CUTTING EDGE TECHNIQUES TO ENHANCE POPULAR HIGH-END WEALTH SHIFTING STRATEGIES

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CUTTING EDGE TECHNIQUES TO ENHANCE POPULAR HIGH-END WEALTH SHIFTING STRATEGIES*

I. INTRODUCTION

Despite the myriad of variations, sophisticated wealth shifting generally encompasses the interaction and blending of several important components – the use of entities to obtain valuation discounts, leveraging strategies and trusts.

A. Entities

Typically, the preferred entities for leveraged wealth shifting are FLPs, LLCs and S Corporations.

B. Valuation Reduction Strategies

A critical element of moving wealth outside of the transfer tax system is the ability to obtain valuation discounts – i.e., ". . . passing on more value than meets the taxable eye in the transfer."[1]

C. Trusts

1. Dynastic

2. Income tax defective as to grantor (IRC§§ 671-677) or to beneficiary (IRC§ 678)

3. Split-interest trusts, principally GRATs

D. IDGTs and GRATs

Two of the principal and most popular wealth shifting techniques to disgorge existing wealth are:

- Installment note sales to Income Tax Defective Trusts ("IDGTs"); and
- Grantor Retained Annuity Trusts ("GRATs")

E. The Estate Planner's Dream Scenario

Under both techniques, it is desirable for the estate owner to:

- Contribute discountable income-producing assets to the trust; and
- Receive payment back in assets, such as cash, which are not discountable

F. My Mission

This outline will discuss some of the advanced planning adjustments which can be used to enhance these strategies.

II. GRATs

A. In General

The grantor makes a gift to the trust and retains the right to receive a fixed annuity, payable at least annually, for a term of years.

1. Because of the <u>Walton</u> case (115 T.C. No. 41 (2000)) the annuity can be designed to be substantially equal to the value of the property transferred to the trust.

2. The gift is the present value of the remainder interest which is usually structured to be a nominal amount.

> <u>*Planning Note*</u>
> From a pure tax prospective, I cannot envision any reason why anyone would create a GRAT which would produce anything other than a nominal gift.

3. At the expiration of the term, any property remaining in the trust passes to the remainder beneficiary without any additional gift tax, regardless of how much the property appreciates.

4. The GRAT will be designed as a "grantor" trust for income tax purposes, thus:

a. Payments to the grantor (even with appreciated property) will be income tax free;

b. The trust will grow, unreduced by income tax attributable to the trust property; and

c. Payment of the tax on the transferred property will be the functional equivalent of a tax free gift and reduce the grantor's estate.

B. Primary Advantages of GRATs

1. <u>Statutorily Sanctioned</u>

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* Copyright © 2006

[1] George Cooper, *A Voluntary Tax? New Perspectives on Sophisticated Estate Tax Avoidance*, 77 Col. L. Rev. 161, 171 (March 1977)

IRC§ 2702 specifically authorizes the technique.

If you follow the rules set forth in the Internal Revenue Code and the Regulations, the technique is safe.

2. Small, Immediate Gift.

Because the grantor typically retains an annuity almost equal to the value of the transferred property, from a "tax" cost, there is only a negligible use of the unified credit.

3. The Ultimate Gift Tax Leveraging Device.

Because there is no further gift at the end of the term, irrespective of growth, an economically successful GRAT can shift millions of dollars while using up only a dollar of gift tax exemption.

4. No Valuation Risk.

If the annuity is expressed in the GRAT document as a percentage of the initial fair market value, there is no risk of gift tax on an undervaluation. For assets which are difficult to value and potentially expose the transfer to a large gift tax on an audit (or litigation) adjustment, a GRAT provides protection offering substantial advantages and comfort. Furthermore, because there is no upside for the Service, or downside risk to the client, there is less incentive for the IRS to audit GRATs and upon audit, there is a significant negotiating advantage for the tax payer.

5. Entire Economic Risk is Borne by the Grantor.

A GRAT is the only estate freezing technique where the donor bears the entire economic risk. In all other freezing devices, the donee bears some economic risk.

C. Primary Disadvantages of GRATs

The two primary disadvantages of GRATs are:

1. Survivorship Feature. (See II.D)

The grantor must survive the term of the annuity or there will be estate tax inclusion, although the correct measure of the inclusion is unclear.

2. Generation-Skipping Tax Exemption. (See II.E)

The GST tax exemption cannot be allocated by the grantor during the term of the annuity. There are, however, several strategies that can mitigate or avoid these potential problem areas.

D. Survivorship Feature

1. If the grantor survives the term, there is a tax free wealth shift of (a) the growth in excess of the AFR, plus (b) the valuation discount.

2. If the grantor does not survive the term, there is estate tax inclusion. Although there might be inclusion, the unified credit used is restored. The result is as if no gift had ever been made.

3. Thus, a zeroed-out GRAT, for gift tax purposes, is a "heads we win / tails we break even" proposition, or a tax free roll of the dice.

4. "Heads We Win/Tails We Win"

The "bet" can be hedged by the acquisition of life insurance. If the projected or hoped-for economics are obtained, the GRAT coupled with life insurance will either:

a. Result in a highly leveraged wealth shift; or

b. A win on the life insurance mortality bet.

5. For larger life insurance purchases, the GRAT remainder interest can be transferred to a life insurance trust (including a GST exempt life insurance trust if the strategy in II.E infra is employed) if the grantor survives the term. (See Exhibit B)

a. The life insurance trust often is funded with Crummey type gifts, split-dollar, loans (premium financing – either family or third-party) or a combination thereof during the term, and the income from the GRATed property after the term.

b. The GRAT remainder can be used to roll out of premium financing and/or split dollar arrangements if the Grantor survives the term.

c. If the Grantor does not survive the term, the insurance proceeds will fund the exit from the premium financing arrangement.

Planning Note
The advisors should always have a viable exit strategy when using premium financing and/or split-dollar funding.

6. What if the client is uninsurable?

a. That client is probably not a good candidate for a GRAT.

b. In such instance, an alternative wealth shifting device should be considered.

E. Generation-Skipping Tax Aspects

1. The "ETIP" rule set forth in IRC§ 2642(f)(1) prevents the grantor of a GRAT from allocating GST exemption to the remainder interest during the estate tax inclusion period, i.e., until the annuity interest ends, at which time the leverage disappears and the value would be the full value of the property.

2. It appears that with proper planning, the "ETIP" problem can be successfully finessed by having the remainder beneficiary either give, or sell for full value, the remainder interest to a GST exempt trust. (See Exhibit B)

3. To illustrate, assume that a child of the grantor is the remainder beneficiary and the child transfers her remainder interest to a GST exempt trust.

a. The child's gift of the remainder interest before the GRAT term should change the identity of the transferor from the original grantor to the child.

b. Because the child has transferred her entire interest, the ETIP rule should not apply, because she has not retained an interest in the transferred property which would cause inclusion.

Planning Note
The spendthrift clause should be eliminated or modified to be sure that it does not prohibit the transfer of the remainder interest by the remainderman.

4. In Private Letter Ruling 200107015, the Service, in a situation involving a CLAT rather than a GRAT, concluded that the transfer of a remainder interest by a child of the grantor shifted the identity of the transferor only to the extent of the portion of the trust assets equal to the present value of the remainder interest.

a. Although the fact pattern in the ruling was somewhat convoluted and the transaction involved in the ruling was the transfer of a remainder interest following a CLAT, the obvious lesson is that the IRS can be expected to apply the same reasoning to the transfer of the remainder interest of the GRAT to rule against the taxpayer.

b. The Service ruled that there would be two transferors as of the date of the assignment, the remainderman with respect to the portion of the trust equal to the present value of his remainder interest and the creator of the original trust as to the balance.

c. Thus, upon the end of the annuity term, the original transferor's interest, which generally would represent the bulk of the assets, would be subject to the GST.

d. The Service's position is based on policy that the purpose of IRC§ 2642(e) and (f) is to prevent the use of these types of leveraging transactions which, in effect, circumvent the application of the GST.

e. Many commentators believe that the Service's position is technically flawed and will not withstand judicial scrutiny.[2]

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[2] Byrle M. Abbin, *[S]he Loves Me, [S]he Loves Me Not-Responding to Succession Planning Needs through a Three-Dimensional Analysis of Consideration to be Applied in Electing from the Cafeteria of Techniques*, 31 U. of Miami Institute on Estate Planning at Ch 13 (1997); Gopman, Steinberg and S. Oshins, *Ruling on Assignment of Vested Remainder Interest May Have Reached Wrong Conclusion*, Tax Management: Estates, Gifts and Trusts Journal, (September/October 2001); Carlyn S. McCaffrey, *The Care and Feeding of GRATs – Enhancing GRAT Performance Through Careful Structuring, Investing and Monitoring*, 2006 Miami Institute on Estate Planning, Ch. 7; David H. Handler and Deborah V. Dunn, *Drafting the Estate Plan – Law and Forms*; Carlyn S. McCaffrey, Richard A. Oshins and Noel C. Ice, *Planning with GRATs*, NYU 62nd Institute of Federal Taxation, 2004; Roy M. Adams, *Proprietary Approaches for Planning with Individuals and Their Business*; Richard B. Covy, Editor, *Practical Drafting*, US Trust; Richard A. Oshins, *Planning Strategies Using Grantor Trusts*, NYU 60th Institute on Federal Taxation, 2002; Richard A. Oshins and Steven J. Oshins, *Protecting*

<u>Planning Note</u>

Consider having the GRAT remainder beneficiary be a grantor trust which could sell the property to the dynastic trust. If both trusts were defective as to the transferor, the transaction would be income tax free. In addition, if the parties use the re-acquisition technique described in II.E.5.c below the re-acquisition would be income tax free. Dual grantor trust status will also enable the strategy described in II.F.4.c, which locks in the success of a successful wealth shift, to be accomplished income tax free.

5. Even if the IRS were to prevail there are some protective measures the planner can incorporate:

a. <u>Use non-skip beneficiaries in dynastic trust.</u> First, as a safety valve, the dynastic trust should be drafted to include "non-skip" persons – i.e., persons who are not more than one generation younger than the grantors. Except for distributions which are made to skip persons, the GST tax will be imposed, if at all, when the trust has no non-skip persons. Until then, only medical and educational payments for younger generation beneficiaries made directly to the provider are GST exempt.

b. <u>Transfer of remainder equivalent.</u> Under this approach the GRAT remainder beneficiary contracts with the GST exempt trust to sell "an amount equal to the remainder interest," i.e., "the remainder equivalent." At the end of the GRAT term, the original remainder beneficiary (and not the GST exempt trust) receives the property and honors its contractual obligation to the GST exempt trust.[3]

c. <u>Reacquisition of Remainder Interest.</u> Alternatively, if the remainder interest is transferred to a GST exempt trust, either the grantor or the GRAT remainder beneficiary trust can purchase the remainder interest for its FMV just prior to the end of the GRAT term. At the expiration of the term, the GST exempt trust will receive the consideration paid and not the remainder interest.[4]

6. If the remainder interest is transferred to a dynastic trust that is the owner of life insurance on the GRAT creator's life, we might end up with the quintessential leveraging device.

a. If the grantor survives the term and the economic projection is obtained, the GST exempt trust will receive a significant amount of transferred wealth tax-free with only a negligible use of the gift tax and GST tax exemption, plus the life insurance.

b. If the grantor dies during the term of the GRAT, the dynastic trust will explode because it wins on the mortality bet with the insurance carrier.

F. Monitoring GRATs

Often GRAT assets will have substantial value swings. Indeed, volatile assets are generally regarded as desirable assets for funding GRATs. This section discusses some of the strategies that can enable the client to preserve the tax benefits of high appreciation and avoid the exposure to a downward economic turn. In addition, I will discuss how to deal with the impact of underperforming assets.

1. <u>Use Single Asset GRATs.</u>

a. The first rule of thumb is that the estate owner use separate GRATs for each asset.

b. The reason to use single asset GRATs is that it prevents underperforming assets from diluting the effectiveness of successfully performing assets.

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and Preserving Wealth Into the Next Millennium, Trusts & Estates, Sept/Oct 1998; Ellen K. Harrison, *Ten Best Ideas I Am Willing to Share*, 37th Miami Institute on Estate Planning, 2003; David A. Handler and Steven J. Oshins, *The GRAT Remainder Sale*, Trusts & Estates, December 2002; Richard A. Oshins and Arthur D. Sederbaum, *Generation-Skipping and the GRAT: Sale or Gift of the Remainder*, Estate Planning, June 2003; See also Jerry A. Kasner, *Hot Tax Topics for Estate Planners*, Outline at 71 (April 12, 2001), where Professor Kasner states, "The IRS can't have it both ways, if the child is deemed to have made a gift, the child would now be the transferor and the father cannot also be the transferor – the rule is the last transferor for gift or estate tax purposes is the transferor for GST purposes."

[3] David A. Handler and Steven J. Oshins, *The GRAT Remainder Sale*, Trusts & Estates, December 2002

[4] Ellen K Harrison, *Ten Best Ideas I Am Willing to Share*, 37th Annual Heckerling Inst. On Est. Planning, p.7

Illustration: Assume an estate owner funds a GRAT with equal amounts of ABC stock and XYZ stock. The ABC stock increases in value 10% per year and the XYZ stock decreases by 10% per year (or even stays level). In a single, mixed asset GRAT there would be no wealth shift because the poor performing stock would offset appreciation of the successfully performing stock. If two separate single asset GRATs were used, the growth in excess of the AFR on the ABC stock would be shifted and the GRAT containing XYZ stock would fail, with the sole costs of a negligible use of the gift tax credit and the transaction expenses.

2. Use Short Term Rolling GRATs.

a. For the same reason where the asset mix lends itself to payments in kind, such as GRATs funded with publicly traded securities, the conventional thinking is to use short-term (2 year) rolling GRATs, recycling the in-kind annuity into new GRATs.

b. That course of action reduces the risk that income and appreciation from high performance years will need to subsidize the annuity in sub-standard performing years before a wealth transfer can occur.

c. In other words, it minimizes the impact that a year or two of poor performance will have on the overall effectiveness of the GRAT (See Exhibit A for an illustration).

d. The short-term GRAT approach also reduces the risk of adverse estate tax inclusion due to the Grantor's death during the term. The shorter the term, obviously the more likely the Grantor will survive the term.

3. Dealing with Under-water GRATs.[5]

a. Where a GRAT is experiencing economic losses, the advisor should suggest protective measures to improve the chances of a successful wealth shift.

b. If the GRATed assets drop in value, they must not only attain the original AFR in the future, but must make up both the amount of the value reduction and the unobtained growth equal to the AFR before a successful wealth transfer will occur. Even if the "make-up" could be attained, that growth would inure to the benefit of the Grantor.

c. If the Grantor were to buy-out the underperforming assets from the GRAT and re-GRAT them, the chances of a successful wealth shift would be dramatically improved. All post-transfer appreciation in excess of the AFR will shift to the remainder beneficiary rather than only the excess after making up the short-fall.

(1) The purchase would be income tax free because the trust is a Grantor trust[6]

(2) A failed GRAT is not harmful if a substantially zeroed-out GRAT is used.

(3) Carlyn McCaffrey suggests that the buyout could be made with a note.[7]

d. Illustration

(1) Grantor contributes $1 million of Newco stock to a GRAT. The value drops to $600,000.

(2) The Grantor buys the Newco stock from the GRAT and contributes it to a new GRAT.

(3) The value of Newco goes back up to $1 million.

(4) The remainder beneficiary will receive $400,000 less the AFR interest rate.

4. Preserving Success for the Remainder Beneficiary.

a. There are strategies to protect significant early growth against a subsequent downside turn that would otherwise reduce the passage of wealth.

b. One option would be for the Grantor to purchase the asset from the GRAT, thus, locking in the appreciation for the remainder beneficiary.

(1) The asset purchase could be for a note.[8]

[5] See McCaffrey, supra, fn2 at ¶ 7.05

[6] Rev. Rul. 85-13, 1985-1, C.B. 184

[7] McCaffrey, supra

(2) The purchase will be income tax free.[9]

c. Alternatively, the Grantor could acquire the remainder interest from the remainder beneficiary.

(1) If the remainder beneficiary is a Grantor Trust the purchase is income tax neutral.

(2) This approach has the additional benefit of protecting the locked-in gain from estate tax inclusion if the Grantor dies during the term.

d. In either case, be it the asset purchase or the remainder purchase, the Grantor should consider re-GRATing the asset. That course of action would shift any subsequent appreciation in excess of the AFR to the remainder beneficiary in case the upward spiral continues. If the assets underperform, we would have a failed GRAT with no harm.

G. GRATs with Disregarded Entities

1. The ideal GRAT structure is where the grantor transfers discountable, income-producing assets into the trust and receives the annuity back from the cash flow generated by the gifted property (a closely held business generally fits that profile).

2. The annuity must be paid (Treas. Regs. § 25.2702-3).

a. If cash is unavailable, the payment would ordinarily be paid "in-kind" with a portion of the transferred asset.

b. In such instance, the valuation discount must be applied, sharply reducing the effectiveness of the wealth shift.

c. A new, and often expensive, appraisal must be obtained.

3. If the cash flow is moderate relative to the value of the property, which often occurs with real estate, one option is to use a longer annuity term in the GRAT in order to pay the annuity in cash.

a. That option extends the risk of inclusion on account of the failure of the grantor to survive the term.

b. In many instances, even an extended term will not enable the annuity to be paid solely with cash flow.

4. Another option is to combine the GRAT with a "disregarded entity."[10]

5. Consider as an illustration the fact pattern which we have worked on in our office where the client has several parcels of real estate with a 5% cash flow and a projected 5% annual appreciation. Assume each parcel is worth $10 million. Assume further our appraiser felt that a 40% valuation discount was appropriate and that the client has 3 children. At the time we did the transaction, the AFR was 5%. See Exhibit E for the structure.

6. The client could create a single member LLC (our client created separate LLCs for each parcel because of the limited liability) that would be taxed as a "disregarded entity" for income tax purposes, but the entity wrapper would be recognized for gift tax purposes.[11]

7. The client would transfer non-controlling interests to the GRATs.

a. In our situation, the client transferred 1/3 of each LLC to each GRAT.

b. The client can retain the 1% controlling interest if desired.

8. The GRAT should be designed as a graduated GRAT with annuity payments increased by 20% per annum as authorized by the Treas. Reg. 25.2702-3(b)(1)(ii)(A). That will make it easier for the annuity

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[8] McCaffrey supra. fn2. Carlyn suggests that the purchase could be for a note with interest equal to the AFR that was in effect at the inception of the GRAT, which would preserve the profit for the remainder beneficiary.

[9] Rev. Rul. 85-13, 1980-1, C.B. 182

[10] For a discussion of "disregarded entities" please see III.D.4, infra.

[11] Rev. Rul. 93-12, 1993-1 C.B. 202

payments to be funded with cash flow in the earlier years. (See Exhibit C which illustrates that with a level GRAT, the cash flow is unable to fully fund the annuity and Exhibit D which shows that with a graduated GRAT, the annuities can be funded during the initial few years.)

9. In the later years, when cash flow is insufficient to pay the annuity, the grantor can purchase assets from the disregarded entity so that the disregarded entity has the cash to distribute to the GRATs to fund the annuity.

a. If the grantor purchased interests in the entity from the separate GRATs, the purchase price would be subject to a valuation discount.

b. By acquiring an asset from the entity itself, there would not be a discount since the entire asset would be purchased.

> Planning Note
> This enables us to achieve the preferred goal of discountable assets gifted and cash back in payment of the annuity. The same strategy could be used for an installment sale to an IDGT.

c. Because the entity is a "disregarded entity" and the GRATs are "grantor" trusts, the sale is income tax free.

d. In our case (the clients with several parcels of real estate with a 5% cash flow), we placed one-third interests in three entities into three 10-year GRATs. If the economic projections are accurate, we will be able to acquire (without discount) one property from an LLC and the cash flow problem will be solved. (See Exhibits D and E.)

10. This strategy works well when combined with the remainder interest transfer. (Discussed in II E, above.)

11. Can a client do a GRAT/disregarded entity strategy with an investment partnership (or LLC) consisting of all or a substantial portion of publicly traded securities?

a. Yes, provided that the advisor properly designs and implements the entity and the client follows proper procedures.[12]

b. There appears to be specific authorization in IRC § 761(a) for a partnership for investment purposes.

Definition of a partnership – IRC §761(a)

" . . . *The term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on . . .* " *Under regulations the secretary may, at the election of all members of an unincorporated organization, exclude such organization from the application of all or part of this subchapter, if it is availed of –*

(1) for investment purposes only and not for the active conduct of a business," (emphasis supplied)

c. The conventional planning with publicly traded stocks is to use single asset, two-year rolling GRATs. (See II.F.1 and II.F.2 supra)

d. However, conventional thinking does not:

(1) Allow for valuation reduction for discountable funding with annuity payments back in cash or assets not subject to a discount;

(2) Lock in present low interest rates;

(3) Enable the grantor to fully exploit the very low early payment feature of a graduated GRAT;

(4) Take advantage of the disregarded entity concept;

(5) Effectively use the generation skipping GRAT strategy; or

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[12] See, Estate of Kelley, T.C. Memo. 2005-235, Oct. 11, 2005, where the tax court allowed a 32.2% discount on a partnership that was essentially a cash partnership. See also, Stacy Eastland, *Defending the Family Limited Partnership – Estate of Elaine Smith White v. Comm. In the Tax Court*, CCH Financial and Estate Planning, ¶ 31,961. I had the privilege of presenting this concept with John Porter where his portion of the presentation substantially consisted of addressing the suitability of a discount in this context.

(6) Lock in the strategy, protecting against a possible change in the law.[13]

e. In many instances, a longer term graduated GRAT funded with non-controlling interests in a disregarded entity may be significantly superior to the conventional short-term rolling GRAT approach.

III. INSTALLMENT SALE TO AN INCOME TAX DEFECTIVE TRUST ("IDGT")[14]

A. Basic Structure

1. An installment sale to a defective trust in exchange for the trust's promissory note is a very popular wealth transfer strategy that offers many significant benefits.

2. Generally, this technique is used to sell non-controlling interests in entities such as limited partnerships, LLCs and corporations (particularly S corporations) to defective dynastic trusts, taking advantage of valuation discounts.

3. Other presumptively undervalued assets such as options or lettered stock are also excellent candidates for this technique.

4. The trust is set up as a grantor trust by intentionally violating one or more of the grantor trust rules.

5. Typically, the note is structured as interest-only for a period of time with a balloon payment at the end of the term and a right of prepayment without penalty.

6. The Service has opined in Rev. Rul. 85-13[15], and in several private letter rulings, that transactions between a trust and its "owner" for income tax purposes will be ignored.

a. Thus, the person who is treated as the "owner" of the trust for income tax purposes can sell an asset to the trust without any income tax ramifications.

b. In addition, the trust can satisfy its note obligation with appreciated assets without income tax consequences.

B. Undercapitalization Risk

If the debt-to-equity ratio is too high, the IRS could attempt to recharacterize the trust as a gift (or part gift) with a retained income interest, exposing the transaction to IRC§ 2036, rather than a sale.

1. To avoid a form over substance or sham argument that the IRS might use, conservative practitioners believe that the defective trust should be independently funded with some seed money.

2. It appears that 10% has been the rule of thumb that most practitioners have used as a threshold amount of "seed money" necessary to support the integrity of the transaction.

3. The 10% rule of thumb is based upon an informal conversation Byrle Abbin had with the IRS. Byrle commented: "...Informally, IRS has indicated that the trust should have assets equal to 10 percent of the purchase price to provide adequate security for payment of the acquisition obligation."[16]

C. Beneficiary Guarantees

It has been suggested by a number of commentators that the 10 percent rule of thumb on the initial funding can be circumvented by funding the trust with less than 10 percent and having a beneficiary of the defective trust personally guarantee the note.

1. They believe that the gift does not take place upon the guarantee, but only, if and when the guarantor makes good on his guarantee.

2. Letter Ruling 9113009 has cast a shadow on that approach. The ruling entertained the issue of whether a personal guarantee of a note payable by another party is a taxable gift. It held that the personal guarantees were gifts subject to the gift tax since

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[13] One change I have heard is a requirement that the gift be at least 10%. That would effectively kill most GRATs.

[14] David Handler and Richard A. Oshins, 2005 NYU Tax Institute

[15] Rev. Rul. 85-13, 1985-1 C.B. 184

[16] Byrle M. Abbin, *[S]he Loves Me, [S]he Loves Me Not – Responding To Succession Planning Needs Through a Three-Dimensional analysis Of Considerations To Be Applied In Selecting From The Cafeteria Of Techniques*, 31 U. of Miami Institute on Estate Planning, Ch. 13 (1997), p. 13-9

"[t]he agreements by [the guarantor] to guarantee payment of debts are valuable economic benefits conferred upon [the debtors]." The date of the gift under the facts of the ruling was held to be the date the debt was guaranteed. The ruling further concluded that "in the event that the primary obligors subsequently default on the loans and [the guarantor] pays any outstanding obligation under the terms of the agreements, any amounts paid by [the guarantor], less any reimbursement from the primary obligors, will be gifts subject to the gift tax."

3. Under the conclusion of Letter Ruling 9113009, this strategy may create both transfer tax problems and income tax problems unless adequate consideration is given for the guarantee. If the beneficiary is considered to have made a gift to the defective trust of which he is a beneficiary, IRC Sec. 2036(a)(1) will apply to the beneficiary (who is also a grantor), and a portion of the trust will be included in the beneficiary's taxable estate. In addition, the beneficiary/grantor would be considered a transferor for GST tax purposes. Because the beneficiary/grantor would be precluded from allocating GST tax exemption to the trust until his death under the ETIP rules (IRC Sec. 2642(f)), the time value advantages of early allocation would not be available.

4. The beneficiary/owner would also be considered a partial "owner" of the trust for income tax purposes under IRC Sec. 677(a)(1) since he is making a transfer to a trust of which he is a permissible beneficiary. Not only would this cause a reporting nightmare, as now there would be two "owners" for income tax purposes, but it would also affect the taxation of the initial grantor's (i.e., the grantor who is not also a beneficiary) installment sale to the defective trust. If a trust is defective as to two different persons and one of them sells an asset to the trust, the transaction would be partially income tax-free under Rev. Rul. 85-13 and partially subject to income tax.

5. In most cases the original grantor would be the owner of most of the trust, and the guarantor/beneficiary/grantor would only own a small portion of the trust for income tax purposes. As a result, the damage from an income tax standpoint may be minimal. This de minimis exposure may be tolerable for some practitioners; however, purists would generally avoid these issues and exposures.

6. Notwithstanding the foregoing caveats, most estate planners do not subscribe to the IRS's position that the guarantee is a gift at the time it is made. The more supportable position is that any gift occurs at the time the guarantor actually discharges the obligation and is unable to enforce his or her subrogation rights against the primary obligors. In addition, it is arguable not only that the IRS's position in Letter Ruling 9113009 is incorrect, but also that the guarantee of a trust beneficiary is distinguishable from the letter ruling in that the guarantee of the installment obligation is not for the benefit of a third party, but is for the benefit of the guarantor/beneficiary himself. Since the donor is also the donee, there would not be a gift at the time the guarantee is signed.

7. Letter Ruling 9113009 was withdrawn by Letter Ruling 9409018. However, Letter Ruling 9409018 only dealt with the marital deduction issues under the facts of the earlier ruling. There was no mention of the gift tax issues. The 1994 ruling specifically held that, "[e]xcept as we have specifically ruled above, we express no opinion at this time about the tax treatment of the transactions under the cited provisions or any other provision of the Code." Thus, the treatment of a personal guarantee as a gift is still in question and creates a risk that many clients would not undertake.

8. Some authorities that concern me.

a. Casner and Pennell. "With respect to a guarantee, if Parent is never called upon to make good on the guarantee – which would generate significant gift or discharge of indebtedness income considerations – giving the guarantee alone should be treated only as a gift of the value of the guarantee – presumably what Child would pay an independent third party to obtain the guarantee, which could be quite expensive."[17] (Emphasis supplied)

b. Henkel. "What if Dad guarantees Son's loan? The IRS has issued a private ruling that the value of the economic benefit conferred on Son by the guarantee constitutes a gift, if appropriate consideration is not paid. Assuming arguendo that this theory is correct, the value of the gift would

[17] A. James Casner and Jeffrey Pennell, Estate Planning, Vol. One-Sixth Edition, Sec. 6.3.3.6

presumably be measured by the fee which would be charged by a bank for a similar guarantee."[18]

c. Zaritsky. Loan Guaranties. In Private Letter Ruling 9113009, the IRS considered for the first time the gift and estate tax consequences of a loan guaranty, and reached somewhat surprising conclusions. In the ruling, T made personal loan guaranties for debts incurred by corporations and other business entities owned by T's children. The guaranteed loans were secured from independent lenders, and the guaranty promises were made without compensation and without other security. T asked the IRS to rule on the effect of incurring the loan guaranties, the effect of payment on the guaranties, and the effect of the guaranties on bequests of assets to trusts for T's surviving spouse.

"The IRS, relying on the Supreme Court's 1984 decision in Dickman v. Commissioner,[19] concluded that making a loan guaranty for one's child (or an enterprise in which the child is beneficially interested) is itself a gift, because a financial benefit is bestowed on the child. The IRS noted that the children could not have obtained the loans without the guaranties, or at least would have had to pay a higher interest rate. The difference between the value of the debt that the children incurred with the guaranties and that they would have had to incur without the guaranties would be a gift on the date the guaranty is made. The IRS also stated that if the primary obligors default on their loans, T could be deemed to have made an additional gift if the amount T is required to pay is not reimbursed by the children, and if it exceeds the amount of the initial gift."[20] (Emphasis supplied)

d. Milford B. Hatcher, Jr. "It is possible that the IRS may argue that any guarantee by the beneficiaries of the IDGT will result in taxable gifts from the beneficiaries to the trust, as the IRS has asserted in the past. Of particular concern is PLR 9113009, which the IRS withdrew in PLR 9409018 without any comment as to the gift tax provisions of the previous ruling. . . . The IRS may argue, at least in the absence of reasonable guarantee fees, that the guarantee by the beneficiaries will effectively permit the gratuitous use of the beneficiaries' credit for the benefit of the trust."

"If such an argument by the IRS is successful, it will clearly cause gift tax problems for the beneficiary/guarantor, as well as possible estate, generation-skipping, and income tax problems. In all probability, if any guarantee results in a taxable gift, it will be a future interest gift that will not be offset by the annual exclusion,...and will thus be a taxable gift to the full extent of the value of the guarantee. The timing and amount of the gift, if any, is unclear. Probably the closest commercial analogy is a bank's charge for a letter of credit. Generally, the bank makes an annual or more frequent charge for such a letter. By analogy, there will be an annual gift, probably in the range of one to two percent of the amount guaranteed, so long as the guarantee is outstanding. However, it may also be argued that a much larger, one-time taxable gift will occur at the inception of the guarantee, especially if the loan precludes prepayment."[21] (Emphasis supplied

9. There is no safe harbor for the amount to be paid for the guarantee.[22]

Planning Note
We take the conservative position and pay for the guarantee.

10. How about those beneficiaries who guarantee installment notes and have to make good on them? Certainly a gift occurred. Did they receive adequate counsel, i.e., that they would have to honor the guarantee if the trust could not, as well as the gift tax implications? Presumably, many guarantees were made by children at the suggestion of their parent(s)'

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[18] Kathryn G. Henkel, *Estate Planning and Wealth Preservation*, Par. 28.07.

[19] Dickman v. U.S., 465 US 330 (1984)

[20] Howard M. Zaritsky, *Tax Planning for Family Wealth Transfers*, Third. Ed., Par. 3.09(1)(d)

[21] Milford B. Hatcher, Jr., *Planning for Existing FLPs*, 2001 Miami Institute on Estate Planning, Ch. 3 at Par. 3.02.B.2, raising the same concerns.

[22] "The Section 1274 rate is a safe harbor rate for intra-family loans. There is no similar safe harbor for a guarantee fee. Interest on third party loans will be at least market rates, higher than the Section 1274 rate due to credit risks." Ellen K. Harrison, *Factors Relevant to Choosing the Best Split Interest Technique*. P. 33

advisors without independent advice, and perhaps in reliance of the parents, counsel.

11. When a sale is made to a trust, factors such as adequacy of interest rate (which is met if the note meets the AFR (IRC Sec. 1274) threshold requirements), and that the trust either has adequate assets or a quality guarantee are taken into account in the determination of whether or not the note is a debt or equity.[23]

12. The problems are:

a. If the note does not have the requisite substance, it may be treated as a gratuitous transfer with a retained interest creating estate tax exposure if the note were outstanding at death.[24]

b. The note would not qualify as a "qualified interest" under IRC Sec. 2702. Thus, the retained interest would be treated as having a value of zero for gift tax purposes.

D. The "Double LLC" Strategy (See Exhibit F)

1. The concept is designed to honor the 10% rule of thumb.

2. Byrle Abbin has told me that he understood that the 10% rule of thumb (which he acknowledges is informal) means really a 9:1 debt to equity ratio and not 10:1

3. Assume that the trust has $1 million of assets; LLC1 holds $15 million of assets and LLC2 holds $50 million of assets.

a. Assume a 33% valuation discount on the value of the LLC units.

b. The grantor trust could purchase a 99% interest in LLC1 (assuming that the interest was a non-controlling interest or, alternatively, was sold by H and W equally) for just under $10 million without exceeding the 10% rule. The trust pays $1 million as a down payment and issues a promissory note for the remaining $9 million.

c. LLC1 subsequently purchases a 99% interest in LLC2 for about $33.3 million.

d. Because LLC1 has $15 million of assets and no debt, it also is within the 10% rule of thumb and could purchase up to $150 million of property for a note.

4. Disregarding LLCs for Gift, Estate and Income Tax Purposes: IRC Sec. 7701.

a. Under Reg. Sections 301.7701-1(a) and 301.7701-2(c)(1), an entity with a single member is disregarded as an entity separate from its owner "for federal tax purposes." Because LLC1 is owned entirely by the grantor and grantor trust, there is only one owner of LLC1 (the grantor) for income tax purposes. Accordingly, LLC1 should be disregarded as an entity separate from the grantor for income tax purposes and no taxable event occurs upon LLC1's purchase of LLC2 units from the grantor. This is supported by Rev. Rul. 2004-77, 2004-31 IRB 119 (Aug. 2, 2004), in which a partnership was owned by a corporation and an LLC wholly-owned by the corporation. Although there were two partners under local law, because one of those partners (the LLC) was a disregarded entity as to the other partner, the corporation was treated as holding all of the LLC's interests in the partnership. As a result, the partnership had only one owner for federal tax purposes and the partnership was disregarded as an entity for federal tax purposes.

b. However, when determining the impact of Section 7701, one should not begin from the notion that LLC1 has only one owner. We must first ask from what perspective the question is being asked. If the question is whether the LLC has more than one owner for federal gift tax purposes, the answer is clearly "yes." While Section 671 states that all income, deductions and credits of a grantor trust are to be included in computing the grantor's taxable income, it does not classify the entity as not being separate from its owner for any other purpose. Thus, the LLC has only one owner for income tax purposes, but has more than one owner for gift tax purposes. The grantor trust rules do not disregard the trust for all

[23] Zaritsky at Par. 12.07(b).

[24] See Lazarus v. Commissioner.

purposes and thus the trust should not be disregarded for all purposes under Section 7701.

In Rev. Rul. 2004-88, 2004-32 IRB 165 (Aug. 9, 2004), the Service recognized that despite non-recognition of an entity for federal income tax purposes, the entity nonetheless exists for state law purposes and therefore has a meaningful legal impact on the owners' rights and economic interests. In that ruling, the Service stated, "Although the regulations under sections 301.7701-1 through 301.7701-3 provide that a disregarded entity is disregarded for all federal tax purposes, these regulations do not alter state law, which determines a partner's status as a general partner. . . Although LLC is a disregarded entity for federal tax purposes, LLC remains a partner in P and is the sole general partner authorized to bind the partnership under state law."

c. Thus, LLC1 should be treated as having two owners (the grantor and the trust) for gift tax purposes and should not be disregarded as an entity under Section 7701 for gift tax purposes. Therefore, the sale of LLC2 units to LLC1 should not be treated as a sale of LLC2 units to the grantor trust for gift tax purposes and the trust should not be treated as exceeding the 10 to 1 ratio. The sale of LLC2 units to LLC1 should be treated as such, and LLC1's debt-to-equity ratio considered as one of several factors in determining whether the note issued by LLC1 is debt or equity.

d. For the same reasons, if the grantor dies owning units in an LLC that is wholly owned by the grantor and a grantor trust, the LLC will have two owners for estate tax purposes. As a result, valuation discounts may apply in determining the estate tax value of the grantor's LLC units. Moreover, the LLC would not be disregarded for purposes of the basis adjustment under Section 1014 even though basis is an income tax concept, because the basis is adjusted to the "value placed on such property for purposes of the Federal estate tax." Reg. Section 1.1014-1(a). Thus, the basis in the grantor's LLC units will be adjusted to the (discounted) estate tax value of the LLC units.

IV. GRAT/SCIN TECHNIQUE[25]

A. SCIN Concept

1. The note element of an installment note sale to an IDGT can take a variety of forms. The typical structure is an interest only note with a balloon payment at the end of the note term. The fair market value at date of death of the unpaid note is includable in the seller's estate.

2. A fairly popular alternative to the interest only balloon note is a sale for a SCIN. If the installment note contains a bona fide provision canceling the seller's remaining obligation at death and as a result there is no residual value included at death because the obligation to make further payments is extinguished, there is no estate inclusion for the canceled obligation.[26] The estate tax savings could be significant if the seller dies during the early years of the SCIN. Because of the self-cancellation feature, the buyer must pay a premium in order to avoid a gift, either by increasing the price for the property or through a higher interest on the note rather than the AFR.

a. Because of the risk premium, if the seller survives the term of the note, the buyer will have overpaid for the property, negating some or all of the anticipated wealth shift.

b. Thus, a SCIN is generally advisable only where the seller's life expectancy is shorter than the life expectancy in the IRS tables but not so short to preclude the use of the tables.

> _Planning Note_
> The GRAT/SCIN strategy alters the general rule of thumb that the risk premium paid is counter-productive if the seller survives the term because the GRAT will pass the excess to the GRAT remainder beneficiary. The analysis should factor in, however, that there will be some leakage from the dynastic trust

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[25] I attribute much of this concept to Bob Keebler, CPA of Green Bay, Wisconsin.

[26] Estate of John A. Moss, 74 T.C. 1239 (1980) acq. 1981-1C.B.2; Ruby Louis Cain, 37 T.C. 18 (1961); G.C.M.-9503

(unless a GRAT remainder transfer is also used) to the GRAT remainder beneficiary.

B. Illustration

Assume that:

1. The client sells a discountable asset to a dynastic IDGT in exchange for a SCIN.[27]

2. The client (perhaps after the original transaction is old and cold) transfers the SCIN (possibly after a transfer of the SCIN to an LLC[28] taxed as a disregarded entity) into GRATs.

3. Once the planner computes the cash flow from the SCIN, she can then structure the GRAT so that the cash flow from the SCIN can be recycled in payment of the GRAT annuity.

4. With elderly clients, the interest payments will be extremely high, providing an excellent source for making the GRAT annuity payments.

5. If the grantor dies during the GRAT term, the dynastic trust explodes in value and the cancellation feature of the SCIN blocks future payments to the GRAT, resulting in little or nothing being includible in the grantor's estate.

6. If the grantor survives the GRAT term there will be a substantial windfall to the GRAT remainder beneficiaries, reducing the adverse effect of the risk premium due to the seller surviving for a longer period than expected.

C. Many Variations

The GRAT/SCIN combination has many variations. One variation which might be considered is for the dynastic trust (or other grantor trust) to purchase assets from a GRAT in exchange for a SCIN.[29]

D. Multiple Discounting and Leveraging Opportunities

The multiple leveraging factors of this scenario for the "right client" (one who survives the GRAT term, but dies prematurely relative to the IRS tables), include:

1. Valuation adjustment because a discountable asset is sold to the IDGT;

2. Presumptively low "hurdle" rate factored in by the IRS in computing the tables (era of low AFR) for SCIN;

3. Fact that income tax is borne by grantor on assets held by IDGT;

4. Self-cancellation feature of SCIN;

5. Discount on GRAT transfers;

6. Favorable relatively low interest rates factored in computation of GRAT annuity payments;

7. Fact that GRAT income is taxed to grantor; and

8. Fact that after the term the remainder beneficiary is typically an income tax defective trust.

E. Income Tax Consequences at Death

1. The normal rule with regard to the income tax consequences of death with an outstanding SCIN is that death is treated as a disposition resulting in gain or loss to the decedent/seller/transferor.[30] There is, however, some uncertainty as to who is the proper taxpayer, the estate or the decedent.

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[27] Alternatively, an LLC taxed as a disregarded entity, which owns an asset (e.g., shopping center) can sell fractional interests in the asset to IDGTs. The fractional interest discount will be less than what would normally be given for the same percentage interest given an uncontrolling interest in an entity, but I am advised by some in the appraisal community that it is not that much. Non-controlling interests in the LLC would then be transferred to GRATs.

[28] The LLC should contain other assets. The advisor must be careful that the existence of the entity will be recognized.

[29] See Carlyn C. McCaffrey, supra, at ¶ 705.4

[30] IRC § 453B

2. A similar issue arises upon the death of the seller who received an interest only balloon note, or any other installment note and the note is still outstanding. Many commentators believe gain must be recognized.[31]

3. A concept that Prof. Jerry Kasner has suggested is that the transaction can be structured so that income tax can be avoided by having the seller elect out of installment reporting.[32] The taxpayer would report the transaction on his return, explain that under Rev. Rul. 85-13 the gain would not be recognized, that there would be carryover of basis and that the taxpayer elected to opt out of installment reporting. In the normal course of action, for example a sale to a non-defective trust, if the taxpayer elects not to use the installment method, the entire gain would be reported in the year of sale. Nothing further would be reported at death. Because the gain is not recognized by the trust, being a grantor trust, why would future years be affected? It would be reasonable to conclude that each successive year would stand on its own and if an estate owner were to die in year 10, for instance, we would not look back to year 1 to see if gain was recognized in determining the treatment for year 10.

4. Since a SCIN is taxed like an installment note, I can see no reason that the strategy suggested by Professor Kasner should not be equally applicable to a death-terminating installment sale a/k/a a "SCIN."

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[31] See, for example, Covey, Practical Drafting at 4365-4367.

[32] IRC § 453(d); Jerry A. Kasner, *Maybe the Cup is Half Empty – Planning for Premature Death*, Outline (1988).

Exhibit A – Advantages of Short Term GRATs

Table A – Growth Pattern		
Year	% Growth	Value at Year End
1	15%	$1,150,000
2	7%	$1,230,500
3	-10%	$1,107,450
4	-5%	$1052,076
5	6%	$1,115,202
6	10%	$1,226,722

Table B – 6-Year GRAT			
Year	% Growth	Payment to Grantor	Value at Year End
1	15%	$197,000	$953,000
2	7%	$197,000	$822,710
3	-10%	$197,000	$543,439
4	-5%	$197,000	$319,267
5	6%	$197,000	$141,423
6	10%	$197,000	$0

Table C – 3 Successive 2-Year GRATs					
Year	Initial Principal	% Growth	Payment to Grantor	Value of GRAT at Year End	Payment to Remainder Beneficiary
FIRST GRAT	$1,000,000				
1		15%	$537,800	$612,200	
2		7%	$537,800	$117,254	$117,254
SECOND GRAT	$1,113,246				
1		-10%	$598,704	$403,217	
2		-5%	$598,704	$0	$0
THIRD GRAT	$951,825				
1		6%	$511,891	$497,044	
2		10%	$511,891	$34,857	$34,857

Facts: $1 million asset transferred to a 6-year GRAT; AFR 5%

Comparative Results **Table B – 6-Year GRAT** – no wealth shift due to poor performance in years 3 and 4

Table C – 3 Successive 2-Year GRATs – wealth shift of $152,111

Adopted from Carlyn S. McCaffrey, Richard A. Oshins, Noel C. Ice, *Planning with GRATs*, New York University 62nd Institute of Federal Taxation 2004

Exhibit B - Illustration

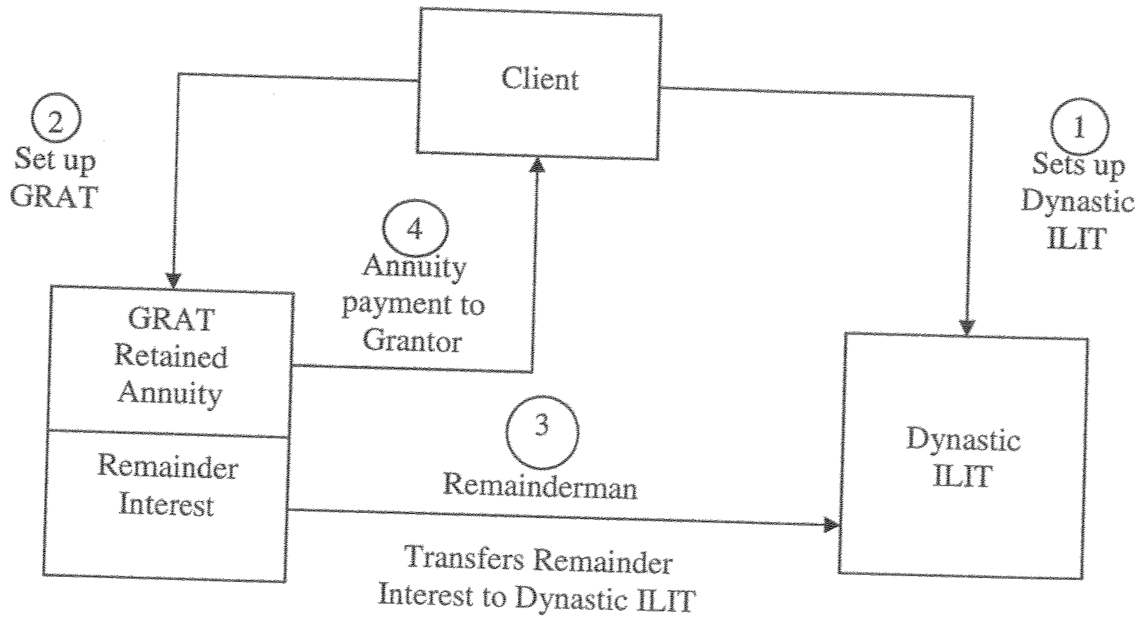

Exhibit C – Level GRAT

Facts:
A typical client owning a business using a level GRAT with a 40% discount, cash flow is 5%, growth is 5%.

Grantor Retained Annuity Trust — 9/12/2005

Type of Calculation:	Term
Transfer Date:	9/2005
§7520 Rate:	5.00%
Grantor's Age(s):	
Income Earned by Trust:	5.00%
Term of Trust:	10
Total Number of Payments:	10
Annual Growth of Principal:	5.00%
Pre-discounted FMV:	$10,000,000
Discounted FMV:	$6,000,000
Percentage Payout:	12.95051%
Exhaustion Method:	IRS
Payment Period:	Annual
Payment Timing:	End
Vary Annuity Payments?	No
Is Transfer To or For the Benefit of a Member of the Transferor's Family?	Yes
Is Interest in Trust Retained by Transferor or Applicable Family Member?	Yes
With Reversion?	No

***** §2702 IS Applicable *****

Base Term Certain Annuity Factor:	7.7217
Frequency Adjustment Factor:	1.0000
Annual Annuity Payout:	$777,030.60
Initial Amount of Payment Per Period:	$777,030.60
Value of Term Certain Annuity Interest	$5,999,997.18
Value of Grantor's Retained Interest:	$5,999,997.18
(1) Taxable Gift (Based on Term Interest):	$2.82

Economic Schedule
Principal value based on Pre-discounted FMV of contributed property

Year	Beginning Principal	5.00% Growth	5.00% Annual Income	Annual Payment	Remainder
1	$10,000,000.00	$500,000.00	$512,500.00	$777,030.60	$10,235,469.40
2	$10,235,469.40	$511,773.47	$524,567.81	$777,030.60	$10,494,780.08
3	$10,494,780.08	$524,739.00	$537,857.48	$777,030.60	$10,780,345.96
4	$10,780,345.96	$539,017.30	$552,492.73	$777,030.60	$11,094,825.39
5	$11,094,825.39	$554,741.27	$568,609.80	$777,030.60	$11,441,145.86
6	$11,441,145.86	$572,057.29	$586,358.73	$777,030.60	$11,822,531.28
7	$11,822,531.28	$591,126.56	$605,904.73	$777,030.60	$12,242,531.97
8	$12,242,531.97	$612,126.60	$627,429.76	$777,030.60	$12,705,057.73
9	$12,705,057.73	$635,252.89	$651,134.21	$777,030.60	$13,214,414.23
10	$13,214,414.23	$660,720.71	$677,238.73	$777,030.60	$13,775,343.07
Summary	$10,000,000.00	$5,701,555.09	$5,844,093.98	$7,770,306.00	$13,775,343.07

Exhibit D – Graduated GRAT

Facts: A typical client owning a business using a graduated GRAT with a 40% discount, cash flow is 5%, growth is 5%.

Grantor Retained Annuity Trust 9/12/2005

Type of Calculation:	Term
Transfer Date:	9/2005
§7520 Rate:	5.00%
Grantor's Age(s):	
Income Earned by Trust:	5.00%
Term of Trust:	10
Total Number of Payments:	10
Annual Growth of Principal:	5.00%
Pre-discounted FMV:	$10,000,000
Discounted FMV:	$6,000,000
Percentage Payout:	5.35492%
Exhaustion Method:	IRS
Payment Period:	Annual
Payment Timing:	End
Vary Annuity Payments?	Yes
Is Transfer To or For the Benefit of a Member of the Transferor's Family?	Yes
Is Interest in Trust Retained by Transferor or Applicable Family Member?	Yes
With Reversion?	No

***** §2702 IS Applicable *****

Base Term Certain Annuity Factor:	18.6744
Frequency Adjustment Factor:	1.0000
Annual Annuity Payout:	$321,295.20
Initial Amount of Payment Per Period:	$321,295.20
Annual Annuity Payment Growth:	20.00%
Value of Term Certain Annuity Interest	$5,999,995.08
Value of Grantor's Retained Interest:	$5,999,995.08
(1) Taxable Gift (Based on Term Interest):	$4.92

Economic Schedule
Principal value based on Pre-discounted FMV of contributed property

Year	Beginning Principal	5.00% Growth	5.00% Annual Income	Annual Payment	Remainder
1	$10,000,000.00	$500,000.00	$512,500.00	$321,295.20	$10,691,204.80
2	$10,691,204.80	$534,560.24	$547,924.25	$385,554.24	$11,388,135.05
3	$11,388,135.05	$569,406.75	$583,641.92	$462,665.09	$12,078,518.63
4	$12,078,518.63	$603,925.93	$619,024.08	$555,198.11	$12,746,270.53
5	$12,746,270.53	$637,313.53	$653,246.36	$666,237.73	$13,370,592.69
6	$13,370,592.69	$668,529.63	$685,242.88	$799,485.27	$13,924,879.93
7	$13,924,879.93	$696,244.00	$713,650.10	$959,382.33	$14,375,391.70
8	$14,375,391.70	$718,769.59	$736,738.82	$1,151,258.79	$14,679,641.32
9	$14,679,641.32	$733,982.07	$752,331.62	$1,381,510.55	$14,784,444.46
10	$14,784,444.46	$739,222.22	$757,702.78	$1,657,812.66	$14,623,556.80
Summary	$10,000,000.00	$6,401,953.96	$6,562,002.81	$8,340,399.97	$14,623,556.80

Exhibit E – Disregarded Entity

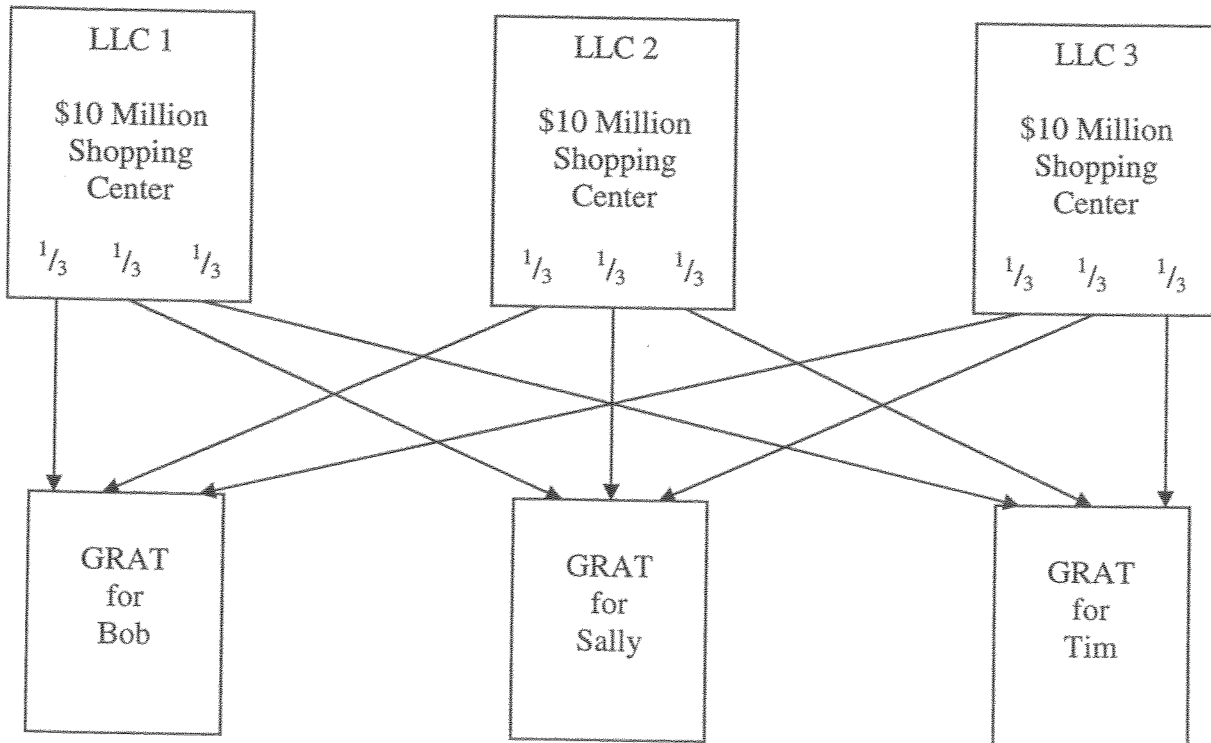

Exhibit F
"Double LLC Strategy"