

Big Beautiful Bill Estate Planning Ideas

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The Big Beautiful Bill has important implications to your estate planning. What should you do now? ... More

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The Big Beautiful Bill (BBB), or The One, Big, Beautiful Bill (OBBBA) is now law. What is the impact on estate planning? According to several smart advisers there is little to do as the exemption is so high. In fact, these experts suggested that pretty simple estate planning documents could be done for those with even a \$30 million net worth. That, they reasoned is because the exemption is \$15 million per person x 2 for a couple is \$30 million. And, that amount is inflation adjusted. No doubt lots of folks will find that appealing. Most people want simple plans and documents. While that may be simple, it is not prudent for several

reasons. Let us take a deeper look at what really should be done for estate planning after the BBB.

What Your Planning Should Consider Now

So, here is a partial list of goals and planning benefits that should be considered in your planning in the current environment:

- **Income taxes.** The BBB made wide ranging changes to income tax rules that will affect everyone's income tax planning. Estate and trust planning, particularly using non-grantor (complex) trusts, can facilitate some aspects of income tax planning. For example, the increased standard deduction of \$31,500 for married taxpayers filing jointly, provides tax savings. But it also means that very few taxpayers will itemize deductions. That will eliminate deductions for charitable contributions (not counting the \$1,000/\$2,000 above the line deduction). Estate planning can be adapted to help maximize your charitable contribution deductions. If you shift passive income producing investment assets (e.g., bonds, dividend paying stocks) to a non-grantor trust that trust can make charitable contribution payments from its gross income and qualify for a full charitable contribution deduction. That is because trusts are not subject to the standard deduction. You will still get your full standard deduction and effectively use contributions deductions that would have otherwise been lost to offset the passive income. This does not have to be costly as you can create a trust in your home state with a family member trustee. This technique also does not have to prevent you from having indirect access to the assets involved. Your spouse can be a beneficiary so long as an adverse party approves distributions.
- **Estate taxes.** Yes, estate tax may still be relevant and how they are relevant will depend on your net worth and to what it may grow. Most important, "permanent" only means lasting until the next law change. So even taxpayers well under the new high exemption amount could be well advised to plan now while they can. If you are very wealthy, say \$40 or \$50 million and higher, you perhaps should continue to plan to reduce your taxable estate. First, you are already subject to estate tax under the new BBB rules. But perhaps more important, no one can predict what future administrations in Washington might do to the estate tax system. Only a few years ago the uber wealthy were focused on Democrat proposals that would have eliminate post estate planning techniques including grantor trusts and worse. So, plan in case that comes back. For those with wealth levels closer to the new exemption amount it may make sense to plan for the same reason.

- Asset protection planning was, is and will remain vitally important for people of all wealth levels. Remember the estate tax at present can at most claim 40% of an estate but a creditor could reach much more. Estate and trust planning are vital to protecting your wealth from claims. And, if you are shifting assets to trusts to protect them, that can also shift those assets outside of your estate.

How Might Post-BBB Trust and Estate Planning Be Different?

Planning should, generally, proceed using similar tools and techniques but more flexibility perhaps than before, but with some modifications.

- We might see a greater use of SPAT, hybrid DAPT and other means of accessing trust assets than merely dynasty trusts and SLATs. A SLAT is a spousal lifetime access trust. That means your spouse but not you can be a beneficiary. A dynasty trust often is designed to exclude you and your spouse as a beneficiary. Instead, if planning is now more for asset protection planning or “just in case” the tax laws change in the future, you might want more ability to access trust assets. So, a Special Power of Appointment Trust (SPAT) in which someone in a non-fiduciary capacity can appoint trust assets to you, or a Hybrid Domestic Asset Protection Trust in which you can be added back as a beneficiary, may be preferable.
- Lifetime limited powers of appointment are rights given to a person called a powerholder to direct or appoint trust assets. Included more such powers that can be exercised even while the person who set up the trust is alive may be a way to infuse flexibility. If laws change that powerholder may appoint trust assets to a new trust or in another way to address the changes.
- Broader trust protector powers might make sense to build in more flexibility to address future changes. A trust protector is a person designated in a trust to hold certain powers. The most common powers given to a trust protector are to remove and replace a trustee or to change the governing law and situs of the trust. However, perhaps it is worth considering whether a trust protector can and should be given powers to modify the trust to address future tax law changes. As a safety measure, that power could require the consent of another party or perhaps a board of three trust protectors could be appointed and require a unanimous agreement to take such powerful actions.
- Non-grantor trusts may warrant greater consideration to facilitate income tax planning. Spousal lifetime access trusts may be created in a non-grantor “flavor” by requiring consent of an adverse party for distributions to a spouse. This might be valuable even for moderate wealthy taxpayers. Example: Middle income taxpayer

Husband gifts a large portion of the couple's investment assets (address the step transaction issue) to a non-grantor SLAT to benefit wife and children who must consent to a distribution to wife. The income earned can be held in the trust and tax paid or distributed to those in a lower bracket. That can be planned so the parents qualify for new tax breaks many of which are subject to phase outs. Example: the new BBB exclusion of tip income up to \$25,000 is phased out at \$300,000. If the couple otherwise qualifies for this benefit shifting investment income away from them in that year (and evaluating it year after year) could enable them to qualify for that benefit.

Other Planning Considerations

- Review existing trusts and estate plans for opportunities to modify existing irrevocable trusts to allow for step-up in income tax basis that may not have been contemplated in the initial plan.
- Reevaluate the title to your asset and the reasons why they were titled (owned) as they presently appear. Consider the impact of the new BBB tax laws. For example, a married couple may have their house owned as tenants in common as they wanted to be able to use ½ that asset to fund a credit shelter trust on the first death. With a permanent \$15 million exemption (even if that may change in the future) it may be safer to retitle that house to tenants by the entirety if under your state law that provides better asset protection.
- Review existing irrevocable trusts and evaluate whether you can decant (merge) those existing trusts into new trusts with broader trust protector powers to allow for more flexibility.
- Review buy sell agreements and consider updating them to reflect true fair market value. Many times, these agreements tried to use a lower value to avoid estate tax but that may not be an issue post BBB.
- Consider estate planning beyond just estate tax considerations. There is so much more.