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J. Winston Busby, ESQ., LLM

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Stewart Welch III, Accredited Estate Planner, Certified Financial Planner®

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Our Welch Investments Division of The Welch Group, LLC is run by two members, Woodard Peay, CFP, MBA, and Marshall Clay, Esq., CFP. Woodard is a seasoned professional in financial planning who also knows what it takes to run a successful business. Marshall graduated from West Point Academy, served our country as a commissioned officer for seven years, then graduated from Cumberland Law School before joining us. Rounding out their team is Callie Jowers, CFP, Adviser; and Reagan White, Associate Adviser. Callie graduated magna cum laude in Family Financial Planning & Counseling from the University of Alabama. Reagan also attended the University of Alabama, where he graduated with a Bachelor of Science degree in finance.

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Introduction

Much of the world we find ourselves in today is defined by chaos, complexity, and a constant state of change. The IRS tax code and accompanying regulations currently runs about 40,000 pages! And then there are our elected representatives in Congress who feel it's their mandate to constantly change laws and regulations. The financial markets today are complex and, in many ways, globally intertwined, making it impossible to predict how events in one part of the world may affect markets in other parts of the world. It's no wonder that so many people simply throw their hands up and focus on trying to pay their bills rather than planning for long-term events like estate, retirement, and tax planning.

I own a fee-only investment management and financial advisory firm serving clients throughout the United States. Winston Busby is a highly intelligent and resourceful estate-planning attorney with one of Alabama's largest and most prestigious law firms. Together, our combined experience helping families plan their financial futures exceeds 50 years. We have had the opportunity to work with many affluent individuals and families throughout the United States. The common characteristic that we find among them is that they take pride in both their financial success and in their ability to handle their finances. This book was not written just for the affluent but also for the many people who want to become affluent.

What does it take? Although you may already have accumulated a sizable estate and feel comfortable handling your investments, chances are there's a lot more you could do in the area of estate, retirement, and tax planning. Tax laws change, creating new opportunities and challenges regarding wealth accumulation and estate planning. The Tax Cuts and Jobs Act of 2017 is the most significant tax legislation since the Reagan Administration.

This is the reason we wrote this book. The purpose of *J.K. Lasser's New Rules for Estate, Retirement, and Tax Planning*, Sixth Edition, is to make certain that you have taken steps to make sure your finances are in order and that you have a specific strategy in place. Whether you are a wealthy Baby Boomer (or not so wealthy) or a Millennial (or a generation in between) who just wants to know the basics of writing a will, how much you should be saving for retirement, or how best to cut your income taxes, this book offers valuable strategies you can use today and in the future.

As you read this book, we encourage you to keep your parents' situation in mind because some of the more advanced strategies may be more appropriate for them than for yourself. You may want to share the ideas in this book with them or, better yet, buy them their own copy. After all, you should all share the goal of maximizing the amount of money that you can transfer to your heirs and charitable organizations.

The book begins with an overview of the most important aspects of the Tax Cuts and Jobs Act of 2017. You will be able to use this chapter as a reference tool for reviewing significant estate and income tax laws affecting you.

Next, you will need to assess the adequacy of your current estate plan. What is the value of your total estate? You will learn how to determine your estate net worth. This is vital because knowing its value will let you define the resources available to your family to provide for their income needs should you die prematurely. You will also be able to determine approximately how much in estate taxes your heirs might owe.

It is also important to assess whether you are on track toward retirement—are you accumulating enough investment assets to provide you with a worry-free retirement? Studies indicate that the average working American is saving less than one-third of what he or she needs to have enough assets to maintain the same lifestyle during retirement. In some cases, this shortfall will be made up from inheritances. If you find out that you're lagging behind, this book will help you figure out how much you need to be investing to get on track, and you'll learn how to devise an appropriate investment plan. Whether you are a pre-retiree (planning to retire within 10 years), already retired, or retirement is decades away, we outline the very best strategies for you to use to create your best retirement possible.

Another key aspect of estate planning is, of course, having a will. Research indicates that as many as 80 percent of adult Americans either don't have a will or their will is out of date. If you fall into this group, you should stop procrastinating. It really does matter if you die without a will! We'll outline the perils of dying without one. The resulting chaos will surprise you. You'll learn how to prepare yourself so that you can minimize the time and expense of working with an attorney.

The use of trusts is a vital part of most estate plans. You can use them to protect your children from themselves, to protect you from possible future creditors, or to save on income and estate taxes. These are powerful weapons in the war to protect your assets for yourself as well as future heirs. It is our experience that many people carry large amounts of life insurance, including their employer's group life. Utilizing some type of trust is often an invaluable estate- planning tool. You'll learn about the irrevocable life insurance trust, living trust, and other types of trusts. Be sure to read the section about the Legacy Trust: a concept you can use to create a financial safety net for future generations of family members (made famous by the Rockefellers and Kennedys).

Many of you face the difficult task of funding your children's education. You'll learn how to effectively use qualified tuition plans and education individual retirement accounts as well as custodial accounts and minors' trusts. You'll also learn about how grandparents can be willing partners in assisting with your children's educational expenses.

If you are interested in providing financial support to a religious organization, an educational institution, or a favorite charity, you'll gain insights on the best ways to maximize the effectiveness of your donations. Often, gifts to tax-exempt organizations can solve a financial dilemma such as how to convert low-basis non-income-producing property into income-producing property while avoiding a large tax bill.

Once you have accumulated enough assets for your retirement years, you may want to shift your focus to transfer strategies for your children and other heirs. We'll outline strategies that will allow you to transfer to heirs significant wealth at a fraction of its market value while maintaining control of your property.

People who own a family business or farm often face a perilous future; this is especially worrisome because many of these individuals desperately want to ensure that the business or farm remains in the family so that it can be continued by future generations of family members. Obstacles to this goal include estate taxes and lack of liquidity. The solution is a well-developed transition plan, which is also fully explained in this book.

In today's litigious society, many people fear the threat of a lawsuit that will result in financial ruin. Feeling helpless, we may cross our fingers and hope it does not happen to us. A preferable approach is to be proactive. If you consider yourself a likely target, you can do many things to protect your assets. Some solutions are as simple as transferring assets to a spouse who is less at risk.

Other solutions include the use of trusts, family limited partnerships, and even more exotic options such as domestic or foreign asset protection trusts. For entrepreneurs, we extensively review the pros and cons of the various entity choices you have for operating your business.

As you develop and implement your estate, retirement, and tax plan, you'll almost certainly need the assistance of a qualified professional. Finding the right person, someone who is truly qualified, can be a daunting task. It is one of the reasons many people fail to plan at all. To help support you with this process, your coauthors will gladly help you find an adviser to assist you with your needs (Appendix A). In Appendix A we also offer tips on how to get the most out of your advisers while minimizing their fees.

Because the world around us is constantly changing and we want you to stay on top of these changes, we maintain a Web link with updates of important changes related to the content of this book as well as other topics we believe would be of concern to you. You can access this resource by visiting the Resource Center at www.welchgroup.com; click on "Links," then "ESTATE BOOK UPDATES."

As Americans, our limitations are constrained only by our own imagination, our willingness to take time to develop appropriate strategies, and the self-discipline to execute our game plan. Picking up this book is an essential first step. Carefully reading it and implementing the strategies most appropriate to your situation will enable you to take a giant leap toward taking charge of your financial destiny. May God smile on your journey.

Stewart H. Welch III, CFP®
Accredited Estate Planner

J.K. LASSER'S™

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CHAPTER 1

Tax Cuts and Jobs Act of 2017

President Trump signed new tax legislation on December 19, 2017, that will significantly impact many Americans. The title of the new law was intended to be the Tax Cuts and Jobs Act. However, due to certain procedures involved in passing the new law, the short title was removed and the official title is "To provide for reconciliation pursuant to title II and V of the concurrent resolution on the budget for fiscal year 2018." Despite the issues surrounding the name, the new tax law is commonly known as the Tax Cuts and Jobs Act and will be referred to in this book as the TCJA.

The TCJA sets forth the most extensive changes to the tax law in more than 30 years, although many of the provisions are set to expire after 2025. The TCJA significantly impacted both individual and corporate taxpayers. Individual tax rates were reduced, and individual deductions were modified. Taxpayers operating businesses through flow-through entities, such as LLCs, S corporations, or sole proprietorships, received a favorable new deduction for certain types of income. The TCJA reduced corporate tax rates for corporations taxed as C corporations. In the estate and gift tax arena, the TCJA doubled the amount of wealth that may pass tax-free to nonspouse, noncharitable beneficiaries.

Although the TCJA made changes to many areas of the tax law, not all the provisions of the TCJA are permanent. Most provisions took effect on January 1, 2018. The TCJA included a sunset provision stating that many provisions will expire after 2025. For instance, the TCJA created provisions regarding individual tax reform that extend through 2025. However, the changes to business reform measures are generally permanent. Taxpayers should become familiar with an overview of the TCJA and its effect on income tax provisions, business tax provisions, and estate and gift tax provisions.

Ordinary Income Tax Rates

The TCJA effectively changed individual income tax rates from 2018 to 2025 for all Americans other than those under the 10 percent tax bracket.

The TCJA shifted the marginal tax rates for Americans making more than $9,525. The marginal tax rates for middle-class Americans are subject to a progressive rate structure as income increases. The ordinary income tax rates under the new law are: 10 percent, 12 percent, 22 percent, 24 percent, 32 percent, 35 percent, and 37 percent. However, the TCJA dramatically altered the income brackets to which the tax rates are applied. For example, the marginal tax rate of 35 percent, which previously encompassed $424,950–$426,700, now encompasses an income bracket of $200,000–$500,000. See Table 1.1 for a complete review of the schedule for joint and single tax filers for 2018. The marginal brackets are indexed for inflation and set to increase beginning in 2018.

Capital Gains Tax Rates and Qualified Dividends

The TCJA maintained the favorable maximum capital gains rates of 15 percent for all Americans making less than $425,000 ($479,000 for married filing jointly), indexed for inflation. For wealthier Americans, the maximum capital gains rate will be 20 percent. Similarly, the 15 percent rate on qualified dividends will apply to taxpayers making less than $425,000 ($479,000 for married filing jointly), indexed for inflation. For taxpayers with incomes above those thresholds, dividends will be taxed at 20 percent.

Educational Provisions

Prior law introduced many tax benefits for implementing an educational savings plan. With respect to the TCJA, prior benefits were retained by extending the American Opportunity Tax Credit for Higher Education Expenses through 2025 as well as the addition of new benefits in some areas. Some of these benefits are highlighted below.

Education IRA

The TCJA continued the opportunity for taxpayers to contribute to a Coverdell Education Savings Account. Because of some of the restrictions outlined below

TABLE 1.1 Schedule of Individual Income Tax Rates

				Single Filers			
2018	10%	12%	22%	24%	32%	35%	37%
Year	**$0–$9,525**	**$9,256–$38,700**	**$38,701–$82,500**	**$82,501–$157,500**	**$157,501–$200,000**	**$200,001–$500,000**	**$500,001+**
				Joint Filers			
2018	10%	12%	22%	24%	32%	35%	37%
Year	**$0–$19,050**	**$19,051–$77,400**	**$77,401–$165,000**	**$165,001–$315,000**	**$315,001–$400,000**	**$400,001–$600,000**	**$600,001+**

and the enhanced features to 529 plans under the TCJA, most taxpayers will likely utilize the benefits of a 529 plan under the new law as opposed to Education Savings Accounts. Nonetheless, the features of these accounts under the TCJA include:

- Permanently increased the contribution limits from $500 per year to $2,000 per year.
- Distributions, when used to pay for qualified education expenses, are tax free.
- Allowed tax-free withdrawals for elementary (including kindergarten), secondary, and postsecondary school tuition and expenses.
- Included tuition, room and board, tutoring, uniforms, extended day program costs, computer technology hardware and software, Internet access, and special needs services for special needs beneficiaries as qualifying expenses.
- The age limit is waived for special needs beneficiaries.
- Contributions can be made until the donor's due date for their federal income tax return.
- For donors who are single tax filers with a modified adjusted gross income (MAGI) of between $95,000 and $110,000 ($110,000 and $220,000 for married taxpayers filing jointly), the contribution limits are (ratably) phased out. These MAGI thresholds are adjusted annually for inflation.

Tip

If you would like to make a contribution to an education IRA for your child but you do not qualify because your adjusted gross income (AGI) is too high, consider having your child contribute to his or her own account. Unlike other IRAs, a person does not have to have earned income to contribute to an education IRA, nor is there a minimum age requirement. Contributions cannot be made for beneficiaries who are 18 years of age or older.

Section 529 Plans

529 college savings plans were expanded through broadening the meaning of "qualified higher education expenses" to include tuition at public, private, or religious elementary or secondary schools, limited to $10,000 per student during the taxable year.

Business and Corporate Tax Relief

Under prior law, the business taxpayer was allowed to immediately deduct up to $500,000 of business property purchased during the calendar year. Prior law also allowed for 50 percent bonus depreciation for purchases of certain new property. The TCJA increased the deductible amount to $1 million with a phase-out threshold of $2.5 million. The TCJA expanded the bonus depreciation percentage from 50 percent to 100 percent for purchases of property acquired and in service after September 27, 2017, and before 2023 (2024 for "long production period" property and certain aircraft). For the latest updates regarding tax law changes, visit the Resource Center at www.welchgroup.com; click on "Helpful Links," then "ESTATE BOOK UPDATES."

Corporate Tax Rate Changes

Under prior law, the tax liability for corporations taxed as C corporations was determined by applying a certain set of progressive rates to brackets of taxable income. A rate of 35 percent as applied at the highest income levels ($18,333,333 in 2017).

Under the TCJA, the corporate tax regime is changed from a progressive rate structure to a flat rate of 21 percent. You will notice that this rate is significantly lower than the highest individual rate. However, corporations (again, taxed as C corporations) are still subject to the so-called double tax on income, meaning that income is first taxed at the corporate level, now at 21 percent but if it is distributed to shareholders as a dividend, the income is subject to a second level of tax at a top rate 20 percent.

Pass-Through Income Deduction Under § 199A

One of the biggest changes to the tax law under the TCJA is the new 20 percent deduction for business income derived from a pass-through entity. Note, in the discussion of the corporate tax above, we talked about the double tax. Income from a pass-through entity is subject to only one level of tax.

Under prior law, sole proprietorships, partnerships, LLCs, and S corporations were treated as pass-through entities subject to tax at the individual owner or shareholder level. The income earned by the owners or shareholders was reported on their individual tax returns and subject to ordinary income tax rates.

Under the TCJA, a 20 percent deduction is now available for taxpayers with domestic "qualified business income" from these types of businesses for tax years after December 31, 2017, and before January 1, 2026. The provisions under new Section 199A are extremely nuanced and complicated, but limits on the deduction are imposed on certain types of income unless a taxpayer's income is below a threshold amount (taxable income under $315,000 for joint filers, $157,500 for single filers).

The deduction is available to noncorporate taxpayers such as trusts and estates. However, pass-through income from certain service businesses in the fields of health, law, accounting, performing arts, and other service businesses are not eligible for the deduction. However, engineers and architects are not subject to this restriction.

Many other limitations and complications to the new pass-through deduction exist, and many tax advisers are looking to the IRS to guide them through issues raised by the deduction.

Additionally, new regulations addressing the deduction were proposed on August 8, 2018. Taxpayers may rely on these rules until final regulations are published.

Estate, Gift, and Generation-Skipping Transfers

The TCJA retained the current transfer tax regime but made a significant change that gives taxpayers a tremendous planning opportunity. The tax rate is 40 percent on estates exceeding the exemption amount (i.e., the "taxable" estate). The previous exclusion amount enacted was $5 million indexed for inflation and under prior law was set to be $5,490,000 in 2018. Under the TCJA, the exemption amount doubled, meaning that each individual may transfer up to $11,180,000 (indexed for inflation) at death or by gift during life without paying transfer taxes. Because of portability, this effectively allowed spouses to transfer approximately $22 million to beneficiaries without estate gift taxes. The applicable exclusion amount is now the basic exclusion amount of $11,180,000 million (indexed for inflation) plus a deceased spouse's unused exclusion (DSUE) amount.

Following is a list of select provisions that could affect your estate planning:

- The TCJA maintained the maximum estate, gift, and generation-skipping rates at 40 percent. The TCJA also temporarily increased the exclusion amount to $11.18 million, indexed annually for inflation (see Table 1.2). This amount is set to return to pre-2018 levels at the end of 2025.
- Portability is still a feature of the estate tax system under the TCJA. A decedent's applicable exclusion amount is now the basic exclusion

TABLE 1.2 2018 Tax Relief Act Applicable Exclusion Amount

Year	Applicable Exclusion Amount	Maximum Estate Tax Rate (%)
2018	$11,180,000	40

amount of $11.18 million plus the DSUE amount. Congress intended that portability would simplify estate planning. Portability will continue to be an important component of the tax system.

- The TCJA retained the "annual exclusion" in which taxpayers may make gifts of assets (assuming the gift is of a present interest) to as many donees as they like without using their applicable exclusion amount. For spouses, the amount effectively doubles. In 2018, the annual exclusion amount is $15,000.

Estate-Planning Issues under the 2017 TCJA

Because of the unique opportunity provided by the TCJA, everyone should review their estate plan to take advantage of the new provisions through 2025. An approach we favor is for the client to contact one of their professional advisers on the estate-planning team, whether the estate-planning lawyer, financial planner, life insurance agent, accountant, or trust officer. Authorize that team member to assemble the team in a preliminary meeting to review the listing of the assets and liabilities (financial X-ray), review the current documents, and then meet with the client and the client's spouse to make team recommendations. This approach maximizes creative input and communication and often aids in identifying important new alternatives to consider. The financial X-ray would show what assets are titled in the name of each spouse; what, if any, assets are titled in joint names; and, ideally, what assets are in the children's names.

Understand that payment of estate or death taxes is largely elective. By making annual gifts during your lifetime, then transferring the maximum tax-free amount (applicable exclusion amount) to your children and grandchildren at death, and finally bequeathing your remaining estate to a family charitable foundation, your estate tax would be zero. For example, Raymond and Laura Gold have a $50 million net worth. Each year, they make maximum annual gifts to their two children and their spouses, plus maximum annual gifts to 529 plans for each of their grandchildren. Their wills direct the maximum to legacy trusts (Chapter 11) for the children, with the balance to a private foundation (Chapter 12) where the children (and eventually grandchildren) will serve as trustees. If they died in 2018, the disposition of their estate would look as follows:

$50,000,000	Total estate
–22,360,000	Exemption amount (2018) to legacy trust
$27,640,000	Directed to private foundation
$ 0	Estate tax

So here's the question: Is $22,360,000 "enough" to leave to your children? If not, you can still achieve "zero" estate taxes by employing additional strategies outlined throughout this book.

Here are two areas to focus your attention on:

1. With the advent of portability, does the plan provide the most flexibility while simultaneously taking advantage of the permanently enacted favorable transfer tax provisions and achieving the best result from an income tax perspective?
2. As discussed later in this chapter, does the estate plan and overall tax plan adequately prepare for income tax issues that may be a function of increased exclusion amounts or the 3.8 percent tax on net investment income that began in 2013 under the Affordable Care and Patient Protection Act?

Planning with Portability Under the TCJA

Portability allows the second spouse to die to use the DSUE amount from the first spouse to die. For example, assuming a couple where the husband has $1 million of assets in his name while the wife has $14 million in her name (combined estate of $15 million). Assuming a $11.18 million exclusion amount, under prior law if the husband died with $1 million of assets titled in his name (and payable to wife), then $10.18 million of his exclusion was wasted. This is because at her subsequent death, her now $15 million estate would be eligible for only her $11.18 million exclusion amount. Thus her taxable estate would be approximately $4 million. Portability will now allow the surviving wife to use the $10.18 million DSUE amount of her deceased husband plus her own $11.18 million exclusion amount. Thus, she could transfer $22.38 million tax free at her death.