
10 Best Estate Planning Strategies in 2018

Presented by:

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Today's Speakers



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Top 10 Estate Planning Ideas

1. Incomplete gift non-grantor trusts
2. Non-grantor trusts for federal and state income tax shifting
3. Decanting grantor trusts into non-grantor trusts
4. Formula general power of appointments for basis step-up
5. Hybrid domestic asset protection trusts
6. Dynasty trusts
7. Non-judicial settlement agreements
8. What estate planners need to know about the 20% small business deduction
9. Modifying businesses and trusts to qualify for the new IRC 199A deduction
10. Not making low basis gifts

1. Incomplete Gift Non-Grantor Trusts

- The two opportunities:
 - Resident of state with state income tax contributes low basis asset to NING Trust
 - Trustee sells low basis asset
 - Avoids state income tax on the sale
 - Resident of state with state income tax contributes investment portfolio to NING Trust
 - Trustee continues to invest portfolio
 - Avoids state income tax on gains

1. Incomplete Gift Non-Grantor Trusts

- NING Trust
 - Non-grantor trust for income tax purposes
 - Distribution Committee made up of adverse parties
 - Incomplete gift for gift tax purposes
 - Retained testamentary non-general power of appointment
 - Retained non-fiduciary inter vivos non-general power of appointment over corpus for HEMS
 - Chief Counsel Advisory 201208026

1. Incomplete Gift Non-Grantor Trusts

- The NING Trust doesn't work if you can't work around the resident's state income tax rules
 - Source income
 - Non-source income
 - Grantor's residency?
 - Administered in state?
 - Resident trustee?
 - Resident beneficiary?

2. Non-Grantor Trusts for Federal and State Income Tax Shifting

- A Grantor may create a grantor or nongrantor trust for their family
- A nongrantor trust will allow for shifting income away from the grantor to the trust or to the beneficiary
- The choice of situs may allow for the elimination of state income taxes
 - Many states will attempt to retain the right to tax
 - A summary chart exists on Steve Oshins' website

2. Non-Grantor Trusts for Federal and State Income Tax Shifting

- Income taxed to either the trust or the beneficiary
 - If income is accumulated, then the income is taxed to the trust
 - If income is distributed, then the trust receives an income tax deduction and beneficiaries report taxable income
- Trusts may be “incomplete” or “completed” gift trusts
- IRC § 199A new opportunities
- IRC § 1202 opportunities

3. Decanting Grantor Trusts into Non-Grantor Trusts

Overview

- **de·cant** (d -k nt)
- *tr.v.* **de·cant·ed, de·cant·ing, de·cants**
- **1.** To pour off (wine, for example) without disturbing the sediment.
- **2.** To pour (a liquid) from one container into another.

Just as you can decant wine by pouring it from its original bottle into a new bottle, leaving the unwanted sediment in the original bottle, you can pour the assets from one trust into a new trust, leaving the unwanted terms in the original trust.

3. Decanting Grantor Trusts into Non-Grantor Trusts

- Many/most existing irrevocable trusts were intentionally drafted as grantor trusts
 - Estate tax savings was more important than income tax savings
 - Installment sales
 - Tax burn
- Time to take a good look at existing trusts
 - Decant into non-grantor trusts?
 - Unwind existing installment sales?

3. Decanting Grantor Trusts into Non-Grantor Trusts

- Huge opportunity for many of our clients
 - Tens of thousands of existing irrevocable trusts that should be changed to non-grantor trusts
 - State income tax savings
 - Federal income tax savings
 - Creating multiple non-grantor trusts
 - \$10,000 per trust state and local income tax deduction
 - IRC 199A pass-thru business opportunities by creating additional business owners

4. Formula GPOAs for Basis Step-Up

- More than 99.9% have no federal estate tax
 - A married couple's combined exemption now exceeds \$22,000,000
 - Income tax planning is more valuable than estate tax planning
- Unused estate tax exemption is now a form of currency

4. Formula GPOAs for Basis Step-Up

- One way to accomplish this is to use a formula GPOA in the trust
 - Give GPOA to an older or ill beneficiary whose net worth is less than the estate tax exemption amount
 - Exercisable only with the written approval of the Independent Trustee (or other non-adverse party)

4. Formula GPOAs for Basis Step-Up

- Your formula
 - Only over assets with a basis less than its FMV
 - Not to cause a federal estate tax
 - Not to cause a state estate tax
 - Ordering provision granting it over highest tax rate assets first
 - Consider whether there are assets that likely won't be sold anytime soon

5. Hybrid Domestic Asset Protection Trusts

- A DAPT is an irrevocable trust that is set up under the laws of one of the states that allows a person to be a discretionary beneficiary of his own trust without creditors being able to access it
 - Pick a state with a short statute of limitations
 - Pick a state where no statutory exception creditors can access it

5. Hybrid Domestic Asset Protection Trusts

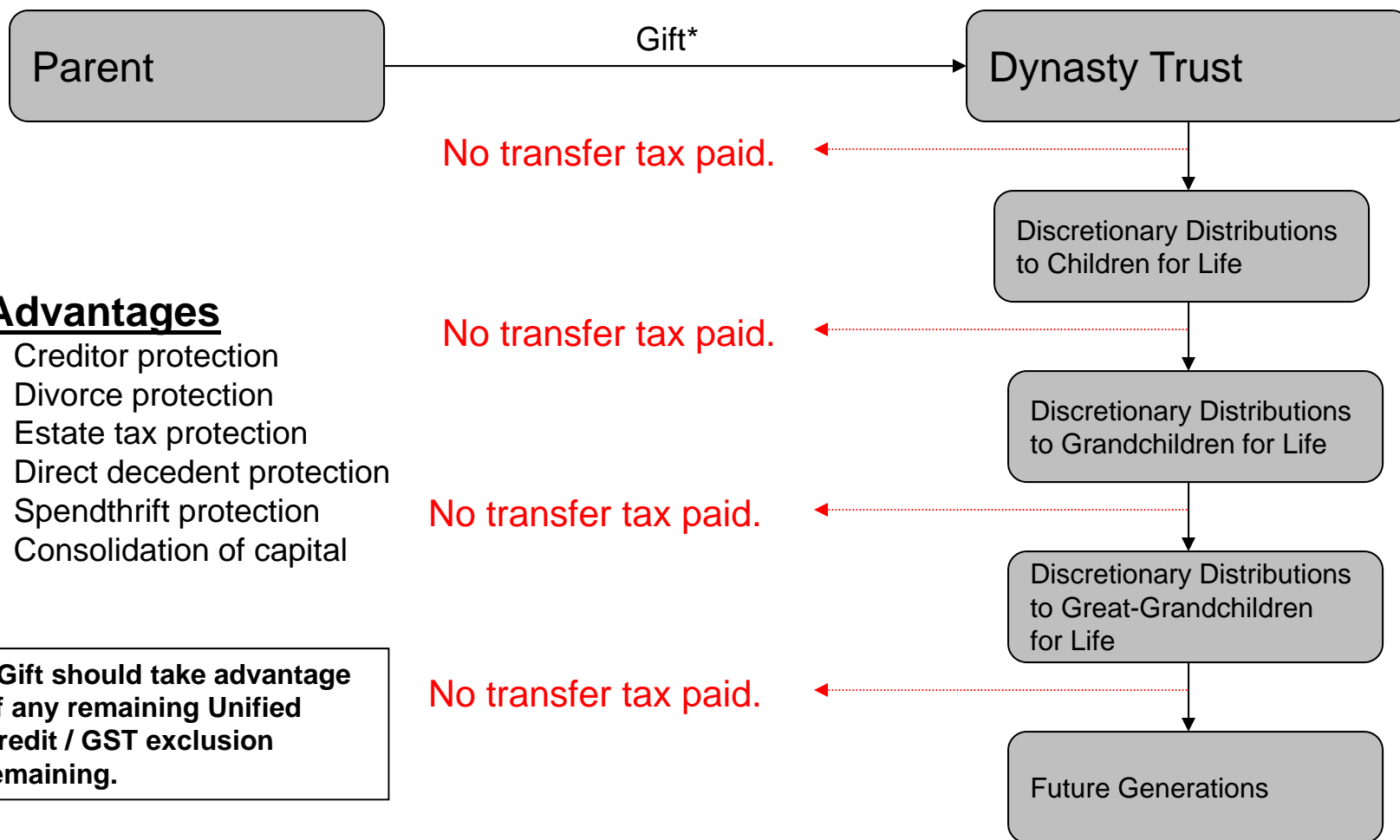
- Before we talk about Hybrid DAPTs, let's start with Third-Party Irrevocable Trusts
 - Third-Party Irrevocable Trusts are irrevocable trusts in which the grantor is not a beneficiary
 - Grantor retains the power to fire and hire trustees
 - Use a “floating spouse” provision
 - If grantor loses his assets, his spouse can take care of him
- We know for a fact that a Third-Party Irrevocable Trust works to protect its assets from creditors of the beneficiaries

5. Hybrid Domestic Asset Protection Trusts

- A “Hybrid DAPT” is a Third-Party Irrevocable Trust that can be turned into a DAPT
 - Concept applies to incomplete gift or completed gift
- Does the grantor really need to see his name in the trust agreement as a discretionary beneficiary?
 - Assuming a good relationship with spouse, a trust for spouse and descendants isn’t much different than a DAPT
- Give Trust Protector the power to add the grantor or remove the grantor as a permissible beneficiary

6. Dynasty Trusts

Strategy Overview



Advantages

- Creditor protection
- Divorce protection
- Estate tax protection
- Direct decedent protection
- Spendthrift protection
- Consolidation of capital

*** Gift should take advantage of any remaining Unified Credit / GST exclusion remaining.**

6. Dynasty Trusts

Tax Savings from Avoiding Estate Tax

	5% Growth	7% Growth	9% Growth
Value of Trust in 20 years	\$ 13,266,489	\$ 19,348,422	\$ 28,022,054
Estate Tax Savings @ 40%	\$ 5,306,595	\$ 7,739,369	\$ 11,208,822
Value of Trust in 40 years	\$ 35,199,944	\$ 74,872,289	\$ 74,872,289
Estate Tax Savings @ 40%	\$ 14,079,977	\$ 29,948,916	\$ 29,948,916
Value of Trust in 60 years	\$ 93,395,929	\$ 289,732,134	\$ 880,156,460
Estate Tax Savings @ 40%	\$ 37,358,372	\$ 115,892,854	\$ 352,062,584
Value of Trust in 80 years	\$ 247,807,205	\$ 1,121,171,938	\$ 4,932,758,341
Estate Tax Savings @ 40%	\$ 99,122,882	\$ 448,468,775	\$ 1,973,103,336

Initial investment of \$5,000,000

6. Dynasty Trusts

Advantages

- Takes maximum advantage of the \$11.2 million lifetime gift tax exemption
- Takes maximum advantage of the \$22.4 million GST tax exemption
- Appreciation of assets will be free from estate tax
- Provides a layer of asset protection from the beneficiaries' creditors
- No estate/gift/GST tax will be paid at the death of the grantor's descendants
- Future trustees can be given the discretion to make distributions as appropriate, given the circumstances that exist at the time the distributions are made
- Grantor can use the trust to positively affect future behavior

7. Non-Judicial Settlement Agreements

- Two types of Non-Judicial Agreements
 - UTC §111: Non-Judicial Settlement Agreement
 - A non-charitable irrevocable trust may be modified or terminated with the consent of all of the “interested persons” as long as the change doesn’t violate a material purpose of the trust
 - An “interested person” is one “whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.” UTC §111(a), (b).
 - UTC §411: Non-Judicial Consent Modification
 - A non-charitable irrevocable trust may be modified or terminated with the consent of the settlor and all beneficiaries even if the modification or termination violates a material purpose of the trust

7. Strategy – Part 1

- Look at trust agreement
 - Trust Protector/Independent Trustee power to amend?
 - In which state is the trust situated?
 - Trustee/Trust Protector power to change situs?
- Does state have a Decanting statute?
 - If yes, does the statute allow the desired changes to be made?
 - If no, does the Trustee/Trust Protector have the power to change situs to a state that does allow the changes to be made?
 - Does the decanting statute require notice to beneficiaries to decant?
 - Does the client care whether the beneficiaries see copies of the trust agreement and decanted trust agreement?



7. Strategy – Part 2

- Does the state have a Non-Judicial Settlement Agreement Statute?
 - If yes, does the desired change violate a material purpose of the trust? [If yes, then doesn't work.]
 - Do the changes include terms and conditions that could be properly approved by the court under applicable law?
 - Who are the “interested persons”?
 - Will all of the Interested persons agree to the changes?
 - Does the state have a virtual representation statute so unborn and remainder beneficiaries can be represented?



7. Strategy – Part 3

- Does state have a Non-Judicial Consent Modification statute?
 - If yes, is the settlor alive and willing to agree to the change?
 - Will all of the beneficiaries agree to the change?
 - Note: No “material purpose” limitations
 - Does the state have a virtual representation statute so unborn and remainder beneficiaries can be represented?



8. What Estate Planners Need to Know About the 20% Small Business Deduction

	Non-Service	Service
Taxable income less than \$315,000 (MFJ)	20% deduction	20% deduction
Taxable income greater than \$315,000 but less than \$415,000(MFJ)	Limitation phased-in	Deduction phased-out
Taxable income greater than \$415,000 (MFJ)	W-2/Property limit applies	No deduction

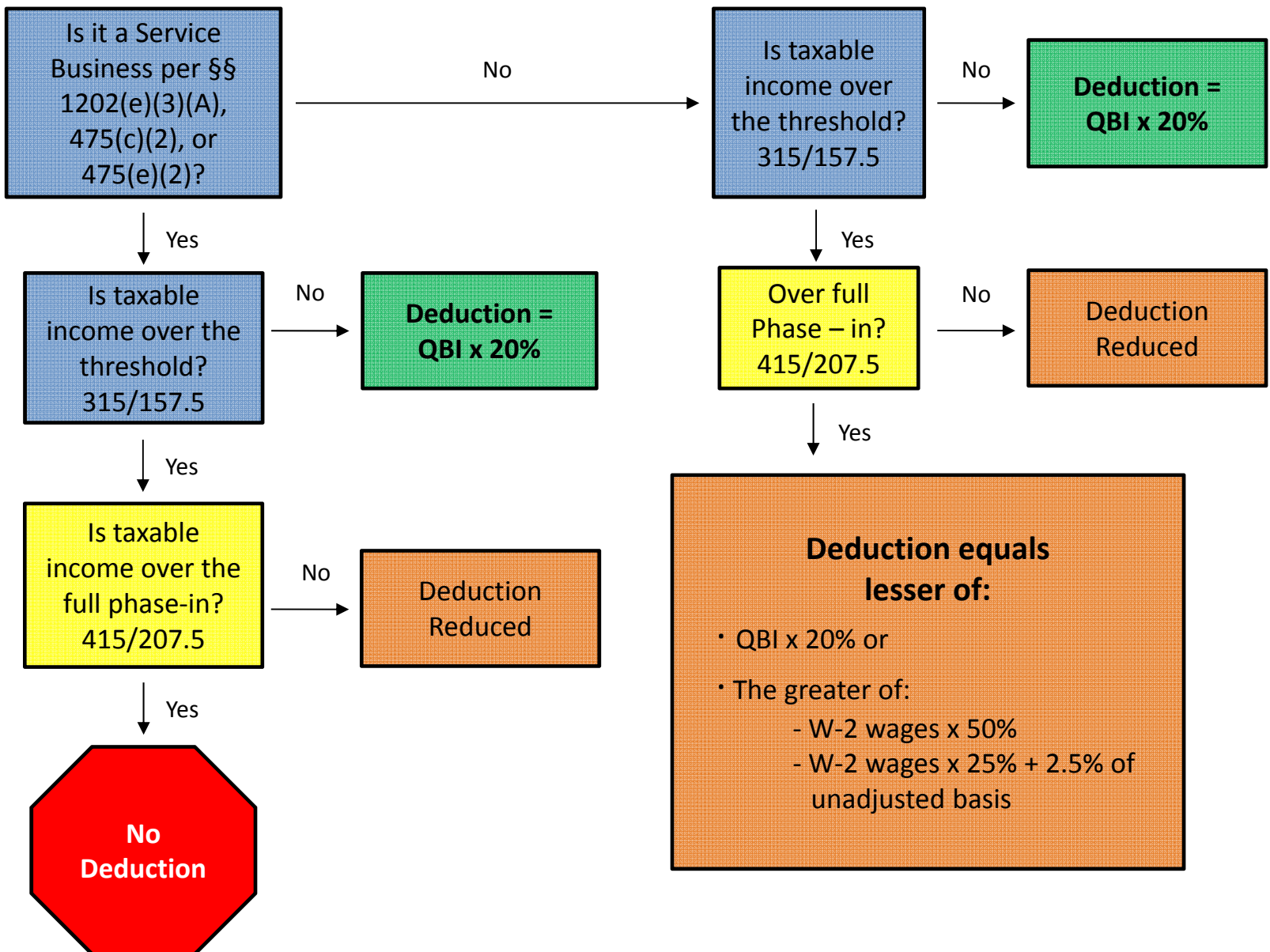
THE HEART OF PLANNING IS MANAGING TAXABLE INCOME AND THE WAGE / PROPERTY LIMITATION.

8. What Estate Planners Need to Know About the 20% Small Business Deduction

- Eligible Taxpayers
 - Sole proprietorships (Schedule C)
 - Sole owners (or TIC owners) of rental real estate (Schedule E)
 - S-Corporation owners (Form 1120S)
 - Partnership owners (Form 1065)

8. What Estate Planners Need to Know About the 20% Small Business Deduction

TYPES OF TAXPAYERS	THRESHOLD AMOUNT
Single persons	\$ 157,500
Married persons	\$ 315,000
Estates	\$ 157,500
Non-grantor completed gift trusts	\$ 157,500
Non-grantor incomplete gift trusts	\$ 157,500
Children subject to the “kiddie tax”	\$ 157,500



9. Modifying Businesses & Trusts to Qualify for the New IRC 199A Deduction

- **W-2 Modification Example**
 - S corporation – not a Specified Service Business
 - \$150,000 W-2 wages
 - \$850,000 of QBI
 - 20% of \$850,000 = \$170,000 deduction?
 - Not so fast! 50% of \$150,000 W-2 = \$75,000
 - \$75,000 deduction under IRC 199A
 - Increase W-2 wages to \$285,700
 - \$714,300 of QBI
 - 20% of \$714,300 = \$142,860
 - 50% of \$285,700 = \$142,850 = IRC 199A deduction

9. Modifying Businesses & Trusts to Qualify for the New IRC 199A Deduction

- Choice of Business Entity Example
 - Client owns a business that is not a Specified Service Business
 - They will have \$1,000,000 of QBI
 - No Qualified Property
 - Compare the effects of entity selection on their QBI deduction:

	Sole Proprietorship	Partnership	S-Corporation
Qualified Business Income	\$ 1,000,000	\$ 1,000,000	\$ 700,000
W-2 Wages	\$ 0	\$ 0	\$ 300,000
QBI Deduction	\$ 0	\$ 0	\$ 140,000

9. Modifying Businesses & Trusts to Qualify for the New IRC 199A Deduction

- Example using Multiple Non-Grantor Trusts
- Specified Service Business will have roughly \$1.5 million of QBI this year
 - Client sets up:
 - NING Trust
 - Separate Non-Grantor Gift Trusts for Child #1, Child #2 and Child #3
 - Separate Non-Grantor Gift Trusts for GC #1, GC #2, GC #3 and GC #4, GC #5 and GC #6
 - Yes, that's 10 trusts
- \$150,000 QBI per trust < \$157,500
 - All ten trusts get full 20% deduction

10. Not Making Low-Basis Gifts

- Income tax is the new estate tax
- 2017 Tax Reform:
 - Doubles the Basic Exclusion Amount and GST exemption in 2018 (\$10,000,000 in 2011 dollars)
(Note, the higher exemption sunsets December 31, 2025)
 - Retains the IRC § 1014(a) basis adjustment (“step-up”)

10. Not Making Low-Basis Gifts

Basis Basics

- Basis is generally FMV on date of decedent's death or, if elected, the alternate valuation date (IRC § 1014(a))
- Appreciated assets receive a “step-up” in basis at death – saves income tax when the property is sold by “heirs”
- Depreciated assets receive a “step-down” in basis – deprives “heirs” of the income tax benefit of claiming a loss when the property is sold
 - Less common than stepped-up basis because taxpayers have an incentive to realize losses during life

10. Not Making Low-Basis Gifts

Basis Basics

- Donee's basis for computing gain is the same as the donor's basis
- Donee's basis for computing loss is the lesser of—
 - Donor's basis, or
 - FMV of property on date of gift (Reg. § 1.1015-1(a))

10. Not Making Low-Basis Gifts

Single Client Age 92 – Gift versus Death Analysis *Simple Breakeven*

Size of Estate	\$	22,400,000	\$	22,400,000	\$	22,400,000
Size of Gift	\$	10,000,000	\$	10,000,000	\$	10,000,000
Basis of Gift	\$	1,000,000	\$	6,000,000	\$	10,000,000
Built-in Gain	\$	9,000,000	\$	4,000,000		0
Built-in Gain taxed @ 25%	\$	2,250,000	\$	1,000,000		0
Appreciation needed to overcome value of step-up	\$	5,625,000 ¹	\$	2,500,000 ²		0 ³
% of Appreciation		56.25%		25%		N/A

1. $\$2,250,000/40\% = \$5,625,000$ 2. $\$1,000,000/40\% = \$2,500,000$ 3. 40% Estate tax exceeds 25% Income tax

10. Not Making Low-Basis Gifts

Single Client Age 92 – Gift versus Death Analysis *Interrelated Breakeven*

Size of Estate	\$ 22,400,000	\$ 22,400,000	\$ 22,400,000
Size of Gift	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000
Basis of Gift	\$ 1,000,000	\$ 6,000,000	\$ 10,000,000
Built-in Gain	\$ 9,000,000	\$ 4,000,000	0
Built-in Gain taxed @ 25%	\$ 2,250,000	\$ 1,000,000	0
Appreciation needed to overcome value of step-up	\$ 15,000,000 ¹	\$ 6,666,667 ²	0 ³
% of Appreciation	150.00%	66.67%	N/A

1. $\$2,250,000 / (40\% - 25\%) = \$15,000,000$ 2. $\$1,000,000 / (40\% - 25\%) = \$6,666,667$ 3. 40% Estate tax exceeds 25% Income tax

Thank You For Attending

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Questions?