

Estate Planning and Tax Updates: 2026 Trends and Heckerling Insights

By Mark R. Brown and Christopher Weeg

The 2026 Heckerling Institute on Estate Planning (“Heckerling”) emphasized the significant shift in the estate planning landscape. With the One Big Beautiful Bill (“OB BB”) making high estate and gift tax exemptions permanent, the planning conversation has moved away from “use it or lose it” sunset planning and toward step-up in basis planning. At the same time, the IRS continues advancing aggressive theories in audits and litigation, often targeting common techniques such as intrafamily promissory notes, portability elections, GRATs, and trust terminations and modifications. This article summarizes several key developments and practice takeaways highlighted at Heckerling.

Effective January 1, 2026, OB BB permanently set at \$15 million the base lifetime estate and gift tax exclusion for individuals, or \$30 million for married couples through portability of the deceased spousal unused exclusion (DSUE), with inflation indexing beginning in 2027. The annual gift tax exclusion remains \$19,000 for 2026. This change to the lifetime estate and gift tax exclusion decreases the necessity to utilize lifetime strategies to reduce estate taxes for many clients. Instead of concerns related to transfer tax minimization, the more important tax planning issue is now preserving or creating estate inclusion for asset step-up in basis at death. The shift towards income tax planning leads advisors to consider techniques such as adding general powers of appointment or modifying or terminating irrevocable trusts. But those techniques may carry unexpected transfer tax risk of their own.

The risk of unexpected gifts is illustrated by CCA 202352018, where the terms of an irrevocable grantor trust for descendants were modified, with beneficiary consent, to add a discretionary tax reimbursement clause benefiting the settlor. The IRS concluded that the beneficiaries had made taxable gifts by consenting to the trust modification. Whether or not one agrees with the analysis, the practical lesson is clear: beneficiary consent is no longer a casual feature of trust modification planning. Even changes that appear administrative or benign may be recast by the IRS as gratuitous transfers. Depending on the facts and governing law, independent actions by a trustee or trust protector (such as decanting) may present a safer approach.

Portability of the DSUE also remains valuable, but *Estate of Rowland v. Commissioner*, T.C. Memo. 2025-76, shows how

unforgiving the procedural rules can be. In *Rowland*, the estate of a predeceased spouse filed a late return to elect portability, but the return did not provide sufficient valuation and descriptive information for certain assets to use the simplified reporting method. The Tax Court held that the return was not “complete and properly prepared” and denied the portability election. The case is a useful reminder that relaxed reporting rules are limited and should not be treated as a shortcut when valuation matters to the amount passing to nonmarital or noncharitable beneficiaries. Practitioners should carefully follow the filing instructions for a portability election and keep in mind that the statute of limitations on assessment does not bar the IRS from reviewing the first deceased spouse’s return to determine the correct DSUE amount.

Promissory notes also remain under scrutiny, particularly involving intrafamily transactions. In *Elcan v. Commissioner*, T.C. Docket No. 3405-25 (Petition filed March 14, 2025), the IRS argues that GRAT annuity payments were improperly satisfied with promissory notes, causing the GRAT to fail from inception and allegedly producing a taxable gift of the full amount originally contributed to the GRAT. Whether the government ultimately prevails, the case is a warning against transactions that look like note substitutes for actual annuity payments. By contrast, *Estate of Galli v. Commissioner*, T.C. Docket Nos. 7003-20 and 7005-20 (March 5, 2025), involved a more conventional intrafamily loan. There, the note was documented, interest was paid, and the lender reported the interest income on her personal tax return. The court declined to recharacterize the loan as a gift on the existing record. Taken together, the cases reinforce an old but increasingly important point: documentation, payment history, and economic substance matter, but even careful note planning can attract close IRS attention.

Heckerling presenters also highlighted unusual language in PLRs 202507005 and 202531005, both involving late GST allocation relief. In each ruling, the IRS suggested that a late allocation shifting interests in exempt and nonexempt shares might raise estate inclusion concerns under Sections 2036(a) (2) or 2038 or potentially implicating an estate tax inclusion period under Section 2642(f) of the IRC. Practitioners should be sensitive to drafting differences between exempt and non-

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exempt shares and may want to consider identical dispositive provisions, or powers granted through an independent trustee rather than tied directly to GST status.

Finally, a growing concern about family law issues impacting estate planning was emphasized at the conference. In *C.S. v. R.H.*, N.Y. Slip Op. 51426(U) (Sept. 8, 2025), a New York court treated assets in irrevocable trusts as marital property where the trusts held most of the couple's wealth, funded the marital lifestyle, and remained subject to substantial grantor control. The case is not Florida law, but it underscores that retained control and personal enjoyment can weaken the real-world value of irrevocable trust structures and lead to an unexpected result in a divorce proceeding.

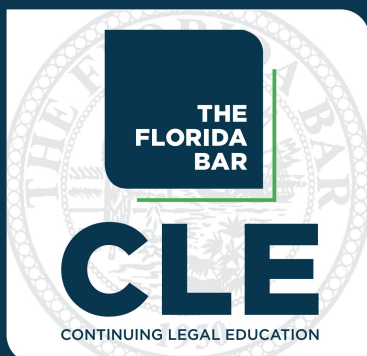
The key lesson from *Heckerling* is that permanent high exemptions have not simplified estate planning, rather changed the focus. Basis planning and technical execution now sit at the center of many engagements, while the IRS continues to test strategies with increasingly expansive theories.



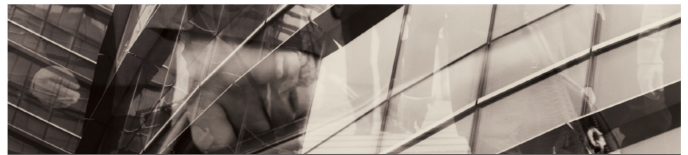
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