

Big Beautiful Estate Plan: Impact Of The Big Beautiful Bill (OBBBA)

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The Big Beautiful Bill affects scores of tax rules and every taxpayer will be effected. Estate planning remains important.

The Big Beautiful Bill

We now have the Big Beautiful Bill (BBB), or The One, Big, Beautiful Bill, or OBBBA as law. The House passed the Senate version of the BBB on July 3; President Trump signed the bill into law on July 4th. The House and Senate each passed the BBB by razor thin margins with most votes on party lines. The bill is massive in terms of spending, tax changes and more. Some of the changes, with a particular focus on estate planning, will be reviewed below. The focus will be on what some of the BBB changes mean to your estate plan.

In very general terms the BBB extends many of the expiring provisions from the 2017 Trump tax cuts contained in the Tax Cuts and Jobs Act. It enacts several Trump campaign promises and tax priorities (e.g., “no” taxes on certain tips and overtime pay). The BBB ends many clean energy tax incentives.

A Meandering Explanation of Why Tax and Estate Planning Remains Important Despite the \$15 Million “Permanent” Exemption

The impact of the BBB is, however, less clear. While the Congressional Budget Office estimated that the BBB may add over \$3.9 trillion to the national debt over the next ten years, other estimates vary significantly. Some believe the BBB will stimulate economic growth and will increase tax revenues. While some characterize the BBB as harming millions of people by reducing Medicaid and SNAP (food stamp) benefits others state that those changes are intended to cut fraud and abuse. There are clearly substantial tax benefits for the wealthy which some complain will only exacerbate the significant wealth disparity in our country. Others suggest that tax changes benefiting the wealthy will be part of the economic engine to supercharge the economy. The differences in views are marked and the actual results will only be known over time.

Why are these irreconcilable interpretations of the impact of the BBB so important to your estate planning? Forgive the conclusions that either interpretation suggests more, not less, estate planning be undertaken. If the White House views that the BBB will create an economic juggernaut, perhaps it behooves those of wealth to shift more assets now into irrevocable trusts to prevent the growth of their estates from creating greater estate taxes in the future. If the Democrat and other negative views of the BBB happen, the economic results will not be sufficient to offset the negative consequences, millions of Americans (perhaps tens of millions) may realize negative consequences from the spending cuts. That may result in the political pendulum swinging in one of the future elections to a Democrat controlled Congress. If enough people at the lower wealth levels are harmed materially by this bill, that may well motivate them, and those that care about their wellbeing, to actively seek to change the post-BBB environment. That may mean that the Democrat proposals like a Senator Sanders estate tax bill or a Senator Warren wealth tax, or both, that have been repeatedly proposed for years, may in fact be enacted. If that is even a modest possibility, those who are wealthy should pursue estate planning now, while it is feasible, to shift wealth out of their estates. That planning makes sense for several reasons but may in fact be different than the typical estate planning techniques. This will all be explored, with specific planning suggestions, below.

There seem to be a few other points that, if accurate, could have an impact on your estate planning. These may be a stretch but let us try. The proceedings in Congress leading up to the passage of the BBB were incredibly antagonistic between those with different views. That dynamic is sadly reflective of the country as a whole. The anger, polarization and seeming unwillingness of so many to consider different views may only exacerbate the already litigious environment we have had for a long time. That might suggest that regardless of the estate tax, pursuing protective steps as part of your estate planning (asset protection planning).

Another point, the BBB contains many detailed tax provisions that affect specific types of income, specific activities and specific people.

- Tips will receive more favorable tax treatment than other incomes. Why is income earned as tips favored over income earned by a professional or business owner?
- Those with real estate and certain business interests may qualify for a 20% reduction in their income, but professionals (doctors, lawyers, architects, etc.) are excluded.
- No deduction is generally permitted for itemized deductions, but teachers will be able to deduct unreimbursed employee expenses.

- Personal interest expense (e.g., on a bank loan) is generally not deductible, but interest paid on car loans from 2025-2028 will be.
- The income tax resulting from the sale of farmland to a qualified farmer can be deferred and paid in four annual installments.
- The list goes on.

Some tax breaks are permanent, others are not. Those that are not permanent end at a variety of times, some in 2028. Various tax breaks are reduced or eliminated as your income reaches certain levels, and the income levels vary by tax break. This adds incredible complexity to a tax code that was already opaque. This creates artificial incentives and disincentives that seem random at best. There will be an increased incentive post-BBB to shift income or deductions to qualify for the categories the BBB favors. Tax planning will be more complex and convoluted. It would seem that the impact of these types of changes on the economy could be hard to predict and there may be unintended ripple effects. Might these phase outs at various income levels and sunseting after a few years been instituted so that the tax benefit can receive attention while the complexity of the limitations may not be understood?

The discussion later in this article reviews many, but far from all, of the tax changes contained in the BBB. Many of these have no connection to your estate planning, but they help demonstrate the breadth, complexity and seeming arbitrariness of the BBB which is important for all taxpayers to understand. For some of these, the indirect implications to your estate planning have been noted. That too, while complicated, is important as so much tax, retirement asset protection and other planning is interconnected. Even if the examples indicated do not apply to you, they may help you realize how to look at your own planning from a broader lens. It may also be instructive to see some of the contrasts in the BBB tax breaks. For example, as explained below the \$25,000 tip deduction is good until 2028 whereas the \$15 million estate tax exemption is permanent. Some of the nuances of the BBB like the above may not have been apparent from general medial discussions of the BBB.

Finally, there has been much discussion of the impact of the BBB on the deficit and the perilous nature of America's debt levels of about \$36 Trillion Dollars. If the predictions that the BBB will spur growth and raise tax revenues do not happen, tax increases may be inevitable. Whether or not the \$15 million exemption is labeled "permanent" may have little relevance if taxes must be raised in the future to address a growing deficit. Senator Warren and others had in prior years introduced legislation to enact a wealth tax. Estimates are that a wealth tax of 2% on wealth in excess of \$30 million might raise over \$400 billion. That

could be about 20% of the deficit. The risk of such changes occurring should be carefully weighed by anyone with wealth before opting not to continue planning.

BBB Estate Tax Exemption Does Not Make Estate Planning Obsolete

The BBB increases and makes permanent the estate and gift tax exemption amount at \$15 million. This figure will be indexed annually for inflation. For a married couple, that effectively means \$30 million of wealth can be passed to future generations without any estate tax.

Consider that one of the underlying reasons that the estate tax was enacted was to reduce wealth concentration. Estimates are that only .25% of American households have a net worth of more than \$30 million. That is approximately 1 out of every 400 households, or perhaps 350,000 family units. <https://itep.org/the-geographic-distribution-of-extreme-wealth-in-the-u-s/>. For comparison, the Federal Reserve Bank estimated that there are approximately 132 million total households in the country. <https://fred.stlouisfed.org/series/TTLHH>. That is a very tiny percentage that may be subject to estate tax after the BBB. The goal of reducing wealth concentration does not seem particularly achievable. All of this might suggest caution that if the current goals for the BBB are not achieved the pendulum in Washington may swing in the other directions, and we may again see proposals for a harsher estate tax, and perhaps even a wealth tax too. This is precisely why those with material wealth, even well under the \$15 million or \$30 million levels, should continue to plan to reduce their estates.

Individual Income Tax Provisions

Bicycle Commuting Costs: The BBB permanently requires that you include reimbursement for bicycle commuting costs in income. Why do this? Part of the reductions in environmental benefits?

Tax rates: The tax rates enacted in 2017 are made permanent. But for this change the marginal tax rates would have increased. The maximum rate will thus remain 37% and not increase to 39.6%. At these rates planning can still be beneficial, e.g., shifting income to a child in a lower tax bracket, or using non-grantor trusts to shift income to lower bracket beneficiaries.

Standard deduction: The “standard deduction” is a basic deduction everyone is allowed to take in calculating their taxable income if they do not qualify to deduct actual permitted deductions. Thus, the standard deduction is a specific dollar figure that is subtracted from income to arrive at the amount on which you are taxed. Additional amounts may be allowed based on age or blindness. The 2017 Tax Act increased the standard deduction amounts,

and the BBB made those increases permanent. For 2025 the standard deduction is \$15,750 for single taxpayers and \$31,500 for married filing joint taxpayers.

Home Mortgage Interest Deduction: The BBB permanently extends the limitation on deducting qualified residence interest to the first \$750,000 in home mortgage acquisition debt. This means, as under prior law, that if you buy a home for cash and later get a mortgage (e.g., rates may come down) you will not qualify to deduct the interest since that debt was not used to acquire the property. Parents helping children to acquire a home should be mindful of these rules. The BBB also makes the inability to deduct interest on home-equity loans permanent.

Charitable Contribution Deductions: Generally, to claim a charitable contribution deduction taxpayers must itemize their deductions and not claim the standard deduction. Because of the increase in the standard deduction and limitations on many of the deductions that could otherwise be itemized most taxpayers do not itemize. But if you take the standard deduction how can you get a tax benefit for making contributions? The BBB provides a charitable contribution deduction up to \$1,000 for single taxpayers, or up to \$2,000 for married taxpayers filing jointly. For taxpayers who itemize deductions, the BBB has charitable contributions reduced by 0.5% of the taxpayer's contribution base. The contribution base is adjusted gross income (AGI) determined without regard to any net operating loss carryback to the taxable year.

Car Loan Interest: The BBB permits the deduction of interest paid on a qualified passenger vehicle loan for the years 2025 through 2028. The loan must be secured by a first lien on a passenger vehicle used for personal use which had its final assembly in the United States. The interest deduction cannot exceed \$10,000 per year and will be phased out for single taxpayers with MAGI in excess of \$100,000, or married filing jointly taxpayers with MAGI over \$200,000.

State and Local Tax (SALT) Deduction: The 2017 Tax Act limited the deduction that can be taken for SALT to \$10,000. For those in high tax states like California and New York this was a very costly change. Some high tax states tried to create a mechanism to reduce the pain of this tax restriction on their residents. This technique is called the Pass-Through Entity Tax or PTET. PTET rules permit taxpayers to shift their otherwise non-deductible SALT cost from the individual taxpayer to an entity. If the entity could deduct the tax payment it would reduce the entity income passing through to the individual taxpayer who would receive a state tax creditor or income exclusion. PTET is thus equivalent to a larger SALT deduction realized by avoiding the SALT cap. Yep, complicated.

The BBB temporarily increases the limit on the federal SALT deduction to \$40,000 and adjusts it for inflation so that in 2026, the limit will be \$40,400. In 2030, it will drop to the current \$10,000. The SALT deduction is also reduced for taxpayers with modified adjusted gross income (MAGI) over \$500,000. The SALT deduction is reduced by 30% of the amount the taxpayer's MAGI exceeding \$500,000, but not below \$10,000. This means that the taxpayers that pay the most will have the least benefit from state taxes. This is an example of the complex variations and phase outs of tax changes that are common in the BBB, and which make understanding the changes and planning for them quite complex.

This can have a number of implications for business and estate planning. The choice of entity for a business may be affected by whether or not that business will qualify for PTET benefits to work around the SALT limitation. For those that may be able to qualify for a larger SALT deduction without PTET because of the liberalized rules it may not be advantageous to dismantle the entity structured created to qualify for PTET because the change is only temporary, is capped as to how much income taxpayers can earn before losing the benefit, etc. Another impact may be on the tax status of entities commonly used in estate planning. While it may simplify income tax filing to have an entity as wholly owned by a trust, so that the entity can be disregarded for income tax purposes, the entity may need to have a second member so that it is in fact recognized for income tax purposes to qualify for PTET. That can create income tax and legal complications.

Moving Expense Deduction: The BBB permanently eliminates the deduction for moving expenses, except for members of the armed forces. Until now if you could deduct moving expenses as relating to a work related move you could file Form 3903 with the IRS. Filing that form may have been good proof if a state tax auditor questioned whether or when you terminated your residency in that state for state income tax purposes. So, depending on your circumstances you might still find it beneficial to keep all the same records that would have been used to back up that deduction even though it is no longer available.

Miscellaneous Itemized Deductions: The BBB makes permanent the elimination of a deduction for miscellaneous itemized deductions such as unreimbursed employee business expenses, tax preparation costs, etc. However, the BBB permits these deductions for eligible educators. Why this favoritism to educators over other taxpayers? Tip income is favored, Social Security favored and teachers. The lack of consistency or rationale to the tax changes of the BBB makes the law unintuitive, complex, and taxpayers will no doubt get lost (and hurt financially) by this complexity.

Itemized Deductions: The amount of itemized deductions an individual taxpayer can deduct (after apply limitations such as those above on home mortgage interest and miscellaneous itemized deductions) must be reduced by 2/3 of the lesser of: (1) the

amount of itemized deductions, or (2) so much of the taxable income of the taxpayer for the taxable year (determined without regard to this section and increased by such amount of itemized deductions) as exceeds the dollar amount at which the 37 percent rate bracket under section 1 begins with respect to the taxpayer. For married filing joint taxpayers this is \$751,600. So, if your income is less than you would not have a limitation since you have no income above \$751,600 so test (2) would be zero. Note the application of this. If you have a business and can deduct all equipment purchases or research costs under the BBB you might have economic earnings that are large yet face no limitation on your deductions. Was that the intent? This language is paraphrased from the actual bill. It was estimated that the BBB was 940 pages. Consider just how dense this one provision is. How many members of Congress understood this limitation? Can you understand this well enough to plan to maximize your deductions?

Senior Exemption/Personal Exemption: A personal exemption was a dollar amount that every taxpayer could deduct from their gross income to reduce their taxable income. The BBB permanently eliminates the personal exemption by setting the amount to zero. But the BBB includes a temporary \$6,000 deduction for those 65+. But this amount is phased out when a taxpayer's modified adjusted gross income (MAGI) exceeds \$75,000 for an individual (and is completely phased out at about \$175,000) or \$150,000 for married taxpayers filing a joint return (and is completely phased out by \$250,000). It will be in effect for the years 2025 through 2028. Why are older taxpayers favored over other taxpayers, e.g., those with disabilities? If someone gets rental income that is sheltered by depreciation deductions, e.g., on a rental home, they may have more cash flow than the limits and thus qualify for this benefit even if someone earning much less is in greater need. Also, consider the complications of all of this, and it is only temporary.

Child Tax Credit: The BBB increases the nonrefundable child tax credit to \$2,200 per child. The availability of the credit is phased out when a single taxpayer income exceeds \$200,000 or a married filing joint taxpayer has income of \$400,000. Notice the complexity of these phase out amounts as contrasted to the phase out amounts for the Senior Exemption above, and other tax benefits in the BBB. What is the rationale for using different income levels for various tax benefits? Perhaps whatever was negotiated and making budget projections acceptable. But the complexity it leads to is disconcerting.

Adoption Credit: The BBB makes up to \$5,000 of the credit refundable and indexes the credit for inflation.

Dependent Care Assistance Programs: The BBB increases the exclusion from income for employer provided dependent care assistance from \$5,000 to \$7,500.

Qualified Business Income (QBI) Deduction: Code Section 199A permits a tax deduction, called the QBI deduction, of up to 20% of qualified income from pass-through entities. This substantial benefit expressly limits this benefit for Specified Service Trades or Businesses (SSTBs). SSTBs include law, accounting, architecture, medicine, etc. When SSTB income exceeds \$75,000 for a single taxpayer, and \$150,000 for a joint tax return, the benefits are reduced. These amounts reflect increases from \$50,000 and \$100,000 respectively by the BBB. Why are real estate and certain businesses favored over professions?

ABLE Accounts: Achieving a Better Life Experience (ABLE) accounts are special accounts that can help people with disabilities save money without jeopardizing their eligibility for government benefits like Supplemental Security Income (SSI) or Medicaid. If your income or assets are too high benefits can be lost. Up to \$100,000 of ABLE account value is excluded from those tests. To qualify the individual must have a qualifying disability that began before age 26 (age 46 in 2026) and must be both the owner and beneficiary of the account. Earnings grow free of income tax. Withdrawals are tax-free if used for Qualified Disability Expenses (QDEs) like housing, education, transportation, and healthcare. The maximum amount that can be contributed to an ABLE account each year is based on the gift tax exclusion amount (\$19,000 in 2025). Working beneficiaries may contribute additional. The BBB makes permanent the 2017 Act's increased limitation on contributions to ABLE accounts. The BBB makes permanent the right for taxpayers to rollover amounts in 529 plans to ABLE Accounts. For those planning their estates who have a child or other disabled heir that qualifies, an ABLE account may be helpful to consider.

Trump Accounts: Trump accounts are a new savings vehicle to help children. These will be in the form of special IRAs to benefit children under age 18. Contributions can only be made in calendar years before the beneficiary reaches age 18. Distributions from a Trump account can only be made in the calendar year the beneficiary attains age 18. The full value must be distributed by age 31. Distributions of basis (what was contributed) are received tax-free. Distributions for Qualified Expenses are treated as net capital gains subject to more favorable taxation. Qualified Expenses are payments for: qualified higher education, qualified post-secondary credentialing, amounts paid to a small business for which the beneficiary has obtained a small business loan or small farm loan, and amounts paid for the purchase of a first home. Investments are restricted to mutual funds and indexed ETFs. Contributions are generally limited to \$5,000 a year (inflation adjusted after 2027). A \$1,000 tax credit may be earned for opening a Trump account for a child born in 2025 to 2028. The relative benefits of a Trump Account versus a 529 Account should be considered. Much larger amounts can be contributed to a 529 plan than a Trump Account, and they are not set to expire after only three years.

529 Account: 529 plans are tax-advantaged savings plans that can help pay for college expenses. Contributions to a 529 plan are not deductible, but earnings grow tax-free. Withdrawals are tax-free when used for qualified education expenses. The account owner, e.g., the parent, can retain control over the funds and can change the beneficiary. Payments can be made up to the gift tax annual exclusion amount which is \$19,000 in 2025. Gifts can even be front-loaded for five years. The BBB has enhanced 529 Plans so that they can be used for enrollment in an elementary or secondary school. The BBB also allows tax-exempt distributions from 529 savings plans to be used for qualified postsecondary credentialing expenses. 529 were a powerful planning tool and have been enhanced by the BBB. Anyone planning for children, at almost any wealth level, should evaluate the possible benefits.

Tip Income Tax Free: The BBB gives a temporary deduction of up to \$25,000 for qualified tips received by an individual in an occupation that customarily and regularly receives tips in tax years 2025 through 2028. The deduction phases out when the taxpayer's Modified Adjusted Gross Income (MAGI) exceeds \$150,000 for a single taxpayer and \$300,000 for a married taxpayer filing a joint return. Note the limited number of years that this benefit will remain. In contrast, the increase of the estate tax exemption to \$15 million is permanent. Consider the cost of these tax benefits, and who benefits from each? Also note the complexity that continues with different phase out levels for different changes enacted as part of the BBB. While this is touted as a benefit for middle income taxpayers the top end of the threshold of \$300,000 of income puts that wage earner in the top 3% of earners in the country. <https://dqydj.com/income-percentile-calculator/>. Another consideration is how much tip income was not reported in the past. If it was not reported it was not taxed before this break was included in the BBB. The Treasury Inspector General for Tax Administration estimated that there was a significant amount of unreported tip income. For example, in 2016, they identified \$6.3 billion in projected unreported tip income. Billions in Tip-Related Tax Noncompliance Are Not Fully Addressed and Tip Agreements Are Generally Not Enforced dated September 28, 2018. The IRS estimated the total dollar value of tips given to employees in a given year at \$36 billion, so perhaps 17.5% is never reported. Another question to ask is why is tip income treated more favorably than other income from labor? A doctor for example, spends a tremendous number of years training, likely faces significant stress and malpractice risk but a physician's income doesn't generally qualify for the QBI deduction under Code Section 199A (see above) or a deduction as does tip income for a worker with far less commitment to training or liability risk. Is that reasonable, rationale or fair?

Overtime Pay Not Taxable: The BBB gives a deduction of up to \$12,500 for a single taxpayer, and up to \$25,000 for married taxpayers filing a joint return for qualified overtime

compensation for tax years 2025 to 2028. Qualified Overtime Compensation is defined as overtime compensation paid to an individual required under section 7 of the Fair Labor Standards Act of 1938 that is in excess of the regular rate. The deduction is phased out as Modified Adjusted Gross Income (MAGI) exceeds \$150,000 for a single taxpayer and \$300,000 for a married taxpayer filing a joint return. See the comments above concerning tip income as those apply to overtime pay as well. So, a person who has childcare or other care giver responsibilities, or who themselves has a disability, so that they cannot work the hours to receive overtime, will pay a higher marginal tax on their income.

Alternative Minimum Tax (AMT): The AMT is a tax applied to high-income taxpayers to try to make sure that they pay a minimum level of tax. The AMT requires adding back certain tax deductions and adjustments to income, multiplying it by an AMT rate and requiring the taxpayer to pay at least the AMT amount. The 2017 Tax Act modified the AMT increasing the exemption and the level at which the exemption is phased out. The BBB makes the 2017 changes permanent. But the BBB reduces the amount at which the exemption starts to phase out from \$1,252,700 to \$1,000,000.

Business Tax Provisions

Bonus Depreciation: Depreciation is the deduction of the cost to buy an asset over its useful life. For example, if you purchased a machine that lasts for 10 years you would, theoretically, deduct 1/10th of the cost to purchase it each year for 10 years. The theory behind depreciation is to match deductions to the revenue they produce. However, the tax laws have long tinkered with these concepts, often accelerating the deductions to provide faster tax benefits to spur investments. That is precisely what the BBB has done with several deduction concepts. The BBB makes permanent the additional first-year, or “bonus,” depreciation deduction at 100% for property acquired and placed in service on or after Jan. 19, 2025.

Sec. 179 Expensing: This is another exception to the concept of depreciation discussed above. The BBB increases the amount a taxpayer can expense under \$2.5 million per year. This immediate deduction is reduced by the amount by which the cost of qualifying property exceeds \$4 million. The latter concept is intended to benefit “smaller” businesses that spend less than \$4 million on new assets. The effective date is tax years beginning in 2025.

Research and Development Expenses: The BBB permits taxpayers to deduct domestic research or experimental expenditures paid or incurred. In contrast, expenditures on research that is conducted outside the United States must be deducted over 15 years.

Qualified Opportunity Zones (QOZ): The BBB makes QOZ benefits permanent. The BBB, however, restricted the definition of “low-income community.” QOZs are a tax incentive created in 2017 to stimulate investments in economically distressed communities. These are in census tracts certified by the U.S. Treasury as low-income. Taxpayers can invest in these by participating in Qualified Opportunity Funds (QOFs). If you reinvest capital gains into a QOF you can defer taxes on those gains. A partial exclusion of deferred gains can be realized if the QOF investment is held for five years, 10% of the deferred gain is excluded from taxation. If it is held for seven years an additional 5% can be excluded. If held for 10 years then new gains from a QOF are tax-free upon sale.

Qualified Small Business Stock (QSBS): QSBS is a tax benefit to stimulate investment in new startup companies. To qualify the stock must be acquired directly from a domestic C corporation (not on the secondary market). The corporation must have had under prior law gross assets of \$50 million or less when the stock is issued. The BBB increased this to \$75 million or less. At least 80% of its assets must be used in an active qualified business. The BBB increased the exclusion for gain from QSBS. For stock held for at least four years the percentage of gain excluded from gross income increased from 50% to 75%. If it is held for five years or more, the exclusion is 100%. The exclusion had been \$10 million, and the BBB increased it to \$15 million.

University Endowments: The BBB imposes an excise tax on certain large university endowments. The excise tax rate varies based on the endowment per student: \$500,000 to \$750,000: 1.4%, \$750,001 to \$2,000,000: 4.0%, and over \$2,000,000: 8.0%.