What Now? The New World of Farm & Business Succession Planning

Thursday, December 6, 2018
Courtyard Marriott ~
Mankato, MN

CliftonLarsonAllen

GISLASON & HUNTER LLP

Tax Reform – What Actually Happened

Kaitlin Pals
Gislason & Hunter LLP

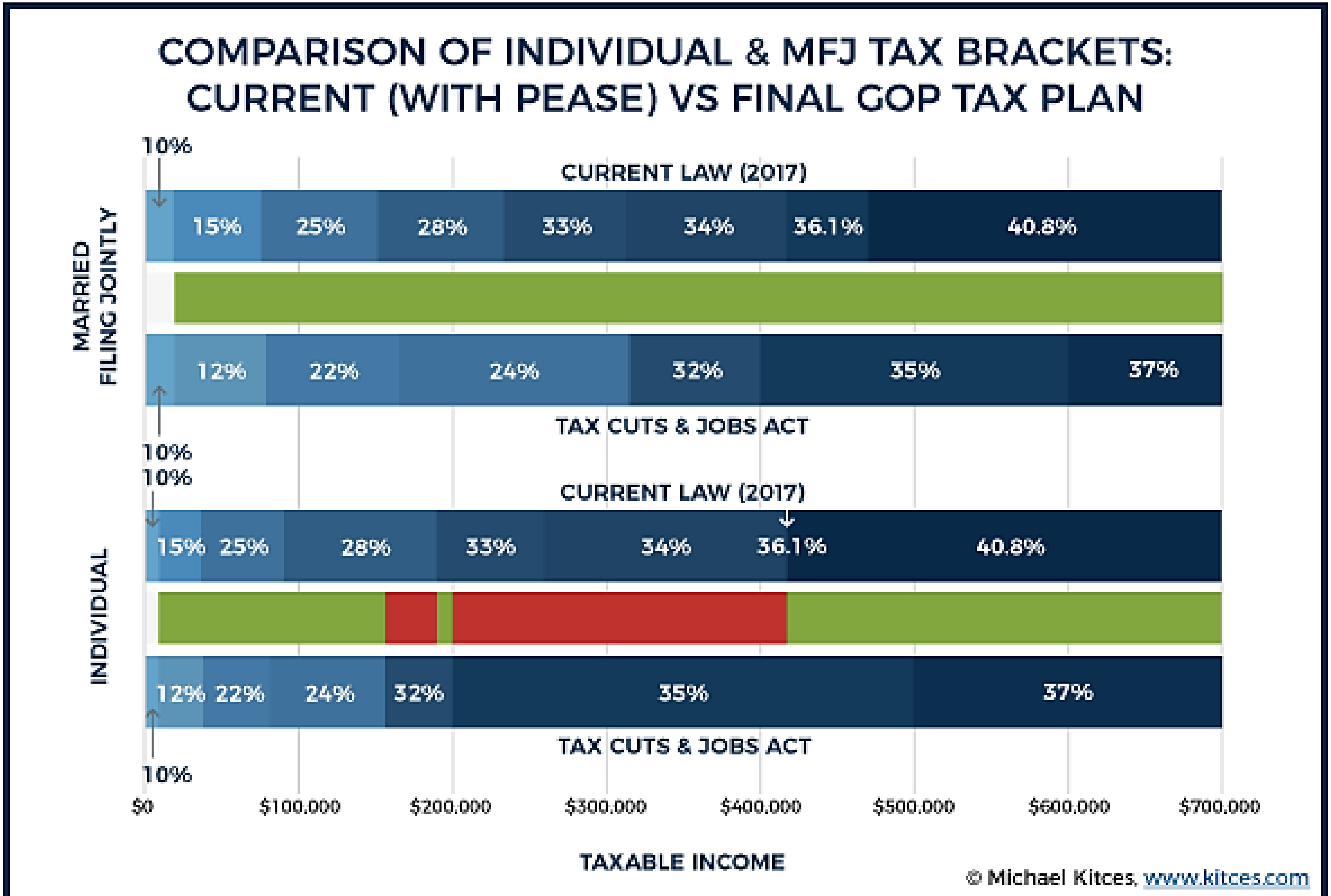
&

Jim Heilman
CliftonLarsonAllen

CliftonLarsonAllen

GISLASON & HUNTER LLP

Tax Rates and Major Individual Tax Changes


COMPARISON OF INDIVIDUAL & MFJ TAX BRACKETS:
CURRENT (WITH PEASE) VS FINAL GOP TAX PLAN
MARRIED FILING JOINTLY
CURRENT LAW (2017)
10%
15%
25%
28%
33%
34%
36.1%
40.8%
12%
22%
24%
32%
35%
37%
TAX CUTS & JOBS ACT
10%
INDIVIDUAL
10%
CURRENT LAW (2017)
15%
25%
28%
33%
34%
36.1%
40.8%
12%
22%
24%
32%
35%
37%
TAX CUTS & JOBS ACT
10%
$0
$100,000
$200,000
$300,000
$400,000
$500,000
$600,000
$700,000
TAXABLE INCOME
© Michael Kitces, www.kitces.com

Kiddie Tax

- Kiddie tax to use estate and trust rate on unearned income
  - 37% tax rate kicks in at $12,500
- Commodity gifts to kids can be more costly
- Use Wages to Kids, not Large Gifts

Corporate Tax Rates

2017 Corporate Tax Rates (Graduated)	
Tax Bracket	**Taxable Income**
15%	50,000
25%	75,000
34%	100,000
39%	335,000
34%	10,000,000
35%	15,000,000
38%	18,333,333
35%	**EXCESS**
Corporate AMT Tax Rate = 20%	

* Blended tax rate for corporations with fiscal years beginning before 12/31/2017

Corporate Tax Rate Under TCJA:

- **Flat 21% Rate, effective for tax years beginning after December 31, 2017***
- **20% Corporate AMT Repealed** *(Prior Alternative Minimum Tax (AMT) Credits refundable up to 50% of excess AMT credits > regular tax liability for 2018 – 2020; Remaining AMT credit refunded in 2021)*

Standard Deduction: 2018

Standard Deduction

- MFJ = $24,000
- Single = $12,000
- H of H = $18,000

Personal Exemptions

- Repealed

Zero tax amount:	2017	2018
Joint	$20,800	$24,000
Single	$10,400	$12,000

Child and Family Tax Credits

- Child credit: Increase from $1,000 to $2,000 for qualifying child
- Plus $500 credit for each dependent not a qualifying child
- Phase-out begins at MFJ of $400,000 AGI (up from $110K)
  - Single at $200,000 (up from $75K)
- Refundable portion increased to $1,400 & indexed

State Tax Deductibility

- Personal deductions limited to combination of $10,000
  - Real property tax, plus
  - Either sales tax or state and local income tax
- Allowed in full for C corporation
- Allowed in full for farmers, cash rent landlords and crop share landlords

Tax Reform for Business

Section 179

- Bumps to $1 million in 2018 (indexed to inflation)
  - Phase-out starts at $2.5 million (indexed)
  - Adds roofs, HVAC, Sec. Systems
- Can be used to optimize taxable income if elects out of bonus depreciation

Bonus Depreciation

- Expense 100% acquired and placed in service >9/27/17 and before 1/1/2023
  - Includes new and used
- Phased-out beginning in 2023
  - 80% in 2023
  - 60% in 2024
  - 40% in 2025
  - 20% in 2026
  - Zero thereafter

What Assets Does Bonus Apply to?

- Any asset with a 20 year life or lower qualifies
  - All equipment
  - All land improvements
  - Most storage "buildings"
  - Any component of a building that is directly related to equipment
    - ◊ Cost Segregation Studies

Depreciation Example: Old and New Law

Depreciation Calculation	Old Law	New Law
New Machine shed	750,000	750,000
New Farm Equipment	150,000	150,000
Used Farm Equipment	675,000	675,000
New Pivots	1,250,000	1,250,000
Purchaed well and mainline on land	750,000	750,000
Total purchases	3,575,000	3,575,000
Section 179 allowed	-	325,000
Bonus depreciation allowed	1,075,000	3,250,000
Regular depreciation	198,884	-
Total depreciation allowed	1,273,884	3,575,000

Business Interest Expense

- Disallowed: excess of 30% of business adjusted taxable income
  - Determined without interest expense, interest income, NOL, depreciation, amortization, depletion (EBIDTA)
    - ◊ EBIT is used beginning in 2022 (depreciation is deducted)
  - Determined at tax filer level (1065, 1120-S)
  - Excess carried forward
- No disallowance for businesses with average gross receipts ≤$25 million

Special Farmer Interest Provision

- If gross revenue over $25 million, then farmer can elect to deduct 100% of business interest expense
  - Must use ADS for depreciation of 10 year + assets (longer lives)
  - Farm equipment still enjoy shorter life
  - Cannot take bonus depreciation on 10 year or longer life assets

Loss Limit Provisions

- Maximum Individual Business Loss in one year - $500,000
- Net Operating Loss: limited to 80% of pre-NOL taxable income
- Pre 2018 NOLs still allowed at 100% (FIFO)
- Repeal carrybacks for non-farmers
  - For years ending in 2018 (2017 fiscal years-no carryback)
- Allows two-year carryback for farms
- However, carryback can only offset 80% of taxable income on both carrybacks and forwards

Employer-provided Housing and Meals

- House proposed cap of $50,000 on exclusion with phase-out
- Not available to ≥5% owners
  - Must be reported as income to owner
  - C Corporation still allowed the deduction
- This did not get included in final bill
- Employer provided meals now deductible at 50% 1-1-18 to 12-31-25
- After 12-31-25, no deduction for employer provided meals on business premises, etc.

Other Business Changes

- **Section 1031 exchanges for only real property**
  - **Personal property exchanges taxable; but asset expensing offsets the gain**
  - **Section 1245 Farm Real Estate can be exchanged**
- **Drops <u>NEW</u> farm machinery from 7 years to 5**
- **Allows 200%db method for farm equipment, etc.**
  - **Was 150%db since 1987**

Section 199A and You

The “Grain Glitch Fix”

- Original tax law created distortions for sales to cooperatives that was not planned
- Dairy farmers were not happy with capital gains limitation
- A group of privates and cooperatives came up with a “fix”
- Passed on March 23, 2018 retroactive to January 1
- Our firm was part of this process

Basics of 199A, Deduction for Qualified Business Income (QBI)

- Taxpayers other than C corporations
- 20% deduction on QBI
- Specified service business income (SSB) ≠ QBI
  - Exception based upon threshold income plus phase-out range
- Separate trades or businesses
- Wages and investment limit applied to each business
  - Exception based upon threshold income plus phase-out range

Application to Multiple Trades or Businesses

- Each trade or business computes its qualified business income amount (QBIA)
  - QBIA may be negative for a trade or business
- Tentative QBIA limited to greater of
  - 50% of taxpayer's share of allocable wages from that trade or business, or
  - 25% of the allocable wages plus 2.5% of the unadjusted basis of qualified property
- Negative QBI not limited by wages and investment

Application of Threshold

- Taxpayers with tentative taxable income below threshold not subject to wages and investment limitation
  - $157,500 (singles, head of household, estates, trusts)
  - $315,000 MFJ
- Wages and investment limitation phases-in over range of income in excess of threshold
  - $50,000
  - $100,000 MFJ

Wages and Investment

- Excess for one business does not spillover to another business
- Wages
  - W-2 wages subject to payroll tax withholding
  - Allocable to that business
  - Wages for calendar year that ended within the fiscal year
- Investment in qualified property
  - Unadjusted basis
  - Tangible personal property on hand at end of year
  - Included in computation for greater of ten years or recovery period

Example – Threshold Limit

- Farmer Ben nets $400,000, but has taxable income of $365,000; wages paid are $65,000 and Qualifying Property is $1 million
- Tentative Deduction is $80,000 ($400,000 X 20%)
- Limit is greater of $32,500 or $41,250 (25% of $65,000 plus 2.5% of $1 million)
- Phase-out is 50% of ($80,000 - $41,250) or $19,375
- Tentative deduction is $60,625 ($80,000 - $19,375)
- Final limit is 20% of $365,000 or $73,000
- Actual Section 199A deduction allowed $60,625

Example – Taxable Income and Capital Gains

- Same facts as previous example, except taxable income includes $200,000 of Section 1231 gains
- $60,625 calculated deduction is now limited to:
  - 20% of ($365,000 - $200,000) or $33,000

Patrons of Cooperatives

- Allowed to deduct amounts passed-through from cooperative without regard to wages expense of patron
- Limit is 100% of taxable income including capital gains
- Patron computes QBIA on entire farm income (including income from cooperatives)
- However, the QBIA is reduced by the lesser of
  - 9% of the QBI allocable to patronage dividends and per-unit retains received by the patron, or
  - 50% of the W-2 wages (subject to payroll tax) with respect to that activity
- For those who sell to both private and cooperative, will need to bifurcate wages

Federal Estate, Gift & GST Tax Reform

CliftonLarsonAllen

GISLASON & HUNTER LLP

Estate and Gift Tax Refresher

- **Estate Tax = tax on date of death fair market value of property transferred at death of owner**
  - The "taxable estate" includes:
    - ◊ Any property owned outright by the deceased
    - ◊ Property held in a revocable trust
    - ◊ Life insurance proceeds of policies owned or controlled by the deceased
    - ◊ Retained life estates (i.e., gave away remainder interest but kept rental income)
    - ◊ Any other property over which the deceased retained "possession or enjoyment" or the right to designate who "possesses or enjoys" the property

Estate and Gift Tax Refresher

- **Gift Tax = tax on date-of-transfer fair market value of property transferred during lifetime of owner for less than fair market value**
  - **"Taxable gifts" include:**
    - ◊ **Straight gifts of cash or assets**
    - ◊ **Placing property in an <u>irrevocable</u> trust (usually)**
    - ◊ **"Bargain sales" to family members**
    - ◊ **Many low- or zero-interest loans to family members**

Estate and Gift Tax Refresher

- Each person has a unified credit against gift and estate tax.
  - You can use this credit against gifts made during your lifetime, against property passing at your death, or a combination of the two
  - Gifts to charity, most transfers to a spouse, directly paying someone's medical expenses or school tuition, and certain "small" lifetime gifts don't even count against your unified credit
  - If you don't fully use your own unified credit, you can "pass" it to your surviving spouse (called the "DSUE")

Estate and Gift Tax Refresher

- As long as the combined value of lifetime gifts and property passing at death are under your unified credit, you and your heirs pay <u>zero Federal estate or gift tax</u>
- Property gifted or passing at death <u>over</u> the unified credit amount is taxed at <u>40%.</u>

Basic Exclusion Amount

- Pre-TRJA = $5 million per person, indexed for inflation from 2011
- TRJA = $10 million per person, indexed for inflation from 2011

Basic Exclusion Amount

Year	Basic Exclusion Amount Per Person
2017	$5.49 million
2018	$11.18 million
2019	$11.4 million

This means that with minimal estate planning, a married couple can pass $22.8 million to their heirs free of gift and estate tax.

GST: The Other Tax

- GST Tax = "Generation-Skipping Transfer Tax"
  - Tax on a gift or estate transfer to a "skip person," meaning someone more than one step down from you on the family tree or an unrelated person much younger than you

GST: The Other Tax

- Most commonly applies when you make a gift to a grandchild if the grandchild's parent (your child) is still alive
- Also can apply if you make a gift to a trust for the benefit of children and grandchildren, when the last child dies

GST: The Other Tax

- Each person has an exemption from GST Tax
  - Operates similar to the unified credit, except you can't "pass" it to your spouse if you don't use it during your life or at your death.
  - Any gift or transfer at death to a "skip person" over the exemption = 40% tax, in addition to any gift or estate tax

GST Exemption Amount

Year	GST Exemption Amount Per Person
2017	$5.49 million
2018	$11.18 million
2019	$11.4 million

GST Exemption Amount is same as Basic Exclusion Amount for Estate and Gift Tax

Sunset Provision

- The elephant in the room: TRJA Estate, Gift and GST Tax provisions sunset at the end of 2025
  - Would require affirmative legislation to maintain the higher basic exclusion amount
  - Otherwise basic exclusion would return to $5 million indexed for inflation (somewhere around $6 million) in 2026

Tax Reform – What to do Now

Kaitlin Pals
Gislason & Hunter LLP

&

Jim Heilman
CliftonLarsonAllen

CliftonLarsonAllen

GISLASON & HUNTER LLP

Section 199A
Planning Opportunities

Cash Rent Landlords

- If it is part of common group, then income qualifies
  - May want to aggregate
- If not part of group, then income does not qualify
  - Unless you materially participate and pay SE tax
- Crop Share Landlords may qualify
  - We don't know for sure yet

Common Group Example

- Three brothers farm as S corporation and rent ground from their LLC which owns farmland
- This is common group since brothers own 100% of both the S corporation and the LLC even though not any brother owns 50% or more

Common Group Example - continued

- Same three brother S corporation but rents ground from each of them individually
  - This is not a common group since there is no "common" ownership of any of the land with the corporation
  - Brothers are not related parties
  - Even if related, may still not qualify

Aggregation

- Common controlled groups can aggregate all entities
  - Except C corporations
  - Must have same year-end
  - Must have common purpose
- Allow you to combine wages and investment
  - Only matters if you are over the threshold
  - But need common ownership for rentals to qualify

Aggregation Example

- ABC S corporation with Sept. 30 year-end cannot aggregate with LLC with Dec. 31 year-end
- But if ABC changes to Dec. 31, can aggregate
- Each owner can make their own election to aggregate
- Locked in to election (until facts change)

Filing Separate Returns for Married Couples

- If one taxpayer well over threshold and one is under threshold, consider filing separate tax returns
- Example, Paul is W-2 employee with $400,000 salary; Patty has a SSB with a profit of $175,000
  - MFJ results in total tax of $164,036 (with no Section 199A deduction)
  - MFS results in total tax of $160,207, a savings of $3,829
  - Minimal cost to prepare two tax returns (software does it automatically)
  - Does not work for community property states

Incorporating as S Corporation

- If sole proprietor, no wages paid and high income, consider S corporation
- Example
  - John has Schedule F income of $750,000 and no wages paid, therefore no Section 199A deduction
  - John becomes an S corporation and pays $225,000 salary
  - Section 199A deduction becomes about $100,000
  - Reducing taxes by about $35,000 (for 2018-2025)
    - ◊ (differences due to payroll tax deduction calculations)

Maximize Retirement Plan Deduction

- If over the threshold and no wages paid, maximizing retirement plan contributions may maximize Section 199A deduction
- Example
  - Betsy and Tom have a SSB netting $439,000 of income – No Section 199A deduction
  - They create 401k plan covering both and reduce AGI by $100,000
  - Creates approximate $63,000 Section 199A deduction

Combining Trades or Businesses

- If wages or investment in qualified property is insufficient in one or more businesses
  - Merge partnerships
  - Contribute sole proprietorships to partnership
  - Drop multiple partnership and/or S corporation businesses into a lower-tier business with one set of books and records

Enhance Qualifying Income

- Transform guaranteed payments into preferred allocations of partnership income
- Reduce compensation paid to S corporation shareholders to the lower end of the reasonable compensation range
- Migrate S corporation businesses to sole proprietorships, which do not allow compensation to be paid to the sole proprietor

Transform Guaranteed Payments into Preferred Allocations

- **Guaranteed payments decrease Section 199A deduction**
- **Switching to preferred allocations enhance Section 199A deduction**
- **Example:**
  - **AB partnership pays $100,000 guaranteed payment to Adam**
  - **Shares the remaining $20,000 of income between Adam and Brett 50/50**
    - ◊ **Only qualifies for $4,000 Section 199A deduction**
  - **If AB instead allocates first $100,000 to Adam and splits remaining profits 50/50**
  - **Section 199A deduction increases to potential $24,000**
- **Still need further guidance from IRS on whether this qualifies**

Reduce S Corporation Wages

- If S corporation has plenty of wages or qualifying property, then reducing Shareholder wages can increase Section 199A deduction
- Example:
  - XYZ Corporation nets $1 million after paying Betty $1 million
  - Section 199A deduction is about $200,000
  - Salary for Betty is reduced to $200,000 (assumes reasonable compensation)
  - Increases Section 199A deduction by about $160,000 (some variance due to payroll tax deductions)
  - Saves about $60,000 of tax each year for 2018-2025

Convert from S Corp. to Sole Proprietor

- Wages paid to S corporation employees reduce the Section 199A deduction
- Sole proprietors and partners do not have wages
  - However, guaranteed payments made to partners reduce 199A deduction
- Example:
  - Mary has S corporation that nets $100,000 after paying her $100,000 salary; it qualifies for $20,000 Section 199A deduction
  - If a sole proprietor, Section 199A deduction increases close to $40,000
    - ◊ Must factor in extra self-employment tax
    - ◊ May increase retirement plan contributions

Strategies for Cooperative Sales

- **Reduce or eliminate wages on cooperative sale operations**
  - **DPAD plus 20% of QBI (less cooperative adjustment if any)**
    - ◊ **But only if you are under the threshold amount**
  - **Create "Custom" Farming side business**
- **Form cooperative for high wage entities or operations**
  - **DPAD equal to 50% of wages paid plus 20% of QBI (less cooperative adjustment if any)**

Opportunity Zones

Opportunity Zones - Benefits

- <u>Temporary</u> deferral of capital gain recognition
- Partial <u>permanent</u> capital gain exclusion
- <u>Permanent</u> exclusion on capital gain appreciation

Opportunity Zones - Benefits

- Capital Gain Deferral Period
  - Deferred until earlier of:
    - ◊ Date the Investment is sold, or
    - ◊ December 31, 2026
  - If Investment is not sold before Dec. 31, 2026 any remaining deferred gain is recognized at that time

Opportunity Zones - Benefits

- **Permanent Exclusion of Deferred Capital Gain**
  - Investments held less than 5 years result in 100% deferred gain recognition
  - Investments held > 5 years, < than 7 years result in recognition of 90% of deferred gain
  - Investments held > 7 years results in 85% deferred gain recognition

Opportunity Zones – Benefits

- Permanent exclusion on capital gain on Investments held at least 10 years
  - Results in a permanent exclusion from income of any post-acquisition capital gain appreciation
  - Results in permanent benefit for depreciation deductions
  - Taxpayers can recognize losses by not making the permanent exclusion election

Eligible Capital Gains

- Any capital gain attributable to sale of:
  - Real Estate (Sec. 1231 Gain)
    - Excluding ordinary depreciation recapture
  - Business (Goodwill)
  - Stock (private or publicly traded)
  - Short term or long term
- Gain cannot originate from transaction with related party (20% common ownership)

Investment in Qualified Opportunity Fund (QOF)

- From capital gain event – 180 days to invest in QOF
  - Gains from passthrough entities = last date of passthrough entity's tax year (i.e. 12/31 for calendar year entities)
- Date proceeds are invested in QOF will be the start of the holding periods for 5 yr, 7 yr, and 10 yr measurement
- Investments in QOF from mixed funds (i.e. after tax proceeds)
  - Do not disqualify QOF status
  - Do not receive favorable 10 year capital gain exclusion

Opportunity Zone Timeline

Year 0	$10MM capital gain invested into QOF. $10MM capital gain deferred.
Year 1	
Year 2	
Year 3	
Year 4	
Year 5	10% step-up basis on original $10MM capital gains ($1,000,000).
Year 6	
Year 7	Additional 5% step-up basis ($500,000). $1,500,000 step-up total. $8.5MM of capital gain recognized.
Year 8	
Year 9	
Year 10	QOF sold for $20MM. $10MM appreciation capital gains excluded from income.

Qualified Opportunity Zone Fund (QOF)

- QOF must be a partnership or corporation that holds at least 90% of its assets in QOZ property
- Requires self certification, no approval required by IRS
- 90% test measured every six month period
  - For QOF's formed late in year, first testing date is 12/31, then 6/30 of subsequent year
  - Failure to meet 90% test results in penalty computation to QOF but does not disqualify permanently
- Not restricted from using a pre-existing entity, but must meet all other existing qualifications to be a QOF
  - Also, must accept new equity contributions from capital gain investors

Qualified Opportunity Zone Property

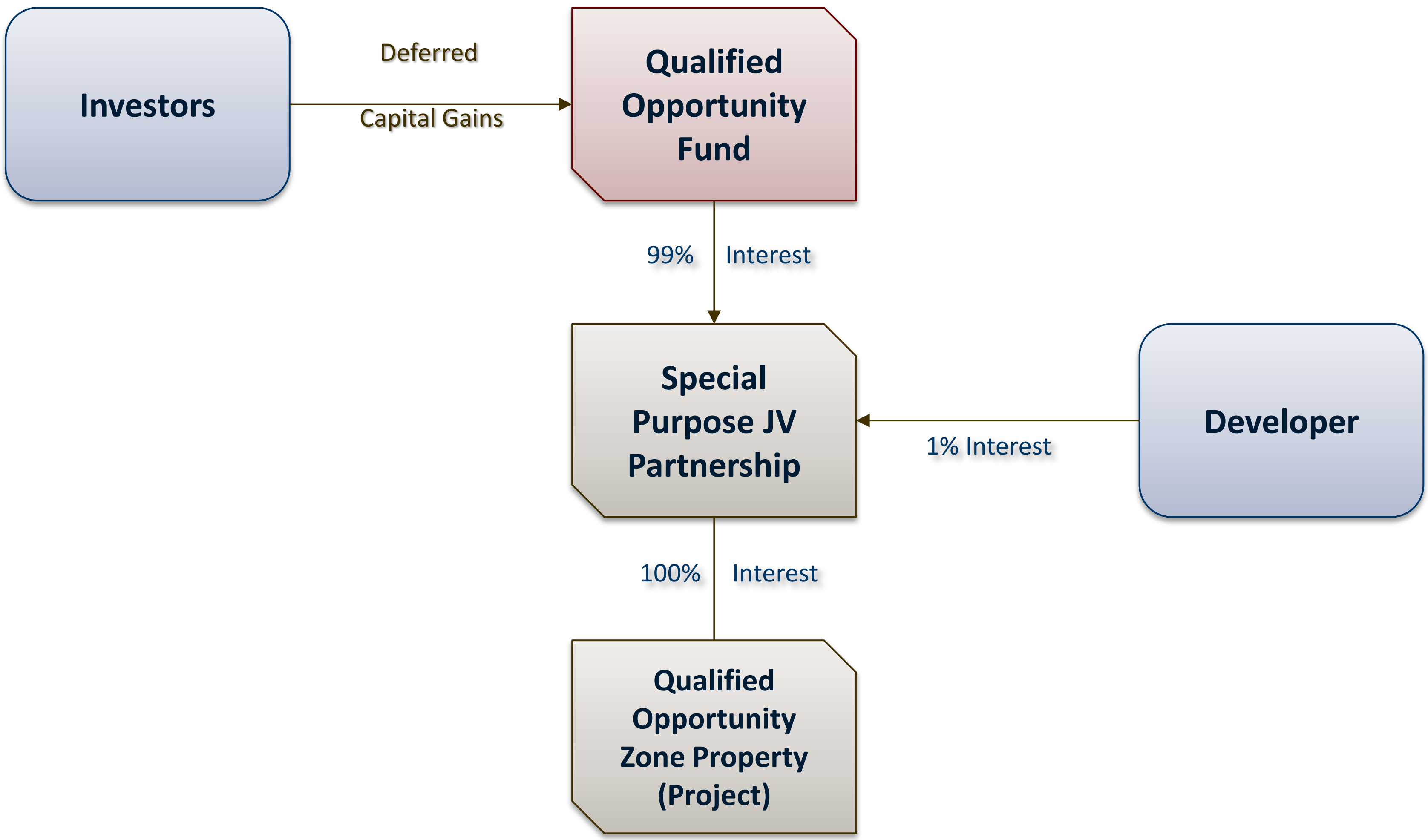
- QOZ stock
- QOZ partnership interest
- QOZ business property
  - Acquired after 12/31/17
    - ◊ Not from related party (20% common ownership)
  - Original use or substantially improved
    - ◊ Substantially improved means 100% of property's purchase basis, excluding land
  - Property used in QOZ

Qualified Opportunity Zone Business

- Greater than 70% of assets is QOZ Business Property
- At least 50% of gross income derived from business in QOZ
- Working capital safe harbor
  - Excess cash can be held for up to 31 months if a written plan to acquire, construct, or improve QOZ Business Property
- Not an excluded business
  - Golf course, country club, massage parlor, hot tub facility, suntan facility, race track, casino, retail alcohol sales

Investment Structure – Direct Investment

Investment Structure – Indirect Investment



Other Considerations

- State income tax consequences
- Cash flow for recognition of deferred gain at 12/31/26
- Comparison to Sec. 1031 exchange

Post-TRJA Estate Planning: Riding Off Into the Sunset?

CliftonLarsonAllen

GISLASON & HUNTER LLP

What Happens After the Sunset?

- TRJA works great, if you and your spouse die before 2025.
- The big question: if Congress doesn't extend the Estate, Gift and GST provisions of TRJA after 2025, what happens?

What Happens After the Sunset?

- What if…
  - I give $11 million away before 2025 but die after the basic exclusion amount goes back down to $6 million?
  - My spouse dies before 2025 and leaves me his/her $11 million DSUE? Does it go down to $6 million in 2026?
  - I give $5 million away before 2025—do I get to keep the "remaining" $6 million basic exclusion amount?

Proposed Regulations

- Late November, IRS issued proposed regulations that would answer some questions.
  - The proposed regulations would keep gifts over $5-$6 million during 2018-2025 from being "clawed back" and taxed if the donor dies after 2025, when the exclusion goes back down to $5-$6 million.

Proposed Regulations

- However, you <u>don't</u> get to "use up" the increase in the exemption first, then keep \$5-\$6 million if the basic exclusion sunsets.

Proposed Regulations

- Example: Abe gifts $7 million of his $11.4 million basic exclusion available in 2019. The basic exclusion goes back down to $6 million in 2026.
  - Under the proposed regulation, Abe wouldn't have to pay tax on the "extra" $1 million in gifting he did in 2019.
  - However, he would not have any basic exclusion left if he died in 2026.

Proposed Regulations

- If a spouse dies between 2018 and 2025 and “passes” more than $5-$6 million in DSUE to the surviving spouse, that amount is locked in. It does not go back down even if the law sunsets in 2025.

What Should I Do About It?

- Couples under $11-$12 million:
  - Stay the course and focus on income tax and Minnesota estate tax planning. TRJA—and the sunset—don't really affect you.

What Should I Do About It?

- **Couples over $23-$24 million:**
  - **Also probably stay the course. You should have a long-term gifting strategy to reduce estate tax, TRJA or not.**
  - **Accelerate the gifting plan so you make sure you use the full, doubled unified credit before 2026.**

What Should I Do About It?

- Couples between $12 and $24 million will have tough decisions to make.
  - Cross your fingers that Congress will make the higher basic exclusion amount permanent (at least as long as you're alive)?
    - ◊ Could cost your heirs over $9 million in estate tax

What Should I Do About It?

- Gift away almost everything, just in case the unified credit drops back to $5-$6 million?
  - If you guess wrong, you're giving up a step-up in basis for your heirs by giving away the property during your lifetime as opposed to hanging onto it until death.
  - In order to make a gift truly stick for estate tax purposes, you usually have to give up the income stream from it as well. How would this gift impact your lifestyle? Retirement?
  - Would these gifts meet your non-tax estate planning goals?

What Should I Do About It?

- The best answer for families caught in the middle is, it depends—and it's probably somewhere in between the two extremes.
  - Be picky in selecting which assets to gift. For example, gifting property with a high basis mitigates losing the benefit of a step-up in basis at death.
  - Always make sure your plan leaves you with sufficient income and/or assets to maintain the lifestyle you want. Don't let planning for what happens when you're gone keep you from living your life.

What Should I Do About It?

- If you're not ready to give away business/farm assets by 2025, consider using the extra basic exclusion amount to get liquid assets out of your estate , to grow and eventually used to pay estate taxes down the road. This could be straight liquid investments, or a life insurance product, held in a trust for the benefit of your heirs and payable at your death.

What Should I Do About It?

- Most of all, <u>don't wait until fall 2025 to put together a plan!</u>
  - In 2012, the ~$5 million unified credit was set to sunset back to $1 million
  - The extension wasn't passed until early morning on January 1, 2013
  - Many people, fearful they would lose $4 million in unified credit, made last-minute gifts at the end of December that they may not have fully understood at the time

A Little Fun with GST Tax Exemption

A Little Fun with GST Tax Exemption

- The IRS wants to tax property at each generation transition
- GST Tax = stop-gap to keep people from "skipping" a generation to avoid tax
- 2019 GST Tax Exemption = $11.4 million

A Little Fun with GST Tax Exemption

- How to maximize the usefulness of GST Tax Exemption?
  - Instead of just giving a gift to a grandchild—which only skips one generation—give it to a trust designed to last for multiple generations
  - Called “Dynasty Trusts”

A Little Fun with GST Tax Exemption

- Traditionally, trusts were subject to the "Rule Against Perpetuities"
  - A really complicated rule that essentially limits the maximum length of a trust to 90-120 years
- Many states have abolished or modified the Rule Against Perpetuities to permit trusts to last for 300+ years, 1,000 years, or infinitely

A Little Fun with GST Tax Exemption

- Donor sets up a Dynasty Trust in a state with a modified Rule Against Perpetuities for the benefit of her grandchildren, great-grandchildren, great-great-grandchildren, etc.
- Trust structured to distribute income only
- Donor makes gift to trust using GST Exemption

A Little Fun with GST Tax Exemption

- Result: The original property put into the Dynasty Trust, and its increased value over time, is in effect never subject to Gift, Estate, or GST Tax, until the Trust ends 300+ years in the future.

Questions???

THANK YOU!

This program is not intended to be responsive to any individual situation or concerns as the contents of this presentation are intended for general informational purposes only. Participants are urged not to act upon the information contained in this presentation without first consulting competent legal/tax advice regarding implications of a particular factual situation. Questions and additional information can be submitted to your Gislason & Hunter Attorney or CliftonLarsonAllen Accountant.

State and Local Tax Update

Andrew Willaert
Gislason & Hunter LLP

&

Rod Mauszycki
CliftonLarsonAllen

Estate Tax Exemptions - Federal

	Person	Married Couple
2016	$5,450,000	$10,900,000
2017	$5,490,000	$10,980,000
2018	$11,200,000	$22,400,000
Future Years	Indexed	Indexed

Tax Rates unchanged

Estate Tax Exemptions - Minnesota

	Person	Married Couple
2016	$1,800,000	$3,600,000
2017	$2,100,000	$4,200,000
2018	$2,400,000	$4,800,000
2019	$2,700,000	$5,400,000
2020	$3,000,000	$6,000,000

Tax Rates lowered (later slides)

Minnesota Qualified Small Business Property Deduction (Up to $5,000,000 per Person Exemption)

- Value of property was included in the decedent's federal adjusted taxable estate.
- Property consists of trade or business property, or shares of ownership interests.
- Decedent or decedent's spouse material participation - IRC section 469(h).
- Gross annual sales of no greater than $10 million during the last taxable year.
- Excludes cash, cash equivalents, publicly traded securities, or non-operation assets.
- Decedent continuously owned the property for three-year period prior to death.
- Family member materially participates in the operation for the three years following death.
- Estate and qualified heir agree to pay the recapture tax, if applicable.

Minnesota Qualified Farm Property Deduction (Up to $5,000,000 per Person Exemption)

- Value of property was included in the decedent's federal adjusted taxable estate.
- Agricultural land owned by person or entity (subject to Minn. Stat. 500.24.).
- Classified in taxable year of death as qualified agricultural homestead.
- Classified for property tax purposes in year of death as class 2a property.
- Decedent continuously owned the property for three-year period prior to death.
- Family member maintains the 2a classification for three years after decedent's death.
- Estate and qualified heir agree to pay the recapture tax, if applicable.

Minnesota Small Business and Qualified Farm Land Deduction
Qualified Heirs and Family Members

- Heir must be a “family member”
- Must acquire qualified property upon the death of decedent.
- Family Member must be:
  - Decedent’s ancestors (parent, grandparent, etc.);
  - Decedent’s spouse;
  - Lineal descendant (child, grandchild, etc.)

Minnesota Small Business and Qualified Farm Land Deduction (Up to $5,000,000 per Person Exemption)

	Deduction	Person	Total
2016	$3,200,000	$1,800,000	$5,000,000
2017	$2,900,000	$2,100,000	
2018	$3,600,000	$2,400,000	
2019	$2,700,000	$2,300,000	
2020	$2,000,000	$3,000,000	

Future Years Same

Minnesota Estate Tax Schedule for Estates of Decedents dying in 2017: (First $2,100,000 per person not subject to tax)

Amount of Minnesota Taxable Estate	Rate of Tax
Not over $5,100,000	12 percent
Over $5,100,000 but not over $7,100,000	$612,000 plus 12.8 percent of the excess over $5,100,000
Over $7,100,000 but not over $8,100,000	$868,000 plus 13.6 percent of the excess over $7,100,000
Over $8,100,000 but not over $9,100,00	$1,004,000 plus 14.4 percent of the excess over $8,100,000
Over $9,100,000 but not over $10,100,000	$1,148,000 plus 15.2 percent of the excess over $9,100,000
Over $10,100,000	$1,300,000 plus 16 percent of the excess over $10,100,000

Minnesota Estate Tax Schedule for Estates of Decedents dying in 2018 and after: (First $2,400,000 per person not subject to tax)

Amount of Minnesota Taxable Estate	Rate of Tax
Not over $7,100,000	13 percent
Over $7,100,000 but not over $8,100,000	$923,000 plus 13.6 percent of the excess over $7,100,000
Over $8,100,000 but not over $9,100,00	$1,059,000 plus 14.4 percent of the excess over $8,100,000
Over $9,100,000 but not over $10,100,000	$1,203,000 plus 15.2 percent of the excess over $9,100,000
Over $10,100,000	$1,355,000 plus 16 percent of the excess over $10,100,000

Minnesota Gift Tax

- Minnesota does not have a Gift Tax – Except!!
  – Add Back Provisions
  - Minnesota Property (only)
  - Includes Minnesota property owned by non-residents
  - Gifts made within three years prior to death
  - Gift to Minnesota resident
  - Amounts in excess of Federal Annual Exclusion
  - Counted in calculation of deceased's taxable estate

Minnesota Conformity Update

Walkthrough of Forms for Tax Year 2018

Disclaimers

The information contained herein is general in nature and is not intended, and should not be construed, as legal, accounting, or tax advice or opinion provided by CliftonLarsonAllen LLP to the user. The user also is cautioned that this material may not be applicable to, or suitable for, the user's specific circumstances or needs, and may require consideration of non-tax and other tax factors if any action is to be contemplated. The user should contact his or her CliftonLarsonAllen LLP or other tax professional prior to taking any action based upon this information. CliftonLarsonAllen LLP assumes no obligation to inform the user of any changes in tax laws or other factors that could affect the information contained herein.

The Tax Cuts and Jobs Act

H.R.1 – Tax Cuts and Jobs Act (TCJA)

- **H.R.1 Official Title:** "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018."
- **December 22, 2017:** Signed into law by President Trump (Public Law No. 115-97)

Answering the Big Questions

CliftonLarsonAllen

GISLASON & HUNTER LLP

Big Questions: Individual Income Tax

See http://www.revenue.state.mn.us/Pages/Tax-Law-Changes-FAQs.aspx

1. Will MN permit Sec 1031 deferral for TPP?
   – Yes. MN allows a state-only Sec 1031 deferral for TPP.
2. Does MN allow the Sec 199A deduction?
   – No. MN does this by starting with AGI, not FTI.
3. Will MN enforce penalties for underpaid estimates?
   – Yes. We need to carefully advise our clients.

Big Questions: Individual Income Tax (Cont'd)

4. What are the new forms?
   - M1CAT, M1MOVE, M1SA, M1UE, LK
5. Will MN permit itemization for taxpayers who use the standard deduction on their federal 1040?
   - Yes. MN will allow this on a one-time basis for 2018 only.
6. Where is Minnesota AGI?
   - If Sch. M1NC is required, it's on Sch. M1NC line 38.
   - If not, it's on Form M1 line 1. *Both are on M1SA line 22.*

Big Questions: Individual Income Tax (Cont'd)

7. Can I deduct more than $10,000 in property taxes?
   – Yes. Itemizers are not subject to the TCJA $10K SALT cap.
8. Will Minnesota follow the reductions in the individual income tax rate?
   – No. Even though Minnesota has historically conformed to the definition of "taxable income", it has never historically conformed to the federal tax rate structure.

Big Questions: Business Income Tax

1. Will MN permit small businesses to use the same method of accounting that they use federally?
   – Yes. MN will allow taxpayers to change to the cash method of accounting if they do so under the TCJA.
2. Will MN still have corporate AMT?
   – Yes. Corporations must still complete MN Schedule AMTI and pay AMT if higher than regular tax.

Roadmap: Minnesota's Conformity to the TCJA and 2018 Minnesota Form Walkthrough

CliftonLarsonAllen

GISLASON & HUNTER LLP

Minnesota's "Federal Conformity"

- Minnesota is a "static conformity" state
- Its references to the Internal Revenue Code (IRC) are as of December 16, 2016
- Without some creative statutory interpretation, Minnesota cannot legally follow any IRC provisions enacted after December 16, 2016
- Conformity would be to the tax base, not rates

2018 Minnesota Federal/State Nonconformity Items, Schedule M1NC

2018 Schedule M1NC

- **Line 2: Moving expense deduction (TCJA 11049)**
  - The TCJA suspended (from 2018 to 2025) the deduction for expenses relating to moving to a new home as a result of a change in a taxpayer's principal workplace
  - Minnesota does not follow this suspension, and thus continues to treat these expenses as deductible.
  - New Schedule M1MOVE calculates the deduction
    - ◊ Remember distance and employment status tests

2018 Schedule M1NC

- Line 3: Excess reimbursements on Sch. M1UE, line 8
  - Pre-TCJA law permitted "miscellaneous" deductions for items such as unreimbursed employee expenses, subject to a 2% AGI floor: all suspended by the TCJA (Sec 11045).
  - Minnesota does not follow this suspension.
    - ◊ Sch. M1UE computes the deduction: carry to Sch. M1SA line 19 (do not deduct amounts reported as W-2 box 1 wages).
    - ◊ Sch. M1UE also calculates reimbursements > expenses: carry to Sch. M1NC line 8 as an addback.

2018 Schedule M1NC

- **Line 4: Student loan forgiven due to death or permanent disability (TCJA 11031)**
  - **Pre-TCJA, discharge of indebtedness was taxable.**
  - **The TCJA enacted an exclusion for student loan debt discharged as a result of a student's death or permanent and total disability.**
  - **Minnesota does not recognize this exclusion, which must be added back. The amounts may be included in Form 1099-C, box 2.**

2018 Schedule M1NC

- **Line 5: 529 Plan funds used for K-12 education (TCJA 11032) or rolled into an ABLE acct (TCJA 11025)**
  - Pre-TCJA, Sec 529 plan funds could not be rolled into an ABLE account or used for K-12 expenses.
  - The TCJA permitted penalty-free rollovers into ABLE accounts, and allowed up to $10,000 in K-12 expenses
  - Minnesota does not recognize these items and requires an addback. May come from Form 1099-Q, Box 2, but only if not included in FAGI.

2018 Schedule M1NC

- Line 6: Casualty or theft gain (TCJA 11044)
  - Pre-TCJA, losses during the tax year not compensated by insurance or otherwise were deductible.
  - The TCJA limits the deduction to personal casualty and theft losses incurred in a federally declared disaster.
  - MN does not follow the TCJA: use new Sch. M1CAT.
    - ◊ Net gain (insurance proceeds > basis) – carry to M1NC line 6
    - ◊ Net loss (>$100/loss and >10% MN AGI) – carry to M1SA line 18

2018 Schedule M1NC – Line 11

- Line 11: Federal bonus depr. exceeding 40%
  - Pre-TCJA, bonus depr was 50% of the asset basis in 2017, 40% in 2018, 30% in 2019, and 0% afterward.
    - ◊ Post-TCJA (13201), bonus depr is 100% through 2022.
  - MN follows the pre-TCJA rules.
    - ◊ For tax year 2018, it adds back any bonus depr. for assets placed in service during 2018 in excess of 40% of the basis.
    - ◊ Track fed/MN basis differences by creating "Minnesota NC 4562"

2018 Schedule M1NC – Line 11 (cont'd)

- Line 11: Federal depr. on certain assets
  - The TCJA expanded bonus depr. to include used property as well as TV, film, and live theatrical production property.
    - ◊ MN does not follow these rules.
  - Public utility property: no longer bonus-eligible
    - ◊ Can claim 40% bonus for MN even if none claimed federally
  - Vehicle dealer property
    - ◊ Recall: floor plan interest not subject to 163(j); bonus depr. denied
    - ◊ Can claim 40% bonus for MN even if none claimed federally

2018 Schedule M1NC – line 12

- **Line 12: Section 179 adj: TCJA expanded expensing**
  - TCJA: applies to property placed in service after 12/31/17
    - ◊ Qualified improvement property and roofs, HVACs, fire protection/alarm/security systems for NRRP
    - ◊ Depreciable TPP used to furnish lodging (RRP)
    - ◊ Other qualified property: qualified leasehold improvement property, retail improvement property, restaurant property
  - MN does not conform to these expansions

2018 Schedule M1NC – line 12 (cont'd)

- Line 12: Section 179 adj: TCJA deduction/phase-out
- Federal rules:

Tax Year	Maximum Deduction	Phase-Out Begins
2016	$500,000	$2,010,000
2017	$510,000	$2,030,000
2018	$1,000,000	$2,500,000

- MN rules:

Tax Year	Maximum Deduction	Phase-Out Begins
2018 (use 2016 fed law)	$520,000	$2,070,000

2018 Schedule M1NC

- Line 13: Adjustment for other TCJA depr. rules
  - Passenger vehicles: increased depr. limits
  - Computers/peripherals: no longer required to use ADS if business use was <50%
  - Farm-use M&E: now 5 (vs. 7) year, 150% DB repealed
  - Residential real property: now 30 (vs. 40) year
  - Lease/retail improve & restaurant: now 39 (vs. 15) year
  - Requires ADS for farms opting out of Sec 163(j)

2018 Schedule M1NC

- Line 16: Deduction for certain business expenses
  - Entertainment expense: zero % deductible under TCJA, still 50% deductible for MN (meals remain 50% for fed & MN)
  - Qualified transportation fringe benefits (e.g., transit passes, parking): zero % TCJA deduction, 100% MN
  - Employer operated eating facilities: only 50% TCJA deduction, still 100% MN deduction as de minimis fringe
  - Differences for nondisclosure agreements, lobbying, etc.

2018 Schedule M1NC

- **Line 17: Like-Kind Exchange adjustment (Sch. LK)**
  - The TCJA (13303) restricted the use of like-kind exchanges (LKE) to real property (held in a T/B or for investment), which could previously have included personal property.
  - Minnesota still allows LKE deferrals for personal property. However, if they do, they must track the basis in the new property separately for MN purposes.
  - New Schedule LK

2018 Schedule M1NC

- Line 18: 30% Net Business Interest Adjustment
  - The TCJA (13301) placed a limit on deductibility of business interest expense under IRC Sec 163(j)
    - ◊ Equal to the sum of business interest income, 30% of adjusted taxable income, and floor plan financing interest
    - ◊ Doesn't apply to businesses with average gross receipts < $25M
  - Minnesota does not follow this new limitation
    - ◊ It uses the pre-TCJA (more generous) business interest deduction

2018 Schedule M1NC

- Line 21: Capital gains invested in Opportunity Zones
  - The TCJA (13823) created two new capital gain deferrals:
    - ◊ Temporary deferral of capital gain reinvestments in a qualified opportunity fund (QOF)
    - ◊ Permanent deferral of certain capital gains from the sale or exchange of an investment in a QOF
  - Minnesota does not follow either deferral and requires an addback to report the gain currently

2018 Schedule M1NC

- Line 22: Adjustment for Excess Business Loss (EBL)
  - The TCJA limited the amount of share of pass-through entity loss that a noncorporate taxpayer can deduct.
  - Under Sec. 461(l), an "excess business loss" (EBL) is not deductible, which exists if aggregate losses/deduction from a taxpayer's trades or businesses exceeds the sum of:
    - ◊ Aggregate gross receipts from those T/Bs; and
    - ◊ $500K MFJ / $250K other taxpayers.
  - MN does not recognize EBLs; many farm loss worksheets

2018 Schedule M1NC

- **Line 30: Adjustments from federal credits/incentives**
  - The TJCA & BBA affected the following credits/incentives:
    - ◊ Enacted: Sec. 45S credit for ER-provided paid family leave (TCJA 13403). Wages credited are nondeductible.
    - ◊ Modified: orphan drug credit (IRS Form 8820) (TCJA 13401).
      - The TCJA reduced the % of these expenses that are creditable.
    - ◊ Extended ITC (BBA): solar illumination; fuel cell; microturbine; combined heat/power; small wind; geothermal heat pump
      - The BBA reduces the A/B of the energy property by 50% of the credit.
  - MN does not conform to any of these items

2018 Minnesota Itemized Deductions, Schedule M1SA

CliftonLarsonAllen

GISLASON & HUNTER LLP

Standard Deduction vs. Itemized Deductions

- For 2018 only, MN will allow standard or itemized deductions, regardless of the federal election.
  - *Rev. Not. 18-01* (Sept. 4, 2018).
- Married taxpayers must gen. use the same method
  - Head of household exception
- M1SA replaces Sch. A for taxpayers who claim the federal standard deduction but itemize for MN
  - Consider the documentation issues involved!

Minnesota vs. Federal Standard Deduction

Filing Classification	Minnesota	Federal
MFJ and Qualified Widower)	$13,000	$24,000
Head of Household	$9,550	$18,000
Single and MFS	$6,500	$12,000
Additional amount for taxpayers blind / born before 1/1/1954 and *are* either married or a widow(er)	$1,300	$1,300
Additional amount for taxpayers blind / born before 1/1/1954 but *are not* married or a widow(er)	$1,600	$1,600

Minnesota vs. Federal Personal Exemption

- **Federal:** the TCJA *eliminated* personal exemptions
- **Minnesota:** uses the personal exemptions from Rev. Proc. 2017-58, which is $4,150 per exemption
- **Minnesota treatment of dependent SSNs:**
  - Taxpayers will not have to enter them on their 2018 M1.
  - Instead, they enter them on the current draft of the 2018 federal Form 1040. MN DOR may request additional information if needed to verify dependent exemptions.

Schedule M1SA (cont'd)

- Lines 1-4: Medical/dental expenses
  - The TCJA uses a 7.5% AGI floor; MN still uses a 10% floor
  - "Qualifying expenses" are the same for federal and MN
- Lines 5-8: SALT (income, sales, R/E, PPT)
  - The TCJA imposed a $10,000 cap on state income taxes
    - ◊ MN references the pre-cap amounts from Federal Sch. A, meaning no $10,000 cap on state property taxes!
    - ◊ No $10,000 cap on state income tax, but still added back

Schedule M1SA (cont'd)

- Lines 9-10: Home mortgage interest/points
  - Interest on mortgages originated on/after Dec. 15, 2017
    - ◊ The TCJA limits the interest deduction to amounts on the first $750K (prev. $1M), but retains provisions for second home
    - ◊ Minnesota still allows deduction for interest on the first $1M of debt secured by a first and/or second home
  - Interest on HELOCs originated on/after Dec. 15, 2017
    - ◊ The TCJA repeals the deduction for interest on HELOC debt
    - ◊ Minnesota allows interest on up to $100K of HELOC debt

Schedule M1SA (cont'd)

- **Line 18: Casualty or theft loss**
  - Pre-TCJA, all personal casualty/theft losses were deductible, with a 10% AGI floor.
  - The TCJA suspended the deduction for all personal casualties *except* for those associated with a federally-declared disaster.
  - For MN purposes, the pre-TCJA approach is still used.
  - Losses will come from Schedule M1CAT, line 20

Schedule M1SA (cont'd)

- Line 19: Unreimbursed employee expenses
  - The TCJA repealed all misc. itemized deductions, which were subject to a 2% FAGI floor, e.g.:
    - ◊ Tax prep fees; safe deposit box rentals; unreimbursed business expenses; custodial (e.g., trust account) fees
  - MN does not follow this, and continue to permit these deductions in excess of 2% of MN AGI
    - ◊ Deductions for unreimbursed business expenses: Line 19
      - Remainder of misc. itemized deductions: line 20
    - ◊ New Schedule M1UE is required

Questions???

THANK YOU!

This program is not intended to be responsive to any individual situation or concerns as the contents of this presentation are intended for general informational purposes only. Participants are urged not to act upon the information contained in this presentation without first consulting competent legal/tax advice regarding implications of a particular factual situation. Questions and additional information can be submitted to your Gislason & Hunter Attorney or CliftonLarsonAllen Accountant.

CliftonLarsonAllen

GISLASON & HUNTER LLP

Toolbox Update

Rod Mauszycki
CliftonLarsonAllen

&

Wade Wacholz
Gislason & Hunter LLP

CliftonLarsonAllen

GISLASON & HUNTER LLP

Year-End Tax Planning Tips for Farmers and Cooperatives

CliftonLarsonAllen

GISLASON & HUNTER LLP

Disclaimers

The information contained herein is general in nature and is not intended, and should not be construed, as legal, accounting, or tax advice or opinion provided by CliftonLarsonAllen LLP to the user. The user also is cautioned that this material may not be applicable to, or suitable for, the user's specific circumstances or needs, and may require consideration of non-tax and other tax factors if any action is to be contemplated. The user should contact his or her CliftonLarsonAllen LLP or other tax professional prior to taking any action based upon this information. CliftonLarsonAllen LLP assumes no obligation to inform the user of any changes in tax laws or other factors that could affect the information contained herein.

Individual Income Tax Changes and Farmers

CliftonLarsonAllen

GISLASON & HUNTER LLP

Kiddie Tax

- Kiddie tax to use estate and trust rate on unearned income
  - Maximum rate of 37% on gifts above $12,500 (plus allowed SD)
- Earned income taxed at unmarried brackets and rates
- Unaffected by income of parents or siblings
- Value of commodity gift strategy decreases
  - Gift increases, steep tax brackets

Child and Family Tax Credits

- Child credit: Increase from $1,000 to $2,000 for qualifying child
- Plus $500 credit for each dependent not a qualifying child
- Phase-out begins at MFJ of $400,000 AGI (up from $110K)
- Refundable portion increased to $1,400 & indexed
- Farmers Need to Optimize Taxable Income to use these credits
  - Use it or lose it

Section 199A

Aggregation

- Aggregation at individual level
  - Must have same year-ends
  - Can't have C corporation or SSTB
  - 50% common ownership or more
  - Must meet 2 of 3 factor test
- Treat at 1 company
- If under threshold, do not aggregate
- Once elected, must maintain and provide info to IRS each year.
- IRS can dis-aggregate

Other Business, Nonbusiness Items

- Business
  - Form 4797 ordinary
  - State income tax attributable to business?
  - SE health insurance?
  - 50% SE tax deduction?
- Nonbusiness
  - Retirement plan deductions?
- Capital gain or loss not considered QBI
  - Including Section 1231 gains taxed as CG

Patrons

- Patron computes QBIA on entire farm income
  - Including income from cooperatives
- Allowed to deduct amounts passed-through from cooperative without regard to wages expense of patron
- QBIA is reduced by the lesser of:
  - 9% of the QBI allocable to patronage dividends and per-unit retains received by the patron, or
  - 50% of the W-2 wages (subject to payroll tax) with respect to that activity

Cooperative Section 199A in One Slide

	Farmer with No Sales to Cooperative	Farmer Who Sells to Cooperative and Pays Wages	Farmer Who Sells to Cooperative and Pays No Wages
Sales	$1,000,000	$1,000,000	$1,000,000
Net Farm income	$200,000	$200,000	$200,000
Wages Paid	Zero to $75,000	$75,000	Zero
Coop DPAD	Zero	$10,000	$10,000
Reg. Section 199A	$40,000	$22,000	$40,000
Total Section 199A	$40,000	$32,000	$50,000
Difference in 199A Deduction	-	($8,000)	$10,000

Patron Planning

- If under the threshold
  - Eliminate wages from cooperative operations
  - Custom farming entity (C corporation that breakeven?)
- If over the threshold
  - Same planning
  - But elect to aggregate entities if available
    - ◊ Still should have no reduction for wages paid
    - ◊ Not associated with cooperative sales

Planning for QBID

Merging Businesses – Aggregation Election

- Insufficient wages and investment in one or more businesses
- Proposed Regulations allow for Aggregation
- Pitfalls
  - Have to have same year-end
  - Can’t include C corporation or SSTB
  - One-time election, every year reporting
  - Can’t change unless facts change
  - Aggregation can reduce QBID in some situations

Migrate to Sole Proprietorship

	S Corporation	Schedule F
Wages	$ 100,000	$ -
Farm income	20,000	127,650
Other nonbusiness income	20,000	20,000
1/2 SE tax		(9,018)
Standard deduction	(12,000)	(11,999)
Tentative taxable income	128,000	126,633
Section 199A	(4,000)	(25,530)
Taxable income	$ 124,000	$ 101,103
Income tax	$ 24,050	$ 18,554
SE tax		18,036
Payroll tax	15,300	
Total taxes	$ 39,350	$ 36,590
Savings to switch to Schedule F		$ 2,760

Change Filing Status

	Joint	Shane	Dayna
Wages	$ 120,000	$ 70,000	$ 50,000
S Corporation SSB	120,000	120,000	
S Corporation farm	300,000		300,000
Charitable deductions	(30,000)	(30,000)	
State income tax	(10,000)	(5,000)	(5,000)
Tentative taxable income	500,000	155,000	345,000
Section 199A	(60,000)	(24,000)	(60,000)
Taxable income	$ 440,000	$ 131,000	$ 285,000
Tax	$ 105,379	$ 25,730	$ 72,890
Combined MFS	98,620		
Savings	$ 6,759		

Other Planning Opportunities

- Replace guaranteed payments with preferred allocations
  - Need further guidance on this
- Review S corporation compensation to shareholder
- Elect S corporation on C corporation
  - 199A benefit instead of 21% flat tax rate
  - Temporary
- Incorporating entity eligible for Section 1202

Entity Planning

Entity Planning

- Double taxation of C corporation
- Qualified small business stock
  - Capital gain exclusion
  - Ineligible corporations
  - Processing companies
- Basis in inherited stock
  - IRD issue with S corporations
- State income tax deductibility

Meals and Lodging Fringe Benefit

- Section 119 exclusion
  - C corporation shareholder-employees only
- Meals 50% deductible
  - Drops to zero in 2026
- All housing 100% deductible

S Election from C

- BIG tax at 21%
- Keep income at zero or less over first five years – No BIG
- Push income to related rental entities
- Elect aggregation to obtain wage and QP for high income farmers

New Entities

- Holding period expected
- State taxation
- Shareholder tax bracket
- Qualification for 199A
- Owning assets which may appreciate
- Expected retention of income

Other Variables

- Stability of income
  - Use of C corporation as stabilizer
- Excess business loss n/a to C corporation
- FYE choices
- Examples 5 through 17 as reference material
  - Limited Discussion

Example 5 C v S corporation, very low income, no fringe benefits or state income tax

Corporate federal tax rate	21.00%
Corporate state tax rate	0.00%
Individual federal tax rate	12.00%
Individual state tax rate	0.00%
Federal CG tax rate on liquidation	18.80%
Benefit of 199A	20.00%
Discount rate	5.00%
Assume no special state CG tax rate	

	C	S
Book income	$ 45,000	$ 45,000
50% meals		-
Section 119 benefit on housing		
State taxable income	45,000	45,000
Less state income tax	-	
Taxable income	$ 45,000	$ 45,000
Book income, before tax	$ 45,000	$ 45,000
Federal tax	(9,450)	
State tax	-	
Distributions in lieu of Federal tax		(4,320)
Distributions in lieu of state tax		-
Retained equity	35,550	40,680
# years accumulation	10	10
Liquidation value	355,500	406,800
Basis to shareholders	-	406,800
Capital gain, shareholders	355,500	-
Federal and state capital gains tax	18.80%	18.80%
Shareholder capital gain tax	$ 66,834	$ -
Present value of annual taxes	$ 72,970	$ 33,358
Present value of liquidation tax	41,030	-
Total taxes paid	$ 114,001	$ 33,358

Example 6 Very low income, add fringe benefits, no state income tax

Corporate federal tax rate	21.00%
Corporate state tax rate	0.00%
Individual federal tax rate	12.00%
Individual state tax rate	0.00%
Federal CG tax rate on liquidation	18.80%
Benefit of 199A	20.00%
Discount rate	5.00%
Assume no special state CG tax rate	

	C	S
Book income	$ 45,000	$ 45,000
50% meals	5,000	10,000
Section 119 benefit on housing		25,000
State taxable income	50,000	80,000
Less state income tax	-	
Taxable income	$ 50,000	$ 80,000
Book income, before tax	$ 45,000	$ 45,000
Federal tax	(10,500)	
State tax	-	
Distributions in lieu of Federal tax		(7,680)
Distributions in lieu of state tax		-
Retained equity	34,500	37,320
# years accumulation	10	10
Liquidation value	345,000	373,200
Basis to shareholders	-	373,200
Capital gain, shareholders	345,000	-
Federal and state capital gains tax	18.80%	18.80%
Shareholder capital gain tax	$ 64,860	$ -
Present value of annual taxes	$ 81,078	$ 59,303
Present value of liquidation tax	39,818	-
Total taxes paid	$ 120,897	$ 59,303

Example 7 Very low income, add fringe benefits, add state income tax

Corporate federal tax rate	21.00%
Corporate state tax rate	6.60%
Individual federal tax rate	12.00%
Individual state tax rate	9.00%
Federal CG tax rate on liquidation	18.80%
Benefit of 199A	20.00%
Discount rate	5.00%
Assume no special state CG tax rate	

	C	S
Book income	$ 45,000	$ 45,000
50% meals	5,000	10,000
Section 119 benefit on housing		25,000
State taxable income	50,000	80,000
Less state income tax	(3,300)	
Taxable income	$ 46,700	$ 80,000
Book income, before tax	$ 45,000	$ 45,000
Federal tax	(9,807)	
State tax	(3,300)	
Distributions in lieu of Federal tax		(7,680)
Distributions in lieu of state tax		(7,200)
Retained equity	31,893	30,120
# years accumulation	10	10
Liquidation value	318,930	301,200
Basis to shareholders	-	301,200
Capital gain, shareholders	318,930	-
Federal and state capital gains tax	27.80%	27.80%
Shareholder capital gain tax	$ 88,663	$ -
Present value of annual taxes	$ 101,209	$ 114,899
Present value of liquidation tax	54,431	-
Total taxes paid	$ 155,640	$ 114,899

Example 8 Moderate income, Sec. 119 benefits and no state income tax

Corporate federal tax rate	21.00%
Corporate state tax rate	0.00%
Individual federal tax rate	22.00%
Individual state tax rate	0.00%
Federal CG tax rate on liquidation	18.80%
Benefit of 199A	20.00%
Discount rate	5.00%

Assume no special state CG tax rate

	C	S
Book income	$ 45,000	$ 45,000
50% meals	5,000	10,000
Section 119 benefit on housing		25,000
State taxable income	50,000	80,000
Less state income tax	-	
Taxable income	$ 50,000	$ 80,000
Book income, before tax	$ 45,000	$ 45,000
Federal tax	(10,500)	
State tax	-	
Distributions in lieu of Federal tax		(14,080)
Distributions in lieu of state tax		-
Retained equity	34,500	30,920
# years accumulation	10	10
Liquidation value	345,000	309,200
Basis to shareholders	-	309,200
Capital gain, shareholders	345,000	-
Federal and state capital gains tax	18.80%	18.80%
Shareholder capital gain tax	$ 64,860	$ -
Present value of annual taxes	$ 81,078	$ 108,722
Present value of liquidation tax	39,818	-
Total taxes paid	$ 120,897	$ 108,722

Example 9 Moderate income, Sec. 119 benefits and state income tax

Corporate federal tax rate	21.00%
Corporate state tax rate	7.00%
Individual federal tax rate	22.00%
Individual state tax rate	9.00%
Federal CG tax rate on liquidation	18.80%
Benefit of 199A	20.00%
Discount rate	5.00%

Assume no special state CG tax rate

	C	S
Book income	$ 45,000	$ 45,000
50% meals	5,000	10,000
Section 119 benefit on housing		25,000
State taxable income	50,000	80,000
Less state income tax	(3,500)	
Taxable income	$ 46,500	$ 80,000
Book income, before tax	$ 45,000	$ 45,000
Federal tax	(9,765)	
State tax	(3,500)	
Distributions in lieu of Federal tax		(14,080)
Distributions in lieu of state tax		(7,200)
Retained equity	31,735	23,720
# years accumulation	10	10
Liquidation value	317,350	237,200
Basis to shareholders	-	237,200
Capital gain, shareholders	317,350	-
Federal and state capital gains tax	27.80%	27.80%
Shareholder capital gain tax	$ 88,223	$ -
Present value of annual taxes	$ 102,429	$ 164,319
Present value of liquidation tax	54,161	-
Total taxes paid	$ 156,590	$ 164,319

Example 10 High income shareholders with no Sec. 119 benefits or state income tax

Corporate federal tax rate	21.00%
Corporate state tax rate	0.00%
Individual federal tax rate	37.00%
Individual state tax rate	0.00%
Federal CG tax rate on liquidation	23.80%
Benefit of 199A	20.00%
Discount rate	5.00%
Assume no special state CG tax rate	

	C	S
Book income	$ 45,000	$ 45,000
50% meals		-
Section 119 benefit on housing		
State taxable income	45,000	45,000
Less state income tax	-	
Taxable income	$ 45,000	$ 45,000
Book income, before tax	$ 45,000	$ 45,000
Federal tax	(9,450)	
State tax	-	
Distributions in lieu of Federal tax		(13,320)
Distributions in lieu of state tax		-
Retained equity	35,550	31,680
# years accumulation	10	10
Liquidation value	355,500	316,800
Basis to shareholders	-	316,800
Capital gain, shareholders	355,500	-
Federal and state capital gains tax	23.80%	23.80%
Shareholder capital gain tax	$ 84,609	$ -
Present value of annual taxes	$ 72,970	$ 102,854
Present value of liquidation tax	51,943	-
Total taxes paid	$ 124,913	$ 102,854

Example 11 High income shareholders, Sec. 119 benefits, no state income tax

				C	S
Corporate federal tax rate	21.00%		Book income	$ 45,000	$ 45,000
Corporate state tax rate	0.00%		50% meals	5,000	10,000
Individual federal tax rate	37.00%		Section 119 benefit on housing		25,000
Individual state tax rate	0.00%		State taxable income	50,000	80,000
Federal CG tax rate on liquidation	23.80%		Less state income tax	-	
Benefit of 199A	20.00%		Taxable income	$ 50,000	$ 80,000
Discount rate	5.00%				
Assume no special state CG tax rate			Book income, before tax	$ 45,000	$ 45,000
			Federal tax	(10,500)	
			State tax	-	
			Distributions in lieu of Federal tax		(23,680)
			Distributions in lieu of state tax		-
			Retained equity	34,500	21,320
			# years accumulation	10	10
			Liquidation value	345,000	213,200
			Basis to shareholders	-	213,200
			Capital gain, shareholders	345,000	-
			Federal and state capital gains tax	23.80%	23.80%
			Shareholder capital gain tax	$ 82,110	$ -
			Present value of annual taxes	$ 81,078	$ 182,851
			Present value of liquidation tax	50,408	-
			Total taxes paid	$ 131,487	$ 182,851

Example 12 High income shareholder, no Sec. 119 fringe benefit, state income taxes

Corporate federal tax rate	21.00%
Corporate state tax rate	7.00%
Individual federal tax rate	37.00%
Individual state tax rate	9.00%
Federal CG tax rate on liquidation	23.80%
Benefit of 199A	20.00%
Discount rate	5.00%

Assume no special state CG tax rate

	C	S
Book income	$ 45,000	$ 45,000
50% meals		-
Section 119 benefit on housing		
State taxable income	45,000	45,000
Less state income tax	(3,150)	
Taxable income	$ 41,850	$ 45,000
Book income, before tax	$ 45,000	$ 45,000
Federal tax	(8,789)	
State tax	(3,150)	
Distributions in lieu of Federal tax		(13,320)
Distributions in lieu of state tax		(4,050)
Retained equity	33,062	27,630
# years accumulation	10	10
Liquidation value	330,615	276,300
Basis to shareholders	-	276,300
Capital gain, shareholders	330,615	-
Federal and state capital gains tax	32.80%	32.80%
Shareholder capital gain tax	$ 108,442	$ -
Present value of annual taxes	$ 92,186	$ 134,127
Present value of liquidation tax	66,574	-
	$ 158,760	$ 134,127

Example 13 High income shareholder, qualifies for Sec. 119, state income taxes

Corporate federal tax rate	21.00%
Corporate state tax rate	7.00%
Individual federal tax rate	37.00%
Individual state tax rate	9.00%
Federal CG tax rate on liquidation	23.80%
Benefit of 199A	20.00%
Discount rate	5.00%

Assume no special state CG tax rate

	C	S
Book income	$ 45,000	$ 45,000
50% meals	5,000	10,000
Section 119 benefit on housing		25,000
State taxable income	50,000	80,000
Less state income tax	(3,500)	
Taxable income	$ 46,500	$ 80,000
Book income, before tax	$ 45,000	$ 45,000
Federal tax	(9,765)	
State tax	(3,500)	
Distributions in lieu of Federal tax		(23,680)
Distributions in lieu of state tax		(7,200)
Retained equity	31,735	14,120
# years accumulation	10	10
Liquidation value	317,350	141,200
Basis to shareholders	-	141,200
Capital gain, shareholders	317,350	-
Federal and state capital gains tax	32.80%	32.80%
Shareholder capital gain tax	$ 104,091	$ -
Present value of annual taxes	$ 102,429	$ 238,447
Present value of liquidation tax	63,903	-
Total taxes paid	$ 166,332	$ 238,447

Example 14 High corporate income farm, qualifies for Sec. 119, state income taxes

Corporate federal tax rate	21.00%
Corporate state tax rate	7.00%
Individual federal tax rate	37.00%
Individual state tax rate	9.00%
Federal CG tax rate on liquidation	23.80%
Benefit of 199A	20.00%
Discount rate	5.00%

Assume no special state CG tax rate

	C	S
Book income	$ 500,000	$ 500,000
50% meals	5,000	10,000
Section 119 benefit on housing		25,000
State taxable income	505,000	535,000
Less state income tax	(35,350)	
Taxable income	$ 469,650	$ 535,000
Book income, before tax	$ 500,000	$ 500,000
Federal tax	(98,627)	
State tax	(35,350)	
Distributions in lieu of Federal tax		(158,360)
Distributions in lieu of state tax		(48,150)
Retained equity	366,024	293,490
# years accumulation	10	10
Liquidation value	3,660,235	2,934,900
Basis to shareholders	-	2,934,900
Capital gain, shareholders	3,660,235	-
Federal and state capital gains tax	32.80%	32.80%
Shareholder capital gain tax	$ 1,200,557	$ -
Present value of annual taxes	$ 1,034,531	$ 1,594,615
Present value of liquidation tax	737,038	-
Total taxes paid	$ 1,771,569	$ 1,594,615

Example 15 High income farm, qualifies for higher Sec. 119, state income taxes

Corporate federal tax rate	21.00%
Corporate state tax rate	10.50%
Individual federal tax rate	37.00%
Individual state tax rate	9.00%
Federal CG tax rate on liquidation	23.80%
Benefit of 199A	20.00%
Discount rate	5.00%
Assume no special state CG tax rate	

	C	S
Book income	$ 500,000	$ 500,000
50% meals	15,000	30,000
Section 119 benefit on housing		75,000
State taxable income	515,000	605,000
Less state income tax	(54,075)	
Taxable income	$ 460,925	$ 605,000
Book income, before tax	$ 500,000	$ 500,000
Federal tax	(96,794)	
State tax	(54,075)	
Distributions in lieu of Federal tax		(179,080)
Distributions in lieu of state tax		(54,450)
Retained equity	349,131	266,470
# years accumulation	10	10
Liquidation value	3,491,308	2,664,700
Basis to shareholders	-	2,664,700
Capital gain, shareholders	3,491,308	-
Federal and state capital gains tax	32.80%	32.80%
Shareholder capital gain tax	$ 1,145,149	$ -
Present value of annual taxes	$ 1,164,972	$ 1,803,257
Present value of liquidation tax	703,022	-
Total taxes paid	$ 1,867,994	$ 1,803,257

Example 16 — High income farm, qualifies for Sec. 119, state income taxes, longer operations as a C corporation

Corporate federal tax rate	21.00%
Corporate state tax rate	10.50%
Individual federal tax rate	37.00%
Individual state tax rate	9.00%
Federal CG tax rate on liquidation	23.80%
Benefit of 199A	20.00%
Discount rate	5.00%

Assume no special state CG tax rate

	C	S
Book income	$ 500,000	$ 500,000
50% meals	15,000	30,000
Section 119 benefit on housing		75,000
State taxable income	515,000	605,000
Less state income tax	(54,075)	
Taxable income	$ 460,925	$ 605,000
Book income, before tax	$ 500,000	$ 500,000
Federal tax	(96,794)	
State tax	(54,075)	
Distributions in lieu of Federal tax		(179,080)
Distributions in lieu of state tax		(54,450)
Retained equity	349,131	266,470
# years accumulation	30	30
Liquidation value	10,473,923	7,994,100
Basis to shareholders	-	7,994,100
Capital gain, shareholders	10,473,923	-
Federal and state capital gains tax	32.80%	32.80%
Shareholder capital gain tax	$3,435,447	$ -
Present value of annual taxes	$2,319,230	$3,589,928
Present value of liquidation tax	794,885	-
Total taxes paid	$3,114,115	$3,589,928

Example 17 High income shareholders, no tax-free fringe benefit, state income taxes, longer operations as a C corporation

Corporate federal tax rate	21.00%
Corporate state tax rate	7.00%
Individual federal tax rate	37.00%
Individual state tax rate	9.00%
Federal CG tax rate on liquidation	23.80%
Benefit of 199A	20.00%
Discount rate	5.00%

Assume no special state CG tax rate

	C	S
Book income	$ 45,000	$ 45,000
50% meals		-
Section 119 benefit on housing		
State taxable income	45,000	45,000
Less state income tax	(3,150)	
Taxable income	$ 41,850	$ 45,000
Book income, before tax	$ 45,000	$ 45,000
Federal tax	(8,789)	
State tax	(3,150)	
Distributions in lieu of Federal tax		(13,320)
Distributions in lieu of state tax		(4,050)
Retained equity	33,062	27,630
# years accumulation	26	26
Liquidation value	859,599	718,380
Basis to shareholders	-	718,380
Capital gain, shareholders	859,599	-
Federal and state capital gains tax	32.80%	32.80%
Shareholder capital gain tax	$ 281,948	$ -
Present value of annual taxes	$ 171,618	$ 249,697
Present value of liquidation tax	79,295	-
Total taxes paid	$ 250,914	$ 249,697

Change C Corp Farm to Custom Operator

- Keeps FYE
- 20% 199A available to pass-through farmer
- Shifts patronage to pass-through
- Keep 119 benefit?
- High income
  - M-1 adjustments taxed at 21% rather than higher individual rates
- Custom operator qualification for 1202
  - Need a fresh entity

Excess Business Losses and NOLs

Limitation on Excess Business Losses

- Old excess farm loss repealed
  - Suspended losses treated as deduction in following year – reduce SE tax
- Excess business loss (EBL) not allowed
  - Applied at owner level
  - Taxpayers other than C corporations
- Net business loss limited to $500K jt./$250K single
  - Aggregate all businesses

Excess Business Loss

- Definition of business income
  - Wage income?
- Considered after other limitations (basis, at-risk, passive)
- Excess is treated as NOL c/o
  - Does it retain taint
  - Is it limited to:
    - ◊ $250k/500k, or
    - ◊ 80% of taxable income as part of NOL

Net Operating Losses

- Carrybacks mostly eliminated
  - Years <u>ending</u> after 2017
  - NOL from farming losses continue
    - ◊ Carryback limited to two years
    - ◊ Election available to forego carryback
- 80% of income may be offset by NOL
  - Years <u>beginning</u> after 2017
  - Post-2017 NOLs carried forward indefinitely

Planning for NOL and EBL

- Due to EBL, the NOL generated can't exceed $250,000 ($500,000 MFJ)
- 80% limitation against income reduces benefit of NOL
- Tax plan to minimize NOL
- Married taxpayers less likely to have EBL?
- Is carryover of pre-2018 NOLs subject to EBL?

Section 1031

Section 1031 Exchange

- Section 1245 attribute
- Section 1031 now restricted to real property
  - Definition of real property based on federal law
- Mixed property exchanges –
  - Section 1245 real property must be replaced by Section 1245 real property

S Corporation Built-In Gain

- BIG recognition limited by taxable income
- Prior trade-in strategy for equipment not available
  - Trade of equipment now triggers BIG

Cost Recovery and Section 1031 Exchanges

CliftonLarsonAllen

GISLASON & HUNTER LLP

179 or Bonus?

- Election out of bonus
- Preference for Section 179
- 179 not subject to 263A
- Bonus can create NOL
  - 179 cannot create an NOL
  - Is an NOL beneficial?
- Consider state tax provisions

Charitable Remainder Trusts

Disposition of Raised Grain: No Successor

Strategies:

- **Fund a qualified retirement plan to shelter high SE income**
  - **Reduces income tax but not SE tax**
- **Use a Charitable Remainder Trust**
  - **Sell in CRT; spread income tax over term of years; avoid SE tax!**

Charitable Remainder Trusts (CRT)

Charitable Remainder Trusts

Advantages

- Defer income up to a 20-year term
  - Lower federal income tax rates
  - No SE Soc. Sec. Tax
- Commodity can be sold by Trust with no tax
- Less federal tax; trades off with residual to charity
  - 10% minimum net present value to charity

CRT Examples

- 10 year term, annual payout
- $500,000 funding
- Annual payout @ year-end

IRS Interest Rate	2.0%	4.0%
Payout amount	$50,095	$55,400
Charitable remainder	10.01%	10.13%

[Current IRS rate: About 2.0%!]

Charitable Remainder Trusts (continued)

- **Annuity Trust**
  - Fixed payout
  - No additional funding
- **Unitrust**
  - Payout is % of annual value
  - Additional assets can be contributed

Charitable Remainder Trusts (continued)

- **Charitable Donation**
  - Allowed for capital gain property based on fair market value
  - Ordinary income property is limited to lesser of basis or fair market value

CRT for Farmers

- Funding a CRT with ordinary farm assets (PLR 9413020)
  - No income or SE tax to proprietor for inventory or fully depreciated equipment (other than potential Section 179 recapture)
  - Expenses allowable for current year crop
  - CRT sells inventory tax-free
  - Distributions from CRT = ordinary income but not Self Employment income

CRT Anti-Abuse Rules

- 10% charitable remainder minimum
- 50% maximum payout
- 5% probability of exhaustion

CRT Design Issues

- Select the highest of the 3 AFRs to maximize the income payout
- Use a fixed term CRAT to reduce income tax exposure in early years
- Analyze other income factors of donor
  - Social security
  - Net Investment Income Tax of 3.8% (2013 and forward)
  - Required Minimum Distributions for IRAs etc.

CRT Illustrations

AFR	1.4%	2.4%
Term	10 year	10 year
Payment	End	End
Funding	$750,000	$750,000
Annuity Amount	$72,800	$75,930
Charitable Remainder	10%	10%

Illustration #1 – Annuity versus Unitrust

- Income stream
  - Annuity Trust - $72,800 per year
  - Unitrust
    - ◊ Year 1 $156,000
    - ◊ Year 10 $ 22,000

Illustration #2 – Capital Gain Property

- After-tax accumulation after 10 years:
  - No CRT $670,533
  - 10 Yr. CRAT $634,747
  - 10 Yr. CRUT $634,780
- However, charity will end up with about $86,000 at the end of 10 years with either the CRAT or CRUT

Illustration #3 – Sec. 1245 Prop.-Equip.

- After-tax accumulation after 10 years:
  - Outright sale $460,238
  - 10 Yr. CRAT $504,151
  - 10 Yr. CRUT $504,190
- Savings using CRT – About $44,000
- Charity gets about $86,000

Illustration #4 – Retiring Farmer Inventory (Self Employment Tax)

- After-tax accumulation after 10 years:
  - Outright sale $413,869
  - 10 Yr. CRAT $504,151
  - 10 Yr. CRUT $504,190
- Savings using CRT – About $90,000 plus $86,000 to charity

CRT Cautions

- Need appraisal if transfer "unmarketable securities"
- No active business interests: UBI tax
- No debt into CRT
- No self-dealing (CRT sells assets in open market, not to related party of donor. No loans to donor or related party)

Planning Tools

- Estate / Gift Tax Exemption
  - Federal:
    - ◊ 2017: $5.49 MM
    - ◊ Now: $11.2 MM
  - Minnesota:
    - ◊ 2017: $2.1 MM
    - ◊ Now: $2.4 MM ($3.0 MM in 2020)
    - ◊ Unlimited gift (subject to 3 yr look back)
  - Portability of Spouse's Unused Exemption (but not in MN)
- Annual Exclusion Gifts $15,000 per person per year
- GST Exemption
  - Transfers to 3rd Generation or beyond
  - $11.2 MM – Federal

Planning Tools

- Estate / Gift Tax Exemption
  - Federal: Now at $11.2 MM
    - ◊ LESS PROMINENT IN PLANNING, FEWER TAXABLE ESTATES
  - Minnesota: Now: $2.4 MM ($3.0 MM in 2020)
    - ◊ SIGNIFICANT COMPONENT OF PLANNING NOW
    - ◊ ESSENTIAL TO "MARITALIZE" DOCUMENTS

Planning Tools

- Annual Exclusion Gifts $15,000 per person per year
  - Leveraging opportunities
  - ILIT
  - Partial interests in land (outright or FLP)
- GST Exemption
  - Legacy gifting (split income/residual)

Planning Tools

- Discounting opportunities
  - Farmland or other real estate – tenants in common
    - ◊ 10-15% discount for fractional interests.
  - Corporation Stock, LLC, Partnership
    - ◊ Potential discounts for lack of control and lack of marketability of 20-25%.
  - Sole Proprietorship
    - ◊ Uncertain discounts (control vs. marketability; “going concern” vs. liquidation value)

Planning Tools

- Irrevocable Life Insurance Trust
  - Take insurance proceeds out of taxable estate
  - Fund buy-sell and succession plans
  - Balance equities among family members
  - Manage business risk via insurability

Irrevocable Life Insurance Trust (ILIT)

Insured
A

Pays annual premiums by gift of cash to trust

$cash/year

Insurance Trust

Premiums paid by Trust to Insurance Co.

Insurance Company

Trustee buys and owns Policy on A

Insurance Trust At Death

Insurance Trust

$750,000

Pays death benefit to Trust

Insurance Company

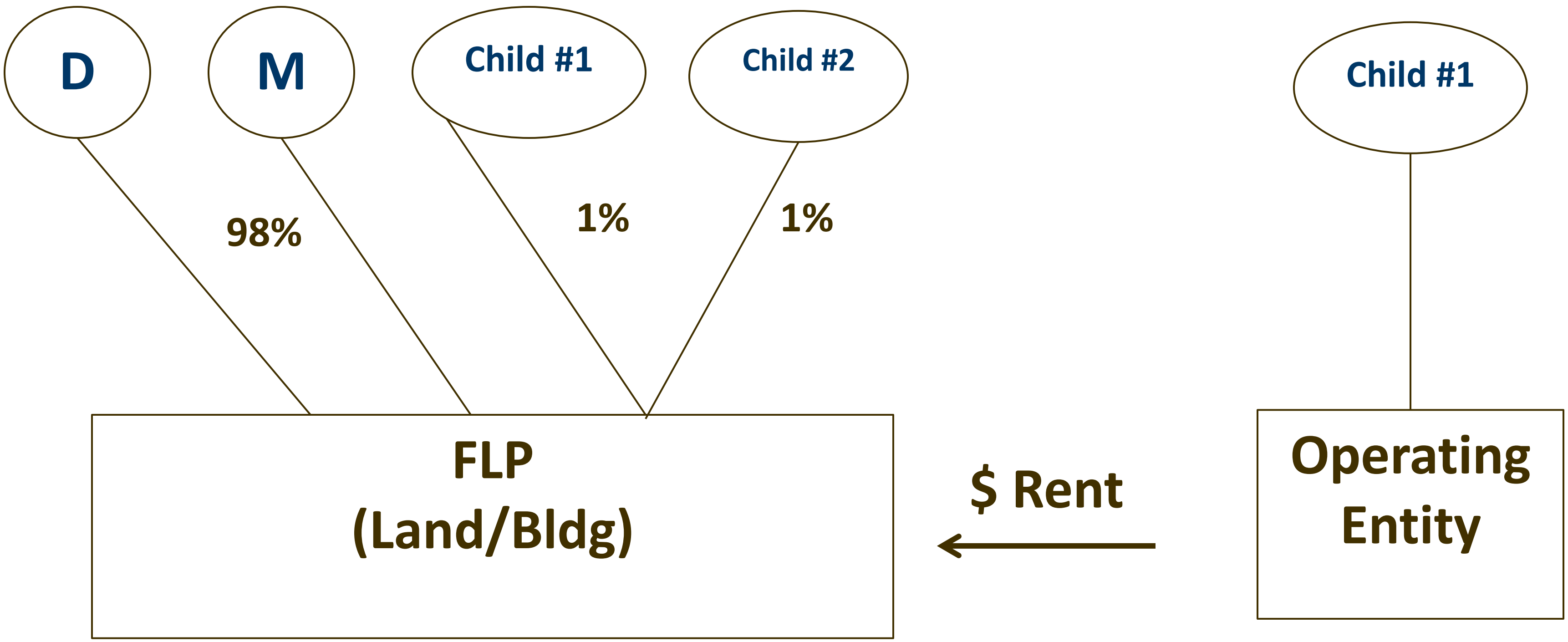
Trustee

- Pays out benefit to beneficiaries
- Lends money to estate for expenses
- Buys assets from estate
- Pays income to surviving spouse

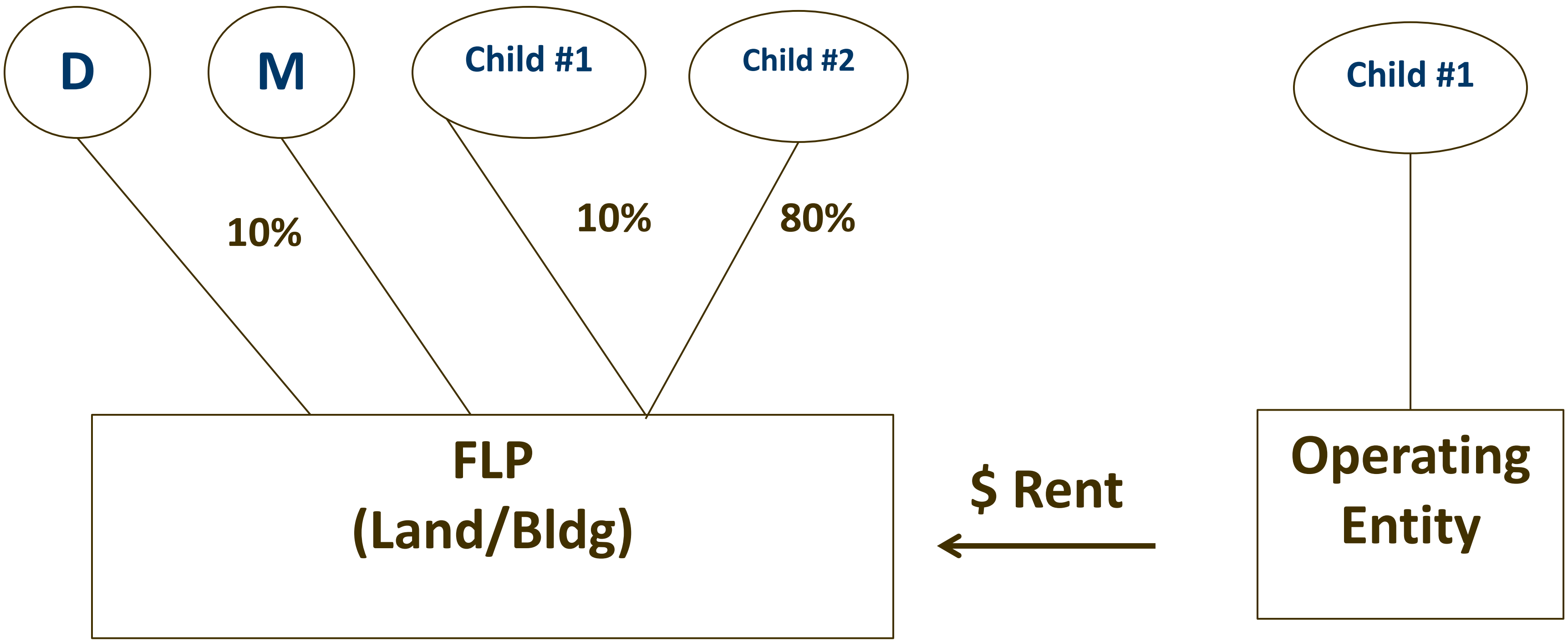
Planning Tools

- Advanced Tools: FLP, GRAT, IDGT Sale
  - Separate income streams
  - “Balance” estate between active/non-active heirs
  - “Freeze Techniques”
  - Low interest rates, appreciating assets, cash flow analysis
  - Leverage transfer value by paying income taxes from transferred assets

Family Ltd. Partnership



Family Ltd. Partnership



Rent mechanisms
Lease terms

GRAT (Grantor Retained Annuity Trust)

Technique allowing a transfer of an appreciating asset to the next generation in exchange for a fixed stream of payments

Generally used to “freeze” value of transferred asset

Transferor retains value of asset plus a defined return based the federal interest rate called the 7520 rate currently 3.6%

GRAT Flowchart

Senior Family Member

- Transfers by gift company stock/equity to "GRAT"
- Receives annuity

Asset

Annuity

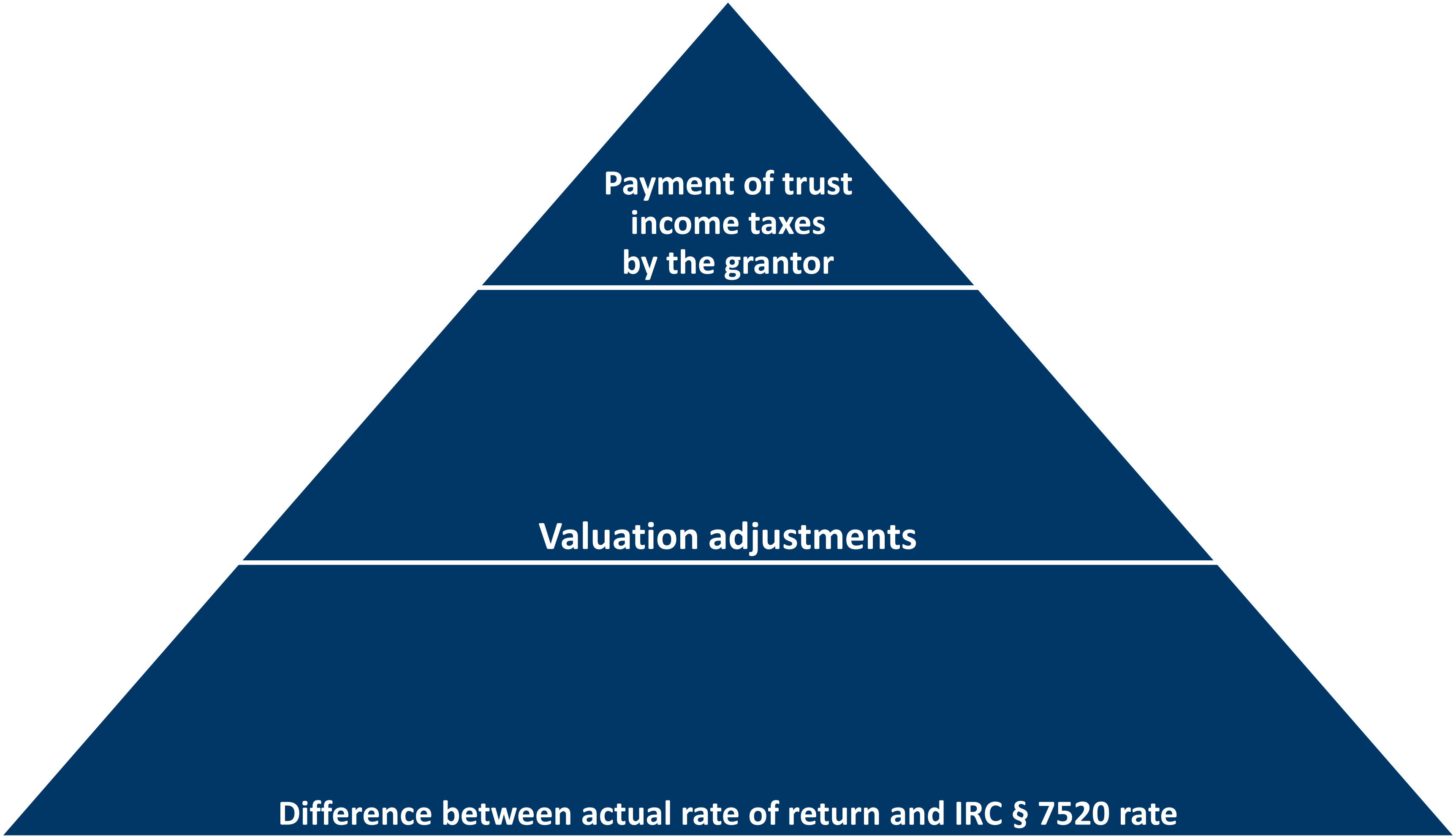
GRAT

- Created by senior family member
- Pays annuity to senior family members for a term of years
- Receive stock/equity

GRAT Beneficiaries

At end of term, remaining stock/equity is transferred outright or to another trust for senior family member's children

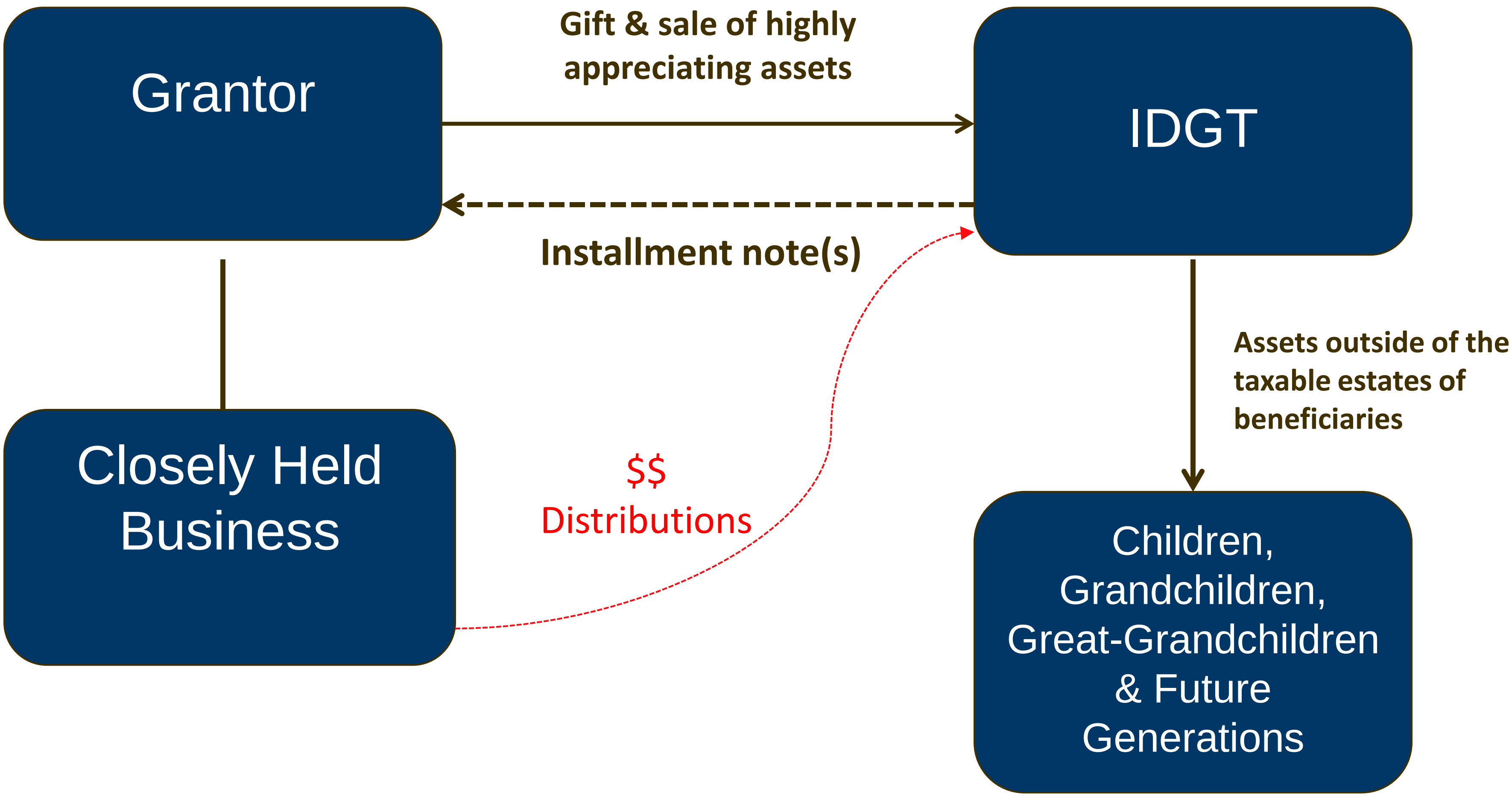
Why GRAT Gift/Sale Works



Sale to Intentionally Defective Grantor Trust

- Similar to the GRAT except
  - Portion of transaction a taxable gift
  - Note payments have more flexibility
  - Note interest rate maybe lower than 7520 rate
  - Generation Skipping works well with this strategy

Sale to an IDGT Strategy Diagram



Why IDGT's can be effective for transferring wealth

Back end-loading of installment payments

Payment of trust income taxes by the grantor

Valuation adjustments

Difference between actual rate of return and AFR

Planning Tools

- "Mind the Gap"
  - Wide gap between Federal and MN
  - Use techniques to reduce taxable estate to MN amount
  - Maritalize
- Basis Rules
  - Assets to be liquidated by heirs – BEQUEATH
  - Assets to hold: GIFT or "SELL"

Questions???

THANK YOU!

This program is not intended to be responsive to any individual situation or concerns as the contents of this presentation are intended for general informational purposes only. Participants are urged not to act upon the information contained in this presentation without first consulting competent legal/tax advice regarding implications of a particular factual situation. Questions and additional information can be submitted to your Gislason & Hunter Attorney or CliftonLarsonAllen Accountant.