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"For my friends, everything; For my enemies, the law." — attributed to Oscar R. Benavides, President of Peru 1933-39, a supporter of selective justice

"It is the first responsibility of every citizen to question authority." — Benjamin Franklin

Tax and Financial Strategies

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Wealth Creation Strategies

The Tax Headlines Missed the Real Story

If you paid attention to media reports about the One Big Beautiful Bill Act last year, you likely came away believing it was mostly about "no tax on tips," "no tax on overtime," or even "no tax on Social Security."

Those headlines certainly attracted attention. But they were not only misleading; they also missed the real story. Congress made permanent the most important individual tax provisions originally enacted in the Tax Cuts and Jobs Act of 2017 that otherwise would have expired at the end of 2025.

This means the current tax brackets remain in place.

That may not sound exciting, but it creates something of enormous value for tax planning:
certainty. When Congress provides greater certainty about future tax rates, long-term planning becomes far more valuable.

For example, many of our retirement planning recommendations—including Roth conversions—depend on knowing not only today's tax rates but tomorrow's as well.

Greater certainty makes better planning. Keep in mind the goal of tax planning isn't to pay the least tax this year. Rather, it's to pay the least tax over your lifetime. That is why certainty matters. When we have greater confidence in future tax rates, we can make better long-term decisions about Roth conversions, charitable giving, retirement distributions, and many other planning opportunities.

On the other hand, OBBBA added enormous and unnecessary complexity into the law, and inspired several misleading headlines.

"No Tax on Social Security"

Start with the biggest misconception: Congress did not eliminate the taxation of Social Security. Instead, it created an additional deduction for taxpayers age 65 and older regardless whether they receive Social Security, subject to income limitations. That deduction will reduce taxes for most retirees.

But the extraordinarily confusing—and often punitive—rules that determine how much of your Social Security becomes taxable remain intact. Those rules can create hidden marginal tax rates far higher than your published tax bracket. We've written about these "hidden tax brackets" on numerous occasions because they affect millions of retirees every year.

Unfortunately, that problem wasn't solved.

No Tax on Overtime

Up to specified limits, certain wage earners may deduct qualified overtime compensation for federal income tax purposes. This doesn't mean the entire overtime pay is tax-free; generally, only the FLSA (Fair Labor Standards Act) required premium above regular wages qualifies, subject to income and other limitations.

No Tax on Tips

Like "no tax on Social Security," the "no tax on tips" headline isn't quite accurate.

The law doesn't exempt tip income from federal income tax. Instead, it allows an additional deduction for certain qualified tip income, subject to numerous restrictions, income limitations, and a maximum annual deduction. The deduction reduces only federal income tax. Qualified tips remain subject to Social Security and Medicare taxes (and self-employment tax where applicable), so the overall tax benefit is often much smaller than many taxpayers expect.

As with many provisions in the tax law, the devil is in the details.

No Tax on Car Loan Interest

Perhaps the most misleading headline of all was "no tax on car loan interest."

The law doesn't make car loan interest tax-free. Instead, it creates a deduction that phases out rapidly as income increases over $200,000 joint/ $100,00 for all others.

The lesson isn't about car loans. It's about Washington's habit of announcing attractive-sounding tax breaks that often prove to be far more limited than advertised. You'll see this below, because the calculation is so screwy it deserves its own article.

The Opportunities

Several provisions deserve far more attention than they've received.

Beginning next year, many taxpayers who don't itemize deductions will once again receive a federal tax benefit for charitable contributions of cash (no goods)—up to $1,000 for single taxpayers and $2,000 for married couples filing jointly, provided the usual substantiation rules are followed and no goods or services are received in return.

The law also expands qualified uses of 529 education savings plans beyond traditional college expenses, making them useful for a much broader range of educational and vocational training.

For taxpayers who itemize deductions, the state and local tax ("SALT") deduction increases substantially, although the new rules contain important limitations and phase-outs that make planning for many higher-income taxpayers essential.

While the headlines generated catchy sound bites, many were highly misleading. However, the real provisions can produce meaningful tax savings.

Good Tax Planning Rarely Fits in a Headline

Every major tax law creates winners and losers.

The challenge is that most news coverage focuses on the political slogans surrounding the legislation rather than the planning opportunities hidden within it.

Good tax planning has never been about chasing headlines. It's about understanding how the law actually works—and then making informed decisions over many years rather than reacting to this year's news cycle.

We'll discuss several of these opportunities in this and future newsletters. As always, please consult with us before making any significant financial decision. The best tax planning is done before the transaction—not after the tax return is prepared.

The "No Tax on Car Loan Interest" That Almost Isn't

One of the most widely publicized provisions of the One Big Beautiful Bill Act was "no tax on car loan interest."

That sounds straightforward enough. If you buy a qualifying vehicle and pay interest on the loan, you might reasonably expect to deduct that interest.

Not so fast.

As with many tax provisions, the headline bears only a passing resemblance to the actual law.

Most income-based phase-outs work in a fairly intuitive way. As your income increases, your deduction or credit gradually shrinks until it eventually disappears.

Congress chose a very different approach here.

The deduction is reduced by $200 for every $1,000 that your modified adjusted gross income exceeds the AGI threshold ($200,000 joint and head of household filers, phasing out at $250,000; $100,000 for single filers, phasing out at $150,000).

At first glance, that may not sound unreasonable. But because many taxpayers pay far less than $10,000 of qualifying interest, the deduction can disappear astonishingly quickly under the way Congress wrote the law.

If you pay...	Your deduction disappears when MAGI reaches...
$1,000 interest	$105,000 (single) / $205,000 (joint)
$2,000 interest	$110,000 / $210,000
$3,000 interest	$115,000 / $215,000
$5,000 interest	$125,000 / $225,000
$7,500 interest	$137,500 / $237,500
$10,000 interest	$150,000 / $250,000

Consider One of Our Clients

The client purchased a qualifying vehicle and paid $1,000 of qualifying interest, making the entire $1,000 potentially deductible before the phase-out.

The phase-out for married couples filing jointly begins when modified adjusted gross income exceeds $200,000. Our client's income was $204,800—only $4,800 above the threshold.

At that point, most people—and even most tax professionals—would expect the deduction to be reduced proportionately. Since the phase-out runs from $200,000 to $250,000, we initially assumed the client would lose only 4.8/50, or 9.6%, of the deduction. That would have left an allowable deduction of about $904.

But that's not how Congress wrote the law.

Instead of reducing your actual deduction, the law reduces the maximum deduction you're allowed to claim—up to $10,000—by $200 for every $1,000 your income exceeds $200,000.

Because our client's income exceeded the threshold by $4,800, the maximum allowable deduction was reduced by $960 ($200 × 4.8). Since the client had paid only $1,000 of qualifying interest, only $40 remained deductible.

Ironically, had the client purchased a much more expensive vehicle and paid $10,000 or more of qualifying interest during the year, approximately $9,040 would have remained deductible.

In other words, the phase-out doesn't depend on how much interest you actually paid. It first reduces a hypothetical $10,000 deduction, whether you pay that much interest or not. Taxpayers paying more qualifying interest retain more of the deduction after the phase-out. The law effectively rewards greater indebtedness—even though those taking on the greatest debt are often the least able to afford it.

The car loan interest deduction illustrates a recurring feature of modern tax law. The headline promises a generous tax break. The statute delivers a maze of definitions, limitations, and unusual phase-out rules. That's why the best tax planning begins with the law itself—not the political slogan describing it.

The best way to understand this unusual phase-out is to compare three taxpayers with the same income.

Interest paid	$1,000	$5,000	$10,000
AGI	$204,800	$204,800	$204,800
Reduction in deduction	$960	$960	$960
Deduction allowed	$40	$4,040	$9,040
Likely federal tax savings	$9	$889	$1,989

Notice that every taxpayer loses the same $960 of allowable deduction, regardless of whether they paid $1,000, $5,000, or $10,000 of qualifying interest. The difference is that taxpayers with larger loans have a bigger deduction remaining after the phase-out.

The law rewards larger car loans—even when taking on that additional debt is terrible financial planning. I'd add this to the extensive list of perverse incentives created by our tax laws.

The Return of the Charitable Deduction for Non-Itemizers

One of the quieter provisions of the One Big Beautiful Bill Act received far less publicity than "no tax on tips" or "no tax on overtime," but it will benefit many more of our clients.

Beginning in 2026, taxpayers who claim the standard deduction may once again deduct certain charitable contributions. Last time this was allowed, back in 2021, the maximum deduction was $300/$600 single/joint filers. This time, the maximum deduction is $1,000 ($2,000 for joint filers).

Before you get too excited, there are several important limitations.

The contribution must be made in cash (including checks, credit cards, and electronic payments) to a qualifying charitable organization. Contributions of clothing, household items, stock, or other property don't qualify.

You cannot receive anything of value in return for your contribution. If you buy raffle tickets, attend a fundraising dinner, purchase auction items, or receive merchandise or other benefits, that portion doesn't qualify.

As with itemized charitable deductions, you must keep appropriate records. For contributions of $250 or more, you'll generally need a contemporaneous written acknowledgment from the charity.

This provision will produce modest tax savings, generally equal to 12% to 35% of the amount contributed, depending on your tax bracket (the value is capped at 35% even though there is a 37% bracket). In effect, the tax savings reduces the after-tax cost of your gift—but only by the amount of the tax saved. Unlike many recent headline-grabbing provisions, this one is straightforward, easy to understand, and may encourage additional charitable giving.

As always, tax considerations should be a secondary benefit, not the primary reason for making charitable gifts. Give because you believe in the organization. If the tax law provides a deduction as well, so much the better.

If you have questions about whether a particular contribution qualifies, please contact us before you make it.

Congress Gave Seniors a Deduction, but Little Relief on the Double Taxation of Social Security

Congress spent enormous political capital debating "no tax on tips," "no tax on overtime," and "no tax on car loan interest." Meanwhile, one of the most punitive features of the tax code remained almost untouched: the taxation of Social Security.

The Congressional Research Service notes that when Congress first adopted taxation of Social Security in 1983, the Greenspan Commission expected only about 10% of beneficiaries to pay tax on any of that income. However, the income thresholds were never indexed for inflation, which, to this skeptic, was hardly an unintended consequence. Today, most retirees pay tax on at least some of their Social Security income.

President Trump campaigned on eliminating taxation of Social Security benefits. Congress instead enacted a temporary deduction for many seniors, leaving the underlying taxation rules intact. Eliminating the tax would have cost hundreds of billions of dollars, and Senate budget reconciliation rules generally would have required Congress to find offsetting tax increases or spending reductions—something Republicans could not accomplish with only a bare majority in the Senate.

Whether repeal was politically possible is almost beside the point. The real problem isn't simply that Social Security is taxed. It's how it's taxed.

Most workers paid Social Security tax on their earnings throughout their careers. A substantial portion of every benefit therefore represents, in part, a return of contributions that have already been taxed. Yet Congress taxes up to 85% of many retirees' benefits a second time. Whether one agrees with that policy or not, the way the tax is imposed creates an even bigger problem.

As non-Social Security income plus half of Social Security increases over \$25,000/\$32,000 (single/joint), half of Social Security gets added to taxable income. So, if you're in the 10% bracket and earn \$1,000 more, \$500 of Social Security is added, so you pay 10% of \$1,500, or \$150 in additional tax—which is 15% of the real \$1,000 increased income. Note that you only earned another \$1,000; the Social Security was already there. If you're in the 12% bracket and you earn \$1,000 more, \$500 of Social Security is added, so you pay 12% of \$1,500, or \$180—which is 18% of the real \$1,000 increased income.

Worse, as income increases you quickly move to the point at which 85% of Social Security is added to taxable income; in fact, the income on which 50% is added barely stretches over \$4,000 of income. So, you're in the 12% tax bracket, you earn \$1,000 of non-Social Security income, and 85% of \$1,000 or \$850 is added to taxable income. You pay tax, then, on \$1,850 of income even though your income increased by only \$1,000, all at 12%--and since 12% of \$1,850 is \$222 you are taxed at a real but phantom 22.2% marginal tax rate even though nominally in the 12% tax bracket.

And then it goes stratospheric. If 85% of Social Security is still being phased into taxable income once hitting the nominal 22% bracket, you are paying 22% of \$1,850, or \$407, on the real \$1,000 increased income—which is a 40.7% marginal tax rate.

Those are astonishing marginal tax rates.

And Social Security income needs only be about \$38,000 for single filers and \$78,000 for joint filers for this to occur if non-Social Security income is high enough.

529 Plans Have Become Multi-Generational Education Funds

For years, we've written nothing about 529 education savings plans, also known as 529 education savings accounts or, simply, 529 plans.

That wasn't because we disliked them. Quite the contrary. For years we viewed Roth IRAs as the more versatile savings vehicle for most families and generally encouraged clients to maximize contributions to Roth IRAs before funding 529 plans. However, Congress has gradually expanded the flexibility of 529 plans. We now think they're worth a close look, even if we still generally lean towards Roth contributions first, assuming funds are limited.

Roth IRAs offer greater flexibility than 529 plans. Money in a Roth IRA can be used for retirement, emergencies, or—subject to the rules for Roth IRAs—education. 529 plans, by contrast, are designed primarily for spending on qualified education expenses. Previously, using 529 plan withdrawals for anything other than qualifying higher education expenses would result in tax and penalties on the profits. Those restrictions have been loosened considerably.

The Original Rules

Congress created 529 plans in 1996. Initially, they were generally limited to paying tuition, fees, and required books, supplies, and equipment at eligible colleges, universities, and certain vocational schools. Beginning in 1998, qualifying room and board expenses for students enrolled at least half-time were also added.

Over the ensuing 28 years, Congress gradually expanded the qualified uses of 529 plan assets. More recently, those expansions accelerated, transforming the plans from relatively narrow college savings vehicles into much more flexible education-planning opportunities.

What Changed? Congress Has Transformed 529 Plans

Because of the increased options available, we believe 529 plans now deserve serious consideration.

The changes were gradual, but cumulatively they have been revolutionary. 529 plan assets may now be used not only for college, but also for a broad range of qualified K–12 expenses, apprenticeship programs, many trade and vocational schools, and even limited Roth IRA funding for the beneficiary. They may also be used to repay up to \$10,000 of the beneficiary's qualified student loans—and, in many cases, up to \$10,000 for each sibling with qualified student loans.

Qualifying Expenses Under the Old Rules:

Higher Education Expenses

- Tuition and mandatory fees for attending eligible colleges and universities.
- Room and board up to prescribed limits, provided the student is enrolled at least half-time.
- Classroom-required books and supplies.
- Many foreign colleges and universities also qualify, provided they participate in applicable U.S. federal student aid programs.
- Certain vocational schools.

Qualifying Expenses Under the New Rules: Higher Education Expenses

All the above plus:

- Programs leading to many professional, trade, and vocational credentials.
- Technology expenses, including computers, related equipment, and internet access used primarily for educational purposes, even if not required by the institution

K-12 Education Expenses

- Tuition of up to \$20,000 per year for public, private, and religious elementary or secondary schools.

- Required textbooks and reading materials, general school supplies necessary for education, digital tools and resources used for learning, any materials required for the educational curriculum, instructional classes and tutoring services, fees for standardized tests and assessments, and costs associated with enrolling in college courses while still in high school.
- Registered apprenticeship programs, including required fees and supplies.

Student Loan Repayments

- Up to $10,000 in lifetime withdrawals to repay the beneficiary's qualified student loans, with separate $10,000 lifetime limits generally available for each sibling's qualified student loans.

IRA Rollovers

- 529 plans that have been open for 15 years or longer can roll up to the yearly limit to a 529 plan beneficiary's Roth IRAs, subject to a $35,000 lifetime cap and other restrictive rules.

529 Plans vs. the American Opportunity Credit

Many of these newer qualified 529 expenses aren't eligible for the American Opportunity Credit, which is limited to a maximum of $2,500 per student, based on only $4,000 of annual qualified expenses. A 529 plan works very differently. There is generally no comparable dollar limit on qualified withdrawals. A $100,000 account—including $90,000 of accumulated earnings—may be withdrawn entirely tax- and penalty-free if used for qualified expenses. The credit also has income limits: it begins to phase out when MAGI exceeds $160,000 for joint filers ($80,000 for all others), and disappears entirely at $180,000 ($90,000 for all others).

Unlike the American Opportunity Credit, which generally benefits only the taxpayer entitled to claim the student as a dependent (or, in limited circumstances, the student himself), 529 plans may be funded by anyone, including parents, grandparents, or other family members.

How 529 Plans Complement Roth IRAs

We have long favored Roth IRAs because of their remarkable flexibility and ability to grow tax-free throughout one's life. However, 529 plans have one important advantage. Annual contributions may be far larger than Roth IRA contributions, and there is generally no statutory dollar limit on the amount that may be withdrawn tax- and penalty-free for qualified expenses. In addition, anyone—not just the parents—may contribute, including grandparents and other family members.

What if My Child Doesn't Go to College?

This isn't as big a problem as it once was. For those who don't go to college, you can change beneficiaries within the same family, use the funds for apprenticeships, and help fund Roth IRAs for beneficiaries. For those who go on to college, if the student doesn't spend it all it can be used for graduate school, or another beneficiary can be designated.

Who Should Own the 529 Plan?

There is no universally correct answer. Parents or grandparents will usually be the better choice, although in some situations the beneficiary may also be an appropriate owner depending on the family's circumstances. Grandparent ownership became more attractive following recent FAFSA (Free Application for Federal Student Aid) changes because distributions from grandparent-owned 529 plans generally no longer count as untaxed student income, which previously reduced federal financial aid eligibility. Parent ownership may be preferable for federal financial aid eligibility. (Some private colleges use the CSS—College Scholarship Service Profile—for non-federal financial aid; the advantages of grandparent ownership may differ at those schools.) Grandparents also retain control of the account, while potentially achieving estate-planning benefits.

Parent ownership may also be preferable because parents are often in the best position to coordinate tuition payments, scholarships, and qualified withdrawals.

Ownership should be coordinated with your estate plan, since the account owner—not the beneficiary—controls the account. Like most planning decisions, ownership should be considered before the account is opened—not afterward.

529 Plans Aren't Perfect

There are still three issues we have with 529 plans.

First, if 529 plan earnings are ultimately withdrawn for nonqualified purposes, they generally become taxable and are usually subject to a 10% penalty. That concern isn't nearly as significant as it once was because Congress has gradually expanded both the qualified uses of 529 plans and the planning opportunities available to account owners.

Second, qualified expenses generally must be incurred during the same calendar year as the withdrawal. Suppose you withdraw $10,000 in December but don't pay the tuition until January. Even though the funds were ultimately used for qualified education expenses, the withdrawal may be treated as nonqualified because the expense occurred in a different tax year.

Third, every withdrawal consists of both contributions and earnings. Unlike a Roth IRA, where contributions are generally deemed withdrawn first, 529 plans require every distribution to be prorated.

For example, suppose your account contains $100,000, consisting of $70,000 of contributions and $30,000 of earnings. If you withdraw $10,000 and none of it is used for qualified expenses, you don't get to treat the entire withdrawal as a tax-free return of your contributions. Instead, $7,000 is treated as a return of contributions, while the remaining $3,000 represents earnings subject to income tax and, generally, the 10% penalty.

From College Fund to Family Education Endowment

Originally, the ability to change beneficiaries meant a 529 plan could technically benefit more than one family member. Over the years, however, Congress greatly expanded the qualified uses of 529 assets, making it increasingly practical to think of a 529 plan not simply as one child's college fund, but as a long-term family education endowment.

They can now serve as long-term family education funds spanning multiple generations.

Say you open a 529 for a granddaughter, Lisa. You have no way of knowing a decade before that she will qualify for a full scholarship and the 529 plan wasn't needed. Yet, it's grown, and the account is worth $250,000.

You can let the account continue to grow tax-free for decades. Later, you change the beneficiary to another qualifying family member, which can be another child, a grandchild, a sibling, your spouse, nieces, nephews, first cousins, a variety of other family members permitted under §529, and even yourself. You can use some of it for Lisa's graduate school, to repay up to $10,000 of Lisa's qualified student loans (and, separately, up to $10,000 for each qualifying sibling's loans), or to roll to Lisa's Roth IRA.

The account doesn't have to "die" with the first beneficiary. 529 plan assets may remain invested indefinitely while the account owner decides whether another qualifying family member may benefit in the future. They can even be preserved for Lisa's future child—or another qualifying family member born decades later.

Should I Fund My Roth First?

We still believe retirement should generally be funded before education. Children can borrow for college. Parents cannot borrow for retirement.

There is no one-size-fits-all approach in saving for education. It varies by family circumstances. The best education funding strategy isn't necessarily the one that saves the most tax. It's the one that best fits your family's overall financial plan.

What if You Can't Do Both?

You must prioritize based on your financial situation and needs. More money may be needed for education than can be contributed to Roth IRAs. Say you think you'll need $200,000 for college and you finally can start contributing when a child is 10 years old. Even with both parents contributing, the contributions will total only $120,000 by the time the child is 18. While that amount can be withdrawn from the Roth IRAs tax- and penalty-free, the earnings cannot be. If those amounts had been contributed to a 529 plan instead, and there was enough growth to match the needs—$80,000—the entire $200,000 can be used for qualifying education expenses with no tax or penalties.

The Individuality of Tax and Financial Planning

Like most tax planning, deciding whether—and how much—to contribute to a 529 plan depends on your broader financial picture. Income, retirement savings, estate planning, the age of the beneficiary, and other available resources all matter. That's why there is no one-size-fits-all answer.

Is a Living Trust Necessary to Avoid Probate?

Many simple techniques can be used to avoid probate without having a living trust, but this must be carefully planned.

By Doug Thorburn, E.A. and guest co-author Tami Ekizian, Esq.

There are several ways by which one's estate can be left to heirs: intestate, probate, trusts, and payable/transfer-on-death accounts. Each has costs and benefits.

What Happens Without Planning?

Leaving an estate intestate—which means without a will or trust—is almost always inadvisable. If you die without an effective will, trust, or beneficiary designation (for retirement accounts and certain other assets), state intestacy law determines who inherits your probate assets. A probate court applies those rules, which may send assets to people you did not intend to benefit.

Probate is a judicial process in which a will is "proved" in a court of law and, ultimately, accepted as the true last testament of the deceased. It is a process in which an estate is administered, liabilities of the deceased paid, and distributions to heirs approved. Probates can be expensive and time-consuming.

Costs vary by state. California is one of a handful of states that have preset fees attorneys may charge for administering a probate, based on the value of the estate:

- 4% of the first $100,000
- 3% of the next $100,000
- 2% of the next $800,000
- 1% of the next $9M
- ½% of the next $15M

Note that the attorneys' fees for administering a $200,000 probate estate run $7,000 and those for administering a $1 million estate are $23,000. While these fees can be negotiated downwards, many attorneys will not work for lower fees.

The personal representative may also receive compensation calculated under the same schedule. Thus, ordinary attorney and executor compensation on a $1 million probate estate could total $46,000 before court costs, appraisal charges, publication costs, bonds, or extraordinary fees. The statutory calculation is generally based on gross estate value without subtracting mortgages.

There are other costs, such as court fees and bonds. In addition, probate is a public proceeding. Anyone can learn everything about the probated financial affairs of the decedent. And probated estates can more easily be "contested," wherein an heir, heirs or would-be heirs can challenge the disposition of the assets. Even an uncontested probate commonly takes many months; complicated or contested estates can take years.

How to Avoid Probate

California offers several simplified procedures for smaller estates. For deaths on or after April 1, 2025, personal property in an estate generally valued at no more than $208,850 may be collected by affidavit after 40 days without opening a formal probate. In addition, a successor may petition the court to transfer a California primary residence worth up to $750,000 without full probate. These procedures still require paperwork, valuation, agreement among the proper successors, and sometimes a court petition; advance planning is usually simpler and safer.

Wouldn't it be preferable to avoid those costs, delays, and loss of privacy altogether? This can be easy and cost-effective, but the estate must be properly structured before death.

The most common way to avoid such costs, the loss of privacy, and probate challenges is by creating a trust, often called a "living" or "revocable" trust, while one is alive. These trusts generally may be amended or revoked while the creator is alive and competent. At death, the deceased creator's trust ordinarily becomes irrevocable, and the successor trustee administers the assets under its terms. (We'd say the trust becomes "etched in stone," but courts can modify or reform irrevocable trusts.) A properly prepared and funded trust generally avoids formal probate, preserves greater privacy, and may reduce opportunities for procedural disputes, although trusts can still be challenged. This allows the decedent to control the disposition of assets after death.

Who Should Create a Trust Instrument?

We recommend avoiding a "trust mill" operation, even though you may get a free meal. Attorneys operating such mills do not know you, your situation, your needs, and are unlikely to spend the necessary time getting to know you well enough to structure a trust that makes sense for you.

Simple estates might get by with a boilerplate fill-in-the-blanks document from one of countless online providers, but even those should be checked by a competent attorney. Co-author Tami Ekizian has seen poorly drafted trusts and wills with confusing instructions to the client. Some wills have not been properly signed, which can invalidate the will. The trust must be structured properly *, which is not always the case with a cookie-cutter online trust document. Assets intended to pass under the trust generally must be retitled in the name of the trust or otherwise properly connected to it**. A beautifully drafted but unfunded trust may fail to avoid probate.

When Simpler Tools May Be Enough

If you have a truly simple estate, there are ways to avoid probate and trust altogether and get the same results as you would by using a trust.

Such simple estates include married couples who intend to leave cash, securities, and a home to the surviving spouse. (This plan may not work as intended if both spouses die simultaneously, although that is fortunately rare.) After the death of one spouse, the survivor can reassess whether a trust has become advisable.

Single individuals can often leave bank and brokerage accounts directly to intended heirs by using payable-on-death (POD) or transfer-on-death (TOD) beneficiary designations. These assets pass directly to the named beneficiaries without probate. In some cases, joint ownership may accomplish the same result, although it can create other legal and tax issues.

In some states, including California, certain real property may also be transferred outside probate through a revocable transfer-on-death deed (TODD). While this can be an effective probate-avoidance tool, execution and post-death notice requirements are technical, and an ill-considered beneficiary designation can create title, creditor, family, or property-tax problems. It should ordinarily be reviewed by an attorney.

Retirement accounts—including IRAs, Roth IRAs, and employer retirement plans—also pass by beneficiary designation rather than through probate. Beneficiaries may include spouses, children, other family members, friends, charities, or even trusts. Naming a trust as the beneficiary can be appropriate, but the income-tax and distribution rules are complex. Poor drafting can accelerate taxation or shorten the post-death distribution period available to beneficiaries, so an attorney experienced with retirement-benefit trusts should be involved.

Joint Ownership Can Backfire

Bank and securities accounts can be owned with a joint tenant, but there are possible catastrophic results if an errant joint owner decides to withdraw funds from the account without the other owner's permission (an all-too-common way for drug-addicted co-owners, including children, to steal money and other assets). Real property can be held as joint tenants with anyone. However, when owned with a non-spouse, legal issues may exist and tax results may be undesirable. For example, a joint owner's signature is required for any disposition, the joint owner may be liable for tax on any gain on sale, and the joint owner's half may not get a stepped-up basis to value as of date of death of the other owner. Adding a joint owner can also create gift-tax reporting issues and expose the asset to the new owner's creditors, divorce, bankruptcy, or lawsuits. While there are solutions to these issues, they are not airtight.

When is an Estate Attorney Essential?

Complicated estates require a good estate attorney ***. Such estates include nearly any in which there are children from a prior marriage, substance-addicted or disabled/special needs children, those in which real property is owned in a state in which one does not live, and situations in which one party thinks the other runs the risk of getting swooped off their feet by a con artist, who might steal part or all of whatever is left in the estate.

Situations involving children by a prior marriage may require an unequal division of assets and/or possible contests by one child/set of children against the other. Substance-addicted and special needs children may require special trusts, which carefully and (usually) slowly distribute funds after the death of both spouses. Property owned in another state may require a separate probate and attendant costs, which a trust may avoid. Setting up "spendthrift" or other trusts post-death may help prevent a spouse or other heir from losing all of his or her remaining assets to a con artist.

Avoiding probate is not the only purpose of estate planning. A plan should also address incapacity, identify who may manage assets, coordinate beneficiary designations, protect vulnerable heirs, and provide workable backup instructions if the first choice of trustee or beneficiary cannot serve. A set of accounts that avoids probate but leaves no one authorized to act during incapacity is not a complete estate plan.

* Structured means drafted properly. Proper drafting generally includes having more than one successor trustee, adding language and documentation supporting a possible Heggstad petition if an asset intended for the trust was inadvertently left outside it, and including a catastrophe clause. Sometimes a boilerplate trust divides the estate in two, with half to one side of the family and the other to the spouse's. This may not be what the grantors of the trust want; yet, if it's not caught when signed, it stays as is.

** The fact that assets are titled in the name of a revocable trust does not mean the grantor gives up the benefits or responsibilities of ownership. The grantor generally retains the right to use, manage, sell, or spend the trust assets just as before. For federal income tax purposes, a typical revocable living trust is treated as a grantor trust and is generally disregarded as a separate taxpayer during the grantor's lifetime. The grantor continues to report all income on his or her individual tax return and pays the associated tax. As Doug often tells clients, for ordinary income-tax purposes, "you are the trust; the trust is you."

*** Co-author Tami Ekizian, Esq., is a great referral, whom Doug has known for decades and trusts without reservation. She can be reached at 818-772-4575.

Do We Use AI? Of Course!

We also use tax preparation software, electronic research services, monthly tax publications, old tax books (and even occasional new ones), spreadsheets, calculators, scanners, and even pens and pencils.

Artificial intelligence is another tool, but not "just" another tool. Its usefulness depends largely on the person using it—especially on knowing which questions to ask and how to ask them. Used that way, it helps us research esoteric tax questions, test possible interpretations, find weaknesses in arguments, improve explanations, and refine letters and disclosures.

But there is an enormous difference between asking AI questions and blindly accepting answers. It can be incredibly useful. It can also be completely—and confidently—wrong.

That means the quality of the result depends heavily on the knowledge and judgment of the user. A tax professional must know enough to recognize when an answer does not make sense, insist on supporting authority, distinguish a statute from an IRS publication, and keep questioning the analysis until the pieces fit together.

One of the things that has distinguished our practice over the years is asking questions others never ask. Our questions therefore rarely stop with "Is this deductible?" or "Should our client do a Roth conversion?"

They are more likely to become:

- What does the statute say?
- Can it be interpreted in favor of our client and, if so, what is the strongest supportable interpretation?
- Is there a regulation or court case supporting our position?
- Is there a stronger legal theory?
- Would an auditor agree?
- Should a disclosure be included to support our position and reduce potential penalties if the IRS disagrees?
- If so, precisely how should such disclosure be worded?
- How much of a Roth conversion should be considered?

Sometimes changing a single word or phrase matters. "Tax bracket," "average tax rate," or "marginal tax rate," for example, may sound interchangeable, but they describe very different concepts that can lead to very different planning decisions.

AI is particularly useful during this process because it allows us to challenge ourselves and revise our thinking repeatedly. An answer to an initial question may lead to another question, which exposes an exception, which allows for or requires a different argument, which then changes the wording on a disclosure or tax-return attachment or Roth conversion analysis.

That is how good professional work is developed: not necessarily through one flash of brilliance, but through repeated questioning, checking, and refinement.

AI does not sign the tax return. It does not represent the client before the IRS. It does not bear professional responsibility for the conclusion. It does not decide whether or how much of a Roth conversion to do.

We do.

Nor does AI know our clients. It cannot fully understand their goals, risk tolerance, family circumstances, business history, or the dozens of facts accumulated during long-term relationships. Those facts frequently matter as much as the words of the Internal Revenue Code—or how those words are interpreted.

We also take confidentiality seriously. Client information must be handled under the same professional and legal standards whether the tool being used is tax software, cloud storage, email, or artificial intelligence. Identifying information should not simply be tossed into a public AI system for convenience.

We do not use AI as a substitute for professional knowledge or judgment. We use it to challenge our assumptions, refine our conclusions, improve our thinking, and test our answers more thoroughly than ever before. Most important, we continue asking questions long after others have stopped.

Like any other tool, AI can help us produce better work more efficiently. But also like any tool, it can be used irresponsibly.

We have been using AI to research issues more thoroughly, test more alternatives, and refine our conclusions in ways that simply weren't feasible a few years ago, which is increasingly valuable as the law has become more complex.

AI may provide the first answer. Our job is to determine whether it should also be the final answer.