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FINANCIAL INSTITUTE

The 2020 Estate Planning Teleconference Series

Participant Guide

Mathematics and Economics of Estate Planning

Cannon Financial Institute, Inc.

Presents

The 2020 Estate Planning Teleconference Series

Tuesday, February 25, 2020

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Charles A. Redd is a partner in the St. Louis, Missouri, office of the law firm of STINSON LLP. Mr. Redd concentrates his practice in estate planning, estate and trust administration and estate and trust-related litigation. Prior to joining Stinson, Mr. Redd was a partner in and Vice Chairman of the Trusts & Estates Practice Group at the law firm of SNR Denton US LLP (now Dentons US LLP). Mr. Redd was also previously a partner in the law firm of Armstrong, Teasdale, Schlafly & Davis (now Armstrong Teasdale LLP) and was Chairman of that firm's Trusts & Estates Department. He was previously employed as a Trust Administrator by First Wisconsin Trust Company (now U.S. Bank, N.A.), Milwaukee, Wisconsin, and as an Assistant Counsel by Centerre Trust Company of St. Louis (now Bank of America Private Bank).

Mr. Redd has extensive experience and expertise in: (a) the drafting of wills, trust instruments, durable powers of attorney, marital agreements and other estate planning documents; (b) pre- and post-death tax planning for individuals, trusts and estates; (c) preparation and filing of estate tax returns, gift tax returns and fiduciary income tax returns; (d) representation and filing of estate tax returns, gift tax returns and fiduciary income tax returns; (e) representation of individual and corporate fiduciaries and (f) litigation in the Probate Division and other equity divisions of the Circuit Court. Mr. Redd has worked on estates and estate planning projects, some involving assets valued at over a billion dollars, and has successfully handled numerous estate tax, gift tax and generation-skipping transfer tax matters, will and trust construction cases, will contests, contests of trust agreements, alleged breach of fiduciary duty cases and other types of cases involving estates and trusts.

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Mr. Redd was Chairman of the Missouri Bar's Health Care Durable Power of Attorney Subcommittee, and he played a significant role in the drafting and enactment of the Missouri Durable Power of Attorney for Health Care Act. In 1991, Mr. Redd received The Missouri Bar President's Award. Mr. Redd was the principal draftsman of the recently enacted Missouri Family Trust Company Act.

Mr. Redd is an elected member of The American Law Institute and a Fellow of The American College of Trust and Estate Counsel (Past Missouri State Chair; Past Regent; Estate and Gift Tax Committee; and Fiduciary Litigation Committee). He was an adjunct professor of law (Estate Planning) at Northwestern University School of Law for fifteen years. He serves as Co-Chair of the Editorial Advisory Board of, and writes a regular column in, TRUSTS & ESTATES magazine. In 2018, he was inducted into the Estate Planning Hall of Fame® by the National Association of Estate Planners and Councils. Mr. Redd is listed in The Best Lawyers in America and is "Band 1" ranked by Chambers and Partners in their High Net Worth guide. He frequently writes and lectures nationally on topics in the trusts and estates field.

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I. TAKING ADVANTAGE OF THE INCREASED BASIC EXCLUSION AMOUNT

A. Introduction

At this time, and for the indefinite future, as a result of the 2017 Tax Act,[1] individuals have a greatly enhanced, historically high basic exclusion amount.[2] This large basic exclusion amount[3] is scheduled to evaporate January 1, 2026,[4] and could be taken away by legislation at any time before that date. Thus, clients having significant wealth who wish to maximize their use of what could be a fleeting opportunity to use the basic exclusion amount now in place should consider expeditiously making one or more lifetime taxable gifts that fully absorb the basic exclusion amount. Individuals making gifts sooner rather than later will remove more appreciation from their gross estate, which would be highly beneficial if the basic exclusion amount declines on January 1, 2026 or sooner. Making a gift, however, is always subject to the risk that a basis step-up upon the owner's death with respect to the gifted asset will be forfeited. Moreover, if the basic exclusion amount doesn't decline, an individual whose net worth is safely under the basic exclusion amount may regret having made a gift to remove post-gift appreciation and income with respect to the gifted asset(s) from his or her gross estate.

B. No "Clawback"

In response to Internal Revenue Code ("IRC") Section 2001(g)(2), enacted as part of the 2017 Tax Act, in which the Secretary of the Treasury was directed to prescribe regulations to carry out IRC Section 2001(g) with respect to the difference between the basic exclusion amount applicable at the time of a decedent's death and the basic exclusion amount applicable with respect to any gifts made by the decedent, the Secretary issued Proposed Regulation Section 20.2010-1(c).[5] The final version of this provision was released on November 22, 2019 and published in the Federal Register on November 26, 2019.[6]

Treasury Regulation Section 20.2010-1(c) ensures that, if a decedent uses the increased basic exclusion amount for gifts made while the 2017 Tax Act was in effect and dies after the sunset of the 2017 Tax Act (currently scheduled for January 1, 2026), such decedent won't be

[1] An Act To Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. No. 115-97.
[2] IRC Section 2010(c)(3).
[3] $11,580,000.00 in 2020.
[4] Internal Revenue Code ("IRC") Section 2010(c)(3)(C).
[5] Proposed Regulation Section 20.2010-1(c), REG-106706-18, 83 Fed. Reg. 59343 (November 23, 2018).
[6] TD 9884.

treated, on such decedent's estate tax return, as having made adjusted taxable gifts solely because the increase in the basic exclusion amount effectuated by the 2017 Tax Act was eliminated.

The mechanism by which Treas. Reg. Section 20.2010-1(c) achieves this result is to provide that, if the total credits that were used in computing a decedent's gift tax on post-1976 gifts, within the meaning of IRC Section 2001(b)(2),[7] is greater than the applicable credit amount used, pursuant to IRC Section 2010(a), to compute the estate tax on the decedent's estate,[8] the credit that can in that circumstance be used to compute the estate tax is deemed to be the total credits that were used in computing the decedent's gift tax.

Unlike Prop. Reg. Section 20.2010-1(c), Treas. Reg. Section 20.2010-1(c) explains how the deceased spousal unused exclusion amount ("DSUEA")[9] interacts with the basic exclusion amount to produce the intended "no clawback" result. Treas. Reg. Section 20.2010-1(c)(1)(ii) and Example 4,[10] taken together, make several important points clear. First, when a surviving spouse makes taxable gifts, any DSUEA that was available to him or her is deemed to have been applied to those gifts before his or her basic exclusion amount was so applied.[11] Second, if that surviving spouse dies after the sunset of the 2017 Tax Act, the DSUEA applied to those gifts is not reduced. Third, if both the DSUEA and the surviving spouse's basic exclusion amount were applied to those gifts, in calculating the amount of the credit available in computing the surviving spouse's estate tax, the undiminished DSUEA is removed. Fourth, the total credits that were used in computing the surviving spouse's gift tax based on that intact DSUEA, *plus* the credit determined by applying the general "no clawback" rule of Treas. Reg. Section 20.2010-1(c), are available to offset the surviving spouse's estate tax liability.

Although, surprisingly, it took a year to bring this relatively small regulatory project to a conclusion, it's a welcome development. In particular, the Internal Revenue Service's treatment of the DSUEA in the "no clawback" context is good news. It is somewhat disappointing that the Service declined to address whether GST exemption allocated before sunset of the 2017 Tax Act would, like the basic exclusion amount and the DSUEA applied in computing the gift tax on post-1976 gifts, would remain in place without reduction. It seems significant, though, that, in the preamble to the final regulation, after observing that the GST exemption amount is defined by reference to the basic exclusion amount,[12] the Service stated: "There is nothing in the statute that would indicate that the sunset of the increased [basic exclusion amount] would have any impact on allocations of the GST exemption available during the increased [basic exclusion amount] period."

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[7] To the extent based solely on the basic exclusion amount. *See* IRC Section 2010(c)(3).
[8] *Id*.
[9] IRC Section 2010(c)(4).
[10] Treas. Reg. Section 20.2010-1(c)(2)(iv).
[11] This conclusion is not at all surprising. It is entirely consistent with Treas. Reg. Sections 20.2010-3(b) and 25.2505-2(b).
[12] IRC Section 2631(c).

C. Basic Estate Tax Benefits of Making Lifetime Gifts

If an individual makes annual exclusion gifts[13] or gifts for educational expenses or medical expenses[14], the value of the gifts themselves, along with all post-gift appreciation and income with respect to the gifted property, is permanently excluded from the donor's transfer tax (estate and gift tax) base.[15] Otherwise, an individual's gifts are reflected, at gift tax values, on his or her federal estate tax return, as "adjusted taxable gifts" (or lifetime taxable gifts).[16] In this circumstance, what's excluded from the donor's transfer tax base is post-gift appreciation and income with respect to the gifted property. The making of lifetime taxable gifts erodes the donor's basic exclusion amount.[17] The making of annual exclusion gifts or gifts for educational expenses or medical expenses doesn't.[18]

D. Defined Value Clauses

In conjunction with the making of large lifetime taxable gifts to take full advantage of today's basic exclusion amount under the 2017 Tax Act but seeking to avoid the risk of actually incurring gift tax (especially where difficult-to-value assets are involved), the use of defined value clauses in documents effectuating gifts or sales would seem imperative. The Internal Revenue Service appears to despise defined value clauses, having litigated many cases in an effort to have them declared as void due to public policy considerations, but it has been decades since the Service has prevailed in a defined value clause case, and there are several relatively recent cases that provide a virtual roadmap for how to design an effective defined value clause that will almost eliminate the risk of incurring gift tax.[19]

E. Tax Exclusive Nature of Gift Tax

In general, the gift tax is "tax exclusive" while the estate tax is "tax inclusive." That is, the tax used to pay gift tax is not itself subject to gift tax. The tax used to pay estate tax is itself, however, subject to estate tax. The tax exclusive nature of the gift tax makes the gift tax rate effectively lower than the estate tax rate (28.6% as opposed to 40%). This is true even though the same tax rate schedule applies to both the gift tax and the estate tax.

If an individual makes aggregate lifetime taxable gifts (after 1976) exceeding his or her available basic exclusion amount, he or she owes federal gift tax. If gift tax is paid with respect to a gift and the donor does not survive for at least three years after having made the gift, the amount

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[13] IRC Section 2503(b).
[14] IRC Section 2503(e).
[15] IRC Sections 2031 and 2033.
[16] IRC Section 2001(b).
[17] IRC Section 2505(a).
[18] IRC Section 2503(b) & (e).
[19] *See Estate of Christiansen v. Comm'r*, 586 F.3d 1061 (8th Cir. 2009); *Estate of Petter v. Comm'r*, 653 F.3d 1012 (9th Cir. 2011); *Hendrix v. Comm'r*, 101 T.C.M. (CCH) 1642 (2011); *Wandry v. Comm'r*, 103 T.C.M. (CCH) 1472 (2012).

of such gift tax is included in the value of the donor's gross estate.[20] In this limited circumstance, the gift tax is "tax inclusive" like the estate tax.

Whether paying gift tax and surviving for the requisite three-year period may be economically advantageous depends on whether the present value of the estate tax savings (which, in turn, depends on how much longer the donor lives) and the increase in the basis in the gifted property by the amount of gift tax paid[21] is greater or less than the value of the dollars used to pay the gift tax. Even if paying gift tax and surviving for the requisite three-year period could be economically advantageous, some individuals lack sufficient liquidity to pay gift tax on a significant gift, and many donors simply don't want to pay tax any sooner than necessary.

Additionally, what amounts to pre-paying estate tax potentially to take advantage of an effective 28.6% rate could backfire. The donor's consumption, or decline in the value of the donor's estate, during his or her remaining life could bring the donor's gross estate plus lifetime taxable gifts within the basic exclusion amount at the donor's death. The basic exclusion amount could be sufficient in any event to cause no estate tax to be due (who foresaw an $11 million basic exclusion amount?). The federal estate tax could be repealed.

F. Gifts vs. Sales

By contrast, with a sale of assets (a transfer in exchange for adequate and full consideration), the consideration, except to the extent consumed, will compose a part of the seller's gross estate.[22] The consideration, depending on its character, could grow in value, shrink in value or remain the same in value between the time it's received and the date of death of the seller. The consideration, except to the extent consumed, and depending on its value at the seller's death, may receive a basis step-up under IRC Section 1014. The value of the sold property is excluded from the donor's transfer tax base. To the extent (if at all) that value exceeds the value of the consideration in the hands of the seller at the seller's death, the sale may be considered a successful estate planning maneuver. Since a sale isn't a gift, the seller's basic exclusion amount remains unchanged, and no gift tax is payable, regardless of the size of the transaction. A sale may be preferable to a gift in a case in which an individual has used up his or her entire basic exclusion amount by making large gift and doesn't want to pay gift tax and/or may have an economic need (or believe he or she has an economic need) to receive consideration in exchange for the contemplated transfer. Of course, selling a low-basis/highly appreciated asset has significant potential disadvantages. Not only would the seller lose the ability to obtain a basis step-up with respect to the asset, but also the seller may incur significant income tax on the sale (unless the sale is to a "grantor trust").

[20] IRC Section 2035(b). If the gift is a direct skip within the meaning of IRC Section 2612(c)(1), neither the amount of the generation-skipping transfer tax nor the amount of the gift tax on the generation-skipping transfer tax (*see* IRC Section 2515) is included in the value of the donor's gross estate regardless of whether the donor lives three years or longer after having made the gift. Nevertheless, IRC Section 2035(b) impacts a lifetime direct skip in exactly the same way as it impacts a gift that is not a direct skip; it effectively eliminates any direct transfer tax advantage of a lifetime direct skip over a direct skip occurring at the property owner's death.

[21] IRC Section 1015(d).

[22] IRC Section 2033.

II. ASSESSING PROPER ROLE OF PORTABILITY

A. Introduction

One of the most important aspects of the 2012 Tax Act[23] for estate planning professionals is that it made portability permanent (to the extent anything emanating from Washington can be said to be "permanent").[24] The term "portability" is shorthand among estate planners to refer to the ability of a predeceased spouse's executor to transmit to the surviving spouse the predeceased spouse's "deceased spousal unused exclusion amount" (DSUEA). As a result, measured by 2020 numbers, spouses with an aggregate net worth of up to $23,160,000, without having to reallocate ownership of assets between them before either of them has died, would be able to transfer all of their assets to any one or more persons, whether through judiciously timed gifts during life or testamentary transfers at death, and pay no federal gift or estate tax.

Among the significant limitations of portability are: (a) the DSUEA, unlike the basic exclusion amount, is not adjusted for inflation; and (b) any income and appreciation accruing after the predeceased spouse's death are not sheltered by the DSUEA. That said, a major advantage of portability is that all assets that, at the death of the first spouse to die, would have passed under that spouse's estate plan, in the absence of portability, to a credit shelter trust using the traditional approach, instead pass to the surviving spouse and will be included in the surviving spouse's estate at his or her subsequent death – thereby generating a step-up in basis of the assets to their then fair market value[25] and minimizing future capital gains taxes when they are sold[26] – perhaps without subjecting the surviving spouse's estate to estate tax liability.

B. Portability vs. Credit Shelter Trust

If portability is used in place of the traditional credit shelter trust model, and if the surviving spouse does not have a taxable estate (*e.g.*, because the spouses' combined net worth was relatively modest to start with or due to poor investment results and/or consumption by the surviving spouse), the beneficiaries will save, at some point in the future when they decide to sell inherited assets, 20% in federal capital gains tax they would have paid on the spread between the basis immediately before the surviving spouse's death and the sale price had a credit shelter trust disposition been implemented. In a case such as this, using portability is obviously the better course of action. A basis step-up with respect to the assets that had composed both spouses' estates is secured at no tax cost.

If portability is used in place of the traditional credit shelter trust model, and if the surviving spouse ends up with a taxable estate (*e.g.*, due to positive investment results and/or reduction in the basic exclusion amount during the surviving spouse's life): (a) the amount of the estate

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[23] American Taxpayer Relief Act of 2012 (P.L. 112-240, H.R. 8, 126 Stat. 2313, enacted January 2, 2013).

[24] Portability was introduced into the law by Section 302(a)(1) of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (P.L. 111-312, H.R. 4853, 124 Stat. 3296, enacted December 17, 2010), amending IRC Section 2010(c))

[25] IRC Section 1014(a).

[26] It is assumed that the value of assets will increase with the passage of time – a usually safe, but not rock-solid in all cases, assumption. Also worthy of note is that the value of assets only very rarely increases in a linear fashion.

exceeding the surviving spouse's applicable exclusion amount[27] will generate an immediate federal estate tax burden of 40%; and (b) the beneficiaries will save, at some point in the future when they decide to sell inherited assets, 20% in federal capital gains tax they would have paid on the spread between the basis immediately before the surviving spouse's death and the sale price had a credit shelter trust disposition been implemented. Whether portability turns out to be advantageous in this case depends on: (1) the amount of federal estate tax payable; (2) the amount of federal capital gains tax saved; and (3) how far in the future federal capital gains tax would have been paid if a credit shelter trust plan had been used.

C. Credit Shelter Trust vs. Portability

For the most part, the opposite results may be expected if a credit shelter trust approach is utilized. For purposes of this portion of the analysis, it is assumed that the dispositive provisions of the credit shelter trust confer on the surviving spouse a "formula" testamentary general power of appointment, *i.e.*, a power that comes into existence at the surviving spouse's death only to the extent its existence does not generate federal estate tax.

If a traditional credit shelter trust is implemented instead of portability, and if the surviving spouse does not have a taxable estate, the beneficiaries will save, at some point in the future when they decide to sell assets received from the credit shelter trust, 20% in federal capital gains tax they would have paid on the spread between the basis immediately before the surviving spouse's death and the sale price ***but only to the extent*** the formula testamentary general power of appointment comes into existence at the surviving spouse's death. The smaller the size of the surviving spouse's estate, the larger the amount of the credit shelter trust's assets to which the formula testamentary general power of appointment would apply – thereby generating a basis step-up. If the value of the surviving spouse's estate is equal to the surviving spouse's basic exclusion amount, the formula testamentary general power of appointment will be irrelevant. Whether the loss of basis step-up resulting from not using portability turns out to be seriously detrimental depends on: (a) the amount of federal capital gains tax that could have been saved; (b) how far in the future federal capital gains tax would have been saved; and (c) the amount of federal estate tax saved by using a traditional credit shelter trust. If the value of the surviving spouse's estate is zero or close to zero, the formula testamentary general power of appointment will deliver essentially the same tax result as portability (albeit only because in this circumstance the predeceased spouse's basic exclusion amount is not used because it isn't needed).

If a traditional credit shelter trust is implemented instead of portability, and if the surviving spouse does have a taxable estate: (a) the amount of the estate exceeding the surviving spouse's basic exclusion amount will generate an immediate federal estate tax burden of 40%; and (b) the formula testamentary general power of appointment will be irrelevant. Whether sacrificing basis step-up (which could have been secured by using portability) is offset by excluding the value of the credit shelter trust's assets from the surviving spouse's taxable estate depends on: (1) the extent of net investment return generated by those assets inside the credit shelter trust during the surviving spouse's life; (2) the amount of federal capital gains tax could have been saved; (3) how far in the

[27] IRC Section 2010(c)(2).

future federal capital gains tax would have been saved; and (4) the amount of federal estate tax due.

D. Pick Your Poison

The portability option will be compelling in those cases in which it is virtually certain that the combined estates of both spouses will be insufficient to generate federal estate tax liability at the death of the surviving spouse.

The portability option may be attractive in those cases in which it is expected that: (a) the combined estates of both spouses will *not* generate *significant* federal estate tax liability at the death of the surviving spouse; *and* (b) the estate of the surviving spouse will contain highly appreciated assets.

The credit shelter trust with formula testamentary general power of appointment option may be attractive in those cases where it is expected that the resulting federal estate tax savings on the increase in value of the credit shelter trust's assets during the surviving spouse's life will offset the present value, at the surviving spouse's death, of the amount of federal capital gains tax that could have been saved had portability been used.

It is a metaphysical impossibility to achieve *both* basis step-up at the surviving spouse's death of all assets that had composed both spouses' estates *plus* exclusion from the value of the surviving spouse's gross estate of all net investment return during the surviving spouse's life generated by assets that were, or could have been, funneled into a credit shelter trust at the death of the first spouse to die.

III. TAKING BASIS INTO CONSIDERATION

A. Gifts

In any case in which it is possible and makes practical sense to do so, once it has been decided that the making of lifetime gifts is desirable, care should be exercised to ensure that assets having the highest income tax basis be the gifted assets. Indeed, sometimes cash is actually the best type of asset to be deployed in a gift-giving program. This is particularly true where the donor has the knowledge and connections so that he or she can point the donee in a direction enabling the donee to invest the gifted cash in a "hot" investment.

Gifting an asset with a basis materially lower than fair market value on the date of the gift should be recognized as effectively making a gift of an asset subject to a lien. To use a concrete example, a gift of $15,000.00 cash, or a gift of an asset having a $15,000.00 basis and a fair market value of $15,000.00 on the date of the gift, is truly a gift that will put $15,000.00 in the donee's pocket, but a gift of an asset having a zero basis and a fair market value of $15,000.00 on the date of the gift is really a gift of $11,250.00 (assuming a combined federal and state capital gains tax rate of 25%), unless the gifted asset, in the hands of the donee and not liquidated, is worth $15,000.00 and can and will be retained by the donee indefinitely.

Even taking the above into account, if a low-basis asset has exceptional appreciation potential, and especially if the donee will likely retain the asset for a long period of time, it can wise to use that asset in the making of a gift. The objective would be to avoid a 40% (or perhaps higher) estate tax on the gifted property or at least on its post-gift appreciation.

B. Asset Swaps

In the next portion of these materials, there is a discussion of several advantages of irrevocable grantor trusts. One additional grantor trust benefit that is best presented here is the opportunity for the settlor (deemed owner for federal income tax purposes) of an irrevocable grantor trust, during the trust's term, to engage in transactions *i.e.*, sales, exchanges, distributions, with the trust on a completely federal income tax-free basis. This opportunity is available because, as discussed more fully below, the settlor and the trust are, for federal income tax purposes, treated as one and the same, and, so the theory goes, a person cannot engage in a taxable transaction with him or herself.

At the creation of an irrevocable grantor trust, an asset may have been gifted or sold to the trust that, then or in the future, may have a high fair market value in relation to its income tax basis. The settlor, as he or she ages and contemplates death more closely on the horizon, may wish that highly appreciated asset could receive a step-up in basis at the time of his or her death but realizes that, unless the asset is included in his or her gross estate, such a step-up will not occur.

Such a settlor, assuming he or she possesses a power, exercisable in a non-fiduciary capacity, to withdraw trust property by substituting other property of an equivalent value[28] (or the trust has a cooperative Trustee with a power to sell trust assets), and individually owns a high-basis asset having the same value as the highly appreciated asset, should consider swapping his or her high-basis asset for the trust's highly appreciated asset. That swap will be ignored for federal income and gift tax purposes, will not cause any negative estate tax consequences and will position the highly appreciated asset to receive a stepped-up basis in the settlor's estate at his or her death.[29]

IV. TAX SAVINGS TO BE ACHIEVED BY USING IRREVOCABLE GRANTOR TRUSTS

A. Introduction

An irrevocable grantor trust is a trust that is treated for federal income purposes as "owned" by an individual. When a person retains or is given substantial control of a trust, that person is considered the trust's owner for federal income tax purposes, and the trust's income, deductions and credits are reported on the owner's individual income tax returns. The trust itself is disregarded for federal income tax purposes.[30] Most sophisticated uses of irrevocable grantor trusts in estate planning involve "threading the needle" in a way that causes the target individual (usually, the settlor but, sometimes, another person) to be treated as owner of the trust for federal

[28] *See* IRC Section 675(4)(C).
[29] The settlor may be able to achieve fundamentally the same result, even if he or she does not individually own a high-basis asset having the same value as the highly appreciated asset, by swapping his or her promissory note in exchange for the trust's highly appreciated asset.
[30] IRC Section 671; Rev. Rul. 85-13, 1985-1 C.B. 184.

income tax purposes but *not* as transferor or beneficiary with sufficient powers and/or beneficial interests to result in inclusion of the value of the trust property in such individual's estate for federal estate tax purposes.

Without question, the most popular method by which to create grantor trust status (where the goal is to cause the settlor (as opposed to some other individual) to be treated as the owner for federal income tax purposes) is to include in the trust's governing instrument a power held by the settlor or a nonadverse party, acting in a non-fiduciary capacity, to "reacquire" trust property by substituting other property of an equivalent value.[31] Such a power of substitution is a reliable way to trigger grantor trust status in a settlor while not causing the value of the trust property to be included in the settlor's gross estate.[32]

The settlor's exercise of the power of substitution is not a taxable event for federal income tax purposes because the settlor is deemed to own both the assets reacquired from the trust and those transferred to the trust, both before and after the exchange,[33] nor is such exercise a taxable gift.[34]

B. Grantor Trust Benefits

The benefits of grantor trust treatment are simply enormous – and not very difficult to quantify. The most important of these benefits are as follows. First, any transaction at the trust's creation, *i.e.*, a sale by the settlor to the trust is ignored for federal income tax purposes; it's as if the sale never happened. Thus, no capital gains tax is payable in respect of such sale.[35] Compare such a result to a sale by an individual to his or her children or to a nongrantor trust. The difference is capital gains tax in the amount of $X.XX versus capital gains tax of $0.00.

Second, any income generated within the trust (interest, dividends, rents, royalties, realized capital gains) is taxable to the settlor,[36] thereby enabling the trust to grow unimpeded, and the settlor's estate to be depleted, by any income tax burden associated with such income. The trust receives all that income, and it compounds, effectively tax-free. Compare that result to a scenario in which income producing assets were transferred by an individual to his or her children or to a nongrantor trust.[37] Compounding of income in a vehicle that itself is income tax-free, and whose assets at the settlor's death will not generate any estate tax, yields pretty astounding results. Few

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[31] *Id.* at note 28.
[32] *See* Rev. Rul. 2008-22, 2008-1 C.B. 796, *modified by* IRS Announcement 2008-46 (May 16, 2008); Rev. Rul. 2011-28, 2011-2 C.B. 830.
[33] Rev. Rul. 85-13, *supra*.
[34] PLR 200842007 (October 17, 2008).
[35] Whether termination of grantor trust status is an event that causes gain to be realized, as if the sale occurred at that moment, is an unsettled question. There are respectable arguments on both sides. *See* Carol A. Cantrell, *Gain is Realized at Death*, TRUSTS & ESTATES (February 2010) at 20, and Mitchell M. Gans and Jonathan G. Blattmachr, *No Gain at Death*, TRUSTS & ESTATES (February 2010) at 34. *See, also*, CCA 200923024.
[36] When the settlor (deemed owner for federal income tax purposes) of an irrevocable grantor trust pays income tax on income produced by the trust, the payment of that tax does not constitute a taxable gift. Rev. Rul. 2004-64, 2004-27 I.R.B. 7.
[37] Federal income tax is payable by a nongrantor trust at the highest marginal rate (currently 37%) when its taxable income exceeds $12,950.00. IRC Section 1(e) &(f).

if any other mechanisms exist in the estate planning world that have the potential to create such powerful leverage.

V. SELECTED ASPECTS OF LEVERAGE-BASED ESTATE PLANNING STRATEGIES

A. Evaluating Viability and Possible Benefits of Leverage-Based Transactions

Relevant factors to consider include

- Value of the asset that will be the subject of the transaction;
- Asset's expected total net return while the transaction remains in place
  - Greater leverage is achieved when the spread between total net return and the required assumed interest rate is large;
- Projected or prescribed length of time the transaction will remain in place
  - Length of time may be measured by transferor's lifespan, a specified term of years or a synthesis thereof
  - In general (but not always), greater leverage is achieved when the transaction is in place longer
  - However, a longer transaction term also often enhances risk that the transaction will not accomplish its intended benefits;
- Interest rate ("applicable federal rate" ("AFR") or IRC Section 7520 rate (120% of the mid-term AFR) required to be assumed
  - New rates are published monthly by the Internal Revenue Service
  - Depending on the type of transaction and the length of time it will remain in place, the short-term, mid-term or long-term AFR may be the interest rate required to be assumed
  - Certain estate planning techniques work best in a low assumed interest rate environment while others work best in a high assumed interest rate environment
  - The published rates are, and have been for several years, considered to be exceptionally low;
- Frequency and timing of payments (if any) to transferor/seller
  - Annually, semi-annually, monthly

- At the beginning or the end of the period;

- Transferor/seller's age (often, but not always, relevant);
- Transferor's "real" life expectancy;
- Objective sought to be realized; and
- Transferor/seller's risk tolerance.

B. Grantor Retained Annuity Trusts ("GRATs")

1. Brief Description

A GRAT is an irrevocable trust to which the settlor makes a gift of property at the outset. The GRAT pays the settlor an annuity,[38] at least annually, for a fixed term of years.[39] The annuity interest generally is described as a percentage of the initial value of the assets transferred to the GRAT. The value of the gift to the GRAT depends heavily on the present value, determined pursuant to IRC Section 7520, of the annuity interest the settlor has chosen to retain (which present value is subtracted from the value of the property conveyed to the GRAT). If the settlor is living at the end of the term, any property remaining in the GRAT after the last annuity payment is made will pass to the remainder beneficiaries (usually the settlor's children), either outright or in trust for their benefit, free of gift, estate and income tax consequences.

The term can be for any length. Generally, the longer the term: (a) the smaller the amount of each annuity payment; and (b) the greater the possibility that the settlor will die during the term (in which case the estate tax savings sought to be achieved will be reduced, perhaps drastically).

A GRAT is a grantor trust for federal income tax purposes – having all the grantor trust benefits discussed above.

GRATs are particularly beneficial when the required assumed interest rate under IRC Section 7520 is low because the retained annuity stream is presumed to be worth a greater proportion of the transferred property's present value. Indeed, so-called zeroed-out GRATs are particularly popular because the funding of a zeroed-out GRAT results in a miniscule taxable gift.

2. Example

Settlor transfers $10,000,000.00 to a GRAT with a nine-year term. The value of the GRAT's assets increases at a lineal rate of 6% per year during the GRAT's term. The GRAT instrument provides that, if Settlor dies during the nine-year term, the remaining annuity payments

[38] The annuity must be a stated dollar amount or a fixed percentage of the initial fair market value of the trust assets. Treas. Reg. Section 25.2702-3(b)(1)(ii). The annuity amount may increase annually by up to 120% of the preceding year's annuity amount. *Id*.

[39] GRATs are authorized by IRC Section 2702. The "recipe" for how to create a GRAT is contained in Treas. Reg. Section 25.2702-3.

will be paid to his estate for the balance of the term. The IRC Section 7520 rate in effect at the creation of the GRAT is 2.2%.

The GRAT instrument provides that Settlor will receive $1,236,873.00 from the GRAT at the end of each year during the nine-year term. Because the GRAT annuity payments have a present value equal to the value of the property transferred, there is no gift when Settlor creates and funds the GRAT. The assets remaining in the GRAT at the end of the nine-year term will have a value of $2,681,491.13 and will be distributable to Settlor's children free of gift, estate and income taxes.

C. Installment Sales to Irrevocable Grantor Trusts

1. Brief Description

With an installment sale to an irrevocable grantor trust, the settlor sells property at its fair market value to the trust in return for an installment note that bears interest that is determined by reference to IRC Section 7872(f)(2)(A). At the end of the note's term, when the note has been fully paid, all remaining trust assets pass to the beneficiaries (usually the settlor's children and/or grandchildren) free of income, estate, gift and, if appropriately structured, generation-skipping transfer taxes.

The term of the note can be for any length. Generally, the longer the term, the larger the required interest payments because the AFR that must be used to set the note's interest rate will be higher. Accordingly, if the AFR is low, the settlor may want to lock in the resulting low interest rate by using a longer term; alternatively, if the AFR is high, the settlor may want to use a shorter note term and later enter into another sale transaction or a renegotiation of the note if and when the AFR is lower.

As with a GRAT, the success of this technique depends on the assets that are the subject of the transaction achieving a rate of return in excess of the required assumed interest rate. An installment sale to an irrevocable grantor trust works best with low interest rate assumptions because, in a low rate environment, the note interest that must be paid to the seller to avoid gift tax consequences with respect to the note is less than in a higher rate environment.

2. Example

Settlor makes a $1,000,000.00 gift (fully protected from gift tax by her basic exclusion amount and to which she allocates $1,000,000.00 of her GST exemption[40]) to an irrevocable grantor trust and then sells an asset having a fair market value of $9,000,000.00 to the trust in exchange for a nine-year, amortized promissory note.[41] The principal amount of the note is $9,000,000.00, and the note bears interest at 1.75% per annum. The value of the trust's assets

[40] IRC Section 2631.

[41] Alternatively, the note may be structured (as a "balloon note") so that the trust makes only annual interest payments and defers paying all principal until the end of the note's term. Using such a note enables a larger amount of assets to remain in the trust during the note's term, thereby allowing greater compounding of investment return inside the trust.

increases at a lineal rate of 6% per year during the note's term. The mid-term AFR in place at the time of the sale is 1.75%.

The note provides that Settlor will receive annual payments of $1,089,523.00 for nine years. The $1,000,000.00 initial funding of the trust is a taxable gift that absorbs $1,000,000.00 worth of Settlor's basic exclusion amount. The sale in exchange for the note is a bona fide sale for adequate and full consideration and so has no gift tax consequences. The assets remaining in the trust at the end of the note's nine-year term will have a value of $4,374,734.00 and will be distributable to or continue to be held for Settlor's children and/or more remote descendants free of income, estate, gift and generation-skipping transfer taxes.

D. Qualified Personal Residence Trusts ("QPRTs")

1. Brief Description

A QPRT is an irrevocable trust to which the settlor conveys, by gift, title to a personal residence.[42] The settlor retains the right to reside in, use and enjoy the residence, rent-free, throughout the specified term of years of the trust; such retained right is treated as the equivalent of an income interest. The settlor also typically retains a reversion to take effect should he or she die during the trust's term.

The value of the gift to the QPRT is determined by subtracting the present value, determined pursuant to IRC Section 7520, of the Settlor's retained interests from the value of the property transferred to the QPRT. If the settlor is living at the end of the term, the property remaining in the QPRT will pass to the remainder beneficiaries (usually the settlor's children), either outright or in trust for their benefit, free of gift, estate and income tax consequences.

The term can be for any length. Generally, the longer the term: (a) the larger the present value of the retained interests; (b) the smaller the amount of the gift to the QPRT; and (c) the greater the possibility that the settlor will die during the term (in which case the estate tax savings sought to be achieved will be forfeited).

In general, QPRTs work best when the required assumed interest rate under IRC Section 7520 is high because, in that circumstance, the presumed value of the settlor's retained income interest will be higher (and so the amount of the settlor's gift to the QPRT will be lower) than if the IRC Section 7520 rate were low. Although the present value of the settlor's reversion will be worth less in a higher required presumed interest rate setting, the effect of the higher rate on the value of the income interest will outweigh any negative effect of the higher rate on the value of the reversion.

[42] Under IRC Section 2702(a)(3)(A), personal residence trusts are excluded from the restrictive scope of IRC Section 2702. The "recipe" for how to create a QPRT is contained in Treas. Reg. Section 25.2702-5(c).

2. Example

Settlor, age 65, makes a $1,000,000.00 gift (fully protected from gift tax by his basic exclusion amount) of a personal residence to a ten-year QPRT. The IRC Section 7520 rate in effect at the creation of the QPRT is 2.2%. The value of the gift is $631,630.00. The value of the retained income interest is $177,510.00, and the value of the reversion is $190,860.00. If the IRC Section 7520 rate in effect at the creation of the QPRT were 5.0%, the value of the gift would be $482,040.00. The value of the retained income interest would be $352,250.00, and the value of the reversion would be $165,710.00.

E. *Inter Vivos* Charitable Remainder Annuity Trusts ("CRATs")

1. Brief Description

An *inter vivos* CRAT is an irrevocable trust[43] to which the settlor makes a gift of assets at the outset. Such a CRAT pays the settlor[44] an annuity, [45] at least annually, throughout the settlor's lifetime or for a fixed term of years.[46] The annuity interest generally is described as a percentage of the initial value of the assets transferred to the CRAT. The value of the gift to a CRAT as described above is the present value, determined pursuant to IRC Section 7520,[47] of the charitable remainder interest, which value gives rise to income tax and gift tax charitable deductions. When the CRAT terminates, any property remaining in the CRAT will pass to the charitable remainder beneficiary.

When the CRAT is created, the present value of the charitable remainder interest must be at least 10% of the initial fair market value of the trust property,[48] and there must be no more than a five percent chance the required annuity payments will exhaust the principal.[49] Additionally, if the CRAT property will be exhausted if the annuitant were to live to age 110, the annuity interest cannot be valued under IRC Section 7520.[50] Particularly in an era of low required assumed interest rates, it can be very difficult to establish a viable CRAT to last for the life of a non-charitable beneficiary.[51]

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[43] *See* IRC Section 664 and the Treasury Regulations thereunder.

[44] The annuity amount beneficiary could be someone other than the settlor, and there may be a succession of annuity amount beneficiaries.

[45] The annuity amount must be at least 5%, but may be no more than 50%, of the initial net fair market value of the trust property.

[46] If the fixed term of years is selected to govern duration of the CRAT, the term may not exceed twenty.

[47] In determining the value of the gift, the taxpayer may use the IRC Section 7520 rate for either of the two months preceding the month in which the CRAT funding occurs or, of course, the month in which the CRAT funding occurs, IRC Section 7520(a), and could also wait to proceed until late in the month in which funding was planned to occur in order to observe whether the following month's IRC Section 7520 rate will generate the best tax deductions.

[48] IRC Section 664(d)(1)(D).

[49] Rev. Rul. 77-374, 1977-2 C.B. 329.

[50] Treas. Reg. Sections 1.7520-3(b)(2); 20.7520-3(b)(2); 25.7520-3(b)(2).

[51] For example, if a five percent CRAT were established when the most favorable IRC Section 7520 rate available was 2.2%, it would be impossible to establish a viable CRAT to last for the life of a non-charitable beneficiary younger than 71 years of age.

The tax benefits generated by CRATs are greatest when the required assumed interest rate under IRC Section 7520 is high because with a high required assumed interest rate the value of what the charitable remainder beneficiary will ultimately receive is presumptively larger.

2. Example

Settlor transfers $5,000,000.00 to a CRAT with a ten-year term. She retains a five percent annuity interest. The most favorable IRC Section 7520 rate available at the creation of the CRAT is 2.2%. The value of the gift (and, therefore, the available income and gift tax charitable deductions) is $2,777,675.00. If the most favorable IRC Section 7520 rate available at the creation of the CRAT were 5.0%. The value of the gift would be $3,069,575.00.

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Participant Survey

We would love to hear your feedback for today's teleconference:

Mathematics and Economics of Estate Planning

February 25, 2020

Please use this link to tell us what you think.

http://livewebcast.net/cannon/022520

Any questions regarding CE credit, please contact Laurie Frye at (706) 353-3346.
Fax (706) 353-3994, Email lfrye@CannonFinancial.com
649 S. Milledge Ave., Ste. 4, Athens, Georgia 30605

Certificate of Attendance

(Participant Name)

Has successfully completed the Cannon Financial Institute, Inc. course:

Mathematics and Economics of Estate Planning

February 25, 2020

Laurie Frye
Professional Education Coordinator

Continuing Education Credits for this course are as follows:

- **Certified Public Accountant** — **1.5 credit hours**
  In accordance with the National CPE Registry of CPE sponsors, CPE credits have been granted based on a 50-minute hour.
  Instructional delivery method: Group-Live
  NASBA #103655; Field of Study –Tax
- **Enrolled Agent (IRS)** — **2.0 credit hours**
  Cannon is designated as a qualified education sponsor by the IRS and can offer continuing education credit to Enrolled Agents. Cannon's agreement with the IRS' Office of Professional Responsibility does not constitute an endorsement by the IRS as to the quality of the programs or their contribution to the professional competence of the enrolled individual.
  Course # (VRUGV-T-00128-20-O)
- **Certified Financial Planner (CFP™)** — **1.5 credit hours**
  Course #268630
- **Accredited Fiduciary Investment Manager (AFIM™)** — **1.5 credit hours**
- **Certified Wealth Strategists (CWS®)** — **2.0 credit hours**
- **Certified Investment Management Analyst (CIMA®)** — **1.5 credit hours**
  Course # 20CFI014
  If you hold the CIMA®, CIMC® or CPWA® certification, you may report this pre-accepted CE program online by logging into your My IMCA account at www.imca.org/user
- **Certified Trust Financial Advisor (CTFA™)** — **2.0 credit hours**
- **Certified IRA Services Professional (CISP™)** — **2.0 credit hours**
- **Certified Retirement Services Professional (CRSP™)** — **2.0 credit hours**
- **Chartered Life Underwriter & Chartered Financial Consultant (**No Individual State Insurance Credit Available)** — **1.5 credit hours**
- **Fiduciary Investment Risk Management Association (FIRMA®)** — **2.0 credit hours**

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Fax (706) 353-3994, Email lfrye@CannonFinancial.com
649-4 S. Milledge Ave., Athens, Georgia 30605

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Certificate of Attendance

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(Participant Name)

____

(Attorney Bar # or Social Security #)

Has successfully completed the Cannon Financial Institute, Inc. course:

Mathematics and Economics of Estate Planning

February 25, 2020

CANNON FINANCIAL INSTITUTE, INC. CORPORATE SEAL GEORGIA

Laurie Frye
Laurie Frye
Professional Education Coordinator

Continuing Legal Education Credits for this course are as follows:

The following states have been approved for 1.5 hours of General Credit: (Course number is indicated in parenthesis):Alabama, Arkansas (TWE68389), California, Delaware, Georgia, Idaho, Illinois, Iowa (335761), Kentucky(215141), Louisiana, Maine (052144), Minnesota (283995), Mississippi, Montana (26520), Nebraska(189288), Nevada, New Mexico, New York, North Carolina, North Dakota, Oregon (60194), Pennsylvania, Rhode Island, South Carolina, Tennessee (Distance Ed), Texas(174075208), Utah, Vermont, Virginia, Washington, Wisconsin, & Wyoming

These states have been approved for the following General Credit: Colorado – 2 hours, Florida - 2 hours (1906539N), Missouri –1.8 hours, Oklahoma – 2 hours, West Virginia – 1.8 hours

The following states either do not require/do not accept outside CLE Credit/or do not accept teleconference calls for CLE Credit: District of Columbia, Hawaii, Maryland, Massachusetts, Michigan & South Dakota

The following states have special circumstances:

Alaska-Attorneys can use this certificate to submit to Alaska State Bar

Arizona-On honor system

Connecticut-Attorneys can use this certificate to submit to Connecticut MCLE

Indiana & Ohio-Site Coordinators must apply for credit as the sponsor in order for participants to receive credit

Kansas–Attorney or Site may apply 30 days prior to program

New Hampshire- *NHMCLE does not approve or accredit CLE activities for the NH Minimum CLE requirement. NH attendees must self-determine whether a program is eligible for credit and self-report their attendance.*

New Jersey-Attorneys can use this certificate for New Jersey CLE for 1.5 General credits (Reciprocity Rule)

New York–Attorneys may use this certificate to report their attendance as it is accredited by Approved NY Jurisdictions: AL, AR, CO, DE, GA, KY, LA, MS, NM, NC, ND, OK. Type of credit: Areas of Professional Practice 1.5 Credits

* In order for PA attorneys to receive credit they must listen to the teleconference in a live classroom setting. The teleconference site must also be listed on the PACLE website and the site must be open to any PA attorney who desires to listen to the program. Call PACLE at 1-800-497-2253 with questions on website listing.

****As required by the following State Bars, Cannon will submit the mandatory attendance rosters for the attorneys seeking CLE credits **ONLY** in the following states: Alabama, Delaware, Georgia, Idaho, Illinois, Louisiana, Montana, Nebraska, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Washington and West Virginia. ****

Any questions regarding CE credit, please contact Laurie Frye at (706) 353-3346.
Fax (706) 353-3994, Email lfrye@CannonFinancial.com
649-4 S. Milledge Ave., Athens, Georgia 30605

CANNON
FINANCIAL INSTITUTE

Certificate of Attendance

____

(Participant Name)

____

(Colorado Attorney Registration #)

Has successfully completed the Cannon Financial Institute, Inc. course:

Mathematics and Economics of Estate Planning

(777608)

CANNON FINANCIAL INSTITUTE, INC. CORPORATE SEAL GEORGIA

February 25, 2020

Laurie Frye

Laurie Frye
Professional Education Coordinator

<u>Continuing Legal Education Credits for this course are as follows:</u>

Colorado – 2.0 General Credits

****As required by the State of Colorado, attorneys must submit their own credits.

Any questions regarding CE credit, please contact Laurie Frye at (706) 353-3346.
Fax (706) 353-3994, Email lfrye@CannonFinancial.com
649-4 S. Milledge Ave., Athens, Georgia 30605

CLE Credit Request Form

BA ______

This form is for lawyers to report CLE credits to the CLE Board when attending a program not sponsored by an Accredited Provider. Lawyers seeking CLE credit in Pennsylvania must complete Section B of this form and return it to the CLE Board along with a copy of the provider's attendance certificate (if available) and a check made payable to PACLE for $1.50 per credit hour. Please refer to Section C for attendance fee calculations.

SECTION A: Course Information

Provider: 1854 Cannon Financial Institute

Course: 311787 Mathematics and Economics of Estate Planning (676388)

Date: 02/25/2020 08:00 Location: ALTERNATE DELIVERY, AD

Total CLE Credit Hours: Maximum: 1.50 = 1.50S

SECTION B: Lawyer Information

Lawyer Name ____________________ PA Lawyer ID __________

Address ____

City ____________________ State __________ Zip __________

By signing below, I certify the activity described above and am entitled to claim:

_____ Substantive _____ Total CLE Credit Hours.

______________________________ ____________________

Signature Date

I am enclosing check # __________ for $ _____

NOTE: If you attended the maximum 1.50 credit hours for this course, please enclose $3.00 attendance fee payment. If you attended fewer than the maximum approved credits, please include payment for only the credits claimed. See Section C below for calculation.

Section C: Attendance Fee Calculation

Pennsylvania grants one (1) CLE credit for each 60 minutes of attendance at an approved course. A $1.50 per credit hour fee is required for each credit reported and any additional half hour increment.

1 hour = $1.50	1.5 to 2 hours = $3.00	2.5 to 3 hours = $4.50	3.5 to 4 hours = $6.00
4.5 to 5 hours = $7.50	5.5 to 6 hours = $9.00	6.5 to 7 hours = $10.50	7.5 to 8 hours = $12.00
etc...			

The Supreme Court of Pennsylvania Continuing Legal Education Board

Pennsylvania Judicial Center • 601 Commonwealth Ave • Suite 3400
PO Box 62495 • Harrisburg, PA 17106-2495 • (800) 497-2253 • www.pacle.org

CERTIFICATE OF ATTENDANCE FOR CALIFORNIA MCLE

To be Completed by the Provider

Provider: Cannon Financial Institute (CA Provider #12179)

Subject Matter/Title: Mathematics and Economics of Estate Planning

Date and Time of Activity: February 25, 2020 1:00-2:30 PM ET, 12:00-1:30 PM CT, 11:00AM-12: 30 PM MT, 10:00AM- 11:30 AM PT

Location: Teleconference

Length of Presentation: 1.5 Hours

ELIGIBLE CALIFORNIA MCLE CREDIT:

TOTAL HOURS: 1.5

Legal Ethics:

Elimination of Bias in the Legal Profession:

Competence:

To Be Completed by the Attorney after Participation in the Above-Name Activity

By signing below, I certify that I participated in the activity described above and am entitled to claim the following California MCLE credit hours:

TOTAL HOURS: ________________________

(You may not claim credit for the following sub-fields unless the provider is granting credit in these areas as listed above.)

Legal Ethics:______________________________

Elimination of Bias in the Legal Profession:______________________________

Competence: ______________________________

Attorney Signature:

REMINDERS: Keep this record of attendance for four years. In the event that you are audited by the State Bar, you may be required to submit this record of attendance. Send this to the State Bar only if you are audited. You must sign in on the Official Record of Attendance for California MCLE maintained by this provider in order for these hours to qualify for California MCLE credit.

Virginia MCLE Board

CERTIFICATION OF ATTENDANCE (FORM 2D)

MCLE requirement pursuant to Paragraph 17, of Section IV, Part Six, Rules of the Supreme Court of Virginia and the MCLE Board Regulations.

Certify Your Attendance Online at www.vsb.org

MCLE Compliance Deadline - October 31. MCLE Reporting Deadline - December 15.
A $100 fee will be assessed for failure to comply with either deadline.

Member Name: ____ **VSB Member Number:** ______________________

Address: ____ **Daytime Phone:** ____________________________

____ **Email:** ____________________________________

____

City **State** **Zip**

Course ID Number: **NHH0343**

Sponsor: **Cannon Financial Institute**

Course/Program Title: **Mathematics & Economics of Estate Planning**

Live Interactive *Approved CLE Credits (Ethics Credits): **1.5** **(0.0)**

Date of telephone/webcast:____________________________ **Location(s):** ____________________________________

By my signature below I certify

___ I attended a total of _____________ (hrs/mins) of **approved CLE**, of which (______) (hrs/mins) were in **approved Ethics**. Credit is awarded for actual time in attendance (0.5 hr. minimum) rounded to the nearest half hour. (Example: 1hr 15min = 1.5hr)

___ The sessions I am claiming had written instructional materials to cover the subject.

___ I participated in this program in a setting physically suitable to the course.

___ I was given the opportunity to interact with the presenter (in real time if live interactive or other method if pre-recorded).

___ I understand I may not receive credit for any course/segment which is not materially different in substance than a course/segment for which credit has been previously given during the same completion period or the completion period immediately prior.

___ I understand that a materially false statement shall be subject to appropriate disciplinary action.

* NOTE: A maximum of 8.0 hours from pre-recorded courses may be applied to meet your yearly MCLE requirement. Minimum of 4.0 hours from live interactive courses required.

____________________ ____________________________________

Date Signature

This form may be mailed to:

Virginia MCLE Board
Virginia State Bar
1111 East Main Street, Suite 700
Richmond, VA 23219-0026
(804) 775-0577
www.vsb.org

[Office Use Only: Teleconference]