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# Maximizing Trust and Estate Planning with the Latest Updates

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## ... Objectives

- Obtain a Better Understanding of Estates and Estate Taxation
- Overview of Estate Tax Current/Future Rates & Exclusions
- Discuss Retirement/Estate Tax Planning Strategies Using Trusts
- Medicaid Asset Protection

## ... Definitions

- **Estate Tax** – Tax levied on assets of a decedent over a specific amount (exemption) at the time of their passing
- **Gift Tax** – Tax levied on gifts (taxable), given in a year which is over the annual exclusion and over the cumulative lifetime exemption amount.
- **Unified Credit/Lifetime Exemption** – A dollar amount that an individual can gift during their lifetime and pass on to heirs before gift or estate taxes apply. (Gift tax is incurred if individual is still alive and Estate tax is incurred if the individual is deceased)(\$13,610,000 per person in 2024)
- **Portability** – The ability of a spouse to inherit and use a deceased spouse's unused estate tax exemption. Married Couples therefore have \$27,220,000 of combined lifetime exemption.
- **Annual Gift Tax Exclusion** – The amount of property (including money) that one person may transfer to another as a gift without incurring gift tax or affecting the unified credit. (\$18,000 in 2024)

## ... Definitions

- **Federal Estate Tax Rates** – Rates start at 18%, but quickly hit the top rate of 40% at \$1,000,000 above the lifetime exemption amount.
- **Step-Up/Step Down Basis** – Tax provision that adjusts the cost basis of an inherited asset on the date of the previous owner's death to its fair market value when it is inherited.



# ••• Estate Taxes By the Numbers

For the 2022 Tax Year, there were 8,130 estate tax returns (Form 706) filed with the IRS

Of these 8,130 returns filed, the IRS collected just over \$22.5 Billion of tax

However, as you can see of the 8,130 estate tax returns filed, only 3,170 of these returns resulted in estate tax being due

Thus, you might ask yourself why would an individual file an estate tax return if there is no tax due?

**Table 1. Estate Tax Returns Filed in 2022**

Tax status and size of gross estate	Gross estate for tax purposes		Net estate tax	
	Number	Amount	Number	Amount
	(1)	(2)	(89)	(90)
<b>All returns</b>	<b>8,130</b>	<b>259,563,620</b>	<b>3,170</b>	<b>22,518,879</b>
Under \$10 million [2]	629	4,568,694	265	247,234
\$10 million < \$20 million	4,541	65,861,254	1,412	2,083,353
\$20 million < \$50 million	2,136	63,006,478	1,050	6,580,266
\$50 million or more	824	126,127,194	444	13,608,026
<b>All taxable returns</b>	<b>3,170</b>	<b>123,295,841</b>	<b>3,170</b>	<b>22,518,879</b>
Under \$10 million [2]	265	1,888,129	265	247,234
\$10 million < \$20 million	1,412	20,999,279	1,412	2,083,353
\$20 million < \$50 million	1,050	31,543,963	1,050	6,580,266
\$50 million or more	444	68,864,469	444	13,608,026
<b>All nontaxable returns</b>	<b>4,960</b>	<b>136,267,779</b>	<b>0</b>	<b>0</b>
Under \$10 million [2]	364	2,680,565	0	0
\$10 million < \$20 million	3,129	44,861,974	0	0
\$20 million < \$50 million	1,086	31,462,514	0	0
\$50 million or more	381	57,262,726	0	0

# Federal Lifetime Estate & Annual Gifting Exemptions Where We Are Today & Where We Are Headed

Federal Estate Taxes				
	2023	2024	2025	2026
Estate Tax Exemption/Unified Tax Credit:	\$ 12,920,000.00	\$ 13,610,000.00	\$ 13,990,000.00	\$ 7,000,000.00
Married Couples Estate Exemptions:	\$ 25,840,000.00	\$ 27,220,000.00	\$ 27,980,000.00	\$ 14,000,000.00
Top Estate Tax Rate:	40.00%	40.00%	40.00%	40.00%

Federal Gift Taxes				
	2023	2024	2025	2026
Lifetime Gift Tax Exemption:	\$ 12,920,000.00	\$ 13,610,000.00	\$ 13,990,000.00	\$ 7,000,000.00
<u>Annual Gift Tax Exclusion</u>				
Individuals:	\$ 17,000.00	\$ 18,000.00	\$ 19,000.00	Unknown
Gifts Split with Spouse:	\$ 34,000.00	\$ 36,000.00	\$ 38,000.00	Unknown
Top Gift Tax Rate:	40.00%	40.00%	40.00%	40.00%

<sup>1</sup> Amount Represents an Estimate as the IRS has not Released the Actual Exemption Amount as of October 2024

# Estate Vs. Individual Income Tax Rates

## 2024 Federal Estate Tax Rates

Taxable Amount	Estate Tax Rate	What You Pay
\$1 - \$10,000	18%	\$0 Base Tax / 18% on Taxable Amount
\$10,000 - \$20,000	20%	\$1,800 Base Tax / 20% on Taxable Amount
\$20,000 - \$40,000	22%	\$3,800 Base Tax / 22% on Taxable Amount
\$40,000 - \$60,000	24%	\$8,200 Base Tax / 24% on Taxable Amount
\$60,000 - \$80,000	26%	\$13,000 Base Tax / 26% on Taxable Amount
\$80,000 - \$100,000	28%	\$18,200 Base Tax / 28% on Taxable Amount
\$100,000 - \$150,000	30%	\$23,800 Base Tax / 30% on Taxable Amount
\$150,000 - \$250,000	32%	\$38,800 Base Tax / 32% on Taxable Amount
\$250,001 - \$500,000	34%	\$70,800 Base Tax / 34% on Taxable Amount
\$500,001 - \$750,000	37%	\$155,800 Base Tax / 37% on Taxable Amount
\$750,001 - \$1,000,000	39%	\$248,300 Base Tax / 39% on Taxable Amount
\$1,000,001 +	40%	\$345,800 Base Tax / 40% on Taxable Amount

## 2024 Married Filing Jointly Tax Rates

Taxable Amount	Married Filing Jointly Tax Rate	What You Pay
\$0 - \$23,200	10%	10% of Taxable Income
\$23,201 - \$94,300	12%	\$2,320 Plus 12% of Amount Over \$23,200
\$94,301 - \$201,050	22%	\$10,852 Plus 22% of Amount Over \$94,300
\$201,051 - \$383,900	24%	\$34,337 Plus 24% of Amount Over \$201,050
\$383,901 - \$487,450	32%	\$78,221 Plus 32% of Amount Over \$383,900
\$487,451 - \$731,200	35%	\$111,357 Plus 35% of Amount Over \$487,450
\$731,201 +	37%	\$196,669.50 Plus 37% of Amount Over \$731,200



## Federal Estate Tax Overview

Estate Tax is a tax on an individual's right to transfer property at their death. It consists of an accounting of everything the individual owns or has certain interests in at the date of death. An individual's "**Gross Estate**" is the total fair market value of all these items. Some examples of includable property in an individual's gross estate are as follows:

- Cash & Securities
- Real Estate
- Life Insurance
- Trust Property
- Annuities
- Business Interests
- Other Assets

After all assets in an individual's estate have been accounted for, certain deductions & in special circumstances, reductions to values may be applied. Some examples of deductions and reductions of value are as follows:

- Mortgages & Other Debts
- Estate Administration Expenses (Funeral Costs, Accounting Fees, Appraisal Fees, Taxes)
- Spouse or Marital Deduction (Property Passing to your Surviving Spouse)
- Charitable Deduction (Property Donated to a Qualified Charity)

After all assets, deductions, and reductions in value have been accounted for, what remains is the decedent's "**Net Taxable Estate**"

## ... Estate Tax Overview Continued...

After arriving at “**Net Taxable Estate**”, a decedent is permitted to apply their unused unified credit/lifetime exclusion (\$13,610,000 for 2024)

For most individuals, the unused portion of their unified credit/lifetime exclusion will completely wipe out their net taxable estate. However, for wealthy individuals whose net taxable estate exceeds the lifetime exclusion, their remaining estate after applying the unused portion of their unified credit/lifetime exclusion will be subject to Federal and in most cases state estate taxes.



DEATH AND TAXES

## ... Why File an Estate Tax Return if Under Lifetime Exemption?

If a decedent's gross estate, increased by the decedent's adjusted taxable gifts and specific gift tax exemption is valued at **more** than the filing threshold for the year of the decedent's death, an estate tax return is required to be prepared and filed whether estate tax will be due. Thus, if a decedent's gross estate, increased by their adjusted taxable gifts and specific gift tax exemption is valued at more than \$13,610,000 in 2024, an estate tax return **must be filed**.

Additionally, if the estate elects to transfer any deceased spousal unused exclusion (DSUE) amount to a surviving spouse, regardless of the size of the gross estate or amount of adjusted taxable gifts, an estate tax return **must be filed**.

However, if the gross estate is less than the prescribed amount and no DSUE is being transferred, an estate tax return is **not required**.

## Step Up in Basis Under IRC Sec. 1041

Heirs of estates owning tax producing property such as business interests, real estate, cryptocurrencies, bonds, mutual funds, arts & furnishings, collectibles and certain other types of property may reap the benefits of IRC Sec. 1014 – Basis of Property Acquired from a Decedent

IRC Sec. 1041 allows for an adjustment to the cost basis of an inherited asset on the date of the previous owner's death to its fair market value when it is inherited. Therefore, if there is tax producing property in an estate with low basis in the hands of the estate, when the assets are ultimately transferred to the beneficiaries/heirs, a step up in basis can be realized to reduce double taxation.

**\*Caution\*** - A step down in basis may also be applicable if the fair market value of the asset is lower than the decedent's basis



## ... Step Up in Basis Example

An individual owns 10,000 shares of XYZ Co. stock. The individual purchased the shares many years ago at an original cost of \$10 per share. Thus, the individual's original cost basis in the shares is \$100,000.

The individual has done some estate planning and has a will drafted in which the will specifies that upon the individual's death the all the individual's property will be handed down to their only child.

At the time of the individual's death in 2024, the stock was valued at \$20 per share.

**Option A (Cash Transfer)** - If the individual sold the stock prior to death, the individual would have received proceeds of \$200,000 ( $\$20 \times 10,000$  shares) of which \$100,000 would be profit subject to long-term capital gains tax. The individual would then pay a standard 15% capital gains tax on this amount or \$15,000 leaving \$185,000 to be passed down to their child.

**Option B (Stock Transfer)** – The individual decides to hold onto their stock until death. When the individual dies the stock is still worth \$20 per share. The child inherits all 10,000 shares and sells them immediately upon receipt. When the shares are inherited upon death, the shares receive a step-up in basis to their fair market value of \$20 per share. Therefore, the child has no taxable gain upon the sale and the whole \$200,000 is inherited.



## ... New York State Estate Taxes - Lifetime Exemption

New York State Estate Taxes				
	2023	2024	2025	2026
Estate Tax Exemption: \$	6,580,000.00	\$ 6,940,000.00	Indexed For Inflation	Indexed For Inflation
Married Couples Estate Exemptions:	No Portability	No Portability	No Portability	No Portability
Top Estate Tax Rate:	16.00%	16.00%	16.00%	16.00%

**\*Caution\*** - New York State **does not** allow portability. Therefore, the New York State exclusion must be used by each spouse at his or her respective death. If the first spouse expires with remaining exclusion, it is wasted!!

# ... New York State Estate Tax Current Rates

Taxable Amount	Estate Tax Rate	What You Pay
\$1 - \$500,000	3.06%	\$0 Base Tax / 3.6% on Taxable Amount
\$500,000 - \$1M	5.00%	\$15,300 Base Tax / 5.0% on Taxable Amount
\$1M - \$1.5M	5.50%	\$40,300 Base Tax / 5.5% on Taxable Amount
\$1.5M - \$2.1M	6.50%	\$67,800 Base Tax / 6.5% on Taxable Amount
\$2.1M - \$2.6M	8.00%	\$106,800 Base Tax / 8.0% on Taxable Amount
\$2.6M - \$3.1M	8.80%	\$146,800 Base Tax / 8.8% on Taxable Amount
\$3.1M - \$3.6M	9.60%	\$190,800 Base Tax / 9.60% on Taxable Amount
\$3.6M - \$4.1M	10.40%	\$238,800 Base Tax / 10.4% on Taxable Amount
\$4.1M - \$5.1M	11.20%	\$290,800 Base Tax / 11.2% on Taxable Amount
\$5.1M - \$6.1M	12.00%	\$402,800 Base Tax / 12.0% on Taxable Amount
\$6.1M - \$7.1M	12.80%	\$522,800 Base Tax / 12.80% on Taxable
\$7.1M - \$8.1M	13.60%	\$650,800 Base Tax / 13.6% on Taxable Amount
\$8.1M - \$9.1M	14.40%	\$786,800 Base Tax / 14.4% on Taxable Amount
\$9.1M - \$10.1M	15.20%	\$930,800 Base Tax / 15.2% on Taxable Amount
Over \$10.1M	16.00%	\$1.082M Base Tax / 16% on Taxable Amount

## ... New York State Estate Tax Cliff

**\*Beware\*** Unlike Federal estate taxes, NYS imposes a tax cliff when NYS estates fall into the “estate tax cliff range”

2024 Cliff Range - \$6,940,000 - \$7,287,000

Taxable Estate	Taxes Owed
\$0 - \$6,940,000	\$ -
\$6,940,001 - \$7,287,000	Taxed on Amount over Threshold Based on Graduated Rates
\$7,287,001 & Up	Taxed on Whole Estate



## ... New York State Estate Tax Cliff Example

**Facts:** An individual dies in January of 2024, with an estate of \$6,940,000. The estate is under the \$6,940,000 New York State estate tax exemption and therefore \$0 tax is owed.

Now let's assume the individual had a taxable estate of \$6,990,000. The estate is over the estate tax exemption for 2024 by just \$50,000. In this situation, the estate would owe New York State taxes of \$132,240 and pay an effective tax rate of 2.0% on the estate. Furthermore, the estate tax rate on the amount above the exemption (\$50,000) would be taxed at approximately 260%.

Finally, let's assume the individual had a taxable estate of \$7,287,000. The estate is now over the estate tax exemption for 2024 by \$347,000 (it has reached the cliff). In this situation, the estate would owe New York State estate taxes of \$626,352 and pay effective tax of 9% on the estate. The estate tax rate on the amount above the exemption would be taxed at approximately 181%.

As you can see, it is vital that NYS residents with estates that are near the estate exemption do sufficient planning to mitigate the taxes owed.

## ... New York State “Santa Clause” Provision

The “Santa Clause” provision is a provision that can be written into your estate planning documents that allows any amount in excess of the NYS estate exemption to be bequeathed to a named charity.

The provision only takes effect if the estate in question is in excess of the current NYS estate exemption.





## ... Common Trusts Utilized to Avoid/Minimize Estate Implications

There are dozens of trusts that individuals can utilize to help reduce their estate tax burden. We will discuss a few of the more common trusts we use at Dannible & McKee to assist our clients in achieving this goal.

- **Intentionally Defective Grantor Trust (IDGT)**
- **Charitable Remainder Uni Trusts (CRUT)**
- **Grantor Retained Annuity Trust (GRAT)**
- **Irrevocable Life Insurance Trusts (ILIT)**

## ... Definitions Continued...

- **Simple Trust** – Type of trust that distributes all its income to beneficiaries annually, and does not distribute principal or make charitable contributions
- **Complex Trust** – Type of trust that does not meet the IRS requirements for a simple trust and therefore can accumulate income, distribute some or all the principal of the trust to beneficiaries
- **Grantor (Trustor/Settlor)** – A person who creates a trust and is considered the owner of the trust's assets for tax purposes
- **Grantor Trust** – Type of trust where the grantor retains some control over the trust's assets or income, making the grantor responsible for the trust's assets for tax purposes.

## ... Definitions Continued...

- **Revocable Trust** – Arrangement set up through a legal document that allows an individual to manage their assets during their lifetime and distribute them after their death.
- **Irrevocable Trust** – Arrangement set up through a legal document that transfers ownership and authority of an individual's assets to avoid estate tax inclusion and help protect assets from creditors
- **Trustee** – An individual who acts as a custodian for the assets held within a trust. The individual is responsible for managing and administering the finances of the trust per the trust document.

## ... Intentionally Defective Grantor Trusts (IDGT)

An IDGT is an irrevocable trust drafted to cause one or more of the grantor trust rules of IRC Sec. 671-678 to apply so that the trust income is taxed to the grantor rather than the trust.

Although the trust is “defective” (an incomplete transfer) for income tax purposes (income is taxed to the grantor), it can be effective (a complete transfer) for estate tax so that the property is not included in the grantor’s gross estate.

### Key Components

Transfer of Assets to Trust can be through Gift, Sale or Combination of Both

- Original Value of Gifts made to the Trust will be Considered a Gift for Gift Tax Purposes (Reduces Lifetime Exemption)
- Sales of Assets to Trust in Return for a Promissory Note Valued at FMV of Assets can Freeze Estate Tax Value, Avoid Capital Gains Tax and interest used from Note can Assist in Paying Income Tax Related to Trust Income

**\*Caution\*** If the grantor/seller dies prior to the full payment of the installment note, the remaining value of the note will be includable in their estate

# ... Intentionally Defective Grantor Trusts (IDGT) Continued...

## **Retained Powers**

- Designating Spouse as Trustee
- Reacquiring Trust Assets
- Authorizing Loans to Grantor

## **Income Tax Reimbursement**

- The trust instrument can include a clause to reimburse the grantor for the income tax payments attributable to the trust's income. However, it is very important that this clause also include that it is at the trustee's discretion to reimburse the grantor as no such wording will result in the full value of the trust's assets to be includable in the grantor's gross estate [IRC Sec. 2036(a)(1)]

## **No Step-Up in Basis Upon Death of Grantor**

## **Best Assets for IDGT's are Appreciating Assets**

- Stock's
- Real Estate
- Business Interests



## ... Intentionally Defective Grantor Trusts (IDGT) Example

**Facts:** An individual owning 100% of an S Corporation currently valued at \$10,000,000 is nearing retirement age and is looking to remove some assets from their estate as they will most likely have a taxable estate upon death. The individual has stock basis in the S Corporation shares of \$6,000,000 and believes the S Corporation stock will appreciate over the next 10 years to approximately \$20,000,000. The individual has never made any taxable gifts and therefore still has all their lifetime gifting exclusion remaining.

If the individual's plan is to transfer the stock to his only heir upon death, we would recommend the individual establish an IDGT and transfer a specified amount of the S Corporation stock into the IDGT to remove the value of its future income and appreciation from the individual's estate. Below are the steps to accomplish this goal.

1. Work with an estate lawyer like Tim to establish an IDGT.
2. Establish a bank account for the IDGT and fund the account with a nominal cash gift (will report on gift tax return)
3. Gift a specified amount of the stock to the IDGT (less than 100%). For this example, we will use 75%.

## Intentionally Defective Grantor Trusts (IDGT) Example Continued...

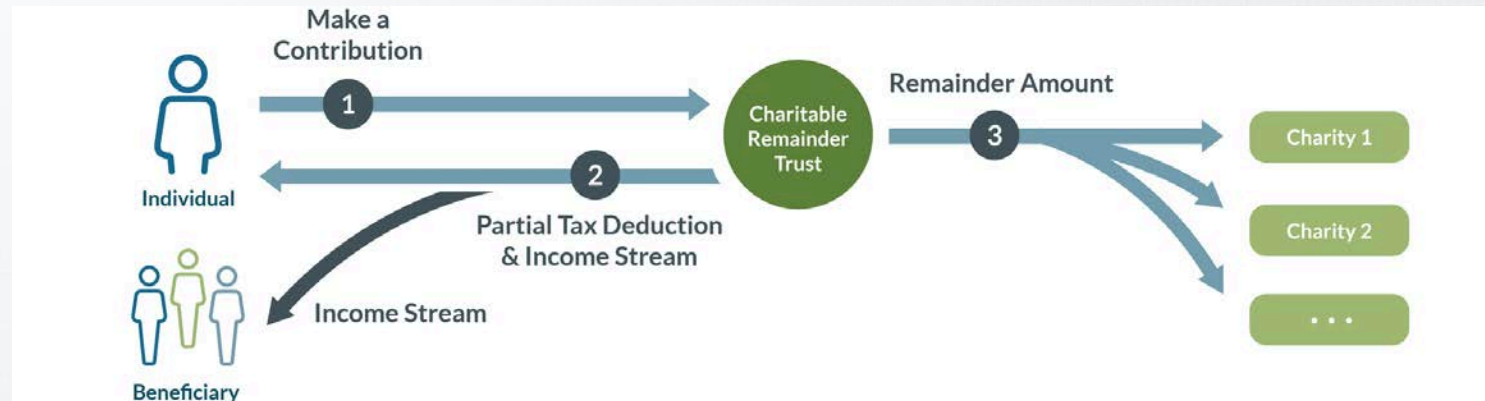
Immediately after making the gift the following has happened:

1. The grantor has frozen the value of the asset for estate purposes at \$7,500,000 ( $\$10,000,000 \times 75\%$ )
2. The grantor has protected the assets from probate and creditors as they are now in the trust
3. The IDGT continues to lower the grantor's estate by allowing the grantor to pay taxes on the income earned on the assets gifted.
4. The S Corporation can make distributions to the trust further increasing the future amount available for the beneficiary
5. In times where cash is scarce for the grantor, the trustee can elect to reimburse the grantor for the income taxes paid related to the trust's income

## Charitable Remainder Unitrust (CRUT)

A charitable remainder unitrust (CRUT) is an irrevocable tax-exempt trust that pays a percentage of its assets annually to non-charitable beneficiaries, while the remaining balance is eventually given to a charity.

CRUTs are great tools for individuals who are planning for retirement that are charitable in nature and are also looking to avoid capital gains taxes on the sale of appreciated assets transferred to the trust while also receiving a partial charitable income tax deduction when the trust is funded.



## Charitable Remainder Unitrust (CRUT)

### Key Components

- Grantor/Trustor/Settler transfers assets into the trust (Cash, Securities, Private Business Interests, Real Estate)
- Trust's Basis in the Transferred Assets is Carryover Basis (Basis in the Hands of the Donor)
- Trust Pays Fixed Income Stream to at least 1 Living Beneficiary (Usually the Donor) Based on Trusts Value at the end of each year
- Payments Continue for a Specific Term of up to 20 Years or the Life of 1 or More Beneficiaries
- Trust is a tax-exempt entity and therefore does not pay capital gains tax when it sells an asset.  
    \***Caution**\* Unrelated Business Taxable Income (UBTI) may apply if non-capital income is generated.
- Charitable Deduction Available to Grantor/Trustor/Settler is the Present Value of the Charitable Organization's Remainder Interest (Calculated as the Value of the Donated Property Minus the Present Value of the Annuity)

## Charitable Remainder Unitrust (CRUT) Example

**Facts:** An individual who is nearing retirement age has highly appreciated stock valued at \$1,000,000. The individual wants to make a charitable donation of the stock to receive the benefit of the donation on their individual income tax return, but also wants to continue receiving income in the future to fund their retirement.

The Individual is a Great Candidate to Establish a CRUT. Below are the Steps the Individual Should Take:

1. Work with an estate lawyer like Tim to establish the CRUT with the individual as the beneficiary of the CRUT
2. Fund the CRUT with \$1,000,000 of stock
3. Establish an income stream rate. This individual chose 5%. (Minimum = 5% / Maximum = 50%)
4. CRUT Sells the stock and receives the \$1,000,000 to fund the income stream for the beneficiary

### Year 1

- The individual will receive a \$50,000 from the CRUT.
- The individual will also have an available charitable deduction to report on their individual income tax return of \$580,720\* (Stock is eligible for 30% deduction of Year 1 AGI – Remaining balance can be carried forward)

\*Based on 5.2% Charitable Mid-term Federal Rate



## Charitable Remainder Unitrust (CRUT) Example

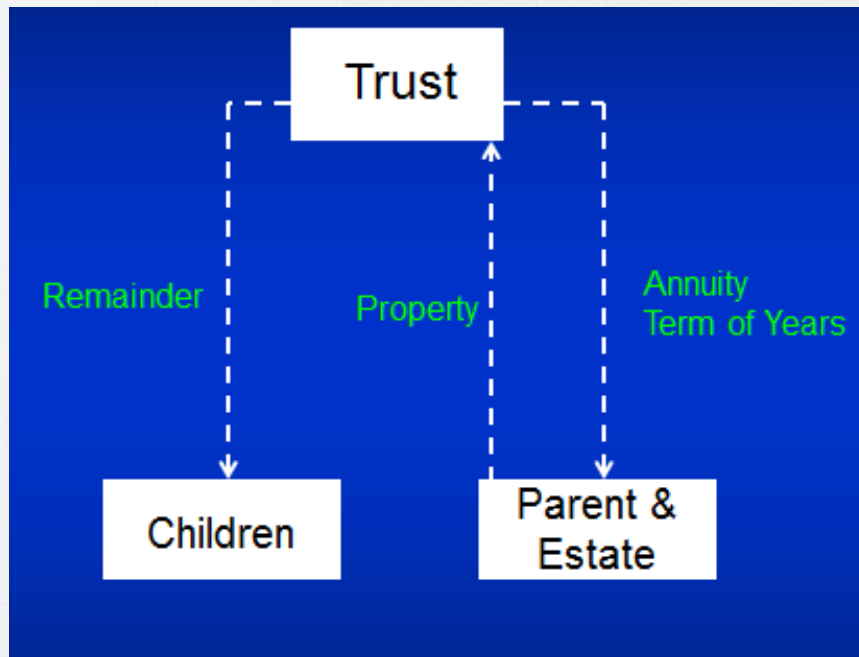
### Years 2 through Final Year

- Individual will continue to receive income payments based on reevaluation of assets in CRUT
- Upon termination of the trust or death of the individual (whichever comes first), the remaining corpus will be donated to the charity/charities of the individual choosing.

## Grantor Retained Annuity Trust (GRAT)

A Grantor Retained Annuity Trust (GRAT) is a type of irrevocable trust that allows an individual to transfer high-yielding or rapidly-appreciating assets into the trust while retaining the right to an annuity interest for a fixed term of years or for the shorter of fixed term or life.

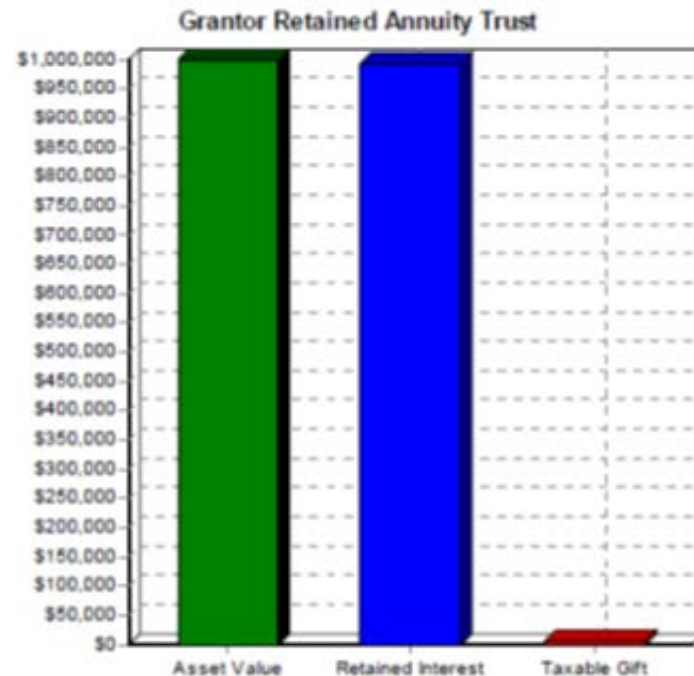
When the retention period ends, assets in the trust (including all appreciation) go to the named remainder/beneficiary (ies).



## Grantor Retained Annuity Trust (GRAT)

### Key Components

- When a GRAT is funded, the value of the remainder interest is considered a taxable gift (goes against lifetime gifting exclusion)
- The value of the remainder interest is the FMV of the property transferred reduced by the value of any interest retained by the grantor (Gift is Discounted lower value applied against estate)
- Grantor is responsible for paying income tax on the GRAT's income, gains, and losses.
- Annuity payments received from GRAT are not taxable because they are considered a transfer of principal between grantor and themselves.



## ... Grantor Retained Annuity Trust (GRAT) Continued...

### Potential Pitfalls of GRATs

- If the grantor does not outlive the term of years for the GRAT, the trust property goes back into the grantor's estate
- The GRAT may fail to outperform the 7520 rate
  - This results in no excess to transfer which means no tax savings
- No Annual Gift Tax Exclusion is Available
- Grantor gives up control of GRAT Property
  - If grantor finds that they need more than the annuity payment amount, they will not be able to access the property or change the terms of the GRAT since it is irrevocable
- No Step-Up in Basis

## ... Grantor Retained Annuity Trust (GRAT) Continued...

### When to use a GRAT

Grantor has property that is expected to appreciate significantly in the short term

- Closely Held Stock
- High-Growth Investment Portfolios
- Real Estate

\*Key Factor is assets need to outperform the IRC Sec. 7520 Interest Rate (Represents 120% of the Applicable Federal Rate (AFR))

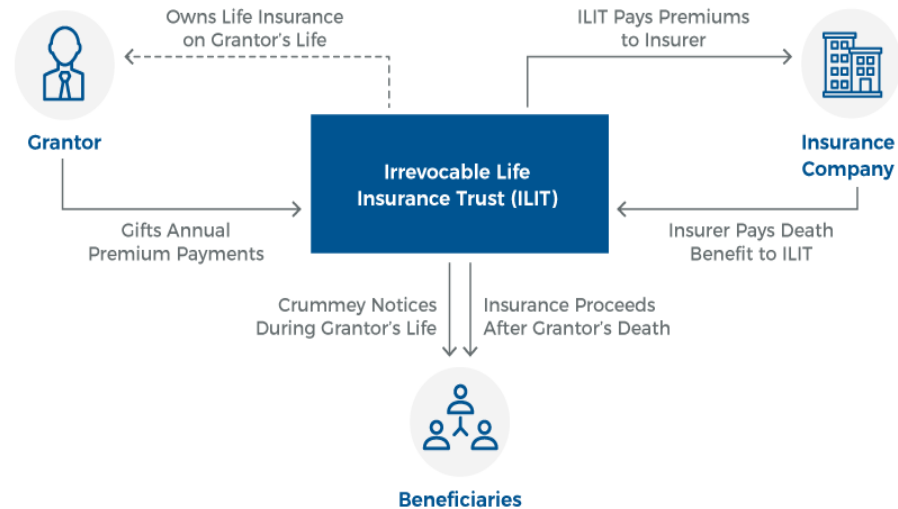
November 2024 Long-Term Annual AFR is 4.15%

Grantor does not want to pay Federal Gift tax and has already used up their applicable estate and gift tax exclusion



## ... Irrevocable Life Insurance Trust (ILIT)

An Irrevocable Life Insurance Trust (ILIT) is a trust created during the insured's lifetime that owns and controls a term or permanent life insurance policy or policies in so that the life insurance proceeds are not included in the individual's estate upon their death and the proceeds can be passed on to their beneficiaries in a tax-free manner.



## ... Irrevocable Life Insurance Trust (ILIT)

### Key Components

- Trust can be initially funded with a one-time gift or annual gifts to cover the life insurance premiums
- Grantor can transfer an existing policy or have the trust purchase a new policy. If transferring existing policy this will be considered a gift for gift tax purposes
- If grantor makes a one-time gift, each year they use the annual gift tax exclusion (\$18,000 in 2024) to pay the premiums.
  - \***Caution**\* The trustee must notify the beneficiaries of their right to withdraw the gift for a limited amount of time for this to work (gives the beneficiaries a “present interest” in the gifts)
- Independent trustee must be assigned (trustee cannot be grantor or grantor’s estate)
- If existing policy is transferred to trust, 3-year waiting period before death benefits are excluded from estate

# ... Irrevocable Life Insurance Trust (ILIT) Example

## Key Roles

### Grantor

- Sets up the ILIT
- Chooses Trustee and Beneficiaries
- Gifts monies to ILIT to pay for the Life Insurance Premiums

### Trustee

- Holds the legal title to the life insurance policy
- Manages the ILIT
- Pays the premiums, handles the tax filings, invests any assets held by the trust, and distributes proceeds

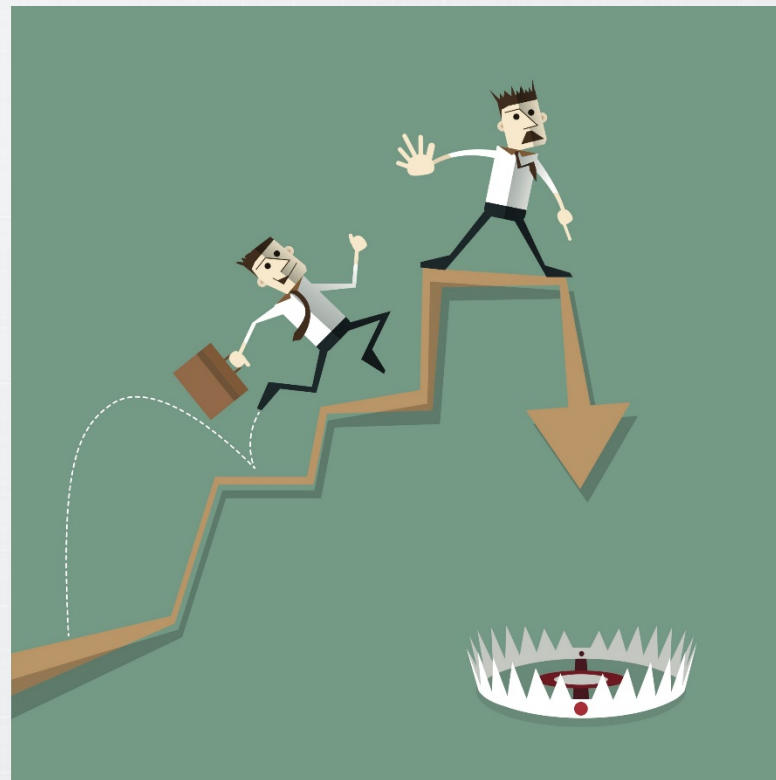
### Beneficiaries

- Receive the money from the policy upon the grantor's death

## Irrevocable Life Insurance Trust (ILIT) Example

### Potential Pitfalls

- Irrevocable – Trust cannot be modified or changed
- Loss of control of assets
- Costs – Administration costs can be burdensome
  - Trustee Fees
  - Annual Tax Returns
  - Trust document formation costs
- Proceeds are included in beneficiaries estates



## ... Medicaid Planning Background

### Medicare versus Medicaid

- What covers what?
- Who qualifies for each program?

### Two main types of Medicaid:

- Community/Home Care Service
  - Services being provided in the community by home nurses, aides, etc.
  - Potential coverage for assisted living
- Institutional/Nursing Home Services
  - Services being provided in a 24/7 skilled nursing facility



## ... Medicaid Resource and Income Rules

Single Person may retain and qualify for Medicaid Nursing Home Benefits:

- Personal and Household Effects
- \$31,175.00 in non-exempt assets
- Term Life Insurance (no cash value)
- \$50 monthly income
- Exempt assets (list to follow)

Above these asset levels, ineligible for Medicaid until assets are spent down.

## ... Medicaid Resource and Income Rules

Married Couple with Spouse living in the community

- Spouse in Nursing Home: same rules as single person
- Community Spouse can keep in his/her name:
  - \$74,820.00 or spousal share ( $\frac{1}{2}$  of couple's resources as of the date of institutionalization, up to \$154,140.00)
  - Prepaid, irrevocable burial expenses (reasonable)
  - Minimum combined monthly income of \$3,853.50
- Thresholds are for 2024, due to increase slightly in 2025

## ... Medicaid Resource and Income Rules

### Exempt Resources from Asset Calculations:

- Homestead\* (up to \$1,071,000.00 of equity)
  - Note that all other real property is NOT exempt
- Personal Belongings
- Household Items
- Burial Fund of \$1,500.00
- One vehicle
- Life Insurance Cash Value of \$1,500.00
- Reasonable Pre-Paid Funeral Arrangements
- Individual Retirement Account/401(k)/403(b)\*

## ... Medicaid Rules

### Five Year Look Back Period

- Upon applying for Medicaid, DSS will review five years of financial statements from all accounts owned by the applicant and spouse.
- Any gift made during the 5-year lookback will result in a period of ineligibility for Medicaid benefits (the “Penalty Period”)
- During the Penalty Period, the applicant must privately pay for the nursing home.

## ... Trust Planning

- Testamentary Trusts
- Revocable Trusts
- Irrevocable Trusts



## ••• Testamentary Trusts and Medicaid Planning

- Testamentary Trusts are created under the Last Will and Testament of the deceased individual.
- Common scenarios for a Testamentary Trust are for minor children, grandchildren, or individuals that cannot be trusted with funds.
- There is an opportunity for Medicaid asset protection planning between Spouses by utilizing testamentary trusts.
- Funds left in Trust UNDER THE WILL of a decedent are exempt from Medicaid asset calculations

## ... Revocable Trusts

- Revocable Trust vs Irrevocable Trust
- Avoids Probate
- Multi-Jurisdictional Ancillary Probate Avoided
- Potential Will Contests and Location of Distributees
- Offers No Creditor Protection During Life

## ... Irrevocable Income Only Trusts

- Created by a creator for purpose of asset preservation.
- Creator relinquishes authority over the Trust and ownership of assets provided to the Trust.
- Typically, creator is naming a child or children as Trustee(s).
- Common assets are real property and financial assets whereby the creator does not need to benefit from the assets anymore.
- The creator can retain a power of appointment over remaining principal at death to determine who will receive the remaining principal – thus allowing this be an “Incomplete Gift”

## ... Other Medicaid Planning Tools

- Straight Gifting of Assets
- Life Estate Deed
- Promissory Note Planning (Crisis Plan)
- Power of Attorney/Health Care Proxy Documents
- Utilizing potential Exempt Transfer

# Questions







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