Hot Topics in Estate Planning for 2022

Financial Planning Association of Greater Indiana

Presented by:

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Overview

- Build Back Better Act
- RMD Tables Adjustment
- Annual Gift Tax Exclusion and 529 Accounts
- Basic Exclusion Amount
- New Indiana Health Care Advanced Directives Act
- Roth Conversions and Creating Large Charitable Income Tax Deductions with Charitable Lead Trusts
- Employed Owned Companies

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Build Back Better Act – Pending

- Surcharges – … than $10 Million … e or trust)
  - Plus 3% … $25 Mil … ,000 … st)
- Accelerat … equired … Distribut … lances Gre … 10 Mill … me greater than $400 …
- SALT Cap … 0,000 through … tate & Trusts)
- Expand 3.8 … Investment In … assthroughs (S – Corporations …

REQUIRED MINIMUM DISTRIBUTION NEW TABLE

2021

Age of IRA Owner or Plan Participant	Life Expectancy (in years)
72	25.6
73	24.7
74	23.8
75	22.9
76	22.0
77	21.2
78	20.3
79	19.5
80	18.7
81	17.9

2022

Age of IRA Owner or Plan Participant	Life Expectancy (in years)
72	27.4
73	26.5
74	25.5
75	24.6
76	23.7
77	22.9
78	22.0
79	21.1
80	20.2
81	19.4

REQUIRED MINIMUM DISTRIBUTION NEW TABLE

- Example of New Table vs. Old Table
- $1,000,000 IRA Balance
- 2021 vs 2022 RMD Distribution at Age 80:

2021 Life Expectancy Factor Uniform Table: 18.7 - RMD: $53,476

2022 Life Expectancy Factor Uniform Table: 20.2 – RMD: $49,505

REQUIRED MINIMUM DISTRIBUTION NEW TABLE

- Special Rule for Pre – January 1, 2020, Stretch Inherited IRAs
- New Table Applies to Stretch Inherited IRAs (Pre-Secure Act Rules Apply)
- Onetime Reset to New Table
- Pre-Secure Act Rule: The designated beneficiary's life expectancy is measured using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year in which the account owner died. In subsequent calendar years, the applicable distribution factor (life expectancy factor) is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of the owner's death.

REQUIRED MINIMUM DISTRIBUTION NEW TABLE

- Special Rule for Pre – January 1, 2020, Stretch Inherited IRAs
- Example of Onetime Reset:

Clark was born June 30, 1945; he passed away December 2019 at age 74, prior to the Secure Act's EDB rule. On December 31, 2019, Clark's IRA was valued at $1,000,000, and he designated his daughter, Audrey, as beneficiary of 100% of the IRA.

Audrey attained age 33 in 2020 and has a life expectancy from the single life table of 50.4; her 2020 RMD would be $19,841 ($1,000,000/50.4). In subsequent years, the life expectancy factors would be reduced by 1.0—for example, 49.4 for 2021 (50.4 less 1 year), 48.4 for 2022 (50.4 less 2 years), and so on.

REQUIRED MINIMUM DISTRIBUTION NEW TABLE

- Special Rule for Pre – January 1, 2020, Stretch Inherited IRAs
- Example of Onetime Reset:

Under the updated single life table for a 33-year-old, Audrey's initial life expectancy factor receives a one-time reset from 50.4 to 52.5. For 2022, she will take the new initial factor of 52.5 and reduce it by the two calendar years (2021 and 2022) that will elapse after 2020. Her life expectancy factors would adjust as follows: 50.5 for 2022 (52.5 - 2 years), 49.5 for 2023 (52.5 less 3 years), and so on

INCREASE ANNUAL EXCLUSION GIFTS

- 2022 – Annual Exclusion Gift - $16,000 per donee
- Example: 8 Grandchildren - $16,000 per grandchild up to $128,000 gifted annually if single, or $256,000 for a married couple
- Consider using a 529 Accounts – [Indiana Maximum Account Contributions – up to $450,000 per beneficiary (all beneficiary’s accounts are maximized) [Highest State – New York $520,000]

INCREASE ANNUAL EXCLUSION GIFTS

- May make 5 years of gifts at one time ($80,000 if single or $160,000 for married couples). Example: 10 Grandchildren may transfer for married couples $1,600,000 to 529 Account
- Contributions are considered completed gifts (special recapture rule if you make contributions using the 5 year at one time rule and die within the 5-year period) and excluded from contributor’s estate
- Account owner retains control over the account

INCREASE IN GIFT/ESATE EXCLUSION AMOUNT

- **2021 - $11,700,000**
- **2022 - $12,060,000**

- **Estimated Basic Exclusion Amount Starting in *2026:***

$6,500,000

NEW INDIANA HEALTH CARE ADVANCE DIRECTIVE ACT

- Effective July 1, 2021 – Deals with Appointing Health Care Representative
- Added to Indiana Code by adding Section 16-36-7 (Same Article that living will, out-of-hospital DNR, and POST statutes are located)
- Hoosiers can still rely on old statute until December 31, 2022 (Appointment of Health Care Representative and Durable Power of Attorney conferring health care powers)
- Pre-2021 law document valid until amended
- After December 31, 2022, must use new law

NEW INDIANA HEALTH CARE ADVANCE DIRECTIVE ACT

Couple of takeaways:

- Maybe Springing or immediately effective
- Can name one or more health care representatives
- Freedom and flexibility to contain unlimited range of health care decisions, wishes, and treatment. For example: palliative care, life-prolonging procedures, POST preferences, living will choices
- No mandatory or official form but act requires Indiana State Health Department (ISDH) to update it website to provide links but no specific requirement to develop “official” form

NEW INDIANA HEALTH CARE ADVANCE DIRECTIVE ACT

- Increased Flexibility for signing: Two methods to sign: signed electronically or on paper, can sign or direct someone to sign
  - Must occur in the "presence" of two witnesses or notary

  - Line of sight interaction with physical presence (20th century rule)
    - Either sign on paper or electronically

  - Non-Physical Presence – Paper or Electronically Sign - Glass window /phone, or FaceTime, Zoom, MS Teams – signing counterparts currently with electronic line of sight and assemble counterparts within 10 days (21st century rule)
- Statutory requirements are all located in a single new chapter making it easier to understand

NEW INDIANA HEALTH CARE ADVANCE DIRECTIVE ACT

- Preserves patient autonomy if not incapacitated:
  - If declarant has ***not*** been determined to be incapacitated, declarant can issue- treatment decisions and instructions which overrule the contents of that declarant's advance directive
  - Declarant can reverse or veto consents or decisions made by Health Care Representative
- Incapacity – Indiana Code Section 36-16-7-15: "incapacity" and "incapacitated" mean that an individual is unable to comprehend and weigh relevant information and to make and communicate a reasoned health care decision.

Roth Conversions and Lifetime Charitable Lead Trust (CLAT or CLUT)

Best Practice – Use Roth Conversions to spread taxable income over many years and lower bracket

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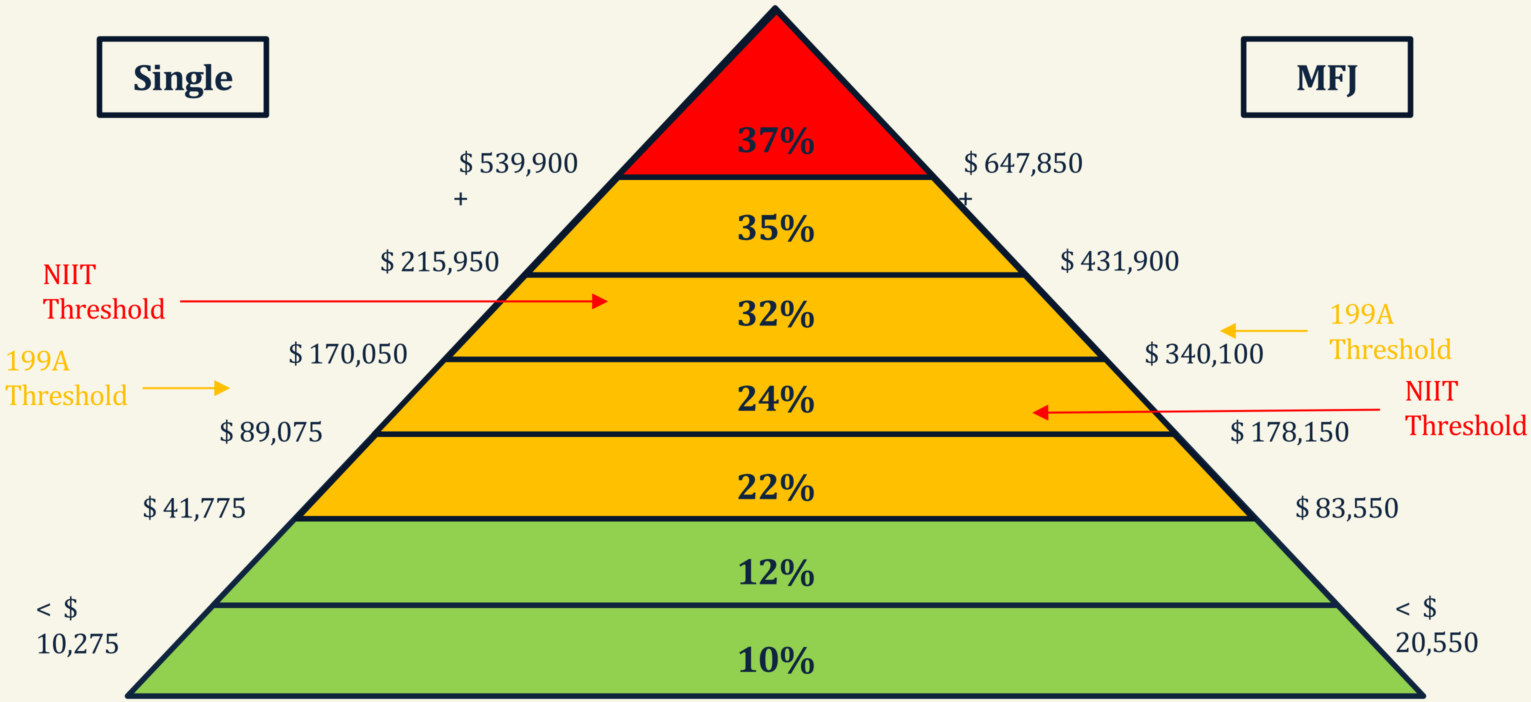
2022 Ordinary Income Tax Rates



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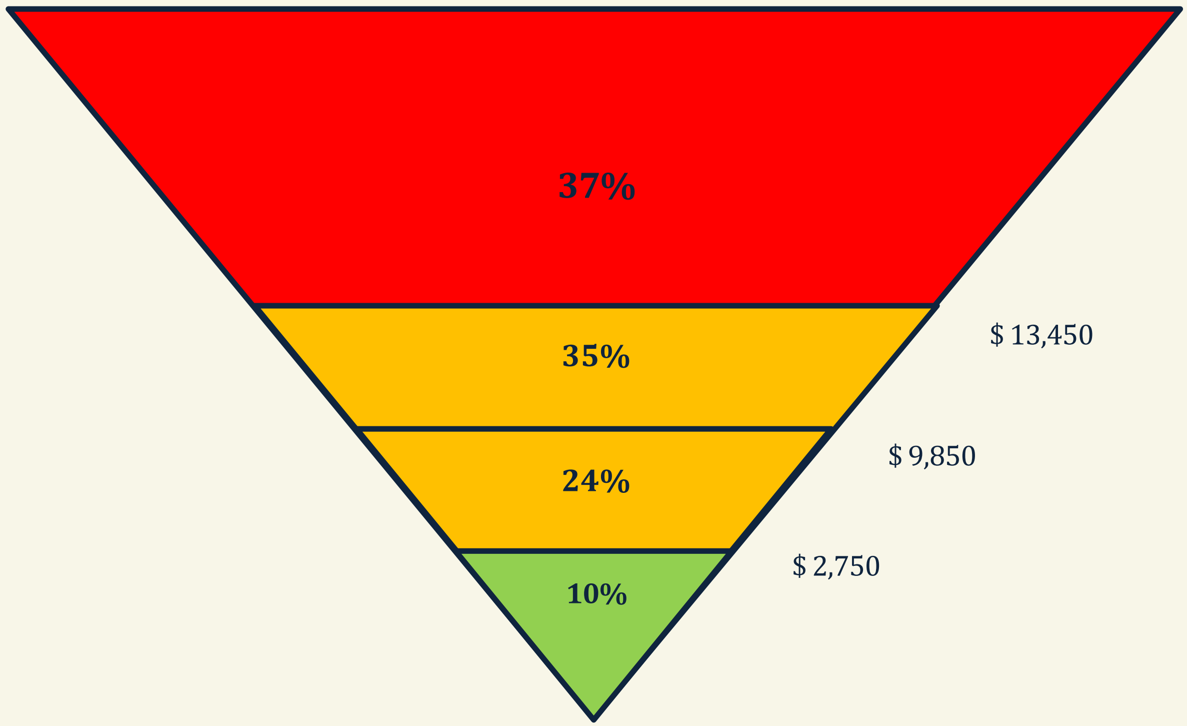
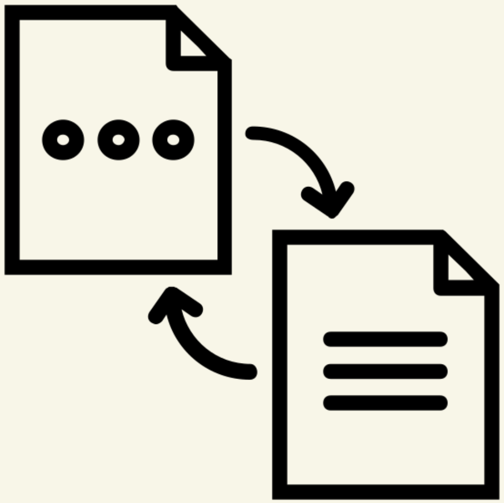
2022 Ordinary Income Tax Rates for Estates & Trusts



Accounts to Convert

- Accounts to Convert:



  - Traditional IRAs
  - 401(k) plans
  - Profit Sharing Plans
  - 403(b) annuity plans
  - 457 plans
  - “Inherited” 401(k) plans (See Notice 2008-30)

- Accounts ***Unable*** to Convert: “Inherited” IRAs & Education IRAs

Reasons to Convert

- Suspension of Minimum Distribution at age 72 (working beyond age 72 or other sources of income after retirement – business owners)

- Pay tax due from Roth Conversion with other funds ***(Watchout for paying tax on pre-59 ½ Roth Conversion from Traditional IRA funds - 10% Penalty)***

- Taxpayer Desires to leave IRA to Family in Trust

Reasons to Convert

- GST-exempt trust are more efficient
- Roth IRA Qualified Distributions are not considered taxable income of computing limits on 199A deduction
- May reduce the 3.8% surtax in the future
- Historically low tax rates – Rates will increase in 2026 (sunset of the 2017 Tax Act benefits)

The Math

- A Traditional IRA will produce the same after-tax result as a Roth IRA

  - Provided growth rates the same

  - Tax Rate is the Same

The Math – No Roth Conversion vs. Roth Conversion with CLAT

Example: Bill Sample has a $1,000,000 IRA.

- Bill is age 62
- Bill is in the 40% combined Federal and Estate Tax
- Bill has other after-tax investment account of $2,000,000
- Bill doesn't need his after-tax investment account for living expenses
- Bill plans to work to age 75
- Bill plans to leave the Alzheimer's Association $500,000 in his estate plan
- Bill desires to leave his retirement account in an accumulation trust for his children – tax rate 40%

The Math – No Roth Conversion vs. Roth Conversion with CLAT

Example: Grantor CLAT – 10 Year Charitable Term

Pre-Tax ROI	10%
After-Tax ROI	8%
Bill's Tax Rate	40%
Tax Rate with CLAT Ded	22%
CLAT Annuity Amount	5%
Federal Mid-Term Rate	1.4%

The Math – No Roth Conversion vs. Roth Conversion with CLAT

Summary – 30 Year Deferral (000,000s)

	No CLAT, No Roth	Roth Conversion with CLAT
Family – IRA & RMD	$9.6	$13.9
Side Fund/CLAT	$8.9	$ 6.7
Total to Family	$18.6	$20.6

BENEFIT TO FAMILY: $2.0

BENEFIT TO CHARITY: $.5

With CLAT Charitable Ded: Effective Tax Rate 22%

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 back to maker (grantor) or children
  - 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
- Can design it so grantor receives an up-front income tax deduction

Charitable Lead Trust

Donation

Charitable Lead Annuity Trust
___Term of Years

At the end of the Term of Years
Balance to Family Beneficiaries

Annual
Annuity
Amount

Select Charities,
Donor Advised Fund,
or Private Foundation

Maker
(Grantor)
or Family

Charitable Lead Trusts

- Types:
  - Grantor Charitable Lead Annuity Trust
    - Charitable Income Tax Deduction is taken by the maker (grantor) of the CLAT
    - Maker is usually the beneficiary at the end of the charitable lead term
  - Non-Grantor Charitable Lead Annuity Trust
    - Charitable Income Tax Deduction is taken by the Trust Annually
    - Children are usually the beneficiary at the end of the charitable lead term and assets are outside of the maker's taxable estate
  - Super Charitable Lead Annuity Trust
    - Charitable Income Tax Deduction is taken by the maker (grantor) of the CLAT
    - Children are usually the beneficiary at the end of the charitable lead term and assets are outside of the maker's taxable estate

The Silver Tsunami

- OVER THE NEXT 10 YEARS, 2.5 MILLION BABY BOOMER BUSINESS OWNERS WILL BE LOOKING TO TRANSFER OWNERSHIP OF THEIR BUSINESS

- THE SILVER TSUNAMI WILL BE THE SINGLE LARGEST TRANSFER OF BUSINESS OWNERSHIP IN HISTORY

The Silver Tsunami

- Most business owners know that there are three options when planning for retirement

1. One, they can sell their business
2. Two, they can pass the business to a member of their family
3. Or three, they can close up shop (liquidate the business)

The Silver Tsunami

But, there's a fourth option. One that allows a business owner to sell the business to the people who care most about its success, the employees. It's called an Employee Stock Ownership Plan

This type of succession plan happens on the business owner's timeline and ensure the business stays open, local, and in the hands of people who are passionate about the legacy of the company

The Business Succession Planning Process – The Assessment

1. I would like to sell to an outsider now, not worry about the future success of the Company, and start on a new adventure in my life.

2. I want to transition or sell the Company to either key employees or family.

3. I have at least one child that I want to succeed me, but other children that are not part of the Company.

4. I want to continue to be responsible for the Company's success and failures over the next 5 – 10 years but slowly becoming less and less involved in the day to day operations.

5. My key employees and/or family can currently run the Company, or should be able to run it in 24 months with proper training.

The Business Succession Planning Process – The Assessment

6. I love work, I’m in great health, and I can’t imagine ever slowing down.

7. I need to diversify my personal financial statement and desire a cash payment/liquidity now, followed another payout in 5 – 10 years.

8. My Company and/or I are in the highest tax bracket.

9. I want to provide my employees long-term incentives that are tied to the success of the Company.

10. I view the Company as my legacy to my community and my employees.

The Business Succession Planning Process – The Assessment

- Answer True to Question 1
  - Consider Sale to Outsider
- Answer True to 3 out of 4 of Questions 2 – 5
  - Consider Sale/Transition to Insider or Family
- Answer True to Question 6
  - Consider The Family Legacy Plan
- Answer True to 3 out of 4 of Questions 7 – 10
  - Consider an ESOP or Partial ESOP

ESOPS & ESTATE PLANNING

- Passing the value of the business or the business itself
  - The Planning Model –
    - Managing the value of the family business
    - Creating the cash flow
    - Combining passing the value of the business and the business itself
- What is Fair and Equal

ESOP OVERVIEW – THE 4TH OPTION

- An Employee Stock Ownership Plan (ESOP) is a unique qualified retirement plan instituted to facilitate the transference of equity in privately held businesses to employees

ESOP OVERVIEW

- There are approximately 6,624 ESOP Companies across the U.S. which cover 14.2 million employees.
- The Midwest is home to the greatest number of ESOPs.

Midwest

- **2,110 ESOPs**
- **3,561,970 employees**

Indiana

- **185 ESOPs**
- **133,490 employees**

Indiana ESOP Companies

SHIEL SEXTON

MAC Muncie Aviation
Employee Owned

KSM KATZ SAPPER & MILLER
Our People: Your Success

BADER Company

OLIVER WINERY

nasco INDUSTRIES INC

BULLDOG BATTERY
THE RELIABLE ENERGY SOURCE

RIETH-RILEY
Serving Indiana and Michigan since 1916

McFarling FOODS

FabricServices
"Where workers own and ownership works"

RMP

PERFORMANCE VALIDATION

Wood-Mizer

XFMRS

BARRY COMPANY INCORPORATED

E&F

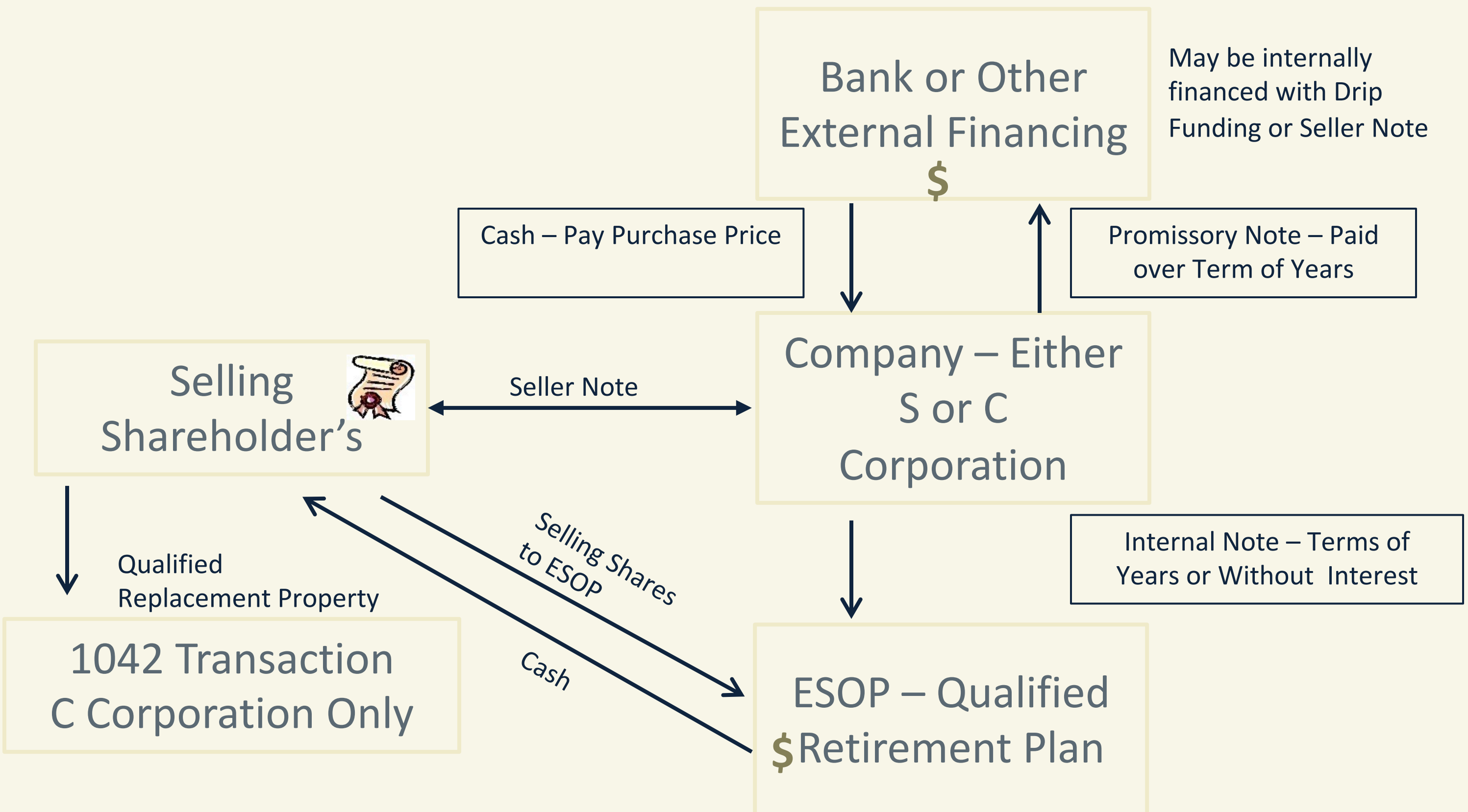
Reasons for Establishing an ESOP

- Tax benefits
- Avoids third party sale
- Employees become “beneficial” owners of Company – benefit financially from future growth of Company

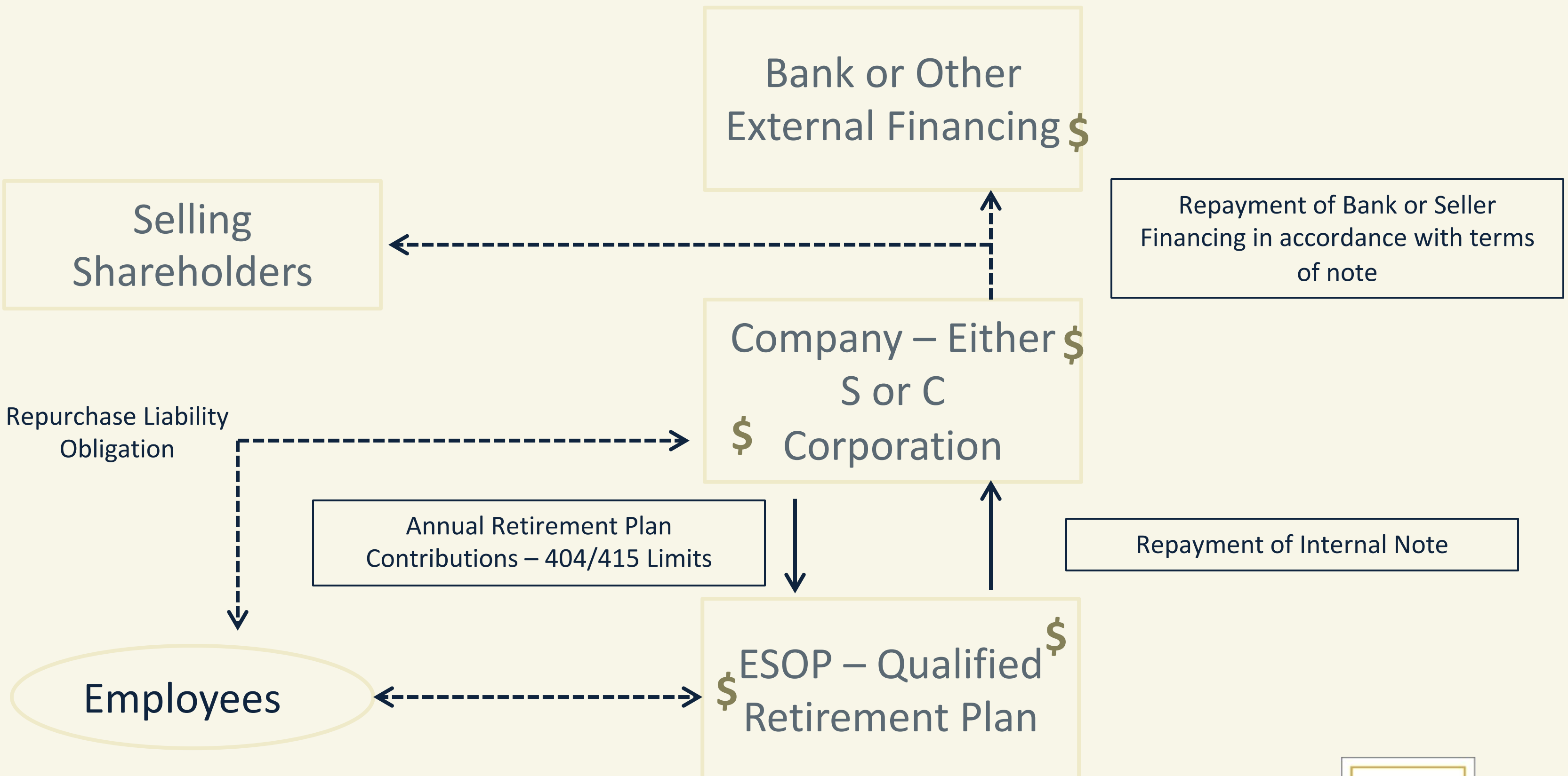
Employees - Benefits of an ESOP

- Tax-qualified retirement plan
- Ownership Culture / Pride
- Potential to impact the value of the Company
- 100% funded by Company – no employee contributions
- Business skills development

The Overall Structure



Annual Structure – The Flow of Funds



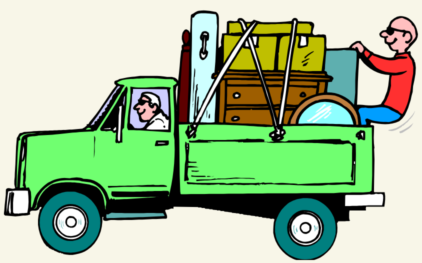
ESOP Mechanics – Like Home Ownership

Sell house $$$

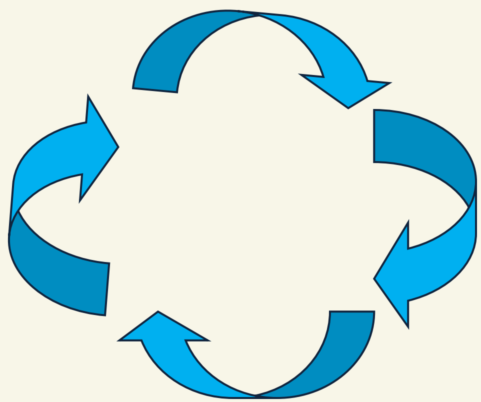
Find a home

My money; bank's money

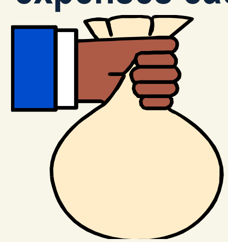
Purchase a home; bank holds title and deed



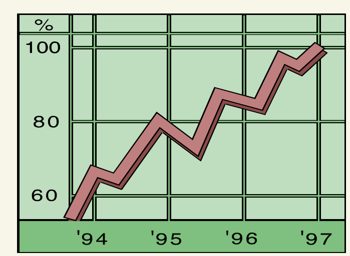
Decide to move or retire



Pay for expenses each year



At times you need to invest money in repair or additions



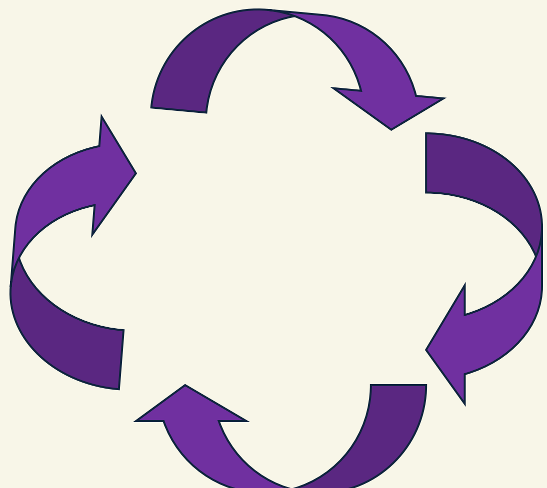
You hope the house increases in value, you gain equity over time

ESOP Lifecycle

Company Stock Acquired by ESOP

Company Continues to Operate Business

Company Makes ESOP Contributions to the ESOP



Company Stock Allocated to Employees Annually

Company Stock Valued Annually

ESOP Accounts +/- Based on Stock Value

ESOP Accounts Distributed at Retirement/Termination

The Overall Structure

- Benefits of ESOP to Seller
  - Diversification of non-liquid and highly concentrated equity position
  - For C Corporation tax deferral and potential elimination of capital gain
  - Creates the necessary cash flow for advanced estate planning strategies
  - For S Corporations – converts ordinary income to capital gain
  - Leaves a lasting legacy and provides for the continuation of a business
  - Can create super discount for transferring interests to family members or trusts for the benefit of family members

The Overall Structure

- Benefits of ESOP to Company/Purchaser
  - Increases cash flow by allowing tax deductions for both principal and interest payments
  - Increases employee productivity by making the employees "Employee Owners"
  - Keeps jobs in the community v. a potential outside sale
  - Can create tax free entity for 100% ESOP owned S Corporations

The Overall Structure

- Benefits of ESOP to Employees
  - Provides employees an equity interest in the corporation without cost
  - Creates a "We Can" attitude versus an "Us and Them" and "We Can't" attitude
  - Provides employees with increased retirement plan contributions
  - Allows employees to maintain positions and remain employed
  - Allows senior management to maintain control

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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 and Founder of the Eagle Wealth Planning 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, Illinois, and Indiana. Brian is the Indianapolis, Indiana founder and managing attorney of the law firm, Eagle & Fein which was launched in 1992. He is a co-founder of both Legacy Administration Services, a company focusing on estate planning administration, and Inheralink®, an estate planning client portal. 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.

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 they are the proud parents of their son, Zachary.

Eagle & Fein, P.C.

Inspiring People to Plan

- Areas of Practice:
  - Estate Planning
  - Wealth Strategies Design
  - Business Succession Planning
  - ESOPs
  - Corporate Counsel
  - Business Transactions
  - Estate / Trust Administration
  - Elder Law / VA & Medicaid Planning

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