BDITs: Structuring Beneficiary Defective Inheritor's Trusts to Minimize Tax and Retain Control Over Assets

THURSDAY, AUGUST 11, 2016
1pm Eastern    |    12pm Central    |   11am Mountain    |    10am Pacific

Today’s faculty features:

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TURNING A BDIT INTO A “CAN’T BEAT IT”

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“Control Everything; Own Nothing”*  
◊ Legal Title Exposes Wealth  
◊ BDIT  
◊ Control Similar to Outright Ownership  
◊ Everything Sheltered

*Attributed to John D. Rockefeller
TRANSFER TAX AND CREDITOR RIGHTS – A third-party, such as a parent or grandparent, sets up a trust for our client so that the third-party is the Trust Creator for transfer tax purposes and creditor protection purposes. The client never makes a gift to the trust. Any transactions between the trust and the client will be sales for adequate consideration – i.e., equal value.

INCOME TAX – The gift will be subject to a lapsing ("Crummey") power of withdrawal over all contributions to the trust and the donor will not have rights that cause grantor trust status to the donor.
THE “WISH” LIST

- Control
- Use and Enjoyment
- Flexible / Amendable
- Creditor / Divorce Protection
- Tax Savings
- Simplicity
Dynastic; Discretionary (with distribution discretion in the hands of an Independent Party who can be fired and replaced); Beneficiary Controlled Trust (unless (i) controls are undesirable or (ii) impermissible under law to avoid the taxing authorities and other claimants); where the use of trust assets rather than distributions are encouraged (unless distributions are beneficial or desirable); sitused in a trust-friendly jurisdiction.
DOES THIS LOOK FAMILIAR TO YOU?

CLIENT

Gift to Trust

Dynasty Trust

Power of Withdrawal

CHILD
WHAT ARE THE TAX CONSEQUENCES?

- Tax
  - Donor
  - Powerholder

- Creditor Protection*
  - Third-party Created Trust
  - Spendthrift Trust

* Assuming Proper Situs
DOES THIS LOOK FAMILIAR TO YOU?

Gift to Trust

Dynasty Trust

Power of Withdrawal

CLIENT

MOM

12
KEY CONCEPTS
KEY CONCEPT #1 – SET UP AND FUNDED BY SOMEONE ELSE

- “Received” in Trust
  ◊ Governed by IRC § 2041
- “Retained” in Trust
  ◊ Subject to IRC § 2036
- Cannot Reimburse Donor – Step Transaction
Anyone but a Beneficiary

Should Not Be Spouse

- IRC §672(c); 677(a)
- Ethical Issues
- *Linda Gibbs*

Former Spouse

* 1997-196, 73 TCM 2669, April 29, 1977
Beneficiary Cannot Make a Gift
Sales for Equal Value are Permissible

◊ “Adequate and Full Consideration” Exception
◊ Use “Defined Valuation Sales” – E.g., McCord, Christiansen, Petter, Hendrix, Wandry
KEY CONCEPT #3 – TRANSFER TAX CONSEQUENCES

- Measured by the Value of the Transfer
  - “Willing Buyer – Willing Seller” Concept
  - Rev. Rul. 93-12
- Subsequent Growth Irrelevant
- GSTT Exempt
KEY CONCEPT #4 – BENEFICIARY GIVEN A LAPSING POWER OF WITHDRAWAL OVER ALL GIFTS – INCOME TAX CONSEQUENCES

- Rev. Rul. 85-13
  - Sales are I/T Free
- Estate Depletion as a Result of Grantor Trust Status – “Tax Burn”
  - Beneficiary’s Wealth Depleted – Transfer Taxes
  - Beneficiary’s Wealth Depleted – Other Claimants
The Red Line Indicates the Powerful Effect on the Estate Depletion as a Result of Grantor Trust Status
FREQUENTLY ASKED QUESTION #1

IRC § 678
OBTAINING
BENEFICIARY GRANTOR STATUS

The PLR 200949012 “MYTH”
PLR REQUESTS

- Facts
- Legal Discussion
- IRS Conclusion
Discretionary; Three Trustees; Broad Testamentary SPA; Lapsing Crummey Power of Withdrawal

“Beneficiary will have the power, during his lifetime, to direct the net income and/or principal of the Trust to be paid over or applied for Beneficiary’s benefit, but only to the extent necessary for Beneficiary’s health, education, maintenance or support. This power will not lapse.”
Partial Lapse Pundits Say You Need HEMS and Partial Lapse

- Power of Withdrawal Lapses
- HEMS Does Not Lapse
- Therefore, Partial Lapse

Full Lapse and No Lapse Do Not Equal Partial Lapse

No Requirement of a Partial Lapse
FALSE NARRATIVE

- Facts – Mention HEMS Power That Will Not Lapse
- Legal Analysis – Silent on HEMS
- IRC Ruling – Silent on HEMS
- How Can a Ruling That Never Discusses an Issue be Cited as Authority for That Issue?
- Read the Ruling
Was Ruling Ever Requested on the HEMS Issue?

- If Yes – What Happened?
- If No – Why Not?

Why Would an Advisor Request This Ruling in First Place?

- HEMS Irrelevant in Prior and Subsequent Rulings
- HEMS Irrelevant in PLR 200949012
IRS Consistent Position
PLR 201039010 – Correct Analysis
PLR 201216034 – Technically Flawed
My Discussions With IRS-CC
No Ruling List
HEMS creates a “support trust” for creditor purposes and can expose the trust assets to statuary or judicially created exception creditors, depending upon applicable state law.*

Planning Note – Prudent advisors should avoid the PLR since all other PLRs have approved the BDIT Strategy without sacrificing the creditor protection.

CASE STUDY #1

OPPORTUNITY SHIFTING
Client (or Someone Else) Has
- New Opportunity
- Ancillary Business Opportunity

Typical Planning
- Limited to Choice of Entity

BDIT Solution – Everybody Wins
Client – Control, Beneficial Enjoyment, Rewrite Power

Business (or Investment) is Never Exposed to:
- Transfer Taxes
- Creditors

Client’s Personal Wealth is “Tax Burned”
Why Not Every Client?

- Intra-family Diversion of Wealth Popular Strategy
- Resolves Biggest Dilemma

Exception
CASE STUDY #2

INSTALLMENT

NOTE SALES
Except Third-party Sets Up and “Seeds” BDIT
Client Given a Lapsing Power of Withdrawal
Client Sells Interests in Entity to BDIT for a Note
Cash Flow Pays the Note
TAX RESULT – FREEZE, SQUEEZE AND BURN

- Estate Freeze
- Discount Removed From Transfer Tax System
- Estate Depletion
Client in Control
Key Family Asset Creditor Protected

◊ Creditors
◊ Divorcing Spouses
Oxymoron

“Counselor...” – UGH!

Any “Retained Interest” Taints All – §2036

◊ *Estate of Korby* – Implied Agreement

◊ *Estate of Turner* – $2,000 a Month Held Excessive

BDIT Avoids Need to “Retain”

◊ Tested Under §2041

*T.C. Memo 2011-209*
FREQUENTLY ASKED QUESTION #2

ECONOMIC SUBSTANCE AND THE “10%” MYTH*

THE 10% RULE OF THUMB

- Theoretical Safety Net
- Ratio 9:1
- Contra – *Baker Commodities, Inc.*
  - 700:1 Debt / Equity Deemed Legitimate
DOES THE UNDERLYING NATURE OF THE INDEPENDENT FUNDING MATTER?

- Cash / Bonds of $1 Million
- A Non-controlling, Non-marketable Interest Worth $1 Million in an LLC Which Owns Raw Land
Asset With Cash Flow That is Reasonably Projected to Pay the Note in Accordance With Its Terms

Low or Non-cash Flowing Non-Marketable Asset of Equivalent Value
“REALITY OF SALE” – CRUCIAL QUESTION

“Based on all of the facts, can it be reasonably expected that the purchaser will be able to meet its financial obligations on the promissory note?”
That is What Occurs in the Real World
Comports With Academia
  See Prof. Jerry Hesch’s Analysis
  See Prof. Charles Kingson’s Analysis
Follows the Judicial Analysis of the Income Tax Cases Including Several SCOTUS (and Other) Cases
Makes Economic Sense
Makes Common Sense
With respect to the issue of economic substance, any IRS attack would have “...to deal with the four Supreme Court cases...Clay Brown, Frank Lyon, Consumer Life, and Cottage Savings. Each upholds a transaction with no nontax motive, no nontax economic effect, and no nontax profit.”*

(Citations omitted)

* Kingson, p. 642
Sale for a Note Payable Solely Out Of Earnings - Respected

Risk Shifting – Not Essential

Tax Consequences Are Meaningful

- Factor Considered in Real World Transactions
- Tax Benefits Increase the Economic Result

*Quotes in slides that follow are from Comm’r v. Clay Brown et. al., 380 U.S. 563 (1965)
NOTE PAYABLE SOLELY OUT OF EARNINGS

“To require a sale for tax purposes to be a financially responsible buyer who undertakes to pay the purchase price from sources other than the earnings of the assets sold or to make a substantial down payment seems at odds with commercial practice and common understanding of what constitutes a sale.”* (Emphasis Supplied)

*Clay Brown, Justice White, Majority Opinion
“...[R]isk-shifting of the kind insisted on by the Commissioner has not heretofore been considered an essential ingredient of a sale for tax purposes.”* (Emphasis Supplied)

*Clay Brown, Justice White, Majority Opinion
“...[T]he Commissioner, however, ignores as well the fact that if the rents payable by Fortuna were deductible by it and not taxable to the Institute, the Institute could pay off the purchase price at a considerably faster rate than the ordinary corporate buyer subject to income taxes, a matter of considerable importance to a seller who wants the balance of his purchase price paid as rapidly as he can get it.”* (Emphasis Supplied)

*Clay Brown, Justice White, Majority Opinion
“Were it not for the tax laws, the respondent’s transaction with the (Institute) would not make sense, except as one arising from a charitable purpose. However, the tax laws exist as an economic reality in the businessman’s world, much like the existence of a competitor. Businessmen plan their affairs around both, and a tax dollar is just as real as one derived from another source.”* (Emphasis Supplied)

*Clay Brown, Justice White, Concurring Opinion
TAX CONSEQUENCES ARE A MEANINGFUL INGREDIENT OF BUSINESS DECISION MAKING PROCESS

- Seller Transfers the Remainder Interest After the Debt is Paid
- Seller Receives Back Two Items of Substantial Value
  - The Secured Note
  - The Favorable “Tax Attributes”
A Taxable Sale of a $6 Million Business
   ◊ Buyer Who Must Pay 40% Income Tax on Earnings
   ◊ And, the Seller Also Pays Capital Gains Tax

A Tax-free Transaction
   ◊ Charity
   ◊ Grantor Trust
Which is Safer?
Who Can Pay the Purchase Price Faster?
Use Legitimate Guarantees
Which Would You Prefer?

◊ IDGT - $1 Million (10%)
◊ BDIT - $5,000
◊ BDIT - $5,000 Plus Legitimate Guarantee
USE OF GUARANTEES

- Guarantor With the Economic Wherewithal to Pay if Called
- Must be Paid if Business Implodes
- Need Not be for Full Amount of the Note
- Meet Community Standards
Anyone With the Financial Wherewithal to Pay
◊ Except the Seller

Is a Gratuitous Guarantee a Gift?
◊ Bradford, 34 TC 1059 (1990) Distinguishable
◊ PLR 9113009
◊ PLR 9409018

Solution
◊ Pay Market Interest
IDGT Provides the Guarantee
Meeting the “Rule of Thumb” With Large Transactions

◊ IDGT #1 – Exempt Trust
◊ IDGT # 2 – Incomplete Gift Trust – Treas. Reg. 25.2511-2(b)
Value of the Property
The Guarantee Fee
Impact on the “Reality of Sale” Issue
AVOID “TAXPAYER STOOD ON BOTH SIDES OF THE TRANSACTION” ARGUMENT

- For “Hard to Value Assets”
  - Client Should Not Act as Both Buyer and Seller
  - Don’t Use “Directed Trust” Where Family Directs
  - Both Sides Represented by Separate Counsel
    - (Stone, Rector)
  - Taxpayer “Stood on Both Sides” Not Relevant
WE HAVE INDEPENDENT TRUSTEE ACT IN THREE CAPACITIES

- Independent Trustee
  - Makes all Tax-sensitive Decisions
  - Represents the BDIT on Transactions Involving Hard-to-value Assets
  - Represents the BDIT on all Decisions Involving Life Insurance on the Life of the Investment Trustee

- Independent Trustee Often Also Provides Situs
THE TWO PRINCIPAL FEATURES OF A LIFE INSURANCE POLICY*

- Death Benefit
- Lifetime Benefits
  - Often Acquired as a Conservative Safe Alternative Asset Class Backed by a Powerful Large Financial Institution
  - Income Tax-free Build-up

*Other than a term policy
Who Owns the Policy?

- ILIT
- Insured

Virtues of BDIT as Funded ILIT

- Complexities Avoided
- Gifting Limitations Finessed
- Access Without Estate Tax
Life Insurance in a Trust Created by Another Person Makes the Policy More Valuable to the Insured

With Minimal Exceptions, Investing in LI Should be Permissible in Every Trust

Rules for LI on Client

- Insured Cannot be Decision Maker
- No Power of Appointment Over LI or Its Proceeds
CASE STUDY #4

CLIENTS WHO HAVE PREVIOUSLY DONE ADVANCED WEALTH SHIFTING AND HAVE RETAINED INTERESTS
CLIENT(S) THAT HAVE DONE TYPICAL HIGH-END WEALTH SHIFTING

- Client Transferred Discountable Interests in Entity
- Client Retained
  - Control and/or Economic Benefits (for Security)
  - E.g., Excess Compensation or Perks
- Potential Continuing IRC §2036 Risk
THE RISK IF VIOLATE IRC §2036

- Illustration - $5 Million Grows to $50 Million
  - 100% Inclusion
  - Impact on Marital / Charitable Deduction
- Estate of Turner
- FLP Planning
Control Continues as BDIT Investment Trustee
Control in a Fiduciary Capacity is Not Attribute to the Decedent
Sale For “Adequate and Full” Consideration Exception – IRC §2035(d) Implication
Indirect Access as a Trust Beneficiary
CASE STUDY #5

ESTATE THAW: PLANNING WITH CONCEPTUALLY UNDESIRABLE ASSET MIX*

Impediments To Wealth Shifting

- Low Growth Assets
- Low Income Assets

E.g., Cash Equivalents

- Bonds
- Blended Stocks/Bonds for Safety
OVERCOMING IMPEDIMENTS
– FACT PATTERN

- $20 Million Bonds in Estate
- Estate Tax Bracket – 40%
- Estate Tax - $8 Million
PREFERRED PARTNERSHIP (or LLC) DESIGN CHARACTERISTICS

- Preferred Interest
  - Dividend Preference
  - Liquidation Preference

- Common Interest
  - Growth After Preferred Interest Entitlements
  - Greater Risk of Loss
TRADITIONAL ESTATE FREEZE

- Freeze (Cap) the Value of Client’s Estate
- Transfer Appreciation (Growth)
- Pre-Chapter 14
  - Artificial Rights to Reduce Valuation
  - Rights Would Not be Exercised
  - Willing Buyer Would Not be Able to Rely on Non-Exercise
IRS/Congressional Goals

◊ Reduce Value of Preferred Interest
◊ Increase Value of Common Interest

Impact

◊ Harms the Traditional Freeze
◊ Helps the Reverse Freeze
VALUING THE PREFERRED INTEREST

- Rev. Rul. 83-120
  - Yield
  - Preferred Payment Coverage
  - Liquidation Protection (Cushion)

- Other Normal Discounts Apply
  - Lack of Control
  - Lack of Marketability
  - Others
FREEZE ENTITY
ILLUSTRATION

- Preferred - $10 Million
  - 8% Dividend Interest
- Common - $10 Million
CLIENT SELLS PREFERRED INTEREST FOR A NOTE*

$20 Million Bonds LLC

Preferred Interest
$10 Million
8% Preferred Dividend
$800,000
Liquidation Preference

Common Interest
$10 Million
Retained

Sell Preferred Interest
Discounts Apply

Promissory Note

Interest-only at AFR with Balloon Payment

BDIT

IRC § 678
Trust Created
By Another f/b/o
Client and Client’s Family

IDGTs, GRATs and CLTs are Alternative Options

*Not subject to Chapter 14
ECONOMICS

Preferred Interest

Liquidation Preference
$10 Million
FMV $8 Million
Annual Dividend 8%
$800,000

Note

$8 Million
15-Year
3% Interest
$240,000 Annual Interest

Dividends $800,000
Interest on Note $240,000
Annual Tax-Free Wealth Shift $560,000
Clients in Estate

- Note $8 Million
  - Discountable (35%)
  - $5.2 Million

- Common Interest
  - Discountable (30%)
  - $7 Million
Doing Nothing
   ◊ Tax - $8 Million

Reverse Freeze
   ◊ Tax - $4,880,000
Wealth Shift

Interest Disparity - $560,000 per year
Return on Interest

Tax Burn

In Estate

Note
Common Interest
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dividends</td>
<td>$800,000</td>
</tr>
<tr>
<td>Interest on Note</td>
<td>$152,000</td>
</tr>
<tr>
<td>Tax-Free Wealth Shift</td>
<td>$648,000</td>
</tr>
</tbody>
</table>

**USING AUG 2016 LONG-TERM AFR (1.9%)**
LI in BDIT*
  ◊ Funded ILIT

Early Death
  ◊ Death Benefit
  ◊ Discounts

Late Death
  ◊ LI as an Asset Class
  ◊ Tax Burn

*Or IDGT, or ILIT
TAXABLE CORPORATE BONDS PAYING 4.2% ANNUAL INTEREST

- LLC Cash Flow
  - $840,000 Annual Interest
  - $800,000 Preferred Payment

- Tax Burn Allocable to Grantor Trust Status
  - $320,000 Each Year
  - 40% x $800,000 (Ignoring State)
CASE STUDY #6

CLIENTS WHO HAVE NOT PROCEEDED WITH THEIR PLANNING
FREQUENT CONCERNS

- Too Complex
- Too Controlling
- Too Expensive
- Inability to Change Mind
- Running Out of Money
HAS THE BDIT BEEN TESTED?
CASE STUDY #7

CASCADING BDITS
Every Trust Should Enable an Independent Trustee of a “Primary Trust” to Create a Beneficiary Taxed Trust F/B/O all Trust Beneficiaries – Unless Impermissible as a Condition of Qualification
3.1.1 Discretionary Distributions of Income and/or Principal. The Independent Trustee, in its sole, absolute and unreviewable discretion, shall have the power, the exercise of which shall be absolutely binding on all persons interested now or in the future in this trust, to distribute to or apply for the benefit, enjoyment or use of any one or more of the following permissible distributes:

A. The primary beneficiary,
B. The spouse of the primary beneficiary,
C. The descendants of the primary beneficiary who are then living (even though not now living),
D. Any then living spouse of any such descendant who is then deceased (provided such spouse was living with such descendant at the time of such descendant’s death or was unable to do so for reasons of health), and/or
E. Any trust for the primary benefit of any one or more of the above-described permissible distributees (even one created by the Independent Trustee hereunder), whether now existing or hereafter created, except...

so much of the income or principal, or both, of the trust estate, in equal or unequal proportions, and at such time or times as such Independent Trustees shall deem appropriate for such beneficiaries’ benefit, care, comfort, enjoyment or for any other purposes, after taking into consideration their income or other resources...
GOALS

- Shelters
  - Tax
  - Creditor

- Sensible Family Planning
  - Sibling Fairness
  - Shared Ownership - Undesirable
RULES

- Existing Trust is a Complex Trust
- Existing Trust Cannot be an IDGT OR BDIT
  - Grantor of First Trust is Grantor of Second Trust
    IRC §678(b)*
  - Simple Solution

*Treas. Regs. Sec. 1.671-2(e)(5); 1.671-2(e)(6), ex 8 & 9.
SPENCER’S NEW BUSINESS (OR INVESTMENT) OPPORTUNITY
Beneficiary Has a Favorable Opportunity
Someone Else Has a Favorable Opportunity
Opportunity Shifting Trust
  ◊ Can be Taxed in One of Three Ways
  ◊ We Will Assume BDIT
NEW BUSINESS/INVESTMENT ACHIEVES HOPED-FOR SUCCESS

- Full Control in Hands of Beneficiary
- Fully Sheltered
  - Transfer Tax Protected
  - Creditor / Divorce Protected
- Enhanced Sheltering “Tax Burn”
  - Estate Tax
  - Creditors
CASCADING BDIT PLANNING IDEA #2

KATIE OWNS AN EXISTING BUSINESS (OR INVESTMENT)
SALE OF EXISTING BUSINESS TO SECONDARY BDIT TRUST

- Independent Trustee Creates and Funds Trust Subject to Katie’s Power of Withdrawal
- Katie Sells Her Business to the BDIT Income Tax-free
- Guarantee (or Loan) Can be Made by Primary Trust
BENEFICIARY HAS

- Full Control
- Beneficial Enjoyment of Trust Owned Assets
- Creditor / Divorce Protection
- Transfer Tax Shelter
- “Tax Burn” of Personal Wealth
Beneficiary can acquire low/negative basis from BDIT prior to death:

- Basis step-up at death
- Estate tax neutral
Basis Bump Planning Through GPAs and DTT
IRC §1014
CASE STUDY #8

BUSINESS SUCCESSION PLANNING
Client Owns Business
Worth $20 Million

One Child in the Business

One Child not in the Business
BUSINESS SUCCESSION
TRADITIONAL PLANNING

Business
Life Insurance
Voting
Non-Voting
BUSINESS SUCCESSION BDIT

Business

Life Insurance
FREQUENTLY ASKED QUESTION #4

DOMICILE SELECTION
PRINCIPLE CONSIDERATIONS

- RAP
- No State Income Tax
- Protective Creditor Shelter Laws
  - No Exception Creditors
- Cost of Renting Situs
- Cooperation of Situs Trustee
Is There a Duty to Advise Clients to Use a More Protective Situs?

Do the Relatively Low Standards of the Industry Protect You?

For a Very Insightful Article on This Topic, See Randy Roth, “Liability Issues for Lawyers and Other Fiduciaries”, 44 U. Miami Heckerling Inst. on Est. Plan., Ch. 16 (2010)
Dick Nenno

“Planning With Domestic Asset-Protection Trusts,” 40 RPP&T J. 263 at 284, (Summer 2005 – Cited by Prof. Roth (Fn. 105)
“Attorneys might face exposure if they do not advise the client to [engage in asset protection planning] and creditors later reach the client’s assets.”

“Planning to Minimize or Avoid State Income Tax on Trusts”, 34 ACTEC Journal 131 (2008), at 146; “Managing state income tax liability is a critical aspect of planning and administering a trust. (N)o court has yet held an attorney or trustee liable for failing to minimize state income tax, but such a case probably is not far off. Accordingly, attorneys and trustees ignore this crucial issue at their peril.”

Gideon Rothschild/Dan Rubin

“Asset-Protection Planning: Ethical? Legal? Obligatory?,” Rothschild & Rubin, Trusts & Estates at 42 (Sept. 2003) “...it is only a matter of time before clients make claims against estate planners who did not raise the subject of asset protection planning as part of the planning process-when it arguably would have worked.” Gideon has told me that the same concern applies to minimizing taxes and moving wealth to a situs without state income tax.

Skip Fox

“Current Financial and Estate Planning Trends”, CCH Financial and Estate Planning, (Nov 26, 2007), “… I would argue that there may very well be an affirmative duty to talk to your clients about (an asset protection trust).” at p. 83 and, "...it could be any advisor.” at p. 84.
FREQUENTLY ASKED QUESTION #5

COUNTERINTUITIVE
DESIGN FEATURES
DECISION MAKING
HELPFUL OR HARMFUL

- Investment Committees
  - The Right to Invest is Legally Inconsequential
  - Exception – LI on life of Client
- Distribution Committees
- Directed Trusts
BDIT COMPARED TO OTHER STRATEGIES

BENEFITS AND RISKS

BDIT is the Only Strategy That Satisfies All of the “Wish” List Objectives
BDIT v. IDGT

- Disparity in Testing
  - IDGT Tested Under §§2036 and 2038*
  - BDIT Tested Under §2041
- How Much to Transfer
- Excessive Compensation Risk
  - Estate of Turner
  - BDIT Takes Distributions as Dividends
- Pierre v. Comm’r

*See Karmazin, Woelbing, and Davidson
BDIT v. IDGT con’t.

- “Wish List” Compliance
  - Use and Enjoyment
  - Re-write Power

- Estate Depletion as a Result of Grantor Trust Status
  - Economic Risk if Wealth Shift is Too Successful
  - Did We Transfer Too Much?
  - Turning Off Spigot
  - Funding Taxes
  - Continue “Tax Burn” if Creditor Problems Arise
BDIT v. GRAT — ARE GRATs REALLY SAFE?

- GRAT Funding
  - Statutorily Sanctioned
  - Fund GRAT With Formula Clause

- Operational Risks
  - Not Protected by the Code
  - Underpayment of Annuity
  - 105-Day Rule
  - *Estate of Atkinson*
BDIT v. FLP

- Historical Purpose of FLPs
  - Control
  - Valuation Discounts - Restrictions
- FLPs – Audit-sensitive
- FLPs – Substantial Non-tax Purpose
- For the Next Generation
BDIT v. ILIT

- Funding
- No Crummey Complexities and Limitations
- BDITs Living Benefits of Life Insurance