

Top 5 Hot Topics in Estate Planning for 2021

Financial Planning Association of Greater Indiana

Presented by:

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Overview

- Joe Biden's Estate Tax Proposal
- Excess Exemption - Spousal Lifetime Access Trust
- Intra-Family Loans
- Charitable Lead Trust
- Grantor Retained Trusts/Sales to IDITs
- Roth Conversions – Secure Act Revisited

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President Biden's Estate Tax Proposal

- Reduce Exemption from \$11,700,000 to:
 - \$7,000,000
 - \$5,000,000
 - \$3,500,000
- **Increase Tax from 40% to 45%**
- **\$50,000 Cap on Annual Exclusion Gifts**
- **Eliminating the Step-Up on Basis (Estates Greater than \$10 M, forced recognition of gain at death)**



Uses Excess Exemption Now

- Use the Excess Exemption while it is still available
 - Sunsets in 2026
 - President Biden's Proposed Tax Bill
 - Use it or Lose it
- **No Claw Back for use of Excess Exemption (Regs. Sec. 20.2010-1(c))**



Uses Excess Exemption Now

- Example:

If an unmarried individual made post-1976 taxable gifts of \$9 million, all of which were sheltered from gift tax by the cumulative \$10 million in basic exclusion amount allowable on the dates of the gifts, and the individual dies after 2025, when the basic exclusion amount is \$5 million, the special rule allows the applicable credit amount against estate tax to be based on a basic exclusion amount of \$9 million (Regs. Sec. 20.2010-1(c)(2)).



Uses Excess Exemption Now

- Example – Deceased Spouse Unused Exemption (“DSUE”):

The reference to “basic exclusion amount” in Sec. 2010(c)(4), defining DSUE as the lesser of the Basic Exclusion Amount (“BEA”) or the unused portion of the spouse’s applicable exclusion amount, is a reference to the BEA in effect at the time of the deceased spouse’s death, rather than the BEA in effect when the surviving spouse dies. This ensures that a DSUE amount elected during the increased BEA period will not be reduced when the increased BEA sunsets.

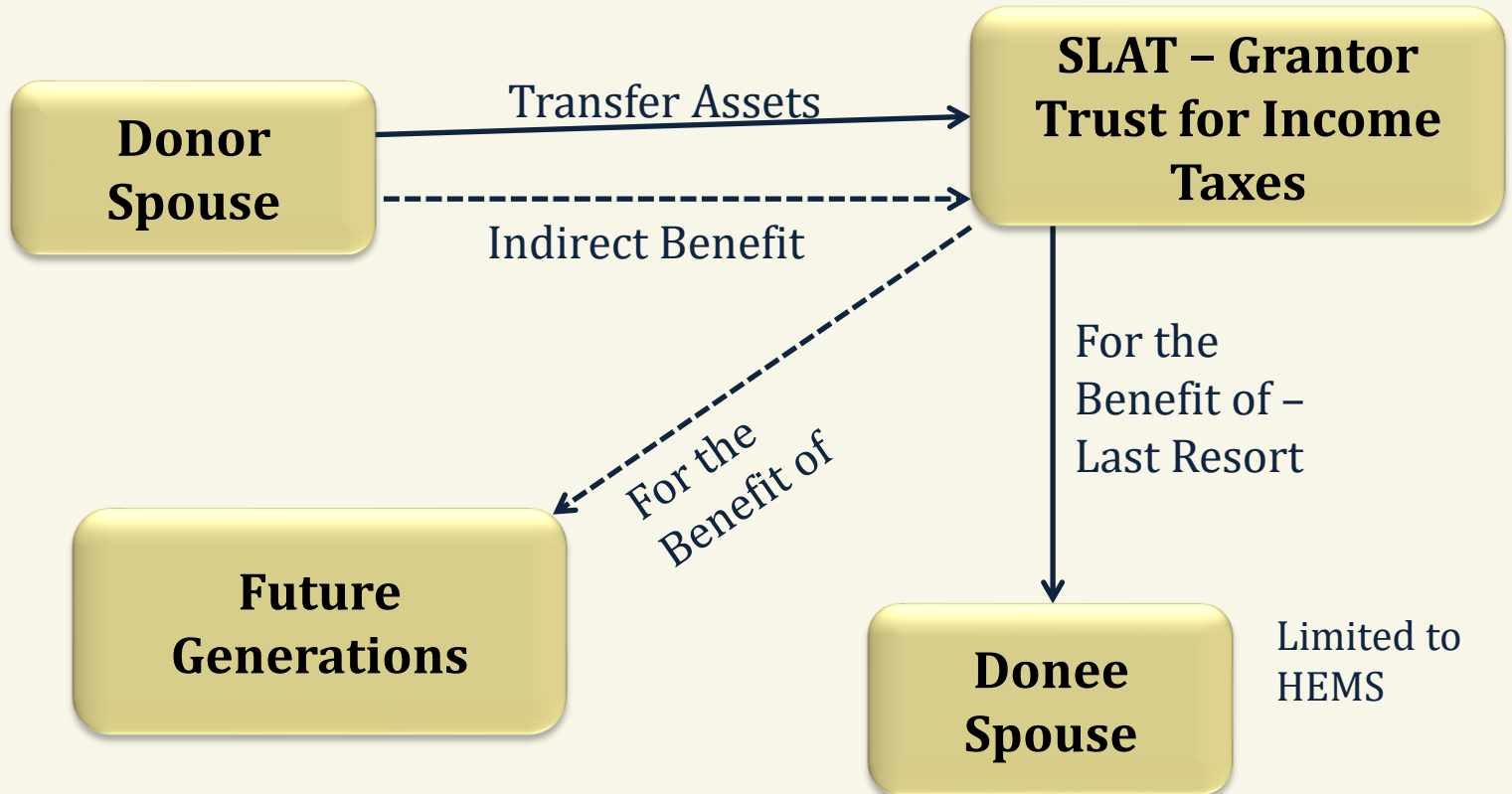


Spousal Lifetime Access Trust (SLAT)

- A SLAT is a type of trust in which a spouse creates a trust for the benefit of the other spouse with the remainder interest passing to “heirs.”
- The purpose is to provide cash flow to the spouse-beneficiary while keeping the assets secure from creditors and excluded from either spouse’s estate.
- **Use Excess Exemption Amount to create**



SLAT



Intra-Family Loans

- Freezes parent's assets/Estate Value – Future Appreciation goes to children
- Senior Generation Lends assets to children or a trust for benefit of children at Applicable Federal Rate (“AFR”)
- Borrower (children) then invests for a higher return
- Children keep excess over borrowed amount and AFR
- Works well when the AFR is low – use interest only term loan of 3-9 year (AFR in January 2021 was .52%)

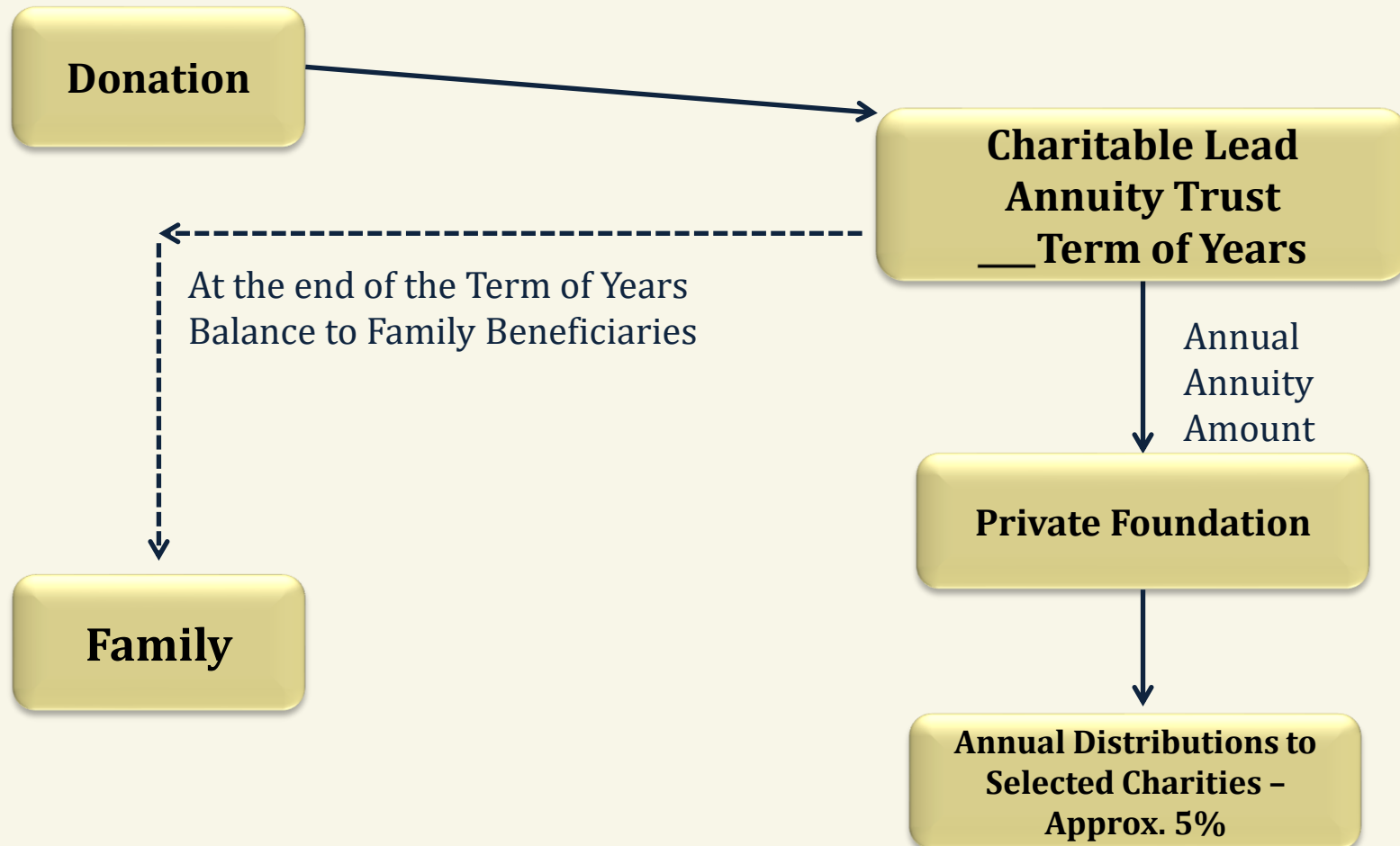


Charitable Lead Trust (CLAT or CLUT)

- How it Works:
 - Grantor transfers assets to a trust for a term of years
 - Trust Makes a payment each year to charity or charities
 - May be a Private Foundation
 - At end of term, assets are distributed to non-charitable beneficiaries – either children or grandchildren
 - Maybe a **Unitrust** or **Annuity Trust**
 - Unitrust payment to charity is recalculated annual
 - Annuity Trust payment to charity is calculated once and then remains constant
- All appreciation above the annual payment to charity is removed from estate, tax –free
- Can design it so grantor receives an up-front income tax deduction



Charitable Lead Trust



Charitable Lead Trust

\$1,000,000 Contributed with 6% Annuity Amount

@.06% AFR

Annuity amount = \$ 60,000

Term 17 years

Remainder interest = \$ 33,046

Annuity interest = \$ 966,954

@5% AFR

Annuity amount = \$ 60,000

Term 36 years

Remainder interest = \$ 7,186

Annuity interest = \$ 992,814



Grantor Retained Annuity Trust (GRAT)

How it Works

- Grantor transfers assets to an irrevocable trust
- Trust pays grantor an annuity amount for a fixed number of years
- The annuity amount may be paid in cash or in-kind
- Any appreciation in excess of the annuity amount passes to the beneficiary at the end of the term, free of gift tax

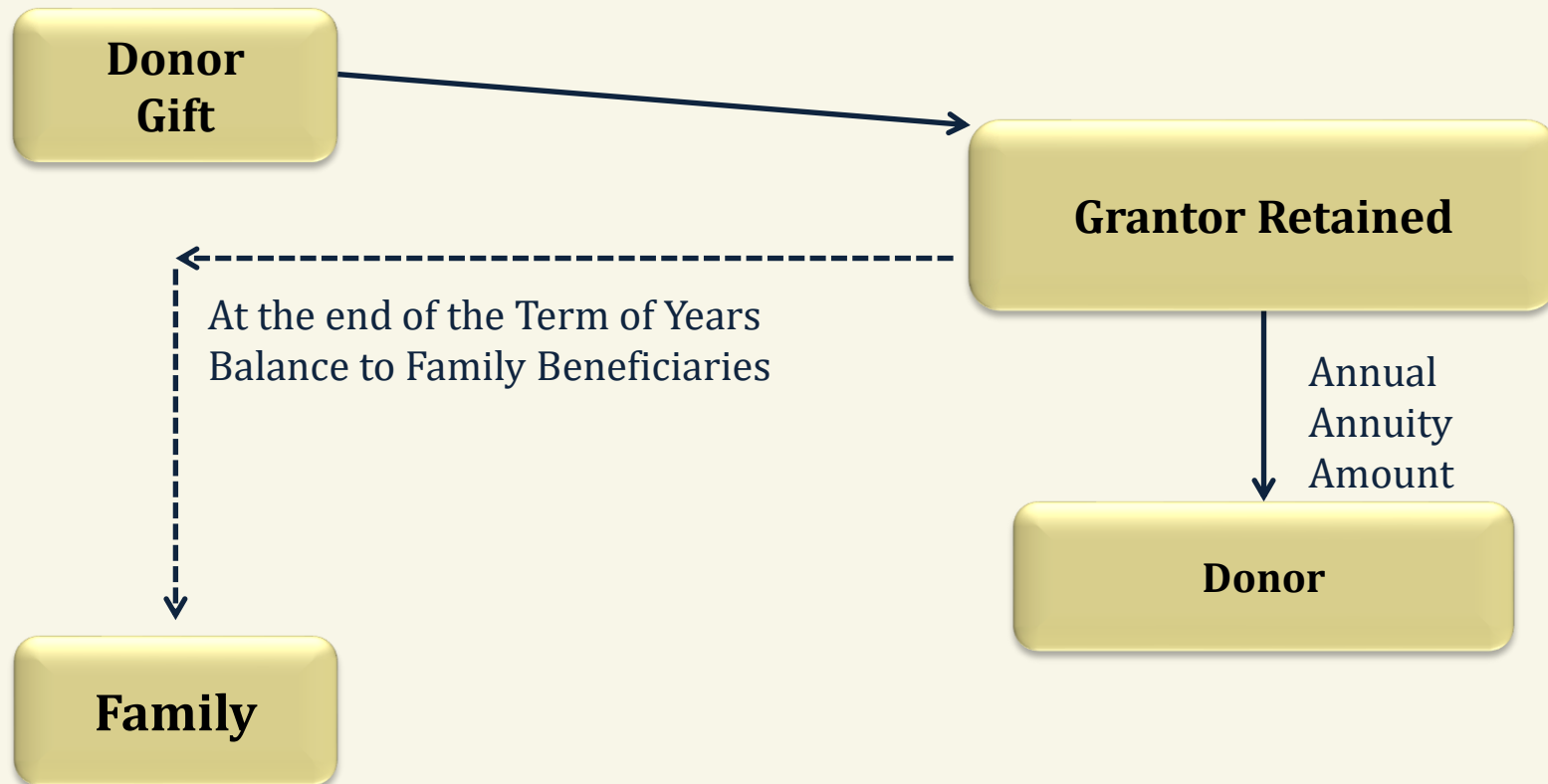


Tax Benefits of GRAT

- Structured so no gift tax is owed when gift is made to the trust
- IRS Assumes value of the property will grow at a statutory rate referred to as the 7520 Federal Rate (in January 2021 - .6%)(the “Hurdle Rate”)
- Consider unwinding GRATs that have a high Hurdle Rate or assets that have depreciated in value
 - Grantor purchase asset for FMV for cash
 - Old GRAT now owns cash and uses the cash to pay the annuity amount
 - New GRAT is created for same assets at more favorable Hurdle Rate



GRAT



Sale to IDIT

IDIT – Intentionally Defective Irrevocable Trust

How it Works

- Grantor transfers a down-payment to an irrevocable trust use a part of the Basic Exclusion Amount
- IDIT then purchase assets from Grantor (such as shares in a privately held company) in exchange for a promissory note
- The promissory note – interest at AFR (Mid-term: January 2021 - .52%)
- Any appreciation in excess of the interest rate passes to the beneficiaries

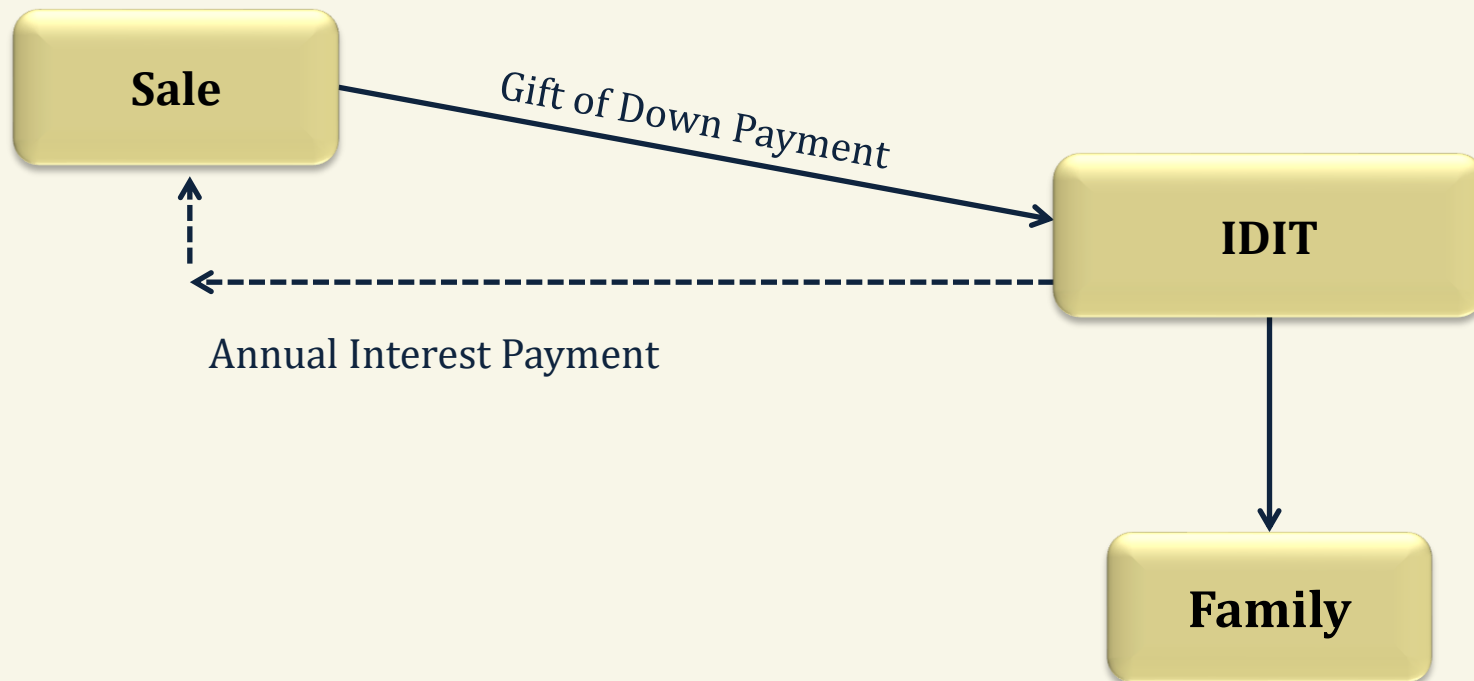


Tax Benefits of IDIT

- Structured so no gift tax is owed when gift is made to the trust and only limited use of the grantor Basic Exclusion Amount
- IRS Assumes value of the property will grow at a statutory rate referred to as the Federal Mid-term Rate (in January 2021 - .52%)(the “Hurdle Rate”)
- No tax on sale since the IDIT is a Grantor Trust for income tax purposes (the trust and the seller are considered for income tax purposes the same person)
- Should be considered for Non-voting Interest in a highly appreciated S-Corporation Business



IDIT

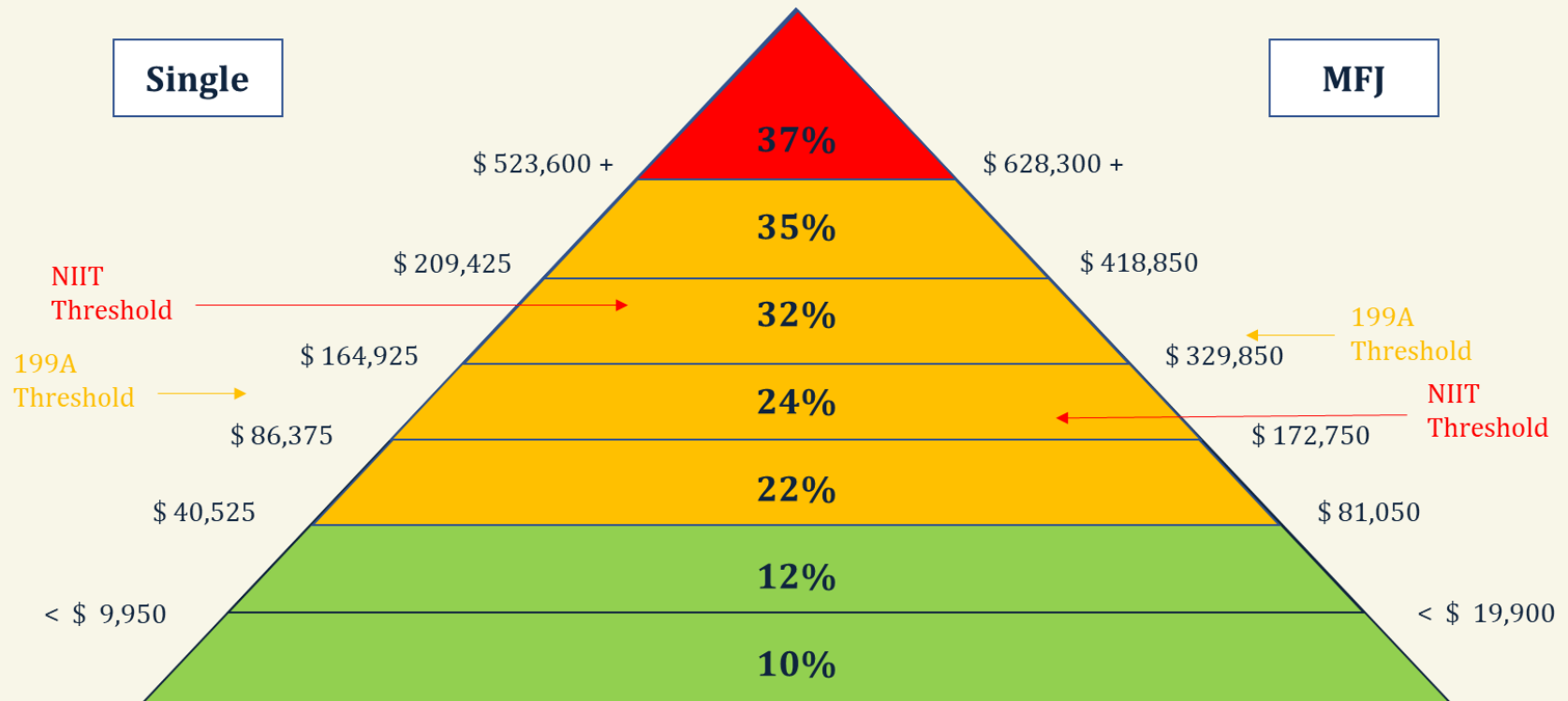


Roth IRA Conversion

- Most non-spouse beneficiaries must withdraw the entire balance of the retirement account within 10 years, and
- The income tax due is accelerated.
- **Do we save on taxes or protect the retirement account from the beneficiary's (or a some of each):**
 - **unwise/influenced decisions,**
 - **creditors/lawsuits,**
 - **divorce, and/or**
 - **remarriage/blood line protections?**

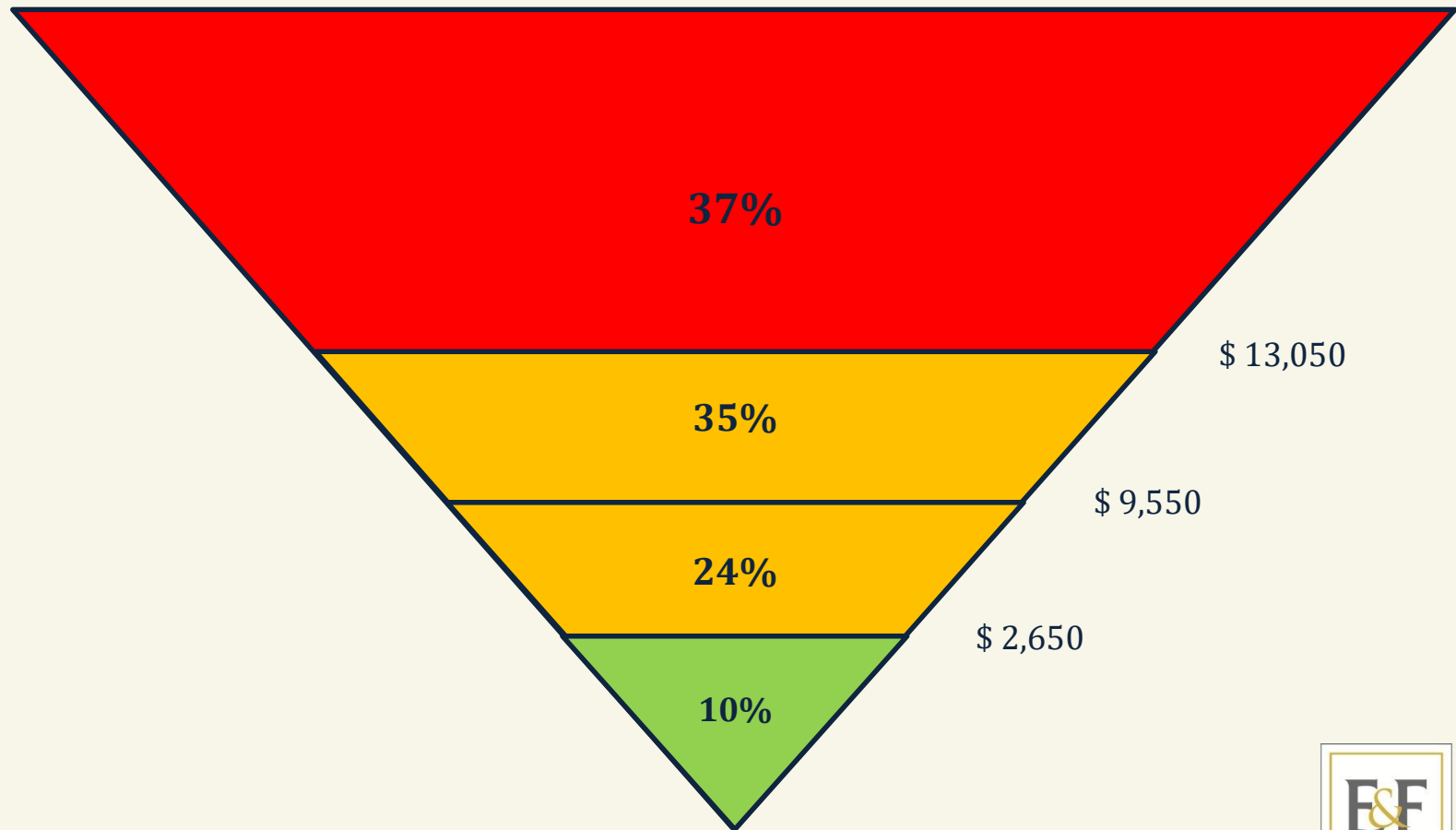


2021 Ordinary Income Tax Rates



Foundational Concepts

2021 Ordinary Income Tax Rates for Estates & Trusts



Review and Amend Documents Now

- We need to review client's documents as soon as possible to determine what is going to happen to their retirement account(s).
- If we previously used a conduit provision, we need to consider amending or updating the Trust to prevent the beneficiary from getting the entire balance within 10 years of the participants death.
 - Consider using an Accumulation Trust.



Roth IRA Conversions

- Convert Traditional IRAs into Roth IRAs during participant's lifetime
 - Income taxed on conversion
 - No distribution required at Required Beginning Date
 - Spread distributions over many years and lower brackets
 - 100% of growth is tax exempt



Roth IRA Conversions

- **Convertible** accounts include:
 - Traditional IRAs
 - 401(k) plans
 - Profit sharing plans
 - 403(b) annuity plans
 - 457 plans
 - “Inherited” 401(k) plans [see Notice 2008-30]
- **Non-Convertible** accounts include:
 - “Inherited” IRAs and Education IRAs



Roth IRA Conversions

- The more time the better – younger clients age 60+
- Keep in mind “floors” (e.g., for social security and Medicare Part B&D, Income Related Monthly Adjustment Amount “IRMAA”)
- Taxpayer that has a large Charitable Deduction or Charitable Deduction Carryforward (Lifetime CLAT with Roth Conversion)
- Taxpayer who can pay the income tax with other funds
- Taxpayer who desires to use IRA assets to fund their Basic Exclusion Amount and/or desires remarriage protection or protections for children
 - Generally lower taxes during lifetime rather than after death



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Brian A. Eagle is a nationally recognized attorney, educator, author, and wealth strategy consultant. He is a member of the WealthCounsel and an Instructor at the InKnowVision Institute. Together with his colleagues he is a co-author of the highly acclaimed books, *Legacy, Plan, Protect & Preserve Your Estate*, 1996, Esperti Peterson Institute, *Generations*, 1998, Esperti Peterson Institute, *Strictly Business – Planning Strategies for Privately Owned Businesses*, 2002, Quantum Press, and *Estate Planning Strategies, Collective Wisdom Proven Techniques*, 2009, Wealth Builders Press, LLC. He has also published numerous articles as well as lectured on various topics, including ESOPs, business, tax, and estate planning.

Brian is a graduate of Indiana University (B.S. Accounting, 1986) and Hofstra University (J.D. 1990). He is admitted to practice in the states of New York, Connecticut, and Indiana. Brian is the Indianapolis, Indiana founder and managing attorney of the law firm, Eagle & Fein. He is a co-founder of both Legacy Administration Services, a company focusing on estate planning administration and Connect2A.com, a software application service for accountants, attorneys, and financial professionals. Brian passed the Certified Public Accountant Examination in 1988. He is a member of the Indianapolis, Indiana State, and American Bar Associations.

Brian is currently a member of the Central Indiana Community Foundation's Cornerstone Advisory Council and previously a member of their Professional Leadership Council. In November 2000, Brian received the Professional Partners in Philanthropy Award from the Central Indiana Community Foundation, in recognition of his service to the foundation.

From 2010-2013 Brian was recognized in the *Indianapolis Monthly Magazine* as a Top Scoring Wealth Manager for Highest Overall Satisfaction.

In 2001, Brian served as an Adjunct Professor of the Academy of Multidisciplinary Practice at Michigan State University.

Brian served as student manager of the Indiana University Men's Soccer Team from 1983-1986.

In 1996, he received the Jerry Yeagley Lifetime Achievement Award and the Indiana Youth Soccer Association Presidents Award for outstanding contribution to youth soccer in Indiana.

Brian resides in Fishers, Indiana with his wife, Kellie, and his son, Zachary.



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