Steve Leimberg's Estate Planning Email Newsletter - Archive Message #3310

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From: Steve Leimberg's Estate Planning Newsletter

Subject: **Thomas A. Tietz and Martin M. Shenkman on the Fair Trusts for Fiscal Responsibility Act of 2026: A Technical Reassessment of Large-Trust Planning**

"The Fair Trusts for Fiscal Responsibility Act of 2026 (the 'Proposal'), if enacted, would alter the economics of estate and trust planning by targeting very large trusts with a recurring asset-based annual percentage charge. While it is highly unlikely that anything like this Proposal could be enacted under the current administration, it is yet another indication of what could be enacted in a different political environment."

Thomas A. Tietz and **Martin M. Shenkman** provide members with their analysis of the Fair Trusts for Fiscal Responsibility Act of 2026.

Thomas Tietz, JD, has lectured at the Notre Dame Tax & Estate Planning Institute and for the New Jersey Bar and Institute of Continuing Legal Education. He has published articles in the American Bar Association E-Report, Wealthmanagement.com and Trusts & Estate Magazine. He is a member of the American Bar Association, Real Property, Trust and Estate Law and Business Law sections, the New York State Bar Association.

Martin M. Shenkman is an attorney in private practice in New Jersey and New York who concentrates on estate planning. He is the author of over 40 books and more than 1,400 articles and has won many professional awards.

Here is their commentary:

EXECUTIVE SUMMARY:

The Fair Trusts for Fiscal Responsibility Act of 2026 (the "Proposal")[i], if enacted, would alter the economics of estate and trust planning by targeting very large trusts with a recurring asset-based annual percentage charge. While it is highly unlikely that anything like this Proposal could be enacted under the current administration, it is yet another indication of what could be enacted in a different political environment. Practitioners, even at this premature stage, might consider:

· Including a warning to clients with large value trusts and pursuing large dollar value planning that this is a possibility.

· Consider this type of proposal when engaging clients in discussions about infusing flexibility into a trust plan. For example, if a non-grantor trust is being considered to save state income tax, consider also that it may be impractical to later swap non-income producing assets out of that trust for income producing assets to generate the cash flow that the Proposal could necessitate.

· Consider integrating as much flexibility as appropriate and comfortable for the client into the planning such as an express decanting power, lifetime limited powers of appointments, broad trust protector provisions, an express ability to divide trusts (not only for GST inclusion ratio purposes), and perhaps, if the client is willing, a power held by someone in a non-fiduciary capacity to add beneficiaries.

Consider the impact that an annual trust wealth tax under the Proposal may have when combined with the tax impact of the 2/37ths reduction on trust deductions for charity and distributable net income (DNI)?

COMMENT:

Is The Proposal Part of a Bigger Picture?

Practitioners might also consider and include cautions to clients in client facing communications that this is not the only proposal to make estate taxes much harsher. The Working Americans' Tax Cut Act[ii] proposes a $1 million gift exemption, a $3.5 million non-inflation adjusted estate tax exemption and more. What would the impact on wealth be if a state like California, and perhaps others, impose a wealth tax on UHNW residents?

The Proposal

The Proposal is directed at the use of dynasty trusts, grantor trust arrangements, and other long-duration structures through which substantial wealth may compound for generations with minimal or no transfer-tax consequences, with the objective to change the tax posture by assessing an annual tax based on value as a prepayment towards eventual estate tax due.

The legislation is strategically framed to try to avoid a constitutional challenge as an impermissible tax on wealth. Instead of framing this as a direct tax on wealth, the Proposal characterizes the annual charge as an advance collection towards future transfer-tax liability. That reframing appears deliberate. The policy message, therefore, is not merely substantive, it is architectural. One point to consider, if an existing trust is outside the transfer tax system, fully generation skipping transfer (GST) tax exempt, and in a jurisdiction that permits perpetual trusts, what future tax is being prepaid?

The rhetoric accompanying the Proposal is also consequential. Describing trust planning as exploitation of a "loophole" does more than summarize a technical concern. It recasts lawful planning executed within the statutory framework as conduct warranting correction. That approach, coupled with the reframing of the annual charge as a transfer-tax prepayment, suggests a broader effort to change the policy narrative surrounding wealth transfer planning. The Proposal may reflect a more sophisticated legislative approach to increasing taxation of ultra-high net worth individuals.

If enacted, the Proposal would not merely affect future planning. It would adversely affect existing trust plans that were created in reliance on current rules. In practical terms, the Proposal would undermine common planning techniques UHNW families and could disrupt trust plans already in place before enactment if the statute applies without regard to trust formation date. The resulting impact would be felt not only in tax cost, but in trust investment policy, fiduciary administration, and beneficiary expectations.

Structure of the Annual Asset-Based Tax

The Proposal would impose an annual tax on the net value of assets held in applicable trusts as of the last day of each calendar year. This not only creates a new recurring liability, it does so through a separate statutory regime. If enacted, it would function as a standalone asset-based tax system under a new chapter of the Internal Revenue Code. The introduction of yet another chapter into an already complex Code would add yet another layer of administrative and interpretive burden.

The tax applies only when a trust holds at least $50 million of assets. The Proposal more accurately sets a 0% bracket below the first threshold, which is set at $50 million of trust assets. That might create a concern that if the Democrats have sufficient control of the government in the future, the $50 million may at enactment or a future date simply be reduced. That threshold narrows the tax to very large trusts, but it also creates difficult threshold questions. Valuation of hard-to-value assets is among the most problematic features of the Proposal. Closely held businesses, family limited liability companies, real estate, carried interests, and similar illiquid holdings cannot easily be measured each year as can, for example, a brokerage account. The Proposal appears to contemplate possible use of appraisals, perhaps with a longer permitted reuse period so that a single qualified appraisal might serve for more than one year. Treasury also may be expected to prescribe alternative methods, and formula-based conventions may emerge. Yet none of those possibilities eliminates the burden. Implementation will in all likelihood be expensive, technical, and potentially disruptive.

Consider the difficulties certain trusts may have in gathering the information required to complete a qualified appraisal. For example, a minority equity holder may not have the legal authority to compel a general partner or manager to deliver the detailed financial information needed to perform annual valuation work. A trust might therefore be taxable by reference to asset values that it cannot independently verify. Also, if the trust owns entirely non-liquid assets how will the trustee finance the annual tax cost?

The $50 million threshold itself also raises unanswered aggregation questions. If multiple trusts exist for related family members, will they be combined in applying the $50 million test? Would trusts for siblings be aggregated? Would partitioned trusts or trusts formed at different times be combined under anti-fragmentation regulations? The Proposal does not fully or clearly resolve those questions, but planners might need to contemplate them immediately because aggregation rules could determine whether a family is outside the statute or within it and how trusts are structured today may be relevant.

Applicable and Excluded Trusts

The Proposal reaches dynasty trusts, GRATs, complex grantor trusts, and other trusts commonly used for multigenerational transfer planning. The list sounds straightforward until one examines how more nuanced trust planning techniques might fit into the new regime. A beneficiary defective irrevocable trust (BDIT) might illustrate a problem. In a BDIT, the beneficiary who holds the requisite demand power may be treated as the deemed owner for income-tax purposes rather than the settlor who created the trust. The proposal nevertheless appears to subject the trust itself to the new annual asset tax based upon the settlor, without regard to which individual bears the income-tax consequences. The separation between income-tax ownership concepts and this new proposed asset-based regime may create another layer of mismatch complexity. Does the relationship of the person who created the BDIT and made the $5,000 gift control whether a particular BDIT would be aggregated with trusts of the beneficiary or only of the settlor?

The Proposal includes an exclusion for charitable planning and charitable trusts, i.e., trusts from which only charitable transfers may be made appear exempt. However, that exclusion is equally fraught. Many sophisticated trusts do not fit neatly into that category. A dynasty trust may include charitable beneficiaries or permit the later addition of charitable beneficiaries even though it is not itself a charitable trust. As there are non-charitable beneficiaries of the trust, it would therefore seem subject to the Proposal’s annual tax regardless of having charitable beneficiaries. Would such a trust have to be divided to preserve exemption? Is that even feasible? Charitable lead trusts (CLTs) and charitable remainder trusts (CRTs) present even sharper issues because they benefit both charitable and noncharitable interests. If the exemption is limited to trusts from which only charitable transfers may be made, then CLTs and CRTs would appear not to qualify. Consider how the combination of the 2/37ths reduction in DNI and charitable deductions for trusts would impact large trusts when combined with the tax under the Proposal. The combination of the two could create tremendous cash flow issues for even pre-existing trusts and over decades of time compound to erode the intended benefits of the trust planning. In such instances what can be done? Would trustees have to seek court approval to modify the trust in a manner that can somewhat preserve the initial intent?

The Proposal excludes certain trusts not typically used for transfer-tax minimization, but that leaves uncertainty for other trusts, such as purpose trusts used to hold a business indefinitely or to fund a section 501(c)(4) objective. Whether such arrangements are "typically used" for transfer-tax minimization is not self-evident, and the ambiguity itself becomes a planning and compliance risk.

Even revocable trusts are not entirely free from uncertainty. A trust in which the grantor may revest title without anyone else's consent appears excluded from the Proposal's tax. But elder-abuse planning frequently conditions revocation or amendment on the concurrence of a nonadverse party in order to protect a vulnerable settlor from coercion. If the existence of that required consent means the grantor no longer can revest title unilaterally, a common protective drafting technique could unintentionally pull a revocable trust into the statutory regime and subject it to the Proposal's annual tax.

Rate Structure, Economic Burden and Fiduciary Allocation Issues

The proposed rate structure is progressive: 1% on value from $50 million to $100 million, 1.5% on value from $100 million to $250 million, 2% on value from $250 million to $1 billion, and 3% above $1 billion. Those percentages may appear modest when compared to transfer-tax rates, but that comparison is misleading. Because the charge is annual and imposed on value rather than realized gain or distributed income, it operates as a recurring drag on compounding. Over long periods the erosion can be substantial.

The severity of the burden will be dependent on the assets held in the trust. A trust invested in marketable securities may be able to raise cash through interest, dividends, harvesting gains and losses, or through portfolio trimming. A trust invested predominantly in growth stocks, real estate, or a family business may have little or no liquidity from which to pay the tax. In such a case the trustee may need to borrow. Borrowing itself may be difficult, may require guarantees or collateral, and may become increasingly burdensome if required to be repeated year after year to fund a tax based on appraised value rather than cash flow. The Proposal therefore creates very different pressures depending on asset mix, governance rights, and access to capital.

The Proposal may also introduce a fiduciary accounting problem which the drafting of many existing trusts did not contemplate. Because the tax is based on asset value, one threshold question is whether the burden should be charged to principal, thereby depressing remainder interests, or whether some portion should be borne by income beneficiaries. Existing drafting often does not contemplate a recurring tax of this character. The Uniform Principal and Income Act of 2008[iii] and the Fiduciary Income and Principal Act[iv] contain rules for taxes tied to receipts allocated to income, and those rules also require adjustments when deductions arise from distributions to beneficiaries. Yet an annual tax computed on asset value rather than on income receipts might appear to be allocable to principal. Trustees may therefore face disputes among classes of beneficiaries over who bears the economic cost, especially where current beneficiaries expect distributions but the tax is economically attributable to preserving or retaining principal.

Integration with Estate and GST Tax: Prepayment, Credits and Conceptual Strain

A central technical feature of the Proposal is that annual trust-level tax would effectively serve as a prepayment or credit against eventual estate-tax liability. The language of the Proposal includes a mathematical equation in the proposed Code Sec. 2901(a), which provides, in part: "*There is hereby imposed a tax on the net value of all assets of an applicable trust…*" and proposed Code Sec. 2901(b) provides a limitation on the tax which provides, in part, "*…The amount of tax…shall not exceed… the highest rate of tax under section 2001(c) on the estates of decedents dying on such day…*"[v] The intent of this mathematical equation is to create a cap on the amount paid by a trust so that it does not exceed the estate tax liability as if the settlor paid estate taxes on the assets held in the trust. Therefore, the Proposal is presented in effect as a timing adjustment. Tax is collected earlier during the life of the trust, and those payments are later credited against the settlor's transfer tax due at death. As shown above, the Proposal also includes a cap intended to prevent total trust-level tax from exceeding an estate-tax-equivalent amount tied to section 2001 rates. Both features reinforce the intended characterization of the regime as an accelerated transfer-tax system rather than a direct wealth tax. Consider, again, what transfer tax is being prepaid by a GST exempt perpetual that under current law does not face any future transfer tax?

In addition, consider the language in the Proposal's proposed Code Sec. 2901(b), "…*rate of tax under section 2001(c) on the estates of decedents dying on such day*…" this language appears to permit the legislature to increase the rate in section 2001(c) (i.e., increase the estate tax) and have that new rate apply to all trusts established before the changed rate. This might effectively prevent grandfathering of trusts established before a change in the estate tax, as all trusts would be subject to the asset-based tax under the Proposal, with the cap increased to whatever the new effective estate tax rate is at that particular time.

That conceptual framing, however, creates extraordinary practical questions. If tax is paid annually but there is no eventual estate tax (or a lower one) to absorb the credits, is there a refund? If no refund is provided for, the Proposal's characterization of the annual tax as a "prepayment" becomes difficult to reconcile with the actual economics imposed on a trust. Does that change the possibility of a constitutional challenge of the Proposal as a disguised wealth tax? Even if a refund is available, the loss of the time value of money by accelerating those costs could still be severe.

Changes in estate-tax rates over time create additional uncertainty. If rates increase or decrease between the creation of the trust and the transfer-tax event against which credits are applied, does the prior stream of annual tax still function as intended? The filing mechanics may appear simple at a high level—amounts previously paid reduce tax otherwise due—but the coherence of the Proposal is muddied by the consistent changes to the estate and gift tax system practitioners have experienced.

Valuation Rules, Elimination of Discounts and Anti-Avoidance Pressure

For many estate plans and trust arrangements, the anti-avoidance rules established in proposed Code Sec, 2921(3),[vi] of the Proposal could be nettlesome, or worse. Traditional valuation discounts—such as lack of marketability and minority interest discounts—would appear not to be available in computing the tax base. Discount elimination has been proposed in various forms in the past, but the Proposal applies that approach within an annual asset-tax framework, amplifying both economic burden and administrative difficulty.

The discount issue is not merely a debate over tax reduction techniques. Discounts often reflect real economic limitations. A trust that owns a 30% interest in a limited liability company and lacks the ability to elect management, compel distributions, or control liquidation does not hold the same rights as an owner with control. Under current law those differences may be reflected in valuation. Under the Proposal, the annual tax may be imposed on an undiscounted value even though the trust cannot force the liquidity needed to pay the resulting tax. In that sense the elimination of discounts worsens the very cash-flow problem that trustees would already face under an asset-based annual tax.

The corollary question is whether the elimination of discounts also implies the elimination of valuation premiums. If minority discounts disappear because interests are measured on a fuller look-through basis, would a control premium likewise be ignored? The Proposal does not appear to address that symmetry question. Silence on that point creates not only valuation uncertainty but also a risk of inconsistent treatment in implementation.

The effect of the Proposal for some planning structures resulting from anti-Powell planning is uncertain. For example, a controlling voting interest in a family entity may have been carved out and transferred to one trust while most of the economic value was shifted to another trust. In that structure, the trust holding the principal economic value may have no power over distributions or liquidation. If the annual asset tax is imposed without recognition of the trust's lack of control, the trust with the economic value bears a tax cost while lacking the power to create the cash flow needed to satisfy that cost. The Proposal does not address that practical reality. Also, if a valuation premium applies to the control interest, and no discounts apply to the remaining interests, could the family valuation exceed 100%?

The look-through rules for passive-asset holding entities compound the challenges. If discounts are denied, one may ask what additional consequence the look-through regime performs. Presumably it is intended to prevent passive assets from benefiting indirectly from entity-level valuation reductions. Yet look-through treatment introduces its own layer of complexity, particularly where a trust owns a noncontrolling interest in an entity and perhaps cannot readily obtain the information required to value the underlying assets. The statute may therefore require a degree of annual valuation precision that certain trust owners may be structurally unable to achieve.

Intra-Family Loans and Related-Party Complexity

The Proposal provides for the possible disregard of intra-family loans so that, for example, if a taxpayer consummates sales to grantor trusts and similar note-based transactions the value of such a loan is disregarded. Proposed Code Sec. 2921(a) addresses how the net assets of a trust will be computed, stating, "…*For purposes of this chapter, the term 'net value of all assets' means, as of any date, the value of all property of the trust, real or personal, tangible or intangible, wherever situated, reduced by any qualified debts owed by the taxpayer*…" However, proposed Code Sec. 2921(b)(4)(c) creates an exception to this rule, stating *"…The term 'qualified debt' means any debt other than any debt to a person. (A) who made a contribution to the trust…"*[vii] The result is that the trust may be required to pay the annual tax on the gross value of the transferred assets without reduction for the obligation created in the sale. That result would materially reduce the effectiveness of a common planning structure. The cash flow pressure this could create on large estate planning transactions could be problematic. Those affected will also find the application of these new rules to old transactions consummated when none of this applied to be unfair. There does not appear to be any type of grandfathering provided for pre-existing transactions.

One difficulty is that the key term itself is uncertain. What constitutes an intra-family loan? The proposal suggests that individuals related to the trust, contributors, or beneficiaries within the meaning of Code Section 267(b) may be implicated. But related-party structures often involve entities, partial family ownership, and relationships that may not clearly align neatly with Code Section 267(b) definitions. How much family ownership of a lending or borrowing entity is enough to render a loan "intra-family"? If the entity falls just outside the statutory related-party category, is the loan respected? This will determine whether very common estate-planning transactions are effectively penalized through gross-value taxation.

The cumulative complexity here also invites a broader observation. Implementing this proposal may itself prove costly and difficult for both taxpayers and the government. The possibility exists that a more direct approach to raising tax revenue would require less complexity than layering a highly technical annual trust-tax system onto existing transfer-tax law.

Treasury Regulatory Authority and Administrative Weight

The Proposal expressly authorizes the Treasury to issue regulations concerning valuation of closely held business interests, illiquid assets, and associated implementation questions. That delegation is important. Express statutory authority may increase the durability of resulting regulations and make successful challenge even under a Loper Bright analysis more difficult. The proposal therefore not only creates substantive rules of concern to wealthy taxpayers and their advisers; it also appears designed to reinforce the government's position in later interpretive disputes.

Reporting, Compliance and Confidentiality Risks

The Proposal would impose annual trust asset disclosure, beneficiary reporting of trust interests subject to thresholds, and substantial trustee obligations to track, value, and report assets. Penalties would apply for underreporting and noncompliance. For practitioners, this resembles an administrative framework associated more with wealth-tax reporting information regimes than with traditional estate-tax compliance.

The reporting burdens may be especially nettlesome as the information involved may be personal and financially sensitive. Beneficiary-level reporting requirements invite concern about confidentiality and data security. Comparison to the Corporate Transparency Act (CTA) is apt in this respect. The CTA was widely viewed as burdensome, and the disclosure of personal beneficial ownership information generated substantial concerns. A trust reporting framework requiring recurring transmission of financial details could produce similar anxiety and resistance.

What penalties are imposed will also require close attention if legislation advances. Valuations under the Proposal could involve appraisals, uncertain legal classifications, limited access to information, and future regulations and other guidance. In that setting, the standards governing penalties for mis valuation or underreporting become central to risk management. Advisers, trustees, and family offices may need robust procedures not simply to calculate tax, but to defend the reasonableness of those calculations.

Consequences for Dynasty Trusts, Grantor Trusts and Long-Term Planning

The Proposal directly attacks the core premise of dynasty trust planning: long-term compounding outside the transfer-tax system. Many dynastic trusts are structured as grantor trusts so that there is no annual income tax drag on that compounding. Long term tax favorable compounding is clearly the objective. By imposing a yearly asset-based charge, the Proposal converts trusts designed for indefinite accumulation and perhaps no annual leakage to income taxation into annual taxpayers. The fact that the tax payment is framed as a prepayment of some future estate tax does not change the impact. The Proposal is aimed at the advantage achieved under current law when transfer taxes can be deferred for generations in dynastic planning.

Grantor trust planning will be put under pressure. Sophisticated structures such as SLATs and GRATs and other grantor trusts will be less effective when the trust corpus itself is subject to annual tax. In addition, the proposal raises a separate issue of substantial significance: any trust asset tax paid by a grantor or other deemed owner of an irrevocable grantor trust may be treated as a taxable gift to the trust. If that approach becomes law, advisers would need to determine whether the trust provisions that cause grantor trust status should be turned off, disregarded, or otherwise modified.

That may not be easy to accomplish in all instances as many grantor trusts do not contemplate a simple mechanism to change their income tax status from grantor to non-grantor. That choice could be costly. If a large note-sale transaction has already been consummated on the assumption that grantor trust status will persist, later terminating grantor trust status could have significant tax and administrative consequences. Yet maintaining grantor trust status in a system where the grantor's payment of tax itself is deemed a gift may be untenable. That tension underscores how thoroughly the Proposal would affect existing trusts, not merely future planning.

Liquidity, Investment Policy and the Search for Structural Adjustments

An annual tax liability will force some trusts to reconsider portfolio construction. More liquid allocations may become necessary. Trustees may need authority, or seek approval for, forced liquidations, expanded borrowing, or modified distribution powers. Family entities may need credit facilities or dedicated liquidity sources such as lines of credit. Illiquid assets such as private equity holdings, real estate concentrated portfolios, and closely held business interests are particularly exposed because the tax is assessed on value, without regard to income or cash flow.

The Proposal also may prompt renewed comparison between trust ownership and direct individual ownership. Some ultra-high-net-worth clients may conclude that if large trusts are subject to an annual asset-based charge, transferring assets to trust is no longer automatically superior to either retaining those assets directly (but no asset protection) or transferring assets instead to a pass through entity like an LLC or limited partnership. But that conclusion is not necessarily prudent. A trust subjected to annual tax may still compare favorably to direct ownership if the alternative is eventual exposure to a transfer tax exceeding 40% (and there is no assurance that rate won't be increased). Forecasting therefore may become essential to decision making. Advisers would need to model the compounded cost of annual trust-level taxation, the value of any eventual credit, and the estate tax consequences of retaining assets outright. This type of analysis will require clarification of what transfer tax assets in a dynastic completed gift trust will ultimately be subject to.

Moreover, direct ownership sacrifices non-tax benefits that often are central to the planning objective, especially asset protection. Abandoning trust planning solely because of an annual tax might prove to be a larger mistake than tolerating the recurring tax. Some clients may find the complexity and uncertainty of all of this too burdensome and simply opt to avoid complex planning.

If enacted, planners may seek partial corrective strategies. A settlor could purchase hard-to-value assets from an affected grantor trust in exchange for marketable securities or notes so that the trust continues to operate with a more easily valued and more liquid asset base. The result would only partially preserve the intended benefits because future appreciation on repurchased assets would be in the settlor's estate. Even so, replacing illiquid or difficult-to-value trust assets with interests easier to measure and easier to monetize may reduce strain under the annual tax cost. Likewise, notes could be introduced or swapped into the trust in amounts calculated so that the interest stream would generate cash flow sufficient to cover a recurring annual tax cost. It would seem that a note used in this context would not be disregarded as discussed above.

Planning Flexibility, Grandfathering Possibilities and Trust Modification Powers

The final scope of any enacted legislation cannot be known, but uncertainty itself suggests several practical concerns. If grandfathering is possible, families may wish to complete trust planning before enactment. Yet, if the statute applies broadly to all trusts above the threshold, simple acceleration of trust formation may prove inadequate. That uncertainty should not paralyze planning. It should prompt greater emphasis on flexibility.

If aggregation rules ultimately matter, the capacity to partition trust assets or differentiate trust interests may become valuable. Express powers for a trust protector to divide and restructure trusts, along with explicit trustee decanting authority, may furnish helpful flexibility. Consideration also may be given to granting a nonfiduciary person authority to add beneficiaries or to divide a single trust into multiple trusts with different allocations of assets rather than purely pro rata slices. None of those techniques ensures exclusion from the statute. They do, however, create tools that may matter if final regulations or legislative revisions provide planning openings.

Conclusion

The Fair Trusts for Fiscal Responsibility Act of 2026 could affect the practical economics of sophisticated trust planning by imposing an annual asset-based charge on large trusts, eliminating or curtailing valuation-based techniques, introducing complex look-through and related-party rules, and integrating the tax with estate-tax credits in a conceptually strained manner, the proposal would move large-trust planning away from indefinite deferral and toward recurring annual tax.

If enacted, the Proposal's reach extends beyond tax cost alone. It would affect valuation practice, fiduciary accounting, governance, confidentiality, liquidity management, grantor trust design, and trust modification strategy. The question for estate planners is not whether large-trust planning disappears, but how trust structures, ownership arrangements, and fiduciary powers must evolve if a recurring asset-based tax becomes part of the landscape. Some of those steps might be reasonable to integrate into trust currently being planned.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Thomas A. Tietz

Martin M. Shenkman

CITE AS:

LISI Estate Planning Newsletter #3310 (July 1, 2026) at http://www.leimbergservices.com.

CITATIONS:

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[i] The Proposal is S.4490 119th Cong. (2026). Text of the Proposal can be viewed at https://www.congress.gov/bill/119th-congress/senate-bill/4490/text, last accessed June 13, 2026.

[ii] S. 4083, 119th Cong. (2026), the text can be viewed at https://www.congress.gov/bill/119th-congress/senate-bill/4083/text, last accessed June 13, 2026.

[iii] The most recent version of the UPIA was amended on February 9, 2009, and a copy can be viewed at the Uniform Law Commission's archive webpage, https://www.uniformlaws.org/viewdocument/committee-archive-110?CommunityKey=7a376d0a-56f4-4f6f-ae0a-25f369c919d9&tab=librarydocuments, last accessed June 15, 2026.

[iv] A copy of the final Fiduciary Income and Principal Act can be viewed on the Uniform Law Commission's archive webpage, https://www.uniformlaws.org/viewdocument/final-act-73?CommunityKey=1105f9bb-eb93-4d4d-a1ab-a535ef73de0c&tab=librarydocuments, last accessed June 15, 2026.

[v] S.4490 119th Cong. (2026), proposed Code Sec. 2901(a) in full states, "*There is hereby imposed a tax on the net value of all assets of an applicable trust held on the last day of any calendar year*" and proposed Code Sec. 2901(b) in full states, " *Limitation.—The amount of tax imposed under this chapter on any applicable trust shall not exceed the excess (if any) of—(1) product of— (A) the sum of— (i) the net value of all assets of the trust held as of the last day of the calendar year, plus (ii) the balance of the trust withholding credit account (as determined under section 2911) as of such day, and (B) the highest rate of tax under section 2001(c) on the estates of decedents dying on such day, over (2) the amount determined under paragraph (1)(A)(ii)*"

[vi] S.4490 119th Cong. (2026), proposed Code Sec. 2921(3) states, "*LIMITATION ON DISCOUNT BY REASON OF FAMILY CONTROL (A) IN GENERAL.—For purposes of this chapter, in the case of any interest in an entity other than an interest which is actively traded (within the meaning of section 1092), if the person who transferred such interest, the transferee, and members of the family of the transferor and transferee have control of such entity immediately before such transfer, no discount shall be allowed— (i) by reason of the fact that the transferor or transferee does not have control of such entity, (ii) by reason of the lack of marketability of the interest, or (iii) for any other reason*."

[vii] The full text of S.4490 119th Cong. (2026) proposed Code Sec. 2921(b)(4)(c) states: "*(c) Qualified debt.—For purposes of this section— (1) IN GENERAL.—The term 'qualified debt' means any debt other than any debt to a person— (A) who made a contribution to the trust, (B) who is a beneficiary of the trust, or (C) who is related (within the meaning of section 267(b)) to the trust or to a person described in subparagraph (A) or (B).*"