

A December Guide to the Trump Tax Act: Where We Stand and New Planning Opportunities

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My Disclaimer!



Dear Attendees:

Please note that at the time this PowerPoint presentation is being submitted, the House and Senate are still working out their respective legislative bills. Meanwhile, I seem to have misplaced my crystal ball, so the concepts should be accurate, but the specific legislation may change by the date of this webinar.

Yours truly,
Steven J. Oshins

Single Income Tax Brackets

2018 (currently scheduled)

- 10% (under \$9,525)
- 15% (under \$38,700)
- 25% (under \$93,700)
- 28% (under \$195,450)
- 33% (under \$424,950)
- 35% (under \$426,700)
- 39.6% (above \$426,700)

H.R. 1

- 12% (under \$45,000)
- 25% (under \$200,000)
- 35% (under \$500,000)
- 39.6% (over \$500,000)

Senate Finance Committee

- 10% (under \$9,525)
- 12% (under \$38,700)
- 22% (under \$70,000)
- 24% (under \$160,000)
- 32% (under \$200,000)
- 35% (under \$500,000)
- 38.5% (over \$500,000)

Rates sunset after 12/31/2025

Married Income Tax Brackets

2018 (currently scheduled)

10% (under \$19,050)
15% (under \$77,400)
25% (under \$156,150)
28% (under 237,950)
33% (under \$424,950)
35% (under \$480,050)
39.6% (over \$480,050)

H.R. 1

12% (under \$90,000)
25% (under \$260,000)
35% (under \$1 million)
39.6% (over \$1 million)

Senate Finance Committee

10% (under \$19,050)
12% (under \$77,400)
22% (under \$140,000)
24% (under \$320,000)
32% (under \$400,000)
35% (under \$1 million)
38.5% (over \$1 million)

Rates sunset after 12/31/2025

Proposed Tax Bills – Gift, Estate and GST Tax

- Current (scheduled for 2018)
 - Single: \$5 million plus indexing = \$5.6 million
 - Married: \$10 million plus indexing = \$11.2 million
- H.R. 1
 - Single: \$10 million plus indexing = \$11.2 million
 - Married: \$20 million plus indexing = \$22.4 million
 - Repealed for decedents dying on or after 12/31/2024
- Senate Finance Committee
 - Single: \$10 million plus indexing = \$11.2 million
 - Married: \$20 million plus indexing = \$22.4 million
 - No repeal

ESTATE TAX SAVINGS

Will the new transfer tax laws be permanent?

- Budget Reconciliation rules
 - Need simple majority in the Senate
 - Vice President Pence breaks a 50/50 tie
 - Byrd Rule: Doesn't allow budget reconciliation legislation to add to the deficit beyond the budget window (Year 2027)
- Many possibilities
 - Sunset of transfer tax laws?
 - Trump a one-term president?
 - Trump a two-term president?
 - Next president/Next congress completely changes the rules?

Temporary large gift tax exemption?

- Should all of our wealthy clients make large gifts?
 - \$11.2 million single
 - \$22.4 million married
- Window of opportunity?
- What about loss of income tax basis step-up?
 - Completed Gift Hybrid Domestic Asset Protection Trust

Completed Gift Hybrid DAPT becomes most important trust

- A “Hybrid DAPT” is a Third-Party Irrevocable Trust that can be turned into a DAPT
 - Use a top-tier trust jurisdiction (Nevada/South Dakota/Alaska)
 - Give Trust Protector the power to add the grantor or remove the grantor as a permissible beneficiary
- Lock in the gifting Window of Opportunity
- Ability to add grantor as a discretionary beneficiary
 - Give formula General Power of Appointment
 - Over low basis assets, but not over high basis assets

Dynasty Trust

- A “Dynasty Trust” is an irrevocable trust that is not subject to estate taxes for as long as state law allows
- It can also be drafted to be protected from creditors and divorcing spouses
- Rule against perpetuities limitations

Tier 1 Dynasty Trust States

- These states are generally considered the Tier 1 states (listed in alphabetical order)
 - Alaska
 - Delaware
 - Nevada
 - South Dakota
- To use one of these state's laws, add a co-trustee (or sole trustee) from that state

Tier 1 Dynasty Trust States

- Alaska
 - 1,000 years
 - Spendthrift clause protects against divorcing spouse
- Delaware
 - Perpetual for personal property/110 years for real estate
 - Spendthrift clause does not protect against divorcing spouse per *Garretson v. Garretson*, 306 A.2d 737, 742 (Del. 1973), so must draft as discretionary trust
- Nevada
 - 365 years
 - Spendthrift clause protects against divorcing spouse
- South Dakota
 - Perpetual
 - Spendthrift clause protects against divorcing spouse

Trump-Era Dynasty Trusts

- Traditionally, the #1 reason to use a Dynasty Trust has been to save estate taxes
- Roughly 99.8% of estates owe no federal estate tax today
 - Joint Committee on Taxation, “History, Present Law, and Analysis of the Federal Wealth Transfer Tax System,” March 16, 2015, <https://www.jct.gov/publications.html?func=startdown&id=4744>
 - With \$11.2 million exemption (\$22.4 million exemption for married couple), less than 0.1% will owe federal estate tax!

Trump-Era: Why will we use Dynasty Trusts?



- To save estate taxes?
- To protect assets from creditors and divorce?
- To shift income to lower federal tax brackets?
- To save state income taxes?
- To be able to give beneficiaries GPOAs over low basis assets

FEDERAL AND STATE INCOME TAX SAVINGS

Income Tax versus Estate Tax

- 0.02% of estates have a federal estate tax
 - Less than 0.01% in the Trump-Era
- Almost everybody pays a federal income tax
 - Therefore, our focus should be on designing the Dynasty Trust with income tax savings in mind

Federal Income Tax

- Many practitioners automatically draft trusts to either terminate or to pay all income out
 - Why not use a discretionary trust?
 - Pay all income out if it makes sense to do so
 - Ability to sprinkle income
 - Individual federal tax brackets will be much wider, assuming the new legislation is passed, so more likely to sprinkle income than to keep in trust

State Income Tax

- Set the Dynasty Trust up in a state with no state income tax
 - Take a look at the trust agreement and the state tax laws
 - Balance state income tax savings vs. possible higher federal brackets to keep in trust
 - Can't deduct state income tax against federal
 - Source income
 - Non-source income
 - Grantor's residency?
 - Administered in state?
 - Resident trustee?
 - Resident beneficiary?



Basis Step-Up

- Approximately 99.8% of estates have no federal estate tax (99.9%+ in Trump-era)
- Need flexibility to cause estate inclusion
 - Draft Dynasty Trust with older generation as discretionary beneficiaries
 - Use formula General Power of Appointment to cause estate inclusion
 - So as not to cause an estate tax
 - Only over assets with a basis lower than fair market value
 - Advantage: No new basis for assets with basis exceeding FMV

NING TRUST

Nevada Incomplete Gift Non-Grantor Trust

There must be a way to
save state income taxes!



Saving state income tax is about to become much more important!



Both tax bills cut the deductions for state income taxes paid!!!

NING Trust Description

- **NING Trust** (Nevada Incomplete Gift Non-Grantor Trust)
 - Trust situs in Nevada
 - Must be Domestic Asset Protection Trust situs with no state income tax
 - Nevada trust company as co-trustee/sole trustee) to get Nevada jurisdiction
 - Non-grantor trust for income tax purposes
 - Distribution Committee made up of adverse parties
 - Incomplete gift for gift tax purposes
 - Retained testamentary power of appointment
 - Retained non-fiduciary inter vivos power of appointment for HEMS

The Opportunity #1

- Resident of state with state income tax contributes low basis asset to NING Trust
 - Trustee sells low basis asset
 - Avoids state income tax on the sale

The Opportunity #2

- Resident of state with state income tax contributes investment portfolio to NING Trust
 - Trustee continues to invest portfolio
 - Avoids state income tax on gains

Other Use – Sprinkling Income

- Many of our clients make annual exclusion gifts (and sometimes exemption gifts) each year
- Rather than making a gift out of their pocket, consider:
 - Distribution from NING Trust of \$15,000 per year (or \$30,000 per year if Grantor is married) to each intended beneficiary
 - Or do much more!...Remember how high the new gift tax exemption will be!!!
 - Most of our clients' children, grandchildren and other intended beneficiaries are in lower income tax brackets

FLEXIBILITY FOR CHANGE

Irrevocable

I can't change my trust???
How could I have anticipated
my children having drug and
divorce problems?



Flexibility

- We're seeing huge changes from Congress to Congress
- Flexibility is key
 - Decanting by statute
 - Decanting language in trust agreement
 - Amendment by Trust Protector per language in trust agreement
 - Non-Judicial Settlement Agreement
 - Non-Judicial Consent Modification
 - Judicial Modification

Thank You For Attending Today's Seminar

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