Preparing for California's Proposed Billionaire Wealth Tax: Proposition 40

Preparing Today for Tomorrow's Planning Opportunities
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Editor's Note

> *This article discusses a proposed California ballot initiative that has not been enacted into law. The discussion below reflects publicly available information as of the date of publication. Future legislation, regulatory guidance, judicial decisions, or administrative interpretations may materially affect the issues discussed.*

Every significant tax law creates two distinct planning periods.

The first occurs before the law is enacted, when taxpayers have flexibility but incomplete information.

The second occurs after the law is enacted, when the rules are better understood—but many planning opportunities have already narrowed or disappeared.

California's proposed Billionaire Wealth Tax Initiative appears to be entering the first of those periods.

Whether the initiative ultimately passes or fails, individuals and families with significant wealth should begin evaluating how their assets are owned, valued, and managed—not because dramatic changes should be made today, but because sophisticated planning requires time, flexibility, and careful analysis.

Waiting until after the election—or until regulations are issued—may unnecessarily limit planning opportunities. At the same time, because the initiative uses January 1, 2026 as its proposed obligation date and contains rules addressing later transfers and trust arrangements, taxpayers should not assume that steps taken during the balance of 2026 will necessarily eliminate potential liability.

Acting too quickly, however, may be equally costly.

The challenge for successful families is not deciding whether to react today.

The challenge is preparing today so they can make informed decisions tomorrow.

This article is not intended to predict the outcome of the proposed initiative or recommend immediate changes to existing plans. Rather, its purpose is to identify the planning issues successful families should begin evaluating now so they are prepared to respond thoughtfully as the legal landscape develops.

The legal profession often speaks about "planning opportunities." In reality, planning opportunities rarely appear overnight. They are created by time—time to evaluate alternatives, coordinate advisors, obtain valuations, review existing estate planning documents, and thoughtfully consider the long-term consequences of significant decisions.

That is precisely where California's proposed Billionaire Wealth Tax Initiative finds many successful families today. The initiative presently raises more planning questions than it answers, but it also provides something equally valuable: time to prepare before important decisions may need to be made.

What We Know

In June 2026, California’s Secretary of State certified the 2026 Billionaire Tax Act for the November 3, 2026 General Election ballot, where it will appear as Proposition 40. If approved, Proposition 40 would impose a one-time tax for the 2026 tax year on applicable individuals with net worth of at least $1 billion and on certain applicable trusts. For individuals with net worth between $1 billion and $1.1 billion, the applicable rate would phase in from zero to five percent. Once an individual’s net worth reaches $1.1 billion, the proposed tax would generally equal five percent of the individual’s covered net worth—not merely five percent of the amount exceeding $1 billion. Married couples would be treated as one individual for this purpose. Covered wealth generally includes businesses, securities, intellectual property, artwork, collectibles, and other tangible and intangible personal property, while certain real property, retirement assets, and other specified assets would be excluded.

The proposal’s timing is especially important. The initiative defines January 1, 2026 as the “tax obligation date” and December 31, 2026 as the “valuation date.” In general, whether an individual or trust falls within the potentially taxable class would be determined by circumstances existing on January 1, 2026, while the amount of covered net worth would be measured as of December 31, 2026. Thus, the initiative is designed to impose a tax for 2026 even though California voters will not consider the measure until November 3, 2026. The initiative also directs courts, if necessary, to reform those dates so that the tax applies in 2026, 2027, or the earliest subsequent year constitutionally permitted.

Although the proposal is expressly structured as a one-time tax, tax policy does not remain static. Future voters or legislatures could amend rates, exemptions, valuation rules, or the duration of a tax regime, subject to applicable constitutional requirements. No one can predict whether that will occur here. The appropriate planning response is neither to assume that the tax will become permanent nor to assume that the proposal as currently drafted will remain unchanged, but instead to favor structures capable of adapting if the law later evolves.

Although the proposal’s headline—a one-time tax of up to five percent on individuals and certain trusts associated with net worth of at least $1 billion—is relatively easy to understand, its practical application is considerably more complex. As is often the case with significant tax legislation, the implementation details may ultimately prove more consequential than the headline rate itself.

For many taxpayers, the most significant planning issues may not concern the tax rate itself, but rather:

- What assets are included?
- How are difficult-to-value assets appraised?
- Which trusts are attributed to the grantor?
- When is wealth measured?
- How are ownership interests valued?
- What documentation will be required?

Those questions will likely determine the practical impact of the proposal far more than the five percent tax rate.

The November ballot will also include two constitutional initiatives that could materially affect Proposition 40. Proposition 41 would prohibit new state taxes that exclude their revenues from the existing voter-approved state spending limit, including taxes appearing on the same ballot. Proposition 42 would prohibit new state taxes on the ownership or control of personal property and certain retroactive state taxes, likewise including taxes appearing on the same ballot. If voters approve Proposition 40 together with either or both competing measures, their interaction may depend upon the respective vote totals, the measures' specific provisions, and subsequent judicial interpretation. These competing measures add another significant layer of uncertainty that affected families and advisors should monitor closely.

A Simplified Illustration

Assume, solely for illustration, that a married couple is treated as having covered net worth of $1.05 billion on the applicable valuation date. Under the proposed phase-in formula, the applicable rate would be 2.5%, producing a tentative tax of approximately $26.25 million before considering exclusions, liabilities, apportionment, credits, trust attribution, or other adjustments.

If the couple's covered net worth were $1.1 billion or more, the general rate would be 5% of covered net worth. Thus, covered net worth of $1.2 billion could produce a tentative tax of approximately $60 million—not merely $10 million based on the $200 million exceeding the $1 billion threshold.

These examples are deliberately simplified. The initiative contains detailed rules governing debts, trusts, exempt assets, transfers, valuation, apportionment, and optional deferral arrangements that could materially affect the actual calculation.

What We Do Not Yet Know

Perhaps the most important aspect of the current discussion is recognizing what remains uncertain.

As estate planners, business attorneys, and tax advisors, we often tell clients that uncertainty should not produce panic—but neither should it produce inaction.

At present, a number of important questions remain unresolved or will likely require further legislative, regulatory, or administrative guidance if the initiative is approved.

Among the matters likely to require further guidance or adjudication are:

- Detailed valuation methodologies for closely held businesses and complex investment interests;
- The availability and extent of discounts for lack of control and lack of marketability;
- The qualifications and procedural requirements applicable to certified appraisers;
- The treatment of differing classes of startup and pre-IPO equity;
- Valuation of carried interests, promotes, and contingent economic rights;
- The interaction among grantor-trust attribution, applicable-trust taxation, beneficiary attribution, and transfer rules;
- The effect of trust modifications or changes in grantor status occurring during 2026;
- Filing, payment, audit, protest, and refund procedures;
- The constitutional validity of the initiative’s retroactive features and residency rules; and
- The interaction between the wealth-tax initiative and the competing ballot measure prohibiting new personal-property taxes.

These unanswered questions should not be viewed as reasons to postpone planning.

Rather, they define the areas where planning should begin.

Three Types of Uncertainty

As advisors, we often think about uncertainty in three distinct ways.

Legislative uncertainty.

Will California voters ultimately approve the initiative?

Regulatory uncertainty.

If enacted, how will administrative agencies interpret, implement, and enforce the statute?

Personal uncertainty.

Perhaps most importantly, what will your own circumstances look like over the next several years? Will you sell your business? Experience a liquidity event? Retire? Admit new owners? Modify your estate plan? Relocate? Receive an inheritance?

Sophisticated planning accounts for all three forms of uncertainty—not merely the first.

Why Planning Cannot Wait

Some readers may reasonably ask:

> "If the law is not final, why begin planning now?"

The answer is simple.

Sophisticated planning takes time.

Business valuations may require months to complete. Estate planning modifications frequently involve attorneys, accountants, valuation experts, trustees, and family members. Complex ownership structures often require substantial review before any meaningful recommendations can be made.

Beginning those conversations today does not require anyone to make irrevocable decisions. It allows families and their advisors to identify available options, understand which actions remain legally effective, and prepare to act promptly as the measure's validity, implementation, and administrative requirements become clearer.

Planning Before There Is Something To Do

Sophisticated planning is rarely reactive.

The best plans are established before they become necessary.

Today, there may be relatively few irreversible decisions that should be made solely because of the proposed initiative.

There are, however, several planning projects that families and business owners should begin now.

1. Inventory Your Wealth

Many families have never assembled a comprehensive inventory of their wealth.

While investment accounts may be easy to identify, other assets are frequently spread among multiple entities, trusts, partnerships, and family offices.

Now is an excellent opportunity to organize:

- ownership schedules;
- trust diagrams;
- capitalization tables;
- entity charts;
- family balance sheets;
- ownership percentages;
- shareholder agreements; and

- operating agreements.

Regardless of whether the initiative ultimately becomes law, this exercise will improve the family's overall planning.

2. Identify Assets That May Present Valuation Challenges

Perhaps the single greatest uncertainty surrounding the proposed initiative is not the tax itself, but valuation.

Consider two families, each with a reported net worth of approximately $2 billion.

One family's wealth consists primarily of publicly traded securities.

The other owns a controlling interest in a privately held technology company whose value depends upon future earnings, intellectual property, and anticipated growth.

Although their reported wealth may appear similar, the valuation issues are fundamentally different.

This illustrates why valuation may ultimately become one of the defining issues under any future wealth tax.

The initiative already establishes several important valuation rules. Publicly traded assets would generally be valued at their market trading value on December 31, 2026. For a privately held business, a funding round or other equity sale occurring within two years of the valuation date may establish a minimum value unless the taxpayer proves by clear and convincing evidence that the resulting valuation would significantly overstate the company's worth. The initiative also requires certified appraisals in specified circumstances, directs appraisers to submit copies to the Franchise Tax Board, and authorizes penalties against appraisers in cases involving substantial or gross valuation errors.

Further guidance would still be necessary concerning qualified appraisers, acceptable methodologies, discounts, documentation, and the treatment of many complex assets. Nevertheless, the initiative does not leave valuation entirely for future rulemaking. It establishes a framework that taxpayers, valuation professionals, and advisors should begin studying now.

Comparable valuation challenges may arise with:

- startup companies;
- venture capital investments;
- private equity interests;
- intellectual property;
- carried interests;
- general partnership interests;
- cryptocurrency;
- mineral interests;
- fine art;

- collectibles; or
- unique investment assets.

Families owning these types of assets should begin identifying which holdings may ultimately require sophisticated valuation analysis.

This does **not** necessarily mean obtaining formal appraisals today.

Rather, it means identifying those assets that may require defensible valuation methodologies should future guidance require them.

For many successful families, that work will take months—not weeks.

Families should also recognize that valuation is rarely a single event. As businesses mature, financing rounds close, markets fluctuate, or intellectual property develops, values may change substantially over relatively short periods. Establishing a defensible valuation process may ultimately prove more important than arriving at a single valuation conclusion.

Estate Planning: Flexibility May Become More Valuable Than Certainty

Perhaps the most significant planning discussion arising from the proposal concerns existing estate planning structures.

Many affluent families have implemented sophisticated trust planning over many years using intentionally defective grantor trusts ("IDGTs"), GRATs, SLATs, dynasty trusts, and other wealth-transfer techniques.

The initiative expressly addresses grantor trusts. As currently drafted, an individual's net worth would include the net worth of any trust treated as a grantor trust for income-tax purposes. The proposal's definition also includes a trust whose assets would be included in the grantor's estate for federal transfer-tax purposes. Accordingly, assets held in an intentionally defective grantor trust would generally be attributed to the grantor for purposes of the proposed wealth-tax calculation, even though those assets may have been removed from the grantor's taxable estate.

That does not necessarily mean that terminating grantor-trust status would eliminate the proposed tax. The initiative also creates separate rules for certain nongrantor trusts funded by an applicable individual and includes attribution provisions directed at property transferred to trusts during 2025 and 2026. Depending upon the trust, its funding history, its beneficiaries, and the timing of any modification, ending grantor-trust status could cause the trust to become separately taxable or leave its assets attributable under another provision.

The pertinent planning question is therefore not simply whether grantor-trust status can be terminated. It is whether changing that status would produce a meaningful net benefit after considering the initiative's separate trust-tax, attribution, transfer, estate-tax, income-tax, and administrative consequences.

That uncertainty creates an important planning opportunity.

Rather than asking:

> "Should I terminate my grantor trust?"

A better question may be:

> "Does my existing trust provide sufficient flexibility if future law changes?"

Historically, many estate planning techniques have been designed to reduce estate tax exposure, facilitate business succession, or protect family assets over multiple generations. Future wealth-tax legislation may introduce an entirely different planning consideration.

The relevant inquiry may no longer end with whether a trust successfully removed assets from a taxable estate. It may also include whether the trust's governing provisions provide sufficient flexibility to address a separate wealth-tax regime and adapt to future changes in law.

In an environment of legislative uncertainty, flexibility may become one of the most valuable features of sophisticated estate planning.

For many families, this may be the appropriate time to review whether existing trust documents include:

- grantor trust toggle provisions;
- powers of substitution;
- reimbursement provisions;
- trust protector powers;
- decanting authority;
- modification provisions; and
- other mechanisms that may permit future adjustments if circumstances warrant.

The objective is not to redesign every estate plan today.

The objective is to determine whether the existing plan provides enough flexibility to respond intelligently if the law changes tomorrow.

Liquidity Matters

One issue receiving comparatively little attention is liquidity.

Many individuals whose net worth exceeds one billion dollars are not sitting on one billion dollars in cash.

Their wealth may consist primarily of:

- privately held businesses;

- startup equity;
- concentrated stock positions;
- investment partnerships;
- real estate development interests;
- intellectual property; or
- other relatively illiquid assets.

If a future tax obligation is based upon asset values rather than realized income, liquidity planning may become just as important as tax planning.

Families should begin evaluating:

- available borrowing capacity;
- existing lines of credit;
- dividend policies;
- anticipated liquidity events;
- insurance planning;
- redemption provisions; and
- succession planning.

Those discussions are valuable regardless of whether this proposal ultimately becomes law.

Governance Is Planning

One of the recurring themes we encounter with successful families is that governance often lags behind wealth creation.

We frequently observe that families spend years building successful businesses but comparatively little time documenting how those businesses are owned, governed, or integrated into the family's overall estate plan.

Good governance is not simply administrative.

It creates optionality.

Families with current ownership records, balance sheets, trust summaries, capitalization tables, and organizational charts are better positioned to respond not only to changing tax laws, but also succession events, financing opportunities, sales of businesses, and unexpected liquidity needs.

Family balance sheets may not be current.

Ownership charts may not exist.

Operating agreements may not reflect actual ownership.

Entity records may be incomplete.

Trust summaries may never have been prepared.

These are not merely administrative issues.

They become planning issues.

A well-organized family office—or even a well-organized family without a formal family office—can respond to changing tax laws much more effectively than one that must first determine what it owns.

Don't Let the Tax Tail Wag the Dog

Perhaps the most important planning advice we can offer is also the simplest:

Do not let uncertainty force unnecessary decisions.

Significant tax legislation often creates understandable anxiety.

It is tempting to believe that every major decision must be made immediately.

History suggests otherwise.

For some families, residency planning may ultimately become appropriate.

For others, restructuring entities or modifying trusts may make sense.

Still others may determine that no significant changes are necessary.

The point is this:

Sophisticated planning balances tax efficiency against flexibility.

Likewise, families should avoid assuming that today's proposal will necessarily represent the final legislative landscape. Tax policy is rarely static. Whether through amendments, administrative guidance, judicial interpretation, or future legislation, significant tax regimes often evolve over time. Planning should therefore emphasize flexibility and adaptability rather than attempting to optimize for a single version of the law.

Leaving California, restructuring a business, terminating a long-standing trust arrangement, or accelerating transfers may all carry significant costs independent of taxes.

The Opportunity Cost of Acting Too Soon

Taxes are only one component of sophisticated decision making.

Every significant planning decision carries costs beyond taxation.

For example, relocating to another state may reduce future tax exposure, but it may also involve leaving behind business relationships developed over decades, proximity to children and grandchildren, established medical providers, charitable organizations, professional advisors, and community involvement.

Similarly, modifying an existing estate plan solely in anticipation of legislation that has not yet been enacted may create unnecessary complexity if future guidance ultimately reaches a different result.

Sophisticated planning requires balancing tax efficiency against flexibility.

In many situations, preserving options may prove more valuable than maximizing tax savings based upon assumptions that may later change.

That balance should be evaluated deliberately—not emotionally.

One planning principle deserves particular emphasis.

You can almost always leave California later.

You cannot always reverse an unnecessary restructuring transaction, unwind an irrevocable trust modification, or restore planning flexibility that was voluntarily surrendered too soon.

Sometimes the most valuable planning decision is preserving flexibility until additional guidance becomes available.

That does not mean waiting to prepare.

It means preparing so that you are ready to act if and when action becomes appropriate.

Lessons From Other Jurisdictions

Wealth taxes are not a new concept.

Various countries have adopted, modified, or repealed forms of wealth taxation over the past several decades. Their experiences have been mixed, with recurring challenges involving asset valuation, administrative complexity, liquidity, taxpayer mobility, constitutional concerns, and long-term revenue stability.

Regardless of one's views regarding wealth taxation as public policy, those experiences illustrate an important point:

Designing a wealth tax is often considerably easier than administering one.

California also has experienced several highly publicized relocations by entrepreneurs, investors, and business owners over the past decade. Each decision has reflected its own combination of business, family, lifestyle, and tax considerations. The proposed initiative will likely renew those discussions, but no single explanation adequately describes why any individual or family chooses to relocate.

While each jurisdiction has adopted different approaches, one lesson has been remarkably consistent: valuation, administration, and taxpayer behavior often become more significant than the statutory tax rate itself.

Those experiences do not necessarily predict California's future, but they do highlight the importance of thoughtful implementation and careful planning.

Thoughtful planning requires individualized analysis—not headlines.

Looking Ahead

No one can predict whether the proposed tax will survive the election, competing ballot measures, constitutional review, and the administrative process in its present form.

What successful families can do is understand their assets, evaluate their trust and ownership structures, identify valuation and liquidity issues, and prepare a coordinated response. That does not necessarily require immediate restructuring, relocation, or abandonment of long-standing estate plans. It requires knowing which options remain available and what legal, tax, and personal costs each option would carry.

The objective of sophisticated planning is not to predict a single future. It is to build a plan resilient enough to accommodate several possible futures.

What We Are Discussing With Clients Today

Although many legal questions remain unresolved, our current client conversations generally focus on five practical projects:

- Preparing comprehensive family balance sheets.
- Identifying difficult-to-value assets.
- Reviewing existing trust flexibility.
- Evaluating liquidity planning.
- Monitoring legislative developments before making irreversible decisions.

Preparing Today: Ten Action Items

If your family or business could be affected by future wealth-tax legislation, consider beginning with the following:

1. Prepare or update a comprehensive personal balance sheet.
2. Inventory trusts, entities, and ownership structures.
3. Identify assets that may require specialized valuation.
4. Review existing grantor trust provisions for future flexibility.
5. Evaluate liquidity sources and potential cash-flow needs.
6. Update capitalization tables and ownership charts.
7. Confirm residency and domicile documentation is current.
8. Gather existing appraisal reports and valuation studies.
9. Establish a process for monitoring legislative and regulatory developments.
10. Resist making irreversible changes until there is both a legal framework and an independent planning reason to act.

Selected Sources

Primary Legal Sources

- California Attorney General, *2026 Billionaire Tax Act*, Initiative No. 25-0024A1.
- California Secretary of State, *California Secretary of State Shirley N. Weber, Ph.D., Certifies Measures for the November 3, 2026 General Election Ballot*.
- California Secretary of State, *Secretary of State Shirley N. Weber, Ph.D., Assigns Numbers to November Ballot Measures, Invites Ballot Arguments*.
- California Attorney General, *Prohibits New State Personal Property Taxes and Certain Retroactive State Taxes*, Initiative No. 25-0041A1.
- California Attorney General, *Requires Audits of Programs Funded by New State Special Taxes; Prohibits New State Taxes Excluded from Existing Voter-Approved State Spending Limit*, Initiative No. 25-0040A1.

Professional and Comparative References

- Organisation for Economic Co-operation and Development (OECD), *The Role and Design of Net Wealth Taxes in the OECD.*
- Congressional Research Service, *Wealth Taxes: International Experience.*
- Tax Foundation, *International Experience with Wealth Taxes.*

Additional Reading

- San Francisco Chronicle, reporting on implementation and residency considerations.
- Associated Press, coverage of the proposed initiative and its potential impact.

Legal Disclaimer

This article is intended for general informational purposes only and should not be construed as legal, tax, accounting, investment, or financial advice. Because every client's circumstances are unique, readers should consult their professional advisors before taking action based on the matters discussed herein.

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