



Areas of Practice

- Estate Planning
- Business Transactions
- Real Estate Transactions
- Estate and Trust Administration
- Taxation
- Non-Profit Organizations

David P. Wilson

Partner

Phone: 402-330-6300

Fax: 402-330-6303

Email: dwilson@walentineotoole.com

Biography

Partner David Wilson brings over 30 years of legal and industry experience to his representation of families and family-run businesses in high-value estate and tax planning, business and real estate transactions, and estate and trust administration.

David began his legal career in public accounting, and his deep understanding of tax issues offers added value to his transactional clients and a real differentiator to his practice.

From his experience as in-house corporate counsel, David understands the complex legal concerns of businesses from an insider's perspective. He has worked as a tax attorney for a national accounting firm, as in-house counsel for a Midwest gas company and currently serves as outside general counsel for an international trade association in the movie theater equipment and technology industry.

After growing up with seven siblings and now raising five children, David intimately understands the often-complex dynamics of families and family-owned businesses. It is this combination of business and family experiences that makes him uniquely qualified to advise family businesses on their estate and succession planning, real estate acquisitions and sales and business-related contracts and transactions.

David prides himself on his listening skills that enable him to translate his clients' desired outcomes into efficient arrangements that help accomplish their goals. He considers himself a client partner – one who makes it easier for his clients to continue growing and shaping their business entities, knowing their legal concerns are being handled.

A two-time graduate of Creighton University (1982 B.S.B.A. in accounting/finance and 1985 J.D.), David has deep family roots in Omaha and Nebraska. When not advising clients, he enjoys traveling with his wife Laura, running (he's completed 25+ marathons), watching movies and staying active with his family and four dogs.

Professional Associations and Memberships

- Nebraska State Bar Association
- Omaha Bar Association
- Omaha Estate Planning Council

Publications and Presentations

- Has spoken frequently on estate and tax planning topics
- Written articles for Film Journal International on legal matters involving the movie industry
- Presented seminars for lawyers on estate planning topics
- Presented client seminars on estate planning

Education

- J.D., Creighton University School of Law, 1985
- B.S.B.A., Creighton University, 1982 (Accounting and Finance)

Representative Cases

- Represented a high net worth client in creative estate and wealth-transfer planning, saving his client millions of dollars in federal estate taxes
- Obtained a six-figure federal estate tax refund for a client who had previously filed a federal estate tax return
- Negotiated and closed several eight and nine-figure business acquisitions and sales

Representative Clients

- International Cinema Technology Association
- Flinn Paving Company
- Nebraska Furniture Mart, Inc. and affiliated entities

Honors & Awards

- CAP/Chartered Advisory in Philanthropy designation from the American College of Financial Services

Pro Bono Activities

- Member, Mount Michael Benedictine High School Alumni Board
- Member, Nebraska Humane Society Board of Directors

Bar Admissions

- Nebraska
- United States Tax Court

THINGS YOU NEED TO KNOW

I. DYING WITHOUT A WILL – INTESTACY

A. Step 1 – Determine Share of Surviving Spouse

1. If no surviving issue or parents of deceased - entire estate to spouse
2. If no surviving issue - but parent(s) survive - spouse gets first \$100,000 plus $\frac{1}{2}$ of the rest
3. If issue survive who are also issue of the surviving spouse - spouse gets first \$100,000 plus $\frac{1}{2}$ of the rest
4. If issue survive - one or more who are not the issue of surviving spouse - spouse gets $\frac{1}{2}$ of intestate estate

B. Step 2 – Determine Share of Non-spouse Heirs

1. The part of the intestate estate not passing to spouse or the entire intestate estate if no surviving spouse passes to:
 - a. Surviving issue by right of representation
 - b. If no surviving issue - but parent(s) - equally to parent(s)
 - c. If no surviving issue or parents – to the issue of parents or either of them by right of representation
 - d. If no surviving under a, b or c – but surviving grandparent(s) – $\frac{1}{2}$ to maternal grandparents or their issue by right of representation and $\frac{1}{2}$ to paternal grandparents or their issue by right of representation (or if only on one side – to that side entirely)
 - e. If a - d do not apply – to next of kin in equal degree – with priority given to less remote ancestor kin
 - f. If no surviving heirs or next of kin – entire estate escheats to State of Nebraska

C. Issue = Descendants

II. REASONS WHY YOU NEED AN ESTATE PLAN

- A. To adequately and properly provide for loved ones and especially those dependent upon you for support
- B. To avoid the expense of going through an intestate estate administration

- C. To accomplish your wishes with respect to the disposition of your estate
- D. To avoid leaving your family with a mess
- E. To avoid the consequences of family dysfunction

III. LEGAL ZOOM, ROCKET LAWYER AND OTHER FAMILY DISASTERS

A. Legal formalities are important

1. Wills

- a. Testator/Testatrix must be at least 18
- b. Written and signed by Testator or by another at the Testator's direction
- c. In the presence of 2 competent witnesses, at least one of whom must be disinterested
- d. Self-proving affidavit – presumes valid execution
- e. Free and voluntary act; no duress; no undue influence; testamentary capacity

2. Holographic Will

- a. Signature, date, material provisions are entirely in the Testator's handwriting
- b. No witnesses necessary

3. The Story of the Black Widow

- a. Used form Wills – bought at office supply store
- b. No children despite multiple husbands – who all predeceased Testatrix
- c. Nieces and nephews – not all named in Will
- d. Multiple charities named
- e. Original Will – properly executed – blanks filled in blue ink
- f. Over a period of years – numerous interlineations and additions to original Will – often in a different color ink
- g. Testatrix dies. Predictable Will contest ensues.

- h. Result: After tens of thousands in legal fees (numerous lawyers) – of the original 12 nieces and nephews, 2 friends and 8 charities named – 1 friend, 1 niece and 2 charities split the estate – 3 years after she died.
- i. It is worth the expense of a lawyer to properly prepare your estate plan and make certain that documents are properly executed.

IV. ASSET TITLING

A. Modes of Asset Title

- 1. In your name
- 2. In the name of your Revocable Trust
- 3. Jointly titled
- 4. In your name – with death beneficiaries

B. Importance of Asset Titling

- 1. Determines who has rights in asset during life
- 2. Determines method by which asset passes on death
- 3. Asset titling needs to be considered with estate plan
- 4. Creditor considerations
- 5. Determine who has control during incapacity
- 6. Determine lifetime transferability of interest

C. Joint Tenancy Ownership

- 1. Tenants in Common – Each joint tenant owns an undivided fraction of the whole asset. Undivided interest of deceased joint tenant passes on death by Will or intestacy.
- 2. Joint Tenants WROS – Each joint owner has an undivided interest in the whole. On death – the interest of a deceased joint tenant passes as operation of law to surviving joint tenant or joint tenants. Neither Will nor Trust will pass deceased tenant's interest on death.
- 3. **Multiple Party Accounts**
 - a. Survivorship bank accounts

- b. Each party has rights in whole account
 - c. During lifetime – each party only has legal claim on account in proportion to his/her contribution
 - d. Under some circumstances – those accounts can be problematic
 - e. Bad if one party has creditor issues
 - f. Bad if non-contributing owner withdraws amounts during life
 - g. Story account pre-death account raiders
 - h. Those account can be inconsistent with your estate plan
4. Best Practice Alternatives for Asset Titling
- a. Titling assets in your Revocable Trust (assets are subject to terms of Trust Agreement)
 - b. Titling assets in your name – subject to financial durable power of attorney and Will
 - c. T.O.D. beneficiary designations consistent with your estate plan
 - d. T.O.D. beneficiary deeds for real estate
 - e. Ultimate objectives - Make sure titling is done in a manner which is consistent with your estate plan and which avoids creditor issues and problematic joint owners.

V. WHAT TO INCLUDE IN YOUR ESTATE PLAN

- A. Comprehensive distribution of assets
- B. Payment of debts and expenses and taxes
- C. Appointment of fiduciary in charge (Personal Representative/Trustee)
- D. Appointment of Guardians/Conservators for minors and incapacitated dependents
- E. Incapacity planning documents
 - 1. Financial/personal durable power of attorney
 - 2. Health care durable power of attorney

3. Living will
 4. Revocable Trust Agreement
- F. Organ donor documentation
- G. Tax motivated estate planning
- H. Charitable estate planning

VI. OPPORTUNITIES FOR INSURANCE PROFESSIONALS

- A. Long-term care insurance
1. New LTC policies
 2. Life insurance for LTC
 3. Using existing (not otherwise necessary life policies)
- B. Wealth replacement policies
- C. Succession planning
1. Cross purchase agreements
 2. Redemption agreements
 3. Family equalization
- D. Insurance can be very useful in blended family situations by providing a source of inheritance for step-relatives

VII. FREEING POLICIES FROM OBSOLETE ILLIT.

- A. Many ILITs were set up for the purpose of funding federal estate tax liabilities
- B. Those ILITs may be obsolete because of significant changes in federal estate tax laws
- C. Since ILITs are “irrevocable” – policies are locked up in their Trusts
- D. Freeing up those policies may be desirable when they can be used for other purposes or when beneficiaries need access to cash values
- E. Uniform Trust Code permits termination of irrevocable trusts under certain circumstances:
1. By consent of Settlor and all beneficiaries

- a. Even if termination is inconsistent with a material purpose
 - b. If all beneficiaries consent – Trust may be terminated if the Court concludes that continuance of the Trust is not necessary to achieve any material purpose of the Trust
 - c. Requires Court Order in an action commenced by Trustee or a beneficiary
 - d. Trustee shall distribute Trust property as agreed by the beneficiaries – upon termination under those proceedings
 - e. If not all beneficiaries consent – the Court may still order termination if
 - (i) termination would have occurred if all beneficiaries had consented, and
 - (ii) the interests of the non-consenting beneficiary(ies) is adequately protected
2. Termination of uneconomical Trust
- a. If Trust property has a value of less than \$100,000
 - b. If Court concludes value insufficient to justify continued cost of Trust administration
 - c. Requires Court Order
- F. It is important to keep a close watch on federal estate and gift tax legislation during the Biden administration. If the federal estate and gift tax and GSTT exemptions are reduced with an accompanying increase in rates, it is possible that life insurance funding for estate tax liquidity purposes will become prevalent again.

VIII. TRANSFER TAX LANDSCAPE

- A. Federal Estate and Gift Tax
- 1. \$11,700,000 combined lifetime taxable transfer exemption (2021)
 - 2. \$15,000 per donee annual present interest gift tax exclusion; \$30,000 for split gifts
 - 3. \$11,700,000 generation-skipping transfer tax exemption (2021)
 - 4. While the lifetime exemptions are very high, taking many of our clients out of taxable situations, it is possible or even likely that future legislation could significantly reduce those outrageously high amounts. The current exemption levels are set to expire on December 31, 2025. As of the date of this outline, President Biden has not chosen to expand the federal estate tax by reducing exemption levels or increasing federal estate and gift tax rates. The current

emphasis in the Biden tax plan is to eliminate stepped-up basis and to increase capital gains tax rates. This creates a way for the federal government to make up revenue shortfalls through income tax instead of federal estate taxes.

5. Before Trump presidency, federal estate and gift tax averaged 2.3% of annual federal revenues
6. Because of reduced taxes under all of Trump's tax laws, taxes will need to increase at some point in the near future. President Biden intends to increase federal income tax rates for individuals earning over \$425,000 (\$509,000 for married taxpayers filing jointly). Because of the economic stimulus brought on by COVID-19 it is certain that Americans will be paying much higher income taxes beginning sometime during the Biden administration.
7. If the federal estate and gift tax laws remain unchanged, beginning in 2026, the exemption levels for federal estate and gift tax and GSTT will fall to \$5 million per taxpayer, adjusted for inflation (estimated at \$6-7 million in 2026). The federal estate tax maximum rate will increase from 40% to 45%. It is also possible, if President Biden follows his campaign platform, that he could push for legislation before 2026 which would decrease the tax exemption to \$3,500,000 per taxpayer. For all of these reasons, tax planning is still important for high-net-worth clients.
8. Clients who have taxable situations in the current federal transfer tax environment need experienced tax advisors.
9. Anti-clawback regulations. The Department of the Treasury has issued proposed regulations which would protect taxpayers who have made taxable gifts based upon the increased exemption amounts during years where the exemption amounts are higher if the taxpayers die in future years when the exemption is lower. This presents a significant lifetime gifting opportunity for high-net-worth individuals during the period of time when the exemption levels are high. Again, because of legislative uncertainty it is advisable, if it makes sense for clients, for high-net-worth clients to make lifetime gifts all the way up to the current exemption level. Every situation is unique and there are non-tax considerations which may dictate that this is not a good strategy in some cases. Consulting with tax advisors and legal counsel is extremely important during these uncertain times.
10. Legislative update

B. Nebraska Inheritance Tax (see Worksheet attached)

1. Subject to exceptions and exemptions – property passing to non-spouse heirs on death (including gifts made within 3 years of death) is subject to this tax
2. Payable to County Treasurer; statutory lien on real estate arises upon death for this tax

3. Requires an Order of probate court. Personal Representative or Trustee must file inventory and inheritance tax worksheet with Court and must obtain approval of County Attorney
4. This tax and its court process – takes the privacy aspect away from Revocable Trusts
5. This tax can't be avoided by having a Revocable Trust
6. Starting point is fair market value of property passing to heirs and devisees
7. Deductions for funeral expenses, expenses of last illness, administration expenses, lawful debts, and other expenses
8. Homestead exemption, exempt property and family allowance are all deductible
9. Exemptions/Tax Rates
 - a. Siblings, ancestors, issue - \$40,000 exemption – 1% tax rate
 - b. Uncle, aunt, niece, nephew or their lineal descendants and spouses - \$15,000 exemption – 13% tax rate
 - c. All others - \$10,000 exemption – 18% tax rate
 - d. No tax on assets passing to surviving spouse or charity
10. Nebraska remains in the minority of states which continue to have an inheritance tax

WALENTINE O'TOOLE, LLP

Attorneys at Law

GENERAL TRANSFER INSTRUCTIONS

1. Title to Assets in General

Generally, the proper manner in which to title your assets (other than IRAs, qualified requirement plans, pensions, annuities, and life insurance) is as follows:

_____, Trustee, and his/her successors in trust, under the _____ Revocable Trust created by Trust Agreement dated _____, and all amendments and restatements thereto.

See Section 7 for instructions for IRAs, pensions, qualified retirement plans, annuities, and similar assets. See Section 8 for instructions for life insurance.

2. Accounts

Transfer your savings accounts, brokerage accounts, mutual fund accounts, money market accounts, certificates of deposit, and similar assets to the Trust (refer to language in Section 1 above). Checking accounts should also be changed to the Trust (refer to language in Section 1 above) if large amounts of money are generally kept in such accounts; otherwise, those checking accounts may be made "transfer on death" (TOD) to (a) a particular family member, or (b) your revocable trust (refer to language in Section 1 above). Take a copy of the Trust Agreement or a Certification of Trust with you to the financial institution to set up the account. **When using TOD beneficiary designations on accounts, please make sure that there are enough liquid assets in your estate or Trust to pay administration expenses, debts and taxes following your death. Do not transfer all of your liquid assets to family members using TOD beneficiary designations, because the beneficiary(ies) will own those assets after your death and may not be obligated to use them to pay those expenses. If you are contemplating using TOD beneficiary designations for accounts or jointly titling accounts with someone other than your spouse, please consult me before doing so.**

Walentine O'Toole, LLP
www.walentineotoole.com

11240 Davenport Street
PO Box 540125
Omaha, NE 68154
Phone: (402) 330-6300
Fax: (402) 330-6303

1851 Madison Avenue, Suite 712
Council Bluffs, IA 51502
(712) 318-1500

10610 Shawnee Mission Parkway, Suite 200
Shawnee, KS 66203
(913) 228-1800

5024 S. Bur Oak Place, Suite 210
Sioux Falls, SD 57108
(605) 681-9030

Michael F. Kivett**
Craig A. Knickrehm**
Camille R. Hawk*
Matthew J. Bock****
Raymond R. Aranza*
David P. Wilson
Matthew J. Kivett*****

Jonathan M. Brown***
Andrew R. Biehl**
Jamie M. Hurst
John M. Kivett*
Betty L. Egan, Of Counsel
Richard C. Gordon, Of Counsel

* (also admitted in Iowa)

** (also admitted in Iowa & South Dakota)

*** (also admitted in Iowa, Wisconsin & South Dakota)

**** (also admitted in Kansas & Missouri)

***** (also admitted in South Dakota)

3. Stocks and Bonds

For stock in a closely-held business, a stock power should be prepared to transfer your stock to the Trust (refer to language in Section 1 above). Thereafter, the applicable corporation should issue a new stock certificate to the Trust representing the transferred shares. Before transferring your stock, you should review the corporation's Bylaws and any buy-sell agreements to make certain such agreements do not contain transfer restrictions which prevent you from transferring your stock to the Trust. If you own stock in a public corporation in your individual name in certificated form (which is not in a mutual fund or a brokerage account), please let us know and we will instruct you on the proper manner to transfer title of such stock.

For bearer bonds and registered bonds, a bond power should be prepared for each bond to transfer the bonds to the Trust (refer to language in Section 1 above).

I suggest that you consult me with regard to any transfers of any closely-held business interests or certificated stocks and bonds to make certain that they are done correctly.

4. Real Estate

I will prepare appropriate deeds to properly title your real estate either jointly with right of survivorship, or in the name of your Trust.

5. Partnerships and Limited Liability Companies

Partnership and limited liability company interests may be transferred to the Trust (refer to language in Section 1 above) by execution of an assignment form. If your ownership in the partnership or limited liability company is evidenced by a certificate, a new certificate will need to be issued to the Trust. Before transferring any such interests, you should review the partnership agreement or the limited liability company's operating agreement and any buy-sell agreements to make certain such agreements do not contain transfer restrictions which may prevent you from transferring your interests to the Trust. I suggest that you consult me with regard to any transfers of partnership and limited liability company interests to make certain that they are done correctly.

6. Notes, Trust Deeds and Contracts

An assignment form should be signed for each note or contract and such form should be stapled to the original note or contract in order to transfer such assets to the Trust (refer to language in Section 1 above). An assignment of deed of trust for each trust deed should be signed, notarized and recorded in the county where the real property is located. I suggest that you consult me with regard to transfers of any note, trust deed or contract to make certain that they are done correctly.

7. IRAs, Retirement Accounts, Pensions, Annuities, and Similar Assets

If you have an IRA, qualified retirement plan assets (i.e., a 401(k), 403(b), profit sharing plan), pensions, annuities, or similar assets, you should request that the custodian of those assets

change the primary beneficiary of such assets to your revocable trust. If you have charitable intentions, we should discuss how charities might be named as the beneficiary of some of these assets for income tax and estate tax savings. If you have retirement accounts other than the ones mentioned above, please let me know and I will instruct you on the proper beneficiary for such assets.

You will need to call the custodians and request that they send you the appropriate "change of beneficiary" forms. After completing the forms, you will need to return the forms to them.

8. Life Insurance Policies

For life insurance policies insuring your life, your Revocable Trust should be named as the primary beneficiary. You will need to call the insurance companies and request that they send you the appropriate "change of beneficiary" forms. After completing the applicable forms, you will need to return the forms to them. Should they request a copy of your Trust Agreement, ask them if you can send them either a Certification of Trust or a copy of the pertinent pages of your Trust Agreement (the first page, the section naming the successor Trustee(s), and the signature page).

9. Automobiles

Future and current automobile titles should be titled in the Trust (refer to language in Section 1 above).

10. 529 Educational Accounts

For any 529 accounts for children, you should consider naming trusted family members as the successor owners after you. With respect to 529 accounts for grandchildren, you should consider naming the parents of the respective grandchild as the successor owners after you. For 529 accounts for nieces, nephews or other individuals, you should consider naming the parents of the respective individual as the successor owners after you.

11. Safe Deposit Box

You should designate one or two individuals (e.g., Successor Trustee, Agent or family members) on your safe deposit box so they may access your original estate planning documents and its other contents upon your death.

12. Assistance with Re-Titling

I would be happy to help you with any of these transfers if you would supply the following documentation:

- (a) Accounts – last account statement;
- (b) Stocks and Bonds – copy of certificates or instruments;
- (c) Real Estate – copy of latest deed;
- (d) Partnership or Limited Liability Company – copy of most recent Form K-1;

- (e) Notes, Trust Deeds and Contracts – copy of note, deed or contract; and
- (f) IRAs, Retirement Plans, Pensions, Annuities, and Life Insurance – change of beneficiary form (and ownership form, if applicable), identification number or policy number, and copy of the policy or last account statement.

Please let me know if you have any questions or need any help in completing these instructions.

Sincerely,

David P. Wilson
dwilson@walentineotoole.com

DPW:smd

IN THE COUNTY COURT OF _____	COUNTY, NEBRASKA
IN THE MATTER OF THE ESTATE OF _____	Case No. PR _____ - _____
_____, DECEASED	INHERITANCE TAX WORKSHEET
Date of Death: _____	VOLUNTARY APPEARANCE AND WAIVER OF NOTICE (Eff. 2011)
	Final Determination

ASSETS OF ESTATE FOR INHERITANCE TAX PURPOSES, SECTIONS 77- 2001 & 77-2002

1	Schedule A, Real Estate (or Total of Short Form Inventory Value if Separate Schedules not Filed)		Clear Market Value at Date of Death
2	Schedule B, Stocks and Bonds		
3	Schedule C, Mortgages, Notes and Cash		
4	Schedule D, Life Insurance Payable to Estate		
5	Schedule E, Jointly Owned Property		
6	Schedule F, Other Miscellaneous Property		
7	Schedule G, Transfers During Lifetime (Include Section 77-2002(2) gifts)		
8	Schedule H, Powers of Appointment (See Section 77-2009 for Taxability)		
9	Schedule I, Annuities		
10	Total Clear Market Value (Total of lines 1 through 9) or Total Inventory Value		
11	Contribution by Surviving Joint Tenant (Explanation Attached)		
12	<i>Gross Estate (Line 10 Minus Line 11)</i>		

ALLOWANCES & EXEMPT PROPERTY, SECTIONS 30-2322 TO 30-2325 & DEDUCTIONS, SECTION 77-2018.04

13	Homestead Allowance (Maximum \$20,000)		Allowances
14	Exempt Property (Maximum \$12,500)		
15	Family Maintenance Allowance (Maximum \$20,000 Without Court Order)		
16	<i>Total Allowances & Exempt Property (Total of Lines 13 Through 15)</i>		
17	Cost of Funeral, Including Interment and Marker		Deductions - Include Only to Extent Paid From, Chargeable to or Paid With Respect to Property Subject to Nebraska Inheritance Tax
18	Attorney Fees and Expenses		
19	Personal Representative Fees		
20	Court Costs and Recording Fees		
21	Publication Costs		
22	Bond		
23	Other Administration Expenses (Schedule J or Other Schedule Attached)		
24	Non-Probate Property Expense		
25	Predeath Debts Not Otherwise Listed (Schedule K or Other Schedule Attached)		
26	<i>Total Deductions (Total of Lines 17 to 25)</i>		

MARITAL EXEMPTION, SECTION 77-2004

Explanation: The Marital Exemption is the total of Spouse's actual share less Homestead Allowance, Exempt Property, and Family Allowance together with claims and administration expenses which are paid out of the interest of the Surviving Spouse.

27	Interest of Spouse in Decedent's Joint Property		Marital Exemption
28	Interest of Spouse in Decedent's Probate Estate		
29	Interest of Spouse in Decedent's Other Property		
30	<i>Total of Spouse's Actual Share of Estate (Total of Lines 27 Through 29)</i>		

FEDERAL ESTATE TAX DEDUCTION, SECTION 77-2018.04(5), CHARITABLE EXEMPTION SECTION 77-2007.03 & .04

31	Gross Estate plus Adjusted Taxable Gifts (From Federal Estate Tax Return)		Federal Estate Tax Allocation
32	Total of Line 31 Not Subject to Nebraska Inheritance Tax		
33	<i>Total of Line 31 Subject to Nebraska Inheritance Tax (Line 31 minus Line 32)</i>		
34	<i>Factor (Line 33 Divided by Line 31 carried to four places)</i>		
35	Federal Estate Tax Paid (From Form 706)		
36	<i>Federal Estate Tax Paid Attributable to Property Subject to Nebraska Inheritance Tax (Line 34 Multiplied by Line 35)</i>		
37	Governmental, Religious, and Charitable Gifts		
38	<i>Total Deductions and Exemptions (Total of Lines: 16, 26, 30, 36 and 37)</i>		
39	<i>Net Value of Property Subject to Nebraska Inheritance Tax (Line 12 minus Line 38)</i>		

TENTATIVE INHERITANCE TAX PAID AND CREDIT FROM ESTATES OF PRIOR DECEDENTS, SECTION 77-2018.06

	Total Inheritance Tax Credit Due Estate of this Decedent (Explanation Attached)		
	<i>Tentative Inheritance Tax Previously Paid in this Estate</i>		

NEBRASKA INHERITANCE TAX COMPUTATION
(Using rates effective as of January 1, 2011)

		Beneficiary Number	Spouse	1	2
		Beneficiary Name			
		Beneficiary Relationship			
		Class (Insert Spouse, 1, 2, 3, or Charitable)			
12		Gross Estate			
16		Allowances & Exempt Property			
26		Deductions			
30		Marital Exemption			
36		Federal Estate Tax			
37		Charitable			
39		Net Value			
		Exemption			
		Taxable Amount			
40		Tentative Tax			
41		Tax Credit From Prior Estate			
42		Tentative Inheritance Tax Previously Paid			
43		Tax Due			
		<< Total of Inheritance Tax Credit From Prior Estates, Must Equal or Exceed Line 41 Allocation of Credit			

Determine Class of Beneficiary:

- **Class 1:** Parents, grandparents, siblings, lineal descendants, and spouses of any of these.
- **Class 2:** Uncles and aunts, nephews and nieces, or lineal descendants or spouses of such relatives.
- **Class 3:** All others.

Note: Relatives of decedent's current spouse and of a former spouse of the decedent to whom the decedent was married at the death of the former spouse have the same relationship as if relatives of decedent.

Beneficiary Number	3	4	5	6	7	8
Beneficiary Name						
Beneficiary Relationship						
Class (1, 2, 3, or Charitable)						
Gross Estate						
Allowances & Exempt Property						
Deductions						
Federal Estate Tax						
Charitable						
Net Value						
Exemption						
Taxable Amount						
40 Tentative Tax						
41 Tax Credit From Prior Estate						
42 Tentative Tax Paid						
43 Tax Due						

Inheritance tax rates on taxable amount (by class):

- **Class 1:** Property in excess of \$40,000 is taxed at 1%
- **Class 2:** Property in excess of \$15,000 is taxed at 13%
- **Class 3:** Property in excess of \$10,000 is taxed at 18%.

Note: Where the clear market value of the beneficial interested received by a beneficiary is equal to or less than the threshold set for that class, it shall not be subject to the tax. This schedule is for deaths on or after January 1, 2008.

COUNTY ATTORNEY VOLUNTARY APPEARANCE AND WAIVER OF NOTICE FOR FINAL DETERMINATION OF INHERITANCE TAX

ESTATE OF _____

I, the undersigned (Deputy) County Attorney, hereby enter my voluntary appearance on behalf of the below designated County and the State of Nebraska in the above captioned proceeding and waive the service of notice upon me to show just cause, and furthermore waive all notice required by law of time and place of hearing for the determination of values of property for inheritance tax purposes and for the purpose of assessing inheritance tax, if any, due under the laws of the State of Nebraska. I have examined the foregoing Worksheet and have no objections thereto for inheritance tax purposes only.

(Deputy) County Attorney	County	Date
(Deputy) County Attorney	County	Date
(Deputy) County Attorney	County	Date

NebraskaFarmer



WEEDS AND YOUR ESTATE PLAN: Unwanted invaders in a crop field have to be removed. Pulling weeds is a challenging chore, and there are similarities in that task to what it takes to create a successful estate plan.

Don't let weeds grow in your estate plan

Author learned a life lesson removing "crop invaders" that has value for farmers.

Oct 24, 2018

By Michael Dolan

What can we learn about estate planning from weeds? It may seem odd, but I learned a lot as a young man by pulling weeds. My father had an interesting way of punishing his three sons. When we landed in trouble, in addition to our other chores, he would send us out on the property with directions to pull a certain number of various types of weeds. You had to pile the weeds in piles of 10 for easy tabulation, and if the pulled weed did not have most of its root, it did not count. The number of weeds assigned usually corresponded to the severity of the offense. Needless to say, with three mischievous boys, there were not a lot of weeds on our property. So, what did I learn?

1. I learned that if you make good decisions early, you don't have to face bad consequences. It's not that different in estate planning. If you plan ahead by putting a well-designed system in place to deal with matters upon your disability and/or death, you and your family don't have to face the significant and expensive consequences of failing to plan. Paying excess taxes, navigating probate, or having significant delays and legal complications sound a whole lot worse than hunting down and pulling 200 leafy spurge plants.

2. I learned that taking one more step forward always gets you closer to success. Even though the project often seemed insurmountable to a young man standing in the hot sun, pulling that next weed got me closer to getting it done. To have an effective estate plan, you need to take all the necessary steps. Having a will or trust is a start, but it doesn't mean you have an estate plan. It simply means you have an unimplemented set of instructions that usually have little to do with your objectives for your family. If you want a plan that works, you need to do more than just buy some documents. Learn what steps are needed to have a successful plan, and then take them. You never know when a big patch of Canada thistle may be just over the next rise.

3. I learned that stopping before the job is done can have adverse consequences. If I wandered off to do anything — even my chores — before the assigned number of weeds had been collected, the punishment was swift and uncomfortable. When you estate-plan, you need to complete the entire project. Your estate plan is one of the few things in life that involves everyone you love and everything you own. A couple of hours in the attorney's office many years ago is a classic example of not getting the project done. You need to work closely enough with the attorney to design the plan to fit your family, undertake a process to update and maintain it as time passes, and make sure it is ready to serve your family well when a disability occurs, or the good Lord calls you home. This is the best way to avoid weeds sprouting on your outdated estate plan.

Dolan, an attorney, helps farm and ranch families achieve comprehensive estate, succession and legacy planning objectives. Dolan is the principal of Dolan & Associates P.C. in Brighton and Westminster, Colo. Learn more on his website, estateplansthatwork.com.

Source URL: <https://www.farmprogress.com/management/don-t-let-weeds-grow-your-estate-plan>

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Importance of TOD & JTWRROS Designations

The Importance of TOD & JTWRROS Designations

A convenient move that could ward off probate on your accounts.

Provided by Total Financial Advisors, LLC.

TOD, JTWRROS...what do these obscure acronyms signify? They are shorthand for *transfer on death* and *joint tenancy with right of survivorship* – two designations that permit automatic transfer of bank or investment accounts from a deceased spouse to a surviving spouse.

This automatic transfer of assets reflects a legal tenet called the *right of survivorship* – the idea that the surviving spouse should be the default beneficiary of the account. In some states, a TOD or JTWRROS beneficiary designation is even allowed for real property.¹

When an account or asset has a TOD or JTWRROS designation, the right of survivorship precedes any beneficiary designations made in a will or trust.^{1,2}

There are advantages to having TOD and JTWRROS accounts ... and disadvantages as well.

TOD & JTWRROS accounts can usually avoid probate. As TOD and JTWRROS beneficiary designations define a direct route for account transfer, there is rarely any need for such assets to be probated. The involved financial institution has a contractual requirement (per the TOD or JTWRROS designation) to pay the balance of the account funds to the surviving spouse.¹

In unusual instances, an exception may apply: if the deceased account owner has actually outlived the designated TOD beneficiary or beneficiaries, then the account faces probate.³

What happens if both owners of a JTWRROS account pass away at the same time? In such cases, a TOD designation applies (for any named contingent beneficiary).³

To be technically clear, *transfer on death* signifies a route of asset transfer while *joint tenancy with right of ownership* signifies a form of asset ownership. In a variation on JTWRROS called *tenants by entirety*, both spouses are legally deemed as equal owners of the asset or account while living, with the asset or account eventually transferring to the longer-living spouse.³

Does a TOD or JTWRROS designation remove an account from your taxable estate? No. A TOD or JTWRROS designation makes those assets non-probate assets, and that will save your executor a little money and time – but it doesn't take them out of your gross taxable estate.

In fact, 100% of the value of an account with a TOD beneficiary designation will be included in your taxable estate. It varies for accounts titled as JTWRROS. If you hold title to a JTWRROS account with your spouse, 50% of its value will be included in your taxable estate. If it is titled as JTWRROS with someone besides your spouse, the entire value of the account will go into your taxable estate unless the other owner has made contributions to the account.⁴

How about capital gains? JTWRROS accounts in common law states typically get a 50% step-up in basis upon the death of one owner. In community property states, the step-up is 100%.⁵

Could gift tax become a concern? Yes, if the other owner of a JTWRROS account is not your spouse. If you change the title on an account to permit JTWRROS, you are giving away a percentage of your assets; the non-spouse receives a gift from you. If the amount of the gift exceeds the annual gift tax exclusion, you will need to file a gift tax return for that year. If you retitle the account in the future so that you are again the sole owner, that constitutes a gift to you on behalf of the former co-owner; he or she will need to file a gift tax return if the amount of the gift tops the annual exclusion.⁵

TOD & JTWRROS designations do make account transfer easy. They simplify an element of estate planning. You just want to be careful not to try and make things too simple.

TOD or JTWRROS accounts are not cheap substitutes for wills or trusts. If you have multiple children and name one of them as the TOD beneficiary of an account, that child will get the entire account balance and the other kids will get nothing. The TOD beneficiary can of course divvy up those assets equally among siblings, but in doing so, that TOD beneficiary may run afoul of the yearly gift tax exclusion.²

JTWRROS accounts have a potential drawback while you are alive. As they are jointly owned, you have a second party fully capable of accessing and using the whole account balance.²

As you plan your estate, respect the power of TOD & JTWRROS designations. Since they override any beneficiary designations made in wills and trusts, you want to double-check any will and trust(s) you have to make sure that you aren't sending conflicting messages to your heirs.²

That aside, TOD & JTWRROS designations represent convenient ways to arrange the smooth, orderly transfer of account balances when original account owners pass away.

Total Financial Advisors, LLC. may be reached at 516-579-2700 or tfa@totalfinancialadvisors.com.

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Get in Touch

24 Union Avenue, Bethpage, New York 11714 United States
516-579-2700 | tfa@totalfinancialadvisors.com

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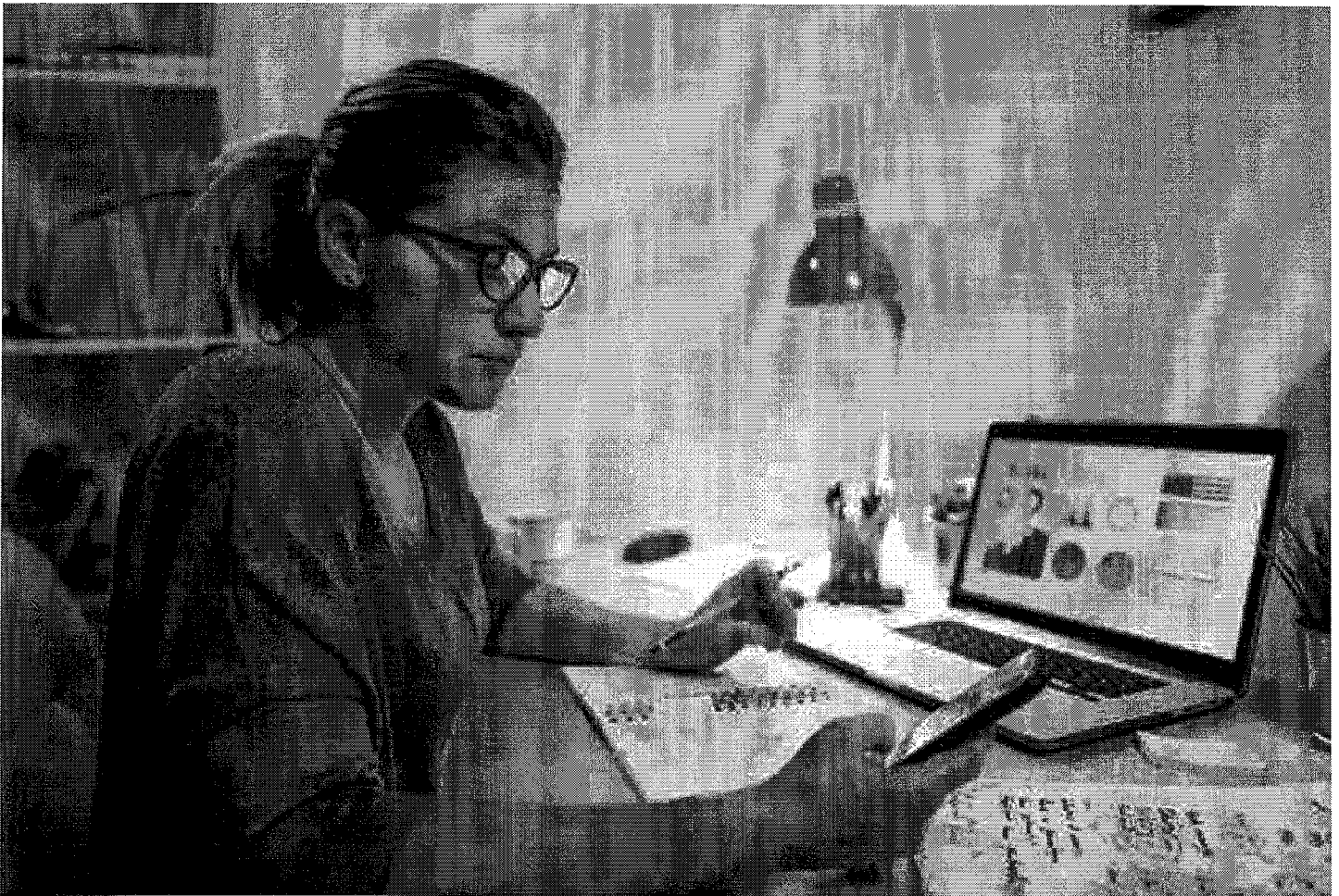
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Inside Biden's Capital Gains Tax Plan

Arturo Conde | MAY 02, 2021

SHARE



President Joe Biden proposed doubling capital gains taxes for investors making over \$1 million to fund his \$1.8 trillion American Families Plan. This could compel some high-income investors to sell off assets before the tax hike takes effect. Others will look into alternate strategies to lower their taxes. Whether you're thinking about selling off investments or holding on to them, a financial advisor can help you optimize a tax strategy for your needs and goals. Let's take a look at what this tax increase could mean for investors, who will get taxed and what you can do to minimize capital gains taxes.



Talk to a financial advisor about your **capital gains tax strategy: 1(888) 873-5370** ×



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Biden proposed raising the top capital gains tax from 20% to 39.6% before a joint session of Congress on April 28. This will affect long-term and short-term capital gains, since both would be taxed as ordinary income in the highest bracket.

“We’re going to get rid of the loopholes that allow Americans who make more than \$1 million a year pay a lower rate on their capital gains than working Americans pay on their work,” he said.

Currently, the 20% tax paid for long-term capital gains over \$445,850 is lower than the ordinary income tax rate that many Americans pay. For reference, the table below breaks down the tax rates and income brackets for tax year 2020:

Rate	Single	Married Filing Jointly	Married Filing Separately	Head of Household
10%	\$0 – \$9,875	\$0 – \$19,750	\$0 – \$9,875	\$0 – \$14,100
12%	\$9,876 – \$40,125	\$19,751 – \$80,250	\$9,876 – \$40,125	\$14,101 – \$53,700
22%	\$40,126 – \$85,525	\$80,251 – \$171,050	\$40,126 – \$85,525	\$53,701 – \$85,500
24%	\$85,526 – \$163,300	\$171,051 – \$326,600	\$85,526 – \$163,300	\$85,501 – \$163,300
33%	\$163,301 – \$207,250	\$326,601 – \$414,700	\$163,301 – \$207,250	\$163,301 – \$207,250



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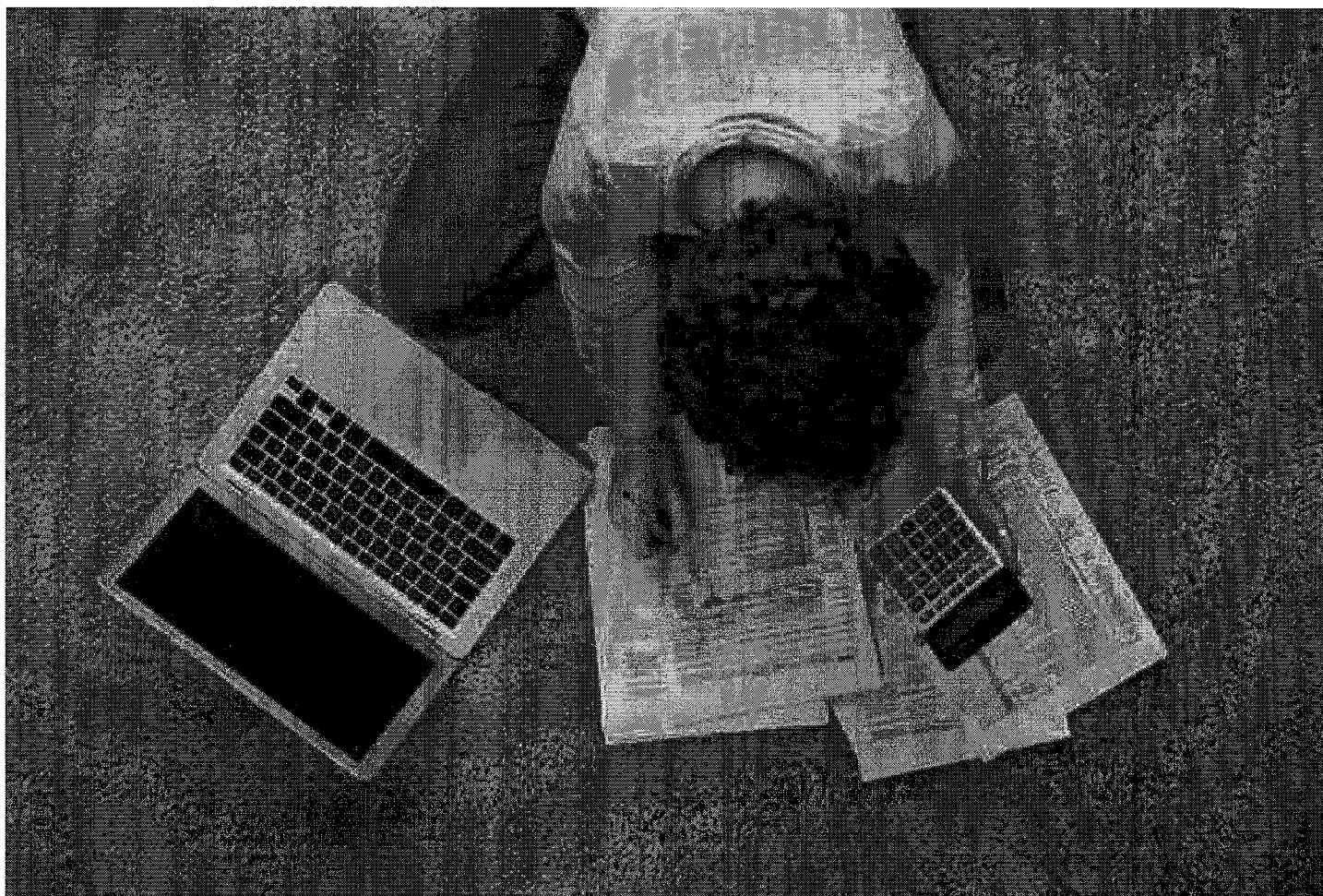


As you can see above, individuals for tax year 2020 earning between \$40,126 and \$85,525 paid 22%, and those earning between \$85,526 and \$163,300 pay 24%. Individuals earning more than \$518,400 pay the top rate of 37%.

The President specified that the capital gains increase would only apply to three-tenths of 1% of all Americans. Some investors may panic in response and think about selling off their holdings to avoid paying a 19.6% tax hike. However, there are other alternatives to lower capital gains taxes.

It's worth noting that a recent study from the University of Pennsylvania's Wharton Business School says that raising the top rate to 39.6% will decrease tax revenue between 2022 and 2031 by \$33 billion.

How Will Biden's Tax Reform Affect Capital Gains?



The IRS applies the capital gains tax to the profits that are made from selling investments. These profits can



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year.

The IRS taxes short-term capital gains like ordinary income. This means that high-income investors making over \$418,400 in tax year 2020 have to pay the top income tax bracket rate of 37% (which is due on May 17, 2021). It's important to note that Biden is also proposing a tax hike that will raise the top income tax bracket from 37% to 39.6%.

Biden's tax plan would impact long-term capital gains significantly by nearly doubling the rate for high-income investors. Currently, individuals pay a 20% tax rate for long-term gains made over \$445,850. For reference, the table below breaks down long-term capital gains tax rates and income brackets for tax year 2020:

Rate	Single	Married Filing Jointly	Married Filing Separately	Head of Household
0%	\$0 – \$40,000	\$0 – \$80,000	\$0 – \$40,000	\$0 – \$53,600
15%	\$40,001 – \$441,450	\$80,001 – \$496,600	\$40,001 – \$248,300	\$53,601 – \$469,050
20%	\$441,451+	\$496,601+	\$248,301+	\$469,051+

The proposed increase would tax long-term gains over \$1 million as ordinary income, which means that these high-income investors would have to pay a top rate of 39.6%.

The IRS also charges high-income investors an additional 3.8% net investment income tax, which could raise Biden's proposed tax to 43.4% for those with long-term capital gains over \$1 million. And depending on where you pay state taxes, your capital gains may also be taxed at the same rate as regular income taxes as well.

To figure out how much you owe in capital gains taxes, use SmartAsset's free capital gains tax calculator.

How Can High-Income Investors Lower Capital Gains?



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While there are many reasons to sell off an investment, experts agree that holding onto it long-term generally makes the most financial sense. For those who are looking to minimize capital gains taxes, here are four strategies for investors:

- 1. Time your sales.** Capital gains taxes, unlike income taxes, are discretionary. This means that investors have greater flexibility on when to sell their investments, and therefore can determine how much tax they will have to pay in a specific tax year. High-income investors may want to sell off their assets slowly over time to keep their long-term capital gains beneath the \$1 million threshold.
- 2. Harvest your losses.** If your capital losses are greater than your capital gains, the IRS currently allows you to claim up to \$3,000 (\$1,500 if you're married filing separately) to lower ordinary income. Investors can also carry the loss forward to other tax years, pairing them with gains in their portfolios, until they are fully claimed.
- 3. Invest in your retirement.** Contributions to IRAs and 401(k)s are a tax-free or tax-deferred alternative that is exempt from paying capital gains taxes. This means that when your retirement account sells investments you won't have to pay a capital gains tax like you do with other investment portfolios.



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because the capital gains rate depends on your taxable income, you may want to max out other tax-advantaged contributions to health savings accounts (HSAs) as long as you are younger than 65 or 529 plans. Note that you could also reduce your taxable income by itemizing deductions as long as they add up to more than the standard deduction. These could include charitable donations, business expenses, mortgage points and interest, and medical and dental expenses.

Under the current rules, heirs can take advantage of a tax-provision known as stepped-up basis to reduce capital gains taxes. Biden said he wants to close this loophole, which allows heirs to pay minimal taxes on inherited wealth. The Wharton study says that the new proposed tax rate without the stepped-up basis “would raise \$113 billion over 10 years.”

Bottom Line

President Joe Biden proposed doubling capital gains taxes for investors making over \$1 million to fund his American Families Plan. While some high-income investors may consider selling assets to avoid paying a 39.6% rate, the current tax code allows for different strategies to minimize capital gains taxes. Biden’s plan will change as it moves through Congress, and both chambers will have to approve it via vote before the president can sign it into law.

Tips for Tax Planning

- The American Families Plan could have a significant impact on your finances and taxes, with specific changes on investment income. A financial advisor can help you create a financial plan and optimize your tax strategy for your needs and goals. SmartAsset’s free advisor matching tool connects you with financial advisors in your area. If you’re ready to be matched with local advisors, get started now.
- SmartAsset’s free income tax calculator can help you figure out how much you will owe in taxes.

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ARTURO CONDE

Arturo Conde is an editor at SmartAsset and a bilingual freelance journalist. He writes for NBC News and WhoWhatWhy. His articles have been published in Fusion, Univision, City Limits and the NACLA Report on the Americas.



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Joe Biden's 61 Percent Tax on Wealth

April 29, 2021

Scott A. Hodge, Garrett Watson

As part of President Joe Biden's American Families Plan (<https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan/>) (AFP), the White House yesterday proposed two major tax increases on accumulated wealth, adding to a 61 percent tax on the wealth of high-earning taxpayers.

First, the American Families Plan would tax unrealized capital gains at death for unrealized capital gains worth over \$1 million. Currently, long-term capital gains of high earners are subject to a 20 percent tax rate and the 3.8 percent net investment income tax (NIIT) when the gains are realized (sold).

Second, Biden also wants to tax the capital gains of millionaires at ordinary income tax rates, which would be levied at his proposed top marginal rate of 39.6 percent. Added to the NIIT, it would mean a combined top tax rate on capital gains of 43.4 percent, compared to 23.8 percent today.

In addition to taxing unrealized capital gains at death at ordinary income tax rates, large estates would also be subject to the current estate tax of 40 percent above an exemption of \$11.7 million per person.

As the accompanying table illustrates, for an asset worth \$100 million (all of which is a capital gain for the sake of simplicity), the two changes would mean an immediate capital gains tax liability of \$42.9 million at the time of death. Upon paying the capital gains tax at death, the value of the \$100 million asset falls to \$57 million for the purposes of the estate tax. After subtracting the \$11.7 million exemption, the 40 percent estate tax rate is levied on the remaining \$45.3 million in assets to produce an estate tax bill of about \$18.1 million.

President Biden's Taxes on Wealthy Estates

(All dollar figures in millions)

Value of Original Asset (\$100 million)	\$100.00
Value of asset after \$1 million step-up in basis repeal exemption	\$99.00
Capital gains taxed at ordinary rates 39.6% + 3.8% NIIT = 43.4%	43.4%
Capital gains tax owed	\$42.96
Value of remaining assets in the estate	\$57.04
Biden's estate tax exemption (\$11.7 million)	\$11.70
Taxable estate	\$45.34
Estate tax rate (40%)	40%
Taxes owed on the estate	\$18.13
Total taxes paid on \$100 million asset =	\$61.10
Effective tax rate	61.1%

Source: Tax Foundation calculations.

TAX FOUNDATION

@TaxFoundation

By historical standards, Biden's plan to tax unrealized gains at death and levy the estate tax at the same time is quite unique. Traditionally, estate tax law has allowed for a "step-up" in the basis of transferred assets so that they were not hit by the capital gains tax and the estate tax at the same time. Combining both taxes results in a total tax liability of \$61.1 million on the original \$100 million asset, for an effective tax rate of 61 percent. The tax rate under Biden's proposal is nearly twice the effective tax rate that the same asset would face today under existing tax rules.

When the estate tax was repealed for one year in 2010, the step-up was also repealed, which meant that heirs did face tax liability on any gains when they sold inherited assets.

However, the impact of the step-up's repeal was mitigated somewhat for smaller estates by a provision that exempted "\$1.3 million of an estate's increased value from the capital gains tax and \$3 million for transfers to a spouse." Even though some heirs did pay higher capital gains taxes on the assets they inherited in 2010, Congress has historically understood that it was bad policy to levy a capital gains tax and estate tax on the same assets.

Of course, most economists agree that both the estate tax and capital gains taxes already amount to a second or third layer of tax on the same income. In the case of corporate stocks, capital gains (and dividends) are second layers of tax on corporate profits that were already taxed by the corporate income tax. Estate taxes are levied on assets that were purchased with after-tax income and on assets that may already have been taxed, as might be the case with stocks or corporate bonds.

Increasing the top capital gains tax rate to 43.4 percent alone would mean high-earning taxpayers may face tax rates north of 50 percent on capital gains when including state taxes. Taxing unrealized gains at death while still levying the estate tax further compounds the total tax burden on saving and investment, which may be the highest tax burden on capital gains seen in nearly a century.

Rather than penalize productive activity further, tax policy that encourages greater economic growth is a better path ahead for U.S. tax policy.

Biden's Tax Plan Roadmap

**Bloomberg
Tax & Accounting**



President Biden's Position on Taxes

[U.S. Individual Taxes](#)

[U.S. Business Taxes](#)

[Estate Taxes](#)

[Financial Instruments and Transactions](#)

[Real Estate](#)

[Tax Enforcement](#)



[Compensation and Benefits](#)

[International Business Taxes](#)

The following table shows how current law might change under the tax proposals of President Joe Biden with primary legislative activity. Changes will be made as warranted. Last updated May 6, 2021. More detailed information on the American Rescue Plan Act of 2021, Pub. L. No. 117-2, signed March 11 can be found [here](#).
Michael Bloomberg also sought the Democratic presidential nomination. He endorsed Joe Biden on March 4, 2020. Bloomberg Industry Group is operated by entities controlled by Bloomberg.

U.S. Individual Taxes		
Current Law	Joe Biden Individual Rates	Legislation
<p>Seven tax brackets: 10%, 12%, 22%, 24%, 32%, 35%, and 37% applicable to tax years beginning after Dec. 31, 2017, and before Jan. 1, 2026. For 2021, the top rate applies to incomes \$628,300 for joint filers (\$622,050 in 2020); \$523,600 for single taxpayers (\$518,400 in 2020)</p>	<p>Campaign: Increase top rate to 39.6% for taxpayers making more than \$400,000.</p> <p><i>Comment:</i> Because the second highest tax bracket (35%) applies to incomes over \$400,000 for joint and individual tax filers, adjustments to the income for each bracket would need adjusting to maintain the promise that income taxes wouldn't rise for people earning \$400,000 or less.</p>	<p>H.R. 946 (introduced February 8, 2021, by Rep. Pascrell (D-NJ)) to increase the top marginal tax rate to 39.6%.</p> <p>S. 126 (introduced January 28, 2021, by Sen. Cruz (R-TX) to make the individual tax rates from the 2017 Tax Cuts and Jobs Act permanent.</p>
<p>American Families Plan (released April 28, 2021): Returning the top rate to 39.6 percent, applying only to</p>		

U.S. Individual Taxes

 Current Law	 Joe Biden	Legislation
No taxation on accumulation of wealth; IRS is required to assess the net worth of the wealthiest Americans when they pass away, to calculate estate tax liability.	those within the top one percent - those earning more than \$452,700 in 2022 and married couples making at least \$509,300. Households making over \$1 million will pay the same 39.6% rate on all their income, equalizing the rate paid on investment returns (dividends and capital gains) and wages.	S. 510 (introduced March 1, 2021, by Sen. Warren (D-MA)) that would impose a 2% annual tax on net worth of households and trusts valued over \$50 million and an additional 1% annual surtax on households and trusts valued over \$1 billion.
Wealth Tax		
Campaign: Does not generally support.		

U.S. Individual Taxes

Legislation



Current Law



Joe Biden

Child Incentives

The earned income tax credit (EITC) is a refundable personal credit available for any eligible individual who has a qualifying child for the tax year, or any other eligible individual without children who satisfies certain conditions. Taxpayers 65 or older are not eligible for the EITC.

A taxpayer may claim a \$2,000 credit with respect to each qualifying child (under age 17) of the taxpayer and \$500 for nonqualifying children and other dependents. The credit is phased out at higher incomes. A portion of the credit is refundable.



A credit up to 35% of spending on childcare to work allows up to \$1,500 for one child, and \$3,000 for two or more children under age 13.



Campaign:
Earned Income Tax Credit: For one year, expand EITC to older workers; raise minimum credit to \$1,500; and raise income limit to close to \$21,000. Expand eligibility for younger workers. **Dependent Care Tax Credit:**

One-year expansion of the dependent care credit to provide up to a 50% credit on spending \$8,000 for one child, and \$16,000 for two or more children under age 13. The tax credit will be refundable and will explore ways to make it advanced. The full 50% reimbursement will be available to families making less than \$125,000 a year. All families making between \$125,000 and \$400,000 will receive a partial credit ensuring that in no case will they get less than they are eligible for today. **Child Tax Credit:** For one year, raise the child tax credit to \$3,000 per child for children ages 6 to 17 and \$3,600 for children under 6. Make credit fully refundable.

American Families Plan (released April 28, 2021):
Extend key tax cuts in the American Rescue Plan that benefit lower- and middle-income workers and families, including the Child Tax Credit, the Earned Income Tax Credit, and the Child and Dependent Care Tax Credit. Make permanent the full refundability of the Child Tax Credit, while extending the other expansions to the Child Tax Credit through 2025. Make permanent the temporary Child and Dependent Care Tax Credit (CDCTC) expansion. Make the EITC expansion permanent.

American Rescue Plan Act of 2021 (Pub. L. No. 117-2) - Expanded the **Child Tax Credit**, **Earned Income Tax Credit**, and **Dependent Care Credit**.

U.S. Individual Taxes		Legislation
 Current Law	 Joe Biden	
Credits and Deductions		
<p>Taxpayers can take eligible deductions and credits against their income tax liability. The itemized deduction for state and local taxes (SALT) is capped at \$10,000.</p> <p>From the CARES Act and the Consolidated Appropriations Act, 2021, taxpayers under a certain AGI threshold receive an advance payment of the Recovery Rebate Credit.</p>	<p>Campaign: Cap itemized deductions at 28%. Restore PEASE for incomes above \$400,000. End SALT dollar limit.</p> <p>Supports a \$3,000 tax credit allowing family caregivers to defray some of what they spend to assist their loved ones.</p> <p>Supports additional payments to taxpayers.</p>	<p><u>H.R. 613</u> (introduced January 28, 2021, by Rep. Suozzi (D-NY)) to repeal the SALT limit.</p> <p><u>S. 85</u> (introduced January 28, 2021, by Sen. Schumer (D-NY)) to repeal the SALT limit.</p> <p><u>H.R. 946</u> (introduced February 8, 2021, by Rep. Pascrell (D-NJ)) to repeal the SALT limit.</p> <p><u>S. 126</u> (introduced January 28, 2021, by Sen. Cruz (R-TX)) to make the SALT limit permanent.</p> <p><u>H.R. 258</u> (introduced January 11, 2021, by Rep. Lee (D-CA)) to provide a dependent care credit for dependents aged 50 and over.</p> <p>American Rescue Plan Act of 2021 (Pub. L. No. 117-2) - Added a third stimulus payment as an advance Recovery Rebate Credit.</p> <p><i>Editor's Note:</i> SALT repeal not part of American Rescue Plan Act.</p>
Student Loans/Education		
<p>Loan forgiveness is generally included in income unless an exception applies. Student loan forgiveness is includible in income unless the individual worked for a certain period of time in certain professions for any of a broad class of employers.</p>	<p>Campaign: Student loans will be cancelled, tax-free, after borrowers have been enrolled in the income-based repayment plan for 20 years.</p> <p><i>Comment:</i> There is political pressure for Biden to eliminate \$50,000 of federal student loans.</p>	<p>American Rescue Plan Act of 2021 (Pub. L. No. 117-2) - Expanded tax-free forgiveness of student loans, but did not cancel outright.</p> <p><u>S. 496</u> (introduced March 1, 2021, by Sen. Menendez (D-NJ)) that would make permanent the tax-free forgiveness of student loans.</p>

Financial Instruments and Transactions		Legislation
 Current Law	 Joe Biden Carried Interest	
<p>Income that flows to the general partner of a private investment fund, known as carried interest, is taxed at the lower capital gains rates. Three-year holding period requirement for long-term capital gain and loss for certain service-based partnership interests.</p>	<p>Campaign: Eliminate carried interest. American Families Plan (released April 28, 2021): Close the carried interest loophole so that hedge fund partners will pay ordinary income rates on their income.</p>	<p><u>H.R. 10668</u> (introduced February 15, 2021, by Rep. Pascrell (D-NJ)) to provide for the proper tax treatment of personal service income earned in pass-thru entities.</p>
Cryptocurrency		
<p>Virtual currencies are treated as property for tax purposes. The IRS requires taxpayers to report on their Form 1040 if they own virtual currencies.</p>	<p>Campaign: No specific plan announced.</p>	
Transaction Tax		
<p>There is no tax on entering into a financial transaction such as buying or selling stocks, bonds and/or derivatives.</p>	<p>Campaign: Supports:</p>	<p><u>H. Res. 249</u> (introduced March 17, 2021, by Rep. McHenry (R-NC)) to express the sense of the House of Representatives that the Congress should not impose a financial transaction tax on individuals or market intermediaries. <u>S. 817</u> (introduced March 23, 2021, by Sen. Schatz (D-HI)) to impose 0.1% tax on each sale of stocks, bonds and derivatives. <u>S. 1283</u> (introduced April 21, 2021, by Sen. Sanders (I-VT)) to impose a tax on certain trading transactions.</p>

Compensation and Benefits



Current Law



Joe Biden

Employment/Social Security Taxes

Legislation

Payroll tax applied on worker's wages up to \$137,700 for 2020, \$142,800 for 2021. FICA tax of 12.4% split between employer and employee.

For 2020 and 2021, most workers can contribute and get preferential tax treatment on up to \$19,500 a year in a 401(k) account (extra \$6,500 if age 50 or higher). Highly paid executives can contribute an unlimited amount in certain tax advantaged plans.

Campaign: End employers intentionally misclassifying their employees as independent contractors to avoid paying employment taxes.

Lift social security taxable wage base cap on high earners (taxpayers making more than \$400,000). Thus, taxpayers earning between the wage base and \$400,000 would not pay additional Social Security taxes.

American Families Plan (released April 28, 2021): Apply the additional 3.8% Medicare tax consistently to those making over \$400,000, ensuring that all high-income Americans pay the same Medicare taxes.

Retirement Incentives

Eligible employees can contribute a portion of their salary to a qualified retirement plan (401(k), 403(b), 457, etc.). The deferred salary is not included in taxable income until withdrawn. Penalties apply for early withdrawal. No all employers offer qualified retirement plans. Minimum distributions required when taxpayer turns 72.

Campaign: Create "automatic 401(k)" for workers without access to pension or 401(k) plans. Allow 401(k) plans to offer hardship withdrawals for survivors of domestic violence or sexual assault and allow penalty-free distributions for such persons.
Equalize the tax benefits of defined contribution plans across the income scale. A tax credit instead of a deduction would cap the tax benefit for the deferred salary.
Allow caregivers to make "catch-up" contributions to retirement accounts, even if they're not earning income in the formal labor market. Offer tax credits to small businesses to offset much of the cost of starting or maintaining retirement plans.

H.R. 409 (introduced January 21, 2021 by Rep. Neal (D-Mass.) to provide relief for multiemployer and single employer pension plans.
H.R. 423 (introduced January 21, 2021 by Rep. Scott (D-Va.) to provide relief for multiemployer and single employer pension plans.
H.R. 2954 (passed House Ways & Means Committee May 3, 2021) to increase retirement savings, improve workers' long-term financial wellbeing, and build on the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019.
American Rescue Plan Act of 2021 (Pub. L. No. 117-2) - Shored up multi-employer pension plans.

Health Care and Long-term Care		
<p>Tax credits are available to lower income taxpayers to help pay premiums for purchasing health insurance in an Exchange under the Affordable Care Act. Long-term care insurance premiums are eligible medical care expenses for purposes of the medical deduction.</p>	<p>Campaign: Eliminate the 400% income cap on tax credit eligibility for the premium tax credit to allow all families purchasing health care through an Exchange can claim the credit.</p> <p>Base tax credits on gold plan (not silver). Impose a tax penalty on drug manufacturers that increase the costs of their brand, biotech, or abusively priced generic over the general inflation rate.</p> <p>Terminate pharmaceutical corporations' tax deduction for advertisement spending.</p> <p>Create a \$5,000 tax credit for using informal caregivers, including family members. Increase tax benefits for older Americans who buy long-term care insurance and pay for it using their savings for retirement.</p> <p>Expand access to refundable health premium tax credits so that no family spends more than 8.5% of their income on health insurance.</p> <p>American Families Plan (released April 28, 2021): extend the expanded health insurance tax credits in the American Rescue Plan Act of 2021.</p>	<p>American Rescue Plan Act of 2021 (Pub. L. No. 117-2) - Changed method of determining amount and eligibility of premium tax credits.</p>

U.S. Business Taxes

Legislation



Current Law



Joe Biden

Corporate Tax Rates

21%

Campaign: 28% with 15% minimum book tax on companies reporting more than \$2 billion in the U.S. but paid zero or negative federal income taxes. Credit for foreign taxes paid and carryovers allowed. [part of **Made in America Tax Plan** released March 31, 2021]

Editor's Note: During the campaign, the 15% minimum book tax would have applied to \$100 million. 10% offshoring penalty surtax on the profits from any production by a U.S. company overseas for sale on American soil, making the overall tax rate on those profits 30.8%.

S. 794 (introduced March 17, 2021, by Sen. Sanders (I-VT)) to impose a corporate tax rate increase on companies whose ratio of compensation of the CEO or other highest paid employee to median worker compensation is more than 50 to 1.

S. 921 (introduced March 25, 2021, by Sen. Sanders (I-VT) to reinstate the progressive corporate tax rate structure (top rate 35%).

Carbon Tax/Incentives

The United States does not place a tax on fuels that emit greenhouse gases into the atmosphere.

Taxpayers may claim a credit for sequestering qualified carbon oxide that otherwise would have been released into the atmosphere.

Campaign: Supports, but may not push for carbon tax as part of climate change plan.

Expand the Section 45Q tax credit, making it direct pay and easier to use for hard-to-decarbonize industrial applications, direct air capture, and retrofits of existing power plants.



S. 685 (introduced March 10, 2011, by Sen. Durbin (D-IL)) to establish a carbon fee.

Community Development

A taxpayer who holds a qualified equity investment on a credit allowance date that occurs during the tax year can claim a new markets tax credit for the taxable year. The NMTC limitation is \$5 billion for 2021-2025. No amount may be carried over to a calendar year after 2030.

Campaign: Expand the new markets tax credit program to provide \$5 billion in support every year and make the program permanent. Enact a manufacturing community tax credit.
Editor's Note: The Consolidated Appropriations Act, 2021, extended the NMTC through 2025.

S. 456 (introduced February 25, 2021, by Sen. Cardin (D-MD) to make the new markets tax credit permanent. H.R. 1321 (introduced February 25, 2021, by Rep. Sewell (D-AL) to make the new markets tax credit permanent.

U.S. Business Taxes		Legislation
 Current Law	 Joe Biden	
Credits and Incentives		
<p>Businesses enjoy a nonrefundable tax credit for a portion of wages paid to certain new employees who qualify as members of disadvantaged groups. The employee must begin work before January 1, 2026.</p> <p>For taxable years beginning after 2020 and before 2027, taxpayers other than C corporations are subject to a limitation on their ability to deduct any business loss.</p>	<p>Campaign: Expanding the work opportunity tax credit to include military spouses.</p> <p>Impose a tax penalty on drug manufacturers that increase the costs of their brand, biotech, or abusively priced generic over the general inflation rate.</p> <p>Terminate pharmaceutical corporations' tax deduction for advertisement spending. Create a new childcare construction tax credit to encourage businesses to build childcare facilities at places of work. Employers will receive 50% of the first \$1 million of construction costs per facility.</p> <p>A 10% "Made in America" tax credit for companies that create jobs for American workers. Available for revitalizing closed or nearly closed facilities, retooling or expanding facilities, and bringing production or service jobs back to the U.S. and creating U.S. jobs. It will also apply when a company is increasing manufacturing wages above the pre-Covid baseline for jobs paying up to \$100,000 [part of Made in America Tax Plan released March 31, 2021].</p> <p>American Families Plan (released April 28, 2021): Permanently extend the current limitation that restricts large, excess business losses.</p>	<p><u>S. 141</u> (introduced January 28, 2021, by Sen. Shaheen (D-NH)) to prohibit a tax deduction for expenses relating to direct-to-consumer advertising of prescription drugs.</p> <p><u>S. 269</u> (introduced February 8, 2021, by Sen. Portman (R-OH)) to make the work opportunity tax credit permanent.</p>

U.S. Business Taxes

Legislation



Current Law



Joe Biden

Depreciation

Taxpayers can take a depreciation deduction as a mechanism for recovering the capital invested in an asset. Eligible property can be expensed entirely in the first year placed in service.

Campaign: No specific plan announced.

Fossil Fuels

Several deductions and other incentives appear in the I.R.C. for businesses to invest in fossil fuels. The primary incentive is a deduction for intangible drilling costs paid or incurred by operators of oil and gas wells. The Code also allows for a deduction for the depletion of minerals and oil and gas extraction.

Campaign: End fossil fuel subsidies (e.g., deductions for drilling wells, depletion of oil and gas deposits, domestic manufacturing) [part of **Made in America Tax Plan** released March 31, 2021].

Manufacturing

Repealed for tax years beginning after December 31, 2017, businesses were entitled to a 9% deduction for domestic production activities.

Campaign: Enact a manufacturing communities tax credit. Impose a tax penalty on drug manufacturers that increase the costs of their brand, biotech, or abusively priced generic over the general inflation rate.

Create a 10% tax penalty on companies that move operations overseas and a 10% tax credit for companies that create jobs in the U.S. to incentivize manufacturing (see U.S. Business Taxes - Credits and Incentives, above).

U.S. Business Taxes

Legislation



Current Law



Joe Biden

Qualified Business Income Deduction

Taxpayers other than C corporations generally can deduct 20% of qualified business income (QBI) from a partnership, S corporation, or sole proprietorship, as well as 20% of qualified REIT dividends and qualified publicly traded partnership income. The deduction expires at the end of 2025.

Campaign: End special qualifying rules, including those for real estate investors. Only allow deduction to taxpayers making \$400,000 and under.

H.R. 1381, S. 480 (introduced February 25, 2021, by Rep. Jason Smith (R-MO) and Sen. Steve Daines (R-MT), respectively) - To make permanent the 20% qualified business income deduction.

S. 126 (introduced January 28, 2021, by Sen. Cruz (R-TX) to make the qualified business income deduction permanent.

Renewable Energy

Taxpayers are allowed an investment tax credit for certain investments in renewable energy, such as solar and wind. A tax credit exists for biodiesel and renewable diesel used as a fuel during the tax year.

Campaign: Restore the full electric-vehicle tax credit; reinstate tax credits for residential energy efficiency; expand tax deductions for energy retrofits, smart metering systems, and other emissions-reducing investments in commercial buildings; reinstate the solar Investment Tax Credit (ITC); tax benefits for carbon capture, use and storage.

10-year extension and phase down of an expanded direct-pay investment tax credit and production tax credit for clean energy generation and storage.
Extend the Section 48C tax credit program for qualifying advanced energy projects.

Comment: The Consolidated Appropriation Act, 2021, extended the ITC for solar energy property for construction that begins before 2024.

H.R. 1298 (introduced April 22, 2021, by Sen. Wyden (D-OR) to provide tax incentives for increased investment in clean energy.

Real Estate



Current Law

Taxes on gains of real property are deferred if the property is exchanged for that of "like-kind." Owners of certain residential rental property occupied by low-income tenants may claim a tax credit of a percentage of the qualified basis of the property over a 10-year period.



Joe Biden

Campaign: Roll "back unproductive and unequal tax breaks for real estate investors with incomes over \$400,000."

End qualified business income deduction for real estate investors. Would take aim at like-kind exchanges and prevent investors from using real-estate losses to lower their income tax bills.

Create new refundable, advanceable tax credit of up to \$15,000 to assist buying first-home. Credit paid upon purchase, not when filing tax return.

Tax credits to renovate distressed properties in distressed communities, called Neighborhood Home Credit as part of general business credit.

Enact renter's tax credit.

Extend and expand home and commercial efficiency tax credits.

American Families Plan (released April 28, 2021): End the special real estate tax break—that allows real estate investors to defer taxation when they exchange property (like-kind exchanges)—for gains greater than \$500,000.

Legislation

International Business Taxes

Legislation



Current Law



Joe Biden

BEAT/GILTI/FDII

Effective minimum rate of 10.5% on “global intangible low-taxed income” (GILTI) of U.S. shareholders of CFCs, with a deduction of 37.5% (and 21.875% for tax year beginning after 2025) for foreign-derived intangible income (FDII) plus 50% (37.5% for tax years beginning after 2025) of the GILTI. Minimum base erosion anti-abuse tax (BEAT) for certain taxpayers of 10% and 12.5% for tax years beginning after 2025.

Campaign: Raise minimum GILTI rate to 21% calculated on a country-by-country basis. Eliminate the rule that allows U.S. companies to pay zero taxes on the first 10 percent of return when they locate investments in foreign countries. [part of **Made in America Tax Plan** released March 31, 2021]

Denying deductions to foreign corporations on payments that could allow them to strip profits out of the United States if they are based in a country that does not adopt a strong minimum tax. Replaces an ineffective provision in the 2017 tax law that tried to stop foreign corporations from stripping profits out of the United States [part of **Made in America Tax Plan** released March 31, 2021].

Eliminate tax incentives for FDII [part of **Made in America Tax Plan** released March 31, 2021].

Sen. Wyden’s (D-OR) framework for overhauling international taxation would (1) repeal the QBAI exemption; increase the GILTI rate (amount not specified); (2) move GILTI to a country-by-country system or divide global income into 2 groups – high tax and low tax - and apply GILTI to only low-tax countries; (3) expenses for research and management that actually occur in the U.S. should be treated as entirely domestic expenses; (4) revise FDII to promote incentive to invest in the U.S. by changing application from foreign deemed intangible to deemed innovation income; (5) equalize FDII and GILTI rates; (6) provide full value of domestic business tax credits under BEAT; and (7) increase BEAT rate on base erosion payments.

S. 714 (introduced March 11, 2021, by Sen. Whitehouse (D-RI) to end offshore tax breaks in the 2017 Tax Cuts and Jobs Act.

Expatriation

A special “mark-to-market” tax regime may apply to U.S. citizens who renounce their citizenship and to certain long-term resident aliens who terminate their resident status.

Campaign: No specific plan announced.



Sourcing of Income

Source of income rules determine whether items of income (or expense) are derived from sources within the United States (U.S. source) or from sources without the United States (foreign source).

Campaign: No specific plan announced.



Inversions		
<p>Inversion transactions usually involve the transfer of stock of a corporation by one or more shareholders to a wholly or partly owned subsidiary of that corporation in exchange for newly issued shares of the subsidiary's stock. Under §7874 generally, if the domestic corporation's shareholders own at least 80% of the new foreign parent corporation's stock after the inversion transaction (whether by stock or asset transfer, or any combination of the two), the new foreign parent corporation is treated as a domestic corporation for all federal tax purposes for a period of 10 years.</p>	<p>Campaign: Making it more difficult for corporations to undertake inversions. Deny write off expenses that come from offshoring jobs [part of Made in America Tax Plan released March 31, 2021].</p>	<p><u>S. 1501</u> (introduced April 29, 2021, by Sen. Durbin (D-IL) to modify the rules related to inverted corporations.</p>

International Business Taxes



 <p>Current Law</p> <p>American corporations can defer paying U.S. income tax on profits of their offshore subsidiaries until those profits are "repatriated." A one-time repatriation tax of past profits of U.S. corporations' foreign subsidiaries with a credit for foreign taxes paid on that income.</p>	 <p>Joe Biden Repatriation</p> <p>Campaign: Would end incentives in the 2017 TCJA that allow multinationals to dramatically lower taxes on income earned overseas and allow the largest, most profitable companies to pay no tax at all. Establish a "claw-back" provision to force a company to return public investments and tax benefits when they close down jobs here and send them overseas.</p>	<p>Legislation</p>
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<p>The IRS is empowered under §482 to re-allocate income and other items among related parties to prevent evasion of tax or to clearly reflect income.</p>	<p>Campaign: No specific plan announced.</p>	<p>Transfer Pricing</p>
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Estate Taxes

 <p>Current Law</p> <p>Exemption amount \$11.7 million for 2021 (\$11.58 million for 2020). Assets passed through at death get a basis step-up to fair market value for the recipient. Increased exemption amount reverts to \$5 million after 2025. Top rate is 40%.</p>	 <p>Joe Biden</p> <p>Campaign: Eliminate stepped-up basis rule that allows people to pass capital gains to heirs without tax after death. Reduce estate tax exemption amount to \$3.5 million. Increase top rate to 45%.</p> <p>American Families Plan (released April 28, 2021): End the practice of "stepping-up" the basis for gains in excess of \$1 million (\$2.5 million per couple when combined with existing real estate exemptions) and</p>	<p>Legislation</p> <p><u>S. 617</u> (introduced March 9, 2021, by Sen. Thune (R-SD)) to repeal the estate and generation-skipping transfer taxes.</p> <p><u>S. 822</u> (introduced February 4, 2021, by Rep. Latta (R-OH)) to repeal the estate tax and retain stepped-up basis at death.</p> <p><u>S. 126</u> (introduced January 28, 2021, by Sen. Cruz (R-TX)) to make estate and gift tax exemption amounts from the 2017 Tax Cuts and Jobs Act permanent.</p>
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	<p>making sure the gains are taxed if the property is not donated to charity. Protect family-owned businesses and farms to avoid paying taxes when given to heirs who continue to run the business.</p>	<p>S.994 (introduced March 25, 2021, by Sen. Sanders (I-VT)) to reinstate estate and generation-skipping taxes.</p>
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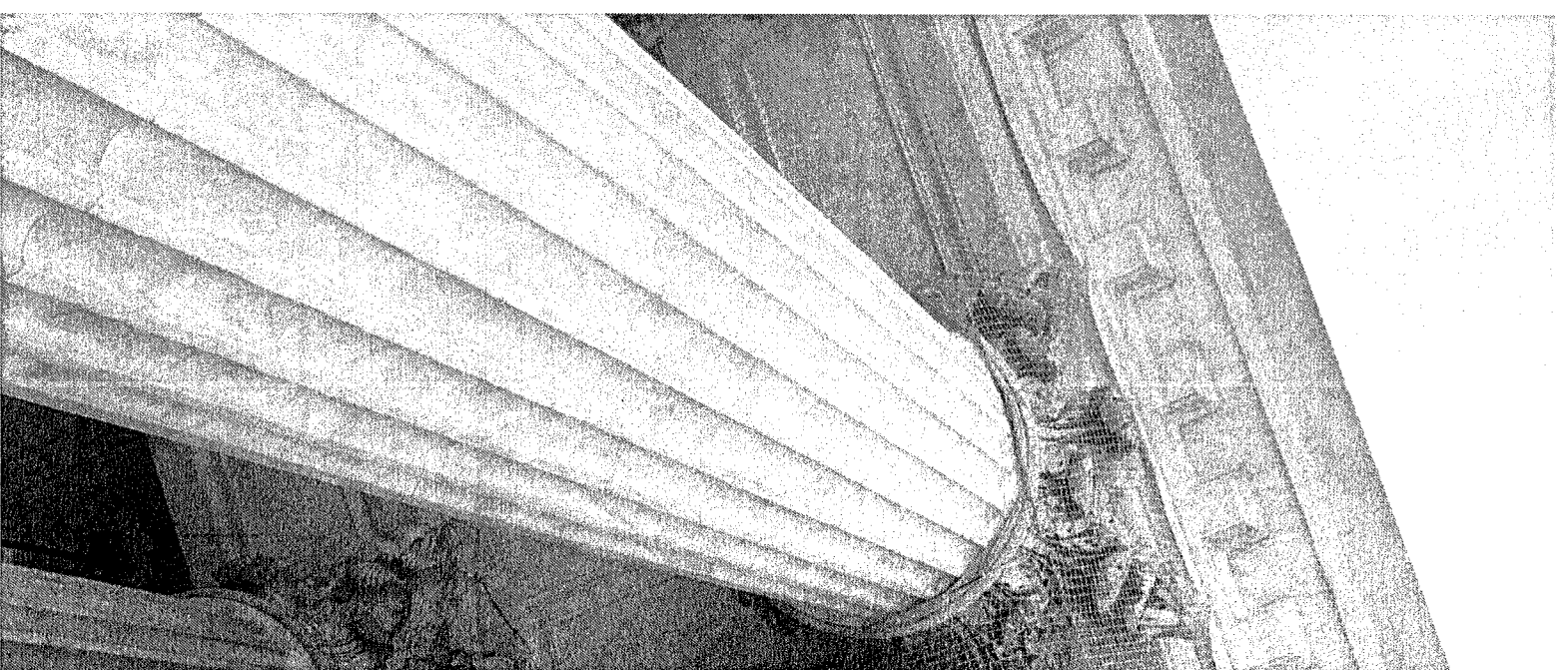
Tax Enforcement and Compliance		Legislation
 Current law	 Joe Biden	
<p>Tax compliance runs on a voluntary system requiring taxpayers to file yearly tax returns. A tax gap, the difference between what is estimated to be owed and what the IRS collects, stands at approximately \$440 billion per year.</p>	<p>Campaign: Make sure that the Internal Revenue Service has the resources it needs to effectively enforce the tax laws against corporations; increase audit rates of corporations. [part of Made in America Tax Plan released March 31, 2021].</p> <p>American Families Plan (released April 28, 2021): Give IRS the authority to regulate paid tax preparers. Require financial institutions to report information on account flows so that earnings from investments and business activity are subject to reporting more like wages already are. Add IRS resources would focus on large corporations, businesses, and estates, and higher-income individuals.</p>	<p>H.R. 1116 (introduced February 18, 2021, by Rep. DeFazio (D-OR)) to improve IRS resources to close the tax gap.</p>

Sources:	
General:	<ul style="list-style-type: none"> • https://joebiden.com/# • https://joebiden.com/made-in-america/ • Manager's Amendment to H.R. 1319 • American Jobs Plan (3/31/21) • Made in America Tax Plan (4/7/21) • American Families Plan (4/28/21)
Child-Related Incentives	<ul style="list-style-type: none"> • https://buildbackbetter.gov/wp-content/uploads/2021/01/COVID_Relief-Package-Fact-Sheet.pdf
Tax Rates/Capital gain:	<ul style="list-style-type: none"> • https://www.bloomberglaw.com/product/tax/document/XEM6OKPG0000000 • https://www.bloomberglaw.com/product/tax/document/XFTPUM00000000 • https://joebiden.com/wp-content/uploads/2020/09/Buy-America-fact-sheet.pdf
Carbon Capture:	<ul style="list-style-type: none"> • https://www.bloomberglaw.com/product/tax/document/XBCRT5500000000

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11 | 20 | 2018

Treasury, IRS: Making large gifts now won't harm estates after 2025

IR-2018-229

WASHINGTON – Today the IRS announced that individuals taking advantage of the increased gift and estate tax exclusion amounts in effect from 2018 to 2025 will not be adversely impacted after 2025 when the exclusion amount is scheduled to drop to pre-2018 levels.

The Treasury Department and the IRS issued proposed regulations which implement changes made by the 2017 Tax Cuts and Jobs Act (TCJA). As a result, individuals planning to make large gifts between 2018 and 2025 can do so without concern that they will lose the tax benefit of the higher exclusion level once it decreases after 2025.

In general, gift and estate taxes are calculated, using a unified rate schedule, on taxable transfers of money, property and other assets. Any tax due is determined after applying a credit – formerly known as the unified credit – based on an applicable exclusion amount.

The applicable exclusion amount is the sum of the basic exclusion amount (BEA) established in the statute, and other elements (if applicable) described in the proposed regulations. The credit is first used during life to offset gift tax and any remaining credit is available to reduce or eliminate estate tax.

The TCJA temporarily increased the BEA from \$5 million to \$10 million for tax years 2018 through 2025, with both dollar amounts adjusted for inflation. For 2018, the inflation-adjusted BEA is \$11.18 million. In 2026, the BEA will revert to the 2017 level of \$5 million as adjusted for inflation.

To address concerns that an estate tax could apply to gifts exempt from gift tax by the increased BEA, the proposed regulations provide a special rule that allows the estate to compute its estate tax credit using the higher of the BEA applicable to gifts made during life or the BEA applicable on the date of death.

Treasury and IRS welcome public comment, and the proposed regulations provide details on how to submit comments.

More information about this and other TCJA provisions can be found on the [Tax Reform](#) page on IRS.gov.