

# WEALTH & ESTATE PLANNING SEMINAR

## MAY 13, 2025

### TIME:

- 3:00 PM: REGISTRATION OPENS
- 4:00 TO 6:00 PM: PROGRAM
- 6:00 PM: COCKTAIL RECEPTION

### LOCATION:

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# 2025 PROGRAM

# WEALTH & ESTATE PLANNING SEMINAR

**May 13, 2025**

**Dear fellow professional,**

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**A special thank you goes to our generous sponsors and to our committee members who have helped bring this seminar to you over the years.**

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**We hope that you enjoy the 2025 Annual Palm Beach County Wealth & Estate Planning Seminar and that you will spend some time networking with one another.**

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## AGENDA MAY 13, 2025

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#### **INTRODUCTION TO KEYNOTE SPEAKER**

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#### **PRESENTATION**

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#### **CLOSING REMARKS**

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# SPEAKER PROFILE

Justin Miller is a Partner and the National Director of Wealth Planning at Evercore Wealth Management, counseling advisors and clients on complex taxation, trusts and estates, charitable planning, and family governance issues. He additionally serves as a Senior Wealth and Fiduciary Advisor at the San Francisco office of Evercore Wealth Management and Evercore Trust Company.



Prior to joining Evercore in 2021, Justin was a national wealth strategist for 10 years at BNY Mellon. He previously was a managing director at Wells Fargo and began his career as a tax attorney at Sidley Austin.

Justin is an adjunct professor at Golden Gate University School of Law, a Fellow of the American Bar Foundation, and a Fellow of the American College of Trust and Estate Counsel. He has served in leadership positions with the American Bar Association, California Bar Foundation, San Francisco Estate Planning Council, and State Bar of California, and is a former editor-in-chief of the California Tax Lawyer. Additionally, he is a past recipient of the Outstanding Conference Speaker Award from the California Society of CPAs and the V. Judson Klein Award from the California Tax Bar.

Justin received a B.A., with honors, from the University of California, Berkeley, and a J.D. and LL.M. in Taxation from New York University School of Law. He also holds the Accredited Estate Planner® designation and CERTIFIED FINANCIAL PLANNER™ certification and is a member of the State Bar of California.

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JEFF MAURER  
Partner and Chariman  
T: 561.812.1015  
maurer@evercore.com

JUSTIN MILLER  
Partner and National Director of Wealth Planning  
T: 415.288.3012  
justin.miller@evercore.com

MICHAEL COZENE  
Partner and Wealth & Fiduciary Advisor  
T: 813.313.1193  
michael.cozene@evercore.com

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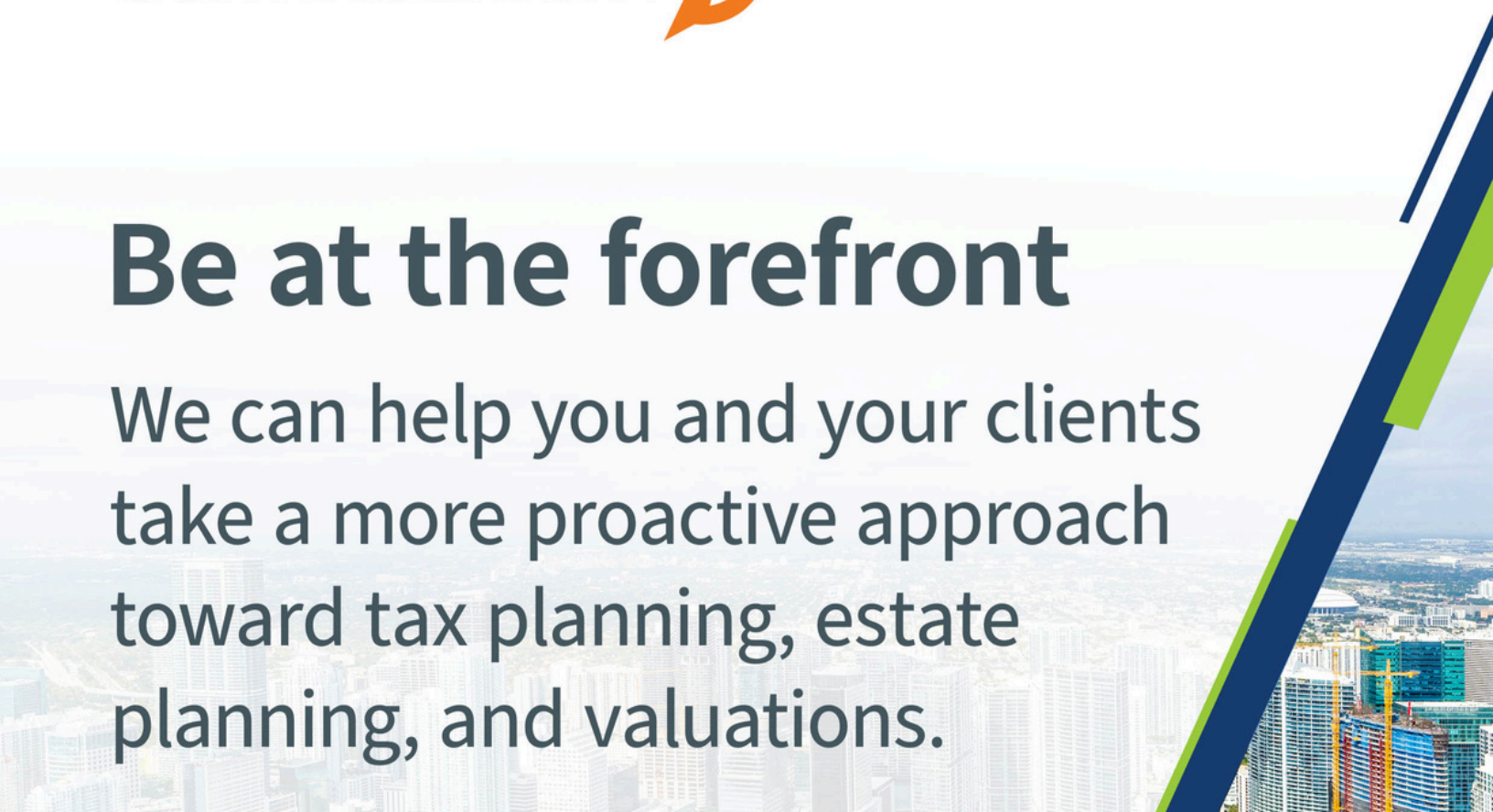


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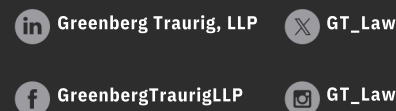
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# **PRESENTATION MATERIALS**



# The New Normal for Charitable Tax Planning

Presented by:

**JUSTIN MILLER, J.D., LL.M., TEP, AEP®, CFP®**

Partner and National Director of Wealth Planning, Evercore Wealth Management  
Managing Director, Evercore Trust Company

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# AGENDA

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## **I. Overview**

- What, Where and Why Do Individuals Give?

## **II. Charitable Giving Strategies**

- Standard Deduction v. Itemized Deductions
- Gifts of Cash, Stock or Other Assets
  - Contemporaneous Written Acknowledgements and Qualified Appraisals
  - Assignment of Income
- IRAs
- Charitable Remainder Trusts (CRUTs and CRATs)
- Charitable Deduction for Non-Grantor Trusts and Estates

## **VI. Charitable Giving Vehicles**

- Private Foundations; Donor Advised Funds; “Charitable” LLCs; Purpose Trusts; 501(c)(4) Social Welfare Organizations

## **VII. Sustainable, Responsible and Impact (SRI) Investing**

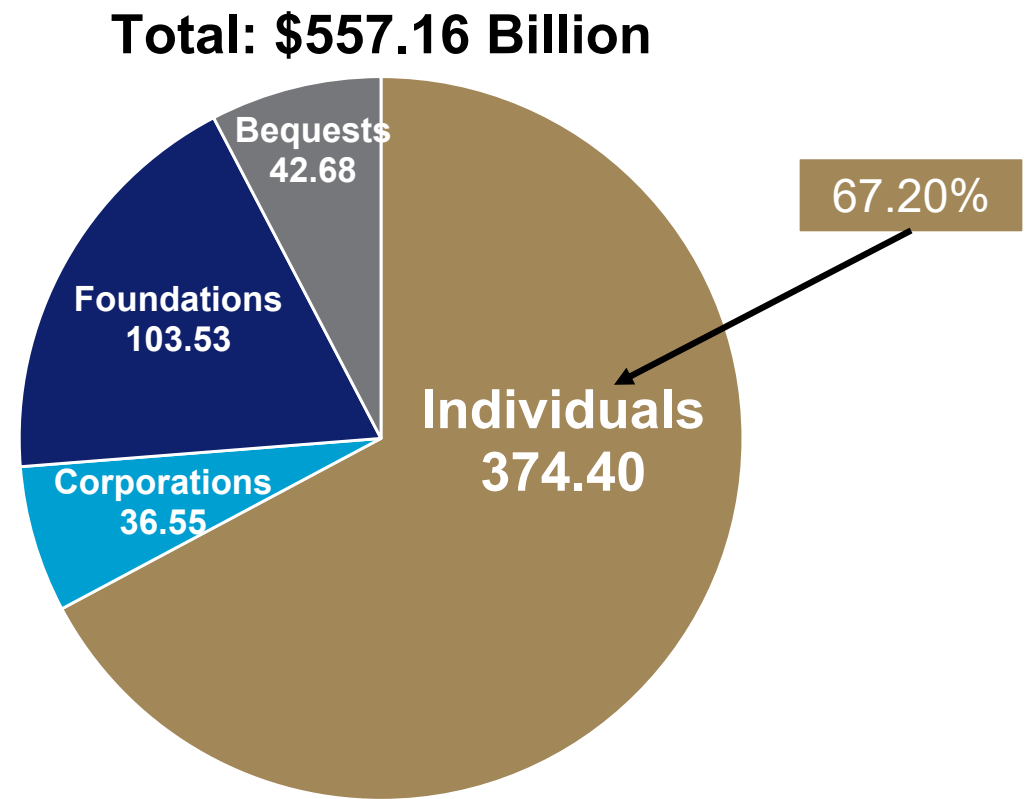
## **VIII. Shams, Scams and No Thank You Ma’ams**

## **IX. Family Philanthropy**

# Overview



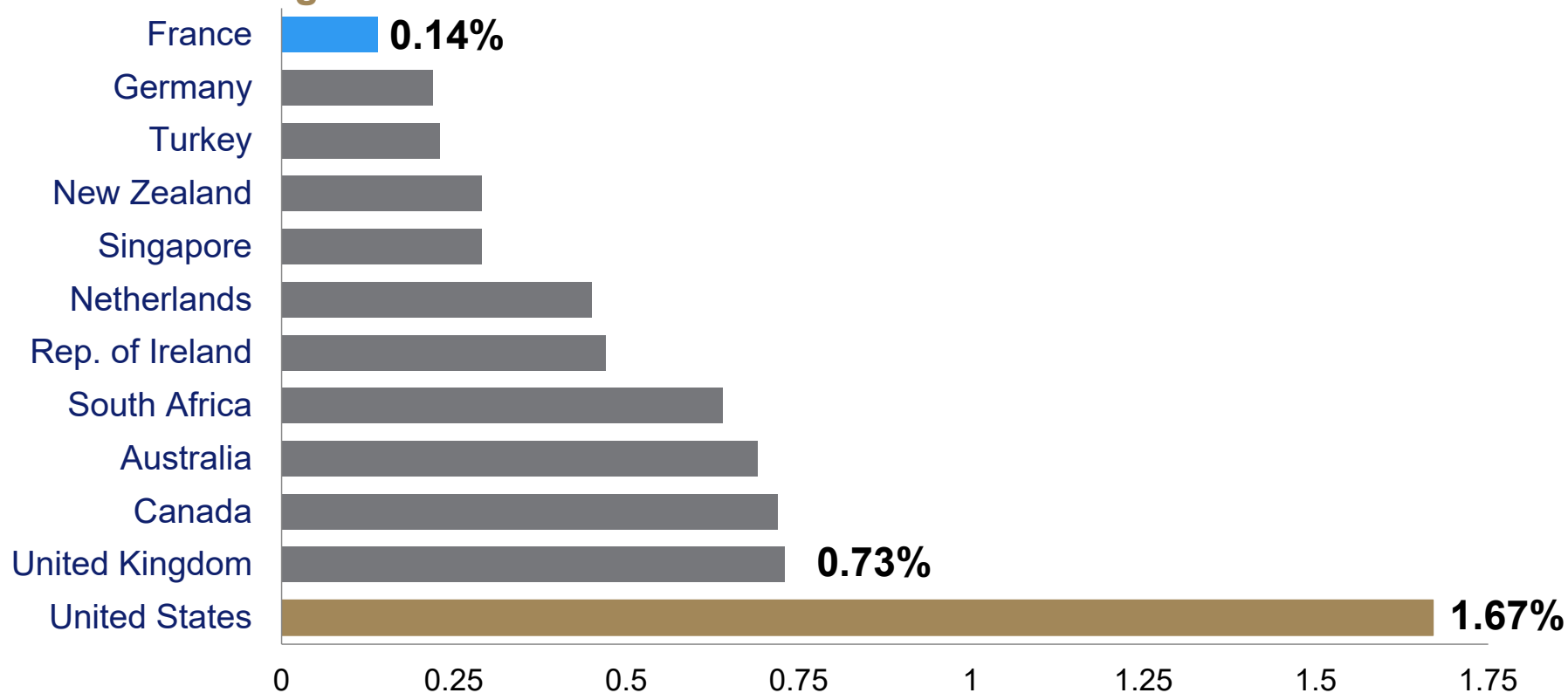
# WHAT DO INDIVIDUALS GIVE?



Sources: *Giving USA 2024: The Annual Report on Philanthropy for the Year 2023*, Giving USA Foundation, 2024, researched and written by the Indiana University Lilly Family School of Philanthropy.

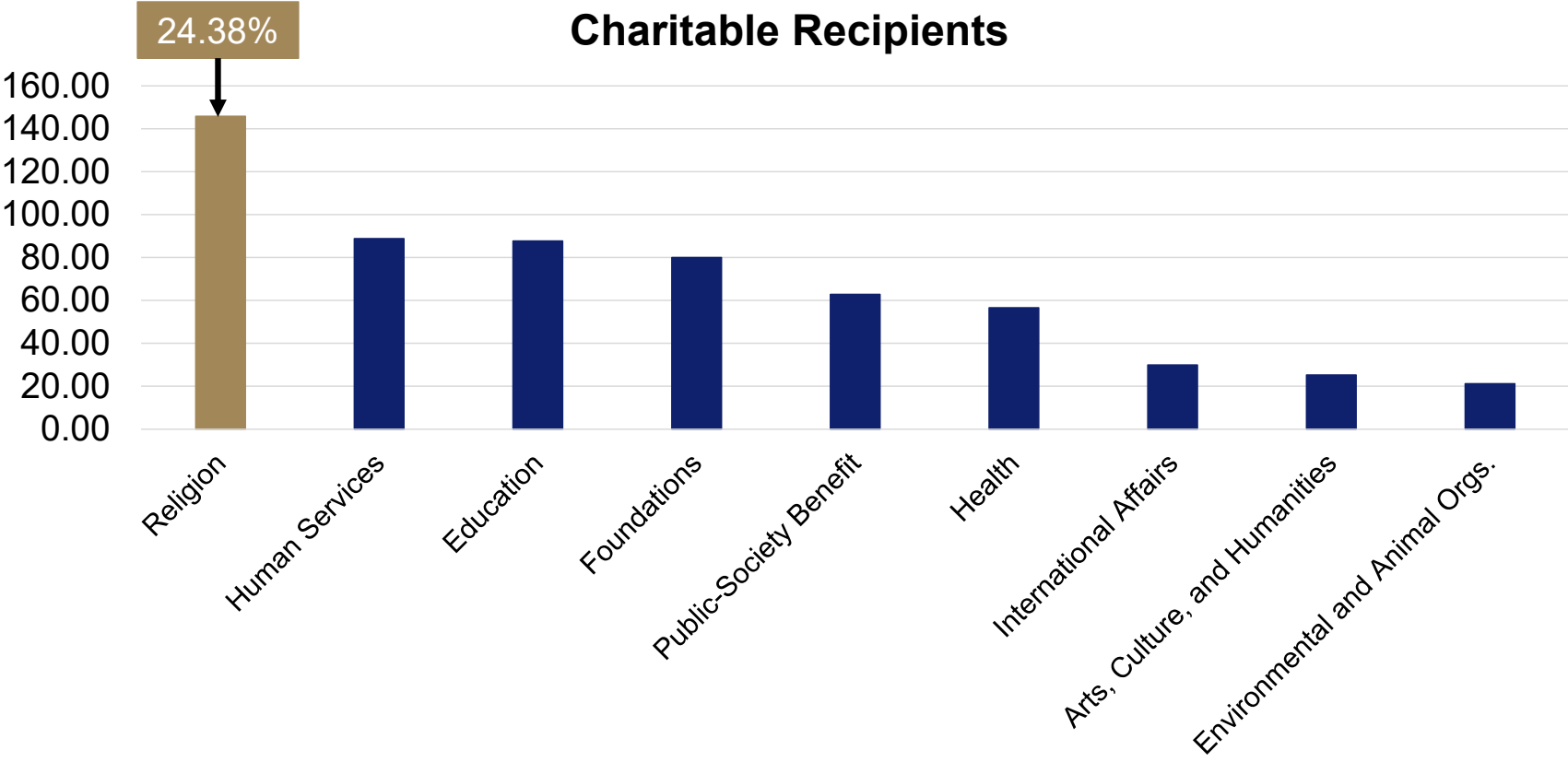
# INDIVIDUAL GIVING BEHAVIOR AROUND THE GLOBE

## National Giving As % of GDP



Source: "International Comparisons of Charitable Giving," Charities Aid Foundation (Kent, UK, Nov. 2006).

# WHERE DO INDIVIDUALS GIVE?



Sources: *Giving USA 2024: The Annual Report on Philanthropy for the Year 2023*, Giving USA Foundation, 2024, researched and written by the Indiana University Lilly Family School of Philanthropy.



# WHY DO INDIVIDUALS GIVE?

## Studies on Charitable Giving

- Psychological—giving causes happiness<sup>1</sup>
- Social—signaling one's wealth or status<sup>2</sup>
- Economic—tax breaks<sup>3</sup>

<sup>1</sup> Andreoni, J., "Giving with impure altruism: Application to charity and ricardian equivalence," The Journal of Political Economy (1989); Andreoni, J., "Impure altruism and donations to public goods – a theory of warm glow giving," Economic Journal (1990); Dunn, E. W., Aknin, L. B., & Norton, M. I., "Spending money on others promotes happiness," Science (2008); Harbaugh, W., Mayr U., & Burghart, D., "Neural Responses to Taxation and Voluntary Giving Reveal Motives for Charitable Donations," Science, vol. 316, no. 5831 (2007).

<sup>2</sup> Becker, G. S., "Theory of social interaction," Journal of Political Economy (1974); Glazer, A., & Konrad, K. A., "A signaling explanation for charity," American Economic Review (1996); Griskevicius, V., et al., "Blatant benevolence and conspicuous consumption: When romantic motives elicit strategic costly signals," Journal of Personality and Social Psychology (2007).

<sup>3</sup> Clotfelter, C. T., "Federal tax policy and charitable giving," Chicago: University of Chicago Press (1985); Clotfelter, C. T., "The economics of giving," in J. W. Barry & B. V. Manno (Eds.), "Giving better, giving smarter", Washington, DC: National Commission on Philanthropy and Civic Renewal (1997); Reece, W. S., & Zieschang, K. D., "Consistent estimation of the impact of tax deductibility on the level of charitable contributions," Econometrica (1985).

# INVESTIGATE

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## Key Questions for Uncovering Explicit Needs:

- How has uncertainty in the current environment impacted your charitable giving?
- In what ways have you documented your values and charitable goals?
- What assets have you considered for charitable giving?
- How are you providing for charity while accomplishing wealth transfer goals for your loved ones?
- What have you done to prepare your children to receive your wealth?

# Charitable Giving Strategies



## TAX PROPOSALS—*NOT CURRENT LAW*

### House Ways & Means Committee<sup>1</sup>

- Endowment Tax Expansion from 1.4% to 14% (\$10 billion in 10-year savings)
- Increase Applicability of Endowment Tax to 10-12 Add'l. Schools (\$275 million in 10-year savings)
- Eliminate Exclusion of Scholarship and Fellowship Income (\$54 billion in 10-year savings)
- Eliminate Nonprofit Status for Hospitals (\$260 billion in 10-year savings)
- Eliminate Deduction for Charitable Contributions to Health Organizations (\$83 billion in 10-year savings)
- Eliminate Home Mortgage Interest Deduction vs Lower Cap to \$500k (\$1 trillion in 10-year savings vs. \$50 billion in 10-year savings)
- SALT Deduction Repeal vs. Increase Cap. (\$1 trillion in 10-year savings versus add'l. costs)
- Eliminate the Death Tax (\$370 billion in 10-year costs)
- Repeal IRA's IRS Enforcement Funding (\$46.6 billion in 10-year costs)

<sup>1</sup> See House Ways and Means Committee at [https://www.finance.senate.gov/imo/media/doc/budget\\_optionspdf.pdf](https://www.finance.senate.gov/imo/media/doc/budget_optionspdf.pdf) Also note the lyrics from “I’m Just a Bill” by Dave Frishberg, “I’m just a bill. Yes, I’m only a bill. And I’m sitting here on Capitol Hill. Well, it’s a long, long journey to the capital city.”

## INCOME AND INCOME TAXES

Income Category	AGI	Share of Total AGI	Share of Total Income Taxes Paid
<b>Top 1%</b>	<b>&gt;\$663,164</b>	<b>22.4%</b>	<b>40.4%</b>
<b>Top 5%</b>	<b>&gt;\$261,591</b>	<b>38.3%</b>	<b>61.0%</b>
<b>Top 10%</b>	<b>&gt;\$178,611</b>	<b>49.4%</b>	<b>72.0%</b>
<b>Top 25%</b>	<b>&gt;\$99,857</b>	<b>69.9%</b>	<b>87.2%</b>
<b>Top 50%</b>	<b>&gt;\$50,339</b>	<b>88.5%</b>	<b>97.0%</b>
<b>Bottom 50%</b>	<b>&lt;\$50,339</b>	<b>11.5%</b>	<b>3.0%</b>

Source: Internal Revenue Service, "SOI Tax Stats - Individual Income Tax Rates and Tax Shares," 2024 review of 2022 tax return data.

Note that standard deduction for 2025 is \$15,000 for single filers and \$30,000 for married filing jointly.

**EVERCORE** | Wealth Management  
Trust Company

THE NEW STANDARD IN WEALTH MANAGEMENT

## BUNCHING ITEMIZED DEDUCTIONS

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### Who Should Consider?

- Taxpayers with itemized deductions that fall short of the standard deduction amount—in other words, itemized deductions do not produce any tax benefit

### Solution

- Rather than deduct the standard deduction every year, time deductions (when possible) and bunch together in one year

## BUNCHING ITEMIZED DEDUCTIONS

	2025	2026	2027
State Income Taxes	\$15,000	\$15,000	\$15,000
Property Taxes	\$15,000	\$15,000	\$15,000
Mortgage Interest	\$10,000	\$10,000	\$10,000
Charitable Gifts	\$10,000	\$10,000	\$10,000

SALT Deduction limited to \$10,000

Standard Deduction is \$30,000 (for married couple, 2025)

### Without Bunching: No Charitable Deduction

### With Bunching of \$30k Charitable Gifts in Single Year: Charitable Deduction

2025 = \$50,000

2026 ≈ \$30,750 (standard deduction w/ inflation adjustment)

2027 ≈ \$31,519 (standard deduction w/ inflation adjustment)



## STANDARD DEDUCTION AND CHARITABLE DEDUCTION?

### Universal Charitable Giving Tax Deduction<sup>1</sup>

- Proposed legislation
- Above-the-line deduction for charitable contributions of individuals who do not itemize
- May not exceed 1/3 of the standard deduction

**41.4M taxpayers claimed the special \$300 CARES Act deduction for 2020—more than 25% of all non-itemizers<sup>2</sup>**

<sup>1</sup> The “Charitable Act,” S. 566 (Feb. 28, 2023), would apply to tax years beginning in 2023 and 2024. See also H.R. 651 (Jan. 17, 2019); H.R. 5771 (May 10, 2018); S. 2123 (Nov. 14, 2017); and H.R. 3988 (Oct. 4, 2017).

<sup>2</sup> IRS Publication 4801 (Rev. 11-2022), “Statistics of Income, Individual Income Tax Returns, Line Item Estimates, 2020.”

## ASSET OPTIONS: STOCK VS. CASH

	Sell Stock and Donate Cash	Donate Stock
Value of Stock	\$250,000	\$250,000
Taxes on Capital Gains	(\$50,000)	\$0
Charitable Deduction	\$200,000	\$250,000
Amount to Charity	\$200,000	\$250,000

### Donating Stock

- Saves taxpayer \$50k in capital gains taxes
- Provides taxpayer with an additional \$50k charitable deduction
- Provides charity with an additional \$50k

Assumes stock with \$166,667 long-term capital gain, and 30% blended tax rate on capital gains (federal and state).

# CONTEMPORANEOUS WRITTEN ACKNOWLEDGEMENT (CWA)<sup>1</sup>

## Charitable Gifts of \$250 or More—Internal Revenue Code § 170

### Strict Compliance

- Must state whether you received something in return (e.g., goods or services)
- For a donor advised fund, must confirm that it "has exclusive legal control over the assets contributed" under IRC § 170(f)(18)
- Must receive acknowledgment by the earlier of:
  - (i) date the Federal income tax return for the year of the contribution is filed; or
  - (ii) due date (including extensions) of the return

<sup>1</sup> Brooks v. Commissioner, No. 23-1314 (4th Cir. Jul. 15, 2024) (no deduction and 40% gross valuation misstatement penalty for conservation easement charitable deduction on less than 1/2 property purchased for \$1.35mm when \$652k basis reported as \$1.35mm, no "contemporaneous written acknowledgment," and substantial misstatement of \$5.1mm value for deduction); Tucker v. Commissioner, T.C. Memo 2023-87 (Jul. 17, 2023) (Charity's communications about fashion show donations failed to indicate whether goods and services were provided and were "woefully inadequate for purposes of satisfying the section 170(f)(8)(B) CWA requirements"); Braen v. Commissioner, T.C. Memo 2023-85 (Jul. 11, 2023) (No \$5.22mm charitable contribution deduction because bargain sale did not comply with CWA requirements by disclosing bargained-for reversion in settlement agreement); Keefer v. U.S., U.S. District Court, Northern District of Texas, Dallas Division, No. 3:20-CV-0836-B (N.D. Tex. Jul. 6, 2022) (DAF acknowledgement letter did not confirm that it "has exclusive legal control over the assets contributed," under IRC § 170(f)(18), and supplemental material from DAF was not incorporated by reference); Izen v. Commissioner, 38 F.4th 459, 2022 WL 2337393 (5th Cir. Jun. 29, 2022), aff'g 148 T.C. 71 (2017) (no deduction for airplane donation since CWA did not meet § 170(f)(12) requirements for used motor vehicles, boats, and airplanes); Albrecht v. Commissioner, T.C. Memo 2022-53 (May 25, 2022) (No deduction for 120 items donated under five-page gift agreement without statement of goods or services provided); Durden v. Commissioner, T.C. Memo 2012-140 (Receipt from charity lacked statement of goods or services provided, and second receipt was not contemporaneous).

## QUALIFIED APPRAISAL<sup>1</sup>

### Gifts of More Than \$5,000—Internal Revenue Code § 170

#### Limited exceptions—e.g., cash or publicly traded securities

- Summary or actual appraisal (e.g., \$500K+ donation or \$20K art)
- Must be attached to the Federal income tax return (for the year of contribution and carryover years)

<sup>1</sup> Cade v. Commissioner, T.C. Memo 2025-20 (Mar. 10, 2025); Corning Place Ohio, LLC v. Commissioner, T.C. Memo 2024-72 (Jul. 17, 2024) (Denial of \$22.6 million charitable contribution deduction and 40% gross valuation misstatement penalty when lost development rights for 34-story vertical addition to historic office building would violate rehabilitation plan and historic preservation tax credits); Oconee Landing Property, LLC v. Commissioner, T.C. Memo 2024-25 (Feb. 21, 2024) and T.C. Memo 2024-73 (Jul. 17, 2024) (40% gross valuation misstatement penalty and 20% substantial understatement penalty for portion not attributable to overvaluation when \$20.67mm appraisal was not qualified because of tacit agreement with petitioner that a certain value was needed to obtain the desired amount of syndication proceeds and original landowners, who controlled petitioner/partnership, had tried unsuccessfully for two years to sell the land before initiating the syndicated conservation easement transaction and knew its value was significantly less than \$10 million); Braen v. Commissioner, T.C. Memo 2023-85 (Jul. 11, 2023) (Valuation not a “qualified appraisal” because it failed to disclose settlement agreement that influenced property value); Estate of Hoensheid v. Commissioner, T.C. Memo. 2023-34 (Mar. 15, 2023) (Valuation date failed to consider bonus payouts, and appraisal failed to sufficiently describe appraiser’s relevant qualifications and valuation experience); Chief Counsel Advice 202302012 (Jan. 13, 2023) (qualified appraisal required for cryptocurrency valued at more than \$5,000); Schweizer v. Commissioner, T.C. Memo 2022-102 (Oct. 6, 2022) (No deduction for failure to comply with the substantiation requirements of Treas. Reg. §1.170-13); Gemperle v. Commissioner, T.C. Memo 2016-1 (Failure to include qualified appraisal for façade easement resulted in denial of deduction and penalties with no grounds for mitigation of the penalties by reason of acting with reasonable cause and in good faith); Mohamed v. Commissioner, T.C. Memo 2012-152 (No deduction for failure to comply with the substantiation requirements of Treas. Reg. §1.170-13); and Evenchik v. Commissioner, T.C. Memo 2013-34 (No deduction for donated shares of a corporation when appraisal was for two apartment buildings owned by the corporation).



# CADE V. COMMISSIONER<sup>1</sup>

## No Qualified Appraisal, No Charitable Deduction

### Background

- Married couple filed an amended return claiming a \$284,553 charitable contribution deduction for donating clothing, cobblestones, and flooring materials to a church
  - \$146,043 deduction for thousands of personal clothing items—paid \$2,250
  - \$89,100 deduction for 16,200 “granite cobblestones of various sizes”—paid \$1,000
  - \$49,410 for 9,608 pieces of commercial vinyl tile and 10 four-gallon tubs of floor-tile adhesive—paid \$1,080

### Court Ruling

- No Deduction—Forms 8283 and statements provided by Taxpayers did not constitute qualified appraisals under I.R.C. §170(f)(11) and related regulations
- Taxpayers failed to show that the individuals who prepared the appraisals had completed the requisite coursework or relevant experience necessary to be qualified appraisers under the regulations

<sup>1</sup> Cade v. Commissioner, T.C. Memo 2025-20 (Mar. 10, 2025).

# RANCH SPRINGS, LLC V. COMMISSIONER<sup>1</sup>

## Donation Value Overstated by 7,694%

### Background

- December 2016: LLC acquired rural land in Alabama for \$6,500 per acre
- December 2017: Appraiser valued land at \$236,673 per acre—highest and best use was limestone mining
- 2017 Partnership Return: Claimed \$25,814,000 charitable deduction for conservation easement

### Court Ruling

- Value of donation was \$335,500 (\$720,500 “before value” less \$385,000 “after value”)
- Rezoning to permit mining was not reasonably probable—and valuation failed to consider assets required to conduct a hypothetical mining business
- 40% gross valuation penalty

<sup>1</sup> Ranch Springs, LLC v. Commissioner, 164 T.C. No. 6 (Mar. 31, 2025).

## BROOKS V. COMMISSIONER<sup>1</sup>

### No Charitable Deduction and Gross Valuation Misstatement Penalty of 40%

#### Background

- Property purchased for \$1.35M
- Conservation easement on less than ½ property
- Basis for charitable deduction reported as \$1.35mm—*not* \$652K
- Charitable deduction valued at \$5.1M

#### Court Ruling

- No “contemporaneous written acknowledgment”—easement deed insufficient
  - Easement Deed stated “for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration”
- Zero charitable deduction—even though court valued easement at \$470,000
- Gross valuation misstatement penalty of 40% of the underpayment of tax

<sup>1</sup> Brooks v. Commissioner, 109 F.4th 205 (4th Cir. Jul. 15, 2024), aff’g T.C. Memo 2022-122 (Dec. 19, 2022).

# CORNING PLACE OHIO, LLC V. COMMISSIONER<sup>1</sup>

## No Charitable Deduction and Gross Valuation Misstatement Penalty of 40%

### Background

- \$6M acquisition of vacant 11-story historic building and eight associated parcels
- Rehabilitation plan and condition for Federal and Ohio historic preservation tax credits
  - No rooftop improvements “visible from the street”
- \$22.6M charitable contribution deduction claimed for conservation easement
  - Lost development rights to add 34-story vertical addition on top of historic building

### Court Ruling

- “Apart from being structurally implausible and economically unsound, adding 34 floors of steel and concrete atop the building would have required the partnership to forfeit the Federal and Ohio tax credits upon which it relied to finance the renovation”
- Payment of contribution was not “made within the taxable year” under § 170(a)(1)
- Gross valuation misstatement penalty of 40% of the underpayment of tax

<sup>1</sup> Corning Place Ohio, LLC v. Commissioner, T.C. Memo 2024-72 (Jul. 17, 2024).



# OCONEE LANDING PROPERTY, LLC V. COMMISSIONER<sup>1</sup>

## No Charitable Deduction and Gross Valuation Misstatement Penalty of 40%

### Background

- Landowners tried unsuccessfully for two years to sell the land for less than \$10 million
- Syndicated conservation easement partnership—controlled by original owners
- \$60 million appraisal for land and \$20.67 million for conversation easement

### Court Ruling

- Appraisal not “qualified” because:
  - Tacit agreement that \$60mm value needed to obtain desired syndication proceeds
  - Original landowners knew value was significantly less than \$10 million
- Zero charitable deduction for easement—even though court valued at <\$5 million
- Gross valuation misstatement penalty of 40% of the underpayment of tax and 20% substantial understatement penalty for portion not attributable to overvaluation

<sup>1</sup> Oconee Landing Property, LLC v. Commissioner, T.C. Memo 2024-25 (Feb. 21, 2024) and T.C. Memo 2024-73 (Jul. 17, 2024).

# J L MINERALS, LLC V. COMMISSIONER<sup>1</sup>

## No Charitable Deduction and Gross Valuation Misstatement Penalty of 40%

### Background

- 12/15: Jackson Lake purchased 645 acres of land in rural Georgia for \$1.6M
- 12/15: Jackson Lake contributed 64.7 acres (easement property) to JL Minerals (JL)
- 1/16: Timber company purchased 98% of Jackson Lake for \$3.1M and JL for \$167,837
- 12/17: JL donated conservation easement and claimed \$16.745M charitable deduction

### Court Ruling

- Value claimed on JL Minerals' tax return (\$16,745,000) exceeded the correct amount (\$93,690) by more than 200%
- "... the conduct of informed market participants over decades convinces us that mining was not reasonably probable in the reasonably near future"
- "... the deduction amount was an outrageous overstatement"
- Gross valuation misstatement penalty of 40% of the underpayment of tax

<sup>1</sup> J L Minerals, LLC v. Commissioner, T.C. Memo 2024-93 (Oct. 8, 2024).

## WT ART PARTNERSHIP LP V. COMMISSIONER<sup>1</sup>

### Appraisals Obtained from a Chinese Auction House Were Not Qualified Appraisals

#### Background

- Donation of ancient Chinese paintings to the Metropolitan Museum of Art (the “Met”)
- Email to Chinese auction house that taxpayer could “use more than a \$20 million deduction this year” and two days later estimate provided of \$26 million for “Palace Banquet” painting

#### Court Ruling

- Donation **NOT** disallowed—failure to obtain qualified appraisals due to reasonable cause (§170(f)(11)(A)(ii)(II)) because petitioner believed auction house could provide acceptable appraisals
- Fair market value of main painting was \$12mm—not \$26mm reported value (exceeded correct value by more than 200%)
- Gross valuation misstatement penalty of 40% of the underpayment of tax

<sup>1</sup> WT Art Partnership LP v. Commissioner, T.C. Memo 2025-30 (Apr. 9, 2025)

## BASS V. COMMISSIONER<sup>1</sup>

### Similar Items of Property Treated As One Property

#### Background

- Taxpayer donated “various” property in “good used” condition
- \$25,446 aggregate clothing donations—\$13,852 Goodwill and \$11,594 Salvation Army
- 173 separate trips to Goodwill and Salvation Army—often multiple trips on same day—with donation acknowledgment receipt for each trip with a fair market value of less than \$250

#### Court Ruling

- All clothing donations must be aggregated—equaled more than five times the \$5k threshold for appraisal
- For \$500 and \$5,000 thresholds, “similar items of property” donated to one or more charitable organizations are treated as one property (§ 170(f)(11)(F); Treas. Reg. § 1.170A-13(c)(1)(i))

<sup>1</sup> Bass v. Commissioner, T.C. Memo. 2023-41 (Mar. 27, 2023).



# ESTATE OF WARNE V. COMMISSIONER<sup>1</sup>

## Valuation Discounts for Charitable Gifts of LLC Interests

### Background

- Estate held majority interests, ranging from 72.5% to 100%, in five LLCs holding real estate
- Estate donated entire 100% interest in one LLC by splitting donation between two charitable organizations
  - 75% to family foundation
  - 25% to church

### Court Ruling

- Discounts should be applied for lack of control and lack of marketability
  - Taxpayer win for controlling majority interests (6.9% discount)
  - Taxpayer loss for charitable deduction (4% discount for 75% interest; 27.385% discount for 25% interest)—*easily could have been avoided*

<sup>1</sup> Estate of Warne v. Commissioner, T.C. Memo. 2021-17 (Feb. 18, 2021).

# ESTATE OF HOENSHEID V. COMMISSIONER<sup>1</sup>

## ASSIGNMENT OF INCOME—PRESALE CHARITABLE CONTRIBUTION OF COMPANY STOCK

### Timeline in 2015

- April 1: Business owned by three brothers—grandchildren of founder—received \$92M letter of intent (LOI)
- April 16: One of the brothers (Donor) was considering a donor-advised fund (DAF) to make a presale charitable contribution of stock, and Donor's attorney emailed, "**the transfer would have to take place before there is a definitive agreement in place.**"
- April 21: Donor emailed his attorney, "**I would rather wait as long as possible to pull the trigger. If we do it and the sale does not go through, I guess my brothers could own more stock than I...**"
- April 23: Nonbinding LOI signed
- June 1: Donor emailed his attorney, "**I do not want to transfer the stock until we are 99% sure we are closing.**"
- **June 11:** Shareholders/directors approved sale and Donor's charitable gift—but **field left blank in executed Consent to Assignment for number of shares to be transferred to DAF**
- June 12: Acquiring company's investment committee and managing partners approved acquisition subject to competition of due diligence
- July 6: Donor emailed his attorney and other advisors that he was, "**not totally sure of the shares being transferred to the charitable fund yet.**"

<sup>1</sup> Estate of Hoensheid v. Commissioner, T.C. Memo. 2023-34 (Mar. 15, 2023).

# ESTATE OF HOENSHEID V. COMMISSIONER<sup>1</sup>

## ASSIGNMENT OF INCOME—PRESALE CHARITABLE CONTRIBUTION OF COMPANY STOCK

### Timeline in 2015 (continued)

- July 7: Company approved bonus plan for key employees and distribution of remaining cash at closing
- July 9: Revised draft of Purchase Agreement with partially filled in recital that Donor transferred 1,380 shares to DAF on "July . . . 2015," and Donor's wealth advisor emailed DAF representative, **"it looks like Scott has arrived at 1380 shares—which will come out to about \$3,000,000" and that he would "have the stock certificate shortly."**
- July 10: Bonuses of \$6.1M paid to employees; and Donor created online giving account with DAF
- July 13: Revised Purchase Agreement circulated with agreement to all substantive provisions; **PDF of signed/undated stock certificate for 1,380.40 shares emailed to DAF representatives; and Minority Stock Purchase Agreement signed by DAF**
- July 14: Final draft of Purchase Agreement circulated showing share contribution on "July 10, 2015," with minimal other changes, and nearly all remaining cash of \$4.7M to brothers/shareholders—but not DAF
- July 15: Transaction closing—DAF received \$2,941,966 in cash proceeds from sale
- November 18: DAF sent Donor a confirmation letter acknowledging a contribution of 1380.40 shares on **June 11, 2015**
- *Donor did not report any capital gains associated with the sale of the 1,380 shares and claimed a noncash charitable contribution deduction of \$3,282,511 on Form 8283*

<sup>1</sup> Estate of Hoensheid v. Commissioner, T.C. Memo. 2023-34 (Mar. 15, 2023).

# ESTATE OF HOENSHEID V. COMMISSIONER<sup>1</sup>

## ASSIGNMENT OF INCOME—PRESALE CHARITABLE CONTRIBUTION OF COMPANY STOCK

### Court Ruling

- Completed transfer was on July 13, two days before July 15 closing, when sale was a "virtual certainty"—not June 11 date on confirmation letter from DAF<sup>2</sup>
- Considering the "reality and substance of all the circumstances," Donor had a "fixed right to income in the property at the time of transfer."
- Four-factor test whether sale was "virtually certain to occur at the time of gift"
  - (1) any legal obligation to sell by the donee—which "is only one factor to be considered in ascertaining the 'realities and substance' of the transaction"<sup>3</sup>
  - (2) the actions already taken by the parties to affect the transaction
  - (3) the remaining unresolved transactional contingencies
  - (4) the status of the corporate formalities required to finalize the transaction
- "Bonus payouts and distributions could not be clawed back," no substantial "unresolved contingencies," final written consent was "a foregone conclusion," and "formal shareholder approval was purely ministerial"
- Also, **NO** qualified appraisal and **NO** qualified appraiser—required for gifts of more than \$5,000 under §170
  - June 11 valuation date failed to consider \$6.1M bonus payouts prior to July 13, and appraisal failed to sufficiently describe appraiser's relevant qualifications and valuation experience

<sup>1</sup> Estate of Hoensheid v. Commissioner, T.C. Memo. 2023-34 (Mar. 15, 2023). See also Lucas v. Earl, 281 U.S. 111 (1930) ("the fruits cannot be attributed to a different tree from that on which they grew").

<sup>2</sup> Michigan state law "requires a showing of: (1) donor intent to make a gift; (2) actual or constructive delivery of the subject matter of the gift; and (3) donee acceptance."

<sup>3</sup> Compare with Rev. Rul. 78-197, 1978-1 C.B. 83 (proceeds treated "as income to the donor only if the donee is legally bound, or can be compelled by the corporation, to surrender the shares for redemption"). See also Treas. Reg. § 1.170A-1(b) and Rauenhorst v. Commissioner, 119 T.C. 157 (1993).



## CHARITABLE PLANNING WITH TRADITIONAL IRAS

### TAX BENEFIT OF NAMING CHARITY AS IRA BENEFICIARY

	Stock to Charity and IRA to Child		IRA to Charity and Stock to Child	
	Charity	Child	Charity	Child
Stock	\$1,000,000		—	\$1,000,000
IRA	—	\$1,000,000	\$1,000,000	—
Income Tax	—	(\$450,000)*	—	—
NET BEQUEST	\$1,000,000	\$550,000	\$1,000,000	\$1,000,000**

\* Assumes a blended ordinary income tax rate of 45% (federal and state) upon distribution from the IRA.

\*\* Note that the child's shares of stock also receive a step-up in basis when the decedent dies.

# CHARITABLE PLANNING WITH TRADITIONAL IRAS

## SECURE ACT 2.0, SECURE ACT, PATH ACT OF 2015\*

### Qualified Charitable Distributions (aka Charitable IRA Rollovers)

- “Permanent” extension
- Required minimum age of 70½
  - **Beware** of SECURE Act tax trap if post-70½ deductible contributions
- Can satisfy required minimum distribution (RMD)
- Excluded from gross income, but no charitable deduction
- Up to \$108k per year (in 2025)
  - **Indexed for inflation under SECURE Act 2.0 starting in 2024**
- Must be paid directly to public charity
  - No supporting organizations, non-operating private foundations (unless conduit rules apply), or donor advised funds\*\*

\* The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, SECURE Act 2.0 of 2022, and Protecting Americans from Tax Hikes (PATH) Act of 2015.

\*\* Note that the “Charities Helping Americans Regularly Throughout the Year Act” (“Charity Act”) (H.R. 2916, Jun. 15, 2017; S. 1343, Jun. 13, 2017; and S. 2750, Apr. 6, 2016) and “Grow Philanthropy Act” (H.R. 4907, Apr. 12, 2016) would strike existing prohibition for IRA distributions to donor advised funds.

# CHARITABLE PLANNING WITH TRADITIONAL IRAS

## LEGACY IRA ACT UNDER SECURE ACT 2.0\*

### One-Time \$54,000 (Adjusted for Inflation in 2025) Qualified Charitable Distribution—Life Income Rollover

- Allows income benefit for lifetime with remainder to charity after death
- Can benefit participant and spouse
- Required minimum age of 70½
- Can satisfy required minimum distribution (RMD)
- To a charitable gift annuity (CGA), charitable remainder unitrust (CRUT), or charitable remainder annuity trust (CRAT)
  - Likely most effective with CGAs given cost and administrative burden of charitable trusts

\* SECURE Act 2.0 of 2022. See also prior unsuccessful legislative proposals, including Legacy IRA Act, H.R. 1337 (Mar. 2, 2017); H.R. 5171 (May 6, 2016).

# COMMUNICATE—LEFT BRAIN VS. RIGHT BRAIN

## Don't Just Give Facts and Figures

### Charitable Remainder Unitrust (CRUT)—Sample Client Summary for Client

#### Structure:

- Funded by the sale for the benefit of Client's lifetime
  - The remainder (amount expected to go to charity) must be at least 10% of the fair market value of the assets contributed to the CRUT
- Provides an annual payment of 6.31194% of the trust's fair market value each year (the Unitrust Amount)
  - A higher percentage payout would not pass the 10% test
  - The annual payment may go as low as 5%—decreasing the annual payments would increase the charitable deduction.
- Assumes funding in May 2025, which allows use of the 5.4% §7520 rate from March 2025 (eligible to use the highest out of a three-month period)
  - The higher the rate, the greater the deduction, although there is a relatively small difference
- Upon Client's death, the remaining balance in the CRUT must pass to charity, Client's Donor Advised Fund or another charity of Client's choice

#### Advantages:

- Provides income for Client's lifetime
- Tax deduction valued at 10% of the initial amount contributed to the trust
- Tax-free growth of the CRUT portfolio
- Defers the payment of capital gains on the amount initially contributed to the CRT upon the sale of the asset
- Provides a substantial bequest to charity at the end of the trust term

#### Disadvantages:

- Lack of access to principal
- Additional complexity and administration
- May not be advantageous economically for Client—other than benefit to charity—if Client does not live to 2041

# COMMUNICATE—LEFT BRAIN VS. RIGHT BRAIN

## Don't Just Give Facts and Figures

Trust Type:	Life
Transfer Date:	5/2025
\$7520 Rate:	5.40%
FMV of Trust:	\$5,000,000
Growth Rate:	5.60%
Income Rate:	1.40%
Optimized:	Yes
Using Optimized Payout:	6.31194%
Payment Period:	Annual
Months Val. Precedes Payout:	3
Lives:	1
Ages:	38
CRUT Type:	Normal
Mortality Table:	2010CM

Payout Sequence Factor:	0.986938
Adjusted Payout Rate:	6.229%
Interpolation:	
Factor at 6.2%:	0.10087
Factor at 6.4%:	0.09499
Difference:	0.00588
$(6.229\% - 6.2\%) / 0.2\% = X / 0.00588$ ; Therefore $X = 0.00085$	
Life Remainder Factor = Factor at 6.2% Less X:	0.10002
Present Value of Remainder Interest = \$5,000,000.00 x 0.10002:	\$500,100.00
Donor's Deduction:	\$500,100.00
Donor's Deduction as Percentage of Amount Transferred:	10.002%



## CHARITABLE REMAINDER UNITRUST (CRUT)

**Upfront Charitable  
Income Tax  
Deduction:  
\$500K**



Assumes 7% net return (5.6% growth and 1.4% income), 38-year-old donor, and most favorable IRC § 7520 rate of 5.4% for most recent three months as of May 2025. Rev. Rul. 2025-06.

# CHARITABLE REMAINDER ANNUITY TRUST (CRAT)

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## Fixed Dollar Annual Payment (CRAT) vs. Unitrust (CRUT)

### One or two-life CRATs

- Previously, not possible due to low interest rate environment for those younger than about 74
- Probability of exhaustion test—greater than 5% probability all assets will be paid out

## IRS Revenue Procedure 2016-42 (Aug. 9, 2016)

### Safe harbor provision

- Early termination if CRAT's assets fall below 10% of initial value multiplied by discount factor
- Not triggered if investments outperform § 7520 rate

## CCA 202233014<sup>1</sup>

### CRUT with Variable Unitrust Payout to Spouse or Charity

#### Background

- Annual CRUT unitrust payment of 5% for life with remainder to charity after death
  - 25% of unitrust payment—that is, 1.25% of CRUT—**must** be distributed to decedent's spouse
  - 75% of unitrust payment—that is, 3.75% of CRUT—may be distributed to **either** decedent's spouse **or** charity at the discretion of the trustee

#### Conclusion

- No estate tax charitable deduction under § 2055 for any portion of unitrust interest
- No estate tax marital deduction under § 2056 for 75% discretionary portion of unitrust interest
- IRS changed position from earlier rulings that taxpayers were entitled to an estate tax marital deduction under § 2056 or a gift tax marital deduction under § 2523 for a CRUT unitrust interest that can be distributed between a charity and spouse at the trustee's discretion<sup>2</sup>

<sup>1</sup> Chief Counsel's Advice 202233014 (Aug. 19, 2022).

<sup>2</sup> PLRs 201845014, 201117005, 200832017, and 200813006.

## ESTATE OF BLOCK V. COMMISSIONER<sup>1</sup>

### Not a Charitable Remainder Trust—No Charitable Deduction for Estate

#### Background

- Trust required annual payment of the greater of \$50k or the trust's net income to decedent's sister or sister's spouse with remainder to charity
- Article 4.1 stated intent to be “a charitable remainder annuity trust, within the meaning of Rev. Proc. 2003-57 and § 664(d)(1) of the Code, and the terms of this Section shall be construed to give maximum effect to such intent”
- Trust amended, effective on death, to require \$50k annually—removed “all net income”

#### Ruling

- No charitable deduction under § 2055(a)—greater of \$50k or net income is not a “sum certain” for a CRAT
- Not a qualified judicial reformation under § 2055(e)(3)—amendment was not within 90-day period after estate tax return due and not instituted by court

<sup>1</sup> Estate of Block v. Commissioner, T.C. Memo. 2023-30 (Mar. 13, 2023) (“Congress made clear that the rules for qualified reformations are to be construed strictly, in order to prevent abuse of the charitable deduction”)

# CHARITABLE DEDUCTION FOR NON-GRANTOR TRUSTS AND ESTATES

## IRC § 642(c)

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### Requirements

- Paid from gross income
- Paid pursuant to governing document

### Unlimited in Amount

### No Distribution Deduction

### Generally, Must Be Actually Paid in Current Year or Following Year

- Estates and pre-1969 trusts get charitable deduction if “permanently set aside”

### Limited to Basis (Green v. U.S., 2018)

See *Mart D. Green v. United States*, 880 F.3d 519 (10th Cir. 2018).



## CHARITABLE DEDUCTION FOR NON-GRANTOR TRUSTS AND ESTATES HYPOTHETICAL EXAMPLE

### **In 2025, Trust Has:**

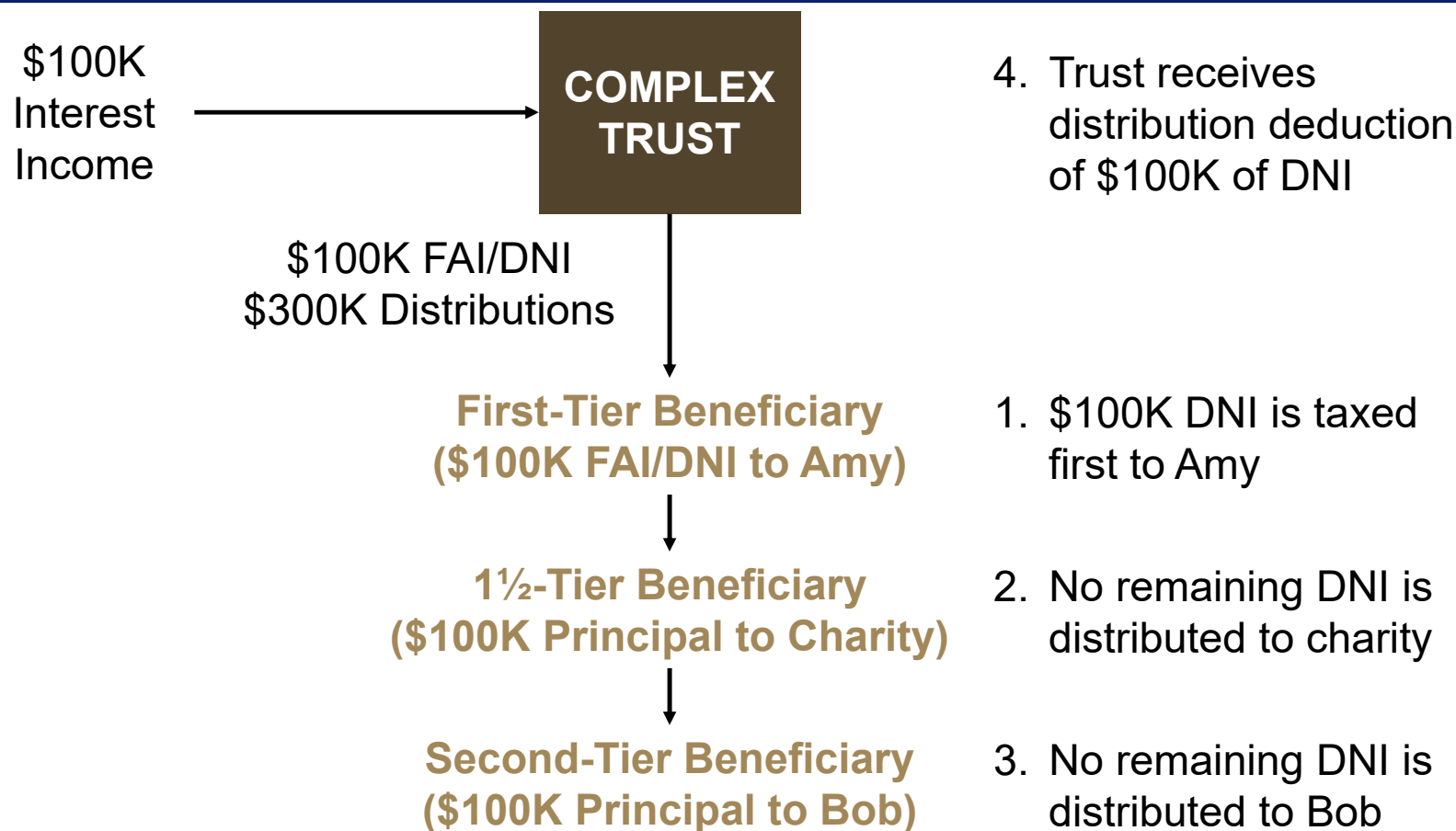
- \$100K of taxable interest income

### **During 2025, Trustee Distributes:**

- \$100K to Amy (mandatory income distribution)
- \$100K to Bob
- \$100K to a charity

**What was distributed to the beneficiaries for tax purposes?**

## CHARITABLE DEDUCTION FOR NON-GRANTOR TRUSTS AND ESTATES HYPOTHETICAL EXAMPLE



## CHARITABLE DEDUCTION FOR NON-GRANTOR TRUSTS AND ESTATES HYPOTHETICAL EXAMPLE

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### Another Option

- Distribute additional \$100K to Amy instead of charity (not taxable since the DNI already came out)
- Amy can make a \$100K contribution to charity
- Amy will get an income tax deduction, subject to the AGI rules and other limitations

## Charitable Giving Vehicles

# PRIVATE FOUNDATION VS. DONOR ADVISED FUND

## COMPARING TWO PHILANTHROPIC VEHICLES

	Private Foundation	Donor Advised Fund
<b>Tax Deductibility</b>	<ul style="list-style-type: none"> <li>• Cash—up to 30% of AGI</li> <li>• Appreciated and closely held stock—up to 20% of AGI</li> </ul>	<ul style="list-style-type: none"> <li>• Cash—up to 60% of AGI</li> <li>• Appreciated and closely held stock—up to 30% of AGI</li> </ul>
<b>Minimum Payout Requirements</b>	<ul style="list-style-type: none"> <li>• 5% annually</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> </ul>
<b>Investment Flexibility</b>	<ul style="list-style-type: none"> <li>• Divest excess business holdings within five years or pay excise tax</li> </ul>	<ul style="list-style-type: none"> <li>• Donor chooses among investment options offered by DAF</li> </ul>
<b>Grant Making Support</b>	<ul style="list-style-type: none"> <li>• Create and handle due diligence and monitoring structure</li> </ul>	<ul style="list-style-type: none"> <li>• Professional staff of DAF handles due diligence</li> </ul>
<b>Administration</b>	<ul style="list-style-type: none"> <li>• Legal/accounting fees; filing fees; and annual tax return</li> </ul>	<ul style="list-style-type: none"> <li>• DAF handles all administration</li> </ul>
<b>Excise Taxes</b>	<ul style="list-style-type: none"> <li>• 1.39% of investment income annually</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> </ul>
<b>Liability and Risk Insurance</b>	<ul style="list-style-type: none"> <li>• Must be purchased</li> </ul>	<ul style="list-style-type: none"> <li>• Provided by DAF</li> </ul>
<b>Start-Up Costs</b>	<ul style="list-style-type: none"> <li>• Legal fees and other start-up costs can be substantial</li> </ul>	<ul style="list-style-type: none"> <li>• Typically, none</li> </ul>
<b>Valuation of Gifts</b>	<ul style="list-style-type: none"> <li>• FMV for cash/publicly traded stock; cost basis for closely held stock/real property</li> </ul>	<ul style="list-style-type: none"> <li>• Fair market value</li> </ul>
<b>Privacy</b>	<ul style="list-style-type: none"> <li>• No</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>



# DONOR ADVISED FUND: PROPOSED REGULATIONS<sup>1</sup>

## New Guidance to Interpret and Apply § 4966—Taxes on Taxable Distributions

- DAF must be “separately identified by reference to contributions of a donor or donors”
  - Sponsoring organization maintains a formal record relating to donor(s)
  - Facts and circumstances—e.g., fund named after donor, donor receives statements, and advice solicited from donor
- Donor or donor-advisor (e.g., donor’s appointee, designee, advisory committee member or investment advisor) must have, or reasonably expect to have, “advisory privileges” under facts and circumstances test, regardless of whether exercised
  - Sponsoring organization allows donor/donor-advisor to provide nonbinding recommendations regarding distributions or investments
  - Written agreement that donor/donor-advisor has such advisory privileges
  - Written document or marketing material that donor/donor-advisor may provide such advice
  - Sponsoring organization generally solicits such advice from donor/donor-advisor
- Taxable “deemed distribution” if more than incidental benefit to donor/donor-advisor or related person
  - Exception for non-U.S. public charities if “equivalency determination” or “expenditure responsibility”
  - ***NEEDS REVIEW – No exception for investment fees paid to donor’s investment manager***

<sup>1</sup> Taxes on Taxable Distributions from Donor Advised Funds under Section 4966, 26 CFR Part 53, Reg-142338-07 (Nov. 13, 2023). See, e.g., Pinkert v. Schwab Charitable Fund, 48.F.4th 1051 (9th Cir. Sep. 4, 2022), aff’g Case No. 20-cv-07657-LB (N. Dist. Cal. Jun. 17, 2021). Fairbairn v. Fidelity Investments Charitable Gift Fund, Case No. 18-cv-04881-JSC (N. Dist. Cal. Feb. 26, 2021).

# LOPER BRIGHT ENTERPRISES VS. RAIMONDO<sup>1</sup>

## Interpretation of Federal Regulatory Agencies

### Background

- Supreme Court in Chevron v. Natural Resources Defense Council (1984)<sup>2</sup>
  - Courts must defer to federal regulatory agencies—like Treasury—if they reasonably determine legislative intent for ambiguous or unclear statutes

### Supreme Court Ruling

- End of 40-Year Chevron Deference
  - Judges should determine legislative intent for ambiguous federal statutes and do *not* need to defer to reasonable interpretation of federal regulatory agencies
  - Exception if statute specifically authorizes federal regulatory agency to act

<sup>1</sup> Loper Bright Enterprises v. Raimondo, 603 U.S. \_\_\_\_ (Jun. 28, 2024).

<sup>2</sup> Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837 (1984).

## DONOR ADVISED FUND: REFORM PROPOSALS

### Currently, No Mandatory Distribution Requirement, But...

- 15-Year Qualified DAFs and 50-Year Non-Qualified DAFs—*The Accelerate Charitable Efforts (ACE) Act*, S.1981 (Jun. 9, 2021), Senators Angus King (I-ME) and Chuck Grassley (R-IA), and H. 6595 (Feb. 3, 2022)
- California failed attempts to regulate DAFs include AB 2936 (Wicks 2020) and AB 1712 (Wicks 2019)
- Five-year payout requirement and 20% excise tax for failure—*Camp Proposal* (H.R. 1, Feb. 26, 2014)
- “there is likely to be substantial variation in payout rates at the individual level across all sponsoring organization”—*Congressional Research Service Study* (Jul. 2012)
- “premature to recommend a distribution requirement... at this point”—*Department of Treasury Study* (Dec. 2011)

# FAIRBAIRN V. FIDELITY INVESTMENTS CHARITABLE GIFT FUND<sup>1</sup>

## Donor Advised Fund Litigation

### Background

- Fidelity touted its sophisticated methods to time liquidation so as not to depress price
- Donor transferred thinly-traded shares
- Fidelity sold stock immediately upon receipt

### Court Ruling

- Donor had no “special relationship” with DAF sponsor
- No breach of a fiduciary duty by DAF sponsor

<sup>1</sup> Fairbairn v. Fidelity Investments Charitable Gift Fund, Case No. 18-cv-04881-JSC (N. Dist. Cal. Feb. 26, 2021).

# PINKERT V. SCHWAB CHARITABLE FUND<sup>1</sup>

## Donor Advised Fund Litigation

### Background

- Donor claimed Schwab Charitable Fund affiliations with Schwab Corp. maximized profits for Schwab Corp. to the detriment of charity
  - Utilized Schwab index and money market funds
  - Purchased funds at retail prices—instead of wholesale
  - Failed to leverage bargaining power to retain less expensive brokerage and custodial services

### Court Ruling

- Court dismissed all claims
  - Donor lacked standing after making irrevocable contribution of assets and relinquishing dominion and control
  - Schwab Charitable Fund had exclusive legal control over donated assets

<sup>1</sup> Pinkert v. Schwab Charitable Fund, 48.F.4<sup>th</sup> 1051 (9<sup>th</sup> Cir. Sep. 4, 2022), aff'g Case No. 20-cv-07657-LB (N. Dist. Cal. Jun. 17, 2021).



## “CHARITABLE” LLC

### NOT A PUBLIC CHARITY, PRIVATE FOUNDATION OR CHARITABLE TRUST

#### The Good

- LLC *not* subject to mandatory distributions or prohibitions on self-dealing, excess business holdings, jeopardy investments and taxable expenditures (e.g., lobbying/political activities)
- LLC *not* subject to attorney general oversight
- LLC tax returns *not* subject to public disclosure
- Assets *not* permanently restricted for charitable purposes; can be used for any permissible purpose under state law

#### The Bad and the Ugly

- LLC *not* exempt from federal income tax; taxed as “pass-through” to owners
- No charitable income tax deduction from funding; future benefit if LLC donates to charity

# PATAGONIA PURPOSE TRUST AND 501(c)(4) ORGANIZATION<sup>1</sup>

## 2% to Purpose Trust (Voting Shares)

- 2% of \$3 billion = \$60 million (without discounting)
- \$17.5 million in gift taxes = 40% of \$43.75 million

## 98% to Section 501(c)(4) Nonprofit "Social Welfare Organization" (Non-Voting Shares)

- 98% of \$3 billion = \$2.94 billion (without discounting)
- NO gift, estate or GST taxes—a 40% gift tax on 98% of \$3 billion could have been as much as \$1.176 billion
- NO income taxes—can continue to grow tax free for generations
- NO charitable income tax deduction, unlike a § 501(c)(3) nonprofit charitable organization
- **Can be used for political purposes, unlike a § 501(c)(3) nonprofit charitable organization**

<sup>1</sup> Estimates based on Juliana Kaplan and Grace Kay, "Patagonia founder's big donation potentially saves him over \$1 billion in taxes — and experts say it shows how the wealthy are able to 'entirely opt out of taxes,'" Business Insider (Sep. 16, 2022), and David Gelles, "Billionaire No More: Patagonia Founder Gives Away the Company," The New York Times (Sep. 14, 2022).

# **Sustainable, Responsible and Impact (SRI) Investing**

## SUSTAINABLE, RESPONSIBLE AND IMPACT (SRI) INVESTING

<b>Program Related Investment (PRI)</b>	Final Regulations (Apr. 25, 2016) allow private foundation investments for both charitable purposes and financial returns
<b>Environmental, Social, Governance (ESG)</b>	Positive screen for investment analysis and decision making
<b>Impact Investing (II)</b>	Direct private investment to generate measurable financial and social impact, such as community development, food security or health improvements
<b>Responsible Investment (RI)</b>	Sustainable, ethical or “green” investments that consider both financial returns and social good
<b>Socially Responsible Investing (SRI)</b>	Negative screening of the investment universe, such as excluding “sin” stocks

# **Charitable Planning Scams, Shams and No Thank You Ma'ams**

# GERHARDT V. COMMISSIONER AND U.S. V. EICKHOFF<sup>1</sup>

## Charitable Remainder Annuity Trust (CRAT) & Single Premium Immediate Annuity (SPIA)

### Background

- Taxpayers contributed substantially appreciated property to CRATs, property was sold, and then majority of proceeds were used to purchase a SPIA
- CRAT tax return, Form 5227, reported no taxable gain from sale of property and K-1s didn't reflect annuity payments carrying out income
- Tax scheme promoters claimed—by misapplying the rules under sections 72 and 664—CRAT payments were excluded from income tax as a return of investment

### Ruling

- While trust itself is tax-exempt, the actual tax only is deferred—subject to the worst-in-first-out (WIFO) method of accounting
- Sale of appreciated real property and subsequent annuity payments funded by the sale proceeds were not permanently free of federal income tax

<sup>1</sup> Proposed Regulation §1.6011-15, REG-108761-22 (Mar. 25, 2024); Gerhardt v. Commissioner, T.C., No. 11127-20 (Apr. 20, 2023); US v. Eickhoff, W.D. Mo., No. 2:22-cv-04027 (May 17, 2023) (permanently enjoined the promoters from further promoting the tax scheme); IRS “Dirty Dozen,” IR-2023-65 (Mar. 31, 2023) and Treasury Notice of Proposed Rule, REG-108761-22 (Jun. 2023).



## IRS IR-2023-185<sup>1</sup>

### Promoters of Improper Art Donation Deductions

#### Background

- Promoters encourage taxpayers to purchase art at “discounted” prices—promoter may take care of storage, shipping, appraisal and donation
- Promotion scheme claims that donation value is significantly more than purchase price

#### IRS News Release

- Beware of promoters advertising exaggerated values and offering poor appraisals
- IRS increasing compliance activity—more than 60 audits have been completed producing more than \$5 million in additional tax
- Taxpayers are responsible for the accuracy of their tax return—participating in illegal schemes to avoid paying taxes can result in additional penalties and interest and potentially even fines and imprisonment

<sup>1</sup> IRS IR-2023-185 (Oct. 5, 2023).

# LIM AND CHU V. COMMISSIONER<sup>1</sup>

## Abuses of Charitable LPs and Charitable LLCs

### Background

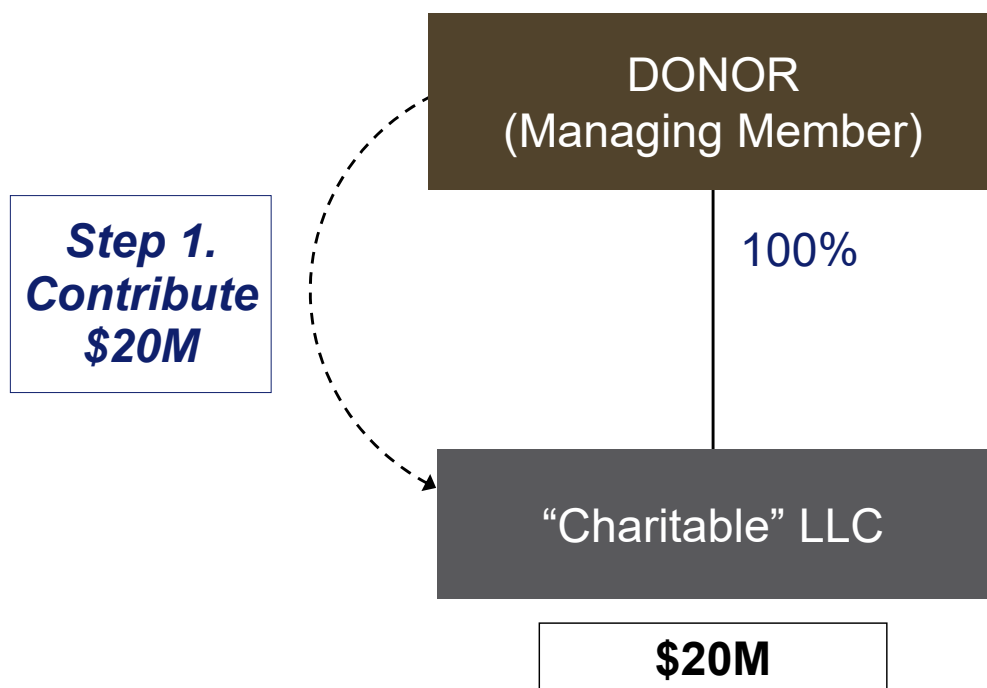
- Taxpayers engaged Michael Meyer, promoter of a charitable LLC tax scheme commonly referred to as “The Ultimate Tax Plan”—for \$84k fee
- In theory, taxpayers...
  - Promised to pay charitable LLC \$2 million
  - Donated LLC interests to purported charity related to Mr. Meyer
  - Claimed a deduction for \$1.6 million

### Court Ruling

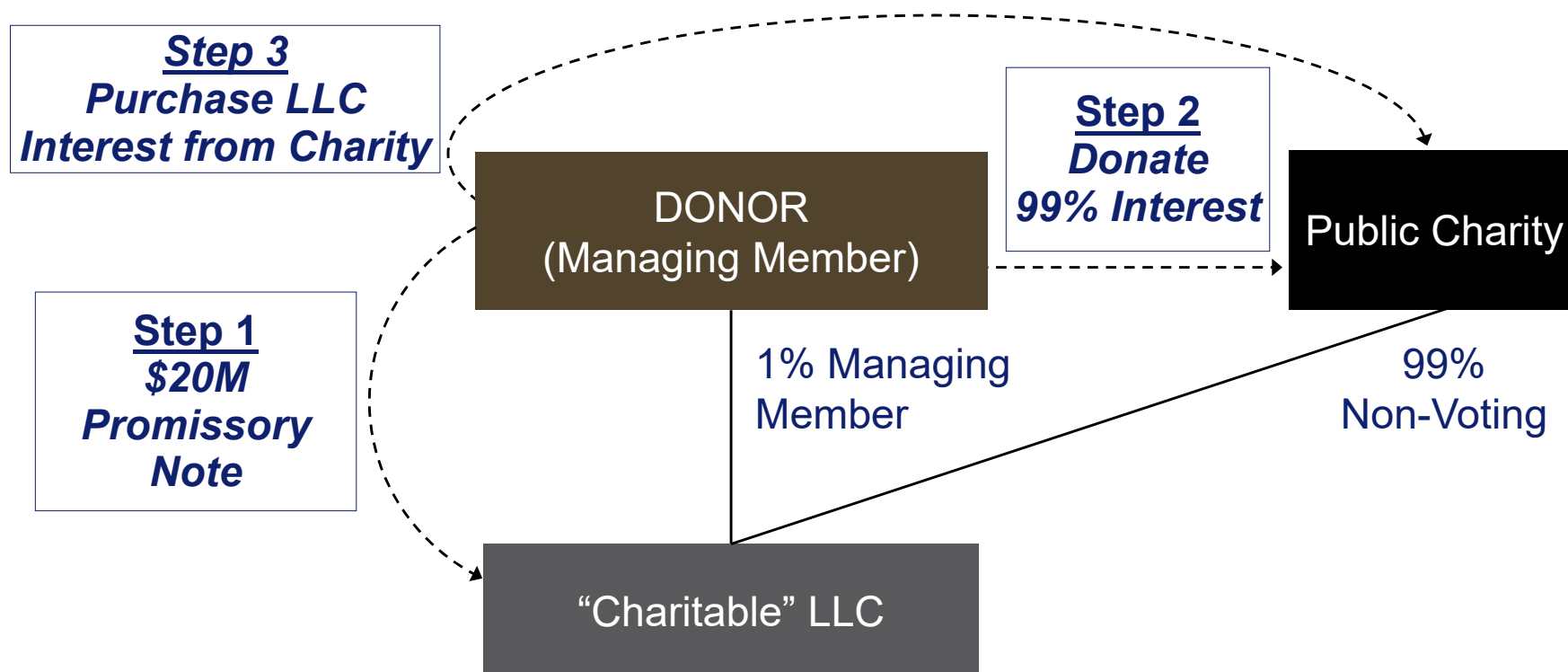
- Failure to prove donation occurred with transfer documentation and failure to obtain CWA and qualified appraisal—prohibited fee arrangement based on appraised value
- However, taxpayers entitled to argue “reasonable cause” defense at future trial due to reliance on advice from CPA and attorney

<sup>1</sup> Calvin A. Lim and Helen K. Chu v. Commissioner, T.C. Memo 2023-11 (Jan. 23, 2023). See also Miller, Justin T., “Using and Abusing Charitable LLCs,” Cal Tax Lawyer, Vol. 27, No. 4 (Jan. 2019); Notice 2004-30; and U.S. v. Meyer, United States District Court, Southern District of Florida (Apr. 26, 2019). Note that advisors were fined and sentenced to prison in April 2024 for promoting “The Ultimate Tax Plan,” an illegal tax shelter scheme involving false charitable deductions using charitable LLCs.

## “CHARITABLE LLC” HYPOTHETICAL EXAMPLE



## “CHARITABLE LLC” HYPOTHETICAL FRAUDULENT SHAM EXAMPLE



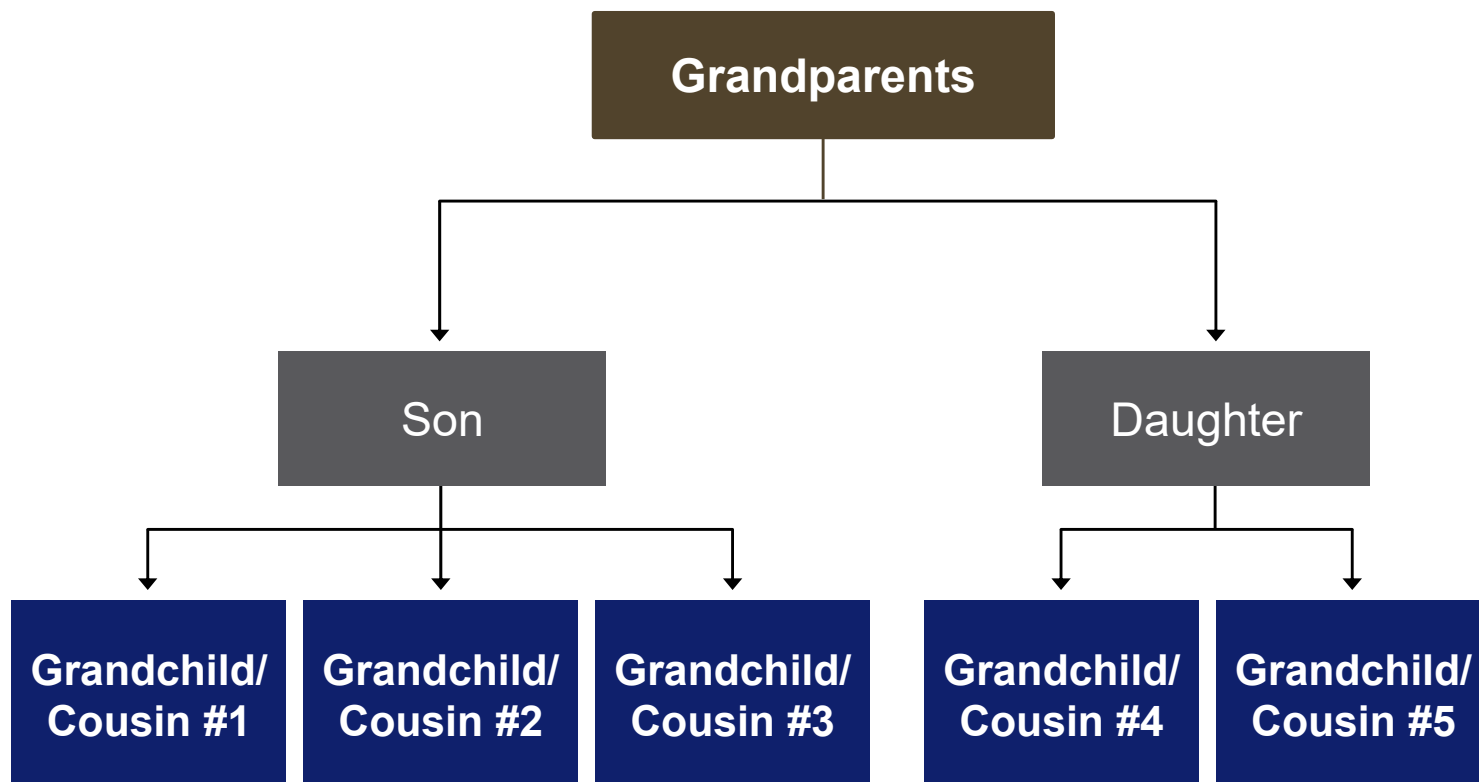
Assumes \$15.84M value with a 20% discount for lack of control and lack of marketability and assumes Notice 2004-30 does not apply. But see *Lim and Chu v. Commissioner*, T.C. Memo 2023-11 (Jan. 23, 2023) and *U.S. v. Meyer*, United States District Court, Southern District of Florida (Apr. 26, 2019). Note that advisors were fined and sentenced to prison in April 2024 for promoting “The Ultimate Tax Plan,” an illegal tax shelter scheme involving false charitable deductions using charitable LLCs.

# Family Philanthropy

## MOTIVATE—FAMILY PHILANTHROPY

### Grandparents Set Aside \$25k Annually for Charity:


- \$1K directed by each grandchild
- \$5K directed by son's children
- \$5K directed by daughter's children
- \$10K directed by cousin consortium





## MOTIVATE—FAMILY PHILANTHROPY

### Why It Works—Family Members Learn:

- **Communication, negotiation and shared decision making**
  - **Leadership**
  - **Accountability**
  - **Investing and financial literacy**
  - **Responsibility to help others**
- 

These are all skills that are necessary for managing the family's "wealth."

**Thank You!**

## BIO

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**Justin Miller, J.D., LL.M., TEP, AEP®, CFP®**

**Partner and National Director of Wealth Planning, Evercore Wealth Management**

**Managing Director, Evercore Trust Company**

Justin Miller is a Partner and National Director of Wealth Planning at Evercore Wealth Management and a Managing Director at Evercore Trust Company, where he works collaboratively with accountants, attorneys, and other advisors to provide comprehensive wealth planning advice to clients. Prior to joining Evercore in 2021, Justin was a national wealth strategist for 10 years at BNY Mellon. He previously was a managing director at Wells Fargo and began his career as a tax attorney at Sidley Austin.

Justin also is an adjunct professor at Golden Gate University, a Life Fellow of the American Bar Foundation, and a Fellow of the American College of Trust and Estate Counsel. He has served in leadership positions with the American Bar Association, California Bar Foundation, San Francisco Estate Planning Council, and State Bar of California, and is a former editor-in-chief of the *California Tax Lawyer*. Additionally, he is a past recipient of the Outstanding Conference Speaker Award from the California Society of CPAs and the V. Judson Klein Award from the California Tax Bar.

Justin received a B.A., with honors, from the University of California, Berkeley, and a J.D. and LL.M. in Taxation from New York University School of Law. He also holds the Accredited Estate Planner® and CERTIFIED FINANCIAL PLANNER™ designations and is a member of the State Bar of California.

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