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Family Law & Estate Planning newsletter



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500 YEAR TRUSTS IN MINNESOTA



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One highly significant change to Minnesota trust laws which went into effect this year was the change in how long a Minnesota trust can last. Often times, an individual or family wish to create a ‘legacy trust’ to preserve farmland, a family business, or other assets for multiple generations. Common situations where legacy trusts are desirable include the preservation of a century farm or avoiding the sale or dissipation of a business someone has spent a lifetime building. Legacy trusts or multi-generational trusts can also be used to benefit favorite charities for generations and other purposes. There was a significant limitation on how long a legacy trust can last in Minnesota prior to

August 1st, 2025, due to its complicated history.

History of the Rule Against Perpetuities

Historically, the so-called, Rule Against Perpetuities (RAP), was adopted by many states to limit how long a trust can last and thereby avoid estate or inheritance taxes. Originally, RAP required that an interest in property must vest or fail within 21 years of a ‘life in being’ at the creation of the interest. A ‘life in being’ means a life that was in existence at the creation of the interest. This traditionally included unborn infants; so, in effect the rule required an interest in property to vest or fail within 21 years and nine months of a life in being at the creation of the interest. If the person serving as the ‘measuring life’ was one year old when an interest in property was created and lived until they were 91, the interest in property must become definitively owned by someone or lapse within 21 years (21 years and nine months if there is a pregnancy involved) of the death of this measuring individual. Therefore, the unmodified RAP had the effect of often limiting trust durations to less than 125 years.

There are commonly three policy reasons given to support the old RAP rule: (1) to ensure that land remains alienable, freely sellable, and not locked up in trusts; (2) to keep land productive and not underutilized due to legal constraints; and (3) to limit intergenerational perpetuation of wealth disparities (i.e. Think Rockefellers, Vanderbilts, Carnegies with perpetual trusts).

States Opting Out of RAP

Modern trust law has softened many of these policy arguments supporting the RAP. For example, today's trust laws often grant trustees sweeping authority to sell, invest, or exchange assets, preventing property from being tied up for the same duration as the owning trust. Greater modern authority for trustees over trust assets also mitigates the concern that a controlling "dead hand" will stifle the potential of property to be optimally productive for society if trusts are allowed to continue long term. So, the strongest argument remaining in favor of RAP is to avoid the concentration of wealth in family lines, but this has not been persuasive enough to avoid the repeal or modification of many RAP statutes as states compete for trust administration business. In other words, states, in competing with other states for trust business, have been willing to overlook the tax revenue loss as a result of doing away with the RAP in exchange for the more immediate revenues generated from trusts being located or moved to their state.

Most states today have modified the traditional RAP because the original formulation was viewed as too rigid. Less than five states currently follow the original RAP currently and at least one of these have pending legislation to modify it. The first wave of changes for RAP statutes in the United States involved many states, including Minnesota, adopting a version of the Uniform Statutory Rule Against Perpetuities (USRAP).

Old RAP Statute in Minnesota

Until recently, Minnesota followed the USRAP's modified version of RAP as the official law governing the permissible duration of trusts. Initially adopted in 1987, Minn. Stat. § 501A.01 Required any interest in property to vest or fail within 90 years of the creation of the interest. Alternatively, a second more rigid standard in the statute held non-vested property interests were valid if it was *certain* at the creation of the property interest that the property interest would vest or fail within twenty-one years after the death of someone who was alive at the creation of the property interest. This meant that a trust created to generically benefit "my descendants" could not exist longer than 90 years typically as a family with ever expanding descendants would not be sufficiently ascertained for the property interest to vest in known, final beneficiaries before 90 years had expired. Under the more rigid alternative standard, the likelihood of a trust surviving longer than 90 years was complicated by the "fertile octogenarian" concept. The "fertile octogenarian" refers to the legal theory that even though someone is highly unlikely to have a child in their eighties, it is not legally *certain* that such an individual is not going to have another descendent (perhaps by adoption) which would then cause the trust to end at 90 years because it would not be certain, at inception of the interest, who the final descendent of the original trust creator would be. Conse-

quently, there was, until recently, virtually a 90-year limitation on how long trusts could exist in Minnesota.

Minnesota's New 500 Year Trust Statute

This year, Minnesota revised its trust code to allow for trusts that last for 500 years, instead of 90. This became effective August 1st, 2025. The revised statute added section (f) which reads, in its entirety, as follows:

For any trust created on or after August 1, 2025, this section shall apply to a nonvested property interest or power of appointment contained in a trust by substituting the term "500 years" for "90 years" in each place it appears in this section, unless the terms of the trust require that all beneficial interests in the trust vest or terminate within a lesser period.

Minn. Stat. Ann. § 501A.01 (f). The new statute positions Minnesota to be competitive for trust administration business alongside the over 30 other states which have already elongated their RAP statutes to allow for trusts older than 90 years. Some states, like South Dakota for example, have even abolished the RAP altogether and now allow perpetual dynasty trusts. Previously, some Minnesota residents were considering other states for their trusts due to the unfavorable tax implications of a 90-year legacy trust compared to longer lasting options. This is no longer the problem it once was as Minnesota's new 500-year legacy trust provides a competitive option from which to preserve assets over many generations.

Generation Skipping Transfer (GST) Tax

The GST tax was created in 1986 by congress to prevent people from avoiding estate taxes. Distributions from a trust (or asset transfers generally) are GST taxed when they skip a generation. Each time property passes hands it is normally subject to gift or estate taxes as high as 40% unless an exemption applies; additionally, if the property is skipping a generation (like an inheritance given to a grandchild from a grandparent), such inheritance is taxed both by estate taxes and by GST tax at a flat 40%. Altogether, taxes can take up to 80% of an inherited dollar if it is skipping generations. Congress created an exemption to the GST tax which initially was only \$1,000,000 at its inception in 1986 but has grown to \$13.99 million per person. The GST exemption helps but does not fully solve the loss caused to wealthy families by this tax.

Benefits of a 500 Year Legacy Trust

Long-term legacy trusts (also known as dynasty trusts), are a huge benefit to those persons looking to take advantage of their tax savings. Tax savings stretch as high as 80% for each beneficiary generation if the unified gift and estate tax exemption of \$15 million and the \$15 million GST exemption (new

numbers effective January 1st, 2026) are both used to fund the trust initially. Later generations can receive the benefit of the growth beyond the \$15 million initial contribution at merely their own individual income tax rate without ever paying further estate taxes on the funds each time someone passes away. Saving on estate taxes in this way is especially beneficial for families whose descendants are expected to have significant assets of their own to transfer to their heirs because it allows future generations to utilize any then existing tax exemptions separately from their inherited lifetime interest in the trust fund. All the tax savings of a legacy trust means the money in a legacy trust is free to accumulate much faster for your descendants than by any other means.

Legacy trusts can also help create an orderly estate plan beyond just tax planning. For example, if descendants inherit a piece of the same property and then separately pass it on to other more numerous individuals at each generation as the descendants die, then the original property becomes incredibly divided potentially leading to intra family partition actions or business dissolutions down the road. Legacy trusts help prevent the sale of legacy farms and family businesses. Charitable giving can also be powerfully bolstered by the effects of a legacy trust through the creation of sustained streams of income for the designated non-profit cause for generations, although the tax treatment for charitable legacy trusts is different.

Best Practices

Work with an experienced planner to create a legacy trust because it can be complex to set up and choosing the right trustees is critical for the long-term success of the trust. Giving trustees, whether an individual or an institution, sufficient flexibility to appropriately manage the assets while simultaneously protecting the assets from misfeasance, taxes, and creditor claims is not for the inexperienced. Estate planning with a legacy trust and using the exemptions and exclusions available can preserve century or other dynasty assets for generations to come while saving taxes, managing Minnesota estate taxes and preserving something for family which is worth keeping.

Conclusion

With the 500-year trust option now available, Minnesota residents have a powerful tool for long-term legacy planning. Minnesota trust law now rivals legacy offerings in other states while preserving assets from estate and GST taxes for descendants far into the future. Thoughtful and proper planning of a legacy trust can be a very useful way to manage or minimize estate taxes while preserving for those yet to come what has been built or been in the family for over a century.

Protect Your Legacy

For over 50 years, Gislason & Hunter has provided expert, one-on-one estate planning to families of all sizes. Whether your estate is large or small, we offer affordable, personalized advice to help you set up a trust and secure your future.

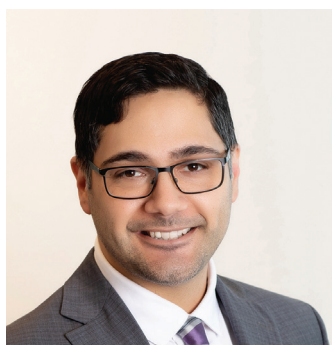
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MINNESOTA ESTATE TAX AND PROPERTY OWNERSHIP: WHY RESIDENCY ALONE DOES NOT SHIELD FAMILIES FROM TAX LIABILITY



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Introduction

Ten states, including Minnesota, have an estate tax. Many Minnesotans believe that if they relocate to another state—particularly one without an estate tax—they can avoid Minnesota’s estate tax altogether. Unfortunately, the rules are not so simple. Minnesota taxes the assets of

its residents at death, and the value of tangible assets located within the State of Minnesota owned by non-residents at death. In other words, you cannot necessarily escape Minnesota estate tax by moving away. A Minnesota cabin, farmland, or even a business presence in the state can all create “nexus” or connection justifying the imposition of Minnesota estate tax. Without careful planning, children and heirs may be surprised by a tax bill that could have been minimized or avoided through foresight.

This article will first explain the statutory framework that applies when a taxpayer dies owning Minnesota-sited property, illustrated with practical hypotheticals. We will then turn to strategies that can be used to mitigate the tax burden, including the use of gifts, disclaimers and Minnesota exemptions.

Overview of Minnesota’s Estate Tax

Minnesota imposes an estate tax on a resident’s assets, including real, personal, tangible, and intangible property, owned at death and located within the State of Minnesota, less certain

deductions such as the unlimited Marital Deduction for transfers to a surviving spouse. Non-residents are also taxed on the value of their estate to the extent tangible property is “sited” or located within Minnesota. Specifically, the Minnesota gross estate includes the value of assets owned by a person wherever located worldwide, “excluding . . . any property included in the estate which has its situs outside Minnesota, and (b) including any property omitted from the federal gross estate which is includable in the estate, has its situs in Minnesota, and was not disclosed to federal taxing authorities.”¹ Real property and tangible personal property are normally considered “sited” in the state or county where it is located.

Conversely, the location of intangible personal property, such as stocks, bank accounts, investment accounts, closely-held business interests, etc., is determined by the primary residence of the deceased taxpayer. Minnesota generally cannot tax the value of intangible property owned by a non-resident. However, a person cannot avoid Minnesota estate tax by holding Minnesota real or personal property in a passthrough entity and then moving out of state. Minnesota treats the business entity as through it does not exist. The entity’s assets are deemed to be personally owned by the deceased taxpayer. If more than one person owns the company, ownership of the Minnesota sited property is attributed to the deceased taxpayer in proportion to his or her percentage ownership interest.

The Minnesota estate tax varies between 13% and 16% with each tax bracket increasing by \$1 million increments. Similar to the federal unified credit, Minnesota has a basic exclusion of \$3 million that reduces the value of the taxable estate. No Minnesota estate tax is owed by estates valued at \$3 million or less (regardless of residency). The estates of Minnesota

¹ Minn. Stat. § 291.005, Subd. 1(4).

residents may also be eligible for additional \$2 million deduction for the value of certain Qualified Farm Property and Qualified Small Business Property. In total, up to \$5 million dollars can escape estate tax.

Amount of Minnesota Taxable Estate	Tax Rate
Exempt Amount (\$3,000,000 – \$5,000,000)	\$0
Not over \$7,100,000	13.0% of excess over exempt amount
Over \$7,100,000 but not over \$8,100,000	13.6% of excess over \$7,100,000
Over \$8,100,000 but not over \$9,100,000	14.4% of excess over \$8,100,000
Over \$9,100,000 but not over \$10,100,000	15.2% of excess over \$9,100,000
Over \$10,100,000	\$1,355,000 + 16.0% of excess over \$10,100,000

Minnesota Estate Tax on Non-Residents and Residents with Foreign Property

Minnesota residents who own real estate or tangible assets outside Minnesota, as well as non-residents with Minnesota property, must contend with complex rules to determine how much of their estate is subject to Minnesota tax. To start with, Minnesota treats the deceased taxpayer as if all property owned by them at death is subject to Minnesota estate tax, less the \$3 million Minnesota estate tax exemption and other applicable deductions. This is known as the Minnesota taxable estate. The Minnesota taxable estate is then used to calculate the initial amount of Minnesota estate tax by applying the marginal tax rates in the table above. The resulting tax liability is further reduced proportionally by the value of Minnesota sited property over the total value of the decedent's estate—also known as the federal gross estate.

Example 1 – Minnesota Resident w/ Vacation Home

Dan Smith is a Minnesota resident with a \$5 million gross estate—\$1 million of which is attributed to a Florida vacation property. Dan passes away in 2025 leaving behind three children and no surviving spouse. Dan's estate does not qualify for any additional deductions. How much estate tax is owed to Minnesota? The answer is \$208,000.

Minnesota Gross Estate	\$5,000,000.00
MN Estate Tax Exemption	\$ (3,000,000.00)
Minnesota Taxable Estate	\$2,000,000.00
Minnesota Estate Tax (13%)	\$260,000.00
Minnesota Sited Property	\$4,000,000.00
Percentage of MN Property	80%
Minnesota Estate Tax Due	\$208,000.00

Example 2 – Minnesota Resident Relocates to Arizona

Donald Schmidt is a retired farmer with no spouse and four children. Donald currently has a \$7 million estate. His estate consists of \$4 million in qualified farm land, \$1 million in an Arizona residence, and \$2 million worth of investments. Donald decides to move to Arizona as a permanent resident, but passes

away eight months later. The result is that Donald's estate owes \$297,143 in Minnesota estate tax.

Minnesota Gross Estate	\$7,000,000.00
MN Estate Tax Exemption	\$ (3,000,000.00)
Minnesota Taxable Estate	\$4,000,000.00
Minnesota Estate Tax (13%)	\$520,000.00
Minnesota Sited Property	\$4,000,000.00
Percentage of MN Property	57%
Minnesota Estate Tax Due	\$297,142.86

The above examples underscore a critical point: non-residents do not escape Minnesota estate tax liability simply because they live elsewhere. Minnesota will recover its share of estate tax attributable to Minnesota sited property.

Mitigating Minnesota Estate Tax Through Pro-Active Planning

While Minnesota's estate tax rules can be rigid, several strategies remain available to reduce Minnesota estate tax exposure. These strategies primarily involve maximizing available exemptions and deductions, and reducing your Minnesota taxable estate through gifts, sales, tax deferred exchanges, and disclaimers.

The \$3 million Minnesota estate tax exemption is available to residents and non-residents alike. As a result, a taxpayer at or near the Minnesota exemption can implement a gifting program to make use of the federal gift tax annual exclusion. Each completed gift will reduce the taxpayers gross estate with the goal being to reduce the taxpayers estate below \$3 million. For the 2025 calendar year, each person can gift \$19,000 per year per donee free of tax consequences. For instance, a father of four could gift \$19,000 to each of his children for a total \$76,000.

It should be noted that Minnesota does not have a gift tax. It may be appropriate for individuals without a federal taxable estate (\$15 million in Unified Credit for 2026) to give above and beyond the annual gift tax exclusion; however, those gifts will be clawed back into a decedent's Minnesota taxable estate if he or she passes away within three years of the gift. Assets will not be clawed back into your Minnesota estate if sold for fair compensation. Older taxpayers residing outside of Minnesota should consider selling Minnesota assets for cash, which would be considered intangible personal property for Minnesota estate tax purposes. Your attorney or accountant will need to weigh the income tax liability of the sale against the estate tax exposure caused by retaining Minnesota assets in your taxable estate.

As to real estate, commercial real estate or real estate held for investment or business purposes may qualify for tax deferred treatment under Internal Revenue Code 1031—also known as

a 1031 exchange. While an in-depth discussion of 1031 exchanges are beyond the scope of this article, most real estate is considered “like-kind” for other real estate. Bare farmland generally can be exchanged for improved real property, such as an apartment building. In this scenario, an Arizona resident whose only Minnesota sited property is real estate could eliminate their Minnesota estate tax liability by exchanging this land for commercial real estate property located in another state without an estate tax.

Example 3 – Maximizing Estate Deductions

Maximizing available deductions is also important. Turning back to Example 2, how could we have structured Donald’s estate to transfer his wealth in a more tax efficient manner? Remember that Donald had \$4 million in qualified farm real estate. By moving to Arizona, Donald gave up the homestead status of his farmland and lost \$2 million in additional deductions for Qualified Farm Property. Donald’s estate would have saved \$37,143 if Donald had remained a Minnesota resident and split his time between the two states.

Minnesota Gross Estate	\$7,000,000.00
MN Estate Tax Exemption	\$ (5,000,000.00)
Minnesota Taxable Estate	\$2,000,000.00
Minnesota Estate Tax (13%)	\$260,000.00
Minnesota Sited Property	\$7,000,000.00
Percentage of MN Property	100%
Minnesota Estate Tax Due	\$260,000.00

Disclaimers provide one of the few post-death options to mitigate tax liability for those decedent’s who failed to plan around these issues. In simple terms, a persona can disclaim (or refuse) to accept property from a decedent. A person making the disclaimer is usually treated as having predeceased the decedent taxpayer. As a result, the assets that would have gone to the disclaimant will pass to other persons named in the decedent taxpayer’s will or trust, or if none, to other heirs-at-law in accordance with the Minnesota laws of intestate succession. A qualified tax disclaimer must be irrevocable, in writing, describe the disclaimed assets, and delivered to the decedent’s personal representative or trustee within 9 months of the decedent’s death.

Disclaimers can be strategically employed to change the proportion of Minnesota-sited property in the estate, along with the corresponding estate tax liability.

Example 4 – Disclaimers Involving a Married Couple

Warren and Veronica are Florida residents. The couple collectively have \$10 million in assets. Their respective estates have not been equalized. Warren owns \$7 million with \$3 million in Minnesota sited business property. Veronica owns \$3 million in non-Minnesota sited property. Warren passes away in 2025 leaving all of his estate to Veronica, except for those assets which

she disclaims. Disclaimed assets go to a disclaimer trust for the benefit of Veronica and the parties’ surviving children. Veronica passes away six months after Warren.

No Minnesota estate tax is owed by Warren’s estate because of the unlimited Marital Deduction, but the value of Veronica’s estate has been increased by Warren’s assets, which include Minnesota sited property. If no disclaimer is made by Veronica’s Personal Representative, her Estate will owe \$273,000 in Minnesota estate tax.

Minnesota Gross Estate	\$10,000,000.00
MN Estate Tax Exemption	\$ (3,000,000.00)
Minnesota Taxable Estate	\$7,000,000.00
Minnesota Estate Tax (13%)	\$910,000.00
Minnesota Sited Property	\$3,000,000.00
Percentage of MN Property	30%
Minnesota Estate Tax Due	\$273,000.00

However, Veronica’s Personal Representative could make a qualified disclaimer shortly after her passing to push the Minnesota farmland back into Warren’s taxable estate. Warren’s estate would not owe any Minnesota estate tax because all of the Minnesota farmland would be sheltered from estate tax by Minnesota’s \$3 million exemption. Likewise, Veronica’s estate would not be liable for Minnesota estate tax because it wouldn’t hold any Minnesota sited property. In addition, Veronica would have indirect access to the land and income there from under the terms of the Disclaimer Trust.

Conclusion

Minnesota residents face worldwide taxation, while non-residents remain exposed on their Minnesota-sited tangible property. The state’s \$3 million exemption offers some relief, and tools such as disclaimers provide opportunities to reshape the taxable estate after death, but these measures require foresight. Without proactive planning, families may be caught off guard by how aggressively Minnesota asserts its estate tax jurisdiction.

The lesson is simple: Minnesota estate tax does not stop at the border. Real estate, equipment, and business assets anchored in Minnesota tie heirs to Minnesota’s tax system, regardless of where the decedent lived. Careful planning—before and even after death—can mean the difference between preserving wealth and writing an unexpected check to the state of Minnesota.

The information provided in this article is not intended to and does not constitute legal advice. The statements herein are for general informational purposes only. Should you have a question about your specific situation, it is recommended that you consult with a licensed attorney or other professional.



THE ONE BIG BEAUTIFUL BILL'S IMPACT ON ESTATE PLANNING



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The One Big Beautiful Bill Act (OBBBA) signed into law on July 4th, 2025, includes some critical estate planning changes. While the main estate planning related changes are focused in just a few areas, OBBBA gives many taxpayers a compelling reason to create or revisit their estate plans.

Estate and Gift Tax Exemption

First, the unified estate and gift tax exemption did not expire and will now be set at \$15 million per person (\$30 million for married couples) starting on January 1st, 2026. This welcome news is an increase from the existing exemption amount which is currently set at \$13.99 million per person (\$27.98 million per married couple). The existing exemption was set to be cut in half on January 1st, 2026, but instead, now there will be roughly a one million dollar increase per person under this critical tax shelter.

The increase in the unified estate and gift tax exemption is critical because the federal wealth transfer tax remains the same at 40% for any amount of property left to others post death that exceeds the \$15 million per person threshold. Few

want to donate 40% of their possessions to taxes when they die, so this portion of OBBBA is a relief for those with assets that will exceed the \$15 million exemption. The new \$15 million per person unified estate and gift tax exemption is permanent and indexed to inflation starting in 2027; therefore, unless Congress decides to act again, no further changes are forecasted for this critical tax exemption besides increases in the exemption amount to match inflation after 2025. However, when the composition of Congress changes, it is possible this exemption will be revisited since an exemption to estate taxes at this level is not universally supported. OBBBA was only narrowly enacted with a vote of 218-214 in the Federal House of Representatives, and a vote of 51-50 in the U.S. Senate, which required the Vice President to break what would have otherwise been a tie. While many things were in OBBBA besides estate planning provisions, the point remains that the largely positive opportunities for tax management that arise out of OBBBA will not necessarily be supported by a new Congress.

For now, however, individuals and couples that previously maxed out their lifetime exclusion amount can make plans to avoid taxes on another one or two million, respectively. Additionally, because currently some states have a separate estate tax and exemption amount (e.g., currently \$3 million per individual in Minnesota or \$6 million per couple with proper planning), there may be other important adjustments you can make to your estate plan to save on taxes. For example, under OBBBA there

is continued opportunity for the \$19,000 per individual (\$38,000 per couple) in tax free gifting allowed annually under the federal gift exclusion.

Generation Skipping Transfer Tax Exemption

Second, the generation-skipping-transfer (GST) tax exemption has also increased from \$13.99 million to \$15 million. While often spoken of in the same breath as the unified estate and gift tax exemption, the GST tax exemption is a distinct exemption that may or may not apply at the same time as the unified estate and gift tax exemption. The GST exemption comes into play when a gift is made that skips generations such as when a grandparent leaves wealth to a grandchild or anyone at least 37.5 years younger than they are; this skip avoids a generation of estate taxes unless it exceeds the GST exemption and the special GST tax applies. For many though, the new \$15 million GST exemption will be more than enough to transfer all the assets they want up to the new \$15 million exemption across generations while avoiding at least the GST tax.

Qualified Small Business Stock Exemption

Third, for those who hold Qualified Small Business Stock (QSBS), there is more good news. Previously there was an exclusion from federal income tax for capital gains up to \$10 million dollars from the sale of QSBS (usually stock acquired directly from an active U.S. ‘C’ Corporation of a “qualified small business”) if the owners had held them for at least five years (and acquired the stock between September 27th, 2010, and July 4th, 2025). If QSBS was acquired before September 27th, 2010, then the exclusion was 50% or 75% depending on the purchase date. Now the exemption cap is immediately increasing to \$15 million for holdings acquired after July 4th, 2025, and there is a tiered system for achieving a minimum percentage of tax savings before the five-year benchmark has been achieved.

If QSBS is held for at least three years, then 50% of the gain may be excluded upon sale; if QSBS is held for at least four years, but less than five, then 75% of the gain may be excluded. So, now not only is there an option to exclude some capital gain taxes on the sale of QSBS held for less than five years, but the maximum exemption amount that can be sheltered increased from \$10 million to \$15 million. Starting in 2027, the \$15 million exemption limit will be adjusted for inflation (but this will not affect those who have already maxed out the exemption with respect to a specific issuer). In some situations, a higher exclusion than \$15 million may also apply based on an individual’s aggregate adjusted basis in the QSBS sold (up to ten times their aggregate adjusted basis).

Additionally, the definition of a “qualified small business” has been expanded under OBBBA so the gain exclusion applies to most active US ‘C’ Corporations who have less than \$75 million in gross assets (a number that will increase with inflation in future years).

Tax efficient succession planning may be able to be accelerated and greater savings achieved because of these QSBS changes.

Charitable Giving

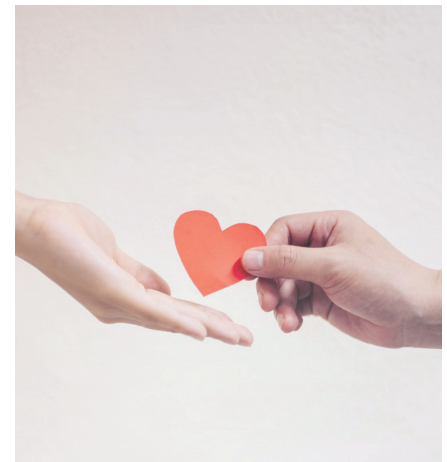
Fourth, OBBBA enacted a number of changes to the federal tax code concerning charitable donations which make careful estate planning for the philanthropically minded even more crucial. Starting for the 2026 tax year there is now a \$1,000 federal income tax

deduction available for each taxpayer (\$2,000 for couples filing jointly) who donates to IRS recognized public charities and takes the standard deduction instead of itemizing. However, for those individuals who itemize, they must now donate an aggregate of at least 0.5% of their adjusted gross income to qualified charities to claim a charitable deduction. For example, this means a couple that makes \$200,000 must now donate over \$1000 to secure a charitable deduction on the amount over \$1000 when itemizing on their tax return.

Corporate donations and charitable deductions under OBBBA are also semi restricted now with only contributions that exceed 1% of the company’s taxable income qualifying for an income tax deduction.

Large donors will be pleased that the maximum an individual may claim as a charitable deduction in a given tax year is now permanently set at 60% of their adjusted gross income (AGI). This amount was initially increased from no more than 50% of a taxpayer’s AGI for donations made to IRS recognized charities to 60% temporarily in 2017 by the Tax Cuts and Jobs Act. OBBBA has now made this change permanent.

Less positively for top earners, OBBBA limits the benefit taxpayers in the highest 37% tax bracket can receive for a charitable deduction to 35%; this is colloquially known as the “2/37ths haircut.” Effectively, this means that for a donor who gives \$1000 to charity, only \$350 of it will return to them as a tax reduction instead of \$370 as would have been the case



prior to the enactment of OBBBA.

These changes may encourage bunching donations together into the same year to achieve greater tax savings. Another, more sophisticated, way to avoid this loss of tax savings on major planned giving is to fund a donor advised fund (DAF) in 2025 before the new rules take effect in 2026. Funding a donor advised fund gives the donor an immediate tax deduction for 2025 under the pre-OBBBA existing rules and allows donors to then make grants out of the irrevocable trust to public charities for years to come while avoiding the new 2/37ths haircut on their charitable giving.

Alternatively, a person who has an income of perhaps \$200,000 per year plus significant assets might benefit from the tax savings a non-grantor trust can offer under OBBBA. A non-grantor trust is a type of irrevocable trust made to benefit the grantor's (creator's) spouse, children, and/or charities. The grantor can fill a non-grantor trust with passive income creating investments; and because these assets are removed from the direct control of the grantor, the non-grantor trust is treated as a separate tax entity with a separate trust income tax scale. This can save the grantor money on income tax because the grantor remains eligible for the new \$15,750 per person (\$31,500 per married couple) standard deduction under OBBBA (these 2025 numbers are indexed

to inflation). The grantor can also still limit their exposure to high trust income tax rates by distributions to children in lower tax brackets (children will pay taxes on distributions at their individual rates instead of the trust paying tax on the distribution) and donations to charity from the trust that are not subject to the 2/37ths haircut.

Conclusion

While most of the federal landscape regarding estate planning has remained unchanged after the enactment of OBBBA, notable changes have occurred. These changes make proper estate planning even more beneficial for those with larger estates. There is time to utilize both old and new tools while favorable law is available for estate planning. Maxing out the \$19,000 annual federal gift exclusion will not reduce your new lifetime \$15 million federal unified estate and gift tax exemption cap or lifetime \$15 million GST exemption cap. Plan well with your QSBS stock sales and charitable giving to maximize tax savings. A general estate planning principle remains true after OBBBA-it is often best to reduce your taxable estate now via smart planning and the transfer of items that you expect to appreciate, in order to remove both the item and the future growth in value of that item from your taxable estate.

Plan for the unpredictable

At Gislason and Hunter, we specialize in prenuptial and postnuptial agreements, divorce, and dispute resolution. Whether you're looking to protect your assets before marriage, navigate the complexities of divorce, or resolve conflicts related to prenuptial or postnuptial agreements, our experienced attorneys are here to guide you every step of the way.

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- Creating family business succession plans with emphasis on each family's particular goals and values
- Farm estate and succession planning
- Evaluating estate and gift tax issues and structuring planning options to minimize tax obligations
- Administering and assisting clients with probate proceedings, conservatorships and guardianships
- Advising on Medicaid, Medicare, nursing home and elder law issues
- Handling disputed estate and probate matters in litigation, arbitration or mediation formats

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- Custody, Parenting Time and Child Support
- Divorce
- Farm Ownership & Divorce
- Order of Protection and Harassment Restraining Orders
- Prenuptial and Postnuptial Agreements

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