

Post-Election Estate Planning

Aaron E. Newell

January 9, 2025

Political Environment

Post-Election Planning



- **2017 Tax Cuts and Jobs Act:** Federal exemption was \$5.49 million. Effective 1/1/18 the exemption increased to \$11.18 million per person.
- **Byrd Rule:** Senate procedural rule that requires that any bill that reduces taxes must be eliminated within ten years, unless at least 60 senators vote otherwise. Hence the estate tax exemption is set to decrease in 2026 unless Congress extends it. There's currently 52 Republicans in the Senate.
- **Political Environment:** Republicans have majority in House and Senate, but the margin isn't substantial. If nothing is done, the estate tax exemption automatically reverts to pre-TCJA level adjusted for inflation.

Post-Election Planning



American Housing and Economic Mobility Act of 2024 (Estate Tax Reform):

- Gifts and death treated as a recognition event
- Estate tax rates ranging from 55% to 65%
- Lowered exemption to \$3.5 million
- Surcharge on high-income estates and trusts
- Limitation on GRAT's
- Elimination of benefits of grantor trusts
- Changes to 2032A
- Limitations on valuation discounts
- Changes to GST
- Effective date/date of enactment

Post-Election Planning



Trump Tax Policy Focus

- Tariffs
- Elimination of provisions of the Inflation Reduction Act (IRA)
- Corporate Income tax rate 21% to 20%/15%
- Elimination of tax on tips and overtime
- Expansion of child tax credit
- Lift or elimination of SALT cap
- Extension and restoration of many provisions of the TCJA

Post-Election Planning



Revenue Impact of Extending Certain Provisions in the TCJA in Calendar Year 2026	(\$ Billion)
Personal income tax rates	\$ (201.9)
Increased standard deduction	\$ (105.5)
Repeal personal exemptions	\$ 156.2
Increase child tax credit and income limits	\$ (83.0)
SALT Cap	\$ 97.2
Expanded exemption from alternative minimum tax (AMT) for individuals	\$ (77.8)
Pass-Through Business Deduction (199A)	\$ (60.0)
Estate Tax Cut	\$ (13.7)
Total	<u>\$ (288.50)</u>

Source: Institute of Taxation of Economic Policy

Estate Tax Implications

Post-Election Planning



No Sunset 1/1/26

	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>
Exemption	13,610,000	13,990,000	14,380,000 *	14,780,000 *
Unified Credit	5,389,800	5,541,800	5,697,800	5,857,800

Sunset 1/1/26

	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>
Exemption	13,610,000	13,990,000	7,190,000 *	7,390,000 *
Unified Credit	5,389,800	5,541,800	2,821,800	2,901,800

*Estimated

Post-Election Planning



	<u>12/31/25</u>	<u>12/31/45</u>
Net Worth	30,000,000	96,214,064
Exemption	(27,980,000)	(25,215,418) *
Oregon Estate Tax	<u>(4,302,500)</u>	<u>(14,736,750)</u>
Taxable Estate	<u>(2,282,500)</u>	<u>56,261,896</u>
Federal Estate Tax	<u>-</u>	<u>22,904,759</u>

*Estimated

Post-Election Planning



- **Ultra-Wealthy Clients:** Critical to consider regardless of sunset. Most likely to have already focused on maximizing exemption.
- **Taxable Estates W/Sunset:** Opportunity to remove federal tax exposure permanently or for many years. A mixed bag whether they've maximized exemption.

Post-Election Planning



What are the options?

Family	Charity	Spend	Government
-How much? -In trust or outright? -During life or at death?	-How much? -Which assets? -During life or at death?	-Financial planning -Asset growth location -Income taxes	-Federal 40% -Oregon 16% -Washington 20%

Estate Tax vs. Income Tax

Post-Election Planning



- Which is more expensive?

	<u>Federal</u>	<u>Oregon</u>	<u>Washington</u> **	<u>California</u>
Income *	37.00%	9.90%	0.00%	13.30%
Capital Gains	20.00%	0.00%	0.00%	0.00%
Net Investment Income Tax	3.80%	0.00%	0.00%	0.00%
Self-employment tax	15.30%	0.00%	0.00%	0.00%
Medicare "Hospital Tax"	0.90%	0.00%	0.00%	0.00%
Multnomah PFA	0.00%	3.00%	0.00%	0.00%
Metro SHS	0.00%	1.00%	0.00%	0.00%
COP/MUL	0.00%	4.60%	0.00%	0.00%
Tri-Met	0.00%	0.8037%	0.00%	0.00%
Real Estate Excise Tax	0.00%	0.00%	3.00% ***	0.00%
Real Estate Transfer Taxes	0.00%	0.00%	0.00%	0.33% ****

*39.6% Starting 1/1/2026

** in general, leases or rentals not subject to B&O and retail sales tax

***Varies based on sales price

****varies based on location of property

Post-Election Planning



	<u>FMV</u>	<u>Basis</u>	<u>Unrealized Gain</u>
Commercial Property A	4,000,000	2,000,000	2,000,000
Commercial Property B	2,500,000	1,000,000	1,500,000
Commercial Property C	7,500,000	4,000,000	3,500,000
Multi-family Property - A	6,500,000	3,000,000	3,500,000
Multi-family Property - B	4,750,000	2,750,000	2,000,000
Multi-family Property - C	3,250,000	2,250,000	1,000,000
Real Estate Trade or Business	7,000,000	3,000,000	4,000,000
Personal Residence	2,000,000	1,200,000	800,000
Stocks and Bonds	4,000,000	2,500,000	1,500,000
Retirement	1,000,000	-	1,000,000
Net Asset Values	42,500,000	21,700,000	20,800,000
2024 Federal Estate Tax	9,035,000	21.26%	
2024 Oregon Estate Tax	6,302,500	14.83%	
	<u>15,337,500</u>		

Post-Election Planning



	Unrealized Gain	Capital Gains
Commercial Property A	2,000,000	730,000
Commercial Property B	1,500,000	547,500
Commercial Property C	3,500,000	1,277,500
Multi-family Property - A	3,500,000	1,277,500
Multi-family Property - B	2,000,000	730,000
Multi-family Property - C	1,000,000	365,000
Real Estate Trade or Business	4,000,000	1,460,000
Personal Residence	800,000	109,500
Stocks and Bonds	1,500,000	547,500
	19,800,000	7,044,500 35.58%

*Does not factor in time value of money

Flexible Estate Planning

Post-Election Planning



Flexible Estate Tax Planning Strategy

- Tax reimbursement clause
- Loan provisions
- QTIP trust
- Formula clauses
- QSST/ESBT options
- Disclaimer provisions
- Powers of appointment

Post-Election Planning



Flexible Estate Tax Planning Strategy

- **Tax reimbursement clauses**

- Rev. Rul. 2004-64: tax reimbursement by a trustee to a grantor for income taxes paid on behalf of the grantor, pursuant to the original terms of the trust agreement, would not be a gift from the trust beneficiaries.

Question: Can a grantor participate in a pass-through entity election or would this be considered a 2036 issue?

Post-Election Planning



Flexible Estate Tax Planning Strategy

- **QTIP Trust**

- Allows flexibility for step up in basis should the exemption be extended
- QTIP election allowed up until the due date of the tax return (including extensions)
- Step up in basis may still be available if QTIP election is made with the timely filed gift tax return.
- Consider transfers under IRC. Sec. 2519 in the future should the estate laws change.
- Oregon separate QTIP election (*Est. of Helene J. Evans v. Dep't of Revenue*)
- Consider a reverse QTIP election for GST purposes.

Post-Election Planning



Flexible Estate Tax Planning Strategy

- **Disclaimer**

- Option to remove the trust gifts if made within 9 months from date of gift
- Retains exemption
- Step up in basis may still be available

Post-Election Planning



Flexible Estate Tax Planning Strategy

- **QSST/ESBT**
 - Not all trusts address S Corporations as an owner.
 - Allows options for a trust to be a qualified shareholder of an S corporation
 - Taxpayers already in the top income tax brackets may consider an ESBT election to accumulated more assets in the trust
 - However, a QSST is treated as a trust for Oregon PTE-E, so this could have a material federal income tax benefit.
 - You may be able to switch between QSST and ESBT

Post-Election Planning



Flexible Estate Tax Planning Strategy

- **Power of Appointment**

- A trust protector could add a general power of appointment in the future should it be more valuable to have a step up in basis
- Granting a limited power of appointment to the spouse in a SLAT can allow for more flexibility in determining how much lineal descendant or charity should receive.

Thank you.
