

25 Legal Tips in 50 Minutes

2025 Professional Advisor Symposium
October 2025

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**FILL OUT EVAL FORM to be
entered into THEME CONTEST!**



Winner will be announced via email next week.



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TIP #1 – Opportunity Zones Part Deux: Primer

- Originally Established by Tax Cuts and Jobs Act
- Enables investment of Capital Gains into Qualified Opportunity Zone Businesses or Property which, if held for 10 years or more, may be sold Capital Gains Tax Free
- Investments must be made in Opportunity Zones, of which there are 8,700 across the US
- Investments are Equity Investments
- Additional Tax Incentives, such as Deferrals and Reduction in Basis, Expired

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TIP #1 – OZ, continued: OBBBA

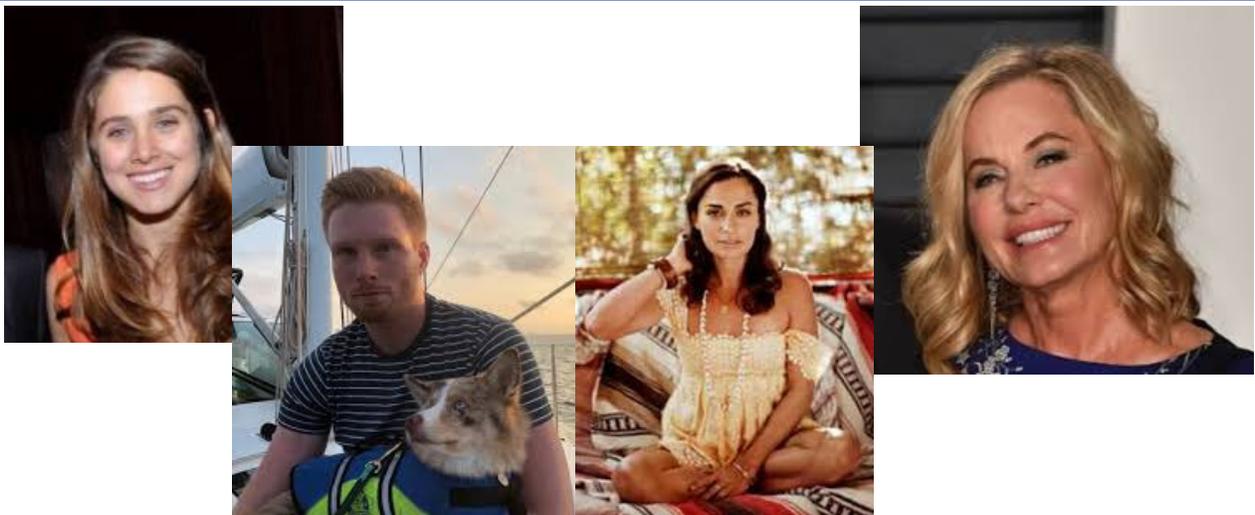
- Makes Opportunity Zone Program Permanent (not just a temporary benefit expiring in 2026)
- Current Zones sunset at end of 2026 and new zones are to be designated every 10 years
- Deferral and Step-up in basis reauthorized, and in cases of rural zones, are supercharged.



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TIP #2: Beneficiary Designations



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Designate Beneficiaries on Retirement Accounts!

- Need for Proper Communication: clients & advisors
- Primary Beneficiary Designations (normally, the **spouse**)
 - Loss of the Spousal Rollover for Traditional and Roth IRAs
 - Loss of spouse's ability to withdraw over lifetime (for Traditional IRA)
 - Loss of Spouse's ability to defer withdrawals altogether (for Roth IRA).
- Secondary Beneficiary Designations (most often, **children**)
 - Typically, the retirement benefits will default to the decedent's *estate*
 - Disadvantages: (1) shortens the period for withdrawing money; (2) not divided among multiple beneficiaries and (3) usually results in the income being taxed at a higher tax rate.

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TIP #3: Get Title Insurance



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Title Insurance Protects Investments

- To obtain title insurance, a title insurance agent must conduct a thorough investigation of the title.
- Protects investment from unknown liens and encumbrances.
- Verifies the chain of title and addresses any defects in title.
- Facilitates the preparation and recording of documents conveying title.
- Provides coverage for any undetected/undisclosed title defects, liens, and/or encumbrances.
- Can facilitate a smoother closing in the future.

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TIP #4: 50/50 – A Cautionary Tale

The Stage is Set

- Johnny A-LaCarte – Great Idea
- Buzz Cason – \$\$\$\$ and Connections
 - A business that can't miss
 - S-Corp, Online Articles and Bylaws, No Shareholder Agreement
 - 1,000 Shares, 500 each. No Owners' Agreement (sorry Jerry and Colleen)
 - Johnny is President and Secretary, and runs days-to-day operations
 - Buzz is Treasurer and deals with finances and sourcing the ingredients in their signature drink – gin... and ice.



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TIP #5: Understand Clients' Likelihood of Skilled Care



Understand Clients' Likelihood of Skilled Care

- About 70% of adults who survive to age 65 will need “long term supports and services.”
- About 50% of adults who survive to age 65 will need “long-term care.” (aka: skilled nursing care)
- Average duration for care = 3.6 years for women, 2.5 years for men.
- Nursing home care = 12,000+/month; \$432,000 for 3 years!!

TIP #6 – It's 5:00 Somewhere: Rolling OZ Deferrals and Basis Rules



TIP #6 – Rolling OZ Deferrals and Basis Rules

- Prior Investments in Opportunity Zones received a 10% step-up in basis if an investment was held for 5 years prior to 12/31/2026, and 15% if it was held for 7 years.
- Capital Gains invested in a fund after January 1, 2027 will receive a 10% Step Up in basis at the end of the 5 year rolling deferral period.
- Previously, the deferral date was fixed – December 31, 2026. The new OZ Law allows for a rolling 5 year deferral for capital gains invested after January 1, 2027 – meaning that you pay the tax on the capital gains initially earned and that were invested on the fifth anniversary of the investment into the fund.

TIP #7 – GIN-TOWN

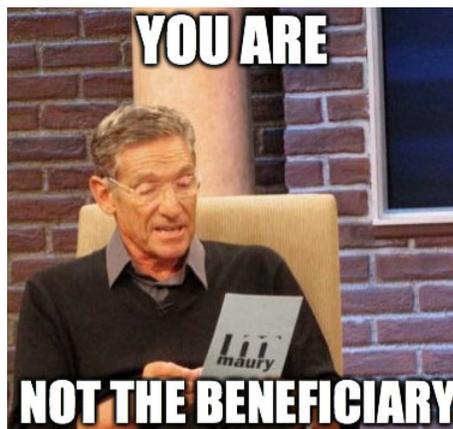
After 2 years, Gin-Town has 15 stores from Buffalo to Gary, IN.

- Tagline: Turning My Frown Upside Down in Gin-Town
- Johnny actively manages all stores and works 100% in the business
- Buzz spends 10% of his time in the business
- Both earn \$150k/year and reinvest all profits
- Johnny wants to invest in a house in St. Thomas, wants an increase
- Buzz says no?
- **Legal Options:** Information; Board Meetings

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TIP #8: Perform a Title Search



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Title Searches Verify the Status of Real Estate Investments

- **Common issues that arise when a title search is repeatedly not performed:**
 - Unknown judgments affecting title;
 - Mortgages that were never satisfied;
 - Unknown restrictive covenants;
 - Incorrect ownership designation;
 - Inappropriate estate administration (or lack thereof) resulting in unintended ownership;
 - Improper legal descriptions;
 - Unknown out-sales.
- **The longer a title defect goes uncorrected, the more difficult it can be to correct, requiring a quiet title or some other legal mechanism to be able to remove a cloud on title.**
- **Can result in not leaving real estate to intended beneficiaries and/or conveying issues instead of just real estate.**

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TIP #9 – Changes in Latitudes, Changes in Tax Attitudes – Rural Investment Kickers



TIP #9 – Rural Investment Kickers

- Rural Opportunity Zones– Meaning census tracts with 50,000 or fewer residents and not adjacent to urbanized zones or adjacent to a city or town with 50,000 or more residents.
- Qualified Rural Opportunity Funds (QROFs) – must invest up to 90% of funds into Rural Opportunity Zones
- Receive 30% step-up in basis at year 5
- Lowered substantial improvement investment required – 50% of original basis vs. 100% in standard OZ’s.

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TIP #10: Understand Medicaid Eligibility vs. Recovery



Understand Medicaid ELIGIBILITY vs. RECOVERY

- Medicaid eligibility = relates to the medical and financial eligibility of the applicant (and their spouse) at the time of applying for Medicaid.
 - Either \$2,400 or \$8,000 for applicant; up to \$155,000 for spouse
- Medicaid recovery = relates to the State(s) ability to collect unpaid cost after the death of the person who received Medicaid benefits.
- Some assets, like the primary residence, are excluded for MA eligibility but subject to MA recovery!

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TIP #11: Tax-Deferred Accounts for Charitable Donations



"I would, but I don't want to push you into a higher tax bracket."

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Tax-Deferred Accounts for Charitable Donations

- **Lifetime** gifts – Use retirement accounts to fund charitable donations, whenever possible.
 - **Why?** Because the donations effectively offset ordinary (higher taxed) income.
 - **Recommended:** Donate **directly** from a traditional IRA (“*Qualified Charitable Distribution*”) to the charity, because the donation is **excludable** from gross income.
 - **Advantages** of QCD:
 - *Federal Income Tax* - (1) If client does not itemize, clients still benefits from the exclusion; and (2) If client does itemize, it lessens phase-out of deductions (which are often based on client's income).
 - *PA Income Tax* – exclusion from income avoids state level income.
 - *Medicare Premiums* – QCDs do not trigger income-based surcharge in Medicare premiums.

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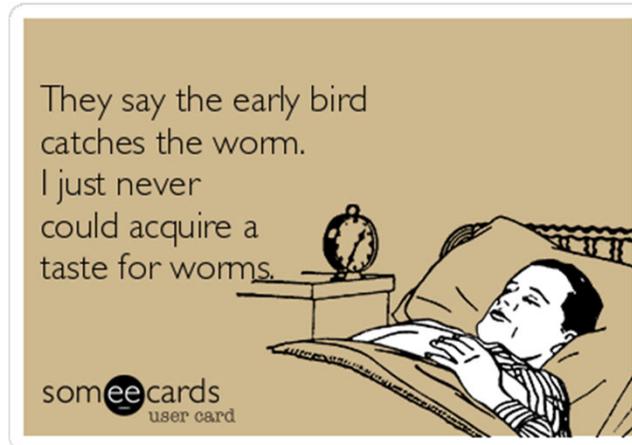
Tax-Deferred Accounts for Charitable Donations (continued)

- **Testamentary** Gifts (estate planning) – designate the charities as beneficiaries of tax-deferred retirement accounts and give the individual beneficiaries other assets that are not subject to income tax.
 - The charities are normally tax-exempt and therefore do not pay tax on the income received from the retirement accounts; and
 - The individuals receive “*after tax*” assets (through Will provisions or from other sources).

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TIP #12: The Early Bird Gets the Worm...



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... for MEDICAID PLANNING

- Time is one of the most critical factors for building wealth.
- The same is true for Medicaid planning!
- Having a 5+ year runway is ideal for pre-planning by getting assets “off the table” for the Medicaid calculation.

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TIP #13 – Gin-Town: On the Rocks???

- Economic up-turn
- Changes in circumstance, changes in affluence.
- Cap Grille comes in – Out with the Gin, in with the Dom.
- Johnny continues to work non-stop, but stores are stagnating. Profits continue to hold.
- Buzz becomes obsessed with the pirate industry of the great lakes, building floating museums in no-wake zones throughout Lake Erie, Lake Ontario, and Lake Huron.
- Johnny starts to notice financial irregularities.

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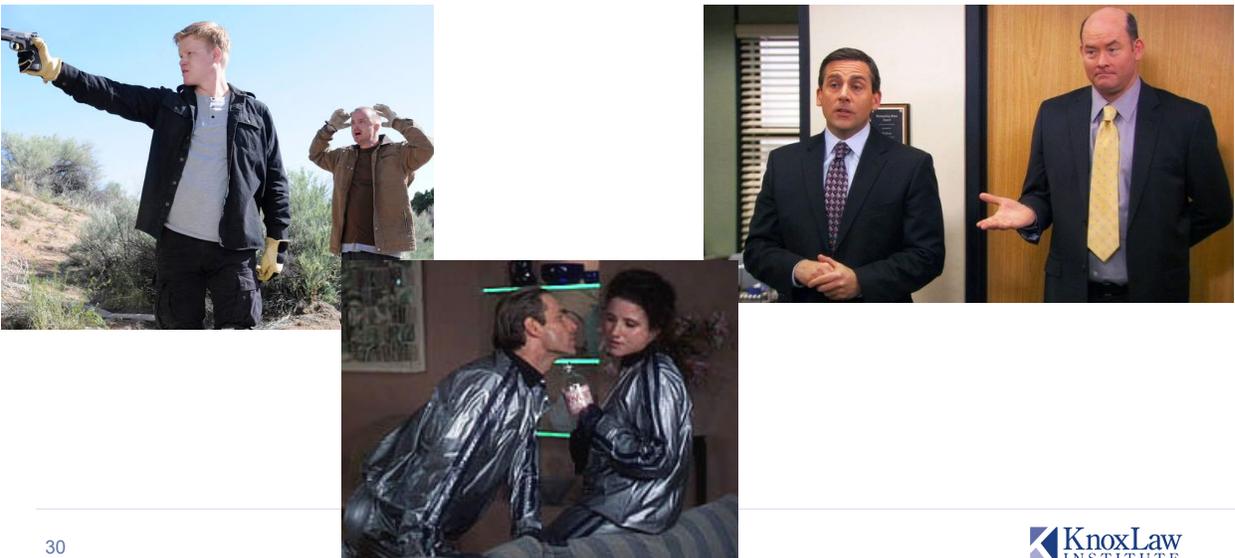
TIP #13, Continued

- Legal Options:
 - Legal action to obtain records
 - Creating record of potential malfeasance
 - If something is found, options for action.

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TIP #14: Beware: “TOD” Designations



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Do NOT Title Assets “TOD” without...

- Fully understanding all of the client’s circumstances and objectives.
- “TOD” designation effectively negates the client’s Will provisions with respect to that account.
- That can be okay in some circumstances, but it can also cause a lot of problems in other circumstances.

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How Problems Happen

- Clients don't always understand the *implications* of using TOD designations and how they may (or may not) affect their estate plan.
- Clients often do *not communicate* to the persons planning their estates that accounts are designated "TOD."
- Clients often *forget* that accounts have TOD designations and often fail to *update* them when circumstances change.

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When TOD Designations Can Be Useful

- If a client wants to give money to a person without drawing attention to it.
- If the client has *only one* intended beneficiary.

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When “TOD” Can Be Harmful

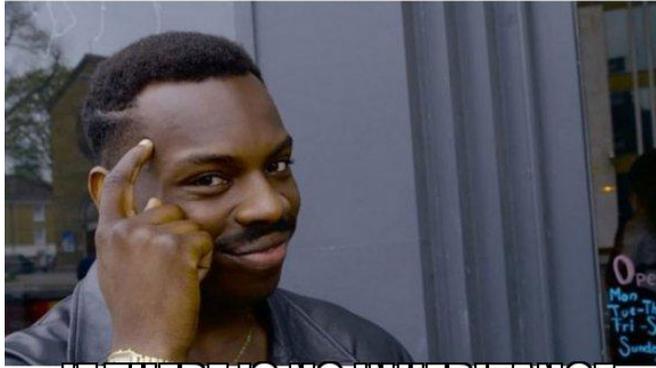
- The client intend to benefit persons (indirectly) *in trust* for some reason:
 - Underaged
 - Disabled
 - Alcohol or substance abuse problems
 - Bad at Managing money
- The TOD designations will effectively leave the estate *without sufficient funds* to cover inheritance tax and/or administrative expenses (especially if there are a lot of designated beneficiaries).

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TIP #15: Don't Bequeath a Headache

YOU CAN'T TAX INHERITANCE



IF THERE IS NO INHERITANCE

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Common Mishaps with Generational and Inherited Real Estate

- Real estate not properly transferred into the Trust;
- Decedent told a “beneficiary” that they would get the house when they passed – no will, no writing;
- Real estate never properly conveyed, of record, for several generations;
- Inheritance tax never paid – life estates, JTWRORS, other operation of law transfers;
- Unknown encumbrances/restrictions.

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TIP #16: Implications of Re-Titling Property



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Implications of Re-Titling Property

- Clients often expect that a realty transfer will be "problem-free," particularly if no money changes hands.
- The **Point**: Do not recommend to a client that property be re-titled without discussing the various **ramifications**.

Potential Problems with Re-Titling Property

- What could go **wrong**?
 - It could affect their ability to **continue living** in their home (e.g., if made to the wrong person or if made without reserving certain rights).
 - It can affect the client's ability to **control the disposition** of their home in the future.
 - It could affect their ability to **qualify for medical assistance** to pay for their nursing care (e.g., if made within 5 years of applying for MA).

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Potential Problems with Re-Titling Property (cont.)

- What could go **wrong**? (continued)
 - It could cause the client to **lose tax benefits**.
 - Loss of "*stepped-up*" (increased) tax basis (e.g., from lifetime gift)
 - Loss of *exemption* from capital gain on the sale of a residence (e.g., if the property is given to a person who is not living in the property when it is sold).

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Factors to Consider

- Client's cognitive state
- Client's family relationships
- Client's financial circumstances
- Whether the property is appreciated in value and, if so, by how much.
- How significant the property is in relation to the client's other assets.
- What other assets has the client already transferred?

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TIP #17: If You Loan Money, Even to Family, Protect Your Investment



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Title Insurance Isn't Just for Buyers

- **Document loans, even to family members so that there is no question as to terms and obligations:** Note, Mortgage, Loan Agreement, (Personal Guaranty if lending to an entity/Trust)
- **Secure loan obligations to increase recovery and disincentivize failure to repay:** Securing loan obligations can take many forms, including but not limited to Mortgages, Assignments of Leases and Rents, UCC-1s, etc.
- **Obtain title insurance to protect security from the following:**
 - Complications after death of the borrower;
 - Difficulty collecting on unpaid loans;
 - Having security divested by lienholders with priority;
 - Having recovery limited by others with interests in the property;
 - Have a documented and recorded interest in the asset which puts all other parties on notice;
 - Protects repayment security for any heirs should you predecease the repayment.

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TIP #18 – Gin-Town: On the Rocks???



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TIP #18 – Gin-Town: On the Rocks???

Johnny blows out his red crocs, stepped on some sharp rocks.

- Johnny can't work but continues to own 50%.
- Buzz has lost all other investments – no booty in floating museums.
- Buzz unilaterally hires a new management company.
- While Johnny was incapacitated, Buzz reduced shareholder salaries to \$25,000 by noticing a board meeting that Johnny could not attend.
- Despite steady business, financials show no profit.
- Johnny has concerns that Buzz is now drastically diverting income.

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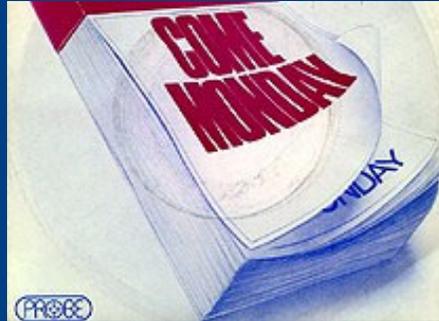
TIP #18 – Legal Options

- Forensic analysis
- Accounting
- Custodian
- Dissolution

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TIP #19: Come Monday, You'll Be Reporting



TIP #19 – You'll Be Reporting

- Traditional OZ investments had no real reporting requirements
- There was no public disclosure necessary to identify or track an investment as an OZ investment, other than filing a 9886 with the IRS
- Increased Transparency
- New reporting requirements include filing of detailed tax return identifying the investment, jobs, etc.
- IRS will be issuing an annual report regarding the number of funds, and the impacts and outcomes of investments by census tract on a pre-OZ designation vs. post-OZ designation basis

TIP #20: Understand When Medicaid Planning is (Likely) Not an Issue



TIP #20: Understand When Medicaid Planning is (Likely) Not an Issue

- More money = less concern re Medicaid planning.
- Clients with a net worth of \$1.5 million + will almost certainly have the resources to pay for their care for the rest of their lives.
 - Also, clients with high income in retirement are much better positioned to absorb increased costs.
- CAUTION: CONSIDER THE PORTFOLIO
 - Does the family want to keep assets in kind (like, a family lake home or hunting camp)?

TIP #21: Talk to an Attorney/Title Insurance Agent About Your Options



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Not All Transactions Are One-Size Fits All

- Before you act, discuss options.
- Avoid issues with improper designation and gifting to intended beneficiaries.
- Verify that title is clean and that the property is being conveyed without defect.
- Obtain appropriate approvals and information to best secure investments.
- Obtain special endorsements for title policies depending on the type and location of property.

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TIP #22: Compass Points and Captains Log - Opportunity Zone Takeaways



TIP #22 – Opportunity Zone Takeaways

- If you earn \$100,000 in Capital Gains and invest them in a QOF after January 1, 2027, you can:
 - Defer Payment on the Capital Gain Tax for 5 years
 - Earn 10% Step-up in Basis for Traditional OZ investments, 30% Step-up in Basis for Qualified Rual OZ Investments
 - Sell your equity in the project after 10 years – CAPITAL GAINS TAX FREE
 - **SUPER ROTH**
- You should expect:
 - Heightened Reporting to the IRS
 - Heightened Transparency in the investments
 - Detailed Reports on the economic viability of Zones

TIP #23: Federal Estate Tax Returns

Year	Exclusion Amount	Year	Exclusion Amount
2016	\$5,450,000	2021	\$11,700,000
2017	\$5,490,000	2022	\$12,060,000
2018	\$11,180,000	2023	\$12,920,000
2019	\$11,400,000	2024	\$13,610,000
2020	\$11,580,000	2025	\$13,990,000
		2026	\$15,000,000

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What NOT To Do:

- Do **NOT** tell a client NOT to file a federal estate tax return just because a decedent's estate is (slightly or moderately) below the Federal Estate Tax Exemption.
- **NOTE:** We are **NOT** talking about estates that consist of a few hundred thousand dollars or even several hundred thousand dollars.
- We **ARE** talking about estates that are worth several millions of dollars, even if they are well below the threshold.

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Reasons to File – When the first spouse dies

- File a federal estate tax return to "**port**" (transfer) the first spouse's "applicable exclusion" (i.e., exemption) over to the surviving spouse, effectively "locking in" the exemption for the second spouse's estate.

- That could be important:
 - If the asset values *increase* in the future; or
 - If the exemption amount is *lowered* in the future.

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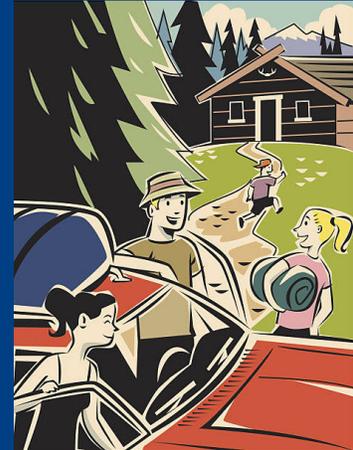
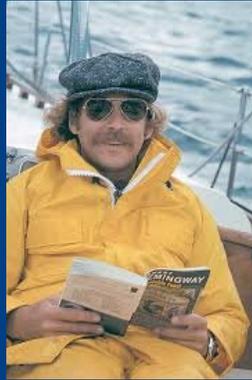
Reason to file – when the second spouse dies

- Filing a federal estate tax return effectively starts the *statute of limitations* on the decedent's tax filing obligation.
- That could be important if the estate has assets that are *difficult to value* or if the executor takes an *aggressive* tax return position that could be later disputed by the IRS.
- If no tax return is filed, the statute remains open!

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TIP #24: Family Involvement and Lifetime Gifting



TIP #24: Family Involvement and Lifetime Gifting

- The best outcomes for asset protection and smooth wealth transfer to the next generation occur when the family is involved.
- Lifetime gifts CAN be a meaningful part of a client's wealth management plan. Don't let Medicaid eligibility scare you – we just need to make a plan. 😊

TIP #25: Smooth Sailing?

It's 5 o'clock somewhere...



**FILL OUT EVAL FORM to be
entered into THEME CONTEST!**



Winner will be announced via email next week.



Thank You!

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Jeff Scibetta
Tim Wachter

Attorney Bios:



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