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ADVISORY

2025 Year-End Estate Planning Advisory

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2025–2026 Planning Priorities

This year's planning season arrives amid sweeping tax and regulatory changes that affect income, wealth transfer, business, trust administration and reporting. The enactment of the One Big Beautiful Bill Act (OBBBA) reshaped the landscape for high-net-worth families, entrepreneurs and fiduciaries. At the same time, courts and regulators have materially altered the rules of the road for guidance, enforcement and compliance. The following summarizes what matters most now and the practical steps to consider before year-end and into 2026.

What Changed: Highlights With Immediate Planning Impact

OBBBA permanently extended much of the 2017 Tax Cuts and Jobs Act (TCJA) and layered in new provisions with significant implications for individuals, trusts and closely held businesses.

- **Transfer tax exemptions.** Beginning in 2026, the estate, gift and generation-skipping transfer (GST) exemptions increase to $15 million per person, indexed thereafter, with no scheduled sunset. This makes federal transfer taxes a secondary concern for the vast majority of families, although state estate taxes remain relevant for many and income taxes remain relevant for all.
- **State and Local Tax (SALT) deduction.** For 2025–2029, the SALT deduction cap increases to $40,000, phasing out for incomes above $500,000. Entity-level-pass-through entity (PTE) workarounds remain important complements but should be coordinated with the new cap and phase-out dynamics (as well as with your private wealth attorney depending on the complexity of the ownership structure).
- **Qualified Small Business Stock (QSBS) Expansion.** Starting as of the date of enactment, QSBS benefits expand: higher per issuer exclusion caps ($15 million, inflation-indexed), a higher asset threshold for qualifying corporations ($75 million), and shorter holding period allowing for tiered use of the exclusion. These enhancements renew interest in thoughtful share ownership, but taxpayers must navigate the per-issuer cap rules, the stacking/anti- abuse landscape and the permanent disqualification trigger if the annual cap is fully utilized.
- **Trusts and itemized deductions.** OBBBA brings an overall limitation on itemized deductions via a 2/37ths reduction for top income tax bracket taxpayers. An interpretive question is whether that limitation applies to deductions unique to estates and trusts (including distribution deductions and the fiduciary charitable deduction under section 642(c)[i]). Until the Internal Revenue Service (IRS) provides more specific guidance, fiduciaries should plan for the possibility that certain deductions will be limited and factor this into their tax planning and reporting for trusts and estates.

- **Retirement and Required Minimum Distributions (RMDs).** SECURE and SECURE 2.0 changes continue to govern RMDs, with later Required Beginning Dates (RBDs) – i.e., the year in which the participant attains age 73 – and 10-year payout rules for most designated beneficiaries. Beneficiary designations and conduit/accumulation trust drafting remain critical to avoid unintended acceleration and loss of flexibility.

- **Enforcement and administration.** IRS enforcement funding shifts and a lighter Priority Guidance Plan, combined with the Supreme Court's rejection of the Chevron deference, mean more regulatory challenges and less predictability.

- **Beneficial ownership reporting.** The Financial Crimes Enforcement Network (FinCEN) has suspended enforcement of the Corporate Transparency Act's Beneficial Ownership Information (BOI) reporting for domestic companies; current activity is focused on foreign reporting companies while rules are re-examined. Open questions remain regarding previously filed reports and future deadlines; entities should maintain reporting readiness and documentation pending updated rules.

Planning Priorities for Now

Refocus on income tax efficiency, basis and flexibility. With transfer tax exposures diminished, attention shifts to how, when and where income is recognized. Structures that create access, optionality and long-term control – while remaining nimble enough to recalibrate – are the ones to favor.

- **Basis management at death.** With larger exemptions, capturing a step-up (or step-down) is often more valuable than excluding appreciation from transfer tax. Consider upstream planning, asset substitution or sales between grantor and grantor trusts, and carefully tailored formula general powers of appointment to secure basis without triggering avoidable estate tax.

- **Trust distribution planning.** Trusts are taxed at compressed brackets; prudent distribution planning can shift income to lower-bracket beneficiaries, especially where the SALT cap is relevant.

- **SALT optimization.** Quantify benefits of the $40,000 cap and the phase out at higher incomes. Coordinate with PTE elections and entity-level tax strategies. For multistate families, weigh residency, administration and trustee location to reduce state source exposures. Consider non-grantor trusts for "stacking."

- **QSBS positioning.** Map ownership, verify issuer eligibility and maintain contemporaneous records. Where appropriate, consider share division strategies among family members and non-grantor trusts, taking care to respect section 643(f) and anti-abuse rules that collapse multiple trusts with substantially the same grantors and beneficiaries.

Reassess the structure and administration of trusts and entities in light of the evolving regulatory posture and recent case law.

- **Trust drafting for flexibility.** Include robust decanting tools, special and formula powers of appointment, substitution powers and trust protectors. Build in grantor trust flexibility when appropriate, but be mindful of potential adverse income tax effects of toggling.

- **Entity planning and estate inclusion risk.** Courts continue to scrutinize retained powers and "in conjunction with others" authority over distributions and liquidation in the years following the landmark case of *Powell v. Commissioner*, 148 T.C. 392 (2017), as described in more detail here. Separate investment and distribution powers, avoid unanimous voting requirements that place distribution and dissolution decisions within a transferor's control, and document actual non-tax purposes. For clients insisting on control, segment voting rights and appoint independent distribution managers for "tax sensitive" decisions.

- **Non-grantor trust usage.** Non-grantor trusts can produce tax benefits when properly structured and administered. Beware attribution, anti abuse under section 199A regulations and section 643(f). Vary primary beneficiaries and substantive rights across trusts to respect separate taxpayer status.

- **Divorce-resiliency.** Courts may treat heavily controlled, family used trusts as marital in substance. Use independent fiduciaries, avoid donor-centric removal powers and "investment advisor" roles that dominate trust activity, respect formalities, and ensure any personal use is arm's-length and documented. Wealthy families should strongly encourage younger generation beneficiaries to enter into pre-/post-marital agreements to take family assets and trusts "off the table."

The One Big Beautiful Bill Act: Key Year-End Tax Changes for Private Wealth Clients

The One Big Beautiful Bill Act (OBBBA), Pub. L. No. 119-21, enacted on July 4, 2025, marks a sweeping overhaul of the United States Internal Revenue Code of 1986 (Code). Fulfilling a major campaign promise of the Trump Administration, the OBBBA extends, expands, and makes permanent several key provisions of the Tax Cuts and Jobs Act of 2017 (TCJA) that were previously set to expire at the end of 2025. In addition, the OBBBA introduced new presidential priorities, international tax reforms, and permanent extensions of tax incentives focused on individuals and small businesses, with significant implications for US and foreign individuals, businesses and estate planning strategies.

Below, we highlight the most relevant updates for private wealth clients, incorporating additional insights and planning considerations from recent estate and tax law developments.

Individual Income Tax Changes

- **Top Marginal Tax Rate:** The 37% top federal income tax rate for individuals is made permanent, preventing the scheduled reversion to the pre-TCJA 39.6% rate in 2026. For tax year 2026, the top tax rate remains 37% for individual single taxpayers with incomes greater than $640,600 ($768,700 for married couples filing jointly). Estates and complex trusts are subject to the top 37% rate with income in excess of $16,000. The capital gains rate structure is also permanently retained, with the 15% rate kicking in at $49,451 for individual single taxpayers ($98,901 for married couples filing jointly) and the 20% rate kicking in at $545,500 for individual single taxpayers ($613,700 for married couples filing jointly).

- **Alternative Minimum Tax (AMT):** The higher AMT exemption amounts and phase-out thresholds established by the TCJA are made permanent. For tax year 2026, the exemption amount for unmarried individuals is $90,100 and begins to phase out at $500,000 ($140,200 for married couples filing jointly for whom the exemption begins to phase out at $1,000,000). The phase-out threshold will be indexed for inflation beginning in 2027.

- **Standard Deduction:** The increased standard deduction is permanently extended and enhanced. Taxpayers aged 65 and older receive an additional $6,000 through 2028. The increased standard deduction will be indexed for inflation beginning in 2027.

Standard deduction	Single; Married Filing Separately	Married Filing Jointly; Surviving Spouses	Heads of Households
Tax Year 2025	$15,750	$31,500	$23,625
Tax Year 2026	$16,100	$32,200	$24,150

- **Personal Exemption:** The personal exemption is permanently repealed.

- **Charitable Deductions:** The 60% annual gross income (AGI) limitation for cash contributions is made permanent (up from the pre-TCJA 50%). For itemizers, only contributions exceeding 0.5% of AGI are deductible, with special carryforward rules for amounts above the ceiling and below the floor. For taxpayers in the top 37% marginal

income tax bracket, the value of charitable deductions is capped at 35%, effectively imposing a 2% tax on otherwise deductible contributions. Non-itemizers may now claim an above-the-line charitable deduction of up to $1,000 (single) or $2,000 (joint). For those wishing to make sizable charitable gifts, consider accelerating to complete in 2025 before these new limitations take effect; non-itemizers, however, should consider holding tight until 2026 to benefit from the new above-the-line charitable deduction.

- **State and Local Tax (SALT) Deduction Cap:** The cap on SALT deductions increases from $10,000 to $40,000 for 2025-2029, with a phase-out for modified AGI between $500,000 and $600,000. Both the cap and phase-out thresholds increase by 1% annually. The pass-through entity tax (PTET) "workaround" remains available in states that have enacted it.
- **Itemized Deduction Limitation:** Beginning in 2026, the value of itemized deductions is capped at 35%, creating a 2% tax on itemized deductions for those in the top bracket. The suspension of miscellaneous itemized deductions (e.g., investment management and tax preparation fees) is made permanent.

Gift, Estate and Generation-Skipping Transfer (GST) Tax Exemptions

- **Increased Exemptions:** Beginning in 2026, the federal estate, gift, and GST tax exemptions are permanently increased to $15 million per taxpayer ($30 million per married couple with portability), indexed for inflation from 2027 (up from $13,990,000 for 2025). This provides expanded opportunities for generational wealth transfer and long-term planning.

Planning Note: With the "permanent" $15 million exemption, federal transfer taxes are now a concern for only the wealthiest of families. For most clients, income tax planning – including basis adjustment at death and the use of non-grantor trusts – will take on greater importance than transfer tax planning. Review existing trust documents with formula clauses, as many credit shelter or GST trusts may no longer provide transfer tax benefits and could even be disadvantageous by denying a basis step-up at the surviving spouse's death.

Exemption	2025	2026	Change
Gift and Estate Tax Exemption	$13,990,000 *($27,880,000 with portability)*	$15,000,000 *($30,000,000 with portability)*	$1,010,000
Generation-Skipping Tax Exemption	$13,990,000	$15,000,000	$1,010,000
Gift Tax Annual Exclusion	$19,000 *($38,000 with split-gift election)*	$19,000 *($38,000 with split-gift election)*	No Change
Annual Exclusion for Gifts to Non-citizen Spouse	$190,000	$194,000	$4,000
Federal Transfer Tax Rate	40%	40%	No Change

New and Enhanced Savings Vehicles

- **Trump Accounts:** The OBBBA introduces "Trump Accounts," a new federal tax-deferred savings vehicle for children, starting in July 2026. Children born between January 1, 2025, and December 31, 2028, with a valid Social Security number, receive a one-time $1,000 government contribution. Contributions by individuals are limited to $5,000 per year (indexed), with employers able to contribute up to $2,500 per year (also indexed), subject to the overall cap. Earnings grow tax-deferred; contributions are after-tax and not deductible. Investments

must be in low-cost US index-tracking funds. Distributions are prohibited before age 18. Following age 18, the account starts to look and function much more like a traditional IRA. Note that unlike 529 Plan contributions, it is unclear if contributions to Trump Accounts are covered by the gift tax annual exclusion (currently $19,000).

- **529 Plan Enhancements:** Annual distribution limits from 529 Plans for elementary, secondary or religious school expenses increase to $20,000 (from $10,000) beginning after December 31, 2025. The definition of qualifying expenses is expanded to include a broader range of educational costs, including tuition, materials, tutoring, standardized test fees and educational therapies for students with disabilities.

Business Tax Provisions Affecting Individuals

- **Qualified Business Income (QBI) Deduction:** The 20% deduction for QBI for noncorporate taxpayers is made permanent, with relaxed phase-in thresholds for specified service businesses and W-2 wages. Taxpayers with at least $1,000 of qualifying income from active trades or businesses are entitled to a minimum deduction of $400, adjusted for inflation from 2027.

- **Business Interest Deduction:** The interest expense limitation is restored to its more favorable, pre-TCJA form and made permanent. Adjusted Taxable Income (ATI) is now calculated without regard to depreciation, amortization or depletion deductions, allowing greater interest deductibility. However, for tax years after 2025, subpart F income and "net CFC tested income" are excluded from ATI, reducing available interest deductions for US shareholders of foreign corporations.

- **Excess Business Loss Limitation:** The limitation on excess business losses for noncorporate taxpayers is made permanent, capping deductible losses at $250,000 ($500,000 for joint filers), adjusted for inflation. From 2026, the inflation adjustment baseline resets to 2024. Disallowed losses become net operating losses for future years.

Tax-Favored Investment Provisions

- **Qualified Opportunity Zone (QOZ) Program:** The QOZ program is indefinitely extended and modified. Existing QOZ designations remain until December 31, 2028. New tracts may be proposed every 10 years, with stricter eligibility. From January 1, 2027, a new incentive structure allows deferral of capital gains reinvested in Qualified Opportunity Funds (QOFs) within 180 days. Deferred gains become taxable at the earlier of sale or the fifth anniversary, with a 10% step-up in basis after five years. No additional step-up is available at seven years. Gains on investments held for 10 years are permanently excluded from tax; after 30 years, basis is stepped up to fair market value. The OBBBA also introduces Qualified Rural Opportunity Funds (QROFs), which require only a 50% basis improvement over 30 months and provide a 30% step-up in basis after five years.

- **Qualified Small Business Stock (QSBS) Exclusion:** For QSBS acquired after July 4, 2025, the per-issuer gain exclusion cap increases to the greater of $15 million ($7.5 million for married filing separately) or 10x the taxpayer's basis, indexed for inflation. The minimum holding period for partial exclusions is reduced to three years (50% exclusion), four years (75%), and five years (100%). The gross assets test increases from $50 million to $75 million, also indexed. Core requirements under section 1202 remain unchanged.

Planning Note: The OBBBA's enhancements to QSBS planning – including the higher cap, shorter holding periods for partial exclusions, and the ability to "stack" exclusions using non-grantor trusts – create new opportunities for liquidity and tax efficiency, especially for founders and early investors in venture-backed companies.

Changes to QSBS Under the One Big Beautiful Bill Act		
	Pre-OBBBA	Post-OBBBA
Holding Period	5 years	At least 3 years
Capital Gain Exclusion	100%	50% if held at least 3 years 75% if held at least 4 years 100% if held at least 5 years
Maximum Exclusion	Greater of (i) $10 million (or $5 million if married filing separately) and (ii) 10 times the tax basis in the stock	Greater of (i) $15 million (or $7.5 million if married filing separately) and (ii) 10 times the tax basis in the stock
Maximum Gross Asset Test	Up to $50 million	Up to $75 million, adjusted for inflation

Provisions Impacting Not-For-Profit Organizations

- **Private Foundations:** The 1.39% excise tax on net investment income for private foundations remains unchanged.
- **Endowment Tax:** Beginning in 2026, private colleges and universities with per-student assets exceeding $750,000 face a graduated excise tax: 4% for assets between $750,000 and $2 million per student, and 8% for assets above $2 million. International students are excluded from the per-student calculation.
- **Scholarship Granting Organizations (SGOs):** Starting in 2027, a new federal nonrefundable tax credit is available for contributions to 501(c)(3) public charities designated as SGOs. Taxpayers may claim up to $1,700 annually, with a 5-year carryforward. The credit is reduced if a similar state-level credit is claimed.

International Tax Changes

- **GILTI and FDII:** The OBBBA renames GILTI as "net CFC tested income" (NCTI) and FDII as "foreign-derived deduction eligible income" (FDDEI). The deduction for NCTI is reduced to 40% (from 50%), and for FDDEI to 33.34% (from 37.5%). The portion of foreign income taxes deemed paid increases to 90% (from 80%), but 10% of deemed paid foreign tax credits are disallowed for distributions of previously taxed NCTI. The effective tax rate for both NCTI and FDDEI rises to 14% (from 13.125%).
- **Controlled Foreign Corporations (CFCs):** The OBBBA restores the rule limiting "downward attribution" of stock for CFC status, reducing the number of foreign corporations treated as CFCs. A new section 951B targets certain foreign-parented groups. The *pro rata* share rules are modified so that US shareholders may have subpart F or NCTI inclusions if they own CFC stock on any day of the year, not just the last day.
- **The Base Erosion and Anti-Abuse Tax (BEAT) Rate and Credits:** The BEAT rate is permanently set at 10.5% beginning in 2026, and the pre-2025 rules for BEAT-favored tax credits are retained.

Additional Planning Considerations for Post-OBBBA Planning Era

- For individuals with estates under $15 million and married couples with estates under $30 million, federal transfer taxes are now a low priority, and income tax planning – including basis step-up strategies and the use of non-grantor trusts – should be reviewed.
- Review existing trusts with formula clauses, as many credit shelter or GST trusts may no longer provide transfer tax benefits and could even be disadvantageous by denying a basis step-up at the surviving spouse's death.
- The use of non-grantor trusts may offer income-shifting, enhanced SALT deduction utilization, and increased QSBS exclusion opportunities, but careful structuring and administration are required.

- The OBBBA's changes to the QOZ and QSBS rules create new opportunities for tax-efficient investment and liquidity planning, especially for entrepreneurs and investors in high-growth sectors.

Select Updates Impacting Family Business Owners

Family business owners are navigating material regulatory and market shifts that affect entity transparency, workforce strategy and generational planning. This section highlights pivotal developments and highlights what matters now for governance, compliance and succession readiness.

Corporate Transparency Act

- **Interim Final Rule:** During Q1 2025, the Financial Crimes Enforcement Network (FinCEN) issued an interim final rule that materially narrowed the Corporate Transparency Act's (CTA) beneficial ownership reporting regime. As a result, at present, only "foreign reporting companies" – entities organized under non-US law that are registered to do business in a US state or Tribal jurisdiction – are required to report to FinCEN. Entities formed under the laws of a US state or Tribal jurisdiction (formerly "domestic reporting companies") are not currently subject to CTA reporting. For more background, see our earlier publication here.

- **Who Must Report:** FinCEN also limited who must be reported. Reporting companies are no longer required to report beneficial owners who are US persons. In effect, the CTA now requires only foreign reporting companies to disclose their foreign beneficial owners. Notwithstanding this contraction, non-exempt foreign reporting companies that failed to file initial reports or timely updates are delinquent.

- This is a significant departure from the CTA's original design. The policy environment remains fluid. FinCEN could reverse course, including by reinstating reporting obligations for domestic reporting companies and/or for US beneficial owners. Businesses should maintain readiness to comply promptly if broader federal reporting returns.

- A comprehensive overview of the CTA detailing Reporting Companies, Beneficial Owners, Company Applicants and Beneficial Ownership Information is available here.

New York LLC Transparency Act

While federal reporting is curtailed for now, states are moving to fill the gap. New York's LLC Transparency Act (NY LLCTA) remains in place and borrows heavily from the CTA's original framework, while differing in important respects. Effective January 1, 2026, the New York law contemplates that all limited liability companies (LLCs) (but not corporations or limited partnerships) doing business in the state — both domestic LLCs as well as those formed in other states that were qualified to do business in New York — will be required to disclose their beneficial ownership information or file an attestation for exemption (similar to under the CTA).[ii]

Family Businesses and Non Competes

Last year, the Federal Trade Commission (FTC) adopted a final rule that would have broadly banned employment non competition agreements; litigation halted enforcement.

- In September 2025, the FTC moved to vacate that rule and is no longer pursuing a nationwide ban on employment non competes. At the same time, the FTC filed an enforcement complaint against a company's employee non compete practices, signaling continued case-by-case scrutiny of anticompetitive conduct. State courts and legislatures likewise continue to restrict non competes.

Planning Note: Family businesses should use this reprieve to audit restrictive covenant programs – non-competes, non-solicits, confidentiality and training repayment agreements – for compliance with current state law and to fortify alternative protections (e.g., strong trade secret programs, tailored non solicits and retention strategies).

The Great Wealth Transfer

An unprecedented intergenerational wealth transfer is underway, with outsized implications for family business owners. Clarity of objectives and early planning will determine whether transitions preserve legacy and generate value.

If continuity is the goal, owners should evaluate the readiness of next generation leadership, the timing and phasing of management transitions, decision-making and dispute-resolution mechanisms, and the economic alignment between active and non active family members. If a partial or full exit is contemplated, owners should assess timing, target buyer profiles, pre-sale readiness, team composition and post-sale plans.[iii]

Key Things to Know

- **CTA status today:** Only foreign reporting companies must report, and only their foreign beneficial owners are in scope; domestic entities and US owners are currently out, but this could change quickly.
- **NY LLCTA compliance:** Starting in 2026, New York–formed and New York-registered LLCs must file beneficial-ownership information or an exemption attestation.[iv]
- **Non-compete landscape:** No nationwide ban, but the FTC and states continue to police restrictive practices; ensure policies comply with state law and emphasize trade secret protection.
- **Succession timing:** Begin documenting business goals, leadership plans and economic frameworks now to capitalize on a favorable planning window and avoid rushed transitions.

Planning Considerations for the Rest of 2025 and Into 2026

The years 2025-2026 mark an inflection point for estate, gift and generation-skipping transfer (GST) planning following enactment of the One Big Beautiful Bill Act (OBBBA or The Act). The Act permanently increased the federal estate, gift and GST exemption to $15,000,000 per individual (indexed for inflation) beginning January 1, 2026. For 2025, the exemption is $13,990,000 per individual. These amounts are significantly higher than the pre-TCJA baseline and, unlike the TCJA, do not sunset. For most families, this reduces federal transfer tax pressure and refocuses planning on income tax efficiency, basis step-up, trust flexibility and state estate tax coordination. For clients whose wealth approaches or exceeds the new thresholds, this remains a critical window to remove future appreciation from the taxable estate and to structure trusts for income, asset protection and multigenerational objectives. All clients should review dispositive provisions, tax elections and fiduciary structures with counsel as 2025 concludes.

Year-End Checklist for 2025

- Make 2025 annual exclusion gifts of $19,000 per donee ($38,000 for married couples who elect to split gifts).
- Make 2025 IRA contributions and confirm required minimum distributions compliance.
- Establish or fund 529 Plans; consider 5-year frontloading of annual exclusions, coordinated with other 2025 gifts.
- Pay tuition and non-reimbursable medical expenses directly to providers to avoid gift tax treatment.
- Complete 2025 charitable giving, including qualified charitable distributions (QCDs) from IRAs where appropriate.

Review Formula Bequests

- Many wills and revocable trusts use formula clauses that fund a credit shelter (bypass) trust up to the available federal exemption, with the balance passing to a marital trust. With the exemption at $13.99 million in 2025 and $15 million in 2026, legacy formulae can unintentionally overfund a credit shelter trust and underfund (or eliminate) the marital share, which may be inconsistent with the testator's objectives or prudent for the surviving spouse's support. This risk is heightened in blended families and in states with estate taxes decoupled from the federal system. A targeted review should confirm the formula, beneficiary class and state estate tax interaction remain appropriate. Consider modern flexibility mechanisms – such as disclaimer-based plans, QTIPable trusts with elective treatment and carefully drafted powers of appointment – to right-size post-mortem outcomes.

Income Tax Basis Planning

- With federal transfer tax exposure reduced for many, the tradeoff between lifetime gifting and income tax basis becomes central. Low-basis assets held until death generally receive a step-up in basis, eliminating built-in gain for heirs, whereas assets gifted during life retain carryover basis. Revenue Ruling 2023-2 confirms no section 1014 basis adjustment at the grantor's death for assets held in a completed-gift grantor trust unless those assets are includible in the grantor's gross estate. Strategies to secure basis step-up where appropriate include:
  - Prioritizing retention of low-basis assets in the taxable estate while gifting higher-basis or low-growth assets.
  - Using substitution powers or purchases from grantor trusts to "swap in" high-basis assets and "swap out" low-basis assets before death.
  - Where a trust beneficiary has unused estate tax exemption, selectively causing inclusion of low-basis trust assets in that beneficiary's estate via a general power of appointment, a properly structured distribution, or deliberate exercise of a limited power of appointment to trigger the Delaware tax trap, subject to careful asset-by-asset analysis and creditor considerations.
  - These techniques require individualized modeling of basis profiles, expected appreciation, exemption availability and liquidity.

Planning to Utilize Increased Federal Exemptions

- Increased exemptions create opportunities to remove appreciating assets from the estate permanently and to implement flexible, protective structures for long-term succession. While OBBBA made the higher exemptions permanent, future legislation could alter them; clients with material transfer tax exposure may wish to accelerate strategic transfers.
- In parallel, many families without exposure will benefit more from income tax optimization, state estate tax planning and trust modernization rather than aggressive transfer tax strategies.

Gifting Techniques

- Lifetime gifts are tax-exclusive, remove future appreciation from the estate, and can be combined with valuation discounts and trust structures. However, lifetime gifts forgo a basis step-up at death; the balance between transfer tax savings and capital gains deferral should be analyzed across the asset mix. For clients not expected to owe estate tax, retaining low-basis assets until death is often preferable, subject to cash flow needs and risk tolerance.
- Trust-based approaches include:

- Spousal Lifetime Access Trusts (SLATs) to create access for a spouse while excluding assets from both estates, ensuring non-reciprocal design between spouses and observing timing rigor to avoid potential step transaction issues.
  - » To mitigate the risk of application of the Reciprocal Trust Doctrine, consider differing beneficiary classes, divergent powers of appointment, distinct termination dates and non-identical distribution standards.
  - » Where one spouse must first transfer assets to equalize estates before the other funds a SLAT, allow adequate time and substance between steps; using separate tax years for intra-spousal transfers and downstream trust funding is a conservative approach.
  - » Consider the impact of the order of deaths and the possibility of divorce. If the beneficiary spouse predeceases the grantor, the grantor may lose indirect access to trust assets. Similarly, if the couple divorces, the beneficiary spouse's interest in the SLAT may be terminated or altered, potentially cutting off access for both parties. Trust documents should address these contingencies to ensure the trust continues to serve its objectives under changing circumstances.
- Dynasty trusts to which GST exemption is allocated, insulating assets from transfer tax and often providing robust long-term asset protection and governance benefits.

Techniques Leveraging the Higher Exemption

- Sales to grantor trusts and combination gift/sale structures can "freeze" values. Adequate disclosure should be used to commence the statute of limitations; qualified appraisals are essential for nonmarketable assets.
- Forgiving or restructuring intrafamily notes may be attractive, although today's higher interest rates can reduce the appeal of refinancing.
- Allocate additional GST exemption to existing GST non-exempt trusts to improve multigenerational efficiency.
- Balance spouses' estates to maximize both exclusions, with care for transfers to non-US citizen spouses (annual exclusion $190,000 for 2025; $194,000 for 2026) and creditor protection.
- Reassess life insurance needs and ownership structures; consider irrevocable life insurance trusts (ILITs) to keep death benefits outside the taxable estate and to provide liquidity.

Trust Income Tax Planning and Medicare Surtax

- Non-grantor trusts reach the top 37% bracket at just $16,000 of taxable income in 2026 and are exposed to the 3.8% net investment income tax (NIIT) once undistributed net investment income exceeds trust thresholds. Shifting DNI to beneficiaries in lower brackets can materially reduce the family's overall tax burden, and targeted distributions can also mitigate trust-level NIIT where beneficiaries are below the NIIT thresholds. Evaluate distribution standards, beneficiary tax profiles, and potential to include capital gains in DNI where state law and governing instrument permit.
- Beginning in 2026, a 2/37ths itemized deduction reduction applies to trusts and estates with income above the 37% bracket threshold, which can modestly erode the section 642(c) charitable deduction at the trust level. Planning should account for this haircut when designing charitable distributions from non-grantor trusts.

Freeze Planning in the Current Environment

Even with higher exemptions, traditional freezing techniques remain relevant for wealth preservation, creditor protection, income shifting and governance:

- Grantor Retained Annuity Trusts (GRATs) remain effective, though higher section 7520 rates reduce leverage. Properly structured GRATs can be "zeroed-out" to avoid current gift tax; outperformance over the hurdle rate transfers excess value to remainder beneficiaries transfer-tax-free.
- Sales to Intentionally Defective Grantor Trusts (IDGTs) continue to be a cornerstone technique. The grantor status prevents gain recognition on sale and interest payments; appreciation above the applicable federal rate (AFR) accrues outside the estate. As a rule of thumb, seed equity of at least 10% of post-sale trust value is prudent. Pairing closely held entities with voting/nonvoting classes can support valuation discounts for lack of control and marketability when supported by a qualified appraisal.
- Consider swaps or buybacks of low-basis assets from grantor trusts to secure a basis step-up at death. Obtain appraisals for hard-to-value assets to avoid inadvertent gifts and support fiduciary prudence.
- Consider intrafamily loans to fund life insurance premiums in ILITs, capitalize trusts for investment spreads over AFR. Formalize all loans with promissory notes, commercial terms, and consistent administration.

Charitable Planning

- Maintain awareness of the 2026 0.5% annual gross income (AGI) "haircut" on individual charitable deductions and plan bunching strategies accordingly.
- Qualified Charitable Distributions (QCDs) remain a compelling tool for those age 70½ and older to satisfy charitable intent and reduce taxable income outside itemized deduction limitations. For those at least age 73, QCDs also count towards satisfying annual RMDs. For 2025 and 2026, the maximum amount which may be directly transferred from an IRA to a qualified charity as a QCD is $108,000. This is in addition to the new above-the-line charitable deduction of up to $1,000 for single filers or $2,000 for joint filers for 2026.

Review and Reevaluate

- Consider whether legacy techniques (e.g., certain qualified personal residence trusts, family limited partnerships, or split-dollar arrangements) still deliver net benefits.
- Confirm GST allocations and inclusion ratios; for partially exempt trusts, consider whether allocating additional GST exemption or trust modifications would strengthen outcomes.
- Portability remains valuable – particularly when paired with QTIP planning – to preserve a second basis step-up and retain post-mortem optionality. Rev. Proc. 2022-32 provides a simplified method to elect portability up to five years after death in qualifying cases, but it is critical to ensure the filing of a "complete and properly prepared" estate tax return or run the risk of disqualification as illustrated in *Estate of Rowland v. Commissioner*, T.C. Memo. 2025-76 (July 15, 2025)
- Unmarried couples should review foundational documents and beneficiary designations.

Select Federal Caselaw Updates

Below are key federal caselaw developments from 2025 with practical implications for private wealth clients, along with planning insights and technical considerations drawn from recent estate and tax law commentary. These cases reinforce the importance of technical compliance, careful documentation, and proactive planning in the evolving estate, gift and trust tax landscape.

***Estate of Martin W. Griffin v. Commissioner*, T.C. Memo. 2025-47 (May 19, 2025)**

The decedent's revocable trust made two bequests for the benefit of his surviving spouse: (1) $2 million to an irrevocable trust with monthly distributions up to $9,000 for her life, and (2) $300,000 as a "living expense reserve"

to be distributed at $5,000 per month for up to 60 months, with any remainder passing to her estate. The estate's Form 706 listed the $2.3 million bequest on Schedule M as "all other property" but did not identify any property as Qualified Terminable Interest Property (QTIP) or make a QTIP election. The IRS disallowed the marital deduction for both bequests, asserting they were includible in the gross estate and subject to deficiency and penalty.

The Tax Court addressed two issues:

- Whether the $2 million bequest, admittedly a terminable interest, qualified for the marital deduction as QTIP.
- Whether the $300,000 bequest was a terminable interest or a separate trust qualifying for the marital deduction.

The Tax Court held that the $2 million bequest did not qualify for the marital deduction because the estate failed to make the required affirmative QTIP election, resulting in loss of the deduction for this terminable interest. In contrast, the $300,000 bequest was found to create a separate trust, with the remainder passing to the spouse's estate, and thus qualified for the marital deduction.

Practice Note: This case underscores the strict requirements for QTIP elections: failure to expressly elect QTIP status results in the loss of the marital deduction for terminable interests, regardless of the underlying intent or structure.

***Elcan v. Commissioner*, No. 3405-25 (T.C. petition filed March 14, 2025)**

This pending case tests the boundaries of Grantor Retained Annuity Trust (GRAT) planning, particularly the use of substitution powers and grantor promissory notes.

In 2018, the taxpayers created two GRATs funded with closely held business interests and marketable securities, following standard GRAT provisions. The GRATs allowed the grantor to substitute assets, and the grantor used promissory notes to satisfy annuity payments and to substitute for trust assets.

The IRS issued a notice of deficiency, arguing that using grantor notes to satisfy annuities and substituting assets violated the requirements for a qualified annuity interest, causing the GRAT to fail and the initial transfer to be treated as a taxable gift.

The case raises important questions about whether non-cash annuity payments and asset substitutions undermine the integrity of a GRAT and could result in gift tax exposure. Advisors should monitor the outcome, as it may affect the structuring of GRATs involving substitution powers and grantor notes. Until the Tax Court rules, caution is warranted in using these techniques to avoid adverse tax consequences.

***Pierce v. Commissioner*, T.C. Memo. 2025-29 (April 7, 2025)**

This case involved a gift tax valuation dispute over interests in a closely held S corporation. The taxpayers made gifts and sales of company interests to irrevocable trusts and related entities, reporting values based on a 2014 appraisal. The IRS challenged the reported values, asserting higher fair market values. After the IRS conceded to lower values than initially claimed, the taxpayer argued for even lower values, presenting new expert testimony.

The Tax Court conducted a detailed review of the valuation methodologies, ultimately favoring the taxpayer's expert on several key points:

- Adoption of a 26.2% entity-level tax affecting rate using the Delaware Chancery method.
- Acceptance of a 3% long-term growth rate and a working-capital approach for excess cash.
- Application of a 5% discount for lack of control and a 25% marketability discount, both supported by industry data.

Conversely, the court accepted the IRS's 18% base cost of equity and rejected the taxpayer's additional risk premium. The court's approach demonstrates a preference for well-supported, data-driven valuation analyses and careful justification of all assumptions. The final dollar value was left for computation on remand.

Planning Note: This case highlights the importance of robust, defensible valuation work in gift and estate tax planning for closely held businesses.

***WT Art Partnership LP v. Commissioner*, T.C. Memo. 2025-30 (April 9, 2025)**

This case addressed the substantiation requirements for charitable contribution deductions of high-value art.

- The taxpayer donated valuable Chinese paintings to the Metropolitan Museum of Art, relying on appraisals from a Chinese auction house. The IRS disallowed the deductions, arguing the appraisals were not from a "qualified appraiser" and did not meet the technical requirements of section 170(f)(11)(D).
- The court agreed that the appraisals were technically deficient but found that the taxpayer's reliance on professionals and prior IRS settlements constituted reasonable cause, excusing the failure. However, the court reduced the value of one painting and imposed a 40% gross valuation misstatement penalty for that year, while declining penalties for other years.

Planning Note: Strict compliance with qualified appraisal requirements remains essential, particularly for contributions over $500,000. Even reputable appraisers must satisfy IRS qualification criteria. The case illustrates that while courts may excuse technical noncompliance when reasonable cause is shown, they will not accept unsupported or inflated valuations.

***In the Matter of the CES 2007 Trust*, C.A. No. 2023-0925-SEM (May 2, 2025)**

This Delaware Chancery Court case reinforced the strength of Delaware Asset Protection Trusts (DAPTs) against creditor claims. The CES 2007 Trust, established years before a creditor dispute, held interests in Delaware LLCs for the benefit of the grantor's family. The creditor sought to pierce the trust and LLC structure to satisfy a Michigan judgment.

The court found the trust was properly created under Delaware's Qualified Dispositions in Trust Act and dismissed the creditor's claims, emphasizing that Delaware law does not permit creditors to disregard LLC entities or pierce qualified trusts absent clear evidence of fraud or abuse.

Planning Note: The case highlights the importance of proper trust formation, administration and the timing of transfers in asset protection planning. It also suggests that DAPTs can be effective even for non-residents, though conflict of law and full faith and credit issues remain open for future litigation.

***Estate of Barbara Galli v. Commissioner*, Nos. 7003-20 & 7005-20 (T.C. Mar. 5, 2025)**

This case addressed the gift tax treatment of intrafamily loans.

The decedent loaned $2.3 million to her son at the applicable federal rate (AFR), with proper documentation and annual interest payments. Upon her death, the note remained outstanding and was included in her estate. The IRS challenged the arrangement, arguing it should be treated as a gift due to lack of commercial enforceability.

The Tax Court ruled for the taxpayer, finding the note met all requirements of a bona fide loan under section 7872, including proper interest, documentation and administration. No gift arose, and no revaluation was required.

Planning Note: The case underscores the importance of adhering to and respecting formalities in intrafamily lending to avoid unintended gift tax consequences.

***Estate of Rowland v. Commissioner*, T.C. Memo. 2025-76 (July 15, 2025)**

This case involved the denial of a portability election for failure to file a timely and complete estate tax return.

The decedent's estate filed Form 706 late and without sufficient asset detail, seeking to transfer the deceased spouse's unused exclusion (DSUE) to the surviving spouse. The IRS disallowed the election, and the Tax Court upheld the denial, finding the return was both untimely and incomplete. The court rejected arguments for substantial compliance and equitable estoppel, reaffirming that strict adherence to procedural and reporting requirements is essential for a valid portability election under Rev. Proc. 2017-34 and Treasury Regulations section 20.2010-2.

Planning Note: This decision highlights the need for careful compliance with all filing deadlines and information requirements when electing portability.

Practice Pointers:

- **QTIP Elections:** Always make an explicit QTIP election on the estate tax return for any terminable interest intended to qualify for the marital deduction.
- **GRATs and Substitution Powers:** Exercise caution with non-cash annuity payments and asset substitutions in GRATs until further guidance emerges from pending litigation.
- **Valuation:** Use robust, well-documented, and industry-supported valuation methods for closely held business interests and charitable contributions.
- **Asset Protection:** Properly structured and administered DAPTs can provide strong protection, but timing and compliance with state law are critical.
- **Intrafamily Loans:** Document and administer loans as bona fide transactions to avoid recharacterization as gifts.
- **Portability:** Ensure estate tax returns are timely and complete, with detailed asset reporting, to preserve portability elections.

State of the States

This section surveys notable 2025 developments in trusts and estates across key jurisdictions, highlighting enacted legislation, pending proposals and consequential court decisions with practical planning implications. From Connecticut's decanting statute and digital asset forfeiture rules to New York's movement on electronic wills and service reforms, Illinois's modernization measures and case law, Florida's adoption of FUFIPA and expanded decanting, and significant changes in Texas, California, and North Carolina, the landscape continues to evolve in ways that affect fiduciary administration, tax exposure and beneficiary rights.

Connecticut

The following bills became effective or passed in Connecticut in 2025:

- *Connecticut Uniform Trust Decanting Act*, CT Gen Stat section 45a-545a, which permits Connecticut irrevocable trusts to be decanted (effective as of January 1, 2024).
- *H.B. No. 6990*, which specifies that the term "property," as used in various Connecticut statutes concerning the seizure and forfeiture of property, includes digital wallets and virtual currency (signed into law on June 23, 2025).

- *H.B. No. 6918*, which prohibits marriage between first cousins (signed into law on June 23, 2025).

The following bills were proposed in Connecticut in 2025 and are pending:

- *H.B. No. 5333*, which would adopt the Uniform Real Property Transfer on Death Act in Connecticut.
- *H.B. No. 5152*, which would reduce the estate tax exemption threshold from the current $13.99 million to $3.6 million, eliminate the caps on estate and gift taxes (currently $15 million for combined estate and gift tax) and deposit the revenue from such taxes in the Early Childhood Education Fund.
- *H.B. No. 7177*, which would extend the filing deadline for estate tax returns from six months to nine months.

As a reminder, Connecticut has a separate state gift tax. Connecticut residents are subject to state gift tax on all federally taxable gifts, while nonresidents are subject to state gift tax only on federally taxable gifts of real estate or tangible personal property located in Connecticut. Connecticut taxable gifts must be reported on a Connecticut gift tax return, regardless of whether any tax is due. Connecticut gift tax and estate tax are unified, meaning that Connecticut taxable gifts reduce the amount of Connecticut estate tax exemption available at death ($13.99 million, for decedents dying in 2025).

New Jersey

New Jersey had very few developments in trusts and estates law in 2025.

- *Senate Bill S421*, a bill to authorize electronic wills introduced in 2024, remains under consideration.
- *Archit & Monal Amin v. Director, Division of Taxation*, Docket No. 007430-2022 (Tax Court of New Jersey, December 31, 2024).
  - On New Year's Eve of 2024, the Tax Court of New Jersey granted summary judgment to New Jersey resident taxpayers contesting an assessment of New Jersey income tax on undistributed earnings from certain controlled foreign corporations (CFC), as defined in Section 957 of the Internal Revenue Code.
  - The taxpayers were direct shareholders in four CFCs and indirect shareholders in two other CFCs. Under the Tax Cuts and Jobs Act (TCJA), for federal income tax purposes, US shareholders in CFCs are taxed on their share of the CFC's post-1986 accumulated earnings and profits, as a deemed repatriation dividend, regardless of whether those earnings and profits are actually distributed. The TCJA imposes a one-time tax on such dividends. For tax year 2017, the taxpayers included their share of the CFCs' post-1986 accumulated earnings and profits which had not been distributed to them on their federal income tax return but not their state income tax return. On audit, the New Jersey Division of Taxation assessed a $2.1 million state income tax deficiency.
  - In finding for the taxpayers, the Tax Court held that the New Jersey Gross Income Tax Act, NJSA 54A:5-1(f), expressly requires dividends to be actually distributed in order to be income taxable.

As a reminder, New Jersey has a state inheritance tax, which is imposed on the beneficiary, rather than a state estate tax imposed on the decedent's estate. New Jersey state inheritance tax applies to New Jersey resident decedents and non-resident decedents who own real estate or tangible personal property in New Jersey. The amount of the tax depends on whether the decedent was a New Jersey resident, the beneficiary's relationship to the decedent, the value of the decedent's estate and the type of property received by the beneficiary.

New York

The following bills were proposed in New York in 2025 and are currently pending:

- *A7856A*, which would allow for the electronic execution of wills, has passed the Senate and the Assembly and is currently awaiting delivery to Governor Hochul.
- *S8175*, which would amend New York's Surrogate's Court Procedure Act (SCPA) to enhance service of process procedures is also awaiting delivery to the Governor. The proposed revisions would:
  - Permit service by certified mail without return receipt;
  - Include service by electronic methods as a means of alternative service, when needed;
  - Amend the rules on service periods within and without the State; and
  - Deem service by electronic means to be complete upon transmission of the process to the recipient.

Planning Note: New York has a state estate tax that applies to New York resident decedents and non-resident decedents who own real or tangible personal property located in the state of New York. In 2025, New York's estate tax exemption amount is $7,160,000. This amount is set to be adjusted for inflation in 2026 and is projected to be approximately $7,300,000. Additionally, unlike with the Federal estate tax exemption, a New York decedent will completely lose the benefit of the exemption amount if their gross estate exceeds 105% of the exemption amount. New York does not have a state gift tax, however, taxable gifts made within three years of death are deemed brought back into a New York decedent's estate for the purpose of calculating their gross estate. The 3-year gift addback rule was set to expire on January 1, 2026, but was extended until 2032 as part of the passage of the 2025-2026 state fiscal plan.

Illinois

Illinois continued its steady modernization of probate, trust and fiduciary law in 2025, with the legislature enacting several significant statutory changes and appellate courts issuing decisions with practical implications for estate planning, trust administration and fiduciary risk management.

Legislative Updates

- **Small Estate Affidavit Threshold Increased (effective January 1, 2026).** Illinois expanded the situations where a decedent's estate can be settled without opening a full probate. The threshold for using a Small Estate Affidavit increased from $100,000 to $150,000, and, importantly, motor vehicles do not count toward that $150,000 cap because they can be transferred under separate vehicle-title rules. In practice, this means modest estates can be settled faster and at lower cost when the decedent primarily held bank or brokerage accounts, and will help families avoid the need for probate proceedings.
- **Expanded Recordkeeping and Compliance Duties for Trustees (effective January 1, 2026).** The Illinois Trust Code now requires trustees to retain a copy of the governing trust instrument for seven years following trust termination. The same legislation also aligns trustees' duties with Illinois's Revised Uniform Unclaimed Property Act, mandating that trustees "conduct a reasonable search" for assets which have been presumptively abandoned or have been reported and remitted to a state unclaimed property administrator before final distribution. Trustees and family offices should ensure document-retention and compliance policies are updated to meet these new standards.
- **Health Care Decision-Making Revisions (effective January 1, 2026).** Illinois updated the Living Will Act and the Health Care Surrogate Act to clarify the interaction between living wills, powers of attorney for health care and Physician Orders for Life-Sustaining Treatment (POLST). The amendments confirm that a valid health care power

of attorney controls whenever the named agent is available (and thus the agent's decisions supersede a Living Will), and providers should follow the agent's decisions within the scope of the document. The amendments also clarify that a POLST form is not a prerequisite to honoring a patient's declaration if the patient has been determined to be a qualified patient (defined under the Act as a terminally ill patient with capacity to make such decision).

- **Financial Institution Reliance on Probate Court Documents (effective January 1, 2026).** Financial institutions now have statutory protection and are released from liability when relying in good faith on court-issued Letters of Office or similar authority of an executor or administrator. If multiple fiduciaries are named and there is confusion or conflict regarding who can act, financial institutions may refuse to act until receiving direction from a court. This change is intended to provide greater certainty and reduce delays stemming from institutional liability concerns.

- **Pending Illinois Estate-Tax Reform (introduced, not yet enacted).** Several bipartisan bills introduced in 2025 would raise the Illinois estate tax exemption (currently $4 million per individual). Several of these bills propose increasing the exemption to $6 million per individual, tying it to the federal exemption with portability, or creating a higher exemption for qualifying farm property. If enacted, these changes could materially reduce Illinois estate tax exposure for many families. Individuals who are Illinois residents or who have property located in Illinois should monitor developments in 2026. Until then, the baseline remains: Illinois imposes estate tax above $4 million per decedent (without portability), which often requires coordinated planning for married couples and Illinois-situs assets.

Key Appellate Decisions

- **Trustee Duty Enforce Loans – *In re Estate of Sippel, 2025 IL App (3d) 230227.*** An Illinois Appellate Court confirmed that trustees must actively pursue repayment of loans and notes owed to a trust. In *Sippel*, a corporate trustee was found to have breached its fiduciary duty by failing to collect shareholder loans owed to the trust, and the trustee was surcharged for the resulting losses. This case reinforces that Illinois trustees have an affirmative duty to pursue and document collection of debts owed to a trust, and trustees should inventory all receivables, follow up at reasonable intervals and document collection efforts.

- **Divorce and Retirement-Account Beneficiaries – *Mowen v. Kelly, 2025 IL App (4th) 240906.*** An Illinois Appellate Court held that a former spouse remained the valid beneficiary of retirement accounts because the decedent did not change the beneficiary following the divorce and the divorce decree did not expressly revoke the designation. The decedent had named the former spouse as the primary beneficiary of the retirement accounts and had not updated the accounts after the divorce. The Appellate Court held that absent express language in a divorce decree or the applicability of a state statute, beneficiary designations survive divorce. Clients should be aware that divorce does not automatically alter retirement or life insurance beneficiary designations. Clients should verify and update beneficiary designations, especially after significant life events (including changes in marital status).

- **Scrivener Exception for Estate Documents Prepared with Non-Lawyer Assistance – *Roszkowiak v. Roszkowiak, 2024 IL App (2d) 230265.*** An Illinois Appellate Court held that a trust amendment typed by the settlor's daughter was valid, finding that the daughter acted merely as a scrivener and not as an unauthorized drafter. A trust settlor may amend his or her own trust without the assistance of an attorney, but non-lawyers are ordinarily prohibited from preparing estate planning documents under the Illinois Consumer Fraud and Deceptive Business Practices Act. This decision confirms that it is permissible for a non-lawyer to provide ministerial assistance to an individual – here, typing the trust amendment at the direction of the trust settlor – when the non-lawyer is acting at the settlor's direction and is not providing legal advice. That said, to avoid ambiguities and/or disputes, clients should involve counsel to ensure the document is legally valid, properly executed, and consistent with related beneficiary designations and tax objectives.

- **Standing to Sue Agents under Power of Attorney – *In re Estate of Piton, 2024 IL App (3d) 240051.*** An Illinois Appellate Court narrowed standing – a legal concept permitting one to pursue a lawsuit because there is a sufficient connection to the legal claim and the court has the ability to remedy the legal injury – to challenge an agent's conduct under the Illinois Power of Attorney Act. Only principals or true successors in interest (i.e., someone who actually inherits the affected property) may sue an agent for fiduciary breach under the Illinois Power of Attorney Act. Individuals with mere expectancy interests (in Piton, the principal's nieces and nephews) lack standing. This case limits exposure to peripheral challenges from individuals serving as agents under a power of attorney.

- **Disclosure Obligations of Trustees – *Lindblad v. Blair, 2025 IL App (1st) 241753-U.*** A trustee satisfies disclosure duties under the Illinois Trust Code by providing a beneficiary with the most recent restatement of the trust agreement. An Illinois Appellate Court held that beneficiaries are not entitled to prior drafts or non-operative amendments unless there is a specific challenge to validity of the current operative trust instrument. This case clarifies the scope of a trustee's duty to provide information to trust beneficiaries and limits beneficiaries' rights to access non-operative trust instruments absent a specific need for validity challenges.

Florida

Over the past year, several legislative developments have impacted the private wealth and fiduciary landscape in Florida. A summary of key updates follows.

Florida Uniform Fiduciary Income and Principal Act (FUFIPA)

- Effective January 1, 2025, the FUFIPA replaces the prior Florida Uniform Principal and Income Act. FUFIPA governs the default allocation of receipts and disbursements between income and principal for trusts and estates with a Florida principal place of administration.

- FUFIPA modernizes Florida's fiduciary accounting rules by encouraging the use of modern portfolio theory, emphasizing total return across both income and principal appreciation. Fiduciaries are now expressly authorized to make adjustments between income and principal under certain circumstances, providing greater flexibility to administer long-term trusts for both current and remainder beneficiaries. This modernization aligns with Florida's 2022 extension of the rule against perpetuities to 1,000 years.

- If a court determines that a fiduciary has abused its discretion under FUFIPA, affected beneficiaries are entitled to be restored to the position they would have occupied but for the abuse.

Expanded Decanting Flexibility under Florida Law

- Trust decanting allows a trustee to transfer assets from an existing trust into a new trust with modified terms – essentially "pouring" the old trust into a new one – to better reflect the settlor's intent or respond to changing family, tax or administrative circumstances. Recent amendments to Florida Statute section 736.04117 expand trustee flexibility and clarify beneficiary protections.

- "Authorized trustees" (as defined in section 736.04117(1)(b)) now have greater latitude when establishing a new trust to receive property through decanting:

  - Trustees with *absolute discretion* to invade principal may extend the trust's duration, modify dispositive provisions and alter beneficial interests. Subject to statutory limits, this includes the ability to decant into a supplemental needs trust, even if the original trust was not one.

  - Trustees with *limited discretion* to invade principal (e.g., limited to distributions for health, education, maintenance and support) may also decant, provided the beneficiaries' interests in the new trust remain substantially similar to those in the original trust.

- Under Florida law, beneficiaries who receive a limitation notice – a written statement that an action for breach of trust may be barred if not brought within six months of adequate disclosure – must typically act within that 6-month window. The new legislation clarifies, however, that a trustee's notice of intent to decant does not constitute a disclosure sufficient to trigger this limitations period. Accordingly, the 6-month period begins only after the trustee has exercised the decanting power and provided formal disclosure of the completed decanting to the beneficiaries.

Planning Note: These changes afford trustees additional flexibility to adapt trusts to evolving family or tax circumstances while reinforcing the importance of clear documentation and disclosure once a decanting is executed. Counsel should be consulted well in advance to ensure compliance with the statute and proper timing of all beneficiary notices.

Effect of Lifetime Gifting on Trust Distributions

- New Florida legislation clarifies that lifetime gifts by a settlor to a beneficiary may be applied to satisfy, in whole or in part, future trust distributions if:
  - The trust instrument expressly so provides;
  - The settlor or trustee makes a contemporaneous written declaration at the time of the gift; or
  - The beneficiary provides a written acknowledgment that the gift is to be treated as a partial or full satisfaction of a trust distribution.
- This clarification is intended to prevent beneficiaries from receiving a "double benefit" when a settlor makes significant lifetime transfers intended to accelerate or substitute for future trust distributions.

Texas

While state governments rarely make headlines, this year all eyes have been on Austin – or rather, away from Austin. The Texas Legislature convenes every other year – in 2025, lawmakers have been at work passing a wide variety of laws, ranging from state and local taxation to education.

Income and Transfer Tax Updates

- **Capital Gains:** Senate Joint Resolution 18 proposes a constitutional amendment that would prohibit the imposition of capital gains tax upon a decedent's death. This will be voted on in a general election this November.
- **Estate, Gift, and GST Taxes:** House Joint Resolution (HJR) 2 proposes a constitutional amendment prohibiting the imposition of state-level estate, gift or generation-skipping transfer (GST) taxes. Although none currently exist in Texas (with one exception, discussed below), this amendment would prohibit any from occurring in the future, notwithstanding any future amendments. HJR 2 will also be on the ballot this November.
- **Vehicle Gift Tax:** Texas does impose a flat $10 gift tax on the recipient of a motor vehicle from certain family members, trusts and a decedent's estate. SB2064 eliminated the gift tax on transfers of vehicles from a decedent's estate. SB2064 was signed into law on June 20, 2025 and became effective September 1, 2025.

Property Tax Updates

- Texas does not have a state income tax, so most of the state's revenue is sourced from property taxes. The lack of other sources of revenue, coupled with rising property values, has resulted in very high property taxes throughout the state – in fact, Texas property taxes are, on average, among the highest in the nation.

- In an effort to provide some relief to homeowners, the homestead exemption aims to effectively reduce the value of one's home.
- In 2025, the available homestead exemption is $100,000. Therefore, if you apply and qualify for the Texas homestead exemption, your property tax liability will be calculated as though your home is worth $100,000 less than its appraised value.
- To qualify, the home must qualify as a residence homestead and be owned by an individual (or a property structured trust) as his or her primary residence (i.e., not a vacation home).
- Texas Governor Greg Abbott signed SB4 into law, which could result in an important change to Texas's property code and benefit homeowners residing within the state. This bill would increase the homestead exemption to $140,000 for all Texans, thereby reducing Texans' property tax liability up to an estimated $900.
- Governor Abbott also signed SB23, which would increase the homestead exemption to $200,000 for Texans who are 65 or older or disabled (i.e., eligible for disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance).
- Because SB4 and SB23 seek to amend the Texas Constitution, they both will subject a state constitutional vote in November 2025.

Business Courts

For the past several years, we have been tracking the creation and implementation of Texas Business Courts. These special courts, intended to oversee complex business cases, have jurisdiction over the following:

- Disputes over $5 million that involve various corporate affairs, such as derivative actions, actions by a business or its owner against another officer or owner, and actions to hold owners or executives responsible for breaches of duty;
- Cases involving publicly traded companies, regardless of the amount in question; and
- Cases in excess of $10 million that involve contracts or commercial transactions and where the parties consent to the business courts' jurisdiction.

As of September 23, 2025 – just over one year since the Business Courts began hearing cases – 45 opinions have been issued on matters ranging from energy and natural gas disputes, to jurisdictional conflicts, to limited liability company agreement interpretation. Given how new the Business Courts are, it is hard to ascertain trends or opine on the anticipated success or failure of any specific causes of action. However, having courts dedicated to complex commercial litigation, coupled with Texas's business-friendly economic and tax environment, may be appealing to business owners looking to relocate from less appealing jurisdictions.

California

The following highlights summarize key updates, including new legislation and important appellate decisions that are particularly relevant for those with California ties.

Legislative Updates

- **Private Retirement Plans and Trusts.** California Assembly Bill (AB) 2837, effective January 1, 2025, made significant amendments to the California Enforcement of Judgments Law (EJL). The legislation revises procedures for serving notices of judgment, expands certain exemptions from collection and updates rules on wage garnishment. Most notably for private wealth clients, AB 2837 modifies creditor protections for

distributions from retirement assets, potentially impacting planning involving Private Retirement Plans (PRPs) and Private Retirement Trusts (PRTs).

- **Private Retirement Plans (PRPs).** California Code of Civil Procedure (CCP) section 704.115 governs exemptions for assets held in PRPs. While the statute provides limited guidance – famously defining a "private retirement plan" as a "private retirement plan" – California courts have interpreted this to mean a plan "designed and used for retirement purposes."
  - Courts apply a totality-of-the-circumstances test to determine whether a plan meets this standard, considering:
    - The debtor's subjective intent;
    - The timing of the plan's creation;
    - The debtor's control over contributions;
    - Compliance with the plan's formal rules; and
    - Whether withdrawals were actually used for retirement purposes.
- **Private Retirement Trusts (PRTs).** A PRT is an employer-sponsored, irrevocable grantor trust designed to hold and protect PRP assets from creditors and bankruptcy claims. California courts have identified several factors relevant to determining whether a PRP held in trust qualifies as a valid PRT:
  - The sponsoring employer may be wholly owned by the plan participant.
  - The plan must be structured for bona fide retirement purposes, supported by financial forecasting or appraisal.
  - The trust should be administered by an independent trustee or custodian.
  - The plan should be maintained and reviewed annually.
  - The plan should include a clear formula for contributions and distributions, including timing and eligibility criteria.
- **Creditor Protection Framework Before and After AB 2837.** Prior to AB 2837, qualified plan balances enjoyed protection under federal ERISA rules, while distributions from those plans were protected under CCP section 704.115, subject to exceptions such as child and spousal support obligations.
  - Under AB 2837, courts now apply a "means test" when a creditor challenges a claim of exemption. The court determines how much of the PRP's balance or distributions is necessary for the debtor's retirement and exempts only that portion.
  - Importantly, assets held in a properly structured PRT are not subject to the means test and remain fully exempt from creditor claims, regardless of the debtor's financial need. If a court finds that a PRT was properly established and administered, both the trust corpus and distributions may be shielded from judgment creditors.

Planning Note: When properly implemented, PRTs can serve as a powerful tool for creditor protection of retirement assets in California. However, the post–AB 2837 landscape remains untested.

***Estate of Tarlow*, 109 Cal. App. 5th 124 (2025)**

The California Court of Appeal held that a trustee of a testamentary trust has standing to petition in an estate proceeding because the trustee is a person entitled to distribution of a share of the estate.

- **Facts:** The decedent's will created a testamentary trust for his sister, naming his friend as trustee. Following the decedent's death, the beneficiaries sought final distribution of the estate and argued that their mutual disclaimers and assignments eliminated the need to fund the testamentary trust. The trustee disagreed and petitioned the court for distribution of the sister's share to him as trustee. The trial court dismissed the petition, finding that the trustee lacked standing.
- **Holding:** The appellate court reversed, holding that when a will creates a testamentary trust, the named trustee is a devisee under the will whose interests vest at the decedent's death. Accordingly, under California Probate Code section 11700, the trustee qualifies as a person entitled to distribution and has standing to petition for distribution from the estate.

***Packard v. Packard*, 108 Cal. App. 5th 1284, 330 Cal. Rptr. 3d 203 (2025)**

The court held that a petition seeking construction or reformation of a trust amendment – intended to implement the trustor's intent rather than challenge the trust's validity – is not a "trust contest" subject to the 120-day statute of limitations for contests.

- **Facts:** The trustor's amendment allocated specific assets between his two sons and later included a handwritten change that altered the distribution formula. After the trustor's death, one son petitioned to reform the trust to reflect equal division, arguing a drafting mistake. The probate court deemed the petition a time-barred "contest."
- **Holding:** The appellate court reversed, finding that the petition was not a contest because it sought to reform the trust to reflect the settlor's true intent, not to invalidate the instrument. The court confirmed that reformation is permissible even where the language appears unambiguous, so long as clear and convincing evidence demonstrates a mistake in expressing intent.

Statutory Updates

- **Adjustment of Intergenerational Transfer Exclusion under Proposition 19.**
  - **Background:** Proposition 19 (2020) amended the California Constitution to modify property tax rules governing intergenerational transfers and base value transfers.
  - **2025 Adjustment:** For transfers or changes in ownership occurring February 16, 2025 through February 15, 2027, the intergenerational transfer exclusion amount increases to $1,044,586. The exclusion is adjusted biennially based on changes in California's housing price index, as published by the Federal Housing Finance Agency.
- **Update to Small Estate Petitions (AB 2016).**
  - **Background:** California's "summary succession" procedures allow successors to transfer certain property without formal probate when the decedent's gross estate falls below a statutory limit, adjusted every three years.
  - **2025 Update:** For decedents dying on or after April 1, 2025, the gross estate limit increases to $750,000 (up from $184,500 for decedents dying between April 1, 2022 and March 31, 2025). Assembly Bill 2016 also limits this simplified process to a decedent's primary residence in California and codifies the $750,000 threshold under the Probate Code.

North Carolina

Electronic Storage of Attested Written Wills by an Attorney

- This new law, enacted as part of Session Law 2025-33 (enacted June 30, 2025), allows attorneys to electronically store original wills and subsequently offer a certified paper copy of the electronic record for probate.
  - This law, codified under Chapter 31 of the North Carolina General Statutes, addresses the problem of probating a photocopy of a will that cannot be located after the testator's death (a lost will), which can be a cumbersome process. Under this new law, at a testator's direction, a North Carolina licensed attorney may create an electronic record of an original will and sign an affidavit certifying that the paper copy is a complete, true and accurate copy of that electronic record.
  - The printed electronic copy of the will and the affidavit may be filed after the testator's death, and the electronic copy may then be probated in the same manner as an attested written will. This law is effective on January 1, 2026, will apply to attested written wills stored as electronic records on or after the date (even if the will was executed before the effective date).
- There are two important points to note about this new law.
  - First, only an attorney licensed to practice in North Carolina may create the electronic record of the paper will and a certified paper copy of the electronic record that may later be offered for probate.
  - Second, creating an electronic record of the will means the testator may not subsequently revoke this will by physical act (destroying or tearing up the will). The will, however, can still be revoked by a later will or codicil.

Elective Share Updates

- S.L. 2025-33 addressed the requirements a trust must satisfy for a trust created for a surviving spouse to be valued as 100% countable toward the surviving spouse's elective share under G.S. 30-3.3A(e)(1) (i.e., the full value of the trust would be treated as having passed to the surviving spouse for elective share purposes).
- Pursuant to G.S. 30-3.3A(e)(1), a trust must satisfy the following requirements in order for a trust to qualify as a 100% spousal trust under G.S. 30-3.3A(e)(1):
  - The trust must be controlled by a non-adverse trustee during the surviving spouse's lifetime;
  - The trustee shall distribute to or for the benefit of the surviving spouse either:
    - (a) the entire net income of the trust at least annually, or
    - (b) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse; and
  - The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance and support of the surviving spouse.
- This law amends G.S. 30-3.3A(e)(1) to clarify the following:
  - A non-adverse trustee must be in place for the entire duration of the trust (i.e., all successor trustees must be non-adverse trustees);
  - The non-adverse trustee requirement will be met if the surviving spouse serves as his or her own trustee;

- A trust will not meet the income or principal distribution requirements above unless the trust provides that the trustee shall distribute the income and principal as provided in those sub-subdivisions by specifically using the terms "shall," "is required to," or other equivalent term or terms; and
- The trustee's ability to exercise discretion regarding the timing and amount of distributions necessary for health, maintenance, and support of the surviving spouse is not determinative.

Uniform Community Property Disposition at Death Act

- The Uniform Community Property Disposition at Death Act (S.L. 2025-25, signed into law on June 26, 2025) repeals existing Chapter 31C of the General Statutes, which already recognized community property rights at death for couples who had moved to North Carolina from a community property state, and enacts a new Article 5 of Chapter 30, which creates a new framework for how community property is handled at the death of a spouse in North Carolina.
- This new law clarifies how community property is handled in a separate property state like North Carolina.
- The new law creates a presumption that one-half of community property belongs to the surviving spouse and cannot be disposed of by the deceased spouse's will; the other one-half can be disposed of by the deceased spouse's estate plan (or if none, by intestate succession). The deceased spouse's one-half of the community property is not subject to a claim for an elective share by the surviving spouse.
- The act also provides procedures outlining how a surviving spouse (or heirs) can make claims for community property and provides time limits for filing such claims (generally one year from the date of death). In addition, the new law protects third parties who transact in good faith with community-property spouses.
- The act will become effective on January 1, 2026, and will apply to judicial proceedings commenced on or after that date.

Paternity Updates

- Under North Carolina law, a child born to unmarried parents is presumed to be the child of the mother for inheritance purposes. Under current law, even if a father consents to having his name on the child's birth certificate, this alone does not create a parent-child relationship sufficient to allow the child to inherit from the father. In order for the child to inherit from the father, the father must also file an affidavit acknowledging paternity during his lifetime and the child's lifetime with the Clerk of Superior Court of the county where either the father or the child resides.
- A new law eliminates the requirement of filing the acknowledgement of paternity with the Clerk of Superior Court. This change, made by modification of G.S. 29-19(b)(2), was signed into law on July 9, 2025 in S.L. 2025-75. The new law will be effective December 1, 2025 and applies to the estates of decedents dying on or after that date.

Relevant International Updates

As with the Tax Cuts and Jobs Act (TCJA) in 2017, the 2025 calendar year ushered in a new set of tax legislation – the One Big Beautiful Bill Act (OBBBA) – as well as several changes the current administration made to the implementation of existing laws. The changes made in the OBBBA were not as seismic as those of the TCJA in respect of international tax planning, but they were nonetheless meaningful.

Changes Pursuant to the OBBBA

The changes in the OBBBA mainly revolved around rules related to controlled foreign corporations (CFCs). There were also changes made in respect of the Base Erosion and Anti-Abuse Tax (BEAT) and a new excise tax on outbound remittances. Last, there was also a change to the law on the lifetime US federal estate tax exemption that, if a non-US client's facts and circumstances fit the profile, then that non-US client may have an even higher US federal estate tax exemption utilizing an estate or gift tax treaty between the United States and that client's country of domicile. Below is a punchy, digestible explanation of those changes.

- **Downward Attribution.** The OBBBA made changes to other provisions relating to CFCs, notably restoring a taxpayer-favorable rule that was repealed by the TCJA (section 958(b)(4)), and adding a new proposed section 951. Section 958(b)(4) limits "downward attribution" of stock for purposes of determining CFC status. The repeal of that rule by the TCJA significantly increased the number of foreign corporations treated as CFCs, particularly within foreign-parented groups. By restoring the rule limiting downward attribution, the OBBBA will materially reduce the number of foreign corporations treated as CFCs. Section 951B was added to address the types of ownership structures that initially prompted the repeal of section 958(b)(4) and has the effect of, in a more narrowly tailored manner than the TCJA, of subjecting foreign subsidiaries within certain foreign-parented groups to the subpart F regime.

- **Changes to Global Intangible Low-Taxed Income (GILTI).** The OBBBA made several changes to the provisions governing the regimes formerly known as GILTI and Foreign-Derived Intangible Income (FDII) for taxable years beginning after December 31, 2025. The OBBBA renames GILTI as "net CFC tested income" (NCTI) and FDII as "foreign-derived deduction eligible income" (FDDEI). The OBBBA reduces the deduction for NCTI (to 40% from 50%) and FDDEI (to 33.34% from 37.5%) and increases (to 90% from 80%) the portion of foreign income taxes that a domestic corporation is deemed to have paid with respect to NCTI. The OBBBA also disallows 10% of the deemed paid foreign tax credits (FTCs) for distributions of previously taxed NCTI. These changes increase the effective tax rate for both NCTI and FDDEI to 14% from the current 13.125%.

- ***Pro Rata* Share Rules.** The OBBBA also modified the *pro rata* share rules under subpart F. Under prior law, a US shareholder includes its *pro rata* share of a CFC's subpart F income and NCTI only to the extent the shareholder holds stock of the foreign corporation on the last day of the year on which the foreign corporation was a CFC. Under the OBBBA, a US shareholder may have subpart F income or NCTI inclusions if the shareholder owns stock of a CFC on any day of the taxable year even if that shareholder does not hold stock in the CFC on the last day of the year. The OBBBA provides that a US shareholder's *pro rata* share of a CFC's subpart F and NCTI is the portion of such income that is attributable to (a) the stock of such corporation owned by the shareholder and (b) any period of the CFC year during which the shareholder owned the stock, the shareholder was a US shareholder of such corporation and such corporation was a CFC.

- **Changes to Base Erosion and Anti-Abuse Tax (BEAT) Rate and Tax Credit Changes.** Under pre-2026 law, the BEAT rate for 2025 was 10%, and the BEAT rate had been scheduled to increase to 12.5% beginning in 2026. The OBBBA instead permanently sets the BEAT rate at 10.5% beginning in 2026. Prior law also would have narrowed the type of tax credits that are BEAT-favored beginning in 2026, but the OBBBA eliminated this, permanently retaining the pre-2025 BEAT calculation credit rules.

- **Excise Tax on Outbound Remittances.** There is a new 1% excise tax on certain outbound remittances. The new law is enacted by section 4475. The excise tax applies to certain "remittance transfers," which broadly includes an electronic transfer of funds by a sender located in the United Sates to a person located in a foreign country. Importantly, it does not apply to certain amounts, including amounts withdrawn from an account maintained by US banks and brokers. The excise tax itself is borne by the sender of the funds, but a new withholding obligation on the "remittance transfer provider" (RTP), who has due diligence obligations in connection with identifying

whether a transaction is subject to section 4475. The tax is payable quarterly, and in the absence of the tax being paid, the RTP has secondary liability.

- E**nhanced Estate Tax Exemption.** Starting in 2026, the lifetime US estate tax was increased to $15M permanently, to be adjusted for inflation. This allows US citizens, and individuals otherwise domiciled in the United States, to undertake more estate planning. For non-US persons (e.g., individuals who are neither citizens nor residents of the United States for US federal estate tax purposes) domiciled in countries that have an estate tax treaty with the United States, they may have – depending on the terms of the treaty – an enhanced exemption amount that exceeds the normal (minimal) $60,000. Of course, in those circumstances, a treaty-based position needs to be claimed when filing a Form 706-NA.

Changes to Corporate Transparency Act (CTA)

As discussed above, although domestic reporting companies are currently exempt from the CTA's beneficial ownership information filing obligations, FinCEN did not exempt foreign reporting companies.

- What this means – for now – is that non-US persons with indirect interests in domestic reporting companies do not need to fear that their personal information will be disclosed to a private database. However, two things may still unfold.
  - First, while it may not be challenged, it is arguably unconstitutional for the executive branch to override a Congressional mandate. That is, the law implementing the CTA requires domestic reporting companies to report, so FinCEN – a branch of the executive arm of the government – does not have the constitutional authority to override a law on the books.
  - Second, once there is a change in the administration, it is unclear whether that new administration will reinstate the reporting requirement for domestic reporting companies.

Key Things to Know

- The changes to downward attribution were welcomed, as well as the changes to BEAT and the lifetime US estate tax exemption.
- On the other hand, the changes to GILTI and the new excise tax on remittances abroad were less positive for taxpayers in the sense that they both effectively cause more tax (although the margin of difference is small).
- Last, the administration's approach to the CTA was welcomed by all domestic reporting companies. However, the law implementing the CTA remains. Whether a new administration will resume the implementation of the CTA, and whether there will be further challenges to the CTA's constitutionality, will be determined at a later date.

Conclusion

The 2025–2026 window offers unusually favorable conditions to streamline wealth plans for income tax efficiency, basis optimization and intergenerational governance. The right approach blends judicious use of trusts, carefully controlled entity structures, and precise drafting – anchored by a clear view of state-specific exposure and the evolving regulatory environment. We recommend targeted updates before year-end and a broader structural review in early 2026 to lock in benefits and reduce future friction. As always, the Katten Private Wealth practice stands ready and able to assist you with these matters at any time.

[i] Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

[ii] Katten received notice on November 10, 2025, from Capitol Services, LLC (a nationwide provider of registered agent, corporate, and lien services) regarding recent guidance from the New York Department of State. According to this guidance, only LLCs formed under the laws of a foreign country and authorized to do business in New York will be subject to beneficial ownership information disclosure requirements under the NY LLCTA. Further communications with the Department of State confirmed that the scope of the NY LLCTA will be significantly narrowed: LLCs formed in New York or in another US state and authorized to do business in New York will not currently be required to disclose beneficial ownership information under the NY LLCTA. Katten is actively working to independently verify this information and will provide an updated advisory as soon as additional details become available.

[iii] Our team, led by Michael L. Sherlock, is developing a dedicated content series for family business owners to evaluate succession, liquidity, and governance alternatives. The series is set to launch in January. To receive this content via email, click **here**.

[iv] See Note [ii].

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