

ESTATE PLANNING IN A CHANGING TAX ENVIRONMENT

Presented By:

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Estate Planning in a Changing Tax Environment



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Cocktail Party Conversations

- Sunset (2025)
- Estate Tax ~ \$11.2 mil.
- Basis Step-Up versus Gifting
- C-Corps ~ 21%
- Qualified Business Income (QBI) deduction for pass-through ~ 20%
- SALT Cap ~ \$10,000



C-Corps Back in Vogue

- Tax Brackets – 35% → 21%
- Do the math – longer term investments
 - Double taxation getting money out – income or dividend
 - Accumulated Earnings Tax
 - Personal Holding Corporation Tax
- Section 1202 Qualified Small Business Stock
 - C-Corp founder stock
 - 5 year holding period
 - No capital gains on sale



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C-Corporations and Accumulated Earnings Tax

- For C corporations that are accumulating earnings in the 21% C corporation, can they use permanent life insurance to justify holding onto the funds?
 - Document by revising buy sell agreements previously funded with term insurance to use high cash value insurance.
- For C corporations that are engaged in real estate acquisitions – hold cash for the next deal?



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Topics & Planning Plays

- 199A – QBI
- Increase Temporary Exemption – Use it or lose it.
- Income Taxes – New planning/drafting approaches to minimize.



1 - Qualified Business Income (QBI) Deduction (Sec. 199A)

- Applicable
 - Partner in partnership
 - Member of LLC
 - Shareholder S Corp
 - Sole Proprietor (Independent Contractor)
- Benefit
 - Up to 20% deduction from income tax
- Limitations
 - US Trade or Business
 - Investment / personal activities do not qualify
- Sunsets 2025

QBI Buckets



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Bucket 1 – 20% Deduction

- Any qualifying business (service or otherwise)
- Deduct 20% of QBI

Taxable Income	\$315,000
QBI percent	20%
QBI deduction	\$63,000
Federal Tax Base	\$252,000
Approx. Tax Savings	\$20,000

Note:

- Guaranteed payments and salary not QBI
- Retirement account contributions reduce taxable income

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Bucket 2 – Service Business

- Reduce % of QBI

Taxable Income	\$365,000
Amount in Excess Limit	\$50,000
% Excess / \$100,000	$\$50,000 / \$100,000 = 50\%$
Limitation to QBI %	$20\% * 50\% = 10\%$
QBI Deduction	\$36,500
Federal Tax Base	\$328,500
Approx. Tax Savings	\$11,000

Service Businesses:

- Health
- Law
- Accounting
- Actuarial Science
- Performing Arts
- Consulting
- Athletics
- Financial Services
- Brokerage Services

Bucket 2 – Non-Service Business

- Deduction equals lesser of:
 - QBI * 20%, or
 - Greater of:
 - W-2 Wages * 50%
 - W-2 Wages * 25% + 2.5% of unadjusted basis

Taxable Income	\$400,000
QBI	\$100,000
W-2 Wages	\$50,000
QBI 20% Deduction	$\$100,000 * 20\% = \$20,000$
Wage Test	$\$50,000 * 25\% = \$25,000$
QBI Deduction	\$20,000

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QBI Deduction	\$20,000

Bucket 2 – Non-Service Business over \$315,000

- Deduction equals lesser of:

QBI * 20%, or

Greater of:

W-2 Wages * 50%

W-2 Wages * 25% + 2.5% of unadjusted basis

Taxable Income	\$500,000
QBI	\$100,000
W-2 Wages	\$50,000
QBI 20% Deduction	$\$100,000 * 20\% = \$20,000$
Wage Test	$\$50,000 * 25\% = \$25,000$
QBI Deduction	\$20,000

Bucket 3 – Impact of Wages over \$315,000

Taxable Income	\$500,000
QBI	\$300,000
W-2 Wages	\$50,000
QBI 20% Deduction	\$300,000 * 20% = \$60,000
Wage Test	\$50,000 * 25% = \$25,000
QBI Deduction	\$25,000

Taxable Income	\$500,000
QBI	\$300,000
W-2 Wages	\$200,000
QBI 20% Deduction	\$300,000 * 20% = \$60,000
Wage Test	\$200,000 * 25% = \$50,000
QBI Deduction	\$50,000

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Bucket 3 – Impact of Capital over \$315,000

- Property not fully depreciated
- Use acquisition cost – not depreciated value

Real Estate Purchase (less land)	\$500,000
QBI	\$100,000
W-2 Wages	\$0
QBI 20% Deduction	\$500,000 * 20% = \$100,000
Wage Test	\$0 * 25% = \$25,000
Capital Test	\$500,000 * 2.5% = \$12,500
QBI Deduction	\$12,500

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2-Increased Temporary Federal Exemption

- Use it or lose it – 2025 sunset.
- Plan for a client's current and projected future wealth.

New York Estate Tax Cliff

- Exemption \$5,250,000
- 105% Cliff - \$5,512,500
- Santa clause -

	Net to Family – No Charitable Bequest	Net to Family – With Charitable Bequest
Gross Estate	\$5,512,500	\$5,512,500
Bequest to Charity of amount over Tax Exemption	\$0	\$262,500
Taxable Estate	\$5,512,500	\$5,250,000
NYS Estate Tax	\$452,300	\$0
Net to Family	\$5,060,200	\$5,250,000

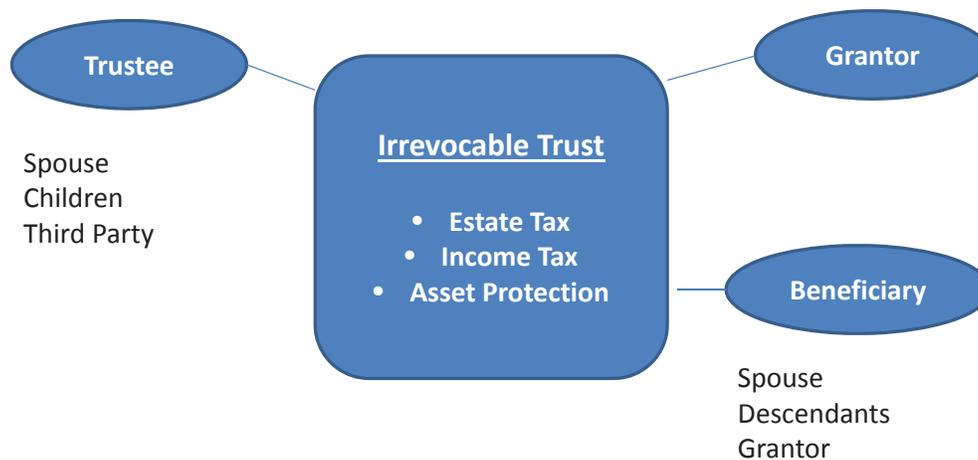
Plans to Use Doubled Exemptions

- SLATs: Non-reciprocal spousal lifetime access trusts (“SLATs”):
Use exemption but preserve access.
 - Avoiding reciprocal trust status
 - Power to loan for access to assets
- DAPTs: Domestic asset protection trusts (“DAPTs”): Use exemption but preserve access.
- Basis Plays: Consider mechanisms to include in estate.
- Don’t Sell: (Non)Exit Planning

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Transfers to Trusts: SLATs & DAPTs



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Asset Protection and Irrevocable Trusts

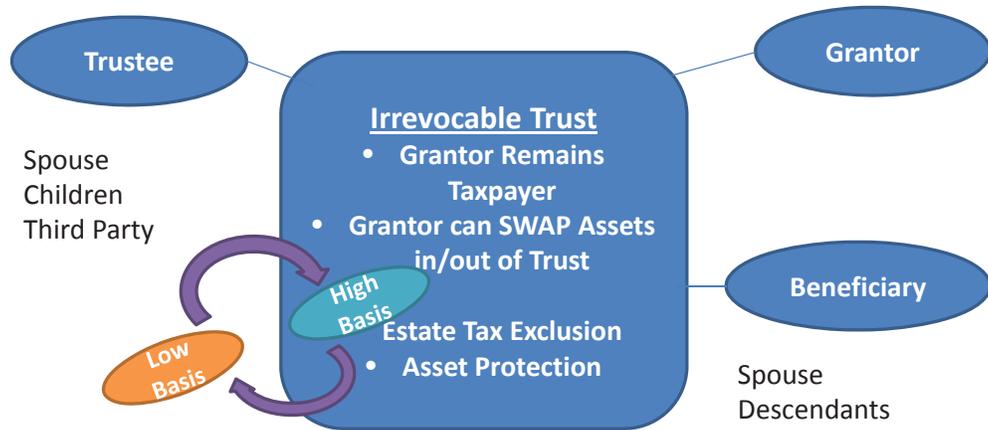
- Large use it or lose it exemptions encourage gifting larger portions of wealth to lock-in the temporary exemptions.
- Concerns:
 - Percentage of wealth that can be transferred in.
 - Solvency affidavits and other due diligence.
 - Future access to transferred assets is critical if more of wealth transferred.

Non-Grantor Trusts – Not in New York

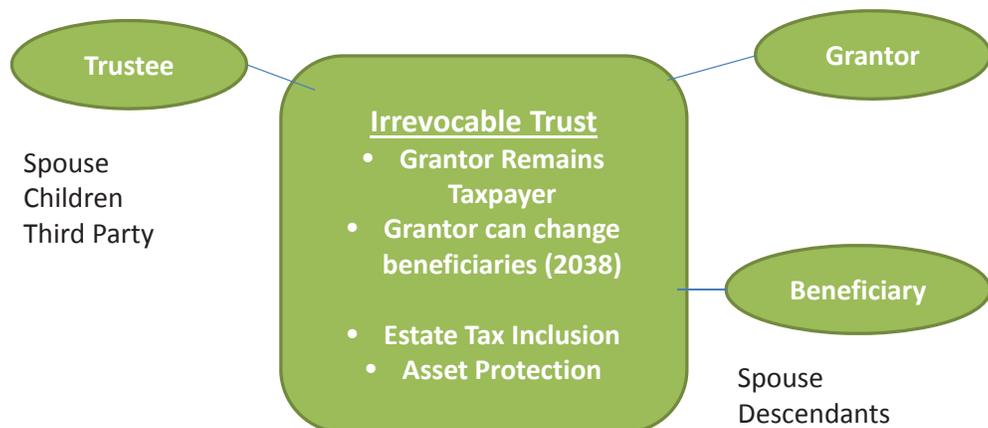
Trust Creation	Trust Residency
Trust created by Will New York resident	New York resident trust
Irrevocable inter-vivos trust created by New York resident	New York resident trust
Revocable inter-vivos trust becomes irrevocable while Grantor is New York resident	New York resident trust

Resident New York Trust subject to New York income tax on all income.

Use Grantor Trust for Basis Play



Use Estate Tax Defective Trust for Basis Play



Exit Planning – Why Sell?

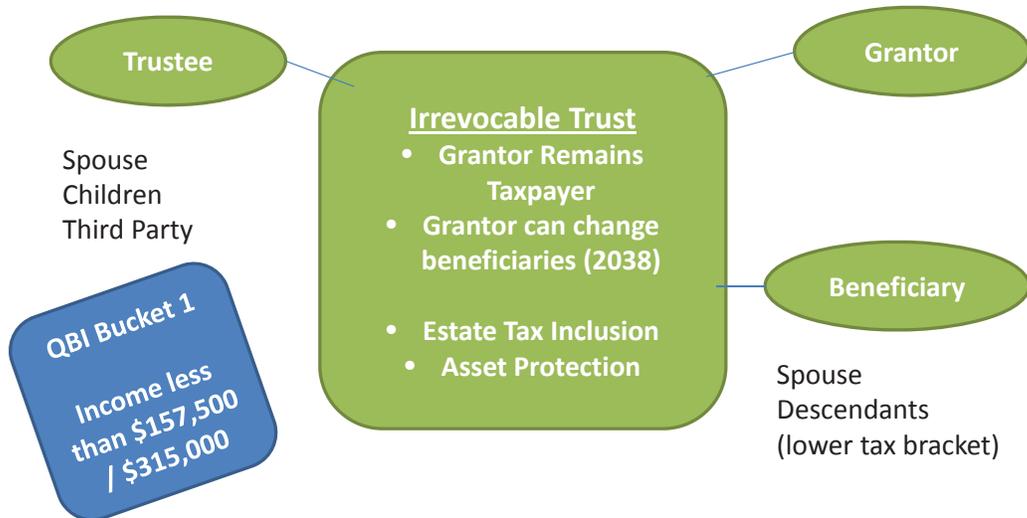
- Transfer control, not equity

Sell During Life		Sell Following Death	
Sale Price	\$11,000,000	Sale Price	\$11,000,000
Basis	\$1,000,000	Basis	\$11,000,000
Net Sale Price	\$10,000,000	Net Sale Price	\$0
Federal Cap. Gain	\$2,000,000	Federal Cap. Gain	\$0
State Tax	\$850,000	State Tax	\$0
Net to Invest	\$7,150,000	Net to Invest	\$11,000,000
Income @ 6%	\$429,000	Income @ 6%	\$660,000

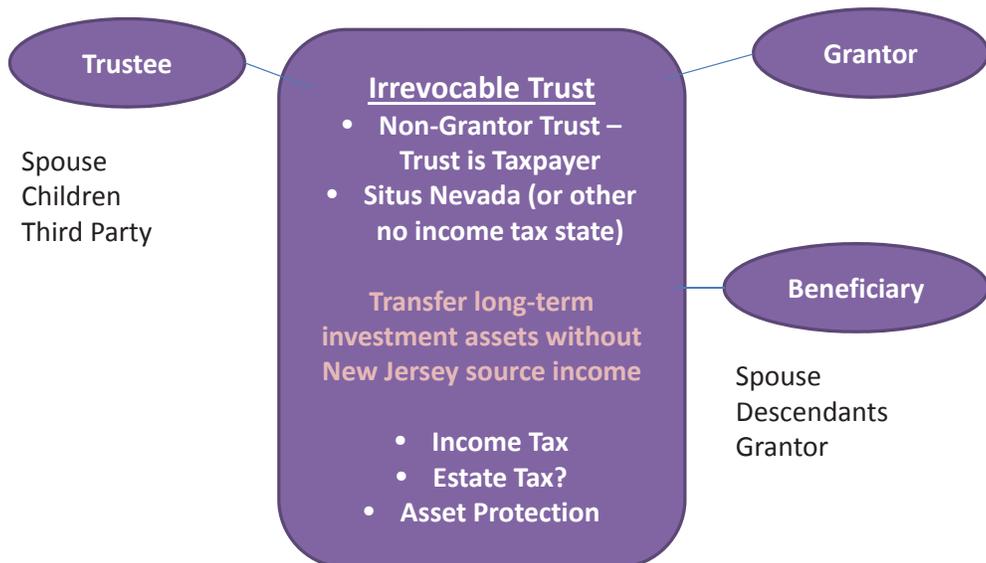
3-Income Tax Planning

- Federal
 - Shift to lower brackets
 - Qualified Business Income deduction (Non-grantor TRUSTS)
- State
 - Shift earnings to non-income tax state (NING)

Use Non-Grantor Trust for Federal Tax Minimization



Non-NY Residents - Use Non-Grantor Trust for State Income Tax Play





Contact Information

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