

SUMMER 2021

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WEALTH PLANNING IN 2021: PREPARING FOR A CHANGING TAX LANDSCAPE

Since President Biden took office at the beginning of this year, there has been much buzz and conjecture regarding what the tax policy under the Biden-Harris Administration would look like. In light of the recently released Department of Treasury's General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals, commonly known as the "Green Book," we now have a better idea of the proposed tax law changes that the Administration will focus on implementing in the coming year.

While the Green Book contains various tax proposals that could significantly affect estate planning, it interestingly does not include a proposal to decrease the estate and gift tax exemption, which was a major topic of discussion during last year's election cycle (click here to review our advisory on Estate Planning and the 2020 Election). However, some Democrats in Congress nonetheless continue to argue for this reduction. For example, Senator Bernie Sanders' proposed legislation, For the 99.5% Act, would reduce the gift tax exemption to \$1 million per person and the estate tax exemption to \$3.5 million per person and would also impose new progressive

estate tax rates ranging from 45% to 65%.

In any event, the Green Book contains the proposed tax laws that reflect the Administration's top priorities and are more likely to be enacted than those proposals not included in the Green Book. The Green Book proposals seek to reverse many of the tax laws included in the 2017 Tax Cuts and Jobs Act enacted under former President Trump, such as a proposed increase to individual income tax rates and an end to certain capital gains tax preferences, discussed in further detail below.

GREEN BOOK PROPOSALS THAT WOULD AFFECT HIGH NET WORTH CLIENTS:

Increase Top Marginal Individual Income Tax Rate for High-Income Earners. The top marginal income tax rate would increase from 37% to 39.6% for taxable income in excess of the top bracket threshold. For taxable years beginning January 1, 2022, this would apply to income in excess of \$509,300 for married individuals filing jointly and \$452,700 for single filers, and thereafter be indexed for inflation.

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Tax Capital Gains for High-Income Earners at Ordinary Income Tax Rates.

For taxpayers with adjusted gross income of more than \$1 million, long-term capital gains and qualified dividends tax rates would increase to match the proposed ordinary income tax rates. To the extent that a taxpayer's income exceeds \$1 million, rates would go from 20% (or 23.8% including the net investment income tax ("NIIT")) to 39.6% (or 43.4% including NIIT). This proposal currently includes a retroactive effective date of April 28, 2021.

Treat Transfers of Appreciated Property by Gift or at Death as Realization Events.

This proposal would eliminate the so called "step up in basis loophole," which allows for an asset transferred at death to be "stepped up" to fair market value for cost basis purposes resulting in no capital gains tax imposed on the asset's appreciation through date of death. Instead, the transfer of an appreciated asset by gift or at death would be treated as sold for fair market value at the time of the transfer, creating a taxable gain realization event for the donor or deceased owner. There would, however, be a \$1 million per person (or \$2 million per married couple) exemption from recognition of capital gains on property transferred by gift or at death, indexed

for inflation. In addition, certain exclusions would apply, including:

- *Residence.* \$250,000 per person (or \$500,000 per married couple) would be excluded from capital gain on the sale or transfer of any residence.
- *Surviving spouse.* Transfers by a decedent to a U.S. citizen spouse would carry over the basis of the decedent and capital gain recognition would be deferred until the surviving spouse dies or otherwise disposes of the asset.
- *Charity.* Appreciated property transferred to charity would not generate a taxable gain; however, the transfer of appreciated assets to a split-interest charitable trust would generate a taxable gain as to the share of the value transferred attributable to any non-charitable beneficiary.
- *Tangible personal property.* No capital gain would be recognized on transfers of tangible personal property (excluding collectibles).

Although the tax imposed on gains deemed realized at death would be deductible on the estate tax return of the decedent's estate, deductions are not equivalent to tax credits and in high tax states such as New York, the additional tax could be substantial.

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

Impose Gain Recognition on Property Transferred to or Distributed from an Irrevocable Trust. Any transfers of property into, and distributions in kind from, an irrevocable trust would be treated as deemed recognition events subject to capital gains tax. In addition, while the generation-skipping transfer (“GST”) tax exempt status of a trust would not be affected, gain would automatically be recognized on property held in an irrevocable trust which has not otherwise been subject to a taxable recognition event within the prior 90 years. The first possible recognition event would be December 31, 2030 for any trust in existence on January 1, 1940. This proposal would also apply to transfers to, and distributions in kind from, partnerships and other non-corporate entities.

Elimination of Valuation Discounts. The valuation of partial interests in property contributed to a trust would be equal to the proportional share of the fair market value of all of such property. In other words, no discounts for lack of marketability or minority interests would be allowed in

valuing transfers of partial interests in LLCs, corporations, partnerships or real property.

SUMMARY

The legislative text of the Administration’s tax proposals will likely not be available until the fall. It is important to note that any proposed tax law changes face a split 50-50 Senate, which means that the prospect of passing any tax reform at all is uncertain. Commentators believe that the Green Book proposals will be the subject of extensive negotiation over the next several months, including significant opposition to large increases in capital gains tax rates.

In the meantime, we at **Wiggin and Dana** are available to discuss the Green Book proposals in more detail and to make proactive, tailored recommendations in light of the current changing tax law landscape. For more information on the estate and gift tax planning techniques to consider in light of the Green Book proposals, click the links below.

▶ [Gift Assets Now](#)

▶ [Dynasty Trusts](#)

▶ [Substitute Assets in Existing Grantor Trusts](#)

▶ [GRATs—Grantor Retained Annuity Trusts](#)

▶ [SLATs—Spousal Lifetime Access Trusts](#)

▶ [Charitable Giving](#)