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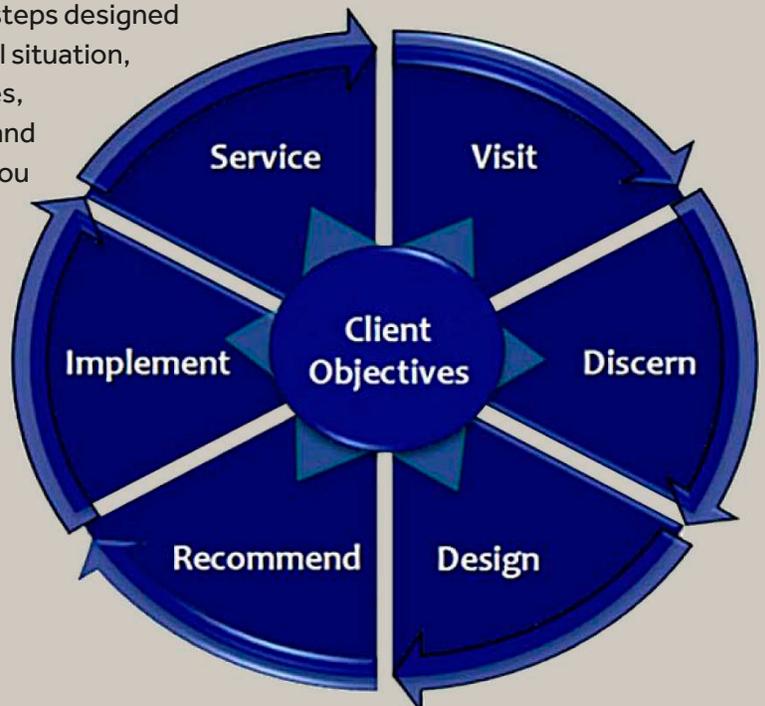
WEALTH STRATEGIES & INSURANCE SOLUTIONS, INC.



OUR PROCESS

We are different because we take the planning process beyond the numbers to focus on our clients' unique mission, values and goals. There are myriad things that keep them up at night; things like a desire for lifetime economic security, asset protection, transferring their core values to the next generation and more.

Our customized approach is comprised of six steps designed to collect information relevant to your financial situation, crystallizes your important goals and objectives, uncovers any gaps affecting these objectives and provides strategies that can be taken to help you reach your financial goals and help ensure you have created the legacy you envisioned.



Five things you may not know about the federal estate tax basic exclusion.

By Eva Stark, JD, LL.M.

Most high net worth clients or the owners of highly successful businesses are aware that estate taxes could be a potential concern; beyond that, many have no familiarity with even the most rudimentary estate tax concepts, such as the federal estate tax basic exclusion amount. This might lead to missed planning opportunities in some cases.

The following list of general items to know about the federal estate tax basic exclusion amount can help clients gain a better understanding of the workings of federal estate taxes and may help them ask better questions during the planning process.

1 Individuals are generally entitled to a basic exclusion amount for federal estate tax purposes.

The "basic exclusion amount" is the value of taxable gifts that an individual can give to any donee while alive, or to any heir after death, without triggering federal gift or estate taxes. In 2021, the basic exclusion amount is \$11.7 million; it is adjusted annually for inflation.

As taxable gifts are made during an individual's lifetime, portions of this amount can be utilized to offset any gift tax due. Once the exclusion amount is exhausted, additional taxable gifts will generally trigger gift tax liability. Upon the individual's death, his or her unused exclusion amount, if any, may be used to shield transfers to heirs from estate tax. Taxable transfers at death that



exceed the decedent's unused exclusion amount will generally trigger estate tax.

2 The basic exclusion amount currently includes a temporary "bonus" that will disappear at the end of 2025.

The Tax Cuts and Jobs Act of 2017 (TCJA) doubled the basic exclusion amount, from \$5 million under the American Taxpayer Relief Act of 2012, to \$10 million, adjusted for inflation. However, certain provisions of the TCJA were not made permanent and are scheduled to sunset on December 31, 2025.

One of the sunset provisions is the doubling of the basic exclusion amount. If the "bonus" \$5 million

(plus inflation adjustment) is not utilized before it expires, it will be lost. Note, too, that federal legislation to change this provision could be enacted prior to 2026. Clients and their advisors should consider taking advantage of this window of opportunity, if feasible, before it closes.

3 Not all gifts diminish an individual's basic exclusion amount.

An individual may gift his or her assets without tapping into or utilizing his or her basic exclusion amount in some cases. For example:

- Transfers to a spouse generally qualify for a marital deduction to gift or estate tax.

- Transfers to qualifying charities generally qualify for a charitable deduction.
- Individuals also are generally entitled to make annual exclusion gifts of \$15,000 per year, per donee, in 2021 (or twice that amount if the donor splits gifts with his or her spouse). The annual gift tax exclusion is also adjusted for inflation, but only in \$1,000 increments.
- Generally, payments made for qualifying educational or medical expenses on behalf of a donee paid directly to an educational institution or medical provider do not diminish the donor's annual gift tax exclusion (the \$15,000) or his or her basic exclusion amount (the \$11.7 million).

4 Surviving spouses may utilize their predeceased spouses' unused exclusion, but many caveats exist.

An individual may be able to utilize his or her deceased spouse's unused exclusion in certain circumstances if a "portability" election is made. A portability election may be made on an estate tax return that meets specific requirements. However, one potential concern with reliance on portability is that it is only applicable to a deceased spouse's unused estate tax exclusion, not generation-skipping transfer tax exclusion.

Another potential concern is that a subsequent remarriage of the surviving spouse may affect the amount that may be available for the surviving spouse from the deceased spouse's unused exclusion.

For example, suppose that Bob and Linda are successful business owners with an estate valued at approximately \$17 million. Bob, a reluctant planner, dies, leaving everything to Linda outright. A timely portability election is made, which would generally avail his unused exclusion to Linda.

Linda subsequently marries Jim, who is also a successful business owner. Unlike Bob, Jim engaged in significant estate planning and exhausted his basic exclusion amount when he gifted assets to his children from his first marriage.

Linda does not engage in planning to utilize any of Bob's unused exclusion. Jim subsequently dies while married to Linda.

Since the deceased spouse's unused exclusion applies with respect to the last deceased spouse (in this case, Jim, who has no unused exclusion), Linda would now be limited to her own exclusion amount for future gifts (see Treas. Reg. 20.2010-3(b)-(c)), significantly increasing her estate tax liability and diminishing the inheritance of her heirs.



Eva Stark, JD, LL.M., joined The Nautilus Group in 2014 to assist with the development of estate and business plans. She also performs advanced tax research. Eva graduated summa cum laude with a BS in economics and finance from The University of Texas at Dallas. She earned her JD, with honors, from Southern Methodist University, where she served as a student attorney and chief counsel at the SMU Federal Taxpayers Clinic. She received her LL.M. in taxation from Georgetown University Law Center. Prior to joining Nautilus, Eva worked in private practice in tax controversy, business law, and litigation.

5 State-level transfer tax regimes may be an additional concern.

If an individual is a resident of, or owns property in, a state with a state-level transfer tax, such taxes may apply even if the individual is not subject to federal estate taxation.

The exclusion amount to state-level estate tax varies greatly by state, as does the tax rate. Rules as to portability and the ability to make various elections also differ greatly from state to state.

Conclusion

Estate planning for high net worth clients and business owners who could have a taxable estate can be complex and time consuming. A basic understanding of some general estate tax principles can help clients better engage in the planning process. Clients may wish to explore with their attorneys or other advisors how the general principles presented above might apply in their particular circumstances and what planning opportunities and areas of concern they may create.

Creating an irrevocable trust that may be modified or terminated in the future.

By Michelle M. Kenyon, JD, CLU®

Many clients would like to modify or terminate irrevocable trusts that they have created or would like to establish irrevocable trusts that may be easily altered in the future. In other cases, beneficiaries may want to make changes to a testamentary trust created in a family member's will or revocable trust. Some of the changes that may be desired include:

- Change of trustees or trustee provisions;
- Change of distribution provisions;
- Division into separate trusts with different provisions;
- Exclusion of beneficiaries;
- Adjustment for changes in income and estate tax laws or other laws that affect trust administration;
- Modification of powers of appointment; and
- Modification of trust terms to provide for a special needs beneficiary.

Generally, in order to keep the trust assets outside of the trust creator's (settlor's) estate for estate tax purposes, to maintain creditor protection, and to avoid other potential adverse consequences, the settlor may not modify an irrevocable trust he or she established.¹

If the trust was initially drafted to include provisions that allow for flexibility and "modification" by others, changes can be made without adverse consequences or without going to court to request a



trust modification or termination (if allowed under state law).

Some of the provisions that clients may want to include in their trusts for flexibility are described below, including:

- Powers of appointment;
- Power to transfer property to another trust (or decant);
- Trust protector provisions;
- Independent trustee provisions;
- Power to turn off grantor trust provisions.

Powers of appointment

A trust document can give a beneficiary the power to appoint property held in trust for his or her benefit, exercisable during his or her lifetime or at death, or both. Property can be appointed outright or in further trust(s) for the benefit of the

appointees. Powers of appointment are an effective way to address changes in family circumstances or other events, allowing the holder of the power to "rewrite" the trust with respect to the appointed property.

For example, dad creates separate trusts for his three children, Adam, Betty, and Carol. Each trust gives the child a limited power to appoint trust property remaining at the child's death to his or her descendants, and property that is not appointed by a child is distributed outright to the grandchildren at age 35 (after the child's death). Adam has three children, one with special needs (Dale). Adam can use his power of appointment to appoint property to trusts for his children for their lifetimes and design the trusts and select the trustees. The trust for

¹ Internal Revenue Code §§2036 and 2038

Dale can be drafted in a way that will not disqualify him from receiving government benefits. (See Diagram 1.)

General powers of appointment are often used for tax purposes since property subject to a general power of appointment is included in the power holder's estate for estate tax purposes.² Estate inclusion results in a step-up in basis for income tax purposes. Inclusion and step-up in basis occur even if the power is not exercised. A general power of appointment is often given to avoid generation skipping transfer (GST) taxes.

For example, mom created a separate (GST nonexempt) lifetime trust for each of her children, Adam, Betty, and Carol. Each child has a general power of appointment exercisable at his or her death. With the general power of appointment, the property is not subject to GST tax and is subject to estate tax only if the child has a taxable estate.

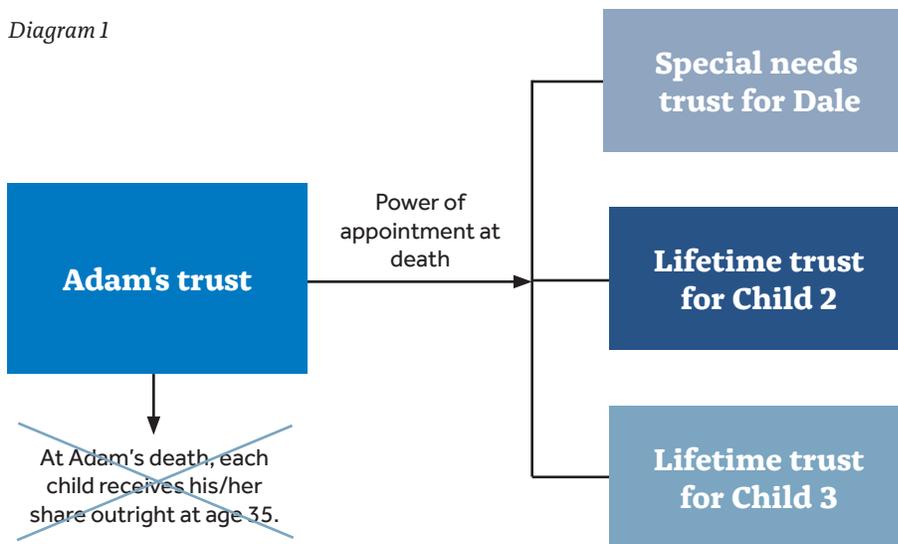
If desired, Adam could appoint property in the same manner as described above, to provide a special needs trust for Dale and lifetime trusts for his other children. If assets in a trust are sold soon after Adam's death, there should be little or no gain for income tax purposes due to the step-up in basis.

Power to transfer to another trust (or decant)

If a trust is decanted, the assets of the trust are transferred to a new trust with more favorable terms. Many states authorize decanting with specific statutes or under state common law. The trust instrument itself may also provide that certain trustees have the power to distribute trust property in further trusts for one or more of the beneficiaries.

For example, mom creates a single trust for her children, Adam, Betty,

Diagram 1



and Carol, when they are minors. The trust is to continue as a single trust until the death of the last surviving child. Adam, Betty, and Carol are now adults, and it makes more sense to have separate trusts for each child. The trust includes decanting provisions. The trustee can create three new trusts, one for each child, and transfer one-third of the assets to each new trust. (See Diagram 2.)

Trust protector

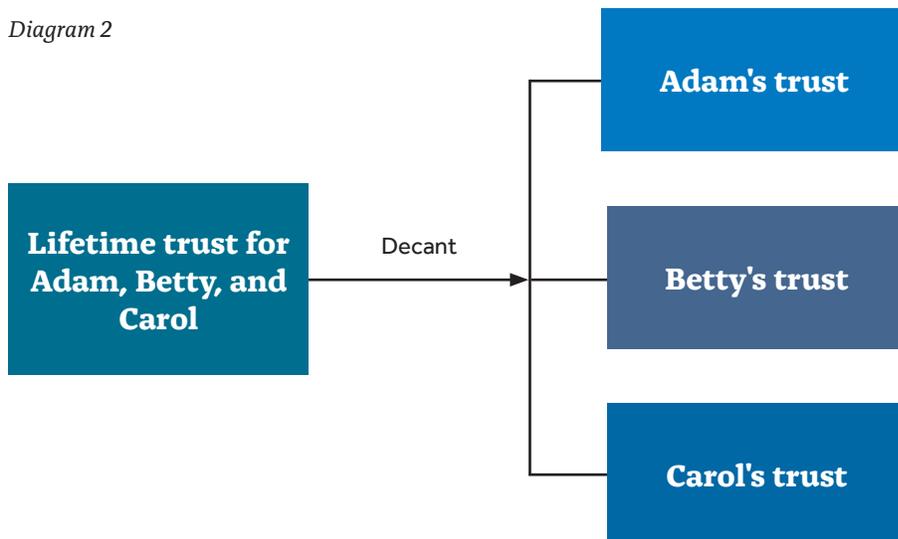
A trust can provide for a trust protector. The trust protector will have the powers provided by

applicable state law, if any, and those powers expressly provided for in the trust. Some trust protector provisions that may be desirable include the power to:

- Amend a trust;
- Remove and replace trustees;
- Give a beneficiary a general or limited power of appointment and revoke the power of appointment; or
- Terminate the trust.

The power to modify is generally limited but can include modifications that take into account changes

Diagram 2



² Internal Revenue Code §2041

in tax laws or other laws, correct drafting errors, or carry out the settlor's intent. Generally, if the trust protector is given tax sensitive powers, the trust protector should be a person who is not related or subordinate to the settlor or to any beneficiary.

For example, Adam creates a trust for his daughter, Felicia. Fifteen years later the federal tax rates and rules for trusts are modified in a manner that is unfavorable to the trust and to Felicia. The trust protector, who has the power to amend the trust in such event, can modify the trust to achieve more favorable tax treatment under the new law.

Independent trustee provisions

The trust can provide for an independent trustee with the authority to exercise certain powers that cannot be exercised by a non-independent trustee without adverse tax consequences. Generally, an independent trustee is not related or subordinate to the settlor or to any beneficiary and has no legal obligation to support a beneficiary.

Some of the powers that might be given to an independent trustee include the power to make distributions to the beneficiaries for any purpose, to grant or revoke powers of appointment, to terminate a trust, or to postpone or terminate distributions to a beneficiary.

For example, Betty creates a trust for her child, Pat. Pat is 25, and Pat's trust provides that Pat receives all income at least annually. Pat has a gambling addiction and may need to

file for bankruptcy protection. If the independent trustee has the power to postpone distributions, mandatory distributions of income may be paused by the independent trustee until these issues are resolved.

Grantor trust provisions

A grantor trust is a trust in which the trust creator (grantor or settlor) retains one or more powers over the trust and as a result the grantor and the grantor trust are treated as the same person and trust income is taxable to the grantor (or settlor).³ Payment of taxes on trust income by the grantor is not treated as a gift to the trust for gift tax purposes. This allows the assets to grow within the trust without the economic burden of paying income taxes.

Some of the other advantages of a grantor trust include the power of the grantor to sell assets to the trust at fair market value without recognition of gain,⁴ and allowing the purchase or exchange of low basis assets for higher basis assets without imposition of income tax.

At some point in the future, the grantor may want to stop paying taxes on the trust's income or, due to changed circumstances or laws, the advantages derived from the grantor trust provisions may have vanished or diminished. If the grantor trust includes provisions allowing the grantor or some other person to release or terminate the grantor trust powers, the grantor trust provisions can be turned off, and trust income will no longer be taxable to the grantor.

Conclusion

When establishing an irrevocable trust, or wills and revocable trusts that create irrevocable trusts in the future, consider the many ways to create flexibility, if desired, and work with professional advisors to ensure documents can be drafted in a way to meet personal objectives and family dynamics.

³ Internal Revenue Code §671-679 set out rules to determine when the trust should be treated as a grantor trust for income tax purposes.

⁴ Rev. Rul. 85-13, 1985-1 C.B. 184



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Biden Administration tax law changes: How will they impact you?

By James M. Duggan, MBA, JD



In late March, the “For the 99.5% Act” (the Act) was introduced to Congress. The Act contains several additions, removals, and amendments to the Internal Revenue Code that could significantly alter your estate tax obligation and planning structure.

In addition, the Biden Administration has proposed various income tax law changes that also will impact high income and high net worth clients – purportedly only the top 1%.

The questions below will help you consider what these proposals might mean to you and provide guidance on what to do if the Act becomes law.

IS YOUR ESTATE WORTH MORE THAN \$3.5 MILLION?

If your estate is worth more than \$3.5M, under the Act you would now be subject to estate tax at death on all assets in excess of this amount.

This is a significant change as the current law only taxes assets in excess of \$11.7M. These amounts are “per taxpayer,” so if you are married and have proper planning, you can double the amount of assets subject to this estate exemption. By reducing the exemption to \$3.5M per taxpayer, it greatly increases the amount of estates that will potentially be subject to paying tax. Based on historical numbers published by the IRS, the amount of estate tax returns subject to estate tax would likely triple if the proposed reduction is enacted.

HOW MUCH OF YOUR ESTATE COULD YOU STAND TO LOSE DUE TO THE PROPOSED TAX LAW CHANGE?

Under the current federal estate tax structure, a flat 40% tax is imposed on all assets in your estate above the exemption amount. The proposed

change would eliminate the 40% rate and replace it with the following progressive tax system:

Estate assets	Tax rate
Up to \$3.5M	0%
In excess of \$3.5M up to \$10M	45%
In excess of \$10M up to \$50M	50%
In excess of \$50M up to \$1B	55%
Greater than \$1B	65%

CAN YOU STILL MAKE TAX-FREE GIFTS?

Yes, you can still make tax-free gifts – on an annual basis, as well as during your lifetime (in excess of the annual exclusion) – but the amounts are greatly reduced. In addition, the amount you can give away during your lifetime in excess of the annual exclusion is capped at \$1M, which is a significant departure from current law. Under current law, your lifetime gifting exemption is the same as

the estate tax exemption at death (\$11.7M in 2021). The proposed law would divorce the two numbers so that you are more limited in what you can give away during your lifetime versus at death. This could create a large disparity in many estates and will make wealth transfer planning much more difficult.

ARE YOU STILL ABLE TO PLAN WITH TRUSTS THAT PROVIDE FOR MULTIPLE GENERATIONS?

Legally, yes, you will still be entitled to benefit from statutes that provide long or perpetual trust terms, but the tax benefits will be greatly diminished. Whereas today you can create trusts that will avoid estate tax and generation skipping tax into perpetuity for your future generations, the Act would require the imposition of a generation skipping tax every 50 years, and would impose the highest applicable tax rate at such time (65% under the current proposal). So, while the trust terms may go on into perpetuity, the tax benefits may not.

WHAT ABOUT THESE THINGS CALLED GRATs – ARE THEY FINALLY BEING ABOLISHED?

Under the current federal tax code, grantor retained annuity trusts (GRATs) can be utilized by individuals by transferring appreciating assets to their beneficiaries via a GRAT without the appreciation being subject to taxation. The typical GRAT is structured as a “zeroed out, two-year GRAT” to minimize possibility of taxation. The Act, however, includes a required minimum 10-year term for GRATs, and includes a prohibition of the “zeroing out” method, thereby ensuring some value is ascribed to the transfer.

If enacted, GRATs will become a far less desirable and utilized estate planning tool. GRATs have



been attacked repeatedly in prior administrations’ tax law proposals, but in the end, have somehow managed to prevail.

CAN YOU STILL USE VALUATION DISCOUNTS WHEN VALUING CERTAIN ASSETS YOU GIFT?

Similar to the longstanding attack on GRATs, the use of valuation discounts in wealth transfer planning has been the subject of attack and proposed legislation for decades. Most private clients own either private investments or interests in family limited liability companies or partnerships, which in turn own their more liquid assets. Rather than giving actual cash or marketable securities to the next generation when gifting, it is most often desirable to gift interests in these various companies instead. Determining the value of these interests is a difficult task, and the taxpayer is generally allowed to reduce the stated value of the gift by taking valuation discounts for:

- Lack of marketability, and
- Lack of control.

As a result of these combined discounts, the typical value of a gift can generally be reduced by 25%-

35%. For example, while a gift of \$1M in cash is equal to exactly that – \$1M – for gift tax return reporting purposes, a gift of \$1M of an entity subject to a combined valuation discount of say 33%, would only be reported as a \$670K gift for tax purposes. Another way to look at it for gift maximization purposes is to work in reverse and gross-up the amount that can be gifted. For example, a \$1.5M gift of interests in a family entity subject to a 33% discount would be reported as an actual gift of \$1M, effectively allowing the taxpayer to give away 50% more value without paying tax.

To avoid this mismatch between liquid and illiquid asset valuation for tax purposes, the Act proposes to do away with valuation discounts on non-operating family enterprises altogether.

WILL INTENTIONALLY DEFECTIVE GRANTOR TRUSTS STILL BE A USEFUL TOOL?

As an alternative to using a GRAT to “freeze” the value of an asset and transfer all of the appreciation to the next generation, many have recently turned to a vehicle known as an intentionally defective grantor trust (IDGT). The IDGT is purposefully structured so that the income on

the assets transferred to the trust remains taxable to the grantor, but the value of the underlying assets is excluded from the grantor's estate for tax purposes. The benefit to this structure for the high net worth client is that the grantor is "forced" to pay the taxes on assets transferred to the next generation, and since it is required under the grantor trust rules, the payment of the income taxes is not viewed as an additional gift to the next generation. The ability to pay the taxes for the next generation and not have it be a taxable gift can be very compelling in the amount that can be transferred as well as allowing the principal of the trust to grow without depletion since no trust assets have to be used to pay a tax burden. In addition, under the current law, all appreciation of the assets in the IDGT are outside of the grantor's estate and not subject to estate tax.

The Act proposes to eliminate the benefits of IDGT planning by:

1. Including the entire value of the grantor trust (less the value of gifts made to the trust) to the decedent's estate,
2. Treating distributions from the trust as taxable gifts, and
3. Creating a taxable gift of the assets if the grantor changes the status of the trust from a grantor trust to a non-grantor trust.

Although the proposal is that these law changes will only apply to trusts or transfers to trusts established after enactment, it will greatly curtail the effectiveness of IDGTs for wealth transfer planning purposes.

WILL MY INCOME TAXES BE GOING UP?

With all of the proposals in the first few months of this year, the result is going to be some form of tax increase. Corporate tax rates are proposed to increase from 21% to

28%, and the top marginal rate for individuals would increase from 37% to 39.6%.

WILL MY CAPITAL GAINS RATE BE GOING UP, TOO?

If your income exceeds \$1M, you will also experience an increase in your capital gains tax. Specifically, your tax will be the same as the highest ordinary rate, or 39.6%, plus the 3.8% net investment income tax under Obamacare (which gets triggered for income over \$250,000 (assuming joint filing)). Therefore, the effective rate will be 43.4% in the highest bracket.

This increase is critical for those with large portfolios or those intending to sell a business. For the sale of a business in excess of \$1M, this could mean that the tax differential between an asset sale (that is primarily ordinary income) and a stock sale (capital gain) would be negligible, as both would be taxed at the highest rate.

WILL THE STEP-UP IN BASIS AT DEATH BE ELIMINATED?

The increase in the capital gains rate could have significant impact on inheritances as well. Under current law, all of the assets in one's estate get a "step-up" in basis at death. By increasing the tax basis of inherited assets to the amount equal to the fair market value of the assets at death, it means a beneficiary receives the assets with no inherent gain. Therefore, if the asset was immediately sold, there would be no capital gains tax to pay. If the asset is sold down the road after some appreciation, the gain is now calculated from the higher basis amount, resulting in less tax. That is the benefit of the step-up in basis at death.

Under Biden's proposal, he would eliminate the step-up in basis altogether. Rather, the beneficiary

would receive what is called "carry-over basis" – which is generally the original cost of the decedent's investment, with some adjustments along the way. If the decedent would have gains to pay upon sale of the asset, so too will the beneficiary since the basis would not change. As a result, beneficiaries receiving assets in an estate administration, beyond a \$1M exemption per person and \$500K per couple for real estate, could ultimately be subject to capital gains tax at the 43.4% rate mentioned above if all of Biden's proposals are enacted.

SO, WILL ALL OF THESE CHANGES HAPPEN, AND IF SO, WHEN?

At this point, the changes to the law outlined herein are proposals and are not yet final. There will no doubt be some changes in the law that will be consistent with the proposals and will be to the detriment of the high income, high net worth client. It is good to prepare yourself for this eventuality. However, it is not likely that all of the foregoing will be enacted, and if enacted, it is possible/likely that the ultimate rates and thresholds will be lower numbers. The legislative process will surely run its course for better and for worse.

The good news from the Act as proposed is that there was no intent to "clawback" the effective date to January 1, 2021. Instead, it appears that most proposals would be intended to take effect on either the date of enactment or on January 1, 2022. This should afford taxpayers the opportunity to plan during this year to get ahead of any potentially adverse changes.

IF THE PROPOSED LAWS DO GO THROUGH IN ONE FORM OR ANOTHER, WHAT PLANNING CAN BE DONE THIS YEAR TO TAKE ADVANTAGE OF EXISTING LAWS?

Given the current favorable estate tax laws in effect, many taxpayers will

want to consider leveraging those rules to accomplish the following this year:

1. Make annual exclusion gifts at the current \$15,000 level;
2. Utilize their lifetime exemption gifts by making large gifts up to the \$11.7M exemption level before it goes away;
3. Maximize gifting by utilizing available valuation discounts in conjunction with family limited liability companies or partnerships; and
4. Combine the discounted gift of interests with freeze techniques such as GRATs and IDGTs to be grandfathered.

With respect to income tax planning, for those who are considering the

sale of a business or other capital assets in the short term, it would obviously be advantageous to sell prior to any change in the law to lock in the lower rates.

On a go-forward basis after the proposed income tax changes, taxpayers may wish to structure their investments in a more tax favorable manner, such as investing more of their wealth in qualified plans, individual retirement plans, annuities, and insurance vehicles. The insertion of the tax-free vehicle avoids any tax drag when selling the capital assets.

Please consult with your financial and other advisors to determine which, if any, of the strategies discussed herein may be beneficial for your planning purposes.



James M. Duggan is a founding principal of DUGGAN BERTSCH, LLC, a Chicago-based business, tax, estate and wealth planning firm comprised of attorneys and accountants. Jim's practice has concentrated principally on business and corporate law, and estate and wealth planning, primarily as they relate to closely held business interests and high net worth families. Jim's experience in the structuring and implementation of Family Offices, sophisticated tax planning, and asset protection planning strategies is nationally recognized, as is his role in the firm's development of a leading multidisciplinary planning protocol.

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**Michael J. Flynn,
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Step One: Getting to know you

This is where we visit and listen to your story. Through thoughtful questions and active listening, we gather all the hard and soft facts from your current personal, business and estate plans. We then take these facts and produce a clear, understandable picture of your current situation.

Step Two: Crystallizing your objectives

People have three kinds of plans: the plan they think they have, want to have and the one they really have. Once we have analyzed your current situation, we review it with you exactly as it is in that moment. Nearly 100% of the time, our clients discover their current plans do not reflect their true intentions. To ensure your plan is the one you want, we continue to further discern your intentions as they relate to your wealth management and estate planning needs and wants.

Step Three and Four: Building your customized plan

With your personal goals and objectives as our benchmark, we begin to design and recommend strategies built specifically to fulfill your desired objectives and ultimately help you achieve the legacy you want.

Step Five: Taking action

In the previous steps, we have discovered what is needed to overcome the obstacles preventing you from achieving your goals and objectives. We are now ready to work together to implement your selected strategies. Additionally, we will coordinate the implementation of these strategies with your tax and legal advisors wants.

Step Six: Keeping on target

We desire to not only provide you with value, but to be valuable to you. We are committed to providing you with ongoing service in an effort to make sure that the plan you want is always the plan you have. We will work with you to help keep your plan on track with your changing needs, goals and desires. In an ever changing tax and regulatory environment, this is an extremely important and valuable part of our process.



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