2026 Seminar for Accounting Professionals

November 18, 2026

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AI Evidence and Discovery Issues

Overview

- AI-generated illustrative aids
- Expert opinions using AI
- Privilege and Work Product risks arising from AI
- Discovery and AI chats as powerful evidence

Illustrative Aids – Federal Rule of Evidence 107

What is an illustrative aid?

The court may allow a party to present an illustrative aid to help the trier of fact understand the evidence or argument if the aid's utility in assisting comprehension is not substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or wasting time.

Is an illustrative aid evidence?

No.

Is an illustrative aid available to the jury during deliberations?

No, unless the parties consent or the Court orders otherwise for good cause.

How does an illustrative aid compare to a summary under Rule 1006?

A summary under Rule 1006 is evidence and can go to the jury room.

Illustrative Aids – Key Issues Arising From AI

An example of a problem caused by AI-generated illustrations.

A plaintiff in one case wanted to use AI-generated videos to compare two software programs in a copyright dispute. The narration described the software's functions and said there was a "mathematically infinitesimal" chance that the similarities were a coincidence. The plaintiff did not identify the narrators and could not account for "the seemingly AI-generated voices on at least 15 of the videos labeled 'invideo-ai." The Court held that the audio was hearsay and could not be used as evidence or as part of an illustrative aid. The Court allowed the visual component.

Automated Mgmt. Sys., Inc. v. Rappaport Hert Cherson Rosenthal, PC, 2024 WL 4987018 (S.D.N.Y. Dec. 4, 2024)

An example of a computer-generated animation being allowed even though it did not perfectly match the facts in the case.

Judge Gerrard allowed an animation to be used as an aid illustrating how air brake systems generally work, even though it did not perfectly match the truck at issue. The differences could be discussed on cross-examination if needed. The opinion does not specifically discuss if the animations were AI-generated.

Heil v. Batie Cattle Co., 2025 WL 224617 (D. Neb. Aug. 6, 2025).

Illustrative Aids – An example of substantial prejudice



Experts using AI

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Generally, distinguish between experts using AI to (1) generate their opinions, versus (2) helping illustrate or edit their opinions after they were formed.

In connection with a preliminary injunction hearing, a court excluded an expert report that cited two nonexistent articles and miscited the authors of a third. The Court held that the errors "shatter[]" the expert's credibility, and the expert submitted a false declaration under penalty of perjury. It did not matter that the errors were innocent, and the Court refused to allow a corrected declaration.

Kohls v. Ellison, 2025 WL 66514 (D. Minn. Jan. 10, 2025).

An expert used an AI chatbot in "cross-checking" his damages calculations. He could not remember what prompts he used, could not state what sources the AI model relied upon, and could not explain any details about how the AI model worked or how it arrived at its output. The Court independently entered a prompt into three AI models, which generated three different numbers. The court held that counsel has an affirmative duty to disclose the use of artificial intelligence by experts, and that use should be subject to a hearing [in that case a *Frye* hearing] to assess admissibility.

In re Weber as Trustee, 220 N.Y.S.3d 620 (N.Y. Surr. 2024)

Privilege, Confidentiality, and Work Product Issues

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A client might destroy privilege, confidentiality, or work product protections by entering information in an AI model that uses data to train its model or otherwise has insufficient protections. Likely a case-by-case analysis.

In a criminal case, a defendant waived the privilege when he put his attorney's advice into an AI model seeking to develop his own strategy. The Court applies the privilege test and concluded that the AI model's terms of service were insufficient to preserve the privilege and were not protected as work product in a criminal case.

United States v. Heppner, 820 F. Supp. 3d 292 (S.D.N.Y. 2026)

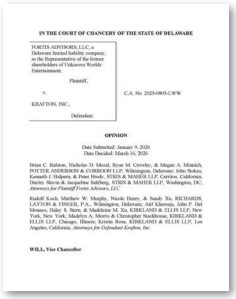
Some courts have expressed more willingness to finding work product protection when a client uses AI models in civil cases.

Fontainebleau Florida Hotel, LLC v. Boteach, 2026 WL 3151630 (S.D. Fla. Oct. 21, 2026)

Some courts have been more willing to find work product protections when dealing with a *pro se* party using AI.

Warner v. Gilbarco, Inc., 820 F. Supp. 3d 629 (E.D. Mich. 2026)

AI Chats as Evidence



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

FORTIS ADVISORS, LLC, a Delaware limited liability company, as the Representative of the former shareholders of Unknown Worlds Entertainment,

Plaintiff,

v.

KRAFTON, INC.,

Defendant.

C.A. No. 2025-0805-LWW

OPINION

Date Submitted: January 9, 2026
Date Decided: March 31, 2026

WILL, Vice Chancellor

Fortis: Case involved a $250 million post-acquisition earnout that it appeared would be triggered by the release of a new video game.

CEO first sought advice from his management team and lawyers, who told him it would be hard to avoid the earnout.

CEO then asked ChatGPT, which initially told him that it would be difficult to cancel the earnout.

CEO did not like that answer, so he kept prompting until ChatGPT gave him a "pressure and leverage package" combining "hardball (Legal + Finance)" and "softball (Support/Incentive)" tactics.

The Court quoted the AI chats extensively and concluded that the CEO "consulted AI" to "contrive" a strategy, making the company's justifications "pretextual."

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2026 Employment Law Developments & Trends

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Top 2026 Federal & Nebraska Employment Law Changes

- EEOC's New Focus
- DOL's Proposed Rules
- Immigration I-9 Compliance – Heightened Scrutiny
- Nebraska Healthy Families and Workplaces Act
- Nebraska Mini-WARN Act

EEOC

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Trump's Actions for EEOC Control

January 2025	• Trump terminates 2 EEOC commissioners and its General Counsel (Democrats appointed by Biden) and revokes Biden Executive Orders.
January 2025	• Trump names Lucas as Acting Chair and in March reappoints Lucas to another 5-year term
July 2025	• Commissioner Lucas confirmed as EEOC Chair
October 2025	• New commissioner confirmed giving Republicans a 2-1 majority and restoring full EEOC authority.
November 2026	• Trump nominates Matthew Zandi as 3rd Republican Commissioner

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EEOC Chair – Andrea Lucas

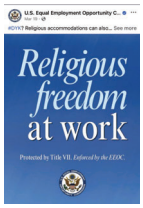


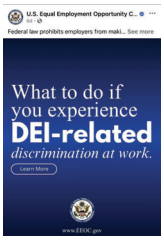
- Appointed by Trump to EEOC in 2020 and reappointed in March 2025
- Confirmed as EEOC Chair July 31, 2025
- Strongly opposed by Democrats and civil rights organizations
- Republicans praise her commitment to rolling back Biden-era guidance
- Actions in combating DEI-related discrimination

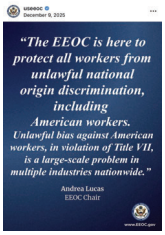
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EEOC Focus & Solicitation of Charges

- Discrimination against American workers (national origin)
- Discrimination against white males (race and sex)
- Religious discrimination







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EEOC Solicitation of Charges



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EEOC Solicitation of Charges

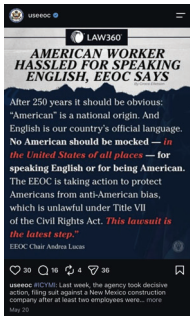


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EEOC Solicitation of Charges

- May 2026 – EEOC sued Advanced Technology Group, Inc. for national origin discrimination and retaliation
- Allege 2 employees were subjected to anti-American slurs by their Mexican coworkers
- Allege employees were terminated after complaining of harassment

ATG CONSTRUCTION SERVICES



EEOC Attack on DEI



- December 2025 - Lucas warned that the EEOC will use expanded searches of archived web content to identify DEI violations
- Merely changing program names will not shield DEI initiatives from scrutiny
- February 26, 2026 - Lucas wrote a letter to all Fortune 500 companies reminding them to comply with Title VII and warning of DEI policies

EEOC Attack on DEI

- February 2026 EEOC sues Coca-Cola Beverages Northeast over employer-sponsored trip and networking event
- February 2026 EEOC files subpoena enforcement action against Nike for DEI-related objectives
- February 2026 EEOC settled lawsuit against Kickback Jack's for $1.1M for refusing to hire male applicants
- March 2026 Planned Parenthood of Illinois settled with the EEOC for $500,000 for DEI related claims including "affinity caucuses" segregated by race and DEI trainings
- May 2026 EEOC sues The New York Times for engaging in DEI-related discrimination in promotion against a white male employee

Coca-Cola

NIKE

KICKBACK JACK'S

The New York Times

Planned Parenthood

Unlawful DEI Strategy

- Making employment decisions (hiring, promotion, compensation) based on race, sex, or other protected characteristics, including quotas or preferences
- Excluding or limiting opportunities (e.g., internships, leadership programs) to certain groups based on protected traits
- Creating a hostile or discriminatory environment, such as mandatory trainings that single out or stereotype employees or require them to affirm particular beliefs tied to protected characteristics

Better DEI Strategy

- Focus on expanding access and removing barriers (e.g., broad outreach, inclusive recruiting) without making decisions based on protected characteristics
- Use training, mentorship, and culture initiatives that are inclusive and voluntary without stereotyping or compelling agreement with specific viewpoints
- Analyze workforce data and identify gaps and improve processes without tying hiring, promotion, or pay decisions to demographic targets or quotas

Pregnant Workers Fairness Act (PWFA) Update

- November 2, 2026 – New York Times reported that the Trump administration is planning to scale back on the accommodations offered under the PWFA
- Anticipated proposals:
  - Narrowing related medical conditions – abortion, fertility treatments (such as IVF), and birth control
  - Broader religious exemptions
  - More burden on individual employees to prove their medical eligibility

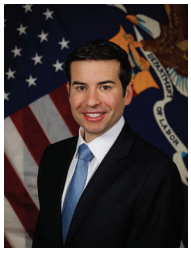


Department of Labor (DOL)

DOL Leadership



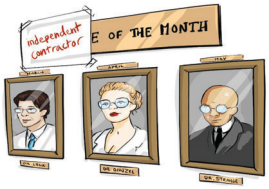
Former Labor Secretary Lori Chavez-DeRemer
(resigned on April 20, 2026)



Acting Secretary of Labor Keith E. Sonderling

Independent Contractor Rule

- February 2026 Proposed Rule
- Proposed to rescind 2024 independent contractor rule and replace it with the previous 2021 Trump-era standard



Independent Contractor Rule

Current rule adopted in 2024 is a multi-factor analysis that requires consideration of 6 factors (totality of circumstances), each bearing equal weight:

1. The individual's opportunity to sustain a profit or loss based on his or her management skills;
2. Investments by the worker and potential employer;
3. How permanent the working relationship is between the worker and the potential employer;
4. The nature and degree of control exercised by the potential employer over the work and the relationship;
5. Whether the work is an integral part of the potential employer's business; and
6. The skill and initiative of the worker.

Independent Contractor Rule

New Proposed Rule (February 2026) – Economic Reality Rule

1. The nature and degree of control over the relevant work; and
2. Individual's opportunity for profit or loss



Joint Employer Rule

New Proposed Rule Announced April 22, 2026

A single nationwide standard under:

- Fair Labor Standards Act
- Family and Medical Leave Act
- Migrant and Seasonal Agricultural Worker Protection Act



Joint Employer Rule

Vertical Joint Employment

Whether the potential joint employer:

1. Hires or fires the employee
2. Supervises and controls the employee's work schedule or conditions of employment to a substantial degree
3. Determines the employee's rate and method of payment
4. Maintains the employee's employment records

Horizontal Joint Employment

Two employers would be considered "sufficiently associated" if:

1. There is an arrangement between them to share an employee's services
2. One employer is acting directly or indirectly in the interest of the other employer in relation to the employee
3. They share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer

Major Changes Proposed to PERM Labor Certification

- Announced November 16, 2026; published in Federal Register on November 17, 2026
- Substantially changes the PERM labor certification process used in many employment-based green card cases
- Eliminates Schedule A – currently allows employers to bypass the PERM labor market test for certain workers
- Replaces existing recruitment requirements with expanded electronic recruitment
- Requires advertisements to run for at least 90 days
- New restrictions and reporting obligations related to layoffs



Department of Homeland Security (DHS)

I-9 Audits

- An agent of DHS ICE-Homeland Security Investigations (HSI) serves an employer a Notice of Inspection (NOI) by hand-delivery or certified mail
- An employer has 3 business days to respond to the NOI
- The NOI requests an employer produce:
  - Forms I-9 of all current and terminated employees (usually 1-3 years from termination) and documentation
  - E-Verify confirmations or other E-Verify paperwork
  - A list of employees' names
  - Most recent payroll and quarterly payroll reports
  - Owners' names
  - Names of contractors and staffing companies used, etc.



I-9 Audits - Violations



- Substantive violations
  - Most serious violations that cause ICE to assess a penalty
- Technical violations
  - Minor procedural errors that can be corrected

More Errors are Now Substantive Violations

- In March 2026, ICE made significant changes to Form I-9 compliance and violations
- These changes recategorized several technical violations as "substantive" violations
- As a result, formerly correctable technical or procedural errors are now exposing employers to monetary fines



Technical Violations Now Categorized as "Substantive" Violations



Section 1 – Employee Information:
- Missing or incomplete legal name
- Missing date of birth
- Failure to check box attesting to immigration status in U.S. and any additionally required information (alien registration number, Form I-94 number, foreign passport number)
- Failure to sign/date Section 1

Section 2 and Supplement B - Employer Information:
- Missing required information under identity and work authorization documents
- Missing date of hire or rehire
- Missing employer/authorized representative's complete name and title
- Missing signature or date in the Certification

Technical Violations Now Categorized as "Substantive" Violations



Supplement A - Preparer/Translator Certification:
- Missing full name, address, signature, or date for preparers/translators

Remote Inspection/Alternative Procedure:
- Failure to check appropriate alternative procedure (remote/virtual inspection of documents) box in Section 2 or Supplement B
- Failure to be an E-Verify participant when using alternative procedure

Electronic I-9 Systems:
- Noncompliance with requirements for electronic completion, retention, documentation, security, reproduction, and/or signature (inadequate audit trail, security, or e-signature functionality)

Spanish-Language Form:
- Incorrect use of the Spanish-language I-9 Form (outside of Puerto Rico)

Now Limited "Technical" Violations

Section 1 - Employee Information:
- Failure to use the current edition of the I-9
- Failure to provide other last names used or physical address
- Failure to ensure the Social Security number is correct when employer is enrolled in E-Verify

Section 2 - Employer Information:
- Missing employee's complete name at the top of page 2
- Missing employer's name or physical address



Supplement A:
- Failure to write employee's full name at the top of Supplement A

Supplement B:
- Failure to record employee's full name at the top of Supplement B
- Failure to record employee's new name (if applicable) as appropriate

I-9 Audits - Penalties

Notice of Technical or Procedural Failures identifies technical or procedural failures found during the inspection of Forms I-9 and gives the employer at least 10 business days to correct the forms.

After this correction period ends, uncorrected technical or procedural failures will become substantive violations.

Fines range from **$288 - $2,861** per I-9

What To Do Now

- Conduct an internal I-9 audit
  - Confirm all current employees have an I-9
  - Complete missing I-9s
  - Review and correct errors
  - Discard unnecessary I-9s
- Review current protocols
- Conduct internal training



Nebraska Healthy Families and Workplaces Act



Nebraska Paid Sick Leave Law

- Applies to employers with 11 or more employees.
- Employers with 11-19 employees – workers may earn up to **40 hours** of paid sick leave per year.
- Employers with 20 or more employees – workers may earn up to **56 hours** of paid sick leave per year.



Counting Employees

- Coverage under the Act – employee count on any given day
- Small vs. Large Business
  - Look at employee counts in each week
  - If have 20 or more employees on payroll for 20 or more calendar weeks during previous or current calendar year, will be considered a large business



Counting Employees

Dunder Mifflin currently employs 15 individuals. Dunder Mifflin employed 23 individuals for 10 weeks last year but has never employed more than 19 employees in any week in the current year. Under this scenario, is Dunder Mifflin a "small business" or "large business" employer?



Counting Employees

Central Perk currently employs 15 individuals, but they employed 23 individuals in 20 weeks in the previous calendar year. Under this scenario is Central Perk a "small business" or "large business?"



Counting Employees

Rosebud Motel had been a "small business" for the previous 2 calendar years with a consistent team size of 15 to 19 employees. On November 3, 2025, Rosebud Motel expanded to a team of 25 employees. If they keep a team of 25 to 30 employees through calendar year 2026, when will Rosebud Motel be considered a "large business?"

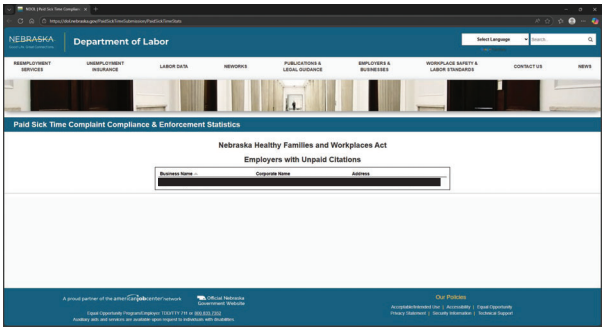


Counting Employees

Initech employed 11 workers starting in January 2026. On March 15, 2026, Initech reduced its workforce to 10 workers. Effective March 15, 2026, Initech employees are no longer considered employees for purposes of the Act because it is not a covered employer. On June 1, 2026, Initech hires an additional worker which now brings the total to 11 workers. When will Initech be considered covered by the Act again? Does the 80-hour requirement affect this answer? What about previously earned leave?



NDOL Website





Nebraska WARN Act

Nebraska WARN Act

- Requires 90 days' advance written notice to employees in business closing and mass layoff situations
- Signed by Gov. Pillen on April 14, 2026
- Went into effect July 17, 2026
- Applies to employers with 100 or more employees, excluding part-time employees

Nebraska WARN Act

Key Provisions	Federal WARN Act	Nebraska Mini-WARN (LB921)
Covered Employer	100+ full-time employees	100+ full-time employees
Business Closing Trigger	Shutdown causing employment loss for 50+ employees	Shutdown causing employment loss for 100+ employees
Mass Layoff Trigger	Reduction in force causing employment loss of 33% of workforce **and** 50+ employees, **or** 500+ employees	Reduction in force causing employment loss of 100+ employees

Nebraska WARN Act – Notice Content Requirements

1. Name and address of employment site and name and telephone number of company official to contact for further information
2. Statement as to whether the planned action is expected to be permanent or temporary
3. Expected date of the first employment loss and anticipated schedule for employment losses
4. Job titles of positions to be affected and the names of the employees currently holding those jobs
5. Notices to the Department of Labor must also include the addresses of the affected employees
6. Copies of all applicable employee handbooks, personnel policies, and employment-related policies, or written statement identifying specific online location of such materials that may be accessed without restriction

Nebraska WARN Act – Key Takeaways

- Longer notice, differing coverage
- Increased notice content
- No private remedy but state-imposed civil penalty of up to $100 per day
- CBA may override notice period
- Both statutes may apply – must satisfy whichever law imposes the stricter obligation and penalty exposure under both



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2026 Seminar for Accounting Professionals

Morning Break



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AGENDA

What We Will Cover

- The Three Tax Benefits and How They Work
- A Simple Example
- How Deals Are Structured
- Compliance Rules That Matter
- Common Mistakes
- OZ 2.0: What Changed and the Transition Rules
- Nebraska: Where Things Stand

1. FOUNDATIONS OF THE OPPORTUNITY ZONE PROGRAM

Tax Cuts and Jobs Act of 2017 | IRC §1400Z-1 and 1400Z-2 | Made permanent by the OBBBA in 2025

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The Three Core Tax Benefits

IRC §1400Z-2

DEFERRAL

Invest the gain in a QOF within 180 days. Tax on the gain is postponed.

OZ 2.0: the deferred gain is recognized 5 years after investment, or on an earlier sale

BASIS STEP-UP

Hold 5 years and 10% of the deferred gain is forgiven.

Pay tax on 90% of the old gain (30% forgiven in a rural fund)

TAX-FREE GROWTH

Hold 10 years and all appreciation on the QOF investment is tax free.

The prize. No capital gains tax and no depreciation recapture on exit

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KEY CONCEPT

The Two-Gain Framework

THE OLD GAIN

The gain you already had when you sold the stock or the building.

Deferred, trimmed by 10% at year 5, then taxed.

THE NEW GAIN

The growth on the QOF investment itself.

Never taxed if held 10 years.

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The Investment Process

1	**Realize eligible capital gain**	Stock, real estate, a business, crypto. Any capital asset, short or long term
2	**Invest gains into QOF within 180 days**	Only the gain, not the full sale proceeds
3	**QOF deploys into QOZ Property**	QOF must hold at least 90% in Qualified OZ Property
4	**Elect deferral on tax return**	Form 8949 and Form 8997. Self-certification, no IRS pre-approval
5	**Hold 10+ years for tax-free growth**	Elect basis step-up to fair market value on sale

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Example: Sarah's $3M Capital Gain

WITHOUT OPPORTUNITY ZONE

SCENARIO

Sarah sells an apartment building in 2027

Sale Price: $5,000,000
Adjusted Basis: $2,000,000
Capital Gain: $3,000,000

Combined federal rate: 23.8%
(20% capital gains + 3.8% NIIT)

TAX DUE IMMEDIATELY

$714,000

Federal capital gains tax

Net After-Tax Proceeds
$4,286,000

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Sarah Invests the $3M Gain in a QOF

WITH OPPORTUNITY ZONE

Year 0 (2027)	Year 5 (2032)	Year 12 (2039)
Invest $3M into QOF	Gain recognized 10% step-up	Sell QOF at $7.5M FMV
Basis = $0 Tax deferred	Tax on $2.7M = $642,600	$4.5M growth TAX-FREE

TOTAL TAX BENEFIT

~$178,500	$71,400	$1,071,000	~$1,320,900
Time value of 5-year deferral	10% basis step-up savings	Tax-free appreciation	TOTAL FEDERAL BENEFIT

3. HOW OZ REAL ESTATE DEALS ARE STRUCTURED

Why almost every deal uses two entities

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The Two-Tier Deal Structure



4. KEY COMPLIANCE RULES THAT MATTER IN REAL DEALS

Four rules that make or break a deal

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Four Compliance Tests

90% ASSET TEST

QOF holds at least 90% of assets in Qualified OZ Property. Tested June 30 and December 31. Failure means a monthly penalty, not automatic disqualification.

SUBSTANTIAL IMPROVEMENT

Existing buildings: spend more than the building's basis on improvements within 30 months. Building only, not land. 50% in rural zones.

ORIGINAL USE

The QOZB is the first to place the property in service. New construction always passes. Vacant 5+ years can pass.

5% FINANCIAL PROPERTY

QOZB holds no more than 5% of assets in cash, stock, or debt instruments. Working capital safe harbor solves this.

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Working Capital Safe Harbor

Treasury Reg. §1.1400Z2(d)-1(d)(3)(v)

THE PROBLEM

The QOZB receives $20M of equity before construction starts. It is holding 100% cash and fails the 5% test.

THE SOLUTION

The QOZB may hold the cash for up to 31 months if three things are true:

1	**Written designation**	Money is designated in writing for acquiring, building, or improving property in the zone
2	**Written schedule**	A written schedule shows the money will be spent within 31 months
3	**Actual compliance**	The money is actually spent substantially on that schedule. Plan must exist when the cash arrives

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Example: Two New Buildings, Same Zone

The 50% income test requires an active business in the zone

PURE NNN RETAIL BUILDING: FAILS

20,000 SF, 15-year triple-net lease to a national tenant. Tenant runs everything. The QOZB deposits the rent check and does nothing else.

200-UNIT APARTMENTS: PASSES

On-site manager, leasing agents, and maintenance crew working in the zone every day. Three safe harbors, any one works:

1	**Hours**	At least 50% of employee and contractor hours are worked in the zone
2	**Compensation**	At least 50% of compensation is paid for services performed in the zone
3	**Property and management**	Tangible property and management functions are located in the zone

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Four Common Mistakes

Failing the 90% Asset Test	Fund receives $10M on June 15 and holds $5M of QOZB interests on the June 30 test date. 33% qualifying. Fix: call capital just after a test date.
Missing the Paperwork	No Form 8996 in year one means no QOF. No written working capital plan at funding means no safe harbor. S corporations do not fit.
Buying From Yourself or Your Relatives	Property must be acquired by purchase from an unrelated party. Contributions do not count. Related party means 20% ownership, with attribution to spouses, siblings, parents, children, and controlled entities.
180-Day Timing Mistakes	Partnership gains: the investor's 180 days may start December 31, not on the sale date. Confirm the start date before assuming you have time.

Best practice: build the compliance calendar, the written working capital plan, and the related-party map at formation, not after the first test date.

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Example: The Developer Already Owns the Land

Dan owns 3 acres in a zone worth $4M with a $1M basis

CONTRIBUTING THE LAND: FAILS

Dan contributes the land to his QOZB for a membership interest. No tax, basis carries over. Because basis carries over, it is not a purchase. The land never qualifies and every investor loses.

SELLING THE LAND: WORKS

The QOZB buys the land from Dan for $4M cash at appraised value. Dan recognizes a $3M gain and invests it in the QOF within 180 days. Three guardrails:

1	**Related-party check**	Dan (with attribution) must own 20% or less of the QOZB, or the sale fails
2	**Independent appraisal**	Arm's-length price supported by a third-party appraisal
3	**Sell before placed in service**	Entitlements in Dan's name are fine. Occupancy or depreciation in Dan's hands starts original use with Dan

6. CHANGES INTRODUCED BY THE ONE BIG BEAUTIFUL BILL ACT

Signed July 4, 2025 | "OZ 2.0" |

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The Program Is Now Permanent

PERMANENT No more sunset. Rolling 10-year designation cycles.

Stricter Eligibility

Income threshold drops from 80% to 70% of area median. Nebraska went from 44 zones to 28 nominations.

Contiguous Tracts Repealed

Tracts must independently meet criteria. No more designation by proximity.

New Income Cap

20% poverty rate tracts must also have MFI below 125% of median. Closes high-income loophole.

33% Rural Mandate

At least one-third of newly designated OZs must be in rural census tracts.

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Revised Tax Benefits Under OBBBA

For investments made on or after January 1, 2027

DEFERRAL

Rolling 5-year deferral (replaces fixed 12/31/2026 date)

Gain recognized on the 5th anniversary of the investment or on an earlier sale. Same benefit whenever you invest.

BASIS STEP-UP

10% at 5 years (7-year additional step-up eliminated)

Simpler. Almost no post-2019 investor could reach the 7-year step-up anyway.

TAX-FREE GROWTH

10-year exclusion retained, capped at 30 years

All appreciation excluded after a 10-year hold. Step-up freezes at the year-30 value; appreciation after that is taxable.

M|N

Rural Opportunity Zone Incentives

Qualified Rural Opportunity Funds (QROFs)

Feature	Standard QOF	Rural QROF
Basis Step-Up (5 years)	10%	**30%**
Substantial Improvement	100% of building basis	**50% of building basis**
10-Year Exclusion	Yes	Yes
Deferral Period	5 years	5 years
Eligible Location	Any designated OZ	Rural areas (<50K pop.)

M|N

TCJA vs. OBBBA: Side-by-Side

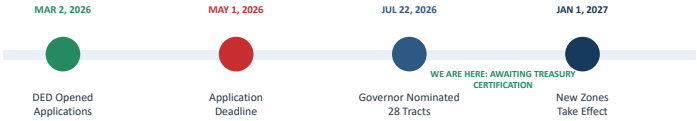
Feature	TCJA (Original)	OBBBA (OZ 2.0)
Program Duration	Temporary (sunset 2026)	**Permanent**
Deferral Period	Until 12/31/2026 (fixed)	5 years (rolling)
5-Year Step-Up	10%	10% (30% for QROF)
7-Year Step-Up	15% total	Eliminated
10-Year Exclusion	Through 12/31/2047	Capped at 30 years
Zone Designation	One-time (2018)	Rolling (every 10 years)
Income Threshold	80% of median	70% of median
Contiguous Tracts	Allowed	Repealed
Rural Incentives	None	**QROF: 30% step-up, 50% improvement**
Reporting	Minimal	Extensive (penalties up to $50K)

NEBRASKA

Where Things Stand After the July Nominations

28 tracts nominated July 22, 2026 | Effective January 1, 2027

Nebraska OZ 2.0: From Applications to Designation



WHO APPLIED

Cities and counties, not developers. Applications covered 107 of the 112 eligible tracts. DED scored investment readiness, economic need, and community benefit.

THE 28 NOMINATIONS

10 in Omaha, 5 in Lincoln, and 13 across Bellevue, Columbus, Fremont, Norfolk, Alliance, Beatrice, Crete, Hastings, Lexington, McCook, North Platte, Ogallala, and Scottsbluff. Down from 44 zones under OZ 1.0.

RURAL MANDATE

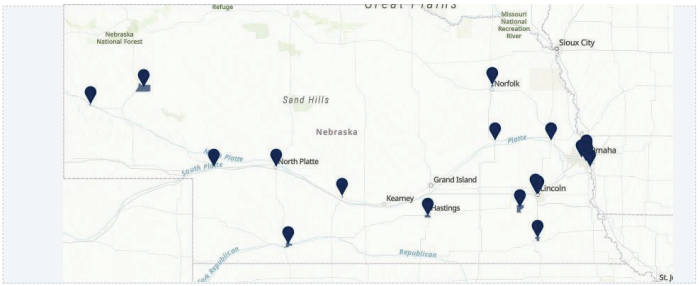
At least one-third of nominations must be rural. QROF benefits (30% step-up, 50% improvement) depend on the federal rural definition. Confirm each tract against Rev. Proc. 2026-14 before relying on them.

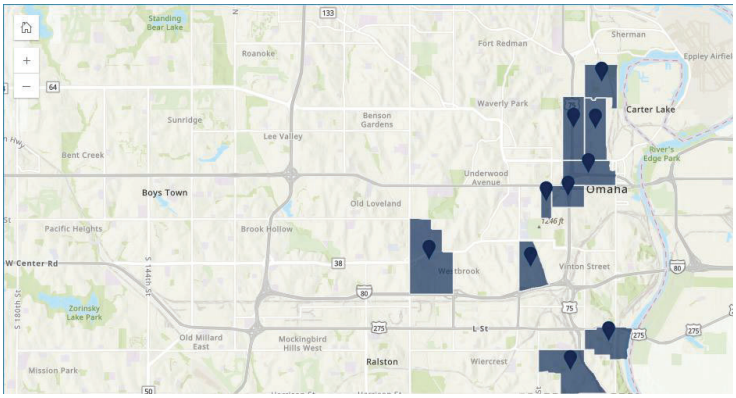
WHAT HAPPENS NEXT

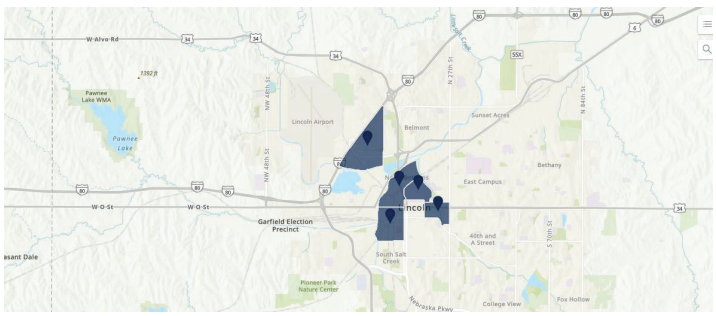
Treasury certifies within 90 days (one 30-day extension). Designations effective January 1, 2027, the first day an OZ 2.0 investment can be made in these tracts.

Nebraska's 28 Nominated Tracts

10 Omaha | 5 Lincoln | 13 other communities | Effective January 1, 2027







M|N

Sources & References

STATUTORY, REGULATORY, AND STATE

IRC §1400Z-1 and §1400Z-2, as enacted by the Tax Cuts and Jobs Act of 2017 and amended by the One Big Beautiful Bill Act, Pub. L. No. 119-21 (July 4, 2025)

Treasury Regulations §1.1400Z2(a)-1 through (f)-1 (Final Regulations, December 2019)

IRS Notice 2025-50 (rural OZ investments); IRS Notice 2025-71 (Section 139L interest exclusion)

Rev. Proc. 2026-14 (April 2026): nomination procedures and list of eligible and rural census tracts

IRS Notice 2026-40 (June 18, 2026): transitional guidance and intent to issue proposed regulations

Office of Governor Jim Pillen, release of July 22, 2026 (28 nominated tracts and map); Nebraska DED OZ program page

QUESTIONS?

Thank you for your time and attention.

Opportunity Zones | OBBBA | OZ 2.0

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ATTORNEYS

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ATTORNEYS

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The Family Enterprise Initiative

A Bigger Conversation Family Business Leaders Are Having With Their Families and Trusted Advisors

Nick Niemann
Family Enterprise Attorney
and Exit Planning Attorney

This Program Today

3 Objectives

1. **Recognize the Next Step beyond Family Business success and Estate Planning.**
2. **Learn about The Family Enterprise Initiative.**
3. **See how to develop a Family Enterprise Game Plan.**

3 Take-Aways

1. **A New Perspective—And why this is important to Family Business Leaders and their Trusted Advisors today.**
2. **A Proven Framework for achieving Family objectives.**
3. **The "Smith Family Enterprise Game Plan" Illustration.**

A remarkable Family Business is just the Beginning

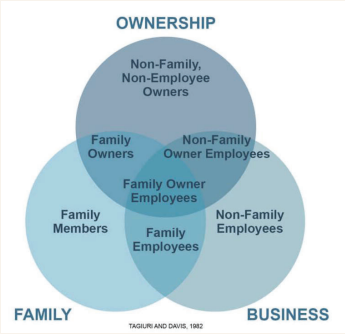


The Family Business creates the capacity for a wider Family Enterprise.

"Are You A Family Business?"

Family Businesses = 90% of All U.S. Businesses

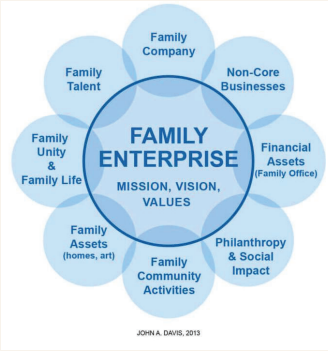
(U.S. Bureau of the Census)



The Famous 1982 Three-Circle Model
Of the Family Business System

This Shows How Family Business Dynamics Can Be Visualized.

91



A Family Enterprise Model was introduced in 2013

This Is The Starting Point for our Discussion Today

92

Inspired by that Model, we built the Family Enterprise Initiative around the adoption of an overall well-designed Family Enterprise Game Plan to better achieve the broader objectives of Business Families.

93

"What is a Family Enterprise?"

An intentional, integrated platform for growing Family capital, developing leadership, preserving wealth, engaging future generations, and aligning decision-making across family branches and generations.

Most Already Have Some Level of a "Family Enterprise"

94

Two remarkable accomplishments.
One larger possibility.

THE FAMILY
Relationships · character · values · people

+

THE FAMILY BUSINESS
Opportunity · enterprise · colleagues · community

=

THE FAMILY ENTERPRISE

What might these two achievements make possible when designed together?

95

THE NEXT STEP -- FROM FAMILY BUSINESS TO FAMILY ENTERPRISE -- HAS CLEARLY EMERGED—As Many Reports and Articles Show

KPMG • 2026
From ambition to architecture
2026 U.S. Family Business Report

EY • 2026
How Family Enterprises preserve ownership through governance
Family and corporate governance work together

UBS + AGREUS • 2025
Family Enterprise Governance Report 2025
A comprehensive approach across the enterprise

IMD + FBN • 2025
The Global Family Office Report
The evolving identities of family offices

J.P. MORGAN • 2026
Stronger governance, stronger bonds for business-owning families
2026 Global Family Office Report

DELOITTE • 2025
Board governance and succession planning top the agenda
Private Company Outlook: Family Enterprise

PWC • 2025
Governance and leadership alignment: The backbone of continuity and agility
U.S. Family Business Survey 2025

BANK OF AMERICA • 2026
Building for generations
2026 Family Office Study

FAMILY ENTERPRISE PLANNING IS BECOMING WIDESPREAD— AS ACCOUNTING, FINANCIAL AND CONSULTING FIRMS EMBRACE IT

CAMBRIDGE FAMILY ENTERPRISE GROUP • 2024
The Family Business and the Family Enterprise
A framework for coordinating the family's wider assets and activities

RSM • 2026
Establish Family Enterprise governance to sustain a legacy across generations
Seven elements to align the family across generations

EY • 2025
How Family Enterprises can address succession planning amid complexity
Coordinating succession in sophisticated family structures

IMD • 2025
Should family or non-family members lead governance in Family Enterprises?
The design of governance matters—not just who leads it

RUSSELL REYNOLDS • 2025
When's the right time for Family Enterprise boards to appoint independent directors?
Board design for continuity through future generations

FILLMORE RILEY • 2026
Family Enterprises: Why formal governance pays
Informal family arrangements may not scale with complexity

INC. / KELLOGG • 2025
There's no such thing as "best practices" in Family Enterprise governance
Governance should fit the family—not a checklist

DELOITTE • 2024
2024 Family Enterprise Survey
Current and next generations differ on trust, risk and planning

LAW FIRMS ARE ALSO EMBRACING THIS NEXT STEP TO FAMILY ENTERPRISE PLANNING

BAKER McKENZIE — November 2025
International: Beyond optimization — Family Enterprise strategy for volatile times

WITHERS — March 2026
Navigating global risk in the modern Family Enterprise

TORYS LLP — Spring 2024
Family Enterprise governance: stewardship for the benefit of future generations

MLT AIKINS — June 2022
Family Enterprise Advising: Considering the "Soft-Skills" of Succession and Inter-Generational Planning

BENNETT JONES — September 2025
Q&A on How to Disaster-Proof the Legacy of a Family Enterprise

FILLMORE RILEY — August 2026
Family Enterprises: Why formal governance pays

HANDLER LAW — March 2024
Family Enterprise Risk Management

CLARK WILSON LLP — November 2023
Ensuring Continuity of Family Vision & Values in the Family Enterprise

Family Enterprise Organizations

These Organizations Are Part of this Next Step-- Taking On The Challenges and This Opportunity

- Family Business Alliance (FBA)
- Family Enterprise USA (FEUSA)
- Purposeful Planning Institute (PPI)
- Family Firm Institute (FFI)
- Family Office Exchange
- Business Families Foundation (BFF)
- Family Business Network (FBN)
- Cox Family Enterprise Center - Kennesaw State University
- Family Business Institute - University of Vermont – Grossman School of Business
- Family Enterprise Center - Stetson University
- Family Business Center - Loyola University Chicago
- Family Enterprise Center at Kenan-Flagler - University of North Carolina
- Family Business Program - University of Southern California – Marshall School of Business
- Initiative for Family Business and Entrepreneurship - St. Joseph's University
- Family Business Center - University of Wisconsin-Madison
- Center for Family Business - Cal State Fullerton
- Prairie Family Business Association (affiliated with the University of South Dakota)

99

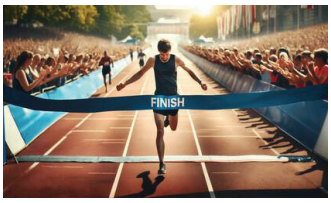
This Family Enterprise Report provides a look at the depth and richness of this Next Step



100

Why Are We Addressing This?

Family Business Success



Because Too Often We Were Seeing This

Family Failure



Followed by Family Business Failure

101

This Leads Us To This Question:

What if we as Trusted Advisors have been doing everything right—

but not yet everything that is necessary?

Professional excellence includes recognizing and taking certain next leaps.

102

This Program Is About Perhaps The Most Important Question You and We Might Not Be Asking Our Family Business Clients

Our Family Business clients were not asking us to prepare a better Estate Plan.

They want us to be asking and addressing a bigger question:

"What can everything we have built now make possible for our Family—and the Generations to follow?"

The unfinished questions behind an excellent Estate Plan

Six recurring gaps between transferring wealth and developing a Family Enterprise

DISTRIBUTION Who receives the assets? **Who prepares the people who receive them?**	**DEATH** What happens when we die? **What can we build together while we live?**	**OWNERSHIP** Who will own and control? **Who will lead, contribute, and create?**
WEALTH How do we protect value? **What greater purposes will that value serve?**	**SEPARATE PLANS** Are the technical plans sound? **Who makes them work as one Game Plan?**	**INHERITANCE** How much will heirs receive? **Will future generations be builders, too?**

WHAT FAMILIES ARE ASKING US TO HELP ACCOMPLISH

Five main ambitions beyond the transfer of wealth

Each one expands what the Family can accomplish with its success

01	**Develop heirs**	Not merely fund inheritances
02	**Create opportunities**	Not merely preserve assets
03	**Strengthen the Family**	Not merely divide property
04	**Perpetuate capabilities**	Not merely transfer ownership
05	**Build for generations**	Not merely conclude a life's work

From an Estate Plan to a Family Enterprise Game Plan

Not a replacement. A broader assignment built upon the planning already completed.

TRADITIONAL ESTATE PLANNING FOCUS:	FAMILY ENTERPRISE GAME PLAN FOCUS:
How will assets be distributed?	**What do we want our resources to accomplish?**
Who receives ownership?	**How will we develop future stewards and leaders?**
How do we protect and transfer wealth?	**How do we coordinate and grow all 10 Family Capitals?**
What arrangements govern after death?	**What can we build together during life—and beyond?**

The greatest opportunity may be while the parents are alive

The Family Enterprise is built through participation—not merely inheritance.

NOW	TOGETHER	NEXT	BEYOND
1	2	3	4
Mentor children	**Build opportunities**	**Establish governance**	**Prepare generations**
Transmit judgment and values	Develop ventures and service	Practice decision-making	Sustain a living institution

The question is not only what we leave the next generation. It is what we build with them.

An Estate Plan helps determine
what we leave to the next generation.

A Family Enterprise Game Plan helps determine what we can build with the next generation.

ONE NEW QUESTION • ONE NEW CONVERSATION

Key Question We Are Asking Our Family Business Clients:

"Would you like to discuss what the success of your Family Business has now made possible for your entire Family both today and over multiple generations?"

The Next 12 Slides show the Main Answers—As to what Business Families are wanting to Actually Accomplish—Beyond normal Estate Planning

WHAT FAMILIES ARE WANTING TO ACCOMPLISH

Our aspirations for our Family, our Colleagues, and our Communities

We want to live our Faith, strengthen our Family through honor, and use our gifts to serve others.

WHAT FAMILIES ARE WANTING TO ACCOMPLISH

Our aspirations for our Family, our Colleagues, and our Communities

We want to agree on our responsibilities, make decisions fairly, and treat one another with respect.

WHAT FAMILIES ARE WANTING TO ACCOMPLISH

Our aspirations for our Family, our Colleagues, and our Communities

We want to keep building a thriving business that creates opportunity for our Family, Colleagues, and Customers.

WHAT FAMILIES ARE WANTING TO ACCOMPLISH

Our aspirations for our Family, our Colleagues, and our Communities

We want to steward our wealth wisely to support security, opportunity, generosity, and future generations.

WHAT FAMILIES ARE WANTING TO ACCOMPLISH

Our aspirations for our Family, our Colleagues, and our Communities

We want to protect and improve real estate properties that contribute lasting value and meaning to our Family.

WHAT FAMILIES ARE WANTING TO ACCOMPLISH

Our aspirations for our Family, our Colleagues, and our Communities

We want to encourage promising new business ventures and help future generations turn sound ideas into worthwhile new companies.

WHAT FAMILIES ARE WANTING TO ACCOMPLISH

Our aspirations for our Family, our Colleagues, and our Communities

We want to preserve treasured places, traditions, and experiences that bring us together and enrich our lives.

WHAT FAMILIES ARE WANTING TO ACCOMPLISH

Our aspirations for our Family, our Colleagues, and our Communities

We want to pass on our wealth responsibly, protect our loved ones, and prepare them to be good stewards.

WHAT FAMILIES ARE WANTING TO ACCOMPLISH

Our aspirations for our Family, our Colleagues, and our Communities

We want to share our blessings and make a lasting difference in the communities we serve.

WHAT FAMILIES ARE WANTING TO ACCOMPLISH

Our aspirations for our Family, our Colleagues, and our Communities

We want to develop leaders of character and judgment, within our Family and our Family Business and beyond it.

WHAT FAMILIES ARE WANTING TO ACCOMPLISH

Our aspirations for our Family, our Colleagues, and our Communities

[redacted]

We want to cultivate knowledge, practical skills, and curiosity so every generation can continue learning.

WHAT FAMILIES ARE WANTING TO ACCOMPLISH

Our aspirations for our Family, our Colleagues, and our Communities

[redacted]

We want to give each generation strong roots, freedom to explore, and opportunities to find purpose.

The question is no longer whether these issues matter.

It is whether we are ready to help our clients address them.

Family governance · leadership readiness · shared purpose · total family wealth · continuity

THE NEXT STEP

From Estate Planning to Family Enterprise Planning

Recognizing what our clients' success has made possible — and working with them to build what comes next

Strength with Honor

THE FAMILY ENTERPRISE GAME PLAN ACCOMPLISHES THOSE 12 OBJECTIVES WITH 12 THESE COMPONENTS

Our aspirations for our Family, our Colleagues, and our Communities

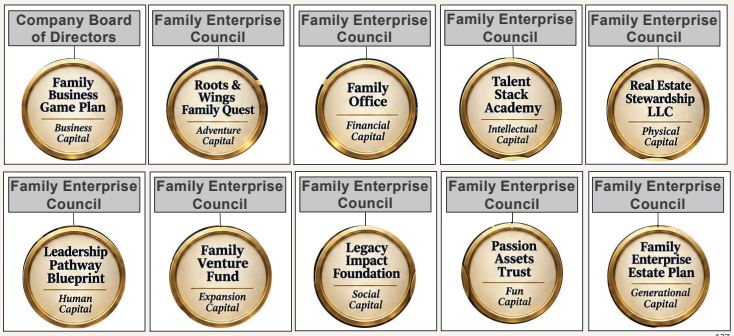
Vision / Mission We will live our Faith, strengthen our Family through honor, and use our gifts to serve others.	**Charter / Code** We will agree on our responsibilities, make decisions fairly, and treat one another with respect.	**Family Business Game Plan** We will keep building a thriving business that creates opportunity for our Family, Colleagues, and Customers.	**Family Office** We will steward our wealth wisely to support security, opportunity, generosity, and future generations.
Real Estate Stewardship LLC We will protect and improve our real estate properties that contribute lasting value and meaning to our Family.	**Family Venture Fund** We will encourage promising new business ventures and help future generations turn sound ideas into worthwhile new companies.	**Passion Assets Trust** We will preserve treasured places, traditions, and experiences that bring us together and enrich our lives.	**Family Enterprise Estate Plan** We will pass on our wealth responsibly, protect our loved ones, and prepare them to be good stewards.
Legacy Impact Foundation We will share our blessings and make a lasting difference in the communities we serve.	**Leadership Pathway Blueprint** We will develop leaders of character and judgment, within our Family and Family Business and beyond it.	**Talent Stack Academy** We will cultivate knowledge, practical skills, and curiosity so every generation can continue learning.	**Roots & Wings Family Quest** We will give each generation strong roots, freedom to explore, and opportunities to find purpose.

Seven Steps to Build Your Family Enterprise

A shared Game Plan turns family aspirations into coordinated action.

1. **Vision** — Agree on the future we want to build.
2. **Mission** — Define our shared purpose.
3. **Charter** — Establish roles and decision authority.
4. **Code** — Set standards for our conduct.
5. **Agenda** — Set priorities and Design the Blueprint.
6. **Deploy** — Put our Game Plan into action.
7. **Live Well** — Enjoy what we build and renew the plan.

You Don't Need To Deploy The Whole Platform At Once



The 10 Capitals of Family Enterprises

1. **Business Capital** — The businesses that create value and opportunity.
2. **Financial Capital** — The wealth that supports our goals and choices.
3. **Physical Capital** — The real estate and tangible assets we steward.
4. **Expansion Capital** — The resources we invest in new ventures.
5. **Fun Capital** — The special assets we enjoy together.
6. **Generational Capital** — The resources and responsibilities we pass on.
7. **Social Capital** — The good we contribute to our communities.
8. **Human Capital** — The character, well-being and leadership we develop.
9. **Intellectual Capital** — The knowledge and skills we build and share.
10. **Adventure Capital** — The shared experiences that broaden our lives.

A Well-Designed Visual (like a Blueprint) Makes the Plan Understandable



A home blueprint
Shows how every space fits together.



A factory layout
Organizes equipment into an efficient flow.



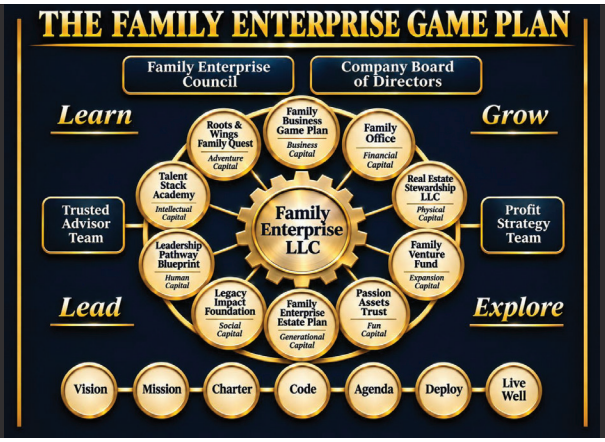
A car design
Coordinates thousands of parts into one system.



A football game plan
Gives every player a role in a shared strategy.

Your Family and Family Business already have many moving parts and complexities. The Family Enterprise Game Plan blueprint is the picture worth a 1,000 words.

THE FAMILY ENTERPRISE GAME PLAN



THIS GAME PLAN ACCOMPLISHES WHAT CENTURIES-OLD FAMILY BUSINESSES TEACH US ABOUT FAMILY ENTERPRISE ENDURANCE

Six enduring disciplines drawn from William T. O'Hara's "Centuries of Success" research

01 FAMILY UNITY & PURPOSE
Maintain shared identity, commitment, and a legacy worth continuing.

02 ENTERPRISE BEFORE ENTITLEMENT
Make leadership and ownership decisions that protect the business's future.

03 WRITTEN LONG-TERM PLANNING
Put intentions into plans that guide decisions across generations.

04 GOVERNANCE & CONFLICT RESOLUTION
Establish clear decision rules and workable ways to address disagreement.

05 CUSTOMERS & COMMUNITY
Serve enduring needs, build trust, and honor obligations beyond the family.

06 SUCCESSION & FAMILY TALENT
Prepare successors and use the capabilities of family members across generations.

THE LESSON: Endurance requires more than transferring ownership. It requires deliberately developing the Family and the Family Enterprise that supports the Family's "Strength with Honor". These principles have been built into The Family Enterprise Initiative.

Source: William T. O'Hara, Centuries of Success: Lessons from the World's Most Enduring Family Businesses (Adams Media, 2003). Six themes synthesized from his 11 recurring practices.

THE GREATER OPPORTUNITIES ARE ACHIEVED:

Beyond regular Estate Planning. The real value is to develop possibilities—not merely tax efficient distribution of assets.

DEVELOP PEOPLE
Prepare heirs to become capable, independent contributors.

BUILD OPPORTUNITY
Support new ventures and paths beyond the original business.

STRENGTHEN FAMILY
Create shared purpose, connection and sound governance.

PRESERVE KNOWLEDGE
Transfer judgment, values and relationships—not just shares.

SERVE OTHERS
Expand opportunity for colleagues and communities.

PLAN FOR GENERATIONS
Decide what should endure, and design foundations accordingly.

Is this too big of a development?
Are we as Trusted Advisors up to it?

Let's consider what History teaches us and apply it to the Family Enterprise Movement.

Sometimes a new way to understand the whole problem or situation presents itself—resulting in the Next Step in History.
Let's look at some Examples.

Some Next Steps in History

History Shows the Power of Taking the Next Step and Never Going Back

1 From Transaction Records to Integrated Accounting



Transaction Records — Double-Entry Accounting

2 From Handwritten Books to Mass Knowledge



Manuscripts — Printing Press

3 From Building Automobiles to Mass Production



Individual Automobile — Moving Assembly Line

4 From Moving Cargo to Integrated Transport



Separate Cargo Handling — Standardized Containers

Some Next Steps in History

History Shows the Power of Taking the Next Step and Never Going Back

5 From a Successful Restaurant to a Scalable Business System





One Successful Restaurant — Replicable System

6 From Connected Computers to a Connected World





Individual Computers — World Wide Web

7 From Checkout Transactions to Enterprise Information





Manual Checkout — Barcode & Data System

8 From Corner Grocery Store to the Supermarket





Full Service — Self Service

Some Next Steps in History

History Shows the Power of Taking the Next Step and Never Going Back

9 From Treating Disease to Preventing It





Medical Treatment — Vaccination & Prevention

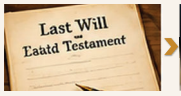
10 From Individual Credit to a Widely Accepted Network





Local Credit Accounts — Payment Network

11 From a Will to a Comprehensive Estate Plan

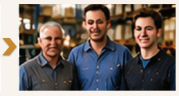




Last Will — Coordinated Estate Plan

12 From Replacing the Leader to Institutional Continuity





Leadership Handoff — Enduring Institution

Some Next Steps in History

History Shows the Power of Taking the Next Step and Never Going Back

13 From Managing Investments to Purposeful Wealth Planning





Investment Management — Wealth for a Greater Purpose

What is the Next Step for our Family Business clients?

Not replacing excellent plans.
Recognizing what their success now makes possible.

14 From Estate Plan to Family Enterprise Game Plan





FAMILY ENTERPRISE GAME PLAN
Family • Business • Ownership
Leadership • Wealth • Governance
Estate • Legacy

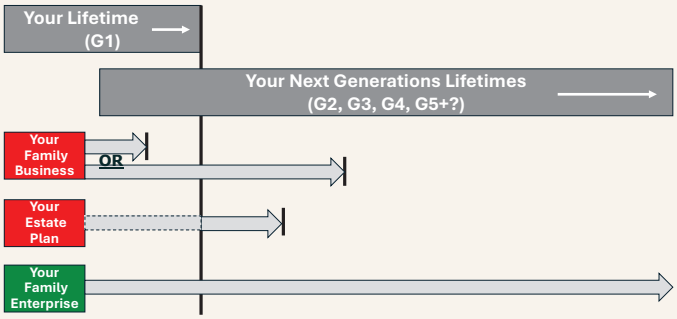
What These History Examples Reveal:

The breakthrough often came from seeing what the existing system could not yet see.

The parts each continue to matter. The Next Step came from a new understanding of the need and of the opportunity.

We Start With This Question:

Are You and Your Family Short Term or Generational Thinkers?



How Long Do You Want Each or All of Your Family Enterprise 10 Capitals To Endure For?

This Is How Long: G1, G2, G3, G4, G5+	This Is Achieved By A:
Business Capital → ?	Family Business Game Plan
Financial Capital → ?	Family Office
Physical Capital → ?	Real Estate Stewardship LLC
Expansion Capital → ?	Family Venture Fund
Fun Capital → ?	Passion Assets Trust
Generational Capital → ?	Family Enterprise Estate Plan
Social Capital → ?	Legacy Impact Foundation
Human Capital → ?	Leadership Pathway Blueprint
Intellectual Capital → ?	Talent Stack Academy
Adventure Capital → ?	Roots & Wings Family Quest

Build the structure for the generations you intend to serve



THE LESSON FOR FAMILY ENTERPRISE

- Shared Vision, Mission, and values
- Ownership, governance, and decision rules
- Financial resilience and leadership development
- Next-generation readiness and periodic renewal

The longer the intended generational horizon, the more deliberately the family must design—and maintain—its Game Plan.

Design for endurance—not merely completion



THE LESSON FOR FAMILY ENTERPRISE

- Purposeful engineering and durable materials
- A structure able to withstand changing demands
- Centuries of adaptation, repair, and stewardship

An enduring Family Enterprise requires both a carefully designed foundation and ongoing governance and renewal.

What lasts above ground depends on what grows below



THE LESSON FOR FAMILY ENTERPRISE

- Deep roots anchor the tree against storms
- An extensive root system supports continuing growth
- Resilience requires nourishment and ongoing care

The visible successes of a Family Enterprise depend on less visible roots: values, leadership, governance, trust, and preparation.

A Key Question For Today

What Do Families And Family Businesses, Strive For?

Long Term Success And Peace

(However Defined)

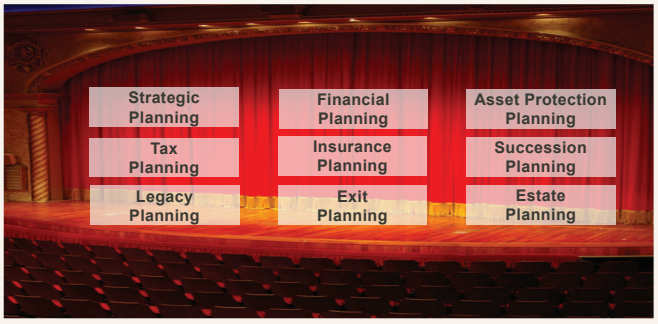
Some Big Roadblocks

This Sometimes Requires Family Business Leaders To Recognize What Neuroscientists call:

- "Optimism Bias"
- "Confirmation Bias"
- "Illusion of Control Bias"

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The Family Enterprise Initiative Sets The Stage For:



This opens up discussion for all of these topics.

What Went Into Designing This?

Active Involvement With:

- Business Enterprise Institute
- Exit Planning Institute
- Vistage International
- Family Firm Institute
- CEO Space International
- Secret Knock
- Strategyzer
- Maxwell Leadership Program

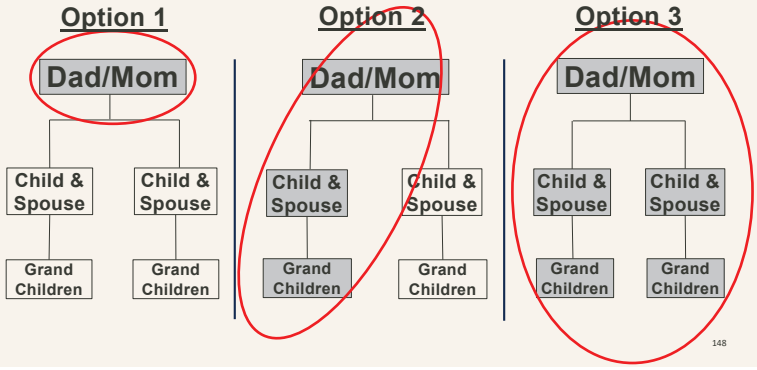
And input from Many Business Authors and hundreds of Family Businesses

Family Enterprise Scope:

- Family Business Dynamics
- Family Dynamics
- Business Strategy
- Asset Protection
- Business Continuity
- Leadership
- Succession
- Exit Planning
- Estate Planning

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- The Family Enterprise Game Plan – You Don't Need The Whole Family To Start



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A Key To Success: Each Needs An Entity and A Champion

Family Business Inc.

Chair
Board of Directors

Family Enterprise LLC

Chair
Family Enterprise Council

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2 / THE GAP

An Estate Plan helps determine

what we leave to the next generation.

A Family Enterprise Game Plan helps determine

what we can build with the next generation.

This is a framework for making the complex simpler—not a mandate to do everything.

1	SEE THE WHOLE	Identify the family's resources, aspirations and gaps.
2	CHOOSE PRIORITIES	Determine what matters now—and what can wait.
3	DESIGN TO FIT	Build only the components the family actually needs.
4	WORK TOGETHER	Coordinate existing advisors around one agreed direction.

What a family may actually hope the Game Plan will accomplish—is actually achieved:

ONE SHARED DIRECTION
A Vision, Mission and clear principles.

CAPABLE GENERATIONS
Leadership, learning and independence.

GREATER OPPORTUNITY
New ventures, capital and career paths.

STRONGER CONNECTIONS
Family traditions, experiences and governance.

PURPOSEFUL STEWARDSHIP
Philanthropy, colleagues and communities.

ENDURING LEGACY
Intentional timelines, renewal and accountability.

Does The Family Enterprise Model Still Apply If You Sell The Family Business?

Yes. The Re-Invested Sale Proceeds Become The "Family Business"

Your Stage For This Has Already Been Set

THE FAMILY ENTERPRISE

We began by suggesting that a remarkable Family Business is just the beginning



The Family Business creates the capacity for a wider Family Enterprise.

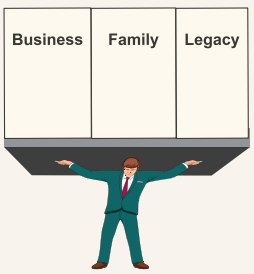
Are You Here?



OR

VS

Are You Here?



You've Invested Decades Building Your Family And Your Business

The key to building on that success is to be as intentional and dedicated in creating your Family Enterprise as you've been in creating your Family and your Family Business

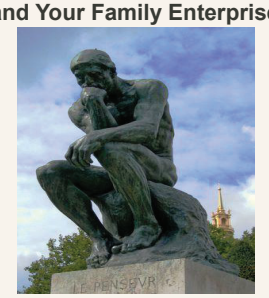
You've Heard It Before …

"Work IN Your Business"



AND

"Work ON Your Business" (and Your Family Enterprise)



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The Family Enterprise Applies For All Companies



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The Family Enterprise Applies For All Sectors

Business

- Consumer Product Manufacturing
- Industrial Manufacturing
- Business Services
- Food and Beverage
- Construction
- Health Care
- Agribusiness
- Farm & Ranch
- Real Estate
- Product Development
- Distribution
- Financial Services
- Retail
- Human Resources
- Franchise
- Security
- Consumer Services
- Education
- Personal Services
- Leasing
- Technology Licensing

Professional

- CPAs
- Financial Planners
- Insurance Advisors
- Business Consultants
- Investment Advisors
- Environmental Specialists
- Engineers
- Attorneys
- Architects
- Physicians
- IT Professionals
- Real Estate Developers

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The Family Enterprise Applies for All "Perfect Families"

A "Perfect Family" =

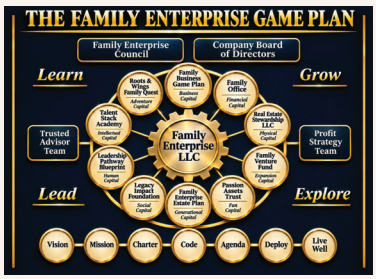
Imperfect Parents with Imperfect Children

Who Absolutely <u>Refuse to Give Up</u> on One Another

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We Find For Most Families …

- **It's Not So Much A Question Of Is This Needed. Business Families Already Have Much Of This.**
- **It's a Question Of Do The Family Wants To Be Organized And Intentional**



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Is The Family Enterprise Game Plan Complicated?

- **Family Life is complicated (yet you Created it).**
- **A Family Business is complicated (yet you Built it).**
- **The Family Enterprise Initiative creates clarity, direction and "Long Term Success and Peace".**

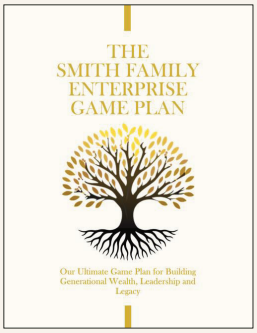
Without It | **With It**



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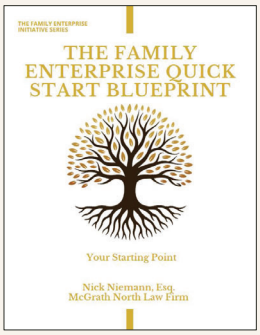
Can We See An Example?

Sure Can.
See Handout.
Or leave us your card or email us.



Quick Start Blueprint

- **When you would like to invest an hour to discuss further, just send me an email or text to request this.**
- **No obligation.**



The greater opportunity is already there.

THE FAMILY ALREADY HAS...

- A Family Business
- Wealth & Real Estate
- Talents & Leadership
- Relationships & Values
- Advisors & Existing Plans



The Game Plan helps these existing resources work together toward the Family's larger aspirations.

The CPA and Financial Advisor may recognize the need before anyone asks for a Game Plan.

6 signals to listen for in existing client relationships.

WEALTH GROWS
The family's activities extend beyond the business.

CHILDREN MATURE
Adult children have differing interests and paths.

SUCCESSION NEARS
The next generation needs capability—not just shares.

LIQUIDITY EVENT
Sale proceeds create a new kind of family future.

ASSETS DIVERSIFY
Property, investments and ventures multiply.

OWNERSHIP EXPANDS
More people, entities and decisions require governance.

The "Day After Conference" Challenge

"Starting Tomorrow, How Will You Deploy One Thing We Discussed Today?"



THE CPA AND FINANCIAL ADVISOR DO NOT HAVE TO BUILD THE GAME PLAN

1 Recognize the moment
The Family's Business success now justifies a broader planning conversation.

2 Ask the larger question
What does the Family want all this success to make possible?

3 Collaborate
Bring in Family Enterprise Counsel and help coordinate the Family's Trusted Advisor team.

The opportunity is to spot the need, start the conversation, and participate as a key Trusted Advisor.

A POSSIBLE NEXT STEP FOR AFTER THE CONFERENCE:



1. Ask 3 Family Business clients this question:

"Would you like to discuss what the success of your Family Business has now made possible for your entire Family both today and over multiple generations?"

2. Share this PPT Presentation with each and have a conversation with each.

3. Have them each fill out the Family Enterprise Quick Start Blueprint

The Family Business Leader's Next Step May Be The Most Meaningful Of All

Another way to pose the question:

How can you impact what your Family can accomplish over the next 10, 25, 50, 75 or 100 years?

A New Undertaking?

--The Family Enterprise Initiative is not asking the Family Business Leader (or the Trusted Advisor) to begin an unrelated undertaking.

--This is just the next logical step in the work the Family Business Leader and Trusted Advisor have already devoted your life to building.

--The foundation is in place. The Family Business economic engine has been developed.

--The Family possesses talents, relationships, experiences, values, and aspirations that can contribute to something much larger.

Your Family Enterprise Game Plan …

A few more thoughts for Family Business Leaders

--You are not constraining the dreams of future generations.

--You are expanding the opportunities available to them.

--You are not merely passing along an inheritance.

--You are building a valuable, generational Family Enterprise.

--When should you begin? Ideally, don't wait until you've run out of gas. Best results occur when you build your Family Enterprise side-by-side as you build your Family Business

My Challenge to my McGrath North colleagues and to all of our fellow Trusted Advisor colleagues:

"As Trusted Advisors, should we be taking a leadership role on this with our Family Business Leader clients?"

Well…
Why not us? Why not right now?

The greatest loss to our clients may be "The Next Step" never suggested by their Trusted Advisors.

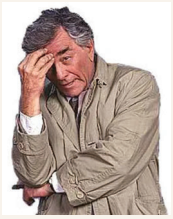
I invite each of you to reach out today or tomorrow to discuss this further.

Our Vision is every Family Business Leader can one day say this is:



ONE GAME PLAN • TEN CAPITALS • SHARED GOVERNANCE • IMPLEMENTATION IN STAGES

Questions?



NICK NIEMANN

McGrath North
Law Firm

Working throughout the
United States of America



Thank You!

Nick Niemann

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The Family Enterprise Initiative

A Bigger Conversation Family Business Leaders Are Having With Their Families and Trusted Advisors

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Updates to Cryptocurrency Income Tax Reporting & Estate Planning Issues

November 2026

Tom Kelley
McGrath North Mullin & Kratz, PC LLO

Agenda

1. Brief Recap of Core Rules & What Changed Since November 2025
2. Form 1099-DA: Reporting Status, Broker Mechanics & Backup Withholding
3. Basis Identification Relief (Notice 2026-20) Through Dec. 31, 2026
4. Per-Wallet Tracking & 1099-DA Reconciliation
5. DeFi Reporting Status & IRC §6050I

Agenda

6. Pending Legislation: Tax Certainty, PARITY & CLARITY Acts
7. Staking Income After Paschall (Tax Court 2026)
8. Estate Planning: Access, Step-Up, Valuation & Checklist
9. Crypto ETPs (Exchange Traded Products) & Staking (Rev. Proc. 2026-20)
10. Practical Takeaways

Recap: How Digital Assets Are Acquired & Stored

Key background from the November 2025 presentation

- Centralized exchanges (Coinbase, etc.): deposit fiat → place order → choose storage.
- Mining (Proof of Work): solve computational puzzles; reward is newly issued crypto (ordinary income when received).
- Staking (Proof of Stake): lock/stake assets to validate; rewards generally ordinary income when dominion and control is obtained.
- Other: airdrops, forks, yield farming, NFTs, payments for goods/services.
- Storage: exchange-hosted wallets vs. self-custody (hot or cold wallets). Control of the private key = control of the asset.

Recap: Form 1040 Question & IRS Basic Position

- Form 1040 digital asset question (2025): Did you receive (as reward/award/payment) or sell/exchange/gift/dispose of a digital asset?
- Answer "Yes" for mining, staking, airdrops, forks, payments, sales, or exchanges. Answer "No" only for pure holding, transfers between own wallets, or purchases with real currency.
- Digital assets are treated as property (similar to stock), not currency.
- Acquisition may or may not be taxable depending on method; disposition is generally capital gain/loss (Form 8949 / Schedule D).
- Ordinary income events (mining, staking, compensation) reported on the appropriate form (e.g., Schedule C or Form 1040).

What Changed Since the November 2025 Presentation

2025 position → 2026 development

- Basis reporting is now in effect for covered assets; the per-wallet rule (§1.1012-1(j)) has applied since 1/1/2025.
- Identification relief: Notice 2026-20 extends books-and-records identification through 12/31/2026.
- Backup withholding: Notice 2025-33 waives it for 2025–2026 sales, with limited 2027 relief.
- DeFi broker rule: nullified by Congress (Pub. L. 119-5) and removed from the CFR.
- GENIUS Act (Pub. L. 119-27, July 18, 2025): first federal stablecoin statute.
- Paschall (June 4, 2026): Tax Court holds staking rewards taxable on receipt.
- New: pending H.R. 10357 and PARITY Act; Rev. Proc. 2026-20 for staking ETPs.

Form 1099-DA: Current Reporting Status

Custodial brokers only (exchanges, hosted wallets, kiosks, certain payment processors)

- **2025 transactions (reported in early 2026)**
  - Gross proceeds required. Basis reporting was voluntary. Most Forms 1099-DA show proceeds only — taxpayer must still calculate basis.
- **Covered assets (2026 forward)**
  - Mandatory basis + acquisition date for digital assets acquired on or after January 1, 2026 and held continuously in the same broker account until disposition.
- **Noncovered assets**
  - Assets acquired before 2026, or transferred into the broker from elsewhere, generally remain noncovered. Broker is not required to report basis.
- **Other notes**
  - Real estate closings on or after 1/1/2026 report FMV of digital assets. Aggregate reporting options for certain stablecoin/NFT sales. Penalty relief: Notice 2024-56, extended by Notice 2025-33.

Form 1099-DA: Broker Mechanics & Backup Withholding

Practical filing detail for broker-custodied clients

- Gross proceeds = cash plus FMV of property/services received, less transaction costs.
- Crypto-for-crypto exchanges: 100% of transaction costs allocated to the disposed asset (Treas. Reg. §1.1001-7).
- Broker deadlines: file by February 28 (March 31 if filed electronically); customer statements by February 15; retain transaction IDs and wallet addresses for 7 years.
- Annual thresholds (aggregate proceeds per customer): $600 for payment-processor sales; optional aggregate reporting above $600 for NFTs and $10,000 for qualifying stablecoins.
- Backup withholding (Notice 2025-33): none required on 2025 or 2026 sales.
- 2027: 24% may apply to uncertified customers, but relief continues for TIN-matched preexisting customers and certain foreign-address accounts.

Notice 2026-20: Temporary Identification Relief

Issued March 18, 2026 | Extends Notice 2025-7 relief through December 31, 2026 for broker-custodied units

- During the relief period, a taxpayer may make an "adequate identification" of which units are sold by recording it on the taxpayer's own books and records no later than the date and time of the sale.
- A standing order (e.g., highest-cost first) recorded in the taxpayer's records is sufficient.
- The units identified in the taxpayer's books control for federal income tax purposes — even if the broker's Form 1099-DA reports a different (often FIFO) basis.
- The relief does not change broker gross-proceeds reporting on Form 1099-DA.
- After December 31, 2026, the permanent rule applies: the taxpayer must communicate a specific identification to the broker using an identifier the broker designates as sufficiently specific, or the default FIFO rule within that account will apply.

Per-Wallet / Per-Account Basis Tracking

Treas. Reg. §1.1012-1(j) effective January 1, 2025 | Rev. Proc. 2024-28 transition safe harbor

- Basis is determined on a wallet-by-wallet or account-by-account basis. Universal or multi-wallet pooling is no longer permitted for dispositions on or after January 1, 2025.
- Rev. Proc. 2024-28 provided a one-time safe harbor to allocate pre-2025 unused basis to specific wallets/accounts (specific unit or global allocation methods; deadlines generally passed).
- For unhosted wallets, specific identification must be made in the taxpayer's books and records by the date/time of sale, referencing sufficient identifiers (purchase date/time or price). Failure defaults to FIFO.

Per-Wallet / Per-Account Basis Tracking (Cont.)

Treas. Reg. §1.1012-1(j) effective January 1, 2025 | Rev. Proc. 2024-28 transition safe harbor

- Expected mismatches: During the 2026 Notice 2026-20 period, a taxpayer's correctly identified lots may differ from the broker's 1099-DA. Reconcile on Form 8949 (adjustment code "B" is commonly used when basis differs from the information return).
- Incomplete historical records create risk of zero or default FIFO basis. Reconstruction may be necessary before year-end or in response to IRS inquiries.

DeFi / Non-Custodial Reporting Status

T.D. 10021 (December 2024) nullified by Public Law 119-5 (April 10, 2025)

- Congress used the Congressional Review Act to disapprove the rule that would have required certain decentralized finance platforms and non-custodial service providers to file Forms 1099-DA.
- Treasury and IRS subsequently removed the rule from the Code of Federal Regulations. It has no force or effect.
- Reporting continues to apply to custodial brokers that take possession of the digital assets (centralized exchanges, hosted wallets, kiosks, certain digital asset payment processors).
- Purely decentralized, non-custodial protocols and validators are currently outside the 1099-DA regime. Any future similar requirements would need new legislation.

IRC §6050I: Digital Assets Treated as "Cash"

On the books, but not yet operative for digital assets

- §6050I(d)(3) includes digital assets in the definition of "cash" (IIJA amendment).
- Announcement 2024-4: until final regulations issue, digital assets need not be counted toward the $10,000 reporting threshold.
- Ordinary cash over $10,000 must still be reported on Form 8300; income-tax obligations are unaffected.
- Monitor for final §6050I regulations before advising business clients that accept crypto.

Pending: Digital Asset Tax Certainty Act (H.R. 10357)

Ordered reported 38-5 by Ways & Means, Sept. 16, 2026 — not yet law; Senate path uncertain (as of Oct. 2026)

- Extend wash-sale rules (IRC §1091) to widely traded digital assets — loss harvesting by selling and quickly repurchasing would be restricted.
- De minimis nonrecognition for qualifying network and transaction fees of $10 or less (with anti-abuse limits for high-volume traders).
- Special rules for qualified U.S. dollar stablecoins using redemption value for basis and gain/loss calculations (reducing noise from small peg fluctuations).
- Charitable contribution appraisal rules aligned more closely with those for publicly traded securities.

Pending: Digital Asset Tax Certainty Act (H.R. 10357) (Cont.)

Ordered reported 38-5 by Ways & Means, Sept. 16, 2026 — not yet law; Senate path uncertain (as of Oct. 2026)

- Optional simplified accounting method for widely traded digital assets (aggregate gain/loss by asset type, treated as short-term).
- Voluntary disclosure program with reduced penalties for taxpayers seeking to come into compliance.
- Also: sourcing/characterization rules for mining and staking income, updated broker reporting, and lending and mark-to-market parity.
- Note: The bill does not resolve the timing of income recognition for mining and staking rewards.

Other Federal Crypto Legislation

Enacted vs. pending (as of Oct. 2026)

- **Enacted – GENIUS Act (July 18, 2025):** payment stablecoins only from permitted issuers; 1:1 reserves; no issuer interest or yield for merely holding.
- **Pending – CLARITY Act:** House passed July 2025; Senate Banking draft advanced 15–9 on May 14, 2026.
- **Pending – Digital Asset PARITY Act (H.R. 8899):** five-year deferral of staking rewards; wash-sale extension.
- Wash-sale extension appears in every major proposal; year-end loss harvesting is most at risk.

Staking Income: Paschall v. Commissioner

T.C. Memo. 2026-46 (June 4, 2026) — first court ruling on the merits

- Staking rewards credited to a platform account were gross income on receipt at fair market value.
- A limit on transfers to outside wallets did not defeat dominion and control; the taxpayer could sell for cash at any time.
- Rejected stock-dividend and "self-created property" theories; did not rest on Rev. Rul. 2023-14.
- Limits: memorandum opinion, stipulated pro se case, passive platform staker.
- Jarrett II (2020 tax year) remains pending in the M.D. Tenn.

Estate Planning: The Access Problem

Legal ownership is not the same as practical control

- Self-custodied digital assets are controlled solely by the private key or recovery seed phrase. If the key is lost or inaccessible at death, the value is generally unrecoverable.
- Never include seed phrases, private keys, or detailed recovery instructions in a will — probate records are public.
- Best practice: general digital-asset clause in the will or trust + separate, securely stored inventory/memorandum that identifies accounts, wallets, and how credentials are protected.

Estate Planning: The Access Problem (Cont.)

Legal ownership is not the same as practical control

- RUFADAA (Revised Uniform Fiduciary Access to Digital Assets Act) gives fiduciaries access to digital records and communications, subject to platform terms; it does not itself give authority over the underlying asset.
- Crypto held on an exchange may be a RUFADAA "financial digital asset"; self-custodied crypto generally is not.
- Custodial accounts are usually recoverable with letters testamentary and a death certificate.
- Self-custody requires advance operational planning (multi-sig, trusted holders, documented recovery). No statute can recover a lost private key.

Exchange Account Type General Survey (as of Nov. 2026)

Exchange	Account Options	Individual (Check State Law)	POD / TOD / Beneficiary	Revocable / Irrevocable Trust	C Corp	LLC
Coinbase	Individual; Business; Prime	Individual	No	Prime	Business	Business
Kraken	Individual; Business	Individual	No	Business	Business	Business
Uphold	Individual; Business; Vault	Individual	Vault only	Business	Business	Business
Binance.US	Individual; Institutional	Individual	No	Unclear	Institutional	Institutional
Gemini	Individual; Institutional	Individual	No	Institutional	Institutional	Institutional
Robinhood	Individual	Individual	No	No	No	No

Estate Planning: Step-Up in Basis & Valuation

- Because digital assets are property, IRC §1014 generally provides a basis equal to fair market value on the date of death (or the alternate valuation date if elected). This can eliminate years of unrealized appreciation for heirs.
- Basis can also step down if the date-of-death value is lower than the decedent's basis.
- Valuation: no crypto-specific IRS valuation guidance. The stock mean-of-high/low convention is commonly used by analogy; document the exchange, method, and time of day. Illiquid tokens and NFTs need a defensible methodology.

Estate Planning: Step-Up in Basis & Valuation (Cont.)

- IRD (§691): rewards credited and controlled before death were already income to the decedent (Paschall). IRD treatment is limited to amounts earned but not yet received or controlled at death.
- Even estates below the 2026 federal basic exclusion amount ($15 million) may benefit from filing Form 706 to elect portability and create a clear record of basis for the heirs.
- Gifts during life do not receive a step-up; the donee takes a carryover basis (subject to the dual-basis rule for gifted loss property).

Estate Planning: Gift, GST & State-Law Considerations

- Lifetime gifts take a carryover basis (no step-up), but shift future appreciation out of the estate — use the annual exclusion and lifetime gift/GST exemption.
- Allocate GST exemption when funding generation-skipping or dynasty trusts with digital assets.
- RUFADAA varies by state and reaches records, not keys — confirm the client's state and the platform's terms-of-service and online-tool controls.
- Valuation substantiation: contemporaneous exchange data for liquid assets; a qualified appraisal for illiquid tokens, NFTs, and charitable gifts above the threshold (H.R. 10357 would ease this, but is not law).
- Document basis and holding period now to support the §1014 step-up and future dispositions by heirs.

Estate Planning Checklist for Crypto Holders

- **Inventory & access:** separate secure inventory; tech-capable fiduciary; multi-sig or shared custody.
- **Authority:** express crypto powers in will, trust, and durable POA; consider holding self-custodied assets in a revocable trust.
- **Basis records:** per-wallet lot records since 2025; pre-2026 and transferred-in assets lack 1099-DA basis.
- **Step-up & valuation:** document date-of-death value, source, and method.
- **Income items:** report staking rewards on receipt (Paschall); don't rely on unenacted deferral bills.
- **Gifts & charity:** qualified appraisal still required above the threshold.
- **Fund-held crypto:** ETPs avoid the key-access problem; staking ETPs pass staking income through.

Crypto ETPs (Exchange Traded Products) & Staking: Rev. Proc. 2026-20

Issued October 6, 2026 | Clarifies and supersedes Rev. Proc. 2025-31

- Safe harbor lets qualifying investment trusts that are grantor trusts stake digital assets on permissionless proof-of-stake networks without losing trust classification.
- Required conditions include: interests traded on a national securities exchange; staking disclosure in an effective SEC registration statement; single digital asset type; one or more custodians; arm's-length staking; rules for distributing rewards; liquidity policies.
- Effective for tax years ending on or after October 6, 2026; reliance on Rev. Proc. 2025-31 ends six months after that date.

Crypto ETPs (Exchange Traded Products) & Staking: Rev. Proc. 2026-20 (Cont.)

Why it matters to estate-planning clients

- Applies only to exchange traded trusts holding a single proof-of-stake asset — not bitcoin, multi-asset vehicles, or private funds.
- Family revocable, dynasty, and other estate-planning trusts will not qualify; staking inside them is governed by ordinary trust and fiduciary rules.
- Relevant to clients who invest in staking ETPs: expect staking-reward income passed through from the fund.

Practical Takeaways for CPA-Client Conversations

- Reconcile every Form 1099-DA to the client's records. Differences during 2026 are often legitimate under Notice 2026-20 if the taxpayer made a timely identification.
- Confirm clients maintain contemporaneous lot-identification records, especially for broker accounts before the December 31, 2026 relief expires.
- Flag large self-custodied holdings for estate-planning review (access plan + documentation of basis for step-up).
- Monitor H.R. 10357 and the PARITY Act — year-end loss harvesting may be curtailed if wash-sale rules are extended.
- Staking rewards are income on receipt (Paschall); mining rewards are ordinary income when received.

M|N

Additional Action Items for CPAs

- Monitor for final §6050I regulations before requiring Form 8300 reporting of crypto receipts.
- Collect TIN certifications now; 2027 backup withholding relief is limited to TIN-matched and certain foreign-address customers.
- Build pre-2026 "noncovered" basis files now to avoid the zero-basis default on future Forms 1099-DA.
- For clients holding staking ETPs, plan for passed-through staking income.

Thank You

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Questions?

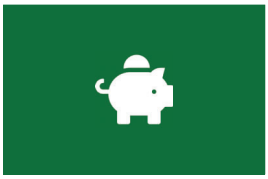
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2026 Seminar for Accounting Professionals

Lunch

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Trump Accounts as an Employee Benefit



Amy Thompson Sunderland
McGrath North Mullin & Kratz, PC LLO | Employee Benefits
Prepared for Nebraska CPAs | November 2026

General information only; not legal or tax advice. Guidance reviewed November 15, 2026. The §128 employer regulations remain proposed; reliance is permitted under their stated terms.

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Trump Accounts: Structure and Growth Period

Account Established	Growth Period	After the Growth Period
A traditional IRA owned by the child.	No earned income required for contributions.	Ordinary IRA rules generally apply.
Automatic accounts must be claimed and activated.	Investments limited to eligible, low cost U.S. equity index funds.	Begins January 1 of the year the child turns 18.
	Ends December 31 of the year the child turns 17.	Later withdrawals may be taxable.

§128 employer contributions are available only during the growth period.

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History of Children's Savings Accounts

Family Funded Accounts	Proposed Savings Expansions	Proposed Public Starter Accounts
Enacted	**Not enacted**	**Not enacted**
529 plans (1996)	Lifetime Savings Accounts (2003)	KidSave (1999)
Roth IRAs (1997)	Young Savers Accounts (2006)	ASPIRE Act (2004)
Education IRAs (1997) (Coverdell ESAs)	RAYS Act (2014 and 2015)	Baby bonds (2018)
		401Kids (2024)

Nebraska's Meadowlark program provides $50 in a state owned NEST account for eligible children born beginning in 2020.

Trump Accounts: Federal Tax Framework

Provision	What It Provides
§530A	Child owned traditional IRA with special contribution, investment, and distribution rules.
§6434	One time $1,000 federal contribution for eligible U.S. citizens born in 2025-2028.
§128	Excludes qualifying employer contributions from income.
§128(c); selected §129(d) rules	Separate written program, nondiscrimination requirements, employee notice, and annual statement.
§125 and §152	Salary reduction; applicable dependent definition.
§§408 and 72(t)	Ordinary IRA rules; possible early distribution tax.

Employer implementation: proposed §§1.128-1 through 1.128-3, with permitted reliance.

Contribution Sources and the $5,000 Account Limit

Annual account limit: $5,000 for 2026 and 2027 §530A(c)(2)

Count Toward the Limit:	Outside the Limit:
Employer contributions under §128, including salary reduction.	$1,000 federal pilot contribution.
Contributions from parents, grandparents, other individuals, or the child.	Qualified general contributions through Treasury.
	Qualified rollover contributions.

- A charitable gift is not automatically a qualified general contribution.
- Under the proposed §128 rules, employers are not required to monitor the child's aggregate $5,000 limit.

Two Employer Options Under §128

Employer Funded Contributions	Employee Salary Reduction
Paid from employer funds.	Paid from employees' future wages.
Employee's or dependent's account during the growth period.	Dependent's account during the growth period.
Written §128 program.	Written §128 program and §125 plan.
Shares the employee's $2,500 limit.	Shares the same $2,500 limit.

- After tax payroll contributions are not currently supported by the platform.
- Qualifying contributions remain subject to FICA and FUTA.

Employer Funded Contribution Design

Design Decision	Terms to Establish
Contribution formula	Uniform amount, federal pilot match, employee contribution match, or another compliant formula.
Eligible employees and accounts	Covered employees and allocation among eligible accounts.
Contribution schedule	Frequency, payment dates, and final eligible contribution year.
Employment changes	When contributions are earned and payable, including new hires and departures.

- A cafeteria plan is generally unnecessary when employees cannot choose cash or another taxable benefit instead.

Salary Reduction Through a §125 Plan

The cafeteria plan must expressly authorize the Trump Account benefit.

1. Adopt the plan provisions before salary reduction elections take effect.
2. Permit contributions only to eligible dependents' accounts.
3. Allow prospective election changes or revocations at least monthly.
4. Address both §128 and §125 nondiscrimination requirements.

- No employer funded contribution is required.
- Employer funding and salary reduction share the $2,500 employee exclusion.
- No qualifying life event is required for a monthly election change.

Employee Eligibility and Owner Restrictions

Who	Treatment Under §128
Common law employees	May participate under the program's terms.
Partners and sole proprietors	Not eligible through their own businesses.
More-than-2% S corporation shareholders, including constructive owners	Not eligible for the exclusion under §§1372(b) and 318.
C corporation shareholder employees	May participate, subject to program requirements and testing.

- Confirm employee status, actual and attributed ownership, and dependent eligibility before enrollment.

Applying the Employee and Account Limits

$2,500
per employee across all employers and eligible accounts

$5,000
per child's account

Example: Eligible Newborn's Account	Amount
Employer funded contribution	$1,000
Employee salary reduction	$1,500
Grandparent contribution	$2,500
Contributions subject to the account limit	**$5,000**
Federal pilot contribution, outside the limit	$1,000
Total deposited	**$6,000**

- During the growth period, contributions count for the calendar year made.

§128 Nondiscrimination Requirements

Test	Requirement	Qualifying Pilot Match
Contributions and benefits	Terms may not favor highly compensated employees.	Contributions disregarded.
Eligibility	Reasonable, nondiscriminatory employee classification.	Test still applies.
Average benefits	NHCE average must equal at least 55% of HCE average, based on recipients included in the test; satisfied at plan year end.	Contributions disregarded.

- Equal election opportunities alone do not satisfy every test.

Average Benefits Test: Failure and Correction

Example from proposed §1.128-3(h), Examples 2 and 4

HCE Average	NHCE Average	Test Result
$2,500	**$1,285.71**	**51.4%**
11 participating HCEs	7 participating NHCEs	Below the required 55%

Illustrated correction: Treat $500 of each HCE's benefit as taxable.
The HCE average falls to $2,000, raising the ratio to 64.3%.

- Loss of the §128 exclusion does not require a distribution from the account.

Certification, Verification, and Remittance

Employee Certifies	Employee or dependent status for the contribution year.
	Beneficiary's date of birth.
	No known disqualifying facts.
Employer Verifies	A valid Trump Account through the trustee or service provider.
	The current portal uses a child contribution ID.
Employer Identifies	Each remittance, in writing to the trustee, as a §128 contribution.
	Correction and notification procedures.

- Portal registration does not replace the required employee certification and account verification.

Required Documents and Employee Notices

Document	What It Covers
Written §128 program	Eligibility, contribution rules, account designation, plan year, certifications, notices, reporting, and corrections.
§125 plan or amendment	Express authorization for Trump Account salary reduction and prospective election changes.
Employee forms	Election, eligibility certification, account information, and wage deduction authorization.
Notice and annual statement	Program availability and terms for eligible employees and annual contribution amounts for participants.

- A separate written §128 program is a condition of the income tax exclusion. The employer must operate according to its written terms.

Legal Treatment: ERISA and Nebraska Law

ERISA Title I	Nebraska Wage Law
DOL Technical Release 2026-02 generally treats programs for dependents as outside ERISA Title I.	Agreed fringe benefits can become wages when the stated conditions are satisfied.
Contributions to a minor employee's own account require review of DOL's conditions.	Obtain written authorization for salary deductions.
	Define when employer contributions are earned and payable.

- Keep the program terms and employee notification and forms consistent.

Current Guidance and Issues Under Review

Area	Current Position
Guidance	Temporary account rules are in effect. Employer and investment regulations remain proposed.
Policy concerns	Unequal capacity to contribute, administrative complexity, and potentially taxable withdrawals.
Administrative proposals	Simpler verification and remittance; testing flexibility; clearer corrections; transition relief.
Legislative proposals	H.R. 8313 would extend the pilot birth year window. Other proposals seek Roth-style treatment.

Employers may rely on the proposed §128 rules. Final rules may differ.

Announced Employer Programs

Design	Announced Examples
Federal pilot match	JPMorgan Chase, BlackRock, Delta, Intel, and Edward Jones.
Pilot and employee contribution matches	IntraFi: $1,000 pilot match plus up to $1,500 matching employee contributions.
Broader child eligibility	Chime: $1,000 pilot match, with $250 for other eligible children.
Employee directed benefit	Vanguard: $1,500 employee directed benefit available for eligible Trump Accounts beginning in 2027.

Questions?

Employee benefits counsel for you and your clients

- **Design and implementation:** Plan design, drafting, amendments, and administrative guidance.
- **Compliance and corrections:** Ongoing compliance, operational corrections, and voluntary correction programs.
- **Audits and defense:** Representation in IRS and DOL audits, investigations, and enforcement proceedings.

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Aircraft Ownership and Operation

Do's and Don'ts for Private Business Aviation



Jon Grob
McGrath North
November 10, 2026

Purchase Agreement – *Aircraft Inspections and Rejection Rights*

PURCHASE

Inspection, acceptance and rejection

The buyer can reject only to the extent the signed agreement preserves that right.

Before inspection, set scope, report date, written rejection deadline, seller cure rights and deposit result. The alternatives below depend on the negotiated clause.

Issue	Rule and answer
Reject for any reason	A timely written rejection during the inspection period can end the deal for any reason allowed by the clause. Specify deposit return and the notice deadline.
Reject only for defined reasons	Define material damage, corrosion, records gaps or other discrepancies. State whether the seller may cure and when an uncured item permits rejection. Rejection for unapproved reasons results in loss of deposit.

Purchase agreement terms govern inspection and acceptance rights

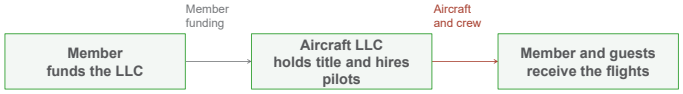
Operational Control and Dry Leasing

OPERATING STRUCTURE

The aircraft-only LLC cannot supply the flights

The holding LLC in this example must lease the aircraft to the actual operator.

Assume an aircraft-only LLC without commercial authority. Its member pays all operating costs.



Why the proposed operation fails: The LLC supplies aircraft and pilots to its member. This is an illegal charter.

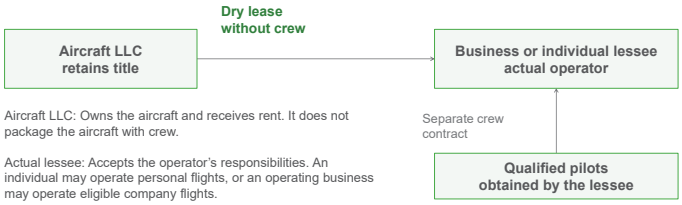
FAA Cooling interpretation (2017) 14 C.F.R. § 119.23(b)

OPERATING STRUCTURE

The holding LLC leases to the operator

The lease supplies the aircraft without crew. The lessee conducts its own flights.

Operational control means "the exercise of authority over initiating, conducting or terminating a flight."



Aircraft LLC: Owns the aircraft and receives rent. It does not package the aircraft with crew.

Actual lessee: Accepts the operator's responsibilities. An individual may operate personal flights, or an operating business may operate eligible company flights.

14 C.F.R. § 1.1 FAA AC 91-37B FAA Cooling interpretation

OPERATING STRUCTURE

A dry lease in actual operation

The lessee must exercise operational control. The pilot in command retains final safety authority.

Issue	Rule and answer
Who controls the operation?	The lessee decides its trips and separately obtains crew. The actual authority and conduct must support the lease. The pilot in command makes the final aircraft-safety decision.
What must the lease identify?	The responsible operator's name, address and signature, and the FAA operational-control explanation.
What happens before flying?	Mail the compliant lease to the FAA within 24 hours of execution. Carry a copy aboard. Give the responsible FAA office at least 48 hours' notice before the first flight, unless authorized otherwise. For a covered U.S.-registered large civil aircraft.

14 C.F.R. §§ 1.1, 91.3(a) and 91.23

OPERATING STRUCTURE

When does the operator need Part 135?

First identify who supplies the aircraft and crew. Then ask what the passenger pays for.

Arrangement	Flight authority
Aircraft rental	Under a genuine dry lease, the lessee controls its own operation and may pay rent and hire a pilot.
Passenger transportation	Carrying passengers for compensation generally requires commercial authority unless a specific exception applies.

14 C.F.R. §§ 91.501, 119.5(g) and 119.23(b)

OPERATING STRUCTURE

The charter management arrangement

The authorized Part 135 operator conducts charter flights. Owner flights need their own control arrangement.

Issue	Rule and answer
Who operates each flight?	The licensed charter operator.
Owner flights?	For owner flights, the owner or lessee operates under Part 91 or buys a Part 135 charter. If Part 91, may still have an LLC flight department company issue.

Part 135 authorization and the management agreement Illustrative figures

OPERATING STRUCTURE

Consequences of unauthorized operations

The FAA can assess separate flight violations and take action against relevant certificates.

Issue	Rule and answer
Civil penalty categories	Up to $75,000 for a covered violation.
Separate flight violations	Each applicable flight can be a separate violation.
Insurance coverage?	Insurance coverage may be at risk!

49 U.S.C. §§ 44709, 46301. 14 C.F.R. § 13.301. FAA, ExcelAire proposed penalty, Sept. 22, 2026.

Part 91 Subpart F Payment Rules § 91.501

PAYMENTS FOR FLIGHTS

Which aircraft qualify under § 91.501?

Section 91.501(a) covers three categories of U.S.-registered aircraft.

Basis for eligibility	What qualifies
Large airplane	Maximum certificated takeoff weight over 12,500 lb.
Multiengine turbojet airplane	Qualifies at any weight.
Fractional program aircraft	The aircraft must operate under Part 91, Subpart K.
Separate NBAA exemption	For a U.S.-registered small civil airplane or helicopter of any size, FAA Exemption 7897N covers most 91.501 operations. Before first use, an NBAA member must file a letter of intent and notify Flight Standards.

14 C.F.R. §§ 1.1, 91.501(a), 91.1001. FAA Exemption 7897N. § 91.501(a) amendment effective Jan. 11, 2027 (91 Fed. Reg. 72397).

PAYMENTS FOR FLIGHTS

Inter-company flights under § 91.501(b)(5).

An eligible operator may carry company officials, employees, guests and property on qualifying trips.

Test	Application
Company relationship	The operator must be the company whose people or property it carries, its parent, its subsidiary, or another subsidiary of the same parent. A genuine dry lessee can be that operator.
Business purpose	The trip must be within the scope of and incidental to a business other than air transportation.
Payment	For qualifying carriage, the ceiling is the cost of owning, operating and maintaining the airplane. If a guest's carriage is outside the company's business, paragraph (b)(5) permits no charge for that guest.

14 C.F.R. § 91.501(a) and (b)(5)

PAYMENTS FOR FLIGHTS

Time sharing

The operator supplies aircraft and crew for eligible company officials, employees or guests. Only listed costs of that specific flight may be charged.

Section 91.501(d)(1)–(5)	Section 91.501(d)(6)–(10)
1. Fuel, oil, lubricants and additives	6. Customs, foreign permits and similar flight fees
2. Crew travel, food, lodging and ground transportation	7. In-flight food and beverages
3. Hangar and tie-down away from the aircraft's base	8. Passenger ground transportation
4. Insurance obtained for that specific flight	9. Flight-planning and weather-contract services
5. Landing fees, airport taxes and similar assessments	10. An additional amount equal to item 1

14 C.F.R. § 91.501(b)(6), (c)(1), (d)(1)–(10).

PAYMENTS FOR FLIGHTS

Interchange and joint ownership

Each arrangement has its own ownership or exchange requirement and cost rule.

Issue	Rule and answer
Interchange, § 91.501(c)(2)	A supplies its airplane for equal time on B's airplane. A cash charge cannot exceed the difference in ownership, operating and maintenance cost.
Joint ownership, § 91.501(c)(3)	One registered joint owner employs and supplies crew. Each registered joint owner pays the share in the agreement.
Choosing the arrangement	Two members of one aircraft LLC cannot assume the registered-joint-owner rule applies. Use genuine leases with valid payment authority, or appropriately authorized commercial carriage.

14 C.F.R. § 91.501(b)(6), (c)(2)–(3). FAA letter to Kevin Y. Jung, March 22, 1996, questions 2A–2C.

Sales and Use Tax

SALES TAX

The state of delivery and Nebraska tax

Closing in another state does not avoid Nebraska sales or use tax.

Examine the delivery state's tax and flyaway rules before closing, then examine the aircraft's actual Nebraska use.

Issue	Rule and answer
Tax at delivery	Confirm physical delivery, purchaser eligibility, required affidavits and removal deadlines under that state's law.
Nebraska flyaway	Delivered in this state to an individual who is a resident of another state or any other person who has a business location in another state when the aircraft is not to be registered or based in this state and it will not remain in this state more than ten days.

316 NAC 1-067.10 Neb. Rev. Stat. § 77-2704.26 DOR use-tax guidance

SALES TAX

When does Nebraska tax an aircraft brought here?

Entry within one year of purchase plus either Nebraska basing or a majority of operating hours here triggers Reg. 1-067.10.

Issue	Rule and answer
1. Was it brought here within one year?	Identify the purchase date and first Nebraska entry.
2. Is it regularly based here?	Has a hangar located in Nebraska.
3. Are more than half the operating hours here?	Exclude maintenance, repair or fabrication operations if the aircraft leaves on completion.

316 NAC 1-067.10 and .10A. Nebraska Department of Revenue, state sales and use tax rate.

SALES TAX

When can a used aircraft qualify as an occasional sale?

Nebraska exempts a qualifying occasional sale from sales and use tax.

Requirement	What the buyer needs to establish
One year of business use	The seller used the aircraft in its business as depreciable equipment for at least one year. A predecessor's use can count if the aircraft passed in a qualifying § 77-2701.24(1) transfer.
Tax on the earlier purchase	§ 77-2701.24(3)(b) requires prior sales or use tax paid directly or indirectly. Reg. 1-022.07 also recognizes an exempt original purchase.
Evidence from the seller	Obtain an exempt sale certificate or other written substantiation from the seller.

Neb. Rev. Stat. §§ 77-2704.48, 77-2701.24(3). 316 NAC 1-022.06–.07 and 1-014.01.

SALES TAX

A qualifying purchase for resale

Nebraska DOR has challenged aircraft resale claims. The lessor needs a real leasing business at fair market rent.

Issue	Rule and answer
Purpose and business activity	Section 77-2701.34 requires resale in the normal course of business. Reg. 1-018.05 requires purchase solely for leasing to another person and fair market rental payments.
Support the lease rate	Obtain a written opinion from a qualified aircraft appraiser or leasing specialist.
Operate the leasing business	Set commercially supported terms before closing. Invoice and collect on schedule, enforce payment terms, keep separate records, and collect and remit tax on taxable rent.

Neb. Rev. Stat. §§ 77-2701.34 and .07 316 NAC 1-018.05 Big Blue

SALES TAX

Big Blue Express

The actual leasing activity undermined the claimed resale business.

Big Blue Express, Inc. v. Nebraska Department of Revenue, 309 Neb. 838 (2021).

Issue	Rule and answer
Aircraft and ownership	Big Blue bought 66⅔% of a Phenom 100. The full aircraft price was $2,821,500, making its share $1,881,000. No acquisition sales or use tax was paid.
Lease terms and collections	The written use agreements set rent at $1,300 per hour. Lessees paid the December 31, 2011 invoices 495–570 days past due. Big Blue did not collect the agreed 18% interest.
Business economics	The court compared about $9,000 in monthly lease revenue with about $20,000 in monthly operating expenses. Most users had ties to Big Blue, and it did little marketing.

Big Blue Express, Inc. v. Neb. Dep't of Revenue, 309 Neb. 838, 842–43, 845, 857–58 (2021).

SALES TAX

Why Big Blue owed use tax

The Supreme Court affirmed the resale denial and left the separate related-company interpretation unresolved.

Issue	Rule and answer
What the court decided	The evidence supported finding that leasing did not occur in the normal course of the taxpayer's business. Paying rental tax did not establish the acquisition exemption.
What the court did not decide	It did not resolve NDOR's separate argument that § 77-2704.28 itself requires paying tax up front for any related-company leasing.

Big Blue Express, 309 Neb. 838, 845 and 856–64 (2021)

SALES TAX

The related-company lease exemption

Use the related-company exemption only after checking both the ownership and the tax paid on the aircraft.

Issue	Rule and answer
Which entity relationships?	Parent and subsidiary, subsidiaries of one parent, or brother-sister companies. Reg. .08A requires at least 50% common ownership for corporations and equivalent relationships for other entities. Sole proprietorships cannot qualify.
Which tax must already be paid?	The statute refers to sales or use tax paid directly or indirectly by the seller or transferor. What if the purchase was tax exempt? For example, occasional sale?
What about the purchase itself?	The second statutory sentence gives the lessor the liability the lessee would have had on a direct purchase. Paying tax only on related rent is not an unrestricted alternative to that purchase liability.

Neb. Rev. Stat. § 77-2704.28 316 NAC 1-018.08 and .08A

SALES TAX

Buying the LLC that owns the aircraft

Buying LLC interests does not erase existing tax or establish a sales-tax exemption.

Issue	Rule and answer
What changes for income tax?	A 100% disregarded-LLC purchase generally is a deemed asset purchase for federal income tax not sales tax.
Can it reduce transfer tax?	A genuine equity transfer can leave aircraft title unchanged. Substance-over-form is a risk.
What risk stays with the buyer's LLC?	The LLC retains prior acquisition and tax exposure, interest, penalties and liens.

Neb. Rev. Stat. §§ 21-104 and 77-2701.33 Federal and state tax classifications differ

Thank you!

Jon Grob

McGrath | North – 2026 Accounting Seminar

The Coming Probate Storm

What Accountants Need to Watch For in Estate & Trust Administration

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CONTEXT

A Demographic Wave, Not a Passing Trend

The largest generational wealth turnover in U.S. history

- Over 70 million boomers are aging into retirement; by 2035 adults over 65 outnumber children
- Boomers control an estimated $78 trillion in household wealth
- The broader Great Wealth Transfer is estimated to exceed $84 trillion
- Longer lives mean longer periods of cognitive decline and family disagreement

CONTEXT

More Wealth, More Complexity, More Conflict

Why disputes are multiplying

- Blended families, digital assets, and real-estate-heavy wealth drive more complex disputes
- Courts are bracing for a flood of contested probate and trust matters
- Those who spot trouble early — including the accountants who touch these estates — will be far ahead

WHY THIS TALK, WHY YOU

Accountants Are the Early-Warning System

You see the numbers before litigation counsel is ever involved

- You see the numbers that signal a family dispute — before a lawyer is called
- You prepare fiduciary accountings, estate and trust tax returns, and valuations
- You sit across from aging clients and their adult children
- That vantage point makes you an early-warning system — and sometimes a witness

THE COMING PROBATE STORM

Where We're Going

A practical guide to recognizing estate and trust litigation risk — and knowing when to bring in counsel.

01	Why probate and trust litigation is surging
02	Three claims: capacity, undue influence & fiduciary breach
03	Specific risk areas you'll encounter in your work
04	Red-flag checklist and when to call counsel

CORE CLAIMS

The Three Claims Behind Most Disputes

Capacity, undue influence, and breach of fiduciary duty

- Most contests and administration disputes turn on one of three claims
- **Capacity:** did the person understand what they were doing when they signed?
- **Undue influence:** was a vulnerable person manipulated into changing the plan?
- **Breach of fiduciary duty:** did the trustee, executor, or PR mismanage or self-deal?
- The first two attack the plan's validity; the third targets its administration

CORE CLAIMS

Capacity — Elements of the Claim

A will or trust signed without capacity can be voided

- **Threshold:** the signer must be at least 18 and of sound mind — the same standard for a revocable trust
- Of sound mind means understanding three things: the nature and consequence of signing, the property owned, and who would naturally inherit
- The bar is lower than to sign a contract — competent to make a will Monday, not to sell the home Tuesday
- If a court finds a lack of capacity, the document can be voided

CORE CLAIMS

Capacity — Where Accountants Come In

You often see the signs first

- Capacity is proven after the fact — from medical and financial records
- Watch for missed mortgage payments, account confusion, and unexplained transfers
- These are the very signs litigators look for — and you often see them first

CORE CLAIMS

Undue Influence — Elements of the Claim

Estate decisions must be free and voluntary

- **The claim:** a third party's influence or coercion overcame the individual's free will
- A will, trust, or lifetime gift procured by undue influence is generally void
- **Red flags:** the influencer selects or instructs counsel, controls information and decisions, attends the signing, procures witnesses, or pays the fee (e.g. - a plan suddenly favors the child "holding the checkbook or managing the pills")
- Surging through caregiver-beneficiary ties and late-in-life changes and marriages; the burden may shift to the person who benefited.

CORE CLAIMS

Breach of Fiduciary Duty — Elements of the Claim

The claim that targets administration, not validity

- **Who owes it:** trustees, executors, and personal representatives are fiduciaries to the beneficiaries and the estate
- **The elements:** a fiduciary duty was owed, the fiduciary breached it, and the breach caused damages
- **The core duties:** loyalty and good faith solely to beneficiaries, prudent care, impartiality, keeping beneficiaries informed, protecting property, recordkeeping, and no commingling
- **Liability:** a surcharge of the greater of restoring the trust or disgorging the fiduciary's profit — even absent a loss
- **Frequent targets:** a fiduciary who is also a beneficiary carries a built-in conflict, and a caretaker who becomes a beneficiary draws scrutiny
- **Your role:** the accountings and valuations you prepare or review are what prove — or disprove — a breach

RISK AREAS

The Family Home — The #1 Flashpoint

Money plus memory is combustible

- Often the most valuable estate asset — and the most emotional
- **Common fights:** the heir who won't leave, the heir who blocks a sale, forced partitions
- Negligent fiduciaries who let insurance, taxes, or repairs lapse face breach claims
- **Your role:** independent appraisals and documented valuations

RISK AREAS

Trust Administration — Private, but Not Safe

Silence is what breeds lawsuits

- Avoiding probate does not avoid conflict — no court-supervised accountings or notices
- The most common failure is silence — a successor trustee goes dark
- A delayed accounting is easily misread as embezzlement
- **Your role:** timely, transparent, milestone accountings are the best prevention

RISK AREAS

Trust Modification & Decanting

Old trusts meet new circumstances

- Decades-old irrevocable trusts are modified or "decanted" into new trusts
- Contested by remainder beneficiaries who say their vested interests are altered
- No-contest ("in terrorem") clauses are increasingly challenged
- **Your role:** these changes carry tax consequences and spike litigation risk

RISK AREAS

Digital Assets & E-Signatures

New assets, new manipulation

- Crypto, NFTs, and online accounts create novel disputes over keys, access, and valuation
- E-signature and remote notarization let control shift "without discussion"
- Evidence lives in audit trails, metadata, and IP logs — and in patterns of rapid change
- **Your role:** press for a digital-asset inventory; flag holdings no one can value

RECOGNIZE IT EARLY

Red-Flag Checklist — What Should Make You Pause

Any one warrants attention; several warrant a call

- Late-in-life plan changes favoring the caregiver or the child managing finances
- A trustee who won't communicate — no accounting, no inventory
- Unexplained transfers, new signatories, or out-of-character gifts
- Property deteriorating, uninsured, or sold to an insider or below market
- A fiduciary who is also a primary beneficiary — a built-in conflict
- Diminished-capacity signs in your own client meetings

EARLY IS CHEAPER THAN LATE

When to Bring in Litigation Counsel

Disputes rarely start with fraud — they start with silence or delay that spirals. Accountants surface the financial warning signs; counsel evaluates exposure and preserves the record. Seeking help early is a professional imperative.

01 **Refer on contested capacity or undue influence**

02 **Call on a silent or self-interested fiduciary**

03 **Preserve digital evidence before it disappears**

RECOGNIZE IT EARLY. PICK UP THE PHONE.

Thank You

The wealth transfer is accelerating, and contested estates will grow in number and complexity. Accountants who spot the red flags early protect their clients, their engagements, and themselves.

Let's keep the conversation going —

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Donor Advised Funds: The Good, the Bad, & the Taxable

Courtney Foltz

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Agenda

- Fundamentals: what is a DAF?
- The Good: planning opportunities
- The Bad: drawbacks and limits
- The Taxable: compliance pitfalls

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What is DAF? 3 Statutory Elements

- IRC § 4966
- Separately defined by a donor's contribution
- Owned and controlled by a sponsoring organization (a public charity, not a private foundation)
- Donor (or designee) has advisory privileges over distributions or investments by reason of being a donor

The Players

- Sponsor – public charity, legal owner of the assets
- Donor / Donor Advisor – keeps only the privilege to recommend grants – no legal control once the gift is made
- Fund manager – Officer, directors, and responsible employees of the sponsor (relevant to excise-tax liability)
- Client's misconception: it is still the client's money.
  - Client says "it's my money in the DAF." Correction: it is a nonbinding recommendation, the charity is not legally required to follow it, though in practice it almost always does for qualified grantees

DAF v Private Foundation v Direct Gift

Feature	Private Foundation	Donor-Advised Funds	Direct Gift
Cost / complexity to create	High — separate entity, IRS exemption	None / low — open an account	N/A
Ongoing administration	High — Form 990-PF, excise tax	Low — handled by sponsor	None
Cash deduction limit	30% of AGI	60% of AGI	60% of AGI
Appreciated LTCG property	20% of AGI; often basis-only	30% of AGI; FMV	30% of AGI; FMV
Annual payout	5% minimum (§ 4942)	None required	N/A
Donor privacy	Public (990-PF discloses donors)	Private if desired	Private if desired
Donor control	Extensive	Advisory only	None

The Good

Planning Opportunities

- Fair market value deduction
- In kind gifts - deduct FMV and avoid the capital gains tax a sale would trigger

Example

- Jane purchased 1,000 shares of publicly traded stock at $5/share 5 years ago
- The stock has grown $45,000 in value for a total FMV of $50,000
- Jane's AGI is $300,000. Assume a 15% federal capital gains tax rate
- Due to the new AGI floor, Jane's contributions over $1,500 will be deductible, assuming she itemizes

Example

- Option 1: Jane sells her entire position first then donates the proceeds to charity.
  - $6,750 in long-term capital gains tax
  - $43,250 available for gift
  - $41,750 deduction
- Option 2: Jane donates the stock directly to a DAF.
  - No capital gains tax
  - $50,000 to charity
  - $48,500 deduction
  - Jane avoids $6,750 in tax, charity receives more, and Jane gets a $6,750 larger deduction

Higher Limits & Bunching

- Cash: up to 60% of AGI; appreciated property 30% of AGI
- 5-year carryforward for amounts over the annual limit
- Bunch several years of giving into one high-income year to clear the standard deduction
- Example: contribute $75,000 now instead of $15,000/year. Itemize this year, take the standard deduction for four years, and let the DAF grant $15,000/year to the usual charities.
- Best in a liquidity event year – sale, bonus, etc.

Timing & Administrative Advantages

- Deduction now, granting later
- No 5% annual payout requirement
- Low cost, no separate entity, no Form 990-PF
- Privacy – donor identity can be kept confidential

The Bad

Drawbacks & Limitations

- Irrevocable – recommendations are not binding
- No payout mandate – funds can sit indefinitely
- Asset limits: sponsors prefer cash and marketable securities and often liquidate non-cash gifts; illiquid assets may be declined
- Grant restrictions: qualifying charities only, no grants to individuals and no private-benefit gains

The Taxable

Taxable Distributions & Prohibited Benefits

- IRC Section 4966 – taxable distributions
  - Grants to individuals or non-charitable purposes
  - Tax – 20% on sponsoring organization and 5% on a knowing fund manager
  - Safe harbors: grants to Section 170(b)(1)(A) public charities, the sponsor itself, or to another DAF are not taxable distributions
- IRC Section 4967 – more-than-incidental benefit
  - Tax - 125% on the donor, plus 10% on a knowing fund manager
  - The trap: gala tickets, personal pledges, or auction items through the DAF.

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Excess Benefit & Business Holdings

- IRC Section 4958(c) – automatic excess benefit
  - Any grant, loan, or payment to a donor or related parties is per se improper
  - Tax – 25% on the disqualified person, 10% on a knowing fund manager, and 200% if not corrected
- IRC Section 4943(e) – excess business holdings
  - DAF is treated as a private foundation – the DAF plus disqualified persons generally may not hold more than 20% of a business enterprise
  - Tax - 10% on the value of the excess holdings + 200% if not divested by the end of the taxable period
  - Watch gifts of closely held business interests carefully

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Substantiation

- $250+ written acknowledgement
  - Acknowledgement must state the sponsor has exclusive legal control
- Appraisals
  - Description required over $500
  - Qualified appraisal over $5,000
  - Appraisal attached to the return over $500,000

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What's on the Horizon

- New .5% of AGI floor
- Charitable deduction for non-itemizers – does not apply to DAF gifts
- November 2023 proposed Treasury regulations.

M|N

Key Take Aways

- Confirm exclusive-legal-control acknowledgement
- Give appreciated securities
- Never let a DAF return a benefit to the donor
- Watch closely held business interests
- Factor in the new .5% floor
- Keep an eye on 2023 regulations

Questions?

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Dividing the Family Business: Tax and Estate Planning Strategies

Nicole Sultani

Family Businesses: The Challenge

- Equal value ≠ equal ownership and control
- Children have varied levels of involvement, interest, and ability
- Varied business assets and lines of business
- Family disputes, operational problems

Four threshold questions

- Ownership: Who holds the equity?
- Control: Who votes and makes major decisions?
- Economics: Who receives distributions and appreciation?
- Management: Who works in the business and receives compensation?

Five paths for the family business:

- Equal shares, outright
- Lifelong trusts, management control
- Voting and Nonvoting Recapitalization
- Designated Ownership & Equalization with Non-Business Assets
- Sale

Separating Control from Economic Benefit

- Class A / Class B interests can separate governance from economics
- Active child may control operations while economic benefit is shared
- Recapitalization
- S corporations v. partnership

Buy-Sell Planning

- Triggers: death, disability, retirement, attempted transfer
- Cross-purchase vs. entity redemption vs. hybrid
- Price: formula, agreed value or appraisal
- Funding: insurance, cash, installments, financing
  - *See* Connelly (2024)

IRC § 355: Divisions

- Separates distinct active businesses into different corporations
- Facilitates different ownership paths
- Qualifying distributions avoid immediate shareholder and corporate gain
- Often coordinated with divisive D reorganization under § 368(a)(1)(D)

Tax-Free Divisions

- Spin-Off
  - Parent distributes subsidiary stock to its shareholders pro rata
- Split-Off
  - Certain shareholders exchange parent stock for subsidiary stock
- Split-Up
  - Parent liquidates into two or more corporations

§ 355 Requirements

- Active trade or business, 5-year lookback
- Not a device to distribute E&P
- Corporate business purpose
- Continuity of interest

Lifetime Transfers: Estate and Gift Considerations

- Gifts of minority or nonvoting interests shift future appreciation
- Independent valuation supports discounts
- Installment sales – exchange appreciating equity for a note
- GRATs
- Cash flow, transfer restrictions, trust governance

Gift now – or preserve basis at death?

- Lifetime gifts generally transfer donor's income tax basis
- 1014 basis adjustment at death
- Transfer tax savings vs. capital-gain savings

Equalization Options

- Life insurance (ILITs)
- Notes
- Preferred interests
- Other assets

Ask:

- Do all children want to own the business?
- Does the current entity separate control, economics, and management?
- Could distinct businesses be separated before succession?
- Do the estate plan and buy-sell entity documents align?

Questions?

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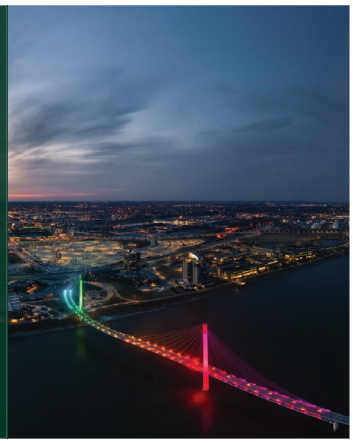
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TOP 3

Nebraska Tax and Incentive Issues

Matthew Ottemann
McGrath North Law Firm



AGENDA

What We'll Discuss Today

I	How Is Nebraska Doing Economically?
II	Key Issue #1: Nebraska State Tax Residency
III	Key Issue #2: Special Capital Gains Exclusion
IV	Key Issue #3: Manufacturing Machinery & Equipment Exemption
V	Additional Issues That We're Seeing

I

SECTION

How Is Nebraska Doing Economically?



NEBRASKA'S ECONOMY

Aksarben Foundation Report

A study of employment and wage growth in Omaha and Lincoln compared with fast-growing peer metros

PREPARED BY
DCI Consulting Group

PUBLISHED
August 14, 2025

COMMISSIONED BY
Aksarben Foundation



AKSARBEN FOUNDATION · REPORT SUMMARY

Omaha and Lincoln Not Adding Jobs

- Nebraska's economy, as defined by employment and wage growth, is struggling to grow in large part because Omaha's and Lincoln's economies are not growing employment and wages at annual rates commensurate with other comparable cities.
- Omaha's employment level has barely grown over the past five years, only growing from 500,000 employed in 2019 to 512,000 employed in 2024.

OMAHA EMPLOYMENT

500K
employed in 2019

↓

512K
employed in 2024 — barely grown in five years

Source: DCI Consulting Group (August 14, 2025), Commissioned by Aksarben Foundation

AKSARBEN FOUNDATION · REPORT SUMMARY

Peer Cities Are Growing Jobs Five Times Faster

Cities such as these are growing their employment totals five times faster than Omaha:

- Fayetteville, AR
- Huntsville, AL
- Sioux Falls, SD
- Raleigh, NC

< 0.5%

Omaha's annual employment growth

> 2.5%

Annual employment growth in these peer cities

Lincoln
Lincoln's employment and wage growth are nearly identical to Omaha's growth rates.

Source: DCI Consulting Group (August 14, 2025), Commissioned by Aksarben Foundation

AKSARBEN FOUNDATION · REPORT SUMMARY

The Cost of Slow Growth

If Omaha and Lincoln had grown occupied jobs (employment) and wages over the past five years by annual growth rates commensurate with comparable cities, then these two cities would have collectively generated:

$11B+

in additional wages over the five-year period

$700M

in additional tax revenues the state would have collected from those wages

Source: DCI Consulting Group (August 14, 2025), Commissioned by Aksarben Foundation

AKSARBEN FOUNDATION · REPORT DETAILS

Omaha Employment Growth



5-YEAR CAGR

0.47%

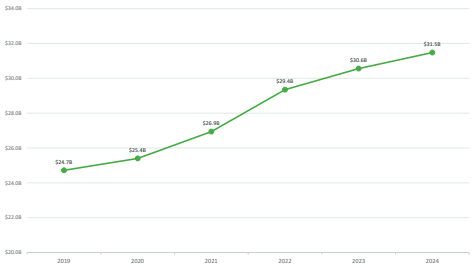
2019
500,194

2024
512,130

Source: DCI Consulting Group (August 14, 2025), Commissioned by Aksarben Foundation

AKSARBEN FOUNDATION · REPORT DETAILS

Omaha Wage Growth



5-YEAR CAGR

4.95%

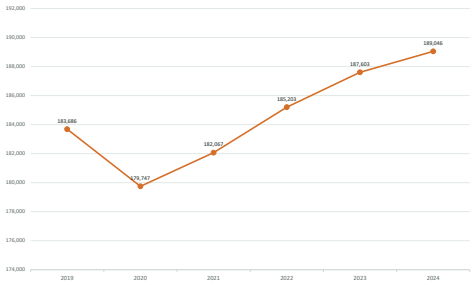
2019
$24.7B

2024
$31.5B

Source: DCI Consulting Group (August 14, 2025), Commissioned by Aksarben Foundation

AKSARBEN FOUNDATION · REPORT DETAILS

Lincoln Employment Growth



5-YEAR CAGR

0.58%

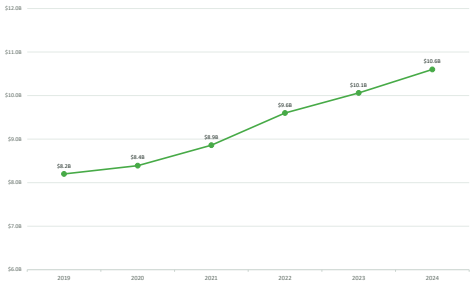
2019
183,686

2024
189,046

Source: DCI Consulting Group (August 14, 2025), Commissioned by Aksarben Foundation

AKSARBEN FOUNDATION · REPORT DETAILS

Lincoln Wage Growth



5-YEAR CAGR

5.25%

2019
$8.2B

2024
$10.6B

Source: DCI Consulting Group (August 14, 2025), Commissioned by Aksarben Foundation

AKSARBEN FOUNDATION · REPORT DETAILS

Gross Wage & Employment Growth vs. Other Cities

GROSS WAGE & EMPLOYMENT GROWTH COMPARISONS WITH OTHER CITIES

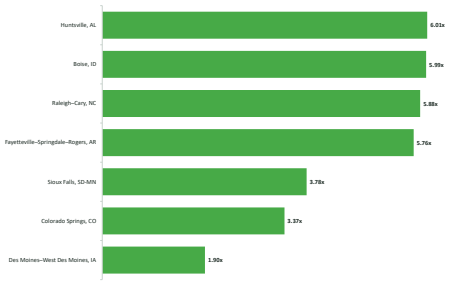
Metro Area	10/1/18 to 9/30/19 2019	10/1/19 to 9/30/20 2020	10/1/20 to 9/30/21 2021	10/1/21 to 9/30/22 2022	10/1/22 to 9/30/23 2023	10/1/23 to 9/30/24 2024	5-YEAR CAGR
Colorado Springs, CO Gross Wages	$15,013,236,936	$15,491,970,405	$16,868,664,006	$18,723,055,890	$19,924,392,148	$21,079,058,138	7.02%
Employment	350,184	339,821	355,602	368,786	376,303	378,981	1.59%
Average Annual Earnings	$41,549	$42,581	$44,788	$49,129	$51,160	$53,241	5.08%
Des Moines-West Des Moines, IA Gross Wages	$20,884,883,469	$21,505,635,418	$22,888,300,459	$25,362,696,880	$26,562,317,424	$28,412,121,152	6.35%
Employment	383,359	359,985	372,986	388,108	397,453	400,922	0.90%
Average Annual Earnings	$53,060	$56,547	$59,039	$63,600	$64,096	$68,768	5.32%
Fayetteville-Springdale-Rogers, AR Gross Wages	$13,080,512,952	$13,738,936,725	$15,103,496,043	$16,557,392,666	$17,399,080,240	$18,535,039,929	7.22%
Employment	260,835	257,905	266,935	282,576	290,439	298,365	2.73%
Average Annual Earnings	$48,877	$50,808	$54,919	$57,208	$58,441	$60,458	4.34%
Huntsville, AL Gross Wages	$13,805,794,030	$14,557,506,741	$15,682,146,719	$17,018,553,355	$18,210,879,333	$19,639,947,483	7.30%
Employment	234,337	231,844	242,818	252,499	262,381	269,563	2.84%
Average Annual Earnings	$57,344	$59,769	$62,987	$66,040	$68,012	$70,986	4.36%
Omaha-Council Bluffs, NE Gross Wages	$24,719,050,836	$25,396,418,456	$26,942,880,123	$29,346,289,026	$30,555,729,319	$31,478,147,635	4.95%
Employment	500,194	486,905	495,671	503,626	508,394	512,130	0.47%
Average Annual Earnings	$47,912	$49,707	$52,730	$56,987	$58,600	$59,645	4.48%
Raleigh-Cary, NC Gross Wages	$38,022,870,151	$38,035,392,972	$41,773,970,423	$47,576,479,723	$50,354,400,436	$53,367,258,457	7.02%
Employment	715,134	677,615	726,216	783,532	808,309	820,175	2.78%
Average Annual Earnings	$51,281	$52,651	$55,205	$58,843	$60,411	$63,038	4.17%
Sioux Falls, SD-MN Gross Wages	$7,743,220,537	$8,068,741,652	$8,795,746,198	$9,900,134,098	$10,326,019,536	$11,123,777,255	7.51%
Employment	157,308	156,425	161,145	164,971	168,499	171,878	1.79%
Average Annual Earnings	$48,052	$49,590	$53,323	$58,977	$60,254	$63,624	5.77%
Lincoln, NE Gross Wages	$8,204,190,316	$8,391,727,822	$8,863,354,040	$9,603,279,318	$10,062,629,022	$10,596,973,292	5.25%
Employment	183,686	179,747	182,067	185,203	187,603	189,046	0.58%
Average Annual Earnings	$43,412	$44,716	$47,447	$50,789	$52,490	$54,639	4.71%
Boise, ID Gross Wages	$15,916,480,611	$16,702,676,454	$18,807,713,203	$21,439,766,306	$22,762,794,574	$24,543,632,383	9.05%
Employment	375,602	373,141	395,318	413,066	424,086	431,861	2.83%
Average Annual Earnings	$41,250	$42,263	$45,951	$50,539	$52,064	$54,847	5.86%

Source: DCI Consulting Group (August 14, 2025), Commissioned by Aksarben Foundation

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AKSARBEN FOUNDATION · REPORT DETAILS

Employment Growth vs. Competitor Metros



How to read it
Each bar shows how many times faster the metro grew employment than Omaha over the same five-year period.

Five of seven peers grew at roughly 4–6x Omaha's pace.

Source: DCI Consulting Group (August 14, 2025), Commissioned by Aksarben Foundation

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AKSARBEN FOUNDATION · REPORT DETAILS

Estimated Missed Tax Revenue

ESTIMATED MISSED TAX REVENUE

OMAHA & LINCOLN (COMBINED)	2019	2020	2021	2022	2023	2024	5 YR
Gross Wages	$32,923,241,152	$33,788,146,179	$35,806,234,363	$38,947,568,344	$40,618,358,342	$42,075,120,926	5.03%
Employment	683,880	666,652	677,738	688,829	695,997	701,176	0.50%
Average Annual Earnings	$46,705	$48,366	$51,316	$55,252	$56,958	$58,300	4.53%
What if Omaha and Lincoln grew WAGES at a CAGR of 7%, similar to the other metro areas?							
Estimated Gross Wages (7.0% CAGR)	$32,923,241,152	$35,227,868,033	$37,693,818,795	$40,332,386,111	$43,155,653,139	$46,176,548,858	7.00%
Employment to Achieve 7% CAGR	683,880	695,058	713,466	713,321	739,474	769,526	2.39%
Missed Wage Growth	---	$1,439,721,754	$1,887,584,432	$1,384,817,767	$2,537,294,797	$4,101,427,932	**$11,350,846,682**
Income Tax @ 5.0%	---	$71,986,088	$94,379,222	$69,240,888	$126,864,740	$205,071,397	**$567,542,334**
Estimated Sales Tax @ 5.0%	---	$17,996,522	$23,594,805	$17,310,222	$31,716,185	$51,267,849	**$141,885,584**
Total Missed Tax Revenue	---	$89,982,610	$117,974,027	$86,551,110	$158,580,925	$256,339,246	**$709,427,918**

$11.35B
Missed wage growth (2020–2024)

$567.5M
Missed income tax @ 5.0%

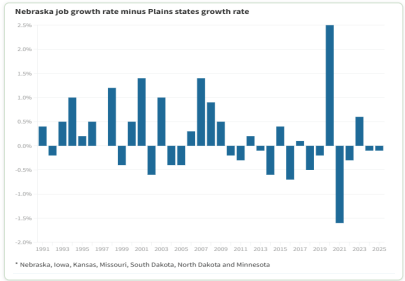
$709.4M
Total missed tax revenue

Source: DCI Consulting Group (August 14, 2025), Commissioned by Aksarben Foundation · Assumes 7% wage CAGR, similar to peer metros

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NEBRASKA'S ECONOMY

Nebraska's Job Growth Rate Minus Plains States Growth Rate



Reading the chart
Each bar is Nebraska's annual job growth rate minus the Plains states' rate. Bars below zero are years Nebraska grew more slowly than its neighbors.

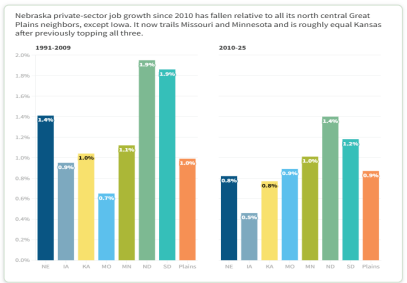
Plains states: Nebraska, Iowa, Kansas, Missouri, South Dakota, North Dakota and Minnesota.

Source: Flatwater Free Press, Apr. 17, 2026

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NEBRASKA'S ECONOMY

State Comparison in Private-Sector Job Growth



The takeaway
Since 2010, Nebraska's private-sector job growth has slipped relative to its north-central Plains neighbors (except Iowa).

Nebraska once outpaced Missouri, Minnesota and Kansas; it now trails Missouri and Minnesota and roughly matches Kansas.

Source: Flatwater Free Press, Apr. 17, 2026

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II

KEY ISSUE #1

Nebraska State Tax Residency

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KEY ISSUE #1 · NEBRASKA RESIDENCY

Two Ways to Be a Nebraska Resident

Residency Test

Have a permanent place of abode in Nebraska and are present over 183 days

OR

Domicile Test

Domiciled in Nebraska

KEY ISSUE #1 · NEBRASKA RESIDENCY · FACTORS 1–4 OF 18

Domicile Factors

01 Purchasing a home in another state for use as a principal residence

02 Paying taxes as a resident of another state

03 Obtaining a driver's license as a resident of another state

04 Registering a motor vehicle as a resident of another state

KEY ISSUE #1 · NEBRASKA RESIDENCY · FACTORS 5–7 OF 18

Domicile Factors

05 Voting in another state

06 The number of days you are present in Nebraska

07 The size, value, and nature of your Nebraska residence compared to your out-of-state residence

KEY ISSUE #1 · NEBRASKA RESIDENCY · FACTORS 8–10 OF 18

Domicile Factors

08 The location of your employment, business connections, and professional licenses

09 The physical location of items that have significant sentimental value to you

10 Your social, community, and family ties in both locations

KEY ISSUE #1 · NEBRASKA RESIDENCY · FACTORS 11–14 OF 18

Domicile Factors

11 Where your minor children attend school or daycare

12 Where your doctors, dentists, accountants, attorneys, bankers, and other professionals are located

13 Statements in estate planning documents

14 Location of burial plots

KEY ISSUE #1 · NEBRASKA RESIDENCY · FACTORS 15–18 OF 18

Domicile Factors

15 Obtaining resident hunting or fishing licenses

16 Where an individual spent his or her holidays, both secular and religious

17 Type and value of cars in your new state vs. Nebraska

18 Membership in clubs, civic organizations, and churches

KEY ISSUE #1 · NEBRASKA RESIDENCY

How to Win

1 **Declaration of Abandonment**

2 **Documentation**

3 **Coordinated Audit Responses**

KEY ISSUE #1 · NEBRASKA RESIDENCY

Business Owner Case

Key Facts Supporting Nebraska Residency

- Kept house in Nebraska
- Business interests in Nebraska (and elsewhere)
- Nebraska social contacts

Key Facts Supporting New State Residency

- Residence
- Voting / Registered to vote
- Jury duty
- Mail
- Banking

KEY ISSUE #1 · NEBRASKA RESIDENCY

Business Owner Case

COURT

No Nebraska domicile

No special test for domicile in tax cases

KEY ISSUE #1 · NEBRASKA RESIDENCY

Recent Case: Zweiback

Key Facts Supporting Nebraska Residency

- Kept house in Nebraska
- Approx. 5 months in Nebraska
- Kept Nebraska professional license

Key Facts Supporting New State Residency

- Residence in new state
- Voting / Registered to vote
- Approximately 7 months in new state
- Professional license in new state
- Indications that couple wanted to start new life in different place

KEY ISSUE #1 · NEBRASKA RESIDENCY

Recent Case: Zweiback

COURT

No Nebraska domicile

NDR did not agree with evidence of locations — what carried the day:

Taxpayers used their own testimony

Testimony of other parties who knew their locations

Additional documents consistent with those locations

KEY ISSUE #1 · NEBRASKA RESIDENCY

Acklie v. NDR

Lancaster County District Court · November 10, 2021

Key Facts

Owned residences in NE, FL, CO
CO was most valuable, FL 2nd

Additional vacation home for family in Nebraska

Investment property in Nebraska
Tax information for all Nebraska properties sent to Nebraska address

When travelling outside of Nebraska and Florida, generally left and returned from Nebraska

KEY ISSUE #1 · NEBRASKA RESIDENCY

Acklie v. NDR

Nebraska Supreme Court · December 9, 2022

Key Facts Pointing to Nebraska

- Investment property in Minnesota
  - Tax information for all Minnesota properties sent to Nebraska address
- Family connections to Nebraska
- Ownership interest in Nebraska corporation
  - Long time employee of Nebraska corporation

Key Facts Pointing to Florida

- Registered to vote in Florida
- Florida driver's licenses
- Passports listed Florida as home state

KEY ISSUE #1 · NEBRASKA RESIDENCY

Acklie v. NDR

Nebraska Supreme Court · December 9, 2022

Key Facts Pointing to Nebraska

- More time in Nebraska than Florida
  - Over 183 days if partial days count
- Family connections to Nebraska
- Ownership interest in Nebraska corporation
  - Long time employee of Nebraska corporation

Key Facts Pointing to Florida

- Registered to vote in Florida
- Florida driver's licenses
- Passports listed Florida as home state

KEY ISSUE #1 · NEBRASKA RESIDENCY

Acklie v. NDR — Decision

Nebraska Supreme Court · December 9, 2022

COURT

The Acklies were Nebraska residents

Takeaways

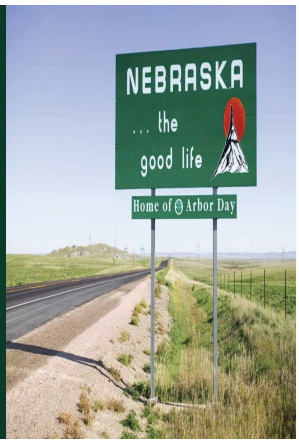
Court agreed with NDR that partial days in Nebraska count as full days toward the Residence Test

Court found too many factors pointing to Nebraska under the Domicile Test

III

KEY ISSUE #2

Nebraska's Special Capital Gains Exclusion



KEY ISSUE #2 · NEBRASKA'S SPECIAL CAPITAL GAINS EXCLUSION

The Basics

Shareholders of Corporation
Includes LLCs filing as corporation

Nebraska Residents

Acquired shares while working at Corporation

Passed in LB 775, 1987



KEY ISSUE #2 · NEBRASKA'S SPECIAL CAPITAL GAINS EXCLUSION

Requirements for Corporation

5
Shareholders

2
Groups of unrelated shareholders
At least 10% in each group

3 yrs
Operating in Nebraska prior to realization

✓
Includes successor corporations
Tax free reorganization



KEY ISSUE #2 · NEBRASKA'S SPECIAL CAPITAL GAINS EXCLUSION

Gifts

Qualifying stock may be gifted to:

- **Spouse**
- **Issue**
- **Trust for benefit of spouse or issue**



KEY ISSUE #2 · NEBRASKA'S SPECIAL CAPITAL GAINS EXCLUSION

Issues That We're Seeing

01 **Gifts to children through partnership, LLC or trust**

02 **LLC qualification**
Structure through newly created corporation

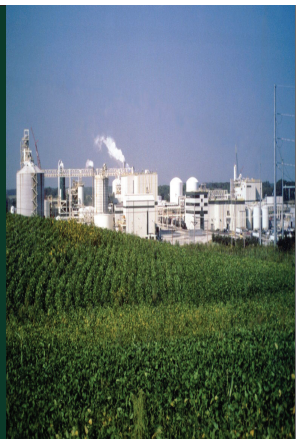
03 **Last minute transfers**
Stewart decision



IV

KEY ISSUE #3

Manufacturing Machinery & Equipment Exemption



KEY ISSUE #3 · NEBRASKA'S MANUFACTURING MACHINERY & EQUIPMENT EXEMPTION

The Basics

- The sale, lease, or rental of manufacturing machinery and equipment
- To a manufacturer
- For use in manufacturing
- **Is exempt from tax.**



KEY ISSUE #3 · NEBRASKA'S MANUFACTURING MACHINERY & EQUIPMENT EXEMPTION

Specific Inclusions

- **Machinery and equipment used to maintain the integrity of the product**
- Or to maintain the unique environmental conditions
- Necessary for either the product or the manufacturing machinery and equipment.



KEY ISSUE #3 · NEBRASKA'S MANUFACTURING MACHINERY & EQUIPMENT EXEMPTION

Specific Inclusions

- **Machinery and equipment used to transport, convey, handle, or store**
- The raw materials or components used in manufacturing
- Or the products produced by the manufacturer for sale.



KEY ISSUE #3 · NEBRASKA'S MANUFACTURING MACHINERY & EQUIPMENT EXEMPTION

Issues That We're Seeing

Definition of Manufacturer

- No more 50% test
- Manufacturing in the context of another business activity

NDR's Narrow Interpretation of Eligible Equipment

- Used to transport, convey, handle or store raw materials and products



V

SECTION

Other Important Nebraska State Tax Issues



OTHER ISSUES

Other Significant Tax and Nebraska Incentive Issues

Sales tax on software development

Tax on cloud computing / data center services

Nebraska tax for trusts administered elsewhere

Qualification for alternative apportionment

Classification as taxable goods or nontaxable services

Business buyer's liability for seller's unpaid taxes

Real v. personal property
Particularly in the context of contractors

Q&A

Questions & Discussion



Thank You!

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Education

- Creighton – College of Business 1999 (Summa Cum Laude)
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- Alabama – LL.M in Taxation 2010 (Magna Cum Laude)
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Memberships

- American Bar Association – Section of Taxation, State and Local Taxes Committee
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- American Institute & Nebraska Society of CPA's

Recognition

- Chambers USA – America's Leading Lawyers for Business (Nebraska, Tax-Band 1)
- Co-designer and co-drafter of 2020 Imagine Nebraska Act

Practice

- Works with Nick Niemann in the areas of tax incentives, site selection and state tax defense and planning for businesses
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