

2. With regard to the **administration of decedent estates**, remember that there are specific timelines and procedures that must be followed for every decedent. The successor trustee or personal representative is a fiduciary and has legal duties to the beneficiaries. Whenever a person becomes incapacitated or dies, the estate must be reviewed as soon as practical, and an inventory of assets should be made. Other important issues to be reviewed include the following:
 - i. If necessary, a 706 estate tax return, including a portability return, must be filed or extended within **9 months** of a decedent's death.
 - ii. The decedent's Last Will and Testament must be admitted to the probate court within one year of the decedent's death. Please confirm that you are in possession of your original will.
 - iii. Trustees must give a formal **notice** to certain beneficiaries within 120 days of the settlor's death or in the event that a trust becomes irrevocable.
 - iv. Timelines with regard to creditors must be adhered to.
 - v. Proper settlements and distributions must be made in order to relieve the trustee of liability and wrap up the administration. If these actions are not taken the trustee will **remain liable** to the beneficiaries.
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NOTABLE TAX STRATEGIES

1. The Secure Act still controls the administration of retirement laws, under IRC 401 (a)(9), especially regarding beneficiary distributions. The final regulations to the Secure Act have been issued and as a result some new strategies for transferring retirement plan assets through trusts have been clarified. Generally, the ten-year distribution rule will apply where the IRA/plan is left to an individual or to a trust that qualifies as a see-through trust (which may be further classified as a conduit trust or an accumulation trust), and requires that all assets be distributed from the IRA/plan no later than December 31st following the tenth calendar year of the plan participant's death. Exceptions to the ten-year rule exist for eligible designated beneficiaries. **The final regulations clarify the use of an age 31 accumulation trust, a last person standing trust, the disregard rules pertaining to the countable beneficiaries of a trust, trust modifications, and the exercise of various types of powers of appointment.** In light of these changes, you should review your beneficiary designations to ensure they comport with your estate planning goals.
2. If you are charitably inclined, you may want to make **charities the beneficiaries of the retirement accounts** to maximize the tax benefits.
3. 529 plans are a way to transfer assets to a beneficiary to be used for **qualifying educational expenses**. Each contributor may transfer the amount of their annual gift tax exclusion (\$19,000) to a 529 plan or front load the contribution equal to 5 times the exclusion (\$95,000). The funds can be used for post-secondary expenses such as tuition and fees, books and required school supplies, room and board, and computers, as well as certain other options such as student loan payments and elementary and secondary school tuition (with certain limitations). In the event the beneficiary does not use the funds, the owner may be transfer it to another family member for their educational use. There is also an option, if an account has been open for at least 15 years, to roll up to \$35,000 into a Roth IRA for the beneficiary of the 529 plan.

4. The law has not changed regarding a surviving spouse's ability to use his or her deceased spouse's unused exemption amount (DSUE), which is commonly referred to as a "portability election". This strategy allows a surviving spouse to carry over, or "port", the **unused basic exclusion amount that the deceased spouse did not use**. In this way, the surviving spouse may use both the survivor's and the deceased spouse's unused estate tax credit at the time of the surviving spouse's death. A portability election must be made on the deceased spouse's 706 estate tax return. The period by which a 706 may be filed for only portability purposes (meaning it was not otherwise required) has been extended to 5 years after the decedent's death, although it is always preferable to file within the standard 9-month period if possible.

ESTATE, GIFT, AND GST TAXES

We are happy to report that the federal estate tax, gift tax, and generation-skipping tax laws have generally remained stable and only reflected small adjustments for 2026. Accordingly, the general 2026 federal exclusions, deductions, and rates are as follows:

1. Estate, gift, and generation-skipping transfer tax exclusion = **\$15,000,000**. Accordingly, each married couple may transfer **\$30,000,000** at their death or during their life in 2026.
2. Annual gift tax exclusion = **\$19,000** total per individual recipient. As a reminder, if you exceed that, you are required to file a Form 709 Gift Tax Return.
3. Basis Reporting Requirements. After death, if your estate is taxable, the executor/trustee of an estate that is taxable (over \$15,000,000) is required to file a 706-estate tax return and must **report the basis** of all assets transferred to the beneficiaries. This basis reporting requirement is satisfied by the executor filing Form 8971 so that the IRS may track the capital gains step up or carry over attributable to the beneficiaries on the assets received at the decedent's death.
4. Any person who is administering an estate or irrevocable trust must remember that a **1041 fiduciary tax return** is required to be filed annually. Fiduciary income tax rates are compressed (reaching the highest 37% rate after \$16,000 of income in 2026) and distributions should be planned. The new rates are applicable to the taxation of irrevocable trusts, such as marital and residuary trusts, as well as probate estates.

MISSOURI TRUST & PROBATE LAW

The Qualified Spousal Trust ("QST") statute was amended the 4th time and became effective on August 28, 2024. The statute grants **bankruptcy exemption** to the assets titled under the trust name, subject to the Federal Bankruptcy Code. The amendment also addressed how an asset in a QST can be titled in order to **designate the share** in which the asset is to be held (e.g., husband's, wife's, spouses', or joint). For all married couples in Missouri, the use of a QST is still recommended based on the creditor protection granted from an individual spouse's creditor. Separate shares may also be established in order to **allocate** each spouse's, basic estate tax exemption, capital gains basis, and generation-skipping transfer tax exemption rather than relying on traditional joint ownership allocation rules. Importantly, the statute grants the surviving spouse **exemption from the creditors who existed at the time of the death of the first spouse** to die. This exemption is specifically granted to those spouses that use a QST. The exemption applies to the assets in the trust at the date of the

death of the first spouse to die and should be segregated from new assets transferred to the trust after the first spouse's death by a pour over, post death transfer, or post death addition. Accordingly, all QST's should be amended to provide for the treatment of assets transferred to a QST after the death of the first spouse.

SUMMARY

Based upon the legal changes that have occurred, all clients should come in to review their estate plans and get the following updates:

1. All joint trusts should be **amended to provide for the additions, pour overs, and post death transfers** to the trust in order to segregate those assets from the assets in the trust at the date of the first spouse's death. This is important to clearly preserve the creditor protection in the assets that were in the trust at the time of the first spouse's death.
2. **Retirement plan language** should be updated to include the options under the final regulations, particularly if you have minor children. And review your beneficiary designations.
3. Based upon the need to find qualified experts and medical doctors who can declare a person incapacitated the **incapacity clause of all trusts should be amended**.
4. The **trustee powers clause (and durable powers of attorney and wills) should be amended** in order to provide for the administration of digital assets including cyber currency.

Whenever there is a **change in the family dynamics or estate assets**, a review of all of the estate planning documents, titling and beneficiaries of assets, and ownership of business interests should be conducted.

It is impossible to know what is right for every person's estate without reviewing the exact facts and circumstances of that person's life. Every plan is different and should be **customized to accommodate** the wishes and desires of the individual, and we recommend that everyone take responsibility to review their estate plans on a regular basis to ascertain if the existing plan still meets their needs and fulfills their wishes.

Please call our office or contact Rachel Hayes at rachel@magliaripc.com if you wish to make an appointment. We look forward to hearing from you!

