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KSCPA – Tax and Estate Planning Update

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Kansas Updates

- Community Property Trust Act
- Grantor Trust Reimbursement

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Kansas Community Property Trust Act

- **What Is a Community Property Trust?**
  - A joint trust that allows a married couple in a separate property state to elect community property treatment for assets owned by the trust.
- **What Is Community Property?**
  - A form of marital ownership in which each spouse has a present one-half ownership interest in most income, assets, and debts earned or incurred by either spouse regardless of legal title.

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Kansas Community Property Trust Act

- **Why It Matters: I.R.C. § 1014(b)(6)**
  - For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent…
  - Property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State…, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate.
    - Only the deceased spouse's ½ of community property is included in the decedent's taxable estate.

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Kansas Community Property Trust Act

- **Requirements:**
  - (1) **Express designation.** The trust must expressly declare that it is a Kansas community property trust.
  - (2) **Qualified trustee.** At least one trustee must be a Kansas resident or a company authorized to act as a fiduciary in Kansas. That trustee's powers must cover maintaining trust records and preparing, or arranging preparation of, required trust income tax returns.
  - (3) **Signatures.** Both spouses must sign the agreement.
  - (4) **Statutory warning.** The trust agreement must contain a specific warning concerning extensive consequences for marital and divorce rights.

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Kansas Community Property Trust Act

- THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE.

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Kansas Community Property Trust Act

- **Consequences of Community Property Status:**
  - **Management.** The agreement determines management and control of trust property.
  - **Amendment.** The trust generally may not be amended or revoked unless specifically authorized in the agreement. Either spouse may nevertheless amend the disposition of that spouse's half at death.

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Kansas Community Property Trust Act

- **Divorce.** Upon dissolution of marriage, the community property trust terminates and the trustee must distribute ½ of the trust's assets to each spouse. Special rules address division and pending dissolution proceedings.
- **Creditors.** One spouse's obligations can reach that spouse's half; joint obligations incurred during marriage can reach the trust property.

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Kansas Community Property Trust Act

- **Death.** Half of the aggregate value belongs to the surviving spouse; the other half is subject to disposition by the deceased spouse.
  - The Act does not prohibit the surviving spouse from granting the deceased spouse a power of appointment over the surviving spouse's ½.

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Kansas Community Property Trust Act

- **Use Cases:**
  - Selective use for some, but not all, assets
  - Appreciated marketable securities
  - Depreciated farm machinery
  - Rental properties
  - Old S corporations

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Grantor Trust Reimbursement

- Under new **K.S.A. 58a-816(28)**, unless the trust's terms provide otherwise, the trustee may reimburse the settlor for the portion of the settlor's income-tax liability attributable to the trust under I.R.C. § 671.
- **Consequently:**
  - **An express reimbursement clause is unnecessary.** No need to modify or amend the trust.
  - **Reimbursement is discretionary.** The statute does not give the grantor an automatic right to payment.
  - **Contrary trust provisions control.** An express prohibition on reimbursement overrides the default.
  - **Fiduciary standards.** The trustee's exercise of statutory powers remains subject to fiduciary duties.

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Grantor Trust Reimbursement

- **Creditor Concerns**
  - As amended, **K.S.A. 58a-505(a)(2)** prevents a settlor's creditor or assignee from reaching trust property **solely because** the trustee has discretionary authority to pay or reimburse the settlor's taxes on trust income or principal.
  - This is a specific exception to Kansas's general rule permitting creditors to reach amounts distributable to or for the benefit of an irrevocable trust's settlor.
- **Estate / Gift Tax Concerns**
  - The grantor's payment of the tax without reimbursement is not a gift to the beneficiaries.
  - The existence of the power alone does not cause estate inclusion.
  - Mandatory reimbursement, pursuant to the trust agreement or state law, causes inclusion of the entire trust estate.
  - An express or implied reimbursement arrangement or the grantor's ability to appoint himself or a subordinate individual as successor trustee may cause concern.

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Federal Updates

- OBBBA Exemption Increase
- IRS Enforcement Action
- Additional OBBBA Provisions
- Recent Cases of Interest

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OBBBA Exemption Increase

- **2017 TCJA**
  - Temporarily increased gift / estate / GST exemption amounts to $10 million, indexed for inflation.
  - Provisions were due to sunset effective January 1, 2026.

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OBBBA Exemption Increase

- **2025 One Big Beautiful Bill Act**
  - Permanently increased gift / estate / GST exemption amounts to $15 million, indexed for inflation, effective January 1, 2026.
- **2027 Inflation-Adjusted Amounts**
  - $15,480,000 Gift / Estate / GST Exemption
  - $20,000 Annual Exclusion
  - $201,000 Noncitizen Spouse Annual Exclusion

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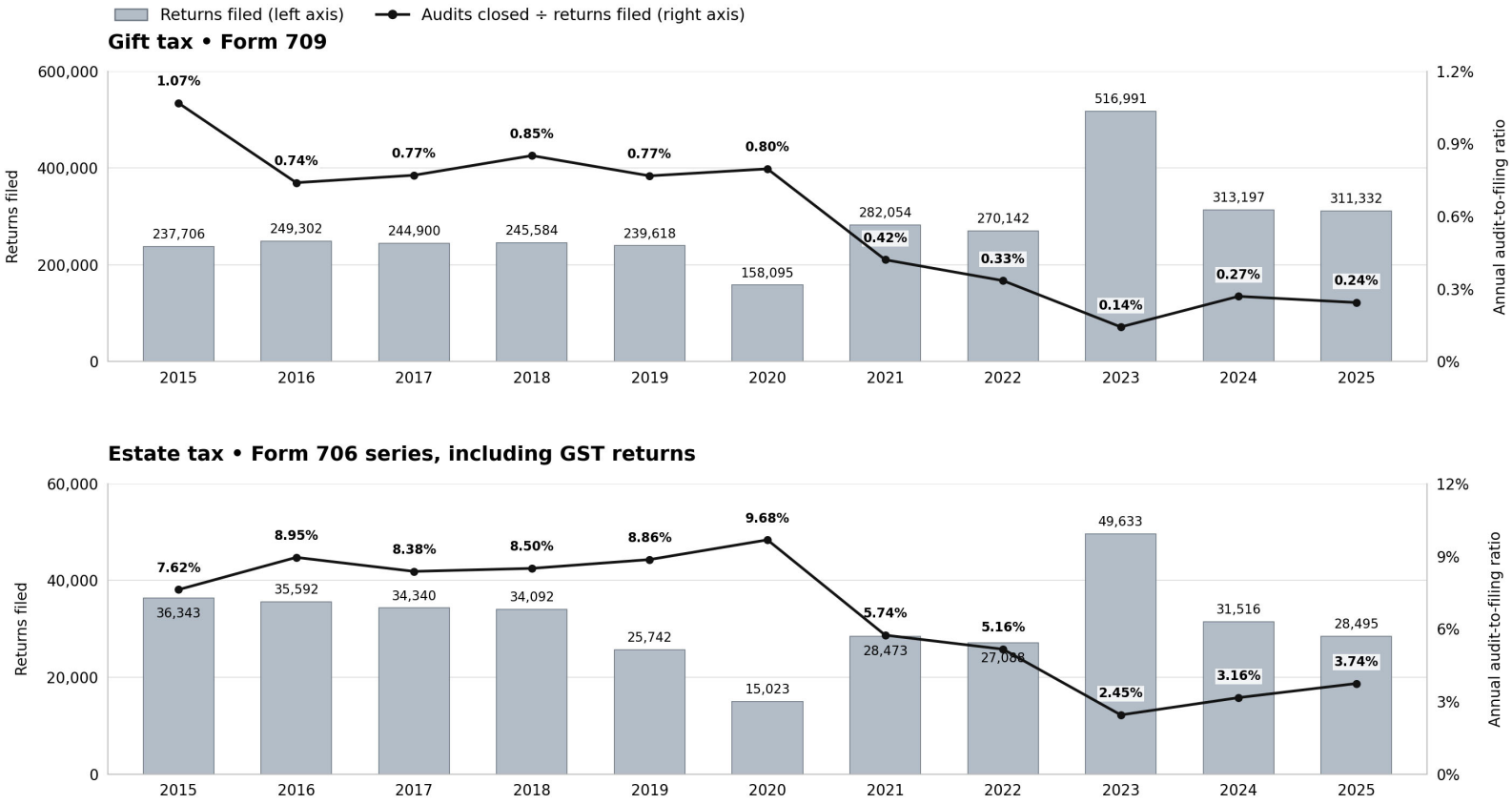
IRS Enforcement Action

Gift and estate tax filings & audit activity

IRS fiscal years 2015–2025 • Bars: returns filed • Lines: annual audit-to-filing ratio



Measure: audits closed during each fiscal year ÷ returns filed during that same fiscal year × 100.

This activity ratio is not the eventual audit probability of returns filed in that year; audits generally concern earlier filings.

Fiscal year ends September 30. "Prepared" is measured by IRS returns filed/processed. Filing backlogs can affect annual counts.
Estate filing counts cover the Form 706 series; the audit table covers Form 706. The estate ratio is therefore approximate.

Sources: IRS Data Books 2015–2025. Filings: Table 3 (2015–2016); Table 2 (2017–2024); Table 1-2 (2025).
Audits: Table 9a (2015–2018); Table 17b (2019); Table 18 (2020–2024); Table 3-2 (2025). irs.gov/statistics/soi-tax-stats-all-years-irs-data-book

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OBBBA Exemption Increase

- **Planning with Higher Exemptions:**
  - For years, the focus was on getting assets out of the taxable estate.
  - Now, the focus is on causing estate inclusion to obtain a stepped-up basis.
    - Termination of old trusts
    - Modification to add a contingent general power of appointment
    - Upstream powers of appointment

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Additional OBBBA Provisions

- **Permanent Reduction in Tax Brackets**
  - Permanently extends the TCJA individual income tax rates, including the 37% top marginal rate.
  - Standard deduction increased in 2025 to $31,500/$23,625/$15,750, indexed for inflation.
- **SALT Cap Temporarily Increased**
  - $40,000/$20,000 for 2025.
  - 1% annual increase 2026–2029.
  - Reverts to $10,000 for 2030.

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Additional OBBBA Provisions

- **Permanent Above-the-Line Charitable Deduction**
  - Permanently allows taxpayers who claim the standard deduction to deduct up to $1,000, or $2,000 for married taxpayers filing jointly, of qualifying cash contributions.
  - Noncash gifts and contributions to donor-advised funds or supporting organizations do not qualify. **Effective 2026.**
- **New 0.5% Floor for Itemizers**
  - Charitable contributions are deductible only to the extent otherwise allowable contributions exceed 0.5% of the taxpayer's contribution base (generally AGI computed without an NOL carryback).
  - The floor applies to cash and noncash contributions, including otherwise deductible gifts to donor-advised funds. **Effective 2026.** I.R.C. § 170(b)(1)(I).

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Additional OBBBA Provisions

- **Permanent 60% Limit for Cash Gifts**
  - Makes permanent the 60%-of-AGI ceiling for cash contributions to qualifying organizations, which would have expired after 2025.
  - The 60% AGI cap applies to cash donations made to 501(c)(3) public charities, including donor-advised funds (DAFs).
  - Cash gifts to private foundations remain capped at 30% of AGI.

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Additional OBBBA Provisions

- **New Credit for Scholarship Contributions – I.R.C. § 25F**
  - **Credit Amounts:**
    - Up to $3,400/$1,700 for qualified cash contributions. Nonrefundable. **Effective 2027.**
  - **How It Works:**
    - Donors make cash contributions to approved Scholarship Granting Organizations (nonprofits that manage and distribute scholarship funds).
  - **Eligible Uses:**
    - Scholarships can cover a broad range of K–12 expenses, including private school tuition, tutoring, special-needs services, books, computers, transportation, and qualifying public-school assistance services.
  - **Eligibility:**
    - Students whose household income is under **300% of the area or county median gross income** generally qualify to apply for support through participating SGOs.
  - **State Participation:**
    - The program requires states to opt in.
    - The State Treasurer currently anticipates compiling the **2027 Kansas SGO list by February 15, 2027.**

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Recent Cases of Interest

- ***McDougall v. Commissioner*, 163 T.C. 112 (2024), and *Lewis v. Commissioner*, T.C. Memo. 2026-58**
  - **Facts:**
    - Wife created a QTIP trust for Husband under her estate plan, providing Husband a lifetime income interest with the remainder passing to her two children.
    - In 2016, Husband and the two children executed a nonjudicial settlement agreement, terminating the trust early and distributing its assets (valued at roughly **$117.6 million**) outright to Husband. Husband then exchanged a portion of the assets for promissory notes from trusts for the benefit of the children.
    - The family reported the transactions as offsetting reciprocal gifts resulting in no net gift tax.
  - **Why It Matters:**
    - The Tax Court held Husband did not make a taxable gift under I.R.C. § 2501 or § 2519 when the trust was terminated and assets were distributed to him.
    - The court ruled the children made taxable gifts to their father under I.R.C. § 2511 by surrendering their remainder interests in the QTIP trust.
    - In the follow-up decision, the Tax Court determined the value of the children's gifts was governed by state property law rather than federal actuarial tables under I.R.C. § 7520. Ultimately, the court concluded that each child made a taxable gift valued at **$35,141,321**.

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Recent Cases of Interest

- ***Estate of Fields v. Commissioner*, 178 F.4th 895 (5th Cir. 2026), aff'g T.C. Memo. 2024-90**
  - **Facts:**
    - Shortly before Fields died from end-stage Alzheimer's disease, her great-nephew and agent under a power of attorney, Bryan Milner, transferred roughly **$17 million** of her assets into a newly formed limited partnership. $2.15 million remained outside the partnership.
    - Fields died ten days after the final transfer. After she passed, the estate reported her 99.9% limited partnership interest at roughly **$10.8 million**, claiming a 36.5% valuation discount for lack of control and marketability.
    - Partnership distributions were made to fund bequests and pay estate tax.
  - **Why It Matters:**
    - The IRS audited the return and rejected the discount under **§ 2036**, arguing the assets remained part of Fields's gross estate because the partnership lacked a genuine, non-tax business purpose and was merely a tax-reduction vehicle.
    - Both the U.S. Tax Court and the Fifth Circuit Court of Appeals ruled against the estate, holding that the full value of the transferred assets must be included in the gross estate and sustaining a **20% accuracy-related penalty**.

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Recent Cases of Interest

- ***Estate of Rowland v. Commissioner*, T.C. Memo. 2025-76**
  - **Facts:**
    - Wife died in April 2016 with an estate below the filing threshold ($5,450,000). Executor obtained an extension to file Form 706, but did not actually mail the return until December 2017.
    - The late return relied on estimated totals rather than individual fair-market-value valuations. The return also improperly attempted to use "relaxed reporting" rules for marital/charitable property, despite a portion passing to trusts for grandchildren.
    - When Husband died in January 2018, his estate claimed a DSUE of $3.7 million ported from Wife's estate.
  - **Why It Matters:**
    - The IRS disallowed the DSUE portability claim because Wife's estate tax return was both "untimely" and incomplete/improperly prepared.
    - The Tax Court sided with the IRS, resulting in Husband's estate facing roughly $1.5 million in additional tax deficiencies.

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Recent Cases of Interest

- ***Pierce v. Commissioner*, T.C. Memo. 2025-29**
  - **Facts:**
    - The taxpayer transferred interests in an LLC taxed as an S corporation through gifts and sales involving irrevocable trusts. The court accepted tax-affecting the company's earnings using a **26.2% hypothetical entity-level tax rate**, supported by the expert's calculations. It also analyzed the appropriate valuation discounts and other assumptions.
  - **Why It Matters:**
    - This is useful authority when valuing pass-through business interests transferred to trusts. It supports a properly substantiated tax-affecting analysis—not an automatic entitlement to a particular rate or discount.

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Thank You

QUESTIONS?



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