

2024

**Advanced
Sales Forum**

Navigating the Changing Tides

**Best Planning Ideas
for the Twilight of
Higher Exemptions**



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Disclaimer and Thanks

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Opinions: Any opinions expressed in this presentation are opinions of the author (not a divine being). Opinions of other reasonable professionals may vary.

Thanks: Thank you for inviting me today.

Thanks to Chat GPT for assistance with my graphs!

And, of course thanks to Congress and the IRS for always giving me material!

Agenda

- Past Performance is not Indicative of Future Results
Where we've been and where we're going
- Common Thread of Best Planning Ideas
- What Causes Best Planning Ideas to Fall Apart?
- Some Client Examples
- Questions and Answers



1994

Gift Tax Annual Exclusion = \$10,000

Unified Credit = \$600,000

Graduated Estate Tax; Top Rate = 55%

No Portability



2024

Gift Tax Annual Exclusion = \$18,000 (▲80%)

Basic Exclusion Amount = \$13.61M
(▲2168.33%)

Top Estate Tax Rate = 40% (▼27.27%)

Portability of Lifetime Exemption (But Not
GSTT Exemption)



January 1, 2025

Annual Exclusion Amount = ? (Still Indexed)

Lifetime Exemption = \$5.0 (Indexed - \$6.5-\$7.0M)

GSTT Exemption = \$5.0 (Indexed - \$6.5 - \$7M)

Lifetime Exemption = Portable

GSTT Exemption = Not Portable

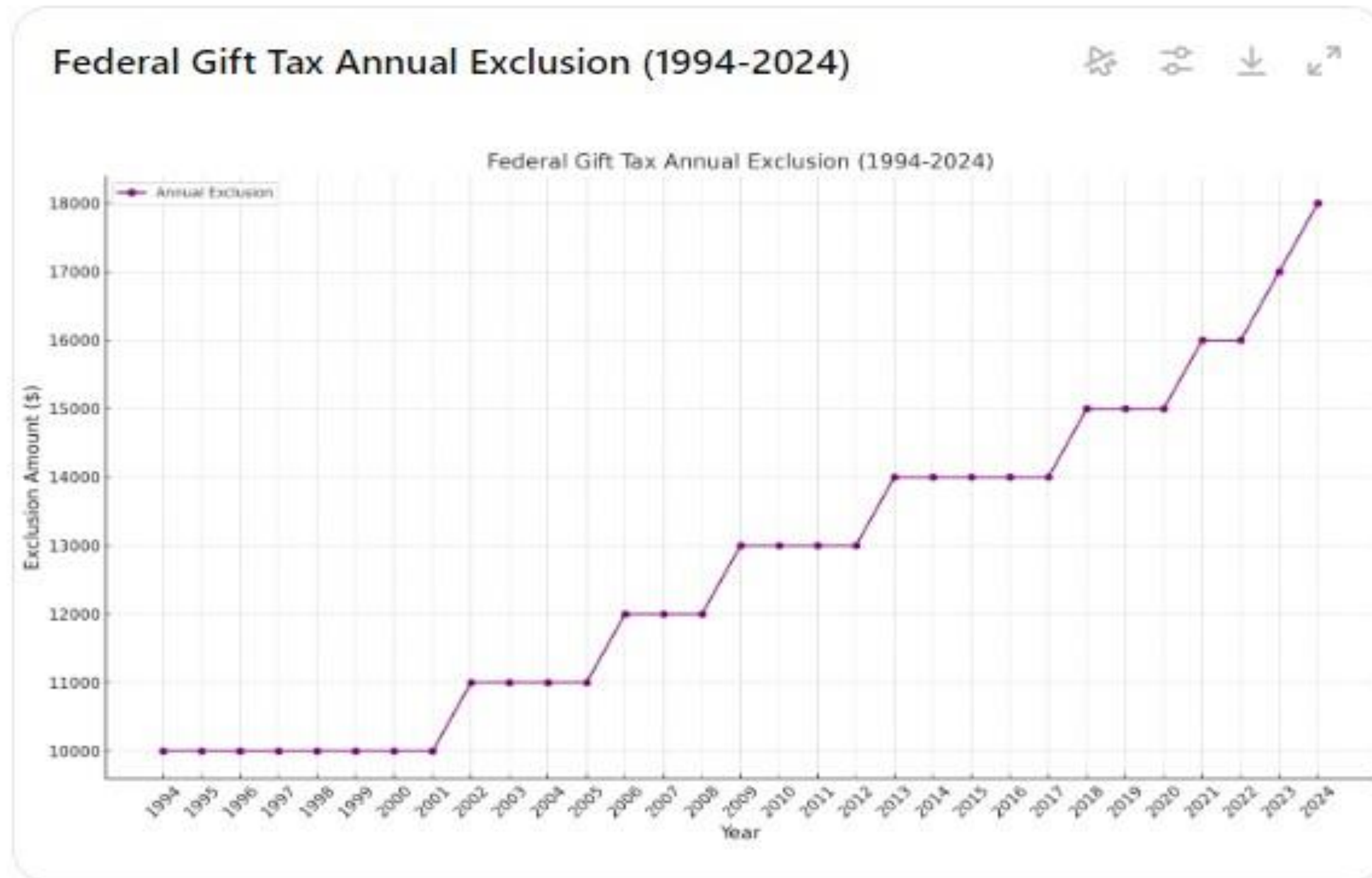
Tax Rate = 45%



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Past Performance is not Indicative of Future Results



Past Performance is Not Indicative of Future Results

Question: Who was the President when the current Estate/Gift/GST Rules were put into effect?



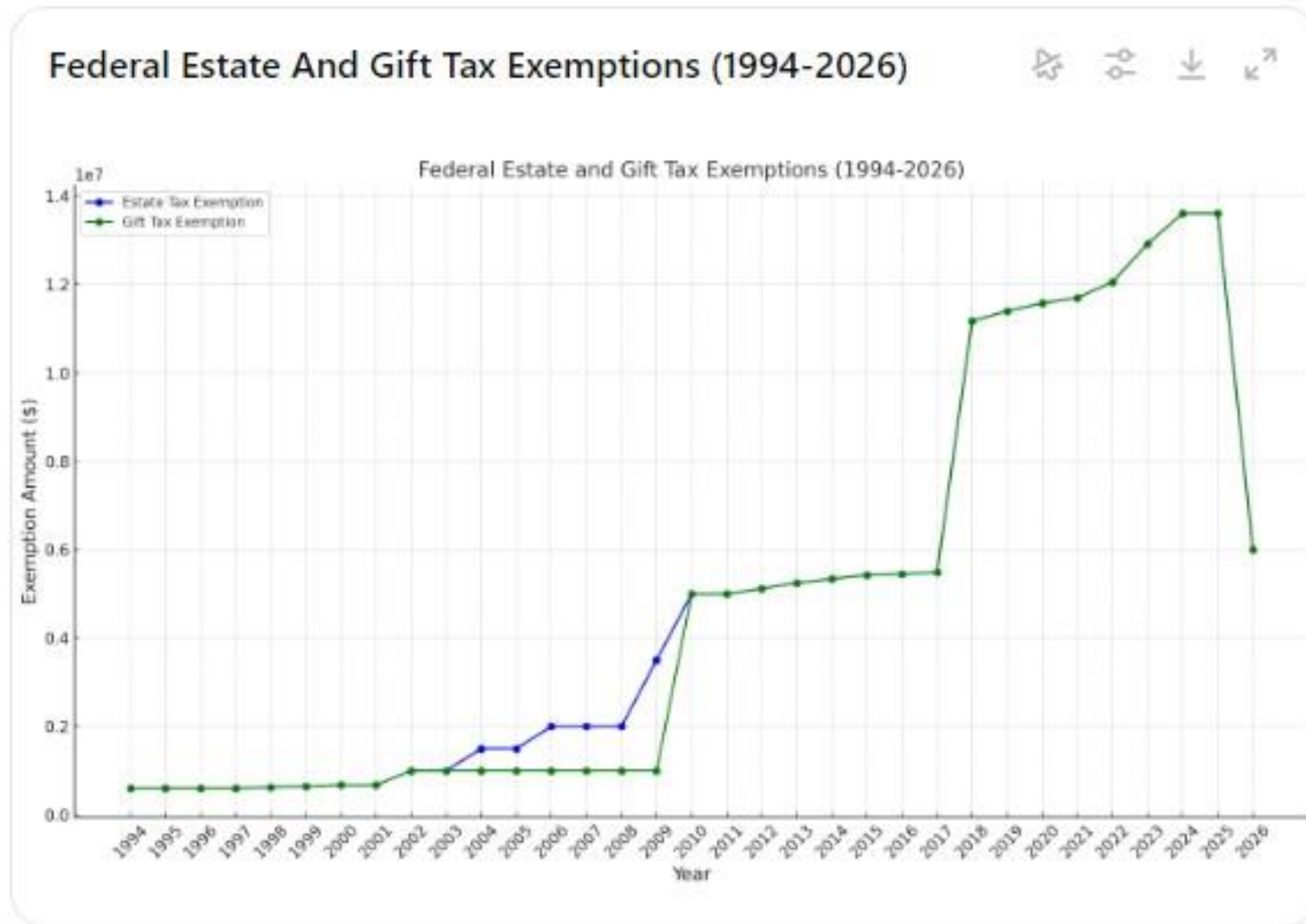
Past Performance is Not Indicative of Future Results

Question: Who was the President when the current Estate/Gift/GST Rules were put into effect?

Donald Trump
The Tax Cuts and Jobs
Act (TCJA) of 2017



Past Performance is not Indicative of Future Results



Past Performance is Not Indicative of Future Results

Question: Why will the Gift Tax Annual Exclusion continue to increase while the Estate/Gift/GST Exemptions will fall?



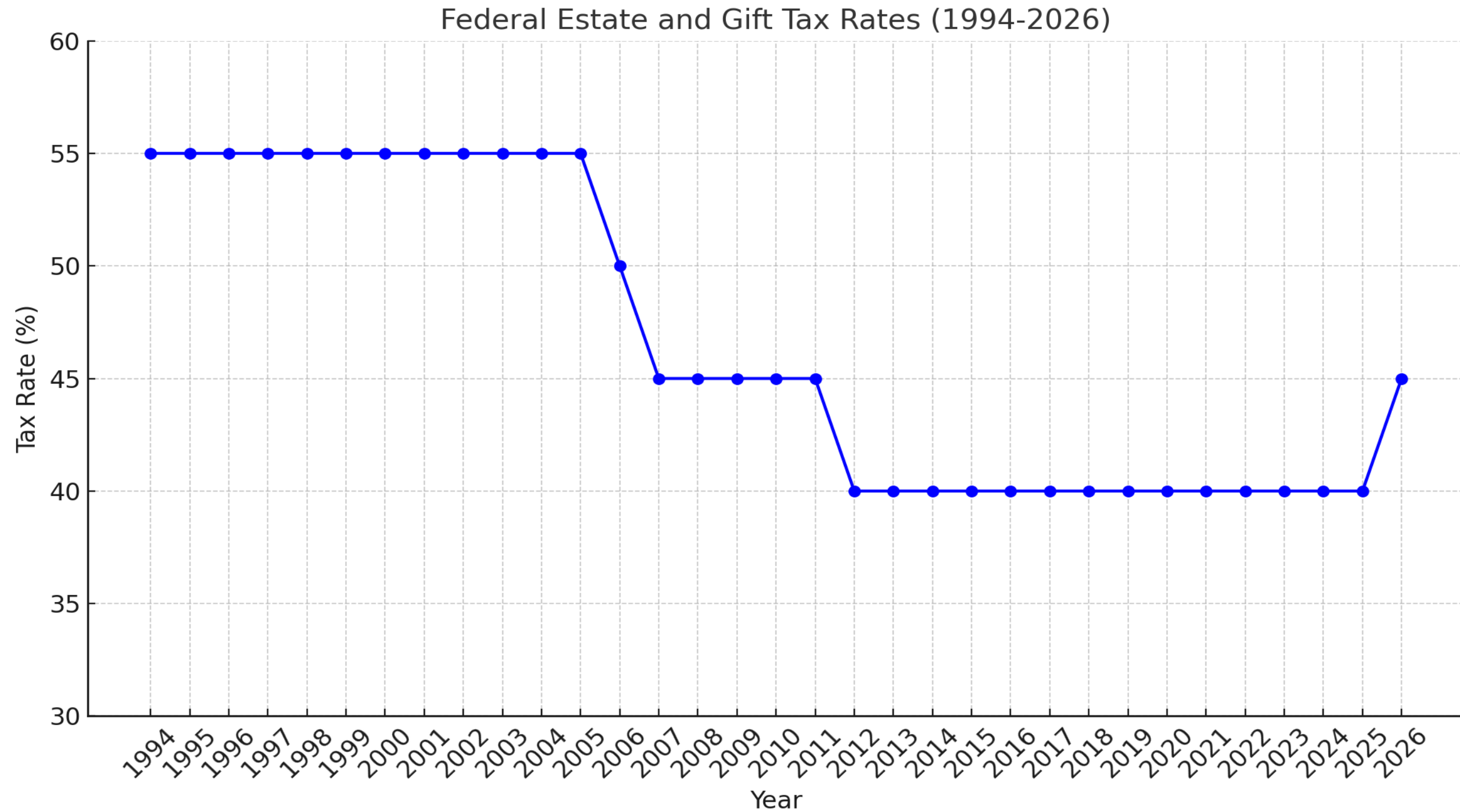
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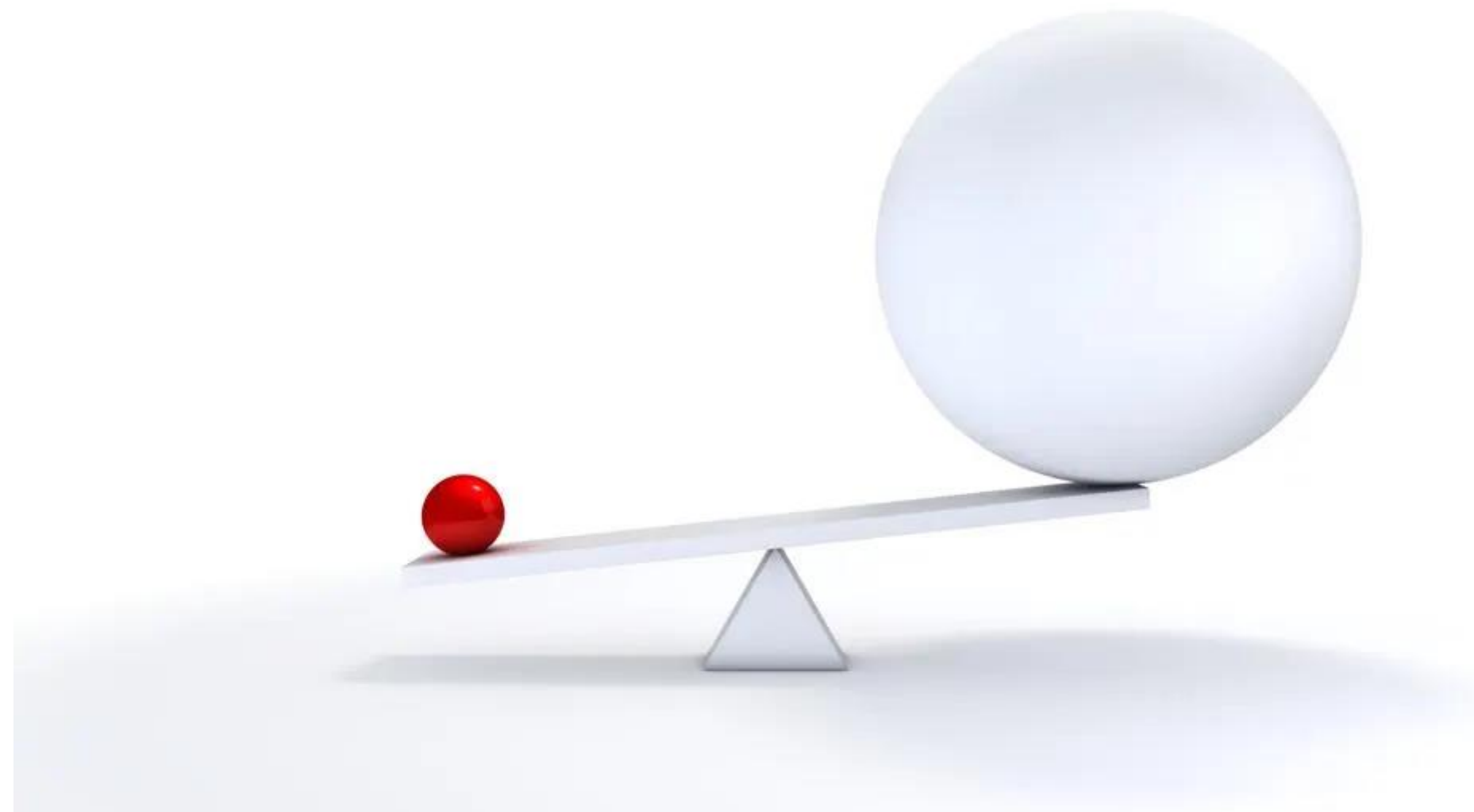
The Byrd Rule



Past Performance is not Indicative of Future Results



What Do All the Best Planning Ideas Have in Common?



Leverage

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Client Favorites in the Toolkit

- Irrevocable Trusts
 - Spousal Lifetime Access Trusts (SLATs)
 - Irrevocable Gifting Trusts for Children and Grandchildren (IGTs)
 - Irrevocable Life Insurance Trusts (ILITs)
 - Intentionally Defective Irrevocable Trusts or “Irrevocable Grantor Trusts”

Client Favorites in the Toolkit

- Gifts of Family Entities
 - Equity in Family Business
 - Family Limited Partnerships/Limited Liability Companies (FLLC)
- IRC §2503(e) Tuition Payments and Medical Expense Payments

Best Planning Ideas Create Leverage:

Question: Of the tools on the prior slides, which are most likely to create leverage?

- Spousal Lifetime Access Trusts (SLATs)
- Irrevocable Gifting Trusts for Children and Grandchildren (IGTs)
- Irrevocable Life Insurance Trusts (ILITs)
- Intentionally Defective Irrevocable Trusts or “Irrevocable Grantor Trusts”
- Gifts of Family Entities (Business, FLLC)
- IRC §2503(e) Tuition Payments and Medical Expense Payments

What Causes Best Planning Ideas to Fall Apart?

- Good Intention + Bad Planning/Judgment
- Good Intention + Mistakes of Law
- Good Intention + Failure to Act
 - We'll concentrate on #2 first
 - Review some client examples of #1, then
 - Talk about #3

Let's Consider the SLAT...

- Irrevocable Trust
- Spouse #1 is the Grantor
- Spouse #2 is the Trustee
- “Lifetime Beneficiaries” are typically Spouse #2 and Descendants
- Typically funded using (a) gift tax annual exclusion gifts, and (b) lifetime exclusion
- Sometimes GSTT Exemption is allocated, if it is structured as a Dynasty Trust

What could Possibly Go Wrong????

- Reciprocal Trusts
- Annual Exclusion Issues
- GSTT Issues
- Source of Assets
- Type of Assets
- Unanticipated Events (death of spouse, divorce)



Evading Common Traps: Reciprocal Trusts

Reciprocal Gifts – Estate of Grace (1969) – Dies the arrangement, to the extent of mutual value, leave the Settlers in approximately the same economic position as if they had created their own trusts, naming themselves as beneficiaries.

Common Tools to make SLATs “non-reciprocal”:

- Special Powers of Attorney
- Family Trust vs. “Marital Trust” after Grantor’s death
- Mandatory distributions of income vs. Discretionary
- Created at different times?

Evading Common Traps: Gift Tax Annual Exclusion Issues

- Present Interest vs. Future Interest
- Unrestricted right to immediate use, possession, or enjoyment of the property or its income.
 - Note this frequently arises as FLLC issue
- Withdrawal rights in irrevocable trusts (aka *Crummey* powers) are granted to convert what would otherwise be a gift of a future interest into a gift of a present interest.
- Rev. Rul. 81-7 – if immediate right to possession or enjoyment is postponed – no annual exclusion.
- **Questions about the annual exclusion**

Gift Tax Annual Exclusion Questions:

- Are *Crummey* Notices required to qualify for the Annual Exclusion?
- Who can one “count” in determining how many annual exclusions are available?
- If a gift to the Trust qualifies for the Gift Tax Annual Exclusion, will it also qualify for the GSTT Annual Exclusion?
- How long must the beneficiary have the right to withdraw for a withdrawal power to be valid?
- In a single life irrevocable trust, may a spouse have a *Crummey* withdrawal right?

Gift Tax Annual Exclusion Questions:

- Are *Crummey* Notices required to qualify for the Annual Exclusion?
- No. *Crummey* notices provide written proof that the beneficiary knew about the right to withdraw, but are not required.
 - *Estate of Holland v Commissioner*, TCM 1997-32 (verbal notice ok)
 - Beneficiaries = minors; Trustee = Parent who didn't give notice to herself (Facts and circumstances proved actual notice), PLR 9030005; *Estate of Holland*.
 - Could utilize a Trust Protector or other adult to serve as recipient on behalf of minor.
 - Single Notice covering annual gifts to ILITs approved in multiple PLRs;
- Trustee payment of ILIT premiums directly to carrier still qualified for annual exclusion because ILIT had sufficient assets to satisfy withdrawal rights.

Gift Tax Annual Exclusion Questions:

- Who can one “count” in determining how many annual exclusions are available?
 - **Beneficiaries with a vested or contingent interest.**
 - No “naked powerholders”.
 - No “pay it forward” beneficiaries
 - More beneficiaries = more chance a beneficiary will exercise his/her/their withdrawal right as it must not be illusory
 - If the trust agreement provides that a beneficiary has a withdrawal right, written notice to the Trustee is required to restrict the withdrawal right.
 - The “push down” to later generations
 - When a beneficiary is in difficult situation

Gift Tax Annual Exclusion Questions:

- If a gift to the trust qualifies for the Gift Tax Annual Exclusion, will it also qualify for the GSTT Exclusion?
- **Probably not. The GSTT Exclusion is only available for “direct skip” gifts (to a skip person or a trust in which all the beneficiaries are skip persons that meets certain other requirements).**
- GSTT exemption must be allocated to the trust on a 709.
- There are automatic allocation rules, but does the donor want to rely on them?
- Late allocations come with a cost
- But must be careful not to “waste” GSTT Exemption if there are bigger fish in the future

Gift Tax Annual Exclusion Questions:

- How long must the beneficiary have the right to withdraw for a withdrawal power to be valid?
- **Unknown 30 days = safe, 15 days = risky, but approved, 3 days = no**
- May a spouse have a withdrawal right?
 - Technically, yes, but probably should not, especially if the trust is generation skipping.
 - PLR 200616022 – Nondonor spouse's interest must be severable and ascertainable from gifts to other beneficiaries.
 - If spouse is beneficiary funding should come from Grantor's sole and separate property.

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Evading Common Traps: Source of Funding

- If a Grantor is also a beneficiary of an irrevocable trust, it is includable in his/her gross estate under IRC 2036/2038
- If a Grantor's spouse is a beneficiary of a SLAT or an ILIT, must avoid having spouse deemed a transferor to the Trust.
 - Funding for the SLAT must come from Grantor spouse's separate property.
 - In community property states, there are multiple steps that must be taken to sever the tenancy
 - Another reason to avoid spousal withdrawal powers.

Sometimes, there's no fix for bad planning

- Jo, a widow, died in March of 2023. Her daughter, Kim, was the Trustee of her Trust. Kim gave me a copy of the Trust entitled: “Second Amendment to and Complete Restatement of the Josephine Smith Revocable Trust dated March 24, 1983, executed on December 6, 2011”
- Kim indicated Jo amended her trust several times after that, but Kim didn't have the amendments. She would have her Mom's lawyer send them to me
- She said she and her sister-in-law (wife of her deceased brother were the only beneficiaries of the trust).
- She indicated that the Trust held real estate, investments and was going to get some life insurance for a total value of approximately \$11.4M.
- She said Jo gave annual exclusion gifts every year, but didn't make any big gifts.

Sometimes, there's no fix for bad planning

Red Flag #1 – The decedent's attorney sent me the following documents:

- The “First Amendment to First Restatement of Josephine Smith Revocable Trust” executed by the Grantor on November 8, 2016;
- The “First Amendment of the Josephine Smith Restated Trust” executed by the Grantor on March 14, 2019;
- The “Second Amendment of the Josephine Smith Restated Trust” executed by the Grantor on April 9, 2019

Sometimes, there's no fix for bad planning

Red Flag #2 – The decedent's attorney also sent me a gift tax return showing that Jo gifted approximately \$600K to each of her children several years before

- She made outright gifts to each child
- She had purchased the original Apple stock in 1982
- Her broker, an experienced advisor with a very large wire house, assisted with the transaction.
- I was told that was the only gift tax return although she made “gifts to the grandchildren and great grandchildren every year, but they were “below the limit”

Sometimes, there's no fix for bad planning

Red Flag #3 – The decedent had been transferring money every year into “accounts” and “annuities” for the Grandchildren.

- There were two TODs for Grandchildren with \$300k of Apple stock;
- She purchased separate annuities for grandchildren, she was the owner, the grandchild was the annuitant and beneficiary
- Some of the grandchildren were minors when she died – conservatorship
- The “accounts” were custodial accounts. She was the custodian
- The trust paid estate tax of \$800k in June 2024

Look Before you Leap!

Charlie and Delilah have been my clients since 2019. They are in their 50s with 3 children (ages 18 – 25). Charlie is a C-suite executive in a large closely held company that sold to an ESOP shortly before I met them. As part of the transaction with the ESOP, the executive team got various warrants that currently have very low value due to the note from the ESOP transaction. When note is paid, they will skyrocket in value.

2020 - Update basic estate planning documents

2021 – Establish ILIT with \$12M second-to-die funded with Annual Exclusion Gifts (premium just under \$90k); Establish Charlie's SLAT with Delilah as Trustee; Gifted warrants to Charlie's SLAT

Look Before you Leap!

2022 – Established Delilah's SLAT. Gifted Warrants.

2023 – Charlie gifted more warrants. Intra-family loans to other family members (not children).

2024 – Charlie and Delilah have committed to gifting both their Lifetime Exclusions before end of 2025. (+/- \$12M combined).

Current Estate: +/- \$80M

Projected Estate at Mortality +/- \$315M

Look Before you Leap!

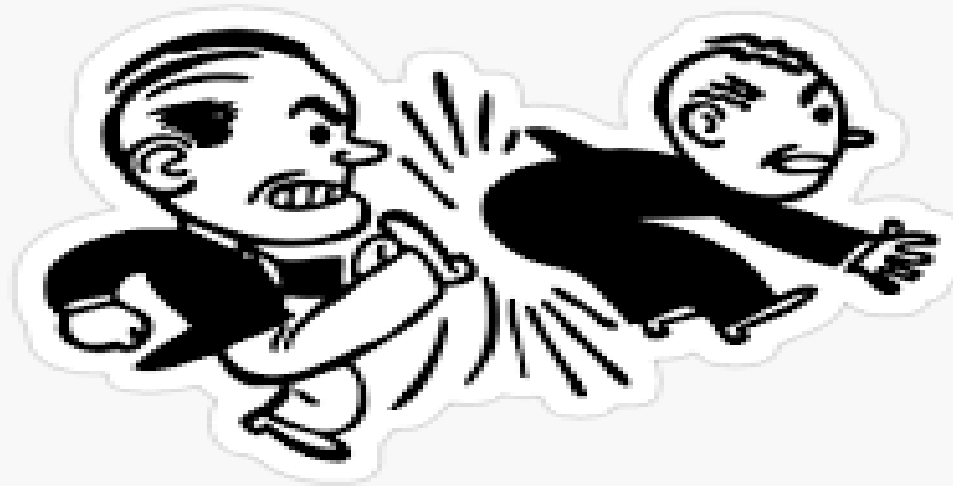
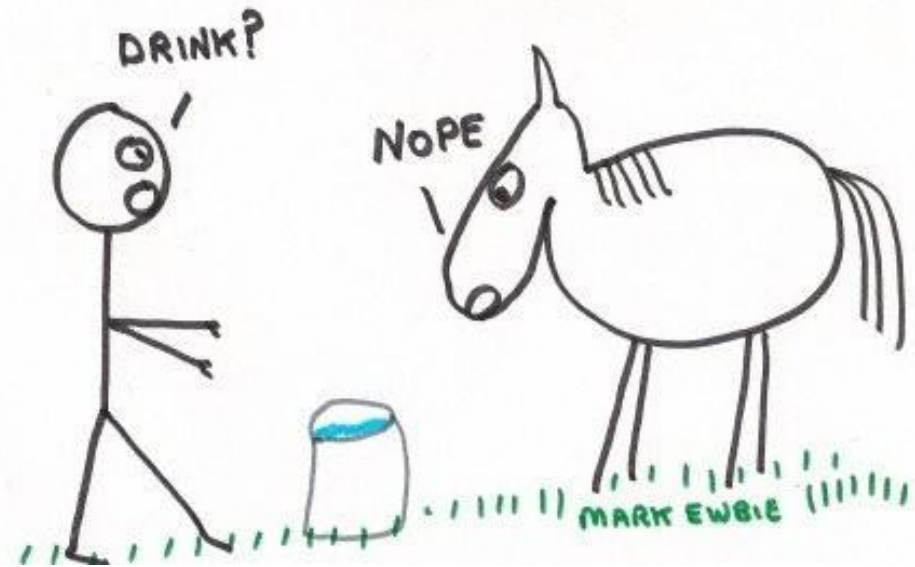
Financial Advisor recommends additional life insurance in the ILIT bringing total coverage to \$40M; Combined premium \$315k/year;

He also recommended transferring an investment account worth approximately \$9.5M to “the SLAT”

Charlie and Delilah have a number of private equity investments that he thinks will appreciate exponentially.

What would you recommend?

Prompting Clients to Take the Next Step



Thank You



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