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GC Bootcamp for a Family-held Business: Introduction to Estate Planning, Taxes and Family Offices

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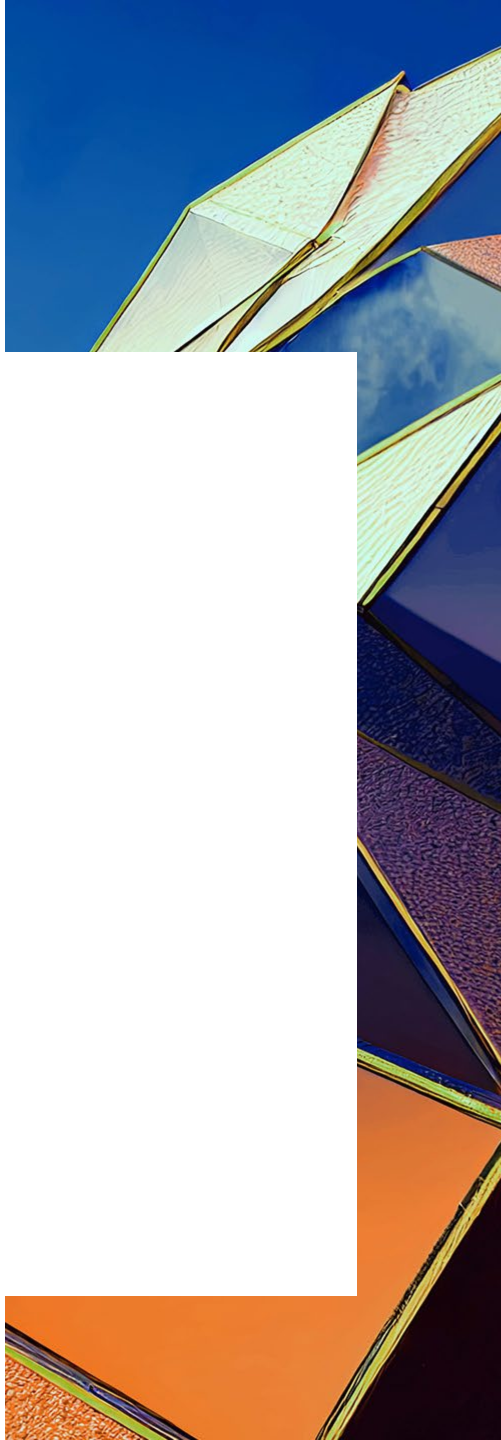
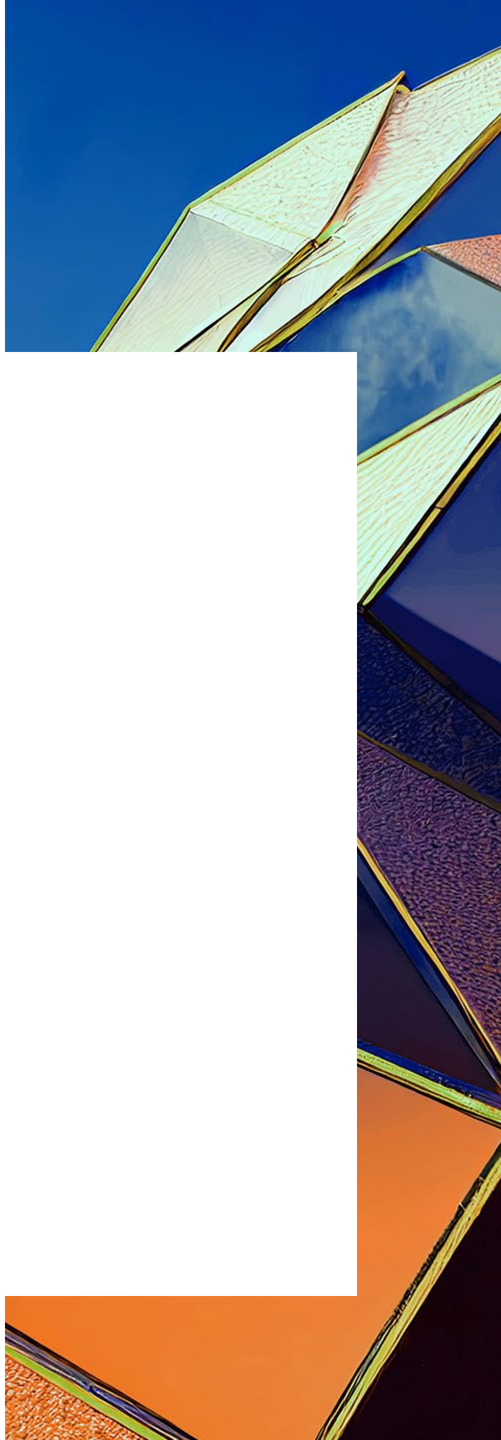


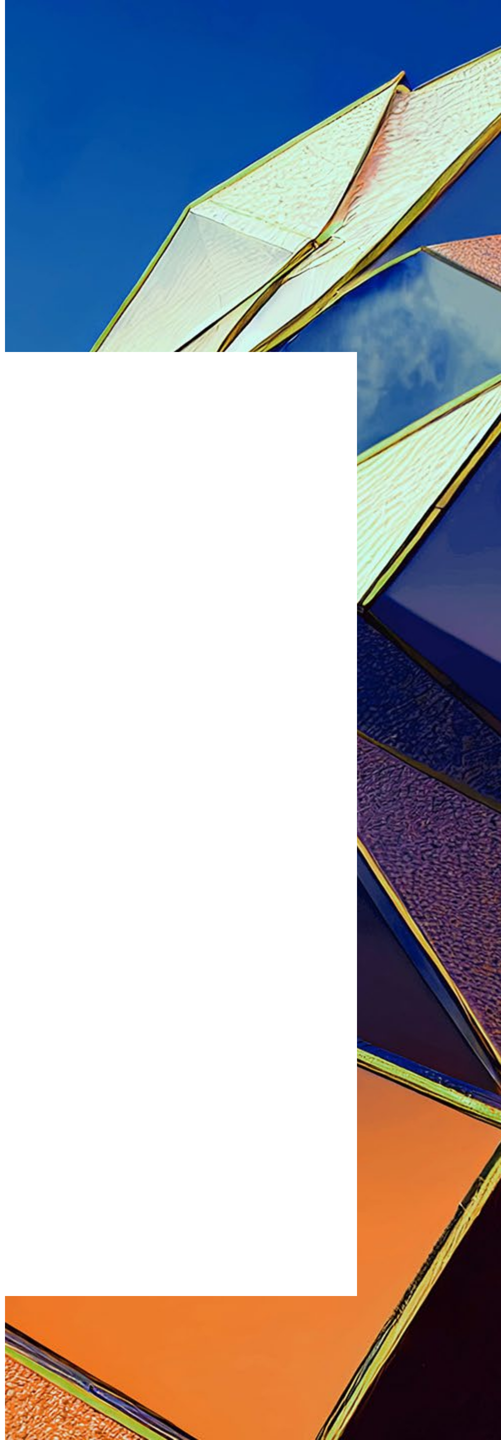
Agenda

- Estate and Gift Tax Planning Background
- Trusts
- Succession Planning: Ownership and Control
- S corporations
- Family Offices
- Company Foundations

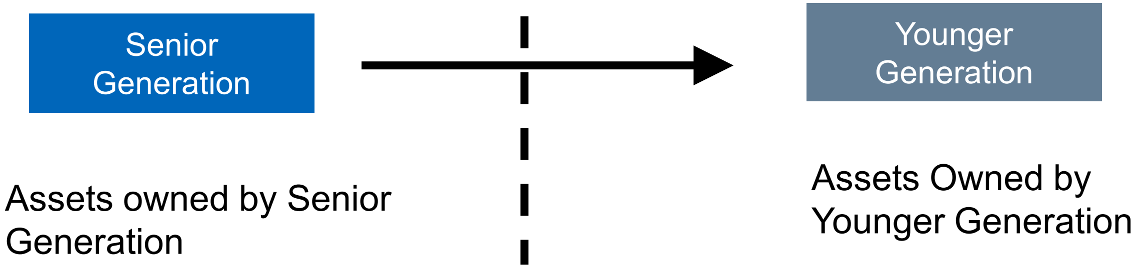


Gift and Estate Tax

- Gifts (transfers for no consideration) subject to 40% Gift Tax
- Exceptions:
  - Annual Exclusion transfers ($17k)
  - Lifetime Exemption (currently $12.92M; will revert to $7M in 2026)
- Estate Tax
  - 40% tax on the assets valued over $12.92M owned by the decedent at death.
  - Amounts passing to charity and spouse are not subject to estate tax.
  - Estate tax exemption is set to decrease from $12.92M to $7M in 2026.



Application of Estate Tax



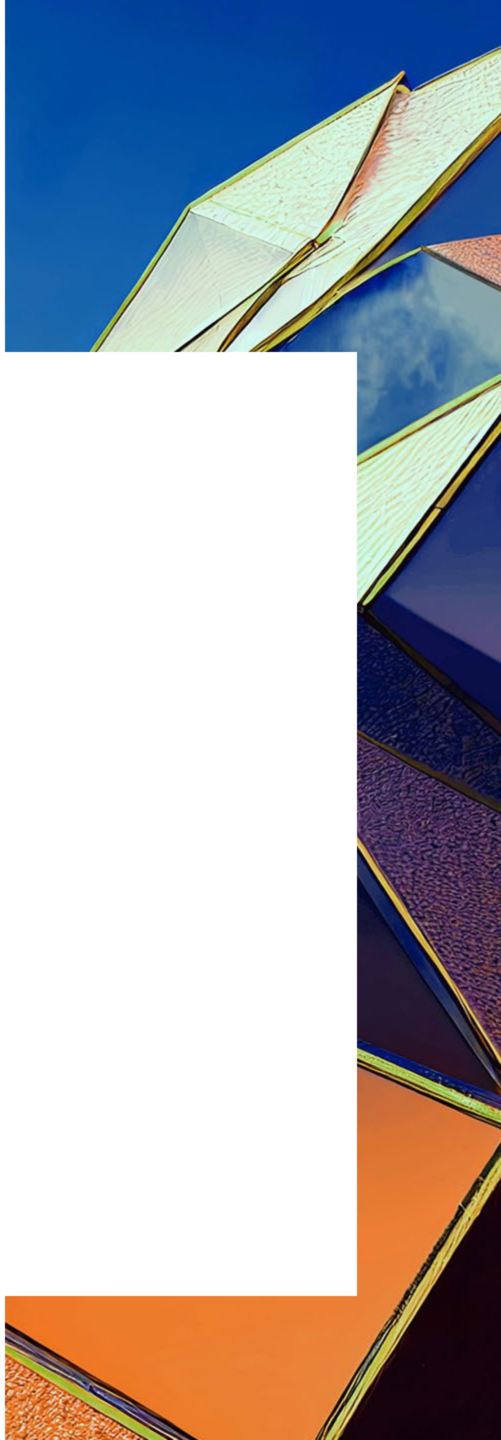
Example: If senior generation has $50M in net assets at death and bequests the assets to the children, then (under current rules):

Under Current Rules:

Net Assets:	$50.00M
Exemption:	$12.92M
Taxable Estate:	$37.08M
Estate tax:	$14.83M
Net to Children:	$35.17M

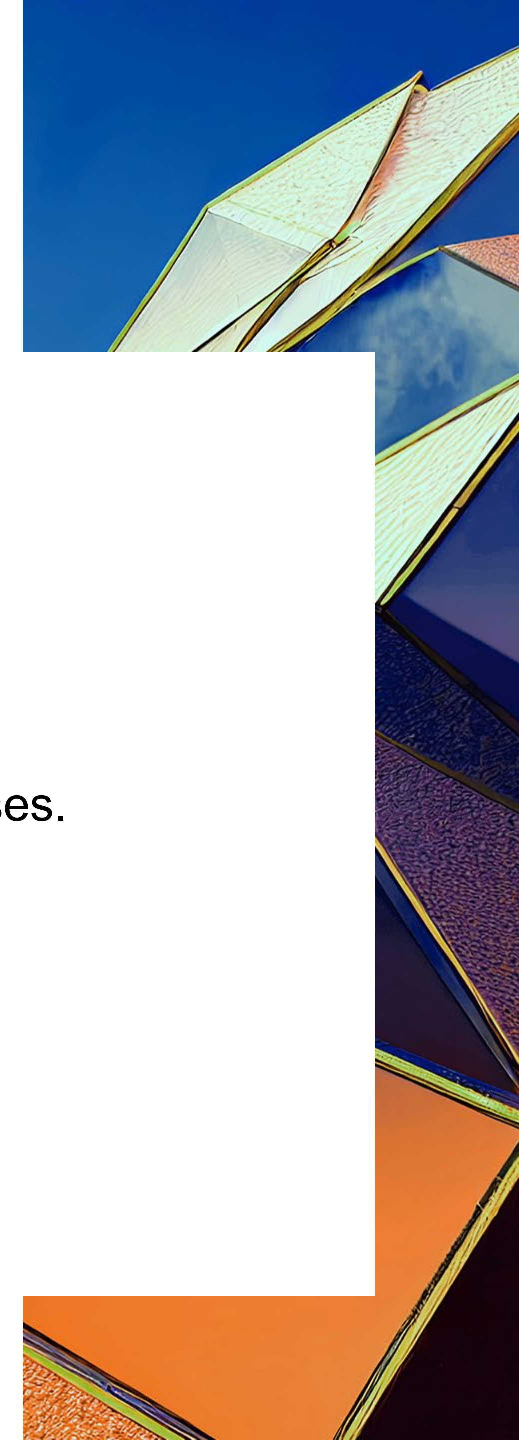
Under 2026 Rules:

Net Assets:	$50.00M
Exemption:	$ 7.00M
Taxable Estate:	$43.00M
Estate Tax:	$17.20M
Net to Children:	$32.80M



Planning Around the Estate Tax

- Significant tax bill with no liquidity.
  - $100M company -- $40M tax.
- Possible Solutions to Paying Estate Tax.
  - Installment Plan for estate tax with IRS.
  - Life insurance.
  - Lifetime transfers are timed and structured to reduce the value for transfer tax purposes.



Gift/Estate Tax

Senior Generation → Younger Generation

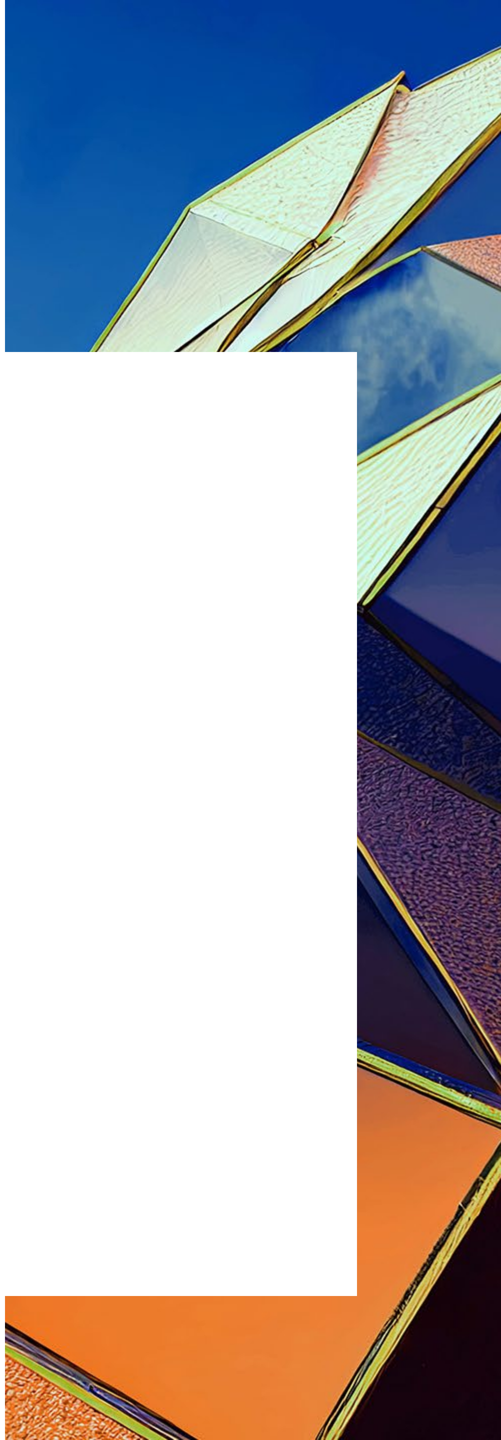
Assets owned by Senior Generation

40% Tax on FMV of transfer

Assets Owned by Younger Generation

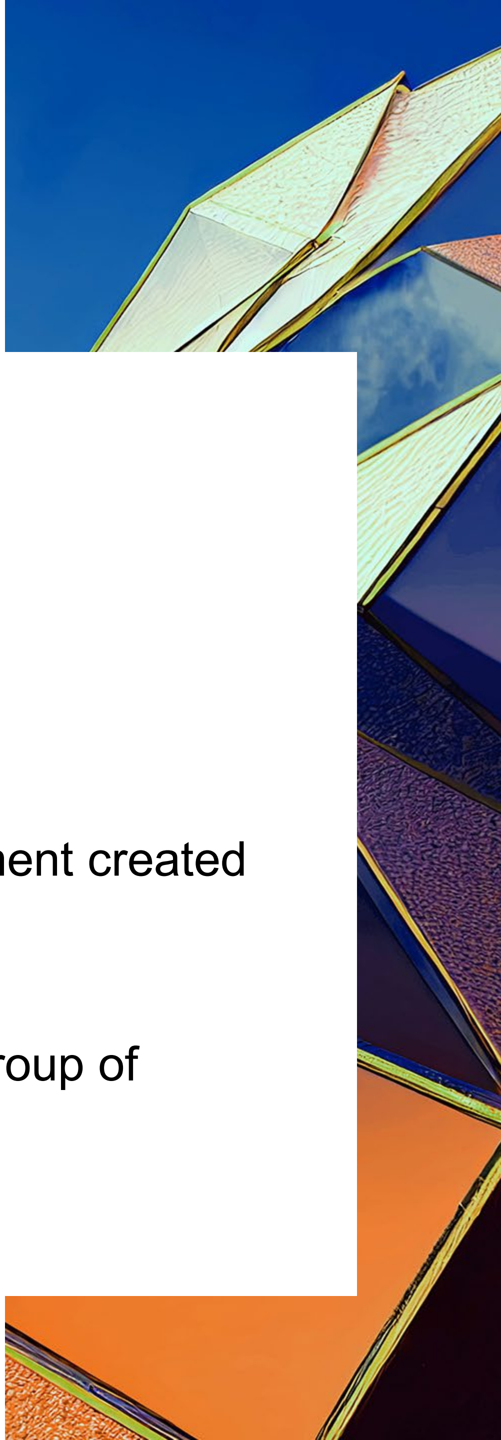
- Transfer non-voting interests
  - Provide minority and liquidity discounts
- Transfer earlier before major appreciation events—"freeze"
- Transfer using higher gift/estate tax exemption

- Objection: I don't want my children to have control or a dividend stream now.



Trusts

- A Trust is a relationship between Settlor, Trustee, and Beneficiaries:
  - Settlor/Grantor:
    - Makes a gift or bequest to trust.
    - Creates the rules about how the assets will be managed and distributed.
  - Trustee:
    - Has control over assets and makes distributions to beneficiaries.
    - Has fiduciary duties to beneficiaries and must follow the rules under the trust document created by the Settlor.
  - Beneficiaries:
    - Individuals who benefit from the assets held in trust (although this may be a large group of people).



Gifts via Trust

Value for Gift Tax Purposes

At some future time

Donor/Settlor/ Grantor

Trustee

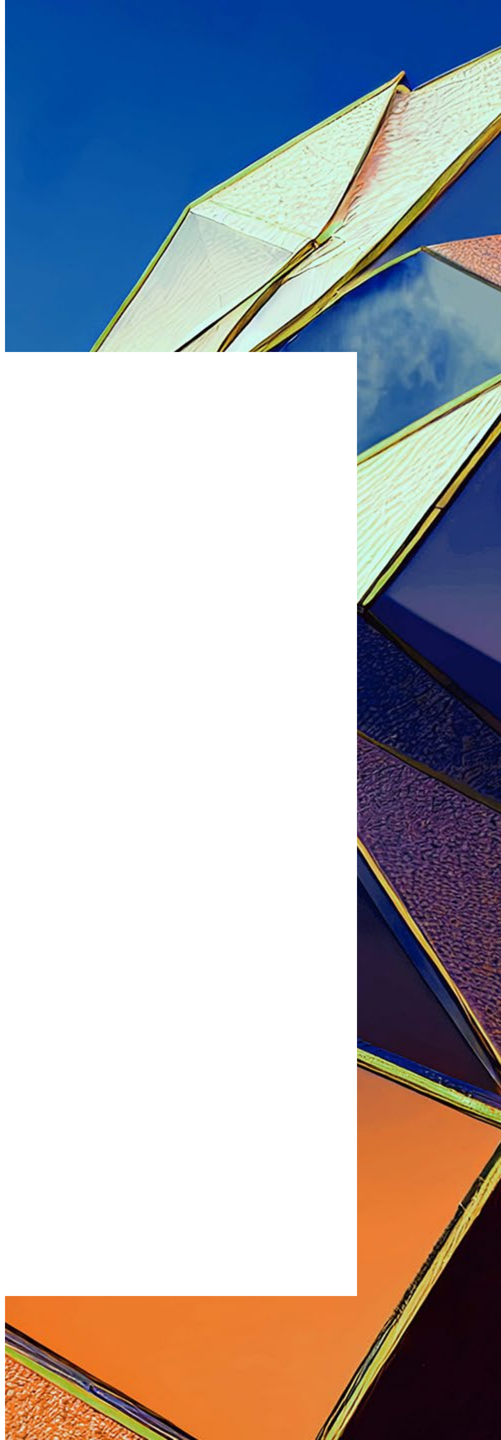
Shares & Distributions

Beneficiaries

Trust shifts future economic ownership, but control and economics are determined by the trustee, not the beneficiary.

- Settlor makes a gift of shares to the Trustee today.
- Trustee holds shares and any distributions.
- Trustee controls and votes shares
- Trustee makes distributions based on trust document.

- Beneficiaries may have rights to information.
- Beneficiaries may receive distributions from the trust.
- Assets in trust not subject to beneficiary's creditors.

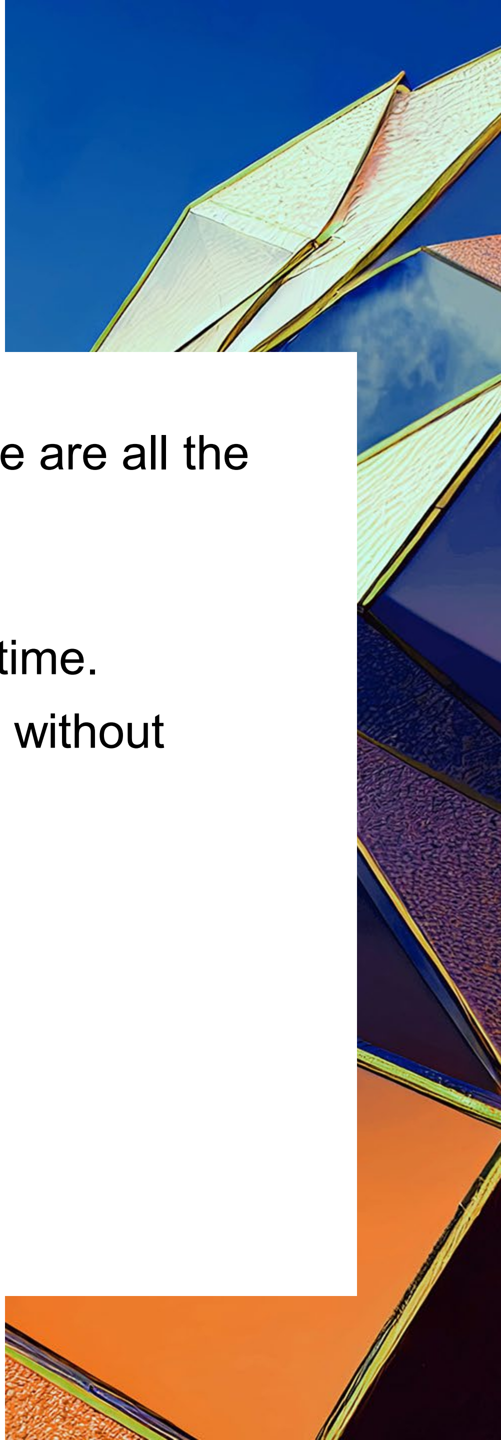


Irrevocable Trusts

- The settlor is usually not a Beneficiary or Trustee.
- Settlor relinquished ownership rights and control of the property to make a gift.
- Funded by an irrevocable transfer of assets, but the trust code allows modifications, amendments, etc.
- “Family” or “GST” or “Descendants” or “Dynasty”

Revocable Trusts

- The settlor, Beneficiary, and Trustee are all the same person.
- No shift in ownership/control.
- Can be modified or revoked at any time.
- Allow for transfer of assets at death without probate.
- No estate tax advantage.
- “Living” or “Revocable” Trusts

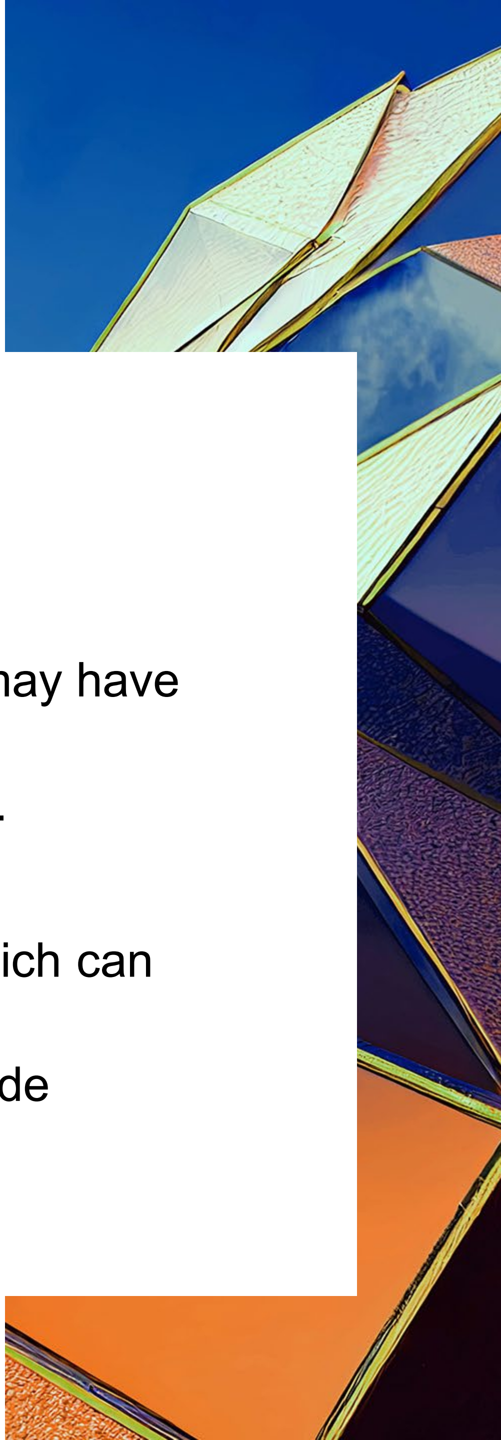


Titling

- Stephanie Derks as trustee of the Jason Kohout Irrevocable Trust dated 12/15/2025.
- Stephanie Derks as trustee of the Patrick J. Kohout Trust u/t/a Jason Kohout Irrevocable Trust dated 12/15/2025.
  - “u/t/a” under the trust agreement.
  - Descendants Trust f/b/o Patrick J. Kohout (“for benefit of”).
- At death, Revocable Trusts usually create a number of different trusts.
  - Family Trust, Marital Trust, Survivor’s Trust.
  - Family Trust u/t/a Jason Kohout Revocable Trust dated 1/1/2023.
- New trusts created without new agreement or amendment.
- One trust instrument can create numerous trusts—for multiple children, etc.

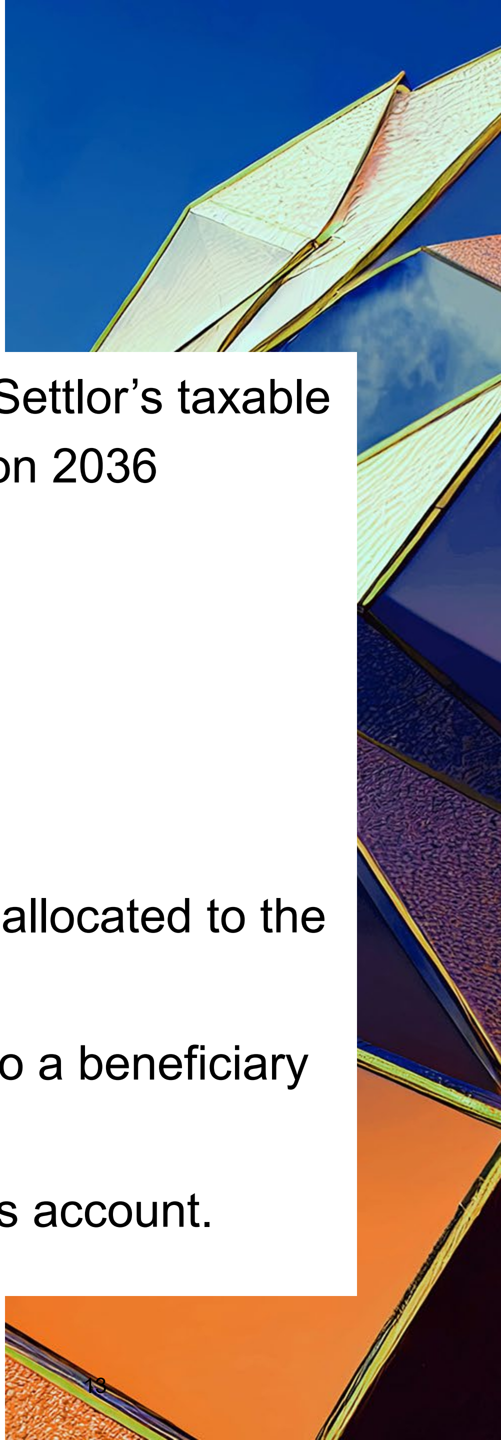
Trusts as Shareholders of Family Held Business

- Signing shareholder documents.
  - The trustee usually signs documents on the trust's behalf.
  - However, always review the trust instrument.
    - A third party, such as a "Directing Party," "Trust Protector," or "Special Trustee" may have authority over business interests owned by the trust.
    - Consider beneficiary approval for large transactions such as sales, mergers, etc.
      - Trust assets are held for the beneficiaries' benefit.
      - Beneficiaries may have the ability to bring lawsuits against fiduciaries (which can stop transactions).
    - Fiduciaries may be subject to conflict of interest rules, and requirements to provide information.



Trust Administration

- If the Settlor retains an interest in gifted property, the property could be included in the Settlor's taxable estate. (Especially the ability to decide who receives beneficial enjoyment). IRC Section 2036
  - Protecting the estate planner's hard work! / estate tax mitigation.
- Respecting the Trust as a Separate Entity.
  - A trust is a separate entity.
  - A trust should have a separate shareholder account.
    - Keep accurate books and records: all dividends, distributions, sale proceeds, etc. allocated to the trust's shares should be deposited into the trust's account.
    - Funds held in the trust's account should only be removed if making a distribution to a beneficiary or repaying a loan owed by the trust.
    - Other parties, such as the Settlor, should not transfer funds in and out of the trust's account.

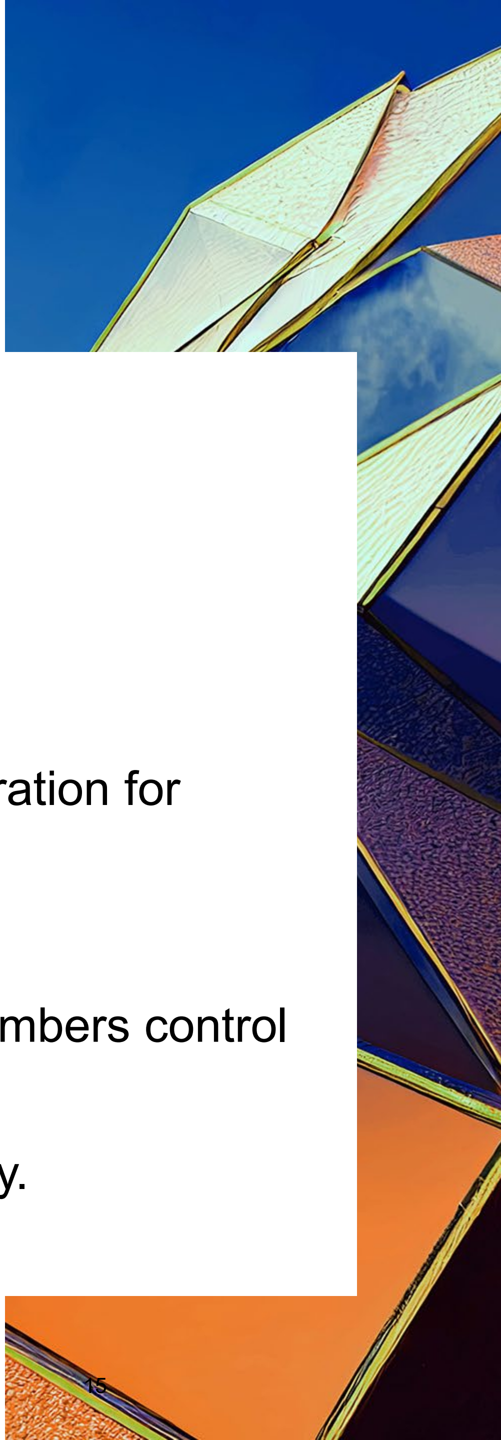


Succession Planning

- Three Tiers:
  - Ownership: economic benefits from the business.
  - Control: vote the interests.
  - Management.

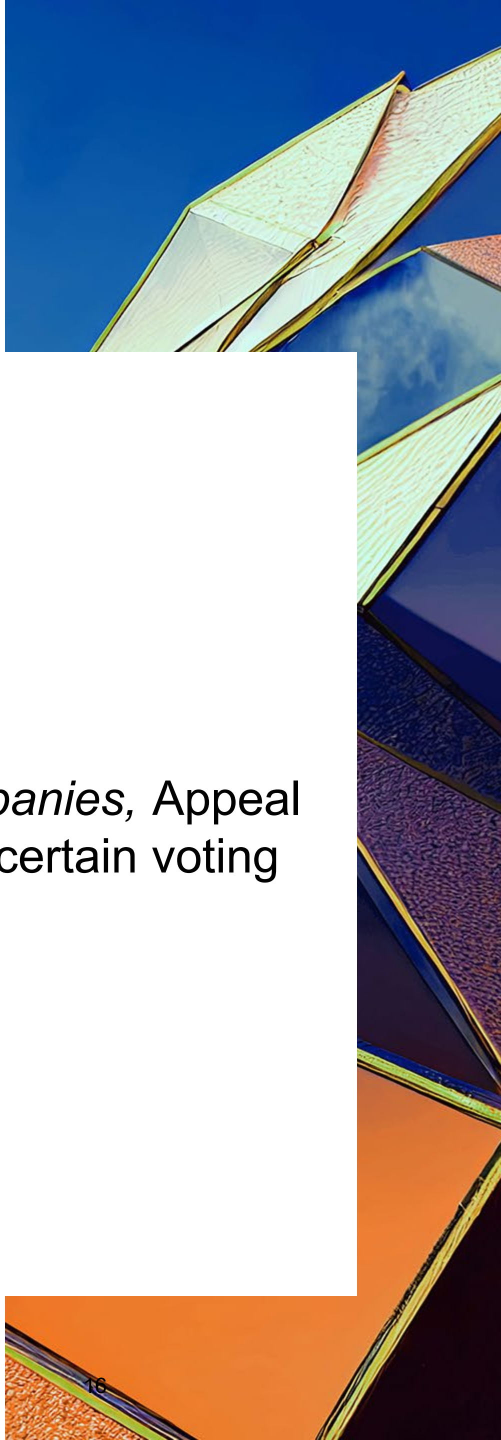
Goals & Complications

- Goals of closely-held company succession planning:
  - Maintain family ownership – no non-family members.
  - Resolution of disputes among family members.
- Oftentimes stock ownership (economic benefits) is separated from control.
  - For purposes of estate planning (transfer the beneficial ownership to the younger generation for estate tax purposes).
  - Succession planning.
    - The goal is to maintain the company for heirs equally but grant a group of family members control of the business (oftentimes, these are the family members involved in the business).
    - Divergent decision-making between family owners inside and outside of the company.



Methods to Separate Control from Economic Ownership

- Voting and Non-Voting Stock in a corporation.
- Voting Trust / Voting Agreement.
  - Wis. Stat. § 180.0730.
  - The vote is transferred to a trustee for a period of time for purposes of voting.
  - See *In re: The 2015 Voting Trust Agreement for Certain Shareholders of Mason Companies,* Appeal No. 2020AP1937 *(Wis. Ct. App. 2023)*: unpublished opinion upholding a challenge to certain voting shareholders of closely-held business creating a Voting Trust.
    - Wanted to avoid certain family members participating in voting shares of business.
- Trusts (Chapter 701 of the Wisconsin Statutes).
  - Trustee typically votes the shares.
- Chapter 183 allows for voting and non-voting members of LLCs.

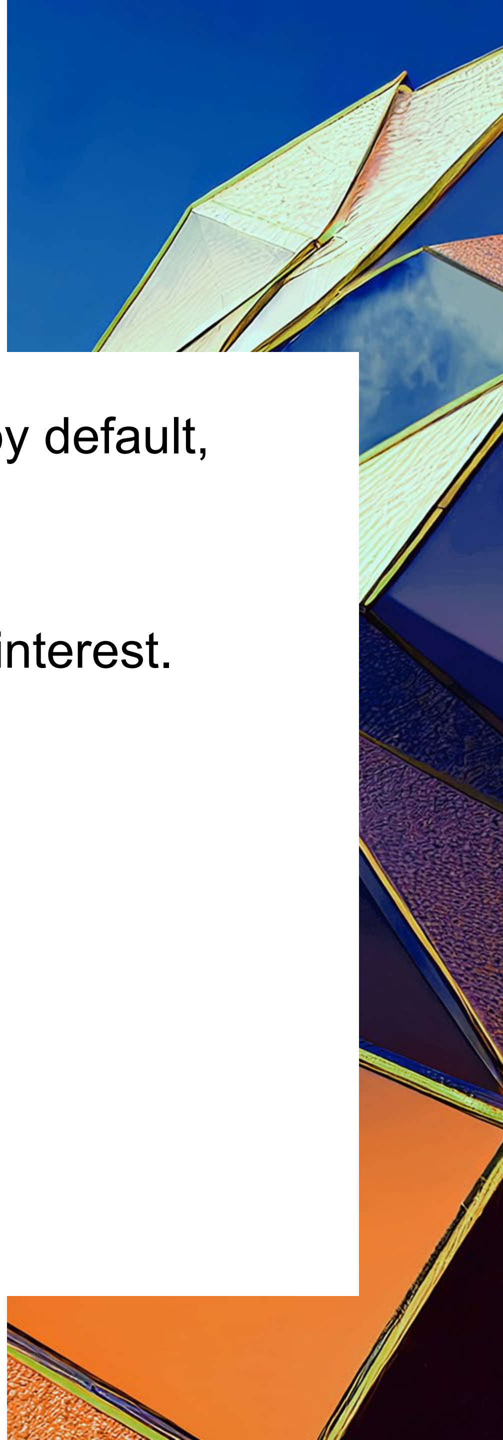


Maintain Family Ownership: Shareholder Agreement

- Buy-sell:
  - Shareholders are forced to sell shares if shares are transferred to a non-family member.
    - Creditors.
    - Ex-spouses.
  - Could be at a disadvantageous price (with liquidity discounts or formula price) and/or with a promissory note.
- May create possibilities for shareholders to sell stock for liquidity.

Marital Property

- In community property states, property owned and titled to a married individual is, by default, marital property:
  - Each spouse has an undivided one-half interest in the property.
  - Title determines control during life, but each spouse receives one-half undivided interest.
  - At divorce or death, each spouse is entitled to a one-half undivided interest.
  - Wisconsin Statutes Chapter 766.

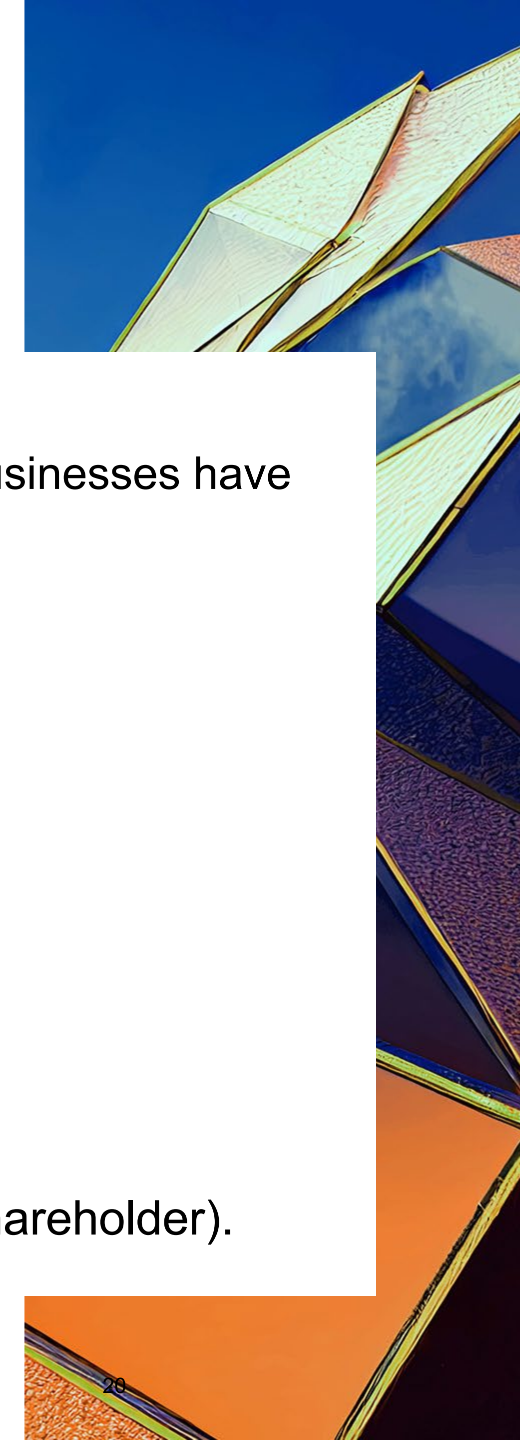


Marital Property

- Exceptions to marital property:
  - Trusts created by a 3rd party.
  - Assets brought to the marriage.
  - Inherited and gifted assets.
  - Wis. Stat. § 766.31(6)-(7)
- However:
  - Income from individual property is marital property unless denoted otherwise. Wis. Stat. § 766.31(4).
  - Intermingling; growth in value due to efforts of a spouse during marriage may make some of the property marital property. Wis. Stat. § 766.63.
- Families use trusts, prenuptial agreements, and shareholder agreements to ensure family ownership.
- Spousal consent to shareholder agreement.

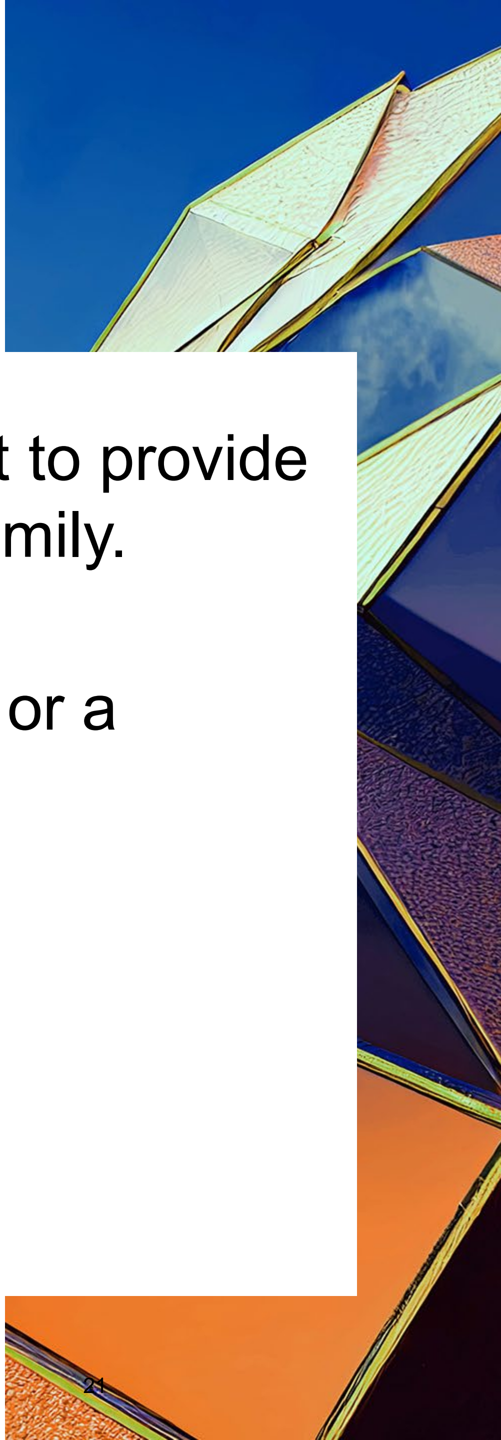
Rules for S corporations (IRC Sec. 1361)

- S corporations do not pay federal income tax; flows through to shareholders
  - Can be a valuable benefit, but with a reduction in the corporate income tax rate, family businesses have converted to C corporation status.
- Requirements:
- Only one class of stock.
  - Every shareholder is entitled to the same dividend and liquidation rights.
    - Be wary of any hidden way to avoid this rule
  - Debt could be considered stock in certain circumstances.
  - Voting and non-voting stock allowed.
- Only certain types of shareholders:
  - Certain types of trusts and foreign owners; no partnerships.
- Limited to 100 Shareholders (but family members, spouses, and trust treated as one shareholder).



What is a Family Office?

- A “Family Office” is a wealth management business or arrangement to provide investment and wealth management services to a high net-worth family.
  - Term has many meanings; highly variable.
- Family office activities may be embedded in an operating company or a separate entity.



Common Services Provided by the Family Office

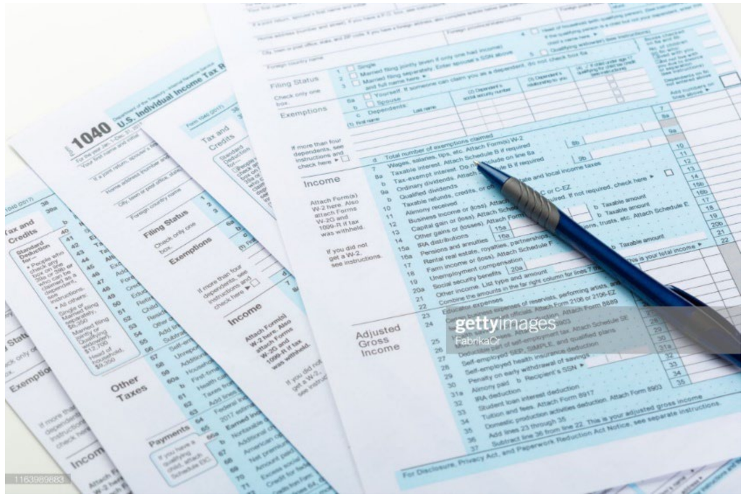
- Personalized Financial Reporting, Accounting, and Tax Preparation Services
- Investment Management Services
- Direct Investment
- Family Education and Coordination
- Managing Estate Planning
- Philanthropy
- Concierge Services

FO Structuring – Potential Income Tax Savings

- Deduction Limitations: IRC Section 212 and Section 67

prohibits individuals and trusts from deducting investment expenses, including:

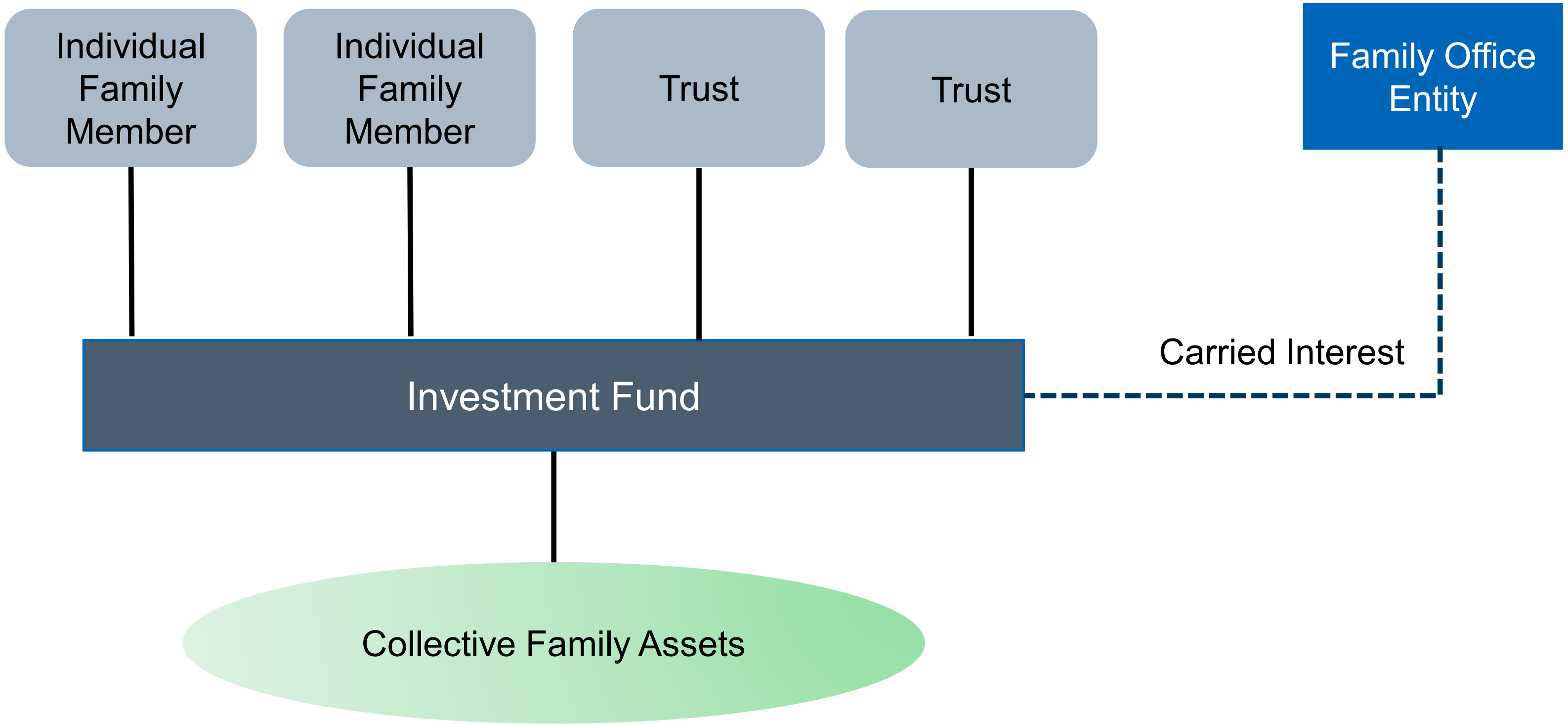
  - Outside investment managers
  - Cost for outside investment advisors
  - Investment advisor staff
  - Accounting, tax preparation, etc.
  - Nearly all of the other FO functions
    not directly tied to an operating business



Workaround: *Lender Management*

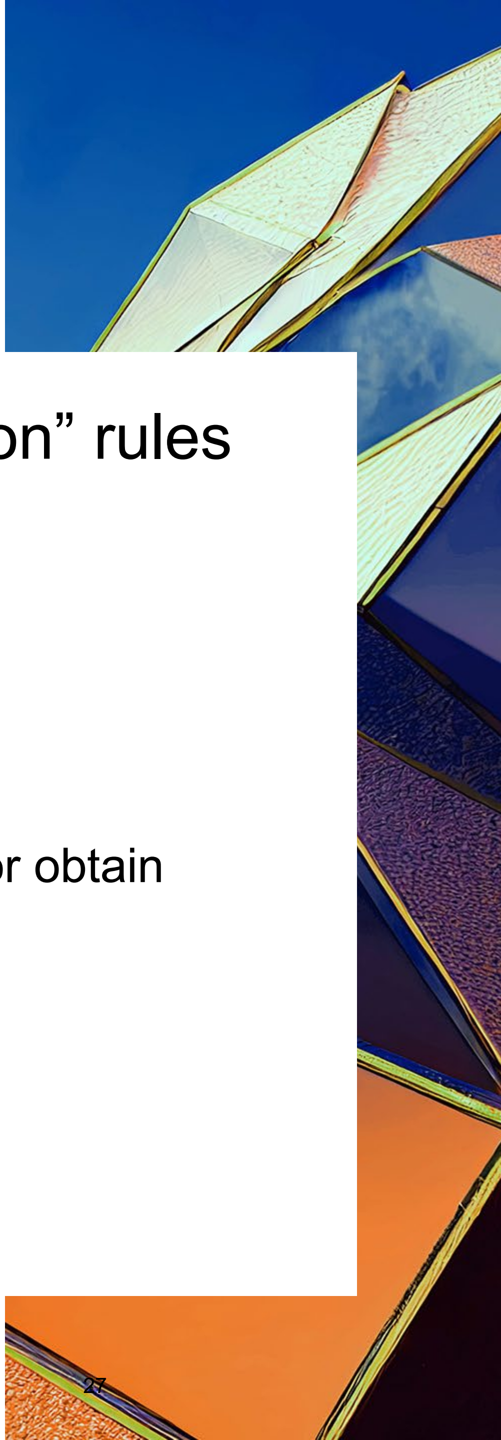
- TC Memo 2017-246 (2017).
- Family members invested in family investment LLCs.
- The family investment LLCs paid “profits interest” to the management services entity (led by one grandchild, Keith).
  - Profits interest is not taxable until profits materialize (*Sol Diamond*).
- Court holding:
  - Management services entity was engaged in a business enterprise, not managing family member’s funds (Management could claim deductions for compensation costs for Keith)
  - This would not be allowed if family investment LLCs paid Keith directly.

Family Office Structure



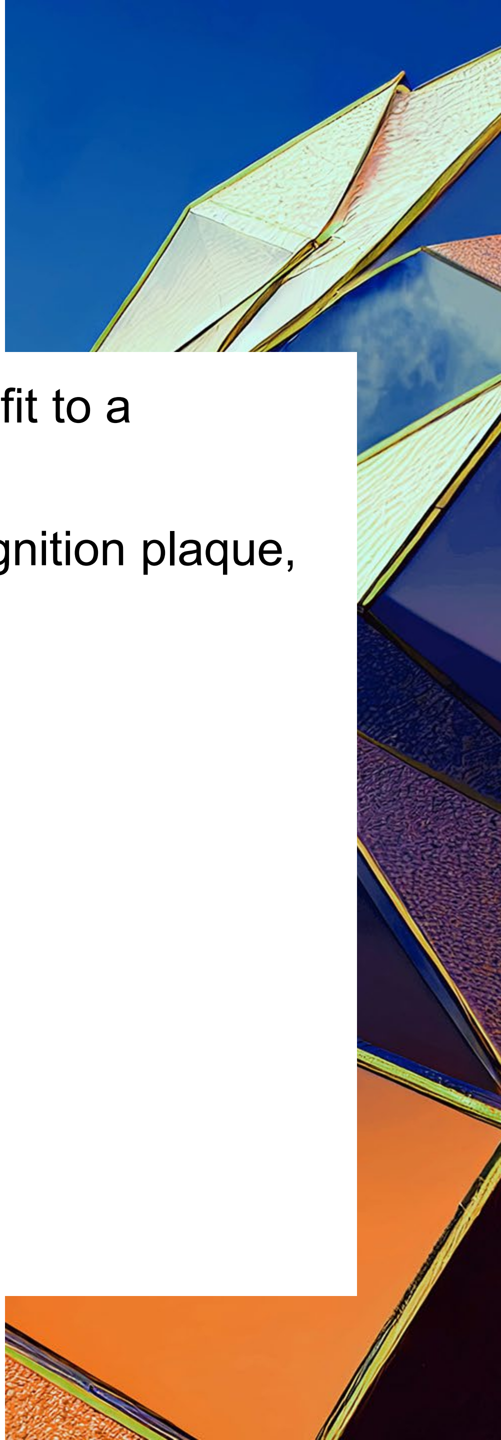
Company Foundations

- Company Foundation is a 501(c)(3) subject to the “private foundation” rules
  - Self-dealing under IRC Section 4941
  - Taxable expenditures under IRC Section 4945
- Foundation cannot:
  - Satisfy pledges made by the company or by its owners, officers or directors
  - Make charitable contributions that allow company owners to attend a charitable event or obtain valuable tickets or other *quid pro quo* items
    - No golf outings and galas



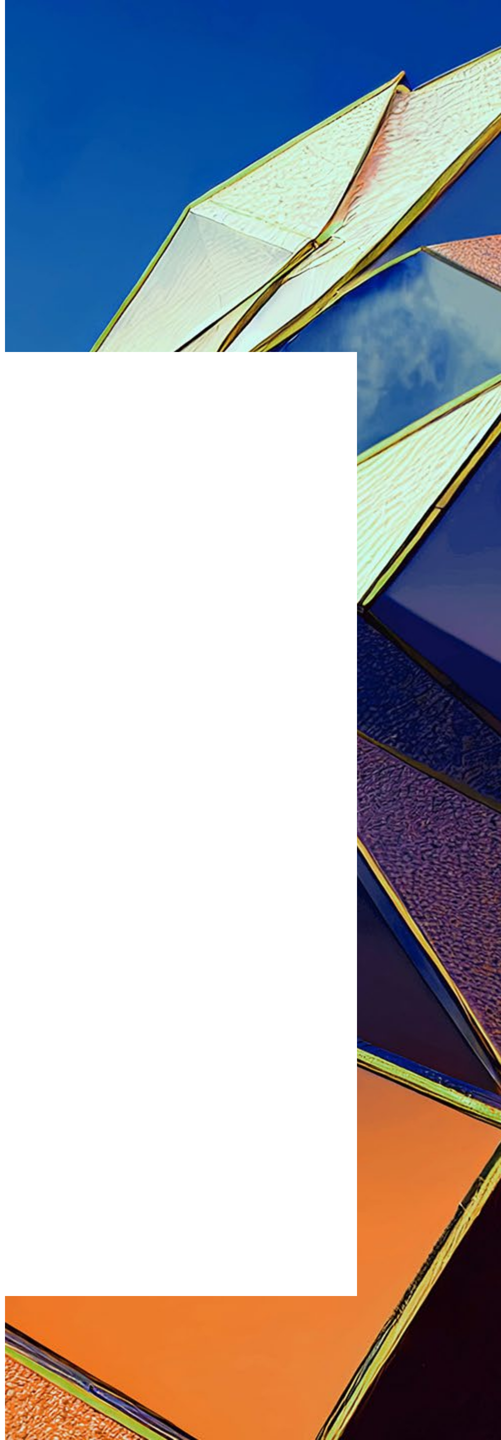
Company Foundations, cont.

- Company can receive recognition related to foundation grants (incidental or tenuous benefit to a disqualified person is allowed)
  - The recipient can recognize the company in its annual report, on its website, on a recognition plaque, or in the name of a building
  - Foundation can use the company's name and logo
- Foundation can pay family members to be directors/officers.
- Annual tax returns (Form 990-PF) are publicly available



Thank You

- Questions?



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