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Subject: Martin M. Shenkman and Thomas Tietz: Planning Developments and Practice Lessons from the 2026 UJA Conference Steve Leimberg's Estate Planning Newsletter

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Steve Leimberg's Estate Planning Email Newsletter - Archive Message #3346

Date: **30-Oct-26**

From: **Steve Leimberg's Estate Planning Newsletter**

Subject: **Martin M. Shenkman and Thomas Tietz: Planning Developments and Practice Lessons from the 2026 UJA Conference**

"The 2026 UJA Sidney Kess New York Estate, Tax and Financial Planning Conference covered trust income taxation, state tax and domicile developments, the current estate tax landscape, AI ethics and practical AI tools, charitable planning, asset protection, international planning and Jewish healthcare directives. The common thread was that uncertainty at the federal, state and local levels favors acting sooner, documenting more carefully, and drafting with greater flexibility."

Martin M. Shenkman and Thomas Tietz provide a summary of the 2026 UJA Sidney Kess New York Estate, Tax and Financial Planning Conference, held October 22, 2026 in New York City, along with their own comments on the planning lessons from each session.[1]

Thomas A. Tietz, JD, is an attorney in private practice in New Jersey and New York, assisting clients with Estate Planning. He is the author of more than 20 articles and has published articles with Trusts & Estate Magazine, the American Bar Association E-Report, the National Association of Estate Planning Council's Journal of Estate and Tax Planning, and Leimberg Information Services, Inc. (LISI). He has lectured for numerous professional organizations, including the Notre Dame Tax & Estate Planning Institute,

the New Jersey State Bar Association, the CPA Academy, and the National Academy of Continuing Legal Education.

Martin M. Shenkman, CPA, MBA, JD, PFS, AEP (Distinguished) is author of more than 40 books and more than 1,400 articles on estate planning and related topics. He is a frequent lecturer for numerous trade, professional and other organizations. He is active in numerous charitable endeavors. He has practiced estate planning for 35+ years.

Here is their commentary:

EXECUTIVE SUMMARY:

The conference addressed a wide range of current estate, income tax, charitable, asset protection, international planning, health care and artificial intelligence issues. The discussion below is based upon notes prepared by the authors during the conference and incorporated some thoughts from the authors based upon what was discussed.

The Basics of the Income Taxation of Estates and Trusts – Jeremiah W. Doyle, IV

Begin with the Governing Instrument
Trust income tax planning cannot be separated from fiduciary administration. Trust tax brackets are highly compressed: accumulated trust income above approximately $16,000 reaches the maximum ordinary income tax bracket, while a married couple filing jointly may not reach the maximum bracket until income is approximately $768,000 in 2026. That disparity can make distributions that carry out income generated by the trust to the beneficiaries, so that income is taxed at a lower rate on the beneficiary's personal return, attractive from a pure income tax perspective, but the tax result is only one part of the analysis.

Distributable net income, or DNI, generally limits the amount a beneficiary reports when receiving a distribution. Section 643(a) provides the framework for calculating DNI. The computation begins with taxable income, adds back the distribution deduction and personal exemption, removes capital gains and adds capital losses (except in the year the trust is terminated, where capital gain/loss is not removed or added). Trustee fees and other expenses may require allocation, including allocation to tax-

exempt income, which can reduce the deductible portion of those expenses.

Capital gains ordinarily remain taxable at the trust level unless they are brought into DNI and distributed. Regulation Section 1.643(a)-3(b) describes methods that may permit capital gains to enter DNI when the governing instrument or local law provides the necessary authority. Gains may be allocated to income, allocated to corpus but actually distributed, or allocated to corpus but used by the fiduciary in determining the amount distributed or required to be distributed. Drafting flexibility is therefore central to later tax planning.

Section 68 may reduce itemized deductions for taxpayers in the 37% bracket so that the benefit is effectively limited to 35%. For estates and trusts, potentially affected items include the charitable deduction, the Section 691(c) deduction for income in respect of a decedent, the income distribution deduction (i.e., the DNI distributed out to beneficiaries) and administrative expenses. The practical consequence raised during the conference is important: even when an estate or trust distributes all DNI, it may still have taxable income because it may not receive a complete distribution deduction. This creates a whipsaw situation where the trust is paying income tax on income it did not retain. The presenter discussed that professionals are raising concerns with the IRS and authorities on the issues this will create, but it is not clear if this will be addressed before next year's tax season.

Estates may select a fiscal year, while trusts generally cannot. A fiscal year can defer the beneficiary's recognition of distributed income. A Section 645 election permits a qualified revocable trust and an estate to elect combined treatment as an estate. This can eliminate the need for two income-tax returns and can extend estate-specific benefits to the trust, including use of a fiscal year, potentially more favorable charitable-deduction treatment, and eligible S corporation shareholder status without an ESBT or QSST election.

> ***Authors' Comment.*** *Always begin with the signed trust instrument. An adviser should not counsel a trustee about distributions or tax consequences without reviewing the complete document, not merely the most obvious distribution provisions. AI may be used as a secondary review tool, but it does not replace the professional's own reading and analysis.*

Authors' Comment. *Mandatory distributions must be made. For discretionary distributions, advisers should consider each potential beneficiary's federal and state tax status, exposure to claims, mental-health and addiction concerns, and marital circumstances. If the instrument allows payments for a beneficiary's benefit rather than directly to the beneficiary, that authority may be especially useful. Disproportionate distributions require careful review of the governing instrument, fiduciary exposure and beneficiary communications.*

The distinction between trust accounting income, taxable income and DNI is crucial. Trust accounting income is a fiduciary-accounting concept that helps determine what is payable to an income beneficiary. Taxable income is the federal income-tax base. DNI coordinates the trust's distribution deduction, the amount included by beneficiaries, and the character carried out to them. Thus, if DNI is $50,000 and a beneficiary receives $100,000, $50,000 is reportable income and the remaining $50,000 is a tax-free principal distribution. The trust would then receive a deduction of $50,000 on the trust's tax return (reduced by the 2/37ths haircut discussed above).

Section 265 can make part of a fiduciary expense nondeductible when the trust receives tax-exempt income. Example: a trust has $25,000 of taxable interest, $5,000 of tax-exempt income and a $5,000 trustee fee. The tax-exempt percentage is $5,000 divided by $30,000, and applying that percentage to the trustee fee produces $833 of nondeductible trustee fees.

Simple and Complex Trusts, Distribution Tiers and Separate Shares

A simple trust must distribute all trust accounting income, may not distribute principal, and may not make Section 642(c) charitable distributions. A complex trust is any trust that does not qualify as simple. The classification is annual: the same trust may be complex in one year and simple in another.

When multiple beneficiaries receive distributions, the pro-rata rule and tier system (for complex trusts and estates) determine how DNI is carried out. Beneficiaries entitled to trust accounting income receive DNI in the first tier. Other beneficiaries receive DNI in the succeeding tier. When distributions exceed DNI and the tier rules apply, the tier system is mandatory.

The separate-share rule treats a trust as consisting of separate and independent shares solely for allocating DNI. If the trust expressly divides property into distinct shares for identified beneficiaries, DNI is computed and assigned by share rather than simply across the entire trust. A wholly

discretionary trust may avoid application of the separate-share rule, while language expressly dividing a trust into equal or otherwise defined shares may require employing the rule.

A Section 643(e) election may allow the trust to recognize gain at the trust level on an in-kind distribution. That election creates a planning opportunity when the fiduciary wants to distribute appreciated property but prefers to locate the resulting tax at the trust level.

Sections 651 and 661 are the distribution provisions associated with simple and complex trusts, respectively. Charitable beneficiaries can complicate application of the tier rules.

Section 663(b), commonly called the 65-day rule, may permit a fiduciary to make a distribution during the first 65 days of a year and elect to treat it as made on December 31 of the preceding year. This can create a post-year-end opportunity to distribute prior-year DNI.

Section 663(a)(1) generally prevents a qualifying specific bequest of a fixed sum or specific property from carrying out DNI. The bequest cannot be payable in more than three installments and cannot be paid from income. This treatment can prevent a specific legatee under a will from unexpectedly receiving taxable trust or estate income.

Numerical Section 643(e) illustration. Assume $50,000 of DNI and a distribution of stock worth $50,000 with a $20,000 basis. If no Section 643(e) election is made, $20,000 of DNI is carried out and the beneficiary takes a $20,000 basis. Not making the Section 643(e) elections transfers the embedded gain to the beneficiary without having to comply with the Section 643(a) regulations to have gains included in DNI. If the Section 643(e) election is made, the gain is taxed at the entity level, the amount of DNI carried out to the beneficiary and the cost basis of the stock to the beneficiary is $50,000.

The State of the States: Latest Key Planning Developments Across the U.S. – Sharon L. Klein

Second Homes, Wealth and Revenue Pressure
The discussion emphasized increasing attention to high-value residences, second homes and wealthy taxpayers. New York City's pied-à-terre tax does not apply when the property is the primary residence of the owner, immediate family or a bona fide tenant. Condominiums and cooperatives

are initially treated differently, with cooperative values imputed from shares and often below fair market value. Beginning July 1, 2028, a comparable-sales methodology will apply to covered properties, together with a $5 million threshold and graduated rates.

Litigation is developing. O'Brien v. City of New York concerned a challenge, not to the tax itself, but to the burden on homeowners to prove that a property is their primary residence and avoid the pied-à-terre tax. The City was ordered to redo the implementation notices, but implementation continues pending an appeal.. Ross v. State of New York and Friedman v. State of New York present constitutional challenges to the tax. The tax is expected to appear on the property tax bill.

The discussion addressed New York's approach when considering a broader national trend. Rhode Island, Montana, Washington, D.C. are also jurisdictions considering or using mechanisms directed at taxing second homes. Hawaii counties classify residential property by use, taxing homes that are not principal residences at higher, often tiered, rates. Other proposals include an additional 2% New York income tax on New York City residents with taxable income above $1 million, a California billionaire wealth tax of 5% for taxpayers with net worth of $1 billion on January 1, 2026, and a Washington millionaire's tax. The theme is that states are seeking additional revenue and increasingly focusing on affluent taxpayers.

> ***Authors' Comment.*** *These trends support immediate planning rather than waiting for future enactments. The risk is not limited to federal estate-tax legislation. Advisers should monitor state and local income, wealth, property and transfer taxes, and should model the combined effect on clients whose homes, businesses and trusts span multiple jurisdictions.*

The Corporate Transparency Act, CTA, was limited to foreign entities (i.e., entities created outside of the United States) which significantly limits the requirement for reporting under the act. The New York LLC Transparency Act (NYLLCTA), which is a NY specific law requiring reporting for LLCs, was drafted applying rules established in the CTA, so when the CTA was limited to foreign entities the NYLLCTA was also limited to foreign entities. A proposal to expand the NYLLCTA to domestic entities was vetoed by Governor Hochul. The remaining New York requirement does not apply to domestic entities.

Telecommuting, Domicile and Residency Audits

The convenience-of-the-employer rule can source compensation to the employer's office state location when an employee works remotely for personal convenience rather than employer necessity. Connecticut, Delaware, Nebraska, New York, New Jersey and Pennsylvania are states using this concept. New York treated remote days during the pandemic as New York workdays for nonresidents whose primary offices were in New York, even when the office was closed, unless the taxpayer proved employer necessity or maintained a bona fide office elsewhere.

Matter of Zelinsky v. Commissioner and the Petition of Scott and Elizabeth Bryant illustrate the continuing importance of proving employer necessity or satisfying bona fide home-office factors. Relevant facts may include whether the home office is required as a condition of employment and whether the office is physically separated from the living area.

Domicile disputes remain intensely factual. In Matter of John J. Hoff & Kathleen Ocorr-Hoff, the tribunal concluded that the taxpayers had not changed domicile. The analysis considered the home maintained in New York, active business and salary ties, time spent in each state, sentimental possessions, club memberships, family connections and holiday patterns. Cell-phone records were used as evidence of time spent. There is a trend for Courts viewing formal steps such as a declaration of Florida domicile, voter registration and vehicle registration as self-serving and therefore less persuasive. A general point raised at the conference was that New York remains vigilant in residency and related tax enforcement.

State of New York ex rel. Pressman v. Estate of Pressman involved a disinherited son's effort to use a whistleblower statute in a manner that would effectively alter his mother's testamentary plan.

Connecticut was also discussed as another aggressive jurisdiction regarding residency. Daniels v. Commissioner involved an estate with homes in Connecticut, Arizona and Florida. The decedent reportedly spent approximately five and one-half months in Connecticut and three and one-half months in Florida. The ties to Connecticut and Florida were found comparable. However, the appellate court did not make a determination of residency, as the trial court used a clear and convincing evidentiary standard, and the appellate court stated the correct burden of proof was a preponderance of the evidence, so it was remanded to the trial court for redetermination. One practical lesson is that time spent in each state

matters greatly, no single factor is controlling, and the full factual pattern will be examined in each instance.

> ***Authors' Comment.*** *Many clients still assume that a new driver's license, library card, voter registration or similar formal step changes domicile. These cases reinforce that far more is required. High-tax states may scrutinize the client's actual life, including homes, business activity, family, possessions, travel and electronic records. Advisers should build the factual record before the move, contemporaneously document it, and test whether the client's conduct matches the declared domicile.*

Medical Aid in Dying, Electronic Wills and Transfer-on-Death Deeds

Medical aid in dying, or MAID, is moving from an exceptional issue addressed rarely to a recurring estate planning consideration. Under the uniform act approach, a mentally competent, terminally ill patient with no more than six months to live may receive medication to end their life. California, Colorado, the District of Columbia, Delaware, Hawaii, Maine, New Jersey, New Mexico, New York, Oregon, Vermont and Washington have some form of aid-in-dying legislation, and additional states have proposals to implement their own laws. New York's MAID law took effect in August 2026. The underlying terminal illness, rather than suicide, is listed as the cause of death on the death certificate, which may affect life insurance payout and other benefits for the decedent.

> ***Authors' Comment.*** *When counseling clients with terminal illness, advisers should consider whether residence in a jurisdiction permitting MAID is relevant to the client's wishes. Health-care proxies and living wills should be reviewed for provisions that may need revision. Because MAID may conflict with deeply held religious beliefs, the subject should be raised cautiously and addressed in a values-sensitive manner.*

New York's Electronic Will Act, signed on December 12, 2025 and effective December 12, 2027,permits electronic wills to be executed with witnesses in the testator's physical or electronic presence, requires signatures by at least two witnesses, specified cautionary disclosures and filing of the will and audit trail data with the New York State Unified Court System within 30 days.

The Uniform Real Property Transfer on Death Act permits an owner to record a beneficiary designation during life so that real estate passes

automatically at death. The owner must have capacity, the instrument must be recorded during life, and the owner may revoke it. Because the beneficiary receives no present interest, there should be no gift-tax consequence. The arrangement avoids probate, but can disrupt the broader dispositive plan, create estate-tax apportionment issues and increase malpractice risk. A revocable trust may sometimes provide a better option.

In the divorce case CS v. RH, the trial court included the value of assets transferred by the spouses to irrevocable, completed gift trusts for their descendants (the spouses were not beneficiaries) 15 years before the divorce action in the marital estate.. In a follow up, an appellate decision on October 8, 2026, overturned the trial court's decision to include the value of those assets in the marital estate. A few of the factors the appellate court concentrated on:

- Valid irrevocable trusts for third-party beneficiaries are not subject to equitable distribution absent sham, revocation power or retained beneficial interests. In CS v. RH, neither spouse as a beneficiary of the trusts that were created.
- Administrative powers, grantor trust status and incidental benefits did not create required ownership interest.

Authors' Comment. *Advisors may wish to consider what powers are provided to clients when drafting trusts in light of the decision in CS v RH. In recent years many practitioners have included powers in trusts that provide greater access to assets transferred to the trust to clients, permitting them to transfer a greater portion of their wealth to the trust. For example, would the inclusion of a Hybrid DAPT power (the ability of an independent individual to add beneficiaries to the trust, which may include the grantor) or a Special Power of Appointment Trust (including a power for an independent individual to appoint assets to a class of individuals, which may include the grantor) create a greater risk of being considered an ownership interest?*

- The court found the Wife knowingly participated in creation of the trusts, met with counsel during the estate planning process, reviewed explanatory materials provided by counsel, and understood she was transferring marital assets beyond her ownership.
- The trial court in its decision concentrated on the Husband's conduct and control of the estate planning process. The appellate court found

that Husband's conduct and benefits may still support unequal distribution of non-trust marital assets.

Postmortem Publicity Rights and Digital Replicas
New York has protected postmortem publicity rights since 2021, with protection extending for 40 years after death. Estate of Michael Jackson v. Commissioner illustrates the valuation problem: the defining valuation date was the date of death. For Michael Jackson, at the time of his death allegations against him, including well publicized court cases and claims of child abuse had materially affected the value of his image and likeness rights. The estate had initially valued the rights at $2,000, the IRS countered with a value of $434 million. The court determined a value of $4 million, which was a huge victory for the taxpayer.

Artificial intelligence complicates the valuation analysis because digital replicas can preserve and commercially deploy a person's appearance, voice or persona long after death. Advertisers must disclose when a performer's likeness is AI-generated. Estate planners going forward may need to begin identifying the relevant rights, determine ownership and control, address licensing and fiduciary authority, and anticipate technologies and uses that may not yet exist. This creates additional complications for planning. Planning documents may need sufficiently broad definitions and fiduciary powers to govern future forms of identity-based intellectual property.

Navigating the Estate Tax Landscape: Planning Opportunities and Pitfalls - Thomas Tietz and Joy Matak

Current Estate Tax Landscape, Tax Proposals and Retroactivity
The panel discussed the current estate and gift tax exemption, which was increased to $15 million under the One Big Beautiful Bill Act in 2025, affects less than 1% of the population. Only about 0.25% of Americans are expected to be required to file an estate tax return, with about 0.14% having to pay an estate tax. In 2026, there was a proposal called the Strengthen Social Security by Taxing Dynastic Wealth Act, which among other changes would reduce the estate tax exemption to $3.5 million, decouple the gift tax exemption and set it at $1 million, increase the marginal estate tax rate to 45%, and cap the deceased spouse unused exemption (DSUE) that could be used for lifetime gifts. The goal of these

proposals would be to reduce the ability to make lifetime wealth transfers that shift wealth outside the estate tax system. While the panelists acknowledged that the current political climate makes it unlikely for this proposal to gain any traction, the proposal itself illustrates potential future changes to the estate tax system. Panelists emphasized flexible planning, by incorporating provisions into estate planning documents that account for the possibility of changes to the estate tax system in the future. Consider incorporating disclaimers to credit shelter trust, or clayton QTIP planning, as well as both lifetime and testamentary powers of appointment in client's planning.

The panel warned about the possibility that future legislation could be made retroactive to an earlier date, which may potentially include dates when proposals were in previous years. Practitioners may wish to discuss this risk with clients and encourage them to complete planning now, so that their plans might be grandfathered into the current, likely more favorable, tax system.

The panel also discussed the Fair Trusts for Fiscal Responsibility Act of 2026, which proposes a complex annual asset-based tax on trusts as a "pre-payment" of the estate tax that would eventually be charged to the settlor of the trust. How such a pre-payment system would work with irrevocable, completed gift trusts that are considered outside of the estate and gift tax system is unclear under the proposed legislation. The panelists discussed the uncertainty of how collection of any such pre-payments would be affected by future changes in the estate and gift tax system.

> ***Authors' Comment.*** *Federal transfer-tax uncertainty, combined with state and local initiatives directed at wealthy taxpayers, should prompt earlier planning even for clients who do not view themselves as ultra-high-net-worth. Because grandfathering cannot be assumed, creating and funding appropriate irrevocable trusts before change may be beneficial.*

Grantor Trust and Non-Grantor Trust Planning Considerations

Grantor trusts remain a powerful wealth transfer tool in the estate planner's toolkit, primarily because Treasury confirmed in Rev. Rul. 2004-64 that the grantor's payment of income taxes on income earned by the grantor trust would not be treated as a taxable gift. This mechanism allows the settlor to reduce the taxable estate outside the trust by paying income taxes while the grantor trust accumulates the income for the benefit of the settlor's beneficiaries.

That grantor trust "tax burn" which purposely erodes the grantor's retained wealth can become a burden. A discretionary tax-reimbursement clause can provide a safety valve. Reimbursement cannot be automatic, i.e., it needs to be at the discretion of the trustee and not a requirement that the grantor be reimbursed. The panelist recommended that the trustee document the process for determining when and whether to reimburse the settlor in order to demonstrate the trustee's independence. The IRS may scrutinize communications between the grantor and the trustee to evaluate whether there was an "implied agreement" between the grantor and the trustee that income tax would be reimbursed. For example, casual emails asking a family-member or friend trustee to pay the tax may undermine the arrangement. When the trustee exercises discretion to reimburse the trustee, any such reimbursements should be made sporadically, not consistently every year. Documented instances where a trustee refuses to make a reimbursement when it is requested may help support the argument that the trustee was independent.

When a reimbursement is made, the grantor's CPA should calculate the actual income tax liability attributable to the trust's income that the grantor had to pay. The trustee should retain such calculation with the trust's files. Reimbursement greater than the actual income tax attributable to the trust income may potentially be considered a distribution from the trust to the grantor, possibly causing the trust to be considered a self-settled trust. As a matter of New York law, such a conclusion would make those assets reachable by the grantor's creditors and includable in the grantor's estate.

Switching off grantor trust status is deemed a transfer from the grantor to the newly non-grantor trust for income tax purposes. Ideally, the settlor's advisory team should model the potential tax consequences of turning off grantor-trust status and discuss them with the client, before actions are taken. For example, if a promissory note issued as part of an installment sale by the grantor to the trust remains outstanding, cessation of grantor trust status may be considered a recognition event, causing gain to be due on the assets sold to the trust. Another example is a situation where there are entities held in the trust and the trust has a negative capital account for that entity. Treas. Reg. Sect. 1.1001-2(c) Example 5 provides that there may be a deemed sale of those assets in that situation.

With the increased estate tax exemption of $15 million, the importance of income tax planning for estate planners has increased. The use of non-

grantor trusts in a client's planning can provide income tax benefits. A few of the examples discussed by the panelists include:

- With the state and local taxes (SALT) deduction increased to $40,000 due to OBBBA on income up to $500k, establishing non-grantor trusts and providing those trusts with assets that generate SALT taxes can increase a client's total SALT deduction, as each non-grantor trust will have its own $40,000 deduction. The panelists noted that several states, including New York with the Pass-Through Entity Tax (PTET), have established regimes that permit business owners to bypass the SALT deduction limit. So, practitioners may want to consider multiple options for providing clients with increased SALT deductions.
- IRC Sec. 199A provides a 20% deduction on qualified business income (QBI). However, there is a phase out of the deduction based upon the income the client has made- in 2026 that phase out begins at income of approximately $201k for single taxpayers and $403k for married filing jointly taxpayers. Transferring assets to non-grantor trusts can potentially reduce the client's income to below the thresholds, or transfer entity interests that can create a 199A deduction to a non-grantor trust, which will have its own separate phase out threshold (based on the single taxpayer threshold amount above).
- IRC Sec. 642(c) charitable donations. Non-Grantor Trusts, if by their terms are permitted to make distributions to charities, can receive a charitable deduction for donations made. In addition, non-grantor trusts are not subject to the 0.5% charitable deduction floor that was introduced for taxpayers in OBBBA. Trusts are, however, subject to the 2/37ths haircut on charitable deductions, similar to taxpayers who make charitable donations.
- IRC Sec. 1202 – Qualified Small Business Stock (QSBS) deduction. Planning can be implemented that includes QSBS "stacking" through the use of multiple non-grantor trusts. The panelists discussed an example which assumed a $15 million exclusion under OBBBA: an individual and four separate trusts could potentially multiply the exclusion from $15 million for an individual, to $75 million for the individual and all 4 trusts, if all statutory requirements are satisfied.
- Avoiding state income taxes on trust income, by structuring a trust to be treated as exempt for state income tax purposes. In New York, a nongrantor completed gift trust will qualify as a "resident-exempt

trust" and may avoid paying NY income taxes so long as: 1. The trust does not own NY-situs assets; 2. The trust does not have a NY-resident trustee; and 3. The trust has no NY-source income. Practitioners should caution clients that NY does impose a throwback tax on distributions made to certain NY beneficiaries, potentially reducing the efficacy of this strategy for New Yorkers.

Authors' Comment. *Clients often underestimate the decades-long effect of tax burn. Advisers should model trust growth, the client's retained wealth and cumulative income-tax payments. Tax-reimbursement clauses and structures that preserve potential access, including SLATs, DAPTs, hybrid DAPTs and SPATs, may warrant consideration despite greater cost and complexity.*

Authors' Comment. *For a New York resident exempt trust, even a small amount of New York-source income may taint the intended result. Consider a Section 678 withdrawal power over all New York income.*

Decanting and Modifying Trusts

The panel discussed Chief Counsel Advice 2023522018 (CCA), which is an IRS memorandum that establishes a position the IRS is arguing. In this CCA, the IRS took the position if a trust is modified, with the consent of the beneficiaries, to add an income tax reimbursement clause, the IRS would consider such modification to be a gift by the beneficiaries to the grantor of the trust. At a previous conference, the previous chief counsel of the IRS who authored the CCA discussed the idea behind the CCA, indicating that the position in the CCA rested on the fact that the beneficiaries' consent to the change, which provided access to trust funds the grantor did not have previously, and that established the gift. The author of the CCA went on to point out that if the fact pattern in the CCA was that of a third-party arrangement, even unrelated individuals choosing to provide another person with ways to access assets they did not have in the past would be considered a gift, so it should in related party situations as well. The panelists also noted that the former chief counsel raised the idea was that even in a modification or decanting situation where the trustees were required to provide notice to the beneficiaries, the choice of the beneficiaries not to challenge the modification could be considered tantamount to consent. When decanting or modifying a trust, practitioners may want to consider if the proposed revisions could be considered as changing beneficial interests or rights of any party involved in the trust in

any way and considered if there could be gift tax implications due to those modifications, and address those concerns proactively.

The McDougall case, (McDougall v. Commissioner, 163 T.C. No. 5, September 17, 2024) and the follow up Lewis case (Lewis v. Commissioner and McDougall v. Commissioner, T.C. Memo. 2026-58, July 20, 2026) exemplify the risks to clients when modifications, decantings and terminations of trusts are made. In McDougall, a QTIP trust which was established on the death of the wife with $60 million had grown to approximately $117 million. There was no discretionary distribution language in the QTIP, the only distribution permitted was to the husband for his health, education, maintenance and support. The surviving spouse, husband, along with the consent of the two children, son and daughter, agreed to the distribution of all assets to the husband and then termination of the QTIP. The IRS raised a Code Sec. 2519 challenge to attempt to argue this was an immediate gift of all assets by the husband, but the tax court rejected this argument as the estate and gift tax was preserved due to the assets being distributed to the husband. However, the tax court found that the son and daughter, due to consenting to the termination of the trust, had made a gift to the husband, their father. McDougall did not determine the value of the gift that was made by the son and daughter. The 2026 Lewis case (which is the daughter's married name, hence the change of name in the case), determined the value of the gift by the son and daughter. After consideration of several factors in the trust, the eventual gift by each of son and daughter to their father was determined as approximately $35 million. This created a significant immediate gift tax cost by each of the son and daughter- even if they had their full $15 million exemptions, it was $20 million above that amount each ($40 million total) times 40%= $16 million in gift tax. In addition, the original $117 million value husband received from the QTIP distribution is still in his estate and will be subject to estate tax on his death. The Lewis and McDougall cases are a cautionary tale practitioners can use when discussing potential modifications with their clients and are an example of the need for flexibility incorporated into planning. If the QTIP had a fully discretionary distribution provision, the trustee could have exercised that discretion to distribute assets to the husband without needing the consent of the son or daughter, which may have avoided the adverse tax result the family faced.

> ***Authors' Comment.*** *The reimbursement-clause guidance and Lewis suggest added caution before modifying trusts. The trend also supports drafting more flexibility at inception, potentially including a*

broader "kitchen sink" set of administrative and tax powers when appropriate.

Basis Planning, General Powers of Appointment and Documentation

A general power of appointment (GPOA) granted to a family member with excess estate tax exemption may intentionally pull low-basis assets into the powerholder's gross estate to obtain a basis adjustment. For example, if a client has an asset with significant appreciation and parents with a modest estate, the client can fund an irrevocable, completed gift trust which includes a GPOA to their parent, causing trust assets to be included in that parent's estate on their death, in order to achieve a basis adjustment to the parent's date of death value. This is sometimes referred to as "upstream planning." Restrictions may be placed on exercise of that GPOA, without necessarily destroying the tax status of the power, such as conditioning exercise on approval by a non-adverse party.

Any plan including a GPOA for upstream planning should have substance. The GPOA powerholder might also be a beneficiary of the trust, receive distributions from the trust and receive notice of the trust's existence as well as the power they hold in the trust. On the powerholder's death, the estate-tax return should be filed when required and should properly report the assets included by reason of the power. Caution should be exercised not to create an unintended estate tax on the death of the powerholder. Practitioners might consider using a formula GPOA or monitor the size of the powerholder's estate as well as value of the assets held in the trust with the GPOA to confirm that they remain under the estate tax exemption with both combined. Formula GPOA planning or monitoring will be especially important if the estate tax exemption is reduced in the future.

Documentation of what options were considered by the client and the client's decision to move forward with specific planning was a recurring practice-management theme. Sophisticated estate and income-tax planning involves decisions that clients may remember differently years later, and each of those decisions can create significant effects on the planning as well as the tax consequences on the client. Advisers should record recommendations, alternatives, risks and the client's decisions in writing.

Authors' Comment. *The more technically complex the planning, the greater the risk of selective or incomplete recollection a decade later.*

Contemporaneous written records are part of both sound client service and professional risk management.

AI Ethics With a Practical Focus – Bryan Skarlatos

Professional Responsibility and Privilege
The presentation separated and quantified three questions: what the law permits, what professional standards permit, and what the practitioner personally regards as right or wrong. Difficult problems often arise from conflicts among duties to the client, the tax system and the practitioner's own interest in serving clients while earning a living. A practitioner must know where the line is, guide the client up to it when appropriate, and refuse to cross it.

The governing standards discussed included Circular 230, the AICPA Statements on Standards for Tax Services, the National Association of Enrolled Agents' rules of professional conduct, the ABA Model Rules of Professional Conduct and ABA ethics opinions. AICPA SSTS Section 1.4 addresses reliance on tools: a professional may use AI but remains responsible for professional judgment. IRS OPR Alert 2026-19 similarly emphasizes that practitioners remain responsible for any content of return filings as well as any other materials provided to the IRS.

Competent use of AI includes understanding how the tool handles information. ABA Formal Opinion 512, Model Rule 1.1 Comment 8, Model Rule 1.6(a), and New York City Bar Formal Opinion 2024-5 were discussed as establishing standards of practice. A reoccurring theme throughout all materials promulgated was the need for the practitioner to take "reasonable efforts" to protect confidential client information regarding any technology used as part of the practice of law, including artificial intelligence. The presentation recommended the use of enterprise (paid) AI rather than free public AI for confidential client work. Entering client facts in an open tool can waive or compromise attorney-client privilege or confidentiality. Section 7525 privilege and the work-product doctrine may also be relevant.

United States v. Heppner addressed a client's use of free Claude AI in a criminal matter. The client was found to have waived privilege by sharing information regarding the case provided to the client by the client's attorney with the platform. The court found that the client's own AI search may not be a confidential attorney-client communication, may not be for the purpose of obtaining legal advice and was not made at counsel's direction, which

prevented the application of the attorney work product to the materials. Engagement letters should address client and firm AI use, confidentiality risks, consent and recording or transcription practices.

Accuracy remains nondelegable. Model Rule 3.3(a)(1) prohibits false statements of law to a tribunal and requires correction of false statements. Lawyers must review and verify AI-generated work. Courts have sanctioned lawyers for filing fabricated AI citations. The three Circular 230 pillars highlighted were competence under Section 10.35, diligence as to accuracy under Section 10.22, and standards for tax positions under Section 10.34.

Competence may be possessed, acquired through research and study, or supplemented by consulting an expert. Due diligence requires persistent factual inquiry. Regulation Section 6694 permits good-faith reliance on client information without an audit, but the practitioner may not ignore known implications and must make reasonable inquiries when the information appears incomplete, inconsistent or too favorable. The presenter noted that “the truth often comes in installments.”

An example of the danger of the use of AI in formulating an estate plan was made through the transfer of tangible personal property. Consider a Chippendale dining-room set worth approximately $1 million dollars that the client wishes to transfer to one of their children. AI may, correctly, sate that if the client were to gift only several of the chairs, there would be a discount in the value of those chairs as they are no longer part of a set, and that if in later years additional pieces were gifted those pieces would also receive a discount as they are no longer part of a full set. However, what is the effect of all of the additional pieces of the set are gifted to that same beneficiary over a period of several years? Consider if the beneficiary were to then, soon after receiving the final pieces of the set, to sell it at a Sotheby’s auction for $1.5 million? The AI suggestion may have correctly identified the concept of discounts by breaking apart the set, but it did not fully address the step-transaction doctrine risks created due to the client choosing to provide all of the set pieces to the same individual, or the negative optics of the transaction that the beneficiary then quickly selling the set for a significant sum would create. This was used as a cautionary tale that practitioners cannot abdicate their professional judgment to materials generated by AI, as the practitioner through experience may have additional contextual nuance that AI cannot (currently) identify.

Cohan v. Commissioner permits reasonable estimates when records are unavailable, but the professional should first obtain as much documentation as reasonably possible.

For nonshelter items, Section 6694 generally requires substantial authority, or reasonable basis with adequate disclosure. A higher standard applies to tax shelters: the position must be supported by a reasonable belief that it is more likely than not correct. Regulation Section 1.6662-3(b) was noted. A purported cryptocurrency gift is not completed when the donor retains the private keys.

Practitioners should be careful to distinguish reasonable basis from substantial authority. Substantial authority as a weighing process in which authorities supporting the position must be substantial relative to contrary authorities. For regular positions, the alternatives might be framed as substantial authority or reasonable belief accompanied by disclosure. For tax shelters, they record a more demanding combination of authority, disclosure and a reasonable belief that the treatment is more likely than not correct.

There is a view attributed to the Tax Executives Institute's standard of conduct that practitioners must help clients reduce tax liabilities. That framing does not displace the practitioner's duties under Circular 230, Section 6694, applicable professional rules and the ethical limits discussed elsewhere in the article.

> ***Authors' Comment.*** *If many clients do not perceive a moral problem with cheating, practitioners must be prepared to resist unreasonable demands. No fee justifies risking a professional license, sanctions, criminal exposure or reputational harm.*

> ***Authors' Comment.*** *AI competence requires both use and restraint. Professionals should understand the technology well enough to use it productively, protect confidentiality, verify output and take responsibility for the final work.*

Advanced Charitable Planning Strategies – Jeremiah W. Doyle, IV, William D. Samers, and Rachel Schnoll

The charitable-planning panel discussed a new 0.5% floor for charitable gifts and the Section 68 reduction of itemized deductions by 2/37ths which were created by OBBBA. The panel indicated that in practice they have not

yet seen reduced giving due to these changes, but many donors do not understand the new rules. One basic strategy is to sell property that has a loss, recognize the loss, and donate the cash rather than donate the asset itself.

A donor-advised fund is maintained and administered by a Section 501(c)(3) public charity and therefore generally offers the public-charity deduction rules. Donors may contribute appreciated securities, cash or complex assets. The gift is irrevocable and the donor no longer owns the asset. The donor may advise on investment and grants, although the sponsoring organization retains legal control. The “three Gs” provide a simple explanation: give assets to the DAF, grow them tax-free, and grant funds to charities.

Bunching gifts into a DAF can concentrate deductions in one year while grants are made over later years. This may reduce the number of years in which the 0.5% floor applies to donations, creating a larger deduction for the client. Substantiation is critical when donations are made. Contributions of $250 or more require a contemporaneous written acknowledgment containing required statements about goods or services. A DAF acknowledgment should confirm that the sponsoring organization owns and controls the contributed funds.

A charitable gift annuity is typically a short contract under which a donor transfers cash or appreciated property to a charity in exchange for an annuity based on rates established by the American Council on Gift Annuities. The donor receives an income-tax charitable deduction for the actuarial value of the charitable gift. If the annuity is nonassignable and the donor is the annuitant, embedded gain may be reported over time.

A charitable remainder trust (CRT) can receive property, sell and reinvest it, and make payments based upon statutory requirements. Distributions follow the worst-in, first-out system and are characterized as ordinary income, capital gain, tax-exempt income and return of capital. Investment planning inside the CRT should therefore seek tax-efficient income. The panel recommended against a CRT for a contribution of less than $250,000.

Qualified charitable distributions (QCD) from a retirement account, such as an IRA, remain especially useful. In 2026 QCDs are limited to $111,000 per taxpayer and can only be made once the taxpayer reaches 70.5 years old. There is also a once-in-a-lifetime amount of $55,000 that can be

distributed from a retirement account to a charitable gift annuity. A QCD must move directly from the IRA to an eligible public charity; DAFs are not eligible. The transfer does not increase adjusted gross income, is not subject to an AGI limit, the 0.5% floor or the 2/37ths reduction, and can count toward the required minimum distribution. Lower AGI may also reduce Medicare surcharges. The panel noted that for required minimum distributions, the first distributions of the calendar year made will count. So, if the intent is to make a QCD and have it be considered the RMD from a particular retirement account, the QCD will need to be made before any other distributions from that account.

Bitcoin and other cryptocurrencies are considered property for charitable-deduction purposes. Gifts above $5,000 generally require an appraisal and filing of Form 8283. DAF sponsors may require that any cryptocurrency accepted is traded through an exchange, such as Coinbase or another readily liquid market, and charities may liquidate promptly because of volatility. Similar substantiation concerns apply to the donation of entity interests in real-estate LLCs, partnerships and other complex assets.

The panel recommended dividing substantiation rules/requirements into practical categories: below $250, a receipt or written record of the donation; $250 through $500, a contemporaneous written acknowledgment that states that there were no goods or services received for the donation (or if there were, the value of the goods and services received); $501 through $5,000, the acknowledgment plus acquisition details, basis and filing of Form 8283 Section A; $5,001 through $500,000, the acknowledgment, a qualified appraisal by a qualified appraiser, and filing of Form 8283 Section B; artwork above $20,000, the appraisal and a photograph of the artwork; and gifts above $500,000, the acknowledgment, a qualified appraisal attached to the return and filing of Form 8283 Section B. If an unused contribution is carried forward (such as due to percentage restrictions on the amount that can be deducted for the donation, which is based on a percentage of AGI determined by what kind of asset was donated), the required substantiation documentation must be disclosed again during the subsequent years deductions are taken, or the deduction will be disallowed.

Practitioners should begin charitable planning by identifying when the transfer will occur and what property will be contributed. Section 170 governs the lifetime income-tax deduction, while Section 2522 addresses the lifetime gift-tax charitable deduction. The nature of the asset, including

whether it produces ordinary income or capital gain, affects both the deduction and the broader tax result.

A contribution of a life-insurance policy is generally valued by reference to basis or fair market value rather than the death benefit. Additional premiums paid after the transfer may constitute additional charitable contributions. Naming charity to receive retirement assets can also avoid the income-tax burden that otherwise may fall on noncharitable beneficiaries.

Bargain-sale treatment can apply when property is transferred to charity for less than full value or subject to debt. The example discussed by the panel assumes property worth $100,000 is sold to a charity for $60,000, producing a $60,000 sale and a $40,000 charitable contribution, with basis on the sale allocated proportionately (i.e., in the example, if the basis was $20,000, 60% of that would be attributed to the sale portion, or $12,000). A transfer of mortgaged property may similarly treat the remaining debt as consideration received, creating taxable gain even though the taxpayer did not receive funds directly from the charity.

Asset Protection: Recent Developments and Practice Guidelines – Gideon Rothschild

The presentation discussed the fine line that asset protection is completed on- planning addresses creating structures that avoid assets being reachable by future creditors; it cannot place assets outside the reach of present creditors, which would make it a fraudulent or voidable transfer. New York Debtor and Creditor Law Section 273 may render a transfer voidable when made with intent to defraud a creditor and without reasonably equivalent value, or when the transfer leaves remaining assets unreasonably small relative to the business involved (or for an individual, unreasonable to support their lifestyle). New York now applies a four-year limitations period to fraudulent-transfer claims.

Transfers undertaken after an accident or other precipitating event are particularly vulnerable. A bankruptcy discharge may also be denied when the debtor has made a voidable transfer, effectively keeping all assets the individual accumulates reachable by creditors for a significantly longer period of time, leaving exposed to creditor enforcement for up to l 20 years.

Present creditors, subsequent creditors and unidentified future creditors must be distinguished. A physician with no current claim may reasonably

anticipate professional exposure, but that is different from an individual who has already committed a wrongful act and expects suit. The earlier legitimate planning occurs and the more time that passes before a claim, the stronger the position is that those assets should not be reachable by creditors. A transfer more than ten years before a bankruptcy filing may avoid the concern raised above.

Clients who should consider asset protection planning include professionals, officers and directors, clients exposed to environmental liabilities and individuals considering marital planning. A last-minute prenuptial agreement may not survive challenge. In some jurisdictions, premarital transfers to an asset-protection trust may protect the separate property transferred in a later divorce.

Inherited property should generally remain in a protective trust rather than being distributed automatically at ages 25, 30 and 35, which for many decades was a standard practice. Outright inheritance of assets potentially exposes that property to divorce, creditors and accident claims. Joint titling with a spouse may convert separate property to marital property. Even if the inheritor initially keeps the inherited assets separate, over time the possibility of unintentional comingling of the assets causing them to convert to marital property increases significantly. For clients that are concerned with the restrictions on a beneficiary's access to assets while they are in a trust, a limited power of appointment can preserve flexibility without giving the beneficiary outright ownership.

Traditional asset protection techniques include protected retirement plans, insurance, transfers between spouses, corporations, LLCs and limited partnerships. An operating entity can shield personal assets from business liabilities, but equity in the entity may still be reached by the client's individual creditors. LLC and limited-partnership interests may be subject to charging-order remedies, due to the concept that there are other members/partners of the partnership or LLC who would be forced into business with the creditor if the interest was transferred to the creditor. However, that protection is weaker for a single-member LLC holding a securities account or personal residence without a real business or unrelated partner. Even if charging order protection is provided to an individual, when distributions are meant to be made to the individual, the court could require that those assets are instead distributed to the creditor, preventing the individual from receiving a benefit from the interests they hold in the entity.

Portability of the estate tax exemption from a decedent spouse to a surviving spouse is a federal estate tax concept and is not applicable to the New York state estate tax. Although portability may support an outright marital transfer for federal purposes, New York's lack of portability may favor funding a credit-shelter trust to preserve the decedent spouse's exemption on the first death. The concept of tenancy by the entirety, which provides asset protection for real property owned as "husband and wife" against individual creditors of either the husband or wife, but not against creditors of both of them, can provide meaningful protection. It was noted that different states have different levels of protection attributed to tenancy by the entirety, for example certain states provide tenancy by the entirety protection for intangible assets in addition to real property, so practitioners should review the applicable state rules. Delaware, Hawaii, Illinois, Indiana, Maryland, Missouri, Virginia and Wyoming for example are jurisdictions with statutes permitting tenancy-by-the-entirety treatment for qualifying trust assets, and Tennessee even provides protection for a deceased spouse's assets against the survivor's creditors. Going further than tenancy by the entirety, Florida's homestead exemption can provide significant asset protection, but Florida must truly be the client's home. Federal claims, such as unpaid taxes owed to the IRS, may override state law exemptions.

Retirement plans and regular IRAs may receive substantial protection under New York and bankruptcy law. In re Kellerman was discussed as an example of a case that upheld retirement account asset protection. Clark v. Rameker held that an inherited IRA was not protected under federal bankruptcy law. In addition, New York does not protect inherited IRAs. Due to this, if a potential beneficiary has asset protection concerns, the client may consider leaving the retirement account to that beneficiary in a trust. There are specific requirements in order for a trust to be considered a "designated beneficiary," which practitioners should be aware of. Trusts can be structured as a conduit trust, which passes any required minimum distributions directly out to a beneficiary, permitting those distributions to be taxed at the beneficiary's income tax rate, but also expose the distributed funds. Another option is to structure the trust as an accumulation trust, which can retain the required minimum distributions and provide greater protection to the assets, but will subject the income to the compressed tax brackets of a trust, and the maximum tax bracket at approximately $16,000 in income.

A third-party trust generally protects property when the beneficiary cannot compel distributions and does not hold a general power of appointment. A revocable trust provides no protection from the settlor's creditors. More than twenty states permit domestic self-settled asset protection trusts (DAPT), but their effectiveness in a non-DAPT state remains uncertain. New York and New Jersey do not recognize self-settled asset-protection trusts. The presenter also cautioned that a plan in which a spouse's QTIP includes a power of appointment permitting the beneficiary-spouse to redirect assets back to a trust for the settlor-spouse's benefit on the beneficiary-spouse's death may be treated under relation-back principles as self-settled in New York and New Jersey. In litigation it is possible that a New York court will choose not to apply Nevada or South Dakota law even if the trust is administered in those states. Even in a non self-settled trust jurisdiction, having a DAPT may create negotiating leverage due to requiring additional litigation by the creditor to attempt at getting access to those assets.

Administration is decisive in determining the efficacy of asset protection. A client who treats a trust-owned LLC as a personal checkbook, disregards formalities and acts as though the trust does not exist invites a court to disregard the plan as a sham. Spendthrift provisions should be included, but providing the trustee with discretionary distribution standards and avoiding mandatory distributions to beneficiaries provides stronger protection. Except for QTIP considerations, distributions should generally be discretionary, and practitioners may consider including language such as "sole and absolute discretion" and "unreviewable by a court of law." Spousal lifetime access trusts (a trust where the grantor's spouse is a beneficiary), floating-spouse provisions (the grantor's spouse is defined as whomever the grantor is married to at the particular time) and special power of appointment trusts (SPATs) may preserve flexibility. An inter vivos QTIP requires a timely election on a timely filed gift-tax return.

Authors' Comment. *Many clients and some advisers mistakenly believe that a revocable living trust provides asset protection. It does not protect the settlor from the settlor's creditors.*

Authors' Comment. *Consider preparing a trust operations manual. Well-designed documents are not enough if trustees, managers and beneficiaries do not understand accounts, distributions, records, tax reporting and separateness requirements.*

The Nuts and Bolts of General International Estate Planning That Every U.S. Professional Must Understand (With Special Pointers on U.S. Persons With Assets or Descendants Living in Israel) – Avi Kestenbaum

U.S. Persons, Nonresident Aliens and Cross-Border Property
International issues are common even for practitioners who do not consider themselves international planning specialists. Clients may own foreign property, invest abroad, have relatives in other countries or change immigration status. U.S. persons are generally taxed on worldwide income, while nonresident aliens (NRA) are generally taxed on U.S.-source income. The U.S. person definition includes U.S. citizens and green-card holders, and may include individuals meeting the substantial-presence test. The substantial-presence test includes a counting of days, stating for individuals who spend at least 31 days in the current year and 183 weighted days over three years will be considered as having a substantial presence in the US. Treaties between countries and state rules must also be considered.

U.S. citizens and U.S. domiciliaries are subject to Federal estate tax on worldwide assets. Transfer-tax domicile is a subjective inquiry under the Regulations, focusing on residence plus the individual's intent to remain in that location. A person can therefore be a resident for gift- and estate-tax purposes but not for income-tax purposes, or vice versa.

An NRA who directly owns stock of a U.S. corporation may be exposed to U.S. estate tax with only a $60,000 exemption and rates up to 40%. The financial institution may freeze the account at death. Gift-tax rules differ: a gift of U.S. corporate stock by a nonresident alien generally is not subject to U.S. gift tax, while U.S. real estate, cash or tangible personal property situated in the United States may be. NRAs have the same $19,000 gift tax annual exclusion that a U.S person does.

There is no unlimited marital deduction for transfers to a noncitizen spouse. However, a $194,000 annual exclusion for qualifying gifts to a noncitizen spouse exists. A foreign blocker corporation may be used to prevent direct ownership of U.S. stock by an NRA for estate tax purposes. U.S. real estate is more difficult to address because both estate and gift taxes may apply, and restructuring after acquisition may itself trigger tax.

A Qualified Domestic Trust (QDOT) can preserve the estate-tax marital deduction for a noncitizen spouse. The noncitizen spouse must receive all income, the trust must be solely for the spouse, and at least one trustee must be a U.S. citizen. If the QDOT exceeds $2 million, a U.S. bank trustee or a bond equal to 65% of fair market value is required.

The presenter raised several concerns regarding QDOTs. For example, a principal distribution from a QDOT above fiduciary accounting income may trigger an immediate estate tax cost, unless the distribution qualifies for a hardship exception. QDOTs also only defer rather than eliminate estate tax, and can be difficult to administer.

For a U.S. citizen living abroad who holds a U.S. account, beneficiary designations, joint title, an IRA or a revocable trust may not prevent an institutional freeze on those assets on their death. Obtaining a transfer-tax waiver for a frozen U.S. account may take one and one-half years or longer if there is no U.S. executor. Therefore, as a practical matter, having the international client prepare a U.S. will naming a U.S. executor may remain useful even when beneficiary designations or revocable-trust planning were intended to avoid probate. The local probate court's jurisdiction and the existence of a local asset to assist with easing the probate process may be considered when planning for international clients.

A foreign trust created by a U.S. person that includes a U.S. beneficiary is generally treated as a grantor trust. A trust with only foreign beneficiaries may avoid ongoing U.S. income tax, but funding that trust may trigger immediate recognition of built-in gain for any assets transferred. The client's home-country law must always be examined in parallel to determine if there are any adverse interactions between US law and that country's laws.

Evaluate foreign asset-protection trust (FAPT) optics as a litigation consideration. Even if the creation of a FAPT is technically permissible, creating an offshore trust may cause a judge to scrutinize the client's conduct and the plan more skeptically. It was noted that there have been instances of settlors of FAPTs sitting in jail for years due to refusing to repatriate assets held in the FAPT.

Israel-Related Planning for Property and Trust Beneficiaries

Cross-border planning involving Israel requires coordination of U.S. and Israeli law. Separate wills in both the U.S. and the foreign country are often

preferable for property in another country because relying solely on a U.S. may require a cumbersome approval process abroad.

Israel does not provide a U.S.-style basis step-up at death and instead applies carryover basis.

Israeli real estate is difficult to title directly in a trust. A U.S. LLC (which owns the Israeli property) owned by a U.S. trust may sometimes be used, but Israeli tax treatment, rental-income consequences and U.S. gift-tax reporting must be considered from inception. Transferring an already-owned apartment to an LLC or trust may trigger Israeli tax on built-in gain. Nominee agreements and inconsistent ownership positions between U.S. and Israeli filings (i.e., in the U.S. the property is treated as owned by the trust in care of the trustee, and in Israel the property is considered owned directly by the individual that was named as trustee in the U.S. trust) create significant risk; the overall story and reporting of the asset should be coherent.

Israeli trust rules changed in 2014. When a U.S. trust has an Israeli resident beneficiary, reporting and tax consequences can change during the settlor's life, upon distributions and after the settlor's death. A "relative trust" regime, a 60-day election between income and distribution tracks, and the risk that the presence of one Israeli beneficiary in a pot trust subjects the structure to Israeli reporting or tax should be considered when creating planning involving a client with beneficiaries living in Israel. Separate trusts for Israeli and non-Israeli beneficiaries may therefore be preferable. Amendments removing an Israeli beneficiary and the distinction between a gift and a trust distribution require coordinated steps including the client's estate planning attorney, accountant, international attorney and potential other professionals.

The United States and Israel do not have a gift-tax treaty. Israel does not have forced-heirship law, which means that clients are not required to give a certain amount of their estate to their children. Other countries, such as France, have forced-heirship laws which need to be addressed as part of the client's planning. These country-specific differences reinforce the need to avoid applying one jurisdiction's succession assumptions to another.

For a foreign investor, an Israeli corporation that owns U.S. stock may act as an estate-tax blocker because the investor owns shares of the foreign corporation rather than the U.S. securities directly. Another possible

structure may use debt and the portfolio-interest exemption, but caution that the tax law of the investor's residence must also be reviewed.

Jewish Healthcare Directives and Estate Planning: Tools for the Jewish Community - Rabbi Dr. Shlomo Brody, Ph.D.

Health-care-agent appointments require more thought and consideration than simply selecting a trusted person. Advisers must decide how much substantive direction the documents should contain, and how to guide a client on making decisions that reflect their personal views. A client who is healthy at 60 may assess end-of-life choices differently at 90, and medical technology may change the available options. Documentation that includes typical language for decisions such as whether "heroic measures" should be taken and when they can be removed may create a situation where the documents direct actions be taken that contradict what the family knows the individual would want be taken, creating significant stress, frustration, strife and family issues. The discussion touched on the nebulous nature of what "heroic measures" even are- one attendee noted that when they asked a medical professional what was considered a heroic measure, the medical professional states antibiotics were included in the definition. One goal for the adviser to consider when having a conversation with a client is creating documentation that preserves the client's values without assuming that present medical choices will remain appropriate decades later.

The Ematai's Conversation Guide is a resource for discussing personal wishes. Although created in a Jewish context, the conversation method can be adapted for clients of any faith or no faith. A Halachic Shtar is a separate contract intended for use in a Jewish court, or Bet Din, to address the biblical double-inheritance right of the eldest son and reduce the risk of a challenge under Jewish law.

> ***Authors' Comment.*** *This subject is broader than planning for observant Jewish clients. The most important lesson is to facilitate difficult, values-based conversations before drafting. The legal document should emerge from the client's considered wishes, family realities, faith commitments and understanding of medical uncertainty.*

Advisers can help clients by emphasizing that they need a plan, not merely documents. Consider engaging clients in a conversation about their goals, fears, family relationships, cultural expectations and religious sensitivities.

The presentation described a range of Jewish perspectives on preserving life and avoiding the prolongation of dying. One formulation is: “To prolong life is a mitzvah [good deed]; to prolong dying is not.” For an observant client, planning considerations may not be limited to what treatment the client personally wants. It may also include what Jewish law requires or permits and, when it permits choice, what the client prefers.

Conflicting levels of observance among children can produce disagreement unless the planning process addresses decision-making authority in advance. The Ematai approach favors a health-care proxy, disclosure to the children of whom the client appointed, designation of a rabbinic consultant, and decision-making in accordance with Jewish law and custom. Instead of a binding living will, it uses a nonbinding conversation guide to support discussion as medicine, family circumstances and the client’s views evolve.

Advisers may recommend to clients that they prepare a legacy letter, comparable to a letter of instruction, through which the client can explain their values, priorities and wishes to heirs. This can complement, but not replace, the client’s legal documents.

> ***Authors’ Comment.*** *The increasing importance of cultural and religious sensitivity is also a reminder of the human work that technology cannot readily replace. As AI assumes more drafting and information-processing tasks, nuanced conversations about faith, fear, family and dignity may become an even more central part of the estate planner’s role.*

Practical AI You Can Use Today and In Your Office Tomorrow – Alan S. Gassman

AI can be integrated into many different aspects of estate planning practice, including billing review, transcription, meeting summaries, client memoranda, letter drafting, website avatars and knowledge development. For billing, a detailed prompt can identify spelling and grammar problems, incomplete entries, insufficient descriptions and entries that warrant human review, such as unusually long calls or meetings. AI can review a long time run consistently, although a partner or other responsible professional must

still review the comments provided by AI and make the final decision on if and how entries should be revised.

Engagement letters should address whether the client authorizes recording and AI processing. Depending on the firm's practice model, the engagement terms may affirmatively state that meetings are ordinarily recorded and transcribed, subject to applicable consent requirements and client agreement.

Hallucinations and serious errors must be assumed. The presentation discussed whether a prominent legend disclosing the scope of human review could sometimes be relevant, but also emphasized the practitioner's professional responsibility for materials that are provided to clients, as well as other professionals and institutions. Security diligence should include reasonable measures for that time, as technology is quickly evolving and what is considered standard will change over time. Examples provided for security measures to consider at the time of the presentation included SOC 2 Type 2 certification, penetration testing and cybersecurity insurance.

> ***Authors' Comment.*** *The conference discussion demonstrated that AI is no longer merely another office tool. Properly governed, it can change how professionals gather facts, draft, review, communicate, administer matters and allocate senior-professional time.*

Consider AI adoption as part of a broader professional system involving personal life, professional responsibilities, clients, team members, processes and the firm's knowledge base. Imbalance in one area can impair concentration and performance elsewhere. AI should therefore be evaluated not only by drafting speed but also by whether it reduces avoidable workload and improves the quality of attention given to clients and colleagues.

Prompts are the instructions provided to the AI system on what steps should be taken. When crafting prompts, practitioners should specify the desired task, steps, format and constraints in detail. A practitioner dictating a meeting summary can embed instructions in the dictation itself, such as asking the AI to identify planning issues raised by a child's move to another state.

Assume that important AI errors will occur. As AI continues to proliferate the estate planning profession, practitioners may type less but will need to read and review more. Using a second AI system to critique or fact-check the first may help identify hallucinations and omitted issues, but it is the

practitioner’s professional responsibility to complete a final human review of the work product, the depth of which may depend upon what that particular material is going to be used for. For example, a final planning memorandum providing direction on the implementation of planning the client determined to move forward with may have a higher level of professional review required than a preliminary discussion of potential options for the client to consider.

AI-assisted background research may uncover information about prospective clients that has been removed from ordinary current web results.

When AI participates in a meeting workflow, the client’s consent to recording should be confirmed. Transcriptions of discussions can generate multiple work products from a single client meeting. The transcript can be used to prepare an initial memorandum, and the prompt can direct the system to omit jokes, disparaging comments and other material that should not be memorialized. Human review remains necessary to determine whether omissions distort any material advice or decision.

For document drafting, the presenter recommended beginning with a reliable form from document drafting systems, such as ILS or WealthCounsel, or with the firm’s own firms, rather than asking AI to draft without a foundation. An AI system can then produce a redline version of the document implementing requested changes, check internal references to articles and paragraphs, and assist with issue spotting, making the subsequent professional review easier to complete.

Consider the developing professional-liability tension. Documented AI issue spotting may help show that a professional used a thorough process. Conversely, a failure to use readily available AI tools might later be criticized if an obvious issue would have been flagged. That possibility makes governance, documentation and professional judgment as important as the tool itself.

Firms should examine security and learning settings before permitting client information to be entered into an AI system. The presenter also recommend considering cybersecurity insurance and systematically identifying time-wasting activities that technology or improved workflow can reduce.

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

Martin M. Shenkman
Thomas Tietz

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