Take-Away: I was asked to share my thoughts on the impact of the election of Mr. Trump as President on the future of estate planning. Frankly, I'm not smart enough to form any opinions, but I confess that I do read lots of articles where others have no problem coming up with their own thoughts and predictions (for which they are never held accountable!) From that reading I have formed a couple of conclusions, none of which will come as a surprise.

Background: We currently have a favorable environment for estate planning and wealth shifting strategies.

> **Gigantic Transfer Tax Exclusions:** With the 2017 Tax Act we have massive federal transfer tax exclusions that can be used to shift wealth to others with no tax. In 2025 each individual's applicable exemption amount is pegged at $13.99 million. A lot of wealth can be moved to others with no tax if that exclusion is used intelligently.
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> **Low Interest Rates:** With the Federal Reserve starting to cut interest rates, wealth leveraging strategies like grantor retained annuity trusts (GRATs,) charitable lead annuity trusts (CLATs), and intra-family loans all effectively work to shift wealth at little or no transfer-tax cost. Something as simple as an intra-family loan using the low AFR rate is capable of shifting wealth to individuals in lower marginal income tax brackets with little or no complications.
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> **Valuation Discounts:** Coupled with the low interest rates is the use of valuation discounts with lack of control, lack of marketability, or 'tax affecting' for S corporations. Using valuation discounts, wealthy individuals can remove even more wealth from their taxable estates

with the use of family limited partnerships (FLPs) and family limited liability companies (FLLCs), so long as the transferor gives up direct, and indirect, control of the transferred assets.

Charitable Gifts: Charitable remainder trusts (CRTs) will continue to be popular with those wealthy individuals who are philanthropically inclined, but who want to avoid capital gain recognition on their liquidity events, like the sale of a business or real property. For the less wealthy, they will continue to use charitable gift annuities (CGAs) to help their favorite charities, all the while generating charitable income and gift tax deductions. The IRS is looking closely at what it calls abusive charitable annuity remainder trusts (CRATs), but a conventional CRAT is probably not going to attract much attention from the IRS. These devices provide both an immediate income tax benefit, while shifting an appreciating asset out of the transferor's taxable estate.

Future Wealth Planning: While many of the above estate planning strategies were closely scrutinized during the Biden administration, and some like GRATs and *grantor* trusts were to be curtailed, not too many changes will occur during the upcoming Trump administration. Similarly, Treasury's on-going 'war' on the wealth transfer efficacy of *grantor* trusts, which are used to shift appreciation out of a grantor's taxable estate without capital gains recognition to the transferor, or to make an indirect gift to the trust's beneficiaries (through the grantor's payment of the trust's income tax liability), will probably dissipate with a Republican controlled Congress and the stated intent to hire 'loyalists' to run the Department of Treasury. However, many Republicans in Congress tend to feel that the lifetime transfer of appreciating assets to a *grantor* trust should not cause the transferred assets to receive a step-up in income tax basis on the grantor's death, as some commentators and taxpayers have argued.

2017 Tax Act Sunset: Probably the pressure to 'do something' before the end of 2025 to take advantage of the historically large applicable exemption amount ($13.99 million per person in 2025) which is scheduled to be cut in half come 1/1/26 will be much less with the election of Mr. Trump. With a Republican controlled Congress, there is a strong feeling that many of the income favorable provisions of the 2017 Tax Act will be extended, in part due to the increase in wealth (at least in some hands) due to the recent run-up in the stock market. Accordingly, there is a good chance those favorable transfer tax provisions will continue long after 2025 comes to an end. With some of that Act's income tax provisions, e.g., the $10,000 SALT limit on income tax deductions, the IRC 411 income tax deduction for many small businesses, they too will survive. The same with the large standard deduction tied to cost-of-living. Less clear will be some of the other changes in that Act that were meant to close perceived tax loopholes, e.g., where multiple trusts will be combined if they have similar provisions for the eligibility for some of the taxpayer friendly provisions, e.g., the IRC 411 small business deduction.

Federal Deficit: Whether the promised 20% across-the-board tariff that Mr. Trump proposes will generate enough tax revenue to off-set the loss of tax revenues if the 2017 Tax Act income tax provisions (tax rates, tax brackets, and itemized deductions) is continued, however, anyone's guess. Most economists who have looked closely at the proposed 20% flat tariff conclude that the estimated revenues generated by the planned tariff will not be sufficient to offset the loss of tax revenues if the 2017 Tax Act and many of its provisions are continued, and thus the tariff, without other changes to the Tax Code, will continue to add significantly to the federal deficit, which few in Congress want to talk about. However, as reported in a recent missive, the federal deficit continues to rise, [e.g., the interest paid on the federal deficit in the past fiscal year was larger than the combined federal budgets for Medicare and the Department of Defense] and there are practical limitations to how far income tax revenue reductions can go in the face of the spiraling national deficit. To this end, here are some bipartisan committees in Congress that are beginning to float some ideas to generate more income tax revenues, in addition to the proposed 20% flat tariff on all imported goods.

Comments: Obviously, no one can predict with certainty what will happen when the new Congress convenes in early January.

Sunset: I fully expect that many of the transfer tax provisions of the 2017 Tax Act will be extended, including an individual's large applicable exemption amount, and also the same with many, but not all, of that Act's income tax provisions.

Social Security: The cynic in me says that there will be no changes to the Social Security contribution levels, other than the slow creep of the SS reported income contribution ceiling, which is now around $170,000, until Congress finally realizes that the expected tax revenues from the proposed flat 20% tariff on foreign imported goods did not generate sufficient tax revenues to 'save' Social Security. [Sorry Mr. Trump.] Only then will Congress turn its attention to creating other tax revenue sources to address the Social Security shortfall, and maybe then, (doubtful) the spiraling national debt and in particular, regarding the annual interest obligation on that national debt.

Roths: My biggest fear is regarding Roth retirement accounts. The owners of Roth accounts are promised lifetime tax-free income, which is why there are thousands of articles that now preach back-door Roth IRAs, Roth IRA conversions, and Roth 401(k) accounts. Many of the SECURE 2.0 Act's provisions encourage, or frankly force, Roth contributions (e.g. make-up contributions for high earners), in order to accelerate the income tax revenue with a Roth contribution. But we also know that Congress can 'change its mind' whenever it wants. When I was practicing many clients named their grandchildren as the beneficiaries of their Roth IRAs, with the intent that their grandchild could receive tax-free income from the inherited Roth IRA over the grandchild's lifetime. Well, with the SECURE Act, that grandchild can only receive tax-free income over 10 years- Roths were not eliminated, just the rules that 'capped' the tax-free income to 10 years. I worry that with the growing federal deficit and the perceived threat to Social Security solvency, that at some point in the next 3 to 5 years, Congress will have to find new sources of tax revenue, and an easy target will be the tax-free income generated by a Roth IRA. Accordingly, while the benefits of a Roth contribution or Roth conversion are real, those benefits could easily be curtailed by a Congress in its desperate search for additional tax revenues. In sum, I suspect it will be pretty much status quo when it comes to the rules regarding taxes, but only for a couple of years when Congress can no longer look the other way and 'kick the can down the road' to another Congress to address federal deficits and SS solvency. Of course, I could easily be wrong on all of these comments or predictions as well, they are just my opinions.