



NORTHERN
TRUST

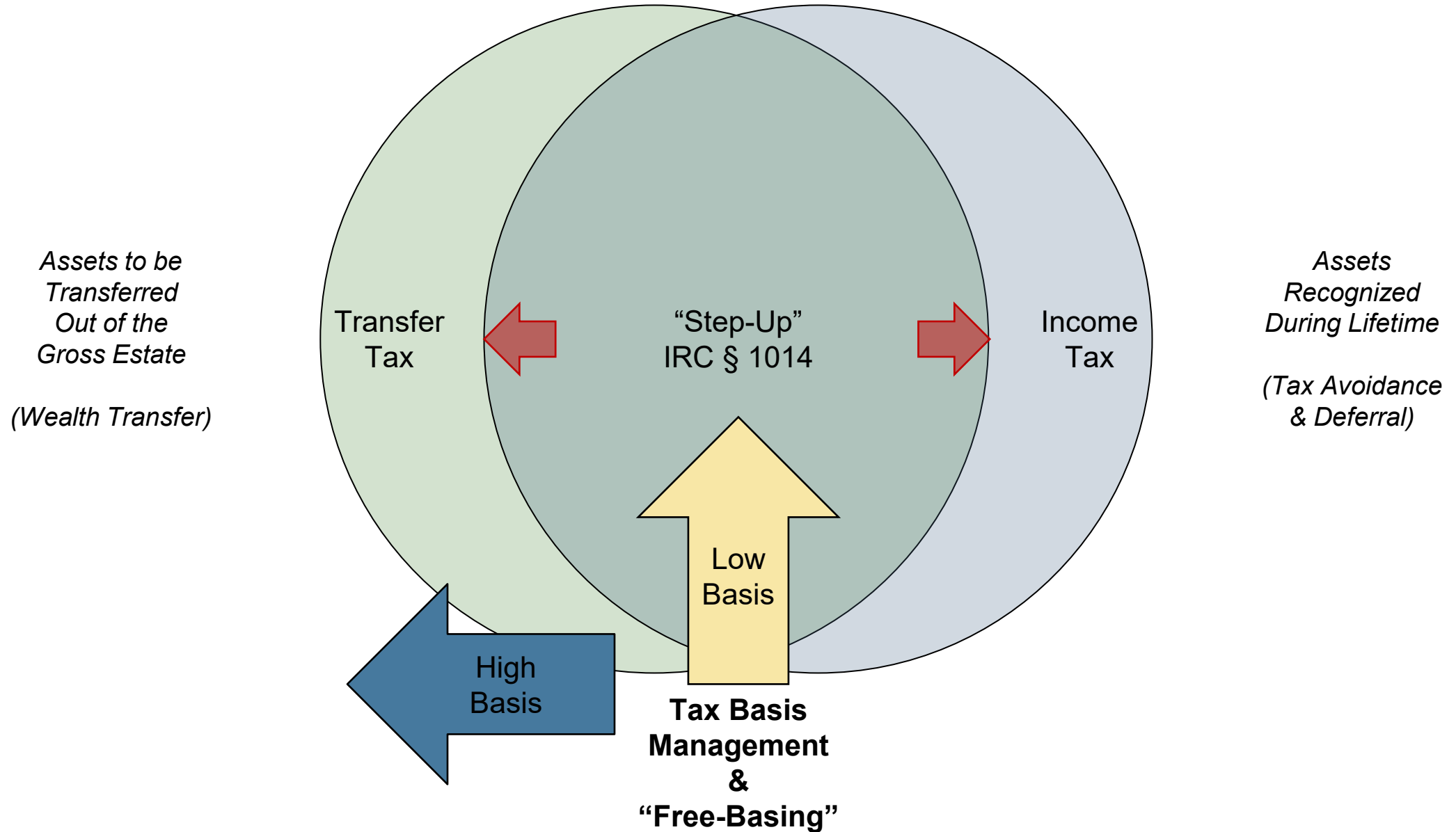
Top Tax & Estate Planning Techniques Today

*(Finding Gems in the Ashes of
the Dumpster Fire)*

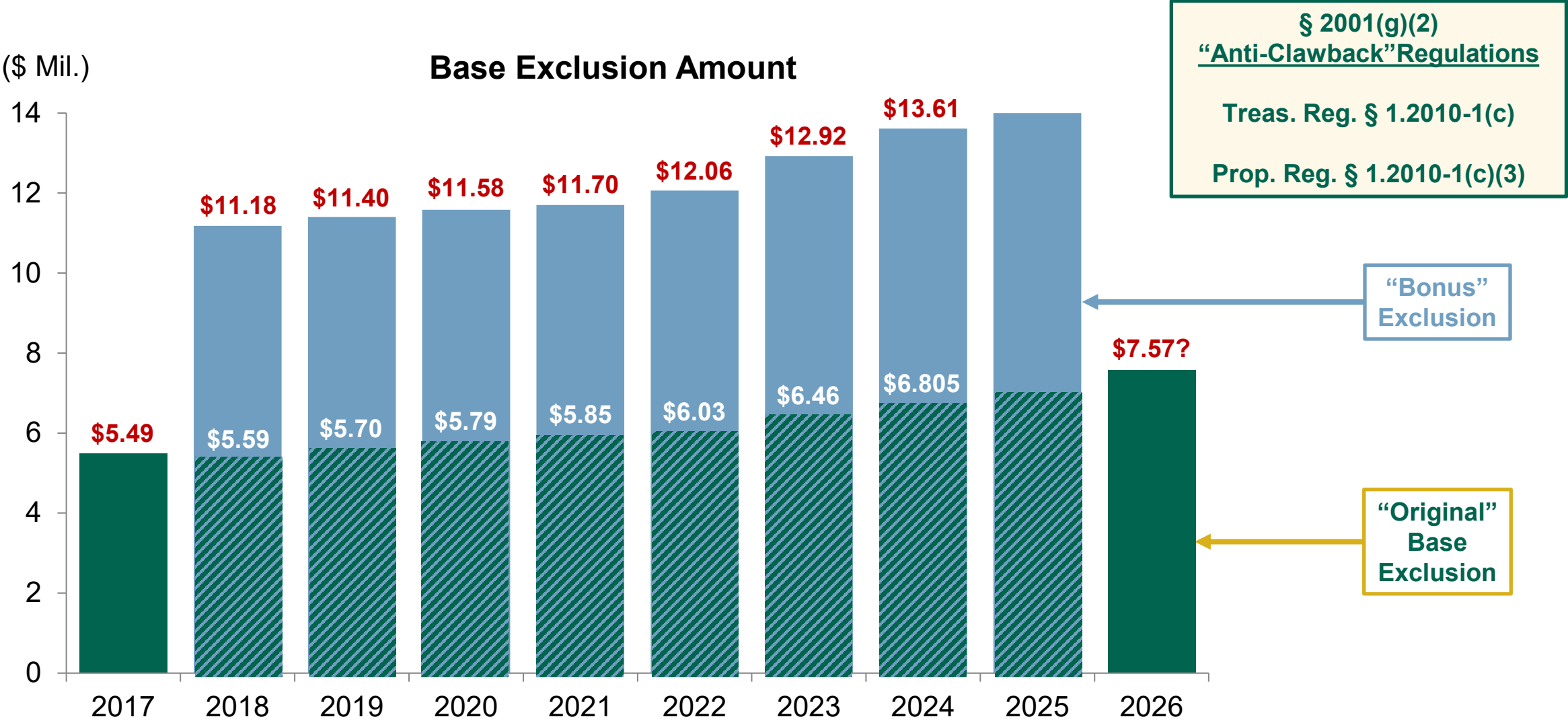
Paul S. Lee, J.D., LL.M.
Chief Tax Strategist
The Northern Trust Company
New York, New York

PLANNING LANDSCAPE TODAY AND TOMORROW

Temporary TCJA Transfer Tax Landscape



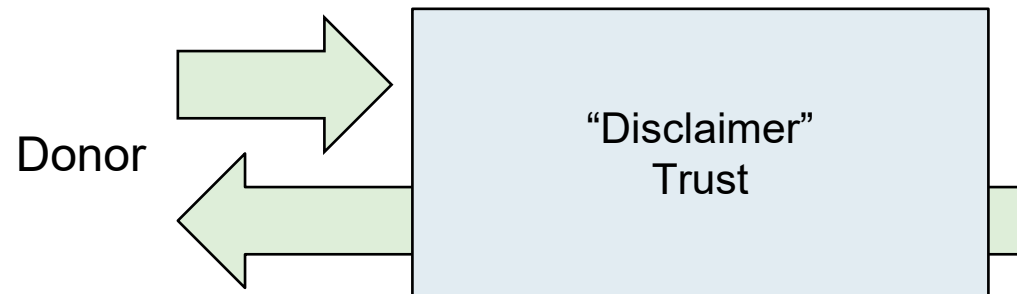
2025: The New 2012?



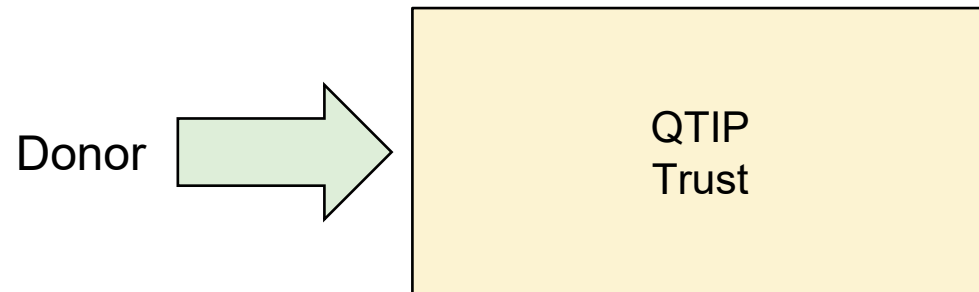
Undoing Gifts: Disclaimer Trusts and QTIP Elections

Reasons to “Undo” Taxable Gifts:

- Current Base Exclusion Amount becomes permanent
- Gifted asset depreciates in value
- Loss of “step-up” in basis
- NY donor dies soon after gift (gifts within 3 years of death are subject to NY estate tax but with no corresponding federal estate tax deduction): 49.6% v. 56% effective transfer tax



- *Trust provides if beneficiary disclaims interest in trust, property is returned to donor.*
- *If a qualified disclaimer (9 months), not a taxable gift*



If, before due date of the donor’s gift tax return (April 15 or October 15), donor makes § 2523(f) QTIP election on gift tax return, transfer covered by the marital deduction and not a taxable gift that reduces Base Exclusion Amount

INITIAL CONSIDERATIONS:
GIFTING BUT RETAINING
ACCESS TO THE ASSETS

To Gift or Not to Gift: That's the Question

Up to Wealthy

\$0 to ~\$13.61 Mil.

- ❑ Limit taxable gifts
- ❑ Preserve Base Exclusion Amount
- ❑ Take advantage of free “step-up” in basis
- ❑ Limit valuation discounts
- ❑ Transfers of wealth in excess of the Base Exclusion Amount via “zeroed-out” techniques
- ❑ Transfer high basis assets to IDGTs with “swap” power

“Middle Class” Wealthy

~\$13.61 Mil. to ~\$50.0 Mil.

- ❑ Taxable gifts in excess of the “Original” Base Exclusion Amount depends on whether taxpayer can afford to make the gift
- ❑ Careful consideration of “split-gift” election (or NOT) in certain years
- ❑ Spousal Lifetime Access Trusts (SLATs)
- ❑ Retained cash flow techniques (i.e., preferred partnership freezes)
- ❑ Trusts that provide maximum “flexibility”

Ultra-Wealthy

Above ~\$50.0 Mil.

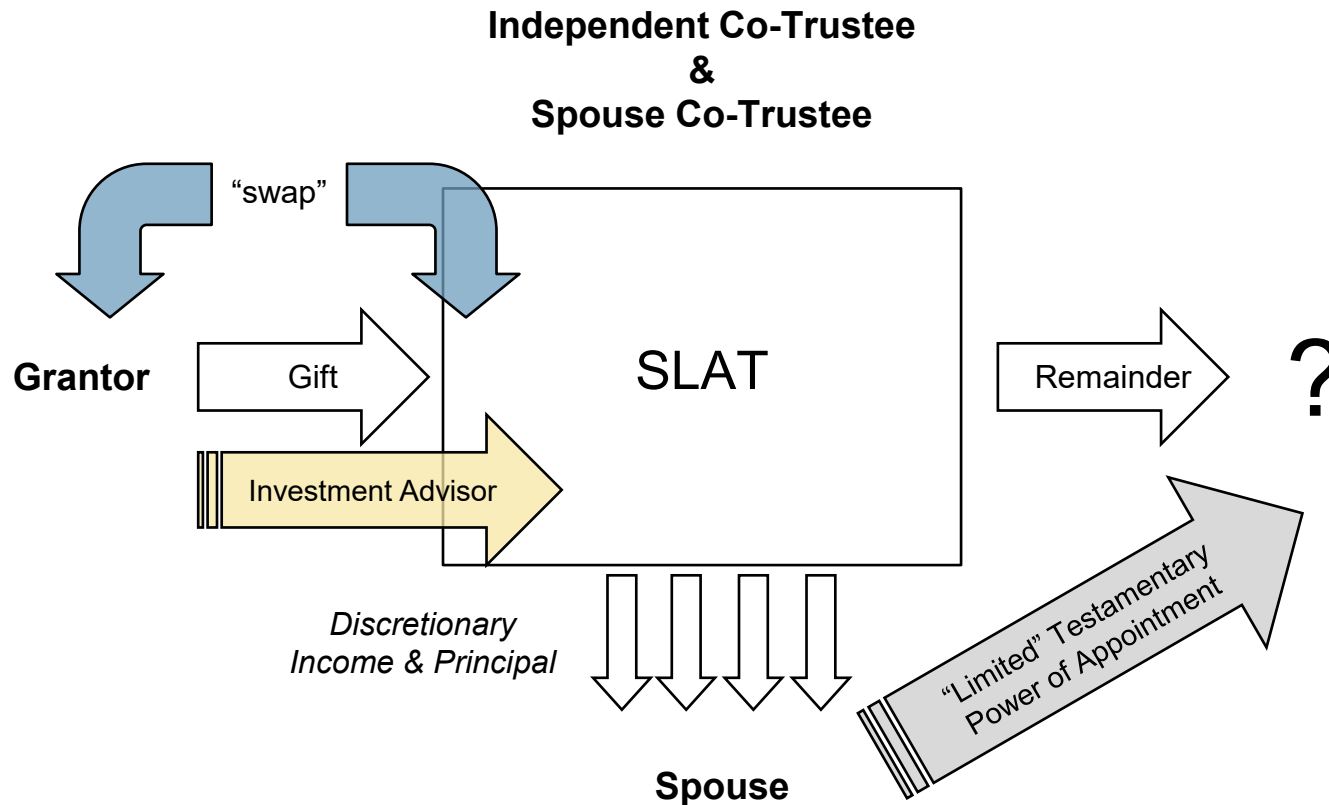
- ❑ Large taxable gifts to use “Original” and “Bonus” Base Exclusion Amount
- ❑ Transfer to IDGTs (with “swap” power)
- ❑ Valuation discount planning
- ❑ “Zeroed-out” techniques, leveraging taxable gifts (i.e., installment sale)
- ❑ “Free-basing” with marital deduction and estate reduction planning with surviving spouse

Consider:

- Base Exclusion gifts of cash (or marketable securities)
- Borrowing and collateralizing low basis assets
- Exercise of “swap” power in the future
- Consider gifting lower rate notes because of higher rates today

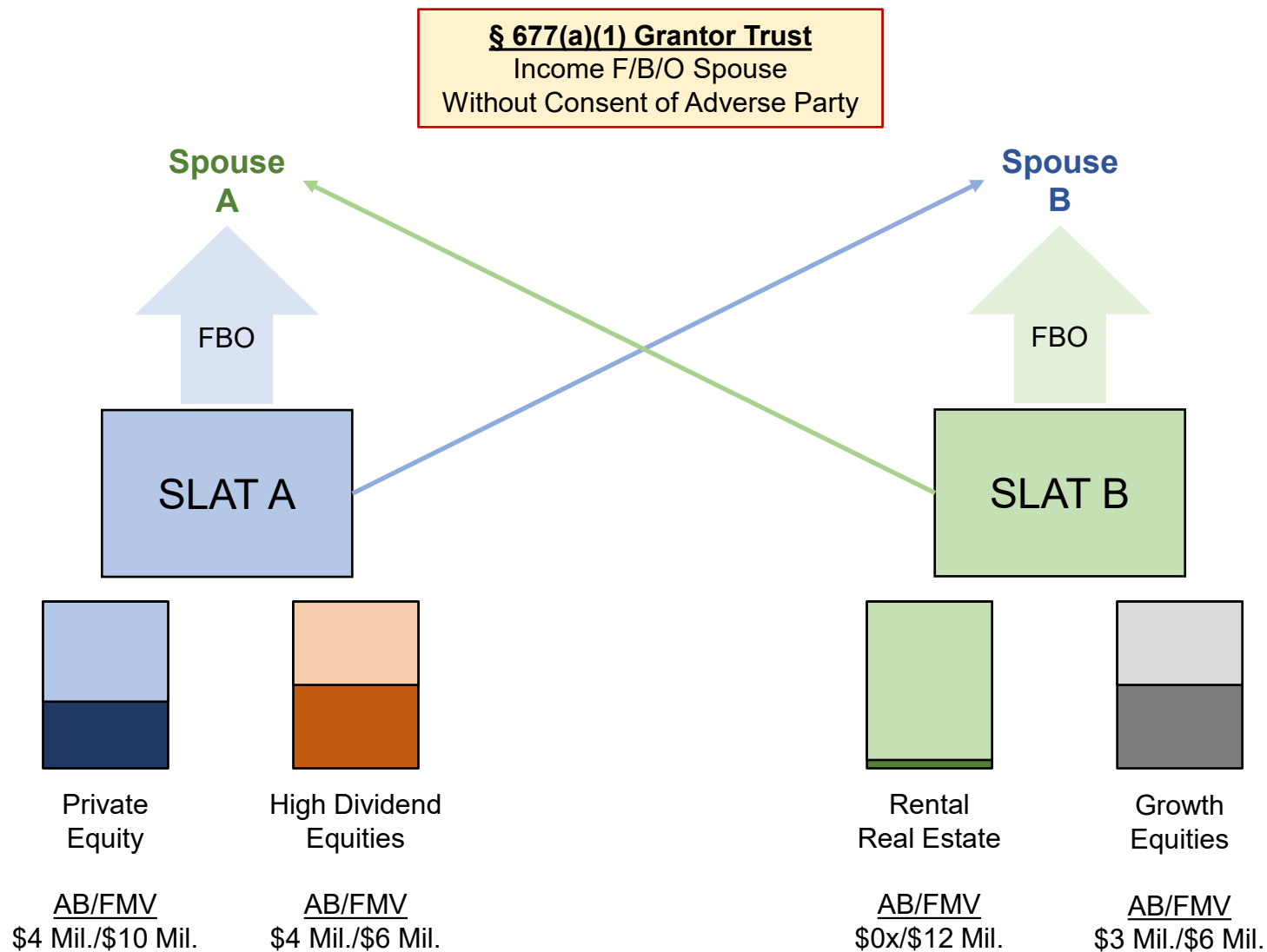
SLAT
Considerations and
Problems

Spousal Lifetime Asset Trusts

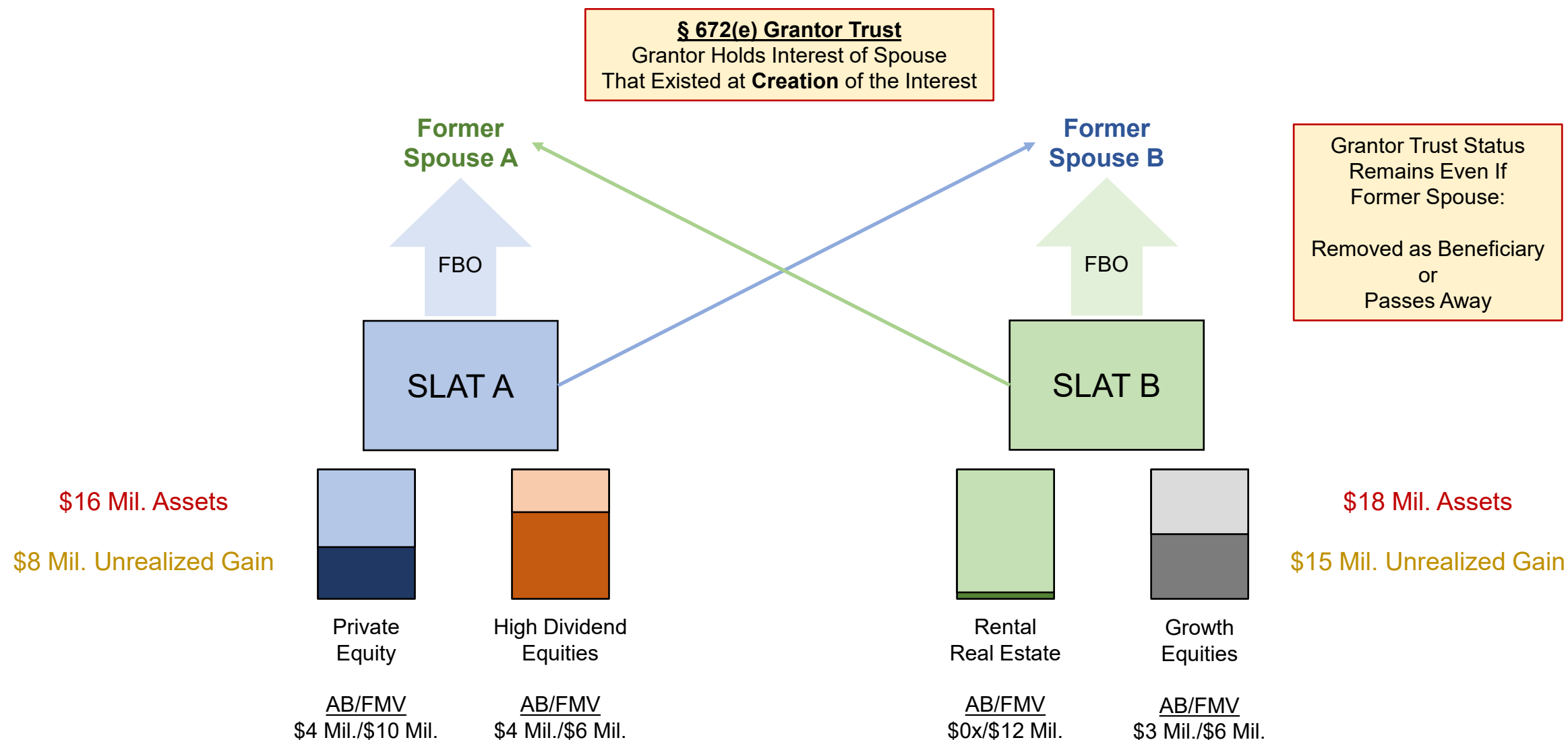


- Applicable state law on donor's creditor claims critical to know
- Reciprocal trust doctrine considerations (Grace or Levy)
- Alternative: Special Power of Appointment Trust (SPAT)
- Divorce and ongoing grantor trust status under section 672(e)
- Possible solution: "Post-Divorce SLAT Partnership"

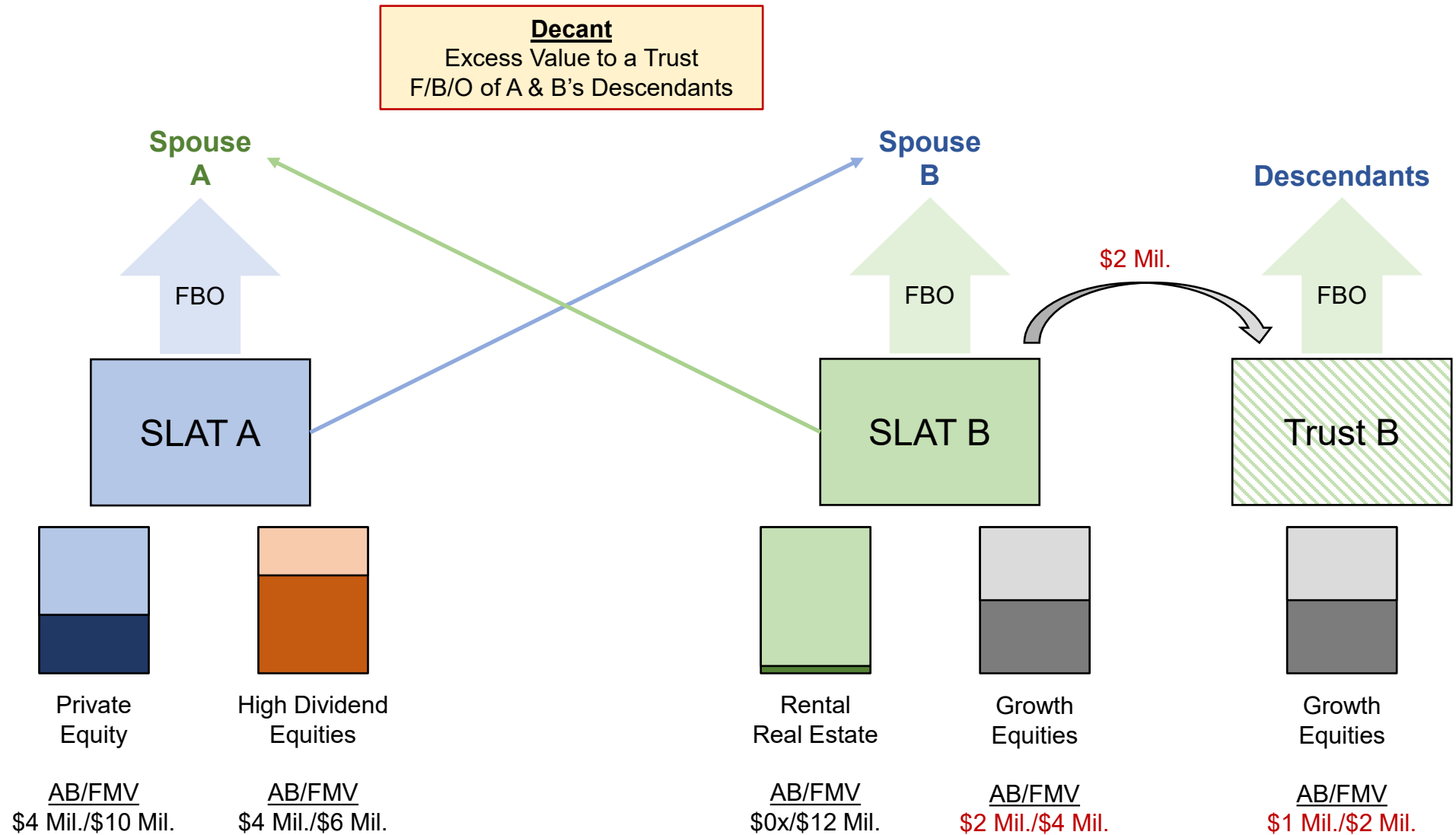
Spousal Lifetime Access Trusts Are Grantor Trusts



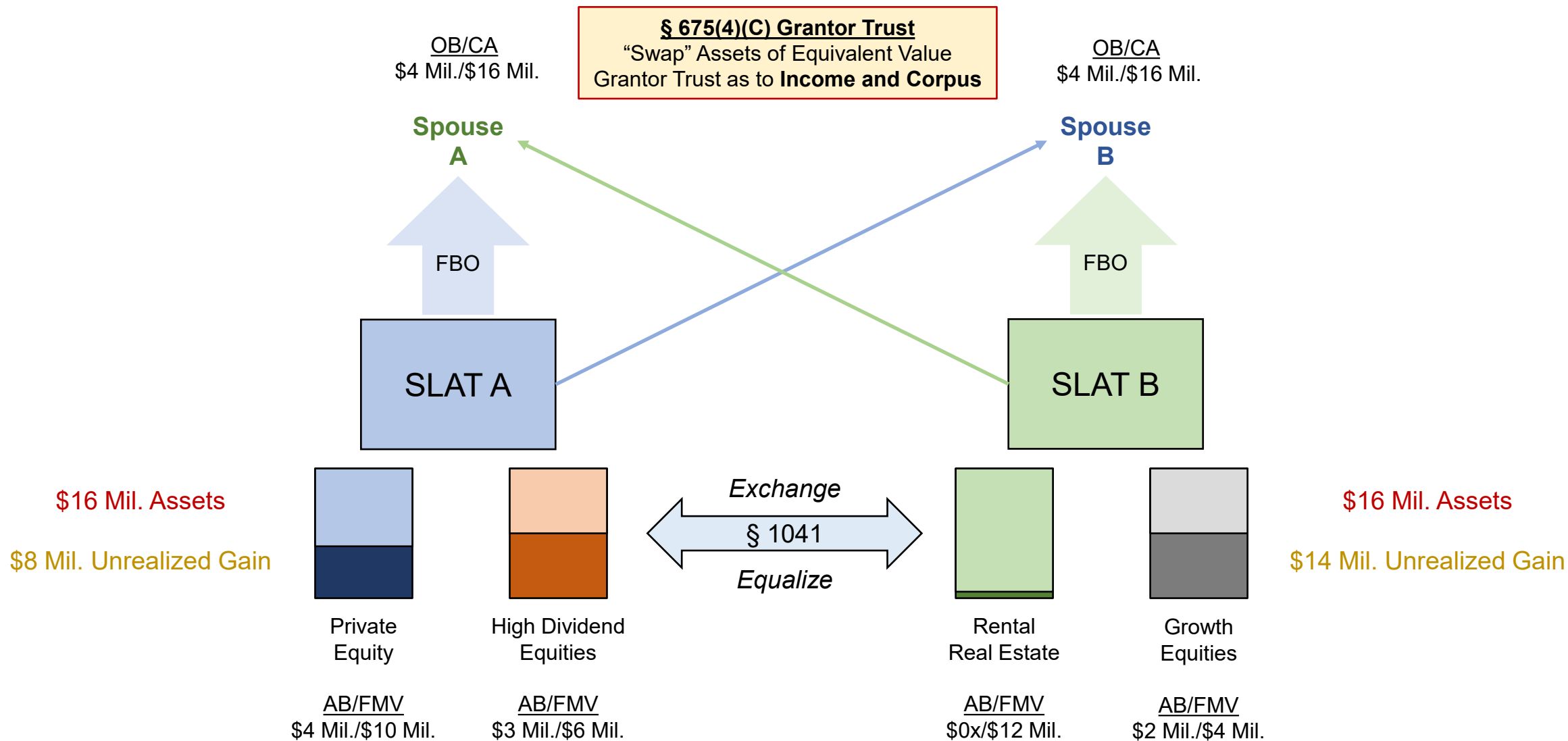
Spousal Lifetime Access Trusts Are Grantor Trusts After Divorce



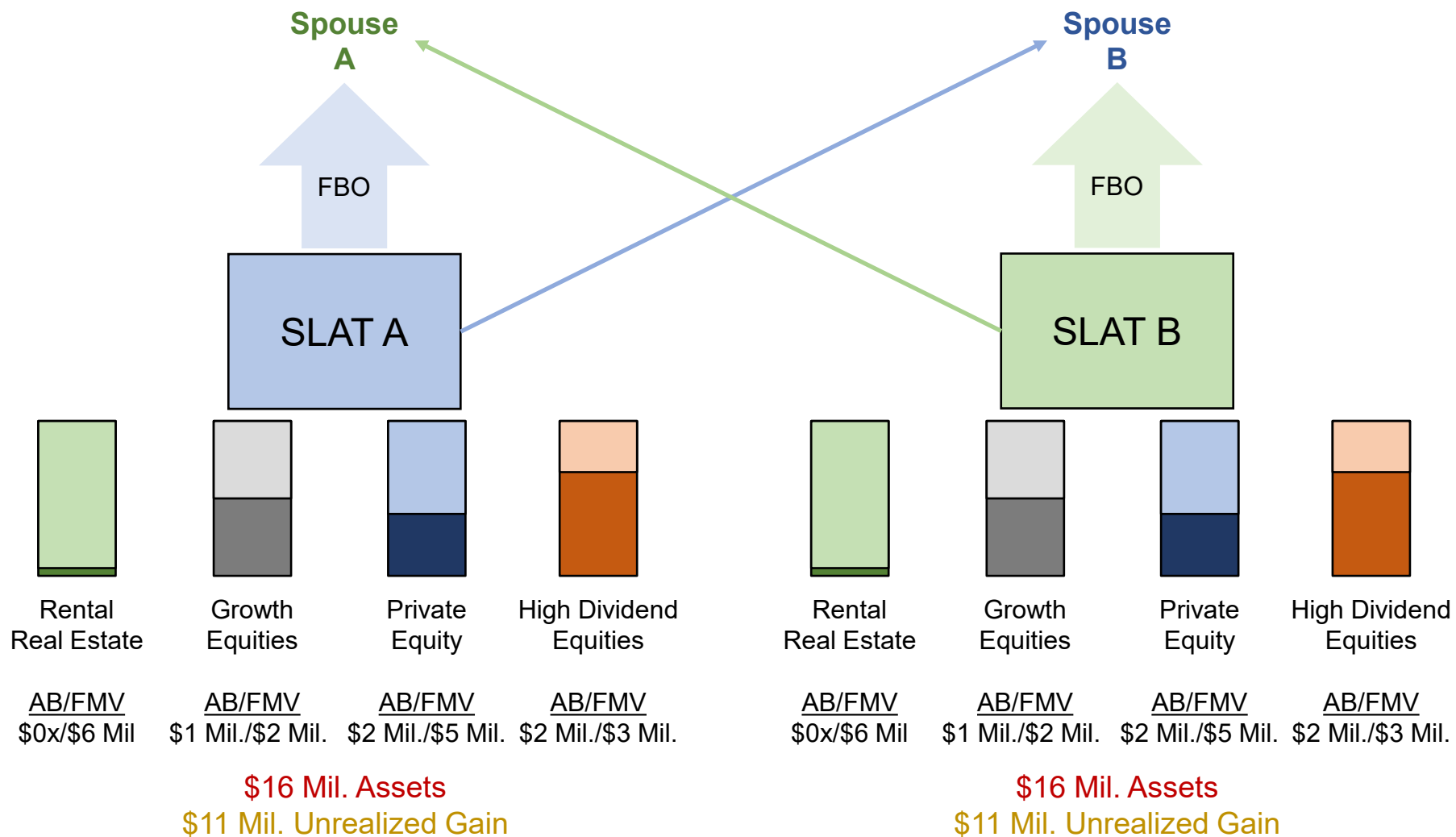
Equalize the Value of the Assets



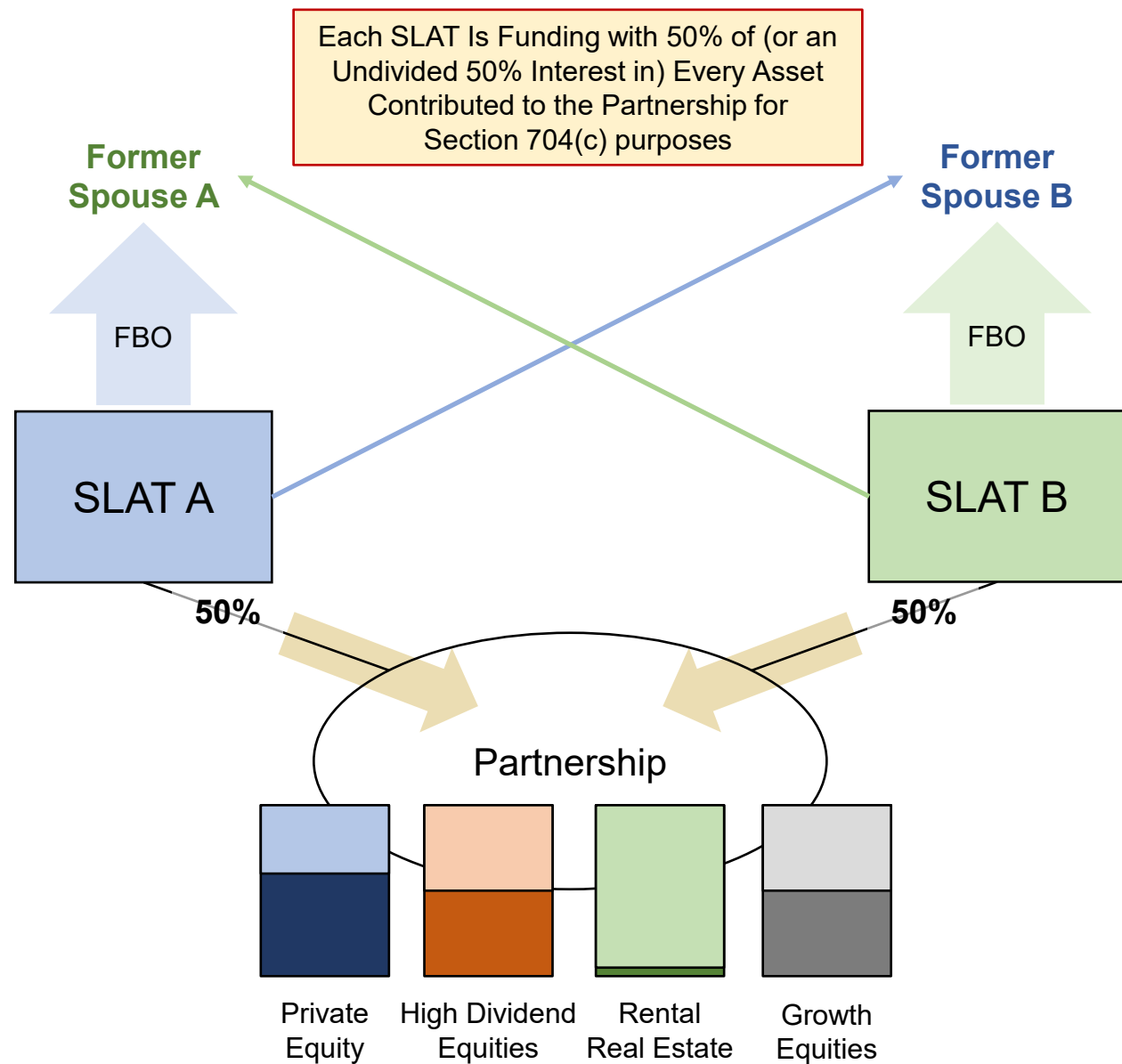
Exchange and Equalize Assets



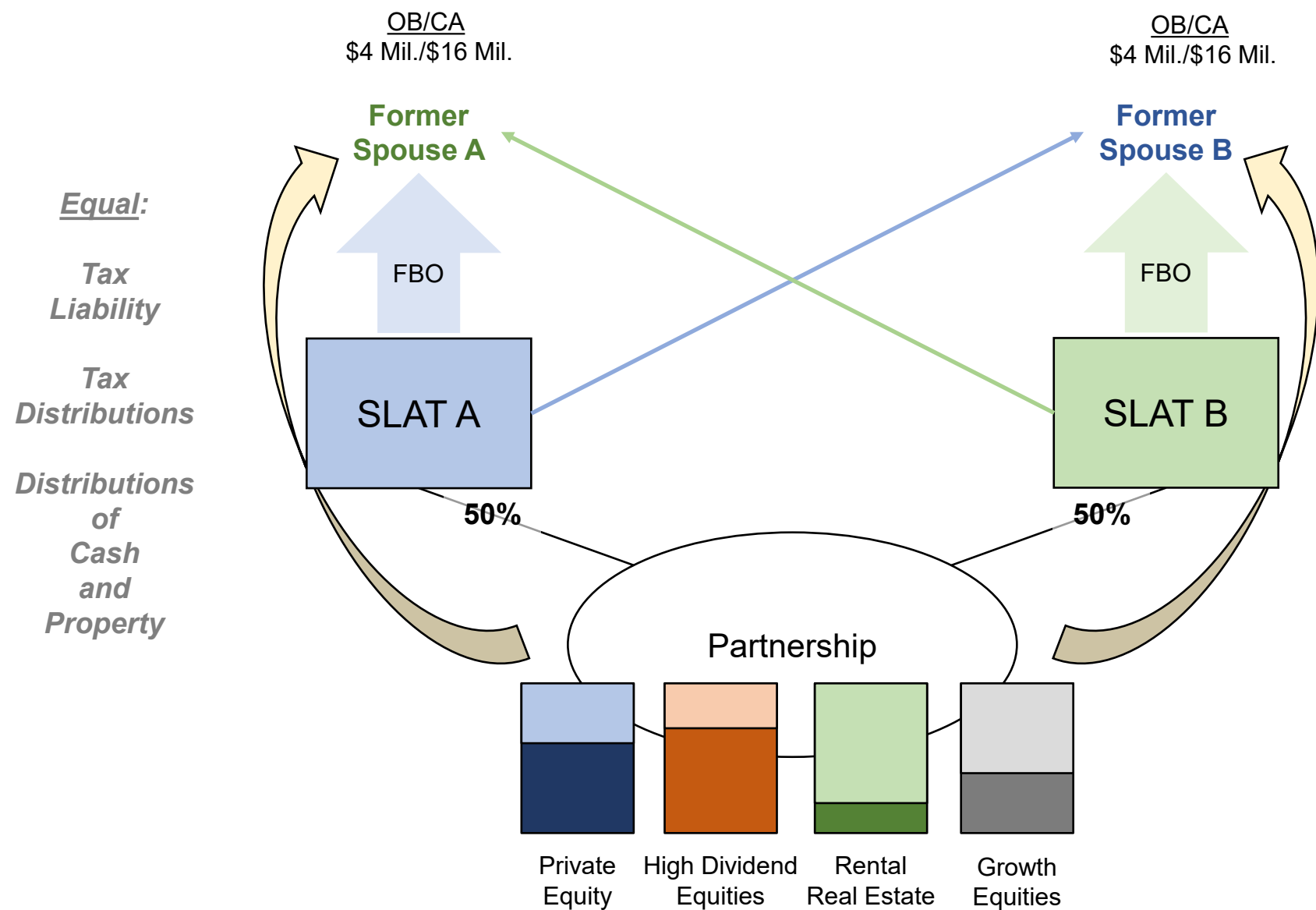
Exchange and Equalize Assets



Contribute Assets to a Partnership

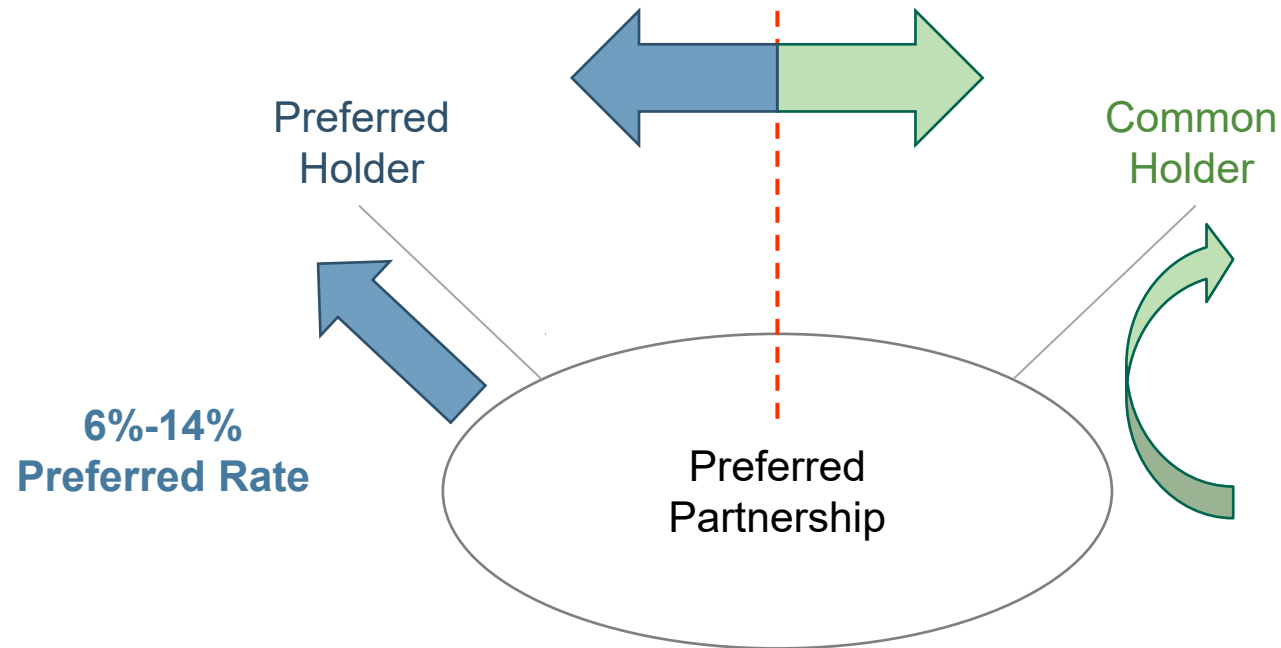


Equal Allocations and Distributions



*Intentionally
Non-Qualified (“Busted”)
Preferred Partnership Freeze*

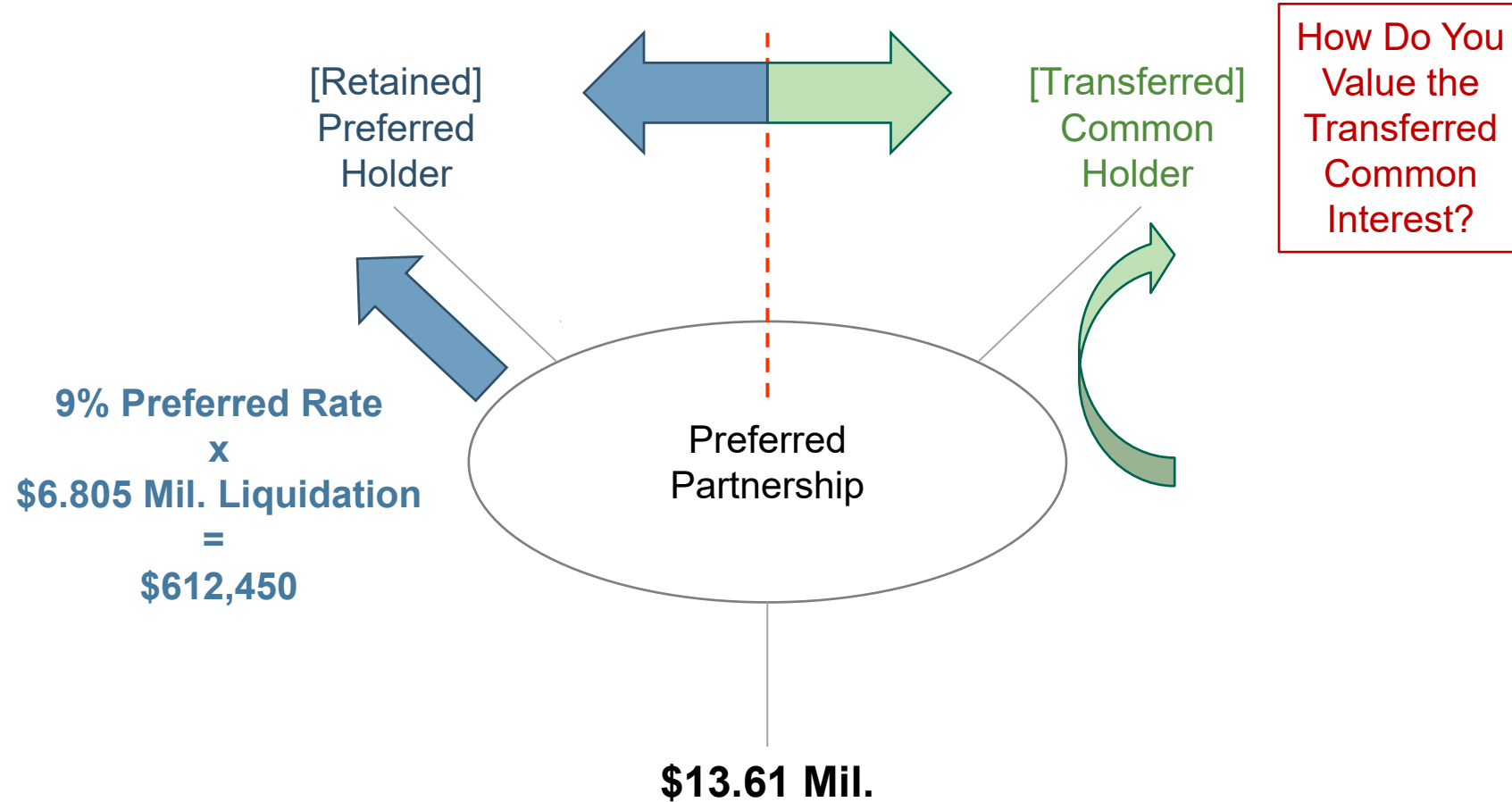
Preferred & Common Partnership Freeze: Retain or Transfer



- Fixed Preferential Liquidation
- Annual Distribution at Fixed Preferred Rate
- Traditionally Retain ("Forward"), Section 2701 Applies
- Transfer ("Reverse"), Normal Gift Tax Rules
- Tax Items Preferentially Allocated

- Value in Excess of Preferred Rate & Liquidation Preference
- No Fixed Annual Distribution
- If Retain ("Reverse"), Normal Gift Tax Rules
- If Transfer ("Forward"), Section 2701 Applies
- Allocated Residual Tax Items

Intentionally Non-Qualified (“Busted”) Preferred Partnership Freeze



Subtraction Method with a Non-Qualified Preferred Interest

■ Step 1: Determine

- ◆ Value of all family-held interests

■ Step 2: Subtract

- ◆ Value of senior equity interests

■ Step 3: Allocate

- ◆ Among the transferred interests

■ Step 4: Determine

- ◆ Value of the gift

Section 2701

Not liquidation value
No minority interest discount

Zero

or

Value of
“Qualified Payment” Interest

Minority interest discount
Lack of marketability discount
Subordination discount

Qualified Payment
Annual
Cumulative
Fixed Rate

Rev. Rul. 83-120

No ability to
inflate value above
liquidation

Non-Cumulative Preferred

\$13,610,000
(Ignore Discounts for Simplicity)

Minus
Zero
(Non-Qualified)

Equals
\$13,610,000
(Allocated to Common)

Gift Tax Value of Preferred
\$13,610,000
(Ignore Discounts for Simplicity)

Non-Qualified Preferred Solves “No Clawback” Problem in Estate

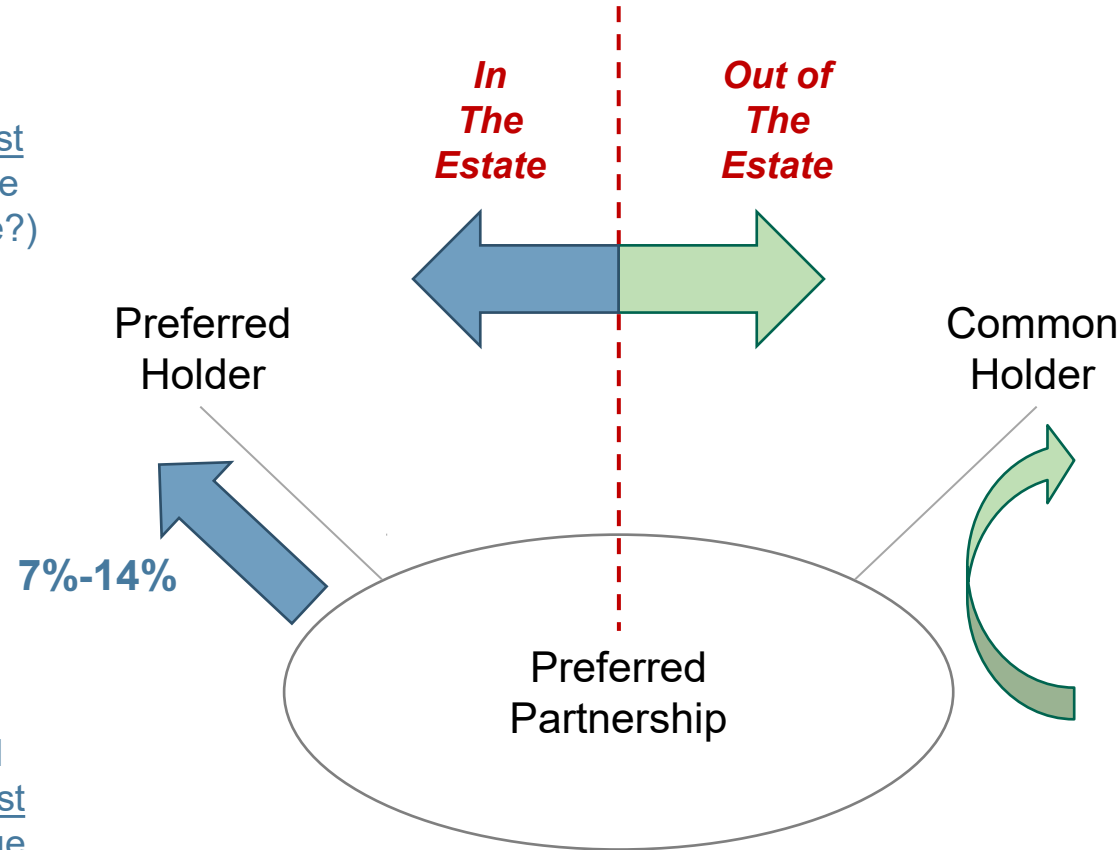
Estate Tax

Eligible for
“Clawback” Fix?
Yes
(Increase Unified Credit)

Qualified
Preferred Interest
Fair Market Value
(Liquidation Value?)

Non-Qualified
Preferred Interest
Fair Market Value
(Liquidation Value)
LESS
Reg. § 25.2701-5(a)(3)
Adjustment

Eligible for
“Clawback” Fix?
No
(Anti-Abuse Prop. Regs.)



Separate from § 2001(g) “Clawback” Regulations.

Reduction of adjusted taxable gifts equal to the amount of zeroed gift tax value (\$6,805,000)

Gift Tax

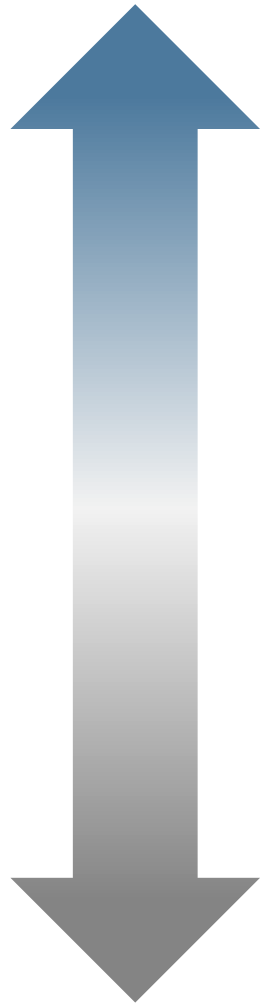
Common
Interest
Family Interests
less
Qualified Interest
less
Discounts

Common
Interest
Family Interests
less
Zero
less
Discounts

TAX BASIS PLANNING: THE BASICS AND THE SUBLIME

Some Assets Benefit from “Step-Up”—Some Do Not

“Step-Up” Important
[Higher Valuation]



“Step-Up” Not Important
[Lower Valuation]

Asset Type

Creator-Owned Copyrights, Trademarks, Patents & Artwork

“Negative Basis” Commercial Real Property LPs

“Bonus Depreciation” Qualified Property under § 168(k)

Oil & Gas Investments

Artwork, Gold & Other “Collectibles”

Low Basis Stock

Roth IRA Assets

Qualified Small Business Stock (QSBS)

High Basis Stock

Fixed Income

Cash

Passive Foreign Investment Company (PFIC) Shares

Stock at a Loss

Variable Annuities

Traditional IRA & Qualified Plan Assets

Tax Characteristic

Ordinary Transforms to Long-Term

Recapture & >100% Long-Term

§ 1245 Recapture

§ 1245 Recapture

28% Long-Term

20% Long-Term

Tax Free & No Surcharge

§ 1202 Gain [50, 60, 75 or 100%] Exclusion

Minimal Gain

Typically Minimal Gain

Basis = Face Value

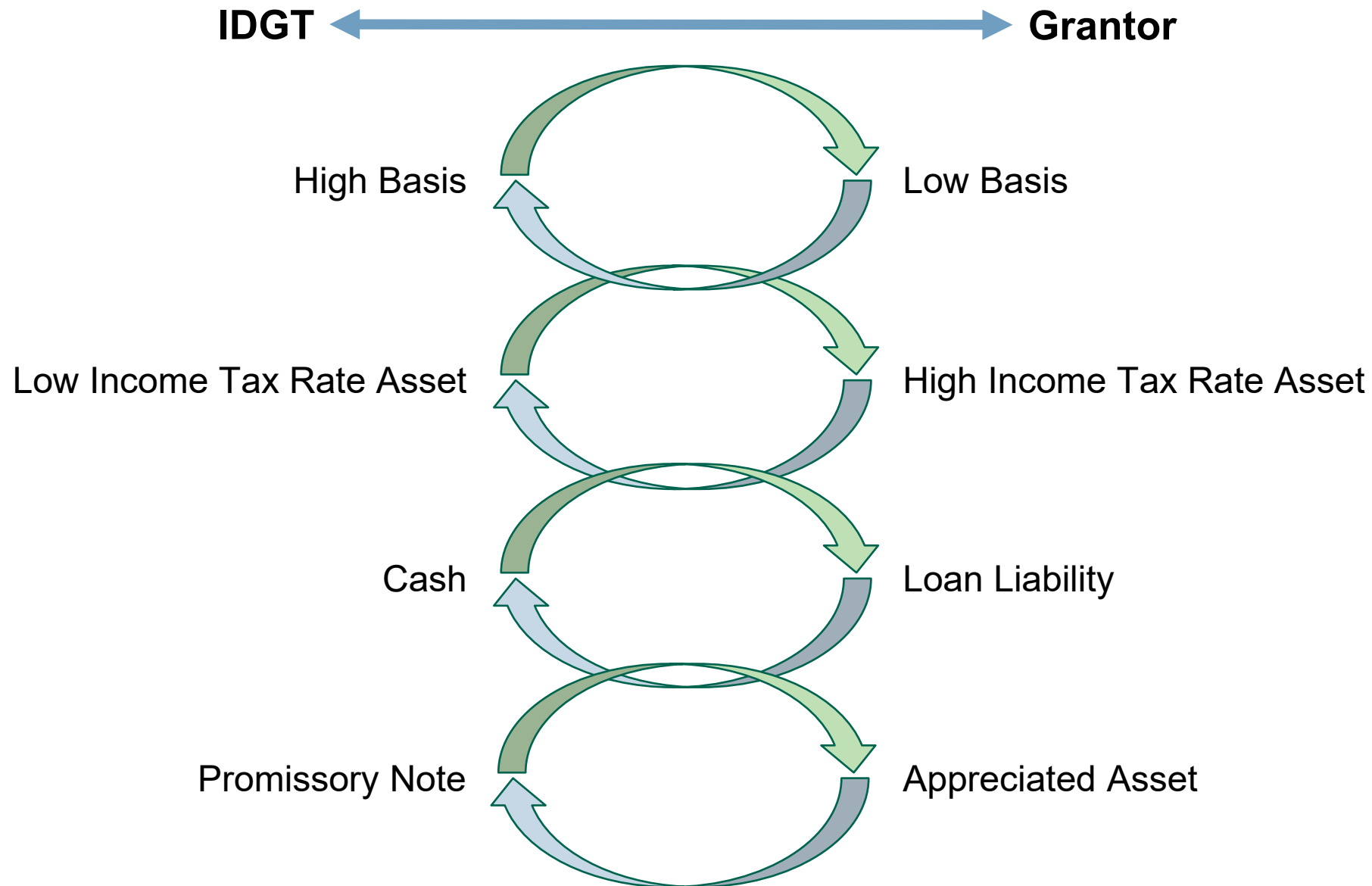
No “Step-Up”

Capital Loss Erased

Partially IRD

100% IRD

Tax Basis Management Basics: Grantor Trust Swapping

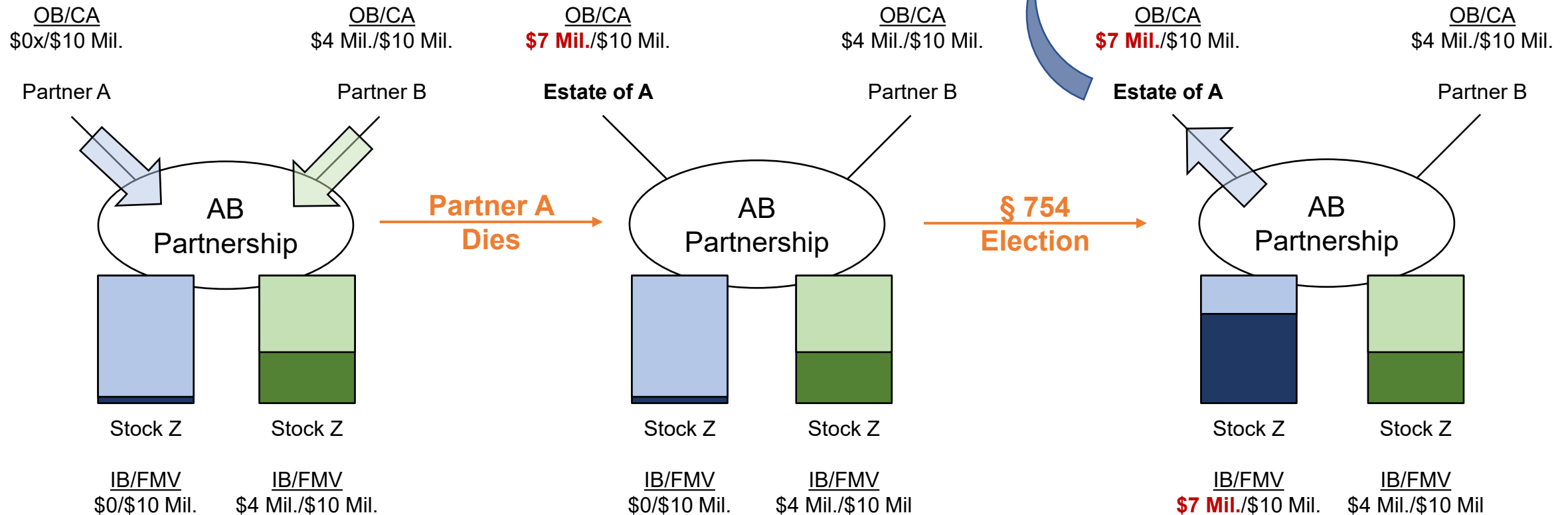


MAXIMIZING THE SECTION 1014 BASIS ADJUSTMENT

Inside Basis Adjustments Versus “Staggering Distributions”

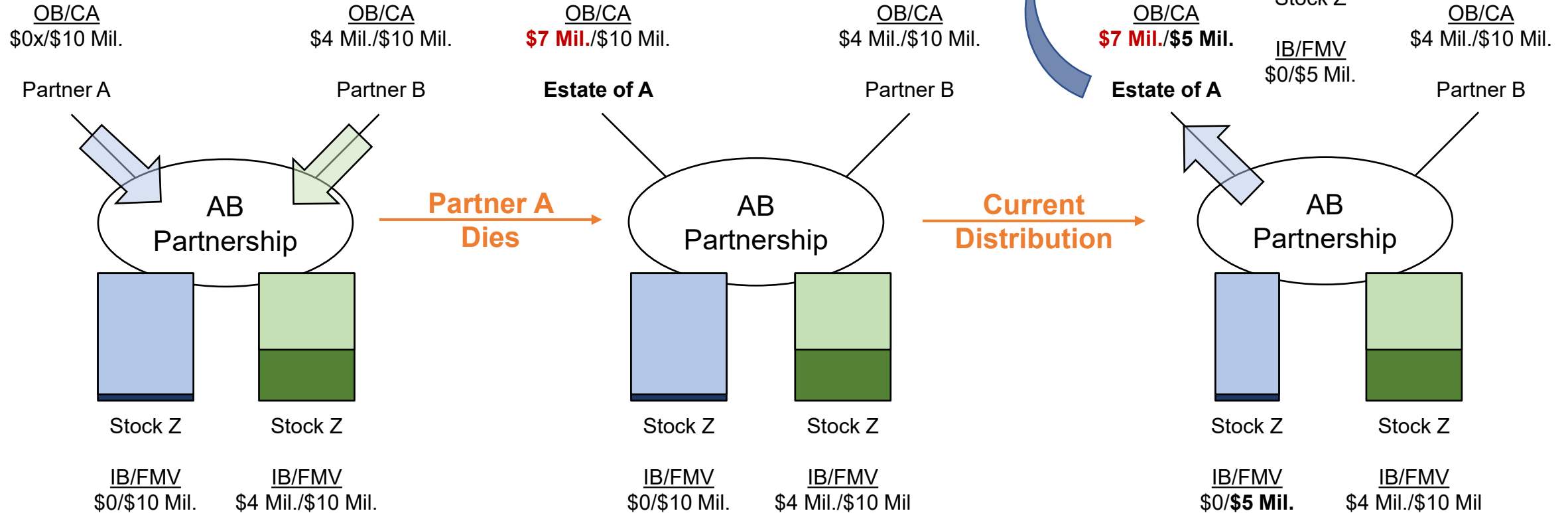
Inside Basis Adjustment at Death Is a Blunt Instrument

30%
Valuation
Discount

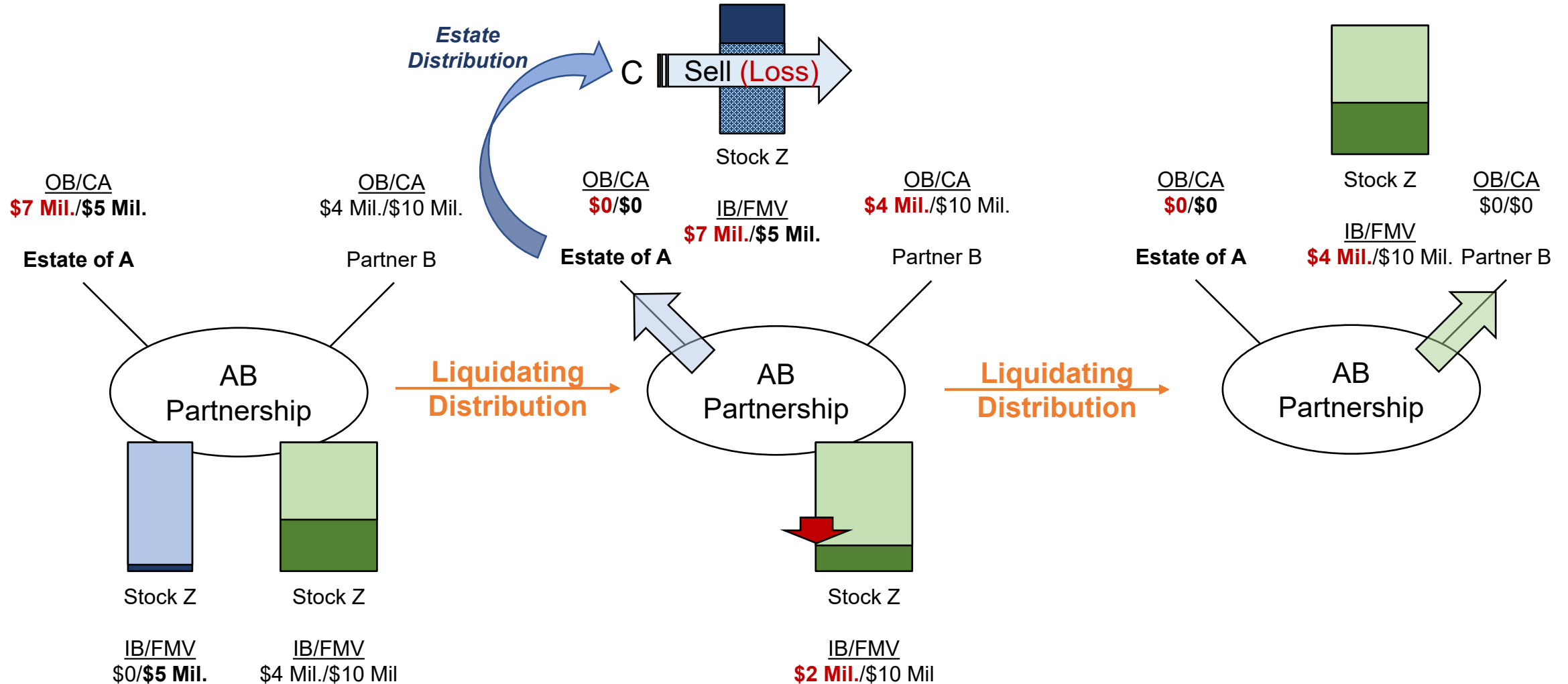


No Section 754 Election: “Staggering Distributions”

30%
Valuation
Discount



No Section 754 Election: “Staggering Distributions”



“Substantial Basis Reduction”
Mandatory Section 734(b)
Inside Basis Adjustment

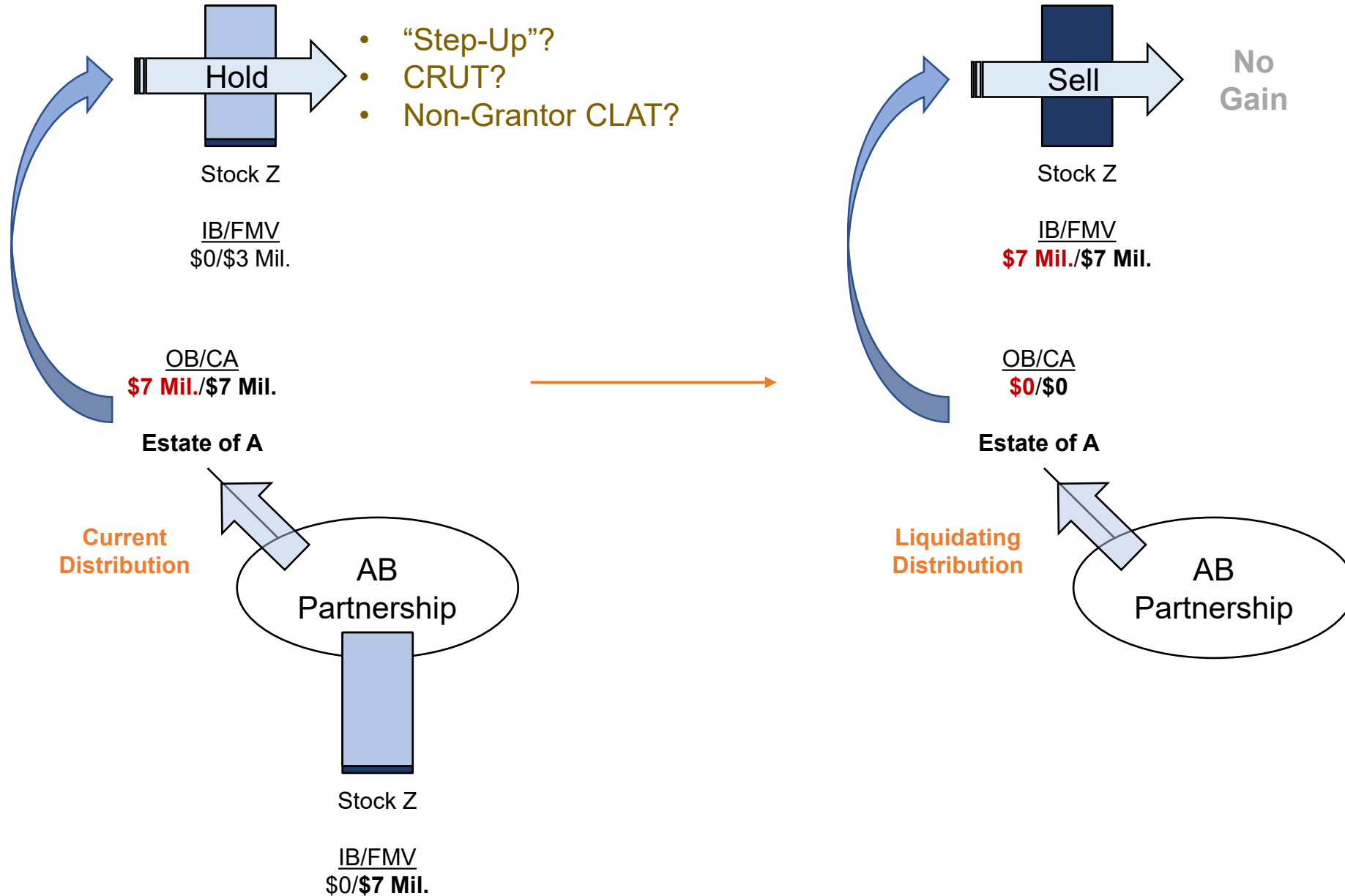
Inside Basis Adjustment v. “Staggering Distributions”

SUMMARY OF THE SECTION 743(b) INSIDE BASIS ADJUSTMENT	
Savings Due to \$5 Mil. Charitable Deduction @ 37.0% Rate	\$1,850,000
Unrecognized Gain of \$1.5 Mil. Due to Charitable Donation @ 23.8% Rate	\$357,000
\$1.5 Mil. Recognized Capital Gain Tax on \$5 Mil. Sale of Stock Z @ 23.8%	(\$357,000)
Total Net Tax Benefit	\$1,850,000
<i>After-Tax Amount Reinvested in Diversified Portfolio</i>	<i>\$4,643,000</i>
TOTAL ECONOMIC BENEFIT	\$6,493,000

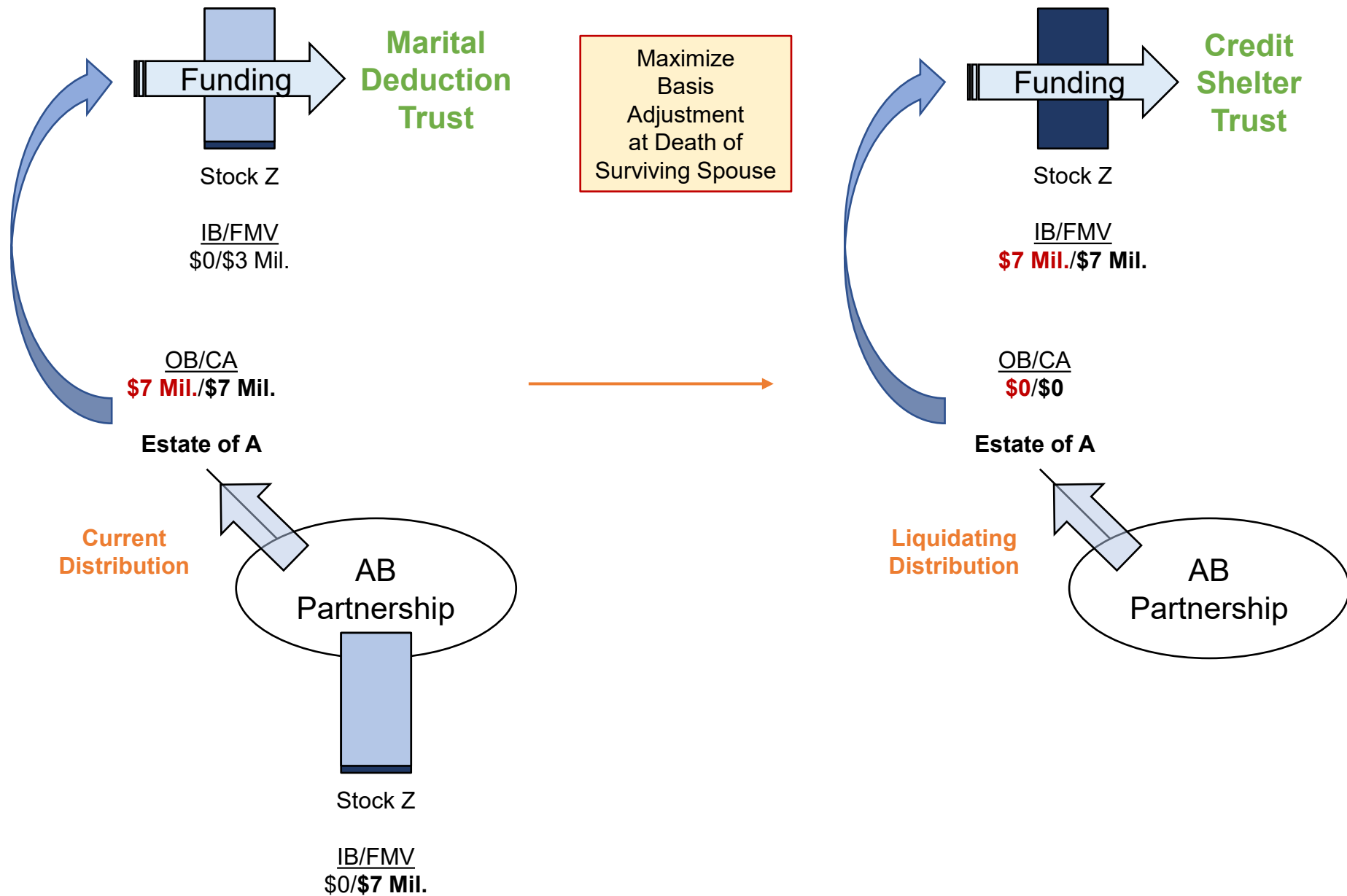
SUMMARY OF “STAGGERING DISTRIBUTIONS”	
Savings Due to \$5 Mil. Charitable Deduction @ 37.0% Rate	\$1,850,000
Unrecognized Gain of \$5 Mil. Due to Charitable Donation @ 23.8% Rate	\$1,190,000
Savings from (\$2 Mil.) Capital Loss on \$5 Mil. Sale of Stock Z @ 23.8%	\$476,000
Total Net Tax Benefit	\$3,516,000
<i>After-Tax Amount Reinvested in Diversified Portfolio</i>	<i>\$5,000,000</i>
TOTAL ECONOMIC BENEFIT	\$8,516,000

**+\$2,023,000
Economic
Benefit**

Other Applications for “Staggering Distributions”

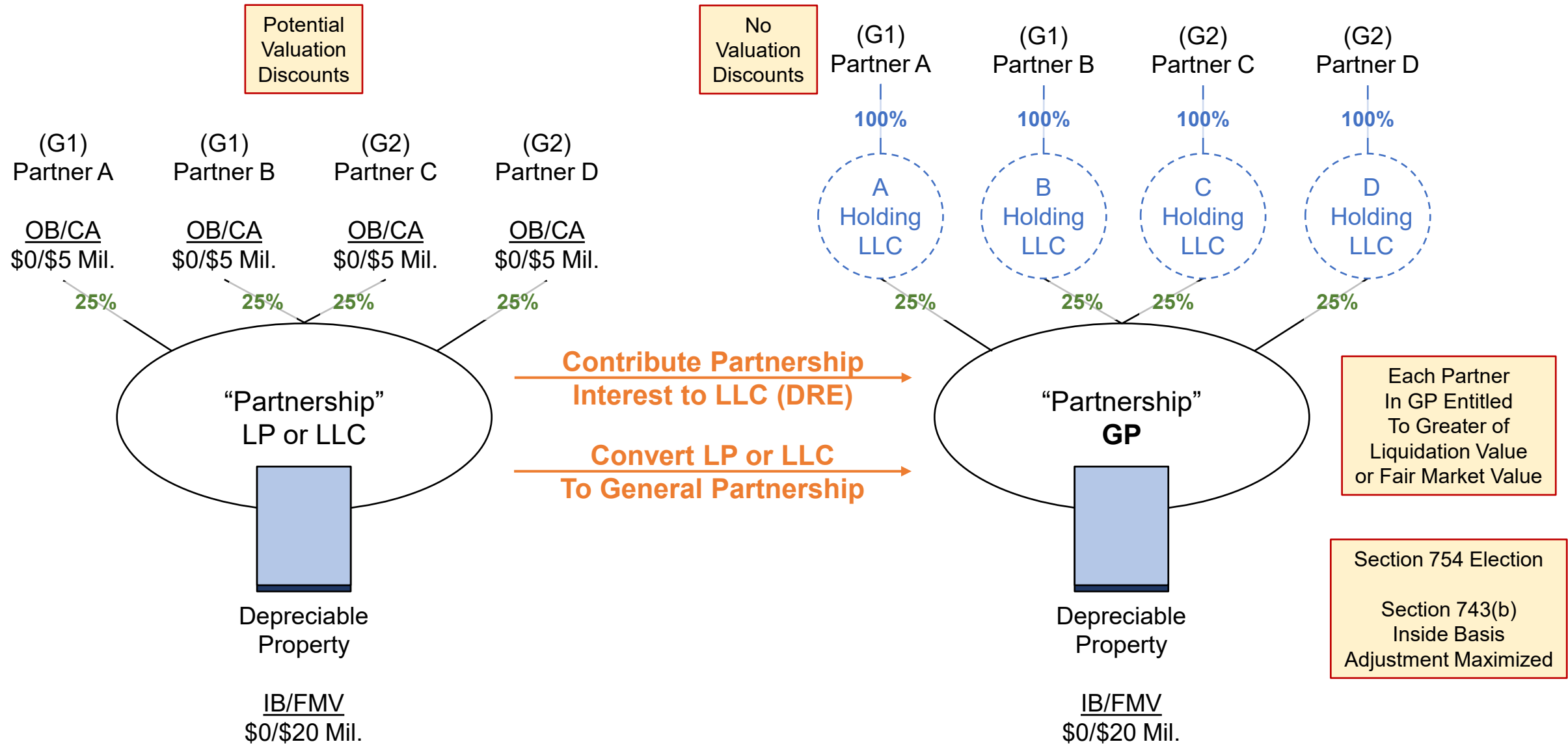


Other Applications for “Staggering Distributions”



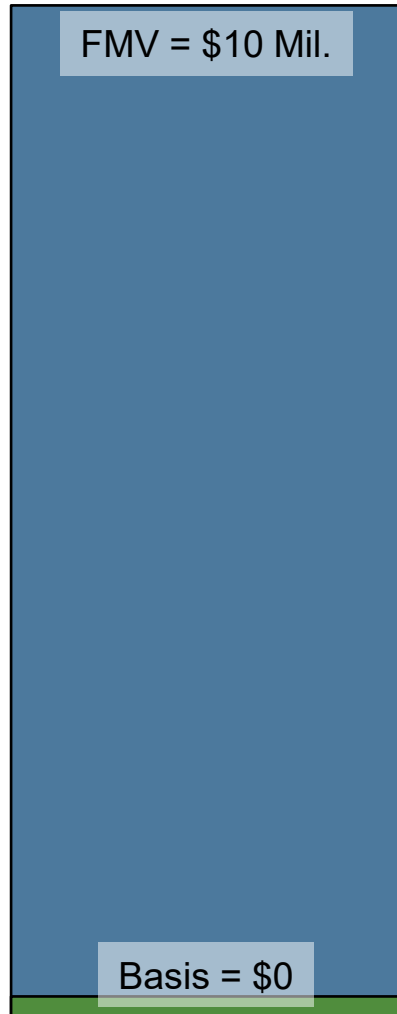
Eliminating Valuation Discounts

Eliminating Valuation Discounts on Pre-Existing Partnerships



Using Debt to “Multiply” the “Step-Up” in Basis

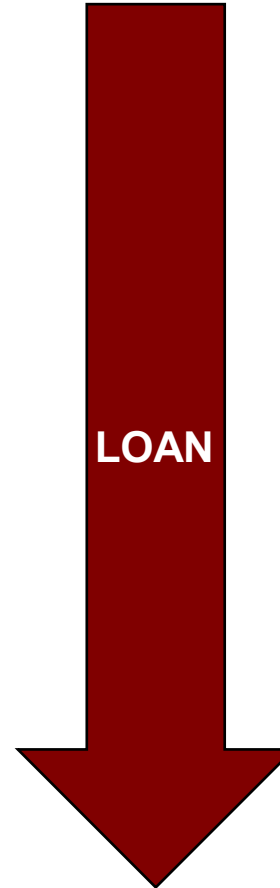
Maximizing the “Step-Up” & Minimizing Estate Tax: Debt



Gross Estate
§ 2031 = \$10 Mil.

Taxable Estate
§ 2051 = \$10 Mil.

“Step-Up” in Basis
§ 1014(a) = \$10 Mil.



Debt = \$9 Mil.
(Cash)

Gross Estate
§ 2031 = \$10 Mil.

Indebtedness
§ 2053(a)(4) = (\$9 Mil.)

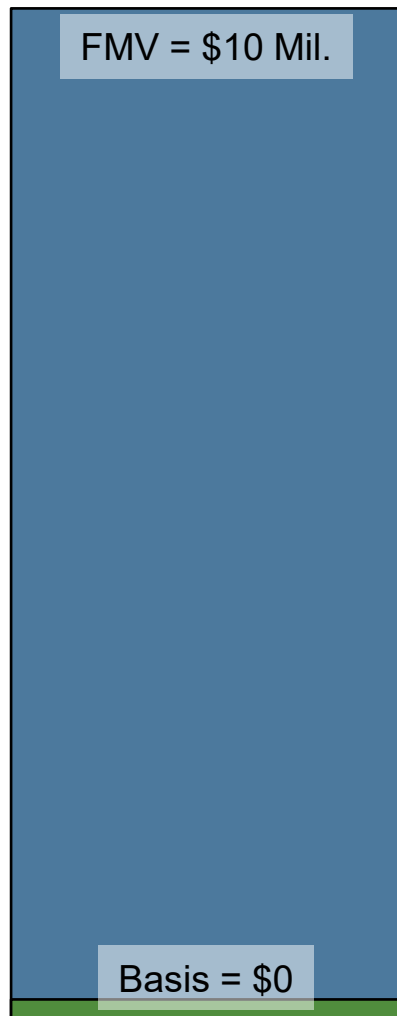
Taxable Estate
§ 2051 = \$1 Mil.

“Step-Up” in Basis
§ 1014(a) = \$10 Mil.



Spend It
“Zeroed-Out” Transfers
“Swap” for Appreciated Pty.
Private Split-Dollar Loan

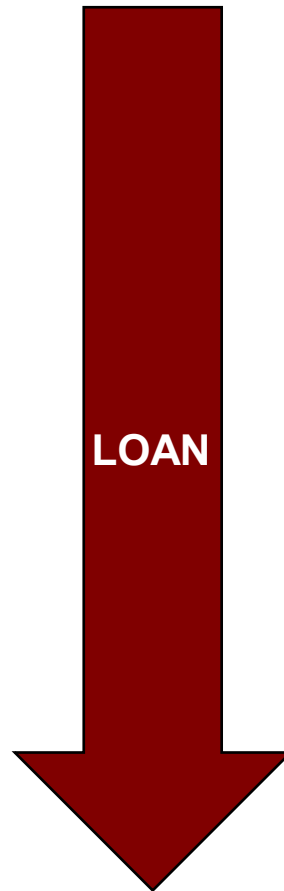
Debt with QTIP Trusts?



Amount Includible
§ 2044 = \$10 Mil.

Taxable Estate
§ 2051 = \$10 Mil.

“Step-Up” in Basis
§ 1014(b)(10) = \$10 Mil.



Debt = \$9 Mil.
(Cash)

Amount Includible
§ 2044 = \$10 Mil.

Indebtedness
§ 2053(a)(4) = (\$9 Mil.)

Taxable Estate
§ 2051 = \$1 Mil.

“Step-Up” in Basis
§ 1014(b)(10) = \$10 Mil. or \$1 Mil. (?)

Amount Includible
§ 2044 = 1 Mil.

Taxable Estate
§ 2051 = \$1 Mil.

“Negative Basis”
and
“Negative Capital”

“Negative Basis” Is Debt in Excess of Basis

“Negative Basis”

“Disposition”

Partnership Contribution

Taxable Sale

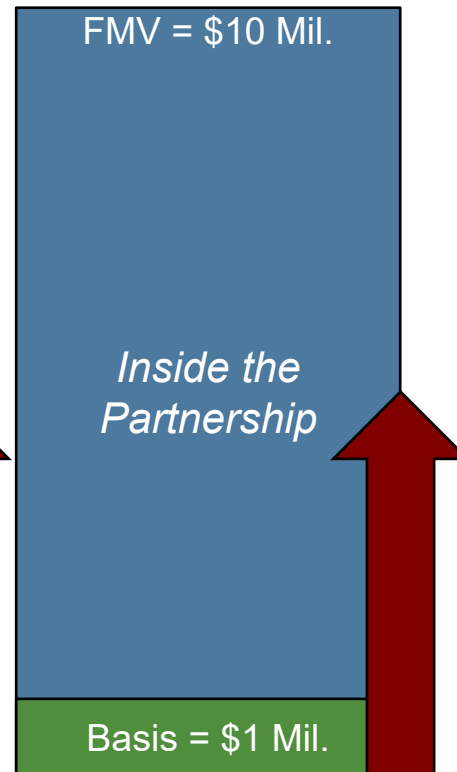
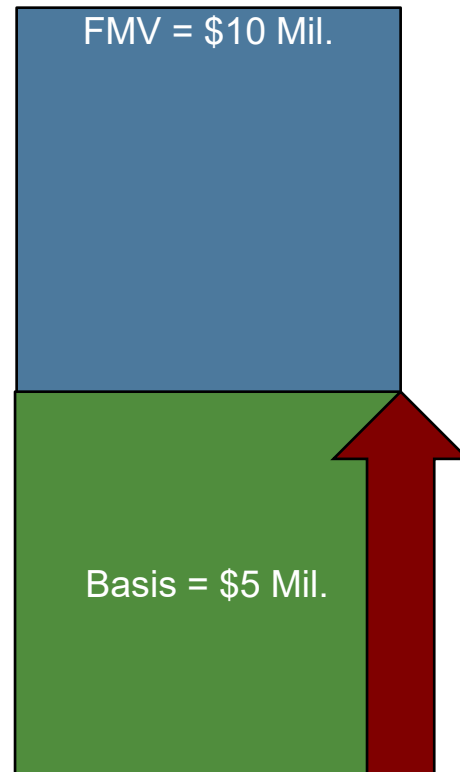
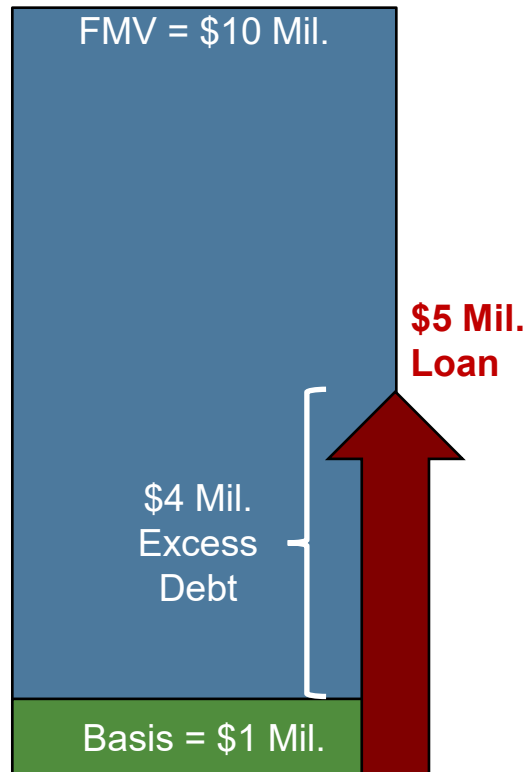
Estate Inclusion

\$4 Mil. Gain
(*Crane & Tufts*)

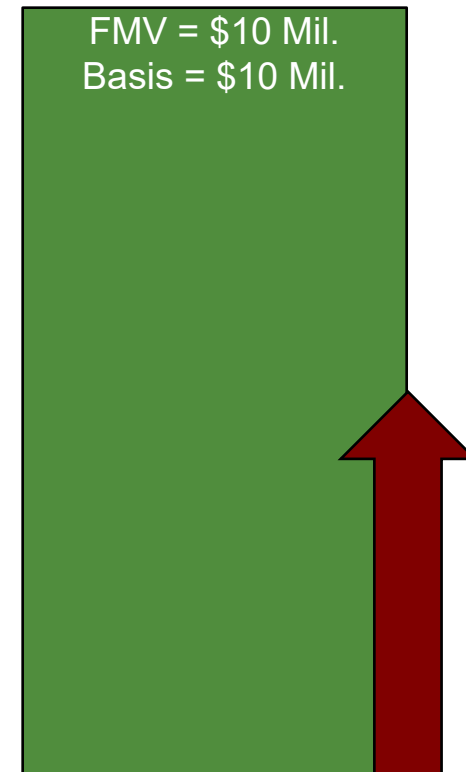
No Gain
[§ 1.1001-2(a)(4)(iv)]

\$9 Mil.
Capital Gain

Maximum
Estate Tax Cost = \$2 Mil.
(40% of \$5 Mil.)



Sale Proceeds	\$10,000,000
Loan Payback	(\$5,000,000)
Capital Gain Tax (23.8%)	(\$2,142,000)
Net Proceeds	\$2,858,000



“Negative Basis” and “Negative Capital”: Real Property Partnership

**Purchase Land
Borrow & Build**

FMV = \$10 Mil.
Basis = \$10 Mil.
Debt = \$9 Mil.
O.B. = \$10 Mil.
C.A. = \$1 Mil.

Depreciate

FMV = \$10 Mil.
Basis = \$1 Mil.
Debt = \$9 Mil.
O.B. = \$1 Mil.
C.A. = (\$8 Mil.)

**Appreciate
& Refinance**

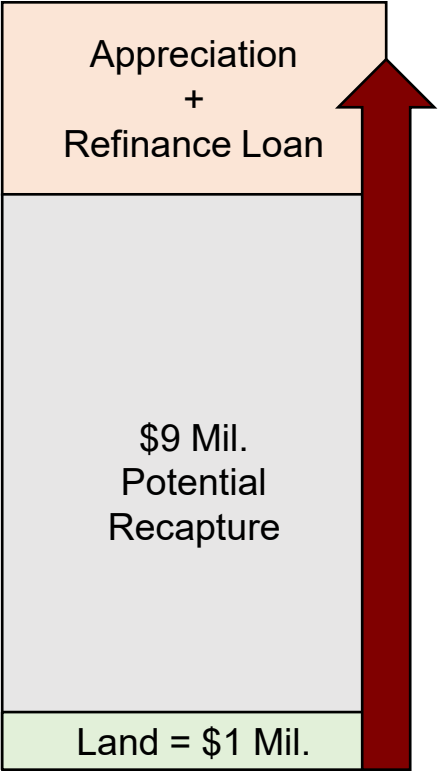
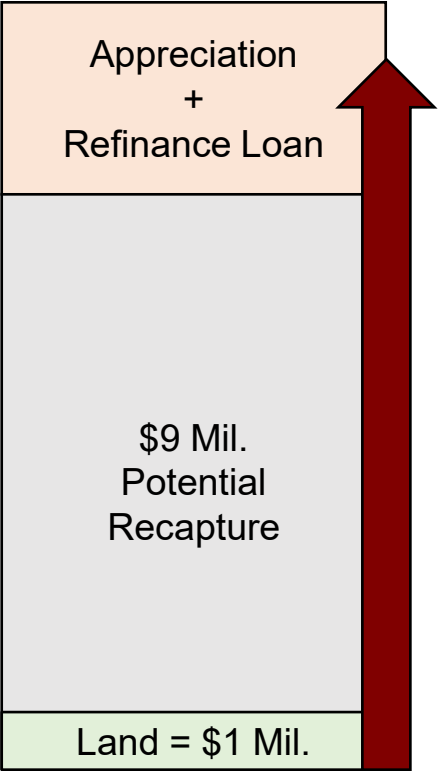
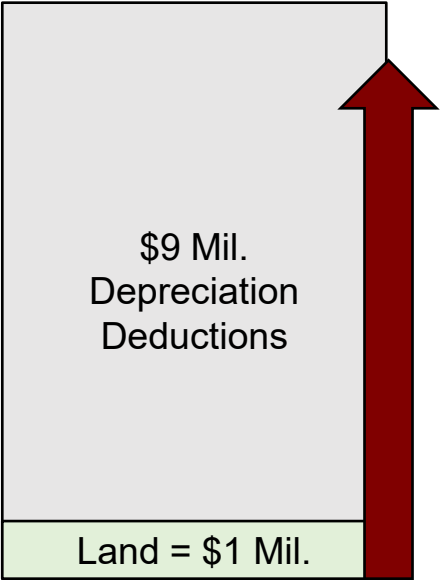
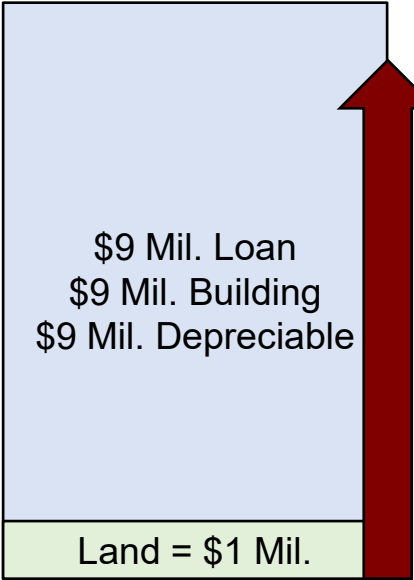
FMV = \$15 Mil.
Basis = \$6 Mil.
Debt = \$14 Mil.
O.B. = \$6 Mil.
C.A. = (\$8 Mil.)

**Distribution Cash
(Tax Free)**

FMV = \$15 Mil.
Basis = \$1 Mil.
Debt = \$14 Mil.
O.B. = \$1 Mil.
C.A. = (\$13 Mil.)

**Taxable Sale vs.
Estate Inclusion**

\$9 Mil. Recapture Income
\$5 Mil. Capital Gain
\$13 Mil. C.A. Obligation

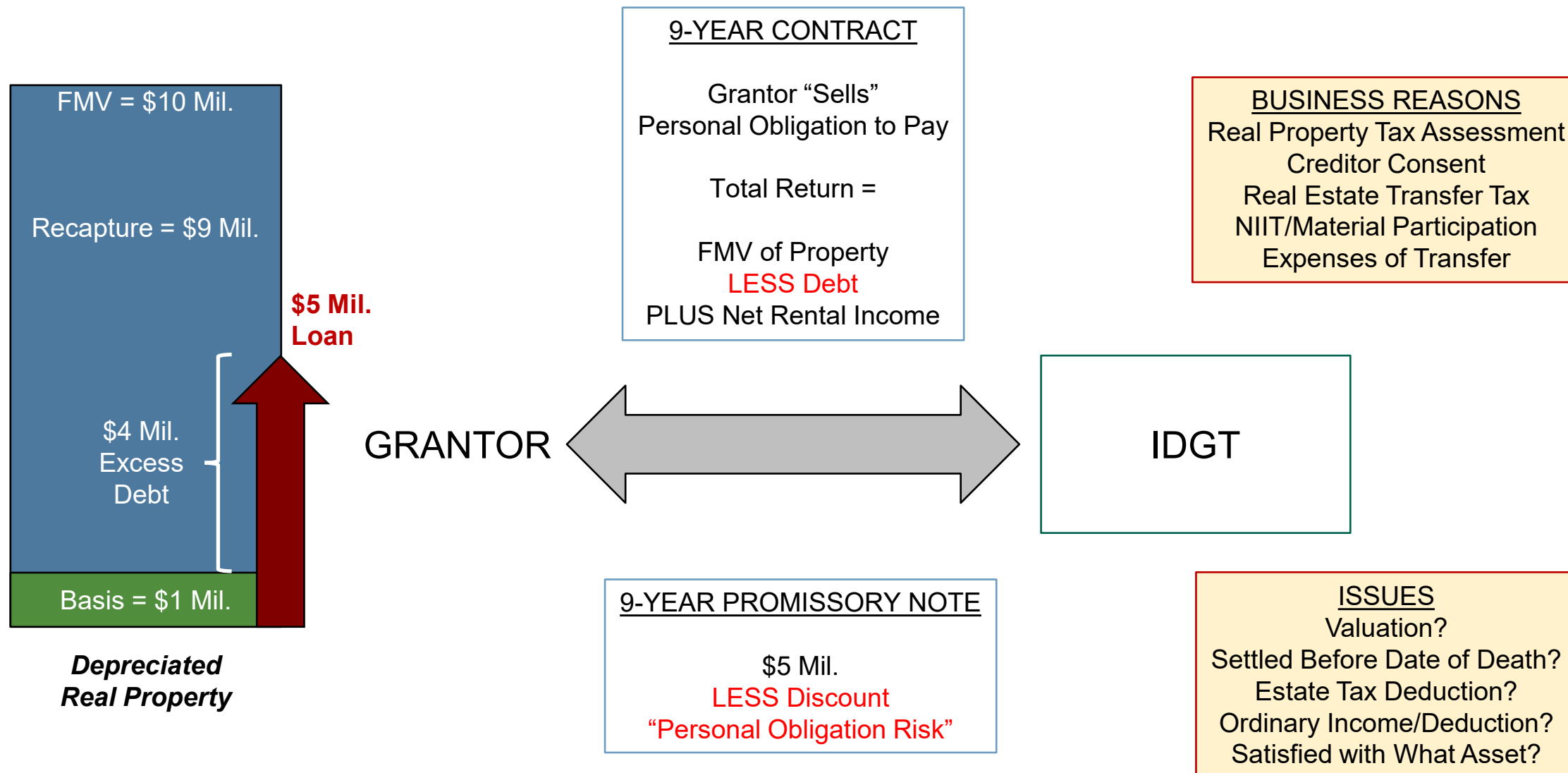


Sale Proceeds	\$15,000,000
Loan Payback	(\$14,000,000)
Recapture (25%)	(\$2,250,000)
Capital Gain Tax (23.8%)	(\$1,190,000)
Net Proceeds	(\$2,440,000)

ESTATE INCLUSION	
Max Est. Tax	\$400,000
“Step-Up” Depreciation	\$9,000,000
Net Taxable Sale	\$1,000,000

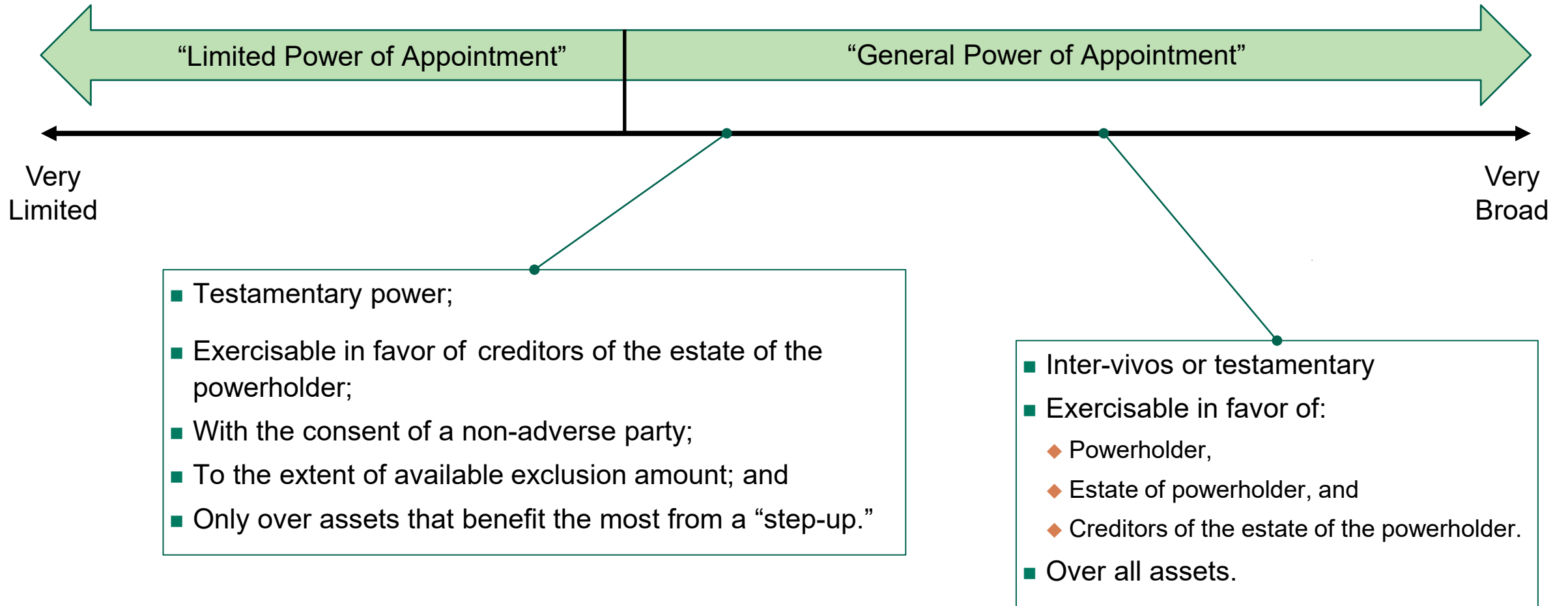
Private Derivative:
“Transfer” but Retain
Asset for “Step-Up”

Sell the Appreciation Via Contract, Own the Asset



Powers of Appointment and Upstream Planning

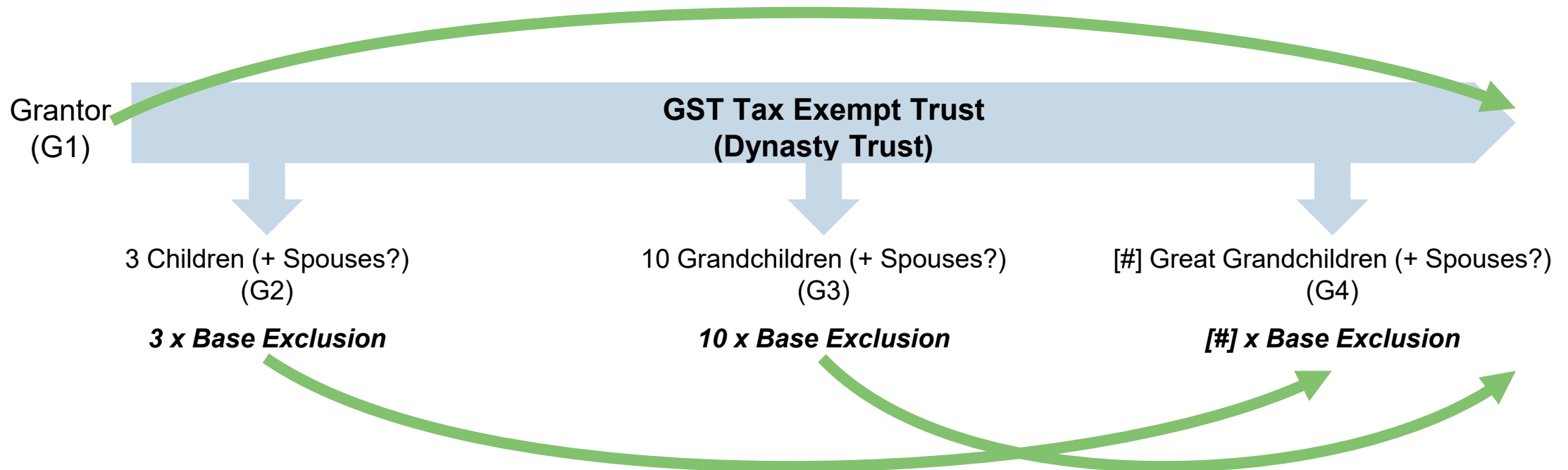
Powers of Appointment



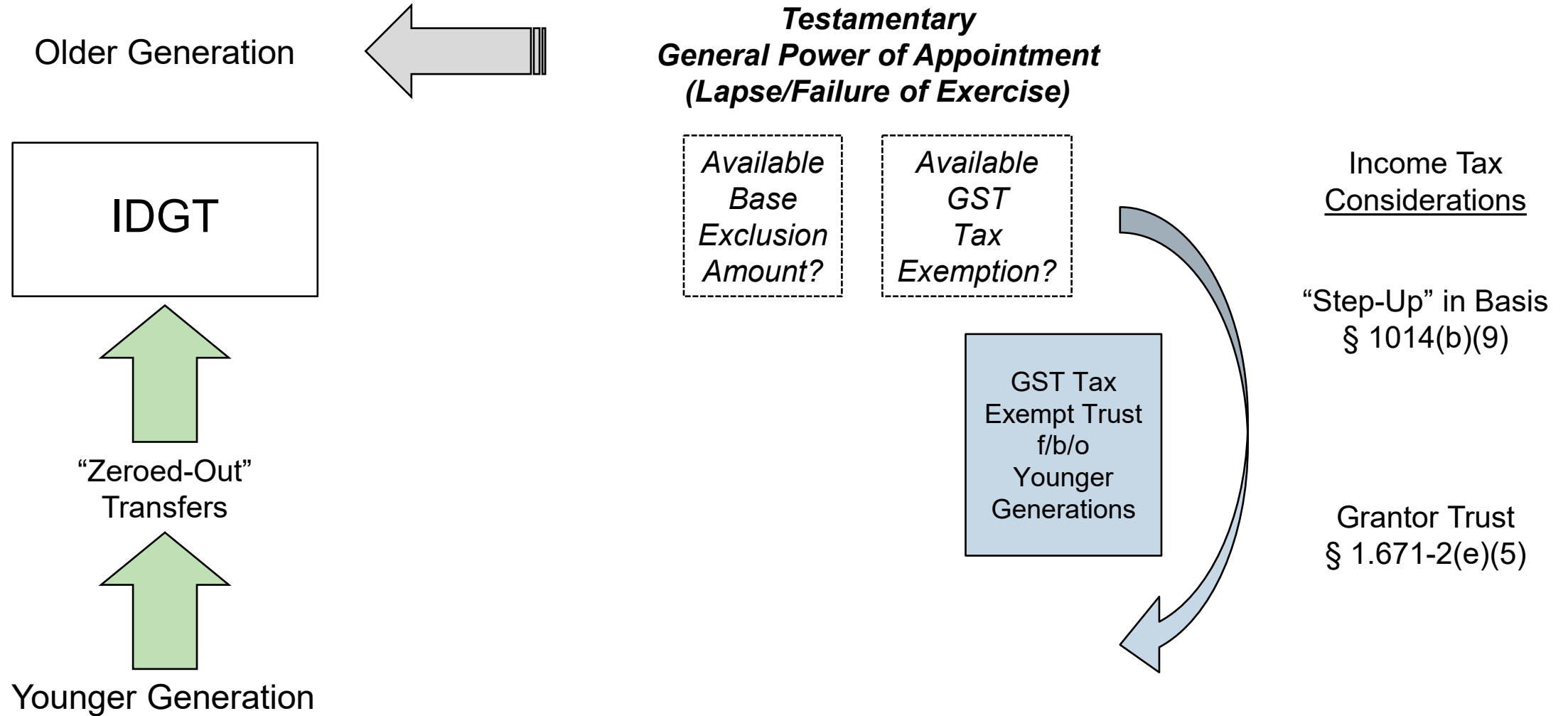
Multiplying the Unused Base Exclusion

■ Testamentary General Powers of Appointment

- ◆ Formula clause: each beneficiary's unused Base Exclusion Amount (estate and GST tax), specific to asset that would most benefit from "step-up" in basis, and in default in further trust.
- ◆ Independent trustee/protector giving testamentary general power of appointment to beneficiary.
- ◆ Modification of existing trusts or decanting to a new trust.



Upstream Planning: “Accidentally Perfect” Grantor Trust



INNOVATE PLANNING
WITH **TAXABLE**
INSTALLMENT NOTES

Deferred Payment Obligations in Estate and Income Tax Planning

Income Tax Consequences?

None

Gain
Basis
Interest

None

Seller/Lender

IDGT
Installment
Note

Taxable
Installment
Note

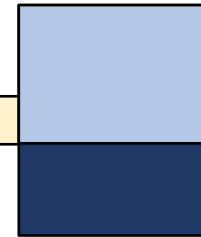
Intra-Family
Promissory
Note

Buyer/Borrower

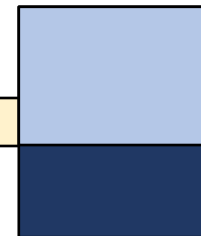
Intentionally
Defective
Grantor Trust

Taxable
Non-
Grantor Trust

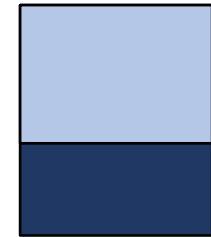
Intentionally
Defective
Grantor Trust



AB/FMV
\$40x/\$100x



AB/FMV
\$40x/\$100x



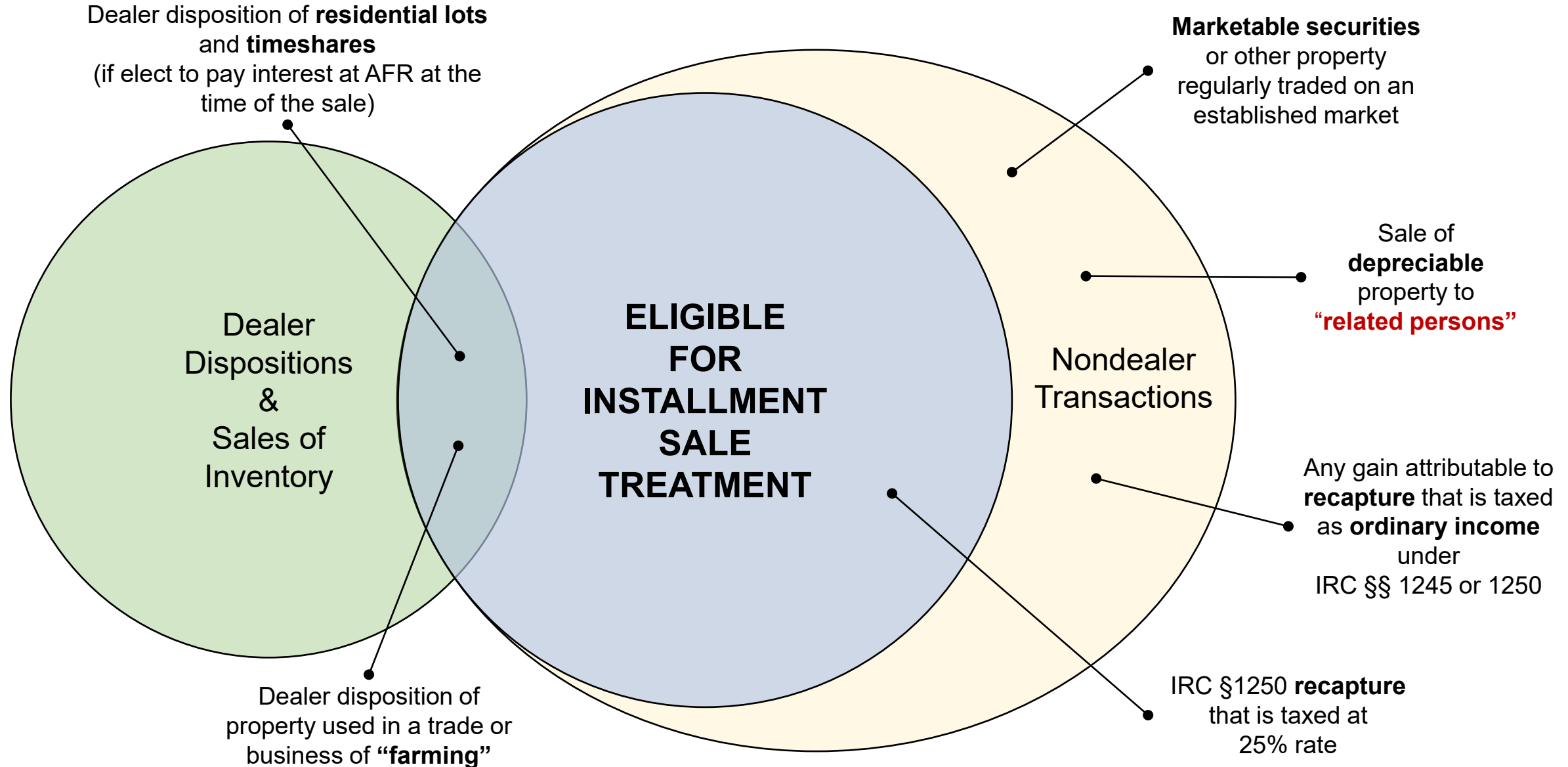
AB/FMV
\$40x/\$100x



AB/FMV
\$100x/\$100x



(IN)Eligibility for the Installment Method: Assets & Transactions



Not “Rushing”
Related Party
Sales

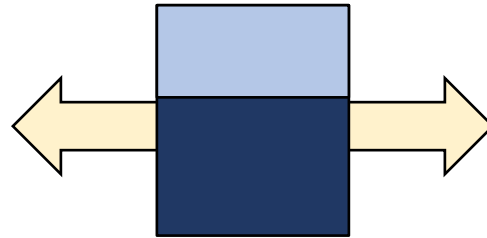
Resale of Purchased Property by a Related Person in 2 Years

IRC § 453(e): Resale of purchased property by a related party within 2 years of the first sale treated as a payment

Original
Seller

5-Year
Taxable
Installment
Note

First Disposition



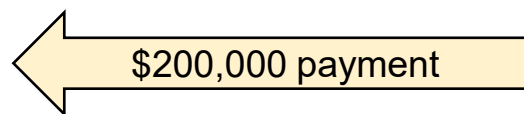
AB/FMV
\$600,000/\$1,000,000



AB/FMV
\$1,000,000/\$1,000,000

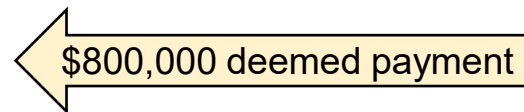
End of 1st Year (\$200,000 Installment Payment)

\$80,000 Gain (40%)
\$120,000 Basis
Interest

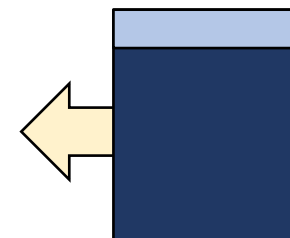


Before End of 2nd Year (Related Party Sells for \$1,200,000)

\$320,000 Gain (40%)
\$480,000 Basis



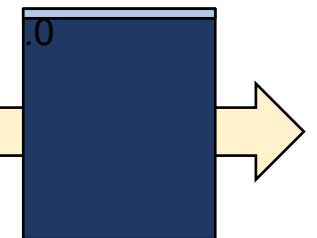
Related Party
Seller



AB/FMV
\$1,000,000/\$1,200,000

Second Disposition

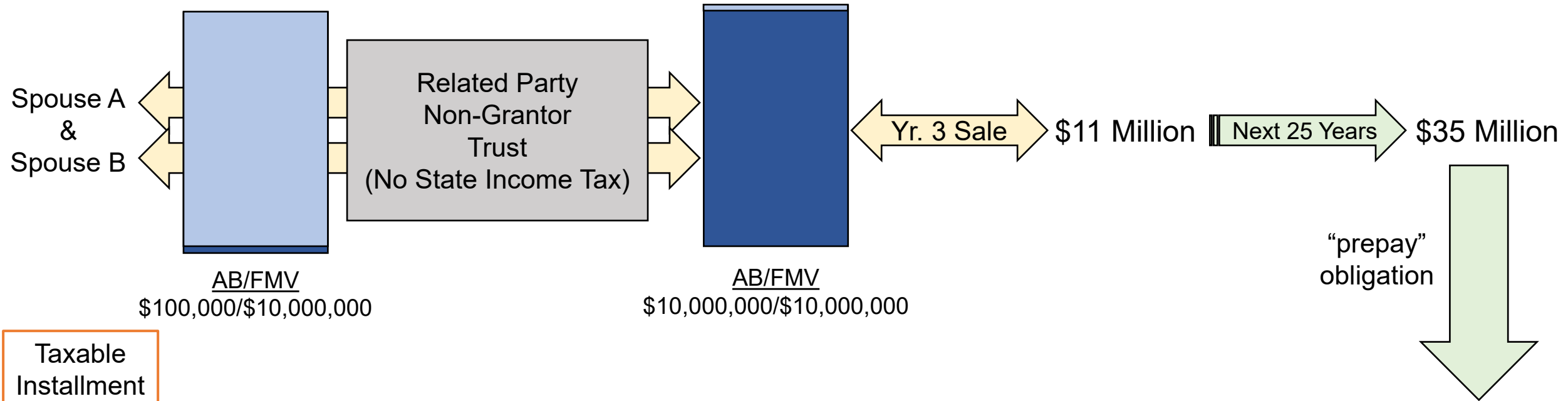
\$1,200,000



AB/FMV
\$1,200,000/\$1,200,000

- 2-year period is tolled if risk of loss is diminished (i.e., put, short, etc.)
- A “second disposition” includes a **gift** or other taxable transfer of the installment obligation
- A “second disposition” does not include any transfer after earlier of **death** of original seller or related party buyer
- Deemed payment does not cause prepayment of the installment obligation. Payments continue according to schedule unless the parties agree otherwise.

Not “Rushing” Related Party Sales



Taxable
Installment
Notes

30-year interest-only “balloon” [\$10,000,000 in year 30]



- Long term income tax deferral at both Federal and state levels
- No Interest Charge payable
- \$25 million of wealth transfer
- Flexibility to “prepay” at any time for any reason (i.e, tax rate increase)
- Complete avoidance of state income tax if A and B move to a no income tax state

What if you convert from a non-grantor trust to a grantor trust?

CCA 200923024
PLR 201730018

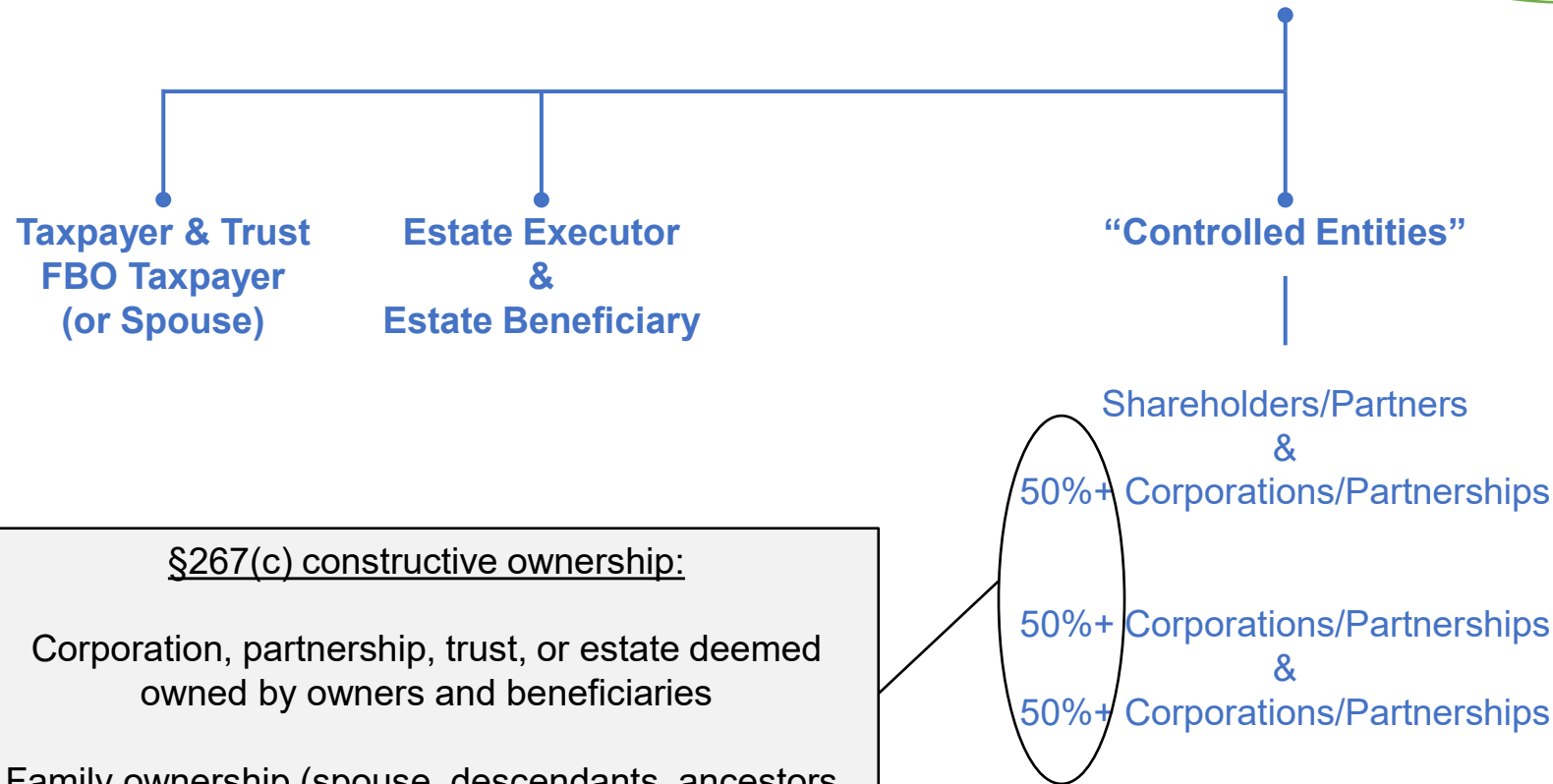
“Refreshing” Basis and
“Resurrecting” Depreciation:

Depreciable Property Sales to
“Related Persons”

“Related Person” under Section 453(g)

§ 453(e) & § 453(f)(1) “Related Person” ≠ § 453(g) “Related Person”

§ 453(g) “Related Person” = § 1239(b) + § 707(b)(1)(B)

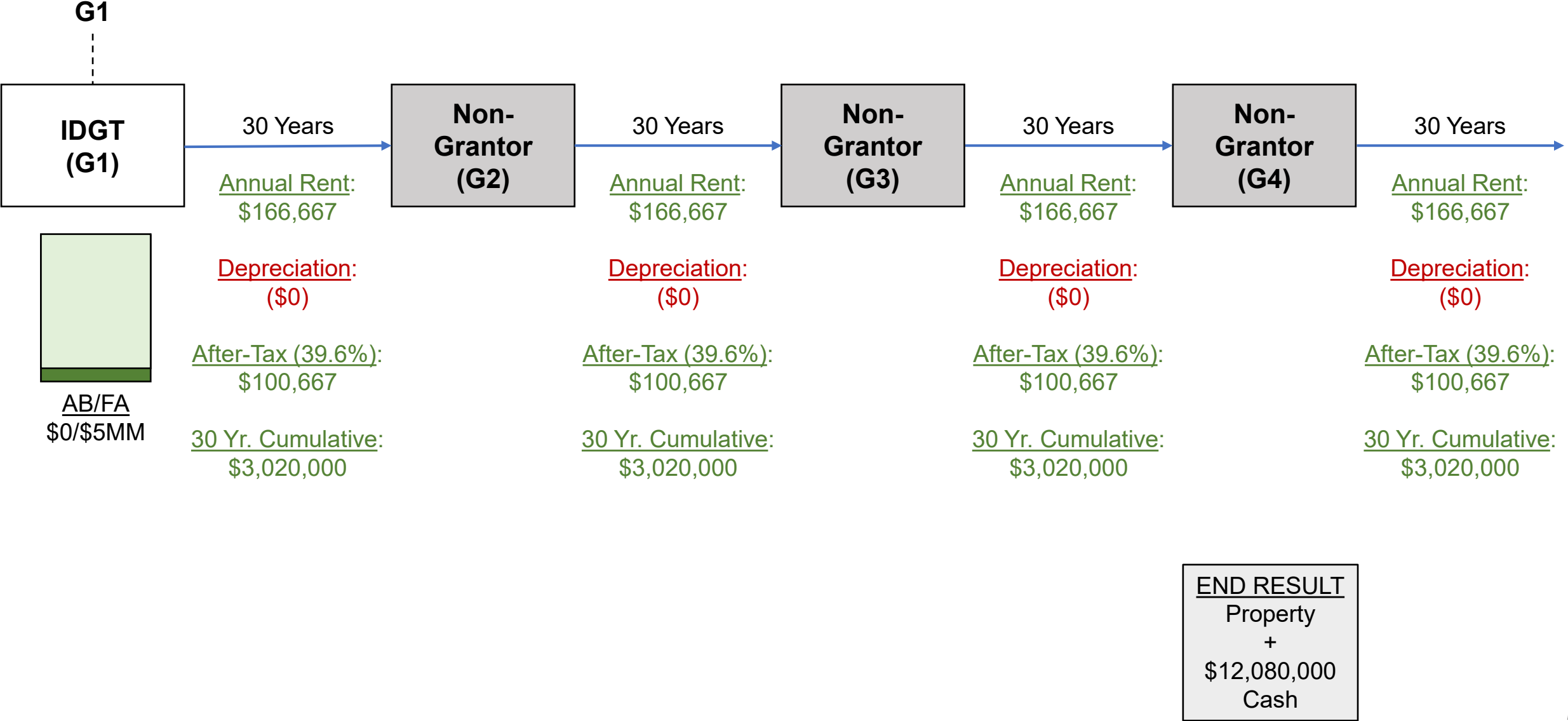


Only applies between 50%+ partnerships (with constructive family ownership) but NOT corporations and trusts

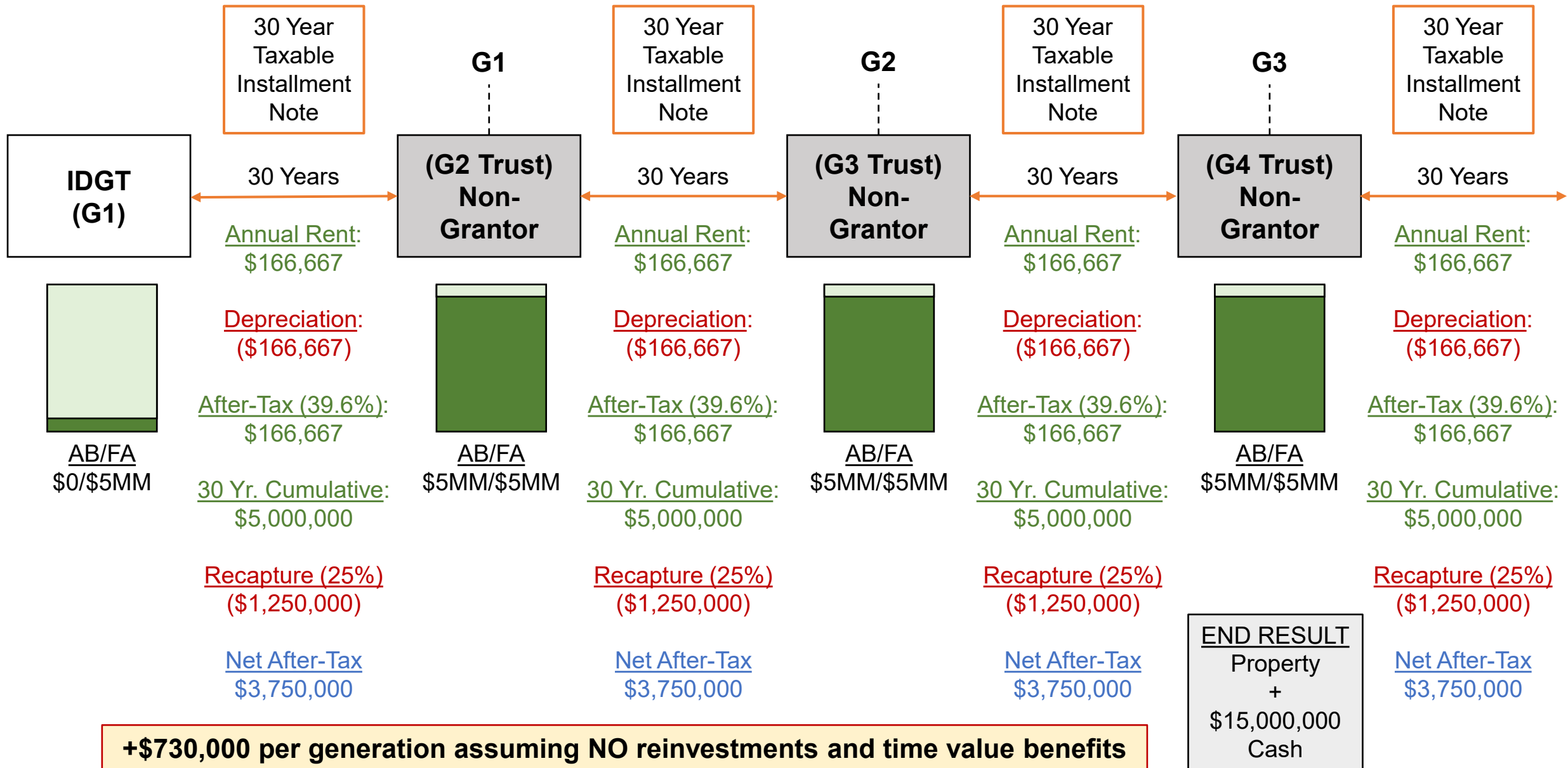
NOT §453(g) “Related Persons”

Children
Descendants
Trust for Children
Trust for Descendants

When Depreciated Property Is Held by an IDGT Dynasty Trust

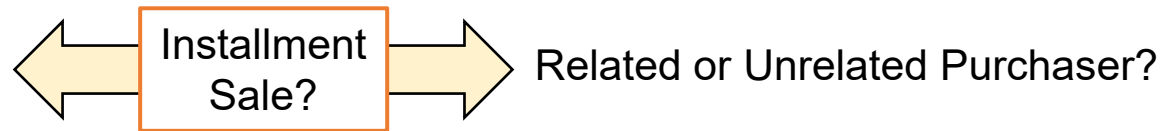
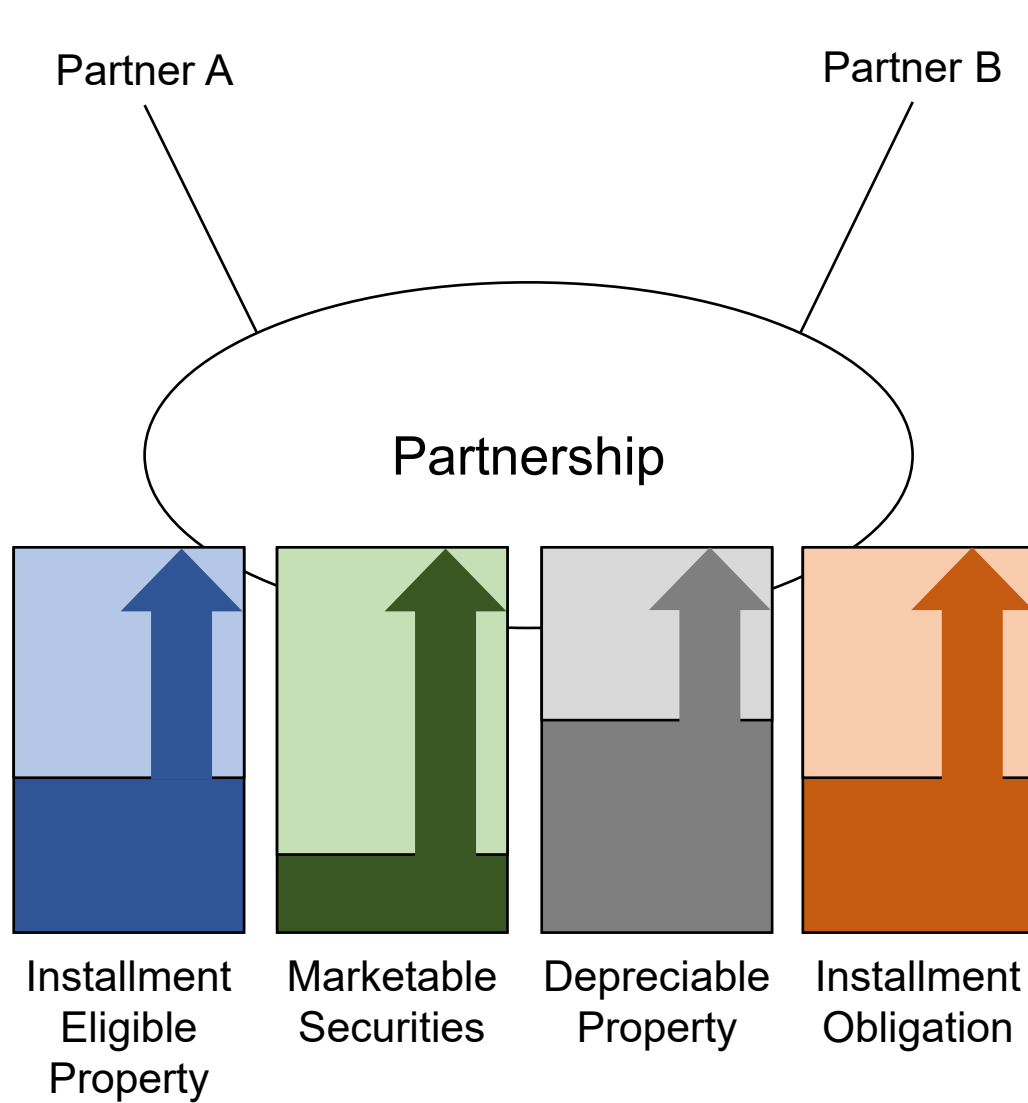


Refreshing Basis and Resurrecting Depreciation Deductions



Partnership Interest Installment Sales and Inside Basis Adjustments

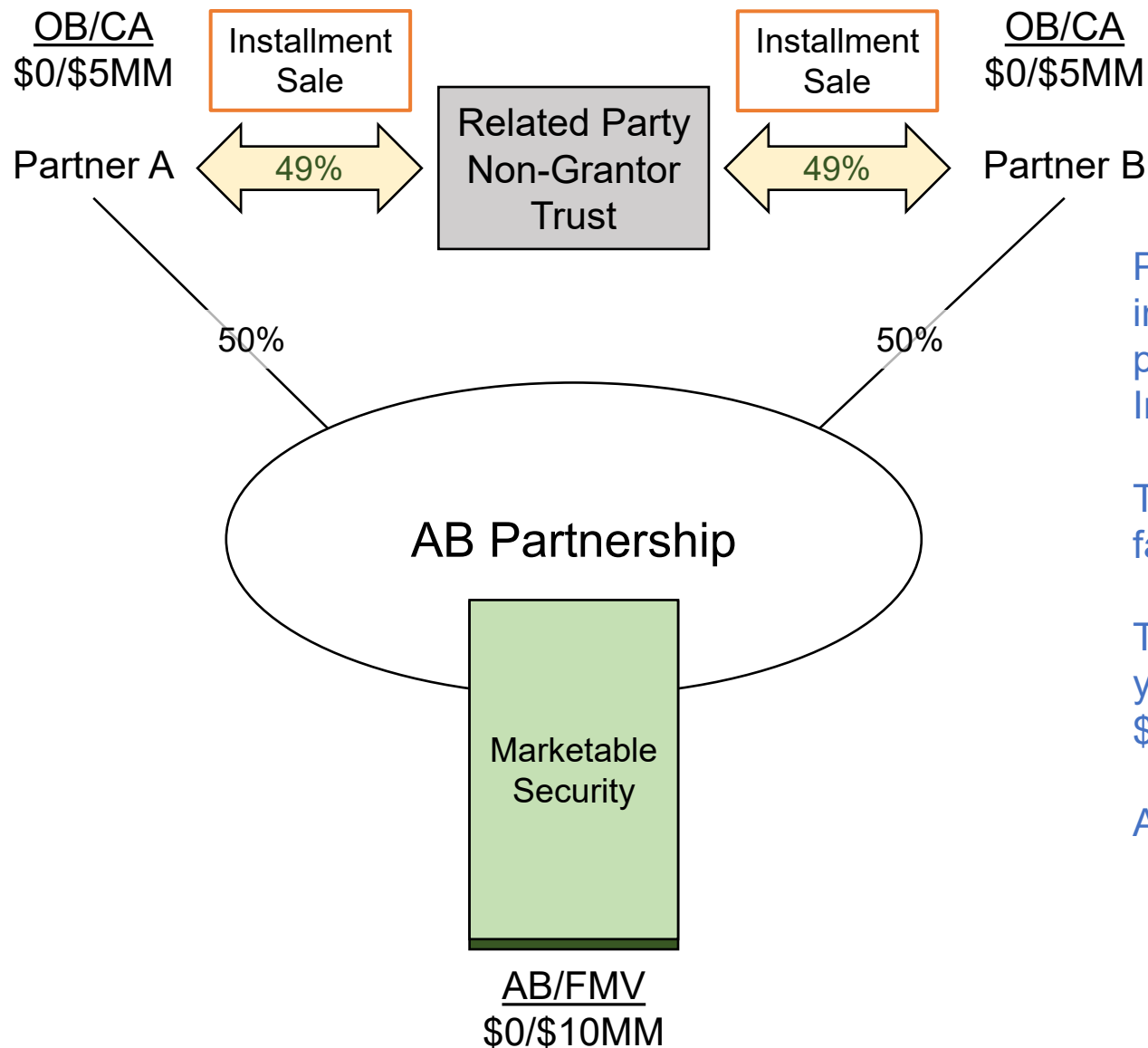
Partnerships and Sales of Partnership Interests



With some exceptions (i.e., inventory, unrealized receivables, installment notes), the IRS has not treated the installment sale of a partnership interest as a sale of a proportionate sale of the assets of the partnership

- Under what circumstances can an interest in a partnership be sold in installments when the partnership owns assets that are not eligible for the installment method?
- If a section 754 election is in place and an inside basis adjustment increases the basis of the partnership assets, what happens when a partnership asset is subsequently sold?
- What if the subsequent sale occurs within 2 years of the partnership sale?
- What if the installment obligation was contributed and subsequently distributed?

Marketable Security Partnership: Likely Does NOT Work



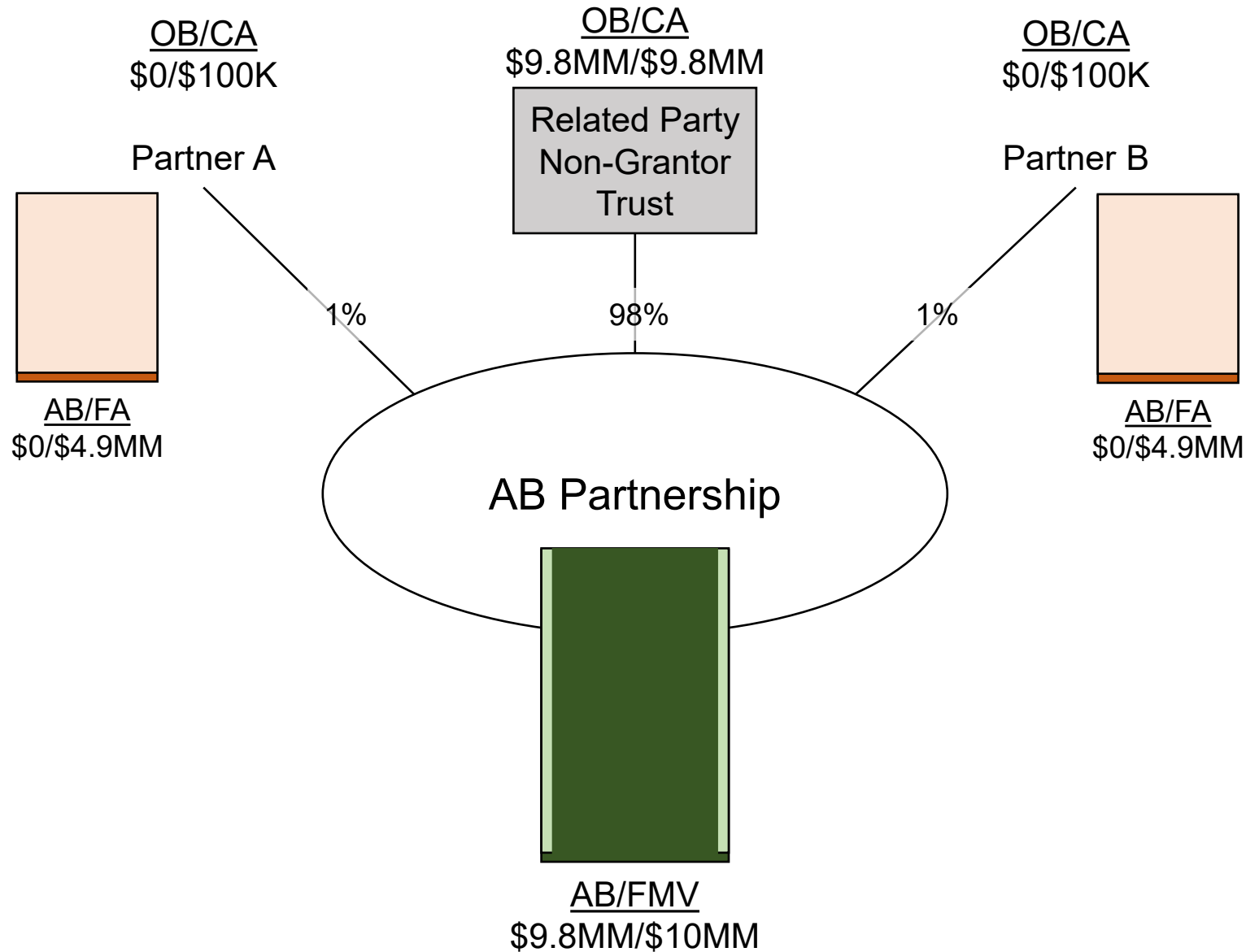
Partner A and B (spouses) each sell a 49% interest in AB Partnership (98% in aggregate) to a related party non-grantor trust in exchange for 2 Taxable Installment Obligations.

The Taxable Installment Obligations each have a face amount of \$4.9MM (\$9.8MM in aggregate).

The obligations provide for interest only for 10 years, followed by 10 equal annual installments of \$490,000 (\$980,000 in aggregate).

AB Partnership has a § 754 election in place.

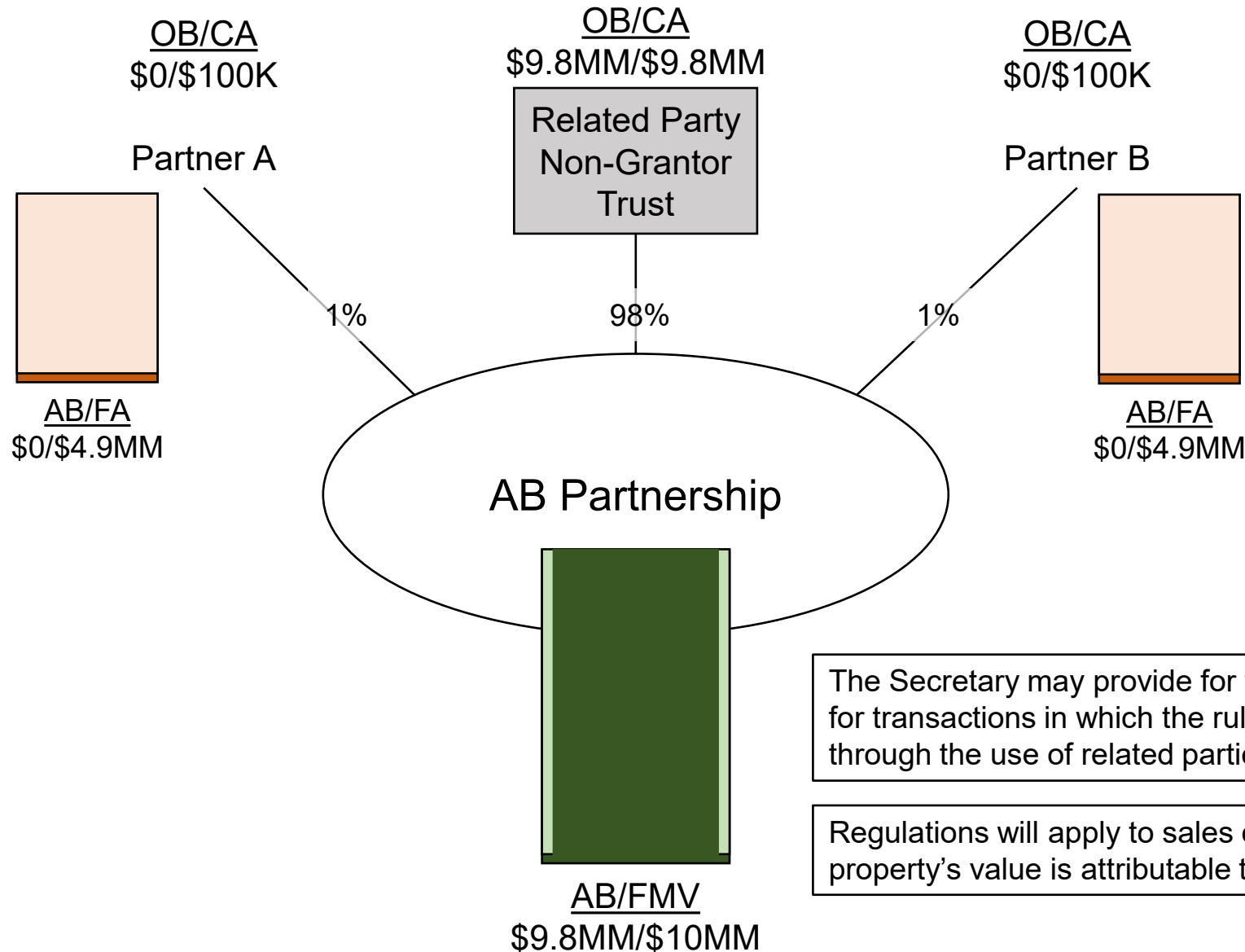
Marketable Security Partnership: Likely Does NOT Work



Under § 743(b), the inside basis of the marketable security is increased to \$9.8MM.

AB Partnership sells the marketable security.

Marketable Security Partnership: Likely Does NOT Work



Taxpayers hope for the following results:

- \$9.8MM of outside basis for the trust
- \$9.8MM of inside basis adjustment
- \$200K of capital gain upon sale of the marketable security
- No Interest Charge payable
- No claim that a related party had made a resale within 2 years
- Long-term deferral of the capital gain

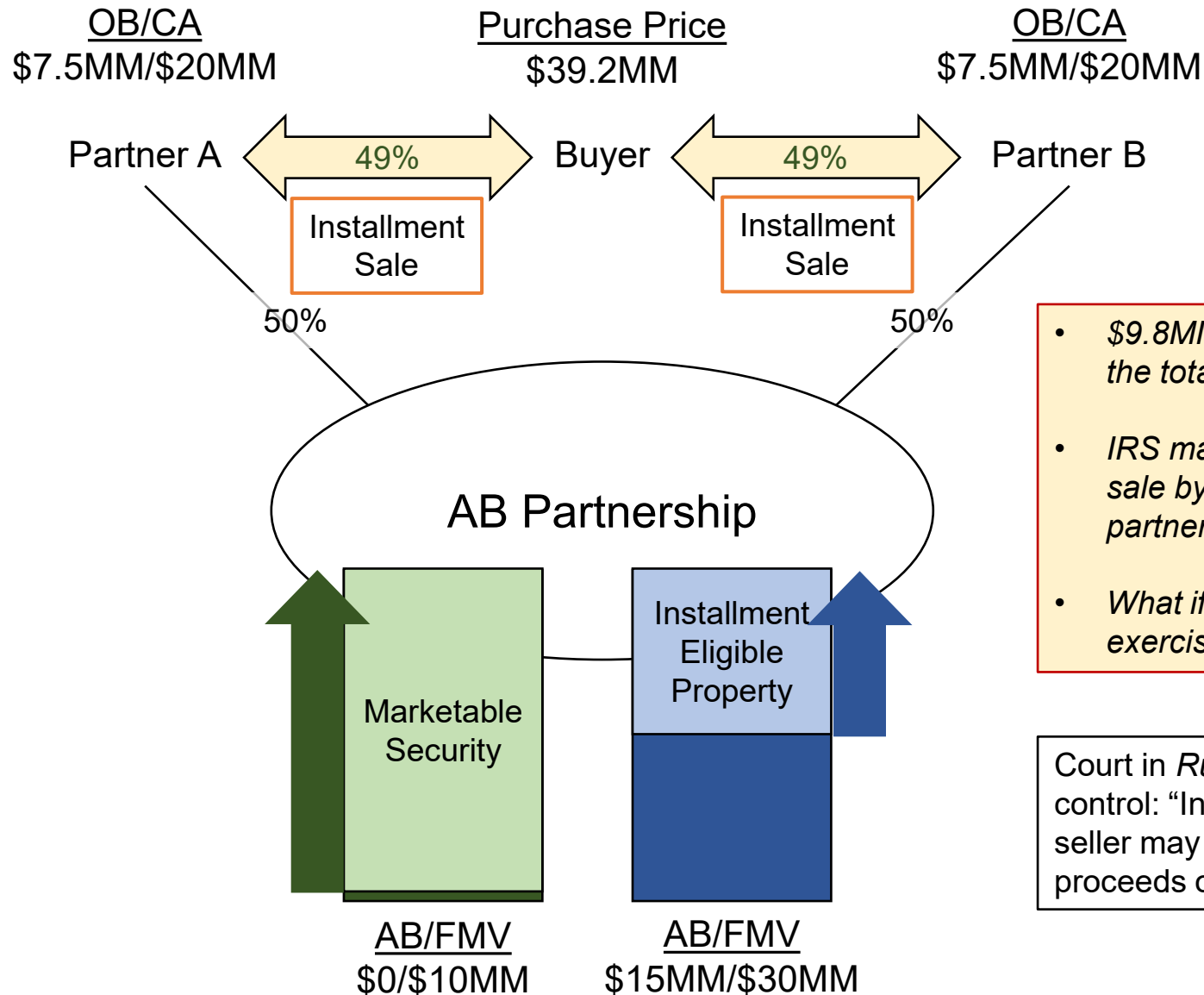
Actual likely results:

- A and B will recognize \$9.8MM of gain upon the sale of their partnership interests
- No installment sale treatment
- Inside basis of the marketable security will be increased to \$9.8MM under § 743(b)

The Secretary may provide for the application of this subsection in whole or in part for transactions in which the rules of this subsection otherwise would be avoided through the use of related parties, pass-thru entities, or intermediaries. § 453(k)

Regulations will apply to sales of property where a “**substantial portion**” of the property’s value is attributable to gain from publicly traded property. S. Rep. 99-133

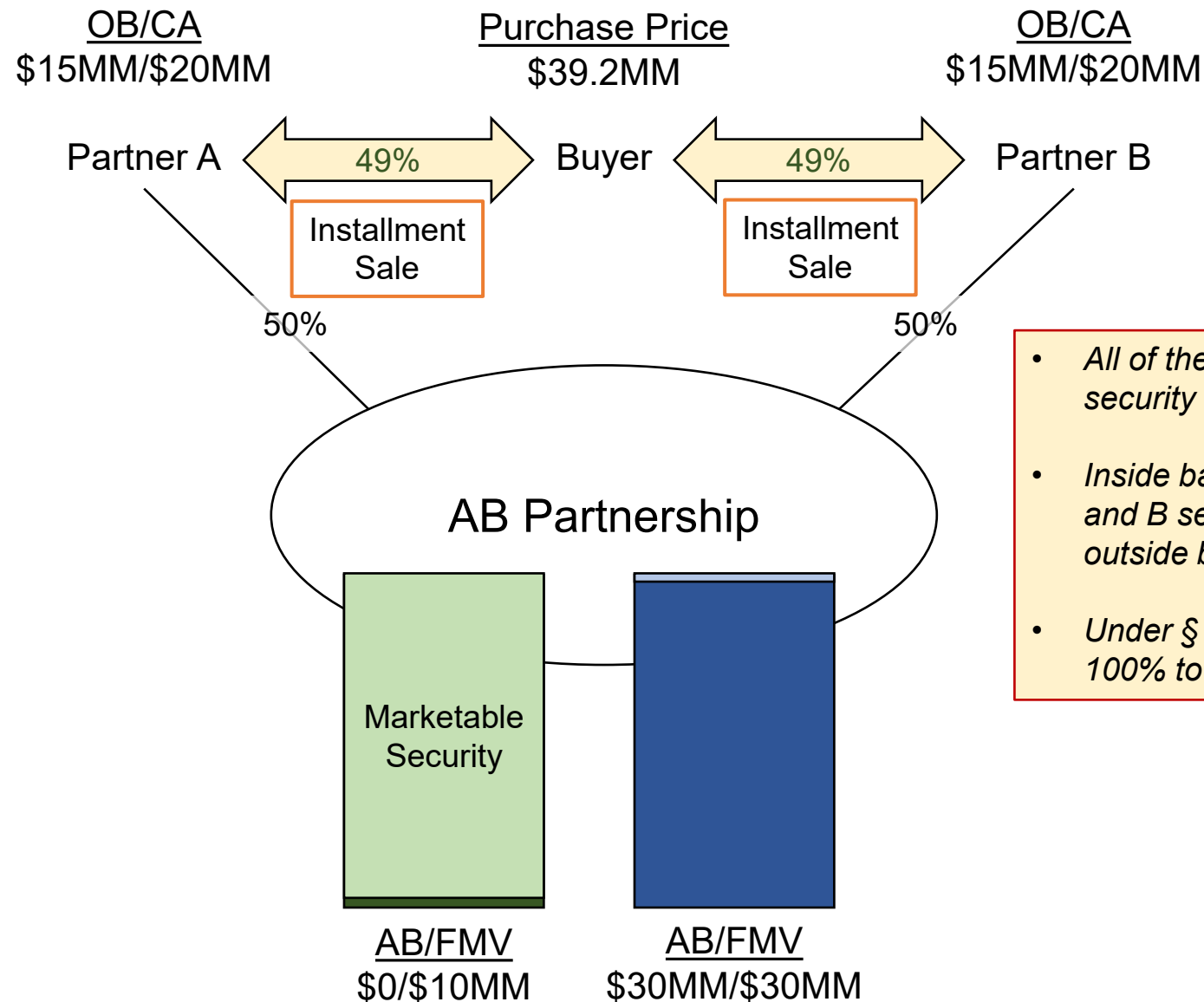
An Example of What Likely Would Work



- *\$9.8MM of appreciation is likely not a “substantial portion” of the total value of the partnership interest sold (\$39.2MM).*
- *IRS may argue that the sale of the marketable security is a sale by a related party, but what if the buyer of the partnership interest is not a related party?*
- *What if the marketable security is purchased due to an exercise of a call option by a third party?*

Court in *Rushing v. Commissioner* opined the key element is control: “In order to receive the installment sale benefits the seller may not directly or indirectly have control over the proceeds or possess the economic benefit therefrom.”

What About This Variation?

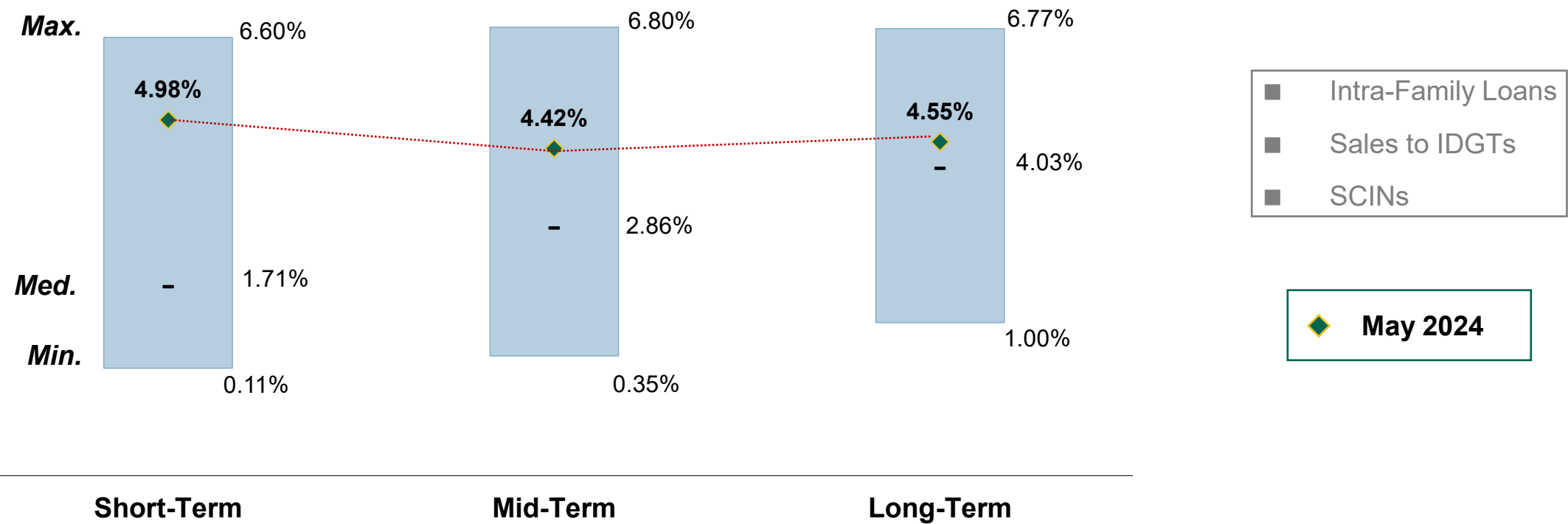


- All of the unrealized appreciation is due to the marketable security
- Inside basis adjustment under § 743(b) will be \$9.8MM (A and B sell in aggregate 98% of AB Partnership with an outside basis of \$29.4MM for a purchase price of \$39.2MM)
- Under § 755, the \$9.8MM basis adjustment will be allocated 100% to the marketable security

PLANNING WITH HIGHER INTEREST RATES

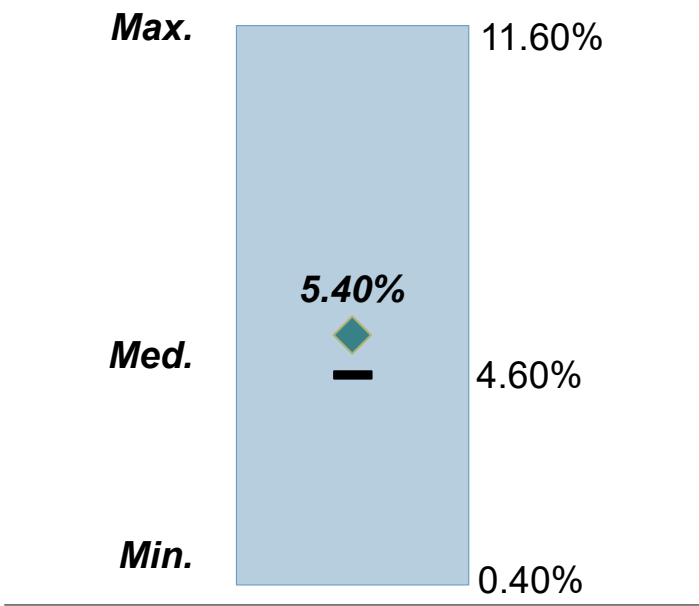
Today's AFR Rates

Applicable Federal Rates Jan. 1998 – May 2024



Today's 7520 Rate

Section 7520 Rate
(Since Inception)
Mar. 1989 – May 2024



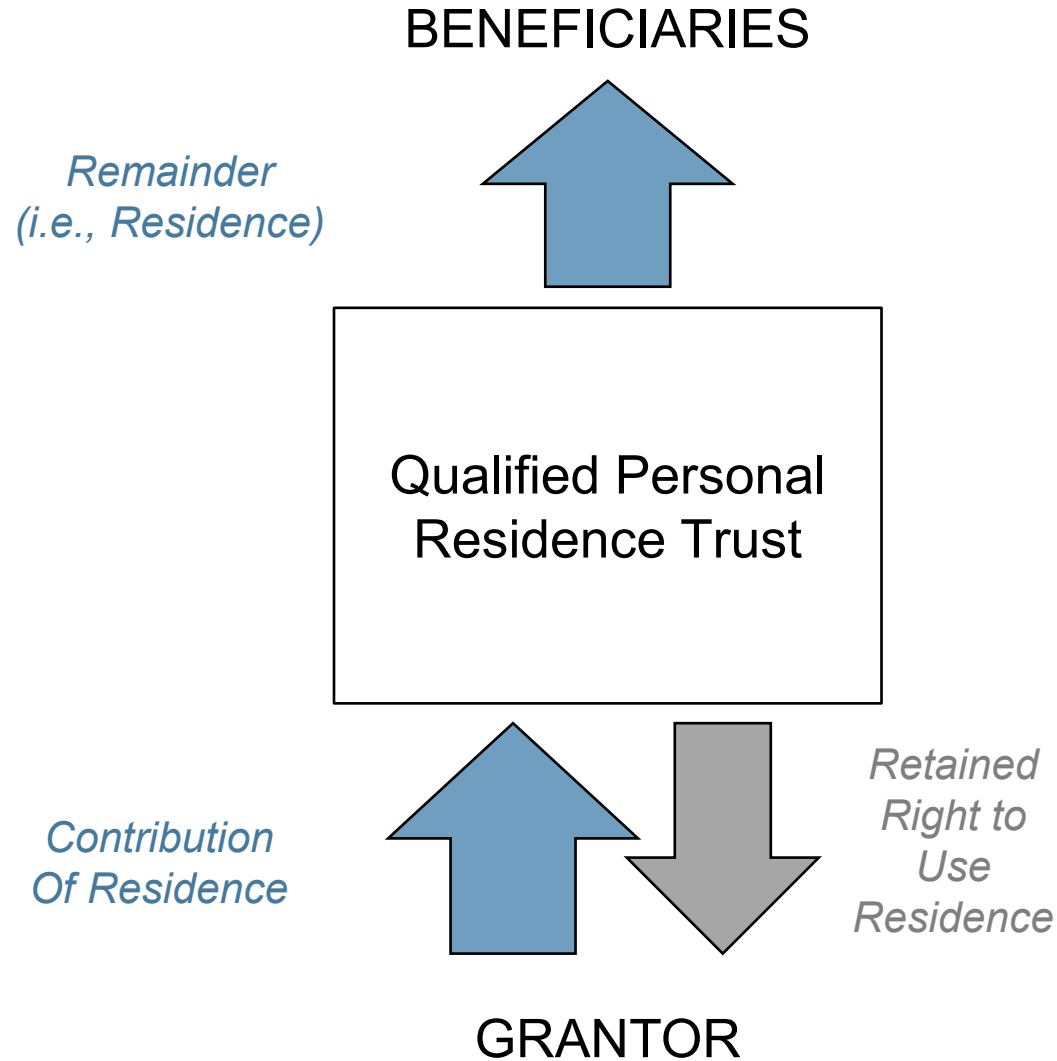
- GRATs
- QPRTs
- CLATs
- Private Annuities

7520 Rate

◆ **May 2024**

QPRT
or
Better Mouse Trap?

Qualified Personal Residence Trusts



No “Zeroed-Out” Gifts with QPRTs

<u>Resulting Taxable Gift</u> 50-Year Old Grantor \$1.0 Mil. Residence/Contribution		
Term	1.0% 7520 Rate	5.4% 7520 Rate
10 Years	\$847,290	\$553,150
20 Years	\$654,950	\$279,140
30 Years	\$402,860	\$112,090
40 Years	\$132, 560	\$24,080
50 Years	\$9,600	\$1,140

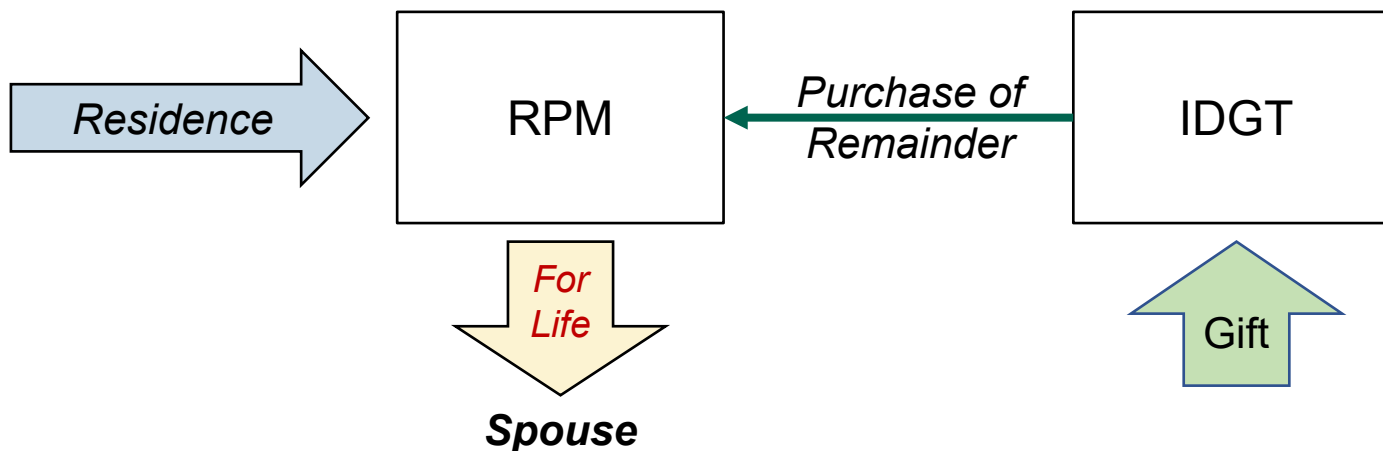
Additional Things About QPRTs

- Commutation of term holder's interest is prohibited
- Limitations to QPRTs
 - ◆ Residence may not be purchased by grantor or grantor's spouse during term or after term
 - ◆ Fair market value rent must be paid to owners after expiration of the term
- Sale of residence with no intent to repurchase will convert QPRT to GRAT
- Personal residence
 - ◆ Includes interest holder's principal place of business
 - ◆ Can be rented when interest holder is not occupied by interest holder
 - ◆ Can be used rent free by family members
- Possible to cause estate tax inclusion (and "step-up" in basis) on QPRT assets
- Alternatives to QPRTs include:
 - ◆ Joint split-interest purchase
 - ◆ Remainder Purchase Marital Trust

Remainder Purchase Marital Trust with Personal Residence

RPM Trust: Remainder Value 60-Year-Old Spouse \$1.0 Mil. Residence	
Term	5.4% 7520 Rate
Life	\$368,580
Life or 20 Years	\$435,790
Life or 30 Years	\$377,170
Life or 40 Years	\$368,800

QPRT: Resulting Taxable Gift 60-Year-Old Grantor \$1.0 Mil. Residence	
Term	5.4% 7520 Rate
10 Years	\$504,640
20 Years	\$202,640
30 Years	\$43,530
40 Years	\$2,060



No QPRT Restrictions On:

- Multiple personal residences
- Sale of residence to grantor, spouse, or grantor trust
- Use of residence (rental)
- Additional property by gift or sale
- Use of sale or insurance proceeds

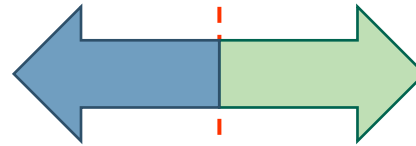
*“Reverse”
Preferred Partnership
Freeze*

“Reverse” Preferred Partnership Freeze

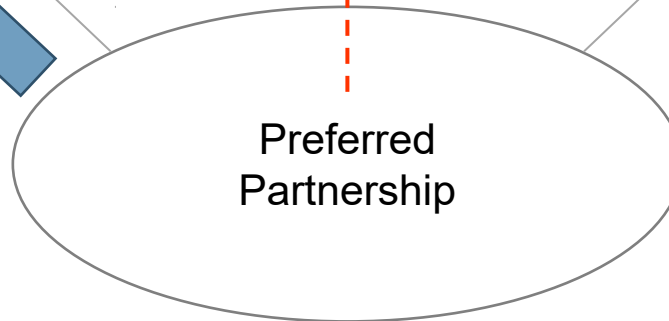
How Do You
Value the
Transferred
Preferred
Interest?

$$\begin{array}{r} 9\% \text{ Preferred Rate} \\ \times \\ \$19,442,000 \text{ Liquidation} \\ = \\ \$1,749,780 \end{array}$$

[Transferred]
Preferred
Holder



[Retained]
Common
Holder



\$10,558,000
Common

\$30.0 Mil.

“Junior Equity” Exception and Rev. Rul. 83-120

“Junior Equity Exception” to Section 2701

- Normal gift tax valuation rules apply
- Lack of marketability and minority interest discounts applicable

30% Valuation Discount

\$13.61 Mil. Taxable Gift

\$1,749,780 = ~12.9% Annual Return

Rev. Rul. 83-120

■ Major Factors

◆ Yield

◆ Dividend Coverage

◆ Dissolution Protection

■ Minor Factors

◆ Voting Rights

◆ Lack of Marketability

“high-grade, publicly-traded preferred stocks”

Based on
structure
of the
partnership

Preferred Stock Sectors

Financial Services

Oil & Gas

Real Estate

Interest Rates



Preferred Stock Yields

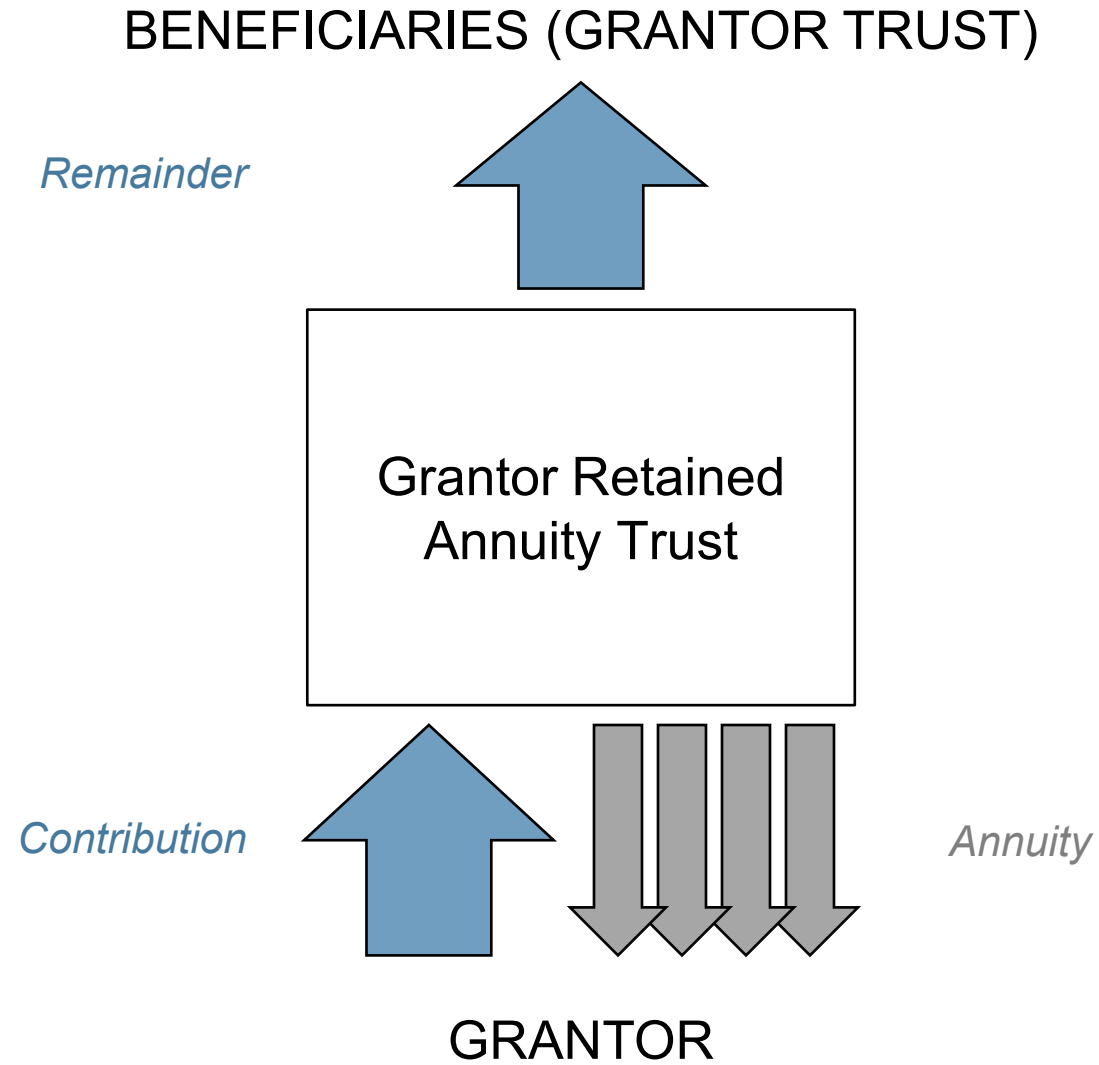
7% to 14%



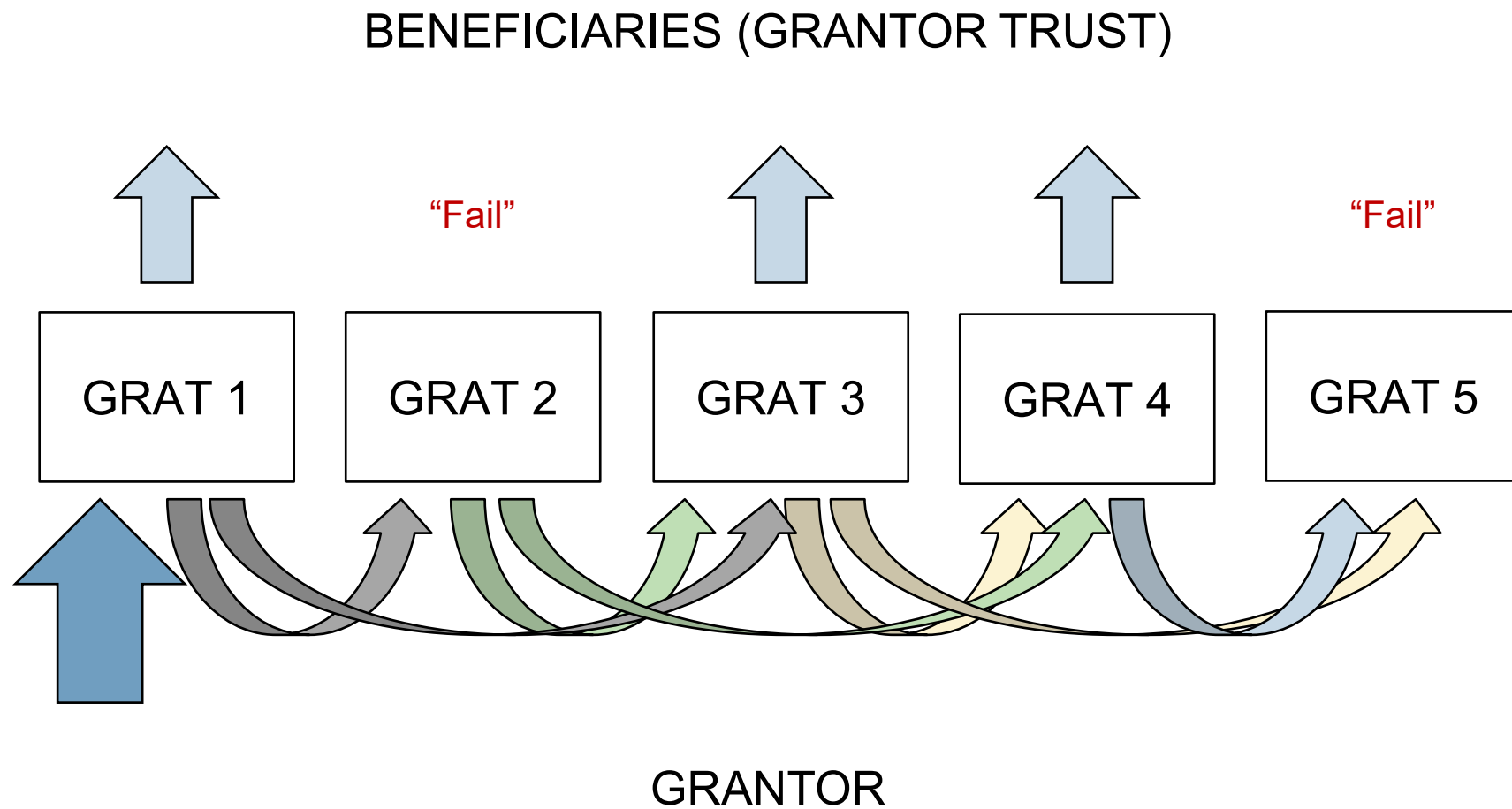
GRAT

Considerations

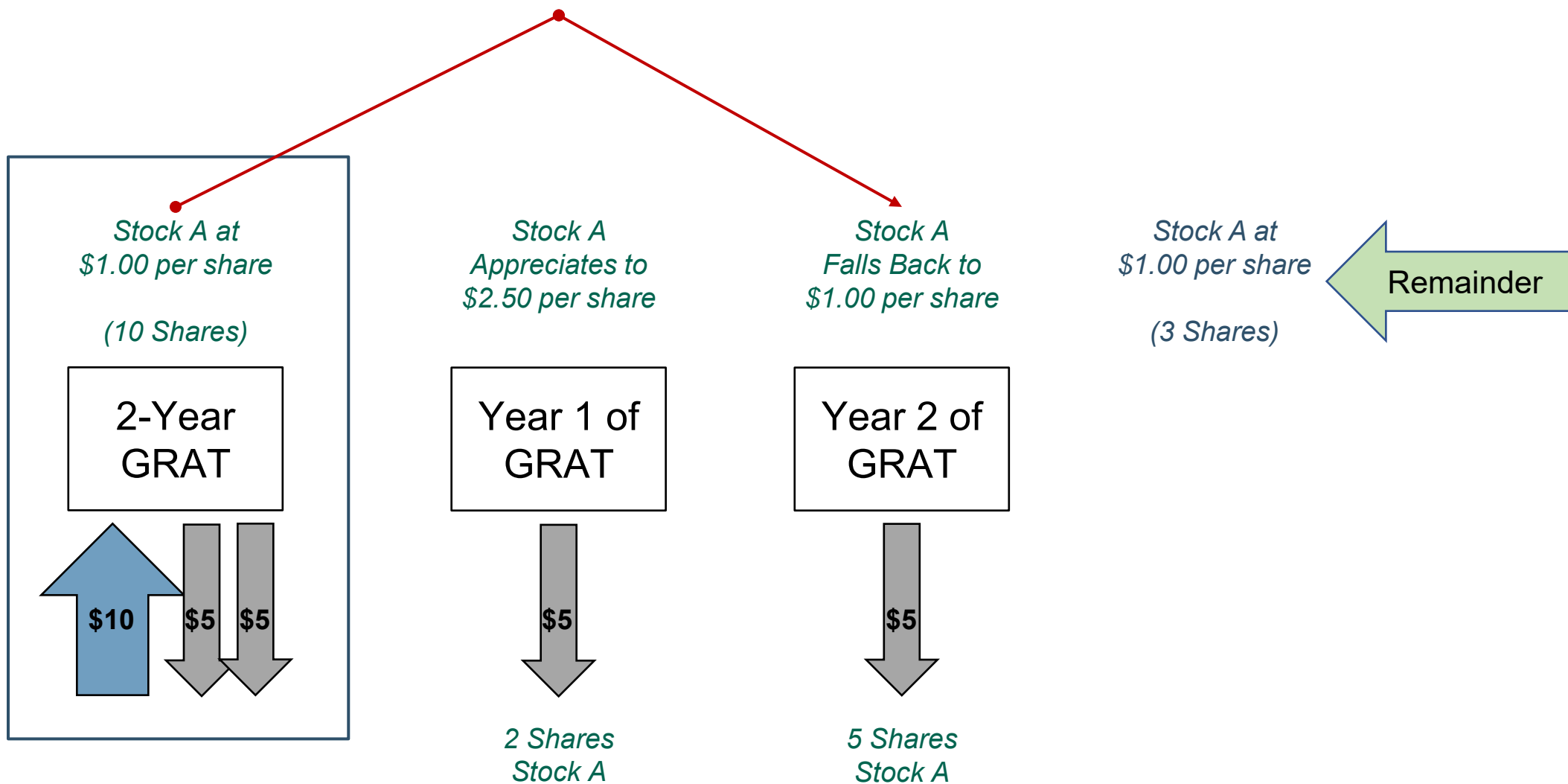
Grantor Retained Annuity Trusts



Short-Term (2-Year) Zeroed-Out “Rolling” GRATs



Short-Term GRATs Are About Volatility (Not Return or 7520 Rate)



Long-Term GRATs with Bonus Exclusion Gift

\$10,000,000 Contribution - \$3,195,000 Retained Annuity = \$6,805,000 Taxable Gift

50 Year GRAT

Annuity	\$ 185,937.12
7520 Rate	5.4%
Years	50
PV of Grantor's Retained Interest	\$ 3,195,000
Annuity Factor	17.18322821
Life Factor	0.927894323
Remainder Factor	0.072105677

7520 Rate at Death	\$ 20.2036-1(c)(2) Inclusion
1.0%	\$ 18,593,712
2.0%	\$ 9,296,856
3.0%	\$ 6,197,904
4.0%	\$ 4,648,428
5.0%	\$ 3,718,742
6.0%	\$ 3,098,952
7.0%	\$ 2,656,245

GRAT Asset Value	
Years	Annual Return 7%
5	\$ 12,956,241
10	\$ 17,102,523
15	\$ 22,917,897
20	\$ 31,074,261
25	\$ 42,513,982

60 Year GRAT

Annuity	\$ 180,209.65
7520 Rate	5.4%
Years	60
PV of Grantor's Retained Interest	\$ 3,195,000
Annuity Factor	17.7293503
Life Factor	0.957384916
Remainder Factor	0.042615084

7520 Rate at Death	\$ 20.2036-1(c)(2) Inclusion
1.0%	\$ 18,020,965
2.0%	\$ 9,010,482
3.0%	\$ 6,006,988
4.0%	\$ 4,505,241
5.0%	\$ 3,604,193
6.0%	\$ 3,003,494
7.0%	\$ 2,574,424

GRAT Asset Value	
Years	Annual Return 7%
5	\$ 12,989,179
10	\$ 17,181,656
15	\$ 23,061,823
20	\$ 31,309,061
25	\$ 42,876,239

70 Year GRAT

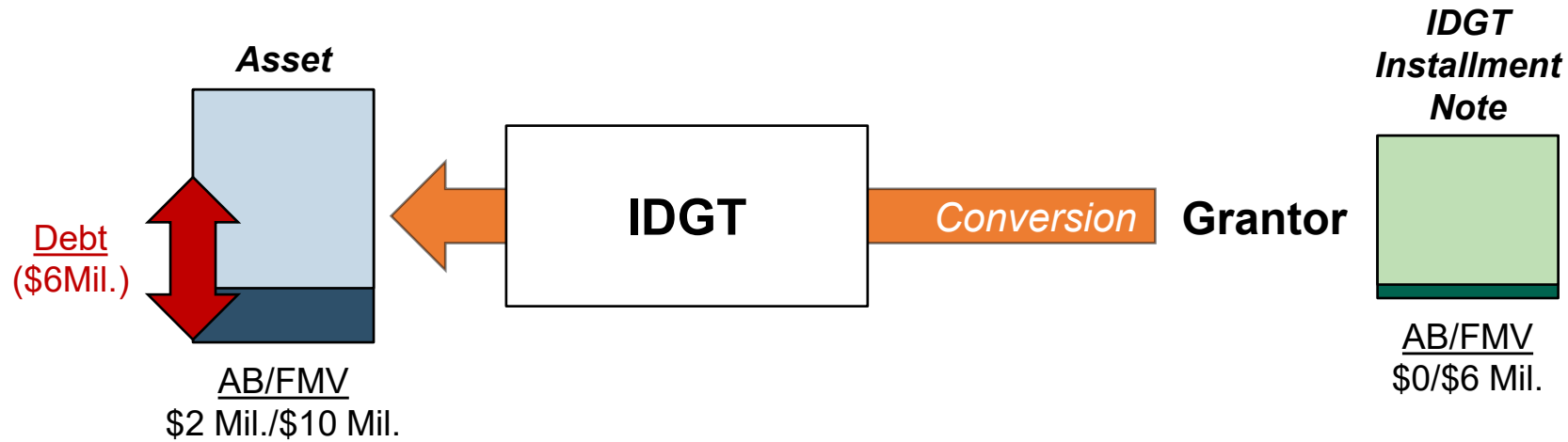
Annuity	\$ 176,987.59
7520 Rate	5.4%
Years	70
PV of Grantor's Retained Interest	\$ 3,195,000
Annuity Factor	18.05211322
Life Factor	0.974814114
Remainder Factor	0.025185886

7520 Rate at Death	\$ 20.2036-1(c)(2) Inclusion
1.0%	\$ 17,698,759
2.0%	\$ 8,849,379
3.0%	\$ 5,899,586
4.0%	\$ 4,424,690
5.0%	\$ 3,539,752
6.0%	\$ 2,949,793
7.0%	\$ 2,528,394

GRAT Asset Value	
Years	Annual Return 7%
5	\$ 13,007,708
10	\$ 17,226,174
15	\$ 23,142,790
20	\$ 31,441,151
25	\$ 43,080,032

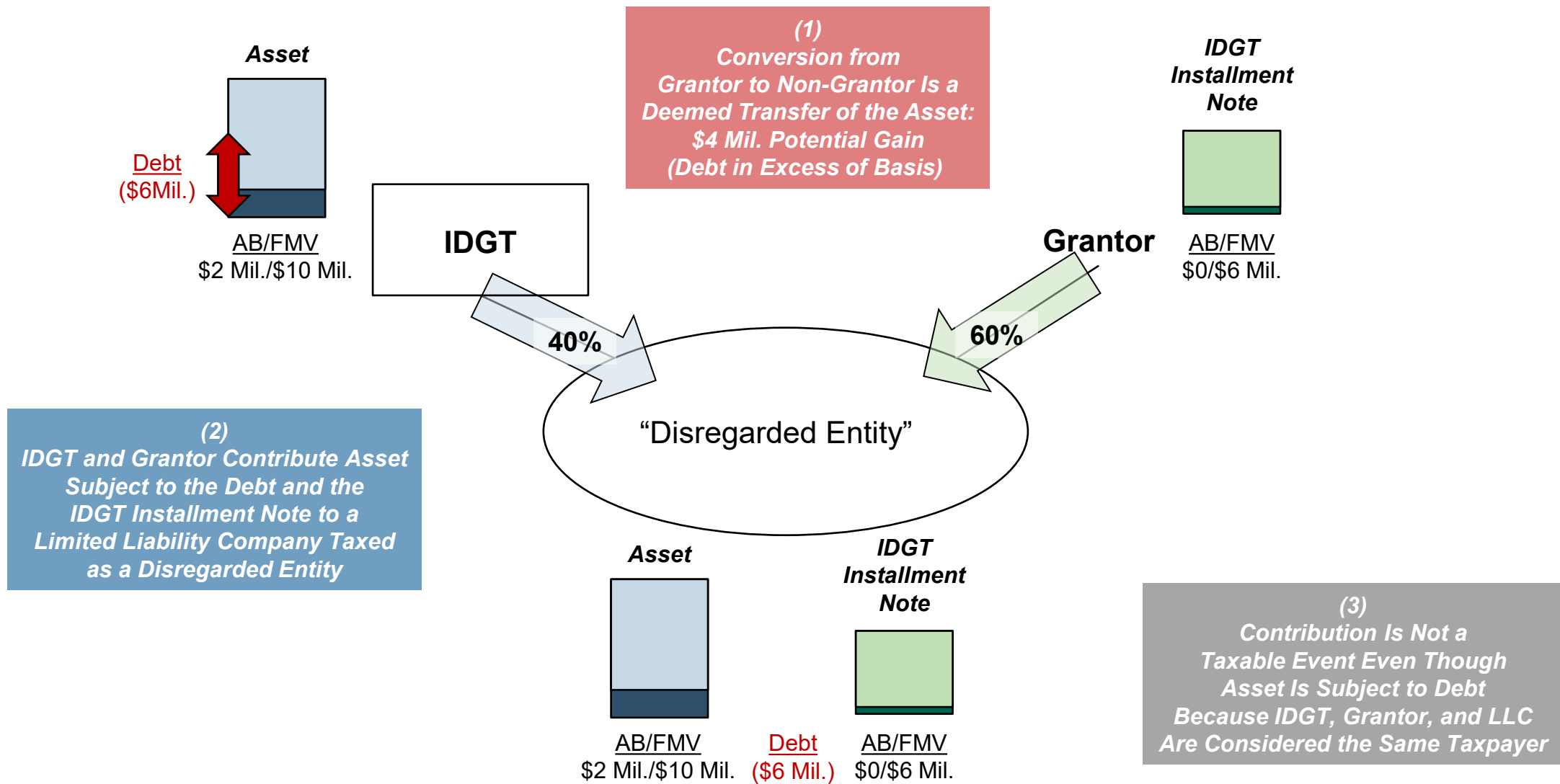
AVOIDING GAIN
UPON THE DEATH OF
THE GRANTOR

Installment Sale to IDGT and Outstanding Note

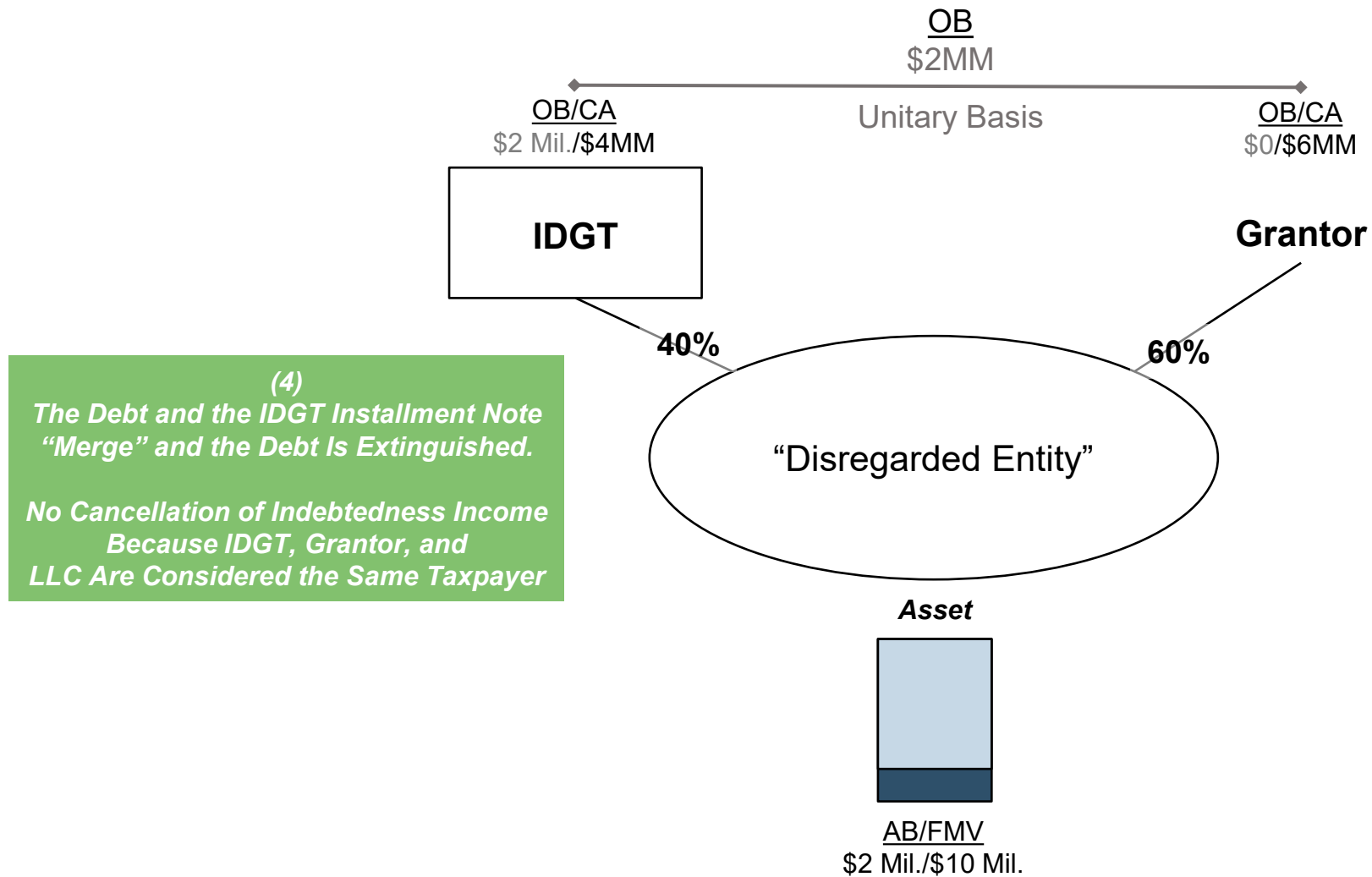


**Potential \$4 Mil. Taxable Gain
Upon Conversion of
Grantor Trust to Non-Grantor Trust**

Making the Debt Disappear with a Disregarded Entity



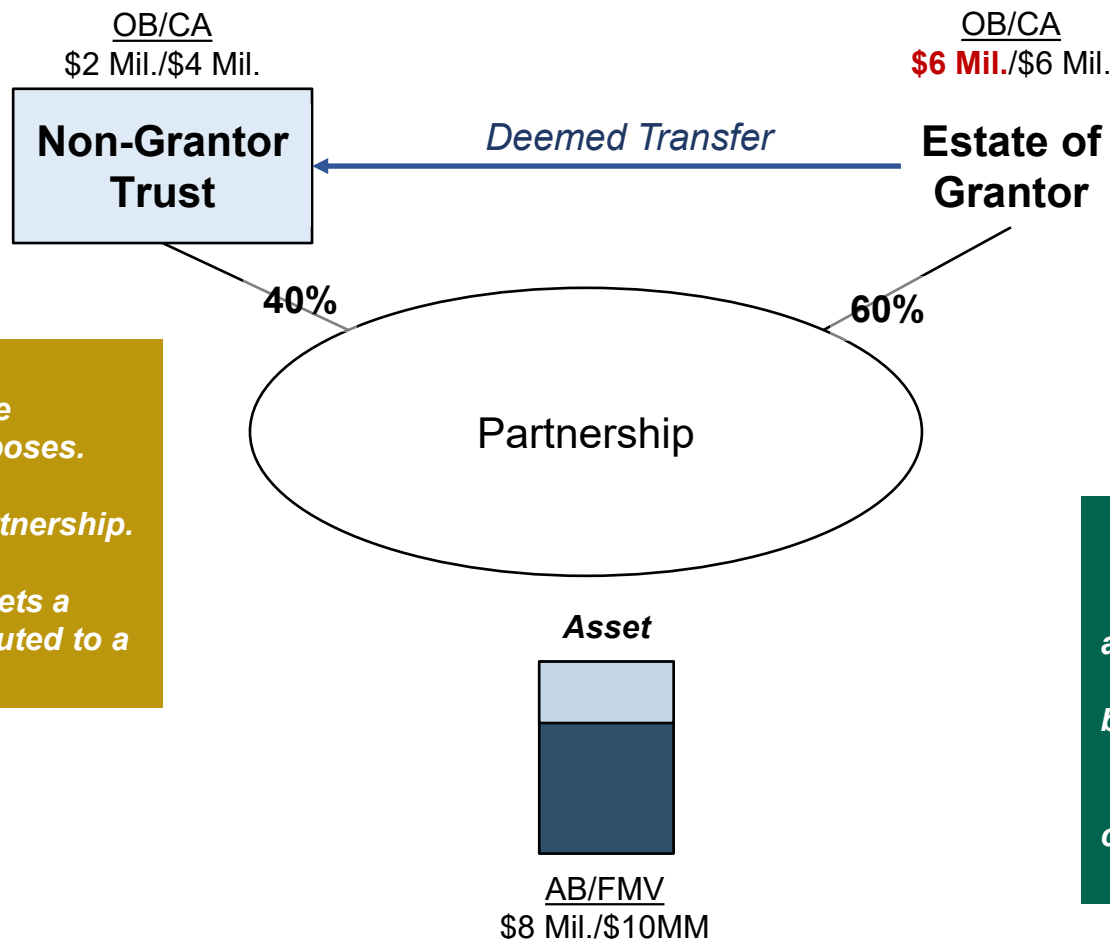
Debt “Merges” and Disappears: Non-Taxable Event



Death of Grantor Converts Disregarded Entity to a Partnership

Rev. Rul. 99-5

Conversion of Disregarded Entity to Partnership Created by Transfer of an LLC Interest to Another Taxpayer Treated as Purchase of Assets and Contribution to a New Partnership.



(5)
Grantor's Death Converts the LLC to a Partnership for Tax Purposes.

Treated as the Creation of a New Partnership.

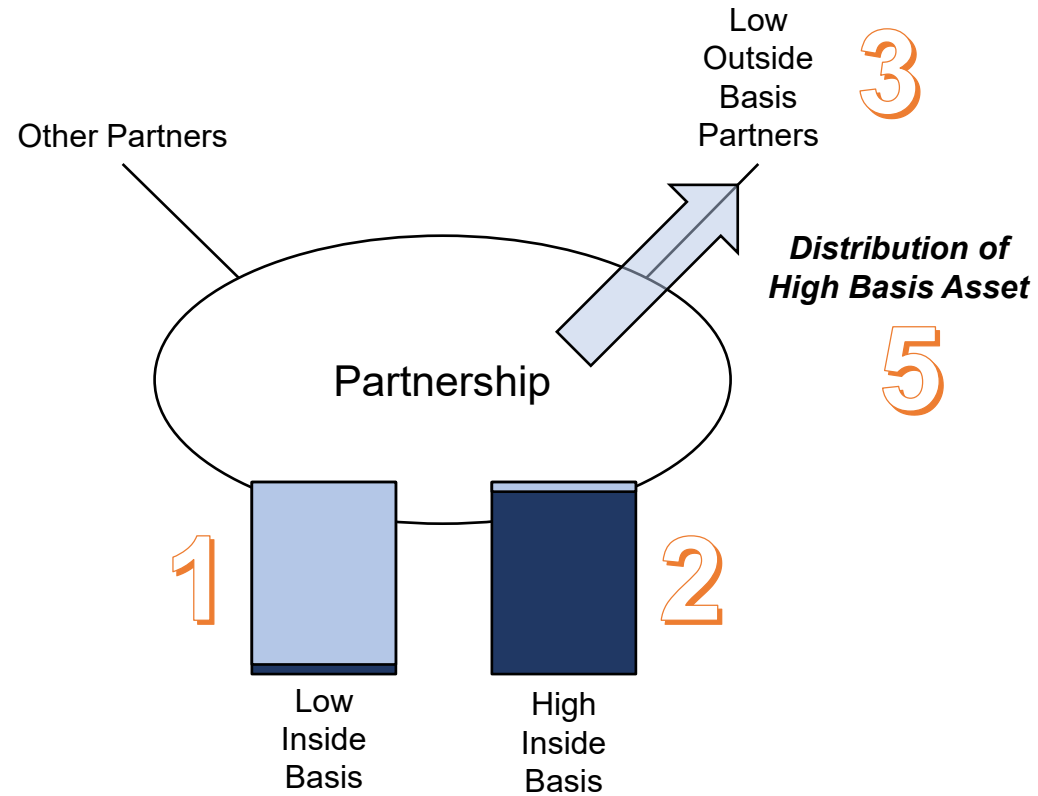
Grantor's Portion of the Asset Gets a "Step-Up" in Basis, and it is Contributed to a Newly-Formed Partnership.

(6) End Results:

- a) *No Gain at Grantor's Death.*
- b) *Asset Gets a Partial Basis Adjustment under Section 1014.*
- c) *No Installment Note Included in Grantor's Estate.*

BASIS SHIFTING WITH LOW BASIS MARKETABLE SECURITIES

Elements of Basis Shifting



4

Partnership Property:

Purchased by the partnership

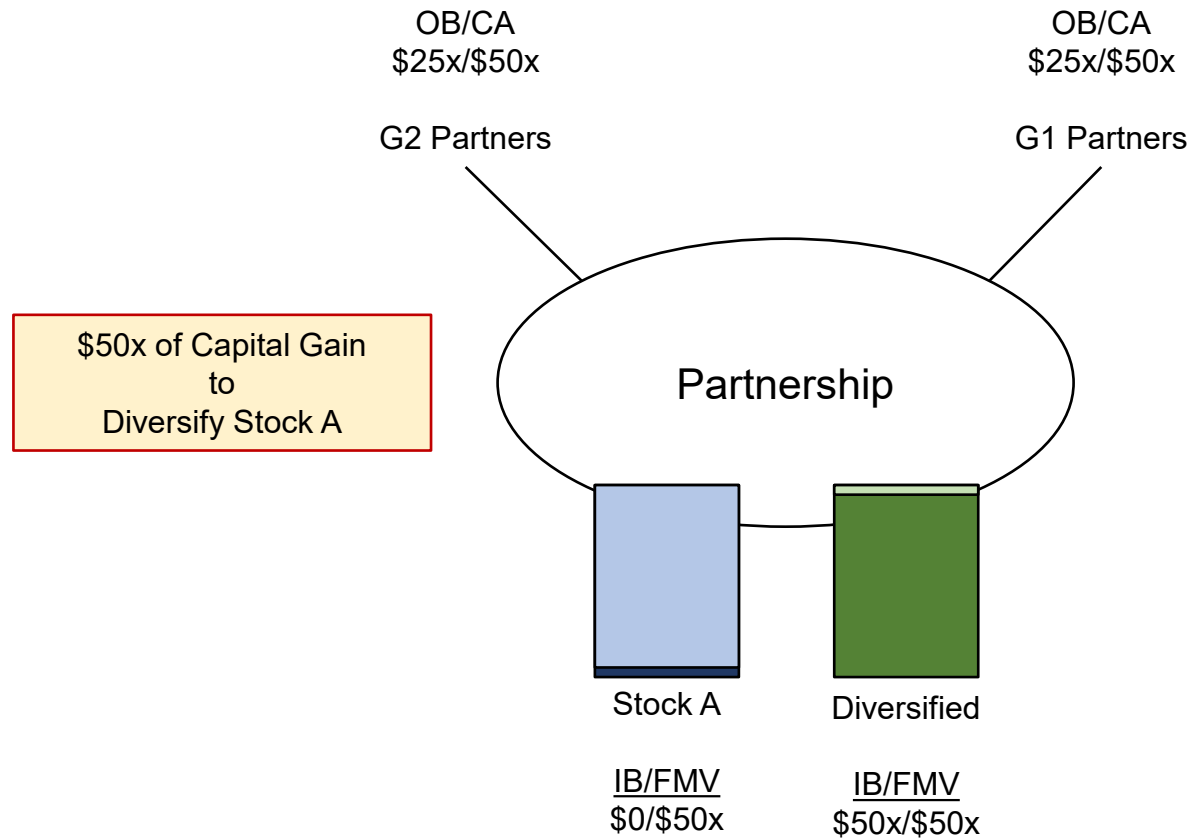
or

Contributed more than 7 years ago

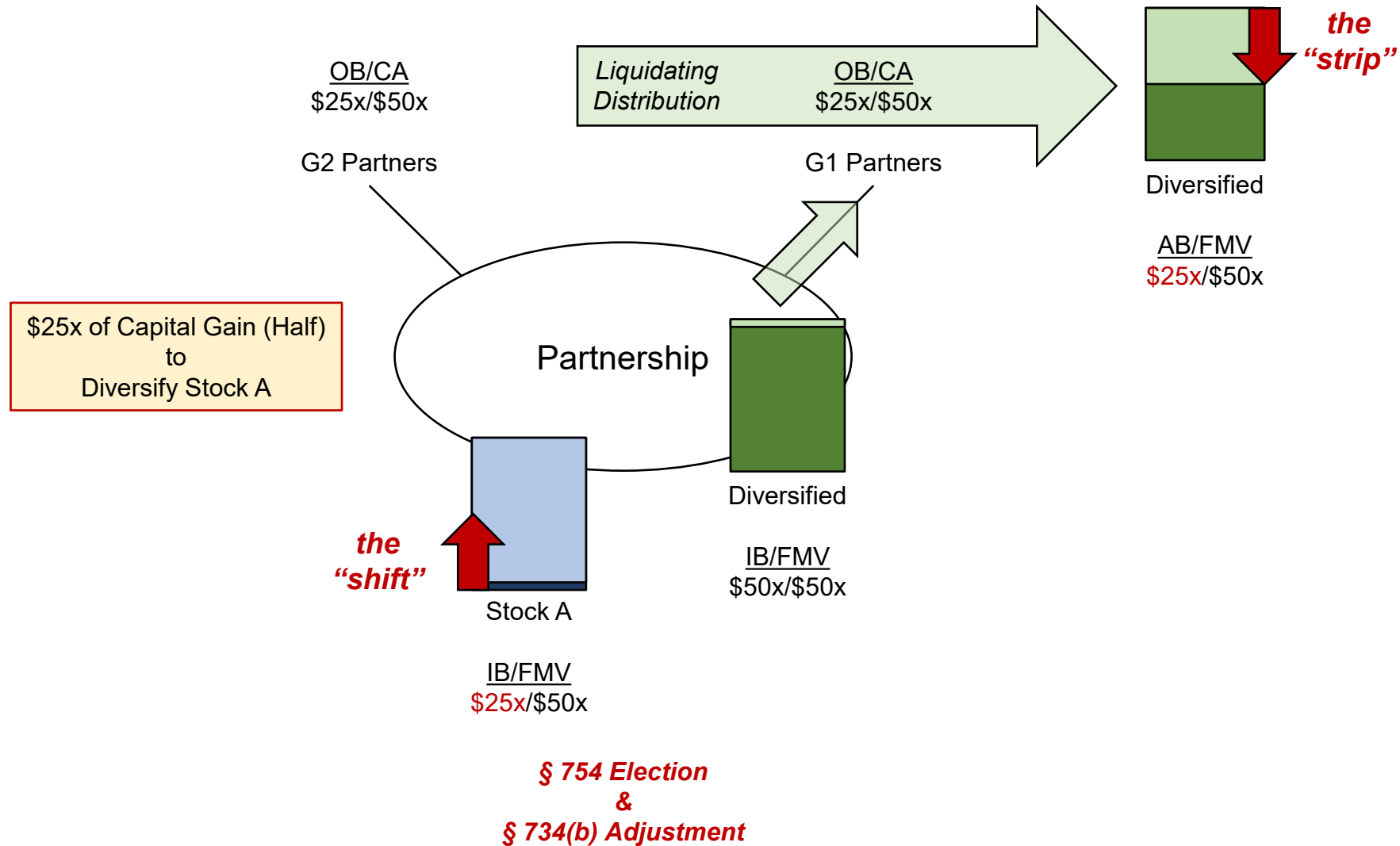
Section 754
Election

6

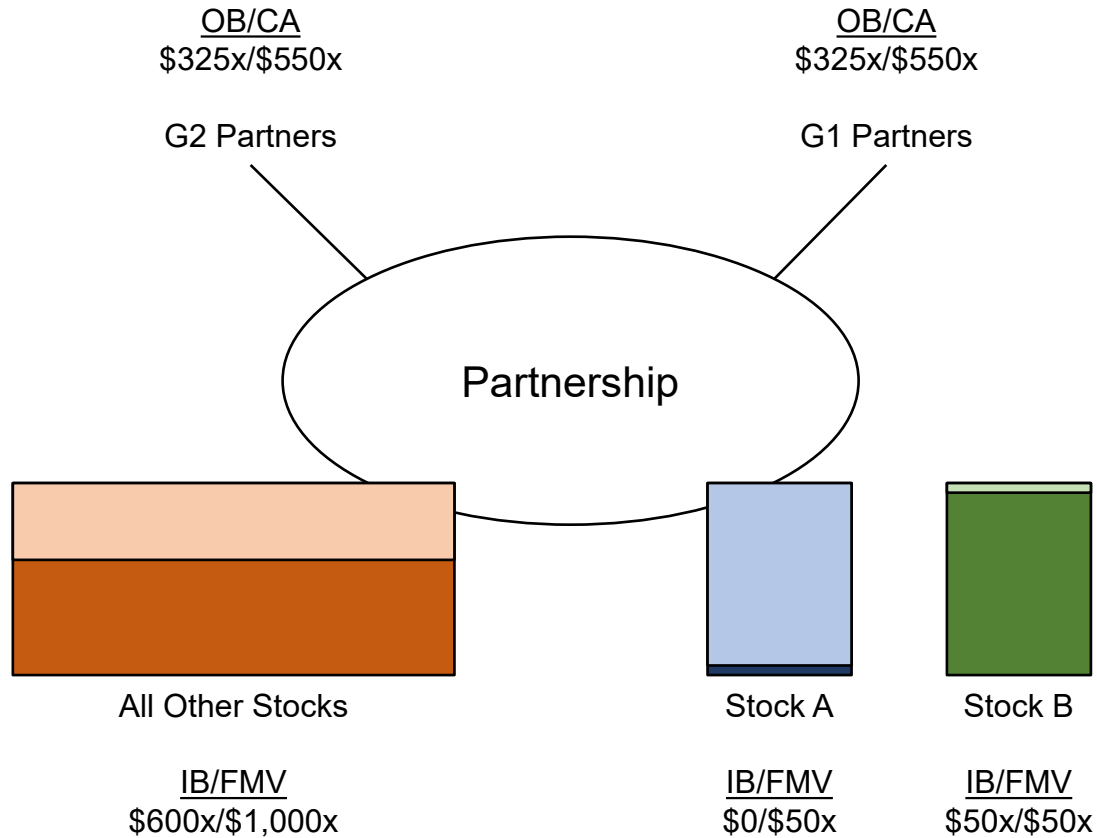
Common Simple Basis Shift Example



Common Simple Basis Shift Example



How to Be Surgical with Basis Shifting...



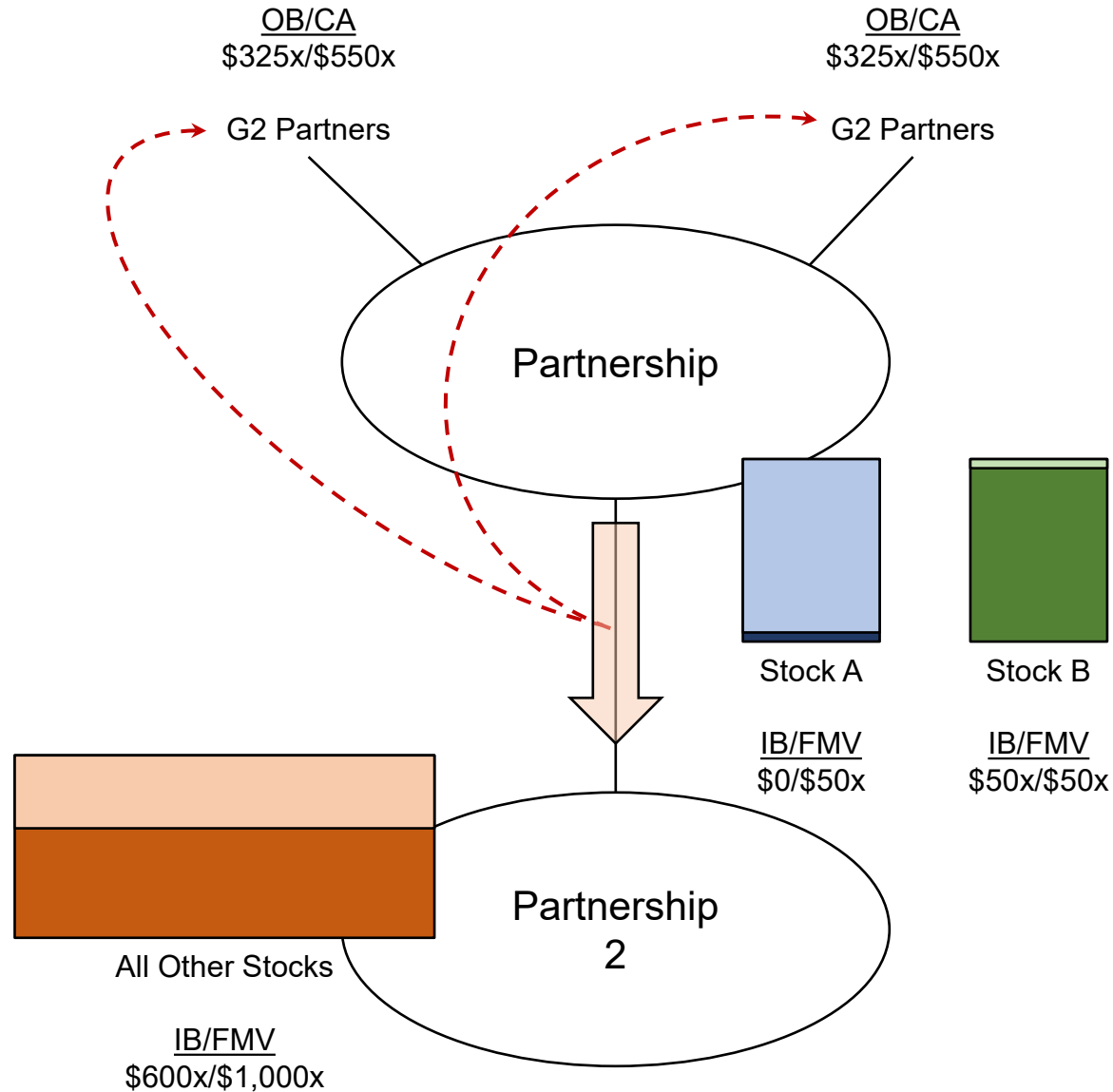
Generally, other assets in the partnership:

(i) Will Prevent a Basis “Strip”

(ii) Will Not Allow for an Efficient Basis “Shift”

(Inside Basis Adjustment under Section 734(b) Must Be Allocated Across All of the Partnership Assets)

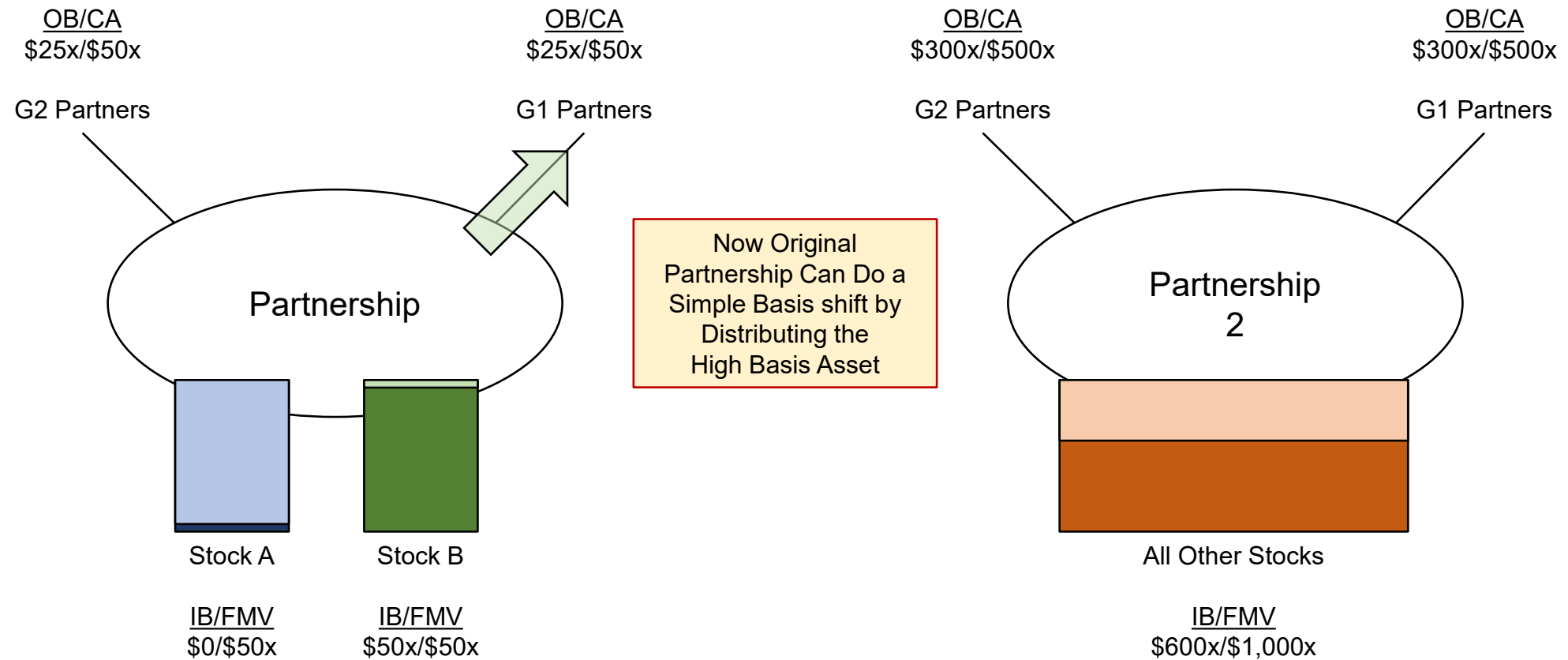
How to Be Surgical with Basis Shifting: Partnership Divisions



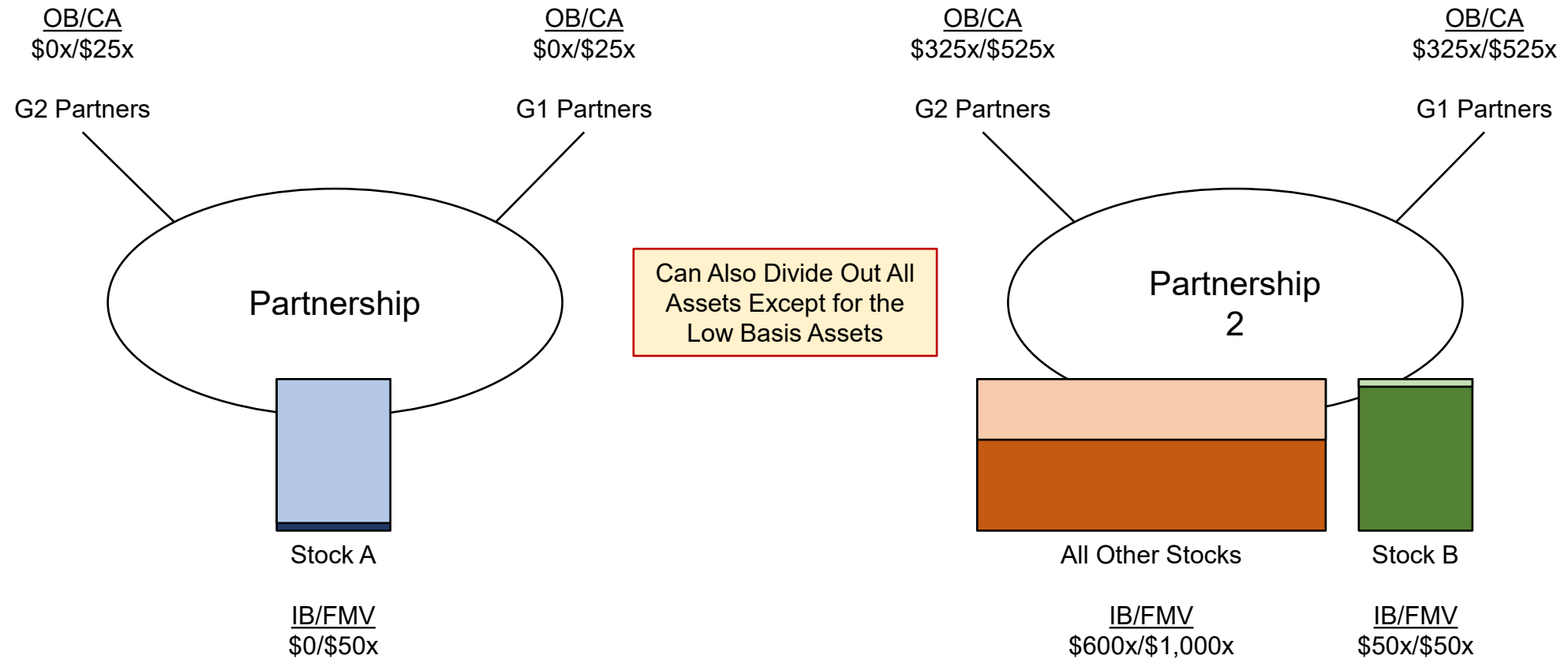
Pro Rata "Assets-Over" Division (Vertical Slice)

- (i) Contribution of "All Other Stocks" to Newly-Created Partnership/Disregarded Entity
- (ii) Distribution of Interests in the New Entity to the Partners of the Old Partnership

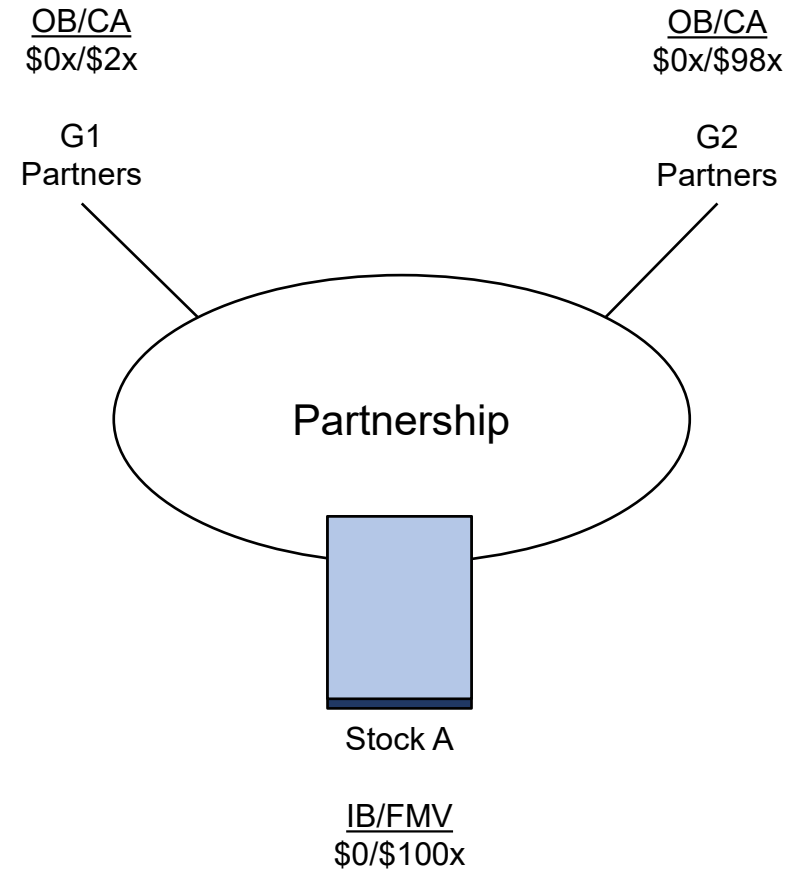
How to Be Surgical with Basis Shifting: Partnership Divisions



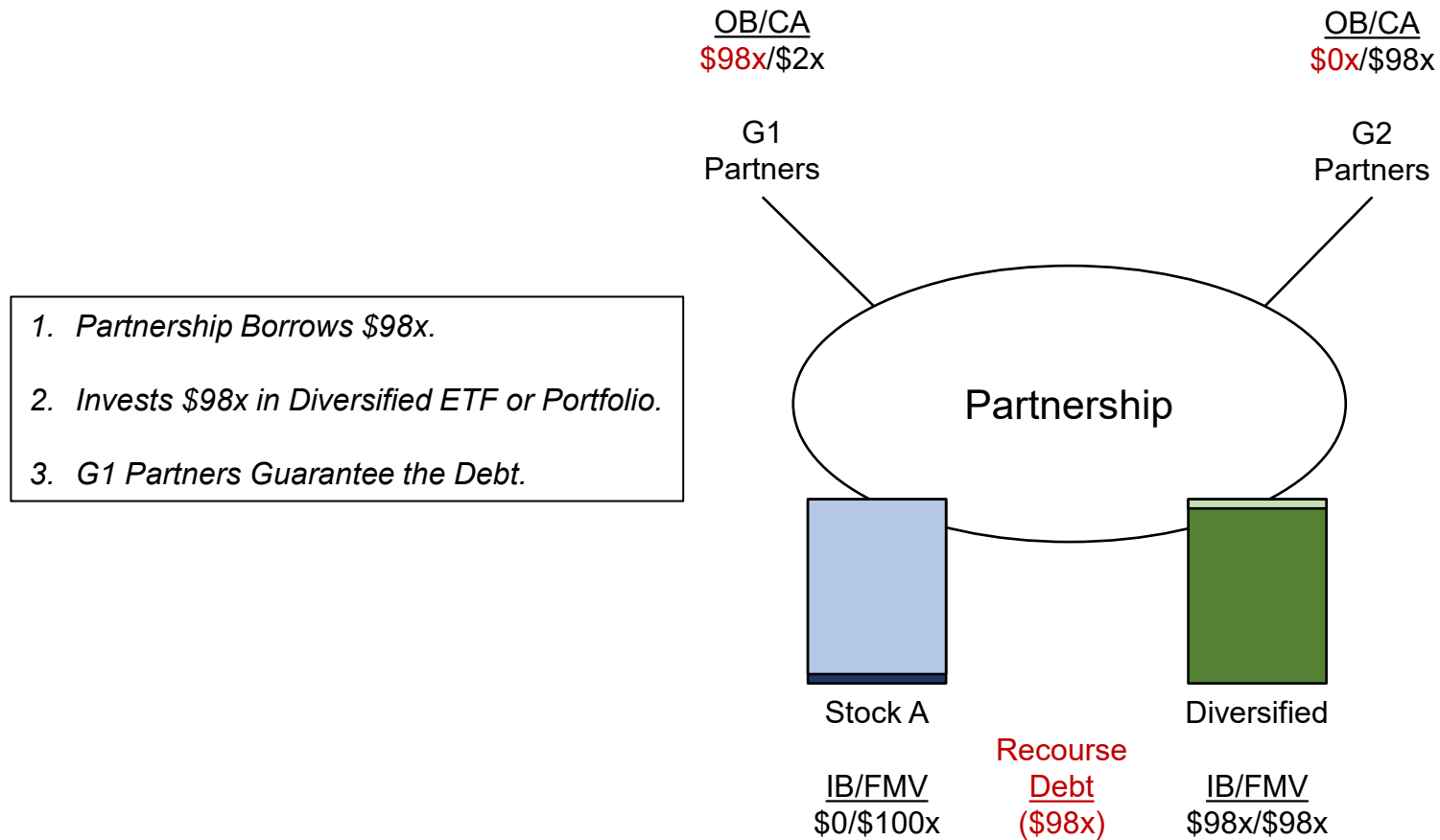
How to Be Surgical with Basis Shifting: Partnership Divisions



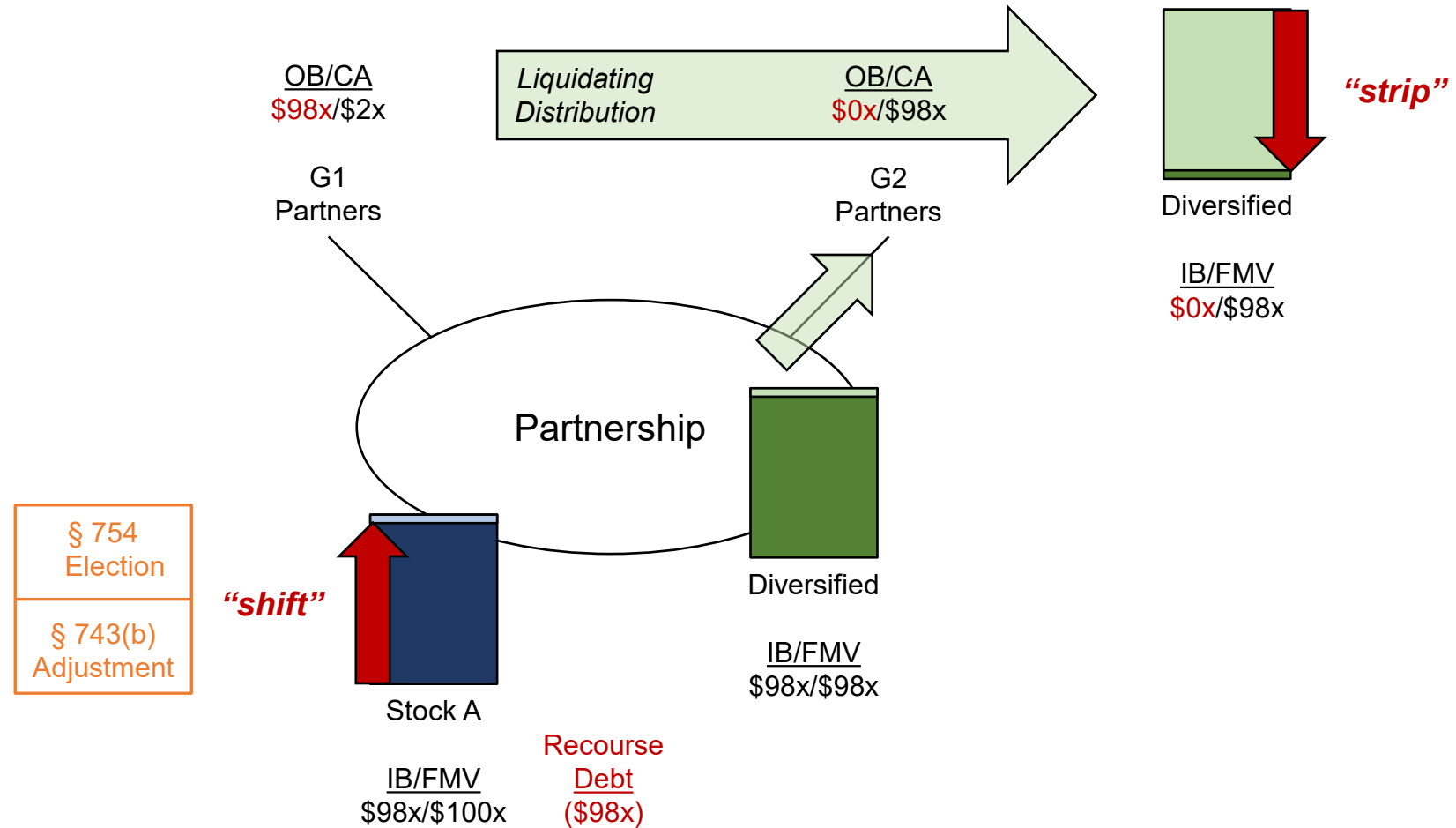
Basis Shifting with Just Low Basis Stock



Basis Shifting with Just Low Basis Stock: Leverage



Basis Shifting with Just Low Basis Stock: Liquidation



Basis Shifting with Just Low Basis Stock: Repay the Loan

OB/CA
 $\$1.96x/\$2x$

G1
Partners

1. Sell \$98x of Stock A (\$96.04x of Basis).
2. Recognize \$1.96x of gain (OB of G1 Partners Increased to \$99.96x).
3. Repay \$98x to Lender (OB of G1 Partners Reduced to \$1.96x).

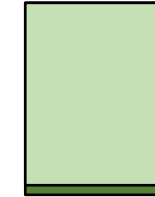
Partnership



Stock A

IB/FMV
 $\$1.96x/\$2x$

Former
G2
Partners

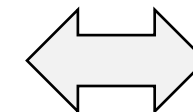


Diversified

IB/FMV
 $\$0x/\$98x$

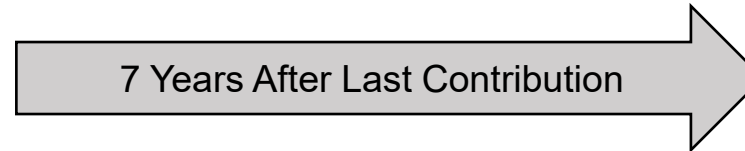
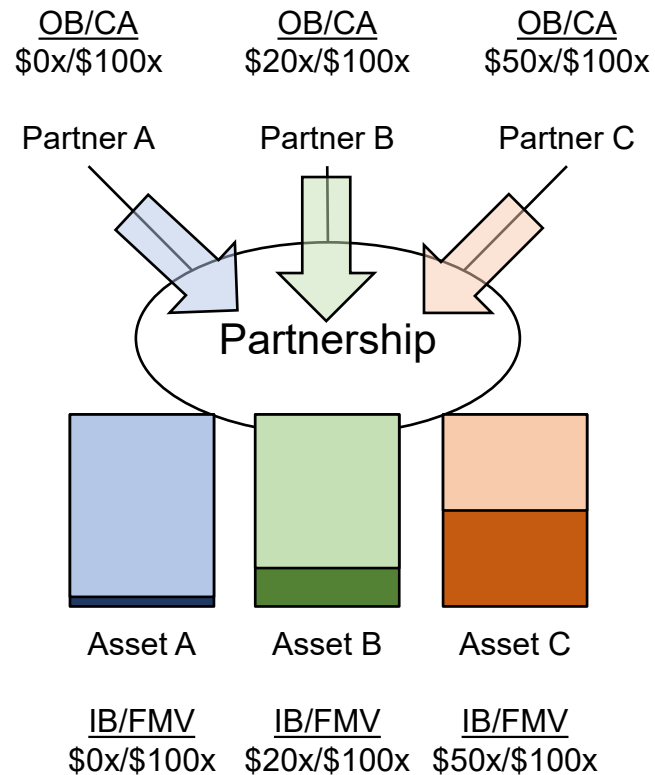
This is essentially a personal exchange fund.

Can be used with tangible personal property
in lieu of a “like-kind” exchange.



TAX FREE EXCHANGES OF UNDIVIDED INTERESTS IN PARTNERSHIP PROPERTY

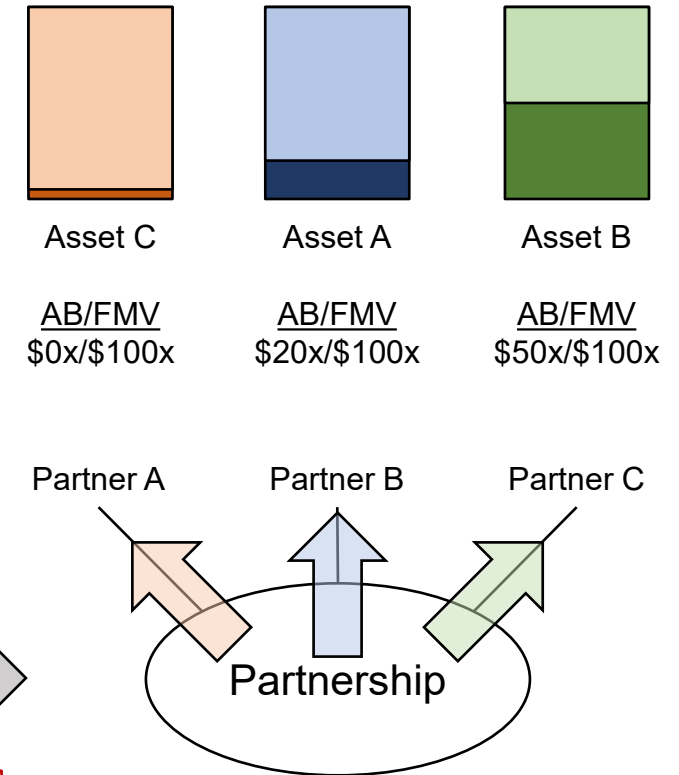
Avoiding the “Anti-Mixing Bowl” Rules



“Mixing Bowl” Transaction:

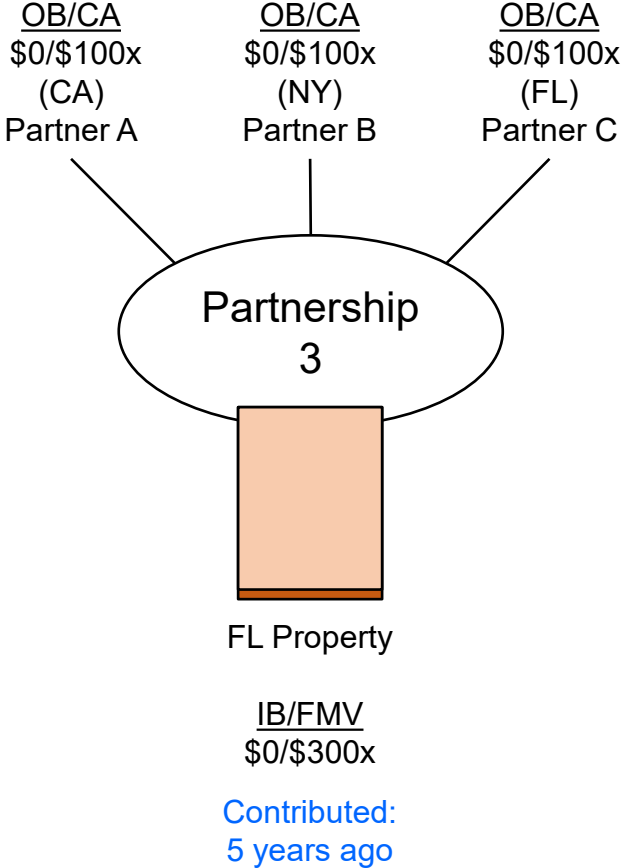
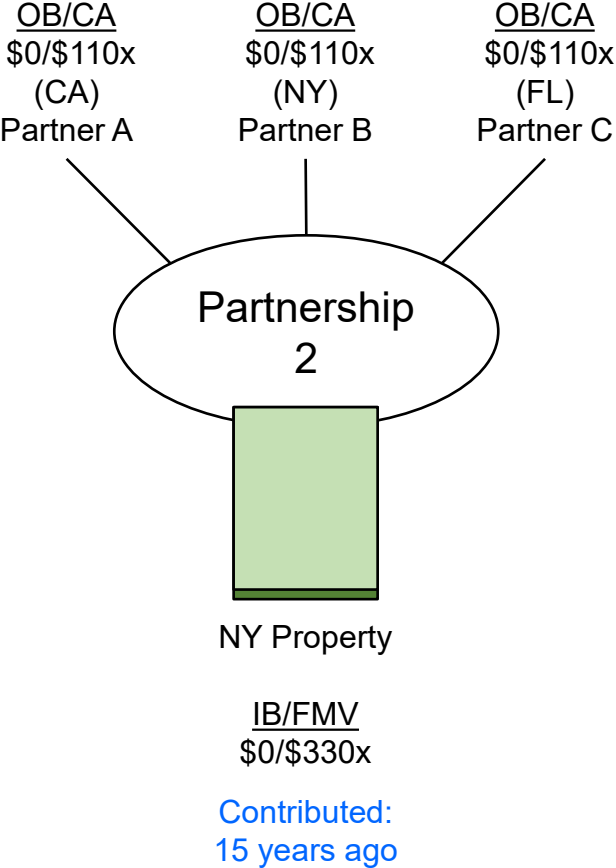
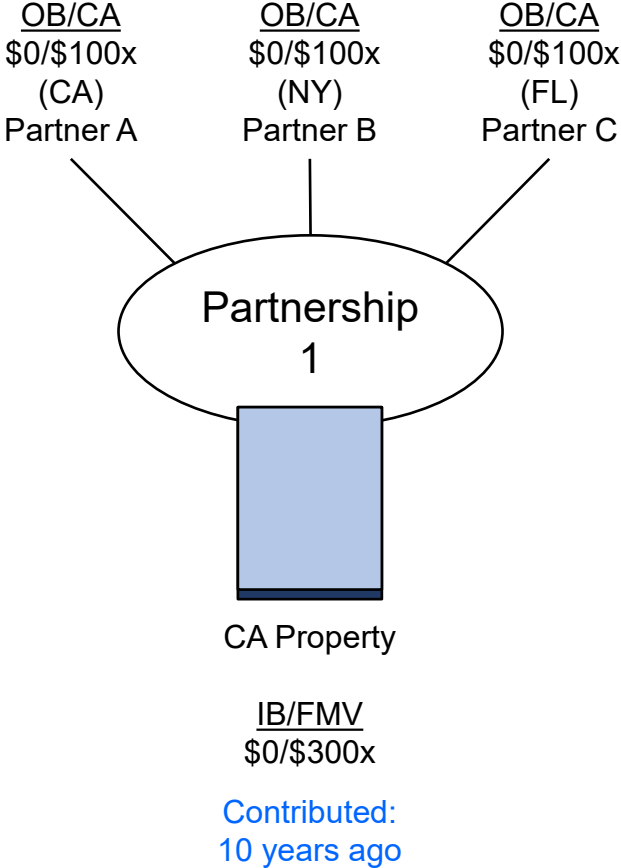
§ 704(c)(1)(B)
Contributed Property Is Distributed to Another Partner within 7 Years of Contribution

§ 737
Other Property Is Distributed to a Contributing Partner within 7 Years of the Contribution



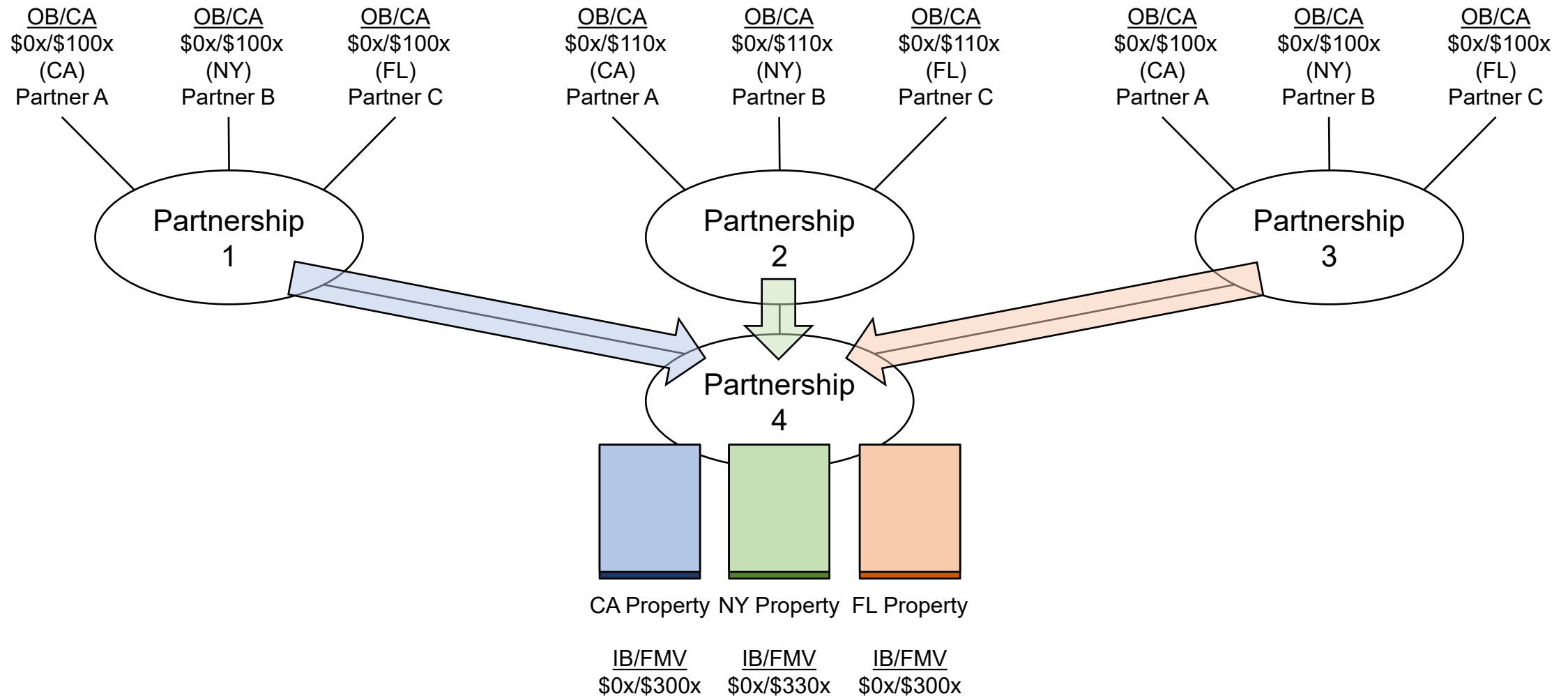
Swapping Interests in Different Properties

A wishes to own 100% of CA property
B wishes to own 100% of NY property
C wishes to own 100% of FL property

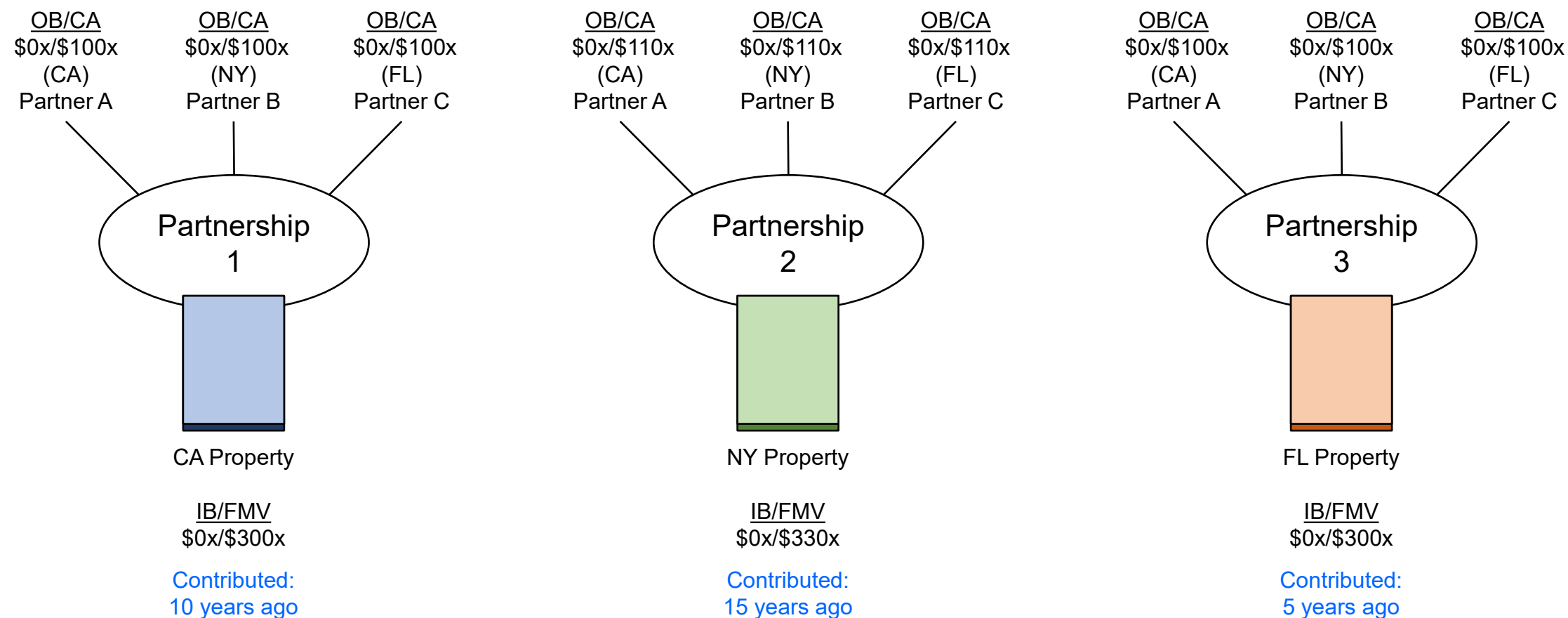


Common Mistake: Contribution to a New Partnership

Contribution to a newly-created partnership
Starts a **NEW** holding period for “mixing bowl” purposes

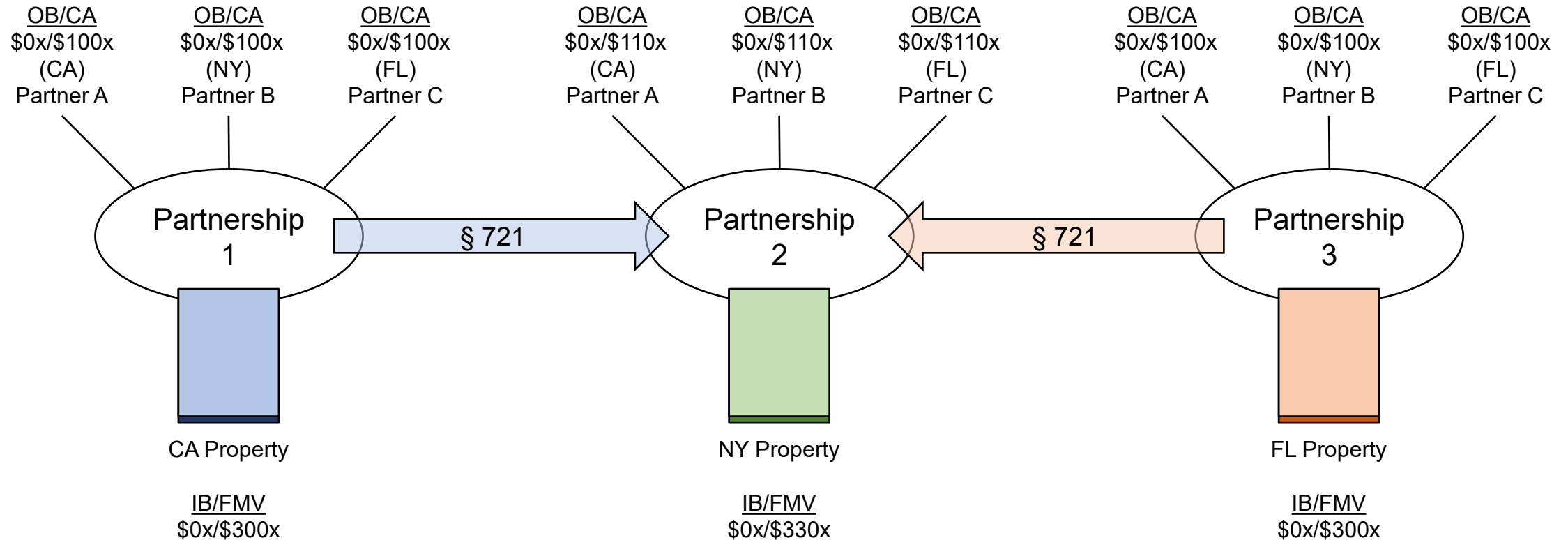


Swapping Interests in Different Properties

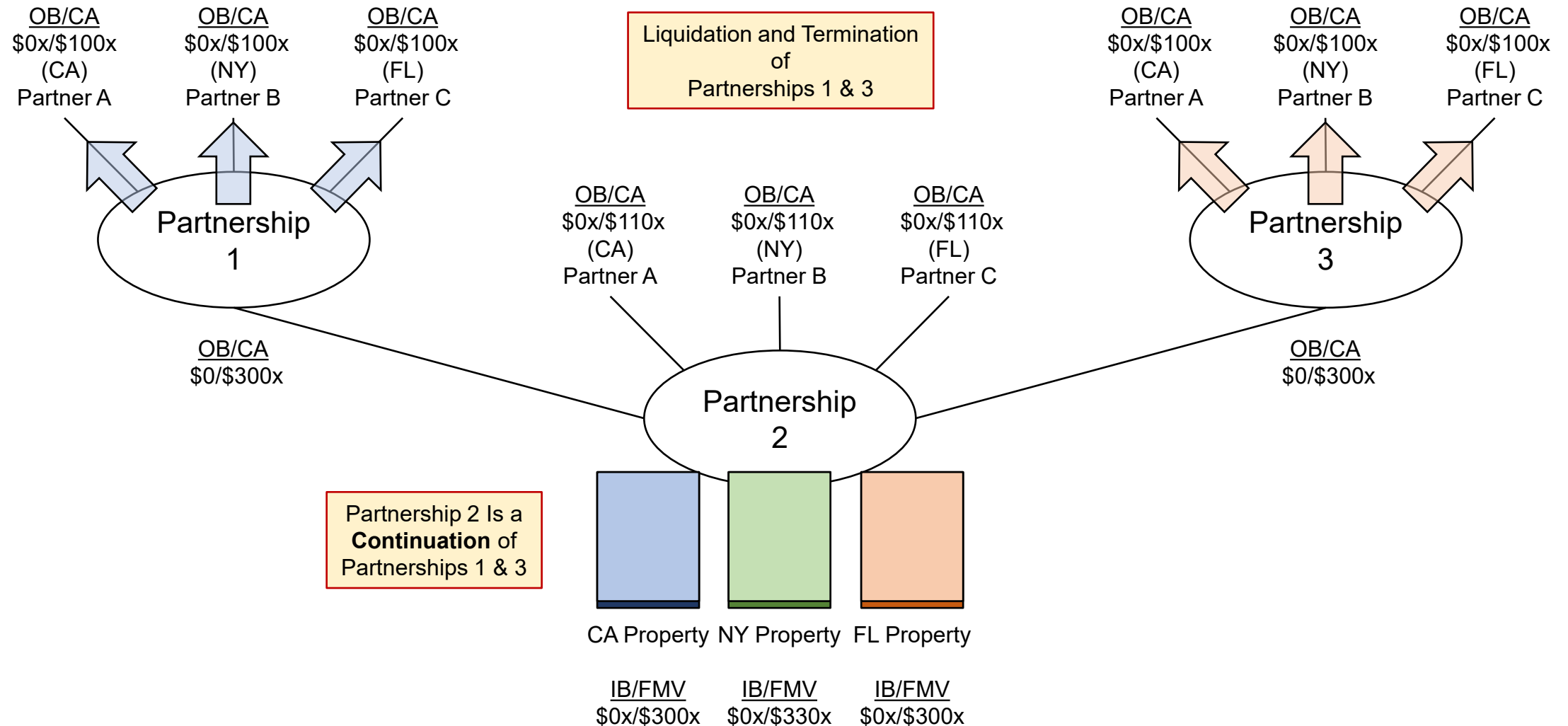


“Assets-Over” Merger Into an Existing Partnership

Partnerships 1 & 3 Contribute
All Assets and Liabilities to
Partnership 2 under Section 721 in
Exchange for Interests in Partnership 2



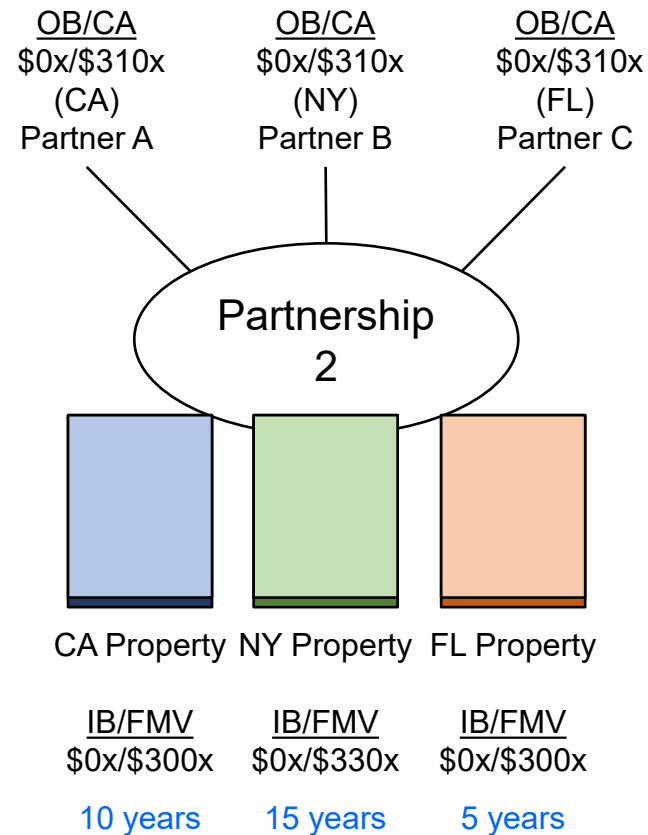
“Assets-Over” Merger Into an Existing Partnership



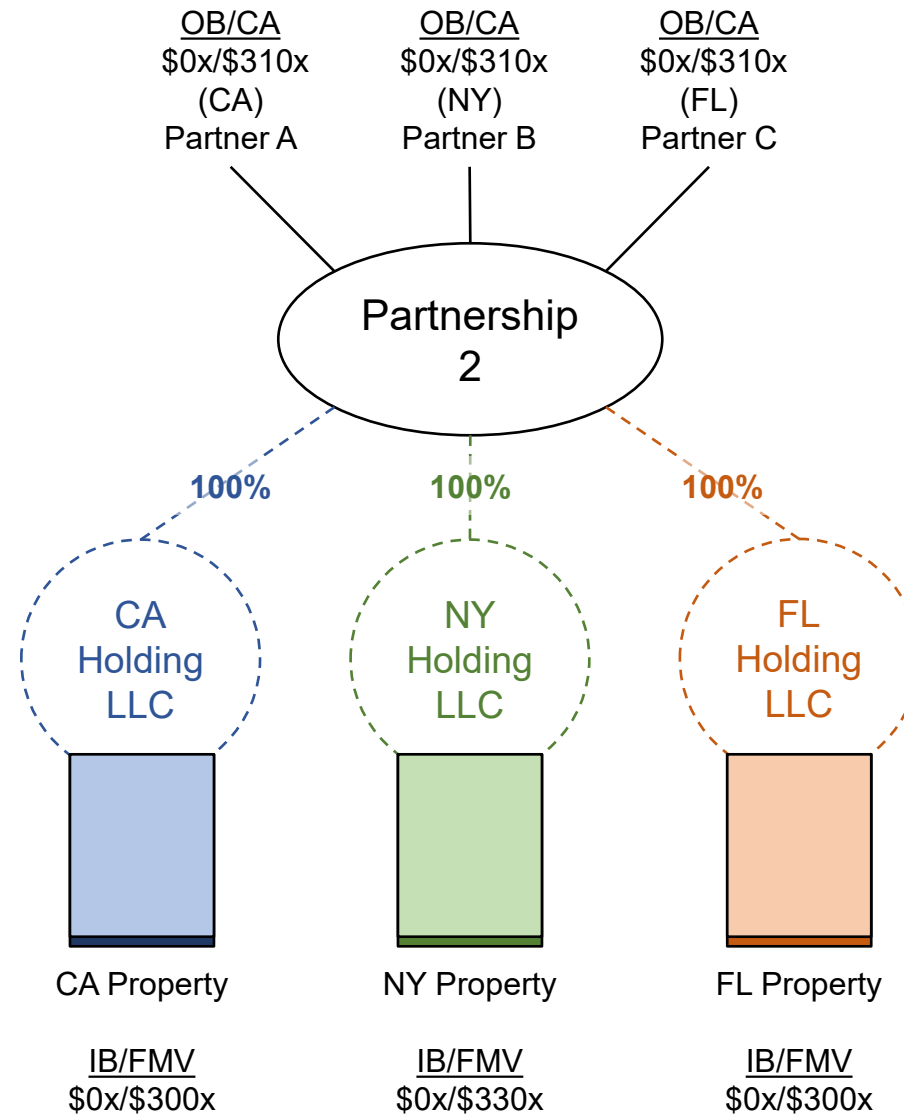
“Assets-Over” Merger Into an Existing Partnership

Transfers of Partnership Interest by Contributing Partner (Parents):

Transferees (A, B & C) stand in the shoes of the contributing partner for “mixing bowl” purposes



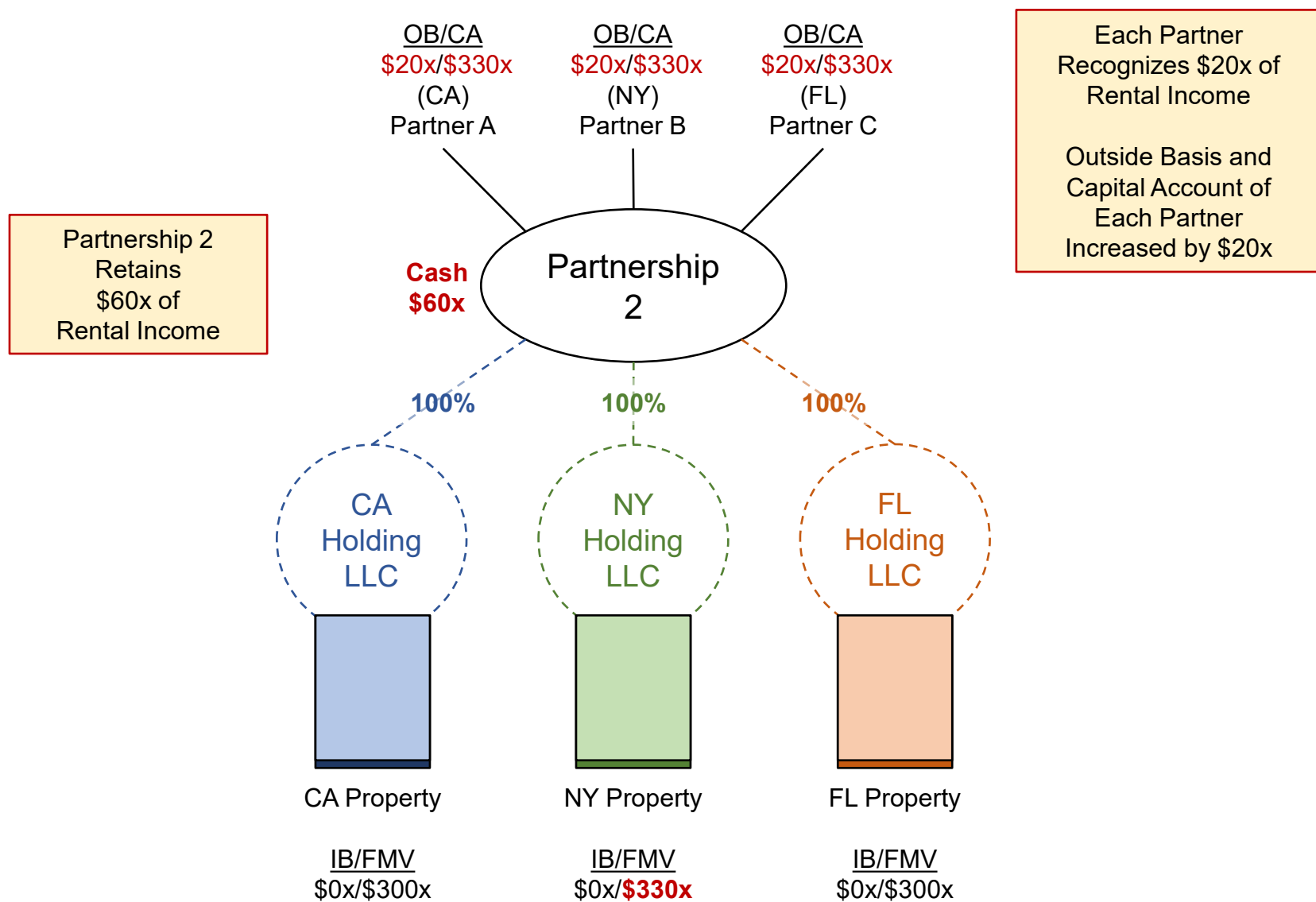
Holding Companies: Disregarded Entities



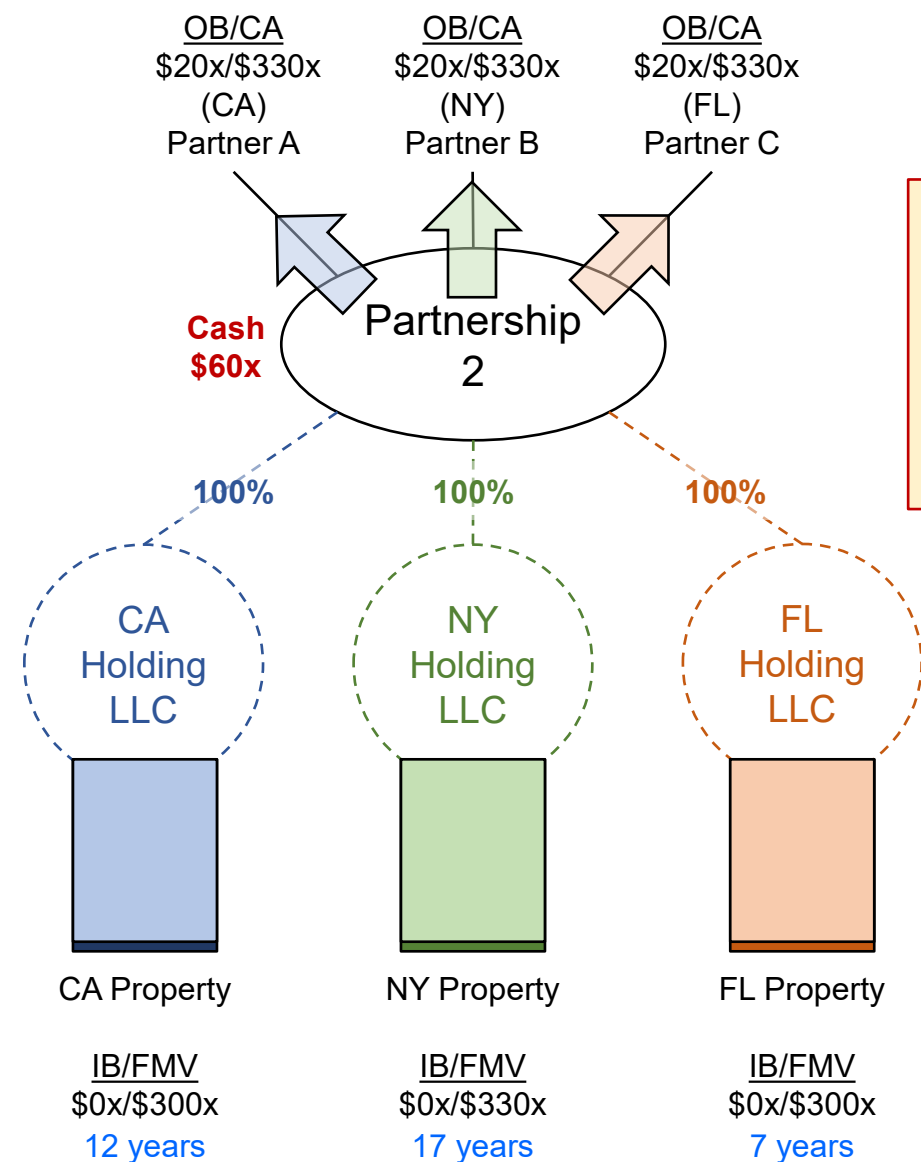
Disregarded LLCs Provide:

Limited Liability
&
Will Facilitate Transfers

Planning for Differences in Value



Separating the Property



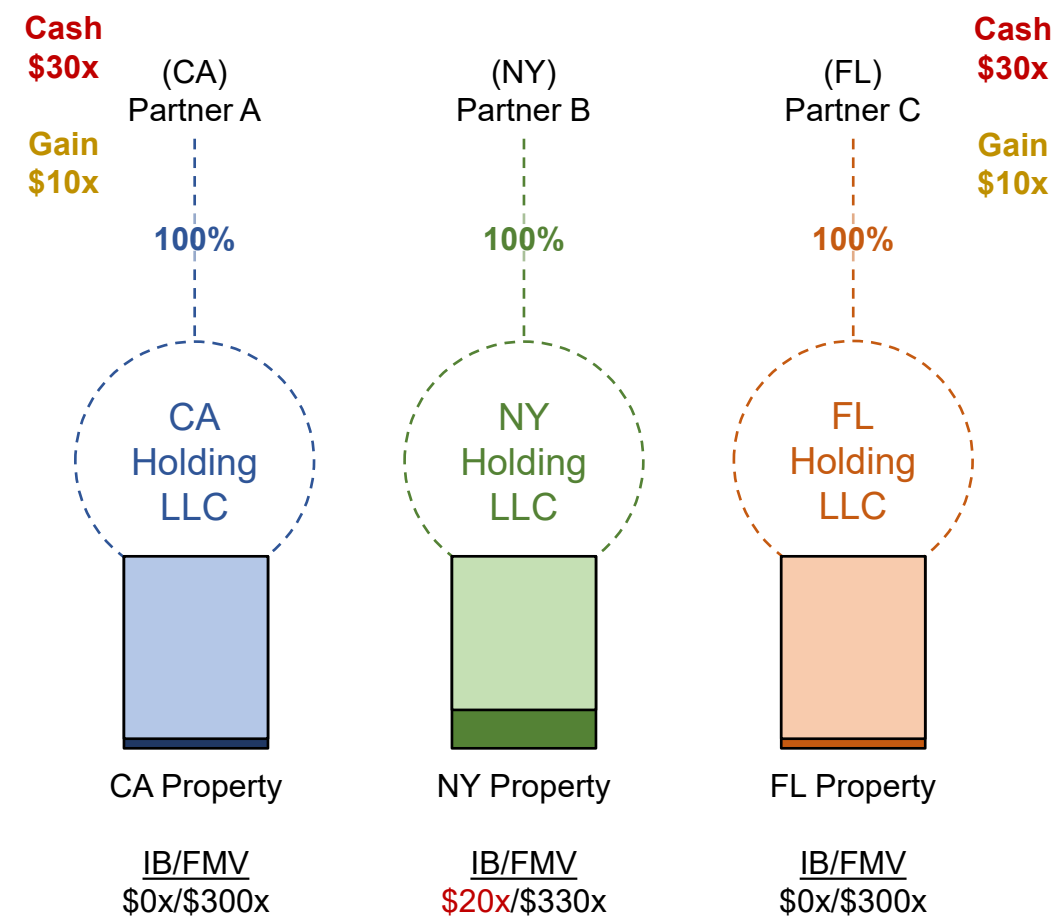
2 Years after the Merger:

Liquidate the Partnership.

Distribute the Holding Companies to A, B & C.

Distribute \$60x Cash Equally to Partners A and C.

Separation of the Properties



Disclosures

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