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2025 Trust, Estate & Tax Law Updates

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The Johnston Allison Hord Trusts & Estates Practice Group is pleased to share key updates to fiduciary and tax laws taking effect in 2025, including an overview of the tax provisions in the One Big Beautiful Bill Act and how the Act affects charitable giving and individuals with disabilities. If these developments impact your legal or estate planning matters, please contact a member of our team to develop a tailored solution.

North Carolina Legislative Update

This year, the North Carolina General Assembly updated the rules that protect surviving spouses from being disinherited by their late husband or wife. These rules, called the elective share laws, entitle a surviving husband or wife to claim a portion of the decedent spouse's estate, even if the decedent spouse's will or trust says otherwise. Under the law, the portion of the estate that the surviving spouse is entitled to claim depends upon the number of years the spouses were married.

The recent statutory changes in Session Law 2025-33 clarify the process of claiming an elective share. While a surviving spouse still must file his or her claim with the Clerk of Court within six months after the personal representative qualifies to administer the estate, the new law resolves longstanding ambiguity regarding whether a summons must be issued by providing that no such requirement exists. Instead, a claimant must serve only the personal representative of the decedent's estate with the claim. Service must be made formally through a process server or signature required delivery, but it is not fatal to the claim if service occurs outside the six-month limitation period. Upon receipt of an elective share claim, the personal representative or other interested parties may serve a responsive pleading called an answer, but doing so is not required. Generally, these technical updates to the statute should help lower the cost of bringing an elective share claim and eliminate certain procedural traps.

The General Assembly also clarified how certain assets are valued in the context of an elective share. Often, a decedent spouse does not disinherit the surviving spouse entirely but instead elects to leave the spouse his or her inheritance in trust, rather than outright. The new law confirms the requirements for a trust to be fully countable against the surviving spouse's elective share. Further, by providing proposed language for use by practitioners intending to draft fully countable trusts, the new law is anticipated to provide greater certainty for clients that their estate plan will, in fact, accomplish their objectives.

Altogether, these changes make North Carolina's elective share law more predictable and easier to administer. Married couples seeking to avoid outright distributions to the survivor of them should consult with counsel to ensure the plan will operate as intended under the new law.

South Carolina Legislative Update

South Carolina bases its probate fees on the value of the probate estate, and, unlike North Carolina, South Carolina has no cap on those fees. Accordingly, the probate fee can be substantial for decedents who decline to fund their revocable trusts during their lifetime or fail to update the beneficiary designations for their non-probate assets. This year, the South Carolina Legislature made two changes that permit additional categories of assets to pass outside probate, which give individuals the opportunity further to mitigate the size of the probate fee due at death.

First, the Legislature raised the minimum value of probate assets that a decedent must own to require a full estate administration from $25,000 to $45,000.

Second, the Legislature made vehicles and mobile homes transferable on death (TOD) by way of a new TOD designation with the South Carolina Department of Motor Vehicles (DMV). Now, if an individual owns a vehicle with a TOD designation, his or her car will pass to the TOD beneficiary outside probate and notwithstanding the provisions of a valid will or trust instrument. If a married couple owns a vehicle, it must be owned as joint tenants with right of survivorship (i.e., the car is owned by "husband or wife") and not as tenants in common (i.e., the car is owned by "husband and wife") to avoid probate and to add a TOD designation. Upon the death of the surviving owner, the TOD beneficiary may apply for a car title in his or her sole name at the DMV.

In addition to the updates related to estates, the Legislature also made changes that make South Carolina a more desirable state in which to create a trust. First, it extends the time by which a nonvested interest must vest or terminate and when a general power of appointment must be exercised from 90 years to 360 years. This extension brings South Carolina trust law in conformity with 29 other states that have enacted the Uniform Rule Against Perpetuities. This rule is an important extension in wealth transfer planning because it allows a dynastic trust in South Carolina to last up to 360 years. The Legislature also amended the Trust Code to allow an independent trustee to reimburse a grantor for income taxes paid on a grantor trust. Lastly, the Legislature bolstered creditor protection for beneficiaries of trusts by clarifying that an exercise of a testamentary power of appointment does not subject trust assets to the beneficiary's creditors.

What's Big and Beautiful About the New Tax Act?

This summer, Congress passed the One Big Beautiful Bill Act (OBBBA). The OBBBA, in large part, addressed the "sunset" of provisions included in the 2017 Tax Cuts and Jobs Act (TCJA). As the name implies, the OBBBA is big, over 870 pages long. The following is a high-level overview of some of the tax provisions of greatest importance and is not intended to be an exhaustive summary. Unless otherwise noted, OBBBA changes take effect in 2026.

Good News for Transfer Tax Limitations

Before the OBBBA was passed, the estate and gift tax exclusion amount was set to revert from $13,990,000 in 2025 to the pre-TCJA inflation-adjusted $5,000,000 threshold (estimated to be approximately $7,000,000 in 2026). Instead, under the OBBBA the estate and gift tax exclusion amount will be $15,000,000 in 2026 and adjusted for inflation each year thereafter. The new exclusion amount will not automatically revert to a lower amount without an act of Congress. The generation-skipping transfer (GST) tax exemption amount also will be $15,000,000 in 2026 and adjusted for inflation going forward. It is important to note that the gift and estate tax exemption amounts still are unified, meaning that lifetime taxable gifts continue to reduce the amount of estate tax exemption available at death.

Good News for QOZ Investments

Qualified opportunity zones (QOZ), which were introduced in the TCJA, are low-income areas in which certain new investments are eligible for preferential tax treatment. Under the TCJA, if an investor sells property and realizes gain, he or she can defer the recognition of the gain until December 31, 2026, if the gains are invested in a Qualified Opportunity Fund (QOF) within 180 days of gain realization. A QOF is an investment vehicle formed for the purpose of investing in QOZ property. Under the TCJA, a staggered deferral and exclusion applies to the gain: 10% of the deferred gain is excludable if the investment in a QOF is held for at least 5 years; 15% of the deferred gain is excludable if the investment is held for at least 7 years; and 100% of the deferred gain is excludable if the investment is held for at least 10 years. Mechanically, the gain exclusion is achieved by an increase in the taxpayer's tax basis in the property.

The OBBBA extends the QOZ rules but makes significant changes. Under the OBBBA, a 5-year rolling schedule applies for deferred gain invested in a QOF. The 10% deferred gain exclusion still applies if a QOF investment is held for at least 5 years, but the 15% exclusion if the investment is held for at least 7 years is eliminated. Gain accruing after a QOF investment is made still is excluded if the investment is held for at least 10 years. However, if the investment is held for more than 30 years, the taxpayer's basis is the fair market value of the investment on the date that is 30 years after the date that the investment was made. Any gain accruing after 30 years is taxable when the investment is sold. Note that the OBBBA changes to the QOZ rules take effect in 2027.

Extension of Qualified Business Income Deduction

In more good news, the qualified business income (QBI) deduction for pass-through entities, which seeks to equalize the tax treatment of corporations and pass-through entities, is extended indefinitely. The deduction remains at 20% of a pass-through entity's QBI.

State and Local Tax Deduction Changes

Under the OBBBA, the state and local tax (SALT) income tax deduction limitation is increased to $40,000, beginning in tax year 2025. Under this rule, up to $40,000 of state and local real property, personal property, and income taxes are deductible for federal income tax purposes. However, the good news for high income earners is moderated: the $40,000 limitation is reduced by 30% of the excess of a taxpayer's modified AGI (MAGI) over $500,000, but the SALT limitation will not be reduced below $10,000. Further, both the limitation and the phase-out threshold increase by 1% each year from 2026 to 2029. Beginning in 2030, the SALT limitation amount reverts to a flat $10,000 for all taxpayers.

Good News for Depreciation Deduction

The OBBBA amends the "bonus depreciation" deduction rules to allow 100% depreciation of certain business assets in the year in which the asset is placed in service. Such property must have been acquired and placed in service after January 19, 2025, to be eligible for the 100% depreciation deduction. Property acquired and placed in service before January 19, 2025 is eligible for a 40% depreciation deduction. Under the TCJA, the bonus depreciation deduction percentage was reduced by 20% each year beginning in 2023. Under the OBBBA, the 100% deduction applies indefinitely and is good news for business owners.

Expansion of 529 Account Benefits

The OBBBA expands eligibility to pay for expenses for elementary and secondary education from a 529 account. Distributions from a 529 account can be used to pay tuition and other expenses (like room and board) for full-time college students. However, for elementary and secondary school students, only the tuition cost to attend the elementary or secondary educational institution was payable from a 529 account. Now, expenses related to curriculum, books, online educational materials, tutoring, standardized tests, dual enrollment, and educational therapy for students with disabilities at the elementary and secondary levels are qualified educational expenses. Furthermore, the limit on distributions for elementary and secondary expenses will increase from $10,000 to $20,000.

Conclusion

The OBBBA is largely good news for taxpayers. The estate and gift tax exclusion amount increases, the GST tax exemption amount increases, investments in QOZs remain tax-preferred, the QBI deduction is extended indefinitely, the SALT income tax deduction increases, 100% bonus depreciation returns, and 529 accounts offer more flexibility for distributions for qualified educational expenses. However, high-income taxpayers cannot take full advantage of the increase in the SALT income tax deduction limitation. Overall, the OBBBA provides taxpayers with more certainty and more flexibility for thoughtful tax and estate planning.

Fiduciary Litigation Update: When a Child is Born After a Parent's Death

A recent North Carolina Court of Appeals case, Abitol v. Clark, highlights an issue that is becoming increasingly common with the assistance of modern reproductive technology: what happens when a child is born after a parent dies?

In Abitol, the decedent had a daughter from a prior relationship when he died. After his death, his wife underwent a frozen embryo transfer and had a son. Although the son was the decedent's biological son by virtue of in vitro fertilization (IVF), the decedent's wife was not pregnant at the time of her husband's passing. Further, the son was born over ten lunar months after decedent's death, which is the statutory measuring point for inheritance purposes under North Carolina law.

The decedent had completed careful estate planning. He signed a will and established a trust for his daughter, but, of course, when those documents were written, the son did not exist yet. That left a big unanswered question: does the son qualify as a beneficiary of the decedent's estate and trust, or, because the decedent's wife became pregnant after her husband died, does the estate pass only to the decedent's daughter?

The executor of the decedent's estate asked the court to resolve the issue. The court-appointed guardian of the decedent's daughter, understandably, wanted to protect the daughter's interests. Each fiduciary had a legal duty to fight for its side. The trial court originally sided with the daughter's guardian, but the North Carolina Court of Appeals disagreed. The Court held that the ten lunar month statute was not an outer limit on a child's right to inherit if the child is not otherwise accounted for in the estate plan.

This case reminds us that estate planning is not just about dividing assets – it is about avoiding potential litigation. A strong plan depends on full disclosure. Sharing the specific dynamics of your family with your estate planning attorney is essential to avoid future disputes and to ensure your wishes are carried out.

How the OBBBA Affects Seniors and People with Disabilities

The OBBBA enacts significant changes for seniors and people with disabilities.

Taxes

While the OBBA does not eliminate tax on Social Security benefits, a new deduction may reduce taxable income for many seniors. Taxpayers aged 65 years and older can claim a $6,000 above-the-line deduction ($12,000 for a married couple) in addition to the standard deduction. The deduction begins to phase out for single filers with modified adjusted gross income (MAGI) over $75,000 and married couples with MAGI over $150,000, and will expire in 2028. The OBBBA also retains current tax rates, helping seniors avoid increased tax burdens as inflation rises.

Medicaid

The OBBBA cuts Medicaid benefits by over $1 trillion over the next decade – the largest reduction of federal healthcare funding in American history. Non-partisan estimates project that around 15,000,000 people will lose health insurance by 2034, and changes to the way Medicaid is funded will affect access and quality of care for many Americans.

The OBBBA prohibits states from imposing new provider taxes and caps current provider tax rates, which means that states have fewer options to finance their share of Medicaid costs. Federal and state dollars fund Medicaid programs, and provider taxes help states contribute to their share of Medicaid spending. The federal government then matches state funds using a formula based on a state's per capita income. Provider tax restrictions will reduce overall Medicaid dollars, which typically are used to maintain provider rates and support rural hospitals, nursing homes, and home and community-based services. Facing deficits, states may cut home and community-based services designed to help seniors age safely at home and to keep disabled individuals living in the community. States also must implement work requirements for Medicaid expansion populations and may tighten other eligibility rules to offset federal funding losses.

Medicare

The OBBBA also affects Medicare, the primary source of health insurance for people over age 65. Medicare access now is limited to U.S. citizens, lawful permanent residents, and a few select migrant groups. Despite the steepest Medicaid cuts in history, the OBBBA will add at least $3.4 trillion to the national debt, accelerating the timeline for when the trust fund for Medicare will become insolvent. The deficit increase will automatically trigger Medicare spending cuts, potentially reducing Medicare spending by $500 billion over the next ten years.

Conclusion

The new law will have broad and significant impact on the benefits available to seniors and people with disabilities. Please contact a member of the Johnston Allison Hord team for a consultation on how the law changes will specifically affect you and your family.

How the OBBBA Affects Seniors and People with Disabilities

The OBBBA also ushered in tax reforms on charitable giving. For charitable giving, these reforms present unique opportunities and new challenges for clients with philanthropic goals.

Expanded Access for Non-Itemizing Donors

Beginning in 2026, individuals who do not claim itemized deductions will be eligible to claim a charitable deduction for cash donations up to $1,000 ($2,000 for couples filing jointly) in addition to the income tax standard deduction. Dissimilar to prior tax years when charitable deductions were grouped into the individual's standard deduction, this change to the tax code may incentivize non-itemizing donors to begin their philanthropic journey.

Limitations on High Income and Itemizing Donors

Under the OBBBA, cash gifts to a charitable organization are deductible to the extent they do not exceed 60% of a taxpayer's adjusted gross income (AGI). This is good news, as under prior law, the 60% limitation was scheduled to revert to a 50% limitation in 2026. Also starting in 2026, the OBBBA introduces a new charitable deduction "floor," meaning that individuals who itemize deductions will be eligible to deduct their charitable gifts only if such gifts exceed 0.5% of their adjusted gross income (AGI). The effect of this change likely will be a reduction in tax benefits for donors who gift less than 0.5% of their AGI, but more than $1,000 individually (or $2,000 for couples filing jointly). In addition, the new legislation caps the tax benefit of itemized charitable deductions at 35%. Donors who itemize their charitable income tax deductions may consider prioritizing charitable donations in 2025, before the OBBBA's changes take effect, to maximize potential tax benefits while still available.

Corporate Giving Floor

Currently, corporations are subject to a 10% charitable deduction ceiling, meaning a corporation cannot deduct charitable contributions that exceed 10% of its AGI. Under the OBBBA, the 10% ceiling remains in effect, but a new 1% floor is implemented, so that a corporation can deduct only charitable contributions that exceed 1% of its AGI. Accordingly, corporate clients and those with closely held businesses should be aware of the 1% floor before expecting tax benefits for charitable deductions as experienced in prior years.

Maximizing Gift Impact

For most philanthropic clients, the incoming changes to legislation will result in a reduction of tax benefits in 2026 and an incentive to accelerate charitable gifts in 2025. In addition, the new law presents an opportunity for young donors to start giving up to $1,000 in 2026 and immediately reap the tax benefits of such gifts. Individuals considering making significant gifts are advised to consult with us for guidance on maximizing the related tax benefits of gifts both now and in the future.