)	-	13,069,941
Year 19	13,069,941	130,699	261,399	(86,920)	-	13,375,119
Year 20	13,375,119	133,751	267,502	(88,960)	-	13,687,413
Year 21	13,687,413	136,874	273,748	(91,044)	-	14,006,991
Year 22	14,006,991	140,070	280,140	(93,174)	-	14,334,027
Year 23	14,334,027	143,340	286,681	(95,353)	-	14,668,694
Year 24	14,668,694	146,687	293,374	(97,582)	-	15,011,173
Year 25	15,011,173	150,112	300,223	(99,862)	-	15,361,646
Year 26	15,361,646	153,616	307,233	(102,195)	-	15,720,301
Year 27	15,720,301	157,203	314,406	(104,582)	-	16,087,328
Year 28	16,087,328	160,873	321,747	(107,024)	-	16,462,925
Year 29	16,462,925	164,629	329,258	(109,523)	-	16,847,289
Year 30	16,847,289	168,473	336,946	(231,887)	-	17,120,821

**Schedule 9**  
**ELDER FAMILY**  
**NO FURTHER PLANNING - DISCOUNT ALLOWED**  
**3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Estate Tax Rate	45.00%
Elder LP Discount	40.00%

*Elder Children*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Estate Taxes</b>	<b>End of Year</b>
Year 1	20,000,000	200,000	400,000	(2,017,360)	(5,400,000)	13,182,640
Year 2	13,182,640	131,826	263,653	(73,700)	-	13,504,419
Year 3	13,504,419	135,044	270,088	(80,012)	-	13,829,539
Year 4	13,829,539	138,295	276,591	(85,103)	-	14,159,322
Year 5	14,159,322	141,593	283,186	(89,353)	-	14,494,749
Year 6	14,494,749	144,947	289,895	(93,028)	-	14,836,563
Year 7	14,836,563	148,366	296,731	(96,316)	-	15,185,344
Year 8	15,185,344	151,853	303,707	(99,348)	-	15,541,557
Year 9	15,541,557	155,416	310,831	(102,217)	-	15,905,587
Year 10	15,905,587	159,056	318,112	(104,989)	-	16,277,765
Year 11	16,277,765	162,778	325,555	(107,712)	-	16,658,386
Year 12	16,658,386	166,584	333,168	(110,417)	-	17,047,721
Year 13	17,047,721	170,477	340,954	(113,128)	-	17,446,024
Year 14	17,446,024	174,460	348,920	(115,863)	-	17,853,542
Year 15	17,853,542	178,535	357,071	(118,634)	-	18,270,514
Year 16	18,270,514	182,705	365,410	(121,450)	-	18,697,179
Year 17	18,697,179	186,972	373,944	(124,318)	-	19,133,776
Year 18	19,133,776	191,338	382,676	(127,244)	-	19,580,546
Year 19	19,580,546	195,805	391,611	(130,230)	-	20,037,732
Year 20	20,037,732	200,377	400,755	(133,282)	-	20,505,582
Year 21	20,505,582	205,056	410,112	(136,402)	-	20,984,347
Year 22	20,984,347	209,843	419,687	(139,592)	-	21,474,286
Year 23	21,474,286	214,743	429,486	(142,855)	-	21,975,659
Year 24	21,975,659	219,757	439,513	(146,193)	-	22,488,736
Year 25	22,488,736	224,887	449,775	(149,608)	-	23,013,791
Year 26	23,013,791	230,138	460,276	(153,102)	-	23,551,102
Year 27	23,551,102	235,511	471,022	(156,678)	-	24,100,957
Year 28	24,100,957	241,010	482,019	(160,336)	-	24,663,650
Year 29	24,663,650	246,636	493,273	(164,080)	-	25,239,479
Year 30	25,239,479	252,395	504,790	(347,399)	-	25,649,265

**Schedule 9**  
**ELDER FAMILY**  
**NO FURTHER PLANNING - DISCOUNT ALLOWED**  
**3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Estate Tax Rate	45.00%
Elder LP Discount	40.00%

*Elder GST Trust*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Estate Taxes</b>	<b>End of Year</b>
Year 1	8,571,429	85,714	171,429	(39,154)	-	8,789,418
Year 2	8,789,418	87,894	175,788	(45,928)	-	9,007,172
Year 3	9,007,172	90,072	180,143	(51,114)	-	9,226,273
Year 4	9,226,273	92,263	184,525	(55,196)	-	9,447,865
Year 5	9,447,865	94,479	188,957	(58,513)	-	9,672,788
Year 6	9,672,788	96,728	193,456	(61,302)	-	9,901,670
Year 7	9,901,670	99,017	198,033	(63,733)	-	10,134,987
Year 8	10,134,987	101,350	202,700	(65,923)	-	10,373,113
Year 9	10,373,113	103,731	207,462	(67,955)	-	10,616,352
Year 10	10,616,352	106,164	212,327	(69,887)	-	10,864,955
Year 11	10,864,955	108,650	217,299	(71,762)	-	11,119,142
Year 12	11,119,142	111,191	222,383	(73,608)	-	11,379,108
Year 13	11,379,108	113,791	227,582	(75,446)	-	11,645,035
Year 14	11,645,035	116,450	232,901	(77,292)	-	11,917,095
Year 15	11,917,095	119,171	238,342	(79,155)	-	12,195,452
Year 16	12,195,452	121,955	243,909	(81,045)	-	12,480,271
Year 17	12,480,271	124,803	249,605	(82,966)	-	12,771,713
Year 18	12,771,713	127,717	255,434	(84,923)	-	13,069,941
Year 19	13,069,941	130,699	261,399	(86,920)	-	13,375,119
Year 20	13,375,119	133,751	267,502	(88,960)	-	13,687,413
Year 21	13,687,413	136,874	273,748	(91,044)	-	14,006,991
Year 22	14,006,991	140,070	280,140	(93,174)	-	14,334,027
Year 23	14,334,027	143,340	286,681	(95,353)	-	14,668,694
Year 24	14,668,694	146,687	293,374	(97,582)	-	15,011,173
Year 25	15,011,173	150,112	300,223	(99,862)	-	15,361,646
Year 26	15,361,646	153,616	307,233	(102,195)	-	15,720,301
Year 27	15,720,301	157,203	314,406	(104,582)	-	16,087,328
Year 28	16,087,328	160,873	321,747	(107,024)	-	16,462,925
Year 29	16,462,925	164,629	329,258	(109,523)	-	16,847,289
Year 30	16,847,289	168,473	336,946	(231,887)	-	17,120,821

**Schedule 9**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder LP*

	Beg. of Year	Income	Growth	Distribution - Income Taxes	Distribution - Estate Taxes	Note Payment to CLAT	End of Year
Year 1	28,571,429	285,714	571,429	(1,926,000)	(1,350,000)	(571,886)	25,580,686
Year 2	25,580,686	255,807	511,614	-	-	(571,886)	25,776,220
Year 3	25,776,220	257,762	515,524	(5,132)	-	(571,886)	25,972,489
Year 4	25,972,489	259,725	519,450	(13,794)	-	(571,886)	26,165,985
Year 5	26,165,985	261,660	523,320	(20,133)	-	(571,886)	26,358,945
Year 6	26,358,945	263,589	527,179	(24,849)	-	(571,886)	26,552,978
Year 7	26,552,978	265,530	531,060	(28,432)	-	(571,886)	26,749,249
Year 8	26,749,249	267,492	534,985	(31,226)	-	(571,886)	26,948,615
Year 9	26,948,615	269,486	538,972	(33,473)	-	(571,886)	27,151,714
Year 10	27,151,714	271,517	543,034	(35,344)	-	(571,886)	27,359,036
Year 11	27,359,036	273,590	547,181	(36,957)	-	(571,886)	27,570,964
Year 12	27,570,964	275,710	551,419	(38,398)	-	(571,886)	27,787,808
Year 13	27,787,808	277,878	555,756	(39,726)	-	(571,886)	28,009,831
Year 14	28,009,831	280,098	560,197	(40,981)	-	(571,886)	28,237,259
Year 15	28,237,259	282,373	564,745	(42,195)	-	(571,886)	28,470,296
Year 16	28,470,296	284,703	569,406	(43,387)	-	(571,886)	28,709,132
Year 17	28,709,132	287,091	574,183	(44,573)	-	(571,886)	28,953,946
Year 18	28,953,946	289,539	579,079	(45,764)	-	(571,886)	29,204,914
Year 19	29,204,914	292,049	584,098	(46,967)	-	(571,886)	29,462,209
Year 20	29,462,209	294,622	589,244	(48,188)	-	(9,571,886)	20,726,001
Year 21	20,726,001	207,260	414,520	(159,558)	-	-	21,188,223
Year 22	21,188,223	211,882	423,764	(156,177)	-	-	21,667,693
Year 23	21,667,693	216,677	433,354	(154,833)	-	-	22,162,890
Year 24	22,162,890	221,629	443,258	(154,945)	-	-	22,672,832
Year 25	22,672,832	226,728	453,457	(156,103)	-	-	23,196,914
Year 26	23,196,914	231,969	463,938	(158,021)	-	-	23,734,801
Year 27	23,734,801	237,348	474,696	(160,498)	-	-	24,286,348
Year 28	24,286,348	242,863	485,727	(163,394)	-	-	24,851,544
Year 29	24,851,544	248,515	497,031	(166,611)	-	-	25,430,480
Year 30	25,430,480	254,305	508,610	(353,024)	-	-	25,840,370

**Schedule 9**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder Children*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Distrib. from Elder LP - Estate Taxes	Distrib. From CLAT	Income Taxes	Estate Taxes	End of Year
Year 1	-	-	-	337,050	1,350,000	-	(337,050)	(1,350,000)	-
Year 2	-	-	-	-	-	-	-	-	-
Year 3	-	-	-	1,246	-	-	(1,246)	-	-
Year 4	-	-	-	3,350	-	-	(3,350)	-	-
Year 5	-	-	-	4,890	-	-	(4,890)	-	-
Year 6	-	-	-	6,036	-	-	(6,036)	-	-
Year 7	-	-	-	6,906	-	-	(6,906)	-	-
Year 8	-	-	-	7,585	-	-	(7,585)	-	-
Year 9	-	-	-	8,131	-	-	(8,131)	-	-
Year 10	-	-	-	8,585	-	-	(8,585)	-	-
Year 11	-	-	-	8,977	-	-	(8,977)	-	-
Year 12	-	-	-	9,327	-	-	(9,327)	-	-
Year 13	-	-	-	9,649	-	-	(9,649)	-	-
Year 14	-	-	-	9,954	-	-	(9,954)	-	-
Year 15	-	-	-	10,249	-	-	(10,249)	-	-
Year 16	-	-	-	10,539	-	-	(10,539)	-	-
Year 17	-	-	-	10,827	-	-	(10,827)	-	-
Year 18	-	-	-	11,116	-	-	(11,116)	-	-
Year 19	-	-	-	11,408	-	-	(11,408)	-	-
Year 20	-	-	-	11,705	-	9,000,000	(11,705)	-	9,000,000
Year 21	9,000,000	90,000	180,000	38,757	-	-	(79,869)	-	9,228,888
Year 22	9,228,888	92,289	184,578	37,935	-	-	(86,160)	-	9,457,530
Year 23	9,457,530	94,575	189,151	37,609	-	-	(91,279)	-	9,687,586
Year 24	9,687,586	96,876	193,752	37,636	-	-	(95,592)	-	9,920,258
Year 25	9,920,258	99,203	198,405	37,917	-	-	(99,356)	-	10,156,428
Year 26	10,156,428	101,564	203,129	38,383	-	-	(102,751)	-	10,396,753
Year 27	10,396,753	103,968	207,935	38,985	-	-	(105,905)	-	10,641,736
Year 28	10,641,736	106,417	212,835	39,688	-	-	(108,907)	-	10,891,768
Year 29	10,891,768	108,918	217,835	40,470	-	-	(111,822)	-	11,147,169
Year 30	11,147,169	111,472	222,943	85,750	-	-	(236,589)	-	11,330,745



**Schedule 9**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder GST Trust*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Distrib. from Elder LP - Estate Taxes	Distrib. From CLAT	Income Taxes	Estate Taxes	End of Year
Year 1	-	-	-	577,800	-	-	(577,800)	-	-
Year 2	-	-	-	-	-	-	-	-	-
Year 3	-	-	-	3,885	-	-	(3,885)	-	-
Year 4	-	-	-	10,443	-	-	(10,443)	-	-
Year 5	-	-	-	15,243	-	-	(15,243)	-	-
Year 6	-	-	-	18,813	-	-	(18,813)	-	-
Year 7	-	-	-	21,526	-	-	(21,526)	-	-
Year 8	-	-	-	23,641	-	-	(23,641)	-	-
Year 9	-	-	-	25,342	-	-	(25,342)	-	-
Year 10	-	-	-	26,759	-	-	(26,759)	-	-
Year 11	-	-	-	27,980	-	-	(27,980)	-	-
Year 12	-	-	-	29,071	-	-	(29,071)	-	-
Year 13	-	-	-	30,076	-	-	(30,076)	-	-
Year 14	-	-	-	31,027	-	-	(31,027)	-	-
Year 15	-	-	-	31,946	-	-	(31,946)	-	-
Year 16	-	-	-	32,848	-	-	(32,848)	-	-
Year 17	-	-	-	33,747	-	-	(33,747)	-	-
Year 18	-	-	-	34,648	-	-	(34,648)	-	-
Year 19	-	-	-	35,559	-	-	(35,559)	-	-
Year 20	-	-	-	36,483	-	-	(36,483)	-	-
Year 21	-	-	-	120,802	-	-	(120,802)	-	-
Year 22	-	-	-	118,241	-	-	(118,241)	-	-
Year 23	-	-	-	117,224	-	-	(117,224)	-	-
Year 24	-	-	-	117,309	-	-	(117,309)	-	-
Year 25	-	-	-	118,185	-	-	(118,185)	-	-
Year 26	-	-	-	119,637	-	-	(119,637)	-	-
Year 27	-	-	-	121,513	-	-	(121,513)	-	-
Year 28	-	-	-	123,705	-	-	(123,705)	-	-
Year 29	-	-	-	126,141	-	-	(126,141)	-	-
Year 30	-	-	-	267,275	-	-	(267,275)	-	-

**Schedule 9**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Charitable Lead Annuity Trust*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Note Payment Received	Annuity Payment to Charity	Income Taxes	Distrib. To Elder Family Remaindermen	End of Year
Year 1	-	-	-	1,011,150	571,886	(571,886)	(1,011,150)	-	-
Year 2	-	-	-	-	571,886	(571,886)	-	-	-
Year 3	-	-	-	-	571,886	(571,886)	-	-	-
Year 4	-	-	-	-	571,886	(571,886)	-	-	-
Year 5	-	-	-	-	571,886	(571,886)	-	-	-
Year 6	-	-	-	-	571,886	(571,886)	-	-	-
Year 7	-	-	-	-	571,886	(571,886)	-	-	-
Year 8	-	-	-	-	571,886	(571,886)	-	-	-
Year 9	-	-	-	-	571,886	(571,886)	-	-	-
Year 10	-	-	-	-	571,886	(571,886)	-	-	-
Year 11	-	-	-	-	571,886	(571,886)	-	-	-
Year 12	-	-	-	-	571,886	(571,886)	-	-	-
Year 13	-	-	-	-	571,886	(571,886)	-	-	-
Year 14	-	-	-	-	571,886	(571,886)	-	-	-
Year 15	-	-	-	-	571,886	(571,886)	-	-	-
Year 16	-	-	-	-	571,886	(571,886)	-	-	-
Year 17	-	-	-	-	571,886	(571,886)	-	-	-
Year 18	-	-	-	-	571,886	(571,886)	-	-	-
Year 19	-	-	-	-	571,886	(571,886)	-	-	-
Year 20	-	-	-	-	9,571,886	(571,886)	-	(9,000,000)	-

**Schedule 9**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

**Charity**

	Beg. of Year	Income	Growth	Annuity Payment Received	End of Year
Year 1	-	-	-	571,886	571,886
Year 2	571,886	5,719	11,438	571,886	1,160,929
Year 3	1,160,929	11,609	23,219	571,886	1,767,642
Year 4	1,767,642	17,676	35,353	571,886	2,392,558
Year 5	2,392,558	23,926	47,851	571,886	3,036,220
Year 6	3,036,220	30,362	60,724	571,886	3,699,193
Year 7	3,699,193	36,992	73,984	571,886	4,382,055
Year 8	4,382,055	43,821	87,641	571,886	5,085,402
Year 9	5,085,402	50,854	101,708	571,886	5,809,851
Year 10	5,809,851	58,099	116,197	571,886	6,556,032
Year 11	6,556,032	65,560	131,121	571,886	7,324,599
Year 12	7,324,599	73,246	146,492	571,886	8,116,223
Year 13	8,116,223	81,162	162,324	571,886	8,931,596
Year 14	8,931,596	89,316	178,632	571,886	9,771,430
Year 15	9,771,430	97,714	195,429	571,886	10,636,458
Year 16	10,636,458	106,365	212,729	571,886	11,527,438
Year 17	11,527,438	115,274	230,549	571,886	12,445,147
Year 18	12,445,147	124,451	248,903	571,886	13,390,388
Year 19	13,390,388	133,904	267,808	571,886	14,363,985
Year 20	14,363,985	143,640	287,280	571,886	15,366,791
Year 21	15,366,791	153,668	307,336	-	15,827,795
Year 22	15,827,795	158,278	316,556	-	16,302,629
Year 23	16,302,629	163,026	326,053	-	16,791,707
Year 24	16,791,707	167,917	335,834	-	17,295,459
Year 25	17,295,459	172,955	345,909	-	17,814,322
Year 26	17,814,322	178,143	356,286	-	18,348,752
Year 27	18,348,752	183,488	366,975	-	18,899,215
Year 28	18,899,215	188,992	377,984	-	19,466,191
Year 29	19,466,191	194,662	389,324	-	20,050,177
Year 30	20,050,177	200,502	401,004	-	20,651,682

**Schedule 9**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Note Between Elder LP and CLAT*

	<u>Beg. Balance</u>	<u>Interest</u>	<u>Payment</u>	<u>End of Year Balance</u>
Year 1	9,000,000	571,886	(571,886)	9,000,000
Year 2	9,000,000	571,886	(571,886)	9,000,000
Year 3	9,000,000	571,886	(571,886)	9,000,000
Year 4	9,000,000	571,886	(571,886)	9,000,000
Year 5	9,000,000	571,886	(571,886)	9,000,000
Year 6	9,000,000	571,886	(571,886)	9,000,000
Year 7	9,000,000	571,886	(571,886)	9,000,000
Year 8	9,000,000	571,886	(571,886)	9,000,000
Year 9	9,000,000	571,886	(571,886)	9,000,000
Year 10	9,000,000	571,886	(571,886)	9,000,000
Year 11	9,000,000	571,886	(571,886)	9,000,000
Year 12	9,000,000	571,886	(571,886)	9,000,000
Year 13	9,000,000	571,886	(571,886)	9,000,000
Year 14	9,000,000	571,886	(571,886)	9,000,000
Year 15	9,000,000	571,886	(571,886)	9,000,000
Year 16	9,000,000	571,886	(571,886)	9,000,000
Year 17	9,000,000	571,886	(571,886)	9,000,000
Year 18	9,000,000	571,886	(571,886)	9,000,000
Year 19	9,000,000	571,886	(571,886)	9,000,000
Year 20	9,000,000	571,886	(9,571,886)	-

**Schedule 9**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder LP*

	<u>Beg. of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Distribution - Income Taxes</u>	<u>Distribution - Estate Taxes</u>	<u>Note Payment to CLAT</u>	<u>End of Year</u>
Year 1	28,571,429	285,714	571,429	(2,010,700)	(4,500,000)	(127,086)	22,790,786
Year 2	22,790,786	227,908	455,816	(77,554)	-	(127,086)	23,269,870
Year 3	23,269,870	232,699	465,397	(89,328)	-	(127,086)	23,751,552
Year 4	23,751,552	237,516	475,031	(98,560)	-	(127,086)	24,238,453
Year 5	24,238,453	242,385	484,769	(106,032)	-	(127,086)	24,732,488
Year 6	24,732,488	247,325	494,650	(112,290)	-	(127,086)	25,235,086
Year 7	25,235,086	252,351	504,702	(117,720)	-	(127,086)	25,747,332
Year 8	25,747,332	257,473	514,947	(122,593)	-	(127,086)	26,270,073
Year 9	26,270,073	262,701	525,401	(127,099)	-	(127,086)	26,803,990
Year 10	26,803,990	268,040	536,080	(131,373)	-	(127,086)	27,349,651
Year 11	27,349,651	273,497	546,993	(135,510)	-	(127,086)	27,907,544
Year 12	27,907,544	279,075	558,151	(139,578)	-	(127,086)	28,478,107
Year 13	28,478,107	284,781	569,562	(143,623)	-	(127,086)	29,061,741
Year 14	29,061,741	290,617	581,235	(147,681)	-	(127,086)	29,658,826
Year 15	29,658,826	296,588	593,177	(151,777)	-	(127,086)	30,269,728
Year 16	30,269,728	302,697	605,395	(155,928)	-	(127,086)	30,894,806
Year 17	30,894,806	308,948	617,896	(160,147)	-	(127,086)	31,534,417
Year 18	31,534,417	315,344	630,688	(164,445)	-	(127,086)	32,188,919
Year 19	32,188,919	321,889	643,778	(168,829)	-	(127,086)	32,858,672
Year 20	32,858,672	328,587	657,173	(173,305)	-	(2,127,086)	31,544,041
Year 21	31,544,041	315,440	630,881	(214,558)	-	-	32,275,804
Year 22	32,275,804	322,758	645,516	(218,025)	-	-	33,026,053
Year 23	33,026,053	330,261	660,521	(222,033)	-	-	33,794,802
Year 24	33,794,802	337,948	675,896	(226,456)	-	-	34,582,189
Year 25	34,582,189	345,822	691,644	(231,210)	-	-	35,388,445
Year 26	35,388,445	353,884	707,769	(236,233)	-	-	36,213,866
Year 27	36,213,866	362,139	724,277	(241,485)	-	-	37,058,796
Year 28	37,058,796	370,588	741,176	(246,939)	-	-	37,923,622
Year 29	37,923,622	379,236	758,472	(252,574)	-	-	38,808,756
Year 30	38,808,756	388,088	776,175	(534,821)	-	-	39,438,198

**Schedule 9**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder Children*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Distrib. from Elder LP - Estate Taxes	Distrib. From CLAT	Income Taxes	Estate Taxes	End of Year
Year 1	-	-	-	1,172,908	4,500,000	-	(1,172,908)	(4,500,000)	-
Year 2	-	-	-	40,080	-	-	(40,080)	-	-
Year 3	-	-	-	46,164	-	-	(46,164)	-	-
Year 4	-	-	-	50,936	-	-	(50,936)	-	-
Year 5	-	-	-	54,797	-	-	(54,797)	-	-
Year 6	-	-	-	58,032	-	-	(58,032)	-	-
Year 7	-	-	-	60,838	-	-	(60,838)	-	-
Year 8	-	-	-	63,356	-	-	(63,356)	-	-
Year 9	-	-	-	65,685	-	-	(65,685)	-	-
Year 10	-	-	-	67,894	-	-	(67,894)	-	-
Year 11	-	-	-	70,032	-	-	(70,032)	-	-
Year 12	-	-	-	72,134	-	-	(72,134)	-	-
Year 13	-	-	-	74,224	-	-	(74,224)	-	-
Year 14	-	-	-	76,322	-	-	(76,322)	-	-
Year 15	-	-	-	78,438	-	-	(78,438)	-	-
Year 16	-	-	-	80,583	-	-	(80,583)	-	-
Year 17	-	-	-	82,764	-	-	(82,764)	-	-
Year 18	-	-	-	84,985	-	-	(84,985)	-	-
Year 19	-	-	-	87,251	-	-	(87,251)	-	-
Year 20	-	-	-	89,564	-	2,000,000	(89,564)	-	2,000,000
Year 21	2,000,000	20,000	40,000	110,884	-	-	(120,020)	-	2,050,864
Year 22	2,050,864	20,509	41,017	112,675	-	-	(123,392)	-	2,101,674
Year 23	2,101,674	21,017	42,033	114,747	-	-	(126,673)	-	2,152,797
Year 24	2,152,797	21,528	43,056	117,033	-	-	(129,912)	-	2,204,502
Year 25	2,204,502	22,045	44,090	119,489	-	-	(133,142)	-	2,256,984
Year 26	2,256,984	22,570	45,140	122,085	-	-	(136,389)	-	2,310,390
Year 27	2,310,390	23,104	46,208	124,800	-	-	(139,671)	-	2,364,830
Year 28	2,364,830	23,648	47,297	127,618	-	-	(143,000)	-	2,420,393
Year 29	2,420,393	24,204	48,408	130,530	-	-	(146,387)	-	2,477,149
Year 30	2,477,149	24,771	49,543	276,395	-	-	(309,915)	-	2,517,943

**Schedule 9**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder GST Trust*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Distrib. from Elder LP - Estate Taxes	Distrib. From CLAT	Income Taxes	Estate Taxes	End of Year
Year 1	-	-	-	603,210	-	-	(603,210)	-	-
Year 2	-	-	-	37,474	-	-	(37,474)	-	-
Year 3	-	-	-	43,163	-	-	(43,163)	-	-
Year 4	-	-	-	47,624	-	-	(47,624)	-	-
Year 5	-	-	-	51,235	-	-	(51,235)	-	-
Year 6	-	-	-	54,259	-	-	(54,259)	-	-
Year 7	-	-	-	56,883	-	-	(56,883)	-	-
Year 8	-	-	-	59,237	-	-	(59,237)	-	-
Year 9	-	-	-	61,414	-	-	(61,414)	-	-
Year 10	-	-	-	63,479	-	-	(63,479)	-	-
Year 11	-	-	-	65,479	-	-	(65,479)	-	-
Year 12	-	-	-	67,444	-	-	(67,444)	-	-
Year 13	-	-	-	69,399	-	-	(69,399)	-	-
Year 14	-	-	-	71,360	-	-	(71,360)	-	-
Year 15	-	-	-	73,339	-	-	(73,339)	-	-
Year 16	-	-	-	75,344	-	-	(75,344)	-	-
Year 17	-	-	-	77,383	-	-	(77,383)	-	-
Year 18	-	-	-	79,460	-	-	(79,460)	-	-
Year 19	-	-	-	81,578	-	-	(81,578)	-	-
Year 20	-	-	-	83,741	-	-	(83,741)	-	-
Year 21	-	-	-	103,675	-	-	(103,675)	-	-
Year 22	-	-	-	105,350	-	-	(105,350)	-	-
Year 23	-	-	-	107,286	-	-	(107,286)	-	-
Year 24	-	-	-	109,424	-	-	(109,424)	-	-
Year 25	-	-	-	111,721	-	-	(111,721)	-	-
Year 26	-	-	-	114,148	-	-	(114,148)	-	-
Year 27	-	-	-	116,686	-	-	(116,686)	-	-
Year 28	-	-	-	119,321	-	-	(119,321)	-	-
Year 29	-	-	-	122,044	-	-	(122,044)	-	-
Year 30	-	-	-	258,425	-	-	(258,425)	-	-

**Schedule 9**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Charitable Lead Annuity Trust*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Note Payment Received	Annuity Payment to Charity	Income Taxes	Distrib. To Elder Family Remaindermen	End of Year
Year 1	-	-	-	234,582	127,086	(127,086)	(234,582)	-	-
Year 2	-	-	-	-	127,086	(127,086)	-	-	-
Year 3	-	-	-	-	127,086	(127,086)	-	-	-
Year 4	-	-	-	-	127,086	(127,086)	-	-	-
Year 5	-	-	-	-	127,086	(127,086)	-	-	-
Year 6	-	-	-	-	127,086	(127,086)	-	-	-
Year 7	-	-	-	-	127,086	(127,086)	-	-	-
Year 8	-	-	-	-	127,086	(127,086)	-	-	-
Year 9	-	-	-	-	127,086	(127,086)	-	-	-
Year 10	-	-	-	-	127,086	(127,086)	-	-	-
Year 11	-	-	-	-	127,086	(127,086)	-	-	-
Year 12	-	-	-	-	127,086	(127,086)	-	-	-
Year 13	-	-	-	-	127,086	(127,086)	-	-	-
Year 14	-	-	-	-	127,086	(127,086)	-	-	-
Year 15	-	-	-	-	127,086	(127,086)	-	-	-
Year 16	-	-	-	-	127,086	(127,086)	-	-	-
Year 17	-	-	-	-	127,086	(127,086)	-	-	-
Year 18	-	-	-	-	127,086	(127,086)	-	-	-
Year 19	-	-	-	-	127,086	(127,086)	-	-	-
Year 20	-	-	-	-	2,127,086	(127,086)	-	(2,000,000)	-



**Schedule 9****ELDER FAMILY****CLAT REDEMPTION - \$10 MILLION TO FAMILY****3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

**Charity**

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Annuity Payment Received</b>	<b>End of Year</b>
Year 1	-	-	-	127,086	127,086
Year 2	127,086	1,271	2,542	127,086	257,985
Year 3	257,985	2,580	5,160	127,086	392,810
Year 4	392,810	3,928	7,856	127,086	531,680
Year 5	531,680	5,317	10,634	127,086	674,717
Year 6	674,717	6,747	13,494	127,086	822,044
Year 7	822,044	8,220	16,441	127,086	973,792
Year 8	973,792	9,738	19,476	127,086	1,130,091
Year 9	1,130,091	11,301	22,602	127,086	1,291,080
Year 10	1,291,080	12,911	25,822	127,086	1,456,899
Year 11	1,456,899	14,569	29,138	127,086	1,627,692
Year 12	1,627,692	16,277	32,554	127,086	1,803,608
Year 13	1,803,608	18,036	36,072	127,086	1,984,803
Year 14	1,984,803	19,848	39,696	127,086	2,171,433
Year 15	2,171,433	21,714	43,429	127,086	2,363,662
Year 16	2,363,662	23,637	47,273	127,086	2,561,657
Year 17	2,561,657	25,617	51,233	127,086	2,765,593
Year 18	2,765,593	27,656	55,312	127,086	2,975,647
Year 19	2,975,647	29,756	59,513	127,086	3,192,002
Year 20	3,192,002	31,920	63,840	127,086	3,414,848
Year 21	3,414,848	34,148	68,297	-	3,517,294
Year 22	3,517,294	35,173	70,346	-	3,622,813
Year 23	3,622,813	36,228	72,456	-	3,731,497
Year 24	3,731,497	37,315	74,630	-	3,843,442
Year 25	3,843,442	38,434	76,869	-	3,958,745
Year 26	3,958,745	39,587	79,175	-	4,077,508
Year 27	4,077,508	40,775	81,550	-	4,199,833
Year 28	4,199,833	41,998	83,997	-	4,325,828
Year 29	4,325,828	43,258	86,517	-	4,455,603
Year 30	4,455,603	44,556	89,112	-	4,589,271

**Schedule 9**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**3% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	3.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	1.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	2.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Note Between Elder LP and CLAT*

	<u>Beg. Balance</u>	<u>Interest</u>	<u>Payment</u>	<u>End of Year Balance</u>
Year 1	2,000,000	127,086	(127,086)	2,000,000
Year 2	2,000,000	127,086	(127,086)	2,000,000
Year 3	2,000,000	127,086	(127,086)	2,000,000
Year 4	2,000,000	127,086	(127,086)	2,000,000
Year 5	2,000,000	127,086	(127,086)	2,000,000
Year 6	2,000,000	127,086	(127,086)	2,000,000
Year 7	2,000,000	127,086	(127,086)	2,000,000
Year 8	2,000,000	127,086	(127,086)	2,000,000
Year 9	2,000,000	127,086	(127,086)	2,000,000
Year 10	2,000,000	127,086	(127,086)	2,000,000
Year 11	2,000,000	127,086	(127,086)	2,000,000
Year 12	2,000,000	127,086	(127,086)	2,000,000
Year 13	2,000,000	127,086	(127,086)	2,000,000
Year 14	2,000,000	127,086	(127,086)	2,000,000
Year 15	2,000,000	127,086	(127,086)	2,000,000
Year 16	2,000,000	127,086	(127,086)	2,000,000
Year 17	2,000,000	127,086	(127,086)	2,000,000
Year 18	2,000,000	127,086	(127,086)	2,000,000
Year 19	2,000,000	127,086	(127,086)	2,000,000
Year 20	2,000,000	127,086	(2,127,086)	-

**Schedule 10**  
**ELDER FAMILY**  
**8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Elder LP Discount	40.00%
Gross Proceeds	28,571,429

*Future Values at the end of 30 Years of Annual Compounded Growth at 8%*

	<b>Elder Children's Future Values</b>	<b>Elder GST Trust Future Values</b>	<b>Charity</b>	<b>IRS - Income Taxes</b>	<b>IRS - Investment Opp. Costs</b>	<b>IRS - Estate Taxes</b>	<b>Totals</b>
No Further Planning - No Discount Allowed	74,723,823	55,481,827	-	29,497,788	118,801,049	9,000,000	287,504,487
No Further Planning - Discount Allowed	84,904,303	55,481,827	-	33,691,823	108,026,533	5,400,000	287,504,487
CLAT Redemption - Discount Allowed - \$3 Million to Family	46,374,710	92,379,335	56,500,420	30,013,402	60,886,619	1,350,000	287,504,487
CLAT Redemption - Discount Allowed - \$10 Million to Family	74,166,232	65,866,823	12,555,671	32,874,812	97,540,948	4,500,000	287,504,487

**NO FURTHER PLANNING - NO DISCOUNT ALLOWED**

Elder Children	74,723,823	25.99%
Elder GST Trust	55,481,827	19.30%
Charity	-	0.00%
IRS (income and estate taxes)	38,497,788	13.39%
IRS (investment opportunity costs)	118,801,049	41.32%
Total	287,504,487	100.00%

**NO FURTHER PLANNING - DISCOUNT ALLOWED**

Elder Children	84,904,303	29.53%
Elder GST Trust	55,481,827	19.30%
Charity	-	0.00%
IRS (income and estate taxes)	39,091,823	13.60%
IRS (investment opportunity costs)	108,026,533	37.57%
Total	287,504,487	100.00%

**CLAT REDEMPTION - DISCOUNT ALLOWED - \$3 MILLION TO FAMILY**

Elder Children	46,374,710	16.13%
Elder GST Trust	92,379,335	32.13%
Charity	56,500,420	19.65%
IRS (income and estate taxes)	31,363,402	10.91%
IRS (investment opportunity costs)	60,886,619	21.18%
Total	287,504,487	100.00%

**CLAT REDEMPTION - DISCOUNT ALLOWED - \$10 MILLION TO FAMILY**

Elder Children	74,166,232	25.80%
Elder GST Trust	65,866,823	22.91%
Charity	12,555,671	4.37%
IRS (income and estate taxes)	37,374,812	13.00%
IRS (investment opportunity costs)	97,540,948	33.93%
Total	287,504,487	100.00%

## ELDER FAMILY

## NO FURTHER PLANNING - NO DISCOUNT ALLOWED

## 8% RATE OF RETURN, 30 YEARS

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Estate Tax Rate	45.00%

*Elder Children*

	Beg. of Year	Income	Growth	Income Taxes	Estate Taxes	End of Year
Year 1	20,000,000	400,000	1,200,000	(201,980)	(9,000,000)	12,398,020
Year 2	12,398,020	247,960	743,881	(165,654)	-	13,224,208
Year 3	13,224,208	264,484	793,452	(186,936)	-	14,095,209
Year 4	14,095,209	281,904	845,713	(206,460)	-	15,016,365
Year 5	15,016,365	300,327	900,982	(225,034)	-	15,992,641
Year 6	15,992,641	319,853	959,558	(243,246)	-	17,028,806
Year 7	17,028,806	340,576	1,021,728	(261,531)	-	18,129,579
Year 8	18,129,579	362,592	1,087,775	(280,218)	-	19,299,728
Year 9	19,299,728	385,995	1,157,984	(299,561)	-	20,544,145
Year 10	20,544,145	410,883	1,232,649	(319,762)	-	21,867,915
Year 11	21,867,915	437,358	1,312,075	(340,991)	-	23,276,357
Year 12	23,276,357	465,527	1,396,581	(363,394)	-	24,775,071
Year 13	24,775,071	495,501	1,486,504	(387,104)	-	26,369,973
Year 14	26,369,973	527,399	1,582,198	(412,243)	-	28,067,328
Year 15	28,067,328	561,347	1,684,040	(438,933)	-	29,873,781
Year 16	29,873,781	597,476	1,792,427	(467,293)	-	31,796,391
Year 17	31,796,391	635,928	1,907,783	(497,444)	-	33,842,659
Year 18	33,842,659	676,853	2,030,560	(529,511)	-	36,020,561
Year 19	36,020,561	720,411	2,161,234	(563,626)	-	38,338,580
Year 20	38,338,580	766,772	2,300,315	(599,923)	-	40,805,743
Year 21	40,805,743	816,115	2,448,345	(638,549)	-	43,431,653
Year 22	43,431,653	868,633	2,605,899	(679,654)	-	46,226,532
Year 23	46,226,532	924,531	2,773,592	(723,400)	-	49,201,255
Year 24	49,201,255	984,025	2,952,075	(769,958)	-	52,367,397
Year 25	52,367,397	1,047,348	3,142,044	(819,510)	-	55,737,278
Year 26	55,737,278	1,114,746	3,344,237	(872,250)	-	59,324,011
Year 27	59,324,011	1,186,480	3,559,441	(928,382)	-	63,141,550
Year 28	63,141,550	1,262,831	3,788,493	(988,126)	-	67,204,748
Year 29	67,204,748	1,344,095	4,032,285	(1,051,713)	-	71,529,415
Year 30	71,529,415	1,430,588	4,291,765	(2,527,945)	-	74,723,823

**ELDER FAMILY****NO FURTHER PLANNING - NO DISCOUNT ALLOWED****8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Estate Tax Rate	45.00%

*Elder GST Trust*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Estate Taxes</b>	<b>End of Year</b>
Year 1	8,571,429	171,429	514,286	(86,563)	-	9,170,580
Year 2	9,170,580	183,412	550,235	(109,948)	-	9,794,279
Year 3	9,794,279	195,886	587,657	(129,592)	-	10,448,230
Year 4	10,448,230	208,965	626,894	(146,799)	-	11,137,289
Year 5	11,137,289	222,746	668,237	(162,503)	-	11,865,769
Year 6	11,865,769	237,315	711,946	(177,374)	-	12,637,656
Year 7	12,637,656	252,753	758,259	(191,903)	-	13,456,765
Year 8	13,456,765	269,135	807,406	(206,450)	-	14,326,857
Year 9	14,326,857	286,537	859,611	(221,286)	-	15,251,720
Year 10	15,251,720	305,034	915,103	(236,619)	-	16,235,238
Year 11	16,235,238	324,705	974,114	(252,618)	-	17,281,439
Year 12	17,281,439	345,629	1,036,886	(269,418)	-	18,394,536
Year 13	18,394,536	367,891	1,103,672	(287,140)	-	19,578,959
Year 14	19,578,959	391,579	1,174,738	(305,889)	-	20,839,387
Year 15	20,839,387	416,788	1,250,363	(325,764)	-	22,180,774
Year 16	22,180,774	443,615	1,330,846	(346,862)	-	23,608,374
Year 17	23,608,374	472,167	1,416,502	(369,278)	-	25,127,766
Year 18	25,127,766	502,555	1,507,666	(393,108)	-	26,744,878
Year 19	26,744,878	534,898	1,604,693	(418,453)	-	28,466,016
Year 20	28,466,016	569,320	1,707,961	(445,414)	-	30,297,884
Year 21	30,297,884	605,958	1,817,873	(474,100)	-	32,247,614
Year 22	32,247,614	644,952	1,934,857	(504,625)	-	34,322,798
Year 23	34,322,798	686,456	2,059,368	(537,110)	-	36,531,512
Year 24	36,531,512	730,630	2,191,891	(571,681)	-	38,882,352
Year 25	38,882,352	777,647	2,332,941	(608,475)	-	41,384,464
Year 26	41,384,464	827,689	2,483,068	(647,635)	-	44,047,586
Year 27	44,047,586	880,952	2,642,855	(689,314)	-	46,882,079
Year 28	46,882,079	937,642	2,812,925	(733,674)	-	49,898,972
Year 29	49,898,972	997,979	2,993,938	(780,887)	-	53,110,002
Year 30	53,110,002	1,062,200	3,186,600	(1,876,976)	-	55,481,827

**Schedule 10**  
**ELDER FAMILY**  
**NO FURTHER PLANNING - DISCOUNT ALLOWED**  
**8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Estate Tax Rate	45.00%
Elder LP Discount	40.00%

*Elder Children*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Estate Taxes</b>	<b>End of Year</b>
Year 1	20,000,000	400,000	1,200,000	(2,127,980)	(5,400,000)	14,072,020
Year 2	14,072,020	281,440	844,321	(182,559)	-	15,015,222
Year 3	15,015,222	300,304	900,913	(208,409)	-	16,008,031
Year 4	16,008,031	320,161	960,482	(231,769)	-	17,056,904
Year 5	17,056,904	341,138	1,023,414	(253,704)	-	18,167,753
Year 6	18,167,753	363,355	1,090,065	(274,983)	-	19,346,191
Year 7	19,346,191	386,924	1,160,771	(296,172)	-	20,597,714
Year 8	20,597,714	411,954	1,235,863	(317,697)	-	21,927,834
Year 9	21,927,834	438,557	1,315,670	(339,880)	-	23,342,180
Year 10	23,342,180	466,844	1,400,531	(362,979)	-	24,846,576
Year 11	24,846,576	496,932	1,490,795	(387,203)	-	26,447,099
Year 12	26,447,099	528,942	1,586,826	(412,731)	-	28,150,136
Year 13	28,150,136	563,003	1,689,008	(439,721)	-	29,962,426
Year 14	29,962,426	599,249	1,797,746	(468,322)	-	31,891,098
Year 15	31,891,098	637,822	1,913,466	(498,673)	-	33,943,713
Year 16	33,943,713	678,874	2,036,623	(530,914)	-	36,128,296
Year 17	36,128,296	722,566	2,167,698	(565,186)	-	38,453,374
Year 18	38,453,374	769,067	2,307,202	(601,631)	-	40,928,013
Year 19	40,928,013	818,560	2,455,681	(640,400)	-	43,561,854
Year 20	43,561,854	871,237	2,613,711	(681,647)	-	46,365,155
Year 21	46,365,155	927,303	2,781,909	(725,538)	-	49,348,830
Year 22	49,348,830	986,977	2,960,930	(772,246)	-	52,524,491
Year 23	52,524,491	1,050,490	3,151,469	(821,953)	-	55,904,497
Year 24	55,904,497	1,118,090	3,354,270	(874,856)	-	59,502,001
Year 25	59,502,001	1,190,040	3,570,120	(931,160)	-	63,331,001
Year 26	63,331,001	1,266,620	3,799,860	(991,085)	-	67,406,396
Year 27	67,406,396	1,348,128	4,044,384	(1,054,865)	-	71,744,043
Year 28	71,744,043	1,434,881	4,304,643	(1,122,749)	-	76,360,818
Year 29	76,360,818	1,527,216	4,581,649	(1,195,000)	-	81,274,684
Year 30	81,274,684	1,625,494	4,876,481	(2,872,355)	-	84,904,303

**Schedule 10**  
**ELDER FAMILY**  
**NO FURTHER PLANNING - DISCOUNT ALLOWED**  
**8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Estate Tax Rate	45.00%
Elder LP Discount	40.00%

*Elder GST Trust*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Estate Taxes</b>	<b>End of Year</b>
Year 1	8,571,429	171,429	514,286	(86,563)	-	9,170,580
Year 2	9,170,580	183,412	550,235	(109,948)	-	9,794,279
Year 3	9,794,279	195,886	587,657	(129,592)	-	10,448,230
Year 4	10,448,230	208,965	626,894	(146,799)	-	11,137,289
Year 5	11,137,289	222,746	668,237	(162,503)	-	11,865,769
Year 6	11,865,769	237,315	711,946	(177,374)	-	12,637,656
Year 7	12,637,656	252,753	758,259	(191,903)	-	13,456,765
Year 8	13,456,765	269,135	807,406	(206,450)	-	14,326,857
Year 9	14,326,857	286,537	859,611	(221,286)	-	15,251,720
Year 10	15,251,720	305,034	915,103	(236,619)	-	16,235,238
Year 11	16,235,238	324,705	974,114	(252,618)	-	17,281,439
Year 12	17,281,439	345,629	1,036,886	(269,418)	-	18,394,536
Year 13	18,394,536	367,891	1,103,672	(287,140)	-	19,578,959
Year 14	19,578,959	391,579	1,174,738	(305,889)	-	20,839,387
Year 15	20,839,387	416,788	1,250,363	(325,764)	-	22,180,774
Year 16	22,180,774	443,615	1,330,846	(346,862)	-	23,608,374
Year 17	23,608,374	472,167	1,416,502	(369,278)	-	25,127,766
Year 18	25,127,766	502,555	1,507,666	(393,108)	-	26,744,878
Year 19	26,744,878	534,898	1,604,693	(418,453)	-	28,466,016
Year 20	28,466,016	569,320	1,707,961	(445,414)	-	30,297,884
Year 21	30,297,884	605,958	1,817,873	(474,100)	-	32,247,614
Year 22	32,247,614	644,952	1,934,857	(504,625)	-	34,322,798
Year 23	34,322,798	686,456	2,059,368	(537,110)	-	36,531,512
Year 24	36,531,512	730,630	2,191,891	(571,681)	-	38,882,352
Year 25	38,882,352	777,647	2,332,941	(608,475)	-	41,384,464
Year 26	41,384,464	827,689	2,483,068	(647,635)	-	44,047,586
Year 27	44,047,586	880,952	2,642,855	(689,314)	-	46,882,079
Year 28	46,882,079	937,642	2,812,925	(733,674)	-	49,898,972
Year 29	49,898,972	997,979	2,993,938	(780,887)	-	53,110,002
Year 30	53,110,002	1,062,200	3,186,600	(1,876,976)	-	55,481,827

**Schedule 10**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder LP*

	Beg. of Year	Income	Growth	Distribution - Income Taxes	Distribution - Estate Taxes	Note Payment to CLAT	End of Year
Year 1	28,571,429	571,429	1,714,286	(2,008,469)	(1,350,000)	(571,886)	26,926,788
Year 2	26,926,788	538,536	1,615,607	(130,219)	-	(571,886)	28,378,826
Year 3	28,378,826	567,577	1,702,730	(176,195)	-	(571,886)	29,901,051
Year 4	29,901,051	598,021	1,794,063	(219,626)	-	(571,886)	31,501,623
Year 5	31,501,623	630,032	1,890,097	(259,113)	-	(571,886)	33,190,754
Year 6	33,190,754	663,815	1,991,445	(295,735)	-	(571,886)	34,978,394
Year 7	34,978,394	699,568	2,098,704	(330,898)	-	(571,886)	36,873,881
Year 8	36,873,881	737,478	2,212,433	(365,632)	-	(571,886)	38,886,273
Year 9	38,886,273	777,725	2,333,176	(400,703)	-	(571,886)	41,024,586
Year 10	41,024,586	820,492	2,461,475	(436,691)	-	(571,886)	43,297,976
Year 11	43,297,976	865,960	2,597,879	(474,049)	-	(571,886)	45,715,879
Year 12	45,715,879	914,318	2,742,953	(513,145)	-	(571,886)	48,288,118
Year 13	48,288,118	965,762	2,897,287	(554,286)	-	(571,886)	51,024,996
Year 14	51,024,996	1,020,500	3,061,500	(597,742)	-	(571,886)	53,937,368
Year 15	53,937,368	1,078,747	3,236,242	(643,760)	-	(571,886)	57,036,711
Year 16	57,036,711	1,140,734	3,422,203	(692,574)	-	(571,886)	60,335,188
Year 17	60,335,188	1,206,704	3,620,111	(744,413)	-	(571,886)	63,845,703
Year 18	63,845,703	1,276,914	3,830,742	(799,506)	-	(571,886)	67,581,967
Year 19	67,581,967	1,351,639	4,054,918	(858,086)	-	(571,886)	71,558,553
Year 20	71,558,553	1,431,171	4,293,513	(920,394)	-	(9,571,886)	66,790,957
Year 21	66,790,957	1,335,819	4,007,457	(1,101,957)	-	-	71,032,276
Year 22	71,032,276	1,420,646	4,261,937	(1,151,631)	-	-	75,563,227
Year 23	75,563,227	1,511,265	4,533,794	(1,210,755)	-	-	80,397,531
Year 24	80,397,531	1,607,951	4,823,852	(1,278,095)	-	-	85,551,238
Year 25	85,551,238	1,711,025	5,133,074	(1,352,882)	-	-	91,042,454
Year 26	91,042,454	1,820,849	5,462,547	(1,434,678)	-	-	96,891,172
Year 27	96,891,172	1,937,823	5,813,470	(1,523,288)	-	-	103,119,178
Year 28	103,119,178	2,062,384	6,187,151	(1,618,692)	-	-	109,750,021
Year 29	109,750,021	2,195,000	6,585,001	(1,721,007)	-	-	116,809,015
Year 30	116,809,015	2,336,180	7,008,541	(4,136,387)	-	-	122,017,349



**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

**Elder Children**

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Distrib. from Elder LP - Estate Taxes	Distrib. From CLAT	Income Taxes	Estate Taxes	End of Year
Year 1	-	-	-	351,482	1,350,000	-	(351,482)	(1,350,000)	-
Year 2	-	-	-	31,630	-	-	(31,630)	-	-
Year 3	-	-	-	42,798	-	-	(42,798)	-	-
Year 4	-	-	-	53,347	-	-	(53,347)	-	-
Year 5	-	-	-	62,939	-	-	(62,939)	-	-
Year 6	-	-	-	71,834	-	-	(71,834)	-	-
Year 7	-	-	-	80,375	-	-	(80,375)	-	-
Year 8	-	-	-	88,812	-	-	(88,812)	-	-
Year 9	-	-	-	97,331	-	-	(97,331)	-	-
Year 10	-	-	-	106,072	-	-	(106,072)	-	-
Year 11	-	-	-	115,147	-	-	(115,147)	-	-
Year 12	-	-	-	124,643	-	-	(124,643)	-	-
Year 13	-	-	-	134,636	-	-	(134,636)	-	-
Year 14	-	-	-	145,191	-	-	(145,191)	-	-
Year 15	-	-	-	156,369	-	-	(156,369)	-	-
Year 16	-	-	-	168,226	-	-	(168,226)	-	-
Year 17	-	-	-	180,818	-	-	(180,818)	-	-
Year 18	-	-	-	194,200	-	-	(194,200)	-	-
Year 19	-	-	-	208,429	-	-	(208,429)	-	-
Year 20	-	-	-	223,564	-	9,000,000	(223,564)	-	9,000,000
Year 21	9,000,000	180,000	540,000	267,665	-	-	(358,556)	-	9,629,109
Year 22	9,629,109	192,582	577,747	279,731	-	-	(395,176)	-	10,283,993
Year 23	10,283,993	205,680	617,040	294,092	-	-	(430,164)	-	10,970,641
Year 24	10,970,641	219,413	658,238	310,449	-	-	(464,589)	-	11,694,153
Year 25	11,694,153	233,883	701,649	328,615	-	-	(499,243)	-	12,459,057
Year 26	12,459,057	249,181	747,543	348,483	-	-	(534,727)	-	13,269,539
Year 27	13,269,539	265,391	796,172	370,007	-	-	(571,505)	-	14,129,603
Year 28	14,129,603	282,592	847,776	393,180	-	-	(609,953)	-	15,043,199
Year 29	15,043,199	300,864	902,592	418,033	-	-	(650,383)	-	16,014,305
Year 30	16,014,305	320,286	960,858	1,004,728	-	-	(1,563,482)	-	16,736,696

**ELDER FAMILY  
CLAT REDEMPTION - \$3 MILLION TO FAMILY  
8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder GST Trust*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Distrib. from Elder LP - Estate Taxes	Distrib. From CLAT	Income Taxes	Estate Taxes	End of Year
Year 1	-	-	-	602,541	-	-	(602,541)	-	-
Year 2	-	-	-	98,589	-	-	(98,589)	-	-
Year 3	-	-	-	133,397	-	-	(133,397)	-	-
Year 4	-	-	-	166,279	-	-	(166,279)	-	-
Year 5	-	-	-	196,175	-	-	(196,175)	-	-
Year 6	-	-	-	223,901	-	-	(223,901)	-	-
Year 7	-	-	-	250,523	-	-	(250,523)	-	-
Year 8	-	-	-	276,820	-	-	(276,820)	-	-
Year 9	-	-	-	303,372	-	-	(303,372)	-	-
Year 10	-	-	-	330,619	-	-	(330,619)	-	-
Year 11	-	-	-	358,903	-	-	(358,903)	-	-
Year 12	-	-	-	388,502	-	-	(388,502)	-	-
Year 13	-	-	-	419,650	-	-	(419,650)	-	-
Year 14	-	-	-	452,550	-	-	(452,550)	-	-
Year 15	-	-	-	487,391	-	-	(487,391)	-	-
Year 16	-	-	-	524,348	-	-	(524,348)	-	-
Year 17	-	-	-	563,595	-	-	(563,595)	-	-
Year 18	-	-	-	605,306	-	-	(605,306)	-	-
Year 19	-	-	-	649,657	-	-	(649,657)	-	-
Year 20	-	-	-	696,830	-	-	(696,830)	-	-
Year 21	-	-	-	834,292	-	-	(834,292)	-	-
Year 22	-	-	-	871,900	-	-	(871,900)	-	-
Year 23	-	-	-	916,663	-	-	(916,663)	-	-
Year 24	-	-	-	967,646	-	-	(967,646)	-	-
Year 25	-	-	-	1,024,267	-	-	(1,024,267)	-	-
Year 26	-	-	-	1,086,195	-	-	(1,086,195)	-	-
Year 27	-	-	-	1,153,281	-	-	(1,153,281)	-	-
Year 28	-	-	-	1,225,512	-	-	(1,225,512)	-	-
Year 29	-	-	-	1,302,975	-	-	(1,302,975)	-	-
Year 30	-	-	-	3,131,658	-	-	(3,131,658)	-	-

**Schedule 10**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Charitable Lead Annuity Trust*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Note Payment Received	Annuity Payment to Charity	Income Taxes	Distrib. To Elder Family Remaindermen	End of Year
Year 1	-	-	-	1,054,446	571,886	(571,886)	(1,054,446)	-	-
Year 2	-	-	-	-	571,886	(571,886)	-	-	-
Year 3	-	-	-	-	571,886	(571,886)	-	-	-
Year 4	-	-	-	-	571,886	(571,886)	-	-	-
Year 5	-	-	-	-	571,886	(571,886)	-	-	-
Year 6	-	-	-	-	571,886	(571,886)	-	-	-
Year 7	-	-	-	-	571,886	(571,886)	-	-	-
Year 8	-	-	-	-	571,886	(571,886)	-	-	-
Year 9	-	-	-	-	571,886	(571,886)	-	-	-
Year 10	-	-	-	-	571,886	(571,886)	-	-	-
Year 11	-	-	-	-	571,886	(571,886)	-	-	-
Year 12	-	-	-	-	571,886	(571,886)	-	-	-
Year 13	-	-	-	-	571,886	(571,886)	-	-	-
Year 14	-	-	-	-	571,886	(571,886)	-	-	-
Year 15	-	-	-	-	571,886	(571,886)	-	-	-
Year 16	-	-	-	-	571,886	(571,886)	-	-	-
Year 17	-	-	-	-	571,886	(571,886)	-	-	-
Year 18	-	-	-	-	571,886	(571,886)	-	-	-
Year 19	-	-	-	-	571,886	(571,886)	-	-	-
Year 20	-	-	-	-	9,571,886	(571,886)	-	(9,000,000)	-

**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Charity*

	Beg. of Year	Income	Growth	Annuity Payment Received	End of Year
Year 1	-	-	-	571,886	571,886
Year 2	571,886	11,438	34,313	571,886	1,189,523
Year 3	1,189,523	23,790	71,371	571,886	1,856,571
Year 4	1,856,571	37,131	111,394	571,886	2,576,982
Year 5	2,576,982	51,540	154,619	571,886	3,355,027
Year 6	3,355,027	67,101	201,302	571,886	4,195,315
Year 7	4,195,315	83,906	251,719	571,886	5,102,826
Year 8	5,102,826	102,057	306,170	571,886	6,082,938
Year 9	6,082,938	121,659	364,976	571,886	7,141,460
Year 10	7,141,460	142,829	428,488	571,886	8,284,662
Year 11	8,284,662	165,693	497,080	571,886	9,519,321
Year 12	9,519,321	190,386	571,159	571,886	10,852,753
Year 13	10,852,753	217,055	651,165	571,886	12,292,859
Year 14	12,292,859	245,857	737,572	571,886	13,848,174
Year 15	13,848,174	276,963	830,890	571,886	15,527,914
Year 16	15,527,914	310,558	931,675	571,886	17,342,033
Year 17	17,342,033	346,841	1,040,522	571,886	19,301,282
Year 18	19,301,282	386,026	1,158,077	571,886	21,417,270
Year 19	21,417,270	428,345	1,285,036	571,886	23,702,538
Year 20	23,702,538	474,051	1,422,152	571,886	26,170,627
Year 21	26,170,627	523,413	1,570,238	-	28,264,277
Year 22	28,264,277	565,286	1,695,857	-	30,525,419
Year 23	30,525,419	610,508	1,831,525	-	32,967,453
Year 24	32,967,453	659,349	1,978,047	-	35,604,849
Year 25	35,604,849	712,097	2,136,291	-	38,453,237
Year 26	38,453,237	769,065	2,307,194	-	41,529,496
Year 27	41,529,496	830,590	2,491,770	-	44,851,855
Year 28	44,851,855	897,037	2,691,111	-	48,440,004
Year 29	48,440,004	968,800	2,906,400	-	52,315,204
Year 30	52,315,204	1,046,304	3,138,912	-	56,500,420

**Schedule 10**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Note Between Elder LP and CLAT*

	<u>Beg. Balance</u>	<u>Interest</u>	<u>Payment</u>	<u>End of Year Balance</u>
Year 1	9,000,000	571,886	(571,886)	9,000,000
Year 2	9,000,000	571,886	(571,886)	9,000,000
Year 3	9,000,000	571,886	(571,886)	9,000,000
Year 4	9,000,000	571,886	(571,886)	9,000,000
Year 5	9,000,000	571,886	(571,886)	9,000,000
Year 6	9,000,000	571,886	(571,886)	9,000,000
Year 7	9,000,000	571,886	(571,886)	9,000,000
Year 8	9,000,000	571,886	(571,886)	9,000,000
Year 9	9,000,000	571,886	(571,886)	9,000,000
Year 10	9,000,000	571,886	(571,886)	9,000,000
Year 11	9,000,000	571,886	(571,886)	9,000,000
Year 12	9,000,000	571,886	(571,886)	9,000,000
Year 13	9,000,000	571,886	(571,886)	9,000,000
Year 14	9,000,000	571,886	(571,886)	9,000,000
Year 15	9,000,000	571,886	(571,886)	9,000,000
Year 16	9,000,000	571,886	(571,886)	9,000,000
Year 17	9,000,000	571,886	(571,886)	9,000,000
Year 18	9,000,000	571,886	(571,886)	9,000,000
Year 19	9,000,000	571,886	(571,886)	9,000,000
Year 20	9,000,000	571,886	(9,571,886)	-

**Schedule 10**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder LP*

	<u>Beg. of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Distribution - Income Taxes</u>	<u>Distribution - Estate Taxes</u>	<u>Note Payment to CLAT</u>	<u>End of Year</u>
Year 1	28,571,429	571,429	1,714,286	(2,168,728)	(4,500,000)	(127,086)	24,061,329
Year 2	24,061,329	481,227	1,443,680	(254,961)	-	(127,086)	25,604,188
Year 3	25,604,188	512,084	1,536,251	(301,867)	-	(127,086)	27,223,570
Year 4	27,223,570	544,471	1,633,414	(343,269)	-	(127,086)	28,931,100
Year 5	28,931,100	578,622	1,735,866	(381,322)	-	(127,086)	30,737,180
Year 6	30,737,180	614,744	1,844,231	(417,581)	-	(127,086)	32,651,488
Year 7	32,651,488	653,030	1,959,089	(453,179)	-	(127,086)	34,683,342
Year 8	34,683,342	693,667	2,081,001	(488,956)	-	(127,086)	36,841,968
Year 9	36,841,968	736,839	2,210,518	(525,545)	-	(127,086)	39,136,694
Year 10	39,136,694	782,734	2,348,202	(563,437)	-	(127,086)	41,577,107
Year 11	41,577,107	831,542	2,494,626	(603,026)	-	(127,086)	44,173,163
Year 12	44,173,163	883,463	2,650,390	(644,639)	-	(127,086)	46,935,291
Year 13	46,935,291	938,706	2,816,117	(688,560)	-	(127,086)	49,874,468
Year 14	49,874,468	997,489	2,992,468	(735,048)	-	(127,086)	53,002,292
Year 15	53,002,292	1,060,046	3,180,138	(784,343)	-	(127,086)	56,331,046
Year 16	56,331,046	1,126,621	3,379,863	(836,680)	-	(127,086)	59,873,764
Year 17	59,873,764	1,197,475	3,592,426	(892,294)	-	(127,086)	63,644,285
Year 18	63,644,285	1,272,886	3,818,657	(951,422)	-	(127,086)	67,657,319
Year 19	67,657,319	1,353,146	4,059,439	(1,014,310)	-	(127,086)	71,928,509
Year 20	71,928,509	1,438,570	4,315,711	(1,081,212)	-	(2,127,086)	74,474,491
Year 21	74,474,491	1,489,490	4,468,469	(1,178,013)	-	-	79,254,437
Year 22	79,254,437	1,585,089	4,755,266	(1,249,127)	-	-	84,345,665
Year 23	84,345,665	1,686,913	5,060,740	(1,326,199)	-	-	89,767,120
Year 24	89,767,120	1,795,342	5,386,027	(1,409,205)	-	-	95,539,284
Year 25	95,539,284	1,910,786	5,732,357	(1,498,240)	-	-	101,684,187
Year 26	101,684,187	2,033,684	6,101,051	(1,593,490)	-	-	108,225,433
Year 27	108,225,433	2,164,509	6,493,526	(1,695,211)	-	-	115,188,256
Year 28	115,188,256	2,303,765	6,911,295	(1,803,720)	-	-	122,599,596
Year 29	122,599,596	2,451,992	7,355,976	(1,919,382)	-	-	130,488,181
Year 30	130,488,181	2,609,764	7,829,291	(4,613,446)	-	-	136,313,789

**Schedule 10**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder Children*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Distrib. from Elder LP - Estate Taxes	Distrib. From CLAT	Income Taxes	Estate Taxes	End of Year
Year 1	-	-	-	1,265,092	4,500,000	-	(1,265,092)	(4,500,000)	-
Year 2	-	-	-	131,764	-	-	(131,764)	-	-
Year 3	-	-	-	156,005	-	-	(156,005)	-	-
Year 4	-	-	-	177,402	-	-	(177,402)	-	-
Year 5	-	-	-	197,067	-	-	(197,067)	-	-
Year 6	-	-	-	215,806	-	-	(215,806)	-	-
Year 7	-	-	-	234,203	-	-	(234,203)	-	-
Year 8	-	-	-	252,692	-	-	(252,692)	-	-
Year 9	-	-	-	271,602	-	-	(271,602)	-	-
Year 10	-	-	-	291,184	-	-	(291,184)	-	-
Year 11	-	-	-	311,644	-	-	(311,644)	-	-
Year 12	-	-	-	333,149	-	-	(333,149)	-	-
Year 13	-	-	-	355,848	-	-	(355,848)	-	-
Year 14	-	-	-	379,873	-	-	(379,873)	-	-
Year 15	-	-	-	405,348	-	-	(405,348)	-	-
Year 16	-	-	-	432,396	-	-	(432,396)	-	-
Year 17	-	-	-	461,138	-	-	(461,138)	-	-
Year 18	-	-	-	491,695	-	-	(491,695)	-	-
Year 19	-	-	-	524,195	-	-	(524,195)	-	-
Year 20	-	-	-	558,770	-	2,000,000	(558,770)	-	2,000,000
Year 21	2,000,000	40,000	120,000	608,797	-	-	(628,995)	-	2,139,802
Year 22	2,139,802	42,796	128,388	645,549	-	-	(671,203)	-	2,285,332
Year 23	2,285,332	45,707	137,120	685,379	-	-	(715,618)	-	2,437,920
Year 24	2,437,920	48,758	146,275	728,277	-	-	(762,530)	-	2,598,701
Year 25	2,598,701	51,974	155,922	774,290	-	-	(812,208)	-	2,768,680
Year 26	2,768,680	55,374	166,121	823,515	-	-	(864,903)	-	2,948,787
Year 27	2,948,787	58,976	176,927	876,085	-	-	(920,863)	-	3,139,912
Year 28	3,139,912	62,798	188,395	932,163	-	-	(980,334)	-	3,342,933
Year 29	3,342,933	66,859	200,576	991,937	-	-	(1,043,570)	-	3,558,735
Year 30	3,558,735	71,175	213,524	2,384,229	-	-	(2,508,397)	-	3,719,266

**Schedule 10**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder GST Trust*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Distrib. from Elder LP - Estate Taxes	Distrib. From CLAT	Income Taxes	Estate Taxes	End of Year
Year 1	-	-	-	650,619	-	-	(650,619)	-	-
Year 2	-	-	-	123,197	-	-	(123,197)	-	-
Year 3	-	-	-	145,862	-	-	(145,862)	-	-
Year 4	-	-	-	165,868	-	-	(165,868)	-	-
Year 5	-	-	-	184,255	-	-	(184,255)	-	-
Year 6	-	-	-	201,775	-	-	(201,775)	-	-
Year 7	-	-	-	218,976	-	-	(218,976)	-	-
Year 8	-	-	-	236,263	-	-	(236,263)	-	-
Year 9	-	-	-	253,943	-	-	(253,943)	-	-
Year 10	-	-	-	272,253	-	-	(272,253)	-	-
Year 11	-	-	-	291,382	-	-	(291,382)	-	-
Year 12	-	-	-	311,490	-	-	(311,490)	-	-
Year 13	-	-	-	332,712	-	-	(332,712)	-	-
Year 14	-	-	-	355,175	-	-	(355,175)	-	-
Year 15	-	-	-	378,994	-	-	(378,994)	-	-
Year 16	-	-	-	404,284	-	-	(404,284)	-	-
Year 17	-	-	-	431,157	-	-	(431,157)	-	-
Year 18	-	-	-	459,727	-	-	(459,727)	-	-
Year 19	-	-	-	490,115	-	-	(490,115)	-	-
Year 20	-	-	-	522,442	-	-	(522,442)	-	-
Year 21	-	-	-	569,216	-	-	(569,216)	-	-
Year 22	-	-	-	603,578	-	-	(603,578)	-	-
Year 23	-	-	-	640,819	-	-	(640,819)	-	-
Year 24	-	-	-	680,928	-	-	(680,928)	-	-
Year 25	-	-	-	723,949	-	-	(723,949)	-	-
Year 26	-	-	-	769,974	-	-	(769,974)	-	-
Year 27	-	-	-	819,126	-	-	(819,126)	-	-
Year 28	-	-	-	871,558	-	-	(871,558)	-	-
Year 29	-	-	-	927,446	-	-	(927,446)	-	-
Year 30	-	-	-	2,229,217	-	-	(2,229,217)	-	-



**Schedule 10**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Charitable Lead Annuity Trust*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Note Payment Received	Annuity Payment to Charity	Income Taxes	Distrib. To Elder Family Remaindermen	End of Year
Year 1	-	-	-	253,018	127,086	(127,086)	(253,018)	-	-
Year 2	-	-	-	-	127,086	(127,086)	-	-	-
Year 3	-	-	-	-	127,086	(127,086)	-	-	-
Year 4	-	-	-	-	127,086	(127,086)	-	-	-
Year 5	-	-	-	-	127,086	(127,086)	-	-	-
Year 6	-	-	-	-	127,086	(127,086)	-	-	-
Year 7	-	-	-	-	127,086	(127,086)	-	-	-
Year 8	-	-	-	-	127,086	(127,086)	-	-	-
Year 9	-	-	-	-	127,086	(127,086)	-	-	-
Year 10	-	-	-	-	127,086	(127,086)	-	-	-
Year 11	-	-	-	-	127,086	(127,086)	-	-	-
Year 12	-	-	-	-	127,086	(127,086)	-	-	-
Year 13	-	-	-	-	127,086	(127,086)	-	-	-
Year 14	-	-	-	-	127,086	(127,086)	-	-	-
Year 15	-	-	-	-	127,086	(127,086)	-	-	-
Year 16	-	-	-	-	127,086	(127,086)	-	-	-
Year 17	-	-	-	-	127,086	(127,086)	-	-	-
Year 18	-	-	-	-	127,086	(127,086)	-	-	-
Year 19	-	-	-	-	127,086	(127,086)	-	-	-
Year 20	-	-	-	-	2,127,086	(127,086)	-	(2,000,000)	-

**Schedule 10**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Charity*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth Annuity Payment Received</b>	<b>End of Year</b>
Year 1	-	-	-	127,086
Year 2	127,086	2,542	7,625	127,086
Year 3	264,339	5,287	15,860	127,086
Year 4	412,572	8,251	24,754	127,086
Year 5	572,664	11,453	34,360	127,086
Year 6	745,563	14,911	44,734	127,086
Year 7	932,294	18,646	55,938	127,086
Year 8	1,133,963	22,679	68,038	127,086
Year 9	1,351,766	27,035	81,106	127,086
Year 10	1,586,994	31,740	95,220	127,086
Year 11	1,841,039	36,821	110,462	127,086
Year 12	2,115,408	42,308	126,925	127,086
Year 13	2,411,727	48,235	144,704	127,086
Year 14	2,731,751	54,635	163,905	127,086
Year 15	3,077,377	61,548	184,643	127,086
Year 16	3,450,654	69,013	207,039	127,086
Year 17	3,853,792	77,076	231,228	127,086
Year 18	4,289,181	85,784	257,351	127,086
Year 19	4,759,402	95,188	285,564	127,086
Year 20	5,267,240	105,345	316,034	127,086
Year 21	5,815,705	116,314	348,942	-
Year 22	6,280,961	125,619	376,858	-
Year 23	6,783,438	135,669	407,006	-
Year 24	7,326,113	146,522	439,567	-
Year 25	7,912,202	158,244	474,732	-
Year 26	8,545,179	170,904	512,711	-
Year 27	9,228,793	184,576	553,728	-
Year 28	9,967,096	199,342	598,026	-
Year 29	10,764,464	215,289	645,868	-
Year 30	11,625,621	232,512	697,537	-

**Schedule 10**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**8% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	8.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	6.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Note Between Elder LP and CLAT*

	<u>Beg. Balance</u>	<u>Interest</u>	<u>Payment</u>	<u>End of Year Balance</u>
Year 1	2,000,000	127,086	(127,086)	2,000,000
Year 2	2,000,000	127,086	(127,086)	2,000,000
Year 3	2,000,000	127,086	(127,086)	2,000,000
Year 4	2,000,000	127,086	(127,086)	2,000,000
Year 5	2,000,000	127,086	(127,086)	2,000,000
Year 6	2,000,000	127,086	(127,086)	2,000,000
Year 7	2,000,000	127,086	(127,086)	2,000,000
Year 8	2,000,000	127,086	(127,086)	2,000,000
Year 9	2,000,000	127,086	(127,086)	2,000,000
Year 10	2,000,000	127,086	(127,086)	2,000,000
Year 11	2,000,000	127,086	(127,086)	2,000,000
Year 12	2,000,000	127,086	(127,086)	2,000,000
Year 13	2,000,000	127,086	(127,086)	2,000,000
Year 14	2,000,000	127,086	(127,086)	2,000,000
Year 15	2,000,000	127,086	(127,086)	2,000,000
Year 16	2,000,000	127,086	(127,086)	2,000,000
Year 17	2,000,000	127,086	(127,086)	2,000,000
Year 18	2,000,000	127,086	(127,086)	2,000,000
Year 19	2,000,000	127,086	(127,086)	2,000,000
Year 20	2,000,000	127,086	(2,127,086)	-

**Schedule 11**  
**ELDER FAMILY**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Elder LP Discount	40.00%
Gross Proceeds	28,571,429

*Future Values at the end of 30 Years of Annual Compounded Growth at 10%*

	<b>Elder Children's Future Values</b>	<b>Elder GST Trust Future Values</b>	<b>Charity</b>	<b>IRS - Income Taxes</b>	<b>IRS - Investment Opp. Costs</b>	<b>IRS - Estate Taxes</b>	<b>Totals</b>
No Further Planning - No Discount Allowed	123,192,353	90,396,643	-	48,656,063	227,309,299	9,000,000	498,554,358
No Further Planning - Discount Allowed	139,510,717	90,396,643	-	54,254,602	208,992,396	5,400,000	498,554,358
CLAT Redemption - Discount Allowed - \$3 Million to Family	71,245,398	160,754,913	84,957,439	51,480,571	128,766,037	1,350,000	498,554,358
CLAT Redemption - Discount Allowed - \$10 Million to Family	121,173,406	109,208,237	18,879,464	53,639,178	191,154,073	4,500,000	498,554,358

**NO FURTHER PLANNING - NO DISCOUNT ALLOWED**

Elder Children	123,192,353	24.71%
Elder GST Trust	90,396,643	18.13%
Charity	-	0.00%
IRS (income and estate taxes)	57,656,063	11.56%
IRS (investment opportunity costs)	227,309,299	45.59%
Total	498,554,358	100.00%

**NO FURTHER PLANNING - DISCOUNT ALLOWED**

Elder Children	139,510,717	27.98%
Elder GST Trust	90,396,643	18.13%
Charity	-	0.00%
IRS (income and estate taxes)	59,654,602	11.97%
IRS (investment opportunity costs)	208,992,396	41.92%
Total	498,554,358	100.00%

**CLAT REDEMPTION - DISCOUNT ALLOWED - \$3 MILLION TO FAMILY**

Elder Children	71,245,398	14.29%
Elder GST Trust	160,754,913	32.24%
Charity	84,957,439	17.04%
IRS (income and estate taxes)	52,830,571	10.60%
IRS (investment opportunity costs)	128,766,037	25.83%
Total	498,554,358	100.00%

**CLAT REDEMPTION - DISCOUNT ALLOWED - \$10 MILLION TO FAMILY**

Elder Children	121,173,406	24.30%
Elder GST Trust	109,208,237	21.90%
Charity	18,879,464	3.79%
IRS (income and estate taxes)	58,139,178	11.66%
IRS (investment opportunity costs)	191,154,073	38.34%
Total	498,554,358	100.00%

**Schedule 11**  
**ELDER FAMILY**  
**NO FURTHER PLANNING - NO DISCOUNT ALLOWED**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Estate Tax Rate	45.00%

*Elder Children*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Estate Taxes</b>	<b>End of Year</b>
Year 1	20,000,000	400,000	1,600,000	(221,240)	(9,000,000)	12,778,760
Year 2	12,778,760	255,575	1,022,301	(195,287)	-	13,861,349
Year 3	13,861,349	277,227	1,108,908	(225,540)	-	15,021,944
Year 4	15,021,944	300,439	1,201,756	(254,093)	-	16,270,045
Year 5	16,270,045	325,401	1,301,604	(282,028)	-	17,615,021
Year 6	17,615,021	352,300	1,409,202	(310,162)	-	19,066,361
Year 7	19,066,361	381,327	1,525,309	(339,123)	-	20,633,874
Year 8	20,633,874	412,677	1,650,710	(369,410)	-	22,327,852
Year 9	22,327,852	446,557	1,786,228	(401,438)	-	24,159,199
Year 10	24,159,199	483,184	1,932,736	(435,567)	-	26,139,551
Year 11	26,139,551	522,791	2,091,164	(472,121)	-	28,281,385
Year 12	28,281,385	565,628	2,262,511	(511,407)	-	30,598,116
Year 13	30,598,116	611,962	2,447,849	(553,725)	-	33,104,202
Year 14	33,104,202	662,084	2,648,336	(599,378)	-	35,815,245
Year 15	35,815,245	716,305	2,865,220	(648,676)	-	38,748,094
Year 16	38,748,094	774,962	3,099,848	(701,945)	-	41,920,958
Year 17	41,920,958	838,419	3,353,677	(759,529)	-	45,353,525
Year 18	45,353,525	907,070	3,628,282	(821,796)	-	49,067,081
Year 19	49,067,081	981,342	3,925,366	(889,138)	-	53,084,651
Year 20	53,084,651	1,061,693	4,246,772	(961,978)	-	57,431,138
Year 21	57,431,138	1,148,623	4,594,491	(1,040,769)	-	62,133,483
Year 22	62,133,483	1,242,670	4,970,679	(1,126,004)	-	67,220,827
Year 23	67,220,827	1,344,417	5,377,666	(1,218,212)	-	72,724,698
Year 24	72,724,698	1,454,494	5,817,976	(1,317,965)	-	78,679,202
Year 25	78,679,202	1,573,584	6,294,336	(1,425,884)	-	85,121,239
Year 26	85,121,239	1,702,425	6,809,699	(1,542,636)	-	92,090,727
Year 27	92,090,727	1,841,815	7,367,258	(1,668,946)	-	99,630,854
Year 28	99,630,854	1,992,617	7,970,468	(1,805,597)	-	107,788,342
Year 29	107,788,342	2,155,767	8,623,067	(1,953,435)	-	116,613,741
Year 30	116,613,741	2,332,275	9,329,099	(5,082,762)	-	123,192,353

**Schedule 11**  
**ELDER FAMILY**  
**NO FURTHER PLANNING - NO DISCOUNT ALLOWED**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Estate Tax Rate	45.00%

<i>Elder GST Trust</i>	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Estate Taxes</b>	<b>End of Year</b>
Year 1	8,571,429	171,429	685,714	(94,817)	-	9,333,755
Year 2	9,333,755	186,675	746,700	(126,362)	-	10,140,768
Year 3	10,140,768	202,815	811,261	(153,523)	-	11,001,322
Year 4	11,001,322	220,026	880,106	(177,982)	-	11,923,472
Year 5	11,923,472	238,469	953,878	(200,961)	-	12,914,858
Year 6	12,914,858	258,297	1,033,189	(223,359)	-	13,982,984
Year 7	13,982,984	279,660	1,118,639	(245,850)	-	15,135,432
Year 8	15,135,432	302,709	1,210,835	(268,951)	-	16,380,024
Year 9	16,380,024	327,600	1,310,402	(293,073)	-	17,724,954
Year 10	17,724,954	354,499	1,417,996	(318,555)	-	19,178,895
Year 11	19,178,895	383,578	1,534,312	(345,687)	-	20,751,097
Year 12	20,751,097	415,022	1,660,088	(374,734)	-	22,451,473
Year 13	22,451,473	449,029	1,796,118	(405,941)	-	24,290,679
Year 14	24,290,679	485,814	1,943,254	(439,550)	-	26,280,197
Year 15	26,280,197	525,604	2,102,416	(475,801)	-	28,432,415
Year 16	28,432,415	568,648	2,274,593	(514,944)	-	30,760,713
Year 17	30,760,713	615,214	2,460,857	(557,237)	-	33,279,547
Year 18	33,279,547	665,591	2,662,364	(602,955)	-	36,004,546
Year 19	36,004,546	720,091	2,880,364	(652,389)	-	38,952,611
Year 20	38,952,611	779,052	3,116,209	(705,851)	-	42,142,021
Year 21	42,142,021	842,840	3,371,362	(763,677)	-	45,592,546
Year 22	45,592,546	911,851	3,647,404	(826,228)	-	49,325,573
Year 23	49,325,573	986,511	3,946,046	(893,893)	-	53,364,237
Year 24	53,364,237	1,067,285	4,269,139	(967,094)	-	57,733,566
Year 25	57,733,566	1,154,671	4,618,685	(1,046,286)	-	62,460,637
Year 26	62,460,637	1,249,213	4,996,851	(1,131,958)	-	67,574,743
Year 27	67,574,743	1,351,495	5,405,979	(1,224,644)	-	73,107,574
Year 28	73,107,574	1,462,151	5,848,606	(1,324,917)	-	79,093,414
Year 29	79,093,414	1,581,868	6,327,473	(1,433,399)	-	85,569,357
Year 30	85,569,357	1,711,387	6,845,549	(3,729,649)	-	90,396,643

**Schedule 11**  
**ELDER FAMILY**  
**NO FURTHER PLANNING - DISCOUNT ALLOWED**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Estate Tax Rate	45.00%
Elder LP Discount	40.00%

*Elder Children*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Estate Taxes</b>	<b>End of Year</b>
Year 1	20,000,000	400,000	1,600,000	(2,147,240)	(5,400,000)	14,452,760
Year 2	14,452,760	289,055	1,156,221	(213,804)	-	15,684,232
Year 3	15,684,232	313,685	1,254,739	(250,219)	-	17,002,436
Year 4	17,002,436	340,049	1,360,195	(284,076)	-	18,418,603
Year 5	18,418,603	368,372	1,473,488	(316,788)	-	19,943,675
Year 6	19,943,675	398,874	1,595,494	(349,410)	-	21,588,633
Year 7	21,588,633	431,773	1,727,091	(382,745)	-	23,364,751
Year 8	23,364,751	467,295	1,869,180	(417,424)	-	25,283,802
Year 9	25,283,802	505,676	2,022,704	(453,965)	-	27,358,217
Year 10	27,358,217	547,164	2,188,657	(492,804)	-	29,601,235
Year 11	29,601,235	592,025	2,368,099	(534,335)	-	32,027,023
Year 12	32,027,023	640,540	2,562,162	(578,920)	-	34,650,805
Year 13	34,650,805	693,016	2,772,064	(626,911)	-	37,488,975
Year 14	37,488,975	749,779	2,999,118	(678,658)	-	40,559,214
Year 15	40,559,214	811,184	3,244,737	(734,520)	-	43,880,616
Year 16	43,880,616	877,612	3,510,449	(794,869)	-	47,473,809
Year 17	47,473,809	949,476	3,797,905	(860,098)	-	51,361,092
Year 18	51,361,092	1,027,222	4,108,887	(930,625)	-	55,566,576
Year 19	55,566,576	1,111,332	4,445,326	(1,006,895)	-	60,116,338
Year 20	60,116,338	1,202,327	4,809,307	(1,089,389)	-	65,038,583
Year 21	65,038,583	1,300,772	5,203,087	(1,178,622)	-	70,363,819
Year 22	70,363,819	1,407,276	5,629,106	(1,275,150)	-	76,125,051
Year 23	76,125,051	1,522,501	6,090,004	(1,379,574)	-	82,357,982
Year 24	82,357,982	1,647,160	6,588,639	(1,492,543)	-	89,101,237
Year 25	89,101,237	1,782,025	7,128,099	(1,614,757)	-	96,396,603
Year 26	96,396,603	1,927,932	7,711,728	(1,746,975)	-	104,289,289
Year 27	104,289,289	2,085,786	8,343,143	(1,890,017)	-	112,828,200
Year 28	112,828,200	2,256,564	9,026,256	(2,044,770)	-	122,066,251
Year 29	122,066,251	2,441,325	9,765,300	(2,212,192)	-	132,060,684
Year 30	132,060,684	2,641,214	10,564,855	(5,756,036)	-	139,510,717

**Schedule 11**  
**ELDER FAMILY**  
**NO FURTHER PLANNING - DISCOUNT ALLOWED**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Estate Tax Rate	45.00%
Elder LP Discount	40.00%

*Elder GST Trust*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Income Taxes</b>	<b>Estate Taxes</b>	<b>End of Year</b>
Year 1	8,571,429	171,429	685,714	(94,817)	-	9,333,755
Year 2	9,333,755	186,675	746,700	(126,362)	-	10,140,768
Year 3	10,140,768	202,815	811,261	(153,523)	-	11,001,322
Year 4	11,001,322	220,026	880,106	(177,982)	-	11,923,472
Year 5	11,923,472	238,469	953,878	(200,961)	-	12,914,858
Year 6	12,914,858	258,297	1,033,189	(223,359)	-	13,982,984
Year 7	13,982,984	279,660	1,118,639	(245,850)	-	15,135,432
Year 8	15,135,432	302,709	1,210,835	(268,951)	-	16,380,024
Year 9	16,380,024	327,600	1,310,402	(293,073)	-	17,724,954
Year 10	17,724,954	354,499	1,417,996	(318,555)	-	19,178,895
Year 11	19,178,895	383,578	1,534,312	(345,687)	-	20,751,097
Year 12	20,751,097	415,022	1,660,088	(374,734)	-	22,451,473
Year 13	22,451,473	449,029	1,796,118	(405,941)	-	24,290,679
Year 14	24,290,679	485,814	1,943,254	(439,550)	-	26,280,197
Year 15	26,280,197	525,604	2,102,416	(475,801)	-	28,432,415
Year 16	28,432,415	568,648	2,274,593	(514,944)	-	30,760,713
Year 17	30,760,713	615,214	2,460,857	(557,237)	-	33,279,547
Year 18	33,279,547	665,591	2,662,364	(602,955)	-	36,004,546
Year 19	36,004,546	720,091	2,880,364	(652,389)	-	38,952,611
Year 20	38,952,611	779,052	3,116,209	(705,851)	-	42,142,021
Year 21	42,142,021	842,840	3,371,362	(763,677)	-	45,592,546
Year 22	45,592,546	911,851	3,647,404	(826,228)	-	49,325,573
Year 23	49,325,573	986,511	3,946,046	(893,893)	-	53,364,237
Year 24	53,364,237	1,067,285	4,269,139	(967,094)	-	57,733,566
Year 25	57,733,566	1,154,671	4,618,685	(1,046,286)	-	62,460,637
Year 26	62,460,637	1,249,213	4,996,851	(1,131,958)	-	67,574,743
Year 27	67,574,743	1,351,495	5,405,979	(1,224,644)	-	73,107,574
Year 28	73,107,574	1,462,151	5,848,606	(1,324,917)	-	79,093,414
Year 29	79,093,414	1,581,868	6,327,473	(1,433,399)	-	85,569,357
Year 30	85,569,357	1,711,387	6,845,549	(3,729,649)	-	90,396,643



**Schedule 11**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder LP*

	Beg. of Year	Income	Growth	Distribution - Income Taxes	Distribution - Estate Taxes	Note Payment to CLAT	End of Year
Year 1	28,571,429	571,429	2,285,714	(2,035,984)	(1,350,000)	(571,886)	27,470,702
Year 2	27,470,702	549,414	2,197,656	(179,250)	-	(571,886)	29,466,636
Year 3	29,466,636	589,333	2,357,331	(247,795)	-	(571,886)	31,593,619
Year 4	31,593,619	631,872	2,527,489	(312,378)	-	(571,886)	33,868,717
Year 5	33,868,717	677,374	2,709,497	(372,018)	-	(571,886)	36,311,685
Year 6	36,311,685	726,234	2,904,935	(429,307)	-	(571,886)	38,941,660
Year 7	38,941,660	778,833	3,115,333	(486,173)	-	(571,886)	41,777,767
Year 8	41,777,767	835,555	3,342,221	(544,079)	-	(571,886)	44,839,579
Year 9	44,839,579	896,792	3,587,166	(604,169)	-	(571,886)	48,147,482
Year 10	48,147,482	962,950	3,851,799	(667,371)	-	(571,886)	51,722,973
Year 11	51,722,973	1,034,459	4,137,838	(734,469)	-	(571,886)	55,588,916
Year 12	55,588,916	1,111,778	4,447,113	(806,158)	-	(571,886)	59,769,763
Year 13	59,769,763	1,195,395	4,781,581	(883,077)	-	(571,886)	64,291,777
Year 14	64,291,777	1,285,836	5,143,342	(965,842)	-	(571,886)	69,183,227
Year 15	69,183,227	1,383,665	5,534,658	(1,055,064)	-	(571,886)	74,474,599
Year 16	74,474,599	1,489,492	5,957,968	(1,151,366)	-	(571,886)	80,198,807
Year 17	80,198,807	1,603,976	6,415,905	(1,255,392)	-	(571,886)	86,391,410
Year 18	86,391,410	1,727,828	6,911,313	(1,367,824)	-	(571,886)	93,090,841
Year 19	93,090,841	1,861,817	7,447,267	(1,489,381)	-	(571,886)	100,338,659
Year 20	100,338,659	2,006,773	8,027,093	(1,620,834)	-	(9,571,886)	99,179,805
Year 21	99,179,805	1,983,596	7,934,384	(1,869,617)	-	-	107,228,168
Year 22	107,228,168	2,144,563	8,578,253	(1,994,329)	-	-	115,956,656
Year 23	115,956,656	2,319,133	9,276,532	(2,137,562)	-	-	125,414,759
Year 24	125,414,759	2,508,295	10,033,181	(2,298,399)	-	-	135,657,837
Year 25	135,657,837	2,713,157	10,852,627	(2,476,558)	-	-	146,747,063
Year 26	146,747,063	2,934,941	11,739,765	(2,672,241)	-	-	158,749,528
Year 27	158,749,528	3,174,991	12,699,962	(2,886,024)	-	-	171,738,457
Year 28	171,738,457	3,434,769	13,739,077	(3,118,779)	-	-	185,793,524
Year 29	185,793,524	3,715,870	14,863,482	(3,371,629)	-	-	201,001,247
Year 30	201,001,247	4,020,025	16,080,100	(8,771,543)	-	-	212,329,829

**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

**Elder Children**

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Distrib. from Elder LP - Estate Taxes	Distrib. From CLAT	Income Taxes	Estate Taxes	End of Year
Year 1	-	-	-	356,297	1,350,000	-	(356,297)	(1,350,000)	-
Year 2	-	-	-	43,540	-	-	(43,540)	-	-
Year 3	-	-	-	60,189	-	-	(60,189)	-	-
Year 4	-	-	-	75,877	-	-	(75,877)	-	-
Year 5	-	-	-	90,363	-	-	(90,363)	-	-
Year 6	-	-	-	104,279	-	-	(104,279)	-	-
Year 7	-	-	-	118,091	-	-	(118,091)	-	-
Year 8	-	-	-	132,157	-	-	(132,157)	-	-
Year 9	-	-	-	146,753	-	-	(146,753)	-	-
Year 10	-	-	-	162,104	-	-	(162,104)	-	-
Year 11	-	-	-	178,403	-	-	(178,403)	-	-
Year 12	-	-	-	195,816	-	-	(195,816)	-	-
Year 13	-	-	-	214,499	-	-	(214,499)	-	-
Year 14	-	-	-	234,603	-	-	(234,603)	-	-
Year 15	-	-	-	256,275	-	-	(256,275)	-	-
Year 16	-	-	-	279,667	-	-	(279,667)	-	-
Year 17	-	-	-	304,935	-	-	(304,935)	-	-
Year 18	-	-	-	332,244	-	-	(332,244)	-	-
Year 19	-	-	-	361,771	-	-	(361,771)	-	-
Year 20	-	-	-	393,700	-	9,000,000	(393,700)	-	9,000,000
Year 21	9,000,000	180,000	720,000	454,130	-	-	(553,688)	-	9,800,442
Year 22	9,800,442	196,009	784,035	484,423	-	-	(617,103)	-	10,647,806
Year 23	10,647,806	212,956	851,825	519,214	-	-	(680,413)	-	11,551,388
Year 24	11,551,388	231,028	924,111	558,281	-	-	(745,162)	-	12,519,645
Year 25	12,519,645	250,393	1,001,572	601,556	-	-	(812,565)	-	13,560,600
Year 26	13,560,600	271,212	1,084,848	649,087	-	-	(883,615)	-	14,682,133
Year 27	14,682,133	293,643	1,174,571	701,015	-	-	(959,158)	-	15,892,203
Year 28	15,892,203	317,844	1,271,376	757,551	-	-	(1,039,950)	-	17,199,025
Year 29	17,199,025	343,981	1,375,922	818,969	-	-	(1,126,695)	-	18,611,201
Year 30	18,611,201	372,224	1,488,896	2,130,608	-	-	(2,932,446)	-	19,670,482

**ELDER FAMILY  
CLAT REDEMPTION - \$3 MILLION TO FAMILY  
10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder GST Trust*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Distrib. from Elder LP - Estate Taxes	Distrib. From CLAT	Income Taxes	Estate Taxes	End of Year
Year 1	-	-	-	610,795	-	-	(610,795)	-	-
Year 2	-	-	-	135,710	-	-	(135,710)	-	-
Year 3	-	-	-	187,606	-	-	(187,606)	-	-
Year 4	-	-	-	236,501	-	-	(236,501)	-	-
Year 5	-	-	-	281,654	-	-	(281,654)	-	-
Year 6	-	-	-	325,029	-	-	(325,029)	-	-
Year 7	-	-	-	368,082	-	-	(368,082)	-	-
Year 8	-	-	-	411,922	-	-	(411,922)	-	-
Year 9	-	-	-	457,416	-	-	(457,416)	-	-
Year 10	-	-	-	505,266	-	-	(505,266)	-	-
Year 11	-	-	-	556,067	-	-	(556,067)	-	-
Year 12	-	-	-	610,342	-	-	(610,342)	-	-
Year 13	-	-	-	668,577	-	-	(668,577)	-	-
Year 14	-	-	-	731,239	-	-	(731,239)	-	-
Year 15	-	-	-	798,789	-	-	(798,789)	-	-
Year 16	-	-	-	871,699	-	-	(871,699)	-	-
Year 17	-	-	-	950,458	-	-	(950,458)	-	-
Year 18	-	-	-	1,035,579	-	-	(1,035,579)	-	-
Year 19	-	-	-	1,127,610	-	-	(1,127,610)	-	-
Year 20	-	-	-	1,227,133	-	-	(1,227,133)	-	-
Year 21	-	-	-	1,415,487	-	-	(1,415,487)	-	-
Year 22	-	-	-	1,509,907	-	-	(1,509,907)	-	-
Year 23	-	-	-	1,618,349	-	-	(1,618,349)	-	-
Year 24	-	-	-	1,740,118	-	-	(1,740,118)	-	-
Year 25	-	-	-	1,875,002	-	-	(1,875,002)	-	-
Year 26	-	-	-	2,023,154	-	-	(2,023,154)	-	-
Year 27	-	-	-	2,185,009	-	-	(2,185,009)	-	-
Year 28	-	-	-	2,361,227	-	-	(2,361,227)	-	-
Year 29	-	-	-	2,552,660	-	-	(2,552,660)	-	-
Year 30	-	-	-	6,640,935	-	-	(6,640,935)	-	-

**Schedule 11**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Charitable Lead Annuity Trust*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Note Payment Received	Annuity Payment to Charity	Income Taxes	Distrib. To Elder Family Remaindermen	End of Year
Year 1	-	-	-	1,068,891	571,886	(571,886)	(1,068,891)	-	-
Year 2	-	-	-	-	571,886	(571,886)	-	-	-
Year 3	-	-	-	-	571,886	(571,886)	-	-	-
Year 4	-	-	-	-	571,886	(571,886)	-	-	-
Year 5	-	-	-	-	571,886	(571,886)	-	-	-
Year 6	-	-	-	-	571,886	(571,886)	-	-	-
Year 7	-	-	-	-	571,886	(571,886)	-	-	-
Year 8	-	-	-	-	571,886	(571,886)	-	-	-
Year 9	-	-	-	-	571,886	(571,886)	-	-	-
Year 10	-	-	-	-	571,886	(571,886)	-	-	-
Year 11	-	-	-	-	571,886	(571,886)	-	-	-
Year 12	-	-	-	-	571,886	(571,886)	-	-	-
Year 13	-	-	-	-	571,886	(571,886)	-	-	-
Year 14	-	-	-	-	571,886	(571,886)	-	-	-
Year 15	-	-	-	-	571,886	(571,886)	-	-	-
Year 16	-	-	-	-	571,886	(571,886)	-	-	-
Year 17	-	-	-	-	571,886	(571,886)	-	-	-
Year 18	-	-	-	-	571,886	(571,886)	-	-	-
Year 19	-	-	-	-	571,886	(571,886)	-	-	-
Year 20	-	-	-	-	9,571,886	(571,886)	-	(9,000,000)	-

**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Charity*

	Beg. of Year	Income	Growth	Annuity Payment Received	End of Year
Year 1	-	-	-	571,886	571,886
Year 2	571,886	11,438	45,751	571,886	1,200,961
Year 3	1,200,961	24,019	96,077	571,886	1,892,943
Year 4	1,892,943	37,859	151,435	571,886	2,654,123
Year 5	2,654,123	53,082	212,330	571,886	3,491,421
Year 6	3,491,421	69,828	279,314	571,886	4,412,449
Year 7	4,412,449	88,249	352,996	571,886	5,425,580
Year 8	5,425,580	108,512	434,046	571,886	6,540,024
Year 9	6,540,024	130,800	523,202	571,886	7,765,913
Year 10	7,765,913	155,318	621,273	571,886	9,114,390
Year 11	9,114,390	182,288	729,151	571,886	10,597,715
Year 12	10,597,715	211,954	847,817	571,886	12,229,373
Year 13	12,229,373	244,587	978,350	571,886	14,024,196
Year 14	14,024,196	280,484	1,121,936	571,886	15,998,501
Year 15	15,998,501	319,970	1,279,880	571,886	18,170,237
Year 16	18,170,237	363,405	1,453,619	571,886	20,559,147
Year 17	20,559,147	411,183	1,644,732	571,886	23,186,948
Year 18	23,186,948	463,739	1,854,956	571,886	26,077,529
Year 19	26,077,529	521,551	2,086,202	571,886	29,257,168
Year 20	29,257,168	585,143	2,340,573	571,886	32,754,770
Year 21	32,754,770	655,095	2,620,382	-	36,030,247
Year 22	36,030,247	720,605	2,882,420	-	39,633,272
Year 23	39,633,272	792,665	3,170,662	-	43,596,599
Year 24	43,596,599	871,932	3,487,728	-	47,956,259
Year 25	47,956,259	959,125	3,836,501	-	52,751,885
Year 26	52,751,885	1,055,038	4,220,151	-	58,027,074
Year 27	58,027,074	1,160,541	4,642,166	-	63,829,781
Year 28	63,829,781	1,276,596	5,106,382	-	70,212,759
Year 29	70,212,759	1,404,255	5,617,021	-	77,234,035
Year 30	77,234,035	1,544,681	6,178,723	-	84,957,439

**Schedule 11**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$3 MILLION TO FAMILY**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains	
Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	571,886
Elder Children's Ownership of Elder LP in Year 1	17.50%
CLAT Ownership of Elder LP in Year 1	52.50%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Note Between Elder LP and CLAT*

	<u>Beg. Balance</u>	<u>Interest</u>	<u>Payment</u>	<u>End of Year Balance</u>
Year 1	9,000,000	571,886	(571,886)	9,000,000
Year 2	9,000,000	571,886	(571,886)	9,000,000
Year 3	9,000,000	571,886	(571,886)	9,000,000
Year 4	9,000,000	571,886	(571,886)	9,000,000
Year 5	9,000,000	571,886	(571,886)	9,000,000
Year 6	9,000,000	571,886	(571,886)	9,000,000
Year 7	9,000,000	571,886	(571,886)	9,000,000
Year 8	9,000,000	571,886	(571,886)	9,000,000
Year 9	9,000,000	571,886	(571,886)	9,000,000
Year 10	9,000,000	571,886	(571,886)	9,000,000
Year 11	9,000,000	571,886	(571,886)	9,000,000
Year 12	9,000,000	571,886	(571,886)	9,000,000
Year 13	9,000,000	571,886	(571,886)	9,000,000
Year 14	9,000,000	571,886	(571,886)	9,000,000
Year 15	9,000,000	571,886	(571,886)	9,000,000
Year 16	9,000,000	571,886	(571,886)	9,000,000
Year 17	9,000,000	571,886	(571,886)	9,000,000
Year 18	9,000,000	571,886	(571,886)	9,000,000
Year 19	9,000,000	571,886	(571,886)	9,000,000
Year 20	9,000,000	571,886	(9,571,886)	-

**Schedule 11**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder LP*

	Beg. of Year	Income	Growth	Distribution - Income Taxes	Distribution - Estate Taxes	Note Payment to CLAT	End of Year
Year 1	28,571,429	571,429	2,285,714	(2,196,243)	(4,500,000)	(127,086)	24,605,243
Year 2	24,605,243	492,105	1,968,419	(303,409)	-	(127,086)	26,635,273
Year 3	26,635,273	532,705	2,130,822	(369,098)	-	(127,086)	28,802,616
Year 4	28,802,616	576,052	2,304,209	(428,811)	-	(127,086)	31,126,980
Year 5	31,126,980	622,540	2,490,158	(485,383)	-	(127,086)	33,627,209
Year 6	33,627,209	672,544	2,690,177	(540,910)	-	(127,086)	36,321,934
Year 7	36,321,934	726,439	2,905,755	(596,969)	-	(127,086)	39,230,072
Year 8	39,230,072	784,601	3,138,406	(654,781)	-	(127,086)	42,371,213
Year 9	42,371,213	847,424	3,389,697	(715,318)	-	(127,086)	45,765,930
Year 10	45,765,930	915,319	3,661,274	(779,394)	-	(127,086)	49,436,043
Year 11	49,436,043	988,721	3,954,883	(847,712)	-	(127,086)	53,404,849
Year 12	53,404,849	1,068,097	4,272,388	(920,915)	-	(127,086)	57,697,334
Year 13	57,697,334	1,153,947	4,615,787	(999,610)	-	(127,086)	62,340,371
Year 14	62,340,371	1,246,807	4,987,230	(1,084,393)	-	(127,086)	67,362,929
Year 15	67,362,929	1,347,259	5,389,034	(1,175,868)	-	(127,086)	72,796,268
Year 16	72,796,268	1,455,925	5,823,701	(1,274,655)	-	(127,086)	78,674,155
Year 17	78,674,155	1,573,483	6,293,932	(1,381,405)	-	(127,086)	85,033,079
Year 18	85,033,079	1,700,662	6,802,646	(1,496,806)	-	(127,086)	91,912,495
Year 19	91,912,495	1,838,250	7,353,000	(1,621,594)	-	(127,086)	99,355,064
Year 20	99,355,064	1,987,101	7,948,405	(1,756,555)	-	(2,127,086)	105,406,930
Year 21	105,406,930	2,108,139	8,432,554	(1,926,225)	-	-	114,021,398
Year 22	114,021,398	2,280,428	9,121,712	(2,077,673)	-	-	123,345,864
Year 23	123,345,864	2,466,917	9,867,669	(2,243,357)	-	-	133,437,093
Year 24	133,437,093	2,668,742	10,674,967	(2,423,905)	-	-	144,356,897
Year 25	144,356,897	2,887,138	11,548,552	(2,620,152)	-	-	156,172,435
Year 26	156,172,435	3,123,449	12,493,795	(2,833,117)	-	-	168,956,562
Year 27	168,956,562	3,379,131	13,516,525	(3,063,977)	-	-	182,788,241
Year 28	182,788,241	3,655,765	14,623,059	(3,314,064)	-	-	197,753,001
Year 29	197,753,001	3,955,060	15,820,240	(3,584,856)	-	-	213,943,445
Year 30	213,943,445	4,278,869	17,115,476	(9,327,365)	-	-	226,010,425

**Schedule 11**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder Children*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Distrib. from Elder LP - Estate Taxes	Distrib. From CLAT	Income Taxes	Estate Taxes	End of Year
Year 1	-	-	-	1,281,142	4,500,000	-	(1,281,142)	(4,500,000)	-
Year 2	-	-	-	156,802	-	-	(156,802)	-	-
Year 3	-	-	-	190,750	-	-	(190,750)	-	-
Year 4	-	-	-	221,609	-	-	(221,609)	-	-
Year 5	-	-	-	250,846	-	-	(250,846)	-	-
Year 6	-	-	-	279,542	-	-	(279,542)	-	-
Year 7	-	-	-	308,514	-	-	(308,514)	-	-
Year 8	-	-	-	338,391	-	-	(338,391)	-	-
Year 9	-	-	-	369,676	-	-	(369,676)	-	-
Year 10	-	-	-	402,791	-	-	(402,791)	-	-
Year 11	-	-	-	438,098	-	-	(438,098)	-	-
Year 12	-	-	-	475,929	-	-	(475,929)	-	-
Year 13	-	-	-	516,598	-	-	(516,598)	-	-
Year 14	-	-	-	560,414	-	-	(560,414)	-	-
Year 15	-	-	-	607,688	-	-	(607,688)	-	-
Year 16	-	-	-	658,742	-	-	(658,742)	-	-
Year 17	-	-	-	713,910	-	-	(713,910)	-	-
Year 18	-	-	-	773,550	-	-	(773,550)	-	-
Year 19	-	-	-	838,040	-	-	(838,040)	-	-
Year 20	-	-	-	907,788	-	2,000,000	(907,788)	-	2,000,000
Year 21	2,000,000	40,000	160,000	995,473	-	-	(1,017,597)	-	2,177,876
Year 22	2,177,876	43,558	174,230	1,073,742	-	-	(1,103,226)	-	2,366,179
Year 23	2,366,179	47,324	189,294	1,159,367	-	-	(1,195,189)	-	2,566,975
Year 24	2,566,975	51,340	205,358	1,252,674	-	-	(1,294,203)	-	2,782,144
Year 25	2,782,144	55,643	222,571	1,354,095	-	-	(1,400,986)	-	3,013,467
Year 26	3,013,467	60,269	241,077	1,464,155	-	-	(1,516,272)	-	3,262,696
Year 27	3,262,696	65,254	261,016	1,583,463	-	-	(1,640,828)	-	3,531,601
Year 28	3,531,601	70,632	282,528	1,712,708	-	-	(1,775,463)	-	3,822,006
Year 29	3,822,006	76,440	305,760	1,852,654	-	-	(1,921,037)	-	4,135,823
Year 30	4,135,823	82,716	330,866	4,820,382	-	-	(4,998,569)	-	4,371,219



**Schedule 11**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Elder GST Trust*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Distrib. from Elder LP - Estate Taxes	Distrib. From CLAT	Income Taxes	Estate Taxes	End of Year
Year 1	-	-	-	658,873	-	-	(658,873)	-	-
Year 2	-	-	-	146,607	-	-	(146,607)	-	-
Year 3	-	-	-	178,348	-	-	(178,348)	-	-
Year 4	-	-	-	207,201	-	-	(207,201)	-	-
Year 5	-	-	-	234,537	-	-	(234,537)	-	-
Year 6	-	-	-	261,368	-	-	(261,368)	-	-
Year 7	-	-	-	288,456	-	-	(288,456)	-	-
Year 8	-	-	-	316,390	-	-	(316,390)	-	-
Year 9	-	-	-	345,642	-	-	(345,642)	-	-
Year 10	-	-	-	376,603	-	-	(376,603)	-	-
Year 11	-	-	-	409,614	-	-	(409,614)	-	-
Year 12	-	-	-	444,986	-	-	(444,986)	-	-
Year 13	-	-	-	483,011	-	-	(483,011)	-	-
Year 14	-	-	-	523,979	-	-	(523,979)	-	-
Year 15	-	-	-	568,179	-	-	(568,179)	-	-
Year 16	-	-	-	615,913	-	-	(615,913)	-	-
Year 17	-	-	-	667,495	-	-	(667,495)	-	-
Year 18	-	-	-	723,257	-	-	(723,257)	-	-
Year 19	-	-	-	783,554	-	-	(783,554)	-	-
Year 20	-	-	-	848,767	-	-	(848,767)	-	-
Year 21	-	-	-	930,752	-	-	(930,752)	-	-
Year 22	-	-	-	1,003,932	-	-	(1,003,932)	-	-
Year 23	-	-	-	1,083,990	-	-	(1,083,990)	-	-
Year 24	-	-	-	1,171,231	-	-	(1,171,231)	-	-
Year 25	-	-	-	1,266,058	-	-	(1,266,058)	-	-
Year 26	-	-	-	1,368,962	-	-	(1,368,962)	-	-
Year 27	-	-	-	1,480,514	-	-	(1,480,514)	-	-
Year 28	-	-	-	1,601,356	-	-	(1,601,356)	-	-
Year 29	-	-	-	1,732,202	-	-	(1,732,202)	-	-
Year 30	-	-	-	4,506,983	-	-	(4,506,983)	-	-

**Schedule 11**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Charitable Lead Annuity Trust*

	Beg. of Year	Income	Growth	Distrib. from Elder LP - Income Taxes	Note Payment Received	Annuity Payment to Charity	Income Taxes	Distrib. To Elder Family Remaindermen	End of Year
Year 1	-	-	-	256,228	127,086	(127,086)	(256,228)	-	-
Year 2	-	-	-	-	127,086	(127,086)	-	-	-
Year 3	-	-	-	-	127,086	(127,086)	-	-	-
Year 4	-	-	-	-	127,086	(127,086)	-	-	-
Year 5	-	-	-	-	127,086	(127,086)	-	-	-
Year 6	-	-	-	-	127,086	(127,086)	-	-	-
Year 7	-	-	-	-	127,086	(127,086)	-	-	-
Year 8	-	-	-	-	127,086	(127,086)	-	-	-
Year 9	-	-	-	-	127,086	(127,086)	-	-	-
Year 10	-	-	-	-	127,086	(127,086)	-	-	-
Year 11	-	-	-	-	127,086	(127,086)	-	-	-
Year 12	-	-	-	-	127,086	(127,086)	-	-	-
Year 13	-	-	-	-	127,086	(127,086)	-	-	-
Year 14	-	-	-	-	127,086	(127,086)	-	-	-
Year 15	-	-	-	-	127,086	(127,086)	-	-	-
Year 16	-	-	-	-	127,086	(127,086)	-	-	-
Year 17	-	-	-	-	127,086	(127,086)	-	-	-
Year 18	-	-	-	-	127,086	(127,086)	-	-	-
Year 19	-	-	-	-	127,086	(127,086)	-	-	-
Year 20	-	-	-	-	2,127,086	(127,086)	-	(2,000,000)	-

**Schedule 11**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Charity*

	<b>Beg. of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Annuity Payment Received</b>	<b>End of Year</b>
Year 1	-	-	-	127,086	127,086
Year 2	127,086	2,542	10,167	127,086	266,881
Year 3	266,881	5,338	21,350	127,086	420,655
Year 4	420,655	8,413	33,652	127,086	589,806
Year 5	589,806	11,796	47,184	127,086	775,873
Year 6	775,873	15,517	62,070	127,086	980,546
Year 7	980,546	19,611	78,444	127,086	1,205,687
Year 8	1,205,687	24,114	96,455	127,086	1,453,341
Year 9	1,453,341	29,067	116,267	127,086	1,725,761
Year 10	1,725,761	34,515	138,061	127,086	2,025,424
Year 11	2,025,424	40,508	162,034	127,086	2,355,052
Year 12	2,355,052	47,101	188,404	127,086	2,717,643
Year 13	2,717,643	54,353	217,411	127,086	3,116,493
Year 14	3,116,493	62,330	249,319	127,086	3,555,229
Year 15	3,555,229	71,105	284,418	127,086	4,037,838
Year 16	4,037,838	80,757	323,027	127,086	4,568,707
Year 17	4,568,707	91,374	365,497	127,086	5,152,664
Year 18	5,152,664	103,053	412,213	127,086	5,795,017
Year 19	5,795,017	115,900	463,601	127,086	6,501,604
Year 20	6,501,604	130,032	520,128	127,086	7,278,851
Year 21	7,278,851	145,577	582,308	-	8,006,736
Year 22	8,006,736	160,135	640,539	-	8,807,409
Year 23	8,807,409	176,148	704,593	-	9,688,150
Year 24	9,688,150	193,763	775,052	-	10,656,965
Year 25	10,656,965	213,139	852,557	-	11,722,662
Year 26	11,722,662	234,453	937,813	-	12,894,928
Year 27	12,894,928	257,899	1,031,594	-	14,184,421
Year 28	14,184,421	283,688	1,134,754	-	15,602,863
Year 29	15,602,863	312,057	1,248,229	-	17,163,149
Year 30	17,163,149	343,263	1,373,052	-	18,879,464

**Schedule 11**  
**ELDER FAMILY**  
**CLAT REDEMPTION - \$10 MILLION TO FAMILY**  
**10% RATE OF RETURN, 30 YEARS**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Assumptions:	
Total Rate of Return	10.00%
Rate of Return on Assets That Are Taxable at Ordinary Rate	2.00%
Rate of Return on Assets That Are Taxable at Capital Gains Rate	8.00%
Long-Term Capital Gain Tax Rate	16.05%
Ordinary Tax Rate	36.05%
Estate Tax Rate	45.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Interest Rate on CLAT Note	6.35%
CLAT Annuity Payment	127,086
Elder Children's Ownership of Elder LP in Year 1	58.33%
CLAT Ownership of Elder LP in Year 1	11.67%
Elder GST Trust's Ownership of Elder LP in Year 1	30.00%
Elder LP Discount	40.00%

*Note Between Elder LP and CLAT*

	<u>Beg. Balance</u>	<u>Interest</u>	<u>Payment</u>	<u>End of Year Balance</u>
Year 1	2,000,000	127,086	(127,086)	2,000,000
Year 2	2,000,000	127,086	(127,086)	2,000,000
Year 3	2,000,000	127,086	(127,086)	2,000,000
Year 4	2,000,000	127,086	(127,086)	2,000,000
Year 5	2,000,000	127,086	(127,086)	2,000,000
Year 6	2,000,000	127,086	(127,086)	2,000,000
Year 7	2,000,000	127,086	(127,086)	2,000,000
Year 8	2,000,000	127,086	(127,086)	2,000,000
Year 9	2,000,000	127,086	(127,086)	2,000,000
Year 10	2,000,000	127,086	(127,086)	2,000,000
Year 11	2,000,000	127,086	(127,086)	2,000,000
Year 12	2,000,000	127,086	(127,086)	2,000,000
Year 13	2,000,000	127,086	(127,086)	2,000,000
Year 14	2,000,000	127,086	(127,086)	2,000,000
Year 15	2,000,000	127,086	(127,086)	2,000,000
Year 16	2,000,000	127,086	(127,086)	2,000,000
Year 17	2,000,000	127,086	(127,086)	2,000,000
Year 18	2,000,000	127,086	(127,086)	2,000,000
Year 19	2,000,000	127,086	(127,086)	2,000,000
Year 20	2,000,000	127,086	(2,127,086)	-

**INSURANCE FAMILY****HYPOTHETICAL INTEGRATED INCOME AND ESTATE TAX PLAN COMPARISONS - SURVIVING SPOUSE DIES END OF YEAR 10**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY</b>	<b>Future Value in 30 Years</b>	<b>Present Value (Discounted at 3%)</b>	<b>Percentage of Total</b>
Insurance Children	417,679,967	172,078,616	30.56%
Consumption - Direct Cost	22,927,759	9,445,933	1.68%
Consumption - Investment Opportunity Cost	168,266,209	69,323,450	12.31%
IRS - Income Tax	94,874,217	39,086,921	6.94%
IRS - Investment Opportunity Costs	580,465,509	239,144,104	42.48%
IRS - Estate Tax (at 45%)	82,357,221	33,930,085	6.03%
<b>Total</b>	<b>\$1,366,570,882</b>	<b>563,009,109</b>	<b>100.00%</b>
<b>HYPOTHETICAL INTEGRATED INCOME &amp; ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY</b>			
Insurance Children	173,319,917	71,405,511	12.68%
Insurance Children & Grandchildren	572,273,337	235,769,038	41.88%
Consumption - Direct Cost	22,927,759	9,445,933	1.68%
Consumption - Investment Opportunity Cost	168,266,209	69,323,450	12.31%
IRS - Income Tax	159,136,543	65,562,149	11.64%
IRS - Investment Opportunity Costs	432,194,150	178,058,267	31.63%
IRS - Estate Tax (at 45%)	34,174,842	14,079,582	2.50%
Investment Opportunity Cost/(Benefit) of Buying Life Insurance	(195,721,874)	(80,634,821)	-14.32%
<b>Total</b>	<b>\$1,366,570,882</b>	<b>563,009,109</b>	<b>100.00%</b>

**Schedule 12**  
**INSURANCE FAMILY**  
**ASSET PAGE**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Family Limited Partnership

Asset: Miscellaneous Assets	\$100,000,000
Basis: Miscellaneous Assets	\$100,000,000

Miscellaneous Assets:

Asset: Cash	\$3,000,000
Basis: Cash	\$3,000,000

<b>Total Assets*</b>	<b>\$103,000,000</b>
<b>Total Basis</b>	<b>\$103,000,000</b>

\* There is not any proposed planning for Ian & Inez Insurance's other assets



## INSURANCE FAMILY

## NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (with 3% inflation adjustment each year)	2,000,000

*Insurance Children*

	Beg. of Year	Income	Growth	Income Taxes	Bequest Received	End of Year
Year 1	-	-	-	-	-	-
Year 2	-	-	-	-	-	-
Year 3	-	-	-	-	-	-
Year 4	-	-	-	-	-	-
Year 5	-	-	-	-	-	-
Year 6	-	-	-	-	-	-
Year 7	-	-	-	-	-	-
Year 8	-	-	-	-	-	-
Year 9	-	-	-	-	-	-
Year 10	-	-	-	-	100,658,826	100,658,826
Year 11	100,658,826	2,013,177	7,046,118	(1,021,687)	-	108,696,433
Year 12	108,696,433	2,173,929	7,608,750	(1,325,222)	-	117,153,891
Year 13	117,153,891	2,343,078	8,200,772	(1,584,155)	-	126,113,586
Year 14	126,113,586	2,522,272	8,827,951	(1,814,907)	-	135,648,902
Year 15	135,648,902	2,712,978	9,495,423	(2,029,315)	-	145,827,989
Year 16	145,827,989	2,916,560	10,207,959	(2,235,995)	-	156,716,513
Year 17	156,716,513	3,134,330	10,970,156	(2,441,312)	-	168,379,687
Year 18	168,379,687	3,367,594	11,786,578	(2,650,061)	-	180,883,798
Year 19	180,883,798	3,617,676	12,661,866	(2,865,953)	-	194,297,387
Year 20	194,297,387	3,885,948	13,600,817	(3,091,955)	-	208,692,197
Year 21	208,692,197	4,173,844	14,608,454	(3,330,537)	-	224,143,958
Year 22	224,143,958	4,482,879	15,690,077	(3,583,845)	-	240,733,068
Year 23	240,733,068	4,814,661	16,851,315	(3,853,827)	-	258,545,218
Year 24	258,545,218	5,170,904	18,098,165	(4,142,321)	-	277,671,966
Year 25	277,671,966	5,553,439	19,437,038	(4,451,123)	-	298,211,320
Year 26	298,211,320	5,964,226	20,874,792	(4,782,039)	-	320,268,300
Year 27	320,268,300	6,405,366	22,418,781	(5,136,915)	-	343,955,532
Year 28	343,955,532	6,879,111	24,076,887	(5,517,674)	-	369,393,856
Year 29	369,393,856	7,387,877	25,857,570	(5,926,338)	-	396,712,965
Year 30	396,712,965	7,934,259	27,769,908	(14,737,165)	-	417,679,967



**INSURANCE FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.="No Further Planning"!A8:H9

Assumptions:	
<b>Ian &amp; Inez Insurance</b>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	2,000,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%
Annual Insurance Premium	400,000
Death Benefit Value of Insurance	41,000,000

FLP	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Ian & Inez Insurance's Initial Growth Interest Percentage Ownershi	100.00%
GST Grantor Trust's Preferred Ownership in Insurance FLP	30,000,000
Interest Percentage on Preferred Ownership	10.50%
Insurance FLP Valuation Discount	40.00%

*Insurance FLP*

	<b>Beginning of Year</b>	<b>Income</b>	<b>Growth</b>	<b>Growth Interest Distributions</b>	<b>Preferred Coupon Distribution</b>	<b>End of Year</b>	<b>Growth Interest Percentage Ownership of FLP by Ian &amp; Inez Insurance at End of Year</b>	<b>Growth Interest Percentage Ownership of FLP by GST Trust at End of Year</b>
Year 1	100,000,000	2,000,000	7,000,000	(2,515,000)	(3,150,000)	103,335,000	95.01%	4.99%
Year 2	103,335,000	2,066,700	7,233,450	(2,819,375)	(3,150,000)	106,665,775	89.94%	10.06%
Year 3	106,665,775	2,133,315	7,466,604	(3,064,848)	(3,150,000)	110,050,847	84.73%	15.27%
Year 4	110,050,847	2,201,017	7,703,559	(3,270,519)	(3,150,000)	113,534,903	1.00%	99.00%
Year 5	113,534,903	2,270,698	7,947,443	(3,449,983)	(3,150,000)	117,153,061	1.00%	99.00%
Year 6	117,153,061	2,343,061	8,200,714	(3,612,950)	(3,150,000)	120,933,886	1.00%	99.00%
Year 7	120,933,886	2,418,678	8,465,372	(3,766,395)	(3,150,000)	124,901,541	1.00%	99.00%
Year 8	124,901,541	2,498,031	8,743,108	(3,915,369)	(3,150,000)	129,077,311	1.00%	99.00%
Year 9	129,077,311	2,581,546	9,035,412	(4,063,569)	(3,150,000)	133,480,700	1.00%	99.00%
Year 10	133,480,700	2,669,614	9,343,649	(7,193,814)	(3,150,000)	135,150,149	1.00%	99.00%

**INSURANCE FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.="No Further Planning"!A8:H9

Assumptions:	
<b>Ian &amp; Inez Insurance</b>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	2,000,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%
Annual Insurance Premium	400,000
Death Benefit Value of Insurance	41,000,000

FLP	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Ian & Inez Insurance's Initial Growth Interest Percentage Ownershi	100.00%
GST Grantor Trust's Preferred Ownership in Insurance FLP	30,000,000
Interest Percentage on Preferred Ownership	10.50%
Insurance FLP Valuation Discount	40.00%

**Ian & Inez Insurance**

	Beginning of Year	Income	Growth	Growth Interest Distribution from Partnership	Note Payments - Preferred Ownership	Note Payments - Growth Interest	Payments for Purchase of Additional Growth Interest	Income Taxes	Consumption	End of Year	Estate Taxes (at 45%)	Cash Bequest to Children
Year 1	-	-	-	2,515,000	556,200	-	2,193,800	(1,045,450)	(2,000,000)	2,219,550	-	-
Year 2	2,219,550	44,391	155,369	2,678,807	556,200	-	2,334,368	(1,331,684)	(2,060,000)	4,597,001	-	-
Year 3	4,597,001	91,940	321,790	2,756,507	556,200	-	2,502,141	(1,564,433)	(2,121,800)	7,139,345	-	-
Year 4	7,139,345	142,787	499,754	32,705	2,750,000	3,237,814	-	(1,761,365)	(2,185,454)	9,855,587	-	-
Year 5	9,855,587	197,112	689,891	34,500	2,750,000	3,415,484	-	(1,935,083)	(2,251,018)	12,756,473	-	-
Year 6	12,756,473	255,129	892,953	36,130	2,750,000	3,576,821	-	(2,094,627)	(2,318,548)	15,854,330	-	-
Year 7	15,854,330	317,087	1,109,803	37,664	2,750,000	3,728,731	-	(2,246,533)	(2,388,105)	19,162,978	-	-
Year 8	19,162,978	383,260	1,341,408	39,154	2,750,000	3,876,215	-	(2,395,576)	(2,459,748)	22,697,691	-	-
Year 9	22,697,691	453,954	1,588,838	40,636	2,750,000	4,022,933	-	(2,545,305)	(2,533,540)	26,475,207	-	-
Year 10	26,475,207	529,504	1,853,265	71,938	13,411,099	40,340,343	-	(5,479,219)	(2,609,546)	74,592,591	34,174,842	40,417,749

**INSURANCE FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.="No Further Planning"!A8:H9

Assumptions:	
<b>Ian &amp; Inez Insurance</b>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	2,000,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%
Annual Insurance Premium	400,000
Death Benefit Value of Insurance	41,000,000

FLP	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Ian & Inez Insurance's Initial Growth Interest Percentage Ownershi	100.00%
GST Grantor Trust's Preferred Ownership in Insurance FLP	30,000,000
Interest Percentage on Preferred Ownership	10.50%
Insurance FLP Valuation Discount	40.00%

*Insurance GST Grantor Trust*

	Beginning of Year	Income	Growth	Growth Interest Distribution from Partnership	Preferred Coupon Distribution from Partnership	Annual Insurance Premium	Death Benefit Value of Insurance	Note Payments - Preferred Ownership	Note Payments - Growth Interest	Purchase of Additional Insurance FLP Growth Interest	Income Taxes	End of Year
Year 1	3,000,000	60,000	210,000	-	3,150,000	(400,000)	-	(556,200)	-	(2,193,800)	-	3,270,000
Year 2	3,270,000	65,400	228,900	140,568	3,150,000	(400,000)	-	(556,200)	-	(2,334,368)	-	3,564,300
Year 3	3,564,300	71,286	249,501	308,341	3,150,000	(400,000)	-	(556,200)	-	(2,502,141)	-	3,885,087
Year 4	3,885,087	77,702	271,956	3,237,814	3,150,000	(400,000)	-	(2,750,000)	(3,237,814)	-	-	4,234,745
Year 5	4,234,745	84,695	296,432	3,415,484	3,150,000	(400,000)	-	(2,750,000)	(3,415,484)	-	-	4,615,872
Year 6	4,615,872	92,317	323,111	3,576,821	3,150,000	(400,000)	-	(2,750,000)	(3,576,821)	-	-	5,031,300
Year 7	5,031,300	100,626	352,191	3,728,731	3,150,000	(400,000)	-	(2,750,000)	(3,728,731)	-	-	5,484,117
Year 8	5,484,117	109,682	383,888	3,876,215	3,150,000	(400,000)	-	(2,750,000)	(3,876,215)	-	-	5,977,688
Year 9	5,977,688	119,554	418,438	4,022,933	3,150,000	(400,000)	-	(2,750,000)	(4,022,933)	-	-	6,515,680
Year 10	6,515,680	130,314	456,098	7,121,876	3,150,000	(400,000)	41,000,000	(13,411,099)	(40,340,343)	-	-	4,222,525
Year 11	138,021,173	2,760,423	9,661,482	-	-	-	-	-	-	-	(1,440,590)	149,002,489
Year 12	149,002,489	2,980,050	10,430,174	-	-	-	-	-	-	-	(1,844,484)	160,568,228
Year 13	160,568,228	3,211,365	11,239,776	-	-	-	-	-	-	-	(2,190,794)	172,828,574
Year 14	172,828,574	3,456,571	12,098,000	-	-	-	-	-	-	-	(2,500,982)	185,882,164
Year 15	185,882,164	3,717,643	13,011,751	-	-	-	-	-	-	-	(2,790,531)	199,821,028
Year 16	199,821,028	3,996,421	13,987,472	-	-	-	-	-	-	-	(3,070,733)	214,734,187
Year 17	214,734,187	4,294,684	15,031,393	-	-	-	-	-	-	-	(3,349,942)	230,710,322
Year 18	230,710,322	4,614,206	16,149,723	-	-	-	-	-	-	-	(3,634,472)	247,839,780
Year 19	247,839,780	4,956,796	17,348,785	-	-	-	-	-	-	-	(3,929,223)	266,216,137
Year 20	266,216,137	5,324,323	18,635,130	-	-	-	-	-	-	-	(4,238,135)	285,937,454
Year 21	285,937,454	5,718,749	20,015,622	-	-	-	-	-	-	-	(4,564,501)	307,107,324
Year 22	307,107,324	6,142,146	21,497,513	-	-	-	-	-	-	-	(4,911,196)	329,835,787
Year 23	329,835,787	6,596,716	23,088,505	-	-	-	-	-	-	-	(5,280,845)	354,240,163
Year 24	354,240,163	7,084,803	24,796,811	-	-	-	-	-	-	-	(5,675,934)	380,445,844
Year 25	380,445,844	7,608,917	26,631,209	-	-	-	-	-	-	-	(6,098,902)	408,587,068
Year 26	408,587,068	8,171,741	28,601,095	-	-	-	-	-	-	-	(6,552,206)	438,807,699
Year 27	438,807,699	8,776,154	30,716,539	-	-	-	-	-	-	-	(7,038,365)	471,262,026
Year 28	471,262,026	9,425,241	32,988,342	-	-	-	-	-	-	-	(7,560,008)	506,115,601
Year 29	506,115,601	10,122,312	35,428,092	-	-	-	-	-	-	-	(8,119,895)	543,546,110
Year 30	543,546,110	10,870,922	38,048,228	-	-	-	-	-	-	-	(20,191,923)	572,273,337

**INSURANCE FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.="No Further Planning"!A8:H9

Assumptions:	
<b>Ian &amp; Inez Insurance</b>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	2,000,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%
Annual Insurance Premium	400,000
Death Benefit Value of Insurance	41,000,000

FLP	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Ian & Inez Insurance's Initial Growth Interest Percentage Ownershi	100.00%
GST Grantor Trust's Preferred Ownership in Insurance FLP	30,000,000
Interest Percentage on Preferred Ownership	10.50%
Insurance FLP Valuation Discount	40.00%

*Insurance Children*

	Beginning of Year	Income	Growth	Income Taxes	Bequest Received - Cash	End of Year
Year 1	-	-	-	-	-	-
Year 2	-	-	-	-	-	-
Year 3	-	-	-	-	-	-
Year 4	-	-	-	-	-	-
Year 5	-	-	-	-	-	-
Year 6	-	-	-	-	-	-
Year 7	-	-	-	-	-	-
Year 8	-	-	-	-	-	-
Year 9	-	-	-	-	-	-
Year 10	-	-	-	-	40,417,749	40,417,749
Year 11	41,769,251	835,385	2,923,848	(423,958)	-	45,104,526
Year 12	45,104,526	902,091	3,157,317	(549,912)	-	48,614,021
Year 13	48,614,021	972,280	3,402,981	(657,359)	-	52,331,924
Year 14	52,331,924	1,046,638	3,663,235	(753,111)	-	56,288,686
Year 15	56,288,686	1,125,774	3,940,208	(842,082)	-	60,512,586
Year 16	60,512,586	1,210,252	4,235,881	(927,845)	-	65,030,873
Year 17	65,030,873	1,300,617	4,552,161	(1,013,043)	-	69,870,608
Year 18	69,870,608	1,397,412	4,890,943	(1,099,666)	-	75,059,297
Year 19	75,059,297	1,501,186	5,254,151	(1,189,252)	-	80,625,382
Year 20	80,625,382	1,612,508	5,643,777	(1,283,033)	-	86,598,633
Year 21	86,598,633	1,731,973	6,061,904	(1,382,035)	-	93,010,475
Year 22	93,010,475	1,860,209	6,510,733	(1,487,148)	-	99,894,270
Year 23	99,894,270	1,997,885	6,992,599	(1,599,179)	-	107,285,575
Year 24	107,285,575	2,145,712	7,509,990	(1,718,892)	-	115,222,385
Year 25	115,222,385	2,304,448	8,065,567	(1,847,032)	-	123,745,368
Year 26	123,745,368	2,474,907	8,662,176	(1,984,348)	-	132,898,102
Year 27	132,898,102	2,657,962	9,302,867	(2,131,607)	-	142,727,324
Year 28	142,727,324	2,854,546	9,990,913	(2,289,607)	-	153,283,177
Year 29	153,283,177	3,065,664	10,729,822	(2,459,185)	-	164,619,478
Year 30	164,619,478	3,292,390	11,523,363	(6,115,314)	-	173,319,917

**INSURANCE FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.="No Further Planning"!A8:H9

<u>Assumptions:</u>	
<u>Ian &amp; Inez Insurance</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	2,000,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%
Annual Insurance Premium	400,000
Death Benefit Value of Insurance	41,000,000

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Ian & Inez Insurance's Initial Growth Interest Percentage Ownershi	100.00%
GST Grantor Trust's Preferred Ownership in Insurance FLP	30,000,000
Interest Percentage on Preferred Ownership	10.50%
Insurance FLP Valuation Discount	40.00%

*Note Between Ian & Inez Insurance and Insurance GST Grantor Trust - Preferred Ownership*

	<u>Beginning of Year</u>	<u>Interest</u>	<u>Note Payment</u>	<u>End of Year</u>
Year 1	27,000,000	556,200	(556,200)	27,000,000
Year 2	27,000,000	556,200	(556,200)	27,000,000
Year 3	27,000,000	556,200	(556,200)	27,000,000
Year 4	27,000,000	556,200	(2,750,000)	24,806,200
Year 5	24,806,200	511,008	(2,750,000)	22,567,208
Year 6	22,567,208	464,884	(2,750,000)	20,282,092
Year 7	20,282,092	417,811	(2,750,000)	17,949,903
Year 8	17,949,903	369,768	(2,750,000)	15,569,671
Year 9	15,569,671	320,735	(2,750,000)	13,140,407
Year 10	13,140,407	270,692	(13,411,099)	-
Year 11	-	-	-	-
Year 12	-	-	-	-
Year 13	-	-	-	-
Year 14	-	-	-	-
Year 15	-	-	-	-
Year 16	-	-	-	-
Year 17	-	-	-	-
Year 18	-	-	-	-
Year 19	-	-	-	-
Year 20	-	-	-	-
Year 21	-	-	-	-
Year 22	-	-	-	-
Year 23	-	-	-	-
Year 24	-	-	-	-
Year 25	-	-	-	-
Year 26	-	-	-	-
Year 27	-	-	-	-
Year 28	-	-	-	-
Year 29	-	-	-	-
Year 30	-	-	-	-

**INSURANCE FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.="No Further Planning"!A8:H9

Assumptions:	
<b>Ian &amp; Inez Insurance</b>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	2,000,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%
Annual Insurance Premium	400,000
Death Benefit Value of Insurance	41,000,000

FLP	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Ian & Inez Insurance's Initial Growth Interest Percentage Ownershi	100.00%
GST Grantor Trust's Preferred Ownership in Insurance FLP	30,000,000
Interest Percentage on Preferred Ownership	10.50%
Insurance FLP Valuation Discount	40.00%

*Note Between Ian & Inez Insurance and Insurance GST Grantor Trust - Growth Interest*

	<u>Beginning of Year</u>	<u>Interest</u>	<u>Note Payment</u>	<u>End of Year</u>
Year 1	-	-	-	-
Year 2	-	-	-	-
Year 3	-	-	-	-
Year 4	55,287,310	1,138,919	(3,237,814)	53,188,415
Year 5	53,188,415	1,095,681	(3,415,484)	50,868,613
Year 6	50,868,613	1,047,893	(3,576,821)	48,339,685
Year 7	48,339,685	995,798	(3,728,731)	45,606,751
Year 8	45,606,751	939,499	(3,876,215)	42,670,035
Year 9	42,670,035	879,003	(4,022,933)	39,526,105
Year 10	39,526,105	814,238	(40,340,343)	-
Year 11	-	-	-	-
Year 12	-	-	-	-
Year 13	-	-	-	-
Year 14	-	-	-	-
Year 15	-	-	-	-
Year 16	-	-	-	-
Year 17	-	-	-	-
Year 18	-	-	-	-
Year 19	-	-	-	-
Year 20	-	-	-	-
Year 21	-	-	-	-
Year 22	-	-	-	-
Year 23	-	-	-	-
Year 24	-	-	-	-
Year 25	-	-	-	-
Year 26	-	-	-	-
Year 27	-	-	-	-
Year 28	-	-	-	-
Year 29	-	-	-	-
Year 30	-	-	-	-

**INSURANCE FAMILY****HYPOTHETICAL INTEGRATED INCOME AND ESTATE TAX PLAN COMPARISONS - SURVIVING SPOUSE DIES END OF YEAR 30**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<b>NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY</b>	<b>Pre-Death</b>	<b>Post Death</b>	<b>Present Value (Discounted at 3%)</b>	<b>Percentage of Total</b>
Ian & Inez Insurance	614,438,212	-	-	0.00%
Insurance Children	-	337,941,016	139,227,224	24.73%
Consumption - Direct Cost	95,150,831	95,150,831	39,200,883	6.96%
Consumption - Investment Opportunity Cost	266,196,369	266,196,369	109,669,379	19.48%
IRS - Income Tax	124,662,541	124,662,541	51,359,316	9.12%
IRS - Investment Opportunity Costs	266,122,930	266,122,930	109,639,123	19.47%
IRS - Estate Tax (at 45%)	-	276,497,195	113,913,183	20.23%
<b>Total</b>	<b>\$1,366,570,882</b>	<b>\$1,366,570,882</b>	<b>563,009,109</b>	<b>100.00%</b>

**HYPOTHETICAL INTEGRATED INCOME & ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Ian & Inez Insurance	13,100,010	-	-	0.00%
Insurance Children	-	7,205,005	2,968,367	0.53%
Insurance Children & Grandchildren	586,008,373	586,008,373	241,427,691	42.88%
Consumption - Direct Cost	95,150,831	95,150,831	39,200,883	6.96%
Consumption - Investment Opportunity Cost	266,196,369	266,196,369	109,669,379	19.48%
IRS - Income Tax	133,704,220	133,704,220	55,084,368	9.78%
IRS - Investment Opportunity Costs	258,888,064	258,888,064	106,658,455	18.94%
IRS - Estate Tax (at 45%)	-	5,895,004	2,428,664	0.43%
Investment Opportunity Cost/(Benefit) of Buying Life Insurance	13,523,015	13,523,015	5,571,303	0.99%
<b>Total</b>	<b>\$1,366,570,882</b>	<b>\$1,366,570,882</b>	<b>563,009,109</b>	<b>100.00%</b>

**Schedule 13**  
**INSURANCE FAMILY**  
**ASSET PAGE**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

Family Limited Partnership

Asset: Miscellaneous Assets	\$100,000,000
Basis: Miscellaneous Assets	\$100,000,000

Miscellaneous Assets:

Asset: Cash	\$3,000,000
Basis: Cash	\$3,000,000

<b>Total Assets*</b>	<b>\$103,000,000</b>
<b>Total Basis</b>	<b>\$103,000,000</b>

\* There is not any proposed planning for Ian & Inez Insurance's other assets



## INSURANCE FAMILY

## NO FURTHER PLANNING; BEQUEATHS ESTATE TO FAMILY

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such.

<u>Assumptions:</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (with 3% inflation adjustment each year)	2,000,000

*Ian & Inez Insurance*

	<u>Beg. of Year</u>	<u>Income</u>	<u>Growth</u>	<u>Income Taxes</u>	<u>Consumption</u>	<u>End of Year</u>
Year 1	103,000,000	2,060,000	7,210,000	(1,045,450)	(2,000,000)	109,224,550
Year 2	109,224,550	2,184,491	7,645,719	(1,335,744)	(2,060,000)	115,659,015
Year 3	115,659,015	2,313,180	8,096,131	(1,573,760)	(2,121,800)	122,372,767
Year 4	122,372,767	2,447,455	8,566,094	(1,776,986)	(2,185,454)	129,423,876
Year 5	129,423,876	2,588,478	9,059,671	(1,957,916)	(2,251,018)	136,863,091
Year 6	136,863,091	2,737,262	9,580,416	(2,125,525)	(2,318,548)	144,736,696
Year 7	144,736,696	2,894,734	10,131,569	(2,286,316)	(2,388,105)	153,088,579
Year 8	153,088,579	3,061,772	10,716,201	(2,445,060)	(2,459,748)	161,961,743
Year 9	161,961,743	3,239,235	11,337,322	(2,605,320)	(2,533,540)	171,399,440
Year 10	171,399,440	3,427,989	11,997,961	(2,769,816)	(2,609,546)	181,446,028
Year 11	181,446,028	3,628,921	12,701,222	(2,940,691)	(2,687,833)	192,147,647
Year 12	192,147,647	3,842,953	13,450,335	(3,119,697)	(2,768,468)	203,552,770
Year 13	203,552,770	4,071,055	14,248,694	(3,308,325)	(2,851,522)	215,712,673
Year 14	215,712,673	4,314,253	15,099,887	(3,507,902)	(2,937,067)	228,681,844
Year 15	228,681,844	4,573,637	16,007,729	(3,719,660)	(3,025,179)	242,518,370
Year 16	242,518,370	4,850,367	16,976,286	(3,944,783)	(3,115,935)	257,284,306
Year 17	257,284,306	5,145,686	18,009,901	(4,184,444)	(3,209,413)	273,046,037
Year 18	273,046,037	5,460,921	19,113,223	(4,439,835)	(3,305,695)	289,874,650
Year 19	289,874,650	5,797,493	20,291,226	(4,712,186)	(3,404,866)	307,846,316
Year 20	307,846,316	6,156,926	21,549,242	(5,002,785)	(3,507,012)	327,042,688
Year 21	327,042,688	6,540,854	22,892,988	(5,312,986)	(3,612,222)	347,551,322
Year 22	347,551,322	6,951,026	24,328,593	(5,644,227)	(3,720,589)	369,466,125
Year 23	369,466,125	7,389,322	25,862,629	(5,998,038)	(3,832,207)	392,887,831
Year 24	392,887,831	7,857,757	27,502,148	(6,376,054)	(3,947,173)	417,924,508
Year 25	417,924,508	8,358,490	29,254,716	(6,780,021)	(4,065,588)	444,692,104
Year 26	444,692,104	8,893,842	31,128,447	(7,211,810)	(4,187,556)	473,315,028
Year 27	473,315,028	9,466,301	33,132,052	(7,673,423)	(4,313,183)	503,926,775
Year 28	503,926,775	10,078,536	35,274,874	(8,167,009)	(4,442,578)	536,670,598
Year 29	536,670,598	10,733,412	37,566,942	(8,694,872)	(4,575,855)	571,700,224
Year 30	571,700,224	11,434,004	40,019,016	(4,001,902)	(4,713,131)	614,438,212

**INSURANCE FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such. =No Further Planning!A8:H9

<u>Assumptions:</u>	
<u>Ian &amp; Inez Insurance</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	2,000,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%
Annual Insurance Premium	400,000
Death Benefit Value of Insurance	41,000,000

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Ian & Inez Insurance's Initial Growth Interest Percentage Ownership i	100.00%
GST Grantor Trust's Preferred Ownership in Insurance FLP	30,000,000
Interest Percentage on Preferred Ownership	10.50%
Insurance FLP Valuation Discount	40.00%

**Insurance FLP**

	Beginning of Year	Income	Growth	Growth Interest Distributions	Preferred Coupon Distribution	End of Year	Growth Interest	
							Percentage Ownership of FLP by Ian & Inez Insurance at End of Year	Percentage Ownership of FLP by GST Trust at End of Year
Year 1	100,000,000	2,000,000	7,000,000	(3,265,000)	(3,150,000)	102,585,000	94.96%	5.04%
Year 2	102,585,000	2,051,700	7,180,950	(3,569,900)	(3,150,000)	105,097,750	89.69%	10.31%
Year 3	105,097,750	2,101,955	7,356,842	(3,811,991)	(3,150,000)	107,594,556	84.14%	15.86%
Year 4	107,594,556	2,151,891	7,531,619	(4,011,088)	(3,150,000)	110,116,978	1.00%	99.00%
Year 5	110,116,978	2,202,340	7,708,188	(4,181,253)	(3,150,000)	112,696,253	1.00%	99.00%
Year 6	112,696,253	2,253,925	7,888,738	(4,332,494)	(3,150,000)	115,356,421	1.00%	99.00%
Year 7	115,356,421	2,307,128	8,074,949	(4,471,956)	(3,150,000)	118,116,544	1.00%	99.00%
Year 8	118,116,544	2,362,331	8,268,158	(4,604,764)	(3,150,000)	120,992,269	1.00%	99.00%
Year 9	120,992,269	2,419,845	8,469,459	(4,734,626)	(3,150,000)	123,996,947	1.00%	99.00%
Year 10	123,996,947	2,479,939	8,679,786	(4,864,248)	(3,150,000)	127,142,425	1.00%	99.00%
Year 11	127,142,425	2,542,848	8,899,970	(4,995,637)	(3,150,000)	130,439,606	1.00%	99.00%
Year 12	130,439,606	2,608,792	9,130,772	(5,130,308)	(3,150,000)	133,898,863	1.00%	99.00%
Year 13	133,898,863	2,677,977	9,372,920	(5,269,435)	(3,150,000)	137,530,325	1.00%	99.00%
Year 14	137,530,325	2,750,606	9,627,123	(5,413,958)	(3,150,000)	141,344,096	1.00%	99.00%
Year 15	141,344,096	2,826,882	9,894,087	(5,564,654)	(3,150,000)	145,350,410	1.00%	99.00%
Year 16	145,350,410	2,907,008	10,174,529	(5,722,193)	(3,150,000)	149,559,753	1.00%	99.00%
Year 17	149,559,753	2,991,195	10,469,183	(5,887,175)	(3,150,000)	153,982,956	1.00%	99.00%
Year 18	153,982,956	3,079,659	10,778,807	(6,060,157)	(3,150,000)	158,631,265	1.00%	99.00%
Year 19	158,631,265	3,172,625	11,104,189	(6,241,673)	(3,150,000)	163,516,406	1.00%	99.00%
Year 20	163,516,406	3,270,328	11,446,148	(6,432,246)	(3,150,000)	168,650,636	1.00%	99.00%
Year 21	168,650,636	3,373,013	11,805,545	(6,632,402)	(3,150,000)	174,046,791	1.00%	99.00%
Year 22	174,046,791	3,480,936	12,183,275	(6,842,673)	(3,150,000)	179,718,329	1.00%	99.00%
Year 23	179,718,329	3,594,367	12,580,283	(7,063,609)	(3,150,000)	185,679,370	1.00%	99.00%
Year 24	185,679,370	3,713,587	12,997,556	(7,295,774)	(3,150,000)	191,944,740	1.00%	99.00%
Year 25	191,944,740	3,838,895	13,436,132	(7,539,759)	(3,150,000)	198,530,008	1.00%	99.00%
Year 26	198,530,008	3,970,600	13,897,101	(7,796,177)	(3,150,000)	205,451,532	1.00%	99.00%
Year 27	205,451,532	4,109,031	14,381,607	(8,065,672)	(3,150,000)	212,726,498	1.00%	99.00%
Year 28	212,726,498	4,254,530	14,890,855	(8,348,916)	(3,150,000)	220,372,967	1.00%	99.00%
Year 29	220,372,967	4,407,459	15,426,108	(8,646,617)	(3,150,000)	228,409,917	1.00%	99.00%
Year 30	228,409,917	4,568,198	15,988,694	(14,142,829)	(3,150,000)	231,673,981	1.00%	99.00%

**INSURANCE FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such. =No Further Planning!A8:H9

Assumptions:	
<b>Ian &amp; Inez Insurance</b>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	2,000,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%
Annual Insurance Premium	400,000
Death Benefit Value of Insurance	41,000,000

FLP	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Ian & Inez Insurance's Initial Growth Interest Percentage Ownership i	100.00%
GST Grantor Trust's Preferred Ownership in Insurance FLP	30,000,000
Interest Percentage on Preferred Ownership	10.50%
Insurance FLP Valuation Discount	40.00%

*Ian & Inez Insurance*

	Beginning of Year	Income	Growth	Growth Interest Distribution from Partnership	Note Payments - Preferred Ownership	Note Payments - Growth Interest	Payments for Purchase of Additional Growth Interest	Income Taxes	Consumption	End of Year
Year 1	-	-	-	3,265,000	556,200	-	2,193,800	(1,045,450)	(2,000,000)	2,969,550
Year 2	2,969,550	59,391	207,869	3,390,073	556,200	-	2,373,627	(1,331,684)	(2,060,000)	6,165,026
Year 3	6,165,026	123,301	431,552	3,419,159	556,200	-	2,586,632	(1,564,433)	(2,121,800)	9,595,636
Year 4	9,595,636	191,913	671,695	40,111	2,750,000	3,970,977	-	(1,761,365)	(2,185,454)	13,273,512
Year 5	13,273,512	265,470	929,146	41,813	2,750,000	4,139,441	-	(1,935,083)	(2,251,018)	17,213,281
Year 6	17,213,281	344,266	1,204,930	43,325	2,750,000	4,289,169	-	(2,094,627)	(2,318,548)	21,431,795
Year 7	21,431,795	428,636	1,500,226	44,720	2,750,000	4,427,236	-	(2,246,533)	(2,388,105)	25,947,975
Year 8	25,947,975	518,960	1,816,358	46,048	2,750,000	4,558,716	-	(2,395,576)	(2,459,748)	30,782,733
Year 9	30,782,733	615,655	2,154,791	47,346	2,750,000	4,687,279	-	(2,545,305)	(2,533,540)	35,958,960
Year 10	35,958,960	719,179	2,517,127	48,642	2,750,000	4,815,605	-	(2,698,412)	(2,609,546)	41,501,557
Year 11	41,501,557	830,031	2,905,109	49,956	2,750,000	4,945,680	-	(2,857,000)	(2,687,833)	47,437,501
Year 12	47,437,501	948,750	3,320,625	51,303	2,750,000	5,079,005	-	(3,022,771)	(2,768,468)	53,795,945
Year 13	53,795,945	1,075,919	3,765,716	52,694	2,750,000	5,216,741	-	(3,197,157)	(2,851,522)	60,608,337
Year 14	60,608,337	1,212,167	4,242,584	54,140	2,750,000	5,359,819	-	(3,381,421)	(2,937,067)	67,908,557
Year 15	67,908,557	1,358,171	4,753,599	55,647	227,085	5,509,008	-	(3,576,718)	(3,025,179)	73,210,169
Year 16	73,210,169	1,464,203	5,124,712	57,222	-	5,178,997	-	(3,784,152)	(3,115,935)	78,135,217
Year 17	78,135,217	1,562,704	5,469,465	58,872	-	-	-	(4,004,810)	(3,209,413)	78,012,035
Year 18	78,012,035	1,560,241	5,460,842	60,602	-	-	-	(4,239,788)	(3,305,695)	77,548,237
Year 19	77,548,237	1,550,965	5,428,377	62,417	-	-	-	(4,490,213)	(3,404,866)	76,694,915
Year 20	76,694,915	1,533,898	5,368,644	64,322	-	-	-	(4,757,262)	(3,507,012)	75,397,507
Year 21	75,397,507	1,507,950	5,277,825	66,324	-	-	-	(5,042,169)	(3,612,222)	73,595,215
Year 22	73,595,215	1,471,904	5,151,665	68,427	-	-	-	(5,346,245)	(3,720,589)	71,220,377
Year 23	71,220,377	1,424,408	4,985,426	70,636	-	-	-	(5,670,881)	(3,832,207)	68,197,759
Year 24	68,197,759	1,363,955	4,773,843	72,958	-	-	-	(6,017,564)	(3,947,173)	64,443,778
Year 25	64,443,778	1,288,876	4,511,064	75,398	-	-	-	(6,387,880)	(4,065,588)	59,865,647
Year 26	59,865,647	1,197,313	4,190,595	77,962	-	-	-	(6,783,529)	(4,187,556)	54,360,433
Year 27	54,360,433	1,087,209	3,805,230	80,657	-	-	-	(7,206,329)	(4,313,183)	47,814,017
Year 28	47,814,017	956,280	3,346,981	83,489	-	-	-	(7,658,232)	(4,442,578)	40,099,957
Year 29	40,099,957	801,999	2,806,997	86,466	-	-	-	(8,141,329)	(4,575,855)	31,078,236
Year 30	31,078,236	621,565	2,175,476	141,428	-	-	-	(18,520,304)	(4,713,131)	10,783,270

**INSURANCE FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such. =No Further Planning!A8:H9

Assumptions:	
<b>Ian &amp; Inez Insurance</b>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	2,000,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%
Annual Insurance Premium	400,000
Death Benefit Value of Insurance	41,000,000

FLP	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Ian & Inez Insurance's Initial Growth Interest Percentage Ownership i	100.00%
GST Grantor Trust's Preferred Ownership in Insurance FLP	30,000,000
Interest Percentage on Preferred Ownership	10.50%
Insurance FLP Valuation Discount	40.00%

*Insurance GST Grantor Trust*

	Beginning of Year	Income	Growth	Growth Interest Distribution from Partnership	Preferred Coupon Distribution from Partnership	Annual Insurance Premium	Death Benefit Value of Insurance	Note Payments - Preferred Ownership	Note Payments - Growth Interest	Purchase of Additional Insurance FLP Growth Interest	Income Taxes	End of Year
Year 1	3,000,000	60,000	210,000	-	3,150,000	(400,000)	-	(556,200)	-	(2,193,800)	-	3,270,000
Year 2	3,270,000	65,400	228,900	179,827	3,150,000	(400,000)	-	(556,200)	-	(2,373,627)	-	3,564,300
Year 3	3,564,300	71,286	249,501	392,832	3,150,000	(400,000)	-	(556,200)	-	(2,586,632)	-	3,885,087
Year 4	3,885,087	77,702	271,956	3,970,977	3,150,000	(400,000)	-	(2,750,000)	(3,970,977)	-	-	4,234,745
Year 5	4,234,745	84,695	296,432	4,139,441	3,150,000	(400,000)	-	(2,750,000)	(4,139,441)	-	-	4,615,872
Year 6	4,615,872	92,317	323,111	4,289,169	3,150,000	(400,000)	-	(2,750,000)	(4,289,169)	-	-	5,031,300
Year 7	5,031,300	100,626	352,191	4,427,236	3,150,000	(400,000)	-	(2,750,000)	(4,427,236)	-	-	5,484,117
Year 8	5,484,117	109,682	383,888	4,558,716	3,150,000	(400,000)	-	(2,750,000)	(4,558,716)	-	-	5,977,688
Year 9	5,977,688	119,554	418,438	4,687,279	3,150,000	(400,000)	-	(2,750,000)	(4,687,279)	-	-	6,515,680
Year 10	6,515,680	130,314	456,098	4,815,605	3,150,000	(400,000)	-	(2,750,000)	(4,815,605)	-	-	7,102,091
Year 11	7,102,091	142,042	497,146	4,945,680	3,150,000	(400,000)	-	(2,750,000)	(4,945,680)	-	-	7,741,279
Year 12	7,741,279	154,826	541,890	5,079,005	3,150,000	(400,000)	-	(2,750,000)	(5,079,005)	-	-	8,437,994
Year 13	8,437,994	168,760	590,660	5,216,741	3,150,000	(400,000)	-	(2,750,000)	(5,216,741)	-	-	9,197,414
Year 14	9,197,414	183,948	643,819	5,359,819	3,150,000	(400,000)	-	(2,750,000)	(5,359,819)	-	-	10,025,181
Year 15	10,025,181	200,504	701,763	5,509,008	3,150,000	(400,000)	-	(227,085)	(5,509,008)	-	-	13,450,363
Year 16	13,450,363	269,007	941,525	5,664,971	3,150,000	(400,000)	-	-	(5,178,997)	-	-	17,896,869
Year 17	17,896,869	357,937	1,252,781	5,828,304	3,150,000	(400,000)	-	-	-	-	-	28,085,891
Year 18	28,085,891	561,718	1,966,012	5,999,556	3,150,000	(400,000)	-	-	-	-	-	39,363,177
Year 19	39,363,177	787,264	2,755,422	6,179,256	3,150,000	(400,000)	-	-	-	-	-	51,835,119
Year 20	51,835,119	1,036,702	3,628,458	6,367,924	3,150,000	(400,000)	-	-	-	-	-	65,618,204
Year 21	65,618,204	1,312,364	4,593,274	6,566,078	3,150,000	(400,000)	-	-	-	-	-	80,839,920
Year 22	80,839,920	1,616,798	5,658,794	6,774,247	3,150,000	(400,000)	-	-	-	-	-	97,639,759
Year 23	97,639,759	1,952,795	6,834,783	6,992,972	3,150,000	(400,000)	-	-	-	-	-	116,170,310
Year 24	116,170,310	2,323,406	8,131,922	7,222,816	3,150,000	(400,000)	-	-	-	-	-	136,598,454
Year 25	136,598,454	2,731,969	9,561,892	7,464,361	3,150,000	(400,000)	-	-	-	-	-	159,106,676
Year 26	159,106,676	3,182,134	11,137,467	7,718,215	3,150,000	(400,000)	-	-	-	-	-	183,894,492
Year 27	183,894,492	3,677,890	12,872,614	7,985,015	3,150,000	(400,000)	-	-	-	-	-	211,180,011
Year 28	211,180,011	4,223,600	14,782,601	8,265,427	3,150,000	(400,000)	-	-	-	-	-	241,201,639
Year 29	241,201,639	4,824,033	16,884,115	8,560,150	3,150,000	(400,000)	-	-	-	-	-	274,219,937
Year 30	274,219,937	5,484,399	19,195,396	14,001,401	3,150,000	(400,000)	41,000,000	-	-	-	-	356,651,132

**INSURANCE FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such. =No Further Planning!A8:H9

<u>Assumptions:</u>	
<u>Ian &amp; Inez Insurance</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	2,000,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%
Annual Insurance Premium	400,000
Death Benefit Value of Insurance	41,000,000

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Ian & Inez Insurance's Initial Growth Interest Percentage Ownership i	100.00%
GST Grantor Trust's Preferred Ownership in Insurance FLP	30,000,000
Interest Percentage on Preferred Ownership	10.50%
Insurance FLP Valuation Discount	40.00%

*Note Between Ian & Inez Insurance and Insurance GST Grantor Trust - Preferred Ownership*

	<u>Beginning of Year</u>	<u>Interest</u>	<u>Note Payment</u>	<u>End of Year</u>
Year 1	27,000,000	556,200	(556,200)	27,000,000
Year 2	27,000,000	556,200	(556,200)	27,000,000
Year 3	27,000,000	556,200	(556,200)	27,000,000
Year 4	27,000,000	556,200	(2,750,000)	24,806,200
Year 5	24,806,200	511,008	(2,750,000)	22,567,208
Year 6	22,567,208	464,884	(2,750,000)	20,282,092
Year 7	20,282,092	417,811	(2,750,000)	17,949,903
Year 8	17,949,903	369,768	(2,750,000)	15,569,671
Year 9	15,569,671	320,735	(2,750,000)	13,140,407
Year 10	13,140,407	270,692	(2,750,000)	10,661,099
Year 11	10,661,099	219,619	(2,750,000)	8,130,718
Year 12	8,130,718	167,493	(2,750,000)	5,548,210
Year 13	5,548,210	114,293	(2,750,000)	2,912,503
Year 14	2,912,503	59,998	(2,750,000)	222,501
Year 15	222,501	4,584	(227,085)	-
Year 16	-	-	-	-
Year 17	-	-	-	-
Year 18	-	-	-	-
Year 19	-	-	-	-
Year 20	-	-	-	-
Year 21	-	-	-	-
Year 22	-	-	-	-
Year 23	-	-	-	-
Year 24	-	-	-	-
Year 25	-	-	-	-
Year 26	-	-	-	-
Year 27	-	-	-	-
Year 28	-	-	-	-
Year 29	-	-	-	-
Year 30	-	-	-	-

**INSURANCE FAMILY  
HYPOTHETICAL TECHNIQUE: INTEGRATED ESTATE TAX PLAN WITH A PARTNERSHIP; BEQUEATHS ESTATE TO FAMILY**

Simulated, modeled, or hypothetical performance results have certain inherent limitations. Simulated results are hypothetical and do not represent actual trading, such as liquidity constraints, that may have had an impact on actual decision-making. Simulated results are also achieved through retroactive application of a model designed with the benefit of hindsight. The results shown reflect the reinvestment of dividends and other earnings but do not reflect advisory fees, transaction costs and other expenses a client would have paid, which would reduce return. No representation is being made that any client will or is likely to achieve results similar to those shown.

Goldman, Sachs & Co. does not provide tax and/or legal advice to its clients and all investors are strongly urged to consult with their own advisors regarding any potential investment or strategy. This material is intended for educational purposes only. While it is based on information believed to be reliable, no representation or warranty is given as to its accuracy or completeness, and it should not be relied on as such. =No Further Planning!A8:H9

<u>Assumptions:</u>	
<u>Ian &amp; Inez Insurance</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Long-Term Capital Gain Tax Rate	15.00%
Ordinary Tax Rate	35.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Consumption (increasing at 3% per year)	2,000,000
Intra-Family Note Interest Percentage	2.06%
7520 Rate	2.40%
Annual Insurance Premium	400,000
Death Benefit Value of Insurance	41,000,000

<u>FLP</u>	
Rate of Return Taxed at Ordinary Rates	2.00%
Rate of Return Taxed at Capital Gains Rates	7.00%
Turnover Rate (% of Capital Gains Recognized/Year)	30.00%
Ian & Inez Insurance's Initial Growth Interest Percentage Ownership i	100.00%
GST Grantor Trust's Preferred Ownership in Insurance FLP	30,000,000
Interest Percentage on Preferred Ownership	10.50%
Insurance FLP Valuation Discount	40.00%

*Note Between Ian & Inez Insurance and Insurance GST Grantor Trust - Growth Interest*

	<u>Beginning of Year</u>	<u>Interest</u>	<u>Note Payment</u>	<u>End of Year</u>
Year 1	-	-	-	-
Year 2	-	-	-	-
Year 3	-	-	-	-
Year 4	53,671,793	1,105,639	(3,970,977)	50,806,456
Year 5	50,806,456	1,046,613	(4,139,441)	47,713,628
Year 6	47,713,628	982,901	(4,289,169)	44,407,359
Year 7	44,407,359	914,792	(4,427,236)	40,894,915
Year 8	40,894,915	842,435	(4,558,716)	37,178,634
Year 9	37,178,634	765,880	(4,687,279)	33,257,234
Year 10	33,257,234	685,099	(4,815,605)	29,126,728
Year 11	29,126,728	600,011	(4,945,680)	24,781,058
Year 12	24,781,058	510,490	(5,079,005)	20,212,543
Year 13	20,212,543	416,378	(5,216,741)	15,412,180
Year 14	15,412,180	317,491	(5,359,819)	10,369,852
Year 15	10,369,852	213,619	(5,509,008)	5,074,464
Year 16	5,074,464	104,534	(5,178,997)	-
Year 17	-	-	-	-
Year 18	-	-	-	-
Year 19	-	-	-	-
Year 20	-	-	-	-
Year 21	-	-	-	-
Year 22	-	-	-	-
Year 23	-	-	-	-
Year 24	-	-	-	-
Year 25	-	-	-	-
Year 26	-	-	-	-
Year 27	-	-	-	-
Year 28	-	-	-	-
Year 29	-	-	-	-
Year 30	-	-	-	-