

ADVANCED PLANNING ALTERNATIVES

Planning Matrix

	Outright Gift	Grantor Retained Annuity Trust	Sale to Defective Trust	Limited Liability Company
Control	This is a completed gift. The donor gives up control over the asset. Trusts can be used to provide limited control.	This is a completed transfer to a trust. The donor gives up control of the asset.	This strategy involves a completed sale to a grantor trust. The Donor gives up control of the asset.	Donor gives up control of transferred LLC interest. In light of IRS challenges, the donor should not retain sole managing control. Some authorities maintain that the donor should not retain any control.
Property Retained	No income or reversion retained	Annuity payments are made to the donor as determined at the time of transfer.	Interest payments are made to the donor. Principal may be amortized and paid annually, or paid as a balloon at the end of the term of the note.	Distributions of income or capital may be made in percentage ownership retained by the donor(s).
Children Receive	Full amount of property transferred.	Appreciated value of assets over the annuity payments for the term of the trust.	Appreciated value of assets over the interest and principal repayment on the note.	Percentage ownership of the LLC represented by shares gifted.
Gift Tax	Taxable gift of full value of the property transferred. Annual exclusions and unused	Value of the gift is discounted pursuant to a formula which includes the value of the property, the retained annuity rate, term of the trust, age of the grantor and applicable federal rate.	Initial gift to establish the grantor trust, if necessary to provide seed capital for the sale, is a taxable gift. Unused applicable exclusion or annual exclusions may offset tax. The sale should not be taxable for gift tax purposes.	Taxable gift of the value of the property after allowable discounts.
Tax Discount	Possible discounts allowed if gift is not cash or is an interest in a business.	The annuity calculation discounts the gift of the remainder interest. In addition, the assets transferred to the GRAT initially may be eligible for possible discounts.	Possible discounts allowed if sale is of an entity or other non-marketable asset.	Possible discounts allowed for lack of control and lack of marketability.
Income Tax	Future income taxable to the donees, unless gift is to a grantor trust, providing income is taxable to grantor.	Trust is a grantor trust for income tax purposes. Taxable income flows through to the grantor.	Trust is a grantor trust for income tax purposes. Taxable income flows through to the grantor. If the grantor predeceases the term of the note, the estate may need to recognize gain.	LLCs are flow-through entities. Income taxed to members according to their percentage ownership. to retained portion.
Estate Tax	Asset is removed from the estate.	If grantor dies before the end of the GRAT term, a portion of the assets will be included in the estate. If grantor survives the term, appreciation is removed from the estate.	If the grantor predeceases the term of the note, the balance due is included in the grantor's estate. All appreciation is removed from the estate.	If properly structured, interest transferred may be removed from the estate. Interest retained is taxable in the estate. Discounts may apply with respect to retained portion.

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GST Tax	GST planning can be accomplished if gift is made outright to grandchild or to a properly structured trust.	GST planning is not generally available with GRATs.	GST planning can be accomplished if gift and sale are made to a properly structured trust.	GST planning can be accomplished if gift is made outright to grandchild or to a properly structured trust.
Risks	IRS may challenge asset valuation.	This is a statutory technique, supported by strong caselaw. IRS may challenge asset valuation. Grantor may die during the term of the GRAT negating its benefit.	This strategy is supported by case law only and is not referenced in the Internal Revenue Code. The IRS may challenge the asset valuation and if so there is a risk that the sale could be viewed as a part sale/part gift transaction. Mortality risk is limited to the amount of unpaid note balance.	IRS may challenge asset valuation.
	Any appreciating asset.	Any appreciating asset.	Any appreciating asset.	Assets that will support business purpose of the LLC and any appreciating asset.

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