SELECTED HIGHLIGHTS OF THE 60TH ANNUAL HECKERLING INSTITUTE ON ESTATE PLANNING

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ANDREW B. BENSON
GODFREY & KAHN, S.C.
833 EAST MICHIGAN STREET
MILWAUKEE, WISCONSIN 53202
(414) 273-3500

WWW.GKLAW.COM

I. FEDERAL LEGISLATION

A. Budget Reconciliation (The "One Big Beautiful Bill Act," Public Law No. 119-21, enacted July 4, 2025)

1. 330 single-spaced pages with 175 pages amending the Internal Revenue Code, most notably "permanently extending" many provisions of the 2017 Tax Cuts and Jobs Act that would have expired at the end of 2025.

2. Section 2010 New Basic Exclusion Amount for Federal Estate, Gift, and Generation-Skipping Transfer Taxes

For decedents dying in	The basic exclusion amount is	For decedents dying in	The basic exclusion amount is
2011	$5,000,000	2018	$11,180,000
2012	$5,120,000	2019	$11,400,000
2013	$5,250,000	2020	$11,580,000
2014	$5,340,000	2021	$11,700,000
2015	$5,430,000	2022	$12,060,000
2016	$5,450,000	2023	$12,920,000
2017	$5,490,000	2024	$13,610,000
		2025	$13,990,000
		2026	$15,000,000

a. Annual gift tax exclusion remains at $19,000 for 2026.

b. Annual exclusion for gifts to non-citizen spouses increased to $194,000 for 2026, up $4,000 from 2025.

3. 2026 Income Tax Brackets

Taxable Income Exceeding		Ordinary Income	Adjusted Net Capital Gain* and Qualified Dividends	Medicare Surtax on Earned Income**	Medicare Surtax on Net Investment Income
Unmarried	Married Filing Jointly				
$0	$0	10%	0%	2.9%	0%
$12,400	$24,800	12%			
$49,450	$98,900		15%		
$50,400	$100,800	22%			
$105,700	$211,400	24%			
AGI over $200,000	*AGI over $250,000*			3.8%	3.8%
$201,775	$403,550	32%			
$256,225	$512,450	35%			
$545,500	$613,700		20%		
$640,600	$768,700	37%			

* Other long-term capital gains could be taxed as high as 25 percent (building recapture) or 28 percent (collectibles and Section 1202 stock).

** Includes employer contribution of 1.45 percent (Section 3111(b)(6)), individual contribution of 1.45 percent (§3101(b)(1)), and additional tax of 0.9 percent for adjusted gross income over $200,000 for an unmarried individual and $250,000 on a joint return (Section 3101(b)(2)).

4. 2026 Trusts and Estates Income Tax Brackets

Taxable Income Exceeding	Ordinary Income	Adjusted Net Cap Gain* & Qualified Dividends	Medicare Surtax on Net Investment Income
$0	10%	0%	0%
$3,300	24%	15%	
$11,700	35%		
$16,000	37%		
$16,250		20%	3.8%

* Other long-term capital gains could be taxed as high as 25 percent (building recapture) or 28 percent (collectibles and Section 1202 stock).

5. Alternative Minimum Tax – higher exemptions and phaseouts from 2017 Tax Cuts and Jobs Act "permanently extended."

	2017			2018			2026		
Taxpayer	Joint Filers	Single	Estates and Trusts	Joint Filers	Single	Estates and Trusts	Joint Filers	Single	Estates and Trusts
AMT Exemption Amount	$84,500	$54,300	$24,100	$109,400	$70,300	$24,600	$140,200	$90,100	$31,400
Exemption phaseout begins when AMTI exceeds	$160,900	$120,700	$80,450	$1,000,000	$500,000	$82,050	$1,000,000	$500,000	$104,800

6. Standard Deduction – higher deduction extended and enhanced

Filing Status	2017 Standard Deduction	2018 Standard Deduction	2025 Standard Deduction (Pre-OB3 Act)	2025 Standard Deduction (Post-OB3 Act)	2026 Standard Deduction
Married Filing Jointly	$12,700	$24,000	$30,000	$31,500	$32,200
Head of Household	$9,350	$18,000	$22,500	$23,625	$24,150
Unmarried	$6,350	$12,000	$15,000	$15,750	$16,100
Married Filing Separately	$6,350	$12,000	$15,000	$15,750	$16,100

7. Section 24 Child Credit

   a. For years 2025 and beyond, credit is $2,200 per child (now indexed for inflation, per Revenue Procedure 2025-32 the credit amount for 2026 does not receive an inflationary adjustment and remains $2,2000).

Child Credit Feature	2001 – 2017	2018 – 2024*	2025 – beyond
Credit Amount	$1,000 per child	$2,000 per child; $500 other dependent	$2,200 per child (as adjusted for inflation); $500 other dependent
Phaseout Begins when AGI exceeds… Unmarried & Head of Household Joint Filers	 $75,000 $110,000	 $200,000 $400,000	 $200,000 $400,000
Phaseout Complete when AGI hits… Unmarried & Head of Household Joint Filers	 $95,000 $130,000	 $240,000 $440,000	 $240,000 $440,000
Refundable Portion	15% of earned income in excess of $3,000	15% of earned income > $2,500, not to exceed $1,400 per child (as adjusted for inflation)	15% of earned income > $2,500, not to exceed $1,400 per child (as adjusted for inflation)

* Does not include 2021, when the American Rescue Plan Act of 2021 increased the credit to $3,000 per child ($3,600 in the case of a child under age 6) and made the credit fully refundable.

8. Section 67 – Miscellaneous Itemized Deductions

   a. Gone "forever," but deduction for "educator expenses" are now treated as regular, non-miscellaneous itemized deductions.

   b. "Educator expenses" are books, supplies, computer equipment and other equipment, and supplementary materials used by an eligible educator in the classroom.

9. Section 68 – Itemized Deductions Limitation

   a. For taxpayers in the highest ordinary income tax bracket, the amount of itemized deductions otherwise allowable is reduced by 2/37 of the lesser of: (1) the amount of such itemized deductions, or (2) the amount by which the taxpayer's taxable income (increased by the amount of itemized deductions) exceeds the dollar amount at which the 37-percent bracket begins with respect to the taxpayer.

   b. Example: An unmarried individual under age 65 has adjusted gross income of $1,000,000 and allowable itemized deductions of $100,000. The individual's allowable itemized deductions are reduced by $5,045 to $94,595.

      Lesser of –

      (1) 2/37 of $100,000 in itemized deductions: ***$5,045***

      (2) 2/37 of $359,400 excess of $1,000,000 adjusted gross income over $640,600 threshold for 37% tax bracket: ***$19,427***

c. Example: same facts as above but adjusted gross income is $700,000. The individual's allowable itemized deductions are reduced by $3,211 to 96,789.

Lesser of –

(1) 2/37 of $100,000 in itemized deductions: ***$5,045***

(2) 2/37 of $59,400 excess of $700,000 adjusted gross income over $640,600 threshold for 37% tax bracket: ***$3,211***

d. Application to Trusts and Estates

1) Prior Section 68(e) provided expressly that it did not apply to trusts and estates, but that subsection was deleted for years beginning after December 31, 2025.

2) The Senate Finance Committee summary of the One Big Beautiful Bill Act (published July 31, 2025) says Section 68 is "applicable to individuals, estates, and trusts."

3) The Heckerling panel noted that it's unclear whether this new rule applies to deductions for expenses unique to estates and trusts or to distribution deductions under Sections 651 and 661 but stated a better reading of the new Section 68 is that it <u>does</u> apply and could result in double taxation for distribution deductions. They are hoping for a technical correction or IRS guidance this year to clear up the ambiguity.

4) The Heckerling panel's theory is as follows:

a. Section 641(b) provides: "taxable income for an estate or trust shall be computed in the same manner as in the case of an individual, except as otherwise provided in this part."

b. Trusts have deductions that individuals do not, such as distribution deductions and deductions for expenses unique to the administration of trusts and estates, which may be incorporated under "except as otherwise provided in this part."

c. The panel felt that was unclear.

d. Section 67(e) say trust expenses incurred solely because the expenses were incurred by a trust (such as portions of trustee fees not attributable to investment

management expenses and distribution deductions under Sections 651 and 661) are treated as allowable in arriving at a trust's adjusted gross income, but specifically only apply "[f]or purposes of this section," which deals with miscellaneous itemized deductions.

e. Section 63(d) says the term "itemized deductions" means all deductions allowable under Chapter 1 other than deductions allowable in arriving at adjusted gross income and deductions under Section 63(b).

f. Because neither Section 63(b) nor Section 62 (which sets forth the deductions allowable in determining adjusted gross income) list expenses unique to estates and trusts or Section 651 and 661 distribution deductions, those deductions are considered itemized deductions that are not disallowed under Section 67 but are still itemized deductions under Section 63(d) and would be subject to Section 68.

g. Perhaps this is remedied by Treasury Regulation § 1.67-4(a)(1) which states that deductions for expenses unique estates and trusts and deductions under Sections 651 and 661 are allowed in arriving at adjusted gross income, which means they are not itemized deductions and not subject to Section 68.

h. The IRS directs examiners that it is bound by its regulations (See Section 4.10.7.2.3.4 of the Internal Revenue Manual), January 1, 2006). Therefore, the IRS is bound to treat unique trust and estate expenses and distribution deductions as miscellaneous itemized deductions and not itemized deductions subject to Section 68.

10. Section 108 Discharge of Student Loan Debt

a. The 2017 Tax Cuts and Jobs act created Section 108(f)(5) which excluded the cancellation of a student loan because of the student's death or total disability from gross income if the cancellation occurred after 2017 and before 2026.

b. The American Rescue Plan Act of 2021 applied the exclusion to all federal loan forgiveness between 2021 and 2025 regardless of the reason.

c. The One Big Beautiful Bill Act once again makes the exclusion applicable only in the case of death or total disability, but makes it "permanent"

11. Section 132 Qualified Bicycle Commuting Reimbursements

a. Sorry, Madison, WI.

b. Previously, Section 132(f)(1)(D) allows employees to exclude "qualified bicycle commuting reimbursement" amounts paid to him or her by his or her employer from gross income.

c. Such amounts were for the purchase of a bicycle, improvements, repair and storage if used regularly for travel between the employee's residence and place of employment, up to $20 per month.

d. 2017 Tax Cuts and Jobs Act suspended the exclusion through 2025, and the One Big Beautiful Bill Act permanently suspended it.

12. Section 164 Deduction for State and Local Taxes

a. 2017 Tax Cuts and Jobs Act limited SALT deduction to $10,000 or $5,000 for married individuals filing separately.

b. Now, the SALT deduction is allowed up to an "applicable limitation amount" that sunsets in 2030.

Taxable Year Beginning in	Applicable Limitation Amount
2025	$40,000
2026	$40,400
2027	$40,804
2028	$41,212
2029	$41,624
2030 or later	$10,000

c. If a taxpayer's modified adjusted gross income exceeds a "threshold amount," the applicable limitation amount is reduced by 30% of the excess modified adjust gross income above the threshold amount, but not below $10,000.

Taxable Year Beginning in	Threshold Amount
2025	$500,000
2026	$505,000
2027	$510,050
2028	$515,151
2029	$520,302

13. Section 529 Plans

    a. Distributions from "qualified tuition programs" (aka 529 Plans) are not included in gross income if used to pay for "qualified higher education expenses."

    b. 2017 Tax Cuts and Jobs Act expanded the definition of "qualified higher education expenses" to include tuition expenses at "an elementary or secondary public, private, or religious school."

    c. The One Big Beautiful Bill Act clarifies that the 2017 definition expansion includes: tuition, curricular materials, books, instructional materials, online educational materials, standardized test fees, dual enrollment fees, educational therapy fees, and costs for tutoring by unrelated persons.

    d. 2017 Tax Cuts and Jobs Act had a $10,000 limit per child for distributions for elementary and secondary school tuition or for homeschooling expenses, which has been increased to $20,000 per child starting in 2026.

14. Section 163(h) Home Mortgage Interest Deduction

    a. Extension of the limitations put in place in 2017.

    b. Taxpayers may only deduct "qualified residence interest" (aka interest paid on acquisition indebtedness for a principal residence or one other residence incurred after December 15, 2017) on acquisition debt up to $750,000 ($375,000 for married filing separately).

    c. Example: If a taxpayer borrows $2 million to purchase a home and gives a lender a mortgage, the taxpayer can only deduct 37.5% of the interest paid ($750,000 of the $2 million loan is acquisition debt). If the taxpayer borrows $1 million to purchase a home and gives a lender a mortgage, the taxpayer can deduct 75% of the interest paid.

15. Section 530A Trump Accounts

    a. Basically function as individual retirement accounts for children under age 18

    b. Can be created for the benefit of an "eligible individual" who is someone who will not reach age 18 at the close of the calendar year when the account is created and who has been issue a social security number.

c. Can be funded starting July 4, 2026 (a federal holiday and a Saturday, so most custodians will be closed until July 6).

d. Contributions are generally limited to $5,000 annually for 2026 and 2027 with the limit adjusted for inflation beginning in 2028.

1) The One Big Beautiful Bill Act did not clarify if contributions by persons other than the beneficiary qualify for the gift tax annual exclusion. It is unlikely that they do because the beneficiary cannot withdraw contributions until reaching age 18.

e. Until the beneficiary reaches age 18, the funds can only be held in "eligible investments" which are typically mutual funds or exchange traded funds that are not industry- or sector-specific. The fund cannot charge annuals fees and expenses in excess of 0.1% of the fund's balance.

f. Distributions are generally disallowed until the start of the calendar year in which the beneficiary reaches age 18. Upon the beneficiary reach age 18, the account is treated like an ordinary individual retirement account with withdrawals treated as ordinary income and withdrawals before age 59.5 possibly incurring a 10% penalty (penalty exceptions exist for first-time home purchases, qualified education expenses, certain medical expenses).

16. Section 1062 Qualified Farmland Property

a. Under this new section, the "applicable net tax liability" from the sale or exchange of "qualified farmland property" after July 4, 2025, may be paid in four equal annual installments starting with the due date for the tax return for the year in which the sale or exchange occurs.

b. "Applicable net tax liability" means the excess of the taxpayer's tax liability for the year over what the tax liability would have been without regard to any gain recognized from the sale or exchange of qualified farmland property.

c. "Qualified farmland property" is: (1) real property located in the United States, (2) that the taxpayer uses or leases for farming purposes during substantially all of the 10-year period ending on the date of the sale or exchange, and (3) which is subject to some legally enforceable restriction that prohibits the use of the property for anything other than a farm for at least 10 years after the date of sale or exchange.

d. "Farm" and "farming purposes" have the same meaning as under Section 2032A for wealth transfer tax purposes and includes animal farms, orchards, ranches, greenhouses, etc.

e. The delayed payments are accelerated if the taxpayer dies or makes a late installment payment, or, if the taxpayer is a corporation, if the corporation liquidates or makes a late installment payment.

17. Section 1202 Qualified Small Business Stock

a. There are new capital gain exclusion amounts for the sale of qualified small business stock acquired on or after July 4, 2025, along with a new phased increase exclusion depending on how long a taxpayer holds the stock prior to sale.

b. One major change is that a portion of gain can now be excluded if stock is held for 3 or 4 years, whereas previously it had to be held for 5 years.

For qualified small business stock acquired:	**The amount of gain excluded under §1202 is:**
On or before February 17, 2009	50% if held 5+ years
After February 17, 2009, but before September 28, 2010	75% if held 5+ years
After September 27, 2010, but before July 4, 2025	100% if held 5+ years
On or after July 4, 2025	50% if held 3 years 75% if held 4 years 100% if held 5+ years

c. Only C corporation stock can claim the benefit, which has always been the case.

d. And, as before, the exclusion only applies if the stock is acquired as compensation for serviced provided to the corporation or in exchange for money or other non-stock property at a time when the corporation was a qualified small business.

e. A qualified small business was defined as a business with aggregate gross assets of $50 million or less at all times after August 10, 1993, and before the stock issuance. However, under the One Big Beautiful Bill Act, the cap is now increased to $75 million for stock issued after July 4, 2025, which is adjusted by inflation starting in 2027.

f. Additionally, the total amount of gain excluded was capped at $10 million per issuer (or, if more, ten times the total adjusted basis of all qualified small business stock of the corporation sold by the taxpayer during the taxable year). However, under the One Big Beautiful Bill Act, the limit is increased to $15 million per issuer

for stock issued by the corporation and acquired by the taxpayer after July 4, 2025, which is also adjusted by inflation starting in 2027.

18. See Section V, below, for updates to Section 170 Charitable Deductions.

II. FINAL AND PROPOSED ADMINISTRATION GUIDANCE

A. Estate Tax Closing Letters: T.D. 10031

1. Interim final regulations reducing user fee for estate tax closing letters from $67 to $56 for letter requests received as of May 21, 2025.

2. Based on an estimate that the IRS receives 8,894 requests per year, requiring 5,781 staff hours, costing the IRS $502,573.00 per year.

B. New Form 709 – Important Changes

1. Part I of the Form is reorganized.

2. Addresses now allow for the input of foreign addresses.

3. There is a box to check if the return is an amended return. No longer need to write "Supplemental Information" across the top. Still must provide a statement of what changed, with supporting information and a copy of the original return.

4. Gift splitting lines have significant updates. Instead of Lines 12-18, there is a single Line 19, with gift splitting information moved to a new Part III.

a. Line 19: "Did you and your spouse make gifts to third parties? See Instructions. (If the answer is 'Yes,' complete Part III on page 2)."

b. The premise of gift splitting is that only one spouse made a gift with the other spouse agreeing to split it even though that spouse did not make the gift. Thus, the question seems poorly phrased.

c. Instructions state, "If you and your spouse want your gifts to be considered made one-half by you and one-half by your spouse, check the "Yes" box and complete Part III. If you are not married or do not wish to split gifts, skip to line 20."

d. If both spouses made gifts, but do not want the gifts to be split, they should check "No."

e. If splitting gifts, a new Part III should be completed, which generally contains the same questions on gift splitting that were in Part I of the prior form. However, the donor's spouse no longer

signs the donor's Form 709. Instead, the spouse must sign a separate "Notice of Consent." No form Notice of Consent is provided.

f. There are new Schedules A, B, C and D in landscape format instead of portrait format. Schedule A has additional columns for information about donees and gifted assets and new checkboxes to make elections for charitable deduction, marital deduction and reverse QTIP (which no longer appears on Schedule D, dealing with generation-skipping transfer taxes).

5. The IRS "e-News for Tax Professionals" webpage says Forms 709 and 709-NA may now be filed electronically.

C. New Form 706 – Important Changes

1. Schedules now appear as separate documents with the Form 706 only containing Parts I-VI. Schedules have been significantly reformatted.

D. Tax on Gifts and Bequests from Certain Expatriates: T.D. 10027

1. Under Section 2801, a tax is imposed on "covered gifts" and "covered bequests" received by a United States citizen or resident from a "covered expatriate," with the recipient paying the tax.

a. "Covered gift" means property acquired directly or indirectly by gift from a covered expatriate.

b. "Covered bequest" means property acquired by reason of the death of a covered expatriate.

c. "Covered expatriate" means an individual who expatriates after June 17, 2008, and on the expatriation date, the individual (1) has an average annual net income tax liability for the previous five years in excess of $124,000 (adjusted for inflation); (2) has a net worth of at least $2 million, and (3) fails to certify compliance with all United States tax obligations for the previous five tax years.

2. This Code section was enacted in 2008, and final regulations have now been published.

3. The IRS has also published a draft Form 708 and draft instructions for the form, which will be used to report the gifts and bequests.

III. TREASURY- IRS 2025-2026 PRIORITY GUIDANCE PLAN; NO RULING UPDATES

A. Contains five priority areas: Implementation of the One Big Beautiful Bill Act, Deregulation and Burden Reduction, Guidance Addressing Tribal Tax Issues, Guidance Addressing Digital Assets, and Guidance Addressing the SECURE 2.0 Act.

B. Only one priority guidance project related to gifts, estate and trusts.

1. Regulations Under Section 2010 Regarding Extension and Enhancement of Increased Estate and Gift Tax Exemption Amounts and Related Issues.

a. There is no additional information about what this means or specifically what the guidance will address. The Heckerling panel thought it might address the anti-abuse exception under the anti-clawback regulation, but this description is different from one a specific provision in the 2024-2025 Prior Guidance Plan that had specifically described the anti-abuse exemption.

C. Four priority guidance projects from 2024-2025 were completed.

1. Final regulations under Sections 1014(f) and 6035 regarding basis consistency between estate and person acquiring property from decedent. Final regulations issued September 17, 2024.

2. Regulations under Section 20.2056A-2 for qualified domestic trust elections on estate tax returns, updating obsolete references. Final regulations issued August 21, 2024.

3. Final regulations under Section 2801 regarding the tax imposed on U.S. citizens and residents who receive gifts or bequests from certain expatriates. Final regulations issued on January 14, 2025.

4. Guidance updating the user fee for estate tax closing letters. Final regulations issued on May 20, 2025.

D. Rulings and Determination Letters Involving Trusts and Estates: Revenue Procedure 2026-3

1. Areas in Which Rulings or Determination Letters Will Not Ordinarily Be Issued – Notable Change from Prior Years

a. Sections 661 and 662: Whether the distribution of property by a trustee from an irrevocable trust to another irrevocable trust (sometimes referred to as a "decanting") or the modification of the terms of an irrevocable trust resulting in a change in beneficiary interests is a distribution for which a deduction is allowable under

§ 661 or which requires an amount to be included in the gross income of any person under § 662.

b. Section 2501: Whether the distribution of property by a trustee from an irrevocable trust (sometimes referred to as a "decanting") or the modification of the terms of an irrevocable trust resulting in a change in beneficial interests is a gift under § 2501.

c. Sections 2601 and 2663: Whether the distribution of property by a trustee from an irrevocable GST exempt trust to another irrevocable trust (sometimes referred to as a "decanting") or the modification of the terms of a GST exempt trust resulting in a change in beneficial interests causes the loss of GST exempt status or constitutes a taxable termination or taxable distribution under § 2612.

d. These had previously been under the Issues to be Addressed in Forthcoming Guidance section for many years. It now appears the IRS does not plan to provide additional guidance on decanting issues in the near future.

IV. FEDERAL TRANSFER TAX DEVELOPMENTS

A. Botched Portability Election – *Estate of Rowland v. Commissioner*, T.C. Memo. 2025-76 (July 15, 2025)

1. Under Section 2010(c)(2), a surviving spouse's applicable exclusion amount for federal wealth transfer tax purpose also includes a deceased spousal unused exclusion amount ("DSUE amount"), which allows a surviving spouse to port and use a deceased spouse's unused exclusion.

2. Under Section 2010(c)(5)(A), the deceased spouse's executor must timely file an estate tax return even if one is not otherwise required. And, under Regulation 20.2010-2(a)(7), an estate making a DSUE election to follow Form 706 instructions, which require the estate to list property by schedule and provide a fair market value of each item.

3. Under Regulation 20.2010-2(a)(7)(ii), if an estate is not required to file an estate tax return, the estate does not have to report the value of property qualifying for a marital deduction or charitable deduction, it only needs to provide a "the description, ownership, and/or beneficiary of such property, along with all other information necessary to establish the right of the estate to the deduction." Assets that pass to other beneficiaries do need to be separately state and valued.

4. In the case, the deceased spouse's executor did not file a timely estate tax return, which would normally disqualify the surviving spouse from claiming DSUE. However, there is a safe harbor rule where returns are

considered timely filed if filed before the second annual anniversary of the decedent's date of death. Rev. Rul. 2017-34.

5. In the decease spouse's return, the executor listed $3 million as the "estimated gross estate" and $1.5 million as the "estimated total allowable deductions." Portions of the deceased spouse's estate went to her surviving husband. However, there were also bequests to other family members, friends, and charitable organizations.

6. At the surviving spouse's death, his executor claimed a DSUE amount, which the IRS rejected claiming the portability election was invalid because the deceased spouse's estate tax return did not provide a schedule of assets with estimates of fair market value for the assets passing to people other than her surviving spouse and charity.

7. The executor claimed it should be allowed because the deceased spouse's estate substantially complied with the election requirements.

8. The Tax Court stated that even if it applied, the deceased spouse's estate had not substantially complied because it only applies to "avoid hardship in cases where a taxpayer does all that is reasonably possible, but nonetheless fails to comply with the specific requirements of a provision." Here, the deceased spouse's estate had not done that because it did not follow the Form 706 instructions to provide a property schedule with fair market values of each item, falling well short of the requirements.

B. Partial Denial of Marital Deduction (QTIP) – *Estate of Griffin V. Commissioner*, T.C. Memo. 2025-47 (May 19, 2025)

1. Section 2056 generally allows an estate tax deduction for property passing to a surviving spouse unless the surviving spouse receives a "terminable interest," which is one that will end upon the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event of contingency to occur. In other words, if someone will possess or enjoy the property after the termination of the spouse's interest, it generally does not qualify for the marital deduction.

2. Policy Goal: deny marital deduction for transfers between spouses that are designed to avoid estate tax at death of surviving spouse.

3. However, if property passes to a spouse's estate of the spouse's death, a full marital deduction is allowed, as with QTIP elections.

4. The deceased spouse must elect to treat property as QTIP property on his or her federal estate tax return.

5. In this case, decedent had created an inter vivos irrevocable trust for his wife, giving her the power to withdraw contributions made to the trust as

he directed. At his wife's death, the assets would pass as she determined pursuant to a limited power of appointment, or, in default, to her then-living descendants.

6. At decedent's death, his revocable trust provided for two bequests: (i) $2 million to the inter vivos irrevocable trust for his wife, which the trustee was instructed to use to pay her a monthly distribution, and (ii) another bequest for $300,000 to the inter vivos irrevocable trust to be used as a living expense reserve for his wife with $60,000 distributed to her each year for up to five years and any undistributed amount distributed to her estate if she died during that term.

7. The decedent's estate claimed a $2.3 million marital deduction, which the IRS disallowed.

8. In Tax Court, the estate conceded the first bequest was a terminable interest and that it had not made a QTIP election. The estate then argued that should not matter because the IRS had not raised that issue during its audit. The Tax Court did not take the bait on that argument and said it was not QTIP because no election was made.

9. For the second bequest, the estate argued it was not a terminable interest under state law because unpaid amounts would be payable to the wife's estate if she did not survive the 5-year term. The IRS argued that it was a terminable interest because the inter vivos irrevocable trust required any funds remaining at the wife's death to pass under a limited power of appointment or to the wife's descendants, not to the wife's estate.

10. The Tax Court held that the second bequest created a separate trust due to the conditions placed on it that clearly contradicted the inter vivos irrevocable trust's terms, but that the decedent had wanted the same person to administer that trust, which was why it was directed there. As such, it was not a terminable interest and qualified for the marital deduction.

C. Gifted Remainder Interests in QTIP Trust – *McDougall v. Commissioner*, 163 T.C. No. 5 (2024)

1. Husband was the beneficiary of a QTIP trust requiring all net income to be distributed to him with principal distributions for health, maintenance and support. He had a testamentary power of appointment, and, in default thereof, the remainder would be divided into equal shares, one share for each living child of husband's deceased wife and one share for each deceased child with then living descendants.

2. Husband, children and virtual representatives of contingent remainder beneficiaries entered into a nonjudicial settlement agreement to have the property distributed to the husband. That same day, husband sold, on a

promissory note, substantially all of the assets to two irrevocable trusts, one for each child and that child's descendants.

3. The IRS had concluded in CCA 202118008 that the children and their descendants made gifts of their remainder interests to the husband and husband made a gift of the QTIP trust remainder interest, all under Section 2519.

4. The Tax Court found that husband did not make a gift of the remainder interest because he wound up with all of the trust assets or promissory note equal in value, so there was no gratuitous transfer. The Tax Court found that the children did make gifts by agreeing the assets could be distributed to the husband.

5. The case was remainder to trial court to determine the value of the children's gifts. An April 25, 2025, court order concluded the value of their gifts "equaled the value of the distributions to which they would have been entitled . . . upon the termination of the [trust] had they not agreed in...the Nonjudicial Agreement that all of the trust property be distributed to [husband]."

6. Briefs were filed in October 2025 regarding the value of the distributions the children would have been entitled to upon the termination of the QTIP. The children took the position that they gifted the value of their contingent remainder interests immediately before signing the nonjudicial settlement agreement. They further took the position that they were "restricted beneficial interest" that could not be valued under Section 7520 tables, and should be valued at $156,000 under the hypothetical willing buyer/willing seller standard.

7. The IRS took the position that the children could not transfer their remainder interests because the QTIP trust included a spendthrift provision. Therefore, the QTIP Trust had to be terminated before any transfer to the husband. Under the trust terms, upon termination "each beneficiary would have the right to receive assets of value equal to the value of their respective interests in the Trust as of the time of the distribution." Under the IRS's theory that the children's gifts were the right to receive terminating distributions with no contingencies after the nonjudicial settlement agreement, the value would be determined under Section 7520 tables and each gift was worth between $35.1 million and $53.4 million.

8. This case has not been resolved at this time.

D. Intrafamily Loan – *Estate of Galli v. Commissioner*, No. 7003-20 (U.S. Tax Court, March 5. 2025)

1. Mother made a $2.3 million loan to her son, with a 9-year term, and interest at the mid-term AFR for the month in which the loan occurred, which was memorialized with a promissory note. She did not report the loan on a gift tax return.

2. Son proceeded to make three required annual interest payments, which the mother included in her taxable income on her tax returns, and then mother died. The note was distributed to son from mother's estate resulting in its cancelation. The mother's estate included the fair market value of the unpaid portion of the loan in the gross estate.

3. The IRS determined it was a gift because "the loan was unsecured and the note lacked provisions necessary to create a legally enforceable right to repayment reasonably comparable to the loans made between unrelated persons in the commercial marketplace. It has not been shown that the borrower had the ability or intent to repay the loan. It has not been shown that the decedent had the intent to create a legally enforceable loan, or that she expected repayment. …For estate tax purposes, the estate valued the note at $1,624,000. The difference between the amount lent and the fair market value of the note then determined by the IRS is $869,000."

4. The son challenged the deficiency, claiming the IRS deficiency notice treated the transfer not as a gift entirely but as a gift loan, which was not taxable as long as interest was payable at the AFR as of the day on which the loan was made.

5. The Tax Court found the IRS's position unclear but determined it was contending the loan was a partial gift, not that the transaction was sham or disguised gift. However, the son was able to produce the note, his mother's income tax returns and bank statements proving actual interest payments. The Tax Court granted the estate' summary judgment motion.

6. Heckerling panel comment: the IRS's case seemed sloppy and as thought it had cut and paste its deficiency notice from another audit, but the Tax Court affirmed the important aspects of intrafamily loans: a promissory note, interest at the AFR, and <u>actual</u> payments.

E. GRATs Holding Grantor's Promissory Note – *Elcan v. Commissioner*, Tax Ct. Dkt. # 3405-25 (pet. Filed March 14, 2025; answer filed July 9, 2025)

1. Husband and wife each created separate two-year GRATs and funded them with approximately $687 million of shares in a corporation and units in a general partnership, which were investment holding companies.

2. Both GRATs included swap powers allowing the grantor to reacquire trust assets by substituting assets of equivalent value.

3. Both spouses exercised their swap powers reacquiring the assets in exchange for promissory notes with face values of $853 million bearing interest at the rate of prime plus one percent. The trustees distributed the notes to the grantors in satisfaction of the annuity payments, leaving the remainder beneficiaries $131 million plus interest on the notes.

4. The wife created another GRAT and transferred shares and units in the same companies and then reacquired assets in exchange for a promissory note with a face value of $360 million.

5. The IRS took the position that the annuity interest were not qualified annuity interests under Section 2702 because the notes were used to satisfy the annuity payments, meaning the entire value transferred to the GRATs was a taxable gift without any reduction for their retained interests. The assessed gift tax deficiency was $736 million.

6. There is a specific regulation prohibiting satisfaction of annuity amount by distributing a trust's own promissory note (Reg. §§ 25.2702-3(b)(1)(i) and 25.2702-3(d)(6)). Under those regulations, a trust cannot distribute its own promissory note because that is, in effect, a promise to make a future distribution which violates the GRAT requires that there be at least one annual annuity distribution.

7. The Heckerling panel noted that the trustees did not distribute their own notes, but the grantors' notes, which the regulations do not prohibit. A distribution of the grantors' own promise to pay the trust arguably provides valuable payment to the grantors.

    a. They suggested an alternative structure where the grantor borrows from a third party, reacquires trust property with the cash, the trust uses the cash to make annuity payments to the grantor, and the grantor uses annuity payment cash to repay the loan.

8. This case has not been resolved at this time.

F. QTIP Trust Division and Disclaimer – PLR 202504006

1. Trustee and beneficiaries of QTIP trust agreed to divide the trust on a non-pro rata basis (which was authorized by the trust agreement) into Trust 1 and Trust 2, with Trust 1 holding cash and marketable securities with a value that would not exceed the surviving spouse's remaining basic exclusion amount and Trust 2 holding the balance of the assets.

2. After the division, the surviving spouse would disclaim her interest in Trust 1, which would cause those assets to be distributed to the remainder beneficiaries.

3. The IRS ruled: (1) the non-pro rata division of the QTIP trust would not cause the recognition of income, gain, or loss; (2) both Trust 1 and Trust 2 would continue to be QTIP trusts under Section 2056(b)(7); (3) surviving spouse's disclaimer of Trust 1 would be treated as a gift of the assets of Trust 1 (covered by surviving spouse's remaining basic exclusion amount); (4) the disclaimer of Trust 1 would not result in a gift of assets held by Trust 2; (5) the assets of Trust 1 would not be included in surviving spouse's gross estate, and (6) the disclaimer would not cause the surviving spouse's interest in Trust 2 to be valued at zero under Section 2702.

4. This could be a useful alternative to trust commutations (avoiding the income tax and gift issues) if a surviving spouse has sufficient exemption, and especially useful if the surviving spouse does not have an otherwise taxable estate.

G. Generation-Skipping Transfer Tax – PLRs 202507005 and 202531005

1. Both PLRs ostensibly dealt with seeking extensions to allocate GST exemption to trusts where the donor had opted out of automatic allocation and then subsequently failed to allocate GST exemption to gifts to the trusts.

2. However, the IRS raised and did not answer serious questions about the consequences of a retained authority to allocate GST exemption when the allocation could alter the beneficiary's interest in the trust.

3. In both PLRs, trusts existed that provided for different treatment of GST exempt trusts and non-exempt trusts.

4. In PLR 202507005, a child's trust gave the child incremental withdrawal rights of principal, culminating at age 45 (presumably for a full withdrawal at that age, but that was not specifically stated), over the non-exempt portion of the trust. The child could also appoint the non-exempt portion among the donor's decedents and the creditors of the child's estate. For the exempt portion, the child had a testamentary limited power of appointment and no withdrawal rights.

5. In PLR 202531005, a beneficiary's trust gave the beneficiary a testamentary limited power of appointment over a GST exempt trust created under the trust agreement and a testamentary general power of appointment over any non-exempt trust.

6. In PLR 202507005, the IRS stated:

    a. Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion as to whether Donor's power to alter the child's withdrawal rights by changing the portion of the trust that is exempt from GST tax (through a late allocation of GST exemption) would cause the trust to be includible in the donor's estate under §2036(a)(2) and §2038. We further express no opinion as to whether Donor's retained indirect power causes any portion of the Trust to be subject to an estate tax inclusion period under §2642(f). We therefore express no opinion as to the effect of an allocation of GST exemption made pursuant to this grant of relief.

7. In PLR 202531005, the IRS stated:

    a. Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion as to whether Donor's power to alter a beneficiary's testamentary power of appointment by changing the portion of Trust that is exempt from GST tax (through a late allocation of GST exemption) would cause Trust to be includible in Donor's estate under §2036(a)(2) and §2038. We further express no opinion as to whether Donor's retained indirect power causes any portion of Trust to be subject to an estate tax inclusion period under §2642(f). We therefore express no opinion as to the effect of an allocation of GST exemption made pursuant to this grant of relief.

8. These PLRs raise serious questions about including GST exempt and non-exempt trusts under the same trust agreement with different terms that are dependent upon the allocation or non-allocation of GST exemption when the donor can undertake a late allocation of GST exemption.

9. Potential solutions include: (i) identical terms for GST exempt and non-exempt trusts, (ii) providing a trust protector with the discretion to expand a beneficiary's limited power of appointment into a general power of appointment, or (iii) if a the non-exempt trust has a limited power of appointment, the trustee could decant it to a trust that gives the beneficiary a general power of appointment.

V. CHARITIES AND CHARITABLE CONTRIBUTIONS

A. One Big Beautiful Bill Act

1. Section 170 Charitable Contribution Deductions

a. Cash Donations by Standard Deduction Taxpayers

1) Individuals who do not itemize their deductions may claim a partial deduction for charitable contributions of cash to public charities up to $1,000 ($2,000 for joint filers).

b. "Permanent Increase" in Cap on Cash Contributions

1) The One Big Beautiful Bill Act makes "permanent" the 60% deduction limit (compared to a prior 50% deduction limit) of a donor's contribution base (usually the taxpayer's adjusted gross income) for cash contributions to charitable organizations.

2) Example: If taxpayer donates $100,000 cash in a year when taxpayer's contribution base is $150,000, the taxpayer can deduct $90,000 (60% of $150,000) with $10,000 carrying over for up to five taxable years.

c. Charitable Contribution Floors

1) New Section 170(b)(1)(I) imposes a 0.5% floor on donations.

2) An individual can only deduct otherwise allowable charitable contributions to the extent such contributions, in the aggregate, exceed 0.5% of the taxpayer's contribution base (usually the taxpayer's adjusted gross income). Any amounts disallowed carry over for up to five taxable years.

a) Example: an individual with a 2026 contribution base of $100,000 donates $10,000 to charity. The individual can deduct $9,500 in 2026 (0.5% of $100,000 = $500).

b) Does not apply to standard deduction taxpayers.

3) To avoid the floor limitation, the Heckerling panel noted that it may be desirable to make a large contribution to a donor advised fund, rather than making smaller charitable contributions directly to charitable organizations each year. The donor advised fund can then fund annual charitable

contributions for future years while making sure the initial contribution is above the floor limitation.

4) Heckerling panel noted that the new 2/37 reduction under Section 68 may apply to charitable deductions for trusts and estates. Section 642(c) allows charitable deductions, without limitation, for trusts and estates, and Section 67 limitations on miscellaneous itemized deductions has always had a specific carve out for Section 642(c) deductions. However, the new Section 68 does not mention Section 642(c). They are hoping for a technical correction or IRS guidance this year to clear up the ambiguity.

VI. POSTAL SERVICE RULES UPDATE

A. Under Section 7502(a)(1) of the Code, "If any return, claim, statement, or other document required to be filed, or payment required to be made, . . . is delivered by the United States mail to the agency, officer or office . . . the date of the United States postmark stamped on the cover . . . shall be deemed to be the date of delivery or date of payment."

B. That has been widely relied on by taxpayers/tax preparers to mean that a filing, payment, or document will be considered timely filed if submitted to USPS ahead of pickup time or facility closing time where the filing, payment, or document is mailed, with the postmark applied to reflect the date on which USPS took possession of the mailing.

C. USPS adopted final Section 608.11, Postmarks and Postal Possession.

1. "The presence of a postmark confirms that the Postal Service accepted custody of a mailpiece, and that the mailpiece was in the possession of the Postal Service on the identified date. However . . . the postmark date does not necessarily indicate the first day that the Postal Service had possession of the mailpiece . . . [it] shows the date of the first automated processing operation performed on a mailpiece or, alternately, the date when a mailpiece was accepted as a retail unit."

D. If relying on the postmark for a timely filing requirement, one should request a manual postmark at the Post Office counter or obtain a certificate of mailing. Alternately, documents can be sent via certified mail with return receipt requested or shipped with a private delivery service.