The Ultimate 2021 Guide to

END OF YEAR ESTATE & TAX PLANNING

Critical Estate & Tax Planning Action Items to Protect Your Legacy!

THE LAW OFFICE OF PAUL S. LABINER

2021 End-of-Year Planning

As 2021 draws to a close, wealthy individuals should be thinking about their end-of-year tax and estate planning opportunities. Several tax reform proposals have been put forward this year that would **drastically change the tax and estate planning landscape** for high-income individuals and larger estates.

Exactly *which* provisions of *which* bills will be included in the final piece of legislation is still unknown. But virtually **every iteration** of **every provision** in **every bill** focuses on incomes above a $400,000–$450,000 threshold and estates valued above $5 million.

Doing nothing and hoping for the best is always an option, but, in my experience, it is rarely a good one. If you are a high-income earner or have a larger estate, serious consideration should be given to **addressing these problems** ***before the end of the year***.

Primary Targets for Reform

The various tax reform proposals emphasize increasing taxes, lowering exemptions, and restricting vital tax mitigation and wealth preservation strategies, including:

1. Increasing and restructuring individual, corporate, and estate income taxes.
2. Lowering exemptions for gift and estate taxes.
3. Limiting revocable and irrevocable trust planning options.
4. Increasing capital gains taxes or recharacterizing what counts as a taxable event
5. Restricting retirement account contributions and eliminating Roth IRA conversions.

Four Tax Reform Proposals

The four main plans so far are:

1. Senator Bernie Sander's "For the 99.5% Act"
2. Senator Chris Van Hollen's "Sensible Taxation and Equity Promotion Act"
3. President Biden's "American Families Plan"
4. House Ways & Means Committee's proposal on the "Build Back Better Act"

Below are a few of the top-level items included these various proposals.

Senator Sander's Plan

Bernie Sander's proposal focuses on changes to the gift, estate, and generation-skipping transfer (GST) tax rules.

- A 70% decrease to the estate tax exemption from $11.7 million to $3.5 million.

- A 108% decrease to the lifetime gift tax exemption from $11.7 million to $1 million.
- Transfer tax rates could increase from 40% to 65%.
- Annual exclusion gifts to trusts could be limited to $30,000.
- Valuation discounts on LLCs, partnerships, and other closely-held entities for transfer tax purposes may become unavailable.
- GST-Exempt trusts (aka Dynasty trusts) would only remain exempt for 50 years. Currently, GST-Exempt trusts can remain exempt as long as state law allows the trust to remain in existence.
- New restrictions to limit the viability of Grantor Retained Annuity Trusts (GRATs).

Senator Van Hollen's Plan

The goal of the Van Hollen plan is to increase the kinds of transactions that are subject to capital gains tax. They also will be retroactive to January 1, 2021.

- Gifts to be treated as property sale and subject to capital gains tax.
- Transfers into grantor trusts could trigger capital gains tax unless assets included in taxable estate at death.
- Non-grantor trusts to be subject to gain recognition events every 21 years.
- Step-up in basis at death to be eliminated.

President Biden's Plan

Biden's plan also focuses on capital gains recognition by redefining what transactions are subject to capital gains tax. Parts of the proposal would be retroactive to a time in 2021 (TBD).

- Capital gains to be taxed at ordinary income rates.
- Gifts and transfers at death to be subject to capital gain recognition.
- Termination or transfers into, from, or between trusts to be subject to capital gain recognition.
- Trusts, partnerships, or other non-corporate entities to be subject to a gain recognition event every 90 years.
- Step-up in basis at death to be eliminated.

House Committee Proposal

The Ways & Means Committee is proposing major revisions to the estate tax, capital gains taxes, and retirement account taxation, as well as smaller changes to the corporate tax rate and other business-related taxes.

- Create a three-tiered structure for the corporate tax rate with graduated rates of 18%, 21%, and 26.5%.

- Increase the top marginal income tax rate from 37% to 39.6%, add a 3% surtax for adjusted gross incomes above certain levels, and raise the top capital gains tax rate from 20% to 25%.
- Eliminate the Section 199a 20% QBI deduction for high-income earners.
- Reduce the gift and estate tax exemptions from $11.7 million to $5 million each.
- Limit the viability of Grantor Retained Annuity Trusts (GRATs) by making certain transactions subject to estate, gift, and income taxes.
- Impose contribution limits for both traditional IRAs and Roth IRAs, require a new special minimal withdrawal for account balances above $10 million, and place an income cap on conversions from traditional IRAs to Roth IRAs.

Eight Key Areas to Review

Broadly, we think that there are **eight key areas to address immediately** to ensure your family's estate plan will continue to protect and preserve your wealth, whatever the future holds:

1. Tax Bracket Management
2. Itemized Deduction Timing
3. Major Future Financial Events
4. Significant Future Family Events
5. Retirement Planning
6. Education and Child Planning
7. Executive and Business Planning
8. Estate Tax Planning

As we enter the home stretch of 2021, taxpayers have to think about their estate planning goals and decide what items they want to get done before the end of the year. It's difficult to put estate and wealth management plans into effect at the drop of a hat, so **proactive planning is key**.

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Planning Checklist

2021 END-OF-YEAR

Bracket Management

- [ ] **Bonuses**: Accelerate bonuses to avoid rate increases

Notes:

- [ ] **Recognition events**: Accelerate recognition events to avoid rate increases

Notes:

- [ ] **Business expenses**: Defer business expenses to capture a greater benefit if rates increase

Notes:

- [ ] **Capital gains harvesting**: Consider selling assets to offset capital gains increases

Notes:

Itemized Deduction Timing

- [ ] **Property tax**: Deferral captures greater benefit at higher rates or if $10k SALT deduction cap repealed

Notes:

- [ ] **Charitable contributions**: Deferral captures greater benefit at higher rates; acceleration avoids itemized deduction limits

Notes:

- [ ] Medical expenses

Notes:

Major 2021/2 Financial Events

- [ ] Recognition events

Notes:

- [ ] New investments

Notes:

- [ ] Vesting

Notes:

Major 2021/2 Life Events

- [ ] Job changes

Notes:

- [ ] Residence or domicile relocation

Notes:

- [ ] Family changes

Notes:

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Planning Checklist

2021 END-OF-YEAR

Retirement Planning

- [ ] **Fund IRAs**: Roth conversions before rates increase

Notes:

- [ ] **Fund 401ks**: NUA rollout before rates increase

Notes:

- [ ] Fund pension plans

Notes:

Education Planning

- [ ] Fund 529s

Notes:

- [ ] Fund Coverdell accounts

Notes:

- [ ] Fund ESAs

Notes:

Executive Planning

- [ ] **Review NQCD**: Reconsider NQCD funding to avoid rate increases & increased payroll taxes

Notes:

- [ ] **Review NQSO/ISO**: Consider exercise in case AMT (ISO) renewed or avoid rate increase & increased payroll taxes (NQSO)

Notes:

- [ ] **Review concentrations**: Diversify concentrated positions before rates increase

Notes:

Estate Tax Planning

- [ ] **Lifetime exemption**: Consider large lifetime gifts and capture large estate tax exemption

Notes:

- [ ] **Plan**: annual exclusion gifts

Notes:

- [ ] **Plan**: medical, tuition gifts

Notes:

- [ ] Avoid forced recognition event

Notes:

These critical tax and estate planning measures take time to develop and implement. Contact us to schedule a consultation before it's too late.

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Protect Your Financial Legacy

Each individual and family situation is different. As such, we believe that your estate plan should be unique as well. It should **fit you like a well-tailored suit**, with it changing to accommodate you, not the other way around.

When you work with our office, we take the time to get a full, 360-degree view of your situation and to understand your particular financial goals so that we can **give you the best advice** and **build the most effective and efficient estate plan**.

The critical first step is the *Financial Legacy Review*. During this meeting we will assess your current and future financial goals. Based on the conversation, we will then develop a unique *Financial Legacy Blueprint* for you and your family.

Especially with the unusual challenges presented by the COVID-19 pandemic and the numerous tax reform proposals, it is more critical than ever to review and revise any existing estate, tax, or asset protection plans.

When you are ready to **take proactive measures** to protect your wealth, assets, and financial legacy, call us to **schedule your free *Financial Legacy Review***.

Sincerely,

Paul Labiner

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