

The New Tax Law & Estate Planning 2026

Corpus Christi Estate Planning Counsel

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Kimberly N. Loveland, J.D., L.L.M.
Board-Certified Estate Planning Attorney

Loveland & Hurley, PLLC



Agenda

Implications of the OBBBA Act and Strategic Planning Ahead

- **Policy Landscape:** Key provisions of the OBBBA Act and the broader political and fiscal context.
- **Post-OBBBA Landscape:** How the One Big Beautiful Bill Act reshapes estate, gift, and income tax planning going forward.
- **Planning in the OBBBA Era:** Estate, gift, and income tax strategies in a world of permanent \$15M exclusion and new rules.
- **Advanced Considerations:** Case law updates, IRS guidance, and pitfalls with advanced techniques like SLATs and GRATs.
- **Practical Implementation:** Steps for advisors and clients; solvency tests, liquidity, documentation, and real estate investor issues.

The Policy Landscape in 2025-2026:

OBBBA Act and Beyond

- **OBBBA Act Signed July 4, 2025:**

Comprehensive tax and spending package: 878 pages: reshaping estate, gift, and income tax rules.

- **Estate & Gift Exclusion Fixed at \$15M:** No 2026 sunset. Indexed for inflation. Fundamental shift in long-term planning.

- **Charitable & SALT Deductions:** Haircut for high earners, SALT deduction cap increased to \$40,000 (phasing out at higher incomes).

- 2/37th limitation (about 5.4%) of the amount by which income exceeds where 37% income bracket begins (\$751k for joint returns).

- **Broader Fiscal Context:** IRS funding cuts, record \$37T national debt, and ongoing deficit concerns frame the legislative environment.

Administration Proposals & Greenbooks

Comparing Vision vs. Reality

- **Biden & Trump Greenbooks:** Proposals included wealth tax, mark-to-market rules, higher capital gains rates, and new trust taxation regimes.
- **OBBBA Supersedes:** Despite years of speculation, OBBBA Act became the controlling law—most Greenbook proposals were left on the cutting room floor.
- **What Didn't Pass:** No wealth tax, no elimination of step-up in basis, no mark-to-market; estate tax repeal also off the table.
- **Planning Implication:** Advisors now work with permanent rules, but need to watch future fiscal pressure that could revive these ideas.

Estate Planning Paradigm Shift:

Planning Priorities After OBBBA

- **From Sunset to Stability:** No more 'use it or lose it' before 2026: planning focus shifts from urgency to efficiency.
- **Planning Priorities:** Emphasis on basis adjustment, non-grantor trusts, SALT opportunities, and long-term efficiency.
 - **Basis Adjustment Planning:** With fewer estates paying federal estate tax, the step-up in basis under §1014 becomes the dominant planning opportunity.
 - **Non-Grantor Trusts:** Increasing use for income shifting, SALT optimization, and QSBS stacking.
 - **Strategic Gifting:** Lifetime gifts remain relevant, but now centered on wealth transfer efficiency, GST planning, and family goals.

Federal 2026 Current Estate & Gift Tax Status

- **Permanent \$15M Exclusion:** No reversion in 2026
 - Estate and gift tax exemption fixed at \$15M (indexed), shifting focus away from sunset-driven strategies.
 - Increase from 13.99M in 2025
 - Tax is flat 40% over exemption amount
- Generation Skipping Transfer (GST) tax exemption: \$15M
 - A separate and additional flat 40%
- 2025 annual gift exclusion: \$19,000/per donee
 - \$38,000 / married couple to any individual
- New indexed amounts for 2026 coming soon
 - Released by IRS in Rev. Proc. around October of every year.

OBBBA Estate & Gift Provisions

Core Updates for Wealth Transfer



Permanent \$15M Exclusion

Applies for estate, gift, and GST; inflation-indexed, removing 2026 sunset pressure.



Annual Gift Exclusion

Continues inflation-adjusted annual gifts (\$19,000 in 2025, indexed forward).



GST Planning

GST exemption unified with estate/gift rules, with indexing; no major restrictions added.



Family Wealth Transfer

Focus shifts to efficient multigenerational planning, basis considerations, and timing of gifts.



Charitable & SALT Provisions:

New Rules Under OBBBA

- **Charitable Deductions Haircut:** High-income taxpayers face a 2/3rds limitation reducing the benefit of itemized deductions, including trust/estate deductions.
- **Trust & Estate Charitable Issues:** Application of the haircut to §642(c) deductions creates new complexities and possible circular tax effects for estates passing to charity.
- **SALT Deduction Expansion:** Cap raised to \$40,000 for 2025–2029 (phasing out for higher incomes); PTET workarounds remain available.
- **Client Impact:** Trustees, estates, and high earners need careful recalculations of effective charitable and SALT benefits under the new rules.

Income, SALT, and Charitable Updates

Key OBBBA Act Adjustments



Ordinary & Capital Gains Rates

Top marginal rate maintained at 37%; capital gains at 20% + NIIT; no mark-to-market provisions.



SALT Deduction Expansion

Cap increased to \$40,000 (2025–2029), phasing out at higher incomes



Charitable Deduction Haircut

High earners face limitations, reducing value of deductions; affects estates and non-grantor trusts as well.



Client Impact

Focus shifts to structuring charitable giving and SALT strategies for maximum efficiency under new rules.

Non-Grantor Trusts & Basis Adjustment

Tax Efficiency After OBBBA



Non-Grantor Trusts

Separate Taxpayer: valuable for state income tax savings, SALT deduction optimization, and Qualified Small Business Stock stacking.



Basis Adjustment

Step-up at death remains intact; now the single most powerful planning lever for most families.



Trust Structuring

Advisors can toggle grantor vs. non-grantor status to capture optimal mix of income and estate tax benefits.



Planning Priority

In a stable exclusion environment, managing basis, SALT, and long-term trust design outweighs exemption urgency.

Basis Basics

- Donee's basis for computing gain is the same as the donor's basis.
- Donee's basis for computing loss is the lesser of:
 - *Donor's basis, or*
 - *FMV of property on date of gift .*
- Basis is generally FMV on date of decedent's death or, if elected, the alternate valuation date.
- Appreciated assets receive a "step-up" in basis at death of owner:
 - Saves income tax when the property is sold by beneficiary.
- Depreciated assets receive a "step-down" in basis at death:
 - Deprives beneficiaries of the income tax benefit of claiming a loss when the property is sold.

Step-Up in Basis Planning

Maximizing Income Tax Efficiency



Full Step-Up at Death

Assets included in a decedent's estate generally receive basis adjustment to fair market value under IRC §1014.



Planning Opportunities

High-value appreciated assets can be reclassified to secure significant income tax savings for surviving spouse.

Consider holding appreciated assets until death, using swap powers in IDGTs, and strategic gifting of low-basis property back to senior generation, using GPOA.



Community Property Advantage

In states like Texas, community property enjoys full double step-up of whole property, unlike separate property. Both halves of community property receive full step-up at the first spouse's death, maximizing income tax savings.



Separate Property States

Only decedent's share of jointly held property receives step-up; surviving spouse retains carryover basis.

Texas Community Property & Step-Up in Basis

Planning with Conversion Agreements



Community Property Rules

In Texas, community property generally provides a full step-up in basis at the death of the first spouse. Both halves of community property receive full step-up at the first spouse's death, maximizing income tax savings.



Cautions

Watch for depreciation recapture, IRD assets (retirement accounts), and state law nuances that may limit benefits.



Conversion Agreements

In Texas and other community property states, couples may elect to convert separate property into community property to capture double step-up.



Risks & Considerations

Community property offers superior basis outcomes, conversion must be carefully documented; divorce and creditor risks must be weighed against tax benefits.

Conversion Agreements in Texas:

Mechanics and Requirements

- **Statutory Authority:** Texas Family Code permits spouses to convert separate property into community property by written agreement.
- **Formalities:** Agreement must be in writing, signed by both spouses, and disclose property affected to avoid later disputes.
- **Creditor & Divorce Risks:** Conversion exposes property to division in divorce and to joint creditor claims.
- **Best Candidates:** Most effective for long-term marriages with strong creditor protection, where income tax savings outweigh risks.

Business & Investment Provisions

QSBS, Opportunity Zones, and More



Qualified Small Business Stock (QSBS)

OBBA limits 100% exclusion; phased-down benefits for high earners; still valuable for startups and investors.



Trump Accounts

New \$25k annual limit accounts modeled on Roth IRAs; targeted toward middle-class saving. Does *NOT* qualify for annual exclusion amount.



Opportunity Zones

Extended investment deadlines; reporting tightened; ongoing bipartisan support keeps OZs relevant.



Other Business Provisions

R&D expensing and bonus depreciation partially extended; excise taxes adjusted in energy and luxury sectors.

Expansion of Qualified Small Business Stock Gain Exclusion

- In 2026, the QSBS capital gains exclusion will be enhanced in three key ways:
 - Stock held for at least three years, but less than five years will be able to enjoy some (but less than all) of the QSBS benefits as follows:
 - 50% exclusion of capital gains tax for stock held for at least **three** years
 - 75% exclusion of capital gains tax for stock held for at least **four** years
 - 100% exclusion of capital gains tax for stock held for at least **five** years
- Maximum capital gains exclusion is increased from \$10 million to \$15 million (or \$7.5 million for married couples filing separately), adjusted annually for inflation beginning in 2027.
- Finally, the ceiling for a corporation's gross assets has increased from \$50 million to \$75 million immediately following issuance of the stock, adjusted for inflation.

Planning by Wealth Band:

Tailoring Strategies to Client Profiles & Assets

- **Safe-ish Zone (<\$7.5M / <\$15M couples):** Unlikely to face estate tax; focus on step-up in basis, income tax efficiency, and liquidity planning.
- **Middle Market (\$10–30M):** Gray area where estate tax exposure may or may not apply; strategy includes selective gifting, SLATs, and income-tax driven planning.
- **Very Wealthy (>\$30M):** Estate tax applies at death; priority on capturing GST exemption, shifting appreciation, and dynasty trust strategies.
- **Advisor Role:** Segmenting clients by wealth band ensures customized, proportionate planning aligned with tax exposure.

Practical Implementation

Readiness, Solvency, and Liquidity



Early Engagement

Begin conversations now: advanced strategies require time for valuations, drafting, and funding.



Solvency Testing

Document solvency and sufficiency before large transfers; protect against fraudulent conveyance claims.



Liquidity Planning

Ensure cash flow for lifestyle needs and estate expenses; ILITs and partnerships remain valuable tools.



Advisor Coordination

Requires collaboration among estate attorneys, CPAs, financial planners, bankers, and appraisers.



Financial Analysis & Plan Design

- Run the numbers
- How much does the client need to live on?
- Gross it up for income tax
- Weigh step up in basis vs. gifting
- Sell assets to children trust on private annuity
 - Provides for stream of income for grantor
 - SCINs: unclear if use life expectancy table or personal life table
- Know life expectancy and any illness/risks
 - Counsel clients on risk
 - Doctor Letter on life expectancy
 - Those who might die sooner=hold until later in year

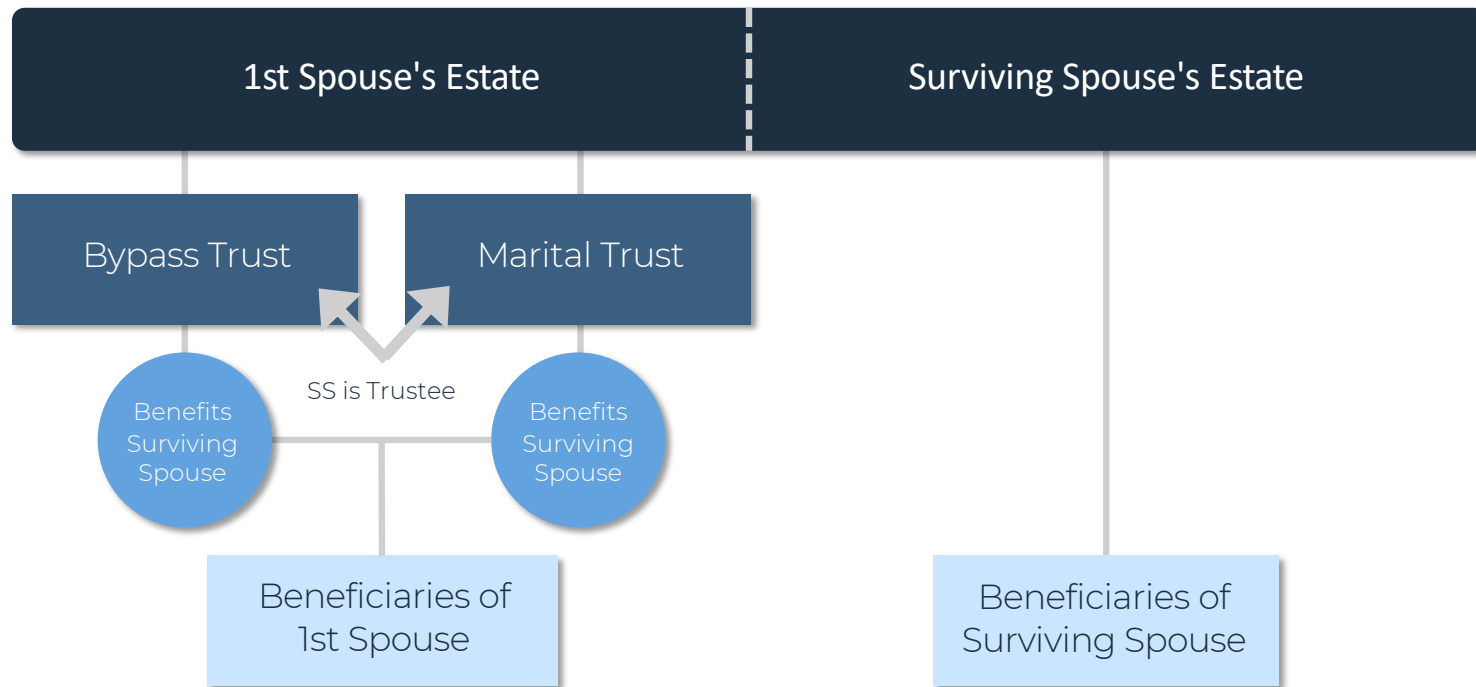
The Planning Process:

Step 1: Establish a Solid Foundation

- **Basic Components of an Estate Plan** (regardless of net worth)
 - Last Will and Testament
 - Revocable Trust
 - Statutory Durable Power of Attorney for Financial Matters
 - Medical Power of Attorney for Health Care
 - Advance Directive for Health Care & Disposition of Remains
 - Coordinate Funding & Beneficiary Designations for Life Insurance and Retirement Benefits
- **Update old documents:**
 - Make sure they align with client wishes & pay attention to funding clauses
- **Where does your stuff go?** 1 of 3 places
 - Family & Intended/Unintended Beneficiaries
 - Charity
 - IRS

Every client situation is unique: depends on family dynamics, portfolio, liquidity, goals, purpose & lifestyle.

Trusts with Estate Tax Planning



Estate Tax Strategies

What can you do right now:

1. Review existing plans & simplify
 - a. Portability
 - b. Check funding clauses
 - c. Disclaimers
2. Maximize use lifetime exemption
 - a. Shield appreciation
 - b. Gift now! Annual gifting adds up
3. Take advantage of private interest rates (intrafamily loans and annuities)
4. Create a family limited partnership/entities
5. Set up/top off irrevocable trusts
6. Explore life insurance products
 - a. *Maintain liquidity*
 - b. Consider an ILIT
7. Explore charitable planning
8. Focus on income taxes vs. estate taxes
 - a. Do the math, know your client's exposure depending on different scenarios.
 - b. Know basis of assets

Tools in the OBBBA Era: Alphabet Soup

- **Irrevocable Dynasty/Heritage Gifting Trusts:** Helps clients leave assets to future generations and avoid being taxed more than once as assets pass from generation to generation.
- **Spousal Lifetime Access Trusts (SLATs):** Helps clients leave assets to future generations but gives a spouse access to assets should the spouse have an unanticipated financial need in the future. Still effective for shifting appreciation, but IRS scrutiny on reciprocal trusts and 2036 issues requires careful drafting. Likely see less of SLATs.
- **Grantor Retained Annuity Trusts (GRATs):** Can help clients who want to transfer more than the gift/estate tax exemption amount to children by transferring asset appreciation (above \$7520 hurdle rate); remain viable with careful structuring.
- **Intentionally Defective Grantor Trusts (IDGTs):** Continue to freeze appreciating asset values while shifting appreciation to heirs; integration with sales and swaps remains critical.
- **Irrevocable Life Insurance Trusts (ILITs):** Maintain role in providing liquidity, equalizing inheritances, and shielding insurance from estate inclusion.
- **Charitable Remainder Trust (CRT) and Charitable Lead Trust (CLT):** Combine income tax planning with philanthropy.

QTIP Trusts and Valuation Case Law Updates

- **QTIP Trust Cases:** Anenberg and McDougall highlight importance of clear elections and administration; IRS continues to litigate scope of QTIP elections.
- **Valuation Cases:** Fields, Pierce, Galli, and Rowland emphasize rigorous appraisal standards and caution against aggressive discounting.
- **Loan & Split-Dollar Arrangements:** Courts scrutinize intra-family loan structures and split-dollar insurance planning for economic substance.
- **Planning Implication:** Technical precision and contemporaneous documentation remain essential in defending estate tax positions.

SLAT Pitfalls & Drafting Cautions

Avoiding IRS and Practical Traps



Section 2036 Risks

Improper retained rights or enjoyment of trust property can trigger estate inclusion.



Reciprocal Trust Doctrine

Back-to-back SLATs with similar terms risk being collapsed by the IRS into self-settled trusts.



Floating Spouse Clauses

Can preserve flexibility but raise drafting complexity and potential litigation risk.



Tax Reimbursement Clauses

Recent IRS guidance suggests modifications may trigger taxable gifts; careful drafting required.

SLAT Techniques

- Prepare cash-flow projections to determine if clients can truly afford to make large gifts.
- Ask client if they are comfortable gifting away this amount of their net worth?
- Texas allows for backdoor SLATs
 - Substitute surviving spouse as beneficiary
- Not all or nothing approach
 - Especially with gray divorce rates
 - Maybe consider 6M in SLAT and 6M in dynasty trust for children
 - Are you going to be the spouse that uses your exemption?

Alternative Structuring:

Decanting, Directed Trusts, and BDOT Approaches

- **Trust Decanting:** Allows movement of assets into a new trust with updated terms; flexibility for modernizing or correcting documents.
- **Directed Trusts:** Separate roles for investment, distribution, and administration; allows customization and advisor involvement.
- **BDOT Approaches:** Beneficiary Deemed Owner Trusts enable income-shifting to beneficiaries while retaining estate tax exclusions.
- **Planning Implication:** Alternative structures provide flexibility and tax efficiency in light of OBBBA's permanent framework.

What's New Gift & Estate Tax Return World

709s

- **Modernized e-File (MeF) for gift taxes now offers a secure and accurate way to file Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return**
- Modernized e-File (MeF) for Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, is now part of IRS e-file. New Modernized e-File (MeF) schema and business rules for Form 709 are now available for tax year 2024/processing year 2025. Additional information is available on the [Modernized e-File \(MeF\) for gift taxes](#) page.

Gift Tax Returns (709s)

- As you go about your gifting plan, remember the 709 form.
- Defend your fees and explain your value. A client pressuring you on fees should tell you a lot.
- Get all key documents early on.
 - Check dates, signatures, and party names.
 - If something doesn't make sense, seems wrong or missing, raise the issue.
 - A second set of eyes never hurts.
- Prepare a detailed table of contents for the exhibits.
 - Be sure the exhibits meet the requirements of adequate disclosure.
 - And that they flow in a logical order and make sense.
- Look at the instructions for form 709.

Gift Tax Return Defense

Documentation and Compliance



Form 709 Precision

Ensure complete, accurate reporting of gifts; review signatures, dates, and party names carefully.



Adequate Disclosure

Include detailed schedules and appraisals to start statute of limitations on IRS review.



Exhibit Organization

Use logical table of contents for supporting documents; second set of eyes strongly recommended.



Defending Fees & Value

Gift tax prep demonstrates advisor's value—defense-ready returns protect clients from later challenges.

706s Recent IRS Updates

- **Form 706 (Estate & GST Return):** Form 706 instructions include a note that the executor can elect portability of the Deceased Spousal Unused Exclusion (DSUE) but must file Form 706 within the 9-month period after death (or within extension) to make that election.
- The instructions also show that estates that did *not* have a filing requirement (i.e. under the threshold) but want to elect portability may qualify under **Revenue Procedure 2022-32**, which allows filing for portability up to the *fifth anniversary* of the decedent's death under certain conditions.
- There is a *draft version* of Form 706 (Rev. August 2025) posted as of May 30, 2025, showing the IRS is preparing updates. But the form is marked "DRAFT — NOT FOR FILING."

Basis Reporting Form 8971

- **What's New: Updated in Form 8971 (Aug 2025 version)**
- The form itself has been revised ("Rev. August 2025") reflecting updated instructions.
- The 2025 Instructions emphasize that Schedule A must be furnished to each beneficiary who acquires property from the decedent, and the executor must certify the date on which that Schedule A was provided.
- There's updated guidance on "supplementing" Forms 8971 and Schedule A: If new property is acquired by a beneficiary after the due date, or there is any correction to information previously submitted, the executor must file supplements.
- The instructions also clarify the timing: Schedule A must be furnished within **30 days** of the date when Form 706 or Form 706-NA is required to be filed (including extensions) or within 30 days of when the estate tax return is actually filed, whichever is earlier.

Additional Considerations

- **Asset Protection**

- But avoid fraudulent conveyances
 - Solvency affidavit before any large transfer to irrevocable trust
 - Have client sign balance sheet showing all assets and liabilities
 - Client projections demonstrating adequate resources to cover lifestyle expenses post-transfer

- **Income Tax Planning**

- **Weigh Step Up In Basis Ramifications**



Planning for the Future

- **Create the vehicles and identify assets now = ready to gift.**
 - Gifting is a process; requires client understanding and acceptance, documents drafted, assets identified, family businesses recapitalized, Secretary of State for entity formation, valuations obtained, and timely transfers effected by consents, acceptance by trustee or signed off by corporate trustee.
- **Alternatively: Gift → Swap/Sell**
 - Establish trusts and gifting easily valued property (e.g., cash or securities), then subsequently swap or sell discountable assets to the trust.
 - Include a defined value clause to guard against gift tax challenges.
- Every dollar that estate grows is only **.60 cents** without planning
 - If including grandchildren and dealing with GST=additional 40%



Key Takeaways:

Advisors and Clients in the OBBBA Era

- **Certainty Restored:** Permanent \$15M exclusion eliminates sunset-driven urgency; focus shifts to long-term strategies.
- **Basis is King:** Step-up in basis planning now drives more tax savings than estate tax avoidance for most families.
- **Trust Flexibility:** SLATs, IDGTs, GRATs, ILITs, and non-grantor trusts remain core tools, just used differently than before.
- **Execution Matters:** Solvency testing, liquidity planning, and documentation are critical for defensibility and client peace of mind.

Closing Thoughts & Q&A

Estate Planning in the OBBBA Era



Stable Rules, New Priorities

Shift from sunset panic to thoughtful long-term planning focused on basis, trusts, and efficiency.



Advisors' Strategic Role

Guiding families through complex trust design, valuation, liquidity, and compliance challenges.



Collaboration Matters

Best outcomes require estate attorneys, CPAs, financial advisors, and appraisers working as a team.



Q&A

Open discussion on how these changes apply to specific client scenarios and strategies.

THANK YOU!

Questions?

Kim Loveland

kloveland@lhestatelaw.com

Loveland & Hurley, PLLC