

## Estate Tax Reform – A Not So Distant Horizon?

Much attention has been paid in recent weeks to President Biden's infrastructure plan as well as its key sources of funding, including, among other things, raising the corporate tax rate. In the shadow of this legislation, two bills have recently been introduced in the Senate that would take direct aim at current wealth transfer planning techniques. While neither bill is likely to survive in its current form, a recent ruling by the Senate parliamentarian has made imminent estate tax reform more likely. These proposals, their effective dates and the possible timeframe for estate tax reform are discussed below.

Typically, to avoid the threat of a filibuster, 60 senators need to vote in favor of proposed legislation. Given the current composition of the Senate, this means that all 50 Democrats and at least 10 Republican senators would need to agree to advance legislation. There has been some conversation about ending the filibuster (either entirely or in its current form) but even this scenario seems unlikely with senators Sinema (D-AZ) and Manchin (D-WV) recently espousing strong opposition to that strategy. As an alternative to passing the legislation with 60 votes in the Senate, it is possible that estate tax reform could still pass via "budget reconciliation," a special procedure whereby bills that impact the government budget can be passed with a simple majority. Historically, budget reconciliation has only been allowed once per fiscal year, with Democrats opting to use this procedure to pass President Biden's \$1.9 trillion COVID-19 relief package earlier this year. In the last few weeks, however, the Senate parliamentarian advised that Senate procedures should be interpreted to allow for multiple reconciliation bills per fiscal year. This interpretation opens the door to the possibility that another budget reconciliation bill could be used to pass the President's infrastructure legislation before October. It is possible that some form of the bills summarized below could be passed to provide further financial support for the landmark infrastructure plan.

### For the 99.5% Act

Senator Bernie Sanders (I-VT) introduced the "For the 99.5% Act" on March 25, 2021. If enacted in its current form, this bill would dramatically alter estate planning in several important and historic ways. For example:

- The federal estate tax exemption would be reduced from its current level of \$11.7 million to \$3.5 million per person. The federal gift tax exemption would

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also be reduced from its current level of \$11.7 million to only \$1 million per person, curbing taxpayers' ability to leverage lifetime gifts to remove growth from the taxable estate.

- The gift tax annual exclusion would also be reduced from \$15,000 to \$10,000 per donee, and would be capped at \$20,000 per donor, per year. Current law does not limit the number of gift tax annual exclusions available to the donor each year.
- The estate tax rate would increase from a flat 40 percent to a progressive rate ranging from 45 to 65 percent.
- The use of valuation discounts would be curtailed in a number of ways.
- Short-term grantor retained annuity trusts (GRATs) and perpetual generation-skipping (or "dynasty") trusts would be eliminated.
- Irrevocable grantor trusts would be included in the grantor's taxable estate. Under current law, it is possible to create a trust that is taxed to the grantor for income tax purposes, but excluded for estate tax purposes.

If passed in its current form, these proposed changes would take effect after the date of enactment. Changes to the exemption amounts and rates would not become effective until the following calendar year. Note that existing irrevocable grantor trusts would be grandfathered, but transfers to such trusts after the enactment of the law would not receive the same treatment.

## **Sensible Taxation and Equity Promotion (STEP) Act**

On the heels of the For the 99.5% Act came the Sensible Taxation and Equity Promotion (STEP) Act, which was introduced by a number of Democratic co-sponsors on March 29, 2021. Under the STEP Act, gifts and bequests of appreciated property would be treated as sales such that unrealized capital gain would be taxable to the donor at the time of the transfer. The bill exempts the first \$1 million of capital gain at death. In addition, \$100,000 of capital gain can be excluded from this treatment during life, but amounts used during lifetime reduce the exclusion available at death. Transfers of appreciated assets to spouses and charities would also be excluded from such treatment.

In contrast to the For the 99.5% Act, the STEP Act proposes a retroactive application so that it is effective as to any gifts or inheritances after December 31, 2020.

As noted above, it seems unlikely that either of these bills will pass in its current form, but the proposed legislation offers valuable insight into the types of changes that may be on the horizon. Given the uncertainty of the form, timing



and severity of estate tax reform, it is more important than ever to consider additional planning. With gift and estate tax exemptions at an all-time high, this is truly a "use it or lose it" situation for individuals with significant wealth. Moreover, even with the economy slowly improving, there is still an enormous [opportunity to transfer wealth at depressed values and low interest rates](#).

If you would like more information regarding estate planning opportunities and strategies, now is the time to contact your Reinhart attorney or a member of Reinhart's [Trusts and Estates Practice](#).

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