

Minimizing Capital Gains in Estate Planning: Sales, Notes, Undoing Trusts, Upstream Gifting, Business Interests

TUESDAY, MARCH 9, 2021

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Robert S. Barnett, CPA, Partner, **Capell Barnett Matalon & Schoenfeld**, Jericho, NY

Lawrence M. Lipoff, CPA, TEP, CEBS, Director, **CohnReznick**, New York, NY

The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service at 1-800-926-7926 ext. 1.**

Sound Quality

If you are listening via your computer speakers, please note that the quality of your sound will vary depending on the speed and quality of your internet connection.

If the sound quality is not satisfactory, you may listen via the phone: dial **1-877-447-0294** and enter your **Conference ID and PIN** when prompted. Otherwise, please **send us a chat** or e-mail sound@straffordpub.com immediately so we can address the problem.

If you dialed in and have any difficulties during the call, press *0 for assistance.

Viewing Quality

To maximize your screen, press the 'Full Screen' symbol located on the bottom right of the slides. To exit full screen, press the Esc button.

Continuing Education Credits

FOR LIVE EVENT ONLY

In order for us to process your continuing education credit, you must confirm your participation in this webinar by completing and submitting the Attendance Affirmation/Evaluation after the webinar.

A link to the Attendance Affirmation/Evaluation will be in the thank you email that you will receive immediately following the program.

For additional information about continuing education, call us at 1-800-926-7926 ext. 2.

If you have not printed the conference materials for this program, please complete the following steps:

- Click on the link to the PDF of the slides for today's program, which is located to the right of the slides, just above the Q&A box.
- The PDF will open a separate tab/window. Print the slides by clicking on the printer icon.

Minimizing Capital Gains Through Estate Planning

Robert S. Barnett

CPA, JD, MS (TAXATION)

CAPELL BARNETT MATALON &

SCHOENFELD LLP

ATTORNEYS AT LAW

(516) 931-8100

rbarnett@cbmslaw.com

Lawrence M. Lipoff

CPA, TEP, CEBS

COHNREZNICK LLP

(646) 601-7791

lawrence.lipoff@cohnreznick

ESTATE

- **SEPARATE** legal entity for tax purposes
- Entity handling Decedent's affairs
- Governed by laws of state D resided in
- Comes into existence and starts tax year at death
- For reasonable period of administration
- **Treas. Reg. 1.641(b)-3**
- Tax year chosen with filing of first 1041

TRUST

- **SEPARATE** legal entity for tax purposes
- **Divides ownership and management from beneficial enjoyment**
- **Inter vivos/Testamentary**
- **Revocable/Irrevocable**
- **Generally use calendar year**
- **Many different types**

Introduction

- **2021 Estate Tax Exemptions:**
 - **IRS: \$11,700,000**
 - **NYS: \$5,930,000**
- **Basis**
 - **Gift: carryover (IRC Sec. 1015)**
 - **Inheritance: step-up (IRC Sec. 1014)**

Introduction Cont.

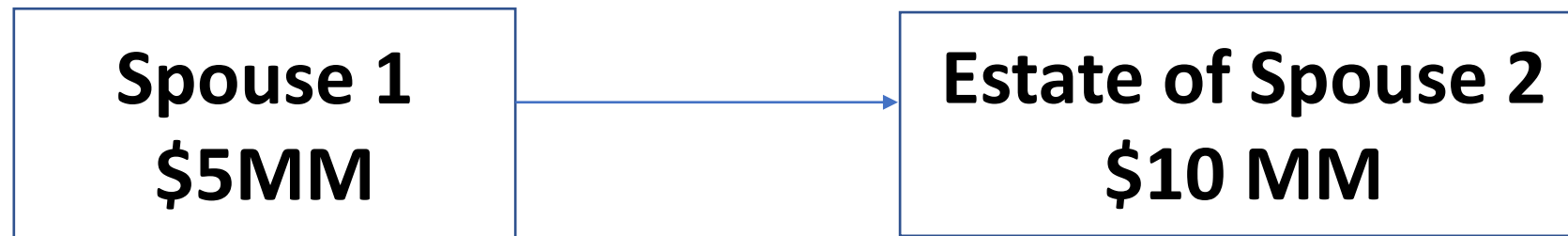
- **Lifetime Trusts:**
 - **Grantor or Non-Grantor?**
 - **Revocable or Irrevocable?**
- **Testamentary Trusts**
 - **Credit Shelter Trust: No step-up upon SS death**
 - **QTIP: Step-up upon SS death**

Example – CST

- Spouse 1 and Spouse 2 each have \$5MM

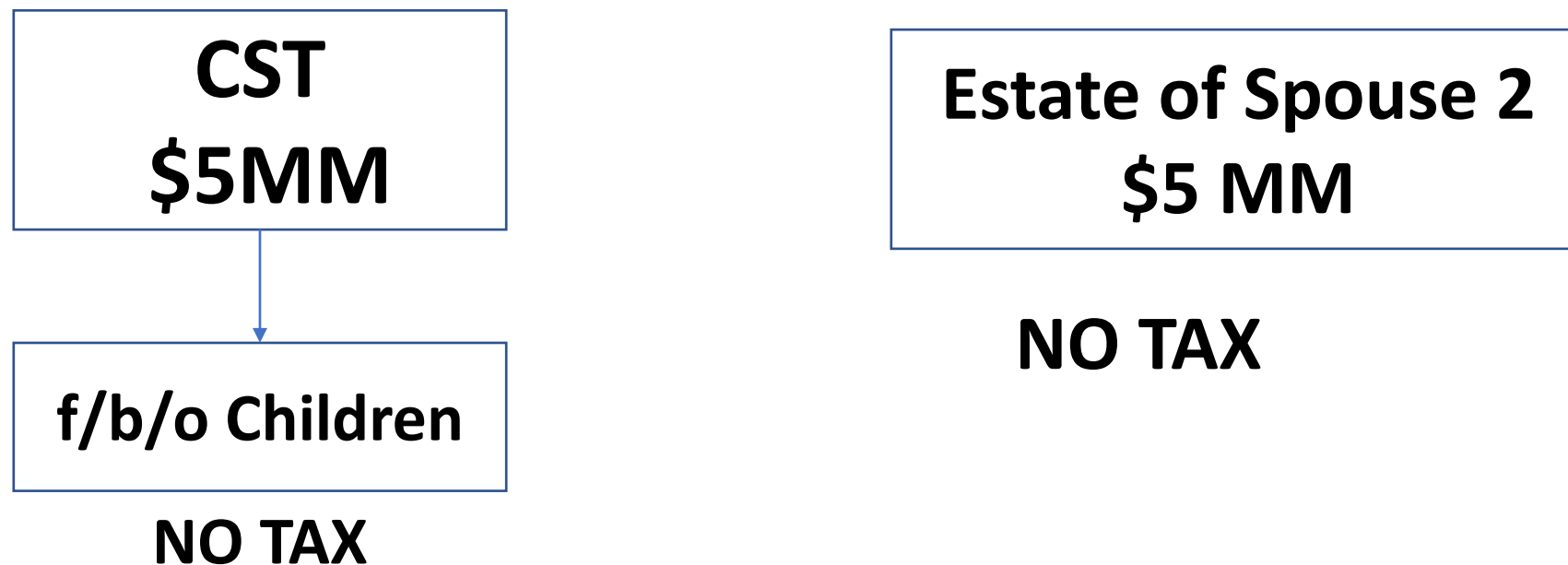
Scenario 1

Outright to Spouse 2



Scenario 2

CST



Basis – QTIP vs CST

Asset

Purchased

\$1,000,000

Basis

1st spouse DOD

\$2,000,000

On 3/09/2021

2nd spouse DOD

\$4,000,000

On 3/09/2026

- **CST – \$2,000,000 basis**
- **QTIP - \$4,000,000 basis**

Gifts

- **Consider gifts of appreciated property if taxable estate**
- **Arbitrage capital gains vs. estate tax**
- **Consider Federal & State estate tax**
- **Consider time value**
 - **When is asset expected to be sold?**
- **Consider QPRT**
- **Ex: appreciating vacation home**

Undoing Trusts

- **IRC Sec. 2036 - Transfers with retained life estate**
- **Disavowing form of transaction not easily permitted**
 - TAM 9515003
- **Only IRS can invoke?**
- **Taxpayer bound by form of transaction, regardless of substance**
 - C.I.R. v. Danielson, 378 F.2d 771 (3d Cir. 1967)
- **Taxpayer can present substance**
 - Complex Media, Inc. v. C.I.R., T.C. Memo 2021-14

What's Good For The Goose Is Good For The Gander

- 1. Deed to Medicaid Trust – life estate under IRC Sec. 2036?**
- 2. Deed to children with life estate**
- 3. Deed to children, no life estate**
 - Mom continues to live in house – RENT?**

Undoing Trusts Cont.

- **Qualified Personal Residence Trust (QPRT)**
 - **Don't pay rent!**

- **Decant/amend to cause estate inclusion**

Upstream Gifting

- Gift highly appreciated assets
- Utilize donee's unused estate tax exemption
- Upon donee's death, step-up?
- IRC Sec. 1014(e) – no step-up if:
 - appreciated property acquired by gift within 1 year of death; and
 - property passes back to original donor

Installment Sales

- **“Seed” gift to IDGT**
- **Sale to IDGT for a promissory note**
- **Rev. Rul. 85-13 – gain and interest not taxable**
- **No taxable gift if sale FMV**
- **Estate freeze technique**
- **Is step-up available?**

Key Issues and Strategies for Business Owners

- **Grantor Retained Annuity Trust (GRAT)**
- **Spousal Lifetime Access Trust (SLAT)**
- **Joint Property**
 - **Community Property Trust**
 - ***Gallenstein v. U.S.*, 975 F.2d 286, 287 (6th Cir. 1992)**
- **IRC Sec. 1031 Exchange**
- **Private Placement Life Insurance**
- **Carried Interests**
- **DELAWARE TAX TRAP**

GRAT EXAMPLE

- 1. Form LLC, deed X Street Property to LLC - \$8MM**
- 2. Gift 25% of LLC to GRAT - \$2MM**
- 3. Discount Value (minority, marketability) – \$1.3MM**
- 4. Cash to Grantor - \$100,000/year + 3% escalation**
- 5. Section 7520 Rate (11/2020) – 0.4%**
- 6. Term of GRAT and Value of Gift**
 - 10 Year Term – \$179,520**
 - 11 Year Term – \$50,910**
 - 12 Year Term – NO GIFT!**

SLAT

- **Must be done properly**
- **Low valuations**
- **No step-up**
- **Consider lifetime QTIP**

Best Practices for Trusts and Estate Practitioners

- Lock in gain/loss with a GRAT
- Grantor Trusts – include swap powers
- Maintain flexibility: make Credit Shelter Trusts “QTIP-able”
 - Annual income distributions to surviving spouse, NOT children
- IRD – review assets and beneficiaries
- Maximize charitable deductions
- Use IRD
- Analyze discounts, perhaps minimize
- Confirm entities are covered by insurance!