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FINANCIAL PLANNING ASSOCIATION
JUNE 2021 TAX & ESTATE PLANNING KNOWLEDGE CIRCLE
"A Conversation with Marvin Blum"

Marvin Blum, JD, CPA joined Scott Bishop, CPA, CFP to discuss potential income and estate tax changes under the Biden administration.

Replay: [A Conversation with Marvin Blum—"Last Chance" Tax Planning](https://youtu.be/9geMtjC3gSQ) (https://youtu.be/9geMtjC3gSQ)

Here are the topics Marvin and Scott discussed:

1. What are the key developments since the November 3, 2020 election?
 - A. January 5 Georgia Senate run-offs shifted the Senate to Democrat control
 - B. March 11 American Rescue Plan became law—\$1.9 trillion of spending, with no revenue in it to pay for it
 - C. Biden's "Build Back Better" agenda—\$2.3 trillion for traditional infrastructure, plus \$2.0 trillion for "social" infrastructure, bringing the total spending to \$6.0 trillion
 - D. Legislative proposals with tax increases to generate revenue to pay for infrastructure spending
2. What are the key proposals to raise taxes?
 - A. Biden's "Made in America Tax Plan"
 - B. Biden's Green Book
 - C. Senator Bernie Sanders' "For the 99.5% Act"
 - D. Senator Chris Van Hollen's (and others) "STEP Act"
3. What are the key provisions of each of these legislative proposals?
 - A. Biden's Made in America Tax Plan—increase corporate tax rate from 21% to 28%; 15% minimum tax on book income of large global companies
 - B. Biden's Green Book—increase long term capital gain rate from 20% + 3.8%, to 39.6% + 3.8% (for a rate of 43.4%) on incomes above \$1 million (retroactive to April 28, 2021); replace basis step-up with realization of gains at death
 - C. For the 99.5% Act—reduce estate tax exemption from \$11.7 million to \$3.5 million; reduce gift tax exemption from \$11.7 million to \$1.0 million; increase rate from 40% to 45%-65%; reduce annual exclusion from \$15K to \$10K, with an overall limit of \$20K per donor per year for gifts to trusts; severely restrict valuation discounts, GRATs, and Grantor Trusts (taxing Grantor Trust assets in the estate of the Grantor, which would also impact most ILITs); cap life of GST trusts at 50 years; grandfather planning completed prior to date of enactment; most provisions are effective 1/1/2022
 - D. STEP Act—replace basis step-up with realization at death and at time of gift; tax unrealized gains on assets in non-grantor trusts every 21 years; retroactive to 1/1/2021

4. What is likely to pass?

Something will likely pass in 2021, as 2022 is an election year (unlikely to pass a tax increase) and there's a risk of Democrats losing control of Congress in mid-term election. We could end up with 2 bills:

 - A. Bipartisan scaled-back infrastructure bill without income tax increases, perhaps funded by increase in gas tax
 - B. "Go it alone" Democratic bill passed through budget reconciliation with provisions all 50 D Senators can support—increase corporate tax rate to 25%; 15% corporate minimum tax; capital gain increase to 28% + 3.8%; replace basis step-up with realization at death; increase funding to IRS; hold off on lowering estate tax exemption until it automatically sunsets in half on 1/1/2026

5. Given all this uncertainty, what kind of planning are you seeing?
 - A. "Use it or Lose it" planning to lock in the doubled estate tax exemption
 - B. "Squeeze & Freeze" planning to lock in valuation discounts and higher exemption but retain access, control, flexibility—Family Limited Partnerships; Defective Grantor Trusts, Spousal Lifetime Access Trusts
 - C. Escape hatch planning in case provisions are retroactive—disclaimers; QTIP election; sell assets and forgive notes on 12/31/2021
 - D. Roth Conversions
 - E. More drastic selling of assets to incur capital gains tax now

6. What other tax law developments are being considered?
 - A. SALT repeal (removing \$10,000 cap on deduction of state & local taxes)
 - B. Eliminating Section 199A deduction for pass-through income (if income above \$400,000)
 - C. Reinstate Pease limitations on itemized deductions (2021 is the ideal year for large cash contributions to public charities since 100% AGI limit and no Pease cutback on itemized deductions in 2021)
 - D. Limit like-kind exchange of real estate to \$1 million gain deferral per year (\$500,000 if single)
 - E. Charitable tax legislation--require pay out from Donor Advised Funds within 15 years; increase annual payout from private foundations from 5% to 10% and tighten up other rules