

# “THE ONE, BIG, BEAUTIFUL BILL”

## *8 Key Takeaways for Estate Planners*

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# Eight Key Takeaways for Estate Planners

1. \$15,000,000 permanent BEA credit
2. TJCA individual bracket structure made permanent (with slight improvements)
3. Itemized deductions
  - TCJA limitations generally made permanent
  - \$40,000 SALT cap (Applies to trusts/estates)
  - NEW: 0.5% charitable deduction floor
  - NEW: overall limitation on itemized deductions
4. Tax advantaged saving accounts:
  - NEW: TRUMP Accounts
  - Improvements to 529 Accounts & ABLA Accounts
5. NEW: Private school scholarship donation tax
6. Section 199A 20% deduction made permanent
7. Increased business expensing
  - 100% bonus depreciation permanent & Section 179 expansion
  - NEW: Qualified Production Property
8. Qualified Opportunity Zones made permanent & improvements to Section 1202

**1. \$15,000,000 BEA**

# Estate & Gift Tax Exclusion

## *Increased BEA Made Permanent*

- The TCJA doubled the Basic Exclusion Amount (BEA) through 12/31/25 (\$13,990,000 in 2025)
- TCJA sunset uncertainty made planning difficult over the last several years
- The bill will permanently increase the estate, gift and GST exclusion to \$15,000,000 for 2026 and will be indexed for inflation thereafter
- This will provide meaningful relief to many families who may be subject to the estate tax but are not wealthy enough to undertake simple & effective tax planning.

# Estate & Gift Tax Exclusion

## *Key Takeaways*

- Removes sunset uncertainty for many families:
  - Reduces the need for Inter Vivos SLAT planning for estate tax planning
  - Increases the opportunity to capture the basis step-up
- Core issues and planning for very wealthy families remain the same – Capturing the estate and GST tax exclusion early remains critical
- Grantor Trusts still beneficial for wealthy families
- Focus on Non-Grantor Trusts for most clients
- Focus on using GPOAs to Increase Basis on Bypass Trusts and SLATs

## 2. TJCA Individual Bracket Structure Made Permanent (with slight improvements)

# Individual Rates – Made Permanent

- All TCJA rates & bracket thresholds generally made permanent
- Roth Conversions still popular
- Added danger zones for Roth Conversions
- Roth Conversions for disabled beneficiaries
- Slight upward adjustments to the top of the 10% and 12% brackets, thereby granting a small amount of additional relief
- Effective in 2026

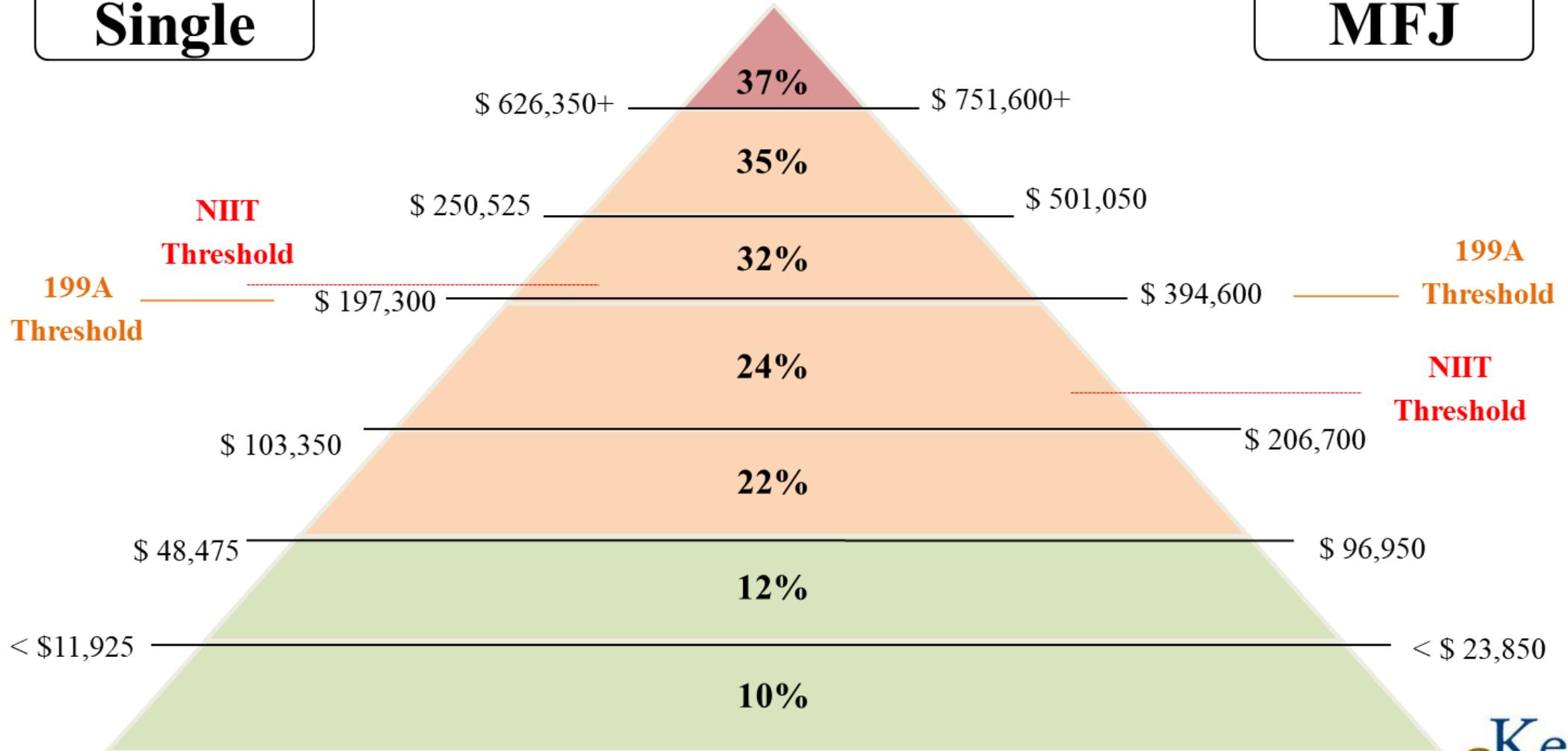


OBBBA § 70101

# 2025 Tax Brackets

**Single**

**MFJ**

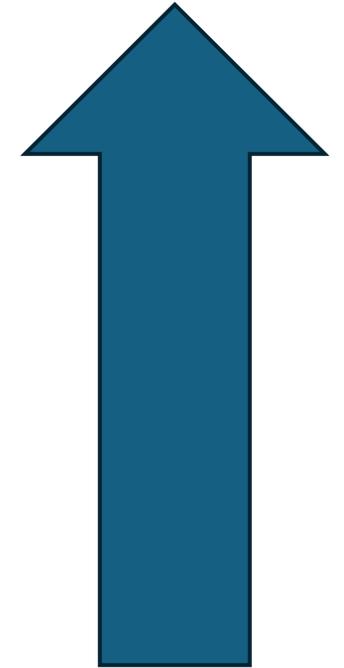


# Standard Deduction

## *Made Permanent & Expanded*

- TCJA standard deduction increase permanent
- Slight additional permanent increase as well
- **Effective in 2025**

	2025 TCJA	2025 OBBBA
<b>Single</b>	15,000	15,750
<b>HoH</b>	22,500	23,625
<b>MFJ</b>	30,000	31,500
<b>MFS</b>	15,000	15,750



OBBBA § 70102

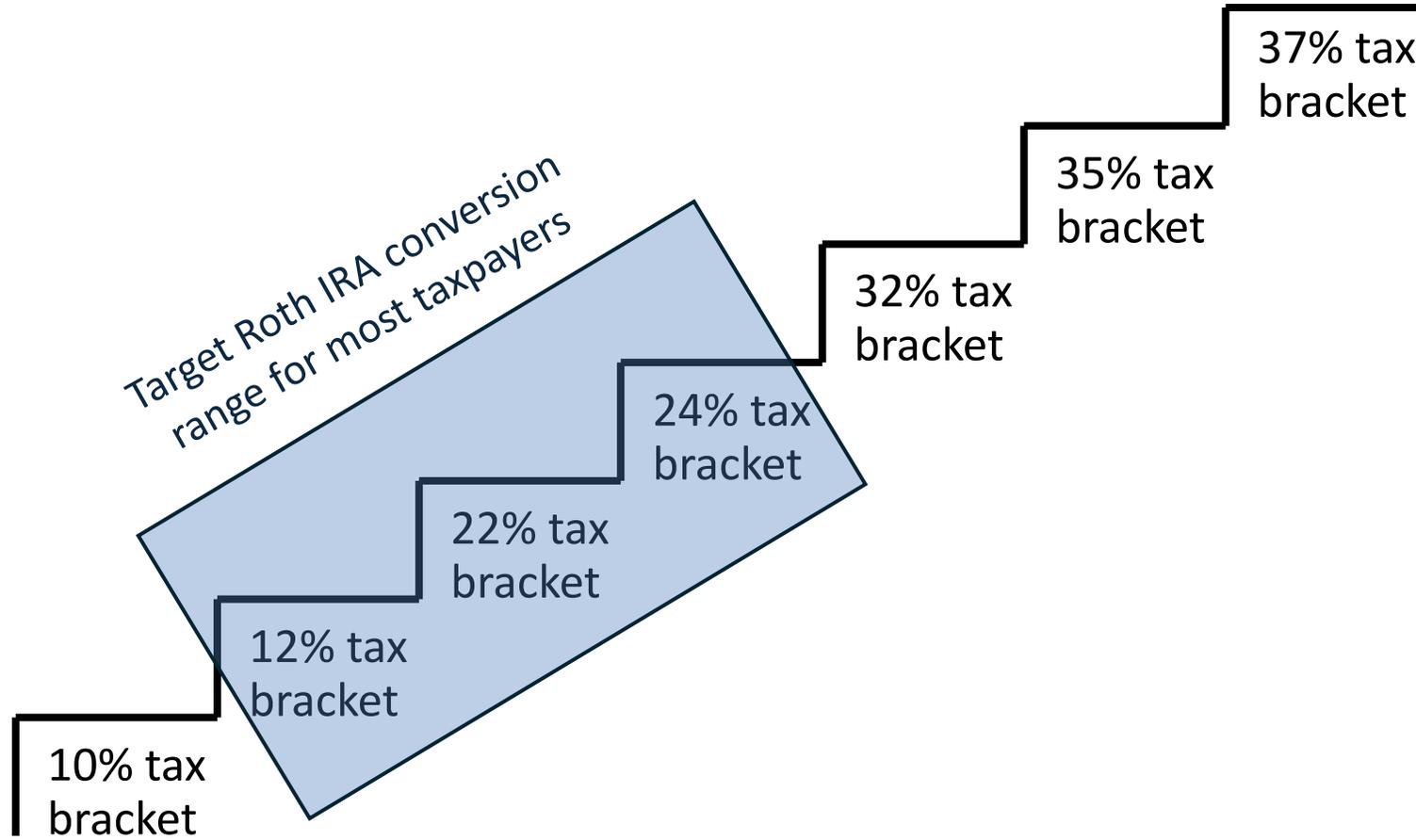
# Senior Personal Exemption

- For years **2025**, 2026, 2027, & 2028 seniors are entitled to an additional \$6,000 exemption.
- Limitations in the bill
  - Available to taxpayers who have attained age 65
  - Reduced by 6% of the amount modified AGI exceeds \$75,000 (\$150,000 MFJ)

# Mathematics of Roth IRA Conversions

- In simplest terms, a traditional IRA will produce the same after-tax result as a Roth IRA provided that:
  - The annual growth rates are the same
  - The tax rate in the conversion year is the same as the tax rate during the withdrawal years (i.e.  $A \times B \times C = D$ ;  $A \times C \times B = D$ )
- Still beneficial for clients with a state or federal estate tax
  - The 691(c) deduction is not efficient
  - A Roth conversion can add 10%-15% to the overall wealth transfer

# Mathematics of Roth IRA Conversions



# 3. Itemized Deduction Reform

# State & Local Tax Deduction *Modifications*

- The bill Increases the deduction cap as follows:

2025	\$40,000
2026	\$40,400
2027	\$40,804
2028	\$41,212
2029	\$41,624
2030+	\$10,000

- Deduction is available to both trusts and estate (Fiscal year idea)
- The bill also provides the deduction cap is reduced by 30% of modified AGI over \$500,000;
  - The deduction is not reduced below \$10,000 (i.e., a \$100,000 phase-out range)
  - The income-based limitation applies 2025+

OBBBA § 70120

# State & Local Tax Deduction

## *Example 1*

- Example 1:
  - Gary and Barb's AGI is \$500,000 and
  - They have itemized deductions of \$75,000 – Including a SALT deduction of \$40,000.
  - Their taxable income will be \$425,000 under the bill. ( $\$500,000 - \$75,000 = \$425,000$ )
  - The marginal rate at taxable income of \$425,000 is 32%.

# State & Local Tax Deduction

## *Example 2*

- Example 2:
  - Matt and Erin's AGI is \$600,000
  - They have itemized deductions of \$75,000 – Including a tentative SALT deduction of \$40,000.
  - However, the phase-in kicks in and their SALT deduction will be reduced by \$30,000 to \$10,000.
  - The phase-in mandates a reduction of the SALT deduction by 30% of income greater than \$500,000. ( $(\$600,000 - \$500,000 = \$100,000)$  and  $\$100,000 * 30\% = \$30,000$ ).
  - Their taxable income will be \$555,000. ( $\$600,000 - \$45,000 = \$555,000$ )
  - The marginal rate at taxable income of \$555,000 is 35%.

# State & Local Tax Deduction *Comparison*

- Example 1 v. Example 2
  - An additional \$100,000 of AGI increased taxable income by \$130,000 because the SALT deduction limitation
  - For a MFJ taxpayer losing a SALT deduction in the phase-out range, the marginal income tax rate will effectively be 45.5% (130% x 35%).
  - The marginal rate can be further increased if the Section 199A or other phaseout applies as well

# State & Local Tax Deduction *Comparison*

- Example 1 v. Example 2
  - Assume that Matt and Erin reduce their hours and only earn \$500,000.
  - If you add state income taxes and/or payroll taxes, it is easy to imagine a marginal income tax rate over 50%
  - An economist might argue that there are additional costs of working more hours than necessary (e.g., home maintenance, social responsibilities, transportation, meals, wardrobe, childcare, etc.)

# State & Local Tax Deduction

## *Active Planning*

- Non-grantor trusts to create additional taxpayers and additional \$40,000 deductions
- Shifting family income to a state without an income tax
- Pass-through entity tax (PTET) elections
- Re-organizing businesses as C-corporations

# Non-grantor Trusts

## *Active Planning*

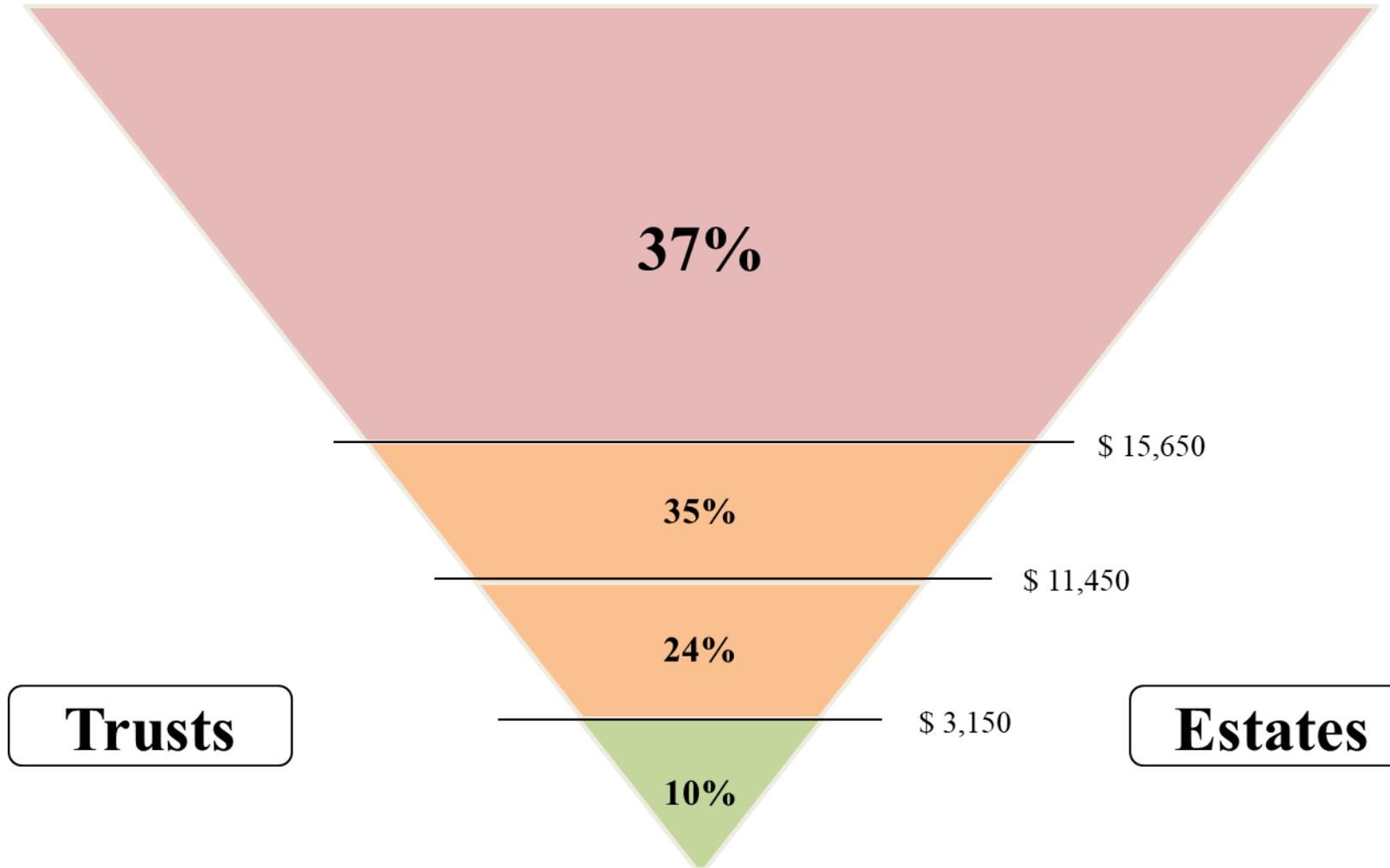
- Create additional taxpayers and additional \$40,000 in SALT deductions
- Income Shifting to trusts, children, and grandchildren
- Allow Shifting family income to a state without an income tax  
(Some “home” states prevent this. See Steve Oshins’s chart.)
- Additional benefits of using non-grantor trusts – beyond SALT:
  - Increase 199A Deductions
  - Additional QSBS Exclusions
  - Asset protection

# Income Taxation of Trusts

- Income taxed to either the trust or the beneficiaries
  - If income is accumulated, then the income is taxed to the trust/estate (37% Rate)
  - If income is distributed, then the trust/estate gets an income tax deduction and beneficiaries report taxable income
  - Roth and Traditional
  - IRA income distributed on a pro rata basis

# Foundational Concepts

## 2025 Ordinary Income Tax Rates for Estates & Trusts



# Foundational Concepts

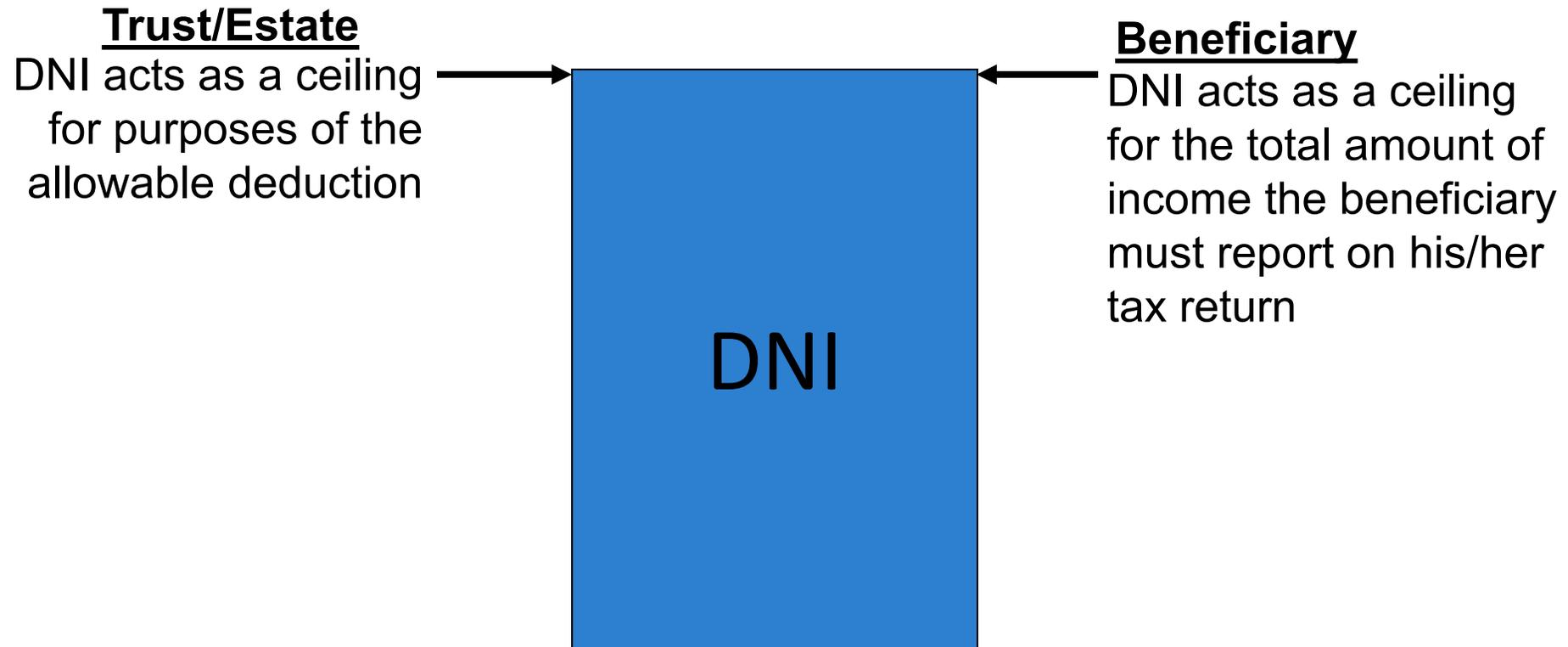
## Distributable Net Income (DNI)

- Determines the amount of the trust's or estate's income distribution deduction.
- Determines how much the beneficiaries must report as income on their tax returns.
- Determines the character (e.g. interest, dividends, IRAs etc.) of the taxable income in beneficiaries' hands.



# Foundational Concepts

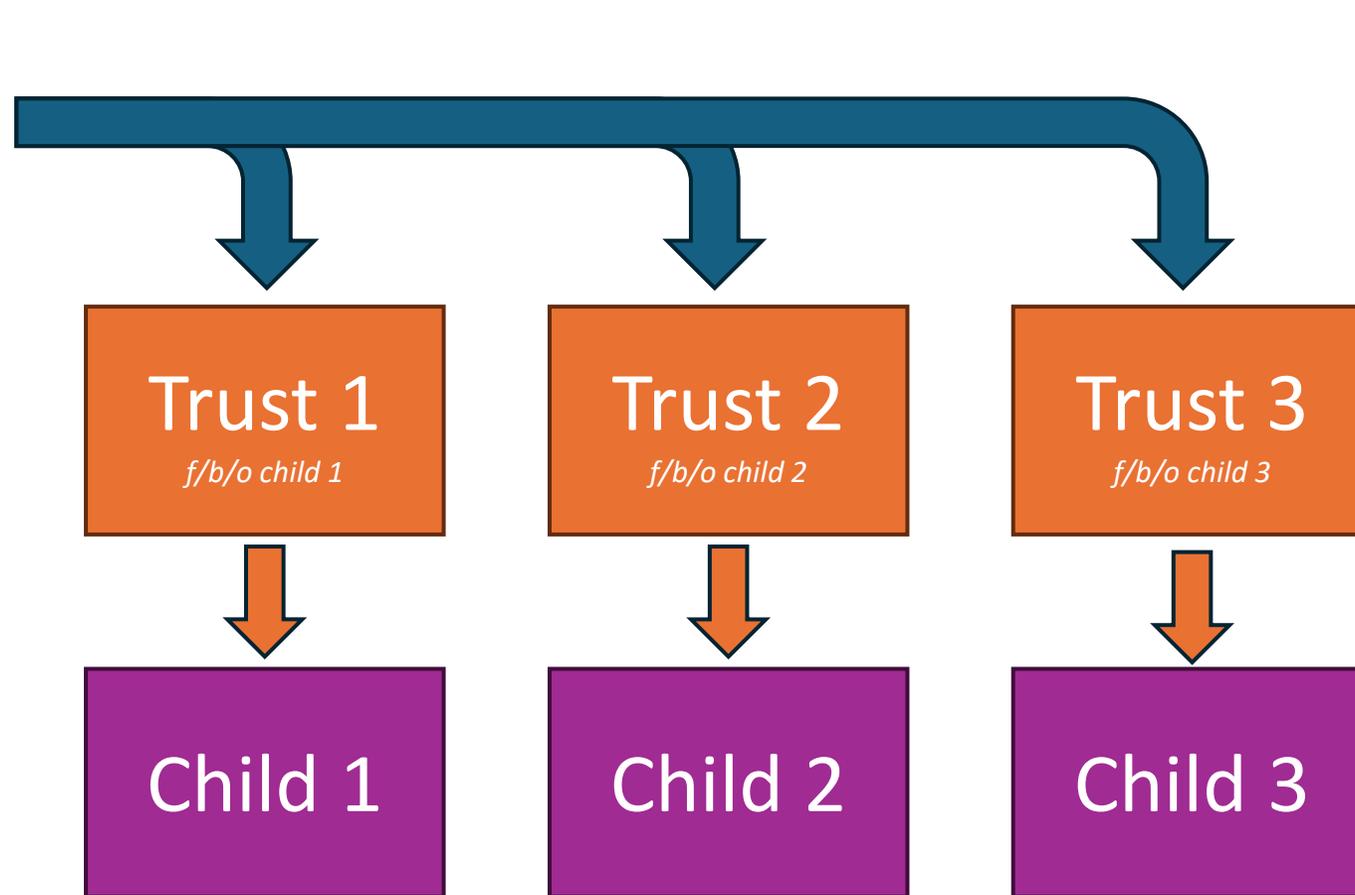
## Distributable Net Income (DNI)



# Creating Additional SALT Deductions

## *Example*

Client

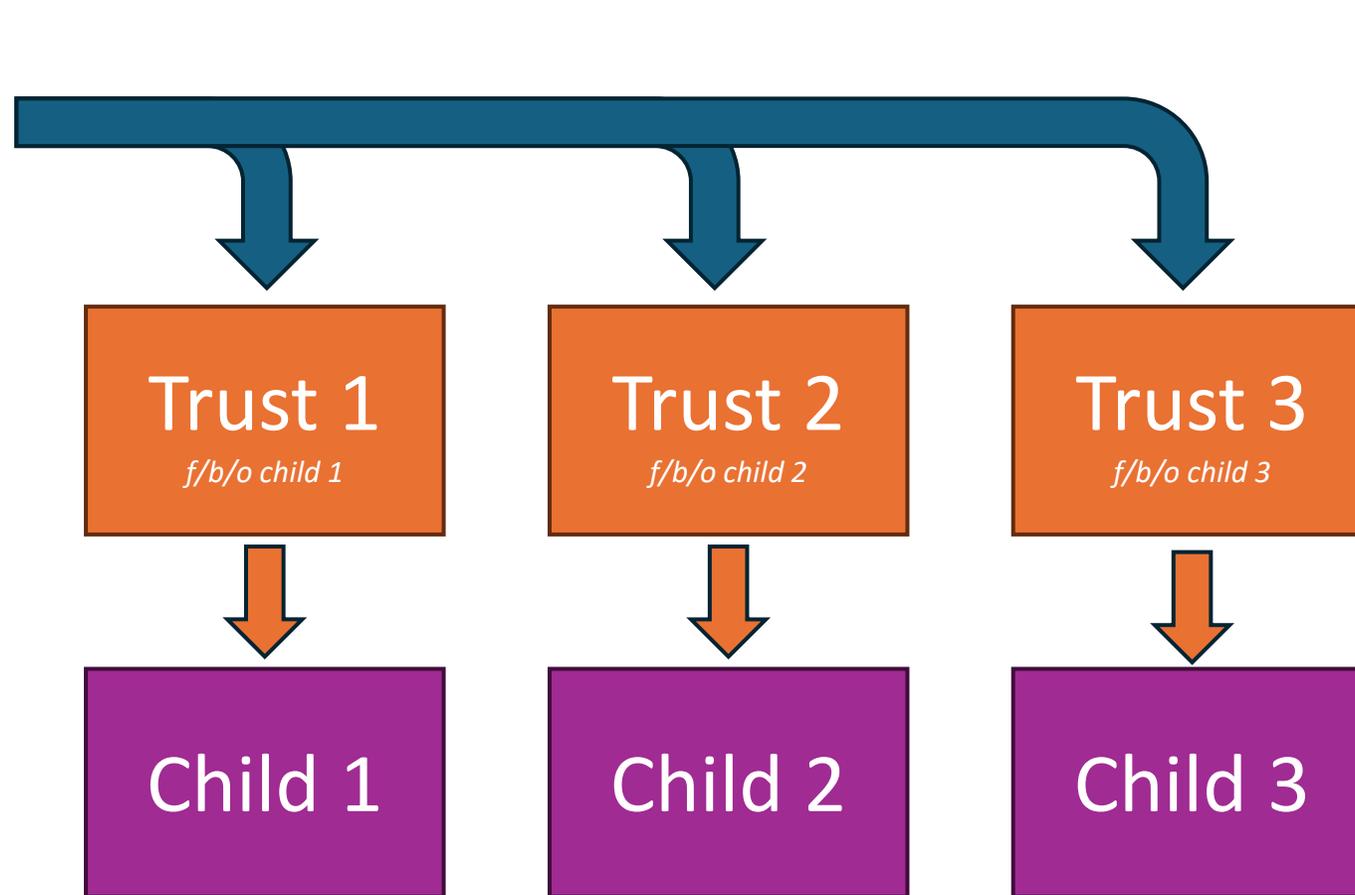


- Consider an average family with three children
- Each non-grantor trust is entitled to a SALT deduction of up to \$40,000
- Each child is entitled to a SALT deduction of up to \$40,000
- Non-grantor trusts can shift trust income to children
- Simple inter vivos estate planning could easily create 6 additional \$240,000 of deductions (\$40,000 x 6)

# Creating Additional 199A Deductions

## *Example*

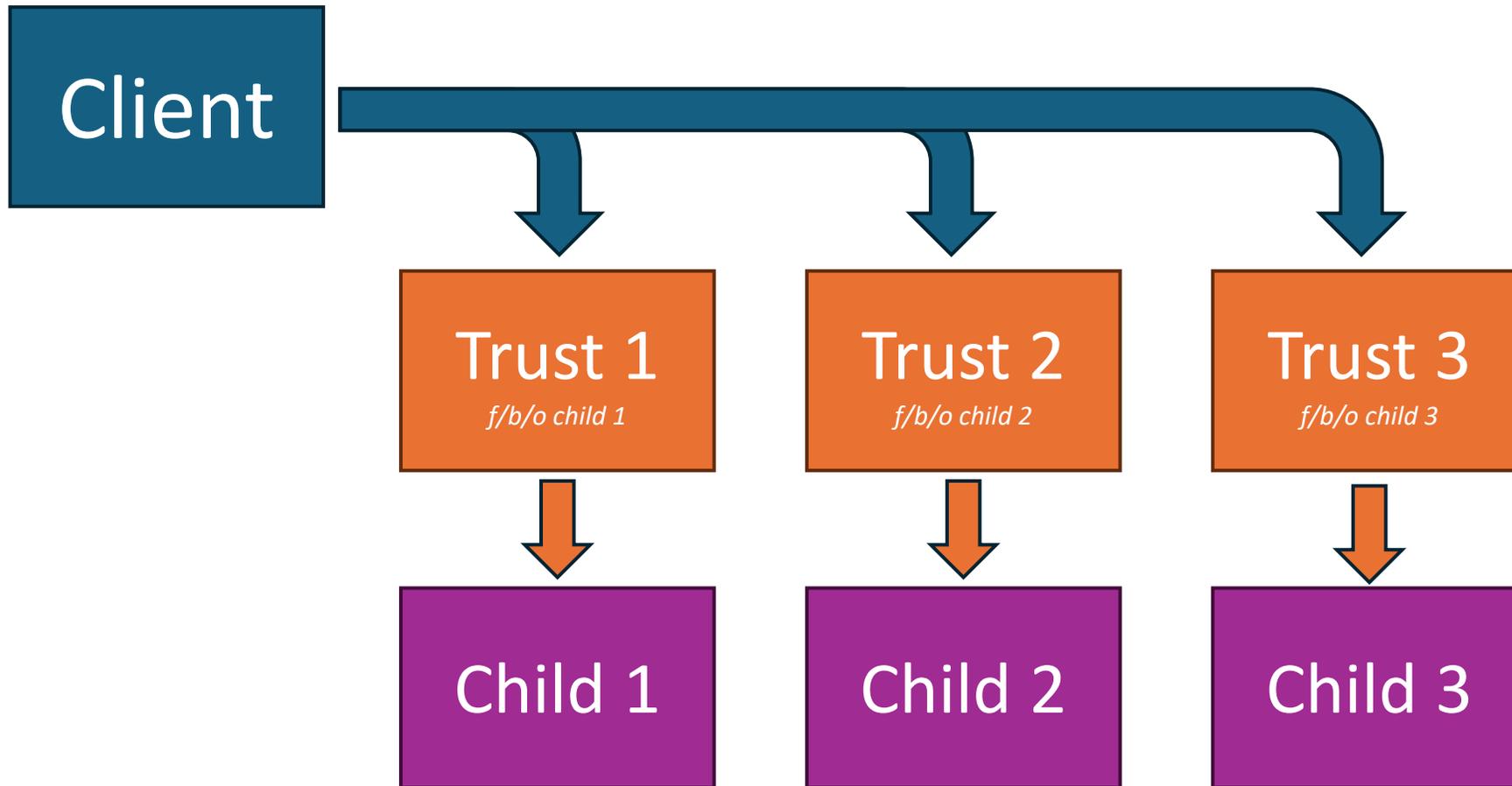
Client



- Consider an average family with three children
- Client gifts partnership units from their rental real estate business to each trust
- The 199A invested capital limitations won't apply to the trusts if each has less than \$197,300 of taxable income
- The 199A invested capital limitations won't apply to the married children if each has less than \$394,600 of taxable income

# Creating Additional QSBS Exclusions

## *Example*



- Consider an average family with three children
- Client gifts stock of a business they expect to sell eventually to three separate trusts (and potentially directly to the children)
- Each of the 3-6 additional taxpayers is entitled to a \$15,000,000 exclusion of gain on sale of the business

# Procedure to “Add SALT”

- Many of us have clients with existing non-grantor trusts
  - The potential value of the tax benefit at issue is about \$14,800 (37% x \$40,000).
  - Many tax preparers simply offer form transcription and will not help clients proactively
- Trusts and Estates are on a cash basis of accounting
  - Taxes paid in 2025 are deductible in 2025
    - 2024 liabilities paid with extensions & returns in 2025 are deductible in 2025
    - 2025 estimated tax payments, paid in 2025, are deductible in 2025
  - Taxes owed for calendar year 2025, but not paid in 2025, are not deductible in 2025 (many trustees will make their final payment for 2025 in 2026 without advice)
- Most tax preparers will generate 2025 estimated tax payment vouchers based the 2024 liability
  - Trustees should review payments to maximize their 2025 SALT deduction
  - Beneficiaries should review payments to maximize their 2025 SALT deduction

# Additional Ideas To Reduce Personal Income

- Tax-exempt bonds
- Deferring and managing LTCG
- General partnership interests in oil and gas
- Matching passive income & passive losses
- Defined benefit and defined contribution plans
- Re-organizing as a c-corporation
- Equipment purchases, QPP construction, & cost segregation
- Leasing office & retail real estate from others
- Debt / income stripping

# 0.5% Floor for Itemized Charitable Deductions

- The bill adds a new limitation – contributions must exceed 0.5% of the taxpayer's contribution base to be deductible
- The bill also permanently increases the cash contribution to 60% (recall, it was 50% before the TCJA)
- Effective to taxable years beginning after 12/31/25

# IRC § 170 v. IRC § 642(c)

- The charitable deduction under IRC § 170 applies to **individuals**, and has the following limitations:
  - Standard deduction “hurdle”
  - New 0.5% “floor”
  - AGI-based percentage limitations
- The charitable deduction under IRC § 642(c) applies to **trusts and estates**, and only has one limitation:
  - The charitable contribution must be made from fiduciary income

*Donations from Trusts & Estates can be much more income tax efficient.*

# Non-Grantor Charitable Lead Annuity Trust (CLAT)

- A non-grantor CLAT makes annual fixed annuity payments to charity for a specified term and the remaining trust assets can be paid to family members.
- CLATs can be an efficient estate and GST tax planning tool for a charitably inclined family.
- The annual charitable contribution made by the CLAT provides an IRC § 642(c) income tax deduction to the trust; the OBBBA increases the tax-efficiency of CLATs.

# Charitable Remainder Trusts (CRT)

- A CRT makes annual payments to the settlor or other family members for a certain term of years and then pays whatever is remaining in the trust to charity.
- The taxpayer who settles a CRT receives a large income tax deduction in the contribution year; this effectively accelerates and combines the family's future charitable intent into a single year which may be more tax efficient after the OBBBA.
- The CRT may help a family navigate post OBBBA complexity:
  - OBBBA added deduction phaseouts: Tips, Overtime, Senior, Car interest, & SALT
  - Many other income-based surtaxes, deductions, and credits
  - Standard bracket management issues
  - 12/31/2026 TCJA opportunity zone deferral forced recognition

# PEASE Limitation *Modification*

- The TCJA suspended the overall limitation on itemized deductions (the PEASE limitation)
- The bill re-introduces and modifies the limitation (effective 2026+)
  - The new formula is as follows:

$$\text{Reduction} = \frac{2}{37} \times \text{the lessor of}$$

*Total Itemized Deductions*

*Total taxable income, plus itemized deductions, subject to the 37% bracket*

OBBBA § 70111

# Itemized Deduction

## *Timing Issues*

- Further increase of standard deduction
- SALT phaseout
- New charitable deduction floor
- New overall limitation on itemized deductions
- Interaction of itemized deduction phaseouts (AGI based) and 199A phaseout (taxable income based)

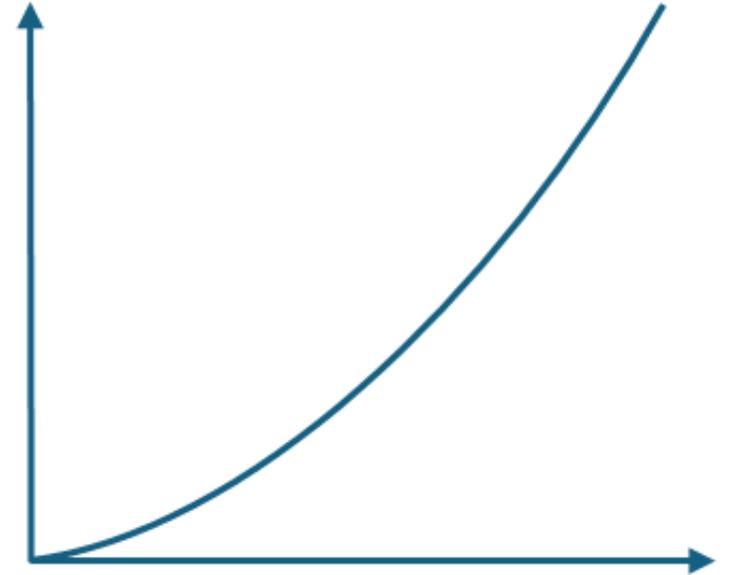
# 4. Tax-Advantaged Saving Accounts

# TRUMP Accounts

- New tax-exempt account (like an IRA)
- Beneficiary must not have yet attained age 8 at the establishment of the account
- Contribution limits
  - Cash contributions will be accepted starting 1/1/26
  - \$5,000 per year (contributions from tax exempt entities can exceed the limit)
  - Contribution limit adjusted annually for inflation
  - No further contributions after the beneficiary attains age 18
  - Broad eligibility regarding who contribute to the account, including federal, state, local and tribal governments and private foundations
  - Employer contributions to accounts excluded from income up to \$2,500 annually

# TRUMP Accounts

- Investment Limitations
  - Must track a well-established index or diversified portfolio of US equities
  - No leverage
  - Minimal fees and expenses
  - Other criteria will be established by Treasury

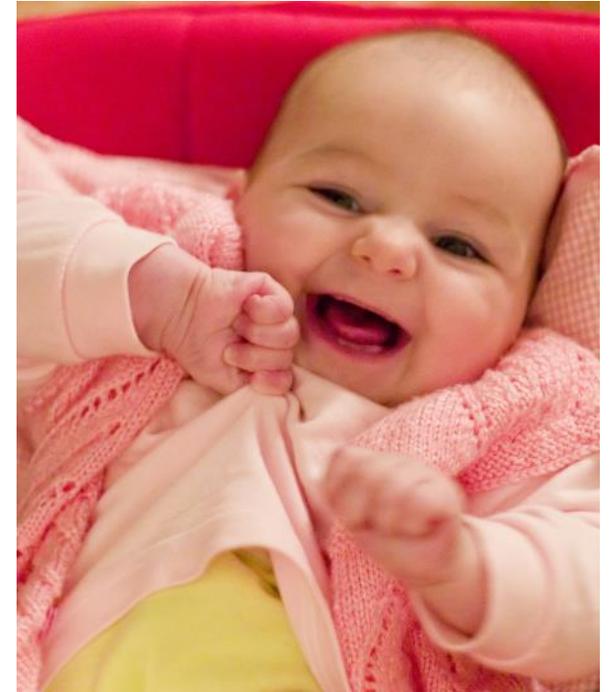


# TRUMP Accounts

- Trustee-to-trustee rollovers allowed
- If the beneficiary dies before distribution, the account is immediately recognized as taxable income by the successor beneficiary or on the beneficiary's final 1040 (HSA rules)
- Duplicate accounts subject to an excise tax equal to 100% of account income
- Excess contribution taxes apply

# TRUMP Accounts

- Contributions by the federal government
  - One time account credit of \$1,000
  - Eligible individuals born in: 2025, 2026, 2027, & 2028



OBBBA § 70204

# Inter-generational Wealth Transfer

## *Using Tax Preference Accounts*

- Retirement accounts
- 529 / QPT accounts
- ABLE Accounts
- Trump Accounts
- Roth IRAs



# 5. Scholarship Donation Tax Credit

# Tax Credit for Contributions to Scholarship Granting Organizations

- The bill creates a credit for contributions to organizations which grant scholarships to elementary and secondary schools
- 100% dollar-for-dollar credit
- Limited to the greater of: 10% of AGI or \$1,700

# 6. Section 199A QBI Deduction

# 199A

## *Made Permanent & Other Modifications*

- The bill makes the 20% QBI deduction permanent
- The bill increases the phase-out range of the SSTB / Wage & Capital limitations from \$50,000 currently to \$75,000
  - For those married filing jointly the phase-out range is increased from \$100,000 to \$150,000
  - The increased phase-out range applies 2026+
- The bill also includes a minimum deduction of \$400 for taxpayers with at least \$1,000 of QBI from one or more active trades or businesses in which the taxpayer materially participates; this will be available 2026+

# 199A

## *Phase-in of Wage & Capital Limits & Phase-out of SSTB QBI*

Filing Status	Threshold Amount	Phase-in Range	Full Limitations Apply
2025 MFJ	\$ 394,600	\$ 100,000	\$ 494,600
2025 All other Taxpayers	\$ 197,300	\$ 50,000	\$ 247,300
2026 MFJ*	\$ 406,000	\$ 150,000	\$ 556,000
2026 All other Taxpayers*	\$ 203,000	\$ 75,000	\$ 278,000

\* 2026 Threshold Amount is a rough estimate of 2025 inflation

Note, the taxpayers with income just over the phase-in range receive relatively harsh treatment.

# Trust Planning Example

## *Family Involved in Rental Real Estate*

Richard and Delores, a married couple, acquired about 500 apartment units between 1975 and 1990. These are managed by others and they pay no wages. The Qualified Business Income from this activity is about \$1,900,000 and their total taxable income is about \$2,200,000. The original basis of the improvements is fully depreciated, so they have a minimal amount of qualified property; about \$750,000. Based on these facts, below is a summary of their QBI deduction:

QBI Deduction = Lesser of:

(a) 20% of net business income:  $\$1,900,000 \times 20\% = \mathbf{\$380,000}$

(b) 20% of taxable income:  $\$2,200,000 \times 20\% = \mathbf{\$440,000}$

(c) greater of: (i) 50% of W-2 wages ( $\$0 \times 50\% = \$0$ ) or (ii) 25% of W-2 wages plus 2.5% of unadjusted cost basis of assets:  $[\$0 \times 25\%] + [\$750,000 \times 2.5\%] = \mathbf{\$18,750}$

# Trust Planning Example

## *Family Involved in Rental Real Estate*

Richard and Delores, gift interests in the entities which own the properties to 15 trusts set up for each of their four children and 11 grandchildren. The Qualified Business Income and taxable income for each of these trusts is approximately \$126,667. This is less than the Threshold Amount and therefore the limitation does not apply:

QBI Deduction = Lesser of:

(a) 20% of net business income:  $\$126,667 \times 20\% = \mathbf{\$25,333}$

(b) 20% of taxable income:  $\$126,667 \times 20\% = \mathbf{\$25,333}$

# 7. Increased Business Expensing

# Bonus Depreciation *Extension*

- 100% bonus depreciation re-instated
- The Senate bill applies to property placed in service 1/20/25+ (permanent)
- Numerous other date changes for specialized industries



# Section 179 Expensing

- The TCJA increased eligibility for 179 expensing:
  - Increased the limit on the amount of property which can be expensed to \$1,000,000
  - Increased the limitation on property placed in service which caused the expensing election to be phased out to \$2,500,000
- The bill increases:
  - The limit on property which can be expensed to \$2,500,000 and
  - The limitation at which the 179 deduction begins to phase-out to \$4,000,000
- The effective date is taxable years beginning after 12/31/24 (i.e. permanent & retroactive)

# Bonus Depreciation v. 179 Expensing

- Any difference between bonus depreciation & Section 179 is generally immaterial for most small businesses, but there are some nuisances
  - Section 179 generally has more limitations, but simply switching to bonus depreciation usually creates the same or better economic result
  - State income tax law conformity varies; for example, more states conform with 179 expensing than bonus depreciation
  - Section 179 provides a few specific expensing opportunities for commercial buildings
- Remember, it may be prudent to elect out of bonus / 179 to spread out deductions and thereby possibly offset a higher tax rate

# Qualified Production Property

- Qualified Production Property receives a depreciation deduction equal to 100% of adjusted basis in the year placed in service.
- Qualified Production Property does not include property eligible for Bonus Depreciation
- Qualified Production Property deductions are allowed in computing AMT

# Qualified Production Property

- Qualified Production Property defined:
  - Non-residential real property
  - Used by the taxpayer as an integral part of a qualified production activity
  - Placed in service in the US
  - Original use begins with the taxpayer (exceptions for unused / adaptive reuse sites)
  - Excludes office and similar space
  - Construction begins after 1/19/25 and before 1/1/29
  - Construction completed before 1/1/31
  - Taxpayer elects this section to apply

# Qualified Production Property

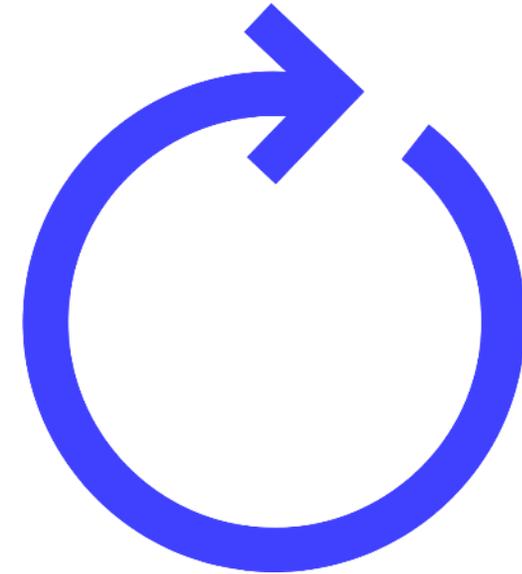
- Qualified Production Activity defined:
  - Manufacturing, production or refining of a qualified product
    - Production limited to agricultural & chemical production
    - Food and beverages prepared in retail establishment excluded
    - Qualified product means any tangible personal property
  - Must result in a substantial transformation of the property comprising the product



OBBBA § 70307

# Qualified Production Property

- Recapture
  - If at any time during the 10-year period after the QPP is placed in service,
  - The property ceases to be QPP,
  - Section 1245 recapture is applied,
  - By treating the property as disposed.



# Qualified Production Property

## *Issues & Unknowns*

- Recapture during the first 10-years is potentially taxed at a higher rate: 37% v. 25%
  - Creates uncertainty for taxpayers with a shorter planning horizon
  - Non-issue for taxpayers taxed as a C-corporation
- Additional concerns which Treasury/IRS will answer with regulations and guidance:
  - Treatment if the property is sold, but continues to be QPP
  - 1031 treatment & NOL carryforwards
  - Reactivated and adaptative re-use sites
  - Exact scope of Qualified Production Activity (QPA)
  - Related party and non-related party leased property

# Section 461(l)

## *Made Permanent*

- The TCJA added Section 461(l) which provides for a limitation on excess business losses
- Section 461(l) has been modified several times since the TJCA, but the limitation was scheduled to sunset year-end 2028
- The bill makes the limitation permanent



# Business Expensing

## *For Trusts & Estates*

- Passive activity loss limitations (§ 469) are a significant issue
- Section 461(l) applies to trusts & estates
- Holding S-corporations in trust is more complicated than a partnership or C-corporation, but will often be more tax efficient

# 8. Opportunity Zones & QSBS Expansion

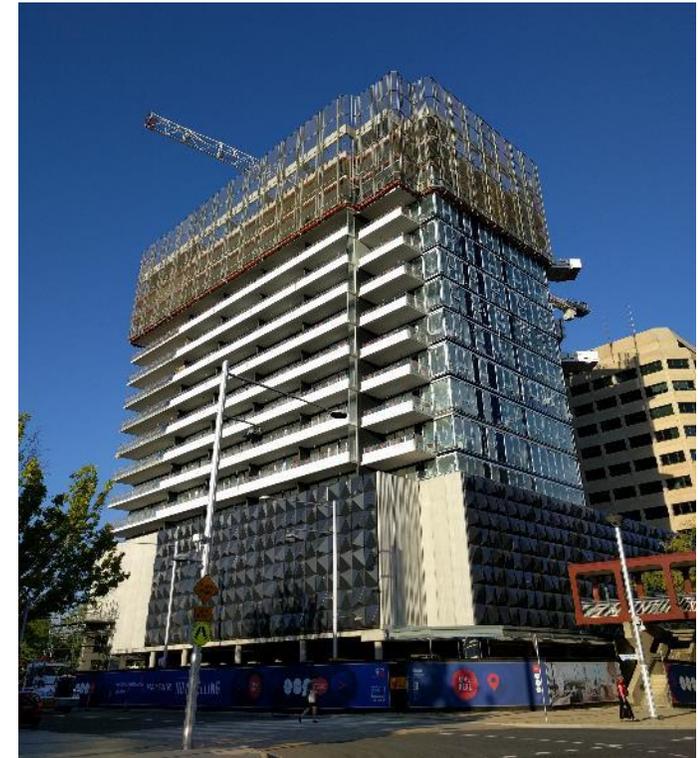
# Opportunity Zones

- Adds a new round of QOZ designations
  - Governors will designate a new set of tracts
  - Reduces census tract eligibility from 80% of statewide median family income to 70% (tracts with a poverty rate of 20%+ also eligible)
  - Excludes census tracts with a median family income of 125% of the statewide average (provides a metro-area test as well)
  - Removes eligibility for census tracks which qualify due to being contiguous with a qualifying census tract
  - **The bill makes the provision permanent and provides for a decennial designation, deferral and recognition timeline**

# Opportunity Zones

- Dates up Next:
  - TCJA OZ deferral forced recognition 12/31/26
  - OBBBA OZ deferral starts 1/1/27

\*It does not appear the old forced recognition date overlaps with the new deferral period



OBBBA § 70421

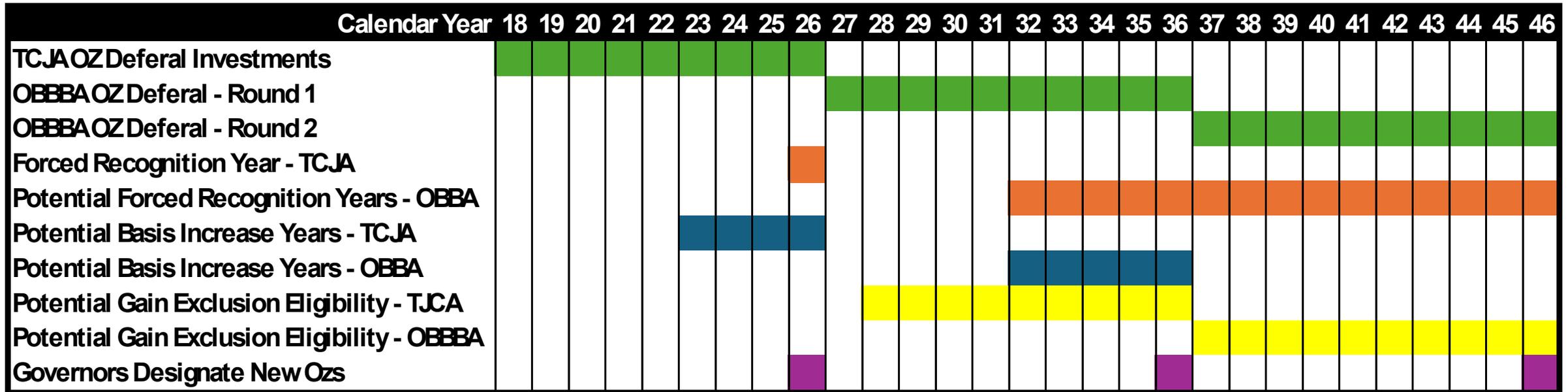
# Opportunity Zones

- Deferral Benefit
  - Capital gains rolled over to TCJA TOFs in calendar years 2018-2026 will be recognized 12/31/26 (applies to all investments)
  - OBBBA QOF investments made starting 1/1/27 receive 5-year deferral benefit (e.g., if \$100,000 of gain is investment in 2027, the taxpayer will report \$100,000 of capital gain in 2032)
  - The 5-year deferral structure implies that it may be possible to rollover gain indefinitely by continuing to make new QOF investments

# Opportunity Zones

- Basis Increase & Exclusion Structure
  - If the investment is held for at least 5-years, basis is increased by 10% of the original investment (TCJA law provided for up to a 15% increase)
  - Rural opportunity zone investments receive a 30% increase – new incentive
  - Exclusion of post-investment appreciation for investments held for at least 10-years was retained, but limited to the FMV 30-years after the initial investment

# Opportunity Zones



OBBA § 70421

# Opportunity Zones

- Qualified Rural Opportunity Fund:
  - Holds at least 90% of its assets in property:
    - Substantially all the use of and holding period was in a rural QOZ
    - QOF interest in a rural business in a QOZ qualifies
  - 100% of basis rule for substantial improvement to QOZ property reduced to 50% for rural property



# Opportunity Zones

- The bill provides for additional reporting requirements



# Managing 12/31/26 Forced Recognition

- Any capital gain deferred using TCJA QOFs will be recognized as taxable income on 12/31/2026.
- The capital gain deferred under TCJA OZ law retains its original character (e.g. deferred gain from the sale of a marketable security in 2019 is taxed as gain from the sale a marketable security as if it was sold 12/31/2026).
- Ideas to manage 12/31/26 forced recognition:
  - Charitable contributions
  - Business property investments
  - Loss harvesting
  - General partnership interests in oil and gas
  - Delaying income
- OBBBA QOF deferral is not available until 1/1/27

# Deferral of LTCG to 2027

## *Potential Ideas*

- IRC § 453 installment sales
- Charitable Remainder Trusts
- Volatility reduction for marketable securities:
  - Protective put options
  - Cashless or monetizing collars
  - Short sales against the box
  - Variable forward sales
  - Exchange funds

# QSBS Expansion

- The bill makes the following changes to the Qualified Small Business Stock (QSBS) exclusion:
  - Under current law, the 100% exclusion is available after a 5-year holding period; the legislation adds a tiered exclusion percentage for earlier sales:
    - After 3 years: 50%
    - After 4 years: 75%
    - After 5 years: 100%
  - Increases the exclusion from \$10,000,000 to \$15,000,000
  - Increases the corporate asset cap from \$50,000,000 to \$75,000,000
- The changes would generally be effective to stock issued or acquired in tax-years beginning after enactment

# QSBS Expansion

- Huge “sleeper” benefit in the bill
- Requires a fresh look at using Qualified Small Business Corporations
- Business entity selection decisions must include considering the value of the QSBS terminal exit benefit compared to the annual tax-cost of organizing as a C-corporation

# Conclusion