

Tax Driven Estate Planning (2011 New Tax Laws)

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Do I Have Enough Assets to Worry About Estate Taxes?

The following are included in the determination of estate value for tax purposes:

- Value of house and other property, cars, boats, other vehicles, stocks/bonds and other securities, art or jewelry
- IRA's, retirement benefits, 401(k) plans
- Insurance you own on your life (even though it will pay someone else at your death)
- Beneficial ownership of a trust which grants Power of Appointment
- General Power of Attorney granted to you over someone else's assets
- Gifts made within 3 years of the date of death

Factors Which Affect Tax Planning

High growth? High Risk?

- Family Business
 - Likelihood of Merger or Buyout by Others?
- Stocks
 - Start-Up/IPO Stocks vs. Mutual Funds?
- Real Estate
 - Significant Discounts Through Family Investment Entities
 - Capital Gain Distribution Planning

Foreign Assets? (Note: FBAR filing issues)

Family Centered vs. Tax Plan Centered

Factors to consider:

- Long Term vs. Short-Term Investment Assets
- Likelihood of Younger Generation to Take Over Family Business
- Fluctuation in Values
- Health Conditions
- Family Relationships (Husband/Wife; Children; In-Laws)



Federal Gift and Estate Tax (Old vs. New)

- Old law which was set to be effective 1/1/2011
 - \$1M per person for estate and gift tax exemption, including lifetime gifts
- New law 1/1/2011
 - \$5M per person for gifts either during lifetime or at death.
(Effective for 2 years or until congress changes the law)
- Old Law: When assets are above taxable threshold; estate tax rates range from 37% to 55% based upon total estate
- New Law 1/1/2011: When assets are above taxable threshold; estate tax rates range from 35% to 45% based upon total estate value

State Estate Taxes

WA Estates above \$2M are subject to WA estate taxes of between 10% - 19% based on a progressive calculation formula.

(In addition to the applicable federal estate taxes)

State Estate Taxes

If Washington Taxable Estate Is*		The Amount of Tax Equals		Of Washington Taxable Estate Value Greater Than
At Least	But Less Than	Initial Tax Amount	Plus Tax Rate %	
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	17.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$890,000	18.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,070,000	18.50%	\$7,000,000
Above \$9,000,000		\$1,440,000	19.00%	Above \$9,000,000

*Under this definition the applicable exemption has already been subtracted from the value of the estate.

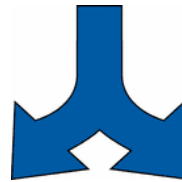
Federal vs. State Estate Taxes

- Continue to monitor the changing federal vs. state estate tax exemptions.
- Watch for pitfalls-certain gifting/distribution may be exempt under federal or state laws and not the other.

Traditional Tax Planning 101

Marital Deduction Planning

Estate of 1st Deceased Spouse



**Credit Shelter
Trust**

**Outright to
Spouse or in
Marital Trust**

Upon death of
Surviving spouse



Children Tax Free

Upon death of
Surviving spouse



**Up to the credit
exemption to Children
Tax Free**

Estate Tax Planning with Credit Shelter

(Preserving Exemption of 1st Deceased Spouse)

Total Assets of the Couple: \$4,000,000* (WA Exemption of \$2M)

Upon the Husband's Death

H's assets → Trust

\$2,000,000 Tax Free

(Using Exemption Amount)

Upon the Wife's Death

W's assets → Kids

\$2,000,000 Kids Tax Free

(Sheltered by Exemption Amount)

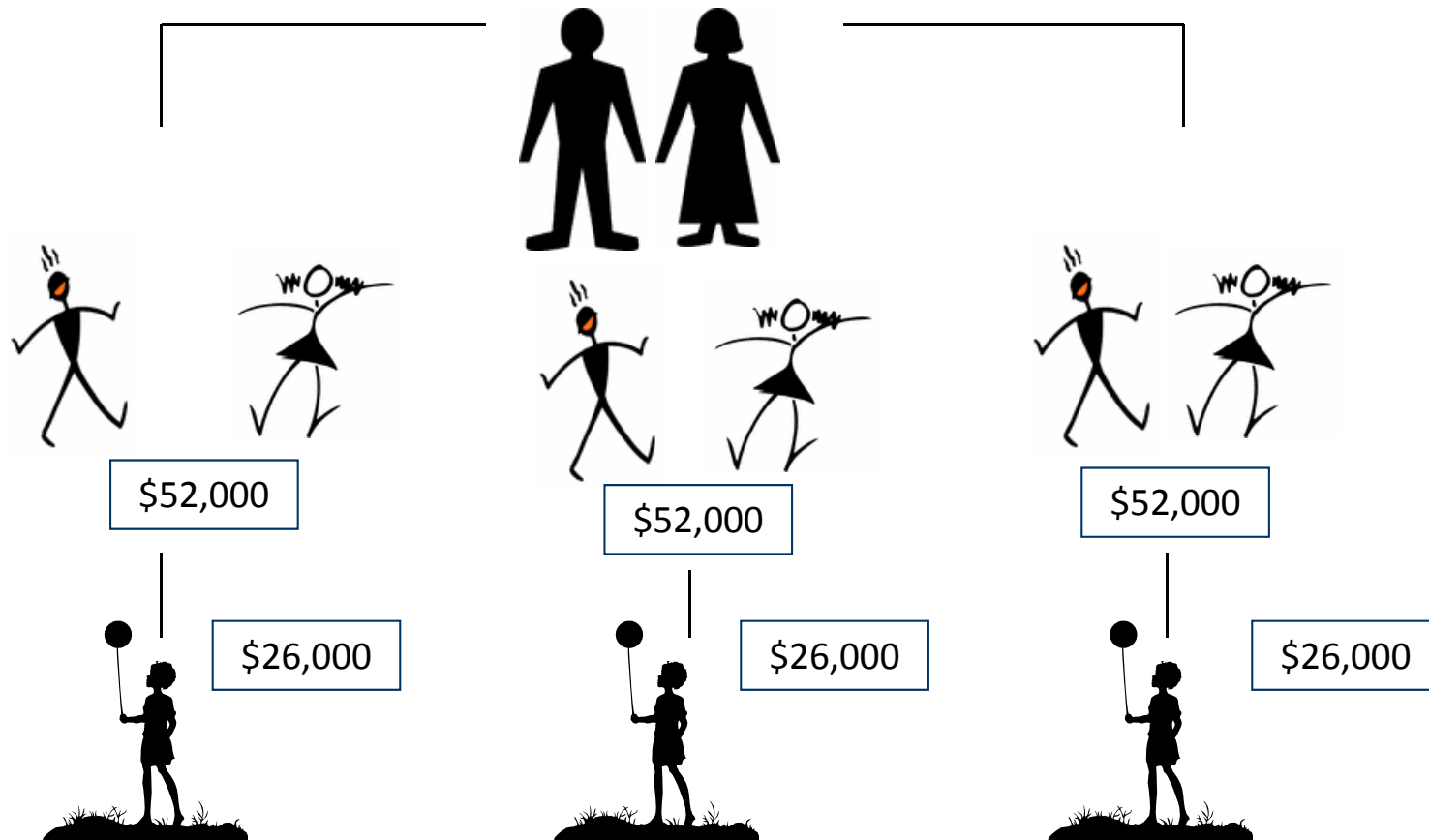
H's Trust assets → Kids

\$2,000,000 (plus all growth since H's death)
Tax Free

Gifts During Life

- Annual Exclusion
 - \$13,000 per donor per donee (current law)
 - Not counted as part of lifetime exemption
 - Use it or lose it by 12/31

Annual Exclusion Gifts



Total Amount of
Tax Free Gifts:
\$234,000 per year

Gifts During Life

- Lifetime Exemption: Currently \$5M
 - Suggestion under New Tax Law: IF gifts are made during the next 2 years up to \$5M and the tax law changes back to \$1M or another amount, the IRS is unlikely to retroactively require additional taxes to be paid*
 - Transfer via gift while fair market value is low
 - Increase (or decrease) in value of gifts between time of gift and death of donor is NOT added or subtracted from exemption used
 - Amount of Exemption NOT used during life may be used at death (unless the law changes)

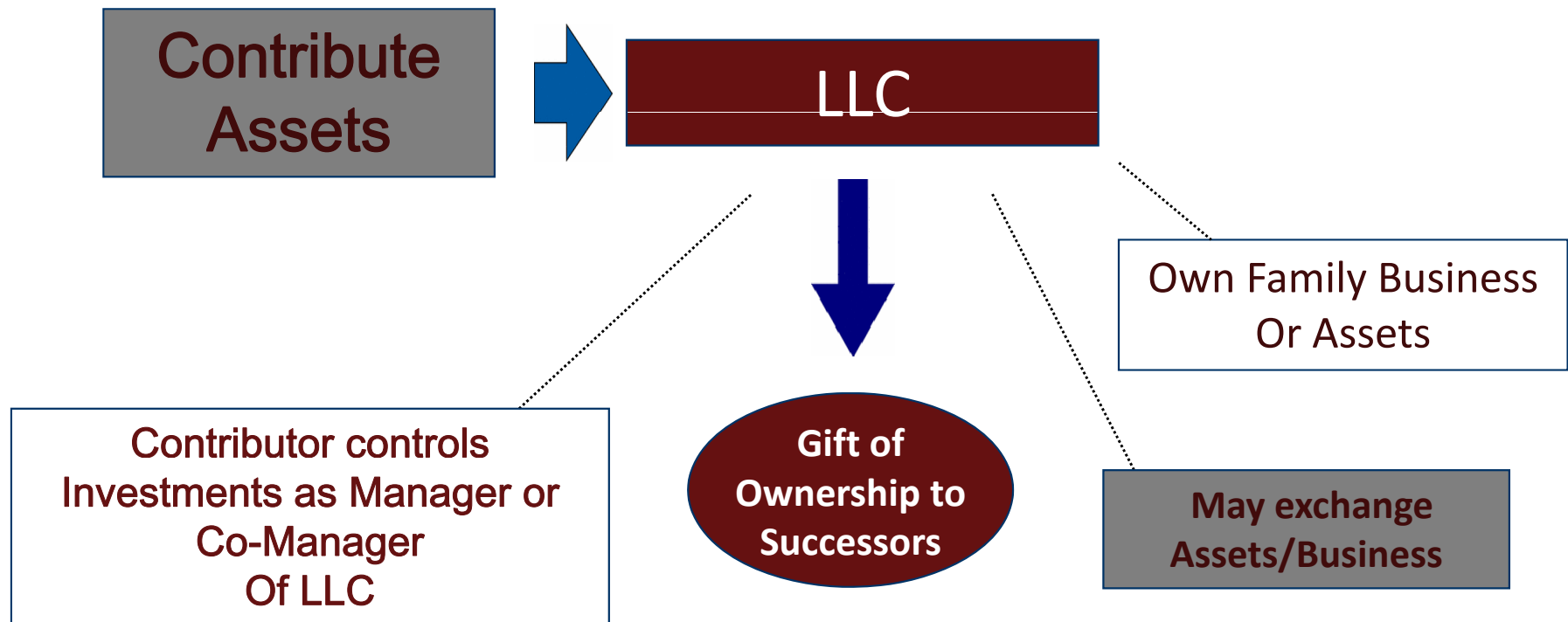
Advanced Tax Driven Techniques Based on Gifting

- Transfer of Partial Interests
 - Gift entitled to discount for lack of control/lack of marketability
- Transfer increase of value
- Use of Irrevocable Trust and/or LLC's (family-entities)
- IDIT/QPRT/GRAT/Children's Trust
- CRT's and Gifting to Non-Profit Organizations Outright

Family Investment Entities (FLPs and FLLCs)

- High Growth & High Risk Assets
 - Asset Segregation / Protection;
 - Centralized management vehicle
- Valuation Discounts generally available.
 - Minority control
 - Lack of marketability
 - Real Estate valuations
- Ability to shift income to family members with lower tax bracket

Operation Of Family Owned Entity



IDITs and Other Irrevocable Trusts

- Intentionally Defective Irrevocable Trust
 - Taxable to Grantor (no separate tax ID)
 - Assets out of Grantor's estate for gifting purposes
 - Managed by Trustee who may be Grantor
 - Used to shift anticipated growth of estate to next generation without losing control
- Irrevocable Trust
 - Income NOT Taxable to Grantor; Taxed to Trust (separate tax ID)
 - All other features are the same as IDIT

Additional Federal Gift and Estate Tax Law Changes

- Executors of a deceased spouse may also transfer the unused exemption to a surviving spouse.
 - May review the necessity of a credit shelter trust and/or change language to accommodate new law
- Step up in basis to date of death value reinstated

Capital Gains Tax Rate

- Long Term Capital Gains Tax Rate (applied to the sale of assets) kept at 15% as adopted in 2001 (for the next 2 years)
 - Have two more years to consider the possible sale of low basis property or assets to successors of family business

Vivien K. Chang

- Ms. Chang's practice focuses primarily on estate planning, probate, and business law. She has extensive experience working with a wide range of clients from complex and high net-worth individuals, to young families with emphasis on protection of children and anticipated growth of family assets. She assists clients in the set-up of family trusts, credit shelter trusts, family limited partnerships/limited liability companies, foundations, charitable remainder trusts, family business succession planning, community property agreements, wills, powers of attorney, and health care directives. Her probate experience includes working with judicial and non-judicial administration of estates of small to large taxable estates, post-mortem tax planning, tax filings, and funding of testamentary trusts.
- Ms. Chang also practices in the areas of corporate and business law, including incorporation, buy/sell of businesses, and corporate maintenance. Ms. Chang is a frequent speaker for financial institutions and for continuing education courses on the topics of estate planning, business succession, and complex trust set-up and administrations.

Disclaimer

*This information is provided for reference only and each individual should seek specific advice from an attorney relating to his or her own circumstances. This presentation represents the point of view and interpretation of current law by Chang Law Group PC.