Steve Leimberg's Estate Planning Email Newsletter - Archive Message #3226

Date: **15-Jul-25**

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

Martin M. Shenkman, Robert S. Keebler, Jonathan G. Blattmachr & Alan S. Gassman:

Subject: # The Big Beautiful Bill's Impact on Estate and Income Tax Planning

"OBBBA affects seemingly every aspect of planning. Not only are the changes numerous and complex but the impact on planning is often far more complex then what initially may be assumed. Practitioners need to communicate with clients about reviewing and updating existing planning, and reconsider how planning has changed for new plans. A renewed emphasis on income tax planning and non-estate tax aspects of estate planning will be critical for the vast majority of clients. Ultra wealth taxpayers should continue aggressive planning similar to what has been done in the past but reflecting the new QBI, QOZ and QSBS rules as applicable to each client."

Here is their commentary:

COMMENT:

Introduction

The Big Beautiful Bill (BBB), or The One, Big, Beautiful Bill Act (OBBBA) is now law. The House passed the Senate version of the OBBBA on July 3rd; President Trump signed the bill into law on July 4th. So now practitioners need to understand the impact and advise clients about the consequences or implications thereof. And the implications, especially for estate planning, may be quite different than what many clients assume. The OBBBA is massive in terms of spending, tax changes and more. Some of the changes, with a particular focus on estate planning, are analyzed below. A focus for advisers should be on what the OBBBA changes mean to income and estate tax planning for clients. This is critical even for clients well below the new "permanent" $15 million exemption (or $30 million for clients who are couples and US taxpayers). Why? Because estate and trust

planning with non-grantor (complex) trusts can facilitate income tax planning. Most important, "permanent" only means lasting until the next law change. So even clients well under the new high exemption amount could be well advised to plan now while they can under the increased exemptions.

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

What should be done? Planning should, generally, proceed using similar tools and techniques but with more flexibility, perhaps, than before. One might suspect to see a greater use of Special Power of Appointment Trusts (SPATs) (discussed in detail in the February 2019 issue of Estate Planning), hybrid Domestic Asset Protection Trusts (DAPTs) and other means of benefitting from trust assets beyond merely using dynasty trusts and Spousal Lifetime Access Trusts (SLATs). Lifetime limited powers of appointment and broader trust protector powers might make sense to build in more flexibility to address future changes. Also, non-grantor trusts may warrant greater consideration to facilitate income tax planning. SLATs may be created as non-grantors trusts by requiring consent of an adverse party for distributions to a spouse. Why might this be valuable even for moderate wealth clients? Example: Middle income client Husband gifts a large portion of the couple's investment assets to a non-grantor SLAT to benefit wife and to benefit children which children must consent to a distribution to wife thereby preventing the trust from being a grantor trust. See Section 677. The income earned can be held in the trust and have the tax paid or distributed to those children in the lower brackets. That can be planned so the parents qualify for new tax breaks, many of which are subject to phase outs. Example: the new OBBBA exclusion of tax on overtime income of up to $25,000 is phased out at $300,000. If the couple otherwise qualifies for this benefit, shifting investment income away from them in that year (and evaluating it year after year) could enable them to qualify for that benefit.

This bill gives planners the opportunity, and perhaps an obligation, to reach out to clients who can no longer be expected to be impacted by the federal estate tax, and to revise their estate and entity/asset planning to optimize results.

Two notable examples discussed below would be to eliminate credit shelter trusts to enable families to get a new fair market value income tax basis on the death of a surviving spouse, and to remove or ameliorate discount features that now exist as a result of entity planning.

OBBBA Impact on Credit Shelter Trusts, QTIPs and More

An important planning step will be , as appropriate, the amendment or replacement of tens of thousands of wills and trusts that provide that the maximum amount possible passes to a credit shelter trust that provides benefits to the surviving spouse without being subject to federal estate tax upon the surviving spouses death and results in no income tax step up on the death of the surviving spouse.

Now, families can decide whether they would like for the disposition to go outright to the surviving spouse, or into a QTIP marital deduction trust that may benefit the surviving spouse and also be considered to be owned by the surviving spouse on the surviving spouse's death. Each of these situations should qualify for a basis step up. Obviously, using a QTIP approach provides for GST planning and asset protection. Many clients will not care about GST considerations if they view the new permanent $15 million exemption as well beyond their and their children's reach.

Clients who are now the beneficiaries or trustees of credit shelter trusts that are already in existence may consider what that may achieve a new fair market value income tax basis achieved upon the death of the primary beneficiary or others. If the couple lives in a state that has or may in the future have an estate or inheritance tax, such as Washington State, which recently increased its estate tax to 35% for certain estates exceeding $9 million dollars in value, then they should think once again about whether to restructure credit shelters/marital deduction trust or outright payment planning. https://lawfilesext.leg.wa.gov/biennium/202526/Pdf/Bills/Senate%20Bills/5813.pdf?q=20250708095032. But these trusts are non-grantor trusts so that you cannot merely have someone swap out or buy assets from the trust for cash to get the appreciated assets back into an estate for basis step up purposes.

OBBBAA Impact on Family LLCs, FLPs

A client family may have been properly advised to own 50% or less of the voting or general partner rights in family limited partnerships (FLP), limited liability companies (LLC), or other entities.

The family may wish to ensure that these entities are owned—or treated as owned—primarily by the senior family member(s) most likely to die first, to maximize receiving new fair market value income tax basis on the proportionate part of the entity or the underlying assets of the entity on the death of a senior family member. In some situations, it might be possible that by granting a "put right" to an individual or their estate to obtain a full fair market value (not discounted) basis equal to the value of the applicable entity multiplied

by the percentage owned by the senior family member that a full undiscounted basis step up.

OBBBA Impact on Life Insurance

Life insurance plans should be re-evaluated in light of the new rules, but with consideration to possible future law changes. The permanent $15 million exemption will have some clients reconsidering their willingness to continue the premium payments. Another post-OBBBA planning consideration might be to have contributions to pay for second-to-die or individual life insurance policies possibly reduced. This could be by freezing payments and accepting whatever coverage can be retained, selling the policy or cashing it in. The policy might be restructured using for clients who may wish to have access to cash value or death benefits outside of a presently existing irrevocable life insurance trust.

For example, some universal life policies are somewhat flexible and there may be little or no economic penalty imposed if the death benefit is reduced and future premiums or reduced or eliminated.

Alternatively, some individuals may wish to purchase existing life insurance policies from life insurance trusts in order to have personal ownership and control of the policy (assuming no state or federal estate tax), or to use split dollar funding whereby each contribution may be considered to be a loan to the trust made at a fair market value interest rate. Such split dollar loans can be repaid if and when the policies are ever borrowed upon, cashed in, or (matures) on the death of the insured.

OBBA Impact on Existing Note Sale Transactions

Existing installment note transactions in place between a grantor trust and the grantor, which is to the benefit of the trust and was primarily motivated by federal estate tax planning purposes should be re-evaluated. Does the plan still make sense? What might the possible estate tax implications be to continuing the plan versus modifying the plan? The grantor may wish to have the loan repaid and the grantor trust continued as a non-grantor trust that may spray its income to lower-income bracket beneficiaries and/or charities in a way that can reduce the federal income tax obligations of the overall family.

OBBBA Impact on Ownership of Assets

OBBBA may change the analysis of which options should be used for the title to client assets. Some changes may result from the previous desire to have assets considered to be owned by a spouse who is more likely to fund the credit shelter trust on the death of the first dying spouse. Some clients may have divided assets years ago when the exemption was much lower and have never revisited that ownership structure despite the increasing

exemption and with OBBBA they may gain planning benefits overall from changing their existing arrangements.

Alternatively, the spouse may have placed assets under an incomplete gift asset protection trust for this purpose, which may now be appropriately resituated.

If the married couple resides in a state that recognizes and protects tenancy by the entirety assets from creditors of either spouse, such as Florida, Wyoming, Delaware, and Tennessee, then the couple may prefer to disband the asset protection trust, and no longer need to rely upon charging order protection, by placing some or all the assets into tenancy by the entireties or into a JEST (Joint Exempt Step-Up Trust) which may offer stronger creditor protection, and provide a basis step-up upon the death of the surviving spouse—and possibly upon the death of the first spouse to die. Many advisors also recommend considering a community property trust to achieve a full fair market value income tax basis upon the death of the first spouse.

Tax and Estate Planning Remains Important Despite the $15 Million "Permanent" Exemption

The impact of the OBBBA is, however, less clear. While the Congressional Budget Office estimated that the OBBBA may add over $3.9 trillion to the national debt over the next ten years, other estimates vary significantly. Some believe that OBBBA will stimulate economic growth thereby increasing tax revenues.

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

Another point to consider: the OBBBA contains many detailed tax provisions that affect specific types of income, specific activities and specific people.

· Tips, in general, will receive more favorable tax treatment than other types of income. Why is income earned as tips favored over income earned by a professional or business owner?

· Those with real estate and certain business interests may qualify for a 20% reduction in their income taxes, but professionals (doctors, lawyers, etc.) are excluded from this benefit.

· No deduction is generally permitted for itemized deductions, but teachers will be able to deduct unreimbursed employee expenses.

· Personal interest expense (e.g., on a bank loan) is generally not deductible, but interest paid on certain car loans from 2025 to 2028 will be.

· The income tax resulting from the sale of farmland to a qualified farmer can be deferred and paid in four annual installments.

· The list goes on.

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

The discussion later in this article reviews many, but far from all, of the tax changes contained in the OBBBA. Many of these have no connection to estate planning, but help demonstrate the breadth, complexity and seeming arbitrariness of the OBBBA which is important for all taxpayers to understand. For some of these, the indirect implications with respect to estate planning have been noted. That too, while complicated, is important as so much tax, retirement asset protection and other planning *are* interconnected. Even if the examples indicated do not apply to a specific client they may help practitioners realize how to look at planning from a broader lens. It may also be instructive to see some of the

contrasts in the OBBBA tax breaks. For example, as explained below the $25,000 tip deduction remains until the end of 2028 whereas the $15 million estate tax exemption is permanent. Some of the nuances of the OBBBA such as the above may not have been apparent from general discussions in the media of the OBBBA.

Finally, there has been much discussion of the impact of the OBBBA on the deficit and the perilous nature of America's debt levels of about $36 trillion. If the forecasts that the OBBBA will spur growth and raise tax revenues do not happen then steep tax increases may become inevitable. Whether or not the $15 million exemption is labeled "permanent" may have little relevance if taxes must be raised in the future to address a growing deficit. Senator Warren and others had in prior years introduced legislation to enact a wealth tax. Estimates are that a wealth tax of 2% on wealth in excess of $30 million might raise over $400 billion a year. That could be about 20% of the deficit. The risk of such changes occurring should be carefully weighed by anyone with wealth before deciding not to continue planning.

OBBBA Estate Tax Exemption Does Not Make Estate Planning Obsolete

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

Consider that one of the underlying reasons that the estate tax was enacted was to reduce wealth concentration. Estimates are that only .25% of American households have a net worth of more than $30 million. That is an extremely small segment of the taxpaying public that will be subject to the estate tax after the OBBBA. Still, planners should remember that, under the Pareto Principle, 80% of a planner's revenues and profits typically come from 20% of their clients.[i] Caution clients that if the stated goals for the OBBBA are not achieved we may again see proposals for a harsher estate tax, and perhaps even a wealth tax. This is precisely why those with material wealth, even well under the $15 million or $30 million levels, may continue to work to reduce their taxable estates if they want to "play it safe."

Business Tax Provisions

Bonus Depreciation: Depreciation is the deduction of the cost to buy an asset over its useful life. For example, if you purchased a machine that lasts for 10 years, you would, theoretically, deduct 1/10th of the cost to purchase it each year for 10 years. The theory behind depreciation is to match deductions to the revenue the depreciable asset produces. However, the tax laws have long changed and rechanged these concepts, often

accelerating the deductions to provide faster tax benefits and spurring investments. That is precisely what the OBBBA has done with several deduction concepts. The OBBBA makes permanent the additional first-year, or "bonus," depreciation deduction at 100% for property acquired and placed in service on or after January 19, 2025.

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

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

Qualified Opportunity Zones ("QOZs"): The OBBBA permanently extends QOZ benefits but restricts the definition of "low-income community." QOZs are a tax incentive created in 2017 to stimulate investments in economically distressed communities. These are in census tracts certified by the U.S. Treasury as low-income. Taxpayers can invest in QOZ's by participating in Qualified Opportunity Funds ("QOFs"). If a taxpayer reinvests capital gains into a QOF, that taxpayer can defer taxes on those gains. A partial exclusion of the deferred gains can be realized if the QOF investment is held for five years, resulting in 10% of the deferred gain to be excluded from taxation. If it is held for seven years, an additional 5% can be excluded. If held for 10 years, then new gains from a QOF are tax-free upon sale.

Qualified Small Business Stock ("QSBS"): QSBS is a tax benefit to stimulate investment in new startup companies. To qualify the stock must be acquired directly from a domestic C corporation (not on the secondary market). The corporation must have previously had $50 million or less in gross assets when the stock is issued. The OBBBA increased this to $75 million or less. At least 80% of its assets must be used in an active qualified business. The OBBBA increased the exclusion for gain from QSBS. For stock held for at least four years, the percentage of gain excluded from gross income increased from 50% to 75%. If it is held for five years or more, the exclusion is 100%. The exclusion had been $10 million, but the OBBBA increased it to $15 million. This change may result in many CPAs modifying their advice on whether a start-up should formed using an S-Corp, LLC or C-Corporation structure.

University Endowments: The One Big Beautiful Bill Act (OBBBA) replaces the flat 1.4% excise tax on the net investment income of large university endowments—originally

enacted under the 2017 Tax Cuts and Jobs Act—with a progressive rate structure based on endowment size per student. Under the new law, endowments with $500,000 to $750,000 per student are subject to a 1.39% excise tax (resulting in negligible change, with estimated tax savings of approximately $100,000 over the next ten years for an institution earning $100 million annually). Institutions with endowments of $750,001 to $2,000,000 per student are taxed at a 4.0% rate, leading to an estimated additional tax of $26 million over ten years. For the wealthiest institutions—those with more than $2,000,000 per student—the excise tax increases sharply to 8.0%, which translates to an estimated $66 million in additional taxes over a ten-year period, assuming consistent $100 million annual net investment income. These changes significantly raise the long-term tax burden on highly endowed private universities.

University	Enrollment	Endowment	Endowment per Student	Tax Bracket	Approx. New Excise Tax/Yr.	10-Yea flat 1.
Harvard	24,519 (Fall 2024)	~$53.2 B	~$2.17 M	**8.0%**	~$8 M	≈ +$66
Yale	15,081 (Fall 2023)	~$41.4 B	~2.75 M	**8.0%**	~$8 M	≈ +$66
Wharton/UPenn	29,109(Fall 2023)	~$22.3 B	~$0.77 M	**4.0%**	~$4 M	≈ +$26
Emory	16,019 (Fall 2023)	~$8.09 B	~$0.51 M	**1.39%**	~$1.39 M	≈ + $0
Tulane	13,078 (Fall 2023)	~$1.8B	~$0.14 M	**Below bracket**	~$–	≈ + $0
USC	47,147(Fall 2024)	~$8.15 B	~$0.18 M	**Below bracket**	~$–	≈ + $0

[ii]

Individual Income Tax Provisions

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

trusts reach the top income tax bracket at only about $15,000 of taxable income, the trustee, if authorized, can make distributions to other taxpayers who are in lower brackets. There will be a renaissance in the use of non-grantor trusts for income tax planning.

Standard deduction: The "standard deduction" is a basic deduction for most individual taxpayers calculating their taxable income if they do not deduct actual permitted deductions. The standard deduction is a specific dollar figure that is subtracted from income to become an individual's taxable income. The OBBBA permanently increased the deduction amounts to $15,750 for single taxpayers and $31,500 for married filing joint taxpayers. Planners will need to carefully determine whether client should itemize or take a standard deduction. This will have important implications for charitable planning, as one example.

Home Mortgage Interest Deduction: The OBBBA permanently extends the limitation on deducting qualified residence interest. This deduction is limited to interest incurred on up to $750,000 of home mortgage acquisition debt. The limitation's provision states that those who purchase a home with cash but acquire a mortgage later will not qualify for the interest deduction. Parents helping children to acquire a home should be mindful of these rules. The OBBBA also permanently restricts the ability to deduct interest on home-equity loans.

Charitable Contribution Deductions: Generally, taxpayers claiming a charitable contribution deduction must itemize deductions, opting out of the standard deduction. Most taxpayers do not itemize because of the many limitations that come with the option and because of standard deduction increases. But if an individual takes the standard deduction, how can that individual get a tax benefit for charitable contributions? The OBBBA provides a charitable contribution deduction of up to $1,000 for single taxpayers, or up to $2,000 for married taxpayers filing jointly, even if the taxpayer does not itemize deductions. For most practitioners this is inconsequential to their clients, but it is a change that may be relevant in client discussions, for client children, etc. For taxpayers who itemize deductions, the OBBBA reduces charitable contributions by 0.5% of the taxpayer's contribution base. While this reduction will reduce the tax benefits that some realize from their contributions, it is likely not material to charitable planning discussions. The contribution base is adjusted gross income (AGI) determined without regard to any net operating loss carryback to the taxable year.

Car Loan Interest: The OBBBA provides an above-the-line interest deduction on the deduction of interest on qualified passenger vehicle loans. This provision is only in effect from 2025 through 2028. The loan must be for a passenger vehicle assembled in the United States, used for personal use, and secured by a first lien. The interest deduction cannot

exceed $10,000 per year and will phase out for single taxpayers with a modified adjusted gross income ("MAGI") in excess of $100,000, or married filing jointly taxpayers with a MAGI over $200,000. The phase out will make this irrelevant for clients of most practitioners, but it may be relevant for client children, etc.

State and Local Tax ("SALT") Deduction: The 2017 Tax Act limited the SALT deduction to $10,000. For those in high tax states like California and New York, this was a very costly change. Some high tax states created a mechanism to reduce the pain this tax restriction caused on their residents. This mechanism, the Pass-through Entity Tax ("PTET") permits taxpayers to shift their otherwise non-deductible SALT cost from the individual taxpayer to an entity.[iii] If the entity could deduct the tax payment it would reduce the entity income passing through to the individual taxpayer who would receive a state tax credit or income exclusion. Thus, a PTET is equivalent to a larger SALT deduction realized by avoiding the SALT cap. Needless to say, this adds another complication to the tax system.

The OBBBA temporarily increases the federal SALT deduction limit to $40,000, adjusted for inflation. In 2026, the limit will increase to $40,400. In 2030, it will drop to the current $10,000. Additionally, for taxpayers with a modified adjusted gross income ("MAGI") over $500,000, SALT is reduced by 30% of any amount exceeding the $500,000. The marginal income tax rate for taxpayers in the phaseout will be 45.5%. Planners will need to find solutions for this anomaly such as oil and gas investments, defined benefit plans, using PTET deductions, or other strategies to better manage income.

Therefore, the taxpayers paying the most will receive the least amount of benefits from state taxes. This exemplifies the OBBBA's various and complex tax changes, thus complicating proper planning and comprehension. The SALT limitation, of $40,000, also applies to non-grantor trusts. Planners will almost certainly explore the use of non-grantor trusts to capture additional SALT deductions.

These developments have several implications for business and estate planning. The choice of entity for a business may now be influenced by whether that business can benefit from a PTET. PTET allows certain pass-through entities—such as partnerships, S corporations, and some LLCs—to pay state income tax at the entity level rather than pushing the tax obligation to the individual owners. This sounds too good to be true, but in states that allow it, it is real: the entity deducts the state tax as a business expense on its federal return, reducing the owner's reportable federal taxable income. Meanwhile, the owner gets state-level credit or exclusion to avoid double taxation.

For example, assuming a taxpayer is a 50% partner in a New York partnership that earns $1 million and pays $100,000 in New York PTET. Instead of reporting $500,000 of income and

paying New York state tax personally (and hitting the $10,000 SALT deduction cap), the partnership deducts the $100,000 at the entity level, reducing its taxable income to $900,000. The partner then reports $450,000 federally (half of $900,000) and receives credit on their New York return for their share of the tax already paid. This results in a real, uncapped federal deduction with no additional out-of-pocket cost.

PTET elections are generally irrelevant for income earned in states without a personal income tax—such as Florida, Texas, or Nevada. However, they become highly relevant when a resident of one of these states owns an interest in a pass-through entity that operates in high-tax jurisdictions like New York, California, or Illinois. In those cases, structuring the entity to qualify for PTET can unlock significant federal tax savings without altering the overall state tax burden.

Another planning implication arises for entities held in trust. Estate planners often structure businesses under a single-member LLC owned by a trust, which is treated as a disregarded entity for income tax purposes. While this simplifies reporting, it typically prevents the entity from electing PTET, which requires the entity to be recognized for tax purposes (i.e., to have more than one member). Adjusting ownership to qualify for PTET—such as by adding another member—may create legal or administrative complexity and should be weighed against the potential tax benefit. But the overall planning picture should be considered. For example, what if the pass through entity were restructured to have a special .1% interest that could control voting decisions on liquidation, distributions and changing those provisions of the governing document. That .1% interest in the entity could be sold to a non-grantor trust that had an independent trustee. That may address both PTET and Powell issues.

Moving Expense Deduction: The OBBBA permanently eliminates the moving expense deduction, except for members of the armed forces. Until now, if you deducted moving expenses related to professional or employment relocation, you could file Form 3903 with the IRS. Filing this form serves as good proof if a state tax auditor questioned if your state residency termination was improperly motivated by state income tax purposes. So, depending on the circumstances, it might be beneficial to maintain all records that would be useful to support this deduction, even though it is no longer available.

Miscellaneous Itemized Deductions: The OBBBA permanently eliminates miscellaneous itemized deductions, such as unreimbursed employee business expenses, tax preparation costs, etc. However, the OBBBA permits these deductions for eligible educators. Why only allow educators the ability to use these deductions? As tip income and social security income are favored, so too are educators. The lack of consistency or rationale to the

OBBBA's tax changes make the law unintuitive, complex, and will no doubt financially hurt taxpayers.

Itemized Deductions: For clarity of terminology, planners should understand that "above the line" deductions reduce taxable income regardless of amount, while "below-the-line" deductions are only useful to the extent they exceed the standard deduction —$31,500 for married couples and $15,750 for individuals in 2025.

The amount of itemized deductions that an individual taxpayer can deduct (after applying limitations, such home mortgage interest and miscellaneous itemized deductions) must be reduced by the lesser of: (1) the amount of itemized deductions, or (2) so much of the taxable income of the taxpayer for the taxable year (determined without regard to the section and increased by such amount of itemized deductions) as exceeds the dollar amount at which the 37 percent rate bracket under Section 1 begins. For those married filing jointly, the amount is $751,600. If earned income is below this amount, the individual taxpayer would not face a limitation as test (2) would equate to zero. Note the application of this. If a taxpayer has a business and deducts all equipment purchases or research costs under the OBBBA, they might have large economic earnings but face no limitation on his or her deductions. Was this the intention? This language is paraphrased from the actual bill.

Senior Exemption/Personal Exemption: A personal exemption was a dollar amount that every taxpayer could deduct from their gross income to reduce their taxable income. The OBBBA permanently eliminates the personal exemption by setting the amount to zero. However, the OBBBA includes a temporary $6,000 deduction for those 65 and over. This amount begins to phase out when a taxpayer's modified adjusted gross income ("MAGI") exceeds $75,000 for an individual (complete phase out at about $175,000) or $150,000 for married taxpayers filing a joint return (complete phased out by $250,000). Effective from 2025 through 2028. Why are older taxpayers favored over other taxpayers, such as those with disabilities? Also, if someone earns rental income that is sheltered by depreciation deductions, their cash flow may exceed the limits but would still thus qualify for this benefit even though someone earning much less is in greater need. There are many other complications to consider resulting from this portion of the OBBBA.

Child Tax Credit: The OBBBA increases the non-refundable child tax credit to $2,200 per child. The availability of the credit is phased out when a single taxpayer income exceeds $200,000 or a married filing joint taxpayer has income of $400,000. Notice the disparity between this amount and the senior exemption phase out amount, or other tax benefits the OBBBA provides. What is the rationale for using different income levels for various tax benefits? Perhaps, it was negotiated to make budget projections acceptable. Nonetheless, the disparity is disconcerting.

Adoption Credit: The OBBBA makes the adoption credit refundable up to $5,000, adjusted for inflation.

Dependent Care Assistance Programs: The OBBBA increases the annual contribution limit on pre-tax employment income that employees can contribute to a Dependent Care Assistance Program.

Qualified Business Income ("QBI") Deduction: Section 199A permits a tax deduction, the QBI deduction, of up to 20% of qualified income from pass-through entities. This substantial benefit cannot be used by Specified Service Trades or Businesses ("SSTBs"). SSTBs include law, accounting, architecture, medicine, etc. When QBI income exceeds $75,000 (for a single taxpayer), or $150,000 (for a married filing joint tax return), the benefits are reduced. These amounts were increased from $50,000 and $100,000, respectively, by the OBBBA. If a taxpayer is caught in the phaseout their marginal federal tax rate on each additional dollar of income will exceed 52%. It would seem real estate and certain businesses are favored over professions. There are many planning opportunities to reduce income tax under Section 199A. Some taxpayers may benefit from shifting passive income to a non-grantor trust.

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

Trump Accounts: Trump accounts are a new savings vehicle to help children. These will be in the form of special individual retirement accounts ("IRAs") to benefit children under the age of 18. Contributions can only be made in calendar years before the beneficiary reaches the age of 18. Distributions from a Trump account can only begin the first day of the calendar year the beneficiary turns 18. At age 18, the Trump account turns into an

IRA. Investments are restricted to mutual funds and indexed ETFs. Contributions are generally limited to $5,000 a year, inflation adjusted after 2027. By opening a Trump account for a child born between 2025 and 2028, taxpayers may receive a $1,000 contribution from the Government. The relative benefits of a Trump Account versus a 529 Account should be considered. Much larger amounts can be contributed to a 529 plan than a Trump Account, and they are not set to expire after only three years.

529 Account: 529 plans are tax-advantaged savings plans that can help pay for college expenses. Contributions to a 529 plan are not deductible, but earnings grow tax-free. Withdrawals are tax-free when used for qualified education expenses. The account owner, e.g., the parent, can retain control over the funds and can change the beneficiary. Payments can be made up to the gift tax annual exclusion amount which is $19,000 in 2025. Additionally, gifts can be front-loaded for up to five years. If desired, a parent or grandparent could fund more using their gift and /or GST exemptions.

The OBBBA has enhanced 529 Plans to enable them to be used for enrollment in an elementary or secondary school. The OBBBA also allows tax-exempt distributions from 529 savings plans to be used for qualified post-secondary credentialing expenses. 529 plans have been a powerful planning tool, even more so after the OBBBA. Anyone planning for children, at almost any wealth level, should evaluate the possible benefits that come from 529 accounts. It appears that, other than the $1,000 government "gift" to Trump Accounts that 529 plans may remain superior. Some taxpayers may choose to fund 529 plans and only thereafter consider a Trump Account.

"Tax Free" Tip Income: The OBBBA gives a temporary deduction of up to $25,000 for qualified tips received by an individual in an occupation that customarily and regularly receives tips in 2025 through 2028 tax years. The deduction phases out when the taxpayer's Modified Adjusted Gross Income ("MAGI") exceeds $150,000 (for a single taxpayer) or $300,000 (for a married taxpayer filing a joint return). Note the limited number of years that this benefit will remain. In contrast, the increase of the estate tax exemption to $15 million is permanent. Consider the cost of these tax benefits, and who benefits from each. Also note the disparity that continues with different phase out levels for the various changes enacted by the OBBBA. While this is touted as a benefit for middle-income taxpayers, the upper limit of $300,000 in income places those earners within the top 3% of earners nationwide. https://dqydj.com/income-percentile-calculator/. Another consideration is the historical lack of tip income reporting. If it was not reported, it was not taxed. The Treasury Inspector General for Tax Administration estimated that there was a significant amount of unreported tip income. For example, in 2016, they identified $6.3 billion in projected unreported tip income. The IRS estimated the total dollar value of tips given to employees

in a given year is roughly $36 billion, so about 17.5% is never reported. Another question to ask is why tip income is treated more favorably than other labor-related income?

Overtime Pay Not Taxable: The OBBBA gives a deduction of up to $12,500 for a single taxpayer, and up to $25,000 for married taxpayers filing a joint return for qualified overtime compensation for 2025 to 2028 tax years. Qualified overtime compensation is defined as overtime compensation paid to an individual required under Section 7 of the Fair Labor Standards Act of 1938 that is in excess of the regular rate. The deduction is phased out as Modified Adjusted Gross Income ("MAGI") exceeds $150,000 for a single taxpayer and $300,000 for a married taxpayer filing a joint return. See the discussion above concerning tip income as they apply to overtime pay as well. So, a person who has childcare or other care giver responsibilities, or who themselves have a disability, thereby unable to work overtime will be excluded from this tax break.

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

Conclusion

OBBBA affects seemingly every aspect of planning. Not only are the changes numerous and complex but the impact on planning is often far more complex then what initially may be assumed. Practitioners need to communicate with clients about reviewing and updating existing planning, and reconsider how planning has changed for new plans. A renewed emphasis on income tax planning and non-estate tax aspects of estate planning will be critical for the vast majority of clients. Ultra wealth taxpayers should continue aggressive planning similar to what has been done in the past but reflecting the new QBI, QOZ and QSBS rules as applicable to each client.

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

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CITE AS:

CITATIONS:

[i] Rosie Dunford, Quanrong Su & Ekraj Tamang, *The Pareto Principle*, 7 **Plymouth Student Scientist** 140 (2014), https://pearl.plymouth.ac.uk/tpss/vol7/iss1/4.

[ii] *Enrollment and endowment figures based on publicly available data from university financial reports, Common Data Sets, and annual endowment updates (2023–2024). Key sources include Harvard's Office of Institutional Research, Yale's FY2024 Financial Report, UPenn's Financial Facts, and USC's FY2024 Endowment Report*.

[iii] LexisNexis, *Tax Type: Corporate Income Tax – Entity-Level Tax on Pass-Through Entities*, Lexis Multistate Tax Charts with Analysis (updated Nov. 6, 2023) (available on Lexis).