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2026 Year-End Estate Planning Advisory



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2026–2027 Planning Priorities

This year's planning season is the first full year under the permanent transfer tax regime of the One Big Beautiful Bill Act (OBBBA). With federal transfer tax exposure reduced for most families, attention has shifted to income tax efficiency, basis, trust flexibility and state-level exposure. At the same time, regulators, courts and state legislatures continued to reshape the rules for beneficial ownership reporting, family entity governance, fiduciary administration and charitable planning. The following summarizes what matters most now and the practical steps to consider before year-end and into 2027.

What changed: highlights with immediate planning impact

- **Transfer tax exemptions.** The federal estate, gift and generation-skipping transfer (GST) exemption is $15 million per person for 2026 and will increase with inflation to $15.48 million in 2027. Although the exemption has no scheduled sunset, future legislation could still reduce it. The gift tax annual exclusion remains $19,000 per donee for 2026 and will increase with inflation to $20,000 per donee for 2027. The annual exclusion for gifts to a spouse who is not a US citizen is $194,000 for 2026 and $201,000 for 2027.
- **Charitable and trust deductions**. 2026 is the first year of the 0.5% adjusted gross income (AGI) floor on individual itemized charitable deductions, the new above-the-line charitable deduction for non-itemizers (up to $1,000 for single filers or $2,000 for joint filers) and the 2/37ths reduction in itemized deductions. Because trusts and estates reach the top bracket at $16,500 (in 2027), the reduction may erode their section 642(c) charitable deduction and, read literally, their distribution deductions, pending Internal Revenue Service (IRS) guidance.

- **Beneficial ownership reporting.** In August 2026, the Financial Crimes Enforcement Network (FinCEN) finalized the exemption of US-formed entities and US persons from Corporate Transparency Act (CTA) reporting, although foreign-formed entities registered in the United States may still have filing obligations. New York's LLC Transparency Act (NY LLCTA) took effect January 1, 2026, with a narrower scope than anticipated, and covered LLCs authorized before 2026 face a December 31, 2026 filing deadline.
- **Family entity governance.** The Delaware Supreme Court upheld the 2025 amendments to section 144 of the Delaware General Corporation Law (DGCL), confirming statutory safe harbors for controller transactions, and Delaware increased its annual taxes on LLCs and limited partnerships.
- **Federal case law.** The Tax Court and the Fifth Circuit continued to police technical compliance: early terminations of qualified terminable interest property (QTIP) trusts can produce large taxable gifts by remainder beneficiaries, family limited partnerships (FLPs) formed near death remain vulnerable under section 2036(a), late estate tax return can forfeit valuable elections and expose an executor-beneficiary to personal liability, and the pending *Elcan* grantor retained annuity trust (GRAT) dispute underscores that even annuity-payment mechanics may draw IRS scrutiny where a grantor swaps promissory notes into GRATs and then uses those notes to satisfy the GRAT annuity.
- **State developments.** Notable state developments include New York City's new pied-à-terre tax, an Illinois estate tax exemption that remains $4 million after reform efforts stalled again, a new nonjudicial trustee discharge procedure in Florida, Texas voters' approval of constitutional amendments prohibiting future state estate, gift and GST taxes and taxes on capital gains, California voters' rejection of a proposed one-time wealth tax on billionaires (Proposition 40) and California's new virtual representation statute, and North Carolina's narrowing of its fiduciary income tax so that a beneficiary's residence alone no longer triggers tax on a trust's undistributed income.

Planning priorities for now

- **Revisit formula bequests.** Formula clauses drafted when exemptions were lower can overfund a credit shelter trust and shrink or eliminate the marital share. Because GST exemption is not portable, relying on portability alone can waste the first spouse's GST exemption.
- **Manage basis.** For clients below the exemption, capturing a basis step-up at death is often more valuable than removing appreciation from the estate. Consider asset swaps with grantor trusts, carefully tailored general powers of appointment and portability paired with QTIP planning.
- **Use the year-end window.** Make 2026 annual exclusion gifts, compare bunching charitable gifts into 2026 with deferring them to 2027 and use the 65-day rule to fine-tune 2026 trust distributions.
- **Match techniques to the rate environment.** Higher section 7520 rates and applicable federal rates (AFRs) raise the hurdle, but GRATs and sales to intentionally defective grantor trusts (IDGTs) remain effective for assets with strong growth prospects. Other techniques actually benefit from higher rates. A qualified personal residence trust (QPRT) produces a smaller taxable gift as the section 7520 rate rises, because the grantor's retained right to use the residence is valued more highly. Similarly, a charitable remainder annuity trust (CRAT) generates a larger charitable deduction, and more easily satisfies the 10% minimum remainder and 5% probability-of-exhaustion tests, when rates are higher.

- **Plan family business transitions early.** As the generational shift of wealth commonly referred to as the "Great Wealth Transfer" accelerates, owners should treat succession and wealth transfer as a single, coordinated plan that begins years before any liquidity event.
- **Confirm entity compliance.** Families with foreign-formed entities or non-US LLCs doing business in New York should confirm their reporting status before year-end, families with North Carolina nonprofit entities should calendar the new annual report requirement, and family businesses should review restrictive covenants under applicable state law.
- **Document and administer with care.** Intrafamily notes, insider transactions with family charities and estate distributions should be documented and administered as arm's-length arrangements to withstand IRS scrutiny.





Select Updates Impacting Family Business Owners

For family business owners, family offices and their advisors, 2026 brought greater clarity on beneficial ownership reporting, Delaware entity governance and federal securities guidance. This section highlights those developments and what matters now. Although domestic reporting burdens have declined, obligations remain for foreign structures, significant public company holdings and transactions involving controlling owners.

Corporate Transparency Act

- **Final rule confirms the domestic exemption.** On August 11, 2026, FinCEN issued a final rule, effective upon publication on August 14, 2026, making permanent its March 26, 2025 interim final rule, which substantially narrowed reporting under the CTA. Under the final rule (91 Fed. Reg. 52508), entities created under US state or Tribal law are exempt from filing beneficial ownership information (BOI) reports, and US persons need not provide BOI as beneficial owners or company applicants.
- **Foreign-formed entities remain subject to reporting**. Foreign-formed entities registered to do business in a US state or Tribal jurisdiction generally remain reporting companies unless exempt. They report non-US beneficial owners and non-US company applicants, but not US persons. Newly registered reporting companies generally have 30 calendar days after notice of effective US registration to file. Because a reporting company must also report its own identifying information (including its legal name, address, jurisdiction of formation and taxpayer identification number), foreign-formed entities whose owners are all US persons should still confirm their filing status rather than assume no report is required.

- **Prior filings and bank requests.** US persons with FinCEN identifiers need not update or correct previously submitted information. FinCEN plans a one-time deletion of US-person information, subject to federal records requirements; individuals need not request removal. If BOI relating to a US company or a US person is included – inadvertently or intentionally – in a filing made after February 10, 2027, FinCEN does not anticipate deleting that information. Separate customer due diligence rules continue to require covered financial institutions to collect ownership information from legal entity customers, including entities held in trust.
- **The statute has not been repealed**. On October 5, 2026, the Supreme Court denied review of the Eleventh Circuit's December 16, 2025 decision in *National Small Business United v. US Department of the Treasury*, which upheld the CTA under the Commerce Clause and rejected a Fourth Amendment challenge. The denial was not a ruling on the merits, and because FinCEN's exemption is regulatory rather than statutory, it could change through future rulemaking.

Planning note: US-formed holding companies, FLPs and similar entities have no current federal BOI filing obligation. Families with foreign-formed, US-registered entities should confirm reporting status and maintain current ownership records. Bank know-your-customer requirements are separate and continue to apply.

New York LLC Transparency Act

The NY LLCTA took effect January 1, 2026, with a narrower scope than originally anticipated. Under New York Department of State guidance, only foreign-country-formed LLCs authorized to do business in New York are covered. LLCs formed in New York or another US jurisdiction currently have no filing obligation.

- **Who files and when.** Covered non-exempt LLCs report individuals who own at least 25% or exercise substantial control; covered exempt LLCs file an attestation. Those authorized before January 1, 2026, must file by December 31, 2026. Those applying for authority on or after January 1, 2026, must file within 30 days of application. Annual filings are also required.

Planning note: Families using non-US LLCs in New York should determine their filing status and complete any outstanding disclosure or attestation before year-end. The Department of State currently accepts submissions by email.

Delaware corporate and LLC developments

- **Controlling stockholder safe harbors upheld.** In *Rutledge v. Clearway Energy Group LLC* (Del. February 27, 2026), the Delaware Supreme Court upheld the 2025 amendments to section 144 of the DGCL, including the challenged retroactive application. For most controller transactions, statutory fiduciary duty safe harbors are available through either approval by a properly empowered disinterested-director committee or an informed, uncoerced disinterested-stockholder vote; fairness remains an alternative. Going-private transactions generally require both safe harbor approvals or, alternatively, fairness. For these purposes, a "controller" may include a stockholder with at least one-third of the voting power who also exercises managerial authority.
- **2026 LLC Act amendments.** Effective August 1, 2026, House Bill 352 permits LLC agreements to establish series that are neither protected nor registered and clarifies that restrictions on a series' mergers, conversions and consolidations do not prevent the umbrella LLC from undertaking those transactions.

- **Entity maintenance costs increased.** Under House Bill 400, Delaware's annual tax for domestic and registered foreign LLCs and limited partnerships increased from $300 to $400, and the additional annual tax per registered series increased from $75 to $100. These annual tax changes apply beginning January 1, 2026; most other filing-fee changes took effect August 1, 2026.

Planning note: For Delaware family corporations contemplating controller loans, leases, recapitalizations or buyouts, structure section 144 approvals from the outset and document independence and disclosures. For LLCs and series structures, review governing agreements and maintenance budgets.

SEC beneficial ownership guidance

In September 2026, the Securities and Exchange Commission (SEC) updated its staff interpretations of Schedules 13D and 13G. Investors relying on Rule 13d-1(b) or (c) do not lose Schedule 13G eligibility solely by discussing voting at an issuer's invitation, speaking with a proxy solicitor or seeking clarification of issuer disclosures. However, pressuring management to make changes may still disqualify an investor. Interpretations issued in July also clarify that standard cash-settled total return swaps, without more, do not create beneficial ownership and address Schedule 13D disclosure by vehicles formed to fund an activist campaign at a specific issuer.

Planning note: Before relying on Schedule 13G, family offices and trusts with holdings exceeding 5% of a registered equity class should assess voting and investment authority, positions that may be aggregated and the purpose of any shareholder engagement.

Family businesses and non-competes

The Federal Trade Commission (FTC) formally removed its blocked nationwide non-compete rule effective February 12, 2026. Federal enforcement nevertheless continues. In June 2026, the FTC finalized an order barring Rollins, Inc. from enforcing non-competes against more than 18,000 workers. State restrictions continue to expand; for example, Washington's broad prohibition takes effect June 30, 2027, and will apply to existing agreements. Case-by-case federal scrutiny and evolving state law are particularly significant for family businesses that employ workers in multiple states.

Planning note: Family businesses should review restrictive covenants under applicable state law and reinforce confidentiality, trade secret and tailored non-solicitation protections.

Key things to know

- **CTA status today:** Domestic BOI reporting relief is now final agency policy, but foreign-formed US-registered entities can still have filing obligations.
- **NY LLCTA compliance:** Covered foreign-formed LLCs authorized before 2026 face a December 31, 2026 initial filing deadline.
- **Delaware:** Use section 144 conflict procedures for controller transactions, and account for increased entity taxes.
- **SEC and employment:** Reassess large public-stock positions and restrictive covenants under current guidance and applicable law.



The Great Wealth Transfer: Planning Priorities for Families

Over the next two decades, an estimated $84 trillion or more is expected to pass from current generations to the next through the Great Wealth Transfer. According to UBS's Global Wealth Report 2026[1], (1) global personal wealth grew 10.8% in 2025, more than double the rate of each of the two prior years, and (2) the United States now holds 35.7% of the world's personal wealth. The United States added more than 440,000 new millionaires in 2025, and more than four million US adults now have a net worth between $5 million and $100 million. UBS's chief economist also noted that the Great Wealth Transfer is attracting political attention and that governments may target this wealth in the future to reduce the cost of debt financing.

For owners of family-owned businesses, the implications of the Great Wealth Transfer are especially profound because the family business is often the single largest concentration of their net worth. Decisions made today about succession, governance and growth will determine whether the family legacy (and fortune) endures or erodes. This is true whether owners plan to keep the business in the family or to exit the business partially or fully. Beyond corporate considerations, owners who neglect estate and tax planning risk, among other things, exposing their families to significant estate taxes. In 2026, the federal estate, gift and GST tax exemption increased to $15 million per person. For owners whose business value exceeds that level, transfer tax planning remains central. Federal estate tax is generally due just nine months after death, which can force a "fire sale" of the business the owner spent a lifetime building. Whether the focus is business planning or estate planning, thoughtful planning conducted well in advance provides certainty, preserves value and optimizes outcomes.

[1] www.ubs.com/global/en/media/display-page-ndp/en-20260630-gwr-2026.html

With respect to business planning, owners generally follow one of four transition paths, each with its own set of planning considerations:

Intergenerational succession. This path transitions the business from the current owner to the next generation (G2) and works best when G2 is educated, motivated and eager to lead the business into the future. Its success depends on shared goals, early leadership development and clear governance. Families should have a transparent dialogue about the business and its future and agree on the "rules of the road" for business governance. Governance should be documented in clear operating or stockholders agreements, including mechanics for board composition and voting, as well as buy-sell provisions.

Minority investment. This path involves selling a minority stake in the business while retaining majority control. It allows an owner to take some chips off the table while bringing in growth capital, and it offers the potential for a "second bite at the apple" through a later partial or full sale. A sophisticated minority investor will require formal governance and reporting and will likely require board representation, which may necessitate an overhaul of the family business's back-office functions.

Sale to insiders. This path is a full sale of the business to the existing management team (for example, through a leveraged buyout) or to employees generally (for example, through an employee stock ownership plan (ESOP)). An insider sale preserves culture and continuity, aligns the team's incentives with the growth and success of the business and may offer a more streamlined diligence process. An ESOP can also offer attractive tax benefits. However, insider sales may introduce leverage that is challenging to manage after closing, and ESOPs in particular come with higher transaction costs and greater complexity.

Third-party sale. The final path is a *bona fide* sale of the business to a third-party buyer. Different types of buyers bring different pricing, deal structures and post-closing expectations, but this path allows the owner to fully transition ownership and potentially create generational wealth for the family. However, the business will then be entirely in the hands of a third party that may not share the selling family's culture or post-closing vision. In a full sale, it is also critical to understand the components of the purchase price, how the price might be reduced upon the occurrence of certain events and the owner's post-closing employment obligations.

Regardless of the transition path, the strongest wealth transfer results come from planning well before an expected liquidity event. Too often, owners begin estate planning only once a sale is being discussed, or even after a letter of intent is signed. Planning early allows transfers to be made at a lower (but appropriate) valuation than the later sale price will reflect, which shifts more value outside the owner's taxable estate.

A variety of techniques are available for wealth transfer planning. The optimal approach for an owner depends on the family's goals, the nature of the business and the expected timing of any liquidity event. Most plans combine several techniques, chosen based on expected growth, volatility, interest rates and liquidity. Examples include:

Recapitalization. A common first step is a tax-free recapitalization into voting and nonvoting equity. The senior generation keeps control of the business while nonvoting interests pass to G2, or to trusts for their benefit, at values that reflect discounts for lack of control and marketability.

Gifts. Family business owners may also make straightforward lifetime gifts to trusts for the benefit of family members, provided the trusts grant the beneficiaries *Crummey* withdrawal rights. Gifts up

to the federal gift tax annual exclusion amount ($19,000 per recipient in 2026) do not use any of the donor's lifetime exemption. Gifts in excess of that amount reduce the donor's lifetime gift and estate tax exemption, and once the exemption is fully used, additional gifts are subject to gift tax. As a result, gifts alone can be limited in impact in comparison to other, more sophisticated planning techniques.

GRATs. A GRAT can have a term as short as two years, and growth above the IRS hurdle rate (the section 7520 rate) passes to the remainder beneficiaries free of gift tax. GRATs work best for assets that are volatile or expected to appreciate quickly. However, the grantor must survive the GRAT term; otherwise, the grantor's estate includes the trust assets. GRATs are also generally poorly suited to GST planning, because GST exemption ordinarily cannot be allocated to a GRAT until the end of the estate tax inclusion period (ETIP). However, in recent Private Letter Ruling 20263302, the IRS applied the exception to the ETIP rules that applies where the possibility of estate inclusion is so remote as to be negligible (less than a 5% chance), which may permit an earlier GST exemption allocation in appropriate circumstances.

Sales to IDGTs. An IDGT is an irrevocable trust structured so that the IRS treats the grantor as the owner of the trust for income tax purposes, while the trust assets remain outside the grantor's gross estate for estate tax purposes. This strategy allows future business growth to pass to the next generation while the owner continues to pay the income tax.

In a typical transaction, the owner makes a seed gift to the IDGT, often at least 10% of the purchase price, and then sells nonvoting interests in the company to the IDGT, usually for a promissory note bearing interest at the AFR, other consideration or both. Because the owner and the IDGT are treated as a single taxpayer for income tax purposes, the IRS disregards the sale, and the owner recognizes no gain.

The owner remains liable for income tax on all trust income. Those tax payments are not taxable gifts, but they operate as additional tax-free transfers: each payment allows the trust assets to grow without reduction for income tax while reducing the owner's taxable estate. As a result, the trust retains all appreciation above the AFR free of transfer tax. If the tax burden becomes undesirable, the owner generally can terminate grantor trust status, for example by releasing a substitution power under section 675(4)(C). Where sufficient gift and GST exemption is available, IDGT planning is generally preferred for multigenerational goals.

Each technique carries valuation risk. Advance planning, carefully drafted formula transfers and well-supported independent appraisals can reduce, though not eliminate, that risk.

Planning note: Owners should treat succession and wealth transfer as a single, coordinated plan that begins years, not months, before any sale. That means putting foundational documents and plans in place well before a sale or other transaction. Experienced counsel and advisors can help analyze a family business owner's goals and build a playbook to maximize the value of an intergenerational transfer or sale while minimizing transaction costs and taxes.

For additional guidance to help business owners navigate these issues, see Katten's comprehensive guide, The Great Wealth Transfer: Strategies for Succession, Legacy and Wealth Generation.[2] To access the complimentary guide, click here.

[2] https://insight.katten.com/61/2451/landing-pages/channel-tracking---web.asp.



Planning Considerations for the Rest of 2026 and Into 2027

2026 is the first full year under the permanent transfer tax rules of OBBBA. The federal estate, gift and GST exemption is now $15,000,000 per individual and is indexed for inflation, increasing to $15.48 million in 2027. Unlike the increased exemption enacted by the 2017 Tax Cuts and Jobs Act (TCJA), this exemption has no scheduled sunset. Given the historically high level of the exemption, the focus for most families has shifted from federal transfer tax to income tax efficiency, basis step-up, trust flexibility and coordination with state estate taxes. Clients whose wealth approaches or exceeds the exemption still have an important opportunity to remove future appreciation from the taxable estate. All clients should confirm that existing dispositive provisions, tax elections and fiduciary structures continue to work as intended.

Year-end checklist for 2026

Reasons to give before the end of 2026	Reasons to wait until 2027
Uses the 2026 annual exclusion before it expires	The 2027 exemption and annual exclusion are higher after inflation indexing
Anticipated growth leaves the estate sooner	Uses separate tax years for intra-spousal transfers and spousal lifetime access trust (SLAT) funding
Protects against a future law that lowers the exemption	Leaves time to get qualified appraisals for assets that are hard to value
Clears the 0.5% charitable floor if 2026 is the "bunching" year	Better choice if 2027 AGI is expected to be higher, because the charitable deduction is worth more in a higher-income year

Review formula bequests

Many wills and revocable trusts use a formula clause that funds a credit shelter (bypass) trust with an amount equal to the available federal exemption, with the balance passing to a marital trust. With the exemption at $15 million in 2026 and $15.48 million in 2027, formulas drafted when exemptions were much lower can now produce unexpected results. The credit shelter trust may now receive far more than intended, and the marital share may shrink sharply or disappear entirely. That outcome may be inconsistent with the grantor's objectives or may not provide adequate support for the surviving spouse. This risk is heightened in blended families, where the two trusts often benefit different people, and in states that have decoupled their estate tax from the federal system, many of which set exemptions well below the federal level.

Families with multigenerational goals should also keep a key limitation in mind when reviewing formula plans: GST exemption is not portable. While a surviving spouse may use the deceased spouse's unused estate and gift tax exemption, any GST exemption the deceased spouse fails to allocate is lost at death. As a result, relying solely on portability risks wasting the first spouse's GST exemption.

A targeted review should consider building in post-mortem flexibility through tools such as disclaimer-based plans, QTIP-eligible trusts that preserve the executor's election and carefully drafted powers of appointment, so that the plan can be adjusted to the circumstances that exist at death. Because these choices also affect basis at each spouse's death, formula reviews should be coordinated with the income tax planning discussed below.

Income tax basis planning

With federal transfer tax exposure reduced for many clients, the tradeoff between lifetime gifts and income tax basis has become central. Low-basis assets held until death generally receive a step-up in basis, eliminating the built-in gain for heirs, whereas assets gifted during life retain the donor's carryover basis.

Revenue Ruling 2023-2 takes the position that assets held in a completed-gift grantor trust receive no section 1014 basis adjustment at the grantor's death unless they are included in the grantor's gross estate. Some commentators have long argued that grantor trust assets should receive a step-up because the grantor is treated as their owner for income tax purposes until death. That position is now being tested in Belmont Investments, LLC v. Commissioner, T.C. Docket No. 14039-25 (petition filed Oct. 3, 2025), in which a partnership made section 754 basis adjustments after the deaths of each spouse-grantor for interests held in irrevocable grantor trusts that were not included in their estates, disclosing the position on Form 8275; the IRS asserts underpayments of about $21 million.

Strategies to secure a basis step-up, where appropriate, include:

- Retaining low-basis assets in the taxable estate while gifting higher-basis assets.
- Using substitution powers, or buying assets back from grantor trusts, to "swap in" high-basis assets and "swap out" low-basis assets before death. Obtain appraisals for hard-to-value assets so that the swap does not create an inadvertent gift.
- Where a trust beneficiary has unused estate tax exemption, deliberately causing low-basis trust assets to be included in that beneficiary's estate. A general power of appointment, a properly structured distribution or the exercise of a limited power of appointment that triggers the Delaware tax trap can accomplish this, subject to careful asset-by-asset analysis and creditor considerations. The higher exemption makes this technique available to more beneficiaries.

- Using portability, especially together with QTIP planning, to preserve a second basis step-up at the surviving spouse's death.

These techniques require individualized modeling of basis profiles, expected appreciation, available exemption and liquidity. The table below summarizes the core tradeoff.

Factor	Lifetime gift	Asset kept until death
Recipient's basis	Same as the donor's (carryover)	Stepped up to value at death
Built-in gain	Passes to the recipient	Eliminated
Future growth	Removed from the estate	Stays in the estate
Assets in a completed-gift grantor trust	No step-up unless included in the grantor's estate (Rev. Rul. 2023-2)	N/A
Target client	Clients exposed to estate tax; high-basis or fast-growing assets	Clients not expected to owe estate tax; low-basis assets

Planning to utilize increased federal exemptions

Although OBBBA made the higher exemptions permanent, "permanent" in the tax code means only that there is no scheduled sunset; future legislation could still reduce the exemptions. For that reason, clients with significant transfer tax exposure may wish to accelerate strategic transfers. The higher exemption creates an opportunity to remove appreciating assets from the taxable estate permanently and to implement flexible, protective trust structures that support long-term succession goals.

For clients who now fall below the increased thresholds, the focus has shifted from minimizing estate tax to income tax efficiency and flexibility, including the basis planning discussed above. Asset-specific planning, such as for retirement accounts, has become an essential part of the overall plan for many families; for example, Roth conversions in lower-income years can leave heirs with assets that are free of income tax.

Gifting techniques

Lifetime gifts are tax-exclusive and remove future appreciation from the estate. They can also be combined with valuation discounts and trust structures. However, as discussed under income tax basis planning, gifted assets do not receive a basis step-up at death, so the transfer tax savings should be weighed against capital gains deferral 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:

SLATs. A SLAT provides access for a spouse while excluding the trust assets from both spouses' estates.

- To mitigate the risk that the reciprocal trust doctrine (under which interrelated trusts that spouses create for each other may be "uncrossed" and included in each grantor's estate) applies to paired SLATs, consider differing beneficiary classes, divergent powers of appointment, distinct termination dates and non-identical distribution standards.
- If one spouse must first transfer assets to the other to equalize estates, allow adequate time and substance between steps. For example, making intra-spousal transfers in late 2026 and funding the trust in 2027 keeps the steps in separate tax years, which is a conservative approach.

- Address what happens if the beneficiary spouse dies first or the couple divorces, since either event can cut off the grantor's indirect access to the trust. One possible solution is to authorize a trust protector to add the surviving spouse as a beneficiary of the trust created by the deceased spouse (if the surviving spouse is not already a member of the beneficiary class).

Dynasty trusts with GST exemption allocated. These trusts insulate assets from transfer tax over multiple generations and often provide robust long-term asset protection and governance benefits.

Other techniques that leverage the higher exemption include:

- Sales to grantor trusts and combined gift/sale structures to "freeze" values. Adequate disclosure on the gift tax return should be used to commence the statute of limitations, and qualified appraisals are essential for nonmarketable assets.
- Allocating more GST exemption to existing trusts that are not GST-exempt. In particular, confirm prior GST allocations and the inclusion ratios of existing trusts. For trusts that are only partially GST-exempt, consider allocating additional exemption or modifying the trust. The higher indexed exemption makes this easier to accomplish in 2027.
- Balancing spouses' estates to maximize use of both exemptions. Take care with transfers to a spouse who is not a US citizen: the unlimited marital deduction is unavailable, and the annual exclusion for those transfers is $194,000 for 2026 and $201,000 for 2027.
- GRATs and sales to IDGTs. Model these against current section 7520 rates and AFRs, as discussed under freeze planning below.

Technique	Main benefit	Main risk or planning point
SLAT	Spouse keeps access while assets stay out of both estates	Reciprocal trust doctrine; the beneficiary spouse dying first; divorce
Dynasty trust (with GST exemption allocated)	Shields assets from transfer tax across generations; asset protection	GST exemption must be allocated correctly
GRAT	"Zeroed-out" design avoids current gift tax; growth above the hurdle rate passes tax-free	Higher section 7520 rates reduce the benefit
Sale to an IDGT	No gain recognized on the sale; growth above the AFR builds up outside the estate	Rule of thumb: seed the trust with about 10% equity
Gift/sale combination	"Freezes" values	Needs adequate disclosure and qualified appraisals
Irrevocable life insurance trust (ILIT)	Keeps the death benefit out of the estate and provides liquidity	Premiums must be funded, for example through intrafamily loans

Techniques leveraging the higher exemption

Building on the gifting techniques above, the current environment of higher exemptions and higher interest rates favors a review and strategic rebalancing of the overall estate plan. Additional opportunities include using the increased exemption to forgive intrafamily notes, particularly where refinancing at a lower rate is no longer available; making late allocations of GST exemption to existing non-exempt trusts to improve their multigenerational efficiency; using sales and gifts to "freeze" asset values (see freeze planning below); reassessing life insurance needs and ownership; and balancing spouses' estates so that both spouses' exemptions can be fully used. Planners should also be mindful of obstacles that can undermine a plan, such as a rule against perpetuities in jurisdictions that still impose one, state estate and inheritance taxes, and transfers to non-US citizen spouses, for whom the unlimited marital deduction is unavailable and the annual exclusion is limited.

Trust income tax planning and the Medicare surtax

Non-grantor trusts reach the top 37% bracket at just $16,000 of taxable income in 2026. The 2027 threshold is $16,500. These trusts are also subject to the 3.8% net investment income tax (NIIT) once undistributed net investment income exceeds the trust threshold.

Before December 31, trustees should model whether to shift distributable net income (DNI) to beneficiaries in lower brackets. Targeted distributions can also reduce trust-level NIIT where beneficiaries are below their own NIIT thresholds. Trustees should also evaluate distribution standards, beneficiaries' tax profiles and whether capital gains can be included in DNI where state law and the trust instrument allow.

Under the 65-day rule, the trustee of a complex trust may elect on a timely filed Form 1041 to treat distributions made by March 6, 2027 as made in 2026, providing a post-year-end window to fine-tune 2026 trust income tax results.

Starting in 2026, OBBBA replaces the former Pease limitation with a reduction of itemized deductions equal to 2/37ths (approximately 5.4%) of the lesser of the itemized deductions or the amount by which income exceeds the start of the 37% bracket. Former section 68(e), which exempted trusts and estates from the limitation, was repealed for taxable years beginning after December 31, 2025. Because trusts and estates reach the 37% bracket at just $16,500 (for 2027) (compared with $768,700 for joint filers), the reduction is far more significant at the fiduciary level, and it may apply even if all of the trust's income is capital gain or qualified dividends taxed at 20%. The issue will first arise when trusts and estates file their 2026 income tax returns in 2027.

Distribution deductions and trust-specific expenses. Read literally, the statute treats expenses unique to trusts and estates and distribution deductions under sections 651 and 661 as "itemized deductions" subject to the reduction. Applied to distribution deductions, this would tax about 5.4% of distributed income twice: once to the beneficiary and again to the trust. For example, a trust that distributes all $2 million of its income would deduct only about $1,892,000, so roughly $108,000 would be taxed to both the trust and the beneficiary, producing about $40,000 of additional tax. Treasury Regulation section 1.67-4 states that these deductions are not itemized deductions, and the IRS is bound by its regulations, but the regulation is issued under section 67 and its reach for section 68 purposes is uncertain. The IRS is unlikely to impose double tax on distributed income and may address the issue in the 2026 Form 1041 instructions, but it is more likely to apply the reduction to trust-specific administration expenses, where no double tax results.

Charitable deduction. The section 642(c) charitable deduction for trusts and estates is listed as an itemized deduction in section 67(b), so the reduction appears to apply. For example, a non-grantor trust that pays $600,000 of gross income to charity would lose about $30,000 of its deduction. For an estate passing entirely to charity, any income tax paid from the charitable share could reduce the set-aside deduction and create a circular computation; *Hartwick College v. United States*, 801 F.2d 608 (2d Cir. 1986), rejected a similar circular computation, but whether it applies here is unclear.

Planning note: Absent guidance, return preparers will need to choose a reporting position for 2026 returns. Many advisors expect to wait and see whether the 2026 Form 1041 instructions resolve the distribution deduction issue. Where the trust instrument permits (or can be amended to permit), a trustee may grant a current beneficiary an annual withdrawal right over an amount equal to the trust's anticipated income, so that income is taxed directly to the beneficiary under section 678 and no double tax arises. Because the 2/37ths reduction also applies to the section 691(c) deduction, accelerating income in respect of a decedent before death may be more attractive. Trustees should evaluate the reduction's effect on charitable distributions before planning for 2027.

Freeze planning in the current environment

Higher exemptions have not made the traditional estate freeze techniques summarized above obsolete. They still serve goals that go beyond transfer tax savings: preserving wealth, protecting against creditors, shifting income and structuring family governance. The current interest rate environment does, however, affect the efficiency of these techniques. GRATs, sales to IDGTs and intrafamily loans move wealth only to the extent the transferred assets outperform a statutory benchmark. For GRATs, that benchmark is the section 7520 rate. For sales and loans, it is the AFR. Both rates remain well above their 2020–2021 lows and show no sign of retreating, so the hurdle is higher. Assets with strong growth prospects, such as business interests ahead of a liquidity event or concentrated equity positions, can still clear it by a wide margin. If rates later fall, transactions completed now will still have moved all appreciation above the benchmark out of the estate.

GRATs remain effective because the grantor can "zero them out" so that the transfer uses little or no gift tax exemption, and any growth above the hurdle rate passes to the remainder beneficiaries free of transfer tax. This makes them especially useful for clients who have already used their exemption or prefer to preserve it.

Sales to IDGTs remain a cornerstone of freeze planning. Because the trust is a grantor trust, the grantor recognizes no gain on the sale and no income on the note payments, and appreciation above the AFR builds up outside the estate. With higher AFRs, success depends more on the assets' expected performance and on valuation discounts that can be supported. Larger exemptions make a larger gift component in the transaction more practical, which reduces reliance on interest-bearing notes.

Pairing these techniques with others, such as valuation discounts or the buyback and asset swap strategies described under income tax basis planning, can create additional opportunities.

Higher rates also make some techniques more attractive than they were when rates were low. These strategies value a retained or charitable interest using the section 7520 rate, so a higher rate shifts value toward that interest and reduces the taxable gift or increases the charitable deduction.

QPRTs. A QPRT allows a grantor to transfer a primary or vacation residence to a trust while retaining the right to live there for a term of years. The taxable gift is the value of the remainder, and as the section 7520 rate rises, the grantor's retained term interest is worth more and the remainder (and therefore the gift) is worth less. Appreciation in the residence after the transfer passes to the

remainder beneficiaries free of transfer tax. As with a GRAT, the grantor must survive the term, or the residence is included in the estate. A grantor who wishes to continue living in the residence after the term must pay fair market rent, which can further reduce the estate.

Charitable remainder trusts. A charitable remainder trust (CRAT) pays the grantor (or other noncharitable beneficiaries) a fixed annuity for life or a term of up to 20 years, with the remainder passing to charity. A higher section 7520 rate reduces the value of the annuity, increasing the grantor's charitable income tax deduction and making it easier to satisfy the requirements that the charitable remainder equal at least 10% of the initial value and that the probability of exhausting the trust not exceed 5%. A CRAT can also be used to sell a low-basis asset, such as a business interest before a liquidity event, without immediate recognition of gain at the trust level, spreading the income tax over the payment term.

Charitable planning

In addition to the 2/37th (approximately 5.40%) reduction to itemized deductions of individuals with income above the 37% tax bracket threshold, 2026 is the first year of the 0.5% AGI floor on individual itemized charitable deductions. Consider bunching contributions into alternating years, for example through a donor-advised fund, to clear the floor efficiently, and compare front-loading gifts in 2026 with deferring them to 2027 based on each client's expected AGI.

Qualified Charitable Distributions (QCDs) remain a compelling tool for clients age 70½ and older to satisfy charitable intent and reduce taxable income outside the itemized deduction limitations. For clients age 73 and older, QCDs also count toward annual required minimum distributions (RMDs). The maximum QCD is $111,000 for 2026 and is estimated to be $114,000 for 2027.

Starting in 2026, non-itemizers can also take a new above-the-line charitable deduction of up to $1,000 for single filers or $2,000 for joint filers. This deduction is in addition to QCDs. Clients who take the standard deduction should make qualifying cash gifts before year-end.

For charitable gifts made through non-grantor trusts, account for the 2/37ths reduction described under trust income tax planning above.

Summary: review and reevaluate

OBBBA set the federal estate, gift and GST exemption at $15 million per person for 2026, indexed for inflation. As a result, most estate plans warrant review. For many families, the principal concern is no longer federal transfer tax but income tax efficiency, basis step-up, trust flexibility and state estate tax.

Formula bequests drafted when exemptions were lower may now put far more into the credit shelter trust than intended. That can shrink the marital share, which matters most in blended families and in states with their own estate tax. Because GST exemption is not portable, relying on portability alone can waste the first spouse's GST exemption.

Clients with significant estate tax exposure should still consider removing appreciating assets from the estate soon, through techniques such as SLATs, dynasty trusts, GRATs and sales to IDGTs, since future legislation could lower the exemption. Although higher section 7520 rates and AFRs raise the hurdle, freeze techniques remain effective for assets with strong growth prospects. Clients below the threshold may benefit more from retaining low-basis assets until death so that their heirs receive a basis step-up.



Select Federal Caselaw Updates

Below are key federal caselaw developments from late 2025 and 2026 with practical implications for private wealth clients. These cases again underscore the importance of careful documentation, timely compliance and advance planning in the estate, gift and charitable tax landscape.

Lewis v. Commissioner, T.C. Memo. 2026-58 (July 20, 2026)

The decedent's estate passed under her will to a QTIP trust that paid all income to her surviving spouse, who also held a testamentary limited power of appointment. Absent exercise of the power, the assets would pass equally to their two children, and, on an early termination, each beneficiary was entitled to assets equal in value to his or her interest. In 2016, all three agreed to terminate the trust and distribute its $117,604,143 of assets to the surviving spouse. In *McDougall v. Commissioner*, 163 T.C. 112 (2024), the Tax Court held that the children made taxable gifts. In a later order, the court ruled that each gift equaled what that child would have received had the trust simply terminated early. In Lewis, the Tax Court valued each gift at $35,141,321.

In valuing the gifts, the court addressed three questions:

Effect of the power of appointment. The court declined to reduce the gifts on the ground that the surviving spouse could have used his power of appointment to redirect the assets. Under state law, a trustee dividing assets on early termination must follow the decedent's intent, and nothing in her will suggested she wanted the surviving spouse to receive everything. A trustee therefore would have disregarded the power and divided the assets equally between the children.

Hypothetical gift tax reimbursement. The court did reduce the gifts by a hypothetical reimbursement obligation. Had the children received their shares under an ordinary early termination, the surviving spouse would have owed gift tax on the transfer and could have recovered the tax from the children. The court reduced each child's gift by that hypothetical reimbursement obligation, even though no gift tax was actually paid.

Actuarial tables. Because the children's entitlements on an early termination depended on the will and state law, the section 7520 tables did not control the calculation. Separately, when assessing the surviving spouse's income interest, the court refused to treat the 85-year-old surviving spouse as if he were five years younger, because high income and "above-average health" do not justify that adjustment.

Planning note: Terminating a QTIP trust early can trigger multimillion-dollar taxable gifts by the remainder beneficiaries. Families should model gift tax exposure before signing any termination agreement and recognize that the trust's termination provisions and state law directly affect valuation.

Estate of Anne Milner Fields v. Commissioner, No. 25-60403 (5th Cir. June 8, 2026)

The decedent had Alzheimer's disease, and her great-nephew managed her finances as agent under a power of attorney. In May 2016, during a period of rapid decline in the decedent's health, an attorney formed an FLP and emailed an appraiser about "obtaining a deeper discount." The agent then signed the partnership agreement individually and on behalf of the decedent, making the decedent a 99% limited partner and the agent's own entity the general partner. The agent transferred about $17 million of the decedent's assets to the FLP, leaving the decedent only about $2.15 million outside it. The decedent died in June 2016. The estate reported the decedent's FLP interest at a discounted $10,877,000, but the Tax Court required inclusion of the full value under section 2036(a). The Fifth Circuit affirmed.

The section 2036(a) exception for a *bona fide* sale for adequate and full consideration did not apply. The court examined whether the following asserted non-tax purposes motivated the transfer and concluded that none did:

Fixing problems with the power of attorney. The estate claimed the successor agents were reluctant to serve and that financial institutions would not honor the agent's authority. However, the decedent chose the successor agents while of sound mind, the FLP's structure would not have solved any succession problem, and the agent moved $17 million using the power of attorney alone.

Streamlining management. None of the assets required active management, and pooling unrelated assets from a single contributor offered little benefit.

Preventing elder abuse. The cited incidents occurred years before the FLP was created and had already been addressed.

The court also found the circumstances "troublesome" due to the compressed timeline, the "deeper discount" email and the depletion of the decedent's liquid assets, which left the estate unable to pay the decedent's bequests without FLP distributions, all suggested the claimed purposes were after-the-fact justifications.

Planning note: FLPs formed or funded near death, particularly for an incapacitated transferor with a discount-focused planning record, are highly vulnerable under section 2036(a). Families should form and fund FLPs well in advance, document genuine non-tax purposes and retain sufficient assets outside the entity for personal needs.

Estate of Spenlinhauer v. Commissioner, T.C. Memo. 2025-134 (Dec. 30, 2025)

The decedent's son served as executor and residuary beneficiary of her estate. He obtained an extension to file the estate tax return but did not file by the extended due date and transferred all remaining estate assets to himself. Nearly 11 years after the extended due date, the son filed a return that elected the alternate valuation date, excluded a qualified conservation easement and reported different values for real estate, business interests and promissory notes. The IRS determined an estate tax deficiency against the estate and asserted transferee liability against the son, and the Tax Court largely sided with the IRS:

Late elections. The alternate valuation date election was invalid because it was made more than one year after the extended due date. The conservation easement exclusion also failed because it had to be elected on a return filed by the extended due date, and the court identified other defects in that claim.

Valuation. The court rejected the son's real estate values, which were based on local property tax assessments, and adopted the IRS appraiser's values based on comparable sales and income. It valued the decedent's business interest using the company's sale price shortly after her death.

Estate inclusion. The decedent deeded her residence to her son for a promissory note and lived there until her death. A few months before she died, at age 95, the note was amended to cancel the remaining debt at her death. Finding no documented payments and no intent to create a debtor-creditor relationship, and noting that intrafamily self-canceling notes are presumed to be gifts, the court included the residence in her gross estate under section 2036(a)(1).

Transferee liability. The son was personally liable as a transferee under state law because he distributed all remaining estate property to himself, leaving the estate insolvent before the IRS's claim was resolved.

Planning note: A late estate tax return (Form 706) and undocumented positions carry severe consequences. Valuation elections depend on timely filing. Intrafamily sales for notes, particularly self-canceling notes, must be documented and administered as genuine debt, or the property may be pulled back into the estate under section 2036. Executor-beneficiaries should not distribute assets until estate tax liabilities are resolved, or they risk personal transferee liability.

Sitaraman Jagannath v. Commissioner, T.C. Memo. 2026-92 (Sept. 24, 2026)

The taxpayer founded and served as president of a section 501(c)(3) public charity and was the sole member of an LLC that was disregarded for federal income tax purposes. In April 2016, $590,000 was withdrawn over the counter from the charity's account. Eleven days later, the taxpayer signed an interest-free $590,000 promissory note on behalf of both the charity, as lender, and the LLC, as borrower, but the LLC's accounts never reflected receipt of the funds. The charity's 2016 and 2017 Forms 990 reported a $590,000 loan to an officer, but omitted required information about the transaction. The Tax Court held that the taxpayer engaged in an excess benefit transaction under section 4958. Because he did not correct it within the taxable period, the court sustained a 25% first-tier tax of $147,500 and a 200% second-tier tax of $1,180,000.

The taxpayer, a disqualified person, documented both sides of the transfer, possessed the charity's records and offered no credible explanation for the withdrawal. The charity received no consideration. Relying on contemporaneous bank records and Forms 990 rather than his self-serving testimony, the court rejected the taxpayer's defenses:

Repayment. The taxpayer claimed that a $600,000 wire the charity received in December 2016 repaid the withdrawal. The court disagreed, noting that the withdrawal came from the charity's money market account while the wire went into a different checking account, and that the amounts did not match.

Real estate planning. The taxpayer testified that the note was not an actual transfer but part of an anticipated plan to buy a building for another nonprofit, which his LLC helped fund in 2018. The court found it far more reasonable to conclude that the note, signed 11 days after a $590,000 withdrawal, reflected that withdrawal. The 2018 withdrawal of $536,919.89 occurred more than two years later and appeared to be an independent transaction.

Planning note: Founders of family-controlled charities should avoid insider loans. Any unavoidable insider transaction should be independently approved, documented on commercial terms and reported consistently on Form 990, and any excess benefit should be corrected promptly to avoid the second-tier tax.

Cases to watch

Palermo. The taxpayer preemptively took the position that a residence previously transferred to a QPRT was includible in the gross estate because below-market rent was being paid for its continued use, in an apparent attempt to undo the QPRT and obtain a basis step-up at death. *Palermo v. United States*, No. 24-22514-Civ-BECERRA/TORRES, 2026 WL 2475168 (S.D. Fla. Aug. 17, 2026).

Elcan. This case involves a GRATs in which the grantor swapped promissory notes into the GRATS and then used the note to pay the GRAT annuity. The IRS argues that using grantor promissory notes to pay GRAT annuities violates Treasury regulations and retroactively disqualifies the trusts, making the entire initial transfer a taxable gift. The taxpayers contend that canceling a pre-existing note held as a trust asset is legally distinct from issuing a new debt instrument to pay an annuity. *Elcan v. Commissioner*, Docket No. 3405-25.

Planning note: Both cases test the limits of techniques discussed above, including basis step-up strategies and asset swaps with grantor trusts, and we will continue to monitor them.

Practice pointers

- **QTIP terminations:** Model the gift tax consequences for remainder beneficiaries before agreeing to terminate a QTIP trust early.
- **FLPs:** Form and fund FLPs well before death, document non-tax purposes and leave the transferor sufficient assets outside the entity.
- **Estate tax returns:** File Form 706 on time to preserve elections, and do not distribute estate assets until tax liabilities are resolved.
- **Intrafamily notes:** Document and administer notes, especially self-canceling notes, as bona fide debt.
- **Family charities:** Avoid insider transactions, and correct any excess benefit promptly.



State of the States

This section surveys notable 2026 developments in trusts and estates across key jurisdictions, highlighting enacted legislation, pending proposals and consequential court decisions with practical planning implications.

Connecticut

Connecticut did not enact any new trusts and estates legislation in 2026. The following bills were proposed in 2026 but none were enacted:

- H.B. No. 5266, which would adopt the Uniform Real Property Transfer on Death Act in Connecticut.
- H.B. No. 5152, which would require the collection of identifying information from nonresident owners of residential property.
- S.B. No. 261, which would facilitate the transfer of a motor vehicle registration to a named beneficiary upon the death of the owner of the vehicle.

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 ($15 million, for decedents dying in 2026).

New Jersey

At the end of 2025, New Jersey readopted and amended its inheritance tax regulations. Notable changes include the following:

- The regulations expanded the definition of Class A beneficiaries to include nonbiological children conceived through any means of assisted reproduction.
- The regulations clarify that the Division of Taxation requires an Inheritance Tax Waiver for transfers to beneficiaries from all financial institutions, rather than only those that qualify as banking institutions, trust companies and deposit companies.
- The regulations further clarify that the law allows no inheritance tax deduction for executor commissions related to the transfer of real estate that was specifically devised to a beneficiary.

The following bills were proposed in New Jersey in 2026 and are pending:

- Several bills that would narrow the transfer inheritance tax, including S985 (exempting transfers of residential real property between family members), S2427 (exempting all transfers to lineal relatives), S1867/A1523 (eliminating the tax on a decedent's brothers and sisters) and A316/S3858 (eliminating the tax on step-grandchildren).
- A3545, which would realign the transfer inheritance tax payment due date to coincide with the due date of the federal estate tax payment.
- A1819, which would establish the Uniform Real Property Transfer on Death Act in New Jersey.
- A4736, which would authorize a trustee, in certain circumstances, to terminate service without filing a formal accounting with the court or obtaining release agreements from beneficiaries.

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 inheritance tax applies to New Jersey resident decedents and nonresident 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 most notable 2026 development in New York is the enactment of the New York City non-primary residence property surcharge. The surcharge, more commonly known as the "pied-à-terre tax," was enacted as part of the state budget and became effective July 1, 2026, applying retroactively to obligations arising from the start of the year. The new tax applies to family homes (Class 1 properties) with a market value of at least $5 million and condos or co-ops (Class 2 properties) with a market value of at least $1 million. Properties used as a primary residence are exempt from the tax; however, the property owner is responsible for filing an exemption request demonstrating that the property qualifies.

On September 29, 2026, a state court ruled that the rollout of the pied-à-terre tax was unlawful because it improperly shifted the burden of proof onto homeowners. The ruling did not invalidate the tax itself, only the City's implementation of it. The City immediately appealed, and the rollout has continued in the meantime. Several other legal challenges to the tax remain pending. The deadline for

requesting an exemption from the tax was October 13, 2026. Absent extension, the tax is set to sunset on June 30, 2031.

Other New York legislation enacted or taking effect in 2026 includes the following:

- Governor Hochul signed the Medical Aid in Dying Act (A136/S138) on February 6, 2026, and it became effective August 6, 2026. The act allows a terminally ill, mentally capable adult with a prognosis of six months or less to live to request, obtain and decide whether to ingest medication to end his or her life peacefully. Additional safeguards include a five-day waiting period between the writing and filling of the prescription, an audio/video recording of the patient's oral request (which may not be witnessed by anyone who could benefit financially from the patient's death), a mental health evaluation and an initial in-person examination by a physician.
- The NY LLCTA became effective January 1, 2026. As discussed above under "Select updates impacting family business owners," LLCs formed outside the United States and authorized to do business in New York must report certain beneficial ownership information to the New York Department of State. For such LLCs authorized to do business in New York on or after January 1, 2026, the filing deadline is 30 days after filing the application for a Certificate of Authority. For such LLCs authorized to do business in New York prior to January 1, 2026, the filing deadline is December 31, 2026.
- S8373, which became effective January 20, 2026, reduces and standardizes commissions for trustees of charitable trusts. The annual commissions for a trustee of a charitable trust are now 80% of the rates applicable to a non-charitable trust up to the principal value of $20 million and are further reduced to 50% for any portion of a charitable trust exceeding $20 million in principal value. Such commissions are payable one-third from income and two-thirds from the principal of the trust, unless the trust instrument explicitly states otherwise. Trustees of trusts in existence before the effective date may continue using the prior method of computing commissions through December 31, 2026.

Planning note: New York has a state estate tax that applies to New York resident decedents and nonresident decedents who own real or tangible personal property located in the state of New York. In 2026, New York's estate tax exemption amount is $7,350,000, with this amount set to be adjusted for inflation in 2027. Additionally, unlike with the federal estate tax exemption, a New York decedent will completely lose the benefit of the exemption amount if the decedent's gross estate exceeds 105% of the exemption amount. While New York does not have a state gift tax, taxable gifts made within three years of death are brought back into a New York decedent's estate for the purpose of calculating the decedent's gross estate. The three-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

In 2026, Illinois continued its incremental approach to probate, trust and fiduciary reform. The spring session produced legislation, effective January 1, 2027, that limits the grounds on which third parties may refuse to accept a power of attorney, establishes procedures for charitable beneficiaries to collect nonprobate assets and strengthens supported decision-making as an alternative to guardianship. Illinois also decoupled from the federal qualified small business stock (QSBS) gain exclusion. Efforts to raise the Illinois estate tax exclusion amount stalled yet again, and the appellate courts issued several decisions with practical implications for will execution, spousal rights, intestate succession and estate litigation.

- **Third-Party Acceptance of Powers of Attorney for Property (effective January 1, 2027).** Public Act 104-0609 (HB 4462) amends Section 2-8 of the Illinois Power of Attorney Act (755 ILCS 45/2-8) to remove two grounds that were previously considered "reasonable cause" for a third party to refuse to honor a power of attorney for property: (i) the agent's refusal to provide a copy of the original power of attorney, certified by an attorney, a court, or a governmental entity as valid; and (ii) the refusal of the principal's attorney to certify that the power of attorney is valid. However, a third party may still require that an agent provide an affidavit or an Agent's Certification and Acceptance of Authority, and all other current statutory grounds for refusal (including suspected financial exploitation) remain unchanged. In practice, institutions will no longer be able to condition acceptance on attorney validity certificates, potentially reducing delays for agents managing accounts on behalf of incapacitated clients. Agents should nonetheless be prepared to deliver a properly executed Agent's Certification and Acceptance of Authority on request.
- **Charitable Organization Beneficiary Act (effective January 1, 2027).** Public Act 104-0481 (HB 4206) creates the Charitable Organization Beneficiary Act, which establishes a process meant to ensure that charitable organizations actually receive assets that are left to them through nonprobate beneficiary designations (such as payable-on-death accounts and retirement plans). Holders of such property must notify the charitable organization within 45 business days after verifying the owner's death. They must also provide key details, including the exact beneficiary designation language, the name of the owner of the property and a description of the property. For bad-faith noncompliance, courts may impose up to a $10,000 penalty, while holders acting in good faith receive liability protection. Charitably inclined clients who rely on beneficiary designations should confirm that their designation language precisely identifies the intended organization and intended gift; upon the client's death, holders will be required to share the exact designation language with the charity.
- **Supported Decision-Making Revisions (effective January 1, 2027).** Public Act 104-0663 (HB 5365) amends the Supported Decision-Making Act (755 ILCS 9/), which permits adults with disabilities to retain decision-making authority with the assistance of chosen supporters rather than through the appointment of a guardian. The amendments provide that the execution of such a supported decision-making agreement may not be used as evidence of capacity or incapacity in any civil or criminal proceeding (even though the existence of an agreement may still be entered into evidence), and that supporters must complete training developed by the Guardianship and Advocacy Commission within 45 days of signing the consent to act. Families planning for a beneficiary with disabilities should consider whether a supported decision-making agreement, coordinated with powers of attorney and a supplemental needs trust, would be a better alternative to a guardianship proceeding.
- **Small Estate Affidavit – Excluded Motor Vehicles Revisions (effective January 1, 2027).** Public Act 104-0624 (SB 2704) amends the Small Estates Article of the Probate Act of 1975 (755 ILCS 5/25-1) to clarify that certain vehicles (including motor homes and other vehicles used as living quarters, non-self-propelled vehicles, commercial vehicles, implements of husbandry and buses) are not considered "excluded motor vehicles" and therefore will count toward an individual's $150,000 small estate threshold (which took effect January 1, 2026). The practical effect of this clarification is that, for decedents dying on or after January 1, 2027, the value of these vehicles must be included in the gross value of the personal estate reported on the small estate affidavit, rather than being disregarded and transferred separately. Practitioners should confirm that the

valuation on any affidavit includes any such vehicles, because their inclusion could push an estate above the $150,000 threshold and require formal probate administration. For clients who own recreational vehicles, commercial vehicles or farm equipment in their individual names, this change is yet another reason to consider titling such assets in a revocable trust or, where available, using transfer-on-death vehicle titles.

- **Decoupling From Federal QSBS Exclusion (taxable years ending on or after December 31, 2026).** Public Act 104-0468 (SB 3019), signed June 16, 2026, requires individuals, trusts, estates and partnerships to add back to Illinois base income any gain excluded from federal gross income under section 1202 of the Internal Revenue Code. The addback applies to taxable years ending on or after December 31, 2026, and therefore applies to the full 2026 taxable year for calendar-year taxpayers. Founders and investors anticipating a QSBS sale should model the Illinois tax cost. Families using non-grantor trusts to multiply the federal exclusion should evaluate whether Illinois can tax the gain recognized by each trust.
- **Illinois Estate Tax Reform Stalls Again (introduced, not enacted).** Several bills introduced in the 104th General Assembly would have raised the Illinois estate tax exclusion amount, which remains $4 million per decedent without portability. SB 3847 would have increased the exclusion amount to $8 million for persons dying on or after January 1, 2027, indexed for inflation beginning in 2028, and would have permitted use of a deceased spouse's unused exclusion amount. SB 3787 would have tied the Illinois exclusion amount to the federal applicable exclusion amount under section 2010 for persons dying on or after January 1, 2027, and HB 2601 also would have increased the exclusion amount to $8 million for persons dying on or after January 1, 2026. However, none of these bills advanced beyond committee, and SB 3847 and SB 3787 remained in the Senate Assignments Committee when the spring session adjourned. Because the federal exemption is $15 million per individual for 2026 and will be indexed for inflation beginning in 2027, the gap between federal and Illinois exposure continues to widen, and Illinois residents (as well as nonresidents owning Illinois-situs property) should continue to plan their estates around this $4 million threshold.

KEY APPELLATE DECISIONS

- **Remote witnessing and substantial compliance:** *In re Estate of Felner*, 2026 IL App (1st) 251143. An Illinois Appellate Court affirmed the admission to probate of a will witnessed remotely by audio-video communication during the COVID-19 emergency declaration. The petitioners argued that the will was not executed in substantial compliance with the Electronic Wills, Electronic Estate Planning Documents, and Remote Witnesses Act (755 ILCS 6/1-1 et seq.). Applying a substantial-compliance framework, however, the court held that the essential purposes of the Act were achieved where the remote execution was sufficiently documented and observed to provide a reliable basis for determining proper execution, and there was no evidence of a deviation that compromised the identity of the participants, the authenticity of the execution or the integrity of the instrument. This decision provides comfort for wills remotely witnessed during the pandemic, but practitioners should continue to document remote executions carefully, as the court's analysis turned on the quality of that documentation.
- **Renunciation and out-of-state real property:** *In re Estate of Kohnen*, 2026 IL App (2nd) 250453. A surviving spouse who renounced her late husband's will claimed a one-third share of his estate under Section 2-8(a) of the Probate Act (755 ILCS 5/2-8(a)). The trial court ruled that her spousal share included real property located in Arizona. On appeal, the decedent's children

argued, relying on In re Estate of Pericles, that out-of-state real property is not part of the "entire estate" used to compute a renouncing spouse's share, and the Appellate Court reversed and remanded, holding that out-of-state real property is excluded from the renouncing spouse's share. For clients with real property in multiple states, the decision is a reminder that the situs of real estate can materially affect a surviving spouse's statutory rights, and that ancillary probate and elective share regimes in other jurisdictions must be considered in coordinating the overall plan.

- **Equitable adoption claims narrowly applied:** *In re Estate of Hegner*, 2026 IL App (1st) 240738. A claimant who had been raised by the decedent sought a share of the decedent's intestate estate under the doctrine of equitable adoption. An Illinois Appellate Court affirmed judgment for the decedent's heirs, holding that equitable adoption is an equitable remedy carrying no right to a jury trial, that the Dead-Man's Act properly barred the claimant's testimony regarding his conversations with the decedent, and that a successful claimant does not become an heir but may only receive a share of the estate as an equitable remedy. The decision underscores that informal family relationships, however close, are no substitute for a will, a trust or a completed adoption, and that successful equitable adoption claims remain rare in Illinois.
- **Testamentary capacity and undue influence:** *In re Estate of Ticknor*, 2026 IL App (5th) 250501. The Appellate Court affirmed a bench-trial judgment rejecting a will contest brought by the decedent's only child, whom the will expressly disinherited in favor of the executrix and her daughter. The court held that the son failed to overcome the presumption of testamentary capacity: the decedent's "bizarre" accusations against his son did not amount to an insane delusion, given that the decedent was independently running his business and managing his finances when he executed the will. The court also held that the son failed to prove undue influence because the decedent was not dependent on the executrix, notwithstanding her status as a fiduciary under the powers of attorney. The case illustrates the value of an express disinheritance clause and of evidence that the testator was managing his own affairs at execution where a client departs from a natural-objects-of-bounty plan.
- **Attorney-client privilege in trust construction actions:** *Dakota R. Mills Longenecker v. Deborah K. Perlita Denker, et al.*, 2026 IL App (4th) 250820-U. An Illinois Appellate Court held that the testamentary exception to the attorney-client privilege, which permits disclosure of a decedent's communications with counsel in actions contesting the validity of a will or trust, does not extend to disputes over the construction or interpretation of wills or trusts. As a result, the drafting attorney's estate planning notes were not discoverable in an action seeking to construe the decedent's trust. Although issued as a nonprecedential Rule 23 order, the decision reinforces the importance of clear drafting, as extrinsic evidence of intent from the planning file may be unavailable in a construction proceeding.

Planning note: Illinois imposes an estate tax on estates exceeding the $4 million exclusion amount, without portability, on residents and on nonresidents owning real or tangible personal property located in Illinois. Illinois does not impose a gift tax. With 2026 reform efforts having stalled, married couples with combined estates above $4 million should confirm that their plans preserve the first spouse's Illinois exclusion, and clients should review powers of attorney, beneficiary designations and planning for family members with disabilities in light of the legislation taking effect January 1, 2027.

Florida

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

AMENDMENT 3: HOMESTEAD EXEMPTION INCREASE AND YEAR-END DEADLINE FOR NEW RESIDENTS

On November 3, 2026, Florida voters adopted Amendment 3 to the Florida Constitution, which materially changes how property taxes are imposed. The non-school homestead exemption will increase from $50,000 to $150,000 in 2027 and to $250,000 in 2028, with annual inflation adjustments beginning in 2029. The existing $25,000 exemption for school-district taxes remains unchanged, and counties and municipalities may offer even larger exemptions, potentially eliminating their local property tax on qualifying homesteads. The increased exemption is immediately available only to homeowners (or future homeowners) who establish Florida permanent residency by December 31, 2026. A person who becomes a Florida resident on or after January 1, 2027, will receive only the existing $50,000 non-school exemption for the first four years of residency and will qualify for the larger exemption in the fifth year. Owning a Florida home before year-end is not the determining factor: a client who owns a Florida vacation home but remains domiciled elsewhere until after January 1, 2027, will be subject to the waiting period, while a client who becomes a Florida resident before December 31, 2026, should qualify for the increased exemption on a homestead acquired later. Amendment 3 also reduces the cap on annual assessment increases for non-homestead residential property, such as vacation homes and rental properties, from 10% to 5% per year.

Planning note: Clients who have been considering a change of domicile to Florida should evaluate accelerating the move into 2026. The taxpayer bears the burden of proving that domicile changed before the deadline, and it is not yet known how strictly property appraisers will enforce it. At a minimum, clients should obtain a Florida driver's license, register to vote and record a Declaration of Domicile before December 31, 2026, and should take broader steps to evidence the move, recognizing that a change of domicile for property tax purposes may also be scrutinized by the client's former state for income and estate tax purposes.

NONJUDICIAL SETTLEMENT AND DISCHARGE OF A TRUSTEE

- The Florida Trust Code was amended to authorize a qualifying trustee to settle the trustee's accounts and be discharged without judicial intervention. A trustee who is in substantial compliance with the duty to inform and account under the Florida Trust Code may seek nonjudicial discharge when the trust terminates or when the trustee resigns or is removed.
- Specifically, a qualifying trustee seeking nonjudicial discharge must send a trust disclosure document to the qualified beneficiaries of the trust and to the co-trustees of the trust. The trust disclosure document must contain the following information:
  - The name, mailing address, telephone number and email address of the trustee seeking discharge;
  - A plan of distribution that includes:
    - A schedule of the assets reasonably anticipated to be distributed by the trustee;
    - The amount of any debts, expenses and taxes to be paid; and
    - Any reasonable reserve to be held by the trustee;

  - If the trustee's duty to account has not been waived, a trust accounting in the form provided for by the Florida Trust Code;
  - A statement that the trust has terminated or that the trustee has resigned or has been removed; and
  - Statutory language regarding the qualified beneficiary's right to object to the requested relief and to consult with an attorney.
- Each recipient of the trust disclosure document has 60 days to object to the relief being sought. If no written objection is received within 60 days after receipt of the trust disclosure document, the trustee is discharged from all liability and claims arising out of any matter disclosed in the trust disclosure document.

Planning note: This procedure provides trustees with an alternative to a judicial accounting when a trust is terminating or a trustee is ceasing to serve.

FEE-SHIFTING MECHANISM FOR PERSONAL REPRESENTATIVES IN ENFORCEMENT PROCEEDINGS

- Effective July 1, 2026, a new section of the Florida Probate Code creates a fee-shifting mechanism in proceedings brought to enforce a personal representative's authority.
- Previously, when a personal representative encountered banks, entities or beneficiaries who refused to recognize the personal representative's authority, obtaining compliance could require court intervention, with its attendant costs.
- Under the new provision, when a personal representative prevails in such an enforcement proceeding, the court must award taxable costs and attorney's fees to the personal representative. The court may direct payment of the fees and costs from:
  - Any person whose action or inaction necessitated the enforcement proceeding;
  - Any person having an interest in the estate; and
  - Property outside of the estate through the entry of an enforceable judgment.

HOMESTEAD PROTECTION FOR PROPERTY HELD IN REVOCABLE TRUST

- In *Schiro v. Elliott*, 435 So. 3d 1156 (Fla. 2d DCA 2026), a case from Florida's Second District Court of Appeal, the personal representative of her mother's estate petitioned the court to determine that her mother's residence was protected homestead property that would be exempt from creditors' claims.
- Notably, title to the residence was held by the decedent's revocable trust, and the decedent was survived by her three adult children.
- The court addressed two issues:
  - Whether a residence titled in a revocable trust can be constitutional homestead; and
  - Whether the protection from creditors can pass to a decedent's adult children or is limited to a surviving spouse and minor children, as argued by the creditors.
- On the first issue, the court held that property held by a revocable trust is considered to be owned by a "natural person" for homestead purposes because the settlor retains the right to revoke the trust during the settlor's lifetime.

- As to whether the decedent's adult children could benefit from the homestead protection, the court noted that Article X, section 4(b) of the Florida Constitution provides that homestead protections "inure to the surviving spouse or heirs of the owner." Under prior Florida case law, "heirs" includes a decedent's descendants, including beneficiaries who would have qualified for homestead protection if title to the property had passed to them directly. Thus, the court held that the decedent's adult children, as heirs, were entitled to the homestead protection from creditors.

Planning note: Clients who title a residence in a revocable trust will not forfeit the creditor protection provided for under Florida's homestead laws if the residence otherwise qualifies. To ensure that such property is protected, clients should consider expressly excluding the homestead property from debt-payment and tax-apportionment clauses so that the terms of the trust agreement do not counteract the otherwise available creditor protection. A general direction to pay debts from the trust could be read as making otherwise exempt property available to creditors.

Texas

Our 2025 Year-End Estate Planning Advisory discussed four proposed constitutional amendments that were on the ballot in the November 2025 general election:

- Senate Joint Resolution 18, which prohibits the imposition of state taxes on realized or unrealized capital gains of an individual, family estate or trust.
- House Joint Resolution 2, which prohibits the future imposition of state taxes on realized or unrealized capital gains of an individual, family, estate or trust.
- Senate Bill 4, which, in relevant part, increases the homestead exemption from property taxes to $140,000 for all Texans.
- Senate Bill 23, which, in relevant part, increases the homestead exemption to $200,000 for Texans aged 65 or older or disabled.

Texas voters approved each of these measures.

Notable Texas cases from late 2025 and 2026 include the following:

- In *Zeller v. Allen*, No. 13-24-00200-CV (Tex. App.—Corpus Christi–Edinburg Nov. 20, 2025), a trust was created in 1966 for the benefit of the settlors' son and his "children and lineal descendants." The son had four sons, one of whom had a nonmarital daughter, who claimed an interest in the trust assets. The Court of Appeals held that the settlors did not intend to include the daughter in the beneficial class of "children and lineal descendants" because the trust instrument did not define the term and, under the law in effect at the time the trust became effective, the term "children" did not include an unrecognized, illegitimate child of the father.
- In *In re Estate of Wynn*, No. 10-23-00187-CV (Tex. App.—Waco Dec. 18, 2025), the decedent's will left his estate to his spouse, subject to two cash legacies to his children from a prior marriage. The will also included a no-contest provision. The children contested the will, alleging, among other things, that the page of the will providing for the disposition of the estate was a forgery. The trial court found that the children's claim triggered the no-contest provision, but the Court of Appeals reversed. Under Texas law, a no-contest provision is unenforceable if the contestant establishes, by a preponderance of the evidence, that there was just cause for bringing the action and that the action was brought and maintained in good faith. For an action to be brought with just cause,

factual grounds applicable to the legal basis of the action must exist. Because a genuine issue of material fact existed as to whether the will was forged, a genuine issue of material fact also existed as to whether the children had just cause for bringing the action.

- In *In re Estate of Ledbetter*, No. 02-25-00326-CV (Tex. App.—Fort Worth Feb. 5, 2026), the decedent, a wealthy widower who had created trusts to benefit his children upon his death, met his second spouse when he was 81 years old. During their marriage, which lasted only 16 months before his death, the decedent gave control of his finances to his spouse (who invoked the Fifth Amendment when asked about her true identity), gave her millions of dollars in cash and real property interests, made uncharacteristic business decisions and extravagant purchases such as a jet and a yacht, grew estranged from his children and executed a new estate plan that disinherited his children and named the spouse as a trustee. The record indicated that the spouse had a pattern of deception and fraud. The Court of Appeals affirmed the trial court's appointment, on its own motion and under its equitable powers, of a receiver to manage the trust assets. The court found that the spouse, as a fiduciary, posed a threat of irreparable dissipation of assets, that the court could not micromanage the complex assets of the estate and that, given her pattern of dishonesty and evasion, the spouse was unlikely to comply with such orders in any event.
- In *In re Est. of McCulloch*, No. 02-25-00036-CV, 2026 Tex. App. LEXIS 2094 (Tex. App.—Fort Worth Mar. 5, 2026, no pet.) (mem. op.), the decedent was survived by a spouse, two sons from their relationship and a third son from a different relationship. The decedent left all of his property to a trust that he and his spouse had settled. After the decedent died, his spouse, as co-grantor and co-trustee and as authorized by the trust's terms, amended the trust to revoke distributions to a separate trust for the benefit of her stepson. The decedent's will named the spouse as executor, and the stepson opposed her appointment. The Court of Appeals held that the stepson lacked standing to oppose the appointment because he was neither an "heir" of the decedent nor did he have a pecuniary interest in the decedent's estate. The stepson was not an heir because the statutory definition of "heir" requires a decedent to have died intestate to have heirs. The stepson did not have a pecuniary interest in the decedent's estate because his interest had been revoked by the stepmother, and the validity of that revocation had not been challenged and was not before the court.

Finally, the Texas Business Court continues to gain traction, in part through an expansion of its jurisdiction. Effective September 1, 2025, the value threshold for a "qualified transaction" was reduced from $10 million to $5 million, and the Business Court was given concurrent jurisdiction over certain intellectual property disputes. The Business Court held its first bench trial in November 2025 and its first jury trial, and issued its first directed verdict, in 2026. Its expanding caseload should allow the court to develop a body of precedent. In July 2026, Governor Greg Abbott reappointed all 10 judges of the Business Court to new two-year terms beginning September 1, 2026.

California

2026 BILLIONAIRE TAX ACT (PROPOSITION 40)

California voters rejected Proposition 40, the 2026 Billionaire Tax Act, on November 3, 2026. We describe the measure here because the policy debate it reflects is unlikely to end with this election. Similar wealth tax proposals have been introduced in California and other states, and a future measure could borrow heavily from Proposition 40's design.

Proposition 40 would have imposed a one-time 5% excise tax on the worldwide net worth of California-resident billionaires and on certain trusts they have funded. Much of the measure was ambiguous and untested, and many technical questions would have been left to Franchise Tax Board guidance. Key features included the following:

- **Who is taxed and when.** The tax would apply to California residents on January 1, 2026, with a net worth of $1 billion or more measured on December 31, 2026. Spouses' net worth is combined. The full 5% rate applies at $1.1 billion, with a phase-in for net worth between $1 billion and $1.1 billion. Trusts pay a flat 5%.
- **What is counted.** Worldwide assets are included at fair market value, excluding directly held real property, certain property kept outside California, retirement accounts and $5 million of other assets. Related-party and below-market debts are not deductible, and gifts over $1 million made after October 15, 2025, are added back in computing the donor's net worth.
- **Trusts.** Grantor trust assets count toward the grantor's net worth. Non-grantor trusts funded by a billionaire are taxed separately unless the transferor elects otherwise, and beneficiaries may be taxed on "distributable" trust assets.
- **Apportionment.** Net worth is apportioned 100% to California, reducible to no less than 25% only on clear and convincing proof.
- **Valuation.** Private businesses are presumed to be worth book value plus 7.5 times average book profits, a presumption that can be rebutted with certified appraisals.
- **Filing and payment.** The tax may be paid in five annual installments, subject to a 7.5% deferral charge, and an automatic six-month extension is available for 2026.
- **Enforcement.** Understatement penalties of 20% or 40% apply, subject to disclosure defenses, and a broad anti-avoidance rule may reach changes of residence.

Planning note: Although Proposition 40 failed, its provisions offer a useful framework for evaluating future wealth tax proposals. Clients who may be affected by similar proposals should contact their Katten attorney.

NEW VIRTUAL REPRESENTATION STATUTE

When the California Probate Code requires notice to, or the consent of, "all beneficiaries," beneficiaries who are minors, incapacitated, unborn or unknown (MIUUs) present a challenge because they cannot act for themselves. Virtual representation addresses this problem by allowing another person to receive notice, give consent and bind MIUUs, so that they cannot later challenge actions such as a trust modification or termination.

Until recently, California was one of only three states without a virtual representation statute. Former Probate Code section 15804 was widely regarded as confusing, and trustees often had to petition the court for a guardian *ad litem* in routine matters, adding delay and expense. AB 565, effective January 1, 2026, rewrote section 15804, bringing California in line with the Uniform Trust Code and 47 other states. Key features of the new statute include the following:

- **Fiduciaries.** Parents may represent minor and later-born children (if a guardian *ad litem* has not been appointed), and conservators, guardians, agents under a power of attorney, trustees and personal representatives may represent those they serve, subject to their fiduciary duties.

- **Powers of appointment.** A power holder may represent all potential appointees, so a single notice to the holder can replace notice to each appointee.
- **Substantially identical interests.** An MIUU who is not otherwise represented may be represented by someone with a substantially identical interest, such as a competent sibling with an equal share. Current interest holders may also consent on behalf of successor interest holders.
- **Prohibitions.** Representation is not permitted where a conflict of interest exists on the matter, and a settlor may not represent others in modifying or terminating an irrevocable trust.
- **Written consent and fiduciary protection.** Consents must be in writing and bind the represented person unless he or she objects before they take effect. Fiduciaries relying on the representation are protected absent intentional breach, gross negligence, bad faith or reckless indifference.
- **Other notice rules.** Existing requirements continue to apply, including section 16061.7 notices, notices of proposed action, special notice requests and the court's power to appoint a guardian *ad litem*.

Planning note: Virtual representation can make accountings, modifications, trustee changes and terminations faster and less costly, particularly for multigenerational trusts. Because a hidden conflict could later undo the result, it is best used for routine actions where interests clearly align; for potentially divisive actions, such as changing distribution shares, full notice or the appointment of a guardian *ad litem* remains the safer course. Because the statute is new and courts have not yet interpreted it, trustees should identify any MIUU beneficiaries, document their conflict analysis and obtain written consents before relying on it.

ADJUSTMENTS TO THE CALIFORNIA HOMESTEAD EXEMPTION

Assembly Bill 2782, signed into law in September 2026, is an omnibus measure amending California's Civil, Family, Labor and Probate Codes. Of most interest to homeowners, it sets the 2026 homestead exemption, which protects equity in a primary residence from creditors' claims, at a minimum of $373,175 and a maximum of $746,350. Beginning January 1, 2027, these amounts will be adjusted annually for inflation. Homeowners with significant equity in a California residence should consider how the updated exemption fits within their broader asset protection and estate plans.

REVISED STATUTORY POWER OF ATTORNEY FORM

Assembly Bill 2199, signed into law in June 2026, repeals and replaces Probate Code section 4401 and adds section 4466, modernizing California's statutory power of attorney form effective January 1, 2027. The revised form allows the principal to (i) appoint one or more successor agents, (ii) nominate the agent or co-agents as conservator or co-conservators of the principal's estate and (iii) grant optional authority over digital assets, consistent with the Revised Uniform Fiduciary Access to Digital Assets Act. Under the digital assets provisions, the principal may authorize the agent to access a catalog of the principal's electronic communications (for example, whom the principal emailed and when), the content of those communications or both. The general signing, witnessing and acknowledgment requirements are unchanged, and the bill does not amend existing powers of attorney; documents properly signed on the current form before 2027 remain valid.

North Carolina

UPDATES TO THE NORTH CAROLINA NONPROFIT CORPORATION ACT

Session Law 2026-52, signed into law on July 7, 2026, and effective October 1, 2026, made several changes to the North Carolina Nonprofit Corporation Act (Chapter 55A of the North Carolina General Statutes).

- **New annual reporting requirement.** For the first time, every domestic nonprofit corporation, and every foreign nonprofit corporation authorized to conduct affairs in North Carolina, must file an annual report. New G.S. 55A-16-22.1 requires a paper or electronic report by November 15 of each year disclosing the corporation's registered office and agent, principal office, principal officers, a brief description of its activities and a contact authorized to speak for the entity. The filing fee is $18 for an electronic report and $25 for a paper report. A report not filed within 60 days after the due date is delinquent, and delinquency is a new ground for administrative dissolution, as is the failure to designate a principal office. The annual reporting requirement takes effect January 1, 2027.
- **Mergers and domestication.** Charitable and religious corporations may now merge, without court approval or notice to the Attorney General, with a single-member LLC whose sole member is a section 501(c)(3) organization (and that would itself qualify for exemption). The act also expands the types of business entities that may merge with a North Carolina nonprofit corporation. In addition, new Article 11B of Chapter 55A permits a nonprofit corporation to domesticate into or out of North Carolina without dissolving and re-forming.
- **Minimum board size.** The default minimum size of a nonprofit board increases from one director to three directors for nonprofit corporations organized on or after October 1, 2026. The change does not apply to private foundations, which may continue to have a board of one or more directors.

Planning note: Families with North Carolina private foundations or other charitable entities should calendar the new November 15 annual report deadline to avoid delinquency and the risk of administrative dissolution, and should consider whether the new domestication and merger provisions offer useful restructuring options.

FIDUCIARY INCOME TAX UPDATES

Section 1.3 of S.L. 2026-31 rewrites G.S. 105-160.2, the statute that imposes North Carolina income tax on estates and trusts.

Under prior law, North Carolina imposed fiduciary income tax on the taxable income of an estate or trust that was for the benefit of a North Carolina resident, or for the benefit of a nonresident to the extent the income was derived from North Carolina sources. As a result, the undistributed income of a trust could be taxed solely because a beneficiary resided in North Carolina, regardless of whether the beneficiary received, or had any right to receive, a distribution. In *North Carolina Department of Revenue v. Kimberley Rice Kaestner 1992 Family Trust*, 588 U.S. 262 (2019), the US Supreme Court held that the Due Process Clause of the Fourteenth Amendment prohibited North Carolina from taxing the undistributed income of a trust based solely on the in-state residence of its beneficiaries, where the beneficiaries had no right to demand distributions, did not receive distributions during the years at issue and the trust otherwise had no connection to the state.

In response to *Kaestner* and the resulting uncertainty in applying the prior statute, G.S. 105-160.2(b) now imposes the tax only on the taxable income of an estate or trust that (i) is derived from North Carolina sources and is attributable to the ownership of an interest in real or tangible personal property in North Carolina or (ii) is derived from a business, trade, profession or occupation carried on in North Carolina. A beneficiary's North Carolina residence will no longer, standing alone, subject a trust's undistributed income to North Carolina fiduciary income tax. The change is effective for taxable years beginning on or after January 1, 2026.

Planning note: Trustees of trusts with North Carolina beneficiaries should revisit their North Carolina filing positions for 2026, and families considering a non-grantor trust for a North Carolina resident may find North Carolina a more favorable environment than under prior law.

EXTENSION OF EMERGENCY VIDEO NOTARIZATION AND WITNESSING

North Carolina's emergency video notarization and witnessing provisions have again been extended for an additional year. The provisions expired by their terms on July 1, 2026, before a permanent remote notarization framework became operational and before the extension was enacted. Part VII-A of S.L. 2026-52 (House Bill 517) restored the provisions by moving the sunset date in both operative expiration statutes from July 1, 2026, to July 1, 2027. The provisions will sunset earlier if the Secretary of State issues the first remote electronic notary license under G.S. 10B-134.19 before July 1, 2027.

Planning note: Until the extension is confirmed to cover the gap period, consider re-executing any documents that were notarized or witnessed by video between July 1, 2026, and the date the extension was enacted.





Relevant International Updates

Unlike 2025, which brought significant change through OBBBA, 2026 was relatively quiet in terms of new legislation and final regulations (REG-115646-25). Most developments were administrative, along with several proposed regulations targeting controlled foreign corporations (CFCs). The usual inflation adjustments affecting international private clients also continued.

Proposed regulations on CFCs and potential impact on traditional inbound planning

In late August, the IRS and the US Department of the Treasury published proposed regulations (REG-115646-25) under sections 951 and 951A intended to equitably allocate a US shareholder's subpart F income or net CFC tested income inclusion when CFC ownership changes mid-year. Under law in effect before OBBBA, the so-called "hot potato" rule generally caused a US shareholder who held CFC stock on the last day of the CFC's taxable year to bear the full inclusion, even if the shareholder acquired the interest mid-year. In effect, this gave US shareholders a planning mechanism to dispose of CFC stock mid-year and avoid the subpart F income or net CFC tested income inclusion, although section 1248 would still apply to the mid-year disposition.

To address this distortion, the proposed regulations set forth a default allocation method, a mandatory closing of the CFC's taxable year upon a change in CFC status and an elective closing of the CFC's taxable year:

- **Default allocation.** The default method uses a daily proration based on (i) the percentage of CFC stock owned by the US shareholder and (ii) the percentage of the CFC's taxable year during which the US shareholder owned that stock.
- **Mandatory closing.** A CFC must close its books at the end of the day on which it becomes or ceases to be a CFC (a "status change event"), and the closing applies to all shareholders and for all purposes of the Code.

- **Elective closing.** If a "significant ownership variance" occurs, a "controlling section 958(a) shareholder" may elect to close the CFC's taxable year. Like the mandatory closing, an elective closing applies to all shareholders and for all purposes of the Code as of the end of the day on which the variance occurs.

For inbound planning, the traditional "diamond structure" (in which a trust owns two holding companies that in turn own a single holding company) may see a resurgence. The structure was used more routinely when the former "30-day" rule was in effect, under which a subpart F income inclusion could arise only if a US shareholder owned CFC stock for an uninterrupted 30-day period. A check-the-box election could be made for the single subsidiary effective before the death of the trust's grantor, and check-the-box elections could then be made for the two companies directly owned by the trust effective after the grantor's death. So long as those later elections were effective before US beneficiaries could be treated as indirectly owning the underlying company shares for an uninterrupted 30-day period, the successive elections (i) preserved the US estate tax blockers and (ii) avoided any CFC issue for the US beneficiaries.

After the 30-day rule was eliminated, and before OBBBA changed the *pro rata* share rules (the changes the proposed regulations address), a US beneficiary of a foreign grantor trust whose non-US grantor died could face the hot potato rule. With the OBBBA change and the proposed regulations, the diamond structure may again become more appealing: although a subpart F income or net CFC tested income inclusion may still arise, the amount of the inclusion should generally be smaller than under the hot potato rule.

Administrative changes: new IRS Form 708 and penalty relief changes

NEW IRS FORM 708

At the beginning of 2026, the IRS finally addressed a long-standing reporting gap for gifts and bequests from "covered expatriates." Subject to various exceptions, a covered expatriate is a US citizen who renounces citizenship, or a long-term green card holder who relinquishes his or her green card, and who fails one of three tests (the tax liability test, the net worth test or the tax compliance test). A long-term green card holder is one who has held a green card during any part of eight of the last 15 taxable years. Two consequences generally follow covered expatriate status. First, the covered expatriate is deemed to sell all of his or her assets at fair market value (with special rules for certain deferred arrangements and non-grantor trusts). Second, a US recipient of a "covered gift" or "covered bequest" from the covered expatriate is subject to what is effectively an inheritance tax on the amount received (again, with limited exceptions).

Until now, the IRS had no form to enforce disclosure of covered gifts and covered bequests under section 2801. Form 708 now fills that gap. Although issued in January 2026, Form 708 applies to covered gifts and covered bequests received in 2025. The general due date is the 15th day of the 18th month following the close of the taxable year in which the covered gift or covered bequest was received, so Form 708 for 2025 receipts is due June 15, 2027. Special due dates apply to certain covered bequests, to foreign trusts that migrate to domestic status and to foreign trusts that elect to be treated as domestic trusts.

IRS PENALTY RELIEF CHANGES AND PROCEDURES

Amid the recent downsizing of the IRS, the agency has made several changes to its approach to penalties for international information returns, affecting penalties for late Reports of Foreign Bank and

Financial Accounts (FBARs), first-time penalty abatement and penalties on Form 3520 reports of gifts received by US persons from nonresident aliens.

- **Delinquent FBARs.** The IRS website previously described a "Delinquent FBAR Submission Procedure," under which a US person with reasonable cause for late filing who had timely filed federal income tax returns, properly reported all income and was not under civil or criminal investigation could file delinquent FBARs without penalty. In July 2026, the IRS quietly removed the procedure from its website, creating uncertainty about its posture on delinquent FBARs. Statutory relief remains available, however, if a US person can show that the failure to file was non-willful and due to reasonable cause. The removal may signal that the IRS wishes to retain more discretion over whether and when to grant penalty relief.
- **Late-filed Forms 3520.** In 2024, practitioners raised concerns that the IRS was automatically assessing penalties, of up to 25% of the gift or bequest, on late-filed Forms 3520 reporting gifts or bequests from nonresident aliens, without considering reasonable cause. The IRS announced at the end of 2024 that it would stop automatic assessments and updated the Internal Revenue Manual accordingly toward the end of 2025. As a result, the IRS should now consider the merits of a reasonable cause statement before assessing a penalty, rather than requiring the taxpayer to contest the assessment on appeal.
- **First-time abatement.** In 2026, the IRS replaced its First Time Abatement (FTA) administrative waiver for certain failure-to-file and other penalties with an Automatic Exemption from Penalty (AEP). Neither the FTA nor the AEP applies to delinquent international information returns (such as FBARs and Forms 8938 and 5471); the IRS expressly excludes information return penalties from the AEP program. Taxpayers with delinquent international information returns therefore must continue to rely on traditional administrative programs, such as the Streamlined Filing Compliance Procedures, or on statutory relief (generally, a showing of reasonable cause).

Inflation adjustments

The usual inflation adjustments affecting international private clients continued:

- **Gifts to a non-citizen spouse.** Although the unlimited marital deduction is unavailable for gifts to a non-citizen spouse, an enhanced annual exclusion applies. The exclusion was $190,000 for 2025 and increased to $194,000 for 2026 and will be $201,000 for 2027.
- **Foreign earned income exclusion.** The exclusion for US persons earning certain income while living abroad increased from $130,000 for 2025 to $132,900 for 2026 and will be $137,300 for 2027.
- **Covered expatriate tax liability test.** The average annual net income tax liability threshold for the five years before expatriation was $206,000 for 2025, increased to $211,000 for 2026 and will be $218,000 for 2027.
- **Covered expatriate exclusion.** The exclusion from gross income available against a covered expatriate's deemed sale of assets was $890,000 for 2025, increased to $910,000 for 2026 and will be $940,000 for 2027.

Key things to know

- Federal tax, administrative and reporting changes affecting international private clients were far fewer in 2026 than in 2025.
- The proposed CFC regulations are a welcome change and reopen the door to the diamond structure in inbound planning.
- New Form 708 should be taken into account now for covered gifts and covered bequests received from covered expatriates.
- Recent changes appear to narrow certain administrative penalty abatement paths for delinquent international information returns, which may signal increased IRS scrutiny, although statutory avenues for penalty relief are unaffected.





Conclusion

The first full year under OBBBA's permanent transfer tax regime offers favorable conditions to refine wealth plans for income tax efficiency, basis optimization and intergenerational governance. With federal transfer tax exposure reduced for most families, the right approach blends flexible trust design, carefully controlled entity structures and precise drafting, anchored by a clear view of state-specific exposure and an evolving regulatory and reporting environment. We recommend targeted updates before year-end and a broader review of existing plans in early 2027 to capture these opportunities and reduce future friction. As always, the Katten Private Wealth practice stands ready to assist you with these matters.

CONTACTS

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